

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

M2023-008 Incomplete Response #2

Jodi Schreiber <jodi@arycorp.com>

Mon, Mar 27, 2023 at 3:28 PM

To: "Eschberger - DNR, Amy" <amy.eschberger@state.co.us>, Joel Renfro - DNR <joel.renfro@state.co.us>

Good afternoon Amy and Joel.

Please see the attached updated lease agreements and maps for the permit application.

Thank you,



Jodi Schreiber

839 Mackenzie Ave., Canon City, CO 81212

Office (719) 275-3264 | Mobile (719) 529-0916

jodi@arycorp.com

"Success is not final, failure is not fatal; it is the courage to continue that counts. "

-Winston Churchill

6 attachmentsOutlook-http___ary.png
4K **Exhibit A_B r1.pdf**
958K **Existing Conditions r1.pdf**
299K **Mining Map r1.pdf**
335K **Rec. Map r1.pdf**
312K **20230327_001.pdf**
724K

Property Lease

This Farmland Property Lease (this "Lease") dated this 25th day of February 2023, (hereinafter referred to as the "Lease"), by and between A&S Construction Co. ("Lessee"), whose address is 839 Mackenzie Ave, Canon City, CO 81212, and Ollis Lauppe and Susan Lauppe, whose address is 21209 29 RD, Fowler, KS 67844. *Mack*

Recitals

In consideration of the sum of Ten Dollars (\$10) paid by the Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged by Lessor, and on and subject to the terms and conditions provided in this Lease, Lessor hereby leases, lets and demises to the Lessee as defined herein, in, on and under the following described real property situated in Kiowa County, Colorado with a legal description as follows:

SEE ATTACHED MAP AND ASSESSOR SHEET

the exclusive right to place a portable asphalt plant during the Term of this Lease.

1. Definitions.

- a. Lease Year shall mean a period of one year beginning on the date the Term of the Lease commences, as set forth in Subsection e, below, or on any annual anniversary thereof.
- b. Term. The Term of this lease shall be for a period commencing on a date to be determined by A&S Construction and will terminate at the end of the CDOT Project with 30-day notice from A&S Construction to the landowner.

2. Lease Payment.

- a. All parties agree to a lease payment of ~~XXXXXX~~ per month.

3. Operations.

- a. The Lessee shall conduct its operations on the Property in a prudent and workmanlike manner and in accordance with good and accepted mining and business practices and in compliance with all applicable federal, state, and local laws, rules and regulations and all applicable permits. The timing, nature, manner and extent of all activities shall be within the sole discretion of the Lessee.
- b. The Lessee shall have the right to construct, maintain, use roads, fence, power lines, telephone lines, and any right of way it deems

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Lessee Initials AS

necessary or desirable for its operations on the Property related to the Lessee's operations under this Lease. Lessee shall have the right to house and operate a portable asphalt plant, and any and all necessary equipment.

- c. Lessor shall have the right to continue use of the surface of the Property during the Term of this Lease. Any lease or other agreement for such use shall be made expressly subject to the Lessee's right hereunder, and the Lessee shall have no obligation to pay Lessor or any surface use for impairing such use in connection with the Lessee's operations hereunder.
4. Ingress and Egress. The Lessee shall have the right of ingress and egress to and from the said property.
5. Liabilities.
- a. Lessee shall defend and indemnify and hold harmless the Lessor and Lessor's agents and employees from and against any and all claims, demands, judgments and liability, including reasonable attorney fees and expert fees, by or to any and all third parties that may arise as a result of the negligent acts or omissions of Lessee or its agents, representatives, officers, employees, lessees and contractors, in or about the Property.
 - b. The Lessee shall defend, indemnify, and hold harmless Lessor from any and all liability resulting from the Lessee operations hereunder pursuant to all local, state and federal environmental laws, ordinances, rules and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) and the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), as any of such laws, ordinances, rules and regulations have been or are amended from time to time.
 - c. The foregoing indemnifications shall all survive the termination of this Lease. The indemnity provisions set forth in this Lease shall apply to amounts paid in settlement of a claim by an indemnified party only if such settlement is approved by the indemnifying party, which approval shall not be unreasonably withheld and shall include any and all legal fees, costs and expert witness fees incurred by the party being indemnified.
6. Insurance.
- a. The Lessee shall maintain at its sole expense and at all times statutory Workers Compensation Insurance coverage as required under the laws

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Lessee Initials

and regulations of the State of Colorado for all its officers and employees who perform work for the Lessee hereunder.

