

Staff Report 52

APPLICANT:

EDF Renewables Development

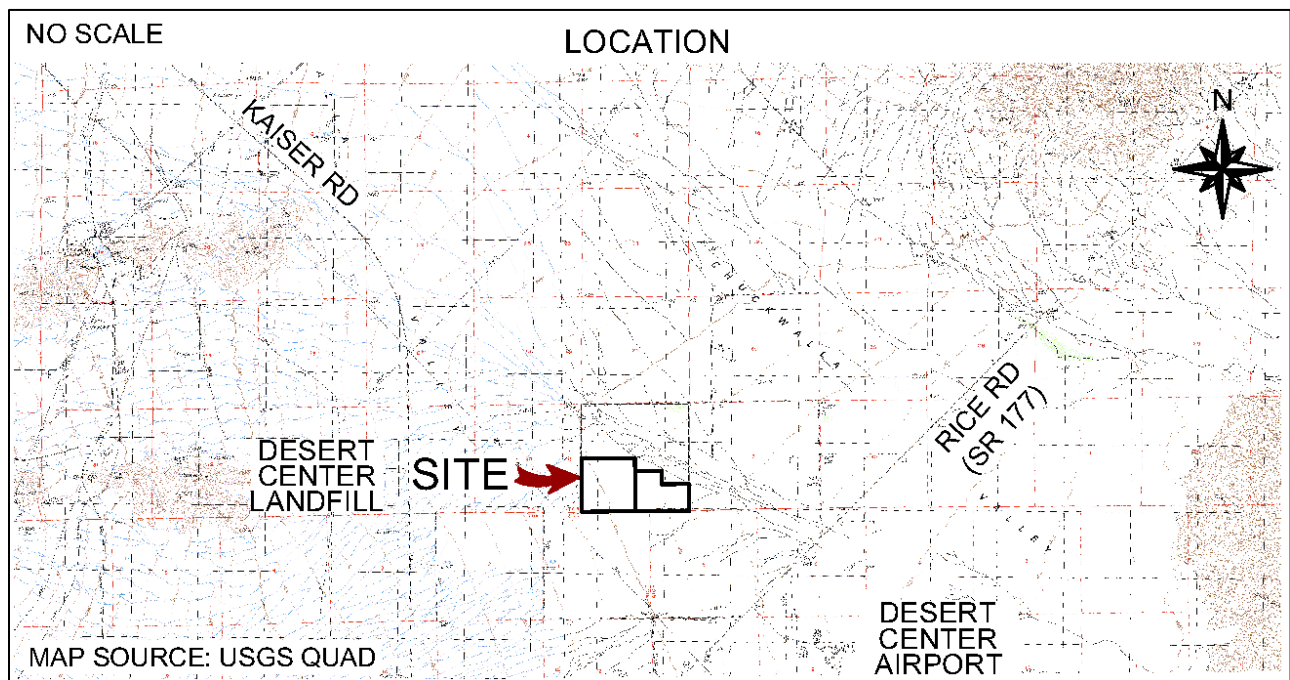
PROPOSED ACTION:

Issuance of a Modification of the State's Right of Surface Entry.

AREA, LAND TYPE, AND LOCATION:

Approximately 260 acres of State 100 percent reserved mineral interest school land, Assessor's Parcel Numbers: 807-172-010 and 807-172-011, located near Desert Center, Section 36, Township 4 North, Range 15 East, San Bernardino Baseline & Meridian, Riverside County (as shown in Figure 1).

