

Agenda

County of Inyo Board of Supervisors

Board of Supervisors Room
County Administrative Center
224 North Edwards
Independence, California

All members of the public are encouraged to participate in the discussion of any items on the Agenda. Anyone wishing to speak, please obtain a card from the Board Clerk and indicate each item you would like to discuss. Return the completed card to the Board Clerk before the Board considers the item (s) upon which you wish to speak. You will be allowed to speak about each item before the Board takes action on it.

Any member of the public may also make comments during the scheduled "Public Comment" period on this agenda concerning any subject related to the Board of Supervisors or County Government. No card needs to be submitted in order to speak during the "Public Comment" period.

Public Notices: (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

Note: Historically the Board does break for lunch, the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

May 8, 2012

9:00 a.m. INVOCATION by Supervisor Richard Cervantes

PLEDGE OF ALLEGIANCE

COMMENT (Portion of the Agenda when Board takes comment from the public and County staff)

1. **PUBLIC COMMENT**
2. **COUNTY DEPARTMENT REPORTS** (Reports limited to two minutes)
3. **INTRODUCTION** - Mr. Kevin Christensen, Deputy District Attorney, will be introduced to the Board.

CONSENT AGENDA (Approval recommended by the County Administrator)

COUNTY ADMINISTRATOR

4. **Emergency Services** – Request Board continue the local emergency as a result of the Inyo Complex Oak Creek Mud Flows.

HEALTH AND HUMAN SERVICES

5. **Behavioral Health Services** – Request approval of Amendment No. 1 to the Contract between the County of Inyo and Country Villa Merced Behavioral Health (for residential placement of adults in a locked facility, increasing the Contract by \$30,000 to an amount not to exceed \$60,000, for the period of July 1, 2011 through June 30, 2012; and authorize the Chairperson to sign.

SHERIFF'S DEPARTMENT

6. Request Board A) approve the 2012 Domestic Cannabis Eradication/Suppression Program Letter of Agreement in the amount of \$7,500, contingent upon the Board's adoption of a FY 12-13 Budget; and B) authorize the Sheriff to sign the agreement and all necessary documents.

WATER DEPARTMENT

7. Request approval to purchase 150 gals of Garlon 4 herbicide and 600 gallons of Improved JLB Oil Plus, with dye from Silverado Ranch Supply in an amount not to exceed \$25,746.87, including tax.

DEPARTMENTAL (To be considered at the Board's convenience)

8. **HEALTH AND HUMAN SERVICES – Behavioral Health Services** - Request Board find that consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the position exists in the Mental Health Budget as certified by Health and Human Services Director and concurred with by the County Administrator and the Auditor-Controller; B) where internal candidates meet the qualifications for the position of Program Chief, the position could possibly be filled by internal recruitment, however, an open recruitment may be more appropriate to ensure a sufficient number of qualified candidates apply; and C) approve the hiring of one Program Chief at Range 84 (\$5,777 - \$7,022).
9. **HEALTH AND HUMAN SERVICES – Behavioral Health Services** – Request approval of the Contract with Anthem Blue Cross, allowing the Health and Human Services Behavioral Health Division to bill for services provided for residents covered by programs of the County Medical Services Program (CMPS); and authorize the Chairperson to sign.
10. **COUNTY ADMINISTRATOR – Integrated Waste Management** – Request Board consider and provide direction to Staff on the request by the Big Pine Paiute Tribe of the Owens Valley to waive the gate and disposal fees for the disposal of building demolition debris.
11. **COUNTY ADMINISTRATOR – Personnel** - Request Board find that consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the position from the General Fund and, possibly, certain Non-General Fund departments depending on job responsibilities and associated budget allocations, as certified by the County Administrator and concurred with by the Auditor-Controller; B) the vacancy could possibly be filled by internal candidates meeting the qualifications for the position, however, an open recruitment is appropriate to ensure the position is filled with the best qualified candidate; and C) approve the hiring of one Deputy County Administrator at Range 88 (\$6,370 – \$7,740).
12. **COUNTY ADMINISTRATOR – Advertising County Resources** – Request Board authorize final payments for completed Community Project Sponsorship Grant Projects as follows: \$2,750 to the Lone Pine Chamber of Commerce for the Early Opener Trout Derby and \$2,500 to the Bishop Area Chamber of Commerce & Visitors Bureau for reprinting the Inyo County Treasure Map Brochure.
13. **CLERK-RECORDER** – Request Board A) amend the Inyo County Legislative Platform by adding No. 22 to the General Government Section to read: 22. **Oppose** legislation that minimizes, restricts and/or eliminates real property rights of private citizens; and B) approve the correspondence to the County's State Legislators opposing AB2299; and authorize the Chairperson to sign.
14. **PUBLIC WORKS** – Request Board A) approve a resolution titled "A Resolution of the Board of Supervisors Approving 1) the Mitigated Negative Declaration of Environmental Impact for the Procedures to Implement Assembly Bill 628 and 2) Approving the Implementing Procedures; B) certify that the subject Mitigated Negative Declaration of Environmental Impact was prepared in compliance with CEQA, was presented and considered by your Board, and reflects the independent judgment of the Board; C) approve the environmental document for the Implementation Procedures for Assembly Bill 628 based on all of the information in the public record and on recommendation of the Planning Commission; and D) approve the procedures to implement the Pilot Program authorized by Assembly Bill 628.
15. **PUBLIC WORKS** – Request Board declare an entrance panel main and meter section and two 225 amp circuit breakers as surplus and authorize the Purchasing Agent to sell the surplus equipment.
16. **PUBLIC WORKS** – Request Board A) amend the FY 2011-12 State Funded Road budget Unit 034601 by increasing estimated revenue in Federal Grants (Revenue Code #4555) by \$143,500 and increasing appropriations in Sabrina Bridge (Object Code #5711) by \$143,500; (4/5's vote required.); and B) approve amendment No. 1 to the Contract between the County of Inyo and Quincy Engineering, Inc. for the provision of engineering services for the Sabrina Bridge Replacement Project increasing the Contract by \$143,500 to a total contract amount of \$632,582 and extending the term of the contract from an ending date of June 30, 2012 to June 30, 2013, contingent upon the Board's adoption of a FY 2012-13 Budget; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

TIMED ITEMS (Items will not be considered before scheduled time)

WORKSHOPS AND PRESENTATIONS (To be considered at the Board's convenience)

CORRESPONDENCE - ACTION

17. **CALIFORNIA DEPARTMENT OF AGING** – Request the County provide additional information to complete its evaluation of the County's Area Agency on Aging proposal.

BOARD MEMBERS AND STAFF REPORTS

COMMENT (Portion of the Agenda when the Board takes comment from the public and County staff)

18. **PUBLIC COMMENT**

CLOSED SESSION

19. **PERSONNEL [PURSUANT TO GOVERNMENT CODE §54957]** - Public Employee Performance Evaluation – Title: Director of Health and Human Services.
20. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriffs Association (DSA) - Negotiators: Labor Relations Administrator Sue Dishion, Information Services Director Brandon Shults, and Planning Director Josh Hart.
21. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistants Association (EOAA) - Negotiators: Chief Probation Officer Jeff Thomson and Labor Relations Administrator Sue Dishion.
22. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICCOA) - Negotiators: Labor Relations Administrator Sue Dishion.
23. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Labor Relations Administrator Sue Dishion, Director of Child Support Services Susanne Rizo, Chief Probation Officer Jeff Thomson.
24. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** – Instructions to Negotiators re: wages, salaries and benefits – Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) – Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.
25. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators Association (LEAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

REPORT ON CLOSED SESSION AS REQUIRED BY LAW

CORRESPONDENCE - INFORMATIONAL



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

5

- Consent Hearing
 Departmental
 Correspondence Action
 Public
 Scheduled Time for
 Closed Session
 Informational

FROM: HEALTH & HUMAN SERVICES – Behavioral Health

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Approval of Amendment Number One (1) to the Contract between Inyo County Mental Health and Country Villa Merced Behavioral Health.

DEPARTMENTAL RECOMMENDATION:

Request Board approve Amendment Number One (1) to the contract between Inyo County Mental Health and Country Villa Merced Behavioral Health (for residential placement for adults in a locked facility) in an additional amount of \$30,000.00 for a total amount not to exceed \$60,000.00 for the period of July 1, 2011 through June 30, 2012, and authorize the Chairperson to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This Amendment is necessary to accommodate the placement at Country Villa of one additional adult who has been placed on LPS Conservatorship. We will then have two adults in this placement. Inyo County has a good working relationship with this facility and monitors the care of conserved adults carefully. We place persons in the least restrictive environment and try to move persons safely to a lower level as soon as possible. During this fiscal year we have moved a conserved adult placed at Country Villa to a lower level of care and we anticipate the movement of another individual within the next 3 months.

ALTERNATIVES:

Your Board could deny approval of Amendment Number One (1) to this contract. This would result in the possible loss of this placement option for LPS conserved adults. This would result in limited placement options, which might eventually necessitate placement in the State Hospital at great expense to the County.

OTHER AGENCY INVOLVEMENT:

Inyo County Courts

FINANCING:

100% Mental Health Realignment Funds (clients partially reimburse with SSI payments). This expense is budgeted in Mental Health (045200) in Support & Care (5508). No County General Funds.

APPROVALS

COUNTY COUNSEL:



AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)

Approved: yes 4/23/2012 Date:

AUDITOR/CONTROLLER:

ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)



Approved: yes 4/26/12 Date:

PERSONNEL DIRECTOR:

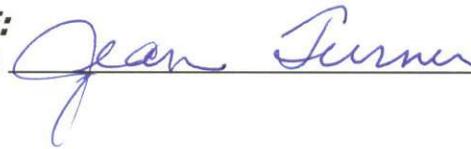
PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)



Approved: J 5/2/12 Date:

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 5-2-12

AMENDMENT NUMBER One TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Country Villa Merced Behavioral Health
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Country Villa Merced Behavioral Health, of Merced, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated June 14, 2011, on County of Inyo Standard Contract No. 157, for the term from July 1, 2011 to June 30, 2012.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

WHEREAS, such Agreement provides that it may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties thereto, if such amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Contractor hereby amend such Agreement as follows:

The first sentence of paragraph 3.D. Limit upon amount payable under Agreement, of the Agreement is amended to read as follows:

The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed \$60,000.00 (Sixty Thousand Dollars) (Hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

The effective date of this Amendment to the Agreement is April 1, 2012.

All the other terms and conditions of the Agreement are unchanged and remain the same.

**AMENDMENT NUMBER One TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Country Villa Merced Behavioral Health
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
____ DAY OF _____, _____.

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By:  _____

Signature

MARK PISKOBEL GC, S.A.M.A.A.G.S.K.

Type or Print

Dated: 4/17/12

APPROVED AS TO FORM AND LEGALITY:



County Counsel

APPROVED AS TO ACCOUNTING FORM:



County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:



Director of Personnel Services

APPROVED AS TO RISK ASSESSMENT:



County Risk Manager

**AGREEMENT BETWEEN COUNTY OF INYO
AND Country Villa Merced B.H. FOR THE PROVISION OF
RESIDENTIAL TREATMENT SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the Residential treatment services of Country Villa Merced Behavioral Health of Merced, California (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Gail Zwier, Ph.D., whose title is: Behavioral Health Director. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from July 1, 2011 to June 30, 2012 unless sooner terminated as provided below.

3. CONSIDERATION.

A. **Compensation.** County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. **Travel and per diem.** Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. **No additional consideration.** Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. **Limit upon amount payable under Agreement.** The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed \$30,000.00 Thirty Thousand Dollars (hereinafter referred to as "contract limit"). County expressly

reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety-nine dollars (\$1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9, attached hereto as Attachment C, upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to insure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, and municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates, and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of

Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.epls.gov>.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard, and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKERS' COMPENSATION.

Contractor shall provide Statutory California Workers' Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers, and employees shall be named as additional insured or a waiver of subrogation shall be provided.

9. INSURANCE.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the Contractor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability (including operations, products, and completed operations as applicable): \$1,000,000.00 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$ 1,000,000.00 per accident for bodily injury and property damage.
3. Employer's Liability: \$ 1,000,000.00 per accident for bodily injury or disease.
4. Errors and Omissions Liability: \$ 1,000,000.00 per occurrence.

C. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

D. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The County, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy (CG 20 10 11 85).
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers whether or not Contractor is named in any future suit arising out of the provision of services under this Agreement. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The County at its option may waive this requirement.

F. Verification of Coverage. Contractor shall furnish the County with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the County or on other than the County's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by the specifications at any time.

10. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

12. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, certification and licensing regulations, and directions. Records shall be permanent, either typewritten or legibly written in ink and shall be kept on all patients accepted for treatment. All health records of discharged patients shall be completed and filed within thirty (30) days after termination of each episode of treatment and such records shall be kept for a minimum of seven (7) years, except for minors whose records shall be kept at least until one (1) year after the minor has reached the age of 18, but in no case less than seven (7) years consistent with California Code of Regulations, Title 22 Section 75054, and 75343. All psychologist records shall also be maintained on each patient for seven years from the patient's discharge date, or in the case of a minor, seven years after the minor reaches 18 years of age consistent with California Business and Professions Code Section 2919.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, ancestry, gender, sexual orientation, age, national origin, or mental or physical handicap. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

14. PATIENTS RIGHTS.

Contractor shall comply with applicable patients' rights provisions in W&I Division 5, Part I; Title 9, California Code of Regulations, Subchapter 4; and other applicable law in the provision of services to patients hereunder. Contractor shall adopt and post in a conspicuous place a written policy on patient rights in accordance with Section 70707 of Title 22 of the California Code of Regulations and Section 5325.1 of the Welfare and Institutions Code. Complaints by patients or beneficiaries with regard to substandard conditions may be investigated by the County's Patients' Rights Advocate, County or State Department of Mental Health, or by the Joint Commission on Accreditation of Healthcare Organization, or such other agency, as required by law or regulation. Contractor is responsible for posting information on grievance and appeal processes accessible to individuals and their beneficiaries receiving services at the facility. Contractor shall make available for use by patients or beneficiaries at Contractor sites, without requiring either written or verbal request, grievance and appeal forms and Inyo County Mental Health self-addressed envelopes.

15. CANCELLATION.

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days' written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days' written notice of such intent to cancel to County.

16. ASSIGNMENT.

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

17. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days' written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

18. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-five (25) below.

19. CONFIDENTIALITY.

Contractor agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County.

20. CONFLICTS.

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

21. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

22. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

23. FUNDING LIMITATION.

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-five (25) (Amendment).

24. ATTORNEY'S FEES.

If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

25. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

26. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required or may desire, to make, shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

County of Inyo
Behavioral Health Department
162 J Grove Street Street
Bishop, California 93514 City and State
Contractor:
Country Villa Merced B.H. Name
1255 B Street Street
Merced, California 95340 City and State

27. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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AGREEMENT BETWEEN COUNTY OF INYO
AND Country Villa Merced B.H. FOR THE PROVISION OF
RESIDENTIAL TREATMENT SERVICES

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
14 DAY OF June, 2011.

COUNTY OF INYO

By: 

CONTRACTOR

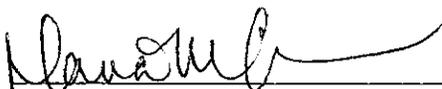
By: 
Signature

MARK S. ECKEL GENERAL COUNSEL FOR THE COUNTY
Print or Type Name

Dated: 6-14-11

Dated: 4/22/11

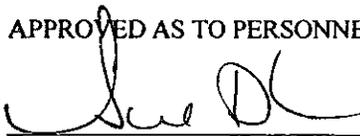
APPROVED AS TO FORM AND LEGALITY:


County Counsel

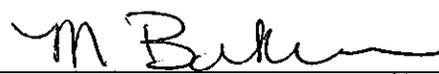
APPROVED AS TO ACCOUNTING FORM:


County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:


Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:


County Risk Manager

ATTACHMENT A

AGREEMENT BETWEEN COUNTY OF INYO
AND Country Villa Merced B.H. FOR THE PROVISION OF
RESIDENTIAL TREATMENT SERVICES

TERM:

FROM: 07/01/2011 TO: 06/30/2012

SCOPE OF WORK:

Residential care in a locked Psychiatric Skilled Nursing Facility provided by Country Villa Merced Behavioral Health Center. Facility shall maintain skilled nursing licensure and certification. Treatment services to include daily needs: food, bed, monthly barber, hairstyling services, and basic hygiene products. Special needs to be provided: activities, nursing services, special treatment program to provide a structured educational living environment, which provides for each residents psychosocial needs.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND Country Villa Merced B.H. FOR THE PROVISION OF
RESIDENTIAL TREATMENT SERVICES

TERM:

FROM: 07/01/2011

TO: 06/30/2012

SCHEDULE OF FEES:

Country Villa Merced Behavioral Care Center Rate Sheet
FISCAL YEAR 2011-2012

TOTAL DAILY RATE

Mental Health Rehabilitation Center/IMD Services (AB 360 rate)\$158.37 per bed day

Special Treatment Program Patch\$5.72 per bed day

TOTAL COST PER DAY WITH PATCH\$164.09 per bed day

Bed Hold Rate is \$158.55

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO
AND Country Villa Merced B.H. FOR THE PROVISION OF
RESIDENTIAL TREATMENT SERVICES

TERM:

FROM: 07/01/2011

TO: 06/30/2012

Form W-9

Request for Taxpayer
Identification Number and Certification
(See attached)



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerks Use Only

AGENDA NUMBER

6

Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Sheriff's Department

FOR THE BOARD MEETING OF: May 08, 2012

SUBJECT: Approval of the Drug Enforcement Administration (DEA) Domestic Cannabis Eradication/Suppression Grant

DEPARTMENTAL RECOMMENDATION:

Request the Board A) approve the 2012 Domestic Cannabis Eradication/Suppression Program Letter of Agreement in the amount of \$7,500; B) authorize Sheriff Lutze to sign the agreement and all necessary documents; C) contingent upon adoption of the FY12/13 budget.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The US Drug Enforcement is again offering local law enforcement agencies grants for cannabis eradication and suppression. Over the last couple of years, these funds have been instrumental in financing the eradication of the illegal marijuana grows found in our local mountains. This year's grant award is \$7,500. The grant award will be used for flight time, equipment, and overtime. The DEA grant will enhance the Inyo Narcotic Teams ability to detect, identify, and apprehend suspects involved in illicit cannabis cultivation.

ALTERNATIVES:

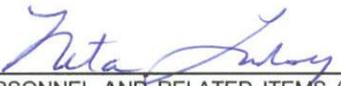
Deny the grant and use existing county funds for cannabis enforcement.

OTHER AGENCY INVOLVEMENT:

FINANCING:

The DEA Grant award is \$7,500 of federal funds designed to augment local law enforcement efforts to eradicate/suppress domestic cannabis. The funds will be budgeted in the FY 12/13 Domestic Cannabis Eradication/Suppression Budget Unit # 671507.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved:  _____ Date <u>4.23.12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved:  _____ Date <u>5/3/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 5-2-12



U. S. Department of Justice
Drug Enforcement Administration

Agreement Number: 2012-21

This Letter of Agreement (LOA) is entered into between the **INYO COUNTY SHERIFF'S DEPARTMENT**, hereinafter referred to as (**THE AGENCY**), and the DRUG ENFORCEMENT ADMINISTRATION (DEA) OF THE UNITED STATES DEPARTMENT OF JUSTICE (DOJ), hereinafter referred to as DEA, in reference to the following:

There is evidence that trafficking in controlled substances exists, and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the *State of California*. The parties hereto agree that it is to their mutual benefit to cooperate in locating and eradicating illicit cannabis plants and in the investigation and prosecution of those cases before the courts of the United States (U.S.) and the courts of the *State of California*. DEA, pursuant to the authority of 21 U.S.C. § 873, proposes to provide certain necessary funds and **THE AGENCY** is desirous of securing funds.

NOW, therefore, in consideration of the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

1. **THE AGENCY** will, with its own law enforcement personnel and employees, as hereinafter specified, perform the activities and duties described below:
 - a. Gather and report intelligence data relating to the illicit cultivation, possession, and distribution of cannabis.
 - b. Investigate and report instances involving the trafficking in controlled substances.
 - c. Provide law enforcement personnel for the eradication of illicit cannabis located within the *State of California*.
 - d. Make arrests and refer to the appropriate prosecutorial authority cases for prosecution under controlled substances laws and other criminal laws.
 - e. Send required samples of eradicated cannabis to the National Institute on Drug Abuse (NIDA) Potency Monitoring Project.
 - f. **MANDATORY requirement to utilize the Web-based DEA internet Capability Endeavor (DICE) or if applicable the Firebird based DEA Analysis/Response Tracking System (DARTS) to report all statistics and seizures per incident, to include the submission of significant items for de-confliction and information sharing purposes.**
 - g. Submit to DEA quarterly expenditure reports.
2. It is understood and agreed by the parties to this Agreement that the activities described in Subparagraphs a, b, c, d, e, f, and g above shall be accomplished with existing personnel, and that the scope of **THE AGENCY's** program with respect to those activities by such personnel shall be solely at **THE AGENCY's** discretion, subject to appropriate limitations contained in the budget adopted by

THE AGENCY.

3. DEA will pay to **THE AGENCY** Federal funds in the amount of **Seven Thousand Five Hundred Dollars (\$7,500.00)** for the period of **JANUARY 1, 2012, to DECEMBER 31, 2012**, to defray costs relating to the eradication and suppression of illicit cannabis. These Federal funds shall only be used for the eradication of illicit cannabis as provided in this agreement. **THE AGENCY** explicitly understands and agrees that Federal funds provided to **THE AGENCY** under this Agreement may not be used to defray costs relating to herbicidal eradication of cannabis without the advance written consent of DEA. These Federal funds shall not be used to fund any state, county or local program that authorizes cultivating marijuana in support of that program. While using the Federal funds provided to **THE AGENCY** under this Agreement for activities on Federal land, **THE AGENCY** agrees to notify the appropriate local office of the U.S. Department of Agriculture, (Forest Service) and the U.S. Department of the Interior (Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and/or Bureau of Reclamation) of **THE AGENCY's** presence on Federal land.

4. The Federal funds provided to **THE AGENCY** are primarily intended for payment of deputies'/officers' overtime while those deputies and officers are directly engaged in the cannabis eradication process, (**per DOJ policy, the annual maximum overtime reimbursement rate is based on the current year General Pay Scale / rest of the United States and cannot exceed 25% of a GS-12, Step 1; the funds shall only be used to pay the normal overtime rate, i.e. time and a half. The overtime reimbursement rate "shall not include any cost for benefits, such as retirement, FICA, or other expenses", which is specifically prohibited by DOJ**) and for per diem and other direct costs related to the actual conduct of cannabis eradication, examples of such costs includes rental of aircraft, fuel for aircraft, and minor repairs and maintenance necessitated by use to support cannabis eradication. These Federal funds are not intended primarily for the purchase of equipment, supplies. When DCE/SP funds are used to purchase supplies and equipment, those items must be directly related to the program activities. [*Agency Initial* _____]

All purchases of equipment and supplies must have approval from DEA. Procurement of these items is subject to the following approval authority: LOA expenditures up to \$2,500 will be approved at DEA Division level. When expenditures exceed \$2,500, prior to the purchase being made, the LOA must request authorization in writing, **through** the respective DEA Division, **to OMS**. Requests must include manufacturer specifications and pricing of the item (including tax, if applicable) to be purchased. OMS will notify the state/local agency whether or not the purchase has been approved. Unless specifically approved in advance, expenditures for equipment should not exceed 10% of the total Federal funds awarded. Though equipment/supplies may be specifically itemized in the Operation Plan, **they are not automatically approved for purchase**. All requests for purchases must be received in HQ/OMS by October 15th. Exemptions to any of these requirements must have prior HQ/OMS approval.

Per the DOJ, none of the funds allocated to you may be used to purchase promotional items, gifts, mementos, tokens of appreciation, or other similar items. These will include items justified as training aids if they are embossed, engraved or printed with the agency or program logos. Additionally, the use of DCE/SP funds for Demand Reduction expenses is no longer authorized.

5. In compliance with Section 623 of Public Law 102-141, **THE AGENCY** agrees that no amount

of these funds shall be used to finance the acquisition of goods or services (including construction services) unless **THE AGENCY**:

- (a) Specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of Federal funds that will be used to finance the acquisition; and
- (b) Expresses the amount announced pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to procurements for goods or services (including construction services) that have an aggregate value of \$500,000 or more.

6. If DEA approves the purchase of supplies (all tangible personal property other than "equipment" as defined by 28 C.F.R. § 66.3), and there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of this Agreement, and if the supplies are not needed for any other federally sponsored programs or projects, **THE AGENCY** shall compensate DEA for DEA's share.

7. If DEA approves the purchase of equipment (tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit) for the use of **THE AGENCY's** personnel engaged in cannabis eradication under this Agreement, **THE AGENCY** will use, manage, and dispose of the equipment in accordance with 28 C.F.R. §66.32.

8. Payment by DEA to **THE AGENCY** will be in accordance with a schedule determined by DEA and said payment will be made pursuant to the execution by **THE AGENCY** of a Request for Advance or Reimbursement (SF-270) and receipt of same by DEA. However, no funds will be paid by DEA to **THE AGENCY** under this Agreement until DEA has received to its satisfaction an accounting of the expenditures of all funds paid to **THE AGENCY** during the previous year Agreement. The final/closeout expenditure report will be documented on a Financial Status Report (SF-425) and an October thru December (FINAL) Accounting Form.

9. It is understood and agreed by **THE AGENCY** that, in return for DEA's payment to **THE AGENCY** of Federal funds, **THE AGENCY** will comply with all applicable Federal statutes, regulations, guidance, and orders, including OMB Circular A-102 (administrative requirements), OMB Circular A-87 (cost principles, codified at 2 C.F.R. Part 225), OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations", 28 C.F.R. Part 66 (grants management common rule), 2 C.F.R. § 2867 (non-procurement suspension & debarment), 28 C.F.R. Part 83 (Drug-Free Workplace Act common rule), 28 C.F.R. Part 69 (Byrd Anti-Lobbying Amendment common rule), and DOJ Order 2900.8A (June 20, 1990). The Financial Guide published by the office of the Comptroller, Office of Justice Programs, U.S. Department of Justice contains helpful information regarding compliance requirements. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. In conjunction with the beginning date of the award, the audit report period of **THE AGENCY** under the single audit requirement is 01/01/2012 through 12/31/2012.

10. **THE AGENCY** acknowledges that arrangements have been made for any required financial and compliance audits and audits will be made within the prescribed audit reporting cycle. **THE**

AGENCY understands that failure to furnish an acceptable audit as determined by the cognizant Federal agency may be a basis for denial of future Federal funds and/or refunding of Federal funds and may be a basis for limiting **THE AGENCY** to payment by reimbursement on a cash basis.

11. **THE AGENCY** shall maintain complete and accurate reports, records, and accounts of all obligations and expenditures of DEA funds under this Agreement in accordance with generally accepted government accounting principles and in accordance with state laws and procedures for expending and accounting for its own funds. **THE AGENCY** shall further maintain its records of all obligations and expenditures of DEA funds under this Agreement in accordance with all instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

12. **THE AGENCY** shall permit and have available for examination and auditing by DEA, the U.S. Department of Justice Office of Inspector General, the Government Accountability Office, and any of their duly authorized agents and representatives, any and all investigative reports, records, documents, accounts, invoices, receipts, and expenditures relating to this Agreement. In addition, **THE AGENCY** will maintain all such foregoing reports and records for three years after termination of this Agreement or until after all audits and examinations are completed and resolved, whichever is longer.

13. **THE AGENCY** agrees that an authorized officer or employee will execute and return to the DEA Regional Contractor, the Letter of Agreement (LOA); Request for Advance or Reimbursement (SF-270); Electronic Funds Transfer Memorandum; Certifications Regarding Lobbying; Debarment, Suspension, & Other Responsibility Matters; Drug Free Workplace Requirements (OJP Form 406 1/6); and the Assurances (OJP Form 4000/3). **THE AGENCY** acknowledges that this Agreement will not take effect and that no Federal funds will be awarded by DEA until DEA receives the completed LOA package.

14. Employees of **THE AGENCY** shall at no time be considered employees of the U.S. Government or DEA for any purpose, nor will this Agreement establish an agency relationship between **THE AGENCY** and DEA.

15. **THE AGENCY** shall be responsible for the acts or omissions of **THE AGENCY's** personnel. **THE AGENCY** and **THE AGENCY's** employees shall not be considered as the agent of any other participating entity. Nothing herein is intended to waive or limit sovereign immunity under other federal or state statutory or constitutional authority. This Agreement creates no liability on the part of the DEA, its agents or employees, or the U.S. Government for any claims, demands, suits, liabilities, or causes of action of whatever kind and designation, and wherever located in the *State of California* resulting from the DCE/SP funded by DEA.

16. **THE AGENCY** shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the U.S. Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H, and I.

17. Within thirty (30) days after termination of the Agreement, **THE AGENCY** will prepare an October thru December (FINAL) Accounting Form and a Federal Financial Report SF-425, itemizing the breakdown of final expenditures. The October thru December (FINAL) Accounting Form and

the SF-425, along with a refund check, payable to DEA for any unexpended funds which were advanced by DEA pursuant to this Agreement, will be returned to the DEA Regional Contractor by January 31st.

18. Upon submission of the October - December (FINAL) Accounting Form and Federal Financial Report SF- 425 to your regional contractor for the preceding year, a copy of the general ledger and the underlying supporting documentation reflecting the expenditures for equipment in excess of \$2,500, that was previously approved by OMS, and the expenses associated with the rental or leasing of vehicles or aircraft must be attached.

19. The duration of this Agreement shall be as specified in Paragraph 3. This Agreement may be terminated by either party for good cause shown after 30 day written notice to the other party. All obligations that are outstanding on the above prescribed termination date or on the date of any thirty (30) day notice of termination shall be liquidated by **THE AGENCY** within sixty (60) days thereof, in which event DEA will only be liable for obligations incurred by **THE AGENCY** during the terms of this Agreement. In no event shall **THE AGENCY** incur any new obligations during the period of notice of termination. **THE AGENCY** shall return to DEA all unexpended funds forthwith after the sixty (60) day liquidation period.

20. **THE AGENCY** must be registered in the Central Contractor Registration (CCR) to receive payment of Federal funds. There are two steps to registering in CCR. **First, THE AGENCY** must have a Data Universal Numbering System (DUNS) number. [A "+4 extension" to a DUNS number (DUNS+4) is required when there is a need for more than one bank/electronic funds transfer account for a location.] A DUNS number may be obtained via the internet (<http://fedgov.dnb.com/webform>) or by phone (U.S. and U.S. Virgin Islands: 1-866-705-5711; Alaska and Puerto Rico: 1-800-2343867). **Second, THE AGENCY** must then register with CCR via the internet www.ccr.gov. Questions regarding the internet registration process may be directed to 1-866-606-8220 (follow the prompts for CCR). Both the DUNS number and registration in CCR are free of charge.

Note: It is THE AGENCY's responsibility to update their CCR registration annually or whenever a change occurs.

THE AGENCY's current DUNS No. is 010706687.

THE AGENCY's opportunity to enter into this Agreement with DEA and to receive the Federal funds expires on June 1, 2012.

INYO COUNTY SHERIFF'S DEPARTMENT

By: _____

Title: _____

Date: _____

Agency, please submit original signed LOA & associated paperwork to your DEA Regional Contractor.

DRUG ENFORCEMENT ADMINISTRATION

By: _____

Date: _____

Anthony D. Williams
Special Agent in Charge
San Francisco Field Division

SAC, please submit original signed LOA & associated paperwork to your Fiscal Office.

**DEA DIVISIONAL FISCAL CLERK MUST INPUT INTO UFMS AND COMPLETE
THE BOTTOM OF THIS SECTION**

ACCOUNTING CLASSIFICATION/OBLIGATION NO.; SLA-G2/001-I:
12/12/S1R/OM/8210000/SLA-G2/001-IB/DCE/OPS

CT No. _____

DP No. _____

UFMS INPUT DATE: _____, BY: _____

Fiscal, please submit original signed LOA & associated paperwork to your DEA Regional Contractor.

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

OMB APPROVAL NO. 0348-004		PAGE 1 OF 2 PAGES
1. TYPE OF PAYMENT REQUESTED	a "X" one or both boxes	
	<input checked="" type="checkbox"/> ADVANCE <input type="checkbox"/> REIMBURSEMENT	
	b "X" the applicable box	
	<input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Drug Enforcement Administration		2. BASIS OF REQUEST <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL
4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY 2012-21		5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST
6. EMPLOYER IDENTIFICATION NUMBER 95-6005445	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST
		FROM (month, day, year) January 1, 2012
		TO (month, day, year) December 31, 2012
9. RECIPIENT ORGANIZATION <i>Name:</i> Inyo County Sheriff's Department <i>Number and Street:</i> PO Box 1392 <i>City, State and ZIP Code:</i> Bishop CA 93515		10. PAYEE (Where check is to be sent if different than Item 9) <i>Name:</i> <i>Number and Street:</i> <i>City, State and ZIP Code:</i>

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ➤	(a) Original LOA	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	\$7,500.00			\$7,500.00
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)	\$7,500.00			\$7,500.00
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)	\$7,500.00			\$7,500.00
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)	\$7,500.00			\$7,500.00
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances	1st month			
	2nd month			
	3rd month			

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	

AUTHORIZED FOR LOCAL REPRODUCTION

(Continued on Reverse)

STANDARD FORM 270 (Rev. 7-97)
Prescribed by OMB Circulars A-102 and A-110

13. **CERTIFICATION**

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.	SIGNATURE OR AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (AREA CODE, NUMBER AND EXTENSION)

This space for agency use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

- | <u>Item</u> | <u>Entry</u> |
|---|--|
| 2 | Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis. |
| 4 | Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement. |
| 6 | Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency. |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. |
| 8 | Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested. |
| <p>Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.</p> | |
| 11 | The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or |

- | <u>Item</u> | <u>Entry</u> |
|-------------|---|
| | activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. |
| 11a | Enter in "as of date," the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees. |
| 11b | Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement. |
| 11d | Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance. |
| 13 | Complete the certification before submitting this request. |



U.S. Department of Justice
Office of Justice Programs
Office of the Comptroller

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

I. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS
(DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connec-

tion with a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620--

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant,

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ___ if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ___ if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620--

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address: Inyo County Sheriff's Office
P.O. Drawer S., 550 S. Clay St.
Independence, CA. 93526

Domestic Cannabis Eradication/Suppression

95-6005445



2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

4. Typed Name and Title of Authorized Representative

5. Signature

6. Date

Memorandum



Subject Electronic Funds Transfer (DFN: 601-13)	Date April 17, 2012
---	----------------------------

To
All Domestic Cannabis Eradication/Suppression Program (DCE/SP) Participating Agencies

From *L. Alan Bassham*
L. Alan Bassham
Chief, Investigative Support Section

Funding for the Domestic Cannabis Eradication/Suppression Program (DCE/SP) is only available by electronic transfer. Funds will be transferred directly into the Letter of Agreement (LOA) agency bank account. In order to process electronic transfers the following information must be provided below:

Agency Name on Bank Account: Inyo County Treasury General

Account Number: 2740013710

Name of Bank/Financial Institution: UNION BANK

Address of Bank/Financial Institution: 445 S. Figueroa St., 8th Floor Los Angeles, CA. 90071

Telephone Number of Bank/Financial Institution: (800) 798-6466

Contact Person of Bank/Financial Institution: Eileen Lew Perez

Bank/Financial Institution ABA Number: 12200496

Diane Fortney Asst. Treasurer/Tax Collector

Authorized Agency Representative - Name & Title

Diane Fortney
Signature of Authorized Agency Representative

4/23/12
Date

(This original form and original Letter of Agreement Package must be returned to your regional contractor for processing. Please retain a copy for your records.)



ASSURANCES

The Applicant hereby assures and certifies compliance with all Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-87, A-110, A-122, A-133; E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements - 28 CFR, Part 66, Common rule, that govern the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information may be required.
2. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally - assisted programs.
3. It will comply with provisions of Federal law which limit certain political activities of employees of a State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants. (5 USC 1501, et seq.)
4. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act if applicable.
5. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
6. It will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.
8. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
9. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
10. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569 a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
11. It will comply, and assure the compliance of all its subgrantees and contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1; and all other applicable Federal laws, orders, circulars, or regulations.
12. It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.
13. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.
15. It will provide an Equal Employment Opportunity Program if required to maintain one, where the application is for \$500,000 or more.
16. It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

Signature _____

Date _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

7

XX Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: WATER DEPARTMENT/SALT CEDAR PROJECT

FOR THE BOARD MEETING OF: **May 8, 2012**

SUBJECT: **PURCHASE OF HERBICIDE AND OIL DILUENT**

DEPARTMENTAL RECOMMENDATION:

It is requested that your Board approve the purchase of:

- One hundred fifty (150) gallons of Garlon 4 herbicide and six hundred (600) gallons of Improved JLB Oil Plus, with dye, from Silverado Ranch Supply

The total amount of the purchase order will be \$25,746.87 including tax; this purchase will be for use in the control of saltcedar.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Salt Cedar Control Program has the need to purchase herbicide and diluent for the ongoing control of saltcedar. The Water Department requested pricing from Red River Specialties, Inc., Silverado Ranch Supply, Target Specialty Products and Wilbur-Ellis for the chemicals needed. The following bid was received:

Vendor	Garlon 4 Per Gallon	Improved JLB Oil Plus Per Gallon
Red River Specialties	99.50	14.95

ALTERNATIVES:

Not authorize the purchase order and require re-bidding of the chemicals.

OTHER AGENCY INVOLVEMENT:

Purchasing and Auditor-Controller

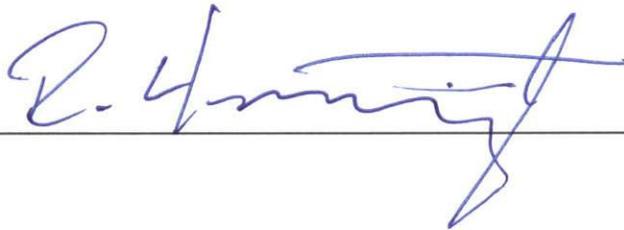
FINANCING:

There are sufficient funds in the Saltcedar Project Budget Unit (024502) and the Wildlife Conservation Grant Budget Unit (621700) to cover these purchases contingent on approval of third quarter budget amendments.

APPROVALS

COUNTY COUNSEL: N/A	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>5/1/12</u>
PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 4/26/2012



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 8
--

Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: HEALTH & HUMAN SERVICES - Behavioral Health Division

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Request for authorization to hire one full time Program Chief in the Behavioral Health division.

DEPARTMENTAL RECOMMENDATION:

Request that Board find that consistent with the adopted Authorized Position Review Policy:

- 1) the availability of funding for this requested position exists in the Mental Health Budget, as certified by the Health and Human Services Director, and concurred with by the County Administrator and the Auditor-Controller; and
- 2) where internal candidates meet the qualifications for the position, the vacancy could possibly be filled through internal recruitments, though an open recruitment may be more appropriate to ensure a sufficient number of qualified candidates apply; and
- 3) approve the hiring of one Program Chief at Range 84, (\$5,777-\$7,022).

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Adult Program Chief position was vacated due to the retirement of an employee in 2008. The requirements of this position state that the candidate must be a licensed psychotherapist with supervisory experience. The position provides clinical and administrative oversight of the adult services staff including any interns or volunteers, provides required initial and annual clinical assessment of all adult clients, provides oversight of documentation of services and assists with treatment planning, oversees the adult clinical staffing meetings and the subsequent authorization of services and staff assignment, oversees scheduling and provides both planned and 24 hour crisis mental health services, and oversees the Quality Improvement Program necessary to meet the extensive requirements of the MediCal Managed Care Plan. The funding for this position includes MediCal, MHSA and Mental Health Realignment funds and ensures compliance with State and Federal requirements for the continuance of these funds.

This vacant position was advertised for over two years, but was not filled with a qualified applicant. In the meantime, HHS continued to look at other options to supervise adult program services staff and to ensure quality assurance activities were performed. The Behavioral Health Director has provided direct supervision (including weekly clinical supervision) of five adult program staff in addition to the eight positions she normally oversees. She also oversees the Patients' Rights Advocate as well as providing some oversight for interns/volunteers hours. For the quality improvement functions, a contract was in place with a licensed psychotherapist for two years. In 2011 this therapist filled another Behavioral Health psychotherapist position after an employee retired. While this helps us to achieve the Quality Improvement tasks, it takes away from some direct service capability. Also in 2011, HHS merged funding for the Program Chief with the Public Health Nurse Practitioner to help position both divisions for an integrated healthcare model. Again the position was not filled. HHS now hopes that with a better job market due to the economic downturn, we may have more qualified applicants apply for this position than we had when the Program Chief was last actively recruited. We are particularly interested in trying to attract a person who is licensed as a Licensed Clinical Social Worker as we have several persons in the department that are able to register as

interns in this area. The Behavioral Health Director would attempt to elicit the support of contacts at the state level who might be aware of candidates as well as continuing to pursue other ways of advertising this position.

The ongoing lack of a Program Chief is limiting the ability of the Behavioral Health Director to manage and support the many important areas and duties in which she is involved and must perform. Good clinical teamwork takes intensive supervision and coordination. Due to the increased amount of time spent directly supervising clinical work, many other important administrative tasks are not able to be given the attention or focus needed on an ongoing basis. For example, as we move further into integrating behavioral health care and physical healthcare as well as continuing to explore the impact of AB109, there is a need to work further with county and community partners to develop the most effective strategies to accomplish this. Also, it is important to stay current with behavioral health issues at the state level and to understand requirements and have a voice in making our needs heard. There are also plans to be written and a need to identify the strategies that result in the best wellness outcomes for our County, including best practices. Finally, there is the need to ensure that our workforce is trained in these practices. As attention is turned to the clinical work, the administrative tasks are strained and when attention is turned to administrative tasks, clinical work is strained. An adult Program Chief would focus on the important task of providing and supporting the provision of excellent direct services in a parallel manner to that which is provided by the Child and Family Program Chief.

ALTERNATIVES:

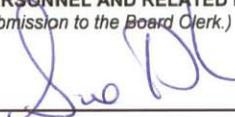
Your Board could deny this request. This would impact our ability to both best serve persons with mental illness within our community and to respond to crisis and urgent situations while addressing the administrative and "big picture" issues necessary to keep us current with the direction of behavioral healthcare.

OTHER AGENCY INVOLVEMENT:

Behavioral Health works closely with partners from the schools and probation for work with youth and with partners in law enforcement, probation, hospitals, and other community providers in work with adults and older adults.

FINANCING:

MediCal, EPSDT, client fees and Mental Health Realignment funds. This position is budgeted in Mental Health (045200) in the Salaries & Benefits object codes. No County General Fund.

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i>  Approved: <u>Yes</u> Date: <u>4/26/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i>  Approved: <u>J</u> Date: <u>4/18/12</u>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 4-27-12



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
9

- Consent Hearing
 Scheduled Time for
- Departmental
 Closed Session
- Correspondence Action
 Public
- Informational

FROM: HEALTH & HUMAN SERVICES, Behavioral Health

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Approval of Contract to Provide CMSP and Path2Health Services

DEPARTMENTAL RECOMMENDATION:

Request your Board approve the contract with Anthem Blue Cross, allowing the HHS Behavioral Health Division to bill for services provided for residents covered by programs of the County Medical Services Program (CMSP); and authorize the Chairman to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The County Medical Services Program (CMSP) has two medical insurance programs for indigent adults: the new Path2Health program and the former CMSP residual program for those not qualifying for Path2Health. CMSP contracts with Anthem Blue Cross to administer both programs; so, this agreement includes both programs and determines access to a defined set of medically necessary mental health and addiction treatment services for its beneficiaries. Licensed mental health practitioners and certified addiction counselors may become "fee for service" providers under this agreement. As Behavioral Health has historically provided crisis and medically necessary behavioral health services to this population of indigent adults, we desire to enter into this provider agreement to seek some reimbursement for services rendered. Persons eligible for these medically necessary services are primarily unattached males who have evidenced co-occurring mental health and addiction issues. We currently provide additional support for these beneficiaries using our Wellness Center sites and support groups. Services must be preauthorized by Anthem Blue Cross. Our first step in this process is to enter into a practitioner agreement with Anthem Blue Cross. In the past, we have been a provider for Anthem Blue Cross as part of the Healthy Families program. Our participation as a provider will give us some experience and knowledge regarding reimbursement benefits and challenges that may occur in the future with integrated care and health care reform.

ALTERNATIVES:

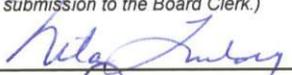
Your Board could choose not to grant permission to enter into this provider agreement. We would then continue to provide these services without any reimbursement. We would also miss the opportunity to gain knowledge regarding this managed care relationship and related challenges and opportunities.

OTHER AGENCY INVOLVEMENT:

Social Services, Probation and Primary Care Partners.

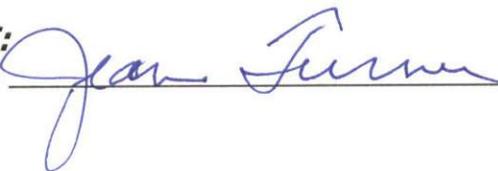
FINANCING:

County Medical Services Program funds and Federal Funds (under the 1115 Waiver). This funding would be recognized as revenue in the Mental Health Budget (045200) in Insurance Payments (4747).

APPROVALS	
COUNTY COUNSEL: 	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.) Approved: <u>yes</u> Date: <u>4/2/2012</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)  Approved: <u>yes</u> Date: <u>4/26/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)  Approved: <u>✓</u> Date: <u>4/19/12</u>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 4-27-12

**ANTHEM BLUE CROSS
PATH2HEALTH and COUNTY MEDICAL
SERVICES PROGRAM PARTICIPATING
MENTAL HEALTH
PRACTITIONER AGREEMENT**

**Anthem Blue Cross Path2Health and County Services Medical Program (CMSP)
Participating Mental Health Practitioner Agreement**

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**ANTHEM BLUE CROSS
PATH2HEALTH and COUNTY MEDICAL SERVICES PROGRAM PARTICIPATING
MENTAL HEALTH PRACTITIONER AGREEMENT**

This AGREEMENT is effective on _____ between BLUE CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS and Affiliates ("BLUE CROSS") and Inyo Co. Beh. Health("PRACTITIONER").

I. RECITALS

- 1.1 BLUE CROSS is a California corporation licensed by the Department of Managed Health Care with the authority to enter agreements with PRACTITIONER to provide services pursuant to certain Benefit Agreements.
- 1.2 PRACTITIONER is a duly licensed psychologist, clinical social worker, marriage-family therapist or Certified Substance Abuse Counselor.
- 1.3 BLUE CROSS's Affiliate, Anthem Blue Cross Life & Health Insurance Company ("BC LIFE") has or is about to enter into an agreement with the County Medical Services Program Governing Board ("Governing Board") to act as a third party administrator to administer health care services, including without limitation, claims processing, provider contracting and utilization management, on a self-funded basis for indigent adults served by the Path2Health program and County Medical Services Program("CMSP") in certain California counties.
- 1.4 BLUE CROSS intends by entering into this Agreement to make available behavioral health care to persons under the Path2Health program and the County Medical Service Program ("CMSP") by contracting with PRACTITIONER. PRACTITIONER intends to provide such quality behavioral health care in a cost-efficient manner.

II. DEFINITIONS

- 2.1 "Acute Psychiatric Facility" means a psychiatric hospital, designated psychiatric unit of a general acute hospital, or psychiatric health facility, licensed by the State of California to provide twenty-four (24) hour acute inpatient care for persons with psychiatric disorders.
- 2.2 "Affiliate(s)" means a corporation or other organization owned or controlled either directly or through parent or subsidiary corporations, by BLUE CROSS, or under common control with BLUE CROSS. BC Life is one such Affiliate of BLUE CROSS.
- 2.3 "Behavioral Health Services" means services for the evaluation and treatment of Mental Disorders and/or Chemical Dependency.
- 2.4 "Benefit Agreement(s)" means documents prepared and distributed by the Governing Board that describe and explain the health care benefits that BLUE CROSS administers for Members. The Governing Board retains the unilateral right to modify the benefit structure of Path2Health and CMSP.
- 2.5 "Case Management/Utilization Management Program" means the procedures established and administered by BLUE CROSS to manage the plan benefits through reimbursement of services that are Medically Necessary, appropriate, and cost-effective.
- 2.6 "Utilization Management" means a function performed by either BLUE CROSS or an organization or entity acting as an agent of BLUE CROSS, and selected by BLUE CROSS to review and approve whether Medical Services provided, or to be provided, are Medically Necessary.

- 2.7 "Case Manager" means a professionally qualified person, employed by or under contract to BLUE CROSS to perform Case Management/Utilization Management services involving Members, hospitals/facilities, programs, outpatient services, and practitioner services.
- 2.8 "Case Management" means a process of arranging, negotiating, and coordinating long term high cost and/or complex care through benefit substitution, based upon the Member's Benefit Agreement.
- 2.9 "Chemical Dependency" generally means those conditions, not including those covered as Mental Disorders, in the International Classification of Diseases as diagnostic codes 290-319. These conditions include, but are not limited to: (1) psychoactive substance induced mental disorders; (2) psychoactive substance use dependence; and (3) psychoactive substance use abuse. Chemical Dependency does not include addiction to, or dependency on, tobacco or food substances (or dependency on items not ingested).
- 2.10 "Coordination of Benefits" means the method of determining primary responsibility for payment of covered services under applicable law and regulations when more than one carrier may have liability for payment for services received by Member of BLUE CROSS.
- 2.11 "County Medical Services Program" (CMSP) means the program governed by the Governing Board to provide health care services to medically indigent adults that are not eligible for Path2Health.
- 2.12 "Emergency" means a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including without limitation severe pain) such that the patient may reasonably believe that absence of immediate medical or psychiatric attention could reasonably result in any of the following:
- (1) Placing the patient's health in serious jeopardy; or
 - (2) Other serious medical consequences; or
 - (3) Serious impairment to bodily functions; or
 - (4) Serious and/or permanent dysfunction of any bodily organ or part.
- In addition, for behavioral health purposes, the above definition shall be supplemented by the following: "Emergency" shall also mean a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity which the Member reasonably perceives could result in the Member's actions causing harm to the Member or placing others in danger.
- 2.13 "Facility" means any general acute hospital, psychiatric hospital, psychiatric health facility, or other BLUE CROSS care facility, or outpatient setting.
- 2.14 "Hospital Services" means those acute care inpatient and hospital outpatient services which are covered by the Benefit Agreement. Hospital Services do not include long-term non-acute care.
- 2.15 "Medically Necessary" means procedures, supplies, equipment or services that BLUE CROSS determines to be:
- (1) Appropriate for the symptoms, diagnosis or treatment of the medical condition; and
 - (2) Provided for the diagnosis or direct care and treatment of the medical condition; and
 - (3) Within standards of good medical practice within the organized medical community; and
 - (4) Not primarily for the convenience of the Member, the Member's physician or another provider; and
 - (5) The most appropriate procedures, supplies, equipment or service must satisfy the following criteria: (i) there must be valid scientific evidence demonstrating that the expected health benefits from the procedure, supply, equipment or service are clinically significant and produce a greater likelihood of benefit, without a disproportionately greater risk of harm or

complications, for the Member with the particular medical condition being treated than other alternatives; and (ii) generally accepted forms of treatment that are less invasive have been tried and found to be ineffective or are otherwise unsuitable; and (iii) for hospital stays, acute care as an inpatient is necessary due to the kind of services the Member is receiving or the severity of the medical condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting.

