

1 **BEFORE THE STATE ENVIRONMENTAL COMMISSION**

2 **STATE OF NEVADA**

3 In Re:)

4 Appeal of Class I Permit to Operate a)
5 Municipal Waste Area – Fill Disposal Site:)
6 Permit No SW1722REV00 Issued to Bedroc)
7 Limited, LLC)

**NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION'S
RESPONSE TO OPENING BRIEF OF
COYOTE SPRINGS INVESTMENT LLC**

8 The Nevada Division of Environmental Protection, Bureau of Waste Management
9 ("NDEP"), by and through counsel, Adam Paul Laxalt, Attorney General for the State of
10 Nevada, and Belinda A. Suwe, Deputy Attorney General, hereby responds to the Opening
11 Brief of Appellant Coyote Springs Investment LLC in the above captioned matter. On
12 September 19, 2014, the NDEP issued Class I Solid Waste Disposal Site Permit No.
13 SW1722REV00 (the "Permit") to Permittee Bedroc Limited, LLC ("Bedroc") for the Bedroc
14 Disposal Site located approximately 65 miles north of Las Vegas in Lincoln County ("Bedroc
15 landfill"). On September 29, 2014, Appellant Coyote Springs Investment, LLC ("Appellant")
16 filed a Form #3 Request for an Appeal Hearing with the State Environmental Commission
17 ("SEC"). The SEC is scheduled to hold a hearing on this Appeal on February 17, 2015.

18 **I. INTRODUCTION**

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20 Appellant fails to show that the NDEP violated any statute or regulation in issuing the
21 Permit. Rather, Appellant relies on county regulations and matters under the jurisdiction of
22 other State agencies that do not play into the analysis of whether or not the NDEP should
23 issue a Class I solid waste disposal site permit under NRS 444.440 through 444.620 and
24 NAC 444.6405 through 444.7499. For example, Appellant's flagship argument is that the
25 Permit should not have been issued because Bedroc's Lincoln County Special Use Permit
26 (SUP) is allegedly invalid. See Opening Brief of Coyote Springs Investment LLC ("Appellant's
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1 Br.") at pp. 5-18. This argument falls short for two primary reasons. First, the NDEP statutes
2 and regulations do not require "a valid SUP," but rather require that the proposed landfill
3 location "conform with the land use planning of the area." See NAC 444.678(5). Because the
4 Bedroc Class I landfill site is proposed in a location which conforms with land use planning of
5 the area (the same location where Bedroc's existing class III landfill sits), State statutes and
6 regulations are met and the NDEP properly issued the Permit. Second, because Lincoln
7 County has jurisdiction over its SUPs, Lincoln County must resolve any alleged invalidity of
8 Bedroc's SUP, not the NDEP. Nevertheless, counsel for the County confirmed in writing to
9 the NDEP that the SUP issued to Bedroc is valid, with some contingencies that are unrelated
10 to location. Therefore, as an additional precaution, the NDEP added as a condition to the
11 Permit the requirement for a valid SUP before Bedroc can construct or operate its proposed
12 landfill.

14 As such, the NDEP complied with all applicable statutes and regulations in the
15 issuance of the Permit. Indeed, the NDEP was obligated to issue the Permit at the point it
16 determined that the design and location of the Bedroc landfill was sufficient to meet the
17 NDEP's regulatory requirements.

18 Appellant urges the SEC to reverse the issuance of the Permit based on Appellant's
19 assertions that the NDEP abused its discretion in permitting the Bedroc landfill because the
20 Bedroc landfill allegedly: 1) does not conform with land use planning of the area because
21 Bedroc does not have a valid SUP; 2) does not conform with land use planning of the area
22 because the landfill is permitted to exceed local building height limitations; 3) is located within
23 1,000 feet of surface waters; 4) is located within 1,000 feet of a public highway with
24 inadequate special provisions for the beautification of the site; and 5) without necessary water
25 rights for dust control and compaction of cover material. As discussed in detail below,
26 Appellant's arguments are either meritless or they are based on matters which the NDEP
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1 does not have jurisdiction, and Appellant cannot show that the NDEP abused its discretion in
2 issuing the Permit on any of these bases, or any other basis.

3 The Bedroc Permit complies with all regulations required for the issuance of a Class I
4 Permit. The record clearly indicates that the NDEP acted reasonably and with substantial
5 evidence in making the determination that the Bedroc Permit met or exceeded every State
6 law and regulation required for permit issuance. For these reasons, the SEC should affirm the
7 issuance of the Permit.

