

1 **BEFORE THE STATE ENVIRONMENTAL COMMISSION**

2 **STATE OF NEVADA**

3 In Re:)
4 Appeal of the Reclamation Permit for the)
5 Dayton Consolidated Exploration Project,)
6 Permit No. 0315, issued to Comstock Mining,)
7 Inc., by The Comstock Residents Association.)

**NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION'S
RESPONSE TO CRA'S OPENING
BRIEF, MOTION TO DISMISS APPEAL
AND WITNESS LIST**

8 The Nevada Division of Environmental Protection, Bureau of Mining Regulation,
9 Reclamation, and Bureau of Corrective Actions (collectively "NDEP"), by and through counsel,
10 Catherine Cortez Masto, Attorney General for the State of Nevada, Cassandra P. Joseph,
11 Deputy Attorney General, hereby responds to Comstock Residents Association's ("CRA")
12 Opening Brief. NDEP also moves to dismiss the instant appeal of the issuance of the
13 Reclamation Permit for the Dayton Consolidated Exploration Project, Permit No. 0315, to
14 Comstock Mining, Inc. ("CMI"). Finally, NDEP provides its witness list for the hearing set for
15 April 27, 2012.

16 **I. MOTION TO DISMISS THE APPEAL**

17 **A. The CRA Appeal Is Untimely**

18 As a threshold matter, the CRA's appeal must be dismissed because it is untimely.
19 Under NAC 445B.890, "[a]ny person requesting a hearing before the Commission concerning
20 a final decision of the Department may do so by filing a request, within 10 days after notice of
21 the action of the Department" NDEP issued Reclamation Permit No. 0315 on December
22 20, 2011. It wasn't until 49 days later, on February 8, 2012, that the CRA filed a Form #3
23 Request for an Appeal Hearing with the State Environmental Commission ("Form #3") for the
24 instant appeal—more than a month overdue. The CRA's Form #3 for the instant appeal
25 explicitly states that it is an appeal of Permit No. 0315. See Form #3 at section 4 ("Contested
26 Permit: Reclamation Permit # 0315"). The SEC unambiguously explains on its website that
27 "appeals not received timely will not be considered by the Commission." The SEC should
28 therefore dismiss the untimely appeal.

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1 B. Approval of the Sampling And Analysis Plan Is Not An Appealable Action

2 In an effort to avoid dismissal based on the untimely filing of the appeal, NDEP expects
3 that CRA will assert that it is appealing NDEP's original approval of CMI's Sampling and
4 Analysis Plan ("SAP") on January 31, 2012, rather than the Permit. This belies the plain
5 statements of the CRA on its Form #3 that it is contesting Permit No. 0315. See Form #3 at
6 section 4 ("Contested Permit: Reclamation Permit # 0315"). However, even assuming that
7 interpretation, the appeal must still be dismissed because approval of the SAP is not an
8 appealable action under the NRS or the NAC.

9 Under NAC 519A.415, "any person aggrieved by the issuance, denial, renewal,
10 suspension, modification, condition or revocation of a permit; or the issuance, modification or
11 rescission of any other order . . . may appeal to the Commission. Further, under NAC
12 445B.890, any person may request a hearing before the SEC concerning a "final decision."
13 The SAP is not a permit, order or final decision, and therefore is not appealable to the
14 Commission. NDEP is not aware of any occasion where the SEC has reviewed the approval
15 of a SAP.

16 The SAP is a guidance document which is subject to continual modification as NDEP
17 and CMI learn additional information about the Carson River Mercury Superfund Site
18 ("CRMS"). As CMI samples material pursuant to the SAP, valuable information relating to the
19 types and locations of the contaminants of concern (CoCs) within CRMS become available for
20 use by NDEP to outline the course of action allowed to CMI within the CRMS. The SAP has
21 already been amended several times since the January 31, 2012 version as a result of the
22 parties identifying new areas for sampling and establishing protective measures for operation
23 based on preliminary test results. Some of the amendments to the SAP have led to NDEP
24 requiring additional remedial measures by CMI, including placing six inches of cap soil in
25 some areas where exploration drilling will occur. NDEP-Bureau of Corrective Action (BCA)
26 and CMI regularly interact regarding the SAP, and as appropriate, amend the SAP to ensure
27 the ability for NDEP to immediately and appropriately regulate the activities conducted within
28 CRMS based on new information regarding the CoCs. Because the SAP is a flexible, working

1 document that typically undergoes routine amendment, the SAP is never a "final decision"
2 within the meaning of NAC 455B.890. If the SAP were deemed a "final decision," each time
3 the parties amended the working document to accomplish the goals set forth in the ROD and
4 LTSRP, namely to protect the public from contaminants released during historic Comstock
5 era mining and/or milling activities, the appeal process would be available to the public each
6 and every time. As a result, the SEC would be inundated with appeal notices and hearings
7 which would result in a backlog at the SEC and potentially delay projects for months or even
8 years. Such a ruling would also substantially interfere with BCA staff's ability to effectively
9 apply their technical expertise to the day-to-day business of NDEP, as they were hired to do.
10 This was certainly not the intent of NAC 519A.415 or NAC 445B.890.

11 Accordingly, the SEC should dismiss the instant appeal because it is either an appeal
12 of Reclamation Permit No. 0315, and therefore untimely; or it is an appeal of the approval of
13 the SAP, which is not an appealable action.

14 **II. RESPONSE TO CRA'S OPENING BRIEF**

15 If the SEC does not dismiss the CRA's appeal based on the arguments addressed
16 above, it should deny the appeal based on the CRA's failure to present any violation or error
17 by NDEP in approving the SAP. Before addressing the CRA's specific arguments relating to
18 the SAP, it is helpful to understand the rigorous sampling required of CMI under the SAP.

19 The SAP requires CMI to sample the soil in all areas within the CRMS risk boundary
20 that CMI intends to disturb, unless CMI provides evidence demonstrating that a particular
21 area has not been impacted by historic mining and/or milling activities and therefore should
22 not fall within the CRMS risk boundary. See SAP at pp. 9-10, 16.¹ To date, CMI has
23 provided no such evidence. This means that before CMI may conduct any exploration drilling
24 or any other disturbance, it must first take soil samples using the methods described in the
25 SAP, which generally call for CMI to take at least one five point composite sample per quarter
26 acre. See SAP at pp. 15-18. Although the exact number of samples under the SAP depends

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28 ¹ Because of the large size of the document, the SAP is not attached to this brief. However, the SAP and its associated
figures and maps are available by link on the NDEP website at <http://www.ndep.nv.gov/comstock/index.htm>.

1 on variables that are continuously changing, the SAP as originally approved on January 31,
2 2012 specified that CMI take more than 1440 samples, of which approximately 835 were
3 taken as of March 28, 2012. See SAP at pp. 27-28. Although the ROD only related to
4 residential development activities and only required sampling for mercury, the SAP requires
5 CMI to sample for mercury, lead and arsenic before engaging in its commercial/industrial
6 activities. See SAP at p. 6. Because the SAP exceeds the ROD in terms of the scope of
7 sampling and mitigation prior to any disturbances within the CRMS risk boundary, any
8 argument that NDEP erred in establishing sufficient protections for the health and safety of
9 the public fails.

10 Now turning to the CRA's specific arguments, the CRA's Form #3 alleges three distinct
11 arguments as follows: 1) "a public hearing should have been conducted to provide an
12 opportunity for the public to submit written and oral input" regarding the SAP; 2) "the
13 underlying archaeological survey and field review referenced in the SAP were not reviewed
14 for validity by NDEP staff;" and 3) "the SAP provides for the removal of certain areas of CMI
15 holding from the CRMS prior to testing." See Form #3 at section 5.

16 Because the CRA's opening brief goes well beyond the three issues contained in the
17 CRA's Form #3, the SEC should narrow the issues upon which testimony, if any, will be
18 received at the hearing. See NAC 445B.895 and 445B.8953. Those issues not addressed in
19 the Form #3 were not preserved on appeal, are not properly before this Commission, and
20 therefore should be dismissed outright, including the following arguments: 1) NDEP narrowed
21 CRMS boundaries; 2) the SAP excludes testing of "sediments;" 3) the SAP lacks air sampling;
22 and, 4) NDEP failed to protect historic resources. Nevertheless, none of those arguments
23 has merit, as is briefly addressed below. Therefore, in the event the SEC determines those
24 issues should not be dismissed outright for the CRA's failure to preserve them on appeal, the
25 SEC should deny the appeal on the merits of those arguments.

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1 A. Arguments Contained In The CRA's Form #3 Lack Merit

2 1. A Public Hearing Was Not Required Before Approving The SAP

3 In its Form #3, the CRA asserted that "a public hearing should have been conducted to
4 provide an opportunity for the public to submit written and oral input" regarding the SAP. See
5 Form #3 at section 5. The argument stated in CRA's Form #3 fails because a hearing is only
6 required if one is requested on an application for a permit. Under NAC 519A.195, NDEP
7 shall only schedule a public hearing "on an application for a *permit* if [a] person who is directly
8 affected by the application for a permit requests the hearing and the Division determines that
9 the request is reasonable and there is a significant degree of public interest in the matter, or
10 the Division deems it necessary." *Id.* Therefore, no hearing is required for a SAP. Further,
11 even if a hearing were afforded for a SAP to the same extent one is afforded for a permit,
12 NDEP was not required to hold a hearing for the SAP because the CRA never requested
13 such a hearing. At best, the CRA requested *more time* to provide comment.

14 Recognizing the deficiency in the argument stated in its Form #3, the CRA abandoned
15 that argument and instead argued in its brief that 30 days should have been provided to allow
16 the public a "meaningful opportunity to comment." CRA Opening Brief at p. 5. Even if the
17 argument raised in the CRA's opening brief had been preserved on appeal, it fails because
18 nothing in the statutes or regulations requires a 30 day review period for a SAP.

19 The CRA argues that under NAC 519A.185, NDEP must provide the public and
20 applicant with 30 days to comment on the *draft permit*. See CRA Opening Brief at p. 5. The
21 CRA does not dispute that NDEP allowed 30 days for review of draft Reclamation Permit No.
22 0315, that NDEP conducted a hearing regarding the Permit, and that NDEP responded to all
23 comments received regarding the Permit in compliance with NAC 519A.180, 519A.185 and
24 519A.210. Instead, the CRA asserts that NDEP did not provide the same public review
25 process for the SAP as it did for the Permit. However, the CRA fails to point to any authority
26 requiring the same public review process for a SAP as it does for a permit. None exists.

27 That the SAP was a condition to the Permit does not make the SAP subject to the
28 same public review process applicable to the Permit, just as conditions of bonding,

1 compliance with reporting or other regulatory obligations included by NDEP in permits do not
2 require NDEP to provide a public review process for those referenced obligations when they
3 become due. Such a requirement is unprecedented, and would substantially interfere with
4 the ability of NDEP to effectively regulate. That approval of the SAP was a condition to the
5 permit only demonstrates that NDEP was in fact providing additional protection for Nevada's
6 citizens which are not required under NAC Chapter 519A. Ironically, it is NDEP's additional
7 efforts to protect some of the very citizens who are now challenging NDEP on those efforts
8 that have led to this second appeal.

9 Moreover, even if public comment of the SAP was required, which NDEP disputes, the
10 public was in fact provided a meaningful opportunity to comment. The SAP was provided to
11 the CRA on January 7, 2012, and comments were initially required back within 7 days, but
12 upon request from the CRA and others, NDEP allowed an extra 4 days for comment.
13 Although the CRA insists that it was required to review more than 600 pages, only the first 28
14 pages of the SAP and an additional 30 associated figures are directly relevant to the sampling
15 areas and other sampling requirements. See SAP at pp. 1-28. The remaining 570 pages or
16 more constitute appendices related to laboratory data quality objectives, sample handling
17 procedures, and standard operating procedures (SOPs); McGinley and Associates SOPs
18 developed by the EPA, chain-of-custody forms, and sample labels; and McGinley and
19 Associates Health and Safety Plan. See SAP, Appendices A-E. None of the public comment
20 or the changes from NDEP regarding the SAP was directed at the appendices. In addition to
21 receiving written comments from three separate individuals, BCA staff also met with the CRA
22 Secretary Gayle Sherman on January 10, 2012 for approximately two hours to discuss the
23 SAP and requirements therein.

24 Despite the CRA's assertion that it was not provided any meaningful opportunity to
25 comment, the fact is that all of the comments raised by the CRA to date—more than two
26 months since the SAP was made available—are the same comments raised within the 11 day
27 period provided by NDEP in January. Therefore, the CRA's argument that it did not have time
28 for meaningful comment is dubious.

1 NDEP not only considered all of the public comments received, but also incorporated a
2 number of substantive comments into the SAP, which led to changes such as an expansion
3 of the areas for sampling to include processing areas and required the characterization of
4 areas CRA identified as being disturbed. This hardly constitutes a lack of meaningful input.
5 Even CRA Secretary Gayle Sherman recognized in her January 17th letter to BCA's Jeff
6 Collins that NDEP had made "obvious efforts [] to address the concerns of the [affected]
7 communities" and thanked him and other BCA staff for their "efforts to provide a balanced
8 regulatory oversight of the proposed mining activities" in the CRMS. See Exhibit 1.

9 NDEP was not required by law to make the SAP available for comment or accept and
10 incorporate comment from the public, but did so as a courtesy and to obtain valuable public
11 input, which it did. Simply because NDEP allowed public comment does not mean NDEP
12 was required to do so under the law. Thus, the SEC must deny the CRA's appeal on
13 this basis.

14 2. The CRA's Assertion Regarding CMI's Archaeological Survey Forming The 15 Basis For CRMS Boundaries Is Erroneous

16 The CRA states the following in its Form #3:

17 The SAP is an important standard that identifies the areas on CMI
18 property in the CRMS that will be tested for toxic substances
19 based on archaeological locations of mines and mills. However,
20 the underlying archeological survey and field review referenced in
21 the SAP were not reviewed for validity by NDEP staff.

22 See Form #3 at section 5.

23 The CRA alleges that an archaeological study done by CMI was the basis for the
24 boundaries of the CRMS identified in the SAP. This assertion is erroneous. The boundaries
25 set forth in the SAP are risk area boundaries established by BCA staff based on studies
26 conducted by the EPA, NDEP and other organizations stemming back to at least 1993. None
27 of the risk area boundaries set forth in the SAP is derived from studies conducted by CMI. As
28 addressed below, while the SAP does allow for CMI to provide BCA with evidence of
undisturbed land for BCA's consideration of whether or not the area should in fact be included
within the CRMS boundary, to date CMI has provided no such evidence. Thus, the risk area

1 boundaries contained in the SAP are those boundaries designated by BCA based on several
2 studies of the area.

3 3. Historically Undisturbed Areas Are Not Part Of The CRMS To Begin With,
4 So The CRA's Characterization Of Those Areas As Being "Removed" From
CRMS Is Flawed

5 Preliminarily, it is important to understand that the goal of the ROD and LTSRP was to
6 identify areas of contamination from historical mining and/or milling. Undisturbed virgin land
7 that has clearly not been disturbed by historical mining and/or milling does not fall within the
8 threat of contamination from historic mining and/or milling activities. Accordingly, those
9 undisturbed areas, by definition, fall outside the CRMS boundary.

