

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

4 JOHN L. MARSHALL
5 SBN 6733
6 570 Marsh Avenue
7 Reno, Nevada 89509
8 Telephone: (775) 303-4882
9 Attorney for Petitioners Comstock
10 Residents Association & Joe McCarthy

11
12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 COMSTOCK RESIDENTS ASSOCIATION,
14 JOE McCARTHY

15 Appellants,
16 00128

No. 68433
District Court Case No. 14-CV-

17 v.

18 LYON COUNTY BOARD OF
19 COMMISSIONERS; COMSTOCK
20 MINING INCORPORATED

21 Respondents,
22 _____/

23 JOINT APPENDIX

24 VOLUME 28

25 PAGES 3751-3979
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014)	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015)	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014)	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015)	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014)	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014)	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877

1 B. CMI Will Not Be Prejudiced

2 Both Lyon County and CMI argue that CMI will be prejudiced if CRA is granted leave
3 amend to state a claim under the NRPA against Lyon County. Defendants speculate that
4 granting of the motion will cause delay to the ultimate resolution of this case with prejudice to
5 CMI. Lyon County Opposition at 7, CMI Opposition at 5. As set forth in CRA's Motion to
6 Amend, this case is in its earliest stages. Discovery has yet to be conducted and a briefing
7 schedule yet to be created. After the close of discovery, a single summary judgment motion (or
8 cross motions) can likely resolve the entire case. Thus, the addition of a single claim at this
9 juncture will not likely delay the ultimate resolution of the entire case, particularly where final
10 resolution will likely come after an appeal to the Nevada Supreme Court.
11

12 CMI complains, without citation to fact, that adding the NPRA claim will unduly delay it
13 "from moving forward with the use of its property." CMI Opposition at 5:24-25. However,
14 CMI can proceed with mineral exploration of its property now, as it could prior to the master
15 plan amendment and zone change. And, as both Lyon County and CMI have reminded this
16 Court, CMI cannot proceed to with mining activity without first obtaining a special use permit.
17 Something that CMI has yet to do or even apply for, and should it occur an action certainly to
18 be subject to judicial challenge prior to the ultimate resolution of this case. Therefore, CMI and
19 Lyon County simply speculate, with out any factual basis to conclude, that by adding another
20 claim, CMI's use of the property will be delayed.
21

22 Moreover, any speculative delay is more than outweighed by the judicial efficiency
23 promoted by amending this claim to the present litigation. Rather than having potentially two
24 courts reviewing actions intimately related, judicial economy can be served by this Court
25 resolving all issues related to Lyon County's actions, including, but not limited to, whether
26
27
28

1 Lyon County has in fact submitted a complete record necessary for the resolution of CRA's
2 NRS Chapter 278 claims.

3 In short, Lyon County and CMI have provided no facts upon which to claim that CMI will
4 suffer "undue" prejudice through delay that outweighs the general principles of liberally
5 granting timely motions to amend (Defendants do not argue that CRA's unduly delayed filing
6 its motion).
7

8 **III. CONCLUSION**

9 CRA seeks to amend its Complaint/Petition to add a claim under the NPRA intimately
10 related to the other claims already stated therein. Defendants Lyon County and CMI oppose
11 with arguments of futility and prejudice. As demonstrated above, CRA's NPRA claim for the
12 release of public records sent or received by private devices represents a wholly reasonable
13 application of the NRPA and in the form accepted to force Lyon County to release them.
14 Likewise, the Defendants' speculation regarding any ultimate delay unduly prejudicing CMI is
15 without factual foundation, contrary to fact, and inconsistent with judicial economy. CRA
16 therefore respectfully requests that the Court grant it leave to amend to state a claim under the
17 NRPA as set forth in the proposed Amended Complaint/Petition attached as Exhibit A to its
18 motion.
19
20

21 Dated: August 4, 2014.

22 Respectfully submitted,

23
24 By 

25 John L. Marshall, SBN 6733
26 570 Marsh Avenue
27 Reno, NV 89509
28 775.303.4882

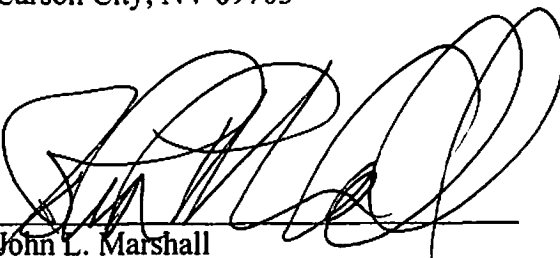
Attorney for Plaintiffs/Petitioners CRA, Gayle
Sherman, Joe McCarthy

CERTIFICATE OF SERVICE

Pursuant to NRS 239B.030, the undersigned affirms that the preceding document does not contain the social security number of any person. I hereby certify that the foregoing Reply to Motion to Amend was served on the parties a copy thereof on the 4th day of August, 2014, by hand delivery:

Steven B. Rye
Chief Deputy District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703



John L. Marshall

1 Case No. 14-CV-00128

2 JOHN L. MARSHALL
3 SBN 6733

4 570 Marsh Avenue

5 Reno, Nevada 89509

6 Telephone: (775) 303-4882

7 Attorney for Plaintiffs/Petitioners Comstock
8 Residents Association, Gayle Sherman, Joe
9 McCarthy

FILED
2014 OCT 14 PM 3:03

TANYA O'CONNOR
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY

Plaintiffs/Petitioners,

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents.

CRA'S NOTICE OF SUPPLEMENTARY AUTHORITY RE MOTION TO AMEND

Plaintiffs/Petitioners Comstock Residents Association, Gayle Sherman and Joe McCarthy
(collectively "CRA") hereby submit notice of the recently decided case that is relevant to
CRA's Motion to Amend. On September 9, 2014, the Court of Appeal of the State of
Washington decided Nissen v. Pierce County, 333 P.3d 577 (Wash. App. Div. 2, 2014). The

1 Court in Piece County held that the Washington State Public Records Act applied to
2 government related text messages and call logs sent via private cellular devices.

3
4 Dated: October 14, 2014.

5
6 Respectfully submitted,

7
8 By 

John L. Marshall, SBN 6733

570 Marsh Avenue

Reno, NV 89509

775.303.4882

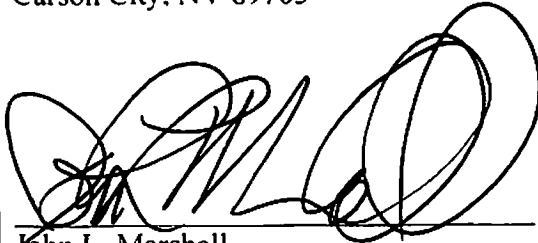
11 Attorney for Plaintiffs/Petitioners CRA, Gayle
12 Sherman, Joe McCarthy

CERTIFICATE OF SERVICE

Pursuant to NRS 239B.030, the undersigned affirms that the preceding document does not contain the social security number of any person. I hereby certify that the foregoing Notice of Supplemental Authority was served on the parties a copy thereof on the 14th day of October, 2014, by electronic and U.S. mail:

Steven B. Rye
Chief Deputy District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703



John L. Marshall

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this
document does not contain a social security
number.

[Signature]

2014 OCT 16 PM 2:43

TANYA SECOR
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson TY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents.

**LYON COUNTY'S OBJECTION TO COURT'S CONSIDERATION OF CRA'S
SUPPLEMENTAL AUTHORITY**

Defendant LYON COUNTY BOARD OF COMMISSIONERS (referred to as COUNTY),
by and through ROBERT L. AUER, Lyon County District Attorney, and STEPHEN B. RYE,
Chief Deputy District Attorney, objects to this Court's consideration of the supplemental
authority, Nissen v. Pierce County, 333 P.3d 577 (Wash. App. Div. 2, 2014), submitted by the
Petitioners/Plaintiffs herein for the reasons that the matter has been submitted for decision
and the Nissen case is not controlling authority in Nevada.

//

//

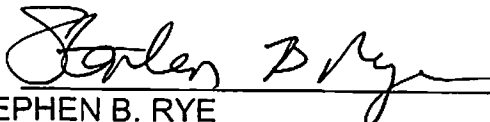
//

//

//

1 DATED this 16th day of October 2014.

2
3 ROBERT L. AUER
DISTRICT ATTORNEY

4
5 By: 
6 STEPHEN B. RYE
7 CHIEF DEPUTY DISTRICT ATTORNEY
8 31 South Main Street
9 Yerington, NV 89447
10 775-463-6511

11 Attorney for Respondent/Defendant
12 Lyon County Board of Commissioners
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

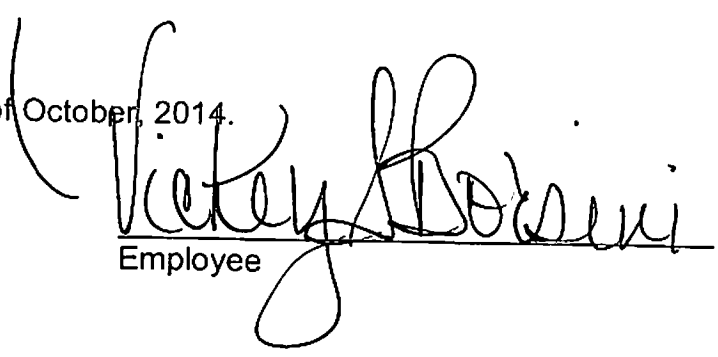
Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 16th day of October, 2014, a copy of the foregoing was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 16th day of October, 2014.


Employee

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this document does not contain a social security number.

2014 OCT 21 PM 12:15

TANYA SOLIMON
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED

Defendants/Respondents,

**OBJECTION TO COURT'S CONSIDERATION OF CRA'S
SUPPLEMENTAL AUTHORITY**

COMES NOW Defendant/Respondent, COMSTOCK MINING INCORPORATED, a Nevada Corporation (hereinafter referred to as "CMI"), by and through its counsel, ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., and hereby objects to this Court's consideration of Plaintiff/Petitioner's Notice of Supplemental Authority Re Motion to Amend herein

///

///

///


///

///

1 for the reasons that the matter has been submitted for decision and the authority cited is neither
2 controlling authority in Nevada, nor is it supportive of the position for which it is offered.

3 ALLISON, MacKENZIE, PAVLAKIS,
4 WRIGHT & FAGAN, LTD.
5 P.O. BOX 646
6 Carson City, Nevada 89702
7 Phone (775) 687-0202
8 Fax (775) 882-7918

9 By:


10 James R. Cavilia, Esq.
11 Nevada State Bar No. 3921
12 Justin Townsend, Esq.
13 Nevada State Bar No. 12293
14 Attorneys for Defendants/Respondents
15 COMSTOCK MINING, INCORPORATED
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served to all parties to this action by:

X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
____ Hand-delivery
____ Facsimile
____ Federal Express, UPS, or other overnight delivery
____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

John L. Marshall, Esq.
570 Marsh Avenue
Reno, NV 89509
Attorney for Plaintiffs/Petitioners,
Comstock Residents Association, Gayle Sherman,
Joe McCarthy

Stephen B. Rye, Esq.
Chief Deputy District Attorney
31 South Main Street
Yerington, NV 89447
Attorney for Respondent/Defendant,
Lyon County Board of Commissioners

DATED this 17 day of October, 2014.


CHRISTINE HARPER

1 Case No. 14-CV-00128

2 Dept. No. II

2014 DEC -3 PM 12: 26

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DeAnn Peebles

DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON
8

9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER DENYING PLAINTIFFS MOTION TO AMEND**

17 Comstock Residents Association ("CRA"), Plaintiff/Petitioner herein, filed a Motion to
18 Amend the Complaint on July 3, 2014. CRA sought permission to file an amended
19 complaint to include Public Records Request Action against Lyon County,
20 Defendant/Respondent. Lyon County filed an Opposition to the Motion on July 28, 2014.
21 Defendant Respondent, Comstock Mining, Inc. ("CMI") filed an opposition on July 25, 2014.
22 CRA filed its reply on August 5, 2014.

23 This matter came before this Court for hearing on September 10, 2014. James R.
24 Cavlilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan,
25 Ltd., appeared representing CMI. John Marshall, Esq. appeared representing CRA.
26 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon
27 County. The Court reviewed the pleadings and all documents on file, the applicable law,
28

1 and considered the arguments of the parties. Good cause appearing, the Court makes the
2 following findings and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to amend the Complaint/Petition to include a cause of action against
5 Lyon County under Chapter 239 of the Nevada Revised Statutes, the Nevada
6 Public Records Act.
- 7 2. Essentially CRA alleges that Lyon County failed to comply with a public records
8 request for written electronic transmission and telephone records.
- 9 3. The parties agree that Lyon County did provide some records from private
10 computers and cellular phones pursuant to the CRA public records request.
- 11 4. Lyon County did not provide all private cellular phone and private computer
12 records that CRA seeks.
- 13 5. Some of the evidence that may be garnered by a release of government records
14 may be relevant to the some of the issues in the original complaint.
- 15 6. CMI is not a party to the public records request cause of action and would be
16 burdened by the delay and litigation related to this cause of action.

17 **Conclusions of Law:**

- 18 1. A motion to amend is addressed to the sound discretion of the trial court. NRCP
19 15; Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105, 507 P.2d 1338, 139
20 (1973)(Citations omitted).
 - 21 2. The public records request and any subsequent litigation is a cause of action
22 which can proceed on its own merits.
 - 23 3. The Amendment, if allowed, would essentially add another step to the quick and
24 speedy determination of the land use issues in this case.
 - 25 4. The land use issues can be decided separately from the public records action.
 - 26 5. Allowing this amendment will cause undue delay to CMI and will be burdensome
27 and prejudicial to CMI.
- 28

1 6. The land use claims need to move forward to a final resolution for the county,
2 petitioner, CMI, and the citizens of Lyon County, and this amendment would
3 further delay that resolution. See Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d
4 825, 828 (2000).

5 Based on the foregoing, and good cause appearing,

6 IT IS HEREBY ORDERED that the Motion to Amend is Denied.

7 IT IS FURTHER ORDERED that CRA is not precluded from filing a separate action
8 or pursuing the public records request separately.

9 Dated this 2nd day of December, 2014.

10 : Robert J. Egan
11 DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Case No. 14-CV-00128

2 Dept. No. II

2014 DEC -3 PM 12:28

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
DeAnn Peebles
DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON
8

9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,
15

16 **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS**

17 Comstock Residents Association, Plaintiff/Petitioner herein, ("CRA") filed a Complaint
18 for Injunctive and Declaratory Relief/Petition for Judicial Review. The Complaint included
19 four causes of action: (1) Violations of Nevada Open Meeting Law; (2) Denial of Due
20 Process; (3) Abuse of Discretion; (4) Violation of NRS 278.220. Comstock Mining, Inc.
21 ("CMI") filed its Answer on March 28, 2014. Lyon County filed its Answer on March 27,
22 2014. On June 10, 2014, Lyon County filed a Motion to Dismiss or in the alternative Motion
23 for Summary Judgment, requesting that the Court dismiss the first, second and fourth
24 causes of action. CMI filed a joinder in the Motion on June 13, 2014. CRA filed its
25 Opposition to the Motion on July 3, 2014. Lyon County filed its Reply on July 29, 2014.

26 This matter came before this Court for hearing on September 10, 2014. James R.
27 Cavilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan,
28 Ltd., appeared representing CMI. John L. Marshall, Esq. appeared representing CRA.

1 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon
2 County. The Court reviewed the pleading and all documents on file, the applicable law, and
3 considered the arguments of the parties.

4 On October 23, 2014, the Court held a hearing to issue the ruling on the pending
5 motions before the Court.

6 Good cause appearing, the Court makes the following findings and Order.

7 **Findings of Fact:**

- 8 1. Citizens have alternative methods to pursue some of the claims in the Complaint.
- 9 2. CRA filed a complaint under the Open Meeting Law alleging essentially: (1) that
10 the Board of County Commissioners held a meeting or deliberated outside of an
11 agendized meeting in violation of the Open Meeting law; and, (2) the agenda item
12 was not specific enough, and the Board took action that was not specified on the
13 agenda.
- 14 3. CRA alleges in the complaint that two commissioners met on January 1, 2014, in
15 violation of the Nevada Open Meeting law.
- 16 4. The Complaint does not contain allegations that more than two commissioners
17 met outside of an agendized meeting. CRA alleges in its Opposition that a third
18 commissioner met with a representative of the applicant and that representative
19 was present at the January 1, 2014 meeting.
- 20 5. The complaint and opposition do not include an allegation that supports or
21 establishes any serial meeting.
- 22 6. CRA filed a cause of action for violation of due process based on a conflict of
23 interest of two of the County Commissioners. The thrust of the CRA complaint is
24 that a Commissioner must recuse him or herself when a reasonable person would
25 perceive a conflict of interest.
- 26 7. CRA alleges that Commissioner Keller received compensation from CMI.
- 27 8. Commissioner Keller stated in the record that she consulted with the Nevada
28 Commission on Ethics and the Lyon County District Attorney.

1 9. Commissioner Keller disclosed on the record prior to her decision what her
2 connections were with CMI.

3 10. No person or entity objected at the hearing to Commissioner Keller's participation
4 in the hearing.

5 11. Representatives of CRA were present at the Planning Commission and County
6 Commission public hearings on the CMI Applications.

7 12. CRA alleges that campaign contributions to certain board members rose to the
8 level creating a conflict of interest, and that said members were required to recuse
9 themselves from the decision.

10 13. CRA filed a cause of action alleging that Lyon County did not follow NRS 278.220
11 with respect to the CMI Applications.

12 **Conclusions of Law:**

13 1. A motion to dismiss a claim under NRCP 12(b)(5) tests the legal sufficiency of the
14 claim set out against the moving party and such a motion should be granted if it
15 appears beyond doubt that the plaintiff is entitled to no relief under any set of
16 facts that could be proved in support of the claim. Washoe Medical Center, Inc. v.
17 Reliance Insurance Co., 112 Nev. 494, 915 P.2d 288 (1996).

18 2. The Court must balance the rights granted citizens to challenge acts by the
19 government with the rights of the governing body and rights of citizens who may
20 or may not oppose the actions of the government.

21 3. The Board of County Commissioners' meetings are subject to the Nevada Open
22 Meeting law.

23 4. The allegations in the Complaint together with the factual showing in CRA's
24 opposition brief for a violation of the Nevada Open Meeting law are factually
25 deficient to state claim under the Nevada Open Meeting law.

26 5. A meeting is defined as a gathering of a quorum of members of the public body to
27 deliberate towards a decision. NRS 241.015(2). A quorum is defined as a simple
28 majority of the members of the board. NRS 241.015(5).

- 1 6. The Nevada Open Meeting Law is not intended to inhibit all private discussions of
2 public issues. Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94-
3 95, 64 P.3d 1070, 1075 (2003) (citing McKay v. Board of Cty. Comm'rs, 103 Nev.
4 490, 495-96, 746 P.2d 124, 127 (1987).
- 5 7. The Nevada OML prevents or prohibits collective deliberations or actions where a
6 quorum is present. The complaint alleges that only two County Commissioners
7 were present at the specific meeting held January 1, 2014, alleged to be the
8 violation.
- 9 8. Serial meetings are also prohibited under the Nevada OML if such serial meetings
10 constitute deliberations. In this case, the complaint and opposition brief do not
11 sufficiently allege a serial meeting or any serial deliberation. The facts alleged in
12 the complaint and opposition brief do not constitute a serial meeting as defined in
13 the Nevada Open Meeting Law or pursuant to the Nevada Supreme Court
14 decision of Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d 770 (1998).
- 15 9. The agenda items challenged by CRA for the January 2, 2014, County
16 Commissioner agenda are clear and complete in accordance with NRS 241.020.
- 17 10. The action of the Board of Commissioners did not exceed the scope of the clear
18 and complete agenda items. NRS 241.020(2)(c)(1) requires that discussion at a
19 public meeting cannot exceed the scope of a clearly and completely stated
20 agenda topic. Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d
21 902, 905 (2003). The Board complied with the applicable provisions of Nevada
22 law with respect to the agenda topics.
- 23 11. CRA has not stated a claim under the Nevada Open Meeting Law.
- 24 12. The Commissioners made adequate disclosures related to CMI prior to
25 consideration of the agenda items and decision on the CMI Applications.
26 Therefore, the Commissioners were allowed to deliberate on the matter. See
27 NRS 281A.420(1).
28

- 1 13. A public official who properly discloses the items mentioned in NRS 281A.420(1)
2 is permitted to deliberate and vote on the matter in question unless the "judgment
3 of a reasonable person in the public officer's position would be materially affected
4 by" the disclosed item(s). NRS 281A.420(3).
- 5 14. A public official is presumed not to be materially affected by the gift, loan,
6 significant pecuniary interest, or commitment to another's interests if the benefit to
7 the public officer is not greater than that accruing to any other person affected by
8 the matter in question. NRS 281.420(4).
- 9 15. The complaint does not contain sufficient allegations to support a claim that there
10 was an actual or perceived conflict of interest requiring that any Board members
11 recuse themselves from the decision under the relevant standards set forth in
12 Nevada and federal law.
- 13 16. Nevada law does not require recusal based upon campaign contributions if they
14 are properly reported. See NRS 281A.420(2)(a); Nevada Attorney General
15 Opinion 1998-29.
- 16 17. CRA has not stated a claim for violation of due process in the Complaint in file
17 herein.
- 18 18. The Lyon County Commissioners have ultimate authority to make changes to the
19 master plan pursuant to NRS Chapter 278 and NRS 278.220. If the County
20 violates NRS 278.220, the statute provides a remedy. NRS 278.220 states quite
21 clearly that no change may be made.
- 22 19. NRS 278.220 carries its own remedy in that before that change can be made,
23 which the court understands that the Board of Commissioners has the ultimate
24 authority, it still requires a report by the Planning Commission. When the county
25 makes a change that change may or may not be beneficial and that's the reason
26 that the Planning Commission or why the statute states that the Planning
27 Commission must make a report. The Comstock Residents argue that the county
28

1 put the cart before the horse. The Court agrees. The violation of NRS 278.220 is
2 not dismissed.

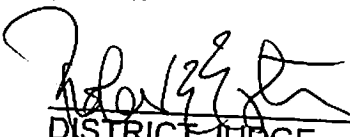
3 Based on the foregoing, and good cause appearing,

4 IT IS HEREBY ORDERED that the Motion to Dismiss with respect to the First Cause
5 of Action, Nevada Open Meeting Law Violation, is GRANTED, and the First Cause of Action
6 is DISMISSED with prejudice and without leave to amend.

7 IT IS FURTHER ORDERED that the Second Cause of Action, Due Process, is
8 GRANTED, and the Second Cause of Action is DISMISSED with prejudice and without
9 leave to amend.

10 IT IS FINALLY ORDERED that the Motion to Dismiss the Fourth Cause of Action,
11 NRS 278.220, is DENIED.

12 Dated this 2nd day of December, 2014.

13
14 : 
15 DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 14-CV-00128

Dept. No. Senior Judge

The undersigned hereby affirms this document does not contain a social security number.

FILED
2014 DEC -8 PM 4:24

JAYLA SCOTT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

NOTICE OF ENTRY OF ORDER

Please take notice that the Court entered its Order Denying Plaintiff's Motion to Amend on December 3, 2014. A copy of the Order is attached hereto.

DATED this 5 day of December, 2014.

ROBERT L. AUER
DISTRICT ATTORNEY

By: Stephen B. Rye
STEPHEN B. RYE
CHIEF DEPUTY DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners

Office of the District Attorney
Lyon County, State of Nevada
801 Overland Loop, Suite 308, Dayton, Nevada 89403 - 31 South Main Street, Yerington, Nevada 89447 - 565 East Main Street, Fernley, Nevada 89429


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 5th day of December, 2014, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 5th day of December, 2014.


Employee

1 Case No. 14-CV-00128

2 Dept. No. II

2014 DEC -3 PM 12: 26

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DeAnn Peebles

DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON
8

9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER DENYING PLAINTIFFS MOTION TO AMEND**

17 Comstock Residents Association ("CRA"), Plaintiff/Petitioner herein, filed a Motion to
18 Amend the Complaint on July 3, 2014. CRA sought permission to file an amended
19 complaint to include Public Records Request Action against Lyon County,
20 Defendant/Respondent. Lyon County filed an Opposition to the Motion on July 28, 2014.
21 Defendant Respondent, Comstock Mining, Inc. ("CMI") filed an opposition on July 25, 2014.
22 CRA filed its reply on August 5, 2014.

23 This matter came before this Court for hearing on September 10, 2014. James R.
24 Cavlilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan,
25 Ltd., appeared representing CMI. John Marshall, Esq. appeared representing CRA.
26 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon
27 County. The Court reviewed the pleadings and all documents on file, the applicable law,
28

1 and considered the arguments of the parties. Good cause appearing, the Court makes the
2 following findings and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to amend the Complaint/Petition to include a cause of action against
5 Lyon County under Chapter 239 of the Nevada Revised Statutes, the Nevada
6 Public Records Act.
- 7 2. Essentially CRA alleges that Lyon County failed to comply with a public records
8 request for written electronic transmission and telephone records.
- 9 3. The parties agree that Lyon County did provide some records from private
10 computers and cellular phones pursuant to the CRA public records request.
- 11 4. Lyon County did not provide all private cellular phone and private computer
12 records that CRA seeks.
- 13 5. Some of the evidence that may be garnered by a release of government records
14 may be relevant to the some of the issues in the original complaint.
- 15 6. CMI is not a party to the public records request cause of action and would be
16 burdened by the delay and litigation related to this cause of action.

17 **Conclusions of Law:**

- 18 1. A motion to amend is addressed to the sound discretion of the trial court. NRCP
19 15; Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105, 507 P.2d 1338, 139
20 (1973)(Citations omitted).
- 21 2. The public records request and any subsequent litigation is a cause of action
22 which can proceed on its own merits.
- 23 3. The Amendment, if allowed, would essentially add another step to the quick and
24 speedy determination of the land use issues in this case.
- 25 4. The land use issues can be decided separately from the public records action.
- 26 5. Allowing this amendment will cause undue delay to CMI and will be burdensome
27 and prejudicial to CMI.

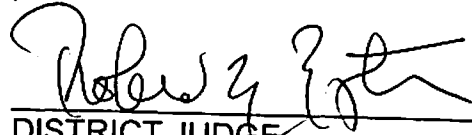
1 6. The land use claims need to move forward to a final resolution for the county,
2 petitioner, CMI, and the citizens of Lyon County, and this amendment would
3 further delay that resolution. See Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d
4 825, 828 (2000).

5 Based on the foregoing, and good cause appearing,

6 IT IS HEREBY ORDERED that the Motion to Amend is Denied.

7 IT IS FURTHER ORDERED that CRA is not precluded from filing a separate action
8 or pursuing the public records request separately.

9 Dated this 2nd ^{December} day of November, 2014.

10 : 
11 DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 14-CV-00128

Dept. No. Senior Judge

The undersigned hereby affirms this document does not contain a social security number.

2014 DEC -8 PM 4:23

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

NOTICE OF ENTRY OF ORDER

Please take notice that the Court entered its Order Granting in Part and Denying in Part Motion to Dismiss on December 3, 2014. A copy of the Order is attached hereto.

DATED this 5 day of December, 2014.

ROBERT L. AUER
DISTRICT ATTORNEY

By:
STEPHEN B. RYE
CHIEF DEPUTY DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners

Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 5th day of December, 2014, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 5th day of December, 2014.



