

Agenda

County of Inyo Planning Commission

Board of Supervisors Room
Inyo County Administrative Center
Independence, California

HOWARD LEHWALD
CAITLIN (KATE) J. MORLEY
TODD VOGEL
CALLIE PEEK
SCOTT KEMP

CATHREEN RICHARDS
RYAN STANDRIDGE
PAULA RIESEN
MICHAEL ERRANTE
NATE GREENBERG
CHRISTIAN MILOVICH

FIRST DISTRICT
SECOND DISTRICT
THIRD DISTRICT(CHAIR)
FOURTH DISTRICT (VICE CHAIR)
FIFTH DISTRICT

PLANNING DIRECTOR
ASSOCIATE PLANNER
PROJECT COORDINATOR
PUBLIC WORKS DIRECTOR
COUNTY ADMINISTRATOR
COUNTY COUNSEL

Inyo County Planning Commission
Post Office Drawer L
Independence, CA 93526
(760) 878-0263
(760) 872-2712 FAX
inyoplanning@inyocounty.us

This meeting will be held in the Board of Supervisors Room located at 224 N. Edwards Street, in Independence California.

Items will be heard in the order listed on the agenda unless the Planning Commission rearranges the order or the items are continued. Estimated start times are indicated for each item. The times are approximate and no item will be discussed before its listed time.

Lunch Break will be given at the Planning Commission's convenience.

The Planning Commission Chairperson will announce when public testimony can be given for items on the Agenda. The Commission will consider testimony on both the project and related environmental documents.

The applicant or any interested person may appeal all final decisions of the Planning Commission to the Board of Supervisors. Appeals must be filed in writing to the Inyo County Board of Supervisors within 15 calendar days per ICC Chapter 15 [California Environmental Quality Act (CEQA) Procedures] and Chapter 18 (Zoning), and 10 calendar days per ICC Chapter 16 (Subdivisions), of the action by the Planning Commission. If an appeal is filed, there is a fee of \$300.00. Appeals and accompanying fees must be delivered to the Clerk of the Board Office at County Administrative Center Independence, California. If you challenge in court any finding, determination or decision made pursuant to a public hearing on a matter contained in this agenda, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Inyo County Planning Commission at, or prior to, the public hearing.

Public Notice: In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Planning Department at (760) 878-0263 (28 CFR 35.102-3.104 ADA Title II). Notification 72 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 Planning Department 2 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format (Government Code Section 54954.2).

May 31, 2023

10:00
A.M.

1. **PLEDGE OF ALLEGIANCE.**
2. **ROLL CALL** – Roll Call to be taken by staff.
3. **PUBLIC COMMENT PERIOD** – This is the opportunity for anyone in the audience to address the Planning Commission on any planning subject that is not scheduled on the Agenda.

Action
Item

4. **APPROVAL OF MINUTES** – Approval of minutes from the March 22, 2023 Planning Commission Meeting.

Action
Item
Public
Hearing

5. **AMENDMENT TO CONDITIONAL USE PERMIT 1994-2 BROWN'S SUPPLY; RECLAMATION PLAN 1994-2 BROWN'S SUPPLY-** The applicant has applied to amend Conditional Use Permit (CUP) 1994-2 and Reclamation Plan (REC) 1994-2, proposing to remove the east pit of 4.97 acres within the existing mining boundary and update both the CUP and REC to restrict future mining operation to the west pit and add storage of foreign materials not generated on site. The reduction in mining boundary and the additional storage makes this update necessary per Surface Mining and Reclamation Act (SMARA) and the County code. The project is Exempt under CEQA Guidelines 153021, Existing Facilities – Class 1.

Action
Item
Public
Hearing

6. **AMENDMENT TO RECLAMATION PLAN 1997-6 INDEPENDENCE MS#118 CALIFORNIA DEPARTMENT OF TRANSPORTATION-** The applicant has applied for an amendment to Reclamation Plan 97-6 with permission from the Bureau of Land Management (BLM). The California Department of Transportation proposing a minor revision of the condition of approval #20, abandoning the well, in the approved plan at the Independence Pit MS #118. The project is Exempt under CEQA Guidelines 153021, Existing Facilities – Class 1.

Work
shop

7. **BROWN ACT REVIEW** – County Counsel will give a presentation to the Planning Commission about the Brown ACT and how it applies to the Planning Commission.

COMMISSIONERS' REPORT/COMMENTS

Commissioners to give their report/comments to staff.

PLANNING DIRECTOR'S REPORT

Planning Director, Cathreen Richards, will update the Commission on various topics.

CORRESPONDENCE-INFORMAITONAL

COUNTY OF INYO PLANNING COMMISSION

MINUTES OF MARCH 22, 2023 MEETING

COMMISSIONERS:

VACANT
CAITLIN (KATE) J. MORLEY
TODD VOGEL
CALLIE PEEK
SCOTT KEMP

FIRST DISTRICT
SECOND DISTRICT
THIRD DISTRICT (CHAIR)
FOURTH DISTRICT (VICE)
FIFTH DISTRICT

Inyo County Planning Commission
Post Office Drawer L
Independence, CA 93526
(760) 878-0263
(760) 872-0712 FAX

STAFF:

CATHREEN RICHARDS
CHRISTIAN MILOVICH
CYNTHIA DRAPER
DANIELLE VISUANO
PAULA RIESEN
NATE GREENBERG
MIKE ERRANTE

PLANNING DIRECTOR
ASSISTANT COUNTY COUNSEL
ASSISTANT PLANNER
ASSOCIATE PLANNER
PROJECT COORDINATOR
COUNTY ADMINISTRATOR
PUBLIC WORKS DIRECTOR

The Inyo County Planning Commission met in regular session on Wednesday, March 22, 2023. Commissioner Vogel opened the meeting at 10:10 a.m. These minutes are to be considered for approval by the Planning Commission at their next scheduled meeting.

ITEM 1: PLEDGE OF ALLEGIANCE – All recited the Pledge of Allegiance at 10:10 a.m.

ITEM 2: ROLL CALL - Commissioners: Todd Vogel, Callie Peek, and Kate Morley were present.

Staff present: Cathreen Richards, Planning Director, Cynthia Draper, Assistant Planner, Danielle Visuano, Associate Planner, Paula Riesen, Project Coordinator, and Christian Milovich, Assistant County Counsel.

Staff absent: Nate Greenberg, County Administrator; Michael Errante, Public Works Director.

ITEM 3: PUBLIC COMMENT PERIOD – This item provides the opportunity for the public to address the Planning Commission on any planning subject that is not scheduled on the agenda.

Chair Vogel opened the Public Comment Period at 10:13 a.m.

With no one wishing to comment Chair Vogel closed the public comment period at 10:13 a.m.

ITEM 4: APPROVAL OF MINUTES (Action Item) – Approval of the Minutes from the February 22, 2023 meeting of the Planning Commission.

MOTION: Commissioner Kate Morley made the motion to approve the minutes. The motion was seconded by Commissioner Todd Vogel.

The Motion passed 3-0 at 10:14 a.m.

Cathreen Richards, Planning Director, addressed the Commission stating that agenda items # 5 and #6 are being postponed until the next Planning Commission meeting.

ITEM 5: RENEWABLE ENERGY PERMIT 2022-01/BARKER- The applicant, Robbie Barker, has applied for a Renewable Energy Permit located on one private parcel(APN:038-330-46), in Trona California. This permit would allow the applicant to construct a proposed 1-megawatt photovoltaic solar facility that uses approximately 2,300 single axis tracker solar panels. The project encompasses 5-acres of pre-disturbed land.

ITEM 6: RENEWABLE ENERGY PERMIT 2022-02/BARKER-The applicant, Robbie Barker, has applied for a Renewable Energy Permit located on three private parcels (APN:038-330-32,33,34), in Trona California. This permit would allow the applicant to construct a proposed 3-megawatt photovoltaic solar facility that uses approximately 6,000 single axis tracker solar panels. The project encompasses 15- acres of pre-disturbed land.

ITEM 7: GENERAL PLAN AMENDMENT (GPA) -2023-01/INYO COUNTY – VACANT LANDS AND HOUSING OPPORTUNITY AND ZONE RECLASSIFICATION (ZR)- 2023-01/INYO COUNTY – VACANT LANDS AND HOUSING OPPORTUNITY – With the help of HELIX Environmental Planning Inc., a vacant lands inventory and a zoning and General Plan review of properties located in the County was conducted. This information was used to identify parcels land that are appropriate for zone and General Plan designation changes to promote affordable housing opportunities primarily by increasing allowable residential density. Eight total parcels were selected: three in the Bishop area, one in Independence and four in Lone Pine. They were then evaluated under the California Environmental Quality Act (CEQA) and are now being recommended for General Plan and zoning designation changes.

Cathreen Richards, Planning Director, presented the staff report. She introduced the consultant who worked on the project, Robert Edgerton, Principal Planner from Helix Environmental Planning.

Robert Edgerton presented the CEQA document for the Vacant Lands Environmental Impact Report with a power point presentation.

Cathreen Richards, Planning Director then continued her staff report.

Commissioners did not have any questions at this time so Chair Vogel opened the Public Comment Period at 10:35 a.m.

Jerry Rogers was the first to speak; he lives on 487 E. South Street for 40 years. He wanted everyone to consider the traffic noise that would come to the neighborhood by changing the zoning on South Street and it would decrease the property owner's value immediately. He does not want the zoning to be changed in his neighborhood.

Richard White introduced himself and said he was from Independence. The last time he spoke at the meeting he forgot to say he went over the maps and there are 3 parcels that DWP owns that could provide housing that are zoned R3. There are 2 parcels that are owned by DWP that are zoned CB. Also there is one lot for sale right now, which is available for development as we speak. The parcels you are prosing only have one paved road which is Mazourka Canyon Road and no existing utilities available. There is no need to rezone the 1 acre parcels when the other parcels already have streets and infrastructure available.

Bruce Pischel was the next to speak from Lone Pine. High density housing right next to homes is a bad idea, taking the grant money to make the changes is a mistake, these grants come with strings attached. If this property was next to your home would you vote for it? Please reconsider and vote these 4 parcels R2. High density housing should be in its own area away from homes.

Robert Dowers from the Neighborhood Church was up next to speak about the South Street property. The church now leases a 1 acre part, of the 4 acre property proposed on South Street for parking at the church. We hold events there like the fall festival, fundraising events, and Mule Days uses that property for parade lineup. We would like that parcel if DWP ever decided to sell it. Please keep that in mind when you make your decision. We do have need housing but we have a vested interest in that property.

Ken Gregorich was the next to address the Commission. My wife and I came here in 2016 for the open space and lack of urban sprawl. We bought the property at 475 E South Street and now share it with our children as we now live north of Bishop. We do not want high density housing next to us. There are 17 houses in that area and that would change the neighborhood for the worse. Why were alternate sites not listed for this development?

Cathreen Richards, Planning Director answered we only looked in the unincorporated areas outside of Bishop. We had certain criteria we had to conform to.

Ken Gregorich stated that he had seen that listed in the paperwork, but he would like to join the other property owners that he does not want this project to happen.

Frank Crome was the next to speak he moved into that house in 1964 and lives at 351 E. South Street, he heard about the project and he agrees with his neighbors 100%. He does not want the project and feels the property is very vital to their neighborhood and their church. He hopes that DWP never sells it, and leaves it like it is, and don't change the zoning.

With no one else wishing to comment Chair Todd Vogel closed the public comment period at 10:51 a.m.

The Commissioner's continued to discuss the details of the project.

MOTION: Commissioner Todd Vogel made a motion to approve GPA-2023-01/INYO COUNTY/ Vacant Lands and Housing Opportunity. Commissioner Morley made the second.

The Motion did not pass
2 - Yes- (Todd Vogel & Kate Morley)
1- Opposed (Callie Peek)

ITEM 8: **2022 ANNUAL GENERAL PLAN PROGRESS REPORT** - Staff will give a presentation to the Planning Commission summarizing the Inyo County 2022 Annual General Plan Progress Report.

Cathreen Richards, Planning Director gave staff report.

Commissioner Callie Peek made a motion to approve the 2022 Annual General Plan Progress report and Commissioner Morley made the second.

COMMISSIONERS' REPORT/COMMENTS –

Chair Vogel asked if the next Planning Commission meeting could be held one week later on May 3, 2023. Commissioner Peek made a motion to approve the change of date for the meeting. Chair Vogel made the second.

DIRECTOR'S REPORT –

Planning Director, Cathreen Richards, said there will be a Brown Act Workshop, given by Christina Milovich, Assistant County Counsel at the next meeting.

ADJOURNMENT –

The next meeting will be May 3, 2023, at 10:00 a.m.

Chair Todd Vogel requested a motion to adjourn the meeting at 12:05 p.m.

The motion was made by Commissioner Callie Peek.
Seconded by Commissioner Kate Morley.

Motion passed 3-0.

Prepared by:
Paula Riesen
Inyo County Planning Department



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

**Phone: (760) 878-0263
FAX: (760) 872-2712
E-Mail: inyoplanning@inyocounty.us**

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

PLANNING COMMISSION MEETING DATE: May 31, 2023

SUBJECT: Amendment to Conditional Use Permit (CUP)1994-2 Brown’s Supply; Reclamation Plan (REC) 1994-2 Brown’s Supply

EXECUTIVE SUMMARY

The applicant has applied to amend Conditional Use Permit (CUP) 1994-2 and Reclamation Plan (REC) 1994-2, proposing to remove the east pit of 4.97 acres within the existing mining boundary and update both the CUP and REC to restrict future mining operation to the west pit and add storage of foreign materials not generated on site. The reduction in mining boundary and the additional storage makes this update necessary per Surface Mining and Reclamation Act (SMARA) and the County code.

PROJECT INFORMATION.

Supervisory District: 4

Project Applicant: Brown’s Supply (Douglas A Brown)

Property Owner: Los Angeles Department of Water and Power

Site Address: 2372 Sunland Drive, Bishop, CA 93514

Community: Bishop, CA

A.P.N.: 12-100-13, 13-020-07-03

General Plan: Natural Resources (NR),Public Facilities (PF), General Industrial (GI)

Zoning: Open Space- 40 Acre Minimum (OS-40)

Size of Parcel: 24.43-acre lease of the larger 596.83-acre parcel(12-100-13), 18.37-acre lease of the larger 651-acre parcel(13-020-07-03)

Surrounding Land Use:

| Location: | Use: | Gen. Plan Designation | Zoning |
|------------------|-----------------------|--|--|
| Site | Mine/ Salvage Yard | Natural Resources (NR) Public Service Facilities (PF) and General Industrial (GI) | Open Space – 40-acre minimum (OS-40), Open Space – 40-acre minimum (OS-40) and Public (P) |
| North | Vacant/Open Space | Agriculture (A) | Open Space – 40-acre minimum (OS-40) and Public (P) |
| East | Vacant/Open Space | Agriculture (A) | Open Space – 40-acre minimum (OS-40) |
| South | Vacant/Open Space | Agriculture (A) | Open Space – 40-acre minimum (OS-40) |
| West | Vacant/Open Space | Natural Resources (NR) | Open Space – 40-acre minimum (OS-40) |

Staff Recommended Action:

1.) Approve the Amendment to CUP 94-2 Brown’s Supply; REC 94-2 Brown’s Supply, with the Findings and Conditions as identified in the Staff Report and find the project is exempt under CEQA.

Alternatives:

- 1.) Deny the Amendment to CUP 1994-2 Brown’s Supply; REC 1994-2 Brown’s Supply.
- 2.) Approve the Amendment to CUP 1994-2 Brown’s Supply; REC 1994-2 Brown’s Supply with additional Conditions of Approval.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Ryan Smith-Standridge, Associate Planner

STAFF ANALYSIS

Background and Overview

On July 27, 1994, the Planning Commission approved CUP 1994-2 and REC 1994-2. These permits allow for the mining of 10,000 tons of decomposed granite on two separate Department of Water and Power (DWP) parcels with a pit located on each parcel. Brown's Supply has mined these pits continuously based on product demand. The east pit on parcel 013-020-07 is out of material and has only been used as storage for material and equipment since the late '90s. Eventually, the 4.97-acre pit was encroached on by the salvage yard that is also owned by Brown’s Supply and is located adjacent to the east pit .

Inyo County code requires a salvage yard to have a CUP. Doug Brown, the President of Brown's Supply Inc., was informed he would need to amend: the salvage yard CUP 1985-

7; the mining CUP 1994-2; and, the REC 1994-2 to comply with both SMARA and County codes.

Last year, the applicant went through the process of expanding the salvage yard by amending CUP 1985-7. The Planning Commission approved the amendment on March 23, 2022. Brown's Supply has since submitted an additional, amendment, application to reduce the mining boundary and allow for the storage of foreign materials imported to the site such as sand, top soil, and rip rap. The request for this amendment makes the update to the mining CUP and REC necessary per the County's Surface Mining and Land Reclamation Ordinance 7.70, which requires approval by the Planning Commission.

Inyo County Code

Surface Mining and Land Reclamation in Inyo County is governed by Chapter 7.70 of the Inyo County Code which incorporates California's Surface Mining and Reclamation Act of 1975 ("SMARA", Public Resource Code Section [PRC] 271 et seq. and California Code of Regulations Section 3500 et seq.) The County is the "lead agency" (ref. PRC Section 2728) with State Mining and Geology Board-certified surface mining and reclamation Ordinance (ref. PRC Section 2774.)

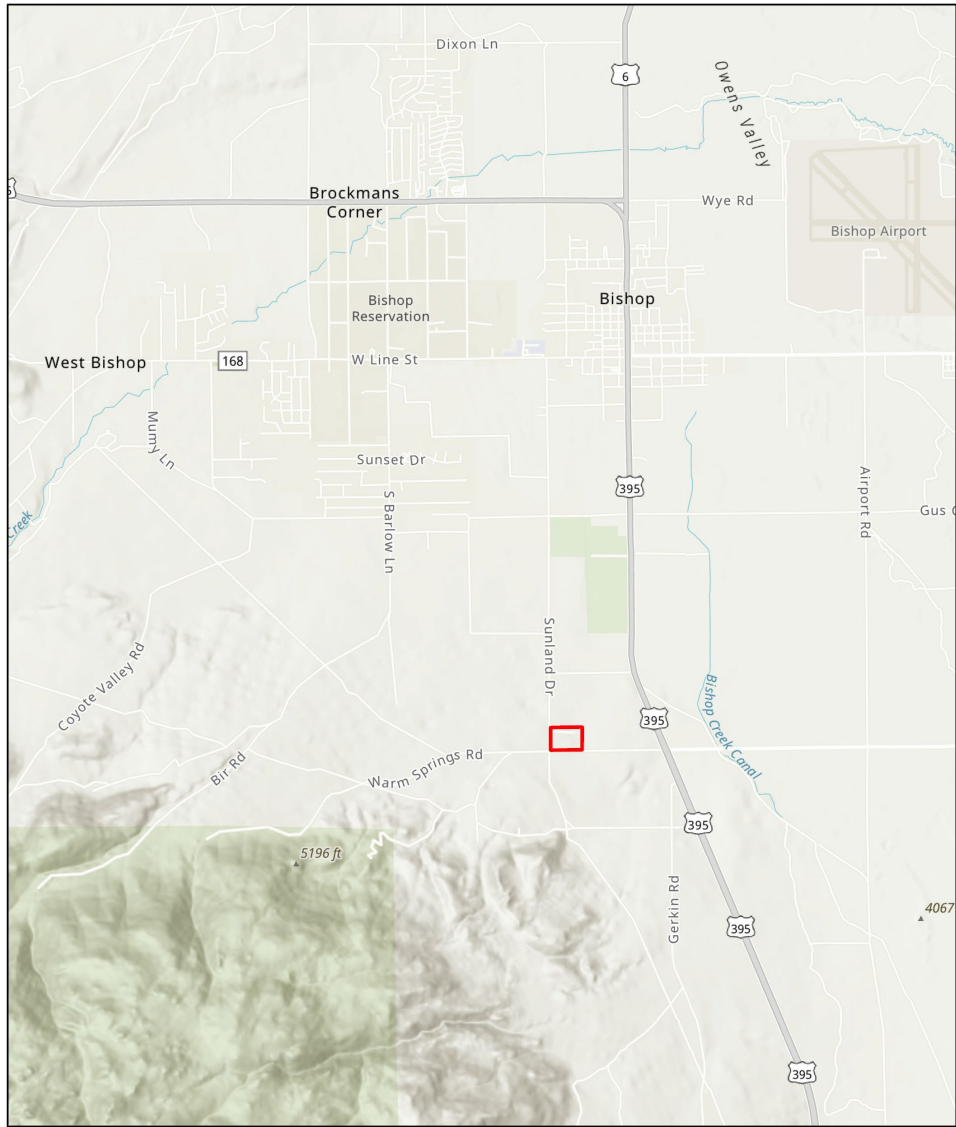
Planning Staff received a comment letter from the California Department of Mine Reclamation (DMR), dated September 19, 2022, in response to the County's request to review the amendment to the approved the mine's REC (Attachment). DMR staff provided substantial comments to be addressed.

The first comment was that PRC Section 2772(c)(6) requires that the REC include a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation. In response to this comment, Brown's Supply has amended the REC text on pages 9 and 10 under the Reclamation and Reclamation Schedule and updated Figure 5. Additionally, Brown's Supply has been conditioned with a 13-year term.

The second comment concerns PRC Section 2772(c)(10). It requires that the REC include a signed statement in which the person submitting the plan accepts responsibility for reclaiming the mined lands per the REC.

Brown's Supply's has been conditioned to sign a statement within 30 days of approval, in response to this.

Vicinity Map



 Project Area

0 0.5 1 Miles

Site Map
West Pit



East pit



General Plan Consistency

The proposed project is consistent with the County General Plan designation of Natural Resource (NR) as the NR designation The County approved the original (CUP 1994-2, REC 1994-2) on July 27, 1994, which allows the mining of 10,000 tons of decomposed granite. Also, Section 08.4.4 of the General Plan's Goals and Policies states: 'protect the current and future extraction of mineral resources that are important to the County's economy while minimizing impacts on the public and the environment.' Brown's Supply plays a role in the County's local production of decomposed granite. The decomposed granite is screened to various sizes depending on product demand for landscaping and soil amendments and is a component of building materials for construction industries. Both parcels will remain consistent with the General Plan since the planning commission has already approved the operator for the east pit of 4.97 acres to change to a salvage yard use. The west pit will continue to operate and complete reclamation in phases that meet the General Plan goals by minimizing the environmental impact.

Zoning Ordinance Consistency

The proposed amendment consists of reducing the size of the existing mining boundary and allowing the storage of foreign materials that are considered as continued mining uses. These uses include mining and processing natural resources. The proposed project is consistent with the County's zoning designation of Open Space (OS) as the OS designation allows for mining uses with a CUP.

NOTICING & REVIEW The amendment for CUP 94-2 Brown's Supply; REC 94-2 Brown's Supply has been reviewed by the appropriate County departments, the DMR, and the DWP.

ENVIRONMENTAL REVIEW

The amendment to CUP 94-2 Brown's Supply; REC 94-2 Brown's Supply is Categorically Exempt under CEQA Guidelines 153021, Existing Facilities – Class 1. Class 1 consists of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.” The amendment is being applied for to reduce the mining boundary. No new construction is being proposed at this time; the site is already completely disturbed, and in use as a mine; and therefore, the project is exempt.

RECOMMENDATION

Planning Department staff recommends the approval of the Amendment to CUP 1994-2 Brown's Supply; REC 1994-2 Brown's Supply with the following Findings and Conditions of Approval:

FINDINGS

1. The proposed CUP is exempt under CEQA Guidelines 15301, Existing Facilities – Class 1 and the provisions of the California Environmental Quality Act have been satisfied.

[Evidence: Class 1 consists of the permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The amendment reduces the mining boundary, and allows storage of foreign material. No new disturbance or construction is being proposed at this time, the site is already completely disturbed, and in use as a mine; and therefore, the project is exempt.]

2. The proposed CUP is consistent with the Inyo County General Plan Land Use designation of (NR).

[Evidence: The proposed project is consistent with the County General Plan designation of NR. Section 08.4.4 of the General Plan's Goals and Policies states: 'protect the current and future extraction of mineral resources that are important to the County's economy while minimizing impacts on the public and the environment'. Brown's Supply plays a role in the County's local production of decomposed granite. The decomposed granite is screened to various sizes depending on product demand for landscaping and soil amendments and is a component of building materials for construction industries. The operator will continue to complete reclamation in phases during mining to minimize environmental impacts. Therefore remains consistent with the General Plan.

3. The proposed CUP is consistent with the Inyo County Code designation of OS.

[Evidence: The proposed project is consistent with the County zoning designation of OS as it allows for mining uses, with a CUP. These uses include the mining and processing of natural resources. The proposed amendment consists of reducing the mining boundary with continued phased reclamation and storage of foreign material and continued mining uses; therefore, it remains consistent with county code designation of OS.]

4. The proposed amendment is necessary or desirable.

[Evidence: The leased mining area that is currently being used as a mine and the proposed reduction of the 4.97 salvage yard from the mining boundary will bring the site into conformance with County code and SMARA. Upon approval of the amendment the east pit will be retired as a mine and DMR will procedurally recognize it as reclaimed so it can be removed from the Mine identification numbers mining boundary.]

5. The proposed CUP is properly related to other uses and transportation and service facilities in the vicinity.

[Evidence: The proposed amendment proposes to reduce the size of an existing land use (mining). It will not substantially add to the current level of use of the site or the type of use; and therefore, will have no impact on transportation or service facilities in the vicinity.]

6. The proposed CUP would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.
[Evidence: The amendment is being proposed to reduce the size of mining boundary. It will not change or increase the current level or type of use; and therefore, it will not create impacts on the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.]
7. Operating requirements necessitate the CUP for the site.
[Evidence: The use of the leased land as a mine requires a CUP per Inyo County Code Section 18.12.040; therefore, the CUP is necessary for the continued operations at the site.]

CONDITIONS OF APPROVAL

1. **Term of CUP**
The term of the CUP shall not exceed 13 years from the date of approval, or no later than April 26, 2035. The total amount of decomposed granite that can be removed from this pit is 130,000 tons. If the 130,000 tons are removed prior to the termination date, reclamation shall proceed within six months of it. The Planning Commission may grant an extension upon the application of additional amendments to the CUP and the REC. To assure continued operation, the above application should be received prior to the expiration date.
2. **Term of Plan and Timing of Reclamation**
The term of the REC shall not exceed fifteen years from the date of approval, or no later than May 3, 2037. The Planning Commission may grant an extension upon the application of an additional amendment to the reclamation plan. To assure continued operation, the above application should be received prior to the expiration date and shall be updated for current SMARA requirements.
3. **Interim Management Plan**
Throughout the 13-year life of this project, the interim management plan shall be implemented during periods of "idle" operation. If zero production occurs for a period of five consecutive years, the reclamation plan shall be implemented immediately. Mining cannot occur until an amended reclamation plan is submitted and approved by the Planning Director.
4. **Compliance with County Code**
The applicant/operator shall conform to all applicable provisions of Inyo County Code. Failure to do so may result in the revocation of the CUP. If the use provided by this CUP is not established within one year of the approval date it the CUP shall become void.

5.Reclamation Plan Recording

All mining procedures and reclamation outlined in Brown's Supply Reclamation plan revised September 22, 2022 shall be recorded by the planning department upon approval. The recorded copy shall be the official reclamation plan that both the lead agency and operator will follow.

6.Compliance of Lease Agreement

The applicant shall obtain and adhere to the requirements of DWP Lease Agreement. DWP will enforce all conditions in the lease and notify Inyo County any violation of the lease. The applicant shall provide the county any updated lease agreements within 30 days of being executed. Failure to comply may cause revocation of 1994-2/ Brown Supply.

7.Reclamation Responsibility Statement

The applicant shall submit a notarized statement to the planning department accepting responsibility for reclaiming the lands as specified in the conditions of approval.

8.Area to be Reclaimed

This amendment to the reclamation plan removes 4.97 acres known as the east pit from the mining boundary as reclamation has been completed. The amended mining boundary will be located on one parcel. It will consist of 22.60 acres for the west pit, 0.91 acres access road, and .92 acres designated as a baseline vegetation area for monitoring . If mining occurs beyond these area's acreages, an amendment to this reclamation plan and CUP shall be required.

9.Top Soil Salvage

During mining, the top six inches of soil (topsoil) shall be stockpiled for use as a growth media at the conclusion of mining.

10. Maintenance of Topsoil

The topsoil stockpiles shall be maintained and shall be located on the mine site as depicted on the map of the pit.

11. Berm Between Borrow Pits

The operator shall maintain a berm between the other leased borrow pits adjacent to Brown's Supply pit. At the completion of mining removal of the berm between the adjacent borrow pits may be sold as product or spread over the bottom of the pit.

12.Depth of Mining

The applicant shall not mine deeper than 25 feet deep in the west pit. This shall be controlled by condition 13 below.

13.Mapping

Operator shall provide the County with a mine site map illustrating the approved area and any completed mining activity. The map shall include two-foot contours and is required to be updated every three years prior to the required yearly SMARA

inspection or on the day of the inspection. Failure to comply may cause revocation of 1994-2/ Brown Supply.

14.Slope of cut Banks

The cut banks shall be sloped at a 2 to 1 ratio.

15.Removal of Stockpiles

At the conclusion of mining, any remaining stockpiles or waste piles will be spread over the bottom of the pit.

16. Pit Scarification

The bottom of the pit and slope shall be scarified to promote plant growth.

17.Equipment Removal

All equipment shall be removed from the site before final reclamation and seed disbursement for revegetation can be started.

18.Plant Growth Media

Stockpiled topsoil and plant growth media will be distributed over the bottom of the pit and up contoured slopes to promote plant growth.

19.Access Road Reclamation

The access road to the west pit shall be scarified, covered with the stockpiled growth media and reseeded. Access shall be denied by an earthen berm at Sunland Drive.

20.Baseline Vegetation

The operator shall have a qualified vegetation specialist conduct a baseline vegetation study. A report will be prepared and submitted within 9 months of the approved amendment. The data will be used during reclamation to compare vegetation standards to determine the degree of success. Failure to comply may cause revocation of 1994-2/ Brown Supply.

21.Seed Collection and Species

Seeds will be collected on or near the site. Species that will be used are the following:

| Species | Pounds/Acre |
|--|--------------------|
| Artemisia tridentata (Big sagebrush) | 4 |
| Atriplex canescens (Four-wing Saltbush) | 4 |
| Atriplex confertifolia (Shadscale) | 2 |
| Chyrsothamnus nauseisus (Rabbitbrush) | 2 |
| Oryzopsis hymenoides (Indian Ricegrass) | 4 |
| Sitanion hystrix (Bottlebrush Squirrel tail) | 4 |

22. Revegetation

The seed will be broadcast and then mixed into the top 1/2 inch of the substrate by either raking or dragging a chain across the seeded area, or another suitable method. The species selections for this pit are native to the area and are drought tolerant. Therefore, irrigation should not be needed and is not recommended for this site. Irrigation will only be considered as part of the remedial measures.

23. Revegetation standards

Reclamation efforts shall be measured each year. Reclamation shall not be considered complete on any portion of the leased area until the plant species become established on the disturbed portion. This requirement includes that plants must be at a density that matches 25% the plant density on the undisturbed portion and that the plant diversity reaches 60% of the diversity found on the undisturbed ground. This will be measured by the Inyo County Planning Department.

