
SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: 297790N DATE: 7 April 2006
RESPONSE REQUIRED BY: 8 May 2006

PERMIT MANAGER: David Ammerman PHONE: 707-443-0855 Email: David.A.Ammerman@spd02.usace.army.mil

1. **INTRODUCTION:** Mr. Tom Horn, T & T Construction, P.O. Box 349, Orleans, California 95556, (Contact Mr. Horn at (530) 627-3484), has applied for a Department of the Army Permit to discharge approximately 220,000 cubic yards (CY) of landslide material and excess soil or rock fill from construction projects into waters of the United States (open ponds and wetlands adjacent to Peach Creek), over a ten-year period, in the community of Orleans, near the Klamath River, in Humboldt County, California. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. PROPOSED PROJECT:

Project Site: The project is located on a private parcel (APN 529-212-03), immediately adjacent to and southeast of Highway 96, about one mile northeast of the community of Orleans. In addition, the project site can be found in the northwest quarter of Section 32, Township 11 North, Range 6 E, HB&M, Orleans USGS Quadrangle (See Sheet 1 of 5). The project site is labeled on the quadrangle maps as the site of the old Peach Creek Mine, a historic hydraulic mining area going back decades. From the project description in

the California Department of Fish and Game's Notification of Lake or Streambed Alteration, the mine was formally known as the McGaine Mine, last operated in the 1940's. The Notification further states the Highway 96 road fill (embankment) has created a contained depression, allowing water to fill a series of depressions and hollows at the northwest central part of the site. These depressions and hollows have open water but are also surrounded by deciduous trees, including willows (*Salix* sp.), and some Douglas fir with an understory of wetland vegetation along the margins of the ponds. The applicant states that a culvert under the highway drained runoff water during the rainy season and a seasonal seep from the hillside above the site. This is shown as a 60-inch Corrugated Metal Pipe (CMP) at the northeast corner of the property. The intake of this culvert receives flow from the project site at elevation 974.2 feet above Mean Sea Level. This culvert drains water underneath Highway 96, underneath the old highway now used as a local road, and the culvert outlet drains water directly onto the banks of the Klamath River (See Sheets 2 of 5 and 5 of 5).

The entire 75-acre parcel is undeveloped, unoccupied and highly disturbed from mining and other grading activities. In the

early 1980's, the California Department of Transportation (Caltrans) dumped slide material on a portion of the site. There is a network of gravel roadways on the northwest corner of the site, with one roadway leading uphill to what appears to a water supply and treatment facility. The applicant states the Orleans Community Services District was granted an easement by the previous property owner (Mr. Thomas Jordan) to install the water system that exists today. An agreement was made that the excess water from the system would be discharged on the property, including into the property's ponds. The applicant states this water system is still in operation.

The southeastern corner of the property, before it rises up in elevation to mountainous terrain, contains a large open water pond with a perimeter fringe of emergent and floating wetland vegetation. This pond was also created by mining activity. Direct rainfall and runoff from hillside drainages supply water to this pond, as well as the water plant overflow system. There appears to be a large earthen embankment in the center of the property that impounds this large pond and a rough, natural overflow spillway drains northward towards the lower ponds.

Property southwest of and adjacent to the Peach Creek Mine site contains a building and property owned by the Karuk Tribe of California.

Project Description: The Corps of Engineers circulated a Public Notice (PN # 24484N), dated May 12, 2000 for this same project site but for a previous applicant, Thomas Jordan. That proposal, which was

neither permitted nor implemented, involved placement of 500 CY of fill on 800 square feet of wetlands out of a total 1.5 million CY of landfill material, rock and soil on 18 acres of the parcel. The current owner, applicant and licensed contractor for this new proposal would be T & T Construction of Orleans.

As shown in the attached drawings (See Sheets 2 of 5 through 5 of 5), the applicant plans to dispose at the project site approximately 220,000 CY of landslide material (much of it from 2005-2006 winter storm activity on unstable slopes along Highway 96 and other roads in the area) and place soil, rock and other material left over or in excess from road construction projects. Using this material, the applicant would fill approximately 10 acres of the project site, including approximately 0.90 acres of ponds and wetlands. The proposed discharge would not occur in the larger pond in the southeast corner of the property. The applicant states the fill material would range from rocky material to clay material. Only clay and shale type material would be ideal to fill the site, since rocky material is utilized as much as possible to make aggregate products. The wetland and pond depressions would be filled, and the site leveled to target elevations (See Sheets 3 of 5 & 4 of 5). The project site would be completely dewatered and cleared of vegetation. Then the site would be filled in lifts (layers) from the bottom of depressions with earth moving equipment (dozers) and compacted. Once the site reached the final grade elevation, ponds and waterways would be created. The water would then be allowed to flow through the site, interconnecting the new ponds. In addition, erosion control

measures would be implemented during project construction (grading and filling) to prevent sedimentation or erosion of areas adjacent to the large pond and adjacent streams. Erosion control measures would include but not be limited to: installation of geotextile fabric with an over layer of rock slope protection at culvert outlets between waterways; installation of 9-inch straw wattles to contain water within the project area; and seeding of exposed areas with vegetation (quick growing grasses). All erosion control measures would be completed by October 15. No final grading would occur between October 15 and April 15, per Humboldt County Planning Department direction. After completion of the grading and filling, the applicant would create ponds and wildlife habitat as mitigation for the above work (See the section "Mitigation" below).

Purpose and Need: The applicant indicates the basic purpose of the project is to create a disposal site for land or rock slide material removed on an emergency basis from State and County roads. During the 2005-2006 winter seasons, Highway 299 and Highway 96 along with other local County roads were closed or reduced to one-lane traffic due to landslides, mudslides or rock slides. This is expected to be an ongoing situation every winter after heavy rainfall and water saturate steep mountain slopes along the roadways, including road slump activity (collapse of roadways under river banks or washouts). The applicant further indicates there are limited locations where large quantities of landslide debris can be disposed of during storms and at the same time where these disposal sites do not have the potential to leak sediment-laden water or saturated soil

into nearby water courses or the Klamath River. Many impromptu disposal sites, including road turnouts, quarry sites or contained disposal areas are at capacity, and it is difficult to find an area to dispose of landslide material without placing fill in wetlands or waterways. The applicant finally indicates the overall purpose of the project is to create usable land out of a highly disturbed site after the landslide fill is complete. Two new ponds, wetland and riparian areas that would be constructed present an opportunity to enhance waterfowl and wildlife use of this area.