Employee

1 Case No. 14-CV-00128

2 Dept. No. II

2014 DEC -3 PM 12:26

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
DeAnn Peebles
DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON
8

9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS**

17 Comstock Residents Association, Plaintiff/Petitioner herein, ("CRA") filed a Complaint
18 for Injunctive and Declaratory Relief/Petition for Judicial Review. The Complaint included
19 four causes of action: (1) Violations of Nevada Open Meeting Law; (2) Denial of Due
20 Process; (3) Abuse of Discretion; (4) Violation of NRS 278.220. Comstock Mining, Inc.
21 ("CMI") filed its Answer on March 28, 2014. Lyon County filed its Answer on March 27,
22 2014. On June 10, 2014, Lyon County filed a Motion to Dismiss or in the alternative Motion
23 for Summary Judgment, requesting that the Court dismiss the first, second and fourth
24 causes of action. CMI filed a joinder in the Motion on June 13, 2014. CRA filed its
25 Opposition to the Motion on July 3, 2014. Lyon County filed its Reply on July 29, 2014.

26 This matter came before this Court for hearing on September 10, 2014. James R.
27 Cavilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan,
28 Ltd., appeared representing CMI. John L. Marshall, Esq. appeared representing CRA.

1 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon
2 County. The Court reviewed the pleading and all documents on file, the applicable law, and
3 considered the arguments of the parties.

4 On October 23, 2014, the Court held a hearing to issue the ruling on the pending
5 motions before the Court.

6 Good cause appearing, the Court makes the following findings and Order.

7 **Findings of Fact:**

- 8 1. Citizens have alternative methods to pursue some of the claims in the Complaint.
- 9 2. CRA filed a complaint under the Open Meeting Law alleging essentially: (1) that
10 the Board of County Commissioners held a meeting or deliberated outside of an
11 agendized meeting in violation of the Open Meeting law; and, (2) the agenda item
12 was not specific enough, and the Board took action that was not specified on the
13 agenda.
- 14 3. CRA alleges in the complaint that two commissioners met on January 1, 2014, in
15 violation of the Nevada Open Meeting law.
- 16 4. The Complaint does not contain allegations that more than two commissioners
17 met outside of an agendized meeting. CRA alleges in its Opposition that a third
18 commissioner met with a representative of the applicant and that representative
19 was present at the January 1, 2014 meeting.
- 20 5. The complaint and opposition do not include an allegation that supports or
21 establishes any serial meeting.
- 22 6. CRA filed a cause of action for violation of due process based on a conflict of
23 interest of two of the County Commissioners. The thrust of the CRA complaint is
24 that a Commissioner must recuse him or herself when a reasonable person would
25 perceive a conflict of interest.
- 26 7. CRA alleges that Commissioner Keller received compensation from CMI.
- 27 8. Commissioner Keller stated in the record that she consulted with the Nevada
28 Commission on Ethics and the Lyon County District Attorney.

1 9. Commissioner Keller disclosed on the record prior to her decision what her
2 connections were with CMI.

3 10. No person or entity objected at the hearing to Commissioner Keller's participation
4 in the hearing.

5 11. Representatives of CRA were present at the Planning Commission and County
6 Commission public hearings on the CMI Applications.

7 12. CRA alleges that campaign contributions to certain board members rose to the
8 level creating a conflict of interest, and that said members were required to recuse
9 themselves from the decision.

10 13. CRA filed a cause of action alleging that Lyon County did not follow NRS 278.220
11 with respect to the CMI Applications.

12 **Conclusions of Law:**

13 1. A motion to dismiss a claim under NRCP 12(b)(5) tests the legal sufficiency of the
14 claim set out against the moving party and such a motion should be granted if it
15 appears beyond doubt that the plaintiff is entitled to no relief under any set of
16 facts that could be proved in support of the claim. Washoe Medical Center, Inc. v.
17 Reliance Insurance Co., 112 Nev. 494, 915 P.2d 288 (1996).

18 2. The Court must balance the rights granted citizens to challenge acts by the
19 government with the rights of the governing body and rights of citizens who may
20 or may not oppose the actions of the government.

21 3. The Board of County Commissioners' meetings are subject to the Nevada Open
22 Meeting law.

23 4. The allegations in the Complaint together with the factual showing in CRA's
24 opposition brief for a violation of the Nevada Open Meeting law are factually
25 deficient to state claim under the Nevada Open Meeting law.

26 5. A meeting is defined as a gathering of a quorum of members of the public body to
27 deliberate towards a decision. NRS 241.015(2). A quorum is defined as a simple
28 majority of the members of the board. NRS 241.015(5).

6. The Nevada Open Meeting Law is not intended to inhibit all private discussions of public issues. Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94-95, 64 P.3d 1070, 1075 (2003) (citing McKay v. Board of Cty. Comm'rs, 103 Nev. 490, 495-96, 746 P.2d 124, 127 (1987)).
7. The Nevada OML prevents or prohibits collective deliberations or actions where a quorum is present. The complaint alleges that only two County Commissioners were present at the specific meeting held January 1, 2014, alleged to be the violation.
8. Serial meetings are also prohibited under the Nevada OML if such serial meetings constitute deliberations. In this case, the complaint and opposition brief do not sufficiently allege a serial meeting or any serial deliberation. The facts alleged in the complaint and opposition brief do not constitute a serial meeting as defined in the Nevada Open Meeting Law or pursuant to the Nevada Supreme Court decision of Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d 770 (1998).
9. The agenda items challenged by CRA for the January 2, 2014, County Commissioner agenda are clear and complete in accordance with NRS 241.020.
10. The action of the Board of Commissioners did not exceed the scope of the clear and complete agenda items. NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic. Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d 902, 905 (2003). The Board complied with the applicable provisions of Nevada law with respect to the agenda topics.
11. CRA has not stated a claim under the Nevada Open Meeting Law.
12. The Commissioners made adequate disclosures related to CMI prior to consideration of the agenda items and decision on the CMI Applications. Therefore, the Commissioners were allowed to deliberate on the matter. See NRS 281A.420(1).

- 1 13. A public official who properly discloses the items mentioned in NRS 281A.420(1)
2 is permitted to deliberate and vote on the matter in question unless the "judgment
3 of a reasonable person in the public officer's position would be materially affected
4 by" the disclosed item(s). NRS 281A.420(3).
- 5 14. A public official is presumed not to be materially affected by the gift, loan,
6 significant pecuniary interest, or commitment to another's interests if the benefit to
7 the public officer is not greater than that accruing to any other person affected by
8 the matter in question. NRS 281.420(4).
- 9 15. The complaint does not contain sufficient allegations to support a claim that there
10 was an actual or perceived conflict of interest requiring that any Board members
11 recuse themselves from the decision under the relevant standards set forth in
12 Nevada and federal law.
- 13 16. Nevada law does not require recusal based upon campaign contributions if they
14 are properly reported. See NRS 281A.420(2)(a); Nevada Attorney General
15 Opinion 1998-29.
- 16 17. CRA has not stated a claim for violation of due process in the Complaint in file
17 herein.
- 18 18. The Lyon County Commissioners have ultimate authority to make changes to the
19 master plan pursuant to NRS Chapter 278 and NRS 278.220. If the County
20 violates NRS 278.220, the statute provides a remedy. NRS 278.220 states quite
21 clearly that no change may be made.
- 22 19. NRS 278.220 carries its own remedy in that before that change can be made,
23 which the court understands that the Board of Commissioners has the ultimate
24 authority, it still requires a report by the Planning Commission. When the county
25 makes a change that change may or may not be beneficial and that's the reason
26 that the Planning Commission or why the statute states that the Planning
27 Commission must make a report. The Comstock Residents argue that the county
28

1 put the cart before the horse. The Court agrees. The violation of NRS 278.220 is
2 not dismissed.

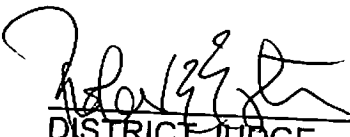
3 Based on the foregoing, and good cause appearing,

4 IT IS HEREBY ORDERED that the Motion to Dismiss with respect to the First Cause
5 of Action, Nevada Open Meeting Law Violation, is GRANTED, and the First Cause of Action
6 is DISMISSED with prejudice and without leave to amend.

7 IT IS FURTHER ORDERED that the Second Cause of Action, Due Process, is
8 GRANTED, and the Second Cause of Action is DISMISSED with prejudice and without
9 leave to amend.

10 IT IS FINALLY ORDERED that the Motion to Dismiss the Fourth Cause of Action,
11 NRS 278.220, is DENIED.

12 Dated this 2nd day of December, 2014.

13
14 : 
15 DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Case No. 14-CV-00128

2 Dept. No. II

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.

[Signature]

2014 DEC 15 PM 3:58

TANYA S. GOMEZ
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

[Signature] DEPUTY

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE MCCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

15 Defendants/Respondents,

16 **MEMORANDUM OF POINTS AND AUTHORITIES**
17 **IN OPPOSITION TO PETITION FOR JUDICIAL REVIEW**

18 **STANDARD OF REVIEW**

19 This action is a petition for judicial review under NRS 278.0233. A record of the
20 administrative proceedings involving Respondent Comstock Mining Incorporated's ("CMI")
21 application to amend the Lyon County Master Plan and the zoning for certain real property in
22 Lyon County near Silver City has been prepared and submitted to the Court and all of the
23 parties hereto. No party has formally objected to the record presented. The record contains
24 documents paginated 14CV00128-000001 through 14CV00128-003050 and audio recordings
25 of the public meetings held on this matter (collectively, the "Record") before the Lyon County
26 Planning Commission (the "Planning Commission") and the Respondent Lyon County Board
27 of Commissioners (the "BOARD"). For ease of reference, all references to the case number
28

1 portion and any leading zeroes of the aforementioned page numbers of the Record will be left
2 off.

3 In judicial review of land use and zoning decisions, Nevada jurisprudence has long
4 held that the reviewing court is "not empowered to substitute its judgment for that of a zoning
5 board, in this case the Board of County Commissioners, when the board's action is supported
6 by substantial evidence." McKenzie v. Shelly, 77 Nev. 237, 240, 362 P.2d 268, 269 (1961).
7 Only rarely may a court interfere with a governing board's decision, "and then only when it can
8 be demonstrated by the one seeking the privilege that the governing board is acting outside of
9 its legal powers." City Council of City of Reno v. Irvine, 102 Nev. 277, 278, 721 P.2d 371, 372
10 (1986). Judicial interference is not warranted except in cases of "manifest abuse of
11 discretion." Id. at 279 (quoting Henderson v. Henderson Auto, 77 Nev. 118, 122, 359 P.2d
12 743, 745 (1961)). The burden of proving abuse of discretion lies with the petitioner. Id. at
13 278; see also NRS 233B.135(2) .

14 A charge against an administrative body for abuse of discretion seeks to ascertain
15 whether that body acted arbitrarily or capriciously. See Barnum v. Williams, 84 Nev. 37, 41,
16 436 P.2d 219, 222 (1968) and Karadanis v. Bond, 116 Nev. 163, 167, 993 P.2d 721, 724
17 (2000); see also, Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, 96
18 P.3d 756, 760 (2004) and Helms v. State of Nevada, Div. of Environmental Protection, 109
19 Nev. 310, 313, 849 P.2d 279, 281 (1993). An administrative decision is arbitrary and
20 capricious only when it "lacks support in the form of substantial evidence." Stratosphere, 120
21 Nev. at 528 (quoting Tighe v. Las Vegas Metro. Police Dept., 110 Nev. 632, 634, 877 P.2d
22 1032, 1034 (1994).

23 Finally, in conducting a review of land use and zoning decisions, the Court is limited to
24 reviewing "the agency record to decide whether substantial evidence supports the governing
25 body's findings." City of Reno v. Citizens for Cold Springs, 236 P.3d 10, 15 (Nev. 2010).
26 "Substantial evidence is that which a reasonable mind could accept as sufficient to support a
27 conclusion." Id. (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d
28 497, 498 (1986)).

RELIEF REQUESTED

Respondents request that this Court find that the decision of the BOARD to grant CMI's application for a master plan amendment and zone change was based on substantial evidence, that the decision was therefore not arbitrary and capricious, and that the same should be upheld.

BACKGROUND

Petitioners, COMSTOCK RESIDENTS ASSOCIATION, GAYLE SHERMAN, and JOE McCARTHY (hereinafter collectively "CRA"), brought this action initially alleging four (4) claims for relief against Respondents. First, CRA alleged that the BOARD violated NRS 241, which is commonly referred to as Nevada's Open Meeting Law. Second, CRA alleged that the BOARD denied CRA due process under the State and Federal Constitutions on the basis that two (2) individual members of the BOARD have allegedly illicit ties to Respondent, CMI. Third, CRA has alleged that the BOARD abused its discretion in granting CMI's application for a Master Plan Amendment and Rezoning. Fourth, CRA has alleged that the BOARD violated NRS 278.220(4), which requires that the BOARD submit to the Planning Commission any proposed change to a master plan adopted by the planning commission for a report thereon. Respondents filed a Motion to Dismiss CRA's First, Second, and Fourth claims for relief. The Court granted Respondents' Motion as to CRA's First and Second claims for relief. All that remains are CRA's petition for judicial review of the BOARD's decision and allegations that the BOARD violated NRS 278.220(4).

THE RECORD

In short, the Record reveals (1) that CMI applied in 2013 for an amendment to the Lyon County Master Plan and the applicable zoning of certain real property situated within Lyon County near Silver City, (2) that CRA opposed the application, (3) that others in the community supported the application, and (4) that after a public hearing, the BOARD granted the master plan amendment and zone change with regard to the bulk of the real property included in the application.

///

1 **1. The Application**

2 In or about August 2013, CMI submitted to the Lyon County Planning Department a
3 Master Plan Amendment and Zone Change Application (the "Application"). Record at p. 549-
4 81. The Application sought a change to the land use and zoning designations for six (6)
5 parcels totaling approximately 87.2 acres adjacent to the town site of Silver City. Id. at 551.
6 The specific requests made in the Application were to amend the Lyon County Master Plan by
7 changing the land use designation from Suburban Residential to Rural Residential on
8 approximately 42.57 acres and from Resource to Rural Residential on approximately 12.29
9 acres and to amend the zoning designation from NR1 to RR3 on 54.86 acres and from NR1
10 to RR5 on 32.34 acres. Id. at 552.

11 The Application was made for the purpose of furthering mineral exploration efforts on
12 the property. Id. at 553. However, the proposed land use and zoning designations do not
13 permit actual mining activities and CMI, if it determined from its mineral exploration that
14 mining activities on the property would be appropriate, would still have to apply for and obtain
15 a special use permit from the BOARD. Id. CMI did not apply for a special use permit in
16 connection with the Application and has not heretofore applied for a special use permit to
17 conduct mining activities on the property.

18 **2. Planning Commission Meetings**

19 The Planning Commission initially set CMI's Application for public hearing on
20 November 12, 2013. Id. at 582 & 1152-1154. Prior to the November 12, 2013 meeting, Lyon
21 County planning staff prepared a report concerning CMI's Application. Id. at 868-911. A
22 corrected staff report, totaling 35 pages was delivered only a few hours prior to the planned
23 meeting. Id. at 1914. Therefore, at the outset of the meeting, CMI asked for and the
24 Planning Commission granted a continuance of the hearing on the Application to December
25 10, 2013 in order to allow CMI to review and respond to the staff report, if necessary. Id.

26 At the December 10, 2013 Planning Commission meeting, the Planning Commission
27 accepted testimony and evidence from CMI and from various individuals both for and against
28 the Application. Id. at 1915-20. At the close of the December 10, 2013 meeting, the Planning

Commission voted 5-1 to recommend that the BOARD deny the application for a master plan amendment and 6-0 to recommend that the BOARD deny the application for a zone change. Id. at 1921. The Lyon County planning staff prepared and delivered to the BOARD reports on the Planning Commission's actions with respect to the Application. Id. at 2-47.

3. Board of Commissioners Meeting

The BOARD, having the recommendations of the Planning Commission, set CMI's Application for public hearing before the BOARD on January 2, 2014. Id. at 1. In addition to the Planning Commission reports, the BOARD was provided with various documents for its consideration in connection with the Application. In total, the packet of materials provided for the BOARD's consideration exceeded 500 pages and included the following:

- Planning Commission Staff Reports – Id. at 2-47;
- Lyon County Planning Department Letters to CMI re Planning Commission's findings – Id. at 48-51;
- Minutes from the November 12, 2013 Planning Commission meeting – Id. at 60-62;
- Planning Department Staff Reports provided to Planning Commission before their consideration of the Application – Id. at 63-108;
- CMI's Application and supporting documents, including correspondence and documents outlining the benefits of the Application to Lyon County – Id. at 109-82;
- An exhaustive Technical Report, including maps and analyses regarding CMI's Application – Id. at 183-268;
- Seventeen emails/letters to the Lyon County Planning Department offering support of CMI's Application – Id. at 269-92;
- Thirteen emails/letters to the Lyon County Planning Department opposing CMI's Application – Id. at 293-349;
- Comments and minutes of meetings of the Silver City Advisory Board, including petitions and various other attachments – Id. at 350-406;
- A PowerPoint presentation made by Ascent Environmental, Inc. at the December 10, 2013 Planning Commission meeting – Id. at 407-22;
- A description of a DVD presentation made by Robert Elston at the December 10, 2013 Planning Commission meeting – Id. at 423-25 (a copy of the DVD is also made a part of the Record);
- A PowerPoint presentation made by CMI at the December 10, 2013 Planning Commission meeting – Id. at 426-82;
- Various other emails/letters received after the December 10, 2013 Planning Commission meeting – Id. at 483-507.

All of the foregoing material was appended to the public agenda for the BOARD's January 2, 2014 meeting.

In addition to the materials provided with the agenda, the County Commissioners and members of the Lyon County Planning Department individually received emails from citizens,

1 CMI, and others to discuss the Application. Id. at 2777-3050. Some of these
2 communications reveal that meetings with individual Commissioners and members of the
3 Planning Department staff took place with an eye towards expressing concerns, opposition, or
4 support for the Application. See e.g., Id. at 2941.

5 At the January 2, 2014 hearing, Jeff Page, the Lyon County Manager, who was very
6 involved throughout the process of the Planning Commission's and the BOARD's
7 consideration of CMI's Application, disclosed a proposed reduction in the scope of the
8 Application that would reduce the amount of acreage under consideration for a master plan
9 amendment and zone change. Id. at 528. Thereafter, the individual commissioners made
10 public disclosures as required by law. Id. at 528-29. Commissioners Keller and Hastings
11 presented written disclosures, which have been made a part of the Record. See Id. at 511-
12 14. This Court has already ruled that the issue of whether Commissioners Keller and
13 Hastings' disclosures were adequate and whether they should have recused themselves is
14 not an issue for this Court. See Court's December 3, 2014 Order Granting in Part and
15 Denying in Part Lyon County's Motion to Dismiss.

16 Once all disclosures had been made, Rob Loveberg, the Lyon County Planning
17 Director, noted to the BOARD that the Planning Commission recommended denial of the
18 Application. Mr. Loveberg further notified the Board that many citizens were opposed to the
19 Application and many citizens were in favor of the changes proposed by the Application.
20 Record, p. 529.

21 **a. Presentation of the Application**

22 Mark Rotter, a civil engineer representing CMI then presented the Application to the
23 BOARD. Id. Mr. Rotter presented for nearly thirty minutes with the members of the BOARD
24 asking questions throughout. Recording of January 2, 2014 BOARD meeting, CMI #1 at
25 23:10-50:30. Mr. Rotter presented an analysis of historical land uses in and around the
26 subject property. Id. beginning at 25:50. He further testified that the Application would not
27 allow mining on the property, but that a special use permit would have to be obtained prior to
28 any mining of the subject property. Id. beginning at 34:00.

1 Mr. Rotter presented testimony and photographic evidence of CMI's efforts to preserve
2 the historic quality of the Comstock, which includes expending, as of that date, more than \$1
3 million in historic restoration and preservation efforts. Id. beginning at 41:15. He also pointed
4 out the inconsistency of the current zoning and master plan designations, which allow
5 medium residential density, and the topography of the subject property, which is not at all
6 suitable for dense residential development. He noted that, even if no mining ever occurs on
7 the property, the requested master plan amendment and zone change would be the most
8 appropriate master plan and zoning designations for the property. Id.

9 Finally, Mr. Rotter expressed CMI's approval of the proposed reduction in the number
10 of acres subject to the changes requested in the Application and described the scope and
11 effects of the same. Id. beginning at 47:40.

12 **b. Opposition to Application**

13 Three individuals at the hearing presented the formal opposition to the Application:
14 Erich Obermayer, Chairman of the Silver City Citizens Advisory Board; John Marshall,
15 attorney representing CRA; and John Singlaub, of Ascent Environmental Company. Record,
16 p. 529. Mr. Obermayer presented the recommendation of the Silver City Advisory Board,
17 which was that the Application be denied. Id.; see also Recording of January 2, 2014 BOARD
18 meeting at 57:00-1:03:00.

19 Mr. Marshall, presenting on behalf of CRA, spoke for approximately ten minutes and
20 emphasized prior land use planning decisions in Lyon County and urged the BOARD to deny
21 the Application based on prior land use planning decisions affecting the subject property.
22 Recording of January 2, 2014 BOARD meeting at 1:03:20-1:12:05.

23 Finally, Mr. Singlaub testified in opposition to the Application. Mr. Singlaub discussed
24 the BOARD's prior denial of an application by Nevex Mining to change the zoning designation
25 on the subject property in 1986 and urged the BOARD to do the same with respect to CMI's
26 Application. Mr. Singlaub also extolled the virtues of the community planning process. Id. at
27 1:23:45-1:39:02.

1 **c. Proposed Reduction of Acreage and Motion to Approve Master Plan**
2 **Amendment**

3 Following the presentations for and against the Application, Commissioner Vida Keller
4 discussed the proposed reduction of the amount of acreage subject to the master plan
5 amendment and zone change request from 87.2 acres to 71.63 acres, which would operate to
6 protect the Silver City viewshed and historic buildings. Record, p. 529. Commissioner Keller
7 noted that the proposed acreage reduction was her idea and she moved to approve the
8 master plan amendment based on the reduced acreage. Id.; see also Recording of January
9 2, 2014 BOARD meeting beginning 1:40:20. The motion was seconded by Commissioner
10 Mortensen. Record, p. 530.

11 **d. Public Comment**

12 After the motion to approve the master plan amendment was made and seconded, the
13 BOARD opened the hearing for public comment. Approximately 68 people signed in on the
14 sign-in sheet provided therein. Many of those persons made public comment. Id. at 508-10.
15 Twenty-six people spoke in opposition to the Application, although many of them merely
16 expressed an opposition to open pit mining, which was not actually at issue. Id. at 530.
17 Twenty-three people spoke in favor of the Application. Id. at 530-31. In total, the BOARD
18 accepted public comment for a period of approximately 1 hour and 50 minutes. See
19 Recording of January 2, 2014 BOARD meeting, CMI #2 00:15-1:34:20 & CMI #3 00:00-16:50.
20 All members of the public who desired to speak were afforded the opportunity to do so.

21 **e. BOARD Deliberations and Final Comments on Master Plan Amendment**

22 Following public comment, the individual commissioners deliberated the Master Plan
23 Amendment in public. All five commissioners extensively expressed their views and opinions
24 with respect to the Application. Mr. Rotter and Mr. Marshall were also invited to make final
25 comments in support of their respective positions. Record, p. 531; see also Recording of
26 January 2, 2014 BOARD meeting, CMI #3 at 17:20-59:40. A predominant theme during the
27 BOARD's deliberations was that the requested master plan amendment and zone changes
28 would not authorize any actual mining on the subject property. Conditions on mining work on

1 the property, if any, would not be considered or imposed until the BOARD considers any
2 special use permit applications to mine the property. See Id.

3 Following deliberations of the BOARD and final comments from Mr. Rotter and Mr.
4 Marshall, Commissioner Mortensen called for a vote on the motion. The motion passed 4-1,
5 with Commissioner Arellano representing the sole dissenting vote. Record, p. 531. The
6 motion included the following findings as required by the Lyon County Code and Nevada law:

- 7 • The applicant has demonstrated that the amendment is in substantial compliance
8 with and promotes the Master Plan goals, objectives and actions in that it is in
9 keeping with applicable guiding principles, goals, policies and strategies;
- 10 • The proposed amendment is compatible with the actual and planned adjacent land
11 uses, and reflects a logical change in land uses in that the amendment would
12 decrease the density of residential development;
- 13 • The proposed amendment has demonstrated a response to changed conditions or
14 further studies that have occurred since the Master Plan was adopted by the Board,
15 and the requested amendment represents a more desirable utilization of land;
- 16 • The proposed amendment will not adversely affect the implementation of the
17 Master Plan goals, objectives and actions and will not adversely impact the public
18 health, safety or welfare;
- 19 • The proposed amendment will promote the desired pattern for the orderly physical
20 growth of the County, maintains relatively compact development patterns, and
21 guides development of the County based on the least amount of natural resource
22 impairment and the efficient expenditure of funds for public services;
- 23 • The proposed amendment is compatible with the surrounding area, and the goals
24 and policies of the Comprehensive Master Plan;
- 25 • The proposed amendment will have no major negative impacts on transportation
26 services, and facilities;
- 27 • The proposed amendment will have minimal effect on service provision, including
28 adequacy or availability of facilities or services, and is compatible with existing and
planned service provision;
- Strict adherence to the Comprehensive Master Plan would result in a situation
neither intended nor in keeping with key elements and policies of the plan.

Record, p. 529-30. Each of these Board findings is supported by evidence in the record,
including, but not limited to, the various presentations, comments, documents and maps, and
the Board's own knowledge of existing conditions and the area. E.g., Record, p. 124-30.

f. Motion to Approve Zone Change

The Master Plan Amendment and Zone Changes were presented together, with public
comment also being heard on both items together. Id. at 531. After the vote on the Master
Plan Amendment, Commissioner Keller moved to approve the requested zone change based

1 on the reduced acreage proposal. Record, p. 532. Commissioner Hastings seconded the
2 motion, which passed unanimously.

3 **g. Referral to Planning Commission under NRS 278.220**

4 Rob Loveberg, Lyon County Planning Director, explained that the BOARD's decision
5 on the master plan amendment must be sent back to the Planning Commission for a report,
6 but that the BOARD's action on the zone change is a final action that does not require any
7 further action by the Planning Commission. Id. at 531; see also Aff. of Rob Loveberg, ¶ 5, a
8 copy of which is incorporated herein by reference and attached hereto as Exhibit "1."

9 On January 30, 2014, the BOARD sent a letter to the Planning Commission notifying
10 the Planning Commission of its decision to amend the Lyon County Master Plan. Exhibit 1,
11 Aff. of Rob Loveberg, ¶ 6. A copy of the BOARD's January 30, 2014 letter is incorporated
12 herein and attached hereto as Exhibit "2." At the regularly-scheduled February 11, 2014
13 Planning Commission meeting, the Planning Commission considered the BOARD's action to
14 approve the master plan amendment and determined to send a report back to the BOARD
15 pursuant to NRS 278.220 expressing concern for the BOARD's decision and recommending
16 commencing a community planning process for Silver City. Exhibit 1, Aff. of Rob Loveberg,
17 ¶¶ 7-8. A copy of the February 11, 2014 Planning Commission meeting minutes are
18 incorporated herein and attached hereto as Exhibit "3."

19 On March 6, 2014, the BOARD voted unanimously to acknowledge receipt of
20 comments and submissions from the Planning Commission. Exhibit 1, Aff. of Rob Loveberg,
21 ¶ 9. A copy of the March 6, 2014 BOARD minutes are incorporated herein and attached
22 hereto as Exhibit "4." The BOARD did not take any further action on the comments of the
23 Planning Commission as they were not required to do so under NRS 278.220.

24 The foregoing process with regards to the BOARD's actions on CMI's Application is
25 consistent with Lyon County practices and procedures and is, in the opinion of Rob Loveberg,
26 consistent with the requirements of NRS 278.220. Exhibit 1, Aff. of Rob Loveberg, ¶¶ 10-11.

