

MINUTE ITEM

This Calendar Item No. 19
was approved by the Board
No. 19 by the State Lands
Commission on 3
at 2/24/77
meeting.

MINUTE ITEM

2/24/77
LWC
JBT

19. INDUSTRIAL LEASE, HOLLY CORPORATION - WP 2108.

During consideration of Calendar Item 19 attached, Mr. James L. Trout, Manager, Land Operations, explained that this item was before the Commission at the request of the attorney representing Holly Corporation, Mr. William Bode of Washington, D.C. However, Mr. Bode was unable to attend this meeting. Chairman Kenneth Cory asked if a representative was in the audience, but no one appeared.

Mr. Trout stated that the dispute concerns the throughput rental rates. Mr. Sid McCausland, Commission-alternate, read into the record a letter from Mr. Bode to Mr. Leslie H. Crimes, Assistant Manager, Land Operations, dated September 2, 1976, on file in the office of the State Lands Commission. The letter transmitted a copy of the contract between the Defense Fuel Supply Center and Holly and suggests that counsel was aware that he did not have an agreement with the State and that consequently the staff's recommendations are correct.

Mr. Trout explained the procedures on which a lease is made, but stated that negotiations with Holly have been unsuccessful. Mr. Robert C. Hight, Chief Counsel, explained that the recommendation provides that throughput is an applicable rental rate and directs the staff to continue negotiations. He further stated that it does not prejudice Mr. Bode or his client.

Mr. McCausland then proposed the deletion of Part 1 of the recommendation and implement Parts 2 and 3. It was then moved and seconded.

Upon motion duly made and carried, the following resolution, as amended, was adopted by a vote of 3-0:

THE COMMISSION:

1. FINDS THAT VOLUMETRIC RENTAL RATES ARE APPLICABLE AND APPROPRIATE.
2. DIRECTS THE STAFF TO REMAIN AVAILABLE FOR NEGOTIATIONS WITH THE APPLICANT ON THE TERMS, CONDITIONS, AND APPLICABLE RATES FOR MINIMUM AND VOLUMETRIC RENT, AND REPORT BACK TO THE COMMISSION AT ITS APRIL 1977 MEETING.

Attachment: Calendar Item 19 (6 pages)

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S 7

CALENDAR ITEM

2/77
WP 2408
EWC/JFT

19.

INDUSTRIAL LEASE

APPLICANT: Holly Corporation
2001 Bryan Tower, Suite 3327
Dallas, Texas 75201

AREA, TYPE LAND AND LOCATION:
8.14 acres of tide and submerged land in
Carquinez Strait, near Ozol, Contra Costa
County.

LAND USE: Dock site and jet fuel loading facilities.

TERMS OF ORIGINAL LEASE:
Initial period: 15 years from May 28, 1959.
Renewal options: 1 successive period of 5
years.
Surety bond: \$10,000.
Consideration: \$1,342.77.

PREREQUISITE TERMS, FEES AND EXPENSES:
Applicant is lessee of upland.
Filing fee has been received.

STATUTORY AND OTHER REFERENCES:
A. Public Resources Code: Div. 6, Parts 1 & 2,
B. Administrative Code: Title 2, Div. 3
Arts. 1, 2, 10 & 11.

BACKGROUND:
1. This lease was originally issued to
Chandler Lloyd, Trustee, effective May 28,
1959. On September 18, 1959 the lease was

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assigned to the Lark Corporation and later, on August 5, 1963, reassigned to Holly Corporation.

2. Holly Corporation requested renewal of their lease on November 6, 1973 requesting 6 years so as to coincide with the expiration date of their contract with the United States. The filing fee for the renewal was received November 26, 1973. Lease renewal application forms were completed and returned to the Division on March 27, 1974. Detailed pipeline data was received on January 22, 1975.
3. A proposed lease document was sent to the applicant on January 27, 1976. This document proposed rental of \$3,600 for the period from May 28, 1974 through June 29, 1975; \$4,800 from June 30, 1975 through May 27, 1976; and \$4,800 per year thereafter subject to rent review on the fifth anniversary. Also proposed was the addition of standard Indemnity, Bond and Insurance paragraph. The proposed lease renewal document also contained the following provision:

"This Agreement will become binding on the lessor only when duly executed on behalf of the State Lands Commission of the State of California."
4. A check for \$7,870.52 covering the period from May 28, 1974 through May 27, 1976 was received on March 29, 1976 and placed in the Division's suspense account pending completion of negotiations.
5. Also, on March 29, 1976, the proposed lease renewal and amendment was received back signed by the applicant. The paragraph concerning Indemnity, Bond and Insurance had been altered by striking out and initialing the phrase "including liability

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attributable to pollution". This deletion was made following telephone discussion with Division staff and a letter dated March 2, 1976 from the Division stating in part, "With respect to insurance, you may delete the phrase 'including liability attributable to pollution' located on lines 7 and 8 on page 5 of the document."