- b. The Lessee shall purchase, at its sole expense, and shall maintain at all times the following minimum insurance protection with Lessor designated as an additional insured providing for written notice to Lessor thirty (30) days prior to cancellation. Lessee shall provide Lessor with a certificate of such insurance annually.
 - i. Comprehensive General Liability in the amount of \$1,000,000 combined single limit;
 - ii. Employer's Liability Insurance in the amount of \$500,000 each occurrence;
 - iii. Automobile Liability Insurance in the amount of \$1,000,000 combined single limit; and
 - iv. Adequate and reasonable insurance for other risks ordinarily insured against in similar operations.
- c. The Lessee agrees that it shall require all contractors and subcontractors who perform work on the Lessee's behalf in connection with the Property to have similar and adequate insurance in full force and effect.

7. Title and Other Conditions.

- a. BLANK.

8. Labor and Materials. The Lessee agrees to keep the Property free and clear of liens charges, claims or demand arising from the Lessee's operations hereunder and to promptly pay for all labor performed on the Property and for all supplies, materials, and equipment used or placed on the Property. The Lessee shall defend, indemnify and hold harmless Lessor from and against any and all claims, charged, demands, causes of action, damages and liability, including reasonable attorneys fees and expert fees, that arise from or are connected to the acts or omissions of the Lessee hereunder or to those of its contractors, subcontractors, employees, officers, agents or lessees in regard to providing labor and acquiring in installing materials, equipment and supplies for operations under this Lease. The Lessee may contest in good faith any lien; provided that the Lessee shall not allow title to the Property or any portion of it to be lost.

9. Termination.

- a. Lessor shall have the right at Lessor' option to terminate this Lease if the Lessee fails to perform any of its obligations hereunder as follows;

Lessor Initials
Lessee Initials

- i. If the Lessee fails to pay when due any amounts to be paid hereunder, Lessor may at Lessor's option give the Lessee written notice of such failure and the Lessee shall have thirty (30) days from the date it receives notice to pay the amounts owed to Lessor. If the Lessee fails to pay the past due amounts to Lessor within ninety (90) day period, Lessor may at Lessor's option declare the Lessee in default and terminate this Lease.
 - ii. If the Lessee defaults in the performance of any obligation hereunder other than the obligation to pay money when due, Lessor may at Lessor's option give written notice by certified mail of such default to the Lessee, and the Lessee shall have ninety (90) days from the date it received such notice to cure the default. If the Lessee fails to cure the default within the ninety-day period, Lessor may at Lessor's option terminate this Lease; provided, however, that if the default is minor and the default can be fully compensated for damages, than such default shall not be a basis for cancellation or forfeiture of this Lease or any of Lessee's rights hereunder if the Lessee pays the full amount of damages within ninety (90) days after demand by Lessor. If through no fault of the Lessee, such failure is impracticable to correct within the 90-day prior, Lessor shall have no right to terminate this Lease if the Lessee commences in good faith to correct the failure and provided that the Lessee diligently pursues and completes the correction within a reasonable time.
 - b. Upon termination of this Lease with respect to all or any part of the Property, the Lessee agrees to furnish Lessor with a document reasonably satisfactory to Lessor verifying such termination and release of Lease.
 - c. Upon termination of this Lease by the Lessee for any reason, all sums paid hereunder to Lessor shall remain the property of Lessor and shall not be recoupable or refundable except to the extent that they have already been recouped or refunded as of the effective date of termination, or except as expressly provided in Paragraphs 10.B and C above.
10. End of Term. The Lessee shall have the right for six (6) months from the date of the expiration or termination of the Lease to dismantle and remove machinery, equipment, improvements, and other facilities installed or constructed on the Property by the Lessee and also to sell and remove Materials then stockpiled on the Property, subject to its obligation to pay Sales Royalties pursuant to Section 3.
11. No Development Covenant. There is no implied covenant or obligation of the Lessee to explore, develop or mine the Property or to sell Materials. The

