

**CALENDAR ITEM
C62**

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S. Mulqueen

**CONSIDER AN APPLICATION FOR A NEGOTIATED STATE
MINERAL EXTRACTION LEASE FOR MINERALS OTHER THAN OIL, GAS
AND GEOTHERMAL RESOURCES ON STATE SCHOOL LANDS,
SAN BERNARDINO COUNTY**

APPLICANT:

Hi-Grade Materials Co.
Attn.: Ms. Lori Clifton
17671 Bear Valley Rd.
Hesperia, CA 92345

AREA, LAND TYPE, AND LOCATION:

Approximately 116 acres of State fee owned school land (APN: 449-111-23 and APN: 449-111-26) located in lots 10, 11 and 12 containing 38.14 acres, 37.64 acres and 40.06 acres, respectively, all within section 30, T4N, R1E, SBBM, San Bernardino County. This parcel is situated east of Victorville in a remote area of Lucerne Valley in the Mojave Desert.

BACKGROUND:

Hi-Grade Materials Co. (Hi-Grade), a subsidiary of Robar Enterprises, Inc. (Robar), is a sand and gravel company that has operated a mine on private lands supplying construction materials and concrete to the building industry since the 1960's. This operation is contiguous to and north of the State school lands.(see Exhibit). Operating practices have evolved since the inception of mining by Hi-Grade especially since the enactment of the California Surface Mining and Reclamation Act (SMARA) in 1975 requiring mining properties to be reclaimed to a safe state and suitable for alternative uses. In 2001, when Hi-Grade applied to renew and expand its mining permit with the San Bernardino County Planning Department, the County advised Hi-Grade that several of its existing pit walls were too steep, at an average angle of 45°. The pit walls would have to be reduced to a slope not to exceed 27° or buttressed in order to address concerns for both human safety and slope stability. One of these steep pit walls abutts the State school lands. Initially, Hi-Grade was considering the buttress method but later settled on laying back the slope to the gentler angle. This would necessitate

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mining of the State school lands. Therefore Hi-Grade filed a Negotiated Lease application with the California State Lands Commission (CSLC) in May 2001, pursuant to Public Resources Code section 6897. From the State's perspective, there were ancillary advantages. In addition to alleviating the public safety and stability issues, the State school lands would provide additional quality sand and gravel resources needed by Hi-Grade and create new revenue for the State Teachers Retirement System.

Under SMARA, counties serve as lead agencies for the preparation of the Mining Permit/Reclamation Plans and appropriate CEQA documents. The CSLC functions as a responsible Agency in the issuance of a mineral extraction lease. On May 4, 2006, San Bernardino County approved and adopted Mitigated Negative Declaration (MND) SCH# 2004081107 for the expansion of the existing 90 acre pit and a proposed new 120 acre aggregate pit on additional private lands. The MND includes the State school lands to be mined. Additionally, the County approved a revised Mining and Reclamation Plan No. 10507 SM1/06M-001. Hi-Grade has a financial security instrument with San Bernardino County for approximately \$1,000,000 to ensure proper reclamation.

Hi-Grade is a subsidiary of its parent company, Robar. CSLC staff reviewed the financial condition of both Hi-Grade and Robar. The financial condition of Robar parallels the construction industry. Staff will require a guarantee for Hi-Grade from Robar. Hi-Grade has agreed to furnish and maintain a continuous financial security with the State in an amount of \$50,000 to guarantee faithful performance by the Lessee of the lease terms and conditions.

Mineral Resources Management Division (MRMD) staff inspected the State parcel, the existing gravel pit operated by Hi-Grade and its gravel plant. All operations were being conducted in a structured, safe manner, utilizing mineral extraction practices common to the mining industry.

The primary lease term is for seven years, effective July 1, 2009, with a preferential right to renew the lease for two successive terms not to exceed seven years each upon such reasonable terms and conditions as may be prescribed by the State including a redetermination of rent and royalty. The lessee shall pay a royalty of six percent (6%) of the fair market value for all rock, sand and gravel extracted from the State school lands, with a non refundable minimum annual royalty of \$10,000 whether or not any material is produced, extracted, shipped, used or sold. The lessee shall pay a rental of \$1 per acre.

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STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code, sections 6890 et seq.
- B. Public Resources Code sections 21000 et seq.
- C. Title 14, California Code of Regulations, Chapter 3, section 15096.
- D. Title 14, California Code of Regulations, Title 2, section 1911.

