MINUTE ITEM
This Calendar Item No. 46
was approved as Minute Item
No. 46 by the State Lands
Commission by a vote of 3
to 0 at its 4-28-93
meeting.

CALENDAR ITEM

46

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04/28/93
WP 5871
Martinez

AWARD OF MINERAL EXTRACTION LEASE

PARTY:
State Lands Commission
1807 - 13th Street
Sacramento, California 95814
HIGH BIDDER
Bell Marine Company, Inc.
775 Seaport Boulevard
Redwood City, California 94063

On February 5, 1992, the Commission authorized staff to offer for lease by competitive bid, State-owned tide and submerged lands in San Francisco Bay at Alcatraz Shoals, San Francisco County, for the annual extraction of a maximum 100,000 cubic yards of minerals other than oil, gas and geothermal resources. The area is a commercial source of sand and gravel deposits that has been under lease in the past. The area is currently not under lease and a request has been received to offer it for lease. In accordance with the Commission's authorization, staff prepared a bid package which was circulated to interested parties and a notice inviting responses to the proposal was published in the San Francisco Chronicle on April 2, 1993 soliciting bids.

In accordance with the published Notice, the bids were opened in the Sacramento Office of the Commission on April 16, 1993. The bid factor, 2.3, is to be applied to the royalty formula attached as Exhibit "B" hereto. The bid factor operates as a multiplier to the lease royalty formula which will effectively result in the payment of royalties at 23 percent of the weighted average sales price per cubic yard. The minimum annual rental is $1,026 and the minimum royalty is $32,500 annually for five years. The lease has a term of five years.

Pursuant to Section 6890 of the P.R.C., the Office of the Attorney General has reviewed and approved the lease form as to

conformance with the requirements specified in the Commission's proposal to enter into a Mineral Extraction Lease covering those specified State-owned lands in the San Francisco Bay, and as to compliance with the applicable provisions of law and the rules and regulations of the State Lands Commission.

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15025), the staff has prepared a Proposed Negative Declaration identified as ND 572, State Clearinghouse No. 91113030. Such Proposed Negative Declaration was prepared and circulated for public review pursuant to the provisions of CEQA. This ND, certified by the Commission on February 5, 1992, is applicable to the subject consideration.

Based upon the Initial Study, the Proposed Negative Declaration, and the comments received in response thereto, there is no substantial evidence that the project will have a significant effect on the environment. (14 Cal. Code Regs. 15074(b))

This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 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.

AB 884:

N/A.

EXHIBITS:

A. Location Map.
B. Royalty Formula.
C. Lease Form.

IT IS RECOMMENDED THAT THE COMMISSION, IN ACCORDANCE WITH THE PROVISIONS OF DIVISION 6 OF THE P.R.C:

1. FIND THAT ON FEBRUARY 5, 1992, THE COMMISSION ADOPTED ND NO. 572, SCH 91113030, WHICH WAS PREPARED AND CIRCULATED FOR THE SUBJECT CONSIDERATION IN COMPLIANCE WITH CEQA; AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN;

2. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET SEQ.

3. FIND THAT BELL MARINE, HAVING SUBMITTED A BID WITH A BID FACTOR OF 2.3 IS THE HIGHEST QUALIFIED AND RESPONSIBLE BIDDER AMONG THOSE PRESENTING BIDS FOR THE SUBJECT LEASE.

4. AUTHORIZE THE ISSUANCE OF A FIVE-YEAR MINERAL EXTRACTION LEASE OF STATE-OWNED LANDS IN THE SAN FRANCISCO BAY, CONTRA COSTA AND SOLANO COUNTIES, MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED THERETO AND BY REFERENCE MADE A PART HEREOF TO EXTRACT A MAXIMUM 100,000 CUBIC YARDS OF SAND PER YEAR, AT A ROYALTY DETERMINED IN ACCORDANCE WITH THE FORMULA ATTACHED AS EXHIBIT "B", AND THE OTHER TERMS AND CONDITIONS AS SET FORTH IN THE LEASE OFFERING.

