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### PLANNING COMMISSION MEETING

October 3, 2018

FILE NUMBER:	UP #96056 (associated permits: 79-80-44, 11-2-85, 94032)
OPERATOR:	TLT Enterprises LLC (Perry Thompson)
PROPERTY OWNER:	TLT Enterprises LLC (Perry Thompson)
TYPE OF HEARING:	Revocation Hearing

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County of Lassen  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

September 28, 2018

**Maurice L. Anderson, Director**

707 Nevada Street, Suite 5

Susanville, CA 96130-3912

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TO: Lassen County Planning Commission  
Agenda Date: October 3, 2018

Zoning & Building

Inspection Requests

Phone: 530 257-5263

FROM: Maurice L. Anderson, Director 

SUBJECT: Public Hearing to Consider Revocation of Use Permit #96056 (associated permits: 79-80-44, 11-2-85, 94032)

RECOMMENDED ACTION:

1. Receive Report; and
2. Adopt Resolution Imposing Conditions to Avoid Revocation of Use Permit #96056.

SUMMARY

As required by Section 18.112.060 of Lassen County Code, the Lassen County Planning Commission will hold a public hearing to consider revocation of Use Permit #96056, for non-compliance with the condition #22, of Board of Supervisors Resolution No. 97-067. Use Permit #96056 was conditionally approved on September 23, 1997, to allow surface mining and material processing, with concrete and asphalt plants (Resolution No.97-067 and conditions of approval are attached).

BACKGROUND

Again, this letter is regarding the Ward Lake mine site, which was observed conducting operations in violation of Board Resolution No. 97-067, and approved Use Permit #96056. Said operations are also a violation of the *Lassen County Code*. Specifically, condition #22 of Board Resolution No. 97-067 limits the hours of operation (including truck traffic) at the Ward Lake site to between 6:00 a.m. 7:00 p.m., Monday through Saturday.

On August 2, 2018, Staff received a complaint (including photographs) from the owner of a neighboring parcel, asserting that the Ward Lake site had been operating throughout the night for several nights. Senior Planner Matt May conducted an inspection on August 2, 2018, at approximately 8:35 p.m., and confirmed that the Ward Lake site was conducting operations outside of the site's permitted hours of operation. Night operations related to this complaint ceased on August 3, 2018.

On August 6, 2018, Staff observed on the Caltrans website that their Highway 36 project, which required night-work, had been awarded to Hat Creek Construction, and said project was set to begin on August 13, 2018. The Planning Department was at the time of said observation, and is currently, processing an amendment for Hat Creek Construction, which proposes to allow for (among other changes) limited nighttime operations at the Ward Lake site. However, completion of said amendment is pending completion of an Environmental Impact Report (EIR), as required by the California Environmental Quality Act. If an EIR were certified, the Planning Commission, and ultimately the Board, would then be in a position to approve or disapprove the proposed amendments.

Lassen County Planning Department Staff continued to monitor the Ward Lake site and observed night operations between the hours of 7:01 p.m. and 5:59 a.m., as well as operations on non-permitted days (i.e. Sunday) on the following dates:

<b>DATE</b>	<b>DAY</b>	<b>INSPECTOR</b>	<b>APPROXIMATE START TIME OF OBSERVATIONS</b>
8/19/2018	Sunday	Matt May	9:00 p.m.
8/20/2018	Monday	Brooke Suarez	8:35 p.m.
8/21/2018	Tuesday	Brooke Suarez	8:50 p.m.
8/22/2018	Wednesday	Jeanette Childress	9:00 p.m.
8/23/2018	Thursday	Matt May	8:15 p.m.
8/26/2018	Sunday	Nancy McAllister	9:11 p.m.
8/27/2018	Monday	Jeanette Childress	8:30 p.m.
8/28/2018	Tuesday	Brooke Suarez	9:05 p.m.
8/29/2018	Wednesday	Brooke Suarez	9:28 p.m.
8/30/2018	Thursday	Matt May	7:50 p.m.
9/3/2018	Monday	Matt May	8:05 p.m.
9/4/2018	Tuesday	Jeanette Childress	8:45 p.m.
9/5/2018	Wednesday	Jeanette Childress	9:00 p.m.
9/6/2018	Thursday	Brooke Suarez	8:20 p.m.
9/9/2018	Sunday	Brooke Suarez	9:00 p.m.
9/10/2018	Monday	Jeanette Childress	8:15 p.m.
9/11/2018	Tuesday	Gaylon Norwood	9:10 p.m.
9/12/2018	Wednesday	Nancy McAllister	9:16 p.m.
9/13/2018	Thursday	Jeanette Childress	8:15 p.m.
9/16/2018	Sunday	Jeanette Childress	8:15 p.m.
9/17/2018	Monday	Nancy McAllister	9:14 p.m.
9/18/2018	Tuesday	Matt May	7:24 p.m.
9/19/2018	Wednesday	Gaylon Norwood	8:52 p.m.



Notice of the observed violations (attached), which included an order to cease and desist all operations outside of those permitted in conditional Use Permit #96056 and Board Resolution No. 97-067, and which conveyed the consequences of noncompliance, was sent to the owner /operator of the Ward Lake site on August 21, 2018. Said August 21, 2018, letter included an official notice of the Departments intent to seek revocation of Use Permit #96056, should the violations noted above persist. Subsequent letters (attached) were sent on August 31, 2018, September 7, 2018, September 14, 2018, and September 24, 2018, and pursuant to Lassen County Code Chapter 1.20, included administrative citations due to “the failure to comply with any condition imposed by any entitlement.”

Again, pursuant to Lassen County Code Section 18.112.060 (attached), because the conditions of approval for Use Permit #96056 were not complied with, the Planning Commission was authorized to give notice to the permittee of their intention to revoke said permit, and hold a hearing thereon. At the conclusion of this hearing, the Planning Commission may revoke said permit. Such revocation would be subject to the right of appeal (to the Board of Supervisors) in the same manner as set forth in Section 18.112.050 of Lassen County Code.

### **RECOMMENDATION**

Observations by staff on September 20, 2018, September 23, 2018, September 24, 2018, September 25, 2018, September 26, 2018, and September 27, 2018, appear to support statements found in a letter (attached) from Attorney Christiana Darlington (representing Hat Creek Construction), dated September 20, 2018, which in part asserts that the violations of Board Resolution 97-067, and approved Use Permit #96056, have been discontinued.

In addition and as previously stated, Hat Creek Construction has applied for and the Department is currently processing an amendment to allow for the following: limited nighttime operations, increased truck traffic, an extension of the permits expiration date, and increased permitted volume of production during declared emergencies.

Because current operations at the Ward Lake site appear to comply with Board Resolution 97-067 and approved Use Permit #96056, and because Hat Creek Construction is currently seeking amendment to said Use Permit, Staff does not recommend revocation for this hearing.

In lieu of revocation, Staff recommends that the Commission adopt a condition for monitoring of the Ward Lake site to ensure that there is no continuance of the previously observed violations. Monitoring of the Ward Lake site should be conducted until the Board of Supervisors considers the proposed amendment, and/or, until the Department is satisfied that the Operator intends to remain in compliance with Board Resolution 97-067, and approved Use Permit #96056.



Additionally, Staff recommends that the Commission adopt a condition for supplementary monitoring (e.g. traffic counters, motion capture cameras, etc.), ordered at the Operators expense, if at any time it is determined that Staff's capacity to monitor the Ward Lake site is insufficient.