- 2.16 "Medical Services" means those Medically Necessary Behavioral Health Services provided by a Participating Practitioner and covered by a Benefit Agreement that are within the scope of the PRACTITIONER'S license.
- 2.17 "Member" means "Path2Health Enrolled Beneficiaries" and "CMSP Enrolled Beneficiaries", as defined in the contract between BC LIFE and the Governing Board, who are eligible to receive Medical Services pursuant to the County Medical Services Program and Path2Health, respectively.
- 2.18 "Mental Disorders" generally means those conditions, not including those covered as Chemical Dependency, in the International Classification of Diseases and diagnostic codes 290-319. These conditions include, but are not limited to; (1) schizophrenia, (2) manic-depressive and other conditional usually classified in the medical community as psychoses, (3) depressive phobic, manic, and anxiety conditions, (4) bipolar affective disorders including mania and depressions, (5) obsessive-compulsive disorders, and (6) post-traumatic stress disorders.
- 2.19 "Path2Health" means the Low Income Health Program offered by the Governing Board pursuant to an agreement between the Governing Board and the State Department of Health Care Services (DHCS). Path2Health provides health care services to certain medically indigent adults that are eligible to receive Medical Services. The program is authorized by DHCS' 1115 Federal Medicaid Waiver and state law and provides federal Medicaid matching funds for Medical Services provided to eligible members.
- 2.20 "Participating Hospital" means a hospital which has entered into an agreement as a Path2Health/CMSP Participating Provider with BLUE CROSS to provide Hospital Services to Members.
- 2.21 "Participating Practitioner" means a psychologist, clinical social worker, marriage-family therapist, or certified substance abuse counselor who has entered into an agreement as a PATH2HEALTH/CMSP with BLUE CROSS to provide Medical Services to Members as a Participating Provider and who is duly licensed in the State of California or other applicable State.
- 2.22 "Participating Provider" means a hospital, other health facility, physician, physician group, federally qualified health center (FQHC), rural health center (RHC), Indian health services (IHC) or other health professional which has entered into an agreement with BLUE CROSS to provide health care services to Members at prospectively determined rates.

III. RELATIONSHIP BETWEEN BLUE CROSS AND PRACTITIONER

- 3.1 BLUE CROSS and PRACTITIONER are independent entities. Nothing in this Agreement shall create or be construed to create a relationship of employer and employee or principal and agent or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.
- 3.2 BLUE CROSS and PRACTITIONER agree that PRACTITIONER shall maintain a practitioner/patient relationship with each Member that PRACTITIONER treats. PRACTITIONER shall be solely responsible for the Member's treatment and medical care.

- 3.3 Nothing in this Agreement is intended to be construed as encouraging PRACTITIONER to restrict Medically Necessary covered Medical Services or to limit clinical dialogue between PRACTITIONER and Members. PRACTITIONER may freely communicate with Members regarding the treatment options available to them, including medication treatment options, regardless of benefit coverage limitations. Nothing in this Agreement shall create or be construed to create any rights or remedies in any third party, including but not limited to a Member or a Participating PATH2HEALTH and CMSP Practitioner other than PRACTITIONER, except as otherwise provided herein.
- 3.4 PRACTITIONER consents to the memorializing of his/her legal obligations with BLUE CROSS and each particular Affiliate in one or more separate written agreements that shall not alter the substance of those obligations.
- 3.5 PRACTITIONER agrees that each such arrangement by which PRACTITIONER performs services for members, enrollees, employees, dependents and other beneficiaries who are covered by an Affiliate's Benefit Agreement or by an Other Payor ("Covered Persons") that utilizes the BLUE CROSS Managed Care Network shall constitute an independent legal relationship between PRACTITIONER and that Affiliate or Other Payor.
- 3.6 PRACTITIONER hereby expressly acknowledges his/her understanding that this Agreement constitutes a contract between PRACTITIONER and BLUE CROSS as an independent corporation, operating under a license with the Blue Cross and Blue Shield Association, an Association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BLUE CROSS to use the Blue Cross service mark in the State of California and that BLUE CROSS is not contracting as the agent of the Association. PRACTITIONER further acknowledges and agrees that he/she has not entered into this Agreement based upon representations by any person other than BLUE CROSS and that no person, entity, or organization other than BLUE CROSS shall be held accountable or liable to PRACTITIONER for any of BLUE CROSS' obligations to PRACTITIONER created under this Agreement. This section shall not create any additional obligations whatsoever on the part of BLUE CROSS, including under Section 4.18 herein, other than those obligations created under other provisions of this Agreement.
- 3.6 If PRACTITIONER is a participating PATH2HEALTH and CMSP practitioner under any other BLUE CROSS Participating PATH2HEALTH or CMSP Provider Agreement, this Agreement shall supersede such prior agreement and the provisions of this Agreement shall control.

IV. PRACTITIONER SERVICES AND RESPONSIBILITIES

- 4.1 PRACTITIONER shall provide Medical Services to Members which are Medically Necessary and which are in accordance with the applicable Benefit Agreement and this Agreement.
- 4.2 PRACTITIONER shall, to the extent possible, seek, accept and maintain evidence of assignment of benefits for the payment of Medical Services provided to Members by PRACTITIONER under the applicable Benefit Agreement.
- 4.3 PRACTITIONER shall confirm each Member's eligibility status prior to providing Medical Services. PRACTITIONER shall confirm that the person presenting the BLUE CROSS identification card or the State of California Beneficiary Identification Card is the Member or Covered Person named on the card. BLUE CROSS shall not be responsible for the fraudulent or deceptive use of either identification card.
- 4.4 If PRACTITIONER arranges for admission of Members to inpatient hospital services, PRACTITIONER agrees to arrange admission only to Participating PATH2HEALTH and CMSP Hospitals unless otherwise determined by PRACTITIONER and agreed to in writing by BLUE CROSS. In case of an Emergency, as that term is defined in this Agreement, Practitioner agrees to use

- a Participating PATH2HEALTH and CMSP hospital whenever possible. Other exceptions to the use of Participating PATH2HEALTH and CMSP Hospitals shall be approved pursuant to the provisions of Article VII.
- 4.5 PRACTITIONER agrees to refer Members to other Participating PATH2HEALTH and CMSP Providers unless otherwise determined by PRACTITIONER and agreed to in writing by BLUE CROSS.
- 4.6 If PRACTITIONER, in any case other than an Emergency, arranges for admission of a Member to a non-Participating PATH2HEALTH or CMSP Hospital or refers a Member to a non-Participating PATH2HEALTH CMSP Practitioner, PRACTITIONER will obtain authorization from BLUE CROSS Utilization Management Program as set forth in the BLUE CROSS PATH2Heath/CMSP Provider Operations Manual.
Additionally, PRACTITIONER agrees,
- (1) To use his or her best efforts to require any non-Participating PATH2HEALTH or CMSP Practitioner to whom a Member is referred to abide by the terms of this Agreement.
 - (2) That unless BLUE CROSS explicitly agrees otherwise, he or she is a Participating PATH2HEALTH or CMSP Provider at all locations and under all tax I.D. Numbers. Furthermore, PRACTITIONER agrees to notify BLUE CROSS in writing of each separate tax I.D. number under which PRACTITIONER receives compensation.
- 4.7 PRACTITIONER agrees to comply with all requirements set forth in the BLUE CROSS PATH2HEALTH/CMSP Providers Operations Manual to be provided by BLUE CROSS. The PATH2HEALTH/CMSP Provider Operations Manual is incorporated herein by this reference.
- 4.8 PRACTITIONER agrees to participate in the Utilization Management provided in Article VII, and with such amendments as PRACTITIONER may be notified of, and to abide by decisions resulting from that review subject of reconsideration, review and arbitration provided in Section 7.3.
- 4.9 PRACTITIONER has accurately completed the Participating PATH2HEALTH/CMSP practitioner application. PRACTITIONER shall promptly notify BLUE CROSS of any change in principal place of business, PRACTITIONER shall notify BLUE CROSS at least within forty-five (45) days prior to such change.
- 4.10 PRACTITIONER agrees to provide Medical Services to Members that are timely, Medically Necessary, appropriate, efficient, and consistent with professional community standards. PRACTITIONER agrees to adhere to BLUE CROSS standards of accessibility and shall be available for appointments with Members within ten (10) business days of a request for non-emergency services or shall notify BLUE CROSS and assist BLUE CROSS in making alternative arrangements.
- 4.11 PRACTITIONER agrees to provide only those services which PRACTITIONER is qualified by training, experience and state licensure to provide and which comply fully with applicable state and federal regulations. PRACTITIONER shall provide EMERGENCY Medical Services to Members twenty-four (24) hours per day, seven (7) days per week, or make arrangements with another Participating Practitioner qualified to render such services to provide coverage during any periods in which PRACTITIONER is unavailable. When a Participating Practitioner is not available, PRACTITIONER may utilize the services of a non-Participating Practitioner under the same terms and conditions of this Agreement.
- 4.12 PRACTITIONER shall immediately notify BLUE CROSS of any legal or ethics actions against PRACTITIONER'S license, or any malpractice suits, or any change in hospital privileges (including without limitation, any reduction, suspension or termination of such privileges). Such actions include, but are not limited to, actions by the applicable state regulatory board, professional associations or hospitals. PRACTITIONER authorizes BLUE CROSS to receive reports on demand from the state licensure agencies, professional associations and other agencies who may maintain data relating to the legal status, litigation history, or clinical performance of PRACTITIONER. If applicable, upon request by BLUE CROSS, PRACTITIONER shall obtain a National Practitioners Data Bank report on

himself/herself and provide it to BLUE CROSS. If PRACTITIONER fails to notify BLUE CROSS of any disciplinary action or judgment which results in the probation, suspension or revocation of PRACTITIONER's license or curtailment of hospital privileges or otherwise limits PRACTITIONER's ability to render Medical Services covered by this Agreement, then BLUE CROSS may terminate this Agreement immediately. If PRACTITIONER is a Medi-Cal provider, for the term of this Agreement, PRACTITIONER shall remain in good standing with the Medi-Cal program.

- 4.13 PRACTITIONER agrees to furnish BLUE CROSS with all patient information that is necessary to the fulfillment of the terms of this Agreement, subject to applicable state and federal laws regarding confidentiality of patient data.
- 4.14 PRACTITIONER agrees to participate in BLUE CROSS orientation and training procedures.
- 4.15 PRACTITIONER agrees to notify BLUE CROSS Case Management/Utilization Management within twenty-four (24) hours after a Member fails to comply with or discontinues services or otherwise deviates from pre-certified services.
- 4.16 PRACTITIONER agrees that Members shall not be subject to discrimination regardless of race, creed, color, religion, physical/mental handicap, sexual orientation marital status or national origin/ancestry. PRACTITIONER agrees to see and schedule Members for Medical Services on a similar basis to Medi-Cal beneficiaries and/or other patients of PRACTITIONER.
- 4.17 PRACTITIONER agrees to use all BLUE CROSS proprietary information only in relation to the obligations of provider performance under the terms of this Agreement. PRACTITIONER shall not, during the term of this Agreement or after termination of this Agreement, disclose or use any BLUE CROSS proprietary information for PRACTITIONER's own benefit or for the benefit of a third party.
- 4.18 PRACTITIONER agrees that in the event that PRACTITIONER fails to secure pre-authorization of services in accordance with the BLUE CROSS Case Management/Utilization Management program or otherwise comply with the BLUE CROSS procedures established and it is determined retrospectively by BLUE CROSS that services shall be reimbursable, PRACTITIONER agrees to accept reimbursement as outlined in Section 5.1 herein and shall not bill Member for any additional amounts.
- 4.19 PRACTITIONER shall provide Medical Services to Members in an Emergency or upon referral, and shall not decline to treat Members upon referral or in an Emergency unless alternate arrangements have been authorized by BLUE CROSS.
- 4.20 PRACTITIONER agrees to cooperate with BLUE CROSS' administration of its internal quality of care review and grievance resolution procedures.
- 4.21 PRACTITIONER agrees to keep confidential and take all reasonable precautions to prevent the unauthorized disclosure of records required to be prepared under and/or maintained by this Agreement, except as such disclosure may be authorized by the patient or by law.
- 4.22 PRACTITIONER agrees to provide Medical Services to any and all Members until such time as PRACTITIONER believes in his or her reasonable professional judgment, that accepting additional Members would endanger patients' access to or continuity of care, and closes his/her practice and is no longer accepting new patients from any health plan with which PRACTITIONER contracts. PRACTITIONER shall give BLUE CROSS prompt written notice of such practice closure.
- 4.23 PRACTITIONER shall confirm each Member's eligibility status prior to providing Medical Services. In the event Member is determined retrospectively eligible for Medi-Cal for a period in which PRACTITIONER billed BLUE CROSS for Medical Services under this Agreement, PRACTITIONER

shall resubmit the claim(s) to Medi-Cal and refund any amounts paid by BLUE CROSS under this Agreement or any share-of-cost paid by the Member.

- 4.24 PRACTITIONER shall comply with all applicable state and federal laws and regulations relating to the delivery of Medical Services.

V. BLUE CROSS SERVICES AND RESPONSIBILITIES

- 5.1 BLUE CROSS agrees to pay PRACTITIONER compensation pursuant to the provisions of Article VI and in accordance with the Rate Schedule in Exhibit B. BLUE CROSS shall not compensate PRACTITIONER for services that were not pre-authorized according to the Case Management/Utilization Management program, where such pre-authorization is required.
- 5.2 BLUE CROSS agrees to grant PRACTITIONER the status of "Participating PATH2HEALTH/CMSP Practitioner to identify PRACTITIONER as a Participating PATH2HEALTH/CMSP Practitioner on informational materials to Members, and to facilitate the direction of such Members to PRACTITIONER.
- 5.3 BLUE CROSS agrees to provide PRACTITIONER with a list of Participating PATH2HEALTH/CMSP Practitioners, Participating PATH2HEALTH/CMSP Hospitals and other PATH2HEALTH/CMSP Participating Providers.
- 5.4 BLUE CROSS agrees to provide appropriate identification cards for Members.
- 5.5 BLUE CROSS agrees that the terms "Emergency" and "Medically Necessary" shall bear the same meanings in Benefit Agreements as in this Agreement.
- 5.6 BLUE CROSS agrees to continue listing PRACTITIONER as Participating PATH2HEALTH/CMSP Practitioner until this Agreement is terminated.

VI. COMPENSATION AND BILLING

- 6.1 PRACTITIONER shall seek payment only from BLUE CROSS for the provision of Medical Services.
- 6.2 Subject to any applicable share-of-cost to be paid by a Member, PRACTITIONER agrees to accept the fee schedule as provided in EXHIBIT B, attached to and made part of this Agreement, or PRACTITIONER'S covered billed charges, whichever is less, as payment in full for all Medical Services provided to Members. Such payment shall be for Medical Services provided on or after the effective date of this Agreement. If PRACTITIONER receives any additional surcharge from a Member in excess of the applicable share-of-cost, BLUE CROSS shall require that PRACTITIONER promptly refund the amount thereof to the Member. PRACTITIONER agrees to hold harmless the Governing Board and Members in the event BLUE CROSS cannot or will not pay for Medical Services performed PRACTITIONER.
- 6.3 Subject to the approval of the CMSP Governing Board, BLUE CROSS may change the applicable fee schedule. PRACTITIONER will receive notification of any such change prior to its implementation.
- 6.4 PRACTITIONER shall bill BLUE CROSS on forms and in a manner acceptable to BLUE Cross no later than one hundred fifty (150) days of performing the Medical Services or BLUE CROSS may deny payment. PRACTITIONER shall furnish, on request, all information reasonably required by BLUE CROSS to verify and substantiate the provision of Medical Services. BLUE CROSS reserves the right to review all such information submitted by PRACTITIONER when necessary and in accordance with this Agreement.

- 6.5 BLUE CROSS shall pay PRACTITIONER within sixty (60) days of receipt of billings which are accurate, complete and otherwise in accordance with Section 6.4.
- 6.6 Any amount paid by BLUE CROSS to PRACTITIONER under this Agreement determined subsequently by BLUE CROSS to have been an overpayment will be considered indebtedness of PRACTITIONER to BLUE CROSS. BLUE CROSS shall have a first lien in the amount of such indebtedness and may, at its sole option, recover such indebtedness by;(i) notifying PRACTITIONER of the overpayment, then (ii) deducting from and setting off the amount of such indebtedness from any amounts due and payable from BLUE CROSS to PRACTITIONER at any time under this Agreement or any other agreement between BLUE CROSS and the PRACTITIONER, or for any reason, an amount or amounts equal to such indebtedness of PHYSICIAN. THE CMSP Provider Operations Manual specifies the procedures concerning recoveries.
- 6.7 PRACTITIONER expressly acknowledges that if a Member has other health coverage, CMSP and Path2Health shall be the payers of last resort.
- 6.8 Practitioner acknowledges that BC LIFE is acting as a third party administrator for the Governing Board in the administration of CMSP and Path2Health, and accordingly, neither it nor BLUE CROSS assumes any financial risk for the payment of Medical Services.
- 6.9 PRACTITIONER shall not charge Members for Medical Services denied as not being Medically Necessary under Article VII, unless PRACTITIONER has obtained a signed agreement on a form approved by BLUE CROSS from that Member or individual legally responsible for the Member. Such agreement must be obtained in advance of rendering services and shall specify those services which BLUE CROSS has denied as not being Medically Necessary and shall clearly state that the Member, or individual legally responsible for the Member, shall be responsible for payment of Medical Services denied by BLUE CROSS.
- 6.10 PRACTITIONER agrees to assign to BLUE CROSS any payments made by third parties to PRACTITIONER on behalf of Members if BLUE CROSS has previously paid for such services, subject to the Coordination of Benefit provisions of the applicable Benefit Agreement and Section 6.4 hereof.
- 6.11 BLUE CROSS shall deny payment for Medical Services related to Hospital/Facility Services which are denied as not Medically Necessary or which exceed the BLUE CROSS approved length of stay, as communicated to PRACTITIONER and hospital/facility through the process outlined in Article VII, Case Management/Utilization Management.

VII. CASE MANAGEMENT/UTILIZATION MANAGEMENT

- 7.1 BLUE CROSS may establish a Utilization Management ("UM") program which shall seek to assure that Hospital Services or Medical services provided to Members are Medical Necessary. The Utilization Management shall follow the procedures described on Exhibit A attached to and made part of this Agreement. BLUE CROSS may change UM procedures by delivering amendments to, or a replacement for, Exhibit A. The BLUE CROSS Quality Management Committee shall be part of the UM program.
- 7.2 Utilization Management for Medical Services will include:
- (1) "Preadmission review or "pre-service review" to determine whether a scheduled inpatient admission or scheduled treatment is Medically Necessary. Preadmission review procedures and pre-service review procedures can be obtained by contacting BLUE CROSS.
 - (2) "Admission Review" to determine whether an unscheduled inpatient admission or an admission not subject to preadmission review is Medical Necessary.

- (3) "Concurrent review" to determine whether continued inpatient hospital stay or treatment is Medically Necessary.
 - (4) "Retrospective review" to determine whether inpatient medical services or treatments were Medically Necessary.
- 7.3 PRACTITIONER may appeal a Utilization Management decision. The appeal shall be commenced by requesting reconsideration of the decision. If PRACTITIONER is not satisfied with the result, a review by BLUE CROSS shall be requested. If practitioner continues not to be satisfied, PRACTITIONER'S remedy shall be arbitration as provided in Exhibit A of such appeal, PRACTITIONER may request arbitration as provided in Exhibit A.

VIII. RECORDS MAINTENANCE, AVAILABILITY, INSPECTION AND AUDIT

- 8.1 BLUECROSS, the Governing Board and their auditors shall have access (which includes inspection, examination and copying to the extent permitted by state and federal law, at reasonable times upon demand to the book, records, documents and papers of PRACTITIONER at PRACTITIONER'S office or such other mutually agreeable location in California relating to the services PRACTITIONER providers to Members and to payments PRACTITIONER receives from members or others on their behalf, PRACTITIONER shall maintain such records and provide such information to BLUE CROSS and the Governing Board as may be necessary for BLUE CROSS's or the Governing Board's compliance with the requirements of any applicable law or regulations. PRACTITIONER shall maintain such records in a system that permits prompt retrieval of information for at least five (5) years from the termination of this Agreement, and such obligations shall not be terminated upon a termination of this Agreement, whether by rescission or otherwise.

Subject to all applicable laws relating to privacy, confidentiality, and privileged documents and communications. PRACTITIONER shall only make a Member's information including but not limited to medical records available upon reasonable request to each physician or practitioner treating the Member, for Utilization Management purposes, and to BLUE CROSS or as consented by the MEMBER or an authorized representative of the Member.

This Section 8.1 will not be construed to prevent PRACTITIONER from releasing information which PRACTITIONER has taken from such medical records to organizations or individuals taking part in research, experimental, educational or similar programs, if no Member identifiable information is released and such release complies with all applicable laws.

- 8.2 Ownership and access to records of Members shall be controlled by applicable law.
- 8.3 All records must be maintained in a system that permits prompt retrieval of information. Medical records are to be legible, documented accurately in a timely manner and readily accessible.
- 8.4 In the event this Agreement is terminated, PRACTITIONER agrees to assist BLUE CROSS in the transfer of Member medical care.
- 8.5 In the event this Agreement is terminated, PRACTITIONER agrees to assist BLUE CROSS in the transfer of Member medical including making available to the Governing Board or its designee and BLUE CROSS copies of medical records, patient files, and any other pertinent information held by PRACTITIONER necessary for efficient case management of Members, as determined by the CMSP Governing Board. The parties acknowledge that the cost of reproduction required by this provision will not be billed to Members.
- 8.6 In consideration that Path2Health is funded, in part, with federal Medicaid funds, PRACTITIONER agrees that DHCS and the Centers for Medicare and Medicaid Services (CMS) may inspect and audit any financial records associated with Path2Health. PRACTITIONER shall provide DHCS and CMS

access to any books, documents, papers and records of PRACTITIONER that are directly pertinent to Path2Health for the purpose of making an audit, examination, excerpt, or transcription. PRACTITIONER agrees that there shall be no restrictions on the right of DHCS or CMS to conduct inspections and audits of Path2Health that are necessary to assure quality, appropriateness or timeliness of services and reasonableness of costs.

IX. LIABILITY, INDEMNITY AND INSURANCE

- 9.1 Neither BLUE CROSS nor PRACTITIONER nor any of their respective agents or employees shall be liable to third parties for any act or omission of the other party.
- 9.2 PRACTITIONER, at its sole expense, agrees to maintain adequate insurance for professional liability and comprehensive general liability. In Lieu of any insurance required by this section, PRACTITIONER shall maintain the ability to respond to any and all damages which would be covered by such insurance.
- 9.3 Upon request by BLUE CROSS, PRACTITIONER shall provide BLUE CROSS with copies of current insurance policies or evidence of the ability to respond to any and all damages as approved in Section 9.2.
- 9.4 If insurance is reduced, terminated, or changed, PRACTITIONER will notify BLUE CROSS prior to the change.

X. MARKETING, ADVERTISING AND PUBLICITY

- 10.1 BLUE CROSS shall use its best efforts to encourage Members to use the services of PRACTITIONER.
- 10.2 BLUE CROSS shall have the right to use the name of PRACTITIONER for purposes of informing Members and prospective members of the identity of Participating Practitioners.
- 10.3 PRACTITIONER shall have the right to display in the treatment setting an approved BLUE CROSS "Participating CMSP Provider" plaque and/or other symbol until termination of this Agreement.
- 10.4 Except as provided in Section 10.2 hereof, BLUE CROSS and PRACTITIONER each reserve the right to and the control of the use of its name and all symbols, trademarks or service marks presently existing or later established. In addition, except as provided in Section 10.2 hereof, neither BLUE CROSS nor PRACTITIONER shall use the other party's name, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of that party, and shall cease any such usage immediately upon written notice of the party or on termination of this Agreement, whichever is sooner.

XI. DISPUTE RESOLUTION

- 11.1 BLUE CROSS and PRACTITIONER agree to meet and confer in good faith to resolve any problems or disputes that may arise under this Agreement.
- 11.2 In the event that any problem or dispute concerning the terms of this Agreement, other than a Utilization Review decision as provided for in Article VII, is not satisfactorily resolved, BLUE CROSS and PRACTITIONER agree to arbitrate such problem or dispute. Such arbitration shall be initiated by either party's making a written demand for arbitration on the other party. The arbitration will be conducted by the American Arbitration Association, under the Commercial Rules of the Judicial Mediation and Arbitration Services (JAMS) Association, unless otherwise mutually agreed in writing by BLUE CROSS and PRACTITIONER. PRACTITIONER and BLUE CROSS agree that

the arbitration results shall be binding on both parties in any subsequent litigation or other dispute. The initiation of the arbitration by written demand must be made within two (2) years of the date upon which the problem or dispute arose.

XII. TERM AND TERMINATION

- 12.1 When executed by both parties, this Agreement shall become effective as of the date noted on page one (1) and shall continue in effect until terminated pursuant to this Agreement.
- 12.2 Either party may terminate this Agreement, by giving at least ninety (90) days prior written notice. Nothing contained herein shall be construed to limit either party's lawful remedies in the event of a material breach of this Agreement. In the event of a material breach PRACTITIONER, BLUE CROSS, in addition to any other available remedy, may require that PRACTITIONER promptly prepare and submit for BLUE CROSS'S approval a corrective action plan that addresses the material breach. PRACTITIONER shall immediately implement such approved corrective action plan and provide BLUE CROSS with periodic status reports, as requested.
- 12.3 After the effective date of termination, this Agreement shall remain in effect for the resolution of all matters unresolved at the date. Without limiting the forgoing, if this Agreement is terminated, PRACTITIONER shall continue to provide and be compensated under the terms of this Agreement for Medical Services provided to Members who are under the care of PRACTITIONER at the time of that termination, until the services being rendered to that Member are completed or reasonable and medically appropriate provision is made for the assumption of such services by another Participating PATH2HEALTH/CMSP Practitioner. In the event of termination, PRACTITIONER agrees to follow the Member notification procedures as set forth in the applicable PATH2HEALTH/CMSP Practitioners Operation Manual
- 12.4 In the event of termination of this Agreement by either party, PRACTITIONER agrees not to represent itself as a Participating PATH2HEALTH/CMSP Practitioner.

XIII. GENERAL PROVISIONS

- 13.1 Assignment. No assignment of the rights, duties or obligations of this Agreement shall be made by PRACTITIONER without the express written approval of a duly authorized representative of BLUE CROSS. Any attempted assignment in violation of this provision shall be void as to BLUE CROSS.
- 13.2 Binding on Successors in Interest. Subject to Section 13.1, the provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon the parties hereto and their respective successors and assigns and shall insure to the benefit of the parties hereto and their respective successors and assigns.
- 13.3 Waiver of Breach. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.
- 13.4 Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be delivered by electronic mail, by facsimile, by hand, or sent postage prepaid by mail. Unless specified otherwise in writing by a party, BLUE CROSS shall send PRACTITIONER notice to an address that BLUE CROSS has on file for PRACTITIONER, and notice initiated by PRACTITIONER shall be sent to BLUE CROSS's address as set forth below. Notice shall be effective upon the marked date associated with the corresponding delivery method noted above. Notwithstanding the foregoing, BLUE CROSS may post updates to the BLUE CROSS Path2Health/CMSP Provider Operations Manual.

To Anthem Blue Cross at:
Blue Cross of California
State Sponsored Programs
1 WellPoint Way
Thousand Oaks, CA 91360
Mail stop: CAT201-N003

and to PRACTITIONER at: 162 J Grove Street
Bishop, CA 93514

- 13.5 **Severability.** In the event any provision of this Agreement is rendered invalid or unenforceable by an Act of Congress or of the California legislature or by any regulation duly promulgated by officers of the United States or of the State of California acting in accordance with law, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement shall, subject to Section 13.6 hereof, remain in full force and effect.
- 13.6 **Effect of Severable Provision.** In the event that a provision of this Agreement is rendered invalid or unenforceable or declared null and void as provided in Section 13.5 and its removal has the effect of materially altering the obligations of either party in such manner as, in the judgment of the party affected: (a) will cause serious financial hardship to such party; or (b) will cause such party to act in violation of its corporate Articles or Bylaws, the party so affected shall have the right to terminate this Agreement upon thirty (30) days, prior written notice to the other party. The applicable provisions of Article XII hereof shall apply to such termination.
- 13.7 **Entire Agreement.** This Agreement, together with the Exhibits contains the entire Agreement between BLUE CROSS and PRACTITIONER relating to the rights granted and the obligations assumed by this Agreement. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.
- 13.8 **Amendment.** Blue Cross may amend this Agreement or any part or section of it by providing written notice to PRACTITIONER at least thirty (30) business days prior to the effective date of such amendment which shall become effective upon the effective date unless PRACTITIONER objects in writing to such amendment within fifteen (15) business days of receipt of such notice. Amendments required due to legislative, regulatory or other legal authority do not require prior approval of PRACTITIONER and shall be deemed effective immediately upon PRACTITIONER receipt of notice.
- 13.9 **Attorney's Fees.** In the event that either BLUE CROSS or PRACTITIONER institutes any action, suit or arbitration proceeding to enforce the provisions of this Agreement, each party shall pay one half of the arbitration costs and otherwise pay its own attorneys' fees and other costs.
- 13.10 **Headings.** The headings of articles and sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.11 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California and all other laws, regulations and contractual obligations of BLUE CROSS.

FOR ANTHEM BLUE CROSS

Signature

Print name

Title

Date

FOR PRACTITIONER

Signature

Print Name/Title

95-6005445
Tax ID Number

Date

EXHIBIT A

ARBITRATION FOR CASE MANAGEMENT/UTILIZATION MANAGEMENT

The initial decision regarding whether Medical Services are Medically Necessary and appropriate shall be made pursuant to Article VII of the Agreement. PRACTITIONER may appeal such a decision pursuant to the terms of Section 7.3 of the Agreement. Arbitration under that section shall follow the procedure below:

- A. PRACTITIONER agrees to submit any dispute concerning a Utilization Management decision, unresolved by reconsideration, appeal or review pursuant to the terms of Article VII, to binding arbitration. The arbitration shall be commenced by PRACTITIONER making written demand on BLUE CROSS. The scope of the arbitration shall be limited to a determination of whether, or to what extent, benefits specified in the applicable agreement were Medically Necessary or appropriate or otherwise payable for the claim or claims in dispute.
- B. The arbitration will be conducted under the commercial Rules of the American Arbitration Association unless otherwise mutually agreed in writing by BLUE CROSS and PRACTITIONER. PRACTITIONER and BLUE CROSS agree that the arbitration findings shall be binding upon any subsequent litigation.

EXHIBIT B

PRACTITIONER PAYMENT SCHEDULE

The fee schedule set forth in this EXHIBIT B shall be used solely to determine payment to PRACTITIONER as in section 6.2 for Medical Services provided to Members as defined in the Agreement and shall not be used by BLUE CROSS to determine payment to PRACTITIONER for any services provided to any non-Member.

Reimbursement for each Medical Service rendered under this Agreement shall be at the lesser of PRACTITIONER's charge for such Medical Service or at the allowable unit amount. The allowable unit amount reimbursement to procedure codes is as follows:

Procedure codes	Allowable
90801	\$90.00
90804	\$35.00
90806	\$70.00
90853	\$30.00
90857	\$30.00
H0001	\$90.00
H0004	\$17.50 (2 unit minimum)
H0005	\$30.00

Exhibit B
Intentionally left blank



AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

10

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator
Integrated Waste Management

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Request by the Big Pine Paiute Tribe of the Owens Valley to Waive Waste Disposal Fees

DEPARTMENTAL RECOMMENDATION

Request your Board consider and provide direction to staff on the request by the Big Pine Paiute Tribe of the Owens Valley to waive the gate and disposal fees for the disposal of building demolition debris.

SUMMARY DISCUSSION

The Big Pine Paiute Tribe of the Owens Valley submitted the attached letter dated May 2, 2012 requesting that your Board waive the disposal and gate fees for the disposal of building demolition debris. In the early morning hours of March 31, 2012, a home on the Big Pine Reservation was completely destroyed by fire. Due to the limited funds of the property occupants, the Big Pine Paiute Tribe agreed to coordinate and pay for the debris clean up, removal and disposal.

The letter of request states that the Big Pine Paiute Tribe sought verbal bids for the project clean up and the low bid was approximately \$12,000 to \$13,000 and a majority of that amount was for dumping fees at the Inyo County Landfill in Bishop. The Big Pine Tribe is requesting your Board waive the dumping fees, which could be up to \$6,000.

As of the writing of this agenda request, the actual disposal fees are not known. The project is anticipated to begin as soon as possible, but should take no longer than five (5) days. More information will be available when your Board considers this request on May 8, 2012.

ALTERNATIVES

Your Board could choose to:

- 1) Approve the request to waive the entire set of fees
- 2) Reduce rather than waive the fees
- 3) Not approve the fee waiver request

OTHER AGENCY INVOLVEMENT

Inyo County Counsel

FINANCING

The estimated loss of revenue to the Inyo County Waste management program is \$6,000.00. This is a significant amount of program revenue.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: _____ Date <u>5-3-12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 05-03-2012
(Not to be signed until all approvals are received)



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY
Big Pine Paiute Indian Reservation

Gloriana M. Bailey, Tribal Administrator

E-mail: g.bailey@bigpinepaiute.org

P.O. Box 700 • 825 South Main Street • Big Pine, Ca 93513
Office No. (760) 938-2003 • Fax No. (760) 938-2942

May 2, 2012

Jeff Ahlstrom
Managing Landfill Engineer
Independence, CA
Via E-mail to: jahlstrom@inyocounty.us
Re: Request for Waiver of Dump Fees

Dear Jeff,

Per our recent discussion and a follow-up with Kelley Williams on Tuesday, May 1, 2012 please schedule an item on an upcoming Board of Supervisor's agenda. Due to information provided to me from Kelley, the next scheduled meeting is May 8, 2012. As we discussed on March 31, 2012, an occupied home on the reservation (994 Hill Street) burned up in the morning hours and fortunately the occupants escaped uninjured. Due to the limited income of the occupants, the only way to clean up the hazardous site is for the Tribe to coordinate and pay for the demolition and clean up.

After conducting a survey, the lowest bid is approximately \$12,000.00 to \$13,000.00 and of that amount, I am told a big majority of the expense is for dumping fees at the Inyo County Landfill in Bishop. The Tribe has a very limited budget, as with all public entities at this time, however we need to move forward and remove this health and safety issue. The exact dump fees will be known after the project is finished. We would like the demolition to start on as soon as possible; however, this project should take no longer than five (5) days.

Our request to the County Board of Supervisors' is to waive the dumping fees, which could be up to \$6,000.00.

It was good speaking with you and thank you for taking the time. If I could get an idea of the approximate time on your agenda, I hope to have representatives at the meeting to make the request and to answer questions. If you have any questions, you may call me at the above listed numbers or you may also call me on my cell at (760) 263-4286.

Sincerely,

Gloriana M. Bailey, MBA
Tribal Administrator

Cc: Tribal Council
Marty Fortney, County Supervisor, 4th District



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

11

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator – Personnel

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Request to fill vacant Deputy CAO position

DEPARTMENTAL RECOMMENDATION:

Request your Board find, consistent with the adopted Authorized Position Review Policy:

- a. The funding for the position comes from the General Fund and, possibly, certain Non-General Fund departments depending on job responsibilities and associated budget allocations, as certified by the County Administrator and concurred with by the Auditor-Controller;
- b. The vacancies could possibly be filled by internal candidates meeting the qualifications for the position, however, an open recruitment is appropriate to ensure the position is filled with the best qualified candidate; and,
- c. Approve the hiring of a Deputy County Administrator position, Range 88 (\$6,370-\$7,740).

SUMMARY DISCUSSION:

The Fiscal Year 2011-2012 Manpower Report, approved by your Board as part of the Fiscal Year 2011-2012 County Budget, authorizes two (2) Deputy County Administrator positions. Both positions are currently vacant. In December, your Board approved the hiring of a Deputy County Administrator. The Agenda Request Form noted that, while there was a pressing need to fill the vacancy being created by the retirement of the incumbent Deputy County Administrator responsible for managing the County's Integrated Waste Management, Motor Pool and Parks programs, depending on the number and strengths of the candidates identified through the recruitment process staff could return to your Board with a request to fill the second vacancy.

We are in the process of winnowing down finalists in what has been a very strong recruitment effort that has resulted in identifying a number of highly skilled and qualified candidates. It would be advantageous to take advantage of the success and momentum of this recruitment effort to fill the second Deputy County Administrator position which has been vacant for a number of years. Doing so will provide an opportunity to add very talented staff to the County organization in a department which has, and will continue to maintain a large number of vacancies in its authorized staffing to support the County's budget objectives. Filling this position will also facilitate the possible restructuring of department assignments in an effort to save resources and improve services, as well as allowing us to begin undertaking and implementing some very long overdue initiatives.

ALTERNATIVES:

Your Board could decide not to approve filling the vacancy.

OTHER AGENCY INVOLVEMENT:

The position will function in support of your Board's priorities, all County departments, County relations with other agencies, and the community at large.

FINANCING:

Funding for these positions is included in the Fiscal Year 2011-2012 County Budget.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> <i>Leslie L. Chapman</i> Approved: <input checked="" type="checkbox"/> Date <u>5/3/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 05-03-2012
(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

12

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Scheduled Time for
 Closed Session
 Informational

FROM: Jon Klusmire, Museum Services Administrator

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Final County of Inyo Community Project Sponsorship Grant Presentations and Payments for the Lone Pine Chamber of Commerce Early Opener Trout Derby and the Bishop Area Chamber of Commerce & Visitors Bureau Treasure Map Brochure.

DEPARTMENTAL RECOMMENDATION: Request your Board approve final payments from the 2011-12 Advertising County Resources budget, 011400, for the following, completed Community Project Sponsorship Grant projects: A \$2,750 final payment to the Lone Pine Chamber of Commerce for the Early Opener Trout Derby; and a \$2,500 final payment to the Bishop Area Chamber of Commerce & Visitors Bureau for reprinting the Inyo County Treasure Map Brochure.

SUMMARY DISCUSSION: The Lone Pine Chamber of Commerce was awarded a FY 2011-12 County of Inyo Community Project Sponsorship Grant in the amount of \$5,500 in November 2011 to help sponsor the Early Opener Trout Derby. After contracts were finalized, half the grant funds (\$2,750) were disbursed to the Chamber. The Chamber has provided staff with sufficient documentation of acceptable expenses for reimbursement for the remaining \$2,750 in grant funding. The Chamber also provided ample evidence that Inyo County was prominently mentioned as a sponsor of the event, which was advertised in media reaching anglers in Southern California, Bakersfield, and across the state. On March 6, 2012 anglers and their families gathered for the event at Diaz Lake. The Early Opener represents the first Eastern Sierra angling opportunity of the Fishing Season. As the attached letter from Chamber CEO notes, about 300 people signed up to officially participate in the Derby, while a total of about 500 people fished and otherwise participated in the event, with a gratifying increase in the number of local anglers who took part.

The Bishop Area Chamber of Commerce & Visitors Bureau was awarded a FY 2011-12 County of Inyo Community Project Sponsorship Grant in the amount of \$5,000 in November of 2011 to help reprint and update the popular Inyo County Treasure Map Brochure. After contracts were finalized, half the grant funds (\$2,500) were disbursed to the Chamber. The Chamber has provided staff with sufficient documentation of acceptable expenses for reimbursement for the remaining \$2,500 in grant funding. The Chamber also provided ample evidence that Inyo County was prominently mentioned as a sponsor of the brochure. In March, the Chamber received 18,000 copies of the updated brochure.

ALTERNATIVES: The Board could deny the requests.

OTHER AGENCY INVOLVEMENT: County Counsel, County Administrator's Office, Auditor/Controller.

FINANCING: The FY 2011-12 Advertising County Resources budget, (011400), which is funded solely by the General Fund, includes \$100,000 for the Community Project Sponsorship Program.

APPROVALS

COUNTY COUNSEL:

N/A

AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)

Approved: _____ Date _____

AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: <u><i>[Signature]</i></u> Date <u>5/1/12</u>
PERSONNEL DIRECTOR: <i>N/A</i>	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)

[Signature]

Date: 4-26-12



LONE PINE CHAMBER COMMERCE

120 South Main Street ~ P.O. Box 749 ~ Lone Pine, CA 93545
(760) 876-4444 ~ Fax (760) 264-9675

April 12, 2012

Inyo County Board of Supervisors
PO Box N
Independence CA 93526

Dear Supervisors,

We want to thank you for your support of our Early Opener Trout Derby in March.

This year we had about 300 people sign up to fish and, of course there were others fishing that were not in the derby. We estimate about 500 people participated this year. This year we saw an increase in local participation which is great

Our volunteers indicated that the fishing was really great and the people were thrilled with the fishing.

Sincerely,
Kathleen New
President/CEO



BISHOP AREA CHAMBER OF COMMERCE & VISITORS BUREAU
690 N. MAIN STREET, BISHOP, CALIFORNIA 93514

March 21, 2012

Dear Mr. Klusmire and Inyo County Supervisors:

Please find enclosed final funding request related to Inyo County Community Project Sponsorship Grant Funding for reprinting of the Inyo County Treasure Map Brochure. Please consider this correspondence as our written report to the Board and note that I would be happy to appear in person if the Board desires.

The Bishop Area Chamber of Commerce & Visitors Bureau is pleased to report that the project has been completed and we have received 18,000 copies of the updated brochure. Since its initial printing in 2000, the Treasure Map has become one of the most frequently requested promotional tools distributed by all visitor centers in Inyo County. The piece is designed to get motorists off of Highway 395 and to spend more time enjoying the many natural, cultural and historical assets of our beautiful region.

The Treasure Map was updated at the last printing in 2010 to include the Coalition of Chambers Logo and website. We also made some changes to the text in order to better highlight several attractions in Southern Inyo, including the Mount Whitney Fish Hatchery, Manzanar Historic Site and the Lone Pine Film History Museum.

I have included the CPSP reimbursement form and invoice related to printing and delivery fees. I am also requesting reimbursement for three(3) hours of staff time used to negotiate price & delivery schedule, proof the document prior to printing, and accept delivery of the brochures.

We thank you in advance for your assistance with processing our reimbursement requests at your earliest convenience.

As always, thank you for your continued support of the Bishop Chamber and of our many events.

Sincerely,

Tawni Thomson

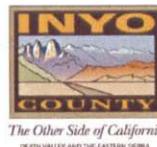
Tawni Thomson
Executive Director
Bishop Area Chamber of Commerce & Visitors Bureau

RECEIVED

MAR 28 2012

Inyo Co. Water Department

VOICE 760-873-8405 FAX 760-873-6999



WWW.BISHOPVISITOR.COM



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk=s Use Only:
AGENDA NUMBER
13

- Consent **Departmental** Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Kammi Foote, Clerk-Recorder and Registrar of Voters

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Amendment to the County's Legislative Platform

DEPARTMENTAL RECOMMENDATION:

Request Board amend the Inyo County Legislative Platform to add item No. 22 to the General Government Section to read: 22. **Oppose** legislation that minimizes, restricts and/or eliminates real property rights of private citizens; and request your Board oppose AB2299.

SUMMARY DISCUSSION:

The sole reason that Recorder's offices exists is to archive public records that provide constructive notice. This process is the foundation of land ownership and the integrity of this system is essential. Beginning as early as 1641 the citizenry has recognized the importance of constructive notice to our freedom. This leading to the recording of deeds at the local level and the availability of those records to anyone interested in conducting business related to that property. Historically governments have used control of records related to land ownership to be oppressive and elitist in controlling those they rule. In many countries today citizens are prevented from knowing who owns what real estate unless the 'government' allows them to know.

County Recorders throughout the State uphold the public's right to access and view land records. We support the established legal doctrine of 'constructive notice' ensuring that everyone knows about and has access to the records we maintain related to real estate transactions. Currently there is legislation being considered that would disassemble constructive notice, the cornerstone to property rights in California. AB2299 would establish a class of individuals who could hide their interests in real property. By hiding their information individuals will be able to conduct business outside of the public's view resulting in different classes of property owners and the demise of California's constructive notice property rights system. Recorder's offices make complete, accurate and permanent records. Every document recorded is indexed in a manner which allows them to be found and provide constructive notice. The moment there is even one document that is redacted from the index, the system begins to crumble. This amendment will provide the County the ability to oppose current and future legislation that would minimizes, restricts and/or eliminates real property rights of private citizens.

ALTERNATIVES:

Your Board could choose not to add this item to the Legislative Platform or not to oppose AB2299. This alternative is not recommended in that support of this type of legislation would undermine the real property rights of private citizens.

FINANCING:

There is not cost associated with this action. However, should legislation be passed that would require redacting names, legal descriptions or documents from the public record, it would be financially devastating. The cost associated with purchasing or developing a system that would be able to redact specific information for precise time periods would be nearly impossible to calculate.

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



_____ Date:

Date: May 8, 2012

The Honorable Mike Feuer
Assembly Member
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0042

Oppose: Assembly Bill 2299

Dear Assemblymember Feuer,

On behalf of the Inyo County Board of Supervisors, I am writing to express our unanimous opposition to AB2299. While the Board understands the motivation behind creating a system which seeks to protect members of the law enforcement community, the Board feels that impacts of AB2299 would be too great.

First and foremost, it is important to understand the purpose of recording documents and the significance of this process in proving ownership of real property. California government is structured to protect real property ownership rights by recording all documents that affect real property into a single public repository in each county known as the "Official Records". A document that is recorded is preserved in the Official Records permanently. After a document is recorded, it is indexed and is open to public inspection to provide constructive notice to subsequent purchasers and lenders. Title companies, lenders and members of the public research the Official Records to examine the series of transactions that have recorded over time. The sequence in which the series of documents have recorded is known as "the chain of title". If throughout history, legal property owners properly transferred possession of land, there is no break in the chain of title and ownership can be established. Currently, there are no provisions to "unrecord" or remove documents from the Official Records. If a name, legal description or document was redacted from the Index, or from the Official Records, it would no longer provide constructive notice of the transaction, creating a break in the chain of title and undermining the entire system of recording land transactions.

It has long been argued that ownership of real property is the foundation of a free society. Home ownership is also viewed by many as a part of the American dream. AB2299 would make it impossible for a member of the public to verify ownership of their own home. Under AB2299, only the government could verify real property ownership. AB2299 would put the interests of a handful of public safety officials above the real property ownership rights of all Californians.

In addition to the alarming impact this would have on the essential purpose of recording documents, it would also be financially devastating. The cost associated with purchasing or developing a system that would be able to redact specific information for precise time periods would be nearly impossible to calculate. The administrative, programming, staffing and legal fees would be crippling on County resources.

For these reasons, the Inyo County Board of Supervisors respectfully **opposes Assembly Bill 2299.**

Sincerely,

Marty Fortney,
Chairman, Inyo County Board of Supervisors

BILL NUMBER: AB 2299 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 9, 2012

INTRODUCED BY Assembly Member Feuer

FEBRUARY 24, 2012

An act to amend Section 6254.1 of, and to add Sections 27279.5 and 27279.7 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as amended, Feuer. Local government: public safety officials: confidentiality.

Existing law sets forth the duties and powers of the board of supervisors of a county and the county recorder and county assessor of each county. Existing law requires the county recorder to, upon payment of proper fees and taxes, accept for recordation, any instrument, paper, or notice that is authorized or required by statute or court order to be recorded, as specified. Existing law allows any instrument or judgment affecting the title to, or possession of, real property to be recorded. Existing law requires a document that effects or evidences a transfer or encumbrance of an interest in real property to include the name or names in which the interest appears of record. Existing law requires the county recorder of each county to establish a social security truncation program for the redaction of social security numbers to create a public record version of official records.

~~Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees covering direct costs of duplication.~~

This bill would authorize the board of supervisors of a county to establish a program that requires the names of certain public safety officials to be redacted from any property record of principal residence that is disclosed to the public by that county, except as specified. The bill would authorize a county to charge a fee for participation in the program. The bill would set forth requirements that would apply to the sale of aggregate data.

Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees covering direct costs of duplication.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to authorize the board of supervisors of any county to establish a county program to redact the name of a public safety official from a property record that contains the address of the principal residence of the public safety official. A public safety official is defined for purposes of this act as an official employed by a public agency responsible for law enforcement, the justice system, or corrections.

~~SECTION 1.~~ SEC. 2. Section 6254.1 of the Government Code is amended to read:

6254.1. (a) Except as provided in Section 6254.7, this chapter shall not require disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) This chapter shall not require the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) This chapter shall not require the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

(d) This chapter shall not require disclosure of the name of any public safety official contained in any property record of a county that is disclosed to the public, if the public safety official has requested confidentiality of that information, in accordance with Section 27279.5, and the county maintains a program that redacts that information from property records pursuant to Section 27279.5.

~~SEC. 2.~~ SEC. 3. Section 27279.5 is added to the Government Code, to read:

27279.5. (a) The board of supervisors of a county may establish a program that requires the name of a public safety official to be redacted from any property record that is disclosed to the public by that county.

(b) Subdivision (a) shall apply only to a public safety official described in Section 27279.7 who has requested that his or her name be redacted from a property record that is disclosed to the public by that county. The county may prescribe the form or application by which a request of confidentiality shall be submitted pursuant to this subdivision.

(c) Notwithstanding subdivisions (a) and (b), this section shall not preclude a county from using or maintaining records internally that include the name of a public safety official who has requested redaction under the program.

(d) The county may charge a fee for participation in the program, provided the fee is reasonable and charged to cover only the costs of the program.

