

MINUTE ITEM

37

10/26/89  
PRC 3964  
Martinez  
Frey  
Kaufman

CONSIDERATION OF SAND EXTRACTION LEASE IN MONTEREY BAY  
TO MONTEREY SAND COMPANY

Chairman McCarthy asked for the Chief Counsel, Robert Hight, to make a statement relative to pulling Item 37.

Mr. Hight said we are asking to pull Item 37, which is consideration of a lease with Monterey Sand Company, at their request. They believe that they did not receive adequate notice, pursuant to the ten-day notice requirement.

Mr. Hight said our records indicate that the notice was sent within the required time period. Apparently, because of the earthquake problems, they did not receive it.

As we agreed in the executive session, the lease will be continued until December 15.

Attachment: Calendar Item 37.

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10/26/89  
PRC 3964  
Martinez  
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Kaufman

CONSIDERATION OF SAND EXTRACTION LEASE IN  
MONTEREY BAY TO MONTEREY SAND COMPANY

APPLICANT: Monterey Sand Company  
625 Elder Street  
Sand City, California 93955

AREA, TYPE LAND AND LOCATION:  
6.24 acres of tide and submerged lands in  
Monterey Bay, Monterey County.

LAND USE: Extraction of sand for processing and  
commercial sale.

TERMS OF EXISTING LEASE:

Initial period: Twenty years beginning  
July 1, 1968.

Renewal options: Two successive periods of  
ten years each.

CONSIDERATION: Rental: \$6 per annum.

Royalty: \$15,000 for sand extracted prior to  
issuance of the lease. \$0.06 per  
cubic yard for all sand extracted  
during the term of the lease. \$0.30  
per cubic yard pursuant to agreement  
beginning April 1, 1989.

(ADDED 10/25/89)

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CALENDAR ITEM NO. 37 (CONT'D)

**BASIS FOR CONSIDERATION:**

Pursuant to 2 Cal. Code Regs. 2003.

**STATUTORY AND OTHER REFERENCES:**

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

B. Cal. Code Regs.: Title 2, Div. 3;  
Title 14, Div. 6.

**AB 884:** N/A at this time (application has been deemed incomplete).

**BACKGROUND:**

On March 23, 1988, Lessee formally notified the staff of the State Lands Commission of its intent to renew Mineral Extraction Lease PRC 3964, which would expire on June 30, 1988. It is the Lessee's position that the lease was granted in settlement of litigation and that the option to renew for two successive ten-year periods, which is addressed in Paragraph 18 of the lease, was a material term specifically bargained for. Lessee believes that the option to renew the lease was granted specifically to them. Therefore, they are now proposing to exercise the option to renew for the first ten-year period, commencing July 1, 1988, and believe that the Commission does not have any discretion to deny or condition such renewal of the lease.

On April 22, 1988, the Lessee was notified that its submitted Notice of Intent to Renew the lease was considered by staff to be an application to renew, and that it was deemed incomplete, pursuant to the requirements of the Permit Streamlining Act, pending the submittal of specific items required for further processing. At that time, Lessee was also notified that preliminary studies by staff and comments from the California Coastal Commission, Sierra Club, and the Native Plant Society indicate that the project authorized by the lease may have the potential for causing a significant impact on the environment and that it was staff's determination that an environmental impact report would be required prior to consideration of the request for renewal.

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With respect to environmental review, Lessee contends the lease renewal is not subject to CEQA, and that there is no obligation to submit materials related to an environmental determination. It is Lessee's belief that Commission actions authorizing the continued operation of existing facilities are categorically exempt from the requirements of CEQA. Lessee invokes the provisions of P.R.C. Sections 21083 and 21084, which require, respectively, that guidelines for the implementation of CEQA be prepared and adopted by the Resources Agency and such guidelines include a list of classes of projects which have been determined not to have a significant effect on the environment and which, therefore, shall be exempt from CEQA. The CEQA guidelines adopted by the Resources Agency list as Class No. 1 of exempt projects the continued operation of existing facilities, 14 Cal. Code Regs. 2905(a)(2) and such is repeated in the regulations of the State Lands Commission, 2 Cal. Code Regs. 2905(a). Lessee contends that it has conducted the same operations from the same facilities as will be conducted after the renewal of the lease. Thus, Lessee concludes that no environmental impact report or other environmental review is required or called for in connection with the renewal of the lease.

Lessee's concluding position is that the Commission's authority is limited only to a reasonable increase in the royalty rate.

Staff's interpretation of the lease, specifically Paragraph 18, is: 1) that Lessee's request to renew requires the issuance of a new lease; 2) that any subsequent lease or any terms and conditions of that lease is subject to the Commission's discretionary action; and 3) that prior to such action, an environmental review must be conducted in order to satisfactorily comply with the requirements of CEQA.

Staff believes that both Paragraph 18 of the lease and P.R.C. Section 6898 give a lessee the right to renew a lease. However, in context of the statutes governing the leasing of minerals other than oil and gas, it is believed this language only stays the requirement on the State to lease such materials through competitive bidding.

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Staff further believes that the Legislature did not intend that a lessee have an automatic right to a term of more than 20 years on identical terms as its original lease or that a lessee would be exempt from other applicable statutes. Both the statute and the subject lease make it clear that any right to renewal is subject to such reasonable terms and conditions as the Commission chooses to impose. It is believed that "reasonable terms and conditions" indicate the Commission has the discretion to alter, amend, or modify the lease to respond to new knowledge of potential adverse environmental impacts through the application of the CEQA process.

The existing lease also makes it clear the Lessee must comply with "such rules and regulations as may hereafter be promulgated by any agency of the State of California having jurisdiction therein." The relevant Commission regulation, promulgated after the issuance of the lease to the Applicant in 1968, specifically requires compliance with CEQA. (See 2 Cal. Code Regs Section 2954).

Staff does not believe this project is categorically exempt from CEQA, as the Lessee contends. In point of fact, the lease expired in 1988 and the Commission had discretion in considering the lease renewal, the Applicant's renewal request cannot be considered an existing operation. In any event, the categorical exemption for existing operations contained in Class 1 of CEQA guidelines (14 Code Reg. Section 15301) would be inapplicable in this situation because the exceptions contained in Section 15300.2(b) and (c) of the guidelines apply to the instant application.