24. Financial Assurances

Financial assurances in the sum of \$54,567.10 are required in the form of a surety bond, irrevocable letter of credit, cash or certificate of deposit. Government agencies may also use budget set asides, or pledge of revenue to post their financial assurances. Financial assurances shall be posted with the Inyo County Planning Department. Said assurances shall be made payable to the County of Inyo and the Director of the California Department of Conservation

25. Financial Assurance Recalculation

Financial assurances shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and the Inyo County Code. This shall occur at the time of annual inspections.

26. Release of Financial Assurances

As required reclamation standards are achieved, the portion of financial assurances covering the completed reclamation activity may be released. The remainder of financial assurances covering revegetation and monitoring shall not be released until the revegetation performance standards are met.

Attachments:

A. Reclamation Plan Text

BROWN'S SUPPLY SUNLAND BORROW PIT | CUP 94-2 MINING AND RECLAMATION PLAN

10/14/2021 Revised 09/22/2022

Prepared For:

Brown's Supply
219 Wye Road
Bishop, CA 93514
760-872-6911

Prepared by:

Douglas Buck Brown, P.E.



CONTENTS

| | |
|---|----|
| INTRODUCTION AND BACKGROUND | 3 |
| Operator | 3 |
| Land Owner | 3 |
| General Plan Designation | 3 |
| Zoning | 3 |
| Figure 1 – General Vicinity Map | 4 |
| Figure 2 – East Pit Site Map..... | 5 |
| Figure 3 – West Pit Site Map..... | 6 |
| MINING PLAN | 7 |
| Mining Operation | 7 |
| Mine Waste | 7 |
| Foreign Material | 7 |
| Processing | 8 |
| Production Water..... | 8 |
| Erosion and Sediment Control | 8 |
| Blasting | 8 |
| RECLAMATION | 9 |
| Land Use..... | 9 |
| Visibility | 9 |
| Vegetation..... | 9 |
| Wildlife..... | 9 |
| Reclamation and Reclamation Schedule..... | 9 |
| Revegetation | 10 |
| Cleanup..... | 10 |
| Post-Reclamation and Future Mining | 10 |
| Slopes and Slope Treatment..... | 10 |
| Ponds, Reservoirs, Tailings, Waste..... | 10 |
| Drainage and Erosion Control | 11 |
| Public Safety | 11 |
| Monitoring and Maintenance | 11 |
| Reclamation Assurance | 11 |
| GEOLOGY | 11 |
| HYDROLOGY | 12 |
| APPENDIX A – REFERENCE DOCUMENTS | 13 |
| APPENDIX B – SITE MAPPING | 14 |
| APPENDIX C - SURFACE MINING AND RECLAMATION ACT OF 1975 (SMARA) & CALIFORNIA CODE OF REGULATIONS (CCR TITLE 14) | 15 |

INTRODUCTION AND BACKGROUND

Brown's Supply is applying to amend / revise the existing Mining Reclamation Plan for the Brown's Sunland Borrow Pit. The original plan (CUP 94-2) was approved in July of 1994 and covers property located in Inyo County in Township 7, South, Range 32 & 33 East Section 24 & 19 at an elevation of approximately 4000 feet. See Figure 1 below.

At the time of the original approval, the project was located on two sites, referred to as the "East Pit" and the "West Pit" which are on opposite sides of Sunland Drive, 2,000 feet south of Sunland Reservation Road, south of Bishop (APN 13-020-01 & 12-100-12) The property owner is the Los Angeles Department of Water and Power (LADWP). The East Pit is no longer in operation and awaiting final reclamation per County approval leaving active mining operations occurring within the West Pit only.

The operation was originally approved to mine up to 10,000 tons of decomposed granite per year and this remains in effect. The East Pit is 4.97 acres on an 18.4 acre lease. The West Pit is 23.51 acres including an access road off Sunland Drive. The property is zoned OS-40 (Open Space – 40 acres minimum)

The property and operation have adopted a negative declaration and was deemed exempt from negative environmental impact. See Appendix A for the Negative Declaration documentation.

The subject property began within an existing borrow pit previously disturbed by operations and contains no significant native vegetation suitable for wildlife.

Operator

Brown's Supply
219 Wye Road
Bishop, CA 93514
760-872-6911

Land Owner

Los Angeles Department of Water and Power (LADWP)
300 Mandich Street
Bishop, CA 93514
760-873-0370

General Plan Designation

Open Space and Agricultural Exclusive

Zoning

OS-40

Figure 1 – General Vicinity Map



Figure 2 – East Pit Site Map



-  Property Limits
-  Mine Limits
-  Disturbed Area (Reclaimed)
-  Active Mine Area

Landowner: Los Angeles Department of Water and Power
 300 Mandich Street
 Bishop, CA 93514

Operator: Brown's Supply
 219 Wye Road
 Bishop, CA 93514

APN: 13-020-07-03

Total Area: 18.37 Acres

Disturbed Area: 4.87 Acres

Area Reclaimed: 4.87 Acres (No longer actively mined)

Figure 3 – West Pit Site Map



**Southwest corner of property beyond the dry canal will not be disturbed. Disturbance shall not intrude within a 50' offset northwest of the ditch flow line. See attached site map. Northeast portion not shaded is within projected mine area and has yet to be disturbed.*

Landowner: Los Angeles Department of Water and Power
300 Mandich Street
Bishop, CA 93514

Operator: Brown's Supply
219 Wye Road
Bishop, CA 93514

APN: 12-010-12

Total Area: 24.43 Acres

Disturbed Area: 16.67 Acres

Area Reclaimed: Active Mining

MINING PLAN

Mining Operation

Mining operations have previously been undertaken within two different pits. The east pit and the west pit as shown on the maps provided. The east pit was the first phase of mining and is no longer in operation. Slopes have been stabilized with adequate plant establishment and reclamation substantially achieved. The current and future mining operation will be conducted within the West Pit property. Excavations shall not go deeper than 25 feet from original surface gradient in the west pit as stipulated in the approved permit, and 35 feet deeper in the east pit.

No mining shall take place in the southwest corner of the property within a 50' offset north east of the canal ditch. See attached Maps Figure 5&6.

Mine Waste

Overburden, vegetation and/or oversize rock are the expected waste products generated on site. In general, the overburden topsoil will be stockpiled onsite and reused later during the reclamation process. Oversize cobbles may be sold or spread within the reclaimed surface provided they do not negatively impact the stability of the surface. Any other waste products generated, general housekeeping garbage or objectionable material will be disposed of at the adjacent landfill as necessary.

Foreign Material

During its operation, the mine property may accept various imported material from customers. The local industry has demonstrated a demand for facilities to accept material coming off construction sites, or development projects that is of sound quality to re-use on future projects.

Acceptable import material may include but is not limited to:

- Aggregate(s)
- Topsoil
- Sand
- Rock
- Boulders
- Riprap

Import material not acceptable to store onsite includes:

- Asphalt Grindings
- Local Manure

Imported material will be visually inspected prior to accepting onsite and all objectionable material will be sent to the adjacent landfill. Material stockpiled that is not generated onsite will be temporary and intended for resale within 6 months of acceptance, or as otherwise approved.

Processing

The first step in the production is removal of the overburden topsoil that will be stockpiled onsite, generally along the exterior berms to later be used during reclamation. The operation will then generally consist of excavating / dozing the material into a stockpile where it will be loaded in its existing state. There may be a dry screen (grizzly) operation to remove oversize as necessary per customer demand. There will be no need for any crushing or power screening to occur in this operation. The decomposed granite is a sellable product in its native state.

Typical equipment used to operate the borrow pit includes, but is not limited to the following (Equipment storage location will vary, but be within the mine site boundary during active operation, at the adjacent salvage yard or offsite for extended storage or when no longer needed):

- Dozer(s) – Excavate, doze material into stockpile, stabilize slopes.
- Front End Loader(s) – Load material for offsite transfer
- Motor Grader – Onsite road maintenance
- Water truck – Onsite dust suppression (haul roads, stockpiles, etc), material conditioning (as applicable)
- Dump truck(s) – General material transport on/off site, waste management, customer delivery

Production Water

The operation does not require water. No crushing or washing anticipated.

Erosion and Sediment Control

The soil conditions on site are highly permeable which allow storm water to drain freely onsite. The elevation of the pit(s) is generally below grade, and surface runoff discharge off site is not expected. Ongoing access road maintenance will maintain a safe entrance and occasional water truck usage will be available for dust suppression, as necessary.

Blasting

Blasting will not occur at this mine.

RECLAMATION

Land Use

The subject property has been a borrow pit for over 30 years and was previously disturbed prior to the CUP went into effect. The surrounding area is owned by LADWP and primarily used for recreation with adjacent surface mining and landfill operations in effect.

Visibility

The site is located entirely below ground within a “pit” surrounded by a berm on its perimeter and cannot be seen from adjacent public roads. Access is through a locked gate on the eastern entrance along Sunland Drive heading west into the pit. The east pit is also located below ground and accessed via a locked gate on the opposite side of Sunland Drive and cannot be seen from adjacent public roads.

Vegetation

The site was previously disturbed by farming practices prior to its initial approval and with minimal vegetation and wildlife habitat. The County Commission found the project site in favor of a less than “De Minimus” finding. Vegetation generally consists of sparse sagebrush and rabbit brush. See Appendix A for more details on the findings.

Wildlife

The site contains no measurable wildlife resource as defined in section 711.2 of Fish and Game code. As the project is a reclamation plan, in conjunction with a Conditional Use Permit, wildlife resources will be enhanced by the completion of the project and concurrent reclamation procedures during operations.

Reclamation and Reclamation Schedule

Reclamation of the mine occurs concurrently with the mining operations. Final reclamation will occur upon termination of the mining activities. The West Pit will be the only active mining area as of the time of this revised reclamation plan. Specific phasing of operations may be subject to change but generally be phased as follows:

Phase 1: Reclaim East Pit (2021) – Single Segment

- East pit has ceased operations and has been sloped and contoured with vegetation re-growth established. The east pit is no longer in operation as part of this mine plan and is currently being used for storage and processing of scrap metal under a separate amendment to the adjacent salvage business operation. (CUP 85-7). Remove area from West Pit permit under CUP amendment(s)

Phase 2: Mine West Pit (2021-Depletion)

- As mine floor approaches 25' depth in active walls within the pit, floor and slopes will be contoured and scarified as operation transitions into new area within the property. Specific locations may vary pending demand and seasonality. In general, the operation will begin reclamation as depths are reached at the following estimated sequence:

| Mine Sequence | Active Mine Start | Reclamation |
|-------------------------------|-------------------|---------------|
| West Wall | 2022 (Current) | December 2024 |
| North Wall | January 2025 | December 2027 |
| East Wall | January 2028 | December 2030 |
| South Wall & Floor | January 2031 | December 2035 |
| Final Reclamation (see below) | December 2035 | January 2036 |

- This will include ongoing survey control to verify elevations and plan operation accordingly
- Regular access road maintenance, stockpile management, and BMP upkeep are included within the active mining phase of this project.
- Time schedule subject to vary, based on demand.

Phase 3: Final Reclamation (2035)

- All slopes contoured, equipment removed, floor scarified, seed spread, and regrowth established. Necessary inspections and verifications to ensure site is safe, environmentally sound, and within conformance to regulatory requirements and provisions of this reclamation plan

Revegetation

The bottom of the pit (up to 25' below the original contour) as well as the access road will be scarified to promote plant growth. Overburden and/or topsoil stockpiled onsite shall be spread over the bottom and contoured slopes to promote plant growth. Seed will be collected on or near the site with the following species.

- *Artemisia tridentata* (Big Sagebrush)
- *Atriplex canescens* (Four-wing Saltbrush)
- *Atriplex confertifolia* (Shadscale)
- *Chrysothamnus nauseosus* (Rabbitbrush)
- *Oryzopsis hymenoides* (Indian Ricegrass)
- *Sitanion hystrix* (Bottlebrush Squirreltail)

Over most of the site, the seed will be broadcast and mixed into the top ½ inch of the substrate by either raking or dragging a chain across the seeded, or other suitable method.

Cleanup

Within 12 months of the completion of mining activities, all equipment will be removed from the project site. All debris will be removed and disposed of at the Inyo County Landfill as necessary.

Post-Reclamation and Future Mining

Reclamation consists of spreading topsoil and reseeding. The site will remain as a partially vegetated pond or hole consistent with surrounding vegetation. Slopes and surface treatments will be consistent with processes and descriptions stated in this reclamation plan in its post-reclamation state. This will have no effect on future mining because the topsoil can be removed again, and mining can take place. The decomposed granite (DG) will not be depleted by this operation nor by any of the other adjacent borrow pits in the area.

Slopes and Slope Treatment

Cut bank shall be sloped to approximately 2:1 in their final condition for safety and stability. The east pit has been sloped and stabilized and no additional mining activity is planned in the east pit.

Ponds, Reservoirs, Tailings, Waste

This operation does not require ponds, reservoirs, or tailings. Waste may include overburden and other stripping materials that will be incorporated into the reclamation as topsoil or disposed of at the adjacent Inyo County Landfill.

Drainage and Erosion Control

This operation operates in a closed system. Runoff from up slope is intersected by an old historical dry canal that serves as a flood control canal for all the borrow pits in the immediate area. No water can enter the pit from up slope. The pits are on a relatively level area of the alluvial fan. No water entering the pit from rain fall can escape the pit. The slopes of the pit may show small amounts of erosion into the pits. This will be taken care of in the daily operations of the mine. Rainfall in the area is very little. The rain that does fall is absorbed or evaporates very quickly.

Public Safety

All equipment and debris will be removed from site upon project completion. Public access to the site will be restricted by the site perimeter berm and fence and the locked access gates to the Brown's Sunland Borrow Pit. Any other access roads will be blocked with large boulders or berms. The reclaimed slopes will be of sufficient low gradient as not to cause a hazard to public safety if the public illegally trespasses onto the site past the berms, fences and signs.

Monitoring and Maintenance

The county, as the lead agency that implements SMARA, requires annual reporting of Mining and Reclamation activities. The reports are filed with the State Division of Mine Reclamation (DMR) and the County.

Baseline conditions of present environment are present in the Southwest corner of the property of the west pit. This area will not be disturbed and represents the existing condition of vegetation and surface conditions prior to mining disturbance.

Monitoring and maintenance of reclamation is an ongoing responsibility of Brown's Supply the lease holder. Brown's will take ownership of maintaining fencing, berms, gates, signs and general housekeeping of the premises and fulfilling the conditions of this reclamation plan. Brown's Supply will provide access as necessary for LADWP, the property owner, to monitor the reclamation maintenance activity.

Reclamation Assurance

The reclamation assurance shall be reviewed by the Lead Agency annually as required by the SMARA. Inyo County is the lead agency for SMARA compliance and will review the reclamation FACE and inspect the mine site annually.

In addition to the monitoring through inspections and reporting, the operator is required to assure reclamation of the site in accordance with the approved Reclamation Plan in compliance with Section 2773.1 of SMARA. The operator shall post financial assurance in the form of a surety bond, irrevocable letter of credit, cash, or certificate of deposit in sufficient amount to cover the costs associated with reclamation activity needed based on the annual FACE and shall continue to post reclamation assurance mechanisms in an amount sufficient to pay for the cost of reclamation as outlined in this plan. The financial assurances must be approved by and payable to the County and the California Department of Conservation.

GEOLOGY

The project site is located on an alluvial fan formed of sediment from the late Cenozoic period sloping gently to the east. Soils are deep and consist of decomposed granite.

HYDROLOGY

The site is not located within a flood zone and is not prone to experience any sort of flood concern. There is no water usage expected on the property

APPENDIX A – REFERENCE DOCUMENTS

Negative Declaration of Environmental Impact (1994)

Original Reclamation Plan and Conditional Use Permit #94-2 (1994)



Peter Chamberlin
Planning Director

PLANNING DEPARTMENT
DRAWER L • INDEPENDENCE • CALIFORNIA 93526
OFFICE: (619) 878-0263
FAX: (619) 872-2712

County of
INYO
FILED

SEP 13 1994

BEVERLY J. HARRY
INYO COUNTY CLERK
DEPUTY

**CALIFORNIA DEPARTMENT OF FISH AND GAME
CERTIFICATE OF FEE EXEMPTION**

"De Minimus Impact Finding"

Project Title:

RECLAMATION PLAN #94-2 and CONDITIONAL USE PERMIT #94-2 BROWN

Location (Include County):

The project is located on two sites (one lease issued by the Los Angeles Department of Water and Power - Landowner) on both sides of Sunland Drive, 2,000 feet south of Sunland Reservation Road, south of Bishop (APN 13-020-01 & 12-105-12) Inyo County.

Name and Address of Project Proponent:

Brown's Supply
219 Wye Road
Bishop, Ca. 93514

Project Description:

A request to mine up to 10,000 tons per year of decomposed granite. Eastern site is 4.97 acres on a 18.4 acre lease. The western site is 23.51 acres including an access road off Sunland Drive. The property is zoned OS - 40 (Open Space - 40 acres minimum).

Findings of Exemption (include required findings):

A. Based upon the Initial Study and all written and verbal comments received, adopt the Negative Declaration of Environmental Impact and certify that the provisions of the California Quality Act have been satisfied.

B. The subject property is an existing borrow pit which has been disturbed, graded and contains no significant native vegetation suitable for wildlife. The site contains no

94-75-21406

measurable wildlife resource as defined in Section 711.2 of the Fish and Game Code. As the project is a Reclamation Plan in conjunction with a Conditional Use Permit, wildlife resources will be enhanced by the completion of the project (Reclamation Plan) and concurrent reclamation procedures during operations (Conditional Use Permit). As the site has been previously disturbed by prior farming practices and currently has both minimal vegetation and wildlife habitat, the Commission found in favor of a less than "De Minimis" finding for the subject application.

C. The project is consistent with the goals and policies of the Inyo County General Plan and the Reclamation Plan and Conditional Use Permit standards of the Inyo County Surface Mining and Reclamation Ordinance and the Inyo County Zoning Ordinance.

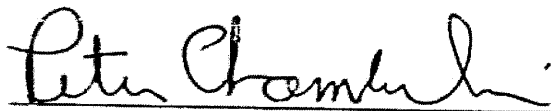
D. Since this project consists of a Mining Reclamation Plan that has adequate assessed financial assurances and standard revegetation procedures incorporated into both the Reclamation Plan and Conditional Use Permit, there is no potential for cumulative adverse impacts to wildlife and resources.

E. Based upon the Initial Study and hearing record of the Inyo County Planning Commission for the subject property, there is substantial evidence to rebut the legal presumption adverse effect on the types of resources listed in Section 753.5 (d), (A) through (G) of the Fish and Game Code.

The project site contains no wildlife resources as defined in Section 711.2 of Fish and Game Code.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that, based upon the Initial Study and hearing record, the project will not individually or cumulatively have any adverse impact on wildlife resources as defined in Section 711.2 of the Fish and Game Code.



**Peter Chamberlin, Planning Director
Inyo County Planning Department**

Date: September 12, 1994.



County of Inyo Planning Department

P.O. Drawer L, Independence, CA 93526
Peter Chamberlin, Director of Planning

Planning Office
Charles Thistlethwaite
Curtis Kellogg
Earl Gann
Sandy Miller

(619) 878-0263
FAX (619) 872-2712

Yucca Mountain Office

Brad Mettam
Janet Cross

(619) 878-0380
FAX (619) 878-0382

August 8, 1994

Mr. Earl V. Brown
219 Wye Road
Bishop, CA 93514

RE:

RECLAMATION PLAN #94-2 / CONDITIONAL USE PERMIT #94-2/ Brown's
Sunland Borrow Pit

NOTICE OF DECISION

On July 27, 1994 The Inyo Planning Commission held a public hearing to consider your Reclamation Plan Application #94-2 and Conditional Use Permit 94-2. The Reclamation Plan and Conditional use permit covers property located in Inyo County in Township 7 South, Range 32 & 33 East Section 24 & 19, MDMB, at an elevation of 4000 feet. Located on both sides of Sunland Drive one and a half miles south of the city of Bishop. The site is on LADWP land.

At the public hearing the Planning Commission considered the Report of Staff, all oral and written testimony, and approved both Reclamation Plan #94-2 and Conditional Use Permit #94-2 by taking the following actions:

A. Based upon the initial Study and all written and verbal comments received, adopt the Negative Declaration of Environmental Impact and certified that the provisions of the California Environmental Quality Act had been satisfied.

B. The subject property is an existing borrow pit which has been disturbed, graded and contains no significant native vegetation suitable for wildlife. The Site contains no measurable wildlife resource as defined in section 711.2 of Fish and Game Code. As the project is a reclamation plan, in conjunction with a Conditional use permit, wildlife resources will be enhanced by the completion of the project (Reclamation Plan) and concurrent reclamation procedures during operations (Conditional Use

Permit). As the site has been previously disturbed by prior farming practices and currently has both minimal vegetation and wildlife habitat. The Commission found in favor of a less than "De Minimus" finding for the subject application.

C. The project is consistent with the goals and policies of the Inyo County General Plan and the Reclamation Plan and Conditional Use Permit standards of and the Inyo County Surface Mining and Reclamation Ordinance and the Inyo County Zoning Ordinance.

D. Since this project consists of a mining reclamation plan that has adequate assessed financial assurances and standard revegetation procedures incorporated into both the Reclamation Plan and Conditional Use Permit, there is no potential for cumulative adverse impacts to wildlife and resources.

E. Based upon the initial study and hearing record of the Inyo County Planning Commission for the subject property, there is substantial evidence to rebut the legal presumption of adverse effect on the types of resources listed in section 753.5(d), (A) through (G) of the Fish and Game Code.

F. Approve Conditional Use Permit # 94-2 and Reclamation Plan #94-2/ Browns Sunland Borrow Pit subject to the following Conditions:

CONDITIONAL USE PERMIT

Top Soil Salvage

1. During mining, the top six inches of soil (topsoil) shall be stockpiled for use as a growth media at the conclusion of mining.

Maintenance of Topsoil

2. These topsoil stockpiles shall be maintained and shall be located on a surface map of the pit.

Depth of Mining

3. The applicant shall not mine deeper than 35 feet in the east pit and not more than 25 feet deep in the west pit. This shall be controlled by condition 7 below.

Berm Between Borrow Pits

4. The applicant shall maintain a berm (from natural ground level to depth of mining) between the west pit and the other borrow pits adjacent to it. This berm is to keep the operators in their own pit.

Reclamation Timing

5. Reclamation shall be ongoing. Mining shall be done in an orderly method so reclamation can be done on areas mined out. A map shall be provided that shows how mining and reclamation will take place.

Annual Inspections

6. The above mining and reclamation shall be reviewed at the time of the annual inspection. A comprehensive review shall take place every five years.

Survey Control

7. A LADWP Licensed Land Surveyor shall set benchmarks on the boundary lines to delineate the boundaries. The benchmarks shall control the depth of mining.

Storage of Equipment and Material

8. The applicant may store in the east pit, certified, clean, underground storage tanks. No other material may be stored in this pit.

No equipment may be stored in the west pit other than mining equipment used to extract decomposed granite. If no excavation will be done for more than thirty days, the equipment shall be removed.

Hold Harmless

9. The applicant, landowner, operator shall defend, indemnify and hold harmless Inyo County or its agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul approval of the county, its advisory agencies, its appeal Board, or legislative body concerning Conditional Use Permit 94-2/ Browns Sunland Borrow Pit.

RECLAMATION PLAN CONDITIONS OF APPROVAL:

Top Soil Salvage and Mapping

1. During mining the top six inches of soil (topsoil) shall be stockpiled for use as a growth media at the conclusion of mining. The topsoil stockpiles shall be identified and maintained on a plot map of the pit.

Berm Removal

2. Additional mitigation shall be the removal of the berm between the west pit and adjacent borrow pits. The berm material may be sold as product or spread over the bottom of the pit.

Equipment Removal

3. All equipment shall be removed from the site before final reclamation and revegetation. All underground storage tanks stored in the east pit shall be removed before final reclamation and revegetation.

Removal of Stockpiles

4. At the conclusion of mining, any remaining stockpiles or waste piles will be spread over the bottom of the pit.

Slope of Cut Banks

5. The cut banks shall be sloped to a 2.5 to 1 or less for safety and stability reasons. The east pit may need material imported to reach the required slopes. If this is the case, material may come from the west pit.

Pit Scarification

6. The bottom of the pit and slope shall be scarified to promote plant growth.

Plant Growth Media

7. Stockpiled topsoil and plant growth media will be distributed over the bottom and contoured slopes to promote plant growth.

Access Road Reclamation

8. The access road to the west pit shall be scarified, covered with the stockpiled growth media and reseeded. Access shall be denied by an earthen berm at Sunland Drive.

Seed Collection and Species

9. Seed will be collected on or near the site. Species that will be used are the following:

| <u>Species</u> | <u>Pounds/acre</u> |
|---|--------------------|
| Artemisia tridentata (Big Sagebrush) | 4.00 |
| Atriplex canescens (Four-wing Saltbush) | 4.00 |
| Atriplex confertifolia (Shadscale) | 2.00 |
| Chyrsothamnus nauseisus (Rabbitbrush) | 2.00 |
| Oryzopsis hymenoides (Indian Ricegrass) | 4.00 |
| Sitanion hystrix (Bottlebrush Squirreltail) | 4.00 |

Revegetation

9. Over most of the site, the seed will be broadcast and then mixed into the top 1/2 inch of the substrate by either raking or dragging a chain across the seeded, or other suitable method.

The species selections for this pit are native to the area and are drought tolerant. Therefore, irrigation should not be needed and is not recommended for this site. Irrigation will only be considered as part of the remedial measures.

Revegetation Standards

10. Reclamation efforts shall be measured each year. Reclamation shall not be considered complete on any portion of the lease until the species become established on the disturbed portion to a density of 25% the plants on undisturbed ground and the plant diversity reaches 60% of the undisturbed ground. This will be by measurement by the Inyo County Planning Department.

Area to Be Reclaimed

11. This reclamation plan covers the proposed 4.97 acre east pit, the 22.60 acre west pit, and the 0.91 acre access

road. If mining occurs beyond these acreages, an amendment to this reclamation plan and conditional use permit shall be required.

Reclamation Responsibility Statement

10. The applicant shall submit a notarized statement to the Planning Department accepting responsibility for reclaiming the lands as per the conditions specified herein.

Financial Assurances

11. Financial assurances in the sum of \$8,665.00 in the form of a surety bond, irrevocable letter of credit, cash, or certificate of deposit shall be posted with the Inyo County Planning Department. Said financial assurances shall be made payable to the County of Inyo and the California Director of Conservation. A comprehensive review of the mining and reclamation shall be conducted every five years.

Financial assurances Recalculation

12. Financial assurance shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and County code. This shall occur at the time of the annual inspection. As the Berm is developed between this pit and adjacent pits, the cost of removal shall be calculated into the amount of financial assurances.

Yearly Inspection By Inyo County

14. This Reclamation Plan shall be reviewed and the applicant's compliance with the conditions listed above shall be evaluated every year, as required by section 2774(b) of SMARA. At the same time, the amount of the financial assurances shall be reviewed and adjusted as needed. This shall be known as the annual inspection.

Hold Harmless

15. The applicant, landowner, operator shall defend, indemnify and hold harmless Inyo County or its agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annual approval of the county, its advisory agencies, its appeal Board, or legislative body concerning Reclamation Plan 94-2 / Browns Sunland Borrow Pit.

The California Fish and Game Code Section 711.4(e) and Inyo County Ordinance Number 904 requires a documentary handling fee of twenty-five dollars (\$25.00) be paid to the Inyo County Clerks Office for the filing of the Notice of Determination for your project as per the "de minimus" finding above. The documentary handling fee must be paid to the Inyo County Clerk prior to the Project being considered "final". Failure to comply with the conditions stated above will result in the proposed use being in violation of the Inyo County Code.

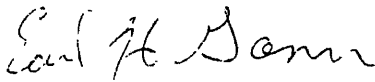
The Conditional Use Permit and Reclamation Plan will become effective fifteen (15) days after the Planning Commission's

action. During that time, pursuant to Section 18.81.030 of the Inyo County Zoning Ordinance (#943 2/15/94) any interested person alleging Error in any Determination made by the Planning Commission may appeal all or any portion of this Conditional Use Permit or Reclamation Plan to the Inyo County Board of Supervisors after compiling evidence of the alleged error and making an appeal fee payment of three-hundred dollars (\$300.00) to the Clerk of the Board.

If you have any questions regarding the above, please feel free to contact this office.

Sincerely,

PETER CHAMBERLIN
Planning Director



Earl H. Gann
Mining Reclamation Planner

cc: Department of Fish and Game - Bishop
Supervisor Robert W. Gracey, 4th District
Inyo County Assessor's Office



County of Inyo Planning Department

P.O. Drawer L, Independence, CA 93526
Peter Chamberlin, Director of Planning

Planning Office
Charles Thistlethwaite
Curtis Kellogg
Earl Gann
Sandy Miller
(619) 878-0263
FAX (619) 872-2712

Yucca Mountain Office
Brad Mettam
Janet Cross
(619) 878-0380
FAX (619) 878-0382

August 8, 1994

State of California
Department of Conservation
Office of Mine Reclamation
801 "K" Street, MS 09-06
Sacramento, CA 95814-3529

RE:

RECLAMATION PLAN #94-2/ BROWN'S SUNLAND BORROW PIT

Dear Sirs:

Attached please find a copy of the Notice of Decision dated August 8, 1994 outlining the conditions of approval for Reclamation Plan #94-2/ Brown's Sunland Borrow Pit. Also, a copy of the Reclamation Plan and Conditional Use Permit approved Inyo County Planning Commission on July 27, 1994 is included.

Pursuant to Section 2774(d) of the Surface Mining and Reclamation Act of 1975 (SMARA), the lead agency must respond to the DMG letter addressing the above project. These are included within the body of the Staff Report presented to the Planning Commission. They are listed below.

1. DMG Comment (May 16, 1994):

SMARA Section 2772(e) requires that a reclamation plan include the size and legal description of the lands that will be affected by mining. SMARA Section 2772(e) also requires that a map of the site clearly show the limits of the mining, reclamation, proposed access roads and existing roads on site, And utilities within or adjacent to the mine site.

The map provided shows the property boundary, roads, disturbed

soil areas, and adjacent mine lease locations. Plan maps showing the proposed excavation and final contours and cross-sections are not provided. As a part of the proposed concurrent reclamation, the reclamation plan states that seed-bearing surface soils will be stockpiled and respread, and the site will be regraded to blend with the natural contours of the area. Therefore, the site map for the project should also include temporary location(s) for topsoil stockpiles.

Inyo County Response:

The County concurs. The topsoil stock piles will be located on a contour map. The final pit configuration is not known and may not be known for many years. Therefore to require a final contour map now is counter productive. The pit will not go below the limits set in the plan.

2. DMG Comment (May 16, 1994):

SMARA Section 2772(d) requires that the depth of mining be specified. The depth of mining is specified at 15 feet in the west pit and at 25 feet in the east pit. The depth of mining should also be depicted on cross sections and tied to a verifiable benchmark that can be referenced in the field for compliance monitoring.

