

MINUTE ITEM
This Calendar Item No. 27
was approved as Minute Item
No. 27 by the State Lands
Commission by a vote of 3
to 0 at its 5/31/89
meeting.

CALENDAR ITEM

A 76
S 39

27

05/31/89
W 2875.73 PRC 7301
Willard
Pelka

MINERAL EXTRACTION LEASE
SAN DIEGO COUNTY

APPLICANT: Nelson and Sloan Co.
Post Office Box 448
Chula Vista, California 92012

AGENT: Donald R. Ford
Overton, Lyman & Prince
550 South Flower Street
Los Angeles, California 90071-2467

AREA, TYPE OF LAND AND LOCATION:
Patented, State school lands, with 100 percent
(100%) minerals reserved to the State and
further described as follows: The SW 1/4 of
NW 1/4, and the N 1/2 of SW 1/4 of Section 36,
T14S, R1W, SBM, southwestern San Diego County
excepting therefrom those lands specifically
excluded as contained in Exhibit "A".

LAND USE: Extraction of rock, sand and gravel. The
material is processed on site at a crushing and
screening plant for production of a variety of
salable products.

TERM: The lease term shall be ten years with a
preferential right to renew the lease for one
successive period of ten years upon such
reasonable terms and conditions as may be
prescribed by the State, including but not
limited to, modification of the royalty or any
other provisions in a manner which, in the
opinion of the State, will adequately protect
the interests of the State.

CALENDAR ITEM NO. 27 (CONT'D)

ROYALTY: Ten percent of the gross value of any and all minerals produced, extracted, shipped, used or sold, less certain charges incurred with respect to transporting and processing the State's royalty share of production, but not less than twenty-five cents (\$.25) per ton.

A nonrefundable minimum annual royalty payable on the lease anniversary date, whether or not material is extracted from the leased premises, shall be computed based on a minimum annual required production of 30,000 tons per year times the royalty rate. Such minimum royalty per ton shall be credited against royalties due on products sold during the year.

BOND: Lessee shall furnish and maintain a continuous bond in the sum of \$20,000, guaranteeing faithful performance by Lessee of the terms, covenants and conditions of the lease.

STATUTORY AND OTHER REFERENCES:

- A. Cal. Code Regs.: Title 2, Section 2200.
- B. P.R.C.: Div. 6, Section 21080.11.

AS 884: N/A.

OTHER PERTINENT INFORMATION:

Nelson and Sloan, Inc., a sand, gravel and cement company occupies a parcel of land in Section 36, Township 14S, Range 1W, SBM, San Diego County. The parcel surface was originally sold by the State in 1946. One hundred percent (100%) of the minerals were reserved to the State. Through subsequent conveyances the parcel vested in Tri-Way Materials, Inc. in 1965. None of these deeds contained the mineral reservation. On March 17, 1974, Nelson and Sloan entered into a stock merger with Tri-Way and gained ownership of the parcel.

Nelson and Sloan report that gravel has been extracted from the parcel since the mid-1960's. This unauthorized extraction of the State's minerals was discovered by staff in 1984. When presentation of the State's claim was made, Nelson & Sloan denied it.

CALENDAR ITEM NO. 27 (CONT'D)

In 1985, a lawsuit was filed by the State Lands Commission against Nelson and Sloan seeking to quiet title and receive compensation for minerals removed. A number of meetings have been held with Nelson and Sloan in an attempt to settle this matter without further litigation. An agreement has been reached whereby Nelson and Sloan will recognize the State's title and the State Lands Commission will withdraw its lawsuit for a settlement amounting to \$207,260.25 as payment for past extraction, including interest, and execution of a mineral extraction lease. Nelson and Sloan has requested damages be paid in 12 equal monthly installments beginning June 1, 1989 with interest at 10 percent on the remaining unpaid balance. Staff recommends approval of this request. Adjacent to the State's reserved mineral interest parcel, Nelson and Sloan has private lands under lease and has been producing these properties during settlement discussions with the State. In order to protect the State's interest, procedures have been provided in the lease for prior notification when extraction will occur from these adjacent private lands. Additionally, an aerial survey has been flown to establish baseline resource data which will be compared with future surveys to insure proper accounting of State-owned material.