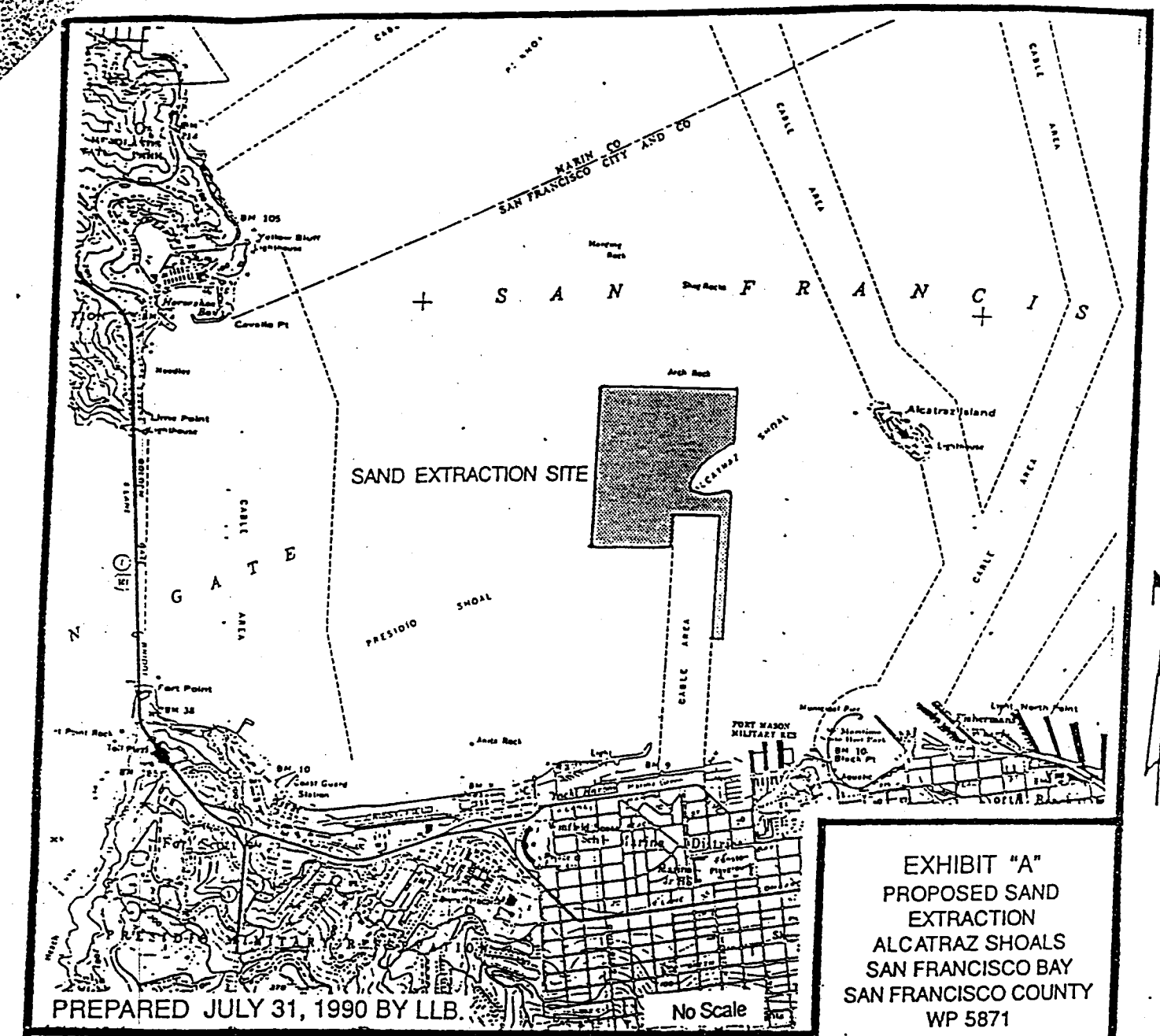
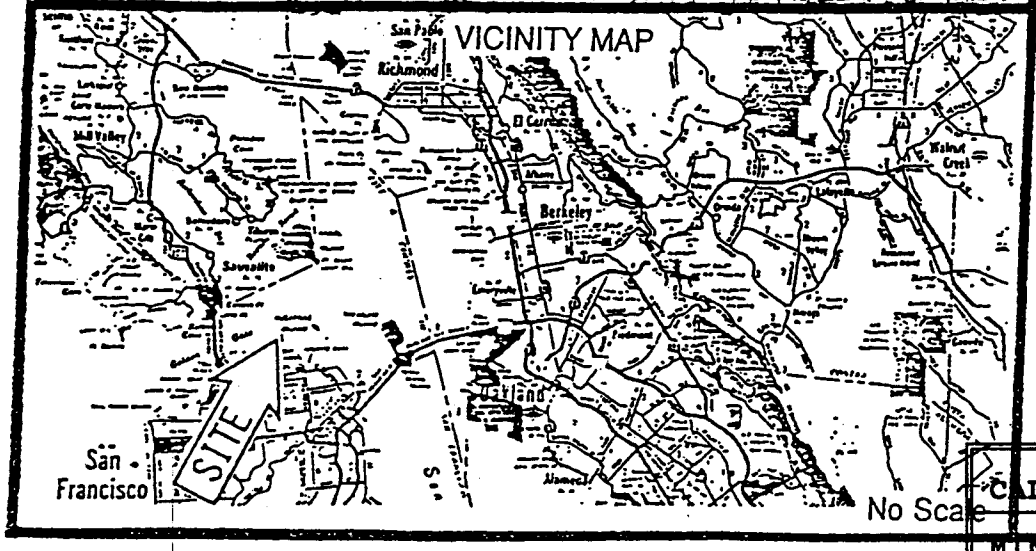
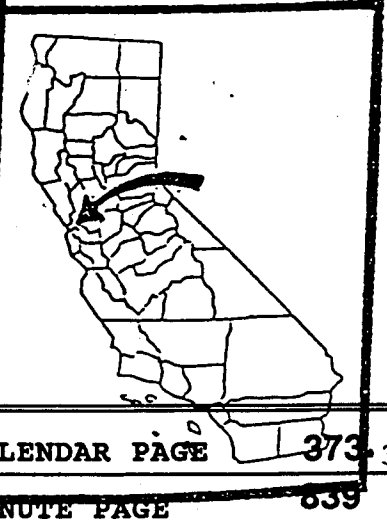


