

MINUTE ITEM

This Calendar Item No. 46 was approved as
Minute Item No. 46 by the California State Lands
Commission by a vote of 2 to 0 at its
10-30-07 meeting.

**Minute Item
46**

10/30/07
PRC 7779
PRC 7780
D. Oetzel

**HANSON MARINE OPERATIONS, INC.
LESSEE)**

Calendar Item 46: Staff made a presentation to the Commission asking to amend the lease to adjust royalties for Hanson Marine Operations, Inc. application. The Commission voted to approve the item as presented by a 2-0 vote (Garamendi and Chiang).

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PRC 7779.1, 7780.1,
2036.1, 709.1
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AMENDMENT OF LEASES FOR EXTRACTION OF SAND AND GRAVEL

APPLICANT/LESSEE:

Hanson Marine Operations
3000 Busch Road
Pleasanton, California 94566

AREA, LAND TYPE, AND LOCATION:

An aggregate of approximately 2,750 acres of submerged lands in San Francisco Bay; Marin and San Francisco counties.

AUTHORIZED USE, EXISTING LEASES:

Commercial sand and gravel extraction operations.

LEASE TERM:

Ten years, beginning July 1, 1998.

CONSIDERATION:

The Biannual Royalty is determined according to the following formula:

$$R = 0.23 (W)(Y)$$

Where R = Royalty in dollars and cents paid to Lessor biannually.

W = The weighted average Gross Sales Price, F.O.B. the dock for sales of Sand and Gravel extracted from the Leased Lands. This factor includes both inside and outside sales.

Y = Total cubic yardage of Sand and Gravel extracted from the Leased Lands for the biannual period.

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BACKGROUND:

On July 1, 1998, the State entered into State Sand and Gravel Extraction Leases Nos. PRC 709.1, 2036.1 and 7780.1 with Moe Sand Company, and State Sand and Gravel Extraction Lease No. PRC 7779.1 with Olin Jones Sand Company (collectively referred to as the "Leases"). Hanson Marine Operations (HMO) has succeeded to the Lessee's interest in the Leases. The Leases were granted for a term of ten years with a right to renew for one additional period of ten years upon terms, conditions, including the modification of royalty, which will reasonably protect the interests of the State. The existing term of the Leases will end on June 30, 2008. HMO has notified the SLC of its election to exercise the renewal rights as to each of the Leases and has requested that the SLC grant an additional ten year renewal following the July 1, 2008 through June 30, 2018 renewal term.

On August 16, 2001, qui tam plaintiff Kevin Bartoo filed a complaint alleging that certain defendants, including HMO violated the California False Claims Act (Government Code section 12650 et seq.) and Business and Professions Code section 17200 et seq. in connection with the mining of sand and gravel from submerged State land in the San Francisco Bay and Suisun Bay pursuant to the Leases and from State land where the defendants had no leases. Hanson Marine Operations filed a complaint for Declaratory Relief against the SLC and on November 3, 2003, the SLC filed a cross complaint for underpayment of royalties due under the Leases and for mineral trespass and conversion.

A central issue in the litigation has been the proper interpretation of the royalty provisions of the Leases, which currently provide for the royalty to be calculated at the rate of 23% of the weighted average gross sales price, F.O.B. the dock, times the total cubic yardage of sand and gravel extracted from the leased lands during the biannual period.

A dispute exists between HMO and the State as to the meaning of a number of the terms of the royalty provision. On August 27-28, 2007, the SLC staff participated in a mediation with all parties to the litigation in an effort to settle all of the litigation issues described above. While the proposed terms of settlement remain confidential at this time, a component of the proposed settlement provides for the parties to renegotiate the royalty provision of the leases in an attempt to agree on

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a royalty that is consistent with fair market values. The primary objective of the negotiations is to arrive at a royalty rate that would eliminate the existing controversy over the meaning of its terms and would be more straight-forward from an accounting and auditing standpoint. The renegotiated royalty would be effective July 1, 2007 through the remainder of the existing term, and for any additional period during which the Lessee is permitted to continue sand and gravel extraction operations on the Leased Lands in holdover pending Commission consideration and action upon Lessee's application to renew the Leases.