10 The CRA argues that the SAP allows CMI to "remove" sites from the CRMS boundary
11 without any sampling. Form #3 at section 5; CRA Opening Brief at p. 8. This is inaccurate.
12 What is true is that if NDEP receives sufficient evidence demonstrating that the *risk area*
13 *boundaries* it identified as likely to be included in the CRMS site should be narrowed, then
14 NDEP will narrow the risk area boundaries based on that evidence. The same is true if NDEP
15 receives evidence demonstrating that areas not presently included within the risk area
16 boundaries should be included. In other words, NDEP is still fine tuning where CRMS
17 boundaries are located. NDEP cannot ignore evidence that will assist NDEP and EPA in
18 more precisely identifying areas of contamination. To do so would only be a disservice to the
19 public. Therefore, the SAP allows for refined risk area boundaries—either removal or addition
20 of areas—based on evidence supporting that a specific area is or is not contaminated by
21 historic mining and/or milling activities.

22 In its opening brief, the CRA further argues that "in some instances known locations for
23 mill sites are excluded from testing because there is finding of no mill site foundations or
24 disturbance." CRA Opening Brief at p. 7. This assertion is simply false. Each of the mill sites
25 identified in the CRA's brief is within the CRMS boundary as set forth in the SAP. See SAP
26 Figures 17, 18, 21, 22, 25. The mill sites referenced in the CRA's brief are not identified for
27 sampling only because CMI has not indicated that it intends to conduct any activity in those
28 areas. *Id.* NDEP cannot require CMI to sample areas on its private land that it does not

1 intend to disturb. However, if CMI were to propose any activity in those areas, including any
2 exploration drilling, under the procedures set forth in the SAP, CMI would first need to
3 conduct sampling of those areas because each of those mill sites is included within the
4 CRMS risk area boundary. The CRA's assertions are incorrect, and therefore the SEC must
5 deny the CRA's appeal on this basis.

6 B. Arguments Not Contained In The CRA's Form #3 Likewise Lack Merit

7 Although the following arguments are not contained in the CRA's Form #3, NDEP
8 briefly addresses them below to show that they also lack merit

9 1. NDEP Has Established Risk Area Boundaries And Is Working To Identify
10 The CRMS Boundaries

11 The ROD and LTSRP only identified very general areas believed to have
12 contamination from historic mining. The EPA tasked BCA with identifying more specific
13 boundaries of contamination to better assist with managing the CRMS. BCA identified risk
14 area boundaries based on a thorough analysis of several studies conducted by EPA, NDEP
15 and other agencies as well as considerable independent historical research and Geographic
16 Information System (GIS) analysis of that information. BCA identified risk area boundaries
17 that it determined were most likely to harbor contamination. However, as discussed above,
18 BCA will willingly accept evidence that its risk area boundaries do not exactly track the
19 contaminated areas that make up the CRMS boundaries, and has provided room for
20 amendment of those risk area boundaries based on substantial evidence. See SAP at p. 16,
21 parag. 1. The EPA has approved BCA's approach to refining the CRMS boundaries as being
22 consistent with the objectives of the ROD and LTSRP, and EPA will further be involved in any
23 decision regarding the inclusion or exclusion of a particular area from the CRMS boundary.
24 Therefore, BCA's refinement of the contaminated areas is wholly consistent with the ROD
25 and LTSRP.

26 2. The SAP Does Not Include Testing of "Sediments" Because CMI Did Not
27 Propose To Disturb Any Sediment.

28 The only reason the SAP did not include the testing of sediments, i.e. river beds and
streams, is because CMI did not propose any disturbance to sediments. In other words, CMI
did not propose to do any exploration or other activity in those areas. However, to the extent

1 CMI proposes any disturbance whatsoever to sediments, including drilling or non-drilling
2 activities such as construction, the SAP requires CMI to conduct sampling before such a
3 disturbance. Further, if CoCs are found, CMI will be required to take remedial and/or
4 mitigative measures as part of any disturbance.

5 C. Air Sampling May Be Included As Part of the Remedial And/Or Mitigative
6 Measures Addressed By The SAP

7 The SAP requires that CMI take remedial and/or mitigative measures when it will
8 disturb areas determined to contain CoCs at levels which exceed current screening/action
9 level amounts. See SAP at p. 26. Air sampling may be included as part of those
10 remedial/mitigative measures if deemed appropriate. For example, if CMI disturbs an area
11 that is determined to contain CoCs, depending on the proposed activity and the level of CoCs
12 found in that area, CMI may be required to take action to control dust and conduct air
13 sampling. Therefore, the CRA's assertion that air sampling is not part of the SAP is not true.
14 What is true is that air sampling is not required as part of soil sampling. This is because the
15 human health risk assessment studies conducted by the EPA that led to the ROD established
16 that while ingestion of CoCs did present a potential health risk for small children, that
17 inhalation of airborne contaminants did not appear to be a human health exposure pathway of
18 concern. Therefore, the limited disturbance as a result of sampling does not fall within the
19 risk factors found to apply by the EPA.

20 D. NDEP Does Not Have Jurisdiction Over The Preservation Of Historic Resources

21 The CRA's arguments in its opening brief regarding the historic and archaeological
22 resources are misplaced, because the preservation of historic resources is based in federal
23 law that is not implicated by CMI's commercial mining activities. As such, NDEP lacks
24 jurisdiction to regulate CMI's preservation activities.

25 Section 106 of the National Historic Preservation Act ("Section 106") requires *federal*
26 *agencies* to take into account the effects of federally assisted undertakings on historic
27 properties in consultation with the Advisory Council for Historic Preservation. 16 U.S.C. 470,
28 et seq. In the case of CMI's activities within CRMS, no federal "undertaking" has occurred
and therefore Section 106 does not apply. The federal action with respect to the CRMS is the

1 issuance of the ROD, and because the ROD only addresses residential activities—not the
2 commercial activities conducted by CMI on its private land—Section 106 is not implicated.
3 Nevada’s State Historic Preservation Office has met with NDEP and EPA and confirmed that
4 the absence of a finding of an “undertaking” with respect to the activities conducted by CMI on
5 its private land means those activities fall outside the purview of Section 106. As such, BCA
6 lacks authority to regulate CMI’s preservation activities. However, it is worth noting that
7 preservation is occurring under the Storey County Special Use Permit, which contains special
8 provisions directly related to the preservation and protection of cultural resources. See
9 Exhibit 2 at p. 10, sections 5.7, 5.8 and 5.9 and p. 28, sections. 21-24.

10 **III. CONCLUSION**

11 In sum, the SEC should dismiss this appeal because it is either an untimely appeal of
12 Reclamation Permit No. 0315, or it is an appeal of a non-appealable action, namely approval
13 of a SAP. Further, none of the three arguments raised in the CRA’s Form #3 supports a
14 finding by the SEC of any error by NDEP in approving the SAP. Because the CRA failed to
15 preserve the remaining arguments on appeal when it failed to raise those arguments in its
16 Form #3, the SEC should dismiss the remaining arguments outright. Nevertheless, the new
17 arguments raised in CRA’s opening brief are likewise meritless and cannot support a finding
18 of error by NDEP.

19 For the foregoing reasons, NDEP respectfully requests that the appeal be dismissed.
20 Should the SEC entertain an evidentiary hearing on this matter, NDEP requests that the
21 CRA’s appeal be limited to the three specific allegations set forth in Form #3, as
22 addressed above.

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1 **IV. WITNESS LIST**

2 NDEP provides the following witness list for the Hearing scheduled for April 27, 2012:

- 3 1. Jeff Collins
4 2. Jack Yates
5 3. Bruce Holmgren
6 4. Gayle Sherman
7 5. Any witnesses listed or called by CRA
8 6. Any witnesses that may become necessary for impeachment and/or rebuttal.

9 DATED this 4th day of April 2012.

10 CATHERINE CORTAZ MASTO
11 Attorney General

12 By: 

13 CASSANDRA P. JOSEPH
14 Deputy Attorney General
15 100 North Carson Street
16 Carson City, NV 89701

17 Attorneys for the State of Nevada
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 4th day of April 2012, I emailed and deposited for mailing a true and correct copy of the foregoing **NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S RESPONSE TO CRA'S OPENING BRIEF, MOTION TO DISMISS APPEAL AND WITNESS LIST** via United States Postal Service in Carson City, Nevada, by first class mail, postage prepaid, to the following:

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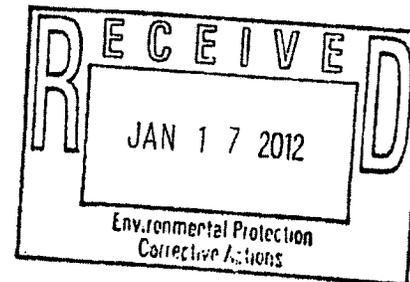
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EXHIBIT 1

EXHIBIT 1

Jeff Collins
Program Coordinator for Bureau of Corrective Actions
Nevada Department of Environmental Protection
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January 17, 2011

Re: Comments on the January 6, 2012 Draft Sampling and Analysis Plan (SAP) For the Carson River Mercury Superfund Site

Dear Mr. Collins,

I want to thank you for the opportunity to provide comments regarding the above referenced plan. As you know, many citizens of the Comstock are very concerned about the impact of Comstock Mining Inc.'s activities on the health and welfare of our families, friends and neighbors.

I am impressed with the overall clarity and detail contained in the SAP as well as the obvious efforts made to address the concerns of the communities of Virginia City, Gold Hill and Silver City. I also want to thank you and Jack Yates for all of your efforts to provide a balanced regulatory oversight of the proposed mining activities in residential areas of the Carson River Superfund site.

Residents of Silver City, Gold Hill, Virginia City and Dayton met to discuss the plan and provide the following comments for your consideration:

Section 2.1 Sampling Area Description

General Comments

It is unclear from the SAP how the areas to be tested or not tested were identified. Although the report states "The scope of the sampling applies to areas of the Site where historic disturbance has been documented by archaeological verification and aerial photo analysis", the EPA's Five Year Review Report (September 30, 2008) found that the CRMS boundaries are not well defined.

The plans for a NDEP sponsored comprehensive archaeological inventory of all Comstock era mill sites as outlined in the EAP bulletin of April 2011 would be a welcome definition of boundaries. If this EPA sponsored inventory was not the basis for the scope of the sampling area in the SAP, there are valid concerns on the part of the residents who live in the Superfund site, that the "archeological inventory" referenced in the SAP is establishing parameters of the Superfund site without the ability of the public or the EPA to review and validate the inventory findings.

In the SAP, Figure 6 identifies in green, areas outside of the CRMS zone. The SAP also provides for the removal of these areas from the CRMS. Without a thorough archeological inventory sponsored by NDEP, the removal of these areas is premature. From 2008 to the present the number of known mill sites increased from 50 to over 250. A comprehensive archaeological inventory of all Comstock era mill sites as proposed by NDEP and as referenced above, including precise geographic locations, physical remains and process history is needed prior to the removal of any areas within the CRMS.

2. Currently used areas (roads, drill pads and other generally disturbed areas used by which will undergo surface sampling to verify COC levels are acceptable for workers and adjacent residents due to dust and direct contact.

Comments

There are areas identified by the SAP as potential contaminant zones, currently used by CMI that are not included as areas to be sampled. CMI engaged in exploratory drilling/mining/milling activities that disturbed significant amounts of soil in the following areas:

- Directly behind the Gold Hill Hotel. A mill site is also located in this area.
- CMI's American Flat Mill. It should be noted that the mill site is located in a potential contaminants zone. The construction of the mill may have released COCs into the environment. This was the processing site for all of the ore removed from the Lucerne/Billie the Kid pit. Since the ore was deposited at the mill site for processing, and may have been a source of COCs, sample testing should be required to determine the contaminant exposure to residents of the area, who live downwind of the mill site. Currently, there is a draft Air Pollution Control Permit issued by NDEP which will allow the expansion of the mill site. Sample testing should be required as a condition of this permit.
- It appears that waste from the excavation of the Lucerne pit was dumped in the area in Storey County on the east side of Highway 342, north of Devils Gate. This area was excavated extensively by CMI in the past year. Drill pads, roads and bore holes all were constructed in 2011. Because the disturbed area is identified as a potential contaminant zone, sample testing should be performed. The sample testing should include vertical testing down to native soils due to the fact that material was transported and used as fill from unknown sources which may have an effect on the accuracy of the samples taken.
- At the Dayton Mill Site in Silver City, not all areas that were disturbed either historically or recently are slated for sampling. A review of the aerial photograph in figure 25, reveals areas of disturbance that are not included in the sampling plan.

In addition, in this section it states that the "areas to be assessed" will be based on the data collected from the areas to be sampled. This brings the validity of the sampling plan into question as it is not clear what evidence was used to determine the sampling areas.

3. Known historic tailings areas that Comstock will agree to process during its operations

Comments

The SAP states that no areas outside the Hartford/Lucerne Pit have been identified for reprocessing. There are many, many tailing piles in the area outlined in the SAP. Why is the reprocessing limited to the Hartford/Lucerne Pit?

4. Areas which will not require sampling because they are in an undisturbed condition.

Comments

Because of the vast area of the Superfund site, extending from the Comstock to Moundhouse to the Stillwater area east of Fallon, careful oversight of the development of criteria that determines areas where COCs are found, is essential. In this SAP, it appears that the reduction of the CRMS boundaries is a byproduct of CMI's sampling plan, not just for sample areas that test below the levels of contamination for residential areas, but also for other large areas that are determined by the CMI consultant to not contain COCs based on information that is not available to the public.

The SAP states that the areas that are undisturbed are based on Figure 1 and 2 of the CRMS site, contained in the LTSRP and also on verification from the review of historic aerial photographs and field verification performed by CMI. An independent archeological review and field verification needs be the basis for this exclusion of sampling areas. CMI is in effect, determining Superfund site boundaries based on undisclosed information. It appears that Superfund site boundaries are being determined by the mining company that would most benefit

from the exclusion.

6. Areas which may have been affected by fluvial redistribution of COCs will be sampled.

Comments

- It appears that waste from the excavation of the Lucerne pit was dumped in the stream bed on the east of Highway 342, just north of Devils Gate. On May 11, 2011, NDEP issued a cease and desist letter to CMI, for introducing pollutants into the stream bed at this location. It is a concern that COCs were released into the waterway as a result of this activity. Per the SAP, the stream bed should be sampled.
- The SAP incorrectly assumes that the quantity and distribution of COCs in alluvial sediment depends completely upon proximity to documented historic COC sources. Proximity to original sources is obviously important, but factors such as stream flow, gradient, other geological processes, and accumulation from additional upstream sources can result in COC concentrations considerably distant from the original sources. An additional problem is the assumption that all the historic COC sources have been documented, or are identified through archaeological field investigation. This is not true. To protect all downstream areas, all waterways on CMI property within the Superfund site should be sample tested for toxicity and if found to contain COCs, mitigation should be required.
- The EPA's 2003 Five year review of the Carson River Superfund site identified the need for flood protection and monitoring as storm events may result in the transport of COCs downstream. Recent well documented flood events occurred in February 1986, January 1997 and January 2006. It is a concern that CMI's exploration, excavation and mining activities will release contaminants that travel downstream as a consequence of future storm events. In section 2.3 of the SAP it states areas likely to have the highest levels of COCs include former mill sites and associated drainage pathways down-gradient of mill sites as well as within the Carson River System itself. This confirms the need for downstream testing

8. Where access is permitted, specific residential areas will be tested.

Comments

It is unclear which residential areas will be tested. How will the residents be informed of this? A protocol is needed for the inclusion of residential properties which have already been affected by CMI ground disturbance activities and for properties that may be affected by CMI ground disturbance activities in the future. The exploration activities at the Dayton Mill Site and on the east side of Highway 342 north of Devils Gate, generated significant quantities of airborne dust and particulate that was deposited on private property.