Lessor Initials PGL
Lessee Initials [Signature]

Lessee may maintain this Agreement in effect for its term and any allowed extensions by making the payments set forth herein.

12. Notice. Notices of default or of cancellation or termination of this Lease and all other notices required or permitted hereunder shall be given by personal delivery or by registered or certified mail, postage prepaid, addressed to the parties as follows;

If to the Lessee: A&S Construction Co.
839 Mackenzie Ave.
Canon City, CO 81212

If to Lessor: Olis G Lauppe Living Trust
Susan K Lauppe Living Trust
21209 29 RD
Fowler, KS 67844

13. Condemnation. If the whole or any part of the Property shall be taken by any public authority under the power of eminent domain at any time during the term of this Lease, Lessor and the Lessee shall each be entitled to share in the award to the extent of their respective interests in the Property with respect to any taking. In the event only a portion of the Property is taken, and if notwithstanding such taking the Lessee will be able to continue to conduct its business in the remainder of the Property in substantially the manner it was being conducted immediately prior to such taking, this Lease shall cease only as to the part taken. If, however, by reason of the condemnation there is not sufficient property left in or upon the Property for the Lessee to conducting its business in substantially the manner in which it was being conducted immediately prior to such taking, then and in such event this Lease shall terminate. All condemnation awards on account of the interest of the Lessor shall be paid to the Lessor and all awards on account of Lessee's leasehold interest shall be paid to Lessee. The allocation of any lump sum award for any taking between Lessor and Lessee shall be made by agreement between them, if possible, or if the parties cannot agree (i) the value of Lessor's interest in the property affected by such taking and under this Lease, and (ii) the value of Lessee's interest therein under the Lease.
14. Non-Business Day Deadlines. If a date for notice, performance or payment falls on a holiday or weekend, the time for performance or payment shall be extended to the next business day, and if notice, performance or payment has occurred on such weekend or holiday or after 5:00p.m. On any business day, it shall be deemed to have occurred on the next business day.
15. Confidentiality; Recording. The parties agree that the terms and conditions of this Lease are confidential and shall not be disclosed to any third party without the consent of the other. Neither party shall record this Lease without

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Lessee Initials AS

the consent of the other. The parties agree to execute a short lease for recording to provide record notice of this Lease without disclosing the economic terms hereof.

16. Entire Agreement. This Lease contains the entire agreement between the parties hereto, and neither it nor any part of it may be changed, altered, modified, or limited orally or by any agreement between the parties unless such agreement be expressed in writing, signed, and acknowledged by the Lessor and the Lessee, or their respective heirs, personal representatives, successors and assigns.
17. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Lease.
18. Choice of Law. This agreement and its provisions shall be interpreted and enforced under the laws of the State of Colorado.
19. Severability. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent Court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained.
20. Attorney's Fees. In the event either party is required to seek counsel or seek redress in a Court of law for enforcement of this contract, the prevailing party in such dispute shall be entitled to reimbursement of reasonable attorney's fees and costs, in addition to any damages found to be due.
21. Miscellaneous. A&S Construction will place an electric fence on the perimeter of the hot plant site. A&S Construction will reclaim and reseed the hot plant site at the conclusion of the project. If any roads are developed, A&S Construction will reclaim and reseed those areas as well. At the conclusion of the project, A&S Construction agrees to leave a 20' cattle guard in place at the entrance of the site. If A&S Construction puts office trailers onsite for this project, they will upgrade the electrical onsite and leave the service when the project is complete.