The Commission has also been advised that the cumulative impact of the sandmining at these sites over time is significant. (See Id., Section 15300.2[b].) Further, there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances". (Id., Section 15300.2[c]) The unusual circumstances here include: 1) the fact that the Applicant's operation is the only surfzone sandmining in California; 2) the significant new information developed since 1970 regarding the impacts of sandmining; and 3) the existence of lease provisions allowing the Commission to impose reasonable terms and conditions upon renewal and requiring the Applicant to comply with new rules and regulations of the Commission.

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A letter to Lessee on May 24, 1988 confirmed the staff's positions that renewal of the lease is a discretionary action and that preparation of an environmental impact report would be required prior to further consideration of renewal of the lease. At that time, staff requested that Lessee cease operations at the end of the lease term, but indicated it would be permissible to leave in place any fixed equipment until resolution of the lease renewal issue.

The lease expired on June 30, 1988. Monterey Sand filed a lawsuit against the Commission in the nature of a Petition for Relief in the Nature of Mandamus and Complaint of Declaratory Relief, Specific Performance and Injunctive Relief, on the same day. Finally, also on that same day, Monterey Sand and the Commission entered into an Agreement whereby the parties could preserve their respective legal positions and negotiate a settlement. This Agreement, extended several times, expires on October 31, 1989.

Monterey Sand also needs a permit from the U.S. Army Corps of Engineers. Their prior permit has expired. Because the Corps has found that Monterey Sand's operation may have a significant impact on the quality of the human environment, it has ordered Monterey Sand to prepare an Environmental Impact Statement (EIS). The Corps, however, has not stopped Monterey Sand from continuing to mine sand while the EIS is being prepared. Under the National Environmental Policy Act (NEPA), any decision to renew a permit, whose impact may have a significant impact on the quality of the human environment, must be preceded by the preparation of an EIS. Staff contends the Corps has violated the requirements of NEPA by permitting Monterey Sand to continue mining sand during the preparation of the EIS, which the Corps itself has found necessary.

The Corps has been contacted and is undecided on whether to bar Monterey Sand from continuing to mine sand until after the EIS has been completed and reviewed.

The parties appear to be at an impasse and unable to resolve, in a mutually satisfactory manner, the need for an EIR and the amount of royalty increase and other terms and conditions of the new lease. Similarly, the Corps and the Commission are at an impasse over the need to prohibit mining given the absence of a permit issued after consideration of a final EIS.

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Accordingly, the Commission staff and the staff of the Attorney General recommend that negotiations be terminated with Monterey Sand and authorization be granted to (1) oppose Monterey Sand's lawsuit and take other appropriate legal action to oppose Monterey Sand; (2) adopt the attached lease in the event of a final judicial decision that an EIR is not required for the renewal of Monterey Sand's lease; and (3) file suit in federal district court against the Corps and Monterey Sand to bar the company from operating until the Corps issues a permit after consideration of a valid final EIS if the Corps and the Commission cannot come to an agreement on this issue.

**OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: P.R.C. 21080(b)(5) and 14 Cal. Code Regs. 15270.

- EXHIBITS:**
- A. Land Description.
  - B. Location Map.
  - C. Lease Document.

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080(b)(5) AND 14 CAL. CODE REGS. 15270, PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DIRECT STAFF TO TERMINATE NEGOTIATIONS WITH MONTEREY SAND OVER THE RENEWAL OF A REQUESTED SAND EXTRACTION LEASE.
3. RECOGNIZE THE TERMINATION OF PRC 3964 ISSUED JULY 1, 1968 FOR TERM OF TWENTY YEARS AND DENY THE REQUEST FOR A RENEWAL BECAUSE OF FAILURE OF THE APPLICANT TO COMPLY WITH THE CEQA AND TO AGREE TO OTHER REASONABLE TERMS AND CONDITIONS FOR LEASE ISSUANCE.

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4. AUTHORIZE THE COMMISSION (A) TO OPPOSE MONTEREY SAND'S LAWSUIT AND TAKE OTHER APPROPRIATE LEGAL ACTION TO OPPOSE MONTEREY SAND; (B) ADOPT THE ATTACHED LEASE IN THE EVENT OF A FINAL JUDICIAL DECISION THAT AN EIR IS NOT REQUIRED FOR THE RENEWAL OF MONTEREY SAND'S LEASE; AND (C) FILE SUIT IN FEDERAL COURT AGAINST THE CORPS OF ENGINEERS AND MONTEREY SAND TO BAR MONTEREY SAND FROM OPERATING UNTIL THE CORPS ISSUES A PERMIT AFTER CONSIDERATION OF A VALID FINAL EIS.

(ADDED 10/25/89)

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## LAND DESCRIPTION

Parcel One - Sand City Site

A strip of tide and submerged lands 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay and a line drawn parallel therewith and 200 feet seaward therefrom; said strip of land being bounded on the northeast by a line drawn perpendicular to the ordinary high-water mark and extending northwesterly from the point of intersection of the ordinary high-water mark with the northerly line of Lot 1 of the Abrego Subdivision of the Rancho Noche Buena as surveyed and subdivided for the heirs of Don Jose Abrego in July of 1878 according to the map thereof on file in the Office of the County Surveyor of Monterey County, file reference D-18; and bounded on the southwest by the northwesterly projection of that certain course numbered (10) in the deed description of that certain 45.125 acre parcel of land granted by Laura W. Metz, et al to Monterey Sand Co., a partnership, by deed dated October 20, 1958 and recorded November 14, 1958 in Volume 1909 of Official Records of Monterey County at page 490, said projection being extended from the point at which said course numbered (10) intersects the ordinary high-water mark of Monterey Bay.