8 **II. BACKGROUND**

9
10 In May 2003, Lincoln County Commissioners granted Special Use Permit 2003-5-2
11 ("SUP") to Western Elite, Inc., Bedroc's corporate parent, to construct and operate a Class I
12 solid waste disposal facility in Lincoln County, Nevada. See Exh. 1, Special Use Permit. On
13 October 24, 2013, Bedroc filed a Permit Application with the NDEP for a Class I Solid Waste
14 Permit at the Bedroc landfill site, which is adjacent to Bedroc's existing Class III waste
15 disposal site. On June 6, 2014, the NDEP issued a Draft Permit and opened public comment
16 which was extended to September 11, 2014 at Appellant's request. See Draft Permit and
17 Public Notice (<http://ndep.nv.gov/admin/public.htm>).¹ During the public comment period, the
18 NDEP held a public hearing on July 7, 2014 in Lincoln County and addressed each concern
19 raised by the public at that time, including those now raised by Appellant in its opening brief.
20 See NDEP Response to Public Comment (<http://www.sec.nv.gov/main/bedroc.htm>).² On
21 September 19, 2014, NDEP issued Class I Solid Waste Disposal Site Permit No.
22 SW1722REV00 (the "Bedroc Permit").
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27 ¹ In order to reduce the volume of paper submitted with this Response, the Permit Application, Draft Permit, and
Public Notice can be found in their entirety at <http://ndep.nv.gov/admin/public.htm>.

28 ² The Permit with Transmittal Letter and Written Response to Comments are available in their entirety at
<http://www.sec.nv.gov/main/bedroc.htm>

1 On November 8, 2013, shortly after Bedroc filed their Permit Application, the NDEP
2 received a letter from Daniel M. Hooge, District Attorney for Lincoln County, to "clarify the
3 status" of Bedroc's 2003 SUP. See Exh. 2, Letter from D. Hooge to J. Taylor (Nov. 8, 2013).
4 The Lincoln County District Attorney stated that "Lincoln County issued Special Use Permit
5 2003-5-2 to Bedroc in 2003 with conditions" and that he "did not foresee any substantial
6 impediment to completion for Bedroc and expect[ed] Bedroc to meet the conditions to Lincoln
7 County's satisfaction." *Id.* In response to this letter from the Lincoln County District Attorney
8 and concerns raised by Appellant during public comment, the NDEP made it an express
9 condition in Bedroc's Permit that "[n]inety (90) days prior to initiation of construction, the
10 Permittee shall submit to the Division documentation from Lincoln County demonstrating that
11 the conditions required for the Special Use Permit (SUP) of May 19, 2003 have been met."
12 See Permit at p 5.

14 While reviewing Bedroc's Permit Application and conducting the technical review, the
15 design for the Bedroc landfill was significantly enhanced to ensure the beautification of the
16 site and for the control of litter and vectors. For example, the NDEP required that the
17 beautification plan for the Bedroc landfill include the following:

- 19 • The use of waste as the base structure of proposed landfill berms was
20 prohibited and instead the NDEP required that the berms be constructed
21 completely of soil;
- 22 • At each stage of landfill construction, the NDEP required that there must be no
23 significant visual impact from any point on the highway within 1,000 feet of the
24 edge of the proposed landfill; and
- 25 • The geometry of the proposed landfill was altered to maximize the setback from
26 the highway so that the eastern boundary of the landfill runs parallel to the
27 highway.

28 See Exh. 3, Technical Review of Revised Application at p. 9. The Final Permit further
requires that Bedroc maintain soil berms adjacent to the landfill area as required such that
waste is not visible from US highway 93 if within 1000 feet of the roadway and that native

1 plant species and gravel be used on the final slopes. See Permit at p. 5 and Permit
2 Application at Appendix H. The beautification plan in the Permit approved by the NDEP
3 promotes a natural and visually attractive cover for the landfill. After Bedroc changed its
4 design to meet the NDEP's additional technical requirements, the NDEP issued the Permit.

5 **III. STANDARD OF REVIEW**

6 Under NAC 445B.890, an appeal to the SEC of a final decision of NDEP must be
7 based upon one or more of the following grounds:

- 8 (a) The final decision was in violation of any constitutional or statutory provision;
9 (b) The final decision was in excess of the statutory authority of the Department;
10 (c) The final decision was made upon unlawful procedure;
11 (d) The final decision was affected by other error of law;
12 (e) The final decision was clearly erroneous in view of the reliable, probative,
13 and substantial evidence on the whole record; or
14 (f) The final decision was arbitrary or capricious or characterized by abuse of
15 discretion.
16

17 Substantial evidence is evidence which a reasonable mind might accept as adequate to
18 support a conclusion. *Schepcoff v. State Indus. Ins. Sys.*, 109 Nev. 322, 325, 849 P.2d 271,
19 273 (1993). Appellant concedes that the Commission must review the NDEP's issuance of
20 Bedroc's Permit under an abuse of discretion standard and uphold the NDEP's decision if it is
21 supported by substantial evidence in the record. See Appellant's Opening Brief, p. 7.
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23 **IV. RESPONSE TO APPELLANT'S ARGUMENTS**

24 **A. The NDEP Did Not Abuse Its Discretion Or Act Arbitrarily Or Capriciously
25 By Issuing The Bedroc Permit Because the Bedroc Landfill Location
26 Conforms With The Land Use Planning Of the Area.**

27 Appellant's primary contention with the Bedroc Permit revolves around the allegation
28 that Bedroc's SUP issued by Lincoln County is invalid. However, determining the validity of a

1 SUP is a county issue that must be resolved by the county. See e.g., NRS 278.020(1) (“the
2 governing bodies of cities and counties are authorized to regulate and restrict the
3 improvement of land and to control the location and soundness of structures.”) For the
4 reasons set forth in more detail before, the NDEP’s issuance of the Bedroc Permit was
5 reasonable, not arbitrary or capricious or an abuse of discretion, and complied with all State
6 statutes and regulations. More specifically, the NDEP had substantial evidence to conclude
7 that the location of the Bedroc Landfill conformed with land use planning of the area.
8

9 1. The NDEP Did Not Act Arbitrarily Or Capriciously When It Reasonably Relied On A
10 Letter From The Lincoln County District Attorney to Determine That The Bedroc
11 Landfill Location Conformed With Land Use Planning of the Area.

