

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.

NOTE: At the conclusion of this regular meeting the Board may convene in Special Session, as necessary, to continue the Budget Hearings which began on Monday, September 9, 2013.

September 10, 2013

8:30 a.m. 1. PUBLIC COMMENT

CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code §54956.9(d)(1)] - City of Los Angeles, Department of Water and Power of the City of Los Angeles v. Inyo County Board of Supervisors, et al.** Inyo County Superior Court Case No. 12908; Blackrock 94 Dispute Resolution.
3. **PERSONNEL [Pursuant to Government Code §54957] - Public Employee Performance Evaluation - Title – Director, Health and Human Services.**
4. **REPORT ON CLOSED SESSION AS REQUIRED BY LAW.**

OPEN SESSION

10:00 a.m. PLEDGE OF ALLEGIANCE

5. **PUBLIC COMMENT**
6. **COUNTY DEPARTMENT REPORTS (Reports limited to two minutes)**
7. **INYO NATIONAL FOREST – Forest Supervisor Ed Armenta will discuss the Inyo National Forest Plan Update/Revision with the Board.**

CONSENT AGENDA (Approval recommended by the County Administrator)

HEALTH AND HUMAN SERVICES

8. **Inyo First 5 – Request Board appoint the following to the Inyo County Children and Families First Commission to complete unexpired three year terms two ending December 5, 2015 and one ending February 1, 2015: Candice Ruiz, representing a parent receiving services category; Raymond Naylor-Hunter representing a local organization for prevention or early intervention category; and Robyn Wisdom, representing educators specializing in early childhood development category. (Notice of vacancy resulted in requests for appointment being received from Ms. Ruiz, Mr. Naylor-Hunter and Ms. Wisdom.)**

PLANNING

9. Request Board review and approve the Memorandum of Understanding with the U.S. Department of Interior, Bureau of Land Management, U.S. Fish and Wildlife service, California Energy Commission and the California Department of Fish and Wildlife regarding administrative draft review of the Desert Renewable Energy Conservation Plan; and authorize the Chairperson to sign.

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

10. **PLANNING** – Request Board review the Notice of Preparation (NOP) of Draft Tribal Environmental Impact Report for the proposed Fort Independence Hotel and Casino Project; approve correspondence to the Fort Independence Community of Paiute Indians in response to the NOP; and authorize the Chairperson to sign.
11. **PLANNING** – Request Board A) conduct a workshop to receive a presentation on the "Next Steps Memorandum" on the Building Blocks for Sustainable Communities: Neighborhood Planning for Healthy Aging, Lone Pine, Inyo County, California and B) provide staff with comments and direction for implementing the action items.
12. **PLANNING – Yucca Mountain** – Request Board receive an update from staff regarding recent events pertaining to the Yucca Mountain Repository, including (a) Write of Mandamus granted on August 13, 2013 ordering the Nuclear Regulatory Commission to continue the licensing process for Yucca Mountain, and (b) a hearing on July 31, 2013 by the House Energy and Commerce Subcommittee on Environment and Economy on the Energy Department's Strategy for Radioactive Waste Disposal; and provide direction to staff on these issues to be shared with the Affected Units of Local Government (AULG).
13. **CLERK OF THE BOARD** – Request approval of the minutes of the Board of Supervisors meetings as follows: A) Regular Meeting of August 13, 2013; B) Special Meeting of August 19, 2013; C) Special Meeting of August 20, 2013; and D) Regular meeting of August 20, 2013.

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

- 11:30 a.m. 14. **PLANNING** – Request Board conduct A) a **public hearing** on a proposed resolution titled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Declaring the Vacation and Abandonment of That Portion of Birch Street in West Bishop; and B) at the conclusion of the public hearing adopt the Resolution.
- 1:30 p.m. 15. **COUNTY ADMINISTRATOR – Integrated Waste** – Request Board accept a presentation to review the recommended program changes in the Integrated Waste Management Program and provide direction to staff on how to proceed?

BOARD MEMBERS AND STAFF REPORTS

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

16. **PUBLIC COMMENT**

CORRESPONDENCE - INFORMATIONAL



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 – First 5 Inyo County

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Appointment of commission members Candice Ruiz and Raymond Naylor-Hunter and reappointment of Robyn Wisdom to the Inyo County Children and Families Commission.

DEPARTMENTAL RECOMMENDATION: - Request Board appoint the following to the Inyo County Children and Families First Commission: (a) Candice Ruiz, representing the parent receiving services category, and (b) Raymond Naylor-Hunter, representing the local organization for prevention or early intervention category, and (c) reappoint Robyn Wisdom, representing educators specializing in early childhood development, to complete unexpired three-year terms two ending December 2015, and one ending February 1, 2015.

COUNTY ADMINISTRATOR RECOMMENDATION:

SUMMARY DISCUSSION: - County Ordinance 1034 requires the Commission membership to include seven (7) members representing various backgrounds as designated in statute. Currently, there are three (3) active board members. The addition of the two new members and the reappointment of Ms. Wisdom will bring the count to six (6) members. Efforts will be made to fill the remaining vacancy. Candice Ruiz has been an active participant in the First 5 program, and would like to volunteer and provide valuable input as a parent receiving services. Raymond Naylor-Hunter is the Executive Director of the Inyo American Indian Education Initiative, Inc. which provides social services and early intervention and prevention activities for clients. He has a wealth of experience working with our local communities. Robyn Wisdom has been a commission member representing the educators specializing in early childhood development since 2010. She has been a key member of the commission and brings a valuable perspective to the First 5 program. Each of these applicants would be a great asset to the commission. They each submitted a letter of interest to become or remain part of the commission during a recent recruitment conducted by your Assistant Clerk of the Board.

ALTERNATIVES: - Your Board could deny this request resulting in the need for further recruitments to fulfill County Ordinance 1034.

OTHER AGENCY INVOLVEMENT: - None

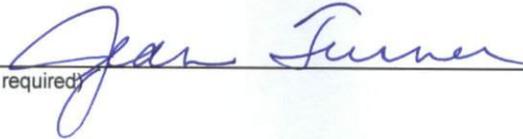
FINANCING: - None

APPROVALS

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

DEPARTMENT HEAD SIGNATURE:

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



Date: 8-29-13

June 8, 2013

Inyo County Board of Supervisors
Attn: Pat Gunsolley
Asst. Clerk of Board of Supervisors

P.O. Box N
Independence, Ca. 93526

RE: Parent Commissioner Position

Greetings!

My name is Candice Ruiz and I recently moved with my husband and four children to the city of Bishop. In the six months I've been here I have thoroughly enjoyed several of the classes that First Five has offered. Both Jodi and April have been incredibly supportive resources and because I've gleaned so much, I felt motivated to want to give back. I understand you are in need of a parent commissioner and would like to volunteer for the position. I feel as though my input would be valuable as I live in the area and have many children under the age of five. I thank you again for your time and consideration.

Sincerely,

Candice Ruiz

Raymond James Naylor-Hunter, M.A.
340 S. Webster St.
Independence, CA 93526
(951) 205-2982

August 2, 2013

First 5 Inyo County
568 W. Line St.
Bishop, CA 93514

Dear First 5 Inyo County:

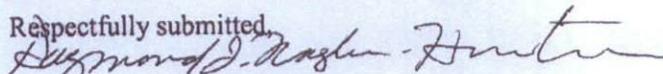
Hello. My name is Ray Hunter, and I would like to be considered to be seated on the First 5 Inyo County Commission. I am currently employed as the Executive Director with the Inyo American Indian Education Initiative, Inc. This small non-profit organization provides social services, early intervention and prevention activities, and can make referrals for clients to agencies that can assist them with services forming a better quality of life. I have been employed with this company for 3 years. I live in Independence with my wife and two children.

I hold a master of arts degree from the UCLA in American Indian Studies with a concentration in history and law. I have 10 years experience working in the helping field. I have worked as a substance abuse counselor guiding teens in Orange County, as a family advocate for local tribes, and as a program director for local tribal education departments.

I have a wealth of experience and knowledge working in Native American communities focusing on sobriety, and health & wellness movements. I participate in family groups and prevention activities that assist families and individuals create self-reliance, and sustainability allowing them to create future and worthwhile plans and networks. Also, I volunteer at local Indian reservation education centers, community events, and education workshops-providing information and life experiences that help to mentor people to think critically about wellness, healing, and sustainability.

I believe I can bring a fresh viewpoint and critical eye if I am seated on the commission. I know that together our communities can thrive and create opportunity where it may have been non-existent or not tapped into before.

Respectfully submitted,


Raymond J. Naylor-Hunter

Inyo County Board of Supervisors
PO Drawer N
Independence, CA 93526

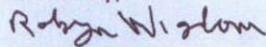
August 2, 2013

Honorable Board of Supervisors;

I am requesting reappointment to the Inyo County First 5 Commission. I've been serving as a First 5 Commissioner under the category of Early Childhood Educator since July 6, 2010. I enjoy sitting on the Commission and would like to continue my service with First 5.

Thank you for considering this request for reappointment to the Inyo County First 5 Commission.

Sincerely;



Robyn Wisdom
2168 Kiowa Circle
Bishop, CA 93514



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

9

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

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Desert Renewable Energy Conservation Plan – Memorandum of Understanding regarding Review of Administrative Draft Plan

DEPARTMENTAL RECOMMENDATION: Review the Memorandum of Understanding with the U.S. Department of the Interior, Bureau of Land Management, U.S. Fish and Wildlife Service, California Energy Commission, and the California Department of Fish and Wildlife regarding administrative draft review of the Desert Renewable Energy Conservation Plan and authorize the Chair to sign.

REQUESTED ACTION: Staff has briefed the Board previously regarding the Desert Renewable Energy Conservation Plan (DRECP);¹ most recently about renewable energy planning grants for counties within the DRECP area. Work on the DRECP is proceeding, and an internal administrative review of the Plan and related documents is expected over the next several months, with public review later in the year.

DRECP representatives have requested that the County enter into the attached Memorandum of Understanding (MOU) to provide for confidential internal staff review of administrative drafts of the DRECP. The agreement commits the County to refraining from releasing administrative drafts of the DRECP, unless required under the Public Records Act or other law. The MOU may be terminated by either party with 30 days written notice. Staff has reviewed the MOU, and recommends that the Board authorize the Chair to sign in order to afford the County input into development of the DRECP. While the MOU limits the County's ability to utilize and disclose the administrative draft documents, such opportunities would not be available to the County absent the MOU.

BACKGROUND: Governor Schwarzenegger ordered the development of the Desert Renewable Energy Conservation Plan (DRECP) for the Mojave and Colorado deserts to provide binding, long-term endangered species permit assurances and facilitate renewable energy project review and approvals. The DRECP planning area includes portions of Inyo County: roughly in the Owens Valley to just north of Independence, the Panamint Valley, Death Valley, and other southeast portions of the County. A Renewable Energy Action Team (REAT) was formed consisting of the California Natural Resources Agency, California Energy Commission (CEC), California Department of Fish and Wildlife (CDFW), Bureau of Land Management (BLM), and the U.S. Fish and Wildlife Service (USFWS) in part to coordinate the DRECP. Other involved State and federal agencies include the California Public Utilities Commission, California Independent System Operator, National Parks Service, and the Department of Defense.

¹ Refer to <http://www.drecp.org/> for more information regarding the Plan and <http://inyoplanning.org/RenewableNewPage.htm> for previous correspondence and other materials published by the County regarding the DRECP.

Local governments, including the County of Inyo, were invited to participate on the DRECP Stakeholder Committee with the REAT agencies. In addition to the REAT and other agencies discussed previously, those participating on the Committee include the counties of Kern, San Bernardino, Los Angeles, Imperial, and Riverside, a variety of non-governmental organizations, utilities, renewable energy developers, Native American organizations, and off-highway vehicle associations. The County has been participating in the DRECP, and has entered into an MOU with the CEC for this participation.

The DRECP is to be a Habitat Conservation Plan under the Federal Endangered Species Act and a Natural Communities Conservation Plan (NCCP) under the California Natural Community Conservation Planning Act. The BLM, in compliance with the Federal Land Policy and Management Act, will consider the DRECP for possible amendments to the California Desert Conservation Area Plan. If the County chooses to participate in the DRECP, it may issue permits under the NCCP.

OTHER AGENCY INVOLVEMENT: Governor Brown, CEC, USFWS, CDFG, BLM, counties of Kern, Los Angeles, Imperial, Riverside, San Diego, and San Bernardino, and other affected agencies and stakeholders.

ALTERNATIVES: The Board may consider not authorizing the Chair to sign and/or directing staff to negotiate changes to the MOU. These options are not recommended, as the MOU provides the County with valuable input opportunities, and any negotiations may be time-consuming and unproductive.

FINANCING: General funds are utilized to monitor State and federal planning efforts.

<u>APPROVALS</u>	
COUNTY COUNSEL: <i>Yes</i>	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> <i>Nauchoir 9/3/13</i>
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>
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>

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

Johnna West _____ Date: *9/3/13*

Attachment: MOU

MEMORANDUM OF UNDERSTANDING

Between

United States Department of the Interior, Bureau of Land Management; United States Department of the Interior, Fish and Wildlife Service; California Energy Commission; California Department of Fish and Wildlife;

and [insert Party] _____
regarding the

Desert Renewable Energy Conservation Plan

A. PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the United States Department of the Interior, Bureau of Land Management (BLM); United States Department of the Interior, Fish and Wildlife Service (FWS); California Energy Commission (CEC); California Department of Fish and Wildlife (CDFW);

and [insert Party] _____.

B. PURPOSE

The purpose of this MOU is to emphasize and support the partnership among the Parties to assist in the development and preparation of the Desert Renewable Energy Conservation Plan (DRECP). This MOU establishes that the parties will cooperate and coordinate in the preparation of the DRECP and establishes procedures through which each Party will participate with the DRECP team to conduct the analysis and develop the DRECP.

C. INTRODUCTION AND BACKGROUND

The DRECP is a multi-species conservation plan designed to guide solar and other renewable energy project siting in the Mojave and Colorado Desert regions of California and to provide for the conservation and management of certain species, habitats and natural communities in these areas which may be affected by those projects. The DRECP will be a multi-volume joint document, which will include (1) one or more habitat conservation plans under the federal Endangered Species Act, (2) a natural community conservation plan under the state Natural Community Conservation Planning Act, (3) a Land Use Plan Amendment under the Federal Land Policy and Management Act, and (4) a joint environmental impact statement/environmental impact report under the National Environmental Policy Act and California Environmental Quality Act.

D. PRINCIPLES OF AGREEMENT

The Parties hereby agree to:

1. BLM, FWS, CEC, and CDFW, may share with [insert Party] _____ preliminary, administrative drafts of the DRECP.

2. Consistent with each Party's respective policies and statutory authorities, the Parties agree to refrain from releasing the administrative drafts received pursuant to this MOU.

E. OTHER PROVISIONS

1. Nothing in this MOU shall be construed as limiting or affecting in any way the authority or legal responsibilities of any Party.

2. Nothing in this MOU binds any Party to perform beyond its respective authorities.

3. Nothing in this MOU requires any Party to assume or expend any funds in excess of available appropriations, authorized by law.

4. The mission requirements, funding, personnel, and other priorities of each Party may affect its ability to fully implement all the provisions identified in this MOU.

5. This MOU is neither a fiscal nor a funds obligation document. Specific activities that involve the transfer of money, services, or property between any Party shall require execution of separate agreements or contracts.

6. Nothing in this MOU restricts any Party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

7. This MOU does not supersede any of the terms of earlier MOUs governing the DRECP process entered into by any of the parties.

8. Any information furnished to a federal agency under this MOU is subject to the Freedom of Information Act (5 USC 552). Any records furnished to a state agency are subject to the California Public Records Act (Calif. Govt. Code § 6250 et seq.).

9. Each and every provision in this MOU is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.

10. All cooperative work under the provisions of this MOU will be accomplished without discrimination against any employee because of race, creed, color, or national origin.

11. Amendments or supplements to this MOU may be proposed by any Party and shall become effective upon written approval of all Parties.

12. Any Party may terminate its participation in this MOU at any time through written notification to the other Parties at least 30 days prior to termination.

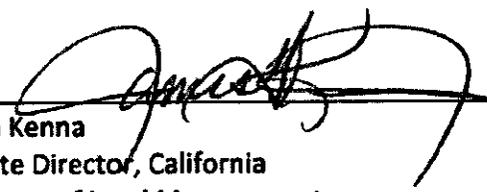
13. This MOU shall become effective upon signature by all Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document.

F. CONTACTS

The primary points of contact for carrying out the provisions of this MOU are:

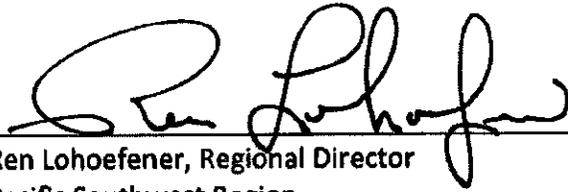
1. BLM: Tom Pogacnik
2. FWS: Alexandra Pitts
3. CEC: Roger Johnson
4. CDFW: Kevin Hunting
5. [Party] _____ : [Contact] _____

G. APPROVALS



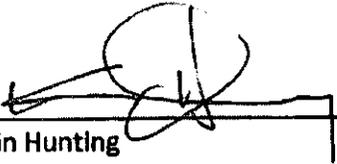
Jim Kenna
State Director, California
Bureau of Land Management

6/5/2013
Date



Ren Lohofener, Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service

June 7, 2013
Date



Kevin Hunting
Chief Deputy Director
California Department of Fish and Wildlife

6.13.13
Date

Robert B. Weisenmiller

6-12-13

Date

Robert B. Weisenmiller
Chair
California Energy Commission

[Name]

[Title]

[Party]

Date



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: Planning Department

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Response to the Notice of Preparation for the Draft Tribal Environmental Impact Report being prepared for the proposed Fort Independence Hotel and Casino Project

DEPARTMENTAL RECOMMENDATION: Review the Notice of Preparation (NOP) of Draft Tribal Environmental Impact Report (TEIR) and approve correspondence to the Fort Independence Community of Paiute Indians in response to the NOP and authorize the Chairperson to sign.

SUMMARY DISCUSSION: A Notice of Preparation (NOP) of Tribal Environmental Impact Report (TEIR) for a proposed Fort Independence Hotel and Casino Project (refer to Attachment 2) has been issued. The first project phase consists of an approximately 80,000 square foot gaming floor accommodating up to 800 gaming machines and table games, a 60-room four-story hotel tower, and related facilities. Phase 2 would include expanded facilities, restaurants, and additional amenities, with full build-out including a conference center, multi-purpose event center, and related and ancillary facilities.

The purposes of the NOP, amongst others, include soliciting input into the scope of the EIR, possible mitigation measures, and alternatives. According to the NOP, the EIR will address land use, population and housing, transportation/circulation, air quality and noise, hydrology and water quality, biological and cultural resources, aesthetics, hazards and hazardous materials, public services and utilities, and geology and soils. The Compact with the State providing for the project requires preparation of the TEIR, mitigation of impacts, and an agreement with the County to address benefits and impacts to the satisfaction of the Governor.¹ The Compact also describes the requirements for the TEIR. Responses to the NOP are due September 16, 2013.

County staff has prepared a draft response to the NOP, which is included in Attachment 1, for the Board's consideration. Staff has solicited input from potentially impacted County departments, the results of which have been incorporated into the draft correspondence, as appropriate. Overall, staff recognizes that the project has multiple potential benefits to the County if impacts to County services and infrastructure and other environmental effects are addressed satisfactorily.

ALTERNATIVES: The Board may consider additional input to be incorporated into the correspondence. Although the Board could refrain from submitting correspondence altogether, this alternative is not suggested due to the potential severity of impacts that could result from the project.

OTHER AGENCY INVOLVEMENT:

County departments and other agencies, organizations, and persons will also be participating in the environmental review process, such as Caltrans, the California Department of Fish and Wildlife, Independence Fire Department, other local agencies, etc.

¹ Refer to http://gov.ca.gov/docs/Compact_Final_2013.pdf to review the Compact.

FINANCING:

General funds are utilized to support staff's efforts in monitoring tribal activities. If impacts to County services and infrastructure and other environmental effects are addressed, the project has the potential to result in multiple benefits to the County.

<u>APPROVALS</u>	
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 _____
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:

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

 Date: 9/3/13

Attachments:

1. Draft Correspondence
2. Notice of Preparation

September 10, 2013

Fort Independence Indian Community of Paiute Indians
PO Box 214
Independence, CA 93526

Re: Notice of Preparation for the Draft Tribal Environmental Impact Report being prepared for the proposed Fort Independence Hotel and Casino Project

To Whom it May Concern:

On behalf of the Inyo County Board of Supervisors, we are pleased and excited about the wide array of opportunities the proposed Fort Independence Hotel and Casino Project presents for the Tribe and Inyo County. We are looking forward to working with you to expedite and facilitate this project, and we offer our assistance to the extent we can to work through any issues that may arise. We note that the Compact between the Tribe and the State requires an agreement with the County to address impacts and benefits, and we welcome the opportunity to develop mutually agreeable solutions.

With this in mind, we offer the following comments regarding the Notice of Preparation for inclusion in the Draft Tribal Environmental Impact Report (TEIR).

1. We look forward to refinement of the project description in order to better assist us in understanding the project's benefits and impacts.
2. We believe that the proposed project has the potential to benefit the County and its citizens tremendously. However, we request that an economic analysis be prepared to confirm this belief and ensure that blighting impacts will not occur.
3. We look forward to working with you to address impacts our public services and infrastructure, and we plan to coordinate with you and our staff to refine impact estimates and identify mitigation. We believe that this analysis should include direct, indirect, and induced growth that may occur due to the project. As you know, the community of Independence is relatively small, and the project could significantly impact local services and infrastructure, not only when considered by itself, but also from indirect and induced growth.
 - a. The TEIR should address impacts to County health services and other social services.
 - b. The TEIR should evaluate increased demand for police protection services and impacts to the Sheriff. Means to offset impacts from new personnel and infrastructure should be included in the analysis. We suggest that security plans be prepared for inclusion in the Draft TEIR to mitigate impacts to the Sheriff.
 - c. The TEIR should address potential impacts to emergency response and evacuation plans.
 - d. Potential impacts on County roads and traffic in the vicinity should be evaluated in the TEIR. It appears that an encroachment permit will be required for Phase II work on the Fort Independence Road/US 395 intersection. We encourage consideration of transit in parking lot operations.
 - e. The project will impact the Independence Landfill, which only has around 48 years left of service life based on the current amount of waste entering the landfill. The TEIR should evaluate these impacts and identify commensurate mitigation measures. We strongly urge that a recycling program with a service provider be included to minimize waste being disposed of in the landfill.

- f. Potential impacts on County recreational facilities, including the Independence Park and Campground, should be evaluated and mitigation identified.
4. The TEIR should include an analysis regarding the County's General Plan.¹
5. We suggest that lighting be designed sensitively to minimize glare and illumination of dark skies.
6. We encourage that noise attenuation be considered in project design to minimize any noise impacts to nearby residences.
7. We suggest that alternatives and mitigation measures that connect the townsite of Independence into the project be considered, such as transit and potentially rail options; we would be happy to assist in identifying funding for such endeavors.

Thank you again for the opportunity to provide input regarding the scope of the TEIR. We look forward to working with you throughout this process. Please contact the County Administrative Officer, Kevin Carunchio, at (760) 878-0292 or at kcarunchio@inyocounty.us to begin working on evaluating impacts to County services and infrastructure, or if you have any questions.

Sincerely,

Linda Arcularius, Chair
Inyo County Board of Supervisors

cc: Board of Supervisors
County Administrative Officer
County Counsel
Planning Department
Health and Human Services Department
Public Works Department
Sheriff

¹ Refer to http://inyoplanning.org/general_plan/index.htm for more information regarding the County's General Plan.



**ANALYTICAL
ENVIRONMENTAL
SERVICES**

1801 7th Street, Suite 100
Sacramento, CA 95811
<http://www.analyticalcorp.com>
(916) 447-3479 • Fax (916) 447-1665

TRANSMITTAL

To: Inyo County
Administration Office
P.O. Drawer N
224 N. Edwards Street
Independence, CA 93526

From: Pete Bontadelli

Phone:

Date: August 14, 2013

Re: Fort Independence Hotel and Casino
Project

CC:

Urgent For Review Please Comment Please Reply For Your Information

On behalf of the Fort Independence Indian Community of Paiute Indians, please find enclosed one hard copy of the Fort Independence Hotel and Casino Project Notice of Preparation (NOP) for a Tribal Environmental Impact Report (TEIR). This NOP is being submitted to Inyo County and comments are requested regarding the possible off-reservation environmental effects and reasonable mitigation measures that the Fort Independence Tribe will have to explore in the TEIR to comply with the provisions of the Draft Tribal-State Gaming Compact between the Tribe and the State. To be considered, please ensure any comments are submitted by September 16, 2013 (contact information included with enclosed NOP).



RECEIVED

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**NOTICE OF PREPARATION
TRIBAL ENVIRONMENTAL IMPACT REPORT**

ADJ
CLERK OF

Date: August 16, 2013
To: State Clearinghouse
County of Inyo
Interested Parties

The Fort Independence Indian Community of Paiute Indians (Tribe) is the Lead Agency for the preparation of a Tribal Environmental Impact Report (TEIR) to assess the potential off-reservation environmental impacts of the Fort Independence Hotel and Casino Project (Proposed Project). The TEIR is being developed in accordance with the Tribal-State Gaming Compact (Compact) entered into by the Tribe and the State of California in February 2013.

The Tribe is hereby requesting comments regarding the probable off-reservation environmental effects and reasonable mitigation measures to be addressed in the TEIR to comply with the provisions of the Compact.

The project description, location, vicinity map, site plan, and a brief description of probable environmental effects are attached. Information about the Proposed Project will also become available online at www.fortindependenceteir.com.

Your comments should be sent at the earliest possible date, but postmarked no later than September 16, 2013.

Please send your comments to:

Fort Independence Indian Community of Paiute Indians
P.O. Box 214
Independence, CA 93526

PROJECT TITLE

Fort Independence Hotel and Casino Project.

LEAD AGENCY

Fort Independence Indian Community of Paiute Indians

CONTACT PERSON FOR ENVIRONMENTAL DOCUMENT

Pete Bontadelli, Project Manager, Analytical Environmental Services
(916) 447-3479

ENVIRONMENTAL REQUIREMENTS OF THE TRIBAL-STATE GAMING COMPACT

Section 11.0 of the Compact requires that a TEIR be prepared and provide detailed information about potential off-reservation environmental effects which may be caused by the Proposed Project and methods by which significant effects on the off-reservation environment could be minimized. Environmental effects are defined in the *Off-Reservation Environmental Impact Analysis Checklist* which is included as an exhibit to the Compact (Checklist) and is included as **Attachment A**. The Tribe has determined that the Proposed Project may have a significant effect on the off-reservation environment and therefore is preparing a TEIR.

PROJECT INFORMATION

Site Location

The Proposed Project is located in Inyo County, California (**Figure 1**). The development would be constructed within the western portion of the 360-acre Fort Independence Reservation (**Figure 2**), generally north and west of the Tribe's existing gas station/mini-mart along U.S. 395. Project site access is currently provided by U.S 395, via the Miller Lane exit south of the project site.

Description of the Project

The Tribe proposes to develop a combination Class II and Class III Gaming Complex and associated full service hotel structure (Proposed Project). The multi-phase development at build-out would include an approximately 80,000 square foot of gaming floor accommodating up to 800 gaming machines and table games. The initial development phase would involve the construction of a fabric membrane structure occupying approximately 46,000 square feet with 36,000 ft of gaming-related space and up to 60-room, four-story hotel tower. Phase 2 would include an expanded facility with increased gaming floor, restaurant space, and additional amenities. At full build-out the associated facilities would include a conference center and a multi-purpose event center, developed primarily by the conversion of the Phase 1 fabric membrane structure. Surface parking, included under both the first and second phases, would be constructed primarily to the south and east of the gaming structure with initial access to the project site provided from the existing Miller Lane intersection to the south of the project site. At full build out an additional access may be developed at the existing eastbound Fort Independence Road intersection with U.S. 395.

The final phase of development would include the expansion of the existing Tribal campground and recreational vehicle (RV) park, development of rental cabins, and the possible development of a golf course.

Wastewater would be treated through the development of an on-site wastewater treatment plant (WWTP). The WWTP would be expandable to meet the ultimate treatment needs at full build-out. Potable water supply would be provided primarily from on-site groundwater wells, through integration into the existing Tribal water supply infrastructure. A water treatment facility is proposed. A preliminary site plan for the Proposed Project is provided as **Figure 3**.

Potential Off-Reservation Environmental Effects

The following section discusses potential adverse off-reservation environmental impacts associated with the Proposed Project. These environmental resources will be examined in the TEIR using the significance criteria presented in the Checklist. The TEIR will evaluate the extent to which the Proposed Project's mitigation measures, in combination with adopted governmental requirements, would mitigate potential adverse off-reservation environmental impacts. The TEIR will identify any expected significant off-reservation adverse impacts that cannot be mitigated. The TEIR will provide analysis of the Proposed Project's off-reservation impacts including, but not limited to, the following resource areas:

Land Use

The project site is located within an area developed with commercial land uses adjacent to U.S. 395 on the Fort Independence Reservation just north of the Tribe's existing gas station/mini mart and Class II gaming facility and would generally be compatible with the designated land uses within populated areas in the off-reservation environment in Inyo County. A majority of the surrounding land is owned by the City of Los Angeles Department of Water and Power (LADWP) and maintained as open space. The TEIR will include an analysis of the Proposed Project's off-reservation impact on surrounding land uses.

Population and Housing

The Proposed Project would provide new employment opportunities; and may have an impact on off-reservation housing and growth-inducement due to the minimal existing local labor force and commuting distance to the project site. TEIR will include an analysis of the Proposed Project's off-reservation impact on the regional population and housing supply and will discuss any needed mitigation measures.

Transportation and Circulation

The Proposed Project would generate additional vehicular use of local roadways, contributing to increased traffic volumes and possible impacts on existing levels of service. Potential impacts to off-reservation roads and circulation during both the construction and operational phases of the Proposed Project will be evaluated. The TEIR will additionally include an analysis of the Proposed Project's cumulative off-

reservation impact on the regional transportation system and will discuss any recommended mitigation measures.

Air Quality and Noise

Construction of the Proposed Project would generate short-term emissions, including dust, which could contribute to existing or projected air quality exceedances. The Proposed Project would also generate operation based air emissions primarily through the addition of vehicular traffic to the area's roadway system. Construction activity would increase noise levels in the area during the construction phase, and increased traffic trips generated by the operation of the Proposed Project could potentially increase off-reservation noise levels. The Proposed Project's off-reservation impact on air quality and noise will be evaluated in the TEIR. Potential impacts from GHG emissions during both construction and operations will also be evaluated in the TEIR.

