

LAND USE SERVICES DEPARTMENT



COUNTY OF SAN BERNARDINO

PLANNING DIVISION

385 N. Arrowhead Avenue, San Bernardino, CA 92415-0182
(909) 387-8311 Fax (909) 387-3223
<http://www.sbcounty.gov/landuseservices>

CHRISTINE KELLY
Director

July 25, 2011

George Rodda, Jr.
Bagdad Chase, Inc.
33440 Barrington Drive
Temecula, CA 92592

RE: Certificate of Land Use Compliance and Conditional Approval
Bagdad Chase, Inc.'s Application No. P201100277
APNs: 0551-181-02 through 0551-181-14, 0551-191-02 through -05, -07, -10
through -12, -15 through -17, -19, -22, -24 and -25
28 Land Patents Located Approximately 7 Miles South of Ludlow, CA

Dear Mr. Rodda:

Please be advised that Bagdad Chase, Inc.'s (Bagdad Chase) Application No. P201100277 to certify legal use of the subject land patents for mineral resource development activities has been **APPROVED** by the Land Use Services Department provided that Bagdad Chase agrees with disclosure in the public record a certificate of land use with long-term conditions or lawful restrictions that apply to continuation of the use in accordance to Chapters 85.05 and 88.03 of the Development Code.

The County's Development Code was first enacted in 1951. For some uses, the Code identified uses in certain zoning areas that were permitted as of right and did not require issuance of a use permit. In 1981, the County adopted a new Title 8 to the County's Code, identified as the Development Code. In 1989, the Development Code was amended to include, among other things, the requirement for a Mining Conditional Use Permit (CUP). Surface mining operations that legally existed at the time of a zone change to a more restrictive land use zoning district was allowed to continue operating to the full limit and extent of land and structures existing at the time of the zone change, provided that a Certificate of Land Use Compliance (Certificate) is recorded in compliance with the Development Code Chapter 85.05. The application and supporting material evidence indicates Bagdad Chase's desire is to continue mineral resource development activities that have been ongoing by Bagdad Chase and predecessors-in-interest since 1901. Mineral resource development to the fullest extent at the subject properties shall not require a mining CUP approval under the County's Development Code, as the pre-existing use was a permitted use by right, enacted at the time the

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Bagdad Chase, Inc.
July 25, 2011
Page 2 of 3

subject properties underwent development and subsequent approval by the County (ref. Reclamation Plan 84M-022 dated May 30, 1984).

Pursuant to the statutes specified in the Surface Mining and Reclamation Act of 1975 ("SMARA", Public Resources Code, Section 2710 et seq.), surface mining operations in existence prior to, and continuing after January 1, 1976 (vested rights operations) were not required to obtain permits to mine, but were required to have a reclamation plan submitted to the local lead agency by March 31, 1988. Lead agencies, in turn, were required to have the reclamation plans for vested rights operations reviewed and either approved or denied by July 1, 1990. County Planning records indicate that the Planning Commission approved Reclamation Plan 84M-022 for the subject Bagdad Chase area properties on June 7, 1984, thus demonstrating recognition of the surface and underground mineral resource development activities as an existing legal land use and the intent of the approval was to conform with SMARA requirements. It is staff's opinion that the natural progression of mining to extract valuable mineral reserves is not considered a substantial change in the land use included in the historic Stedman (Buckeye) Mining District or exploring its extents, which specifically includes all of the subject properties.

In addition, the historic record and field evidence provides additional proof that substantial liabilities have been incurred prior to the Legislature's establishment of SMARA in 1976 and the implementation of the County's permitting process. Supporting evidence includes reports on production, access roads, extensive excavations, overburden and tailings dumps, underground development, widespread drilling exploration and corresponding mineral assay reports. However, recordation of this Certificate and the County's recognition of your "vested right" shall not exempt any individual or company from laws that are applicable and enforceable to future land-disturbing activities. In accordance with Public Resources, Code Section 2770(a), no person can conduct surface mining operations unless a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by San Bernardino County and the Department of Conservation.

Conservation of valuable mineral resources, responsible productive use by extractive industries and the provisions for their continued availability is promulgated by the County's General Plan provided that mineral extraction activities are in compliance with SMARA and the Development Code (specifically Chapter 88.03) requirements and do not result in significant adverse environmental effects and open space uses have been considered before commencement of such activities.



Bagdad Chase, Inc.
July 25, 2011
Page 2 of 3

In consideration of the information presented herein, it is staff's opinion that continued land use pertaining to mineral resource development activities and appropriately conditioned, is not only consistent with the General Plan, but also consistent with the standards codified in the 2007 Development Code. The use of the land, not its ownership, determines the right to continued use; therefore, the enclosed Certificate certifies the legal use of the properties and may support a protective measure for existing access routes by giving priority of use over other proposed future land uses in the immediate area, or at least, accommodate local mineral resource extraction activities with as good or better alternate access routes, provided the alternate access routes do not adversely impact open space resources.

With your acceptance of the enclosed Certificate, Planning staff shall cause the Certificate to be filed for record with the County Recorder's Office. Again, once recorded, the transfer of title does not affect the right because the Certificate runs with the land; however, a knowing intent to waive, abandon or otherwise forego the vested right or provided that the State Mining and Geology Board assumes the County's SMARA lead agency responsibility, may result in extinguishment of the right and void the Certificate.

If you have any questions, please feel free to call me direct at (909) 387-4105.

Sincerely,



George H. Kenline, Mining Geologist
Environmental & Mining Section
Land Use Services Department

Attachment: Certificate of Land Use Compliance/Notice of Condition No. VR2011-01

Cc: Judy Tatman, Supervising Planner, Land Use Services Department