27 //

ARGUMENT

1. The BOARD's Decision to Approve the Application was Based on Substantial Evidence

The master plan and zoning process is a process governed by statute. NRS 278 guides the land use planning process from the initial application through deliberations by the Planning Commission and by the BOARD. That process was strictly followed in this matter over the course of several months. The BOARD is empowered by NRS 278 to make ultimate decisions regarding master plans and zoning designations. See NRS 278.010. As noted above, the Court should not substitute its judgment for that of the BOARD. See Citizens for Cold Springs, 236 P.3d at 15-16.

The BOARD received substantial amounts of evidence, both for and against the Application. Certainly, a reasonable mind could accept the evidence, when considered both for and against the Application, to support a conclusion to grant the Application to amend the Lyon County Master Plan and change the zoning designations on the subject property.

In McKenzie v. Shelly, supra, the Nevada Supreme Court upheld a land use decision by the Washoe County Board of Commissioners. The Court reasoned as follows:

"The record shows that at the public hearing which was properly noticed, eight witnesses testified against and eleven in favor of the requested amendment of the land use plan. All persons wanting to speak for or against the requested amendment were given an opportunity to do so.

It would serve no purpose to detail the nature of all the evidence presented at the public hearing. It does appear from the record that the Board's action was based not only on such oral evidence, but also upon a map of the general plan and upon its own knowledge of existing conditions. Also, over one thousand signed written communications were submitted to the board."

77 Nev. at 240.

Here, the Record also shows substantial witness testimony both for and against the Application. The Record also shows that all persons wanting to speak for or against the Application were given an opportunity to do so. Without detailing the nature of all the evidence presented to the BOARD in this matter, the Court can readily ascertain that the BOARD's findings, as set forth above, and action taken were based on oral and visual

1 evidence presented at the public hearing, but also on a myriad of documentary evidence
2 available to the BOARD and on the BOARD's own knowledge and insight of the relevant
3 conditions applicable to the Application. For these reasons, the Court should deny CRA's
4 Petition for Judicial Review and uphold the BOARD's decision to grant CMI's Application.

5 **2. The COUNTY has Complied with NRS 278.220**

6 NRS 278.220(4) states as follows:

7 No change in or addition to the master plan or any part thereof, as
8 adopted by the planning commission, may be made by the governing
9 body in adopting the same until the proposed change or addition has
10 been referred to the planning commission for a report thereon and an
11 attested copy of the report has been filed with the governing body. Failure
of the planning commission so to report within 40 days, or such longer
period as may be designated by the governing body, after such reference
shall be deemed to be approval of the proposed change or addition.

12 The Court has not dismissed CRA's Fourth Cause of Action, which alleges violations
13 of NRS 278.220 and has ordered further briefing on this particular issue. Under NRS
14 278.220, only changes in or additions to master plans must go back to the Planning
15 Commission for a report. Changes or additions to zoning are not covered by this statute.
16 Moreover, the statute does not require that the proposed master plan change go back to
17 the Planning Commission for a report prior to the BOARD voting on the proposed action.

18 In any event, the evidence attached hereto demonstrates the BOARD's compliance
19 with NRS 278.220. The BOARD referred its decision to amend the Lyon County Master
20 Plan back to the Planning Commission. See Exhibit 1. The Planning Commission
21 considered the BOARD's action at a duly-noticed public meeting on February 11, 2014 at
22 which time the Planning Commission determined to report back to the BOARD. See Exhibit
23 2. Finally, the BOARD considered the Planning Commission's report back to the BOARD
24 and determined to take no further action. See Exhibit 3.

25 Under the statute, the Planning Commission has no authority to overturn or reject the
26 BOARD's action. Indeed, NRS 278.010 empowers the BOARD "to regulate and restrict the
27 improvement of land and to control the location and soundness of structures." Furthermore,
28

1 the Planning Commission did not attempt to overturn the BOARD's decision, instead, it
2 merely expressed its concerns therewith. See Exhibit 2.

3 Ultimate authority for zoning and planning rests with the BOARD. In this case, the
4 Planning Commission made recommendations to the BOARD. Nevertheless, the BOARD
5 is empowered by NRS 278 to make the final decision on CMI's Application. See Falcke v.
6 Douglas County, 116 Nev. 583, 590, 3 P.3d 661, 665 (2000) (noting in footnote no. 4 that
7 the plain language of NRS 278.220 does not require that the governing body's decision
8 comport with the planning commission's recommendation and citing 79-14 Op. Att'y Gen.
9 73 (1979) (concluding that the governing body "is not precluded from subsequently acting
10 on a proposed amendment to the Master Plan which initially failed to obtain an affirmative
11 two-thirds majority vote of the [Planning Commission]"); Lyon County Code 10.12.07;
12 10.12.09.


13 The process adhered to by the BOARD and the Planning Commission conforms with
14 NRS 278.220 and long-time Lyon County practices. See Exhibit 4, Aff. of Rob Loveberg, ¶¶
15 10-11. The BOARD has complied with NRS 278.220 and the Court should find that CRA
16 has no claim for relief thereunder.

17 CONCLUSION

18 Based on the foregoing, the COUNTY respectfully requests that this Court uphold its
19 decision to grant CMI's Application for a Master Plan Amendment and Zone Change.


20 DATED this 15th day of December 2014.

21 ROBERT T L. AUER
22 DISTRICT ATTORNEY

23 By: 
24 STEPHEN B. RYE, ESQ.
25 Chief Deputy District Attorney
26 31 South Main Street
27 Yerington, NV 89447
28 775-463-6511

Attorney for Respondent
Lyon County Board of Commissioners

ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FARRIN, LTD.

By: 
JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
PO Box 646
Carson City, NV 89702
775-687-0202


Attorneys for Respondent
Comstock Mining Incorporated

Certificate of Mailing

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 15th day of December, 2014, a copy of the foregoing Memorandum of Points and Authorities in Opposition to Petition for Judicial Review was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

Dated this 15th day of December, 2014.



Employee

Exhibit 1

JA3799

AFFIDAVIT OF ROBERT G. LOVEBERG

STATE OF NEVADA)
 :SS.
County of LYON)

ROBERT G. LOVEBERG, being first duly sworn, deposes and says that:

- 1) I am employed by Lyon County as the Director of Community Development and prior to July 1, 2014, I was employed as the Lyon County Planning Director. The Community Development Department is responsible for processing planning applications for Lyon County, including zone change and master plan amendments. I have worked for Lyon County for eight years and ten months.
- 2) I have worked in zoning and planning for Douglas County and Lyon County. I have also worked in the private sector in zoning and planning matters.
- 3) I am familiar with NRS 278.220 and the requirements of the Lyon County Code with respect to master plan amendments.
- 4) I was the Planning Director at all times relevant to the Comstock Mining, Inc. applications for zone change and master plan amendment.
- 5) I informed the Board of County Commissioners at the January 2, 2014 meeting that the decision on the master plan amendment would be referred to the Planning Commission for a report pursuant to NRS 278.220 and the Lyon County Code.
- 6) The matter was referred to the Planning Commission by letter dated January 30, 2014, from the County Manager to the Lyon County Planning Commission.
- 7) The Lyon County Planning Commission considered the matter at their regularly scheduled meeting on February 11, 2014, the earliest available Planning Commission Meeting after the January 2, 2014 Board of County Commissioner meeting.
- 8) At the February 11, 2014 Planning Commission Meeting, the Commission discussed the item and the Commission agreed on the report to be forwarded to the Board of County Commissioners. The matter was approved by a vote of 5-0 with 2 members absent.


1 9) The Commission report was considered by the Board of County Commissioners at
2 their duly noticed meeting on March 6, 2014. The Board of County Commissioners
3 unanimously voted to accept the report of the Planning Commission.

4 10) The process followed in this master plan amendment is consistent with what Lyon
5 County has done with other master plan amendments while I have worked at Lyon
6 County.

7 11) It is my opinion that Lyon County complied with NRS 278.220 and the Lyon
8 County Code with respect to this master plan amendment application filed by Comstock
9 Mining, Inc.

10 FURTHER, AFFIANT SAYETH NAUGHT.

11 DATED: This 15 day of December, 2014.

12
13 
14 Robert G. Loveberg

15 SUBSCRIBED and SWORN to before me

16 this 15th day of December, 2014,

17 by Robert G. Loveberg.

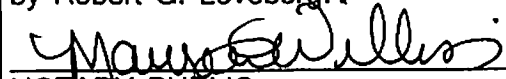
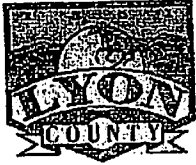
18 
19 NOTARY PUBLIC



Exhibit 2

JA3802



BOARD OF COUNTY COMMISSIONERS

LYON COUNTY NEVADA

27 South Main Street

Yerington, Nevada 89447

Phone: (775)463-6531 Fax: (775)463-6533

Joe Mortensen, Chair
Ray Fierro, Vice Chair
Bob Hastings, District 1
Vida Keller, District 2
Virgil Arellano, District 5

Jeffery A. Page
County Manager

January 30, 2014

Lyon County Planning Commission
27 South Main Street
Yerington, NV 89447

RE: Comstock Mining, INC. Request for Master Plan Amendment and Zone Change;
January 2, 2014 Board of County Commissioners Action

Dear Planning Commission,

January 2, 2014 the Lyon County Board of Commissioners conducted their regular scheduled meeting. The Board of Commissioners had scheduled this item for a time specific at 9:30 AM.

I have attached a copy of the Board minutes for your review and information. Pursuant to applicable planning law the Board of Commissioners must notify the Planning Commission of the action taken by the Board.

The Board of Commissioners voted 4-1 to approve the Master Plan Amendment and 5-0 to approve the zone change. Both motions included proposed changes by Commissioner Keller and the specifics of said motions are in the attached minutes.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffery A. Page".

Jeffery A. Page
Lyon County Manager

cc: Rob Loveberg, Planning Director

CM01302014-01 CMI-LCPC NOTICE

JA3803

Exhibit 3

JA3804

**LYON COUNTY PLANNING COMMISSION MEETING MINUTES
FEBRUARY 11, 2014**

The Lyon County Planning Commission met this day with a quorum. The following members were present: Chuck Davies, Larry Wahrenbrock, Betty Retzer, Harold Ritter, and Mike Hardcastle. Paul Lanning and George Mortensen were absent. Attending staff were Robert Loveberg, Planning Director and Kerry Page, Planning Assistant. Commissioner Bob Hastings was present as Board of Commissioners Liaison to the Planning Commission.

PLEDGE OF ALLEGIANCE

Betty Retzer led the Pledge of Allegiance.

REVIEW AND ADOPTION OF AGENDA

Betty Retzer made the motion to adopt the agenda as presented. Larry Wahrenbrock seconded and the motion passed by a unanimous vote of those members present: (5 ayes; 0 nays; 2 absent-Paul Lanning & George Mortensen)

APPROVAL OF THE MINUTES

Betty Retzer made the motion to approve the minutes of the January 14, 2014, Planning Commission meeting as presented. Larry Wahrenbrock seconded and the motion passed by a unanimous vote of those members present: (5 ayes; 0 nays; 2 absent-Paul Lanning & George Mortensen)

MISCELLANEOUS CORRESPONDENCE

None

PUBLIC PARTICIPATION

None

1. **NEVADA COPPER, INC. – VARIANCE** (for possible action) – Request for a variance to allow use of a natural, pre-existing, drainage ditch adjacent to the road, in place of the required design ditch; located along the unpaved portion of Pursel Lane, Yerington (APN's 12-171-04, 12-171-05, 12-171-09, 12-171-10 & 12-161-03) PLZ-14-0001

Robert Loveberg, Planning Director, presented a memorandum stating that Nevada Copper had requested their application for a variance be withdrawn. Mr. Loveberg said that the County Engineer and the Engineer for Nevada Copper, after review of the plans, determined that the variance would no longer be necessary because the road improvements could be constructed within the parameters of the current county standards.

Chuck Davies said when their special use permit was approved one of the conditions was for the applicant and the county to enter into a road maintenance agreement for a portion of Pursel Lane. Mr. Davies said that the staff report notes that that agreement had not yet been put in place and that the same approval condition appeared in the staff report for a variance. He stated he wanted to see that agreement perfected.

Don Giorgi, Mason Valley resident, said he was glad that Pursel Lane is to be properly built and maintained but he hopes that the flooding conditions that exist along that roadway are addressed in the near future.

Betty Retzer made a motion to accept the withdrawal of a variance as requested by Nevada Copper. Mike Hardcastle seconded and the motion passed by a unanimous vote of those members present: (5 ayes; 0 nays; 2 absent-Paul Lanning & George Mortensen)

2. **BOARD OF COMMISSIONERS' REFERRAL OF COMSTOCK MINING, INC. MASTER PLAN AMENDMENT ACTION FOR REPORT (FOR POSSIBLE ACTION)**
– Consideration of the Board of Commissioners' action to approve a Master Plan Amendment previously denied by the Planning Commission and report back to the Board of Commissioners in accordance with NRS 278.220 and LCC 10.12.09(G)(4) in the matter of a request to amend the Master Plan from Resource land use designation and Suburban Residential land use designation to Resource land use designation on approximately 32.34 acres and Rural Residential land use

designation on approximately 54.86 acres of a 94.27 total acre parcel; located off of Highway 341, Silver City (a portion of APN 08-091-05 & 08-091-02) PLZ-13-0050

Rob Loveberg, Planning Director, explained that with this referral the Planning Commission has the opportunity to make a report back to the Board of Commissioners regarding their action being different from the Planning Commission action on the Master Plan Amendment. He said they have a few options such as choosing to do nothing; a report that states their agreement with the Board of Commissioners action; a report in disagreement with the Board of Commissioners action; or make a recommendation for some other type of action. Mr. Loveberg said that a motion one way or another, stating their decision, must be made at the end of this discussion.

Chuck Davies provided the commission a copy of some decision notes he had made for consideration. He proceeded to read the notes and offered an explanation.

Larry Wahrenbrock stated that, in his opinion, the application was substantially modified at the time of the Board of Commissioners hearing and their action was taken based on new information presented to them at the last minute and prior to the information being made available to the Planning Commission or the public. Mr. Wahrenbrock said he would like the new information clarified and the approved changes made available.

Commissioner Bob Hastings said the decision to approve the application was made based on a reduction in area being proposed for revision with no changes being made to the application and secondly they had consulted with the District Attorney to ensure their actions were appropriate.

Rob Loveberg reminded the Planning Commission that the Board of Commissioners is in no way obligated to refer the matter back to the Planning Commission. The report function is an opportunity for the Planning Commission to comment on the Board of Commissioner's decision when it differs from the Planning Commission decision. He clarified that it was the decision of the District Attorney that the amount of land being considered in the revised materials was less than that being agendaized therefore was within the statute of the open meeting law notification requirements.

Rob Loveberg, Planning Director, gave a visual presentation of the application revisions. A lengthy discussion accompanied the presentation. Larry Wahrenbrock stated that his understanding was that the portion of land removed from the submittal was in part to reduce the impact on the viewshed and he doesn't see where that was actually accomplished. Discussion continued.

Betty Retzer said that she was initially confused as to how to vote on the application at the time and that she does understand both sides of the issue. She wishes they could go back and have the opportunity to review and discuss both sides of the issue and come to a reasonable solution that works for everyone.

Chuck Davies said he thought the best way for the applicant to accomplish what they wanted was to do a community plan first and it was his initial understanding that that was what they had planned to do. He said there is an obvious difference of opinion on the issues and feels that the applicant and the county should pursue the process of a community plan for Silver City, with mining being a part of that process, prior to any future applications being submitted. He added that, in his opinion, there are areas in Silver City that could possibly support mining but that the residential area selected is possibly not the best location.

Larry Wahrenbrock asked if it was an appropriate action for the Planning Commission to take to request the Board of Commissioners "hit the reset button" on their action. Mr. Loveberg said you can recommend, in your report, whatever you feel is their best course of action, but he feels it unlikely that what they request will occur although he has not discussed that possibility with anyone yet. Mr. Loveberg informed the Planning Commission that the county has recently been served and is now named in a suit regarding the action that was taken.

Discussion followed regarding how development of a community plan could benefit the community and the applicant. Larry Wahrenbrock asked if the county's official Master Plan is in jeopardy as a result of the decision made by the Board of Commissioners to modify that plan without specifically stating their grounds for that decision. Mr. Wahrenbrock was told that findings were made by the Board of Commissioners and that

one decision does not jeopardize the entire master plan especially when this decision only affected specific parcels of land.

Chuck Davies offered his recommendations regarding their referral to the Board of Commissioners. Mike Hardcastle said he is not offended that the Board overturned their recommendation as that is just part of a process. He feels that asking everyone to participate in a community planning process makes sense but asking the board to rescind their decision is not a reasonable nor is it a useful request. Commissioner Hastings said that encouraging a community plan is a good idea and that that was something he was hoping for. He feels that with the action that was taken, both sides will be forced to the table for discussion.

Discussion followed regarding how their letter of referral should be worded. Each member offered their thoughts.

Chuck Davies stated there is an obvious difference of opinion here however we, the Planning Commission, encourage the county to ensure that a community plan is accomplished before any further action is taken in Silver City.

Betty Retzer said the fact that the two commissions could not come to an agreement speaks loudly to the whole process. The townspeople and Comstock Mining didn't have opportunity to come to an agreement just as the commissions couldn't. She said it was unfortunate that the Planning Commission did not have the same information presented to them on which to act, when the Board of Commissioners had the opportunity to review and act on different information. Ms. Retzer feels that what is done is done so we should move forward from here to work towards a suitable goal for the Silver City community as a whole.

Elton Buckley, NCS Institute, asked for clarification of what has transpired in regards to this application and if there has been a timeline presented by the applicant for progress on their project. Discussion followed.

Larry Wahrenbrock said we need language that expresses their concern for the Commissioners' decision and it is the desire of the Planning Commission for them to expedite commencement of the community plan process for Silver City. He added that the development of the community plans has always been a priority of the Planning Commission.

Chuck Davies agreed but acknowledged that there is not enough staff to accomplish that. He said it is in the county's best interest to develop the community plan before any further decisions are made regarding the Silver City area.

Rob Loveberg said the Planning Commission can recommend that the board make this a priority, offering them a recommended way of doing that or a timeframe and stressing to them that this is extremely important to consider right now, given the current situation.

Betty Retzer made a motion that a recommendation be forwarded to the Board of Commissioners, in response to the decision made by them regarding the Master Plan Amendment for Comstock Mining, Inc., that the community plan for Silver City be commenced as expeditiously as possible and if that requires the county to hire a consultant to develop the plan then so be it. Harold Ritter added that development of a community plan will provide the county with a solid foundation on which to base all future planning applications from this property owner and Silver City as a whole.

It was determined that a letter containing the recommendation of the Planning Commission will be drafted and a copy of the letter be forwarded to the members for review prior to the item being forwarded to the Board of Commissioners.

Larry Wahrenbrock seconded and the motion passed by a unanimous vote of those members present: (5 ayes; 0 nays; 2 absent-Paul Lanning & George Mortensen)

RECESS TO CONVENE AS THE LYON COUNTY PUBLIC LANDS MANAGEMENT ADVISORY BOARD

3. Public participation

None

4. Discussion and possible action regarding the annual review of the Lyon County Public Lands Policy, continued from the January 14, 2014 meeting, with comments

and recommendations to be forwarded to the Board of Commissioners (for possible action)

Rob Loveberg said he has not received any new information that could be considered for inclusion or revision of the existing plan. Betty Retzer said she has not yet submitted her comments or corrections. Chuck Davies acknowledged that no member has yet submitted any revisions to date.

Rob Loveberg said that the March regular meeting will be their last opportunity to make revisions to the existing plan and action must be taken at that time whether or not they make any revisions. It must go before the board at their first meeting in April.

5. Future agenda items for discussion and possible action (for possible action)

None

6. Board member comments

Betty Retzer asked about the outcome of the Bi State Sage Grouse issue. Harold Ritter stated he recently attended the meeting in Winnemucca with Virgil Arellano. He said this issue will greatly affect the people in that area therefore the meeting was well attended. Mr. Ritter added that there was not a lot of new information provided but the comments that Lyon County compiled were very good and have already been forwarded to the USFS. Mr. Ritter stated his concern that the federal agencies are not giving the problem of predators in these areas enough consideration and there was a lot of discussion regarding that problem at the meeting. He feels that the federal agencies are more concerned with being politically correct than with the problem of predators. Discussion followed. Mr. Ritter said his feeling is that the listing will occur eventually but it may be a long way down the road.

7. Public participation

Don Alt said that the issue of listing the Sage Grouse is not so much a problem for the existing public lands but it will be a big problem for the private lands that will be affected by the decision. It could become somewhat of a taking of private land if the Sage Grouse becomes a protected species, similar to the situation that occurred with the Spotted Owl in other areas. Discussion followed.

ADJOURN TO RECONVENE AS THE LYON COUNTY PLANNING COMMISSION

8. Discussion and possible action regarding the draft Lyon County Land Use and Development Code, with special concentration on Part's 3 & 4 (for possible action)

The Planning Commission continued their review of the proposed Title 15, Chapters 341.01 through 807.10 with recommendations for corrected or additional text. Rob Loveberg briefly went over the chapters that were reviewed at the previous workshop meeting for those members that were absent that day.

Mr. Loveberg provided the commission a draft copy of the Wireless Communications Facilities chapter which was also reviewed at length and comments made. He explained that the new text completely changes and replaces our existing WCF code that is not currently working for Lyon County. Discussion followed.

Rob began a discussion to clarify Chapter 341 – Single Family Detached Residential Development as there was some confusion, at a previous meeting, as to what zoning district this applies to. It was stressed that restrictions on the allowable aesthetic conditions for homes, such as color, siting and architecture, only applies to new development within suburban residential districts. A discussion on storage containers determined that they are only proposed to be restricted from use within suburban character districts (one half acre or smaller parcels) and only upon new development. They will still be allowed within the rural districts and historic districts.

Chuck Davies asked Nancy Sbragia, the sole member of the audience, if there is a portion of the document she was specifically interested in. She asked if Title 13 which is the portion of the existing code that relates to manufactured homes and mobile home parks, will be extended into the new code because she didn't see it in her copy of the text. Her concern is that within the mobile home park that she currently owns she has a combination of mobile homes and recreational vehicles. The current county code (13.01.01.E) says that up to 25% of a mobile home park area may be designated as a recreational vehicle park. Mrs. Sbragia asked if that flexibility is to be continued into the

new code. Rob Loveberg responded that it hasn't been carried over into the new code yet but the code hasn't been changed yet. That will be up to the board. Paul Esswein said that the new code will only affect any new mobile home or RV parks and they just haven't even considered how to address the existing parks. Mrs. Sbragia said that her existing park does contain some non-conforming uses because she does have some people living in RV's as a permanent residence. She added that per NRS 118B.010 RV's are regulated the same as a mobile home in a park if the term of residency is longer than 30 days. Rob Loveberg said that currently the code does not allow RV's to be used as a residence and are designed for a more transient use. Mr. Loveberg asked the Planning Commission if this is something they would like to have added to the draft code. A lengthy discussion followed regarding where this type of low income housing might be allowed among other things. Rob Loveberg said that in the current code, if the TC zoned portion of the Mrs. Sbragia's property was to remain as it is, then the RV use would become an allowed use in that zoning district and the manufactured homes would become non-conforming. It was determined that the portion of the existing code where up to 25% of a mobile home park area may be designated as a recreational vehicle park be added into the draft code for consideration. Rob Loveberg said they would have to develop some standards for separation between the two uses and the lots would have to be developed utilizing standards for an RV park.

There was a lengthy discussion regarding Cluster Developments. Mr. Loveberg provided a visual presentation of how these developments could work. He explained that this is a new development type for Lyon County and could be very beneficial for certain property owners.

Cottage Housing developments, Townhouse developments, Zero Lot Line developments and some of the other development types which are new to Lyon County were reviewed for inclusion into the draft code.

Paul Esswein said he has made most of the recommended changes to the document except for those made today. The possibility of postponing next week's workshop as well as the joint workshop with the commissioners scheduled for the 20th was discussed, so that they can have time to properly prepare a complete document. Rob Loveberg asked the members to go over the Use Tables in detail and then be ready to talk about them at the workshop next week. He needs to know if there are items, or uses, that need to be added to or removed from those tables – we just need as much input as possible. We also need to discuss the mining portion of the code and more about Wireless Communications Facilities. He said the joint meeting with the commissioners will be postponed probably until the first meeting in March. Discussion followed regarding the schedule.

9. STAFF COMMENTS AND COMMISSIONER COMMENTS

Discussion continued regarding the timing for agendaizing the referral back to the Board of Commissioners of the Comstock Mining, Inc. Master Plan Amendment. Rob Loveberg said it would probably be heard on the first meeting of the next month.

Larry Wahrenbrock expressed his concern that the Board of Commissioners will not read the draft code document carefully because of how complicated the document is.

Mike Hardcastle expressed his opinion regarding certain commissioners' relationships with Comstock Mining. Discussion followed.

PUBLIC PARTICIPATION

Nancy Sbragia stated that the draft code is somewhat a daunting document and she is not sure how the public will accept it at first.

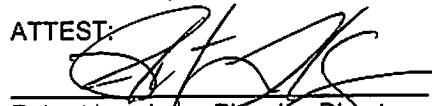
ADJOURNMENT

At approximately 3:35 P.M. it was unanimously motioned that the meeting be adjourned.

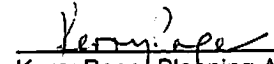


 Chuck Davies, Chairman

ATTEST:



 Robert Loveberg, Planning Director



 Kerry Page, Planning Assistant

Exhibit 4

JA3810

19. Public participation

There was no public participation.

ADJOURN TO RECONVENE AS THE LYON COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING ON PLANNING ITEMS

20. COMSTOCK MINING, INC. - REPORT OF PLANNING COMMISSION ACTION (for possible action) - Consideration of the Planning Commission's report to the Board of Commissioners in accordance with NRS 278.220 and LCC 10.12.09 (G)(4) regarding the Board of Commissioners action in the matter of the Comstock Mining, Inc.'s request to amend the Master Plan from Resource land use designation and Suburban Residential land use designation to Resource land use designation and Rural Residential land use designation; located off of Highway 341, Silver City (a portion of APN 08-091-05 & 08-091-02) PLZ-13-0050

Rob Loveberg Planning Director, reported on the Board of County Commissioners' action of 1/2/14 concerning Comstock Mining, Inc. He explained the planning commission has 40 days to issue a report to the Board of Commissioners.

Comm. Arellano moved to accept receipt of the Planning Commission's comments and acknowledge their comments and their submission to the Board of Commissioners regarding this matter. Comm. Hastings seconded and the motion passed unanimously 5 - 0.

There was no public comment.

*END OF PLANNING APPLICATIONS **

REGULAR AGENDA

21. For Possible Action: Approve/authorize a letter of acknowledgement/support to the Governor's Office of Economic Development for Clean Dried Processing/Labudde Group's application for economic incentives, including sales and use tax abatements and modified business tax abatements, for their relocation/expansion (requested by Governor's Office of Economic Development/NNDA)

Danny Campos, Vice President of Business Development with the Northern Nevada Development Authority, explained they are seeking support for the Clean Dried Processing/Labudde Group application for state and use tax abatement estimated at \$71,400 and modified business tax estimated at \$2,052. He explained the company manufactures various pet supplements produced with selected waste from food by-products. He explained the benefits package the company will offer to their employees and said the average hourly wage will be \$14.35. He discussed the capital expenses and the projected economic impact to Lyon County.

The commissioners had questions and comments.

Comm. Arellano moved to approve/authorize a letter of acknowledgement/support to the Governor's Office of Economic Development for Clean Dried Processing/Labudde Group's application for economic incentives, including sales and use tax abatements and modified business tax abatements, for their relocation/expansion, as requested by Governor's Office of Economic Development/NNDA. Comm. Hastings seconded and the motion passed unanimously 5 - 0.

