



County of Lassen
Department of Planning and Building Services

• Planning • Building • Environmental Health • Code Enforcement • Surveyor • Surface Mining

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October 26, 2023

Zoning & Building
Inspection Requests
Phone: 530 257-5263

**NOTICE OF PREPARATION
OF ENVIRONMENTAL IMPACT REPORT**

TO: Responsible and Trustee Agencies

FROM: Maurice Anderson, Director
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

SUBJECT: UP #2023-010, RP #2023-001, EIR #2023-004, TLT Enterprises Skyline Mine

The County of Lassen will be the Lead Agency in processing applications for a Use Permit (UP) and Reclamation Plan (RP) and preparing an Environmental Impact Report (EIR) for a proposed surface mining operation. A Draft EIR is being prepared by the applicant's consultant and will be reviewed by Lassen County and, if necessary, a third-party consultant. This Notice of Preparation (NOP) has been prepared to solicit comments from interested agencies as to the scope and content of the environmental information that is germane to your agency's statutory responsibilities in connection with the proposed project. When (and if) approved, your agency may need to use this EIR when considering permits or other approvals for the project.

Due to the time limits mandated by State law, responses to this NOP must be sent at the earliest possible date, but no later than 30 days after receipt of this notice. Please send written responses to Nancy McAllister, Senior Planner, Lassen County Department of Planning and Building Services, at the above address or via email to landuse@co.lassen.ca.us. Please provide a contact person for your agency in the written response.

This NOP, attachments (e.g., Reclamation Plan/Use Permit application and supporting documents), and the project file are available for review at the Lassen County Department of Planning and Building Services, located at 707 Nevada Street, Suite 5, Susanville, CA 96130.

The department is open from 7:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Friday, excepting holidays. The NOP and attachments can also be found on the Department of Planning and Building Services website by following the link below:
<https://www.lassencounty.org/dept/planning-and-building-services/environmental-documents-noticing-and-attachments>

1.0 Project Location

The proposed project would be located on approximately 460 acres of a 640-acre parcel, located approximately one-and-a-half miles east of State Routh 139 off of Skyline Road to the northeast of Susanville in Lassen County (APN 101-110-024).

2.0 Project Description

The proposed project at the Skyline Aggregates site would include mining, processing, and reclamation activities by Hat Creek Construction and Materials, Inc. on approximately 460 acres of a 640-acre parcel. The remaining acreage within the project site will serve as setback areas and buffers from surrounding properties, critical habitats, and archeological resources. Materials mined onsite will consist of hard rock aggregate. Aggregate mined on the site will be crushed, screened, washed, and graded onsite and then used in the production of virgin aggregates, asphalt mix, and ready-mix concrete. Equipment onsite will include loaders, generators, a concrete batch plant, concrete trucks, service truck, man lift, belly dump, articulated dump truck, crusher, and asphalt batch plant. Wet suppression will be used when necessary to control dust caused by excavation, processing activities, and materials transport. The operation plans to operate using power and natural gas supplied from the City of Susanville. Backup generators will be available onsite.

Proposed mining operations will follow the guidelines established by SMARA and will conform to the monitoring schedule established by the Lead Agency. The site will be mined in five phases, taking approximately 10 years per phase and 50 years total to complete. Mining operations are estimated to begin in the spring of 2025, following permit approval. The termination date will be based on demand.

"Overburden," the material lying above the aggregate deposits, will be removed and stockpiled to be used in support of site reclamation. Overburden will be used as backfill after mining activities are complete. Overburden varies in nature depending on its location onsite, but is generally a mix of loam and clay and very limited in supply. Rock is generally at the surface. Topsoil will not be mapped prior to mining. To the extent possible, overburden will be moved directly to its final planned location immediately after excavation. If stockpiling is necessary, stockpiles will be managed to minimize water and wind erosion. Any stockpiles will receive an application of hydroseed/mulch to stabilize the slope. If stockpiled, the topsoil will be clearly identified to distinguish the topsoil material. Topsoil removal will not precede mining by more than one year. Topsoil stockpiles will be maintained, identified, signed, and managed prior to reclamation.

