

**CALENDAR ITEM  
C42**

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WP 4908.1  
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**CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT AND  
ISSUANCE OF A NEW GENERAL LEASE – INDUSTRIAL USE**

**APPLICANT:**

Equilon Enterprises LLC dba Shell Oil Products US  
Martinez Refinery  
PO Box 711  
Martinez, CA 94553-0071

**AREA, LAND TYPE, AND LOCATION:**

19.6 acres, more or less, of sovereign land in the Carquinez Strait, in the city of Martinez, Contra Costa County.

**AUTHORIZED USE:**

The continued operation and maintenance of an existing approximately 1,850-foot long, 150-foot wide, concrete marine oil terminal wharf with mooring dolphins at each end, two active berths (#1 and #2) on the outer (north) side, two inactive berths (#3 and #4) on the inner (south) side, one crane rig and control shack for product transfer equipment and hoses at each of berths #1 and #2, and a single-story control building at the middle; an approximately 1,900-foot long, 16-foot wide, pile-supported wood approach trestle with an approximately 40-foot-wide pile-supported pipe rack paralleling the trestle; and the remnants of an approximately 250-foot long, 55-foot wide pile-supported warehouse structure adjacent to the west side of the approach trestle.

**PREVIOUS LEASE TERM(S):**

15 years, beginning August 1, 1974, with three additional periods of 10 years each.

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**PROPOSED LEASE TERM:**

30 years, beginning August 1, 2009.

**CONSIDERATION:**

Base Rent of \$307,359 for the period from August 1, 2009, to July 31, 2010; Annual Rent of \$312,864 for the period from August 1, 2010, to July 31, 2011; and Annual Rent of \$318,171 for the period from August 1, 2011, to July 31, 2012; with the State adjusting the Annual Rent for each year following the Base Rent year by the application of the annual percentage change of the Consumer Price Index (CPI), provided that the adjusted Annual Rent will never be lower than the Base Rent then in effect. CPI adjustments will continue annually until each tenth anniversary of the Lease (2019 and 2029), when a new Base Rent may be established as outlined in the Lease. The applicant has agreed to pay additional rent in the amount of \$2,479,179 for the period from August 1, 1999 to July 31, 2011(see Background for more information).

**SPECIFIC LEASE PROVISIONS:**

**Insurance:** Liability Insurance: Combined single-limit coverage of no less than \$10,000,000; the State may, at any time, require an increase in the amount of liability insurance to reflect economic inflation and to cover any additionally authorized improvements or alterations; Lessee may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the Lease.

**Performance Deposit:** \$2,000,000; At any time during the term of the Lease, the State may require an increase in the amount of the performance deposit to reflect economic inflation or to cover any additionally authorized improvements, alterations, or other purposes, or any modification of rental.

**Dredging:** Maintenance dredging may occur a maximum of once every five years, and is limited by specific time restraints and all other conditions as imposed by regulatory agencies having jurisdiction regarding this matter; if dredging is required for safe navigation or operations of the terminal, dredging may occur more often upon the written consent of Commission staff; dredged material shall be disposed of at any U.S. Environmental Protection Agency approved Carquinez Strait site or at any onshore disposal site fully authorized by all governmental entities having jurisdiction; dredged material may not be sold.

**BACKGROUND:**

Shell Oil Company (Shell) has operated a wharf for the transfer of petroleum products adjacent to its upland refinery in Martinez since approximately 1915. The Commission originally authorized Shell's use of State land for its wharf and related structures under Lease No. PRC 543.1, beginning August 1, 1948. On

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April 24, 1974, the Commission terminated PRC 543.1 and authorized issuance of Lease No. PRC 4908.1, a General Lease – Commercial Use, to Shell for the maintenance of a wharf, causeway and necessary dolphins, and pilings and pipelines for the transmission of petroleum products.

Lease No. PRC 4908.1 had an initial term of 15 years beginning on August 1, 1974, and included three 10-year renewal options upon such reasonable terms and conditions that the Commission might impose. The first 10-year renewal option was exercised in 1989.