Inyo County Response:

The County concurs. The depth of mining is noted on the reclamation plan. Due to the nature of this mining project, finished contours are not necessary now. The Land owner is drawing a contour map of the project, including adjacent mining operations. Survey control will be provided.

3. DMG Comment (May 16, 1994):

SMARA Section 2772(f) requires that a reclamation plan describe the surface mining operation and provide a time schedule for completion of each segment of mining so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation. The reclamation plan proposes to mine concurrently with reclamation. We recommend that reclamation phases be identified on plan maps.

Inyo County Response:

The County concurs. With the nature of this operations this shall be required.

4. DMG Comment (May 16, 1994):

SMARA Section 2772(i) requires that the reclamation plan include an assessment of the effect of implementation of the reclamation plan on future mining in the area.

Inyo County Response:

The County concurs. There are six other borrow pits in the same general location. Reclamation consists of spreading topsoil and reseeding. This will have no affect on future mining because the topsoil can be removed again and mining can take place. The decomposed granite will not be depleted by this operation nor by any of the others.

5. DMG Comment (May 16, 1994):

SMARA Section 2772(j) requires that the reclamation plan include a signed statement in which the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the approved reclamation plan. We recommend that the plan include this statement.

Inyo County Response:

The County concurs. All Reclamation plans must have this before they are deemed complete or approved.

6. DMG Comment (May 16, 1994):

Financial assurances are required of all surface mining operations to guarantee site reclamation. These financial assurances should be payable to the SMARA lead agency and the Department of Conservation; and that the financial assurances be submitted to the Department of Conservation for review and comment. We recommend that the plan include financial assurances adequate to guarantee site reclamation.

Inyo County Response:

The County concurs. This requirement is required of each submitted reclamation plan and will be required for this one.

7. DMG Comment (May 16, 1994):

CCR Section 3502 (b)(2) requires that a reclamation plan address public health and safety, given consideration to the degree and type of present and probable future public exposure to the site. Potential public access to the deep pits should be addressed in the reclamation plan.

Inyo County Response:

Inyo County concurs. This borrow pit is one of seven that are adjacent to each other. The access to each of these pits has a locked gate. This serves two purposes.

1. The gate is a public safety device.
2. The gate keeps unauthorized persons from obtaining product.

8. DMG Comment (May 16, 1994):

The Reclamation plan does not discuss the ultimate disposition of equipment used during excavation. All equipment should be stored in a designated area identified on the plan maps. We recommend this information be included in the reclamation plan.

Inyo County Response:

The County does not concur. This information should be in the conditional use permit and not the reclamation plan. In actuality all equipment will be kept on the applicants salvage yard or in the east pit which is adjacent to the salvage yard.

9. DMG Comment (May 16, 1994):

SMARA Section 2772(g) requires that the reclamation plan include a description of the proposed end use. The end use is stated as open space. To achieve this use, the plan proposes to recontour the site and respread conserved growth medium. Performance standards are not included. Without these standards it will not be possible to determine if reclamation has been successful.

Inyo County Response:

Inyo County concurs. Reclamation standards shall be placed in the conditions of the reclamation plan and conditional use permit.

10. DMG Comment (May 16, 1994):

The reclamation plan does not propose to employ erosion control facilities. These facilities have been proposed for adjacent mines. CCR Sections 3706 and 3710 require that surface and ground water be protected in accordance with the Porter-Cologne and Clean water Acts as implemented by the Regional Water Control Board and the State Water Resources Control Board. Recent regulations approved by the State Water Control Board require that a mine site which discharges storm waters that may have contacted any overburden, raw material, intermediate products, byproducts, or waste products in the mine site obtain a general industrial activities storm water permit and submit a Storm Water Pollution Prevention Plan (SWPPP). We recommend that the applicant consult with the Regional Water Quality Control Board to determine if these requirements are applicable to this operation. If the permit and the SWPPP are obtained, the required information, monitoring requirements and water quality standards should be incorporated into the reclamation plan.

Inyo County Response:

Inyo County concurs. The Applicant shall be informed of these requirements. However, this operation is a closed system. Runoff from up slope is intersected by an old historical canal that circumvents all the borrow sites. Rainfall in the area is very little. The rain that does fall is absorbed or evaporates very quickly.

11. DMG Comment (May 16, 1994):

CCR Section 3706(d) requires that erosion and sedimentation be controlled during all phases of mining and reclamation and provides performance standards for drainage, diversion structures, and erosion control. CCR Section 3503(a)(3) addresses the construction of erosion control facilities. The erosion control plan requirements of SMARA may be met by the SWPPP required by the State Water Resources Control Board. Evaluation of the effectiveness of the erosion control plan should be done as part of the annual inspection.

Inyo County Response:

The County concurs. This operation is in a closed system. Runoff from up slope is intercepted by an existing historical canal. This canal is dry and serves as a flood control canal for all the borrow pits in this immediate area. No water can enter the pit from up slope. The pits are on a relatively level area of the alluvial fan. No water entering the pit from rain fall can escape the pit. The slopes of the pit may show small amounts of erosion into the pits. This will be taken care of in the daily operations of the mine.

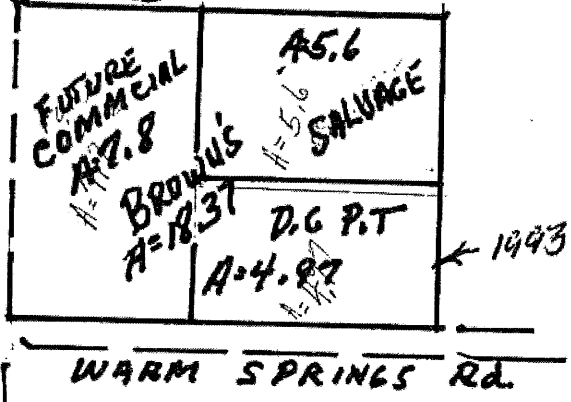
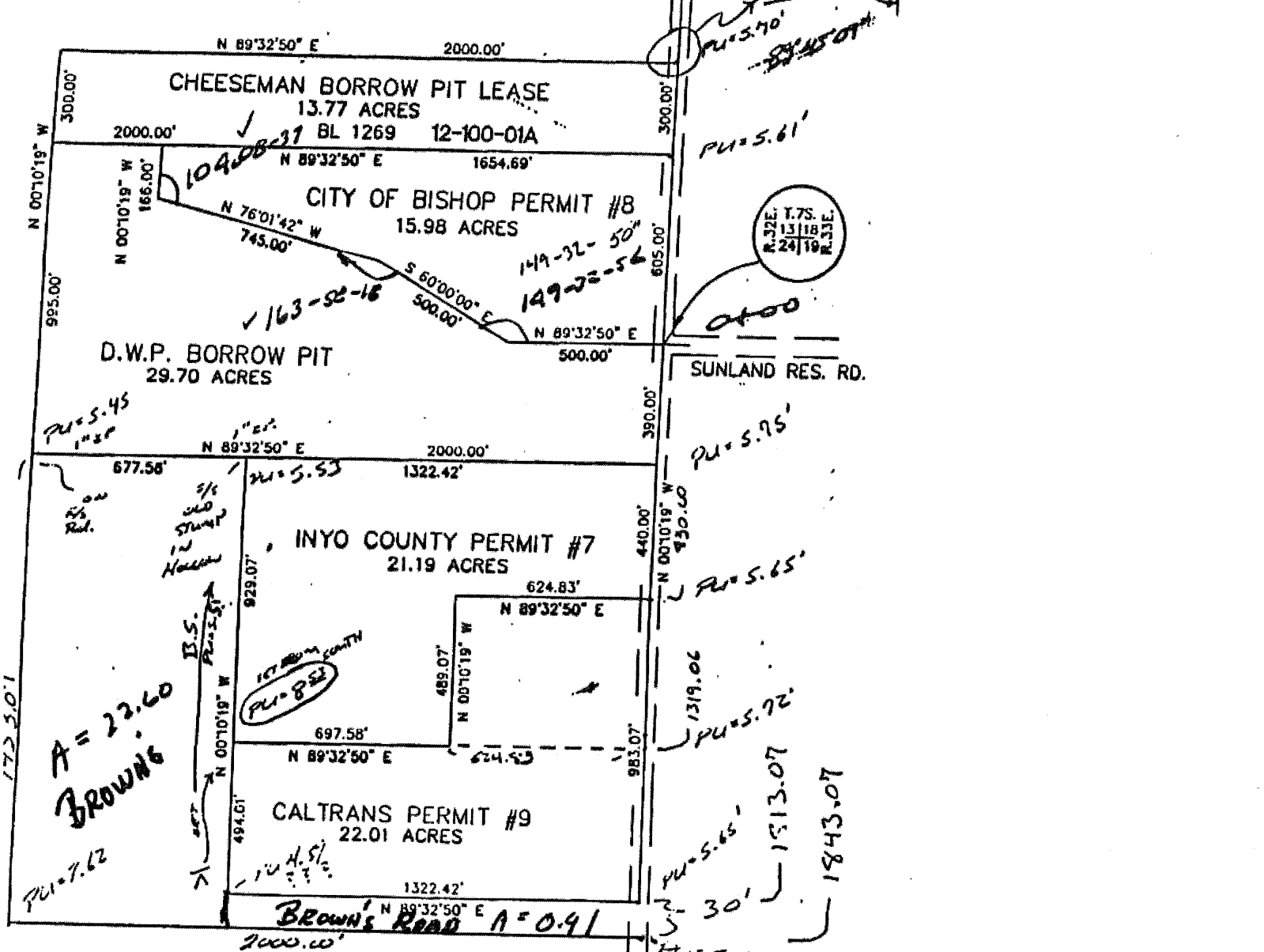
Sincerely,



Earl H. Gann
Mining Engineer

Attachments:

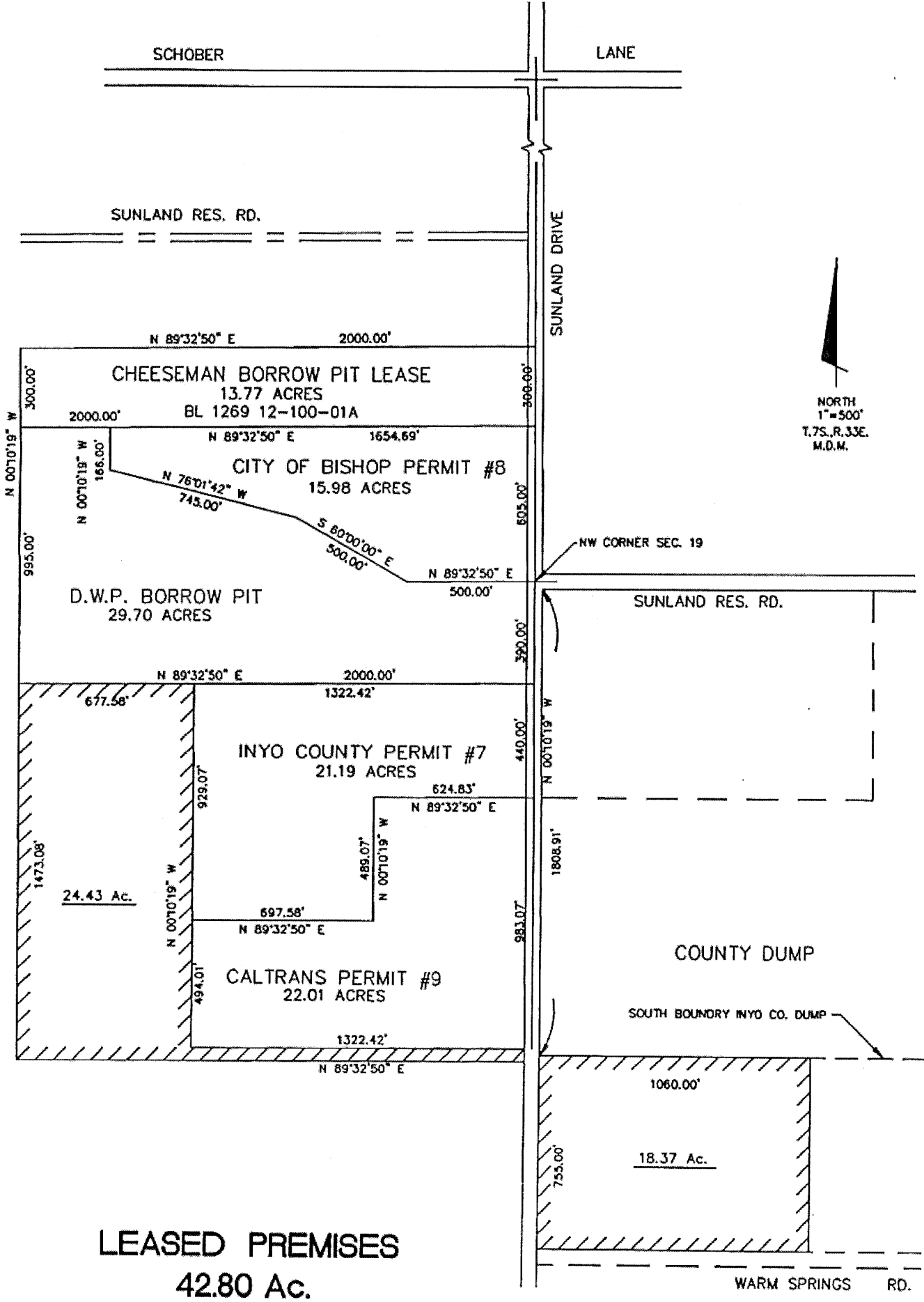
Notice of Decision
Rec. Plan #94-2, Conditional Use Permit #94-2
Planning Department Staff Report



Scale 1 inch = 500 feet
 BY: P. MADDOCK & M. SMITH
 DATE: JUNE 30, 1993
 REF. DWG S-93-D
 FILE: 1210001A.dwg

1994

SUNLAND BORROW PITS
 PERMIT AND LEASE PREMISES



APPENDIX B – SITE MAPPING

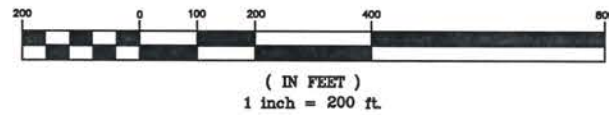


***Estimated Timeline / Sequence (Mine - Reclaim)**

- West Wall Reclaim (2022-December 2024)
- North Wall (Jan. 2025 - Dec. 2027)
- East Wall (Jan. 2028 - Dec 2030)
- South Wall / Floor (Jan. 2031 - Dec.2035)

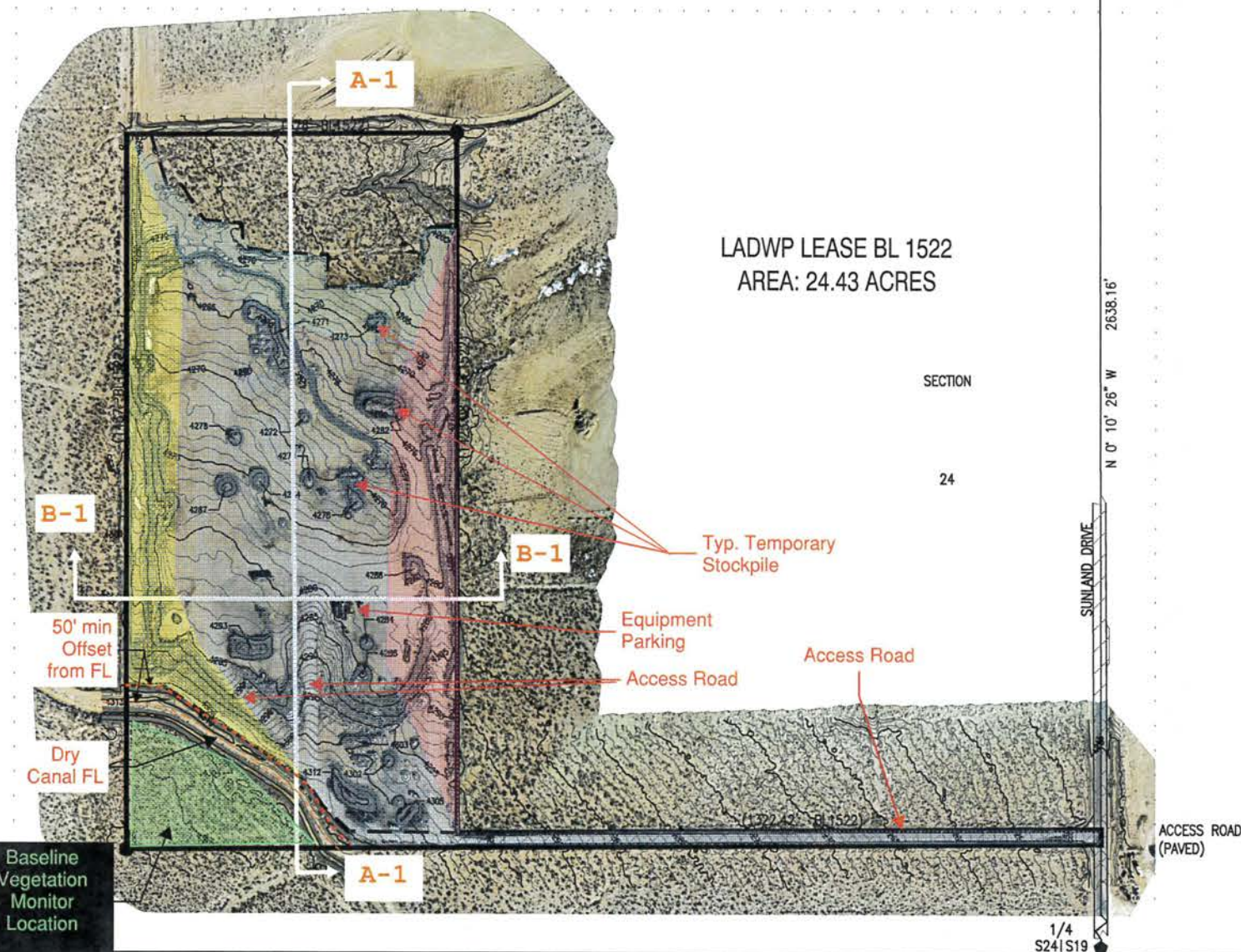
**Timing subject to change based on demand for material and economic outlook going forward. Reclamation in each area will occur once disturbance limits are achieved at the earliest possible time on each portion*

GRAPHIC SCALE



T 7 S
R 33 E

S13|S18
S24|S19



DESCRIPTION

A Portion of the Northeast quarter of Section 24, Township 7 South, Range 32 East, Mount Diablo Base & Meridian, more particularly described as follows:

COMMENCING at the Inyo County Surveyor brass cap set to mark the location of the quarter corner common to said Section 24, Township 7 North, Range 32 East and Section 19, Township 7 South, Range 33 East, Mount Diablo Base & Meridian, as depicted on the Inyo County Surveyor's Map No. 23.

Thence, North 0° 10' 26" West, 2,638.16 feet to the Inyo County Surveyor's brass cap near the intersection of Sunland Road and Sunland Indian Reservation Road, set to mark the corner common to Sections 13, 24, 18 and 19, in said Township and Ranges;

Thence, returning, South 0° 10' 26" East, 1,813.15 feet, to the TRUE POINT OF BEGINNING;

Thence, South 89° 33' 27" West, 1,322.48 feet, to a point;

Thence, North 0° 10' 05" West, 1,423.08 feet, to a 1.5 inch, outside diameter, iron pipe;

Thence, South 89° 33' 27" West, 667.50 feet, to a point;

Thence, South 0° 10' 05" East, 1,453.07 feet, to a 1.5 inch, outside diameter, iron pipe;

Thence, North 89° 33' 27" East, 1,999.99 feet, to a point between said Inyo County Surveyor brass caps;

Thence, North 0° 10' 26" West, 30.00 feet to the TRUE POINT OF BEGINNING.

Containing 23.51 acres ±.

BASIS OF BEARINGS

The Basis of Bearings for this description is the California State Plane, NAD 83, Zone IV, bearing of North 0° 10' 26" West, between the Inyo County Surveyor's brass caps said before.

SURVEY DATA

BASIS OF BEARINGS: GRID NORTH, as determined by an NGS Opus solution at Point 1000

Bearings are Grid; Distances are Ground

CORS Stations used for Opus Solution:

| PID | DESIGNATION | LATITUDE | LONGITUDE |
|----------------|---------------------------|----------------|-----------------|
| 1. DN7455 P650 | ANTELOPEMTC2006 CORS ARP | N37°53'28.581" | W118°33'17.590" |
| 2. DM7554 P468 | MAZOURKAPKCS2006 CORS ARP | N365832.441 | W1180706.0553. |
| 3. DN7458 P651 | CHALFANTVACS2006 CORS ARP | N37°33'47.179" | W118°23'13.086" |

NGS Opus Latitude & Longitude Base values are:
 LATITUDE: N 37° 19' 30.63047" (±0.001 meters)
 LONGITUDE: W 118° 24' 10.09861" (±0.001 meters)

CCS, Zone III NAD_83(2011)(EPOCH:2010.0000)
 Coordinate Base values are:
 Northing: 2,366,105.77 US Survey Feet
 Easting: 6,735,322.97 US Survey Feet
 Ortho Height: 4,237.00 US Survey Feet
 [NAVD88 (Computed using Geoid18)]

Convergence Angle: +0°21'23" @ Base
 True Azimuth= Grid Azimuth + Convergence Angle

Combined Grid Factor: 0.99981663 @ Base
 Ground Distance=
 Grid Distance/Combined Grid Factor

Contour Data:
 Major Contours: 1"=5'
 Minor Contours 1"=1'

BROWN'S SUPPLY, CA MINE NO. 91-14-0101 RECLAMATION NOTES

OPERATOR LESSEE: BROWN'S SUPPLY, INC.
 219 WYE ROAD
 BISHOP, CA 93514
 TELEPHONE: (760) 873-2-6911

LESSOR: LOS ANGELES DEPARTMENT OF WATER AND POWER
 REAL ESTATE SECTION
 300 MANDICH STREET
 BISHOP, CA 93514
 TELEPHONE: (760) 873-0251

DATE: February 18, 2021

APPLICANT: SAME AS OPERATOR

OWNER MINERAL RIGHTS: SAME AS OWNER

ROADS/EASEMENTS: NONE

ASSESSOR'S PARCEL NO: 12-010-12

EXISTING DISTURBED: 16.67 ACRES

EXISTING PERMITTED:

TOTAL MINE AREA: 24.43 ACRES

AREA TO BE RECLAIMED:

RECLAIMED END USE:

LEGEND

- INYO CO. BRASS CAP IN MONUMENT WELL
- 1-1/2" OUTER DIAMETER IRON PIPE
- EXISTING FENCE
- LEASE BOUNDARY
- DISTURBED AREA BOUNDARY
- PAVED ROAD
- DIRT ROAD
- SECTION LINE
- 1/4 SECTION LINE
- CONTOUR INTERVAL:
- MAJOR- 5'
- MINOR- 1'

CONTROL SURVEY AND DESCRIPTION BY:

JEFFREY THOMPSON
 25 QUAIL LANE
 BISHOP, CA 93514

DRONE AERIAL SURVEY PHOTOGRAMMETRY & PLAT BY:

BEAR ENGINEERING, INC.
 2575 STATE ROUTE 338
 WELLINGTON, NV 89444

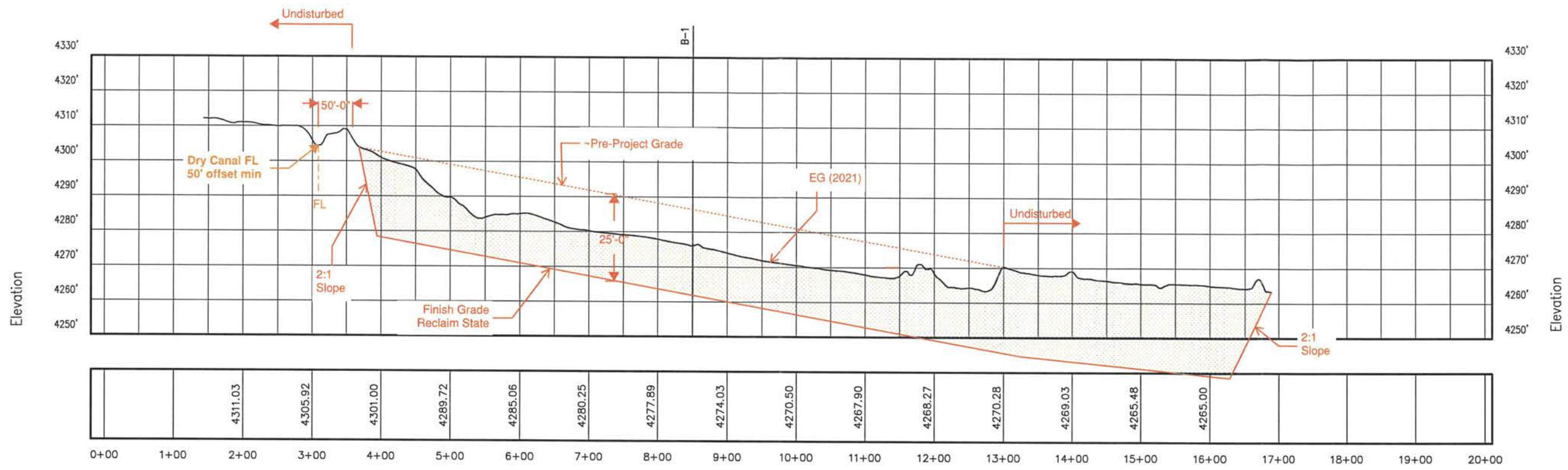
PLAT PREPARED BY:

BUCKY BROWN

RENO, NV

RECLAMATION PLAN

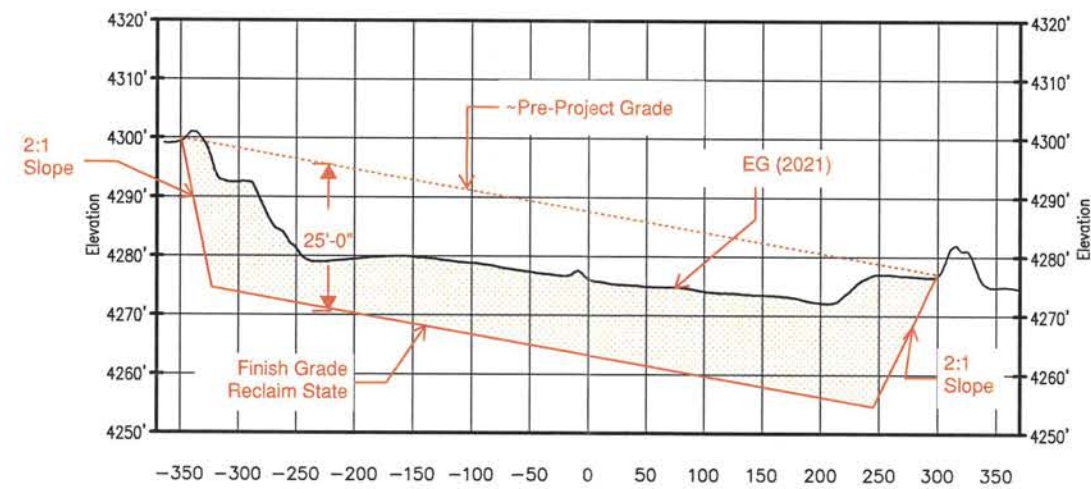
BROWN'S SUPPLY, CA MINE NO. 91-14-0101
 INYO COUNTY, CALIFORNIA



SECTION A-1

SCALE:
 HORIZONTAL: 1" = 100'
 VERTICAL: 1" = 20'

- MATERIAL AVAILABLE TO MINE (~25' from EG Pre-Mine)
- PRE-PROJECT GRADE (PROJECTED)
- FINISH GRADE RECLAIM STATE ~25' depth, 2:1 Cut
- EXISTING GRADE (2021 SURVEY)



SECTION B-1

SCALE:
 HORIZONTAL: 1" = 100'
 VERTICAL: 1" = 20'



