



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for 10:00 a.m. Closed Session Informational

FROM: Inyo County Planning Department & Office of County Counsel

FOR THE BOARD MEETING OF: August 22, 2011

SUBJECT: Stipulated Judgment and Resolution Revoking the Renewable Solar and Wind Energy General Plan Amendment (General Plan Amendment No. 2010-03/Inyo County)

DEPARTMENTAL RECOMMENDATION: Request the Board:

1. Conduct a public hearing regarding the resolution to vacate, set aside and revoke the Renewable Solar and Wind Energy General Plan Amendment (General Plan Amendment No. 2010-03/Inyo County);
2. Review and approve the Stipulated Agreement for Entry of Judgment by which Inyo County would agree to revoke General Plan Amendment No. 2010-03/Inyo County, the Center for Biological Diversity and Sierra Club would agree to waive all attorney fees associated with the lawsuit; and the Court would enter judgment and dismiss the lawsuit; and
3. Set September 6, 2011 as the date to adopt the Resolution revoking the Renewable Solar and Wind Energy General Plan Amendment (General Plan Amendment No. 2010-03/Inyo County).

SUMMARY DISCUSSION: On April 28, 2011 the Board conducted a public hearing for General Plan Amendment (GPA) No. 2010-03/Inyo County (refer to Attachment 4) regarding Renewable Solar and Wind Energy,¹ considered all of the information in the record, and adopted Resolution No. 2011-17 making certain findings and approving the GPA. On May 26, 2011, the Sierra Club and the Center for Biological Diversity initiated litigation in Inyo County Superior Court against the County to set aside approval of the GPA based upon allegations that an Environmental Impact Report pursuant to the California Environmental Quality Act should have been prepared to approve the GPA. The County and the petitioners participated in mandatory settlement negotiations, but could not reach a mutually agreeable solution which would allow the GPA to remain as adopted by your Board. Due to the cost to the County to defend the action, coupled with the potential exposure for the petitioners' attorneys' fees and court costs should the County not prevail, County staff recommends that the Board execute the Stipulated Agreement for Entry of Judgment (Attachment 1) and rescind the GPA as described in the Resolution (Attachment 2).

ALTERNATIVES: The Board may consider the following alternatives:

- Refer the item back to the Planning Commission for further input. This is not recommended as it is not necessary and the petitioners have agreed to dismiss the lawsuit and waive their attorneys' fees and costs incurred to date if the County rescinds the GPA, and further delay could expose the County to additional costs for the petitioners' attorney fees.
- Do not adopt the resolution and direct staff to pursue the litigation. This is not recommended as the cost to the County to defend the action would be substantial and would expose the County to additional cost in the way of petitioners' attorneys' fees and costs should the County not prevail.

¹ Refer to <http://inyoplanning.org/RenewableNewPage.htm> for more information regarding renewable energy and the GPA.

Petitioners have agreed to dismiss the lawsuit and waive their attorneys' fees and costs if the County rescinds the GPA, and further delay could expose the County to the additional costs noted above.

- Decline to approve the stipulated judgment and instead direct staff to negotiate a settlement agreement with similar terms by which the environmental groups would dismiss the lawsuit without entry of judgment. This is not recommended because a judgment by the court removes discretion from the County regarding revoking the amendment thus limiting review under CEQA.
- Return to staff with other direction.

OTHER AGENCY INVOLVEMENT: None directly; numerous federal, State, and local agencies may be involved in planning and permitting for renewable energy projects, including, but not limited to, the City of Los Angeles Department of Water and Power, Bureau of Land Management, California Energy Commission, and Department of Defense agencies.

FINANCING: Funds for the update effort have been provided by the General Fund/Planning Department budget.

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) <i>[Signature]</i> 8-17-11
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

[Handwritten Signature]

Date: 8/18/11

Attachments:

1. Proposed Stipulated Agreement
2. Proposed Resolution
3. General Plan Amendment No. 2010-03
4. Complaint-Petition

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2 DANA M. CROM, Deputy County Counsel (148091)
3 COUNTY OF INYO
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5 Post Office Box M
6 Independence, California 93526
7 Telephone: (760) 878-0229
8 Facsimile: (760) 878-2241

6 Attorneys for Respondents, Inyo County and
7 the Inyo County Board of Supervisors

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF INYO

12 CENTER FOR BIOLOGICAL) CASE NO.: SICVPT 11-52154
13 DIVERSITY, a non-profit public interest	
14 corporation, and SIERRA CLUB, a not-for-	
14 profit California Corporation,	
15 Petitioners,) STIPULATED AGREEMENT FOR ENTRY OF JUDGMENT
16 vs.	
17 INYO COUNTY and INYO COUNTY	
18 BOARD OF SUPERVISORS,	
19 Respondents.)
20	

22 Petitioners, CENTER FOR BIOLOGICAL DIVERSITY and SIERRA CLUB (hereinafter
23 Petitioners), and respondents, INYO COUNTY and INYO COUNTY BOARD OF
24 SUPERVISORS (hereinafter Respondents), (hereinafter collectively referred to as Parties)
25 hereby stipulate and agree to the following:
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RECITALS

1. On April 25, 2011, Respondent Inyo County, by and through its Board of Supervisors, approved General Plan Amendment No. 2010-03 (Renewable Solar and Wind Energy) by Resolution. The Board also adopted Findings with respect to the General Plan Amendment No. 2010-03/Inyo County (Renewable Solar and Wind Energy), and certified and adopted a Mitigated Negative Declaration/Initial Study ("MND/IS") for General Plan Amendment No. 2010-03.
2. On May 26, 2011, Petitioners Center for Biological Diversity and Sierra Club, filed a Verified Petition for Writ of Mandate against Respondents County of Inyo and Inyo County Board of Supervisors in Inyo County Superior Court, Case Number SICVPT 11-52154. The Petition alleged that Respondents' approval of General Plan Amendment No. 2010-03 and its certification and adoption of a Mitigated Negative Declaration/Initial Study violated the California Environmental Quality Act ("CEQA") by failing to prepare an Environmental Impact Report ("EIR").
3. On June 16, 2011, the Parties participated in a mandatory Settlement Meeting, pursuant to Public Resources Code section 21167.8(A). During the Settlement Meeting, Respondents maintained the appropriateness of the MND/IS and benefits derived from the General Plan Amendment and Petitioners asserted that the MND/IS was in violation of CEQA.

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AGREEMENT

Now, therefore, the Parties hereby desire to resolve this matter without resorting to costly and time consuming litigation, without admitting wrongdoing or error and finding that such resolution is in the best interest of both Petitioners and Respondents, the Parties hereby stipulate and agree to the following:

1 Upon execution of this Stipulated Agreement for Entry of Judgment by the Parties,
2 the Judgment attached hereto as Exhibit A and incorporated herein by reference shall be
3 filed by the Respondents in Inyo County Superior Court Case Number SICVPT 11-52154
4 together with a request from the Parties that the Court enter the Judgment in accordance
5 with this Stipulated Agreement for Entry of Judgment. The Judgment includes the
6 following provision:

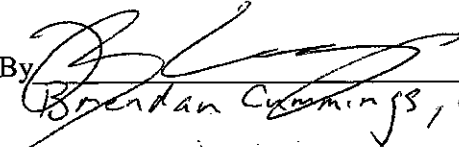
- 7 1. Respondents shall promptly rescind General Plan Amendment No. 2010-03,
8 which amendment, once rescinded, shall have no force or effect; and
9 2. Petitioners Center for Biological Diversity and Sierra Club shall waive and give
10 up any claim for attorneys' fees and costs incurred in connection with this
11 matter.

12 It is hereby stipulated and agreed.

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14 PETITIONERS:

CENTER FOR BIOLOGICAL DIVERSITY

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16 Dated: 8/11/11

By 
Brendan Cummings, CBD

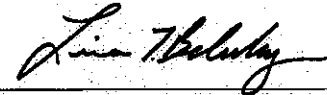
SIERRA CLUB

17
18
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20 Dated: _____

By _____

Attorneys for Petitioners

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22
23 Dated: 8/11/11

By 
Lisa T. Belenky

24
25
26 Dated: _____

By _____
Laurens H. Silver

RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO,
STATE OF CALIFORNIA, TO VACATE, SET ASIDE AND REVOKE RESOLUTION
NO. 2011-17 WHICH ADOPTED INYO COUNTY GENERAL PLAN AMENDMENT
NO. 2010-03/INYO COUNTY REGARDING RENEWABLE SOLAR AND WIND
ENERGY**

WHEREAS, this Board of Supervisors has recognized that the County of Inyo is a superb location for large scale solar energy production facilities; and

WHEREAS, energy industry interest in locating large scale renewable energy facilities within Inyo County was predictable and has been demonstrated; and

WHEREAS, this Board of Supervisors recognized the potential benefit inherent in the location of renewable energy facilities within the County, but also was aware of the potential costs to the County and its social and ecological environment that could result from the development of such facilities within the County; and

WHEREAS, this Board determined to establish a regulatory environment that would encourage the development of renewable energy facilities within the County, where appropriate, but that would ensure input from citizens of the County into such projects and protect the environment of the County; and

WHEREAS, this Board of Supervisors accordingly adopted Title 21 of the Inyo County Code, which established procedures for local input into proposed renewable energy projects, and which required consideration of fiscal and environmental impacts to the County from the development of such projects; and

WHEREAS, this Board of Supervisors subsequently adopted Resolution No. 2011-17, which was a General Plan Amendment that limited the siting of renewable energy facilities to appropriate areas in the County; and

WHEREAS, any proposal for the development of a renewable energy facility would require extensive environmental and other review by the County of Inyo, which review would identify impacts to sensitive species and to the social and economic health of the County; and

WHEREAS, given that detailed environmental analysis of a site cannot effectively or efficiently be accomplished until such project has been proposed, so that the type and location of the project is identified with specificity; and

WHEREAS, because extensive subsequent environmental review would be required for any proposed project, this Board determined that a mitigated negative declaration was the appropriate level of environmental review for the General Plan amendment and would fully protect the citizens and environment of the County of Inyo; and

WHEREAS, this Board adopted General Plan Amendment No. 2010-03, thereby establishing increased regulation and protection of the County and its citizens regarding renewable energy projects in the County; and

WHEREAS, the Center for Biological Diversity and the Sierra Club sued the County of Inyo, seeking to overturn the General Plan Amendment unless a full environmental impact statement was first prepared; and

WHEREAS, an environmental impact statement for the General Plan Amendment, which would require the study of many thousands of acres of land, would be prohibitively expensive, beyond the means of the County of Inyo, and unnecessary given the extensive study that any project proposal would eventually require; and

WHEREAS, litigating against the well-funded Center for Biological Diversity and Sierra Club would take precious County resources which are sorely needed to provide services and support to the citizens of the County; and

WHEREAS, regrettably, this Board of Supervisors is placed in the position of having to choose between the necessary and beneficial regulation of renewable energy facilities on the one hand, and engaging in expensive litigation whose outcome cannot be predicted on the other hand; and

WHEREAS, this Board of Supervisors has decided that it is in the greater interest of its citizens to conserve the financial resources of the County rather than engage in a lawsuit with the Center for Biological Diversity and Sierra Club; and

WHEREAS, this Board has therefore decided to revoke the General Plan Amendment which beneficially controlled renewable energy facility development in Inyo County to preserve County resources.

NOW, THEREFORE, BE IT HEREBY RESOLVED that this Board of Supervisors hereby vacates, sets aside and revokes Resolution No. 2011-17, County General Plan Amendment 2010-03, in its entirety.

PASSED AND ADOPTED on this sixth day of September, 2011, by the Inyo County Board of Supervisors, County of Inyo, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Susan Cash, Chairperson
Inyo County Board of Supervisors

ATTEST:

KEVIN CARUNCHIO
Clerk of the Board

By: _____
Pat Gunsolley, Assistant

**Solar and Wind Renewable Energy
General Plan Amendment No. 2010-03
April 26, 2011**

Government Element

No change

Land Use Element

- Insert the following new definition:

Solar or Wind Renewable Energy Facility. Any electric transmission line, solar thermal powerplant, photovoltaic powerplant, or wind energy powerplant to be constructed in Inyo County. A Facility does not include a "solar energy system," a small wind energy conversion system or a windmill that does not generate electricity, or a pilot or proof of concept powerplant.

- Insert the following new Land Use policy:

Policy LU-1.17 (Solar and Wind Renewable Energy Development) – The County shall consider Solar or Wind Energy facilities within areas with a Renewable Energy Land Use Designation Overlay and in any zoning district under Title 18 of the Inyo County Code. Based on site-specific studies and appropriate environmental review, the County may process Solar or Wind Renewable Energy Facilities within the Overlay pursuant to Inyo County Code Title 21. Potential social, economic, and environmental impacts from Solar or Wind Renewable Energy Facilities must be minimized to the extent feasible. Appurtenant transmission facilities and related infrastructure may be constructed and operated within any Land Use Designation and any zoning district under Title 18 of the Inyo County Code, provided that the facilities they connect operate under valid approval and are the subject of appropriate environmental review.

