MINUTE ITEM
This Calendar Item No. C84
was approved as Minute Item
No. 84 by the State Lands
Commission by a vote of 3
to Ø at its 11-26-01
meeting.

CALENDAR ITEM
C84

A 67

11/26/01
PRC 8272.2
E. Kruger
G. Pelka

S 25

CONSIDER APPROVAL OF AN APPLICATION FOR AMENDMENT AND EXTENSION OF STATE MINERAL EXTRACTION LEASE NO. PRC 8272.2, SAN BERNARDINO COUNTY

APPLICANT:

Washington Group International, Inc.
Attn.: Mr. Leon Hamblin, Project Manager
27460 E. Fifth Street
P. O. Box 600
Highland, CA 92346

AREA, LAND TYPE, AND LOCATION:

Approximately 80 acres of State 100 percent reserved mineral interest (RMI) patented school land (APN: 552-141-17) located in the W2 of the SW4 of Section 36, T8N, R7E, SBM, San Bernardino County (the "subject Property") and situated near Ludlow, approximately 45 miles east of Barstow, California, immediately north of Interstate 40.

BACKGROUND:

At its meeting in February 2001, the California State Lands Commission (Commission) approved State Mineral Extraction Lease No. PRC 8272.2, with an effective date of March 1, 2001. The lease was issued to Washington Group International, Inc., (WGI) for extraction of rock, sand and gravel minerals at a site containing approximately 80 acres of State 100 Percent reserved mineral interest located near Ludlow, California. Prior to issuance of the lease by the State, the San Bernardino County Planning Department (County) prepared and adopted a mitigated negative declaration for this project, and approved a conditional use permit and mining and reclamation plan (MRP) No. 93M-06. The MRP provided for disturbance of 13 acres within an 80-acre site. The MRP expires in June 2003.

In June 2001, WGI indicated to Commission Staff that it wanted to expand the Ludlow project to include additional disturbed acreage and apply to the County for a new MRP. In August 2001, Commission staff reviewed proposed Negative Declaration SCH #2001071107 circulated by the County for a 51-acre expansion of the Ludlow project. In September 2001, WGI submitted a State application to amend the lease to include the expansion area and to extend the term of the lease to coincide with the New MRP. WGI's State application was deemed complete on October 31, 2001. WGI and Commission staffs have agreed to modify terms of the lease, subject to Commission approval.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code section: Division 6
B. Public Resources Code section 21000, et seq.
C. California Code of Regulations: Title 14, Chapter 3, section 15096, California Code of Regulations, Title 2, section 2200.

OTHER PERTINENT INFORMATION

1. As lead agency under the Surface Mining and Reclamation Act and the California Environmental Quality Act (CEQA), the San Bernardino County Planning Department prepared and adopted Mitigated Negative Declaration SCH#2001071107 and approved Mining and Reclamation Plan (MRP) No. 2001-M04 for this project. The MRP provides for expansion of the project area from 13 acres to a total of 64 acres in accordance with MRP 2001M-04, approved by the County on October 4, 2001. A Notice of Determination was filed by the County, which found that the expansion project would not have a significant effect on the environment. Commission staff has reviewed such documentation. San Bernardino County also adopted a mitigation-monitoring program for this project.

2. The primary term of the lease is currently two years and four months to coincide with the expiration of MRP 93M-06. Under the proposed lease amendment, the primary term of the lease shall be extended from its current term to ten (10) years, beginning March 1, 2001 and ending February 28, 2011. The lease also contains a preferential right to renew for one additional ten-year term upon such reasonable terms and conditions as may be prescribed by the State, including but not limited to, modification of royalty or any other provision in a manner which will adequately protect the environment and other interests of the State.

3. The royalty provision of the lease shall be amended by deleting the current minimum royalty of not less than $0.45 per short ton of rock, sand and gravel, and replacing it with not less than $0.47 per short ton of rock, sand and gravel for lease year one, escalated annually thereafter $0.02 per short ton.

4. The lease will further be amended to read that the Lessee shall pay a nonrefundable annual minimum royalty on the 25th day of the calendar month following the end of each lease year, and that the annual minimum royalty shall be based on annual minimum required production of 30,000 short tons of rock, sand and gravel.