12 NAC 444.678(5) states that “[t]he location of a Class I site must conform with land use
13 planning of the area.” Bedroc’s Permitted landfill site is zoned as an “M2 heavy
14 manufacturing district” and is adjacent to Bedroc’s existing Class III waste disposal site. See
15 See Response to Comments p. 8. In an M2 Zone, “[d]umps and refuse disposal areas” are
16 allowed subject to the approval of a SUP to operate a Class I site on the property. See
17 Lincoln County Code § 13-5J-3. In Bedroc’s Permit Application, Bedroc included references
18 to its 2003 SUP from Lincoln County. See Permit Application, Design Report, p. 2. Shortly
19 after receipt of Bedroc’s Permit Application, the NDEP received a letter from Daniel M.
20 Hooge, District Attorney for Lincoln County clarifying the status of Bedroc’s 2003 SUP. See
21 Exh 2. Mr. Hooge’s letter is the most recent correspondence provided to the NDEP from
22 Lincoln County regarding Bedroc’s 2003 SUP. Mr. Hooge’s letter states as follows:

23 I am writing this letter to clarify the status of the special use permit issued to
24 Western Elite, Inc. or Bedroc Limited, LLC (BedRoc) in Lincoln County.

25 Lincoln County issued Special Use Permit 2003-5-2 to BedRoc in 2003 with
26 conditions. BedRoc has not satisfied all of the conditions in the permit; however,
27 BedRoc has notified Lincoln County that it will appear before the Lincoln County
28 Planning Commission soon to complete the conditions.

I do not foresee any substantial impediment to completion for BedRoc and
expect BedRoc to meet the conditions to Lincoln County’s Satisfaction.

1 See Exh. 2. Because the NDEP does not have legal authority to determine the validity of a
2 county's SUP, the NDEP must rely on representations from county's counsel regarding the
3 validity of a SUP. Based on the assurance from the District Attorney of Lincoln County, it was
4 reasonable for the NDEP to conclude that the Bedroc landfill location conformed with land
5 use planning of the area.
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7 The Appellant argues that it was improper for the NDEP to rely on Mr. Hooges letter
8 because the letter references several conditions in the SUP that Bedroc had yet to fulfill. See
9 Appellant's Br. p. 12. Similarly, Appellant argues that the Bedroc landfill location does not
10 conform with land use planning of the area because the SUP Conditions have not been
11 fulfilled. See Appellant's Br. pp. 12-13. Appellant's argument is unreasonable given the
12 content of the SUP conditions. Several of the SUP conditions require that Bedroc be granted
13 a Class I Permit from the State of Nevada prior to fulfilling the condition. See Exh. 1 (first and
14 second conditions require granting of a State of Nevada Class I Permit before fulfillment of
15 condition). Furthermore, none of the conditions for the SUP were related to the location of
16 the landfill. *Id.* Accordingly, it was reasonable for the NDEP to conclude that even though the
17 SUP contained some unfulfilled conditions, these conditions did not impact the fact that the
18 location of the Bedroc landfill conformed with land use planning of the area.
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21 The Appellant also argues that Bedroc's SUP has expired and is invalid pursuant to
22 Lincoln County Codes. See Appellant's Brief pp. 8-9. Lincoln County has jurisdiction to
23 interpret its codes and make determinations regarding the validity of its permits. The NDEP
24 reasonably relied on the Lincoln County District Attorney's representations that the District
25 Attorney expected Bedroc to meet the conditions of Bedroc's 2003 SUP. See Exh. 2.
26 Furthermore, it would have been both unreasonable and improper for the NDEP to deny the
27 Permit based on a conclusion that Bedroc's SUP was invalid because the NDEP does not
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1 have jurisdiction to make such a conclusion about validity and because the NDEP's statutes
2 and regulations do not require a valid SUP before issuing a permit.

3 Similarly, the Appellant argues that Bedroc's SUP does not expressly comply with
4 Lincoln County's Master Plan. Again, the NDEP does not have jurisdiction to make such a
5 determination. Lincoln County has jurisdiction to make a determination that a SUP complies
6 with the County's master plan. As such, the NDEP reasonably relied on the Lincoln County
7 District Attorney's representations that the District Attorney expected Bedroc to meet the
8 conditions of Bedroc's 2003 SUP. See Exh. 2.

9
10 As a practical matter, the NDEP does not have the resources to ensure compliance
11 with all local and State regulations with which the NDEP does not have authority to enforce. It
12 is up to the permittee to ensure compliance with all local and State regulations and for those
13 local and State agencies having jurisdiction to enforce those regulations. See, e.g., Permit p.
14 6. Local and other State authorities have jurisdiction to take action if such requirements are
15 not met.