Section 4. Sampling Rationale

Comments

The sampling rationale is based on data and information that is referred to but not included in the SAP. Assumptions are made based on whether there is evidence of disturbance or not according to the unavailable information. In some instances known locations for mill sites are excluded from testing because there is a finding of no mill site foundations or disturbance. The mill sites not included for any of the sampling are:

- Stuart/Kilpatrick Mill site (figure 16)
- Empire Mill site (figure 16)
- Seals Mill site (figure 17)
- Alpha Mill site (figure 20)
- Ramsell Mill site (figure 20)
- Succor Mill site (figure 20)

Globe and Lindsay Mill site (figure 21)
Bartola Mill Site (figure 24)

Although the Alpha, Ramsell and Succor are in the sampling area associated with the Lucerne Pit, the density of the sampling is very sparse as compared to other sample areas. In addition, the testing grid at the Dayton Mill site (figure 25) excludes areas with obvious disturbance located in the southwest corner of the mill site. All of these known historic mill sites are part of the CRMS and are identified by NDEP and EPA as high risk potential sources of COCs. Sampling should be required at these sites.

4.2 Soil Sampling

Comments

It is not clear from the SAP why areas are only tested to a depth of 2 feet. The testing should be required to a depth where native soil is encountered, particularly in areas that have been disturbed historically or more recently by CMI mining/exploration activities and in areas where the surface has been disturbed or will be disturbed to a depth greater than 2 feet.

4.3 Sediment Sampling

Comments

It is not apparent from the SAP why sediment sampling is not included in this SAP. This appears to be in conflict with Section 2.5 which states "episodic flooding and fluvial deposition have produced areas with high COCs levels which represent hot spots within a wider area of possible contamination." Why is sediment not included in the sampling?

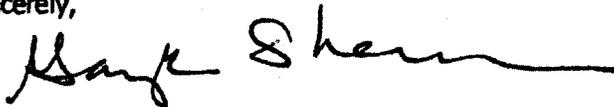
Ingestion by Inhalation

The exclusion of air testing is not explained in the SAP. Ingestion by inhalation of COC contaminated soil is not addressed. CMI activities is likely to disperse contaminate laden dust negatively impacting the health and welfare of the community. Air testing should be a part of the SAP.

If you have any questions concerning the comments provided, please call me at 775-315-0668, or e-mail me at gales@qbis.com.

Once again, thank you for taking our concerns into consideration.

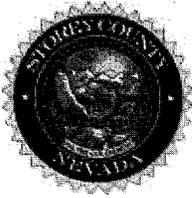
Sincerely,



Gayle Sherman

EXHIBIT 2

EXHIBIT 2



Board of Storey County Commissioners

October 4, 2011
Staff Report

CASE NO.: 2011-016

APPLICANT: Plum Mining Co., LLC & Comstock Mining, Inc.

PROPERTY OWNER: Plum Mining Co., LLC & Comstock Mining, Inc.

PROPERTY DESCRIPTION:
Portions of American Flat and Lower Gold Hill, including:
Portions of the SE $\frac{1}{4}$, S1, T16N, R20E;
Portions of the NE $\frac{1}{4}$, S12, T16N, R20E;
Portions of the S $\frac{1}{2}$, S6, T16N, R21E;
Portions of the S $\frac{1}{2}$, S5, T16N, R21E;
Portions of the E $\frac{1}{2}$, S7, T16N, R21E within Storey County;
Portions of the W $\frac{1}{2}$, S7, T16N, R21E within Storey County;
Portions of the N $\frac{1}{2}$, S8, T16N, R21E within Storey County;
Portions of the SW $\frac{1}{4}$, S8, T16N, R21E within Storey County;
All in the Mount Diablo Baseline and Meridian.

REQUEST: Request for special use permit to conduct bore-hole method mineral exploration activities on approximately 2,500 acres in portions of lower Gold Hill and American Flat, Storey County.

MEETING LOCATION: Storey County Courthouse
26 South "B" Street, Virginia City, Nevada

MEETING TIME: 2:00 p.m.

I. KEY DEFINITIONS

- 1.1 **Development Drilling**: Delineation of the size, mineral content, and disposition of an ore body by drilling boreholes.
- 1.2 **Exploratory Project**: All activities conducted by a person on or beneath the surface of land for the purpose of, or in connection with, determining the presence, location, extent, depth or grade of any mineral, which affects the surface.
- 1.3 **Lode Claim**: Hard-rock mining claims that include veins or “lodes” having well defined boundaries. They also include other rock in place bearing valuable minerals and may be broad zone of mineralized rock.
- 1.4 **Mineral Rights**: Ownership of a mineral estate. It is the right of the owner to exploit, mine, and/or produce any or all of the minerals lying below the surface of the property.
- 1.5 **Patented Claim**: A mining claim for which the federal government has passed its title to a claimant, making it private land. A person may mine and remove minerals from a mining claim without a mineral patent; however, a mineral patent gives the owner exclusive title to the locatable minerals. In most cases, it also gives the owner title certain rights to the surface and other resources.
- 1.6 **Placer Claim**: Unconsolidated materials mining claims, such as sand and gravel, containing free gold or other minerals. By Congressional acts and judicial interpretation, many nonmetallic bedded or layered deposits, such as gypsum and high calcium limestone, are also considered placer deposits.
- 1.7 **Reclamation**: Actions performed during or after exploration project or mining operation to shape, stabilize, re-vegetate or otherwise treat the land in order to return it to a safe, stable condition consistent with the establishment of a productive post-mining use of the land and the abandonment of a facility in a manner which ensures the public safety, as well as the encouragement of techniques which minimize the adverse visual effects.
- 1.8 **Surface Rights**. Ownership of a surface estate. It is the “surface” of the estate which has been separated from the mineral estate, known as a “split-estate” arrangement. Exploitation, mining, and/or production of minerals from the mineral estate shall not negatively impact the surface, i.e., cause subsidence or destabilization of the surface estate.
- 1.9 **Unpatented Claim**: A mining claim located on land owned by the federal government for which an individual has asserted a right of mineral possession. The right is restricted to the extraction and development of a mineral deposit.

II. SCOPE OF SPECIAL USE PERMIT

2.1 SUP No. 2011-016 (Exploration). Special Use Permit Application No. 2011-016 applicable to this staff report and the recommended motion included herein is for mineral exploration as discussed in this report. This SUP application does not include provisions for mining. The geographic scope of the submitted application and this staff report is illustrated in Figures 1 and 2 below and enclosed Exhibits B and C. The area applicable to SUP Application No. 2011-016 will hereinafter be referred to as the “**Exploration Area**”.

2.2 SUP No. 2000-222-A-1 (Mining & Exploration). For the purposes of understanding key components of the following discussion and recommended motion, it is important to note that an approval of SUP No. 2011-016 (see 2.1 above) for mineral exploration will not override, reduce the scope of, nullify, or otherwise affect any portion of the approved operations under SUP No. 2000-222-A-1 approved by the Board of Storey County Commissioners, with recommendation by the planning commission, in the year 2004. The area applicable to the 2004 SUP approval will hereinafter be referred to as the “**Permitted Mining Area**”.

III. BACKGROUND:

3.1 Plum & Comstock Mining History: Information contained in the following table shows a history of applications, permits, and activities associated with Plum Mining and Comstock Mining, Inc.

Date	Company Name	Permit Action	Project Description	Action
6/7/2011	Plum/Comstock Mining Inc.	Application No. 2011-016	Mineral Exploration Registration requirement fulfilled by submittal of SUP Application (§17.92.060)	Active until SUP approval or denial
6/2/2011	Plum/Comstock Mining, Inc.	Application No. 2011-016	Mineral Exploration	Pending PC Hearing
5/17/2011	Plum/Comstock Mining, Inc.	Application No. 2011-016	Mineral Exploration	Received
4/1/2004	Plum Mining	SUP 2000-222A1	Minor modification of SUP 2000-222	Approval PC-4/1/2004
3/22/2004	Plum Mining	Application	Minor modification of SUP 2000-222	Received
12/18/2003	Plum Mining	SUP 2000-222A	Modification of SUP 2000-222	Approval PC-12/18/2003 CC-1/20/2004
12/6/2003	Plum Mining	Application	Modification of SUP 2000-222	Received
3/10/2003	Comstock Gold LLC	Application	No SUP not with 1000' of a resident/exploratory drill	N/A
9/20/2001	Plum Mining	SUP 2002-249	Reverse Circulation Exploration Drilling Program	Approval PC 9/20/2001
9/20/2001	Plum Mining	Application	Reverse Circulation Exploration Drilling Program	Received
3/1/2001	Plum Mining	SUP 2001-237	Exploration drilling	Approval PC-3/1/2001 CC-3/32001
2/12/2001	Plum Mining	Application	Exploration drilling	Received

11/4/1999	Plum Mining	SUP 2000-222	Mine, mill and process ore in open pit	Approval PC-11/4/99 CC-12/7/99
10/14/1999	Plum Mining	Application	Mine, mill and process ore in open pit	Received

3.2 History of Mining Area: Information contained in the following table shows a history of applications, permits, and activities that are associated with mining and exploration at and around the Lucerne Pit area by various companies existing prior to Plum Mining and Comstock Mining, Inc. The information and activities shown below are not associated with Plum Mining or Comstock Mining, Inc. and are provided for the purpose of providing extended history of the project.

Date	Company Name	Permit Action	Project Description	Action
3/9/1993	Oliver Hills/BMR Gold/Rea Gold	Application	Expansion	Received
11/7/1991	Oliver Hills Mining	SUP 1992-045	Exploration drilling in Gold Hill	11/7/91 PC approval
10/16/1991	Oliver Hills Mining	Application	Exploration drilling in Gold Hill	Received
6/18/1991	Oliver Hills Mining	SUP 1991-025	Open pit mining removal of ore	Approval PC-6/6/91 CC-6/18/91
6/7/1991	Oliver Hills Mining	SUP 1991-025	Reduction of bond	CC-approved
5/2/1991	Oliver Hills Mining	SUP 1991-025	Open pit mining removal of ore	PC-continued
4/15/1991	Oliver Hills Mining	Application	Open pit mining removal of ore	Received
2/11/1991	BMR Gold	Application	Exploration drilling in Gold Hill	Received
8/2/1990	Oliver Hills Mining	SUP 1991-001	Continuation Lucerne Pit Ore Removal property ownership changes	PC-passed unanimously
7/3/1990	Oliver Hills Mining	Application	Continuation Lucerne Pit Ore Removal property ownership changes	Received
2/15/1990	Oliver Hills Mining	SUP 1990-009	Continuation Lucerne Pit Ore Removal	Application
3/8/1990	Oliver Hills Mining	SUP 1990-009	Continuation Lucerne Pit Ore Removal	PC-passed unanimously
5/15/1989	Oliver Hills Mining	Approval Letter	Lucerne Pit low grade ore to Haywood Facility	CC-Approved
2/17/1989	Oliver Hills Mining	Application	Lucerne Pit low grade ore to Haywood Facility	Received
6/10/1981	Houston International & Minerals Corp	SUP2-81	Haul Dump Material to American Flat Mill	Approved PC 6/10/81 CC 7/1/81
1/8/1981	Houston International & Minerals Corp	Item #11	Extract/Mine Lucerne Dump material, haul to mill	Accepted w/conditions
11/26/1980	Houston International & Minerals Corp	Special Meeting	Lucerne Dump Committee	More details to be furnished
11/18/1980	Houston International & Minerals Corp	Special Meeting	Lucerne Dump Committee – Conditions Agreed upon	More information/reports required
11/12/1980	Houston International & Minerals Corp	Agenda Item #II	Extract/Mine Lucerne Dump material, haul to mill	Tabled

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9/23/1980	Houston International & Minerals Corp	Application	Extract/Mine Lucerne Dump material, haul to mill	Received
8/23/1978	Houston Oil & Mineral Corp	Item #7	Extracting ore/milling-open pit & underground in Forestry Zone	PC approved with stipulations
8/3/1978	Houston Oil & Mineral Corp	Application	Extracting ore/milling-open pit & underground in Forestry Zone	Received

IV. PROJECT DESCRIPTION

4.1 Activity Type. Mineral exploration operations will include reverse circulation drilling, core drilling, and shallow soil auger drilling (see illustrations in Figure 3). These activities will be supported by ancillary uses, such as sump development and necessary road construction or reconstruction.

4.2 Activity Size. Drill holes will be completed by reverse circulation and core drill rigs (see Figure 3). The drill holes will be a combination of vertical and angle holes occasionally positioned onto a single drill pad optimizing the drill pad and minimizing the disturbance. Drill hole mud collection sumps will be constructed at each drill pad to contain drill cuttings and water discharge during the drilling operations. Drill holes will be plugged and sealed as per the Nevada State Engineer's Office requirements and the Nevada Administrative Code. Developed roads and drill pads will be reclaimed after the exploration drilling operation is concluded. Drill pads are typically 45 feet by 75 feet and will vary depending on the specific location and topography. The depth of the drill holes will vary between 100 feet and 1,500 feet, with the average depth approximately 600 feet. During a drilling campaign several drill pads and sumps will be constructed to efficiently conduct the program. In this manner the scheduling matches the site preparation with the drill activities. For example, with four drill rigs running during a drill program, pad and sump construction would be on-going to stay ahead of the drill activity.

4.3 General Location. The location and scope of the proposed project is illustrated in Figures 1 and 2 of this report. Private land currently covered by the Plum Mining Company Reclamation Permit No. 0196 is bonded and limited to the boundary of the Reclamation Permit (see NDEP Permit boundary also in Figures 1 and 2). Outside the Permit No. 0196 boundary, exploration activities will be in accordance with the NDEP - Bureau of Mine Regulation and Reclamation regulations. The mineral evaluation/assessment drill program on federal land will be under a Notice Level Operation and will have a total disturbance of less than five acres at any given time. The five acres Notice Level Operating Permit will be a rolling five acres, whereupon reclamation of a location on the federal land, the acreage disturbed will be accounted for and signed-off as being reclaimed when compliance criteria is met. At which time the acreage will be recalculated to include only the active working areas where reclamation has not been completed. The Applicant holds several active mining claims in Storey County, where limited drilling will occur. Activities will include drilling and construction of access roads, drill pads, and sumps.

4.4 Type of Equipment Used. Core drills, auger drills, and reverse circulation drill rigs, including track mounted and truck support vehicles will be utilized in the exploration process. Dozers (16 foot wide blade), graders (14 foot wide blade), backhoes, track hoes, water trucks, pipe trucks, skidders, pickups, and other similar equipment will also be utilized.

4.5 Property Status. Comstock Mining’s property rights for mining and mineral exploration consists of several mineral leases, with numerous unpatented and patented mineral claims, and fee ownership of real property. Exhibit C includes a map showing all holdings, those applicable and not applicable to this SUP request, by the Applicant. As discussed briefly in Section II above, the entire project, including operations currently under SUP No. 2000-222-A-1, consists of the company’s headquarters, mining operations, mineral exploration, and a heap-leach processing facility. In addition to existing operations, the Applicant controls approximately 212 unpatented Lode mining claims in Storey and Lyon Counties. The claims were staked by the applicant company or its predecessors. The adjacent Spring Valley Gold Canyon Placers Project consists of 25 unpatented Placer mining claims in Lyon County, which were staked by the applicant company or its predecessors. Only a fraction of these claims are under the scope of the special use permit applicable to this request.