FIGURE 6

APPENDIX C - SURFACE MINING AND RECLAMATION ACT OF 1975 (SMARA) & CALIFORNIA CODE OF REGULATIONS (CCR TITLE 14)

| SMARA/ CCR SECTION | DESCRIPTION | N/A | PAGE(S) |
|-----------------------------------|--|------------|----------------|
| SMARA 2770.5 | 100-year flood, Caltrans contact | X | |
| SMARA 2772 (c) (1) | Name and Address of operator/agent. | | 3,5,6 |
| SMARA 2772 (c) (2) | Quantity & type of minerals to be mined. | | 3 |
| SMARA 2772 (c) (3) | Initiation and termination date. | | |
| SMARA 2772 (c) (4) | Maximum anticipated depth of mining. | | |
| SMARA 2772 (c) (5) | Description, including map with boundaries, topographic details, geology, streams, roads, utilities. | | 4,5,6 |
| SMARA 2772 (c) (6) | Mining plan and time schedule for reclamation (concurrent or phased reclamation). | | 7,8 |
| SMARA 2772 (c) (7) | Proposed subsequent use. | | 9 |
| SMARA 2772 (c) (8) | Description of reclamation measures adequate for proposed end use. | | 8,9 |
| SMARA 2772 (c) (8) (a) | Description of containment Control and mine waste disposal. | | 7 7 |
| SMARA 2772 (c) (8) (b) | Rehabilitation of stream banks/beds to minimize erosion | X | |
| SMARA 2772 (c) (9) | Impact of reclamation on future mining. | | 7,8,9 |
| SMARA 2772 (c) (10) | Applicant statement accepting responsibility for reclamation per the reclamation plan. | | Attached SOR |
| SMARA 2773 (a) | Water quality monitoring plan specific to property. | X | |
| SMARA 2773 (a) | Sediment and erosion control monitoring plan specific to property. | | 7,9 |
| SMARA 2773 (a) | Revegetation plan specific to property. Monitoring Plan. | | 8,9 |

| | | | |
|---------------------|--|---|--------|
| SMARA 2773.1 | Performance (financial) assurances. | | 10 |
| SMARA 2777 | Amended reclamation plans required prior to substantial deviations to approved plans. | X | |
| CCR 3502 (b) (1) | Environmental setting and impact of reclamation on surrounding land uses. (Identify sensitive species, wildlife habitat, sensitive natural communities, e.g., wetlands, riparian zones, etc.). | X | |
| CCR 3502 (b) (2) | Public health and safety (exposure). | | 10 |
| CCR 3502 (b) (3) | Slopes: critical gradient, consider physical properties and landscaping. | | 7,8,10 |
| CCR 3502 (b) (4) | Fill materials in conformance with current engineering practice. | X | |
| CCR 3502 (b) (5) | Disposition of old equipment | X | |
| CCR 3502 (b) (6) | Temporary stream and water diversions shown. | X | |
| CCR 3503 (a) (1) | Removal of vegetation and overburden preceding mining kept to a minimum. | | 7 |
| CCR 3503 (a) (2) | Overburden stockpiles managed to minimize water and wind erosion. | X | |
| CCR 3503 (a) (3) | Erosion control facilities (dikes, ditches, etc.) as necessary. | | 7,9 |
| CCR 3503 (b) (1) | Settling ponds (sedimentation and water quality). | X | |
| CCR 3503 (b) (2) | Prevent siltation of groundwater recharge areas. | X | |
| CCR 3503 (c) | Protection of fish and wildlife habitat (all reasonable measures). | X | |
| CCR 3503 (d) | Disposal of mine waste and overburden (stable-no natural drainage restrictions without suitable provisions for diversion). | X | |

| | | | |
|--------------|--|---|--------|
| CCR 3503 (e) | Erosion and drainage (grading to drain to natural courses or interior basins). | X | |
| CCR 3503 (f) | Resoiling (fine material on top plus mulches). | X | |
| CCR 3503 (g) | Revegetation and plant survival (use available research). | X | |
| CCR 3703 (a) | Sensitive species conserved or mitigated | X | |
| CCR 3703 (b) | Wildlife habitat at least as good as pre-project, if approved end use is habitat. | | 8 |
| CCR 3703 (c) | Wetlands avoided or mitigated at 1:1 minimum | X | |
| CCR 3704 (a) | For urban use, fill compacted in accordance with UBC or local grading ordinance. | X | |
| CCR 3704 (b) | For resource conservation, compare to standard for that end use | X | |
| CCR 3704 (c) | Mine waste stockpiled to facilitate phased reclamation and separate from growth media. | | 8 |
| CCR 3704 (d) | Final reclamation fill slopes not exceed 2:1, except when engineering and revegetation analysis allow. | | 10 |
| CCR 3704 (e) | Final landforms or fills conform with surrounding topography or end use. | | 8,9,10 |
| CCR 3704 (f) | Cut slopes have minimum factor of safety for end use and conform to surrounding topography. | | 10 |
| CCR 3704 (g) | Piles or dumps not placed in wetlands without mitigation. | X | |
| CCR 3705 (a) | Vegetative cover, suitable to end use, self-sustaining. Baseline studies documenting cover, density and species richness. | X | |
| CCR 3705 (b) | Test plots if success has not been proven previously | X | |
| CCR 3705 (c) | Decompaction of site. | X | |

| | | | |
|--------------|--|---|---|
| CCR 3705 (d) | Roads stripped of road base materials, resoiled and revegetated, unless exempted. | X | |
| CCR 3705 (e) | Soil altered or other than native topsoil, required soil analysis. Amend if necessary. | X | |
| CCR 3705 (f) | Temporary access not bladed. Barriers installed. | X | |
| CCR 3705 (g) | Use native plant species, unless exotic species meet end use. | | 9 |
| CCR 3705 (h) | Plant during correct season. | X | |
| CCR 3705 (i) | Erosion control and irrigation, when necessary. | X | |
| CCR 3705 (j) | If irrigated, demonstrate self-sustaining without for two- year minimum. | X | |
| CCR 3705 (k) | Weeds managed. | X | |
| CCR 3705 (l) | Plant protection measures, fencing, caging. | X | |
| CCR 3705 (m) | Success quantified by cover, density and species-richness. Standards proposed in plan. Sample method set forth in plan and sample size provides 80 percent confidence level, as minimum. | X | |
| CCR 3706 (a) | Mining and reclamation to protect downstream beneficial uses. | X | |
| CCR 3706 (b) | Water quality, recharge, and groundwater storage shall not be diminished, except as allowed by plan. | X | |
| CCR 3706 (c) | Erosion and sedimentation controlled during all phases as per RWQCB/SWRCB. | X | |
| CCR 3706 (d) | Surface runoff and drainage controlled and methods designed for not less than 20 year/1 hour intensity storm event. | X | |

| | | | |
|--------------|--|---|---|
| CCR 3706 (e) | Altered drainages shall not cause increased erosion or sedimentation. | X | |
| CCR 3706 (f) | Stream diversions constructed in accordance with DFG 1603, EPA 404, Sec. 10 Rivers and Harbors. | X | |
| CCR 3706 (g) | All temporary diversions eventually removed. | X | |
| CCR 3707 (a) | Return prime ag to prime ag, unless exempted. | X | |
| CCR 3707 (b) | Segregate and replace topsoil by horizon. | X | |
| CCR 3707 (c) | Productivity rates equal pre- project or similar site for two consecutive years. Rates set forth in plan. | X | |
| CCR 3707 (d) | Fertilizers and amendments not contaminate water. | X | |
| CCR 3708 | Other ag capable of sustaining crops of area. | X | |
| CCR 3709 (a) | Equipment stored in designated area and waste disposed of according to ordinance. | | 7 |
| CCR 3709 (b) | Structures and equipment dismantled and removed. | X | |
| CCR 3710 (a) | Surface and groundwater protected. | X | |
| CCR 3710 (a) | Surface and groundwater protected in accordance with Porter Cologne and Clean Water Acts (RWQCB/SWRCB). | X | |
| CCR 3710 (b) | In-stream in accordance with CFG 1600, EPA 404, and Sec. 10 Rivers and Harbors. | X | |
| CCR 3710 (c) | In-stream channel elevations and bank erosion evaluated annually using extraction quantities, cross-sections, and aerial photos. | X | |

| | | | |
|--------------|--|---|--|
| CCR 3710 (d) | In-stream mining activities shall not cause fish to become entrapped in pools or in off-channel pits. California Fish and Game Code section 1600. | X | |
| CCR 3711(a) | All salvageable topsoil removed. Topsoil and vegetation removal not proceed mining by more than one year. | X | |
| CCR 3711 (b) | Topsoil resources mapped prior to stripping, location of stockpiles on map. Topsoil and growth media in separate stockpiles. | X | |
| CCR 3711 (c) | Soil salvage and phases set forth in plan, minimize disturbance, designed to achieve revegetation success. | X | |
| CCR 3711 (d) | Topsoiling phased ASAP. Stockpiles not to be disturbed until needed. Stockpiles clearly identified and planted with vegetation or otherwise protected. | X | |
| CCR 3711 (e) | Topsoil redistributed in stable site and consistent thickness. | X | |
| CCR 3712 | Waste and tailings, and waste disposal governed by SWRCB (Article 7, Chapter 15, Title 23, CCR). | X | |
| CCR 3713 (a) | Drill holes, water wells, monitoring wells abandoned in accordance with laws. | X | |
| CCR 3713 (b) | All portals, shafts, tunnels, or openings, gated or protected from public entry, but preserve access for wildlife. | X | |



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.: 6 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: May 31, 2023

SUBJECT: Amendment to Reclamation Plan 97-6
Independence MS#118
California Department of Transportation.

EXECUTIVE SUMMARY

The applicant has applied for an amendment to Reclamation Plan 97-6 with permission from the Bureau of Land Management (BLM). The California Department of Transportation (Caltrans) is proposing a minor revision of the condition of approval #20, abandoning the well, in the approved plan at the Independence Pit MS #118. Caltrans assumes the well has been removed while their contractor Skanska was operating at the site, but they cannot confirm this. Inyo County, Caltrans, and BLM agree Caltrans is responsible for the well and its proper abandonment. Inyo County and BLM are willing to forgo efforts to locate and abandon the well at this time, with the Planning Commission's approval, with the requirement for Caltrans to enter into a Statement of Responsibility to properly abandon the well if discovered. Upon approval, Caltrans can finalize the reclamation requirements and the mine identification number can be retired.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: California Department of Transportation (Caltrans).

Property Owner: Bureau of Land Management (BLM)

Site Address/ The project is located on the west side of U.S. Highway 395, approximately 1.2 miles northwest of Independence.

Community: Independence

A.P.N.: 022-130-26

General Plan: State and Federal Lands (SFL)

Zoning: Open Space (OS)

Size of Parcel: Approximately 120.31-acres

Surrounding Land Use:

| Location: | Use: | Gen. Plan Designation | Zoning |
|------------------|-------------------|-------------------------------|--------------------------------------|
| Site | Mine | State and Federal Lands (SFL) | Open Space - 40 acre minimum (OS-40) |
| North | Vacant/Open Space | Natural resources (NR) | Open Space - 40 acre minimum (OS-40) |
| East | Vacant/Open Space | Natural resources (NR) | Open Space - 40 acre minimum (OS-40) |
| South | Vacant/Open Space | State and Federal Lands (SFL) | Open Space - 40 acre minimum (OS-40) |
| West | Vacant/Open Space | State and Federal Lands (SFL) | Open Space - 40 acre minimum (OS-40) |

Staff Recommended Action:

1.) Approve the Amendment to Reclamation Plan 97-6 Independence Pit MS #118, Caltrans, with the Findings and Conditions as identified in the Staff Report and find the project is exempt under CEQA.

Alternatives:

1.) Deny Amendment to Reclamation Plan 97-6 Independence MS#118 Caltrans, thereby not allowing the applicant to update its Reclamation Plan, or move forward with the closure of the site

2.) Approve the Amendment Reclamation Plan 97-6 Independence MS#118 Caltrans with additional Conditions of Approval.

3.) Continue the public hearing to a future date and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner:

Ryan Standridge, Associate Planner

STAFF ANALYSIS

Background and Overview

The Independence Pit was an existing Caltrans material site on Bureau of Land Management (BLM) land. Caltrans had used the pit as an aggregate source for years before SMARA took effect. The site had become dormant until Jaxon Enterprises applied for and obtained a material sales permit in 1996 which BLM conditioned to get a reclamation plan through Inyo County. The BLM decision was appealed, delaying the County's ability to approve a reclamation plan. In 1999 the Department of Interior denied the appeal. Soon after the denial, the reclamation plan and mitigated negative declaration was approved by the Planning Commission. Again, it was appealed, resulting in the Board of Supervisors reviewing and upholding the appeal. Jaxon Enterprises filed a lawsuit, and in 2004 Inyo County Superior Court overruled the Board of Supervisors. In 2006 Jaxon Enterprises relinquished its permit with BLM.

Caltrans took over the application process and BLM approved the removal of 1.2 million cubic yards of material for the Black Rock-Independence Four-lane Project and the Manzanar Four-lane Project. Caltrans awarded Skanska Construction the Black Rock Four-lane Project and they operated the pit for the project's duration. Caltrans, in 2017, awarded a contract to complete reclamation activities. During reclamation activities, per Caltrans, there were no indications the well remained on site and after seeding and applying bonding fiber, a two-year vegetation monitoring commenced as required. In October 2020, Caltrans requested a final inspection.

Department of Mine Reclamation (DMR) and Inyo County did the final inspection on November 8, 2020. Inyo County found the condition of approval #20, abandoning the well, could not be verified. Inyo County requested Caltrans provide records of the well abandonment located on the mining site. Inyo County also requested Caltrans provide confirmation of BLM's approval of the site achieving reclamation as a representative from BLM could not attend the final inspection.

Caltrans has provided a letter stating they looked through all available records from the project files that were still accessible, but most exceeded the department's record retention periods for archiving. Caltrans also attempted to contact Skanska's office to track down project records. Skanska no longer employs the associated four lane project staff, and due to the document retention schedule, no documentation related to the contract is available.

On January 13, 2022, Caltrans sent a letter to BLM (attachment F), and Sheri Lisius, the Acting Field Manager for Bishop BLM, provided a letter agreeing the reclamation and revegetation are successful. The letter also included a statement that Caltrans shall be responsible for any future cost or damage related to the abandonment of the well. Upon receipt of the letter from BLM, county staff informed Caltrans that they would have to apply for a minor amendment due to the outstanding liability of not meeting California regulations of well abandonment requirements.

Caltrans requested Inyo County Environmental Health Department (EHD) go to the site to evaluate the location of the well and sign off on the abandonment of the well. EHD

provided the Inyo County Planning Department a letter stating, given the finished remediation, trying to find the well may do more harm than good at this point. Also, given the dry climate and remote location, the threat to water quality from the missing well is minimal. Inyo County EHD also stated they are willing to forgo any further efforts to locate the well, however, if the well's location is ever found, Caltrans and BLM will be responsible for abandoning the well according to state well abandonment procedures within 30 days of its discovery.

This situation is unusual, and County staff reached out to other Counties and DMR for direction. DMR and San Bernardino County recommended having Caltrans enter into a Statement of Responsibility Agreement. County staff prepared the agreement and routed it to BLM and County Counsel for review.

Caltrans has since submitted a signed Statement of Responsibility Agreement, Financial Assurance Cost Estimate, and a letter signed by District 9 director Ryan Dermondy explaining the state highway operation and protection program budgets money to complete SMARA obligations. These funds will be used to fulfill the Financial Assurance Mechanism to guarantee proper abandonment of the well if discovered.

Inyo County Code

Surface Mining and Land Reclamation in Inyo County are governed by Chapter 7.70 of the Inyo County Code which incorporates California's Surface Mining and Reclamation Act of 1975 ("SMARA", Public Resource Code Section [PRC] 271 et seq. and California Code of Regulations Section 3500 et seq.). The County is the "lead agency" (ref. PRC Section 2728) with State Mining and Geology Board-certified Surface Mining and Reclamation Ordinance (ref. PRC Section 2774.)

General Plan Consistency

The proposed project is consistent with the County General Plan designation of 'State and Federal Land' (SFL) as the SFL designation allows for Mining uses, under the approval of the Bureau of Land Management (BLM) and is accompanied by a reclamation plan (REC) approved by Inyo County under a Memorandum of Understanding with the BLM. The County approved the original (REC 97-6) in September 2007. Section 08.4.4 of the General Plan Goals and Policies states: 'protect the current and future extraction of mineral resources that are important to the County's economy while minimizing impacts on the public and the environment'. The closure of the pit minimizes the environmental impacts by returning the land back to vacant land.

Zoning Ordinance Consistency

The proposed project is consistent with the County Zoning Ordinance designation of Open Space (OS) as the OS designation allows mining uses, as a conditional use, or when managed by the Bureau of Land Management with an approved plan of operations. These uses include mining and processing of natural resources, including reclamation. This site's reclamation activities have been completed with successful vegetation growth, returning the land to pre-mining vacant land in open space. This amendment is a minor

change in the documentation required by the reclamation permit to achieve final closure and does not alter the end use of open space.

ENVIRONMENTAL REVIEW

This amendment is Categorically Exempt under CEQA Guidelines 153021, Existing Facilities – Class 1. Class 1 consists of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” This site is an existing approved mining site, and this amendment is a minor change in the documentation required by the reclamation permit to achieve final closure.

NOTICING & REVIEW

Amendment to Reclamation Plan 97-6 Independence MS#118 California Department of Transportation (Caltrans) was noticed in the Inyo Register and sent to all property owners within 300 feet of the project ten days before the Planning Commission Hearing. No public comments have been received to date.

RECOMMENDATION

Planning Department staff recommends the approval of the Amendment to Reclamation Plan 97-6 Independence MS#118, California Department of Transportation with the following Findings and Conditions of Approval:

FINDINGS

1. The proposed Conditional Use Permit is exempt under CEQA Guidelines 15301, Existing Facilities – Class 1 and the provisions of the California Environmental Quality Act have been satisfied.
[Evidence: Class 1 consists of the permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, and mechanical equipment, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. This amendment is a minor change in the documentation required by the reclamation permit to achieve final closure.]
2. The proposed Amendment to Reclamation Plan 97-6 Independence MS#118 CALTRANS is consistent with the Inyo County General Plan Land Use designation of State and Federal Land (SFL).
[Evidence: The proposed project is consistent with the County General Plan designation of State and Federal Land (SFL) as the SFL designation allows for Mining uses, under the approval of the Bureau of Land Management (BLM) and accompanied by a reclamation plan (REC), approved by Inyo County, under a Memorandum of Understanding with the BLM. The County approved the original (REC 97-6) in September 2007 allowing mining and reclamation after extracting materials. Section 08.4.4 of the General Plan Goals and Policies states: ‘protect the current and future extraction of mineral resources that are important to the County’s economy while minimizing impacts on the public and the environment’. The closure of the pit minimizes the environmental impacts by returning the land back to vacant land.]

3. The proposed Amendment to Reclamation Plan 97-6 Independence MS#118 CALTRANS is consistent with the Inyo County Zoning Ordinance, which permits “Mining Uses” as a Conditional Use in the Open Space Zoning District.
[Evidence: The proposed project is consistent with the County Zoning Ordinance designation of Open Space (OS) as the OS designation allows mining uses as a conditional use or when managed by the Bureau of Land Management with the approval of a plan of operation. These include the mining and processing of natural resources, including reclamation. This site's reclamation activities have been completed with successful vegetation growth, returning the land to pre-mining vacant land in open space. This amendment is a minor change in the documentation required by the reclamation permit to achieve final closure and does not alter the end use of open space.]
4. The proposed Amendment to Reclamation Plan 97-6 Independence MS#118, CALTRANS is necessary or desirable.
[Evidence: General Plan Policy Section 08.4.4 of the General Plan Goals and Policies states: 'protect the current and future extraction of mineral resources important to the County's economy while minimizing impacts on the public and the environment.' The pit's closure minimizes the environmental impacts by closing the mining site and returning the land to vacant land by achieving reclamation.]
5. The proposed amendment is properly related to other uses and transportation and service facilities in the vicinity.
[Evidence: The proposed amendment is a minor change in the documentation required by the reclamation permit to achieve final closure; therefore, transportation and service facilities in the vicinity will remain the same.]
6. The proposed Amendment to Reclamation Plan 97-6 Independence MS#118 CALTRANS would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.
[Evidence: The proposed amendment is a minor change in the documentation required to achieve final closure; therefore, it does not adversely affect the health or safety of persons living or working in the vicinity.]
7. Reclamation requirements necessitate the amendment for the site.
[Evidence: The proposed amendment is a minor change in the documentation required to achieve the final closure of the existing mine site. This update is necessary to comply with the Inyo County Code; therefore, the amendment is needed to complete the reclamation. Additionally, this is necessary to retire the mine identification number with the Division of Mine Reclamation per the SMARA.]

CONDITIONS OF APPROVAL

MAPPING

1. Within six months of approval, the applicant shall provide the County with three contour maps with two-foot contours showing the following:
 - a. a map showing the pre-mining contours,
 - b. a map showing the post-mining contours,
 - c. and a map showing contours after reclamation. These maps shall be at a scale of 1"=100'. The maps provided with the reclamation plan show the mining as if the entire 1.2 million cubic yards were to be mined. Because of this, the operator shall provide within one month of approval two-foot contour maps showing pre-mining conditions and what areas are allowed to be mined.

TERM OF PLAN AND TIMING OF RECLAMATION

2. Monthly quantities mined shall be reported to the County. This is to ensure that no more than 550,000 cubic yards of material are mined during the five-year period. Once 550,000 cubic yards are mined, mining shall terminate, and the site shall be reclaimed per the reclamation plan.
3. Mining shall stop and reclamation shall commence at termination of BLM approval or when 550,000 cubic yards have been removed, whichever comes first.
4. Any mining beyond 550,000 cubic yards will require a new reclamation plan application and shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining cannot occur after five-years of idle operation.

INTERIM MANAGEMENT PLAN

5. Through the five-year life of this project, the interim management plan shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining cannot occur after five years of idle operation.
6. At the conclusion of each period of mining, interim reclamation shall take place. This shall consist of re-grading

all slopes to an angle of 3:1 (H:V) or less.

7. During times of inactivity, the applicant/operator shall prevent public access to the pit by blocking the entrance with large rocks or installing a gate.
8. During periods of inactivity, all equipment and trash shall be removed from the area. No asphalt or other material shall be disposed of on-site.
9. During periods of inactivity, all present drainage systems shall be re-established to the satisfaction of the City of Los Angeles Department of Water and Power and the Bureau of Land Management.

PHASED MINING

10. Reclaimed areas shall not be re-disturbed during subsequent mining phases. Each phase, as reclaimed, shall serve as a vegetation test plot for subsequent phases.

ENTRANCE ROAD

11. The entrance road needs improvement in turning lanes both north and south from this pit. This is the responsibility of CALTRANS to build them according to CALTRANS specifications.

DUST CONTROL

12. The operator shall control dust at all times by the application of water on all surfaces before each day's mining and during the day when dust control is necessary. During high wind events (sustained winds of 25 mph or more, or gusts of 40 mph or more) mining shall stop. Dust shall be controlled throughout the pit and on all haul roads. Dust shall not be allowed to be deposited onto U.S. Highway 395.

WATERS OF THE UNITED STATES

13. The letter of August 8, 1995, from the Department of the Army, Corps of Engineers, indicates that the Independence Pit contains waters of the U.S. The operator shall obtain a Section 404 (wetlands) permit from the Corps of Engineers. If the site does not contain waters of the U.S., written

clearance must be obtained from the Corps stating that this pit does not contain waters of the U.S. before mining can occur.

14. The applicant shall consult with the California Department of Fish and Game about a Section 1603 (streambed alteration) permit.

SALVAGE OF GROWTH MEDIA (TOPSOIL)

15. The top six inches (6") of growth media (topsoil), shall be collected from areas to be disturbed, including two inches (2") on previously disturbed areas that have re-established vegetation. This topsoil shall be stockpiled in the active work site until the final phase of reclamation.

EQUIPMENT AND TRASH REMOVAL

16. At the conclusion of each phase of mining, all equipment and trash shall be removed from the area.

EROSION CONTROL

17. Pit slopes shall be contoured to a maximum slope angle of 3:1 (H:V). These slopes shall be established during times of intermittent operation when the interim management plan is in effect and during times of final reclamation. All pre-existing drainage shall be maintained during mining and during reclamation.
18. Final erosion control shall be established and maintained at the conclusion of mining. This shall be done at the satisfaction of the BLM. If at any time during mining operations or within five years of the conclusion of reclamation, the drainage system fails, the operator shall evaluate the cause of the failure and repair it according to the evaluation of the failure.

WATER WELL

19. Water pumped from the well shall not be allowed to enter

the runoff channel and end up entering the aqueduct.

20. The well shall be abandoned at the conclusion of mining. If certification of closure is not available Caltrans shall enter into a financial Responsible Party Agreement Caltrans has since submitted a signed Statement of Responsibility Agreement, Financial Assurance Cost Estimate. These funds will be used to fulfill the Financial Assurance Mechanism to guarantee proper abandonment of the well if discovered.

21. At the conclusion of mining, all waste stockpiles, and material stockpiles shall be used to re-contour all slopes to less than 3:1 (H:V). After re-contouring, all stockpiled growth media shall be spread over the entire site to a depth of six inches to help promote plant growth.

NOXIOUS WEED CONTROL

22. During mining and reclamation activities and during idle periods, noxious weeds shall be controlled on-site.

23. Seeds used for revegetation shall be collected on or near the site. If sufficient seed is not available, it may be purchased. However, it must be certified that it comes from areas within Owens Valley and within twenty miles of the pit site. A seed mix of plant species follows:

PROPOSED SEED

| SCIENTIFIC NAME | COMMON NAME | |
|-------------------------------|----------------------|---|
| | Pounds/Acre | |
| <i>Artemisia Tridentata</i> | big sagebrush | 1 |
| <i>Atriplex canescens</i> | our-winged saltbush | 8 |
| <i>Atriplex confertifolia</i> | shadscale | 1 |
| <i>Atriplex polycarpa</i> | cattle spinach | 1 |
| <i>Ambrosia dumosa</i> | bur-sage | 2 |
| <i>Hymenoclea salsola</i> | cheese-bush | 1 |
| <i>Encelia furinosa</i> | brittle bush | 2 |
| <i>Eriogonum fasciculatum</i> | California buckwheat | 2 |

| | | |
|----------------------------|---------------|----------------|
| <i>Sphaeralcea ambigua</i> | desert mallow | 2 |
| <i>Stipa speciose</i> | needlegrass | .5 |
| | Total | 20.5 lbs./acre |

REVEGETATION METHODS

24. After de-compaction, the approved seed mix shall be broadcast and then mixed into the top one-half inch (1/2”) of the substrate along with the mulch by either raking or dragging a chain across the seed bed. This shall be done perpendicular to the slope of the pit. Scarification and seeding shall be done within three days of each other and in late October to mid-November.

MULCHING

25. The applicant shall mulch with rice straw at the rate of 1,000 pounds per acre into the seeding program. This mulch shall be crimped into the slope to provide both wind and water erosion control and seed holding. This shall be done after seeding has occurred.

REVEGETATION PERFORMANCE STANDARDS

26. Reclamation will not be considered successful or complete until vegetation density reaches 20 percent (number of plants per unit area) compared to the surrounding undisturbed land. The site shall have a 50 percent diversity (species richness) of perennial species compared to the surrounding undisturbed land. New perennial species shall be at least two years old before being considered viable plants. This shall be verified based on visual calculations and substantiated by past photographs of the site, including off-site photographs of the surrounding undisturbed lands.

MONITORING

27. From initial seeding, the project shall be monitored until performance standards are met. Remedial measures may be implemented at any time to insure revegetation success. For the first two years, monitoring shall be performed twice a year.

REMEDIAL MEASURES

28. If it appears the site will not meet the performance standards, the applicant shall consult with the Planning Department for recommendations on remedial measures. The remedial measures listed below shall be considered if reclamation problems are observed during

annual monitoring:

- a. Fertilizing
- b. Reseeding
- c. Irrigation
- d. Planting of appropriate plants and protection of these plants.
- e. If irrigation is used, the plants must make it on their own for two years.
- f. Analysis for soil problems (applicant may wish to do this upfront).
- g. Measures to reduce pest problems, including fencing individual plants.

REPORTING AND ANNUAL INSPECTIONS

29. Each year the applicant shall file an annual mining report with the State. These reports shall be filed until financial assurances are released. Monitoring activities will continue until the County is satisfied that performance standards have been met. In accordance with SMARA Section 2774(b). Inyo County as the Lead Agency shall inspect the site and file annual inspection reports with the State.

RECLAMATION RESPONSIBILITY STATEMENT

30. The applicant shall submit a notarized statement to the Inyo County Planning Department accepting responsibility for reclaiming the land as per the conditions specified herein.

FINANCIAL ASSURANCES

31. Caltrans shall provide a local certified budget set aside and verify funds available. Caltrans shall update the estimated cost to abandon the well every five years and provide BLM and County updated copies of the budget set aside.

FINANCIAL ASSURANCES RECALCULATION

32. Financial assurances shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and Inyo County Code. This shall occur at the time of the annual inspection.

RELEASE OF FINANCIAL ASSURANCES

33. As required reclamation standards are achieved, that portion of financial assurances covering the completed activity may be released. The remainder of financial assurances covering revegetation and monitoring shall not be released until revegetation performance standards are met.

OTHER PERMITS

34. This Reclamation Plan is not valid without all permits required by any other responsible agencies in the mining, processing, and reclamation of the Independence Pit.

CONDITIONS AND LIMITATIONS

35. Once any portion of this Reclamation Plan is implemented by commencing of mining, all of its conditions and limitations shall be operative, and violation of any part shall constitute a violation of this reclamation plan and Chapter 7.70 of Inyo County Code.

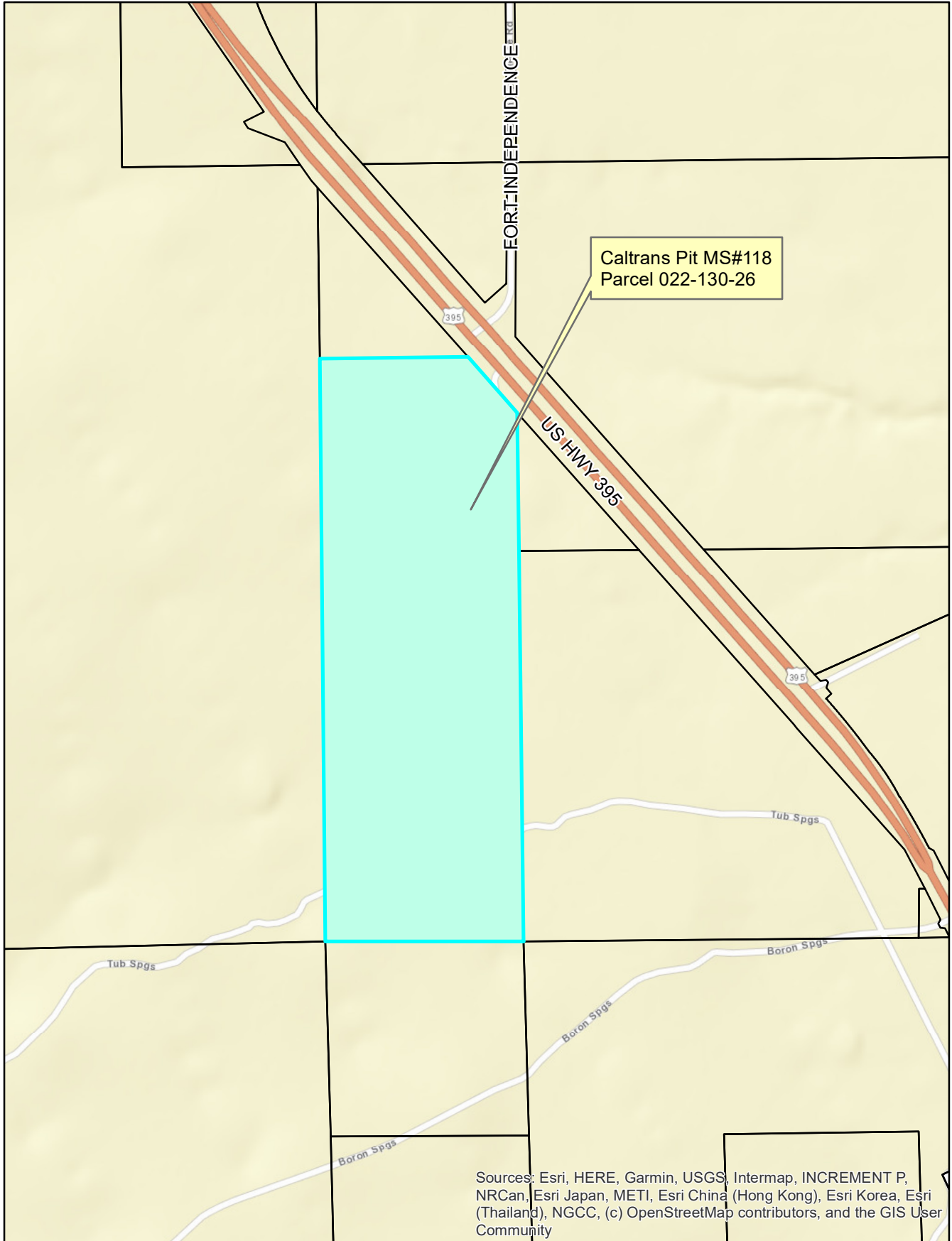
HOLD HARMLESS

36. The applicant, landowner, and operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from, any claim, action, or proceedings against the County, its agents, officers and employees to attack, set aside, or annul any approval of the County, its advisory agencies, appeal boards, or its legislative body concerning Reclamation Plan No. 97-6/Independence Borrow Site MS#118.

Attachments:

- A. Vicinity Map
- B. Approved Reclamation Plan
- C. Environmental Health Letter
- D. BLM Letter
- E. Caltrans Letter Explaining SHOPP
- F. Financial Statement of Responsibility

Attachment A
Vicinity Map REC 97-6 CALTRANS



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCAn, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

0 0.1 0.2 0.4 Miles

Attachment B



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

Phone: (760) 878-0263
(760) 872-2706
FAX: (760) 872-2712
E-Mail: InyoPlanning@telis.org

NOTICE OF DECISION

September 27, 2006

Mark Heckman, District 9 SMARA Coordinator
California State
Department of Transportation
500 S. Main Street
Bishop, Ca 93514

SUBJECT: Change of Applicant for Reclamation Plan No. 97-6/Independence Pit #118/California State Department of Transportation

On September 27, 2006 the Inyo County Planning Commission approved the Change of Applicant for Reclamation Plan No. 97-6/Independence Pit #118/California State Department of Transportation located approximately 1.2 miles northwest of the community Independence. After considering the report of Staff the Planning Commission took the following actions.

