

CALENDAR ITEM

42

A	14	01/29/09 W 25263 W 30068.11 PRC 5805.9
S	9	N. Smith M. Meier M. Brand

CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT, TERMINATION OF DREDGING LEASE PRC 5805.9 AND ISSUANCE OF A NEW GENERAL LEASE - INDUSTRIAL USE TO CHEVRON U.S.A. PRODUCTS FOR THE CHEVRON LONG WHARF MARINE TERMINAL, CITY OF RICHMOND

LESSEE/APPLICANT:

Chevron U.S.A. Products
841 Chevron Way
Richmond, California 94804

AREA, LAND TYPE, AND LOCATION:

68.14 acres, more or less, of sovereign lands in San Francisco Bay, city of Richmond, Contra Costa County.

AUTHORIZED USE:

Operation, use and maintenance of a 3,440 foot long marine terminal with a T-head pier, comprising four deep water outer berths, two breasting dolphins, two inner cargo berths, additional inner berths that provide temporary moorings for standby tugs and barges, oil pipelines, launching facilities for crew and oil spill response boats, and annual dredging of up to 350,000 cubic yards of material.

LEASE TERM:

30 years, beginning July 1, 2006.

CONSIDERATION:

An annual base rent in the amount of \$870,000; with the State adjusting the annual base rent each year by application of the Consumer Price Index (CPI); however, the adjusted annual rent will never be lower than the base rent. This CPI adjustment will continue until the tenth anniversary of the lease, when a new base rent may be established as outlined in the lease. Additional rent in the amount of \$5,815,688 for the period of August 19, 1997 to June 30, 2006. No

CALENDAR ITEM NO. 42 (CONT'D)

additional consideration will be charged for the dredging as the maintenance dredging will take place within the Lease Premises for which rent is being charged. The dredged material may not be sold.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance: Combined single limit coverage of \$10,000,000. Lessee may participate in a self insurance program upon approval of Commission staff to satisfy the insurance requirement.

Bond:

\$2,000,000

Dredging:

Annual maintenance dredging up to a maximum of 350,000 cubic yards; limited to specific time restraints and all other conditions as imposed by regulatory agencies having jurisdiction. The dredged material shall be disposed of at any U.S. Environmental Protection Agency or U.S. Army Corps of Engineers approved ocean and/or San Francisco Bay disposal sites, or at any onshore disposal site fully authorized by all governmental entities having jurisdiction; the dredged material may not be sold.

Other Recommended Provisions:

With regard to artificial lighting on the Property, Chevron shall provide, within one year after a new lease is issued, a program to the satisfaction of the Commission that will reduce, to the extent reasonably feasible, adverse lighting effects upon nearby residences without compromising security and safety. If Chevron does not produce a satisfactory program as required, the Commission will, within six months following that deadline, provide Chevron with a program it shall be required to implement. Chevron shall be required to reimburse the Commission for any and all costs incurred in evaluating or preparing the program and its implementation. Chevron shall be required to complete implementation of the program within two years of the issuance of a new lease.

BACKGROUND INFORMATION:

The Richmond Refinery began operation on July 3, 1902, under the ownership of the Pacific Coast Oil Company. Crude was initially shipped via railcar to the refinery from the San Joaquin Valley until the Long Wharf became operational later that year. At that point, the S.S. Loomis, the first tanker on the Pacific Coast, delivered crude shipments. In 1905, Standard Oil Company of California (now Chevron U.S.A., Inc.) bought the refinery, which was then the largest

CALENDAR ITEM NO. 42 (CONT'D)

refining plant on the Pacific Coast, and one of the largest in the world, processing 10,000 barrels of crude oil daily.

The Long Wharf was originally a wooden structure supported on timber piles, but was modified in 1946 with the construction of a concrete wharf and causeway structure supported on deeper, concrete piles; three buildings were also added in 1946. In 1974, the Long Wharf was modified to accommodate larger vessels when Berth No. 1 was expanded and Berth No. 4 was extensively modified. Over the years, improvements have continued. Recent improvements include a southern platform that was installed in 1986 to Berth No. 4, a breasting dolphin at Berth No. 3 in 1990, and a vapor control system was installed adjacent to Berth A in 1991. In 2000, a major structural upgrade was completed that enabled the structure to withstand a 475-year period seismic event and in November 2004, a comprehensive electrical infrastructure upgrade project was completed.

