

MINUTE ITEM 05

MINUTE ITEM
The Calendar Item No. 05
was approved as Minute Item
No. 5 by the State Lands
Commission by a vote of 2
to 0 at its 10/18/97
meeting.

W 24750

MARTINEZ

DREDGING PERMIT

Charles Warren, Executive Officer, presented Calendar Item 05. He advised that James Strock, Secretary for the California Environmental Protection Agency, is in support of this fee to support the responsibilities of the San Francisco Bay Conservation and Development Commission (BCDC) to supervise studies of upland disposal sites. This fee is also supported by the U.S. Army Corp of Engineers.

Mr. Warren stated that it is intended by some that the dredged material disposal in the Bay is hurting fish. Also that the Long Term Management Strategy (LTMS) project with the Corp of Engineers is designed to find alternatives to the present methods of dredging and dredge spoils disposal. They are looking offshore and also for additional in-Bay sites and are making inquiries as to upland disposal. The LTMS project is designed to last approximately two years.

Veronica Sanchez, Director for Government and Public Affairs for the Port of San Francisco, spoke of behalf of Michael Huerta, Port Director, who was in Japan. She thanked the staff of the State Lands Commission for the prompt turnaround on the paperwork so that the dredging could be started immediately.

Commissioner Tucker asked Ms. Sanchez what the impact had been the last three months while they were not able to dredge.

Ms. Sanchez advised they had two ships go aground and they could only bring in ships to one pier, consequently, they are operating at minimum capacity. She also added that, directly and indirectly, the amount of jobs on just the San Francisco side of the water is calculated to be approximately 6,000.

Commissioner McCarthy stated that the problem we are facing is a multi-dollar economy with jobs which we are trying to save for the people that work at the various Port piers. There are also the environmental problems with the marine life being killed off because of the pollution being disposed of in the Bay. The SLC is trying to find additional sites where we can deposit the spoils.

Ms. Sanchez stated there are short term and long term needs for sites. Not all of their material will be able to go to Alcatraz because of the impact it has on the winter run of

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the endangered Chinook Salmon. However, in the short term we need to find a place to put the balance of the dredged material.

Mr. Warren stated another aspect of this is the legislation (Sher AB 1059) which was passed to enable BCDC to have a ten cent fee in all areas of the Bay in order to find solutions for the long term dredging problems. However, it will be some months before BCDC can implement these provisions. This is the reason why Secretary Strock asked SLC to assist them in the interim. We have negotiated BCDC's agreement so that our funds will be available to BCDC immediately. It is SLC's staff recommendation to the Commission that our fee be terminated as soon as BCDC's fee becomes effective as we do not want duplicate fees on this dredging. We have the terms and the copy of the agreement here today.

Commissioner McCarthy stated he also is strongly opposed to several state agencies charging fees. That is why SLC's fee will terminate as soon as BCDC's fee becomes effective in Sher's legislation, which the Governor has signed.

Steven McAdam of BCDC spoke to the Commission in regards to the good relationship they have always enjoyed with SLC and the use of these fees.

Pat Flannigan of the San Francisco Waterfront Committee, presented a letter he had written to Dan Lungren, California State Attorney General, on behalf of the Standard Fisheries regarding dredging in the San Francisco Bay.

Commissioner McCarthy expressed his strong support for this action because the shipping industry in the Bay Area must, together with SLC as well as others, fight very hard to keep this industry alive and also fulfill our public trust responsibilities and to make sure that environmental damage does not occur.

Approved by Commission 2-0.

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August 31, 1991

The Honorable Donald Lundgren
California State Attorney General
1515 K Street
Sacramento, California 95814

Re: Request for Ruling on Alleged Violation of Trust Fiduciary Duties by the City and County of San Francisco under the Burton Act (Chapter 1333 of the Statutes of 1968), and specifically as it pertains to improper commingling of revenue funds derived by taxes, i.e. possessory interest property taxes and City and County of San Francisco Business and Payroll taxes charged to private tenants on State Lands for uses other than trust purposes.

Dear Mr. Lundgren:

Let me preface this request for a ruling with a few important points. I am making this request, not as a tenant of the Port of San Francisco, but rather as a California taxpayer and beneficiary as a member of the public-at-large of the Burton Act. Nor is this request in any way questioning the authority or ability of city government to exact taxes for the sake of the public good and benefit. This request is also not made in behalf of any public body upon which I might be presently seated, and in no way do I wish to find myself in a position of a conflict of interest. This does not preclude, however, any future legal action which might result in order to effectuate a future correct and legal operation of the Burton Act, and the full compliance with the trust that this Act created and intended to operate.