ENVIRONMENTAL INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines, the staff has determined that the boundary settlement is exempt from the requirements of the CEQA as part of a litigation settlement on title and damages to the leased premises. (P.R.C.: Div. 6, Section 21080.11.
2. As to the issuance of the lease, an Environmental Impact Report (Permit #77-66, Log #77-14-119) was prepared in 1979 with the County of San Diego as Lead Agency. A Notice of Determination was filed on

CALENDAR ITEM NO. 27 (CONT'D)

April 19, 1979 stating that the project would not have a significant adverse affect on the environment. Commission staff have reviewed these findings.

3. A surface Mining and Reclamation Plan has been approved for the mining operation by the San Diego County Planning Department.

APPROVALS OBTAINED:

Pursuant to P.R.C.: Section 6890, the subject lease form has been approved by the Office of the Attorney General as to compliance with the applicable provisions of the law.

EXHIBITS:

- A. Land Description.
- B. Site Map.
- C. Notice of Determination.

IT IS RECOMMENDED BY THE COMMISSION:

1. FIND THAT THE LITIGATION SETTLEMENT ON TITLE TO THE LEASED PREMISES IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA (P.R.C.: DIV. 6, SECTION 21080.11)
2. FIND THAT AS TO THE ISSUANCE OF THE MINERAL EXTRACTION LEASE THAT AN EIR WAS PREPARED AND CERTIFIED BY THE COUNTY OF SAN DIEGO AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
3. ADOPT THE FINDINGS OF THE COUNTY OF SAN DIEGO (PERMIT #77-66, LOG #77-14-119) AND DETERMINE THAT THE PROJECT WOULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
4. AUTHORIZE THE ISSUANCE OF A MINERAL EXTRACTION LEASE TO NELSON AND SLOAN, CO. FOR A TERM OF TEN YEARS, FOR ROCK, SAND AND GRAVEL ON THE SW 1/4 OF NW 1/4 AND THE N 1/2 OF SW 1/4 OF SECTION 36, T14S, R1W, SBM, APPROXIMATELY 120 ACRES; IN ACCORDANCE WITH THE STANDARD FORM OF LEASE; ROYALTY SHALL BE TEN PERCENT OF THE GROSS VALUE OF ANY AND ALL MINERALS PRODUCED, EXTRACTED, SHIPPED, USED OR SOLD, LESS ANY CHARGES THAT ARE MADE OR INCURRED WITH RESPECT TO TRANSPORTING OR PROCESSING THE STATE'S ROYALTY SHARE OF PRODUCTION, BUT NEVER LESS THAN \$.25 PER TON.

CALENDAR ITEM NO. 27 (CONT'D)

5. ACCEPTANCE OF \$207,260.25 IN DAMAGES AS COMPENSATION TO THE STATE FOR CONVERSION OF THE STATE'S MINERAL INTEREST. DAMAGES TO BE PAID IN 12 EQUAL MONTHLY INSTALLMENTS OF TEN-PERCENT (10%) INTEREST ON THE REMAINING UNPAID BALANCE BEGINNING JUNE 1, 1989.
6. AUTHORIZE THE DISMISSAL OF LITIGATION UPON EXECUTION AND APPROVAL OF THE MINERAL EXTRACTION LEASE.

EXHIBIT "A"

LAND DESCRIPTION

W 2875.73

A parcel of school land, being the North 1/2 of the Southwest 1/4 and the Southwest 1/4 of the Northwest 1/4 of Section 36, T14S, R1W, SBM, in the County of San Diego, California, according to the official plat thereof.