Hydrology and Water Quality

In the absence of appropriate mitigation measures, the Proposed Project has the potential to result in impacts to off-reservation surface water quality from discharges to surface waters during and after construction. Post-construction impacts could result from the concentration of stormwater runoff by impervious pavement surfaces. During periods of wet weather, stormwater flows over on-reservation roadway surfaces, parking lots, and other impervious surfaces, could carry pollutants and sediment into local off-reservation water bodies such as Oak Creek and the Owens River. Assessment of the Proposed Project's impacts to off-reservation drainage patterns, groundwater, and water quality will be conducted as part of the TEIR. The TEIR will also discuss potential erosion control and other mitigation measures to minimize off-reservation impacts to water quality consistent with USEPA regulation and jurisdiction. The TEIR will also evaluate any potential off site impacts from the use of groundwater, which is the anticipated primary source for the project, and from the operation of the WWTP and the use, storage and/or disposal of treated wastewater.

Biological and Cultural Resources

The Proposed Project would be developed on federal trust property. Therefore, direct impacts to off-reservation biological habitat and cultural resources are not likely to be significant. The project has been sited to avoid known cultural resources on the trust land. The TEIR will evaluate potential impacts to biological and cultural resources from any off-reservation infrastructure improvements that may be needed. No direct impacts to waters of the U.S. are proposed.

Aesthetics

The project site is located in area of the County designated by the General Plan for agriculture, residential estate, State and Federal Lands, and Natural Resources. Surrounding land uses include open space and rural residential. The proposed hotel and casino would only be visible from U.S. 395 in the immediate vicinity of the project site. The TEIR will evaluate potential changes to the existing visual character and

quality of the area, including light and glare effects. The project will incorporate design features of the surround landscape of the eastern Sierras into project architecture. The TEIR will assess the off-reservation aesthetic impacts and identify mitigation measures, if necessary.

Hazards and Hazardous Materials

The TEIR will evaluate potential off-reservation impacts associated with hazards and hazardous materials resulting from construction and operation of the Proposed Project.

Public Services and Utilities

The Proposed Project would create additional demand for public services (fire protection, law enforcement) and utility services (water supply, wastewater treatment, electricity/natural gas, communication services). The TEIR will discuss potential impacts to these service providers, as well as applicable mitigation measures.

Geology and Soils

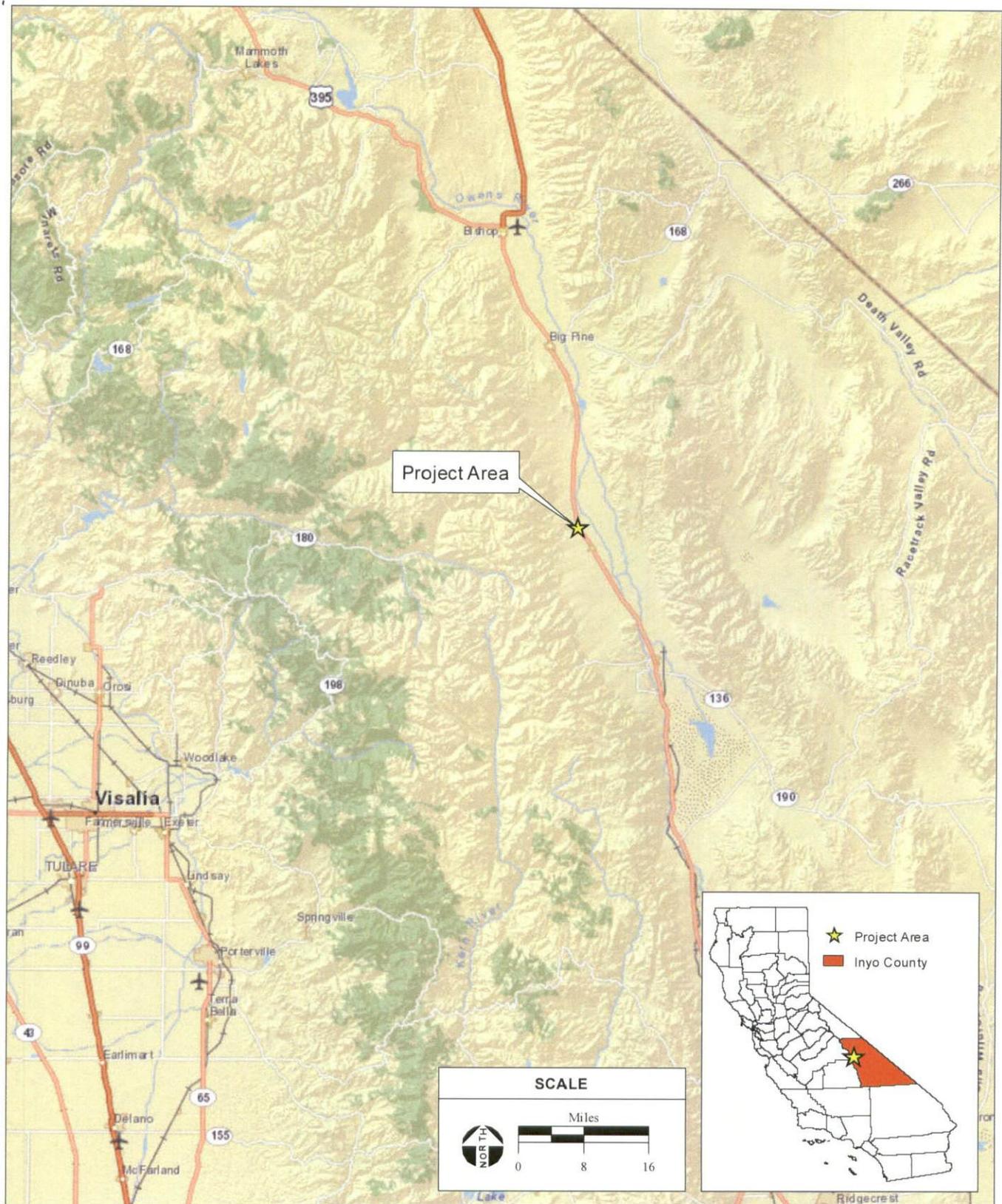
The Proposed Project would be developed in an area in which previous mudflows have occurred. The TEIR will discuss potential impacts to geology and soils, as well as applicable mitigation measures.

The *Off-Reservation Environmental Impact Analysis Checklist* for the Proposed Project is included as **Exhibit A** of this NOP.

Project Approvals

The following project approvals may be required:

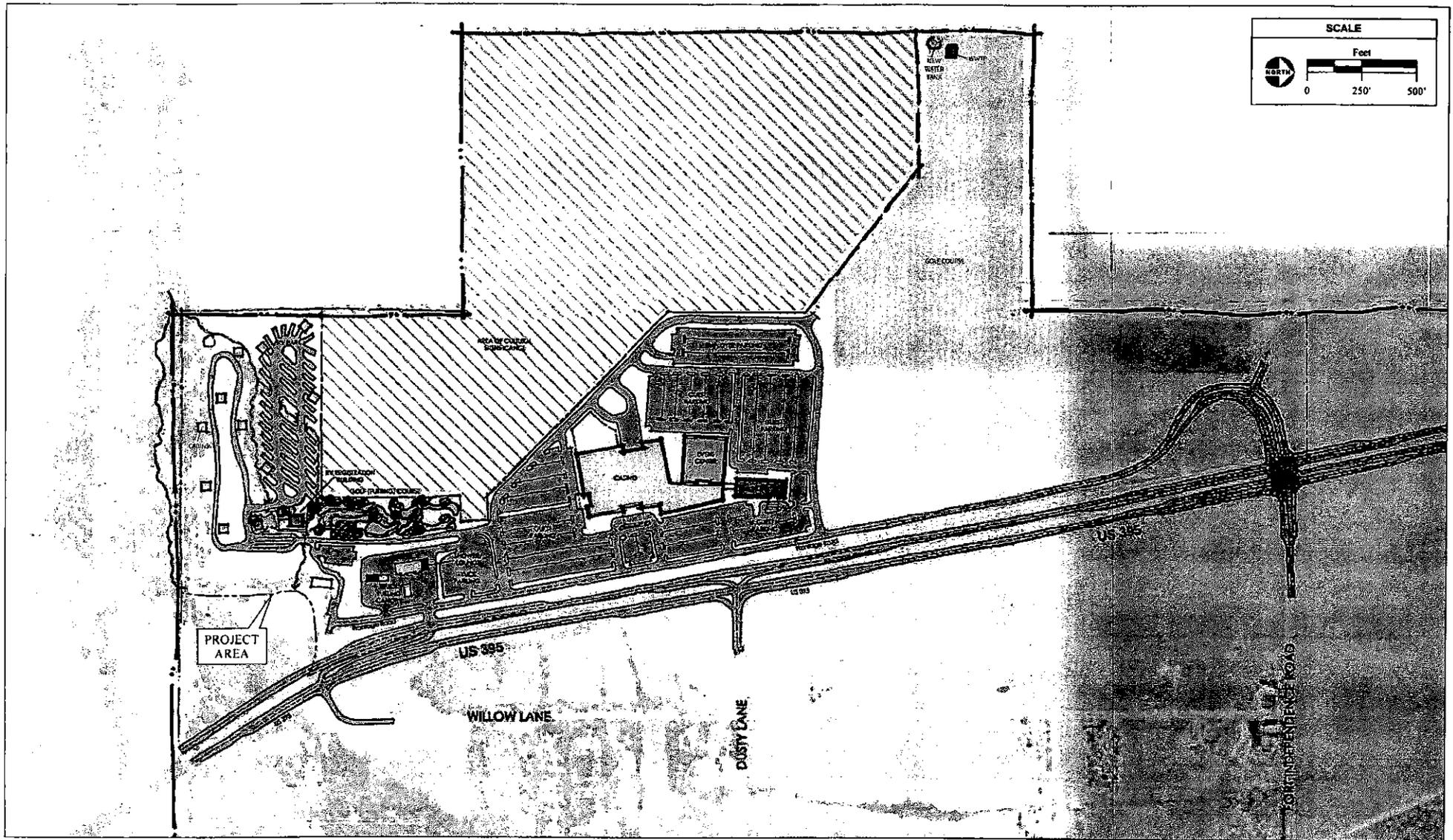
- 1) Fort Independence Tribal Council: The Draft and Final TEIR, along with associated findings, will be submitted to the Tribal Council for consideration and certification.
- 2) U.S. Environmental Protection Agency: National Pollutant Discharge Elimination System 2012 Construction General Permit and associated Stormwater Pollution Prevention Plan (SWPPP).
- 3) California Department of Transportation: Encroachment Permit for the development of a second access intersection along U.S. 395 at full build-out.
- 4) Pursuant to Section 11.8.7 of the Compact, the Tribe and Inyo County shall enter into an Intergovernmental Agreement (IGA) to mitigate or compensate Proposed Project impacts.



SOURCE: ESRI Data, 2013; AES, 2013

Fort Independence Hotel and Casino Project NOP / 213508 ■

Figure 1
Regional Location



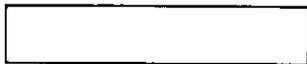
SOURCE: YWS, A-25-2013, AFS, 2013

Fort Independence Hotel and Casino Project NOP / 213308 ■

Figure 3
Full Build-Out Site Plan

Attachment A

Off-Reservation Environmental Impact Analysis Checklist



Off-Reservation Environmental Impact Analysis Checklist

I. Aesthetics

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage off-reservation 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 type="checkbox"/>	<input type="checkbox"/>
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

II. Agricultural and Forest Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use or conversion of off-reservation forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III. Air Quality

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV. Biological Resources

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Have a substantial adverse impact, either directly or through habitat modifications, on any 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

V. Cultural Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VI. Geology and Soils

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Expose off-reservation 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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial off-reservation soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VII. Greenhouse Gas Emissions

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the off-reservation environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any off-reservation plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII. Hazards and Hazardous Materials

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IX. Water Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should 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)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
g) Expose off-reservation 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

X. Land Use

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XI. Mineral Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XII. Noise

Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Would the project result in:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
the off-reservation vicinity of the project?				
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XIII. Population and Housing

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Induce substantial off-reservation population growth?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XIV. Public Services

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation 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 off-reservation public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XV. Recreation

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XVI. Transportation / Traffic

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the off-reservation circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated off-reservation roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in inadequate emergency access for off-reservation responders?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XVII. Utilities and Service Systems

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XVIII. Cumulative Effects

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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 XX a.m. Closed Session Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Building Blocks for Sustainable Communities: Neighborhood Planning for Healthy Aging, Lone Pine, Inyo County, California: Next Steps Memorandum.

DEPARTMENTAL RECOMMENDATION:

Receive a presentation from staff, hold a workshop on the 'Next Steps Memorandum' and provide staff with comments and direction for implementing the action items.

SUMMARY DISCUSSION:

The Board of Supervisors applied for Toolkit for Neighborhood Planning for Healthy Aging to help the County focus attention on the needs of its growing senior population and take steps to help address their issues. This decision was based on the County's population demographics that include 16.6% of the population is over 65-years and 32.6% are part of the baby boomer cohort (1946-1964), indicating the County's population will have an even higher percentage of people over the age of 65 in the years soon to come (2010 US Census). Many of the County's seniors are on fixed, low, incomes and have difficulty procuring goods and services, affordable housing, opportunities to socialize, exercise, as well as get medical attention due to the long travel distances between services, and a limited public transportation system. Lone Pine was chosen as the target community for the analysis due to its ability to represent the small town nature of most of Inyo County's communities and its high proportion of senior population.

Staff worked with the EPA team to plan and schedule a two-day workshop for June 12-13, 2013. The workshop included a walking tour of Lone Pine; a public presentation on the issues facing the aging population; a discussion about the specific barriers identified in Lone Pine and how they apply to the rest of Inyo County; and, a prioritization exercise. Pre-workshop strategizing helped to inform and guide the workshop focus. Three issues were identified as primary factors for Inyo County seniors they were: access to desired and needed services; conditions that make walking to services difficult; and, limited transportation and transit options.

The workshop included a walking tour of Lone Pine led by County Supervisor Matt Kingsley. Lone Pine residents (including one in a wheelchair), County Supervisor Linda Arcularius, Planning Commissioners Paul Payne, and Cindy Wahrenbrock, County, Cal Trans, Toiyabe Indian Health Project and Eastern Sierra Transit staff participated in the 2-hour tour. The tour provided the participants an excellent overview of Lone Pine's physical infrastructure and community amenities. The tour, which began at Statham Hall (the senior center), included the post office, fire department, hospital and health clinic, community bank, pharmacy, hardware store, grocery store and the residential neighborhoods located between. After the tour, the technical assistance team gave a presentation on Smart Growth Concepts for design for an aging community and the group discussed the issues observed on the walking tour and potential strategies to address them. The next day of the workshop focused on prioritizing strategies and developing actions items and a timeline.

Issues and Strategies – Accessibility

Goods and services

The walking tour participants found that retail stores and services can be accessed by foot or short car rides by a majority of Lone Pine residents. Workshop attendees also commented, however, that the local retail stores cater primarily to tourists, so prices are high and typically the inventory of staples is not complete. This means that residents must travel long distances, pay high prices or go without day-to-day necessities. The walking tour also identified issues with the current condition of the streets and lack of sidewalks in Lone Pine that make accessibility by walking to goods and services difficult if not impossible for older residents. There are some alternatives to the grocery store. The Metabolic Studio has supported the establishment of a Farmer's market, community gardens and a CSA (Community Supported Agriculture) program. However, these are still new, quite small, and many seniors are not currently aware of them.

Medical services

Southern Inyo Hospital provides emergency, acute care, laboratory, radiology, skilled nursing, and physical therapy and hospice services. The Southern Inyo Medical Clinic and the Toiyabe Indian Health Project clinic both offer basic medical services. Toiyabe also offers dental services. The Southern Inyo Health Clinic can be accessed by most Lone Pine residents by walking and is accessible by public transit. Conversely, the Toiyabe clinic is not on the current public transit route and is too far to walk to for most residents. Lone Pine does not have specialty doctors that seniors frequently need. Most have to travel great distances for specialty medical services as Bishop, Mammoth Lakes and even Ridgecrest are also limited in the number of medical resources available.

Social, exercise and educational services

Workshop participants were unable to identify places where older adults gather and "hang out" except for Statham Hall, the senior center. The senior center was not perceived by the group to be an especially inviting atmosphere for social/recreational events. Participants also pointed out that there is a significant age range in the "aging population" and a large proportion of Hispanic seniors that are not being served. Participants also indicated that there are very few exercise and no local "Lone Pine" educational opportunities for adults.

Potential strategies to address access issues include:

- Create a one-stop-shop of related services to reduce the number of locations people have to visit. The services include government agencies such as the Eastern Sierra Transit Authority, Area Agency on Aging, Health and Human Services and non-profits such as Inyo Mono Advocates for Community Action (IMACA), Inyo Mono Association for the Handicapped (IMAH), the Salvation Army, Wild Iris, and Southern Inyo Hospital and medical clinic. This would increase the information disseminated, maximize time and space, coordinate services and optimize office space.
- Develop a non-emergency medical volunteer network to provide reliable drivers for those who cannot drive.
- Increase opportunities for older adults to access exercise and other recreational classes and programs possibly through partnerships with Cerro Coso Community College, local clubs and organizations such as the Lions Club, and other area providers.
- County could partner with other organizations (churches, civic groups) to develop an outreach plan to meet the needs of all older adults.

- It is important to have a place to bring the community together not a place where seniors are isolated. Find and develop intergenerational locations and activities.

Issues and Strategies – Walkability

During the walking tour, participants identified barriers to walking that included the width of the residential streets (50-58 feet compared to typical pavement width of 28-36 ft.); a lack of adequate sidewalks, as many sections are short, end abruptly, and are buckled and uneven; the relatively few shade trees; and the speed at which vehicles travel on Main Street/Highway-395. The rough road surfaces, coupled with the absence of sidewalks, make navigation difficult, especially for individuals with assistive devices (wheelchairs, canes and walkers). At the point where residential street paving ends, the remaining right of way (ROW) is usually dirt, which also makes walking a challenge.

Main Street/Highway-395 is a four lane facility with only one traffic light in Lone Pine, located at Main Street and Whitney Portal Road. Main Street is wide and traffic commonly exceeds the 25-mile-per-hour posted speed limit. There is a lot of through traffic that includes tourists and large trucks. Workshop participants indicated that locals travel to the intersection of Main and Whitney Portal to take advantage of the traffic light in their vehicles as well as when walking, because it is too scary and/or takes too much time to cross without it.

Potential strategies to address walkability issues include:

- Review the sidewalk network and address missing links. Investigate whether grants are available for sidewalks.
- Connect all parts of town (especially south) and Tribal Land with a loop path and or a paved path along Hwy-395. There have been planning efforts for bike paths and walking trails but no implementation due to funding. Investigate whether grants are available.
- Create diagonal parking on East-West streets which would reduce speed on those streets making them more attractive to pedestrians.
- Consider removing parking on Main Street and creating bike lanes. The addition of more off-street parking (behind retail establishments) would reduce the number of parking spaces needed on Main Street. Additional space can be used for planters and bike lanes which would slow down traffic.
- Make the hospital more accessible by constructing curb cuts.
- Promote more walking inter-generationally.
- Create designated walking paths to encourage walking and more shade trees would encourage people to walk during the day.

Issues and Strategies – Transportation and transit

Transportation Auto

Due to the distances required to procure many of the necessary goods and services, including medical services, the people living in Lone Pine frequently drive private automobiles. These drives are 60-miles to Bishop, 80-miles to Ridgecrest and hundreds of miles to large retailers and certain specialty medical services. Most destinations within Lone Pine can be reached by using local roads, but for access to services located in cities outside of Lone Pine, Highway-395 must be used and it is a high-speed, multi-lane facility.

Bicycling and multiuse trails

There are no designated bicycle lanes in Lone Pine and workshop participants discussed the need for them, especially along Main Street. Residents in the outlying areas of Lone Pine find it dangerous to bike or walk into town because they have to use the shoulder of Highway-395 as a path. There are currently plans that include various bike lanes and paths in and around Lone Pine as well as the rest of the County. The proposed Lone Pine Heritage Trail would connect Lone Pine with the Alabama Hills, Pangborn Lane, Foothill Trailer Park and the Lone Pine Paiute Reservation.

Public Transportation

The Eastern Sierra Transit Authority (ESTA) provides local daily transit service, long distance services on certain days of the week, and a Dial-A-Ride service that is a relatively inexpensive door-to-door transportation service for residents. These services are a definite benefit to the community, but could be better supported by infrastructure improvements as there is no transit loading zone at the grocery store or at other retailers and services located on Main Street/Highway-395, requiring bus riders to enter from and exit onto the busy street. The limited days and times of the transit provider, along with the travel distances required, make bringing fresh foods back and scheduling medical appointments within the transit provider's schedule - difficult.

Potential strategies to address transportation and transit issues include:

- Consider adding Dial-A-Ride weekend service, possibly shifting service days to Tuesday-Saturday.
- Investigate the possibility of developing a volunteer transportation network (meals on wheels or a church program)
- Provide regularly scheduled travel training. ESTA now provides it once a year. The group suggested that it be more frequent and provided during the senior lunch.

The potential strategies were put into a spreadsheet as a set of action items. Each action item was given a timeline and a person or group was identified to work on it.

ALTERNATIVES:

Do not provide staff with comments and direction for implementing the action items.

OTHER AGENCY INVOLVEMENT:

County staff will continue to work with Eastern Sierra Transit Authority, Cal Trans, Toiyabe Indian Health Project, Advisory Council for Eastern Sierra Area Agency on Aging, Southern Inyo Healthcare District, Inyo Mono Association for the Handicapped and members of the community to implement the action items.

FINANCING:

County staff time will be required to research grants and help organize the workshop group in implementing the action items, as well as, develop General Plan policy. Staff time can be absorbed with current resources.

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

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

 _____ Date: 8/16/13

Attachment: Building Blocks for Sustainable Communities: Neighborhood Planning for Healthy Aging, Lone Pine, Inyo County, California: Next Steps Memorandum.



Neighborhood Planning for
Healthy Aging
Lone Pine, Inyo County,
California

Next Steps Memorandum
August 2013



Smart Growth

BUILDING BLOCKS FOR
SUSTAINABLE COMMUNITIES

Sustainable Communities Building Blocks

Neighborhood Planning for Healthy Aging

Next Steps

1. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) selected Inyo County, California for technical assistance through the Building Blocks for Sustainable Communities program using the Neighborhood Planning for Healthy Aging tool. As a community's population ages, it must plan for the changing needs and abilities of older citizens. This tool helps communities to develop supportive neighborhood design that can create places where residents can age well and where the aging population can maintain independence, mobility, and community involvement.

The Inyo County Board of Supervisors applied for the Building Blocks for Sustainable Communities program Neighborhood Planning for Healthy Aging technical assistance. The county hopes to use the tool to help generate goals and policies that can be incorporated into their General Plan that is currently being updated. Their intention is to enhance the livability of the current senior population and to prepare for the anticipated influx of baby boomers. Analysis generated from this tool may also be used to apply for available federal, state and local grants for senior programs on a range of topics including affordable housing, meals, exercise, social opportunities, medical and mobility management, as well as rural economic development tools to help bring services into the county's small communities.

Inyo is a rural county covering 10,140 square miles with a population of 18,536 (2010 US Census). Less than 2% of the land area is privately owned, most is under state, federal, and city of Los Angeles title. 16.6% of the county's population is over 65-years and 32.6% are part of the baby boomer cohort (1946-1964). Many of the county's seniors are on fixed, low incomes and have difficulty procuring goods and services, affordable housing, and opportunities to socialize or exercise. Additionally, many seniors in Inyo County must travel long distances to receive medical attention with limited public transportation.

The Building Blocks workshop focused on the town of Lone Pine. County officials specifically wanted to address the issues of smaller, unincorporated towns rather than the county's larger incorporated city. Lone Pine, with a permanent population of about 1,800, is a gateway to several recreational areas, including Mt. Whitney (the highest peak in the contiguous United States), Death Valley (the lowest point in the contiguous United States), and Mammoth Ski Resort. Given the tourist economy of that region, many goods and services in Lone Pine are not adequate, affordable or accessible to the low-income senior population. Nearly 15% of the population in and around Lone Pine is 65 or older and 20% of the population is between 50 and 65. There is a significant age range in the "aging population" and a large proportion of Hispanic seniors that are not being served. However, housing is relatively affordable in Lone Pine, so despite these other high costs, the area attracts many older workers and retirees.

The technical assistance involved a tour of Lone Pine and a day and a half-long workshop that featured a public presentation and a prioritization exercise. This memorandum describes the workshop activities held on June 12-13, 2013, highlights the outcomes of the workshop and next steps that the community may wish to pursue as a result of this technical assistance. With the assistance of Inyo County staff, Susan Robinson and Jocelyn Worley with ICMA led the workshop,

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Specific goals of the workshop included:

- Identification of the most critical issues related to accessibility, walkability and transportation in Lone Pine
- Discussion and exploration of issues and concerns associated with healthy aging
- Brainstorming potential strategies and actions to improve healthy aging options in the community
- Prioritization of suggested actions and next steps

2. WORKSHOP EVENTS

The workshop consisted of a walking tour, a presentation by the technical assistance team, a guided discussion of issues and potential strategies, and a prioritization exercise that resulted in an action plan. Day 1 began with introductions and a tour of Lone Pine led by District 5 County Supervisor Matt Kingsley. Lone Pine residents (including one in a wheelchair), District 1 County Supervisor Linda Arcularius, Planning Commissioners Paul Payne and Cindy Wahrenbrock, County, State, and Tribal staff, and Eastern Sierra transit representatives participated in the 2-hour tour. The tour provided participants and the technical assistance team with an excellent overview of Lone Pine's physical infrastructure and community amenities. The route, which began at Statham Hall, the senior center, included the post office, fire department, hospital and clinic, community banks, pharmacy, hardware shop, grocery store, and residential neighborhoods. The size of the town makes most services and retail stores reachable by foot, however, there are a number of impediments that discourage walking especially for older adults and those with disabilities.

Barriers to walking on town streets observed on the tour include: the exceptional width of residential streets (50-58 feet compared to state and national engineering standards for lightly travelled streets with pavement widths of 28-36 ft.); street surfaces are often irregular and bumpy; few adequate sidewalks, many sections are short, end abruptly, and are buckled and uneven; a lack of street shade trees; and the speed at which vehicles travel on Main Street (Hwy 395) due to the wide lane width (80 feet of right of way and 56 feet from gutter to gutter). The rough road surfaces, coupled with the absence of sidewalks, make navigation difficult for individuals with assistive devices, such as wheelchairs, canes, and walkers. On residential streets, paving ends and the remaining right of way (ROW) is usually dirt, which makes walking a challenge and causes significant dust pollution. The Eastern Sierra Transit Authority (ESTA) provides Dial-A-Ride service, a relatively inexpensive door-to-door transportation service for residents. However, there is no loading zone at the grocery store or the pharmacy, and riders must therefore load and unload onto an active street. Workshop attendees also pointed out that retail stores cater to tourists so locals see the prices as being high and feel the inventory of staples is not complete. As a result, residents must travel long distances to purchase those items that are not provided by local retailers.

The tour was followed by a presentation by the technical assistance team on smart growth concepts and elements of built environment design for healthy aging. A guided discussion of issues and potential strategies concluded the day's activities. The group developed a list of potential strategies to address each of the issue areas raised. On Day 2, a smaller group met at the County Building in Independence, the county seat. The group prioritized the strategies developed on Day 1 and developed an action plan (below) to improve accessibility, walkability, and transportation options, along with a corresponding time line. Using a "dot"

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exercise, they determined which of the potential strategies could be implemented in the near term. About 20 community members and staff participated on Day 1 and approximately 10 attended on Day 2. (See list of attendees on p. 8).

3. KEY ISSUES, STRATEGIES and RESOURCES

To understand where older adults live in Inyo County and to see how accessible those areas are, a broad-brush approach was used to map the distribution of two census block groups of older adults—ages 50–60 and 65 plus. This data was then combined with neighborhood walkability indicators from EPA's Smart Location Database. The county chose to focus on Lone Pine in response to discussions with the technical assistance team and their own assessment of the needs and characteristics of the unincorporated towns in the county

Prior to the workshop, Inyo County planning staff and the technical assistance team also assessed less quantifiable factors that typically contribute to a community's ability to age well, such as economic security, independence and mobility, wellness, and, connections and involvement within the community. These conversations helped inform the overall community assessment. The technical assistance team found some areas for improvement:

- Access to desired and needed retail/services and educational/cultural destinations
- Conditions that make walking difficult
- Transportation/transit service availability and accessibility

These issues were confirmed by the neighborhood tour and workshop participant feedback, making accessibility, walkability, and transportation the key topics explored during the two day session. The three issues and potential strategies to address those issues are described in more detail below.

Accessibility

Issues

While there are local retail stores that can be reached by foot and car, residents feel the grocery store, drug store, and the few retail stores (hardware store and 3 outdoor/sporting goods) carry some every day necessities but generally not the goods that residents, especially older residents, need on a regular basis. The stores tend to cater to the tourist population and the goods are often not affordable for the local community. There are few recreation programs or cultural opportunities in or near Lone Pine.

Southern Inyo County Hospital provides limited services for residents; emergency and acute care, diagnostics, skilled nursing, physical therapy and hospice. Basic primary health care is available in Lone Pine, but there are no specialty care providers, which seniors frequently need. The hospital is hard to access by wheelchair users and walkers because of the condition of the sidewalks, and there is only one handicapped parking spot. The hospital provides no transportation for routine trips. There is one dental office in southern Inyo County that sees a large portion of older adults but it is not accessible by public transit.

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Public transit is available on certain days, allowing residents to travel greater distances to obtain goods and services; however, these trips take several hours. Residents can also drive to the communities of Bishop or Ridgecrest to procure necessities, a wider range of retail choices, and medical services but that drive takes ninety minutes. There are a few local alternatives to the grocery store. Metabolic Studio, a Los Angeles based non-profit, has supported the establishment of a farmer's market, community gardens and a Community Supported Agriculture program. However, these are still new and quite small.

Workshop attendees indicated that there are no places where older adults gather and socialize except for Statham Hall, the senior center. The senior center is not perceived to be an inviting atmosphere for social/recreational events by those present. During the Day 1 discussions, community members and county officials described the aging demographic of Lone Pine and considered the issues related to the significant age range in Lone Pine's over 65 population and the large proportion of Hispanic seniors that attendees believe are not being reached. They also discussed the need to provide services and physical improvements that appeal to all ages.