Lessor Initials AGL
Lessee Initials [Signature]

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17. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Lease.
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21. Miscellaneous. A&S Construction will place an electric fence on the perimeter of the hot plant site. A&S Construction will reclaim and reseed the hot plant site at the conclusion of the project. If any roads are developed, A&S Construction will reclaim and reseed those areas as well. At the conclusion of the project, A&S Construction agrees to leave a 20' cattle guard in place at the entrance of the site. If A&S Construction puts office trailers onsite for this project, they will upgrade the electrical onsite and leave the service when the project is complete.

Lessor Initials A.S.C. L
Lessee Initials [Signature]

IN WITNESS WHEREOF, this Property Lease has been duly executed as of the date first above written.

By: Olis G Lauppe
Susan K Lauppe
Olis G Lauppe Living Trust
Susan K Lauppe Living Trust

STATE OF KANSAS)

COUNTY OF Meade)

The foregoing instrument was acknowledged before me this 25th day of March, 2023, by Olis G Lauppe, Susan K Lauppe Lessor.

Witness my hand and official seal.
My Commission Expires:



Dean Zortman
Notary Public

Lessor Initials OLG
Lessee Initials SKL

A&S Construction Co.

By:


John P. Ary, President A&S

STATE OF COLORADO)

COUNTY OF Pueblo)

The foregoing instrument was acknowledged before me this 27th day of March, 2023, by John P. Ary, A&S Construction President, Lessee.

Witness my hand and official seal.

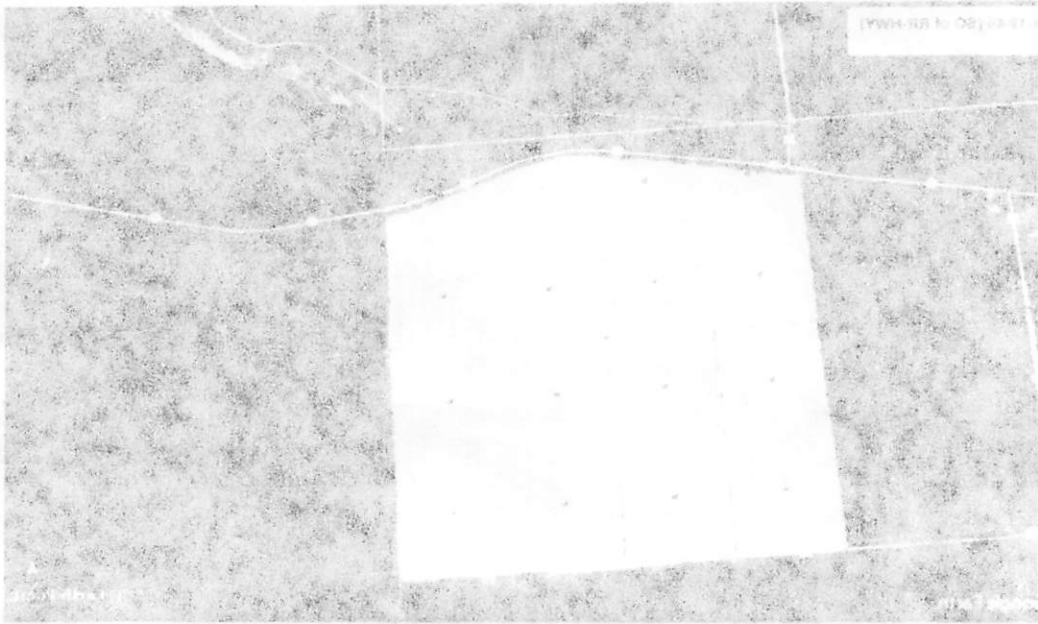
My Commission Expires:


Notary Public

JODI D SCHREIBER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064001792
MY COMMISSION EXPIRES OCTOBER 6, 2026

Lessor Initials AGL
Lessee Initials [Signature]