The Corps does not believe the mere disposal of landslide and other construction materials establish a credible basic and overall project purpose that could withstand the scrutiny of an alternatives analysis required under the Section 404(b)(1) Guidelines. Further discussions with the applicant imply that the site may be later developed as primitive recreational campgrounds (campgrounds with no running water or sewer line connections). Accordingly, the Corps has made a preliminary determination that the project purpose remains rather vague in concept and may not fully comply as an allowable use under the Section 404 (b)(1) Guidelines for Discharge of Dredged or Fill Material.

Impacts: The project would result in the discharge of approximately 30,000 to 50,000 cubic yards of fill (out of a total 220,000 CY) being placed in approximately 0.90 acres of open ponds and adjacent wetlands within jurisdictional waters of the United States. The fill volumes are estimates only. Areas identified as wetlands were typically dominated with an over story of willow (*Salix lasiolepis*) and had

standing water. The vegetation bordering the wetland areas was very dense and largely composed of blackberry bushes (*Rubus* sp.) and poison oak (*Toxicodendron* sp.). Dominant wetland plants, mostly on the margins of the standing water and ponds included cattail (*Typha latifolia* and *Typha angustifolia*), rushes (*Juncus* sp.), nutsedge (*Cyperus* sp.), duckweed (*Lemna* sp.), and fireweed (*Epilobium angustifolium* sp.).

Mitigation: The applicant proposes to excavate new open water pond and stream channels (approximately 2 acres) to compensate for impacts to aquatic resources which could not be otherwise avoided. Excavation of the features (proposed ponds and connecting stream channels are shown on Sheets 2 of 5 & 5 of 5) would begin soon after the project site reached its capacity with fill deposition material (near level with the surrounding patches of unaffected woodland) (MGW Biological, *Stream and Wetland Restoration and Monitoring Plan Fill Material Deposition Project, Highway 96, Orleans, CA*, January 30, 2006). MGW states that because the date of project completion is uncertain, a timeline for restoration and specific milestones cannot be outlined. However, initiation of wetland restoration would begin no later than 2015, allowing the applicant up to ten years to discharge fill material on the property. Riparian and wetland vegetation would be replanted in or adjacent to the new stream channels and ponds. Some of the riparian and wetland vegetation could grow back naturally without active replanting. A monitoring program would be in place to ensure success of revegetation.

The Corps has made a preliminary determination that the wetland mitigation proposal is unacceptable due, in part, to the proposed ten-year time lag between commencement of authorized fill discharges on the property and the commencement of mitigation construction. The Corps typically requires that mitigation work be completed prior to or concurrent with any authorized discharge of fill material into jurisdictional waters of the United States associated with project construction. To take into account wetland temporal loss over a ten-year time frame, the Corps would likely require a much higher ratio of created wetlands to impacted wetlands as compared to the current mitigation proposal. The Corps further doubts that wetlands could ever be established on unconsolidated mixtures of rock, shale, and other potentially porous fill materials discharged on the site. Accordingly, the applicant has been advised to submit a revised mitigation plan or, preferably, to consider off-site mitigation in lieu of on-site mitigation conducted in the distant future.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations (40 C.F.R. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part 325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting

from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Eureka Field Office, P.O. Box 4863, Eureka, California 95502.

Endangered Species Act of 1973 (ESA):

Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. The adjacent Klamath River is critical habitat for the Southern Oregon/Northern California Coastal (SONCC) Evolutionary Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*), listed as threatened by NMFS. No other threatened or endangered species or critical habitat is currently identified as potentially impacted by the proposed project. There may be minor, indirect impacts on coho salmon and its critical habitat. The Corps believes this impact is remote due to the disturbed drainage system between the project site, the highway, and the Klamath River. No tributaries of fish bearing nature would be impacted. The Corps believes this project would have no effect on coho salmon and its critical habitat.

Magnuson-Stevens Fisheries Conservation and Management Act:

NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. The Klamath River is EFH for coho

salmon and Chinook salmon (*Oncorhynchus tshawytscha*). However, as in ESA species, impacts to EFH species would be remote due to the highly disturbed nature of the project site drainage areas. The Corps believes there would be no effect on EFH species from the proposed project.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the California Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may presume that water quality certification has been obtained if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403; by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated

by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). While the applicant has not submitted an Analysis of Alternatives for the project, the applicant's permit application described the difficulty in finding alternative disposal sites for emergency removal of landslide material from state and local roads. The applicant states that there are no practicable alternatives for his project. The terrain along the Klamath River is very steep and unstable, which generates slides on a regular basis, sometimes with large volumes of material. Because of the terrain and often large volumes of material transported, there are very limited sites in which to dispose of this material in an ecologically sound manner. In the past, the applicant has used existing road turnouts and other areas with permission of landowners or public agencies to dispose of landslide material on an emergency basis. However, the applicant must compete with other contractors, Caltrans, and county road crews in using the few disposal sites available. An evaluation has been made by this office under the guidelines and it was determined that the proposed project is not water dependent.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act usually requires an applicant to certify that the proposed project is consistent with the State's Coastal Zone Management Program, if applicable. In this case, the proposed project, in Orleans, California, is some 40-50 miles upstream of the eastern boundary of the Coastal Zone and is neither within Coastal Commission permit authority nor

in the Coastal Zone.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, the Corps San Francisco District Archaeologist (per memorandum dated October 26, 1999) determined that one recorded historic archaeological site and one recorded prehistoric archaeological site exists in the project vicinity (but not on the proposed project site itself). The Corps district archaeologist directed in his memo that special conditions be added to the Corps permit requiring the applicant to retain the services of a professional archaeologist if artifacts from the old mining operations exist within the 10-acre project area. Specific discovery and recording procedures would be described in the special conditions. It is recommended that the same procedures be implemented on the remaining 65 acres if historic cultural materials are found on the property. Any additional field surveys shall be coordinated with the Chairperson, Karuk Tribe of California. The Karuk Tribe shall also be contacted at least 30 days prior to start of construction for coordinated cultural resources monitoring.