RECOMMENDATIONS:

Staff recommends the Planning Commission **approve** the change of applicant for Reclamation Plan No. 97-6 from Jaxon Enterprises to CALTRANS with the original conditions, and to re-instate the terms for financial assurances, as follows:

Mapping

1. Within six months of approval, the applicant shall provide the County with three contour maps with two foot contours showing the following:
 - a. a map showing the pre-mining contours,
 - b. a map showing the post-mining contours,
 - c. and a map showing contours after reclamation

Attachment B

These maps shall be at a scale of 1"=100'. The maps provided with the reclamation plan show the mining as if the entire 1.2 million cubic yards were to be mined. Because of this, the operator shall provide within one month of approval two-foot contour maps showing pre-mining conditions and what areas are allowed to be mined.

Term of Plan and Timing of Reclamation

2. Monthly quantities mined shall be reported to the County. This is to insure that no more than 550,000 cubic yards of material is mined during the five year period. Once 550,000 cubic yards are mined, mining shall terminate and the site shall be reclaimed per the reclamation plan.
3. Mining shall stop and reclamation shall commence at termination of BLM approval or when 550,000 cubic yards have been removed, whichever comes first.
4. Any mining beyond 550,000 cubic yards will require a new reclamation plan application and shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining cannot occur after five-years of idle operation.

Interim Management Plan

5. Through the five-year life of this project, the interim management plan shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining cannot occur after five years of idle operation.
6. At the conclusion of each period of mining, interim reclamation shall take place. This shall consist of re-grading all slopes to an angle of 3:1 (H:V) or less.
7. During times of inactivity, the applicant/operator shall prevent public access to the pit by blocking the entrance with large rocks or installing a gate.
8. During periods of inactivity, all equipment and trash shall be removed from the area. No asphalt or other material shall be disposed of on site.
9. During periods of inactivity, all present drainage systems shall be re-established to the satisfaction of the City of Los Angeles Department of Water and Power and the Bureau of Land Management.

Phased Mining

10. Reclaimed areas shall not be re-disturbed during subsequent mining phases. Each phase, as reclaimed, shall serve as a vegetation test plot for subsequent phases.

Attachment B

Entrance Road

11. The entrance road needs improvement in turning lanes both north and south from this pit. This is the responsibility of CALTRANS to build them according to CALTRANS specifications.

Dust Control

12. The operator shall control dust at all times by application of water on all surfaces before each day's mining and during the day when dust control is necessary. During high wind events (sustained winds of 25 mph or more, or gusts of 40 mph or more) mining shall stop. Dust shall be controlled throughout the pit and on all haul roads. Dust shall not be allowed to be deposited onto U.S. Highway 395.

Waters of the United States

13. The letter of August 8, 1995 from the Department of the Army, Corps of Engineers, indicates that the Independence Pit contains waters of the U.S. The operator shall obtain a Section 404 (wetlands) permit from the Corps of Engineers. If the site does not contain waters of the U.S., written clearance must be obtained from the Corps stating that this pit does not contain waters of the U.S. before mining can occur.
14. The applicant shall consult with the California Department of Fish and Game about a Section 1603 (streambed alteration) permit.

Salvage of Growth Media (Topsoil)

15. The top six inches (6") of growth media (topsoil), shall be collected from areas to be disturbed, including two inches (2") on previously disturbed areas that have re-established vegetation. This topsoil shall be stockpiled in the active work site until the final phase of reclamation.

Equipment and Trash Removal

16. At the conclusion of each phase of mining, all equipment and trash shall be removed from the area.

Erosion control

17. Pit slopes shall be contoured to a maximum slope angle of 3:1 (H:V). These slopes shall be established during times of intermittent operation, when the interim management plan is in affect and during times of final reclamation. All pre-existing drainage shall be maintained during mining and during reclamation.
18. Final erosion control shall be established and maintained at the conclusion of mining. This shall be done at the satisfaction of the BLM. If at any time during mining operations or within five years of the conclusion of reclamation, the drainage system fails, the operator shall evaluate the cause of the failure and repair it according to the evaluation of the failure.

Attachment B

Water Well

19. Water pumped from the well shall not be allowed to enter the runoff channel and end up entering the aqueduct.
20. The well shall be abandoned at the conclusion of mining.

Earthwork

21. At the conclusion of mining, all waste stockpiles, material stockpiles, shall be used to re-contour all slopes to less than 3:1 (H:V). After re-contouring, all stockpiled growth media shall be spread over the entire site to a depth of six inches to help promote plant growth.
22. At the conclusion of mining, all compacted areas shall be de-compacted to a depth of two feet. Road berms shall be brought back into the roadway after de-compacted. De-compacting shall not precede reseeding by more than three days.

Noxious Weed Control

23. During mining and reclamation activities and during idle periods, noxious weeds shall be controlled on site.
24. Seeds used for revegetation shall be collected on or near the site. If sufficient seed is not available, it may be purchased. However, it must be certified that it comes from areas within the Owens Valley within twenty miles of the pit site. A seed mix of plant species follows:

| PROPOSED SEED MIX | | PLS |
|-------------------------------|-----------------------|---------------------|
| SCIENTIFIC NAME | COMMON NAME | POUND/AC (Min) |
| <i>Artemisia Tridentata</i> | big sagebrush | 1 |
| <i>Atriplex canescens</i> | four-winged saltbrush | 8 |
| <i>Atriplex confertifolia</i> | shadscale | 1 |
| <i>Atriplex polycarpa</i> | cattle spinach | 1 |
| <i>Ambrosia dumosa</i> | bur-sage | 2 |
| <i>Hymenoclea salsola</i> | cheese-bush | 1 |
| <i>Encelia furinosa</i> | brittle brush | 2 |
| <i>Eriogonum fasciculatum</i> | California buckwheat | 2 |
| <i>Sphaeralcea ambigua</i> | desert mallow | 2 |
| <i>Stipa speciosa</i> | needlegrass | 0.5 |
| | | Total 20.5 lbs/acre |

Attachment B

Revegetation Methods

25. After de-compaction, the approved seed mix shall be broadcast and then mixed into the top one-half inch (1/2") of the substrate along with the mulch by either raking or dragging a chain across the seed-bed. This shall be done perpendicular to the slope of the pit. Scarification and seeding shall be done within three days of each other and in late October to mid November.

Mulching

26. The applicant shall mulch with rice straw at the rate of 1000 pounds per acre into the seeding program. This mulch shall be crimped into the slope to provide both wind and water erosion control and seed holding. This shall be done after seeding has occurred.

Revegetation Performance Standards

27. Reclamation will not be considered successful or complete until vegetation density reaches 20 percent (number of plants per unit area) compared to the surrounding undisturbed land. The site shall have a 50 percent diversity (species richness) of perennial species compared to the surrounding undisturbed land. New perennial species shall be at least two years old before being considered viable plants. This shall be verified based upon visual calculations and substantiated by past photographs of the site, including off site photographs of the surrounding undisturbed lands.

Monitoring

28. From initial seeding, the project shall be monitored until performance standards are met. Remedial measures may be implemented any time to insure revegetation success. For the first two years, monitoring shall be performed twice a year.

Remedial Measures

29. If it appears the site will not meet the performance standards, the applicant shall consult with the Planning Department for recommendations on remedial measures. The remedial measures listed below shall be considered if reclamation problems are observed during annual monitoring:
 - a. Fertilizing
 - b. Reseeding
 - c. Irrigation
 - d. Planting of appropriate plants and protection of these plants.
 - e. If irrigation is used, the plants must make it on their own for two years.
 - f. Analysis for soil problems (applicant may wish to do this up front).
 - g. Measures to reduce pest problems, including fencing individual plants.

Reporting and Annual Inspections

30. Each year the applicant shall file an annual mining report with the State. These reports shall be filed until financial assurances are released. Monitoring activities will continue until the County is satisfied that performance standards have been met. In accordance with SMARA Section 2774(b), Inyo County as the Lead Agency shall inspect the site and file annual inspection reports with the State.

Attachment B

Reclamation Responsibility Statement

31. The applicant shall submit a notarized statement to the Inyo County Planning Department accepting responsibility for reclaiming the land as per the conditions specified herein.

Financial Assurances

32. Financial assurances in the sum of \$68,826.00 are required. Financial assurances shall be budgeted by CALTRANS and proof of budgeting shall be provided to the Inyo County Planning Department yearly. **(REVISED)**

Financial Assurances Recalculation

33. Financial assurances shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and Inyo County Code. This shall occur at the time of the annual inspection.

Release of Financial Assurances

34. As required reclamation standards are achieved, that portion of financial assurances covering the completed activity may be released. The remainder of financial assurances covering revegetation and monitoring shall not be released until revegetation performance standards are met.

Other Permits

35. This Reclamation Plan is not valid without all permits required by any other responsible agencies in the mining, processing and reclamation of the Independence Pit.

Conditions and Limitations

36. Once any portion of this Reclamation Plan is implemented by commencing of mining, all of its conditions and limitation shall be operative, and violation of any part shall constitute a violation of this reclamation plan and Chapter 7.70 of Inyo County Code.

Hold Harmless

37. The applicant, landowner, and operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from, any claim, action, or proceedings against the County, its agents, officers and employees to attack, set aside, or annul any approval of the County, its advisory agencies, appeal boards, or its legislative body concerning Reclamation Plan No. 97-6/Independence Borrow Site MS#118.

Section 16.56.020 of the Inyo County Subdivision Ordinance provides that any interested party may, within ten (10) days after the Planning Commission's action, appeal the determination made by the Planning Commission to the Inyo County Board of Supervisors after compiling evidence of an alleged error and making an appeal fee payment of one-thousand dollars (\$1,000) to the Clerk of the Board.

Attachment B

If you have any questions regarding the Planning Commission's action, please contact this office at (760) 878-0263.

Thank you



for

Ronald J. Juliff, Inyo County CAO
Interim Planning Director

cc: Jim Bilyeu, 4th District Supervisor
Rich White, 4th District Commission

Attachment B



Inyo County Planning Commission
168 North Edwards Street
Post Office Drawer L
Independence, California 93526

Phone: (760) 878-0263
(760) 872-2706
FAX: (760) 872-2712
E-Mail: InyoPlanning@tells.org

STAFF REPORT

AGENDA ITEM NO.

5a (Action item Only)

**PLANNING COMMISSION
MEETING DATE:**

September 27, 2006

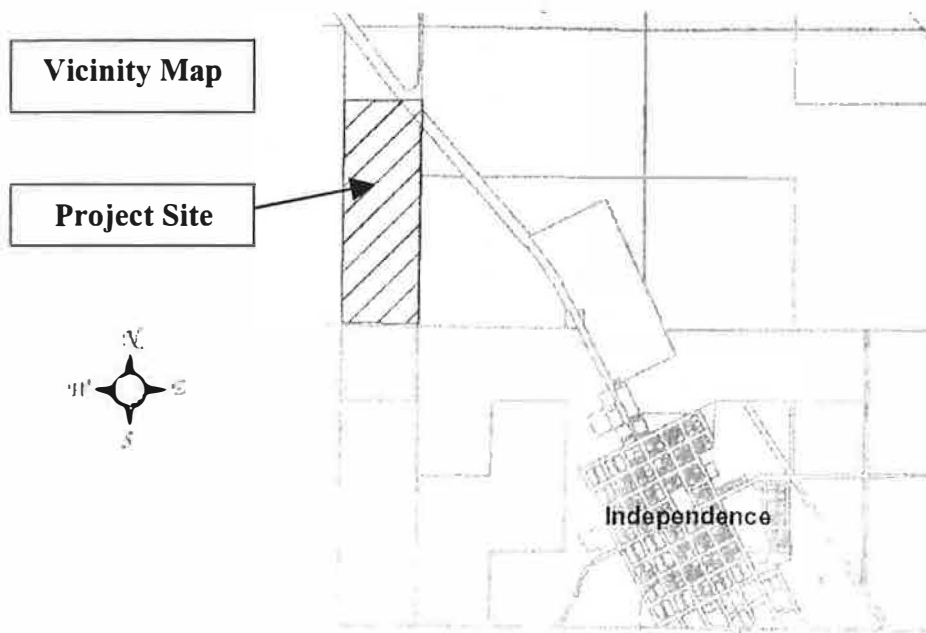
SUBJECT:

Change of Applicant for Reclamation Plan No. 97-6/Independence Pit #118/California State Department of Transportation.

EXECUTIVE SUMMARY

California State Department of Transportation (CALTRANS) is proposing to mine 37 acres of an existing 80-acre site on Bureau of Land Management (BLM) lands (Independence Pit) located on the west side of U.S. Highway 395, approximately 1.2 mile northwest of Independence. CALTRANS proposes to remove 555,000 cubic yards of material over the next 5 years. The material will be used for road construction on State Highways in the Owens Valley. After mining is completed, the site will be reclaimed to open space and wildlife habitat.

The County originally approved this reclamation plan on January 2004 based on a determination by the Inyo County Superior Court. It was issued to Jaxon Enterprises, which has subsequently abandoned their interest in the reclamation plan. CALTRANS is proposing to assume the responsibility of reclaiming the site in accordance with the same conditions of approval.



Attachment B

Based upon this information, the original Mitigated Negative Declaration and the reclamation plan conditions do not need to be amended or modified by the County, except for the amount of the financial Assurances. Therefore, this action by the Planning Commission does not require an environmental review or public hearing notification.

Supervisory

District: Fourth.
Application: Change of Applicant for Reclamation Plan No. 97-6/Independence Pit
Applicant: California State Department of Transportation, District 9.
Landowner: Bureau of Land Management, Bishop Resource Area.
Location: The project is located on the west side of U.S. Highway 395, approximately 1.2 miles northwest of Independence.

Assessor's

Parcel Number: 022-130-00.
General Plan: Natural Resources.
Zoning: Open Space, 40-acre minimum (OS-40).

Recommended

Action: **Approve the name change for Reclamation Plan No. 97-6 for CALTRANS And re-instate the amount of financial assurances.**

Alternatives:

1. **Deny** the name change for Reclamation Plan No. 97-6/Independence Pit
2. **Continue** to a date certain and direct staff to provide additional information or analysis.

Project

Planner: Adena Fansler, Assistant Planner.

HISTORY

The Independence Pit is an existing CALTRANS Material site located on Bureau of Land Management (BLM) land. CALTRANS used the pit as a source for aggregate for many years, but had not done so for the last 20 years or so. The disturbed area is about 32 acres. Although revegetation has occurred, CALTRANS has neither reclaimed the pit, nor obtained approval of a reclamation plan as required by the Surface Mining and Reclamation Act (SMARA). In 1977, CALTRANS relinquished its rights in the pit to the BLM with the understanding that the pit would remain open for use by a private operator for CALTRANS and other projects.

BLM advertised for a material sale out of the Independence Pit. On July 29, 1996, BLM issued a Decision Record for the proposed mineral sale to Jaxon Enterprises to mine 550,000 cubic yards of material, including a requirement that Jaxon Enterprises prepare a SMARA reclamation plan and obtain County approval. The Decision Record included a NEPA environmental assessment, determined that an EIS was not required, approved the EA, issued a finding of No Significant Impact per NEPA, and approved the mineral sale.

Although the County does not generally have jurisdiction over mining activities on federal land, a 1992 MOU between BLM, USFS, California Department of Conservation and the California Mining and Geology Board allows County to require compliance with SMARA on BLM and USFS lands.

Attachment B

On August 28, 1998, the BLM decision was appealed to the U.S. Department of Interior, Interior Board of Land Appeals, and on December 10, 1999, the appeal was denied and BLM's Decision Record and finding of No Significant Impact was affirmed that there were no significant impacts from the mining operations, which would require an EIS.

ON March 15, 1999, Jaxon Enterprises entered into a contract with BLM to remove 550,000 cubic yards of material from the pit over a five-year period and proceeded with preparing a reclamation plan as required.

July 28, 1999 the Inyo County Planning Commission, held a public hearing to consider the Mitigated Negative Declaration and Reclamation Plan FOR Jaxon Enterprises. The Commission unanimously certified the Mitigated Negative Declaration as complying with CEQA and approved the Reclamation Plan. This decision was appealed to the Board of Supervisors, which upheld the appeal.

On January 8, 2004 the Superior Court of the State of California County of Inyo over-ruled the Board of Supervisors.

After all that Jaxon Enterprises relinquished its permit in the material borrow pit back to the BLM.

PROJECT DESCRIPTION:

The proposal is to mine 555,000 cubic yards of material from an existing borrow pit (Independence Pit). At the conclusion of mining, the site will be reclaimed. No asphalt batch plant or crusher will be allowed on site for processing. The material will be used for road construction on State Highways in the Owens Valley.

The permit is for five years and 550,000 cubic yards. At the end of five years, the site will be reclaimed to open space and wildlife habitat by re-contouring, reestablishing drainage and re-vegetating unless a time extension is requested and approved by BLM and Inyo County. Reclamation efforts will remain in effect until performance standards are achieved.

SURROUNDING LAND USES:

The project site has previously been mined for material used in highway construction. The surrounding land uses are a follows:

- North:** Vacant City of Los Angeles Department of Water and Power land designated as "Natural Resources" and zoned Open Space, 40-acre minimum (OS-40).
- South:** Vacant City of Los Angeles Department of Water and Power land designated as "Natural Resources" and zoned Open Space, 40-acre minimum (OS-40).
- East:** Vacant City of Los Angeles Department of Water and Power land designated as "Natural Resources" and zoned Open Space, 40-acre minimum (OS-40).
- West:** Vacant Bureau of Land Management land designated as "Rural Protection" and zoned Open Space, 40-acre minimum (OS-40).

Attachment B

FINANCIAL ASSURANCES:

The Planning Department has determined financial assurances of \$68,826.00 are required as of this date to reclaim the entire mining site. This includes five years of monitoring costs and County inspection fees for conduction inspections.

Caltrans has formulated financial assurances for this reclamation plan, as required by SMARA.

RECOMMENDATIONS:

Staff recommends the Planning Commission **approve** the change of applicant for Reclamation Plan No. 97-6 from Jaxon Enterprises to CALTRANS with the original conditions and to re-instate the terms for financial assurances, as follows:

Mapping

1. Within six months of approval, the applicant shall provide the County with three contour maps with two foot contours showing the following:
 - a. a map showing the pre-mining contours,
 - b. a map showing the post-mining contours,
 - c. and a map showing contours after reclamation

These maps shall be at a scale of 1"=100'. The maps provided with the reclamation plan show the mining as if the entire 1.2 million cubic yards were to be mined. Because of this the operator shall provide within one month of approval two-foot contour maps showing pre-material and that is what is allowed to be mined.

Term of Plan and Timing of Reclamation

2. Monthly quantities mined shall be reported to the County. This to insure that no more than 550,000 cubic yards of material is mined during the five year period. Once 550,000 cubic yards are mined, mining shall terminate and the site shall be reclaimed per the reclamation plan.
3. mining shall stop and reclamation shall commence at termination of BLM approval or when 550,000 cubic yards have been removed, whichever comes first.
4. Any mining beyond 550,000 cubic yards will require a new reclamation plan application and shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining cannot occur after five-years of idle operation.

Interim Management Plan

5. Through the five-year life of this project, the interim management plan shall be implemented during periods of "idle" operations. If zero production occurs during the five-year life of this project, the

Attachment B

reclamation plan shall be implemented immediately. Mining cannot occur after five years of idle operation.

6. At the conclusion of each period of mining, interim reclamation shall take place. This shall consist of re-grading all slopes to 3:1 (H:V) or less.
7. During times of inactivity, the applicant/operator shall prevent public access to the pit by blocking the entrance with large rocks or installing a gate.
8. During periods of inactivity, all equipment and trash shall be removed from the area. No asphalt or other material shall be disposed of on site.
9. During periods of inactivity, all present drainage systems shall be re-established to the satisfaction of the City of Los Angeles Department of Water and Power and the Bureau of Land Management.

Phased Mining

10. Reclaimed areas shall not be re-disturbed during subsequent mining phases. Each phase, as reclaimed, shall serve as a vegetation test plot for subsequent phases.

Dust Control

11. The operator shall control dust at all times by application of water on all surfaces before each day's mining and during the day when dust control is necessary. During high wind events mining shall stop. Dust shall be controlled throughout the pit and on all haul roads. Dust shall not be allowed to move into U.S. Highway 395.

Water of the United States

12. The letter of August 8, 1995 from the Department of the Army, Corps of Engineers indicates that the Independence Pit contains waters of the U.S. The operator shall obtain a Section 404 permit from the Corps of Engineers. If the site does not contain waters of U.S., written clearance must be obtained from the Corps stating that this pit does not contain water of the U.S. before mining can occur.
13. The applicant shall consult with the California Department of Fish and Game about a Section 1603 permit.

Salvage of Growth Media (Topsoil)

14. The top six inches (6") of growth media (topsoil), shall be collected from areas to be disturbed including (2") on previously disturbed areas that have re-established vegetation. This topsoil shall be stockpiled in the active work site until the final phase of reclamation.

Attachment B

Equipment and Trash Removal

15. At the conclusion of each phase of mining, all equipment and trash shall be removed from the area.

Erosion control

16. Pit slopes shall be contoured to a minimum of 3:1 (H:V). These slopes shall be established during times of intermittent operation, when the interim management plan is in affect and during times of final reclamation. All pre-existing drainage shall be maintained during mining and during reclamation.

17. Final erosion control shall be established and maintained at the conclusion of mining. This shall be done at the satisfaction of the BLM. If at any time during mining operations or within five years of the conclusion of reclamation, the drainage system fails, the operator shall evaluate the cause of the failure and repair according to the evaluation of the failure.

Water Well

18. Water pumped from the well shall not be allowed to enter the runoff channel and end up entering the aqueduct.

19. The well shall be abandoned at the conclusion of mining.

Earthwork

20. At the conclusion of mining, all waste stockpiles, material stockpiles, shall be used to re-contour all slopes to less than 3:1 (H:V). After re-contouring all stockpiled growth media shall be spread over the entire site to a depth of six inches to help promote plant growth.

21. At the conclusion of mining, all compacted areas shall be de-compacted to a depth of two feet. Road berms shall be brought back into the roadway after de-compacted. De-compacting shall not proceed reseeding by more than three days.

Noxious Weed Control

22. During mining and reclamation activities and during idle periods noxious weeds shall be control on site.

Attachment B

23. Seeds used for revegetation shall be collected on or near the site. If sufficient seed is not available, it may be purchased. However, it must be certified that it comes from areas within the Owens Valley within twenty miles of the pit site. A seed mix of plant species follows:

| PROPOSED SEED MIX | | PLS |
|-------------------------------|-----------------------|---------------------|
| SCIENTIFIC NAME | COMMON NAME | POUND/AC (Min) |
| <i>Artemisia Tridentata</i> | big sagebrush | 1 |
| <i>Atriplex canescens</i> | four-winged saltbrush | 8 |
| <i>Atriplex confertifolia</i> | shadscale | 1 |
| <i>Atariplex polycarpa</i> | cattle spinach | 1 |
| <i>Ambrosia dumosa</i> | bur-sage | 2 |
| <i>Hymenoclea salsola</i> | cheese-bush | 1 |
| <i>Encelia furinosa</i> | brittle brush | 2 |
| <i>Eriogonum fasciculatum</i> | California Buckwheat | 2 |
| <i>Sphaeralcea ambigua</i> | desert mallow | 2 |
| <i>Stipa speciosa</i> | needlegrass | 0.5 |
| | | Total 20.5 lbs/acre |

Revegetation Methods

24. After de-compaction, the approved seed mix shall be broadcast and then mixed into the top one-half inch (1/2) of the substrate along with the mulch by either raking or dragging a chain across the seed-bed. This shall be done perpendicular to the slope of the pit. Scarification and seeding shall be done within three days of each other and in late October to mid November.

Entrance Road

25. The entrance road needs improvement in turning lanes both north and south from this pit. This is the responsibility of CALTRANS to build them according to CALTRANS specifications.

Mulching

26. The applicant shall mulch with rice straw at the rate of 1000 pounds per acre into the seeding program. This mulch shall be crimped into the slope to provide both wind and water erosion control and seed holding. This shall be done after seeding has occurred.

Revegetation Performance Standards

27. Reclamation will not be considered successful or complete until vegetation density reaches 20 percent (number of plants per unit area) compared to the surrounding undisturbed land. The site shall have a 50 percent diversity (species richness) of perennial species compared to the surrounding undisturbed land. New perennial species shall be at least two years old before being considered viable plants. This shall be verified based upon visual calculations and substantiated by past photographs of the site including off site photographs of the surrounding undisturbed lands.

Attachment B

Monitoring

28. From initial seeding, the project shall be monitored until performance standards are met. Remedial measures may be implemented any time to insure revegetation success. For the first two years, monitoring shall be performed twice a year.

Remedial Measures

29. If it appears the site will not meet the performance standards, the applicant shall consult with the Planning Department for recommendations on remedial measures. The remedial measures listed Below shall be considered if reclamation problems are observed during annual monitoring:

- a. Fertilizing
- b. Reseeding
- c. Irrigation
- d. Planting of appropriate plants and protection of these plants.
- e. If irrigation is used the plants must make it on their own for two years.
- f. Analysis for soil problems (applicant may wish to do this up front).
- g. Measures to reduce pest problems, including fencing individual plants.

Reporting and Annual Inspections

30. Each year the applicant shall file an annual mining report with the State. These reports shall be filed until financial assurances are released. Monitoring activities will continue until the County is satisfied that performance standards have been met. In accordance with SMARA Section 2774(b), Inyo County as the Lead Agency shall inspect the site and file annual inspection reports with the State.

Reclamation Responsibility Statement

31. The applicant shall submit a notarized statement to the Inyo County Planning Department accepting responsibility for reclaiming the land as per the conditions specific herein.

Financial Assurances

32. Financial assurances in the sum of \$68,826.00 are required. Financial assurances shall be budgeted by CALTRANS and proof of budgeting shall be provided to the Inyo County Planning Department yearly. (REVISED)

Financial Assurances Recalculation

33. Financial assurances shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and Inyo County Code. This shall occur at the time of the annual inspection.

Attachment B

Release of Financial Assurances

34. As required reclamation standards are achieved, that portion of financial assurances covering the completed activity may be released. The remainder of financial assurances covering revegetation and monitoring shall not be released until revegetation performance standards are met.

Other Permits

35. This Reclamation Plan is not valid without all permits required by any other responsible agencies in the mining, processing and reclamation of the Independence Pit.

Conditions and Limitations

36. Once any portion of this Reclamation Plan is implemented by commencing of mining, all of its conditions and limitation shall be operative, and violation of any part shall constitute a violation of this reclamation plan and Chapter 7.70 of Inyo County Code.

Hold Harmless

37. The applicant, landowner, and operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from, any claim, action, or proceedings against the County, its agents, officers and employees to attack, set aside, or annul any approval of the County, its advisory agencies, appeal boards, or its legislative body concerning Reclamation Plan No. 97-6/Independence Borrow Site MS#118.