(e) (1) A county that chooses to establish a program pursuant to this section that sells aggregate data shall further require that the names of program participants remain confidential and not be posted on any Internet Web site or solicited, sold, or traded.

(2) A public safety official whose name is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees. A fine not exceeding one thousand dollars (\$1,000) may be imposed for a violation of the court'

s order for an injunction or declarative relief obtained pursuant to this paragraph.

(3) A public safety official whose name is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that public safety official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).

(f) Notwithstanding any other provision of this section, the following shall apply:

(1) A county that exercises reasonable care shall not be held civilly liable for the unintentional disclosure of the name of a public safety official.

(2) The name of a public safety official shall be released upon request of the public safety official.

(g) For purposes of this section and Section 27279.7, the following definitions shall ~~apply~~

have the following meanings :

(1) "Post" means to intentionally communicate or otherwise make available to the general public.

(2) "Property record" means a property record that contains the address of principal residence of the public safety official.

(3) "Public safety official" means a person listed in Section 27279.7 who is eligible for , or participates in, the program.

~~SEC. 3. Section 27279.7 is added to the Government Code, to read:~~

~~27279.7. (a) The name of any of the following public safety officials shall be redacted from a property record pursuant to Section 27279.5 if the public safety official requests the confidentiality of that information.~~

~~(1) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal Code, or a person who is not a peace officer, but who may exercise the powers of arrest during the course and within the scope of his or her employment pursuant to Section 830.7 of the Penal Code.~~

~~(2) A public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.~~

~~(3) An "elected or appointed official" as defined in subdivision (f) of Section 6254.21.~~

~~(4) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.~~

~~(5) A city attorney or an attorney who represent cities in criminal matters.~~

~~(6) An employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have a prisoner in his or her care or custody.~~

~~(7) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, or a local juvenile hall, camp, ranch, or home, or a probation officer as defined in Section 830.5 of the Penal Code.~~

~~(8) A federal prosecutor, a federal criminal investigator, or a National Park Service Ranger working in California.~~

~~(9) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.~~

~~(10) A state or federal judge or a court commissioner.~~

~~(11) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.~~

~~(12) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of his or her employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, or a nonsworn employee that, in the course of his or her employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines the results, and provides expert testimony in court.~~

~~(b) The name of a public safety official listed in subdivision (a) shall not be disclosed, except to any of the following.~~

~~(1) A court.~~

~~(2) A law enforcement agency.~~

~~(3) The State Board of Equalization.~~

~~(4) An attorney in a civil or criminal action that demonstrates to a court the need for the name, if the disclosure is made pursuant to a subpoena.~~

~~(5) A governmental agency to which, under any law, information is required to be furnished from records maintained by the department.~~

SEC. 4. Section 27279.7 is added to the Government Code , to read:

27279.7. (a) The name of any of the following public safety officials, whether active or retired, shall be redacted from a property record pursuant to Section 27279.5 if the public safety official requests the confidentiality of that information:

(1) An employee of a federal, state, or local law enforcement agency, not under suspension or otherwise lacking in good standing, except an employee whose principal duties are clerical or who is not engaged in law enforcement operations.

(2) A judge, federal magistrate, court commissioner, or referee who has statutory authority to preside in criminal proceedings.

(3) An attorney of a federal, state, or local prosecutorial or defense agency who represents that office in criminal matters.

(4) An employee of a federal, state, or local prosecutorial or defense agency whose responsibilities routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(5) An employee of a federal, state, or local agency who supervises inmates or is required to have a prisoner in his or her care or custody, or a probation officer or parole agent.

(b) Notwithstanding subdivision (a), Section 27279.5 and this section shall not apply to an elected official in an elected office, or to a person who has been appointed on a temporary basis to fill a vacancy in an elected office, when that elected office is the attorney general, district attorney, sheriff, public defender, or city attorney or prosecutor.

(c) The name of a public safety official listed in subdivision (a) shall not be disclosed pursuant to Section 27279.5, except to any of the following:

(1) A court.

(2) A law enforcement agency.

(3) The State Board of Equalization.

(4) An attorney in a civil or criminal action that demonstrates to a court the need for the name, if the disclosure is made pursuant to a subpoena.

(5) A governmental agency to which, under any law, information is required to be furnished from records maintained by the county.

~~SEC. 4.~~ SEC. 5. The Legislature finds and declares that this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to prevent crimes against public safety officials and their families, it is necessary that this act take effect.

BILL ANALYSIS

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Date of Hearing: May 2, 2012

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cameron Smyth, Chair
AB 2299 (Feuer) - As Amended: April 9, 2012

SUBJECT : Local government: public safety officials:
confidentiality.

SUMMARY : Authorizes the board of supervisors of a county to establish a program whereby the names of certain public safety officials may be redacted upon request from any property record of principal residence that is disclosed to the public by that county, except as specified. Specifically, this bill :

- 1) Authorizes the board of supervisors of a county to establish a program that requires the name of a public safety official to be redacted upon request from any property record that is disclosed to the public by that county.
- 2) Exempts from the provisions of the Public Records Act the disclosure of the name of any public safety official contained in any property record of a county that is disclosed to the public, if the public safety official has requested confidentiality of that information pursuant to this measure, and the county maintains a program that redacts that information from property records.
- 3) Permits counties to use or maintain records internally that include the name of a public safety official who has requested redaction under the program.
- 4) Authorizes the county to charge a reasonable fee for participation in the program, provided the fee covers only the costs of the program.
- 5) Requires counties that establish a public safety official confidentiality program pursuant to this measure and that sell aggregate data to require that the names of program participants remain confidential and not be posted on any Internet Web site or solicited, sold, or traded.
- 6) Allows a public safety official whose name is made public as a result of a violation of this measure to bring an action seeking injunctive or declarative relief in any court of

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competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees.

A fine not exceeding one thousand dollars (\$1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this paragraph.

- 7) Allows a public safety official whose name is solicited, sold, or traded in violation of this measure to bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that public safety official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).
- 8) Provides that a county that exercises reasonable care shall not be held civilly liable for the unintentional disclosure of the name of a public safety official.
- 9) Provides that the name of a public safety official shall be released upon request of the public safety official.
- 10) Defines the term "post" to mean to intentionally communicate or otherwise make available to the general public.
- 11) Defines the term "property record" to mean a property record that contains the address of principal residence of the public safety official.
- 12) Defines the term "public safety official" to mean a person listed in Section 27279.7 who is eligible for, or participates in, the program.
- 13) Provides that the name of any of the following public safety officials, whether active or retired, shall be redacted from a property record if the public safety official requests the

confidentiality of that information:

- a) An employee of a federal, state, or local law enforcement agency, not under suspension or otherwise lacking in good standing, except an employee whose principal duties are clerical or who is not engaged in law enforcement operations;

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- b) A judge, federal magistrate, court commissioner, or referee who has statutory authority to preside in criminal proceedings;
 - c) An attorney of a federal, state, or local prosecutorial or defense agency who represents that office in criminal matters;
 - d) An employee of a federal, state, or local prosecutorial or defense agency whose responsibilities routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts; or,
 - e) An employee of a federal, state, or local agency who supervises inmates or is required to have a prisoner in his or her care or custody, or a probation officer or parole agent.
- 14) Provides that the provisions of this bill shall not apply to an elected official in an elected office, or to a person who has been appointed on a temporary basis to fill a vacancy in an elected office, when that elected office is the attorney general, district attorney, sheriff, public defender, or city attorney or prosecutor.
- 15) Provides that the name of a public safety official shall not be disclosed under this measure, except to any of the following:
- a) A court;
 - b) A law enforcement agency;
 - c) The State Board of Equalization;
 - d) An attorney in a civil or criminal action that demonstrates to a court the need for the name, if the disclosure is made pursuant to a subpoena; or
 - e) A governmental agency to which, under any law, information is required to be furnished from records maintained by the county.
- 16) Declares that the Legislature's intent in enacting this

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measure is to authorize the board of supervisors of any county to establish a county program to redact the name of a public safety official from a property record that contains the address of the principal residence of the public safety official.

- 17) Finds and declares that this measure imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies, and that this measure is necessary to prevent crimes against public safety officials and their families.

EXISTING LAW :

- 1) Sets forth the duties and powers of the board of supervisors of a county and the county recorder and county assessor of each county.
- 2) Requires the county recorder to, upon payment of proper fees and taxes, accept for recordation, any instrument, paper, or notice that is authorized or required by statute or court order to be recorded, as specified.
- 3) Allows any instrument or judgment affecting the title to, or possession of, real property to be recorded.

- 4) Requires a document that effects or evidences a transfer or encumbrance of an interest in real property to include the name or names in which the interest appears of record.
- 5) Requires the county recorder of each county to establish a social security truncation program for the redaction of social security numbers to create a public record version of official records.
- 6) Requires, pursuant to the Public Records Act, state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees covering direct costs of duplication. There are 30 general categories of documents or information that are exempt from disclosure based on the character of the information. Unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency

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that has custody of the information.

- 7) Require, pursuant to the state Constitution, that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

FISCAL EFFECT : None

COMMENTS :

- 1) This bill would authorize the creation of voluntary confidentiality programs at the county level to redact the names of public safety officials from publicly available property records as a means to better protect those officials from threats and intimidation. This measure is author-sponsored.
- 2) According to the author, "This legislation would permit (but not require) a county board of supervisors to initiate a confidentiality records program for public safety officials' primary home address. Currently, for example, a police officer's home address is contained on property records that are generally open to the public at the offices of a county assessor and/or recorder, and much of the same information is released to data purchasers. AB 2299 provides counties with the authority to implement a program to protect public safety officials by ensuring that county records are not used to locate their home address and potentially endanger them and their families."
- 3) In practice, this bill would permit individual counties to create their own property record confidentiality programs for certain active and retired public safety officials. Such a program would require that the name of eligible officials be, upon request, redacted from the publicly available property records (including data sets available for sale) managed by the county. The county would retain the flexibility to set a cost-recovery fee for the service. Counties' own internal records would not be affected, nor would specified governmental agencies be precluded from accessing the records in unredacted form.

The public safety officials eligible for the protections of this bill are: a) employees of federal, state or local law

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enforcement agencies (except clerical and non-operational staff), b) judges, magistrates, court commissioners and referees, c) criminal attorneys with a federal, state, or local prosecutorial or defense agency, d) employees of a federal, state, or local prosecutorial or defense agency routinely in contact with suspects, and e) employees of a federal, state, or local agency responsible for inmates, or those acting as a custodian, probation or parole officer. Elected officials are explicitly excluded from the program.

The bill gives covered officials the right to seek injunctive or declarative relief in the case of a violation, along with

court costs, attorneys' fees, and a fine not to exceed \$1,000 if a court-ordered injunction is violated. The official may also seek treble damages of at least \$4,000 if their confidential information is traded or sold. Counties exercising reasonable care may not be held civilly liable for an unintentional disclosure.

- 4) According to supporters, the need for this bill lies in the increased danger to law enforcement officials because the accessibility of personal information about that official might allow a dangerous person to find and target them.

According to the Los Angeles City Attorney, "between 2003 and 2008, federal prosecutors and judges experienced an over 50% increase in the number of threats and harassing communications. Just last December, an anonymous internet group publicized the home addresses of more than one dozen members of the Los Angeles Police Department's command staff. Prosecutors, judges, law enforcement, and others place their own safety at risk to protect our local communities, yet, everyday, their personal home addresses remain accessible to anyone."

There is also some precedent for legislative action to protect the personal information of public safety officials. As the Los Angeles Police Protective League (LAPPL) points out, "California law allows certain officials to have their Department of Motor Vehicles records shielded from public disclosure. Current law also provides recourse if a public safety official's address is posted on the internet."

Opponents also point to the online availability of some county real estate data as further evidence of the danger. LAPPL

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states that "as this data is sold by assessors and recorders, the name and home addresses of public safety officials frequently can be found posted on the internet and made available to the general public. This has the potential to endanger public safety officials and their families."

- 5) This bill applies to public property records, and therefore would affect public records kept by both county recorders and county assessors.

A county recorder's office records or files many different kinds of authorized documents, certificates and maps. Once recorded, those documents become part of the public records of the county recorder and are made available for examination by members of the public. Such documents are recorded to provide the public with notice of chain of title or other interest in real property.

The documents maintained by the recorder are indexed. Generally speaking, index searches are limited to the identity of the grantor and grantee. Most counties will have one single index, and a search for a particular name would bring up a list of documents (grant deeds, liens, etc.) and their location (recorder book number and page number). Once identified, a clerk would often need to physically locate each document in order to view or copy it.

Some county recorders compile and sell aggregated electronic data based on the recorder public documents. For example, the Santa Clara County Clerk-Recorder's office sells data related to real property, such as deeds, abstracts of judgments, liens, maps, etc. Copies of documents are generally sold as TIF images, which do not include searchable text data. The county's locator index (also for sale) contains a record for the name of each party to a document along with the document number, date of recording, and document type. Data is sold in packages based on document type and time period requested, although custom requests can be made at a cost of \$131 per hour.

A county assessor's office keeps the assessment roll, which contains the annual assessed valuation of all real and

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business personal property in the county, and is the basis

upon which property taxes are levied. The roll is regularly used by title companies, realtors, the media and prospective buyers and sellers of property. According to the California Assessors' Association, the roll is also "used for legitimate business and government purposes such as liens and debt collection, locating people that may be involved in criminal activity, including tracking down deadbeat dads and locating slum landlords."

6) Opponents of this bill argue that there are several different problems and issues arising from this bill in its current form:

a) Current systems are not designed to permit wholesale redaction . According to the California Land Title Association (CLTA), "[t]he sponsors of AB 2299 have an inaccurate understanding of how county recorder records are held, maintained, and shared with interested parties. Unlike traditional 'databases' held by many governmental and private companies and individuals, county recorders do NOT hold scanned documents in a pure data format that can be queried, sorted, cloaked, and manipulated any number of ways within the database program. Thus, AB 2299 is difficult, if not impossible, to implement?

Because documents will often contain information that is NOT discoverable through a query of the indexing process, often it takes a manual search performed by a human being to discover if the document has information of interest?"

The Santa Clara County Assessor estimates that the cost to develop a system to comply with this bill would range from \$150,000 to more than \$500,000.

b) Practical problems with implementation may compromise public access . Furthermore, CLTA contends that the disruption caused by the exhaustive search they believe would be required by this bill may mean an end to public access of property records. "While such a situation may seem far-fetched, fairly recent examples of this type of problem occurred in Texas when social security numbers were supposed to be cloaked overnight by statute. Because the county recorders in Texas did not have the technical ability to find all of the documents containing social

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security numbers in order to comply with the law, Texas faced a likely shutdown of ALL county recorder records.

It was only the intervention of the Texas State Attorney General and an emergency regulatory decree that allowed county recorders to continue to provide information until Texas could develop a 'redaction' approach similar to California's. Slowly, over time, the Texas county recorders were able to slowly find and redact social security numbers as the statute required. Thus, if they cannot find all of the needles in the haystack, the county recorders may very well have no choice other than cutting off access to the hay." (emphasis removed)

c) Potential negative impacts on constructive notice . Another issue is the impact of redaction on the legal doctrine of 'constructive notice', which is an integral part of California's real property law regime. According to the County Recorders' Association of California, "County records throughout the State uphold the public's right to access and view land records? "[t]he established legal doctrine of 'constructive notice' ensur[es] that everyone knows about and has access to the records we maintain related to real estate transactions? AB 2299 would establish a class of individuals who could hide their interest in real property. By hiding their information individuals will be able to conduct business outside of the public's view resulting in different classes of property owners and the demise of California's constructive notice property rights system. Recorder's offices make complete, accurate and permanent records. Every document recorded is indexed in a manner which allows them to be found and provide constructive notice. AB 2299 will eliminate the ability to find documents in out records."

d) Potential increase in real estate transaction costs and delays . CLTA contends that this measure would complicate real estate transactions involving covered officials. "[i]t is likely that all real estate transactions relating to 'public safety officials' will now require lengthy and costly manual title searches in order to provide the public safety official seeking to buy, sell, transfer, or refinance real property. For example, if a public safety official seeks to refinance his or her real property, we can quickly search title records to ascertain if they

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indeed own the real property and if outstanding liens exist that must be extinguished in escrow before a new loan is recorded?

However, if all county recorder records are cloaked so that this public safety official information disappears, we as an industry will now have to manually and painstakingly recreate all of the public records related to the public safety official, as well as manually check with the Franchise Tax Board and California Child Support Collection Agency to make sure that they do not owe money to any parties.

In essence, by removing the public safety official from public records that are designed to both protect them and force them to make good on obligations they owe to creditors, we will have dramatically increased the time and money each of these public safety officials must expend just to do the ordinary real estate transactions they currently take for granted. In addition, if county recorders are unable to maintain county recorder records as they currently do, this may have a negative impact on ALL consumers who use county recorder records to conduct ordinary real estate transactions."

e) Potential for fraud and negative impacts on enforcement of liens and child support obligations . According to the California Escrow Association, if this bill were passed, "it is likely that all real estate transactions relating to 'public safety officials' would require lengthy and costly additional closing procedures for transactions involving a public safety official seeking to buy, sell, transfer, or refinance real property?¶If a public safety official seeks to refinance his or her real property?¶any outstanding liens would not be associated with a particular property, but are instead tied directly to the name of the property owner, and this would be particularly susceptible to being entirely unaccounted for, that is, neither collected nor paid in the escrow process as a direct result of the cloaking effect of redaction." The same issue could be said of child support obligations and judgment liens as well.

Furthermore, the California Newspaper Publishers Association expressed concerns about how a confidentiality

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program might be used to perpetrate fraud. "AB 2299 would bar journalists and the public from investigating the situation unfolding in Los Angeles where the assessor is accused of collecting campaign contributions from property owners in exchange for lowered property assessments. The bill would completely insulate and protect any public safety official who might be involved in this type of scheme and would eradicate any public scrutiny, oversight or accountability.

1) Given the concerns raised by this bill, the Committee may wish to consider the follow issues and potential amendments to the bill:

- a) In order to prevent fraudulent use of the proposed program, the Committee may wish to consider whether or not the bill should contain a requirement that the recorder's or assessor's office require photo identification and proof of eligibility/good standing before processing a request.
- b) In order to simplify the process of determining eligibility, the Committee may wish to consider whether or not the bill should contain a requirement that a participating county compile a list of eligible persons or positions, perhaps based on agency and job classification. That way, a clerk with the recorder's or assessor's office would only need to check the list to determine a person's eligibility to participate.
- c) The eligibility criteria provided in the current form of the bill are somewhat vague and inconsistent. For example, the bill provides eligibility for retired officials regardless of length of time since separation, but not for

individuals who may have left the position recently for another job. Furthermore, it is not clear what the term "good standing" would mean in practice, although it might be wise to treat some criminal convictions (such as those for fraud) or court orders (for non-payment of child support) as disqualifying. As such, the Committee may wish to consider whether or not the bill's eligibility criteria should be simplified to apply only to active officials and those who have separated from an eligible position in the last five years.

- d) While the extent of the records search required to be

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undertaken to find and redact a name is not explicit in this bill, more specific terms might make this bill more easily implemented. The Committee may wish to consider whether or not the bill should be amended to specify that the only redaction required would be for those documents that show up under a direct grantor/grantee name search - there would be no legal obligation to check other records for the individual's name.

- 1) The following are examples of recent legislation closely related to information privacy and public officials:
 - a) AB 1813 (Lieu), Chapter 194, Statutes of 2010, included the information provided to cellular phone applications in the information that a public official may ask to be removed from the internet and to expand the definition of peace officer within the definition of public official.
 - b) AB 32 (Lieu), Chapter 403, Statutes of 2009, expanded current law relative to the personal information of an elected or appointed official by allowing an agent of the public official to make the written demand for the removal of the Internet posting of the official's home address or telephone number.
 - c) AB 1595 (Evans), Chapter 343, Statutes of 2005, allowed for specified elected or appointed officials to obtain an injunction against any person or entity that publicly posts on the Internet the home address or telephone number of that official, and allows for damages if this disclosure was made with intent to cause bodily harm.
 - d) AB 2238 (Dickerson), Chapter 621, Statutes of 2002, provided for, among other things, an advisory task force to analyze ways to protect a public safety official's home information, and required the task force to submit a report to the Legislature by September 1, 2003. That report was released to the Legislature in January 2004, and contained detailed findings and recommendations, a summary of recent incidents involving threats or violence, and proposals for legislative action.

1) Support arguments : According to the Los Angeles City Attorney, "Existing privacy protections fail to keep property records of police officers, judges, and prosecutors

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confidential. AB 2299 will close this loophole by enabling counties to prevent the release of these property records. Most importantly, AB 2299 will provide prosecutors and other officials with an added safeguard against personal intimidation, threats, and dangers arising from the release of their home addresses."

Opposition arguments : According to the Santa Clara County Assessor, "the proposed legislation would be cost prohibitive to implement and a nightmare to administer. Public accessibility of assessment roll data is used for legitimate business and government purposes such as liens and debt collection, tracking down deadbeat dads and locating slum lords. It is likely this law would be abused to evade child support payments and other financial responsibilities."

REGISTERED SUPPORT / OPPOSITION :

Support

Association for Los Angeles Deputy Sheriffs

Association of Orange County Deputy Sheriffs
California Correctional Peace Officers Association
California Fraternal Order of Police
California Police Chiefs Association
California State Sheriffs' Association
Chief Probation Officers of California
City of Los Angeles
Long Beach Police Officers Association
Los Angeles City Attorney's Office
Los Angeles County Professional Peace Officers Association
Los Angeles County Sheriff's Department
Los Angeles Police Protective League
Hon. James R. Brandlin, Los Angeles Superior Court
Peace Officers Research Association of California
Sacramento County Deputy Sheriffs Association
Sacramento County Sheriff's Department
Santa Ana Police Officers Association

Opposition

California Assessors' Association
California Escrow Association
California Land Title Association
California Newspaper Publishers Association

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County Recorders Association of California
Office of the Assessor, County of Santa Clara

Analysis Prepared by : Hank Dempsey / L. GOV. / (916) 319-3958



County Recorders' Association of California

2011/12 Legislative Committee

April 2, 2012

Committee Chair

LESLIE MORGAN
Shasta County
1450 Court Street
Redding CA 96001
(530) 225-5671
lmorgan@co.shasta.ca.us

The Honorable Mike Feuer
Assembly Member
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0042

Oppose: Assembly Bill 2299

County Members

- Alameda County
- Butte County
- Los Angeles County
- Orange County
- Placer County
- Sacramento County
- San Bernardino County
- San Joaquin County
- San Mateo County
- Santa Clara County
- Shasta County
- Tuolumne County
- Ventura County

Dear Assemblymember Feuer,

The County Recorders Association of California must oppose Assembly Bill 2299. Our opposition is based on the proposed change in the fundamental purpose of a real estate land records system established prior to the founding of the United States. The sole reason that Recorder's offices exists is to archive public records that provide constructive notice. This process is the foundation of land ownership and the integrity of this system is essential. Beginning as early as 1641 the citizenry has recognized the importance of constructive notice to our freedom. This leading to the recording of deeds at the local level and the availability of those records to anyone interested in conducting business related to that property. Historically governments have used control of records related to land ownership to be oppressive and elitist in controlling those they rule. In many countries today citizens are prevented from knowing who owns what real estate unless the 'government' allows them to know.

County Recorders throughout the State uphold the public's right to access and view land records. We support the established legal doctrine of 'constructive notice' ensuring that everyone knows about and has access to the records we maintain related to real estate transactions. AB 2299 would disassemble constructive notice, the cornerstone to property rights in California. AB 2299 would establish a class of individuals who could hide their interests in real property. By hiding their information individuals will be able to conduct business outside of the public's view resulting in different classes of property owners and the demise of California's constructive notice property rights system. Recorder's offices make complete, accurate and permanent records. Every document recorded is indexed in a manner which allows them to be found and provide constructive notice. AB2299 will eliminate the ability to find documents in our records. The moment there is even one document that is redacted from the index, the system begins to crumble.

County Recorders understand the risks associated with having a real property public records system, a system Recorders are responsible for administering. County Recorders have not only been threatened but in fact physically assaulted as a result of

performing their duties. However, having a bifurcated system of real property records, as AB 2299 creates, is not the answer to this threat, it would be the beginning of the end of the constructive notice system, damaging the rights of all Californians.

For these reasons the County Recorders' Association of California respectfully **opposes Assembly Bill 2299.**

Sincerely,

County Recorders' Association of California
Legislative Committee

A handwritten signature in black ink, appearing to read "Leslie Morgan", with a long horizontal flourish extending to the right.

Leslie Morgan, Committee Chair



April 25, 2012

The Honorable Mike Feuer
Member, California State Assembly
State Capitol, Room 2013
Sacramento, CA 95814

RE: AB 2299 (FEUER) – OPPOSE (as amended April 9, 2012)

Dear Assemblymember Feuer:

On behalf of the California Land Title Association, which has represented the title insurance industry in California since 1907, I am writing to inform you of our OPPOSE position on AB 2299 (Feuer). ***AB 2299 is scheduled to be heard in the Assembly Local Government Committee on May 2, 2012.***

County recorder records are not held in a database that would work under the program envisioned by AB 2299:

The sponsors of AB 2299 have an inaccurate understanding of how county recorder records are held, maintained, and shared with interested parties. Unlike traditional “databases” held by many governmental and private companies and individuals, county recorders do NOT hold scanned documents in a pure data format that can be queried, sorted, cloaked, and manipulated any number of ways within the database program. Thus, AB 2299 is difficult, if not impossible, to implement.

County recorder records are really only “digital copies of paper records” that are stored in county computers in a nonalterable format. Essentially, all county recorder records are really nothing more than “digital copies of paper” stored in county computers and/or stored on microfiche. As such, these “digital copies of paper” cannot be easily queried and definitely cannot be altered for a number of technical and legal reasons. Most queries of these documents is performed not based on the contents of the documents themselves, but on the way the document is indexed within the county recorder records.

Because documents will often contain information that is NOT discoverable through a query of the indexing process, often it takes a manual search performed by a human being to discover if the document has information of interest.

It is this most basic of misunderstandings of the county recorder records that gives rise to bills such as AB 2299 and an assumption that such a bill is easy to implement and use.

CLTA fears that AB 2299 will create a "needle in a haystack" problem that will result in no one getting access to the hay:

As currently drafted, AB 2299 has a number of "protected" individuals who fall under the classification of "public safety officials" as set forth in 27279.7 of the Government Code. As described above, because county recorder records are not held in a pure data format or database, finding all of the documents affecting a "John Smith" would be difficult to accomplish without a manual search of virtually all documents.

Having worked closely with county recorders in all 58 counties over the years, we believe their assertions that there is no way to know ALL of the documents containing relevant information relating to "a public safety official" and they cannot be found by simply searching by name and *would require a manual search of all public records to eliminate the possibility.*

Given the huge cost of having to manually search millions of recorded documents that may or may not affect "public safety officials," CLTA believes that many county recorders, when faced with a requirement to "cloak" information for public safety officials, would be forced to cut off access to their public records or face liability and complaints from public safety officials affected by the bill.

While such a situation may seem far-fetched, fairly recent examples of this type of problem occurred in Texas when social security numbers were supposed to be cloaked overnight by statute. Because the county recorders in Texas did not have the technical ability to find all of the documents containing social security numbers in order to comply with the law, Texas faced a likely shutdown of ALL county recorder records.

It was only the intervention of the Texas State Attorney General and an emergency regulatory decree that allowed county recorders to continue to provide information until Texas could develop a "redaction" approach similar to California's. Slowly, over time, the Texas county recorders were able to slowly find and redact social security numbers as the statute required.

Thus, if they cannot find all of the needles in the haystack, the county recorders may very well have no choice other than cutting off access to the hay.

AB 2299 will undermine how "constructive notice" is provided via the public records:

It has long been established in California law that the county recorder's office is the public repository of all recorded documents affecting real property. Under the Public Records Act, numerous sections highlight the public's right and need to have ready access to these public documents.

In addition, under long-held legal principals affecting real property law, because the public has a right to ready access to these recorded documents, any properly indexed and recorded document recorded in the chain of title to real property "imparts constructive notice."

However, the legal concept of "constructive notice" only works if all interested parties can indeed have access to public records held by the county recorder. The legal theory of "constructive notice" necessarily relies on the fact that interested parties are afforded immediate access to these records if they choose to review them for content that materially affects them in real property disputes, contracts, or title searches.

Thus, any bills –such as AB 2299-- that require a “cloaking” of documents within these “public” documents that are required to be made readily available threaten the legal theory of constructive notice and will have very negative impacts on all real estate transactions (purchases, transfers, refinancing, exchanges, etc.) that revolve around this legal principle.

Easy, immediate, and unimpeded access to public records is essential for the doctrine of constructive notice to work.

AB 2299 will result in significant cost increases for real estate transactions and significant delays for all new homebuyers:

Ironically, AB 2299 is likely to have the most negative impact on the very people it seeks to protect.

Setting aside the technical and financial impossibilities of executing the cloaking of public records as described above, it is likely that all real estate transactions relating to “public safety officials” will now require lengthy and costly manual title searches in order to provide the public safety official seeking to buy, sell, transfer, or refinance real property.

For example, if a public safety official seeks to refinance his or her real property, we can quickly search title records to ascertain if they indeed own the real property and if outstanding liens exist that must be extinguished in escrow before a new loan is recorded. In addition, we can now quickly search county public records using the name of the public safety official to see if any judgment liens, child support liens, or other related liens are of record under the county general index.

However, if all county recorder records are cloaked so that this public safety official information disappears, we as an industry will now have to manually and painstakingly recreate all of the public records related to the public safety official, as well as manually check with the Franchise Tax Board and California Child Support Collection Agency to make sure that they do not owe money to any parties.

In essence, by removing the public safety official from public records that are designed to both protect them and force them to make good on obligations they owe to creditors, we will have dramatically increased the time and money each of these public safety officials must expend just to do the ordinary real estate transactions they currently take for granted.

In addition, if county recorders are unable to maintain county recorder records as they currently do, this may have a negative impact on ALL consumers who use county recorder records to conduct ordinary real estate transactions.

AB 2299 will make it impossible for custodial parents, creditors, lenders, and other parties to record liens to protect their security interest in real property owned by a public safety official:

When liens are recorded, they are generally recorded against specific real property and/or under the name of the targeted party. *If AB 2299 is enacted, the real property owned by a public safety official would no longer be known and liens recorded against their names would not be able to be matched against real property that own.*

Thus, AB 2299 would inadvertently protect public safety officials who are trying to avoid child support obligations and judgment liens.

For example, currently, if a custodial parent seeks to enforce an abstract of support against a obligor parent who refuses to pay child support, they will record the abstract of support under the name of the targeted ex-spouse. If the obligor parent tries to purchase real property, sell existing property they own, or simply refinance his real property, this child support lien (via the abstract of support) will be flagged by a title company and brought to the attention of the new buyer and lender.

For obvious reasons, under existing law, the new buyer and lender will insist that the child support lien be paid in full before the purchase takes place or the loan is provided. This leverage associated with the lien would be lost if the public records no longer allow interested persons to find real property owned by a public safety official seeking to avoid paying outstanding obligations.

As stated above, if AB 2299 is enacted so that a public safety official is able to cloak his or her records, they would essentially be able to avoid the leverage of the lien as it now works and potentially avoid repayment of these obligations.

CLTA is unaware of any sound public policy that warrants putting at risk the collection of child support or other outstanding judgments owed by public safety officials.

AB 2299 would become a potential safeharbor for those seeking to commit fraud:

It is CLTA's understanding that AB 2299 does not require county recorders to validate that the person seeking to cloak their records is, in fact, a public safety official. ***Thus, ANY individual could go to a county recorder's office and seek to cloak their records despite that fact that they are not truly a public safety individual. This could be done without any consequences under the current draft of the bill.***

CLTA has seen time after time new and creative ways that criminals and unscrupulous use new modifications of law to hide their criminal wrong doing. We fully anticipate that if such a program as envisioned by AB 2299 were to be put into place, there will be individuals who seek to hide assets, record fraudulent documents, etc., that allow them to defraud others or evade detection.

For these aforementioned reasons, the CLTA strongly opposes AB 2299. Feel free to call me at 916-444-2647 to discuss this bill.

Respectfully,



Craig C. Page
Executive Vice President
and Counsel

cc: Hank Dempsey, Senior Consultant, Assembly Local Government Committee
Rebecca Marcus, Chief of Staff, Office of Assemblymember Feuer



AGENDA REQUEST FORM

BOARD OF SUPERVISORS

COUNTY OF INYO

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for _____ Closed Session Informational

For Clerk's Use
Only:

AGENDA NUMBER

14

FROM: Public Works Department

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Implementing Procedures for Assembly Bill (AB) 628

DEPARTMENTAL RECOMMENDATIONS:

Adopt the attached Resolution and:

1. Certify that the subject Mitigated Negative Declaration of Environmental Impact was prepared in compliance with CEQA, was presented and considered by your Board, and reflects the independent judgment of you Board, and
2. Approve the environmental document for the Implementation Procedures for Assembly Bill 628 based on all of the information in the public record and on recommendation of the Planning Commission, and
3. Approve the procedures to implement the Pilot Program authorized by Assembly Bill 628.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Assembly Bill 628 made revisions to the California Vehicle Code establishing a pilot project allowing Inyo County to designate specific County highways (streets and roads) as combined-use routes. The combined use routes allow the use of County streets and roads by Off-Highway Vehicle (OHV). The Initial Study and Draft Mitigated Negative Declaration to establish Implementing Procedures as required by AB 628 was released for a 30-day public review period ending on February 18th of this year. The future environmental review of each proposed route or routes will be undertaken when such route or routes are proposed for designation. The combined-use highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands in order to provide a unified linkage of trail systems for off-highway motor vehicles. The provisions of AB 628 sunset January 1, 2017.

The project description to the environmental document has been revised to clarify the Mitigated Negative Declaration is only for the Implementing Procedures. This change to the project description, in all cases, reduces the potential impacts. This can be seen in the proposed Final Mitigated Negative Declaration in Appendix 3 at the very end of this packet. In accordance with AB 628 and the proposed procedures, the designation of each roadway segment will require action by the Inyo County Board of

Supervisors at a public hearing. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

Comments and Response to Comments

15 comment letters were received in response to the CEQA document. Those comments and responses to each comment are included in Appendix 1. Many of the comments we received on the environmental document were specific to the future designation of combined-use routes and the responses to comments note this. Several changes to the Implementing Procedures are proposed by staff in response to the comments received and those changes can be viewed toward the back of the document in Appendix 2.

Planning Commission Action

At their April 25th meeting, the Planning Commission approved the attached resolution. Several parties contributed public comment. None of those comments raised potentially significant environmental issues or concerns that were not previously addressed in the environmental document. Comments included:

- The 7-day notification period for property owners adjacent to combined-use routes is not long enough.
- There may be jurisdictional issues with the underlying land owner and the County in those situations where a formal right of way easement is not in place between the County and Federal land management agencies.
- Concern over costs incurred by the County, such as could be created by the placement of signage.
- Inyo National Forest staff requested a “pre-application” or prior consultation with the USFS/BLM before an application is formerly submitted.

Changes to Procedures

The following proposed changes to the draft Implementing Procedures are being proposed in response to comments submitted on the environmental document. These changes to procedures are shown in the order in which they appear in the Implementing Procedures. The origin of each comment is specific to the Response to Comments.

- A. The project title has been changed to **Inyo County Assembly Bill 628 Implementing Procedures** to reflect the project status.
- B. **Comment Letter No. 8, Comment No. 8** Delete reference to driving on the road shoulder in the Implementing Procedures Section 2(a)(iii), regarding items to be submitted as a part of combined-use application, shall be deleted as shown below.

A description of the portion of the right-of-way that is proposed to be used. That is will the off-highway vehicles be limited to: the entire lane, the edge of the lane, ~~the shoulder on pavement, the shoulder off pavement,~~ or some other specific area.

- C. **Comment Letter No. 11, Comment No. 8** A subsection is proposed to be added to Section 3(a)(iv) that reads:

1. Include a letter of permission from the owner of the Assessor's Parcel Number that is the necessary service and/or lodging facility.
- D. **Comment Letter No. 11, Comment No. 8** A subsection is proposed to be added to Section 3(a)(v) that reads:
1. Include a letter of permission from the owner of the Assessor's Parcel Number that is the necessary service and/or lodging facility.
- E. **Comment Letter No. 15, Comment No. 5** The wording in Section 8 is being combined with Section 5. The third sentence in Section 5 is being revised:

During the 120 day period, the County will ~~obtain~~ do the following:...

- F. **Comment Letter No. 14, Comment No. 1 and Comment Letter No. 15, Comment No. 3** A sentence is being added to Section 5(a)

The County shall provide copies of the application to pertinent land management agencies or owners to ensure conformance with the land manager's Land Use Plan. "Pertinent agencies or owners" are defined as those which own, manage, or have jurisdiction for 1) road segments which connect to County roads identified in the application, 2) the land crossed by a County road identified in the application, or 3) the land adjacent to a combined-use segment.

- G. **Comment Letter No. 15, Comment No. 5** What was formerly Section 8 shall become Section 5(b) and read:

Submit a combined-use application to the Commissioner of the California Highway Patrol and ask for a determination if the proposed combined-use segment will create a potential traffic safety hazard. If the combined-use segment is determined by the Commissioner of the California Highway Patrol to have the potential to create a traffic hazard, that segment shall be dropped from consideration.

- H. **Comment Letter No. 3, Comment No. 1** Section 5(c) shall be revised as follows:

Notice a public hearing on the application, providing notice to all land owners ~~surrounding~~ adjacent to the proposed combined-use roadway...

- I. **Comment Letter No. 15, Comment No. 5** Delete Section 8. It was moved to Section 5(b).
J. **Comment Letter No. 15, Comment No. 8** Add a sentence to Section 14(a)(i) that reads:

This information will be solicited from local land management agencies.

- K. **Comment Letter No. 15, Comment No. 7** Add Subsection (f) to Section 14. It reads:

At least 90 days prior to the development of the report described in Section 15, notice will be made to the public and local land management agencies requesting comments and observations regarding roads in the pilot program, including any results from monitoring.

L. Comment Letter No. 11, Comment No. 8 A new Section is proposed to be added and will read:

If the property owner at a starting point or an ending point of a combined-use segment decides at a future date that they do not wish their property to be linked to by a combined-use segment, they can submit a letter stating that the property owner does not wish to be linked to the OHV trail segment. Upon receipt of that letter, and assuming that the service facility is the endpoint of the combined-use segment, the designation on that road shall be changed within 90 days so that the combined-use of that roadway segment shall no longer be allowed.

M. Comment Letter No. 6, Comment Nos. 1, 10, & 12 A new Section is proposed to be added and will read:

The operation of combined use routes by off-highway vehicles in residential areas is restricted to between dusk and dark and no earlier than 7:00 a.m. and no later than 8:00 p.m.

After the mitigation incorporated in the environmental document and the responses to comments, none of the comments raise an issue that can be considered individually or cumulatively significant. On April 25, 2012, the Inyo County Planning Commission held a public hearing. The Planning Commission approved the attached Resolution and recommended that your Board approve the CEQA document and approve the Implementing Procedures.

ALTERNATIVES:

- 1) The Board can continue this hearing to the May 15, 2012 meeting and give specific direction to staff.

OTHER AGENCY INVOLVEMENT:

- (1) The California Highway Patrol – Safety Determination and Accident Database
- (2) Caltrans – Approval of Signage
- (3) Bureau of Land Management – combined use trail segment or trailhead confirmation
- (4) Inyo National Forest – combined use trail segment or trailhead confirmation

FINANCING:

The cost for the signage will be reimbursed by the California Department of Parks and Recreation. The staff work for the development of the Implementing Procedures and future consideration of combined-use applications will be through Rural Planning Assistance funds administered by the Inyo County Local Transportation Commission (LTC). The Inyo County LTC enters into an annual agreement for the use of Rural Planning Assistance funds through the adoption of an Overall Work Program. The Overall Work Program serves as a type of Scope of Work describing Inyo County LTC activities. The 2011-2012 Overall Work Program includes a task in Work Element No. 500.1 that reads:

Consider implementing a planning study to evaluate the combined use of specific local streets and roads by regular vehicular traffic and off highway vehicles. Establish criteria local agencies can use to determine if the roads comply with the Vehicle Code. Monitor the designation of combined use roads.

During a November 15, 2011 workshop on the development of the Implementing Procedures, the Board of Supervisors gave direction for the cost of the combined-use applications to not be the cost of the applicant.

APPROVALS

COUNTY COUNSEL: AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS
(Must be reviewed and approved by County Counsel prior to submission to the board clerk.)
Approved: *hbc* Date *5/1/12*

AUDITOR/CONTROLLER ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)
Approved: _____ Date _____

PERSONNEL DIRECTOR PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)
Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE: *[Signature]* Date: *5-1-12*
(Not to be signed until all approvals are received)

attachments: Proposed Board Resolution
Planning Commission Resolution No. 2012-03

Appendix 1
-Index to comment letters
-Comment letters and a response to each comment

Appendix 2
-Revised Draft Implementation Procedures
-Proposed Combined-Use Application

Appendix 3
-Draft Mitigated Negative Declaration (Modified in accordance with the responses to comments received)
-Assembly Bill 628

INYO COUNTY BOARD OF SUPERVISORS

RESOLUTION No. 2012 -

**A RESOLUTION OF THE BOARD OF SUPERVISORS
APPROVING 1) THE MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL
IMPACT FOR THE PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628 AND
2) APPROVING THE IMPLEMENTING PROCEDURES**

WHEREAS, the Inyo County Board of Supervisors, through Section 15.12.040 of Inyo County Code, designates the Planning Commission as the Environmental Review Board pursuant to Section 15022 of the State CEQA Guidelines; and

WHEREAS, pursuant to Section 15025 of the State CEQA Guidelines, the Planning Commission is responsible for the environmental review of all County projects; and

WHEREAS, on January 16, 2012, Inyo County staff completed an Initial Study and Environmental Checklist and Draft Mitigated Negative Declaration of Environmental Impact pursuant to CEQA; and

WHEREAS, Inyo County staff circulated said Initial Study and Draft Mitigated Negative Declaration of Environmental Impact for a 30 day public review period as required by Section 15.32.060 of Inyo County Code commencing on January 19, 2012 and ending on February 18, 2012, and

WHEREAS, the Initial Study and Draft Mitigated Negative Declaration of Environmental Impact and all documents related to it can be viewed at the Inyo County Public Works Department at 168 North Edwards Street in Independence, California during regular business hours between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 5:00 p.m. and also on the internet at <http://www.inyoltc.org/ab628impl.html>, and

WHEREAS, pursuant to Section 15074 of the State CEQA Guidelines, a mitigation monitoring plan has been adopted and is incorporated in the Final Initial Study and Mitigated Negative Declaration, and

WHEREAS, the Inyo County Board of Supervisors recognizes the need to establish Implementing Procedures as required by the California Vehicle Code and Assembly Bill (AB) 628, which Implementing Procedures shall govern further establishment of combined-use routes located in Inyo County in certain circumstances; and

WHEREAS, the Inyo County Board of Supervisors recognizes the benefits of establishing procedures for the implementation of AB 628 prior to designating any combined-use route or routes which procedures are provided for public input and notification; and

WHEREAS, on April 25, 2012, the Inyo County Planning Commission held a public hearing on the Draft Mitigated Negative Declaration as required by Section 15.32.080 of Inyo County Code; and

WHEREAS, that based on all of the written and oral comment and input received at the April 25, 2012 hearing of the Inyo County Planning Commission, including the Staff Report and the Mitigated Negative Declaration of Environmental Impact concerning the adoption of procedures to implement Assembly Bill 628, the Planning Commission made the following findings regarding this matter and recommended that the Board of Supervisors adopt the following findings:

1. A Draft Mitigated Negative Declaration of Environmental Impact was prepared and circulated in accordance with the California Environmental Quality Act and reflects the County's independent analysis and judgment. Together with the Initial Study, all comments received on the Mitigated Negative Declaration, the responses to those comments, and all other information in the record, the Mitigated Negative Declaration shows that there is no substantial evidence that the project will have a significant effect on the environment, as mitigated.
2. Based on substantial evidence in the record the proposed Inyo County Implementation Procedures comply with Assembly Bill 628 and the California Vehicle Code.

NOW THEREFORE BE IT RESOLVED that the Inyo County Board of Supervisors takes the following action:

1. Certify that the subject Final Mitigated Negative Declaration of Environmental Impact was prepared in compliance with CEQA, was presented to and considered by your Board, and reflects the independent judgment of your Board.
2. Approve the environmental document for the Implementation Procedures for Assembly Bill 628 based on all of the information in the public record and on recommendation of the Planning Commission.
3. Approve the procedures to implement the pilot program authorized by Assembly Bill 628.

ACTION PASSED AND ADOPTED THIS 8th DAY OF MAY 2012, BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marty Fortney, Chair
Inyo County Board of Supervisors

ATTEST:

Kevin Carunchio
CLERK OF THE BOARD

By: _____

Assistant

INYO COUNTY PLANNING COMMISSION

RESOLUTION No. 2012 - 03

**A RESOLUTION OF THE INYO COUNTY PLANNING COMMISSION,
RECOMMENDING APPROVAL OF THE MITIGATED NEGATIVE DECLARATION OF
ENVIRONMENTAL IMPACT FOR THE ADOPTION OF IMPLEMENTATION PROCEDURES
FOR ESTABLISHMENT OF COMBINED-USE ROUTES AS PROVIDED FOR IN ASSEMBLY
BILL 628 PREPARED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA) TO THE INYO COUNTY BOARD OF SUPERVISORS.**

WHEREAS, the Inyo County Board of Supervisors, through Section 15.12.040 of Inyo County Code, designates the Planning Commission as the Environmental Review Board pursuant to Section 15022 of the State CEQA Guidelines; and

WHEREAS, pursuant to Section 15025 of the State CEQA Guidelines, the Planning Commission is responsible for the environmental review of all County projects; and

WHEREAS, on January 16, 2012, Inyo County staff completed an Initial Study and Environmental Checklist and Draft Mitigated Negative Declaration of Environmental Impact pursuant to CEQA; and

WHEREAS, Inyo County staff circulated said Initial Study and Draft Mitigated Negative Declaration of Environmental Impact for a 30 day public review period as required by Section 15.32.060 of Inyo County Code commencing on January 19, 2012 and ending on February 18, 2012, and

WHEREAS, the Initial Study and Draft Mitigated Negative Declaration of Environmental Impact and all documents related to it can be viewed at the Inyo County Public Works Department at 168 North Edwards Street in Independence, California during regular business hours between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 5:00 p.m. and also on the internet at <http://www.inyoltc.org/docs.html>, and

WHEREAS, pursuant to Section 15074 of the State CEQA Guidelines, a mitigation monitoring plan has been adopted and is incorporated in the Final Initial Study and Draft Mitigated Negative Declaration, and

WHEREAS, the Inyo County Planning Commission recognizes the need to establish Implementation Procedures as required by the California Vehicle Code and Assembly Bill (AB) 628, which Implementation Procedures shall govern future establishment of combined-use routes located in Inyo County in certain circumstances; and

WHEREAS, the Inyo County Planning Commission recognizes the benefits of establishing procedures for the implementation of AB 628 prior to designating any combined-use route or routes, which procedures are provided for public input and notification; and

WHEREAS, on April 25, 2012, the Planning Commission held a public hearing on the Draft Mitigated Negative Declaration as required by Section 15.32.080 of Inyo County Code; and

NOW THEREFORE BE IT HEREBY RESOLVED, that based on all of the written and oral comment and input received at the April 25, 2012 hearing, including the Staff Report and the Mitigated Negative Declaration of Environmental Impact concerning the adoption of procedures to implement

Assembly Bill 628, this Planning Commission makes the following findings regarding this matter and hereby recommends that the Board of Supervisors adopt the following findings:

1. A Draft Mitigated Negative Declaration of Environmental Impact was prepared and circulated in accordance with the California Environmental Quality Act and reflects the County's independent analysis and judgment. Together with the Initial Study, all comments received on the Mitigated Negative Declaration, the responses to those comments, and all other information in the record, the Mitigated Negative Declaration shows that there is no substantial evidence that the project will have a significant effect on the environment, as mitigated.
2. Based on substantial evidence in the record the proposed Inyo County Implementation Procedures comply with Assembly Bill 628 and the California Vehicle Code.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors take the following action:

1. Certify that the subject Draft Mitigated Negative Declaration of Environmental Impact was prepared in compliance with CEQA, was presented to and considered by your Board, and reflects the independent judgment of your Board.
2. Approve the environmental document for the Implementation Procedures for Assembly Bill 628 based on all of the information in the public record and on recommendation of the Planning Commission.
3. Approve the Implementation Procedures for the pilot program authorized by Assembly Bill 628.

ACTIONS PASSED AND ADOPTED THIS 25th DAY OF APRIL, 2012.

AYES: White, Wasson, Little, Payne

NOES: None

ABSTAIN: None

ABSENT: Stoll



Sam Wasson, Acting Chair
Inyo County Planning Commission

ATTEST:

Joshua Hart, Planning Director

By 

Dan Stewart
Planning Coordinator

APPENDIX 1

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
APPROVAL OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628
COMMENT INDEX**

- 1. Steven P. McLaughlin (2/14/12)**
- 2. City of Los Angeles, Department of Water and Power (2/14/12)**
- 3. William Mitchel (2/15/12) Procedure Outline**
- 4. William Mitchel (2/15/12) CEQA document**
- 5. California Department of Transportation (2/15/12)**
- 6. Public Employees for Environmental Responsibility and Center for Biologic Diversity (2/16/12)**
- 7. Sierra Club Toiyabe Chapter (2/17/12)**
- 8. Inyo National Forest (2/17/12)**
- 9. William Mitchel (2/17/12)**
- 10. Friends of the Inyo (2/17/12)**
- 11. Annie Walker (2/17/12)**
- 12. Sydney Quinn & Dennis Schumaker (2/18/12)**
- 13. Sydney Quinn e-mail (2/18/12)**
- 14. Bureau of Land Management, Bishop Field Office (3/14/12)**
- 15. Inyo National Forest (3/16/12)**

Steven P. McLaughlin
PO Box 819
Big Pine, CA 93513
spmjeb@qnet.com

Comment letter received via e-mail on
February 14, 2012

Comments: Draft Mitigated Negative Declaration of Environmental Impact and Initial Study.

First of all, I have no objection to the legal and *responsible* use of dirt bikes, quads, rhinos, dune buggies, jeeps, snowmobiles, or any other form of off-highway vehicle (OHV) on designated roads, trails, and OHV-use areas. I do have many concerns with illegal, irresponsible, or reckless use of OHVs, and I think there is clear potential for AB 628 to increase the number of incidents of such use, if it is not thoughtfully and carefully implemented, with adequate funding for law enforcement and any necessary infrastructure.