Finally, Staff recommends that the Commission adopt a condition to immediately place Use Permit #96056 on the Planning Commissions agenda to consider revocation, if monitoring verifies that the violations noted in this hearing are continuing at the Ward Lake site under existing permit entitlements (i.e. without an amendment). If violations continue at the Ward Lake site, any future hearing to consider revocation of Use Permit #96056, will include Staff's recommendation that revocation be upheld.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE LASSEN COUNTY PLANNING COMMISSION DECLARING NON-COMPLIANCE WITH USE PERMIT #96056 TLT ENTERPRISES/HAT CREEK CONSTRUCTION, AND IMPOSING CONDITIONS TO AVOID REVOCATION OF SAID USE PERMIT, BY ENSURING THAT OPERATIONS CONDUCTED IN VIOLATION OF USE PERMIT #96056 DO NOT CONTINUE.

WHEREAS, The Board of Supervisors of the County of Lassen, did adopt Resolution No. 97-067 on September 23, 1997, which conditionally approved Use Permit #96056, to allow surface mining and material processing, with concrete and asphalt plants; and

WHEREAS, Section 18.112.060 of the Lassen County Code requires the Planning Commission to consider revocation of any use permit for which the conditions of approval have not, or are not, complied with; and

WHEREAS, on 23 nights beginning August 19, 2018, through September 19, 2018, the Ward Lake mine site, was observed conducting operations in violation of Board Resolution No. 97-067, and approved Use Permit #96056, specifically, condition #22 of Board Resolution No. 97-067, which limits the hours of operation (including truck traffic) at the Ward Lake site to between 6:00 a.m. and 7:00 p.m., Monday through Saturday, and said operations are also a violation of the Lassen County Code Chapter 18.112; and

WHEREAS, In accordance with Lassen County Code Chapter 18.112, the Planning Commission of Lassen County, after due notice, and a public hearing held on October 3, 2018, has considered documents and other information regarding both the violation of Use Permit #96056, current compliance with the conditions of approval of Use Permit #96056, compliance with the provisions of the County Code, and the question of whether or not Use Permit #96056 should be revoked due to non-compliance; and

WHEREAS, the Environmental Review Officer of Lassen County has determined that revocation of said use permit is not a "Project" as defined by Section 21065 of the California Environmental Quality Act Statutes.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The Lassen County Planning Commission finds as follows:
  - a. Notice of the October 3, 2018, public hearing before the Planning Commission, was properly given.
  - b. The permit holder (Perry Thompson) was present at the October 3, 2018, public hearing.

- c. Testimony was received under oath at the below identified public hearing by the following individuals:

October 3, 2018: Maurice L. Anderson, Director; Gaylon Norwood, Assistant Director; Matthew May, Senior Planner; Perry Thompson, permit holder.

- d. The Planning Commission hereby incorporates all findings, information evidence in the record, and testimony received at the October 3, 2018, public hearing demonstrating the applicant's noncompliance with the conditions of approval for Use Permit #96056, specifically, condition #22 of Board Resolution No. 97-067, which limits the hours of operation (including truck traffic) at the Ward Lake site to between 6:00 a.m. and 7:00 p.m. Monday through Saturday, and all findings, information evidence in the record, and testimony, demonstrating the operation is currently in compliance with Use Permit #96056.
- 4. The Planning Commission hereby concurs with the Environmental Review Officer that revocation, or the establishment of conditions avoid revocation, is not a "project" as defined by the California Environmental Quality Act Statutes at Section 21065.
  - 5. The Planning Commission hereby determines that on 23 nights beginning August 19, 2018, through September 19, 2018, the Ward Lake mine site, was observed conducting operations in violation of Board Resolution No. 97-067, and approved Use Permit #96056, specifically, condition #22 of Board Resolution No. 97-067, which limits the hours of operation (including truck traffic) at the Ward Lake site to between 6:00 a.m. and 7:00 p.m., Monday through Saturday, and said operations are also a violation of the Lassen County Code Chapter 18.112.
  - 8. The Planning Commission hereby confirms that Department of Planning and Building Services Staff did observe through onsite monitoring that operations are currently in compliance with conditions of Use Permit #96056.
  - 9. The Planning Commission hereby establishes the conditions attached hereto in Exhibit A to avoid revocation of Use Permit #96056. If, at any time, said conditions are not satisfied, or if monitoring verifies that the violations noted in this hearing are continuing at the Ward Lake site, the Lassen County Department of Planning and Building Services shall schedule a public hearing before the Planning Commission to consider revocation of Use Permit #96056. .



RESOLUTION NO. \_\_\_\_\_

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the  
County of Lassen, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the  
following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Chairman  
Lassen County Planning Commission

ATTEST:

\_\_\_\_\_  
Maurice L. Anderson, Secretary  
Lassen County Planning Commission

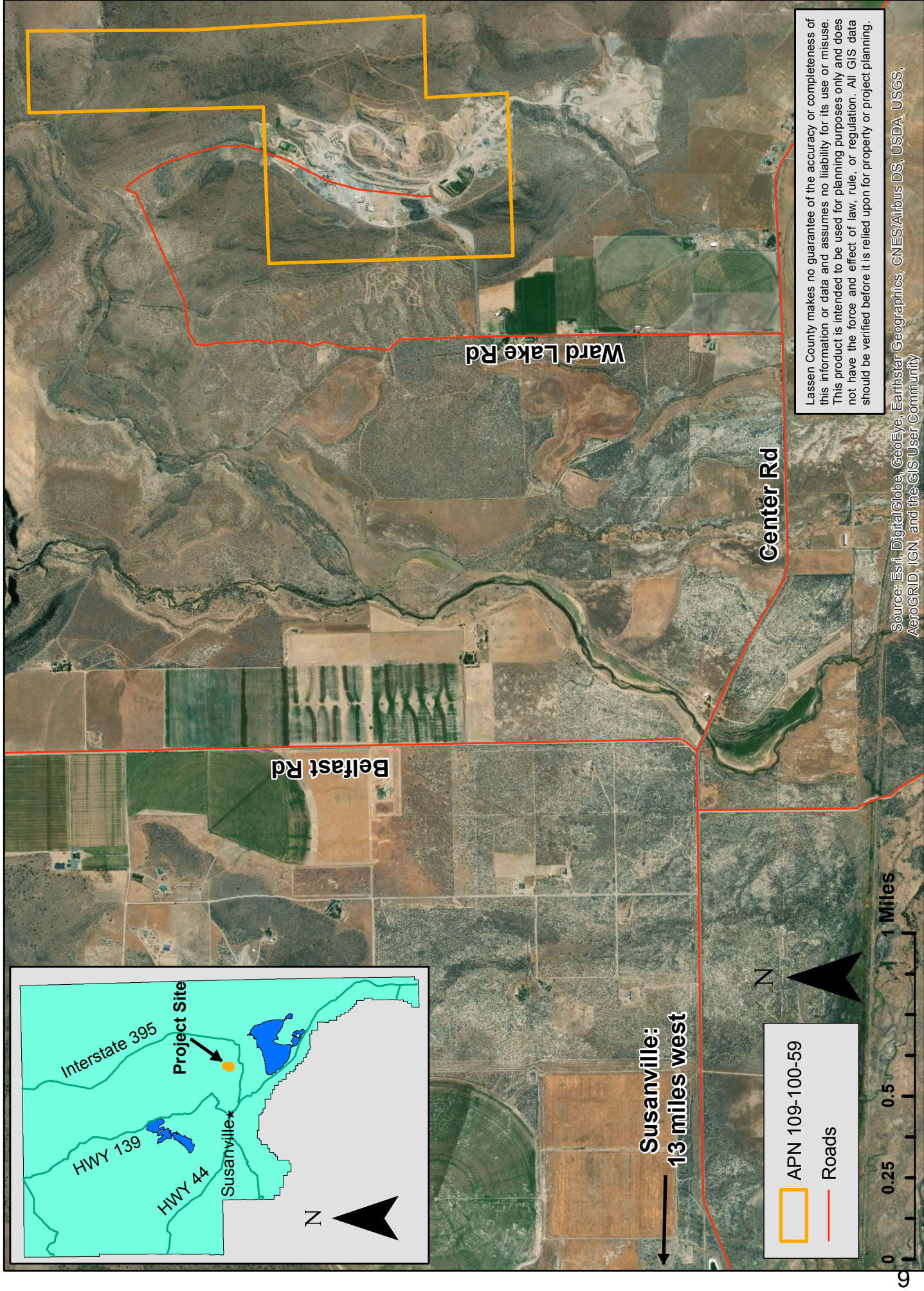
EXHIBIT A

CONDITIONS TO AVOID REVOCATION OF USE PERMIT #96056

- 1) The applicant shall maintain full compliance with all the conditions of approval with Board Resolution 97-067, and Use Permit #96056 at all times.
- 2) Monitoring shall be conducted at the Ward Lake site to ensure that there is no continuance of the previously observed violations. Monitoring of the Ward Lake site shall be conducted until the Department of Planning and Building Services is satisfied that the Operator intends to remain in compliance with Board Resolution 97-067, and approved Use Permit #96056.
- 3) Supplementary monitoring equipment (e.g. traffic counters, motion capture cameras, etc.), third party monitoring, or monitoring of any kind, may be ordered by the Department of Planning and Building Services at the Operators expense, if at any time it is determined that the Departments capacity to monitor the Ward Lake site is insufficient.
- 4) Use Permit #96056 shall be immediately placed on the Planning Commissions agenda to consider revocation, if at any time monitoring verifies that the violations noted in this hearing are continuing at the Ward Lake site. If violations continue at the Ward Lake site, any future hearing to consider revocation of Use Permit #96056, will include Staff's recommendation that revocation be upheld.



# Ward Lake Pit; Use Permit #96056







*County of Lassen*  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

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**NOTICE OF VIOLATIONS/NOTICE AND ORDER TO CORRECT  
VIOLATIONS**

CERTIFIED MAIL/RETURN RECEIPT

7017 1070 0000 7544 8221

August 21, 2018

Zoning & Building  
Inspection Requests  
Phone: 530 257-5263

TLT EnterprisesLLC/Hat Creek Construction  
24339 Highway 89 N  
Burney, CA 96013

RE: CDEF2018-057  
CA Mine # 91-18-0008 (Ward Lake)  
A.P.N. 109-100-59

This letter is in regard to the above referenced Ward Lake mine site, which is conducting operations in violation of Board of Resolution No. 97-067, and approved Use Permit #96056. Said operations are also in violation of both the *Lassen County Code*, and the Surface Mining and Reclamation Act (SMARA).

Condition #22 of Board Resolution No. 97-067 limits the hours of operation (including truck traffic) at the Ward Lake site to 6:00 a.m. to 7:00 p.m. Monday through Saturday. On Sunday August 19, 2018, and Monday August 20, 2018, night time operations were conducted at the Ward Lake site, between the hours of 7:01 p.m. and 5:59 a.m., in violation of both the hours and days of operation allowed under Condition #22 of Board Resolution No. 97-067. Please cease and desist all operations at the Ward Lake site, which are in violation of Use Permit #96056, as conditionally approved thorough Board Resolution No.97-067.

**LASSEN COUNTY CODE**

Section 9.60.140 (*Violations and penalties*) of the Lassen County Code, states:

*If the planning department, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this chapter, the applicable permit and/or the reclamation plan, the county shall follow the procedures set forth in SMARA, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of Chapter 18.112 for revocation and/or abandonment of a use permit which are not preempted by SMARA. (Ord. 509 § 2, 1992).*

Please consider this letter as an official notice of the Departments intent to seek revocation of Use Permit #96056, should the violations noted above persist.

In addition to enforcement procedures outlined above, and pursuant to Chapter 1.20 (Administrative Citations), any person violating any provision of the Lassen County Code may be issued an administrative citation by an enforcement officer as provided in this chapter. A violation of 1.20 code includes, the failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved.

As required under Lassen County Code Section 1.20.040 this letter serves as "Notice of Order to Correct Violation(s)." Again, please cease and desist all operations at the Ward Lake site, which are in violation of Use Permit #96056, as conditionally approved thorough Board Resolution No.97-067.

#### **SMARA**

Sections 2774.1 and 2774.2 of SMARA, requires the Department, to follow specific administrative procedure in dealing with surface mining violations. As such, this letter also serves as an official notice of violation as required in Section 2774.1 (a)(1) of SMARA.

#### **ADDITIONAL ENFORCEMENT**

If the conditions of approval for use permit #96056 are not complied with, the Planning Commission shall give notice to the permittee of intention to revoke said permit at least ten days prior to hearing thereon. At the conclusion of the hearing the Planning Commission may revoke said permit. Such revocation shall be subject to the right of appeal in the same manner as set forth in Section 18.112.050 of Lassen County Code.

Failure to comply with a notice to comply issued pursuant to 2774.1 of SMARA, within 30 days of being served said notice, or commit to enter into a stipulated order to comply within 30 days of being served the notice, may result in issuance of an order to comply. Failure to comply with an order issued pursuant to 2774.1 could result in an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance.

Failure to correct these violations immediately upon receipt of this letter will also result in the issuance of an administrative citation, and penalties will accrue each day the violation continues to exist. The first citation is \$100, the second citation is \$500, the third and subsequent citations are \$1000.

If you have any questions regarding the noted violations, remedy, or additional enforcement actions, please contact this office at (530) 251-8269.

Sincerely,



Maurice L. Anderson,  
Director, Acting Building Official

MLA:mm  
c.c. Division of Mine Reclamation





County of Lassen  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

Maurice L. Anderson, Director

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NOTICE OF VIOLATIONS/NOTICE AND ORDER TO CORRECT  
VIOLATIONS/NOTICE OF ISSUANCE OF CITATIONS

CERTIFIED MAIL/RETURN RECEIPT

7017 1070 0000 7544 8245

August 31, 2018

Zoning & Building

Inspection Requests

Phone: 530 257-5263

TLT Enterprises LLC/Hat Creek Construction  
24339 Highway 89 N  
Burney, CA 96013

RE: CDEF2018-057  
CA Mine #91-18-0008 (Ward Lake)  
A.P.N. 109-100-59

This letter is in regard to the above referenced Ward Lake mine site, which is conducting operations in violation of Board Resolution No. 97-067, and approved Use Permit #96056. Said operations are also in violation of both the *Lassen County Code*, and the Surface Mining and Reclamation Act (SMARA).

