



**Planning Department  
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**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:**

<b>Location:</b>	<b>Use:</b>	<b>Gen. Plan Designation</b>	<b>Zoning</b>
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
	<b>Total</b>	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.

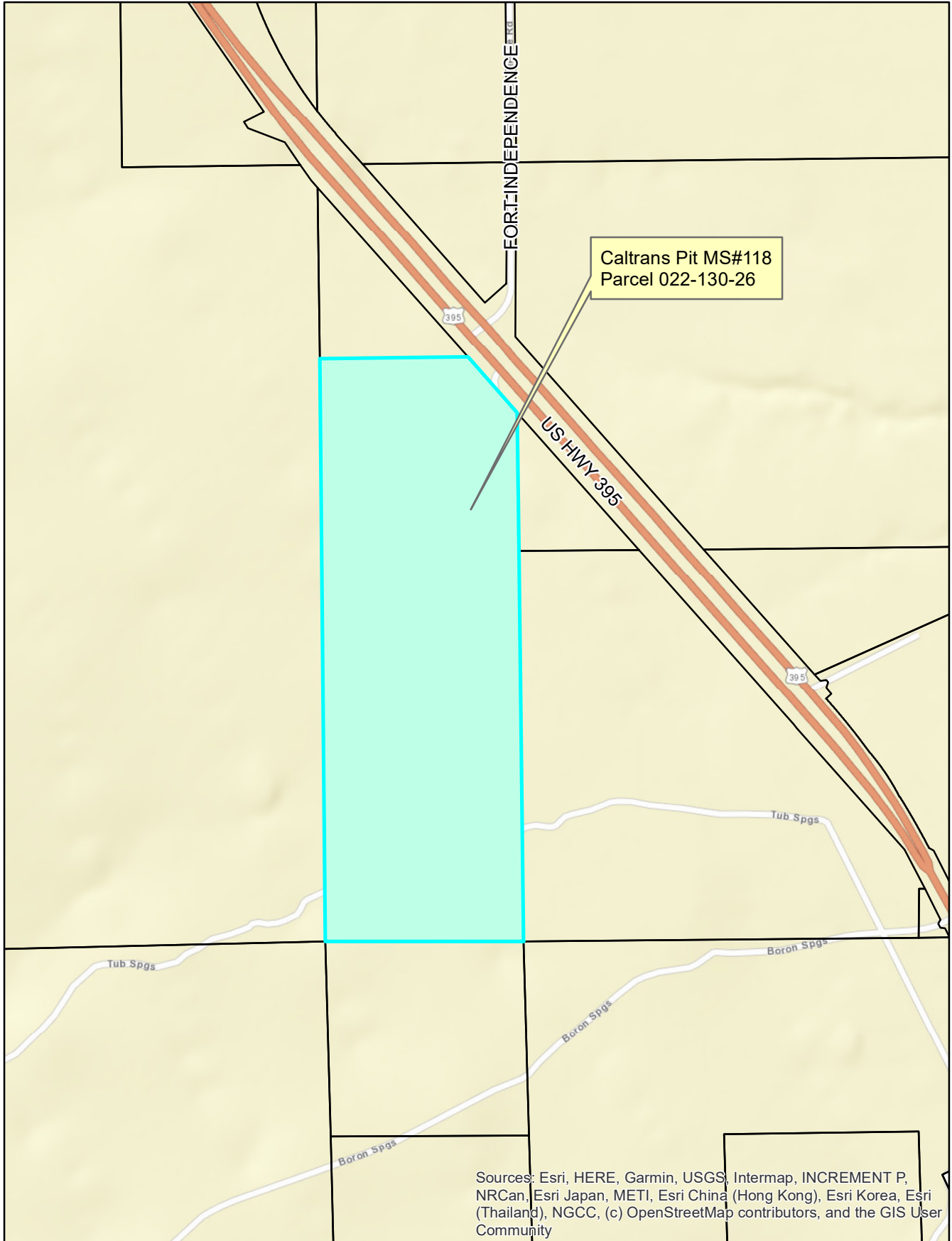
## **HOLD HARMLESS**

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.