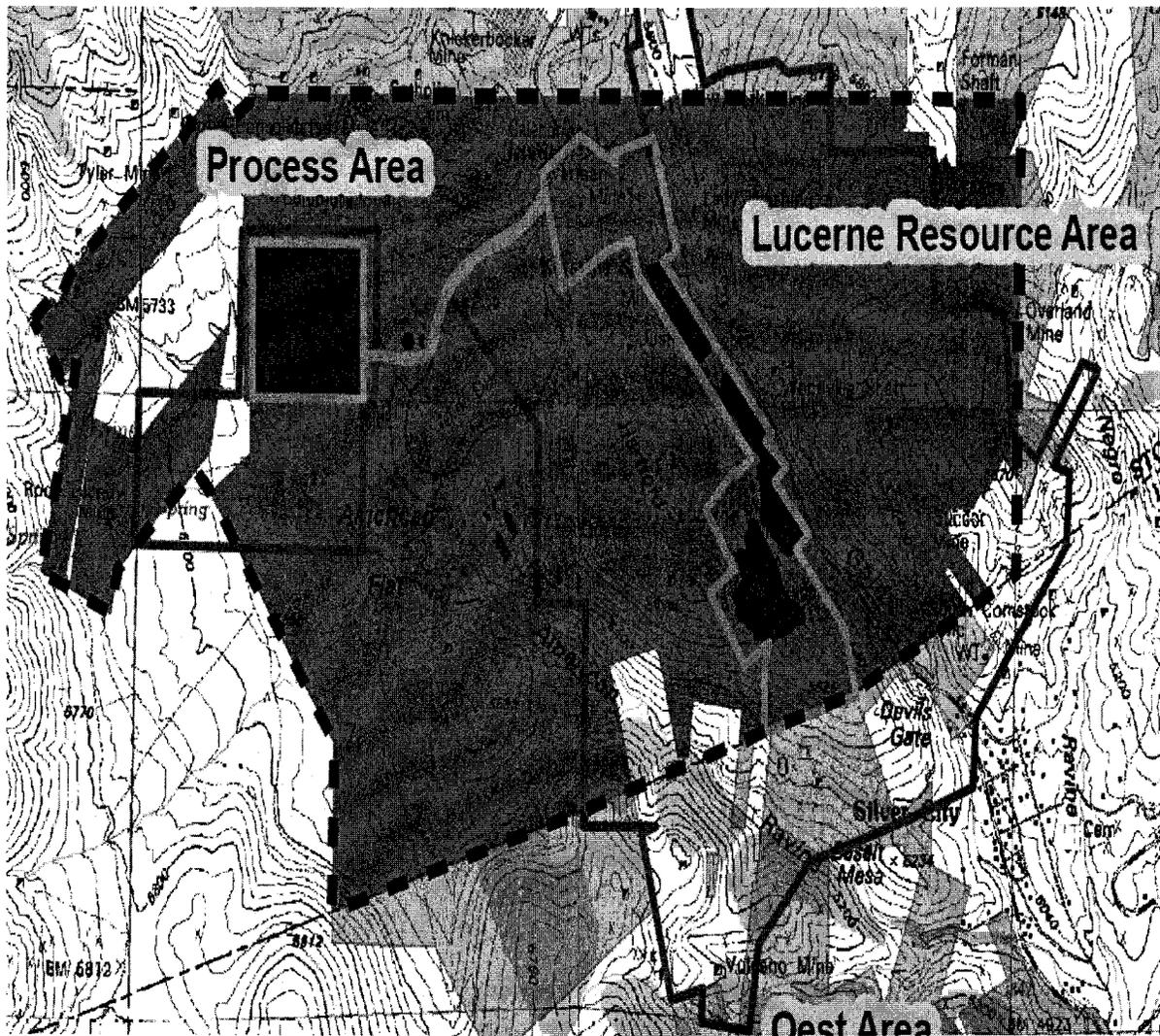


Figure 1: The image above serves to magnify the proposed mineral exploration area shown in Figure 2 below. Legend in Figure 2 applies to both images.

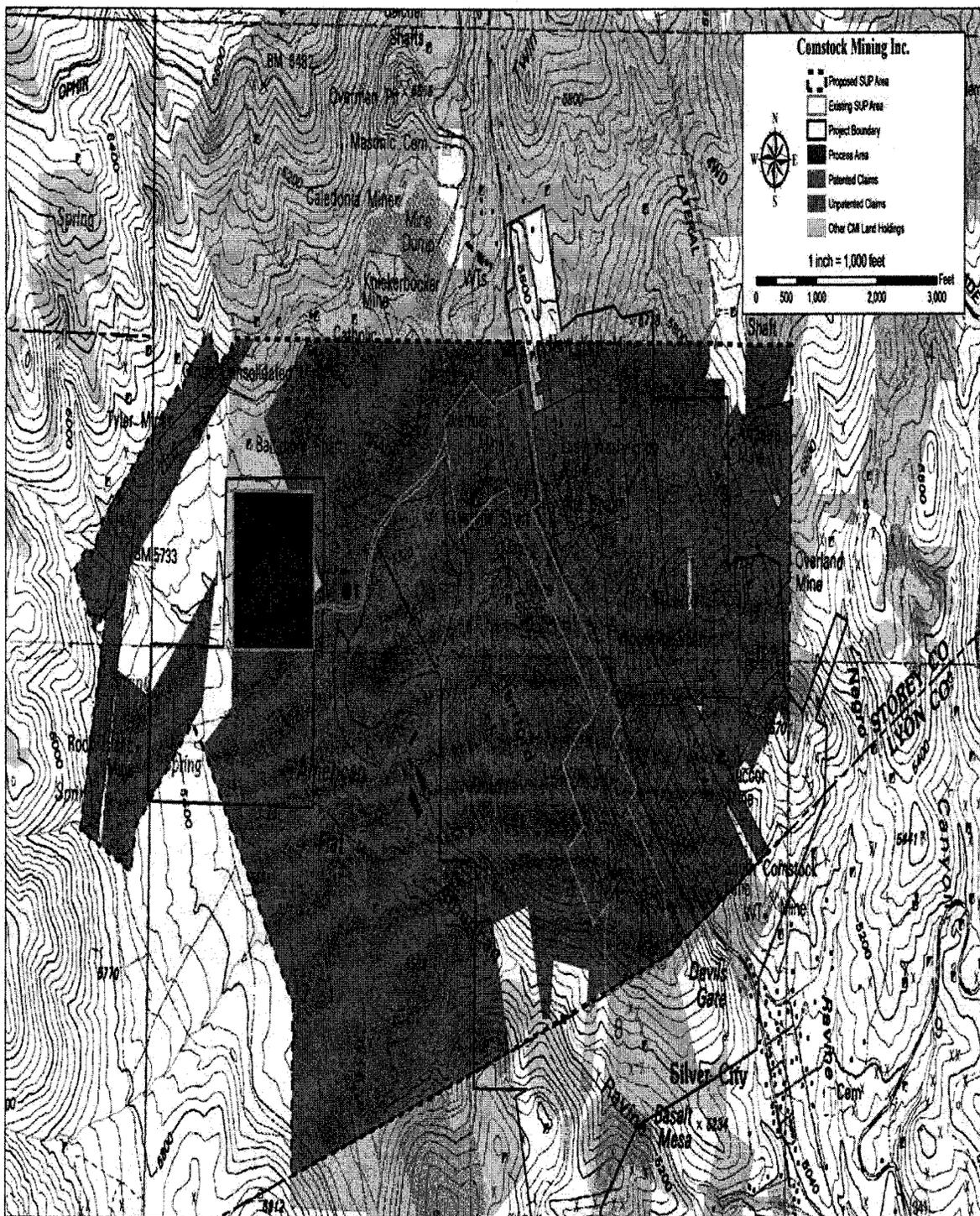


Figure 2: The scope of the proposed exploration project includes portions of patented and unpatented holdings of the Applicant. Holdings include, but are not necessarily limited to, full above and below ground ownership, lease agreements, and other mineral property arrangements. Refer to the definitions of patented and unpatented mine claims in Section I of this report.

V. KEY ISSUES

5.1 Grading Regulations. The SUP Permit Holder will be required to submit to Storey County a Grading and Excavation Permit for access roads when one or more acres of surface greater than 3:1 slope are disturbed. The grading permit will require the SUP Permit Holder to manage each site so as to minimize erosion, sediment loading in nearby waterways, fugitive dust, and impacts to discovered prehistoric and historic artifacts.

5.2 Storm Water Pollution Control. The Permit Holder will be required to submit to the NDEP a Storm Water Pollution Prevention Plan (SWPPP). The plan will discuss and illustrate to the NDEP precise methods by which nearby waterways will be protected from storm water runoff and sediment loading caused by surface disturbances. The Plan will specify how NDEP Best Management Practices (BMPs), e.g., installation of silt fences, straw wattles, storm water retention basins, etc., will be implemented throughout each project and what steps will need to be followed during project changes and at time of reclamation.

5.3 Carson River Mercury Superfund Site (CRMSS). The Carson River Basin, from New Empire to Stillwater and the Carson Sink, was designated a National Priority Listed (NPL) site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund) in August, 1990. Many areas in Virginia City and Gold Hill, particularly where mining and milling activities historically took place, have been identified as potentially containing heavy metal contaminants of concern (CoC's), mercury, arsenic, and lead, and are considered to be within the CRMSS. The Environmental Protection Agency (EPA) has stated that delineating and mitigating the entire region would be prohibitively expensive and impracticable. The NDEP Bureau of Corrective Actions (Bureau) – the local agency designated to manage the Superfund Site – informed the SUP Applicant in 2011 that certain areas within the proposed mineral exploration area may contain CoC's and are applicable to the CRMSS.

In order to minimize potential impacts related to the CRMSS, the SUP will mandate that the Applicant develop and continuously implement a Standard Operations Procedure with and to the satisfaction of the Bureau (and/or EPA if applicable) to properly manage disturbances of existing and former mine and mill sites, mill tailings, mine waste, mine material, and other areas that are found to potentially contain CoC's as applicable to the CRMSS.

Prior to surface disturbances and handling, redistributing, and reprocessing CoC impacted materials, the approved Procedure will require sampling and analysis of soils for possible CoC's applicable to the CRMSS. Official reports and results of each study will be submitted to the Bureau for review and approval for disturbance commencement and Storey County Community Development for review and filing. Naturally occurring minerals and elements, such as mercury, arsenic, lead, etc., that are unrelated to the CRMSS historic mining and milling activities will be managed under state and federal mining and environmental rules and regulations that are unrelated to the CERCLA.

5.4 Emergency and Site Management Plan. The Permit Holder will be required to submit to Storey County a comprehensive Emergency and Site Management Plan. The Plan will be reviewed for appropriateness by Storey County Fire, Emergency Management, Community
9/2/2011

Development, and Public Works Departments before approval. The Plan will include: disaster management; Emergency Medical Services and First-Aid; on- and off-site transportation; reclamation; and Best Management Practices. Specifically, the Plan will include:

- a. Basic company, owner, site, and emergency contact information;
- b. Plot plan (detailed sketch drawings) of each site and access road;
- c. Site evacuation and Emergency Operations Command (EOC);
- d. Emergency contact procedures, including for the NDEP, Dispatch 9-1-1, and Storey County Emergency Services Direct Connect (775.847.0950);
- e. Fire suppression, emergency vehicle access, circulation, and staging;
- f. Documenting and reporting;
- g. Post disaster management, cleanup, and material disposal;
- h. Post-disaster damage reporting for treatment of historic structures and properties;
- i. Schedule of reclamation as required by the NDEP;
- j. NDEP Storm Water Pollution Prevention Plan (SWPPP), when applicable;
- k. Drainage and storm water retention; and
- a. Other information requested by Storey County.

5.5 Other Reclamation. The Emergency and Site Management Plan (see 5.4) will include the following elements when surface disturbances take place within 500 feet of a residential structure or the Virginia & Truckee Railroad/Railway corridor. The Plan will be updated periodically, as needed, and submitted to Storey County for approval at least 10 business days prior to commencement of surface disturbances. Reasonable adjustments to the reclamation schedule may be approved by Storey County Community Development under certain circumstances of Force Majeure. The following elements shall be included in the Plan and shall specify details for each exploration site (e.g., each drill pad, access road, etc.):

- a. Estimated schedule of reclamation that will follow each surface disturbance;
- b. Reclamation beginning no later than 90 calendar days from closure of each surface disturbance;
- c. Reclamation being completed 30 calendar days from the start of reclamation;
- d. Written notice of closure of each exploration site will be provided to Community Development immediately (within 24 hours) following closure thereof;
- e. Treatment of slopes created or affected by the exploration process and explanation or illustrations indicating intent to reshape to approximate original contours;
- f. Plan for replacement of topsoil and vegetation using species previously occurring in the disturbed areas to provide a vegetative cover at least to the point where natural succession is occurring. Photographic proof of pre-existing conditions will be needed. Re-vegetation, including seeding, re-seeding, and/or planting shall take place in October or November and not during times of extreme weather conditions such as snow; and
- g. The post-operation monitoring and maintenance of the reclaimed land. Appropriate preparation and re-vegetation of the land may be sufficient.

5.6 Riparian Area Trees. Removal or disturbance of trees with trunks 6 inches or more in diameter and groves of trees located 75 feet or less to the center-point of a waterway will be prohibited. Appropriate measures to meet these requirements will need to be included in the Emergency and Site Management Plan when activities are scheduled to take place near trees in riparian areas.

5.7 Cultural Resources. No proposals are found in SUP Application No. 2011-016 to remove or otherwise impact historical structures in the Comstock Historic District. Regardless of the intentions outlined in the submitted application, removal, demolition, relocation, or other exterior disturbances to historical structures will be prohibited under this SUP. The Keystone Mine head frame and ore box will be exempt from this requirement when a Certificate of Historical Appropriateness from the Comstock Historic District Commission is submitted to Storey County Community Development. Disturbances to cemeteries will be prohibited under this SUP.

5.8 Site of Historical Importance (Devil's Gate). The Devil's Gate rock outcropping is at least partially located within Lyon County. It is not within Storey County's jurisdiction to regulate land uses in other counties. However, Storey and Lyon County Planning Departments have communicated their shared concerns with regard to protecting this significant natural landmark. Storey County has expressed, and will continue to express, to Lyon County its firm opposition to any disturbances to Devil's Gate and its immediate surrounding environment. In order to provide for protection of said landmark within the regulatory authority of Storey County, surface disturbances within 500 feet of the natural monument and underground activities causing nearby surface disturbances, e.g., land subsidence, will be prohibited under this SUP. Underground activities which cause surface disturbances within this area, such as land subsidence, will also be prohibited. Disturbances between 500 feet and 1,000 feet of the landmark will need to be reclaimed similarly to as required near residences and said railroad.

5.9 Prehistoric/Historic Discoveries. Should any prehistoric or historic remains/artifacts be discovered during development or excavation, work shall temporarily be halted at the specific site and the Storey County Community Development Department shall be notified in order to evaluate the site and, if deemed necessary, to record and photograph the site in question. The period of temporary delay shall be limited to a minimum of two working days from the date of notification, unless it is a significant find and it is deemed necessary to provide more time to evaluate and protect historical remains or artifacts.

