

Consideration of a 112c Application with Objections

Rocky Mountain Aggregate and Construction, LLC

Uncompahgre Pit

M-2013-007

Staff Presentation

August 14, 2013

Pre-hearing Order

- 1. Whether proposed mining operations are compatible with historic, current and future land uses; including whether proposed operations will be in conflict with Montrose County Master Plan; including concerns regarding hours of operation, noise and visual pollution, quality of life and potentially adverse impacts to the view shed, tourism, local economy, and nearby property values.*

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 1.

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

The Act and Rules do not specifically address issues of zoning and land use, impacts to visually appealing landscapes, tourism and impacts to the local economy, hours and/or days of operation, noise and sight pollution, and quality of life. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Montrose County permitting process.

According to Section 34-32.5-115(4)(d) C.R.S., the Board or Office may deny an application if the proposed operation is contrary to the laws or regulations of Colorado or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation. On March 1, 2013, and April 22, 2013, the Division provided notice of the permit application to Montrose County. Montrose County has not indicated any conflict with local zoning, local regulations or the Master Plan for the proposed mine operation.

Pre-hearing Order

- 2. *Whether conflicting information pertaining to proposed operations was presented by the applicant to various regulatory agencies during the permitting process.***

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 3.

The Division provided notice of the application to 13 agencies. No agency has indicated conflicting information pertaining to the proposed operation. No agency has indicated any conflict with any federal, state, or local laws or regulations for the proposed operation.

According to Exhibit M of the application the Applicant must attain approval from the following agencies:

- Montrose County Special Use Permit**
- NPDES permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from the discharge of process water and storm water to the environment**
- APEN permit from the Air Pollution Control Division of the Colorado Department of Public Health and Environment, addressing air pollution issues**
- Division of Water Resources of the Office of the State Engineer, regarding water rights issues**
- Spill Prevention Control and Countermeasure Plan, required through WQCD**
- Access Permit from the Colorado Department of Transportation for access to Highway 550 from County Road T**

The application demonstrates compliance with Section 34-32.5-115(4)(d) C.R.S.

Pre-hearing Order

3. *Whether, given the size of the proposed operation, reclamation as described in the permit application is feasible.*

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 5.

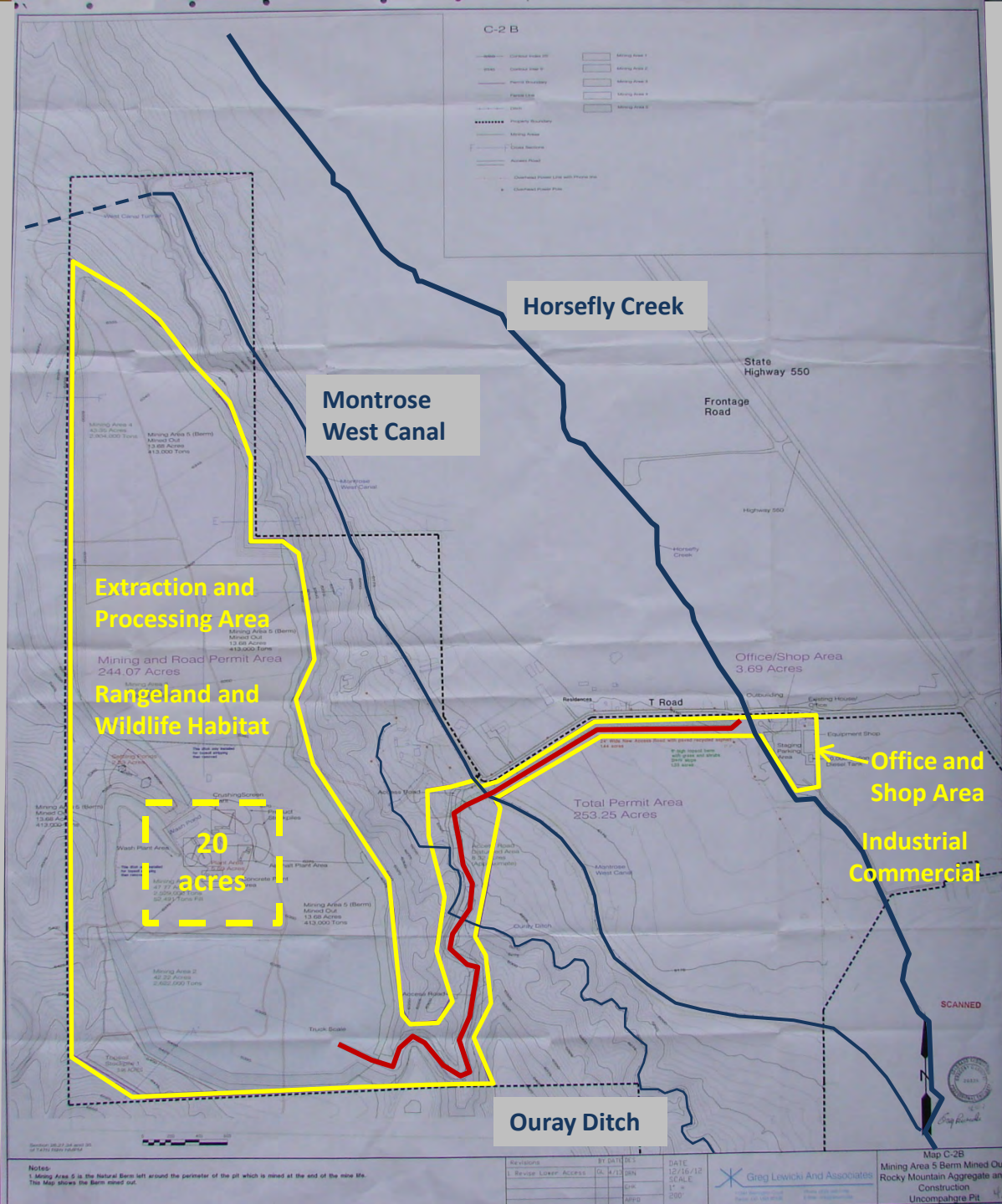
The permit application demonstrates compliance with Section 34-32.5-116(4) C.R.S., which requires reclamation for all affected lands. The mining and reclamation plan includes numerous commitments, which become enforceable conditions if the permit is approved. Some of the commitments specific to reclamation of affected lands includes, but not limited to, the following:

- Phased mine plan with contemporaneous reclamation whereby the un-reclaimed disturbance is limited to approximately 20 acres at any given time
- Final slopes not steeper than 3H:1V
- Subsoil replacement at one foot depth
- Topsoil replacement at one foot depth
- Reclamation seed mix composed of Indian ricegrass, galleta, bottlebrush squirreltail, small burnet, scarlet globemallow, sulfur flower buckwheat, daisy fleabane, winter fat, rubber rabbitbrush, four wing saltbush, and shadscale saltbush
- Reclamation will be performed for all affected lands to support a variety of post-mining land uses including rangeland, wildlife habitat, and industrial/commercial
- Division calculated the initial cost of reclamation at \$99,409.04, and the Applicant has agreed to provide financial warranty in the amount required by the Division

Subsequent to the issuance of the permit the Division will conduct routine periodic inspections of the operation to ensure compliance with the permit conditions, the requirements of the Act and Rules, and to maintain the amount of financial warranty in accordance with current reclamation costs.