Potential Strategies

Workshop attendees generated a number of potential strategies to address issues of adequate, appropriate, and accessible services in Lone Pine through collaboration among the county and community groups. These strategies were later prioritized. The ranking and lead agency for each recommendation is provided in the Action Plan below on page 8)

- Study the creation of a "one-stop-shop" of related services to reduce the number of locations people have to visit to access services. The services include government agencies such as the Eastern Sierra Transit Authority (ESTA), Area Agency on Aging, Health and Human Services and non-profits such as Inyo Mono Advocates for Community Action (IMACA), Inyo Mono Association for the Handicapped (IMAH), the Salvation Army, Wild Iris, and Southern Inyo Hospital and medical clinic. This would increase the information disseminated, maximize time and space, coordinate services and, optimize office space.
- Explore the development of a non-emergency medical volunteer network to provide reliable drivers for those who cannot drive.
- Increase opportunities for older adults to access exercise and other recreational classes and programs possibly through partnerships with Cerro Coso Community College, local clubs and organizations such as the Lions Club, and other area providers.
- Consider partnering with other organizations (churches, civic groups) to develop an outreach plan to meet the needs of all older adults especially those currently not being reached.
- Find and develop intergenerational locations and activities to ensure seniors do not feel isolated.



Small local retailers are within walking distance to most Inyo residents but do not provide all the variety they want.

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Walkability

Issues

Residential Streets



Residential Street with buckled sidewalk makes walking and wheeling difficult for older adults, forcing them to use the street as a pedestrian path



Dirt paths do not provide a safe walking environment from Main Street to residents' homes

Although Lone Pine has a grid street network, there is no network of sidewalks. The few existing sidewalks are incomplete--frequently located in front of a home, public building or church and connecting only to a dirt path. In locations where sidewalks are present, they are commonly cracked or buckled. Curbs are often irregular in height, creating hazards that are challenging for all pedestrians, but particularly those with disabilities.

People in wheelchairs, or those who need canes or walkers, have no choice but to walk or wheel in the street due to poor sidewalk conditions. Others also walk in the streets to avoid the trip hazards and loose dirt. Street surfaces are rough, however, and due to County budget constraints, are rarely resurfaced. Because Lone Pine is unincorporated, the County maintains the streets and workshop attendees indicated that residential streets have a low priority.

Streets in Lone Pine are very wide, and cars park both parallel and diagonally to the buildings. This forces pedestrians to move, around the cars, or walk toward the middle of the street. The wide streets present both challenges and opportunities. The width makes the streets harder for older adults and children to cross safely. They are also isolating since they limit access to neighbors located across the street. However, their width also leaves room for a painted or above grade curb to designate a walking/biking lane.

While there are some street trees, there is not a full canopy along the roads. Pedestrians (including those on the tour) move to alternating sides of the street to seek shade from the high desert sun, especially in the summer. Although workshop attendees understand the benefits of street trees, their experience of living in the desert where water is scarce, leaves them with mixed opinions regarding whether the water use and expense of additional trees is worth the sun and pollution protection that they can provide. Most recreational walking is

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done in the early morning or the evening. There are few streetlights in town, which adds to the possibility of tripping and falling when walking at night. Walking for a purpose (e.g. to run errands etc.) was reported to be an infrequent practice.

Main Street

Main Street (Hwy 395) was reconstructed by the California State Department of Transportation (Cal Trans) 10 years ago and workshop participants consider it to be much more walkable than before the changes were made.

The traffic is often heavy with trucks and tourists. The Cal Trans District 9 representative indicated that in the winter, a large number of vehicles (an average of 5033 per day) access the Mammoth Ski Resort. Summer traffic (June, July, August) is even heavier, with average daily counts of 7358 generated by tourists visiting the Mt. Whitney portal, Death Valley, the Sierra and other sites. Traffic peaks on Sundays in July and August with average daily counts of 9738 cars. Although the posted speed is 45 miles per hour, drivers often substantially exceed this.



Four lanes of high speed traffic on Main Street make it difficult to cross safely.

Main Street has four wide lanes. There is a traffic light at only one intersection (Whitney Portal Road and Main Street) and residents indicate that they use this intersection to cross, both in their vehicles and as pedestrians because few other intersections are marked with crosswalks. There have been few serious accidents on Main Street, but intersections are intimidating due to the width and absence of curb cuts onto some of the existing crosswalks

Bicycle Lanes and Trails

There are no designated bicycle lanes, although Lone Pine streets are typically wide enough to accommodate dedicated bike lanes. Workshop participants discussed the need for bike lanes on Main Street. Residents in outlying neighborhoods find it difficult and dangerous to walk or bike into the commercial area of town since the only option is to walk on the Hwy 395 shoulder/right-of-way, workshop participants suggested the implementation of a long planned bike trail along Hwy 395 south of town and a circuit trail or path around town.

Transportation planners presented information about The Lone Pine Heritage Trail which is included in both *The Inyo County 2008 Collaborative Bikeways Plan*, the official Bicycle Transportation Plan of the County of Inyo, City of Bishop, and Bishop Paiute Tribe, and the *Eastern Sierra Corridor Enhancement Program, US 395 & SR 14 Corridors in Kern, Inyo, and Mono Counties, 2010*, prepared for Kern Council of Governments, Inyo County Local Transportation Commission, Mono County Local Transportation Commission, and California Department of Transportation. Another bicycle trail, the Lower Owens River Project trail is included in the Eastern Sierra Corridor Enhancement Program. It would provide natural vistas and could provide

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access from the Lone Pine to Owens Lake and bird watching opportunities without requiring a car. The path also could connect Lone Pine, Independence, and Bishop (p.50).

The Lone Pine Economic Development Corporation (LPEDC) is planning a Southern Inyo Heritage Trail and Park System (or Lone Pine "Heritage Trail") to improve conditions for walking and bicycling in and around Lone Pine. The Trail is intended to accommodate local walkers and bicyclists and to provide visitors with alternative, non-motorized routes to the central business district, Lone Pine's Film History Museum and Interagency Visitor Center and other points of interest. The primary objective is to improve pedestrian and bicycle access along Main Street. An outer (or long distance) loop trail is proposed around the outskirts of town (Phase 2), while an inner loop would serve the more immediate needs of Lone Pine (Phase 3). The Heritage Trail would provide connectivity for pedestrians and cyclists between Lone Pine and the nearby communities of Alabama Hills, Pangborn Lane, Foothill Trailer Park, the Lone Pine Reservation (*The Inyo County 2008 Collaborative Bikeways Plan* p.7)

Potential Strategies

Workshop attendees generated a number of potential strategies to address issues of adequate appropriate and accessible services in Lone Pine through collaboration among the county and community groups. These strategies were later prioritized. The ranking and lead agency for each recommendation is provided in the Action Plan below on page 11.)

- Review the sidewalk network and address missing links near and leading to public facilities – health clinic, post office, and library. Investigate whether grants are available for sidewalk construction and maintenance.
- Review the plan to connect all parts of town (especially south) and Tribal Land with a loop path and/or a paved path along Hwy 395. Create diagonal parking on East-West streets, which would reduce speed on those streets making them more attractive to pedestrians.
- Consider developing a lower cost alternative to a separate class-one bike path by using paint, inexpensive barriers, and on-street parking to create a network of two-way cycle tracks through town. Candidate streets for cycle tracks include Lake View Street, Lone Pine Avenue, Locust Street, and Inyo Street.
- Look at opportunities to create on road sidewalks by painting-parking lanes on side streets five feet from the edge of the road with a painted "sidewalk"—green or burnt red—between the parking lane and street edge.
- Consider working with local forest service office and forestry students at Bakersfield College or other forestry school to implement an analysis of street trees in county communities and assess the value of better tree coverage in the county.
- Make the hospital more accessible by constructing curb cuts.
- Explore restriping Main Street into a three lane street—one lane in each direction, left turning lanes, with bike lanes and on-street parking. This configuration can handle averaged daily traffic loads of over 10,000 vehicles while providing a Level of Service C.

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Transportation

Issues

Workshop participants discussed a number of transportation issues facing older Lone Pine residents. As previously noted, while basic services and staples are available in Lone Pine they may not be easily accessed by pedestrians. Older residents must either drive or use Eastern Sierra Transit Authority (ESTA) Dial-A-Ride services. To purchase other necessities and to access medical providers Lone Pine residents generally drive to Bishop, 60 miles away, or Ridgecrest about 80 miles from Lone Pine. Older adults can generally avoid driving on major multilane roads to get to key destinations within Lone Pine, but to access the cities with additional services and amenities, they must drive on Hwy 395, which is a high speed four-lane highway. ESTA also provides three round trips per day to Bishop on weekdays and a fixed route 400-mile loop that provides transport to other communities along the Eastern Sierra three days a week. Round trips on the fixed routes require a several hour commitment.

Participants were generally satisfied with ESTA services. The Dial-a-Ride service operates M-F from 7:00am - 3:30pm. It provides on-demand transportation for the general public at a price that is viewed as reasonable (\$2.40-\$3.00 per ride). All transit vehicles are equipped with wheelchair lifts and bike racks. There are limited non-emergency medical transportation vehicles. Currently there is just one bus stop in town located in front of the senior center. ESTA plans to move that stop to Main Street, in front of the McDonalds where there is access to restrooms.

There was consensus that older adults are not always aware of the services provided by ESTA and the county. Safe driving was brought up as a concern. Although ESTA provides transit training once a year and the California Highway Patrol provides driving classes for seniors, the group felt that additional training opportunities should be provided with more frequency.

There was significant consensus that a volunteer transportation network could respond to many of the transportation gaps confronting older adults in Lone Pine and other towns in Inyo especially the time commitment necessary to get to and from larger cities using transit. However, participants also brought up the difficulty of creating a standalone volunteer program. Specifically the screening of volunteers that is necessary when providing services to vulnerable populations,

While there is significant connectivity of streets in town, it can be difficult to cross Main Street (Hwy 395) except at the one traffic signal in town. Inyo County does not have a complete streets ordinance, but Cal Trans does have a complete streets regulation. Implementing the regulation on Hwy 395 is considered to be unlikely do to cost and other projects. Additionally, Cal Trans views efficiently moving trucks, skiers and tourists through town as a priority.

Potential Strategies

- Consider adding Dial-a-Ride weekend service, possibly shifting service days to Tuesday-Saturday. However, the ESTA representative and others thought that giving up a weekday may not be worth the gain of having a Saturday service.
- Investigate the possibility of developing a volunteer transportation network to help with services such as providing meals. Finding suitable volunteers is, however, challenging and expensive. It is unclear if a

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local organization would be willing to take this on. Workshop participants suggested working with Health and Human Services because they recently hired a volunteer coordinator.

- Provide regularly scheduled travel training. ESTA now provides it once a year. Workshop participants suggested that it be more frequent and provided during the senior lunch.

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4. ACTIONS/ TIMEFRAMES/ RESPONSIBILITIES

The key to an effective workshop and EPA's Building Blocks program is to cultivate champions who will carry the knowledge gained from the technical assistance forward to address the community's needs on a comprehensive and consistent basis. To that end, Day 2 of the workshop encouraged key community representatives to prioritize the potential strategies and define the next step action items listed in the table below. These actions reflect ideas generated from the workshop process. The pursuit of these actions is fully at the discretion of the local participants and the communities they represent and serve.

Before implementing these action items workshop participants decided to take the following steps:

1. Present the action plan items to the community via public meeting or flyer to gauge community interest and ask community members if they want to participate in these efforts. Once the memo is distributed, a comment period will be provided.
2. Present an action plan to commissions, local clubs, organizations, tribes, and other interesting parties.
3. After 60 days (giving time for community feedback), leads will start to implement their assigned actions

Action Plan

The participants in the community engagement workshop on Neighborhood Planning for Healthy Aging identified and prioritized a number of strategies for action in the focus area. Below is a summary of the initial actions to implement the strategies identified as responses to the community's highest priorities. In the table below, workshop participants recommended initial steps, assigned responsibilities, and proposed timeframes for completion of actions. County staff, working with neighborhood representatives, will continue to modify these actions and the timeline based on their expertise and experience.

Sustainable Communities Building Blocks

Neighborhood Planning for Healthy Aging

Next Steps

ACTION	PURPOSE	LEAD ENTITIES	TIMING
<i>Address Accessibility Issues</i>			
<p><i>Create Community Facility</i></p> <p>Identify vacant building (old theater, library, or conference room with patio) or other sites.</p> <p>Investigate potential sites, identify owners and find funding for the development of a community center to include a café, room for exercise, and educational classes, movies, and other activities for seniors and the entire community.</p>	<p>There is an expressed need for more recreational and cultural activities for seniors and other community members. The current senior center, Statham Hall, is not appropriate for many of these activities including a coffee shop and exercise classes. The group recommends intergenerational activities in a facility that is more welcoming than Statham Hall.</p>	<p>Del Hubbs, Resident (Investigation lead)</p> <p>Cathreen Richards, County Associate Planner (Property ownership lead)</p> <p>Beth Himelhoch, Executive Director IMAH (funding/grants lead)</p>	<p>90 days</p>
<p><i>Establish a one-stop-shop for senior services</i></p> <p>Find facility, estimate cost per non-profit, and consider feasibility.</p> <p>Send out feelers to organizations and residents interested in this concept.</p>	<p>It would be helpful to have an office or location where older residents can find information and assistance. There are several providers (non-profit and government) who could share space and overhead.</p> <p>There is potential to combine one-stop-shop with community facility to further reduce down on overhead costs</p>	<p>Beth Himelhoch Executive Director IMAH</p>	<p>1 year</p>

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Neighborhood Planning for Healthy Aging

Next Steps

ACTION	PURPOSE	LEAD ENTITIES	TIMING
<p><i>Implement an Hispanic Outreach Effort</i></p> <p>Identify individuals to develop an outreach plan.</p> <p>Identify key individuals in Hispanic community to share information.</p> <p>Contact Catholic church, Fruitopia, HHS (Spanish speaking senior programs), Sunday radio show (KSRW), free newspaper (EL Sol)</p> <p>After outreach – provide Spanish information, services, home deliveries, ESL classes in Lone Pine (Cerro Coso Community College)</p>	<p>A large portion of the aging population is Hispanic, a group that is not being reached or served. The county leadership wants to assure that they are addressing the needs of all seniors.</p>	<p>Marilyn Mann, Program Director, ES Agency on Aging /HHS (Identification Lead)</p> <p>Outreach Plan</p>	<p>30 days</p> <p>1 year</p>
<p><i>Develop Healthy Foods Alternatives</i></p> <p>Connect with individuals currently involved in providing healthy food options in Lone Pine, particularly Metabolic Studio, and identify leads.</p> <p>Work with Metabolic Studios to increase initiatives including community gardens and high school future farmers program</p> <p>Develop action plan</p>	<p>There is one grocery store in Lone Pine. The store caters to tourists and does not provide healthy alternatives for residents at reasonable prices. To purchase many staples and find healthy food options, residents must travel over an hour by car. Community gardens and Farmers Markets are feasible alternatives.</p>	<p>Potential Lead:</p> <p>Cathreen Richards, County Associate Planner,</p> <p>Jeff Griffiths, Brenda Lacey, Jane with Metabolic Studios</p>	<p>90 days</p>

Sustainable Communities Building Blocks

Neighborhood Planning for Healthy Aging

Next Steps

ACTION	PURPOSE	LEAD ENTITIES	TIMING
Address Walkability Issues			
<p><i>Connect neighborhoods south of Lone Pine and the Lone Pine Paiute-Shoshone Reservation to town along Hwy 395</i></p> <p>Work with Caltrans to develop a paved path/bike trail</p> <p>Incorporate public transportation options</p> <p>Involve Lone Pine Paiute-Shoshone tribe and Lone Pine residents</p> <p>Determine Feasibility and Funding</p>	<p>While the residents close to the center of town have good access to stores and existing services, those in outlying neighborhoods and the Lone Pine Paiute-Shoshone Reservation must drive into town since there is no safe way to walk along Hwy 395.</p>	<p>Feasibility: Dave Bloom – Caltrans</p> <p>Funding: Dave Bloom- Caltrans</p>	<p>3 months</p> <p>1 year</p>
<p><i>Develop Loop Trail around town – continuing Heritage Trail plan</i></p> <p>A loop around town (the Heritage trail) has been through a planning process but there is no funding to continue with implementation. Current status is unclear and funding must be found.</p>	<p>Because of the difficulty of walking on Lone Pine Streets and a need for access from homes and neighborhoods to town services, a loop walking/biking trail (Heritage Trail) has been proposed.</p>	<p>Matt Kingsley, County Supervisor Courtney Smith, County Transportation Planner</p>	<p>Investigate Loop status-90 days</p> <p>Develop plan-60 days</p>

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Neighborhood Planning for Healthy Aging

Next Steps

ACTION	PURPOSE	LEAD ENTITIES	TIMING
<i>Address Walkability Issues</i>			
<p><i>Improve walkability on minor arterials and local roads</i></p> <p>Investigate funding options for additional sidewalks and repaving.</p> <p>Develop a plan to make incremental, less costly changes such as:</p> <p>Consider above grade separation of walking area and traffic lane, paint paths to provide walking space for pedestrians, to make safer for disabled, and, to slow down traffic</p> <p>Implement diagonal parking on East and West streets, which would narrow those streets, thereby slowing traffic. With above grade separation walking path could be located between cars and property line.</p> <p>Investigate street lighting to encourage walking at night when it is cooler.</p> <p>Develop a plan to go into the County's general plan and the capital plan so that these projects are "shovel ready"</p>	<p>Residential streets are not pedestrian-friendly. There are few sidewalks and many of those that exist are incomplete or dangerous (trip hazards). Pedestrians must walk in the street, which are often rough and not regularly maintained, making them not accessible to those in wheel chairs, or using other assistive devices. There are few streetlights and the tree canopy is diminishing.</p>	<p>Cathreen, Richards, Inyo County Associate Planner, Courtney Smith, Inyo County Transportation Planner</p>	<p>Investigate 60-90 days</p> <p>Develop plan 6 months</p>

Sustainable Communities Building Blocks
 Neighborhood Planning for Healthy Aging
 Next Steps

ACTION	PURPOSE	LEAD ENTITIES	TIMING
<i>Address Transportation/Transit Issues</i>			
<p><i>Increase Travel Training</i></p> <p>ESTA and California Highway Patrol should offer training presentations on regularly scheduled basis.</p>	<p>ESTA and California Highway have training programs on transit use and safe driving for seniors. These programs are not offered are infrequent and should be increased.</p>	<p>Jill Batchelder, ESTA, Christie Martindale, Toiyabe Indian Health Project Marilyn Mann, Agency on Aging, Inyo County, HHS</p>	<p>30 days</p>

Recognizing the limited staff and financial resources available, the above noted next steps represent the long-term goals for the town of Lone Pine and Inyo County as a whole. This plan can be used to engage public agency partners, citizen volunteers and other stakeholders to foster complementary efforts, and explore the potential for joint project/funding agreements.

5. RESOURCES

EPA staff and Urban Design 4 Health, Inc. provided the following lists of resources for each of the issue areas identified by the workshop participants.

Accessibility Resources

- The State of Oregon has a handbook for the design and planning of walkable commercial areas—the Commercial and Mixed-use Development Code Handbook.
<http://www.oregon.gov/LCD/docs/publications/commmixedusecode.pdf>
- A Mather Café Plus senior center offers healthy dining options and a social gathering place for everyone in the community while providing health, wellness, and educational services to the older adult community.
<http://www.matherlifeways.com/cafe-plus-model>
- The National Association of Area Agencies on Aging. Has created a checklist that for older adult social services called A Blueprint for Action: Developing a Livable Community for All Ages.
http://bookstore.icma.org/Active_Living_for_Older_Adults_P1050C141.cfm?UserID=10433663&jsessionid=4e30e75f460425303542
- Easter Seals and the National Center for Senior Transportation has created a guidebook to help develop a volunteer driver network called The Solutions Package for Volunteer Senior Transportation Programs.

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Next Steps

[http://seniortransportation.easterseals.com/site/DocServer/Volunteer Solutions Package Web.pdf?docID=31363](http://seniortransportation.easterseals.com/site/DocServer/Volunteer_Solutions_Package_Web.pdf?docID=31363)

- The California Endowment, has created a tool and provides background documents on how to create places that support active living and healthy eating called: Strategies for Enhancing the Built Environment to Support Healthy Eating and Active Living. http://www.convergencepartnership.org/atf/cf/%7B245A9B44-6DED-4ABD-A392-AE583809E350%7D/CP_Built%20Environment_printed.pdf

Walkability Resources

- AARP has created a tool assessing a neighborhood's walkability. The Advanced Sidewalks and Street Toolkit: <http://www.aarp.org/content/dam/aarp/livable-communities/plan/assessments/advanced-streets-and-sidewalks-toolkit-2011-aarp.pdf>
- Walkable Communities Inc. has created posters on design elements for intersection design at: <http://www.walkable.org/posters.html>
- United States Forest Service and partners created a software suite for analyzing and assessing benefits of street trees called: I-Tree. <http://www.itreetools.org/>
- Guidelines For Developing and Evaluating Tree Ordinances ,The International Society of Arboriculture available at: http://www.isa-arbor.com/education/resources/educ_TreeOrdinanceGuidelines.pdf
- AARP offers refinements to street and intersection design treatments recommended by the Federal Highway Administration in its Design Handbook for Older Drivers and Pedestrians with their guide to Planning Complete Streets for an Aging America. <http://www.aarp.org/livable-communities/learn/transportation-mobility/planning-complete-streets-aging-america.html>
- NACTO (National Association of City Transportation Officials) provides guidance on how to retrofit streets to accommodate all modes of transportation. Urban Street Design Guidebook, http://nacto.org/wp-content/uploads/2012/10/NACTOUrbanStreetDesignGuide_Highrez.pdf
- AARP has created a very detailed, comprehensive list of items to evaluate walkability for the elderly, and instructions about what is needed to conduct the evaluation with a group of volunteers in their Livable Communities: An Evaluation Guide, http://assets.aarp.org/rgcenter/il/d18311_communities.pdf
- National Association of Area Agencies on Aging, designed a guide to help older adults assess their transportation options. Choices for Mobility Independence http://www.n4a.org/pdf/Transportation_Options.pdf
- Walkability Audit can be conducted by using either
 - EPA/Walkable Livable Communities Walkability Workbook: <http://www.walklive.org/project/walkability-workbook/>
 - Smart Growth America, <http://www.smartgrowthamerica.org/technical-assistance/free-annual-workshops>
 - Project for Public Spaces, <http://livabilitysolutions.org/>
- The Project for Public Spaces offers resources on right sizing streets: <http://www.pps.org/reference/rightsizing/>
- County of Inyo, City of Bishop, and Bishop Paiute Tribe have developed a bicycle transportation plan of the, the Heritage Trail. The Inyo County 2008 Collaborative Bikeways Plan, at <http://www.inyoltc.org/pdfs/bmp/iccbpnofig.pdf> pp.11,39,40. A map of proposed bicycle facilities in the Lone Pine area can be viewed at <http://www.inyoltc.org/pdfs/bmp/app3a.pdf> and also at <http://www.inyoltc.org/pdfs/bmp/lpfig.pdf>.

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Neighborhood Planning for Healthy Aging

Next Steps

- Kern Council of Governments, Inyo County Local Transportation Commission, Mono County Local Transportation Commission and California Department of Transportation have created the Eastern Sierra Corridor Enhancement Program, US 395 & SR 14 Corridors in Kern, Inyo, and Mono Counties, 2010. (pp.49,50).

Transportation Resources

- The Project for Public Spaces and American Public Transportation Association provide guides for bus stop location and design at: <http://www.pps.org/reference/busshelters/> and <http://www.apta.com/resources/standards/Documents/APTA-SS-SIS-RP-008-10.pdf>
- The Community Transportation Association provides information about volunteer driver transportation programs including three basic guides to starting and maintaining a volunteer driver program
 - Easter Seal's Solutions Package for Volunteer Transportation Programs contains helpful information about starting a volunteer transportation program. It is a thorough package of information with numerous model forms. The discussion of risk management, pp. 21-30, is excellent. http://seniortransportation.easterseals.com/site/DocServer/ADS_Sol_Pkg_Web.pdf?docID=31403 (PDF)
Chapter 5, "Risk, Liability, Risk Management, and Insurance," of The National Center for Transit Research and the Florida Department of Transportation report on Programs That Match Seniors With Volunteer Drivers, Practical Recommendations for Organizations and Policy Makers: is a sensible and thorough discussion of risk issues. <http://www.worldtransitresearch.info/research/2619/>.
 - Washington State Agency Council on Coordinated Transportation (ACCT). has a comprehensive Volunteer Drivers: A Guide to Best Practices: that provides the framework for developing and maintaining volunteer driver programs. Excellent on liability and insurance issues. Contains extensive program forms. <http://www.wsdot.wa.gov/transit/training/vdg/default.htm>

Sustainable Communities Building Blocks
 Neighborhood Planning for Healthy Aging
 Next Steps

6. ADDITIONAL INFORMATION

• **Workshop Attendees**

Name	Affiliation	Title	Email
Wednesday, 6/12/13			
Susan Robinson	EPA/International City/County Management Association	Senior Consultant	susangrobinson@gmail.com
Jocelyn Worley	EPA/International City/County Management Association	Assistant Program Manager	jworley@icma.org
Courtney Smith	Inyo County - Public Works	Transportation Planner	csmith@inyocounty.us
David Bloom	Cal Trans - District 9	Acting Local Dev.Intergov Review	dave_bloom@cvt.ca.gov
Jill Batcherlder	Eastern Sierra Transit Authority	Transit Analyst	jbatchelder@estransit.com
Paul E Payne	Inyo County Planning Commission	Commissioner	
Del Hubbs	Citizen - Lone Pine		delhubbs@lonepinetv.com
Cindy Wahrenbrock	Inyo County Planning Commission	Commissioner	the3littles@cebeidge.net
Christie Martindale	Toiyabe Indian Health Project	Associate Director	christie.martindale2to.yabe.us
Justin Ortega	Lone Pine Chamber of Commerce		jaysan1218@gmail.com
Linda Arcularius	Inyo County Board of Supervisors	Supervisor	hlarcularius@gmail.com
Marilyn Mann	Inyo County Health and Human Services	Social Services Director	mmann@inyocounty.us.gov
Beth Himelhoch	Inyo Mono Association for the Handicapped	Executive Director	execdir@imahstars.org
Matt Kingsley	Inyo County Board of Supervisors; Area Agency on Aging	Supervisor	mattk@lonepinetv.com
Josh Hart	Inyo County-Planning Department	Director	jhart@inyocounty.us
Relles Amick	Citizen - Lone Pine		
Cathreen Richards	Inyo County –Planning Department	Associate Planner	crichards@inyocounty.us
Thursday, 6/13/13			
Susan Robinson	EPA/International City/County Management Association	Senior Consultant	susangrobinson@gmail.com
Jocelyn Worley	EPA/International City/County Management Association	Assistant Program Manager	jworley@icma.org
Cathreen Richards	Inyo County –Planning Department	Associate Planner	crichards@inyocounty.us

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 Next Steps

David Bloom	Cal Trans - District 9	Acting Local Development-Intergov Review	dave_bloom@cbt.ca.gov
Courtney Smith	Inyo County - Public Works	Transportation Planner	csmith@inyocounty.us
Del Hubbs	Citizen - Lone Pine		delhubbs@lonepinetv.com
Beth Himelhoch	Inyo Mono Association for the Handicapped	Executive Director	execdir@imahstars.org
Linda Arcularius	Inyo County Board of Supervisors	Supervisor	hlarcularius@gmail.com
Marilyn Mann	Inyo County Health and Human Services	Social Services Director	mmann@inyocounty.us.gov
Christie Martindale	Toiyabe Indian Health Project	Associate Director	christie.martindale2to.yabe.us
Jill Batcherlder	Eastern Sierra Transit	Transit Analyst	jbatchelder@estransit.com
Matt Kingsley	Inyo County Board of Supervisors	Supervisor	mattk@lonepinetv.com



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 XX. Closed Session Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Yucca Mountain update

DEPARTMENTAL RECOMMENDATION:

Request the Board of Supervisors: receive an update from staff regarding recent events pertaining to the Yucca Mountain Repository. These events include (1) a Writ of Mandamus granted on August 13, 2013 ordering the Nuclear Regulatory Commission (NRC) to continue the licensing process for Yucca Mountain; (2) a hearing on July 31, 2013 by the House Energy and Commerce Subcommittee on Environment and the Economy on the Energy Department's Strategy for Radioactive Waste Disposal; and, (3) provide staff with direction on these issues to be shared with the Affected Units of Local Government (AULG).

SUMMARY DISCUSSION:

Writ of Mandamus

The Nuclear Waste Policy Act of 1982 made the Federal Government responsible for the disposal of nuclear waste and the Department of Energy (DOE) the agency in charge of doing so. It also directed that the DOE would have a repository built and begin storing nuclear waste no later than 1998. In 1987, Congress designated Yucca Mountain as the site for this repository and in 2002 the DOE deemed it a suitable site. In 2008 the DOE applied to the NRC for a license to construct the repository at Yucca Mountain. Then in 2009, the DOE found that Yucca Mountain was unworkable, and in 2010 submitted a motion to NRC to withdraw its Yucca Mountain application. Also, in the 2009-2010 budget funding for the repository was cut significantly. These events have caused much controversy and political and legal wrangling.

Aiken County, South Carolina, the State of South Carolina, the State of Washington, Nye County, Nevada, and the National Association of Regulatory Utility Commissioners filed a writ in the U.S. Court of Appeals seeking an order overturning the suspension of the licensing proceedings. On August 13, 2013 the US Court of Appeals granted a Writ of Mandamus ordering the Nuclear Regulatory Commission to continue the licensing process for Yucca Mountain. Judge Brett Kavanaugh wrote in a 2-1 decision "But unless and until Congress authoritatively says otherwise, or there are no appropriated funds remaining, the Nuclear Regulatory Commission must promptly continue with the legally mandated licensing process." Nuclear regulatory officials pointed out, however, that there is only 11.1-million dollars left in the left in the agency's nuclear waste licensing account, meaning money will likely run out soon and that it is questionable whether Congress will begin funding it again. Although, the order does state that the licensing process is to be reinitiated, the funding issues are likely to keep Yucca Mountain, as it is, in a state of flux.

OTHER AGENCY INVOLVEMENT:

AULGs

FINANCING:

No direct impact.