As the result of the review of a substantial body of data concerning the cost of conducting the marine-based sand mining, processing and marketing operations, including data provided by HMO, and following negotiations with HMO, staff has determined that the royalty for the remainder of the existing term of the Lease, including any holdover period, should be a fixed price per cubic yard, subject to an annual adjustment commencing July 1, 2009, based upon a price index as set out in greater detail below. Staff also recommends that the Leases be further modified to impose additional tracking, mapping and reporting of all mining episodes, utilizing the Global Positioning System, also as described below.

PROPOSED AMENDMENT:

SECTION 3, Paragraph 1 – Definitions is amended to delete (b) "Outside Sales", (c) "Inside Sales"; (d) "Gross Sales Price"; (h) Minimum Unit royalty" and (e) "Dock".

SECTION 3, Paragraph 2(a) – Royalty and Minimum Annual Royalty is amended to delete the reference to the Minimum Unit Royalty.

SECTION 3, Paragraph 4(b) – is amended to reflect no Minimum biannual royalty carry-forward credit.

SECTION 3, Paragraph 3 – Commencing July 1, 2007, and continuing for the remainder of the current term of the Lease, and for such additional time as the lease may be allowed to continue in holdover status pending Commission consideration of Lessee's application to renew the leases for an additional term, the royalty shall be calculated as follows:

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$$R = (Y)(B)$$

Where R = Royalty in dollars and cents paid to Lessor biannually.

Y = Total cubic yardage of Sand and Gravel extracted from the Leased Lands for the biannual period.

B = \$2.09 per cubic yard.

Commencing July 1, 2009, the royalty shall be adjusted annually according to the Producer Price Index, finished goods, not seasonally adjusted.

SECTION 3, Paragraph 13 – is amended to add the following:

Beginning with quarter ending on March 31, 2008, and within 30 days of the end of each quarter (Quarter), defined as the three months preceding March 31st, June 30th, September 30th, and December 31st of each year, the Lessee will provide in writing to the SLC:

- a) the number of mining episodes that took place during the preceding Quarter for each of the Leases; and
- b) the track line of each dredge with the start and end point of each sand mining event that took place during the preceding Quarter mapped on the most currently available NOAA chart, including a scale and north arrow, with the boundaries of the Leases overlaid on the chart. The name and registration number of such dredge should be identified to correspond to each track line. Each portion of the respective Leases should be printed on a separate page, so that the image is legible and the track line can be clearly discerned. The information provided will be from the Global Positioning System (GPS) currently used by HMO, and written documentation will be included, specifying the equipment used and the accuracy of the supplied data.

The track lines will provide the location of the actual mining event and differentiate between the traveling or maneuvering periods of a mining episode and the actual sand mining periods. The recording equipment for the mining episode must meet the minimum reporting accuracy of ten feet (horizontal control) during all loading and transportation operations, and shall record position, at a maximum time interval of ten seconds while within 2,000 feet of the lease area, and at one minute

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intervals otherwise. These plots and the raw data from the automated system shall also be made available for electronic download through the internet and by compact disc on a format such as "PDF" files to be approved by Commission staff. If the information is provided via the internet by the required report date, the compact disc copy can be provided in a timely manner after the required reporting date.

Such amendment to be contingent upon execution of a written agreement settling the litigation and subsequent court approval.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, Section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21065 and Title 14, California Code of Regulations, Sections 15060(c)(3) and 15378.

2. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

None

EXHIBIT:

- A. Location and Site Map

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THIS ACTIVITY IS NOT SUBJECT TO THE PROVISIONS OF CEQA BECAUSE IT IS NOT A "PROJECT" AS DEFINED BY THE CEQA AND THE STATE CEQA GUIDELINES, PURSUANT TO THE COMMISSION'S DELEGATION OF AUTHORITY AND THE STATE CEQA GUIDELINES [TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(C)(3)],

AUTHORITY: PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15060(C)(3) AND 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE THE AMENDMENT OF LEASES (PRC 7779.1, 7780.1, 2036.1, 709.1) TO EXTRACT SAND AND GRAVEL FROM THE AREA AS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, AS FOLLOWS:

- A) **SECTION 3, PARAGRAPH 1 – DEFINITIONS** IS AMENDED TO DELETE (B) "OUTSIDE SALES", (C) "INSIDE SALES"; (D) "GROSS SALES PRICE"; (H) "MINIMUM UNIT ROYALTY" AND (E) "DOCK".