EXCEPTING THEREFROM all that land lying southwesterly of the following described line;

COMMENCING at the northwest corner of lot 1 of above said Section 36, which bears S 89° 00' 05" East (record S 89° 23' 21" E), 229.36 feet from a field identified 2 inch iron pipe with L.S. Tag No. 2317 shown on Record of Survey No. 1960 as a point on the north line of the south 1/2 of the Southwest 1/4 of Section 35, T14S, R1W, SBM; thence along the northerly line of said Lot 1, S 88° 57' 00" E, 37.06 feet (record 36.41 feet) to a point of intersection with the northeasterly right of way line of California State Highway XI-SD-198-H (said right of way being the southwesterly line of the property conveyed to Tri Way Material Inc., recorded September 21, 1967, F.N. 144300); thence along said right of way line, S 54° 42' 42" E, 637.82 feet; thence leaving said right of way line, N 40° 40' 32" W, 412.31 feet; thence N 59° 34' 15" W, 104.23 feet to the north line of said Lot 1 and the **POINT OF BEGINNING**; thence continuing N 59° 34' 15" W, 234.92 feet to the westerly line of said Section 36 and the end of the herein described line.

END OF DESCRIPTION

PREPARED APRIL 26, 1989 BY BIU 1.

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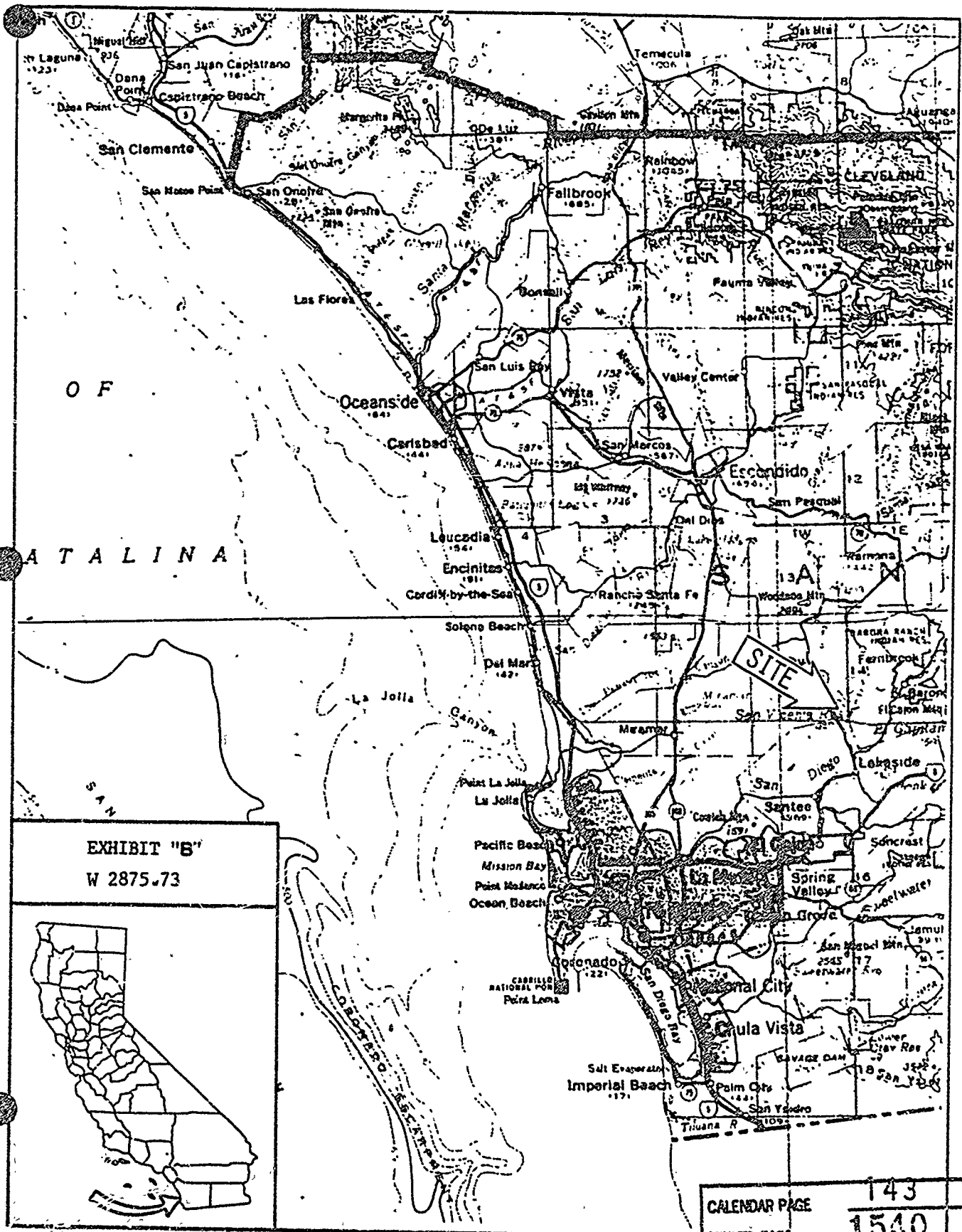