Condition #22 of Board Resolution No. 97-067 limits the hours of operation (including truck traffic) at the Ward Lake site to 6:00 a.m. to 7:00 p.m. Monday through Saturday. On Sunday, August 19, 2018, Monday, August 20, 2018, Tuesday, August 21, 2018, Wednesday, August 22, 2018, Thursday, August 23, 2018, Sunday, August 26, 2018, Monday, August 27, 2018, Tuesday, August 28, 2018, Wednesday, August 29, 2018, and Thursday August 30, 2018, staff observed night time operations being conducted at the Ward Lake site, between the hours of 7:01 p.m. and 5:59 a.m., in violation of both the hours and days of operation allowed under Condition #22 of Board Resolution No. 97-067. Please cease and desist all operations at the Ward Lake site, which are in violation of Use Permit #96056, as conditionally approved through Board Resolution No. 97-067.

**LASSEN COUNTY CODE**

Section 9.60.140 (*Violations and penalties*) of the Lassen County Code, states:

*If the planning department, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this chapter, the applicable permit and/or the reclamation plan, the county shall follow the procedures set forth in SMARA, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of Chapter 18.112 for revocation and/or abandonment of a use permit which are not preempted by SMARA. (Ord. 509 § 2, 1992).*



In addition to enforcement procedures outlined above, and pursuant to Chapter 1.20 (Administrative Citations), any person violating any provision of the Lassen County Code may be issued an administrative citation by an enforcement officer as provided in this chapter. A violation under Chapter 1.20 of Lassen County Code includes the failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved.

As required by Lassen County Code Section 1.20.040, a "Notice of Order to Correct Violation(s)" was served to you in a letter from this Department, dated August 21, 2018. As you have failed to correct the violations as ordered in the Notice of Order to Correct Violation(s) dated August 21, 2018, administrative citations are now being applied to this violation.

- The violation first occurred August 19, 2018, and has resulted in issuance of a citation in the amount of \$100.00;
- The violation continued on August 20, 2018, and has resulted in the issuance of a citation in the amount of \$500.00;
- The violation continued on Tuesday, August 21, 2018, Wednesday, August 22, 2018, Thursday, August 23, 2018, Sunday, August 26, 2018, Monday, August 27, 2018, Tuesday, August 28, 2018, Wednesday, August 29, 2018, and Thursday August 30, 2018, and has resulted in the issuance of EIGHT citations in the amount of \$1000.00 each.

(the Administrative Citations applied to date are attached with this letter)

Penalties will continue to accrue each day the violation exists, and subsequent citations will be \$1000. Again, please cease and desist all operations at the Ward Lake site, which are in violation of Use Permit #96056, as conditionally approved thorough Board Resolution No. 97-067

#### **SMARA**

Please be advised that in the letter from this Department dated August 21, 2018, you were also provided a Notice of Violation as required in Section 2774.1 (a)(1) of the Surface Mining and Reclamation Act (SMARA). Failure to comply with a notice issued pursuant to 2774.1 of SMARA, within 30 days of being served said notice, or failure to commit to enter into a stipulated order to comply within 30 days of being served the notice, may result in issuance of an order to comply. Failure to comply with an order issued pursuant to 2774.1 could result in an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance. This administrative process as required by SMARA is separate from, and in addition to, other Lassen County administrative procedures.

#### **ADDITIONAL ENFORCEMENT**

Again, if the conditions of approval for Use Permit #96056 are not complied with, the Planning Commission is authorized to give notice to the permittee of intention to revoke said permit at least ten days prior to hearing thereon. At the conclusion of the hearing the Planning Commission may revoke said permit. Such revocation shall be subject to the right of appeal in the same manner as set forth in Section 18.112.050 of Lassen County Code.

Lastly, there are other provisions of the Lassen County Code that you need to be advised of. First, section 18.126.030 of the Lassen County Code declares it a misdemeanor to operate in violation of Title 18 of the Lassen County Code. A violation of a Use Permit condition is a violation of Title 18. Moreover, a violation of Title 18 may also be the basis for public nuisance in a court of competent jurisdiction wherein applications for injunction may be made.

If you have any questions regarding the noted violations, remedy, or additional enforcement actions, please contact this office at (530) 251-8269.

Sincerely,

A handwritten signature in black ink, appearing to read 'MLA', followed by a long horizontal line extending to the right.

Maurice L. Anderson,  
Director, Acting Building Official

MLA:mm  
c.c. Division of Mine Reclamation



*County of Lassen*  
Department of Planning and Building Services

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**NOTICE OF VIOLATIONS/NOTICE AND ORDER TO CORRECT  
VIOLATIONS/NOTICE OF ISSUANCE OF CITATIONS**

CERTIFIED MAIL/RETURN RECEIPT  
7017 1070 0000 7544 8023

September 7, 2018

TLT Enterprises LLC/Hat Creek Construction  
24339 Highway 89 N  
Burney, CA 96013

RE: CDEF2018-057  
CA Mine #91-18-0008 (Ward Lake)  
A.P.N. 109-100-59

This letter is in regard to the above referenced Ward Lake mine site, which is conducting operations in violation of Board Resolution No. 97-067, and approved Use Permit #96056. This Notice follows our August 31, 2018, Notice (copy attached) which advised you of violations of Board Resolution 97-067, violations of approved use permit #96056, violations of certain identified Sections of Lassen County Code, and violation of certain identified Sections of the Surface Mining and Reclamation Act (SMARA).

The violations noted in our August 31, 2018, Notice have continued. As such, additional citations are attached for the dates noted on the citations.

If you have any questions regarding the noted violations, remedy, or additional enforcement actions, please contact this office at (530) 251-8269.

Sincerely,

Maurice L. Anderson,  
Director, Acting Building Official

MLA:gfn  
Enclosures

cc: Division of Mine Reclamation





*County of Lassen*  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

Maurice L. Anderson, *Director*  
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website: [www.co.lassen.ca.us](http://www.co.lassen.ca.us)

Zoning & Building  
Inspection Requests  
Phone: 530 257-5263

**NOTICE OF VIOLATIONS/NOTICE AND ORDER TO CORRECT  
VIOLATIONS/NOTICE OF ISSUANCE OF CITATIONS**

CERTIFIED MAIL/RETURN RECEIPT  
7017 1070 0000 7544 8078

September 14, 2018

TLT Enterprises LLC/Hat Creek Construction  
24339 Highway 89 N  
Burney, CA 96013

RE: CDEF2018-057  
CA Mine #91-18-0008 (Ward Lake)  
A.P.N. 109-100-59

This letter is in regard to the above referenced Ward Lake mine site. This Notice follows our August 31, 2018, and September 7, 2018 Notices (a copy of each is attached), which advised you of violations of Board Resolution 97-067, violations of approved use permit #96056, violations of certain identified Sections of Lassen County Code, and violation of certain identified Sections of the Surface Mining and Reclamation Act (SMARA).

The violations noted in our August 31, 2018, and September 7, 2018, Notices have continued. As such, additional citations are attached for the dates noted on the citations.

If you have any questions regarding the noted violations, remedy, or additional enforcement actions, please contact this office at (530) 251-8269.

Sincerely,

Maurice L. Anderson,  
Director, Acting Building Official

MLA:gfn  
Enclosures

cc: Division of Mine Reclamation



*County of Lassen*  
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

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website: [www.co.lassen.ca.us](http://www.co.lassen.ca.us)

**NOTICE OF VIOLATIONS/NOTICE AND ORDER TO CORRECT  
VIOLATIONS/NOTICE OF ISSUANCE OF CITATIONS**

CERTIFIED MAIL/RETURN RECEIPT

7017 1070 0000 7544 8443

Zoning & Building

Inspection Requests

Phone: 530 257-5263

September 24, 2018

TLT Enterprises LLC/Hat Creek Construction  
24339 Highway 89 N  
Burney, CA 96013

RE: CDEF2018-057  
CA Mine #91-18-0008 (Ward Lake)  
A.P.N. 109-100-59

This letter is in regard to the above referenced Ward Lake mine site. This Notice follows our August 31, 2018, September 7, 2018 and September 14, 2018 Notices (a copy of each is attached), which advised you of violations of Board Resolution 97-067, violations of approved use permit #96056, violations of certain identified Sections of Lassen County Code, and violation of certain identified Sections of the Surface Mining and Reclamation Act (SMARA).