If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. **PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the

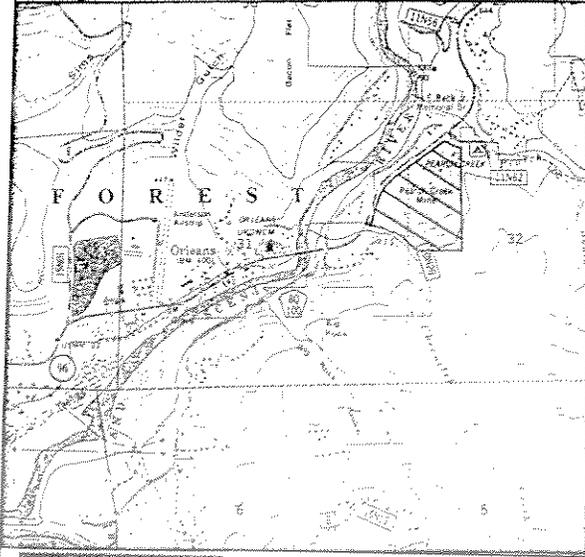
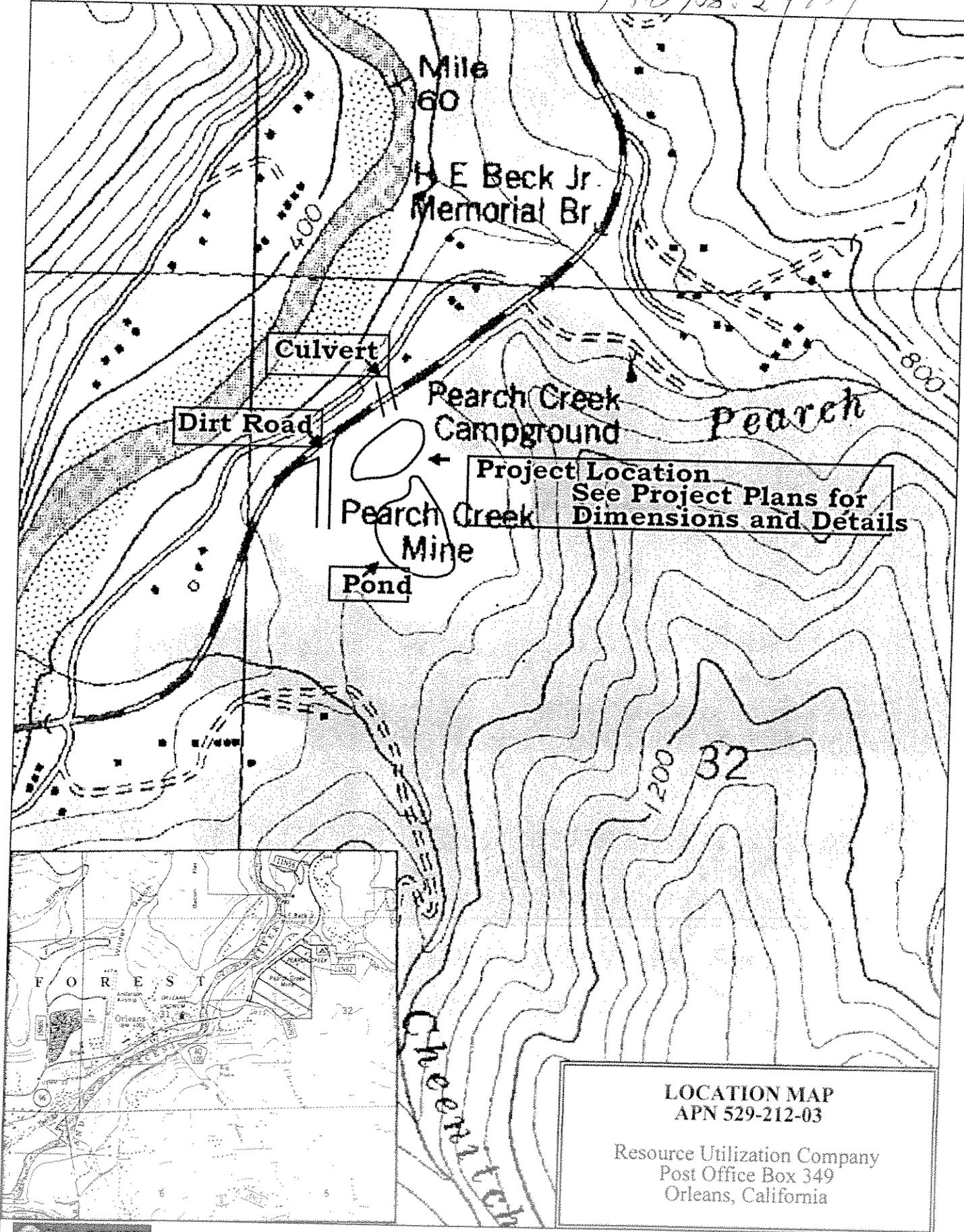
proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

5. CONSIDERATION OF COMMENTS:
The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine

the overall public interest in the proposed activity.

6. SUBMISSION OF COMMENTS:
Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to U.S. Army Corps of Engineers, San Francisco District, Eureka Field Office, P.O. Box 4863, Eureka, California 95502. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting David A. Ammerman of the Eureka Field Office at telephone 707-443-0855 or by e-mail: david.a.ammerman@spd02.usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.