OTHER PERTINENT INFORMATION

- 1. A Mitigated Negative Declaration SCH No. 2004081107 was prepared, circulated and adopted for this project by San Bernardino County on May 4, 2006. The California State Lands Commission's staff has reviewed this document. San Bernardino County also adopted a Mitigation Monitoring Program.
- 2. Revised Mining and Reclamation Plan No. 10507 SM1/06M-001 was approved by San Bernardino County.
- 3. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et. seq. However, the Commission has determined all lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since this declaration of significance is not based upon the requirements and criteria of Public Resources Code Sections 6370, et. seq., use classifications for these lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations, Section 2954 is not applicable.
- 4. The Applicant has submitted the required filing fee and processing fees and has been negotiating with Commission staff in good faith.

APPROVALS OBTAINED:

Pursuant to Public Resources Code section 6890, the form of lease was approved by the Office of the Attorney General.

EXHIBITS:

- A. Location Map
- B. Land Description

PERMIT STREAMLINING ACT DEADLINE:

November 12, 2009

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

1. FIND THAT A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING PROGRAM SCH NO. 2004081107 WERE PREPARED AND ADOPTED ON MAY 4, 2006 FOR THIS PROJECT BY SAN BERNARDINO COUNTY AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
2. ADOPT THE MITIGATION MONITORING PROGRAM AS CONTAINED IN THE CEQA DOCUMENT.
3. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PRSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370 ET. SEQ.

NEGOTITATED LEASE FINDING:

FIND THAT THE ISSUANCE OF A NEGOTIATED MINERAL LEASE PURSEANT TO PUBLIC RESOURCES CODE SECTION 6897 TO HI-GRADE MATERIALS CO. IS IN THE BEST INTEREST OF THE STATE.

AUTHORIZATION:

1. CONSENT TO THE ISSUANCE OF A NEGOTIATED MINERAL EXTRACTION LEASE UPON TERMS AND CONDITIONS AS OUTLINED IN THIS CALENDAR ITEM TO HI-GRADE MATERIALS CO. FOR ROCK, SAND AND GRAVEL MATERIAL FROM STATE FEE OWNED SCHOOL LAND; SUCH LEASE TO BE FOR A PRIMARY TERM OF SEVEN YEARS WITH A PREFERENTIAL RIGHT TO RENEW THE LEASE FOR TWO SUCCESSIVE SEVEN-YEAR PERIODS, UPON SUCH REASONABLE TERMS AND CONDITIONS AS THE STATE MAY PRESCRIBE.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO

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EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT
THE COMMISSION'S ACTION.