ADJOURN TO RECONVENE AS THE LYON COUNTY BOARD OF COMMISSIONERS

1 Case No. 14-CV-00128

2 Pursuant to NRS 239B.030, the undersigned
3 affirms that the following document does not
4 contain the social security number of any person.

2014 DEC 16 PM 1:04

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

KATHY THOMAS

DEPUTY

5 JOHN L. MARSHALL

6 SBN 6733

7 570 Marsh Avenue

8 Reno, Nevada 89509

9 Telephone: (775) 303-4882

Attorney for Petitioners Comstock

Residents Association, Gayle Sherman, Joe

McCarthy

10 IN THE THIRD JUDICIAL DISTRICT COURT
11 OF THE STATE OF NEVADA
12 IN AND FOR LYON COUNTY

13 COMSTOCK RESIDENTS ASSOCIATION,
14 GAYLE SHERMAN, JOE MCCARTHY

15 Plaintiffs/Petitioners,

16 v.

ORAL ARGUMENT REQUESTED

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Defendants/Respondents,
21

22 MOTION TO AUGMENT RECORD AND/OR
23 REQUEST FOR JUDICIAL NOTICE

24 Petitioner Comstock Residents Association, Gayle Sherman and Joe McCarthy

25 (collectively "CRA") hereby move the Court to augment the Record on Appeal ("ROA")

26 provided by Defendant Lyon County. The documents attached as Exhibits A through F are

27 either submitted to Lyon County and/or considered by it during the course of the consideration of
28

1 Defendant CMI's application to amend Lyon County's 2010 Comprehensive Master Plan ("2010
2 CMP") and zoning. After consultation, Lyon County consents to augmentation of the ROA with
3 Exhibit D and F but opposes the addition of the 2010 CMP (Exhibit A). The 2010 CMP is
4 appropriate for inclusion in the ROA because it is the effective Master Plan CMI sought to
5 amend, was considered by Lyon County in its determination whether the amend that document
6 and referenced throughout the ROA itself.
7

8 Additionally, CRA requests that the Court may take judicial notice of Exhibits B, C, E and
9 F as they are official government records and/or contain facts that are capable of accurate and
10 ready determination by resort to sources whose accuracy cannot reasonably be questioned. NRS
11 47.130; *Jory v. Bennight*, 91 Nev. 763, 767, 542 P.2d 1400, 1403 (1975).
12

13 Exhibit A: 2010 Lyon County Comprehensive Master Plan.

14 Exhibit B: Official Minutes of the December 23, 2010 meeting of the Lyon County
15 Board of County Commissioners.

16 Exhibit C: Portions of Election Contribution and Expense Reports for Commissioners
17 Hastings, Keller and Roberts, obtained from the official Nevada Secretary of State website.

18 Exhibit D: Emails from Petitioner Gayle Sherman to Lyon County Commissioner
19 Keller.

20 Exhibit E: Letter from Lyon County District Attorney to John L. Marshall regarding
21 Lyon County's response to CRA's Public Records Request.

22 Exhibit F: Letters to Commissioners Hastings and Keller from John L. Marshall
23 requesting their recusal from participation on CMI's 2013 Master Plan and zoning application,
24 dated December 20, 2013.
25
26
27
28

1 Dated: December 16, 2014.

2 Respectfully submitted,

3
4 By 

5 John L. Marshall, SBN 6733

6 570 Marsh Avenue

7 Reno, NV 89509

8 775.303.4882

9 Attorney for Plaintiff CRA

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Augment/Request for Judicial Notice was served on the parties by ^{hand-delivery} ~~mailing~~ a copy thereof on the 16th day of December, 2014, by United

~~States mail~~, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703



Ann Price McCarthy

EXHIBIT A

E
X
H
I
B
I
T

A

E
X
H
I
B
I
T

A

EXHIBIT A

EXHIBIT B

E
X
H
I
B
I
T

B

E
X
H
I
B
I
T

B

EXHIBIT B

The Honorable Board of Lyon County Commissioners met this day in special session with the following present: Chairman Joe Mortensen, Vice-chair Chuck Roberts, and Commissioners Phyllis Hunewill and Ray Fierro. Also present: County Manager Jeff Page, Chief Deputy District Attorney Mark Krueger and Clerk-Treasurer Nikki Bryan. Commissioner Larry McPherson was absent.

1. Review and adoption of agenda

Commissioner Phyllis Hunewill made a motion to remove item #3 and accept the agenda as amended. Commissioner Chuck Roberts seconded the motion and it passed unanimously (4-0).

2. Public participation

Planning Director Rob Loveberg presented a plaque to Ray Fierro for his service on the Lyon County Planning Commission.

Ervin Hill thanked Commissioner Hunewill for her service to Lyon County for the last 12 years.

3. Discussion and possible action to approve contracts with PK Electrical for construction administration and low voltage, Ainsworth Mechanical for construction administration and RSAC for commissioning and energy solutions

This item was removed from the agenda.

4. Discussion and possible action to address the concerns of the Third Judicial District Court in regards to the proposed Lyon County Justice Complex to include the possible increase or reduction of the scope of work and modification of budget

County Manager Jeff Page gave a report on a meeting with Judge Rogers regarding design of the facility. He stated that the plans will be sent back to the architect for modifications to satisfy space and legal issues and brought back to the Board in January.

5. Discussion and possible action to notify the Western Nevada Regional Youth Center, by January 1, 2011, that Lyon County may want to terminate the existing Western Nevada Regional Youth Center Interlocal Agreement

County Manager Jeff Page stated that this is on the agenda because modifications to or cancellation of the agreement requires notification by January 1 of any year. Lyon County's intent is not necessarily to pull out of the agreement but to evaluate the funding allocated to this facility.

Director Lon Cook of WNRYS spoke about future cooperation and openness.

Commissioner Chuck Roberts made a motion to direct the county manager to send notification to WNRYS and any other counties involved of the intent to open contract discussions. Commissioner Ray Fierro seconded and the motion passed unanimously (4-0).

6. Discussion and possible action to adopt the Final Draft County-wide Component of the Lyon County Comprehensive Master Plan

Planning Director Rob Loveberg presented this item. Commissioner Hunewill stated that Nevada Department of Environmental Protection has many entities under its umbrella. She would like to strike the verbiage in section 6.9 "Bureau of Mining Reclamation" and leave the statement "NDEP and other regulatory agencies". She believes this will cover all entities.

Erich Obermayr of Silver City read a letter into the record addressing the suburban designation in Silver City. He supports the map as it is drawn today.

Cassion Calloway presented 2 letters supporting the master plan as it is written and presented today.

Larry Wahrenbrock expressed support for the master plan as it is presented today.

Gayle Sherman stated this plan supports what the community of Silver City wants.

Commissioner Phyllis Hunewill made a motion to adopt the county-wide component of the master plan as corrected today and to refer the document back to the Planning Commission for a report. The motion was seconded by Commissioner Ray Fierro and it passed unanimously (4-0).

7. Commissioners Comments

Commissioners Chuck Roberts, Joe Mortensen and Ray Fierro all thanked Commissioner Hunewill for her service. Commissioner Hunewill thanked everyone for the opportunity to serve.

The meeting was adjourned.

LYON COUNTY BOARD OF COMMISSIONERS

JOE MORTENSEN, Chairman

ATTEST:

NIKKI BRYAN, Lyon County Clerk/Treasurer

EXHIBIT C

E
X
H
I
B
I
T

C

E
X
H
I
B
I
T

C

EXHIBIT C

NEVADA FINANCIAL DISCLOSURE STATEMENT

- Please read instructions carefully before completing. -

FILED

Jan 15 2013

ROSS MILLER
SECRETARY OF
STATE

NAME: (First, Middle, Last)	Vida D. Keller	ADDRESS: (Number, Street)	3125 Spring Circle		
CITY, STATE, ZIP:	Silver Springs, NV, 89429	TELEPHONE:	775.691.0173		
EMAIL:	vidakeller@gmail.com	LENGTH OF RESIDENCE IN NEVADA (Years):	20	LENGTH OF RESIDENCE IN DISTRICT WHERE REGISTERED TO VOTE (Years):	17

SECTION A (Information about your public office): List all public offices for which this financial disclosure statement is required NRS 281.571(1)(g) Please indicate **why** you are filing this form by choosing the appropriate box below.

- **ANNUAL FILING:** elected and appointed officers (if required) no later than January 15th each year.
- **CANDIDATE FILING:** filed by candidates for public office no later than the 10th day after the last day to qualify as a candidate.
- **NEWLY APPOINTED:** filed when appointed to fill an unexpired term of an elected or appointed public officer. (Filed within 30 days of appointment.)

TYPE OF FILING (check one): ☒ **Annual** ☐ **Candidate** ☐ **New Appointment**

TITLE OF PUBLIC OFFICE AND NAME OF GOVERNMENT (Include the title of the office you hold or are seeking, and the name of the entity that employs this position e.g. 'City Manager', 'City of XYZ')	Elected (E), appointed (A) or appointed to an elected (AE) office.	Is this position entitled to annual compensation of \$6,000 or more?	Amount of compensation received annually	Date elected or appointed
Lyon County Commissioner Dist 2	E	Yes	\$26,136.00	11/2/2010

SECTION B (Sources of Income): List each source of your income (in addition to any source listed in Section A), or that of any member of your household who is 18 years of age or older. [NRS 281.571(1)(b)]:

SOURCES OF INCOME	Self	Household Member
Pnceless Realty Inc	✓	✓
Keller Rebuilders	✓	✓
Lakeview Plaza LLC	✓	✓

SECTION C (Real Property): List specific location and particular use of all real estate (other than personal residence): (1) in which you or a member of your household has a legal or beneficial interest; (2) the fair market value of which is \$2,500 or more; and (3) which is located in this state or an adjacent state [NRS 281.571(1)(c)]:

SPECIFIC LOCATION(Address, City, State)	PARTICULAR USE(Rental, Vacation, Land etc.)
APN 17-025-01 17-043-01,02 1955 Ramsey Weeks,	Vacant Land

JA3821

Silver Springs, NV	
APN 17-024-01 Silver Springs, NV	Vacant Land
APN 06-142-06 Churchill County, NV	Vacant Land
3115 Spring Circle Silver Springs NV	Single family residence

SECTION D (Creditors): List each creditor to whom you or a member of your household owes \$5,000 or more [EXCEPT: (1) debt secured by mortgage or deed of trust on real property which is not required to be listed in Section C above; and (2) debt for which a security interest in a motor vehicle for personal use was retained by seller] [NRS 281.571(1)(d)]:

CREDITOR NAME	Self	Household Member
Schwartz Family Trust	✓	✓
Laird Davis	✓	✓
Tibbals Family Trust	✓	✓

SECTION E (Gifts): List the identity of donor and value of each gift of all gifts received in excess of an aggregate value of \$200 from a donor during the preceding taxable year [EXCEPT: (1) a gift received from a person who is related to you within the third degree of consanguinity or affinity; and (2) ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in your legislative, administrative, or political action] [NRS 281.571(1)(e)]:

DONOR NAME	DESCRIPTION OF GIFT	VALUE OF GIFT
None		

SECTION F (Business Entities): List each business entity (i.e., organization or enterprise operated for economic gain, including a proprietorship, partnership, firm, business, trust joint venture, syndicate, corporation or association) with which you or a member of your household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1% or more of the total outstanding stock or securities issued by the business entity [NRS 281.571(1)(f)]:

BUSINESS ENTITY	Self	Household Member
Priceless Realty Inc	✓	✓
Keller Rebuilders	✓	✓
Lakeview Plaza LLC	✓	✓
Nugget Holdings LLC	✓	✓
SVK Holdings LLC	✓	✓
Silver Springs Development LLC	✓	✓

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT:

Vida D Keller
Signature

01/15/2013
Date

JA3822

CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT**State of Nevada**

Bob Hastings	Lyon County Commissioner, District I	District 1
Name	Office (if applicable)	District (if applicable)
207 Crown Point Drive, Dayton, NV, 89403		775-246-4350
Mailing Address		Telephone No.
ninergold3@gmail.com		
E-Mail Address		

Select Appropriate Box(es)

CANDIDATE	PAC	POLITICAL PARTY	INDEPENDENT EXPENDITURE
NONPROFIT CORP		LEGAL DEFENSE FUND	AMENDED

Annual Filing - Due January 15, 2012

Period: Jan 01, 2011 - Dec 31, 2011

Report #1 - Due May 22, 2012

Period: Jan 01, 2012 - May 18, 2012

Report #2 - Due June 08, 2012

Period: May 19, 2012 - Jun 07, 2012

Report #3 - Due October 16, 2012

Period: Jun 08, 2012 - Oct 12, 2012

Report #4 - Due November 02, 2012

Period: Oct 13, 2012 - Nov 01, 2012

Report #5 - Due January 15, 2013*

Period: Nov 02, 2012 - Dec 31, 2012

Annual Filing - Due January 15, 2013

Period: Jan 01, 2012 - Dec 31, 2012

* Report #5 suffices for the 2013 Annual Filing only if Report #'s 1, 2, 3 and 4 are previously filed

FILED

Oct 16 2012

**ROSS MILLER
SECRETARY OF STATE**

FOR OFFICE USE ONLY

CONTRIBUTIONS SUMMARY

	This Period	Cumulative From Beginning of Report Period #1 through End of This Reporting Period
1. Total Monetary Contributions Received in Excess of \$100 (See page 1 of instruction sheet)	\$ 14,454.36	\$ 19,634.36
2. Total Monetary Contributions in the Form of Loans Guaranteed by a 3rd-Party in Excess of \$100 (See page 1 of instruction sheet)	\$ 0.00	\$0.00
3. Total Monetary Contributions in the Form of Loans that were Forgiven in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
4. Total Amount of Written Commitments for Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
5. Total Value of In Kind Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 1,175.00	\$1,175.00
6. Total Value of Written Commitments for In Kind Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
7. Total Amount of all Contributions of \$100 or less (See page 2 of instruction sheet)	\$ 110.01	\$1,000.01
8. Total Amount of All Contributions (Add Lines 1 through 7) (See page 2 of instruction sheet)	\$ 15,739.37	\$21,809.37

EXPENSES SUMMARY

9. Total Monetary Expenses Paid in Excess of \$100 (See page 2 of instruction sheet)	\$ 11,603.66	\$15,518.43
10. Total Value In Kind Expenses in Excess of \$100 (See page 3 of instruction sheet)	\$ 0.00	\$0.00
11. Total Amount of all Expenses of \$100 or less (See page 3 of instruction sheet)	\$ 2,451.49	\$3,584.98
12. Total Amount of All Expenses (Add Lines 9 through 11) (See page 3 of instruction sheet)	\$ 14,055.15	\$19,103.41

AFFIRMATION**MUST SELECT AT LEAST ONE:**

I Declare Under Penalty of Perjury That the Foregoing is True and Correct.

I Declare Under an Oath to God that the Forgoing is True and Correct*

* A declaration under an oath to God is subject to the same penalties as declaration under penalty of perjury

Signature

Date

MONETARY CONTRIBUTIONS

Report Period # 3

Bob Hastings**Lyon County Commissioner, District 1****District 1**

Name (print)

Office (if applicable)

District (if applicable)

MONETARY CONTRIBUTIONS

<u>NAME AND ADDRESS OF PERSON GROUP OR ORGANIZATION WHO MADE CONTRIBUTION</u>	<u>DATE OF CONTRIBUTION</u>	<u>AMOUNT OF CONTRIBUTION</u>	<u>CHECK HERE IF LOAN</u>	<u>NAME AND ADDRESS OF 3rd PARTY IF LOAN GUARANTEED BY 3rd PARTY</u>	<u>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO FORGAVE THE LOAN, IF DIFFERENT THAN CONTRIBUTOR</u>
Comstock Mining Inc 1200 American Flat Rd VIRGINIA CITY, NV 89440	07/16/2012	\$4,000.00			
	09/14/2012	\$2,000.00			
	10/04/2012	\$4,000.00			
Lyon County Republican Central P.O. Box 619 Yerington, NV 89447	08/08/2012	\$1,118.00			
Reno Gazette Journal PO Box 22000 Reno, NV 89520	08/10/2012	\$236.36			
Dale Denio 453 Lakeshore Blvd. Incline Village, NV 89451	09/13/2012	\$250.00			
Nevada Wood Products 1680 Spruce Ave. Silver Springs, Nv 89429	09/17/2012	\$2,000.00			
Art Wilson Company PO Box 20160 CARSON CITY, NV 89721	10/10/2012	\$350.00			
West & Associates Realty 85 E. Main Street Fernley, NV 89408	10/12/2012	\$500.00			

WRITTEN COMMITMENTS

Report Period # 3

Bob Hastings**Lyon County Commissioner, District 1****District 1**

Name (print)

Office (if applicable)

District (if applicable)

WRITTEN COMMITMENTS

<u>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO MADE THE COMMITMENT</u>	<u>DATE OF COMMITMENT</u>	<u>AMOUNT OF COMMITMENT</u>

JA3824

CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT**State of Nevada**

Bob Hastings	Lyon County Commissioner, District I	District 1
Name	Office (if applicable)	District (if applicable)
207 Crown Point Drive, Dayton, NV, 89403		775-246-4350
Mailing Address		Telephone No.
ninergold3@gmail.com		
E-Mail Address		

Select Appropriate Box(es)

CANDIDATE	PAC	POLITICAL PARTY	INDEPENDENT EXPENDITURE
NONPROFIT CORP		LEGAL DEFENSE FUND	AMENDED

Annual Filing - Due January 15, 2012

Period: Jan 01, 2011 - Dec 31, 2011

Report #1 - Due May 22, 2012

Period: Jan 01, 2012 - May 18, 2012

Report #2 - Due June 08, 2012

Period: May 19, 2012 - Jun 07, 2012

Report #3 - Due October 16, 2012

Period: Jun 08, 2012 - Oct 12, 2012

Report #4 - Due November 02, 2012

Period: Oct 13, 2012 - Nov 01, 2012

Report #5 - Due January 15, 2013*

Period: Nov 02, 2012 - Dec 31, 2012

Annual Filing - Due January 15, 2013

Period: Jan 01, 2012 - Dec 31, 2012

* Report #5 suffices for the 2013 Annual Filing only if Report #'s 1, 2, 3 and 4 are previously filed

FILED

Nov 2 2012

**ROSS MILLER
SECRETARY OF STATE**

FOR OFFICE USE ONLY

CONTRIBUTIONS SUMMARY

	This Period	Cumulative From Beginning of Report Period #1 through End of This Reporting Period
1. Total Monetary Contributions Received in Excess of \$100 (See page 1 of instruction sheet)	\$ 7,500.00	\$ 27,134.36
2. Total Monetary Contributions in the Form of Loans Guaranteed by a 3rd-Party in Excess of \$100 (See page 1 of instruction sheet)	\$ 0.00	\$0.00
3. Total Monetary Contributions in the Form of Loans that were Forgiven in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
4. Total Amount of Written Commitments for Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
5. Total Value of In Kind Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$1,175.00
6. Total Value of Written Commitments for In Kind Contributions in Excess of \$100 (See page 2 of instruction sheet)	\$ 0.00	\$0.00
7. Total Amount of all Contributions of \$100 or less (See page 2 of instruction sheet)	\$ 250.00	\$1,250.01
8. Total Amount of All Contributions (Add Lines 1 through 7) (See page 2 of instruction sheet)	\$ 7,750.00	\$29,559.37

EXPENSES SUMMARY

9. Total Monetary Expenses Paid in Excess of \$100 (See page 2 of instruction sheet)	\$ 8,091.70	\$23,610.13
10. Total Value In Kind Expenses in Excess of \$100 (See page 3 of instruction sheet)	\$ 0.00	\$0.00
11. Total Amount of all Expenses of \$100 or less (See page 3 of instruction sheet)	\$ 405.27	\$3,990.25
12. Total Amount of All Expenses (Add Lines 9 through 11) (See page 3 of instruction sheet)	\$ 8,496.97	\$27,600.38

AFFIRMATION**MUST SELECT AT LEAST ONE:**

I Declare Under Penalty of Perjury That the Foregoing is True and Correct.

I Declare Under an Oath to God that the Foregoing is True and Correct*

* A declaration under an oath to God is subject to the same penalties as declaration under penalty of perjury

Signature

Date

MONETARY CONTRIBUTIONS

Report Period # 4

Bob Hastings**Lyon County Commissioner, District 1****District 1**

Name (print)

Office (if applicable)

District (if applicable)

MONETARY CONTRIBUTIONS

<u>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO MADE CONTRIBUTION</u>	<u>DATE OF CONTRIBUTION</u>	<u>AMOUNT OF CONTRIBUTION</u>	<u>CHECK HERE IF LOAN</u>	<u>NAME AND ADDRESS OF 3rd PARTY IF LOAN GUARANTEED BY 3rd PARTY</u>	<u>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO FORGAVE THE LOAN, IF DIFFERENT THAN CONTRIBUTOR</u>
Santa Fe Financial Corp. 10940 Wilshire Blvd., Suite 2150 LOS ANGELES, CA 90024	10/19/2012	\$2,000.00			
The Intergroup Corp. 10940 Wilshire Blvd., Suite 2150 LOS ANGELES, CA 90024	10/19/2012	\$3,500.00			
Portsmouth Square Inc. 10940 Wilshire Blvd., Suite 2150 LOS ANGELES, CA 90024	10/19/2012	\$2,000.00			

WRITTEN COMMITMENTS

Report Period # 4

Bob Hastings**Lyon County Commissioner, District 1****District 1**

Name (print)

Office (if applicable)

District (if applicable)

WRITTEN COMMITMENTS

<u>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO MADE THE COMMITMENT</u>	<u>DATE OF COMMITMENT</u>	<u>AMOUNT OF COMMITMENT</u>

JA3826

CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT

State of Nevada

Chuck Roberts

Lyon County Commissioner, District I

Name

Office (if applicable)

District (if applicable)

P O Box 498, Carson city, NV, 89702

775-246-5060

Mailing Address

Telephone No.

E-Mail Address

Select Appropriate Box(es) CANDIDATE PAC POLITICAL PARTY INDEPENDENT EXPENDITURE
 NONPROFIT CORP LEGAL DEFENSE FUND AMENDED

Annual Filing - Due January 15, 2012

Period: Jan 01, 2011 - Dec 31, 2011

Report #1 - Due May 22, 2012

Period: Jan 01, 2012 - May 18, 2012

Report #2 - Due June 08, 2012

Period: May 19, 2012 - Jun 07, 2012

Report #3 - Due October 16, 2012

Period: Jun 08, 2012 - Oct 12, 2012

Report #4 - Due November 02, 2012

Period: Oct 13, 2012 - Nov 01, 2012

Report #5 - Due January 15, 2013*

Period: Nov 02, 2012 - Dec 31, 2012

Annual Filing - Due January 15, 2013

Period: Jan 01, 2012 - Dec 31, 2012

* Report #5 suffices for the 2013 Annual Filing only if Report #'s 1, 2, 3 and 4 are previously filed

FILED

Jan 15 2013

**ROSS MILLER
SECRETARY OF STATE**

FOR OFFICE USE ONLY

CONTRIBUTIONS SUMMARY

1. Total Monetary Contributions Received in Excess of \$100
(See page 1 of instruction sheet)
2. Total Monetary Contributions in the Form of Loans Guaranteed by a 3rd-Party in Excess of \$100
(See page 1 of instruction sheet)
3. Total Monetary Contributions in the Form of Loans that were Forgiven in Excess of \$100
(See page 2 of instruction sheet)
4. Total Amount of Written Commitments for Contributions in Excess of \$100
(See page 2 of instruction sheet)
5. Total Value of In Kind Contributions in Excess of \$100
(See page 2 of instruction sheet)
6. Total Value of Written Commitments for In Kind Contributions in Excess of \$100
(See page 2 of instruction sheet)
7. Total Amount of all Contributions of \$100 or less
(See page 2 of instruction sheet)
8. Total Amount of All Contributions (Add Lines 1 through 7)
(See page 2 of instruction sheet)

This Period

Cumulative
From Beginning of
Report Period #1
through End of
This Reporting
Period

\$ 5,250.00	\$ 16,433.00
\$ 0.00	\$0.00
\$ 0.00	\$0.00
\$ 0.00	\$0.00
\$ 0.00	\$8,188.50
\$ 0.00	\$0.00
\$ 0.00	\$1,095.00
\$ 5,250.00	\$25,716.50

EXPENSES SUMMARY

9. Total Monetary Expenses Paid in Excess of \$100
(See page 2 of instruction sheet)
10. Total Value In Kind Expenses in Excess of \$100
(See page 3 of instruction sheet)
11. Total Amount of all Expenses of \$100 or less
(See page 3 of instruction sheet)
12. Total Amount of All Expenses (Add Lines 9 through 11)
(See page 3 of instruction sheet)

\$ 7,543.93	\$17,958.55
\$ 0.00	\$8,188.50
\$ 0.00	\$80.00
\$ 7,543.93	\$26,227.05

AFFIRMATION

MUST SELECT AT LEAST ONE:

I Declare Under Penalty of Perjury That the Foregoing is True and Correct.

I Declare Under an Oath to God that the Forgoing is True and Correct*

* A declaration under an oath to God is subject to the same penalties as declaration under penalty of perjury

EXHIBIT D

E
X
H
I
B
I
T

D

E
X
H
I
B
I
T

D

EXHIBIT D

----- Original Message -----

From: Gayle Sherman

To: Vida Keller

Cc: Barbara Peck

Sent: Monday, December 16, 2013 5:25 PM

Subject: Fw: Follow up on Meeting Request

Hello Ms. Keller,

I know it is a very busy time of year but I was wondering if you could meet with Barbara Peck and I on a day, time and place of your choosing.

Thanks

Gayle Sherman

----- Original Message -----

From: Gayle Sherman

To: Vida Keller

Cc: Barbara Peck

Sent: Saturday, December 14, 2013 10:52 AM

Subject: Follow up on Meeting Request

Hello Ms. Keller,

Just following up on my request below. Would it possible for Barbara and I to meet with you?

Thank you

Gayle Sherman

----- Original Message -----

From: Gayle Sherman

To: Vida Keller

Sent: Thursday, December 12, 2013 9:55 PM

Subject: Question

Hello Ms. Keller,

My name is Gayle Sherman, I live in Silver City. Barbara Peck, Erich Obermayr and I would like to meet with you to discuss some concerns. I was thinking perhaps the Starbucks in Dayton at a date and time that is convenient for you. Would this be possible?

Thanks for your time.

Gayle Sherman

EXHIBIT E

E
X
H
I
B
I
T

E

E
X
H
I
B
I
T

E

EXHIBIT E

ROBERT L. AUER
District Attorney



<http://www.lyon-county.org>

STEPHEN B. RYE
Assistant District Attorney

**OFFICE OF THE DISTRICT ATTORNEY
LYON COUNTY**

801 OVERLAND LOOP, SUITE 308
DAYTON, NEVADA 89403
Phone: (775) 246-6130
Fax: (775) 246-6132

31 SOUTH MAIN STREET
YERINGTON, NEVADA 89447
Phone: (775) 463-6511
Fax: (775) 463-6516

565 EAST MAIN STREET
FERNLEY, NEVADA 89408
Phone: (775) 575-3353
Fax: (775) 575-3358

May 2, 2014

John L. Marshall, Esq.
570 Marsh Avenue
Reno, NV 89509

Via electronic mail only:
johnladuemarshall@gmail.com

RE: CRA Records Request – Emails dated April 25, 2014 and May 1, 2014

Dear John:

I am in receipt of your email dated April 25, 2014. Lyon County does not maintain any records related to private telephones or private computers for county staff or elected officials, including County Commissioners. As such, those are not public records maintained and open to inspection pursuant to the Nevada Public Records Law. The cellular phone bills for the County Manager (and other employees) have been provided in the format in which they are maintained by the County.