On August 19, 1947, the Commission authorized issuance of lease PRC 236.1 to Standard Oil Company of California for a marine terminal facility used in conjunction with the upland refinery. The Commission subsequently approved the assignment of that lease to Chevron, U.S.A., Inc., in October 1976. The lease provided for a 20-year term with three ten-year options to renew. That lease has since expired and Chevron has submitted an application to the Commission for a new long term lease for the continued use of the marine terminal.

LEASE BOUNDARY:

The boundaries of the lease parcel lie entirely offshore, as shown on Exhibit B. Pursuant to Statutes of 1869-1870, Chapter 388, fee title to tide and submerged lands lying between the mean high tide line and a point approximately 750 feet out into the water at the location of the facility closest to shore were conveyed in the 1870s by the Board of Tide Land Commissioners (BTLC) to Chevron's predecessor in interest. While the California Supreme Court ruled, in *City of Berkeley v. the Superior Court of Alameda County*, 26 Cal 3d. 515 (1980), that the State retained a Public Trust easement over the unfilled portions of lands so conveyed by the BTLC, it also found that the fee title to those lands were properly conveyed. The lands along the shore near the facility are therefore not part of the proposed lease. The Commission's authority over unfilled portions of lands conveyed by the BTLC is limited to enforcement of the Public Trust easement. The easement allows the public use of the waters unless the state or federal government takes an action restricting that right (*Marks v. Whitney*, 6 Cal 3d 251, 261 (1971)). However, the Commission may not take possession of lawful improvements on the easement lands without compensating the owner for the value of the improvements (Public Resources Code section 6312).

CALENDAR ITEM NO. 42 (CONT'D)

ENVIRONMENTAL PROCESS:

The Notice of Preparation (NOP) for the EIR was circulated November 30, 1998. The NOP was sent to federal, state and local agencies, environmental and public interest groups; affected landowners; local libraries, newspapers; and other interested parties. A public scoping meeting was held to provide an opportunity for the general public to learn about the proposed project and to participate in the environmental analysis by providing oral or written comments on the proposed project to be included in the Draft EIR. The meeting was held on December 10, 1998 in the city of Richmond.

On February 24, 2006, the Commission issued a Notice of Availability of the Draft EIR and Notice of Public Hearings. The Draft EIR was circulated for a 45-day public review period that started on February 24, 2006, and ended April 13, 2006.

The Commission held two public hearings on March 9, 2006, in the city of Richmond. At these hearings, the public was given the opportunity to ask questions about the EIR and its contents, present oral and/or written testimony on the Draft EIR and its contents and the Commission's decision-making process was also explained. Issues raised during the scoping and public comment period on the Draft EIR were addressed in the Final EIR that was released on March 7, 2007. On January 16, 2009, the Commission issued a Notice of Intent to Certify the EIR.

ENVIRONMENTAL ISSUES:

The Final Environmental Impact Report (FEIR) identified the following significant impacts that, with the application of all feasible mitigation measures, cannot be reduced to less than significant:

1. Oil Spills

The EIR determined that there was the potential risk of accidents resulting from the transportation of crude oil and petroleum products to and from the terminal that cannot be reduced to a level that is not significant. Although mitigation measures could reduce the potential for spills and their associated impacts, the impacts associated with larger spills, which is defined as a spill greater than 50 barrels (bbls), would remain significant.

- Chevron's response capability for containment of spills during transfer operations at the terminal would result in adverse and significant impacts for spills greater than 50 bbls.
- Group V oils have a specific gravity greater than one and do not float on the water; instead, they sink below the surface into the water column or possibly to the bottom. Chevron states in its Spill Preparedness and Emergency Response

CALENDAR ITEM NO. **42** (CONT'D)

Plan that no reasonable technology currently exists for a Group V response in the San Francisco Bay.

- Spills from the terminal during non-transfer periods would be associated with the pipelines and are considered a significant impact for spills greater than 50 bbls.
- Spills from accidents in the Bay could result in significant adverse impacts to water quality or biological resources that would have residual impacts. While Chevron does not have legal responsibility for tankers it does not own, it does have a responsibility to participate in improving general response capabilities.