16 Because the NDEP acted reasonably and had substantial evidence that the location of
17 the Bedroc landfill conforms with the land use planning of Lincoln County, the SEC should
18 reject Appellant's arguments that the NDEP abused its discretion in issuing the Permit.
19

20 2. The NDEP Has Express Statutory Authority To Issue Conditioned Permits And The
21 NDEP Did Not Abuse Its Discretion By Issuing The Bedroc Permit With A Condition
22 To Show Compliance With The SUP Conditions Before Construction.

23 Because of comments received from Appellant regarding the alleged invalidity of the
24 SUP, the NDEP included an express condition in the Permit to address these concerns. See
25 Response to Comments pp. 6-8. The Permit states that "[n]inety (90) days prior to initiation of
26 construction, the Permittee shall submit to the Division documentation from Lincoln County
27 demonstrating that the conditions required for the Special Use Permit (SUP) of May 19, 2003
28 have been met" (hereinafter referred to as the "Permit Condition"). See Permit p. 5.

1 Ironically, the Appellant now attempts to use this Permit Condition, which addresses
2 Appellant's concern, as a means to invalidate the Permit. Appellant argues that the NDEP
3 abused its discretion by issuing a Class I Permit with the Permit Condition because the NDEP
4 does not have regulatory authority to issue a conditional waste disposal permit. See
5 Appellant's Br. P. 14. However, NRS 444.556(4) states "[a] permit issued by a solid waste
6 management authority *must be conditioned* upon all requirements that are necessary to
7 ensure continuing compliance with:

- 8
- 9 (a) The requirements of the Resource Conservation and Recovery Act of 1976, Subtitle
10 D, 42 U.S.C. §§ 6941 et seq., and the regulations adopted pursuant thereto which
11 describe:
- 12 (1) General standards for a municipal solid waste landfill;
 - 13 (2) *Restrictions on the location of such a landfill;*
 - 14 (3) Criteria for the operation of such a landfill;
 - 15 (4) Criteria for the design of such a landfill;
 - 16 (5) Requirements for monitoring groundwater and standards for corrective
actions related thereto;
 - 17 (6) Standards of care related to closure of such a landfill; and
 - 18 (7) Financial requirements for the owners or operators of such landfills;
- 19 (b) *The applicable regulations of the State Environmental Commission;* and
20 (c) The applicable laws of this State.

21 (emphasis added). NRS 444.556 provides express authority for the solid waste management
22 authority to issue conditioned permits. Therefore, the NDEP has express statutory authority to
23 issue permits with permit conditions.

24 Furthermore, as a practical matter, permit conditions are a necessary component of an
25 enforceable permit program. If a permit condition is not met, the NDEP has the authority to
26 demand compliance or else the permittee risks losing its permit. See NAC 444.643(5). If the
27 NDEP were prohibited from issuing permits with conditions, the NDEP would be severely
28 restricted in its ability to enforce certain requirements that do not apply before the permit is
issued. For example, groundwater monitoring reports are an ongoing condition of the Permit
that would be impossible to require until after issuance of the Permit. See Permit p. 5. Thus,
it is common for a solid waste permit to be issued with conditions that have yet to be met.

1 Because the NDEP has express authority to issue conditioned permits, the SEC
2 should reject Appellant's arguments that the NDEP abused its discretion in issuing the Permit.

3 **B. Lincoln County's Height Restrictions Do Not Provide Substantial Evidence**
4 **That the Bedroc Landfill Location Fails To Conform With Land Use**
5 **Planning Of the Area.**

6 The Appellant's next argument is that because the approved design for the Bedroc
7 landfill exceeds Lincoln County's height limitations for buildings within an M2 zone, the Bedroc
8 permit location fails to meet the State regulatory location requirement. See Appellant's Brief
9 pp 15-16. The State regulation, to which the NDEP is bound, states that "[t]he *location* of a
10 Class I site must conform with land use planning of the area." NAC 444.678(5) (emphasis
11 added). NAC 444.678(5) does not require that an NDEP permit comply with all county
12 regulations, but rather, only that the location of a Class I site comply with land use planning of
13 the area. Lincoln County's height limitations for a building do not provide substantial evidence
14 that the Bedroc landfill *location* does not conform with land use planning of the area. This is
15 especially true given that Bedroc's 2003 SUP provides an exception to Lincoln County's M2
16 zoning limitations.

17 Furthermore, there is nothing in the Permit that prevents Lincoln County from enforcing
18 its zoning height limitations on Bedroc. See *e.g. Serpa v. Cnty. of Washoe*, 111 Nev. 1081,
19 1085, 901 P.2d 690, 693 (1995) ("County and local governments can place more
20 burdensome restrictions on growth and development as long as those restrictions are
21 consistent with the relevant long-term comprehensive plans, Nevada law, and notions of
22 public welfare.") Because NAC 444.678(5) only requires that the location of a Class I landfill
23 comply with land use planning of the area, the NDEP has not acted arbitrarily and capriciously
24 or with an abuse of discretion when the NDEP issues a permit that does require compliance
25 with more burdensome local regulations.
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1 **C. There Are No Surface Waters Within 1,000 Feet Of The Bedroc Landfill And**
2 **The Design Is Sufficient to Accommodate Precipitation At The Site**