Lessor Initials REL
Lessee Initials WZ



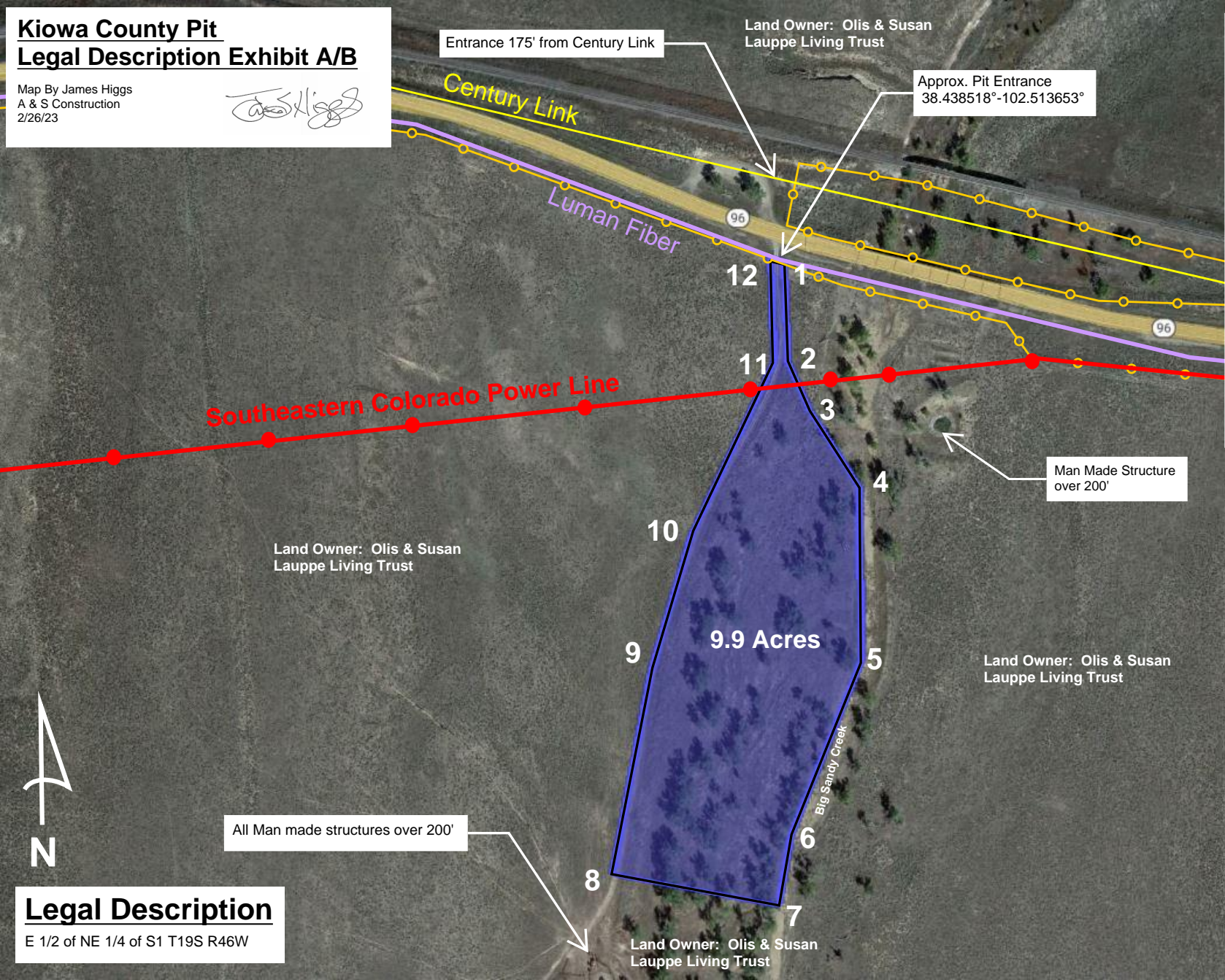
1-10-10 (50 x 100-100)

1-10-10 (50 x 100-100)

