

STAFF REPORT

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08/23/19

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R. Lee

CONSIDER APPLICATION FOR A MODIFICATION OF THE STATE'S RIGHT OF SURFACE ENTRY ON STATE RESERVED MINERAL INTEREST SCHOOL LAND

APPLICANT:

IP Athos, LLC

AREA, LAND TYPE, AND LOCATION:

Approximately 234.25 acres of State 100 percent reserved mineral interest (RMI) school lands, located about 3 miles northeast of the community of Desert Center, in Section 16, Township 5 South, Range 16 East, SBM, Riverside County (Assessor Parcel Numbers 811-180-003, 004, 005, and 811-180-024). See Exhibits A and B, attached.

AUTHORIZED USE:

Modification of the State's right to use or cause to be used, for purposes of developing its mineral reservation, the surface, including its right to enter such lands to a depth of 500 feet below the surface of the lands described in Exhibit A.

LEASE TERM:

30 years beginning August 23, 2019, through August 22, 2049.

CONSIDERATION:

\$2,070 per year, with an annual Consumer Price Index adjustment.

BACKGROUND:

On January 2, 2019, IP Athos, LLC (Athos), applied for a Modification of the State's Right of Surface Entry for mineral interest in school lands. The project area has been permitted by the County of Riverside for construction of a solar facility on approximately 3,228 acres of land owned by Athos and other private parties. Of those 3,228 acres, the State retains 234.25 acres of a 100 percent RMI (subject parcel). The State sold its surface interest on December 1, 1987.

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The proposed solar facility will include approximately 3,228 acres of photovoltaic panels or concentrated photovoltaic collectors (Athos Renewable Energy Project) on the approximately 3,400-acre site. Photovoltaic panels convert solar energy into electricity using semiconducting materials. On June 18, 2019, the County of Riverside certified an Environmental Impact Report for the Athos Renewable Energy Project (State Clearinghouse No. 2018021021). Athos has acquired a Conditional Use Permit, Public Use Permit, and approved variance from the County of Riverside, which were all approved by the County on June 18, 2019.

Athos is seeking a Modification of the State's Right of Surface Entry to prevent the possibility of future conflict between development of the school land minerals and operation of the solar facility over its projected economic life of 30 years. The subject parcel is currently vacant, except a portion where the Commission has issued a transmission line right-of-way to Southern California Edison that expires on June 9, 2026 (Lease No. PRC 1936.2) ([Item C22, June 28, 2007](#)). The lands encompassing Lease No. PRC 1936.2 are expressly excluded from the proposed Modification of the State's Right of Surface Entry.

The Commission may limit its right to enter the surface overlaying the State's RMI, to a depth of 500 feet below the surface, to allow for the orderly use and development of lands where the State has sold the surface but retained the mineral interest. The Commission may modify its right of surface entry upon findings that: there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands; and that such modifications are not inconsistent with federal laws pertaining to the grant of school lands (i.e., the RMI is not sold or otherwise disposed of).

Consequently, one of the essential elements to such applications is the submission of a detailed Mineral Potential Report prepared by a California Professional Geologist. This report must document what mineral potential exists within 500 feet of the surface and evaluate what mineral potential may exist at greater depths such as the existence of oil and gas or geothermal resources. Athos submitted a Mineral Potential Report, discussed below, dated December 26, 2018, prepared by California Professional Geologist, Steve Kupferman (License No. 3844) of the Lilburn Corporation.

MINERAL POTENTIAL REPORT:

The report evaluated the mineral potential from the surface to a depth of 500 feet, concluding that there is no known commercially valuable mineral potential in and above that plane and below that plane for oil and gas and geothermal resources.

The parcel is characterized by alluvial sedimentary deposits consisting mainly of unconsolidated and undissected sand, silt, clay, and gravel. There is no evidence

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of active or historic mineral prospects, mining operations, or oil and gas wells on the parcel, and historically wildcat oil wells drilled in the project vicinity have not exhibited any oil or gas potential. The potential for the occurrence of gold and precious metals is considered nonexistent. The potential for the development of sand and gravel deposits suitable for use as construction sand and road fill is also low. The factors limiting the development include variability in lateral and vertical extent, increased processing costs and waste content, and the haul distance to any market.

Staff inspected the parcels on March 23, 2019, to conduct an independent geologic assessment and confirmed that the conclusions detailed in the consultant's mineral potential report were valid and accurate. The site was formerly used for a jojoba farm but is now abandoned. Staff concurs that there is low mineral development potential for solid minerals, precious and base metals, industrial minerals, oil, gas, and geothermal resources on the site.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Codes sections 6005, 6216, 6301, and 6401; California Code of Regulations, title 2, section 2003.