3 Although Appellant sites no particular body of water within 1,000 feet of the Bedroc
4 landfill location, appellant insists that surface waters exist within 1,000 feet of the Bedroc
5 landfill in order to argue that the Permit should not have been issued under NAC 444.678(9).
6 See Appellant's Brief at p. 17. In response to public comments regarding the Bedroc Landfill
7 being located within the Pahrnagat Wash, the NDEP states that "the Pahrnagat Wash is
8 not considered a surface water since it experiences flow only in response to precipitation
9 events and is otherwise dry." See NDEP Response to Comments p. 28. The Appellant
10 attempts to define surface water as precipitation. See Appellant's Brief at p. 17. This is
11 illogical and simply not supported by the applicable regulations. "Statutory construction
12 should always avoid an absurd result." *State v. White*, 130 Nev. Adv. Op. 56, 330 P.3d 482
13 (2014). If surface water were defined as precipitation, then the requirement that a landfill be
14 1,000 feet from surface water under NAC 444.678(9) would be rendered meaningless. No
15 location would exist that could ever meet that regulation. Because Appellants have failed to
16 provide any evidence that surface waters exist within 1,000 feet of the Bedroc landfill location,
17 Appellant's argument that NDEP abused its discretion in issuing a permit within 1,000 feet of
18 surface waters is meritless.
19

20 In any case, the design and engineering of the Bedroc landfill takes into consideration
21 the precipitation that occurs at the site. NAC 444.6885 requires that the owner or operator of
22 a Class I site shall provide a system to control runon and runoff. The Bedroc landfill design
23 includes a stormwater conveyance channel to divert runon water around the landfill. See
24 Permit Application, Design Report at p. 17 and Exh. 4 July 7, 2014 Public Hearing PowerPoint
25 Presentation Slide 13. The Bedroc landfill design also includes systems of ditches and
26 downslope drains that empty into four stormwater detention ponds to address water runoff.
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1 *Id.* A 100-year, 24-hour storm event was used as the design basis for the proposed runoff
2 and runoff control systems, which exceeds the requirement of NAC 444.6885 that a 25-year,
3 24-hour storm be used for the design. *Id.*

4 In sum, the permitting of the landfill complies with all regulatory authority and any
5 potential issues as a result of precipitation at the site have been properly considered and
6 accounted for in the design and engineering of the site.

7 **D. The Bedroc Landfill Permit Contains Numerous and Sufficient Special**
8 **Provisions For The Beautification Of The Site.**

9 NAC 444.678(6) states that "the location of a Class I site must . . . not be within 1,000
10 feet of a public highway, unless special provisions for the beautification of the site and the
11 control of litter and vectors are included in the design and approved by the solid waste
12 management authority." The Permit includes substantial provisions for the beautification of
13 the site and the control of litters and vectors. See Permit at p. 5 and Permit Application,
14 Beautification Plan. While reviewing Bedroc's Permit Application and conducting the
15 technical review, the design for the Bedroc landfill was significantly enhanced to ensure the
16 beautification of the site and for the control of litter and vectors. For example, the NDEP
17 denied Bedroc's proposal to use waste in berm bases and instead the NDEP required that the
18 berms be constructed completely of soil. See Exh. 3 Technical Review of Revised
19 Application at p. 9 and Permit Application, Beautification Plan. The NDEP also required that
20 Bedroc alter the geometry of the Bedroc landfill to maximize the setback from the highway
21 and so that eastern boundary of the landfill runs parallel to the highway. *Id.* The Permit
22 further requires that the Bedroc maintain soil berms adjacent to the landfill area as required
23 such that waste is not visible from US Highway 93 if within 1,000 feet of the roadway and that
24 native plant species and gravel be used on the final slopes of the landfill. See Permit at p. 5
25 and Permit Application, Beautification Plan.
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1 The Appellant argues that the Beautification Plan is inadequate because the
2 application does not include any drawings or photographs. See Appellant's Brief p. 18.
3 However, several videos depicting the permitted berm structure of the beautification plan
4 were shown to the public at the July 7, 2014 Public Hearing in Alamo, Lincoln County. See
5 Exh. 4 slides 17-19. The beautification plan in the Permit promotes a natural and visually
6 attractive cover for the landfill and complies with the NAC 444.678(6) special provisions for
7 beautification.

8
9 **E. The Bedroc Permit Requires That Adequate Water Be Available At All
10 Times For Dust Control And For Compaction Of Cover Material.**

11 Appellant's final argument is that the NDEP did not have the statutory authority to issue
12 the Permit because Bedroc has yet to acquire the necessary water rights to operate the
13 Bedroc landfill. See Appellant's Br. pp. 18-20. NAC 444.677 details the elements that must
14 be included in a permit application. NAC 444.677 does NOT require that an applicant provide
15 proof of water rights in its permit application. Accordingly, the issue of whether or not Bedroc
16 has water rights at the Bedroc landfill cannot preclude the issuance of the Permit since
17 Bedroc was not required to provide proof of water rights in its Permit Application.