I also wish you to know that I am not an attorney, nor am I trained in matters of legality, so please take this into account as to what follows. While my vocabulary might be legally incorrect, I still believe my logic is correct. I am writing this request only in the capacity of a California taxpayer and beneficiary of the public trust. I am also writing this letter only as to the particular question of the Burton Trust relating to the City and County of San Francisco, but that I am aware that any future ruling might have far broader ramifications and impacts upon other State Lands properties, and might impact how we view all public trusts, whether federal, state, city or county. While the ruling request is of a specific nature, I and you should recognize the potential for a far broader impact on all public trusts, and their operations.

As to legal jurisdiction of your office for this ruling, I am using Sec. 14 of the Burton Act:

"In the event that the City and County of San Francisco...fails or refuses to carry out the terms of the transfer by which the lands were transferred to it pursuant to this act, the Attorney General shall...bring such judicial proceedings for correction and enforcement as are appropriate, and shall act to protect any properties and assets situated on the transferred lands or derived therefrom."

I read this section as meaning that you are the appropriate party for this request, rather than the City and County of San Francisco. Even though this request does not come from the Department of Finance, as a beneficiary of the trust I have the proper public right and duty to make such a request and it is your office's responsibility to comply with this Section.

As to the background information that provides the grounds for this request, I wish to make the following points that I believe should be considered in your ruling and should be answered:

Common Law in regards to the Burton Act

Because the property conveyed under the Burton Act is predominantly reclaimed tidelands, and was originally received by the State of California not in a proprietary capacity, but rather in trust for the people of the entire State, these lands and trust are therefore subject to both common law and the appropriate statutory law relating to the trust itself, and in particular to the specific trust duties of "commerce, navigation and fisheries". Upon review of the common law, some very basic foundations of trusts come into play, and that are relevant to this request.

First of all, the Burton Act establishes an *expressed* trust, established by voluntary action and is represented by a written document, i.e. Chapter 1333. These are the basic conditions of public trust law which must be present as requirements under the Statute of Frauds as it pertains to real property. This is important to recognize, and to consider whether a commission of fraud has occurred in regards to the trust obligations. Depending on the ruling of your office, the potential for investigation of fraud by your office is a possibility in this matter.

I am assuming that trusts, in general, whether public or private, still continue upon basic common law foundations, particularly as to how they relate between trustee beneficiary relationships. Particularly, when money is paid over to one person for the use of another, as in the case of rents or taxes paid to an agent for the owner of the premises, the earmarking of the proceeds by the agent generally establishes him as a trustee. As an example, the Port of San Francisco is the Trustee of the Port of San Francisco and rents paid by private holders of leases or rental agreements pay those moneys to the Port for trust uses. In the original Transfer Agreement, the City and County of San Francisco under voter approval, accepted the responsibilities and duties as established under the

trust. The Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco, under Section V. Requirements of Transfer states:

"Section 4 of the (Burton) Act requires the City to establish a separate Harbor Trust Fund or funds in such manner as may be prescribed by the Department of Finance.....The City agrees that all moneys received directly or indirectly attributable to the transferred lands or its facilities or any other property transferred hereunder shall be deposited in the fund or funds set up pursuant to this agreement. Moneys not designated for other specific funds shall be deposited in the San Francisco Harbor Improvement Fund."

I believe that taxes, i.e. possessory interest taxes and taxes based upon payroll or business revenues are moneys received indirectly and yet attributable to the transferred lands, and, as such, the City agreed that such funds would be deposited for the use of the Trust.

There are three primary duties of any trustee under common law:

1. To carry out the purposes of the trust.
2. To act with prudence and care in the administration of the trust.
3. To exercise a high degree of loyalty toward the beneficiary.

The third duty of the trustee, that of loyalty, illustrates the fiduciary character of the relationship between the trustee and the beneficiary. The trustee in all of his dealings with the trust property, the beneficiary and third parties, must always act in the exclusive interest of the beneficiary. Indeed, the trustee, to protect himself from liability for misfeasance, must lean over backward to avoid any suggestion of personal advantage from the trust. Lack of loyalty may arise from palpable self-dealing or it may be entirely innocent, in either event the trustee can be charged with lack of loyalty. The fact that no harm may be done the trust does not excuse the transaction.