EXHIBIT "A"
PROPOSED SAND
EXTRACTION
ALCATRAZ SHOALS
SAN FRANCISCO BAY
SAN FRANCISCO COUNTY
WP 5871





"EXHIBIT B"

Section 2
ROYALTY AND RENT

1. **Definitions**:

   (a) Sand and Gravel: Aggregate and fill material.

   (b) Outside sales: Sale of aggregate and fill material sand and gravel to third parties.

   (c) Inside sales: Transfer or sale of aggregate and fill material, sand and gravel to companies or business entities owned or controlled by Lessee.

   (d) Gross sales price: For outside sales, the gross sales price shall be the actual sales price to third parties. For inside sales, the gross sales price shall be calculated as the fair market value of the same material as sold in outside sales by Lessee but never less than the average retail fair market value of the same material sold by similar companies in Lessee's sales and marketing area.

2. Royalties for the mineral resources produced or extracted are to be determined according to the following formula:

$$R = [0.10\ W(Y)]\ B$$

Where R = Royalty in dollars and cents paid to the State.
B = Bid factor of 2.3 which shall be no less than 1.0.
W = Weighted average lease quarter gross sales price, F.O.B. the dock for sales of raw products (unprocessed materials) and F.O.B. the scale for finished products (washed and screened materials).
Y = Total lease quarter cubic yardage removed from the lease area.