6. On August 3, 1976, the applicant was further advised of the changes to the Commission's leasing practices which embodied "a rental based on the volume of commodities passing over the State's land." Revised rental rates were proposed, rent to be computed at the rate of \$0.01 per barrel of commodity passing over State land until the minimum annual rent of \$4,800 is reached and thereafter \$0.005 per barrel. Applicant was also informed that the changes made to the pollution liability phrase were unacceptable as the Commission would most likely not approve the renewal absent this provision.
7. On August 1, 1976, Division staff and a representative of the Attorney General's Office met with the applicant to discuss the revised terms of the proposed renewal. Holly Corporation insisted the revised terms were unacceptable. On November 26, 1976, Holly sent a letter to the Division protesting the revised terms and setting forth several claims, summarized below:
 - (a) That execution of the lease by Holly and acceptance of their check for \$7,870.52 created a contract that must be honored by the State.
 - (b) That the volumetric rental rates are unconstitutional.
 - (c) That the revised rates are based on regulations adopted after the lease agreement was executed by Holly.

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- (d) That the new rates will result in a severe financial burden to Holly in that its compensation is fixed by contract with the United States.
 - (e) That the State lands occupied were not identified as environmentally significant.
8. Holly's contentions were answered by the Division on January 7, 1977 as follows:
- (a) That no contract exists since the renewal document specifically provides within it that it will be binding only after execution on behalf of the Commission.
 - (b) That Holly changed the document in a manner not accepted by the Commission.
 - (c) That cashing of their check is a routine administrative procedure, which did not represent acceptance of the contract by the Commission.
 - (d) That all tide and submerged lands of the Commission were found to be environmentally significant on December 1, 1975.
 - (e) That based upon Holly's estimated volume and number of ships, the magnitude of the revised rental would be in the order of \$420 per ship.
9. Staff finds that Holly's proposition is without merit, that volumetric rentals should be applicable to the lease renewal after June 1, 1976, and the lease renewal, if approved, should run for 6 years and terminate at the same time applicant's contract with the United States ends.

EXHIBITS: A. Land Description
 B. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT HOLLY'S PROTEST AND CONTENTIONS ARE WITHOUT MERIT.

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2. FIND THAT VOLUMETRIC RENTAL RATES ARE APPLICABLE AND APPROPRIATE.
3. DIRECT THE STAFF TO REMAIN AVAILABLE FOR NEGOTIATIONS WITH THE APPLICANT ON THE TERMS, CONDITIONS, AND APPLICABLE RATES FOR MINIMUM AND VOLUMETRIC RENT, AND REPORT BACK TO THE COMMISSION AT ITS APRIL 1977 MEETING.

Attachment: Exhibit "A"

EXHIBIT "A"

Lessee: Holly Corporation

MP 2608

A parcel of land owned and lying on the bed of Guadalupe Street, adjacent to the bed of said street, Contra Costa County, State of California being more particularly described as follows:

COMMENCED at a concrete monument set at some point on the line of high tide as said line is shown upon "Map of Boundary of Tideland Survey No. 32, Contra Costa County, California, made under the provisions of Chapter 470, Statutes of 1914, to correct errors in original survey" dated January, 1922, State Lands Commission file nos. 14-6-2 and 6 (said concrete monument being opposite approximate Southern Pacific Railroad Station 2620+82); running thence along said line of high tide shown on the aforesaid map the following courses;

- (1) S 38° 45' E 32.3 feet,
- (2) S 62° 15' E 1130.0 feet,
- (3) S 42° 00' E 235.1 feet,
- (4) S 59° 02' 30" E 525.79 feet; thence leaving said line

of high tide N 30° 57' 30" E 304.50 feet to the line of low tide as shown on map above referred to and the TRUE POINT OF BEGINNING of the parcel of land to be described; thence N 65° 30' W along said line of low tide 85.94 feet; thence leaving said line of low tide N 30° 57' 30" E 311.67 feet; thence N 65° 02' 30" W 61 feet; thence N 30° 57' 30" E 12.1 feet; thence S 59° 02' 30" E 91 feet; thence N 30° 57' 30" E 11.7 feet; thence N 65° 02' 30" W 420 feet; thence N 30° 57' 30" E 500 feet; thence S 59° 02' 30" E 300 feet; thence S 30° 57' 30" W 300 feet; thence N 65° 02' 30" W 430 feet; thence S 30° 57' 30" E 404.7 feet to said line of low tide; thence N 65° 30' W along said line of low tide 55.35 feet to the true point of beginning.

END OF DESCRIPTION

Prepared J. Colman Checked J. Colman
 Reviewed J. Colman Date 1/1/12