Lyon County has provided copies of emails provided by County Commissioners pursuant to your records request, whether on private email accounts or on county email accounts. However, that production of emails was not meant to imply or suggest that all of those documents are public records, or that a request entitles a person to all the records on a person's private computer. You have indicated you do not believe you have received all of the emails. If you provide me more information on what specifically you are referring to, I can contact each of the Commissioners with that information. I will provide the requested privilege log under separate cover.

I also have an email response from Josh Foli, Lyon County Comptroller, to your email dated May 1, 2014, regarding phone allowance for county officials/employees. Also enclosed is an email dated the same date from your client, Gayle Sherman, addressed to Josh Foli asking the same question, along with his response to Ms. Sherman. County staff would appreciate if you can coordinate your efforts so that staff is not required to answer the same questions if in fact you are seeking the same information. If your client wants to work directly with Mr. Foli or the County Manager with regards to the public records request, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Rye".

Stephen B. Rye, Esq.
Chief Deputy District Attorney

JA3831

EXHIBIT F

E
X
H
I
B
I
T

F

E
X
H
I
B
I
T

F

EXHIBIT F

John L. Marshall

ATTORNEY AT LAW

570 Marsh Avenue
RENO, NV 89509

Telephone:
(775) 793-4882
Facsimile:
(775) 201-0195

johnmarshall@charter.net

December 20, 2013

VIA U.S. & ELECTRONIC MAIL

Robert Hastings, Commissioner
Lyon County Board of County Commissioners
P.O. Box 686
Dayton, NV 89503

Re: Comstock Mining Inc. Application for Master Plan Amendment/ Zone
Change (PLZ-13-0050, 0051)

Dear Commissioner Hastings:

I write on behalf of the Comstock Residents Association ("CRA") to request that you recuse yourself from voting on the above referenced matter currently anticipated to come before the Lyon County Commission on January 2, 2014. As described below, CRA believes that an unacceptable appearance of conflict of interest given applicant CMI's overwhelming percentage contributions to your campaign and your prior statements on this matter.

In 2010, CMI sought to change the land use designations for its Dayton Resource Area properties during the adoption of the 2010 Lyon County Master Plan in order to facilitate mining that was otherwise prohibited. The Lyon County Commission ignored CMI's request. In order to improve its chances in subsequent hearings before the Commission, CMI backed your candidacy against former Commissioner Chuck Roberts during the 2012 election cycle. CMI and related companies provided nearly 60% of the contributions you received to support your campaign. The amount CMI and its interests contributed to your campaign alone equaled the cash campaign contributions Mr. Roberts raised in total. After your election, CMI applied to Lyon County to again redesignate its property in order to facilitate mining on its property.

The Due Process Clause of the 14th Amendment to the United States Constitution ensures citizens of neutral decision makers. See e.g. *Caperton v. Massey Coal Co.*, 556 U.S.868 (2009) (the Due Process Clause is concerned with a "general concept of interests that tempt

JA3833

adjudicators to disregard neutrality.”) Moreover, the Due Process Clause is not only concerned with subjective, actual bias but also instances that create an objective risk of bias. *Id.*

The *Massey* case parallels your situation. There, a mining company’s overwhelming support in a judicial election should have precluded the recipient of the company’s largess from participating in a case concerning the company. The Supreme Court concluded,

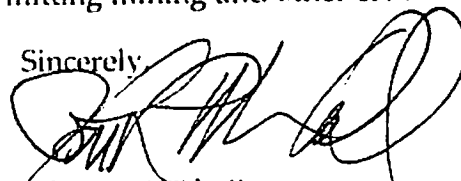
there is a serious risk of actual bias—based on the objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds . . . when the case was pending or imminent. The inquiry centers on the contribution’s relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the elections, and the apparent effect such contribution had on the outcome of the election.

Massey, 556 U.S. at 884.

Here, since CMI’s direct contributions to you accounted for such a large percentage of your total contributions, there is an objective and palpable risk of bias on your part; that you may feel the need to return the favor by supporting CMI’s application. This appearance exists whether or not subjectively you actually feel an obligation to CMI.

In order to protect the due process rights of Lyon County residents and light of these precedents, you should disclose your relationship with CMI and abstain from voting on CMI’s request to amend the Lyon County Master Plan and rezone their property to provide the necessary land use designations permitting mining and other commercial uses.

Sincerely,



John L. Marshall

Attorney for Comstock Residents Association

cc: Lyon County County Manager
Lyon County District Attorney’s Office
Nevada State Ethics Commission
Attorney General Catherine Cortez-Mastos

John L. Marshall

ATTORNEY AT LAW

570 Marsh Avenue
RENO, NV 89509

Telephone:
(775) 303-4882

Facsimile:
(775) 303-0193

johmarshall@charter.net

December 20, 2013

VIA U.S. & ELECTRONIC MAIL

Vida Keller, Commissioner
Lyon County Board of County Commissioners
P.O. Box 201
Silver Springs, NV 89402

Re: Comstock Mining Inc. Application for Master Plan Amendment/ Zone
Change (PLZ-13-0050, 0051)

Dear Commissioner Keller:

I write on behalf of the Comstock Residents Association ("CRA") to request that you recuse yourself from voting on the above referenced matter currently anticipated to come before the Lyon County Commission on January 2, 2014. As described below, CRA believes that you have a disqualifying interest pursuant to NRS 281A.420.

It is CRA's understanding that Comstock Mining Incorporated ("CMI") has likely retained Keller Reconstruction, a business owned by you and your husband, to reconstruct or restore structures on its mining properties in the Comstock Historic Mining District. On November 8, 2013, your husband, Scott Keller, was observed overseeing a construction crew restoring structures on CMI's Comstock Property.

CMI created a foundation to pursue restoration of historic structures in the Comstock. According to CMI, it funds the foundation with a percentage of its mining proceeds to facilitate restoration activities. *Id.* In other words, the more mining CMI undertakes, the more money the foundation will receive to pursue restoration activities and opportunities to continue to employ Keller Reconstruction.

CMI's Application for Master Plan and Zoning Change, referenced above, seeks to expand its mining opportunities to the Dayton Resource Area (and within the Silver City town site). The current and longstanding Master Plan and Zoning precludes mining in this area, hence CMI's application to change the land use designation to categories that would

JA3835

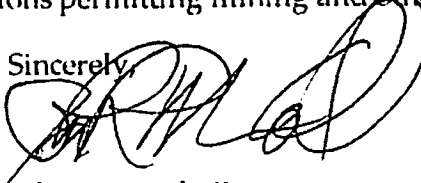
Ms. Vida Keller, Lyon County Commissioner
December 20, 2013
Page 2

allow mining. Indeed, CMI states that it filed the application for "the purpose of pursuing continued mineral exploration, development and the economic mining potential of the subject property." (Application at p. 3.) The Dayton Resource Area also contains significant historic structures that may need restoration (e.g. the Dayton Consolidated Mill site). Additional mining opportunities in the Dayton Resource Area, the subject of PLZ-13-0050 and 0051, would provide additional revenues to CMI or the foundation to support restoration activities and the opportunity for Keller Reconstruction to continue and expand its remunerative relationship with CMI.

Because of your pecuniary interest, Nevada's Ethics in Government (NRS Section 281A.420) requires that you disclose the range of your relationship with CMI and abstain from voting on PLZ-13-0050 and 0051. I attach recent examples of instances where officials should have recused themselves because of disqualifying relationships. In *Carrigan v. Commission on Ethics*, 129 Nev. Ad. Op. 95 (Nov. 27, 2013), the Nevada Supreme Court found that Councilman Carrigan's relationship with a campaign manager disqualified him from voting on a development proposal whose proponent had retained the campaign manager as a paid consultant. In *Request for Opinion No. 12-69A* (August 9, 2013), the Nevada Commission on Ethics advised a member of a local governing body ("Public Officer") to disclose and abstain from voting on a matter benefiting local business for which the Public Officer provided commercial services.

In order to protect the due process rights of Lyon County residents and in light of these precedents, you must disclose your relationship with CMI and abstain from voting on CMI's request to amend the Lyon County Master Plan and rezone their property to provide the necessary land use designations permitting mining and other commercial uses.

Sincerely,



John L. Marshall
Attorney for Comstock Residents Association

cc: Lyon County County Manager
Lyon County District Attorney's Office
Nevada State Ethics Commission
Attorney General Catherine Cortez-Mastos

JA3836

1 Case No. 14-CV-00128

2 Pursuant to NRS 239B.030, the undersigned
3 affirms that the following document does not
4 contain the social security number of any person.

5 JOHN L. MARSHALL
6 SBN 6733
7 570 Marsh Avenue
8 Reno, Nevada 89509
9 Telephone: (775) 303-4882
Attorney for Petitioners Comstock
Residents Association, Gayle Sherman, Joe
McCarthy

2014 DEC 16 PM 1:02
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
KATHY THOMAS DEPUTY

10 IN THE THIRD JUDICIAL DISTRICT COURT
11 OF THE STATE OF NEVADA
12 IN AND FOR LYON COUNTY

13 COMSTOCK RESIDENTS ASSOCIATION,
14 GAYLE SHERMAN, JOE McCARTHY

15 Plaintiffs/Petitioners,

16 v.

ORAL ARGUMENT REQUESTED

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Defendants/Respondents,
21 _____/

22
23 COMSTOCK RESIDENTS ASSOCIATION'S OPENING
24 BRIEF ON PETITION FOR JUDICIAL REVIEW
25
26
27
28

1 I. INTRODUCTION

2 Defendant Comstock Mining Incorporated (“CMI”) wanted to mine property that
3 happened to be located within the town boundaries of Silver City, Lyon County, Nevada. It
4 could not do so because Lyon County’s Master Plan and zoning precluded mining on those
5 properties – and had done so for at least 40 years. After a campaign to elect amendable County
6 Commissioners, curry favor with others and demonstrate its electoral influence, CMI applied to
7 Lyon County to change the Master Plan and zoning to allowing mining as a use. An objective
8 (and naïve) observer may have considered such an application futile because Lyon County had
9 previously denied the same application by another mining company and had on four other
10 occasions affirmed the land use/zoning designations and even expanded express protections of
11 existing residential communities from new mines – the last time just a few years earlier and
12 over CMI own objection.
13

14
15 Initially, CMI’s effort did not fare well. Lyon County’s professional planning staff
16 reviewed the application, assessed the impacts of changing the land use designations,
17 considered the policies of the existing Master Plan, determined the application was inconsistent
18 with and harmful to the Master Plan and recommended denial. Despite a torrent of objections
19 and pressure from CMI, the unelected Lyon County Planning Commission heard hours of
20 testimony, objectively considered the facts before it, and voted overwhelmingly to deny CMI’s
21 application.
22

23 Before the elected County Commissioners, however, CMI’s brand of influence and
24 persuasion gained traction. On January 2, 2014, the County Commissioners approved a last-
25 minute, CMI approved, modified application that over-turned 40 years of repeatedly and
26 consistently applied precedent to change the land use/zoning designations to allow the mining
27 use. The Comstock Residents Association, Gayle Sherman and Joe McCarthy (collectively
28

1 “CRA”) bring this action to affirm the Master Plan, protect their homes, livelihood and the
2 Comstock Historic District, and overturn the County Commissioners’ illegal and arbitrary
3 action.

4 II. BACKGROUND

5 Silver City, Nevada, is one of the few residential communities identified in Lyon County.
6 It is one of two communities Lyon County dedicated as a living, historic community. As
7 modern planning and zoning emerged for the Silver City area, it retained this historical
8 backdrop as its foundation, and overlaid a modern transect of desired development. Lyon
9 County has consistently envisioned the Silver City Town Site as a commercial core with a small
10 industrial zone, which includes some historic mills and mines, all surrounded by residential
11 development. The assigned residential densities within the townsite reflected existing
12 conditions and promoted densities capable of facilitating infrastructure improvement. Beyond
13 the boundaries of the Town Site, land use has consistently been designated for less dense
14 development and open space. Using different designations with different names, this basic
15 concept has carried through generations of land use plans and continues today.

18 A. Lyon County’s 1971 Master Plan

19 In 1971, Lyon County enacted its first master plan and related zoning. It planned and
20 zoned Silver City like all the other towns in the county: urban appropriate uses and densities
21 within the town and rural uses and densities outside of town. The 1971 Plan identified Silver
22 City as an “urbanizing area” surrounded by residential lands and open space. The zoning
23 ordinances that followed placed virtually all of the townsite in NR1 (First Non-rural
24 Residential), with a narrow strip of commercial and light industrial along Main Street. The
25 NR1 zoning allowed for homes, associated buildings, parks, recreation areas and cottage
26
27
28

1 businesses. One of the principal objectives of this residential zoning was to protect the quality
2 of life and property values within in the Silver City townsite.

3 The goals and policies section of the 1971 General Plan emphasized the importance of
4 Lyon County’s residential communities and especially the historic resources located
5 within. The Plan’s language clearly valued open space land as “one of the most important uses”
6 critical to preserving recreation resources, residential stability, sustainable growth, and the
7 area’s precious historic and cultural significance.
8

9 The 1971 Plan also emphasized that industrial development should be prohibited if it
10 would change the natural features or reduce the primary importance of Lyon County
11 communities. In support of that directive, the Plan identified Silver City as a significant,
12 recreational, historical and cultural attraction with an emerging, prosperous residential
13 community. Record on Appeal (“ROA”) 647-648
14

15 B. 1986 Lyon County Rejects Mining Company’s Identical Application

16 In 1986, Nevex Mining Company applied to Lyon County to change the land use and
17 zoning designations for property within Silver City from urban uses to rural uses to allow
18 mining within the town. The Lyon County Commission denied Nevex’s proposed land use and
19 zone changes specifically finding that Nevex’s application for more rural uses and densities
20 violated its Master Plan and was otherwise inappropriate. The land use changes Nevex sought
21 in 1986 are identical to the changes sought by CMI in 2014. See generally ROA 772-833.
22

23 In its 1986 findings, the County adopted a comprehensive list of “findings of fact”
24 supporting the denial, including that, “[t]he proposed rezoning violates the following expressed
25 goals of the county’s master plan: To manage natural resources in a beneficial way; To improve
26 neighborhood stability and increase property values by preventing incompatible and disruptive
27 land use.” Other specific findings the County made in 1986 include:
28

1 In reference to requirements for zoning established by NRS Section 278
2 and 250, we find (A) that the Nevex rezoning request does not comply
3 with the Lyon County Master Plan. (B) The proposed rezoning does not
4 promote the conservation of open space or protect the natural and scenic
5 resources from unreasonable impairment. (C) The proposed rezoning
6 would have both a long-term adverse financial impact to Silver City and
7 the Comstock National Historic Landmark. (D) The proposed rezoning
8 does not promote the health and general welfare of the Silver City area.
9 (E) The proposed rezoning is not compatible with the Silver City area and
10 does not encourage the most appropriate use of land in the Silver City
11 Townsite.

12 There is no land in the Silver City Town site zoned RR-5, and the present
13 zoning is predominantly residential in nature.

14 The proposed rezoning would significantly harm the integrity of the
15 Comstock Historic District and the National Landmark District.

16 The proposed rezoning violates the following expressed goals: (A) To
17 manage national resources in a beneficial way. (B) to improve
18 neighborhood stability and increase property values by preventing
19 incompatible and disruptive land uses.

20 *Id.* Nevex did not further challenge Lyon County's findings or decision.

21 C. 1990 Lyon County Master Plan

22 In 1990, Lyon County affirmed its 1986 decision when it adopted a new Master Plan and
23 maintained the same urban/rural land use designations for Silver City. Specifically, Lyon
24 County approved two goals for Silver City in the 1990 Master Plan:

25 Goal #1 – To maintain, promote, and secure the historic character of the
26 community and to prevent the destruction or degradation of the historic
27 character. Objective: Lyon County should support the Comstock Historic
28 District Commission in its legislative mission.

Goal #2 – Lyon County should review all new development proposals
with the intent to protect the riparian ecology associated with Gold
Canyon and American Ravine [both within Silver City], with the intent of
protecting water quality, minimizing flooding, erosion and sedimentation,
and preserving natural drainage, habitat, and aesthetic functions.

ROA 649-650.

1 D. **2002 West Central Land Use Plan Reaffirmation No Mining**

2 About a decade later Lyon County again examined the appropriate land use designations
3 for Silver City and its environs and reaffirmed the existing designations. In the 2002 West
4 Central Lyon County Land Use Plan, the County designated Silver City as appropriate for urban
5 uses and densities, not mining. The 2002 West Central Plan concludes that Silver City has the
6 potential for continued limited growth with only half of the potential home sites developed. The
7 plan for slow growth of the community was acknowledged, as was the historic nature of the
8 town's architecture and the context of the community within the Comstock Historic District and
9 the Virginia City National Historic Landmark. In the plan, Lyon County stated that Silver City
10 did not have the kind of development potential they saw in Dayton Valley, but instead hoped for
11 gradual residential and commercial growth of Silver City while maintaining the community's
12 historical integrity.
13
14

15 In the 2002 West Central Plan, the County adopted specific goals for Silver City. These
16 goals articulated the future direction and reaffirmation of earlier policies:

17 **To recognize, enhance, and protect the unique character of Silver**
18 **City.** Among the actions set forth to implement this Goal was "to
19 maintain that scale and primary residential character by retaining the
 existing Master Plan designation and zoning categories."

20 **To preserve the scale of the community by architectural review that is**
21 **sensitive to how new structures fit into the existing fabric.** Among the
22 actions set forth to implement this Goal was "to preserve the existing
 pedestrian character by maintaining alleys, soft paving approaches, and
 relatively narrow streets."

23 **To promote the revitalization of the commercial corridor by**
24 **promoting reinvestment.**

25 **To preserve and strengthen the existing infrastructure, i.e., water,**
26 **roadways, drainage, and public facilities.** Among the actions set forth
27 to implement this Goal was "Lyon County shall provide an infrastructure
28 inventory and deficiency evaluation and report. Lyon County shall provide
 a long term if modest capital improvement commitment (i.e., 20 years)

1 that methodically addresses these deficiencies.” Also included was an
2 action “to implement and actively oversee the ‘dark sky’ ordinance.”

3 **To focus on encouraging tourist-oriented historic activities that do not**
4 **degrade the quality of life central to Silver City’s uniqueness.** Among
5 the actions set forth to implement this Goal was “to actively support the
6 efforts of residents to preserve and improve their property.”

7 **To limit earth disturbance or above-ground mining activities that**
8 **create visual scarring or that disrupt the fabric of the community.**
9 “Lyon County shall establish a land use policy that minimizes the impact
10 of mining and other significant earth-disturbing activities that degrade
11 quality of life.”

12 ROA 651-652.

13 **E. 2010 Comprehensive Master Plan Protects Silver City From Mining**

14 Some eight years after the County adopted the 2002 West Central Plan, the County again
15 specifically considered the appropriate land uses for Silver City and reaffirmed its prior
16 decisions for the fifth time. In December 2010, Lyon County adopted a fully vetted County-
17 wide Comprehensive Master Plan (2010 CMP). See generally ROA 652-658.

18 During the development of the 2010 Comprehensive Master Plan, numerous public
19 hearings and community workshops were held throughout Lyon County. The community
20 workshops concentrated on developing the county-wide land use map as well as the language to
21 be included in the text. Development of the 2010 Comprehensive Master Plan was a standing
22 item on Lyon County Planning Commission meetings from September of 2005 to its adoption in
23 late 2010. *Id.*

24 The 2010 Comprehensive Master Plan was a,

25 culmination of four years of dialogue and analysis that has included a wide array
26 of participants including the Board of Commissioners, the Planning Commission,
27 community advisory councils, County staff and the community at large. A series
28 of community meetings, open house events and workshops were held throughout
the county to obtain citizen input and recommendations, including eight meetings
on issues identification in March 2007, eight community meetings and two joint
Planning Commission/Board of Commissioners sessions on community vision in
April and September 2007, six meetings in November 2008 in goals and policies,

1 fourteen meetings in January, April and May 2009 on land use maps, six meetings
2 in July 2009 on land use goals and policies, and finally eleven sessions in October
3 2009 and March 2010 on the overall County-wide Comprehensive Plan.

4 ROA 652 (2010 CMP at 1.10-1.11).

5 On December 23, 2010, the Lyon County Board of Commissioners held a public hearing
6 to consider adopting the 2010 Comprehensive Master Plan. Public comment at the December
7 23, 2010 Commission hearing supported the proposed the Master Plan as it applied to Silver
8 City as recommended by the Planning Commission. Lyon County Board of Commissioners
9 (including two current Commissioners Mortensen and Fierro) thereafter unanimously adopted
10 the same planning designations for Silver City over the express objection of CMI. See CRA's
11 Motion to Augment/Request for Judicial Notice ("MTA/RJN") Exhibit B (Minutes of
12 December 23, 2010 meeting); ROA 545-548.

13 The 2010 CMP "represents a future vision of Lyon County along with recommendations
14 for achieving that vision. The ideas of the Plan are a distillation of the community's many
15 desires, tempered by what seems necessary, feasible, and reasonable." The 2010
16 Comprehensive Master Plan is organized in two tiers: a County-wide Component and more
17 specific Community Plans. The County-wide Component of the 2010 CMP provides for the
18 overall foundation and framework for directing the County's future growth and development.
19 The County-wide Component is the umbrella document that applies to all of the unincorporated
20 area of Lyon County. It represents the overall vision, goals and policy direction, generalized
21 land use patterns for the entire County, and the land use designations for lands outside of
22 defined communities. The County-wide Component provides guidance for the preparation of
23 the more specific Community Plans. ROA 652-658.

24 The Community Plan tier of the 2010 Comprehensive Master Plan presents the specific
25 vision, goals and policy direction, and land use pattern for each identified community as
26

1 determined through the community planning process. Community Plans are designated for
2 existing established communities. These maps provide detailed views of the community's
3 desired growth and development for the future taking into consideration each community's
4 unique character, opportunities and constraints. The County will work with each community to
5 complete Community Plans, including Community Land Use Plans. Lyon County intended the
6 2010 Master Plan to at least "serve for about 10 years." 2010 CMP at 1.8.

8 The 2010 CMP "is comprehensive because the elements cover a broad range of
9 development and growth issues which can be influenced significantly by the County Planning
10 Commission, Board of Commissioners and other governing authorities and agencies. The Plan
11 is general because the recommendations are broad. The plan is long-range because
12 consideration is given to the problems and opportunities which may arise over the next twenty
13 or so years. The Plan is dynamic because there will be amendments to adapt to **new** situations
14 and meet **new** challenges over time." 2010 Comprehensive Master Plan at 1.8 (emphasis
15 added).

17 The 2010 CMP contains policies and goals that are County-wide in nature as well as
18 specific to its eight diverse communities, including Silver City. The following excerpts from
19 the Master Plan are relevant to CMI's 2013 Application.

21 Policy LU 1.1: "Follow development patterns as established on
22 Countywide Land Use Plan or a more specific Community Plan. The
23 Community Plan envisioned for Silver City has not yet been initiated by
24 Lyon County."

24 Policy LU 1.4: "Locate industrial development as designated on County-
25 wide Land Use Plan or determined by criteria. Industrial uses, including
26 extractive industries, will occur in areas that are designated on the County-
27 wide Land Use Plan. **New industrial uses should only be located in
28 areas that do not adversely impact existing residential settlements.**"

Policy CC 1.3: "Design Tailored to Communities. New development in
Lyon County should address and respect the unique character of

1 communities within the county. Strategies: develop Community Plans to
2 identify typical or desirable design elements that maintain or promote the
3 community's desired image. Adopt County-wide standards that allow the
4 flexibility to address specific design needs for individual communities in
5 Lyon County."

6 In Silver City, this means maintaining the historic character of development in the Town
7 Site, continuing the architectural standards within the Comstock Historic District, retaining or
8 restoring existing historic structures, and limiting new development to those proposals that fit
9 with the historic image of Silver City.

10 Goal CC-3: Heritage (under Community Character and Design, Chapter
11 5). "Historic places, structures, and landmarks in the county will be
12 preserved and will provide an opportunity for residents and visitors to
13 learn about and celebrate our heritage."

14 Policy CC-3.1: "Maintain and restore historic resources. Lyon County
15 will encourage and support efforts to preserve and restore registered
16 historic structures, and landmarks, and districts. Strategies: Revise zoning
17 to encourage historic use and development patterns including mixed-use
18 structures and districts. Within historic districts, promote historic design
19 elements, features, and context, and prohibit building design that
20 compromises the integrity of the historic community character. **Within
21 historic districts, limit new land uses that would pose a risk to historic
22 structures or the historic character of the district. Promote the
23 preservation of historic landscape features to maintain historic
24 settings and the integrity of historic resources within historic
25 districts.**"

26 Goal NR 9: Mining and Resource Extraction (under Natural Resources
27 and Environment, Chapter 6). Lyon County will promote the continued
28 development of mineral and aggregate resources while **working to
prevent and reduce conflict between mining and other resource
extraction activities and residential, commercial and industrial
development.**

Policy NR-9.3: Mitigate Operations. "To the extent possible, Lyon
County will require resource extraction projects to mitigate adverse
operational impacts on such items as public infrastructure, traffic,
agricultural operations, residential and commercial land uses, the visual
character of the area, etc."

1 Silver City is an existing community with residential, commercial and industrial areas
2 that would be adversely affected by the mining activities envisioned by CMI there were
3 similar to the impacts anticipated for the proposed Nevex mine in 1986.

4 Goal CP-1: Support Diversity. “Lyon County will celebrate and support
5 the diversity of character among communities in the county.”

6 Policy CP-1.1: “Recognize Diversity of Communities. Lyon County
7 planning efforts and regulations will consider the unique aspects of
8 communities in the county, and will allow for variation and exceptions to
address key aspects of their diversity.”

9 Goal CP-3: Community Plans. “**Lyon County will support community-**
10 **based planning efforts that elaborate community-specific goals that**
are developed with strong public consensus.”

11 See ROA 653-655.

12 The communities within the Comstock Historic District, including Silver City, are the
13 oldest in Lyon County, representing a unique aspect of historic development within the County.
14 Embracing the historic character of Silver City and supporting planning actions and
15 designations that are consistent with Silver City’s heritage is consistent with the intent of this
16 Goal. It is anticipated that the Community Plan process will begin soon for Silver City, which
17 is identified as one of eight existing, established communities in Lyon County for which a
18 Community Plan is required under the Comprehensive Master Plan. Because the Community
19 Plan is intended to tier off the Comprehensive Master Plan, maintaining the Master Plan
20 decisions for Silver City is critical to the continuity and consistency of this process. ROA 655.

23 As with prior land use plans in Lyon County, the 2010 CMP embraced the historic nature
24 and slow pace of development in Silver City, acknowledging that: “Over the past 30 years
25 residential infill and limited commercial endeavors have occurred on existing historic properties
26 in Silver City. The pace of development has been slow for a variety of reasons, including
27
28

1 challenging topography, limited water and sewer infrastructure, and an array of patented and
2 unpatented mining claims.” *Id.*

3 The 2010 Comprehensive Master Plan also states “Silver City has a strong sense of
4 identity and prides itself on its cohesive small town atmosphere. The community treasures its
5 historic buildings and landscape features, as evidenced by the preservation and rehabilitation of
6 many original structures. New construction is regulated for exterior architectural features by the
7 Comstock Historic District Commission.” *Id.*

8
9 The 2010 Comprehensive Master Plan establishes the entire area within the Silver City
10 Community Boundary as an Historic Character District, defined as follows: “Historic Districts
11 include those areas in and around lands included in the Comstock Historic District and Silver
12 City or other future historic designations to preserve existing historic character or to promote
13 ‘historic’ architectural design elements. Tools might include mixed-use, design guidelines and
14 conservation easements.” The lands within the Community Boundary for Silver City will also
15 be the subject of a Community Plan for Silver City. The lands owned by CMI that are proposed
16 for the Master Plan Amendment and Zoning Map Change are all included within the
17 Community Boundary. Therefore, all of the Comstock Mining lands included in its application
18 are within the Historic Character District. ROA 655-656.
19

20 In addition to the Character Districts, the Land Use Plan Map for Silver City establishes
21 Land Use Categories. In keeping with the historical pattern of planning and zoning for Silver
22 City, the lands proposed for Master Plan Amendment and Zoning Map Change are generally
23 divided between a Suburban Residential designation within the Town Site boundary, and a
24 Resource designation outside that boundary. ROA 656.
25

26 Prior to adoption of the 2010 CMP, CMI sought a Master Plan and zone change to its
27 property to allow mining. ROA 545-548. The County Commissioners, including two current
28

1 members, rejected CMI's request and affirmed the continued use designation for Silver City.
2 MTA/RJN Exhibit B.

