

## Kirkland High Quality Pozzolan Mine, Draft Mining and Reclamation Plan of Operations

### FREQUENTLY ASKED QUESTIONS

#### NATIONAL ENVIRONMENTAL POLICY ACT

##### What is the Project's Preliminary Purpose and Need?

The BLM's *preliminary* purpose for action is to respond to Kirkland Mining Company's Draft Mining and Reclamation Plan of Operations and provide opportunity to Kirkland Mining Company's to conduct mining operations and development of associated infrastructure within Kirkland Mining Company's unpatented mining claims on BLM administered lands, pursuant to federal mining laws.

The BLM's *preliminary* need for the action is established by the BLM's responsibility under the Federal Land Policy and Management Act (FLPMA), and BLM Surface Management Regulations at 43 Code of Federal Regulations (CFR) 3809, to respond to the Draft Mining and Reclamation Plan of Operations and take action necessary to meet the performance standards in 43 CFR 3809 and prevent unnecessary or undue degradation of the subject BLM administered lands. In addition, the BLM must determine whether any occupancy of BLM administered land proposed in the Draft Mining and Reclamation Plan of Operations is in conformance with the regulations at 43 CFR 3715.

##### What does "Unnecessary or Undue Degradation" Mean?

43 CFR 3809.5 defines unnecessary or undue degradation as "conditions, activities, or practices that:

- (1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;
- (2) Are not "reasonably incident" to prospecting, mining, or processing operations as defined in § 3715.0-5 of this chapter; or
- (3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas."

Section (3) does not apply to this project.

##### How Many Formal Opportunities are There for Public Input?

**At least two.** Public scoping, although not required by law or regulation, is the first of two formal opportunities for public participation and input. During public scoping, the focus is on the *issues associated with a proposal*, if there are *means to minimize the effects*, and if there are *reasonable alternatives* that meet the project purpose and need the BLM should consider.

The second opportunity is when the BLM makes a "draft" environmental assessment available for review and comment. This document assesses the potential direct, indirect and cumulative impacts from a project. Typically, the "draft" environmental assessment assesses a No Action Alternative and Proposed Action. The document may also analyze any alternatives brought forward as a result of the scoping process. Typically, both public participation and input periods allow comments for a minimum of 30 days each. The second comment period would be for the "draft" environmental assessment and could be in the summer 2018.

## **Will the BLM Make the Public Scoping Comments Available?**

**Yes**, although not required by law or regulation, public comments received during the scoping period were released on October 19, 2017. All personal identifying information was removed (except for emails or letters from agencies and organizations). Personal identifying information removed included: names, addresses, phone numbers, and email addresses.

## **What is a “Reasonable Alternative”?**

A “reasonable alternative” is one that is technically and economically feasible and meets the project purpose and need (see below). Said another way - can it be built/engineered and is it cost-effective or profitable? The determination on whether an alternative is cost-effective or profitable is made by the applicant, and the BLM is not required to review the applicant’s financial records in order to make this determination.

An alternative has been suggested by some commenters- the use of rail for transportation of the mined material to secondary processing facilities (which have not been identified). The determination whether rail transportation is an economically feasible alternative has not been made.

## **What are the Resources or Issues that the BLM will Analyze in the Upcoming Environmental Assessment?**

Based on professional judgement of the BLM's interdisciplinary team, input from the environmental consultant, and review of two reports completed to date for the mine area (cultural resources and biological resources), the initial list of resources that may be affected by the project include the following:

1. Socioeconomics
2. Air Quality
3. Cultural Resources
4. Migratory Birds
5. BLM Sensitive Species (Animals)
6. General Wildlife
7. Minerals/Mining
8. Soils
9. Vegetation
10. Visual Resource Management
11. Travel and Transportation Management
12. Water Resources (Surface/Ground)
13. Noise
14. Public Health and Safety
15. Livestock Grazing
16. Recreation

The following resources *are not present* in the mine area:

1. Area of Critical Environmental Concern
2. Wilderness
3. Wilderness Study Area
4. Prime or Unique Farmlands
5. Lands with Wilderness Characteristics
6. Proposed or Designated Critical Habitat for Threatened or Endangered Species

## **Why is the BLM not Preparing an Environmental Impact Statement (EIS)?**

Based on professional judgement of the BLM's interdisciplinary team, multiple site visits, and review of two reports completed for the project area (cultural resources and biological resources), the BLM has preliminarily found that an environmental assessment is the minimum-level necessary to assess the potential impacts from the proposed mine. The term "significant" impact is based on the context and intensity of potential impacts (see 40 CFR 1508.27). By regulation, an EIS is required for mine projects of 640 acres and larger (this project involves 76 acres of public land) (see the BLM National Environmental Policy Handbook H-1790, Section 7.3).

Under the National Environmental Policy Act, the BLM will assess the following types of impacts by reviewing the proposed mines potential impacts:

- a) Short-term and/or long-term;
- b) Direct, indirect, and cumulative impacts; and
- c) Beneficial or adverse.

## **PERMITTING REQUIREMENTS**

### **What Types of Permits will be Required by Yavapai County?**

The mine operation would likely fall under the Mining/Metallurgical Use Exemption. If approved by the Development Services Department, the mine would be exempt from Yavapai County Planning and Zoning Ordinances.

### **Will the Mining Operation be Regulated by a Yavapai County Noise Ordinance?**

Trucks and other equipment will be muffled in accordance with applicable Arizona State law. Regulation of noise by Yavapai County would be covered by the Mining/Metallurgical Use Exemption.

### **Will the Addition of Trucks on Iron Springs Road Require any Permit from the Yavapai County Public Works Department?**

**No.** There would be no rights-of-way or permit needed from the Public Works Department for the addition of truck traffic on Iron Springs Road.