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>
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>
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>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 8-21-13

Attachments:

- A. United States Court of Appeals: Writ of Mandamus, RE: Aiken County ET AL.
- B. Nye County, Nevada press release regarding the Writ of Mandamus.
- C. Partial testimony from the House Energy and Commerce Subcommittee on Environment and the Economy, hearing on the Energy Department's Strategy for Radioactive Waste Disposal, provided by Nye County, Nevada.
- D. Discussion Draft of a Bill implementing the recommendations of the Blue Ribbon Commission on America's Nuclear Future.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 2, 2012 Decided August 13, 2013
Ordered Held in Abeyance August 3, 2012

No. 11-1271

IN RE: AIKEN COUNTY, ET AL.,
PETITIONERS

STATE OF NEVADA,
INTERVENOR

On Petition for Writ of Mandamus

Andrew A. Fitz, Senior Counsel, Office of the Attorney General for the State of Washington, argued the cause for petitioners. With him on the briefs were *Robert M. McKenna*, Attorney General, *Todd R. Bowers*, Senior Counsel, *Thomas R. Gottshall*, *S. Ross Shealy*, *Alan Wilson*, Attorney General, Office of the Attorney General for the State of South Carolina, *William Henry Davidson II*, *Kenneth Paul Woodington*, *James Bradford Ramsay*, *Robin J. Lunt*, *Barry M. Hartman*, *Christopher R. Nestor*, and *Robert M. Andersen*.

Jerry Stouck and *Anne W. Cottingham* were on the brief for *amicus curiae* Nuclear Energy Institute, Inc. in support of petitioners.

Charles E. Mullins, Senior Attorney, U.S. Nuclear Regulatory Commission, argued the cause for respondent.

With him on the brief were *Stephen G. Burns*, General Counsel, *John F. Cordes Jr.*, Solicitor, and *Jeremy M. Suttenger*, Attorney.

Martin G. Malsch argued the cause for intervenor State of Nevada. With him on the briefs were *Charles J. Fitzpatrick* and *John W. Lawrence*.

Before: GARLAND, *Chief Judge*, KAVANAUGH, *Circuit Judge*, and RANDOLPH, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* KAVANAUGH, with whom *Senior Circuit Judge* RANDOLPH joins except as to Part III.

Concurring opinion filed by *Senior Circuit Judge* RANDOLPH.

Dissenting opinion filed by *Chief Judge* GARLAND.

KAVANAUGH, *Circuit Judge*: This case raises significant questions about the scope of the Executive's authority to disregard federal statutes. The case arises out of a longstanding dispute about nuclear waste storage at Yucca Mountain in Nevada. The underlying policy debate is not our concern. The policy is for Congress and the President to establish as they see fit in enacting statutes, and for the President and subordinate executive agencies (as well as relevant independent agencies such as the Nuclear Regulatory Commission) to implement within statutory boundaries. Our more modest task is to ensure, in justiciable cases, that agencies comply with the law as it has been set by Congress. Here, the Nuclear Regulatory Commission has continued to violate the law governing the Yucca Mountain licensing

process. We therefore grant the petition for a writ of mandamus.

I

This case involves the Nuclear Waste Policy Act, which was passed by Congress and then signed by President Reagan in 1983. That law provides that the Nuclear Regulatory Commission “shall consider” the Department of Energy’s license application to store nuclear waste at Yucca Mountain and “shall issue a final decision approving or disapproving” the application within three years of its submission. 42 U.S.C. § 10134(d). The statute allows the Commission to extend the deadline by an additional year if it issues a written report explaining the reason for the delay and providing the estimated time for completion. *Id.* § 10134(d), (e)(2).

In June 2008, the Department of Energy submitted its license application to the Nuclear Regulatory Commission. As recently as Fiscal Year 2011, Congress appropriated funds to the Commission so that the Commission could conduct the statutorily mandated licensing process. Importantly, the Commission has at least \$11.1 million in appropriated funds to continue consideration of the license application.

But the statutory deadline for the Commission to complete the licensing process and approve or disapprove the Department of Energy’s application has long since passed. Yet the Commission still has not issued the decision required by statute. Indeed, by its own admission, the Commission has no current intention of complying with the law. Rather, the Commission has simply shut down its review and consideration of the Department of Energy’s license application.

Petitioners include the States of South Carolina and Washington, as well as entities and individuals in those States. Nuclear waste is currently stored in those States in the absence of a long-term storage site such as Yucca Mountain.

Since 2010, petitioners have sought a writ of mandamus requiring the Commission to comply with the law and to resume processing the Department of Energy's pending license application for Yucca Mountain. Mandamus is an extraordinary remedy that takes account of equitable considerations. The writ may be granted "to correct transparent violations of a clear duty to act." *In re American Rivers and Idaho Rivers United*, 372 F.3d 413, 418 (D.C. Cir. 2004) (internal quotation marks omitted); *see also Arizona v. Inter Tribal Council of Arizona, Inc.*, No. 12-71, slip. op. at 17 n.10 (U.S. 2013) (noting that if the federal Election Assistance Commission did not act on a state's statutorily permitted request, "Arizona would be free to seek a writ of mandamus to 'compel agency action unlawfully withheld or unreasonably delayed'") (quoting 5 U.S.C. § 706(1)).

In 2011, a prior panel of this Court indicated that, if the Commission failed to act on the Department of Energy's license application within the deadlines specified by the Nuclear Waste Policy Act, mandamus likely would be appropriate. *See In re Aiken County*, 645 F.3d 428, 436 (D.C. Cir. 2011). In 2012, after a new mandamus petition had been filed, this panel issued an order holding the case in abeyance and directing that the parties file status updates regarding Fiscal Year 2013 appropriations. At that time, we did not issue the writ of mandamus. Instead, in light of the Commission's strenuous claims that Congress did not want the licensing process to continue and the equitable considerations appropriately taken into account in mandamus

cases, we allowed time for Congress to clarify this issue if it wished to do so. But a majority of the Court also made clear that, given the current statutory language and the funds available to the Commission, the Commission was violating federal law by declining to further process the license application. And the Court's majority further indicated that the mandamus petition eventually would have to be granted if the Commission did not act or Congress did not enact new legislation either terminating the Commission's licensing process or otherwise making clear that the Commission may not expend funds on the licensing process. *See Order, In re Aiken County*, No. 11-1271 (D.C. Cir. Aug. 3, 2012).

Since we issued that order more than a year ago on August 3, 2012, the Commission has not acted, and Congress has not altered the legal landscape. As things stand, therefore, the Commission is simply flouting the law. In light of the constitutional respect owed to Congress, and having fully exhausted the alternatives available to us, we now grant the petition for writ of mandamus against the Nuclear Regulatory Commission.

II

Our analysis begins with settled, bedrock principles of constitutional law. Under Article II of the Constitution and relevant Supreme Court precedents, the President must follow statutory *mandates* so long as there is appropriated money available and the President has no constitutional objection to the statute. So, too, the President must abide by statutory *prohibitions* unless the President has a constitutional objection to the prohibition. If the President has a constitutional objection to a statutory mandate or prohibition, the President may decline to follow the law unless and until a

final Court order dictates otherwise. But the President may not decline to follow a statutory mandate or prohibition simply because of policy objections. Of course, if Congress appropriates no money for a statutorily mandated program, the Executive obviously cannot move forward. But absent a lack of funds or a claim of unconstitutionality that has not been rejected by final Court order, the Executive must abide by statutory mandates and prohibitions.

Those basic constitutional principles apply to the President and subordinate executive agencies. And they apply at least as much to independent agencies such as the Nuclear Regulatory Commission. *Cf. FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 525-26 (2009) (opinion of Scalia, J., for four Justices) (independent agency should be subject to same scrutiny as executive agencies); *id.* at 547 (opinion of Breyer, J., for four Justices) (independent agency's "comparative freedom from ballot-box control makes it all the more important that courts review its decisionmaking to assure compliance with applicable provisions of the law").

In this case, however, the Nuclear Regulatory Commission has declined to continue the statutorily mandated Yucca Mountain licensing process. Several justifications have been suggested in support of the Commission's actions in this case. None is persuasive.

First, the Commission claims that Congress has not yet appropriated the *full* amount of funding necessary for the Commission to *complete* the licensing proceeding. But Congress often appropriates money on a step-by-step basis, especially for long-term projects. Federal agencies may not ignore statutory mandates simply because Congress has not yet appropriated all of the money necessary to complete a

project. See *City of Los Angeles v. Adams*, 556 F.2d 40, 50 (D.C. Cir. 1977) (when statutory mandate is not fully funded, “the agency administering the statute is required to effectuate the original statutory scheme as much as possible, within the limits of the added constraint”). For present purposes, the key point is this: The Commission is under a legal obligation to continue the licensing process, and it has at least \$11.1 million in appropriated funds – a significant amount of money – to do so. See Commission Third Status Report, at 2 (Apr. 5, 2013).

Second, and relatedly, the Commission speculates that Congress, in the future, will not appropriate the additional funds necessary for the Commission to complete the licensing process. So it would be a waste, the Commission theorizes, to continue to conduct the process now. The Commission’s political prognostication may or may not ultimately prove to be correct. Regardless, an agency may not rely on political guesswork about future congressional appropriations as a basis for violating existing legal mandates. A judicial green light for such a step – allowing agencies to ignore statutory mandates and prohibitions based on agency speculation about future congressional action – would gravely upset the balance of powers between the Branches and represent a major and unwarranted expansion of the Executive’s power at the expense of Congress.

Third, the Commission points to Congress’s recent appropriations to the Commission and to the Department of Energy for the Yucca Mountain project. In the last three years, those appropriations have been relatively low or zero. The Commission argues that those appropriations levels demonstrate a congressional desire for the Commission to shut down the licensing process.

But Congress speaks through the laws it enacts. No law states that the Commission should decline to spend previously appropriated funds on the licensing process. No law states that the Commission should shut down the licensing process. And the fact that Congress hasn't yet made additional appropriations over the existing \$11.1 million available to the Commission to continue the licensing process tells us nothing definitive about what a future Congress may do. As the Supreme Court has explained, courts generally should not infer that Congress has implicitly repealed or suspended statutory mandates based simply on the amount of money Congress has appropriated. See *TVA v. Hill*, 437 U.S. 153, 190 (1978) (doctrine that repeals by implication are disfavored "applies with even *greater* force when the claimed repeal rests solely on an Appropriations Act"); *United States v. Langston*, 118 U.S. 389, 394 (1886) ("a statute fixing the annual salary of a public officer at a named sum . . . should not be deemed abrogated or suspended by subsequent enactments which merely appropriated a less amount for the services of that officer for particular fiscal years"); cf. 1 GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW at 2-49 (3d ed. 2004) ("a mere failure to appropriate sufficient funds will not be construed as amending or repealing prior authorizing legislation").

In these circumstances, where previously appropriated money is available for an agency to perform a statutorily mandated activity, we see no basis for a court to excuse the agency from that statutory mandate.

Fourth, the record suggests that the Commission, as a policy matter, simply may not want to pursue Yucca Mountain as a possible site for storage of nuclear waste. But Congress sets the policy, not the Commission. And policy

disagreement with Congress's decision about nuclear waste storage is not a lawful ground for the Commission to decline to continue the congressionally mandated licensing process. To reiterate, the President and federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress. *See Lincoln v. Vigil*, 508 U.S. 182, 193 (1993) ("Of course, an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes . . ."); 18 Comp. Gen. 285, 292 (1938) ("the question with the accounting officers is not the apparent general merit of a proposed expenditure, but whether the Congress, controlling the purse, has by law authorized the expenditure").¹

¹ Like the Commission here, a President sometimes has policy reasons (as distinct from constitutional reasons, *cf. infra* note 3) for wanting to spend less than the full amount appropriated by Congress for a particular project or program. But in those circumstances, even the President does not have unilateral authority to refuse to spend the funds. Instead, the President must propose the rescission of funds, and Congress then may decide whether to approve a rescission bill. *See* 2 U.S.C. § 683; *see also Train v. City of New York*, 420 U.S. 35 (1975); Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, to Edward L. Morgan, Deputy Counsel to the President (Dec. 1, 1969), reprinted in *Executive Impoundment of Appropriated Funds: Hearings Before the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary*, 92d Cong. 279, 282 (1971) ("With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent.").

III²

We thus far have concluded that the Commission's inaction violates the Nuclear Waste Policy Act. To be sure, there are also two principles rooted in Article II of the Constitution that give the Executive authority, in certain circumstances, to decline to act in the face of a clear statute. But neither of those principles applies here.

First, the President possesses significant independent authority to assess the constitutionality of a statute. *See* U.S. CONST. art. II, § 1, cl. 1 (Executive Power Clause); U.S. CONST. art. II, § 1, cl. 8 (Oath of Office Clause); U.S. CONST. art. II, § 3 (Take Care Clause). But that principle does not help the Commission.

To explain: The President is of course not bound by Congress's assessment of the constitutionality of a statute. The Take Care Clause of Article II refers to "Laws," and those Laws include the Constitution, which is superior to statutes. *See* U.S. CONST. art. VI (Constitution is "supreme Law of the Land"). So, too, Congress is not bound by the President's assessment of the constitutionality of a statute. Rather, in a justiciable case, the Supreme Court has the final word on whether a statutory mandate or prohibition on the Executive is constitutional. *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) (Presidential Recordings and Materials Preservation Act is constitutional); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 639 (1952) (Jackson, J., concurring) (congressional statutes that together preclude President from seizing steel mills are constitutional); *see generally Marbury v. Madison*, 5 U.S. 137 (1803).

² Judge Kavanaugh alone joins Part III of the opinion.

So unless and until a final Court decision in a justiciable case says that a statutory mandate or prohibition on the Executive Branch is constitutional, the President (and subordinate executive agencies supervised and directed by the President) may decline to follow that statutory mandate or prohibition if the President concludes that it is unconstitutional. Presidents routinely exercise this power through Presidential directives, executive orders, signing statements, and other forms of Presidential decisions. *See, e.g., Zivotofsky v. Clinton*, 132 S. Ct. 1421 (2012) (based on Article II, Presidents Bush and Obama refused to comply with statute regulating passports of individuals born in Jerusalem); *Myers v. United States*, 272 U.S. 52 (1926) (based on Article II, President Wilson refused to comply with statutory limit on the President's removal power); *see also Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 906 (1991) (Scalia, J., concurring) (President has "the power to veto encroaching laws or even to disregard them when they are unconstitutional") (citation omitted); *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 Op. Off. Legal Counsel 199, 199-200 (1994) (Walter Dellinger) (describing as "uncontroversial" and "unassailable" the proposition that a President may decline to execute an unconstitutional statute in some circumstances); 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 446 (Jonathan Elliot ed., 2d ed. 1836) ("the President of the United States could shield himself, and refuse to carry into effect an act that violates the Constitution") (statement of James Wilson).³

³ In declining to follow a statutory *mandate* that the President independently concludes is unconstitutional, the President generally may decline to expend funds on that unconstitutional program, at least unless and until a final Court order rules otherwise. But in

But even assuming *arguendo* that an independent agency such as the Nuclear Regulatory Commission possesses Article II authority to assess the constitutionality of a statute and thus may decline to follow the statute until a final Court order says otherwise,⁴ the Commission has not asserted that the relevant statutes in this case are unconstitutional. So that Article II principle is of no help to the Commission here.

declining to follow a statutory *prohibition* that the President independently concludes is unconstitutional (and not just unwise policy, *cf. supra* note 1), the Appropriations Clause acts as a separate limit on the President's power. It is thus doubtful that the President may permissibly expend more funds than Congress has appropriated for the program in question. *See* U.S. CONST. art. I, § 9, cl. 7 (Appropriations Clause); *see also OPM v. Richmond*, 496 U.S. 414, 425 (1990) ("Any exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury."). It is sometimes suggested, however, that the President may elect not to follow a statutory prohibition on how *otherwise available appropriated funds* are spent if the President concludes that the prohibition is unconstitutional, at least unless and until a final Court order rules otherwise. *See* David J. Barron & Martin S. Lederman, *The Commander in Chief at the Lowest Ebb – Framing the Problem, Doctrine, and Original Understanding*, 121 HARV. L. REV. 689, 740 (2008). This case does not require analysis of those difficult questions.

⁴ It is doubtful that an independent agency may disregard a statute on constitutional grounds unless the President has concluded that the relevant statute is unconstitutional. But we need not delve further into that question here. *Compare Humphrey's Executor v. United States*, 295 U.S. 602 (1935), with *Myers*, 272 U.S. 52, and *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 130 S. Ct. 3138 (2010).

Second, it is also true that, under Article II, the President possesses a significant degree of prosecutorial discretion not to take enforcement actions against violators of a federal law. But that principle does not support the Commission's inaction here. To demonstrate why, the contours of the Executive's prosecutorial discretion must be explained.

The Presidential power of prosecutorial discretion is rooted in Article II, including the Executive Power Clause, the Take Care Clause, the Oath of Office Clause, and the Pardon Clause. *See* U.S. CONST. art. II, § 1, cl. 1 (Executive Power Clause); U.S. CONST. art. II, § 1, cl. 8 (Oath of Office Clause); U.S. CONST. art. II, § 2, cl. 1 (Pardon Clause); U.S. CONST. art. II, § 3 (Take Care Clause); *see also* U.S. CONST. art. I, § 9, cl. 3 (Bill of Attainder Clause). The President may decline to prosecute certain violators of federal law just as the President may pardon certain violators of federal law.⁵ The President may decline to prosecute or may pardon because of the President's own constitutional concerns about a law *or* because of policy objections to the law, among other reasons.⁶ *See, e.g., United States v. Nixon*, 418 U.S. 683, 693 (1974) ("the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case"); *Community for Creative Non-Violence v. Pierce*, 786 F.2d 1199, 1201 (D.C. Cir. 1986) ("The power to decide when to investigate,

⁵ The power to pardon encompasses the power to commute sentences. *See Schick v. Reed*, 419 U.S. 256, 264 (1974).

⁶ One important difference between a decision not to prosecute and a pardon is that a pardon prevents a future President from prosecuting the offender for that offense. Prosecutorial discretion, meanwhile, might be exercised differently by a future President – subject to statute of limitations issues or any due process limits that might apply when an offender has reasonably relied on a prior Presidential promise not to prosecute particular conduct.

and when to prosecute, lies at the core of the Executive's duty to see to the faithful execution of the laws"); *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965) ("The discretionary power of the attorney for the United States in determining whether a prosecution shall be commenced or maintained may well depend upon matters of policy wholly apart from any question of probable cause."); *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. Off. Legal Counsel 101, 125 (1984) (Theodore B. Olson) ("the constitutionally prescribed separation of powers requires that the Executive retain discretion with respect to whom it will prosecute for violations of the law"); *id.* at 115 ("The Executive's exclusive authority to prosecute violations of the law gives rise to the corollary that neither the Judicial nor Legislative Branches may directly interfere with the prosecutorial discretion of the Executive by directing the Executive Branch to prosecute particular individuals."); Congressman John Marshall, Speech to the House of Representatives (1800), *reprinted in* 18 U.S. app. at 29 (1820) (The President may "direct that the criminal be prosecuted no further. This is . . . the exercise of an indubitable and a constitutional power."); *see also United States v. Klein*, 80 U.S. 128, 147 (1871) ("To the executive alone is intrusted the power of pardon; and it is granted without limit.").

In light of the President's Article II prosecutorial discretion, Congress may not *mandate* that the President prosecute a certain kind of offense or offender. The logic behind the pardon power further supports that conclusion. As has been settled since the Founding, the President has absolute authority to issue a pardon at any time after an unlawful act has occurred, even *before* a charge or trial. *See Ex parte Grossman*, 267 U.S. 87, 120 (1925) ("The Executive

can relieve or pardon all offenses after their commission, either before trial, during trial or after trial, by individuals, or by classes . . .”). So it would make little sense to think that Congress constitutionally could compel the President to prosecute certain offenses or offenders, given that the President has undisputed authority to pardon all such offenders at any time after commission of the offense. See AKHIL REED AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY* 179 (2005) (“greater power to pardon subsumed the lesser power to simply decline prosecution”).⁷

The Executive’s broad prosecutorial discretion and pardon powers illustrate a key point of the Constitution’s separation of powers. One of the greatest *unilateral* powers a President possesses under the Constitution, at least in the domestic sphere, is the power to protect individual liberty by essentially under-enforcing federal statutes regulating private behavior – more precisely, the power either not to seek charges against violators of a federal law or to pardon violators of a federal law.⁸ The Framers saw the separation of the power to prosecute from the power to legislate as essential

⁷ If the Executive selectively prosecutes someone based on impermissible considerations, the equal protection remedy is to dismiss the prosecution, not to compel the Executive to bring another prosecution. See *United States v. Armstrong*, 517 U.S. 456, 459, 463 (1996); *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886); cf. *Linda R.S. v. Richard D.*, 410 U.S. 614, 618-19 (1973).

⁸ Congress obviously has tools to deter the Executive from exercising authority in this way – for example by using the appropriations power or the advice and consent power to thwart other aspects of the Executive’s agenda (and ultimately, of course, Congress has the impeachment power). But Congress may not overturn a pardon or direct that the Executive prosecute a particular individual or class of individuals.

to preserving individual liberty. See THE FEDERALIST NO. 47, at 269 (James Madison) (Clinton Rossiter ed., rev. ed. 1999) (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.”); 1 MONTESQUIEU, THE SPIRIT OF LAWS bk. 11, ch. 6, at 163 (Thomas Nugent trans., 1914) (“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.”). After enacting a statute, Congress may not mandate the prosecution of violators of that statute. Instead, the President’s prosecutorial discretion and pardon powers operate as an independent protection for individual citizens against the enforcement of oppressive laws that Congress may have passed (and still further protection comes from later review by an independent jury and Judiciary in those prosecutions brought by the Executive).⁹

⁹ It is likely that the Executive may decline to seek *civil* penalties or sanctions (including penalties or sanctions in administrative proceedings) on behalf of the Federal Government in the same way. Because they are to some extent analogous to criminal prosecution decisions and stem from similar Article II roots, such civil enforcement decisions brought by the Federal Government are presumptively an exclusive Executive power. See *Buckley v. Valeo*, 424 U.S. 1, 138 (1976) (“The Commission’s enforcement power, exemplified by its discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law, and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to ‘take Care that the Laws be faithfully executed.’”) (quoting U.S. CONST. art. II, § 3); *Heckler v. Chaney*, 470 U.S. 821, 831-33 (1985); *Confiscation Cases*, 74 U.S. 454, 457 (1868); see

To be sure, a President's decision to exercise prosecutorial discretion and to decline to seek charges against violators (or to pardon violators) of certain laws can be very controversial. For example, if a President disagreed on constitutional or policy grounds with certain federal marijuana or gun possession laws and said that the Executive Branch would not initiate criminal charges against violators of those laws, controversy might well ensue, including public criticism that the President was "ignoring" or "failing to enforce" the law (and if a court had previously upheld the law in question as constitutional, additional claims that the President was also "ignoring" the courts). But the President has clear constitutional authority to exercise prosecutorial discretion to decline to prosecute violators of such laws, just as the President indisputably has clear constitutional authority to pardon violators of such laws. *See, e.g.*, 1963 Attorney Gen. Ann. Rep. 62, 62-63 (1963) (President Kennedy commuted the sentences of many drug offenders sentenced to mandatory minimums); Letter from Thomas Jefferson to Abigail Adams (July 22, 1804), *in* 11 THE WRITINGS OF THOMAS JEFFERSON 42, 43-44 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1904) (President Jefferson both pardoned those convicted under the Sedition Act and refused to prosecute violators of the Act); President George

also Butz v. Economou, 438 U.S. 478, 515 (1978); *Seven-Sky v. Holder*, 661 F.3d 1, 50 & n.43 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (referring to possibility that a President might exercise prosecutorial discretion not to seek civil penalties against violators of a statute). That said, it has occasionally been posited that the President's power not to initiate a civil enforcement action may not be entirely absolute (unlike with respect to criminal prosecution) and thus might yield if Congress expressly mandates civil enforcement actions in certain circumstances. *Cf. Heckler*, 470 U.S. at 832-33.

Washington, Proclamation (July 10, 1795), in 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897, at 181 (James D. Richardson ed., 1896) (President Washington pardoned participants in the Pennsylvania Whiskey Rebellion).¹⁰ The remedy for

¹⁰ As a general matter, there is widespread confusion about the differences between (i) the President's authority to disregard statutory mandates or prohibitions on the Executive, based on the President's constitutional objections, and (ii) the President's prosecutorial discretion not to initiate charges against (or to pardon) violators of a federal law. There are two key practical differences. *First*, the President may disregard a statutory mandate or prohibition on the Executive only on constitutional grounds, not on policy grounds. By contrast, the President may exercise the prosecutorial discretion and pardon powers on any ground – whether based on the Constitution, policy, or other considerations. *Second*, our constitutional structure and tradition establish that a President is bound to comply with a final Court decision holding that a statutory mandate or prohibition on the Executive is constitutional. But in the prosecutorial discretion and pardon context, when a Court upholds a statute that regulates private parties as consistent with the Constitution, that ruling simply *authorizes* prosecution of violators of that law. Such a Court ruling does not *require* the President either to prosecute violators of that law or to refrain from pardoning violators of that law. So the President may decline to prosecute or may pardon violators of a law that the Court has upheld as constitutional. To take one example, a President plainly could choose not to seek (or could commute) federal death sentences because of the President's own objections to the death penalty, even though the Supreme Court has upheld the death penalty as constitutional. See Daniel J. Meltzer, *Executive Defense of Congressional Acts*, 61 DUKE L.J. 1183, 1189-90 (2012) (“President Jefferson ended pending prosecutions under the Sedition Act and pardoned individuals previously convicted under that Act, even though the courts had upheld the Act’s constitutionality. . . . [I]t can hardly be said that his pardons

Presidential abuses of the power to pardon or to decline to prosecute comes in the form of public disapproval, congressional “retaliation” on other matters, or ultimately impeachment in cases of extreme abuse.

So having said all of that, why doesn’t the principle of prosecutorial discretion justify the Nuclear Regulatory Commission’s inaction in this case? The answer is straightforward. Prosecutorial discretion encompasses the Executive’s power to decide whether to initiate charges for legal wrongdoing and to seek punishment, penalties, or sanctions against individuals or entities who violate federal law. Prosecutorial discretion does not include the power to disregard other statutory obligations that apply to the Executive Branch, such as statutory requirements to issue rules, *see Massachusetts v. EPA*, 549 U.S. 497, 527-28 (2007) (explaining the difference), or to pay benefits, or to implement or administer statutory projects or programs. Put another way, prosecutorial discretion encompasses the discretion not to *enforce* a law against private parties; it does not encompass the discretion not to *follow* a law imposing a mandate or prohibition on the Executive Branch.¹¹

disregarded a duty to enforce or defend a congressional statute, given that the pardon power, by its nature, involves undoing the prior enforcement, via conviction, of a statute. And although the abatement of pending prosecutions failed in one sense to enforce the Sedition Act, given the breadth of prosecutorial discretion – whether rooted in the Constitution, in the presumed intention of Congress, or in some combination of the two – it is hard to view Jefferson as having disregarded a congressional mandate.”) (footnotes omitted).

¹¹ Of course, for reasons already discussed, the President may decline to follow a law that purports to *require* the Executive

This case does not involve a Commission decision not to prosecute violations of federal law. Rather, this case involves a Commission decision not to follow a law mandating that the Commission take certain non-prosecutorial action. So the Executive's power of prosecutorial discretion provides no support for the Commission's inaction and disregard of federal law here.

IV

At the behest of the Commission, we have repeatedly gone out of our way over the last several years to defer a mandamus order against the Commission and thereby give Congress time to pass new legislation that would clarify this matter if it so wished. In our decision in August 2012, the Court's majority made clear, however, that mandamus likely would have to be granted at some point if Congress took no further action. *See Order, In re Aiken County*, No. 11-1271 (D.C. Cir. Aug. 3, 2012). Since then, Congress has taken no further action on this matter. At this point, the Commission is simply defying a law enacted by Congress, and the Commission is doing so without any legal basis.

We therefore have no good choice but to grant the petition for a writ of mandamus against the Commission.¹²

Branch to prosecute certain offenses or offenders. Such a law would interfere with the President's Article II prosecutorial discretion.

¹² In his dissent, Chief Judge Garland cites several cases to explain his vote against granting mandamus in this case. Of the eight cases he cites, however, five did not involve a statutory mandate with a defined deadline, as we have here. In the other three cases, the Court made clear that either the agency had to act or the Court would grant mandamus in the future. *See In re United*

the Nuclear Regulatory Commission. Our decision today rests on the constitutional authority of Congress, and the respect that the Executive and the Judiciary properly owe to Congress in the circumstances here. To be sure, if Congress determines in the wake of our decision that it will never fund the Commission's licensing process to completion, we would certainly hope that Congress would step in before the current \$11.1 million is expended, so as to avoid wasting that taxpayer money. And Congress, of course, is under no obligation to appropriate additional money for the Yucca Mountain project. Moreover, our decision here does not pre-judge the merits of the Commission's consideration or decision on the Department of Energy's license application, or the Commission's consideration or decision on any Department of Energy attempt to withdraw the license application. But unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining, the Nuclear Regulatory Commission must promptly continue with the legally mandated licensing process. The petition for a writ of mandamus is granted.

So ordered.

This case has serious implications for our constitutional structure. It is no overstatement to say that our constitutional system of separation of powers would be significantly altered if we were to allow executive and independent agencies to disregard federal law in the manner asserted in this case by

Mine Workers of America International Union, 190 F.3d 545, 554 (D.C. Cir. 1999) (“however modest [an agency’s] personnel and budgetary resources may be, there is a limit to how long it may use these justifications to excuse inaction”); *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 477 (D.C. Cir. 1998) (denying mandamus partly because “this is not a case where an agency has been contumacious in ignoring court directions to expedite decision-making”); *In re Barr Laboratories, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991) (mandamus inappropriate where it would interfere with agency priorities set by applying agency expertise but noting that “[w]here the agency has manifested bad faith, as by . . . asserting utter indifference to a congressional deadline, the agency will have a hard time claiming legitimacy for its priorities”). Consistent with those precedents, we followed a cautious approach in our decision more than a year ago when we declined to issue mandamus against the Commission at that time. But the Court’s majority clearly warned that mandamus would eventually have to be granted if the Commission did not act or if Congress did not change the law. Since then, despite the clear warning, the Commission has still not complied with the statutory mandate. On the contrary, the Commission has reaffirmed that it has no plans to comply with the statutory mandate. In the face of such deliberate and continued agency disregard of a statutory mandate, our precedents strongly support a writ of mandamus. Our respectful factbound difference with Chief Judge Garland, then, is simply that we believe – especially given the Court’s cautious and incremental approach in prior iterations of this litigation, the significant amount of money available for the Commission to continue the licensing process, and the Commission’s continued disregard of the law – that the case has by now proceeded to the point where mandamus appropriately must be granted.