EXHIBIT "B"
W 2875.73



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EXHIBIT "C"
NOTICE OF DETERMINATION

Instructions for Filing: This Notice of Determination is to be filed by the approving body of the Lead Agency (Board of Supervisors, Planning Commission, etc.) with the San Diego County Clerk, County Courthouse, 220 West Broadway, San Diego, CA 92101/Mail Station #C11. A copy should be sent to the Environmental Analysis Division, 9150 Chesapeake Dr., San Diego, CA 92123/Mail Sta. #0175

TO: County Clerk, County of San Diego #C11

FROM: County of San Diego

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title:	
Permit # P77-66	Log # 77-14-119
State Clearinghouse Number (if submitted to State Clearinghouse):	
Contact Person: Sonja F. Itson, Assistant Director (Acting)	Telephone Number: 714-565-3928
Description of Project: Environmental Impact Report heard by the Environmental Review Board on: Date: March 1, 1979	

This is to advise that the County of San Diego
(Lead Agency)
has made the following determinations regarding the above-described project:

1. The project has been approved disapproved by the Lead Agency.
2. The project will will not have a substantial adverse (significant) effect on the environment.
3. An Environmental Impact Report was prepared for this project pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of this Negative Declaration is attached.

Date April 19, 1979

Gerald M. Hermanson
Signature
GERALD M. HERMANSON, Deputy

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SAN DIEGO COUNTY PLANNING COMMISSION

9150 Chesapeake Drive

San Diego, California 92123

November 2, 1979

Decision of the Commission
On the Application of Nelson-Sloan
Application Number RP 79-11

GRANT, as per reclamation plan dated July 24, 1979, a Reclamation Plan pursuant to Section 87.701-714 et. seq. of the County Code and in compliance with the State Surface Mining and Reclamation Act of 1975.

The following conditions are imposed with the granting of this Reclamation Plan:

- A. Within 120 days of the granting of this Reclamation Plan or prior to any expanded use of the property, whichever is less, the applicant shall execute a "Right of Entry" agreement in favor of the County of San Diego in compliance with Section 87.707 of The County Grading Ordinance.
- B. Security in an amount to assure compliance with the Right of Entry Agreement required in Condition A shall be posted with the Director of the Department of Planning and Land Use, and may be (a) a bond or bonds by one or more duly authorized corporate securities, or (b) a deposit of money or negotiable bonds of the kind approved for securing deposit of public moneys, or (c) an instrument of credit from one or more financial institutions subject to regulation by the State or Federal Government and pledging that the funds necessary to carry out the plan are on deposit and guaranteed for payment, or (d) such other security at the option of the mining operator as is acceptable to the Director of Planning and Land Use and the County Counsel.

Said security instrument shall provide that in the event suit is brought by the County and judgment recovered, the surety shall pay in addition to the above specified sum, all costs incurred by the County in such suit including a reasonable attorney's fee to be fixed by the court.