Said Strip of land being more particularly described as follows:

BEGINNING at the point of intersection of the ordinary high water mark of Monterey Bay with the westerly projection of the southerly boundary of that certain 1.31 acre parcel of land conveyed to Granita Construction Company by Deed and Agreement dated May 23, 1946 and recorded June 10, 1946 in the Office of the County Recorder of Monterey, California under Recorder's Series No: 16405, said 1.31 acre parcel being described as Parcel II in said Deed and Agreement, said southerly boundary being the northerly line of Lot 1 of Abrego Subdivision of the Rancho Noche Buena; thence, along said ordinary high-water mark with the meanders thereof:

1. In a southwesterly direction, 840 feet, more or less, to the point of intersection of said line of ordinary high-water with the said Course numbered (10) in said deed (or the northwesterly projection thereof) granting said 45.125 acre parcel of land to Monterey Sand Company said course numbered (10) being stated in said deed as "N 61° 15' W, 972.6 feet; thence, leaving said line of ordinary high-water and along said course numbered (10) and/or the northwesterly projection thereof:

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2. N 61° 15' W, 200 feet more or less to an intersection with a line that is parallel with and 200 feet seaward of said ordinary high-water mark; thence;
3. Northeasterly and parallel with said line of ordinary high-water and 200 feet seaward (northwesterly) therefrom, 840 feet, more or less, to an intersection with the said line drawn perpendicular with the shoreline of Monterey Bay and extending northwesterly from the point of intersection of said line of ordinary high-water with the westerly projection of the southerly boundary of said 1.31 acre parcel of land; thence, following said line perpendicular to the ordinary high-water mark of Monterey Bay;
4. In a southeasterly direction, perpendicular to the ordinary high-water mark of Monterey Bay, 200 feet to the place of beginning, containing 3.86 acres, more or less.

Parcel Two - Marina Site

A strip of tide and submerged land 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay, and a line drawn parallel therewith and 200 feet seaward therefrom;

Said strip of land being bounded on the North by the northerly line of Lot 92 and/or the westerly prolongation of said northerly line, or as may be subsequently determined by agreement of adjoining; and bounded on the south by the southerly line of Lot 95 and/or the westerly prolongation of said southerly line or as may be subsequently determined by agreement of adjoining; as said Lots 92 and 95 are shown and delineated on that certain map entitled "Loche Paddon's Company's Bayside Subdivision of Monterey City Lands" filed for record February 8, 1916 in Volume 2 of Maps and Grants (outside lands), Official Records of Monterey County, at page 15, containing 2.38 acres, more or less, of tide and submerged lands of Monterey Bay.

END OF DESCRIPTION

REVIEWED AUGUST 21, 1989 BY BIU 1.

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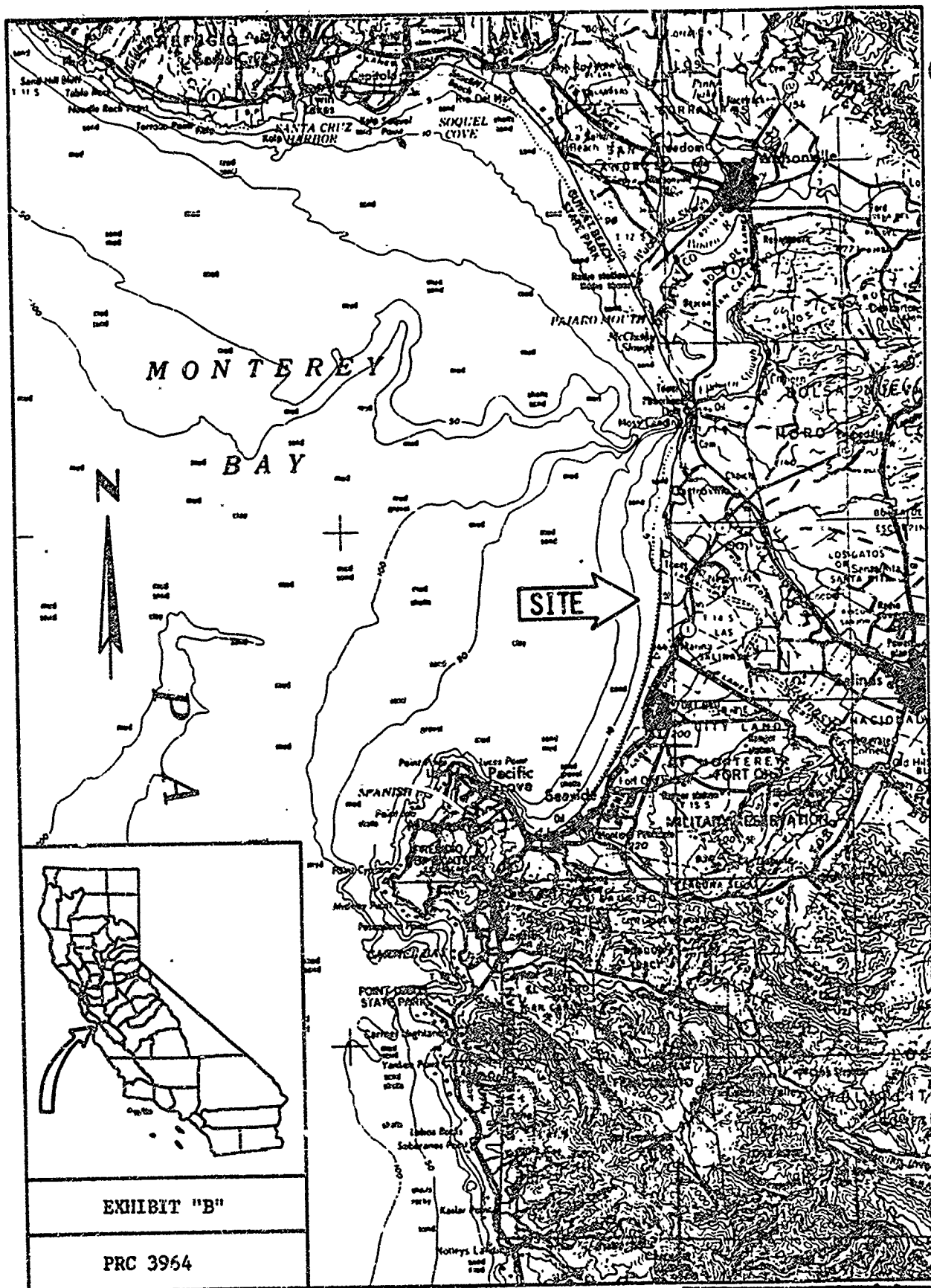


EXHIBIT "B"

PRC 3964

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EXHIBIT "C"

STATE LANDS COMMISSION  
STATE OF CALIFORNIA

LEASE RENEWAL FOR EXTRACTION OF MINERAL RESOURCES

Section 1

THIS INDENTURE OF LEASE, made and entered into pursuant to Division 6 of the Public Resources Code, Statutes of California, by and between the State of California, acting by and through the STATE LANDS COMMISSION, sometimes hereinafter called the State, as Lessor, and MONTEREY SAND CO., a California co-partnership, hereinafter called the Lessee, whose mailing address is: 625 Elder Street, Sand City, CA 93955.