3.0 Project Site Characteristics

The Project site is located to the southwest of Antelope Mountain in Hidden Valley. Topography generally gently slopes from north to south. Site elevation ranges from 4160 feet above sea level in the southwest corner of the Project site to 4350 feet along the northern edge of the Project site.

The existing visual characteristics of the site are undeveloped and is composed of low sage and juniper woodland habitats. The undergrowth varies in density but mainly consists of open land with bitterbrush, sage brush, juniper, perennial and annual grasses and forbs.

Special-status species that are known to occur, or have the potential to occur, within the project area include the greater sandhill crane (*Grus canadensis tabida*), prairie falcon (*Falco mexicanus*), American badger (*Taxidea taxus*), long-eared myotis (*Myotis evotis*), North American porcupine (*Erethizon dorsatum*), Morrison's bumble bee (*Bombus morrisonz*), Pulsifer's milk-vetch (*Astragalus pulsiferae* var. *pulsiferae*), and Susanville beardtongue (*Penstemon sudans*).

No perennial surface water courses are found on the site. One ephemeral drainage exists on the eastern portion of the parcel, outside of the proposed mining area. Surface flow from the site currently is directed to the agricultural land to the south. There is no direct connection to waters of the United States or waters of the State of California. Hat Creek Construction & Materials intends to retain all stormwater that contacts industrial activities onsite.

No portion of the site is located in a 100-year floodplain or designated floodway.

Summers are warm and arid. The average summer temperature is between 75 degrees Fahrenheit (°F) and 83°F with lows ranging around 52°F. Average winter temperatures range from 24°F to 41 °F. There is more snow than rain in this area. Winds are light and elevation changes rapidly within a ten-mile radius of Susanville. Average wind directions shift from the northeast to the northwest with most wind activity during the months of September through November. Wind speed usually averages less than 5mph.

The proposed project site is located in the Northeast Plateau Air Basin, which comprises Siskiyou, Modoc, and Lassen counties. The Northeast Plateau Air basin has a climate regime that is distinct from the rest of California. The basin has sharply defined seasons that follow a continental, rather than marine, pattern. Winters are cold and snowy; summers are warm and dry. The region receives no transported air pollution from major urban areas. As in many rural areas in California, particulates from dust and wood smoke are sometimes a problem.

4.0 Potential Environmental Impacts

The County intends to thoroughly review the project and all potential issues that could result in significant impacts. That said, according to the applicant's consultant, potentially significant impacts in at least the following categories have been identified:

- Aesthetics
- Biological Resources
- Cultural and Tribal Cultural Resources

Despite currently proposed mitigation measures, impacts in the above categories may remain significant and unavoidable.

MLA:njm

Distribution: Supervisor Neely (3); TLT Enterprises; VESTRA Resources; Co. Ag. Commissioner; Co. Assessor's Office; County Administrative Officer; County Counsel; Co. Fire Warden/CAL FIRE; Co. Environmental Health Dept.; Lassen Co. Reg. Solid Waste Mgmt. Authority; Lassen Co. Fish & Game Commission; Co. Public Works/Road Div.; Bureau of Land Management -Susanville; NRCS; US Army Corp of Engineers; US Fish & Wildlife; Pit River Tribe of California; Greenville Rancheria of Maidu Indians; Susanville Indian Rancheria; Honey Lake Maidu; Washoe Tribe of Nevada and California; Susan River Fire Protection District; City of Susanville Planning; City of Susanville Road/Public Works; Co. Air Pollution Control Officer; Lassen County Community College District; Lassen Union High School District; Susanville Elem. School District; LMUD; Banner Lassen Medical Center (Admin); Office of Planning and Research (OPR)

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 8, 2023

Nancy McAllister, Senior Planner
Lassen County
707 Nevada Street, Suite 5
Susanville, CA 96130
landuse@co.lassen.ca.us

SUBJECT: Skyline Mine, TLT Enterprises (Use Permit #2023-010, Reclamation Plan #2023-001, Environmental Impact Report #2023-004) (Project), Notice of Preparation (NOP) of Draft Environmental Impact Report (DEIR), State Clearing House Number 2023100834

Dear Nancy McAllister:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced NOP for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish and Game Code, §§ 711.7, subd. (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Public Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish and Game Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by state law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Lead Agency: Lassen County

Objective: TLT Enterprises proposes a 460-acre surface mining operation on a ~640-acre parcel. Aggregate mined on the site will be crushed, screened, washed, and graded onsite and then used in the production of virgin aggregates, asphalt mix, and ready-mix concrete.

