

**CALENDAR ITEM
C34**

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G. Pelka

**CONSIDER APPROVAL OF AUTHORITY FOR THE
EXECUTIVE OFFICER TO CONTINUE TO ENTER INTO A MEMORANDUM OF
UNDERSTANDING WITH THE DEPARTMENT OF CONSERVATION, OFFICE OF
MINE RECLAMATION AND TO CONTINUE WORK ELIMINATING
POTENTIAL PUBLIC SAFETY HAZARDS AT
ABANDONED MINE SITES ON
STATE SCHOOL LANDS**

PARTY:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

AREA, LAND TYPE, AND LOCATION:

State School Lands located Statewide.

BACKGROUND:

Abandoned mines pose a potential threat to public safety and wildlife. The Department of Conservation's (DOC), Office of Mine Reclamation (OMR), pursuant to the Surface Mining and Reclamation Act of 1975, provides assistance to State and federal agencies involved in the inventory and remediation of abandoned mine hazards.

California State Lands Commission (Commission) staff continues to assess the scope of the abandoned mine problem on State school lands. However, remediations are prioritized based on known features that pose a serious threat, instead of waiting to complete a multiyear statewide inventory. Based on current information, approximately 130 of the 1,200 State school land parcels, or about 11 percent (11%), possess one or more abandoned mine features consisting of a shaft, adit or prospect pit. The majority of these parcels lie in the desert region of Imperial, Riverside, San Bernardino, Kern and Inyo Counties.

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Since September 2002, Commission staff has worked cooperatively with the OMR to inventory and remediate mine features on State school lands using four closure techniques based on the unique circumstances of each feature. These four techniques are the installation of steel bat gates, the use of foam plugs, backfilling with mine waste rock, and as an interim measure, fencing. This work is consistent with Public Resources Code section 6201.5 that promotes "the rehabilitation of lands impacted by mineral exploration and extraction."

As authorized by the Commission on April 5, 2004, the Commission entered into a Memorandum of Understanding (MOU) with the OMR effective April 7, 2004, to clarify their respective roles associated with closing abandoned mines on State school lands. This MOU, effective for a five year period, will expire on April 7, 2009. This MOU established that Commission staff will identify abandoned mine sites on State school lands that are candidates for closure or protection with fencing. The OMR will determine if its funding is appropriate and available for the proposed work. If the determination is positive, the OMR will solicit and award contracts to implement the mine closure under Commission staff management. The majority of contractor costs are paid out of the OMR Reclamation Account. This Reclamation Account was established pursuant to Senate Bill 649 (Kuehl, Chapter 794, Statutes 2003) which provides for a payment of \$5.00 per ounce of gold produced in California and \$0.10 per ounce of silver. The Commission may contribute toward the payment of the contract from the school land bank fund. The Commission may also, at its discretion, pursue mine closure work independent of working with the OMR. To date, all work has been a cooperative effort due to mutual goals.

During this five year period, the cooperative arrangement with OMR has worked successfully and 52 mine features have been closed on State school lands. Work is well underway for closures to be implemented in 2009. Commission staff recommends entering into a new MOU with the DOC/OMR that will continue this cooperative effort for an additional seven (7) years.

The Commission, on December 8, 2005, delegated authority to the Executive Officer or his designee to close various mine features using the methodologies described in this Calendar Item. To facilitate the timely remediation of abandoned mines found on State school lands, it is recommended that this delegation of authority be extended for an additional seven-year period, until February 2016, during which time the new MOU between the Commission and DOC/OMR will be in effect.

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BIOLOGICAL AND HISTORICAL/CULTURAL ISSUES:

Based on the mine closure work conducted since 2002, only two environmental issues are associated with these small, mine features closures, biological and historical/cultural. In cooperation with DOC/OMR, Department of Fish and Game, and the State Office of Historic Preservation (SHPO) staff has developed procedures to successfully address these concerns prior to the closure of mines.

Biological:

Biological issues influence both access to identified mines and the type of closure technique that can be considered. Access to mine closure features is generally achieved along existing roads and jeep trails. Occasionally, short access to mine features is achieved by off-road travel by rubber-tired equipment. Such access is granted only when qualified Commission staff escort the equipment in by preceding it on foot, thereby ensuring protection of plant and animal resources.

