

MINUTE ITEM

This Calendar Item No. C27
was approved as Minute Item
No. 27 by the State Lands
Commission by a vote of 3
to 0 at its 7-19-93
meeting.

CALENDAR ITEM

C27

A 4, 11, 29, 35, 44, 49, 50, 58, 69

S 2, 7, 14, 18, 22, 29, 37

07/19/93
PRC 139.1
PRC 236.1
PRC 2478.1
PRC 5574.1
J. Sekelsky

RENT REVISIONS FOR MARINE TERMINAL LEASES
PRC 139.1, PRC 2478.1, AND PRC 5574.1;
AND RENEWAL OF AND REVISION OF RENT FOR MARINE TERMINAL
LEASE 236.1; CHEVRON REAL ESTATE MANAGEMENT COMPANY ("CHEVRON")

PARTIES:

State Lands Commission
1807 13th Street
Sacramento, California 95814

Chevron Real Estate Management Company
225 Bush Street
San Francisco, California 94104-4289

BACKGROUND:

Chevron operates four marine terminals on State-owned lands at Point Orient (Contra Costa County), Richmond Long Wharf (Contra Costa County), Estero Bay (San Luis Obispo County) and El Segundo (Los Angeles County). A map showing these sites is attached as Exhibit "A".

Rent for each of these leases was initially established upon a volumetric basis; that is, Chevron was to pay a minimum annual rental or a specified price per barrel of oil passing over State lands per year, whichever was greater. In 1985, the United States Supreme Court, in the case of Cory, et al. v. Western Oil and Gas Association, et al., upheld a Ninth Circuit opinion that volumetric rentals could not be imposed where commodities crossed State lands in interstate or foreign commerce. Following that decision, pursuant to Commission directive, Commission staff advised Chevron and other marine terminal lessees to continue paying the minimum annual rent specified in their leases until the leases were next due for rent adjustments (rent review, renewal, replacement, etc.). Chevron's leases were due for rent revision as follows:

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- ▶ PRC 139.1 (Point Orient: March 1, 1987 (five year rent revision));
- ▶ PRC 236.1 (Richmond Long Wharf): August 19, 1987 (day following expiration of previous lease term);
- ▶ PRC 2478.1 (Estero Bay): August 14, 1989 (five year rent revision); and
- ▶ PRC 5574.1 (El Segundo): October 1, 1987 (five year rent revision).

Chevron and other marine terminal lessees and Commission staff continue to disagree as to the appropriate means of establishing rents for the use of State lands for marine terminal purposes. Chevron also disputes the Commission's right to impose adjusted rents retroactively to the dates listed above. In order to assure the State a more equitable return for the use of its lands, and to provide certainty to both Chevron and the State as to rents to be paid for occupancy of State lands under ongoing leases, Chevron and staff have drafted a settlement for the Commission's consideration, as set forth in that letter dated June 3, 1993, attached hereto as Exhibit "B", and incorporated in full herein.

In summary, the settlement provides as follows. Rent adjustments will be based generally upon the last agreed minimum annual rent adjusted by the Consumer's Price Index (CPI). Chevron has submitted a total of \$430,906 as a retroactive adjustment of rents for all four leases. They will pay specified rentals for the remainder of the lease terms, adjusted annually by the CPI, for leases PRC 139.1 (Point Orient) and PRC 2478.1 (Estero Bay). Chevron will pay \$319,140 per year as a deposit toward rent on PRC 5574.1 (El Segundo), which will be established through ongoing negotiations for renewal of that lease.

With regard to renewal of PRC 236.1, the Richmond Long Wharf lease, the last formally approved term of which expired in 1987, Chevron has agreed to the following:

1. A specified rent schedule as shown on attached Exhibit "B";
2. To conduct annual bathymetric surveys of the terminal area;

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3. To secure Commission approval of any dredging activities (Chevron has a current Commission maintenance dredging permit which expires in 1994); and
4. To notify Commission staff two years in advance of any desire to continue to occupy State lands beyond the renewal term, which expires in 1997.

