

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



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

Agenda Number:
Prepared on: 2/1/05
Department Name: Parks
Department No.: 052
Agenda Date: 2/8/05
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Terri Maus-Nisich
Director of Parks

STAFF CONTACT: Coleen Lund
x2470

SUBJECT: Execution of a License Agreement with Unocal to Access the Rancho Guadalupe Dunes County Park for Restoration Activities; Fourth Supervisorial District

Recommendation(s):

That the Board of Supervisors execute the attached License Agreement with Union Oil Company of California (Unocal) to Access the Rancho Guadalupe Dunes County Park for Restoration Activities.

Alignment with Board Strategic Plan: The recommendation is primarily aligned with Goal No. 5.A High Quality of Life for All Residents and with Goal No. 2. A Safe and Healthy Community in Which to Live, Work, and Visit.

Executive Summary and Discussion:

This agreement allows Unocal to remediate a former oil well sump associated with Well 36, the southernmost oil well of the former Union Sugar Lease. The former Union Sugar Lease is part of the Guadalupe Oil Field located within Rancho Guadalupe Dunes Park and the Maretti and Minetti ranch. Well 36 was drilled in 1951 but only resulted in a dry hole that was subsequently plugged and abandoned. The project involves the removal of approximately 2,000 cubic yards of sand contaminated from the drill operation. There are no remnant above- or below-grade structures or equipment to remove. The project site will be backfilled with clean sand and re-seeded with coastal native plant seeds. Unocal has received all of its permit approvals to commence the project. The work is anticipated to take approximately 2 weeks and must be completed prior to the beginning of the western snowy plover and least tern nesting season, March 1.

Mandates and Service Levels: No impact or mandates to service levels. No activity will be allowed during the western snowy plover and least tern nesting season, March 1 – September 30.

Subject: Execution of the Unocal License to Access the Rancho Guadalupe Dunes County Park for Restoration Activities;
Fourth Supervisorial District
Agenda Date: February 8, 2005
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Fiscal and Facilities Impacts: No fiscal impact or impact to facilities. Unocal's operation has been coordinated to minimize impacts to park users.

Special Instructions: Clerk of the Board to provide one certified copy of the executed agreement to County Parks, attn. Coleen Lund.

Concurrence:
County Counsel

LICENSE AGREEMENT FOR ACCESS TO PROPERTY
REGARDING RESTORATION ACTIVITIES

THIS LICENSE AGREEMENT (“**Agreement**”) is entered into, and effective, as of the ___ day of _____, 2005 (“**Effective Date**”) by and between **UNION OIL COMPANY OF CALIFORNIA**, a California corporation, hereinafter “**Unocal**”, and the **COUNTY OF SANTA BARBARA**, a political subdivision of the State of California, hereinafter “**Owner**”. Unocal and Owner may, from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”. This Agreement is made with reference to the following recitals, facts and objectives, all of which are incorporated herein as an integral part of this Agreement.

RECITALS:

A. Owner is the fee owner of that certain real property located in Santa Barbara County, California, more particularly described as Assessor’s Parcel No. 113-020-21 (the “**Premises**”), covered by a portion of that certain oil and gas lease dated April 8, 1936 (the “**Sovereign Lease**”) by and between Union Sugar Company, as lessor, and Sovereign Oil Corporation, as lessee; and,

B. By Assignment of Oil and Gas Lease dated October 25, 1940, Unocal acquired the leasehold estate to the Sovereign Lease. Unocal represents that the Sovereign Lease terminated in 1959; and,

C. Unocal has confirmed the presence of soils impacted by hydrocarbon substances resulting from Sovereign Lease operations (“**Affected Soils**”) at a potential sump location associated with the Union Sugar well #36 (the “**Sump**”), which location and the estimated excavation limits relating to the potential Sump, as well as access to the potential Sump and stockpiling related to such excavation, are shown on the plat, which are attached hereto as **Exhibit “A”** (“**Affected Area**”).

D. The Parties desire that Unocal have access to the Premises to perform the Restoration Activities, and related additional assessment work if required, as provided and defined below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, the Parties agree as follows:

1. **Temporary License.** (a) For the sole consideration provided by Unocal’s promises and representations as herein stated, Owner hereby grants to Unocal, its agents, contractors, subcontractors, employees, representatives, and assigns, this temporary license and right to enter upon the Premises, from time to time and at any time during the term of this License, to perform the activities described in the revised Coastal Development Permit, attached hereto as **Exhibit “B.”** Those described activities shall be collectively known hereinafter as the “**Restoration Activities.**” All work on the premises shall be done in accordance with an applicable site specific restoration plan (SRP”) approved by the Fire Prevention Division of the Santa Barbara County Fire Department (“**FPD**”) and all applicable Federal, State, and local laws, rules, and regulations (collectively, the “**Restoration Requirements**”), including the following requirements

set forth in the Consent Decree and the attachments thereto governing Owner's operation of the Premises and Affected Area (attached hereto as **Exhibit "C"**):

- (i) **Seasonal Limitations.** No Restoration Activities shall take place during the snowy plover/least tern nesting season, defined as March 1 through September 30;
- (ii) **Monitoring.** All Restoration Activities shall occur in the immediate presence of a snowy plover/least tern qualified biologist approved by the Owner;
- (iii) **Notification.** Unocal shall immediately report any and all injuries or mortalities of plovers resulting from Restoration Activities to the USFWS, and provide Owner with a copy of these reports within twenty-four (24) hours of receipt of such reports from the plover monitor(s).