5.10 Water Utility Serving Silver City. The town of Silver City (located in Lyon County) is served primarily by a water line connecting it to the Marlette Water System in upper Gold Hill (Storey County). The water main runs through a portion of the proposed project. To protect the vital utility from potential disturbance, the Applicant will be required to develop and submit to Storey County a Geographic Information Systems (GIS) aerial image with layer(s) illustrating the approximate location of the utility. Workers conducting excavations, drilling, and other surface disturbances shall have the GIS image in possession for reference at all times when such work takes place within 100 feet of said water utility. In accordance with NRS 455, the Applicant shall also call and follow the procedures for USA North One-Call System before digging near said waterline.

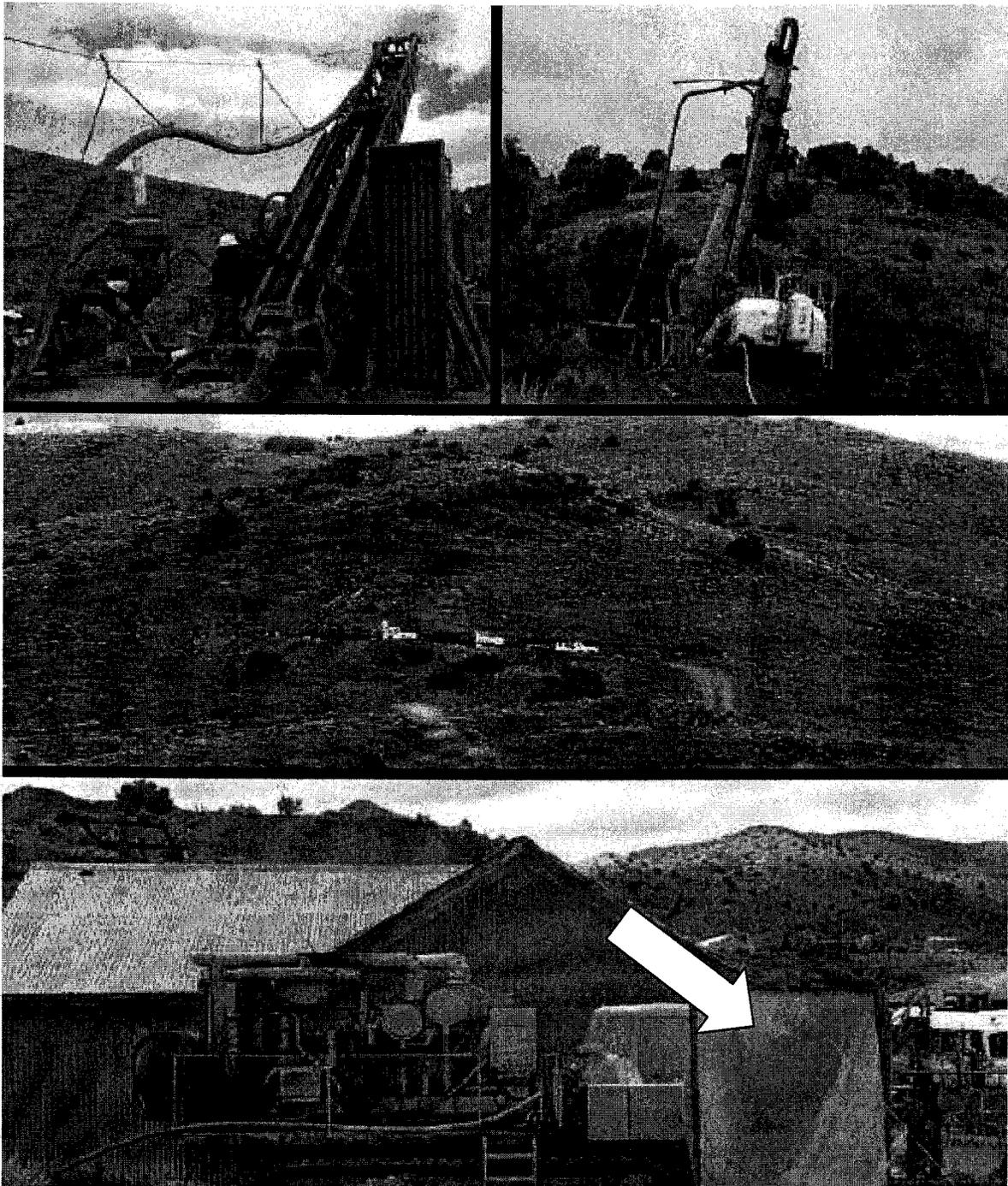


Figure 3: The illustrations located at the top left and right portray the type of drill rigs that are proposed to be utilized in the mineral exploration project applicable to SUP No. 2011-016. Drill holes are typically between 100 and 800 feet deep. The center panoramic image portrays the typical footprint for “drill pads” that needs to be developed. The drill pad typically accommodates one drill rig, two or three vehicles, and several operators. Temporary roads need to be graded for access to the drill pad. The bottom photo illustrates the use of a sound curtain that absorbs noise emitted from the drilling machine. (Source of photos: *Reno Gazette Journal*, May 24, 2011)

9/2/2011

VI. ANALYSIS & LAND USE COMPATIBILITY:

6.1 General Area Description. The table below demonstrates existing land uses and zoning designations in and around the proposed mineral exploration area. The existing conditions shown are followed by an analysis of key aspects of the operation that need to be mitigated in order to become compatible with the surrounding environment.

AREA DESCRIPTION			
	LAND USE	MASTER PLAN DESIGNATION	ZONING
SUBJECT LAND	Multiple zones and land uses including residences, businesses, unoccupied mine sites, and sites of cultural and historical significance	Mining, milling, commercial, and tourism based land uses. Mining related land uses to include a tourism/visitor related component, i.e., visitors' rest stop with information about current and past mining practices	CR, Commercial-Residential; F, Forestry; and SPR, Special Planning Review
LAND TO NORTH	Occupied single-family residences; commercial uses	Commercial; commercial-residential; and tourism based industries; rural type land uses; and land uses compatible with historical and modern mining uses	CR, Commercial-Residential; F, Forestry; and SPR, Special Planning Review
LAND TO SOUTH	Project abuts Storey-Lyon County boundary. Mixed uses in Lyon County include occupied residences	Storey: Mining and related activities when in accordance with preservation of existing cultural resources. Lyon: Mixed land uses including residential and commercial	Storey: F, Forestry Lyon: Mixed residential and commercial type uses
LAND TO EAST	Largely vacant and site of several abandoned small pit and tunnel mines and ancillary structures	Mining related activities when in accordance with preservation of existing cultural resources. Forestry areas include restricted provisions for mining related activities	F, Forestry
LAND TO WEST	Largely vacant with some abandoned tunnel mines. Site of abandoned United Comstock Merger Mill ore processing facility. Several remotely located residences. Virginia and Truckee Railroad/Railway	Mining activities when in accordance with preservation of existing cultural resources. Forestry areas include restricted provisions for mining related activities	F, Forestry

6.2 Existing Residences. It is recognized that mineral exploration in certain areas may be ongoing and that immediate reclamation of land disturbances may be impracticable. Reclamation of land in other areas, particularly near existing residences, needs to take place in a more immediate timeframe (see sections 5.3 and 5.4 above). Several occupied residences have been identified as being in or adjacent to the mineral exploration boundary area. In order to mitigate scenic impacts to those residences, immediate reclamation of surface disturbances will be required within 500 feet thereof. Plugging boreholes and re-contouring cuts and fills, including access routes, drill pads, and other disturbances to a natural looking landscape and topography; and appropriate re-vegetation with native species will be required.

6.3 Virginia and Truckee Railroad/Railway. Storey County, the State of Nevada, and other regional entities have invested millions of dollars developing and rebuilding the historic Virginia and Truckee (V&T) Railroad from Virginia City to Carson City. The purpose of the multi-jurisdictional investment was to enhance and stabilize the tourism industry in Gold Hill, Virginia City, Carson City, and Northern Nevada. The Storey County Master Plan stresses the importance of county officials reviewing land uses decisions that may be incompatible with historical and tourism uses and determining what measures may be taken to mitigate impacts. Portions of the railroad follow the V&T's historical course through American Flat and now abut or traverse through the proposed mineral exploration area. In order to protect scenic historical resources, reclamation of all surface disturbances will be required to comply with those applicable to section 6.2 above (also see requirements in sections 5.3 and 5.4 above).

6.4 Traffic & Haulage. Impacts associated with vehicular and heavy-equipment traffic on State Routes 341 and 342 are expected to be minimal. Generally, all heavy equipment will utilize existing and operator developed off-highway haulage roads. To abate potential fugitive dust hazards, the Permit Holder will be required to manage all road surfaces in accordance with the NDEP and Storey County. A Dust Control Permit may be required by the NDEP when potential conditions for dust emissions are identified. For safety concerns, it is important to restrict heavy vehicles, such as trucks exceeding ten wheels or 13-ton capacity, from travelling on steep grades in upper Gold Hill, particularly between American Flat Road and Toll Road, except under temporary circumstance with county approval when heavy equipment needs to be transported to and from a particular site. Such vehicles will normally be permitted to utilize off-highway haulage roads between Gold Hill and Virginia City.

6.5 Visitor/Tourism Element. Chapter 9, Objective 1.2 of the Storey County Master Plan (see section IX of this report) states that special use permits for mining related operations in the Comstock Historic District operations should include a "visitor/tourism" element to increase compatibility with the local tourism economy and promote cultural awareness of the region. In order to fulfill this stated recommendation, the Permit Holder will be required to reserve an area abutting State Route 342 at a safe and appropriate location between Devil's Gate and American Flat Road in Gold Hill at which motorists may park their vehicles and view information regarding the immediate area, including mining history and the current purpose and plan of the project applicable to the Permitted Mining Area and Exploration Area.

6.6 Lighting. Chapter 8.02 of the Storey County Code ("Dark Skies") limits outdoor lighting that may impact adjacent land uses. Exemptions for temporary and short-term lighting in the Code

(which normally apply to such activities as road construction, and may appear to apply to drill rig operations) will not apply to operations under this special use permit. All operations, buildings, and equipment in association with this special use permit will be required to comply with the strictest regulations of 8.02 of the Code to ensure minimal impacts to neighbors.

6.7 Hours & Days of Operation. Motorized equipment used for mineral exploration oftentimes generates up to 130 decibels (A-weighted) of sound (estimate based on immediate proximity to internal combustion and diesel fueled equipment). It is anticipated that sound levels at the project boundary associated with this SUP application will be approximately between 20 and 55 decibels (A-weighted), excluding ambient conditions. It is hereby recognized that estimated existing ambient conditions may range from 20 to 90 decibels (A-weighted). Ambient noise sources include wind, rustling vegetation and trees, animals, aircraft, vehicular traffic on State Route 342 and other roads, etc. In order to protect the existing quality of life for residents, it is important to impose conditions to SUP No. 2011-016 that will reduce noise impacts on existing land uses.

At a minimum, Chapter 8.04 of the Storey County Code will be administrated by Storey County. The Code places an 84 decibel (octave range 500-1800) limitation on noise at the property line (the SUP boundary in the case applicable hereto). Additionally, when it is determined by Storey County that additional noise abatement may be needed, further requirements, such as installation of sound absorbing structures (see Figure 3), earth-fill barriers, and increased separation between machinery and residences, may be imposed on a case-by-case basis.

Sound levels will need to be further mitigated during the evenings, weekends, and holidays, during which it is recognized that impacts from noise to residential uses are greatest. For that reason, days and hours of operations for mineral exploration activities within 1,000 feet of any occupied residential structures will be limited to Mondays through Fridays, excluding national and Nevada State holidays, from 7:00 a.m. to 7:00 p.m. In order to provide for extended exploration capacity in areas not likely to impact residences, operations beyond 1,000 feet of residences may also take place during said times on Saturdays, Sundays, and holidays.

The weekend and holiday restriction may be waived when the affected property owner(s) (those located within 1,000 of said operations) submit to Storey County Community Development a signed statement that mineral exploration in accordance with this SUP may exceed these day limitations. The waiver shall not extend the times of operations. The waiver will be non-transferrable and will become null and void immediately at the affected property owner(s) written request to Storey County.

It is hereby noted again that the provisions of SUP No. 2011-016 will not override, nullify, or affect SUP No. 2000-222-A-1 for mining and mineral exploration approved by the Board of Commissioners in 2004. The 24-Hour 7-days per week operation allowance will remain within the boundaries of the 2004 SUP and will not apply to SUP No. 2011-016.

6.8 Cemetery Protection.

Concerns have been brought forth regarding potential impacts that the proposed operation may have on two known cemeteries located in Gold Hill. Vibrations, ground subsidence, and other impacts, if left unmitigated, could cause collapse of gravesites, falling of headstones, and

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destruction of other structures therein. To abate potential impacts while allowing mineral exploration to take place, county planning staff engaged in a collaborative effort with members of the Comstock Cemetery Foundation (CCF) and the Applicant to develop a set of limitations and procedures that would meet the needs of both parties.

While the Comstock Historic District (CHD) was contacted and informed of matters pertaining to cemeteries, it was recognized by staff and the CCF that the CHD has limited to no jurisdiction over the regulation and protection of cemeteries. Thus, the effort to employ regulatory measures in this regard relied primarily on the CCF. In summary, the parameters agreed upon by both parties included: no disturbances within a 300 foot buffer area surrounding each cemetery boundary; provision for limited variance in the buffer area only if approved by the CCF; ground vibration monitoring administered by the CCF if variance provided; and no allowance for disturbances within cemetery boundaries.

VII. PUBLIC SAFETY

7.1 Signage. The Permit Holder shall be responsible to post and maintain appropriate signage at and around each exploration site, including at each entrance. Signage shall warn the public of dangerous conditions and state rules of entry, e.g., “No Trespassing”, “Keep Out”, etc.

7.2 Drill Holes. Drilling and bore holes will be required to be managed in accordance with all federal and State Statutes including Nevada Administrative Codes (NAC) 534.4367, 534.4369, 534.4371, 534.4373, 534.4375, 534.4377, 534.438, 534.440, and 534.442. The NAC requires that each bore hole is reclaimed “plugged” within 60 days of its creation.

7.3 Excavation Sites. Active drilling activities and construction of access roads, drill sites, and sumps will be guided as per NAC 513.340 (Rating of Degree of Danger). A point system that rates potentially dangerous conditions by accumulative points derived at each specific drill site. The active construction of the drill sites or reclamation of the drill sites will have a total cumulative number of 2 or 3 points which is rated as a minimal dangerous condition. For example: one point for a vertical or near vertical hole, 8 to 20 feet inclusive in depth and highly visible upon approach by an individual. This would be reflected by the construction and implementation of the sumps for drilling activities. Barricades will be positioned with warning signs at entrance ports and temporary fencing around sumps to prevent a person from accidentally exposing themselves to a potentially dangerous condition. Cautionary signs positioned peripheral to the active drilling area informing individuals entering into the area to be safety conscious and aware of potentially dangerous conditions.

VIII. APPLICABLE CODES & REGULATIONS

8.1 Current Exploration Registration. Mineral exploration activities currently taking place on the east side of State Route 342 in lower Gold Hill are permitted under Subsection 17.92.060(A) which states, “Applications for a special use permit, if required by this Title, shall fulfill the [mineral exploration] registration requirements”. During the public process for SUP No. 2011-016, the Applicant has agreed not to conduct activities that require an SUP, including work that takes place within 1,000 feet of residences.