- Insert the following new Land Use Implementation Measures:

- 9.0 The County shall coordinate with the Department of Defense to work to site renewable energy facilities in a manner that does not significantly impact military readiness. Issues to be addressed in the coordination include radar, light and glare, heat generation, equipment testing and operations, personnel training, and flight activities.
- 10.0 The County shall consider seeking compensation for the loss of revenues from potential renewable energy facilities that are not developed due to potential impacts on military readiness, special status species, and aesthetics, and/or other barriers to development of appropriate renewable energy facilities. Methods of

compensation include but are not limited to Payment-in-lieu of Taxes (PILT) or similar programs.

11.0 The County shall work with utilities and renewable energy developers to encourage collocation of transmission and intertie facilities.

12.0 The County shall encourage renewable energy development on disturbed lands.

- Insert the attached graphics as Land Use Diagram Nos. 32a-q (Solar and Wind Renewable Energy Land Use Designation Overlay) in the Land Use Diagrams.

Public Services and Facilities Element

- Insert the following new Gas and Electrical Facilities policy:

Policy PSU-10.5 (Encourage Renewable Energy Development) – The County shall encourage appropriate development of renewable energy resources, provided that social, economic, and environmental impacts are minimized.

Economic Development Element

- Insert the following new Economic Development policy:

Policy ED-4.4 (Renewable Energy Development Beneficial to the Local Economy) – Renewable energy development shall provide means to offset costs to the County and lost economic development potential. If potential economic impacts from renewable energy development are identified by the County, commensurate mitigation and/or offsets shall be required.

Housing Element

No change

Circulation Element

No change

Conservation/Open Space Element

- Modify the following existing Agricultural Resources policy:

Policy AG-1.3 (Conversion of Agricultural Land) – Discourage conversions of productive agricultural lands for urban development, and encourage avoidance of productive agricultural lands for renewable energy development.

- Insert the following new Mineral and Energy Resources goal:

Goal MER-1 – Encourage appropriate renewable energy development and minimize impacts from such development to the social, economic, and environmental resources of the County.

- Insert the following new Mineral and Energy Resources policies:

Policy MER-2.1 (Large-scale Renewable Energy Development Areas) – The County shall maintain a Land Use Diagram of areas where Solar or Wind Renewable Energy Facilities may be appropriate.

Policy MER-2.2 (Minimize Impacts) – The County shall work with renewable energy developers and other agencies to minimize impacts from renewable energy development.

- Insert the following new Mineral and Energy Resources Implementation Measures:

8.0 Review proposals for renewable energy development and work to minimize potential impacts to the County's social, economic, and environmental resources, in cooperation with other local, regional, State, out-of-State, and federal agencies.

9.0 Collect and disseminate strategies to minimize impacts from Renewable Energy Facilities.

10.0 Periodically review, and as necessary update, the Solar and Wind Renewable Energy Land Use Designation Overlay.

- Insert the following new Water Resources policy:

Policy WR-3.5 (Sustainable Renewable Energy Development) – The County shall encourage renewable energy development to incorporate measures to minimize water consumption and use of potable water.

- Insert the following new Visual Resources policy:

Policy VIS-1.8 (Renewable Energy Development) – The County shall encourage siting and screening to minimize significant changes to the visual environment from renewable energy development, including minimizing light and glare, to the extent possible.

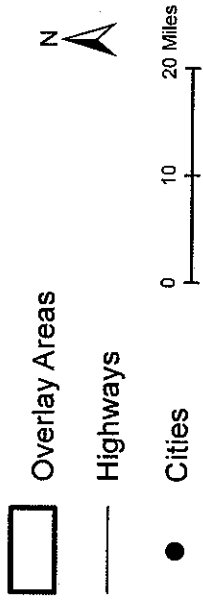
- Insert the following new Recreation Implementation Measure:

16.0 Work with developers and other agencies to minimize impacts to recreational access from renewable energy development.

Public Safety Element

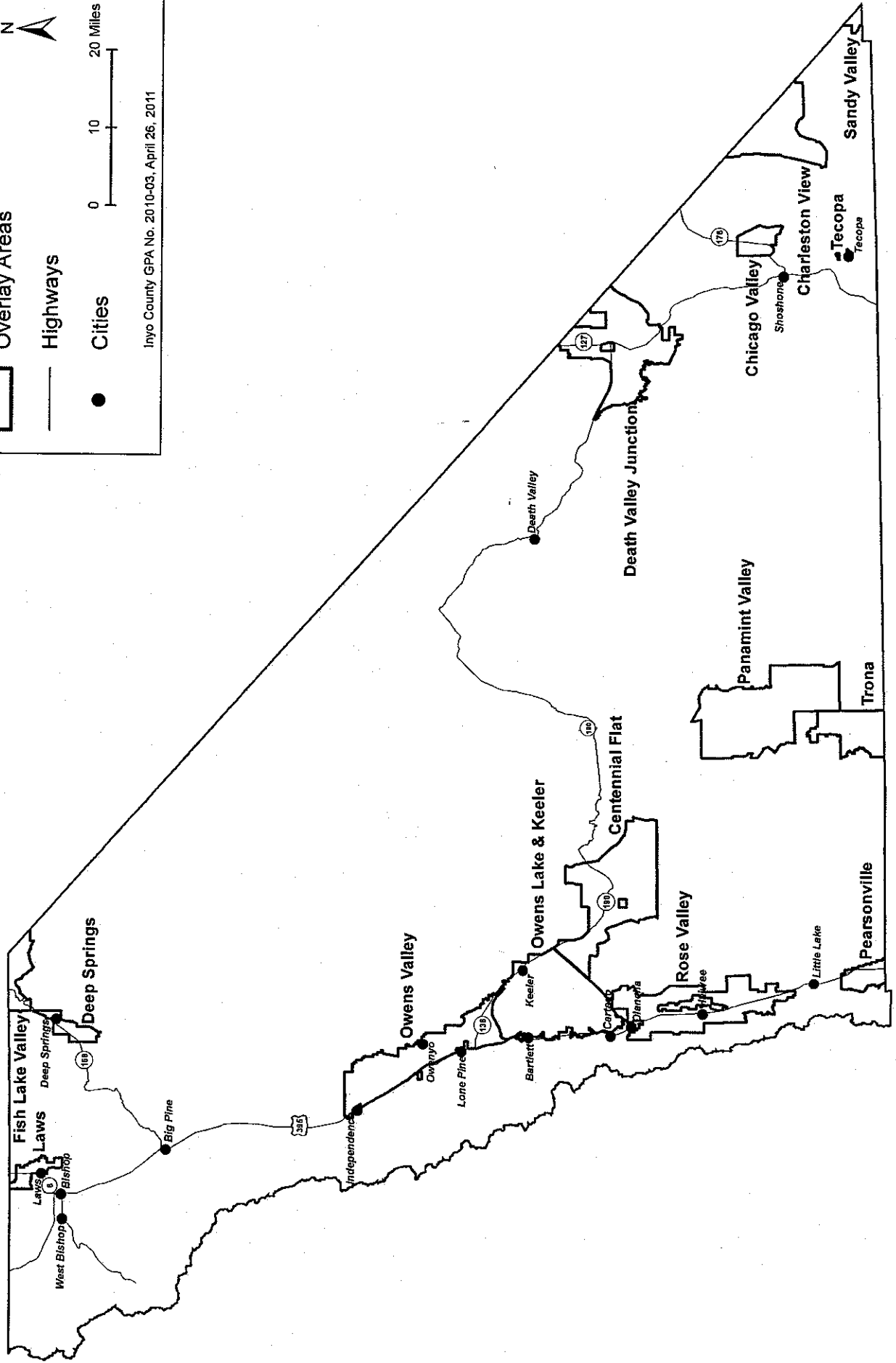
- Insert the following new Air Quality Implementation Measure:
 - 7.0 Support appropriate efforts to combine air quality improvements with other social, cultural, and environmental goals, including renewable energy development.
- Insert the following new Noise Implementation Measure:
 - 12.0 Work with developers and other agencies to minimize noise from renewable energy development.

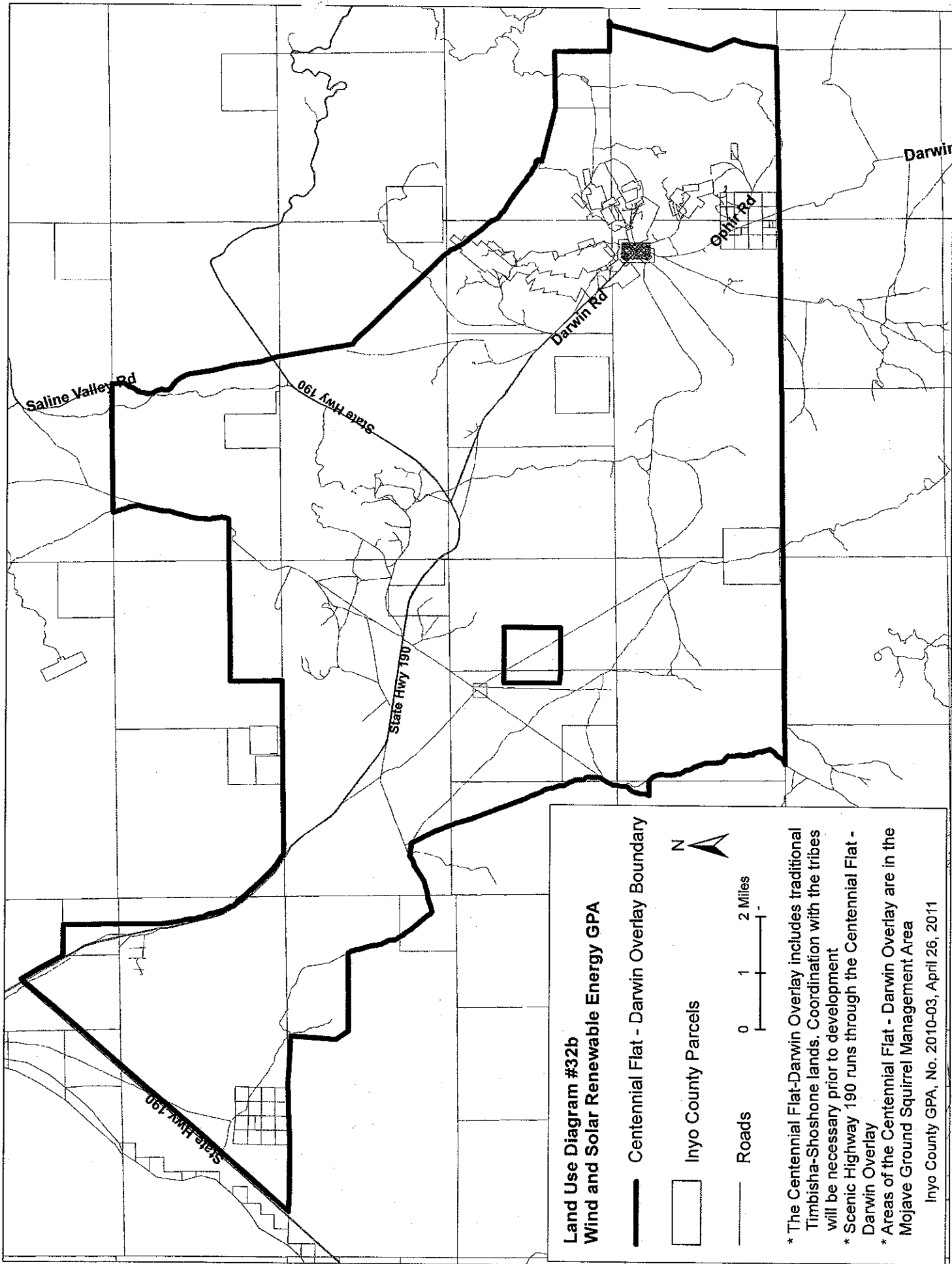
**Land Use Diagram #32a
Wind and Solar Renewable Energy GPA**

 **Overlay Areas**
Highways
Cities



Inyo County GPA No. 2010-03, April 26, 2011





**Land Use Diagram #32b
Wind and Solar Renewable Energy GPA**

— Centennial Flat - Darwin Overlay Boundary

□ Inyo County Parcels

— Roads 0 1 2 Miles



* The Centennial Flat-Darwin Overlay includes traditional Timbisha-Shoshone lands. Coordination with the tribes will be necessary prior to development

* Scenic Highway 190 runs through the Centennial Flat - Darwin Overlay

* Areas of the Centennial Flat - Darwin Overlay are in the Mojave Ground Squirrel Management Area