Location: The Project area is located approximately 1.5 miles east of state Route 139 on Skyline Road, northeast of Susanville in Lassen County (APN 101-110-024).

Timeframe: Mining operations are estimated to begin in the spring of 2025, following permit approval. The site will be mined in five phases, taking approximately 10 years per phase and 50 years total to complete. The termination date will be based on mining demand.

Biological Setting: The NOP states *"The Project site is located to the southwest of Antelope Mountain in Hidden Valley. Topography generally gently slopes from north to south. Site elevation ranges from 4160 feet above sea level in the southwest corner of the Project site to 4350 feet along the northern edge of the Project site. The existing visual characteristics of the site are undeveloped and is composed of low sage and juniper woodland habitats. The undergrowth varies in density but mainly consists of open land with bitterbrush, sage brush, juniper, perennial and annual grasses and forbs.*

Special-status species that are known to occur, or have the potential to occur,

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within the project area include the greater sandhill crane (Grus canadensis tabida), prairie falcon (Falco mexicanus), American badger (Taxidea taxus), long-eared myotis (Myotis evotis), North American porcupine (Erethizon dorsatum), Morrison's bumble bee (Bombus morrisonz), Pulsifer's milk-vetch (Astragalus pulsiferae var. pulsiferae), and Susanville beardtongue (Penstemon sudans).

No perennial surface water courses are found on the site. One ephemeral drainage exists on the eastern portion of the parcel, outside of the proposed mining area. Surface flow from the site currently is directed to the agricultural land to the south. There is no direct connection to waters of the United States or waters of the State of California. Hat Creek Construction & Materials intends to retain all stormwater that contacts industrial activities onsite."

Aerial imagery indicates that the Project area is largely undeveloped, with one stream feature flowing into Jensen Slu. The Project area occurs in the Great Basin Desert and surrounding areas most notably support nesting and migratory birds including the greater sage-grouse, pronghorn antelope, and migratory deer herds. Sagebrush habitats, rare plants and other Sensitive Natural Communities are also known to occur. According to the California Natural Diversity Database (CNDDDB), the Project area has the potential to support over 20 state special status wildlife and plant species.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT #1: Biological Assessment

CDFW assumes that the Lead Agency intends to prepare a Project-specific Biological Resources Analysis in support of the DEIR. The DEIR should provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying special-status species and sensitive habitats. The DEIR should include the following information:

- A. Susanville and its surrounding landscapes support unique and rare plant species. A thorough, floristic-based assessment of special-status plants, natural vegetation communities and sensitive natural communities should be included following [CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural](#)

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[Communities](#) and [VegCAMP Natural Communities](#). CDFW recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity, and at potential mitigation sites for the Project. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

- B. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. Currently, the Project area has no previously reported occurrences on CNDDDB, likely because it has not been surveyed in the past. While [CDFW's CNDDDB](#) should be consulted to obtain current information on any previously reported sensitive species and habitat, to provide an adequate assessment of special status species potentially occurring within the Project vicinity, CDFW recommends that the search area for CNDDDB occurrences include all United States Geological Survey (USGS) 7.5-minute topographic quadrangles with Project activities, and all adjoining 7.5-minute topographic quadrangles. It is recommended that the DEIR discuss how and when the CNDDDB search was conducted, including the names of each quadrangle queried, or why any areas may have been intentionally excluded from the CNDDDB query. Please note that CNDDDB is not an exhaustive and/or comprehensive inventory of all rare species and natural communities statewide and therefore, species that have not been reported to CNDDDB does not negate their potential to occur. All species with potential to occur should be included and analyzed.
- C. An inventory of special status species on site and within the area of potential effect. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service (USFWS). While some species may be assumed present, the completion of protocol-level surveys is important to determine species that are present.
- D. In addition to the CNDDDB, CDFW recommends that other electronic databases such as those maintained by the California Native Plant Society and USFWS be queried. [CDFW's Areas of Conservation Emphasis \(ACE\)](#) viewer is also available to be consulted during EIR preparation. The