As a result of the above, I am asserting that tax moneys derived from Port properties of any type are the other moneys derived indirectly to the Trustees of the Port, and that common law expects that such moneys will be spent for the purposes of the trust, held in a prudent manner for the administration of the trust, and that such actions are done in an atmosphere of a high degree of loyalty. I am also asserting that the City and County of San Francisco, as either a trustee or an agent of the trustee has not complied with any of this in regards to tax revenues derived from the Trust or State properties, and, in fact, has not been loyal to the needs of the beneficiaries of the Trust.

Jurisdiction of the City and County of San Francisco's Taxation Authority

As I stated earlier, I am not questioning the authority of San Francisco to tax. In fact, I even recog-

nize that a government might also act as an agent for another level of government to assist in taxation procedures. This is a given fact of California law. Much of this is based upon the jurisdictional authority of the appropriate government agency. As a result, the State can charge sales taxes within the jurisdiction boundary of all of its counties. However, a county cannot levy taxes upon areas outside the county's jurisdiction. It is interesting to note, however, that a county that owns land outside of its jurisdiction can and does exact rents from such properties, even though it cannot exact property taxes. In such cases, those property taxes go to the general fund of the County in which such properties exist under the appropriate County's boundaries. As an example, the City and County of San Francisco owns property in Pleasanton which is up for development. The City and County has every right to charge rent from the developer of such property, but does not have the right to tax—that right and revenue belongs to the County of Alameda.

Tidelands, of which the Port of San Francisco is composed of, is not the property of the City and County of San Francisco. Under the federal admission of California into the Union, these lands are the property and under the full jurisdiction of the State of California to be held in trust for all of the people of the State, and this is not to be exclusively for just the people of San Francisco. This is a constitutional priority established to the State, and not to any City or County. There is no question that the Port of San Francisco is under the full jurisdiction of the State, rather than the City. If questioned, this would go against the Federal Constitution's full jurisdiction over navigable waters.

Once accepted that the Port of San Francisco comes under State jurisdiction, then the City and County of San Francisco has no legal right to keep moneys derived from the taxation of such trust property. This is not to say that the City cannot act as an agent and tax; only that the distribution of such funds must be dictated by the Trust established for all of California's beneficiaries of the Trust, rather than by the needs of the City. Throughout the appropriate documents, i.e. the Burton Act and the Transfer Agreement, this is recognized and the need to keep such funds separate is a major mandate of such a trust. Plainly stated, if the Port of San Francisco is not part of the County of San Francisco's jurisdiction, then any tax moneys are not legally the property of the County, but rather of the Trust and the State. This is supported also by the logic of Section IX of the Transfer Agreement pertaining to transfer of excess revenues.

In fact, Sec. 22 of the Burton Act clearly states that if the County of San Francisco fails to comply with the trust obligations, the property and title of the Port lands will revert and rest with the State.

As a result of the above, I am asserting that the County and City of San Francisco does have the right to levy taxes upon the Port properties, i.e. possessory interest taxes and business and payroll taxes, but only in the capacity as either agent or trustee of State lands held under public trust. I am asserting that the Port lands are not and never have been within the taxing authority of the City and County of San Francisco under the boundary jurisdiction of the County, and, as a result, those tax moneys collected over the years should not have been commingled with the County or City's

budget, but rather established in separate funds, as authorized under the Transfer agreement and the Burton Act, for the carrying out of the Trust's obligations and priorities. I also assert that such commingling of funds has occurred, and that such revenues have been misappropriated and used for purposes other than those established by the Trust.

Other Appropriate Clauses of the Burton Act

Section 3, Paragraph 6 of the Burton Act clearly notes that "the collection and retention of rents and other revenues from such leases...shall be for purposes consistent with the trusts upon which the lands are held by the state and with the requirements of commerce and navigation....The moneys derived from such lease or leases shall be used solely for the furtherance of the purposes specified by this Act." I maintain that taxes are clearly "other revenues", and subject to this language.