2. Water Quality

The EIR determined that there were potential impacts to water quality including chronic water quality impacts from continuing operations and from periodic oil product spills. Operational impacts to water quality could come from the release of segregated ballast water, runoff of contaminants on the Long Wharf, the leaching of contaminants from antifouling paints or sacrificial anodes from ships visiting the Long Wharf and from the re-suspension of sediments by ship propellers and bow thrusters or from maintenance dredging and the disposal of dredged sediments. A spill of crude oil or product could have wide ranging effects on water quality in San Francisco Bay. Mitigation measures were required to reduce the impacts to water quality from the discharge of ballast water, oil spills, maintenance dredging, and vessel maintenance and operation. Although some impacts may be reduced to a level that is less than significant, impacts from segregated ballast water discharge, vessels with anti-fouling paints, and product spills and leaks would remain significant.

The water quality impacts that cannot be reduced to below a level of significance even with mitigation, are listed below:

- Discharge of segregated ballast water that contains harmful microorganisms could impair several of the project area's beneficial uses, including commercial and sport fishing, estuarine habitat, fish migration, preservation of rare and endangered species, water contact recreation, non-contact water recreation, fish spawning, and wildlife habitat.
- Marine anti-fouling paints are highly toxic containing copper, sodium, zinc, and tributyltin (TBT), and their use on vessels associated with the Long Wharf is considered to have a significant adverse impact to water.
- Routine vessel maintenance would have the potential to degrade water quality due to chronic spills during transfers of lubricating oils, resulting in significant adverse impacts.

CALENDAR ITEM NO. 42 (CONT'D)

- Potential impacts on water quality can result from leaks or spills. Large spills greater than 50 bbls could result in significant adverse impacts.
- A significant impact to water quality could result from leaks or an accidental spill of crude oil or oil product from a vessel along tanker routes either in San Francisco Bay or outer coastal waters.

3. Biology

The EIR found that biological resources have the potential to be impacted by routine operations related to the Long Wharf or by an accidental release of crude oil or product. Mitigation measures were required to reduce impacts to the biota that may occur from the operation of the Long Wharf; however, potential impacts from invasive species and spills remain significant.

The following is a list of significant impacts that cannot be reduced to a less than significant level of impact that could occur to biological resources from routine operations and oil spills:

- Invasive organisms/introduction of non-indigenous species in ballast water released in the Bay could result in significant impacts to plankton, benthos, fishes, and birds.
- The impacts of a spill on the biota at or near the Long Wharf have the potential to spread throughout much of San Francisco Bay. Vulnerable biota include plankton, benthos, eelgrass, fishes, marshes, birds, and mammals. Per Section 4.1, Operational Safety/Risk of Accidents, it may not be possible to contain spills larger than 50 bbls and the Long Wharf may not have adequate boom to protect all the sensitive areas at the most risk that could be oiled within three hours of a spill from the Long Wharf. In addition, a significant impact to biological resources could result from spills of crude oil or product from a vessel in transit along tanker routes either in San Francisco Bay or outer coastal waters.

4. Fisheries

The EIR addressed potential impacts to sport and commercial fisheries, kelp harvesting and aquaculture activities that may occur during routine operations and/or oil spills. Mitigation measures were required to reduce impacts to commercial and sport fisheries; however, potential impacts to fisheries from the introduction of invasive species from segregated ballast water and accidental product spills remain significant. Those impacts are listed below:

- Fisheries depend on a healthy environment to survive and flourish. Invasive species discharged from ballast water could impair water quality (Impacts WQ-2

CALENDAR ITEM NO. 42 (CONT'D)

and WQ-5) and biological resources (Impact BIO-4). These impacts to fisheries resources would impair commercial and sport fishing in the Bay and along the outer coast.

- Shrimp, herring and sport fisheries in central and north San Francisco Bay, San Pablo Bay, the Carquinez Strait and elsewhere in the estuary are at highest risk of spill contamination. Depending on spill location, size, water and weather conditions, areas upstream of the confluence of the Sacramento and San Joaquin Rivers may also suffer harm. In addition, marinas, boat launch ramps and fishing access points in the Bays may be threatened, contaminated or closed. Significant adverse impacts to Bay commercial and sport fisheries would result from oil spill accidents originating at the Long Wharf or from tankers transiting the coast that service the Long Wharf.
- Significant adverse impacts to outer coastal commercial and sport fisheries could result from oil spill accidents from the expected 900 transiting tankers calling at the Long Wharf. The level of impact would depend on the size of the spill, location, and fisheries occurring in the area of the spill.