WITNESSETH

That the Lessor, in consideration of the royalties provided hereunder, as well as the covenants, conditions and agreements herein contained, does hereby lease to the Lessee the State of California's mineral rights in that certain parcel of land, hereinafter designated as the "Leased Lands," situate in the County of Monterey, State of California as described in Exhibit A attached hereto and by reference made a part hereof as though set forth in full.

1. The effective date of this lease shall be July 1, 1988. This lease shall continue for ten years, unless sooner terminated as provided below. The terms and conditions of this lease shall remain in force for the duration of the lease, unless modified by the Commission in the manner set forthin Section 3 of paragraph 4(b). Lessee shall have a preferential right to renew this lease for one successive period of ten years upon such reasonable terms and conditions as may be prescribed by Lessor,

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including but not limited to, modification of the royalty, preparation of an appropriate environmental impact document as required in the discretion of the lessor, or any other provisions in a manner which, in the opinion of Lessor, will adequately protect the interests of Lessor. Any request for renewal by lessee shall be submitted by July 1, 1997.

2. The Lessee shall have the exclusive right to remove a maximum of 100,000 cubic yards of sand deposits from the Leased Lands each year. Lessee shall have no right to prospect for, extract, mine or remove any other mineral, including but not limited to, oil, gas, other hydrocarbons and geothermal resources.

3. The bond required pursuant to paragraph 18 of Section 3 is to be in the amount of \$10,000.

4. This lease consists of three sections and exhibits all attached hereto and by reference made a part of the whole agreement.

#### Section 2

#### ROYALTY AND RENT

1. Lessee shall pay to the State a royalty of ten percent (10%) of the gross value of any and all minerals produced, extracted, shipped, used or sold under this lease, less any transportation and processing charges of the State's royalty share of production but not less than \$.30 per cubic yard. The gross value upon which said royalty rate is based shall not be less than the reasonable fair market value, as fixed by the State, of any mineral resources extracted from the leased lands. If Lessee sells its products by tonnage or fraction of tonnage, Lessee agrees to provide Lessor with the formula(s) it uses to convert those figures to cubic yards for royalty determination purposes.

2. Since this lease is being executed in arrears of its effective date, Lessee agrees to pay within 15 calendar days of the execution date all royalties due on minerals produced,

extracted and sold during the period of July 1, 1988 to date of execution of this lease. Royalties shall be calculated in accordance with paragraph 1, section 2 hereof. Lessee shall receive credit for royalties previously paid on minerals produced, extracted and sold during this period.

3. Lessee shall pay to the State an annual land rent of \$10.00 per acre with an increase of \$1.00 per acre per year on the lease anniversary.

### Section 3

#### STANDARD COVENANTS - STATE LANDS COMMISSION LEASE

1. PURPOSE:

(a) Lessee shall have the right to remove only those mineral resource deposits from the Leased Lands as are specified in paragraph 2 of Section 1 hereof.

(b) No additional structural improvements shall be placed on the Lease lands at any time without prior written approval of Lessor.

(c) Lessor shall have the right to go upon the Leased Lands for the purposes of conducting surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the Leased Lands of any natural resources, including but not limited to, oil, hydrocarbon, gas, other hydrocarbons and geothermal resources, as well as other mineral deposits listed in Public Resources Code Section 6407, (hereinafter collectively "mineral resources") provided that such surveys, tests, or experiments do not unreasonably interfere with or endanger Lessee's operations pursuant to this Lease.

(d) Lessor shall have the right to issue additional nonexclusive rights to conduct surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the Leased Lands of any mineral resource

except those listed in paragraph 2 of Section 1; provided that operations conducted pursuant to such rights do not unreasonably interfere with or endanger Lessee's operations pursuant to this Lease. Further, Lessee agrees to allow all persons authorized by such rights to enter upon the Leased Lands in order to conduct such surveys, tests of experiments.

(e) This lease is entered into with the agreement that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources; this lease shall allow coexistence of other permits or lease of the same lands for deposits of mineral resources other than sand under applicable laws, and the existence of this lease shall not preclude other uses of this area covered hereby. However, operations under such other permits or leases or other such uses shall not unreasonably interfere with or endanger operations under this lease, nor shall operations under this lease unreasonably interfere with or endanger operations under any permit, lease, or other entitlement for use issued pursuant to the provisions of any other act. Nor shall this lease be construed as superseding the authority which the head of any state department or agency has with respect to the management, protection, and utilization of the Leased Lands and resources under its jurisdiction. Lessor may prescribe in its rules and regulations those conditions it deems to be necessary for the protection of other mineral resources.

(f) This lease does not confer upon the Lessee any other privilege or right not expressly given hereto.

2. CONSIDERATION:

Lessee agrees to pay to Lessor the following royalties without deduction, delay or offset and as further provided for herein:

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(a) Royalties for the mineral resources produced or extracted based on the formula, rate, or in the amount specified in Section 2 hereof, which shall be due and payable on the 25th day of the month following the month of extraction or production.

(b) Lessee shall keep accurate books and records of his operations hereunder, including all minerals extracted from the Leased Lands, combined with the adjoining lands of Lessee, together with the cost of extraction of same and of mining, quarrying and shipping thereof and shall file with Lessor copies of all sales contracts for the disposition of any and all minerals extracted from the Leased Lands, combined with the adjoining lands of Lessee.

