



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

FREQUENTLY ASKED QUESTIONS

NATIONAL ENVIRONMENTAL POLICY ACT

What is the Project's Purpose and Need?

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

The BLM's 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?

Two formal opportunities for public comment are being provided for this project. 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. A 78-day public scoping period was completed on September 11, 2017.

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. The BLM initiated a 60-day public review period for the "draft" environmental assessment on July 7, 2018. This comment period will end on September 4, 2018.

Will the BLM Make the Public Comments Available From this 60-Day Review?

Yes, although not required by law or regulation, public comments received during this public comment period will be made available in the winter 2018. 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.

What are the Resources or Issues that are Analyzed in the Environmental Assessment?

Based on professional judgement of the BLM's interdisciplinary team, input from the environmental consultant, review of numerous technical reports and resource studies completed to date for the mine area and the proposed project, and review of scoping comments, the list of issues analyzed in the “draft” environmental assessment include the following:

1. Socioeconomics
2. Air Quality
3. Cultural Resources
4. Wildlife (Migratory Birds, BLM Sensitive Species (Animals), General Wildlife)
5. Minerals and Soils
6. Vegetation
7. Visual Resources
8. Transportation
9. Water Resources (Surface/Ground)
10. Noise
11. Public Health and Safety
12. Land Use (Livestock Grazing and 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 numerous technical reports and resource studies completed for the project, 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 approximately 88 acres of public land) (see the BLM National Environmental Policy Handbook H-1790, Section 7.3).

Under the National Environmental Policy Act, the BLM has analyzed the following types of 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 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. Lee Engineering, LLC (Lee Engineering 2018) evaluated the project driveway design and ingress and egress at the access point at Iron Springs Road to determine if any modifications to signing, striping, or roadway characteristics would be needed to safely accommodate mining and transport traffic in the vicinity of the mine's driveway. In addition, Lee Engineering evaluated the anticipated travel routes of the transport haul trucks to identify any sensitive areas and determine the level of traffic change that would be associated with the project. The findings of these evaluations are documented in the Kirkland Mine Traffic Impact Study (Lee Engineering 2018) and Yavapai County Public Works concurred with the findings in of the Traffic Impact Study in March 2018. This report was published online as a part of the BLM's release of baseline studies on April 2, 2018.

MINING LAW OF 1872

What Minerals are "Locatable" Under the Mining Law of 1872?

Rather than attempting to establish what minerals are locatable, it is 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 BLM Hassayampa Field Office Locatable Minerals Program provided to the Arizona Department of Environmental Quality (ADEQ) Air Quality Division an explanation of geochemical assay results from HQP samples taken from the project area. No asbestos minerals or erionite crystals, fibrous or otherwise, were identified within samples taken from the project area (BLM 2018). The majority of the material found at the project area is volcanic ash, a type of silica that is not a known carcinogen. The volcanic ash would be mined as HQP as part of the project. The BLM's report was published online as a part of the release of baseline studies on April 2, 2018.

Would Kirkland Mining Company, LLC pay property taxes?

Yes. All Kirkland Mining Company, LLC's activities on private property and off-site would be subject to applicable property taxes. Kirkland Mining Company, LLC would also be subject to sales, gas, payroll, use taxes generated by the project, and the Arizona Transaction Privilege Tax for Mineral Commodities. The 88-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 because public lands are not subject to property taxes, search the internet on "Payment in Lieu of Taxes."