

**CALENDAR ITEM
C74**

A	Statewide	02/09/16
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S	Statewide	G. Pelka

**CONSIDER A MEMORANDUM OF UNDERSTANDING WITH
THE DEPARTMENT OF CONSERVATION, OFFICE OF MINE RECLAMATION
AND APPROVAL OF AUTHORITY TO CONTINUE COORDINATING EFFORTS
TO ELIMINATE POTENTIAL PUBLIC SAFETY HAZARDS AT
ABANDONED MINE SITES ON STATE SCHOOL LANDS
LOCATED STATEWIDE**

PARTIES:

California State Lands Commission, acting as Trustee for the School Land Bank Fund

California Department of Conservation, Office of Mine Reclamation

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 (SMARA; Pub. Resources Code, §§ 2710-2796), provides assistance to State and federal agencies involved in the inventory and remediation of abandoned mine hazards.

California State Lands Commission (Commission) staff (Staff) continues to assess the scope of the abandoned mine problem on State school lands. In August 2009, OMR completed a statewide inventory of abandoned mines on State-owned lands. The Commission is one of nine State agencies with lands included in that inventory. The inventory revealed that approximately 1,213 mine features (e.g., a shaft, adit, prospect pit or mine waste pile) exist on 143 sites under the Commission's jurisdiction, with most located on school lands in the desert counties of Imperial, Riverside, San Bernardino, Kern and Inyo Counties. Within the last year, Staff completed a Geographic Information System (GIS) dataset of fee owned lands managed by the Commission. Applying this ownership layer to the 2009 inventory concluded that the mine features exist on 95 State parcels. Remediation activities are prioritized based on known features

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that pose a serious threat. OMR ranked the parcels into five categories with increasing levels of risk posed to the public.

Five closure techniques, based on the unique circumstances of each feature, are used to remediate the sites.

- Where bats or other fauna are found, installation of steel bat gates and cupolas or cable nets are employed.
- Where no animals are found, foam plugs or backfilling with mine waste rock can be used.
- Depending on the location and vehicle accessibility, fencing may be an interim or permanent measure. Fencing has been used for State school lands where vehicle access is not available or on school lands within federally designated Wilderness areas where public visitation is low.

This work is consistent with Public Resources Code section 6201.5 which promotes “the rehabilitation of lands impacted by mineral exploration and extraction.” An analysis is underway to assess the mine closure work cooperatively completed by the agencies since 2002, identify and prioritize remaining work, and estimate the time and resources necessary to adequately safeguard the public from hazards posed by abandoned mines on State school lands. This information will be used to determine the mine closure program for 2016 and future work.

In 2004, the Commission entered into a Memorandum of Understanding (MOU) with OMR for a five-year period which expired on April 7, 2009. A second seven-year MOU will expire on February 3, 2016. These MOUs establish that Staff will identify abandoned mine features on State school lands that are candidates for closure or protection with fencing. Once OMR determines its funding is appropriate and available for the proposed work, OMR will solicit and award contracts to implement the mine closure under Staff management. The majority of contractor costs are paid out of OMR’s Reclamation Account. This Reclamation Account was established pursuant to Senate Bill 649 (Kuehl, Stats. 2003, Ch. 794) which provides for a payment of \$5.00 per ounce of gold and \$0.10 per ounce of silver produced in California. The Commission may and has contributed toward some of the contract funding from the School Land Bank Fund. The Commission may also pursue mine closure work independent of working with OMR.

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Since 2002, this cooperative arrangement with OMR has successfully resulted in the closure of 61 mine features on State school lands. More than 100 abandoned mine warning signs have been posted warning the public of possible hazards. OMR and Staff also installed nine fences in 2015 and work is nearly completed on 13 additional mine closures at a cost of nearly \$182,000. This work includes four bat gates, six cupolas and three cable nets. Staff recommends entering into a new MOU with DOC/OMR that will continue this cooperative effort for an additional seven years.

The Commission, on January 29, 2009, delegated authority to the Executive Officer or her 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, Staff recommends that this delegation of authority be extended for an additional seven-year period coinciding with the new MOU.

BIOLOGICAL AND HISTORICAL/CULTURAL ISSUES:

Based on the mine closure work conducted since 2002, two environmental issues, biological and historical/cultural, are commonly associated with these mine feature closures. In cooperation with DOC/OMR, California Department of Fish and Wildlife (CDFW), and the State Office of Historic Preservation (SHPO), Staff has developed procedures to successfully address these concerns prior to the closure of mines to preserve and enhance wildlife habitat, protect historical/cultural resources and allow for future exploration and development.