The mine features closed thus far on State school lands, have been located in the California desert, which is commonly habitat for various species of bat, desert tortoise critical habitat (State and federally-listed threatened), and occasionally Mohave ground squirrel (State-listed threatened). Although bats may not be present at all times, mines provide potential habitat for hibernating and for maternity roosts. In addition, mine tunnels may provide habitat for desert tortoise, but they may also be deathtraps for tortoise that may fall into shafts located within the mine complex. A desert tortoise that had fallen down a 16-foot mine shaft was rescued by staff during the closure of a shaft in the Fry Mountains.

Closures are almost always preceded by biological surveys, conducted to the satisfaction of the California Department of Fish and Game (CDFG), to determine the presence of bats, desert tortoise, Mojave ground squirrel, or other threatened and endangered species. Surveys for bats and listed species are conducted by qualified individuals, as determined by the CDFG.

All work conducted to date has been performed after determining the significance of the mine for habitat and consulting with CDFG on the suitability of the proposed closure.

Historical:

Any abandoned mine feature that is over 50 years old, which nearly all

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are, is presumed to be an historical resource. For all abandoned mine closure work, Commission staff has consulted with the State Office of Historic Preservation (SHPO) to ensure that such work does not have a significant adverse impact to any historic attributes. For example, mine shafts and adits closed with bat compatible gates and cupolas would remain accessible through a Commission controlled lockable entrance so that historians, archeologists and biologists could document the mines historic and biologic resources after the mine is closed to public access. The closure protects and preserves the resources from damage. Prior to any mine closure, staff consults with the SHPO to ensure that all proposed work does not significantly adversely affect historic resources or render inaccessible to academia.

Closure Method Selection:

Natural and historical resources in the area and in the mine guide the determination of which method is suitable to close the mine. For example, fencing may be used on an interim basis, when the mine cannot be reached by vehicles or in one case where owl habitat precluded other closure methods. Backfill with existing waste rock is used when the waste rock is available and internal inspections show a lack of historic and biologic resources. Foam plugs are sometimes used for closure of shafts when the mine does not provide significant wildlife habitat and mine waste rock is not available or the mine is inaccessible. Bat gates and cupolas are used when the mine provides significant bat or wildlife habitat, the mine possesses historic resources, or there is a high probability of future mineral exploration or development. Therefore, each closure is determined based on a myriad of attributes to determine the best closure technique for the benefit of protecting the public, wildlife and historical resources. Mine closure work is also undertaken with consideration of the economic impact on the State Teachers Retirement System of possible future mining activities.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code section 6201.5
- B. Public Resources Code section 8709.5
- C. Government Code section 11256, Interagency Agreements

OTHER PERTINENT INFORMATION

- 1. **Bat Gates, Cupolas, Fencing, Foam Closures:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines

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(Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures, Title 14, California Code of Regulations, section 15303(e). (Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.)

2. **Backfill Closures:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land, Title 14, California Code of Regulations, section 15304(c). (Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.)
3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Memorandum of Understanding between the California State Lands Commission/Department of Conservation, Office of Mine Reclamation

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

1. **BAT GATES, CUPOLAS, FENCING, FOAM CLOSURES:** FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061, AS A CATEGORICALLY EXEMPT PROJECT, CLASS 3, NEW CONSTRUCTION OF SMALL STRUCTURES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15303 (e).

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2. **BACKFILL CLOSURES:** FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 4, MINOR ALTERATIONS TO LAND; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15304 (c).
3. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. AUTHORIZE THE EXECUTIVE OFFICER TO ENTER INTO A NEW MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF CONSERVATION, OFFICE OF MINE RECLAMATION FOR A PERIOD OF SEVEN YEARS TO FACILITATE A COOPERATIVE EFFORT TO IDENTIFY AND REMEDIATE ABANDONED MINES LOCATED ON STATE SCHOOL LANDS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO UNDERTAKE MEASURES TO IMPLEMENT IN ACCORDANCE WITH THE METHODOLOGY DESCRIBED HEREIN THE CLOSING OF ABANDONED MINES LOCATED ON STATE SCHOOL LANDS.

EXHIBIT A

W 40102

MEMORANDUM OF UNDERSTANDING BY AND AMONG CALIFORNIA DEPARTMENT OF CONSERVATION OFFICE OF MINE RECLAMATION AND CALIFORNIA STATE LANDS COMMISSION

PURPOSE

This Memorandum of Understanding (MOU) implements a policy of coordination and cooperation by and among the California Department of Conservation (DOC) Office of Mine Reclamation (OMR) and the California State Lands Commission (CSLC). The purpose of this MOU is to establish a basic framework to advance the parties' mutual commitment to assess, and where feasible, remediate health and safety hazards associated with abandoned mines on State School Lands.