5. Land Use

The EIR determined that impacts could occur to recreational land uses. Mitigation measures were proposed to reduce potential adverse impacts to sensitive land uses from potential spills. However, even with mitigation, impacts to sensitive land uses from potential oil spills will remain significant. These potentially significant impacts are listed below:

- A number of recreational facilities (designated parks, wildlife preserves, open space, etc.) and recreational uses (nature viewing, boating, fishing, surfing, etc.) are within the potential area that could be impacted by the spread of oil. Shoreline and water-related uses could be disrupted by oil on the shoreline and in the water and could result in significant adverse impacts.
- Spills that reach the beach along sensitive land use areas or heavily used areas including recreational areas would limit or preclude such uses and result in significant adverse impacts depending on the various characteristics of a spill and its residual effects.

6. Noise

The EIR found that the operation of the wharf produces both mobile and stationary source noise emissions. Mobile source noise emissions are associated with the operation of ships and tugs/barges that call on the terminal. Stationary source noise is associated with terminal operations at the Long Wharf and include the noise

CALENDAR ITEM NO. 42 (CONT'D)

associated with ships while hoteling, various pumps, and operation of the vapor recovery system. Mitigation measures were required to reduce potential noise impacts from Long Wharf operations; however, noise impacts will remain significant.

- Since the Long Wharf already exists, it is considered part of the ambient noise environment. It is located in an industrial area; however, sensitive receptors are located along the Point Richmond shoreline approximately one-mile away. Over the lease period, no sensitive receptors are to be constructed proximate to the terminal. Occasional noise complaints from residential receptors are considered significant adverse impacts.

7. Visual Resources

The EIR found that the continued operation of the Long Wharf could impact visual resources in San Francisco Bay. Mitigation measures were proposed to reduce the impacts to visual resources for Long Wharf operations; however, potential impacts to visual resources that may result from spills will remain significant, as listed below.

- The visual impacts of a spill could last for a long period of time, depending on the level of physical impact and cleanup ability, and are considered to be adverse and significant.
- Spills would change the color and texture of water and shoreline conditions. The level of public sensitivity and expectations of viewers would result in a negative impression of the viewshed and result in significant adverse impacts, depending on the various characteristics of a spill and its residual effects.

OTHER ISSUES:

The Bay Trail - During the public review process, it became apparent that the issue of Chevron providing access around its upland facility, via the Bay Trail, was important to the citizens of Richmond and other Bay Area community members. The Bay Trail is planned to be a continuous 400-mile recreational corridor that proposes to encircle the entire San Francisco Bay Area and connect communities to each other and to the Bay. Once completed, it will link the shorelines of all nine counties in the Bay Area and 47 of its cities. Approximately, 240 miles of the Bay Trail, or more than half its ultimate length, have been completed.

The city of Richmond and Chevron have negotiated, as part of the City's Conditional Use and Design Review Permit for Chevron's upland Energy and Hydrogen Renewal Project, a Community Benefits Agreement. Part of the Agreement stipulates that Chevron will dedicate an easement for construction of the Bay Trail. Chevron also agreed to fund the construction cost for security enhancement relating to the Bay Trail up to a maximum of \$2,000,000 and agreed to maintain all facilities

CALENDAR ITEM NO. 42 (CONT'D)

and equipment that Chevron funds and installs on or next to the Bay Trail, including, but not limited to fencing, surveillance and alarm devices.

In response to public and Commission concerns, Chevron has offered to dedicate an easement over property that is owned by Chevron from the Richmond Bridge to Point Molate. Staff is proposing that Chevron confirm its commitments with respect to the Bay Trail as contained in the above-referenced Community Benefits Agreement and its offer to dedicate an easement from the Richmond Bridge to Point Molate, in a letter of agreement between Chevron and the Commission, as follows:

Bay Trail

- 1) Continue to provide active pursuit, with the city of Richmond, the California Department of Transportation (Caltrans), and the Association of Bay Area Governments (ABAG), to identify a Bay Trail alignment from Marine Street at Tewksbury to the north side of Interstate Highway 580 for inclusion in an update of the Refinery's Site Security Plan, that Chevron will then submit to the Department of Homeland Security for approval;
- 2) Dedicate easements across lands owned by Chevron or its affiliates to the Bay Trail Project Owner for construction of the Bay Trail and public access to the approved route within 90 days of all necessary approvals for the alignment of the Bay Trail from the western end of Tewksbury Avenue or Western Avenue to Point Molate;
- 3) Fund the construction cost (up to a maximum of \$2,000,000) for security enhancements of the Bay Trail to meet the requirements of the Maritime Transportation Security Act (33 CFR Part 105) as enforced by the Department of Homeland Security following the granting of the easement of the Bay Trail as proposed above; and,
- 4) Work with the Bay Trail Project Owner, the City, ABAG, Caltrans and others in good faith to secure base funding for construction of the Bay Trail.

Funding commitments by Chevron may be used as part of any local matching funding requirements in grant applications and similar funding requests made by the City to secure funding for the Bay Trail project.

Cold Ironing – In 2008, the California Air Resources Board (CARB) implemented regulations to reduce oxides of nitrogen (NOx) and diesel particulate matter (PM) emitted by ocean going vessels at berth in California ports. This regulation is found in section 2299.3, Title 13, Chapter 5.1, California Code of Regulations (CCR) and is known as Operational Hour Limits, Reduced Onboard Power Generation, and Other Requirements for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-

CALENDAR ITEM NO. 42 (CONT'D)

Berth in a California Port. These regulations apply only to passenger, container and refrigerated vessels

A draft report was completed by the CARB in December of 2007 regarding cold ironing (Evaluation of Cold-Ironing Ocean Going Vessels at California Ports). The report indicated that providing shore power to tanker vessels may not be a cost-effective way to reduce diesel emissions. The CARB determined that cold ironing is most cost-effective for terminals that receive many ships that visit frequently, have long berthing times, and have significant berthing times. The classes of ships that best met this criteria were passenger, container and refrigerated cargo vessels. It was determined that more study would be required to determine cost-effective measures to reduce emission for oil and oil product tankers. For this reason the regulation was not applied to other categories of ships. The development of rules for all other categories of ships not included in section 2299.3, Title 13, Chapter 5.1, California Code of Regulations (CCR) will take place in 2009. The CARB will be focusing their efforts on oil and oil product tankers in January, 2009. It is unknown if the regulatory requirements will be similar to those promulgated for passenger, container and refrigerated vessels.

The following is a brief summary of the final rules in section 2299.3, Title 13, Chapter 5.1, California Code of Regulations (CCR).

Compliance can be achieved by reducing onboard power generation or by providing an equivalent emissions reduction. The following is a brief description of the two options.

1) Reduced Onboard Power Generation Option

- Year 2014 – At least 50 percent of a fleet’s visits to a port shall meet the onboard auxiliary diesel engine operational limits. The fleet’s onboard auxiliary-diesel-engine power generation, while docked at the berth, shall be reduced by at least 50 percent from the fleet’s baseline power generation.
- Year 2017 – At least 70 percent of a fleet’s visits to a port shall meet the onboard auxiliary diesel engine operational limits. The fleet’s onboard auxiliary-diesel-engine power generation, while docked at the berth, shall be reduced by at least 70 percent from the fleet’s baseline power generation.
- Year 2020 – At least 80 percent of a fleet’s visits to a port shall meet the onboard auxiliary diesel engine operational limits. The fleet’s onboard auxiliary-diesel-engine power generation, while docked at the berth, shall be reduced by at least 80 percent from the fleet’s baseline power generation.

CALENDAR ITEM NO. 42 (CONT'D)

In addition, any ocean-going vessels (passenger, container, and refrigerated) equipped to receive shore power that visits a terminal with a berth equipped to provide compatible shore power shall utilize the shore power during every visit to that berth unless the berth is already occupied with a vessel receiving shore power. There are some exceptions, such as emergencies and failure of shore power equipment.

