

**CALENDAR ITEM
C36**

A 18

12/17/09

W 40783

G. Pelka

S 34

V. Perez

**CONSIDERATION OF SETTLEMENT AGREEMENT FOR
REMOVAL OF AGGREGATE FROM STATE'S
MINERAL INTEREST, NEAR THE TOWN OF BAKER,
SAN BERNARDINO COUNTY**

PARTY:

ACJ True Grit, LLC, successor to Jacobson Construction Company
Attention: Ms. Joni Jacobson
P.O. Box 160
Baker, CA 92309

AREA, LAND TYPE, AND LOCATION:

Approximately 44.90 acres of State school lands (APN 544-261-10) located near Baker, San Bernardino County.

BACKGROUND:

Jacobson Construction Company (Jacobson) operated a sand and gravel pit on the southwest outskirts of Baker. In July 1998, California State Lands Commission (Commission) staff received and reviewed Negative Declaration SCH #98051083 prepared by San Bernardino County for a 7.6 acre expansion of the existing 15.4 acre quarry. This expansion included about two acres in APN 544-261-10 (44.90 acres) in which the State reserved a 1/16th mineral interest when the property was patented in 1931. Jacobson purchased the 44.90 acre parcel in 1997. The remainder of the quarry is located on lands patented by the State in 1910 with no mineral reservation.

In December 1998, Commission staff notified Jacobson of the State's 1/16th mineral interest and Jacobson's obligation to pay the State for any minerals removed. In August 2002, Granite Construction Company (Granite) notified staff that it received a large contract from Caltrans for repaving Interstate 15 northeast of Baker. Granite also told staff that it would work with Jacobson to amend and expand the existing Jacobson Quarry Mining and Reclamation Plan with San Bernardino County to supply the aggregate Granite needed. During 2002 and

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2003, staff attempted to negotiate a 1/16th mineral agreement with Jacobson, but no agreement was reached. There was a substantial disagreement over the interpretation of the 1921 statute creating the 1/16th reserved mineral interest with respect to the scope of that interest. The aggregate mining proceeded, nonetheless, because a formal lease agreement is not required for the landowner's development of this 1/16th mineral interest.

In 2007, when the mining was completed and reclamation was in progress, staff and Jacobson resumed negotiations to resolve their impasse. Staff had contemplated calculating the volumes of rock removed from the area of the State's reserved 1/16th interest, but the commingling of the aggregate and backfill of waste material made this endeavor futile. Jacobson agreed to provide staff with its lease agreement with Granite. In that lease, Granite had agreed to compensate the State up to \$80,000 for payment of material removed from that portion of the quarry subject to the State's reserved 1/16th interest.

Due to the substantial disagreement over the extent of the State's 1/16th mineral interest under the 1921 statute creating that interest and the absence of data that would support a credible determination of the State's share of the material removed from its mineral interest lands, staff believes that further pursuit of this matter would not be in the State's best interest. The factual problems and the relatively small amount of money at stake make a settlement, even at \$80,000, a more prudent resolution of this particular dispute than pursuing remedies such as litigation. Staff, therefore, presented an offer to ACJ True Grit, LLC (True Grit), successor to Jacobson, to recommend to the Commission acceptance of \$80,000 from either True Grit or Granite as payment in full of the amount due the State for the aggregate removed that is subject to the State's 1/16th reserved mineral interest.

Staff has prepared a settlement agreement that has been properly executed by True Grit, as successor to Jacobson, and Granite (see Exhibit C, attached hereto). Either Granite or True Grit will pay \$80,000 to the State within 30 days of written notification to them that the Commission has approved the agreement. Staff has completed a field exam documenting the current quarry configuration. Staff has told True Grit that any future mining on the lands, subject to the State's 1/16th mineral interest, will require payment to the State for the extraction of the minerals subject to its 1/16th interest upon commencement of mining operations. No mining is presently occurring.

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STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code section 6401
- B. Statutes 1921, Chapter 303

OTHER PERTINENT INFORMATION

- 1. True Grit and Granite have properly executed the settlement agreement and will make payment to the State of the \$80,000 within 30 days following notification to them of the Commission's approval of the agreement.
- 2. Staff has completed a field exam documenting the current quarry configuration in the event future mining should occur.
- 3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

- A. Land Description
- B. Site Map
- C. Settlement Agreement

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14,

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CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

1. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT WITH ACJ TRUE GRIT, LLC AND GRANITE CONSTRUCTION COMPANY PURSUANT TO WHICH THE STATE ACCEPTS \$80,000 AS PAYMENT IN FULL FOR MATERIAL PREVIOUSLY REMOVED THAT IS SUBJECT TO THE STATE'S MINERAL INTEREST.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT WITH ACJ TRUE GRIT, LLC AND GRANITE CONSTRUCTION COMPANY,