

MINUTE ITEM
This Calendar Item No. C61 was approved as
Minute Item No. 61 by the California State Lands
Commission by a vote of 3 to 0 at its
10-01-02 meeting.

**CALENDAR ITEM
C61**

A 80

10/01/02
WP 8039.2

S 37

G. Pelka
E. Kruger

**CONSIDER APPROVAL OF AN APPLICATION FOR A
PREFERENTIAL MINERAL EXTRACTION LEASE
ON STATE-OWNED SCHOOL LAND,
CHOCOLATE MOUNTAINS,
IMPERIAL COUNTY**

APPLICANT:

Newmont Mining Corporation
Attn: Mr. David Faley, Director, Land
1700 Lincoln Street
Denver, CO 80203

AREA, LAND TYPE, AND LOCATION:

The application for a preferential State mineral extraction lease pertains to lands covered by State mineral prospecting permit No. PRC 8039.2 containing 657.87 acres, more or less, of vacant State-owned school lands, identified as Lots 1-10, inclusive, of Section 5 and Lots 1-10, inclusive, of Section 6, all in Township 13 South, Range 19 East, San Bernardino Base and Meridian, Imperial County (attached as Exhibit A). The subject lands are situated about six miles northeast of Glamis, California, adjacent to the northern boundary of the Mesquite Mine, and are included as part of the mine expansion plan.

BACKGROUND:

The Mesquite Mine is an open-pit, cyanide heap-leach, gold mining and refining facility located in eastern Imperial County. The mine has been continuously operated since 1985. Excavation of ore ceased in May 2001, pending acquisition of mine expansion permits. The mine encompasses approximately 5,200 acres, of which 3,655 acres have been disturbed by mining activities to date. Approximately sixty-seven percent (67%) of the mine is located on public lands administered by the Bureau of Land Management (BLM). The remainder is privately held lands.

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By patent dated June 12, 1997, the State of California received the subject land from the U. S. Department of the Interior in a land exchange made pursuant to Section 707 of the California Desert Protection Act (CDPA) of 1994. The exchange was made pursuant to a Memorandum of Agreement (MOA) between the BLM and the California State Lands Commission (Commission), dated March 4, 1996, and subsequently amended on June 12, 1997. The MOA provides that the subject lands, identified in the MOA as the "Chocolate Mountain Parcels", would be conveyed to the State in exchange for State parcels of equivalent surface value located within areas designated by the CDPA as wilderness areas and units of the National Parks System (referred to as "inholdings"). Pursuant to the MOA, the net royalty generated, as the result of mineral leasing and development of the Chocolate Mountain parcels would be credited to the BLM, and applied to the purchase of additional State inholdings. At such time that all the State's inholdings are acquired, the BLM will retain a perpetual, overriding royalty in the amount of twenty-five percent (25%) of the net royalty income received by the State.

Also on June 12, 1997, Santa Fe Pacific Gold Corporation (Santa Fe) submitted a State mineral prospecting permit application for the subject lands. A Mitigated Negative Declaration (SCH No. 98041136) was prepared and adopted by the Imperial County Planning Commission (County) in May 1998. The Commission reviewed this information, and in June 1998 State Mineral Prospecting Permit No. PRC 8039.2 was issued to Santa Fe for a primary term of two years, effective July 1, 1998 and expiring June 30, 2000. Permitted prospecting activities included geologic mapping, surface sampling and an exploratory drilling program consisting of a maximum of 300 drillholes to a depth not to exceed 500 feet. As previously stated, the permitted area is immediately adjacent to the north boundary of the Mesquite Mine, a gold mining and refining facility operated by Santa Fe since the mid 1980s.

On December 30, 1998, Santa Fe submitted a preferential mineral extraction lease application for the permitted area in accordance with the terms and conditions of the prospecting permit. Paragraph 15 of the permit provides that, upon establishing to the satisfaction of the State that commercially valuable deposits of minerals have been discovered on the permitted land, the Permittee shall be entitled to a preferential lease of the permitted land, provided that certain conditions of the permit are complied with prior to issuance of the lease. The conditions include preparation of necessary environmental reports, execution of a mineral extraction lease document, substantially in the form attached to the permit, and payment of annual rental.