FS# 102-29779

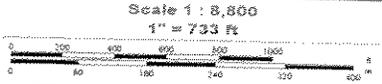


LOCATION MAP
 APN 529-212-03

Resource Utilization Company
 Post Office Box 349
 Orleans, California

DELORME

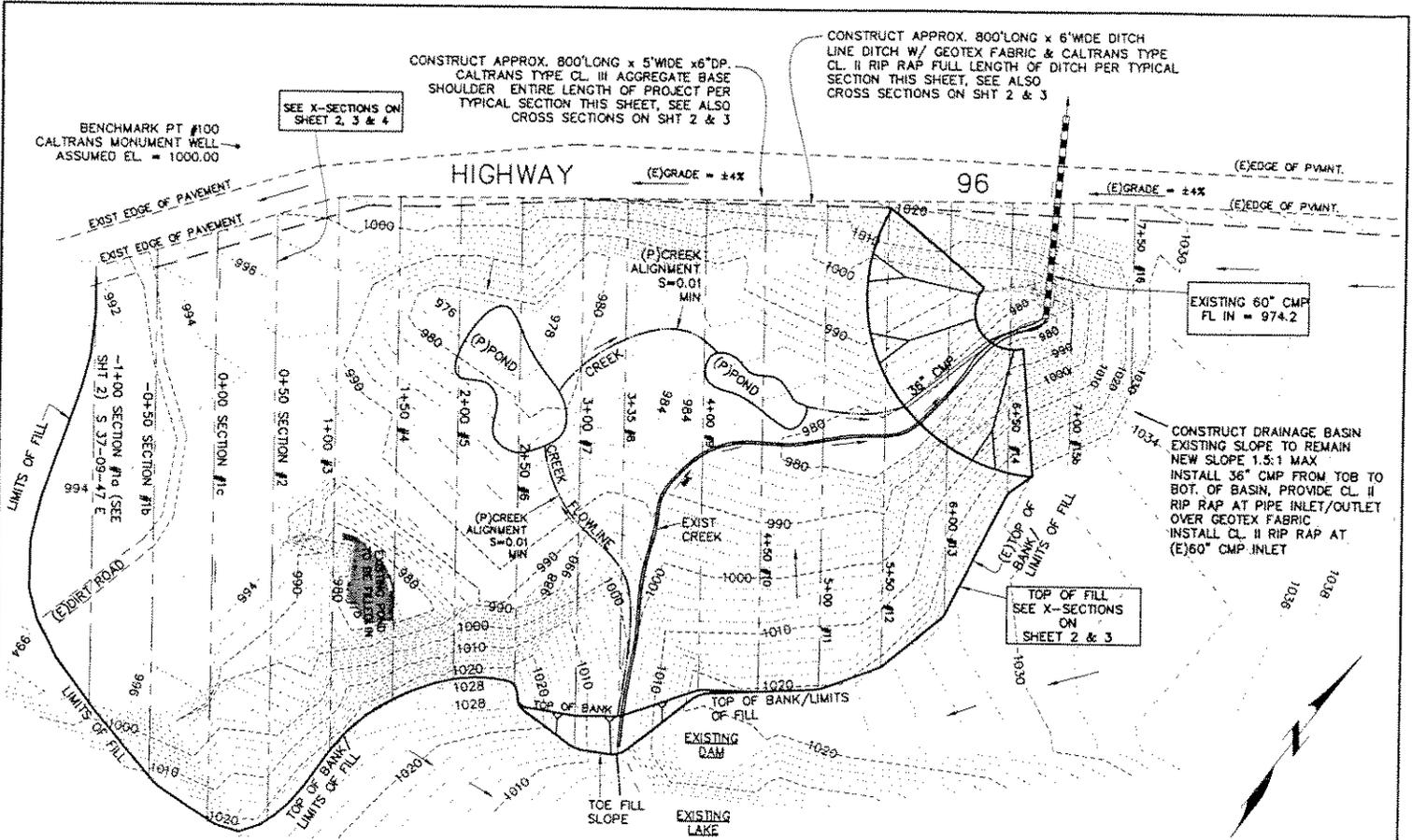
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Sheet 1 of 5

File No. 29779



PEARCH MINE SITE

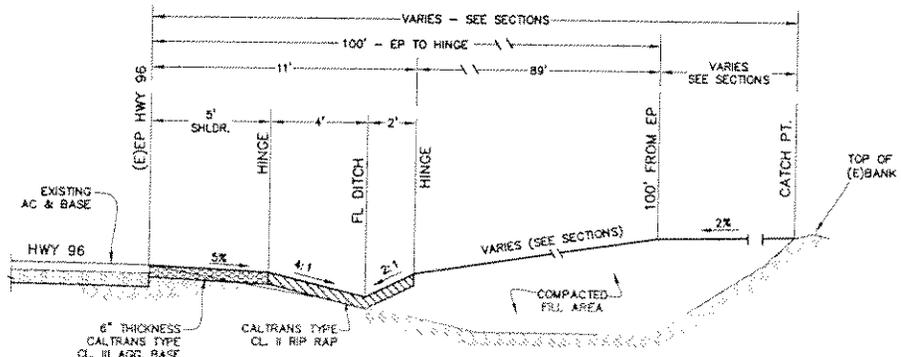
SCALE: 1" = 120'

LEGEND

- EXISTING EDGE OF PAVEMENT
- - - EXISTING HINGE LINE
- LIMITS OF FILL
- CROSS SECTION LINE
- 1000
- EXISTING CONTOUR
- EXISTING STORM DRAIN
- EXISTING DRAINAGE FLOW
- FOUND CALTRANS MONUMENT

TABLE OF CONTENTS

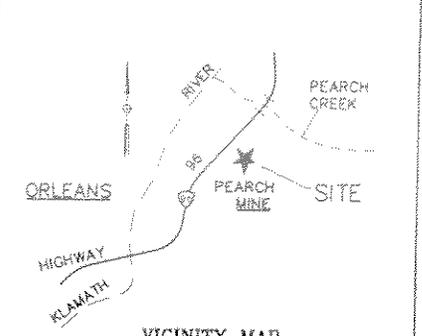
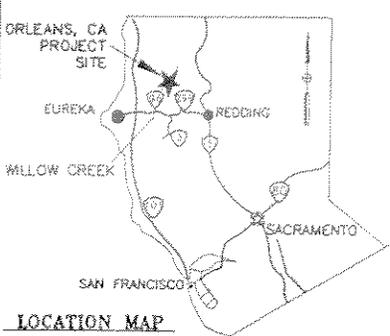
| SHEET NO. | DESCRIPTION |
|-----------|----------------------------|
| 1 | TITLE SHEET & GRADING PLAN |
| 2 | CROSS SECTIONS |
| 3 | CROSS SECTIONS |
| 4 | CROSS SECTIONS |
| 4 | EROSION CONTROL PLAN |