Inyo County GPA, No. 2010-03, April 26, 2011

**Land Use Diagram #32c
Wind and Solar Renewable Energy GPA**

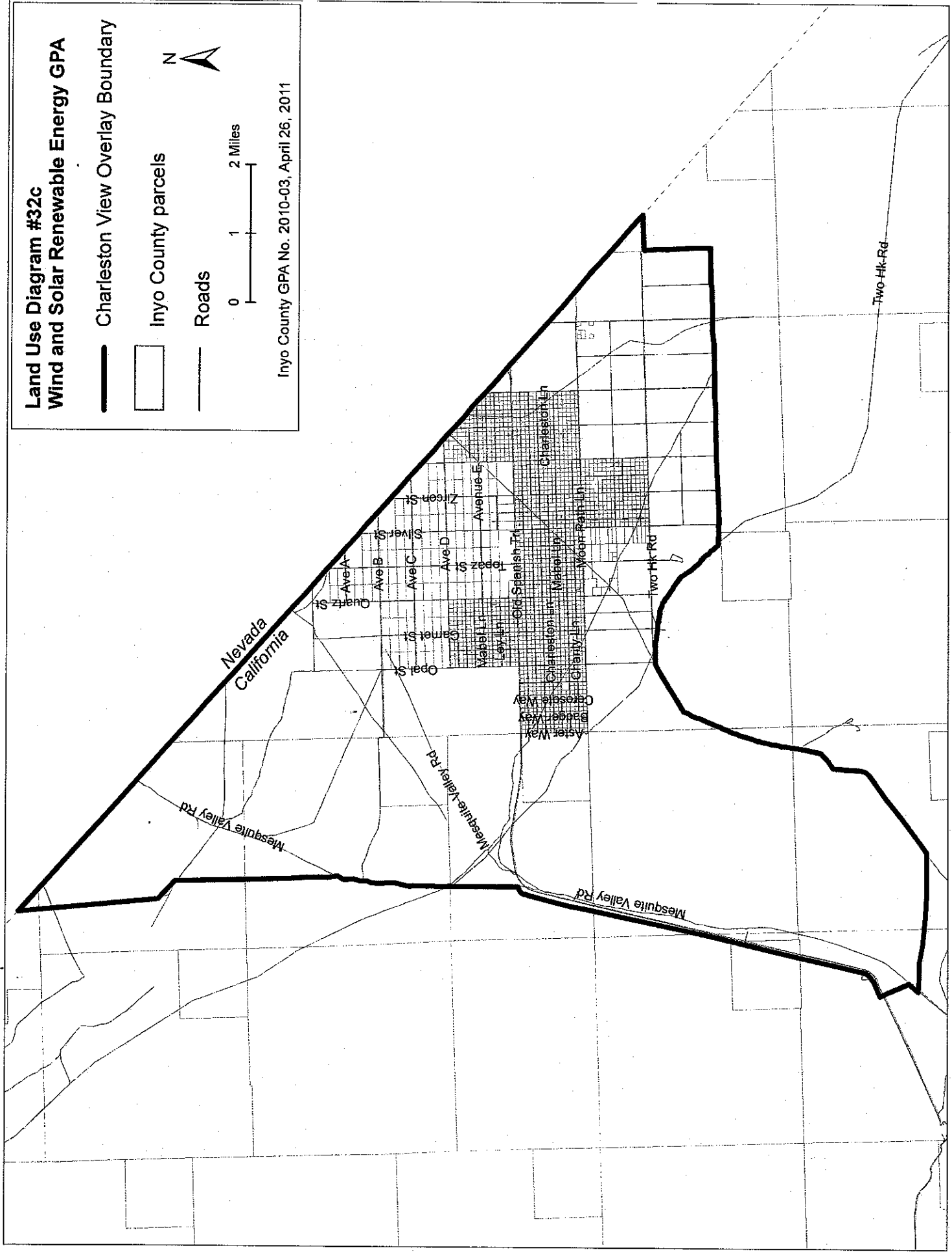
— Charleston View Overlay Boundary

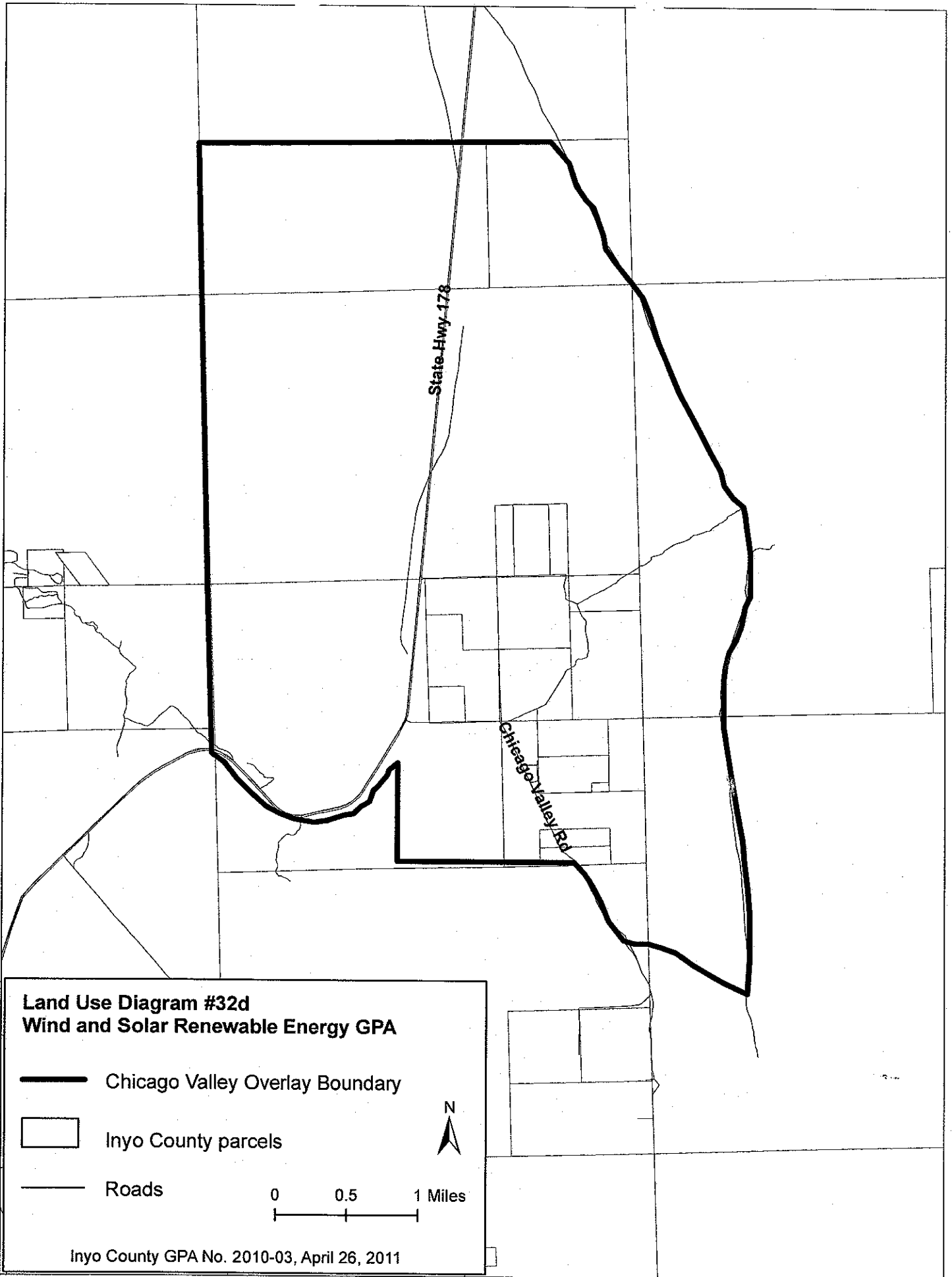
□ Inyo County parcels

— Roads



Inyo County GPA No. 2010-03, April 26, 2011





**Land Use Diagram #32d
Wind and Solar Renewable Energy GPA**

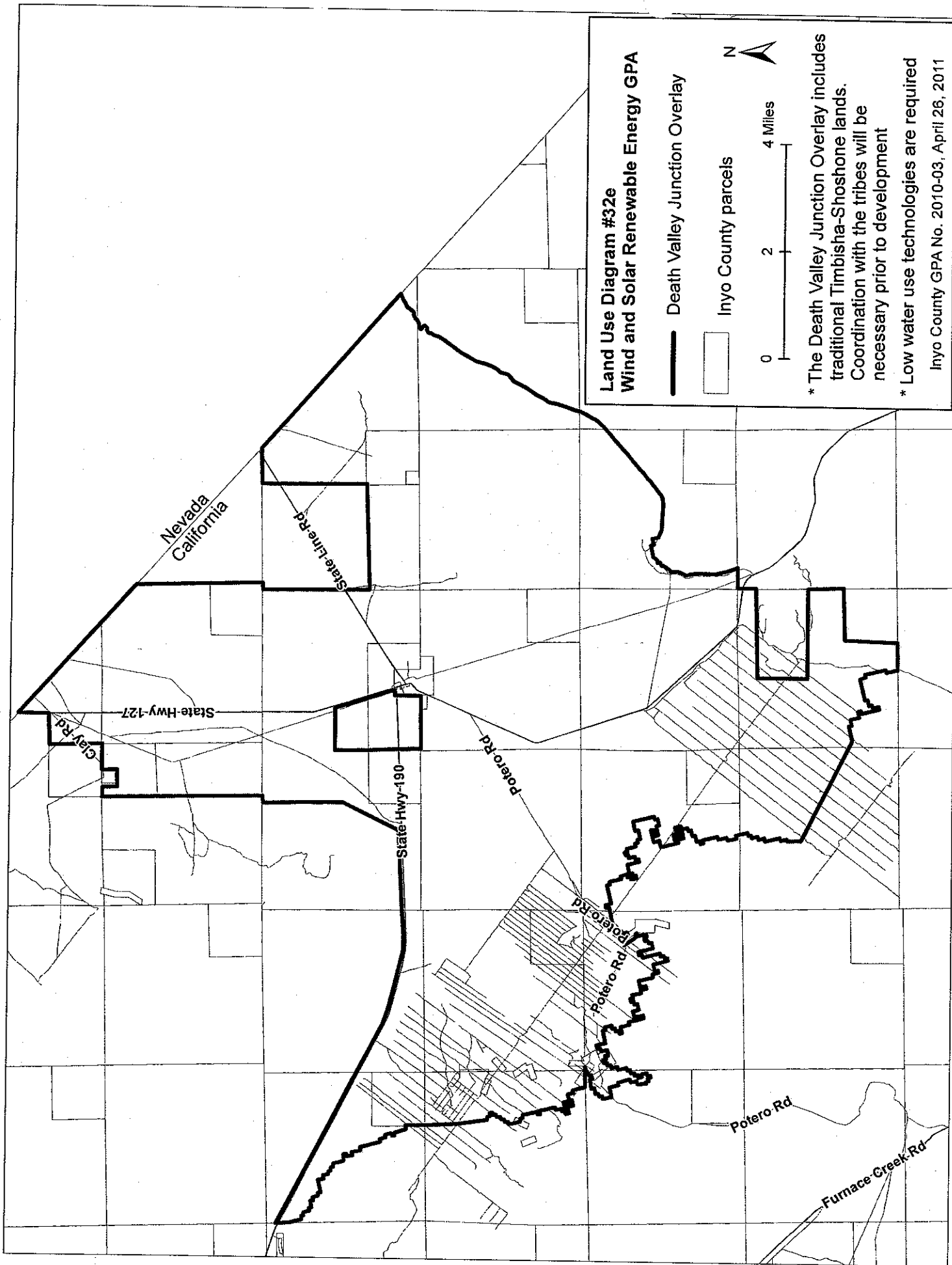
— Chicago Valley Overlay Boundary

□ Inyo County parcels

— Roads



0 0.5 1 Miles



**Land Use Diagram #32f
Wind and Solar Renewable Energy GPA**

— Deep Springs Overlay Boundary

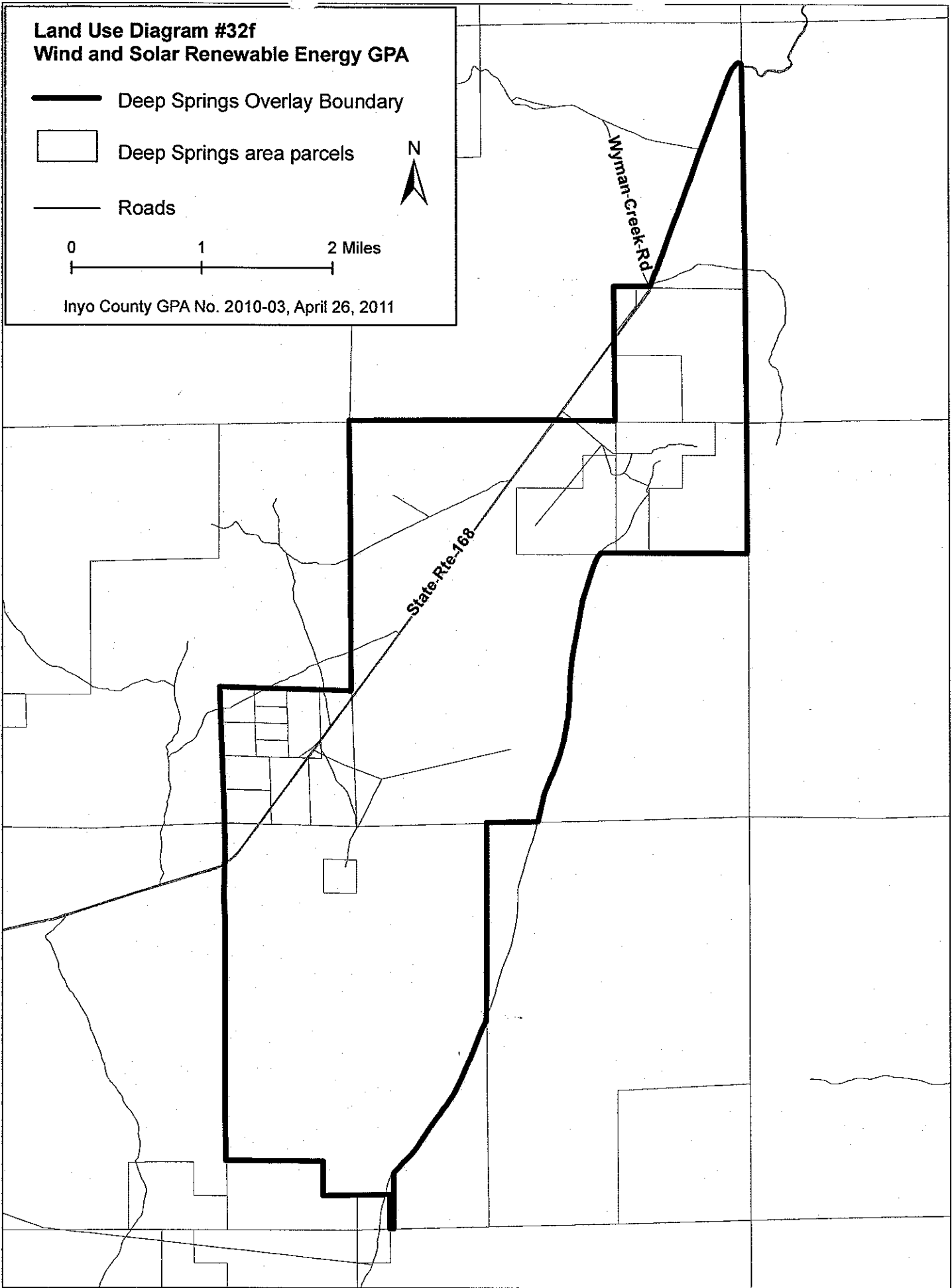
□ Deep Springs area parcels

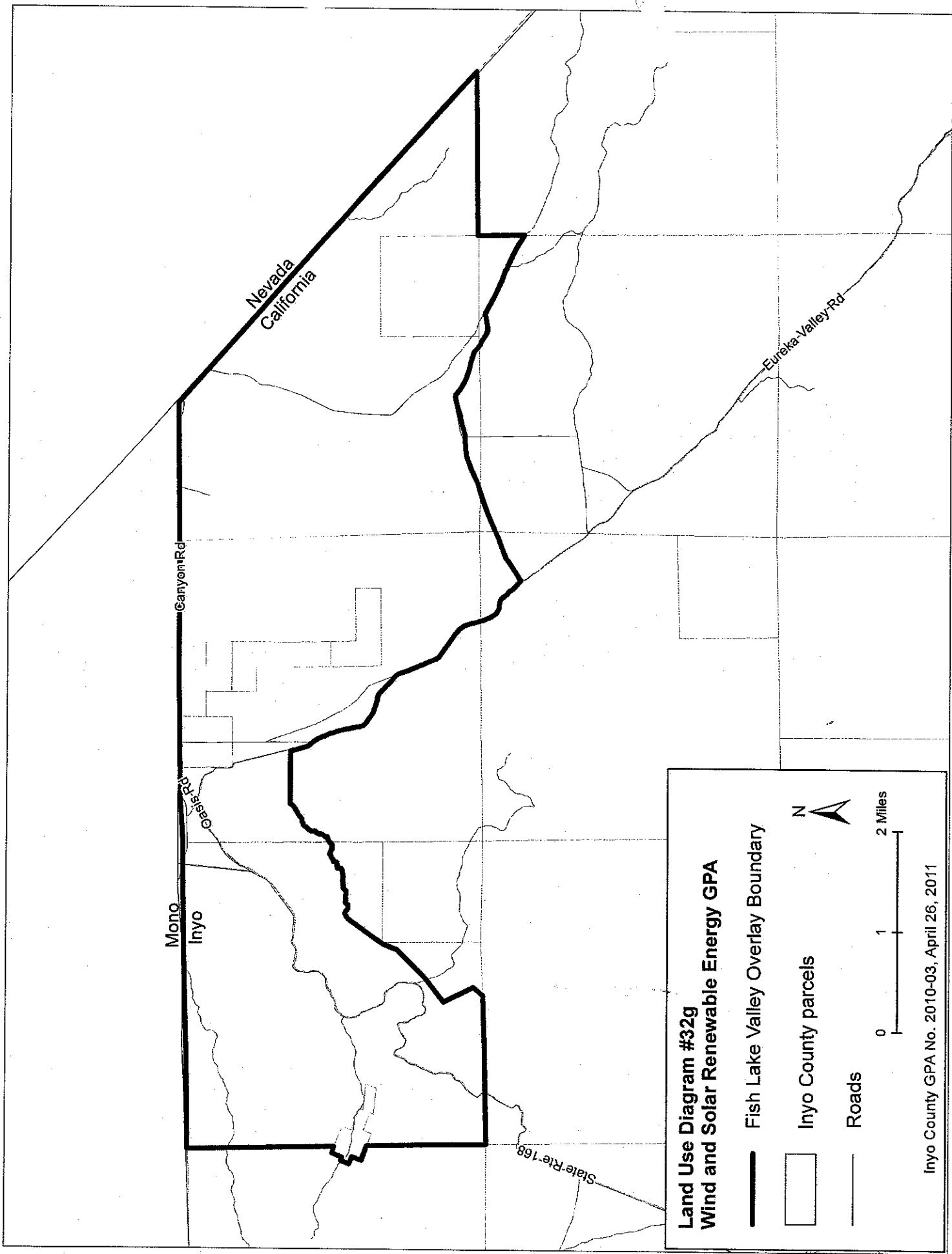
— Roads



0 1 2 Miles

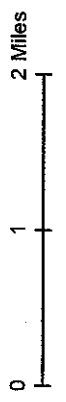
Inyo County GPA No. 2010-03, April 26, 2011