RANDOLPH, *Senior Circuit Judge*, concurring: I join all of the majority opinion except part III, which I believe is unnecessary to decide the case.

I also believe some background information is needed to understand what has occurred here. The Nuclear Waste Policy Act states that the Commission “shall consider” the Yucca Mountain license application and “shall issue a final decision approving or disapproving” the application “not later than” three years after its submission. 42 U.S.C. § 10134(d). The Department of Energy filed the Yucca Mountain application in June 2008, *see* Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008), and Congress later provided substantial appropriations for the licensing process, *see* U.S. NUCLEAR REGULATORY COMMISSION, NUREG-1100, VOL. 26, CONGRESSIONAL BUDGET JUSTIFICATION FOR FY 2011 94–95 (2010). Although the Commission had a duty to act on the application and the means to fulfill that duty, former Chairman Gregory Jaczko orchestrated a systematic campaign of noncompliance. Jaczko unilaterally ordered Commission staff to terminate the review process in October 2010; instructed staff to remove key findings from reports evaluating the Yucca Mountain site; and ignored the will of his fellow Commissioners. *See* U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL, OIG CASE No. 11-05, NRC CHAIRMAN’S UNILATERAL DECISION TO TERMINATE NRC’S REVIEW OF DOE YUCCA MOUNTAIN REPOSITORY LICENSE APPLICATION 7–10, 17, 44–46 (2011). These transgressions prompted an investigation by the Commission’s Inspector General, as well as a letter from all four of the Commission’s other members expressing “grave concerns” about Jaczko’s performance in office. *See* Matthew Daly, *Nuclear Agency’s Commissioners and Chief Trade War of Words*, WASH. POST, Dec. 10, 2011, at A18. After we heard oral argument in this case, Jaczko resigned.

Today's judgment should ensure that the Commission's next chapter begins with adherence to the law. In the Nuclear Waste Policy Act Congress required the Commission to rule on the Yucca Mountain application, and it appropriated funds for that purpose. The Commission's duty is to comply with the law and our duty is to make sure it does so. "Once Congress . . . has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought." *TVA v. Hill*, 437 U.S. 153, 194 (1978).

GARLAND, *Chief Judge*, dissenting: Mandamus is a “drastic and extraordinary remedy reserved for really extraordinary causes.” *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380 (2004) (internal quotation marks omitted). Even if a petitioner can show that it has a “clear and indisputable” right to the writ, issuing the writ remains “a matter vested in the discretion of the court.” *Id.* at 381, 391. Likewise, “mandamus[] does not necessarily follow a finding of a [statutory] violation.” *In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 551 (D.C. Cir. 1999) (second alteration in original) (quoting *In re Barr Labs., Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991)). To the contrary, this court has not hesitated to deny the writ even when an agency has missed a statutory deadline by far more than the two years that have passed in this case. *See id.* at 546, 551 (declining to issue the writ, notwithstanding that the agency missed an “express” statutory deadline by 8 years in “clear violation” of the statute).¹ Finally, and most relevant

¹*See also, e.g., In re Core Commc’ns, Inc.*, 531 F.3d 849, 850 (D.C. Cir. 2008) (noting that the court had declined to issue the writ after the agency failed to respond to the court’s remand for 3 years, but issuing the writ when the delay reached 6 years); *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100-01 (D.C. Cir. 2003) (vacating and remanding the district court’s determination that a 5-year delay was unreasonable, due to the district court’s failure to consider the agency’s resource constraints); *Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455, 477-78 (D.C. Cir. 1998) (declining to order agency action notwithstanding a 10-year delay in issuing a rule and a 20-year delay in achieving the rule’s statutory objective); *In re Int’l Chem. Workers Union*, 958 F.2d 1144, 1146-47, 1150 (D.C. Cir. 1992) (noting that the court had declined to issue the writ after a 3-year delay, but issuing the writ when the delay reached 6 years); *In re Monroe Commc’ns Corp.*, 840 F.2d 942, 945-47 (D.C. Cir. 1988) (declining to issue the writ despite the agency’s 3-year delay since the ALJ’s initial decision, and 5-year delay since the start of agency proceedings); *Oil, Chem. & Atomic Workers Int’l Union v. Zegeer*, 768 F.2d 1480, 1487-88 (D.C. Cir. 1985) (declining to issue the writ after a 5-year delay).

here, “[c]ourts will not issue the writ to do a useless thing, even though technically to uphold a legal right.” *United States ex rel. Sierra Land & Water Co. v. Ickes*, 84 F.2d 228, 232 (D.C. Cir. 1936).²

Unfortunately, granting the writ in this case will indeed direct the Nuclear Regulatory Commission to do “a useless thing.” The NRC has not refused to proceed with the Yucca Mountain application. Rather, by unanimous votes of both the Commission and its Atomic Safety and Licensing Board, it has suspended the application proceeding until there are sufficient funds to make meaningful progress. *See* Mem. and Order at 1-2 (N.R.C. Sept. 9, 2011); Mem. and Order (Suspending Adjudicatory Proceeding) at 3 (A.S.L.B. Sept. 30, 2011); NRC Br. 53; NRC Resp. Br. 5; Oral Arg. Tr. 36. Five months prior to that suspension, Congress had given the Commission only the minimal amount it requested to “support work related to the orderly closure of the agency’s Yucca Mountain licensing support activities.” NRC, CONG. BUDGET JUSTIFICATION FOR FY 2011, at 95 (2010); *see* Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, § 1423, 125 Stat. 38, 126 (2011). The following year, Congress completely zeroed out the Commission’s funding for the project. And the year following that -- after we held this case in abeyance so that Congress could indicate whether it intended to fund the project going forward, *see* Order, *In re Aiken County*, No. 11-1271 (D.C. Cir. Aug. 3, 2012) -- Congress once again appropriated no money for Yucca Mountain activities.

²*See Weber v. United States*, 209 F.3d 756, 760 (D.C. Cir. 2000) (declaring that the writ “is not to be granted in order to command a gesture”); *Realty Income Trust v. Eckerd*, 564 F.2d 447, 458 (D.C. Cir. 1977) (holding that “equity should not require the doing of a ‘vain or useless thing’”).

As a consequence, the agency has only about \$11 million left in available funds. No one disputes that \$11 million is wholly insufficient to complete the processing of the application. By way of comparison, the Commission's budget request for the most recent year in which it still expected the Yucca Mountain proceeding to move forward was \$99.1 million. *See* Inspector Gen. Mem. at 8 (June 6, 2011) (describing NRC's FY 2010 performance budget request, which Congress did not grant).³ The only real question, then, is whether the

³To put the size of the application process in concrete terms, at the time the NRC suspended its licensing proceeding, 288 contentions -- claims that must be resolved before the application can be granted -- remained outstanding. *See* Mem. and Order (Suspending Adjudicatory Proceeding) at 3 (A.S.L.B. Sept. 30, 2011); *see also* Mem. and Order at 2 (N.R.C. June 30, 2009) (noting that the Yucca Mountain proceeding "is the most extensive . . . in the agency's history"). Over 100 expert witnesses had been identified for depositions, to address contentions on such diverse subjects as hydrology, geochemistry, climate change, corrosion, radiation, volcanism, and waste transport -- and those were just for the first phase of the proceeding. *See* Mem. and Order (Identifying Participants and Admitted Contentions), Attachment A at 1-10 (A.S.L.B. May 11, 2009); Dep't of Energy Mot. to Renew Temporary Suspension ("DOE Mot.") at 5 n.14 (A.S.L.B. Jan. 21, 2011).

Nor is funding for the NRC the only problem. The Department of Energy (DOE) is the license applicant and an indispensable party in the application process; it bears the burden of proof on each of the remaining 288 contentions. *See* 10 C.F.R. § 2.325. But Congress has zeroed out DOE's Yucca Mountain funding for three years running. It, too, has only a comparatively small amount of carryover funds available -- enough for less than two months' participation. *See* U.S. Amicus Br. 6; *see also infra* note 4.

Of course, processing the application is itself only the tip of the iceberg. Completing the project, including constructing the Yucca

Commission can make any meaningful progress with \$11 million.

The Commission has concluded that it cannot. *See* NRC Resp. Br. 5; U.S. Amicus Br. 9; *see also* NRC Br. 42. And we are not in a position -- nor do we have any basis -- to second-guess that conclusion. Two years ago, citing insufficient funds to proceed and the need to preserve the materials it had collected, the NRC shuttered the licensing program, dismantled the computer system upon which it depended, shipped the documents to storage, and reassigned the program's personnel to projects that did have congressional funding. *See* Mem. and Order at 1-2 (N.R.C. Sept. 9, 2011); NRC Br. 3; Pet'rs Br. 16; Oral Arg. Tr. 45. The Commission believes it will take a significant part of the \$11 million to get the process started again. *See* Oral Arg. Tr. 45-49; *see also* U.S. Amicus Br. 6.⁴ Nor would that leave the Commission with the remainder to spend on moving the application along, however slightly. In light of the NRC's previous three years of appropriations experience, the only responsible use for the remaining money would be to spend it on putting the materials back into storage -- in order to preserve them for the day (if it ever arrives) that Congress provides additional funds. *See* Oral Arg. Tr. 48-49.

Mountain facilities themselves, would require another \$50 billion, none of which has been appropriated. *See* Oral Arg. Tr. 63.

⁴The Department of Energy is in a position similar to that of the NRC. The DOE office with responsibility for the Yucca Mountain project ceased operations in September 2010. *See* DOE Mot. at 4-5. "An active licensing proceeding would thus require DOE to, among other things, re-hire employees, enter into new contracts for necessary services, and re-create capabilities . . ." *Id.* at 5; *see also supra* note 3.

In short, given the limited funds that remain available, issuing a writ of mandamus amounts to little more than ordering the Commission to spend part of those funds unpacking its boxes, and the remainder packing them up again. This exercise will do nothing to safeguard the separation of powers, which my colleagues see as imperiled by the NRC's conduct. See Court Op. at 7, 21-22. And because "[i]t is within our discretion not to order the doing of a useless act," *Sierra Land & Water*, 84 F.2d at 232, I respectfully dissent.⁵

⁵*Cf. In re Barr Labs.*, 930 F.2d at 76 ("Congress sought to get generic drugs into the hands of patients at reasonable prices -- fast. The record before us reflects a defeat of those hopes. There are probably remedies[, including] more resources. . . . [N]one is within our power, and a grant of [the] petition [for mandamus] is no remedy at all.").

NYE COUNTY



Pahrump Administration Office
2100 E. Walt Williams Drive
Pahrump, NV 89048
Phone (775) 751-7075
Fax (775) 751-7093

Tonopah Administration Office
Nye County Courthouse
William P. Beko Justice Facility
PO Box 153
Tonopah, NV 89049
Phone (775) 482-8191
Fax (775) 482-8198

8/13/2013

PRESS RELEASE

"Nye County is pleased the US District Court of Appeals for the District of Columbia has finally ruled in the Yucca Mountain nuclear waste repository licensing case (In Re: Aiken County). Nye County, a petitioner in the case, has always maintained, and now the federal appeals court has agreed, that the Nuclear Waste Policy Act is the law of the land. The Nuclear Regulatory Commission (NRC) must now comply with this law and continue its review of the Yucca Mountain project. We look forward to the NRC restarting the licensing process and issuing its safety evaluation reports, which we believe will demonstrate the repository can be constructed and operated safely. As the site county for Yucca Mountain, we will continue to be actively involved with the NRC licensing process and push for science, not politics, to dictate whether the project moves forward."

House Energy and Commerce Subcommittee on Environment and the Economy Holds Hearing on the Energy Department's Strategy for Radioactive Waste Disposal

Congressional Transcript

July 31, 2013

SHIMKUS: But -- but I have a personal analogy of a U.S. senator who fought against that as the attorney general who is now a sitting U.S. senator from that state.

So we better be careful. I think this -- this illusion that this consent based approach is going to be panacea I'm not sure is supported by the facts.

Something-- another thing that the Blue Ribbon Commission that you're also promoting is that incentives are a key to success and that the estimated cost of this effort is from -- from the beginning is \$5.6 billion over 10 years.

Why not offer this money to Nevada?

MONIZ: Again, the recommendation is around a consent based approach. Any state and community can come forward...

SHIMKUS: So state of Nevada -- I mean, the -- the issue would be that part of the problem with (inaudible) is they say, show me the money. We don't believe you'll follow through and there's not gonna be any additional benefits.

Wouldn't \$5.6 billion to a state that has a struggling economy, that could rebuild its roads, bring in rail lines and proudly continue to do what we have and the Department of Energy has done with UNLV continue to support their advanced nuclear energy technology, don't you think that would be a good lure?

MONIZ: Again, we are advocating a consent based approach, any state can come forward and we do believe that research, materials testing, characterization facilities are an important part of the storage program and would be part -- and presumably would be part of a possible quotes (ph) incentive program.

SHIMKUS: Thank you, Mr. Secretary.

113TH CONGRESS
1ST SESSION

S. _____

To establish a new organization to manage nuclear waste, provide a consensual process for siting nuclear waste facilities, ensure adequate funding for managing nuclear waste, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To establish a new organization to manage nuclear waste, provide a consensual process for siting nuclear waste facilities, ensure adequate funding for managing nuclear waste, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Nuclear Waste Administration Act of 2013”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FINDINGS, PURPOSES, AND DEFINITIONS

- Sec. 101. Findings.
- Sec. 102. Purposes.
- Sec. 103. Definitions.

TITLE II—NUCLEAR WASTE ADMINISTRATION

- Sec. 201. Establishment.
- Sec. 202. Principal officers.
- Sec. 203. Other officers.
- Sec. 204. Inspector General.
- Sec. 205. Nuclear Waste Oversight Board.
- Sec. 206. Conforming amendments.

TITLE III—FUNCTIONS

- Sec. 301. Transfer of functions.
- Sec. 302. Transfer of contracts.
- Sec. 303. Nuclear waste facilities.
- Sec. 304. Siting nuclear waste facilities.
- Sec. 305. Licensing nuclear waste facilities.
- Sec. 306. Linkage between storage and disposal.
- Sec. 307. Defense waste.
- Sec. 308. Transportation.

TITLE IV—FUNDING AND LEGAL PROCEEDINGS

- Sec. 401. Working Capital Fund.
- Sec. 402. Nuclear Waste Fund.
- Sec. 403. Full cost recovery.
- Sec. 404. Judicial review.
- Sec. 405. Litigation authority.
- Sec. 406. Liabilities.

TITLE V—ADMINISTRATIVE AND SAVINGS PROVISIONS

- Sec. 501. Administrative powers of Administrator.
- Sec. 502. Personnel.
- Sec. 503. Offices.
- Sec. 504. Mission plan.
- Sec. 505. Annual reports.
- Sec. 506. Savings provisions; terminations.
- Sec. 507. Technical assistance in the field of spent fuel storage and disposal.
- Sec. 508. Nuclear Waste Technical Review Board.
- Sec. 509. Repeal of volume limitation.

1 **TITLE I—FINDINGS, PURPOSES,** 2 **AND DEFINITIONS**

3 **SEC. 101. FINDINGS.**

4 Congress finds that—

5 (1) the Nuclear Waste Policy Act of 1982 (42

6 U.S.C. 10101 et seq.)—

1 (A) made the Federal Government respon-
2 sible for providing for the permanent disposal
3 of nuclear waste;

4 (B) vested the responsibility for siting,
5 constructing, and operating a permanent geo-
6 logic repository for the disposal of nuclear
7 waste in the Secretary of Energy; and

8 (C) required the Secretary to enter into
9 binding contracts with the generators and own-
10 ers of nuclear waste pursuant to which the Sec-
11 retary is obligated to have begun disposing of
12 the nuclear waste in a repository not later than
13 January 31, 1998;

14 (2) in 1987, Congress designated the Yucca
15 Mountain site as the site for the repository and pre-
16 cluded consideration of other sites;

17 (3) in 2002, the Secretary found the Yucca
18 Mountain site to be suitable for the development of
19 the repository, the President recommended the site
20 to Congress, and Congress enacted a joint resolution
21 approving the Yucca Mountain site for the reposi-
22 tory;

23 (4) in 2008, the Secretary applied to the Nu-
24 clear Regulatory Commission for a license to con-
25 struct a repository at the Yucca Mountain site;

1 (5) in 2009, the Secretary found the Yucca
2 Mountain site to be unworkable and abandoned ef-
3 forts to construct a repository;

4 (6) in 2010, the Secretary, at the request of the
5 President, established the Blue Ribbon Commission
6 on America's Nuclear Future to conduct a com-
7 prehensive review of the nuclear waste management
8 policies of the United States and recommend a new
9 strategy for managing the nuclear waste of the
10 United States; and

11 (7) the Blue Ribbon Commission has rec-
12 ommended that Congress establish a new nuclear
13 waste management organization and adopt a new
14 consensual approach to siting nuclear waste manage-
15 ment facilities.

16 **SEC. 102. PURPOSES.**

17 The purposes of this Act are—

18 (1) to establish a new nuclear waste manage-
19 ment organization;

20 (2) to transfer to the new organization the
21 functions of the Secretary relating to the siting, li-
22 censing, construction, and operation of nuclear waste
23 management facilities;

24 (3) to establish a new consensual process for
25 the siting of nuclear waste management facilities;

1 (4) to provide for centralized storage of nuclear
2 waste pending completion of a repository; and

3 (5) to ensure that—

4 (A) the generators and owners of nuclear
5 waste pay the full cost of the program; and

6 (B) funds collected for the program are
7 used for that purpose.

8 **SEC. 103. DEFINITIONS.**

9 In this Act:

10 (1) **ADMINISTRATION.**—The term “Administra-
11 tion” means the Nuclear Waste Administration es-
12 tablished by section 201.

13 (2) **ADMINISTRATOR.**—The term “Adminis-
14 trator” means the Administrator of the Administra-
15 tion.

16 (3) **AFFECTED INDIAN TRIBE.**—The term “af-
17 fected Indian tribe” means any Indian tribe—

18 (A) within the reservation boundaries of
19 which a repository or storage facility is pro-
20 posed to be located; or

21 (B) that has federally defined possessory
22 or usage rights to other land outside of the res-
23 ervation boundaries that—

24 (i) arise out of a congressionally rati-
25 fied treaty; and

1 (ii) the Secretary of the Interior finds,
2 on petition of an appropriate governmental
3 official of the Indian tribe, may be sub-
4 stantially and adversely affected by the re-
5 pository or storage facility.

6 (4) AFFECTED UNIT OF GENERAL LOCAL GOV-
7 ERNMENT.—

8 (A) IN GENERAL.—The term “affected
9 unit of general local government” means the
10 unit of general local government that has juris-
11 diction over the site of a repository or storage
12 facility.

13 (B) INCLUSION.—The term “affected unit
14 of general local government” may include, at
15 the discretion of the Administrator, units of
16 general local government that are contiguous
17 with the unit that has jurisdiction over the site
18 of a repository or storage facility.

19 (5) CIVILIAN NUCLEAR POWER REACTOR.—The
20 term “civilian nuclear power reactor” has the mean-
21 ing given the term in section 2 of the Nuclear Waste
22 Policy Act of 1982 (42 U.S.C. 10101).

23 (6) COMMISSION.—The term “Commission”
24 means the Nuclear Regulatory Commission.

1 (7) COMPLIANCE AGREEMENT.—The term
2 “compliance agreement” means a legally enforceable
3 agreement between the Secretary and a Federal or
4 State agency requiring the removal of defense waste
5 from a Department of Energy facility.

6 (8) CONTRACT HOLDER.—The term “contract
7 holder” means any person who—

8 (A) generates or holds title to nuclear
9 waste generated at a civilian nuclear power re-
10 actor; and

11 (B) has entered into a contract for the dis-
12 posal of nuclear waste under section 302(a) of
13 the Nuclear Waste Policy Act of 1982 (42
14 U.S.C. 10222(a)) or this Act.

15 (9) DEFENSE WASTE.—The term “defense
16 waste” means nuclear waste generated by an atomic
17 energy defense activity (as defined in section 2 of
18 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
19 10101)).

20 (10) DISPOSAL.—The term “disposal” has the
21 meaning given the term in section 2 of the Nuclear
22 Waste Policy Act of 1982 (42 U.S.C. 10101).

23 (11) EMERGENCY DELIVERY.—

24 (A) IN GENERAL.—The term “emergency
25 delivery” means nuclear waste accepted by the

1 Administrator for storage prior to the date pro-
2 vided in the contractual delivery commitment
3 schedule pursuant to article V.D. of the stand-
4 ard contract for disposal of nuclear waste codi-
5 fied in section 961.11 of title 10, Code of Fed-
6 eral Regulations.

7 (B) INCLUSION.—The term “emergency
8 delivery” may include, at the discretion of the
9 Administrator, defense waste that is required to
10 be removed from a Department of Energy facil-
11 ity—

12 (i) pursuant to a compliance agree-
13 ment; or

14 (ii) to eliminate an imminent and seri-
15 ous threat to the health and safety of the
16 public or the common defense and security.

17 (12) HIGH-LEVEL RADIOACTIVE WASTE.—The
18 term “high-level radioactive waste” has the meaning
19 given the term in section 2 of the Nuclear Waste
20 Policy Act of 1982 (42 U.S.C. 10101).

21 (13) INDIAN TRIBE.—The term “Indian tribe”
22 has the meaning given the term in section 2 of the
23 Nuclear Waste Policy Act of 1982 (42 U.S.C.
24 10101).

1 (14) MISSION PLAN.—The term “mission plan”
2 means the comprehensive report required under sec-
3 tion 504.

4 (15) NONPRIORITY WASTE.—The term “nonpri-
5 ority waste” means nuclear waste that does not
6 qualify as priority waste.

7 (16) NUCLEAR WASTE.—The term “nuclear
8 waste” means—

9 (A) spent nuclear fuel; and

10 (B) high-level radioactive waste.

11 (17) NUCLEAR WASTE ACTIVITIES.—The term
12 “nuclear waste activities” has the meaning given the
13 term in section 11 of the Atomic Energy Act of
14 1954 (42 U.S.C. 2014).

15 (18) NUCLEAR WASTE FACILITY.—The term
16 “nuclear waste facility” means—

17 (A) a repository; and

18 (B) a storage facility.

19 (19) NUCLEAR WASTE FUND.—The term “Nu-
20 clear Waste Fund” means the separate fund in the
21 Treasury established by section 302(c) of the Nu-
22 clear Waste Policy Act of 1982 (42 U.S.C.
23 10222(c)).

1 (20) OVERSIGHT BOARD.—The term “Oversight
2 Board” means the Nuclear Waste Oversight Board
3 established by section 205.

4 (21) PILOT FACILITY.—The term “pilot facil-
5 ity” means the storage facility for priority waste au-
6 thorized by section 303(1).

7 (22) PRIORITY WASTE.—The term “priority
8 waste” means—

9 (A) any emergency delivery; and

10 (B) spent nuclear fuel removed from a ci-
11 vilian nuclear power reactor that has been per-
12 manently shut down.

13 (23) PUBLIC LIABILITY.—The term “public li-
14 ability” has the meaning given the term in section
15 11 of the Atomic Energy Act of 1954 (42 U.S.C.
16 2014).

17 (24) REPOSITORY.—The term “repository” has
18 the meaning given the term in section 2 of the Nu-
19 clear Waste Policy Act of 1982 (42 U.S.C. 10101).

20 (25) RESERVATION.—The term “reservation”
21 has the meaning given the term in section 2 of the
22 Nuclear Waste Policy Act of 1982 (42 U.S.C.
23 10101).

24 (26) SECRETARY.—The term “Secretary”
25 means the Secretary of Energy.

1 (27) SITE CHARACTERIZATION.—

2 (A) IN GENERAL.—The term “site charac-
3 terization” means the site-specific activities that
4 the Administrator determines necessary to sup-
5 port an application to the Commission for a li-
6 cense to construct a repository or storage facil-
7 ity under section 305(c).

8 (B) REPOSITORY SITE CHARACTERIZA-
9 TION.—In the case of a site for a repository,
10 the term “site characterization” may include
11 borings, surface excavations, excavations of ex-
12 ploratory shafts, limited subsurface lateral exca-
13 vations and borings, and in situ testing needed
14 to evaluate the suitability of a candidate site for
15 the location of a repository.

16 (C) STORAGE SITE CHARACTERIZATION.—
17 In the case of a site for an above-ground stor-
18 age facility, the term “site characterization”
19 does not include subsurface borings and exca-
20 vations that the Administrator determines are
21 uniquely associated with underground disposal
22 and unnecessary to evaluate the suitability of a
23 candidate site for the location of an above-
24 ground storage facility.

1 (D) PRELIMINARY ACTIVITIES.—The term
2 “site characterization” does not include prelimi-
3 nary borings and geophysical testing needed to
4 assess whether site characterization should be
5 undertaken.

6 (28) SPENT NUCLEAR FUEL.—The term “spent
7 nuclear fuel” has the meaning given the term in sec-
8 tion 2 of the Nuclear Waste Policy Act of 1982 (42
9 U.S.C. 10101).

10 (29) STORAGE.—The term “storage” means the
11 temporary retention of nuclear waste pending the
12 disposal of the nuclear waste in a repository.

13 (30) STORAGE FACILITY.—The term “storage
14 facility” means a facility for the storage of nuclear
15 waste from multiple contract holders or the Sec-
16 retary pending the disposal of the spent nuclear fuel
17 in a repository.

18 (31) UNIT OF GENERAL LOCAL GOVERN-
19 MENT.—The term “unit of general local govern-
20 ment” has the meaning given the term in section 2
21 of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
22 10101).

23 (32) WORKING CAPITAL FUND.—The term
24 “Working Capital Fund” means the Nuclear Waste

1 Administration Working Capital Fund established by
2 section 401.

3 **TITLE II—NUCLEAR WASTE**
4 **ADMINISTRATION**

5 **SEC. 201. ESTABLISHMENT.**

6 (a) ESTABLISHMENT.—There is established an inde-
7 pendent agency in the executive branch to be known as
8 the “Nuclear Waste Administration”.

9 (b) PURPOSE.—The purposes of the Administration
10 are—

11 (1) to discharge the responsibility of the Fed-
12 eral Government to provide for the permanent dis-
13 posal of nuclear waste;

14 (2) to protect the public health and safety and
15 the environment in discharging the responsibility
16 under paragraph (1); and

17 (3) to ensure that the costs of activities under
18 paragraph (1) are borne by the persons responsible
19 for generating the nuclear waste.

20 **SEC. 202. PRINCIPAL OFFICERS.**

21 (a) ADMINISTRATOR.—

22 (1) APPOINTMENT.—There shall be at the head
23 of the Administration a Nuclear Waste Adminis-
24 trator, who shall be appointed by the President, by
25 and with the advice and consent of the Senate, from

1 among persons who are, by reason of education, ex-
 2 perience, and attainments, exceptionally well quali-
 3 fied to perform the duties of the Administrator.

4 (2) FUNCTIONS AND POWERS.—The functions
 5 and powers of the Administration shall be vested in
 6 and exercised by the Administrator.

7 (3) SUPERVISION AND DIRECTION.—The Ad-
 8 ministration shall be administrated under the super-
 9 vision and direction of the Administrator, who shall
 10 be responsible for the efficient and coordinated man-
 11 agement of the Administration.

12 (4) DELEGATION.—The Administrator may,
 13 from time to time and to the extent permitted by
 14 law, delegate such functions of the Administrator as
 15 the Administrator determines to be appropriate.

16 (5) COMPENSATION.—The President shall fix
 17 the total annual compensation of the Administrator
 18 in an amount that—

19 (A) is sufficient to recruit and retain a
 20 person of demonstrated ability and achievement
 21 in managing large corporate or governmental
 22 organizations; and

23 (B) does not exceed the total annual com-
 24 pensation paid to the Chief Executive Officer of
 25 the Tennessee Valley Authority.

1 【(6) TERM.—The term of service of the Admin-
2 istrator shall be 6 years.】

3 【(7) REAPPOINTMENT.—An Administrator may
4 serve more than 1 term.】

5 (b) DEPUTY ADMINISTRATOR.—

6 (1) APPOINTMENT.—There shall be in the Ad-
7 ministration a Deputy Administrator, who shall be
8 appointed by the President, by and with the advice
9 and consent of the Senate, from among persons who
10 are, by reason of education, experience, and attain-
11 ments, exceptionally well qualified to perform the
12 duties of the Deputy Administrator.

13 (2) DUTIES.—The Deputy Administrator
14 shall—

15 (A) perform such functions as the Admin-
16 istrator shall from time to time assign or dele-
17 gate; and

18 (B) act as the Administrator during the
19 absence or disability of the Administrator or in
20 the event of a vacancy in the office of the Ad-
21 ministrator.

22 (3) COMPENSATION.—The President shall fix
23 the total annual compensation of the Deputy Admin-
24 istrator in an amount that—

1 (A) is sufficient to recruit and retain a
2 person of demonstrated ability and achievement
3 in managing large corporate or governmental
4 organizations; and

5 (B) does not exceed the total annual com-
6 pensation paid to the Administrator.

7 **[(4) TERM.—The term of service of the Deputy**
8 **Administrator shall be 6 years.]**

9 **[(5) REAPPOINTMENT.—A Deputy Adminis-**
10 **trator may serve more than 1 term.]**

11 **SEC. 203. OTHER OFFICERS.**

12 (a) **ESTABLISHMENT.—**There shall be in the Admin-
13 istration—

14 (1) a General Counsel;

15 (2) a Chief Financial Officer, who shall be ap-
16 pointed from among individuals who possess dem-
17 onstrated ability in general management of, and
18 knowledge of and extensive practical experience in,
19 financial management practices in large govern-
20 mental or business entities; and

21 (3) not more than 3 Assistant Administrators,
22 who shall perform such functions as the Adminis-
23 trator shall specify from time to time.

24 (b) **APPOINTMENT.—**Officers appointed under this
25 section shall—

- 1 (1) be appointed by the Administrator;
- 2 (2) be considered career appointees; and
- 3 (3) be subject to section 161 d. of the Atomic
- 4 Energy Act of 1954 (42 U.S.C. 2201(d)).

5 (c) ORDER OF SUCCESSION.—The Administrator
6 may designate the order in which the officers appointed
7 pursuant to this section shall act for, and perform the
8 functions of, the Administrator during the absence or dis-
9 ability of the Administrator and the Deputy Administrator
10 or in the event of vacancies in the offices of the Adminis-
11 trator and the Deputy Administrator.