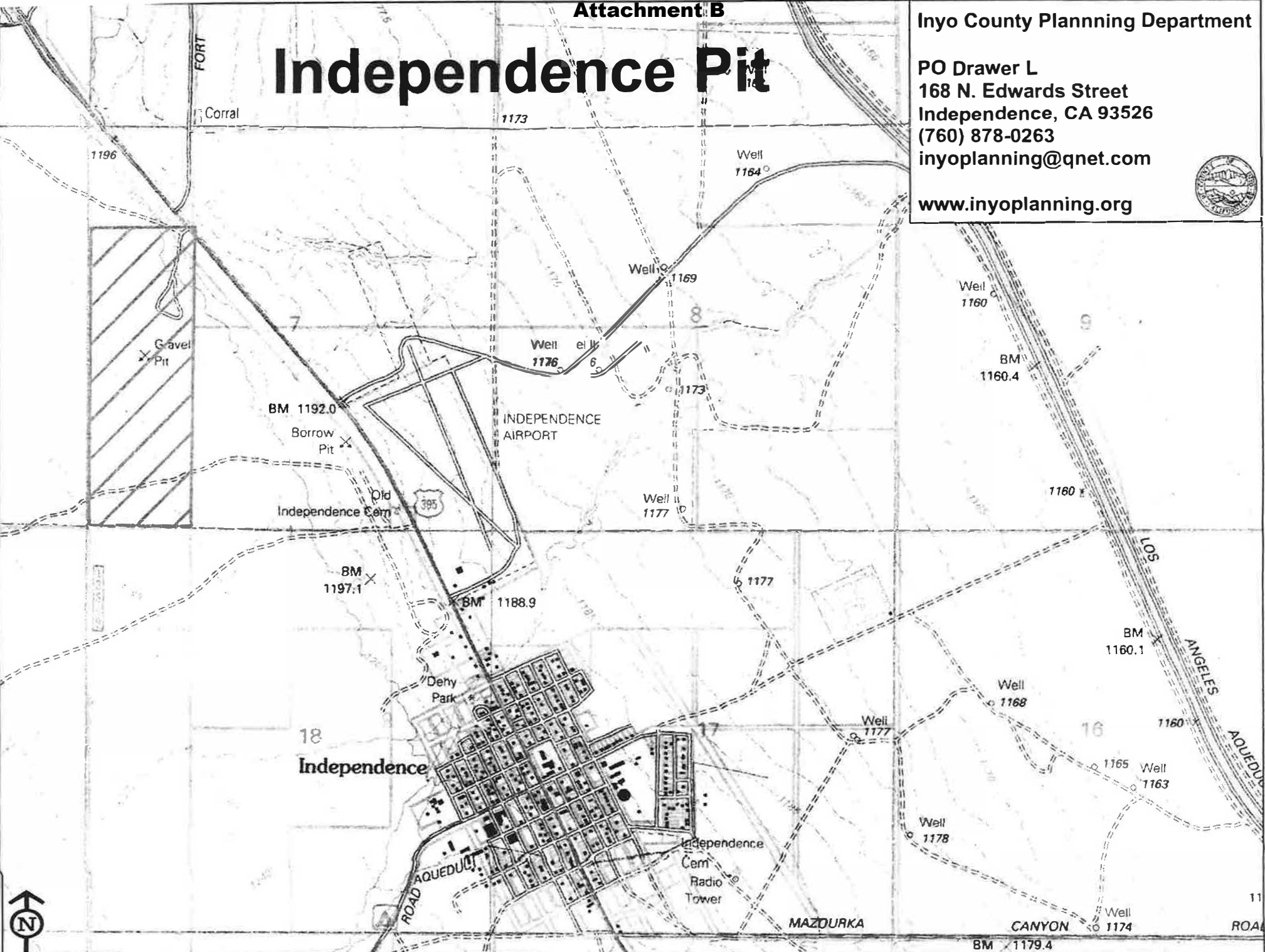
Attachment: Vicinity Map

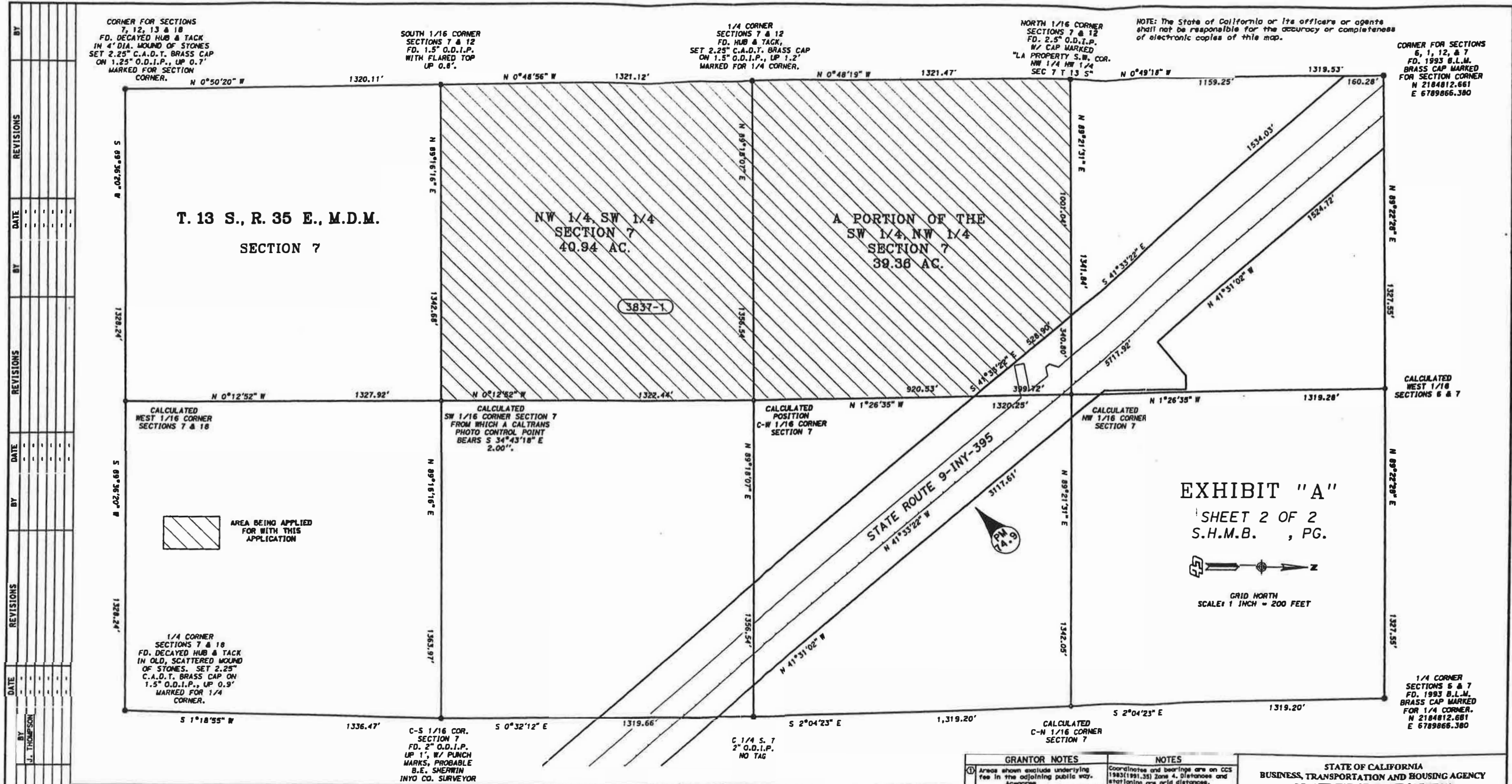
Independence Pit

Inyo County Planning Department

PO Drawer L
168 N. Edwards Street
Independence, CA 93526
(760) 878-0263
inyoplanning@qnet.com

www.inyoplanning.org





| R/W PROJECT SURVEYOR | DATE | BY | REVISIONS |
|----------------------|----------|----|-----------|
| J. THOMPSON | 11-30-05 | | |

| PARCEL# | TITLE CODE | GRANTOR | AREAS (square feet or as noted) | | | | REMARKS | TOTAL | REQUIRED (U) | EXCESS (U) | REMAINDER |
|---------|------------|-----------------|---------------------------------|--------------|------------|-----------|--------------------------|-------|--------------|------------|-----------|
| | | | TOTAL | REQUIRED (U) | EXCESS (U) | REMAINDER | | | | | |
| 3837-1 | E | U.S.A. - B.L.M. | 3,497,976 | | | | 80.3 AC - RE APPLICATION | | | | |

GRANTOR NOTES

- Areas shown exclude underlying fee in the adjoining public way.
- Indicates Underlying Fee (UF) Area
- Indicates Indeterminate UF
- Indicates Rights Only
- F=Fee
- E=Easement (Ease)
- TCE=Temp Construction Ease
- Other Temp Ease (see Remarks)
- Other (see Remarks)

NOTES

Coordinates and bearings are on CCS 1983(1991.35) Zone 4. Distances and stationing are grid distances. Divide by 0.999716 to obtain ground distances. All distances are in feet unless otherwise noted.

LEGEND

- Access Prohibited
- Access Superseded
- Existing R/W Superseded
- Access Spiking (Private)
- Indicates Right of Way
- Indicates Found Monument as noted
- Indicates calculated point. (Does not imply agreement set)
- Title to State
- Required for Others

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY

B.L.M. MAP APPLICATION

TO DESIGN: 11/30/05 EA(s): 333400 FAS:

DISTRICT COUNTY ROUTE SHEET PM SHEET NO-TOTAL SHEETS

9 INY 395 74.9 2 2

FEET
0 100 200 400 600

Attachment B

In the Rooms of the Board of Supervisors

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the *9th* day of *NOVEMBER, 1999*, an order was duly made and entered as follows:

Resol. #99-64/Rec
Plan No. 97-6/ Jaxon
Enterprises

The Planning Director provided a review of the resolution which was being proposed for Mining Reclamation Plan #97-6/Jaxon Enterprises. Mr. Robert Gracey, Appellant, addressed the Board to oppose the waiver of the deadline which was added to the resolution. On motion by Supervisor Arcularius and a second by Supervisor Dorame Resolution No. 99-64 was adopted, denying Mining Reclamation Plan No. 97-6/Jaxon Enterprises (Independence Pit MS #118): motion unanimously passed and adopted.

WITNESS my hand and the seal of said Board this 9th
Day of NOVEMBER 1999



RENÉ L. MENDEZ
Clerk of the Board of Supervisors

By Patricia Gunsolley
Patricia Gunsolley, Assistant

| |
|--|
| Routing |
| CC <input checked="" type="checkbox"/> |
| Purchasing _____ |
| Personnel _____ |
| Auditor _____ |
| CAO _____ |
| Other <input checked="" type="checkbox"/> Planning |
| R. Gracey _____ |
| DATE: November 15, 1999 |

Attachment B

RESOLUTION NO. 99- 64

**A RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF INYO, STATE OF CALIFORNIA,
FINDING THE 1999 DRAFT MITIGATED NEGATIVE DECLARATION
OF ENVIRONMENTAL IMPACT CONCERNING RECLAMATION
PLAN #97-6/JAXON ENTERPRISES, INC., FOR MATERIAL SITE #118
(INDEPENDENCE BORROW PIT) TO BE INADEQUATE, DETERMINING
THAT AN ENVIRONMENTAL IMPACT REPORT THEREON BE PREPARED,
AND ON THAT BASIS DENYING RECLAMATION PLAN #97-6**

WHEREAS, at a public hearing held October 5, 1999, and pursuant to an appeal filed by Robert W. Gracey and others in accordance with Chapter 15.52 and Section 7.70.080 of the Inyo County Code, this Board conducted a *de novo* review of the Inyo County Planning Commission's approval of Reclamation Plan #97-6/Jaxon Enterprises and the Commission's adoption of a Mitigated Negative Declaration of Environmental Impact concerning that Reclamation Plan; and

WHEREAS, at that public hearing this Board received as evidence into the record of its proceedings testimony of the following individuals:

- Chuck Thistlethwaite, Acting Director of the Inyo County Planning Department, who represented the Planning Commission;
- Earl Gann, Associate Planner, who presented the Planning Department's staff report on the appeal;
- Robert W. Gracey, Appellant;
- Ted Stevens, an attorney with Landels, Ripley and & Diamond, LLP, who appeared on behalf of the Appellants;
- Richard Wilder, representing the Fort Independence Indian Reservation;
- Jack Baker, representing Jaxon Enterprises, Inc., the proponent of the Reclamation Plan;
- Scott Morris, an attorney with Kronick, Moskovitz, Tiedemann & Girard, who appeared on behalf of Jaxon Enterprises, Inc.;
- Ron Mitchell, an employee of Jaxon Enterprises; and

Attachment B

- Doug Dodge, a representative of the United States Bureau of Land Management (BLM)

as well as the following documents:

- A Staff Report prepared by the Inyo County Planning Department concerning the Reclamation Plan, and the attachments thereto, which Report was marked as Exhibit 1;
- Four bound volumes of documents filed in a pending appeal before the United States Interior Board of Land Appeals (IBLA) (IBLA #98-474) entitled, respectively: "Letter Briefs and Relevant Documents," "Appellant's Appendix Volume 1," "Appellant's Appendix Volume 2," and "Appellants Reply Appendix," which were marked collectively as Exhibit 2;
- A March 4, 1999, letter from Ted Stevens to former Inyo County Planning Department Director Peter Chamberlin, and attachments thereto, marked as Exhibit 3;
- Resolution No. 98-013 of the Fort Independence Indian Reservation, marked as Exhibit 4;
- An October 1, 1999, letter from Ted Stevens to Bruce Henderson of the United States Army Corps of Engineers, marked as Exhibit 5.

WHEREAS, based on that testimony and those documents, this Board finds that the following events have occurred:

On July 29, 1998, the BLM issued a "Decision Record for proposed Independence Gravel Sale" by which the BLM authorized the sale to Jaxon Enterprises of 550,000 cubic yards of aggregate materials over a five year period; the material authorized to be sold to Jaxon Enterprises is to be extracted from a previously used sand and gravel borrow pit located 1.2 miles northwest of the town of Independence. The details of the gravel sale are set forth in said Decision Record, which is contained in the Planning Department's Staff Report, (Exhibit 1). In connection with that sale, the BLM issued a "Finding of No Significant Impact" (FONSI) pursuant to the National Environmental Protection Act (NEPA). A condition of the sale was that Jaxon Enterprises prepare, and obtain the approval by Inyo County of, a reclamation plan concerning the aggregate mine pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA).

Pursuant to that condition, as well a Memorandum of Understanding (MOU) between the United States and the State of California permitting the enforcement of SMARA on certain federal lands, Jaxon Enterprises, Inc., applied in 1997 to the County of Inyo for approval of a reclamation plan for the mining operation. As more fully described

Attachment B

in the Staff Report, that reclamation plan was processed by Inyo County and a Mitigated Negative Declaration of Environmental Impact thereon was prepared by the Planning Department pursuant to the California Environmental Quality Act (CEQA).

On July 28, 1999, the Inyo County Planning Commission considered Reclamation Plan #97-6 and the Mitigated Negative Declaration of Environmental Impact concerning that Plan. Following a hearing on the matter, the Planning Commission adopted the Mitigated Negative Declaration of Environmental Impact concerning the Reclamation Plan, thereby certifying that CEQA had been complied with, and approved Reclamation Plan #97-6.

In the course of approving Reclamation Plan #97-6, the Planning Commission amended certain of the conditions on the Reclamation Plan that had been recommended by the Planning Department. Most notably, the Planning Commission amended recommended Condition #36. As recommended by the Planning Department, Condition #36 would have required that the Reclamation Plan not take effect until a pending appeal to the IBLA concerning the BLM's Decision Record is resolved. The Condition #36 adopted by the Planning Commission stated instead that if the IBLA reversed the BLM Decision Record and as a result the BLM canceled the aggregate sale, Jaxon Enterprises was to immediately commence reclamation of the site.

On August 9, 1999, an appeal of the above-referenced decisions of the Planning Commission was filed by Robert W. Gracey. The basis for the appeal was that the Planning Commission improperly amended Condition #36; the Appellant requested that Condition #36 be reinstated as originally recommended by the Planning Department. Subsequently, on August 12, 1999, Mr. Gracey amended his appeal to include twenty-three other individuals, who each appealed the Planning Commission's decision on the same grounds as that stated in Mr. Gracey's appeal.

WHEREAS, based on State Law and the Inyo County Code, as well as the above-described record of the proceedings before the Planning Commission and this Board, the issues to be decided by this Board are:

Whether the requirements of the California Environmental Quality Act have been complied with, with respect to Reclamation Plan #97/6; and

Whether, if the requirements of CEQA have been met, the Reclamation Plan complies with the requirements of the Surface Mining and Reclamation Act of 1975 and should therefore be approved.

WHEREAS, in deciding whether the requirements of CEQA have been met, this Board is governed by the following principles and policies, as set forth in that Act as well as in the Inyo County Code;

Attachment B

- That it is the policy of the State to develop and maintain high-quality environment now and in the future, and to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State and to take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.
- That CEQA is to be interpreted to afford the greatest possible protection to the environment.
- That an Environmental Impact Report must be prepared on a proposed project subject to CEQA whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.
- That in assessing the environmental impact of a proposed project, the County must consider the “whole of the action” that may result in a physical change in the environment caused by the project, including reasonably foreseeable consequences of the project, and that environmental analysis of projects not be deferred.

WHEREAS, based on these considerations and the record adduced at the October 5, 1999, public hearing this Board makes the following findings and determinations:

A. THE MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT IS INADEQUATE BECAUSE THE RECLAMATION PLAN MAY HAVE SIGNIFICANT EFFECTS ON THE ENVIRONMENT

1. Effect on Scenic Vistas.

In determining whether the Reclamation Plan will have a potential significant impact on the aesthetics of the area, this Board is guided in part by the relevant policies of the Inyo County General Plan. Specifically, it is stated in the Scenic Highway Element of the General Plan that it is a goal of the County to “preserve and enhance the quality life for present and future generations” and to “protect and preserve the scenic environment.” These goals are based in part on the fact that, as stated in the Scenic Highway Element, “the scenic resources of Inyo County have been recognized as being truly national scenic wonders, to be enjoyed by visitors and residents alike” and that the purpose of the Scenic Highway Element is to “develop, maintain, and protect the scenic resources observed from highways.”

Moreover, in the Scenic Highway Element of the General Plan, it is stated that U.S. Hwy. 395, from the Inyo-Mono County line south to the Inyo-Kern County line, is included in the State Scenic Highway System, although not all of that portion of Highway

Attachment B

395 has been "officially designated" a Scenic Highway. Thus, the County has formally recognized the importance of maintaining the scenic beauty along Highway 395.

It is concluded in the Mitigated Negative Declaration of Environmental Impact (Negative Declaration) that the effects of the Reclamation Plan on the aesthetics of the project area will be less than significant, as mitigated. The suggested mitigation is "to keep equipment low enough in the (mining) pit not to be visible from the highway. The scar of mining will be reclaimed at the conclusion my mining by re-grading and re-vegetation." The Negative Declaration does state, however, that "this operation will be visible from U.S. Hwy. 395."

In addition, testimony was provided at the hearing that, although the site where the mining is to occur has already been mined, it has, to a certain extent reclaimed itself; that the view from Highway 395 west to the project location is virtually unobstructed; and that no manmade objects or activities are currently visible from Highway 395 in the vicinity of the proposed reclamation.

As is stated in the Reclamation Plan, however, reclamation of the site will require grading, stockpiling of soil on the site, and the presence and use of heavy equipment. Moreover, at the conclusion of mining a large pit will remain. Further, although the ultimate goal of the Reclamation Plan is that the site be returned to its natural state, that process, given the physical environment of the site, may take several years. In the meantime, the site will clearly be visible as a disturbed area to travelers along Highway 395. Thus, the reclamation may have a significant effect on the aesthetic values of the area.

For these reasons, the Board finds that the proposed Reclamation Plan may have a significant impact on a scenic vista; may substantially damage scenic resources within a State Scenic Highway; may substantially degrade the existing visual character of the site and its surroundings; and, due to the stockpiling of soil, may create a source of glare which would adversely effect views in the area.

2. Effect on Air Quality.

It is stated in the Negative Mitigated Declaration that the impacts on air quality of the Reclamation Plan will be less than significant with the incorporation of mitigation measures. It is acknowledged that "mining this site has the potential to degrade the air due to wind-blown dust," but that "this problem can be mitigated by not mining during windy days or application of water on the mine workings." It is noted in the Negative Declaration that the Owens Valley is a non-attainment area for particulates, i.e., PM10.

There does not appear to be, however, any provision in the reclamation plan for controlling wind-blown dust during the times that the mine is idle. Although it is difficult to separate the impacts on air quality from the mining operations from those of the Reclamation Plan, the fact that topsoil is to be stockpiled at the site for later reclamation use, coupled with the recurring winds in the area, raises the potential that the stockpiled

Attachment B

soil will degrade the air quality due to it being a source of windblown dust. Moreover, because the reclamation of the site may take several years to accomplish, the stockpiled soils may present a source of windblown dust for a significant period of time.

Therefore, this Board finds that the Reclamation Plan may have a significant effect on air quality.

B. THE NEGATIVE DECLARATION FAILS TO APPROPRIATELY ADDRESS REASONABLY FORESEEABLE IMPACTS OF THE PROJECT AND IMPROPERLY DEFERS ENVIRONMENTAL REVIEW OF THOSE IMPACTS

1. Mine May Be Used to Produce More Than 550,000 Cubic Yards of Material.

The "Project" analyzed by the Negative Declaration was for the reclamation of the Independence Pit following Jaxon Enterprises' extraction therefrom of 550,000 cubic yards of aggregate. However, evidence received at the hearing showed that the site has a potential to produce at least 1.2 million yards of aggregate; that the California Department of Transportation has plans for highway construction projects in the area requiring a similar amount of aggregate, that this site was selected by the Bureau of Land Management because it could provide the needed aggregate for all of those road projects, that other aggregate borrow pits along the Highway 395 corridor were too distant to be efficiently used for these road construction projects, and that the decision of the Bureau of Land Management to restrict the sale to 550,000 cubic yards of material could be rescinded at a later date (See Exhibit 2, Tabs 11, 18, 51, 60).

For these reasons, it is reasonably foreseeable that the aggregate pit may in fact be used to produce aggregate in excess of 550,000 cubic yards of material. As a result, the environmental analysis should have considered a reclamation plan designed to reclaim the site following extraction of 1.2 million cubic yards of material. Because the environmental analysis considered a reclamation plan concerning an extraction of only 550,000 cubic yards from the site, it improperly defers an environmental analysis of the "whole," and/or "reasonably foreseeable" effects, of the proposed project.

2. Batch Plant Is an Integral Part of the "Project."

In addition, the Negative Declaration fails to address the potential impacts of a "batch plant" or gravel crushing operation that will necessarily be used to convert the mined aggregate to asphalt for road construction purposes. It is stated in the Negative Declaration that "there will be no asphalt batch plant or gravel crushing on site. Any necessary batch plant and gravel crushing will be located either where the actual road project is or at some other site. The use of an asphalt batch plant and crusher at another site to produce asphalt from material mine at this site will require additional environmental consideration. Environmental consideration now is not feasible because of the future location of said crusher and asphalt batch plant is not known."

Attachment B

The BLM, in its environmental analysis of the site and Decision of Record, uses a similar justification for its failure to analyze the potential effects of an asphalt batch plant or crusher. Thus, although the BLM and the Planning Department acknowledge that an asphalt batch plant and gravel crusher will be constructed at some location to process the aggregate from the site, no environmental analysis of those activities has been conducted by either entity.

Although this Board understands that it lacks any direct land use authority over activities on federal land, it has such authority with respect to other lands within the unincorporated part of the County. Because there was no evidence produced in the record showing that the asphalt batch plant/gravel crushing operations would definitely be restricted to federal land, the possibility exists that such operations may be located on lands over which the County has land use authority. Thus, because this possibility exists and was not foreclosed upon by the BLM or the Applicant, the Negative Declaration should have analyzed the potential environmental affects of an asphalt batch plant/gravel crusher, in addition to the environmental impacts of the reclamation plant for the Independence Pit.

Therefore, because the Negative Declaration failed to address the “reasonably foreseeable” environmental impacts of the County permitting via a CUP a batch plant or a gravel crushing operation, it improperly defers environmental analysis of those operations and is therefore inadequate and/or fails to analyze the “whole” of the project.

C. ENVIRONMENTAL ANALYSIS WAS BASED ON OUT-OF-DATE DATA

Evidence introduced at the hearing shows that certain of the background information in the Reclamation Plan upon which the Mitigated Negative Declaration is based comes from a 1992 Reclamation Plan prepared by the California Departments of Conservation and Transportation. As a result of the seven years that have lapsed since preparation of that reclamation plan, the data upon which it relies is inadequate to reflect current conditions at the project site.

Specifically, for example, photographic evidence was introduced into the record showing the presence of water at the site. Also, the out-of-date information does not allow for a proper assessment of the current flora and fauna currently at the site. Because both SMARA and CEQA require a description of the existing environment in order to establish an environmental baseline upon which to judge the potential environmental impacts of the reclamation plan, the Negative Declaration’s use of seven year old data renders it inadequate under both of those Acts.

WHEREAS, although the Appellants in this matter initially requested only that Condition #36 of the Reclamation Plan, as recommended to the Planning Commission by the Planning Department, be reinstated as a condition of the Reclamation Plan, Appellants, at the hearing on this matter and over no objection from Jaxon Enterprises, questioned the legal adequacy of the Mitigated Negative Declaration and the Reclamation Plan on several additional grounds and, in any event, this Board has the initial jurisdiction and duty to

Attachment B

review the record and determine whether the Mitigated Negative Declaration on the Reclamation Plan complies with CEQA.

NOW, THEREFORE, BE IT RESOLVED that, based on the findings made above this Board determines the Mitigated Negative Declaration of Environmental Impact to be inadequate and not in compliance with CEQA and that, therefore, in accordance with Inyo County Code Sections 15.36.020, 15.12.080 B., and 15.32.120 A. an Environmental Impact Report be prepared on the Reclamation Plan addressing, at a minimum, the matters discussed above.

BE IT FURTHER RESOLVED that, to the degree practicable, any Environmental Impact Report on the Reclamation Plan should be prepared in accordance with the Memorandum of Understanding (MOU) entered into between the County and the Bureau of Land Management, which MOU is to govern the processing of environmental documents for surface mining activities occurring on Bureau of Land Management Land.

BE IT FURTHER RESOLVED that, for the foregoing reasons Reclamation Plan #97-6/Independence Borrow Pit MS#118/Jaxon Enterprises is hereby denied without prejudice to Jaxon Enterprise to submit to the County for consideration another Reclamation Plan following completion of an EIR thereon; in this regard the Board waives the restrictions of Inyo County Code Section 18.81.210, which prevents reconsideration by the County of a previously denied land use-related application for a period of one (1) year, with respect to this matter.

PASSED AND ADOPTED by the Board of Supervisors of the County of Inyo at a regular meeting of said Board, held on the 9th day of November, 1999, by the following vote of said Board:

AYES: Supervisors Arcularius, Bear, Lent, Hambleton and Dorame
NOES: -0-
ABSTAIN: -0-
ABSENT: -0-

Carroll M. Hambleton Jr.
Carroll Hambleton, Chairman
Inyo County Board of Supervisors

ATTEST: RENÉ MENDEZ,
Clerk of the Board

By: *Patricia G. Gonsolley*
Patricia Gonsolley, Assistant
Resolution/IndepPit.

10/26/99

Attachment B



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
16

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

FROM: Planning Department

FOR THE BOARD MEETING OF: November 9, 1999

SUBJECT: Resolution Denying Mining Reclamation Plan No. 97-6/Jaxon Enterprises (Independence Pit MS#118).

DEPARTMENTAL RECOMMENDATION:

Adopt Board Resolution denying Mining Reclamation Plan No. 97-6/Jaxon Enterprises (Independence Pit MS#118).

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

On October 5, 1999, your Board held a public hearing to consider an appeal of the Inyo County Planning Commission's July 28, 1999 approval of Reclamation Plan No. 97-6/Jaxon Enterprises. Based upon the report of the Planning Commission and all oral and written testimony offered into the hearing record, your Board found that the Draft Mitigated Negative Declaration (Negative Declaration) on the Reclamation Plan was inadequate under the California Environmental Quality Act (CEQA), and on that basis denied the reclamation plan

To memorialize that determination, a resolution was prepared by the Planning Department and Office of County Counsel for consideration by your Board at the October 26, 1999 meeting. Just prior to that meeting, however, a law firm representing Jaxon Enterprises requested, via facsimile, that the Board postpone action on the matter so that it could provide the Board with "a more thorough analysis" of the proposed resolution.

In response, and upon recommendation of County Counsel, your Board deferred action on the matter to its meeting of November 9, 1999, in order to afford Jaxon's attorneys, as well as those representing appellant Robert Gracey, an opportunity to lodge with the County all of their objections to the proposed resolution. By letter dated October 26, 1999. (copy attached) the County Counsel informed them to present their objections to the resolution by 5:00 p.m., Thursday, November 4th.

County Counsel will then consider all timely objections to the prior resolution, draft a final resolution, and present it to your Board for consideration at the November 9, 1999 meeting. Due to the timeline involved, the final resolution could not accompany this Agenda Request.

ALTERNATIVES:

Since the resolution memorializes an action already taken by your Board, the Board's alternatives to the recommended action are as follows:

- Refer the resolution back to staff for further amendment; or
- Reopen the public hearing on the appeal in order to receive additional information on Reclamation Plan No. 97-6 and/or the Negative Declaration.

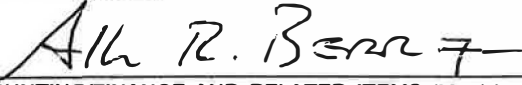
OTHER AGENCY INVOLVEMENT:

Office of the Inyo County Counsel

FINANCING:

No 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>  Approved: <u>YES</u> Date <u>11/3/99</u> |
| AUDITOR/CONTROLLER: | ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> Approved: _____ Date _____ |
| PERSONNEL DIRECTOR: | PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____ |

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



Date 11/3/1999



**OFFICE OF THE COUNTY COUNSEL
COUNTY OF INYO**

PAUL N. BRUCE, *County Counsel*
DANA CROM HARVEY, *Deputy County Counsel*
ALLEN R. BERREY, *Deputy County Counsel*

GREGORY L. JAMES, *Special Legal Counsel*
JOHN D. KIRBY, *A.P.C., Special Legal Counsel*

By Mail and Facsimile

October 26, 1999

Scott A. Morris, Esq.
Kronick Moskovitz Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4417
Fax (916) 321-4555

Ted Stevens, Esq.
Landels, Ripley & Diamond
Hills Plaza
350 Via Embarcadero
San Francisco, CA 94105-1250
Fax (415) 512-8750

Re: Resolution of the Inyo County of Board of Supervisors Denying Reclamation Plan #97-6 and Finding Negative Declaration Thereon Inadequate

Gentlemen:

At their regular meeting of October 26, 1999, the Inyo County Board of Supervisors received and considered the October 25, 1999 letter from Kronick Moskovitz Tiedemann & Girard, requesting that the Board postpone its consideration of the above referenced proposed resolution so that a more thorough analysis of the Board's findings may be presented. After due and careful consideration, the Inyo County Board of Supervisors continued its consideration of the proposed resolution to November 9, 1999. In order that you may have an opportunity to review the proposed resolution and provide the County with any objections or comments, and be prepared to address the issues at the November 9, 1999 Board of Supervisors meeting, we ask that you comply with the following schedule:

1. Initial objections and responses to the proposed resolution to be received by the Office of County Counsel and all opposing counsel on or before 5 p.m., November 2, 1999;
2. Any reply to the opposing party's initial objections and analysis to be received by the Office of County Counsel and opposing Counsel on or before 5 p.m., November 4, 1999.

Attachment B

Scott A. Morris, Esq.
Ted Stevens, Esq.
October 27, 1999
Page 2

In order to assist you in meeting your schedule, the Office of County Counsel will receive the initial objections and comments, as well as any reply thereto by fax transmission to (760) 878-2241.

If you have not received a copy of the proposed resolution as submitted to the Board of Supervisors on October 26, 1999, or a copy of the October 25, 1999 letter from Kronick Moskowitz Tiedemann & Girard concerning this matter, please promptly contact this office, and we will fax you a copy.

Sincerely,



Paul N. Bruce
County Counsel

PNB/dg
Enclosures
iPNB/LtrIndepPit

c: Chuck Thistlethwaite, Acting Planning Director ✓
Allen R. Berrey, Deputy County Counsel



Office of the County Counsel Inter-Office Memorandum

TO: Honorable Members, Inyo County Board of Supervisors

FROM: Chuck Thistlethwaite, Inyo County Planning Director
Allen R. Berrey, Deputy County Counsel

DATE: November 5, 1999

RE: Board Resolution Denying Reclamation Plan #97-6/Jaxon Enterprises

As explained in the Agenda Request Form concerning item #16 on the agenda for the Board's November 9, 1999 meeting, attorneys for Jaxon Enterprises, Inc. and Robert W. Gracey were requested to present any objections they had to the proposed resolution by which the Board would deny Reclamation Plan #97-6.

In response to that request, the County received the accompanying letters, via facsimile. The November 2, 1999 letter from Mr. Scott Morris, who represents Jaxon Enterprises, Inc., is nearly verbatim of the October 26, 1999 letter to the Board from an associate in his law firm; the gist of that letter is that:

"There is simply no evidence in the record to support the Board's findings. Moreover, the Board's proposed resolution containing 'findings' are (sic) no more than a post hoc rationalization of the Board's action. Such rationalization is arbitrary and capricious."

In his November 4, 1999 letter Mr. Ted Stevens, who represents appellant Gracey, states in response that:

"Contrary to the claims made by the applicant's counsel, the Board's decision is clearly supported by substantial evidence in the record. We urge the Board to disregard the applicant's objections and to adopt the proposed resolution in its entirety."

Attachment B

Board of Supervisors
November 5, 1999
Page Two

Based on these comments, it is the recommendation of the Planning Department and the County Counsel that the Board adopt the resolution originally presented to the Board at its October 26, 1999 meeting, with two changes.

First, it is recommended that the resolution contain language waiving the provisions of Inyo County Code § 18.81.20 with respect to Jaxon Enterprises. That section generally prohibits a land use application from being resubmitted to the County within one year of its denial.

The reason for this recommendation is that, upon consideration of the record of the Board's hearing on the appeal from the Planning Commission's approval of Reclamation Plan #97-6, it appeared the Board intended to deny the Reclamation Plan without prejudice to Jaxon Enterprises to resubmit the Plan to the County for consideration following completion of proper environmental review of that Plan, i.e. preparation of an environmental impact report.

Second, it is recommended that the Resolution include language clarifying the Board's position that, although appellant Gracey raised only one point in his appeal (that having to do with condition # 36 of the Reclamation Plan, as approved by the Planning Commission), the Board has both the jurisdiction and the duty to certify that the requirements of CEQA have been met with respect to any land use decision subject to that law that comes before the Board for approval, even if the matter comes to the Board on appeal.