Map C-2B
Mine Plan
Uncompahgre Pit
M-2013-007

Phased mine plan with contemporaneous reclamation whereby the un-reclaimed disturbance is limited to approximately 20 acres at any given time



Pre-hearing Order

- 4. *Whether the application adequately addresses concerns pertaining to water consumption during drought, possible injury to water rights and compliance with water laws.***

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 7.

On March 1, 2013 and on April 22, 2013, the Office provided notice of the application to the Division of Water Resources. On August 1, 2013, the Office received two responses from the Division of Water Resources, clarifying the conditions under which the Applicant may utilize irrigation water, for purposes other than irrigation, and impound storm water runoff in the proposed sediment ponds. The two correspondences from the Division of Water Resources were not included in the MLRB packet but are provided to the Board today with staff's presentation information.

Colorado water laws and regulations governing injury to existing water rights are enforced by the Division of Water Resources. The Division of Water Resources has reviewed the permit application and has clarified how the proposed operation may proceed and remain in compliance with applicable water laws. The Division of Water Resources has not indicated the proposed operation is in conflict with the water laws and regulations enforced by the Division of Water Resources. The application demonstrates compliance with Rule 3.1.6(1)(a).

Pre-hearing Order

5. *Whether wind erosion and stabilization of topsoil stockpiles has been appropriately addressed in the application.*

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 9.

The protection and preservation of stockpiled topsoil is addressed under the performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), where it is necessary to remove overburden in order to expose the mineable materials, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.

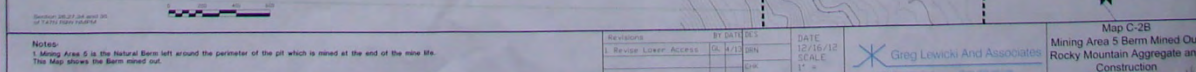
The Applicant has indicated the topsoil stockpile(s) will be constructed during the initial mining phase and the reclamation seed mix will be applied within 60 days of construction. The Applicant has committed to the establishment of a protective vegetative cover for the topsoil stockpile within one year. The Division has determined one year to be an appropriate time frame for the establishment of a protective vegetative cover for stockpiled topsoil, and requires the same for all mining operations throughout Colorado.

During the initial mining phase topsoil will be salvaged and stockpiled at two locations:

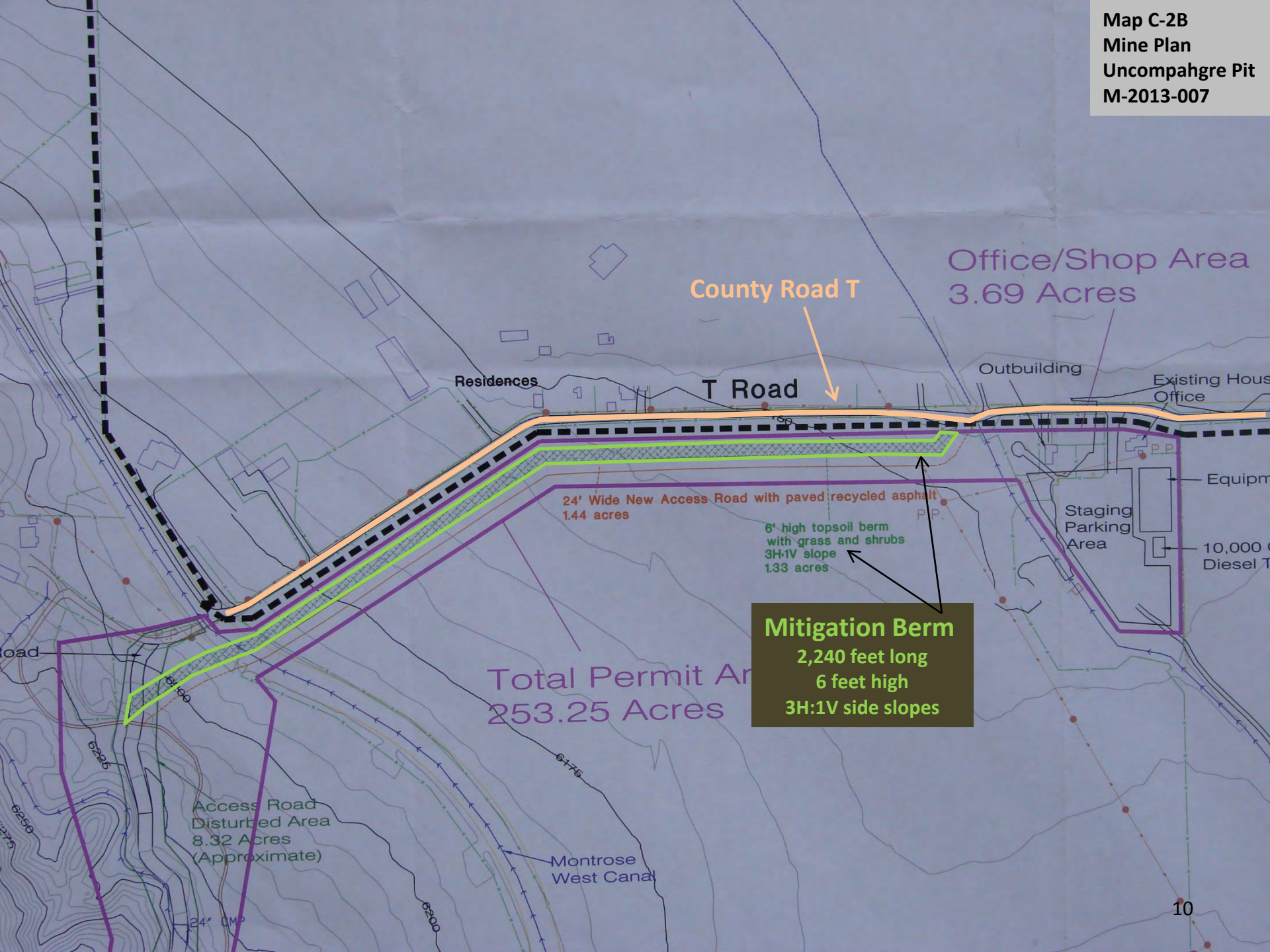
- Topsoil Stockpile 1, located at the southwest corner of the extraction area; and
- Mitigation Berm, located between County Road T and the new access road.

