



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

JUN 29 2015

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: William Butler, Lind Marine Incorporated (formerly Jerico Products)

PERMIT NO.: 2013-00129S

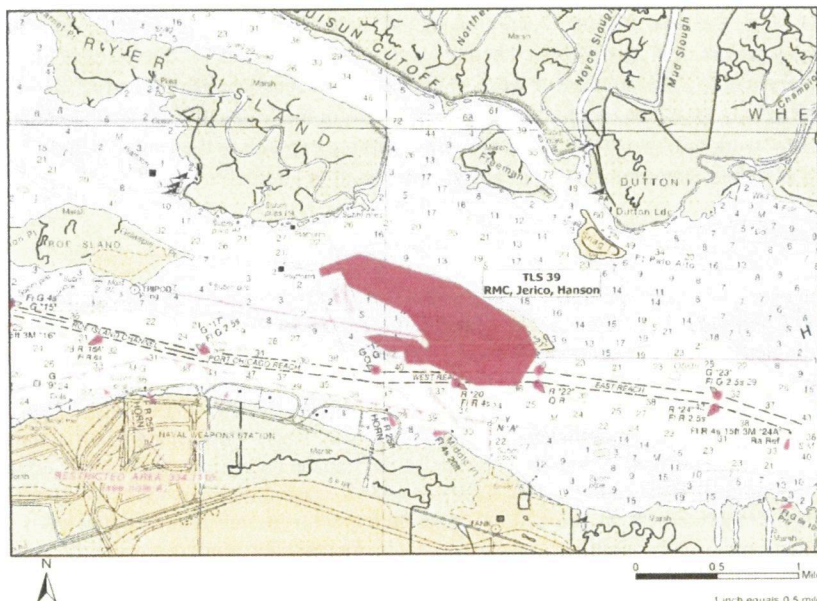
ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: Conduct mining of up to 100,000 cubic yards (cy) of construction grade sand annually for ten years from 367 acres of subtidal sand shoals adjacent to Middle Ground Island using a hydraulic drag arm dredge. Mining would not exceed 1.0 million cy of sand over ten years. In addition, the project would include "peak year" mining volumes up to 120,000 cy in any given year as long as the total does not exceed 1.0 million cy over the ten-year permit period. Sand would be offloaded and sold at various upland facilities throughout the Bay Area.

PROJECT LOCATION: Privately owned submerged lands (367-acre Middle Ground Lease) in the Middle Ground Island sand shoals near Middle Ground Island in western Suisun Bay, Suisun Channel within Contra Costa County (38°03'47" N and -121°58'57" W)



USACE Permit 2013-00129S Lind Marine Middle Ground Sand Mining Leases Location

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on June 1, 2025. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the Biological Opinion(s) entitled, "Marine Sand Mining 10-year Leases within the San Francisco Bay, Suisun Bay, and Sacramento San Joaquin Confluence Project, Solano and Contra Costa Counties, California (Corps File SPK-2000-249413N)" (pages 25-27) dated October 22, 2014. "Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation 10-Year Permit for Hanson Aggregates and Lind Marine Products Sand Mining Operations in San Francisco Bay Estuary. NMFS Consultation Number: SWR-2013-9570" (pages 48-50) dated January 26, 2015. Project authorization under this permit is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the authorization for your project. The USFWS and NMFS are, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. The permittee shall monitor the changes to Bay bathymetry through bathymetric change analysis, utilizing

multibeam surveys of the lease area and an adjoining control area. Two multibeam surveys of the lease areas shall be completed between January 1 and June 1, 2018 and January 1 and June 1, 2023, consistent with the previously required five-year surveys. The bathymetric change analysis shall be conducted by surveying of the lease area and control areas using the same methodology of the original multibeam survey conducted in January 2014, at five year intervals.