3 **F. Public Reliance on Stable Silver City Master Planning**

4 Over the years, Nevada citizens purchased/and or invested in property and businesses
5 within and around Silver City as a result of, and in reliance on, these public, deliberate and
6 consistent land use decisions. ROA 693-696; 298-299 (Rob Reno); 300-301 (Chris and Bonnie
7 Brown); 495-496 (Quest Lakes); 499-500 (Robert Elston); 501-504 (Theo McCormick).
8

9 **G. Advent of CMI's Unprecedented Money Influence in the Comstock**

10 After commencing mining operations in Storey County, CMI turned its attention to Lyon
11 County as it needed to change the Silver City land use designations in order to mine on that
12 portion of its ownership in Lyon County. In December 2010, when it adopted the 2010 Master
13 Plan and ignored CMI's first reclassification request, the Lyon County Commission consisted of
14 Chairman Joe Mortenson, Vice-chair Chuck Roberts, and Commissioners Phyliss Hunewill,
15 Ray Fierro and Larry McPherson. Vice-chair Chuck Roberts represented District I, which
16 includes Silver City. See generally MTA/RJN Exhibit B. Commissioner Roberts made clear
17 that he favored maintaining the longstanding land use designations in Silver City. As a result of
18 the 2010 election, Vida Keller replaced Commissioner Larry McPherson in 2011.
19

20 In order to gain the vote of the District I Commissioner, CMI needed to replace Vice Chair
21 Roberts. Vice chair Roberts came up for reelection in 2012. In the 2012 election, CMI threw
22 its corporate and unprecedented cash support behind Bob Hastings, the challenger to
23 Commissioner Roberts. CMI and its related companies contributed \$17,500 in cash to Bob
24 Hastings to insure his election. CMI's cash contributions were approximately 60 percent of Mr.
25 Hastings' cash contributions that year. MTA/RJN Exhibit C; ROA 515.
26
27
28

1 CMI's cash contributions to Mr. Hastings' election campaign in 2012 were unprecedented
2 in scale. According to Nevada Secretary of State records, CMI's cash contribution to Bob
3 Hastings dwarfed all prior contributions to any candidate from a single interest by 350 percent.
4 CMI cash contribution to Bob Hastings was more than any other Lyon County BOC candidate
5 has ever raised in **total** contributions (cash and in kind) in any other BOC election. The average
6 Lyon County BOC candidate since 2008 has raised \$7,379 in these other races according to
7 reports posted by the Nevada Secretary of State. CMI's \$17,500 contribution more than
8 doubled this average campaign fund raising. *Id.* In the November 2012 election, Mr. Hastings
9 defeated Mr. Roberts in the election for District I Commissioner. After CMI's overwhelming
10 support for Commissioner Hastings and in opposition to a perceived opponent provided the
11 following blunt message to the other County Commissioners: if CMI perceives a commissioner
12 as not friendly to its position, CMI will fund an opponent who is.

15 CMI also makes strategic hiring decisions of those related to important decision makers.
16 County. In Lyon County, CMI hired either Keller Rebuilders (owned by Commissioner Keller
17 and her husband) or Commissioner Keller's husband directly to work CMI owned or controlled
18 buildings and structures in the Comstock. CMI thereafter created a foundation, apparently only
19 supported by CMI contributions, and hired either Keller Rebuilders or Commissioner Keller's
20 husband to continue work on CMI owned or controlled buildings and structures in the
21 Comstock. Commissioner Keller's husband worked for CMI's foundation on a one-year
22 contract. This contract began in the Spring 2013 and was due to expire in the Spring 2014.
23 When Commissioner Keller considered CMI's 2013 Application, her husband's employment
24 contract was extant and due to expire shortly thereafter. ROA 516. According to her Nevada
25 Financial Disclosure Forms, in 2013 and 2014 Ms. Keller received income from only four
26
27
28

1 sources: Lyon County (\$26,136 annually), Priceless Realty Inc., Keller Rebuilders/Consulting,
2 and Lakeview Plaza LLC. MTA/RJN Exhibit C.

3 CMI also employed Commissioner Hastings' wife in relation to certain events it put on.
4 CMI also hired Commissioner Hastings' daughter's boyfriend as an equipment operator. In
5 addition to directly hiring family members, CMI contributes to causes favored by
6 Commissioners. ROA 515. Commissioner Hastings has stated, "Comstock Mining has worked
7 with me to help support several charities, including the Mason Valley Boys & Girls Clubs –
8 Dayton Units."

10 **H. With Influence In Place, CMI Applies to Change Silver City Land Uses**
11 **Designations**

12 In August 2013, CMI applied to Lyon County to change the land use designations and
13 zoning within Silver City from more urban to more rural which would allow industrial uses,
14 such as mining, which heretofore had been prohibited. CMI filed its 2013 Application in order
15 to mine the property, stating the application was for "the purpose of pursuing continued mineral
16 exploration, development and the economic mining potential of the subject property." CMI's
17 2013 Application was, for all intents and purposes, the same application for land use
18 designation changes filed by Nevex Gold and rejected by Lyon County in 1986. See generally
19 ROA 772-833.

21 CMI's 2013 Application contained no expert reports and based its request for zoning
22 change primarily on an assertion that all prior Lyon County land use decisions had been in
23 error. CMI's 2013 Application failed to specify any change in conditions in Silver City or Lyon
24 County that would justify reversal of Lyon County's long-standing land use designations.
25 CMI's 2013 Application also failed to address the express policies in the 2010 Master Plan that
26 were contrary to CMI's request to locate an industrial use, such as mining, with Silver City.
27 ROA 150-182.
28

1 The citizens of Silver City overwhelmingly oppose CMI's 2013 Application.
2 Approximately 75 percent of the 146 registered voters in Silver City oppose CMI's 2013
3 Application and signed a petition to that effect. ROA 739-750. Lyon County has created a
4 system of town advisory councils to provide input of the directly affected communities on
5 issues of concern. In September 2013, the Silver City Advisory Council considered CMI's
6 2013 Application and unanimously voted to recommend that it be denied. ROA 55 (Comment
7 of Erich Obermeyr).
8

9 **I. Lyon County Planning Staff and Planning Commission Reject CMI's**
10 **Application**

11 Upon receipt of CMI's 2013 Application, Lyon County Planning Department staff began
12 to analyze it and compare it to the policies and guidance contained in the 2010 Master Plan. In
13 addition, CRA completed a thorough legal, planning, environmental, economic and historical
14 evaluation of CMI's 2013 Application. CRA submitted their final expert reports to Lyon
15 County. CRA's final report established not only consistency of Lyon County's many prior
16 decisions on the same question, but also inconsistency, and adverse economic, environmental,
17 and social impacts of CMI's proposed industrial uses within Silver City. ROA 632-738.
18

19 CMI applied pressure on Lyon County staff through its friendly Commissioner Bob
20 Hastings. On CMI's behalf, Mr. Hastings contacted Rob Loveberg, head of the Lyon County
21 Planning Department. Mr. Hastings reported to Mr. Loveberg that CMI was "intense" and that
22 CMI was concerned that the staff report might be negative. ROA at 2925. Commissioner
23 Hastings then reported that in his experience Mr. Loveberg drafted staff reports based on facts.
24 *Id.* A report based on facts, however, would "not calm [CMI] nerves" and Commissioner
25 Hastings asked whether the report would be negative or recommend a denial. *Id.* Mr. Loveberg
26 responded that he had not finished the report but intended to submit a balanced one. *Id.*
27
28

1 Commissioner Hastings then went to work to produce a more CMI-friendly report. He
2 forwarded Mr. Loveberg's response to Commissioner Keller and asked for her thoughts. ROA
3 2925. Commissioner Hasting subsequently called Commissioner Vida Keller to discuss Mr.
4 Loveberg's apparently problematic (i.e. factual) approach. ROA 2927 ("I also discussed this
5 with Vida"). Commissioner Hastings then coordinated with CMI's President and CEO Corrado
6 De Gasperis. Commissioner Hasting informed Mr. De Gasperis of his communications with
7 Mr. Loveberg. *Id.* Commissioner Hastings then reported to Mr. De Gasperis that he "will be
8 discussing this matter further with [Lyon County Manager and Mr. Loveberg's supervisor] Jeff
9 Page." *Id.* Commissioner Hastings then assured Mr. De Gasperis that he would take care of
10 CMI's interests in this matter: "I want to make sure that Rob [Loveberg] understands that [sic]
11 concerns we have and Jeff amy [sic] be the conduit we need." ¹
12

13
14 CMI was well concerned that a staff report might be based on facts. After Lyon County
15 professional planning staff exhaustively reviewed CMI's application, it issued in-depth reports.
16 ROA at 64-108. Lyon County's professional planning staff, notwithstanding the pressure
17 placed on them, recommended that CMI's application be denied based on the following
18 considerations:

- 19 1. Industrial land uses requested by the application were in conflict with multiple
20 2010 Master Plan policies.
21
22

23
24 ¹ The record reflects that Mr. Hastings made no similar effort to inform or coordinate with CRA
25 or any other party not sharing CMI's interest. In fact, in response to a request for a meeting
26 with CRA representatives Commissioner Hastings agreed but cautioned "I should let you know
27 that I can listen but because it is an agendized item that is before the Planning Commission and
28 will likely come to the BOCC in some form **it would be inappropriate for me to make any
comments at this time.**" ROA 2935 (emphasis added). At the same time, Commissioner
Hastings communicated with CMI on who might make a positive witness for the company at
the upcoming hearings. ROA 2931; see also 2939 (Email from CMI to Commissioner Hastings:
"Let's talk tomorrow about the upcoming LC Planning meeting. I will fill you in.")

2. No change in conditions has occurred to justify so altering the longstanding land use designations within Silver City.
3. The proposed reduction in density would make needed town infrastructure improvements less likely.
4. As envisioned by the 2010 Master Plan, a land use change of such a magnitude should be considered, if at all, during the development of the Silver City Community Plan.

Id.

After CMI received Lyon County planning staff's Staff Report recommending denial of CMI's 2013 Application, CMI contacted upper level Lyon County management and held a meeting attended by both members of the Planning Commission, County Commission and the Lyon County Manager. ROA 2282 (County Manager email reporting on telephone conversation with CMI who demanded face to face meeting). Lyon County agendized CMI's 2013 Application for haring on October 8, 2013.

A large number of Silver City residents attended the October 8, 2013 Planning Commission meeting. After the Planning Commission had already approved its agenda for the day, while keeping the public at the meeting for more than an hour, CMI and Lyon County staff announced that they had agreed to seek a continuance to the next Planning Commission meeting in November. Although CMI and Lyon County both had advance knowledge of their proposed request, neither party alerted Silver City residents or their representatives of the likely continuance of the hearing for which residents travelled to Yerington to participate. ROA 61-62.

On November 12, 2013, the Lyon County Planning Commission held a public hearing on CMI's 2013 Application. During its presentation on its application, CMI provided no expert

1 testimony to counter or address the evidentiary record created by Plaintiffs/Petitioners and the
2 Lyon County Planning Department. Instead, CMI presented a totally new presentation, not
3 provided to any one in advance, regarding exact boundaries of the original Silver City town site.
4 The Planning Commission chastised CMI for the introduction of last minute information not
5 shared with the obviously interested parties. Both Commissioner Hastings and Keller attended
6 the November 2013 Planning Commission during the hearing on CMI's 2013 Application. See
7 generally, ROA Audio of 12-10-13 Planning Commission Meeting. ROA 61-62.

9 After hearing hours of public testimony, the Planning Commission adopted the
10 recommendation of its professional staff and recommended – by a 4 to 1 vote – that the BOC
11 deny CMI's application. In making its recommendation, the Planning Commission found the
12 following (ROA at 1214-1215):

- 13 A. The proposed amendment is not in substantial compliance with,
14 nor promotes the Master Plan goals, objectives and actions in that
15 it is not in keeping with the majority of applicable guiding
16 principles, goals, policies, strategies and community description
17 contained in the 2010 Lyon County Comprehensive Master Plan,
18 County-wide Component.
- 19 B. The proposed amendment would result in land uses which are
20 incompatible with the actual and planned adjacent land uses, and
21 does not reflect a logical change in land use in that the amendment
22 would change the planned character and intensity of residential
23 development and enables the potential development of a land use
24 incompatible with the actual and planned adjacent and
25 predominant residential land uses.
- 26 C. The proposed amendment fails to identify or respond to changed
27 conditions or further studies that have occurred since the Master
28 Plan was adopted by the Board, and the requested amendment does
not represent a more desirable utilization of land.
- D. The proposed amendment will adversely affect the implementation
of the Master Plan goals, objectives and actions, and will adversely
impact the public health, safety or welfare.
- E. The proposed amendment does not promote the desired pattern for
the orderly physical growth of the County as set forth for the Silver
City community in the 2010 Lyon County Comprehensive Master
Plan, County-wide Component.
- F. The existing Comprehensive Master Plan and/or any related
element thereof is not in need of the proposed amendment.

- 1 G. The proposed amendment is not compatible with the surrounding
2 area, and the goals and policies of the Comprehensive Master Plan,
3 particularly those related to Silver City.
4 H. The proposed amendment will have effects on service provision,
5 including adequacy or availability of facilities and services, and is
6 not compatible with existing and planned service provision.
7 I. Deviation from the strict adherence to the Comprehensive Master
8 Plan would result in a situation neither intended nor in keeping
9 with other key elements and policies of the Plan.
10 J. The proposed Plan amendment will not promote the public welfare
11 and will be inconsistent with the goals and policies of the
12 Comprehensive Master Plan and the elements thereof, and
13 K. The burden of proof has not been met by the applicant in their
14 application to warrant a change in the Master Plan at this time.

15 ROA 53-59. The Planning Commission's findings mirrored the County Commission's 1986
16 findings on the similar Nevex Gold Master Plan amendment application. ROA at 832-833.

17 **J. County Commissioners Reversed its Own Prior Findings, its**
18 **Professional Staff and Planning Commission**
19 **Recommendations and Approved CMI's Application**

20 Lyon County agendized CMI's 2013 Application to be heard by the County
21 Commissioners at its January 2, 2014 meeting. At the beginning of the January 2, 2014
22 meeting, Commissioner Keller announced she had a new action for consideration.
23 Commissioner Keller indicated she had contacted other Commissioners and CMI to discuss her
24 proposal. Although Commissioner Keller characterized the new proposal as a "compromise"
25 offered on behalf of the Silver City residents, she never contacted any representative of the
26 Silver City Town Board or concerned residents to discuss the new alternative.

27 On January 1, 2014, Commissioner Keller and her husband, a CMI employee, met
28 privately with Chair Joe Mortensen and the Lyon County Manager. Commissioner Keller, her
husband, Commissioner Mortensen and the County Manager then met with CMI's CEO and its
consultant. Despite meeting the day before with CMI's CEO and its consultant, Commissioner
Keller informed the public during the January 2 meeting that she had only been working with
CMI's consultant. Although Commissioner Keller has had extensive contacts with CMI, she

1 refused to meet with representatives of Silver City despite repeated invitations. MTA/RJN
2 Exhibit D (CRA emails to Commissioner Keller).

3 Even though they had advance knowledge of the new proposal, no Commissioner or Lyon
4 County staff contacted Silver City residents or their known representatives to either discuss the
5 proposal or provide any notice of the intent to introduce it during the January 2, 2014 hearing.
6

7 CMI's 2013 Application proposed to change land use designations for their ownership
8 within Silver City. The proposed change in land use and zoning designation would permit CMI
9 to pursue further permits for a range of new uses including industrial type uses such a mining,
10 feed lots, etc. Some of these uses were classified as "allowed," which means that CMI could
11 pursue them with an ordinary permit application. Other of the new uses, such as the industrial
12 one including mining, could only be pursued after obtaining a "special" use permit.
13

14 When Lyon County's professional planning staff assessed the appropriateness of CMI's
15 application, it analyzed the full range of potential uses, including special uses such as mining,
16 that could occur under the proposed land use changes. In direct contravention to their
17 professional planning staff analysis and the Commissioners' many prior considerations of the
18 same basic planning decision such as the 1986 Nevex Gold application, Commissioners in favor
19 of the application determined that they could only consider the allowed uses during their
20 discussion of CMI's 2013 Application. These members determined that they could not consider
21 the potential impacts of special uses, such as mining and other industrial uses, at this stage in
22 the land use planning determination. *Infra*, at 34.
23

24 During the January 2, 2014 hearing, CMI presented no expert testimony to counter the
25 factual record regarding the adverse impacts of its 2013 Application. The record is devoid of
26 any evidence of actual benefits to the public resulting from the 2013 Application. The record is
27
28

1 also devoid of any changed circumstances in Silver City or its environs to justify a change in
2 Lyon County's long-standing and consistent land use policies for Silver City. ROA 524-532.

3 After public comment, the Commissioners held an abbreviated discussion consistent with
4 their constrained view of the allowable impacts to consider and voted, 4 to 1 to overturn the
5 Silver City Advisory Council, its professional planning staff recommendation, and the
6 recommendation of its Planning Commission, and grant Commissioner Keller's new amended
7 CMI 2013 Application. *Id.*

9 The Lyon Commissioners did not refer the amended proposal for a Master Plan
10 amendment to its Planning Commission for a report prior to taking action on the application and
11 only did so after they approved the new proposal.

12 **K. Adverse Effects of County's Action on Silver City Residents**

13 CRA members, who include many Silver City residents, Gayle Sherman and Joe
14 McCarthy will be adversely affected by the BOC's approval of the CMI's revised 2013 in the
15 following ways. CMI's past and present exploration and mining activities cause degraded
16 visual conditions, loud industrial noises within a quiet residential area, dust and dirt on roads
17 and in the air, and increased traffic on nearby roads including trucks and other industrial
18 equipment. See e.g., ROA 356-358, 363-364 (Minutes of Silver City Citizen Advisory Board
19 workshops on impacts from to citizens from existing CMI mining activities at Lucerne Pit).
20 The change in land use designations and zoning from prohibiting industrial uses such as
21 mining in Silver City will likely cause these present adverse effects to increase. ROA 659-663.

22 Surface mining, made possible by the change in land use will exacerbate and accelerate
23 the destruction of the CHD. Road building, cuts and fills, trenching, drill pads, and subsequent
24 associated surface mining activities, as noted by the National Park Service individually and
25 cumulatively degrade the unique character of the CHD. In addition, the noise associated with
26
27
28

1 the proposed activities will substantially alter the character of the CHD. As citizens have
2 testified, the construction, drilling and other activities associated with CMI's past and current
3 mineral exploration and mining have significantly altered the aural landscape in the CHD and
4 efforts to attenuate have proven unsuccessful. ROA 298-299 (Rob Reno); 300-301 (The
5 Browns); 495-496 (Quest Lakes); 499-500 (Bob Elston); 501-504 (Theo McCormick).
6

7 Mining operations can generate dust from mining and mineral processing operations and
8 associated truck traffic, releasing particulates, nitrous oxide, sulfur dioxide, and carbon
9 monoxide from the equipment used to mine and process ore minerals. These emissions can
10 generate smog and other forms of air pollution that may impact local air quality. Mine sites
11 can also have increased concentrations of specific metals and salts in water used in – or runoff
12 from – mine sites. Acid mine drainage is a phenomenon that can occur when rock containing
13 sulfides is exposed to air and water. The water can become acidic and often carries elevated
14 levels of toxic metals. Acid mine drainage occurs most frequently in association with metals
15 mines [such as gold and silver mines] and can affect water quality. Pit lakes, another water
16 quality concern during and after mine closure, are created when mining is completed in a pit
17 and dewatering pumps are turned off, allowing groundwater to flow back into the pit. Similar
18 concerns about the acidity and concentration of heavy metals in these water bodies arise in
19 association with metals mines. Changes in water quality and quantity can affect not only
20 human health but also wildlife habitat and ecosystem health. Environmental impact assessment
21 processes often intensively focus on bio-diversity issues in Nevada, and as a consequence,
22 operating plans require significant dedication to design of mitigation and management efforts.
23 ROA 659-663.
24

25
26 The change in land use to rural instead of urban densities will it more difficult for
27 infrastructure improvement for Silver City that would improve the citizens' quality of life.
28

1 *Infra*. The change in land use designations and zoning from prohibiting industrial uses such as
2 mining to allowing it under a special use permit will reduce the value of Plaintiffs/Petitioners'
3 property. ROA 700.

4 III. STANDARD OF REVIEW

5 This Court reviews Lyon County's decision to reverse its historic Master Plan and zoning
6 designations under an abuse of discretion standard. *City of Reno v. Harris*, 111 Nev. 672
7 (1995). An abuse of discretion can be shown if the County failed to proceed in accordance with
8 law or that its decision is not supported by substantial evidence in the record before the County
9 at the time of its decision. *Id.*; *Kay v. Nunez*, 122 Nev. 1100 (2006); *Nova Horizon, Inc. v. City*
10 *Council of the City of Reno*, 105 Nev. 92 (1989); *Serpa v. County of Washoe*, 111 Nev. 1081
11 (1995). In other words, the County must both follow applicable law and have made a rational
12 decision based on evidence presented to it. Under standard land use law, CMI bears the burden
13 of proof to demonstrate that a change to a Master Plan and zoning should occur. *Coronet*
14 *Homes, Inc. v. McKenzie*, 84 Nev. 250 (1968).

17 Moreover, Lyon County has consistently and historically reinforced the appropriate master
18 plan and zoning for townsite and immediately adjacent lands as urban and suburban residential
19 (with minor amounts of commercial). Lyon County must therefore demonstrate why it has
20 changed its position so radically: what changed conditions exist to justify the policy reversal. In
21 addition to this standard burden to justify why such changes to an existing planning document
22 should be made, where an agency has consistently applied its discretion in particular way, it
23 cannot reverse course without demonstrating what has changed in order justify such a policy
24 reversal. See e.g., *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800,
25 808, 93 S.Ct. 2367, 37 L.Ed.2d 350 (1973) (plurality opinion) (describing an "agency's duty to
26 explain its departure from prior norms" and holding that when an agency departs from prior
27
28

1 norms, its reasons “must be clearly set forth so that the reviewing court may understand the
2 basis of the agency's action and so may judge the consistency of that action with the agency's
3 mandate”); *Northwest Environmental Defense Center v. Bonneville Power Administration*, 477
4 F.3d 668, 690 (9th Cir. 2007); *Ramasrakash v. Federal Aviation Authority*, 346 F.3d 1121, 1130
5 (D.C. Cir., 2003).

6 In order to amend its Master Plan, “the County should consider whether:

- 7 1. The existing Comprehensive Master Plan and/or any related element
8 thereof is in need of the proposed amendment;
- 9 2. The proposed amendment is compatible with the surrounding area, and the
10 goals and policies of the Comprehensive Master Plan;
- 11 3. The proposed amendment will have no major negative impacts on
12 transportation, services, and facilities;
- 13 4. The proposed amendment will have minimal effect on service provision,
14 including adequacy or availability of facilities and services, and is
15 compatible with existing and planned service provision;
- 16 5. Strict adherence to the Comprehensive Master Plan would result in a
17 situation neither intended nor in keeping with other key elements and
18 policies of the Plan; and
- 19 6. The proposed Plan amendment will promote the public welfare and will be
20 consistent with the goals and policies of the Comprehensive Master Plan
21 and the elements thereof.

22 MTA/RJN, Exhibit A (2010 CMP at 11.3).

23 As established below, Lyon County neither followed applicable law nor had substantial
24 evidence before it reverse its long-standing protections of Silver City.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. ARGUMENT

A. The County Failed to Provide a Complete Record

A complete record is necessary and critical to judicial review. *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 373 (Failure to certify a complete administrative record constitutes a prejudicial abuse of discretion.) “[W]hen it comes to the administrative record [], any reduction in its contents is presumptively prejudicial” *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 13. Moreover, compiling the record “is essentially a ministerial task” that does not involve agency discretion. *Id.* at 11.

The record filed by Lyon County is not complete. The record consists of various types of documents, including electronic mail messages to and from individual commissioners in the possession of the Lyon County administration.² See e.g., AR 2810-2021 (Commissioner Mortenson Emails); 2822-2830 (Commissioner Fiero Emails); 2887-2897 (Commissioner Keller Emails); 3898-2914 (Commissioner Arrellano Emails); 2915-3050 (Commissioner Hastings Emails). However, these files are incomplete because Lyon County did not include the entire body of electronic communication with commissioners and the public and among themselves. Instead, Lyon County only included those records in its own administrative files and refused to provide any communications with and among commissioners that occurred exclusive on their private email accounts not in administrative possession or any text communication at all. See MTA/RJN, Exhibit E.

Since Lyon County has refused to provide a complete record of its proceedings, it has committed a prejudicial abuse of discretion by precluding complete judicial review.

² For some unexplained reason, the record submitted to the Court excluded numerous documents provided to the County by CRA in opposition to CMI’s application. These documents include letters to Commissioners Keller and Hastings, emails to Commissioner Keller and hundred of pages of material regarding Lyon County’s 1986 denial of Nevex Mining Company’s identical application for a land use and zoning change. CRA’s Motion to Augment, filed contemporaneously herewith, seeks to add these documents to the record.

1 B. **No Changed Conditions Exist to Justify the County’s Policy Reversal**

2 In **1971**, Lyon County determined that the correct land use and zoning designations for the
3 Silver City townsite was for urban/suburban type residential densities that precluded major
4 industrial uses like mining. In **1986**, Lyon County affirmed its 1971 decision by denying a
5 different mining company’s attempt to redesignate CMI’s property as rural and allow mining as
6 a special use. In **1990**, Lyon County again considered the proper land use/zoning for CMI’s
7 property in Silver City and determined that the existing designation should remain. In **2002**,
8 Lyon County specifically considered the future for Silver City in its West Central Lyon County
9 Land Use Plan and expanded the considerations and protections for Silver City and again
10 reaffirmed its long-standing urban/suburban land use designation and uses. In **2010**, Lyon
11 County yet again specifically examined land use within Silver City and its other existing
12 communities and yet again expanded considerations for such historic districts, added specific
13 protections for existing communities from new mining uses, and for the fifth time designated
14 Silver City as urban/suburban and excluded mining uses – all over the objections of CMI.
15 *Supra* at pp. 8. In 2010, current County Commissioners Joe Mortenson and Ray Fierro voted
16 for the 2010 CMP and the specific land use/zoning designations and protective policies for
17 Silver City and rejected a request from CMI to assign use designations allowing mining. See
18 MTA/RJN Exhibit B; ROA 545-548.
19
20
21

22 Thus, for more than 40 years, Lyon County has considered, consistently determined and
23 even expanded the appropriate land use and protections for Silver City to preclude exactly the
24 desires of CMI for its land within the town boundary. As described above, Lyon County
25 residents invested and relied upon this continued history to build homes, business and lives.
26 *Supra* at 12-13. Under these circumstances, Lyon County cannot – under the precepts of in own
27 2010 CMP and applicable law – reverse completely its position without providing a reasoned
28

1 analysis of the justifying changed circumstances. See, *supra*, *Atchison, Topeka; Northwest*
2 *Environmental Defense Center; Ramasrakash*; see also 2010 CMP at 1.8. (Anticipating plan
3 amendments “to adapt to **new** situations and meet **new** challenges over time.”)(emphasis
4 added); LCC 10.12.09(F)(C) (finding for approval: “[t]he proposed amendment has
5 demonstrated and responds to changed conditions or further studies that have occurred since the
6 Master Plan was adopted by the Board . . .”).