The Mitigation Berm is a permanent structure and will not be removed during final reclamation. Topsoil Stockpile 1 will remain undisturbed until final reclamation of the last mining phase. Topsoil for all mine phases subsequent to the first phase will be stripped and utilized immediately for reclamation of the previous mine phase. The direct haul and placement of salvaged topsoil is best management practice.

8







Mining and Road Permit Area
244.07 Acres

Reclaimed Land
Use is
Rangeland and
Wildlife Habitat

Ponds left in Place as
stock ponds

Reclaimed Mining Area
190.63 Acres

Topsoil Stockpile 1
previous location

Reclaimed
Topsoil Area
3.98 Acres

Office/S
3.69 Acr

Residences
T Road

24' Wide New Access Road with paved/recycled asphalt
1.44 acres

6' high topsoil berm
with grass and shrubs
3H:1V slope
1.33 acres

Mitigation Berm left in Place to
protect residences

Total Permit Area
253.25 Acres

Access Road left in Place to
access terrace

Montrose
West Canal

Ouray Ditch

Pre-hearing Order

6. *Whether water quality issues have been adequately addressed in the permit application. Specifically whether process water and storm water permits have been secured, and whether leakage from sediment ponds will adversely impact ground water resources, and whether adverse impacts to the quality of ground- and surface-waters resulting from operations have been adequately addressed.*

Staff Response

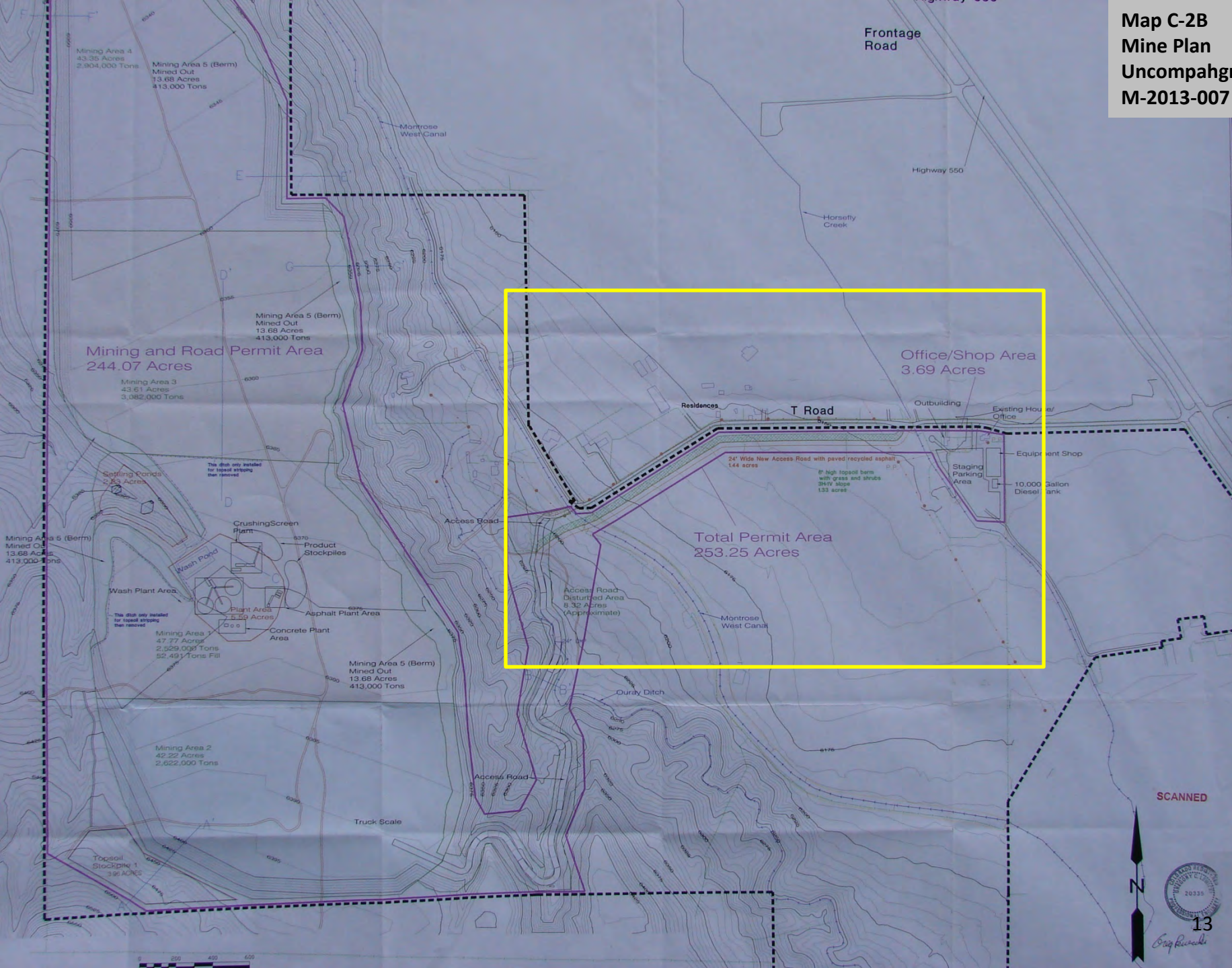
This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 10.

The Applicant has affirmatively stated an NPDES permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from discharge of process water and storm water, is being pursued. Therefore, the Office determined the application to have demonstrated compliance with Rule 3.1.6(1)(b).

Fuel storage tanks will be located within secondary spill containment structures, which have been designed by a Colorado licensed professional engineer to ensure 110% holding capacity. The Office determined the designs to be appropriately protective of surface and ground water resources for the areas surrounding the fuel tanks and demonstrated compliance with the performance standards of Rules 3.1.5(11) and 3.1.6.