TYPICAL SECTION

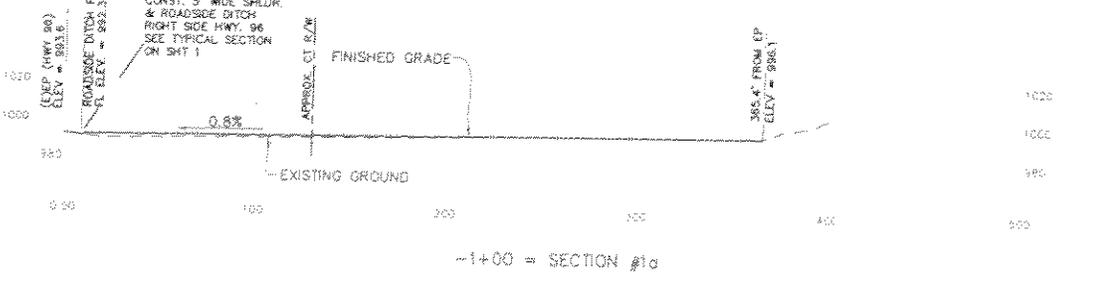
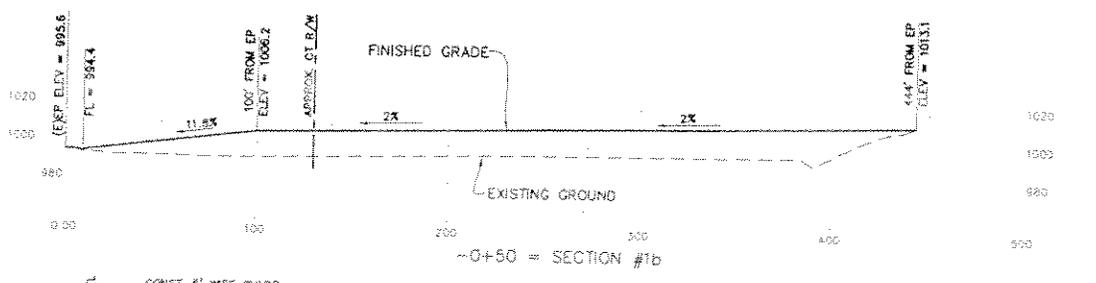
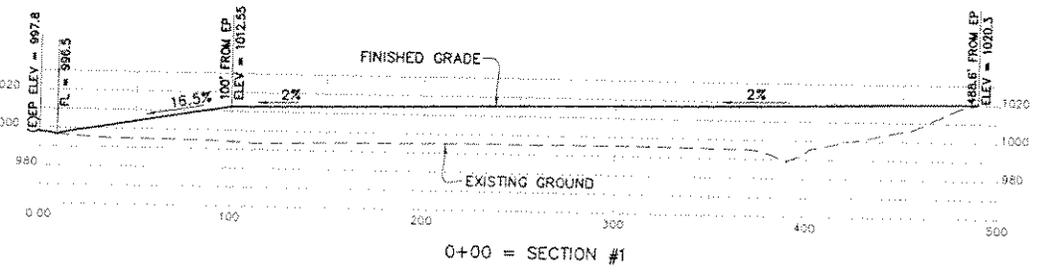
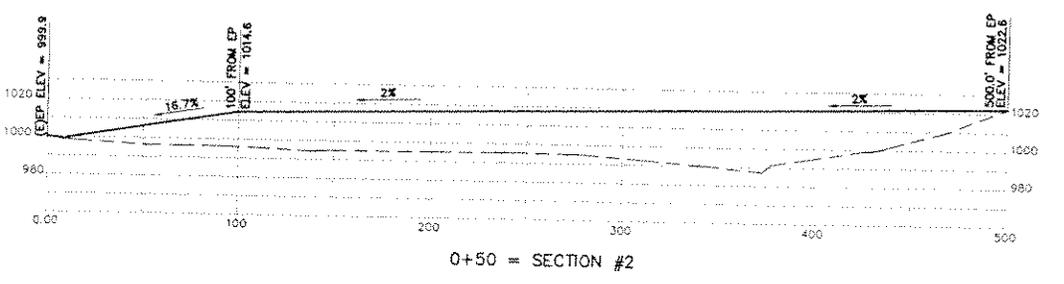
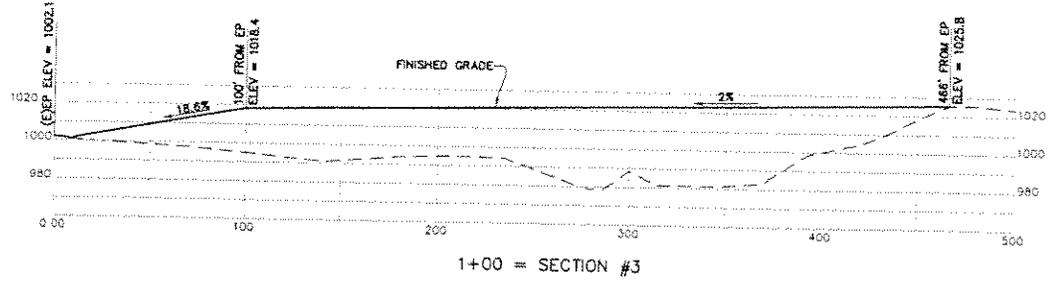
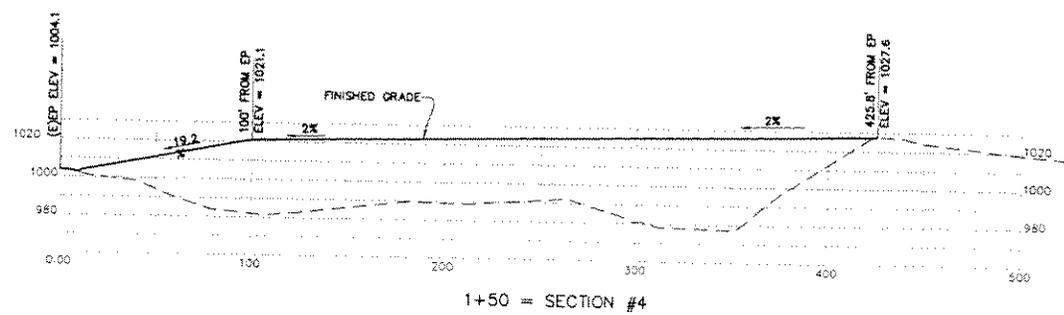
HUMBOLT COUNTY, CALIFORNIA
 PORTION OF
 SECTION 32, T.11N, R6E
 HUMBOLT BASE & MERIDIAN

BENCHMARK:
 PT #100 - CALTRANS MON./WELL
 ASSUMED ELEVATION = 1000.00'



PEARCH MINE SITE GRADING PLAN

| | |
|--|--|
| OWNER - RESOURCE UTILIZATION COMPANY P.O. DRAWER 349 ORLEANS, CA 95556 | DESIGNED BY: J. MCKNIGHT DRAWN BY: S. GASTON CHK. BY: J. MCKNIGHT SCALE: 1" = 120' UNITS: FEET SHEET: 1 OF 5 DATE: MARCH, 2006 |
| TRINITY VALLEY CONSULTING ENGINEERS 67 WALNUT WAY / P.O. BOX 1567 WILLOW CREEK, CA 95573 | |