(b) Prior to exercising any of its rights set forth in paragraph 1(a) above, Unocal shall first give Owner at least 48 hours verbal notice of the commencement of the Restoration Activities to be conducted.

(c) Owner hereby authorizes Unocal, in Unocal's sole discretion, to share copies of all reports and testing data resulting from any additional assessment work performed under and pursuant to this Agreement with governmental agencies that may claim jurisdiction over the substances detected as a result of such work.

2. **Term.** Except as otherwise provided in this Agreement, the term of this Agreement shall commence as of 7:00 a.m., Pacific Time on the date first above written, and shall continue in full force and effect until terminated on the earlier of (a) Unocal's receipt of a "no further action" letter from FPD, covering the Restoration Activities (where no water quality investigation is required) on the Premises, with a copy of such letter provided to the Owner; or (b) Unocal's receipt of a "no further action" letter from FPD, or other governmental agency with jurisdiction over water quality, covering the Restoration Activities (where ground water monitoring is required) on the Premises, with a copy of such letters provided to the Owner; or, (c) 5:00 p.m. Pacific Time on December 1, 2006.

3. **Restoration Activities.** Subject to (i) 48 hours prior verbal or written notice to Owner, as provided in paragraph 1(c) above, (ii) the receipt of applicable agency approval to perform the Restoration Activities on the Premises, and (iii) Unocal coordinating its Restoration Activities with Owner so that Owner may continue public recreational use of the Premises, Unocal will commence Restoration Activities on the Premises and continue such Activities in a commercially reasonable manner until the Affected Soils in and migrating from the Sump are excavated, screened, remediated, and/or removed from the Premises, backfill material is placed into the excavation sites and compacted, all in accordance with the Restoration Requirements including, but not limited to, the cleanup criteria and testing protocol that may be provided in the SRP; or, until this Agreement otherwise terminates. In no event shall Restoration Activities take place during the snowy plover/least tern nesting season, defined as March 1 through September 30. In the event Unocal is required to conduct additional groundwater monitoring by FPD, any and all activities associated therewith shall constitute "Restoration Activities" as defined herein.

4. **Backfill.** Unocal, or its contractors, will backfill the excavation site(s) described in paragraph 3 above with soils from any or all of the following sources: (a) excess soil elsewhere

on the Premises with the prior consent of Owner; (b) remediated soils taken from the excavation sites on the Premises which meet or surpass the cleanup criteria and testing protocol provided for in the SRP; (c) the overburden soil removed from above the Sump prior to excavating the Affected Soils; and (d) clean soil imported from off-site. For purposes of this Agreement, the term “**clean soil**” shall mean, soil that Unocal’s environmental consultant has tested, on a random sampling basis, and which meets or surpasses the cleanup criteria set forth in the SRP.

5. Waste Generation and Management: Unocal shall be the designated generator of any and all substances, liquid gaseous or solid, including but not limited to waste and contaminated soil, produced in performing the Restoration Activities, and shall be fully responsible for preparation and execution of any manifests required by law for the management of such waste.

6. Performance of the Restoration Activities: (a) Unocal shall take all reasonable and necessary safety and security precautions and maintain a neat and orderly workplace in connection with the performance of the Restoration Activities under this Agreement. Unocal shall not cause or permit any damage to the Premises as a result of the performance of the Restoration Activities, except as may reasonably be required to perform the Restoration Activities. Unocal, at its sole expense, shall repair any asphalt damage resulting from its activities on the Premises and access road thereto.

(b) Unocal shall repair any damage caused to the Premises resulting from the performance of the Restoration Activities by Unocal or Unocal’s agents, as soon as is reasonably practicable after completion of each such Restoration Activity, but not later than Thirty (30) days after the end of the breeding season, unless Unocal and Owner can obtain USFWS approval to conduct such activities during the breeding season. Any damage to the symbolic plover fencing caused by Restoration Activities shall be repaired by Unocal within 48 (forty-eight) hours of occurrence.

(c) Unocal shall restore the Affected Area to a condition at least as good as that which existed prior to the time that Unocal or its agents performed any of the Restoration Activities.