It is understood by both Chevron and the State that application of the CPI to adjust rents as set forth herein is an interim measure, a compromise to provide certainty to the parties and a more equitable return to the State, and will not obligate Chevron or the Commission to use of the CPI to adjust rents when each lease is next subject to revision of rents.

Based upon the foregoing, Commission staff recommends the settlement reflected in that letter dated June 3, 1993 and attached hereto as Exhibit "B".

OTHER PERTINENT INFORMATION

1. With regard to rent revisions set forth herein for leases PRC 139.1, PRC 2478.1, and PRC 5574.1, 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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

2. With regard to the renewal of PRC 236.1, subject to such reasonable rent as is established by the Commission, 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 categorically exempt project. The project is exempt under Class 1, Existing Facilities, 2 Cal. Code Regs. 2905(a)(2).

Authority: P.R.C. 21084, 14 Cal. Code Regs. 15300, and 2 Cal. Code Regs. 2905.

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AB 884:
N/A

EXHIBITS:

- A. Land Description
- B. Letter of Agreement

IT IS RECOMMENDED THAT THE COMMISSION:

1. AS TO THE RENT REVISIONS SET FORTH HEREIN, 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 RENT REVISIONS FOR LEASES PRC 139.1 (POINT ORIENT), PRC 2478.1 (ESTERO BAY), AND PRC 5574.1 (EL SEGUNDO), SPECIFICALLY AND ONLY AS SET FORTH IN THE ATTACHED EXHIBIT "B".
3. AS TO THE RENEWAL OF LEASE PRC PRC 236.1, FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. CODE REGS. 2905(a)(2).
4. APPROVE THE RENEWAL OF LEASE PRC 236.1 (RICHMOND LONG WHARF) FOR A TERM OF TEN YEARS BEGINNING AUGUST 19, 1987, AND ENDING AUGUST 18, 1997, SPECIFICALLY AND ONLY AS SET FORTH IN THE ATTACHED EXHIBIT "B".

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EXHIBIT A



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STATE LANDS COMMISSION

1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814
(TDD/TT) 1-800-735-2929
(916) 445-1012

June 3, 1993

File Ref.: PRC 139.1
PRC 236.1
PRC 2478.1
PRC 5574.1

Mr. Dave E. Powell
Senior Staff Real Estate Representative
Land Asset Management
Chevron Real Estate Management Company
225 Bush Street
San Francisco, CA 94104-4289

Dear Dave:

Thank you, Bill, and David for coming to our offices last week to discuss settlement of outstanding issues regarding rent to be paid by Chevron for its leases of State-owned lands at Point Orient, Richmond Long Wharf, Estero Bay, and El Segundo. We felt the meeting was helpful and productive. This letter is to confirm those discussions.

It was stated and understood by all parties that Chevron and Commission staff disagree on several points, including retroactive application and amount of rental adjustments. In the spirit of compromise, in order to update rental rates under the subject leases, and to provide certainty to both Chevron and the State as to rents to be paid for a defined period, we have agreed to present to our respective management boards the settlements set forth below. As stated during our meeting and in my earlier correspondence, application of the CPI to adjust rents should be seen only as an interim measure, and will not obligate the Commission or Chevron to any particular rental formula or amount other than as specifically set forth herein. Commission staff will continue to work to develop a method of establishing rents for marine terminals which will assure a fair return to the State.

In that context, we are willing to submit the following proposal to the State Lands Commission at its next meeting, probably some time in June.

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PRC 139.1 (Point Orient)

The Point Orient lease was subject to rent revision effective March 1, 1987. It is proposed that rents be adjusted as follows.

For lease years March 1, 1987-February 28, 1988 through March 1, 1991-February 28, 1992, rent will be set at \$23,302 per year.