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ACE maps show the relative biological value of an area compared with all other areas across the state. ACE is a decision support tool used in conjunction with species-specific information and local-scale conservation prioritization analyses. The ACE maps do not replace the need for site-specific evaluation of biological resources, and it is not recommended to be used as the sole measure of conservation priority during planning.

- E. CDFW recommends review of previous biological technical reports and CEQA documents prepared for other projects in the vicinity, if applicable, to identify biological resources in the area and to perform a cumulative impacts analysis.
- F. The California Essential Habitat Connectivity dataset in CNDDDB specifies that the Project area occurs next to a large “Natural Landscape Block”, indicating that this area is likely suitable for the movement of plants and wildlife. Habitat connectivity for both plants and wildlife should be determined and assessed for Project impacts. For more information regarding the importance of habitat connectivity, framework for local analyses and implementation, the [California Essential Habitat Connectivity Project](#) may be a useful resource:

Please visit: [CDFW survey guidelines and pre-approved survey protocols for plants and special-status species](#) for more information regarding survey guidelines and protocols.

COMMENT #2: Direct, Indirect, and Cumulative Biological Impacts

To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:

- A. Specific acreages of habitat types that will be impacted due to Project-related activities. Mapping and concise details should be provided on whether impacts will be temporary or permanent.
- B. Potential adverse impacts from lighting, noise, human activity, invasive species, permanent removal of habitat, connectivity, and drainage, among others, may occur. While mitigation measures may be proposed to alleviate such impacts, the Lead Agency should make avoidance a priority and the reduction of project impacts secondary.
- C. Direct and indirect Project impacts on biological resources, including

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resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR. Pursuant to CEQA Guidelines 15126.2 (a), impacts associated with initial Project implementation as well as long-term operation and maintenance of the Project should be addressed in the DEIR.

- D. CDFW advises that the DEIR describe anticipated maintenance activities in detail and corresponding impacts. CDFW also advises that the DEIR consider future decommission of the facilities/staging areas associated with the Project and describe remedial efforts to restore habitat known to be present prior to Project initiation, including adaptive management strategies.
- E. Cumulative effects on biological resources should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- F. CDFW recommends that a range of Project alternatives be analyzed to ensure that the full spectrum of alternatives to the proposed Project are fully considered and evaluated, such as identification and analysis of alternatives that avoid or otherwise minimize impacts to sensitive biological resources, in addition to identifying and prioritizing alternatives that maximize environmental benefits.
 - a. If the Project will result in any impacts described under the Mandatory Findings of Significance (CEQA Guidelines section 15065) the impacts must be analyzed in depth in the DEIR, and the Lead Agency is required to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment. When mitigation measures or Project changes are found to be feasible, CDFW advises that such measures be incorporated into the Project to lessen or avoid significant effects.
- G. "Take" of species of plants or animals listed as endangered or threatened, or those that are candidates for listing as endangered or threatened under CESA, is unlawful unless authorized by CDFW. If the Project could

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result in take of any CESA-listed or candidate species and avoidance is not feasible, acquisition of an ITP would be warranted prior to any ground disturbing activities to comply with CESA, pursuant to Fish and Game Code Section 2081 (b). In addition, CDFW recommends that the DEIR quantify and describe the direct and indirect potential impacts to CESA-listed species and outline specific proposed mitigation measures to reduce impacts to less than significant.

- a. CDFW recommends consulting with the USFWS on potential impacts to federal listed species. Take under the federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS, to comply with FESA, is advised and may need to occur well in advance of any ground-disturbing activities.