Section 4 of the Burton Act clearly states that "The City and County of San Francisco shall establish a separate harbor trust fund or funds upon the transfer in such a manner as may be prescribed by the Department of Finance; the city and county shall deposit in the fund or funds all moneys received directly from or indirectly attributable to facilities on the transferred lands in the harbor." As the transfer agreement does not specifically address taxes, nor does the Burton Act, one must, going back to the common law foundation of trust agreements, find that such taxes are other funds "indirectly attributable" to the transferred lands in the harbor. As a result, these funds should have been kept separately and reported to the State Dept. of Finance as mandated by the Trust and the Transfer Agreement.

Port of San Francisco's History as to Meeting the Trust Obligations

It is common knowledge that the Port of San Francisco has been under almost continual criticism and State review as to its ability to meet its trust obligations. Hearings were held by Senator Dill a few years ago that questioned the Port's ability to comply with the Burton Act and the Transfer Agreement. Particularly, prior to the Port's transfer, the State maintained its own Police for the Harbor. This is clearly noted in Section VI of the Transfer Agreement. The Port even had its own emergency health facility at that time, as well as its own fire department. Since the transfer, such police protection has been dismantled, the health facilities closed, and the fire department has been under constant threat of closing. Clearly, the City and County agreed under Section VI that, if such services were closed down, the Port would not be obligated to pay for such City services provided in lieu of such closures. If such is the case, then this is even more reason why possessory property taxes of Port properties should not be used for the City and County of San Francisco's general fund budget for police and fire. This is clearly an example of improper commingling of trust funds with the County's general fund, and an improper use of Trust revenues.

Since the transfer, the Port has been under continual criticism for lack of maintenance and repair of

all of the properties of the trust. Pier pilings have been allowed to deteriorate, lives have been lost due to unsafe conditions of the port, and major fires have occurred over the years on Port properties due to lack of sufficient repair and security. During those same years, commerce and navigation have severely gone down, and moved to other ports who have maintained their facilities, ironically under the same type of trust agreements with the State. The inability of the Port's trustees to adequately meet and comply with the Trust obligations is well documented almost from the beginning of the transfer agreement. This alone should be sufficient cause for the State Attorney General to begin questioning the appropriate distribution of all revenues from the trust properties. During the same period of the trust, the City and County of San Francisco closed down the Port's legal counsel, and put these duties under the jurisdiction of the County's City Attorney. These legal charges have been transferred and charged to the Port. It would appear that this also is in direct violation of the Transfer Agreement under the above referenced Section.

Instances of the above can be listed almost forever, and are well documented. Certainly, there is a real question as to the fiduciary responsibilities and as to how they have been met. This is even more important when one reads Section VII, regarding the autonomous operation of the Port.

Summary of Rulings Requested

In summary we are requesting the following rulings and findings of your office:

1. That the Port of San Francisco trust properties are exclusively under the boundary jurisdiction of the State, not under the boundary jurisdiction of the City and County of San Francisco, and, as such, all taxing revenues are property of the Trust, and subject to the rules of the Trust. This is not to preclude that the City and County, acting as agent or as trustee, does not have the authority to either levy or collect such taxes as agent or as trustee, but only that such funds are subject to the Trust and Transfer Agreement as to expenditure and use.
2. That tax revenues, i.e. possessory interest taxes and business and payroll taxes, are revenues solely derived from the trust properties, and should be treated as such for the benefit of the trust and beneficiaries of the trust. As a result, such funds should be maintained in separate funds of the trust, and not be commingled with other funds of the City and County of San Francisco, nor should they be used for purposes other than those established by the Trust.
3. That the City and County of San Francisco has not been adhering to the common law foundation of such trusts, nor has it been adhering to the Statutory requirements of the Trust, and that appropriate protective action

should be taken by the State to assure that such agreements and responsibilities are adhered to. Further, that the City has violated its responsibilities pertaining to a strict adherence to the trust and the loyalty that is required under common law in the establishment of such trust, and appropriate action be taken to rectify such injury as might have occurred to the public good and benefit.

In closing, I have tried to make this letter as comprehensive as possible, to have outlined the underlining issues to be considered, and have tried to maintain brevity. I am available to answer any questions your office might have regarding these issues, and for open discussion of the issues as they are being raised. I might add that I do not wish the State to reassume control of these properties, but rather wish to achieve a working relationship between the Port and San Francisco which will allow the Port Commissioners for the first time to begin addressing their obligations. It is not by accident that the Port of San Francisco has deteriorated over the years since the establishment of the trust. That deterioration is not solely caused by one reason, but definitely the lack of proper funding has been a major contributory cause for past criticism and public disenchantment.