For lease year	1992-1993:	\$29,088
	1993-1994:	\$30,408
	1994-1995:	\$31,788
	1995-1996:	\$33,231
	1996-1997:	\$34,739

For lease years 1987-1988 through 1991-1992, the previously agreed rent (\$19,916; 1982) was adjusted by the CPI to 1987 levels (\$23,302). For lease years 1992-1993, the CPI was again used to adjust that rate to 1992 levels (\$29,088). Rents listed for lease years 1993-1994 through 1996-1997 reflect annual adjustment by an average of the CPI adjustment factors for five years beginning in 1987-1988. The calculations which serve as the basis for these amounts are attached as Exhibit A.

The Point Orient lease will next be due for rent revision in 1997. It is understood that application of the CPI to adjust rents as set forth above is an interim measure, and will not obligate the Commission or Chevron to use of the CPI to adjust rents in 1997.

PRC 236.1 (Richmond Long Wharf)

The last approved lease renewal period expired August 18, 1987. The final renewal period for this lease is 1987-1997, subject to establishment of a reasonable rent for that period. It is proposed that we recommend Commission approval of this final renewal at the following rates.

For lease year	1987-1988:	\$100,000
	1988-1989:	\$105,013
	1989-1990:	\$109,119
	1990-1991:	\$114,025
	1991-1992:	\$116,985
	1992-1993:	\$121,919
	1993-1994:	\$127,061

1994-1995:	\$132,420
1995-1996:	\$138,005
1996-1997:	\$143,825

For lease years 1987-1988 through 1991-1992, the previously agreed rent (\$100,000; 1977) was adjusted annually by the CPI. Rents listed for lease years 1992-1993 through 1996-1997, reflect annual adjustment by an average of the CPI adjustment factors for five years beginning in 1987-1988. The calculations which serve as the basis for these amounts are attached in Exhibit B.

The lease renewal will be subject to provisions which will routinely be required in marine terminal leases. These Special Provisions are attached in draft form as Exhibit E. Because this is your first opportunity to review these provisions, we understand you will have questions and we will be available to discuss these at your convenience.

Assuming the Commission approves the 1987-1997 renewal as set forth above, the facility will not be in holdover status, and the Long Wharf lease will finally expire on August 18, 1997. Chevron acknowledges that any continued occupancy of State lands by the terminal after that date will be subject to Commission approval, and to compliance with the California Environmental Quality Act, if applicable. It is understood that application of the CPI to adjust rents as set forth above is an interim measure, and will not obligate the Commission or Chevron to use of the CPI to adjust rents in 1997.

PRC 2478.1 (Estero Bay)

The Estero Bay lease was subject to rent revision effective August 14, 1989. It is proposed that rents be adjusted as follows.

For lease year	1989-1990:	\$144,000
	1990-1991:	\$149,758
	1991-1992:	\$155,266
	1992-1993:	\$162,411
	1993-1994:	\$169,884

For lease years 1989-1990 through 1991-1992, the previously agreed rent (\$144,000; 1984) was adjusted by annual CPI adjustment factors. Rents listed for lease years 1992-1993 and 1993-1994 reflect annual adjustment by an average of the CPI adjustment factors for five years beginning in 1987-1988. The calculations which serve as the basis for these amounts are attached as Exhibit C.

The Estero Bay lease expires effective August 14, 1994. It is my understanding that Dick Harris and Commission staff have begun negotiations for the continued occupancy of State-owned lands at Estero Bay. It is understood that application of the CPI to adjust rents

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June 3, 1993

as set forth above is an interim measure, and will not obligate the Commission or Chevron to use of the CPI to adjust rents in 1994.

PRC 5574.1 (El Segundo)

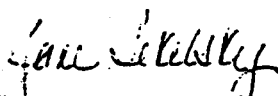
The El Segundo lease was subject to rent revision effective October 1, 1987. Rent for lease years 1987-1988 through 1991-1992 is established at \$319,140 per year. This amount reflects a CPI adjustment of the previously agreed rate (\$270,504; 1983) to 1987 levels. The calculations which serve as a basis for this amount are attached as Exhibit D.