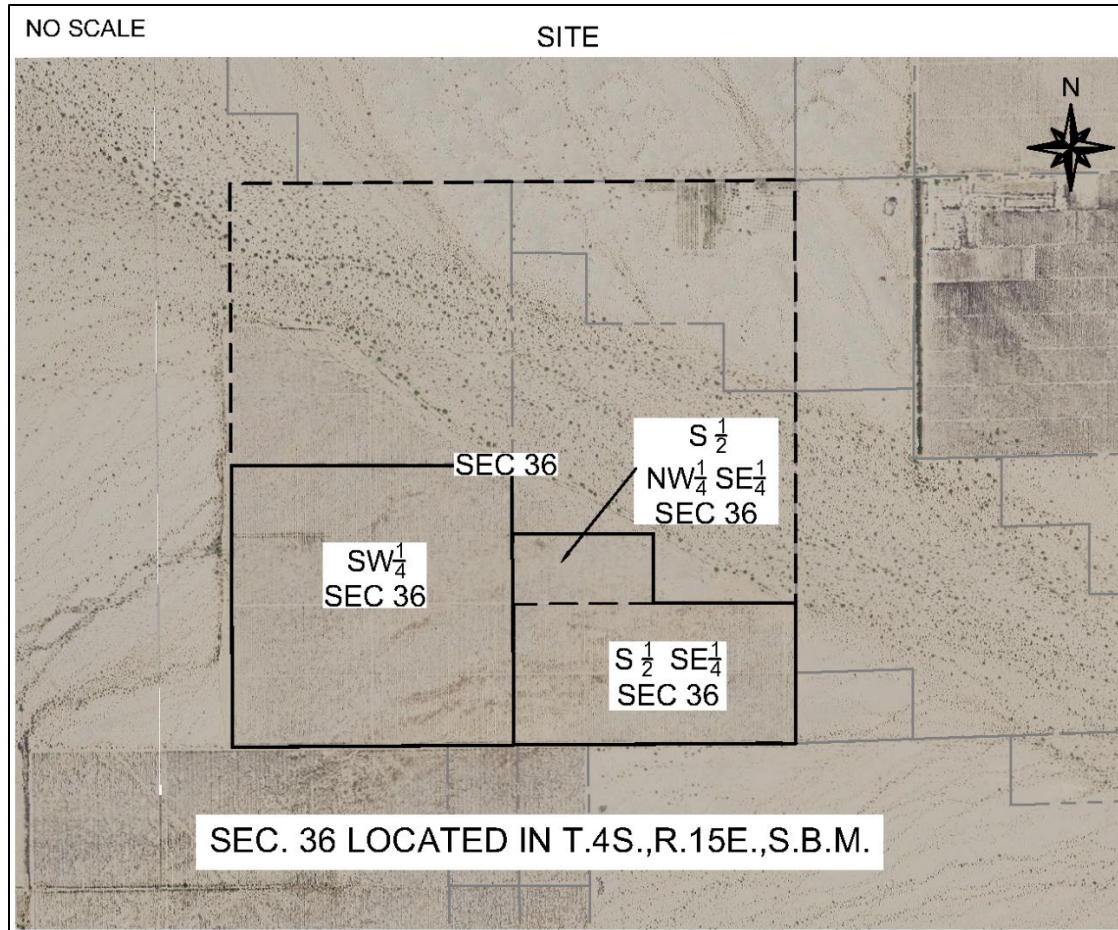
Figure 1. Location



PROPOSED AGREEMENT:

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 (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

20 years, beginning October 19, 2023.

CONSIDERATION:

\$3,645 per year, with an annual Consumer Price Index adjustment.

SPECIFIC AGREEMENT PROVISIONS:

- The Agreement shall run with the land and shall be binding upon and inure to the Applicant, its successors and assigns for the term of this Agreement. The Applicant and any and all subsequent owners of the lands described in Exhibit A shall continue to be benefited and burdened by the covenants unless and until it expires or is otherwise terminated as provided in the Agreement.

BACKGROUND:

The State retains 260 acres of 100 percent reserved mineral interest (RMI) school lands in the Mojave Desert near Desert Center. The surface estate of the lands was patented by the State as school lands to W. W. Palladine on April 20, 1953, and is currently owned by the Applicant. The Applicant proposes to use the surface of the lands for the installation of solar panels, electric transmission lines, and roads.

The Applicant is seeking a modification of the State's right of surface entry on the lands to prevent the possible future conflict between exploration or development of the State's minerals and operation of the solar facility over the next 20 years.

Under Public Resources Code section 6401, subdivision (b), the Commission may modify, and surrender its right to enter 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 a finding 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).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

MINERAL POTENTIAL EVALUATION REPORT:

One of the essential elements to an application for modification of the State's right of surface entry is the submission of a detailed Mineral Potential or Geologic/Geotechnical report prepared by a registered California Professional Geologist/Engineer. This report must document the parcel's mineral potential within

500 feet of the surface and evaluate what mineral potential, such as the presence of oil and gas or geothermal resources, may exist at greater depths.

EDF submitted a Geotech Engineering Report on June 9, 2023, prepared by Barr Engineering Co. (Barr), and signed by Jedediah D. Greenwood, P.E., C.E.G. (License No. 79417 & 2558). The report evaluated the mineral potential on the lands from the surface to a depth of 500 feet, concluding that there are no known commercially valuable mineral deposits above and below that plane including the potential for oil and gas and geothermal resources.