For years, I have studied the Port, criticized its leadership, and tried to make improvements. As a taxpayer, my moneys go supposedly to such ends, and yet we continue to deteriorate as a Port. After 30 years, many Port Directors and Commissioners, one must wonder if such results are attributable to the trustees or managers, or whether, more appropriately, we have ascribed burdensome obligations upon a trust of a financial nature, while simultaneously siphoning away from the trust the appropriate revenues which would allow the trust to operate and comply with its obligations. I have come to the belief that it is the latter cause that must now be addressed, and hope that your office can bring some resolution to this matter.

Sincerely,



Patrick J. Flanagan
President

cc: Mayor Art Agnos

City Attorney, Louise Renne

San Francisco Board of Supervisors

Mr. Charles Warren, Director of State Lands Commission

Mr. Michael Huerta, San Francisco Port Director

Fabris and Ring, Corporate Counsel

Mr. Robert Tufts, Chair of Port of San Francisco Waterfront Land-Use Committee

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DANIEL E. LUNGREN
 Attorney General

State of California
 DEPARTMENT OF JUSTICE

1515 K STREET, SUITE 511
 P.O. BOX 941255
 SACRAMENTO, CA 94244-2550
 (916) 445-9555

October 16, 1991

2740413

Patrick Flanagan
 Standard Fisheries
 P.O. Box 26249
 San Francisco, CA 94126

Dear Mr. Flanagan:

Your letter of August 15, 1991 requests an opinion from the Attorney General's Office. We regret that we will be unable to provide the opinion you request.

Under Government Code Section 12519, the Attorney General's Office has statutory authority to prepare an opinion for designated public officials on questions of law relating to their respective offices. Those officials include constitutional officers, directors of state government agencies that are prohibited by law from employing legal counsel other than the Attorney General, state legislators, district attorneys, prosecuting city attorneys and county counsels. It is for this reason that we must respectfully decline your request.

Also, please know the Attorney General represents the people of California before trial, appellate and supreme courts of California, and the United States in criminal and civil matters. The Attorney General also serves as legal counsel to state officers, boards, commissions and departments, and assists the district attorneys in the administration of justice. The Attorney General carries out these constitutional responsibilities through the programs of the Department of Justice.

In addition, the Governor may direct the Attorney General to appear on behalf of the State whenever any suit or legal proceeding is pending against the State.

As the Attorney General's legislative and constitutional mandate is limited, the office cannot provide any form of legal service to individuals. Though we understand that you may not be asking for personal legal service or legal advice, the Attorney General's Office cannot comment on your summary of rulings requested.

Again, thank you for contacting our office. We regret that we could not provide more assistance to you in this matter.

Sincerely,

Gloriamalia Perez
 GLORIAMALIA PEREZ, Analyst
 Public Inquiry Unit

GP:cpc

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CALENDAR ITEM

A 16

05

10/18/91

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PRC 7594

Martinez

DREDGING PERMIT

APPLICANT:

Port of San Francisco
Ferry Building
San Francisco, California 94111

AREA, TYPE LAND AND LOCATION:

Granted mineral reservation land in San Francisco Bay at Port of San Francisco piers 27 and 80 (Islais Creek north container terminal and approach) and 96 (south container terminal), City and County of San Francisco.

LAND USE:

Dredge a maximum 100,000 cubic yards of material to maintain a navigable depth as follows: 841 cubic yards from Pier 96; 6,000 cubic yards from Pier 27; 30,000 cubic yards from Pier 80 approach; and 63,159 cubic yards from Pier 80. The Applicant has proposed disposal of the dredged material at the United States Army Corps of Engineers' approved Alcatraz Aquatic Disposal Site SF-11.

TERMS OF PROPOSED PERMIT:

Initial period:

October 18, 1991 through November 1, 1991.

Royalty:

No charge for aquatic disposal; \$0.25 per cubic yard for any material sold or used for commercial purposes.

Additional fee:

A fee of \$0.25 per cubic yard for any dredged material disposed of at any site in San Francisco Bay, including, but not limited to, SF-11 to offset the cost of studies necessary to develop non-Bay disposal sites for future use.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing and processing fees have been received.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884:

03/08/92

OTHER PERTINENT INFORMATION:

1. Questions have been raised about continuing disposal of dredged material in San Francisco Bay. It is anticipated the currently approved in-Bay sites will reach capacity within ten years. However, the current lack of suitable upland disposal sites or EPA/Corps-approved offshore disposal sites severely limits the options available for disposal.