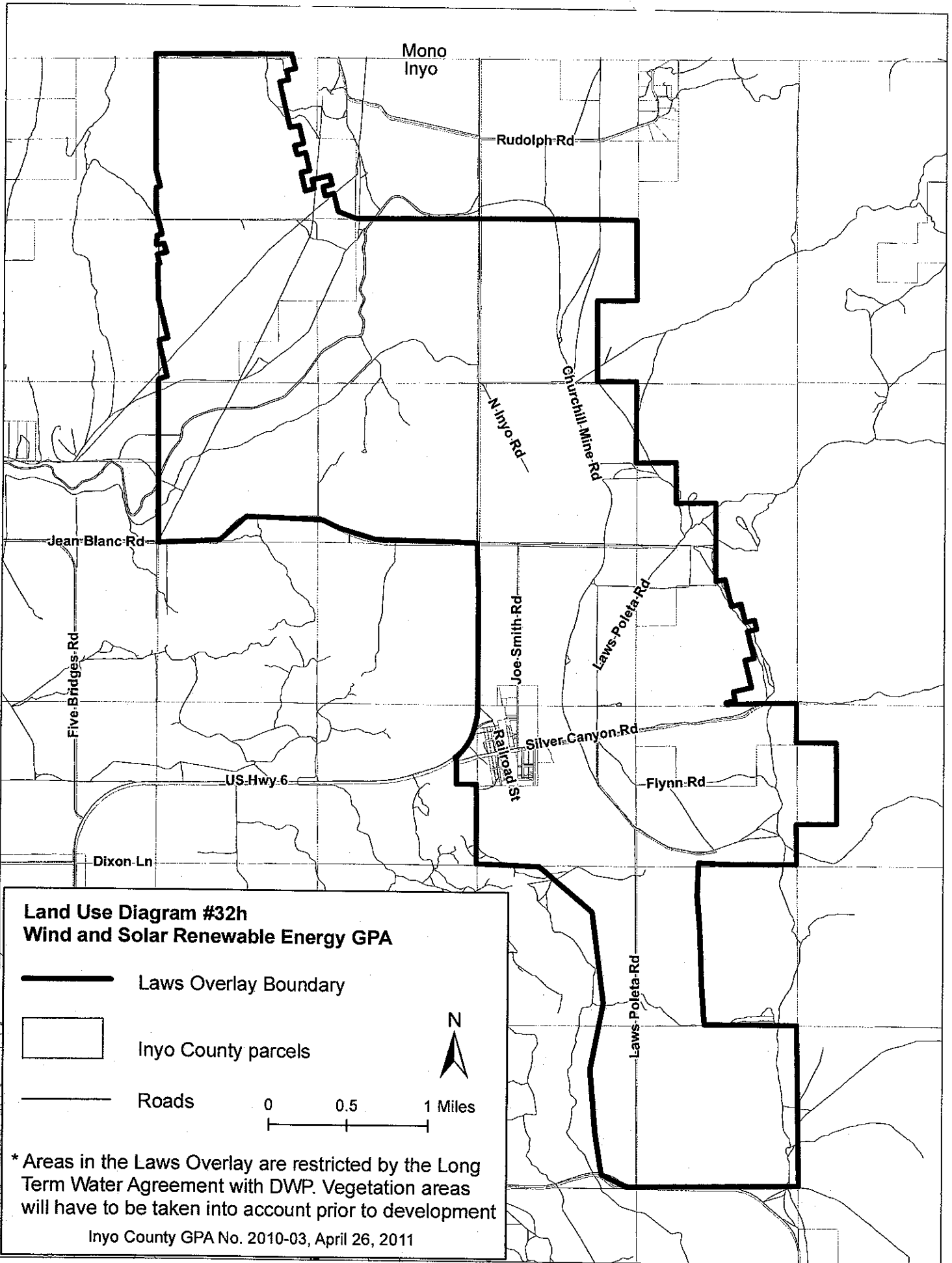


**Land Use Diagram #32g
Wind and Solar Renewable Energy GPA**

- Fish Lake Valley Overlay Boundary
- Inyo County parcels
- Roads



Inyo County GPA No. 2010-03, April 26, 2011



Mono Inyo

Rudolph Rd

N Inyo Rd

Church Hill Mine Rd

Jean Blanc Rd

Five Bridges Rd

Joe Smith Rd

Lays-Poleta Rd

US Hwy 6

Railroad St

Silver Canyon Rd

Flynn Rd

Dixon Ln

Lays-Poleta Rd

**Land Use Diagram #32h
Wind and Solar Renewable Energy GPA**

— Laws Overlay Boundary

□ Inyo County parcels

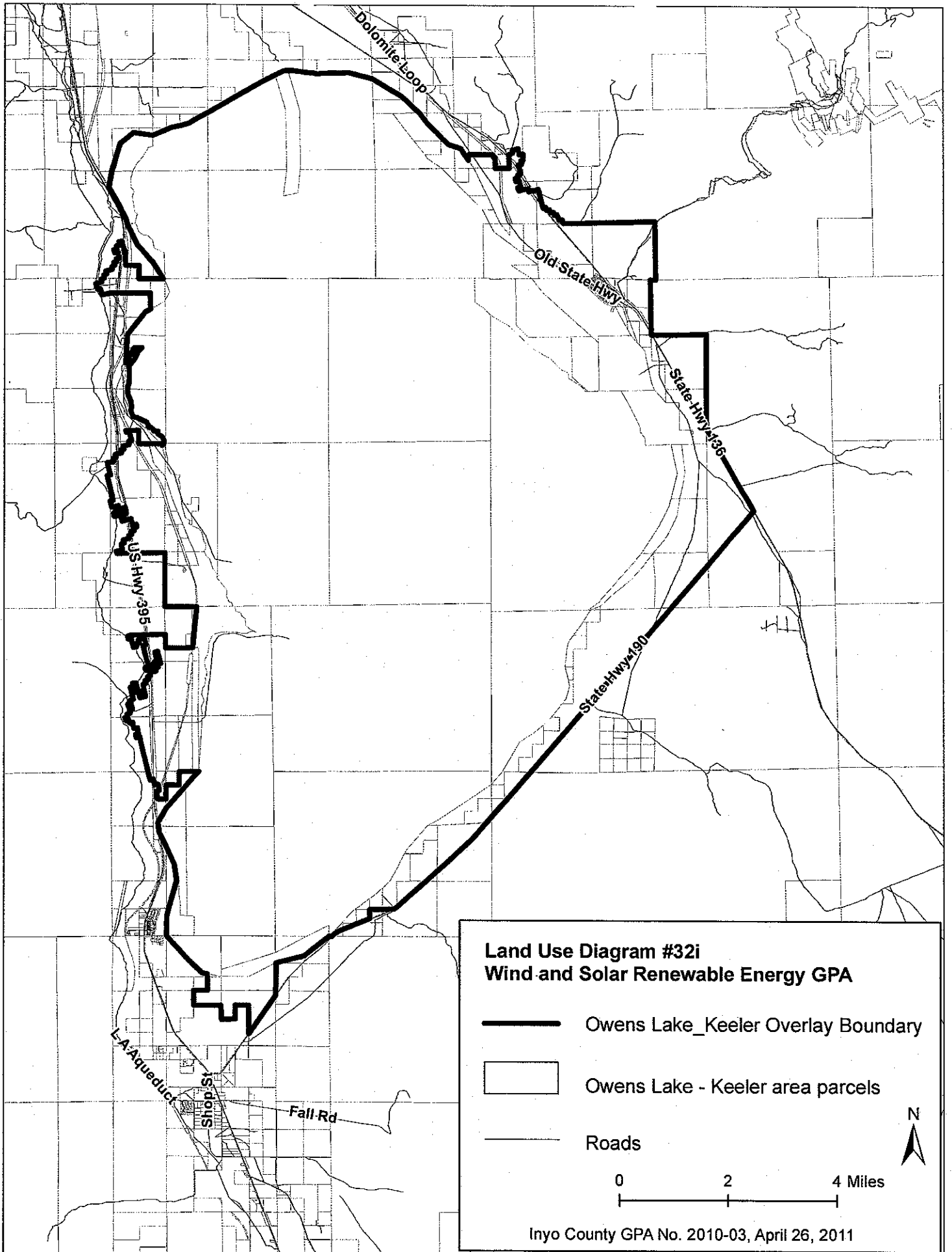
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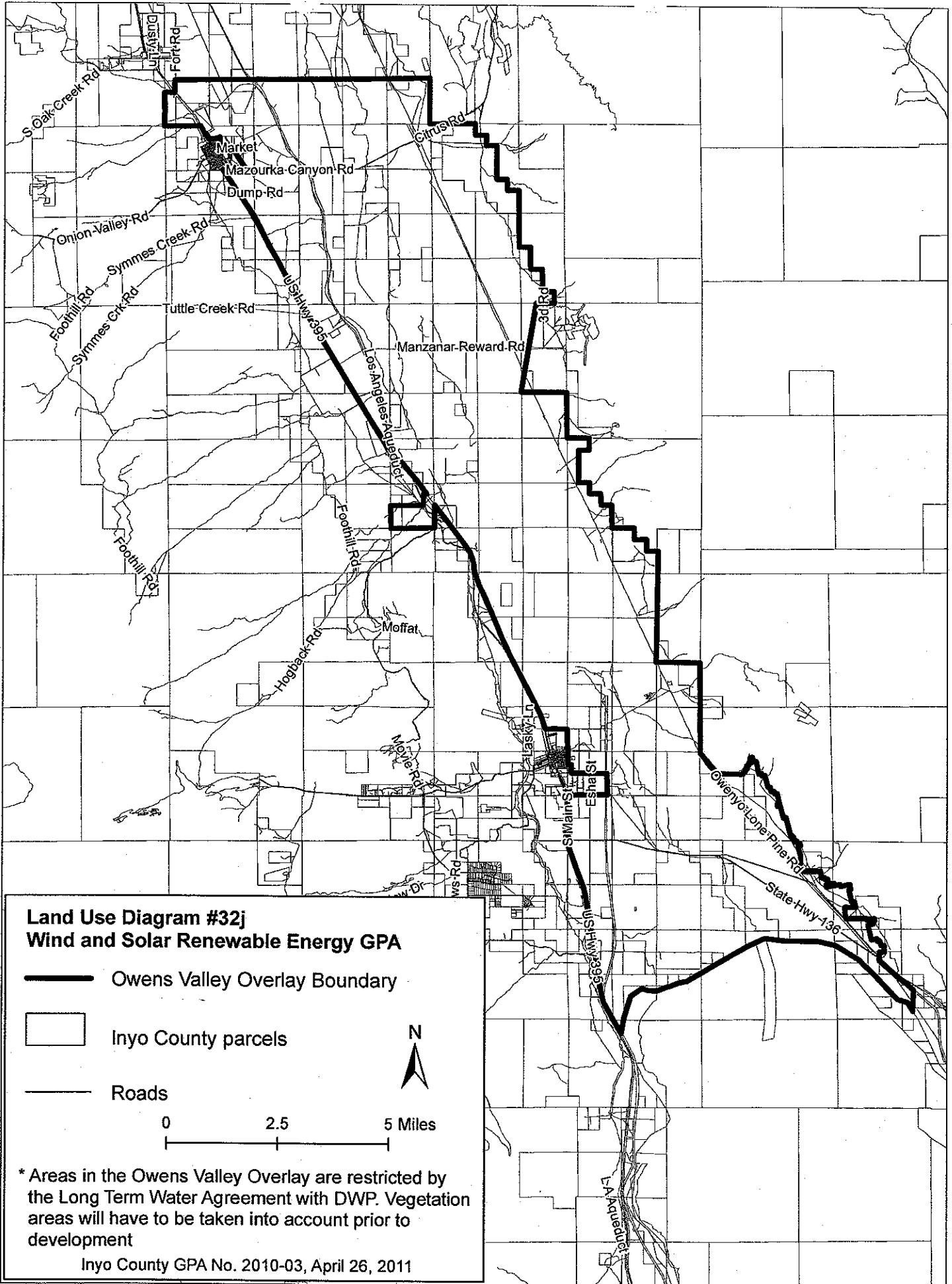
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* Areas in the Laws Overlay are restricted by the Long Term Water Agreement with DWP. Vegetation areas will have to be taken into account prior to development

Inyo County GPA No. 2010-03, April 26, 2011