5. Negative Declaration SCH #93042051, approved July 3, 1993, by San Bernardino County, and referred to in Paragraph 5 of the lease and attached to the lease as Exhibit B, attached hereto, is superseded in its entirety and replaced by Mitigated Negative Declaration SCH No. 2001071107 approved and adopted on October 4, 2001, by the County for WGI's expansion project.

6. Paragraph 6(a) of the lease shall be amended to replace MRP No. 93M-06 with MRP No. 2001M-04 and reflect the State's consent to the expansion project in accordance with the terms and limitations contained in MRP No. 2001M-04 approved October 4, 2001.

7. The amount of the bond for the lease shall be increased from $15,000 to $50,000.

8. On May 14, 2001, WGI and related entities filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. The matter is pending in the United States Bankruptcy Court for the District of Nevada. WGI continues to operate their business as debtor's in possession. Under Section 11 U.S.C. 365(a) of the Bankruptcy Code, WGI has the right to assume or reject leases involving non-residential real property. WGI has filed a motion seeking Court authorization to assume PRC 8272.2 and to extend and amend the lease in accordance with the terms outlined above. The motion will be scheduled for a hearing on or about December 7, 2001, at which time WGI expects to secure the requisite court approvals. Staff proposes that the Commission authorize the lease extension and amendment, subject to the condition that the extension and amendment

shall be void and of no effect unless and until WGI has, on or before March 1, 2002, performed each of the following: (1) assumed PRC 8272.2 pursuant to 11 U.S.C. 365; and (2) secured the authorization of the Bankruptcy Court to execute the extension and amendment.

9. The Applicant has submitted the required filing and processing fees.

APPROVALS OBTAINED:

Pursuant to Public Resources Code section 6890, the lease form has been approved by the Office of the Attorney General as to its compliance with applicable provisions of the law.

EXHIBIT:

A. Location Map.

PERMIT STREAMLINING ACT DEADLINE:

April 30, 2002.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

1. FIND THAT A MITIGATED NEGATIVE DECLARATION (SCH. NO. 2001071107) AND A MITIGATION MONITORING PROGRAM WERE PREPARED AND ADOPTED FOR THIS PROJECT BY THE COUNTY OF SAN BERNARDINO, AND THAT THE CALIFORNIA STATE LANDS COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

2. ADOPT THE MITIGATION MONITORING PROGRAM ON FILE IN THE LONG BEACH OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION.

AUTHORIZATION:

AUTHORIZE THE EXTENSION AND AMENDMENT OF MINERAL EXTRACTION LEASE NO. PRC 8272.2 UPON TERMS AND CONDITIONS OUTLIINED IN THIS CALENDAR ITEM AND IN FORM ON FILE IN THE OFFICES OF THE COMMISSION, TO WASHINGTON GROUP INTERNATIONAL, INC. FOR ROCK, SAND AND GRAVEL FROM STATE 100 PERCENT RESERVED MINERAL INTEREST

SCHOOL LAND, SUBJECT TO THE CONDITION THAT THE EXTENSION AND AMENDMENT SHALL BE VOID AND OF NO EFFECT UNLESS AND UNTIL WASHINGTON GROUP INTERNATIONAL, INC. HAS, ON OR BEFORE MARCH 1, 2002, PERFORMED EACH OF THE FOLLOWING: (1) ASSUMED PRC 8272.2 PURSUANT TO 11 U.S.C. 365; AND (2) SECURED THE AUTHORIZATION OF THE BANKRUPTCY COURT TO EXECUTE THE EXTENSION AND AMENDMENT.

AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE ANY DOCUMENT NECESSARY TO IMPLEMENT THE COMMISSION'S ACTION.

