

MINUTE ITEM

This Calendar Item No. C42
was approved as Minute item
No. 42 by the State Lands
Commission by a vote of 3
to 0 at its 5/5/92
meeting.

CALENDAR ITEM

A)
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05/05/92
W 9977
Martinez
Frey

REVISED DREDGING LEASE FORM

PARTY:

State Lands Commission
1807 - 13th Street
Sacramento, California 95814

Over the last several years there has been an increased awareness of the effects of dredging activities within San Francisco Bay and other waterways and lakes. Commission staff believe it is appropriate to revise the dredging permit, which has been in the form of a letter, into a document more formally setting forth the obligations of the dredger and adding covenants which will enable the Commission to act quickly should some environmental hazard occur. The new format also contains specific provisions dealing with breach of the lease, bonding and insurance.

AB 884:

N/A

EXHIBIT A:

Proposed Dredging Lease Form

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 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
2. APPROVE AND ADOPT THE PROPOSED REVISION OF THE DREDGING LEASE FORM, DATED APRIL 1992, ATTACHED AS EXHIBIT "A" TO THIS CALENDAR ITEM.

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EXHIBIT "A"

State Lands Commission
State of California
Dredging Lease

This Dredging Lease is made and entered into pursuant to Section 6303 of the Public Resources Code by and between the State of California, acting by and through the State Lands Commission (hereinafter "State"), as Lessor, and _____ (hereinafter "Lessee"), whose mailing address is: _____.

In consideration of the terms, covenants, and conditions set forth below, the State issues to Lessee a lease to dredge that certain parcel of land designated as the Leased Lands, situated in the State of California, and more particularly described as follows:

1. **Purpose of Lease:** Lessee is hereby authorized to dredge and dispose of sand, gravel, silt and clay (hereinafter Dredged Materials) at approved disposal sites for purposes of improvement of navigation, reclamation or flood control as provided herein.

2. **Limitations:** (a) This Lease does not authorize the construction or placement of any improvements or fixtures, including but not limited to groins, jetties, sea walls, breakwaters, and bulkheads on the Leased Lands.

(b) This Lease does not authorize Lessee to dredge for purposes of commercial resale, environmental mitigation credits or other private benefit.

3. **Term:** This Lease shall commence upon approval by the State and execution by the Parties hereto, which date shall be hereafter referred to as the "effective date" of this Lease, and shall continue for a period of _____ year(s), unless sooner terminated as provided for in this Lease.

4. **Materials To Be Dredged:** Lessee is hereby authorized to dredge and remove a maximum of _____ cubic yards of Dredged Materials from the Leased Lands each lease year.

5. **Disposal Area:** Lessee is authorized to dispose of the Dredged Materials at the following designated Disposal Site:

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6. **Environmental Document:** The environmental document prepared for this Lease is on file in the offices of State and is described as follows:

Lessee hereby agrees to comply with the restrictions, mitigation measures and other conditions based on this document and adopted by the State as set forth in Exhibit A of this Lease. Furthermore, Lessee agrees to comply with such other terms and conditions or limitations on its operations under this Lease which are considered necessary by State to achieve the objectives set forth in the environmental document.

7. **Royalty:** (a) Lessee shall pay a royalty of _____ per cubic yard of Dredged Materials. However, there shall be no royalty charged for Dredged Materials provided to a public agency at no cost to the agency and used for a public purpose.

(b) Royalties shall be due and payable on the fifteenth (15th) day of the month following the end of each lease quarter. A lease quarter is a three-month period, the first one beginning on the effective date of the Lease and the subsequent ones running consecutively thereafter. All royalty payments shall be made by check or wire transfer. If made by check, they shall be made to the address provided for in Paragraph 10, below. If made by wire transfer, they shall be deposited into the State's bank account as provided in directions to be furnished to the Lessee by the State.

8. **Penalty and Interest:** (a) Royalties and other monetary considerations provided for in this Lease that are not paid when due shall bear interest from the day following the day on which such payment was due until the day of payment in the amount of one and one-half percent (1.5%) per month compounded annually. In addition, a five percent (5%) penalty shall be applied to the total amount past due (excluding payment of interest) which shall be payable with such amount past due.

(b) Penalty and interest for late payments shall apply to amounts determined by the State to be due and timely paid by the Lessee, including without limitation, insufficient payments based on inaccurate, unreasonable or inapplicable information contained in the quarterly statement submitted to State in accordance with Paragraph 9 of this Lease.