Through participation in the Federal/State Joint Long-Term Management Strategy effort being conducted to identify and evaluate site options for the disposal of material dredged from San Francisco Bay, the State Lands Commission has emphasized the need to focus on the selection of upland and ocean disposal site(s). This need has also been expressed by the San Francisco Bay Conservation and Development Commission (SFBCDC).

Identification and evaluation of alternate disposal sites will require numerous studies which have been estimated to cost several million dollars. As ongoing in-Bay disposal contributes to the eventual obsolescence of in-Bay sites and the need to develop other alternatives, a fee will be charged as a condition to the proposed permit to be deposited in a fund to offset the cost of needed studies.

2. The SFBCDC approved the project on January 20, 1972 and on March 20, 1991. An amendment was approved to extend the permit through April 1, 1992. The staff of the State Lands Commission has reviewed the SFBCDC's analysis and approval and believes that the conditions have been met for the Commission, as a responsible agency, to use the analysis as a substitute for a Negative Declaration, as provided under CEQA Guidelines, Section 15253.

3. The proposed project is subject to approval by the Regional Water Quality Control Board and the U. S. Army Corps of Engineers.
4. The National Marine Fisheries Service has found that the disposal of the dredged material at SF-11 will not have a significant adverse effect on resident or migratory aquatic resources, including the winter-run chinook salmon in the San Francisco Bay estuary.

APPROVALS OBTAINED:

San Francisco Bay Conservation and Development Commission
and Regional Water Quality Control Board.

APPROVALS REQUIRED:

United States Army Corps of Engineers.

EXHIBIT:

- A. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT A PROJECT ANALYSIS WAS PREPARED AND ADOPTED FOR THIS PROJECT BY THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION UNDER ITS CERTIFIED STATE REGULATORY PROGRAM (CEQA GUIDELINES SECTION 15253); THAT THE CONDITIONS SPECIFIED IN GUIDELINES SECTION 15253 HAVE BEEN MET AND, PURSUANT TO GUIDELINES SECTION 15252[a], THE COMMISSION, AS A RESPONSIBLE AGENCY, ADOPTS THAT ANALYSIS AS A SUBSTITUTE FOR A NEGATIVE DECLARATION.
2. FIND THAT THE COMMISSION HAS CONSIDERED THE INFORMATION CONTAINED IN THE ANALYSIS AND HAS DETERMINED THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
3. AUTHORIZE STAFF TO ISSUE TO THE PORT OF SAN FRANCISCO THE DREDGING PERMIT ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION. THE PERMIT SHALL ALLOW DREDGING A MAXIMUM VOLUME OF 100,000 CUBIC YARDS OF MATERIAL FROM SAN FRANCISCO BAY AT THE PORT OF SAN FRANCISCO, CITY AND COUNTY OF SAN FRANCISCO, FROM OCTOBER 18, 1991 THROUGH NOVEMBER 1, 1991. IT IS PREFERRED THAT DREDGED MATERIALS SHALL BE DISPOSED OF AT AN UPLAND OR EPA/CORPS OF ENGINEERS-APPROVED OFFSHORE OCEAN DISPOSAL SITE. IN THE ABSENCE OF AVAILABILITY OF SUCH SITES, THE MATERIAL MAY BE DISPOSED OF AT THE CORPS OF ENGINEERS' APPROVED ALCATRAZ DISPOSAL SITE.

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NO ROYALTY SHALL BE CHARGED FOR MATERIAL DISPOSED OF AS APPROVED. A FEE OF \$0.25 PER CUBIC YARD WILL BE CHARGED FOR THE DREDGED MATERIAL PLACED AT THE ALCATRAZ IN-BAY DISPOSAL SITE SF-11. THIS MONEY WILL BE PLACED IN A SEPARATE FUND TO OFFSET COSTS OF STUDIES NECESSARY TO IDENTIFY AND ANALYZE ALTERNATIVE DISPOSAL SITES. THE PERMITTED ACTIVITY IS CONTINGENT UPON THE APPLICANT'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATION, AND LIMITATIONS ISSUED BY FEDERAL, STATE, AND LOCAL GOVERNMENT AGENCIES INCLUDING THE REGIONAL WATER QUALITY CONTROL BOARD AND THE U.S. ARMY CORP'S OF ENGINEERS, INCLUDING CONSULTATION WITH NMFS.