SECTION 3, PARAGRAPH 2(A) – ROYALTY AND MINIMUM ANNUAL ROYALTY IS AMENDED TO DELETE THE REFERENCE TO THE MINIMUM UNIT ROYALTY.

SECTION 3, PARAGRAPH 4(B) – IS AMENDED TO REFLECT NO MINIMUM BIENNIAL ROYALTY CARRY-FORWARD CREDIT.

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- B) COMMENCING JULY 1, 2007, ROYALTY SHALL BE \$2.09 PER CUBIC YARD MINED, AND WILL BE ADJUSTED ANNUALLY COMMENCING JULY 1, 2009, ACCORDING TO THE PRODUCER PRICE INDEX, FINISHED GOODS, NOT SEASONALLY ADJUSTED.
- C) BEGINNING WITH QUARTER ENDING ON MARCH 31, 2008, AND WITHIN 30 DAYS OF THE END OF EACH QUARTER (QUARTER), DEFINED AS THE THREE MONTHS PRECEDING MARCH 31ST, JUNE 30TH, SEPTEMBER 30TH, AND DECEMBER 31ST OF EACH YEAR, THE LESSEE WILL PROVIDE IN WRITING TO THE STATE LANDS COMMISSION:
- A. THE NUMBER OF MINING EPISODES THAT TOOK PLACE DURING THE PRECEDING QUARTER FOR EACH OF THE LEASES; AND
 - B. THE TRACK LINE OF EACH DREDGE WITH THE START AND END POINT OF EACH SAND MINING EVENT THAT TOOK PLACE DURING THE PRECEDING QUARTER MAPPED ON THE MOST CURRENTLY AVAILABLE NOAA CHART, INCLUDING A SCALE AND NORTH ARROW, WITH THE BOUNDARIES OF THE LEASES OVERLAID ON THE CHART. THE NAME AND REGISTRATION NUMBER OF SUCH DREDGE SHOULD BE IDENTIFIED TO CORRESPOND TO EACH TRACK LINE. EACH PORTION OF THE RESPECTIVE LEASES SHOULD BE PRINTED ON A SEPARATE PAGE, SO THAT THE IMAGE IS LEGIBLE AND THE TRACK LINE CAN BE CLEARLY DISCERNED. THE INFORMATION PROVIDED WILL BE FROM THE GLOBAL POSITIONING SYSTEM (GPS) CURRENTLY USED BY HANSON MARINE OPERATIONS, AND WRITTEN DOCUMENTATION WILL BE INCLUDED, SPECIFYING THE EQUIPMENT USED AND THE ACCURACY OF THE SUPPLIED DATA.

THE TRACK LINES WILL PROVIDE THE LOCATION OF THE ACTUAL MINING EVENT AND DIFFERENTIATE BETWEEN THE TRAVELING OR MANEUVERING PERIODS OF A MINING EPISODE AND THE ACTUAL SAND MINING PERIODS. THE