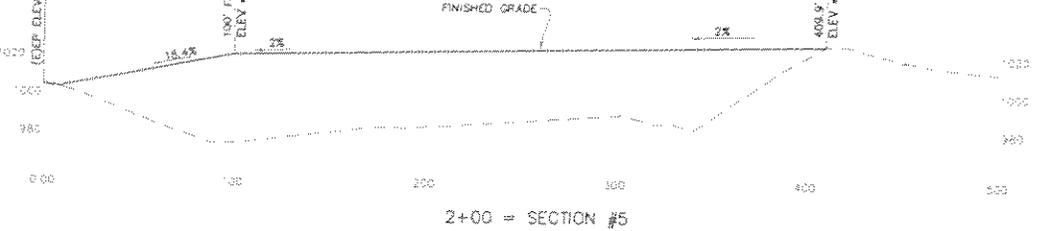
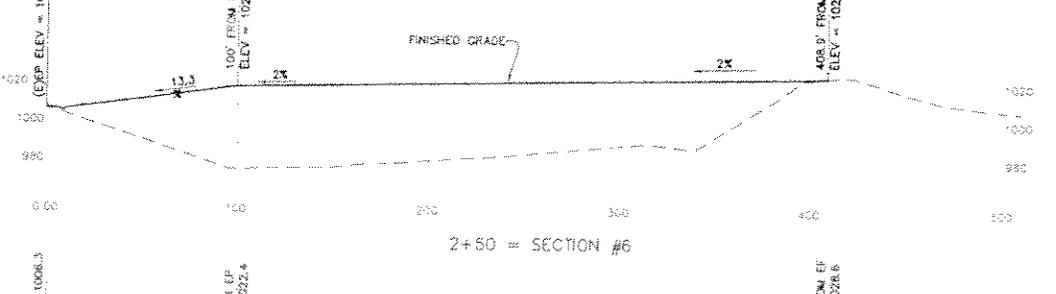
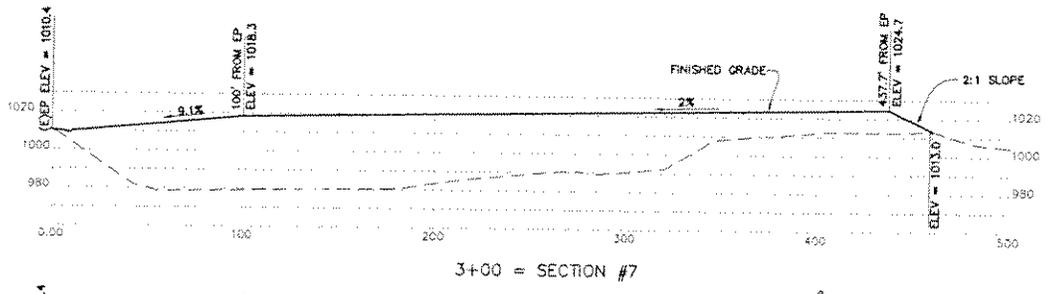
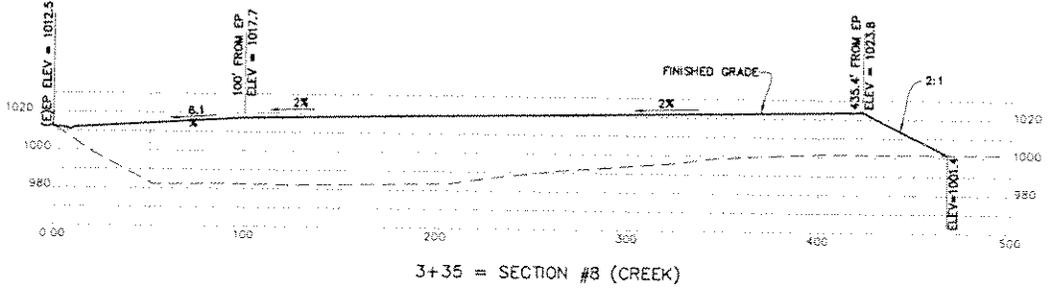
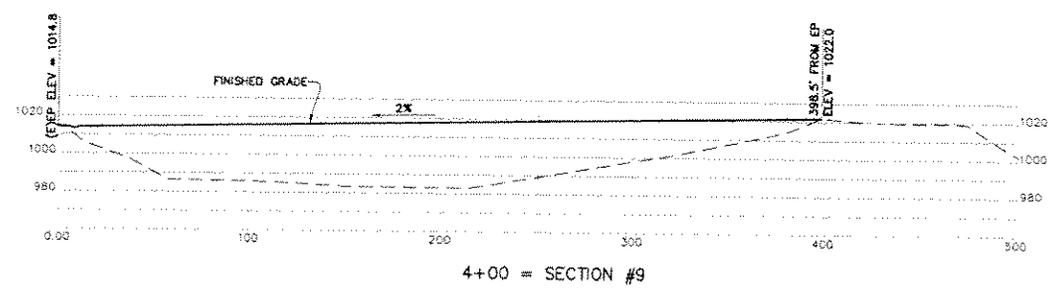
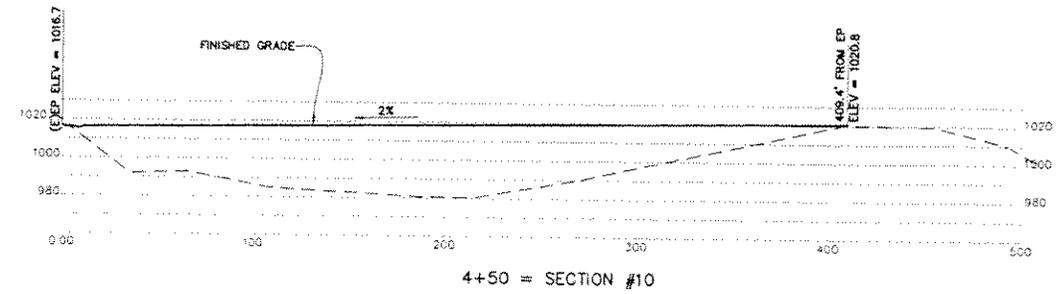


CONST. 5' WIDE SHLDR. & ROADSIDE DITCH RIGHT SIDE HWY. 96 SEE TYPICAL SECTION ON SHT 1



SEARCH MINE SITE CROSS SECTIONS

H: 1"=100'
V: 1"=100'