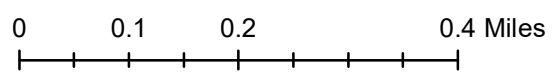
### Attachments:

- 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



## Attachment B



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### 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, 4<sup>th</sup> District Supervisor  
Rich White, 4<sup>th</sup> 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**

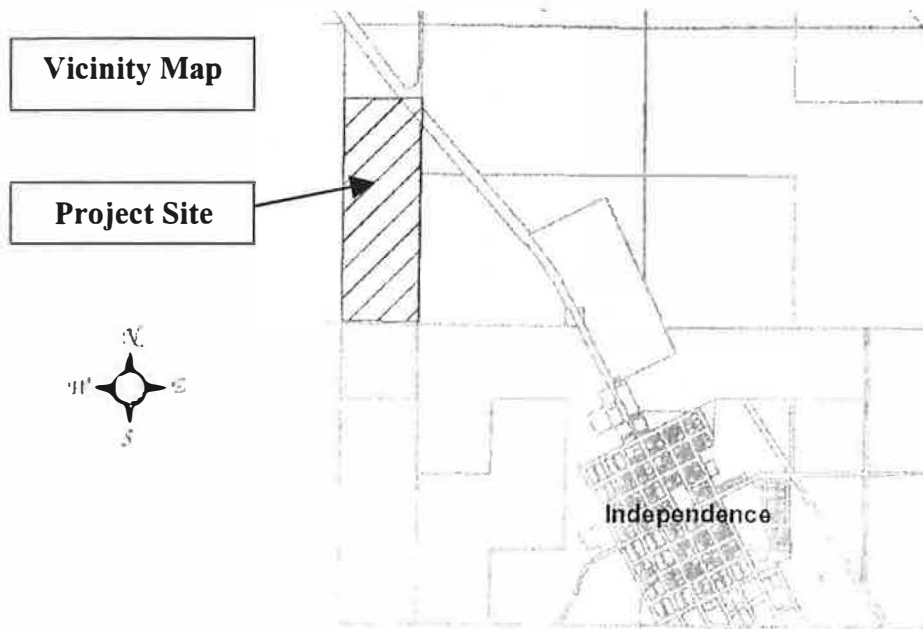
**SUBJECT:**

**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
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<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.
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### **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**