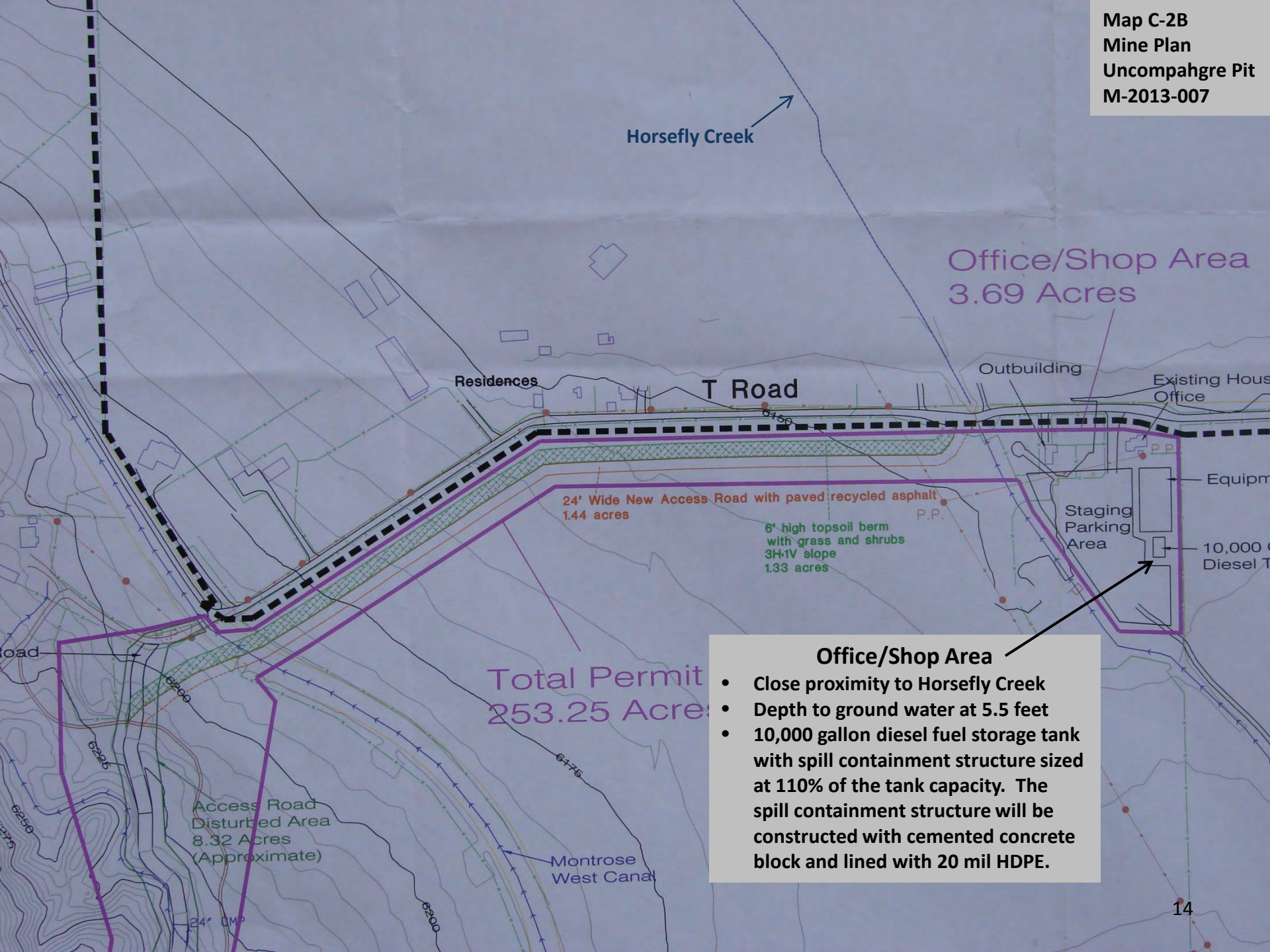
The Applicant has affirmatively stated a Spill Prevention Control and Countermeasure Plan will be posted at the mine office and the employees will be trained to take appropriate steps for inspections of facilities and rapid response in case of a spill. The Office determined the application demonstrated compliance with the performance standards of Rule 3.1.13, regarding protocol and procedures whereby spills of any toxic or hazardous substances, including spills of petroleum products, will be reported to the Office, as well as to any Division of the Colorado Department of Public Health and Environment, the National Response Center, the Colorado Emergency Planning Commission, local Emergency Planning Committee, or the State Oil Inspector.