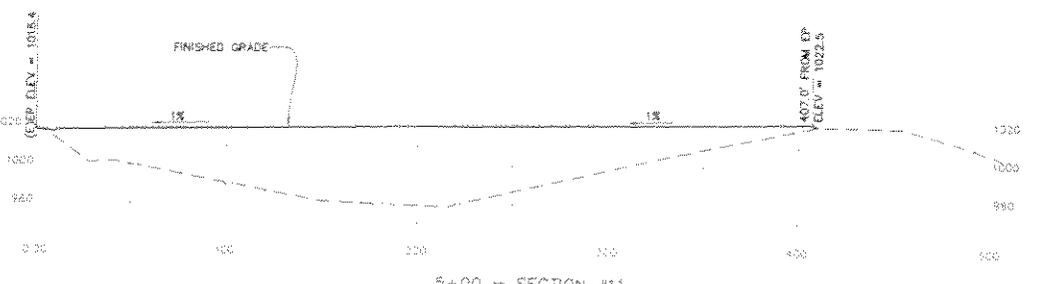
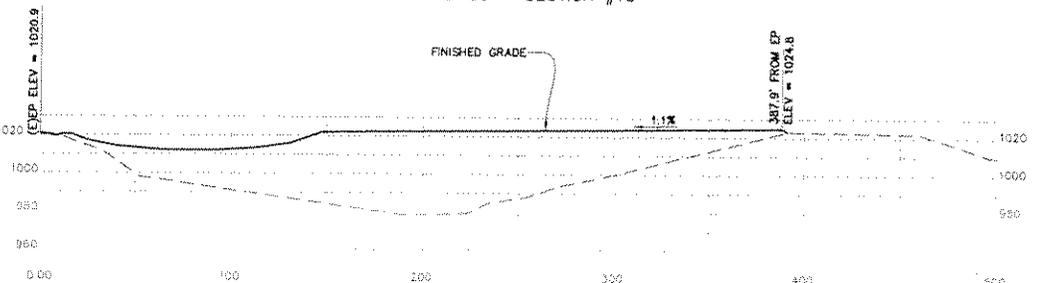
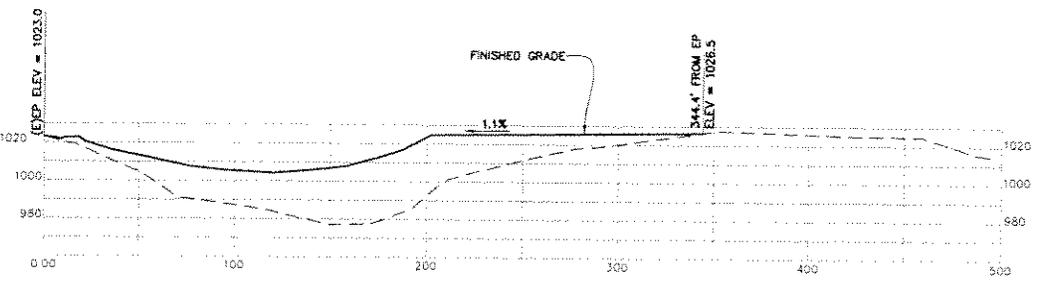
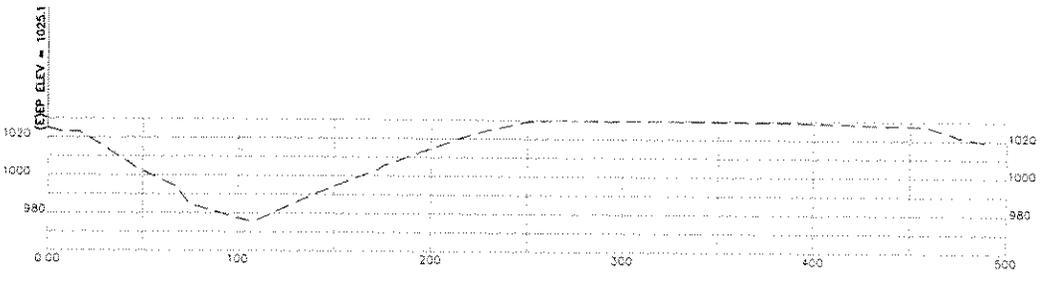
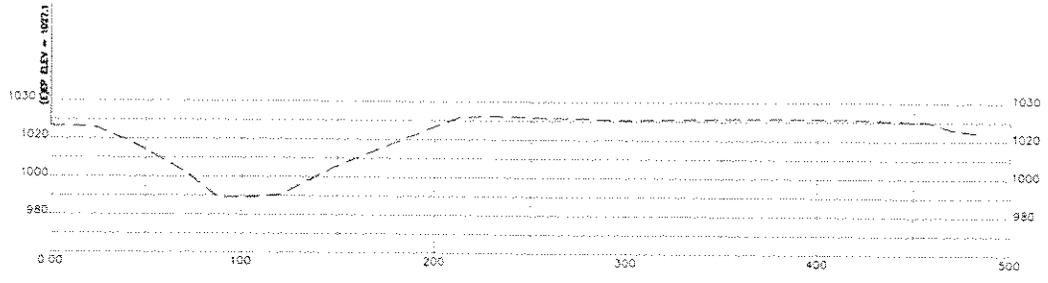


PEARCH MINE SITE CROSS SECTIONS

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V: 1"=100'