9. **Record Keeping and Audits:** (a) Lessee shall prepare and maintain accurate records of its operations under this Lease. On or before the fifteenth (15th) day of the month following the lease quarter, Lessee shall provide to State a detailed statement (hereinafter "Quarterly Report") of the amount of Dredged Materials and copies of reports or contracts with the dredging operator substantiating the volume of Dredged Materials and placement of Dredged Materials.

(b) At the request of State, the Lessee shall provide additional reasonable additional information to State to assist it in interpreting and evaluating the contents of Lessee's Quarterly Report.

(c) All Quarterly Reports and royalty statements shall be subject to audit by State, at State's sole cost. Upon reasonable advance notice to the Lessee from State, Lessee shall make available to State, during business hours, Lessee's books, records, calculations and other materials that are directly related to the Leased Lands and any other lands joined with the Leased Lands under Lessee's plan of operation and the contents of its Quarterly Reports.

(d) Lessee waives any rights or objections it may have and consents to the examination, inspection and audit of the books and records of Lessee and any other party associated with the dredging activities.

(e) Lessee shall, within 30 days of the State's request, provide copies of all data arising from Lessee's operations on the Leased Lands including, but not limited to, surveys of the Leased Lands conducted by or for Lessee before and after dredging under this Lease. All proprietary information and trade secrets shall be held in confidence by the State.

10. Notices: (a) All notices to be given under this Lease shall be deemed to have been given when made in writing, and deposited in the United States mail, first class postage prepaid, addressed as follows:

If to the State: State Lands Commission
1807 13th Street
Sacramento, CA 95814
Attention: Dredging Coordinator

If to the Lessee: _____

The address to which notices shall be mailed may be changed by written notice as provided for in this paragraph 10. All notices to be given under this paragraph shall be deemed to have been given if made in writing and personally served upon the other party.

11. Conduct of Operations: (a) Lessee shall safely conduct all dredging and disposal operations in accordance with accepted dredging and disposal methods and practices and with due regard for

the protection of life and property, preservation of the environment and the conservation of natural resources.

12. **Waste of Resources, Damage, Loss and Liability:** Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, wildlife and the environment on or in the Leased Lands and shall be liable to State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by (1) the intentional or negligent acts 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 State provided, however, that nothing herein shall diminish any other rights or remedies which State may have in connection with any such negligence, breach or noncompliance.

13. **Existing Rights:** This Lease is issued subject to all valid rights, previously granted by the State and existing on the date hereof. Such existing rights shall not be adversely affected by the issuance of this Lease.

14. **Other Easements and Interests:** (a) To the extent of the right, title and interest of the State in the Leased Lands and subject to the rights of the Lessee hereunder, State shall have the right at any time during the term hereof, or any extension as provided herein, to grant to any person or entity, upon such terms as the State may determine to be appropriate, such easements, rights of way, leases, or other interests in the Leased Lands as the State may in its discretion determine to be necessary or appropriate. The State in no event shall grant interests in the Leased Lands that unreasonably interfere with, impede, disrupt or endanger Lessee's activities under this Lease.

(b) Lessee agrees to allow the State, the State's easement holders, permittees or lessees to enter upon the Leased Lands in order to conduct such prospecting and mining activities or other authorized activities; provided that such parties shall provide Lessee with reasonable advance notice of their entry on the Leased Lands and the contemplated activities while on the Leased Lands. The State shall require such parties to indemnify, defend and hold Lessee harmless from and against any loss, cost, charge, cause of action or other liability of any kind whatsoever that arises out of such parties activities on, in or associated with the Leased Lands.

15. **Entry And Inspection Of Leased Lands:** State and its authorized designees shall have the right at all reasonable times to go upon the Leased Lands for the purpose of inspecting Lessee's

operations, for the purpose of maintaining or repairing improvements thereon, for the purpose of placing thereon signs for fire, police, or wildlife management purposes, all without any effect on payments due hereunder and without liability of the State for any loss of occupation of the Leased Lands by the Lessee.

16. **Suspension Of Operations:** Lessee shall immediately suspend all operations under this Lease, except those which are corrective or mitigative, when ordered by the State to do so upon the State's determination that Lessee's operations are causing or creating undue harm to public safety or to the environment or are otherwise not in the State's best interests. Lessee shall not resume operations under this Lease until the State has determined that adequate and feasible corrective or mitigative measures will be implemented by Lessee.