**Land Use Diagram #32j
Wind and Solar Renewable Energy GPA**

— Owens Valley Overlay Boundary

□ Inyo County parcels

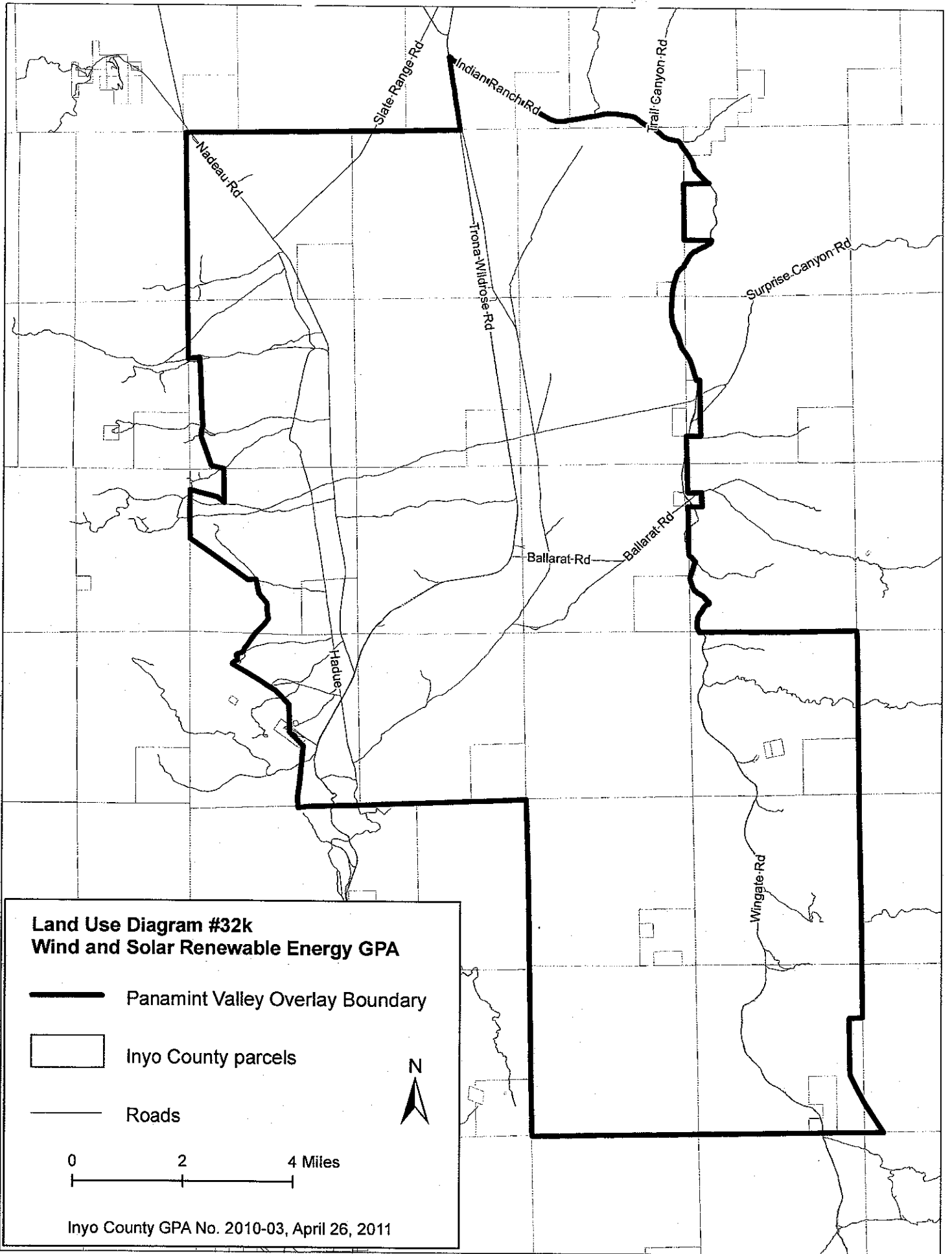
— Roads




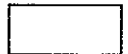

0 2.5 5 Miles

* Areas in the Owens Valley Overlay are restricted by the Long Term Water Agreement with DWP. Vegetation areas will have to be taken into account prior to development

Inyo County GPA No. 2010-03, April 26, 2011



**Land Use Diagram #32k
Wind and Solar Renewable Energy GPA**

-  Panamint Valley Overlay Boundary
-  Inyo County parcels
-  Roads



0 2 4 Miles

Inyo County GPA No. 2010-03, April 26, 2011

**Land Use Diagram #32I
Wind and Solar Renewable Energy GPA**

— Pearsonville Overlay Boundary

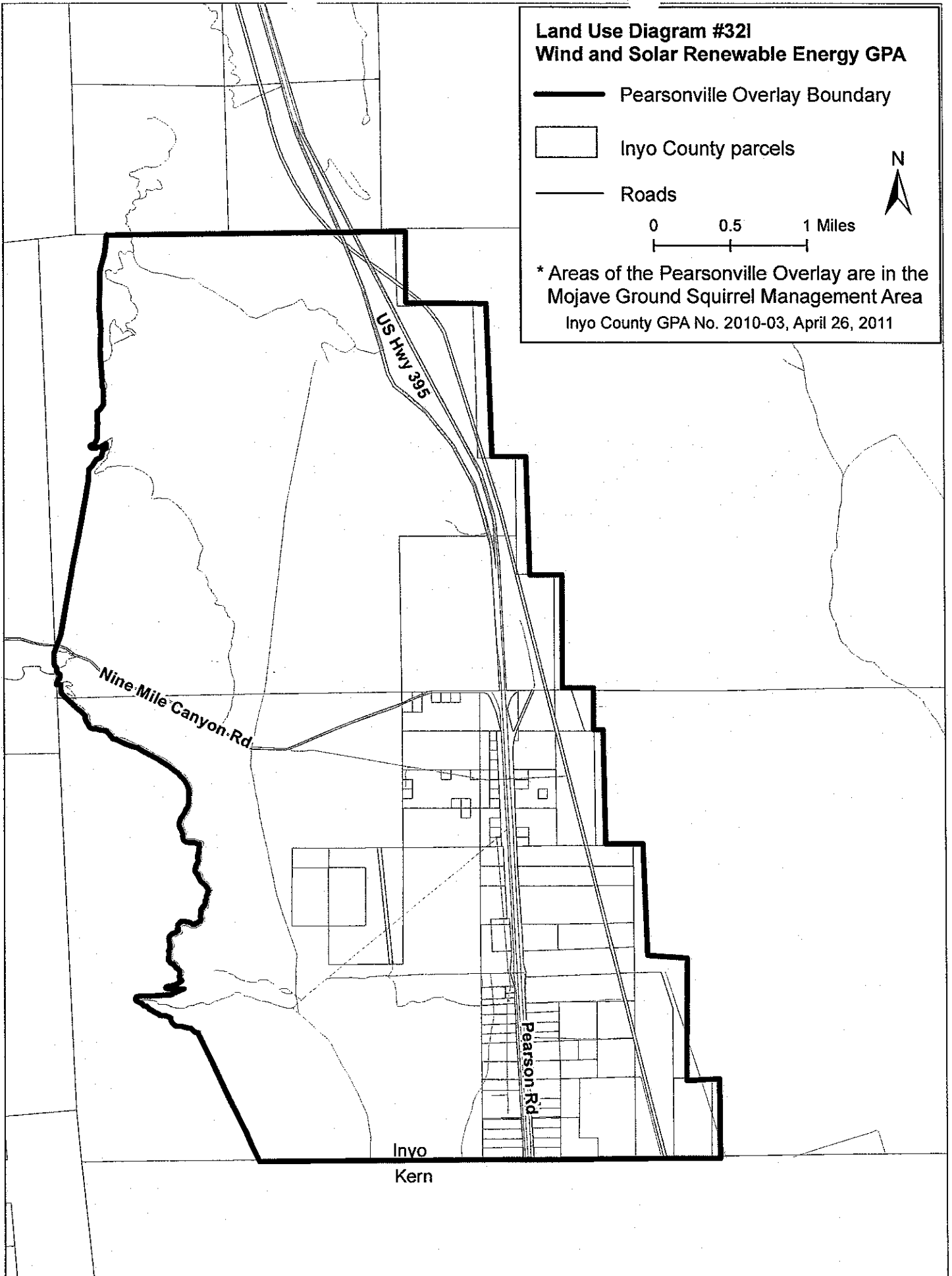
□ Inyo County parcels

— Roads

0 0.5 1 Miles



* Areas of the Pearsonville Overlay are in the
Mojave Ground Squirrel Management Area
Inyo County GPA No. 2010-03, April 26, 2011