Kirkland would be required by the Yavapai County Public Works Department to assess the effects of the increased traffic on county roads. The traffic study would include information from historic and current traffic counts and assess the physical effects on the roads and road shoulders from weighted trucks. This traffic study will help determine signage requirements and any modifications that may be needed to the road shoulder at the mine site entry point to ensure integrity of the Iron Springs Road surface.

## **MINING LAW OF 1872**

### **What Minerals are “Locatable” Under the Mining Law of 1872?**

Rather than attempting to establish what minerals are locatable, it may be more practical to discuss what minerals are not locatable.

The number of locatable minerals authorized by the 1872 Mining Law has been substantially reduced by several subsequent Federal laws.

The Mineral Leasing Act of 1920, as amended, authorized that deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen and bituminous rock ... may be acquired only through a mineral leasing system.

The Materials Act of July 31, 1947 (61 Stat. 681) amended by the Act of July 23, 1955 (69 Stat. 367), excluded common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay. However, uncommon varieties of sand, stone, gravel, pumice, pumicite, cinders and exceptional clay are locatable. The Act of September 28, 1962 (76 Stat. 652), removed petrified wood from the locatable mineral category.

### **Are There Minerals that Were Never Locatable?**

Even before the Materials Act of 1947, and the Act of July 23, 1955, many mineral materials were never locatable even though they could be marketed at a profit. In fact the Materials Act of 1947 was enacted to provide a means to dispose of them. Material in this category includes ordinary deposits of clay, limestone, fill material, etc. Non-locatable minerals generally have a normal quality and a value for ordinary uses.

## What are “Uncommon Variety” Minerals?

Section 601 of Title 30 of the United States Code authorizes the Secretary of the Interior to sell "common varieties" of "sand, stone, gravel, pumice, pumicite, cinders and clay." On July 23, 1955, Public Law 167 (69 Stat. 368; 30 USC 611) was passed to, among other things, prohibit further location of common variety minerals. The Act stated in part:

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws.

However, the Act went on to provide for an exception for “uncommon variety” minerals at 30 USC 611:

"Common varieties" as used in Sections 601, 603, and 611 to 615 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

Therefore, the statute clearly implies that "uncommon varieties" of such materials exist and are still locatable under the mining law. Uncommon varieties are "valuable because the deposit has some property giving it distinct and special value...."

## What Special Provisions Apply to Minerals that may be Common Variety Minerals if Proposed to be Mined Under the 1872 Mining Law?

On mining claims located on or after July 23, 1955, a person must not initiate operations for minerals that may be “common variety” minerals, as defined, until BLM has prepared a mineral examination report, unless they obtain interim authorization. 43 CFR 3809.101

## How Does BLM Determine a Mineral is an “Uncommon Variety?”

The BLM conducts a common variety determination and prepares a mineral report. A mineral report is generally the factual basis for a management determination.

A number of legal decisions have formulated and refined the tests used to determine whether a particular deposit is an uncommon variety. These tests are as follows:

- (1) there must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
- (2) the mineral deposit in question must have a unique property;
- (3) the unique property must give the deposit a distinct and special value;
- (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use;
- (5) and the distinct and special value must be reflected by the higher price which the material commands in the marketplace ... [or by] reduced costs or overhead so that the profit to the producer [is] substantially more.

## OTHER QUESTIONS

### Is the Material Being Proposed for Mining ‘Carcinogenic?’

The primary material being mined is a tuff composed of volcanic ash and pumice. Even though this material has a high silica content, the silica is non-crystalline and *is not* listed as a ‘carcinogen’ by the International Agency on Cancer Research. Only crystalline silica (for example quartz sand) when it is ground fine enough to be respirable is listed as a carcinogen. This operation has much less potential for the presence of crystalline silica, such as quartz sand, than most mines or quarries in silicate rocks, but the same dust control measures established for sand and gravel operations, quarries, and mines with higher potential crystalline silica will still

be applied to this mine. Tests for other airborne carcinogens other than respirable crystalline silica are currently being performed and the results of those tests will be posted to the website as they become available, potentially by the end of 2017.

**Would Kirkland Mining Company pay property taxes?**

**No.** The 76-acre mine site is located on public land and is not subject to property taxes. For information on how counties receive payments from the federal government based because public lands are not subject to property taxes, search the internet on "Payment in Lieu of Taxes." All Kirkland Mining Company activities on private property and off-site would be subject to applicable property/sales/gas taxes.

**Can I Receive a Copy of the Following Documents/Reports?**

A. The preliminary jurisdictional determination for Waters of the US? **No**, that process has not been initiated by Kirkland Mining Company. The BLM does not require that the determination be completed until later in the environmental analysis process.

B. The Class III Cultural Resources Survey of 160 Acres at Kirkland Mine in Yavapai, Arizona report. Based on precedence in case law, the BLM may make the report available to the public with the location of the cultural sites redacted from disclosure.

C. The Spill Prevention, Control and Countermeasure Plan. **No**, this plan has not been developed but an outline is provided in the Draft Mining and Reclamation Plan of Operations.

The Water Management Plan; Overburden Management Plan; Hazardous and Solid Waste Management Plan; Spill Contingency Plan; Transportation Plan and Fire Prevention Plan are all included in Section 2.3 of the Draft Mining and Reclamation Plan of Operations (pages 20-26).

**Has Kirkland Mining Company Entered into an Agreement with Drake Cement to buy the Pozzolan?**

**No**, Kirkland Mining Company has not provided the BLM with information on what if any companies would purchase the high quality pozzolan, nor are potential purchasers of the material identified in the Draft Mining and Reclamation Plan of Operations.