18 The Permit requires that Bedroc shall comply with NRS 444.440 through 444.620, and
19 NAC 444.570 through 444.7499 as applicable. See Permit p. 2. As such, Bedroc must
20 comply with NAC 444.6296(2) which states that "[a]dequate water must be available at all
21 times for dust control and for compaction of cover material." The regulations do not specify
22 the source of the water or that a permit applicant must have necessary water rights at the
23 time of permit issuance. The determination of whether or not Bedroc has water rights at the
24 Bedroc location and enforcement of said water rights is under the jurisdiction of the Division of
25 Water Resources, not the NDEP. See e.g, Permit p. 6. Bedroc will have to secure an
26 adequate water supply to comply with NAC 44.6296(2), but the source of that water supply is
27 undefined. If the Division of Water Resources determines that Bedroc does not have
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1 adequate water rights at the Bedroc location, then Bedrock will be required to obtain
2 adequate water from another source such as via a water truck. Because having water rights
3 is not required by statute before issuance of a permit, the NDEP did have statutory authority
4 to issue the Permit.

5 **V. CONCLUSION**

6 Appellant failed to show that the NDEP abused its discretion in issuing the Permit. The
7 NDEP required that the Bedroc Permit and Application complies with every State law and
8 regulation for permit issuance. Accordingly, the NDEP issued the Permit in compliance with
9 the permitting regulations. For these reasons, the NDEP respectfully requests that the SEC
10 deny the appeal and affirm the issuance of the Permit.
11

12 DATED this 3rd day of February, 2015.

13 ADAM PAUL LAXALT
14 Attorney General

15 By: Belinda A. Suwe
16 Belinda A. Suwe
17 100 N. Carson Street
18 Carson City, NV 89701

19 *Attorneys for the State of Nevada*
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CERTIFICATE OF SERVICE

I, Belinda A. Suwe, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 3rd day of February, 2015 I transmitted a true and correct copy of the foregoing **NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S RESPONSE TO OPENING BRIEF OF COYOTE SPRINGS INVESTMENT LLC**, via email to the following:

Valerie King
vking@ndep.nv.gov

Colleen Platt
cplatt@ag.nv.gov

Scott Hernandez
shernandez@rbsllaw.com

Leslie Godfrey
godreyl@gtlaw.com



BELINDA A. SUWE

EXHIBITS AVAILABLE ONLINE

DESCRIPTION	WEB ADDRESS
Draft Permit	http://ndep.nv.gov/admin/public.htm
Public Notice	http://ndep.nv.gov/admin/public.htm
Permit	http://www.sec.nv.gov/main/bedroc.htm
Permit Application	http://ndep.nv.gov/admin/public.htm
Response to Comments	http://www.sec.nv.gov/main/bedroc.htm

EXHIBIT LIST OF EXHIBITS NOT AVAILABLE ONLINE

NO.	DESCRIPTION
1	Special Use Permit
2	11/8/13 Letter from D. Hooge to J. Taylor
3	Technical Review of Revised Application
4	July 7, 2104 Public Hearing Presentation

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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Exhibit 1

LINCOLN COUNTY COMMISSIONERS

SPECIAL USE PERMIT

Approved by Lincoln County Planning Commission 4-28-2003

Approved by Lincoln County Commission 5-19-2003
Permit No. # 2003-5-2

Application was made by BedRoc Limited LLC, of Las Vegas, Nevada for the establishment of a solid waste disposal center on their property near the county line.

The affected parcels are 08-201-12 & 13.

A letter indicating the intent of BedRoc to pursue a Class 1 land fill has been submitted to the county. At the time the license is approved BedRoc will come back to the county and negotiate terms and conditions of operation, a use or tipping fee, proof of bonding, posting of an inspection bond, and annual or semi-annual review and report of progress. Failure to achieve the licensing through the state of Nevada nullifies this Special Use Permit.

This Special Use Permit is approved by the County Commissioners this 19th day of May, 2003.

Chairman


Spencer W. Hafen

BedRoc, Inc.,
a member of
BedRoc Limited, LLC
3529 Clayton Street
North Las Vegas NV 89030
(702) 647-1162

May 19, 2003

Re: BedRoc, Inc., Special Land Use Permit

Commissioner Spencer Hafen,
Chairman, Lincoln County Commission
P.O. Box 685
Pioche, Nevada 89043

Dear Commissioner Hafen:

Subject; **Letter of Intent** for Special Use permit

In accordance with the request of the Lincoln County Commission in session on May 19, 2003, pertaining to the approval of the application of BedRoc Inc., for a Special Use permit allowing a Class I landfill at the BedRoc Inc., property at Coyote Springs and US Hwy. 93, please accept the following as a **LETTER OF INTENT** on the part of BedRoc Inc.

