

MINUTE ITEM

35. PROPOSED MINERAL EXTRACTION LEASE, SUBMERGED LANDS, SAN FRANCISCO BAY, ALAMEDA AND SAN MATEO COUNTIES - W.O. 2933.

Mr. J. Kerwin Rooney, Port Attorney for the Port Commissioners of the Port of Oakland, appeared in connection with Calendar Item 57 attached, and introduced Mr. Carl H. Hansen, Vice President, Mr. Peter M. Tripp, Commissioner, Mr. Ben E. Nutter, Assistant Executive Director, and Mr. G. R. Dubois, Publicity Representative. Thereafter Mr. Hansen read a "Statement of Carl Hansen, Vice-President, Oakland Board of Port Commissioners, Before the State Lands Commission, October 5, 1959" about the Oakland Airport and its potentialities, in support of the request by the Port of Oakland that the Commission should not permit the proposed mineral extraction operations by dredging. (A copy of this statement is on file in the office of the State Lands Commission.)

Mr. Rooney explained the position of the City of Oakland. Referring to part (B) of the staff recommendation that the subject matter be referred to the Legislature for its review and consideration, he indicated that if this referred to all tideland grants in general and not just to the two grants to the City of Oakland involved herein, there was no objection to such review.

Mr. Nutter also tendered a statement to the Commission, "Statement of Ben E. Nutter, Assistant Executive Director and Chief Engineer, Port of Oakland, Before the State Lands Commission October 5, 1959". (A copy of this statement is on file in the office of the State Lands Commission.)

UPON MOTION DULY MADE, SECONDED, AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

- (A) THE APPLICATION OF THE IDEAL CEMENT COMPANY TO LEASE CERTAIN AREAS WITHIN GRANTED TIDELANDS OF THE CITY OF OAKLAND FOR THE EXTRACTION OF OYSTER SHELLS IS REJECTED AT THIS TIME; AND
- (B) THE GENERAL SUBJECT MATTER RELATIVE TO TIDELAND GRANTS IS TO BE REFERRED TO THE LEGISLATURE FOR ITS REVIEW AND CONSIDERATION AS TO DEFINITIVE LANGUAGE IN ALL TIDELAND GRANTS, WHICH WOULD ASSIST THE COMMISSION IN THE FULFILLMENT OF ITS RESPONSIBILITY AS CUSTODIANS OF THE STATE'S TIDELANDS, AND MORE PARTICULARLY THE ADMINISTRATION OF MINERAL RIGHTS RESERVED IN VARIOUS GRANTED LANDS.

Attachment
Calendar Item 57 (2 pages)

CALENDAR ITEM

57.

PROPOSED MINERAL EXTRACTION LEASE, SUBMERGED LANDS, SAN FRANCISCO BAY, ALAMEDA AND SAN MATEO COUNTIES - W.O. 2933.

An application has been received from the Ideal Cement Company, requesting that an area of approximately 8,000 acres of submerged land in San Francisco Bay be offered for mineral extraction lease for the removal of oyster shells, pursuant to competitive public bidding in accordance with the provisions of Division 6 of the Public Resources Code. The submerged lands covered by the application are included in land grants to the City of Oakland under the Statutes of 1955 and 1957, which grants provide for the establishment, improvement and conduct of a harbor, including an airport or aviation facility, and for the construction, maintenance and operation thereon of wharves, docks, piers, runways, roadways, aprons, taxiways, parking areas, etc. In both grants, there is a mineral reservation to the State. In the 1955 grant, the reservation states in part: "There is hereby excepted and reserved to the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine and remove such deposits from said land; provided, that said excepted and reserved rights and powers shall be exercised in a manner not inconsistent or incompatible with the use of said land by the grantee for the purpose of commerce and navigation." The provisions of the 1957 grant are similar, with the exception that the above restriction on removal of minerals is not included.