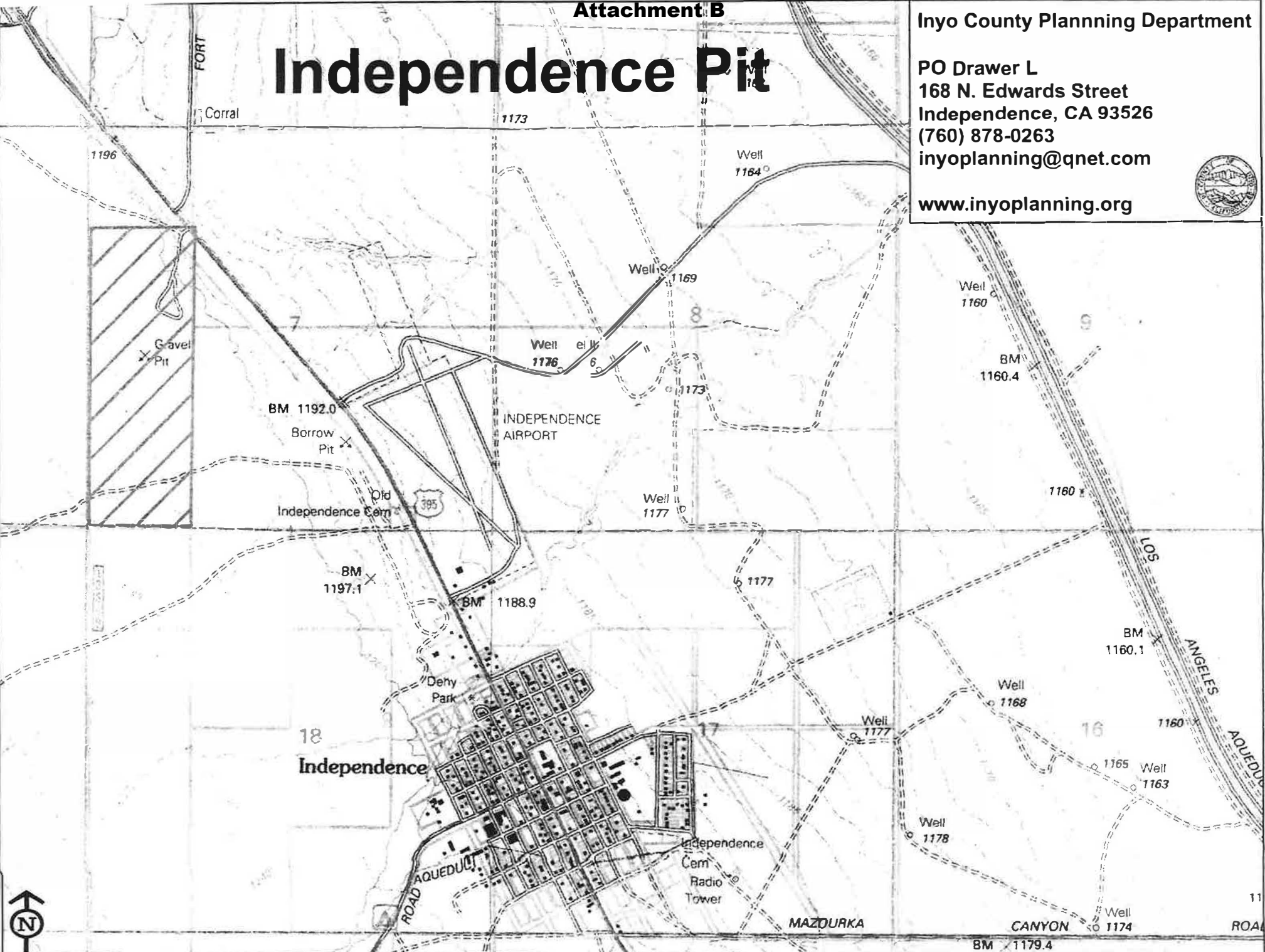
37. The applicant, landowner, and operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from, any claim, action, or proceedings against the County, its agents, officers and employees to attack, set aside, or annul any approval of the County, its advisory agencies,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