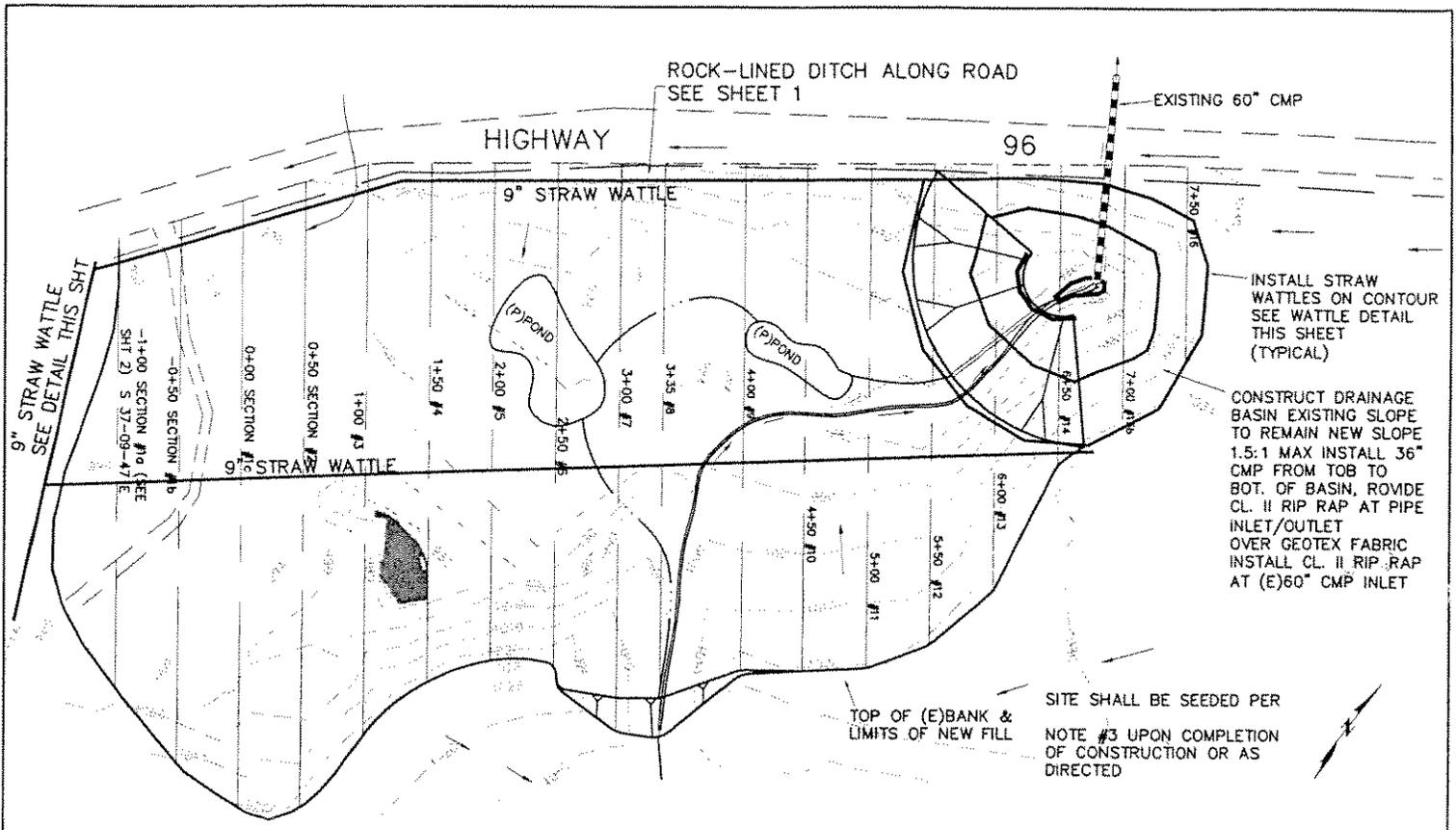


Ms 178-29799 D



PEARCH MINE SITE CROSS SECTIONS

H: 1"=100'
V: 1"=100'



EROSION CONTROL PLAN

SCALE: 1" = 30'

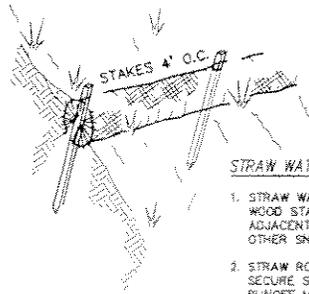
NOTES:

1. THERE SHALL BE NO GRADING ON THE PROPERTY BETWEEN THE PERIOD OCTOBER 15 AND APRIL 15 OR AS DIRECTED BY HUMBOLT COUNTY PLANNING DEPARTMENT.
2. ALL CLEARED AND OR GRADED AREAS INCLUDING ALL CUTS AND FILLS CREATED BY ROAD BUILDING AND PAD CONSTRUCTION SHALL HAVE ALL FACILITIES FOR EROSION AND SEDIMENT CONTROL IN PLACE BY OCTOBER 15. ALL DISTURBED AREAS SHALL BE COVERED PER NOTE 3
3. SEED MIXTURE SHOULD CONTAIN THE FOLLOWING SPECIES OF GRASSES AT THE FOLLOWING APPLICATION RATE: CALIFORNIA BROME 5 LBS/ACRE, IDAHO FESCUE 8 LBS/ACRE, BLUE WILD RYE 5 LBS/ACRE. MULCH SHOULD BE WHEAT STRAW AND APPLIED AT A MINIMUM THICKNESS OF 2 INCHES.
4. MINIMUM EROSION CONTROL MEASURES SHOWN, MORE TREATMENTS MAY BE REQ'D.
5. HUMBOLT COUNTY PLANNING DEPARTMENT PERSONNEL WILL INSPECT THE PROJECT AREA FOR COMPLIANCE.

INSTALL STRAW WATTLES ON CONTOUR SEE WATTLE DETAIL THIS SHEET (TYPICAL)

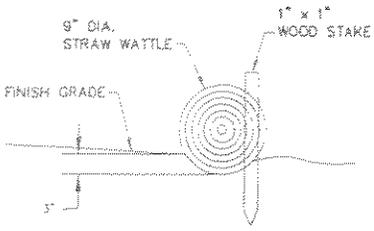
CONSTRUCT DRAINAGE BASIN EXISTING SLOPE TO REMAIN NEW SLOPE 1.5:1 MAX INSTALL 36" CMP FROM TOB TO BOT. OF BASIN, ROVIDE CL. II RIP RAP AT PIPE INLET/OUTLET OVER GEOTEX FABRIC INSTALL CL. II RIP RAP AT (E)60" CMP INLET

SITE SHALL BE SEEDD PER NOTE #3 UPON COMPLETION OF CONSTRUCTION OR AS DIRECTED



STRAW WATTLE NOTES:

1. STRAW WATTLES SHALL BE INSTALLED WITH 18 OR 24 INCH WOOD STAKES AT FOUR FEET ON CENTER. THE ENDS OF ADJACENT STRAW WATTLES SHALL BE ABUTTED TO EACH OTHER SNUGLY.
2. STRAW ROLL INSTALLATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE ROLL IN A TRENCH, 3"-5" DEEP. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND ROLL.



STRAW WATTLE INSTALLATION DETAIL

NTS



| | |
|---|--------------------------|
| PEARCH MINE SITE EROSION CONTROL PLAN | |
| OWNER - HORN | DESIGNED BY: J. MCKNIGHT |
| | DRAWN BY: S. GASTON |
| | CHK. BY: J. MCKNIGHT |
| | SCALE: 1" = 120' |
| TRINITY VALLEY CONSULTING ENGINEERS WILLOW CREEK, CA 95571 | UNITS: FEET |
| | SHEET: 5 OF 5 |
| | DATE: MARCH, 2006 |