State's Best Interests Analysis:

The proposed Modification of the State's Right of Surface Entry is in the State's best interests because it will facilitate the development of a large-scale solar facility. This will, in turn, help achieve the climate goals of AB 32 through the development and expansion of the State's renewable energy portfolio. Despite the temporary loss of entry onto a low mineral potential subject parcel, the State will benefit from the new energy production resulting from the alternative renewable technology of a solar facility. As consideration for the Modification of the State's Right of Surface Entry, Athos shall pay an annual rental fee of \$2,070, adjusted annually by the Consumer Price Index. This consideration value was determined using methods authorized by the Commission under title 2, California Code of Regulations, section 2003. Finally, this subject modification is for a limited term of 30 years in order to preserve the ability to enter the surface if future mineral resources are discovered.

Conclusion:

For all the reasons above, staff believes the approval of the modification is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of State school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. If the Commission denies the application, the Applicant may not be able to deny the State access to its RMI. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Authorization to issue a Modification of the State's Right of Surface Entry is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. The Modification of the State's Right of Surface Entry is consistent with federal statutes pursuant to 43 U.S.C. section 870 because the State is not alienating its mineral interest and retains the ability to develop any minerals at the end of the Modification's term.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

FINDINGS:

1. Find that there are no known commercially valuable minerals located on the subject parcel in and above a plane of 500 feet.
2. Find that the proposed modification will permit the orderly use and development of the lands for alternative energy.
3. Find that the proposed modification is not inconsistent with federal statutes pursuant to 43 U.S.C. section 870.

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STATE'S BEST INTERESTS:

Find that the modification is in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer, or her designee, to issue to IP Athos, LLC, a Modification of the State's Right of Surface Entry to use or cause to be used, for purposes of developing its mineral reservation, the surface, including its right to enter such lands to a depth of 500 feet below the surface of the lands described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof, beginning August 23, 2019, for a term of 30 years; consideration in the amount of \$2,070 per year with an annual Consumer Price Index adjustment.

EXHIBIT A

W 40999

LAND DESCRIPTION

That certain parcel of State School Land in Riverside County, State of California, more particularly described as follows:

SW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 16, Township 5 South, Range 16 East, San Bernardino Meridian, as shown on that Official U.S. Government Township Plat approved July 12, 1856.

EXCEPTING THEREFROM that parcel lying within SW $\frac{1}{4}$ of Section 16, Township 5 South, Range 16 East, San Bernardino Meridian as described in lease PRC 1936.2, Calendar item No. C22 on file in Sacramento Office of California State Lands Commission.

END OF DESCRIPTION

Prepared 06/03/2019 by the California State Lands Commission Boundary Unit.



