

Staff Report 41

APPLICANT:

Project Darwin, LLC, a Nevada Limited Liability Company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

12.09 acres, more or less, of State school land located in the west half of Section 16, Township 19 South, Range 41 East, MDM, near Darwin, Inyo County.

AUTHORIZED USE:

Use and maintenance of an existing 4-inch-diameter buried water pipeline, a 2-wire overhead telephone line, a 4,800-volt three-phase overhead electric power line, and two wood poles.

TERM:

10 years; beginning May 9, 2022.

CONSIDERATION:

\$944 per year, with an annual Consumer Price Index adjustment, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence, or equivalent staff-approved self-insurance program.
- Surety bond or other security in the amount of \$6,000 with the Lessor reserving the right to increase the bond amount.
- Lessee shall take all reasonable and necessary actions to prevent, suppress, and control fires on the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

STATE'S BEST INTERESTS:

On May 24, 2012 ([Item 46, May 24, 2012](#)), the Commission authorized the issuance of Lease 4627, a General Lease – Right-of-Way Use to Project Darwin, LLC, a Nevada Limited Liability Company, for use and maintenance of an existing buried water pipeline, overhead telephone line, overhead electric power line, and two wood poles. The improvements provide water and utilities from an adjacent parcel owned by the Applicant to an existing mineral processing site, which is also located on land owned by the Applicant. The Applicant's adjacent mines produce tungsten, zinc oxide, zinc sulfide, copper, silver, and lead in addition to minor metals including tellurium, germanium, indium, and bismuth. Operation at the adjacent mines and processing site are currently suspended until mineral prices increase to profitable levels. The Applicant has applied for a new lease to maintain the existing improvements.

The existing improvements do not significantly alter the land; the proposed lease does not alienate the State's fee simple interest nor permanently impair public rights. The lease is limited to a 10-year term and does not grant the Applicant exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their natural state. The lease requires the Applicant to insure and indemnify the State for any liability incurred, directly or indirectly, as a result of the lessee's activities on the lease premises and maintain the improvements at its sole expense. The lease also requires the payment of annual rent, generating revenue for the California State Teachers' Retirement System, consistent with Public Resources Code section 6217.5.

CLIMATE CHANGE:

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, storms, dust storms, and flash flooding from thunderstorms. The lease area is open lands with moderate to low vegetation fuels and vulnerable to the aforementioned events as well as wildland fires. The 4,800-volt three phase overhead electric power line could be a

cause of possible wildland fires in an event the power lines get into contact with vegetation. The 2-wire overhead telephone line could also be impacted by flash floods or wildland fires. The shallowly buried 4-inch-diameter water pipeline might be impacted by these projected climate change effects and could become unburied and become a hazard in the lease area. Regular maintenance, as referenced in the lease, may reduce the likelihood of structural degradation.

CONCLUSION:

For the reasons stated above, staff believes issuance of this lease is in the best interests of the State.

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 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 be required to remove the water pipeline, the telephone line, the electric power line, and the two wood poles. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with addressing the challenges and opportunities described in the Commission's 2021-25 Strategic Plan to "Embrace and safeguard multi-benefit School Lands and resource management stewardship that equitably balances responsible local and regional economic development, supports living wages, environmental protection, and revenue generation."
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STATE'S BEST INTERESTS:

Find that the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant, beginning May 9, 2022, for a term of 10 years, for the use and maintenance of an existing 4-inch diameter buried water pipeline, a 2-wire overhead telephone line, a 4,800-volt three-phase overhead electric power line, and two wood poles, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$944, with an annual Consumer Price Index adjustment; liability insurance in the amount no less than \$2,000,000 per occurrence; and a surety bond or other security in the amount of \$6,000.