On May 9, 1996, the Commission authorized the assignment of Shell's interests under the Lease to a subsidiary, Shell Martinez Refining Company, effective as of May 1, 1996. On December 16, 1998, the Commission authorized the assignment of Shell Martinez Refining Company's interests under the Lease to Martinez Refining Company, a Division of Equilon Enterprises LLC (Equilon), also a subsidiary of Shell, effective as of July 1, 1998. On March 4, 2002, Equilon notified the Commission of a name change to Equilon Enterprises LLC dba Shell Oil Products US (Shell Oil Products), effective as of March 1, 2002.

In 1998, Equilon notified the Commission of its intent to exercise the second 10-year option beginning on August 1, 1999, and submitted an application on July 27, 1999 requesting that the Commission authorize the renewal option. A dispute arose over the Commission's requirement to conduct an environmental analysis and prepare an Environmental Impact Report (EIR) as part of the renewal process, and the Lease effectively entered holdover status upon expiration of the first 10-year renewal period on July 31, 1999. The dispute was resolved in 2003 when Shell Oil Products agreed to the preparation of an EIR. At that time, Shell Oil Products also requested that the Commission 'convert' its application for the second 10-year renewal to an application for a new 30-year lease. Preparation of the EIR began in 2004, but complications in the preparation process delayed its completion until 2011.

The applicant has continued to pay the prior annual rent of \$85,212 during the holdover period. Because a new rent would have been in effect had a new lease been authorized in 1999, the applicant has agreed to pay additional, or back, rent in the amount of \$2,479,179 for the period from August 1, 1999 to July 31, 2011, to account for the difference between the prior rental amount already paid during the holdover period and the estimated rental amount that would have been collected had a new lease been in effect during that period. The additional rent includes the first two years of this authorized lease period (August 1, 2009 through July 31, 2011).

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**ENVIRONMENTAL PROCESS:**

The Notice of Preparation (NOP) for the Shell Martinez Marine Terminal Lease Consideration EIR was circulated for a review period on July 21, 2004. The environmental setting existing at the time the NOP is published normally constitutes the baseline physical conditions by which a Lead Agency determines whether an impact is significant (State CEQA Guidelines § 15125(a)). 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. The scoping meeting was held on August 20, 2004, in the city of Martinez.

On January 11, 2010, the Commission issued a Notice of Availability (NOA) for the Draft EIR and a Notice of Public Hearing. The Draft EIR was circulated for 45-day public review with comments accepted by mail, email, facsimile transmission, and in-person at the public meetings. On February 10, 2010, the Commission held two public meetings in the city of Martinez. At these meetings, the public and agencies had the opportunity to ask questions and present oral and/or written testimony on the Draft EIR. No comments were provided at the public meetings; however, six written comments were received later during the public review period.

In preparing the Final EIR, Commission staff responded to all comments received, obtained additional information as needed to respond to comments, and revised the Draft EIR. The Final EIR was released on June 3, 2011, and the Commission staff issued a NOA/Notice of Intent to Certify the EIR on the same day.

**ENVIRONMENTAL ISSUES:**

The Final EIR identifies the following potentially significant adverse impacts associated with the environmental issue areas listed below that, even with the application of all feasible mitigation measures, cannot be reduced to less than significant. A Statement of Overriding Considerations has been prepared and is attached as Exhibit E. These significant impacts are attributed to the risk of oil spills in the marine environment, ballast water discharge and invasive organism/non-indigenous species introduction, water quality degradation, and space use conflicts with commercial and sport fisheries.

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1. Impacts Related to Routine Operations and Accidental Spills (OS-3, OS-4, OS-7, CUM-OS-1, WQ-7, WQ-11, WQ-12, CUM-WQ-1, CUM-WQ-3, BIO-6, BIO-7, CUM-BIO-2, FSH-10, CUM-FSH-3, CUM-FSH-4, LU-3, LU-4, CUM-LU-1, VR-2, VR-3, CUM-VR-2).

Routine operations and accidental spills at the Shell Terminal, or from vessels in transit near the Terminal or in vessel transit lanes, could result in a release of oil or product in quantities greater than 50 barrels (bbls) (spills that cannot be contained during first response efforts with rapid cleanup). A large spill could result in significant adverse environmental impacts, and/or residual impacts to operational safety, water quality, biological resources, commercial and sport fisheries, land uses, and visual resources.