7. Owner Representations. Owner represents and warrants that it presently owns all rights, title, and interests in and to the Premises; that Owner has not conveyed any right, title, or interest in or to all or any part of the Premises to any third party; that Owner’s representative(s) has/have the power, right, and authority to execute this Agreement on behalf of Owner; and, that other than Owner and its invitees, no other person or entity is entitled to occupy the surface of the Premises.

8. Environmental Impairment: Unocal at Unocal’s expense, shall comply with all applicable laws, regulations, rules, including without limitation those relating to construction, grading, signage containing a 24-hour local emergency contact person, health, safety, noise, underground tanks, storing toxic or hazardous materials, environmental and endangered species protection, waste disposal, clean-up and water and air quality, and shall furnish Owner with satisfactory evidence of such compliance upon the request of Owner. Unocal shall obtain all necessary permits at its sole expense.

9. Compliance With the Law: With respect to the all activities conducted on the Premises and/or Affected Area, Unocal shall comply with all local, State, and Federal laws, rules, ordinances, and regulations affecting the Premises and Affected Area, now or hereafter in effect during the term of this Agreement.

10. Waste and Nuisance: While on the Premises subsequent to the execution of this Agreement, Unocal, its agents, or employees shall not commit, nor suffer to be committed, any waste or nuisance upon the Premises and Affected Area. Unocal's Restoration Activities, facilities, and equipment shall be professionally maintained and operated as required to minimize the level of noise and odor to surrounding persons.

11. Toxics: Unocal shall not manufacture or generate hazardous wastes on the Affected Area or Premises unless specifically authorized by this Agreement. Unocal shall be fully responsible for any hazardous wastes, substances or materials as defined under Federal, State or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by Unocal, its agents, employees, or designees on the Affected Area or Premises during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. Unocal shall notify Owner and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

12. Indemnification: Unocal shall defend, indemnify and save harmless the Owner, its officers, agents and employees from any and all third party claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the Unocal or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the Owner. It is the intent of the Parties that this paragraph provide indemnification of Owner by Unocal for liability related to the performance of any and all activities conducted on the Premises, to the fullest extent allowed by law.

Unocal shall notify Owner immediately in the event of any accident or injury arising out of or in connection with the Restoration Activities described in this Agreement. Unocal shall notify Owner immediately in the event of any injuries or mortalities of snowy plovers or least terns arising out of or in connection with the Restoration Activities described in this Agreement.

Owner shall give notice to Unocal within such period of time as shall allow Unocal the benefit of any defense to the claims, demands, damages, costs, expenses, judgments or liabilities for which Owner intends to seek indemnification under this section, and allow Unocal the opportunity to respond in a timely fashion.

13. Obligations Suspended. Any and all obligations under this Agreement to be performed by Unocal as Restoration Activities including the commencement and continuation thereof, and backfill, as provided in paragraphs 3 and 4 above, shall be suspended during any period, but for no longer period, during which Unocal is rendered unable, wholly or in part, to carry out said obligations by a strike, fire, war, civil disturbance, act of God; by federal, state, or municipal law; by any rule, regulation, order, decision, or directive of governmental

agency; by inability to secure materials; by inability to secure government permits, so long as Unocal at all times exercises reasonable efforts to obtain such permits; by adverse weather or soil conditions at the Premises that reasonably prevent operation of heavy equipment; or, by any other cause or causes beyond the reasonable control of Unocal. Unocal shall not be required against its will to adjust or settle any labor dispute in order to meet any obligation imposed hereunder.

14. Insurance: Without limiting Unocal's indemnification of the Owner, Unocal shall either provide a statement of self-insurance acceptable to Owner or procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (a) have a Best's rating of no less than A VII, and (b) are admitted insurance companies in the State of California. All other insurers require the prior approval of the Owner. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place Unocal in default. Upon request by the Owner, Unocal shall provide a certified copy of any insurance policy required herein to the Owner within ten (10) working days.

- A. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all Unocal's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by the Owner. In the event Unocal is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Unocal has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and Unocal submits a written statement to the Owner stating that fact.
- B. **General and Automobile Liability Insurance.** The general liability insurance shall include personal injury liability coverage, shall afford coverage for all premises and operations of Unocal, shall afford coverage for product liability, and shall include contractual liability coverage for this Agreement between Owner and Unocal. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles, which are operated on behalf of Unocal pursuant to Unocal's activities hereunder. Owner, its officers, employees, and agents shall be named as additional Insured on any policy. A copy of a document evidencing that Owner is covered as an additional insured on the policy must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Personal injury liability coverage shall also be in the amount of not less than \$2,000,000 per occurrence and aggregate. Said policy or policies shall include severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form: "Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the Owner has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only." Said policy or policies shall provide that the Owner shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction of coverage.