1 & 2 The Draft MND for implementation of AB 628 appears to me to be based on two important but unstated assumptions: (1) AB 628 will not result in any increased use of OHVs, and (2) all OHVs will be operated in a legal and responsible manner.

If AB 628 does not result in increased visitation to the County for OHV-based recreation, then there would be no economic benefits to balance the costs of implementation. In that case I don't understand why the County would want to proceed. So my specific comments assume that implementation of AB 628 will result in an increase in the amount of OHV traffic in the County. If this is the case, there is good reason to believe that there are many potentially significant impacts from implementation of AB 628 that are not addressed in the Draft MND.

From what I have observed, I think that the majority of Inyo County residents and visitors do operate their OHVs in a legal and responsible manner, but many do not. I live on an unpaved county road. We often have to put up with the dust, noise, litter, and traffic hazards of OHV operators driving as fast as they can, at any hour of the day or night, up and down the road (repeatedly), particularly on weekends during the late spring and early summer months. Additional evidence for illegal, irresponsible use of OHVs outside of our neighborhood is not hard to find: trash on every dirt road, user-created trails, tracks on protected areas (e.g., Eureka Dunes), vandalism of signs, etc. If the *rate* (percentage of irresponsible OHV use) does not change as a result of implementation of AB 628, then the total *number* of illegal and/or irresponsible incidents must increase with an increase in the number of users.

3 The Draft MND states that "all answers [on the Inyo County Environmental Checklist Form] must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts" (Draft MDN p. 3). However, the Draft MND does not do that, restricting its analysis of impacts to the County road rights-of-ways. Increased OHV use, particularly illegal and irresponsible use, is likely to have off-site (i.e., off right-of-way) impacts on: air quality, biological resources, cultural resources, geology/soils, noise, public services, recreation, and transportation/traffic.

AIR QUALITY

"Some of the combined-use roadways will use county maintained dirt roads. The increased use of these routes may increase the amount of dust." (Draft MND p. 9).

- 4 With increased traffic, dust *will* increase—it is unavoidable. On our road, OHV traffic currently creates significant dust problems in certain times of the year. Across the valley, I can see the dust plume from every vehicle that drives down the east side of the Owens River at most times of year.

Appropriate mitigations could include: (1) posting appropriate speed limits on all roads, particularly in residential areas on dirt roads [I suggest 15 mph], (2) increased law enforcement during heavy-use periods, and (3) periodically wetting down roads during heavy use periods.

BIOLOGICAL RESOURCES

"The off-highway vehicles will be traveling on existing roads and routes." (Draft MND p. 10)

How do we know that operators will restrict themselves to existing roads and routes? Many do not now, and with increased use, the number of incidents of use off roads or outside of designated use areas is likely to increase, which will damage vegetation.

- 5 Possible mitigations for this are (1) increased law enforcement by County sheriffs, BLM and INF law enforcement personnel, and (2) increased education by user groups, County, BLM, and INF personnel, and peer-pressure by user groups. The lack of any provisions or programs for education of users is one of the biggest weaknesses of AB 628.

"It is possible that the County will designate a County road such as the Silver Canyon Road or Wyman Canyon Road that repeatedly crosses perennial creeks as a combined-use road. However the project will not change the nature of the crossings." (Draft MND p. 10)

- 6 Increased use of creek crossings will incrementally increase sedimentation and pollution.

Mitigation of these impacts could include monitoring of water quality downstream of such frequently-used stream crossings, and, if necessary, construction of bridges over heavily-impacted stream channels.

CULTURAL RESOURCES

"The implementation of procedures and the future designation of County roadways as combined routes will only apply to existing roadway right of way." (Draft MND p.11)

- 7 This one of many examples of the consistent failure of the Draft MND to consider off-site and indirect impacts. Increased OHV traffic will put more people in contact with cultural and archaeological artifacts, with the potential for increased damage to these resources.

Possible mitigations include increased law enforcement, education, and user-group peer-pressure.

GEOLOGY AND SOILS

"The future designation of Combined-use roadways will have no impact on soil or topsoil. The project only applies to existing County roadways." (Draft MND p.12)

- 8 Again, there is the implicit assumption that all use resulting from implementation of AB 628 will be confined to legal roads and trails, and a consequent failure to consider off-site and indirect impacts. With increased use of OHVs, the number of incidents of use off roads or outside of designated use areas is likely to increase, which will damage soils.

Possible mitigations (again) include increased law enforcement, education, and user-group peer-pressure.

GREENHOUSE GAS EMISSIONS

"However, the implementation of the project is more the dispersal of an existing use than the creation of a new use. As such, the project will not result in excessive amounts of emissions." (Draft MND p.13)

- 9 I just want to make the point, again, that if the project is not an *expansion* of an existing use, it has no economic benefit to the County. I would agree that it will not result in excessive amounts of emissions.

NOISE

"A mitigation measure is being added to reduce potential impacts and complaints for this situation: The operation of combined use routes in residential areas is restricted to between dusk and dark and no earlier than 7:00 a.m. and no later than 8:00 p.m." (Draft MND p.16)

- 10 How will this be enforced? Night-time use of OHVs in our neighborhood is common now during peak use periods. More importantly, is it Inyo County's position that *any* amount of noise between 7 AM and 8 PM is acceptable? With increased OHV use in residential areas, increased noise is inevitable and unavoidable, particularly when the incidents of irresponsible use increase proportionally.

Possible mitigations include posted low speed limits in residential areas (15 mph), increased law enforcement, education, and user-group peer-pressure.

PUBLIC SERVICES

"However, these types of driving are considered reckless and are not legal. It is not clear how the designation of combined-use roads will affect this type of damage. It may create more users and thus reduce this impact." (Draft MND p.19)

- 11 Please explain how creating more users is expected to reduce reckless driving. I think it more likely to increase the incidents, if not the rate, of reckless, irresponsible, and illegal OHV use.

RECREATION

"It is likely that off-highway vehicle users will use local campgrounds to access the trail system. Local campgrounds are not at capacity and any potential impact would not be significant."
(Draft MND p.19)

- 12 On spring and early summer weekends, many County campgrounds appear to me to be filled to capacity (e.g., Taboose Creek, Tinnemaha Creek). What data does the County have to support the above statement? Over-crowding of campgrounds is likely to result in some visitors using areas adjacent to campgrounds, which lack bathrooms and fire rings. The increased potential for wildfires originating in campgrounds and adjacent areas is a particular concern in my neighborhood.

A potential mitigation is setting (and enforcing) campground capacities, and policing wildcat camping outside of campground boundaries.

TRANSPORTATION/TRAFFIC

"The maximum speed limit for off-highway vehicles on the combined-use routes is 35 mile per hour." (Draft MND p.19)

- 13 Speed limits are not posted on most County roads in our area, and there are many segments of county roads in our area where a 35 mph speed limit would be inappropriate, particularly on dirt roads in residential neighborhoods.

Mitigation possibilities include reevaluation of appropriate speed limits on all proposed combined-use roads, posting of appropriate speed limits, and increased law enforcement.



INYO COUNTY
P.O. DRAWER Q
INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Steve McLaughlin (2-14-2012)

- 1) **Comment:** OHV use will increase with time. The environmental document does not take this into account.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

- 2) **Comment:** All OHVs will not be operated in a legal and responsible manner.

Response: The Implementing Procedures only acts to provide the procedures by which routes can be considered for designation. There is currently some ambiguity as to which roads are maintained by the County amongst OHV users. The future designation of specific combined-use routes as provided for in the proposed Implementing Procedures and accompanying signage

¹ Section 38026.1 (a) of the California Vehicle Code

coupled with further mapping efforts such as the *Inyo National Forest and Bishop Area BLM Motorized and Non Motorized Trails* map will further educate visitors as to OHV trails that are legal to ride. In addition, formal designation and signing of combined-use routes will allow law enforcement personnel from the Inyo County Sheriff's Office, Bureau of Land Management, and Inyo National Forest to enforce regulations that are more transparent to all parties involved.

3) Comment: Analysis should not be restricted to just County roads, but whole of Adventure Trail system.

Response: See response to Comment 1. In addition, it is important to keep in mind the humble scope of this project. Any future designated combined-use routes will link existing OHV facilities. The existing OHV facilities have already been evaluated and designated by the land managing agencies. The only roads that will be added to the system are combined-use portions of County roads. The only trail segments that will be connected to are on BLM and Inyo National Forest land. The BLM and Inyo National Forest have gone through formal procedures analyzing the type of vehicles allowed. Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

4) Comment: The project will result in an increase in dust.

Response: County roads are currently open for vehicular travel. OHVs do not produce more dust than do full-size automobiles and trucks.

5) Comment: How do you know the project will not result in damage to biological resources?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

6) Comment: Increased use of creek-crossings will cause increased sedimentation.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the

legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that these creek crossings are currently open to regular vehicular traffic. Regular vehicles weigh significantly more than do OHV vehicles.

7) Comment: The environmental document does not adequately address the cumulative impacts to cultural resources created by increased OHV traffic.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

8) Comment: The environmental document does not adequately address the cumulative impacts to soils.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

9) Comment: How will the project have an economic impact on the County if there is no expansion of use?

Response: It is not clear if this project will have a positive economic impact on the County. The potential economic impact to the County comes from the ability of OHV users to directly access goods and services in the community. It is the OHV trails themselves that will determine the future use of the system, not the combined-use segments designated by the County.

10) Comment: How will enforcement on the hours of use take place?

Response: Enforcement is the responsibility of the Inyo County Sheriff's Department. If there is currently illegal use of the road in front of your residence, you should contact the Inyo County Sheriff's Department. The telephone number for their Bishop office is (760) 873-7887 and for Independence is (760) 878-0383. The designation of specific combined-use routes and accompanying signage coupled with further mapping efforts such as the *Inyo National Forest and Bishop Area BLM Motorized and Non Motorized Trails* map will further educate visitors as to OHV trails that are legal to ride.

11) Comment: The implementation of the combined-use segments will increase reckless and irresponsible driving.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Also, see response to Comment No. 10 above.

12) Comment: Local campgrounds are not adequate to serve projected future use. Specifically Tinnemaha and Taboose Creek campgrounds are booked on spring and early summer weekends. There is a possibility of increased amounts of illegal camping.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

A spreadsheet is attached that shows the number of vehicles camped at Inyo County campgrounds per month. Further correspondence with the Inyo County Parks and Recreation Department confirms that these campgrounds are full on spring and early summer weekends.

Other County, Private, and Federal campgrounds have extra room. It should also be noted that no camping is allowed on City of Los Angeles, Department of Water and Power land. You can contact the Inyo County Sheriff's office if you see camping on City of Los Angeles property. There is also dispersed camping allowed on BLM and Inyo National Forest lands in many areas in the Owens Valley.

13) Comment: A speed limit of 35 will not be appropriate on all roads, especially on dirt roads in residential subdivisions.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The California Highway Patrol is required by the California Vehicle Code to make a safety determination as set forth in the California Vehicle Code and as amended by Assembly Bill 628.

380026 (c) Prior to designating a highway or portion of a highway on the motion of the local authority, an agency of the federal government, or the Director of Parks and Recreation, or as a recommendation of the Off-Highway Motor Vehicle Recreation Commission, a local authority, an agency of the federal government, or the Director of Parks and Recreation shall notify the Commissioner of the California Highway Patrol, and shall not designate any segment pursuant to subdivision (a) which, in the opinion of the commissioner, would create a potential traffic safety hazard.

This is further reinforced in Assembly Bill 628.

Section 38026.1 (e) The County of Inyo shall not designate a highway for combined use pursuant to this section unless the Commissioner of the Department of the California Highway Patrol finds that designating the highway for combined use would not create a potential traffic safety hazard.

Further, Inyo County is required to complete *an evaluation of the overall safety and effectiveness of the pilot project* in a report to the California legislature by January 1, 2016 as shown below.

Section 38026.1 (f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

- (1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
- (2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

Also note that the County will analyze the safety of all proposed combined-use applications as set forth in the Implementing Procedures Section 9(a).

Courtney Smith

From: Teresa Elliott
Sent: Wednesday, February 15, 2012 2:29 PM
To: Courtney Smith
Subject: RE: Inyo County Campground occupancy and use rates
Attachments: Campground Usage 2010-2011.xls

The only thing we keep track of is the monthly usage by vehicle, which I have attached. Tinnemaha and Taboose campgrounds are very popular and do fill up in the spring and summer. They are first-come first-serve campgrounds. So our statistics are pretty basic. Hope this helps.

Teresa Elliott
Account Tech II
Inyo County Administrative Services
Waste Management
Parks & Recreation
Motor Pool
163 May St Bishop, CA 93514
760-873-5577
760-873-5599 fax
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Think Green: Keep it on the screen

From: Courtney Smith
Sent: Wednesday, February 15, 2012 2:25 PM
To: Teresa Elliott
Subject: Inyo County Campground occupancy and use rates

Teresa,

I work for the Public Works Department. Our office released an environmental document on the designation of certain County roads for off-highway vehicles (see the 3rd bullet at <http://www.inyoltc.org/docs.html> if interested). A member of the public submitted comments that Tinemaha Creek and Taboose Creek campgrounds are full on weekends in the spring and fall.

Do you have occupancy statistics for Tinemaha Creek and Taboose Creek campgrounds? Do you know how often these campgrounds are at full capacity.

Jeff Ahlstrom mentioned that you might be able to provide this information. Let me know if you have any questions.

Thanks,

Courtney

Courtney Smith, Transportation Planner
Itho County Public Works Department
(760) 878-0207

INYO COUNTY PARKS & RECREATION DEPARTMENT

Campground Use (Per Vehicle)

2010/2011

DATE	PLEASANT	BAKER	TINNEMAHA	TABOOSE	INDY CG	P. JOE	DIAZ LAKE
JULY	235	166	164	381	93	90	617
AUG	355	167	99	343	71	65	471
SEPT	421	167	92	420	127	61	555
OCT	606	186	235	415	87	68	389
NOV	443	60	50	182	89	18	
DEC	25	14	19	11	26	10	
JAN	188	76	30	24	38	20	
FEB	235	47	16	55	19	22	
MAR	703	118	39	152	13	50	
APR	1,023	229	104	317	78	127	
MAY	1,173	251	347	776	153	95	
JUN	622	249	778	881	156	83	
TOTALS	6,029	1,730	1,973	3,957	950	709	2,032
						TOTAL	17,380
Diaz Lake went to concessionaire on November 1, 2010							



ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice-President*
RICHARD F. MOSS
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

February 9, 2012

RECEIVED

Mr. Courtney Smith, Transportation Planner
Inyo County Public Works Department
PO Drawer Q
Independence, CA 93526

FEB 14 2012

INYO COUNTY
PUBLIC WORKS

Dear Mr. Smith:

Subject: Inyo County Adventure Trails Pilot Project Combined-Use Procedures
Draft Initial Study and Mitigated Negative Declaration

The Los Angeles Department of Water and Power (LADWP) has reviewed the Draft Initial Study (IS) and Mitigated Negative Declaration (MND) for the Adventure Trails Pilot Project Combined-Use Procedures recently released by Inyo County (County). These procedures are being analyzed under the California Environmental Quality Act (CEQA) in order to implement Assembly Bill 628 (AB 628), which revised the California Vehicle Code so that certain County roads could be designated as combined use routes and used by off highway vehicles (OHVs). It is our understanding that this MND will adopt these procedures pursuant to AB 628, and will also cover implementation of the pilot project County-wide where feasible, unless additional environmental concerns are brought to light in this analysis.

LADWP recognizes that the Adventure Trails Project will allow access for OHVs on main arteries in Inyo County, several of which bisect City of Los Angeles (City) property. However, the proposed project does not identify individual routes or provide a map of possible routes, so potentially significant environmental effects of implementing this project cannot be adequately identified at this time.

1

LADWP anticipates an increase in OHV use on adjacent City lands to coincide with the launch of the Adventure Trails Project and is extremely concerned about impacts to our lands and operations as a result. More specifically, we are concerned about the added liability that this project may bring to the City, and further aggravating the issue of limited enforcement of unauthorized OHV use that presently exist County-wide. In addition, increased OHV use on City lands could lead to trail proliferation, significant resource damage, and could conflict with LADWP's aqueduct and ranching operations. Further environmental analysis of individual routes is warranted, and potential impacts to the City are worthy of consideration in assessing the cumulative impacts of this project under CEQA.

2

3

LADWP offers the following comments with regard to specific sections of the IS/MND:

II. Agriculture and Forest Resources

The IS states that there will be no impact to agricultural resources as a result of implementing this project. OHV use on adjacent City property could interfere with the existing ranching operations of LADWP lessees, as users could disturb livestock operations with their activities and noise, as well as leave gates open, etc. This could cause an unnecessary burden and may result in added costs to both the City and its lessees due to fence repair, corrective land management actions, possible loss of livestock and/or added liability due to open gates, etc.

4

Water and Power Conservation . . . a way of life

□ Bishop, California mailing address: 300 Mandich Street • Bishop, CA 93514-3449 • Telephone: (760) 873-0208 • Fax (760) 873-0266
111 North Hope Street, Los Angeles, CA 90012-2607 • □ Mailing address: Box 51111 • Los Angeles, CA 90051-0100
Telephone: (213) 367-4211 • Cable address: DEWAPOLA

These issues should be considered in this analysis, as most City lands in Inyo County are leased for livestock grazing and could be affected by this project.

IV. Biological Resources

The IS states that there will be no impact or less than significant impacts to biological resources as a result of this project. There likely will be no biological impacts from adopting procedures; however, this assessment is inadequate for implementing the project given the limited information provided in the project description. Specific routes could vary greatly from an environmental standpoint and could require different considerations for analysis. As a consequence, we request that a subsequent CEQA analysis of selected routes be conducted prior to implementation to ensure that potentially significant environmental impacts to sensitive species and their habitats are sufficiently analyzed.

The City has recently absorbed the impacts of additional OHV use in the Owens Valley due to road closures on adjacent federal lands. LADWP is concerned that the Adventure Trails Project will result in additional pressure to the City's lands in the Owens Valley to the detriment of the watershed. This use on City lands could jeopardize the success of LADWP's environmental mitigation projects in Inyo County, including the Lower Owens River Project, the Additional Mitigation Projects Developed by the MOU Ad Hoc Group, the Owens Valley Land Management Plans, Yellow-billed Cuckoo Habitat Enhancement Plans, etc., all of which were court mandated projects that have specified goals and criteria for success. Unneeded setbacks due to OHV use could be considerably problematic in attaining these goals.

5

VIII. Hazards and Hazardous Materials

The IS states that there is no hazard to the public or the environment through the routine transport of hazardous materials. It should be acknowledged that OHVs use gasoline and oil for operation. While these materials are not being transported in high volumes, spills could still contaminate waterways.

6

XIV. Public Services

The IS acknowledges that additional police protection will be needed by both the Sheriff's Department and the California Highway Patrol, and that the Sheriff's Department currently has difficulty with enforcement of OHV regulations on City lands. While it is mentioned that two new OHV patrol vehicles have been acquired for enforcement, there is no mention of additional staff or ordinances needed for effective patrol of these rural City-owned lands. Manpower and the necessary legal jurisdiction must be supplied for successful enforcement of OHV policies on County-maintained roads as well as adjacent lands.

7

XV. Recreation

As mentioned above, LADWP is seeing new impacts on the City's watershed lands as a result of recent road closures on adjacent federal lands. Although the Adventure Trails Project targets County roads to be changed to a multi-use designation, LADWP anticipates a simultaneous increase in OHV use on City lands. Increased OHV use on City lands could lead to trail proliferation and significant resource damage as well as conflict with LADWP's aqueduct and ranching operations, all cumulative impacts that should be considered in this and subsequent CEQA analyses regarding the Adventure Trails Project.

8

XVIII. Mandatory Findings of Significance

CEQA Appendix G (Initial Study and Environmental Checklist Form), Item 2 (page 3) states that "all answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts." While this IS/MND assesses direct impacts with regard to sign installation and formal route designation by the County on County-maintained roads, it fails to adequately consider cumulative impacts of implementing the Adventure Trails Project to adjacent landowners.

9

Mr. Courtney Smith
Page 3
February 9, 2012

We appreciate the County's proactive effort for recreation management and recognize that this project may be of benefit to some communities. However, LADWP cannot support this project, nor condone the resulting OHV use of adjacent lands, as the burden of managing and mitigating issues resulting from the Adventure Trails Project will most likely fall on LADWP. LADWP does not wish to take on any new obligation or responsibility associated with this project, nor do we want City lands associated with this endeavor.

Thank you for the opportunity to comment on the Draft IS/MND for the Inyo County Adventure Trails Pilot Project Combined-Use Procedures. Again, we request further analysis of individual routes once selected, and an expanded analysis of cumulative impacts of implementing the project. If you have any further questions or concerns regarding this letter, please contact me at (760) 873-0342.

Sincerely,



Clarence E. Martin
Assistant Aqueduct Manager

LD: bs

c: Mr. Kevin Carunchio
Ms. Susan Cash
Ms. Linda Arcularius
Mr. Rick Pucci
Mr. Marty Fortney
Mr. Richard Cervantes
Mr. Mark Johns

Four J Cattle Corporation
John K. and Tansy I. Smith Trust
Mr. and Mrs. Gary Giacomini
Mr. Joe C. Mendiburu et al.
ST Ranch
Mr. Scott Kemp

S&M Kemp Ranch LLC
Mr. Mark Lacey
Lacey Livestock
Spainhower Anchor Ranch, Inc.
Mr. Ronald Yribarren et al.



INYO COUNTY
P.O. DRAWER Q
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**COUNTY
OF
INYO**

RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628

Commenting Party: City of Los Angeles, Department of Water and Power (1/31/12)

- 1) **Comment:** The environmental document does not address individual routes and therefore is not adequate.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

- 2) **Comment:** A concern about an increase in OHV usage on Los Angeles Department of Water and Power (LADWP) land, trail proliferation, and potential resource damage.

Response: A goal of the implementation of the Eastern Sierra Adventure Trails system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the plan is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

The Pilot Project allowed by Assembly Bill 628 gives the County, the City, and the State a unique opportunity to re-evaluate the impacts of the project before January 1, 2016. Per AB 628:

(f) Not later than January 1, 2016, the County of Inyo, in consultation with the

¹ Section 38026.1 (a) of the California Vehicle Code

Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

- (1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
- (2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

The County will work closely with the LADWP and solicit the City's feedback on the issues raised by LADWP in the development of this status report to the State Assembly. If LADWP is able to quantify increased use or resource damage, that information should be provided to the State as part of the report. The goal of the project is for reduced impact to private property owners.

To reduce the potential impact to a level that is less than significant, the County has added a mitigation measure that will be included at all intersections along combined-use routes on LADWP land where a carbonite post type sign will be placed with an arrow pointing straight ahead in association with an Eastern Sierra Adventure Trails ensignia. This sign will make it clear which way the Adventure Trail combined-use segment is traveling. This should keep users of the Adventure Trails on the combined-use segment headed toward trail segments on BLM and Inyo National Forest land.

The Implementing Procedures only acts to provide the procedures by which routes can be considered for designation. There is currently some ambiguity as to which roads are maintained by the County amongst OHV users. The future designation of specific combined-use routes as provided for in the proposed Implementing Procedures and accompanying signage coupled with further mapping efforts such as the *Inyo National Forest and Bishop Area BLM Motorized and Non Motorized Trails* map will further educate visitors as to OHV trails that are legal to ride. In addition, formal designation and signing of combined-use routes will allow law enforcement personnel from the Inyo County Sheriff's Office, Bureau of Land Management, and Inyo National Forest to enforce regulations that are more transparent to all parties involved.

3) **Comment:** Further environmental evaluation of specific routes is warranted.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures

are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

- 4) **Comment:** OHVs using the Adventure Trails will potentially negatively impact ranch leases on LADWP land.

Response: See response to Comment No. 2 above. Also, please note that the only trail segments that will be connected to are on BLM and Inyo National Forest land.

- 5) **Comment:** The limited information in the environmental document does not address potential impacts to biological resources.

Response: See the answers to questions No. 1 and 2 above.

- 6) **Comment:** There is a hazard from the potential leak of gasoline and oil from OHV vehicles.

Response: See response to Comment No. 1 above. This point is correct, however it is not significant. LADWP roads are currently open to vehicular traffic, including OHVs. The designation of combined-use road segments will concentrate OHV use in areas where OHV use is permitted – on BLM and Inyo National Forest land, not LADWP land.

- 7) **Comment:** Additional law enforcement will be required on LADWP lands. The Sheriff's Department already has difficulty enforcing OHV usage on LADWP land. The Sheriff's Department will not be able to respond to increased trespass caused by the designation of combined-use roads.

Response: The Implementing Procedures only acts to provide the procedures by which routes can be considered for designation. There is currently some ambiguity as to which roads are maintained by the County amongst OHV users. The future designation of specific combined-use routes as provided for in the proposed Implementing Procedures and accompanying signage coupled with further mapping efforts such as the *Inyo National Forest and Bishop Area BLM Motorized and Non Motorized Trails* map will further educate visitors as to OHV trails that are legal to ride. In addition, formal designation and signing of combined-use routes will allow law enforcement personnel from the Inyo County Sheriff's Office, Bureau of Land Management, and Inyo National Forest to enforce regulations that are more transparent to all parties involved. See the response to question No. 2 above.

- 8) **Comment:** Concern over potential proliferation of OHV routes that may further interfere with the City's ability to conduct their aqueduct and ranching operations.

Response: See response to comments No. 1 and 2 above.

- 9) **Comment:** The environmental document fails to adequately address cumulative impacts created by the project on surrounding land.

Response: See response to comment No. 1 above.

Comments
on the
DRAFT Inyo County Adventure Trails Pilot Program Procedure Outline
dated Dec. 23, 2011

Having read the draft procedure outline it is apparent to me that Courtney Smith has done a thorough job in researching and drafting the procedures. His work is appreciated.

Even so, I do find two sections where comment is appropriate and suggest some modifications to the procedures.

1. Sec. 5b. Notice a public hearing on the application, providing notice to all land owners surrounding the proposed combined-use roadway of the date, time and location of the public hearing, with notice mailed a minimum of seven (7) days prior to the public hearing.

Comment: Providing notice to all land owners surrounding the proposed combined-use roadway is a vague statement and is subject to broad interpretation. Giving written notice to all land owners within a specified distance of the roadway might take the judgment out of determining to whom the notices are sent.

1

Mailing the notice a minimum of seven days prior to the public hearing may only give some land owners a few, if any, days to make arrangements to attend the hearing. It takes a minimum of two days by mail so two days are lost. Something like a two week minimum period would make it easier for people to attend. I don't think that would create an undue burden on those reviewing the application plus the county has the option of extending the 120 day period if needed.

2

Also, notice of the public hearing should be given in some form, such as the public notices section of the newspaper, to all members of the community because it is not just those next to a roadway that have an interest. All people using the roadway are potentially affected by speed limits, traffic congestion, noise, etc.

3

2. Sec 14b. The Inyo County Sheriff's Department will maintain a file that includes any information regarding impact on traffic flows, safety, incursions into areas not designated for off-highway vehicle usage, to the extent such information is available.

Comment: Given the potential influx of OHV users, how will the county control their use in areas not designated for OHV use? Is the Sheriff's department equipped and staffed to control use of OHVs in areas not designated for their use? Even with the grant funding the department has received for this purpose in the past, I believe the department is understaffed for this purpose. Mitigation of this issue should be in place before approving any combined-use highways.

4

William Mitchel
716 Sundown Circle
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**COUNTY
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**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: William Mitchel – Procedure Outline (2-15-2012)

- 1) **Comment:** Concerned that notice to surrounding property owners may be too vague. Suggests giving notice to landowners within a specific distance to the roadway.

Response: The noticing requirement set forth in the Draft Implementing Procedures goes beyond that set forth in Assembly Bill 628. The goal of the County is to make the process transparent to property owners most closely affected by the designation of a combined-use route. Staff concurs that the term “surrounding” may be too vague and agrees to change that to read “...providing notice to all land owners **adjacent to** ~~surrounding~~ the proposed combined-use roadway of the date, time and location ...”

- 2) **Comment:** Seven day notice requirement for public hearings is inadequate. Suggest making the notice requirement 14 days at a minimum.

Response: The seven day notice requirement exceeds the three day notice requirement that the Board of Supervisors is required to comply with for taking action by resolution. To facilitate the public review of future combined-use applications, Inyo County staff will load a copy of the combined-use application on the Inyo County Local Transportation Commission website after the application has been determined to be complete

- 3) **Comment:** Concerned about adequacy of public notice.

Response: The notice requirement for the Board of Supervisors is in addition to the seven day notice set forth in Section 5b of the Procedures Outline. The notice of the Board meeting is conducted in the same manner the Board normally advertises a meeting. That includes: posting notice of the meeting, mailing notice of the meeting to local outlets (newspaper, radio, and TV), and making the agenda available on the internet.

The Board of Supervisors Agenda and Agenda Packet are posted on the County website at http://www.inyocounty.us/Board_of_Supervisors/.

- 4) **Comment:** Concerned about possible illegal use of OHV in areas not designated for OHV use. How will this be enforced?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing

Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

Comments
on the
Draft Mitigated Negative Declaration of Environmental Impact and Initial Study
dated January 16, 2012

Inyo County's CEQA Appendix G: Initial Study and Environmental Checklist Form, Evaluation of Environmental Impacts: states that 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

Comment: Due to the potential and likely influx of OHV use upon implementation of AB628, the number of illegal incursions into areas not designated for OHV use will increase. Currently, there is considerable abuse by riding OHVs in areas not

1

designated for such use and by creating routes where none existed before. The increase in OHV use result in an increased level of abuse.

This will have impacts on several of categories listed on the Environmental Checklist Form including Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality, Noise and Public Services. That these impacts will occur off-site should be taken into consideration.

Mitigations should be included to counter these impacts.

2

One of the greatest issues here is the ability of the Sheriff's department to control illegal use of OHVs. Is the Sheriff's department equipped and staffed to do so? Before implementation of AB628, adequate Sheriff's support must be available.

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**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: William Mitchel – CEQA Comments (2-15-2012)

- 1) **Comment:** Concerned about the potential proliferation of OHV routes and a variety of potential impacts that this could create.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act. Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

The program to designate combined-use routes is a pilot project. Assembly Bill 628 gives the County, the City, and the State a unique opportunity to re-evaluate the impacts of the project before January 1, 2016. Per AB 628:

- (f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of

¹ Section 38026.1 (a) of the California Vehicle Code

Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

- 1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
- 2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

The County will work closely with the BLM, Inyo National Forest, and LADWP and solicit feedback on trends in OHV use in the development of this status report to the State Assembly. All information submitted by these agencies will be provided to the State as part of the report. The goal of the project is for reduced impact to private property owners.

- 2) **Comment:** Concerned about the ability of the Inyo County Sheriff's Department to control illegal OHV use.

Response: The Inyo County Sheriff's Department is responsible for enforcing OHV use on County roads and on private land. The Implementing Procedures only acts to provide the procedures by which routes may be considered for designation. There is currently some ambiguity as to which roads are maintained by the County amongst OHV users. The future designation of specific combined-use routes and accompanying signage coupled with further mapping efforts such as the *Inyo National Forest and Bishop Area BLM Motorized and Non Motorized Trails* map will further educate visitors as to OHV trails that are legal to ride. In addition, formal designation and signing of combined-use routes will allow law enforcement personnel from the Inyo County Sheriff's Office, Bureau of Land Management, and Inyo National Forest to enforce regulations that are more transparent to all parties involved.

DEPARTMENT OF TRANSPORTATION

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Flex your power!
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February 15, 2012

Courtney Smith, Inyo County Public Works
P.O. Drawer Q
Independence, California 93526

File: Iny-various
MND
SCH #: 2012011039

Dear Mr. Smith:

Adventure Trails Pilot Program: Combined Use Procedures - draft Mitigated Negative Declaration (MND)

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the MND for the Pilot Program, which would allow specific county roadways to also be used by off highway vehicles. We appreciate previous interaction you have had with Caltrans staff - Mark Reistetter and Kurt Weiermann. We have the following comments:

1

- The Checklist Form, page 6, item 10, includes that Caltrans permitting is required for any sign placement in State right-of-way (R/W). For further information, you may contact Kurt Weiermann at (760) 872-0781 or kurt.weiermann@dot.ca.gov. See also:

Encroachment Permit Application:

[http://www.dot.ca.gov/hq/traffops/developserv/permits/pdf/forms/Std_E.P_Application_\(TR-0100\).pdf](http://www.dot.ca.gov/hq/traffops/developserv/permits/pdf/forms/Std_E.P_Application_(TR-0100).pdf)

Encroachment Permit Instructions:

http://www.dot.ca.gov/hq/traffops/developserv/permits/pdf/forms/encrchpermt_instruc.pdf

You may wish to correct checklist references (e.g. I. Aesthetics, V. Cultural Resources and XI. Mineral Resources), which include that all signage would be placed within existing County R/W. As noted above in item 10, signs could be merited in State R/W.

2

- As stated in the Pilot Program Procedure Outline (November 15, 2011) State Agencies would review specific proposals. During that review, we would determine any requirements pertaining to State highways (i.e. at crossings).

Please continue to forward project information. We value our cooperative relationship regarding transportation in Inyo County. For any questions, you may contact me at (760) 872-0785.

Sincerely,

Handwritten signature of Gayle J. Rosander in cursive.

GAYLE J. ROSANDER
IGR/CEQA Coordinator

c: State Clearinghouse
Mark Reistetter, Caltrans



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**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: California Department of Transportation (2-15-2012)

- 1) **Comment:** County must comply with Caltrans requirements for the placement of signs in the California Department of Transportation (Caltrans) right-of-way.

Response: So noted. In general, the County will first try to place signage in the County road right-of-way. The County acknowledges that it needs to obtain approval from Caltrans if there will be a crossing of a State Highway and/or a sign is to be placed in the Caltrans right-of-way.

- 2) **Comment:** State will review specific proposals involving State Highways.

Response: So noted. Please also note that Caltrans may have responsibility for judging signage per State Code. As revised by Assembly Bill, Section 38026(d)(1) of the California Vehicle Code reads: "A designation of a highway, or a portion ***of a highway, under subdivision (a) shall become effective upon the erection of appropriate signs of a type approved by the Department of Transportation on and along the highway ..." Further, Section 38026(b)(3) reads:

In cooperation with the Department of Transportation, establish uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles, including, but not limited to, the following:

- (A) Devices to warn of dangerous conditions, obstacles, or hazards.*
- (B) Designations of the right-of-way for regular vehicular traffic and off-highway motor vehicles.*
- (C) A description of the nature and destination of the off-highway motor vehicle trail.*
- (D) Warning signs for pedestrians and motorists of the presence of off-highway motor vehicle traffic.*

Please note that the role of Caltrans appears to be more than is stated in their comment letter. The County looks forward to coordinating with Caltrans to make sure these newly designated portions of code are implemented by both the County and the State.



California

Public Employees for Environmental Responsibility

P.O. Box 4057, Georgetown, CA 95634 Phone: (530) 333-2545 Email: capeer@peer.org



VIA EMAIL AND U.S. MAIL

February 16, 2012

Courtney Smith, Transportation Planner
Inyo County
P.O. Drawer Q
Independence, CA 93526
csmith@inyocounty.us

Re: Combined-Use Roadway Designation as part of the implementation of Assembly Bill 628.

Dear Mr. Smith:

We offer the following comments on behalf of Public Employees for Environmental Responsibility ("PEER") and the Center for Biological Diversity (the "Center"), our staffs and members.

PEER is a national, non-profit organization that represents current and former federal and state employees of land management, wildlife protection, and pollution control agencies who are frustrated by the failure of governmental agencies to enforce or faithfully implement the environmental laws entrusted to them by Congress. Many of PEER's members enjoy spending time in Inyo County's numerous special places.

The Center is is a national, nonprofit organization dedicated to protecting rare, imperiled and endangered species and wild places through science, policy,

education, and environmental law. The Center has over 42,000 members, many of whom reside and recreate in Inyo County.

We continue to have many serious concerns regarding the County's proposal for allowing Off Highway Vehicles (OHVs) on county roads.

The following comments address some of those concerns, specifically, deficiencies in the Draft Initial Study/Mitigated Negative Declaration (IS/MND) and Implementation Plan (IP). According to the draft IS/MND (p. 22), the document applies to the entire County system of roads. Given the potentially significant impacts from some routes, this project demands a full Environmental Impact Report. Moreover, because the IS/MND lacks any site specific analysis of significant impacts of the proposal and the County has not undertaken an EIR, the County cannot rely on this review to tier any later CEQA documents.

The Legislative intent of AB628 includes the improvement of natural resource protection, reduction in off-highway vehicle trespass on private land and the minimization of impacts on county residents. (VC 38026.1. (a))¹ Neither the IS/MND nor the Implementation Plan include any provisions that would actually facilitate any of those objectives. Lacking those measures, the implementation of the county-wide process for designation of yet-unspecified routes is likely to have the opposite effect; a proliferation of off-highway vehicle use that will increase impacts to natural resources, increase trespass, expose residents adjacent to the combined use roads to the noise of dirt bikes, ATVs and other vehicles that were never intended for use in residential areas, increase traffic and decrease road safety for all drivers.

Problems with Inyo County's Draft Initial Study/Mitigated Negative Declaration (IS/MND) and implementation plan include:

- 1 (1) a complete dismissal of the noise issue;
- 2 (2) disregard for the fact that vehicle use is intended to and likely will increase substantially on combined use roads and routes on BLM lands and in the National Forests, with a corresponding increase in environmental impacts, including noise, dust and water quality impacts where roads cross unarmored streams;
- 3 (3) disregard for the fact that road shoulders were designed for occasional use for stopping and in emergencies, not for travel, and that any proposed use of shoulders for travel under the program may have significant impacts on adjacent habitat and surface water flow in addition to impacts on safety;

¹ AB628

- 4 (4) disregard for the fact that the "licenses and devices" for off road vehicles are very difficult to read from any distance and this may create additional safety hazards and difficulties for enforcement;
- 5 (5) disregard for the fact that site-specific CEQA review will be required for applications but the program procedures do not provide for any funding mechanism for the required CEQA review;
- 6 (6) The assumption that ORVs will stay on the designated right of ways completely ignores a vast body of evidence to the contrary;
- 7 (7) the only criteria to be considered in the Implementation Plan are safety, liability and maintenance; the plan ignores environmental impacts entirely.

**A Mitigated Negative Declaration is Inappropriate for the Proposed Program;
A Program EIR is Needed**

- The County has provided a proposed 'pilot program procedure outline" that sets up an application procedure and has no information about likely site specific applications. The County then proceeds in the IS/MND to dismiss most of the potentially significant impacts of the program without even identifying those impacts on a site specific basis or on a county-wide programmatic basis. As such, the mitigated negative declaration appears to be an exercise in futility because it provides inadequate identification or analysis of potential impacts of the *program itself* and because the County has failed to prepare a program EIR it cannot tier any later site-specific CEQA review. The County should acknowledge this short-coming and expressly include a requirement that additional site-specific CEQA review be undertaken for the site-specific applications or possibly a set of applications and provide a mechanism for funding the needed CEQA review.
- 8

The purpose of CEQA is to provide decision-makers and the public with environmental information before decisions are made, not after. As the California Supreme Court observed in *Laurel Heights I*, "[i]f post-approval environmental review were allowed, [CEQA analyses] would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this [practice]." *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* ("*Laurel Heights I*"), (1988) 47 Cal. 3d 376, 394 (citation omitted). Accordingly, "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance." CEQA Guidelines § 15004(b)(2). In particular, an agency shall not "take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." CEQA Guidelines § 15004(b)(2)(B).

9

Where, as here, there is a fair argument that the proposed project – the pilot Program-- may have a significant effect on the environment, preparation of an EIR is required. Public Resources Code §§ 21100, 21151; CEQA Guidelines § 15064(a)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 82. A program EIR is needed here where the pilot program contemplates a number of similar site-specific applications for combined use of roads over a large geographic area many of which will be connected in a network of routes. See CEQA Guidelines § 15168 (a). A program EIR is particularly applicable and advantageous in situations such as this one to consider cumulative impacts, alternatives to the proposed program procedures, county-wide design and mitigation requirements for the site-specific combined use road segments, and to avoid duplicative reconsideration of basic policy considerations in each site-specific review. See CEQA Guidelines § 15168 (b). A program EIR would provide a further advantage of allowing the County to tier later CEQA review for site-specific applications, or groups of applications, to the program EIR (which cannot be done with the IS/MND).

As the County is well aware, negative declarations are appropriate only when there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. Pub. Resources Code, § 21064.5; see also § 21080, subd. (c); CEQA Guidelines §§ 15006, subd. (h), 15064, subd. (f)(2), 15070, subd. (b), 15369.5. As shown in this letter, no such determination can be made in this instance.

Furthermore, under CEQA, an EIR must be prepared even if the lead agency can point to substantial evidence in the record supporting its determination that no significant effect will occur. *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal. App. 4th 1095, 1110. The lead agency may not dismiss evidence because it believes that there is contrary evidence that is more credible. *Pocket Protectors v. City of Sacramento* (2005) 124 Cal. App. 4th 903, 935. Either there is substantial evidence showing the possibility of a significant environmental effect or there is not. If there is, then the lead agency must prepare an EIR. *Architectural Heritage Assn.*, 122 Cal. App. 4th at 1109-1110. Importantly, the “fair argument” test “establishes a low threshold for initial preparation of an EIR, which reflects a preference for resolving doubts in favor of environmental review.” *Id.* at 1110. The County may argue that it does not yet have sufficient information regarding the future proposals to undertake an EIR at this time and certainly CEQA requires the preparation of environmental review documents “as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” *Laurel Heights I*, 47 Cal. 3d at 395; see also CEQA Guidelines § 15004(b). In this instance, it is unclear if the County is truly unable to provide meaningful information about the likely impacts of the proposed program (as it appears from the IS/MND) or if perhaps it is the lack of funding for a program EIR that is hampering adequate CEQA review at this stage by the County.

Simply put, the County cannot rely on the IS/MND for the proposed procedures where as here there is a fair argument that the program may affect the environment. We urge the County to consider seeking funding for a program EIR, which is needed to fully inform decisionmakers and the public about the likely impacts of the program, evaluate cumulative impacts, and fully consider alternatives and mitigation measures.

Noise - The IS/MND and Implementation Plan fail to mitigate the impacts of increased noise on residents and completely ignore the impacts of noise on other visitors and recreationists, as well as the impacts of noise on wildlife.

The IS/MND brushes off the noise issue by noting there will only be daytime use. That will be a small comfort to residents and visitors who are subjected to the unwanted and unwelcome noise. There is significant evidence in the scientific literature that noise is detrimental to both physical and mental human health. An article in the Southern Medical Journal, posted on the medical website MedScape News, describes the health impacts to humans of noise:

Noise is defined as unwanted sound. Environmental noise consists of all the unwanted sounds in our communities except that which originates in the workplace. Environmental noise pollution, a form of air pollution, is a threat to health and well-being. It is more severe and widespread than ever before, and it will continue to increase in magnitude and severity because of population growth, urbanization, and the associated growth in the use of increasingly powerful, varied, and highly mobile sources of noise. It will also continue to grow because of sustained growth in highway, rail, and air traffic, which remain major sources of environmental noise. The potential health effects of noise pollution are numerous, pervasive, persistent, and medically and socially significant. Noise produces direct and cumulative adverse effects that impair health and that degrade residential, social, working, and learning environments with corresponding real (economic) and intangible (well-being) losses. It interferes with sleep, concentration, communication, and recreation. The aim of enlightened governmental controls should be to protect citizens from the adverse effects of airborne pollution, including those produced by noise. People have the right to choose the nature of their acoustical environment; it should not be imposed by others.² (Emphasis added.)

Noise, even at levels that are not harmful to hearing, is perceived subconsciously as a danger signal, even during sleep. The body reacts to noise with a fight or flight response, with resultant nervous, hormonal, and vascular changes that have far

²Goines, Lisa and Louis Hagler, MD, Noise Pollution: A Modern Plague

reaching consequences. According to the World Health Organization (WHO), the degree of annoyance produced by noise may vary with the time of day, the unpleasant characteristics of the noise, the duration and intensity of the noise, the meaning associated with it, and the nature of the activity that the noise interrupted. Annoyance may be influenced by a variety of nonacoustical factors including individual sensitivity to noise. These include fear of the noise source, conviction that noise could be reduced by third parties, individual sensitivity, the degree to which an individual feels able to control the noise, and whether or not the noise originated from an important economic activity. Other less direct effects of annoyance are disruption of one's peace of mind, the enjoyment of one's property, and the enjoyment of solitude.³

Goines and Hagler also note noise levels above 80 dB are associated with both an increase in aggressive behavior and a decrease in behavior helpful to others. The news media regularly report violent behavior arising out of disputes over noise; in many cases these disputes ended in injury or death.⁴

10

The IS/MND states, "*The noise level produced by off-highway vehicles will not be in excess of those set forth in the General Plan.*" This statement is untrue; this project would increase noise levels significantly from those allowed in the General Plan. Even OHVs within the legally allowable noise limit of 82 db would exceed the maximums suggested in the General Plan.⁵

The IS/MND states, "*off-highway vehicles should not have noisier mufflers than street-legal motorcycles...*" This statement is also untrue. The maximum decibel limit for street legal motorcycles manufactured after 1985 is 80 db. The max decibel limit for off-road motorcycles manufactured after January 1, 1986 is 82 db at 50 feet. The difference is logarithmic, so 2 decibels is not insignificant. As the Inyo General Plan's own Noise Element discloses, an increase of the sound level by 3 dB corresponds to a doubling of sound intensity.⁶

The Inyo General Plan Implementation measure 2.0 requires, "*During initial project review, the County shall request the incorporation of noise reduction features to mitigate anticipated noise impacts.*" This project does not mitigate noise impacts; it allows them. Therefore the project violates the General Plan. (Inyo Co. GP, p. 9-39)

None of the above takes into consideration the common practice of tampering with exhaust systems or aftermarket exhaust systems, which can significantly increase the noise level of an OHV. Nor does the draft IS/MND take into consideration increased traffic volume, comprised of the noisier vehicles.

³ Ibid

⁴ Ibid

⁵ Inyo County General Plan Noise Element, Table 9-9.

⁶ Inyo County General Plan, p. 9-31

The Implementation Plan includes the notification of hearings to property owners adjacent to any of the routes proposed for multi-use designation. But there is nothing in the plan that requires consideration of objections by property owners to the designation of those routes. The IS/MND has already dismissed noise concerns with the mitigation allowing only daytime use. Consideration for combined use of a route relies only on a recommendation for each route from the Public Works Director, the Risk Manager, the Sheriff, and County Counsel, and only addresses safety, liability and risk and potential maintenance costs. (IP, Item 9).

11

Noise impacts on wildlife, well documented in the Inyo National Forest Environmental Impact Statement for their Travel Management Plan (incorporated here by reference) will also increase in intensity and frequency. The IS/MND entirely ignores these impacts.

12

The IS/MND and Implementation Plan disregard the fact that vehicle use may increase substantially on combined use roads and routes on BLM lands and in the National Forests, with a corresponding increase in environmental impacts, including noise, dust and, where roads cross unarmored streams, water quality impacts.

Growth inducing impacts include "ways in which the proposed project could foster economic or population growth . . . either directly or indirectly, in the surrounding environment" and environmental review should "[a]lso discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment." (CEQA Guidelines § 15126.2(d).) Environmental review documents "must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 368.)

13

During the AB628 legislative process, Inyo County and the project proponents made it quite clear that their goal is to increase off-highway vehicle use in Inyo County. Roads and road segments that become part of this combined-use system will see both an increase in use and a change in the nature of the use. This growth inducing impact of the pilot program is not identified as the County appears to have erroneously concluded that only population growth and density are part of this analysis. As a result, many growth inducing impacts of the proposed project are summarily dismissed in the IS/MND (at 17). Clearly the proposed project is intended to foster economic growth and that growth will encourage and facilitate other activities that could significantly affect the environment—including for example, increased use of routes in the National Forest and on BLM lands and

14

increased use of stream crossings by motorized vehicles as well as similar impacts in other sensitive areas. The proposed project will also lead to growth that will increase impacts to air quality and noise (as discussed in detail in this letter).

15 Off-highway vehicles are notorious for failing to stay on designated routes. The hundreds of miles of user-created routes on the Inyo NF are evidence of that. When one sees a road or trail where OHV use is allowed, there are always signs where vehicle tracks have left the right of way to ride on adjacent lands. Sometimes this involves just a small digression into adjacent open areas, other times it involves the creation of an entirely new route. The County's insistence that new users of a combined use road will stay within the right of way is either naive or duplicitous.

Even accepting the doubtful premise that OHV users will stay on the right of way, the draft IS/MND fails to account for the impacts that will result from the additional traffic and noisier vehicles and users who drive more aggressively.

16 The IS/MND checklist dismisses wildlife impacts, saying, "*The County procedures to implement Assembly Bill 628 require the County to interface with other agencies to assure the integrity of the created routes. The County will consult with the Bureau of Land Management and the Inyo National Forest to make sure that the off-highway vehicle trail segment being linked to are considered as such by the appropriate land management agency.*" (Sic) The Implementation Plan includes no such requirement. Furthermore, given the County's extreme animosity towards the Inyo NF during recent Travel Management planning, the idea that the county would defer to the Forest Service on routes that might impact wildlife defies credence.

17 Similarly, the draft IS/MND dismisses impacts to riparian resources, "*The project does not involve the construction or disturbance of land. It is possible that the County will designate a County road such as the Silver Canyon Road or Wyman Canyon Road that repeatedly crosses perennial creeks as a combined-use road. However the project will not change the nature of the crossings.*" (IS/MND, Item IV. B) If the routes include unarmored stream crossings, the additional use is likely to increase the amount of sedimentation and damage to riparian vegetation. The Inyo NF TMP DEIS notes: "*Native surface system roads have the same impacts as unauthorized routes; including dust, change in hydrologic cycle, concentrated run-off, etc. Several existing roads traverse perennial drainages, such as the county-maintained Wyman and Silver Canyon roads, and impair stream function due to the lack of improved crossings.*" (Inyo NF TMP DEIS, p. 397)

Wyman Canyon Road intercepts Wyman Creek and in several places the creek is actually in the road prism; we have personally observed fish swimming in the creek where it is in the roadway. This was in one of eighteen places where the road intercepts Wyman Creek. (See Photo exhibits). Currently the road gets little use, but designating it as an ORV route would completely change the nature of this canyon. Vehicles avoiding the creek when it is high could destroy riparian vegetation, which borders much of the road. Sensitive plants along the road, including the rare daisy

(CNPS 1B.2) *Erigeron uncialis v. uncialis*, would be vulnerable to damage. All these resources are subject to negative impacts from the introduction and encouragement of OHV use on Wyman Canyon Road. The draft IS/MND is fatally flawed in that it dismisses potential impacts to sensitive plants and animals. This points to the need for the county to first identify the routes it proposes to designate before it can address potential environmental impacts. Silver Canyon Road has similar vulnerabilities.