Group V oils have a specific gravity greater than 1 and do not float on the water; instead, they will sink below the surface into the water column or possibly to the bottom. A release of any quantity of a Group V oil could result in significant adverse environmental impacts.

2. Impacts Related to Ballast Water Discharge and Invasive Organism/Non-indigenous Species Introduction (WQ-2, CUM-WQ-2, BIO-4, CUM-BIO-1).

Discharge of ballast water that contains harmful organisms 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. Effective systems for the treatment of ballast water to remove all associated organisms have not yet been developed. Therefore, discharge of ballast water is determined to have a potentially significant impact to water quality.

The water quality of the San Francisco Bay estuary has been degraded by inputs of pollutants from a variety of sources such as storm water runoff. Use by marine vessels of anti-fouling paints containing copper, sodium, zinc, and tributyltin (TBT) are considered toxic and present a significant adverse impact to water quality. Any contribution of a contaminant already at significantly high levels to the waters of San Francisco Bay would have a significant adverse impact at the cumulative level.

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3. Impacts Related to Conflicts with Commercial and Sport Fisheries (FSH-2, FSH-9, CUM-FSH-1, CUM-FSH-2).

The cumulative impacts of this Project in combination with other proposed Projects in the Terminal vicinity would cause space use conflicts with the commercial shrimp, Pacific herring and sports fisheries, and result in significant impacts. Shell's contribution to space use conflicts with the Pacific herring fishery depends on herring spawning locations, fishing operations and other factors.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. 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. 722, State Clearinghouse No. 2004072114. Such EIR was prepared and circulated for public review pursuant to the provisions of CEQA. A Mitigation Monitoring Program, attached hereto as Exhibit C, has been prepared in conformance with the provisions of CEQA (Public Resources Code section 21081.6).
3. Findings made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15091) are contained in Exhibit D, attached hereto.
4. 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.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq., but such activity will not affect those significant lands. 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.

**EXHIBITS:**

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

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDINGS:**

1. Certify that the Shell Martinez Marine Terminal Lease Consideration EIR No. 722, State Clearinghouse No. 2004072114, was prepared for this project pursuant to the provisions of CEQA, that the Commission has reviewed and considered the information contained therein and that the EIR reflects the Commission's independent judgment and analysis.
2. Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.
3. Adopt the Findings, made in conformance with Title 14, California Code of Regulations, section 15091, as contained in Exhibit D, attached hereto.
4. 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.

**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 section 6370, et seq.

**AUTHORIZATION:**

1. For the period of August 1, 1999 to July 31, 2011, authorize acceptance of additional rent in the amount of \$2,479,179.
2. Authorize issuance of a General Lease – Industrial Use to Equilon Enterprises LLC, dba Shell Oil Products US beginning August 1, 2009, for a term of 30 years, for the continued operation and maintenance of existing marine oil terminal facilities as shown on Exhibit A (for reference purposes only), and as described in Exhibit B attached and by this reference made a part hereof; maintenance dredging a maximum of once every five years subject to compliance with all applicable permits, recommendations, or limitations of all regulatory agencies having jurisdiction over such activity; Base Rent of \$307,359 for the period from August 1, 2009 to July 31, 2010; Annual Rent of \$312,864 for the period from August 1, 2010, to July 31, 2011; and Annual Rent of \$318,171 for the period from August 1, 2011 to July 31, 2012; with the State modifying the Annual Rent by application of a CPI adjustment for each year following

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the fixing of a Base Rent as provided in the Lease, provided that the adjusted Annual Rent will never be lower than the Base Rent then in effect; combined single limit liability insurance coverage in the amount of not less than \$10,000,000 with the State reserving the right at any time to require an increase in the amount of liability insurance to reflect economic inflation and to cover any additionally authorized improvements or alterations; Lessee may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the Lease; performance deposit of \$2,000,000 with the State reserving the right at any time during the lease term to require an increase in the amount of the performance deposit to reflect economic inflation or to cover any additionally authorized improvements, alterations, or other purposes, or any modification of rental as provided in the Lease.