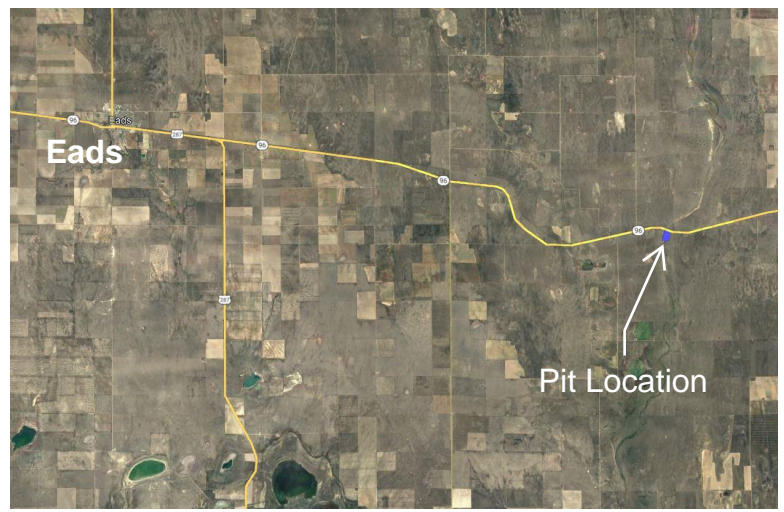
1-10-10 (50 x 100-100)