EXHIBIT A

W 40842

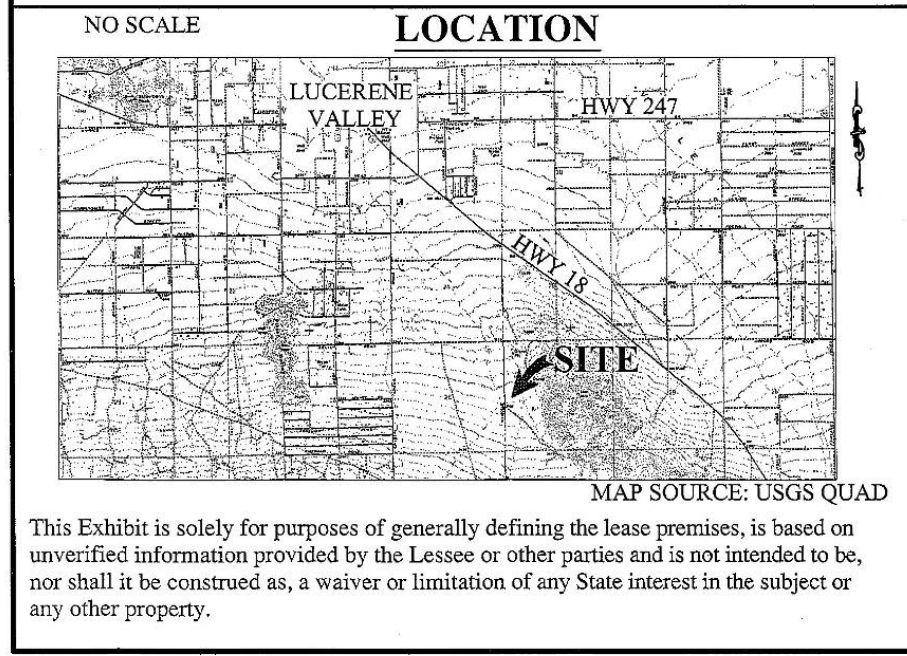
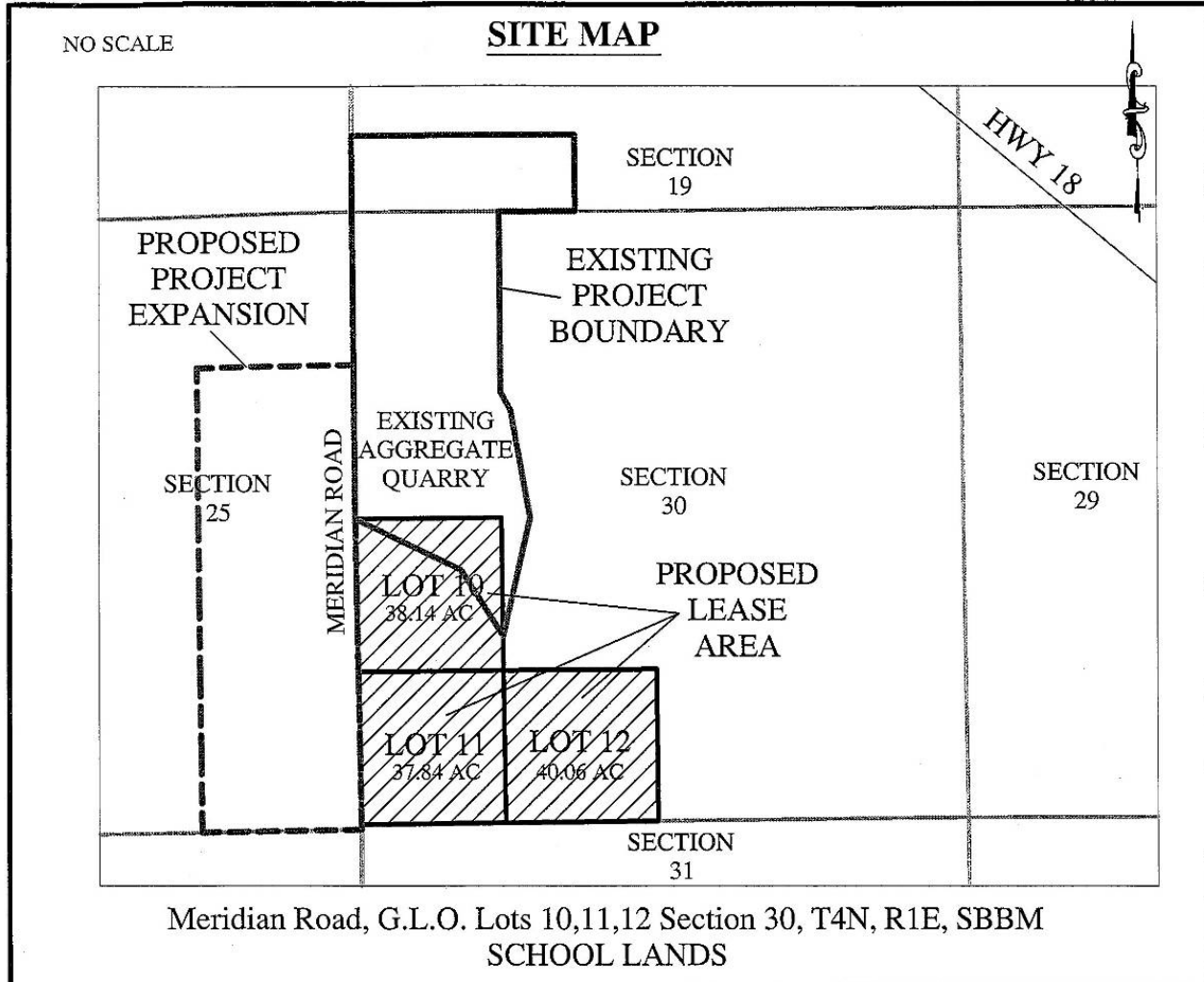


Exhibit A

W 40842
APN 449-111-23&26
HI-GRADE MATERIALS CO.
SOLID MINERAL
EXTRACTION LEASE
SAN BERNARDINO COUNTY

SITE

10/28/08 MJF