Map C-2B
Mine Plan
Uncompahgre Pit
M-2013-007

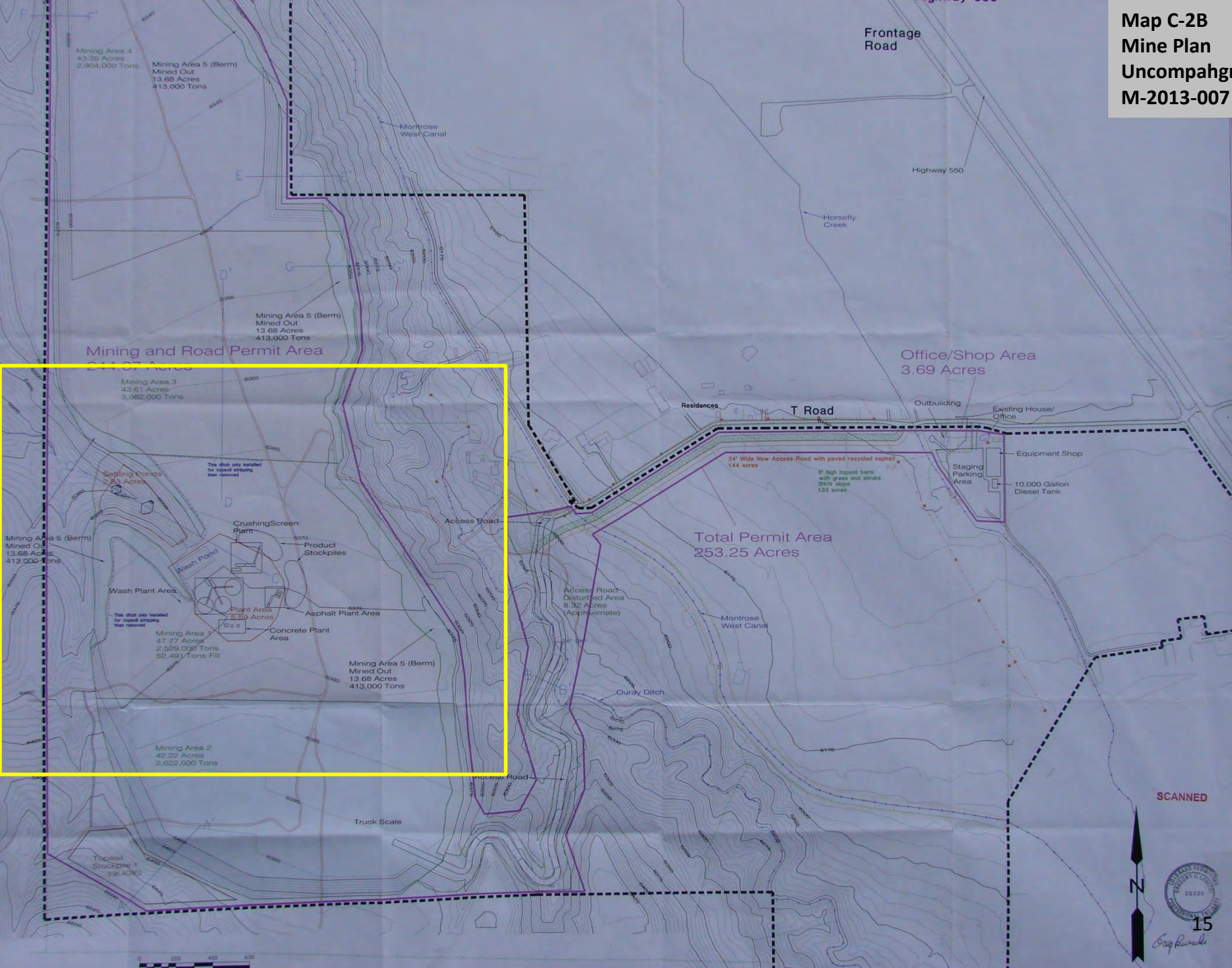


SCANNED





Map C-2B
Mine Plan
Uncompahgre Pit
M-2013-007



244.07 Acres

Mining Area 3
43.61 Acres
3,082,000 Tons

Settling Ponds
2.23 Acres

This ditch only installed
for topsoil stripping
then removed

CrushingScreen
Plant

Product
Stockpiles

Access Road

Mining Area 5 (Berm)
Mined Out
13.68 Acres
413,000 Tons

Wash Pond

Wash Plant Area

This ditch only installed
for topsoil stripping
then removed

Plant Area
5.59 Acres

Asphalt Plant Area

Concrete Plant
Area

Mining Area 1
47.77 Acres
2,529,000 Tons
52,491 Tons Fill

Mining Area 5 (Berm)
Mined Out
13.68 Acres
413,000 Tons

Mining Area 2
42.22 Acres
2,622,000 Tons

244.07 Acres

Mining Area 3
43.61 Acres
3,082,000 Tons

Sediment ponds for treating process water and storm water runoff, per WQCD permit requirements. The ponds are also regulated by DWR for dam safety and water rights issues.

Duckett Draw
approximately
0.5 miles
downstream

This ditch only installed
for topsoil stripping
then removed

Settling Ponds
2.23 Acres

3,000 gallon diesel fuel tank (double walled) with spill
containment structure sized at 110% capacity of fuel tank

BLM

Mining Area 5 (Berm)
Mined Out
13.68 Acres
413,000 Tons

CrushingScreen
Plant

Product
Stockpiles

Wash Pond

Wash Plant Area

This ditch only installed
for topsoil stripping
then removed

Pit Floor
(Mancos Shale contact)