The security shall be in a form approved by the County Counsel and in an amount equal to 100 percent of the estimated cost of the work as determined by the Director of Planning and Land Use as necessary to restore the property to a condition which will not constitute a danger to the public health or safety, and which will substantially conform to the approved reclamation plan, but not to exceed \$20,000.00 provided, however, that in no event shall the limitation on the amount of security required by construed as a limitation on the liability of the permittee.

The permittee and the surety executing such bond or person issuing such instrument of credit or making such cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all such work to be done. In the case of a cash deposit, any unused portion thereof shall be refunded to the permittee.

- B. An inspection of extraction and reclamation activities shall be conducted by the Zoning Enforcement Officer at least once in each calendar year in compliance with Section 87.711 of The County Grading Ordinance.
- F. C. The following conditions shall apply while the Reclamation Plan is in force and effect pursuant to Section 87.701-714 et. seq. of the County Code.
1. Whenever any surface mining operation or portion of an operation subject to the grading ordinance is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of any Reclamation Plan approved pursuant to the provisions of the County Grading Ordinance. (Section 87.712)
 2. All final grades established pursuant to the Reclamation Plan shall comply with the "Design Standards--Performance Requirements" contained in Chapter 4 of the County Grading Ordinance. (Section 87.713)
 3. Neither the issuance of a major use permit or reclamation plan under the provisions of this chapter, nor the compliance with any provisions or conditions thereof, shall relieve any person from any liability or responsibility resulting from grading operations as specified elsewhere in the County Grading Ordinance. (Section 87.714)

This Reclamation Plan is granted and is in effect concurrently with Major Use Permit P77-66.

COUNTY OF SAN DIEGO



Planning Commission

PAUL C. ZUCKER
Secretary

9180 Chesapeake Drive (01731), San Diego, California 92123 Telephone (714) 585-5833

NOTICE OF APPROVAL OF RECLAMATION PLAN BY THE SAN DIEGO COUNTY PLANNING COMMISSION

Reclamation Plan Number: RP 79-011
Date of Notice: November 30, 1979

TO: Nelson-Sloan Corp.
P. O. Box 488
Chula Vista, CA 92012

c: Abel Parra
1058 East 8th Street
National City, CA 92050

On November 2, 1979, the San Diego County Planning Commission conditionally approved your application for the reclamation of land to a usable condition, pursuant to Section 87.701 of the County Code.

This reclamation plan is in conjunction with State Surface Mining and Reclamation Act of 1975, and will be binding upon the land regardless of ownership change. It shall run concurrently with P77-66 for fifteen years and to expire in March 23, 1994.

This decision of the Planning Commission becomes final on December 11, 1979 unless prior to that date you or a protestant files a written appeal to the Board of Supervisors accompanied by a fee of \$55. Filing of an appeal will stay the decision of the Planning Commission until a new hearing on your application is held and action is taken by the Board of Supervisors (refer to Section 7366 of the County Zoning Ordinance).

If there is no appeal on this decision of the Planning Commission filed within the time specified above, this decision of the Planning Commission will be final. This Reclamation Plan permit expires on March 23, 1980, unless prior to that date use in reliance or start of construction is commenced.

I certify that the foregoing Notice of Approval of the Planning Commission was filed in the Office of the Planning Commission and a copy thereof was mailed to the applicant at the address shown on the application. I certify that the attached decision of the Planning Commission was duly adopted by said Commission at a regular meeting thereof.

Paul C. Zucker, Secretary

By: *Gloria A. Kelley*
Gloria A. Kelley, Deputy

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SAN DIEGO COUNTY PLANNING COMMISSION

Room 237, County Administration Center San Diego, California 92101

April 28, 1972

Decision of the Commission
On the Application of Yicko's Materials Company, Incorporated
Application Number P72-213

GRANT, for a period of five years, a special use permit for a borrow pit for rock, sand, gravel, decomposed granite or soil and a rock crushing plant, (open pit mining, reduction and processing of stone, soil and other minerals to workable products) on condition that:

- A. Prior to obtaining any grading permit pursuant to this use permit or any one of the previous permits to this permit:
 1. A revised plot plan shall be submitted to and approved by the Director of Planning showing:
 - a. The projected course of mining the subject property in five acre increments to include those areas where mining has been completed under Permit P65-36.
 - b. Elimination of all terraced slopes with substitution of constant gradient slopes with finished grades not to exceed 5% with no excavation to take place closer than 100 feet to all property lines. This requirement shall also include those portions of the property which have already been mined under previous Permit P65-36 and shall also incorporate condition to follow.
 - c. A planting plan showing acceptable tree and cover over an acceptable replacement soil to adequately grow said ground cover together with a suitable type sprinkler water or similar watering system adequate to provide water necessary to permanently establish said landscaped areas.
 2. An adequate supply of water, approved by the San Diego County Department of Public Health, shall be provided to effect the above dust control methods.
 3. Said premises shall be provided with facilities approved by the Health Officer of the County of San Diego as follows:
 - (a) A potable water supply.
 - (b) Proper sanitary facilities, including toilet, handwashing, and sewage disposal facilities, for employees working on the premises. These facilities shall be installed in accordance with the laws applicable thereto.

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B. The Back (washing) Plant shall be operated subject to the conditions of the existing Air Pollution Control District Permit to Operate No. 0340.

C. The access roads and operating area roads shall be oiled, paved or otherwise dust proofed, and so maintained, as may be required by the Air Pollution Control Officer.

D. Material on trucks shall be surface watered prior to departure from the site if dusty material is handled (material containing less than 5% moisture).

E. Dust control methods to be applied to any dust producing condition which may develop, and result in a nuisance, from this operation as may be determined by the Air Pollution Control Officer.

F. All dust or other air pollution emissions at the screens, at material transfer points, or at any equipment, during any phase of the operation, to be controlled by water sprays, or by such other or additional methods as may be required by said Air Pollution Control Officer to control any excessive dust or air pollutant production which, in the opinion of said Air Pollution Control Officer, may develop or has developed.

G. No plumbing or other installation be made that could cause pollution of the potable water supply due to an open or potential cross-connection or due to back siphonage.

H. The premises to be graded, and all operations on said premises be conducted so that there is no ponding or accumulation of surface waters that would constitute a hazard to persons or property, and so there is no ponding or accumulation of surface waters which, in the opinion of said Health Officer, would or could provide a place for the development or harborage of insects or pests that could cause nuisances or constitute a nuisance to persons or property in the vicinity of such premises.

I. All operations conducted on the premises, including the various repair, arrival and departure of trucks and other vehicular equipment, shall be limited to the period between 5:00 a.m. and 7:00 p.m., each day, Monday through Saturday, and that no operations shall be conducted on the premises on Sundays.

J. There shall be no blasting, and no storage or use of explosives, on the premises.

K. Existing drainage channels shall not be obstructed, diverted, or otherwise altered to adversely affect the adjacent ownerships, except as approved by the County Department of Special District Services.

L. The construction shall take place closer than 100 feet to the property lines, as shown on the revised plot plan.

M. No slope be established having a grade steeper than two foot rise in every four feet.

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- H. No excavating equipment, vehicles, junk or other refuse shall be stored or allowed to exist on the premises described in Application P72-223.
- G. Except for truck access from the property, all other access roads shall be provided with lockable gates. Said gates to be kept locked at all times.
- F. Access to and from the site by delivery trucks shall be limited to use of State Highway 67.
- Q. In those areas of the property where mining operations have been completed, on each new five acre increment is completed, the applicant shall install the permanent type uprighter system, place acceptable sod as shown on the approved planting plan over the finished slope area, and plant the area with ground cover in accordance with the approved planting plan required by plot plan under conditions 1c and 1d above.
- R. All landscaped areas shall be well maintained and amply watered at all times.
- S. Obtain a grading permit from the County Engineer for the grading which will take place within the boundaries of the real property, pursuant to Ordinance 1975 (New Series).

W71pb
4-22-72