MINUTE ITEM
This Calendar Item No. C40 was approved as Minute Item No. 40 by the California State Lands Commission by a vote of 3 to 0 at its 08/21/96 meeting.

CALENDAR ITEM
C40

A 18, 19

S 8, 10

PRC 5534.1

08/21/96
WP 5534.1
H. Maricle

AMENDMENT AND RENEWAL OF STATE MINERAL EXTRACTION LEASE

APPLICANT:

Morris Tug and Barge, Inc.
100 East "D" Street
Petaluma, California 94952

AGENT:

Mr. Michael Cheney
6630 Heartwood Drive
Oakland, California 94611

AREA , TYPE AND LOCATION:

1,560-acres, more or less, of sovereign lands in South San Francisco Bay, Alameda and San Mateo Counties.

LAND USE:

Extraction of oyster shell deposits for commercial sale. The material is extracted using a small hydraulic dredge. The shells will be washed with sea water prior to being located on the barge. Waste water from washing is returned to the Bay through discharge lines extending four (4) feet to eight (8) feet below the surface.

TERMS OF ORIGINAL LEASE:

Initial period:

Ten years beginning January 1, 1979, and the right to renew for two successive periods of five years each.

CONSIDERATION:

Royalty:

Royalty for the mineral resources produced or extracted is calculated in accordance with the following formula:

R =1.81 [0.10c (T)] where
R =royalty in dollars and cents paid to the State
C =weighted average lease quarter sales price, f.o.b. the dock, per ton
T =total lease quarter tonnage sold

The annual minimum royalty shall be $12,000 per year. The minimum royalty per ton shall not be less than $0.50.

Rental:

$2 per acre per year.

TERM OF FIRST FIVE-YEAR RENEWAL:

Renewal period:

January 1, 1989 through December 31, 1993.

Authorized by the Commission on August 30, 1989, Minute Item No. 32.

PROPOSED TERM OF SECOND FIVE-YEAR RENEWAL:

January 1, 1994 through December 31, 1998, at the same land rent and royalty rate set out in the original lease and first five-year renewal thereof.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Division 6, Parts 1 and 2; Division 13.
B. 14 Cal. Code Regs.: Title 3, Division 3; Title 14, Division 6.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15025), the staff prepared a Proposed Negative Declaration identified as EIR ND 478, State Clearinghouse No. 89060613. Such Proposed Negative Declaration was prepared and circulated for public review pursuant to the provisions of CEQA.

2. Based upon the Initial Study, the Proposed Negative Declaration, and the comments received in response thereto, there is no substantial evidence that the project will have a significant effect on the environment. (14 Cal. Code Regs. 15074(b))

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code Sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

4. The renewal transaction has two changes that were not part of the original agreement: The first provides that if the Lessee sells oyster shells to an affiliate entity, the sales price shall be that of an arms-length transaction. The second change provides: a) that the Lessee agrees not to object to the State's examination of the records of businesses or associations transporting for or receiving minerals from the Lessee produced from the leased lands, and; (b) that the Lessee consent to the examination, inspection and reproduction of its books, records and tax returns and shall not object to the examination of those of any individual, association, corporation or other entity with respect to Lessee's operations, improvements, machinery and fixtures used for or in connection with the leased lands.

APPROVALS PREVIOUSLY OBTAINED:

San Francisco Bay Conservation and Development Commission; and Regional Water Quality Control Board; and United States Army, Corps of Engineers.

EXHIBITS:

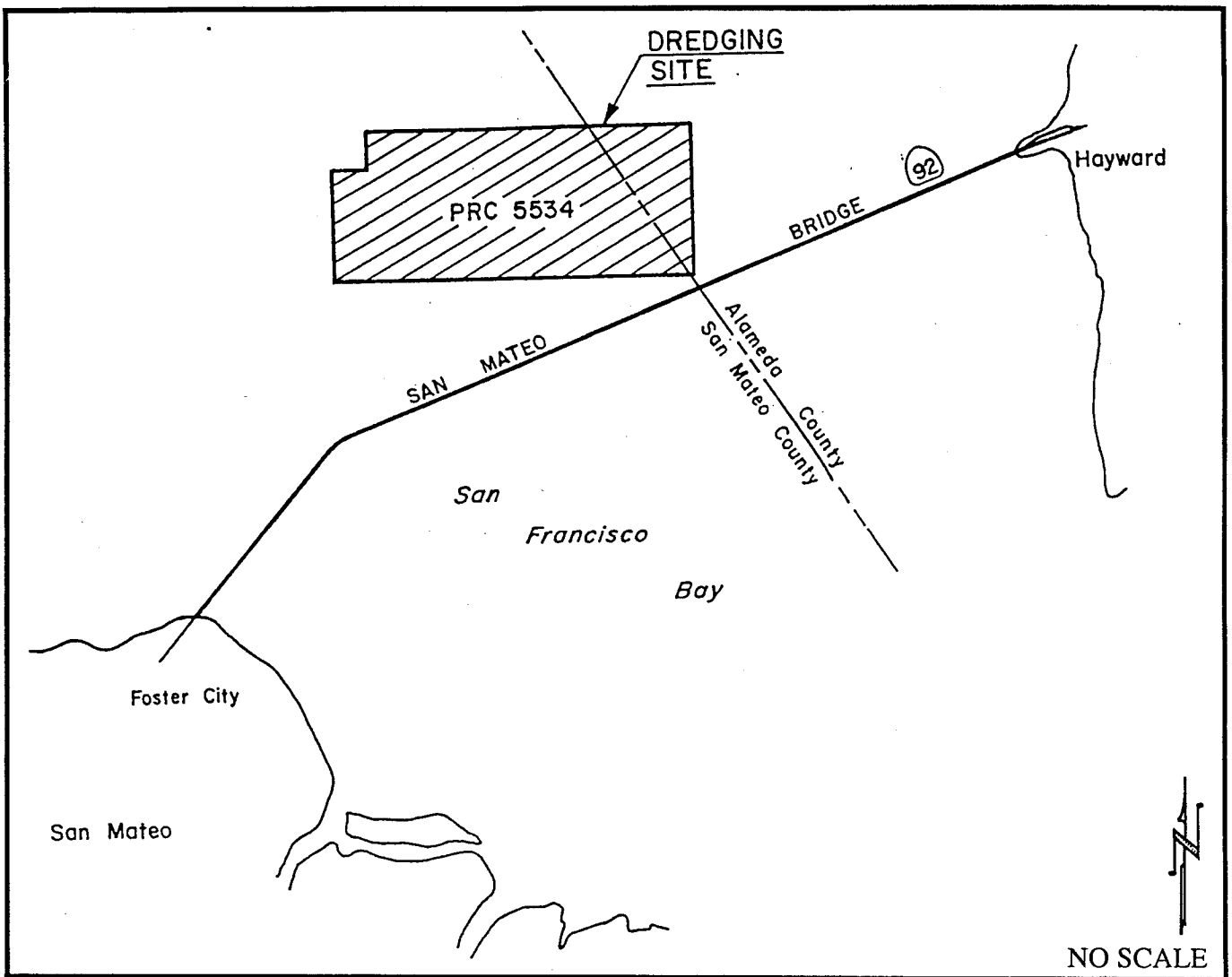
A. Vicinity and Site Map
B. Proposed Amendment and Renewal Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

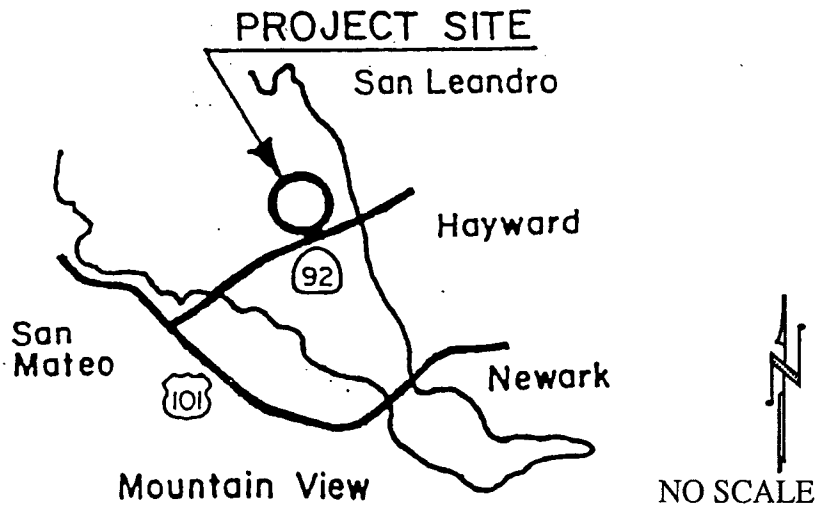
1. FIND THAT A PROPOSED NEGATIVE DECLARATION, EIR ND 478, STATE CLEARINGHOUSE NO. 89060613, WAS PREPARED AND ADOPTED FOR THIS PROJECT PURSUANT TO THE PROVISIONS OF THE CEQA AND THAT THE COMMISSION HAS AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