The El Segundo lease expired effective October 1, 1992. Chevron and Commission staff are currently engaged in negotiations of lease terms for a renewal period. It is understood that neither the rental methods nor amounts employed here will be binding on either party for such continued use of State land following October 1, 1992, except that Chevron will pay \$319,140 by October 1 of each year as a deposit toward whatever rent is finally established by negotiation.

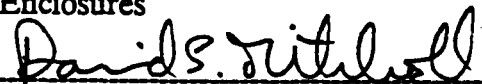
I hope this fairly summarizes our discussions of May 5th. If you agree, and if Chevron is willing to move forward on this basis, please countersign the enclosed copy of this letter and return it to me. We will then schedule the matter for the next Commission meeting.

Again, we appreciate your cooperation in trying to reach a defined and practical approach to resolving rental issues on these four terminals. Please feel free to call me if you have any questions.

Sincerely,


Jane Sekelsky, Chief
Land Management Division

Enclosures



Concurrence by
Chevron Real Estate Management Company
A Division of Chevron U.S.A. Inc.

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EXHIBIT A
CALCULATIONS FOR PRC 139.1
(POINT ORIENT)

A. PERTINENT CPI'S:

All urban consumers, San Francisco-Oakland-San Jose
(1967=100.0)

3/82=298.8	3/90=399.7
3/87=349.6	3/89=386.9
3/92=436.4	3/88=366.1
3/91=418.9	

B. CPI ADJUSTMENT FACTOR:

$$3/82-3/87: \frac{349.6-298.8}{298.8} = 0.1700$$

$$3/87-3/92: \frac{486.4-349.6}{349.6} = 0.2483$$

RENT:

$$3/82-3/87: \$19,916 \times 1.1700 = \$23,302$$

$$3/87-3/92: \$23,302 \times 1.2483 = \$29,088$$

C. FIVE YEAR AVERAGE OF CPI ADJUSTMENT FACTORS:

$$1991-1992: \frac{436.4-418.9}{418.9} = 0.041776$$

$$1990-1991: \frac{418.9-399.7}{399.7} = 0.048036$$

$$1989-1990: \frac{399.7-386.9}{386.9} = 0.0330834$$

$$1988-1989: \frac{386.9-366.1}{366.1} = 0.056815$$

$$1987-1988: \frac{366.1-349.6}{349.6} = 0.0471967$$

$$\frac{0.02269072}{5} = 0.0453814$$

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3/92-3/93 rent: \$29,088
3/93-3/94 rent: \$29,088 x 1.0453814 = \$30,408
3/94-3/95 rent: \$30,408 x 1.0453814 = \$31,788
3/95-3/96 rent: \$31,788 x 1.0453814 = \$33,231
3/96-3/97 rent: \$33,231 x 1.0453814 = \$34,739

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EXHIBIT B
CALCULATIONS FOR PRC 236.1
(LONG WHARF)

A. PERTINENT CPI'S:

8/87: 356.9	8/90: 409.2
8/88: 375.0	8/91: 427.6
8/89: 393.8	8/92: 438.7

B. CPI ADJUSTMENT FACTOR:

$$8/88-8/89: \frac{393.8-375.0}{375.0} = 0.0501333$$

$$8/89-8/90: \frac{409.2-393.8}{393.8} = 0.0391061$$

$$8/90-8/91: \frac{427.6-409.2}{409.2} = 0.0449657$$

$$8/91-8/92: \frac{438.7-427.6}{427.6} = 0.0259588$$

RENT:

8/87-8/88:	\$100,000
8/88-8/89:	\$100,000 x 1.0501333 = \$105,013
8/89-8/90:	\$105,013 x 1.0391061 = \$109,119
8/90-8/91:	\$109,119 x 1.0449657 = \$114,025
8/91-8/92:	\$114,025 x 1.0259588 = \$116,985