(c) On or before the 25th day of each month, the Lessee shall deliver to Lessor statements in the form prescribed showing the work performed upon the Leased Lands and at the request of Lessor upon any other land necessary to make the determination and the amount, quality and value of all mineral resources extracted, produced, shipped or sold or whether any work was performed on the Leased Lands.

(d) Land rent shall be due on each anniversary date of this lease.

3. INTEREST AND PENALTIES:

(a) It is agreed by Lessee hereto that any royalties or other monetary considerations, arising under the provisions of the lease and not paid when due as provided in this lease, shall bear interest from the day following the day upon which such monetary consideration was due at the rate of one and one-half (1-1/2) percent per month until the date of payment.

(b) It is agreed by Lessee hereto that any royalties or other monetary considerations arising under the provisions of this lease, and not paid when due as provided in this lease, shall be subject to a five (5) percent penalty on the



amount of any such royalties, rentals, or other monetary considerations arising under the provisions of this lease. (c) It is agreed by Lessee hereto that, for the purposes of this Section, "royalties or other monetary considerations, arising under the provisions of this lease, and not paid when due" includes but is not limited to any amounts determined by Lessor to have been due to Lessor if, in the judgment of Lessor, an audit by Lessor of the accounting statement and records required by paragraphs 2(b) and 2(c) of Section 3 hereof, shows that inaccurate, unreasonable or inapplicable information contained or utilized in the statement resulted in the computation and payment to the State of less royalties or rentals than actually were due to the State.

4. ENVIRONMENTAL IMPACT:

(a) Within ten days of Lessee's execution of the Lease, Lessee shall pay to Lessor \$15,000 for the preparation of a study of the impacts of sandmining on coastal erosion in Monterey Bay. The study shall be designed and supervised by Lessor. Upon its completion, the study shall be made available to the public and Monterey Sand.

(b) Within twelve months from the completion of the study, the Lessor may impose a new set of reasonable terms and conditions to this Lease, including an increase or decrease in the rate of extraction. Any changes to the terms and conditions of this Lease that are imposed pursuant to this paragraph shall be effective for the remainder of the ten-year term of this Lease.

5. WASTE OF RESOURCES, DAMAGE, LOSS AND LIABILITY:

Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources and wildlife on or in the Leased Lands and shall be liable to Lessor for any such waste, damage or loss to the extent that such waste, damage, or

loss is caused by (1) the negligence of Lessee, its employees, servants, agents or contractors; (2) the breach of any provision of this lease by Lessee, its employees, servants, agents or contractors; or (3) the noncompliance of the Lessee, its employees, servants, agents or contractors, with applicable statutes or rules and regulations of Lessor provided, however, that nothing herein shall diminish any other rights or remedies which Lessor may have in connection with any such negligence, breach or noncompliance. With respect to any other such damage or loss, Lessee agrees to indemnify, save Lessor harmless and, at the option of the State, defend, except in matters involving Lessor's title, Lessor against any and all losses, damages, claims, demands or actions caused by, arising out of, or connected with the operations of the Lessee hereunder as are more specifically provided under paragraph 16 of Section 3 hereof.

6. ENTRY BY LESSOR:

Lessor, or persons authorized by Lessor, shall have the right, at all reasonable times, to go upon the Leased Lands for the purpose of inspecting the same, for the purpose of maintaining or repairing said premises, for the purpose of placing upon the property any usual or ordinary signs, for fire or police purposes, to protect the premises from any cause whatever, or for purposes of examining and inspecting at all times the operations, improvements, machinery, and fixtures used in connection therewith, all without any rebate of charges and without any liability on the part of Lessor, for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

7. NOTICES:

(P) All notices to Lessee or Lessor herein provided to be given shall be deemed to have been fully given when made in writing and deposited in the United States mail, return receipt requested and postage prepaid, addressed as follows:

To the Lessor: State Lands Commission  
245 West Broadway, Suite 425  
Long Beach, CA 90802

To the Lessee: As set forth in Section 1 hereof

The addresses to which the notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other as hereinabove provided.

(b) All notices to Lessee herein provided to be given shall also be deemed to have been fully given if made in writing and personally served upon Lessee or any officer thereof.

(c) All payments specified in this lease shall be made to Lessor at the address provided in paragraph 7(a) above.

8. EXAMINATION OF BOOKS:

Lessee hereby waives any and all rights and objections it may have to prevent an examination of the books and records at reasonable times of any individual, association, or corporation which has transported for, or received from Lessee, any minerals extracted or produced from the Leased Lands, combined with the adjoining lands of Lessee. Further, Lessee waives any and all rights and objections it may have to prevent an examination and inspection of the books and records at reasonable times of the Lessee or of any such individual, association or corporation with respect to such individual's association's, or corporation's or to Lessee's operations, improvements, machinery and fixtures used or in connection with the Leased Lands, combined with the adjoining lands of Lessee.

9. WAIVER OF USE OF DATA:

(a) Lessee does hereby waive any statutory or other right or objection to prevent disclosure to Lessor or a duly authorized employee or representative of Lessor of any information, reports, data, or studies of any kind, filed by Lessee with any public agency, federal, state or local,

relating to the Leased Lands, or any operations carried out in connection with the lease, irrespective of whether such information, reports, data or studies of any kind contain sensitive or proprietary or confidential information or trade secrets. Any and all such information, reports, data, or studies of any kind filed by Lessee with any public agency, federal, state or local, including all information filed with, pursuant to any paragraph of this lease, shall be available at all times for the use of Lessor or its duly authorized representatives for any purpose. Notwithstanding any provisions hereof, however, any information, reports, data or studies obtained by Lessor from any public agency and which are not public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.

(b) Lessee agrees to supply to Lessor within thirty (30) days of Lessor's request, all physical and factual exploration results, logs, surveys and any other data in any form resulting from operations under this lease or from any surveys, tests, or experiments conducted on the Leased Lands by Lessee or any person or entity acting with the consent of Lessee or with information or data provided by Lessee. Lessee agrees to supply to Lessor within thirty (30) days of Lessor's request, the results of all geological, geophysical or chemical experiments, tests, reports and studies, interpretive or factual, irrespective of whether the results of such tests, experiments, reports or studies contain sensitive, proprietary or confidential information or trade secrets. Lessee further agrees that any statutory or other rights or objections it might have to prevent disclosure of any such tests, experiments, reports or studies referred to in this paragraph 9 to Lessor

are hereby waived. Notwithstanding any provisions hereof, however, all data and documents supplied by Lessee pursuant to this section shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by Lessor that such disclosure is in the public interest.