These two changes to the resolution presented at the Board's October 26, 1999 meeting appear **in bold** on the accompanying resolution, which the Planning Director and the County Counsel recommend the Board adopt at its November 9, 1999, meeting.

Attachment B
KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
A PROFESSIONAL CORPORATION

SCOTT A. MORRIS

November 7, 1999

VIA FACSIMILE

Board of Supervisors
County of Inyo
P. O. Drawer N
Independence, CA 93526

Re: Resolution of the Board of Supervisors
Denying Reclamation Plan #97-6 and
Finding Negative Declaration Thereon Inadequate

Dear Board of Supervisors:

This office represents Jaxon Baker and Jaxon Enterprises, Inc. (hereinafter collectively referred to as "Jaxon") in matters related to the Independence Aggregate site near Independence, California. We appreciate the Board's willingness to postpone action on the proposed resolution until November 9th, and offer the following comments regarding the proposed resolution.

As an initial matter, Jaxon requests that the Board waive application of Inyo County Code section 18.81.210. That section states that projects brought before the Board may not be again brought before the Board within one year. Waiver is appropriate to allow an opportunity for Jaxon to return to the Board sooner than one year, should the Board deny the Reclamation Plan and disapprove the Negative Declaration pending before it, and if an acceptable solution be worked out with the Independence site.

That aside, Jaxon vehemently asserts that the Board has acted arbitrarily, capriciously and not in accordance with the law in denying Reclamation Plan #97-6 and finding the Negative Declaration thereon inadequate. There is simply no evidence in the record to support the Board's findings. Moreover, the Board's proposed resolution containing "findings" are no more than a post hoc rationalization of the Board's action. Such rationalization is arbitrary and capricious.

ATTORNEYS AT LAW

400 CAPITOL MALL, 27TH FLOOR SACRAMENTO, CALIFORNIA 95814-4417 TELEPHONE (916) 321-4500 FAX (916) 321-4555

The Board's actions related to the Reclamation Plan are governed by the Surface Mining and Reclamation Act ("SMARA"), found in Public Resources Code section 2710, et seq. SMARA limits the Board's review of Reclamation Plans is limited to the effectiveness of reclamation activities and whether the financial assurances for reclamation are adequate (Pub. Res. Code § 2770). Moreover, under California law the Board's California Environmental Quality Act ("CEQA") review is limited to the environmental effects of the reclamation plan only, since this is the only aspect of the project before the Board. (*City of Ukiah v. Mendocino County (Ford Gravel Co., Inc.)* (1987), 196 Cal.App.3d 47). Contrary to this legal requirement, however, the evidence shows the scope of the Board's review went way beyond those limits, including, but not limited to review of the economic impact to the Town of Independence. In other words, the Board approached its review more in the manner of evaluation of a use permit application, rather than a limited review of the adequacy of the Reclamation Plan, and the environmental effects of the reclamation of the site in the Negative Declaration. What is particularly disturbing is that the tape of the public hearing, held October 5, 1999, demonstrates that the Board was grasping at straws to try to find a way to rule the Negative Declaration inadequate. However, the responses of County Counsel during that hearing show that the environmental review contained within the Negative Declaration was in compliance with CEQA. Nonetheless, the Board voted to rule both the Reclamation Plan and Negative Declaration were inadequate. The following are specific comments regarding the proposed resolution.

1. The Board's Determination that the Reclamation Plan May Have Significant Effect on Scenic Vistas Is Not Supported By the Evidence in the Record.

The Board's proposed resolution finds that "the proposed Reclamation Plan may have a significant impact on a scenic vista; may substantially damage scenic resources within a State Scenic Highway; may substantially degrade the existing visual character of the site and its surroundings; and, due to the stockpiling of soil, may create a source of glare which would adversely effect views in the area." (Resolution at 5.)

There is absolutely no evidence in the record to support the Board's finding. Moreover, the Board misconstrues the Negative Declaration. The Negative Declaration states only that the problem to be mitigated is that the site will be visible from IIS Highway 395 and the town of Independence. In order to mitigate this potentially significant impact, equipment will be kept low enough in the pit to not be visible from the highway or the town of Independence. Thus, the Negative declaration correctly determines this mitigation will reduce the impact to scenic vistas to less than significant.

Moreover, BLM's Environmental Assessment indicates that the only visibility of the site will be from southbound travelers on Highway 395 near Oak Creek Other than from

that site, the Environmental Assessment notes that the project will be virtually unseen. This extremely limited vista cannot be considered a significant impact.

The Negative Declaration states that the Board's concern over scenic vistas will be mitigated to a less than significant level. There is no evidence in the record to support the Board's assertions that despite mitigation, scenic vistas may be significantly impacted by implementation of Reclamation Plan #97-6. The Board's findings are completely unsubstantiated by the record, and are therefore arbitrary, capricious, and not in accordance with the law.

2. The Board's Determination that the Reclamation Plan Could Have A Significant Effect on Air Quality Is Belled by the Facts In the Record.

The Board found that the Reclamation Plan may have a significant effect on air quality. There is insufficient evidence in the record to reach that conclusion. The Mitigated Negative Declaration states that to mitigate against wind-blown dust the operator shall keep roadways watered during operation and shall suspend mining during high wind days. The Mitigated Negative Declaration concludes that this will mitigate possible degradation of air quality to a less than significant level.

There is no evidence in the record to support the Board's conclusion that topsoil stored onsite may degrade air quality. In fact, the record indicates that wind erosion from the topsoil will be controlled. (Staff Report, Inyo County Planning Department, Prepared for July 28, 1999 Meeting, at 6.)

Moreover, Mr. Baker stated on the record that there are ways to control dust. A supervisor during the hearing noted that fugitive dust is a problem throughout the County because of the high desert landscape. To deny this Reclamation Plan for problems with fugitive dust, when fugitive dust would be a problem even without the operation of the site is arbitrary and capricious.

3. The Board's Determination that the Site May Be Used To Produce More Than 550,000 Cubic Yards of Material Is Unsupported.

It is not reasonably foreseeable that the site will be used to produce more than 550,000 cubic yards of material. This is merely speculation on the part of the Board. - Speculation is not substantial evidence that may be relied upon by the Board in its determination of significant impacts. (Pub. Res. Code § 21082.2.)

The lease issued by BLM to Jaxon clearly states that a maximum of 550,000 cubic yards will be removed. (See copy of lease provided with October 25th letter.) Further,

Mr. Baker stated on the record that the permit was only for this amount. To produce more material from this site would constitute another project and would require new environmental approvals. Thus, to invalidate the Negative Declaration on the grounds that more material could be removed from the site is contrary to the evidence, arbitrary and capricious and not in accordance with the law.

4. The Board's Determination that the Batch Plant Is an Integral Part of the Project is Unfounded.

The Board determined that a batch plant is an integral part of this project. That is simply untrue. Again, the Board is relying on mere speculation in finding that the Negative Declaration is inadequate for failure to analyze the environmental effects of a batch plant. As noted above, speculation is not equivalent to substantial evidence, on which a finding of significant effect must be based. (Pub. Res. Code § 21082.2.)

Mr. Baker testified that material from this site would go not only to CalTrans, but also to smaller jobs that required only fill. No batch plant is required for material from the site to be used as fill. Moreover, the record reflects that additional CEQA compliance will be completed if necessary. However, at this time, a batch plant is simply not an integral part of this project, and there is not substantial evidence within the record to show that a batch plant is a part of the project. Thus, the Board's findings based on speculation were arbitrary and capricious.

5. The Board's Finding that Use of Out-of-Date Data Renders the Negative Declaration Inadequate Is Without Merit.

The Board found that the Negative Declaration was rendered inadequate because two pieces of background information were seven years old. This argument is without merit. Evidence presented by BLM on their Environmental Assessment showed that a team of environmental professionals recently visited and evaluated this site. The evaluation included, but was not limited to, endangered species, waters of the United States, and flora and fauna. The Negative Declaration correctly relied heavily on BLM's recent evaluations.

Moreover, there is sufficient evidence in the record and in the Negative Declaration to provide the current environmental baseline upon which to judge significant environmental impacts of the Reclamation Plan. The Board's finding on this issue is arbitrary, capricious and not in accordance with the law.

CONCLUSION

We hope that the Board will choose to reinstate the Planning Commission's well reasoned approval of Reclamation Plan #97-6 and the Negative Declaration for the Independence

Attachment B

Board of Supervisors
November 2, 1999
Page 5

9154.7

site. However, if instead the Board adopts the proposed resolution finding the Negative Declaration inadequate and denying the Reclamation Plan, Jaxon will be forced to seek all legal remedies necessary to protect his legal rights.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



SCOTT A. MORRIS

SAM/mm

cc: Mr. Jack Baker
Paul N. Bruce, Esq.

581097.1

Attachment B



Hills Plaza
350 The Embarcadero
San Francisco, CA
94105-1250
Tel 415 512 8700
Fax 415 512 8750

Ted Stevens Jr.
415 512 4647
txs@landels.com

Via Facsimile

November 4, 1999

Board of Supervisors
County of Inyo
P. O. Drawer N
Independence, CA 93526

Re: Resolution of the Board of Supervisors
Denying Reclamation Plan #97-6 and
Finding Negative Declaration Thereon Inadequate

Dear Board of Supervisors:

As invited by Inyo County Counsel, we submit this letter concerning the adequacy of the proposed resolution of the Board of Supervisors (the"Board") denying Reclamation Plan #97-6 on the basis that the environmental document fails to comply with the California Environmental Quality Act ("CEQA"). Our office represented Mr. Robert Gracey, who along with numerous other concerned citizens of Independence appealed this matter to the Board. As previously disclosed, our office also represents Nikolaus & Nikolaus, Inc. in several related matters, including the pending appeal to the Interior Board of Land Appeals. Nikolaus & Nikolaus, however, was not an appellant in this matter, and participated at the Board hearing as an interested party.

At a regularly scheduled public hearing, the Board received approximately four hours of testimony on the adequacy of Jaxon Baker's proposed reclamation plan for the Independence pit and the related CEQA document for this project. After this lengthy testimony and detailed questioning by the Supervisors, the Board closed the public hearing and voted 5-0 to deny the proposed reclamation plan based on the inadequacy of the CEQA document. The Board also directed staff to prepare a draft resolution for Board approval. The applicant, however, continues to submit written testimony after the close of the public hearing challenging the Board's ultimate decision. Contrary to the claims made by the applicant's counsel, the Board's decision is clearly supported by substantial evidence in the record. We urge the Board to disregard the applicant's objections and to adopt the proposed resolution in its entirety.

Attachment B

Board of Supervisors
November 4, 1999
Page 2

As an initial matter, the applicant has requested that the Board waive application of Inyo County Code section 18.81.210, purportedly to allow the applicant to return to the Board on this matter in less than one year "if an acceptable solution [is] worked out with the Independence site." We object to the applicant's request as premature and without basis. We respectfully request that the Board deny the applicant's request without prejudice until such time as the applicant has provided the County and the public with the details of any such "acceptable solution" and only upon the condition that the public and interested parties are duly notified and allowed to comment on any proposed revisions to the project as required by CEQA and County ordinance.

The applicant's counsel also asserts repeatedly that there is no evidence in the record to support the Board's decision on the merits. The record, however, including volumes of written materials and hours of oral testimony, contains more than sufficient evidence to support the Board's decision.

The Board is required to explain its decision to deny the proposed reclamation plan on the basis of the inadequacy of the CEQA document in written findings. Such findings must be legally relevant conclusions that disclose the agency's mode of analysis of the relevant facts, regulations and policies, and must bridge the analytical gap between raw data and the agency's ultimate decision. Topanga Assn. For A Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 515-516 (1974). Topanga establishes the rule that findings must be supported by substantial evidence. Id. at 517, n. 16. Thus, the Board's decision to deny the project must be supported by written findings, and those findings must be supported by substantial evidence in the record.

Furthermore, any reviewing court must resolve reasonable doubts in favor of the findings and the agency's decision and the court must presume that the record contains evidence to support every finding. Id. at 514. Not every Board finding, however, needs to be supported by substantial evidence, so long as there is one supported finding that the environmental document in question does not comply with CEQA. See, Saad v. City of Berkeley, 24 Cal.App.4th 1206 (1994) (fact that the denial findings for a use permit included other inadequate findings does not justify overturning the agency's denial).

In short, the burden of proof would be on the party challenging the Board's findings to show that the record does not contain substantial evidence to support the Board's decision, and the Board's findings will be upheld as long as one finding among them is supported by the record.

The subject of the Board's proposed findings is the adequacy of the CEQA document prepared for this project. Thus, CEQA's definition of "substantial evidence" is also relevant in

Attachment B

Board of Supervisors
November 4, 1999
Page 2

As an initial matter, the applicant has requested that the Board waive application of Inyo County Code section 18.81.210, purportedly to allow the applicant to return to the Board on this matter in less than one year "if an acceptable solution [is] worked out with the Independence site." We object to the applicant's request as premature and without basis. We respectfully request that the Board deny the applicant's request without prejudice until such time as the applicant has provided the County and the public with the details of any such "acceptable solution" and only upon the condition that the public and interested parties are duly notified and allowed to comment on any proposed revisions to the project as required by CEQA and County ordinance.

The applicant's counsel also asserts repeatedly that there is no evidence in the record to support the Board's decision on the merits. The record, however, including volumes of written materials and hours of oral testimony, contains more than sufficient evidence to support the Board's decision.

The Board is required to explain its decision to deny the proposed reclamation plan on the basis of the inadequacy of the CEQA document in written findings. Such findings must be legally relevant conclusions that disclose the agency's mode of analysis of the relevant facts, regulations and policies, and must bridge the analytical gap between raw data and the agency's ultimate decision. Topanga Assn. For A Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 515-516 (1974). Topanga establishes the rule that findings must be supported by substantial evidence. Id. at 517, n. 16. Thus, the Board's decision to deny the project must be supported by written findings, and those findings must be supported by substantial evidence in the record.

Furthermore, any reviewing court must resolve reasonable doubts in favor of the findings and the agency's decision and the court must presume that the record contains evidence to support every finding. Id. at 514. Not every Board finding, however, needs to be supported by substantial evidence, so long as there is one supported finding that the environmental document in question does not comply with CEQA. See, Saad v. City of Berkeley, 24 Cal.App.4th 1206 (1994) (fact that the denial findings for a use permit included other inadequate findings does not justify overturning the agency's denial).

In short, the burden of proof would be on the party challenging the Board's findings to show that the record does not contain substantial evidence to support the Board's decision, and the Board's findings will be upheld as long as one finding among them is supported by the record.

The subject of the Board's proposed findings is the adequacy of the CEQA document prepared for this project. Thus, CEQA's definition of "substantial evidence" is also relevant in



Board of Supervisors
November 4, 1999
Page 3

evaluating the underlying "evidence" cited in support of the proposed findings. CEQA specifically defines "substantial evidence" for the purposes of evaluating evidence submitted on the adequacy of an environmental document as "facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts." Public Resources Code § 21082.2. Under case law, relevant personal observation may constitute substantial evidence. Citizens' Association for Sensible Development of the Bishop Area, 172 Cal.App.3d 151 (1985).

Under CEQA, a lead agency must prepare an environmental impact report ("EIR") whenever substantial evidence in the record supports a "fair argument" that significant impacts may occur. Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR. No Oil Inc. v. City of Los Angeles, 13 Cal.3d 68, 75 (1975); Friends of "B" Street v. City of Hayward, 106 Cal.App.3d 988, 1000-1003 (1980).

The "fair argument" standard creates a "low threshold" for requiring preparation of an EIR. Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 304-310 (1988). The "fair argument" standard is founded upon the principle that, because issuing a negative declaration has a "terminal effect on the environmental review process" (Citizens of Lake Murray Area Assn. v. City Council, 129 Cal.App.3d 436, 440 (1982)), an EIR is necessary to resolve "uncertainty created by conflicting assertions" and to "substitute some degree of factual certainty for tentative opinion and speculation". No Oil, 13 Cal.3d at 85.

The primary goal of CEQA is protection of the environment. Pub. Res. Code §§ 21000-21002. The California Supreme Court has repeatedly articulated the principle that CEQA "is to be interpreted . . . to afford the fullest possible protection to the environment." Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 259 (1972).

In reviewing the reclamation plan proposed by the applicant, the County must avoid, reduce, or prevent environmental damage when possible. CEQA Guidelines § 15002(a). Public Resources Code section 21002 states the Legislature's intent that public agencies may not approve projects as proposed if feasible alternatives or mitigation measures would substantially lessen significant impacts. Furthermore, the courts have repeatedly stated the purpose of environmental review "is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564 (1990).

In this instance, the Board applied these standards and limited its decision to the inadequacy of the CEQA document prepared for the proposed reclamation plan. The proposed findings accurately reflect the Board's action and decision in this matter. The applicant, however, asserts that the Board's review went beyond the environmental effects of the proposed

Attachment B

Board of Supervisors
November 4, 1999
Page 4

reclamation plan and that the Board approached its review more in the manner of evaluating a use permit than a reclamation plan.

The record shows that the Board did not approach its review in the manner of a use permit. It did not attempt to impose new conditions of approval on the mining operations or attempt in any way to control, limit or otherwise change the Bureau of Land Management's ("BLM") decision to issue a mineral materials sale contract for the pit to the applicant. Instead, the Board found that the record contains substantial evidence that the proposed mitigated negative declaration for the reclamation plan is inadequate under the "fair argument" standard and that the reclamation plan may result in significant unmitigated adverse environmental impacts. In reaching its decision, the Board properly considered evidence and testimony relating to the adequacy BLM's environmental review, since the proposed reclamation plan and CEQA document also relied on this information.

Contrary to the applicant's claims, CEQA does not prohibit the Board from considering such information as part of its consideration of the proposed reclamation plan and CEQA document. The case cited by the applicant, City of Ukiah v. Mendocino County, 196 Cal.App.3d 47 (1987) also does not limit the Board's action in this matter. In that case, a sand and gravel company had a vested right to continue mining in a streambed without a conditional use permit, provided that it obtained approval of a reclamation plan. In its review of the proposed reclamation plan, the lead agency there imposed various conditions of approval through the CEQA process that would have limited and changed the mining activities allowed under the vested right. The court in City of Ukiah held that, where the applicant has a vested right to mine without a use permit, the lead agency's CEQA review is limited to the adequacy of the reclamation plan.

There are several key facts which distinguish the City of Ukiah case from this matter. First, the applicant does not have a vested right to mine. Second, the proposed mining here will take place on federal land, and under both the 1992 Memorandum of Understanding between the state and BLM and the local area agreement between BLM and Inyo County, the two agencies are required to coordinate their environmental review of the proposed mining and reclamation activities conducted on federal lands. As we explained at the hearing and in written testimony that is part of the record, the County has discretionary authority under federal and state law to conduct its own environmental review of both the mining and reclamation activities, if the County finds that BLM's environmental review of the mining operations was inadequate. The Board, however, declined to exercise that authority and limited its review to the proposed reclamation plan. Third, and most importantly, the Board did not impose new conditions of approval on the proposed mining activities that would be allowed by BLM. Instead, relying on oral and written testimony in the record, the Board has found that the reclamation activities may have significant adverse environmental impacts.

Attachment B

Board of Supervisors
November 4, 1999
Page 5

The applicant here fails to acknowledge the relevant CEQA standard applicable to negative declarations. For each proposed Board finding, the applicant cites to evidence in the record supporting his contentions that there will not be significant impacts. Under CEQA's low threshold, however, even if other evidence supports an opposite conclusion, the agency nevertheless must prepare an EIR where there is a "fair argument" that the proposed project may have significant effects. No Oil Inc. v. City of Los Angeles, 13 Cal.3d 68, 75 (1975); Friends of "B" Street v. City of Hayward, 106 Cal.App.3d 988, 1000-1003(1980). Thus, it is legally irrelevant at this stage whether the record contains opinion testimony by the applicant that contradicts the Board's conclusions, especially in this case since substantial evidence supports each of the Board's findings and the record shows that a "fair argument" has been made that the reclamation plan may have significant impacts.

We understand that the Board has made its decision on the merits, is only considering comments on the adequacy of the proposed findings, and is not planning to reopen the public hearing for further testimony. If the Board for any reason decides to accept further evidence in this matter, we request that the Board do so only at a properly noticed public hearing. We appreciate the opportunity to comment on the applicant's objections and your attention to these comments.

Very truly yours,

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

Ted Stevens

TFS/bh

Cc: Robert Gracey (via facsimile)
Scott A. Morris, Esq. (via facsimile)



Attachment B

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

Phone: (760) 878-0263
(760) 872-2706
FAX: (760) 872-2712
E-Mail: InyoPlanning@telis.org

STAFF REPORT

AGENDA ITEM NO: 12

Date of Meeting: July 28, 1999

EXECUTIVE SUMMARY: The proposal is to mine 550,000 cubic yards of material from an existing borrow pit. At the conclusion of mining, the site will be reclaimed. No asphalt batch plant or crusher will be allowed on site for processing. The material will be used for road construction on State Highways in the Owens Valley. Reclamation will include recontouring, reestablishing drainage and revegetation. The mining life of this project is five years. Reclamation efforts will remain in effect until performance standards are achieved.

PROJECT INFORMATION

Application: Reclamation Plan #97-6/Independence Pit MS #118/ Jaxon Enterprises

Supervisory District: Fourth

Applicant: Jaxon Enterprises
P.O. Box 994248
Redding, CA 96099-4248

Land Owner: Bureau of Land Management, Bishop Resource Area

Location: The project is located 1.2 miles north of the community of Independence, west and adjacent to Highway 395, in Section 7, Township 13S, Range 35E.

A.P.N.: 22-130-00

Zoning: The site is Zoned OS-40 (Open Space 40 acres minimum)

General Plan: Open Space /Natural Resources

Site Size: The parcel size is 80 acres with mining to occur on 32 acres

Proposal: Project is to reclaim the site at the conclusion of mining a maximum of 550,000 cubic yards of material in five year time table. Reclamation will not be considered a success and financial assurances will not be released until performance standards are met.

Alternatives: A. Approval of the Reclamation Plan as recommended by staff. The Independence Pit is to be used to provide construction material for highway projects in the vicinity of Independence.

b. Denial of the Reclamation Plan would leave the following alternatives:

1. Find another source of material to construct the highway. Alternative sites in the area have not been explored by the BLM.

Attachment B

2. Purchase aggregate from a private source.
3. Limit the mining and reclamation activities to a smaller foot print.

PROJECT PLANNER: Earl H. Gann, Mine Reclamation Planner

BACKGROUND:

This site is an old Caltrans material site. To comply with the Surface Mining and Reclamation Act of 1975, Caltrans was required to submit to the Lead Agency (Inyo County) a Reclamation Plan for processing and approval. Caltrans District 9 contracted with the Department of Conservation to write their Reclamation Plans. In the process Caltrans terminated its contract with the Department of Conservation (DOC) and decide to do their own reclamation plans. Caltrans basically used the DOC's documents to rewrite the reclamation plans.

Subsequently, Caltrans relinquished the Independence Pit back to The BLM without completing reclamation. The BLM advertised for a material sale out of the Independence Pit. Jaxon Baker was awarded the contract to mine 550,000 cubic yards of material for use in highway construction for Caltrans.

If this reclamation plan is not approved, mining can not occur on this site, and Caltrans is obligated to reclaim the site with an approved reclamation plan.

PROJECT DESCRIPTION:

This project is a request by Jaxon Enterprises to mine and reclaim 550,000 cubic yards of material out of the Independence Material site MS # 118. Caltrans relinquished the site back to the BLM. BLM has opened the site to bid for the 550,000 cubic yards of material needed for Road construction in the Owens Valley. This contract is for five years and 550,000 cubic yards. At the conclusion of five years, Jaxon Enterprises must reclaim the land to an acceptable end use. Reclamation shall include recontouring, and revegetation to meet the proposed end use of open space. Existing drainage must also be reestablished.

SUBJECT PROPERTY AND SURROUNDING LAND USES:

The subject property has previously been mined by Caltrans for material for use in highway construction. The BLM has allowed the City of Los Angeles Department of Water and Power to construct a water diversion facility through the property. During years of high runoff, water is diverted through the pit in an effort to spread water through the valley and to protect Highway 395 from flooding. Property to the east, north, and south is owned by Department of Water and Power. Property to the west is owned by the BLM. All surrounding property is zoned OS-40.

RECLAMATION TREATMENTS (As submitted by the Applicant in Reclamation Plan)

The reclamation treatments as submitted is attached (see Appendix II. The reclamation treatments are basically the steps in the proposed reclamation plan to accomplish the required reclamation to have the financial assurances released. These proposed treatments are in Appendix II.

STAFF ANALYSIS

This reclamation plan is a conglomeration of many different entities input. Caltrans originally contracted with the Office of Mine Reclamation to write the reclamation plan. Somewhere in the process Caltrans dropped the contract with OMR and edited much information out of the document. Caltrans relinquished the pit back to the BLM and the BLM went to bid for a material sale. Jaxon Enterprises won the bid and Caltrans turned over the reclamation plan to Jaxon Enterprises. Jaxon changed the reclamation plan to reflect their operation. BLM put further conditions on mining and reclamation in their Decision Record attached as Appendix III to address some of the concerns of the people of Independence. One of the reasons Caltrans returned the pit back to the BLM was because Caltrans has refused to pay the processing fees to the County. The idea was that Jaxon would pay the fees and be responsible for the reclamation plan. However, the bid to Jaxon was only for 550,000 cubic yards. Caltrans has scheduled road jobs with material from this pit totaling 1.2 million cubic yards. CEQA requires the County to examine the entire project, i.e. the removal of 1.2 million cubic yards of material as well as reclamation. To keep the project moving forward, the BLM restricted the total amount of material that can be removed out of the pit to 550,000 cubic yards. The remaining material will have to be secured from another source. BLM has also restricted the use of the pit by not allowing the use of a crushing plant or asphalt batch plant on site. Because the stated purpose of the pit is to provide material for highway construction, this leaves the CEQA process not being able to define the entire project. Mining and reclamation beyond the 550,000 cubic yards on this site will require additional CEQA review and amendment of this Reclamation Plan.

The reclamation plan as written above is complete on content. However, many of the proposed conditions are not acceptable to the County. Changes in these conditions will be addressed in the conditions of approval at the end of this document. The Office of Mine Reclamation has commented on the reclamation plan and their concerns will also be reflected in the conditions of approval. Caltrans received a letter from The Department of the Army, Corps of Engineers dated August 8, 1995, stating that the Independence pit contain waters of the U. S. The County received a copy of this letter December 21, 1998. It is unknown if the Bureau of Land Management reviewed the letter.

Several entities have appealed the BLM Record of Decision. One of the points of contention is the issue of the definition of waters of the U. S.

Because the Record of Decision was appealed and not stayed, the County determined they must continue with the processing of the reclamation plan. Conditions of approval will address the issue of waters of the U.S. by requiring approval from the Corps of Engineers prior to mining.

The Plan of Operations and material sale has been approved by the BLM pending the appeal. However, for the County to proceed certain mining methods and reclamation methods will be established by the approval of this reclamation plan first. This reclamation plan can not be implemented until all permits, are obtained by the applicant. Mining can not be implemented until all permits are obtained by the applicant.

As of July 10, 1999, the appeal to the U. S. Bureau of Land Appeals (IBLA) has not been settled. The contract for a material sale has not been issued. Staff is recommending a condition of approval that the reclamation plan approval not be valid or effective until a final decision is made by the IBLA (see condition 36).

Attachment B

COMMENTS

Department of Conservation, Office of Mine Reclamation Comments

Pursuant to the State Mining and Reclamation Act of 1975 (SMARA), Inyo County has submitted the Reclamation Plan to OMR for a 30-day review and comment period on October 30, 1998.

Inyo County has reviewed OMR's comments (see attached) and prepared the following written responses to address the issues. Most of OMR's comments have been incorporated into the Reclamation Plans conditions of approval. Comments were received from OMR on December 1, 1998.

Response To Comments Department Of Conservation **RP 97-6**

Office of Mine Reclamation Comment December 1, 1998

1. SMARA Section 2772(c)(3) requires that the reclamation plan included a termination date. The reclamation plan states that the project will terminate 6 years from the plan approval. We recommended that the month and year of project termination be stated for compliance monitoring.

County of Inyo Response December 28, 1998

1. County staff concurs. The termination date can be rather nebulous when the start date is not set. The termination date will be set by conditions of approval to be five years after the date of Planning Commission approval. (Permit to mine is good only for five years.)

Office of Mine Reclamation Comment December 1, 1998

2. SMARA section 2772(c)(5) requires that the reclamation plan include a map with boundaries and information pertinent to the reclamation of the site. The plot plan for this site should clearly show boundaries of active and future mining areas, topographic details, geology, streams, utilities, haul roads, and stockpile areas (topsoil and material) to scale, on a single (or map with match lines) U. S. Geological Survey quad map. Though cross section maps were provided for this site, Map Sheet #1 and Map Sheet #2 do not have north arrows, a legend or depict the required information.

County of Inyo Response December 28, 1998

2. County staff concurs. Map sheets 1 & 2 do not have north arrows and legends. However, these maps can be superimposed on maps 3 & 4. These maps are photos showing the vegetation on the existing disturbed area. County staff also realized the maps provided show the mining of 1.2 million tons. Staff has requested contour maps showing actual mining contours and reclamation contours.

Office of Mine Reclamation Comment December 1, 1998

3. SMARA Section 2773(a) requires performance standards for topography, erosion and sediment control, and revegetation. In order to be able to monitor compliance with the reclamation plan, performance standards must be specific and tied to a time line. The reclamation plan should specify a time by which the sediment and erosion control measures will be installed. Measures discussed in the plan include: repair and reinforcing basin inlets and outlets; and construction new connector ditch with check dams between basins. The basins, properly constructed, reduce potential adverse impacts from storm water flows over

Attachment B

Highway 395, as well as manage water at the project site. Therefore, the plan should specify the erosion control measures will be constructed during the first phase of operation.

County of Inyo Response December 28, 1998

3. County staff concurs. Performance standards will be included in the conditions of approval. As you know the major responsibility of SMARA is the reclamation of the lands at the conclusion of mining. However, this does not preclude the Lead Agency from requiring acceptable mining practices to insure reclamation success. The methods of mining will determine the extent of reclamation and the appropriate mining method can insure reclamation performance standards.

Office of Mine Reclamation Comment December 1, 1998

4. CCR Section 3705(c) and (d) require that all access roads, haul roads, and other traffic routes be stripped of any remaining roadbase material, decompacted and prepared in accordance with subsection 3705 (g), covered with suitable growth media or topsoil, and revegetated. The reclamation plan states that the access roads will be scarified and asphalt removed. It is not clear if access roads will be decompacted as planned for the site. We recommend that all roads be decompacted prior to scarification to provide an appropriate substrate for plant root penetration.

County of Inyo Response December 28, 1998

4. County staff concurs. Many times scarification and decompacting are presumed to be the same thing. This is not true. All roads, working areas shall be decompacted prior to the spreading of stockpiled topsoil. The site can be scarified at the time of planting. These requirements will be made clear in the conditions of approval.