C. FIVE YEAR AVERAGE OF CPI ADJUSTMENT FACTORS:

$$8/87-8/88: \frac{375.0-356.9}{356.9} = 0.0507145$$

8/87-8/88:	0.0507145
8/88-8/89:	0.0501333 (see B above)
8/89-8/90:	0.0391061 (see B above)
8/90-8/91:	0.0449657 (see B above)
8/91-8/92:	0.0259588 (see B above)

$$+ \frac{0.2108784}{5} = 0.0421756$$

8/92-8/93 rent: \$116,985 x 1.0421757 = \$121,919
8/93-8/94 rent: \$121,919 x 1.0421757 = \$127,061
8/94-8/95 rent: \$127,061 x 1.0421757 = \$132,420
8/95-8/96 rent: \$132,420 x 1.0421757 = \$138,005
8/96-8/97 rent: \$138,005 x 1.0421757 = \$143,825

EXHIBIT B
Page 2

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EXHIBIT C
CALCULATIONS FOR PRC 2478.1
(ESTERO BAY)

A. PERTINENT CPI'S:

8/87: 346.7	8/90: 402.6
8/88: 362.3	8/91: 418.7
8/89: 380.9	8/92: 434.1

B. CPI ADJUSTMENT FACTOR:

$$8/90-8/91: \frac{418.7-402.6}{402.6} = 0.0399900$$

$$8/91-8/92: \frac{434.1-418.7}{418.7} = 0.0367805$$

RENT:

8/89-8/90:	\$144,000
8/90-8/91:	\$144,000 * 1.0399900 = \$149,758
8/91-8/92:	\$149,758 * 1.0367805 = \$155,266

C. FIVE YEAR AVERAGE OF CPI ADJUSTMENT FACTORS:

$$8/89-8/90: \frac{402.6-380.9}{380.9} = 0.0569703$$

$$8/88-8/89: \frac{380.9-362.3}{362.3} = 0.0513386$$

$$8/87-8/88: \frac{362.3-346.7}{346.7} = 0.0449956$$

1991-1992:	0.0367805	(see above)
1990-1991:	0.0399900	(see above)
1989-1990:	0.0569703	
1988-1989:	0.0513386	
1987-1988:	0.0449956	

$$+ \frac{\quad}{\quad} \\ 0.2300750/5 = 0.046015$$

8/92-8/93 rent:	\$155,266 * 1.046015 = \$162,411
8/93-8/94 rent:	\$162,411 * 1.046015 = \$169,884

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EXHIBIT E
CHEVRON LONG WHARF
SPECIAL PROVISIONS

Bathymetric Surveys

Sixty days from execution of this lease and annually thereafter until the expiration of this lease or August 18, 1997, which ever shall occur first, the Lessee shall conduct a bathymetric survey of the area surrounding the Richmond Long Wharf facility. The area shall include all those portions of the lease area subject to vessel traffic that are part of a normal terminal operation. Calculations with supporting data and other documentation from this survey shall be submitted within 30 days after completion to the Lessor.

Tankering operations at Richmond Long Wharf shall occur only if the charted water depth of the terminal is sufficient so that the vessel remains afloat at all phases of loading operations and under all conditions for each marine tanker that the Lessee expects to be moored at the terminal. This condition establishes the minimum requirements. It is the Lessee's responsibility to take any and all precautions to provide a safe berth.

Dredging

Should Lessee desire to dredge any portion of the lease premises, Lessee shall be required to secure a permit from State Lands Commission prior to commencement of any dredging operations.

New Lease for Continued Use

Should Lessee wish to continue the use of the existing Richmond Long Wharf facility, situated on State owned lands, beyond the current lease term, Lessee shall notify Lessor, in writing, 24 months in advance of expiration date of lease.

Such written notice must be submitted on a State Lands Commission Standard Form Application for Lease of State Lands and shall be accompanied by the applicable filing fees and appropriate minimum expense deposit.

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