According to the draft IS/MND, the document applies to the entire County system of roads. Given the potentially significant impacts from some routes, this project requires a full Environmental Impact Report.

Air Quality

18 The IS/MND fails to acknowledge that the volume of traffic affects the amount of fugitive dust. Fugitive dust, including PM10 and smaller, is a health hazard. The additional use of dirt roads by OHVs will increase dust, PM10 and related health hazards. Inyo NF DEIS for Travel management identifies roads as a source of fugitive dust and volume of traffic as a factor in the quantity of dust. "The quantity of dust emissions from a given segment of native surface road varies linearly with the volume of traffic. Variables which influence the amount of dust produced include the average vehicle speed, the average vehicle weight, the average number of wheels per vehicle, the road surface texture, the fraction of road surface material which is classified as silt (particles less than 75 microns in diameter), and the moisture content of the road surface (US EPA 2002)." (Inyo NF TMP DEIS, p.402).

Impacts to Habitat Adjacent to Roads

19 The IS/MND fails to address impacts to habitat adjacent to roads that could occur from the combined use where that use is on the road and/or on the shoulders. The proposed Procedure refers to the "right of way" and expressly invites applications to describe the proposed use including "the shoulder on pavement" and "the shoulder off pavement." (Procedure outline at 1). The road shoulders – even where paved and certainly where unpaved-- were not designed for constant use and in fact many shoulders are not complete along the length of the roads and are not a consistent width. Using shoulders—particularly unpaved shoulders-- as a route for motorized vehicles may significantly impact adjacent habitat by for example, compacting areas on the shoulder that are now rarely used by motorized vehicles, changing the drainage flow and shape of the shoulders, and encouraging widening of the shoulders by use. Vehicle use on road shoulders may also result in the introduction and spread of noxious weeds, as explained in the Inyo NF TMP DEIS. These issues must be addressed on a site-specific basis in a CEQA document. The impacts to shoulders and changes in water flow across shoulders can also have significant impacts on adjacent soils and down-gradient waters that provide habitat. Because Inyo County is home to many rare, imperiled and endangered species, these issues

are of particular concern. None of these issues are addressed in the IS/MND which dismisses the issue stating only that the proposals allow use on "existing County roadways" (at 21) and ignoring the fact that the proposed procedures expressly invites applications for use of the shoulders.

Thank you for considering these comments. Please do not hesitate to contact us if you have any questions about the issues raised in these comments. Please add both organizations to the notice list for this matter and any future notices regarding applications using the addresses and contact information below.

Sincerely,



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Attachments:

AB628
Noise Pollution, A Modern Plague
Inyo County General Plan Noise Element
Photos (2) of Wyman Canyon Road
CA Vehicle Code 38370 (OHV noise limits)



9.7 NOISE

Certain areas of the County can experience noise levels that can be a concern to local residents and visitors. Potential noise areas include areas adjacent to highways and roadways that experience high traffic volumes, near large mining or industrial facilities, near local airport facilities, and areas exposed to overflight by military aircraft.

Noise effects may differ depending upon who is exposed to the noise. Some sensitive receptors, such as residential areas, hospitals, convalescent homes and facilities, schools, and other similar uses are affected to a greater degree by noise impacts. Regardless of the source, noise can be a nuisance effect that can adversely impact humans and wildlife resources.

9.7.1 Definitions

In using this element and the goals, policies, and implementation measures that address noise issues, the following definitions will apply.

Ambient Noise. The total noise associated with a given environment and usually comprising sounds from many sources both near and far.

A-weighted decibel (dBA). The A-weighted decibel is a unit of measurement for noise having a logarithmic scale and measured using the A-weighted sensory network on the noise-measuring device. An increase or decrease of ten decibels corresponds to a ten-fold increase or decrease in sound energy. A doubling or halving of sound energy corresponds to a 3 dBA increase or decrease.

Day-Night Average Sound Level (Ldn). The term "Ldn" refers to the average sound exposure over a 24-hour period. Ldn values are calculated from hourly Leq values, with the Leq values for the nighttime period (10:00 p.m. to 7:00 a.m.) increased by 10 dB to reflect their greater disturbance potential.

Mobile/Stationary Noise Sources. Mobile noise sources are moving objects, such as vehicles on a roadway or aircraft. Stationary noise sources are fixed locations, such as an industrial use.



Noise Sensitive Land Uses (Receptors). Noise sensitive land uses (receptors) are defined to include residential areas, hospitals, convalescent homes and extended care facilities, schools, libraries, day-care centers, and other similar land uses as determined by the County.

9.7.2 Existing Setting

Noise sources can be grouped into two categories: mobile and stationary. Mobile sources are noise producers that move within the County. In Inyo County, these include vehicle traffic on highways and roads, aircraft noise from military operations, and noise from general and commercial aviation. Primary stationary sources in the County include mining, industrial, commercial, and utility land uses.

Roadways, in particular federal and state highways, are a major source of ambient noise in Inyo County, especially considering that most developed communities are located adjacent to these transportation corridors. In most communities in the County, these highways provide the function that would normally be associated with arterials in urban areas.

Noise generated from vehicles is governed primarily by the number of vehicles, types of vehicles (the mix of automobiles, trucks, and other large vehicles), and speed. Table 9-7 summarizes the daily traffic volumes, the predicted Ldn noise level at 100 feet from the roadway centerline, and the distance from the roadway centerline to the 55-, 65-, and 70-dB Ldn contours for current conditions. Given the size of the County, this table is used to represent the noise contour information for existing conditions requested by state planning guidelines for noise elements.

As more fully described in Chapter 6, "Circulation and Scenic Highways", seven public access airports and six private airstrips are located throughout the County. To date, noise studies of these airports have not been performed; however, these airports are not considered a significant contributor to current noise levels within the surrounding communities given their locations and current use levels. Conversely, flyovers from China Lake Naval Air Weapons Station and other nearby installations do create significant noise impacts in the County. In addition to aircraft associated with the China Lake facility, aircraft associated with other military installations, including Fort Irwin, Nellis Air Force Base, George Air Force Base, March Air Force Reserve Base, and Edwards Air Force Base, use the station's designated airspace or use other designated flight training routes in the County.



9.7.3 Noise Issues

The following section lists (in no specific order) the critical noise issues that were identified during the preparation of the General Plan.

- Maintaining the rural atmosphere in County.
- Noise from aircraft overflight.
- Noise from roadways.

Related to roadway noise, noise conditions along major highways/roadways in the County were modeled to assess their condition in the year 2020. Table 9-8, below, provides the results of this modeling. Given the size of the County, this table is used to represent the noise contour information requested by state planning guidelines for noise elements.



Table 9-7. Traffic Noise Levels Along Inyo County Roadways

Roadway/Segment	Daily Traffic Volume	% Truck Traffic	Ldn at 100 feet	Distance (feet) to 70 Ldn Contour ^a	Distance (feet) to 65 Ldn Contour ^a	Distance (feet) to 55 Ldn Contour ^a
U.S. 395						
Bishop	12,300	8%	70	100	215	464
Big Pine	6,800	10%	68	74	158	341
Independence	6,000	11%	68	74	158	341
Lone Pine	6,300	11%	68	74	158	341
Olancha	5,500	11%	67	63	136	293
State Route 127						
Death Valley Junction	540	23%	59	18	40	86
Shoshone	1,250	14%	61	25	54	117
State Route 190						
Keeler	390	3%	54	9	18	40
State Route 190						
Furnace Creek	1,550	3.5%	60	22	46	100
Stovepipe Wells	1,750	2%	60	22	46	100

^a Measured from the roadway centerline.



Table 9-8. Future Traffic Noise Levels Along Inyo County Roadways (2020)

Roadway/Segment	Daily Traffic Volume	% Truck Traffic	Ldn at 100 feet	Distance (feet) to 70 Ldn Contour ^a	Distance (feet) to 65 Ldn Contour ^a	Distance (feet) to 60 Ldn Contour ^a
U.S. 395						
Bishop	22,430	8%	73	158	341	736
Big Pine	7,850	10%	69	86	185	398
Independence	8,573	11%	69	86	185	398
Lone Pine	8,570	11%	69	86	185	398
Olancha	8,140	11%	69	86	185	398

^a Measured from the roadway centerline.

9.7.4 Goals and Policies

<p>GOAL NOI-1</p>	<p>Prevent incompatible land uses, by reason of excessive noise levels, from occurring in the future. This includes protecting sensitive land uses from exposure to excessive noise and to protect the economic base of County by preventing the encroachment of incompatible land uses within areas affected by existing or planned noise-producing uses. [New, encompasses Goal 1]</p>
<p>Policy NOI-1.1</p>	<p>Acceptable Noise Limits The County shall utilize the noise levels shown in Table 9-9 for evaluating project compatibility related to noise. [New Policy]</p>



Table 9-9. Maximum Allowable Ambient Noise Exposure by Land Use (County Noise Standards)

Land Use Type	Noise Level (Ldn)						
	0 - 55	56 - 60	61 - 65	66 - 70	71 - 75	75 - 80	> 81
Residential			■	■	■	■	■
Hotels, Motels			■	■	■	■	■
Schools, Libraries, Churches, Hospitals, Extended Care Facilities			■	■	■	■	■
Auditoriums, Concert Halls, Amphitheaters	■	■	■	■	■	■	■
Sports Arenas, Outdoor Spectator Sports		■	■	■	■	■	■
Playgrounds, Neighborhood Parks					■	■	■
Golf Courses, Riding Stables, Water Recreation, Cemeteries					■	■	■
Office Buildings, Business Commercial and Professional				■	■	■	■
Mining, Industrial, Manufacturing, Utilities, Agriculture					■	■	■



Normally Acceptable. Specified land use is satisfactory, based on the assumption that any buildings involved are of normal, conventional construction, without any special noise insulation requirements.

Conditionally Acceptable. New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed insulation features have been included in the design.

Unacceptable. New construction or development should not be undertaken.

If existing noise standards are currently exceeded, a proposed project shall not incrementally increase noise levels by more than 3 dBA



Policy NOI-1.2

Exposure to Existing Noise from Stationary Sources

The County shall not allow new development within areas where existing noise levels currently exceed County noise standards (as shown in Table 9-9), unless mitigation measures would reduce impacts to future occupants. [Modified Policy 2, Modified Policy 6]

Policy NOI-1.3

Limit Increases in Noise Levels from Stationary Sources

Require that new development not increase the ambient exterior noise level (measured at the property line) above established County noise standards (as shown in Table 9-9), unless mitigation measures are included to reduce impacts to below County noise standards. [Modified Policy 3]

Policy NOI-1.4

Transportation-Related Noise

The development of new noise sensitive land uses adjacent to existing or planned transportation facilities or development of new transportation facilities adjacent to existing or planned sensitive land uses shall require a noise impact analysis in areas where current or future exterior noise levels from transportation sources exceeds 65-dB Ldn. This study shall include recommendations and evidence to establish mitigation that will reduce noise exposure to acceptable levels. Areas subject to this criterion are defined as follows:

- **Roadway Noise.** For major roadways in the County, the future noise levels estimated on Table 9-7 shall be used to determine the applicability of this policy.
- **Aircraft Noise.** Existing noise contour information shall be used when available. For airports that do not have noise contour information, uses within ¼ mile shall be evaluated.

Policy NOI-1.5

Implementation of Mitigation Measures

Require that proponents of new projects provide or fund the implementation of noise-reducing mitigation measures to reduce noise to required levels. [Modified Policy 3]

Policy NOI-1.6

Indoor Noise Levels

In the event that acceptable outdoor noise levels cannot be achieved by appropriate noise mitigation measures, indoor noise levels for residential uses shall be designed to not exceed 45-dB Ldn.

Policy NOI-1.7

Noise Controls During Construction

Contractors will be required to implement noise-reducing mitigation measures during construction when residential uses or other sensitive receptors are located within 500 feet. [New Policy]



Policy NOI-1.8

Coordination with Agencies 

The County will encourage other government agencies to implement noise-reducing measures when impacts to receptors within the County's jurisdiction occur. [Modified Policy 7, Modified Policy 8]

**GOAL
NOI-2**

Preserve and maintain a quiet rural environmental character. [Modified goal 3]

Policy NOI-2.1

Rural Roadways

Maintaining two-lane County roadways is encouraged where feasible. Widening and expansion of County roadway facilities is discouraged unless required to provide necessary capacity. [New Policy]

Policy NOI-2.2

Limit Structural Attenuation

Discourage the use of sound walls along roadway facilities. Non-structural mitigation is preferred, such as soft berms, provision of landscaping, buffer distances, and elevated or depressed roadways or structures. [New Policy]

Policy NOI-2.3

Buffers

Provide buffers between sensitive noise receptors and highway facilities that currently carry, or have the potential to carry high vehicle loads. [New Policy]

9.7.5 Implementation Measures

Table 9-10, Noise Implementation Measures, identifies the implementation measures the County should take to implement the goals and policies of this General Plan. The implementation program lists each specific implementation measure, a reference to which General Plan policy it is implementing, who is responsible to implement the program, and the timeframe for implementation.



Table 9-10. Noise Implementation Measures

	Implementation Measure	Implements What Policy	Who is Responsible	Timeframe				
				2001- 2003	2003- 2005	2005- 2010	2010- 2020	On- going
1.0	The County shall prepare an updated Noise Ordinance as part of the Zoning Code update to reflect the goals and policies in this General Plan.	All	Planning	■				
2.0	During initial project review, the County shall request the incorporation of noise reduction features to mitigate anticipated noise impacts	All	Planning					■
3.0	The County shall require project-specific noise studies for projects where existing or project-related noise levels may exceed County noise standards.	NOI-1.1 NOI-1.2 NOI-1.3 NOI-1.4 NOI-1.5 NOI-1.6	Planning					■
4.0	As part of future master planning activities for all public airports, the County shall prepare an updated map reflecting current and future airport noise contours.	NOI-1.4	Public Works					■
5.0	Construction activities within 500 feet of existing noise sensitive uses shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday. No construction shall occur on Sunday or federal holidays without a special permit from the County for unusual circumstances.	NOI-1.7	Environmental Health Building and Safety Public Works					■
6.0	The County shall establish noise guidelines for construction activities.	NOI-1.7	Environmental Health Building and Safety Public Works					■
7.0	Request Caltrans to perform a noise mitigation study as part of any modification of state highways that pass through communities in the County.	NOI-1.8	Environmental Health Building and Safety Public Works					■



Table 9-10. Noise Implementation Measures

	Implementation Measure	Implements What Policy	Who is Responsible	Timeframe				
				2001- 2003	2003- 2005	2005- 2010	2010- 2020	On- going
8.0	The County will work with Caltrans to support narrower roadway cross-sections and soft attenuation techniques (such as buffers and landscaping) along state highways.	NOI-1.8 NOI-2.3	Environmental Health Building and Safety Public Works					■
9.0	The County will work in coordination with other government agencies, including the military, to reduce noise impacts from out-of-county noise sources.	NOI-1.8	Environmental Health Building and Safety Public Works					■
10.0	For County roads, the County shall support narrower roadway cross-sections and soft attenuation techniques (such as buffers and landscaping) along roadways.	NOI-2.1 NOI-2.3	Public Works					■
11.0	During project review, the County shall ensure that structural mitigation along highways/roadways, such as sound walls, is minimized. In areas where sound walls are required, the walls shall be designed and landscaped to reduce the appearance and bulk of the walls.	NOI-2.2	Environmental Health Public Works					■

California Vehicle Code re OHV noise limits

38370. (a) The Department of Motor Vehicles shall not identify any new off-highway motor vehicle, which is subject to identification and which produces a maximum noise level that exceeds the following noise limit, at a distance of 50 feet from the centerline of travel, under test procedures established by the Department of the California Highway Patrol.

- (1) Any such vehicle manufactured before January 1, 1973 92dBA
- (2) Any such vehicle manufactured on or after January 1, 1973, and before January 1, 1975 88dBA
- (3) Any such vehicle manufactured on or after January 1, 1975, and before January 1, 1986 86dBA
- (4) Any such vehicle manufactured on or after January 1, 1986 82dBA

(b) The department may accept a dealer's certificate as proof of compliance with this section.

(c) Test procedures for compliance with this section shall be established by the Department of the California Highway Patrol, taking into consideration the test procedures of the Society of Automotive Engineers.

(d) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a maximum noise level that exceeds the noise limits in subdivision

(a), and for which noise emission standards or regulations have not been adopted by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(e) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a noise level that exceeds, or in any way violates, the noise emission standards or regulations adopted for such a motor vehicle by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(f) As used in this section, the term "identify" is equivalent to the term "licensing" as used in Section 6(e)(2) of the Federal Noise Control Act of 1972 (P.L. 92-574).

(g) Any off-highway motor vehicle, when operating pursuant to Section 38001, shall at all times be equipped with a silencer, or other device, which limits noise emissions to not more than 101 dBA if manufactured on or after January 1, 1975, or 105 dBA if manufactured before January 1, 1975, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287. This subdivision shall only be operative until January 1, 2003.

(h) On and after January 1, 2003, off-highway motor vehicles, when operating pursuant to Section 38001, shall at all

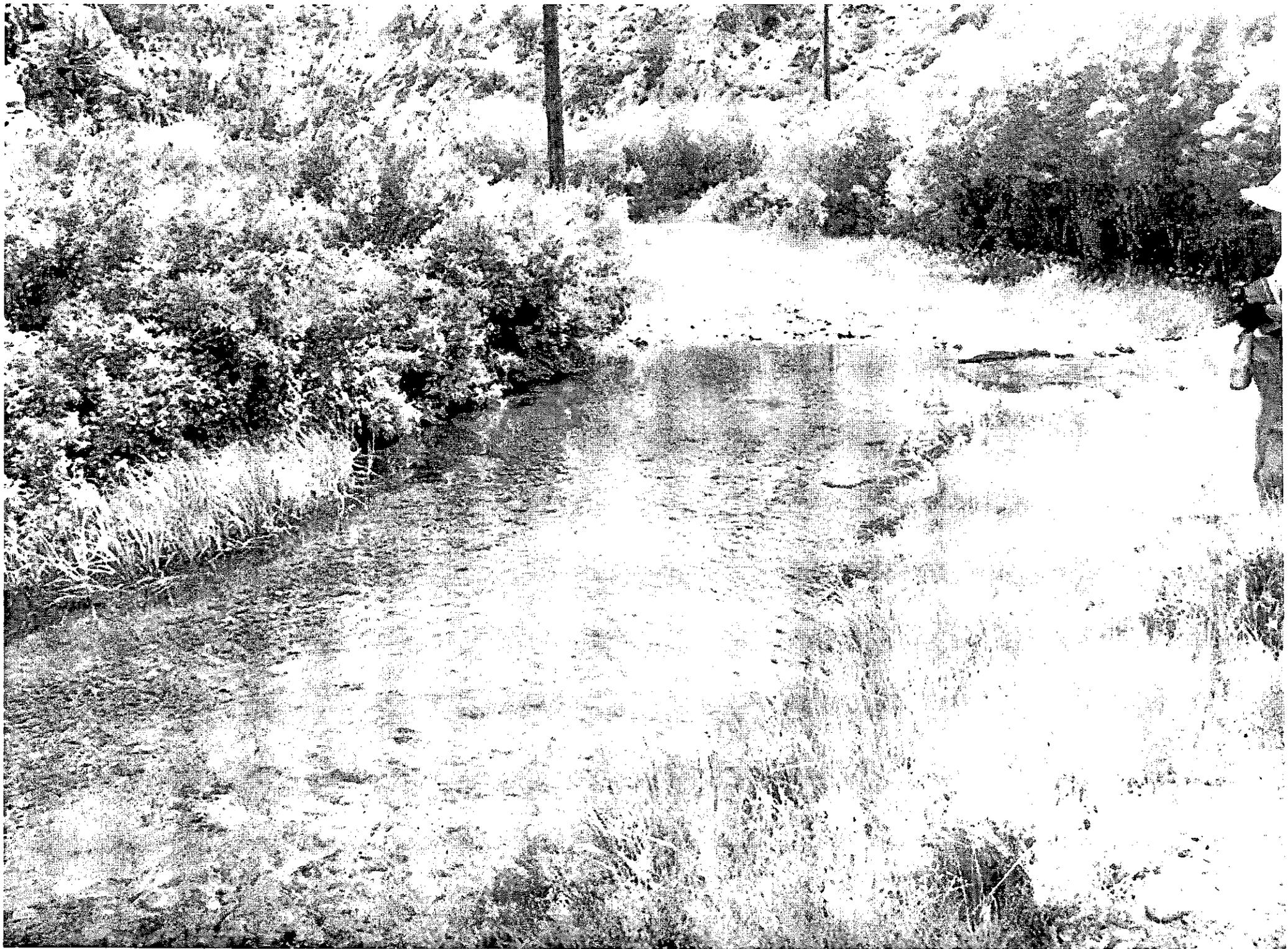
times be equipped with a silencer, or other device, which **limits noise emissions.**

(1) **Noise** emissions of competition off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dBA, and if manufactured prior to January 1, 1998, to not more than 101 dBA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. **Noise** emissions of all other off-highway vehicles shall be limited to not more than 96 dBA if manufactured on or after January 1, 1986, and not more than 101 dBA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable.

(2) The Off-Highway Motor **Vehicle** Recreation Division of the Department of Parks and Recreation shall evaluate and reassess the dates specified in paragraph (1) and include the findings and recommendations in the **noise** report required in subdivision (o) of Section 5090.32 of the Public Resources **Code.**

(i) Off-highway **vehicle** manufacturers or their agents prior to the sale to the general public in California of any new off-highway **vehicle** model manufactured after January 1, 2003, shall provide to the Off-Highway Motor **Vehicle** Recreation Division

of the California
Department of Parks and Recreation rpm data needed
to conduct the
J-1287 test, where applicable.





Noise Pollution: A Modern Plague

Lisa Goines, RN; Louis Hagler, MD

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SMJ
South Medical Journal



Abstract and Introduction

Abstract

Noise is defined as unwanted sound. Environmental noise consists of all the unwanted sounds in our communities except that which originates in the workplace. Environmental noise pollution, a form of air pollution, is a threat to health and well-being. It is more severe and widespread than ever before, and it will continue to increase in magnitude and severity because of population growth, urbanization, and the associated growth in the use of increasingly powerful, varied, and highly mobile sources of noise. It will also continue to grow because of sustained growth in highway, rail, and air traffic, which remain major sources of environmental noise. The potential health effects of noise pollution are numerous, pervasive, persistent, and medically and socially significant. Noise produces direct and cumulative adverse effects that impair health and that degrade residential, social, working, and learning environments with corresponding real (economic) and intangible (well-being) losses. It interferes with sleep, concentration, communication, and recreation. The aim of enlightened governmental controls should be to protect citizens from the adverse effects of airborne pollution, including those produced by noise. People have the right to choose the nature of their acoustical environment; it should not be imposed by others.

Introduction

Throughout recorded history, mankind has been plagued by a variety of both natural and man-made ills. In the 21st Century, we are experiencing the manmade plague of environmental noise from which there is virtually no escape, no matter where we are - in our homes and yards, on our streets, in our cars, at theaters, restaurants, parks, arenas, and in other public places. Despite attempts to regulate it, noise pollution has become an unfortunate fact of life worldwide. In a way that is analogous to second-hand smoke, second-hand noise is an unwanted airborne pollutant produced by others; it is imposed on us without our consent, often against our wills, and at times, places, and volumes over which we have no control.

There is growing evidence that noise pollution is not merely an annoyance; like other forms of pollution, it has wide-ranging adverse health, social, and economic effects.^[1-11] A recent search (September 2006) of the National Library of Medicine database for adverse health effects of noise revealed over 5000 citations, many of recent vintage. As the population grows and as sources of noise become more numerous and more powerful, there is increasing exposure to noise pollution, which has profound public health implications. Noise, even at levels that are not harmful to hearing, is perceived subconsciously as a danger signal, even during sleep.^[2] The body reacts to noise with a fight or flight response, with resultant nervous, hormonal, and vascular changes that have far reaching consequences.^[1-11] Despite the fact that much has been written about the health effects of noise, it seems that much of the following information is not appreciated by the medical community and even less so by the general public.^[7] In 1990, a National Institute of Health (NIH) panel concluded that high visibility media campaigns are needed to develop public awareness of the effects of noise on hearing and the means of self protection. In addition to informing the public, these programs should target primary healthcare physicians and educators who deal with young people.^[7] To these recommendations, we would add the need to inform about all the other adverse effects of noise.

Thus, the purpose of this review is to summarize what is known of these adverse health effects and to encourage physicians, nurses, and other health professionals to join with groups around the country that are trying to restore the Constitutionally guaranteed right of domestic tranquility. Noise Free America and the Noise Pollution Clearinghouse are two such organizations. There are numerous Internet sites that contain relevant information about noise and the ongoing efforts to restore quiet in communities across the United States. The interested reader should consult Noise Off

(www.NoiseOFF.org), The Noise Pollution Clearinghouse (www.nonoise.org), Noise Free America (www.noisefree.org), or the League for the Hard of Hearing (www.lhh.org/noise) for additional information about this subject.

Background

Because their wheels clattered on paving stones, chariots in ancient Rome were banned from the streets at night to prevent the noise that disrupted sleep and caused annoyance to the citizens. Centuries later, some cities in Medieval Europe either banned horse drawn carriages and horses from the streets at night or covered the stone streets with straw to reduce noise and to ensure peaceful sleep for the residents.^[1] In more recent times in Philadelphia, the framers of our Constitution covered nearby cobblestone streets with earth to prevent noise-induced interruptions in their important work. These examples pinpoint two major effects of noise from which men of all ages have sought relief: interruption of sleep and interference with work that requires concentration. It is interesting that noises emanating from the various types of roadways of today are still among the most important sources of environmental noise, even though the types of noise are not those that existed in Rome, Medieval Europe, or 18th century Philadelphia. Our modern roadways (including road, rail, and air) and the products of modern technology produce increasing levels of unwanted noise of varying types and intensities throughout the day and night that disturb sleep, concentration, and other functions.^[4,6,12,13] This noise affects us without our being consciously aware of it. Unlike our eyes, which we can shut to exclude unwanted visual input, we cannot voluntarily shut our ears to exclude unwanted auditory input. Our hearing mechanisms are always on even when we are asleep.^[2]

The noise problems of the past pale in significance when compared with those experienced by modern city dwellers; noise pollution continues to grow in extent, frequency, and severity as a result of population growth, urbanization, and technological developments.^[1,4] For example, within the European Common Market, 65% of the population is exposed to unhealthy levels of transportation noise.^[13] In New York City, maximum noise levels measured 106 dB on subway platforms and 112 dB inside subway cars. These levels have the potential of exceeding recommended exposure limits given sufficient duration of exposure.^[14] In 1991, it was estimated that environmental noise increased by 10% in the decade of the 1980s.^[3] The 2000 United States Census found that 30% of Americans complained of noise, and 11% found it to be bothersome. Among those who complained, noise was sufficiently bothersome to make nearly 40% want to change their place of residence.^[15] That noise pollution continues to grow in scope, variety, and magnitude is unquestioned; it is only the extent of the growth that remains unknown.^[1]

In comparison to other pollutants, the control of environmental noise has been hampered by insufficient knowledge about its effects on humans and about dose-response relationships, but this seems to be changing as more research is carried out. However, it is clear that noise pollution is widespread and imposes long-term consequences on health.^[1-11] In 1971, a World Health Organization (WHO) working group concluded that noise is a major threat to human well-being.^[3] That assessment has not changed in the intervening 30-plus years; if anything, the threat has intensified.

The various sounds in our environment (excluding all those sounds that arise in the workplace) to which we are exposed can be viewed as being either necessary (desirable) or unnecessary (undesirable). One might consider the sounds produced in and around our homes by garbage disposals, dishwashers, clothes washers and dryers, refrigerators, furnaces, air-conditioners, yard maintenance equipment, and the many other mechanized time- and labor-saving devices, which we all use and enjoy, as being necessary. We are exposed to the noise of radio, television, and related technologies; children are exposed to a wide variety of noisy toys.^[5,16] The noise of internal combustion engines (modulated by legally required mufflers), jet engines (modulated by improved design and by altered flight paths), and train horns at grade crossings (modulated by new Federal Quiet Zone rules), might all be considered necessary. There are numerous other such examples of machines or activities that produce sounds that are tolerated because they accompany a desired activity or they serve an important societal purpose, such as the sirens of emergency vehicles.

But what about sounds that accompany an undesired activity, that have no societal importance, or that we consider unnecessary? What about the sounds produced by the so-called boom-cars that are roving, pulsating noise factories? What about the uncomfortable sound levels at concerts, in theaters, and public sporting events? What about the noise of

slow-moving train horns in urbanized areas or the early morning sounds accompanying garbage collection? What about all the noise on our streets to which buses, trolley cars, car horns, car alarms, motorcycles, and unmuffled exhaust systems contribute? What about the risks to children from noisy toys and from personal sound systems? What about the noise of barking dogs, leaf blowers, and recreational vehicles? What about the noise of low flying aircraft? In general, sounds that we deem unwanted or unnecessary are considered to be noise. Our society is beset by noise, which is intrusive, pervasive, and ubiquitous; most important of all, it is unhealthy. Most reasonable people would agree that much of the environmental noise to which we are subjected serves no useful purpose and is therefore undesirable. The variety of noise polluting devices and activities is large and seems to be growing on a daily basis, although there is no consensus about what items are useful and desirable or noise polluting and unnecessary.

Domestic tranquility is one of the six guarantees in the United States Constitution, a guarantee that is echoed in some form or other in every state Constitution. In 1972, the Noise Control Act was passed by Congress, declaring, ... it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes health and welfare. In 1974, the Environmental Protection Agency (EPA) estimated that nearly 100 million Americans lived in areas where the daily average noise levels exceeded those identified as being safe.^[17] However, in 1982, the government abruptly terminated federal funding for the Office of Noise Abatement and Control, the vehicle by which the public was to be protected from the adverse effects of noise. The lack of funds threw total responsibility for noise control to the states, which have had a spotty and generally poor record with respect to noise abatement.^[7,18] Since the Act itself was not repealed, local and state governments may have been deterred from trying to regulate noise. Furthermore, failure to repeal the Act sent the message that noise was not an important environmental concern.^[7] As a result, in the United States, most police departments seem to be unwilling or unable to respond to noise-related problems in a way that provides any measure of genuine or timely control. Yet, in most cities, as noise pollution continues to grow—some say as much as sixfold in the past 15 years—so do complaints about noise. Complaints to police and other officials about noise are among the most frequent complaints by residents in urban environments; in 1998, noise was the number one complaint to the Quality of Life Hotline in New York City. In 1996, the Federal Environmental Agency in Germany reported two out of three of its citizens had complained about excessive noise.^[18] The number of people exposed to unhealthy levels of noise in the United States is unquestionably greater than it was in 1974; the degree of oversight and control is unquestionably less.

Adverse Health Effects of Noise

The WHO has documented seven categories of adverse health effects of noise pollution on humans. Much of the following comes from the WHO Guideline on Community Noise and follows its format.^[1] The guideline provides an excellent, reasonably up-to-date, and comprehensive overview of noise-related issues, as do the other recent reviews on this subject.

1. Hearing Impairment

Hearing is essential for well-being and safety. Hearing impairment is typically defined as an increase in the threshold of hearing as clinically assessed by audiometry. Impaired hearing may come from the workplace, from the community, and from a variety of other causes (eg, trauma, ototoxic drugs, infection, and heredity). There is general agreement that exposure to sound levels less than 70 dB does not produce hearing damage, regardless of the duration of exposure.^[1,17] There is also general agreement that exposure for more than 8 hours to sound levels in excess of 85 dB is potentially hazardous; to place this in context, 85 dB is roughly equivalent to the noise of heavy truck traffic on a busy road.^[1] With sound levels above 85 dB, damage is related to sound pressure (measured in dB) and to time of exposure. The major cause of hearing loss is occupational exposure, although other sources of noise, particularly recreational noise, may produce significant deficits. Studies suggest that children seem to be more vulnerable than adults to noise induced hearing impairment.^[1]

Noise induced hearing impairment may be accompanied by abnormal loudness perception (loudness recruitment), distortion (paracusis), and tinnitus. Tinnitus may be temporary or may become permanent after prolonged exposure.^[1] The eventual results of hearing losses are loneliness, depression, impaired speech discrimination, impaired school and job

performance, limited job opportunities, and a sense of isolation.^[3,19,20]

In 2001, it was estimated that 12.5% of American children between the ages of 6 to 19 years had impaired hearing in one or both ears.^[21] As many as 80% of elementary school children use personal music players, many for extended periods of time and at potentially dangerous volume settings.^[19] There is little doubt that the use of consumer products, which produce increasingly high levels of noise and which are used with headsets or earphones, is growing and may well be responsible for the impaired hearing that is being seen with growing frequency in younger people.^[19,22-24] This form of noise is largely unregulated, despite warnings by the manufacturers.

In the young, hearing loss affects communication, cognition, behavior, social-emotional development, academic outcomes, and later vocational opportunities.^[25] These effects have been well documented in a number of large scale investigations in children.^[23]

Leisure-time exposure, which is generally unregulated, is increasing in other ways as well with resultant adverse effects. In a recent survey, a majority of young adults reported having experienced tinnitus or impaired hearing after exposure to loud music at concerts or in clubs. Very few (8%) considered loss of hearing a significant problem. Many of the respondents said they would be motivated to use ear protection if they were aware of the potential of permanent hearing loss (66%) or if such protection were advised by a medical professional (59%).^[22]

Those working in clubs, bars, and other places of entertainment are also at risk. It is well known that rock musicians frequently have noise-induced hearing loss. Apart from the musicians themselves, employees of music clubs, where noise frequently exceeds safe levels, are at risk.^[26] Thus, nearly a third of students who worked part time (bar staff or security staff) in a university entertainment venue were found to have permanent hearing loss of more than 30 dB.^[27]

The WHO recommends that unprotected exposure to sound levels greater than 100 dB (for example, the sound of a jackhammer or a snowmobile) should be limited in duration (4 h) and frequency (four times/yr).^[1] The threshold for pain is usually given as 140 dB, a level readily achieved in today's boom-cars. Impulse noise exposure (gunfire and similar sources of intense noise of brief duration) should never exceed 140 dB in adults and 120 dB in children. Firecrackers, cap pistols, and other toys can generate sufficient sound levels to cause sudden and permanent hearing loss.^[19] Levels greater than 165 dB, even for a few milliseconds, are likely to cause acute cochlear damage.^[1] It is important to remember to counsel patients that ears do not get used to loud noise. As the League for the Hard of Hearing notes—they get deaf.

2. Interference with Spoken Communication

In 1974, in an attempt to protect public health and welfare against the adverse effects of noise, the EPA published so-called safe levels of environmental noise that would permit normal communication both in and out of doors.^[17] Noise pollution interferes with the ability to comprehend normal speech and may lead to a number of personal disabilities, handicaps, and behavioral changes. These include problems with concentration, fatigue, uncertainty, lack of self confidence, irritation, misunderstandings, decreased working capacity, disturbed interpersonal relationships, and stress reactions. Some of these effects may lead to increased accidents, disruption of communication in the classroom, and impaired academic performance.^[1,5,10,11] Particularly vulnerable groups include children, the elderly, and those not familiar with the spoken language.^[1]

3. Sleep Disturbances

Uninterrupted sleep is known to be a prerequisite for good physiologic and mental functioning in healthy individuals.^[28] Environmental noise is one of the major causes of disturbed sleep.^[1,10] When sleep disruption becomes chronic, the results are mood changes, decrements in performance, and other long-term effects on health and well-being.^[3] Much recent research has focused on noise from aircraft, roadways, and trains. It is known, for example, that continuous noise in excess of 30 dB disturbs sleep. For intermittent noise, the probability of being awakened increases with the number of noise events per night.^[1]

The primary sleep disturbances are difficulty falling asleep, frequent awakenings, waking too early, and alterations in sleep

stages and depth, especially a reduction in REM sleep. Apart from various effects on sleep itself, noise during sleep causes increased blood pressure, increased heart rate, increased pulse amplitude, vasoconstriction, changes in respiration, cardiac arrhythmias, and increased body movement.^[28] For each of these, the threshold and response relationships may be different. Some of these effects (waking, for example) diminish with repeated exposure; others, particularly cardiovascular responses, do not.^[29] Secondary effects (so-called after effects) measured the following day include fatigue, depressed mood and well-being, and decreased performance.^[30] Decreased alertness leading to accidents, injuries, and death has also been attributed to lack of sleep and disrupted circadian rhythms.^[31]

Long-term psychosocial effects have been related to nocturnal noise. Noise annoyance during the night increases total noise annoyance for the following 24 hours. Particularly sensitive groups include the elderly, shift workers, persons vulnerable to physical or mental disorders, and those with sleep disorders.^[1]

Other factors that influence the problem of night-time noise include its occurrence in residential areas with low background noise levels and combinations of noise and vibration such as produced by trains or heavy trucks. Low frequency sound is more disturbing, even at very low sound pressure levels; these low frequency components appear to have a significant detrimental effect on health.^[32]

4. Cardiovascular Disturbances

A growing body of evidence confirms that noise pollution has both temporary and permanent effects on humans (and other mammals) by way of the endocrine and autonomic nervous systems. It has been postulated that noise acts as a nonspecific biologic stressor eliciting reactions that prepare the body for a fight or flight response.^[1,2,6] For this reason, noise can trigger both endocrine and autonomic nervous system responses that affect the cardiovascular system and thus may be a risk factor for cardiovascular disease.^[1,2,6,11,33-36] These effects begin to be seen with long-term daily exposure to noise levels above 65 dB or with acute exposure to noise levels above 80 to 85 dB.^[1,3] Acute exposure to noise activates nervous and hormonal responses, leading to temporary increases in blood pressure, heart rate, and vasoconstriction. Studies of individuals exposed to occupational or environmental noise show that exposure of sufficient intensity and duration increases heart rate and peripheral resistance, increases blood pressure, increases blood viscosity and levels of blood lipids, causes shifts in electrolytes, and increases levels of epinephrine, norepinephrine, and cortisol.^[3] Sudden unexpected noise evokes reflex responses as well. Cardiovascular disturbances are independent of sleep disturbances; noise that does not interfere with the sleep of subjects may still provoke autonomic responses and secretion of epinephrine, norepinephrine, and cortisol.^[29] These responses suggest that one can never completely get used to night-time noise.

Temporary noise exposure produces readily reversible physiologic changes. However, noise exposure of sufficient intensity, duration, and unpredictability provokes changes that may not be so readily reversible. The studies that have been done on the effects of environmental noise have shown an association between noise exposure and subsequent cardiovascular disease.^[1,2,6,33-36] Even though the increased risk for noise-induced cardiovascular disease may be small, it assumes public health importance because both the number of people at risk and the noise to which they are exposed continue to increase.^[1,2]

Children are at risk as well. Children who live in noisy environments have been shown to have elevated blood pressures and elevated levels of stress-induced hormones.^[2,11,18]

5. Disturbances in Mental Health

Noise pollution is not believed to be a cause of mental illness, but it is assumed to accelerate and intensify the development of latent mental disorders. Noise pollution may cause or contribute to the following adverse effects: anxiety, stress, nervousness, nausea, headache, emotional instability, argumentativeness, sexual impotence, changes in mood, increase in social conflicts, neurosis, hysteria, and psychosis. Population studies have suggested associations between noise and mental-health indicators, such as rating of well-being, symptom profiles, the use of psychoactive drugs and sleeping pills, and mental-hospital admission rates. Children, the elderly, and those with underlying depression may be particularly vulnerable to these effects because they may lack adequate coping mechanisms.^[1] Children in noisy

environments find the noise annoying and report a diminished quality of life.^[10,37]

Noise levels above 80 dB are associated with both an increase in aggressive behavior and a decrease in behavior helpful to others.^[38-40] The news media regularly report violent behavior arising out of disputes over noise; in many cases these disputes ended in injury or death. The aforementioned effects of noise may help explain some of the dehumanization seen in the modern, congested, and noisy urban environment.^[2]

6. Impaired Task Performance

The effects of noise pollution on cognitive task performance have been well-studied. Noise pollution impairs task performance at school and at work, increases errors, and decreases motivation.^[11,41] Reading attention, problem solving, and memory are most strongly affected by noise. Two types of memory deficits have been identified under experimental conditions: recall of subject content and recall of incidental details. Both are adversely influenced by noise. Deficits in performance can lead to errors and accidents, both of which have health and economic consequences.^[1]

Cognitive and language development and reading achievement are diminished in noisy homes, even though the children's schools may be no noisier than average.^[18] Cognitive development is impaired when homes or schools are near sources of noise such as highways and airports.^[4,11] Noise affects learning, reading, problem solving, motivation, school performance, and social and emotional development.^[3,5,10,18,42] These findings suggest that more attention needs to be paid to the effects of noise on the ability of children to learn and on the nature of the learning environment, both in school and at home. Moreover, there is concern that high and continuous environmental noise may contribute to feelings of helplessness in children.^[11,18]

Noise produces negative after-effects on performance, particularly in children. It appears that the longer the exposure, the greater the effect. Children from noisy areas have been found to have heightened sympathetic arousal indicated by increased levels of stress-related hormones and elevated resting blood pressure.^[18] These changes were larger in children with lower academic achievement. As a whole, these findings suggest that schools and daycare centers should be located in areas that are as noise-free as possible.^[1]

7. Negative Social Behavior and Annoyance Reactions

Annoyance is defined as a feeling of displeasure associated with any agent or condition believed by an individual to adversely affect him or her. Perhaps a better description of this response would be aversion or distress. Noise has been used as a noxious stimulus in a variety of studies because it produces the same kinds of effects as other stressors.^[2] Annoyance increases significantly when noise is accompanied by vibration or by low frequency components.^[32] The term annoyance does not begin to cover the wide range of negative reactions associated with noise pollution; these include anger, disappointment, dissatisfaction, withdrawal, helplessness, depression, anxiety, distraction, agitation, or exhaustion. Lack of perceived control over the noise intensifies these effects.^[1,10]

Social and behavioral effects of noise exposure are complex, subtle, and indirect. These effects include changes in everyday behavior (eg, closing windows and doors to eliminate outside noises; avoiding the use of balconies, patios and yards; and turning up the volume of radios and television sets); changes in social behavior (eg, aggressiveness, unfriendliness, nonparticipation, or disengagement); and changes in social indicators (eg, residential mobility, hospital admissions, drug consumption, and accident rates); and changes in mood (increased reports of depression).^[1]

Noise exposure per se is not believed to produce aggressive behavior. However, in combination with provocation, preexisting anger or hostility, alcohol or other psychoactive agents, noise may trigger aggressive behavior.^[38] Our news is filled with examples of this kind of behavior.

The degree of annoyance produced by noise may vary with the time of day, the unpleasant characteristics of the noise, the duration and intensity of the noise, the meaning associated with it, and the nature of the activity that the noise interrupted.^[1] Annoyance may be influenced by a variety of nonacoustical factors including individual sensitivity to noise.^[43] These include fear of the noise source, conviction that noise could be reduced by third parties, individual

sensitivity, the degree to which an individual feels able to control the noise, and whether or not the noise originated from an important economic activity.^[1,10] Other less direct effects of annoyance are disruption of one's peace of mind, the enjoyment of one's property, and the enjoyment of solitude.

Greater annoyance has been observed when noise is of low frequency, is accompanied by vibrations that contain low-frequency components, or when it contains impulses such as the noise of gunshots.^[1,32] Annoyance is greater when noise progressively increases rather than remaining constant. Average outdoor residential day-night sound levels below 55 dB were defined as acceptable by the EPA; acceptable average indoor levels were less than 45 dB.^[17] To put these levels into perspective, sound levels produced by the average refrigerator or the sounds in the typical quiet neighborhood measure about 45 dB.^[17] Sound levels above this produce annoyance in significant numbers of people.

The results of annoyance are privately felt dissatisfaction, publicly expressed complaints to authorities (although underreporting is probably significant), and the adverse health effects already noted. Given that annoyance can connote more than slight irritation, it describes a significant degradation in the quality of life, which corresponds to degradation in health and well-being. In this regard, it is important to note that annoyance does not abate over time despite continuing exposure to noise.^[12]

Effects of Multiple Sources of Noise Pollution

Most environments contain a combination of sounds from more than one source (eg, aircraft, motor vehicles, and trains). In urban environments, boom-cars, car horns, car alarms, and public transit systems may be the offenders. In suburban areas, leaf blowers, other power equipment, and barking dogs may be the source. There is, as yet, no consensus on a model for measuring total annoyance from multiple noise sources. Adverse health effects appear to be related to total noise exposure from all sources rather than the noise from any single source.

The evidence related to low-frequency noise is sufficiently strong to warrant immediate concern. It is a special concern because of its pervasive nature, because it arises from multiple sources, and because of its efficient propagation, which is essentially unimpeded by conventional methods of either building or ear protection. Adverse health effects from low-frequency noise are thought to be more severe than from other forms of community noise. This form of noise is underestimated with the usual types of sound measuring equipment.^[32,44]

In residential populations, combined sources of noise pollution will lead to a combination of adverse effects such as impaired hearing; sleep disturbances; cardiovascular disturbances; interference at work, school, and home; and annoyance, among others. These effects are the result of stress from noise, stress that has been increasingly linked to illness.^[2]

Groups Vulnerable to the Effects of Noise Pollution

Vulnerable groups, generally underrepresented in study populations, include patients with various diseases, patients in hospitals or those who are rehabilitating from injury or disease, the blind, the hearing impaired, fetuses, infants and young children, and the elderly. Although anyone might be adversely affected by noise pollution, groups that are particularly vulnerable include neonates, infants, children, those with mental or physical illnesses, and the elderly. Because children are particularly vulnerable to noise induced abnormalities, they need special protection.^[5,19] This vulnerability to noise may be an age-related sensitivity but may be also be due to increased risk based on behavior (personal music systems, loud concerts) or to an inability of the very young to remove themselves from a noxious source.^[5] The evidence is strong enough to warrant monitoring programs in schools and elsewhere to protect children from noise exposure.^[1,5,19]

The effects of noise on the fetus and newborn are unclear. Exposure to noise during pregnancy may increase the risk of high-frequency hearing loss in the newborn, shortened gestation, prematurity, and intrauterine growth retardation.^[5,19,20,45,46] Noise in the NICU may cause cochlear damage and may impair the growth and development of the premature infant.^[24] Even though studies have been inconsistent with respect to noise and congenital malformations, the data were sufficiently compelling for the National Research Council to recommend that pregnant women avoid noisy

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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIGATED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Public Employees for Environmental Responsibility and Center for Biological Diversity (2-16-2012)

1) Comment: Noise is not addressed in the environmental document.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is important to note that many different types of vehicles are currently allowed to be driven on County Maintained Roads. Types of vehicles currently allowed include: tractor trailers, street-legal motorcycles, cement mixers, garbage trucks, automobiles, etc. The use of the road by OHVs will not significantly increase noise to other recreation users.

It is important to note that the Noise chapter of the Inyo County General Plan Goals and Policies Report specifies acceptable noise limits as a Day-Night Average Sound Level (Ldn). The term "Ldn" refers to the average sound exposure over a 24-hour period. Ldn values are calculated from hourly Leq values, with the Leq value for the nighttime period (10:00 p.m. to 7:00 a.m.) increased by 10 dB to reflect their greater disturbance. The comment specifies that under State law the maximum noise level of off-road motorcycles is 82 decibels. This is two decibels louder than the 80 decibels that is allowed for street-legal vehicles. Street-legal vehicles are not restricted from using County roads in residential areas during nighttime hours. The combined-use of County roads in residential areas is restricted to between dawn and dusk and no earlier than 7:00 a.m. and no later than 8:00 p.m. Given the 10 dB increase during nighttime hours that are calculated as a part of generating an Ldn value, it can be seen that the use of OHVs during daylight hours will not be in total more than vehicles that are currently allowed to use County roads.

- 2) **Comment:** The environmental document does not properly address the potential increase in off-highway (OHV) ridership that will result from the designation of combined use routes. The increased ridership will create a variety of environmental impacts that are not addressed.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

- 3) **Comment:** Use of the road shoulder by OHVs may cause impact to neighboring habitat.

Response: It is not legal to drive on the roadway shoulder. The mention of the word "shoulder" in the implementation procedures is incorrect. The word will be deleted from the implementation procedures. There are very few Inyo County maintained roads where travel on the shoulder is possible. Additionally, the amount of traffic on County roads is such that the OHV user will be able to use the primary part of the roadway. The Inyo County Road Department does not wish to see the use of the roadway shoulder. If the future review of a project determines that there is a likelihood of the use of the shoulder by OHVs, mitigation measures will be put in place to reduce that impact.

- 4) **Comment:** OHV licenses and devices are difficult to read and thus create additional safety hazards for law enforcement.

Response: The point that OHV licenses are difficult to read is correct. However, this will provide no additional safety hazards for law enforcement personnel. Green sticker vehicles statewide are held to certain requirements. That will not change as part of the implementation of combined-use trails. As part of the implementation of the combined-use system, the Inyo County Sheriff's Department anticipates doing regular stops of OHV vehicles. At those stops, the Sheriff's Department personnel will answer any questions the user may have and assist the user in becoming familiar with the system. The officer's will additionally check the vehicle

¹ Section 38026.1 (a) of the California Vehicle Code

registration, the age of the driver, and check that the green sticker is present and placed in the proper location.

The implementation of additional signage as part of the implementation of combined-use routes will help clarify which areas are legal to use will make law enforcement easier, which signage must be approved by Caltrans.

5) Comment: What is the funding for the future site specific CEQA review that will be required?

Response: The staff work for the development of the Implementing Procedures and future consideration of combined-use applications will be through Rural Planning Assistance funds administered by the Inyo County Local Transportation Commission (LTC). The Inyo County LTC enters into an annual agreement for the use of Rural Planning Assistance funds through the adoption of an Overall Work Program. The Overall Work Program serves as a type of Scope of Work describing Inyo County LTC activities. The 2011-2012 Overall Work Program includes a task in Work Element No. 500.1 that reads:

Consider implementing a planning study to evaluate the combined use of specific local streets and roads by regular vehicular traffic and off highway vehicles. Establish criteria local agencies can use to determine if the roads comply with the Vehicle Code. Monitor the designation of combined use roads.