7
8 Neither CMI nor the County Commissioners presented any evidence of changed
9 circumstances since the adoption of the 2010 CMP. In its application materials and
10 presentations to Lyon County, CMI contends that Lyon County erred in 1971, in 1986, in 1990,
11 in 2002 and in 2010 when the county determined that lands within the boundaries of the Silver
12 City community should be urban/suburban with associated compatible uses (not including
13 mining). See e.g., ROA 154 (CMI’s application contending land use designations applied as
14 “an erroneous or impractical consideration of dense dwelling development or as an exclusionary
15 attempt to prevent any future mining developments.”); ROA 470 (CMI’s presentation stating
16 proposed amendment “corrects a fundamental, persistent error”). Nor did the County
17 Commissioners voting in favor of the application note any conditions that have changed since
18 2010. See e.g. AR Audio of 1/2/14 County Commission Meeting (CMI#3.wav) at 28:20-31:40
19 (Commissioner Keller: “Master Plan is not set in stone,” “Nothing’s guaranteed in life”); 31:40
20 et seq. (Commissioner Hastings: same). In particular, Commissioners Mortenson and Fierro
21 provided no explanation for their individual votes reversing their position taken in 2010.
22
23

24 Since no evidence of change exists in the record to justify the radical change of position
25 taken by the Commissioners, their action should be vacated.
26
27
28

1 C. **CMI Application Inconsistent With 2010 Comprehensive Master Plan**

2 In Lyon County, proposed Master Plan amendments must meet certain criteria. First, and
3 foremost, proposed amendments must be consistent with the existing Master Plan:

4 Prior to adoption of any master plan amendment, the board **shall** review the
5 commission's report and recommendation, and evidence to determine if the
6 proposed amendment or element is consistent with the existing master plan
7 goals, objectives and actions or the proposed amendment or element represents a
8 necessary and appropriate modification The board shall approve, modify,
or deny the master plan amendment or element request based on the results of
this review.

9 LCC 10.12.09(G)(2) (emphasis added). As found by the County's Planning Commission and
10 professional staff, CMI's proposed Master Plan amendment and zone change are patently
11 inconsistent with multiple provisions of the 2010 CMP.

12 1. CMI Designations Improperly Pre-empted Community Planning

13 As described above, the 2010 CMP created a two step planning process for the
14 unincorporated communities of Lyon County: the County-wide Master Plan and specific,
15 individual Community Plans for the eight identified communities – including Silver City.
16 “Through its Community Planning process, Lyon County will address individual community
17 needs and desires while implementing county-wide policies and actions.” 2010 CMP, Guiding
18 Principles, Communities and Planning, at 26. The land use designations and zoning of the 2010
19 CMP – County-wide component were created with extensive input and direct participation by
20 Lyon County communities. *Id.* at 1.10-1.11.

21 The next step expressly contemplated by the 2010 CMP is development of the local
22 community plans. “Lyon County will support community-based planning efforts that elaborate
23 community specific goals and are developed with strong public consensus.” ROA 1200 (Goal
24 CP 3). Moreover, Policy CC 1.3 states:

25 Design Tailored to Communities. New development in Lyon County should
26 address and respect the unique character of communities within the county.
27
28

1 Strategies: develop Community Plans to identify typical or desirable design
2 elements that maintain or promote the community's desired image. Adopt County-
3 wide standards that allow the flexibility to address specific design needs for
individual communities in Lyon County.

4 ROA 1181. The implementation chapter of the 2010 CMP (Chapter 11) prioritizes completion
5 of Silver City Community Plan one of the first implementation tasks. *Id.* at 11.7.

6
7 CMI proposal to radically change the uses available for their property and potentially the
8 nature and character of Silver City is exactly the type of fundamental community decision the
9 2010 CMP contemplated would occur at the Community Plan stage. As the Lyon County Staff
10 eloquently stated: "Land use regulations and zoning are community master plan implementation
11 measures intended to help promote and produce the community envisioned by its citizens."

12 ROA 1211 (Staff Report). Indeed, the Chairman of the Planning Commission sought to direct
13 the conversation on the use CMI lands into the Community Planning process. ROA 2282
14 (Planning Commission Chair Davies "suggested that a potential win/win option to the current
15 CMI master plan amendment and zone change may be the preparation of the Silver City
16 community plan This would allow CMI and the community to work together on the
17 mining issue in a facilitated setting.") However, the Commission's approval of CMI's
18 application totally bypassed the two-step planning process created by the 2010 CMP and is
19 therefore inconsistent with it.
20

21 2. CMI Designations Inconsistent with Separating Incompatible Uses

22
23 One of the key land use components of the 2010 CMP, indeed one of the central purposes
24 for land use planning is to separate incompatible uses. "The principal purpose of land-use
25 regulation and zoning is to limit conflicts between incompatible land-uses. As a general rule,
26 lower density and rural residential uses can be compatible with higher density residential uses if
27 properly arranged, particularly if they back up to them or if they are separated by a street.
28

1 However, higher intensity industrial uses are generally incompatible with residential uses.”

2 ROA 1211 (Staff Report)(emphasis added).

3 The 2010 CMP, in fact, provides direct guidance on the siting of industrial uses such as
4 mining. “Industrial uses, including **extractive industries**, will occur in areas that are
5 designated on the County-wide Land Use Plan. **New industrial uses should only be located in**
6 **areas that do not adversely impact existing residential settlements.”** ROA 1180 (Policy LU
7 1.4) (emphasis added). Lyon County reemphasized the importance of avoiding conflicts with
8 mining and other uses in Goal NR 9: “Lyon County will promote the continued development of
9 mineral and aggregate resources **while working to prevent and reduce conflict between**
10 **mining . . . and residential, commercial and industrial development.** ROA 1182 (emphasis
11 added). In other words, the 2010 CMP’s mandated direction is not to locate incompatible uses
12 next to each other.
13
14

15 There is no dispute: mining on CMI’s property within the boundaries of Silver City will
16 adversely impact the existing residential community of Silver City. First, the undisputed
17 evidence before the Commission established that CMI’s mining in the Lucerne Pit, farther away
18 that the proposed site, already adversely impacts Silver City residents. *Supra*, at 22-23.
19 Second, anticipated impacts from mining on CMI properties within the townsite include adverse
20 affects on air quality (e.g., dust), scenic values, traffic, and noise. *Id.*
21

22 Given these adverse impacts to an existing residential community, it is not surprising then
23 that the Planning Commission (and Lyon County staff) found the full range of uses sought by
24 CMI to be incompatible with the residential nature of Silver City and inconsistent with multiple
25 provisions of the 2010 CMP (ROA at 1214-1215). See *San Bernardino Valley Audubon*
26 *Society, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 752, 202 Cal.Rptr. 423 (1984)
27
28

1 (County Board's consistency determination arbitrary where Staff Report concluded proposed
2 uses conflicted with specific general plan policy).

3 3. CMI's Designations Are Inconsistent with the Unique Character
4 and Historic Preservation of Silver City

5 CMI's proposal conflicts with multiple provisions of the 2010 CMP that protect the nature
6 and character of Lyon County's designated historic existing communities, such as Silver City.

7 As described in detail in the Staff Report and above, a major focus of the 2010 CMP is the
8 preservation of local historic communities. For example, Goal CC-3: Heritage: "Historic
9 places, structures, and landmarks in the county will be preserved and will provide an
10 opportunity for residents and visitors to learn about and celebrate our heritage." ROA at 1181.

11 Implementing Policy CC-3.1 directs Lyon County to:

12
13 Maintain and restore historic resources. Lyon County will encourage and support
14 efforts to preserve and restore registered historic structures, and landmarks, and
15 districts.

16 Strategies: Revise zoning to encourage historic use and development patterns
17 including mixed-use structures and districts. Within historic districts, promote
18 historic design elements, features, and context, and prohibit building design that
19 compromises the integrity of the historic community character. **Within historic
20 districts, limit new land uses that would pose a risk to historic structures or
21 the historic character of the district. Promote the preservation of historic
22 landscape features to maintain historic settings and the integrity of historic
23 resources within historic districts.**

24 *Id.* at 1181-1182 (emphasis added).

25 Silver City is one of the few designated historic district in Lyon County. ROA 1174. As
26 found by County Staff,

27 [CMI's] requested master plan amendment and zoning change request and
28 [CMI's] stated purpose for both could result in development directly contrary to
this goal, policy and strategies. Silver City is a unique, historic community within
Lyon County that lies within a historic district which contributes to its character
and quality of life.

ROA 1182.

1 In other words, mining activities within the townsite do not “promote the preservation of
2 the historic landscape” or the “integrity of the historic resources within” the Silver City Historic
3 District. ROA 682-685. CMI’s proposed uses are therefore inconsistent with the 2010 CMP
4 goals and policies on historic preservation.

5 CMI’s request is also inconsistent with other CMP provisions designed to protect its
6 existing unique communities. For example, Policy LU 3.2 directs that business and industry
7 should be located consistent with the County’s future land use plan. ROA 1181. Specifically,
8 the CMP directs the County to “[u]se the Countywide Land Use plan and Community Plans as a
9 guide to determine appropriate location for business and industry.” *Id.* However, as found by
10 Lyon County staff, “the County-wide Land Use Plan designations for the Silver City
11 community do not identify lands for industry or mining within the community boundaries.” *Id.*
12 In a similar economic vein, the CMP directly supports a diverse local economy. See e.g., ROA
13 1180 (Goal LU 3, Policy LU 3.1). Mining within the Silver City boundaries will adversely
14 impacts local businesses, tourism and home values; all in conflict with the CMP. ROA 642-
15 738. In addition, “[n]ew development in the communities of Lyon County should create
16 inviting places for locals and visitors to live, shop, eat, visit and do business.” ROA 1181
17 (Policy CC1.1). CMI’s development plans for its lands within the Silver City community
18 boundaries are entirely inconsistent with the type of development Lyon County’s articulated
19 vision for its eight designated communities. See also ROA 1181 (Policy CC1.3); *id.* (CMI’s
20 proposed uses do not “address and respect the unique character of communities within the
21 county.”).

22 Finally, CMI’s proposed downzoning to rural is not consistent with existing town
23 residential densities and contrary to densities necessary to improve Silver City infrastructure.
24 The existing town consists of urban and suburban densities, without any rural zoning. ROA
25
26
27
28

1 1180 (Staff Report) (“The current [urban] Land Use Plan is consistent with the identified long
2 term development goals for Silver City and consistent with approximately 40 years of County
3 master planning efforts and community input.”). Moreover, the planned urban densities are
4 necessary to support future needed infrastructure improvements, such as water and sewer. See
5 e.g., 1180 (“The existing land use designation includes densities starting from one acre per
6 dwelling unit and provide for densities that could improve the potential for the expansion of
7 infrastructure within Silver City.”); 1128 (“Consideration should be given to whether or not the
8 change in development potential and pattern would have a positive or negative impact on the
9 future expansion of the Silver City water system.”). Lyon County planning staff also noted
10 CMP goals and policies for the provision of municipal water and sewer and concluded:
11

12 Silver City has extensive limitations for individual and on-site sewer disposal
13 systems. Additional large lot residential parcels requiring septic systems may be
14 contrary to long term water quality and may reduce the opportunity for a future
15 connection to a municipal sewer system. [¶] Water system improvements are
16 needed for the community and a sewer system may be necessary in the future.
Cost effective improvement and expansion will be influenced by Silver City’s []
long term development potential.

17 ROA 1184.

18 In sum, CMI’s proposal is not consistent with multiple provisions of the 2010 CMP
19 protecting the Silver City designated historic nature and community uniqueness and should
20 therefore be vacated. See *Families Unafraid to Uphold Rural El Dorado County v. El Dorado*
21 *County Board of Supervisors*, 62 Cal.App.4th 1332, 1341, 74 Cal.Rptr.2nd 1 (1998).
22

23 4. County Commission Erred by Focusing Exclusively on Residential
24 Density Rather Than All Potential Uses – including Mining

25 Given the patent conflict with the central principals and goals of the 2010 CMP and CMI’s
26 proposed uses, one wonders how the County Commissioners could have found CMI application
27 consistent with the CMP. The answer was simple: wholly ignore these problematic uses. For
28 example, although CMI sought the land uses changes in order to mine their property, its

1 application materials focus on the residential development potential of the property rather than
2 the complete range of uses, including mining, contemplated by the requested land use and
3 zoning designations. See e.g., ROA 1285-1287. When the Commissioners considered the
4 impacts of their decision, they refused to consider the possible impacts from mining during their
5 considerations. The Commissioners contended that they could only consider impacts from
6 “allowed” (e.g. residential) but not “special” uses (e.g. mining) under the new land use
7 designations.³ See e.g., Audio of January 2, 2014 County Commission Meeting at 46:17, 53:23
8 (Comments of Commissioner Fierro); *id.* at 49:58 (Comments of Commissioner Keller).

10 However, the County must consider the full range of uses authorized otherwise it never
11 will have the opportunity to do so. See e.g., *City of Redlands v. County of San Bernardino*, 96
12 Cal.App.4th 398, 406-408; 117 Cal.Rptr.2d 582, 587-588 (County must assess the impacts of all
13 potential consequences arising from amendments to its General Plan). The Commission
14 members’ blinkered view is directly contrary to the position of its own professional planning
15 staff. ROA 1183 (“The future potential for mineral exploration and extraction operations
16 should be considered for the requested master plan amendment and concurrent zone change.”)
17 Moreover, as Lyon County staff also explained, once the basic land use designations and zoning
18 are set, the Commission’s discretion becomes ever more limited. Because the Commission’s
19 improperly constrained its own consideration of relevant factors, its resulting decision is an
20 abuse of discretion. *Valley Advocates v. City of Fresno*, 160 Cal. App.4th 1039, 1062-1063, 72
21 Cal.Rptr.3d 690 (2008) (“a prejudicial abuse of discretion occurs when a public agency is
22 misinformed regarding its discretionary authority and, as a result, does not choose whether to
23 exercise that discretionary authority.”)
24
25
26

27
28 ³ In general allowed uses are those which could be permitted by the County without public hearing; special uses require a public hearing before permitting.

1 CMI spends considerable time in its presentations listing various CMP provisions for
2 which it contends are consistent with its proposed land use designations and zoning. See e.g.
3 ROA at 1287-1289 (CMI application). However, consistency with selected CMP provisions
4 does not cure direct inconsistency with those provisions outlined above. See e.g., *Concerned*
5 *Citizens of Calaveras County v. Calaveras County Board of Supervisors*, 166 Cal.App.3d 90,
6 212 Cal.Rptr. 273 (1985) (General plan traffic element inconsistent with land use element even
7 though both internally consistent). Nowhere does the County Commission reconcile the
8 findings of its own Planning Commission and staff that CMI proposed designations are
9 inconsistent with the CMP. Therefore the County Commission's determination to the contrary
10 is not supported by substantial evidence.
11

12 The Nevada Supreme Court has shown little patience when local governments disregard
13 master plans for political expedient reasons. In *Nova Horizons, supra*, the Supreme Court
14 overturned a decision by the City of Reno that was clearly driven not by planning principles but
15 political pressures. *Id.*, 105 Nev. at 96-98. Likewise, in *American West Development, Inc. v.*
16 *City of Henderson*, 111 Nev. 804, 898 P.2d 110 (1995), the Supreme Court dismissed an
17 attempt by a municipality to ignore the express provision of the existing master plan in order to
18 respond to a powerful constituency. In this instance, CMI with its resources and influence,
19 asked Lyon County commissioners to ignore the directly applicable CMP provisions that stood
20 in the way of its corporate objectives. The unelected Planning Commissioners resisted; the
21 elected County Commissioners did not.
22
23

24 **D. The County Violated NRS 278.220 By Not Seeking First Seeking**
25 **Planning Commission Report on the Modified Proposal**

26 Lyon County violated NRS 278.220(4) by taking final action before referring CMI
27 application back to the Planning Commission for a report on the proposed change to the CMI
28 application. NRS 278.220 mandates that Lyon County follow a certain order of procedures

1 when amending its master plan. “**No** change in or addition to the master plan or any part
2 thereof, as adopted by the planning commission, may be made by the governing body in
3 adopting the same **until** the proposed change or addition has been referred to the planning
4 commission for a report thereon and an attested copy of the report has been filed with the
5 governing body.” *Id.* (emphasis added).
6

7 Lyon County incorporated the same principle in its own development code. LCC
8 10.12.09(G)(4) states “[i]f the board [of county commissioners] proposes to modify the
9 amendment, as recommended by the commission, it shall refer the proposed modifications to
10 the [planning] commission for its consideration.”

11 The plain language of NRS 278.220(4) states that the Lyon County Commission can make
12 “no” change in the Master Plan “until” the proposed change has been referred to the Planning
13 Commission. Similarly, LCC 10.12.09(G)(4) uses the nondiscretionary “shall” to mandate
14 reference back to the Planning Commission. The timing requirements of NRS 278.220(4) and
15 LCC 10.12.09(G)(4) implement the overall intent of master planning set forth in NRS Chapter
16 278. The Planning Commission initially prepares the master plan under NRS 278.150(1): “The
17 planning commission shall prepare and adopt a comprehensive [master] plan” The master
18 plan may only then be adopted by the governing body of the local government (i.e., the County
19 Commission). NRS 278.220(1) (“Upon receipt of the certified copy of the master plan, or of
20 any part thereof, as adopted by the planning commission, the governing body may adopt [it].”).
21 NRS 278.220(4) then limits the authority of the governing body by prohibiting the governing
22 body from adopting any change not referred by the planning commission until the planning
23 commission first hears and reports on the governing body’s proposal. In this way, the
24 Legislature ensured that master plan proposals will be first considered by the planning
25 commission – even if generated by the County Commission itself – and only then referred to the
26
27
28

1 governing body for consideration for adoption regardless of whether they arise first with
2 planning commission or the governing body.

3 Lyon County admits that the action of the County Commission triggered NRS 278.220(4)
4 – “the commissioners’ decision on the Master Plan Amendment is a final action but it needs to
5 be sent back to the planning commission for a report.” ROA 531; see also 536-539 (Letters of
6 Final Action dated January 7, 2014). The Court has already determined that NRS 278.220(4) is
7 applicable here and Lyon County’s conduct violated it. “When the county makes a change that
8 change may or may not be beneficial and that’s the reason that the Planning Commission must
9 make a report. The Comstock Residents argue that the county put the cart before the horse.
10 The Court agrees.” Order Granting In Part and Denying In Part Motion to Dismiss (filed
11 December 3, 2014), at 5-6.
12

13 Since the County Commission adopted a modified application, it should have first referred
14 the modified proposal to its Planning Commission. Because it did not, the County violated
15 NRS 278.220 and LCC 10.12.09(G)(4) and its approval should be vacated and remanded back
16 to the Planning Commission for consideration. See *Dalton v. City and County of Honolulu*, 462
17 P.2d 199, 208 (HI 1969)(Master plan amendment that did not follow statutory mandated
18 procedures declared void).
19

20 ///

21 ///

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

As set forth above, CRA’s Petition for Judicial Review should be granted, Lyon County’s action approving the change in Master Plan and zoning designations vacated, and the matter remanded back to the County with directions to deny CMI’s application.

Dated: December 16, 2014.

Respectfully submitted,

By _____
John L. Marshall, SBN 6733
570 Marsh Avenue
Reno, NV 89509
775.303.4882

Attorney for Petitioners CRA, Gayle Sherman, Joe
McCarthy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opening Brief in Support of Petition for Judicial Review was served on the parties by mailing a copy thereof on the 16th day of December, 2014, by United States mail, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this document does not contain a social security number.

2015 JAN -2 PM 2:06

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

SUPPLEMENT TO RECORD ON APPEAL

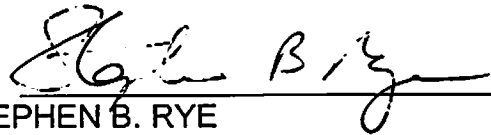
Defendant LYON COUNTY BOARD OF COMMISSIONERS (referred to as COUNTY), by and through ROBERT L. AUER, Lyon County District Attorney, and STEPHEN B. RYE, Chief Deputy District Attorney, hereby files this Supplement to the Record On Appeal, consisting of the following items:

1. Copy of CD submitted with Materials Presented by Comstock Residents Association to Lyon County Planning Department on November 12, 2013.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 2nd day of January, 2015.

ROBERT L. AUER
DISTRICT ATTORNEY

By: 
STEPHEN B. RYE
CHIEF DEPUTY DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 2nd day of January, 2015, a copy of the foregoing was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

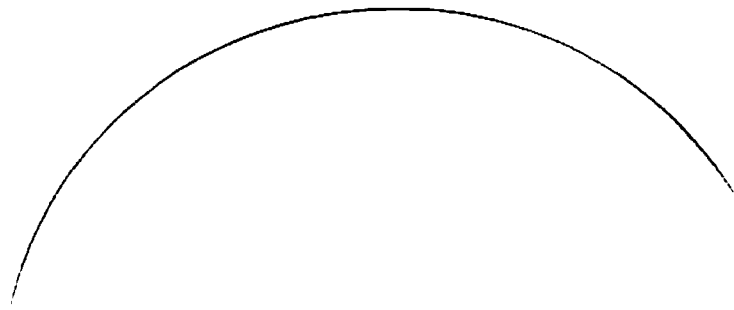
John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 2nd day of January, 2015.



Employee

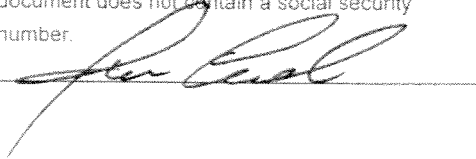


14-CV-00128
11-12-2013 Materials from CRA
Presented to Planning Commission

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this document does not contain a social security number.



2015 JAN -2 PM 2:07

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT



IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

**JOINT OPPOSITION OF RESPONDENTS LYON COUNTY BOARD OF
COMMISSIONERS AND COMSTOCK MINING INCORPORATED TO MOTION TO
AUGMENT RECORD**

Respondents LYON COUNTY BOARD OF COMMISSIONERS (referred to herein as "COUNTY" or the "BOARD"), by and through STEPHEN B. RYE, Lyon County District Attorney, and COMSTOCK MINING INCORPORATED (referred to herein as "CMI") by and through ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., hereby jointly files this Opposition to Petitioners' Motion to Augment the Record. This motion is made and based upon the documents on file herein, the applicable law, the attached points and authorities, and any arguments that may be had at a hearing on this matter.

///

///

///

///

1 DATED this 2nd day of January 2015.

2 STEPHEN B. RYE
3 DISTRICT ATTORNEY

4 By: Stephen B. Rye, Deputy
5 DISTRICT ATTORNEY
6 31 South Main Street
7 Yerington, NV 89447
8 775-463-6511

9 Attorney for Respondent
10 Lyon County Board of Commissioners

ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

By: James R. Cavilia
JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
PO Box 646
Carson City, NV 89702
775-687-0202

Attorneys for Respondent
Comstock Mining Incorporated

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This action is a petition for judicial review under NRS 278.0233. A record of the
4 administrative proceedings involving CMI's application for master plan amendment and zone
5 change (the "Application") has been prepared and submitted to the Court and all of the parties
6 hereto (the "Record"). Petitioners seek, by way of the instant motion, to augment the record
7 with various documents. In addition, Petitioners request that the Court take judicial notice of
8 various other documents.

9 Petitioners ask the Court to augment the Record with the following documents:

- 10 • The 2010 Lyon County Comprehensive Master Plan, Petitioners' Exhibit
11 A;
- 12 • Emails from Petitioner Gayle Sherman to Lyon County Commissioner,
13 Vida Keller, Petitioners' Exhibit D; and
- 14 • Letters to Commissioners Hastings and Keller from Petitioners' attorney,
15 Petitioners' Exhibit F.

16 CMI and the COUNTY have already consented to adding Petitioners' Exhibits D & F. For the
17 reasons set forth below, however, CMI and the COUNTY object to the inclusion of the entire
18 2010 Lyon County Comprehensive Master Plan.

19 Further, Petitioners request that the Court take judicial notice of the following
20 documents:

- 21 • The minutes of the December 23, 2010 meeting of the BOARD,
22 Petitioners' Exhibit B;
- 23 • Excerpts from election contribution reports for three (3) of the members of
24 the BOARD, Petitioners' Exhibit C;
- 25 • A letter from the Lyon County District Attorney's office to Petitioners'
26 attorney concerning a public records request, Petitioners' Exhibit E.

27 CMI and the COUNTY object to the inclusion in the Record or judicial notice of Petitioners'
28 Exhibits B, C, & E for the reasons set forth below.

1 ARGUMENT

2 1. The Record

3 In judicial review of administrative land use and zoning decisions, the Court reviews
4 "the agency record to decide whether substantial evidence supports the governing body's
5 findings." City of Reno v. Citizens for Cold Springs, 236 P.3d 10, 15 (Nev. 2010). 45 (1961));
6 see also NRS 233B.135(1)(b). The agency record that the Court is tasked to review is "the
7 entire record of the proceeding under review, including a transcript of the evidence resulting in
8 the final decision of the agency." NRS 233B.131(1).

9 Here, the proceeding under review includes the Lyon County Planning Commission
10 and BOARD meetings at which CMI's Application was heard. The evidence resulting in the
11 final decision of the BOARD is all evidence that was presented to and considered by the
12 Planning Commission and the BOARD, which ultimately resulted in the BOARD's decision to
13 amend the Lyon County Master Plan and the zoning for land owned by CMI. Proceedings
14 outside of those at issue here and evidence that was not considered or submitted to the
15 BOARD prior to its final decision is not part of the Record.

16 In this case, the BOARD was tasked with considering portions of the Lyon County
17 Master Plan relevant to CMI's Application. All relevant portions of the Lyon County Master
18 Plan were considered by the BOARD and those portions have been included in the Record.
19 See e.g., Record, p. 14-19 (excerpts of the Lyon County Master Plan quoted by the Lyon
20 County Planning Staff); p. 555-63 (excerpts of the Lyon County Master Plan quoted in CMI's
21 Application with analysis concerning why CMI's Application is in harmony with the goals of the
22 Master Plan). The foregoing references are but a sampling of portions of the Record that
23 contain the excerpts of the Lyon County Master Plan that were presented to and considered
24 by the BOARD. There is no reason to augment the Record with portions of the Lyon County
25 Master Plan that were not presented as evidence in the administrative proceedings below and
26 are not relevant to CMI's Application and the BOARD's consideration thereof.

27 ///

28 ///

1 While there is no discernible reason to include the entire 2010 Lyon County Master
2 Plan in the Record, CMI and the BOARD have no objection to the Court taking judicial notice
3 of the 2010 Lyon County Master Plan in its entirety, although all relevant portions thereof are
4 already part of the Record.

5 2. Judicial Notice

6 The Court may take judicial notice of "facts in issue or facts from which they may be
7 inferred." NRS 47.130. The Court may not, however, consider evidence beyond what was
8 presented to the BOARD without following the procedures set forth in NRS 233B.131
9 (allowing the BOARD to alter its findings on outside evidence and rebuttal evidence upon
10 order of the Court). Carson City v. Lepire, 112 Nev. 363, 914 P.2d 631 (1996). Judicial
11 review of an agency decision must be confined to the record. Id. (citing NRS 233B.135).