- C. **Fire Legal Liability.** Unocal shall provide Fire Legal Liability coverage in the amount of \$50,000 as part of the General Liability Policy.
- D. **Property Insurance:** Unocal shall maintain its current self-insured status during the term of this Agreement. Unocal represents that it is self-insured in the amount of \$15,000,000 for property damage. Unocal is not granted personal property coverage under the Owner Property program.
- E. **Contractors' Pollution Liability Insurance:** Unocal shall provide evidence of Contractor's Pollution Liability Insurance coverage in the minimum amount of \$1 Million.

The above insurance requirements are subject to periodic review by Owner. Owner's Risk Manager is authorized to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against Owner or inflation. Any such change of provisions for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Unocal agrees to execute any such amendment within thirty (30) days of receipt.

15. Mutual Waiver of Subrogation Rights: Unocal and Owner hereby waive any rights each may have against the other on account of any loss or damage suffered by Unocal or Owner, as the case may be, to their respective property arising from any risk generally covered by "all risk" property insurance; and the Parties each, on behalf of their respective insurance companies insuring the property of either Unocal or Owner against any such loss, waive any right of subrogation that either may have against the other, as the case may be, including any deductibles or self-insurance maintained thereunder.

16. Notice. Unocal and Owner addresses for notices relating to this Agreement are as set forth below:

Unocal: Union Oil Company of California,
 Operations, Real Estate and Remediation Services
 Attn: Chris Meyer
 P.O. Box 1069
 San Luis Obispo, CA 93406
 Fax: (805) 547-5436

Copy to: Unocal Oil Company of California,
 Operations, Real Estate and Remediation Services
 Attn: Jeff Attebery, Esq.
 P.O. Box 1069
 San Luis Obispo, CA 93406
 Fax: (805) 781-2492

Owner: County of Santa Barbara
Attn: Terri Maus-Nisich, County Parks Department
610 Mission Canyon Road
Santa Barbara, CA 93105
Fax: (805) 568-2459

Copy to: Michael R. Ledbetter, Esq.
Office of County Counsel
105 E. Anapamu Street, Room 201
Santa Barbara, CA 93101
Fax: (805) 568-2982

or to such other address as Owner and Unocal may from time to time designate by written notice to the other. Notice shall be deemed given in writing and shall be delivered personally (effective on delivery), by certified or registered mail, return receipt requested, with postage prepaid, or generally recognized overnight courier service (effective on delivery, or refusal to accept delivery, if such delivery or refusal to accept delivery is confirmed by the return receipt or delivery service), by facsimile (provided sender retains a printed confirmation of delivery to the facsimile number provided below), or by first class mail addressed to the last address of the recipient known to the party giving notice (effective three mail delivery days after deposit in a United States Postal Service office or mailbox).

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be one agreement.

18. No Third Party Beneficiary Intended. This Agreement is made solely for the benefit of the Parties, and their respective successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

19. No Admissions. The Parties agree that neither this Agreement, nor any part hereof, nor any performance under this Agreement, nor any payment of any amount pursuant to any provision of this Agreement shall constitute or be construed as a finding, evidence of, or an admission or acknowledgement of any liability, fault, or past or present wrongdoing, or violation of any law, rule, regulation, or policy, by any Party or by their respective officers, directors, employees, or agents.

20. Headings. Headings are included in this Agreement for convenience of reference and shall in no way define, limit, extend or describe the scope or intent of any provision of this Agreement.

21. Construction. Unless the context clearly requires otherwise: (a) “shall”, “will”, or “agrees” are mandatory, and “may” is permissive; (b) “or” is not exclusive; (c) “includes” and “including” are not limiting; and, (d) “herein”, “hereinafter” and “hereunder” mean within this Agreement. The Exhibits attached to this Agreement are, by this reference, made a part hereof.

22. **Survival.** The provisions contained in paragraphs 5, 6 and 8 through 25, inclusive, shall survive the expiration, or earlier termination, of this Agreement for a period of ten years.

23. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

24. **Severability.** In the event any court invalidates any provision of this Agreement, all other provisions shall remain binding and in full force and effect with respect to the Parties.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all previous negotiations, agreements and understandings, whether written or oral. This Agreement shall not be modified in any respect except by a writing signed by Unocal and Owner.

LICENSE AGREEMENT FOR ACCESS TO PROPERTY REGARDING RESTORATION ACTIVITIES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first hereinabove written.

ATTEST:

COUNTY OF SANTA BARBARA

MICHAEL F. BROWN
CLERK OF THE BOARD

By _____
CHAIR, BOARD OF SUPERVISORS

By _____
Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK,
COUNTY COUNSEL

By _____
Deputy County Counsel

APPROVED AS TO FORM:
RISK MANAGEMENT

UNOCAL:
UNION OIL COMPANY OF CALIFORNIA,
a California Corporation

By _____

By _____