**10. PRESERVATION OF PROPERTY, WASTE DISCHARGE:**

Lessee shall carry on all work hereunder with due regard for the preservation of the property covered by this lease with due regard to the environmental impact of its operations in accordance with the following terms and conditions:

(a) Lessee shall remove equipment and facilities within ninety (90) days after Lessee has ceased making use thereof in its operations.

(b) All permanent operating sites shall be landscaped or fenced so as to screen them from public view from public roads to the maximum extent practical. Such landscaping or fencing shall be approved in advance by Lessor and kept in good condition.

(c) All excavating and production operations shall be conducted in such manner as to eliminate as far as practicable dust, noise, vibration or noxious odors. Operating sites shall be kept neat, clean and safe. Operations shall be conducted so as to prevent widespread deposition of dust. Detrimental material deposited on trees and vegetation shall be removed. The determination as to what is detrimental is a responsibility of Lessor.

(d) Any operations disturbing the soil surface, including road building, construction and movement of heavy equipment in support of or relating to specific mineral extraction or production activities shall be conducted in such a manner as will not result in unreasonable damage to trees and plan cover, soil erosion, or in the degradation of waters of the

state, including fish and aquatic habitat.

(e) Pollution of rivers, lakes or other bodies of water, and all impairment of and interference with bathing, fishing or navigation in such waters is prohibited, and no refuse of any kind from any extraction or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes or other bodies of water without specific written State authorization.

(f) Access to extraction or production sites by the public shall be controlled by Lessee to prevent accidents or injury to persons or property.

(g) The above are in addition to, and not to be construed as limitations upon, all other rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this lease.

**11. EXISTING RIGHTS:**

This lease is issued subject to all existing valid rights as of the date of execution hereof, and such rights shall not be affected by the issuing of this lease. In the event the Leased Lands have been sold by the State of California, subject to mineral reservation, Lessee agrees to follow such conditions and limitations prescribed by law.

**12. OTHER EASEMENTS AND INTERESTS:**

To the extent of the right, title and interest of the State of California in the Leased Lands, Lessor shall have the right at any time during the term of this lease, or any extension thereof, to grant to any person upon such terms as it may determine such easements, rights-of-way, permits, leases or other interests in the Leased Lands, including easements for tunnels or wells bored through or in the Leased Lands as Lessor may, in its discretion, determine to be necessary or appropriate,

provided, however, interests which unreasonably interfere with or endanger Lessee's operations shall not be granted.

13. COMPLIANCE WITH LAWS AND RULES:

Lessee shall comply with all valid laws of the United States and of the State of California and with all valid ordinances of cities and counties applicable to Lessee's operations hereunder, including without limitation by reason of the specification thereof, Lessee's compliance with all provisions of the Public Resources Code, the Administrative Code and the Statutes of California. Lessee further agrees without limitation by reason of the specification thereof to comply with all provisions of Division 2 and Division 6 of the Public Resources Code, Statutes of California, applicable to Lessee's operations hereunder and with all rules and regulations as may from time to time be issued by the State, or by other state agencies, applicable to the Lessee's operations hereunder. Lessee also agrees that, in its employment practices hereunder, it shall not discriminate against any person because of race, color, religion, sex, ancestry or national origin.

14. WORKER'S COMPENSATION INSURANCE:

Lessee shall at all times in any and all operations under this lease and in any and all work in and upon the Leased Lands, carry full and complete Worker's Compensation Insurance covering all employees.

15. BOND:

Lessee shall furnish and shall thereafter maintain a bond in favor of the State of California in the sum specified in paragraph 3 of Section 1 hereof to guarantee the faithful performance of Lessee of the requirements, terms, covenants and observance of the conditions of this lease and of the provisions of the Public Resources Code and the rules and regulations of the State. Said bond shall require the surety to give at least one

hundred and twenty (120) days' written notice of its intention to cease acting as guarantor. If a surety gives notice of its intention to cease acting as guarantor, the Lessee shall provide to Lessor within sixty (60) days of such notice a replacement bond of equal value to become effective upon the expiration of the existing bond. Failure to provide such a replacement bond within the required time shall constitute a default entitling Lessor to levy against the entire amount of the existing bond. Lessee agrees that in no event shall the amount of the bond be construed as a limitation on its liability. In place of a Corporate Surety Bond, Lessee may post cash, pledge a deposit account or provide an irrevocable stand by letter of credit from a state or nationally chartered bank.

16. INDEMNIFICATION:

To the extent hereafter provided, Lessee agrees to indemnify, save harmless and, at the option of Lessor, defend, except in matters involving title, the State of California, its officers, agents and employees against any and all claims, losses, demands, causes of action or liability of any kind which may be asserted against or imposed upon the State of California or any of its officers, agents or employees by any third person or entity arising out of or connected with operations hereunder, or the use by Lessee or its agents, employees or contractors of the land. Without limiting the generality of the foregoing, such indemnification shall include any claim, loss, demand, cause of action or liability of any kind asserted against or imposed upon the State of California or any of its officers, agents or employees arising out of or connected with any alleged or actual violation by Lessee, its agents, employees or contractors of property or contractual rights of any third person or entity. This provision shall not be construed so as to require Lessee to indemnify the State for any alleged acts or negligence or other wrongful act of the State or any officer, agency or employee thereof, except to the extent that such negligence or other



wrongful act is alleged to consist of the issuance of this lease or the adoption and enforcement of the provisions set forth in the lease or in the rules and regulations in effect at the time of the issuance of this lease, or in any alleged failure to the State to adequately enforce any such provisions, provided further that said indemnification shall be limited as follows:

(a) That the foregoing indemnity specified in the lease and regulations is not intended to nor shall it be construed to require the Lessee to defend Lessor's title to mineral resources and that, in the case of litigation involving the titles of the Lessee and Lessor, Lessee and Lessor will join in defending their respective interests, each bearing the cost of its own defense.