AUTHORITY

The OMR administers the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code, Division 2, Chapter 9, §§ 2710 *et seq.*), provides assistance to cities, counties, State agencies and mine operators for reclamation planning, and promotes cost-effective reclamation. OMR strives to reclaim mined lands to a beneficial end-use through the implementation of SMARA, prevent or minimize the adverse environmental effects of mining by providing assistance to lead agencies and miners in the review of reclamation plans, and minimize residual hazards to public health and safety through the Abandoned Mine Lands Program. Since 2002, OMR's Abandoned Mine Lands Unit (AMLU) has helped public agencies remediate more than 500 abandoned mine features statewide that were physical hazards. Since 2006, the AMLU's funding for physical hazard remediation has come from fees established on gold and silver mined in the State pursuant to Senate Bill 649 (Kuehl, Chapter 794, Statutes 2003) (\$5 per ounce of gold and 10¢ per ounce of silver).

The CSLC administers the public lands of the State under policies established by the Legislature and the Commission (Public Resources Code, Division 6). These "public lands" include, but are not limited to, sovereign lands, swamp and overflow lands, school lands, and granted lands. Of these public lands, school lands have historically been most heavily impacted by mining. One component of the Master Plan for school lands embodied in Public Resources Code § 6201.5 provides for rehabilitation of lands impacted by mineral exploration and extraction. The CSLC also reviews, for compliance with the California Environmental Quality Act (CEQA), any projects that propose the use of State lands prior to the issuance of any lease, permit or other entitlement (as set forth in California Administrative Code, Title 2, Division 3, Chapter 1, §§ 2902 *et seq.*). The Commission may, by resolution, authorize any of its employees or officers to execute any instrument in the name of the State (Public Resources Code § 6106). On January 29, 2009, the Commission authorized its Executive Officer to execute interagency

agreements necessary or convenient to eliminate potential public safety hazards on State school lands and to continue cooperative efforts with the DOC to remediate mine hazards for a period of seven years.

It is mutually agreed and understood as follows:

1. Each party shall designate an individual or individuals to coordinate reclamation activities on State School Lands, and shall identify in writing any replacement thereafter.
2. The CSLC shall identify abandoned mine sites on State School Lands that may be candidates for protective measures such as fencing and warning signs and/or for rehabilitation by the installation of mine closure methods such as bat gates, culvert gates, cupolas, foam plugs, and backfill with waste rock material, and shall provide information on these potential sites to the OMR.
3. The OMR will determine if appropriated gold and silver fees are available and can be used to close and protect mine openings on the identified State School Lands parcels. Provided funding is available from appropriated gold and silver fees, the OMR may contract, as needed, with qualified third parties to develop and implement mine closure proposals on State School Lands. The CSLC may contribute in the payment of contractor costs. Should funding not be available through OMR, the CSLC may elect to contract and unilaterally fund a qualified contractor to develop and implement mine closures on State School Lands.
4. The CSLC shall determine, pursuant to the CEQA, the appropriate level of environmental review and analysis of mine closure proposals, and shall coordinate and seek approvals from other agencies, including but not limited to, the California Department of Fish and Game and the State Office of Historic Preservation, prior to the Commission authorizing any remediation work on State School Lands.
5. No reclamation measures shall be undertaken at any mine site on State School Lands without a written Mine Closure Plan prepared and approved by the CSLC. Each party shall ensure that all mine closure activities are conducted in compliance with the approved Mine Closure Plan, the Surface Mining and Reclamation Act, the CEQA, and this MOU. In the event of any disagreement between the parties as to whether proposed operations are in compliance with the foregoing, the CSLC, as trustee of the State School Lands, may require that all site work cease pending resolution of the disagreement.
6. Closure work shall only be performed on mutually acceptable dates so that respective agency monitoring responsibilities may be fulfilled.
7. This MOU may be amended by written agreement of both parties. Both parties further agree to take whatever steps they deem necessary, including additional or

extensions of agreements with each other and with other agencies, to fulfill the purposes of this MOU.

8. Nothing in this MOU is intended, nor shall be construed, as limiting, expanding, delegating, or affecting the existing statutory authority of the DOC, the OMR or the CSLC.
9. This MOU shall be effective as of the date it is signed by the last party and shall remain in effect for a period of seven (7) years, or until terminated by either party in writing.

Signed,

Bridgett Luther, Director
California Department of Conservation

Date

Paul D. Thayer, Executive Officer
California State Lands Commission

Date