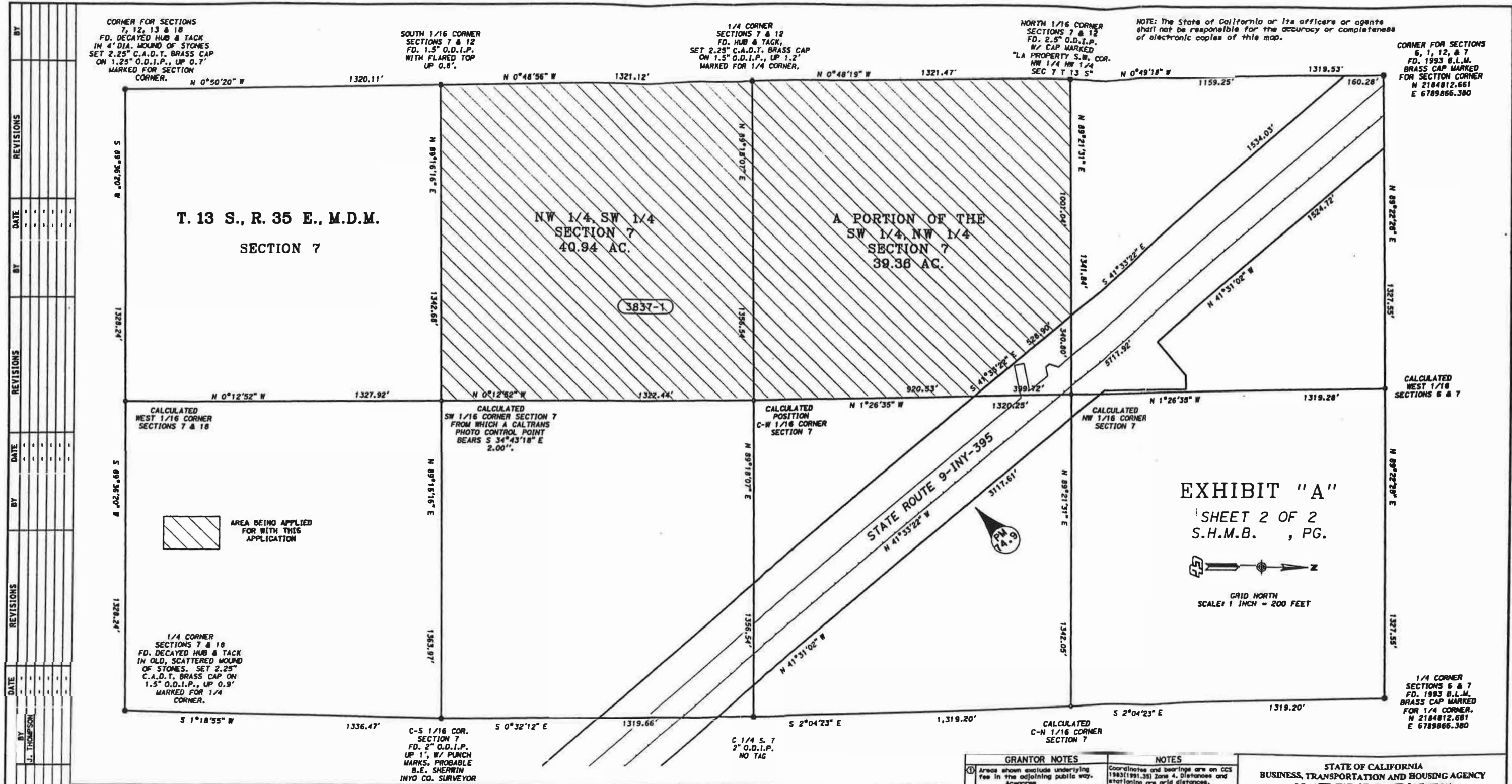
Attachment: Vicinity Map

# Independence Pit

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

[www.inyoplanning.org](http://www.inyoplanning.org)





R/W PROJECT SURVEYOR	DATE	REVISIONS	BY	DATE	REVISIONS	BY
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 0.999716781 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 Radial Bearing
- 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 <u>X</u>
Purchasing _____
Personnel _____
Auditor _____
CAO _____
Other <u>Planning</u>
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**

For Clerk's Use Only:  
**AGENDA NUMBER**  
16



**AGENDA REQUEST FORM**  
**BOARD OF SUPERVISORS**  
**COUNTY OF INYO**

- 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 4<sup>th</sup>.

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.

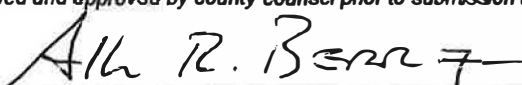
**OTHER AGENCY INVOLVEMENT:**

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, 27<sup>th</sup> 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 Moskovitz 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 9<sup>th</sup>, 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, 27<sup>TH</sup> 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 25<sup>th</sup> 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

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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



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Ted Stevens Jr.
415 512 4647
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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.

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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

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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

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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.

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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  
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Post Office Drawer L  
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### 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

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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

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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

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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](http://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**  
Sherri Lisius, Acting Field Manager  
Bishop Bureau of Land Management

Digitally signed by  
SHERRI LISIUS  
Date: 2022.01.31  
11:33:11 -08'00'

## 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)