3. By October 1, 2018 and October 1, 2023, the permittee shall submit to the Bay Conservation and Development Commission (BCDC) staff and USACE staff, a written report and analysis including: (a) the bathymetric survey of the lease area, (b) an analysis of the changes in bathymetry, areas of depletion, accretion or other trends; (c) a discussion of the findings, and (d) a quality control analysis completed by an independent third party. The first survey and report shall be provided not later than October 1, 2018. The second survey and report shall be provided not later than October 1, 2023.
4. By November 30, 2015, the permittee shall install, use and maintain an automatic Global Positioning System (GPS) tracking system upon all barges used during mining operations under this permit. Once the GPS is installed, the permittee shall submit to BCDC staff and USACE staff documentation verifying the installation. The permittees shall provide "mining track lines" to BCDC staff and USACE staff on a quarterly basis.
5. In order to protect the different life stages of Delta smelt and their habitat in Suisun Bay, particularly during spawning period, the permittee shall adhere to the following Buffer Zone Restrictions: No mining within 200 ft of any shoreline and No mining within 250 ft of depths less than 9 ft below Mean Lower Low Water (MLLW).
6. In order to protect the different life stages of Delta smelt and their habitat in Suisun Bay, particularly during spawning period, the permittee shall adhere to the following Minimum Depth Restrictions: No mining within depths less than 25 ft below MLLW, December through June and No mining within depths less than 15 ft below MLLW, July through November.
7. In order to protect the different life stages of Delta smelt and their habitat in Suisun Bay, particularly during spawning period, the permittee shall adhere to the following Seasonal Volume Limits (from USFWS Biological Opinion):

Lind Marine:

Month	Volume Restriction (cubic yards)
January	7,500
February	6,000
March	4,500
April	4,500
May	9,000
June	9,000
July	No seasonal restriction
August	No seasonal restriction
September	No seasonal restriction
October	No seasonal restriction
November	No seasonal restriction
December	10,500

8. Sand Budget, Transport and Mining Effects. The permittee shall contribute \$84,151 (unless regulatory agencies determine that a lesser amount is adequate) towards scientific studies to increase the understanding of the following: (a) the San Francisco Bay sand budget; (b) sand transport into the Bay from the Delta and local tributaries; and to the outer coast (San Francisco Bar and Ocean Beach); (c) the amount and type of sand available for use; (d) and the impacts of mining on the sand resource. This funding will be combined with additional funding from Hanson Marine Operations and Suisun Associates to provide a total of \$1.2 million to create a Sand Studies Technical Advisory Committee (SSTAC) and an Independent Science Panel and to implement the studies to address the above-described issues and potential impacts of sand mining on the sediment system. The permittees, in coordination with the SSTAC, shall provide reports after completion of each sand study as well as a final report of findings with recommendations for further consideration not later than October 1, 2020 or by such later date as established by the SSTAC.

9. The permittee shall contribute up to \$19,250 towards scientific studies to increase the understanding of the San Francisco Bay benthic ecology and effects of sand mining on that ecology, pursuant to the NMFS' 2015 biological opinion, dated January 26, 2015, and the BCDC permit, dated April 29, 2015. The final report must be submitted by March 31, 2018, for review and consideration by the Benthic Technical Advisory Committee (BTAC), the USACE, the BCDC, the RWQCB and the NMFS staff.
10. For the duration of this authorization, the permittees shall provide USACE with written Quarterly and Annual reports in accordance with the reporting requirements in BCDC permit no. 2013.003.00md (pages 10 and 11).
11. Portions of the Middle Ground shoal lease area are located within a U.S. Coast Guard Safety Zone. This area is a no anchoring or loitering area in the navigable waters of Suisun Bay, near Military Ocean Terminal Concord (MOTCO), CA in the zone between 500 yards, the perimeter of the security zone established in 33 CFR §165.1199, and 3,000 yards of the MOTCO piers in position 38°03'30"N, 122°01'14"W (NAD 83). This safety zone is effective during all military onload and offload operations and will be enforced in conjunction with the MOTCO security zone in 33 CFR §165.1199. The maritime community will receive notification via actual notice from designated on-scene patrol personnel. The permittee shall be responsible for complying with the U.S. Coast Guard Safety Zone.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 - () Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the

public interest was made in reliance on the information you provided.

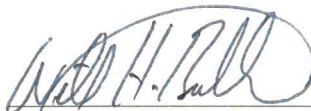
5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions:** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITTEE)

Lind Marine Inc.

VP

6/26/15

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



John C. Morrow
Lieutenant Colonel, U.S. Army
District Commander

29 June 2015

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

CORPS OF ENGINEERS
REGULATORY DIVISION

2015 JUN 26 P 3:30

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SF DISTRICT