The weighted average sales price (WASP) per lease quarter shall include consideration of wholesale and retail sales and is subject to approval and audit by the State. The royalty rate for a lease quarter shall be based upon the WASP for that quarter. In place sales shall not be permitted.

A nonrefundable minimum royalty of Sixteen Thousand Two Hundred Fifty Dollars ($16,250) shall be payable on the effective date of this lease and a minimum annual royalty of Sixteen Thousand Two Hundred Fifty Dollars ($16,250) shall be payable on the anniversary of the effective date of the lease year, whether or not material is extracted from the leased premises. Such minimum royalty shall be credited against royalties due sold during the lease year. In no event shall said royalty be less than sixty-five cents ($0.65) per cubic yard of aggregate and fill material sand and gravel.

If Lessee sells its products by the ton, Lessee agrees to provide Lessor with the formula(s) it uses to convert yardage figures to tonnage for royalty determination purposes, said formulas to be approved in advance by Lessor.

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"EXHIBIT C"

STATE LANDS COMMISSION
STATE OF CALIFORNIA

LEASE FOR EXTRACTION OF SAND AND GRAVEL
PRC 5871

Section 1

THIS LEASE is 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 BELL MARINE CO, INC., hereinafter called the Lessee, whose mailing address is: 775 SEAFORT BLVD, REDWOOD CITY, CA. 94063.

In consideration of the royalties provided for hereunder, as well as the covenants, conditions and agreements contained herein, Lessor hereby leases to Lessee, for the purposes stated in Section 1, Paragraph 2 below, that certain parcel of land hereinafter designated as the "Leased Lands" and situated in San Francisco Bay at Alcatraz Shoals, County of San Francisco, State of California and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof as though set forth in full.

1. This lease shall commence on May 1, 1993, which date shall be hereinafter referred to as the "effective date of this lease" and shall continue for five (5) years, unless sooner terminated as provided below.

2. The Lessee shall have the exclusive right to annually remove up to 100,000 cubic yards of the following mineral deposits from the leased lands: Aggregate and fill material sand and gravel excepting and reserving all other minerals of any kind to Lessor.

3. Lessee or its Operator or its Subcontractor (See Section 3, Paragraph 22(b)) shall not conduct any sales in place, that is, Lessee or its Operator or its Subcontractor shall conduct all operations on the Leased Lands and shall not permit purchasers of its products to engage in the extraction of minerals.

4. The bond required pursuant to paragraph 15 of Section 3 is to be in the amount of Thirty-Two Thousand Dollars ($32,000).

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

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Section 2
ROYALTY AND RENT

1. Definitions:

   (a) Sand and Gravel: Aggregate and fill material.

   (b) Outside sales: Sale of aggregate and fill material sand and gravel to third parties.

   (c) Inside sales: Transfer or sale of aggregate and fill material, sand and gravel to companies or business entities owned or controlled by Lessee.

   (d) Gross sales price: For outside sales, the gross sales price shall be the actual sales price to third parties. For inside sales, the gross sales price shall be calculated as the fair market value of the same material as sold in outside sales by Lessee but never less than the average retail fair market value of the same material sold by similar companies in Lessee's sales and marketing area.

2. Royalties for the mineral resources produced or extracted are to be determined according to the following formula:

$$R = [0.10\ W(Y)]\ B$$

Where R = Royalty in dollars and cents paid to the State.
B = Bid factor of 2.3 which shall be no less than 1.0.
W = Weighted average lease quarter gross sales price, F.O.B. the dock for sales of raw products (unprocessed materials) and F.O.B. the scale for finished products (washed and screened materials).
Y = Total lease quarter cubic yardage removed from the lease area.

The weighted average sales price (WASP) per lease quarter shall include consideration of wholesale and retail sales and is subject to approval and audit by the State. The royalty rate for a lease quarter shall be based upon the WASP for that quarter. In place sales shall not be permitted.