(b) For the purpose of satisfying any judgments, settlements, claims or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that Lessor has no title to the land or mineral resources in the Leased Lands and that the owner thereof is entitled to payment for resources extracted under the lease, this indemnification will be limited to any Lessor liability in excess of the monies received by Lessor in the form of royalties or other payments, as owner of the mineral resources, including any interest actually earned thereon.

At the option of Lessor, Lessee shall procure and maintain liability, property damage or other insurance for the benefit of Lessor in an amount satisfactory to Lessor.

17. SUSPENSION OF OPERATIONS:

(a) The State may temporarily suspend production or any other operation by the Lessee under this lease whenever the State finds that the operation, unless suspended, would pose an immediate and serious threat to life, health, property or natural resources. The suspension shall be effective immediately upon either oral or written notice by the State

to the Lessee. Any oral notice shall be followed by written confirmation from the State. The State shall lift the suspension when the State finds, on the basis of evidence submitted by the Lessee or otherwise available, that resumption of the suspended operation or operations would no longer pose an immediate and serious threat to life, health, property or natural resources. If the State orders suspension of operations because their continuation would or might cause or aggravate erosion of the leased lands or other properties, the operations shall be resumed only in compliance with a State approved program for erosion prevention.

(b) No suspension ordered or approved under this paragraph shall relieve the Lessee from any obligation under this lease unless specifically provided in the terms of the suspension.

18. BREACH:

In the event of Lessee's failure to comply with any of the provisions of this lease, or with any regulation or laws applicable thereto and in force during the period of the lease, Lessor reserves the right, following a 90-day written notice of breach and opportunity to cure as provided by paragraph 26 of Section 3, to declare a forfeiture and cancel this lease subject to paragraph 25 of Section 3 thereof. In the event of the cancellation of this lease, Lessee shall comply with the restoration, reclamation and removal conditions specified in paragraph 25 of Section 3 hereof.

19. WAIVER OF BREACH:

The waiver by Lessor of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach whether of the same or of any other term, covenant or condition, regardless of Lessor's knowledge of such other defaults or breaches. The subsequent acceptance of monies

hereunder by Lessor shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of Lessee to pay the particular monies so accepted, regardless of Lessor's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of the lease or revocation of any notice or other act by Lessor.

20. SOLVENCY:

In the event that Lessee at any time during the term hereof is insolvent under any of the provisions of the Federal Bankruptcy Act or makes a voluntary assignment of his assets for the benefit of creditors, or is adjudged a bankrupt, either upon Lessee's voluntary petition in bankruptcy, or upon the voluntary petition of Lessee's creditors, or any of them, or should an attachment be levied and permitted to remain for any unreasonable length of time upon or against the interest, rights or privileges of Lessee in and to all mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, then upon election by Lessor, all of the interest, rights and privileges of Lessee in and to all mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, shall terminate upon receipt of written notice from Lessor advising that Lessor has so elected. In such event Lessor shall have, and Lessee by the acceptance hereof, hereby gives Lessor the right, option and privilege to cancel and terminate this lease and all of the terms and provisions granted hereby, and all of the rights and privileges of Lessee in and to or upon the Leased Lands, and in and to any mineral resources extracted, produced and saved from the Leased Lands by reason of Lessee's operations thereon, and all of Lessee's rights and privileges granted by this lease shall terminate immediately upon receipt of written notice from Lessor that Lessor has so exercised its option.

21. ASSIGNMENT, SUBLETTING AND OPERATORS:

(a) Lessee may assign or transfer this lease or any interest therein and may sublet said land or any part thereof, as provided in Public Resources Code Section 6804, to any person, association of persons, or corporation, who at the time of such assignment, transfer or sublease possesses the qualifications required of Lessees by Division 6, Part 2, Chapter 3 of the Public Resources Code, subject to the prior written consent of the State. Such written consent to an assignment, transfer or sublease may be conditioned upon the altering, changing or amending of this lease, the acceptance of additional consideration or participation of Lessor in any consideration received by the Lessee or its successors in interest for such assignment, transfer or sublease, as is deemed to be in the best interest of Lessor. The consent to any transfer of any interest of this lease shall not be deemed a consent to any subsequent assignment, subletting or occupancy or use by another person. Any assignment, transfer or subletting without such consent, whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee; further, any such attempted transfer shall be a breach of the lease and shall at the option of Lessor terminate this lease. However, the above provision shall not prevent Lessee from subcontracting parts of the work to be performed without Lessor approval so long as Lessee remains responsible to Lessor. Upon approval of any assignment, transfer or sublease, the assignee, transferee or sublessee shall be bound by the terms of this lease to the same extent as if such assignee, transferee or sublessee were the original lessee, any conditions in the assignment, transfer or sublease to the contrary notwithstanding.

(b) In the event that Lessee does not itself conduct operations as authorized by this Lease, but employs a third party operator (Operator) to do so, Lessee agrees to obtain

the written approval of the Lessor prior to employment of the Operator. Such consent shall not be withheld unreasonably.

**22. SUCCESSORS:**

The covenants and conditions herein contained shall, subject to the provisions of any assignment, apply to and bind all heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

**23. MODIFICATION OF LEASE:**

Whenever it appears to be in the public interest, the parties hereto by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same, with such adjustments and for such considerations as may be fair and equitable in the circumstances.

**24. QUITCLAIM:**

Lessee may at any time make and file with Lessor a written quitclaim of all rights under this lease. Such quitclaim shall be effective as of the date of its filing, subject to the continued obligation of the Lessee and his surety to make all payments of all rentals and royalties therefor accrued, and Lessee will immediately and, at its own expense and risk, restore the land to an environmentally safe and usable condition with due care to carry out all obligations imposed by this lease. No such quitclaim shall release Lessee or his surety from any liability for breach of any obligation of this lease with respect to which Lessee is in default at the time of the filing of such quitclaim or relinquishment.