The violations noted in our August 31, 2018, September 7, 2018, and September 14, 2018, Notices did continue through September 19, 2018. As such, additional citations are attached for the dates noted on the citations.

In addition to documenting the citations noted above, with this letter the Department acknowledges the receipt of a letter from Attorney Christiana Darlington (representing Hat Creek Construction), dated September 20, 2018, which in part asserts that the violation of Board Resolution 97-067, and approved use permit #96056, has been rectified. Although observations by staff on September 20, 2018, and September 23, 2018, support Ms. Darlington's assertion, nightly monitoring will continue until the Department is satisfied that the Permittee intends to remain in compliance with Board Resolution 97-067, and approved use permit #96056. In her letter, Ms. Darlington also requests "a summary accounting of all fines levied by the County." Including the citations attached with this letter, Lassen County has issued 23 administrative citations to TLT Enterprises/Hat Creek Construction. The first citation was \$100, the second citation was \$500, the third and subsequent citations were \$1000 each, for a total of **\$21,600** in fines.

TLT Enterprises/Hat Creek Construction  
September 7, 2018  
Page 2 of 2

If you have any questions regarding the noted violations, remedy, or additional enforcement actions, please contact this office at (530) 251-8269.

Sincerely,

A handwritten signature in black ink, appearing to read 'MLA', with a long horizontal stroke extending to the right.

Maurice L. Anderson,  
Director, Acting Building Official

MLA:gfn  
Enclosures

cc: Division of Mine Reclamation



Lassen County Code						
<a href="#">Up</a>	<a href="#">Previous</a>	<a href="#">Next</a>	<a href="#">Main</a>		<a href="#">Search</a>	<a href="#">Print</a>
<a href="#">Title 18 ZONING</a>						
<a href="#">Chapter 18.112 USE PERMITS</a>						

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**18.112.060 Revocation.**

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(a) In any case, where the conditions of approval for a use permit have not, or are not, complied with, the planning commission shall give notice to the permittee of intention to revoke such permit at least ten days prior to hearing thereon. At the conclusion of the hearing the planning commission may revoke such permit. Such revocation shall be subject to the right of appeal in the same manner as set forth in Section 18.112.050 of this title. (Ord. 467-H § 2, 1991).

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**RESOLUTION NO. 97-067**

**RESOLUTION OF THE LASSEN COUNTY BOARD OF SUPERVISORS  
ESTABLISHING FINDINGS RELATED TO CEQA AND APPROVAL OF USE  
PERMIT (#96056), AND REZONE (#96056), CERTIFYING THE FINAL  
ENVIRONMENTAL IMPACT REPORT (#96056) AND APPROVING USE PERMIT  
(#96056) AND REZONE (#96056), MILLER'S CUSTOM WORK, INC. WARD  
LAKE PIT PROJECT**

**WHEREAS**, Lassen County has received and accepted the conditional use permit and rezone applications submitted by Miller's Custom Work, Inc. for the expansion of the Ward Lake Aggregate Pit Operation; and

**WHEREAS**, pursuant to Chapter 18.112, Section 18.112.035(a) of the Lassen County Code, when an application for a use permit is accompanied by an application to rezone the project site, the Planning Commission's review of and recommendations regarding the use permit and the project as a whole shall be advisory to the Board of Supervisors; and

**WHEREAS**, the Planning Commission, after due notice, has considered, in an advisory capacity to the Board of Supervisors, the Final EIR #96056 prepared and submitted by Planning Concepts, an independent contractor, Use Permit #96056, and Rezone #96056, submitted by Miller's Custom Work, Inc., to expand the Ward Lake Aggregate Pit and rezone the project site from U-C Upland Conservation to U-C-2 Upland Conservation / Resource Management, and has submitted its findings and recommendation to this Board by Resolution #9-01-97; and

**WHEREAS**, the Environmental Review Officer of Lassen County has prepared an Initial Environmental Study and an Environmental Impact Report (EIR) concerning the above project in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS**, Lassen County has caused notice to be given, in accordance with the law, of public hearing before the Planning Commission and the Board of Supervisors in these matters, which Planning Commission hearing was opened on August 6, 1997, and concluded on September 3, 1997, and which Board of Supervisors hearing was held on September 23, 1997; and

**WHEREAS**, the Community Development Director has furnished to the Board of Supervisors, and the Board has incorporated into the record of this matter, the EIR, and the documents discussing the significant environmental effects identified in the EIR, proposed findings concerning mitigation, project alternatives, and project benefits including a statement of overriding consideration, as well as including evidence in support of the proposed findings; and

**WHEREAS**, the Board of Supervisors has duly considered the EIR as required by CEQA, and reviewed the above project and actions in light of that EIR; and

WHEREAS, before consideration of the proposed project, this Board called for comments on the proposal and all persons so desiring to comment were duly heard; and

WHEREAS, the Board has considered all of the testimony presented during the public comment period and the public hearing, as well as the findings and recommendation of the Planning Commission.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS  
AS FOLLOWS:**

1. The foregoing recitals are true and correct, and the Board of Supervisors has jurisdiction to consider and act upon the subject matters of this resolution; and

2. The Lassen County Board of Supervisors certifies that it has reviewed and considered the information contained in the Final Environmental Impact Report (FEIR) dated July 31, 1997, for the Miller's Custom Work, Inc. Ward Lake project, and the findings and recommendations of the Planning Commission as contained in Commission Resolution #9-01-97; and

3. The Board hereby adopts as its findings the CEQA findings of fact and statements of overriding consideration concerning the Miller's Custom Work, Inc. project, consisting of the use permit and rezone, which detailed findings are attached hereto as EXHIBIT ONE, and incorporated herein; and

4. The Board hereby adopts as its findings the findings for approval of the conditional use permit and rezone for the Miller's Custom Work, Inc. project, which detailed findings are attached hereto as EXHIBIT TWO, and incorporated herein; and

5. The Board, after careful consideration of the facts, evidence, comments and recommendations contained in the FEIR, and as submitted during the public review of the EIR and as presented orally and in writing at the public hearings, and as presented in Commission Resolution #9-01-97, hereby:

a. Adopts the findings and statements of overriding consideration as set forth in exhibits ONE and TWO attached hereto.

b. Certifies that it has reviewed and considered the information contained in the FEIR for the Miller's Custom Work, Inc. project, dated July 31, 1997, and further certifies that the FEIR has been completed in compliance with CEQA.

c. Finds that the project is consistent with the Lassen County General plan and the Standish-Litchfield Area Plan, as such Area Plan was amended August 19, 1997.

d. Approves the conditional use permit #96056 and rezone #96056, subject to the conditions of approval attached hereto as EXHIBIT THREE.



e. Adopts the Mitigation Monitoring Program set forth in the FEIR.

f. Finds that the project, together with the conditions of approval, will not, under the circumstances of this case, be substantially detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be substantially detrimental or injurious to people, property or improvements in the neighborhood.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Lassen, State of California, on the Twenty-third day of September, 1997, by the following vote:

AYES: Supervisors Chapman, Neely, Loubet, Dahle

NOES: None

ABSTAIN: None

ABSENT: Supervisor Lough

APPROVED: *Jim Chapman*  
Acting Chairman  
Lassen County Board of Supervisors

ATTEST:  
*Theresa Nagel*  
Theresa Nagel, County Clerk,  
Lassen County

In accordance with Section 25103 of the Government Code of the State of California a copy of this document has been delivered to the Chairman of the Board of Supervisors, County of Lassen on

9-23-97  
By *T Nagel*  
Clerk (Deputy Clerk) of the Board of Supervisors

I, THERESA NAGEL, County Clerk of the County of Lassen, State of California, and ex-officio Clerk of the Board of Supervisors thereof, do hereby certify that the foregoing resolution was duly adopted by said Board of Supervisors at a regular meeting held on the 23 day of Sept, 1997.