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8.2 Storey County Mining & Exploration Code. Chapter 17.92 of the Storey County Code regulates mining and mineral exploration activities. In Findings of Fact, Section 17.92.020, it is stated that, “the extraction of certain natural resources, particularly mineral resources, plays a significant role in the economic and social well-being of the residents of the county. At the same time [it finds], there is a need to provide a mechanism whereby the county is informed at all times of such industries that will be operating within their jurisdiction, and to regulate mineral exploration activities in such a manner as to protect both the residents of the county and the mining industry from possible abuses by unregulated operations.” The regulations for mineral exploration include the following:

- a. In addition to the requirements set forth for Exploration Registration by Chapter 17.92, a special use permit in accordance with Chapter 17.62 shall be required for exploration, expansion of existing, or new mining if the operation falls within the following categories:
 - i. Within three hundred feet of any residence, unless that residence is the property of the owner or operator of the proposed operation, any operation exceeding the scope of assessment work;
 - ii. Within one thousand feet of any residence, unless that residence is the property of the owner-operator of the proposed operation, any drilling operation exceeding five working days duration, any construction of new roads, excavation exceeding one hundred cubic-yards, any alteration of stream flows, or any type of blasting;
 - iii. Over one thousand feet from any residence, construction of new roads, or excavation in excess of one thousand cubic-yards, or any alteration of stream flows.

Mineral exploration activities under SUP Application No. 2011-016 are expected to fall within each of the above regulatory categories, with exception of blasting other than to dislodge or mobilize seized borehole drilling equipment. For these reasons, a special use permit is required.

8.3 Nevada Statutes and Administrative Codes. Reclamation of land subject to mining operations and exploration projects are regulated pursuant to Chapter 519A of the Nevada Revised Statutes (NRS) and Chapter 534 of the Nevada Administrative Code (NAC). Exploration projects are defined by the NRS as “all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, determining the presence, location, extent, depth or grade of any mineral, which affects the surface.” Reclamation as defined thereby means “actions performed during or after an exploration project or mining operation to shape, stabilize, re-vegetate or otherwise treat the land in order to return it to a safe, stable condition consistent with the establishment of a productive post-mining use of the land and the abandonment of the facility in a manner which ensures the public safety, as well as the encouragement of techniques which minimize the adverse visual effects. The provisions set forth by SUP 2011-016 are in accordance with the following requirements:

- a. Surety Bond – No mineral exploration may take place on any land without a Reclamation Permit issued by and surety bond posted with the NDEP (for private land) or Bureau of Land Management (BLM) (for federally owned land). The surety bond ensures that reclamation will be completed in accordance with Nevada State or federal requirements.
- b. Permit Requirements – The following information must be submitted to the applicable regulatory agencies as stated above:
 - i. Company and management information;
 - ii. An exploration map or sketch sufficient to enable the applicable regulatory agency to locate the area to be explored and determine potential environmental impacts;
 - iii. Kinds of prospecting and excavation techniques;
 - iv. Agreement in writing to assume responsibilities for post operations;
 - v. Comprehensive reclamation plan and timeline;
 - vi. Required surety as determined by the Reclamation Commission; and
 - vii. And other information found pertinent by the regulatory agency.
- c. Reclamation General – Reclamation activities, particularly those relating the control of erosion, must be conducted simultaneously with the mining and mineral exploration operations to the extent practicable, and otherwise must be initiated promptly upon the completion of the abandonment of the mining operation in any area not subject to further disturbance. Disturbances of five acres or more are not permitted on federally owned land without initiation of an environmental impact evaluation under the National Environmental Policy Act (NEPA) (see 8.5 below).
- d. Borehole Management – Chapter 534 of the NAC requires that bore holes be “plugged” within 60 days of creation in accordance with the Nevada State Engineer and Section 534.4371 of the NAC.
- e. Storm Water Pollution Prevention Plan – A Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the NDEP by the Permit holder when disturbances are one acre or more. The SWPPP outlines procedures that will be implemented by the developer, such as Best Management Practices to mitigate pollution, including sediment particulates, from entering waterways and stream channels. Evidence is on file with Storey County that the required SWPPP has been submitted to the NDEP.

8.4 Comstock Historic District Jurisdiction. The Comstock Historic District Commission (CHDC) under Section 384.110 of the NRS is authorized to regulate and determine case-by-case appropriateness of the erection, construction, re-construction, alteration, restoration, movement, and demolition of structures within the designated boundaries of the Historic District. In accordance with the NRS, disturbance of a historical structure is only permitted upon granting of a Certificate of Historical Appropriateness from the CHDC. This SUP, however, places more stringent limitations on impacts to historical structures as discussed in 5.7 of this report.

The CHDC requested a legal opinion from the Nevada State Attorney General on the scope of its jurisdiction as pertaining to historic landscape features, such as rock outcroppings, mine tailings,
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and natural landscapes. No opinion thus far has been handed down by the office. Storey County staff finds that the NRS and federal regulations only provide for their regulation of “structures” within the Comstock Historic District.

8.5 National Environmental Policy Act. The National Environmental Policy Act (NEPA) was ratified by the Congress in 1970 to involve all branches of the federal government under certain circumstances to protect the human and natural environment. The NEPA process applies when human impacts take place on federally owned lands or when there is other federal action, such as federal funding, involved. In summary, the NEPA process is as follows: (1) an undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria that the federal government has determined will have no significant environmental impact; (2) a federal agency prepares a written Environmental Assessment (EA) to determine whether or not a federal undertaking would significantly affect the environment. If the answer is no, the agency issues a Finding of No Significant Impact (FONSI); (3) if impacts are found, a detailed Environmental Impact Statement (EIS) will be required to evaluate proposed mitigation and potential alternatives (Environmental Protection Agency, 2011).

Mining and mineral exploration projects located on federally owned land are required to undergo the NEPA process when five or more acres of surface are disturbed. Proposed activities located on federal unpatented claims are expected to remain below the NEPA threshold. The SUP application states that disturbed land will be reclaimed prior to the company conducting exploration on new lands; in essence, no more than 4.99 acres will be disturbed at any given time. Compliance with the NEPA will be monitored and administered by the BLM.

8.6 Federal Mining Law of 1872. The right to claim, lease, and purchase federally owned land for the purpose of exploring and extracting certain minerals, including gold and silver, is regulated under the Federal Mining Law of 1872 in 30 U.S.C. 22. Specifically it states:

Except as otherwise provided, all valuable mineral deposits in land belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the land in which they are found to occupation and purchase, but citizens of the United States and those who have declared their intention to become such, under the regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. [30 U.S.C. 22 et seq.]

The BLM has the primary responsibility for administering the laws and regulations regarding the disposal of locatable minerals from federally administered lands. This statutory authority is derived from the Mining Law of 1872 and other federal regulations.

8.7 Split Estate. In split estate situations, the surface rights and subsurface rights (such as the rights to develop minerals) for a piece of land are owned by different parties. In these situations, mineral rights are considered the dominant estate, meaning they take precedence over other rights associated with the property, including those associated with owning the surface. However, the mineral owner must show due regard for the interests of the surface estate owner and occupy only those portions of the surface that are reasonably necessary to develop the mineral estate. The Bureau of Land Management's split state policy only applies to situations where the surface rights are in private ownership and the right to development of the mineral resources are publically held and managed by the Federal Government (Bureau of Land Management, 2011).

8.8 Law of Apex. Under the Mining Law of 1872, mineral claims situated on federally owned land have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations.

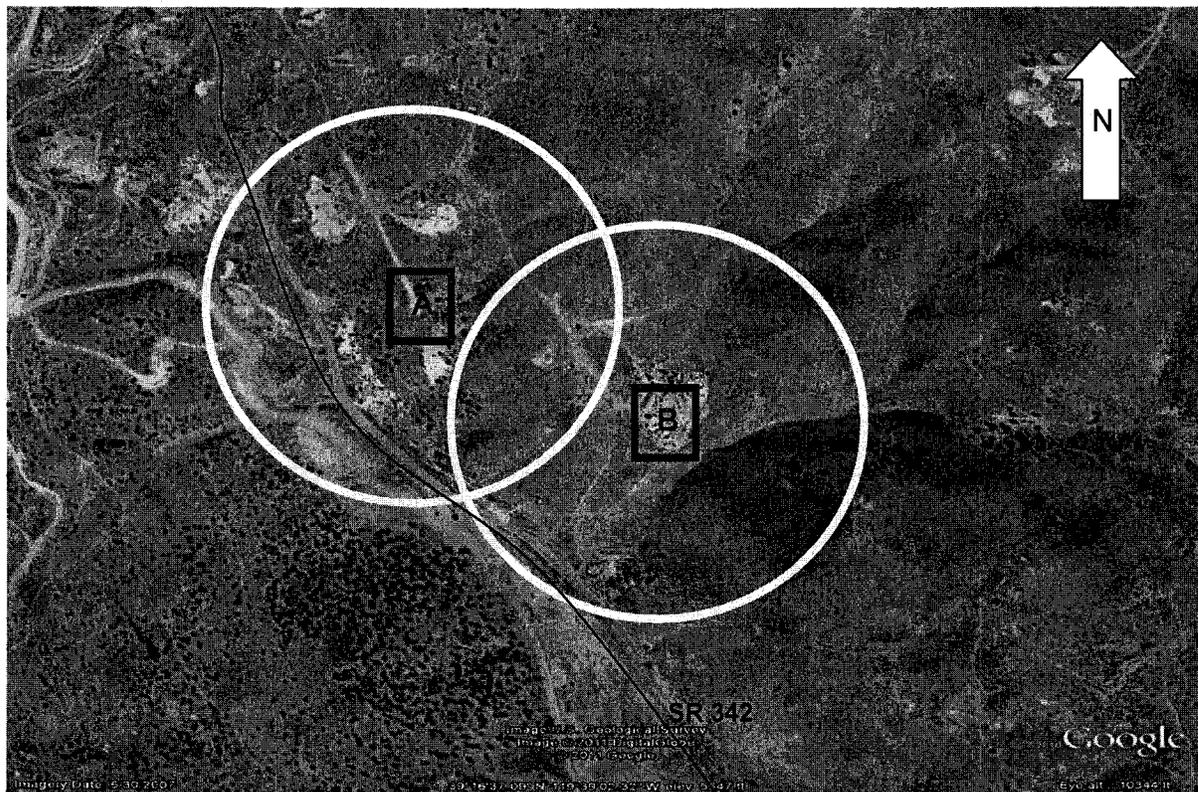


Figure 4: Continued on next page.

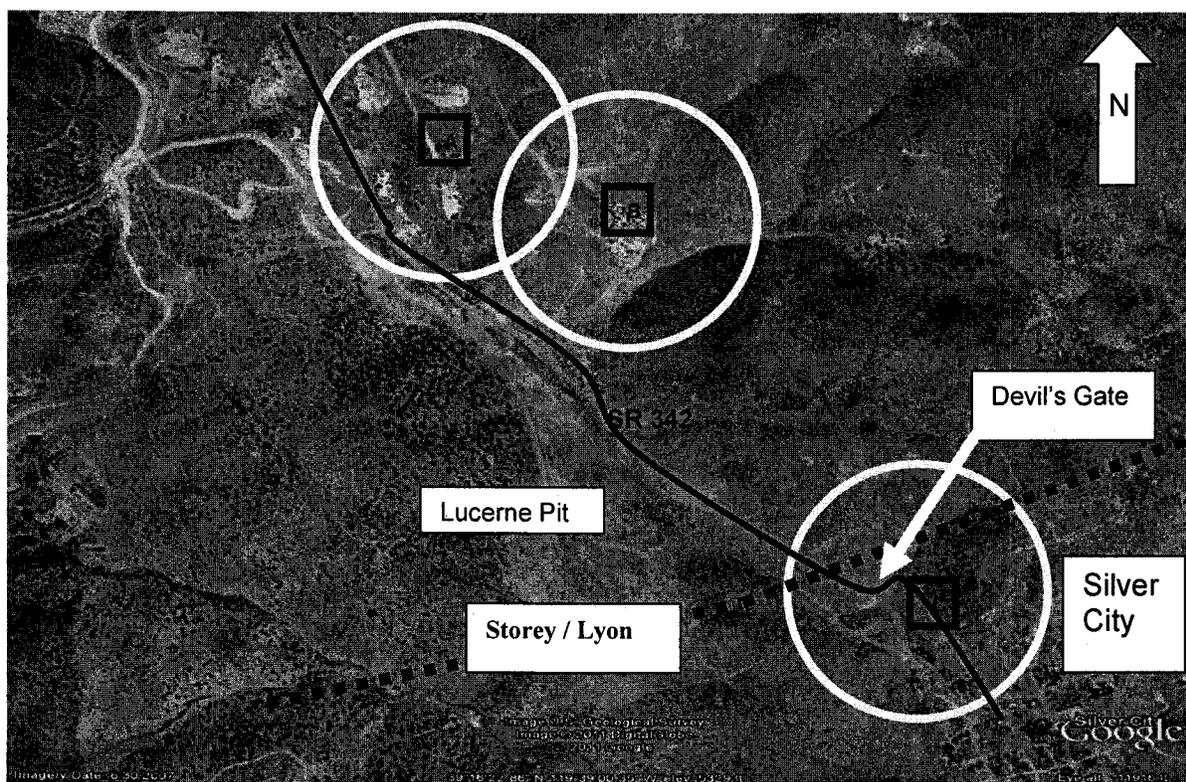


Figure 4: The above shows the approximate 1,000 feet radius around existing occupied residences in the area applicable to the special use permit request. Activities in these areas will be more stringent than elsewhere in the SUP footprint.

IX. STOREY COUNTY MASTER PLAN

Considerable discussion is contained in the Storey County Master Plan regarding the presence of modern mining practices throughout the Comstock Historic District, particularly within Virginia City and Gold Hill. In the Plan, several goals and objectives are set out for public leaders to consider when making land use decisions related to mining that may prove detrimental to the preservation of the area's cultural resources. Inversely, recommendations in the Plan also call for the protection of the mining industry from incompatible land uses. In accordance with the Plan, it is important for the planning commission and governing board to consider allowing historic land use patterns while imposing appropriate measures to minimize impacts to cultural and natural resources, the local tourism economy, and the quality of life for residents.

Specifically, the Plan directs county officials to consider the following goals and objectives in its decisions regarding mining and its compatibility with other land uses:

9.1 MP Chapter 9, Land Uses. Text included as follows:

- a. Goal 1 – Maintain a healthy environment for all residents of the county.
- b. Objective 1.1 – Ensure that land use permit decisions are compatible with the zoning

map, master plan, and previous planning decisions.

- c. Objective 5.2 – Refrain from duplicating permit applications requirements and fees which have been established by state and federal agencies.

9.2 MP Chapter 9, Virginia City/Gold Hill. Text included as follows:

- a. Goal 1 – Reduce land use conflicts between mining operations and other private and public land users.
- b. Objective 1.1 – Actively advise new residents of the importance of mining to the economy of the county and the proximity of patented and possessory mining property when they apply for Building and/or Special Use Permits.
- c. Objective 1.2 – Include a “visitor/tourism” element into Special Use Permit requirements for mining operations within the Comstock Historic District. Such an element could include informational signs explaining the history of the property being worked.
- d. Goal 2 – Preserve the historic heritage of the Comstock Lode or the enjoyment and education of present and future residents and visitors and the economic opportunities it affords.