Office of Mine Reclamation Comment December 1, 1998

5. As stated in comment 3, a discussion of erosion control is not provided in the reclamation plan. Erosion control will be needed until revegetation is established. We recommend that all graded and decompacted areas be mulched with at least 2000 pounds of straw per acre. This material should be incorporated into the reclaimed surface using a sheep's-foot roller or equivalent. Straw applied to the surface and not crimped into the substrate will be lost to wind erosion. In addition, rice straw or certified weed-free straw is highly recommended since non-certified wheat straw contains the seeds of invasive plants. The weed seeds found in rice straw are hydrophilic. Hydrophilic plants require a moist habitat to survive and will not in the arid conditions of this site.

County of Inyo Response December 28, 1998

5. County staff concurs. Erosion control will need to be maintained until revegetation takes hold. The settling pond banks will be the hardest to hold. Weed free mulch will need to be used to stabilize the pits from erosion. This requirement will be a condition of approval.

Office of Mine Reclamation Comment December 1, 1998

6. CCR Section 3711(d) requires topsoil stockpiles to be clearly identified and protected from wind and water erosion. The topsoil stockpiles should be planted with a non-invasive, preferably nitrogen fixing plant or covered with rock mulch (if rock are present on site). CCR Section 3705(e) addresses the need for a soil analysis if the soil is altered or other than native. We recommend that "non-usable materials" that will be used in resoiling be tested.

Attachment B

County of Inyo Response December 28, 1998

6. County staff concurs. The material at this site is alluvial material. The screening that will take place on site will size the material by taking out the larger boulders and undersized material. The only difference between the fines and topsoil no site is that the topsoil contains vegetative material. The need for analysis is not necessary. The planting of nitrogen fixing plants on waste material piles is a very good idea. However, this will only produce topsoil in the top six inches of the pile. The idea of protecting the waste pile from wind erosion by planting is a very good idea. However, when reclamation time comes along, straw mulch is recommended to keep the soil down and supply some vegetative matter to help the seeds to propagate.

Office of Mine Reclamation Comment December 1, 1998

7. Since the topsoil will only be spread to a depth of six inches, the plant roots will be obtaining nutrients from the layer of "non-usable material". An inexpensive soil analysis of this material will let the applicant know if the soil amendments will be necessary, thereby, preventing costly seeding on a substrate that will not support plants due to possible nutrient deficiencies.

County of Inyo Response December 28, 1998

7. County staff concurs. The spreading of six inches of topsoil will be over the entire project area. Areas at the bottom of the pit will be decompacted prior to the spreading of the topsoil. No "non-usable material" will be used in these areas. Plants will have mulch or topsoil with vegetative matter in only the top six inches of "Soil" This is the requirements of SMARA. Plants will be established on this six-inch layer. Eventually plant root systems will go beyond that six inch depth and will need additional nutrients deeper in the ground.

Office of Mine Reclamation Comment December 1, 1998

8. SMARA Section 2773(a) requires that the reclamation plan establish "site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation, and sediment and erosion control." The reclamation plan provides success criteria for percent cover, but fails to include a measurement for density or species richness. Table 4.10-1 states that "perennial density averages 10%." This measurement is incorrect since density is not a percent measurement. Density describes how many individual plants are in a given area. To correctly ascertain reclamation success, the density and species richness in several defined monitoring areas should be specified as success criteria.

County of Inyo Response December 28, 1998

8. County staff concurs. The required site-specific criteria shall be established in the conditions of approval.

Office of Mine Reclamation Comment December 1, 1998

9. The reclamation plan states that "site maintenance and monitoring will continue until BLM and Inyo County deem the reclamation complete or one year after final reclamation, which ever comes first." Revegetation in this area is slow due to the growth habitats of arid-land plants. One year is not sufficient to ascertain reclamation success. Monitoring should be conducted until performance standards are attained.

County of Inyo Response December 28, 1998

9. County staff concurs. The conditions of approval will have performance standards established. Reclamation success will not occur until these performance standards

Attachment B

are attained. This could conceivably take five to ten years depending on the care the applicant takes in establishing proper vegetation.

Office of Mine Reclamation Comment December 1, 1998

10. In addition to providing technical assistance and review of reclamation plans, the Office of Mine Reclamation is authorized to review cost estimates prior to lead agency approval of financial assurance for reclamation plan per SMARA Section 2773.1. The financial assurance estimate included in the reclamation plan states that reclamation costs per acres is \$1387.00. This estimate is not adequate. Several items have been underestimated and others have been omitted from the estimate. For example, the financial assurance estimates for seed cost and equipment rental are very low. In addition, the estimate must include the cost of mobilization to and from the site, and monitoring until success criteria have been met.

County of Inyo Response December 28, 1998

10. County staff concurs. The applicant's financial assurance calculations are usually low and need to be evaluated carefully by County staff. This will be done and the proper amount of financial assurances will be required. This financial assurance will be evaluated each year at the time of the annual mine inspection and adjusted accordingly.

Office of Mine Reclamation Comment December 1, 1998

11. The financial assurance mechanism must include both the lead agency and the Department of conservation as obligees. To be acceptable it should read: "Inyo County or the Department of Conservation." The operator should not be listed as an obligee. Prior to approval, a copy of the financial assurance must be forwarded for review to the office of Mine Reclamation, Reporting and Compliance Unit, 801 K Street, MS 09-06, Sacramento Ca 95814-3529.

County of Inyo Response December 28, 1998

11. County staff concurs. Obligees for this operation must also include the BLM. Financial assurances without the proper terminology will not be accepted and mining can not commence until the financial assurances are approved.

FINANCIAL ASSURANCES:

The applicant has formulated financial assurances for this reclamation plan, as required by SMARA. The applicant calculated financial assurances at \$43,007.00. The Planning Department reviewed the proposed reclamation procedures, costs and the proposed financial assurances and determined they were lacking in mulching monitoring, and mobilization costs. Five years of monitoring costs are also being included in financial assurances. This includes County inspection fees for conduction the inspections. After review, the Planning Department has determined financial assurances of \$52,302.00 are required.

ENVIRONMENTAL REVIEW:

Initial Study and Draft Mitigated Negative Declaration

An Initial Study and Draft Mitigated Negative Declaration was prepared and circulated for this project pursuant to the requirements of the California Environmental Quality Act (CEQA). To date, comments have been received form California Department of Fish and Game, Landels Ripley &

Attachment B

Diamond attorneys for Nikolaus and Nikolaus, Robert Gracey, Arlene Grider, Nancy Masters, Marry Roper and Caltrans. Comment period ended February 16, 1999. Comment period was extended to March 5, 1999.

The comments are addressed in Appendix I, attached.

California Department of Fish and Game

This is a project with a greater than “*de minimus*” findings as defined by the California Department of Fish and Game since it will have a measurable adverse impact on wildlife resources. Native vegetation will be disturbed in the area, so payment of the fee is required pursuant to Section 711.4 of the Fish and Game Code.

If this project is approved, the applicant will be required to pay a fee of \$1250.00 at the time the Planning Department files a Notice of Determination in compliance with the California Environmental Quality ACT (CEQA). The County will then forward the monies to the California Department of Fish and Game. Section 21809(b) of the public Resources Code provides that this project will not be “operative, vested or final “ until this fee has been paid.

PUBLIC NOTICE:

Notice of this public hearing has been published in the *Inyo Register* and mailed to all property owners within 300 feet of the subject property. To date, no comments have been received.

RECOMMENDATION:

Staff recommends the Planning Commission **approve** Reclamation Plan #97-6 Independence Pit MS # 118/ Jaxon Enterprises by taking the following actions:

- A. Based upon the Initial Study and all written and verbal comments received, adopt the Mitigated Negative Declaration of Environmental Impact and certify the requirements of the California Environmental Quality Act have been satisfied.

[Evidence: In accordance with the requirements of the California Environmental Quality Act, an Initial Study and Draft Mitigated Negative Declaration of Environmental Impact were prepared and circulated for public comment.]

- B. Find the proposed reclamation plan conforms and meets the requirements of Chapter 7.70 (Mining & Reclamation) of Inyo County Code and State Mining Reclamation Act of 1975.

[Evidence: Proposed reclamation measures satisfy the objectives set forth in said statutes.]

- C. Find the potential loss of native vegetation and wildlife habitat to be greater than the standards set by the Fish and Game Code for potential habitat loss. Because of the potential loss of native vegetation and wildlife habitat, however sparse, Section 711.4 of the Fish and Game Code requires the payment of \$1,250.00 fee before this project is deemed “operative, vested, or final.” The potential impact is greater than *de minimus* standard of section 711.4. Said \$1,250.00 shall be paid by the applicant at the time the Notice of Determination is filed by the Planning Department (15 days after the reclamation plan approval).

Attachment B

[Evidence: The subject property contains native vegetation and wildlife as documented by the photographic evidence.]

- D. Find the proposed Reclamation Plan # 97-6 is consistent with the Open Space – Natural Resources designation in the Open Space and Conservation Element of the Inyo County General Plan. Further find, based upon substantial evidence in the record, the proposed Reclamation Plan will have little or no probability to be detrimental to, or interfere with, the future adopted General Plan as provided by the State of California’s Governor’s Office of Planning and Research in its March 11, 1998 approval of the County’s request for an extension of time to update its General Plan.

[Evidence: The proposed Reclamation Plan and Conditional Use Permit are consistent with the existing and proposed General Plan Designation of “Open Space – Natural Resources as conditioned.”]

- E. Approve Reclamation Plan No.97-6/Independence Pit MS #118 subject to the following conditions of approval # 1 - #38

Mapping

1. Within six month of approval, the applicant shall provide the County with three contour map with two foot contours showing the following
- a map showing the pre-mining contours,
 - a map showing the post-mining contours,
 - and a map showing contours after reclamation

These maps shall be at a scale of 1”=100’. The maps provided with the reclamation plan show the mining as if the entire 1.2 million cubic yards were to be mined. Because of this the operator shall provide within one month of approval two foot contour maps showing pre-mining, post-mining, and post-reclamation. The contract is for 550,000 cubic yards of material and that is what is allowed to be mined

Term of Plan and Timing of Reclamation

2. Monthly quantities mined shall be reported to County. This is to insure than no more than 550,000 cubic yards of material is mined during the five year period. Once 550,000 cubic yards are mined, mining shall terminate and the site shall be reclaimed per the reclamation plan.
3. Mining shall stop and reclamation shall commence at termination of BLM approval or when 550,000 cubic yards have been removed which ever comes first.
4. Any mining beyond 550,000 cubic yards will require a new reclamation plan application shall be submitted.

Interim Management Plan

5. Through the five year life of this project, the interim management plan shall be implemented during periods of “idle” operations. If zero production occurs during the five-year life of this project, the reclamation plan shall be implemented immediately. Mining can not occur after five years of idle operation.
6. At the conclusion of each period of mining, interim reclamation shall take place. This shall consist of regrading all slopes to 3:1 (H: V) or less.

Attachment B

7. During times of inactivity, the applicant/ operator shall prevent public access to the pit by blocking the entrance with large rocks or installing a gate.
8. During periods of inactivity, all equipment and trash shall be removed from the area. No asphalt or other material shall be disposed on site.
9. During periods of inactivity, all present drainage systems shall be reestablished to the satisfaction of City of Los Angeles Department of Water and Power and the Bureau of Land Management.

Phased Mining

10. Reclaimed areas shall not be re-disturbed during subsequent mining phases. Each phase, as reclaimed, shall serve as a vegetation test plot for subsequent phases.

Dust Control

11. The operator shall control dust at all times by application of water on all surfaces before each day's mining and during the day when dust control is necessary. During high wind events mining shall stop. Dust shall be controlled throughout the pit and on all haul roads. Dust shall not be allowed to move onto U. S. Highway 395.

Waters of the United States

12. The letter of August 8, 1995 from the Department of the Army, Corps of Engineers indicates that the Independence Pit contains waters of the U. S. The operator shall obtain a Section 404 permit from the Corps of Engineers. If the site does not contain waters of the U.S., written clearance must be obtained from the Corps stating that this pit does not contain waters of the U. S. before mining can occur.
13. The applicant shall consult with the California Department of Fish and Game about a section 1603 permit.

Salvage of Growth Media (Topsoil)

14. The top six inches (6") of growth media (topsoil), shall be collected from areas to be disturbed including previously disturbed areas that have re-established vegetation. This topsoil shall be stockpiled in the active work site until the final phase of reclamation.

Equipment and Trash Removal

15. At the conclusion of each phase of mining, all equipment and trash shall be removed from the area.

Erosion Control

16. Pit slopes shall be contoured to a minimum of 3:1 (H: V). These slopes shall be established during times of intermittent operation, when the interim management plan is in affect and during times of final reclamation. All preexisting drainage shall be maintained during mining and during reclamation.
17. Final erosion control shall be established and maintained at the conclusion of mining. This shall be done at the satisfaction of the BLM. If at any time during mining operations or within five years of the conclusion of reclamation, the drainage system fails, the operators shall evaluate the cause of the failure and repair according to the evaluation of the failure.

Attachment B

Water Well

18. Water pumped from the well shall not be allowed to enter the runoff channel and end up entering the aqueduct.
19. The well shall be abandoned at the conclusion of mining.

Earthwork

20. At the conclusion of mining, all waste stockpiles, material stockpiles, shall be used to re-contour all slopes to less than 3:1 (H: V). After recontouring all stockpiled growth media shall be spread over the entire site to a depth of six inches to help promote plant growth.
21. At the conclusion of mining, all compacted areas shall be de-compacted to a depth of two feet. Road berms shall be brought back into the roadway after de-compaction. De-compacting shall not proceed reseeding by more than three days.

Noxious Weed Control

22. During mining and reclamation activities and during idle periods noxious weeds shall be controlled on site.

Seed Sources and Mixtures

23. Seeds used for revegetation shall be collected on or near the site. If sufficient seed is not available, It may be purchased. However, it must be certified that it come from areas within the Owens Valley within twenty miles of the pit site. A seed mix of plant species follows:

| PROPOSED SEED MIX | | |
|-------------------------------|----------------------|---------------------------|
| SCIENTIFIC NAME | COMMON NAME | PLS POUNDS/AC (Min) |
| <i>Artemisia Tridentata</i> | big sagebrush | 1 |
| <i>Atriplex canescens</i> | four-winged saltbush | 8 |
| <i>Atriplex confertifolia</i> | shadscale | 1 |
| <i>Atriplex polycarpa</i> | cattle spinach | 1 |
| <i>Ambrosia dumosa</i> | bur-sage | 2 |
| <i>Hymenoclea salsola</i> | Cheese- bush | 1 |
| <i>Encelia farinosa</i> | brittle brush | 2 |
| <i>Eriogonum fasciculatum</i> | | |
| | California Buckwheat | 2 |
| <i>Sphaeralcea ambigua</i> | desert mallow | 2 |
| <i>Stipa speciosa</i> | needlegrass | 0.5 |
| | | Total 20.5 lbs/acre |

Revegetation Methods

24. After de-compaction, the approved seed mix shall be broadcast and then mixed into the top one-half inch (1/2") of the substrate along with the mulch by either raking or dragging a chain across the seedbed. This shall be done perpendicular to the slope of the pit. Scarification and seeding shall be done within three days of each other and in late October to mid November.

Attachment B

Entrance Road

25. The entrance road needs improvement in turning lanes both north and south from this pit. This is the responsibility of Caltrans to require the applicant to build them according to Caltrans specifications.

Mulching

26. The applicant shall mulch with rice straw at the rate of 1000 pounds per acre into the seeding program. This mulch shall be crimped into the slope to provide both wind and water erosion control and seed holding. This shall be done after seeding has occurred

Revegetation Performance Standards

27. Reclamation will not be considered successful or complete until vegetation density reaches 20 percent (number of plants per unit area) compared to the surrounding undisturbed land. The site shall have a 50 percent diversity (species richness) of perennial species compared to the surrounding undisturbed land. New perennial species shall be at least two years old before being considered viable plants. This shall be verified based upon visual calculations and substantiated by past photographs of the site including off site photographs of the surrounding undisturbed lands.

Monitoring

28. From initial seeding, the project shall be monitored until performance standards are met. Remedial measures may be implemented any time to insure revegetation success. For the first two years, monitoring shall be performed twice a year.

Remedial Measures

29. If it appears the site will not meet the performance standards, the applicant shall consult with the Planning Department for recommendations on remedial measures. The remedial measures listed below shall be considered if reclamation problems are observed during annual monitoring:
- a. Fertilizing
 - b. Reseeding
 - c. Irrigation
 - d. Planting of appropriate plants and protection of these plants.
 - e. If irrigation is used the plants must make it on their own for two years.
 - f. Analysis for soil problems (applicant may wish to do this up front.).
 - g. Measures to reduce pest problems, including fencing individual plants.

Reporting and Annual Inspections

30. Each year the applicant shall file an annual mining report with the State. These reports shall be filed until financial assurances are released. Monitoring activities will continue until the County is satisfied that performance standards have been met. In accordance with SMARA Section 2774(b), Inyo County as the Lead Agency shall inspect the site and file annual inspections reports with the State.

Reclamation Responsibility Statement

31. The Applicant shall submit a notarized statement to the Inyo County Planning Department accepting responsibility for reclaiming the land as per the conditions specific herein.

Financial Assurances

32. Financial assurances in the sum of \$52,302.00 are required in the form of a surety bond, irrevocable letter of credit, cash or certificate of deposit. Financial assurances shall be

Attachment B

posted with the Inyo County Planning Department. Said assurances shall be made payable to the County of Inyo and the Department of Conservation and the Bureau of Land Management.

Financial Assurance Recalculation

- 33. Financial assurances shall be recalculated each year in accordance with Section 2773.1(a)(3) of SMARA and Inyo County Code. This shall occur at the time of the annual inspection.

Release of Financial Assurances

- 34. As required reclamation standards are achieved, that portion of financial assurances covering the completed activity may be released. The remainder of financial assurances covering revegetation and monitoring shall not be released until revegetation performance standards is met.

Other Permits

- 35. This Reclamation Plan is not valid without all permits required by any other responsible agencies in the mining, processing and reclamation of the Independence Pit.
- 36. If the Interior Board of Land Appeals reverses the Bureau of Land Management Decision Record and the BLM cancels the sale, the applicant shall commence reclamation of the site immediately.

Conditions and Limitations

- 37. Once any portion of this Reclamation Plan is implemented by commencing of mining, all of its conditions and limitations shall be operative, and violation of any part shall constitute a violation of this reclamation plan and Chapter 7.70 of Inyo County Code.

Hold Harmless

- 38. The applicant, landowner, and operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its agents, officers and employees to attack, set aside, or annul any approval of the County, its advisory agencies, appeal boards, or its legislative body concerning reclamation plan No. 97-6/ Independence Borrow site MS # 118.

Attachments: Memo from County Counsel
Appendix I, Response to comments including Department of Conservation, Office of Mine Reclamation Comments
Appendix II (Reclamation Treatment Plan)
Appendix III BLM Decision Record
Vicinity Map

Date Reviewers Initials

| | | |
|--|-------------------|--|
| | Project Planner | |
| | Review Planner | |
| | Planning Director | |
| | Secretary | |



Office of the County Counsel

Inter-Office Memorandum

TO: Peter Chamberlin, Planning Director
Chuck Thistlethwaite, Associate Planner
✓ Earl Gann, Reclamation Planner

FROM: Allen R. Berrey, Deputy County Counsel

ARB

DATE: July 1, 1999

RE: Reclamation Plan #97-6/Independence Pit/Jaxon Enterprises



As you know, this office has previously advised the Planning Department that the fact that an appeal has been filed with the Interior Board of Land Appeals (IBLA) over the BLM's approval of Jaxon Enterprises' Independence Pit surface mining operation does not and should not stop the County from processing Jaxon's reclamation plan application filed with the County pursuant to SMARA. The basis of that recommendation was that, because the IBLA appellants had not obtained a stay of the BLM's approval pending resolution of the IBLA appeal, there was no legal justification for the County to refuse to process the reclamation plan application.

However, it is my understanding that Jaxon's reclamation plan application is scheduled to be heard by the Planning Commission at its July 28, 1999 meeting, and this raises the issue whether the Planning Commission can **approve** the reclamation plan (as opposed to the Planning Department **processing** the application therefor) while the IBLA appeal is pending.

As you know, Inyo County Code section 7.70.020.A. states in part that:

"Permits to mine on public and Indian lands shall be obtained from the agency or tribal council administering these lands prior to consideration of **approval** of a reclamation plan and financial assurance by the planning commission." (emphasis supplied)

Again, while, technically, the applicant has "obtained" a permit or authorization to mine on public (BLM) land, that permit or authority is under appeal to the IBLA and could, therefore, be revoked by the BLM or at least remanded back to the local BLM office for further review.

Attachment B

Given that surface mining operations can cause irremediable damage to the land, it would not seem prudent or in furtherance of the policies behind SMARA for the County to authorize those mining activities, via approval of Jaxon's reclamation plan, while the IBLA appeal is pending.

As a compromise to this procedural dilemma, it is suggested that, if the Planning Department is inclined to recommend that the Planning Commission approve the reclamation plan, that it further recommend that the Planning Commission's approval of the reclamation plan not take effect until the IBLA appeal is resolved in such a way that it is clear that BLM's approval of the surface mining operation is no longer in doubt and/or that the project is not subject to further review or study by BLM.

The legal basis of this recommendation would be Inyo County Code section 7.70.020.A., quoted above, and the Planning Commission's/Board of Supervisor's statutory duty and authority to administer SMARA, as well as CEQA, in furtherance of the goals of those laws.

Please be advised the above is only a recommendation; it would be lawful for the Planning Commission to unconditionally approve the reclamation plan application in question or to approve it subject to the condition discussed above or, if the facts warrant, to deny the application altogether. The purpose of this memo is simply to advise that, while the Planning Department was required to process the reclamation plan application even though an IBLA appeal had been filed because no stay of the BLM's approval had been obtained, the absence of such a stay does not prevent the Planning Commission from conditionally approving the application as discussed above.

Please do not hesitate to call or come by should you have any questions or comments or would like to discuss this matter further.

Attachment C



COUNTY OF INYO
ENVIRONMENTAL HEALTH DEPARTMENT

August 10, 2022

Ryan Smith-Standridge
Inyo County Planning Department
168 N. Edwards Street
Independence, CA 93526

RE: Water well located at the MS 118 Independence Pit Mine

Dear Ms. Smith-Standridge,

While contractors worked the MS 118 Independence Pit Mine, they removed the water well without a permit from this office. Therefore, there is no record of the contractor destroying the well according to the provisions outlined in Part III, Section 23 of the California Combined Water Well Standards.

That said, attempts to find the well only occurred after CalTrans completed the reclamation. Still, the CalTrans reclamation contractor found no signs of the well during their work, including site grading and soil decompaction.

Therefore, the Inyo County Environmental Health Department (EHD) agrees that, given the finished remediation, trying to find the well may do more harm than good at this point. Given the dry climate and remote location, the threat to water quality from the missing well is minimal, and Inyo County EHD is willing to forgo any further efforts to locate the well. However, should the well's location ever be known, CalTrans and BLM will be responsible for abandoning the well according to state well abandonment procedures within 30 days of its discovery.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jerry Oser", is written over a light blue circular stamp.

Jerry Oser, Director

Phone (760) 878-0238 • Fax (760) 878-0239
P.O. Box 427, Independence, CA 93526

<https://www.inyocounty.us/services/environmental-health>



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Bishop Field Office
351 Pacu Lane, Suite 100
Bishop, CA 93514
www.blm.gov/office/bishop-field-office

January 31, 2022

CACA 047712
CA170.10
280000

Mr. Ryan Dermody, Director
Caltrans District 9
500 South Main Street
Bishop, CA 93514

Dear Mr. Dermody:

The Bureau of Land Management (BLM) received your letter regarding the MS 118 Independence Pit mine (CA Mine ID 91-14-0032). The BLM agrees that reclamation and revegetation of the site has been successfully achieved, and the California Department of Transportation (Caltrans) shall be responsible for any future costs and/or damages related to the abandonment of this well.

As Caltrans has committed to properly address and destroy this well if ever discovered, the BLM encourages Inyo County to submit the final Surface Mining and Reclamation Act (SMARA) paperwork to the California Division of Mining and Reclamation and retire the mine ID associated with this site.

Sincerely,

**SHERRI
LISIUS**

Digitally signed by
SHERRI LISIUS

Date: 2022.01.31
11:33:11 -08'00'

Sherris Lisius, Acting Field Manager
Bishop Bureau of Land Management

Attachment E

DEPARTMENT OF TRANSPORTATION

District 9
500 SOUTH MAIN STREET
BISHOP, CA 93514
PHONE (760) 874-8315
FAX (760) 872-0754
TTY 711
www.dot.ca.gov

Inyo County
Planning

DEC 2 2022

RECEIVED



Making Conservation
a California Way of Life.

November 30, 2022

Ms. Ryan Standridge
Inyo County
Planning Department
168 North Edwards Street
Independence, CA 93526

Amendment to Reclamation Plan 97-6/Pit MS# 118

Dear Ms. Standridge,

The California Department of Transportation (Caltrans) received your letter dated October 19, 2022, regarding the notice of incomplete application for the subject reclamation plan amendment for the Caltrans operated Independence Pit (Mine ID 91-14-0032). This letter is in response to the three bulleted items that need be addressed to deem the application complete. Below are the three requested items, as requested in the letter, and responses to address these items.

- *“Description of what Caltrans did to locate records. Did you look through your resident engineer’s daily forms? Did you contact the contractor for their records?”*
 - response: Assuming this is regarding the water well circumstances of abandonment. We looked through all available records from the project files that were still accessible, but most have exceeded the Departments record retention periods for archiving and have been disposed. RE daily diaries and forms were disposed of through the post archiving process, though records of well establishment and abandonment were not noted as a contractor submittal requirement at the time. Attempts to contact Skanska’s Los Angeles office and track down projects records or staff associated with the project did not result in any further findings. Associated staff have either been fired or retired, and due to the agencies document retention schedule, no such documentation associated with the contract was available.

Attachment E

Ms. Standridge
November 30, 2022
Page 2

- *"Written Authorization from BLM. After receiving an unofficial electronic copy I emailed Larry Primosch he will not sign until he sees a financial responsibility agreement is included in the application with wet signature."*
 - response: We are hopeful that with the additional financial assurances information provided and the signed Financially Responsible Party Agreement (FRP) form in wet ink, that BLM will be satisfied and willing to provide Inyo County with written concurrence to allow the reclamation plan amendment to be approved.
- *"Financial Responsibility Agreement."*
 - response: See signed FRP attached.

Caltrans District 9 receives approximately five million dollars a year from the State Highway Operations and Protection Program (SHOPP) to fund Minor B projects (projects up to \$388,000), at the Districts discretion, and Minor A projects (projects that exceed the Minor B limit and up to \$2,000,000) which need to be approved by the California Transportation Commission. The District has a Minor B project currently set up under Project EA 39430 and Advantage ID 0922000033, which will more than cover the estimated remediation costs to properly dispose of the water well if discovered and reclaim any associated access disturbance, which is estimated at \$27,127.34 from the submitted Financial Assurance Cost Estimate with the reclamation plan amendment package.

I appreciate your attention to this matter and hope that we can find resolution that works for all parties. Please do not hesitate to contact me at (760)874-8315 or by email at forest.becket@dot.ca.gov.

Sincerely,



FOREST BECKET

Caltrans District 9, Local Assistance Office Chief

FINANCIALLY RESPONSIBLE PARTY AGREEMENT

The Financially Responsible Party (FRP) shall be Caltrans District 9. Caltrans District 9 shall be responsible for all fees and costs associated with the well located on parcel 022-130-026. Caltrans District 9 shall be responsible for paying contractor fees for expenses necessary to complete the proper abandonment should the well be discovered after the mine site is closed and the mine has been retired by the Department of Mining Reclamation. This agreement ("Agreement") is entered into by the County of Inyo (County), Bureau of Land Management (BLM) and Caltrans District 9; the FRP must supply adequate proof of financial encumbrance for the budget of this agreement. Caltrans shall provide an accounting certification provided by an accounting officer to BLM and the County.

Except as provided in, "Indemnification," below, this Agreement is limited in scope to well abandonment.

1. Indemnification. Caltrans agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its "Indemnitees" (herein collectively the County's elected officials, appointed officials (including Planning Commissioners), officers, and its authorized officers, employees, agents, advisory agencies or committees, appeal boards or legislative body and volunteers) from any and all claims, actions, or proceedings against the County or its Indemnitees to attack, set aside, void, or annul an approval of the County and/or its Indemnitees concerning the amendment action, losses, damages, and/or liability arising out of this Agreement and the application(s) from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Indemnitees on account of any claim except where such indemnification is prohibited by law.

This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. Caltrans indemnification obligation applies to Indemnitees' "passive" negligence but does not apply to Indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of CivilCode section 2782.

Caltrans shall reimburse the County and its Indemnitees for all expenses resulting from such actions, including any court costs and attorney fees, which the County or its Indemnitees may be required by a court to pay as a result of such action.

Although the County may, at its sole discretion, participate at its own expense in the defense of any such action, such participation shall not relieve Caltrans of their obligations under this condition to reimburse the County or its Indemnitees for all such expenses. County will act reasonably to promptly notify Caltrans of any claim, action, or proceeding and that the County will cooperate fully in the defense.

2. Indemnification. Caltrans agrees to indemnify, defend (with counsel reasonably approved by BLM) and hold harmless the County and its "Indemnitees" officers, and its authorized officers, employees, agents, advisory agencies or committees, appeal boards or legislative body and volunteers from any and all claims, actions, or proceedings against the BLM or its Indemnitees to attack, set aside, void, or annul an approval of the BLM and/or its Indemnitees concerning the amendment action, losses, damages, and/or liability arising out of this Agreement and the application(s) from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Indemnitees on account of any claim except where such indemnification is prohibited by law.

This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. Caltrans indemnification obligation applies to Indemnitees' "passive" negligence but does not apply to Indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of CivilCode section 2782.

Caltrans shall reimburse the BLM and its Indemnitees for all expenses resulting from such actions, including any court costs and attorney fees, which the BLM or its Indemnitees may be required by a court to pay as a result of such action.

Attachment F

Although the BLM may, at its sole discretion, participate at its own expense in the defense of any such action, such participation shall not relieve Caltrans of their obligations under this condition to reimburse the County or its Indemnitees for all such expenses. The County will act reasonably to promptly notify Caltrans of any claim, action, or proceeding and that the County will cooperate fully in the defense. Caltrans agrees that its indemnification obligations under this Agreement remain in effect even though a court may order the County to complete the well abandonment.

- 3. Change of Caltrans Representative or Address. In the event of change, the County and BLM must be notified within ten (10) working days in writing.
- 4. Notification. Any notification(s) shall be directed to the appropriate department as indicated below:

Planning Department
 Attn: SMARA
 Coordinator
 P.O. Drawer L
 Independence, CA 93526
 (760) 878-0263

BLM- Bishop
 Attn: Larry Primosch
 351 Pacu Lane, Suite 100
 Bishop CA 93514

- 5. This Agreement shall be governed by and construed according to the laws of the State of California.

Executed on the 30 day of November, 20 22

Ryan A. Dermody, Caltrans District 9 Director
 Financially Responsible Party (Please print and sign)