2) Equivalent Emissions Reduction Option

If ocean-going vessels are unable to comply with Option 1, a second option is available for fleets and includes using one or more control options such as power from the utility power grid, electrical power from sources that are not part a utility's electrical grid (distributed generation), or alternative control technologies to reduce emissions of the fleet:

- Calendar year beginning on January 1, 2010 through December 31, 2011, NOx and PM emissions from the fleet's auxiliary engines when the vessels in the fleet are docked at the berth must be reduced by 10 percent from the baseline fleet emissions.
- Calendar year beginning on January 1, 2012 through December 31, 2013, NOx and PM emissions from the fleet's auxiliary engines when the vessels in the fleet are docked at the berth must be reduced by 25 percent from the baseline fleet emissions.
- For the quarter beginning on January 1, 2014, and each subsequent quarter through December 31, 2016, NOx and PM emissions from the fleet's auxiliary engines when the vessels in the fleet are docked at the berth must be reduced by 50 percent from the baseline fleet emissions.
- For the quarter beginning on January 1, 2017, and each subsequent quarter through December 31, 2019, NOx and PM emissions from the fleet's auxiliary engines when the vessels in the fleet are docked at the berth must be reduced by 70 percent from the baseline fleet emissions.
- For the quarter beginning on January 1, 2020, and each subsequent quarter thereafter, NOx and PM emissions from the fleet's auxiliary engines when the vessels in the fleet are docked at the berth must be reduced by 80 percent from the baseline fleet emissions.

Terminals that receive more than 50 vessel calls in 2008 are required submit a plan to the CARB Executive Officer that discusses how the terminal will accommodate

CALENDAR ITEM NO. 42 (CONT'D)

the vessels subject to these requirements. Terminals using both compliance options will be required to submit a plan by July 1, 2009.

Vessel fleets must also submit a similar plan which is due by July 1, 2013. An update to the plan is due July 1, 2016, then again on July 1, 2019. Container and refrigerated cargo fleets that visit California ports less than 25 times per calendar year are exempt from this rule as well as passenger fleets that visit a California port fewer than five times in a calendar year.

Commission staff supports cold ironing as one alternative to reducing particulate air emissions and in response to public and Commission concerns expressed regarding this issue, Chevron has agreed to the following that will also be memorialized in the letter of agreement with the Commission:

Reduction of Emissions from Oil Tankers

No later than one-year after approval of the issuance of a new lease for the Long Wharf, and again on or before the five-year anniversary of said approval, Chevron will provide a written report to Commission staff regarding the status of all plans, actions, decisions, or studies by the California Air Resources Board and/or the Bay Area Air Quality Management District with respect to cold ironing or other comparable technology (including the possibility of installing onshore cold ironing or other comparable infrastructure), relating to oil tanker vessels operating at the Long Wharf.

Artificial Lighting – Section 15064(d) of the CEQA Guidelines addresses the parameters to be used when evaluating the significance of an environmental effect resulting from the implementation of a project. Subsections 15064(d)(1)(2) and (3) address those situations when the project would result in a direct or indirect physical change in the environment. As the renewal of the lease for the Chevron Long Wharf project specifies continued use of existing facilities and does not propose any changes from the existing conditions, ongoing impacts from current lighting at the wharf were considered as part of the existing conditions and found to not be significant in the EIR. However, as explained in comments received during the application review process and at the December 8, 2008, Commission meeting, lighting at the facility does have a negative effect on residents in the neighboring Point Richmond area. In order to reduce these effects, staff is recommending that the following provision be included in the lease:

With regard to artificial lighting on the Property, Chevron shall provide, within one year after a new lease is issued, a program to be reviewed and approved by staff of the Commission that will reduce, to the extent reasonably feasible adverse nighttime lighting effects upon nearby residences without compromising security and safety. If Chevron does not provide a satisfactory

CALENDAR ITEM NO. 42 (CONT'D)

program as required, the Commission shall, within six months following that deadline, provide Chevron with a program it shall be required to implement. Chevron shall be required to reimburse the Commission for any and all costs incurred in evaluating or preparing the program and its implementation. Chevron shall be required to complete implementation of the program within two years of the issuance of a new lease. Notwithstanding any of provision of this Lease, failure to comply with this provision shall be considered a default under Section 21(b) of this lease.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. **Termination of Dredging Lease No. PRC 5805.9:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. **Issuance of New Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15025), the staff has prepared an EIR identified as CSLC EIR No. 688, State Clearinghouse No. SCH No. 98112080. Such EIR was prepared and circulated for public review pursuant to the provisions of the CEQA. A Mitigation Monitoring Program has been prepared in conformance with the provisions of the CEQA (Public Resources Code section 21081.6) and is contained in Exhibit D attached hereto.
4. CEQA Findings, made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15091) are contained in Exhibit C, attached hereto.
5. A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15093) is contained in Exhibit E, attached hereto.
6. 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

CALENDAR ITEM NO. 42 (CONT'D)

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.