*Theresa Nagel*  
County Clerk and ex-officio Clerk of the  
Board of Supervisors

up/rezone/96056/BrdRes

### EXHIBIT THREE

#### CONDITIONS OF APPROVAL USE PERMIT #96056

1. This use permit is granted for the use as reviewed by the Planning Commission on September 3, 1997, and as approved by the Board of Supervisors on \_\_\_\_\_, subject to the terms and conditions set forth herein. Substantial revisions and/or expansion of the project will require a new use permit subject to the approval of the Planning Commission.
2. In case of conflict between the conditions specified herein and those attached to use permits #79-80-44 and #11-02-85, issued to Miller's Custom Work, Inc. pertaining to the Ward Lake Pit, the conditions herein shall control.

#### PRIOR TO ISSUANCE OF THE AUTHORIZATION TO OPERATE UNDER THIS USE PERMIT

3. The operator shall secure all necessary permits from the Lassen County Air pollution Control District. Evidence of approval shall be submitted to the Community Development Department.
4. The operator shall secure all necessary permits from the Lahontan RWQCB and/or the State Water Resources Board. Evidence of approval(s) or a copy of the letter certifying that no off site discharge will occur, exempting the operation, shall be submitted to the Community Development Department.
5. The applicant shall prepare and implement a Spill Prevention and Countermeasure Plan to the satisfaction of the Regional WQCB.
6. The operator shall secure any necessary encroachment permits from the County Road Department.
7. A valid financial assurance, in an amount adequate to cover the costs of complete site reclamation, shall be in place, payable to "Lassen County or the Department of Conservation," prior to issuance of the Authorization to Operate and at all times that the project is subject to SMARA. The financial assurance instrument shall be reviewed periodically for adequacy and shall be amended by the operator as required by the lead agency.
8. Inasmuch as the conditions of approval of this use permit (#96056) shall cause the need to revise the existing approved reclamation plan for the operation, the applicant shall apply to so amend the reclamation plan.

9. The operator shall submit a New Mine Report to the State, with a copy to the Community Development Department, within 30 days of approval by the County, and shall submit annual reports to the State and County every year thereafter, as long as the project is subject to SMARA.
10. The applicant shall enter into a fair share agreement with the County Road Department to chip seal Ward Lake Road from the project access road to the intersection of Conservation Center Road. The agreement shall address the timeframe within which the chip seal is to take place. Unless otherwise specified and agreed to by both parties, the applicant shall be responsible to provide aggregate materials and oil, and the County shall provide the necessary labor to complete the work. Unless authorized by the County Engineer in writing, all work shall be complete within two years from the date of use permit approval.
11. The applicant shall remove all debris from the culvert at the north end of Ward Lake Road immediately upon approval of the project, and shall be responsible to prevent additional debris, originating from the mine site, from blocking the culvert for the duration of the mine operation.

#### OPERATIONAL CONDITIONS

12. Prior to installation or operation of the ready mix concrete batch plant the applicant shall either:
  - a) Redesign project to omit the concrete batch plant; or
  - b) The applicant shall secure the rezoning of the site to a district that allows for concrete batch plants.
13. The following reclamation shall be required and, where different from or in addition to the provisions of the approved reclamation plan, said reclamation plan shall be amended by application:

Reclamation of graded areas. The intent of the Reclamation Plan shall be to recreate to the extent possible a viable, self-sustaining plant community similar to that which existed prior to mining as follows:

Sand and Gravel Excavation Areas: These areas shall be regraded to maximum slopes of 2H:1V, shall be resoiled with adequate growth medium to support vegetation including fines from the crusher and stockpiled topsoil and shall be revegetated with native species including sage, bitterbrush, and rabbit brush. The success of revegetation in these areas shall be monitored by qualified personnel with reports submitted to the County Community Development Department at least once per year for five years. The final approved species list and planting



density must be approved by the County in consultation with the Department of Fish and Game.

Rock Quarry Area: This area shall be re-graded to a maximum overall slope of 2H:1V and shall be benched with minimum 10 foot wide benches at vertical intervals appropriate for the type of material, but not greater than 15 feet. The benches shall be sloped to drain toward the hillside, shall be resoiled with adequate growth medium to support vegetation including fines from the crusher and stockpiled topsoil and revegetated using native range grasses, shrubs, and trees if they can be supported.

The operator shall institute a test plot program on the first available rock face bench to determine the best species mix and planting scheme for subsequent benches. The test plots shall be set up and monitored by qualified personnel with reports submitted to the County Community Development Department at least once per year for five years. The final approved species list and planting density must be approved by the County in consultation with the Department of Fish and Game.

Timing/ Phasing of Reclamation: Reclamation of sub-areas shall take place in a phased manner where possible as excavation is completed.

Protection of Replanted Areas: Replanted areas shall be protected by fencing or other approved method intended to exclude livestock and deer until vegetation is established. Perimeter livestock fencing shall be provided and shall be four wires maximum, bottom wire smooth and no closer than 18 inches to the ground with total fence height not to exceed 42 inches. More site specific deer proof fencing shall also be provided directly around replanting areas.

14. The approved reclamation plan for the project, and any future amendments thereto, is hereby incorporated into this use permit. Adherence to the provisions of the approved reclamation plan, and any County-approved amendments thereto, is hereby made a condition of approval.
15. Top soil (the top surface layer supporting vegetation) shall be scraped and salvaged concurrent with mining, stockpiled and protected from erosion, and shall be re-applied to disrupted surfaces, to promote revegetation and slope stability upon reclamation.
16. At a minimum, wet suppression shall be used to control dust at all times from excavation, processing activities and on haul roads.
17. The disturbed portion of the site, including quarry highwall benches, shall be revegetated with native and/or compatible species per the approved reclamation plan.