12 **SEC. 204. INSPECTOR GENERAL.**

13 There shall be in the Administration an Inspector
14 General, who shall be appointed by the President, by and
15 with the advice and consent of the Senate, in accordance
16 with section 3 of the Inspector General Act of 1978 (5
17 U.S.C. App.).

18 **SEC. 205. NUCLEAR WASTE OVERSIGHT BOARD.**

19 (a) ESTABLISHMENT.—There is established an inde-
20 pendent establishment in the executive branch, to be
21 known as the “Nuclear Waste Oversight Board”, to over-
22 see the administration of this Act and protect the public
23 interest in the implementation of this Act.

24 (b) MEMBERS.—The Oversight Board shall consist
25 of—

1 (1) the Deputy Director of the Office of Man-
2 agement and Budget;

3 (2) the Chief of Engineers of the Army Corps
4 of Engineers; and

5 (3) the Deputy Secretary of Energy.

6 (c) CHAIR.—The President shall designate 1 of the
7 3 members as chair.

8 (d) FUNCTIONS.—The Oversight Board shall—

9 (1) review, on an ongoing basis—

10 (A) the progress made by the Adminis-
11 trator to site, construct, and operate nuclear
12 waste facilities under this Act;

13 (B) the use of funds made available to the
14 Administrator under this Act;

15 (C) whether the fees collected from con-
16 tract holders are sufficient to ensure full cost
17 recovery or require adjustment; and

18 (D) the liability of the United States to
19 contract holders;

20 (2) identify any problems that may impede the
21 implementation of this Act; and

22 (3) recommend to the Administrator, the Presi-
23 dent, or Congress, as appropriate, any actions that
24 may be needed to ensure the implementation of this
25 Act.

1 (e) MEETINGS.—The Oversight Board shall meet at
2 least once every 90 days.

3 (f) REPORTS.—The Oversight Board shall report the
4 findings, conclusions, and recommendations of the Over-
5 sight Board to the Administrator, the President, and Con-
6 gress not less than once per year.

7 (g) EXECUTIVE SECRETARY.—The Oversight Board
8 shall appoint and fix the compensation of an Executive
9 Secretary, who shall—

10 (1) assemble and maintain the reports, records,
11 and other papers of the Oversight Board; and

12 (2) perform such functions as the Oversight
13 Board shall from time to time assign or delegate.

14 (h) ADDITIONAL STAFF.—

15 (1) APPOINTMENT.—The Oversight Board may
16 appoint and fix the compensation of such additional
17 clerical and professional staff as may be necessary to
18 discharge the responsibilities of the Oversight Board.

19 (2) LIMITATION.—The Oversight Board may
20 appoint not more than 10 clerical or professional
21 staff members under this subsection.

22 (3) SUPERVISION AND DIRECTION.—The cler-
23 ical and professional staff of the Oversight Board
24 shall be under the supervision and direction of the
25 Executive Secretary.

1 (i) ACCESS TO INFORMATION.—

2 (1) DUTY TO INFORM.—The Administrator
3 shall keep the Oversight Board fully and currently
4 informed on all of the activities of the Administra-
5 tion.

6 (2) PRODUCTION OF DOCUMENTS.—The Ad-
7 ministrator shall provide the Oversight Board with
8 such records, files, papers, data, or information as
9 may be requested by the Oversight Board.

10 (j) SUPPORT SERVICES.—To the extent permitted by
11 law and requested by the Oversight Board, the Adminis-
12 trator of General Services shall provide the Oversight
13 Board with necessary administrative services, facilities,
14 and support on a reimbursable basis.

15 (k) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Oversight Board
17 from amounts in the Nuclear Waste Fund to carry out
18 this section such sums as are necessary.

19 **SEC. 206. CONFORMING AMENDMENTS.**

20 (a) Section 901(b)(2) of title 31, United States Code,
21 is amended by adding at the end the following:

22 “(R) The Nuclear Waste Administration.”.

23 (b) Section 12 of the Inspector General Act of 1978
24 (5 U.S.C. App.) is amended—

1 (1) in paragraph (1), by inserting “the Nuclear
2 Waste Administration;” after “Export-Import
3 Bank;”; and

4 (2) in paragraph (2), by inserting “the Nuclear
5 Waste Administration;” after “Export-Import
6 Bank;”.

7 **TITLE III—FUNCTIONS**

8 **SEC. 301. TRANSFER OF FUNCTIONS.**

9 There are transferred to and vested in the Adminis-
10 trator all functions vested in the Secretary by the Nuclear
11 Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) relat-
12 ing to—

13 (1) the construction and operation of a reposi-
14 tory;

15 (2) entering into and performing contracts for
16 the disposal of nuclear waste under section 302 of
17 that Act (42 U.S.C. 10222);

18 (3) the collection, adjustment, deposition, and
19 use of fees to offset expenditures for the manage-
20 ment of nuclear waste; and

21 (4) the issuance of obligations under section
22 302(e)(5) of the Nuclear Waste Policy Act of 1982
23 (42 U.S.C. 10222(e)(5)).

1 **SEC. 302. TRANSFER OF CONTRACTS.**

2 Each contract for the disposal of nuclear waste en-
3 tered into by the Secretary before the date of enactment
4 of this Act shall continue in effect according to the terms
5 of the contract with the Administrator substituted for the
6 Secretary.

7 **SEC. 303. NUCLEAR WASTE FACILITIES.**

8 The Administrator shall site, construct, and oper-
9 ate—

10 (1) a pilot facility for the storage of priority
11 waste;

12 (2) 1 or more additional storage facilities for
13 the storage of nonpriority nuclear waste; and

14 (3) 1 or more repositories for the permanent
15 disposal of nuclear waste.

16 **SEC. 304. SITING NUCLEAR WASTE FACILITIES.**

17 (a) IN GENERAL.—In siting nuclear waste facilities
18 under this Act, the Administrator shall employ a process
19 that—

20 (1) allows affected communities to decide
21 whether, and on what terms, the affected commu-
22 nities will host a nuclear waste facility;

23 (2) is open to the public and allows interested
24 persons to be heard in a meaningful way;

25 (3) is flexible and allows decisions to be re-
26 viewed and modified in response to new information

1 or new technical, social, or political developments;
2 and

3 (4) is based on sound science and meets public
4 health, safety, and environmental standards.

5 (b) SITING GUIDELINES.—

6 (1) ISSUANCE.—Not later than 1 year after the
7 date of enactment of this Act, the Administrator
8 shall issue general guidelines for the consideration of
9 candidate sites for—

10 (A) repositories; and

11 (B) storage facilities.

12 (2) REQUIREMENTS.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraphs (B) and (C), the Administrator
15 shall comply with the requirements of section
16 112(a) of the Nuclear Waste Policy Act of 1992
17 (42 U.S.C. 10132(a)) in adopting the guidelines
18 under paragraph (1).

19 (B) EXCEPTION.—The guidelines for stor-
20 age facilities shall not require the Administrator
21 to consider underground geophysical conditions
22 that the Administrator determines do not apply
23 to above-ground storage.

24 (C) ADDITIONAL FACTORS.—In addition to
25 the requirements described in subparagraph

1 (A), the guidelines for storage facilities shall re-
2 quire the Administrator to take into account
3 the extent to which a storage facility would—

4 (i) enhance the reliability and flexi-
5 bility of the system for the disposal of nu-
6 clear waste;

7 (ii) minimize the impacts of transpor-
8 tation and handling of nuclear waste;

9 **[(iii) unduly burden a State in which**
10 **significant volumes of—]**

11 **[(I) defense wastes are stored;**
12 **or]**

13 **[(II) transuranic wastes are dis-**
14 **posed; and]**

15 **[(iv) conflict with—]**

16 **[(I) a compliance agreement re-**
17 **quiring the removal of nuclear waste**
18 **from a site; or]**

19 **[(II) a statutory prohibition on**
20 **the storage or disposal of nuclear**
21 **waste at a site.]**

22 (3) REVISIONS.—The Administrator may revise
23 the guidelines in a manner consistent with this sub-
24 section and section 112(a) of the Nuclear Waste
25 Policy Act of 1982 (42 U.S.C. 10132(a)).

1 (c) IDENTIFICATION OF CANDIDATE SITES.—

2 (1) REVIEW OF POTENTIAL SITES.—As soon as
3 practicable after the date of the issuance of the
4 guidelines under subsection (b), the Administrator
5 shall evaluate potential sites for a nuclear waste fa-
6 cility to determine whether the sites are suitable for
7 site characterization.

8 (2) SITES ELIGIBLE FOR REVIEW.—The Admin-
9 istrator shall select sites for evaluation under para-
10 graph (1) from among sites recommended by—

11 (A) the Governor or duly authorized offi-
12 cial of the State in which the site is located;

13 (B) the governing body of the affected unit
14 of general local government;

15 (C) the governing body of an Indian tribe
16 within the reservation boundaries of which the
17 site is located; or

18 (D) the Administrator, after consultation
19 with, and with the consent of—

20 (i) the Governor or duly authorized
21 official of the State in which the site is lo-
22 cated;

23 (ii) the governing body of the affected
24 unit of general local government; and

1 (iii) the governing body of the Indian
2 tribe, if the site is located within the res-
3 ervation of an Indian tribe.

4 (3) SITE INVESTIGATIONS.—In evaluating a site
5 under this subsection prior to any determination of
6 the suitability of the site for site characterization,
7 the Administrator—

8 (A) shall use available geophysical, geologi-
9 cal, geochemical, hydrological, and other infor-
10 mation; and

11 (B) shall not perform any preliminary bor-
12 ings or excavations at the site unless necessary
13 to determine the suitability of the site and au-
14 thorized by the landowner.

15 (4) DETERMINATION OF SUITABILITY.—The
16 Administrator shall determine whether a site is suit-
17 able for site characterization based on an environ-
18 mental assessment of the site, which shall include—

19 (A) an evaluation by the Administrator of
20 whether the site qualifies for development as a
21 nuclear waste facility under the guidelines es-
22 tablished under subsection (b), including a safe-
23 ty case that provides the basis for confidence in
24 the safety of the proposed nuclear waste facility
25 at the proposed site;

1 (B) an evaluation by the Administrator of
2 the effects of site characterization activities on
3 public health and safety and the environment;

4 (C) a reasonable comparative evaluation by
5 the Administrator of the site with other sites
6 considered by—

7 (i) the Administrator under this sec-
8 tion; or

9 (ii) the Secretary under the Nuclear
10 Waste Policy Act of 1982 (42 U.S.C.
11 10101 et seq.);

12 (D) a description of the decision process by
13 which the site was recommended; and

14 (E) an assessment of the regional and local
15 impacts of locating a repository or storage facil-
16 ity at the site.

17 (d) SITE CHARACTERIZATION.—

18 (1) SELECTION OF SITES.—From among the
19 sites determined to be suitable for site characteriza-
20 tion under subsection (c), the Administrator shall se-
21 lect—

22 (A) at least 1 site for site characterization
23 as a repository; and

24 (B) at least 1 site for site characterization
25 as a storage facility.

1 (2) PREFERENCE FOR CO-LOCATED REPOSI-
2 TORY AND STORAGE FACILITY.—In selecting sites
3 for site characterization as a storage facility, the Ad-
4 ministrators shall give preference to sites determined
5 to be suitable for co-location of—

6 (A) a pilot facility and additional storage
7 facilities for nonpriority waste; or

8 (B) a storage facility and a repository.

9 (3) PUBLIC HEARINGS.—Before selecting a site
10 for site characterization, the Administrator shall
11 hold public hearings in the vicinity of the site and
12 at least 1 other location within the State in which
13 the site is located—

14 (A) to inform the public of the proposed
15 site characterization; and

16 (B) to solicit public comments and rec-
17 ommendations with respect to the site charac-
18 terization plan of the Administrator.

19 (4) CONSULTATION AND COOPERATION AGREE-
20 MENT.—

21 (A) REQUIREMENT.—Before selecting a
22 site for site characterization, the Administrator
23 shall enter into a consultation and cooperation
24 agreement with—

1 (i) the Governor or duly authorized
2 official of the State in which the site is lo-
3 cated;

4 (ii) the governing body of any affected
5 unit of general local government; and

6 (iii) the governing body of any af-
7 fected Indian tribe.

8 (B) CONTENTS.—The consultation and co-
9 operation agreement shall provide—

10 (i) compensation to the State, any af-
11 fected units of local government, and any
12 affected Indian tribes for any potential
13 economic, social, public health and safety,
14 and environmental impacts associated with
15 site characterization; and

16 (ii) financial and technical assistance
17 to enable the State, any affected units of
18 local government, and any affected Indian
19 tribes to monitor, review, evaluate, com-
20 ment on, obtain information on, and make
21 recommendations on site characterization
22 activities.

23 (c) FINAL SITE SUITABILITY DETERMINATION.—

24 (1) DETERMINATION REQUIRED.—On comple-
25 tion of site characterization activities, the Adminis-

1 trator shall make a final determination of whether
2 the site is suitable for development as a repository
3 or storage facility.

4 (2) BASIS OF DETERMINATION.—In making a
5 determination under paragraph (1), the Adminis-
6 trator shall determine if—

7 (A) the site is scientifically and technically
8 suitable for development as a repository or stor-
9 age facility, taking into account—

10 (i) whether the site meets the siting
11 guidelines of the Administrator; and

12 (ii) whether there is reasonable assur-
13 ance that a repository or storage facility at
14 the site will meet—

15 (I) the radiation protection
16 standards of the Administrator of the
17 Environmental Protection Agency;
18 and

19 (II) the licensing standards of
20 the Commission; and

21 (B) development of a repository or storage
22 facility at the site is in the national interest.

23 (3) PUBLIC HEARINGS.—Before making a final
24 determination under paragraph (1), the Adminis-
25 trator shall hold public hearings in the vicinity of

1 the site and at least 1 other location within the
2 State in which the site is located to solicit public
3 comments and recommendations on the proposed de-
4 termination.

5 (f) CONSENT AGREEMENTS.—

6 (1) REQUIREMENT.—On making a final deter-
7 mination of site suitability under subsection (e), but
8 before submitting a license application to the Com-
9 mission under subsection (g), the Administrator
10 shall enter into a consent agreement with—

11 (A) the Governor or duly authorized offi-
12 cial of the State in which the site is located;

13 (B) the governing body of any affected
14 unit of general local government; and

15 (C) if the site is located on a reservation,
16 the governing body of the affected Indian tribe.

17 (2) CONTENTS.—The consent agreement
18 shall—

19 (A) contain the terms and conditions on
20 which each State, local government, and Indian
21 tribe consents to host the repository or storage
22 facility; and

23 (B) express the consent of each State, local
24 government, and Indian tribe to host the reposi-
25 tory or storage facility.

1 (3) TERMS AND CONDITIONS.—The terms and
2 conditions under paragraph (2)(A)—

3 (A) shall promote the economic and social
4 well-being of the people living in the vicinity of
5 the repository or storage facility; and

6 (B) may include—

7 (i) financial compensation and incen-
8 tives;

9 (ii) economic development assistance;

10 (iii) operational limitations or require-
11 ments;

12 (iv) regulatory oversight authority;
13 and

14 (v) in the case of a storage facility, an
15 enforceable deadline for removing nuclear
16 waste from the storage facility.

17 (4) RATIFICATION.—No consent agreement en-
18 tered into under this section shall have legal effect
19 unless ratified by Federal law.

20 (5) BINDING EFFECT.—On ratification by law,
21 the consent agreement—

22 (A) shall be binding on the parties; and

23 (B) shall not be amended or revoked ex-
24 cept by mutual agreement of the parties.

1 (g) SUBMISSION OF LICENSE APPLICATION.—On de-
2 termining that a site is suitable under subsection (e) and
3 ratification of a consent agreement under subsection (f),
4 the Administrator shall submit to the Commission an ap-
5 plication for a construction authorization for the reposi-
6 tory or storage facility.

7 **SEC. 305. LICENSING NUCLEAR WASTE FACILITIES.**

8 The construction and operation of a storage facility
9 or repository under this Act shall be subject to—

10 (1) all applicable standards for the protection of
11 the general environment from offsite releases of ra-
12 dioactive material; and

13 (2) the licensing and regulatory jurisdiction of
14 the Commission, including all applicable criteria and
15 requirements issued by the Commission under sec-
16 tion 121(b) of the Nuclear Waste Policy Act of 1987
17 (42 U.S.C. 10141(b)).

18 **[SEC. 306. LINKAGE BETWEEN STORAGE AND DISPOSAL.**

19 **[(a) PARALLEL PROGRAMS.—**The Administrator
20 shall seek to ensure that efforts to site, construct, and op-
21 erate a storage facility are accompanied by parallel efforts
22 to site, construct, and operate 1 or more repositories.]

23 **[(b) REQUIREMENT FOR SUBSTANTIAL**
24 **PROGRESS.—**Notwithstanding subsection (a), the Admin-
25 istrator may site, construct, and operate storage facilities

1 in the absence of parallel progress on the siting, construc-
2 tion, or operation of a repository if the Administrator is
3 making substantial progress towards siting, constructing,
4 and operating a repository, as measured by the mission
5 plan.】

6 【(c) CERTIFICATION.—】

7 【(1) ADMINISTRATOR.—The Administrator
8 shall certify to the President and the appropriate
9 committees of Congress annually whether substantial
10 progress towards siting, constructing, and operating
11 a repository is being made.】

12 【(2) OVERSIGHT BOARD.—The Oversight
13 Board shall certify to the President and the appro-
14 priate committees of Congress, at the same time
15 that the Administrator submits the certification
16 under paragraph (1), whether substantial progress
17 towards siting, constructing, and operating a reposi-
18 tory is being made.】

19 【(d) SUSPENSION FOR LACK OF SUBSTANTIAL
20 PROGRESS.—If the Administrator or the Oversight Board
21 determines that the Administrator has ceased to make
22 substantial progress towards the siting, construction, and
23 operation of a repository, as measured by the mission
24 plan, the Administrator shall suspend any shipments of
25 nuclear waste to, and receipt of nuclear waste at, any stor-

1 age facility, until such time as the Oversight Board deter-
2 mines that substantial progress is again being made to-
3 wards siting, constructing, and operating a repository.】

4 【(e) EXCEPTION TO SUSPENSION.—Notwithstanding
5 subsection (d), the Administrator may continue to ship
6 and receive any emergency delivery at a storage facility
7 during a suspension described in subsection (d).】

8 【(f) STATUS OF WASTE IN STORAGE.—Notwith-
9 standing subsection (d), the Administrator may continue
10 to store during the suspension any nuclear waste received
11 at a storage facility prior to a suspension described in sub-
12 section (d).】

13 **SEC. 307. DEFENSE WASTE.**

14 (a) DISPOSAL AND STORAGE BY ADMINISTRATION.—
15 The Secretary—

16 (1) shall arrange for the Administrator to dis-
17 pose of defense wastes in a repository developed
18 under this Act; and

19 (2) may arrange for the Administrator to store
20 defense wastes in storage facilities developed under
21 this Act pending disposal in a repository.

22 (b) MEMORANDUM OF AGREEMENT.—The arrange-
23 ments shall be covered by a memorandum of agreement
24 between the Secretary and the Administrator.

1 (c) COSTS.—The portion of the cost of developing,
2 constructing, and operating the repository or storage fa-
3 cilities under this Act that is attributable to defense
4 wastes shall be allocated to the Federal Government and
5 paid by the Federal Government into the Working Capital
6 Fund.

7 (d) PROHIBITION.—No defense waste may be stored
8 or disposed of by the Administrator in any storage facility
9 or repository constructed under this Act until funds are
10 appropriated to the Working Capital Fund in an amount
11 equal to the fees that would be paid by contract holders
12 under section 302 of the Nuclear Waste Policy Act of
13 1982 (42 U.S.C. 10222) if such nuclear waste were gen-
14 erated by a contract holder.

15 (e) COMMINGLING DETERMINATION.—

16 (1) REEVALUATION.—Notwithstanding section
17 8 of the Nuclear Waste Policy Act of 1982 (42
18 U.S.C. 10107), the Administrator may reevaluate
19 the decision to commingle defense wastes with nu-
20 clear waste from civilian nuclear power reactors.

21 (2) NOTIFICATION.—Not later than 2 years
22 after the date of enactment of this Act, the Adminis-
23 trator shall notify the President and the appropriate
24 committees of Congress of whether the Adminis-

1 trator intends to reevaluate the decision under para-
2 graph (1) and the reasons for that decision.

3 (3) SEPARATE NUCLEAR WASTE FACILITIES.—
4 If the Administrator finds, after conducting the re-
5 evaluation under paragraph (1), that the develop-
6 ment of separate nuclear waste facilities for the stor-
7 age or disposal of defenses wastes is necessary or
8 appropriate for the efficient management of defenses
9 wastes, the Administrator may, with the concurrence
10 of the President, site, construct, and operate 1 or
11 more separate nuclear waste facilities for the storage
12 or disposal of defenses wastes.

13 **SEC. 308. TRANSPORTATION.**

14 (a) IN GENERAL.—The Administrator shall be re-
15 sponsible for transporting nuclear waste—

16 (1) from the site of a contract holder to a stor-
17 age facility or repository;

18 (2) from a storage facility to a repository; and

19 (3) in the case of defense waste, from a Depart-
20 ment of Energy site to a repository.

21 (b) CERTIFIED PACKAGES.—No nuclear waste may
22 be transported under this Act except in packages—

23 (1) the design of which has been certified by
24 the Commission; and

1 (2) that have been determined by the Commis-
2 sion to satisfy the quality assurance requirements of
3 the Commission.

4 (c) NOTIFICATION.—Prior to any transportation of
5 nuclear waste under this Act, the Administrator shall pro-
6 vide advance notification to States and Indian tribes
7 through whose jurisdiction the Administrator plans to
8 transport the nuclear waste.

9 (d) TRANSPORTATION ASSISTANCE.—

10 (1) PUBLIC EDUCATION.—The Administrator
11 shall conduct a program to provide information to
12 the public about the transportation of nuclear waste.

13 (2) TRAINING.—The Administrator shall pro-
14 vide financial and technical assistance to States and
15 Indian tribes through whose jurisdiction the Admin-
16 istrator plans to transport nuclear waste to train
17 public safety officials and other emergency respond-
18 ers on—

19 (A) procedures required for the safe, rou-
20 tine transportation of nuclear waste; and

21 (B) procedures for dealing with emergency
22 response situations involving nuclear waste, in-
23 cluding instruction of—

1 (i) government and tribal officials and
2 public safety officers in command and con-
3 trol procedures;

4 (ii) emergency response personnel;
5 and

6 (iii) radiological protection and emer-
7 gency medical personnel.

8 (3) **EQUIPMENT.**—The Administrator shall pro-
9 vide monetary grants and contributions in-kind to
10 assist States and Indian tribes through whose juris-
11 diction the Administrator plans to transport nuclear
12 waste for the purpose of acquiring equipment for re-
13 sponding to a transportation incident involving nu-
14 clear waste.

15 (4) **TRANSPORTATION SAFETY PROGRAMS.**—
16 The Administrator shall provide in-kind, financial,
17 technical, and other appropriate assistance to States
18 and Indian tribes through whose jurisdiction the Ad-
19 ministrator plans to transport nuclear waste for
20 transportation safety programs related to shipments
21 of nuclear waste.

1 **TITLE IV—FUNDING AND LEGAL**
2 **PROCEEDINGS**

3 **SEC. 401. WORKING CAPITAL FUND.**

4 (a) ESTABLISHMENT.—There is established in the
5 Treasury a separate fund, to be known as the “Nuclear
6 Waste Administration Working Capital Fund”, which
7 shall be separate from the Nuclear Waste Fund.

8 (b) CONTENTS.—The Working Capital Fund shall
9 consist of—

10 (1) all fees paid by contract holders pursuant to
11 section 302(a) of the Nuclear Waste Policy Act of
12 1982 (42 U.S.C. 10222(a)) on or after the date of
13 enactment of this Act, which shall be paid into the
14 Working Capital Fund—

15 (A) notwithstanding section 302(e)(1) of
16 the Nuclear Waste Policy Act of 1982 (42
17 U.S.C. 10222(e)(1)); and

18 (B) immediately on the payment of the
19 fees;

20 (2) any appropriations made by Congress to
21 pay the share of the cost of the program established
22 under this Act attributable to defense wastes; and

23 (3) interest paid on the unexpended balance of
24 the Working Capital Fund.

1 (c) AVAILABILITY.—All funds deposited in the Work-
2 ing Capital Fund—

3 (1) shall be immediately available to the Admin-
4 istrator to carry out the functions of the Adminis-
5 trator, except to the extent limited in annual author-
6 ization or appropriation Acts;

7 (2) shall remain available until expended; and

8 (3) shall not be subject to apportionment under
9 subchapter II of chapter 15 of title 31, United
10 States Code.

11 (d) USE OF FUND.—Except to the extent limited in
12 annual authorization or appropriation Acts, the Adminis-
13 trator may make expenditures from the Working Capital
14 Fund only for purposes of carrying out functions author-
15 ized by this Act.

16 [(e) PERFORMANCE-BASED FUNDING.—No fees paid
17 by contract holders pursuant to section 302(a) of the Nu-
18 clear Waste Policy Act of 1982 (42 U.S.C. 10222(a)) shall
19 be paid into the Working Capital Fund after December
20 31, 2025, unless the Administrator is operating a nuclear
21 waste facility.]

22 **SEC. 402. NUCLEAR WASTE FUND.**

23 (a) ELIMINATION OF LEGISLATIVE VETO.—Section
24 302(a)(4) of the Nuclear Waste Policy Act of 1982 (42
25 U.S.C. 10222(a)(4)) is amended in the last sentence by

1 striking “transmittal unless” and all that follows through
2 the end of the sentence and inserting “transmittal.”.

3 (b) INTEREST ON UNEXPENDED BALANCES.—Sec-
4 tion 302(e)(3) of the Nuclear Waste Policy Act of 1982
5 (42 U.S.C. 10222(e)(3)) is amended—

6 (1) by striking “Secretary” the first, second,
7 and fourth place it appears and inserting “Adminis-
8 trator of the Nuclear Waste Administration”; and

9 (2) by striking “the Waste Fund” each place it
10 appears and inserting “the Waste Fund or the
11 Working Capital Fund established by section 401 of
12 the Nuclear Waste Administration Act of 2013”.

13 **SEC. 403. FULL COST RECOVERY.**

14 In determining whether insufficient or excess reve-
15 nues are being collected to ensure full cost recovery under
16 section 302(a)(4) of the Nuclear Waste Policy Act of 1982
17 (42 U.S.C. 10222(a)(4)), the Administrator shall—

18 (1) assume that sufficient funds will be appro-
19 priated to the Nuclear Waste Fund to cover the
20 costs attributable to disposal of defense wastes; and

21 (2) take into account the additional costs re-
22 sulting from the enactment of this Act.

23 **SEC. 404. JUDICIAL REVIEW.**

24 (a) JURISDICTION.—

1 (1) COURTS OF APPEALS.—Except for review in
2 the Supreme Court, a United States court of appeals
3 shall have original and exclusive jurisdiction over
4 any civil action—

5 (A) for review of any final decision or ac-
6 tion of the Administrator or the Commission
7 under this Act;

8 (B) alleging the failure of the Adminis-
9 trator or the Commission to make any decision,
10 or take any action, required under this Act;

11 (C) challenging the constitutionality of any
12 decision made, or action taken, under this Act;
13 or

14 (D) for review of any environmental as-
15 sessment or environmental impact statement
16 prepared pursuant to the National Environ-
17 mental Policy Act of 1969 (42 U.S.C. 4321 et
18 seq.) with respect to any action under this Act,
19 or alleging a failure to prepare any such assess-
20 ment or statement with respect to any such ac-
21 tion.

22 (2) VENUE.—The venue of any proceeding
23 under this section shall be in—

1 (A) the judicial circuit in which the peti-
2 tioner involved resides or has the principal of-
3 fice of the petitioner; or

4 (B) the United States Court of Appeals for
5 the District of Columbia Circuit.

6 (b) DEADLINE FOR COMMENCING ACTION.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), a civil action for judicial review described
9 in subsection (a)(1) may be brought not later than
10 the date that is 180 days after the date of the deci-
11 sion or action or failure to act involved.

12 (2) NO KNOWLEDGE OF DECISION OR AC-
13 TION.—If a party shows that the party did not know
14 of the decision or action complained of (or of the
15 failure to act) and that a reasonable person acting
16 under the circumstances would not have known, the
17 party may bring a civil action not later than 180
18 days after the date the party acquired actual or con-
19 structive knowledge of the decision, action, or failure
20 to act.

21 **SEC. 405. LITIGATION AUTHORITY.**

22 (a) SUPERVISION BY ATTORNEY GENERAL.—The liti-
23 gation of the Administration shall be subject to the super-
24 vision of the Attorney General pursuant to chapter 31 of
25 title 28, United States Code.

1 (b) ATTORNEYS OF ADMINISTRATION.—The Attor-
2 ney General may authorize any attorney of the Adminis-
3 tration to conduct any civil litigation of the Administration
4 in any Federal court, except the Supreme Court.

5 **SEC. 406. LIABILITIES.**

6 (a) PENDING LEGAL PROCEEDINGS.—Any suit,
7 cause of action, or judicial proceeding commenced by or
8 against the Secretary relating to functions or contracts
9 transferred to the Administrator by this Act shall—

10 (1) not abate by reason of the enactment of this
11 Act; and

12 (2) continue in effect with the Administrator
13 substituted for the Secretary.

14 (b) SETTLEMENT OF PENDING LITIGATION; CON-
15 TRACT MODIFICATION.—

16 (1) SETTLEMENT.—The Attorney General, in
17 consultation with the Administrator, shall settle all
18 claims against the United States by a contract hold-
19 er for the breach of a contract for the disposal of
20 nuclear waste under section 302(a) of the Nuclear
21 Waste Policy Act of 1982 (42 U.S.C. 10222(a)) as
22 a condition precedent of the agreement of the Ad-
23 ministrator to take title to and store the nuclear
24 waste of the contract holder at a storage facility.

1 (2) CONTRACT MODIFICATION.—The Adminis-
2 trator and contract holders shall modify contracts
3 entered into under section 302(a) of the Nuclear
4 Waste Policy Act of 1982 (42 U.S.C. 10222(a)) in
5 accordance with the settlement under paragraph (1).