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As of December 1999, the mineral extraction lease had not been approved, and Santa Fe requested the Commission approve transfer of its one hundred percent (100%) interest in the permit to Newmont Gold Company (NGC). The request for transfer was the result of a merger of Santa Fe into its parent company, NGC. Also at this time, Santa Fe requested a one-year extension of the permit from July 1, 2000, to June 30, 2001, to continue prospecting activities, including geologic mapping and surface sampling, the completion of the drilling program, and the evaluation of exploration results gathered on the permitted land. The Commission approved the request for transfer and extension of the permit in April 2000, effective July 1, 2000. Thereafter, NGC changed its name to Newmont Mining Corporation (NMC).

On May 23, 2001, the preferential mineral lease application was deemed complete. In April 2002, staff received notification by the CEQA lead agency, Imperial County, of its approval on March 27, 2002, of the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 1998121054), Conditional Use Permit (CUP) No. 98-0022 and Reclamation Plan (RP) No. 98-0004 for NMC's Mesquite Mine expansion project. Staff advised NMC that in order to qualify for a preferential lease under Section 6895 of the Public Resources Code, NMC must provide information to establish, to the Commission's satisfaction, that commercially valuable mineral deposits have been discovered within the permitted lands. On August 2, 2002, NMC notified Commission staff that it has made a discovery of valuable minerals on the permitted land, and that it was prepared to execute a mineral extraction lease in the form attached to the prospecting permit.

In accordance with the prospecting permit issued by the Commission, NMC drilled 154 exploratory drillholes to a maximum depth of 500 feet from which composite rock samples were taken at five-foot intervals. NMC performed an on-site fire assay at its Mesquite Mine Lab and an off-site evaluation at the American Assay Lab in Sparks, Nevada for quality control. The composite rock samples were also used for determination of rock type, alteration characteristics and geologic structural control. Commission staff witnessed phases of the exploratory drilling and lab work on several occasions at the Mesquite Mine to ensure satisfaction of the quality of work performed.

The geologic and engineering data were submitted to Commission staff with maps showing locational data derived from NMC's interpretation. The NMC mining engineer input in the data derived from the 154 exploratory drillholes into their Mintec MEDSYSTEM software mining package, combining the data with information derived from over 6,000 drillholes previously drilled in the vicinity.

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NMC used the computer mining software and exploration data to design the mine pit parameters to maximize the economic recovery of the precious metal resource. The total surface disturbance for the proposed mine pit and water diversion channel is approximately 91 acres.

Commission staff has worked closely with the geologic and engineering staff of NMC on the review of exploration data and development of the mine plan. The current mine plan is based on a gold price of \$342 per troy ounce. The present price of gold is fluctuating around \$320 per ounce. Although the Mesquite Mine is currently shut down awaiting approvals and higher gold prices, statistical analysis performed by Commission staff on the historic price of gold over the past 30 years, as well as the projected gold price, indicate that economic extraction of the State mineral resource is highly probable within the primary term of the lease. Based on the foregoing data and analysis, staff believes that NMC has demonstrated that a commercially valuable mineral deposit has been discovered within the subject permitted lands.

In July 2002, staff received notification from the BLM that it had approved a Record of Decision for the expansion of the Mesquite Mine on federal lands, adjacent to the State's fee interest in PRC 8039.2.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Division 6
- B. Public Resources Code: Section 21000 et seq.
- C. Code of Regulations: Title 14, Chapter 3, Section 15096
- D. California Code of Regulations: Title 2, Section 2200
- E. State Mineral Prospecting Permit No. PRC 8039.2: Paragraph 15

OTHER PERTINENT INFORMATION

1. As lead agency under the Surface Mining and Reclamation Act and the California Environmental Quality Act (CEQA), the Imperial County Planning Commission prepared and adopted a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 1998121054) for the Mesquite Mine expansion project, and approved Conditional Use Permit No. 98-0022 and Reclamation Plan No. 98-0004. The mine plan includes the mineral development of the subject State lands as part of the larger Mesquite Mine expansion project. The Notice of Determination (attached as Exhibit B) filed by the County on March 27, 2002, found that the project would have a significant effect on the environment, that mitigation measures were made a condition of the approval of the project, that a Statement of Overriding Considerations

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(attached as Exhibit C) was adopted for this project, and that such findings were made pursuant to the provisions of CEQA. Commission staff has reviewed such documentation.