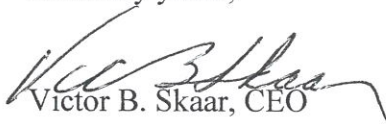
1. Upon the granting of a permit by the State of Nevada of a Class I Permit, BedRoc Inc., will negotiate with Lincoln County a fee to be paid to Lincoln County for materials placed in said landfill. Such fee will be calculated per industry standards on a weight or volume measurement.
2. BedRoc Inc., will comply with bonding requirements imposed with the granting of a Class I permit as specified by the State of Nevada.
3. BedRoc Inc., shall provide periodic informational reviews for the County Commission or the Planning Commission as deemed necessary. It is suggested that annual reviews be the longest interval between presentations.
4. BedRoc Inc., confirms that the Special Use Permit granted by the Lincoln County Commission on May 19, 2003 is for the purpose of allowing BedRoc Inc., to apply to the State of Nevada for a Class I Landfill Permit for this land, and that if the Class I Permit is ultimately not issued by the State of Nevada, that the Special Use Permit granted by the Lincoln County Commission will be of no effect and will not run with the land.

5. BedRoc Inc., will file necessary parcel maps and or deeds to clarify any question of ownership of the land, and to comply with all requirements in effect as of May 19, 2003, imposed by state and county laws for land divisions and parceling.

It is our understanding that the acceptance of this **LETTER OF INTENT** by you that the issuance of the Special Use Permit will proceed and that you, as the chairman, will sign the permit and cause it to be delivered to BedRoc Inc., with copies to: Gregory J. Barlow, Esq., LTD, P.O. Box 98, Caliente NV 89008, and VIC, Inc., Valued Integrated Concepts, 6130 Eisner Drive, Las Vegas NV 89131-2303. We look forward to establishing a strong relationship of mutual benefit with Lincoln County, which results in the ultimate benefit to the residents of Lincoln County.

We welcome the challenge your decision presents.

Sincerely yours,



Victor B. Skaar, CEO

VIC, Inc., Valued Integrated Concepts

6130 Eisner Drive

Las Vegas NV 89131-2303

(702) 645-9108

AGENT FOR: BedRoc, Inc.

CC: Patricia Richards, Vice President BedRoc Inc.

Gregory J. Barlow, Esq.,

Exhibit 2

DANIEL M. HOOGE
State Bar #10620
District Attorney



MATTHEW D. CARLING
State Bar #7302
Deputy District Attorney

OFFICE OF THE DISTRICT ATTORNEY
LINCOLN COUNTY, NEVADA

November 8, 2013

Jon Taylor
PE CEM
NDEP Elite Solid Waste Branch
901 S. Stewart Street, Suite 4001
Carson City, NV 89701

Dear Mr. Taylor:

I am writing this letter to clarify the status of the special use permit issued to Western Elite, Inc. or BedRoc Limited, LLC (BedRoc) in Lincoln County.

Lincoln County issued Special Use Permit 2003-5-2 to BedRoc in 2003 with conditions. BedRoc has not satisfied all of the conditions in the permit; however, BedRoc has notified Lincoln County that it will appear before the Lincoln County Planning Commission and the Lincoln County Commission soon to complete the conditions.

I do not foresee any substantial impediment to completion for BedRoc and expect BedRoc to meet the conditions to Lincoln County's satisfaction.

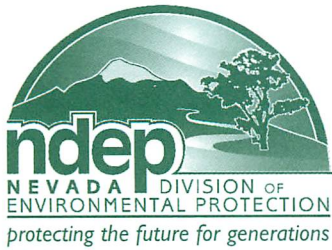
If you have any questions please contact me at the number below.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel M. Hooge".

Daniel M. Hooge
District Attorney for Lincoln County

Exhibit 3



STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

April 22, 2014

Ryan Williams
Bedroc Limited, LLC
2745 N. Nellis Blvd
Las Vegas, NV 89115

Re: Bedroc Class I Landfill SW1722
Permit Application Technical Review Comments

Dear Mr. Williams:

The Nevada Division of Environmental Protection (Division) – Bureau of Waste Management (BWM) is in receipt, on February 10, 2014, of the response to the BWM completeness review comments and revised application for the Bedroc Class I Landfill SW1722. These documents have been reviewed and the following comments were noted:

Response to Completeness Review Comments

1. Evidence of the instrument to be used for financial assurance is required as part of the application for Class I landfill. Please establish the trust fund described in your response and provide a copy to BWM. During the application process the balance may be zero. However, evidence of completion of the first payment must be provided to BWM prior to initial receipt of solid waste at the Class I facility.

Technical Review of Revised Application

2. Appendix B, Section 2.5 – the text states that the site is surrounded by public (BLM) land. Please provide a figure showing the land status within a 2-mile radius of the proposed and existing landfills;
3. Appendix B, Section 11 – the text states that adequate water supply exists for dust control. Please describe the water source.
4. Appendix D, Section 8.2 – for reporting of analytical results which are below the laboratory detection limit, please use one of the following conventions:
 - a. Report “<.xxx” where “.xxx” is the laboratory detection limit; or
 - b. Report “ND” (non-detect) and include the laboratory detection limit for that constituent in a separate column in the report.
5. Appendix D, Section 3.2 – the text states that monitoring well screened intervals will be 10 to 20 feet in length. Please refer to the attached Division guidance for monitoring well



construction. The screened interval must extend into the groundwater a minimum of 15 feet and extend a minimum of one foot above the seasonal high groundwater elevation.