A nonrefundable minimum royalty of Sixteen Thousand Two Hundred Fifty Dollars ($16,250) shall be payable on the effective date of this lease and a minimum annual royalty of Sixteen Thousand Two Hundred Fifty Dollars ($16,250) shall be payable on the anniversary of the effective date of the lease year, whether or not material is extracted from the leased premises. Such minimum royalty shall be credited against royalties due sold during the lease year. In no event shall said royalty be less than sixty-five cents ($0.65) per cubic yard of aggregate and fill material sand and gravel.

If Lessee sells its products by the ton, Lessee agrees to provide Lessor with the formula(s) it uses to convert yardage figures to tonnage for royalty determination purposes, said formulas to be approved in advance by Lessor.

The first lease quarter shall be the first three months following the effective date of the lease and every three-month period thereafter shall be a lease quarter. A lease year shall be the first twelve (12) consecutive months following the effective date of the lease and every twelve month period thereafter shall be a lease year.

All sales and production data are subject to audit by the State. The term "dock" as used herein is defined as the berthing facility commonly used by the lessee as the base of operations for the conduct of those operations permitted under the terms of this lease.

All royalties shall be due and payable to the State as provided in Section 3, Paragraph 2 hereof.

3. On execution of this Lease and annually, on the anniversary date of this Lease, Lessee shall pay a land rent of two dollars ($2.00) per acre for a total of Nine Hundred Forty-Eight Dollars ($948.00) per year.

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) 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.

(c) 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 Lessor to enter upon the Leased Lands in order to conduct such surveys, tests or experiments.

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(d) 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 leases of the same lands for deposits of mineral resources other than aggregate and fill, sand and gravel 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.

(e) 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:

(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 the operations hereunder, including all minerals extracted from the Leased Lands, and those on the adjoining lands of Lessee, together with the cost of extraction of same and of mining, quarrying and shipping thereof and shall retain for a minimum of four years copies of all sales contracts for the disposition of any and all minerals extracted from the Leased Lands, and those on the adjoining lands of Lessee.

(c) On or before the 25th day of the month following the month of extraction or production, 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 of the amount, quality and value of all mineral resources extracted, produced, shipped or sold or whether any work was performed on the Leased Lands.

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 for 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 percent (1½%) 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 percent (5%) 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 IMPACTS:

Lessee agrees to abide by the conditions, measures and restrictions set forth in the Environmental Document No. 91123064 on file in the office of the State Lands Commission and which Environmental Document is by reference made a part hereof as though set forth in full.

Lessee shall comply with any and all modifications of equipment and plans deemed necessary by the State, and other authorizing parties including the Regional Water Quality Control Board, and San Francisco Bay Conservation and Development Commission, California Department of Fish and Game, U.S. Coast Guard, National Marine Fisheries, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, to achieve the criteria and objectives set forth in the environmental documentation.

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 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 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:

(a) 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 1807 13th Street Sacramento, CA 95814
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.

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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, or from lands of the Lessee that have been 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, or from lands of the Lessee that have been combined with or adjoin the Leased Lands.

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, 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) 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.

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

(c) 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:

(a) This lease is issued subject to all existing valid rights in the Leased Lands as of the date of execution hereof, and such rights shall not be affected by the issuing of this lease. In the event that the Leased Lands have been granted by the Legislature to a City, County, Port District or other public entity, subject to a mineral reservation in favor of the State, Lessee agrees to comply with any conditions and limitations, embodied in the grant, which affect Lessee's operations hereunder.

(b) Neither party, on behalf of themselves or any other party, waives any right or claim to fee title or other possessory interest in the real property that is subject to this Lease by the execution of this Lease.

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

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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, and the California Code of Regulations. 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, applicable to Lessee's operations hereunder and with all permits, rules and regulations as may from time to time be issued by Lessor or by other federal,state and local 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, physical disability, sexual orientation, AIDS or AIDS related condition, marital status or age.

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 at the commencement of this lease and shall thereafter maintain a bond in favor of the State of California in the sum specified in Paragraph 4 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 standby letter of credit from a State or nationally chartered bank or provide another financial instrument acceptable to Lessor.

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 Leased Lands. 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.