Kiowa County Pit
Legal Description Exhibit A/B

Map By James Higgs
A & S Construction
2/26/23



Overview Map



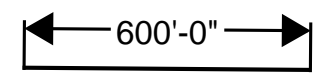
Legal Description

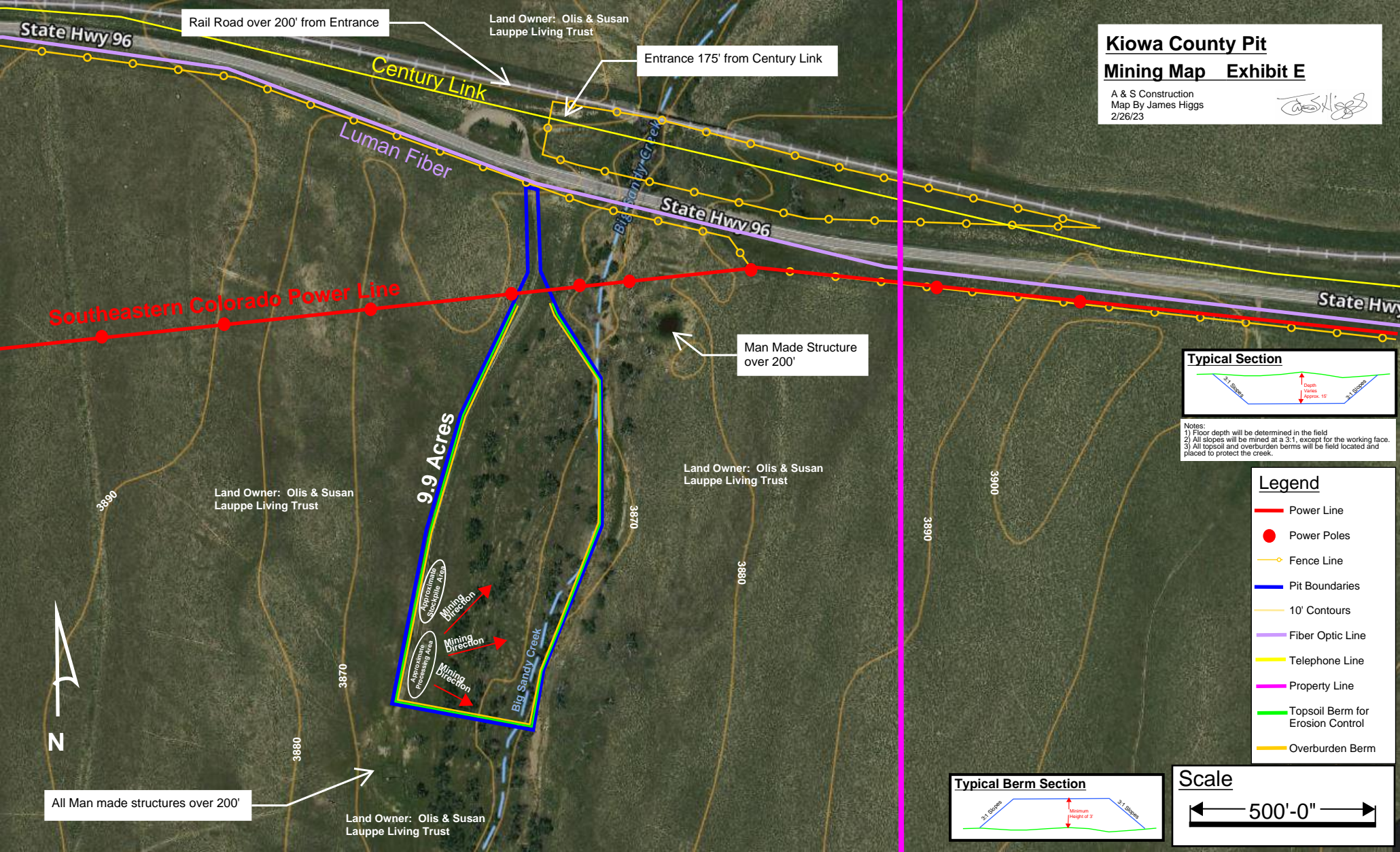
E 1/2 of NE 1/4 of S1 T19S R46W

NAD 83 Coordinates

1)	38.438505°-102.513595°
2)	38.437876°-102.513558°
3)	38.437581°-102.513389°
4)	38.437100°-102.513000°
5)	38.436041°-102.512981°
6)	38.434959°-102.513537°
7)	38.434519°-102.513638°
8)	38.434712°-102.514950°
9)	38.435967°-102.514647°
10)	38.436807°-102.514328°
11)	38.437879°-102.513672°
12)	38.438531°-102.513700°

Scale





Kiowa County Pit Mining Map

Exhibit E

A & S Construction
Map By James Higgs
2/26/23

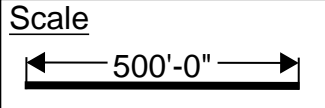
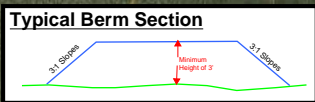




Notes:
1) Floor depth will be determined in the field
2) All slopes will be mined at a 3:1, except for the working face.
3) All topsoil and overburden berms will be field located and placed to protect the creek.

Legend

- Power Line
- Power Poles
- Fence Line
- Pit Boundaries
- 10' Contours
- Fiber Optic Line
- Telephone Line
- Property Line
- Topsoil Berm for Erosion Control
- Overburden Berm



All Man made structures over 200'

Land Owner: Olis & Susan Lauppe Living Trust

Land Owner: Olis & Susan Lauppe Living Trust

Land Owner: Olis & Susan Lauppe Living Trust

Man Made Structure over 200'