18. On site fuel tanks shall be placed and kept in impermeable containment structures capable of holding at least 110% of the tank capacity pursuant to the County's above ground fuel storage standards.
19. The operator will participate in the County's mine permit administration and monitoring program by submitting annual fees pursuant to County Code Section 9.60.110.
20. If any historic or pre-historic artifacts are discovered, work in the immediate vicinity shall stop, the lead agency shall be notified and a qualified archaeologist brought in at the operators expense to assess the resource(s) and recommend mitigation.
21. Except in a state of emergency, as declared by the local Emergency Services Director and/or the Board of Supervisors and/or the City of Susanville, no grading, excavating, or blasting on the site shall be allowed between January 1 and March 31 annually.
22. Hours of operation, including truck traffic to and from the site on Ward Lake Road shall be limited to 6:00 a.m. to 7:00 p.m. Monday through Saturday.
23. In the event that the ready mix concrete plant is allowed and installed on site, the applicant shall paint that portion of the concrete plant visible from Ward Lake Road and Conservation Center Road as determined by the County, to blend with surrounding natural background colors.
24. Ready mix concrete production shall be limited to 12,000 cubic yards per year
25. The operator shall contract with a California Air Resources Board certified private contractor for an annual compliance test at the Ward Lake operation to determine compliance with APCD permit. The test shall be conducted during facility operations before January 1 every year and the results submitted to the APCD for review.
26. Explosives shall be handled by a licensed operator, and shall be stored in an ATF inspected and approved magazine.
27. No explosives shall be detonated between the hours of 6:00 p.m. and 7:00 a.m.
28. The operation shall not exceed the noise standards for industrial activities as described in the Lassen County Noise Element as follows:

Noise produced by industrial uses shall not exceed 70 dB Ldn/CNEL at the nearest property line. (1989 Noise Element, page 21, #9)

The standards of Table III (1989 Noise Element page 19) are also applicable.

29. The operator shall, at the lead agency's request, measure the noise levels in the vicinity of operating equipment, at the nearest property line and at the nearest residential property



line, and submit the result to the lead agency for review. Measurements shall be taken by a qualified acoustical analyst.

30. The paved access to the site from Ward Lake Road shall serve as the only truck access to and from the site.
31. The operation (except the access road) shall be conducted within the following described area:

Township 30N., Range 14E., MDB & M:

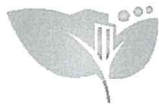
Section 32: SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ ;  
E  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$   
NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$

Section 33: SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ ;  
W  $\frac{1}{2}$  of the SW  $\frac{1}{4}$

32. The location of equipment, quarry, sand and gravel pits, maintenance areas, etc. shall be as shown in the site maps incorporated into the approved reclamation plan as such plan may be amended from time to time with County approval.
33. The operator shall identify the boundaries of the approved mine activity area and flag the corners so that the boundaries are readily visible to County and State officials authorized to inspect the site.
34. The applicant shall provide the necessary funding to the County Road Department to install speed limit signs on Ward Lake Road, upon determination by the County Engineer, applying accepted traffic safety considerations, that speed limit signs would be beneficial in reducing truck speeds and increasing safety on Ward Lake Road. The applicant shall further provide the County funding to install a stop sign at the intersection of the project access road and Ward Lake Road upon similar determination by the County Engineer that such a sign would be beneficial. The applicant's obligations herein shall be valid for a period not to exceed two years from the date of project approval.
35. In the event that the approval of this Use Permit is legally challenged on grounds including, but not limited to, CEQA compliance and/or general plan consistency or adequacy, the County will promptly notify the applicant of any claim, action, or proceeding, and the County will cooperate fully in the defense of the matter. Once notified that a claim, action or proceeding has been filed to attack, set aside, void or annul an approval by the Planning Commission or the Board of Supervisors concerning this Use Permit, the applicant agrees to defend, indemnify and hold harmless the County and its agents, officers and employees.

Up/96056/PCresBrdReco





**CLERE Inc.**

*California Law Empowering Renewable Energy*

CHRISTIANA DARLINGTON  
ATTORNEY AT LAW  
5622 BLACK WILLOW ST  
ROCKLIN CA 95675-4433  
CHRISTIANA@CLEREINC.NET

September 20, 2018

Maurice Anderson, Planning Director  
707 Nevada St., # 5  
Susanville CA, 96130

Dear Mr. Anderson,

Hat Creek Construction and Materials (HCC) takes this opportunity to respond to the letter HCC received from yourself on behalf of Lassen County dated August 21, 2018 (County Letter), and subsequent letters and Notices of Violation dated through September 14, 2018 relating to alleged violations of Lassen County Permit #96056. More specifically, HCC is addressing the potential County action to revoke such permit based on said alleged violations. We understand that the Planning Commission will be hearing this matter at its October 3, 2018 meeting. This is the formal response letter of HCC to the County for the record and for the consideration by the Planning Commission.

To begin, HCC would like to inform the County that effective immediately there will be no more night time work occurring at the site until if and when the permit amendment is approved. HCC requests a summary accounting of all fines levied by the County. While HCC does not admit to any wrong doing or waive any legal rights, the Company plans to settle this dispute and pay all said fines expeditiously.

Meanwhile, this letter deals with the legal arguments made in the letters HCC has received. First, the County's attempt to invoke the Surface Mining and Reclamation Act (SMARA) is unfounded.<sup>1</sup> Violations of SMARA are based upon an annual inspection or otherwise confirmed by an inspection of the mining operation showing that a surface mining operation is not in compliance with SMARA.<sup>2</sup> The action at issue deals with whether or not trucks appropriately travel to and from the property at night. SMARA

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<sup>1</sup> The County Ordinance Section 9.60.140 reference to "permit" would not expand the county authority to somehow invoke state law to defend its local condition of approval on a project relating to actions that are not covered by the Act itself.

<sup>2</sup> See California Public Resources Code 2774 that make it clear that the actions of the lead agency are in relation to violations of SMARA ("this Chapter").

does not regulate truck traffic hours.<sup>3</sup> As this is not an issue regulated by SMARA, this claim would easily be disposed of through law and motion.<sup>4</sup>

To move on to the more substantive issue at hand, the County argues that it has the right to revoke Hat Creek Construction's Use Permit based on a violation of the condition relating to hours of truck traffic travelling to and from the property at night. Revoking the Permit would be a grossly over-reactive decision that would constitute an unconstitutional taking of a vested right in that permit held by HCC.

A Permit that was lawfully issued and relied upon is a vested permit that a local government can only revoke in limited circumstances. The length of time the permit has been in place and the impact on the Permittee who is in jeopardy of losing their permit is relevant. The showing of good cause to revoke a permit requires a showing of public nuisance, which is not occurring here.

In California it is well established case law that once a use permit has been properly issued, the power of a municipality to revoke is limited.<sup>5</sup>

"Once a use permit has been properly issued the power of a municipality to revoke it is limited. Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled... A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance.<sup>6</sup> By simply denying renewal of its conditional use permit, the city destroyed a business which has operated legally for 35 years."<sup>7</sup>

The relevant case law, when applied to the situation at hand, make it clear that this attempt to revoke the HCC permit would violate the Company's vested property rights in such permit.

### Analysis

The Ward Lake site has been used as an active rock quarry since 1980, and currently operates under Lassen County Use Permit No. 96056 adopted in September 1997 and

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<sup>3</sup> See California Public Resources Code 2772 and 2773 for the issues that are covered within a Reclamation Plan.

<sup>4</sup> See also the County's Initial Study done for the permit amendment that stated there are no impacts to geologic or mineral resources expected from the Project's conditional use amendment, which would include the activity at issue in the alleged violation relating to night time truck traffic, as well as a request to extend the life of the mine by ten years.

<sup>5</sup> *Trans - Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776 [194 P.2d 148].

<sup>6</sup> *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 158 [96 Cal.Rptr. 484]; *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776 [194 P.2d 148]; see also *Upton v. Gray* (1969) 269 Cal.App.2d 352 [74 Cal.Rptr. 783]; [\*\*\*22] *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124 [251 Cal.Rptr. 709].

<sup>7</sup> *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530-1531 [8 Cal.Rptr.2d 385].