9.3 Chapter 3, Economy. Text included as follows exhibits the presence of mining in the past and present throughout the Comstock. A note is made to policy makers to take such considerations into account when making land use decisions.

- a. Master Plan 9.1, Introduction – Historically, the economy of Storey County has been directly and indirectly linked to mining. In fact, without the unprecedented richness of the gold and silver contained in the Comstock Lode and the ability of early miners to develop them, there is no reason to account for the existence of the present towns of Virginia City and Gold Hill. During the initial mining period, other economic activities within the County, such as agriculture, construction, finance and transportation were dependent upon the market provided by mining in the area. The region of Storey County outside of the Comstock Historic District contains numerous active, inactive or abandoned mine sites and a significant number of archeological sites, both historic and prehistoric. Archeological sites and mines sites are found clustered in specific regions and in isolated locations. Many sites are in regions remote from public access. Archeological sites provide information allowing the study of cultural forms of the past. Mining activity as reflected in active, inactive and abandoned mine sites may have a significant positive impact on the present economy and environment of the region. Planning commissioners should recognize and evaluate the importance and merit of each site when formulating planning goals for land use decisions.
- b. Master Plan 9.1, Areas of Concern – Considerable concern has been expressed regarding the impact of surface mining on existing cultural resources. The CHDC's area

of responsibility is presently limited to review of exterior architectural features and does not include review of land altering activities. The CHDC will review such projects if formally requested by the local government, state or federal agencies. Recent mine development plans have included cultural resource surveys, protection and preservation of buildings and sites and mitigation of negative impacts where disturbance is unavoidable.

9.4 Chapter, Public Lands. Text included as follows discusses the role mining may have on public lands within Storey County and the challenges associated with mining activities throughout the Comstock.

- a. Master Plan 9.2.3, Mining – Land ownership and the property rights attached to any specific parcel of land in a mining area can be extremely complicated. Mineral rights and surface rights have been separated in many parcels within the communities of Virginia City and Gold Hill. Adding to the general title confusion and conflicts resulting from the separation of the mineral and surface rights are tunnel patents, townsite grants, state school grant lands, old highway and utility rights-of-way, railroad grants, inconsistent and erroneous land surveys, etc. Finally, the rights conferred by, and language contained in federal deeds to local properties vary according to the date or period when the deed was written. To further complicate land use issues, recently mining firms have shown increased interest in the remaining Comstock ore reserves and a number of mining operations have been developed which have had a considerable impact on communities in Storey County. The existence of precious mineral deposits in the areas that are popular to tourists has created numerous land use conflicts which are expected to continue. Mining and tourism are not necessarily incompatible. Specific elements can be included in a mining development plan which will result in an increased appreciation of the Comstock's past and present mining activity on the part of tourist and visitors. A major goal for county planning officials should be to consider developing guidelines that address this conflict in mining plans that are presented to them.
- b. Master Plan 9.2.5, Public Lands Policies – Federal land management agencies should manage and utilize public lands on the basis of multiple use and sustained yield concepts in a manner that will conserve natural resources; protect, preserve and enhance the quality of the environment and ecological, scenic, historical and archeological values; protect and preserve wildlife habitat and certain lands in their natural condition; and provide for long term benefits for the present and future residents of Storey County.

X. FINDINGS OF FACT: It is hereby found that:

- 10.1 A special use permit in accordance with the regulations under 17.62 and 17.92 of the Storey County Code is required for the proposed activities under SUP Application No. 2011-016.
- 10.2 During the review and approval process for SUP Application No. 2011-016, the SUP application itself fulfills the mineral exploration “registration” requirement set forth by Section 17.92.060 of the Storey County Code.
- 10.3 The Storey County Master Plan states that, “the extraction of certain natural resources, particularly mineral resources, plays a significant role in the economic and social well-being of the residents of the county. At the same time [it finds], there is a need to provide a mechanism whereby the county is informed at all times of such industries that will be operating within their jurisdiction, and to regulate mineral exploration activities in such a manner as to protect both the residents of the county and the mining industry from possible abuses by unregulated operations.”
- 10.4 The proposed operation in accordance with SUP No. 2011-016 will not conflict with the purpose, intent, and other specific requirements set forth in the following applicable regulatory zones: CR, Commercial-Residential; F, Forestry; and SPR, Special Planning Review Zone.
- 10.5 In accordance with Chapter 9, Objective 1.2 of the Storey County Master Plan, SUP Permit No. 2011-016 will be required to integrate a tourism/visitor component in order to educate the public on the history of mining on the Comstock as well as current mining and mineral exploration activities under this and other special use permits held by the Applicant.
- 10.6 The conditions and stipulations under SUP No. 2011-016 are in accordance with the minimum requirements set forth by Chapter 17.92 of the Storey County Code and are at least as stringent as and not in conflict the applicable federal and Nevada State regulations pertaining to mineral exploration activities.
- 10.7 The issuance of SUP No. 2011-016 recognizes patented and unpatented underground mineral property rights of the Permit Holder and recognizes all provisions under the Federal Mining Law of 1872.
- 10.8 The issuance of SUP No. 2011-016 recognizes the existence of surface rights in the “split estate” situation and that such surface rights shall not be impinged in the development of mineral rights there beneath.
- 10.9 SUP No. 2011-016 recognizes the importance of natural historical landmarks, particularly in this case the Devil’s Gate rock outcropping, and imposes sufficient limitations to protect this important land feature and its immediate surrounding environment.
- 10.10 SUP No. 2011-016 recognizes the importance of historical man-made structures and imposes sufficient limitations to protect existing historical structures from disturbance and destruction.
- 10.11 The conditions and stipulations of SUP No. 2011-016 and the federal, Nevada State, and Storey County codes and regulations impose sufficient limitations on mineral exploration activities to reasonably mitigate associated impacts on adjacent residences and land uses.

XI. RECOMMENDED CONDITIONS OF APPROVAL:

The following recommended conditions are in accordance with the planning commission's recommendation for approval of SUP No. 2011-016 at its August 18, 2011, hearing. All of the following conditions shall be met to the satisfaction of Storey County Community Development Department staff, unless otherwise noted:

1. This Special Use Permit (SUP) No. 2011-016 shall be for the purpose of conducting mineral exploration in accordance with the limitations set forth hereby. This SUP shall not be construed as a permit for mining activities. Additionally, all operations shall be in accordance with federal, Nevada State, and Storey County codes and regulations, including the Mine Safety and Health Administration (MSHA) and Occupation Safety and Health Administration (OSHA), when applicable. Issuance of this SUP does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations.
2. Requirements. The Permit Holder shall apply for all required permits and licenses, including building and fire permits, for the project within twelve (12) months from the date of final approval of SUP No. 2011-016, and continuously maintain the validity of those permits/licenses, or this approval shall be null and void. Additionally, the Permit Holder shall maintain and furnish proof to Storey County of applicable valid federal and Nevada State permits. **This SUP shall remain valid until April 1, 2016, at which point it shall expire.**
3. Annual Compliance Review. At a regularly scheduled public meeting during the month of April or May of each year beginning in the year of 2012, the planning commission shall be provided a summary report demonstrating the extent to which the Permit Holder has or has not complied with all conditions set forth in this SUP and all applicable federal and Nevada State (i.e., NDEP) requirements. The report shall disclose and provide valid evidence of all known instances of non-compliance with said terms and regulations and explain what measures, and to what degrees of success and expediency, were employed by the Permit Holder to abate and achieve full conformity therewith. The Permit Holder shall be solely responsible for furnishing to Storey County Community Development all documents and reports related to this SUP from the applicable local, state, and federal agencies within 30 days of receipt. Emergencies and reportable environmental disasters shall be reported immediately in accordance with the applicable provisions of this SUP.
4. Transfer of Rights. This SUP shall inure to the record owner of the Subject Property and to the Permit Applicant (Plum Mining Co. and Comstock Mining, Inc.) and shall run with the land. Any/all transfers of SUP 2011-016 shall be advised in writing by Certified Mail to Storey County Community Development Department, P.O. Box 526, Virginia City, NV 89440 at least 90 days prior to assignee taking over operation of facility. The operators of the facility must sign and accept all stipulations and requirements of SUP 2011-016.
5. Indemnification/Insurance. The Permit Holder warrants that the future use of land will conform to the requirements of Storey County, State of Nevada, and applicable federal regulatory and legal requirements; further, the Permit Holder warrants that continued and

future use of the land shall so conform. The Permit Holder and property owner(s) agree to hold Storey County, its officers, and representatives harmless from the costs associated with any damage or liability, and any/all other claims now existing or which may occur as a result of this SUP. The Permit Holder shall maintain satisfactory liability insurance for all aspects of this operation under SUP No. 2011-016 for a minimum amount of \$1,000,000.00 (one million dollars) and provide proof thereof to Storey County prior to granting of this SUP.

6. Surety Bond. No mineral exploration may take place on any land without obtaining necessary permitting from the Nevada Division of Environmental Protection (NDEP) for private mining claims and the Bureau of Land Management (BLM) for federally owned mining claims, whichever is applicable. State and federal permitting requirements include posting of a surety bond adequate in amount to reclaim all disturbed land in accordance with the applicable Nevada State and/or federal regulatory agency.
7. Storm Water Management. The premises shall be maintained for appropriate storm water drainage at all times. No storm water drainage caused by operations under this SUP shall enter any public right-of-ways or adjacent private or public properties. Existing storm water retention and conveyance systems shall remain undisturbed or replaced with systems adequate to maintain existing conditions.
8. Storm Water Pollution Prevention. The Permit Holder shall submit to the NDEP a Storm Water Pollution Prevention Plan (SWPPP) for surface disturbances of one acre or more. The Plan will explain how waterways will be protected from storm water runoff and sediment loading caused from surface disturbances. The Plan will specify how NDEP Best Management Practices, e.g., silt fences, straw waddles, storm water retention basins, etc. will be implemented throughout each project. Site inspections and compliance monitoring will be conducted by the NDEP and the results of those reports will be immediately submitted by the Permit Holder to Storey County Community Development.
9. Noxious Weed Abatement. In accordance with NRS 555.150, the Permit Holder shall be responsible for abating the presence of non-native plant species declared and designated as noxious as provided in NRS. 555.130. Noxious weed species include but are not limited to Tall Whitetop (perennial pepperweed), Hoary Cress, Russian Thistle, Dalmatian Toadflax, Scotch Thistle, etc.
10. Dust Control. The Permit Holder shall be responsible for obtaining a NDEP Dust Control Permit, when applicable, and for maintaining continuous and satisfactory dust control throughout the exploration and development process including at all excavation sites and vehicle staging areas, haul roads, and egress/ingress points.
11. Carson River Mercury Superfund Site (CRMSS). By accepting SUP No. 2011-016 the Permit Holder acknowledges that portions of the mineral exploration area may be within or applicable to the CRMSS. Properly managing disturbances of existing and former mine and mill sites, mill tailings, mine waste, mine material, and other areas that are found to contain Contaminant of Concern (CoC's) as applicable to the CRMSS will be the sole responsibility of the Permit Holder as communicated thereto by the NDEP Bureau of Corrective Actions. Handling, redistributing or reprocessing CoC impacted materials by the Permit Holder shall be completed in accordance with the NDEP. Prior to disturbance of any surface within the CRMSS, the Permit Holder shall comply with an

Environmental Protection Agency (EPA) and/or NDEP approved Standard Operating Procedure for sampling and analyzing soils for possible CoC's applicable to the CRMSS. Official reports and results of each study shall be submitted to Storey County Community Development prior to commencement of surface disturbances. Naturally occurring minerals and elements, such as mercury, arsenic, lead, etc., that are unrelated to the CRMSS historic mining and milling activities will be managed under state and federal mining and environmental rules and regulations that are unrelated to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

12. Mud Tracking. All project access points from State Route 342 and/or any other Nevada State or Storey County paved right-of-way shall be surfaced with at least 100 feet of gravel in order to prevent dirt and mud from entering the paved roadway. The approachment improvement shall be completed to the satisfaction of Storey County, Nevada Department of Transportation, and the NDEP, whichever is applicable.
13. Right-of-Way Limitations. Vehicle exceeding 10,000 Lbs. Gross Combination Vehicle Weight (GCVW) shall be prohibited from travelling on the steep grades of S.R. 342 between American Flat Road and Toll Road, Gold Hill except under temporary circumstances not exceeding five business days for each 90 calendar day period where heavy equipment may need to be transported to or from a site and when approval is granted by the Nevada Department of Transportation or Public Works, whichever is applicable. Vehicle travelling on all public right-of-ways shall comply with maximum weight limit standards and be licensed and insured. Approval from Storey Public Works and County Community Development shall be necessary before any haulage or heavy equipment vehicles travel upon county-owned roads. Heavy equipment including, but limited to, haulage vehicles, drill rigs, excavators, etc., shall be prohibited from traveling upon county-owned paved right-of-ways, unless no other feasible option is available, at which instance the SUP Permit Holder shall work with Storey County in determining an appropriate and feasible access route. Drilling and excavating shall be prohibited on state and county owned right-of-way unless directly related to the improvement thereof and with the approval of the Nevada Department of Transportation or Storey County Public Work, whichever is applicable. The SUP Permit Holder shall be held financially responsible for all damages to Nevada State and Storey County right-of-ways.
14. Access Routes. All off-highway vehicular travel routes shall be developed to the satisfaction of Storey County Community Development and Fire Departments. The established routes shall remain the primary travel ways for all emergency/fire vehicles, equipment, and personnel. The Permit Holder may develop and/or utilize other secondary travel routes for non-emergency use with approval of Storey County. The primary emergency access routes shall be kept clear of rocks and other hazardous obstacles. In order to increase route visibility and reduce confusion for emergency personnel, roadside markers shall be installed every 100 feet along said primary access route. At each point where said travel ways turn at or sharper than 90 degrees, directional sign indicating the path by which a traveler will remain on this designated route shall be installed. Roadside markers and directional signs shall be installed and constructed in a manner which will withstand climatic conditions common to the area, including sun, snow, rain, and 100 MPH wind.
15. Grading & Excavation Permit. The SUP Permit Holder shall obtain a Grading and

Excavation Permit for all access roads and drill pads over one acre in area with slopes steeper than 3:1. Other grading and excavation shall be in accordance with the NDEP and the applicable requirements set forth hereby.