The Board of Harbor Commissioners for the Port of Oakland and the City of Oakland are of the opinion that the removal of shell materials from the bay bottom will impair the use of the granted area for any purpose involving filling and the erection of structures thereon. A map of proposed future land fill has been presented by the Port of Oakland, indicating that approximately 2,500 acres of the area within the lease application of Ideal Cement Company is included in the plan for airport expansion. According to the Port of Oakland's Engineers, damage caused by shell extraction in the area of the proposed airport development would be approximately \$40,000,000. Any additional development within an area where shells had been removed would require an additional cost of approximately \$6,000,000 per square mile. These costs would be chiefly for replacing any materials removed previously.

The above costs are based upon an arbitrary assumption that the concentration of oyster shells would be uniform throughout each and all of the sections concerned, and it is also based upon the supposition that the oyster shells in place make good footings upon which fill materials can be placed. The position of the Port of Oakland is that by removal of the shells, the already unstable materials in the bay bottom would become aggravated and that the "pot holes" caused by extraction of shells would necessitate refilling. It has long been the opinion of the engineers that the San Francisco bay bottom has a self-levelling influence which should cause any depressions to be refilled naturally within a reasonable length of time.

At the time that these respective grants were being considered by the State Legislature, the minerals were reserved in contemplation of possible petroleum potential, and the restriction on the right to remove the minerals as contained

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in the 1955 grant was directed toward the construction of oil derricks which might pose a hazard to the use of the granted lands for either an airport or harbor facility. In the 1957 grant, the Legislature refused to place any reservation on the right to remove minerals for the reason that it was the feeling that improved technology would permit removal of oil and gas from the granted lands without necessitating the construction of equipment or structures which might be hazardous to the proposed use of the lands. Opposition of the Port of Oakland has also been predicated upon the plan that certain of the areas within the granted lands will ultimately be filled and improved for commercial and industrial developments to be leased to private industry by the City of Oakland.

Considerable core-drilling operations have been conducted in the area by the Ideal Cement Company in order to evaluate the shell deposits. Based on this information, and royalty payments of 2.65¢ per cubic yard and a rental of \$1 per acre under an existing lease, the applicant estimates the total revenue due the State over a 20-year period would approximate \$1,615,000 over the entire area included in the application. The Ideal Cement Company is conducting similar extraction operations on lands adjacent and to the south of the area applied for, under a lease from the State. The shell material is dredged into barges, transported to shore and processed for the manufacture of cement.

The controversy which has arisen as a consequence of this application has raised the problem of interpretation of the legislative intent with reference to mineral reservations in the concerned tideland grants, as well as other such grants. It is the opinion of the Attorney General's office that the issuance of a lease within the area of the proposed airport improvement would be inconsistent and incompatible for the express purpose for which the area was granted. However, the plans for the airport expansion are projected 20-year plans to be accomplished in part by Federal participation and at such future time that demands may require the improvement. The problem is one of the legislative intent and purpose in giving such grants and therefore it appears that the problems should properly be reviewed by the Legislature to apprise it of the practical problems encountered under the language of tideland grants which is presently being employed.

IT IS RECOMMENDED: (A) THAT THE APPLICATION OF THE IDEAL CEMENT COMPANY TO LEASE CERTAIN AREAS WITHIN GRANTED TIDELANDS OF THE CITY OF OAKLAND FOR THE EXTRACTION OF OYSTER SHELLS BE REJECTED AT THIS TIME; AND (B) THAT THE SUBJECT MATTER BE REFERRED TO THE LEGISLATURE FOR ITS REVIEW AND CONSIDERATION AS A BASIS FOR INSERTING DEFINITIVE LANGUAGE IN THE GRANTS, WHICH WOULD ASSIST THE COMMISSION IN THE FULFILLMENT OF ITS RESPONSIBILITY AS CUSTODIANS OF THE STATE'S TIDELANDS, AND MORE PARTICULARLY THE EXERCISE OF MINERAL RIGHTS RESERVED IN THE VARIOUS GRANTED LANDS.