Rail Road over 200' from Entrance

Land Owner: Olis & Susan Lauppe Living Trust

Entrance 175' from Century Link

9.9 Acres

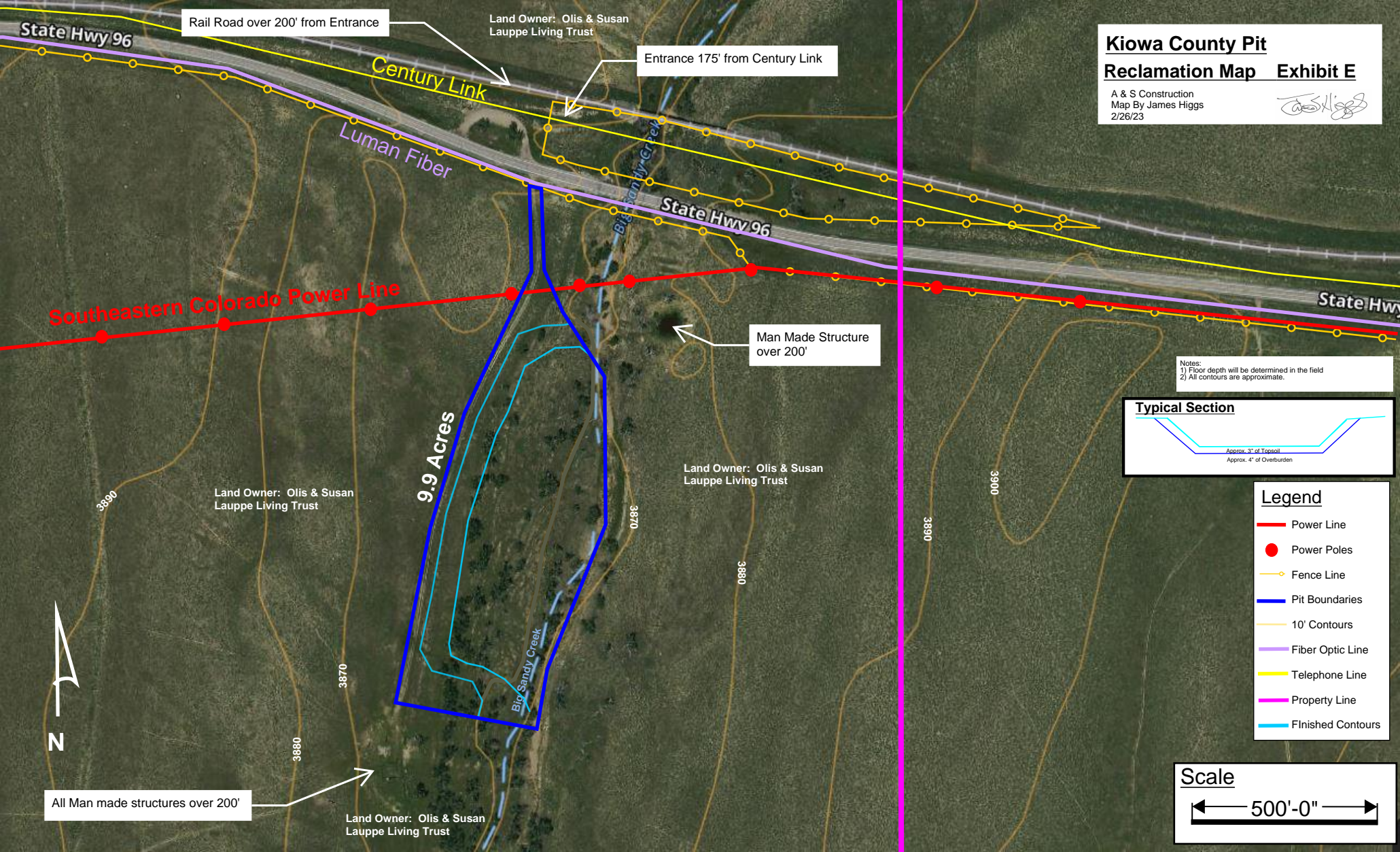
Approximate Stockpile Area

Mining Direction

Approximate Processing Area

Mining Direction

Big Sandy Creek



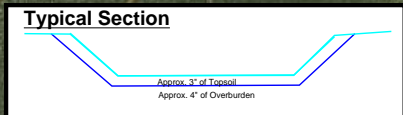
Kiowa County Pit

Reclamation Map

A & S Construction
Map By James Higgs
2/26/23

Exhibit E

Notes:
1) Floor depth will be determined in the field
2) All contours are approximate.



- Legend**
- Power Line
 - Power Poles
 - Fence Line
 - Pit Boundaries
 - 10' Contours
 - Fiber Optic Line
 - Telephone Line
 - Property Line
 - Finished Contours