6. Appendix E, Section 1.0 – please confirm the total number of personnel (direct employees and contractors) that will be working at the site once the Class I landfill is operating along with the Class III facility.
7. Appendix E, Section 11.1 – the overliner protecting the 60-mil HDPE liner is described in the text as 12 inches of coarse aggregate covered by 24 inches of select waste. Please consult with the HDPE liner manufacturer to confirm that, in consideration of the types of vehicles to be used to place the cover and to subsequently place waste on the cover, that the 60-mil liner will not be damaged. If changes are required to the design based on the manufacturer’s recommendation, please revise the description and applicable drawings.
8. Appendix E, Section 13.2 – the text states that the stormwater diversion system has been designed based on the 25-year, 24-hour storm event, as required by NAC 444.6885. In consideration of the fact that the geographic area in which the proposed landfill will be located has not been evaluated as a potential 100-year flood zone, BWM recommends that the design and calculations be reevaluated and, if appropriate, modified to accommodate the 100-year, 24-hour storm event. BWM recognizes that this would be an exceedance of the regulatory requirement, but considers this to be a prudent approach based on the circumstances.
9. Appendix H – the plan for visual screening of the landfill activities from passers-by on the adjacent highway is not considered by BWM to be adequate. Please revise to address the following:
 - a. The use of waste as the base structure of the proposed berms is not acceptable. The berms must be constructed completely of soil.
 - b. Please provide drawings of the berm locations relative to each stage of landfill construction to demonstrate that there will be no significant visual impact from any point on the highway within 1,000 feet of the edge of the proposed landfill. This evaluation must include consideration of the maximum height of the waste and all possible angles of view from the road.
 - c. As part of this evaluation, BWM recommends that the geometry of the proposed landfill be adjusted wherever possible to maximize the setback from the highway. This may include shifting the entire footprint to the west and/or modifying the eastern boundary to run parallel to the highway instead of straight north. Please review this possibility and make adjustments to the design as appropriate.
10. Drawing 4 – please provide a drawing showing the elevation profile of the stormwater diversion channel corresponding to the configuration shown in plan view. In addition, please describe or provide additional views/sections which clarify how the depressions in the north and west tie-in to the channels that will be constructed. Lastly, please provide

cross-sections of the channel at various points showing the dimensions of the channel and the maximum depth of stormwater flow.

11. Drawing 17, Detail D – please modify the detail to extend the liner across all three sides of the anchor trench and provide material and compaction specifications for the backfill. The provision of a short, visible edge of liner at the outboard edge of the anchor trench provides a useful means of confirming by visual inspection that the liner has not pulled down the slope.
12. Drawing 18, Details G, H, I – please modify each detail to extend the liner across all three sides of the anchor trench and provide material and compaction specifications for the backfill. The provision of a short, visible edge of liner at the outboard edge of the anchor trench provides a useful means of confirming by visual inspection that the liner has not pulled down the slope.

Please provide a response to each item above. If you have any questions you may contact me at (775) 687-9477 or peckert@ndep.nv.gov.

Sincerely,



Paul Eckert, P.E.
Staff Engineer III
Permit Writer
Bureau of Waste Management

PE:dm

Enc: Monitoring Well Guidance

ec: R. Eric Noack, Chief, BWM
Mike Leigh, P.E., Supervisor, Permitting Branch, BWM
Mike Ruffner, Solid Waste Inspector, BWM
Ryan Williams, Bedroc Limited, LLC westernelite@msn.com

MONITORING WELL DESIGN REQUIREMENTS

- 1) The screen in a ground water monitoring well must extend a minimum of fifteen feet into the ground water unless hydrogeologic conditions warrant otherwise. The screen must extend a minimum of one (1) foot above the seasonal high water table.
- 2) The filter pack must extend a minimum of one (1) foot above the top of the screened interval. The filter pack must be gravel with sieve analysis appropriate for the screen slot size.
- 3) A five (5) foot solid section of pipe should extend below the perforations.
- 4) The well must be capped at both ends.
- 5) The top of the well must be protected from damage and vandalism. Where subject to traffic there must be an appropriate box. If subject to flooding, the top of the well should extend a minimum of twelve (12) inches above the ground surface with an appropriate cover. In all locations a locking device must be provided.
- 6) There shall be a seal surrounding the well casing to prevent the flow of surface water in and along the edge of the bore hole. A bentonite plug of no greater than two foot thickness shall be placed directly above the gravel pack. The annulus must be sealed from the bentonite plug to the surface with cement and bentonite mixture.
- 7) An upgradient groundwater monitoring well shall be located at the most distant upgradient point of the facility property, but not more than 250 feet from the outer edge of the land disposal system.
- 8) A downgradient groundwater monitoring well shall be located at least 10 feet and not more than 50 feet from the outer edge of the land disposal system and in the direction of the underground flow of the pollutant plume.
- 9) Casing must have a minimum inside diameter of 2 inches.
- 10) All monitoring wells must be drilled by a water well driller licensed in the State of Nevada.
- 11) Monitoring wells constructed pursuant to Division of Environmental Protection permit of Order require design approval prior to well construction.
- 12) All monitoring well construction requires a waiver from Nevada Division of Water Resources (775) 687-4380.

NDEP 10/90

TYPICAL MONITORING WELL DESIGN