The Statement of Overriding Considerations (attached as Exhibit B) identified the following two adverse environmental impacts associated with the Mesquite Mine expansion project that were cumulative, significant and unavoidable:

- A. Cumulative impacts to visual resources anticipated to occur in conjunction with the significant, unmitigable impacts associated with landform alteration at the approved, but as yet not built, Mesquite Landfill, located on land adjacent to the mine. The mine project's visual impacts are not considered significant in themselves, but they would add to the visual impacts resulting from the approved landfill;
 - B. Cumulative impacts to air quality may occur as a result of fugitive dust (PM 10) resulting from mining operations. While air pollutants associated with the mine expansion would not result in significant direct or indirect air quality impacts, and no new air permits will be required due to no increase in mine production, because of the region's nonattainment status for PM10, any PM10 associated with mine activities would tend to add to the nonattainment condition.
2. The primary term of the lease is ten (10) years, and Lessee shall have the preferential right to renew for two (2) successive periods not to exceed ten (10) years each, upon such reasonable terms and conditions as may be prescribed by the State, including, but not limited to, redetermination of royalty and rent.

The lease provides for a sliding scale royalty for gold, silver ores and minerals processed by smelting or refining as a percentage of the Net Smelter Return (NSR). The NSR is the gross value of products that are sold or otherwise disposed of, less allowed expenses for transportation and sampling, such expenses not to exceed one percent (1%) of the gross value of products sold. The sliding scale royalty is set at four percent (4%) of the NSR when the gold price is \$350 per ounce or less; the percentage of NSR yielded by the $\left(\frac{[\text{gold price} - \$150]}{50}\right)$ when the price is between \$350 and \$450 per ounce; and six percent (6%) of the NSR when the gold price is \$450 and above. All other

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minerals will bear royalty at the rate of ten percent (10%) of the gross value of the minerals produced, less any charges approved by the Commission made or incurred with respect to processing or transporting of the State's royalty share.

Lessee shall pay rental in the amount of five dollars (\$5.00) per acre per year for each acre of leased land described in the lease, which shall be due on each anniversary of the effective date of the lease, except for the first year's rental which shall be due thirty (30) days after the effective date of the lease.

Within thirty (30) days of the effective date of the lease, Lessee shall furnish and maintain a bond or other security device in the amount of \$50,000 guaranteeing faithful performance by Lessee of the terms and conditions of the lease. Pursuant to the provisions of the Surface Mining and Reclamation Act, and in accordance with the Conditional Use Permit issued by Imperial County, NMC is required to replace the existing project bonds of \$3,048,081 with a financial assurance in the amount of \$7,737,168 to cover the currently estimated reclamation and closure liabilities at the mine site. Prior to proceeding with the mine expansion, NMC will be required to post an additional assurance with the County of \$2,393,895 to cover the anticipated costs of mine reclamation and closure associated with the expansion.

3. The Applicant has submitted the required filing and staff reimbursement fees.

APPROVALS OBTAINED:

Pursuant to PRC Section 6890, the form of mineral extraction lease has been approved by the Office of the State Attorney General as to its compliance with applicable provisions of the law.

EXHIBITS:

- A. Site Map
- B. Notice of Determination
- C. Statement of Overriding Considerations

PERMIT STREAMLINING ACT DEADLINE:

December 22, 2002

RECOMMENDED ACTION:

CALENDAR ITEM NO. C61 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

FIND THAT FINAL EIR/EIS (SCH NO. 1998121054), MITIGATION MONITORING PROGRAM AND A STATEMENT OF OVERRIDING CONSIDERATIONS WERE PREPARED AND ADOPTED FOR THIS PROJECT BY THE COUNTY OF IMPERIAL AND THAT THE CALIFORNIA STATE LANDS COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

ADOPT THE MITIGATION MONITORING PROGRAM AS AVAILABLE ON FILE IN THE LONG BEACH OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION.

ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15093, AS CONTAINED IN EXHIBIT C, ATTACHED HERETO.

OTHER FINDINGS:

FIND THAT THE SUBJECT PROPERTY CONTAINS COMMERCIALY VALUABLE MINERAL DEPOSITS.

FIND THAT THE ISSUANCE OF A PREFERENTIAL MINERAL EXTRACTION LEASE TO THE APPLICANT IS IN THE BEST INTEREST OF THE STATE.