6 (c) PAYMENT OF JUDGMENTS AND SETTLEMENTS.—
7 Payment of judgments and settlements in cases arising
8 from the failure of the Secretary to meet the deadline of
9 January 31, 1998, to begin to dispose of nuclear waste
10 under contracts entered into under section 302(a)(1) of
11 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
12 10222(a)(1)) shall continue to be paid from the perma-
13 nent judgment appropriation established pursuant to sec-
14 tion 1304 of title 31, United States Code.

15 (d) NEW CONTRACTS.—Notwithstanding section
16 302(a)(5) of the Nuclear Waste Policy Act of 1982 (42
17 U.S.C. 10222(a)(5)), the Administrator shall not enter
18 into any contract after the date of enactment of this Act
19 that obligates the Administrator to begin disposing of nu-
20 clear waste before the Commission has licensed the Ad-
21 ministrator to operate a repository or storage facility.

22 (e) NUCLEAR INDEMNIFICATION.—

23 (1) INDEMNIFICATION AGREEMENTS.—For pur-
24 poses of section 170 of the Atomic Energy Act of

1 1954 (42 U.S.C. 2210) (commonly known as the
2 “Price-Anderson Act”)—

3 (A) any person that conducts nuclear
4 waste activities under a contract with the Ad-
5 ministrator that may involve the risk of public
6 liability shall be treated as a contractor of the
7 Secretary; and

8 (B) the Secretary shall enter into an
9 agreement of indemnification with any person
10 described in subparagraph (A).

11 (2) CONFORMING AMENDMENT.—Section 11 ff.
12 of the Atomic Energy Act of 1954 (42 U.S.C.
13 2014(ff)) is amended by inserting “or the Nuclear
14 Waste Administration” after “Secretary of Energy”.

15 **TITLE V—ADMINISTRATIVE AND**
16 **SAVINGS PROVISIONS**

17 **SEC. 501. ADMINISTRATIVE POWERS OF ADMINISTRATOR.**

18 The Administrator shall have the power—

19 (1) to perform the functions of the Secretary
20 transferred to the Administrator pursuant to this
21 Act;

22 (2) to enter into contracts with any person who
23 generates or holds title to nuclear waste generated
24 in a civilian nuclear power reactor for the acceptance

1 of title, subsequent transportation, storage, and dis-
2 posal of the nuclear waste;

3 (3) to enter into and perform contracts, leases,
4 and cooperative agreements with public agencies,
5 private organizations, and persons necessary or ap-
6 propriate to carry out the functions of the Adminis-
7 trator;

8 (4) to acquire, in the name of the United
9 States, real estate for the construction, operation,
10 and decommissioning of nuclear waste facilities;

11 (5) to obtain from the Administrator of General
12 Services the services the Administrator of General
13 Services is authorized to provide agencies of the
14 United States, on the same basis as those services
15 are provided to other agencies of the United States;

16 (6) to conduct nongeneric research, develop-
17 ment, and demonstration activities necessary or ap-
18 propriate to carrying out the functions of the Ad-
19 ministrator; and

20 (7) to make such rules and regulations, not in-
21 consistent with this Act, as may be necessary to
22 carry out the functions of the Administrator.

23 **SEC. 502. PERSONNEL.**

24 (a) **OFFICERS AND EMPLOYEES.—**

1 (1) APPOINTMENT.—In addition to the senior
2 officers described in section 203, the Administrator
3 may appoint and fix the compensation of such offi-
4 cers and employees as may be necessary to carry out
5 the functions of the Administration.

6 (2) COMPENSATION.—Except as provided in
7 paragraph (3), officers and employees appointed
8 under this subsection shall be appointed in accord-
9 ance with the civil service laws and the compensation
10 of the officers and employees shall be fixed in ac-
11 cordance with title 5, United States Code.

12 (3) EXCEPTION.—Notwithstanding paragraph
13 (2), the Administrator may, to the extent the Ad-
14 ministrator determines necessary to discharge the
15 responsibilities of the Administrator—

16 (A) appoint exceptionally well qualified in-
17 dividuals to scientific, engineering, or other crit-
18 ical positions without regard to the provisions
19 of chapter 33 of title 5, United States Code,
20 governing appointments in the competitive serv-
21 ice; and

22 (B) fix the basic pay of any individual ap-
23 pointed under subparagraph (A) at a rate of
24 not more than level I of the Executive Schedule
25 without regard to the civil service laws, except

1 that the total annual compensation of the indi-
2 vidual shall be at a rate of not more than the
3 highest total annual compensation payable
4 under section 104 of title 3, United States
5 Code.

6 (4) MERIT PRINCIPLES.—The Administrator
7 shall ensure that the exercise of the authority grant-
8 ed under paragraph (3) is consistent with the merit
9 principles of section 2301 of title 5, United States
10 Code.

11 (b) EXPERTS AND CONSULTANTS.—The Adminis-
12 trator may obtain the temporary or intermittent services
13 of experts or consultants as authorized by section 3109
14 of title 5, United States Code.

15 (c) ADVISORY COMMITTEES.—

16 (1) ESTABLISHMENT.—The Administrator may
17 establish, in accordance with the Federal Advisory
18 Committee Act (5 U.S.C. App.), such advisory com-
19 mittees as the Administrator may consider appro-
20 priate to assist in the performance of the functions
21 of the Administrator.

22 (2) COMPENSATION.—A member of an advisory
23 committee, other than a full-time employee of the
24 Federal Government, may be allowed travel ex-
25 penses, including per diem in lieu of subsistence, as

1 authorized by section 5703 of title 5, United States
2 Code, for individuals in the Government service
3 without pay, while attending meetings of the advi-
4 sory committee or otherwise serving away from the
5 homes or regular place of business of the member at
6 the request of the Administrator.

7 **SEC. 503. OFFICES.**

8 (a) **PRINCIPAL OFFICE.**—The principal office of the
9 Administration shall be in or near the District of Colum-
10 bia.

11 (b) **FIELD OFFICES.**—The Administrator may main-
12 tain such field offices as the Administrator considers nec-
13 essary to carry out the functions of the Administrator.

14 **SEC. 504. MISSION PLAN.**

15 (a) **IN GENERAL.**—The Administrator shall prepare
16 a mission plan, which shall—

17 (1) provide an informational basis sufficient to
18 permit informed decisions to be made in carrying
19 out the functions of the Administrator; and

20 (2) provide verifiable indicators for oversight of
21 the performance of the Administrator.

22 (b) **CONTENTS.**—The mission plan shall include—

23 (1) a description of the actions the Adminis-
24 trator plans to take to carry out the functions of the
25 Administrator under this Act;

1 (2) schedules and milestones for carrying out
2 the functions of the Administrator, which shall pro-
3 vide for the operation of—

4 (A) a pilot facility not later than December
5 31, 2021;

6 (B) a storage facility for nonpriority waste
7 not later than December 31, 2025; and

8 (C) a repository not later than December
9 31, 2048; and

10 (3) an estimate of the amounts that the Admin-
11 istration will need Congress to appropriate from the
12 Nuclear Waste Fund (in addition to amounts ex-
13 pected to be available from the Working Capital
14 Fund) to carry out the functions of the Nuclear
15 Waste Fund, on an annual basis.

16 (c) PROPOSED MISSION PLAN.—Not later than 1
17 year after the date of enactment of this Act, the Adminis-
18 trator shall submit a proposed mission plan for comment
19 to—

20 (1) Congress;

21 (2) the Oversight Board;

22 (3) the Commission;

23 (4) the Nuclear Waste Technical Review Board
24 established by section 502 of the Nuclear Waste Pol-
25 icy Act of 1982 (42 U.S.C. 10262);

1 (5) the States;

2 (6) affected Indian tribes; and

3 (7) such other interested persons as the Admin-
4 istrator considers appropriate.

5 (d) PUBLIC NOTICE AND COMMENT.—On submitting
6 the proposed mission plan for comment under subsection
7 (c), the Administrator shall—

8 (1) publish a notice in the Federal Register of
9 the availability of the proposed mission plan for pub-
10 lic comment; and

11 (2) provide interested persons an opportunity to
12 comment on the proposed plan.

13 (e) SUBMISSION OF FINAL MISSION PLAN.—After
14 consideration of the comments received, the Administrator
15 shall—

16 (1) revise the proposed mission plan to the ex-
17 tent that the Administrator considers appropriate;
18 and

19 (2) submit the final mission plan, along with a
20 general statement responding to any significant
21 issues raised in the comments received on the pro-
22 posed mission plan, to the appropriate committees of
23 Congress, the President, and the Oversight Board.

24 (f) REVISION OF THE MISSION PLAN.—The Adminis-
25 trator shall—

1 (1) revise the mission plan, as appropriate, to
2 reflect major changes in the planned activities,
3 schedules, milestones, and cost estimates reported in
4 the mission plan; and

5 (2) submit the revised mission plan to Con-
6 gress, the President, and the Oversight Board prior
7 to implementing the proposed changes.

8 **SEC. 505. ANNUAL REPORTS.**

9 (a) **IN GENERAL.**—The Administrator shall annually
10 prepare and submit to Congress, the President, and the
11 Oversight Board a comprehensive report on the activities
12 and expenditures of the Administration.

13 (b) **MANAGEMENT REPORT.**—The annual report sub-
14 mitted under subsection (a) shall include—

15 (1) the annual management report required
16 under section 9106 of title 31, United States Code;
17 and

18 (2) the report on any audit of the financial
19 statements of the Administration conducted under
20 section 9105 of title 31, United States Code.

21 **SEC. 506. SAVINGS PROVISIONS; TERMINATIONS.**

22 (a) **COMMISSION PROCEEDINGS.**—This Act shall not
23 affect any proceeding or any application for any license
24 or permit pending before the Commission on the date of
25 enactment of this Act.

1 (b) **AUTHORITY OF THE SECRETARY.**—This Act shall
2 not transfer or affect the authority of the Secretary with
3 respect to—

4 (1) the maintenance, treatment, packaging, and
5 storage of defense wastes at Department of Energy
6 sites prior to delivery to, and acceptance by, the Ad-
7 ministrator for disposal in a repository;

8 (2) the conduct of generic research, develop-
9 ment, and demonstration activities related to nuclear
10 waste management, including proliferation-resistant
11 advanced fuel recycling and transmutation tech-
12 nologies that minimize environmental and public
13 health and safety impacts; and

14 (3) training and workforce development pro-
15 grams relating to nuclear waste management.

16 (c) **TERMINATIONS.**—The authority for each function
17 of the Secretary relating to the siting, construction, and
18 operation of repositories or storage facilities not trans-
19 ferred to the Administrator under this Act shall terminate
20 on the date of enactment of this Act, including the author-
21 ity—

22 (1) to provide interim storage or monitored, re-
23 trievable storage under subtitles B and C of title I
24 of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
25 10151 et seq.); and

1 (2) to site or construct a test and evaluation fa-
2 cility under title II of the Nuclear Waste Policy Act
3 of 1982 (42 U.S.C. 10191 et seq.).

4 **SEC. 507. TECHNICAL ASSISTANCE IN THE FIELD OF SPENT**
5 **FUEL STORAGE AND DISPOSAL.**

6 (a) **JOINT NOTICE.**—Not later than 90 days after the
7 date of enactment of this Act and annually for 5 suc-
8 ceeding years, the Secretary and the Commission shall up-
9 date and publish in the Federal Register the joint notice
10 required by section 223(b) of the Nuclear Waste Policy
11 Act of 1982 (42 U.S.C. 10203(b)).

12 (b) **INFORMING FOREIGN GOVERNMENTS.**—As soon
13 as practicable after the date of the publication of the an-
14 nual joint notice described in subsection (a), the Secretary
15 of State shall inform the governments of nations and orga-
16 nizations operating nuclear power plants, solicit expres-
17 sions of interest, and transmit any such expressions of in-
18 terest to the Secretary and the Commission, as provided
19 in section 223(c) of the Nuclear Waste Policy Act of 1982
20 (42 U.S.C. 10203(c)).

21 (c) **BUDGET REQUESTS.**—The President shall in-
22 clude in the budget request of the President for the Com-
23 mission and the Department of Energy for each of fiscal
24 years 2014 through 2019 such funding requests for a pro-
25 gram of cooperation and technical assistance with nations

1 in the fields of spent nuclear fuel storage and disposal as
2 the President determines appropriate in light of expres-
3 sions of interest in the cooperation and assistance.

4 (d) **ELIGIBILITY.**—Notwithstanding any limitation on
5 cooperation and technical assistance to non-nuclear weap-
6 on states under section 223 of the Nuclear Waste Policy
7 Act of 1982 (42 U.S.C. 10203), the Secretary and the
8 Commission may cooperate with and provide technical as-
9 sistance to nuclear weapon states, if the Secretary and the
10 Commission determine the cooperation and technical as-
11 sistance is in the national interest.

12 **SEC. 508. NUCLEAR WASTE TECHNICAL REVIEW BOARD.**

13 (a) **ELIGIBILITY.**—Section 502(b)(3)(C)(iii)(I) of the
14 Nuclear Waste Policy Act of 1982 (42 U.S.C.
15 10262(b)(3)(C)(iii)(I)) is amended by inserting “or the
16 Nuclear Waste Administration” after “the Department of
17 Energy”.

18 (b) **FUNCTIONS.**—Section 503 of the Nuclear Waste
19 Policy Act of 1982 (42 U.S.C. 10263) is amended by
20 striking “Secretary after the date of the enactment of the
21 Nuclear Waste Policy Amendments Act of 1987” and in-
22 serting “Nuclear Waste Administrator after the date of
23 enactment of the Nuclear Waste Administration Act of
24 2013”.

1 (c) PRODUCTION OF DOCUMENTS.—Section 504(b)
2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
3 10264(b)) is amended by striking “Secretary” each place
4 it appears and inserting “Nuclear Waste Administrator”.

5 (d) REPORTS.—Section 508 of the Nuclear Waste
6 Policy Act of 1982 (42 U.S.C. 10268) is amended in the
7 first sentence by striking “Congress and the Secretary”
8 and inserting “Congress, the Nuclear Waste Adminis-
9 trator, and the Nuclear Waste Oversight Board”.

10 (e) TERMINATION.—Section 510 of the Nuclear
11 Waste Policy Act of 1982 (42 U.S.C. 10270) is amended
12 by striking “Secretary” and inserting “Nuclear Waste Ad-
13 ministrator”.

14 **SEC. 509. REPEAL OF VOLUME LIMITATION.**

15 Section 114(d) of the Nuclear Waste Policy Act of
16 1982 (42 U.S.C. 10134(d)) is amended by striking the
17 second and third sentences.



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: CLERK OF THE BOARD
By: Patricia Gunsolley, Assistant Clerk of the Board

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Approval of Minutes

DEPARTMENTAL RECOMMENDATION: - Request approval the minutes of the Board of Supervisors meetings as follows: A) Regular Meeting of August 13, 2013; B) Special Meeting of August 13, 2013; C) Special Meeting of August 19, 2013; D) Special Meeting of August 20, 2013; and E) Regular Meeting of August 20, 2013.

SUMMARY DISCUSSION: - The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's web page at www.inyocounty.us.

ALTERNATIVES: - Staff awaits your Board's changes and/or corrections.

OTHER AGENCY INVOLVEMENT: - n/a

FINANCING: n/a

APPROVALS

BUDGET OFFICER:	BUDGET AMENDMENTS <i>(Must be reviewed and approved by Budget Officer prior to being approved by others, as needed, and submission to the Assistant Clerk of the Board.)</i>
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 Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the Assistant Clerk of the Board.)</i> <p align="right">Approved: _____ Date _____</p>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received) _____ Date: _____
(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

14

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for 11:30 a.m. Closed Session Informational

FROM: Inyo County Planning Department/Commission

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: Road Abandonment No. 2013-01/Indian Creek CSD

DEPARTMENTAL RECOMMENDATION: Requests the Board of Supervisors:

- 1) Conduct a Public Hearing on a proposed resolution entitled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Declaring the Vacation and Abandonment of That Portion of Birch Street in West Bishop; and
- 2) Adopt the attached Resolution.

SUMMARY DISCUSSION: The applicant Indian Creek CSD has requested a road abandonment for a 60-foot wide portion of Birch Street lying west of the westerly prolongation of Grandview Street in West Bishop. The portion to be abandoned is a dead-end street. The applicant is seeking this Road Abandonment to allow for placement of a backup emergency generator for the Indian Creek-Westridge water supply. Attached is Exhibit A to the proposed Resolution, indicating the CSD's proposal.

At the August 20, 2013 meeting of the Board of Supervisors, the Board adopted a Resolution entitled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Declaring its Intent to Vacate That Portion of Birch Street and Setting and Providing Notice of a Public Hearing on Said Vacation." This Notice of Intent was posted and published in accordance with California Streets and Highways Code Sections 8321, 8322, and 8323.

The proposed Resolution declares the vacation and abandonment of the aforementioned County right-of-way. Should your Board adopt the proposed Resolution, the Vacation shall be complete upon closure of the required 15-day appeal period.

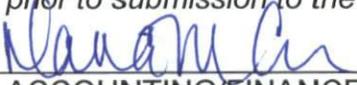
ALTERNATIVES:

- Do NOT adopt the attached Resolution vacating said portion of Birch Street within West Bishop. This alternative is not recommended, as the road is unnecessary since it is a dead-end street and will not restrict access to any parcels.

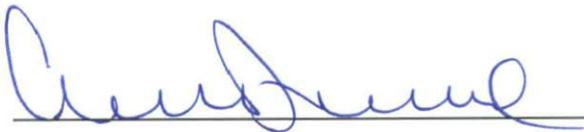
OTHER AGENCY INVOLVEMENT: Inyo County Road Department

FINANCING: No direct impact.

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 8/30/13
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

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

 _____ Date: 9/4/13

- Attachments:
- (1) Proposed Board Resolution
 - (2) Exhibit A: Vicinity Map, Exhibit Map, and Legal Description
 - (3) Board of Supervisors Resolution No. 2013-38
 - (4) Planning Commission Resolution No. 2013-02
 - (5) Planning Commission Staff Report

RESOLUTION NO. 2013 - ____

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, DECLARING THE VACATION AND ABANDONMENT OF THAT PORTION OF BIRCH STREET IN WEST BISHOP

WHEREAS, it appears to be in the best interest of the County of Inyo to abandon certain public roadways or portions thereof, hereinafter described; and

WHEREAS, on August 20, 2013 this Board adopted Resolution No. 2013-38 and thereby declared its intent to vacate that portion of Birch Street in West Bishop, and set a date of September 10, 2013, and a time of 11:30 a.m., for a public hearing before this Board on the issue of said vacation; and

WHEREAS, this Board finds that notice of the hearing set by Resolution No. 2013-38 was duly given by the publication and posting of that Resolution, in accordance with its terms; and

WHEREAS, on September 10, 2013 this Board conducted the hearing set by Resolution No. 2013-38 and there at heard testimony and considered written evidence as to the need and reasons for vacating that portion of Birch Street; and

WHEREAS, the Board of Supervisors of Inyo County, California, has found and determined it is desirable and in the public interest to vacate that portion of Birch Street; and

WHEREAS, the vacation of said roadway will not eliminate required access to contiguous properties.

NOW, THEREFORE, BE IT RESOLVED this Board finds from all of the evidence submitted that: a) the 60-foot wide portion of Birch St. more particularly described as a portion of Section 11, Township 7 South, Range 32 East, M.D.B & M. described as all that portion of Birch Street lying west of the westerly prolongation of the right-of-way line of Grandview Street, being the northerly sixty feet of Lot 67, together with the curb return segment depicted on said plat falling westerly of the prolonged westerly right-of-way line of Grandview Street, Block 1 of the Grandview Heights subdivision on the plat filed in Book 2 of maps at Page 25 in the Office of the Inyo County Recorder, containing 7,666 square feet more or less; b) the vacation of said roadway will not cut off access to any contiguous parcels; c) the portion of said roadway and the underlying right-of-way are not useful as a non-motorized transportation facility; and, d) this portion of Birch Street is therefore unnecessary for present or prospective public use.

BE IT FURTHER RESOLVED AND ORDERED, by the Board of Supervisors, County of Inyo, State of California, that it adopts and incorporates herein the

recitals and findings set forth above and below and for the reasons stated herein, hereby vacates that portion of Birch Street described in Exhibit A attached to this Resolution.

BE IT FURTHER RESOLVED, that this Board of Supervisors adopts the following findings and conditions of approval for Road Abandonment #2013-01:

REQUIRED FINDINGS

1. Find that the project does not conflict with nor is it contrary to the Inyo County General Plan's goals and policies.

[Evidence: This project does not conflict with the Inyo County General Plan. On July 24, 2013 the Inyo County Planning Commission adopted Resolution No.2013-02 in which the Commission found the proposed abandonment to be in conformance with the General Plan.

2. Find that the Zoning and General Plan boundaries extend to the centerline of County right-of-ways pursuant to Inyo County Code Section 18.03.090

[Evidence: Inyo County Code Section 18.03.090 gives the Board of Supervisors the authority to determine the boundaries of any district. By extending the boundary to the centerline ensures that the abandoned portion of road will remain consistent with the General Plan and Zoning designations of the adjacent parcels.]

CONDITIONS OF APPROVAL FOR ROAD ABANDONMENT #2012-01/MULL

1. **Hold Harmless:**

As a condition of approval of Road Abandonment #2013-01/Indian Creek CSD, the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County (County), its agents, officers and employees from any claim, action or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2013-01/Indian Creek CSD.

BE IT FURTHER that the Clerk of this Board shall cause a certified copy of this Resolution of Vacation, attested by the Clerk under seal, to be recorded in accordance with Streets and Highways Code section 8325.

PASSED AND ADOPTED ON THIS 10th DAY OF SEPTEMBER, 2013, BY THE FOLLOWING VOTE:

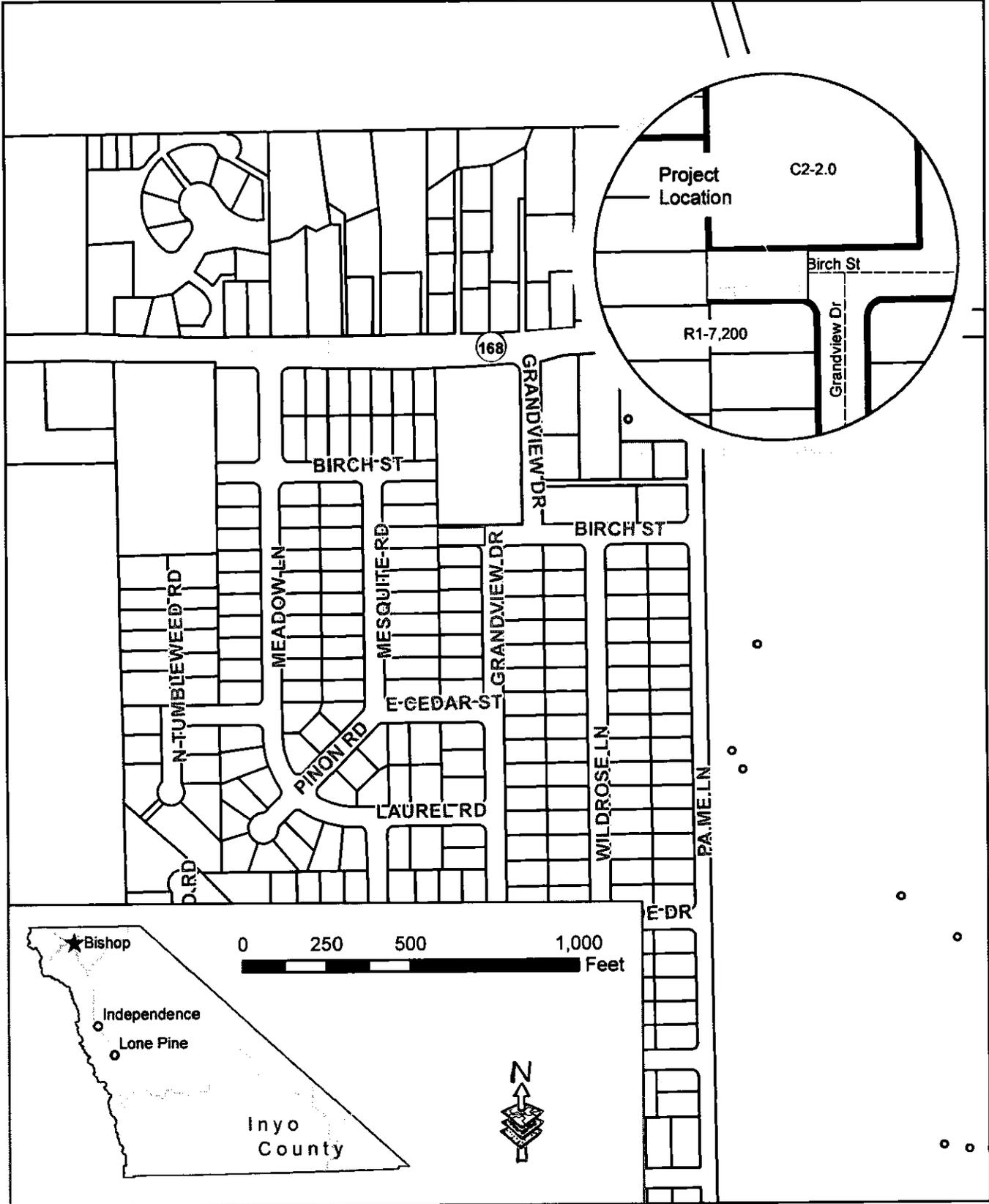
AYES:

NOES:

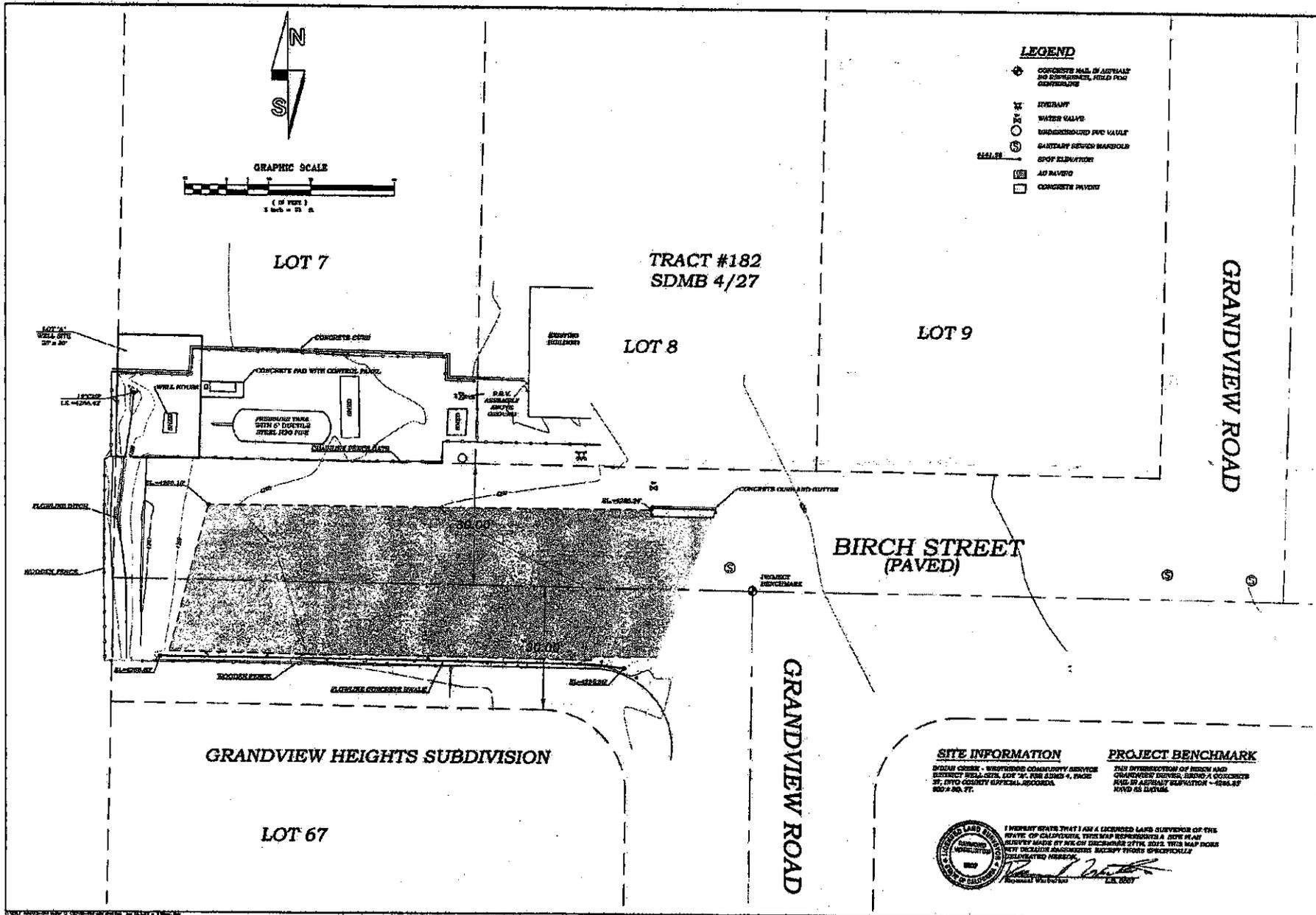
ABSTAIN:

ABSENT:

Vicinity Map



Road Abandonment No. 2013-01/Indian Creek CSD



- LEGEND**
- ⊕ CONCRETE PAD IN ASPHALT OR ASPHALT, FIELD FOR CONCRETE
 - ⊕ WELLS
 - WATER VALVE
 - UNDERGROUND PVC VALVE
 - GATEWAY SEWER MARKERS
 - ⊕ SPOT ELEVATION
 - ⊕ AD PAVED
 - ⊕ CONCRETE PAVED

SITE PLAN
J.K.B.S. WELL SITE
STAFF CODE: COMPANY: DISTRICT

Eastern Sierra Land Surveys, Inc.
1000 N. G Street
 Suite 100
 Fresno, CA 93703
 (559) 233-1111
 www.esls.com

SITE INFORMATION
 BEAR CREEK - IMPROVED COMMUNITY SERVICE DISTRICT, LOT 7, TRACT #182, SDMB 4/27

PROJECT BENCHMARK
 THIS INFORMATION OF BEAR AND GRANDVIEW HEIGHTS, TRACT #182, SDMB 4/27, IS A PRELIMINARY PLAN - SEE SET RECORDS

I HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA. THIS PLAN REPRESENTS A SURVEY MADE BY ME ON DECEMBER 27TH, 2012. THIS MAP DOES NOT INCLUDE BOUNDARIES BACKUP FROM ANY PREVIOUS UNLITATED SURVEYS.