Plant Area
5.59 Acres

Asphalt Plant Area

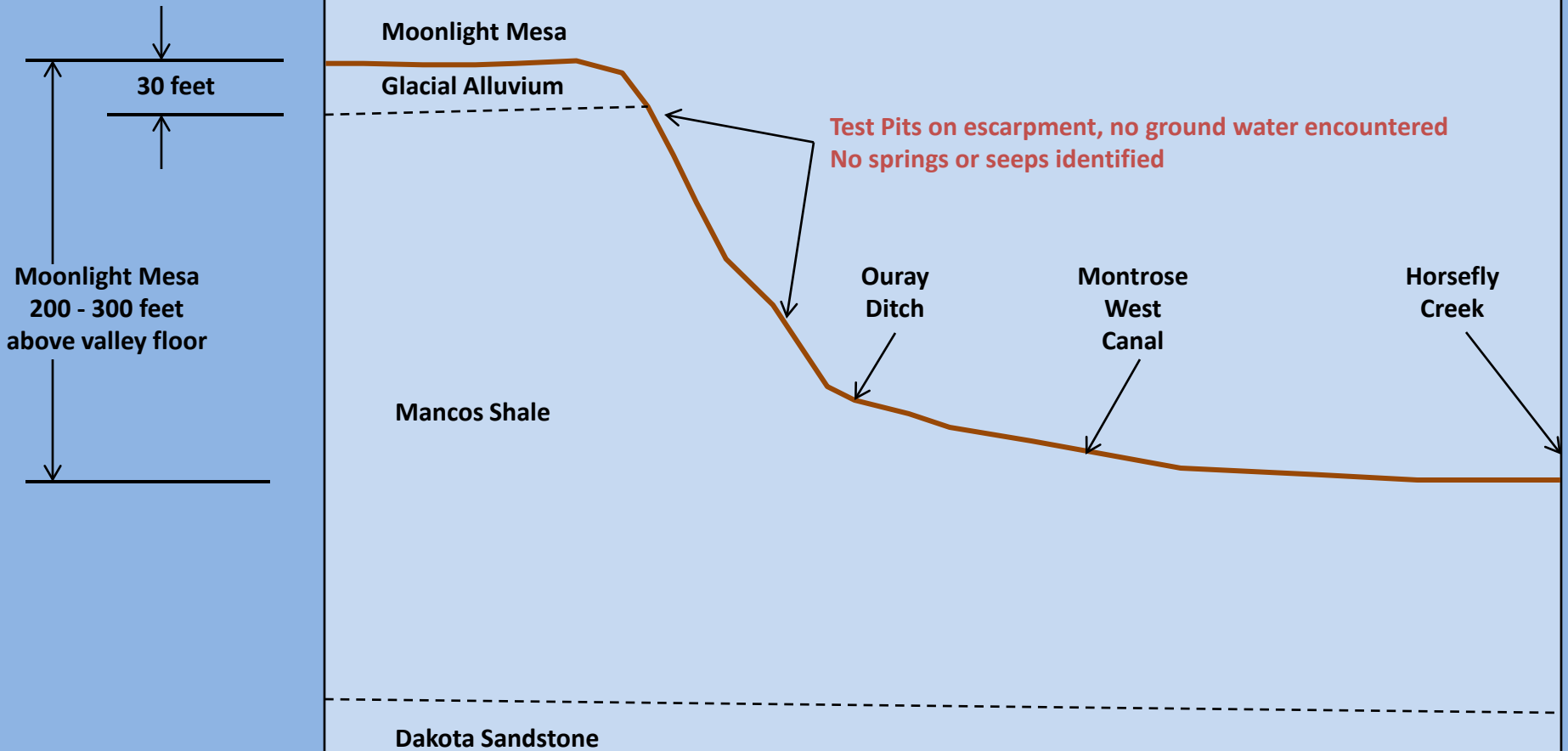
Concrete Plant
Area

Mining Area 1
47.77 Acres
2,529,000 Tons
52,491 Tons Fill

Mining Area 5 (Berm)
Mined Out

As part of a 2006 geotechnical investigation of the property for residential development, eleven test pits (ranging from 8 to 12 foot depth) and four bore holes (ranging from 12 to 35 foot depth) were installed on the top and escarpment of the mesa. No ground water was encounter in any of the test pits or bore holes driven into the mesa. No springs, seeps, or other indications of ground water have been identified along the escarpment of the mesa. The application indicates depth to ground water at 200 feet or greater for the mesa top, where the extraction and processing activities will locate.

General Geographic Cross Section



Pre-hearing Order

- 7. *Whether potential impacts of operations on wildlife and wildlife habitat have been adequately addressed in the permit application.***

Staff Response

This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 11.

The Office determined the application satisfied the requirements of Rules 3.1.8 and 6.4.8, regarding the protection of wildlife.

The application materials include official correspondence from Colorado Parks and Wildlife and an informal email communication from the US Fish and Wildlife Service to the Applicant, regarding Gunnison sage grouse. The US Fish and Wildlife Service did not respond to the Division's notice of the application. Neither agency indicated the proposed operation was in conflict with any federal or state law. Many of the recommendations from the wildlife agency(s) have been incorporated into the mining and reclamation plan, as follows:

Wildlife Agency Recommendation	Mining and Reclamation Plan
Concerns regarding large-scale disruption of wildlife habitat.	Phased mine plan with contemporaneous reclamation whereby un-reclaimed disturbance is limited to approximately 20 acres at any given time.
Habitat restoration with establishment of vegetative cover composed of daisy fleabane, dusty penstemon, sulfur flower buckwheat, small burnet, sagebrush, galleta, Indian ricegrass, winter fat, shadscale, scarlet globemallow, bottlebrush, rabbitbrush, four-wing saltbush. Avoid crested wheatgrass and pubescent wheatgrass.	Reclamation seed mix composed of Indian ricegrass, galleta, bottlebrush squirreltail, small burnet, scarlet globemallow, sulfur flower buckwheat, daisy fleabane, winter fat, rubber rabbitbrush, four wing saltbush, and shadscale saltbush. With the exception of penstemon and sagebrush, the proposed reclamation seed mix was recommended by CPW.
Mining activities should cease from December 15 through April 30 to minimize stress on wintering ungulates.	Page D-2 of the Mine Plan states, "The operation will mine for a few months per year and produce stockpiles to last the remainder of the year. Product sales will occur throughout the year." Therefore, mining activity during winter is highly unlikely due to ground freeze and seasonal market demands.
Disruption of Pinyon pine and Juniper trees on the slopes of the mesa should be minimized.	Mine related impacts to the treed slopes of the mesa are limited to the crest of the escarpment and construction of a new access road, 24 feet wide.
Weeds	Pursuant to Rule 3.1.10(6), the Operator is required to employ weed control methods. Additionally, the Applicant has committed to utilizing certified weed-free mulch and the application includes a weed control plan.
DRMS and Applicant should consult with US Fish and Wildlife Service regarding Gunnison sage grouse.	DRMS and Applicant have contacted US Fish and Wildlife Service regarding the proposed mine operation.

Pre-hearing Order

8. *Whether concerns regarding man-made structures located within 200 feet of the affected land have been adequately addressed in the permit application.*

Staff Response

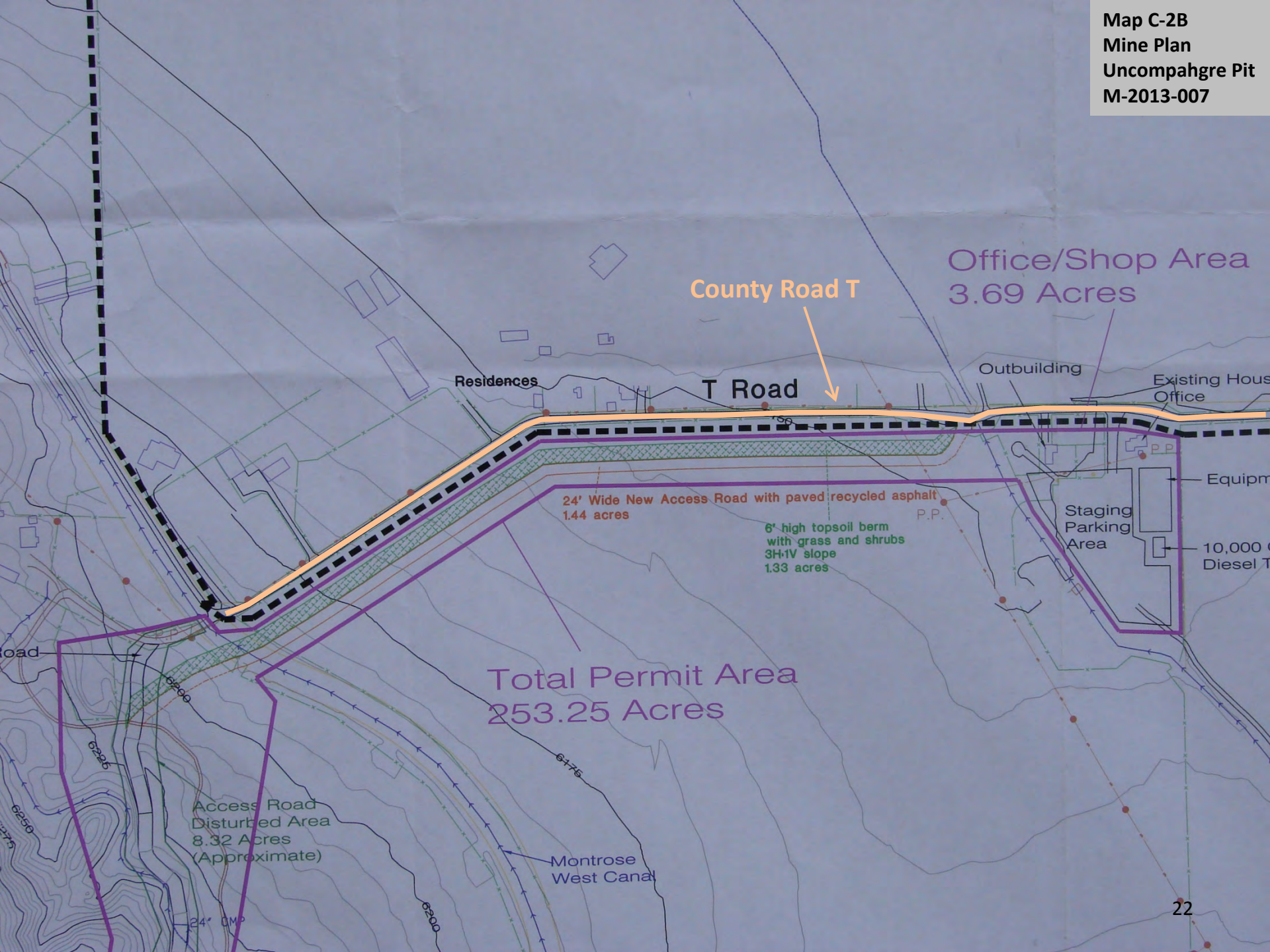
This issue correlates with the Division's rationale document, dated July 19, 2013, issue number 12.