Closure Method Selection:

Natural and historical resources in the area and in each abandoned 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 only 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 preferable when the mine provides or could provide 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

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best closure technique for the benefit of protecting the public, wildlife, mineral and historical/cultural resources.

STATUTORY AND OTHER REFERENCES:

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

OTHER PERTINENT INFORMATION

1. **Bat Gates, Cupolas, Fencing, Foam Closures and Cable Nets:** The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, Title 14, section 15303, subdivision (e).
2. **Backfill Closures:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, Title 14, section 15304, subdivision (c).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. 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.
4. The proposed action is consistent with Strategy 1.1 of the Commission's recently adopted Strategic Plan, to "Deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction." Action item 1.1.4 of the Plan is to "Identify and abate hazards and associated liability on sovereign and school lands." Work under the proposed MOU will identify and abate hazards associated with abandoned mines located on State school lands.

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EXHIBIT:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

1. **Bat Gates, Cupolas, Fencing, Foam Closures and Cable Nets:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, Title 14, section 15303, subdivision (e).
2. **Backfill Closures:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, Title 14, section 15304, subdivision (c).
3. Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize the Executive Officer to enter into a new Memorandum of Understanding (MOU) 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 her designee to undertake measures to implement, in accordance with the methodology described herein and within the MOU, the closing of abandoned mines located on State school lands.



EXHIBIT A



MEMORANDUM OF UNDERSTANDING BY AND AMONG THE CALIFORNIA DEPARTMENT OF CONSERVATION AND THE 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 legacy abandoned mines on State school lands.

AUTHORITY

The OMR administers the Surface Mining and Reclamation Act of 1975 (SMARA; Public Res. Code, Division 2, Chapter 9, §§ 2710 *et seq.*) Within OMR, the Abandoned Mine Lands Program (AMLPL) helps public agencies remediate legacy abandoned mine features that pose a significant public safety or environmental contamination risk. Legacy abandoned mines are mines that ceased operation and were not reclaimed or remediated prior to January 1, 1976, and include historic abandoned mines as defined under Public Resources Code section 2207, subdivision (d)(4)(B)(ii). The AMLP's funding for remediation has come from fees (\$5 per ounce of gold and 10¢ per ounce of silver mined in the State) collected under Public Resources Code section 2207, subdivision (d)(4)(B)(i).

The CSLC administers the public lands of the State under policies established by the Legislature and the Commission (Public Res. Code, Division 6, §§ 6001 *et seq.*). 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 section 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 (see Cal. Code Regs., tit. 2, §§ 2902 *et seq.*). Where so empowered the Commission may, by resolution, authorize any of its employees or officers to execute any instrument in the name of the State (Public Res. Code § 6106). On February 9, 2016, the Commission authorized its Executive Officer to execute this MOU

in order 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.

OBJECTIVES AND AGREEMENTS

It is mutually agreed and understood as follows:

1. Each party shall designate an individual or individuals to coordinate reclamation or remediation activities on State school lands, and shall identify in writing any replacement thereafter.
2. The CSLC shall identify legacy abandoned mine sites on State school lands that pose public safety or environmental contamination risk. Such sites may be candidates for site investigation and sampling, protective measures such as warning signs or fencing, and/or for hazard remediation by the installation of mine closures such as bat gates, culvert gates, cupolas, foam plugs, and backfill with waste rock material. The CSLC shall provide information on these potential sites to the OMR.
3. The OMR will determine if appropriated Abandoned Mine Reclamation and Mineral Fund (AMRMF) fees are available and can be used to close and protect legacy abandoned mine openings on the identified State school lands parcels. Provided funding is available from appropriated AMRMF fees, the OMR may contract, as needed, with qualified third parties to develop and implement legacy abandoned 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 legacy abandoned mine closures on State school lands.
4. The CSLC shall determine, pursuant to the CEQA, the appropriate level of environmental review and analysis of legacy abandoned mine closure proposals, and shall coordinate and seek approvals from other agencies, including but not limited to the California Department of Fish and Wildlife 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 legacy abandoned mine site on State school lands without a written Mine Closure Plan reviewed 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, CEQA, and this MOU, as applicable. 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 CSLC monitoring responsibilities may be fulfilled.
7. This MOU may be amended by written agreement of the parties. The 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 by providing written notice at least 30 days in advance of any intended date of termination. Any reclamation measures in progress at the end of the effective period or at termination shall continue and be completed according to the terms of this MOU and approved Mine Closure Plan.

Signed,



David Bunn, Director
California Department of Conservation

1/27/16

Date

Jennifer Lucchesi, Executive Officer
California State Lands Commission

Date