The parcel is characterized by a variety of different sediment types, consisting primarily of fine sands, silts, clays, and gravels with varying degrees of coarseness. These sediments are generally found in mixed alluvial fan depositional settings. The subject parcel is currently vacant and was the former site of a Jojoba farm, indicated by low, linear berms in a parallel pattern. A variety of low-lying brush and other plants typically found in arid environments are also present. No other significant vegetation occurs on this site.

There is no evidence 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. There is no commercial potential for the occurrence of precious metals in the parcel. The potential for the development of sand and gravel deposits suitable for use as construction sand and road fill is also low due to the reported presence of increased amounts of sand and finer-grained sediments. The factors limiting aggregate development include variability in lateral and vertical extent of commercial-grade aggregate ore, increased processing costs and waste content, and the haul distance to any market.

Staff conducted these independent geologic assessments using publicly available geologic resource data, such as the [U.S. Geological Survey Mineral Resources Dataset](#), historic well data from the California Division of Geology, Energy, and Minerals, and historic mining data from the Bureau of Land Management. The assessment confirmed that the conclusions detailed in the consultant's Geotech Engineering Report were valid and accurate. The most economically viable mineral resource that could possibly occur in this region is aggregate, which is not presently commercial within this parcel. Staff concurs that there is low mineral development potential for other solid minerals, precious and base metals, industrial minerals, oil, gas, and geothermal resources on the site.

STATE'S BEST INTERESTS:

The proposed modification of the State's right of surface entry is in the State's best interests because it will help the State achieve its ambitious greenhouse gas emission reduction target of 40 percent below 1990 levels by 2030 (SB 32, 2016) and renewable energy procurement targets of 60 percent by 2030 and 100 percent by 2045 (SB 100, 2018), through the development and expansion of the State's renewable energy portfolio. Despite the temporary loss of entry onto the parcel, the State will benefit from the new clean energy production from the solar facility. Additionally, given the low mineral potential of the parcel, it is highly unlikely that the Commission will receive any applications to develop any mineral interest on the parcel during the term of the proposed agreement. As consideration for the modification of the State's right of surface entry, the Applicant will pay an annual rental fee of \$3,645, adjusted annually by the Consumer Price Index. This consideration was determined using methods authorized by the Commission under California Code of Regulations, title 2, section 2003. Finally, this subject modification is for a limited term of 20 years 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 of the State's right of surface entry 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 modification of the State's right of surface entry on RMI lands, it exercises legislatively delegated authority and responsibility as trustee of those lands as authorized by law. If the Commission denies the application, the Applicant would not be able to deny the State the authority to extract resources pursuant to its RMI. However, a future mineral lessee of the State would be economically responsible for any loss to surface improvements made by the Applicant if they are impacted by mineral development. Upon expiration or prior termination of the modification agreement, the Commission would no longer be bound by its terms. EDF Renewables Development may submit a new application for a future modification, the approval of which would be at the Commission's sole discretion.
2. The modification of the State's right of surface entry is consistent with 43 U.S. Code 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 agreement's term.

3. This action is consistent with the "Leading Climate Activism" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
4. Authorization to issue a modification of the State's right of surface entry is not a project as defined by the California Environmental Quality Act 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).

EXHIBITS:

- A. Land Description
- B. Modification of Right of Surface Entry Agreement

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 of the State's right of surface entry will permit the orderly use and development of the lands for renewable energy.
3. Find that the proposed modification is not inconsistent with 43 U.S. Code section 870.

STATE'S BEST INTERESTS:

Find that the modification of the State's right of surface entry is in the best interests of the State.

AUTHORIZATION:

Authorize Issuance of a modification of the State's right of surface entry to use or cause to be used, for purposes of developing its mineral reserves, 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 Figure 2 (for reference purposes

only), attached and by this reference made a part hereof, to EDF Renewables Development, beginning October 19, 2023, for a term of 20 years; consideration in the amount of \$3,645 per year with an annual Consumer Price Index adjustment.

EXHIBIT A

A4027

LAND DESCRIPTION

Two parcels of land situate in Section 36, Township 4 South, Range 15 East, San Bernardino Meridian, as shown on Official Government Plat approved October 21, 1856, in Riverside County, State of California, and more particularly described as follows:

PARCEL 1

The Southwest Quarter of said Section 36.

PARCEL 2

The South half of the Southeast Quarter of said Section 36;

Together with:

The South half of the Northwest Quarter of the Southeast Quarter of said Section 36;

END OF DESCRIPTION

Prepared July, 2023 by the California State Lands Commission Boundary Unit.