EXHIBITS:

- A. Land Description
- B. Site Map
- C. CEQA Findings
- D. Mitigation Monitoring Program
- E. Statement of Overriding Considerations

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

1. **TERMINATION OF DREDGING LEASE NO. PRC 5805.9:** FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. **ISSUANCE OF NEW LEASE:** CERTIFY THAT AN EIR NO. 688 AND STATE CLEARINGHOUSE NO. 98112080, WAS PREPARED FOR THIS PROJECT PURSUANT TO THE PROVISIONS OF THE CEQA, THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN AND THAT THE EIR REFLECTS THE COMMISSION'S INDEPENDENT JUDGMENT AND ANALYSIS.
3. ADOPT THE FINDINGS, MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15091, AS CONTAINED IN EXHIBIT C, ATTACHED HERETO.
4. ADOPT THE MITIGATION MONITORING PROGRAM, AS CONTAINED IN EXHIBIT D, ATTACHED HERETO.
5. ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15093, AS CONTAINED IN EXHIBIT E, ATTACHED HERETO.

CALENDAR ITEM NO. 42 (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

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

AUTHORIZATION:

1. AUTHORIZE TERMINATION OF DREDGING LEASE NO. PRC 5805.9 TO CHEVRON U.S.A. PRODUCTS EFFECTIVE DECEMBER 3, 2008.
2. FOR THE PERIOD OF AUGUST 19, 1997 TO JUNE 30, 2006, AUTHORIZE ACCEPTANCE OF ADDITIONAL RENT IN THE AMOUNT OF \$5,815,688 (LESS RENT ALREADY PAID IN THE AMOUNT OF \$1,274,723) AND WAIVE ANY INTEREST THAT MAY HAVE ACCRUED.
3. AUTHORIZE STAFF TO EXECUTE A LETTER OF AGREEMENT WITH CHEVRON U.S.A. PRODUCTS CONFIRMING 1) CHEVRON'S COMMITMENTS TO THE BAY TRAIL AS CONTAINED IN THE COMMUNITY BENEFITS AGREEMENT BETWEEN THE CITY OF RICHMOND AND CHEVRON U.S.A. PRODUCTS, 2) CHEVRON'S OFFER TO DEDICATE AN EASEMENT OVER PROPERTY THAT IS OWNED BY CHEVRON OR ITS AFFILIATES FROM THE RICHMOND BRIDGE TO POINT MOLATE, AND 3) CHEVRON'S COMMITMENT TO SUBMITTING A REPORT TO THE COMMISSION ON COLD IRONING.
4. AUTHORIZE ISSUANCE OF A GENERAL LEASE - INDUSTRIAL USE TO CHEVRON U.S.A. PRODUCTS BEGINNING JULY 1, 2006, FOR A TERM OF 30 YEARS, FOR THE OPERATION, USE AND MAINTENANCE OF EXISTING MARINE TERMINAL FACILITIES AND MAINTENANCE DREDGING OF UP TO 350,000 CUBIC YARDS OF MATERIAL ANNUALLY WITH SUCH ACTIVITY BEING CONTINGENT UPON APPLICANT'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATIONS, OR LIMITATIONS ISSUED BY FEDERAL, STATE AND LOCAL GOVERNMENTS; ON THOSE LANDS AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND AS DESCRIBED ON EXHIBIT B, ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; BEGINNING JULY 1, 2006, ANNUAL RENT IN THE AMOUNT OF \$870,000 WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; THE DREDGED MATERIAL CANNOT BE SOLD; LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF \$10,000,000; OR AN EQUIVALENT SELF INSURANCE PROGRAM UPON APPROVAL OF

CALENDAR ITEM NO. **42** (CONT'D)

COMMISSION STAFF TO SATISFY INSURANCE REQUIREMENTS;
AND A SURETY BOND IN THE AMOUNT OF \$2,000,000.