16. Hours & Days of Operation. It is hereby recognized that estimated existing ambient conditions may range between 20 to 90 decibels (A-weighted). Ambient noise sources include wind, rustling vegetation, domestic and wild animals, vehicular traffic from State Route 342 and other roads, etc. At a minimum, Chapter 8.04 of the Storey County Code will be administrated by Storey County. The Code places an 84 decibel (octave range 500-1800) limitation on noise at the property line, in the case applicable hereto the "property line" is defined as the boundary line for SUP No. 2011-016. Additionally, when it is determined by Storey County that additional noise abatement is needed, further requirements, such as installation of sound absorbing structures, earth-fill barriers, and increased separation between machinery and residences, may be imposed on a case-by-case basis. Days and hours of operations for mineral exploration activities within 1,000 feet of any occupied residence, including within Storey and Lyon Counties, will be limited to Mondays through Fridays, excluding national and Nevada State holidays, from 7:00 a.m. to 7:00 p.m. In order to provide for extended exploration capacity in areas not likely to impact residences, operations beyond 1,000 feet of residences may continue during said times on Saturdays, Sundays, and holidays. The provisions of SUP No. 2011-016 do not override, nullify or affect SUP No. 2000-222-A-1 approved by the Board of Storey County Commissioners in 2004. The extended timeframe (24 hours/7 days per week) of operations under SUP No. 2000-222-A-1 shall only apply within boundaries set forth by that SUP and not SUP No. 2011-016.
17. Hours and Days Waiver Provision. The weekend and holiday restrictions set forth in the condition for Hours and Days of Operation may be waived when the affected property owner(s) in Storey County (those located within 1,000 of said operations) submit to Storey County Community Development a signed statement that mineral exploration in accordance with this SUP may take place on weekends and/or holidays. The waiver shall not extend the hours of operation limitations. The waiver shall be non-transferrable and will become null and void immediately at the affected property owner(s) written request to Storey County Community Development.
18. Cautionary Signage. Signage shall be installed at each port of entry stating days and hours of operation, the company's name, site address, and 24-hour company management emergency contact phone number(s). Warning signs indicating all potentially dangerous conditions shall be installed at each port of entry and around drill pads, sumps and other potentially hazardous conditions. Cautionary signs shall be positioned peripheral to the active drilling area to inform individuals entering the area to be safety conscious and aware of potentially hazardous conditions. Appropriate signage indicating crossing truck traffic (i.e., "Truck Crossing") shall be installed on the southbound and northbound lanes of State Route 342 by and at the expense of the Permit Holder and to the satisfaction of Storey County Public Works and/or the Nevada Department of Transportation, whichever is applicable.
19. Lighting. Chapter 8.02 of the Storey County Code ("Dark Skies") limits outdoor lighting that may impact adjacent land uses. Exemptions for "temporary lighting" in the Code (which normally apply to such activities as road construction, and may appear to apply to

- drill rig operations) shall not apply to operations under SUP No. 2011-016. All operations, buildings, and equipment will be required to comply with the strictest regulations under the Code (shield lighting) to ensure minimal impacts to neighbors.
20. Restrooms. The Permit Holder shall provide properly maintained restroom facilities (porta-potties) at each exploration site. The number of restroom facilities provided shall be determined by the projected number of employees as recommended by the Portable Sanitation Association International (PSAI) (<http://www.pesai.org/about.html>). Restrooms shall be equipped with properly maintained alcohol-based gel hand sanitizer dispensers.
 21. Historical Natural Landmark Protection. As communicated with planning officials in Lyon County, location of “Devil’s Gate” historical natural landmark, Storey County strongly opposes any surface impacts to said landmark or its immediate surrounding environment. In remaining with the regulatory jurisdiction of Storey County, SUP No. 2011-016 prohibits any surface disturbances within 500 feet of Devil’s Gate in Storey County. Surface disturbances within 1,000 feet of the landmark shall be fully reclaimed as pursuant to Condition #34 of this SUP. Underground activities which cause surface disturbances within this area, such as land subsidence, shall also be prohibited.
 22. Historical Structures Protection. Mineral exploration and related operations under SUP No. 2011-016 shall not cause any historical structure to be disturbed, altered, moved, or demolished. Historical structures shall include occupied and unoccupied buildings, outbuildings, tanks, mine head-frames, and accessory structures, machinery, and other appertencies which are 50 years of age or older. Removal and/or relocation of the Keystone Mine head frame and ore box shall be exempt from the limitations of this section when proof of a Certificate of Historical Appropriateness from the Comstock Historic District Commission has been submitted to Storey County Community Development.
 23. Cemetery Protection. The Permit Holder for SUP No. 2011-016 shall not cause any cemetery or structures therein, such as headstones, monuments, fences, enclosures, etc., to be disturbed, altered, moved, or destroyed. The terms of this condition shall be fulfilled by compliance with the following limitations:
 - a. Activities and disturbances shall not take place within 300 feet of a cemetery boundary as defined by NRS 452.0075 and as determined by the Comstock Cemetery Foundation (CCF). These limitations shall not apply to general vehicular and heavy equipment traffic taking place on the established county roads and right-of-ways, including American Flat Road. These limitations also shall not apply to mineral exploration activities approved by the CCF within the established cemetery buffer area, but not within any cemetery boundary or public right-of-way. Written approval by the CCF shall be submitted to Storey County Community Development prior to commencement of activities within the scope of these regulations.
 - b. Activities and disturbances may be permitted between 300 and 500 feet surrounding each cemetery boundary as described above when the SUP Permit Holder initiates and maintains continuous communication and collaboration with the CCF in protecting said cemetery resources. A surface vibration monitoring program shall be developed and implemented as determined by the CCF. The implemented program will monitor surface vibrations at selected sites to assess

potential vibrations from drilling and excavating operations, heavy machinery, and vehicles. The monitoring program, upon approval of the CCF, will be at the expense and oversight of the CCF.

24. Cultural Resources Discovery. Should any prehistoric or historic remains/artifacts be discovered during development or excavation, work shall temporarily be halted at the specific site and the Storey County Community Development Department shall be notified in order to evaluate the site and, if deemed necessary, to record and photograph the site in question. The period of temporary delay shall be limited to a minimum of two working days from the date of notification, unless it is a significant find and it is deemed necessary to provide more time to evaluate and protect historical remains or artifacts.
25. Visitor/Tourism Element. In accordance with the Storey County Master Plan, the Permit Holder shall develop a pedestrian oriented area abutting State Route 342 at a safe and appropriate location between the “Devil’s Gate” outcropping and American Flat Road, Gold Hill, at which motorists may park and exit their vehicles and view information about the history and purpose of past and current mining and mineral exploration. Development of the information center shall commence no later than 90 days from final approval of this SUP and be completed no later than 12 months thereof and be to the satisfaction of Storey County Community Development, Public Works, and, if applicable, the Nevada Department of Transportation.
26. Signage Informational. Up to three signs in connection with the Permit Holder (Business License Holder) may be for commercial advertising and related purposes. Three additional signs that are non-commercial and serve to educate the public as stated in “Visitor/Tourism Element” above shall be installed at the visitor information center to the satisfaction of Storey County Community Development. The signs and their placement shall also be approved by the Comstock Historic District Commission as evident by submitted proof of a Certificate of Historical and Architectural Appropriateness.
27. Excavation Limitations. Methods of mineral exploration shall be limited to reverse circulation, core drilling, shallow soil auger drilling. No trenching or test pit methods of exploration shall be permitted. Bore holes shall be “plugged” in accordance with the Nevada Administrative Codes (NAC) within 60 days of creation. At no time shall there be more than 5 exploration activities taking place at one time outside of the boundaries of SUP No. 2000-222-A-1. The Permit Holder shall exercise due care in assuring that access routes are the minimum width needed to fulfill their purpose. Natural contours of the land shall be followed where practicable to minimize unnecessary disturbances. Community Development may require the operator to use existing roads where feasible to minimize land disturbances. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.
28. Surface/Mineral Estate Disturbance. Mineral exploration activities shall only take place on properties owned and/or leased by the SUP Permit Holder. At no time shall surface disturbances, e.g., grading, equipment staging, and surface subsidence from subterranean activity, take place on surface property not under the ownership or lease agreement of the Permit Holder. An exception to this limitation may be made upon the expressed written permission of the affected property owner(s). The written permission shall be submitted to Community Development before surface disturbances may commence.

29. Emergency & Site Management Plan. The Permit Holder shall submit to Storey County a comprehensive Emergency and Site Management Plan. The Plan will be reviewed for appropriateness by Storey County Fire, Emergency Management, Community Development, and Public Works Departments before operations may commence. The Plan shall include at least the following detailed information:
- a. Basic company, owner, site, and emergency contact information;
 - b. Plot plan (detailed sketch drawing) showing each exploration site area, access roads, and vehicle and material staging/storage areas;
 - c. Site evacuation, hazardous material response and confined space rescue training in accordance with MSHA and OSHA requirements, when applicable;
 - d. Wild land fire prevention;
 - e. Emergency contact procedures, including for the NDEP, Dispatch 9-1-1, and Storey County Emergency Services Direct Connect (775.847.0950);
 - f. Fire suppression, emergency vehicle access, circulation, and staging;
 - g. Documenting and reporting;
 - h. Post disaster management, clean up and material disposal;
 - i. Post-disaster damage reporting for treatment of historic structures and properties;
 - j. Schedule of reclamation that will follow operations, including within 500' of residences and the V&T Railroad/Railway corridor (also see 32, Reclamation);
 - k. NDEP Storm Water Pollution Prevention Plan, when applicable; and
 - l. Other information requested by Storey County.
30. Hazardous Materials Fire Permit. Hazardous materials located on site shall only take place when permitted through the Nevada State Fire Marshal's Office and reviewed by Storey County Fire Department for final approval in order to assure appropriate equipment to respond to any incident exists.
31. Fire Prevention and Responsibility. The Permit Holder shall obtain necessary review and permitting from Storey County Fire Department for any welding and "hot work". Care shall be employed by the Permit Holder to assure that vehicles, drill rigs, and other equipment are placed and managed appropriately to mitigate potential fires caused thereby (see also "Emergency and Site Management Plan"). The Permit Holder shall be fully responsible for all costs associated with wild land fires created by exploration and related activities.
32. Emergency Telephone. Any persons located on the premises in connection with the project shall be made aware to dial Storey County **Emergency Services Direct-Connect 775.847.0950** (in lieu of 9-11) when dialing for emergency service from **cellular telephone. Emergency 9-1-1 still applies to landline telephones.**
33. Spill Reporting. Any hydrocarbon or chemical spill of or exceeding 25 gallons or 3 cubic-yards shall be reported immediately to Emergency Dispatch 9-1-1 and Storey County Emergency Services (775.847.0950). Additionally, the incident shall be immediately reported to the NDEP and the local jurisdiction, including Storey County Fire, Emergency Management, and Community Development Departments. The Permit Holder shall comply with NDEP clean-up requirements and provide Storey County a copy of NDEP completion of remediation immediately. All hazardous materials incident clean-up and response costs shall be borne by the Permit Holder as part of the issuance of this SUP. Incidents exceeding a standard first alarm fire will be billed to the Permit

Holder. If mutual aid is warranted to suppress an incident, those costs shall also be funded by the Permit Holder.

34. Reclamation. The required Emergency and Site Management Plan shall include the following elements when surface disturbance takes place within 500 feet of a residential structure or the Virginia & Truckee Railroad/Railway corridor or within 1,000 feet of the “Devil’s Gate” natural landmark. The Plan shall be updated periodically, as needed, and submitted to Storey County for approval at least 10 business days prior to commencement of surface disturbances. “Closure” of each surface disturbance shall be when the bore hole is plugged. Reasonable adjustments to the reclamation schedule may be approved by Storey County Community Development under certain circumstances of Force Majeure. The following elements shall be included in the Plan and shall specify details for each exploration site:
- a. Estimated schedule of reclamation that will follow each surface disturbance;
 - b. Reclamation beginning no later than 90 calendar days from “closure” of each surface disturbance area and associated land impacts;
 - c. Reclamation being completed no later than 30 calendar days from the start of reclamation;
 - d. Written notice of “closure” of each exploration site to be provided to Community Development within 24 hours thereof;
 - e. Explanation or illustrations indicating intent to reshape the lands disturbed and affected by the exploration operation to its approximate original contours and appearance;
 - f. Plan for replacement of topsoil and vegetation using native species previously occurring in or around the disturbed areas to provide a vegetative cover at least to the point where natural succession is occurring. Photographic proof of pre-existing conditions shall be submitted to Community Development. Re-vegetation, including seeding, re-seeding, and/or planting shall take place in the autumn season in the months of October or November and not during times of extreme weather conditions such as snow. Adjustments to re-vegetation may be made as necessitated by weather and other natural conditions;
 - g. Treatment of slopes created or affected by the exploration process; and
 - h. The post-operation monitoring and maintenance of reclaimed land. Appropriate preparation and re-vegetation of the land may be sufficient.
35. Riparian Area Trees. Within 75 feet of the center-point of any waterway, removal or disturbance of trees with trunks 6 inches or more in diameter or groves thereof shall be prohibited. Storey County Community Development shall be notified if activities are scheduled to take place near riparian area trees.
36. Utilities and Survey Monuments. The Permit Holder shall be responsible for knowing the location of and for protecting all above and below-ground utilities, including electrical, cable, communications, water, and sewer. A Geographic Information Systems (GIS) aerial image with layer(s) illustrating the approximate location (within 10 feet) of the water main serving Silver City shall be submitted to the Storey County Public Works Director for approval and Community Development Department for filing prior to any excavation. Workers conducting excavations, drilling, and other surface disturbances shall have the GIS image in possession for reference at all times when such work takes

place within 100 feet of said water utility. In accordance with NRS 455, the Permit Holder shall be responsible for calling and following the procedures for USA North One-Call System before digging near said waterline. All other provisions under NRS 455 shall also apply. No survey monument shall be moved or disturbed in any way. To the extent practicable, all monument witness corners, reference monuments, bearing trees and line trees shall be protected against undue destruction, obliteration, or damage. If in the course of operations any monuments, corners, or accessories are destroyed, obliterated, or damaged, the Permit Holder shall immediately report the matter to the authorized officer. The Permit Holder shall prescribe, in writing, the requirements for the restoration or re-establishment of all such monuments.

37. **Blasting Limitation.** No blasting, other than down-hole detonations for the purpose of dislodging or mobilizing seized bore hole drilling equipment, shall take place in association with this SUP. Storey County Emergency Dispatch (775.847.0950) shall be notified by telephone 30 minutes prior to each occurrence of material detonation. The Permit Holder shall obtain a blasting permit from Storey County Fire Department prior to detonation.

XII. LEGAL REQUIREMENTS

In accordance with Section 17.60.060 of the Storey County Code, the board of county commissioners, after receipt of the report and recommendation from the planning commission, shall consider the report and recommendation as an action agenda item during a normally scheduled meeting of the board and shall make a decision thereon as it deems warranted. If requested by an appellant pursuant to Section 17.60.070, the board of county commissioners shall hold a public hearing before any decision is made. The board of county commissioners in granting a special use permit or variance, may establish conditions under which the lot or parcel of land may be used, or a building or structure is constructed or altered or make requirements as to architecture, height of a building or structure, open spaces, parking areas or vehicle storage and conditions of operation of any enterprise, or may make any conditions, requirements or safeguards that the commission may consider necessary to prevent damages or prejudice to adjacent properties or detriment to the county. (Ord. 159 § 2(part), 1999)

XIII. PROPOSED MOTION:

In accordance with the findings of fact stated forth in Staff Report No. 2011-016 to the Board of County Commissioners, and federal, Nevada State, and Storey County regulations, and the conditions and stipulations included herein and as approved by the Storey County Planning Commission, staff moves to recommend that the Board of Storey County Commissioners approves Special Use Permit No. 2011-016 to conduct mineral exploration activities in the geographic areas specified in the Project Legal Description and illustrated in the Project Map respectively attached hereto as “Exhibit B” and “Exhibit C”, and to include both said Exhibits with and as part of the Special Use Permit Approval.

Prepared by Austin Osborne, Senior Planner

Enclosed Exhibits: (A) SUP Application No. 2011-016; (B) Project Legal Description; and (C) Project Map.

9/2/2011