You can refer to the Inyo County LTC web page on the Overall Work Program for more information at <http://www.inyoltc.org/owp.html>. During a Board of Supervisors workshop where staff requested specific direction on the development of the Implementing Procedures, the Board of Supervisors gave direction for the cost of the combined-use applications to not be the cost of the applicant.

6) Comment: OHVs will not follow signage and will cause environmental harm.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in

the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."²

- 7) **Comment:** The implementing procedures require the County to evaluate safety, liability, and maintenance, but should also require the County to include an analysis of potential environmental impacts created by the designation of a combined-use route.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

- 8) **Comment:** A Mitigated Negative Declaration is inappropriate for the proposed program; a program environmental impact report (EIR) is needed.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The proposed Draft Mitigated Negative Declaration complies with the CEQA Guidelines. The Implementation Procedures do not, by themselves, create a cumulatively considerable effect. It should also be noted that it is currently legal to designate roads for combined-use in compliance with the California Vehicle Code. The main ways that Assembly Bill 628 is different than existing State law, is that it extends the maximum length allowable for a combined-use route to 10 miles and that Inyo County is required to approve Implementing Procedures before it can designate a combined-use route under Assembly Bill 628. Assembly Bill 628 is only a Pilot Project and is subject to further review by the State of California before it can be implemented on a long term basis.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

-
- 9) **Comment:** Based on the fair argument standard, the project requires the completion of an EIR.
Response: See response to Comment No. 8 above. When considering the entirety of the action

² Section 38026.1 (a) of the California Vehicle Code

being taken to implement procedures for the designation of combined-use roads, it is clear that, as mitigated, the project will have a less than significant impact.

10) Comment: The project will increase noise levels beyond those allowed for in the General Plan. OHVs are legally allowed a noise limit of up to 82 dB which is 2 dB louder than the limit of 80 dB that is the maximum noise allowed for street legal motorcycles. Refers to General Plan Noise Element 9-9. The proposed mitigation to restrict OHV travel beyond that set forth in the Assembly Bill is inadequate.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is important to note that many different types of vehicles are currently allowed to be driven on County Maintained Roads. Types of vehicles currently allowed include: tractor trailers, street-legal motorcycles, cement mixers, garbage trucks, automobiles, etc. The use of the road by OHVs will not significantly increase noise to other recreation users.

It is important to note that the Noise chapter of the Inyo County General Plan Goals and Policies Report specifies acceptable noise limits as a Day-Night Average Sound Level (Ldn). The term "Ldn" refers to the average sound exposure over a 24-hour period. Ldn values are calculated from hourly Leq values, with the Leq value for the nighttime period (10:00 p.m. to 7:00 a.m.) increased by 10 dB to reflect their greater disturbance. The comment specifies that under State law the maximum noise level of off-road motorcycles is 82 decibels. This is two decibels louder than the 80 decibels that is allowed for street-legal vehicles. The combined-use of County roads in residential areas is restricted to between dawn and dusk and no earlier than 7:00 a.m. and no later than 8:00 p.m. Given the 10 dB increase during nighttime hours that are calculated as a part of generating an Ldn value, it can be seen that the use of OHVs during daylight hours will not be in total more than vehicles that are currently allowed to use County roads.

It is important to note that 1) there is a difference between units to measure noise. The dB value is for one specific noise element. The Ldn described in Table 9-9 of the General Plan is a day-night average, 2) in general, residential units next to County roads in residential areas are currently very quiet and do not approach the Ldn maximum noise levels set forth in the Table 9-9, 3) the use of OHVs is restricted to daytime hours, and further during the summer months, from 7:00 a.m. to 8:00 p.m., the maximum speed limit for OHVs is 35 mph and will match the speed limit in residential areas – usually 25 mph and the sound created at these speeds is approximately ½ of the amount of sound released from vehicles traveling around 70 mph. The combination of these factors mitigates potential noise impacts to a level that is less than significant.

11) Comment: The implementing procedures do not provide a mechanism for residential property owners to express their concerns. How will the concerns of the impacted residential property owners be addressed?

Response: The Implementation Procedures only allow the Board of Supervisors to approve a combined-use route at a public hearing where a minimum 7-day notice has been given to property owners adjacent to any proposed route. Anyone wishing to address the Board of Supervisors regarding a potential combined-use designation will have the opportunity to do so. How each Board member votes on the designation of any particular combined-use segment is based on their best judgment of how their vote will serve their constituency. The Board may, if they choose, impose additional restrictions to answer the concerns of area citizens. Each Board of Supervisors represents one of five different districts within the County. Each Board member is elected to serve a four year term.

All comments received on combined-use routes will be forwarded to the State as part of the analysis of the Pilot Project. The result of this is that an individual submitting comments on the combined-use designation will be heard by not only the Board of Supervisors, but also the California State Legislature.

12) Comment: The designation of combined-use routes will create noise impacts on wildlife.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

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It should also be noted that it is currently legal to designate roads for combined-use in compliance with the California Vehicle Code. The main ways that Assembly Bill 628 is different than existing State law, is that it extends the maximum length allowable for a combined-use route to 10 miles and that Inyo County is required to approve Implementing Procedures before it can designate a combined-use route under Assembly Bill 628. Assembly Bill 628 is only a Pilot Project and is subject to further review by the State of California before it can be implemented on a long term basis.

13) Comment: The environmental document does not adequately discuss growth inducing impacts created by the implementation of combined-use routes.

Response: The project will not induce population growth. The future growth of communities in the Owens Valley and in most of the County as a whole is heavily constrained by the land ownership patters. Only approximately 1.7% of the land in the County is in private ownership. The County's population has remained static since the 1990 census.

It should also be noted that it is currently legal to designate roads for combined-use in compliance with the California Vehicle Code. The main ways that Assembly Bill 628 is different than existing State law, is that it extends the maximum length allowable for a combined-use route to 10 miles and that Inyo County is required to approve Implementing Procedures before it can designate a combined-use route under Assembly Bill 628. Assembly Bill 628 is only a Pilot Project and is subject to further review by the State of California before it can be implemented on a long term basis.

14) Comment: Roads and road segments that become part of the combined-use system will see both an increase in use and a change in the nature of the use.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

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15) Comment: OHVs are notorious for failing to stay on designated roads. The County's insistence that new users of a combined use road will stay within the right of way is either naïve or duplicitous.

Response: OHV users will be required to drive entirely on existing pavement or, in the case of dirt roads, on the existing road bed. The Inyo County Sheriff's Department and the California Highway Patrol will enforce the County's requirements on combined-use roadways. As part of the evaluation of the Pilot Project, the County will assess damage to adjoining property owners and to the right-of-way and will include that information to the State.

It is anticipated that OHV users will limit travel on the combined-use segments to access the main portion of their recreational activity, driving on rough dirt roads and trails on BLM and Inyo National Forest land. OHVs driving on County maintained roads will also be more conscious of the presence of law enforcement personnel than on an OHV trail on BLM and Inyo National Forest land.

Per Assembly Bill 628 and as implemented through the procedures, the Inyo County Public Works Department will maintain a file of any complaints received regarding the use of OHVs on designated combined-use routes.

16) Comment: Impacts to wildlife are inappropriately dismissed.

Response: County maintained roads are currently open to all street-legal types of vehicle uses. This includes: cars, SUVs, pickup trucks, commercial trucks, farm equipment, cement mixers, etc. It is again essential to point out that use by OHVs is currently allowed on BLM and Inyo National Forest lands. Therefore, this potential impact is less than significant.

It should also be noted that it is currently legal to designate roads for combined-use in compliance with the California Vehicle Code. The main ways that Assembly Bill 628 is different than existing State law, is that it extends the maximum length allowable for a combined-use route to 10 miles and that Inyo County is required to approve Implementing Procedures before it can designate a combined-use route under Assembly Bill 628. Assembly Bill 628 is only a Pilot Project and is subject to further review by the State of California before it can be implemented on a long term basis.

17) Comment: The environmental document dismisses impacts to riparian resources. If the routes include unarmored stream crossings, the additional use is likely to increase the amount of sedimentation and damage to riparian vegetation.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It should be noted that OHVs are much lighter than cars and trucks.

18) Comment: The IS/MND fails to acknowledge that the volume of traffic affects the amount of fugitive dust. There will be a negative impact to air quality created by the implementation of this project.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

OHV use currently occurs in the area, primarily on Inyo National Forest, BLM, and City of Los Angeles Department of Water and Power land. The combined-use designation of County roads will change the mix of use, though it will not significantly change the amount of fugitive dust released on County roads. The Great Basin Unified Air Pollution Control District does not currently restrict the use of dirt roads maintained by the County.

19) Comment: Impacts to habitat areas adjacent to roads created by use of the shoulder.

Response: See response to comment No. 3 above.

CALIFORNIA ENVIRONMENTAL LAW PROJECT
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**Re: Sierra Club Toiyabe Chapter Comments
Concerning "Combined use Roadway Designation" As Part of the
Implementation of Assembly Bill 628**

Dear Mr. Smith:

1 The Toiyabe Chapter of The Sierra Club shares the concerns voiced by PEER and the Center for Biological Diversity in their letters of today's date. The County's proposed implementation program appears geared to promoting OHV use above all other recreational uses and as well ignores the environmental implications of the increased use of OHV's on County roads. The members of the Toiyable Chapter use county roads for a variety of recreational uses – including scenic viewing, access to trailheads for hiking, bicycle riding, bird and animal viewing and study, walking, and horse back riding. Certainly, virtually all of these recreational uses and experiences are marred by the noise arising from the access that would be given to OHV's on roads designated for combined uses. Sierra Club can find no consideration in the Mitigated Negative Declaration, nor in any accompanying documentation, of the impacts of OHV's on other recreational users and the quality of the experience of enjoyment of the outdoors that is affected by the noise from OHV's.

3 Moreover, it is apparent from the Inyo County Adventure Trails Pilot Program Procedure Outline that impacts on other recreational users, as well as impacts generally on the environment, will not be adequately considered during the combined use designation procedure. Section 10 of the Procedures for implementation make it clear that the Board shall be primarily concerned with safety hazards, compliance wit the California Vehicle Code and whether the combined use designations offer links between off-highway motor vehicle trail segments, and off highway motor vehicle recreational use areas and necessary service facilities, or between lodging facilities and OHV motor vehicle recreational facilities. (Section 2 (i-viii). The Pilot Program is clearly a promotional scheme intended to facilitate and increase OHV use to the detriment of other recreational users, the environmental, and county residents living along the combined use routes.

4

- 5 As pointed out, above, the Toiyabe Chapter shares the environment concerns put forward by PEER and CBD and believes it was inappropriate and illegal to approve the Implementation Plan on the basis of a Mitigated Negative Declaration.

The implementation plan is not consistent with the Legislature's intent in AB 628 to improve natural resource protection and to minimize impacts on County residents. VC 38026.1. As stated in the PEER and CBD letter:

- 6 The Legislative intent of AB628 includes the improvement of natural resource protection, reduction in off-highway vehicle trespass on private land and the minimization of impacts on county residents. (VC 38026.1. (a)) Neither the IS/MND nor the Implementation Plan include any provisions that would actually facilitate any of those objectives. Lacking those measures, the implementation of the county-wide designation of yet-unspecified routes is likely to have the opposite effect; a proliferation of off-highway vehicle use that will increase impacts to natural resources, increase trespass and expose residents adjacent to the combined use roads to the noise of dirt bikes, ATVs and other vehicles that were never intended for use in residential areas.

- 7 The Toiyabe Chapter is deeply concerned that the County has failed to study and has ignored the effects on other recreational users and county residents of the substantial noise generated by OHV's. The County has failed to recognize that OHV use will increase substantially on combined use roads, with a corresponding increase in environmental impacts, including noise, dust, and water quality impacts. Also, as pointed out above, the principal criteria in the implementation plan are safety, liability, and maintenance. Environmental impacts are ignored, and there is no provision for their consideration in connection with applications for combined use designation.

- 8 I. There Is Substantial Evidence in the Record Supporting a Fair Argument That Significant Environmental Effects May Occur From This Project.

An EIR is required whenever substantial evidence in the record supports a "fair argument" that significant environmental effects may occur from implementation of the combined use program. Even if other substantial evidence in the records supports the opposite conclusion the agency nevertheless must prepare an EIR. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1st Dist. 1980) 106 Cal.App.3d 988, 1000-1003.

The "Fair argument" standard creates a "low threshold" for requiring preparation of an EIR. *Citizens Action to Serve All Students. v. Thornley* (1990), 222 Cal.App.3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 310. Since adopting a negative declaration generally means the termination of the environmental review process, an EIR is necessary to "substitute some degree of factual certainty for tentative opinion and speculation" and to resolve "uncertainty created by conflicting assertions." *No. Oil, supra* 13 Cal.3d at 85 (quoting *County of Inyo v. Yorty* (1973), 32 Cal.App.3d 795, 814.

If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences. *Sundstrom* 202 Cal.App.3d 311. An agency may not avoid preparing an EIR by failing to gather relevant data *Sundstrom, ibid.*

In *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 414 the Court held that an agency cannot complain of project opponents' "lack of evidence" to support their concerns about adequacy of a negative declaration when the agency "initially set the stage by failing to gather facts and evidence in conducting its initial study of the [project's] potential environmental effects." As in *City of Redlands*, the County's environmental documents are conclusory, evidencing lack of consideration of the direct, indirect, and cumulative impacts of promoting OHV use on County roads.

In *County Sanitation District No. 2 v. County of Kern* (2005), 127 Cal.App.4th 1544, 1517-1603 the Court held that it is improper to defer environmental review in the context of a negative declaration because a negative declaration is typically the end of an environmental review process, and thus deferred analysis equates to avoidance of analysis. The Agency has a positive duty to study the issue and produce credible evidence of its own. It has failed to do this.

9

II. Any Mitigation Measures Associated With the MND Must Be Implemented Subsequent to Project Approval.

Agencies adopting mitigated negative declarations must take affirmative steps to ensure that approved mitigation measures are in fact implemented subsequent to project approval. The lead agency must adopt a reporting or monitoring program for any mitigation measures incorporated into a project or imposed as conditions of approval. Pub. Res. Code §21081.6(a)(i); Guidelines §§15074(d) and 15097.

A lead agency cannot base a negative declaration on the presumed success of mitigation measures that have not been formulated at the time of project approval. *Sundstrom v. County of Mendocino*, supra.

In any event the County has set forth no regulatory measures that could enforce the "restriction" of use of OHV's between "dusk" and "dark" and between the hours of 7:00 am and 8:00 pm. The County has no law enforcement capability to ensure this restriction will be honored. If there are complaints by residents or other recreational users, the offenders will be off to other areas, and difficult to identify. Residents and other recreational users have no capability to preserve peace and tranquility or the quality of their recreational experiences in the event this restriction is not complied with.

III. An EIR Is Required Where the General Plan Noise Standards Are Exceeded.

10

A general plan may serve to set forth policies that may be functionally equivalent to thresholds of significance. Guideline §15067.7. *See Schaeffer Land Trust v. San Jose City Council* (1986), 215 Cal.App. 3d 612, 623-625. It is not true, as stated in the IS/MND that "The noise level produced by off-highway vehicles will not be in excess of those set forth in the General Plan." It is true, as pointed out by PEER and CBD, that the project would increase noise levels significantly above levels permitted under the Inyo County General Plan.

The Noise Element of the General Plan acknowledges that:

"Certain areas of the County can experience noise levels that can be a concern to local residents and visitors... Noise effects may differ depending upon who is exposed to the noise. Some sensitive receptors, such as residential areas, ...and other similar uses are affected to a greater degree by noise impacts. Regardless of the source, noise can be a nuisance effect that can adversely affect humans and wildlife resources.

Noise Element, p. 9-31.

The Checklist prepared by the County admits that:

Noise levels could become more of an impact during the summer months when it gets light around 5:30 am and it stays dark after 8:00 pm. Although off-highway vehicles should not have noisier mufflers than street level motorcycles, the off-highway vehicles may have higher gearing than is customary for regular street vehicles and therefore have the potential to increase the impact on residential areas by creating noise of a different pitch.” (Page 16).

In *Pocket Protectors v. City of Sacramento*, (2004) 124 Cal.App.4th 903-937, the Court of Appeal held that aesthetic impacts on local residents were environmental impacts that needed to be considered in an EIR, especially when the General Plan expressed policies that implicated esthetic impacts. The County here must examine, through an environmental document, the effects on other recreational users of the noise from OHV's that would impair their enjoyment and tranquility. In *Pocket Protectors*, the Court of Appeal held that a negative declaration was not proper where residents had raised concerns about the aesthetic impacts of a residential building project on their neighborhood.

The PEER-CBD letter states:

The IS/MND states, “*The noise level produced by off-highway vehicles will not be in excess of those set forth in the General Plan.*” This statement is untrue; this project would increase noise levels significantly from those allowed in the General Plan. Even OHVs within the legally allowable noise limit of 82 db would exceed the maximums suggested in the General Plan.¹

The IS/MND states, “*off-highway vehicles should not have noisier mufflers than street-legal motorcycles...*” This statement is also untrue. The maximum decibel limit for street legal motorcycles manufactured after 1985 is 80 db. The maximum decibel limit for off-road motorcycles manufactured after January 1, 1986 is 82 db at 50 feet. The difference is logarithmic, so 2 decibels is not insignificant. As the Inyo General Plan's own Noise Element discloses, an increase of the sound level by 3 dB corresponds to a doubling of sound intensity.² Noise Element at 9-31.

The Inyo General Plan Implementation measure 2.0 requires, “*During initial project review, the County shall request the incorporation of noise reduction features to mitigate anticipated noise impacts.*” This project does not mitigate noise impacts; it allows them. Therefore the project violates the General Plan. (Inyo Co. GP, p. 9-39)

None of the above takes into consideration the common practice of tampering with exhaust systems or aftermarket exhaust systems, which can significantly

¹ Inyo County General Plan Noise Element, Table S 9-7 and 9-9. The maximum allowable exposure for residential users is 70 L dn.

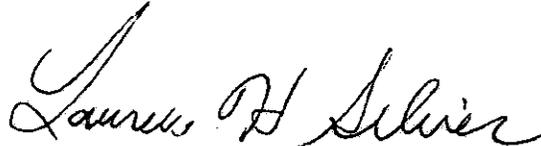
² Inyo County General Plan, p. 9-31.

increase the noise level of an OHV. Nor does the draft IS/MND take into consideration increased traffic volume, comprised of the noisier vehicles.

Where the General Plan thresholds of significance may be exceeded, an EIR is required. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001), 91 Cal.App.4th 1344, 1364-1367 (an EIR must carefully analyze the potential noise and air pollution impacts of increased air flights and take into account compliance with the City's "significance threshold" for noise – in this case the 65 dB CNEL contour found in federal and state law.) In *Berkeley Jets* the Court required the City to study, through an EIR, the environmental and health impacts of "single event noise" beyond the 65 dB CNEL contour. 91 Cal.App. 4th at 1375-1376. The Court accepted the contention of plaintiffs that "single event" airplane noise at night could wake city residents at night and be harmful to health. Here, the County has made no attempt to examine the direct, indirect, or cumulative noise impacts of the increased use of OHV's arising from the Project, if approved, nor has it examined whether the Project's noise impacts are consistent with its General Plan.

For all of the foregoing reasons, the Toiyabe Chapter urges the County not to approve the Project on the basis of a MND.

Sincerely,
CALIFORNIA ENVIRONMENTAL LAW PROJECT



Laurens H. Silver Counsel for Plaintiff
Sierra Club, Toiyabe Chapter



INYO COUNTY
P.O. DRAWER Q
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PHONE: (760) 878-0201
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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Toiyabe Chapter of the Sierra Club (2-17-2012)

- 1) **Comment:** Environmental document ignores the environmental implications of the increased use of OHVs.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

¹ Section 38026.1 (a) of the California Vehicle Code

2) **Comment:** OHV use is emphasized over other recreational uses. Potential conflicts exist between different user groups.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The combined-use of County roads is concerned with the mix of vehicles, including bicycles and pedestrians, on County maintained roads.

3) **Comment:** Combined-use implementation procedures geared toward California Vehicle Code and not environmental impacts

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

4) **Comment:** The Pilot Program is clearly a scheme intended to facilitate an increase OHV use to the detriment of other recreational uses, the environment, and county residents living along the combined use routes.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The Pilot Program was passed by the California Legislature and signed into law by the Governor of the State of California.

5) **Comment:** It was inappropriate and illegal to approve the Implementation Plan on the basis of a Mitigated Negative Declaration.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future. Therefore, the potential impact created by the approval of the Implementing Procedures is less than significant.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

- 6) **Comment:** Draft Implementation Procedures will have the opposite affect of that intended by the State legislation. That is, impacts caused by OHVs to the environment will increase and not decrease.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."²

- 7) **Comment:** Noise created by OHVs will negatively impact other recreation users.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing

² Section 38026.1 (a) of the California Vehicle Code

Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is important to note that many different types of vehicles are currently allowed to be driven on County Maintained Roads. Types of vehicles currently allowed include: tractor trailers, street-legal motorcycles, cement mixers, garbage trucks, automobiles, etc. The use of the road by OHVs will not significantly increase noise to other recreation users.

It is important to note that the Noise chapter of the Inyo County General Plan Goals and Policies Report specifies acceptable noise limits as a Day-Night Average Sound Level (Ldn). The term "Ldn" refers to the average sound exposure over a 24-hour period. Ldn values are calculated from hourly Leq values, with the Leq value for the nighttime period (10:00 p.m. to 7:00 a.m.) increased by 10 dB to reflect their greater disturbance. The comment specifies that under State law the maximum noise level of off-road motorcycles is 82 decibels. This is two decibels louder than the 80 decibels that is allowed for street-legal vehicles. Street-legal vehicles are not restricted from using County roads in residential areas during nighttime hours. The combined-use of County roads in residential areas is restricted to between dawn and dusk and no earlier than 7:00 a.m. and no later than 8:00 p.m. Given the 10 dB increase during nighttime hours that are calculated as a part of generating an Ldn value, it can be seen that the use of OHVs during daylight hours will not be in total more than vehicles that are currently allowed to use County roads.

8) Comment: There is substantial evidence in the record supporting a fair argument that significant environmental effects may occur from this project.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The potential impacts for the approval of the Implementing Procedures are less than significant as mitigated and in response to comments submitted on this environmental document.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

9) Comment: A lead agency cannot base a negative declaration on the presumed success of mitigation measures that have not been formulated at the time of project approval.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

10) Comment: The implementation of the project will exceed the noise levels set forth in the Inyo County General Plan. Therefore, the project conflicts with the General Plan.

Response: The implementing procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the implementing procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is important to note that many different types of vehicles are currently allowed to be driven on County Maintained Roads. Types of vehicles currently allowed include: tractor trailers, street-legal motorcycles, cement mixers, garbage trucks, automobiles, etc. The use of the road by OHVs will not significantly increase noise to other recreation users.

It is important to note that the Noise chapter of the Inyo County General Plan Goals and Policies Report specifies acceptable noise limits as a Day-Night Average Sound Level (Ldn). The term "Ldn" refers to the average sound exposure over a 24-hour period. Ldn values are calculated from hourly Leq values, with the Leq value for the nighttime period (10:00 p.m. to 7:00 a.m.) increased by 10 dB to reflect their greater disturbance. The comment specifies that under State law the maximum noise level of off-road motorcycles is 82 decibels. This is two decibels louder than the 80 decibels that is allowed for street-legal vehicles. Street-legal vehicles are not restricted from using County roads in residential areas during nighttime hours. The combined-use of County roads in residential areas is restricted to between dawn and dusk and no earlier than 7:00 a.m. and no later than 8:00 p.m. Given the 10 dB increase during nighttime hours that are calculated as a part of generating an Ldn value, it can be seen that the use of OHVs during daylight hours will not be in total more than vehicles that are currently allowed to use County roads.



United States
Department of
Agriculture

Forest
Service

Inyo National Forest

351 Pacu Lane, Suite 200
Bishop, CA 93514
(760) 873-2400
(760) 873-2538 TDD

File Code: 1950

Date: February 17, 2012

Mr. Courtney Smith
Project Planner
Inyo County Planning Department
P.O. Drawer Q
Independence, CA 93526

Dear Mr. Smith:

The Inyo National Forest has reviewed the Draft Mitigated Negative Declaration of Environmental Impact and Initial Study (MND/IS) for the Inyo County Adventure Trails Pilot Program Procedures. As stated in the MND/IS, the project would designate certain highways in Inyo County as combined use routes pursuant to the provisions of Assembly Bill 628.

The Inyo National Forest supports the Adventure Trails Pilot Program in concept, and recognizes the economic contribution of off-highway vehicle recreation to our local economy. While we recognize that the designation of certain highway (roads and streets) segments for combined use could enhance the connectivity of existing off-highway vehicle opportunities in Inyo County, we would like to work with you to resolve the following concerns identified during our review of the MND/IS.

- 1. Jurisdiction of Roads on National Forest System (NFS) Lands.** The US Forest Service has authority for the evaluation, processing, and designation of any combined use applications for roads under its jurisdiction. Forest Service policy (FSM 7700) defines jurisdiction of a road as "the legal right to control or regulate use of a forest transportation facility derived from title, an easement, an agreement, or other similar source." For roads across NFS lands, the County may not designate roads for combined use without proper documentation that jurisdiction for the road segment has been transferred to the County. For clarity, we use the term "County road" to refer to those roads or road segments for which Inyo County has legal jurisdiction.
- 2. Adequacy of Effects Analyses.** Without more information about the specific roads proposed for combined use designation, it is difficult to determine the sufficiency of the effects analyses in the MND/IS. The Forest Service requests maps and additional information regarding the roads under consideration for combined use designation, and an additional review and comment period before the County issues a decision on the pilot project. The additional review period will ensure potential issues are brought to light early in the process, rather than after a project applicant submits an application to the County for processing.
- 3. Agency Notification Procedures.** Step 5 in the application process (Inyo County Adventure Trails Pilot Program Procedure Outline) includes the submission of applications to responsible agencies, and requests information be provided by the affected agencies within 60 days. Because of the potential complexities involved in determining



road jurisdiction and our limited funding and staff capacity, we request immediate notification of any applications received that involve road segments on NFS lands so that we may determine the scope of the forest's role. A meeting between the County and the Forest Service would be an effective way to review the applications for road segments on NFS lands.

4. **Public Notification Procedures.** We encourage the County to provide open and inclusive opportunities for public involvement in the combined use designation process. In addition to adjacent property owners, combined use designations have the potential to affect drivers of street-legal vehicles and non-motorized users, among others.
5. **Designation of Graded, Surfaced, or Paved Roads.** Forest Service policy allows for the designation of short segments of roads designed for passenger car travel (Maintenance Levels 3, 4, and 5) for combined use. Maintenance Level 4 and 5 roads are generally paved with a higher degree of user comfort and travel speed; Maintenance Level 3 roads are graded native surface or spot surfacing, with correspondingly lower travel speeds. Due to safety concerns, we have not designated any paved Forest roads for combined use, and would not recommend combined use designation for paved County roads on NFS land.
6. **Indemnification.** Section 38026.1(d) of Assembly Bill 628 indemnifies the state against any and all claims for losses or injuries arising or resulting from off-highway vehicle use on roads designated for combined use by Inyo County, but does not indemnify the federal government. We will be discussing the issue of federal indemnification with our counsel, and will inform you of the outcome of that discussion.
7. **Monitoring.** The Forest Service requests clarification on the County's trail segment monitoring program, and the expectations for land management agencies (Item 14, Pilot Procedure Outline). Forest Service funding may not be available to complete requested monitoring on off-highway trails on the national forest. We are interested in working with you to explore other options for completing needed monitoring.
8. **Clarify the Legal Travel Area for Off-Highway Vehicles.** Page 18, Appendix G, states: "If the off-highway vehicles use the edge of the pavement, there is the possibility to create unraveling along the edge of the pavement...However, it is not legal to drive along the shoulder and so this potential impact is considered to be less than significant." The Adventure Trails Pilot Program Procedure Outline, Item 2.a.iii, says that the application shall include a description of the portion of the right-of-way that is proposed to be used, such as the entire lane, the edge of the lane, or the shoulder. Please clarify whether off-highway vehicles can legally travel on the shoulder of combined use road segments and revise the effects analysis, if necessary.

Early and open communication will be essential to ensure the success of the pilot program. Towards that end, my staff has scheduled a meeting with you, the Bureau of Land Management, and the Los Angeles Department of Water and Power on February 28, 2012 to begin the dialogue on the combined use designation process. Please be advised that, depending on the specific routes proposed and jurisdiction determinations, the combined use designation process may require commitments of time and resources we are not able to provide at this time. Such a

determination cannot be made without information regarding the specific highway segments proposed for combined use designation.

Thank you for the opportunity to comment on the MND/IS for the Adventure Trails Pilot Program. I look forward to working with you to implement of the Pilot Program and ensure safe, sustainable designations of off-highway vehicle trail systems in Inyo County.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Armenta', written in a cursive style.

EDWARD E. ARMENTA
Forest Supervisor

cc: Diana Pietrasanta



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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Inyo National Forest (02-17-2012)

1) Comment: Jurisdiction of roads on National Forest System Lands.

Response: In general, most County maintained roads were accepted into the County Maintained Mileage system back in the 1940s. The underlying right-of-way varies from road to road. On some roads, the right of way is clearly delineated while on other roads there is no formal documentation of the right of way or the road is not at the location that is shown on the ground. In all cases, the County maintenance of the road is well established either through prescriptive right or through the actual right of way. As such, the County is able to place conditions on the use of that road. If the Inyo National Forest has concerns about specific roadways, it would be appropriate to raise those on the specific proposal that is being directed to the Inyo National Forest. The implementing procedures indicate that adjacent property owners need to be notified of the public hearing.

It should be noted that the Inyo National Forest acknowledged the County maintenance mileage system as part of the Travel Management Plan.

2) Comment: Adequacy of effects analyses.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution,

the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

We understand the Forest Services concern about a thorough review of proposed combined-use facilities and providing the applicant with a realistic expectation as to the issue that are involved with the designation of any one particular combined-use segment. Please note that Inyo County is required by Assembly Bill to adopt procedures to implement the combined-use portion of the Adventure Trails system. AB 628 restricts the duration of the pilot project time period. The AB 628 Implementing Procedures require the County to coordinate with the Inyo National Forest and to get agreement from the Forest Service on the validity of trail segments that are linked to by the combined-use segment. Issues or concerns can be addressed at that time.

3) Comment: Agency notification procedures.

Response: The County understands that the Forest Service has many components to its civic duty. We will ask the Forest Service to respond to the action in a timely manner. If the Forest Service is unable to comment within the 60-day period, please notify the County as to the specific reasons for and the duration of the expected time delay.

The Inyo National Forest needs to keep in mind the specific question that the County will be requesting feedback. Namely, is the trail segment that the combined-use segment being linked to currently legal for use by OHVs. This information should be readily apparent as the Inyo National Forest has completed a formal designation process through the adoption of its Travel Management Plan to identify roads that are open to public use and the type(s) of vehicles that are allowed to use those roads.

The County will participate in meetings with the Inyo National Forest and other stakeholders. The County is unable to confirm which roads are being applied for combined-use designation until the time it receives a formal application from the project proponents. The project applicants are responsible for the submittal of combined-use applications

At a meeting on February 28, 2012, Forest Service and BLM staff requested that the County require a preliminary application meeting. The notification procedures set forth in the Implementing Procedures (60-days after the application is determined to be complete) are adequate.

4) Comment: Public notification procedures.

Response: The AB 628 Implementing Procedures are designed to make the designation of combined-use routes a transparent public process. The Board of Supervisors meetings to consider the combined-use designations will be noticed in the same manner as regular meetings of the Board of Supervisors. In addition, the Implementing Procedures include an addition notification to property owners who are adjacent to a proposed combined-use route.

5) Comment: Designation of graded, surfaced, or paved roads.

Response: Any future designations of combined-use routes will comply with the California Vehicle Code, as amended by the approval of Assembly Bill 628. Each potential combined-use route will be evaluated on its own merit.

6) Comment: Indemnification.

Response: By virtue of its Maintained Mileage System, the County has liability for the maintenance and operation of County maintained roads.

7) Comment: Monitoring.

Response: Inyo County is required by AB 628 to submit an evaluation of the Pilot Project. The County is required to:

f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

(1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.

(2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

(3) A description of the public comments received at a public hearing held by the county in regards to an evaluation of the pilot project.

(g)(1) A report submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

It is the intent of the County to address each of these requirements in a thorough manner. We will request information from the Inyo National Forest, the Bureau of Land Management, and the City of Los Angeles Department of Water and Power to make our evaluation more complete. At a minimum, please forward any correspondence your agency has related to the designation of combined-use routes by the County.

8) Comment: Clarify the legal travel area for off-highway vehicles.

Response: The language in the draft AB 628 Implementing Procedures, Section 38026.1(b)(3)(B) requires the County to delineate the right-of-way. It is not legal to travel on the shoulder. The word "shoulder" will be deleted from the Implementing Procedures.

Comments
on the
DRAFT Inyo County Adventure Trails Pilot Program Procedure Outline
dated Dec. 23, 2011
and the
Draft Mitigated Negative Declaration of Environmental Impact and Initial Study
dated January 16, 2012

1

Disclosure of full costs of administering and implementing the Adventure Trails Pilot Program

1. Section 38026.1(a) of the California Vehicle Code as amended by AB628 states that " Except as provided in subdivision (e), the County of Inyo may establish a pilot project to designate combined-use highways on unincorporated county roads" but does not require the county to be the lead agency and incur costs that could be borne by the applicant. However, the county has chosen to be the lead agency and therefore has incurred and will incur the following:

The county has incurred costs in drafting procedures for implementation of the program and in developing a draft mitigated negative declaration of environmental impact.

The county will incur future costs in establishing uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles.

The county will incur costs in the evaluation and processing of combined-use applications including presenting those applications to the Commissioner of the Highway Patrol.

The county will be required to hold public hearings.

The county will require a recommendation from several county departments including Public Works, Risk Management, Sheriff and County Counsel. Each of those departments will incur costs accomplishing their review.

The county may be responsible for the cost of signage if funds are not obtained from the state and the applicant does not provide the funding.

The Sheriff and Public Works Departments will be responsible for maintaining files related to the project. Upon completion of the pilot program, the county will be responsible for preparing and submitting to the legislature a report evaluating the project. The report will be prepared after consultation with the various state agencies that have oversight of the project.

The above tasks will require a significant expenditure of public funds.

2. It should also be noted that:

2

- a. No state General Fund money may be expended on the pilot project.
- b. Inyo County will be required to defend and indemnify the state against any claims including legal defense and liability arising from a claim
- c. The cost of signage may ultimately rest with the county

3

3. **Given the above, the citizens of Inyo County should be given a full disclosure of all costs incurred to date and those costs expected to be incurred during the life of this program before it is approved by the county Board of Supervisors. This should include a real world estimate of the costs to administer, manage and patrol and enforce the system once designated and an assessment of the risks and liabilities that the county could incur.**

4

4. Along with the report the county will prepare for the legislature, the applicant should prepare an economic evaluation of the pilot project that measures the economic benefit that was received by businesses and the county itself. The metrics and methodology to be used in this report should be agreed to in advance so that they will be meaningful.

February 17, 2012

William Mitchel
716 Sundown Circle
Bishop, CA 93514



INYO COUNTY
P.O. DRAWER Q
INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: William Mitchel (2-17-2012)

- 1) **Comment:** County should disclose full cost of administering and implementing the Adventure Trails Pilot Program.

Response: The cost for the signage will be reimbursed by the California Department of Parks and Recreation. The staff work for the development of the Implementing Procedures and future consideration of combined-use applications will be through Rural Planning Assistance funds administered by the Inyo County Local Transportation Commission (LTC). The Inyo County LTC enters into an annual agreement for the use of Rural Planning Assistance funds through the adoption of an Overall Work Program. The Overall Work Program serves as a type of Scope of Work describing Inyo County LTC activities. The 2011-2012 Overall Work Program includes a task in Work Element No. 500.1 that reads:

Consider implementing a planning study to evaluate the combined use of specific local streets and roads by regular vehicular traffic and off highway vehicles. Establish criteria local agencies can use to determine if the roads comply with the Vehicle Code. Monitor the designation of combined use roads.

You can refer to the Inyo County LTC web page on the Overall Work Program for more information at <http://www.inyoltc.org/owp.html>. During a Board of Supervisors workshop where staff requested specific direction on the development of the Implementing Procedures, the Board of Supervisors gave direction for the cost of the combined-use applications to not be the cost of the applicant.

- 2) **Comment:** Specific concerns about use of General Plan funds, potential liability exposure to County, and cost of signage to County. Please also

Response: See response to Comment No. 1 above. The County is certainly exposed to liability from any type of vehicular or other use of County maintained roads. Keep in mind that there are specific requirements for combined-use routes set forth in the California Vehicle Code and Assembly Bill 628.

The California Highway Patrol is required by the California Vehicle Code to make a safety determination as set forth in the California Vehicle Code and as amended by Assembly Bill 628.

380026 (c) Prior to designating a highway or portion of a highway on the motion of the local authority, an agency of the federal government, or the Director of Parks and Recreation, or as a recommendation of the Off-Highway Motor Vehicle Recreation Commission, a local authority, an agency of the federal government, or the Director of Parks and Recreation shall notify the Commissioner of the California Highway Patrol, and shall not designate any segment pursuant to subdivision (a) which, in the opinion of the commissioner, would create a potential traffic safety hazard.

This is further reinforced in Assembly Bill 628.

Section 38026.1 (e) The County of Inyo shall not designate a highway for combined use pursuant to this section unless the Commissioner of the Department of the California Highway Patrol finds that designating the highway for combined use would not create a potential traffic safety hazard.

Further, Inyo County is required to complete *an evaluation of the overall safety and effectiveness of the pilot project* in a report to the California legislature by January 1, 2016 as shown below.

Section 38026.1 (f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

- (1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
- (2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

Also note that the County will analyze the safety of all proposed combined-use applications as set forth in the Implementing Procedures Section 9(a).

- 3) **Comment:** County should reveal cost to administer, manage, patrol, enforce, and an assessment of risks and liabilities that the County could incur as a result of the implementation of the Adventure Trails

Response: See response to Comment No. 1 above.

- 4) **Comment:** The County should prepare an economic evaluation of the pilot project that measures the economic benefit that was received by businesses and the County itself. The metrics and methodology to be used in this report should be agreed to in advance so that they will be meaningful.

Response: See response to Comment No. 1 above.

Friends of the Inyo
819 North Barlow Lane
Bishop, California 93514

15 February 2012

Inyo County Planning Department
P. O. Drawer L
168 N. Edwards Street
Independence, California 93526
Attn: Courtney Smith, Transportation Planner
Via email inyoplanning@inyocounty.us and

**RE: Comments on the Draft Mitigated Negative Declaration for Inyo County
Adventure Trails Pilot Program Procedures**

Dear Courtney,

Thank you for this opportunity to provide comments on the current Initial Study and Draft Mitigated Negative Declaration for the Inyo County Adventure Trails Pilot Program.

As enabled by AB 628, this ambitious project has the potential to greatly influence the recreational landscape of the Owens Valley and greater Inyo County by providing a legal means for non-street legal vehicles to travel on County maintained roads with regular vehicle traffic. If implemented and managed correctly, this project, as stated in the legislation resulting public discussions, could provide some much needed order and increased management to what is currently a largely unmanaged, confusing and illegal, recreational activity – use of non-street legal OHVs on County maintained roads. However, if thoughtful mitigations and the needed capacity to manage this new opportunity are not created concurrently in the analysis and designation process, this project may lead to unforeseen consequences that could potentially damage recreational opportunity in Inyo County.

As a general comment, we are concerned that the current Initial Study and Draft Mitigated Negative Declaration (herein after IS/MND) is too broad to adequately assess the potential impacts and identify needed mitigations that would arise from the designation of any County maintained routes as dual use.

As has been said time and time again with public lands issues around the Eastern Sierra, “the devil’s in the details,” and that is definitely true with issues surrounding roads. While the current IS/MND does not find many impacts rising to a level of mitigateable significance, we are concerned that, both individually, as well as taken collectively, the legalization and subsequent marketing of specific routes may prove to have site-specific issues that do rise to the level of significance.

Absent specific details, the public is not afforded an opportunity to adequately understand, comment on, oppose or support any designation, attendant impact and potential mitigation solutions.

We suggest that rather than attempt to approve and move forward under what could be found to be an inadequate document, the County and proponents update the current draft Program Procedures document with the public input gathered during this initial phase and then proceed by bundling potential routes into a series of individual CEQA documents.

This measured approach would allow for full review of the location of specific routes, maximize public transparency, facilitate informed involvement and allow time to

develop route specific mitigations, if needed.

Specific Comments

- 6 While the draft Procedures documents allows proponents to identify where riders will ride “*the shoulder off pavement*”, the IS/DMD states “*it is not legal to drive along the shoulder and so this potential impact is considered to be less than significant.*” This inconsistency should be clarified.
- 7 Throughout the documents it is assumed that the project will not increase use on designated routes, however in numerous media and public presentation the rationale given for this project is one of promoting and growing motorized recreational tourism in the Owens Valley. The document should be amended to assess potential impacts given the reality that this ambitious project could in fact draw more use to the area and develop (in partnership with local organizations and agencies) mitigation measures to address this use.
- 8 An initial procedure should be added to the Program procedures document to ensure all roads considered for designation are in fact “County maintained roads.” This procedure could simply be for Public Works to attach a summary of existing maintenance records for the route under consideration.
- 9 The document as written fails to provide any detailed accounting or thresholds of when an issue reaches the level of significance. This will be critical for the assessment of impacts of future routes to be considered. Without these thresholds, the public is left without a clear path to provide comments and an assurance that these comments will be meaningful as routes are reviewed under this programmatic approach.
- 10 With regard to public notice of specific future designations, while physical notification of adjacent property owners is a sound practice, the County should ensure that all those who have commented and/or attended meetings through this process are notified of specific actions as the project progresses. This could be accomplished at minimal cost through project-specific email list.
- 11 Perhaps most importantly, the document and proposed procedures leave out any discussion or details of the educational campaign that will be needed to help the recreating public understand and enjoy any newly designated system responsibly. The importance to the future of recreation of a sound educational campaign, consisting of many partners and methods, cannot be overstated.

Thank you again for this opportunity to provide comments on this project. Given the “pilot project” nature of this endeavor, it is critical to all involved that these initial steps are done well. We look forward to continuing to work with the County, project proponents, fellow recreationists and others to enhance and sustain the unparalleled recreational opportunities and natural beauty of Inyo County that we all enjoy.

Respectfully,
Paul McFarland



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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Friends of the Inyo (2-17-2012)

1) Comment: Project could lead to unforeseen environmental impacts to other recreation uses.

Response: This response does not specify which other recreational uses will be impacted. The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act. The County will only be designating County roads as eligible for combined use. The future designation of a combined-use segment will only change the mix of vehicles using existing County roads. Individuals riding OHVs will need to comply with laws governing travel on a County road. Therefore, this impact is determined to be less than significant.

2) Comment: The environmental document is too broad to adequately assess potential environmental impacts and to identify mitigation measures that could arise from the designation of County roads for combined-use.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA. Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

3) Comment: Cumulative impacts could rise to a level of significance.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

4) Comment: The public is not afforded an opportunity adequately understand, comment on, oppose or support any designation, attendant impact and potential mitigation solutions.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is significant to note that the Implementing Procedures go beyond the public notice recommended in AB 628. That is, notice will be sent to property owners adjacent to roads proposed for combined-use. The County Implementation Procedures, in concert with Assembly 628, provide a clear context of how the County will process and evaluate combined-use proposals.

5) Comment: Suggests the County incorporate comments into Implementation Procedures and conduct subsequent environmental review of bundled groups of potential combined-use routes.

Response: This is in effect what is being proposed. The Initial Study and Draft Mitigated Negative Declaration is only for the implementing procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

6) Comment: Clarify whether it is acceptable to use OHVs along the roadway shoulder.

Response: It is not legal to drive on the roadway shoulder. The mention of the word “shoulder” in the implementation procedures is incorrect. The word will be deleted from the implementation procedures.

7) **Comment:** Increased use of area by OHVs not taken into account by environmental document.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The adoption of procedures to implement the State legislation will not increase the use of OHVs in the area.

8) **Comment:** Establish a procedure identifying which roads are County maintained roads.

Response: The County currently has a record of which roads are maintained by the County. The County officially declared to the State which roads it maintains. See <http://www.inyoltc.org/pdfs/InyomMrs.pdf> for an unofficial list of County maintained roads.

9) **Comment:** County should use thresholds of significance to evaluate potential impacts.

Response: Refer to the CEQA Guidelines.

The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

10) **Comment:** Would like to see additional notification. At a minimum this should be a project-specific e-mail list.

Response: A project specific e-mail list will be kept for the future consideration of any combined-use road segment. Interested parties can be added to this list by contacting Transportation Planner Courtney Smith at csmith@inyocounty.us. To make the e-mail as clear as possible, please refer to the Adventure Trails E-Mail List in the Subject line of the e-mail.

11) **Comment:** Further explanation should be provided as to the details of the educational campaign to reduce impacts.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future. It is also important to refer back to the signage requirements set forth in the legislation. Section 38026.1(b)(3) reads: (3) In cooperation with the Department of Transportation, establish uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles, including, but not limited to, the following: (A) Devices to warn of dangerous conditions, obstacles, or hazards. (B) Designations of the right-of-way for regular vehicular traffic and off-highway motor vehicles. (C) A description of the nature and destination of the off-highway motor vehicle trail. (D) Warning signs for pedestrians and motorists of the presence of off-highway motor vehicle traffic.

Further details as to the nature and the location of signage will be brought forward with each proposed trail segment.

February 17th, 2012

Courtney Smith, Transportation Planner,
Inyo County Public Works Department
Inyo County, CA

Dear Mr. Smith,

RE: AB 628

My name is Annie Walker. I am a botanist and in the past I was a resident of Inyo County. I would like to express my thoughts regarding the Draft Mitigated Negative Declaration of Environmental Impact and Initial Study of the current plan to allow dirt bikes, quad runners and other OHV to travel into town via Inyo County roads and streets.

1 Some of these roads are on Bureau of Land Management (Federal) and on the Inyo National Forest (Federal). Does this not make it partially a NEPA project? Is there special relief from NEPA for this project?

2 As a botanist, my first concern is always for rare plant impacts. Now, I know that in Inyo County, there are many gravel roads from local towns (Bishop, Big Pine, Lone Pine) that access rare plant populations. How will these occurrences be protected?

3 On the first page the project is 'described' it says--- "Countywide – on roads that qualify for Combined Use Designation and are designated as such by the Inyo County Board of Supervisors". This project description describes the project, however, the location of the project is unknown. The affected streets and roads in the County are not named.

4 In paragraph five (p.1) it is stated one of the benefits will be to prevent trespass on private lands. How exactly does that work? I would think that citing trespassers would be a simpler and more feasible deterrent to trespassers.

5 In the same paragraph, it is stated that this will improve natural resource protection. Please explain.

6 Also, how exactly will effects on County residents be minimized? It seems to me that it is more likely that County residents will be impacted by the noise and air pollution created by an increasing number of bikes driving by their houses and yards.

The mitigation for noise reads thus: The operation of combined use routes in residential areas is restricted to between dusk and dark and no earlier than 7:00 AM and no later than 8:00 PM. Now, this doesn't mention weekends, when 7 people are out enjoying their yards, and perhaps having barbecues or lawn parties? How will you mitigate for noise then? The other statement that needs clarification is 'residential'. Does this mean within the city limits? What about effects on those who live somewhat outside the city limits?

8 In the Procedural Outline I notice that these dual use roads may be used to connect dirt bike trails with not only services, but lodging places in town. As a business stimulus plan this will certainly not serve to enhance those businesses, as most people will avoid a motel with dirt bikes parked out front. I certainly do.

9 I feel that a Mitigated Negative Declaration is entirely unsuitable for this project. None of the multiple possible impacts have been analyzed.

Thank you for your attention to this letter,

Annie Walker

1731 Country Lane,

Placerville, CA 95667



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**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Annie Walker (2-17-2012)

1) Comment: Shouldn't this project involve NEPA?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA).

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The Bureau of Land Management and the Inyo National Forest are responsible for determining if review under the National Environmental Policy Act (NEPA) is required. Assembly Bill 628 was established to allow the County to designate County roads as combined-use roads to link existing roads where it is already legal to operate an off-highway vehicle (OHV). The Inyo National Forest and the Bureau of Land Management have already conducted a NEPA analysis of the use of those OHV trail segments.

2) Comment: How will potential impacts to rare plants be avoided.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA. Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

3) Comment: Specific roads and streets proposed for combined-use should be named.

Response: Staff concurs. The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

4) Comment: How will the project prevent trespass onto private property?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

This comment originates in Assembly Bill 628 which adds new language to the California Vehicle Code as follows.

38026.1. (a) Except as provided in subdivision (e), the County of Inyo may establish a pilot project to designate combined-use highways on unincorporated county roads in the county for no more than 10 miles so that the combined-use highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands, and to link off-highway motor vehicle recreational-use areas with necessary service and lodging facilities, in order to provide a unified system of trails for off-highway motor vehicles, preserve traffic safety, improve natural resource protection, **reduce off-highway vehicle trespass on private land**, and minimize impacts on county residents.

This legislation was developed in coordination with the California Highway Patrol. The language in the environmental document is borrowed from the legislation. A goal in the designation of combined-use routes will be to clarify which routes are open to OHVs. Law enforcement personnel may be reluctant to enforce the vehicular code when there is some ambiguity. A goal of Assembly Bill 628 and the Implementation Procedures is to clarify which roads are open for OHV use.

5) Comment: How will the project improve natural resource protection?

Response: See response to comment No. 4 above.

6) Comment: How will effects to County residents be minimized? It appears that they will only be increased.

Response: See response to comment No. 4 above.

7) Comment: What about noise impacts on the weekend? What is meant by residential? Does that mean City limits?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The situation of every road varies. The legislation limits the use of OHVs on combined-use routes to daylight hours. The implementing procedures further restrict the hours of operation in residential areas, which refers to any area with a cluster of residentially-designated parcels that are shown in the Inyo County General Plan as residential in nature. In addition, AB 628 sets the maximum speed limit for OHVs on combined-use roads at 35 MPH. The Inyo County General Plan Land Use Diagrams can be viewed online by following links to specific community areas at - http://inyoplanning.org/general_plan/landuse.htm.