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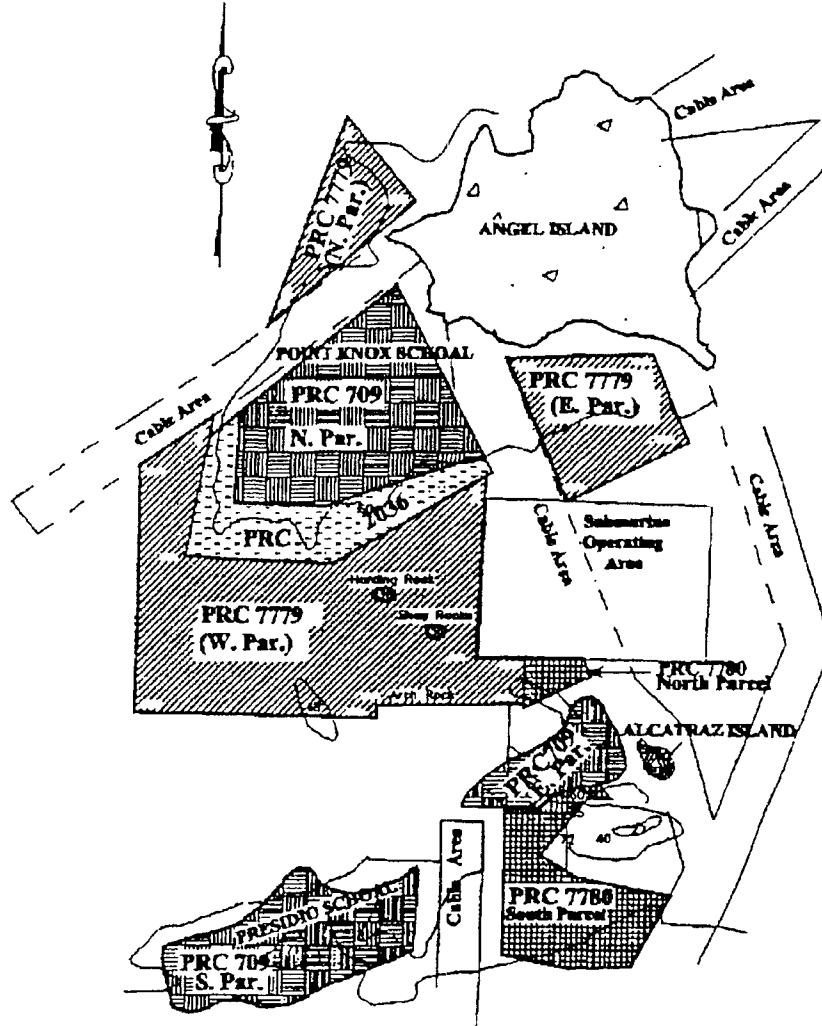
RECORDING EQUIPMENT FOR THE MINING EPISODE MUST MEET THE MINIMUM REPORTING ACCURACY OF TEN FEET (HORIZONTAL CONTROL) DURING ALL LOADING AND TRANSPORTATION OPERATIONS, AND SHALL RECORD POSITION, AT A MAXIMUM TIME INTERVAL OF TEN SECONDS WHILE WITHIN 2,000 FEET OF THE LEASE AREA, AND AT ONE MINUTE INTERVALS OTHERWISE. THESE PLOTS AND THE RAW DATA FROM THE AUTOMATED SYSTEM SHALL ALSO BE MADE AVAILABLE FOR ELECTRONIC DOWNLOAD THROUGH THE INTERNET AND BY COMPACT DISC ON A FORMAT SUCH AS "PDF" FILES TO BE APPROVED BY COMMISSION STAFF. IF THE INFORMATION IS PROVIDED VIA THE INTERNET BY THE REQUIRED REPORT DATE, THE COMPACT DISC COPY CAN BE PROVIDED IN A TIMELY MANNER AFTER THE REQUIRED REPORTING DATE.

AS SET FORTH IN THE LEASE AMENDMENT WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION; ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

SUCH AMENDMENT TO BE CONTINGENT UPON EXECUTION OF A WRITTEN AGREEMENT SETTLING THE LITIGATION AND SUBSEQUENT COURT APPROVAL.

NO SCALE

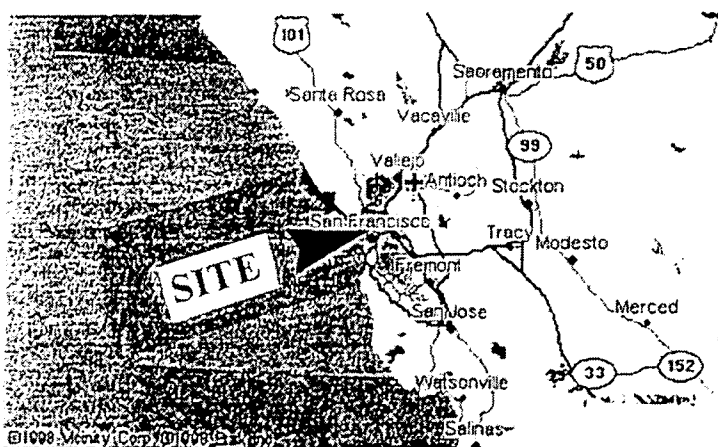
SITE MAP



Sand Extraction Leases Vicinity Alcatraz & Angel Islands

NO SCALE

LOCATION MAP



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This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties, and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

PRC 709, PRC 2036, PRC 7779, PRC 7780
San Francisco Bay
SAN FRANCISCO and MARIN COUNTIES



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