**25. SURRENDER OF PREMISES:**

If Lessee is not the surface owner at the time of the expiration of this lease, or sooner termination thereof, the

Lessee shall deliver up and surrender possession of the Leased Lands with all improvements, structure and fixtures thereon in good order and condition; alternatively, and at the option of Lessor and as specified by Lessor, Lessee, who is not the surface owner at the expiration of this lease, or sooner termination thereof, shall deliver up and surrender possession of the Leased Lands after removing all or any part of the improvements, structures and fixtures, and other things which have been put upon the Leased Lands by Lessee, removing such of the same as shall be required by lessor within ninety (90) days, and otherwise restore the premises and replant those areas designated by Lessor.

**26. CANCELLATION:**

This lease may be forfeited and cancelled upon the failure of the Lessee after ninety (90) days' written notice and demand to comply with any of its provisions or with the laws, rules or regulations thereto.

**27. SURFACE MINING AND RECLAMATION ACT OF 1975:**

To the extent applicable by law, Lessee agrees to comply with the Surface Mining and reclamation Act (Public Resources Code section 2710 and following) or any successor act.

**28. FORCE MAJEURE:**

The obligations imposed upon Lessee by the provisions of this lease may be suspended during such time as Lessee is prevented from complying therewith by wars, riots, acute and unusual labor or material shortages, acts of God, laws, rules and regulations of any federal, state, county or municipal agency or by such other unusual conditions as are beyond the control of the Lessee.

**29. TIME OF ESSENCE:**

Time is of the essence in this lease.

**30. RELATIONSHIP OF THE PARTIES:**

In performing obligations arising under this lease, it is understood that this lease does not constitute, and the parties hereto do not intend it to create among the parties or their successors in interest a partnership, or joint venture or the relationship of master and servant, or principal and agent.

**31. SEVERABILITY:**

If any provision herein is judicially determined to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

**32. TAXES:**

(a) Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State or of any political subdivision thereof or the United States of America, against any and all improvements, property or assets of Lessee situate upon the Leased Lands or other rights of Lessee arising out of the lease.

(b) Lessee recognizes and understands in accepting this lease that it may be liable for a possessory interest tax imposed by a city or county on its leasehold interest and that its payment of such a tax shall not reduce the amount of consideration due Lessor under this lease and that Lessor shall have no liability for the payment of such a tax.

**33. CAPTIONS:**

The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

IN WITNESS WHEREOF, the parties hereto do execute this lease.

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

Dated: \_\_\_\_\_

By \_\_\_\_\_  
W. M. THOMPSON, Chief  
Extractive Development Program

(Lessee)

Dated: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

CORPORATE SEAL,  
if corporation

Approved as to form

JOHN D. VAN DE KAMP  
ATTORNEY GENERAL  
STATE OF CALIFORNIA

By \_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_ Date

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EXHIBIT A

Parcel One - Sand City Site

A strip of tide and submerged lands 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay and a line drawn parallel therewith and 200 feet seaward therefrom; said strip of land being bounded on the northeast by a line drawn perpendicular to the ordinary high-water mark and extending northwesterly from the point of intersection of the ordinary high-water mark with the northerly line of Lot 1 of the Abrego Subdivision of the Rancho Noche Buena as surveyed and subdivided for the heirs of Don Jose Abrego in July of 1878 according to the map thereof on filed in the office of the County Surveyor of Monterey County, file reference D-18; and bounded on the southwest by the northwesterly projection of that certain course numbered (10) in the deed description of that certain 45.125 acre parcel of land granted by Laura W. Metz, et al. to Monterey Sand Co., a partnership, by deed dated October 20, 1958 and recorded November 14, 1958 in volume 1909 of Official Records of Monterey County at page 490, said projection being extended from the point at which said course numbered (10) intersects the ordinary high-water mark of Monterey Bay.

Said strip of land being more particularly described as follows:

BEGINNING at the point of intersection of the ordinary high-water mark of Monterey Bay with the westerly projection of the southerly boundary of that certain 1.31 acre parcel of land conveyed to Granite Construction Company by Deed and Agreement dated May 23, 1946 and recorded June 10, 1946 in the Office of the County Recorder of Monterey, California under Recorder's Series No. 16405, said 1.31 acre parcel being described as Parcel II in said Deed and Agreement, said southerly boundary being the northerly line of Lot 1 of Abrego Subdivision of the Rancho Noche Buena; thence, along said ordinary high-water mark with the meanders thereof:

(1) In a southwesterly direction, 840 feet, more or less, to the point of intersection of said line of ordinary high-water with the said Course numbered (10) in said deed (or the northwesterly projection thereof) granting said 45.125 acre parcel of land to Monterey Sand Company said course numbered (10) being stated in

said deed as "N.61'15'W., 972.6 feet"; thence, leaving said line of ordinary high-water and along said course numbered (10) and/or the northwesterly projection hereof:

(2) N.61'15'W., 200 feet more or less to an intersection with a line that is parallel with and 200 feet seaward of said ordinary high-water mark; thence;

(3) Northeasterly and parallel with said line of ordinary high-water and 200 feet seaward (northwesterly) therefrom, 840 feet, more or less, to an intersection with the said line drawn perpendicular with the shoreline of Monterey Bay and extending northwesterly from the point of intersection of said line of ordinary high-water with the westerly projection of the southerly boundary of said 1.31 acre parcel of land; thence, following said line perpendicular to the ordinary high-water mark of Monterey Bay;

(4) In a southeasterly direction, perpendicular to the ordinary high-water mark of Monterey Bay, 200 feet to the place of beginning, containing 3.86 acres, more or less.

Parcel Two - Marina Site

A strip of tide and submerged land 200 feet in uniform width lying between the ordinary high-water mark of the Pacific Ocean, Monterey Bay, and a line drawn parallel therewith and 200 feet seaward therefrom;

Said strip of land being bounded on the North by the northerly line of Lot 92 and/or the westerly prolongation of said northerly line, or as may be subsequently determined by agreement of adjoining; and bounded on the south by the southerly line of Lot 95 and/or the westerly prolongation of said southerly line or as may be subsequently determined by agreement of adjoining; as said Lots 92 and 95 are shown delineated on that certain map entitled "Locle Paddon Company's Bayside Subdivision of Monterey City Lands", filed for record February 8, 1916 in Volume 2 of Maps and Grants (outside lands), Official Records of Monterey County, at page 15, containing 2.38 acres, more or less, of tide and submerged lands of Monterey Bay.