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SAN FRANCISCO BAY

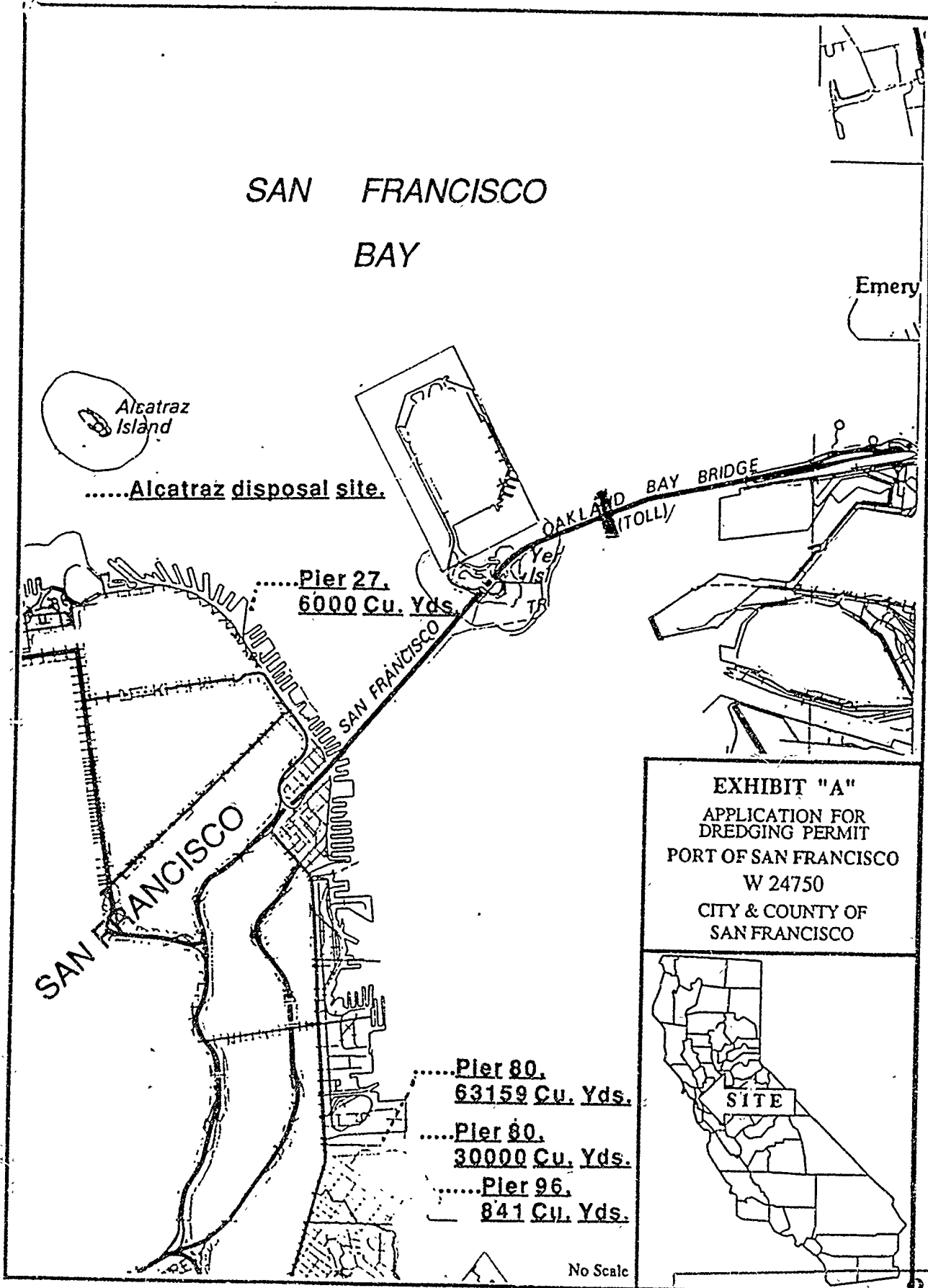


EXHIBIT "A"
APPLICATION FOR
DREDGING PERMIT
PORT OF SAN FRANCISCO
W 24750
CITY & COUNTY OF
SAN FRANCISCO