17. **Default And Remedies:** (a) Failure of Lessee to comply with any provision of this Lease or with the laws, regulations or rules applicable thereto shall immediately and without further notice constitute a default or breach of the Lease by Lessee.

(b) In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach within 30 days of the State having given written notice of such default or breach, the State may at any time, and with or without further notice, do any of the following:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such Lease Premises;

(2) Terminate this Lease and Lessee's right to possession of the Lease Premises. Such termination shall be effective upon the State giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;

(3) Maintain this Lease in full force and effect and recover any royalty or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or

(4) Exercise any other right or remedy which Lessor may have at law or equity.

18. **Waiver Of Breach:** The State's waiver of any default or breach of any term, covenant or condition of this Lease shall not constitute a waiver of any other default or breach whether of the same or any other term, covenant or condition, regardless of the State's knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by the State shall not

constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of the Lessee to pay the particular monies so accepted, regardless of the State's knowledge of such preceding default or breach at the time of acceptance of such monies. Nor shall acceptance of monies after termination of this Lease constitute a reinstatement, extension, or renewal of this Lease or revocation of any notice or other act by State.

19. **Workers Compensation:** Lessee shall at all times in any and all of its operations hereunder and any works in and upon the Leased Lands, carry full and complete workers compensation insurance covering all of its employees.

20. **Insurance:** Prior to commencement of operations hereunder Lessee shall obtain and maintain comprehensive bodily and personal injury and property damage liability insurance in an amount of \$ _____ for the benefit of State. With the prior written approval of State, Lessee may self-insure, if it meets the requirements of the State of California for self insurance.

21. **Bond Or Other Security:** Within thirty (30) days following approval of the issuance of this Lease by the State and prior to commencement of any dredging activity, Lessee shall furnish and maintain until released by the State, a bond or other security instrument acceptable to the State in the amount of \$ _____ and in favor of the State for its exclusive use and benefit, guaranteeing the performance by the Lessee of the terms and conditions of this Lease and observance 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 State within thirty (30) 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 State 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. This requirement shall be separate from any other bonding provisions of the Public Resources Code and the regulations of the State of California or any other State, local or federal requirement.

22. **Indemnification:** Lessee agrees to indemnify, save harmless, and at the option of the State, defend the State of California, its officers, agents and employees, against any and all claims, 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 Lessee's operations under this Lease or the use by Lessee or its agents, employees or contractors, of the Leased Lands.

23. **Taxes:** (a) In accepting this Lease, Lessee understands that the interest created herein may be subject to a possessory interest tax imposed by a local or county tax assessor. Any such possessory interest tax imposed shall not reduce any royalty due hereunder and payment of the tax shall be the liability of the Lessee.

(b) During the term hereof the Lessee shall pay, when due, all taxes and assessments lawfully made and levied under the laws of the State of California or any political subdivision thereof, and of the United States, against any and all improvements, property or assets of Lessee situated upon the Leased Lands. No such taxes and assessments shall be deductible from royalties or other monetary consideration due under this Lease.

24. **No Warranty Of Title:** This Lease is issued upon the application of Lessee and is entered into without a formal title determination. This Lease shall in no way be construed as establishing the extent of the State's claim of title to any real property. The State makes no warranty as to title or rights of possession or quiet enjoyment of the Leased Lands.

25. **Assigns and Successors:** This Lease shall not be assigned without the express prior written approval of State. Any unauthorized assignment shall be null and void, a breach of this Lease and grounds for termination of this Lease. Upon approval of an assignment by State the covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all parties hereto shall be jointly and severally liable hereunder.

26. **Compliance With Laws, Rules And Regulations:** Lessee shall comply with all applicable laws, regulations and rules of the United States, the State of California and counties or cities now or hereafter enacted or promulgated, including, without limitations, all applicable provisions of the Public Resources Code, the California Administrative Code, and the Statutes of California, regardless of which agency or government body may have jurisdiction with respect to enforcement. Lessee also agrees that in its employment practice hereunder, it shall not discriminate against any person because of race, color, religion, sex, ancestry or national origin.

27. **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 conditions of this Lease.

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission and a duly executed copy has been delivered to Lessee. The submission of this Lease by the State, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to the State shall constitute an offer to the State to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have fully executed this Lease effective on the last (chronologically) date entered below.

LESSEE: _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Lease was authorized by
the State Lands Commission on

(Month, Day, Year)