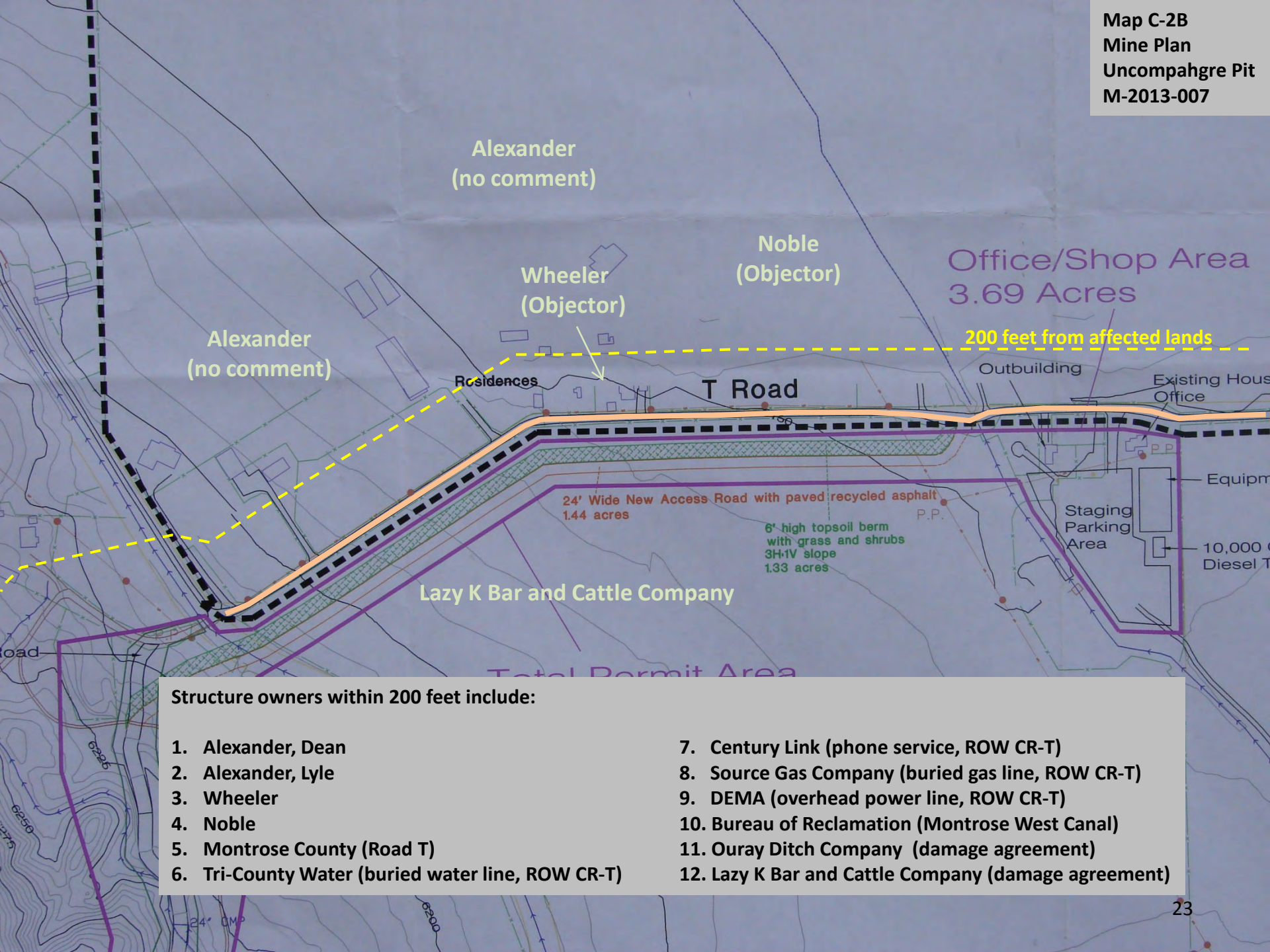
The application identified numerous permanent and valuable man-made structures located within 200 feet of the affected lands. The application identified 12 structure owners. The Office required the Applicant to satisfy the requirements of Rule 6.4.19 for all structure owners located within 200 feet of the affected lands.

Pursuant to Rule 6.4.19(a), the Applicant provided damage compensation agreements to all 12 structure owners. The proposed damage compensation agreements were accepted and executed by the Lazy K Bar Land & Cattle Company (landowner) and the Ouray Ditch Company. The Applicant demonstrated that the damage compensation agreements had been attempted for all 12 structure owners but attained for only two.

Pursuant to Rule 6.4.19(b), the Office was authorized to accept the engineering evaluation provided by the Applicant. The engineering evaluation was prepared and certified by a Colorado licensed professional engineer. The engineering evaluation demonstrated to the Office's satisfaction that no structure located within 200 feet of the affected lands would be damaged by the proposed operation.