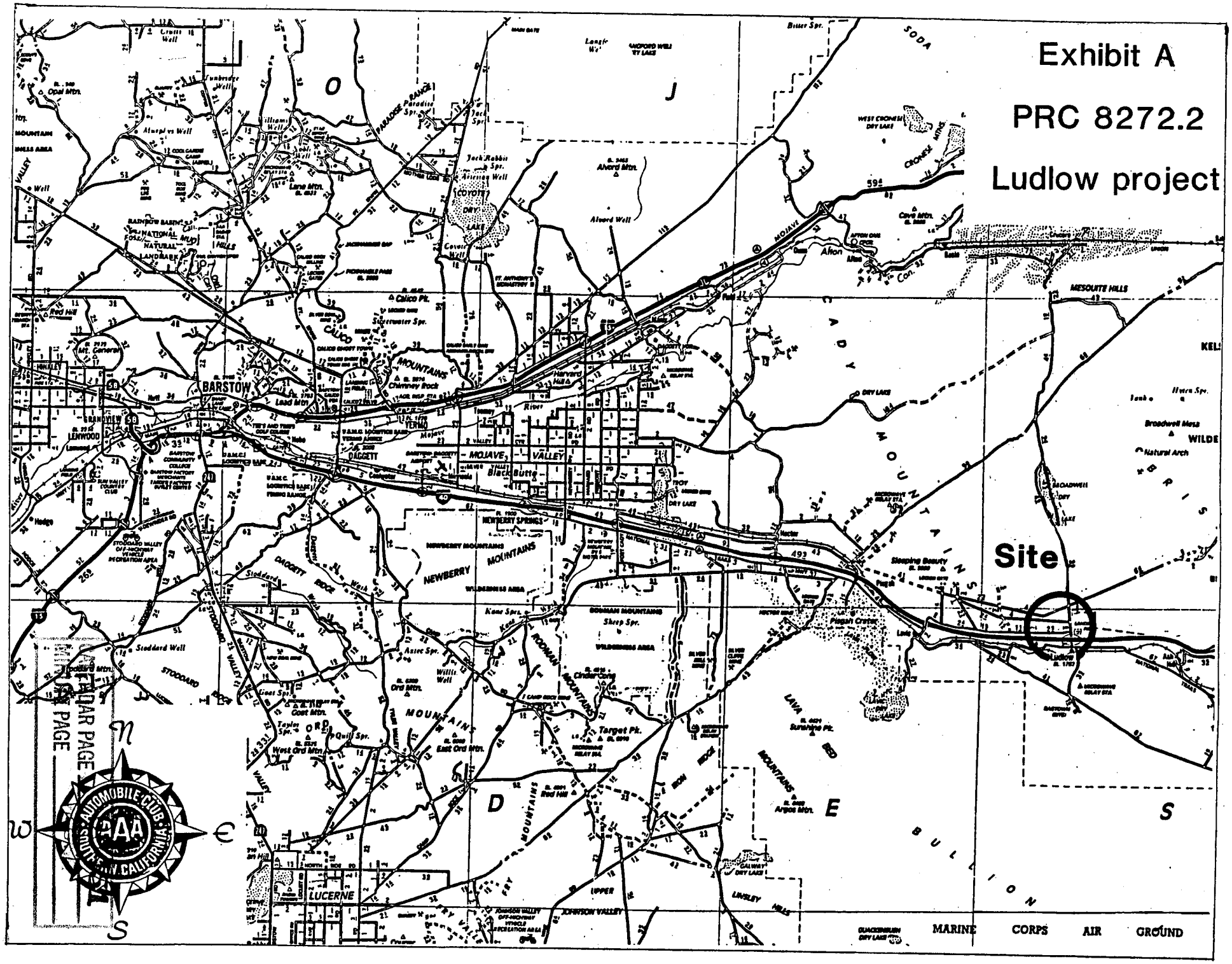
Exhibit A
PRC 8272.2
Ludlow project
Site
BARSTOW
LENWOOD
DAGGETT
MOJAVE VALLEY
NEWBERRY SPRINGS
NEWBERRY MOUNTAINS
CALICO MOUNTAINS
LUCERNE
MARINE CORPS AIR GROUND
MESQUITE HILLS
SODA MOUNTAINS
AUTOMOBILE CLUB SOUTHERN CALIFORNIA
AAA
CALENDAR PAGE
MAP PAGE