



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: General Services
Department No.: 063
For Agenda Of: August 20, 2013
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: General Services Matthew P. Pontes, Director (805) 560-1011
Contact Info: Ronn Carlentine, Office of Real Estate Services (805) 568-3078

SUBJECT: Termination of Land Lease Agreement with Gordon Sand Company, Guadalupe;
ORES 002929; Third District

County Counsel Concurrence

As to form Yes

Auditor-Controller Concurrence

As to form Yes

Other Concurrence: Risk Manager and

Community Services Department

As to form Yes

Recommended Actions:

That the Board of Supervisors:

- a) Direct the Community Services Department Director to terminate the Land Lease Agreement (Lease) between the County of Santa Barbara and the Gordon Sand Company, which leases to the Gordon Sand Company a 7.11 acre portion of the Rancho Guadalupe County Park (A.P.N. 113-020-020); for the Gordon Sand Company's breach of the obligation to pay rent, pursuant to the terms of the Lease (Attachment 1) (Third District); and
- b) Determine that the termination of the Lease is not the approval of a project that is subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines Section 15378, and direct staff to file a Notice of Exemption (Attachment 2).

Summary Text:

The recommended action will allow the Director of the Community Services Department to terminate the month-to-month Lease with Gordon Sand Company that leases to the Gordon Sand Company a portion of Rancho Guadalupe County Park property, based on the Gordon Sand Company's breach of the terms of the Lease for failure to pay rent, and failure to cure that default after County's service of a Notice of Default (Attachment 4).

Background:

The County is the owner of Rancho Guadalupe County Park, located in the Guadalupe Dunes. Gordon Sand Company has been leasing a 7.11 acre portion of the Park property for use as a sand processing plant, under successive lease agreements since 1983. The most recent Lease was executed July 14, 1998, between the County, as lessor, and Gordon Sand, as lessee. That Lease expired December 31, 2007, and the County has been allowing Gordon Sand to hold over under the terms of that Lease, on a month-to-month basis since that time. The Lease requires Gordon Sand to pay monthly rent for its use of the 7.11 acre portion of the Park property. The current monthly rental amount is \$1,385.57.

Gordon Sand's operations on the property are governed by the conditions imposed by Conditional Use Permit 77-CP-66 (CUP), granted in 1978. The CUP provides for the removal of sand from property which is owned by Gordon Sand, located within the Guadalupe Dunes, adjacent to the Rancho Guadalupe County Park property. The sand is then transported across a sand road through the park property to a processing plant located partially on County property (APN 113-020-020) and partially on adjacent private property (APN 113-020-018).

Through the years, Gordon Sand has not made some of the monthly rental payments, and has therefore been in default several times during the term of the Lease. For example, the General Services Department, Office of Real Estate Services issued a Notice of Default to Gordon Sand on February 24, 2010 (Attachment 3). The Lease provides that, if Gordon Sand is in default in the performance of any of its obligations under the Lease, including the obligation to pay rent, County may terminate the Lease upon ten (10) days written notice of default, and the failure of Gordon Sand to cure that default.

On February 22, 2013, the Community Services Department issued a Notice of Default to Gordon Sand, in accordance with the terms of the Lease. Gordon Sand was given thirty (30) days to submit payment in the amount of \$30,482.54, which represented past due rents due for the months of July, September and October of 2010, and the period from July of 2011 through January of 2013. This represented the total amount due under the Lease at the time the Notice of Default was issued. Gordon Sand responded on March 22, 2013, with a payment of \$2,771.14, and stating that it could "double up" the monthly payments going forward in an attempt to eventually bring the rental payments up to date (Attachment 5). Gordon Sand has not made any payments since this date. The current balance owed the County by Gordon Sand is \$36,024.82, which now includes charges due for months of February, March, April, May, June and July, 2013.

In addition to the requirement to pay monthly rent, the Lease also requires Gordon Sand to clear excess sand accumulation from the roadway and parking lot at Rancho Guadalupe County Park, and to dredge and maintain the areas within the leased area that contain surface water. Gordon Sand has been coordinating those efforts with the County's Parks staff and providing some sand clearing of the County road and parking lot that serve the Park. If the Lease is terminated, Parks staff will be required to assume more responsibility for the sand clearing activities to keep that road and parking lot open, which is estimated to be at \$2,500 per month.

On June 16, 1993, in accordance with the Surface Mining and Reclamation Act of 1975 (SMARA, California Public Resources Code Sections 2710 – 2796.5), the Santa Barbara County Planning Commission approved the Gordon Sand Final Reclamation Plan (90-RP-002), supported by the findings

of Negative Declaration 90-ND-64. At the time of the Plan's approval, it was estimated that the sand mining activities would continue until 2015. Therefore, the Reclamation Plan is in effect through March 1, 2015, and would have to be extended by the Planning Commission if operations were to continue beyond that date.

Under the Plan, reclamation will consist of removal of all mining and processing equipment, and a combination of active and passive remediation. Gordon Sand is responsible for funding re-vegetation of portions of the leased area with native plants where determined to be feasible, or allowing re-vegetation to occur naturally. In addition to the requirements of the Plan, the terms of the Lease require Gordon Sand to remove all improvements and personal property from the leased area and to perform all required restoration prior to termination of the Lease. Termination of the Lease will not necessarily terminate Gordon Sand's mining operations, nor will it terminate the Conditional Use Permit or the Reclamation Plan, since these permits run with the land. The processing plant and related equipment will have to be removed from the County-owned property under the terms of the lease.

Fiscal and Facilities Impacts:

Once the County terminates the Lease, the monthly rent of \$1,385.57 will no longer accrue. Termination of the Lease will require Parks personnel to assume more sand clearing responsibilities in regards to the Park road and parking lot, which is estimated to be at \$2,500 per month. All facilities will be removed from the County-owned property.

Special Instructions:

After Board action, please distribute as follows:

1. Minute Order

Office of Real Estate Services, RC

2. Copy of Minute Order

Auditor-Controller
Financial Reporting Division,
Attn: Betsy Schaffer

Attachments:

1. Land Lease Agreement
2. CEQA Notice of Exemption
3. Notice of Default Letters (February 24, 2010)
4. Notice of Default Letter (February 22, 2013)
5. Gordon Sand Response Letter (March 22, 2013)

Authored by: rc - Office of Real Estate Services