EXHIBIT B

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California State Lands Commission
301 East Ocean Blvd. Suite 550
Long Beach, CA 90802-8833

**STATE OF CALIFORNIA
OFFICIAL BUSINESS**

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Portions of A.P.N.s 807-172-010 and 807-172-011
County: Riverside

A4027

MODIFICATION OF RIGHT OF SURFACE ENTRY AGREEMENT

Whereas, the State of California (State), acting by and through the California State Lands Commission (Commission), on April 20, 1953, conveyed by state patent certain lands described in Exhibit A, subject to a mineral reservation with surface entry rights; and

Whereas, the surface estate of the lands described in Exhibit A is proposed by EDF Renewables Development for the development and use of an approximately 260 acre photovoltaic or concentrated photovoltaic solar farm; and

Whereas, to allow for the orderly development and financing of a photovoltaic solar farm, and to protect against disturbance of operations by the potential development of the State's mineral reservation, EDF Renewables Development has applied to the Commission for a modification of the State's reserved right to enter the surface to a depth of 500 feet. In support of its application, EDF Renewables Development submitted a geotechnical engineering report, dated May 30, 2023, concluding no occurrence of commercially valuable minerals upon or under the lands described in Exhibit A; and

Whereas, the Commission, determined, pursuant to California Public Resources Code Section 6401(b), as described in Staff Report No. __, at its meeting on October 19, 2023, that there are no known deposits of commercially valuable minerals in and above a plane located 500 feet below the surface of the lands described in Exhibit A.

Now, therefore, effective October 19, 2023, the State, acting by and through the Commission, and EDF Renewables Development do hereby agree as follows:

1. The State, pursuant to the provisions of Public Resources Code section 6401(b), surrenders its 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 attached hereto, for a period of 20 years commencing October 19, 2023 until October 18, 2043.
2. In consideration for the State modifying its rights pursuant to Public Resources Code section 6401(b) with respect to the lands described in Exhibit A, EDF Renewables Development agrees to pay to the Commission an annual fee of \$3,645. The first annual payment shall be made within 30 days of the execution of this agreement and upon each subsequent anniversary thereafter.
3. The covenant created by this Agreement shall run with the land and shall be binding upon and inure to EDF Renewables Development, its successors and assigns. EDF Renewables Development and any and all subsequent owners of the lands described in Exhibit A shall continue to be benefited and burdened by the covenant unless and until it expires or is otherwise terminated as provided herein. This Agreement shall be recorded by the Commission with the County of Riverside Assessor-County Clerk-Recorder (ACR) upon execution by all parties. EDF Renewables Development, its successors and assigns shall notify any future prospective purchasers or acquirers of the lands described in Exhibit A of this Agreement, and make any sale or transfer of the lands described in Exhibit A contingent on the acquirer's acknowledgement of its rights and duties under this Agreement. The landowner of the lands described in Exhibit A shall notify the Commission of any sale or transfer of such lands within 30 days of such sale or transfer, and shall provide the Commission with the contact information of the new owner of such lands.
4. The annual fee specified in paragraph 2 of this agreement will be adjusted annually by the Consumer Price Index as specified in California Code of Regulations, title 2, section 1900, (m) and (n). The Commission will provide a courtesy invoice 30 days prior to the date the fee is due specifying the updated fee amount at the address currently on file for the owner of the lands described in Exhibit A. If the Commission does not send a courtesy invoice, EDF Renewables Development or its successor landowner, shall submit a payment in the amount of the prior year's annual fee when due and contact the Commission within 30 days to determine the balance due.

5. Should EDF Renewables Development, or subsequent surface owner, fail to perform any covenant, condition, or agreement contained in this agreement and the Breach is not cured within 60 days after written notice of the Breach is served on the surface owner by the Commission, then this Agreement shall automatically terminate.
6. Any revision to this Agreement shall be in writing, signed by both parties, and recorded with the Riverside County ACR.

This modification of the State's right of surface entry is executed by and on behalf of the State of California by the Commission, acting pursuant to law, as approved and authorized at its regular public meeting on October 19, 2023, and as described in Staff Report No. ___, by its duly authorized undersigned officer, this ____ day of _____ 2023.

[SIGNATURES ON NEXT PAGE]

CALIFORNIA STATE LANDS COMMISSION

Date: _____

By: _____

Name

Title

EDF RENEWABLES DEVELOPMENT

Date: _____

By: _____

Name

Title

*In executing this document, the following are required:

Corporations:

1. Affix Corporate Seal.
2. Attach certified copy of the resolution or other document authorizing its execution on behalf of the corporation.

Individuals:

1. Attach acknowledgment of Signature.