**Land Use Diagram #32m
Wind and Solar Renewable Energy GPA**

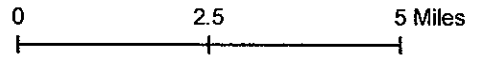
— Rose Valley Overlay Boundary

□ Inyo County parcels

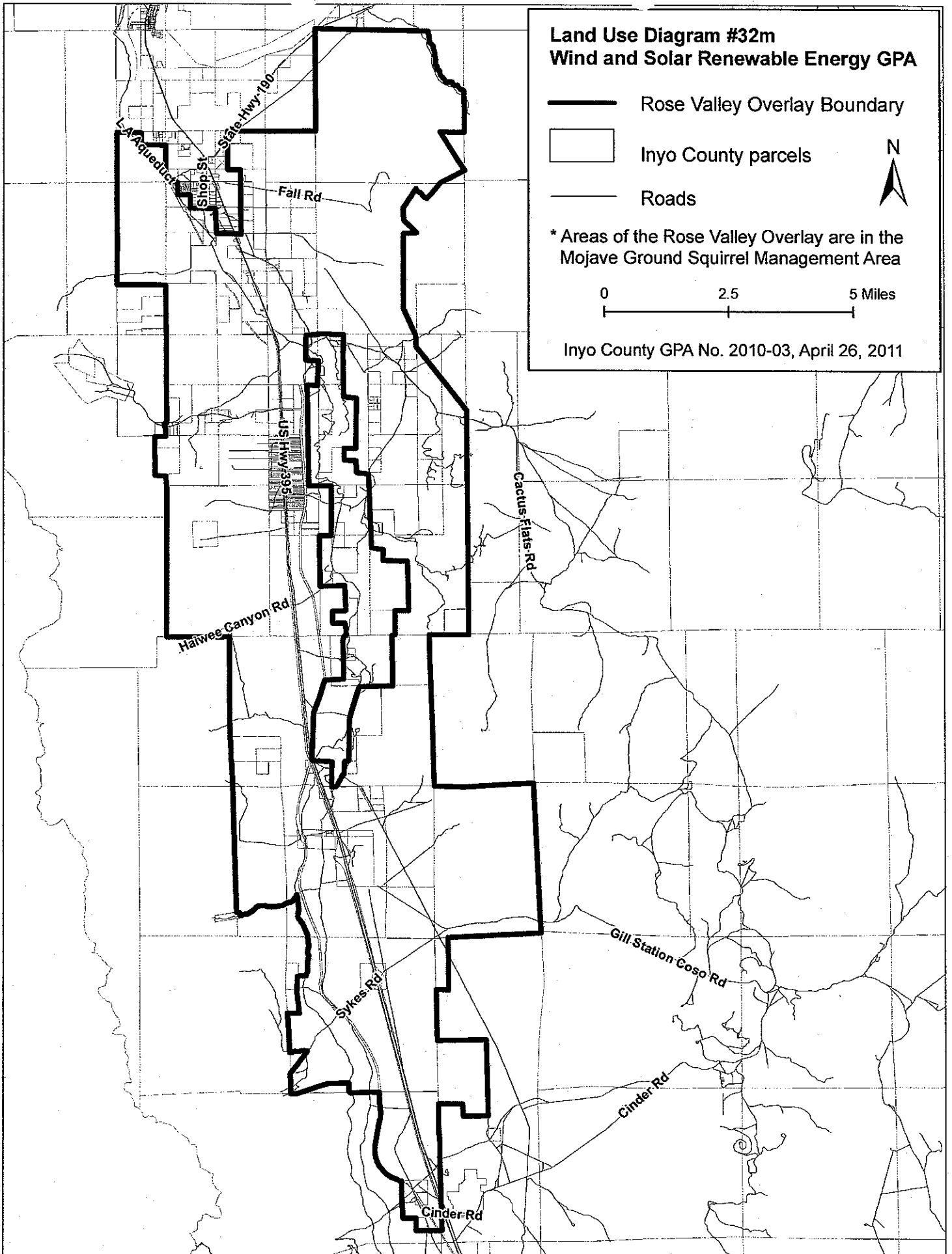
— Roads



* Areas of the Rose Valley Overlay are in the Mojave Ground Squirrel Management Area

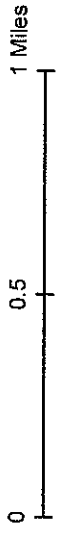


Inyo County GPA No. 2010-03, April 26, 2011

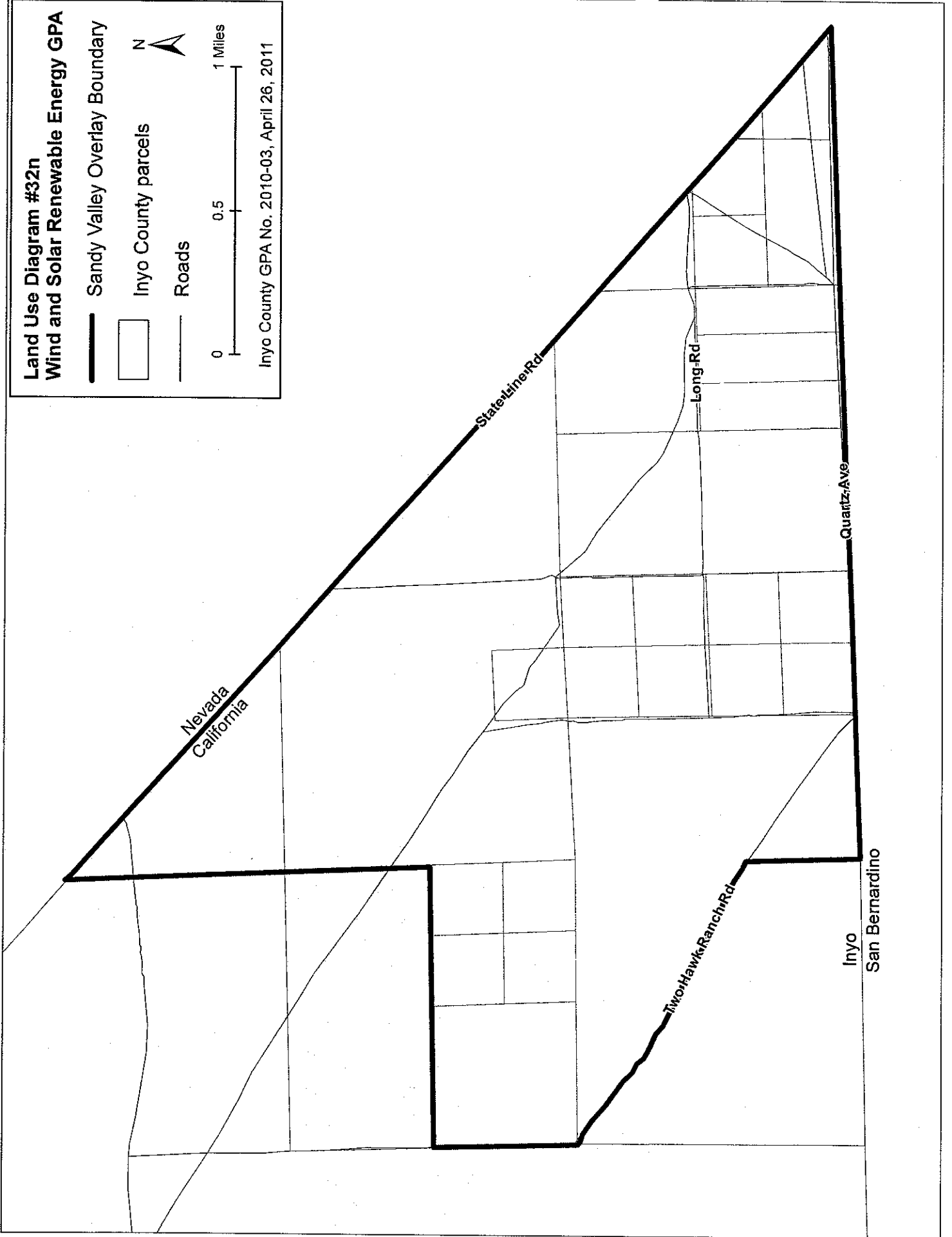


**Land Use Diagram #32n
Wind and Solar Renewable Energy GPA**

- Sandy Valley Overlay Boundary
- Inyo County parcels
- Roads



Inyo County GPA No. 2010-03, April 26, 2011

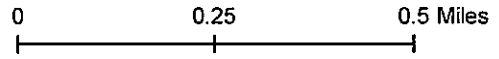


**Land Use Diagram #32o
Wind and Solar Renewable Energy GPA**

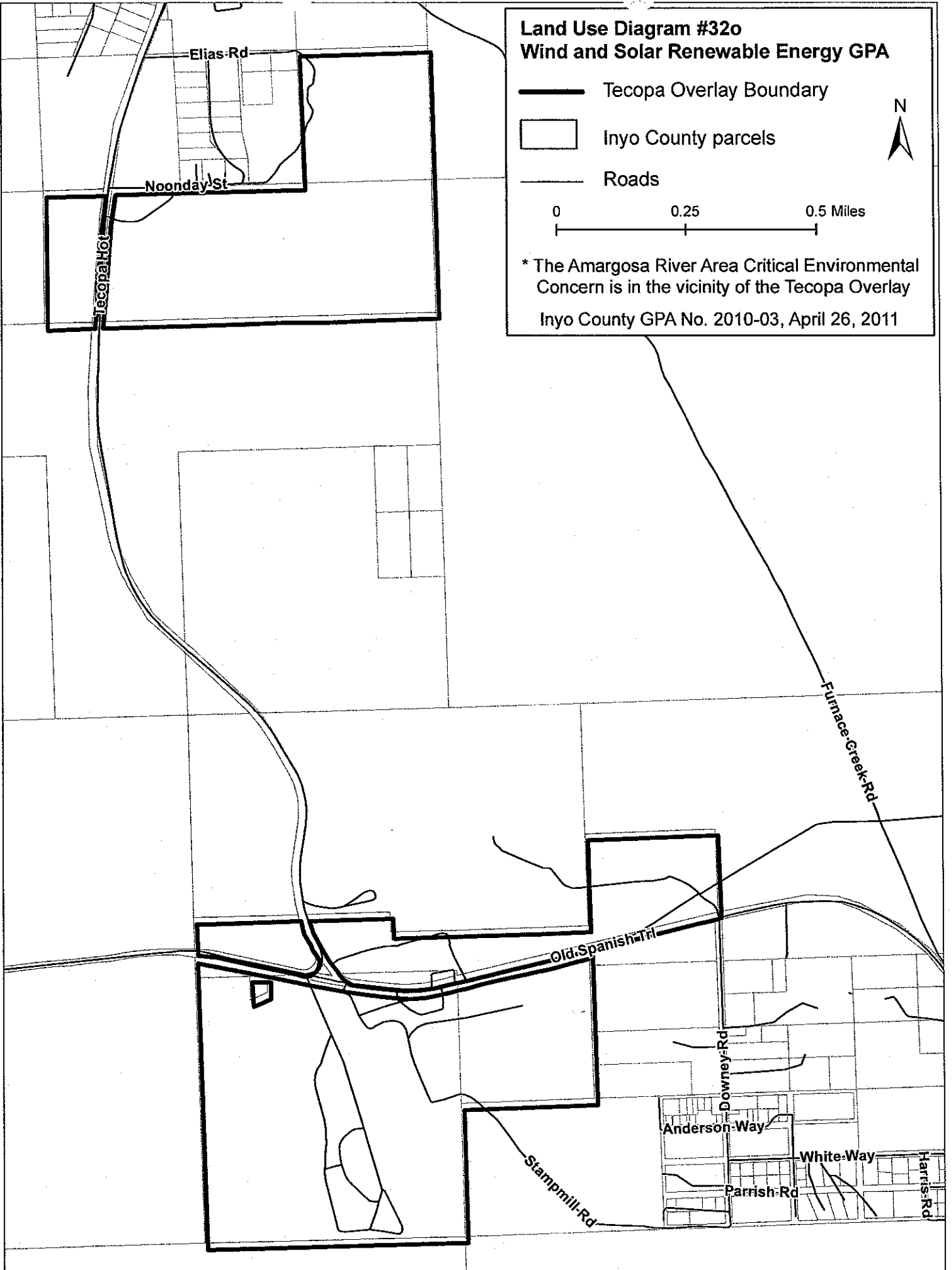
— Tecopa Overlay Boundary

□ Inyo County parcels

— Roads



* The Amargosa River Area Critical Environmental Concern is in the vicinity of the Tecopa Overlay
Inyo County GPA No. 2010-03, April 26, 2011