3. AUTHORIZE ISSUANCE TO MORRIS TUG AND BARGE, INC. OF AN AMENDMENT AND RENEWAL OF STATE MINERAL EXTRACTION LEASE NO. PRC 5534.1, ATTACHED AS EXHIBIT "A", FOR A FIVE-YEAR PERIOD BEGINNING JANUARY 1, 1994, AT THE LAND RENT AND ROYALTY RATE SET OUT IN THE ORIGINAL LEASE AND FIRST FIVE-YEAR RENEWAL THEREOF, ON THE LAND DESCRIBED IN SAID LEASE AND SHOWN ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.



VICINITY MAP



This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT "A"

WP 5534.1

Dredging Application

San Francisco Bay

ALAMEDA & SAN MATEO COUNTIES

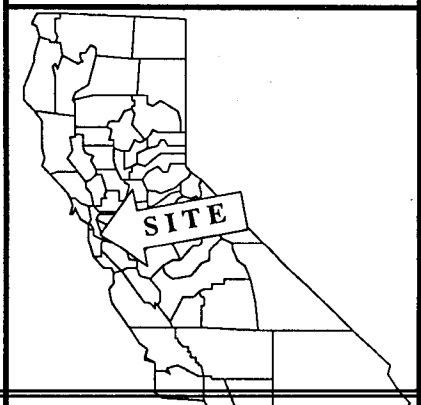


EXHIBIT B

STATE OF CALIFORNIA
STATE LANDS COMMISSION

AMENDMENT AND RENEWAL OF LEASE No. PRC 5534.1

WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and Morris Tug and Barge, Inc. hereinafter called Lessee, have heretofore entered into an Agreement designated as Lease No. PRC 5534.1 and dated December 12, 1978, whereby the Lessor granted to said Lessee a lease for the extraction of mineral resources, covering certain described land situate in the Counties of Alameda and San Mateo for a term of 10 years; and

WHEREAS, the by terms of said Lease No. PRC 5534.1 the right of renewal for two additional periods of five years each was granted upon such reasonable terms and conditions as the State, or any successor in interest thereto, might impose; and

WHEREAS, the first of the said five-year renewals was agreed upon by Lessor and Lessee under an agreement dated September 9,1989, for the period beginning January 1,1989, through December 31, 1993; and

WHEREAS, the parties hereto desire to extend and revise said Lease No. PRC 5534.1, as hereinafter provided, for the final term of this lease,

NOW THEREFORE, the parties hereto agree as follows:

Pursuant to Paragraph 1 of Section 1 of State Mineral Extraction Lease No. PRC 5534.1, Lessor and Lessee hereby agree to renew this lease as amended for a period of five years beginning January 1, 1994, and as amended further by the following paragraphs:

1. The following language is added as subparagraph (g) to Paragraph 2 of Section 5 of the lease:

(g) If Lessee sells minerals produced or extracted under this lease to a parent, subsidiary or sister corporation, partnership, joint venture or other business entity owned in whole or in part by Lessee, the sales price of all such minerals, for royalty purposes only, shall be that of an arms length transaction with a non related party or entity.

2. Paragraph 10 of Section 5 is hereby deleted and the following language is substituted in its place:

Lessee hereby agrees that it shall not object to Lessor examining and inspecting the books and records of any individual, association, corporation or other entity which has transported for or received from lessee any minerals extracted or produced from the leased lands. Further, Lessee hereby consents to the examination, inspection and

reproduction of its books, records and tax returns or those of any individual, association, corporation or other entity with respect to lessee's operations, improvements, machinery and fixtures used for or in connection with the leased lands.

This agreement shall become binding on the State only when approved by the State Lands Commission and executed on its behalf.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date hereafter affixed.

MORRIS TUG & BARGE*

By:_____
Michael Lind, President

Date:_____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By:_____
Jane Sekelsky, Chief
Land Management Division

Date:_____

_____
(SEAL)

Execution of this document was authorized by the State Lands Commission on _____

*In executing this document the following is required:

Corporations.

1. Affixation of Corporate Seal.
2. A certified copy of the resolution or other document authorizing execution of this Agreement on behalf of the corporation.