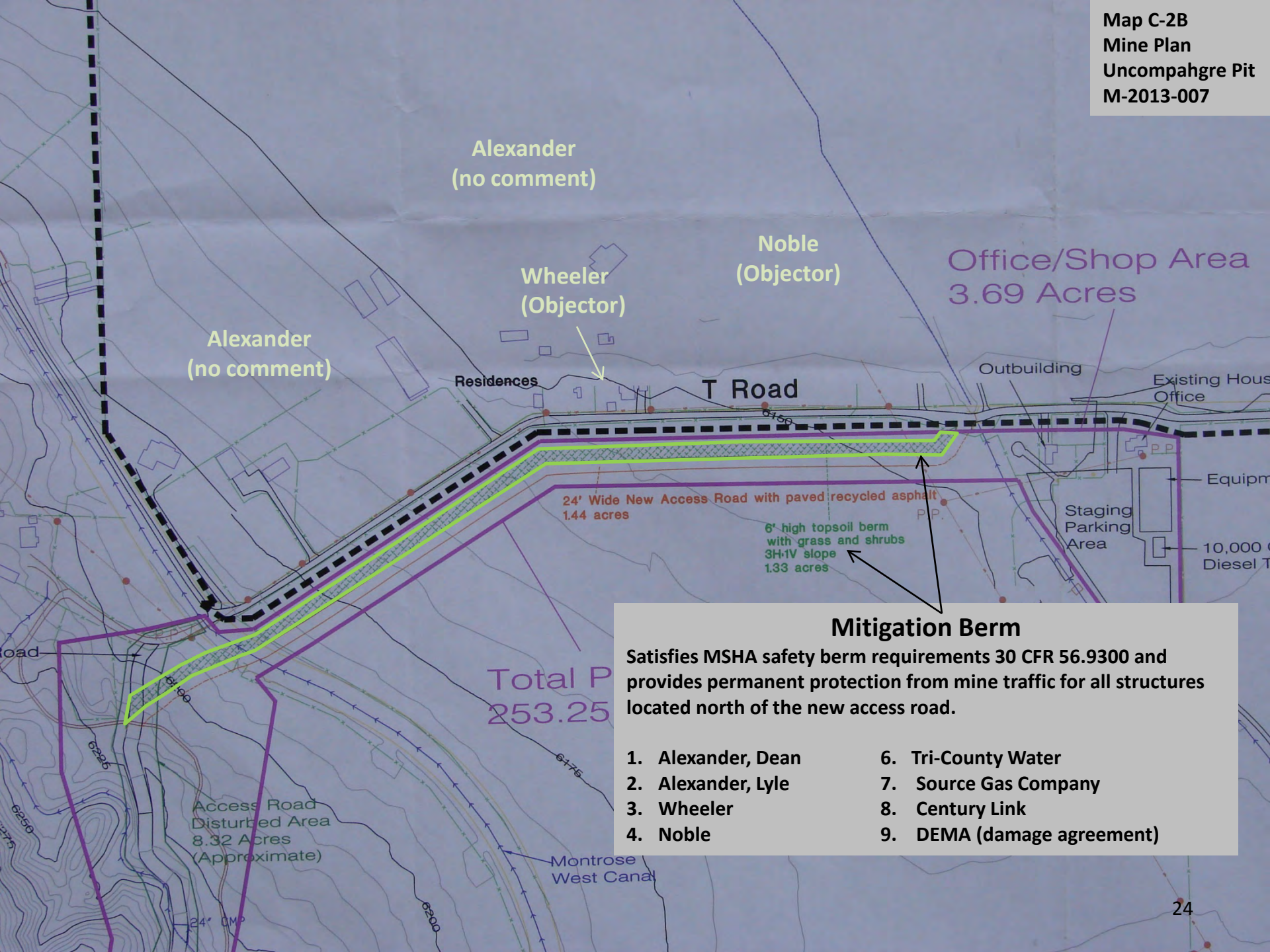
On August 1, 2013, the Division received a third compensation agreement, executed by DEMA (overhead power lines). Therefore, three of the 12 structure owners have accepted the damage compensation agreement offered by the Applicant.





Structure owners within 200 feet include:

1. Alexander, Dean
2. Alexander, Lyle
3. Wheeler
4. Noble
5. Montrose County (Road T)
6. Tri-County Water (buried water line, ROW CR-T)
7. Century Link (phone service, ROW CR-T)
8. Source Gas Company (buried gas line, ROW CR-T)
9. DEMA (overhead power line, ROW CR-T)
10. Bureau of Reclamation (Montrose West Canal)
11. Ouray Ditch Company (damage agreement)
12. Lazy K Bar and Cattle Company (damage agreement)



Alexander
(no comment)

Noble
(Objector)

Office/Shop Area
3.69 Acres

Alexander
(no comment)

Wheeler
(Objector)

Residences

T Road

Outbuilding

Existing House
Office

24' Wide New Access Road with paved recycled asphalt
1.44 acres

6' high topsoil berm
with grass and shrubs
3H:1V slope
1.33 acres

Mitigation Berm

Satisfies MSHA safety berm requirements 30 CFR 56.9300 and provides permanent protection from mine traffic for all structures located north of the new access road.

Total P
253.25

Access Road
Disturbed Area
8.32 Acres
(Approximate)

Montrose
West Canal

1. Alexander, Dean
2. Alexander, Lyle
3. Wheeler
4. Noble

6. Tri-County Water
7. Source Gas Company
8. Century Link
9. DEMA (damage agreement)

C-2 B



Uncompahgre Pit

Appendix 6

Access Road Crossing Design over Montrose Canal

An engineer-approved road crossing design has not been obtained at this time. The existing bridge was found to be inadequate for the proposed truck traffic. Several alternatives were proposed by a professional structural engineer.

The plans for the proposed bridge at the Montrose West Canal will be prepared and certified by a Colorado licensed professional engineer, experienced in road and bridge design. The certified engineering plans will be submitted for review and approval to Montrose County. The certified engineering plans will also be submitted to the Colorado Division of Reclamation, Mining and Safety (Division) for review and approval through the Technical Revision or Amendment process. Construction of the proposed bridge will not commence until the Division has approved the bridge designs and the Division has received and approved any increase in the financial warranty resulting from the revision process. Within 60 days of completion of the bridge construction the Operator shall submit to the Division as built certifications of the completed construction project.

OFFICE RECOMMENDATION AND REQUEST

Therefore, the Office determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S., and issued its recommendation to approve the 112c application for the Uncompahgre Pit, File No. M-2013-007, over public objection.

The Office requests the Board AFFIRM staff's recommendation for approval of the Uncompahgre Pit, File No. M-2013-007, over objections, as detailed in the Office's recommendation and rationale document, dated July 19, 2013, and further detailed in this presentation.