EXHIBIT A

LEASE 4627

LAND DESCRIPTION

A parcel of State School Land situate in Section 16, Township 19 South, Range 41 East, Mount Diablo Meridian, as shown on U.S. Government Survey approved December 28, 1943, Inyo County, State of California, more particularly described as follows:

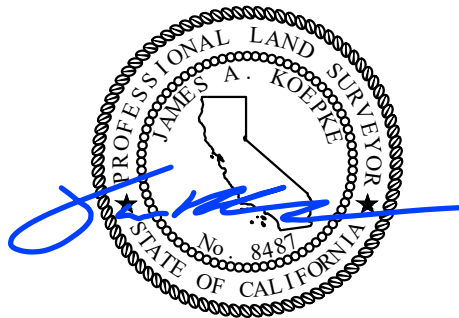
BEGINNING at the West $\frac{1}{4}$ corner of said Section 16; thence along the west line of said section S $00^{\circ} 03' 00''$ E 186.00 feet to a point on a line parallel with and 25.00 feet southerly, measured at right angle from an existing power pole line; thence along said parallel line N $83^{\circ} 22' 08''$ E 2465.65 feet to a line parallel with and 25 feet southerly, measured at right angle from an existing telephone pole line; thence along said parallel line N $87^{\circ} 07' 09''$ E 140.46 feet to the northwesterly boundary line of Reddy Mill Site; thence along said boundary line N $38^{\circ} 54' 40''$ E 95.42 feet to a point on a line parallel with and 25 feet northerly, measured at right angle from an existing four (4) inch water line; thence along said parallel line the following three (3) courses:

1. N $89^{\circ} 17' 10''$ W 1647.49 feet;
2. S $77^{\circ} 47' 40''$ W 313.76 feet;
3. S $86^{\circ} 18' 00''$ W 697.03 feet to said west line of said section; thence along said line S $00^{\circ} 03' 00''$ E 89.25 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

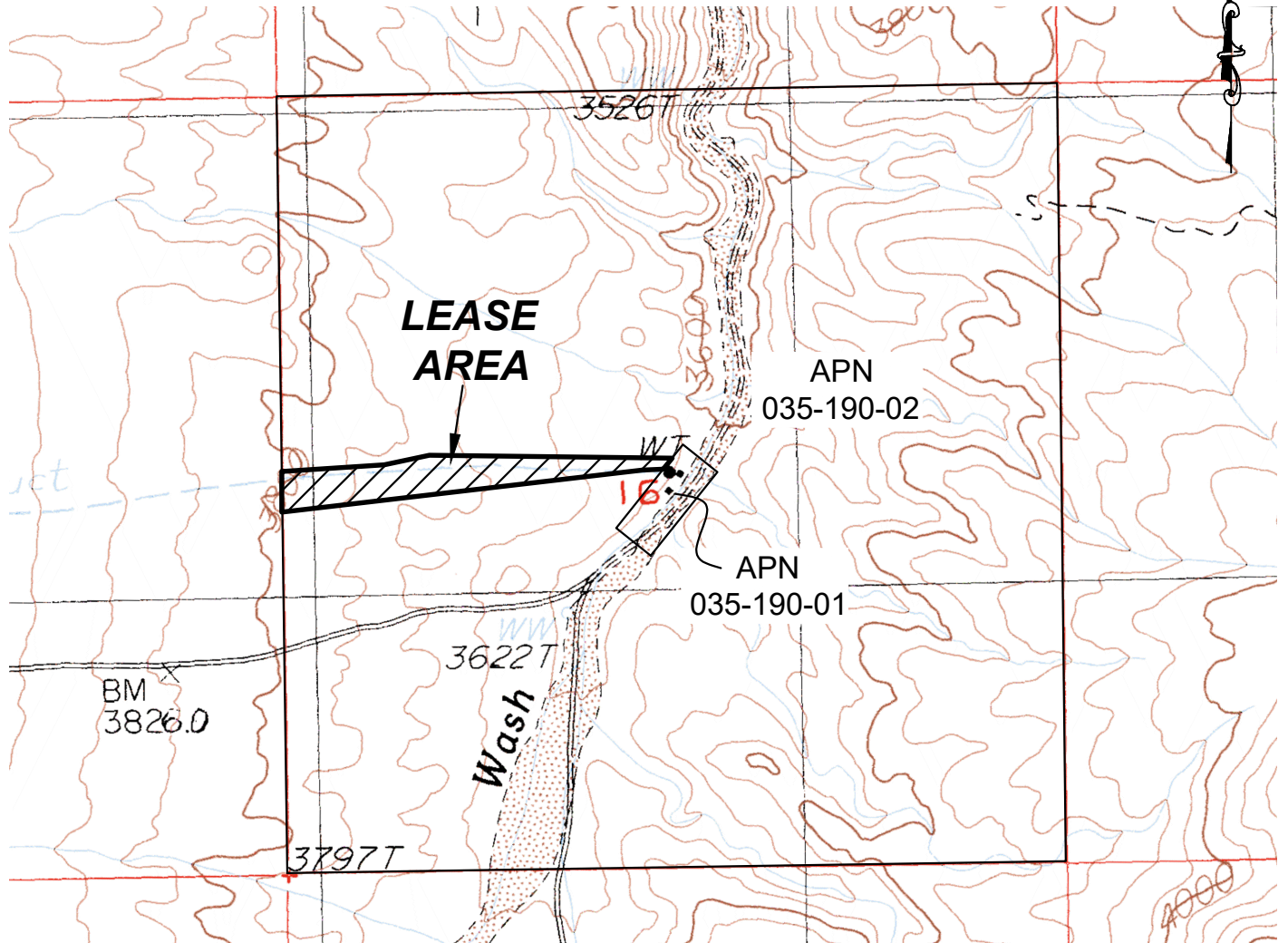
The above description is based on that original description prepared April 7, 2003 by California State Lands Commission Boundary Unit as found in PRC 4627 file, Calendar Item C64.