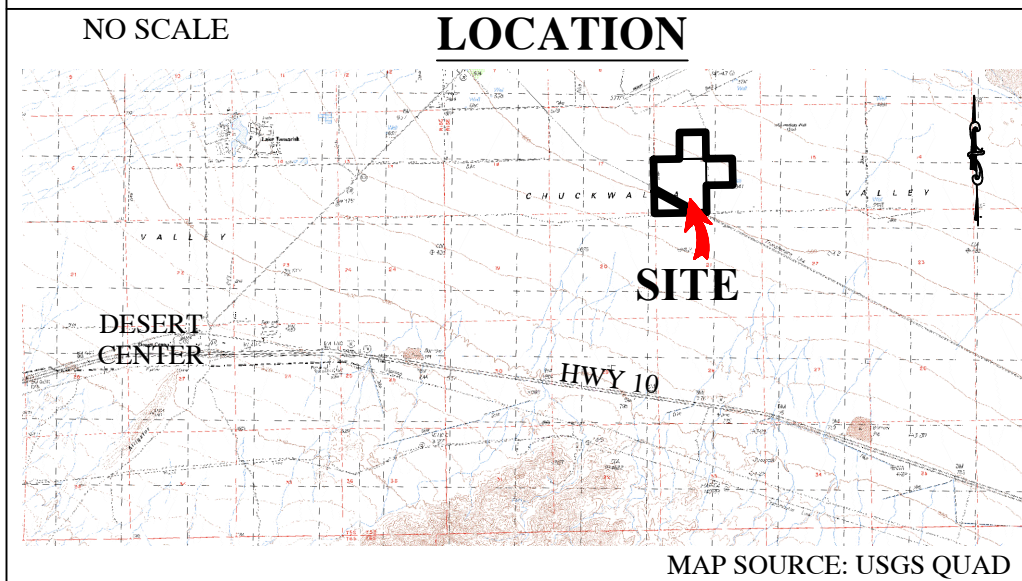
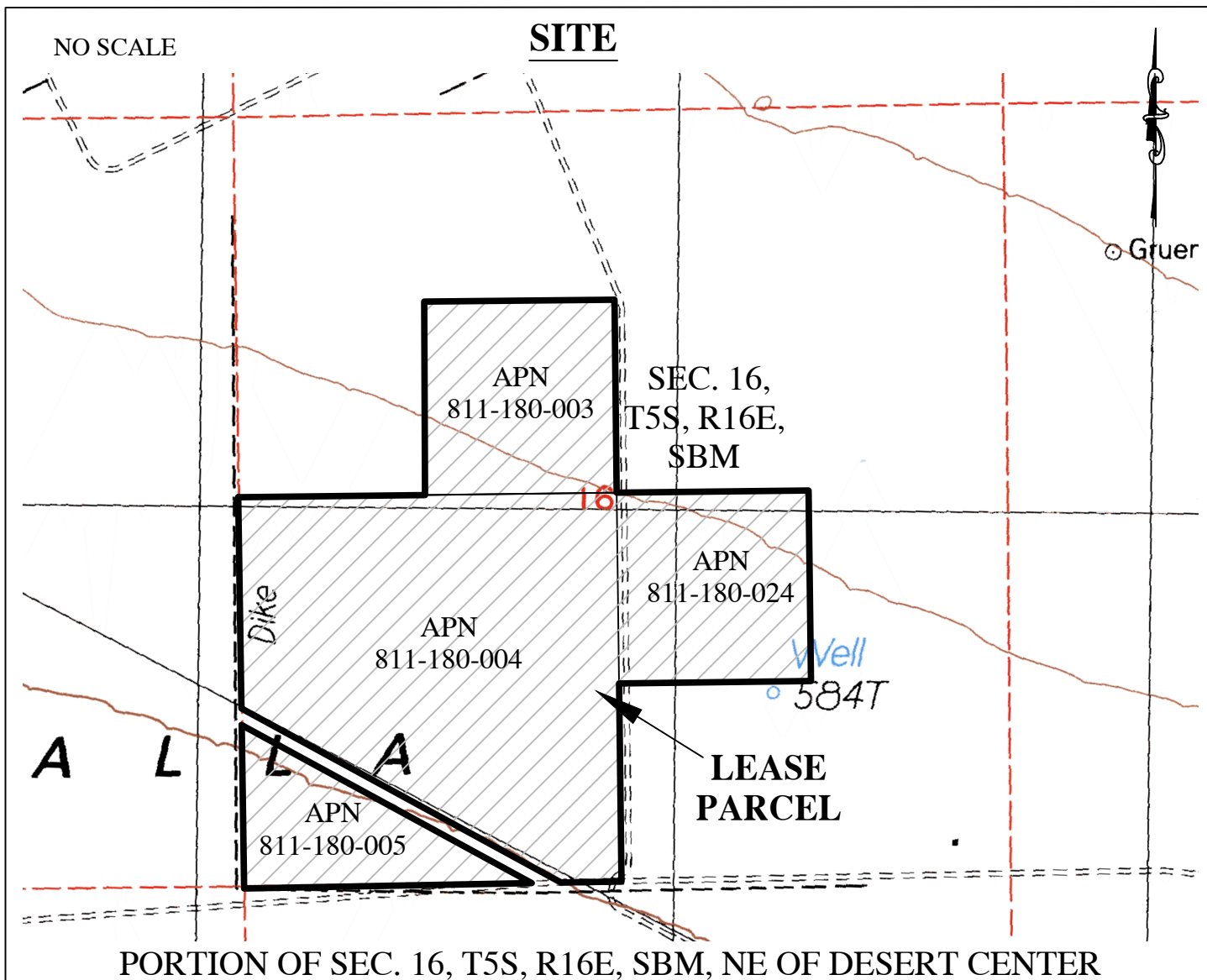


Exhibit B
W 40999
IP ATHOS, LLC
APNs: 811-180-003,
-004, -005 & -024
MODIFICATION OF RIGHT
OF SURFACE ENTRY
RIVERSIDE COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.