**Land Use Diagram #32p
Wind and Solar Renewable Energy GPA**

— Trona Overlay Boundary

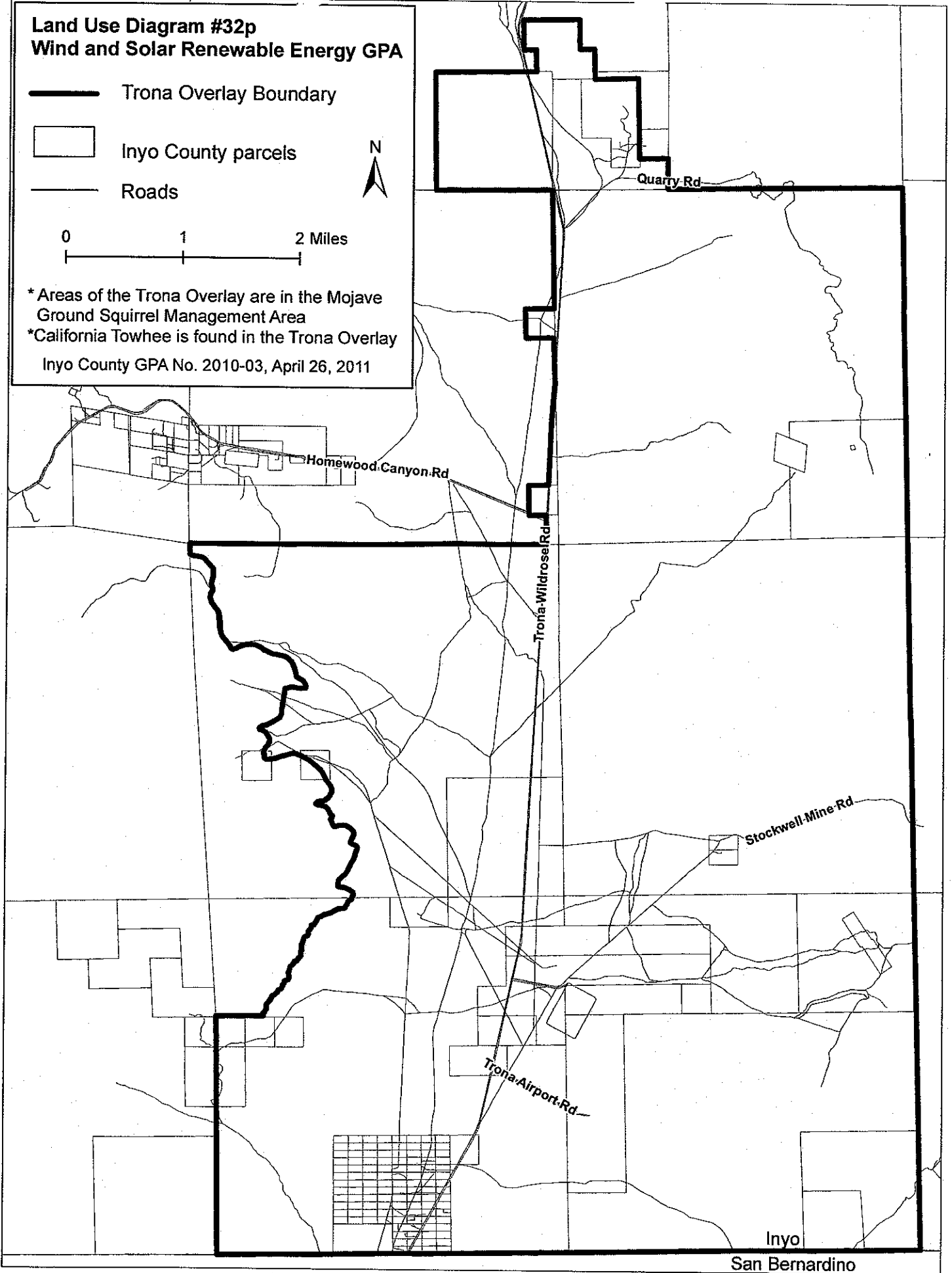
□ Inyo County parcels

— Roads



0 1 2 Miles

* Areas of the Trona Overlay are in the Mojave
Ground Squirrel Management Area
*California Towhee is found in the Trona Overlay
Inyo County GPA No. 2010-03, April 26, 2011



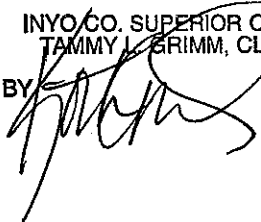
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LAURENS H. SILVER (SBN 55339)
CALIFORNIA ENVIRONMENTAL LAW PROJECT
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Facsimile: (415) 436-9683
lbelenky@biologicaldiversity.org

FILED

MAY 26 2011

INYO CO. SUPERIOR COURT
TAMMY L. GRIMM, CLERK
BY  DEPUTY

Attorneys for Petitioners SIERRA CLUB and CENTER
FOR BIOLOGICAL DIVERSITY

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF INYO

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit public interest corporation,)	CASE NO. SI CV PT 11 5 2 1 5 4
Petitioner,)	VERIFIED PETITION FOR WRIT OF MANDATE
SIERRA CLUB, a not-for-profit California Corporation,)	[Code Civ. Proc. §§ 1085 and 1094.5; Pub. Res. Code § 21000 <i>et seq.</i> (California Environmental Quality Act)]
Petitioner,)	
v.)	
INYO COUNTY and INYO COUNTY BOARD OF SUPERVISORS,)	
Respondents.)	

PARTIES

Petitioner Center for Biological Diversity

1. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-profit, public interest corporation, with over 42,000 members and offices in Los Angeles and San Francisco, California; Arizona; New Mexico; Oregon; Alaska; and Washington, D.C. The Center

1 and its members are dedicated to protecting the diverse native species and habitats through science,
2 policy, education, and environmental law. The Center submitted comments to Inyo County regarding
3 the Project.

4 **Petitioner Sierra Club**

5 2. Petitioner Sierra Club is a not-for-profit membership corporation with hundreds of
6 members who reside in Inyo County. The Sierra Club has had a long history of involvement in
7 groundwater and land use planning disputes in Inyo County over the last 20 years, and submitted
8 comments to Inyo County regarding the Project.

9 **Respondents, County of Inyo, and Inyo County Board of Supervisors**

10 3. Respondent County of Inyo ("County") is a local governmental agency and political
11 subdivision of the State of California charged with the authority to regulate and administer land use
12 activities within its boundaries, subject at all times to the obligations and limitations of all applicable
13 state, federal, and other laws, including CEQA, the CEQA Guidelines, the California Endangered
14 Species Act, and the Federal Endangered Species Act. The County is the CEQA lead agency for the
15 Mitigated Negative Declaration prepared for the Project.

16 4. Respondent Inyo County Board of Supervisors ("Board") is the legislative body and the
17 highest administrative body of the County.

18 **STATEMENT OF FACTS**

19 5. Respondent County, through its Board of Supervisors, on or about April 25, 2011
20 approved a General Plan Amendment No. 2010-03 (Renewable Solar and Wind Energy) by Resolution.

21 6. The Board also adopted Findings with respect to General Plan Amendment No. 2010-
22 03/Inyo County (Renewable Solar and Wind Energy), and certified and adopted a Mitigated Negative
23 Declaration/Initial Study ("MND/IS") for General Plan Amendment No. 2010-03.

24 7. The General Plan Amendment (No. 2010-03) includes a "Land Use Designation Overlay"
25 maps (Land Use Diagram Nos. 32a-q (Solar and Wind Renewable Energy Land Use Designation
26 Overlay) that identify the specific areas renewable energy projects may be developed "based on [later]
27 site specific studies pursuant to the County's Renewable Energy Ordinance and other State, Federal, and
28 local laws."

1 8. By letter dated February 11, 2011 to the Inyo County Planning Department, the Center
2 urged that “renewable energy projects should be thoughtfully planned to minimize impacts to the
3 environment. In particular, renewable energy projects should avoid impacts to sensitive species and
4 habitats, and should be sited in proximity to the areas of electricity end-use and existing transmission in
5 order to reduce the need for extensive new transmission corridors or lines and the efficiency loss
6 associated with extended energy transmission.”

7 9. The Center further stated:

8 “A determination that revisions/mitigations will result in the project having no
9 significant effects is not warranted. [For] the areas that would within the overlay
10 adopted in the proposed GPA contain the significant biological and other resources
11 that will be affected by the proposed GPA an EIR is needed. We are also concerned
12 that the proposed GPA fails to address the transmission needs for renewable energy
13 development in these proposed overlay areas and as a result has ignored many
14 additional significant impacts of the proposed GPA...Although additional
information is needed and a full analysis in an EIR based on the information in the
MND/IS, it appears that some of the proposed overlay zones should be studied
further and others should likely be abandoned as wholly inappropriate.”

15 10. The Center letter further points out that the proposed GPA may have significant direct
16 and indirect impacts on many environmental resources including surface and groundwater resources, air
17 quality, open space, visual resources, and rare and imperiled wildlife and plant species.

18 11. The Center letter lists a number of rare, threatened and endangered species that currently
19 inhabit areas proposed for renewable energy development zones. These include the black toad, desert
20 tortoise, Mohave ground squirrel, least Bell’s vireo, Owens tui chub, and Owens pupfish. Numerous
21 rare, or endangered plants are also listed (Letter at 4).

22 12. The Center letter identifies areas designated for renewable energy development in which
23 such development could significantly impact rare and endangered species off-site. For example,
24 groundwater use in any of the zones may affect down-gradient springs, seeps, and riparian areas that are
critical habitat for rare, threatened, and endangered species, or support the species.

25 13. The MND fails to recognize and evaluate the potential impacts of the zones on the
26 Mojave Ground Squirrel Conservation Area.

27 14. The MND fails to address crucial plant and animal habitat connectivity issues (Letter
28 p.6).

1 15. Sierra Club commented on the proposed General Plan Amendment by letter to the
2 Planning Commission dated February 14, 2011 and by letter to the Board of Supervisors dated April 26,
3 2011.

4 16. In its April 26, 2011 letter to the Planning Commission, Sierra Club pointed out:

5 "Based on the sensitive location of many (and exceptionally large footprint) of the
6 proposed renewable energy areas, the Inyo County General Plan Amendment poses
7 unusually adverse biological impacts to a host of species. Review of the Mitigated
8 Negative Declaration and related documents, demonstrates lack of any supporting evidence
9 that would allow for a finding that the proposed action would not potentially result in
10 significant environmental impacts under the provisions of CEQA. There is no analysis of
11 the potential effects within the overlay areas of renewable energy development on sensitive
12 natural and cultural resources, some of which were set out in detail in site-specific area
13 descriptions in Sierra Club's February 14, 2011 comment letter, and no accounting of these
14 resources and their significance was provided. To the contrary, we believe that the project
15 as proposed may have a significant effect on the environment. For example, public lands in
16 the Centennial Flat area contain an "essential habitat connectivity" area that could be
17 compromised by large-scale renewable energy development. Some of the proposed
18 renewable energy zones in western Inyo County contain habitat for the State threatened
19 Mohave ground squirrel. This species could be significantly and cumulatively impacted by
20 substantial energy development. Habitat for the desert tortoise could also be adversely
21 affected.

22 Approximately 15% of Inyo County lands are proposed for renewable energy
23 development."

24 17. Sierra Club noted that an "EIR is needed to ensure that this planning process will have
25 the desired results in guiding developers to appropriate areas and that the development of renewable
26 energy in Inyo County is properly sited to avoid significant impacts to environmental resources to the
27 greatest extent feasible."

28 18. Sierra Club additionally pointed out:

The proposed GPA is intended to facilitate large-scale renewable energy development in
Inyo County and to steer that development to the overlay areas. In the context of the
current project, the proposed GPA, potential impacts from future renewable energy
projects are reasonably foreseeable indirect impacts of the project and therefore should be
addressed in the CEQA analysis. The MND does not provide adequate evidence to support
the finding that the proposed project would not have a significant adverse impact on the
environment... With many of the proposed overlay areas far from existing or planned
transmission facilities, the GPA should have addressed the transmission requirements for
renewable energy development in the overlay areas. It does not and therefore has ignored
potential significant impacts of any future energy development that would be indirect
impacts of the proposed GPA... The MND/IS leaves resource surveys and development of

1 mitigation measures to future analysis when specific projects are proposed. Other than to
2 indicate the potential for significant environmental effects, there is no analysis of the
3 potential effects of development within the renewable energy overlay areas on sensitive
4 natural and cultural resources and no accounting of these resources and their significance
is provided.

5 19. By letter dated April 26, 2011, Sierra Club urged the Board to prepare a programmatic
6 plan and EIR for Inyo County's renewable energy development amendment. It argued that this would
7 ultimately facilitate more efficient and timely completion of project level CEQA analysis for specific
8 projects proposed within the identified development plans. Based on the experience of BLM and the
9 CEC in "fast-tracking" renewable energy projects in the CDCA, Sierra Club noted there is a need for
10 careful planning in connection with identifying development zones that would potentially support
11 environmentally and economically sound renewal energy generation projects. By taking a
12 programmatic approach to renewal energy development, the cumulative effects of a long-range plan
13 would be identified and mitigated in a comprehensive manner. In this manner, only the most
14 appropriate land for renewable energy would be developed, consistent with environmental constraints
15 and dedicated for long-term renewable energy generation.

16 20. Finally, the Sierra Club pointed out that the County's principal purpose in identifying
17 these renewal energy zones is to direct renewable energy developers "where to investigate solar or wind
18 renewable energy development potential." The general plan amendment is tantamount to establishing
19 zones where renewable energy uses would be accommodated and concentrated but without an adequate
20 environmental analysis of the environmental consequences of concentrating this development in
21 undeveloped, ecologically sensitive lands in 15% of the County. It would result in developers
22 expending up-front costs for planning and environmental studies in areas that may not be appropriate for
23 renewable energy development because of environmental constraints.