Reclamation Plan No. 94032 adopted in July 1994. Hat Creek Construction purchased the Ward Lake Site in June 2011, at which time it was a fully permitted site. Recently HCC had an opportunity to compete for a bid for work to repave dilapidated road networks in and around Susanville, CA as a contractor for Cal Trans. Due to the need to avoid significant traffic delays to the people of Susanville and the County more generally, the contract required material delivery at night. HCC, being aware of its plans to bid this work, began discussions with the County on November 30, 2017. Discussions centered on the need for trucks to enter and leave the Ward Lake Site at night, as well as a few other changes. HCC is aware that one of its neighbors finds night time truck traffic to be an annoyance and has communicated to the County about it.

The Processing of the Use Permit has seen some delays. The issues of traffic and noise instigated numerous discussions at the outset. Due to factors related to all parties involved, it took several months to move the project application along. Eventually the project application was deemed complete on April 20, 2018. Then, it went to the Planning Commission for a determination of which level of environmental review was needed, including direction from staff about which impact areas needed new analysis. After the approval of the Initial Study at the hearing on June 6, 2018, HCC prepared supplemental information, which was submitted to the County on September 10, 2018. In the interim the County requested proposals for a third party review of the project environmental review. While this work is slowly progressing, the Cal Trans project became imminent.

The County Letters describe trucks coming and going from the property during hours that are not allowed under the current use permit on between August 19 and September 14, 2018. Of course, evidence would need to be presented that confirm these allegations. For the purposes of this legal analysis, but without waiving any rights or legal arguments related to the needed proof of such allegations, we continue below as if such activities did indeed happen.

Assuming that such a violation occurred, the County is taking an overly aggressive posture by threatening revocation, which would likely be deemed unwarranted by a Court. To begin, HCC has relied on this permit for a significant period of time, and has made considerable investments at the Ward Lake site, in an amount estimated at \$10,000,000 and directly employs 50 local people, as well as provided approximately 75 jobs are indirectly but critically connected to the facility. If the Permit was revoked the site would have to be closed, those jobs would be lost, and HCC would go bankrupt. This site is an integral part of HCC overall business plan, and it could not survive without the location in operation.<sup>89</sup> The impact of this permit revocation would have an

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<sup>8</sup> If and when this case goes to Superior Court, HCC will file records under seal to the Judge to substantiate these statements.

<sup>9</sup> Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. ( *Trans-Oceanic Oil Corp. v. Santa Barbara*, *supra*, at pp. 784-787; *Dobbins v. Los Angeles*, 195 U.S. 223, 239 [49 L.Ed. 169, 176, 25 S.Ct. 18]; *Jones v. City of Los Angeles*, 211 Cal. 304, 309-312 [295 P. 14]; see *Brougher v. Board of Public Works*, 205 Cal. 426, 433-434 [271 P. 487].)



impact far and wide within the region that go beyond purely economic interests. This is a family owned business that has been in the region for generations.

"In order to justify the interference with the constitutional right to carry on a lawful business it must appear that the interests of the public generally require such interference and that the means are reasonably necessary for the accomplishment of the purpose, and not **unduly oppressive** upon individuals. (emphasis added) ( *Lawton v. Steele*, *supra*, 152 U.S. 133, 137 [38 L.Ed. 385, 388].) As observed in *Lawton*, "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations." ( At p. 137 [38 L.Ed. at p. 388]; see *Dobbins v. Los Angeles*, *supra*, 195 U.S. 223, 236 [49 L.Ed. 169, 175].)<sup>10</sup>

It is clear from the fact that the permit has been in place a number of years and significant financial and social investment has been made, the law supports the conclusion that HCC has a vested right in its Use Permit.

In order for the County to revoke a vested permit, it must have "Good Cause".<sup>11</sup> The term "good cause" is a concept which finds expression in the California Constitution (art. I, § 9; art. XX, § 22) and in numerous statutes.<sup>12</sup> Many Courts equate the term Good Cause to require that the revocation be justified by compelling public necessity, or an inquiry into whether the activity was a public nuisance, <sup>13</sup> even if such activity was not allowed by local regulation.<sup>14</sup> "A public Nuisance is a type of nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."<sup>15</sup> The O'Hagen Court states, "In the present case we perceive that since plaintiff acquired a vested right in the use permit we must equate the term "good cause" with "compelling public necessity." Such "compelling public necessity," in turn, must be viewed in the context of a public nuisance, i.e., whether the operation of plaintiff's drive-in restaurant constituted a public nuisance in fact. If it did constitute a nuisance in fact, our inquiry is then directed to whether there was a compelling necessity warranting the revocation of the use permit.<sup>16</sup>

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<sup>10</sup> (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 159 [96 Cal.Rptr. 484].)

<sup>11</sup> ID.

<sup>12</sup> ID.

<sup>13</sup> *Waters v. Superior Court*, 58 Cal.2d 885, 893 [27 Cal.Rptr. 153, 377 P.2d 265]; *Carroll v. California Horse Racing Bd.*, 16 Cal.2d 164, 167 [105 P.2d 110]; *Bannerman v. Boyle*, 160 Cal. 197, 206 [116 P. 732].) *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 776, 788-789 [194 P.2d 148]. Citing *Jones v. City of Los Angeles*, 211 Cal. 304, 316 [\*789] [295 P. 14]; *People v. Hawley*, 207 Cal. 395 [279 P. 136]; *Jardine v. City of Pasadena*, 199 Cal. 64 [248 P. 225, 48 A.L.R. 509]; *Curtis v. City of Los Angeles*, 172 Cal. 230 [156 P. 462]; *In re Throop*, 169 Cal. 93 [145 P. 1029]; *In re Smith*, 143 Cal. 368 [77 P. 180].)

<sup>14</sup> *HPT IHG-2 Properties Trust v. City of Anaheim* (2015) 243 Cal.App.4th 188 [196 Cal.Rptr.3d 326].)

<sup>15</sup> Cal. Civ. Code, § 3480

<sup>16</sup> *O'Hagen v. Board of Zoning Adjustment* , at P 161.

In the case of the trucks driving at night, we know of one person who has been frustrated with this activity. Certainly the comfort of each and every person within the County is of consequence, but at the same time, the narrow interests of one neighbor, or even a few people, does not rise to the level of public nuisance. Also if the trucks were forced to deliver materials during the daylight hours hundreds, if not thousands of local residents would be subject to significant traffic delays. While the County had the authority to place conditions on the Permit, and enforce those conditions, there are many other choices the County can make in regards to enforcement before it takes the drastic measure of permit revocation. The County does not have good cause to revoke the HCC Permit.

We must emphasize here that HCC has been working with the County for months attempting to process an amendment to its permit. Additionally, The Company has in good faith, and at considerable expense, provided detailed analysis about the impacts of the night time activities at the site within the supplemental information provided on September 10. We feel confident that the Courts would find permit revocation an unwarranted extreme response on the part of the County that would not be supported.

#### Conclusion

HCC has been an integral part of the Lassen County community and continues to be committed to producing the best products for the local residents and visitors to the area. While the county processes an amendment to its use permit for the Ward Lake Pit site, **HHC will not conduct any night time activities**, and understands that appropriate measures might be taken by the county for alleged violations of such permit relating to night time truck traffic between August 19 and September 14. HCC, however will not abide a draconian response. If the County intends to revoke its permit, it will litigate the matter to the fullest extent of the law. Thank you for your time in reviewing this letter, and we look forward to working with you on reasonable solutions.

Sincerely,



Christiana Darlington

General Counsel, Hat Creek Construction