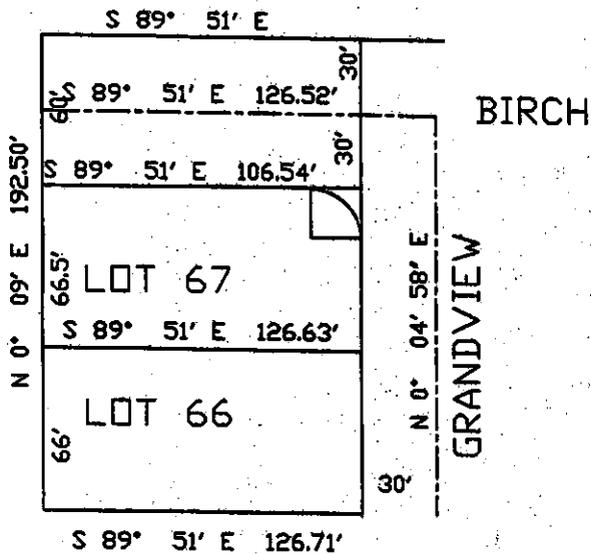
[Signature]
 December 27, 2012



DATE	12/27/12
BY	J.K.B.S.
CHECKED BY	
SCALE	1" = 20'
PROJECT	J.K.B.S. WELL SITE
TRACT	TRACT #182, SDMB 4/27
SHEET	1 OF 1

RELINQUISHMENT:

A PORTION OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 32 EAST, M.D.B. & M. DESCRIBED AS ALL THAT PORTION OF BIRCH STREET LYING WEST OF THE WESTERLY PROLOGATION OF RIGHT-OF-WAY LINE OF GRANDVIEW STREET, BEING THE NORTHERLY SIXTY FEET OF LOT 67, TOGETHER WITH THE CURB RETURN SEGMENT, DEPICTED ON SAID PLAT FALLING WESTERLY OF THE PROLONGED WESTERLY RIGHT-OF-WAY LINE OF GRANDVIEW STREET BLOCK 1 OF THE GRANDVIEW HEIGHTS SUBDIVISION ON THE PLAT FILED IN BOOK 2 OF MAPS AT PAGE 25 IN THE OFFICE OF THE INYO COUNTY RECORDER, CONTAINING 7666 SQUARE FEET, MORE OR LESS.



CURB RETURN
 DELTA = 90° 04' 02"
 R = 20.00
 L = 31.44
 T = 20.02
 SECTOR = 314.39 SQ FT
 SEGMENT = 114.39 SQ FT

TOTAL RELINQUISHMENT AREA
 = 7,665.9 SQ FT.

EASEMENT:

(TO BE FILED AFTER THE RELINQUISHMENT)

AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF AN EMERGENCY GENERATION SYSTEM OVER THE NORTHERLY THIRTY FEET OF LOT 67, BLOCK ONE OF THE GRANDVIEW HEIGHTS SUBDIVISION AS DEPICTED ON THE MAP FILED IN BOOK 2 OF MAPS AT PAGE 25 IN THE OFFICE OF THE INYO COUNTY RECORDER.



RESOLUTION NO. 2013 - 38

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, DECLARING ITS INTENT TO VACATE THAT PORTION OF BIRCH STREET IN WEST BISHOP AND SETTING AND PROVIDING NOTICE OF A PUBLIC HEARING ON SAID VACATION

WHEREAS, on May 29, 2013, an application to vacate that portion of Birch Street in West Bishop was submitted to the County by the Indian Creek-Westridge Community Services District (CSD); and

WHEREAS, on July 24, 2013 the Planning Commission found that the road vacations proposed by the application are consistent with the Inyo County General Plan, pursuant to Government Code Section 65402, and adopted a Resolution recommending that the Board of Supervisors approve said abandonment and that the applicant indemnify and hold the County harmless for and from any action associated with said approval; and

WHEREAS, an abandonment shall be conducted pursuant to Chapter 3, Part 3, Division 9 of the California Streets and Highways Code, which permits the Board of Supervisors to initiate proceedings to vacate a County right-of-way by declaring its intent to vacate said right-of-way and setting a hearing on the proposed vacation, by order.

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors hereby declares its intent to vacate portions of County right-of-ways described as follows:

A portion of Section 11, Township 7 South, Range 32 East, M.D.B. & M. described as all that portion of Birch Street lying west of the westerly prolongation of the right-of-way line of Grandview Street, being the northerly sixty feet of Lot 67, together with the curb return segment depicted on said plat falling westerly of the prolonged westerly right-of-way line of Grandview Street, Block 1 of the Grandview Heights subdivision on the plat filed in Book 2 of maps at Page 25 in the office of the Inyo County Recorder, containing 7,666 square feet, more or less; and

BE IT FURTHER RESOLVED, that in accordance with Chapter 3, Part 3, Division 9 of the California Streets and Highways Code, this Board of Supervisors hereby sets a hearing on the aforementioned proposed roadway vacation to be conducted before it on the 10th day of September, 2013, at 11:30 a.m., in the Board of Supervisors Room, County Administrative Center, Independence, California; and

BE IT FURTHER RESOLVED that this Notice of Intent shall be posted and published in accordance with California Streets and Highways Code Sections 8321, 8322, and 8323.

**PASSED AND ADOPTED ON THIS 20 DAY OF AUGUST, 2013 BY THE
FOLLOWING VOTE:**

AYES:

NOES:

ABSTAIN:

ABSENT:

**Linda Arcularius, Chair
Inyo County Board of Supervisors**

**ATTEST:
KEVIN CARUNCHIO
Clerk of the Board**

**By: _____
Pat Gunsolley, Assistant**

RESOLUTION NO. 2013-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, FINDING THAT PROPOSED ROAD ABANDONMENT #2013-01/INDIAN CREEK CSD IS IN CONFORMANCE WITH THE INYO COUNTY GENERAL PLAN AND RECOMMENDING THAT THE INYO COUNTY BOARD OF SUPERVISORS APPROVE THAT ROAD ABANDONMENT, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, on May 29, 2013, the County of Inyo has received an application to abandon a County right-of-way described as a portion of Section 11, Township 7 South, Range 32 East, M.D.B. & M. described as all that portion of Birch Street lying west of the westerly prolongation of right-of-way line of Grandview Street, being the northerly sixty feet of lot 67, together with the curb return segment depicted on said plat falling westerly of the prolonged westerly line of Grandview Street, Block 1 of the Grandview Heights subdivision on the plat filed in Book 2 of maps at Page 25 in the office of the Inyo County Recorder, containing 7,666 square feet, more or less; and

WHEREAS, such an abandonment may be conducted pursuant to Chapter 3 of Part 3 of Division 9, commencing with Section 8320, of the Streets and Highways Code; and

WHEREAS, Government Code Section 65402 requires a proposed street abandonment to first be reviewed by the Planning Commission for a determination as to the proposal's conformance with the County General Plan; and

WHEREAS, the Planning Commission has found that the proposed road abandonment is consistent and in conformance with the Inyo County General Plan; and

WHEREAS, in accordance with the conditions necessary to identify viable candidates for street abandonment, the Planning Commission has determined the subject streets are not the sole route of access for any property in the vicinity and that the abandonment of said roadways will not cut off required access to contiguous properties; and

WHEREAS, the Planning Commission has found the application for the road abandonment to be exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines (General Rule) since there is no possibility that the activity in question will have a significant effect on the environment and placement of the backup emergency generator to be categorically exempt from CEQA under the Class 3 exemption, "New construction or conversion of small structures, such as water main, sewage, electrical, gas, and other utility extensions" and does not meet any of the exceptions to the exemptions listed in Section 15300.2 of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED that this Planning Commission finds Road Abandonment No. 2013-01/Indian Creek CSD to be in conformance with the Inyo County General Plan; and

BE IT FURTHER RESOLVED, that the Planning Commission makes, and recommends that the Board of Supervisors adopt, the following Conditions of Approval for the proposed project:

RECOMMENDED CONDITIONS OF APPROVAL:

1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2013-01/Indian Creek CSD.

Passed and adopted this 24th day of July, 2013.

AYES: Stoll, Payne, Corner, ~~Wahrenbrock~~ *nb*

NOES:

ABSTAIN: *Wahrenbrock*

ABSENT: Wasson



Paul Payne, Vice-Chair
Inyo County Planning Commission

ATTEST: Joshua Hart, AICP
Planning Director

By: 

Nolan Bobroff
Secretary of the Commission



**Planning Department
168 North Edwards Street
Post Office Drawer L
Independence, California 93526**

Phone: (760) 878-0263

FAX: (760) 878-0382

E-Mail: inyoplanning@inyocounty.us

AGENDA ITEM NO.: 5 (Action Item – Public Hearing)

**PLANNING COMMISSION
MEETING DATE:**

July 24, 2013

SUBJECT:

Road Abandonment No. 2013-01/Indian
Creek Community Service District (CSD)

EXECUTIVE SUMMARY

The applicant, Indian Creek-Westridge CSD, is requesting a road abandonment for a 60-foot wide portion of Birch Street lying westerly of Grandview Road in Bishop, CA. The applicant is seeking this abandonment in order to place an emergency backup generator and a propane tank to fuel the generator. The portion to be abandoned is a dead-end street with residential units to the south and west and a school and well yard to the north. The well yard contains infrastructure components for the Indian Creek-Westridge water supply and will work in conjunction with the proposed generator. Access for the well yard is achieved via this portion of Birch Street and access will continue to be via Birch Street with a slight reconfiguration after the road is abandoned. The adjacent residential parcels are not accessed via Birch Street. The exhibit map, legal description, and vicinity map are included in Attachment "1."

The Public Streets, Highways, and Service Easements Vacation Law, set forth in Section 8300 et seq. of the California Street and Highway Code, allows a County Board of Supervisors to abandon a road under its jurisdiction upon making certain findings following a public hearing. Section 8313 of the Abandonment Law and Section 65402 of the Government Code, states that before the Board of Supervisors may order such an abandonment, the County Planning Commission must review the proposed abandonment and find it is in conformance with the County's General Plan and adopt a resolution of their findings.

PROJECT INFORMATION

Supervisory District: Three

Applicants: Indian Creek-Westridge CSD

Landowners: Inyo County Office of Education; Arnie & Kelliann Palu

Address: 126.5' Section of Birch Street located westerly of Grandview Road in Bishop, CA

Community: Bishop – Grandview Heights Subdivision

A.P.N.s: 011-160-38; 011-280-67

General Plan: Retail Commercial (RC); Residential Medium Density (RM)

Zoning: Highway Services & Tourist Commercial (C2-2.0); Single Family Residential (R1-7,200)

Size of Parcel(s): Section of road to be abandoned is approximately 126.52-foot long by 60-foot wide. (.17 acres)

Surrounding Land Use:

Location	Use	General Plan Designation	Zoning
Site 7,666 sf (.18 acres)	Developed roadway	Retail Commercial (RC); Residential Medium Density (RM)	Highway Services & Tourist Commercial (C2-2.0); Single Family Residential (R1-7,200)
North APN: 011-160-38 116,790 sf (2.68 acres)	School; Well yard	Retail Commercial (RC)	Highway Services & Tourist Commercial (C2-2.0)
East	Developed roadway	Residential Medium Density (RM)	Single Family Residential (R1-7,200)
South APN: 011-280-67 7,764 sf (.18 acres)	Residential	Residential Medium Density (RM)	Single Family Residential (R1-7,200)
West APN: 011-152-19 10,637 sf (.24 acres)	Residential	Residential Medium Density (RM)	Single Family Residential (R1-7,200)

Recommended Action: Find that the proposed road abandonment is consistent with the Inyo County General Plan and recommend approval of the proposed abandonment to the Board of Supervisors.

Alternatives:

1) Find the proposed road abandonment to be inconsistent with the Inyo County General Plan, thereby effectively recommending denial of the proposed road abandonment to the Board of Supervisors.

2) Continue the public hearing to a future date, and provide specific direction to staff regarding additional information and analysis needed.

Project Planner:

Nolan Bobroff, Planning Coordinator

PROJECT DESCRIPTION

The applicant has requested that a portion of Birch Street (60-feet wide) lying west of the westerly prolongation of the right-of-way line of Grandview Road be abandoned. This portion of Birch Street is a dead-end street. The applicant is seeking this abandonment in order to place an emergency backup generator and a propane tank to fuel the generator. All of the adjacent property owners gave written consent to the proposed road abandonment (Attachment "2").

Once abandoned, the entire section of road will become part of the lot to the south, lot 67 as shown on the exhibit map. This is different from most road abandonments in which the section of road abandoned is divided equally to the property owners directly adjacent to the section of road. This is because the roads within the Grandview Heights subdivision were established through dedication and remain part of the subdivision. Through an agreement between the property owner of Lot 67 and the Indian Creek-Westridge CSD, the property owner will convey the northerly 30 foot portion of the newly enlarged lot to the Indian Creek-Westridge CSD. Conveyance of land to a Government Agency is exempt from the Subdivision Map Act.

STAFF ANALYSIS

Site Description

The Grandview Heights subdivision final map was approved by the Inyo County Board of Supervisors on July 25, 1958. The original recorded subdivision map had an easement for Grandview Road originating at the western edge of the portion of Birch Street to be abandoned and running to the north parallel along the western edge of what is now the school parcel. The present alignment for Grandview Road runs along the eastern boundary of the school parcel as shown on the exhibit map. Because of this, Birch Street is a dead-end street and only provides access to the aforementioned well yard.

General Plan Consistency

Pursuant to Section 65402 of the Government Code, the vacation or abandonment of a road by a public agency must be reviewed by the planning agency for consistency with

the general plan. The Planning Commission must make a determination that the proposed action is consistent with the general plan. While there are no specific General Plan policies within the Inyo County General Plan that apply directly to the vacation or abandonment of a roadway, there are policies within the General Plan relevant to the proposed action.

The policies applicable to this project include:

Policy RH-1.5:

Proper Access: Provide proper access to residential, commercial, and industrial areas.

Policy LU-2.14

Access: The County shall require the adequate vehicle access is provided to all neighborhoods and developments consistent with the intensity of residential development.

Discussion: The portion of Birch Street to be abandoned only provides access to a well yard containing tanks belonging to the applicant, the Indian Creek-Westridge CSD. Access for the well yard will continue to be via Birch Street, but with a slightly different configuration. Access for the adjacent residential parcels is located elsewhere.

Policy LU-3.2:

Retail Commercial Designation (RC): This designation provides for retail and wholesale commercial uses, service uses, offices, public and quasi-public uses, and similar and compatible uses.

Discussion: The future use of the northern 30 feet of Birch Street to house a backup emergency generator for the water supply is consistent with the above policy since it is a public or quasi-public use.

Policy LU-2.3:

Residential Medium Density Designation (RM): This designation provides for single-family residential neighborhoods within urban areas, public and quasi-public uses, and similar and compatible uses. Connection to both an acceptable sewer and water system is mandatory for new subdivisions.

Discussion: While the Grandview Heights subdivision is not a new subdivision, it is connected to a sewer and water system. Placement of the backup generator on the portion of road to be abandoned will allow for a continuous supply of potable water in the event of a power outage or if there was a need for increased water pressure due to an emergency such as a fire.

Zoning Ordinance Consistency

The project site is zoned Highway Services & Commercial (C2-2.0) and Single Family Residential (R1-7,200). The portion of road will become part of the adjacent parcels and remain consistent with the zoning designations.

Access/Traffic

The portion to be abandoned is a dead-end street. Birch Street runs east-west and is disconnected due to the alignment of Grandview Road that is different from the originally recorded map.

Access for the well yard is achieved via this portion of Birch Street and access will continue to be via Birch Street with a slight reconfiguration after the road is abandoned. The adjacent residential parcels are not accessed via Birch Street.

Public Services

Sewer:	Eastern Sierra Community Services District
Water:	Indian Creek-Westridge Community Service District
Electric:	Southern California Edison
Telephone:	Verizon
Schools:	Bishop Unified School District
Fire:	Bishop Rural Fire Protection
Law Enforcement:	Inyo County Sheriff

ENVIRONMENTAL REVIEW

The application for abandoning this section of Birch Street is exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines since there is no possibility that the activity in question would have a significant effect on the environment since the roadway is pre-existing and is a dead-end street.

Placement of the backup emergency generator on the abandoned road is Categorically Exempt from the provisions of CEQA, under the Class 3 exemption, "New construction or conversion of small structures, such as water main, sewage, electrical, gas, and other utility extensions" and does not meet any of the exceptions to the exemptions listed in Section 15300.2 of the CEQA Guidelines.

RECOMMENDATIONS

Staff recommends the Planning Commission adopt the attached resolution, to be transmitted to the Board of Supervisors, with the following findings and conditions of approval:

Recommended Findings:

1. Finds Road Abandonment No. 2013-01 to be in conformance with the Inyo County General Plan.

Recommended Conditions of Approval:

1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal

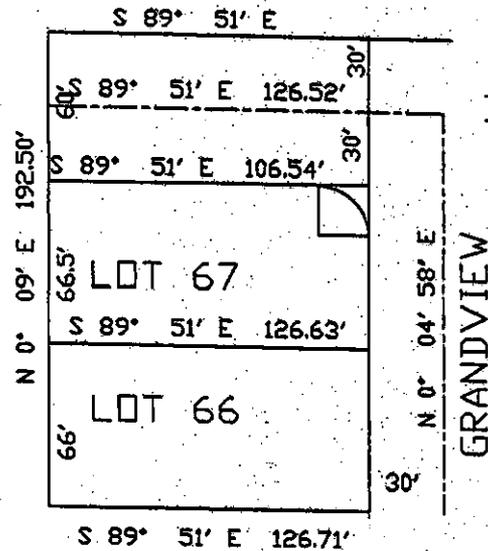
boards, or its legislative body concerning Road Abandonment #2013-01/Indian Creek CSD.

Attachments:

- 1) Exhibit Map, Legal Description & Vicinity Map
- 2) Consent to Road Abandonment
- 3) Planning Commission Resolution No. 2013-02

RELINQUISHMENT:

A PORTION OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 32 EAST, M.D.B. & M. DESCRIBED AS ALL THAT PORTION OF BIRCH STREET LYING WEST OF THE WESTERLY PROLOGATION OF RIGHT-OF-WAY LINE OF GRANDVIEW STREET, BEING THE NORTHERLY SIXTY FEET OF LOT 67, TOGETHER WITH THE CURB RETURN SEGMENT, DEPICTED ON SAID PLAT FALLING WESTERLY OF THE PROLONGED WESTERLY RIGHT-OF-WAY LINE OF GRANDVIEW STREET BLOCK 1 OF THE GRANDVIEW HEIGHTS SUBDIVISION ON THE PLAT FILED IN BOOK 2 OF MAPS AT PAGE 25 IN THE OFFICE OF THE INYO COUNTY RECORDER, CONTAINING 7666 SQUARE FEET, MORE OR LESS.



BIRCH

GRANDVIEW

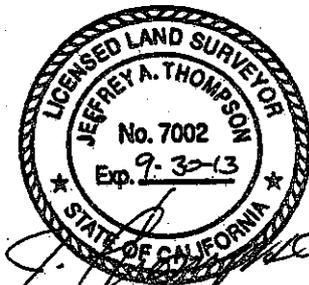
CURB RETURN
 DELTA = 90° 04' 02"
 R = 20.00
 L = 31.44
 T = 20.02
 SECTOR = 314.39 SQ FT
 SEGMENT = 114.39 SQ FT

TOTAL RELINQUISHMENT AREA
 = 7,665.9 SQ FT.

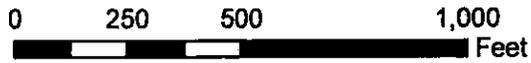
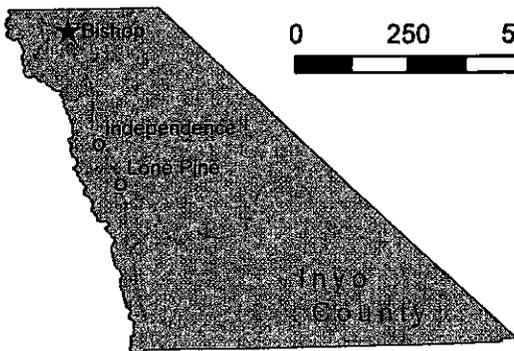
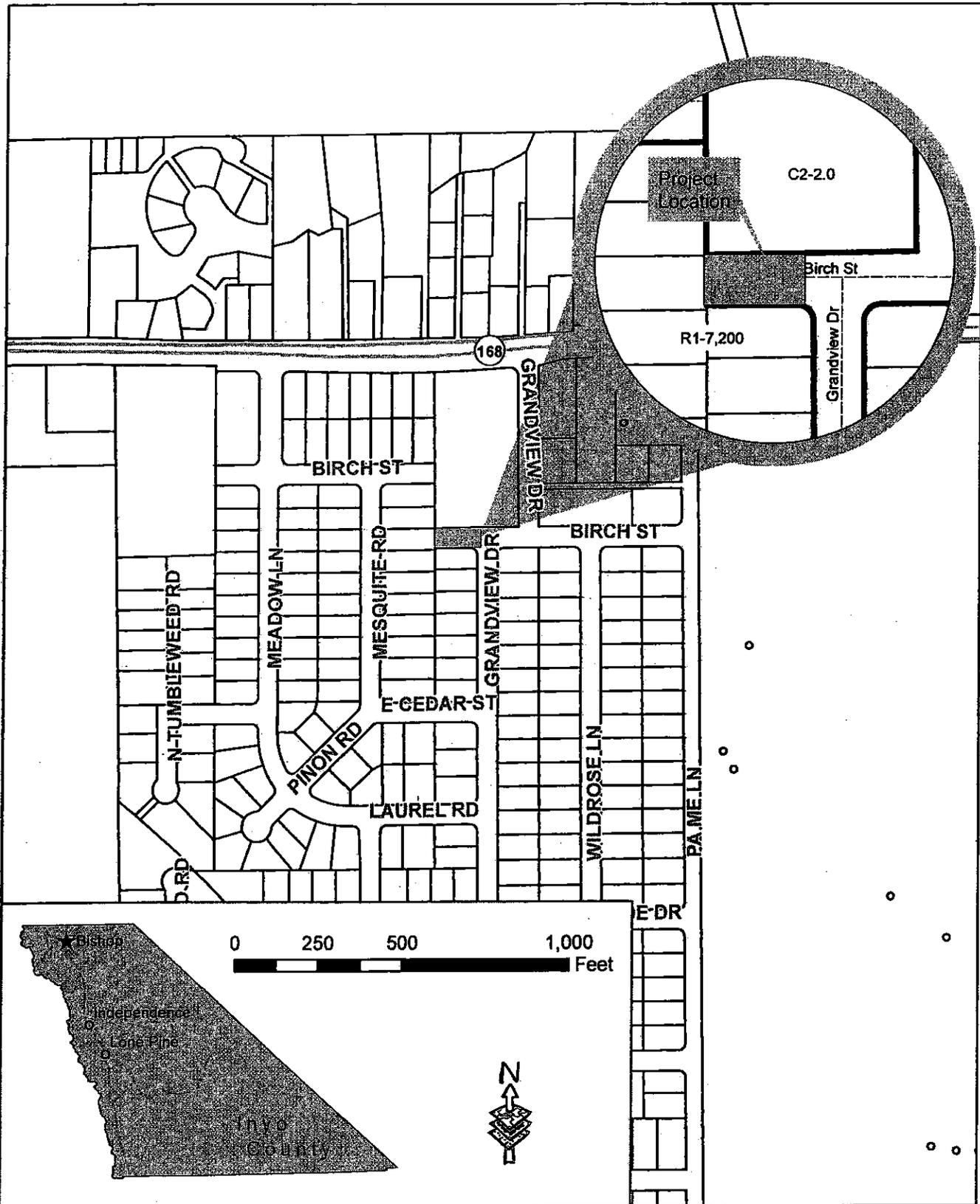
EASEMENT:

(TO BE FILED AFTER THE RELINQUISHMENT)

AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF AN EMERGENCY GENERATION SYSTEM OVER THE NORTHERLY THIRTY FEET OF LOT 67, BLOCK ONE OF THE GRANDVIEW HEIGHTS SUBDIVISION AS DEPICTED ON THE MAP FILED IN BOOK 2 OF MAPS AT PAGE 25 IN THE OFFICE OF THE INYO COUNTY RECORDER.



Vicinity Map



Indian Creek-Westridge Community Services District

12/21/12

District Customers:

The water district is in the process of attempting to upgrade our infrastructure and improve our ability to respond to emergencies. One of our greatest weak points is our inability to pump sufficient water out of the ground in the event of a prolonged power outage. We would like to install a new back up power generator at Well#5 on E. Birch St. but we don't have room to place the device. Therefore the District is requesting that Inyo County abandon the dead end portion of E. Birch St. (west end). If we are successful in that effort, we will have sufficient room to put the generator. The road abandonment process is lengthy and has many requirements. The county department planning requires that we get a "signed consent form for all property owners adjacent to the road abandonment area".

This is a formal request to you to provide your consent to pursue the road abandonment in the interest of improving our community water system.

Thank you very much for your consideration,

Terry Tye General Manager ICWCSD-760-920-1472

I give my consent to ICWCSD to pursue this road abandonment project.

Name TERENCE K. McATEER

Address 166 GRANDVIEW DR.

Date 5/28/13

Indian Creek-Westridge Community Services District

12/21/12

District Customers:

The water district is in the process of attempting to upgrade our infrastructure and improve our ability to respond to emergencies. One of our greatest weak points is our inability to pump sufficient water out of the ground in the event of a prolonged power outage. We would like to install a new back up power generator at Well#5 on E. Birch St. but we don't have room to place the device. Therefore the District is requesting that Inyo County abandon the dead end portion of E. Birch St. (west end). If we are successful in that effort, we will have sufficient room to put the generator. The road abandonment process is lengthy and has many requirements. The county department planning requires that we get a "signed consent form for all property owners adjacent to the road abandonment area".

This is a formal request to you to provide your consent to pursue the road abandonment in the interest of improving our community water system.

Thank you very much for your consideration,

Terry Tye General Manager ICWCSD-760-920-1472

I give my consent to ICWCSD to pursue this road abandonment project.

Name MIKE FELGAR

Address 210 Mesquite RD

Date 12-22-2012

Indian Creek-Westridge Community Services District

12/21/12

District Customers:

The water district is in the process of attempting to upgrade our infrastructure and improve our ability to respond to emergencies. One of our greatest weak points is our inability to pump sufficient water out of the ground in the event of a prolonged power outage. We would like to install a new back up power generator at Well#5 on E. Birch St. but we don't have room to place the device. Therefore the District is requesting that Inyo County abandon the dead end portion of E. Birch St. (west end). If we are successful in that effort, we will have sufficient room to put the generator. The road abandonment process is lengthy and has many requirements. The county department planning requires that we get a "signed consent form for all property owners adjacent to the road abandonment area".

This is a formal request to you to provide your consent to pursue the road abandonment in the interest of improving our community water system.

Thank you very much for your consideration,

Terry Tye General Manager ICWCSD-760-920-1472

I give my consent to ICWCSD to pursue this road abandonment project.

Name Thomas Helvia

Address 218 Mesquite Rd

Date 12/21/2012

RESOLUTION NO. 2013-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, FINDING THAT PROPOSED ROAD ABANDONMENT #2013-01/INDIAN CREEK CSD IS IN CONFORMANCE WITH THE INYO COUNTY GENERAL PLAN AND RECOMMENDING THAT THE INYO COUNTY BOARD OF SUPERVISORS APPROVE THAT ROAD ABANDONMENT, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, on May 29, 2013, the County of Inyo has received an application to abandon a County right-of-way described as a portion of Section 11, Township 7 South, Range 32 East, M.D.B. & M. described as all that portion of Birch Street lying west of the westerly prolongation of right-of-way line of Grandview Street, being the northerly sixty feet of lot 67, together with the curb return segment depicted on said plat falling westerly of the prolonged westerly line of Grandview Street, Block 1 of the Grandview Heights subdivision on the plat filed in Book 2 of maps at Page 25 in the office of the Inyo County Recorder, containing 7,666 square feet, more or less; and

WHEREAS, such an abandonment may be conducted pursuant to Chapter 3 of Part 3 of Division 9, commencing with Section 8320, of the Streets and Highways Code; and

WHEREAS, Government Code Section 65402 requires a proposed street abandonment to first be reviewed by the Planning Commission for a determination as to the proposal's conformance with the County General Plan; and

WHEREAS, the Planning Commission has found that the proposed road abandonment is consistent and in conformance with the Inyo County General Plan; and

WHEREAS, in accordance with the conditions necessary to identify viable candidates for street abandonment, the Planning Commission has determined the subject streets are not the sole route of access for any property in the vicinity and that the abandonment of said roadways will not cut off required access to contiguous properties; and

WHEREAS, the Planning Commission has found the application for the road abandonment to be exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines (General Rule) since there is no possibility that the activity in question will have a significant effect on the environment and placement of the backup emergency generator to be categorically exempt from CEQA under the Class 3 exemption, "New construction or conversion of small structures, such as water main, sewage, electrical, gas, and other utility extensions" and does not meet any of the exceptions to the exemptions listed in Section 15300.2 of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED that this Planning Commission finds Road Abandonment No. 2013-01/Indian Creek CSD to be in conformance with the Inyo County General Plan; and

BE IT FURTHER RESOLVED, that the Planning Commission makes, and recommends that the Board of Supervisors adopt, the following Conditions of Approval for the proposed project:

RECOMMENDED CONDITIONS OF APPROVAL:

1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2013-01/Indian Creek CSD.

Passed and adopted this _____ day of _____, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

Sam Wasson, Chair
Inyo County Planning Commission

ATTEST: Joshua Hart, AICP
Planning Director

By: _____
Nolan Bobroff
Secretary of the Commission



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

15

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

FROM: Inyo Recycling and Waste Management

FOR THE BOARD MEETING OF: September 10, 2013

SUBJECT: A presentation of potential program changes in the Integrated Waste Management Program.

DEPARTMENTAL RECOMMENDATION:

Request Board accept a presentation to review the recommended program changes in the Integrated Waste Management Program and provide direction to staff on how to proceed.

SUMMARY DISCUSSION:

Following up on the Integrated Waste Management Workshop trilogy, Inyo Recycling staff has developed a summary workshop of the priority program changes to be considered for implementation by your board. These recommendations will not only facilitate a review of fees, waste hauler requirements, and ordinance changes that will facilitate further compliance with Cal Recycle regulations.

ALTERNATIVES:

Your board could choose to move the workshop to another meeting date, or provide alternate direction to staff.

OTHER AGENCY INVOLVEMENT:

FINANCING:

There are no financial impacts from this workshop.

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 _____
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:

(Not to be signed until all approvals are received)

Pam Hennerty

Date: 9/5/13