24 21. By letter dated February 16, 2011 to the Inyo County Planning Department, the
25 Department of Fish and Game urged the County, consistent with *City of Redlands, et al v. County of San*
26 *Bernardino*, 96 Cal.App.4th 398 (2002), to undertake additional CEQA review in connection with the
27 GPA, and pointed out deficiencies in the analysis in the IS/Mitigated Negative Declaration.
28

1 22. By letter dated December 9, 2010, Defenders of Wildlife, Natural Resources Defense
2 Council and the Wilderness Society informed the Director of the Inyo County planning Department, that
3 in their view:

4 We recommend development of a programmatic plan and EIR for Inyo County's
5 renewable energy development amendment to the General Plan. A programmatic
6 approach would allow for more efficient and timely completion of project-level
7 CEQA analysis for specific projects proposed within identified development zones.
8 Based on our groups' extensive involvement both individually and collectively in
9 "fast-track" renewable energy projects located on public lands in the California
10 Desert and southern Nevada, we developed a keen sense of the need for careful
11 planning for renewable energy entailing identification of development zones that
12 would potentially support environmentally and economically sound renewable
13 energy generation projects. Lastly, by taking a programmatic approach to renewable
14 energy development, the cumulative impacts of a long-range plan would be
15 identified and mitigated in a comprehensive manner. This would allow for
16 development of the most appropriate lands for solar energy and help ensure that they
17 would be environmentally sustainable and potentially dedicated for permanent
18 renewable energy generation. This could preclude the need for costly
19 decommissioning plans and ultimately minimize the amount of lands needed for
20 such use."

21 23. Defenders, NRDC, and the Wilderness Society also, by letter dated January 14, 2011 to
22 the Director of the County Planning Department, informed the County that "we do not find any
23 supporting evidence that would allow for a finding that the proposed action would not potentially result
24 in significant environmental impacts under the provisions of CEQA. There is no analysis of the
25 potential effects within the overlay areas of renewable energy development on sensitive natural and
26 cultural resources... To the contrary, we believe that the project as proposed may have a significant
27 effect on the environment." (Letter at 5).

28 24. Finally DOW, WS and NRDC pointed out that the County had not analyzed alternatives
to the proposed action, such as limiting renewable energy zones to those areas which are serviced by
existing or already planned transmission lines and limiting technology for solar energy to photovoltaic
panels due to their requirement for less water consumption. Nor had the County considered alternatives
that reduce or scale back the size of overlay areas having potential significant impacts to cultural and
natural resources.

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JURISDICTION AND VENUE

25. This Court has jurisdiction over the matters alleged in this Petition pursuant to CCP §§1085, 1086, 1094.5, and Pub. Res. Code §21167 (CEQA).

26. Venue is proper in the County of Inyo under CCP §§ 392, 393, 394.

ADMINISTRATIVE REMEDIES

27. The Center for Biological Diversity and Sierra Club have performed any and all conditions precedent to the filing of this petition. The Center and Sierra Club submitted comment letters to the Planning Commission in connection with the General Plan Amendment. Sierra Club submitted an additional comment letter to the Board urging the Board not to approve the GPA without additional environmental documentation.

28. All of the statements and letters of the petitioners urged the Board not to approve the General Plan Amendment until it had first prepared and certified an EIR.

29. Petitioners have complied with Public Resources Code § 21167.5 by service of a notice upon the City indicating its intent to file this Petition. The notification is attached as Exhibit A.

30. This Petition is timely filed in accordance with Public Resources Code § 21167 and CEQA Guidelines § 15112.

PUBLIC BENEFIT

31. In seeking to compel the Board to discharge its public duties with respect to enforcement of CEQA, the Center and Sierra Club are beneficially interested in this proceeding and are acting in the public interest as private attorney-generals to enforce important rights and if successful, will confer a substantial benefit on the residents of the County to the extent the environmental effects of the General Plan Amendment are appropriately identified in an EIR, upon issuance of this Court's Writ of Mandate.

STANDARD OF REVIEW

32. This action is brought pursuant to Section 21168 of the Public Resources Code and Section 1094.5 of the Code of Civil Procedure, which require that a public agency's approval of a project be set aside if the agency prejudicially abuses its discretion. Prejudicial abuse of discretion occurs where the agency fails to proceed in a manner required by law, where the decision is not

1 supported by the findings, or where the findings are not supported by substantial evidence in light of the
2 whole record. In the alternative, this action is brought pursuant to Section 1085 of the Code of Civil
3 Procedure and Section 21168.5 of the Public Resources Code which also require that a public agency's
4 approval of a project be set aside where the agency prejudicially abuses its discretion.

5 33. Abuse of discretion is established if the agency has not proceeded in a manner required
6 by law or if the determinations or decisions are not supported by substantial evidence.

7 34. Respondents have abused their discretion and failed to act as required by law in the
8 following ways:

9 **FIRST CAUSE OF ACTION (CEQA)**
10 **(Failure to Prepare an EIR Prior to GPA Approval)**

11 35. Petitioners hereby incorporate by reference paragraphs 1 through 34 of this Petition.

12 36. A "project" is "the whole of an action" directly undertaken, supported or authorized by a
13 public agency which may cause either a direct physical change in the environment or a reasonably
14 foreseeable indirect physical change in the environment." Pub. Res. Code §21065, CEQA §15738(a).
15 Under CEQA Guidelines, the term "project" refers to the underlying activity and not the governmental
16 approval process. *California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. District*
17 (2009) 178 Cal.App.4th 1225, 1241.

18 37. Petitioners, through their respective letters, have demonstrated there is a "fair argument"
19 that the proposed project may have a significant effect on the environment, and as a consequence,
20 preparation of an EIR is required. Pub. Res. Code §21100, 21151, CEQA Guidelines §15064(a)(i); *No*
21 *Oil Inc. v. City of Los Angeles* (1974), 13 Cal.3d 68, 82.

22 38. Negative declarations are appropriate only when there is no substantial evidence in light
23 of the whole record before the public agency that the project, as revised; may have a significant effect on
24 the environment. Pub. Resources Code, § 21064.5; see also § 21080, subd. (c); CEQA Guidelines §§
25 15006, subd. (h), 15064, subd. (f)(2), 15070, subd. (b), 15369.5. No such determination can be made in
26 this instance. By adopting a GPA for renewable energy zones within the County, the decision will steer
27 development of renewable energy and transmission in ways that will substantially affect the
28 environment.

1 39. CEQA requires the preparation of environmental review documents "as early as feasible
2 in the planning process to enable environmental considerations to influence project program and design
3 and yet late enough to provide meaningful information for environmental assessment." *Laurel Heights I*,
4 47 Cal.3d 376 at 395 (1988); see also CEQA Guidelines § 15004(b). The purpose of CEQA is to
5 provide decision-makers and the public with environmental information before decisions are made, not
6 after. As the California Supreme Court observed in *Laurel Heights I*, "[i]f post-approval environmental
7 review were allowed, [CEQA analyses] would likely become nothing more than post hoc
8 rationalizations to support action already taken. We have expressly condemned this [practice]." 47 Cal.
9 3d at 394 (citation omitted). Accordingly, "public agencies shall not undertake actions concerning the
10 proposed public project that would have a significant adverse effect or limit the choice of alternatives or
11 mitigation measures, before completion of CEQA compliance." CEQA Guidelines § 15004(b)(2). In
12 particular, an agency shall not "take any action which gives impetus to a planned or foreseeable project
13 in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQ A
14 review of that public project." CEQA Guidelines § 15004(b)(2)(B).

15 40. The general plan amendment will have direct and foreseeable indirect impacts on the
16 environment including biological resources. The approval of the GPA by the Board constituted a
17 prejudicial abuse of discretion under Section 21168.5 of the Public Resources Code because there was
18 a fair argument in the record before the Board that the project would have significant impacts on the
19 environment including rare, threatened, and endangered species and water resources. The GPA is
20 intended to facilitate industrial scale renewable energy development within the County and steer that
21 development to specific areas. As a result, a full environmental review should have been conducted for
22 the impacts of the project as a whole in connection with the GPA. The time for complete CEQA review
23 of this proposed project was before plan approval, when environmental considerations can inform the
24 County's decision, and before the County takes any steps that could foreclose any potential alternatives
25 or mitigation measures. *Laurel Heights I*, 47 Cal.3d at 394-95; CEQA Guidelines § 15004(b)(2)(B). It
26 does not matter for purposes of CEQA that the County or any other public agency may need to render
27 some later decision with regard to the specific project approvals. See *Fullerton Joint Union High Sch.*
28 *Dist. v. State Bd. of Educ.* (1982) 32 Cal. 3d 779, 795. The County cannot defer evaluation of

1 environmental impacts until after project approval or skirt the required procedure for public review and
2 agency scrutiny of potential impacts. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d
3 296,307-09.

4
5 **SECOND CAUSE OF ACTION**
6 **(Failure to Consider Feasible Alternatives)**

7 41. Petitioners hereby incorporate by reference paragraphs 1 through 40 of this Petition.

8 42. The County has not provided sufficient information about feasible alternatives to comply
9 with CEQA. Pursuant to CEQA and the guidelines, "public agencies shall not undertake actions
10 concerning the proposed public project that would have a significant adverse effect or limit the choice of
11 alternatives or mitigation measures, before completion of CEQA compliance." CEQA Guidelines §
12 15004(b)(2). In particular, an agency shall not "take any action which gives impetus to a planned or
13 foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily
14 be part of CEQA review of that public project." CEQA Guidelines § 15004(b)(2)(B).

15 43. CEQA requires that public agencies should not approve projects as proposed if there are
16 feasible alternatives or feasible mitigation measures available which would substantially lessen the
17 significant environmental effects of such projects. *See* Public Resources Code § 21002. In this case,
18 alternatives that should have been considered and fully analyzed but were not, include but are not
19 limited to, the following alternatives that would: limit renewable energy zones to previously disturbed
20 and/or type converted private lands that do not provide habitat for sensitive species; have fewer or
21 smaller zones to avoid sensitive resources; limit renewable energy zones to areas with existing
22 transmission lines; prioritize approval for distributed renewable energy projects that will supply local
23 energy needs first; strictly limit the use of surface and groundwater for renewable energy projects within
24 the County by requiring at least one to one off-sets in each basin and sub-basin; or focus on distributed
25 generation of renewable energy in the Los Angeles basin and other areas where the power is expected to
26 be exported. This last alternative would not only avoid impacts to the resources within Inyo County
27 from site specific renewable energy generation but would also avoid impacts from additional
28

1 transmission and other infrastructure that would be needed for these proposed zones and be more
2 efficient by avoiding power losses from long-distance transmission.

3 **CONCLUDING ALLEGATIONS AND REQUEST FOR INJUNCTIVE RELIEF**

4 44. Respondents acted arbitrarily and capriciously, failed to proceed in accordance with the
5 law, and lacked substantial evidence to support their findings and decisions. On the basis of the record,
6 and based on public comments, there is a “fair argument” that Respondents’ approval of the GPA will
7 have a significant impact on biological resources, including rare, threatened, and endangered species.
8 Respondents’ approval of the Project is, therefore, subject to being set aside by a Writ of Mandate issued
9 by this Court. CCP §21168.5.

10 45. Petitioners have a clear, present, and beneficial right to the proper performance by the
11 Respondents of their duties as alleged herein. Petitioners are beneficially interested in the issuance of a
12 Writ of Mandate by virtue of the facts set forth previously, in that Petitioners and the general public will
13 otherwise be adversely affected by the actions of the Respondents herein challenged.

14 46. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of the law
15 other than the relief herein sought.

16 47. Petitioners are entitled to attorneys’ fees pursuant to Code of Civil Procedure §1021.5 in
17 that:

- 18
- 19 a. The successful disposition of this lawsuit will result in the enforcement of
20 important rights affecting the public interest and will confer significant benefits
21 upon the public or large class of persons. Petitioners seek to enforce provisions of
22 important state and local environmental and administrative laws for the benefit of
23 the public, and to rectify certain procedural improprieties which will benefit all
24 the future participants in the decision making process employed by the
25 Respondents;
- 26 b. The necessity and financial burden of private enforcement is such to make the award
27 appropriate; and
- 28 c. Such fees will not be paid out of any recovery.

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VERIFICATION

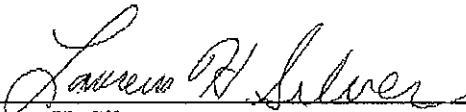
I, Laurens H. Silver, declare:

1. I am an attorney for the Petitioners, which have authorized me to make this verification on their behalf.

2. I have read the foregoing Petition for Writ of Mandate ("Petition") and know the contents thereof. I certify that the allegations contained in the Petition are true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true. I represented Sierra Club in connection with the matters set forth in this Petition, appeared through a letter to the Board of Supervisors in connection with this General Plan Amendment, on behalf of petitioner, Sierra Club, and have personal knowledge of the matters set forth in the Petition. I have represented Sierra Club since 1985 in matters pertaining to the groundwater resources and land use planning activities of Inyo County.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2011 at Richmond, CA.



Laurens H. Silver

CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



Exhibit A

Of Counsel

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May 25, 2011

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Re: Notice of Commencement of Action:
Center for Biological Diversity, Sierra Club v. County of Inyo

Dear Counsel and Clerks:

Please take notice that the attached Complaint-Petition in the case of Center for Biological Diversity and Sierra Club v. County of Inyo, et. al., is being filed in the Inyo County Superior Court on May 26, 2011. A copy of the Complaint-Petition is attached.

Larry Silver
California Environmental Law Project
Counsel for Petitioners-Plaintiffs, Sierra Club and Center for
Biological Diversity