AUTHORIZATION:

AUTHORIZE ISSUANCE OF A PREFERENTIAL MINERAL EXTRACTION LEASE OF THE SUBJECT PARCEL UPON THE TERMS AND CONDITIONS AS OUTLINED IN THIS CALENDAR ITEM TO NEWMONT MINING CORPORATION FOR PRECIOUS METALS, SAND AND GRAVEL, CLAY, AND ALL OTHER MINERALS EXCEPT OIL, GAS, OTHER HYDROCARBONS, AND GEOTHERMAL RESOURCES FROM STATE FEE-OWNED SCHOOL LAND; SUCH LEASE TO HAVE A PRIMARY TERM OF TEN YEARS WITH A PREFERENTIAL RIGHT, UPON SUCH REASONABLE TERMS AND CONDITIONS AS THE STATE MAY PRESCRIBE, TO RENEW THE LEASE FOR TWO SUCCESSIVE PERIODS NOT TO EXCEED TEN YEARS EACH; RENTAL AT THE RATE OF \$5.00 PER ACRE PER YEAR; ROYALTY TO

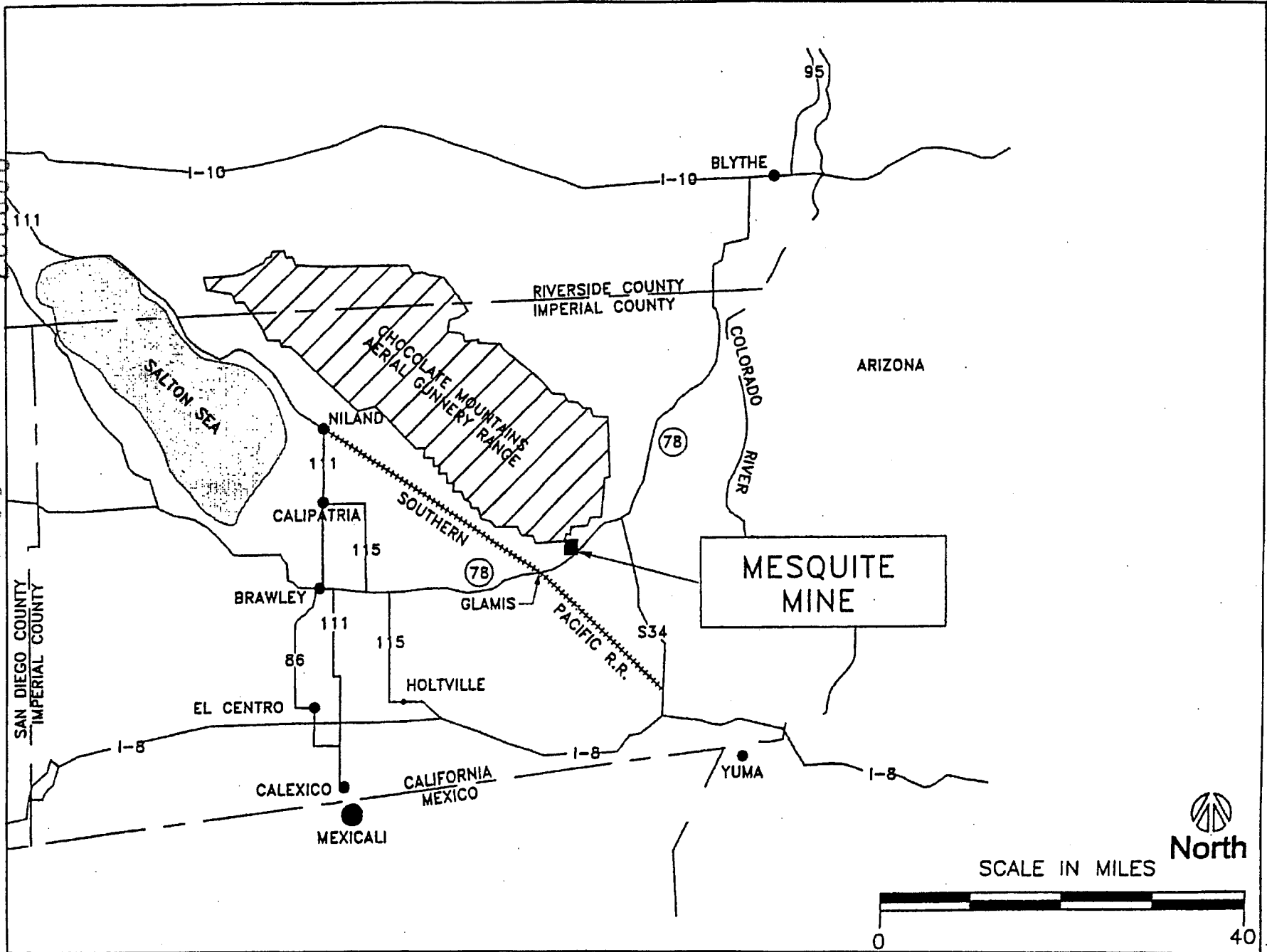
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BE PAID FOR GOLD, SILVER ORES AND MINERALS PROCESSED BY SMELTING OR REFINING AS A PERCENTAGE OF THE NET SMELTER RETURN PURSUANT TO THE FORMULA OUTLINED IN THIS CALENDAR ITEM, WITH ROYALTY SET FOR ALL OTHER MINERALS AT THE RATE OF TEN PERCENT (10%) OF THE GROSS VALUE OF MINERALS PRODUCED, LESS ANY CHARGES APPROVED BY THE COMMISSION MADE OR INCURRED WITH RESPECT TO PROCESSING OR TRANSPORTING OF THE STATE'S ROYALTY SHARE.

AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE ANY DOCUMENT NECESSARY TO IMPLEMENT THE COMMISSION'S ACTION.

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Notice of Determination

Supplementary Document P

To: X Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: Imperial County Planning Commission
939 Main Street
El Centro, CA 92243

POSTED

APR 01 2002

X County Clerk
County of Imperial
939 Main Street
El Centro, CA 92243

Dolores Provencio
Imperial County Clerk Recorder
California

Subject

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

Newmont Mining Corporation, Mesquite Mine Expansion Project Final Environmental Impact Report/Environmental Impact Report, (SCH# 1098121054), Conditional Use Permit # 98-0022 and Reclamation Plan # 98-0004
Project Title

1998121054
State Clearinghouse Number
(If submitted to Clearinghouse)

Richard Cabanilla, Planner IV
Lead Agency (contact)

(760) 482-4236, ext. 4313
Area Code/Telephone/Ext.

6502 State Highway 78, Brawley Imperial County
Project Location (Include County)

Project Description: Proposing to expand the existing mine operations, and thereafter reclaim the existing mine upon closure of the expansion project at the Mesquite Mine, T13S/R19E, approximately 3.5 miles northeast of the Glamis Store, on the north side of State Highway 78, approximately 35 miles east of the City of Brawley, in the eastern portion of Imperial County.

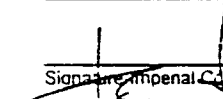
This is to advise that the Planning Commission has approved the above-described project on
 Lead Agency Responsible Agency

March 27, 2002 and has made the following determinations regarding the above described project:
Date

1. The project (will will not) have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures (were were not) made a condition of the approval project.
4. A statement of Overriding Considerations (was was not) adopted for this project.
5. Findings (were were not) made pursuant to the provisions of CEQA.

This is to certify that the Final EIR with comments and responses and record of project approval is available to the General Public at
Imperial County Planning/Building Department, 939 Main Street, El Centro, CA 92243

Bureau of Land Management, 1661 South 4th Street, El Centro CA 92243

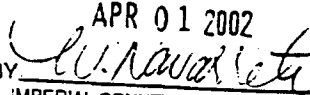

Signature, Imperial County Planning Department

March 27, 2002
Date

AICP Planning Director

Date received for filing at OPR:

RECEIVED

APR 01 2002
BY 
IMPERIAL COUNTY CLERK-RECORDER

.Hirs:G Newmont Mining Corp NCD Mesquite Mine

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**STATEMENT OF OVERRIDING CONSIDERATIONS
MESQUITE MINE EXPANSION**

The proposed project, expansion of the Mesquite Mine, would have the following significant, cumulative, unavoidable, adverse environmental impacts:

1. Cumulative impacts to visual resources are anticipated in conjunction with the significant unmitigable impacts associated with landform alteration at the approved, but unbuilt, Mesquite Landfill, located on land adjacent to the mine. The mine project's visual impacts are not considered significant in themselves, but they would add to the visual impacts resulting from the approved landfill (Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS), p. S-2, S- 40).
2. Cumulative impacts to air quality may occur as a result of fugitive dust (PM₁₀) resulting from mining operations. While air pollutants associated with the mine expansion would not result in significant direct or indirect air quality impacts, and no new air permits will be required due to no increase in mine production, because of the region's nonattainment status for PM₁₀, any PM₁₀ associated with mine activities would tend to add to the nonattainment condition (FEIR/EIS, p. S-2, S-37).