8) Comment: Commenter will avoid motels with dirt bikes. How will this project enhance business environment? Won't it harm the business environment?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

It is not entirely clear what the impact of combined-use designation will do to every surface facility that is being linked to. It depends on the type of business. To give property owners more control over their business environment, the following language is proposed to be added to the Implementing Procedures and applies to whenever a service facility is a starting or an ending facility of a combined-use segment. The sentence "Include a letter of permission from the owner

of the Assessor's Parcel Number that is the necessary service and/or lodging facility" will be added to Section 2(a)(iv)(1) and Section 2 (a)(iv)(2) of the Implementing Procedures.

Section 17 is being added to the Implementing Procedures that reads:

"If the property owner at a starting point or an ending point of a combined-use segment decides at a future date that they do not wish their property to be linked to by a combined-use segment, they can submit a letter stating that the property owner does not wish to be linked to the OHV trail segment. Upon receipt of that letter, and assuming that the service facility is the endpoint of the combined-use segment, the designation on that road shall be changed within 90 days so that the combined-use of that roadway segment shall no longer be allowed."

9) **Comment:** Environmental document is unsuitable. None of the environmental impacts have been analyzed.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

February 17, 2012

Inyo County Planning Department
Independence, California 93526
Attn: Courtney Smith, Transportation Planner
Via email inyoplanning@inyocounty.us

RE: Draft Mitigated Negative Declaration of Environmental Impact and Initial Study of the proposed Adventure Trail System.

Dear Courtney:

Thanks for forwarding the Draft MND for the Adventure Trail as requested. Your presentation for the Inyo Supervisors on November 15th began to clarify the proposal yet there are still many unknown details that are of concern to our neighborhood.

My comments on the Adventure Trail are a result of the fact that I live on a county road, Birch Creek, which has been indicated as a potential route in the system. Mr. Noles said it is and that my concern of dust "could be mitigated by paving Birch Creek Road." This is not realistic nor does our neighborhood want a paved road. On the other hand, my supervisor told me several months ago that Birch Creek Road is not on the route. No one seems to have a clear picture of the overall plan nor realistic mitigation. Independence has been chosen as the pilot project yet I hear many rumors about Bishop, White Mountains, etc.

1

I believe AB 628 will increase use by OHV travelers and multiply the possibility of illegal use if not scrutinized and mitigated extensively. The supposition by the proponents is that OHV use will increase and create economic benefit to Inyo County. This was indicated at two meetings I attended last November at the Inyo County Sheriff's Office and later the presentation made to the Supervisors yet the MND indicates little significant impact.

2

AIR QUALITY: It is a given that dust will increase on county roads which will impact residents. We already have concerns about the dust especially in the summer and during times of drought. We have experimented with various speed limits and anything over 15 mph creates unacceptable dust. Appropriate mitigation would be posting a 15mph speed limit in all residential areas on county dirt roads. Incidentally, we and other neighbors mountain bike and motorized use definitely degrades the roads for biking.

3

BIOLOGICAL RESOURCES: Assuming OHV users will travel only on existing and designated roads is a fallacy. Many do not now and this does not appear to be enforced so how will this be improved? Supposedly there are two ATV's owned by the sheriff's departments. Will they be assigned full time to achieve the needed level of enforcement?

4

The crossing of creeks definitely impacts erosion and pollution. I have witnessed illegal use in the McMurray Meadows area multiple times. How will these issues be mitigated? Perhaps, increased education and posting of sensitive areas as well as bridges over the most impacted areas would be appropriate mitigation.

5

CULTURAL RESOURCE: Again, cultural sites in our area have already been vandalized in the past and one has to assume this will multiply with increased use. Again, there is a need for thorough education and enforcement.

6

NOISE: During busy holidays, the noise is sometimes at an unacceptable level even between 7am and 8pm. Many OHV users are polite and responsible and will comply but how will noncompliance be enforced? Increased law enforcement and an education component will be necessary in every campground. How will this be achieved? Will residents be able to call the sheriff's department for assistance?

7

RECREATION: My observation is that Tinnemaha and Taboose campgrounds are often at full capacity with many OHVs on busy weekends. Several of the campsites are close to patches of sage brush. Our neighborhood is very concerned about human caused fires of which we have had several over the last 10 years. Better campground maintenance and illegal enforcement are necessary. How will the education component be implemented in campgrounds?

8

Will the above mentioned campgrounds be designated as staging areas as the one near Independence? This would make a significant additional impact on our neighborhood.

9

For several years during the 4th of July, a large group uses the campground and has a band or plays very loud music which becomes annoying. Once a year we are prepared to leave for the weekend but an increase in this type of use would be unacceptable.

10

TRANSPORTATION: 35 mph may be appropriate for some portions of the system except for residential areas which should not be over 25mph on pavement and 15mph on dirt sections in residential areas such as ours or the alleys in Independence.

11

In summary, in a perfect world with responsible use there would not be so many concerns. However, my experience is that there is currently significant illegal use that is not enforced. For example, it is illegal for OHV use on county roads now and they are here on Birch Creek Road. Lastly, the MND does not take into account cumulative impacts and in fact states that use will not increase therefore assuming no significant impacts in most sections which is erroneous.

We do like the concept of a trail system that is well thought out, appropriately mitigated and legally enforced. There must be public hearings for everyone to comment not just adjacent residents. The two meetings I attended were not easy to find out about and were informational and not for public input.

Thank you for your time in considering our concerns about the Adventure Trail proposal. It has a lot of potential to improve OHV use with designated routes, education, rules, and adequate enforcement. The public needs more detail to thoroughly understand the full impact. Let's do it right and have a project Inyo County can be proud of.

Sincerely,
Sydney Quinn
Dennis Schumacher, MD



INYO COUNTY
P.O. DRAWER Q
INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
FAX: (760) 878-2001

**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Sydney Quinn and Dennis Schumaker (2-18-2012)

1) Comment: What is on the proposed combined-use route list? Is Birch Creek Road slated to be considered as a combined-use facility?

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

Your concern is understandable. We will not know definitively until the County receives an application to designate Birch Creek Road for combined-use. The Implementing Procedures require a 7-day notice before a public hearing considering the designation of that road. Once the implementing procedures are finalized, the County will be accepting combined-use applications. At the time the application is submitted, it will be public record. After the adoption of the implementing procedures, you can contact Public Works staff Transportation Planner Courtney Smith at (760) 878-0207 and he will let you know if that application has been submitted. In addition, you have been placed on an e-mail list that will receive notice of any proposed combined-use designations inside of the County.

2) Comment: The environmental document does not properly address the potential increase in off-highway (OHV) ridership that will result from the designation of combined use routes. The increased ridership will create a variety of environmental impacts that are not addressed.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

A goal of the implementation of the combined-use system is to make off-highway vehicle users more aware of what routes are legal to use. The intention of the system is to link existing OHV trail segments on Bureau of Land Management and Inyo National Forest land with services in the communities and to provide for more interesting loop routes for the user. The California Vehicle Code was amended in part to "reduce off-highway vehicle trespass on private land."¹

The combined-use highways will be implemented as a pilot project. Assembly Bill 628 gives the County, the City, and the State a unique opportunity to re-evaluate the impacts of the project before January 1, 2016. Per AB 628:

- (f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:
- 1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
 - 1) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

The County will work closely with the BLM, Inyo National Forest, and LADWP and solicit feedback on trends in OHV use in the development of this status report to the State Assembly. All information submitted by these agencies will be provided to the State as part of the report. The goal of the project is for reduced impact to private property owners.

- 3) **Comment:** There are air quality concerns with the implementation of AB 628, particularly where a dirt road abuts residential properties. In these instances, a 15 mph maximum speed limit is warranted.

¹ Section 38026.1 (a) of the California Vehicle Code

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

4) **Comment:** OHV users will not stay on designated routes and will create environmental harm.

Response: See response to your Comment No. 2 above.

5) **Comment:** How will issues such as the illegal use of OHVs in McMurray Meadows area be dealt with.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

Please note that the designation of combined-use routes will only apply to County maintained roads, no new ground will be disturbed by the designation of a combined-use route. Enforcement of off-highway vehicle regulations is the responsibility of the Inyo County Sheriff's Department, the California Highway Patrol, the Bureau of Land Management, and the Inyo National Forest.

6) **Comment:** Concern for the impact to cultural resources.

Response: See Response to Comment No. 5 above.

7) **Comment:** How will the time restrictions for combined-use be enforced? Will resident's be able to call the Sheriff's Department for assistance?

Response: Yes. You will be able to call the Sheriff's Department. The use of OHVs on private land will be enforced by the Inyo County Sheriff's Department

8) **Comment:** Tinnemaha and Taboose Creek campground fill up on busy spring weekends full of OHV enthusiasts.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing

Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

A spreadsheet is attached that shows the number of vehicles camped at Inyo County campgrounds per month. Further correspondence with the Inyo County Parks and Recreation Department confirms that these campgrounds are full on spring and early summer weekends.

Other County, Private, and Federal campgrounds have extra room. It should also be noted that no camping is allowed on City of Los Angeles, Department of Water and Power land. You can contact the Inyo County Sheriff's office if you see camping on City of Los Angeles property. There is also dispersed camping allowed on BLM and Inyo National Forest lands in many areas in the Owens Valley.

- 9) **Comment:** There have been overly loud gatherings at these campgrounds on the 4th of July weekend featuring live amplified music. These are annoying. An increase in this type of use would be unacceptable.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

You can contact the Inyo County Sheriff's Department if you have a complaint of loud music.

There are relevant portions of County Code that may apply that you can cite if you need to raise this matter with the Sheriff's Department. You can look online to view the County Code at <http://www.qcode.us/codes/inyocounty/>.

12.16.110 Loud noises prohibited.

No person shall at any time disturb the peace and quiet by any loud or unusual noise or by hooting, calling, blowing of automobile horns or other noise-making devices, or by the use of vulgar, immoral, profane or indecent language or conduct, or by boisterous or threatening behavior. Furthermore, quiet hours at all county parks and campgrounds shall be from ten p.m. to eight a.m. daily, with the exception of Tecopa Hot Springs Park, which shall be eight p.m. to eight a.m. The director may modify park and campground quiet hours during approved special events. This approval must be in writing. (Ord. 1024 § 2 (part), 2000.)

Chapter 5.12 of the County Code establishes parameters for outdoor festivals. It is important to first note the definition of an outdoor festival.

5.12.010 Outdoor festival defined.

“Outdoor festival” means any music festival, dance festival, rock festival or similar musical activity at which music is provided by paid or amateur performers, by live or prerecorded means, which activity is reasonably anticipated to be attended by more than three hundred people, which is held at any place other than at a permanent building or permanent installation, which building or installation has been constructed for the purpose of conducting similar activities for the number of people anticipated to attend. (Ord. 371 § 1, 1979.)

10) Comment: The minimum speed limit of 35 mph is too fast, especially in residential areas where it should be 25 mph and in residential areas with dirt roads where it should be 15 mph.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The maximum speed for OHVs is 35 mph. If there is a lower speed limit specified on a combined-use road, the OHV must comply with the lower speed limit placed on that route, even if that limit is less than 35 MPH.

11) Comment: There is currently illegal OHV use on County roads. The environmental document does not take into account cumulative impacts.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under CEQA.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

The designation of combined-use roadways will make it more transparent to law enforcement officials which roads are open and which are not open and is intended to clarify what routes are open for OHV use. The Inyo County Sheriff's Department, California Department of Highway Patrol, Bureau of Land Management and Inyo National Forest law enforcement personnel enforce vehicle regulations.

Courtney Smith

From: InyoPlanning
Sent: Tuesday, February 21, 2012 4:42 PM
To: Courtney Smith
Subject: FW: Adventure Trail Comments
Attachments: Adv. Trail Comments.doc

From: Sydney Quinn [<mailto:densydy@gmail.com>]
Sent: Sat 2/18/2012 8:52 PM
To: InyoPlanning
Subject: Fwd: Adventure Trail Comments

Attention: Courtney Smith

Hello Courtney,

I have a couple of more thoughts about the MND to add to my original attachment. We have Golden Eagles, great Horned Owls, Redtail Hawks, Kingfishers and many other species nesting in our "neighborhood". There are also deer, elk, coyotes, bobcat, fox, and mountain lions.

1. The potential impact of noise on wildlife needs to be addressed.
2. How will the OHV traffic mesh with regular vehicle traffic, especially in town.
3. 35 mph seems dangerously fast on most dirt roads.
4. Two persons on ATV's is inadequate for patrolling the large area that will eventually be involved. There needs to be a dedicated team of paid and volunteer patrol. Education is a good idea but easily ignored.

I apologize if this was sent twice.

Thank you,
Sydney Quinn



INYO COUNTY
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INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
FAX: (760) 878-2001

**COUNTY
OF
INYO**

**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Sydney Quinn e-mail (2-18-2012)

1) Comment: Impacts to wildlife from increased noise has not been analyzed.

Response: The Implementing Procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the Implementing Procedures. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act (CEQA). Please note that the Project Title, Project Description, and the Project Location have been changed in the Final Mitigated Negative Declaration of Environmental Impact to clarify that this CEQA document only applies to the adoption of the Implementing Procedures as required by Assembly Bill 628 and not to the specific designation of any specific combined-use road segment.

The County has not yet received an application to designate any specific combined-use roadway segment. Assembly Bill 628 required the County to develop procedures to implement the legislation before any route can be considered. The Implementing Procedures are simply establishing a procedure that the County can use to evaluate combined-use routes in the future.

An argument exists that the approval of the Implementing Procedures is exempt from CEQA. CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3). However, in an abundance of caution, the County has performed a CEQA review, notwithstanding the possible exemptions applicable to the proposed action.

It is important to note that the only action taken by the County will be the designation of existing County maintained roads to allow combined-use. The noise created by an OHV will not be appreciably louder than other vehicles that are currently allowed to use County roads (concrete mixers, tractor trailers, farm equipment, service trucks, etc.).

2) Comment: Concerned about traffic safety in towns created by the designation of combined-use roads.

Response: The California Highway Patrol is required by the California Vehicle Code to make a safety determination as set forth in the California Vehicle Code and as amended by Assembly Bill 628.

380026 (c) Prior to designating a highway or portion of a highway on the motion of the local authority, an agency of the federal government, or the Director of Parks and Recreation, or as a recommendation of the Off-Highway Motor Vehicle Recreation Commission, a local authority,

an agency of the federal government, or the Director of Parks and Recreation shall notify the Commissioner of the California Highway Patrol, and shall not designate any segment pursuant to subdivision (a) which, in the opinion of the commissioner, would create a potential traffic safety hazard.

This is further reinforced in Assembly Bill 628.

Section 38026.1 (e) The County of Inyo shall not designate a highway for combined use pursuant to this section unless the Commissioner of the Department of the California Highway Patrol finds that designating the highway for combined use would not create a potential traffic safety hazard.

Further, Inyo County is required to complete *an evaluation of the overall safety and effectiveness of the pilot project* in a report to the California legislature by January 1, 2016 as shown below.

Section 38026.1 (f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

- (1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.
- (2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

Also note that the County will analyze the safety of all proposed combined-use applications as set forth in the Implementing Procedures Section 9(a).

3) Comment: The speed limit of 35 mph seems dangerously fast on dirt roads.

Response: See response to Comment No. 2.

4) Comment: Inyo County Sheriff's Department does not have enough resources (two ATVs) to patrol the new combined-use roadways.

Response: The Sheriff's Department indicates that they do have capacity to enforce the California Vehicle Code. At this time, only the Implementing Procedures are being considered for approval. Subsequent combined-use applications will receive site-specific environmental review.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Bishop Field Office
351 Pacu Lane Suite 100
Bishop, California 93514
www.blm.gov/ca/bishop



March 14, 2012

In Reply Refer to:
LLCAC07000
8300 (P)

Courtney Smith
Inyo County Transportation Planner
P. O. Drawer Q
Independence, CA 93526

Dear Courtney,

Thank you for your participation in the February 28, 2012 meeting with the Bureau of Land Management and the Inyo National Forest concerning the Eastern Sierra ATV Trails Pilot Program Procedures. The meeting was productive and we appreciate your collaboration with the Bureau as you develop the Pilot Program Procedures. During the meeting you requested suggestions for what the Bureau would recommend be included in the Procedures. We have worked with the Inyo National Forest to draft language that would we would like to see included in the Procedures. Our common suggestions are incorporated in a separate letter from the Inyo National Forest.

1 Additionally, the Bishop Field Office would like to include the following under III. a. of the recommendations; "When the application is deemed complete, the county shall share copies of the application with the pertinent land agencies or owners *to ensure conformance with the land managers Land Use Plan.*"

Thank you and we look forward in working with you in the future.

Bernadette Lovato

Field Manager, Bishop Field Office

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**COUNTY
OF
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**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Bureau of Land Management, Bishop Field Office (03-14-2012)

1) Comment: The Bishop Field Office would like to include the following under III.a. of the recommendations; "When the application is deemed complete, the county shall share copies of the application with the pertinent land agencies of owners *to ensure conformance with the land manager's Land Use Plan.*

Response: The suggested wording has been included in the staff recommendation.



United States
Department of
Agriculture

Forest
Service

Inyo National Forest

351 Pacu Lane, Suite 200
Bishop, CA 93514
(760) 873-2400
(760) 873-2538 TDD

File Code: 7730

Date: March 14, 2012

Courtney Smith
Transportation Planner
Inyo County
PO Drawer Q
Independence, CA 93526

Dear Mr. Smith:

I appreciate meeting with you and Tanda Gretz and Forest Service and Bureau of Land Management staff on February 28th to discuss the Inyo County procedures and potential issues around the Eastern Sierra Adventure Trails Pilot Program. I feel that the meeting was productive, and helped us all get a better idea of what the process may be and what types of communication will be helpful as we move forward on this together.

At the meeting, you asked for our specific suggestions for what the Forest Service would like to see in the Pilot Program Procedures. Attached, please find our suggestions. If you would like clarification about any of this, please do not hesitate to contact Marty Hornick at (760)873-7065 or at mhornick@fs.fed.us

Sincerely,

EDWARD E. ARMENTA
Forest Supervisor

cc: Bernadette Lovato, BLM Field Manager

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MAR 16 2012

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PUBLIC WORKS



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The following recommendations for additions to the Inyo County Adventure Trails Program Procedures are made by the Inyo National Forest in the interest of involving pertinent land management agencies and owners in a timely manner and identifying and resolving potential issues at the earliest stages.

I. Item 2a - ("Application shall include"...):

- 1 a. Add an additional paragraph (x): "Documentation of coordination, including meetings and other correspondence between applicant and pertinent land management agencies or owners, identifying potential issues and potential design elements or mitigations that could affect the designations."

II. Item 3 - ("The Inyo County Department of Public Works shall"...):

- 2 a. Add "for roads under its jurisdiction" to the end of the sentence.

III. Between current Item 4 and Item 5 (or where appropriate in relation to the application submittal being determined as "complete"):

- 3 a. Add an additional sentence: "When the application is deemed complete, the county shall share copies of the application with pertinent land management agencies or owners. "Pertinent agencies or owners" are defined as those which own, manage, or have jurisdiction for 1) road segments identified in the application, 2) road segments which connect to County roads identified in the application, 3) the land crossed by a County road identified in the application, or 4) the land adjacent to a combined use segment."

IV. Item 5 ("Within 120 days"...):

- 4 a. Delete Item 5a (redundant given comment III a.)
b. Add additional sentence (could be added to 5a or make its own paragraph): "County staff will meet with pertinent land management agencies or owners to work toward resolving any outstanding issues".
c. In 5a: delete "/or"

V. Item 8 ("During the 120 day period provided in"...)

- 5 a. Move to under Item 5, step d.

VI. Item 12 ("The County Road Department shall be responsible"...)

- 6 a. Add "for roads under its jurisdiction" to the end of the sentence.

VII. Item 14 ("Each combined use segment will be monitored"...):

- 7 Add section (f): "At least 90 days prior to the development of the report described in Item 15, notice will be made to the public and local land management agencies requesting comments and observations regarding roads in the pilot program, including any results from monitoring."

VIII. Item 14b ("Inyo County Sheriff's Department will maintain a file"...):

- 8 a. Add an additional sentence: "This information will be solicited from local land management agencies, including USFS, BLM, and LADWP or other affected landowners."



INYO COUNTY
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**COUNTY
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**RESPONSE TO COMMENTS
INITIAL STUDY AND DRAFT MITIAGED NEGATIVE DECLARATION FOR THE
ADOPTION OF PROCEDURES TO IMPLEMENT ASSEMBLY BILL 628**

Commenting Party: Inyo National Forest (03-14-2012)

1) Comment: Item 2a - ("Application shall include"...):

a. Add an additional paragraph (x): "Documentation of coordination, including meetings and other correspondence between applicant and pertinent land management agencies or owners, identifying potential issues and potential design elements or mitigations that could affect the designations."

Response: The Forest Service appears to have this serve as a type of preliminary application meeting. This would seem to be duplicative of Section 5(a) of the draft Implementing Procedures. Section 5(a) reads –

Submit copies of the application to responsible State and/or land management agencies for confirmation of the validity of any trail segment and/or general comments, requesting that the requested information be provided within 60 days;

During this review period, the land management agencies will be contacted and provided with an opportunity to provide the feedback set forth in the comment. The applicant will be encouraged to consult with the land management agencies, however, the County does not see a need to incorporate this into the Implementing Procedures.

2) Comment: Item 3 - ("The Inyo County Department of Public Works shall"...):

a. Add "for roads under its jurisdiction" to the end of the sentence.

Response: This is implied by the implementing procedures being approved by the County Board of Supervisors. The Board of Supervisors is obviously only able to act on its own roads. A part of the County's evaluation of a combined-use application will be whether the proposed combined-use route is part of the Inyo County Maintained Mileage System. It is recognized that the Forest Service may have some jurisdictional concerns with the County as judged by its comment letter submitted on February 17, 2012. For purposes of the development of the Implementation Procedures required by Assembly Bill 628, the County is assuming the Inyo County Maintained Mileage System to represent roadways that the County has jurisdiction to maintain and to regulate. The underlying agreement for the road may take different forms. To best reflect the assumptions used for the development of this plan, the County will revise Section 3 to read: "The Inyo County Department of Public Works shall be responsible for the evaluation

and processing of any combined-use applications for streets and roads that are part of the Inyo County Maintained Mileage System.”

The Inyo National Forest acknowledged the Inyo County Maintained Mileage System for the purposes of the development of its Travel Management Plan. The Inyo National Forest has subsequent to that been starting to examine jurisdictional issues with future actions. With respect to the adoption of the Implementing Procedures, the County is making a similar assumption to the one made by the Forest Service.

It is not feasible or practical to resolve jurisdictional issues between the County and the Forest Service, Bureau of Land Management, or the City of Los Angeles Department of Water and Power for the entire Maintained Mileage System at this point. The County will look to resolve jurisdictional issues on a case by case basis. Once the County forwards a specific combined-use application to the land management agencies, it is understood that jurisdictional issues may arise. The County encourages the land management agencies to raise jurisdictional issues in a written manner as early as possible.

3) Comment: Between current Item 4 and Item 5 (or where appropriate in relation to the application submittal being determined as “complete”):

a. Add an additional sentence: “When the application is deemed complete, the county shall share copies of the application with pertinent land management agencies or owners. “Pertinent agencies or owners” are defined as those which own, manage, or have jurisdiction for 1) road segments identified in the application, 2) road segments which connect to County roads identified in the application, 3) the land crossed by a County road identified in the application, or 4) the land adjacent to a combined use segment.”

Response: Staff concurs in part with this suggested language. A sentence will be added to Section 5(a) that reads:

The County shall provide copies of the application to pertinent land management agencies or owners. “Pertinent agencies or owners” are defined as those which own, manage, or have jurisdiction for 1) road segments which connect to County roads identified in the application, 2) the land crossed by a County road identified in the application, or 3) the land adjacent to a combined use segment.

See response to Comment No. 2 above for an explanation of why the first bullet was deleted. The language was added to Section 5(a) so that it would not be un-necessarily duplicative.

4) Comment: Item 5 (“Within 120 days”...):

- a. Delete Item 5a (redundant given comment III a.)
- b. Add additional sentence (could be added to 5a or make its own paragraph): “County staff will meet with pertinent land management agencies or owners to work toward resolving any outstanding issues”.
- c. In 5a: delete “/or”

Response: See how the previous comment was addressed. While staff is certainly willing to meet with pertinent land management agencies or owners, it is not clear what purpose this will

receive as a part of the Implementing Procedures. Pertinent agencies and owners will be notified and encourage to raise issues of concern. To make the process as clear as possible to the applicant and public, the County encourages the agencies/owners to submit their concerns in writing.

- 5) Comment:** Item 8 (“During the 120 day period provided in”...)
a. Move to under Item 5, step d.

Response: Staff concurs. This has been added as a sub-bullet under Section 5.

- 6) Comment:** Item 12 (“The County Road Department shall be responsible”...)
a. Add “for roads under its jurisdiction” to the end of the sentence.

Response: No. The County is unable to designate a combined-use route that is not part of its jurisdiction. This is implied. See response to Comment No. 2.

- 7) Comment:** Item 14 (“Each combined use segment will be monitored”...): Add section (f): “At least 90 days prior to the development of the report described in Item 15, notice will be made to the public and local land management agencies requesting comments and observations regarding roads in the pilot program, including any results from monitoring.”

Response: It should be noted that Inyo National Forest staff has read Assembly Bill 628. This language will be added to the Draft Implementing Procedures.

- 8) Comment:** Item 14b (“Inyo County Sheriff’s Department will maintain a file”...):
a. Add an additional sentence: “This information will be solicited from local land management agencies, including USFS, BLM, and LADWP or other affected landowners.”

Response: It is not anticipated that landowners beside the land management agencies will be able to gather this information. Therefore, the suggested portion that reads “or other affected landowners will be deleted.”

APPENDIX 2

Inyo County Assembly Bill 628 Implementing Procedures ~~Adventure Trails Pilot Program~~
~~Procedure Outline~~

April 25, 2012

DRAFT

1. The Adventure Trails Pilot Program is authorized by Section 38026.1 and other applicable portions of the California Vehicle Code.
2. The Adventure Trails Program project advocates (Applicant) shall submit a formal application to the Inyo County Public Works Department requesting the County consider the designation of specified roadways as combined-use highways.
 - a. The application shall include all of the following for each portion of proposed combined-use roadway:
 - i. Name of Highway
 - ii. Length of combined-use section
 - iii. A description of the portion of the right-of-way that is proposed to be used. That is will the off-highway vehicles be limited to: the entire lane, the edge of the lane, ~~the shoulder on pavement, the shoulder off pavement,~~ or some other specific area.
 - iv. The starting point of the combined-use segment. If this is an existing Bureau of Land Management or U.S. Forest Service road, provide the name and/or number of the off-highway motor vehicle trail or trailhead. If the starting point of the combined-use segment is a necessary service and/or lodging facility, specify the name and Assessor's Parcel Number of the facility.
 1. **Include a letter of permission from the owner of the Assessor's Parcel Number that is the necessary service and/or lodging facility.**
 - v. The ending point of the combined-use segment. If this is an existing Bureau of Land Management or U.S. Forest Service road, provide the name and/or number of the off-highway motor vehicle trail or trailhead. If the ending point of the combined-use segment is a necessary service and/or lodging facility, specify the name and Assessor's Parcel Number of the facility.
 1. **Include a letter of permission from the owner of the Assessor's Parcel Number is the necessary service and/or lodging facility.**
 - vi. A description of the nature and destination of any off-highway motor vehicle trail that is a starting or ending point to a combined-use segment.
 - vii. A description of the nature and purpose of the combined-use segment. To be considered, the combined-use segment must provide a connecting link between one of the following:
 1. A connecting link between off-highway motor vehicle trail segments,
 2. An off-highway motor vehicle recreational use area and necessary service facilities, or
 3. Lodging facilities and an off-highway motor vehicle recreational facility.

The applicant shall state which one of these three types of connecting link is being provided by each combined-use trail segment.

viii. An eight and one-half inch map clearly displaying each combined use section.

The map should display:

1. The information described in subsections (i) through (v).
2. Major cross streets
3. Any controlled intersections (stop signs or signalized intersections)
4. If the combined-use segment starts and/or ends on an un-named roadway, a vicinity map should be included.

ix. A list of property owners adjacent to any and all combined-use routes from the Inyo County Assessor's Department. If multiple properties are owned by one owner, that owner shall be notified of each of their properties adjacent to the proposed combined-use segment. Legal size envelopes with first class postage affixed addressed to each property owner with the return address left blank.

- b. The Applicant can submit the application in multiple sections if they choose. If so, a cover letter to the application should state this.
 - c. Once the application is submitted, the contents of the application will be available for public review.
3. The Inyo County Department of Public Works shall be responsible for the evaluation and processing of any combined-use applications.
 4. The County shall determine if the application packet is complete. The County shall notify the Applicant via e-mail or telephone within 30 days if the application is complete. If feasible, this determination should be made earlier.
 5. Within 120 days of the date the County deems the application complete, the County shall accept or reject the application. This period may be extended by the County, upon written notification to the applicant, together with the reason necessitating the extension. During the 120 day period, the County will ~~obtain~~ do the following:
 - a. Submit copies of the application to responsible State and/or land management agencies for confirmation of the validity of any trail segment and/or general comments, requesting that the requested information be provided within 60 days. **The County shall provide copies of the application to pertinent land management agencies or owners to ensure conformance with the land manager's Land Use Plan. "Pertinent agencies or owners" are defined as those which own, manage, or have jurisdiction for 1) road segments which connect to County roads identified in the application, 2) the land crossed by a County road identified in the application, or 3) the land adjacent to a combined use segment;**
 - b. **Submit the combined-use application to the Commissioner of the California Highway Patrol and ask for a determination if the proposed combined-use segment will create a potential traffic safety hazard. If the combined-use segment is determined by the Commissioner of the California Highway Patrol to have the potential to create a traffic hazard, that segment shall be dropped from consideration.**

- c. Notice a public hearing on the application, providing notice to all land owners ~~surrounding~~ **adjacent** to the proposed combined-use roadway of the date, time and location of the public hearing, with notice mailed a minimum of seven (7) days prior to the public hearing; and
 - d. Hold a public hearing and compile all comments received on the application.
6. The County shall work in cooperation with the California Department of Transportation to establish uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles in accordance with Section 38026.1 of the Vehicle Code.
7. The County will first designate crossings of the State Highway using Section 38026 of the Vehicle Code. The Applicant is encouraged to design their requests to the County to use combined-use segments of three miles or less. Any such request would be undertaken separately from the Pilot Program and requires a separate application to the County in conformance with the existing Vehicle Code. If this is not possible and the combined-use segment is between three and ten miles, the County will consider the designation of crossings of the State Highway as part of the Pilot Program as set forth in Assembly Bill 628.
- ~~8. During the 120 day period provided for in 5.5 above, the County will present the combined use application to the Commissioner of the California Highway Patrol and ask for a determination if the proposed combined use segment will create a potential traffic safety hazard. If the combined use segment is determined by the Commissioner of the California Highway Patrol to have the potential to create a traffic hazard, that segment shall be dropped from consideration.~~
9. The application, together with comments received during the 120 day period, shall be presented to the Board of Supervisors for consideration and approval. The Agenda Request for such consideration shall also include a recommendation for each route from the Public Works Director, the Risk Manager, the Sheriff, and County Counsel on each combined-use segment. Their recommendation shall address:
 - a. Safety
 - b. Liability and Risk
 - c. Potential maintenance costs
10. The County shall hold a public hearing and adopt a resolution to approve combined-use segment(s). The adoption resolution may include multiple combined-use segments. The resolution shall include:
 - a. A determination that the proposed combined use segment does not have the potential to create a safety hazard.
 - b. The information contained in Section 2(A)(i) – (viii).
 - c. A statement that each combined-use trail segment is in compliance with the California Vehicle Code as amended by the inclusion of Section 38026.1.
11. If the funding for the purchase and installation of signage is not forthcoming as set forth in Section 38026.1, the County shall work with the applicant to identify funding to install signage identified in Section No. 6. The purchase and installation of this signage shall be revenue neutral to the County. That is, if the funding for the signage is not forthcoming from the State, the applicant shall be responsible for this expense.

12. The County Road Department shall be responsible for the installation of all required signage on each combined-use trail segment.
13. The County shall formally open the combined-use trail segment once all signage is in place.
14. Each combined-use trail segment shall be monitored in the following ways.
 - a. The County shall be responsible to maintain a database describing any collisions involving an off-highway vehicle on any combined-use segment.
 - i. The Department of Public Works will request from the Inyo County Sheriff and the California Highway Patrol a report of all collisions involving off-highway vehicles on a combined-use segment on an annual basis. **This information will be solicited from local land management agencies.**
 - b. The Inyo County Sheriff's Department will maintain a file that includes any information regarding impact on traffic flows, safety, incursions into areas not designated for off-highway vehicle usage, to the extent such information is available.
 - c. The County shall yearly collect at least a week-long set of data detailing the number of off-highway vehicles using each combined-use segment.
 - d. The County shall send a letter encouraging land management agencies that have an off-highway motor vehicle trail segment that links to a combined-use segment to monitor the amount of off-highway vehicle use.
 - e. The Public Works Department shall maintain a file including all correspondence from the public regarding all combined use segments.
 - f. **At least 90 days prior to the development of the report described in Section 15, notice will be made to the public and local land management agencies requesting comments and observations regarding roads in the pilot program, including any results from monitoring.**
15. No later than January 1, 2016, the County, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project as described in Section 38026.1 of the Vehicle Code.
16. If Section 38026.1 of the Vehicle Code is repealed, the County shall be responsible for the removal of all signage related to combined-use highway segments set forth under Section 38026.1.
17. **If the property owner at a starting point or an ending point of a combined-use segment decides at a future date that they do not wish their property to be linked to by a combined-use segment, they can submit a letter stating that the property owner does not wish to be linked to the OHV trail segment. Upon receipt of that letter, and assuming that the service facility is the endpoint of the combined-use segment, the designation on that road shall be changed within 90 days so that the combined-use of that roadway segment shall no longer be allowed.**
18. **The operation of combined use routes by off-highway vehicles in residential areas is restricted to between dusk and dark and no earlier than 7:00 a.m. and no later than 8:00 p.m.**



DEPARTMENT OF PUBLIC WORKS

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INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
FAX: (760) 878-2001

COUNTY
OF
INYO

Doug Wilson, Interim Director

For County Use Only	Date Application Submitted _____
	Date Application Complete _____

Inyo County Adventure Trails Pilot Program Application

March 14, 2012

DRAFT

1. Applicant Name _____
2. Name of Proposed Combined-Use Highway _____

3. Length of Combined-Use Highway Segment (to nearest tenth of a mile) _____

4. Which portion of the right of way will be used (e.g. the entire lane, the edge of the lane, etc.)

5. The starting point of the combined use segment. If this is an existing Bureau of Land Management (BLM) or Inyo National Forest road, provide the name and/or number of the road or trailhead. If the starting point is a necessary service and/or lodging facility, specify the name of the current business and the Assessor's Parcel Number (APN) of the business. Include a letter of permission from the owner of the APN that is the necessary service and / or lodging facility.

6. The ending point of the combined use segment. Describe in the same or similar way to No. 5.

7. Provide a description of the nature and destination of any off-highway motor vehicle trail that is a starting or ending point to a combined-use segment.

8. Which of the following type of connection does the combined-use segment provide (1, 2, or 3)? The applicant must check the box for indicating which one of connecting link is being provided by each combined-use trail segment.

- 1. A connecting link between off-highway motor vehicle trail segments,
- 2. An off-highway motor vehicle recreational use area and necessary service facilities, or
- 3. Lodging facilities and an off-highway motor vehicle recreational facility.

9. The applicant shall include an eight and one-half inch map clearly displaying each combined use section. The map should display:

- 1. The information described in the Implementing Procedures Section 2 (i to ix),
- 2. Major cross streets
- 3. Any controlled intersections (stop signs or signalized intersections)
- 4. If the combined-use segment starts and/or ends on an un-named roadway, a vicinity map should be included.

10. Prior to holding the public hearing to consider any combined-use segment, the Public Works Department shall notify all property owners adjacent to the proposed combined use segment of the time, date, and proposed action of the public hearing. The Applicant shall be responsible to:

- 1. Acquire a list of property owners adjacent to any and all combined-use routes from the Inyo County Assessor's Department. If multiple properties are owned by one owner, that owner shall be notified of each of their properties adjacent to the proposed combined-use segment.
- 2. The applicant shall be responsible to provide first class postage affixed to legal size envelopes addressed to each property owner as described in Subsection a and b
- 3. The applicant shall leave the return address blank.

The County shall place its return address on each of the envelopes provided and shall send the notice of public hearing using the stamped envelopes provided by the applicant. The notice of public hearing shall be noticed, posted, and mailed to all property owners at least 7 days before the public hearing.

Procedural Notes

Note 1 - The Applicant can submit the application in multiple sections if they choose. If so, a cover letter to the application should state this.

Note 2 - Once the application is submitted, the contents of the application will be available for public review.

Note 3 - The Public Works Department shall be responsible for the evaluation and processing of any combined-use applications.

Note 4 - The County shall determine if this application packet is complete as described in Section 2 of the implementation procedures. The County shall then notify the Applicant via e-mail or telephone within 30 days if the application is complete.

Note 5 - After the date the application is determined to be complete, the County shall accept or reject the application within 120 days. This timeline may be extended if other regulatory agencies take more than 60 days to respond or are non-responsive.

Note 6 - The County will forward the application for each combined use segment that begins and/or ends with an off-highway motor vehicle trail or trailhead to the appropriate land management agency to confirm that the roadway is a valid trail segment.

Note 7 - The County shall work in cooperation with the California Department of Transportation to establish uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles in accordance with Section 38026.1 of the Vehicle Code.

Note 8 - The County will attempt to designate crossings of the State Highway using Section 38026 of the Vehicle Code. The Applicant is encouraged to design their requests to the County to use combined-use segments of three miles or less. Any such request would be undertaken separately from the Pilot Program and requires a separate application to the County in conformance with the existing Vehicle Code. If this is not possible and the combined-use segment is between three and ten miles, the County will consider the designation of crossings of the State Highway as part of the Pilot Program as set forth in Assembly Bill 628.

Note 9 - The County will present the combined-use application to the Commissioner of the California Highway Patrol and ask for a determination if the proposed combined-use segment will create a potential traffic safety hazard. If the combined-use segment is determined by the Commissioner of the California Highway Patrol to have the potential to create a traffic hazard, that segment shall be dropped from consideration.

Note 10 - The Agenda Request for the consideration of the combined use segment(s) shall include a recommendation for each route from the Public Works Director, the Risk Manager, the Sheriff, and County Counsel on each combined-use segment. Their recommendation shall address:

1. Safety
2. Liability and Risk
3. Potential maintenance costs

Note 11 - The County shall hold a public hearing and adopt a resolution to approve combined –use segment(s). The adoption resolution can include multiple combined-use segments. The adoption resolution shall include:

1. A determination that the proposed combined use segment does not have the potential to create a safety hazard.
2. The information contained in Section 2(A).

3. A statement that each combined-use trail segment is in compliance with the California Vehicle Code as amended by the inclusion of Section 38026.1.

Note 12 - If the funding for the purchase and installation of signage is not forthcoming as set forth in Section 38026.1, the County shall work with the applicant to identify funding to install signage identified in Section No. 11. The purchase and installation of this signage shall be revenue neutral to the County. That is, if the funding for the signage is not forthcoming from the State, the applicant shall be responsible for this expense.

Note 13 - The County Road Department shall be responsible for the installation of all required signage on each combined-use trail segment.

Note 14 - The County shall formally open the combined-use trail segment once the Board of Supervisors has approved the combined-use segment and all signage is in place.

Note 15 - Each combined-use trail segment shall be monitored in the following ways.

1. The County shall be responsible to maintain a database describing any collisions involving an off-highway vehicle on any combined-use segment.
 - i. The County Sheriff and California Highway Patrol will be requested to send a yearly report detailing all such collisions to the County Department of Public Works.
2. The County Sheriff shall maintain a file that includes any information regarding impact on traffic flows, safety, incursions into areas not designated for off-highway vehicle usage.
3. The County shall yearly collect at least a week-long set of data detailing the number of off-highway vehicles using each combined-use segment.
4. The County shall send a letter encouraging land management agencies that have an off-highway motor vehicle trail segment that links to a combined-use segment to monitor the amount of off-highway vehicle use.
5. The Public Works Department shall maintain a file including all correspondence from the public regarding all combined use segments.

Note 16 - No later than January 1, 2016, the County, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project as described in Section 38026.1 of the Vehicle Code.

Note 17 - If Section 38026.1 of the Vehicle Code is repealed, the County shall be responsible for the removal of all signage related to combined-use highway segments set forth under Section 38026.1.

APPENDIX 3



INYO COUNTY
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**COUNTY
OF
INYO**

**DRAFT-FINAL MITIGATED NEGATIVE DECLARATION OF
ENVIRONMENTAL IMPACT AND INITIAL STUDY**

PROJECT TITLE: ~~Combined Use Roadway Designation as part of the implementation of~~Procedures to Implement Assembly Bill 628.

PROJECT LOCATION: Countywide – on roads that qualify for Combined Use Designation and are designated as such by the Inyo County Board of Supervisors. The future designation of combined-use routes will require project-specific environmental evaluation under the California Environmental Quality Act.

PROJECT DESCRIPTION: Assembly Bill 628 made revisions to the California Vehicle Code establishing a pilot project allowing Inyo County to designate certain County highways (streets and roads) as combined-use routes. The combined use routes allow the use of County streets and roads by Off-Highway Vehicle (OHV). This document is intended to apply to the potential combined-use designation of any County maintained roadway. In addition, Assembly Bill 628 requires the County to adopt procedures to implement Assembly Bill 628. This environmental document is for ~~the future designation of combined-use routes and for the adoption of procedures to implement Assembly Bill 628.~~ The implementation procedures and Assembly Bill are attached to, and are a part of, this document.

Existing law authorizes an off-highway motor vehicle that has been issued a plate or device to be operated or driven upon a highway under certain circumstances. Existing law authorizes various public entities, and the Director of Parks and Recreation, to designate a highway, or portion thereof, for the combined use of regular vehicular traffic and off-highway motor vehicles if certain requirements are met. Existing law prohibits a highway from being designated for this combined use for a distance of more than 3 miles.

Assembly Bill 628 authorizes the County of Inyo to establish a pilot project to designate combined-use highways on unincorporated county roads for no more than 10 miles. The combined-use highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands in order to provide a unified linkage of trail systems for off-highway motor vehicles. Other goals for the project are to preserve traffic safety, improve natural resource protection, reduce off-highway vehicle trespass on private land, and minimize impacts on county residents. The provisions of AB 628 sunset January 1, 2017.

The implementing procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the implementing procedures. The designation of each roadway segment will require action by the Inyo County Board of Supervisors at a public hearing. Notice of the proposed Board of Supervisors action will be mailed to property owners adjacent to the proposed combined-use routes, included any routes located in residential areas. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

~~This environmental document is intended to cover implementation of the pilot project system-wide. The designation of each roadway segment will require action by the Inyo County Board of Supervisors at a public hearing. Notice of the proposed Board of Supervisors action will be mailed to property owners adjacent to the proposed combined use routes, included any routes located in residential areas. If the subsequent consideration of a combined use route reveals a potentially significant environmental impact that is not included herein, that combined use segment will require a separate environmental evaluation as required by CEQA.~~

FINDINGS: An Initial Study and Evaluation of Potential Impacts has been prepared by the Public Works Department (attached). Staff finds that the proposed project will NOT have a significant adverse impact on the environment for the following reasons:

- A. The proposed project is consistent with goals and objectives of the Inyo County General Plan.
- B. The proposed project is consistent with the provisions of the Inyo County Zoning Ordinance.
- C. Potential adverse environmental impacts will not exceed thresholds of significance, either individually or cumulatively.
- D. Based upon the environmental evaluation of the proposed project, the Public Works Department finds that the project does not have the potential to create a significant adverse impact on flora or fauna; natural, scenic and historic resources; the local economy; public health, safety, and welfare. This constitutes a Negative Finding for the Mandatory Findings required by Section 15065 of the CEQA Guidelines.

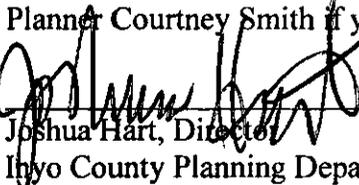
Proposed Project Mitigation Measures

1.) Noise: The following language will be added to the Inyo County Procedures to Implement Assembly Bill 628 and will serve to mitigate noise impacts to a less than significant level:

- The operation of combined use routes in residential areas is restricted to between dusk and dark and no earlier than 7:00 a.m. and no later than 8:00 p.m. This is in addition to the language in Assembly Bill 628 that restricts the operation of off-highway vehicles to daytime hours only.

This mitigation shall be monitored as part of the evaluation of the Pilot Program that is required to be submitted to the California Legislature by January 1, 2016. Refer to Appendix 2 to view changes to the implementing procedures that were made as corrections or clarifications resulting from comments received on the draft document. The 30-day review period for this Mitigated Negative Declaration expires-expired on February 18, 2012. Inyo County is not required to respond to any comments received after this date.

Additional information is available from the Inyo County Public Works Department. Please contact Project Planner Courtney Smith if you have any questions regarding this project.


Joshua Hart, Director
Inyo County Planning Department

4-16-12
Date

Attachments:

- 1. Assembly Bill 628
- 2. Inyo County Draft Implementation Procedures for Assembly Bill 628

INYO COUNTY

CEQA APPENDIX G: INITIAL STUDY & ENVIRONMENTAL CHECKLIST FORM

EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside

document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) **Supporting Information Sources:** A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

- a) the significance criteria or threshold, if any, used to evaluate each question; and
- b) the mitigation measure identified, if any, to reduce the impact to less than significance issues.



INYO COUNTY
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**COUNTY
OF
INYO**

INYO COUNTY

APPENDIX G: CEQA INITIAL STUDY & ENVIRONMENTAL CHECKLIST FORM

1. **Project title:** ~~Procedures to Implement Combined Use Roadway Designation as part of the implementation of Assembly Bill 628.~~
2. **Lead agency name and address:** Inyo County.
3. **Contact person and phone number:** Courtney Smith, Transportation Planner, (760) 878-0207.
4. **Project location:** Countywide – on roads designated by the Inyo County Board of Supervisors as being open for the combined use of off-highway vehicles under certain circumstances and regular automotive traffic. The future designation of combined-use routes will require project-specific environmental evaluation under the California Environmental Quality Act.
5. **Project sponsor's name and address:** ~~Adventure Trail System of the Eastern Sierra, Inc., a 501c(3) non-profit, 3566 Brookside Drive, Bishop, CA 93514; Contact person: Dick Noles.~~ County of Inyo, PO Drawer Q, Independence, CA 93526; Contact person: Courtney Smith.
6. **General Plan designation:** All designations, though the project footprint will be inside of existing County road rights of way.
7. **Zoning:** All zones, though the project footprint will be inside of existing County road rights of way.
8. **Description of project:**

Assembly Bill 628 made revisions to the California Vehicle Code establishing a pilot project allowing Inyo County to designate certain County highways (streets and roads) as combined-use routes. The combined use routes allow the use of County streets and roads by Off-Highway Vehicle (OHV) when certain findings can be made. ~~This document is intended to apply to the potential combined use designation of any County maintained roadway.~~

Existing law authorizes an off-highway motor vehicle that has been issued a plate or device to be operated or driven upon a highway under certain circumstances. Existing law authorizes various public entities, and the Director of Parks and Recreation, to designate a highway, or portion thereof, for the combined use of regular vehicular traffic and off-highway motor vehicles if certain requirements are met. Existing law prohibits a highway from being designated for this combined use for a distance of more than 3 miles.

Assembly Bill 628 authorizes the County of Inyo to establish a pilot project to designate combined-use highways on unincorporated county roads for no more than 10 miles. The combined-use highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands in order to provide a unified linkage of trail systems for off-highway motor vehicles. Other goals for the project are to preserve traffic safety, improve natural resource protection, reduce off-highway vehicle trespass on private land, and minimize impacts on county residents. The provisions of AB 628 sunset January 1, 2017.

The implementing procedures are being completed in accordance with Assembly Bill 628. The Initial Study and Draft Mitigated Negative Declaration is only for the implementing procedures. The designation of each roadway segment will require action by the Inyo County Board of Supervisors at a public hearing. Notice of the proposed Board of Supervisors action will be mailed to property owners adjacent to the proposed combined-use routes, included any routes located in residential areas. Future applications to allow combined-use of County roads will undergo project-specific environmental review under the California Environmental Quality Act.

~~This environmental document is intended to cover implementation of the pilot project system-wide. The designation of each roadway segment will require action by the Inyo County Board of Supervisors at a public hearing. Notice of the proposed Board of Supervisors action will be mailed to property owners adjacent to the proposed combined use routes, including any routes located in residential areas. If the subsequent consideration of a combined use route reveals a potentially significant environmental impact that is not included herein, that combined use segment will require a separate environmental evaluation as required by CEQA.~~

9. Surrounding land uses and setting: Briefly describe the project's surroundings:

The combined-use roadways will abut a variety of land uses and settings. In general, the proposed County maintained road combined-use segments will link roadways and trails where off-highway vehicles are currently permitted with other such currently existing roadways and trails as well as with goods and services.

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement): California Highway Patrol (safety determination), California Department of Parks and Recreation (funding for signage), California Department of Transportation (Approval of Signage), Inyo County Sheriff (enforcement), Bureau of Land Management (acknowledgement of off-highway vehicle trail segment and/or recreation area), and the Inyo National Forest (acknowledgement of off-highway vehicle trail segment and/or recreation area).

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/> Aesthetics Resources	<input type="checkbox"/> Agriculture & Forestry	<input type="checkbox"/> Air Quality
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Geology /Soils
<input type="checkbox"/> Hazards & Hazardous Materials	<input type="checkbox"/> Hydrology / Water Quality	<input type="checkbox"/> Land Use / Planning
<input type="checkbox"/> Mineral Resources	<input checked="" type="checkbox"/> Noise	<input type="checkbox"/> Population / Housing
<input type="checkbox"/> Public Services	<input type="checkbox"/> Recreation	<input type="checkbox"/> Transportation/Traffic
<input type="checkbox"/> Greenhouse Gas Emissions	<input type="checkbox"/> Utilities/Service Systems	<input type="checkbox"/> Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

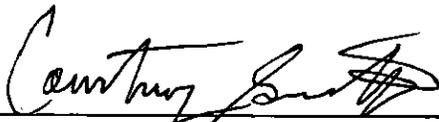
I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Courtney Smith, Transportation Planner
Inyo County Public Works Department

April 12, 2012
Date

INYO COUNTY ENVIRONMENTAL CHECKLIST FORM

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
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I. AESTHETICS -- Would the project:

a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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No. The implementation of the Adventure Trails network will not impact any scenic vista. The procedures for the implementation of Assembly Bill 628 only involve changing the types of vehicles that are permitted to use existing County roadways. This will involve the installation of directional, safety, and regulatory signs inside of existing County road rights of way.

b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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No. See I.a above.

c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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No. See I.a above.