Revised 07/29/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

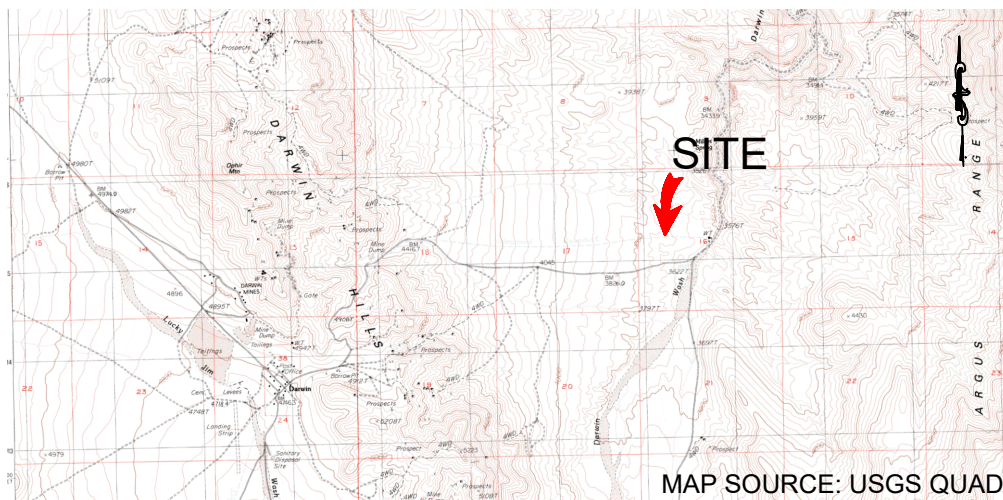
SITE



PORTION OF SECTION 16, T19S, R41E, MDM

NO SCALE

LOCATION



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.

EXHIBIT B

LEASE 4627
PROJECT DARWIN, LLC
APN 035-190-02
GENERAL LEASE -
RIGHT-OF-WAY USE
INYO COUNTY



TS 07/29/2021