

STAFF REPORT

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10/24/19

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R. B. Greenwood

NON-EXCLUSIVE GEOLOGICAL SURVEY PERMIT

APPLICANT:

EcoSystems Management Associates, Inc.

BACKGROUND:

EcoSystems Management Associates, Inc. (Applicant) has applied for a 3-year Non-Exclusive Geological Survey Permit (Permit). The geological surveys to be authorized under the terms of the proposed Permit are for the purpose of obtaining shallow samples of the seafloor for geotechnical information. The data obtained are used in the study of nearshore and sand erosion and deposition studies; design, construction, and safety of offshore structures (pipelines, piers, etc.); and for technical and environmental analyses of offshore operations. The shallow samples are acquired using nonrotary techniques (dart, jet, percussion, grab, box core, and vibracore) from a self-contained ship (usually 50 to 150 feet in length, with a 6-foot draft). The seafloor sampling will be conducted on a statewide basis.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6212.2, 6216, and 6301, California Code of Regulations, title 2, section 2100.

Public Trust and State's Best Interests Analysis:

The Permit would allow geological surveys to obtain scientific data, a use recognized by the courts to be consistent with the common law Public Trust Doctrine and in the best interests of the State by providing greater understanding of tide and submerged lands. (See, for example, *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) The Permit contains restrictions that protect public rights and environmental resources; for example, the Permit would be non-exclusive and is limited to 3 years. The permitted activity is not expected to interfere with navigation or the use and enjoyment of sovereign land. The proposed Permit requires the permittee to provide staff with advance notice of operations and the specifications of the equipment to be employed; to obtain staff approval 30 days in advance of sample locations, including specific latitude and longitude coordinates; and to clearly mark as confidential any confidential

STAFF REPORT NO. 64 (CONT'D)

archaeological information. Permittee coordination with the California Department of Fish and Wildlife and National Oceanic and Atmospheric Administration staffs is also required prior to commencing survey activities in Marine Protected Areas and in National Marine Sanctuaries, and no sampling within these areas is allowed without prior approval of the above agencies. Upon request, Commission staff will receive copies of all data derived from any and all surveys under this Permit.

Staff believes that granting the Permit will not substantially interfere with Public Trust needs and values over the term of the Permit.

For all the reasons above, staff believes the approval of the Permit application is consistent with the common law Public Trust Doctrine and is in the best interests of the State. Staff recommends approval of this Non-Exclusive Geological Survey Permit application.

TERM OF PROPOSED PERMIT:

3 years, beginning October 24, 2019, through October 23, 2022.

OTHER PERTINENT INFORMATION:

1. Staff recommends that the Commission find that this activity is exempt from the requirements of California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to conduct geological surveys on sovereign land. Upon expiration or prior termination of the permit, the applicant has no right to a new permit or to renewal of any previous permit.

STAFF REPORT NO. 64 (CONT'D)

EXHIBIT:

- A. Permit Regions

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(3).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Permit will not substantially interfere with Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a Non-Exclusive Geological Survey Permit for the period October 24, 2019, through October 23, 2022, within Permit Regions I, II, III, and IV as shown on Exhibit A, to EcoSystems Management Associates, Inc.

EXHIBIT A PERMIT REGIONS