COMMENT #3: Avoidance, Minimization and Mitigation of Project-Related Biological Impacts

The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, even with the use of minimization measures, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation, enhancement, acquisition and preservation in perpetuity, or a combination thereof, is advised.

CDFW advises that plans for restoration and revegetation are prepared by qualified individuals with expertise in native plant revegetation techniques specifically in ecosystem functions in which they will be implemented. Each plan may need to include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures may need to be addressed if the success criteria are not met; and (j) identification of the party responsible for meeting the success

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criteria and providing for long-term conservation of the mitigation site.

If mitigation land will be conserved and managed, specific details, such as exact location and acreages of mitigation lands should be described in the DEIR. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity, such as a Conservation Easement. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands. CDFW strongly recommends that any long-term resource management plan for mitigation land be provided to CDFW and the USFWS.

COMMENT #4: Nesting and Migratory Birds

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA). Sections 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds.

A discussion of impacts to migratory and nesting birds should be included in the DEIR, and any appropriate avoidance and minimization measures, and mitigation measures. Proposed Project activities (including constructing the Project and activities to occur over the lifespan of the Project) that may impact nesting birds should occur outside of the nesting bird season which generally runs from February 1- September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the nesting bird season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the bird species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

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COMMENT #5: Riparian Habitat, Streams, and Wetlands

Riparian habitat, stream habitat and wetlands provide valuable resources for a wide variety of plant and wildlife species. Projects that result in a net loss of acreage or habitat value of wetlands are potentially significant, and CDFW has a no-net-loss policy regarding impacts to wetlands. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy.

CDFW recommends that a formal wetland delineation is conducted by a qualified biologist to determine the location and extent of riparian habitat, stream habitat and wetland features within the Project area. A delineation should identify both state and federal wetlands on the Project site. It is important to note that while accurate delineations by qualified individuals have resulted in a quicker review and response from the United States Army Corps of Engineers and CDFW; whereas substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW recommends the DEIR evaluate the wetland delineation results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.

The NOP indicates an ephemeral drainage runs through the Project area. In Project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.

Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. and notification under Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature. Pond construction and dewatering may also require notification. It is important to note CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate or no environmental review has occurred for Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be

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able to issue the Final LSA Agreement until CEQA analysis for the Project is complete. This may lead to considerable Project delays.

CDFW's website has information on [notification requirements through EPIMS](#).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Public Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the CNDDDB. Use this link to access the [CNDDDB field survey form](#) and this link for additional information on the type of [information reported to CNDDDB](#).

The completed form can be mailed electronically to: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONSULTATION

CDFW looks forward to continued and regular consultation with the Lead Agency regarding biological resources and is eager to begin collaboration early in the Project development process. CDFW encourages the Lead Agency to engage CDFW as soon as possible and well before the formulation of the DEIR to discuss avoidance, minimization, and mitigation strategies.


CONCLUSION

CDFW appreciates the opportunity to provide comments on the NOP to assist the Lead Agency in adequately scoping impacts to biological resources.

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If you have any questions, please contact Erika Iacona, Senior Environmental Scientist, Specialist by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:

1D82ADE7303A474...

Tina Bartlett, Regional Manager
Northern Region

ec: State Clearinghouse
State.Clearinghouse@opr.ca.gov

Erika Iacona
R1CEQARedding@wildlife.ca.gov

NATIVE AMERICAN HERITAGE COMMISSION

October 31, 2023

Nancy McAllister
Lassen County
707 Nevada St., Suite 5
Susanville, CA 96130

Re: 2023100834, Skyline Mine, TL T Enterprises (UP #2023-010, RP #2023-001, EIR #2023-004), Lassen County

Dear Ms. McAllister:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a.** A brief description of the project.
 - b.** The lead agency contact information.
 - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a.** Alternatives to the project.
 - b.** Recommended mitigation measures.
 - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
 - a.** Type of environmental review necessary.
 - b.** Significance of the tribal cultural resources.
 - c.** Significance of the project's impacts on tribal cultural resources.
 - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
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Sincerely,

Cameron Vela

Cameron Vela
Cultural Resources Analyst

cc: State Clearinghouse