The County has adopted all feasible mitigation measures with respect to these impacts. Although the mitigation measures will substantially lessen these impacts, the measures will not fully avoid cumulative impacts as described above. Environmental topics for which no mitigation is required include direct air quality impacts, cultural resources, land use, noise, paleontological resources, public services/utilities, recreation, socioeconomics, and transportation. Impacts to all other environmental topics would be mitigated to less than a level of significance through application of the identified mitigation measures (FEIR/EIS, pp. S-6 to S-43; also see the Mitigation Monitoring and Reporting Program (MMERP), the Conditional Use Permit conditions, and the Reclamation Plan conditions). These latter environmental topics include impacts associated with geology (erosion and seismic damage); environmental health and safety; visual resources (night lighting); water resources (erosion, sedimentation, escape of heap leach fluids or fuels/bulk liquids); and biological resources (desert tortoise, microphyll woodland, vegetative habitats, western chuckwalla, mule deer, and four identified sensitive plants).

The County has examined a reasonable range of alternatives to the proposed project. Based on this examination, the County has determined that both the proposed project (190 acres of new, unpermitted disturbance) and the reduced footprint alternative (143 acres of new, unpermitted disturbance) would meet project objectives. However, the reduced footprint alternative is found to be environmentally preferable, based on the reduction of additional unpermitted disturbance area (and disturbance of native habitat) from 190 to 143 acres. No feasible alternative was identified that would avoid the significant cumulative impacts associated with the proposed project and the reduced footprint alternative.

Because of the identified significant unmitigated impacts, in order to approve the project, the County must adopt a "Statement of Overriding Considerations" as required by Public Resources Code Section 21081, Subdivision (b). That mechanism allows a lead agency to cite a project's general economic, social, or other benefits as a justification for choosing to allow the occurrence of specified significant environmental effects that have not been at least substantially mitigated. The statement explains why, in the County's judgment, the project's benefits outweigh the unmitigated significant effects.

The County of Imperial, having reviewed and considered the information contained in the the Draft EIR/EIS, the appendices to the Draft EIR/EIS, the Final EIR/EIS, the Reclamation Plan, and the Administrative Record, finds, pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, that specific overriding economic, legal, social, technological, or other benefits of the proposed project outweigh any and all significant effects that the project will have on the environment, and that on balance, the remaining significant effects (cumulative visual impacts and cumulative air quality impacts associated with fugitive dust) are found acceptable given these overriding considerations:

1. The proposed project (and the reduced footprint alternative) are consistent with all applicable elements of the Imperial County General Plan and with existing County zoning at the site of S-2, M-3 and G/S (DEIR/EIS, pp. 4.1.9-2 to 4.1.9-7).
2. The proposed project (and the reduced footprint alternative) are consistent with the federal California Desert Protection Act and with the BLM's California Desert Conservation Plan (DEIR/EIS, pp. 4.1.9-7 to 4.1.9-8).
3. The proposed project (and the reduced footprint alternative) are consistent with a 1997 BLM land exchange, by which the California State Lands Commission received title to two half sections of land located north of the current Mine boundary, in order to receive payment of mineral royalties to the State for possible educational purposes for any mineral production within those lands (DEIR/EIS, pp. 4.1.9-7). Mining of these two half-sections is part of the current proposed project and reduced footprint alternative.
4. The project applicant (Newmont Gold Corporation) would mitigate all potentially significant direct and indirect impacts, as described in the FEIR/EIS, pp. S-6 to S-43.
5. The U.S. Fish and Wildlife Service has concluded that there would be "no jeopardy" to desert tortoise associated with the proposed project (or the reduced footprint alternative), if mitigated per conditions found in Biological Opinion 1-6-92-F-22R3, August 10, 2001.
6. The California Department of Fish and Game is expected to issue a Section 1603 Streambed Alteration Agreement (No. 6-097-00) for streambed disturbances associated with the proposed project (or the reduced footprint alternative), identifying conditions under which disturbance may occur.
7. The proposed project (or the reduced footprint alternative) would create a substantial number of jobs within the County, once the project is implemented by Newmont. Project employment of the proposed expansion is estimated at 184 to 194 jobs for a six-year period. (DEIR/EIS, Sections 3.13 and 4.1.13). This would be a substantial benefit in a region with 9,200 unemployed persons in January 2002 (California Employment Development Department, March 2002).
8. Estimated wages that would be paid to the employees of the proposed project (or reduced footprint alternative) would total from \$8.28 million to \$8.73 million per year, once the project is implemented by Newmont, with a six-year total of approximately \$50 million (DEIR/EIS, Sections 3.13 and 4.1.13).
9. The proposed project (or reduced footprint alternative) would generate substantial tax revenues for the County and for nearby cities, once the project is implemented by Newmont, with annual sales tax and property tax revenues estimated at \$460,000 or more. Over the six-year period, these revenues to County jurisdictions would total \$2.76 million or more (DEIR/EIS, Sections 3.13 and 4.1.13).