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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No. See I.a above.

II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including The Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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No. The implementation procedures only involve the designation of existing roadways as combined-use routes to connect existing off-highway vehicle trail segments and recreation areas with services. The implementation procedures and combined-use routes will only apply to roadways and will not impact any agricultural land.

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

No. See II.a above.

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?

No. See II.a above.

d) Result in the loss of forest land or conversion of forest land to non-forest use?

No. See II.a above.

e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

No. See II.a above.

III. AIR QUALITY: Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations.

Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

The implementation of combined-use routes will simply change the type of vehicles being used on existing roadways. Many of the combined-use routes are paved. On those roadways, there will be very little impact to air quality. Some of the combined-use roadways will use county maintained dirt roads. The increased use of these routes may increase the amount of dust. The primary source of dust pollution in the Owens Valley is from wind events kicking up dust from the Owens Dry Lake. Dust from the Owens Dry lake places Inyo County within a non-attainment areas for Federal and State PM10 (particulate matter 10 microns or less in diameter) ambient air quality standards. The Great Basin Unified Air Pollution Control District places no restriction in Inyo County on the use of dirt roads. Therefore, this potential impact will be less than significant.

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

No. See III.a above.

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

No. See III.a above.

d) Expose sensitive receptors to substantial pollutant concentrations?

No. See III.a above.

e) Create objectionable odors affecting a substantial number of people?

No. See III.a above.

IV. BIOLOGICAL RESOURCES: Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

The establishment of procedures to implement Assembly Bill 628 and the eventual designation of combined-use roadways will only occur on existing roadways will have no impact on any biological resources. The off-highway vehicles will be traveling on existing roads and routes.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

No. The project does not involve the construction or disturbance of land. It is possible that the County will designate a County road such as the Silver Canyon Road or Wyman Canyon Road that repeatedly crosses perennial creeks as a combined-use road. However the project will not change the nature of the crossings.

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The establishment of procedures to implement Assembly Bill 628 and the eventual designation of combined-use roadways will only occur on existing roadways will have no impact on any biological resources. The off-highway vehicles will be traveling on existing roads and routes.

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

The establishment of procedures to implement Assembly Bill 628 and the eventual designation of combined-use roadways will only occur on existing roadways will have no impact on any biological resources. The off-highway vehicles will be traveling on existing roads and routes.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

No. There are no such known policies or ordinances that the proposed project would conflict with. The only construction with the project will be the installation of signage in existing road rights of way.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No. Since the project will not expand the disturbed footprint of the County maintained mileage roadway system, there will be no such impact.

V. CULTURAL RESOURCES: Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?

No. The implementation procedures and the future designation of County roadways as combined use routes will only apply to existing disturbed roadway right of way.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

No. See V.a above.

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

No. See V.a above.

d) Disturb any human remains, including those interred outside of formal cemeteries?

No. See V.a above. The project does not involve any ground disturbance save for the installation of signage. All signage will be placed inside of the existing County roadway right of way.

VI. GEOLOGY AND SOILS: Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

No. Numerous County maintained roads cross Alquist-Priolo Earthquake Fault zones. However, the implementation of AB 628 and the designation of combined-use roadways will not construct any habitable structures nor is this project a subdivision of land. Therefore, the Alquist-Priolo Earthquake Fault zone does not apply to this project.

iii) Strong seismic ground shaking?

Ground shaking may occur anywhere in the region due to the existence of numerous earthquake faults, regardless of whether the project site is within an identified Alquist-Priolo zone or not. The project will change the class of vehicles using County roads. Automotive vehicles, including off-highway vehicles are generally not severely impacted by ground shaking. State laws regulating fault zones apply to the construction of habitable structures. There are no habitable structures proposed as part of this project.

iii) Seismic-related ground failure, including liquefaction?

Ground failure, including liquefaction, may occur in a few locations in the region. The project will change the class of vehicles using County roads. Automotive vehicles, including off-highway vehicles are generally not severely impacted by liquefaction. State laws regulating ground failure apply to the construction of habitable structures. There are no habitable structures proposed as part of this project.

iv) Landslides?

Landslides may occur in the region. The project will change the class of vehicles using County roads. Automotive vehicles, including off-highway vehicles are generally not severely impacted by landslides. State laws regulating landslides apply to the construction of habitable structures. There are no habitable structures proposed as part of this project.

b) Result in substantial soil erosion or the loss of topsoil?

The future designation of Combined-use roadways will have no impact on soil or topsoil. The project only applies to existing County roadways.

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

Numerous County roadways may be subject to these phenomena. The project will change the class of vehicles using County roads. Automotive vehicles, including off-highway vehicles are generally not severely impacted by this type of geological event. State laws regulating geologic phenomena apply to the construction of habitable structures. There are no habitable structures proposed as part of this project.

d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

There may be County roads that are built over expansive soil. This project does not involve the construction of any new roadways. The project only involves the designations of several county roadways as combined-use roadways, where off-highway vehicles may travel on the roadway.

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

No septic or sewage disposal facilities will be constructed as a part of this project.

VII. GREENHOUSE GAS EMISSIONS: Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

No. The project involves the implementation of AB 628 and the potential designation of County highways as combined-use routes. That is, off-highway vehicles would be legally allowed to travel in the existing County road right of way. The designation of these combined use segments may make some routes, especially loop routes, more attractive to potential off-highway vehicle users. However, the implementation of the project is more the dispersal of an existing use than the creation of a new use. As such, the project will not result in excessive amounts of emissions.

b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

No. See VII.a above.

VIII. HAZARDS AND HAZARDOUS MATERIALS: Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

No. Off-highway vehicles are not suitable for the transport or disposal of hazardous materials. The project proposes the potential designation of combined-use roads where non-street legal vehicles can drive on County roadways.

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

No. See VIII.a above.

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

No. See VIII.a above. While the roadways may be within ¼ mile of existing schools, it does not involve the transport of acutely hazardous materials.

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

County roadways that could be designated as combined use roads may be located next to areas where there are hazardous material sites. However, the potential designation of any combined use routes is on existing roadways. As such, the off-highway vehicle users and neighboring properties alike will not be subject to the hazardous material sites.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

County roadways are within two miles of: the Eastern Sierra Regional Airport in Bishop, the Independence Airport, the Lone Pine Airport, the Trona Airport and the Shoshone Airport. However the project does not involve the construction of airport facilities that may affect neighboring properties. The project may create a different noise pitch to residents within two mile of the airport. See XII.E (Noise).

f) For a project within the vicinity of a private airstrip,

would the project result in a safety hazard for people residing or working in the project area?

Similar to (f) above, there are a couple private airstrips close to existing County roads. Again, the project just involves the implementation of procedures to change the designation of existing County roads at a future date. The project will have no impact on the private airstrips and neighboring residents.

g) Impair implementation of or, physically interfere with, an adopted emergency response plan or emergency evacuation plan?

The use of County roadways will not impair or impact emergency response plan or emergency evacuation plan.

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

No. The project does not involve the construction of any habitable structures.

IX. HYDROLOGY AND WATER QUALITY: Would the project:

a) Violate any water quality standards or waste discharge requirements?

The proposed project will not violate water standards or waste discharge requirements. The project will designate certain roads as being suitable for combined use by off-highway vehicles and regular automotive traffic. Since the footprint of County roads will not change, the project will not result in increase water discharge.

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

The project does not involve the extraction of ground water and will not impact groundwater supplies.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

The drainage pattern on existing County roads will not be changed by the addition of off-highway vehicles on existing County roads.

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site?

No. See IX.c above.

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of

polluted runoff?

No. See IX.c above.

f) Otherwise substantially degrade water quality?

No. See IX.c above.

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

The project does not involve the construction of any habitable structures. Multiple already existing County roads cross 100-year flood hazard zones, however the project only involves the designation of combined-use roadways.

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

The only structures that will be installed as part of this project will be signage. Off-highway vehicles will be allowed to use County maintained roads in certain circumstances in accordance with the Implementation Procedures for Assembly Bill 628.

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

The project involves the designation of existing County roadways as eligible for use by off-highway vehicles. County roadways do cross areas subject to inundation by the failure of a levee or a dam. The project does not involve the construction of any new roadways. As such, this is a less than significant impact.

j) Inundation by seiche, tsunami, or mudflow?

Certain existing County roads are subject to seiche and mudflows. The project does not involve the construction of any habitable structures. Necessary closure of County roads will apply to the new types of vehicles being allowed on specific roadways in specific instances. Therefore, the potential risk is less than significant.

X. LAND USE AND PLANNING: Would the project:

a) Physically divide an established community?

The potential designation of County roads as combined-use routes will not physically divide any communities. The off-highway vehicles will be subject to the same speed regulations as regular automotive traffic.

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

The designation of combined-use roadways does not conflict with the goals and policies adopted in the Inyo County General Plan Circulation Element and the Inyo County Regional Transportation Plan. The General Plan Government Element states under Policy 7(1)(c) and (f):

c. *Off road vehicle use is a significant recreational activity in the County. Existing off-road vehicles use areas should be continued and additional off-road vehicle areas should be developed.*

- f. *The existing network of off-road vehicle routes on public lands in the County is of paramount importance to the recreational and resource goals of the County. All existing four-wheel and off-highway-vehicle drive routes should be maintained and the resource should be expanded where possible, subject to the avoidance of environmental or cultural harm.*

The linking of loop roads and the providing of further off-highway vehicle options is consistent with these policies.

- c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

The scope of this project does not include any areas outside of the existing footprint of previously constructed County roadways. As such, this project does not conflict with any habitat conservation plan.

XI. MINERAL RESOURCES: Would the project:

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

No. The only construction for this project will be the placement of signage in existing County road rights of way. There will be no additional impacts to mineral resources.

- b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

No. See XI.a above

XII. NOISE: Would the project result in the:

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

The noise level produced by off-highway vehicles will not be in excess of those set forth in the General Plan. There is the potential that combined-use routes will be designated in residential areas where off-highway vehicle users are traveling between off-highway vehicle recreation and services inside Inyo County communities. This has the potential to increase intermittent noise levels to residents adjacent to combined-use roadways. Assembly Bill 628 states that off-highway vehicle recreation users can only use combined-use routes during daylight hours. In general this will reduce noise levels during quiet times for most residents. Noise levels could become more of an impact during the summer months when it gets light around 5:30 a.m. and it stays dark after 8:00 p.m. Although off-highway vehicles should not have noisier mufflers than street-legal motorcycles, the off-highway vehicles may have higher gearing than is customary for regular street vehicles and therefore have the potential to increase the impact on residential areas by creating noise of a different pitch. A mitigation measure is being added to reduce potential impacts and complaints for this situation:

The operation of combined use routes in residential areas is restricted to between dusk and dark and no earlier than 7:00 a.m. and no later than 8:00 p.m.

Any complaint letters the County receives regarding the combined-use designation will be kept on file, summed up, and submitted to the California State Legislature in January 2016 when State of California will re-examine the Pilot Program set forth by Assembly Bill 628.

- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

Groups of aggressively driving off-highway vehicles may be able to create groundborne vibrations in residential areas.
See mitigation measure set forth in XII(a).

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

See mitigation measure set forth in XII(a).

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

See mitigation measure set forth in XII(a).

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

See mitigation measure set forth in XII(a).

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

See mitigation measure set forth in XII(a).

XIII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No. The project will create a new mix of vehicular traffic. However the project does not involve any type of development that will effect population growth or density .

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

No. The project does not involve the displacement of any housing units.

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

No. The project does not involve the displacement of any housing units and/or people.

XIV. PUBLIC SERVICES: Would the project:

a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant

environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Fire Protection

The designation of a combined use route will not result in the construction of any flammable structures and will not require the expansion of fire protective services. The project will not have any impact on fire protection.

Police Protection

The project will require additional police protective activity by both the Sheriff's Department and the California Highway Patrol. There is currently some ambiguity as to which roads an off-highway vehicle user can ride. This is especially the case for County maintained dirt roads. A requirement for the implementation of Assembly Bill 628 is for the County to place signage on the ground that indicates the nature and type of off-highway vehicle trails that are being linked into. This requirement will direct off-highway vehicle users toward legal areas to ride.

The Sheriff's Department currently has difficulty with the enforcement of off-highway vehicle regulations on City of Los Angeles Department of Water and Power land and nearby residential areas. The Sheriff's Department has recently acquired two off-highway vehicles to help patrol the existing use and the proposed expansion of use. A goal of the implementation of AB 628 is to make the legality of using combined-use routes and trail segments more transparent to both recreationalists and to law enforcement personnel.

The re-evaluation of the combined-use program implementing Assembly Bill 628 that is required by the County and the California Highway Patrol by January 1, 2016 will serve as another check to monitor the impact to law enforcement personnel. The combination of these factors makes the potential impact to police protection is less than significant.

Schools

The primary potential impact to schools would for those roadways that are designated as combined use and are adjacent to schools. This potential impact would be most pronounced in the morning and afternoon when students and teachers are coming and going to school. This potential impact is mitigated by the safety determination required to be made by the County and the California Highway Patrol: before any roadway is designated as open for combined-use, the California Highway Patrol and County are both required to determine that the designation will not create a traffic safety hazard. Therefore, this potential impact will be less than significant. Off-highway vehicles are required to abide by the same speed and driving behavior as other vehicles.

Parks

A potential impact to park facilities would be the possible use of parks as staging areas for the parking of vehicles carrying off-highway vehicles. These vehicles are subject to the same parking requirements as other vehicles.

Other Public Facilities – County Roads

Placing a new type of vehicle on existing County roads has the potential to negatively affect County roads in several ways. If the off-highway vehicles use the edge of pavement, there is a possibility to create unraveling along the edge of pavement. Off-highway vehicles generally handle better on dirt surfaces so the drivers may be inclined to use the shoulder when possible. However, it is not legal to drive along the shoulder and so this potential impact is considered to be less than significant.

On County maintained dirt roads, there is currently a problem with off-highway vehicles spinning doughnuts and progressing down the center of the roadway, or repeatedly turning sharply in the roadway during wet weather conditions. This decreases ride quality and requires future grading of the roadway. Another potential impact at the intersection of dirt and paved roads is rocks being kicked out into the roadway thereby creating safety hazards for passing vehicles and

CALIFORNIA 2011 LEGISLATIVE SERVICE
2011 Portion of 2011-2012 Regular Session

Additions are indicated by ~~Text~~; deletions by

Vetoes are indicated by ~~Text~~;
stricken material by ~~Text~~.

CHAPTER 532
A.B. No. 628
OFF ROAD VEHICLES--MOTORCYCLES--PILOT PROGRAMS

AN ACT to amend Sections 38026 and 38026.5 of, and to add and repeal Section 38026.1 of, the Vehicle Code, relating to vehicles.

[Filed with Secretary of State October 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 628, Conway. Vehicles: off-highway vehicle recreation: County of Inyo.

Existing law authorizes an off-highway motor vehicle that has been issued a plate or device to be operated or driven upon a highway under certain circumstances. Existing law authorizes various public entities, and the Director of Parks and Recreation, to designate a highway, or portion thereof, for the combined use of regular vehicular traffic and off-highway motor vehicles if certain requirements are met. Existing law prohibits a highway from being designated for this combined use for a distance of more than 3 miles.

This bill would, until January 1, 2017, authorize the County of Inyo to establish a pilot project that would exempt from this prohibition specified combined-use highways, except as provided, in the unincorporated area in the County of Inyo so that the highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands, and to link off-highway motor vehicle recreational-use areas with necessary service and lodging facilities, in order to provide a unified linkage of trail systems for off-highway motor vehicles, among other things, as prescribed.

The bill would authorize the pilot project to include the use of a state highway, subject to the approval of the Department of Transportation, or the crossing of a highway, and would require the County of Inyo to indemnify the state, as specified. The bill would require the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, not later than January 1, 2016, to prepare and submit to the Legislature a report evaluating the effectiveness of the pilot project, and containing specified information.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Inyo County is a rural county with a population of 17,945 residents.
- (b) Inyo County is comprised of 10,140 square miles.
- (c) Inyo County is the second largest county in the United States in area, yet only 2 percent of this land is inhabited.
- (d) Ninety-two percent of land in Inyo County is federally administered public lands.
- (e) Inyo County has outstanding natural diversity, including Mount Whitney in the eastern Sierra, which is the highest peak in the contiguous United States, as well as Death Valley, which is the lowest point in the United States and the largest national park in the contiguous United States.
- (f) With six million acres of public land, Inyo County offers numerous opportunities to explore and recreate.

SEC. 2. It is the intent of the Legislature in enacting this act and designating combined-use highways on unincorporated county roads in the County of Inyo for more than three miles to link existing roads in the unincorporated portion of the county to existing trails and trailheads on federal Bureau of Land Management or United States Forest Service lands in order to provide a unified system of trails for off-highway motor vehicles. It is further the intent of the Legislature that no General Fund moneys be expended for the pilot project established by this act, and the project will be revenue neutral to the state.

SEC. 3. Section 38026 of the Vehicle Code is amended to read:

<< CA VEHICLE § 38026 >>

38026. (a) In addition to Section 38025 and after complying with subdivision (c) of this section, if a local authority, an agency of the federal government, or the Director of Parks and Recreation finds that a highway, or a portion *** of a highway, under the jurisdiction of the authority, agency, or the director, as the case may be, is located in a manner that provides a connecting link between off-highway motor vehicle trail segments, between an off-highway motor vehicle recreational use area and necessary service facilities, or between lodging facilities and an off-highway motor vehicle recreational facility and if it is found that the highway is designed and constructed so as to safely permit the use of regular vehicular traffic and also the driving of off-highway motor vehicles on that highway, the local authority, by resolution or ordinance, agency of the federal government, or the Director of Parks and Recreation, as the case may be, may designate that highway, or a portion *** of a highway, for combined use and shall prescribe rules and regulations therefor. A highway, or portion *** of a highway, shall not be so designated for a distance of more than three miles, except as provided in Section 38026.1. A freeway shall not be designated under this section.

(b) The Off-Highway Motor Vehicle Recreation Commission may propose highway segments for consideration by local authorities, an agency of the federal government, or the Director of Parks and Recreation for combined use.

(c) Prior to designating a highway or portion *** of a highway on the motion of the local authority, an agency of the federal government, or the Director of Parks and Recreation, or as a recommendation of the Off-Highway Motor Vehicle Recreation Commission, a local authority, an agency of the federal government, or the Director of Parks and Recreation shall notify the Commissioner of the California Highway Patrol, and shall not designate any segment pursuant to subdivision (a) which, in the opinion of the commissioner, would create a potential traffic safety hazard.

(d) (1) A designation of a highway, or a portion *** of a highway, under subdivision (a) shall become effective upon the erection of appropriate signs of a type approved by the Department of Transportation on and along the highway, or

portion *** of the highway.

(2) The cost of the signs shall be reimbursed from the Off-Highway Vehicle Trust Fund, when appropriated by the Legislature, or by expenditure of funds from a grant or cooperative agreement made pursuant to Section 5090.50 of the Public Resources Code.

SEC. 4. Section 38026.1 is added to the Vehicle Code, to read:

<< CA VEHICLE § 38026.1 >>

38026.1. (a) Except as provided in subdivision (e), the County of Inyo may establish a pilot project to designate combined-use highways on unincorporated county roads in the county for no more than 10 miles so that the combined-use highways can be used to link existing off-highway motor vehicle trails and trailheads on federal Bureau of Land Management or United States Forest Service lands, and to link off-highway motor vehicle recreational-use areas with necessary service and lodging facilities, in order to provide a unified system of trails for off-highway motor vehicles, preserve traffic safety, improve natural resource protection, reduce off-highway vehicle trespass on private land, and minimize impacts on county residents.

(b) The pilot project shall do all of the following:

(1) Prescribe a procedure for highway, road, or route selection and designation. The procedure shall be approved by a vote of a majority of the Inyo County Board of Supervisors.

(2) Prescribe a procedure for the county to remove a combined-use designation, including a designation that is removed as a result of the conclusion of the pilot program.

(3) In cooperation with the Department of Transportation, establish uniform specifications and symbols for signs, markers, and traffic control devices to control off-highway motor vehicles, including, but not limited to, the following:

(A) Devices to warn of dangerous conditions, obstacles, or hazards.

(B) Designations of the right-of-way for regular vehicular traffic and off-highway motor vehicles.

(C) A description of the nature and destination of the off-highway motor vehicle trail.

(D) Warning signs for pedestrians and motorists of the presence of off-highway motor vehicle traffic.

(4) Require that off-highway motor vehicles subject to the pilot project meet the safety requirements of federal and state law regarding proper drivers' licensing, helmet usage, and the requirements pursuant to Section 38026.5.

(5) Prohibit off-highway motor vehicles from traveling faster than 35 miles per hour on highways designated under this section.

(6) Include an opportunity for public comment at a public hearing held by the county in order to evaluate the pilot project.

(c) The pilot project may include use of a state highway, subject to the approval of the Department of Transportation, or any crossing of a highway designated pursuant to Section 38025.

(d)(1) By selecting and designating a highway for combined use pursuant to this section, the County of Inyo agrees to defend and indemnify the state against any and all claims, including legal defense and liability arising from a claim, for any safety-related losses or injuries arising or resulting from use by off-highway motor vehicles of a highway designated as a combined-use highway by the Inyo County Board of Supervisors pursuant to this section.

(2) This subdivision does not alter the requirements of subdivision (e).

(e) The County of Inyo shall not designate a highway for combined use pursuant to this section unless the Commissioner of the Department of the California Highway Patrol finds that designating the highway for combined use would not create a potential traffic safety hazard.

(f) Not later than January 1, 2016, the County of Inyo, in consultation with the Department of the California Highway Patrol, the Department of Transportation, and the Department of Parks and Recreation, shall prepare and submit to the Legislature a report evaluating the pilot project, and containing both of the following:

(1) A description of the road segments designated to allow combined use for over three miles, as approved or adopted by a majority vote of the members of the Inyo County Board of Supervisors.

(2) An evaluation of the overall safety and effectiveness of the pilot project, including its impact on traffic flows, safety, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation.

(3) A description of the public comments received at a public hearing held by the county in regards to an evaluation of the pilot project.

(g)(1) A report submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

(2) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 5. Section 38026.5 of the Vehicle Code is amended to read:

<< CA VEHICLE § 38026.5 >>

38026.5. (a) In accordance with subdivision (c) of Section 4000, a motor vehicle issued a plate or device pursuant to Section 38160 may be operated or driven on a local highway, or a portion ~~*** of the local highway, that~~ is designated pursuant to Section 38026 ~~or 38026.1~~ if the operation is in conformance with ~~*** this code~~ and the vehicle complies with off-highway vehicle equipment requirements specified in this division.

(b) Notwithstanding subdivision (a), it is unlawful for a person using an off-highway vehicle on a combined-use highway to do any of the following:

(1) Operate an off-highway motor vehicle on the highway during the hours of darkness.

(2) Operate a vehicle on the highway ~~that~~ does not have an operational stoplight.

(3) Operate a vehicle on the highway ~~that~~ does not have rubber tires.

(4) Operate ~~a~~ vehicle without a valid driver's license of the appropriate class for the vehicle operation in possession.

(5) Operate ~~a~~ vehicle on the highway without complying with ~~***~~ Article 2 (commencing with Section 16020) of Chapter 1 of Division 7.

CA LEGIS 532 (2011)

END OF DOCUMENT



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use
Only:

AGENDA NUMBER

15

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

FROM: Public Works and Inyo County Surplus

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Surplus Equipment from the Inyo County Electrical Upgrade Project.

DEPARTMENTAL RECOMMENDATIONS:

1. Authorize the County Purchasing Agent to sell surplus equipment

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Speiss Construction Company, Inc. of Santa Maria, California recently completed construction of the Inyo County Electrical Upgrade Project. The Resolution for the Notice of Completion and acceptance of the project was approved on April 24th. As your Board is probably aware, there were many issues with the engineered plans.

One of the equipment issues included the specifications for the main breaker section of the new service entrance panel located on the Courthouse grounds. LADWP electrical crews would not connect the new meter and mains after they were installed because the main breaker and buss had a capacity greater than that allowed by their requirements, 800 amps compared to 1200 amps that was installed. The contractor and County only became aware of this problem when the DWP line crew arrived to make the connection.

It was necessary to replace this section of the entrance panel by change order to meet the DWP requirements. The contractor is unable to return the panel section to the wholesale supplier because of warranty concerns, and he has turned the main breaker section over to the County for surplus or disposal. This section was purchased for an approximate cost of \$5,000. Though the change order for the replacement, including removal and reinstallation was approximately \$15,000.

A similar situation occurred with the conduit measurements in the historic Courthouse. The plans showed existing 2-1/2" conduits, where the conduits are actually 1-1/4" and 1-1/2". The breaker ratings for the new sub-panels is based on the wire size, and the size of the existing conduits limited the maximum wire size and breakers that could be installed. It was necessary to replace 2 circuit breakers by change order as a result of the inaccurate conduit sizing on the plans. The change order to remove the existing oversized breakers and replace them was approximately \$3,200. The County now has possession of the original circuit breakers.

As a result of these change order replacements, the County has an entrance panel main and meter section and two 225 amp circuit breakers that need to be sold or disposed as surplus.

The County owned surplus now has a market value based on comparable items on the open market. While the County paid full price for these components, they are now valued at between 10% to 50% of new item pricing.

In this Agenda item, we are requesting authority to surplus and sell the meter and main breaker section and two 225 amp circuit breakers.

ALTERNATIVES:

The Board could choose not to approve the sale of the surplus equipment. This is not recommended because the County could potentially lose any money resulting from the sale of the equipment and would incur costs for disposal of the equipment at the landfill.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed this Agenda item.
The County Purchasing Office for conducting the sales process.
The County Auditor's office receipt of funds.

FINANCING:

The Inyo County Electrical Upgrade Project was funded in the Board Approved FY 2010/2011 Network Project Budget, Budget Unit 011805, Object Code 5700. The sales of the surplus will be reimbursed to this budget.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.) <i>Duch</i> Approved: <u>Yes</u> Date <u>5/1/12</u>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) <i>Peta Selby</i> Approved: <u>Yes</u> Date <u>5/2/12</u>
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

[Signature] Date: 5-2-12



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

For Clerk's Use
Only:

AGENDA NUMBER

16

FROM: Public Works Department

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: Approval of a budget amendment to the Public Works Department's budget, and approval of Amendment No. 1 to the contract for engineering services with Quincy Engineering, Inc. (Quincy) for the Sabrina Road Bridge Replacement Project.

DEPARTMENTAL RECOMMENDATIONS: Request that the board:

1. Request Board amend the FY 2011/2012 State Funded Road Budget (Budget Unit 034601) as follows: increase estimated revenue in Federal Grants (Object Code 4555) by \$143,500 and increase appropriation in Sabrina Bridge (Object Code 5711) by \$143,500.
2. Approve Amendment No. 1 to County of Inyo Standard Contract No. 156 between the County of Inyo and Quincy Engineering, Inc. (Quincy) of Sacramento, California for the provision of engineering services in the amount of \$143,500 for the Sabrina Bridge Replacement Project, increasing the total contract amount from \$489,082 to \$632,582; and increase the term of the contract, which currently extends from December 1, 2009 through June 30, 2012, to June 30, 2013.
3. Authorize the chairperson to execute the amendment, contingent upon approval of the budget amendment described above; contingent upon obtaining appropriate signatures; and contingent upon adoption of the fiscal year 2012/2013 budget.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: Quincy recently completed engineering design and plan preparation for the Sabrina Road Bridge Replacement Project, which is currently advertising for bids. The bid opening date is May 16, 2012. Construction is anticipated to begin during July 2012. The project is federally funded by the Highway Bridge Program (HBP) and Toll Credit Program.

The Sabrina Bridge spans the Middle Fork of Bishop Creek at Sabrina Road approximately 0.3 miles west of the intersection of Sabrina Road and S.R. 168. During the summer season, Sabrina Bridge provides access to Lake Sabrina, an important tourist destination for fishing, boating, camping, and hiking. The bridge is susceptible to scour, and is considered functionally obsolete according to the criteria of the Department of Transportation's (Caltrans') Bridge Inspection Program. Both the superstructure and the foundations of the bridge will be completely replaced; and the approach roadway on both sides of the bridge will be realigned to improve sight distance.

The Public Works Department has requested that Quincy provide construction support services during construction of the project. Construction support services include development of an educational program to inform project personnel of environmental resource issues; preparation of mitigation plans to address riparian restoration and potential bat habitat issues; conducting pre-construction environmental surveys for sensitive species; preparation of a mitigation monitoring checklist and mitigation monitoring report; responding to bidder's requests for information, submittal reviews, and preparation of as-built record drawings. The cost of these additional services is estimated at \$143,500. Preparation of the monitoring and mitigation plans and performing pre-construction environmental surveys must be completed well in advance of construction activities. Therefore, the Public Works Department is requesting approval of this contract amendment before bids are opened and a construction contract for the project is awarded.

The project is funded by the Highway Bridge Program (HBP), which will reimburse the county for 100 percent of the construction and construction engineering costs of the project. It was originally anticipated that Prop 1B LS&R funds would also be needed to fund the match for construction. However, Caltrans Local Assistance recently informed the county that the project is eligible for Toll Credits, which will fund the match for the construction phase of the project. Section 1044 of the Intermodal Surface Transportation Efficiency Act permits states to apply the value of certain highway expenditures funded with toll revenues toward the required state match on current federal-aid projects. The HBP will reimburse the county for 88.53 percent of the construction and construction engineering costs of the project, and the Toll Credits Program will pay the remaining 11.47 percent match.

ALTERNATIVES:

The Board could choose not to approve the Amendment No. 1 for construction support services with Quincy for the Sabrina Bridge Replacement Project. This is not recommended because the Quincy provided environmental and engineering design services and is the Engineer of Record for the project. The Engineer of Record must be included in the bidding and construction phases of the project. Environmental surveys, monitoring, and mitigation plan preparation must be performed as a condition of permitting requirements, and as required by the environmental documents for the project.

OTHER AGENCY INVOLVEMENT:

County counsel, the auditor, and the risk manager must review and sign the amendment.

FINANCING: The cost of construction support services will be paid through budget unit 034601, State Funded Roads, object code 5711, Sabrina Bridge. The cost of the Sabrina Road Bridge Replacement Project will be reimbursed by the HBP and Toll Credits Program. The HBP procedures require reimbursement to local agencies upon submittal of progress invoices for expenditures actually made. Therefore, these funds will be loaned from the road fund and reimbursed with HBP and Toll Credits Program funds.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.)	Approved: <u>[Signature]</u>	Date <u>4/25/12</u>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: <u>[Signature]</u>	Date <u>4/26/12</u>
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)	Approved: _____	Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received) [Signature] Date: 4-27-2012

**AMENDMENT NUMBER 1 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING AND ENVIRONMENTAL SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACEMENT PROJECT**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Quincy Engineering, Inc., of Sacramento, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Engineering and Environmental Services dated December 1, 2009, on County of Inyo Standard Contract No. 118, for the term from December 1, 2009 to June 30, 2012.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

WHEREAS, such Agreement provides that it may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties thereto, if such amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Contractor hereby amend such Agreement as follows:

1. Section 2, **TERM**, is revised as follows:

"The term of this Agreement shall be from December 1, 2009 to June 30, 2013 unless sooner terminated as provided below."

2. Section 3D, **Limit upon amount payable under Agreement**. The first sentence is revised as follows:

"The total sum of all payments made by the County to Contractor for services and work performed under this Agreement, including travel and per diem expenses, if any, shall not exceed Six Hundred Thirty-Two Thousand, Five Hundred Eighty-Two Dollars and No Cents (\$632,582.00) (hereinafter referred to as "contract limit")."

3. Attachment A to the Contract, *Scope of Work*, shall be revised to include the additional tasks required for construction support services during construction of the Sabrina Bridge Replacement Project as described in Attachment A1 to the Contract.
4. Quincy's fees, including travel and per diem rates, for the scope of work described in Attachment A1 to the Contract shall be the fees listed in Quincy's *Year 2012 Hourly Rates* included as Attachment B1 to the Contract.

The effective date of this amendment to the Agreement is May 8, 2012.

All other terms and conditions of the Agreement are unchanged and shall remain the same.

**AMENDMENT NUMBER 1 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE RIVERSIDE ROAD BRIDGE REPLACEMENT PROJECT**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
____ DAY OF _____, 2012.

COUNTY OF INYO

CONTRACTOR

By: _____

By: _____

Dated: _____

Dated: _____

Taxpayer's Identification Number:

APPROVED AS TO FORM AND
LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING
FORM:

County Auditor

APPROVED AS TO PERSONNEL
REQUIREMENTS:

Director of Personnel Services

APPROVED AS TO RISK ASSESSMENT:

County Risk Manager

ATTACHMENT A1

**AGREEMENT BETWEEN COUNTY OF INYO
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACEMENT PROJECT**

TERM:

FROM: December 1, 2012 TO: June 30, 2013

SCOPE OF WORK:

The scope of work described in the original contract, dated December 1, 2009, is revised to include additional tasks required for construction support for the Sabrina Road Bridge Replacement Project. The scope of services and estimated fee for these services shall be in general accordance with Quincy's proposal entitled *Phase 4 - Construction Support*, included in Attachment A1 to this amendment.

Scope of Work

Construction Support



Phase 4 of the original contract scope of work is amended as follows:

PHASE 4 - CONSTRUCTION SUPPORT

TASK 24 - CONSTRUCTION ENGINEERING SERVICES

Construction Support services are to be provided as requested by the Resident Engineer during construction as follows:

24.1 – CONSTRUCTION SUPPORT MANAGEMENT AND OVERSIGHT

The PS&E Project Manager will provide project management during the project construction period. A total of 40 hours has been assumed for this task.

24.2 - CONTRACTOR SUBMITTAL REVIEWS

- a. Concrete mix design peer review total 3 (6 hours)
- b. Post-Tensioning System Shop Drawing Review (32 hours)
- c. Falsework Shop Drawing review (32 hours)

24.3 – REQUESTS FOR INFORMATION

Response to contractor requests for information. A total of 24 hours has been assumed for this task.

24.4 – SPECIAL INSPECTION

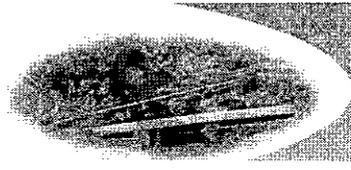
1. QEI will provide on-site inspections by a bridge or roadway engineer as determined by the County's Resident Engineer. Six inspection trips with two partial travel days (5 hours each) and five full (8 hour on-site plus ½ hour to and ½ hour from site) days for a total of 55 hours per trip has been assumed. This equates to a total of 330 hours for this task. Special Inspections include: CIDH Pile installation, Stem and Soffit construction, Deck construction, Post Tensioning, Barrier Railing construction, and one at the discretion of the RE. Kleinfelder will perform one site inspection for the foundation construction.
2. Panorama, Inc.'s (Panorama's) will assist with implementation of mitigation requirements and permit conditions. Panorama Staff has a clear understanding of the environmental conditions and measures required during construction of the project.

a. DEVELOP EDUCATION PROGRAM

A construction personnel education program is required per mitigation identified in the IS/MND and the Caltrans Natural Environment Study (NES). The program will address the environmental resource issues and requirements for the project including:

- Air Quality - Dust suppression requirements
- Biological Resources - A description of listed, fully protected, and sensitive species, migratory birds, and their habitats. The occurrence of these species within the project area. An explanation of the status of these species. The measures to be implemented to conserve listed species and their habitats as they relate to the work site, and boundaries within which construction may occur.
- Cultural Resources - A definition of cultural resource, the potential for resources to be found at the site (low) and what to do if a resource is found or human remains are found.
- Hazards - Identification of potential hazards and requirements. This scope does not include training on handling and storage of hazardous or flammable materials, which should be performed by the contractor.

Scope of Work Construction Support



- Hydrology and Water Quality - Erosion and sediment control requirements and flow diversion requirements.
- Noise - Noise reduction requirements including hours of operation and the handling of noise complaints. The training program will also include a fact sheet and tailgate training materials. This task includes one trip by one member of the Panorama staff to Bishop, CA to give the training program at the start of construction. New workers on the site will receive the written materials and tailgate training by the contractor.

DELIVERABLES

- Training program in PowerPoint/handout
- Fact sheet

b. PREPARE PLANS

i. PREPARE RIPARIAN RESTORATION PLAN/MITIGATION PLAN

Panorama Environmental, Inc. will prepare a mitigation and monitoring plan as required under the Streambed Alteration Agreement, the NES, and the IS/MND for restoration of aspen and riparian habitat. The mitigation and monitoring plan will include:

The location of the mitigation site

- A schematic depicting the mitigation area including photographs
- The species to be seeded and planted and the ratio of seed mix and/or plantings for each species
- A work schedule, including names, titles and companies for all individuals who are involved in preparing the plan and conducting activities
- Specific success criteria
- A maintenance and monitoring program for a minimum of five years, unless success criteria are met
- Contingency measures should the success criteria not be met

A draft mitigation and monitoring plan will be submitted to Quincy Engineering and the County for comment. Upon receipt of and incorporation of comments, Panorama will submit the mitigation and monitoring plan to DFG for review and approval. Our scope assumes acceptance of the plan and no additional comments from DFG.

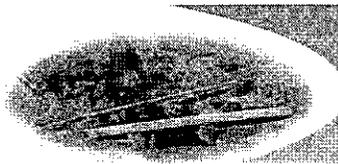
ii. PREPARE BAT HABITAT ASSESSMENT, COMPENSATION DESIGN, AND BAT EVICTION PLAN

Panorama will subcontract to Patricia Brown to prepare the Bat Habitat Assessment Plan. The plan will address the methods for the assessment of bat habitat in the project area including under the existing bridge.

Surveys will be conducted for bat habitat as identified under Task 3. If bat habitat is identified, a Bat Habitat Compensation Design Plan will be prepared. The plan will include recommendations for the type and design of compensation habitat to be installed on the new bridge. We will work with Quincy Engineering on the design and to obtain approval of the design by Caltrans.

Scope of Work

Construction Support



Patricia Brown will also prepare a bat eviction plan for implementation if bats are identified during project operations. The plan will be prepared to have in place prior to construction in the event that bats are identified during construction and eviction is necessary.

c. PERFORM PRE-CONSTRUCTION SURVEYS

Several sensitive species could occur in the project area. Surveys are required in project permits and environmental documents.

i. CONDUCT AVIAN SURVEYS

Migratory birds, including raptors such as Coopers hawks (*Accipiter cooperii*) and cliff swallows (*Petrochelidon pyrrhonota*) could nest in the project area. Avian nesting surveys will be conducted within 14 days prior to project construction and repeated 48 hours prior to construction for areas within 500 feet of the project construction limits. Surveys will be performed by Wildlife Resource Consultants and a memo of the results will be prepared. If nests are found, Panorama will coordinate with the CDFG and Caltrans to determine the appropriate construction buffers.

ii. CONDUCT SURVEYS FOR SIERRA NEVADA YELLOWLEGGED FROG

Surveys for Sierra Nevada yellow-legged frog (SNYLF) will be conducted by Wildlife Resource Consultants at the same time as nesting surveys, 48 hours prior to construction, for an area of 250 feet surrounding the project area. This task also includes coordination with the construction contractor for installation of exclusion fencing prior to construction if any SNYLF are identified during the surveys. A memo summarizing the survey results will be prepared.

iii. CONDUCT SURVEYS FOR AMERICAN BADGER AND SIERRA MARTEN

The project area includes suitable denning habitat for denning and nesting of American badger and Sierra marten. Preconstruction surveys for these species will be conducted by Wildlife Resource Consultants for an area within 250 feet of the construction limits within 14 days of the start of construction. The surveys will be performed at the same time as the initial avian nesting surveys. A memo summarizing the survey results will be prepared. We assume that the typical protocol surveys for Sierra Marten will not be required given the small footprint of the project.

iv. CONDUCT SURVEYS FOR BATS

Patricia Brown will implement the surveys and Bat Habitat Assessment Plan at the appropriate time of year to determine if bat roosting habitat is located in the project area. Surveys will be conducted prior to construction. The type of bat and the type of roosting habitat will be identified and summarized in a results memorandum. The surveys include two daytime and two night-time surveys.

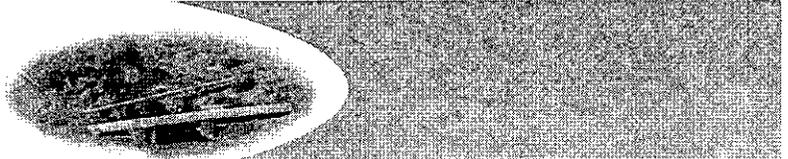
DELIVERABLES

- Memorandums summarizing the pre-construction survey results and any additional requirements as the result of the findings of the surveys.

d. BAT EVICTION

Scope of Work

Construction Support



- i. This task includes time to implement bat eviction, if required. The scope presented here assumes 2 days of work (16 hours), plus 2 hours of reporting on eviction methods and success to the overseeing agencies.

DELIVERABLES

- Memorandum summarizing bat eviction efforts, if required
- e. MITIGATION IMPLEMENTATION OVERSIGHT AND PROJECT COORDINATION

- i. PREPARATION OF A MITIGATION AND PERMIT CONDITION CHECKLIST

Several measures will need to be implemented by the construction contractor and/or Quincy Engineering (e.g., preparation of a Spill Control and Countermeasure Plan (SPCC)), in addition to the measures required in Task 1-4. Panorama will prepare a Mitigation Monitoring Checklist of all measures and conditions as well as the entity responsible for implementation and the timeframe of implementation. The checklist will be provided to Quincy Engineering, Inyo County, and the construction contractor. Panorama will work with the contractor and Quincy to provide verification of the mitigation implementation as identified in the checklist. This task does not include in-field monitoring by Panorama.

- ii. PREPARATION OF FINAL MITIGATION MONITORING REPORT

Panorama will prepare a final report of on project mitigation and permit condition implementation for Inyo County and the permitting agencies (as required). The report include a compilation of plans, survey results, and mitigation monitoring results, and completion of the checklist identified in Subtask 5.1. This task includes only a final report with no revisions required.

- iii. PROJECT COORDINATION WITH QUINCY, INYO COUNTY, AND PERMITTING AGENCIES

This task includes time to provide coordination with Quincy, the County, and the permitting agencies in the event that issues arise during construction and to discuss the status of environmental compliance. This task includes one site visit to Bishop, CA by the Panorama Project Manager or designated staff to attend a project/contractor kick-off meeting. It is assumed that minimal issues and coordination will be required on an on-going basis for this task.

TASK 25 - PREPARE RECORD DRAWINGS

When construction is completed, Quincy Engineering will prepare Record Drawings (as-built plans) for the County's and Caltrans' files. These as-built plans will be based on information clearly marked on a set of contract plans prepared by the County's Resident Engineer/Bridge Representative. A total of 16 hours has been assumed for this task.

ATTACHMENT B1

**AGREEMENT BETWEEN COUNTY OF INYO
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACEMENT PROJECT**

TERM:

FROM: December 1, 2009 **TO:** June 30, 2013

SCHEDULE OF FEES:

The rates and estimated fees described in the original contract, dated December 1, 2009, are revised in accordance with Quincy's 2012 rate sheet, estimated fee, and estimated hours summary included in Attachment B1 to this amendment. The contractor shall be compensated at these rates for the scope of work described in Attachment A1 to Amendment No. 1.

Payment for the rates and costs identified herein shall constitute full compensation for providing all services, labor, equipment, materials, and other incidentals necessary to perform all work described in Attachment A, *Scope of Work*.

The fee and hours summary shown in Attachment A1 are estimates of probable costs, and are presented for information only. The actual costs billed may differ, depending on the actual number of hours and actual direct costs incurred by the contractor. The total compensation to be provided shall not exceed the total contract amount, subject to such adjustments as may be made by properly approved amendments.

**Project: Construction Support - Phase 4 Amendment 1
Special Inspection Services
Inyo County - Sabrina Road Bridge over the Bishop Creek**

Project Number: BRLO 5948(051)
Date: 3/28/2012

Direct Labor: \$22,133.55
Overhead (1.731): \$38,313.18

A. Subtotal: \$60,446.73

Subconsultant Costs:

(1). RMT: \$52,766.00
(2). Kleinfelder: \$9,810.00
(3). : _____
(4). : _____
(5). : _____
(6). : _____

B. Subconsultant Subtotal: \$62,576.00

Other Direct Costs:

Travel (7 round trips)	4228	@ \$0.555 per mi.	<u>\$2,346.54</u>
Phone/Fax			_____
Delivery	1	32.3	<u>\$64.59</u>
Prevailing Wage Diff. (Straight time) - RF -	240	\$8.40	<u>\$2,016.00</u>
Prevailing Wage Diff. (1.5 OT) - RF -	60	27.83	<u>\$1,669.80</u>
Prevailing Wage Diff. (2.0 OT) - RF -	30	47.26	<u>\$1,417.80</u>
	total	330 OK	_____

Misc.

(1). Lodging & Meals (6 trips, 5 nights per trip @ \$150): \$4,500.00
(2). : _____
(3). : _____

C. Direct Cost Subtotal: \$12,014.73

Subtotal = A+B+C \$135,037.46

Fixed Fee 14.0% of A \$8,462.54

TOTAL = **\$143,500.00**

Note: Invoices will be based upon actual QEI hourly rates plus overhead at 173.1% and a fee of 14% of labor and overhead. Subconsultant and Direct Costs will be billed at actual cost.

Quincy Engineering, Inc.

Year 2012 Hourly Rates

Rates are effective January 1, 2012 through December 31, 2012

Labor by Classification	Hourly Rate
Principal Engineer/ Project Manager	\$50-72
Senior Engineer / Project Engineer Resident Engineer	\$37-70
Senior Engineer	\$50-70
Associate Engineer / Bridge Representative	\$33-63
Assistant Engineer*	\$25-45
Engineering Assistant/Technician*	\$15-30
Engineering Detailer/ Draftsman*	\$20-40
Drafting Technician*	\$15-30
Administrative Assistant*	\$15-37
Office Support Staff*	\$10-25
Overhead	173.1%

Other Direct Costs	Rate
Office Computer & Software	Included in Overhead
Office Phone/Cell/Fax	Included in Overhead
Reproduction	
Black & White in office	Included in Overhead
Color in office	Included in Overhead
Vendor	Cost
Delivery	Cost
Car Mileage	Current Federal Rate (\$.555/mi.)
Other Travel	Cost
Subconsultants	Cost
Short Term Per Diem	\$150 per day
Long Term Per Diem	\$2000 per month
Pickup Truck	\$1400 per month
Field Computer/Printer	\$200 per month
Field Cellular Phone	\$120 per month
Prevailing Wage Differential**	Cost Plus Payroll Taxes
Misc.	Cost

Fee	
Labor + Overhead	14%
Other Direct Costs	0%

Notes:

*Overtime rates apply to these classifications and will be charged at 1.5 times the hourly rate.

**Prevailing Wage Differentials may apply for Construction Inspection Services.

Labor Costs to be invoiced based on actual hourly rate plus overhead plus fee.

Other Direct Costs to be invoiced at actual cost plus fee.

CALIFORNIA DEPARTMENT OF AGING
LONG-TERM CARE AND AGING SERVICES DIVISION
1300 NATIONAL DRIVE, SUITE 200
SACRAMENTO, CA 95834
Internet: www.aging.ca.gov
TDD Only: 1-800-735-2929
TEL 916-419-7540
FAX 916-928-2506



May 3, 2012

Mr. Marty Fortney, Chairperson
Board of Supervisors
County of Inyo
P.O. Box N
Independence, California 93526

Dear Supervisor Fortney:

Thank you for your April 20, 2012 letter, submitting the County of Inyo's proposal to be designated as the Area Agency on Aging (AAA) for Planning and Service Area (PSA) 16. The California Department of Aging (CDA) needs additional information to complete its evaluation of the County of Inyo's proposal.

In its guidance dated January 29, 2012, CDA requested that you submit a detailed proposal containing information regarding your ability to fulfill the federally mandated requirements specified in the Older Americans Act (OAA). Given that your entity has not yet been designated as the AAA for PSA 16, CDA is requesting that you provide a letter assuring that if your entity is designated as the AAA for PSA 16, the County of Inyo will prepare and develop an area plan for PSA 16 consistent with the requirements under OAA Section 306 (a). Such plan will be subject to CDA's approval.

To ensure prompt review of the County of Inyo's proposal for AAA designation, please reply to this request for additional information at your earliest convenience, but no later than Thursday, May 17, 2012. Please feel free to contact me at 916-419-7542 or ed.long@aging.ca.gov, if you require further information.

Sincerely,

A handwritten signature in cursive script that reads "Edmond P. Long".

Edmond P. Long
Deputy Director
Long-Term Care and Aging Services Division

cc: Lora Connolly, Director, California Department of Aging
Michael Alward, Policy Manager, California Department of Aging
Kevin Carunchio, Inyo County Administrative Officer
Linda Arcularius, Chair, Inyo-Mono AAA Governing Board
Roger Rasche, Chair, Inyo-Mono AAA Advisory Council
Jean Turner, HHS/IMAAA Director



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
19-20-
21-22-23
24-25

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: COUNTY COUNSEL

FOR THE BOARD MEETING OF: May 8, 2012

SUBJECT: ISSUES TO BE DISCUSSED IN CLOSED SESSION

DEPARTMENTAL RECOMMENDATION:

PERSONNEL [PURSUANT TO GOVERNMENT CODE § 54957] - Public Employee Performance Evaluation Title: Director of Health and Human Services

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriff's Association (DSA) - Negotiators: Labor Relations Administrator, Sue Dishion, Information Services Director, Brandon Shults, and Planning Director Josh Hart.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistant Association (EOAA) - Negotiators: Chief Probation Officer Jeff Thomson and Labor Relations Administrator Sue Dishion

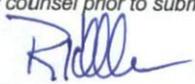
CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICCOA) - Negotiators: Labor Relations Administrator Sue Dishion.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Labor Relations Administrator Sue Dishion, Director Child Support Services Susanne Rizo, and Chief Probation Officer Jeff Thomson.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators' Association (LEAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: _____ Date <u>5.2.12</u>
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DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

 Date: 5.2.12