17. INSURANCE:

Lessee shall procure and maintain personal liability, property damage or other insurance for the benefit of Lessor in the amount of One Million Dollars ($1,000,000) for the benefit of Lessor.

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18. 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.

19. BREACH:

In the event of Lessee's failure to comply with any of the provisions of this lease, or with any permit, 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 27 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 paragraphs 25, 26 and 30 of Section 3 hereof.

20. 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.

21. SOLVENCY:

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If at any time during the term hereof, a filing is made by or against the Lessee under the federal bankruptcy laws, the Lessor shall have all the rights to which it is entitled under the federal bankruptcy laws to protect its interest under this lease.

22. 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, 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. Further, Lessee shall not be released from any liability under this lease arising after the effective date of the assignment and not associated with Lessee's use, possession or occupation of or activities on the Leased Lands without the express written release of Lessor.

(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 or subcontractor. Such consent shall not be withheld unreasonably. The relationship between Lessee and operator or subcontractor shall not be considered an assignment or sublease.

23. 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.

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24. 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.

25. 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 theretofore 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.

26. 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, structures 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.

27. CANCELLATION:

This lease may be forfeited and canceled 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 applicable thereto.

28. HOLDING-OVER:

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension or renewal of the lease term and shall be on the terms, covenants, and conditions of this Lease.

29. PRODUCTION FROM ADJACENT PRIVATE LANDS:

If at any time during the term of this lease or any renewal, Lessee proposes to concurrently mine and extract the same minerals as those authorized by Section 1, Paragraph 2 of this Lease from private lands owned or leased by Lessee, Lessee agrees to notify the State ten (10) days prior to such operations. The Lessee's notice shall provide Lessor with a method for tracking and identifying the production from the State lands. All material removed from both private and State lands without notice will be considered to be removed from State lands for royalty purposes.

For purposes of this paragraph, Lessee agrees to allow Lessor to examine and audit any of its records pertaining to production on the private lands.

30. SURFACE MINING AND RECLAMATION ACT OF 1975:

Lessee agrees that any reclamation plan drafted under the Surface Mining and Reclamation Act (Public Resources Code Section 2770 et seq.) or any subsequently issued one shall be incorporated into this lease and that Lessee shall comply with its terms during Lessee's operations on the Leased Lands and upon any partial or total quitclaim, surrender, forfeiture or cancellation of this lease.

31. MONITORING OF AGGREGATE REPLENISHMENT:

Lessee shall at its own expense and at the commencement of this lease and at six-month intervals thereafter, conduct echo sounder surveys to determine the replenishment of aggregate materials. A final survey shall be conducted at the termination of the lease.

Prior to conducting any such survey, Lessee shall submit its plan of survey to the State for its approval. Data from the surveys shall be transmitted to the State within 30 days of completion of each survey. All data shall become property of the State and the State shall have the right to disclose such data to other parties so long as proprietary information and trade secrets of lessee are not disclosed.

32. 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.

33. TIME OF ESSENCE:

Time is of the essence in this lease.

34. 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.

35. SEVERABILITY:

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

36. TAXES:

Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State of California 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. Such taxes include possessory interest taxes imposed by a city or county on the leasehold interest. The payment of any such taxes by the Lessee shall not reduce the amount of consideration due the Lessor under this lease.

37. POSSESSORY INTEREST:

Lessee recognizes and understands in accepting this lease that his interest created therein may be subject to a possible Possessory Interest Tax that the city or county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by the lessee.

38. 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.

This agreement will become binding on the State only when approved by the State Lands Commission and when executed on the behalf of the Commission.

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

BELL MARINE CO., INC.
Lessee

By: Susan Bell
Name of Representative

President
Title

Dated: 4/15/93

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____
Jane Sekelsky, Chief
Division of Land Management

Dated: _____

CORPORATE SEAL,
if corporation

Approved as to form

DANIEL E. LUNGREN
ATTORNEY GENERAL
STATE OF CALIFORNIA

By _____
Alan V. Hager
Deputy Attorney General

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