12 Petitioners ask that the Court take judicial notice of the official minutes of the December
13 23, 2010 meeting of the BOARD. See Petitioners' Exhibit B. Petitioners do not explain why
14 the Court should take judicial notice thereof or why minutes from a meeting more than two (2)
15 years prior to the meeting at which the BOARD decided to grant CMI's Application are
16 relevant to this Court review. The 2010 meeting minutes were not presented to the BOARD
17 for consideration and any facts derived therefrom are not at issue here. The Court should not
18 take judicial notice of the December 2010 BOARD meeting minutes.

19 Petitioners next ask the Court to take judicial notice of excerpts from election
20 contribution reports for three (3) of the members of the Board. See Petitioners' Exhibit C.
21 Petitioners fail again to demonstrate any need for the Court to consider these documents.
22 Moreover, these reports were not presented to or considered by the BOARD in the
23 proceedings below. Nothing in the election reports constitutes facts at issue here, nor were
24 the reports presented or considered in the proceedings below. The election reports should
25 not be considered by the Court.

26 Finally, Petitioners request that the Court take judicial notice of a letter from the Lyon
27 County District Attorney's Office concerning Petitioners' public records request. See
28 Petitioners' Exhibit E. Again, Petitioners offer no basis for having the Court consider this

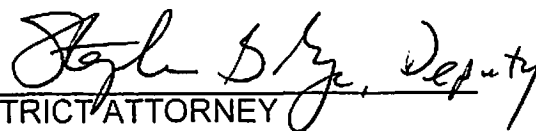
document. More importantly, the letter in question is dated May 2, 2014, a full four (4) months after the BOARD made the decision that the Court is now tasked to review. Furthermore, the letter concerns a public records request made by Petitioners well after the BOARD had made its decision on CMI's Application. Indeed, Petitioners sought to amend the Complaint in this case to add a claim that the BOARD had violated the Nevada Public Records Act based, in part, on the May 2, 2014 letter. The Court denied Petitioners' Motion to Amend the Complaint and the public records issue is not at issue in this judicial review. See Court's Order dated December 3, 2014. The May 2, 2014 letter is neither relevant to these proceedings nor was it considered by the BOARD in making its decision on January 2, 2014. Therefore, the Court must not consider it in reviewing the Record in this case.

CONCLUSION

The COUNTY and CMI do not object to augmenting the Record with Petitioners' Exhibits D and F. Further, the COUNTY and CMI do not object to the Court taking judicial notice of Petitioners' Exhibit A, which is the 2010 Lyon County Master Plan. However, based on the arguments presented herein, the COUNTY and CMI respectfully request that this Court deny the remainder of Petitioners' Motion to Augment the Record.

DATED this 2nd day of January 2015.

STEPHEN B. RYE
DISTRICT ATTORNEY

By: 
DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent
Lyon County Board of Commissioners

ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

By: 
JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
PO Box 646
Carson City, NV 89702
775-687-0202

Attorneys for Respondent
Comstock Mining Incorporated

Certificate of Mailing

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 31st day of December, 2014, a copy of the foregoing Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record was mailed, postage prepaid, by placing the same in the mail receptacle at the Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

Dated this 31st day of December, 2014.


Employee

Case No. 14-CV-00128

Pursuant to NRS 239B.030, the undersigned
affirms that the following document does not
contain the social security number of any person.

2015 JAN -9 PM 1:18

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Sceirine DEPUTY

JOHN L. MARSHALL
SBN 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
Attorney for Petitioners Comstock
Residents Association, Gayle Sherman, Joe
McCarthy

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY

Plaintiffs/Petitioners,

v.

ORAL ARGUMENT REQUESTED

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,

**COMSTOCK RESIDENTS ASSOCIATION'S REPLY
BRIEF IN SUPPORT OF MOTION TO
AUGMENT/REQUEST FOR JUDICIAL NOTICE**

1 I. INTRODUCTION

2 On December 16, 2014, Petitioners Comstock Residents Association, Gayle Sherman and
3 Joe McCarthy's (collectively "CRA") filed a Motion to Augment/Request for Judicial Notice in
4 support of their Opening Brief on Petition for Judicial Review. CRA sought to augment the
5 Record on Appeal ("ROA") with three documents and request judicial notice of three other
6 official government records. Motion to Augment at 2. All of these documents provide
7 background to issues directly considered by Lyon County when addressing CMI's application to
8 amend the 2010 Comprehensive Master Plan ("2010 CMP") and applicable zoning to expand
9 the potential uses on CMI's property to include mining.
10

11 In Lyon County and Comstock Mining Incorporated's ("CMI") Joint Opposition to CRA's
12 Motion to Augment (filed on or about December 31, 2014), Respondents agree to augment the
13 ROA with documents Lyon County somehow left out of the record: namely Motion to Augment
14 Exhibits D and F. Respondents agree that the Court may take judicial notice of the 2010 CMP
15 (Motion to Augment Exhibit A), but that the entire plan should not be made part of the ROA.
16 Lastly, Respondents oppose judicial notice of Exhibits B, C and E only relevance grounds,
17 thereby admitting the documents are in fact noticeable.
18

19 In this Reply, CRA demonstrates that the 2010 CMP is a necessary part of the ROA and
20 that Exhibits B, C and E are indeed relevant to the CRA's arguments before the Court.
21

22 II. ARGUMENT

23 A. The 2010 CMP Should be Part of the Record

24 Pursuant to LCC 10.12.09(G)(2) and NRS 278.250, CMI must prove and Lyon County
25 must find that the land use proposed changes were consistent the whole 2010 CMO. In review
26 of CMI's application, Lyon County reviewed the 2010 CMP in order to determine whether the
27 proposed land use and zoning designations were consistent. ROA at 3-47. Because Lyon
28

1 County was required to and apparently did consider the 2010 CMP, the complete 2010 CMP
2 should be part of the record. Despite these requirements, CMI and Lyon County argue that
3 since the entire 2010 CMP was not physically presented to the County Commission, it should
4 not be made part of the record. Joint MTA Opposition at 4. The 2010 CMP, however, is
5 different in its graphic presentation than presented in excerpts in the record. Compare ROA 23
6 with MTA Exhibit A). Furthermore, the record is replete with documents not considered by or
7 provided to the County Commission. See e.g., ROA 283 let seq. (Lyon County Planning
8 Department emails). It would be bizarre indeed for these inconsequential emails to be part of
9 the official record but not the central document in this case: the actual 2010 CMP. Finally, in
10 order to review this Court to review the 2010 CMP to determine if substantial evidence exists, it
11 should review the actual plan. The Court should therefore grant CRA Motion to Augment and
12 include the 2010 CMP in the record.
13
14

15 **B. Document Demonstrating Lyon County's Improper Limitation on**
16 **Content of ROA Relevant for this Court to Decide Completeness of**
17 **Record**

18 In its Opening Brief, CRA demonstrates that the record is deficient because Lyon County
19 included only some, but not all, communications between CMI and Lyon County
20 Commissioners and between the Commissioners themselves. As evidence of this fact, CRA
21 offered a letter from the Lyon County District Attorney MTA Exhibit E) that explained the
22 Record on Appeal (which also doubled as the main response to CRA's public records request)
23 did not contain certain official communications that were not recorded on County-owned
24 devices. Thus, the District Attorney's letter is directly relevant to the completeness of the
25 official record and should therefore be judicially noticed.
26
27
28

1 C. **Court May Properly Consider Extra-Record Background Documents**

2 CMI and Lyon County fail to disclose reviewing courts regularly consider material
3 outside of the administrative record for a variety of purposes. In *ASARCO Inc. v. US EPA*, 616
4 F.2d 1153, 1160 (1980), the court described a number of categories of extra-record information
5 that could be considered in a record review case, including background, explanatory documents.
6 See also, *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581, 602 (9th Cir.
7 2014). Here, CRA presented minutes of the December 13, 2010 meeting of the Board of
8 Supervisors (Exhibit B) and the election contribution reports for certain Commissioners
9 (Exhibit C) as background for the Court regarding several issues raised during the
10 administrative process before Lyon County. For example, the December 2010 minutes establish
11 the date of adoption of the 2010 CMP, the unanimous support for its adoption over CMI's
12 objection, and the make-up of the Commission at the time. All of these topics are directly
13 relevant as background to the (1) Lyon County's recent and repeated determination to maintain
14 Silver City historic land use categories (see ROA 637-638), (2) the threat CMI posed to
15 unfriendly and uncooperative elected Commissioners who had voted against them in 2010 (See
16 ROA 515-516; MTA Exhibit F), and (3) the likely rationale behind the Commissioners' radical
17 departure from Lyon County's prior position and advice of its professional planning staff and
18 Planning Commission. The December 2010 minutes are therefore relevant and noticeable.
19
20
21

22 Likewise, the campaign finance forms (MTA Exhibit C) provide the Court with
23 background information of CMI extensive and overwhelming financial support of friendly
24 candidates that is repeatedly referenced in the record. See ROA 515-517; MTA Exhibit F.
25 These official government documents, submitted by Respondent Commissioners themselves,
26 provide the Court with the actual documentary evidence of the facts referenced by both
27
28

Commissioners and CRA. Under the *ASARCO, Inc.* line of cases, these documents are also appropriate for the Court to notice.

E. Respondents' Own Use of Non-Record Documents Undercuts Their Objections to CRA's Use of Such Background Documents

Finally, CMI and Lyon County's contradictory positions must be noted. On the one hand, the Respondents object to documents provided by CRA because they are allegedly outside of the record compiled by Lyon County. On the other hand, when it serves them, CMI and Lyon County attach as exhibits to their brief extra-record, post-decisional documents. See Joint Opposition Merits Brief, Exhibits 1-4. The rules governing record review cases apply to all extra-record documents regardless of who submits them and Respondents attempt to apply them unequally should be rejected.

III. CONCLUSION

For the reasons set forth above, CRA's Motion to Augment/Request for Judicial Notice should be granted.

Dated: January 7, 2015.

Respectfully submitted,

By _____
John L. Marshall, SBN 6733
570 Marsh Avenue
Reno, NV 89509
775.303.4882

Attorney for Petitioners CRA, Gayle Sherman, Joe McCarthy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief In Support of Motion to Augment/Request for Judicial Notice was served on the parties by mailing a copy thereof on the 7th day of January, 2015, by United States mail, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703

1 Case No. 14-CV-00128

2 Pursuant to NRS 239B.030, the undersigned
3 affirms that the following document does not
4 contain the social security number of any person.

2015 JAN -9 PM 1:18

COURT REPORTER
THIRD JUDICIAL DISTRICT

5 JOHN L. MARSHALL
6 SBN 6733
7 570 Marsh Avenue
8 Reno, Nevada 89509
9 Telephone: (775) 303-4882
Attorney for Petitioners Comstock
Residents Association, Gayle Sherman, Joe
McCarthy

Tanya Sceirine DEPUTY

10 IN THE THIRD JUDICIAL DISTRICT COURT
11 OF THE STATE OF NEVADA
12 IN AND FOR LYON COUNTY

13 COMSTOCK RESIDENTS ASSOCIATION,
14 GAYLE SHERMAN, JOE McCARTHY

15 Plaintiffs/Petitioners,

16 v.

ORAL ARGUMENT REQUESTED

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Defendants/Respondents,
21 _____/

22
23 COMSTOCK RESIDENTS ASSOCIATION'S OPPOSITION
24 BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW
25
26
27
28

1 I. INTRODUCTION

2 As set forth in the Comstock Residents Association, Gayle Sherman and Joe McCarthy's
3 (collectively "CRA") Opening Brief on Petition for Judicial Review ("Opening Brief"),
4 Defendant Lyon County improperly buckled to the influence of Defendant Comstock Mining
5 Incorporated ("CMI") when it granted a modified version of CMI's application to amend the
6 Lyon County Master Plan and applicable zoning in order to allow mining use on property
7 within Silver City. This brief responds to Lyon County and CMI's joint Memorandum of Points
8 and Authorities in Opposition to Petition for Judicial Review ("Joint Opp."). As demonstrated
9 herein, Lyon County and CMI's abbreviated Joint Opposition presents no grounds to deny
10 CRA's Petition for Judicial Review ("Petition"); indeed, it provides the basis for this Court to
11 grant it.
12

13 II. ARGUMENT

14 In their Joint Opposition, Lyon County and CMI defend the action of the Lyon County
15 Board of Commissioners by arguing that (1) CMI's "[a]pplication was made for the purpose of
16 furthering mineral exploration efforts" but not to actually mine the property in the future (Joint
17 Opp. at 4), (2) the alleged inconsistency of the current land use designations with the
18 topography of the property (*id.* at 7), (3) people opposed and supported the application (*id.* at
19 11), (4) Commissioner Keller's proposal would allegedly protect the Silver City viewshed and
20 historic buildings (*id.* at 8), and (5) the Commissioners referred their final action for a
21 subsequent, after-the-fact "report" by the Planning Commission (*id.* at 12-13). These assertions
22 ignore patent Master Plan inconsistencies, provide no basis to deny CRA's Petition, or are
23 demonstrably false.
24
25
26
27
28

1 A. **CMI’s Narrowed Purpose Renders County’s Action Unnecessary and**
2 **Arbitrary**

3 CMI represents to this Court that it sought to change land uses designations for its
4 property “for the purpose of furthering mineral exploration efforts on the property.” Joint Opp.
5 at 4. However, CMI needed **no** change in land use designations to conduct the mineral
6 exploration as mineral exploration does not need a permit from Lyon County as CMI has, in
7 fact, conducted extensive mineral exploration of its property. See e.g., ROA 253-259 (Behre
8 Dolbear mining report modeling Dayton area geologic resources), *id.*, at 233 (noting as of 2010
9 252 exploration holes drilled in Dayton Resource Area). Since CMI could already explore the
10 mineralization potential of its property, the land use changes approved by the County were
11 entirely unnecessary to achieve CMI’s stated purpose and were therefore arbitrary.
12

13 B. **Divergent Public Comment Fails To Provide Substantial Evidence of**
14 **Master Plan Consistency Of New Designations**

15 Lyon County and CMI rely heavily on the fact that both CMI and CRA made
16 presentations to the County Commissioners and attendees both opposed and supported CMI’s
17 application. Joint Opp. at 11 (“Here, the record also shows substantial witness testimony both
18 for and against the Application.”). In fact, CMI and the County deign not even to describe the
19 evidence supporting CMI’s application. Instead, Respondents proffer only this:
20

21 Without detailing the nature of all the evidence presented to the BOARD
22 in this matter, the Court can readily ascertain that the BOARD’s findings .
23 . . and action taken were based on oral and visual evidence presented at the
24 public hearing, but also on the myriad of documentary evidence available
25 to the BOARD and on the BOARD’s own knowledge and insight of the
26 relevant conditions applicable to the Application.

27 *Id.* at 11-12.

28 However, the fact of divergent testimony or the mere existence of evidence does not, *ipso*
facto, provide substantial evidence that CMI met its burden to prove consistency with the
existing 2010 CMP. For example, in *Enterprise Citizen Action Committee v. Clark County*, 112

1 Nev. 649, 656-657 (1996), the Nevada Supreme Court expressly rejected mere recitation of the
2 existence of “documentary evidence” without explanation for how that evidence actually
3 supported the proposition before the Court. Similarly, in *Nova Horizons v. City of Reno*, 105
4 Nev. 92, 97 (1989), the Court rejected reliance on mere expression of political debt or similar
5 concerns rather than substantial evidence relevant to the central issue: whether the challenged
6 actions were consistent with the City’s master plan. Since Lyon County and CMI refuse to
7 specify what evidence supports the action taken, CMI failed to carry its burden below.

9 **C. Prior Land Use Designations Entirely Consistent With Topography;
10 New Zoning Designations Are Internally Inconsistent**

11 In the background section of their Joint Opposition, CMI and the County refer to site
12 topography as relevant to the change in land use and zoning. Joint Opp. at 7. However, the
13 existing Suburban/NR-1 land use designation and zoning for the CMI property within Silver
14 City provides the maximum development and design flexibility. Under Lyon County
15 development code, CMI could conceptually develop at a range of densities from a minimum of
16 one unit per lot up to a maximum of 7.26 units per acre (6,000 square foot lots). See ROA 45;
17 Lyon County Code 10.03.09 (NR-1 Single Family Nonrural Residential District). Should CMI
18 desire to develop its property for residential purposes, it already possesses the flexibility to
19 design an appropriate project under the Suburban Residential land use classification and NR-1
20 zoning. These land use classifications therefore allow either large lot development or clustering
21 of density to drive more economically feasible development within the townsite that would
22 promote needed community infrastructure improvements. See e.g. ROA 44 (Lyon County Staff
23 Report: “Densities as contemplated in the County’s Comprehensive Master Plan would
24 contribute to the cost effectiveness of a sewer system.”) Thus, CMI Master Plan/zoning change
25 request had really nothing to do with potential residential development for the site. It was
26 simply a ruse to obtain the ability to mine within the Silver City townsite.

1 Indeed, the zoning proposed by CMI and adopted by the County is actually inconsistent
2 with their alleged concern for site topography. As called out by Lyon County planning staff,
3 CMI proposed to place higher density zoning on the steeper portions of the CMI property with
4 the less dense zoning on the flatter section – exactly contrary to the alleged concern over site
5 topography: “If topography was [actually] a determining factor in the justification of the
6 change request, it would seem to be more logical that the steepest and most difficult land to
7 develop would be zoned [at a lower density].” ROA 46 (Staff Report on Zoning Change).
8 Since concern for site topography was thus clearly pretextual in order to introduce mining uses,
9 CMI failed to meet its burden to establish that the long-standing land use was inappropriate.
10 See e.g., *Enterprise Citizen*, *supra*, 112 Nev. 649 (addition of industrial uses via variance
11 inconsistent with master plan).
12

13
14 **D. Last Minute Proposal Protects Neither Viewshed Nor Buildings**

15 CMI and Lyon County falsely describe Commissioner’s last minute change to the CMI’s
16 application as “operat[ing] to protect the Silver City viewshed and historic buildings.” *Id.* at 8
17 (citing ROA 529). However, no support for such conclusions exists in the record. For instance,
18 CMI and Lyon County’s citation to the January 2, 2014 minutes (ROA 529) is only a statement
19 by Commissioner Keller that “she spoke with [CMI’s representative] to review some maps and
20 go over some concerns regarding the view shed.” No evidence is presented how the last minute
21 proposal would in fact protect the viewshed from an open pit mine on the hillside. In fact, the
22 undisputed evidence is to the contrary. See e.g., ROA 1755 (visual modeling of hillside open
23 pit mine in Silver City) (attached hereto as Exhibit A).
24

25 What is necessary to protect the viewshed of the Comstock Historic District is to prohibit
26 any additional open pit mines – as the existing 2010 CMP did and what even Storey County did
27 in its own development code. Storey County Code Section 17.92.145(D) (Large Operations –
28

1 Restrictions: “Large operations surface mining is prohibited within the CHPA restricted area.”),
2 Appendix A (Comstock Historic Preservation Area/Historic Viewshed Boundary map)(attached
3 hereto as Exhibit B).

4 Similarly, no evidence in the record exists how the exclusion of some historic buildings
5 from the rezoned area would provide any greater protection that currently exists. In fact, CMI is
6 free to seek removal of the buildings regardless of the underlying zoning. See e.g., ROA Audio
7 of 1/2/14 County Commission Meeting (CMI#3.wav) at 39:07.
8

9 Again, CMI and Lyon County proffer only pretext instead of actual evidence to support
10 the addition of mining uses to CMI’s property.

11 **E. NRS 278.220 Requires Referral Prior To Final Action Not After It**

12 In the Joint Opposition, Lyon County admits that it violated NRS 278.220(4) by taking
13 final action before referring CMI’s application back to the Planning Commission for a report on
14 the proposed change to the CMI application. Joint Opp. at 12. As noted by this Court, Lyon
15 County clearly put “the cart before the horse.” Order Granting In Part and Denying In Part
16 Motion to Dismiss (filed December 3, 2014), at 6. Nevertheless, Lyon County attempts to
17 excuse its violation by informing the Court that it after it took final action, the County referred
18 the matter to the Planning Commission for a *post hoc* “report.” The County Commission then
19 “received” the “report” at a later date but long after it had already approved the master plan
20 change. Joint Opp. at 12-13. The question squarely before the Court is therefore, does a post
21 hoc reference to the Planning Commission satisfy NRS 278.220?
22
23

24 When construing statutory language, the Nevada Supreme Court starts with the plain
25 language of provision at issue. *Vanguard Piping Systems, Inc. v. Eight Judicial Court*, 129
26 Nev. ___, 309 P.3d 1017, 1020 (2013); *City of N. Las Vegas v. Warburton*, 127 Nev. ___, 262
27 P.3d 715, 718 (2011). Here, NRS 278.220 plainly and unambiguously directs that Lyon County
28

1 follow a certain order of procedures when amending its master plan. “No change in or addition
2 to the master plan or any part thereof, as adopted by the planning commission, may be made by
3 the governing body in adopting the same **until** the proposed change or addition has been
4 referred to the planning commission for a report thereon and an attested copy of the report has
5 been filed with the governing body.” *Id.* (emphasis added). See also LCC 10.12.09(G)(4) (“If
6 the board [of county commissioners] proposes to modify the amendment, as recommended by
7 the commission, it shall refer the proposed modifications to the [planning] commission for its
8 consideration.”)

10 As explained in CRA’s Opening Brief, the statutory context of master plan amendments
11 makes clear that the purpose of NRS 278.220 is to provide the County Commission with input
12 from its Planning Commission prior to taking final action, not after it. CRA Opening Brief at
13 36-38. In fact, Lyon County’s interpretation of NRS 278.220 – to allow it to refer matter to its
14 planning commission after the County Commission took final action – would render the express
15 language and intent of NRS 278.220 a nullity, a result to be avoided. *Public Employees’*
16 *Benefits Prog. v. Las Vegas Metropolitan Police Dep’t*, 124 Nev. 138, 179 P.3d at 542 (2008).

18 Courts routinely enforce similar statutes that address procedural requirements. For
19 example, in *Sierra Club v. Bosworth*, 510 F.3d 1016, the Ninth Circuit Court of Appeals held
20 that “[p]ost-hoc examination of data to support a pre-determined conclusion is not permissible
21 because this would frustrate the fundamental purpose of NEPA, which is to ensure that federal
22 agencies take a ‘hard look’ at the environmental consequences of their actions, early enough so
23 that it can serve as an important contribution to the decision making process.” (Citations
24 omitted.) In *City of North Las Vegas v. District Court*, 122 Nev. 1197, 1209, 147 P.3d 1109
25 (2006), the Nevada Supreme Court rejected a city’s attempt to construe its land use procedural
26 appeal provision contrary to both NRS and local ordinance provisions. See *id.* (“Thus, we
27
28

1 cannot read the Code as the City Council urges, for to do so would eviscerate the purpose of
2 both statutory and local ordinance provisions.”); see also *Las Vegas Taxpayer Accountability*
3 *Committee v. City Council of City of Las Vegas*, 125 Nev. 165, 208 P.3d 429 (2009)(City lacked
4 discretion under state statute to deviate from unambiguous procedures for placing initiatives on
5 a ballot).

6
7 Lyon County describes to this Court the process it undertook **after** its County Commission
8 took final action on the amended application. Lyon County also candidly admits that it
9 routinely follows this illegal practice of *post hoc* referral for all master plan amendments. Joint
10 Opp., Exhibit 1 at ¶ 10. Since NRS 278.220 and LCC 10.12.09(G)(4) expressly require that the
11 County refer the matter to the Planning Commission **prior** to final action, the Court should find
12 Lyon County’s past and current practice violated these provisions.

13
14 Lastly, CRA appreciates CMI and Lyon County’s recognition that Robert G. Loveberg,
15 Lyon County Development Director, has significant planning experience and is well versed in
16 Lyon County planning documents and the facts of this case. See Joint Opp. at Exhibit 1
17 (Affidavit of Robert G. Loveberg). Respondents’ own recognition of Mr. Loveberg’s excellent
18 planning credentials renders more powerful his thoughtful and incisive recommendation to deny
19 CMI’s proposed master plan amendment and zoning change as inappropriate and inconsistent
20 with the 2010 CMP – a recommendation entirely ignored and unaddressed by the County
21 Commission. Notwithstanding his impressive planning credentials, Mr. Loveberg is not
22 qualified to render an opinion on legal meaning of NRS 278.220 (see Joint Opp. Ex. 1 at ¶ 11),
23 and therefore Paragraph 11 of his affidavit should be struck.

24
25 **F. Respondents Ignore Patent Master Plan Inconsistencies**

26 Finally, CMI and Lyon County’s Joint Opposition entirely ignore the express
27 inconsistencies between the existing 2010 CMP and CMI’s proposed land use and zoning
28

1 amendments. As demonstrated in CRA’s Opening Brief, CMI’s proposed designations and
2 zoning violated multiple 2010 CMP provisions, including but not limited to:

3 • “Industrial uses, including **extractive industries**, will occur in areas that are
4 designated on the County-wide Land Use Plan. **New industrial uses should only be located in**
5 **areas that do not adversely impact existing residential settlements.”** ROA 1180 (Policy LU
6 1.4) (emphasis added).
7

8 • “Lyon County will promote the continued development of mineral and aggregate
9 resources **while working to prevent and reduce conflict between mining . . . and residential,**
10 **commercial and industrial development.** ROA 1182 (Goal NR 9 (emphasis added)).
11

12 • “**Within historic districts, limit new land uses that would pose a risk to**
13 **historic structures or the historic character of the district. Promote the preservation of**
14 **historic landscape features to maintain historic settings and the integrity of historic**
15 **resources within historic districts.”** ROA 1181-2 (Policy CC-3.1)(emphasis added).
16

17 • Policy LU 3.2 directs that business and industry should be located consistent with
18 the County’s future land use plan. ROA 1181. Specifically, the CMP directs the County to
19 “[u]se the Countywide Land Use Plan and Community Plans as a guide to determine
20 appropriate location for business and industry.”
21

22 • “New development in the communities of Lyon County should create inviting
23 places for locals and visitors to live, shop, eat, visit and do business.” ROA 1181 (Policy
24 CC1.1).
25

26 • “Through its Community Planning process, Lyon County will address individual
27 community needs and desires while implementing county-wide policies and actions.” 2010
28 CMP, Guiding Principles, Communities and Planning, at 26.

- “Lyon County will support community-based planning efforts that elaborate community specific goals and are developed with strong public consensus.” ROA 1200 (Goal CP 3).

- “New development in Lyon County should address and respect the unique character of communities within the county.” ROA 1181 (Policy CC 1.3).

The additional mining and other industrial uses within the Silver City town site contradicts all of these existing policies of the 2010 CMP as described in Lyon County’s Staff Report. See CRA’s Opening Brief at 29-34. Notwithstanding these patent 2010 CMP inconsistencies, CMI and Lyon County’s Joint Opposition brief remains silent on how allowing land use and zoning designations – which contemplate mining and other industrial uses – could be consistent within Silver City town boundaries. Since these proposed uses would change entirely the nature and character of the town, they are inconsistent with the direction of the 2010 CMP and should be rejected. See *Enterprise Citizens, supra*.

III. CONCLUSION

As set forth above, CRA's Petition for Judicial Review should be granted, Lyon County's action approving the change in Master Plan and zoning designations vacated, and the matter remanded back to the County with directions to deny CMI's application.

Dated: January 9, 2015.

Respectfully submitted,

By _____
John L. Marshall, SBN 6733
570 Marsh Avenue
Reno, NV 89509
775.303.4882

Attorney for Petitioners CRA, Gayle Sherman, Joe
McCarthy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition Brief in Support of Petition for Judicial Review was served on the parties by mailing a copy thereof on the 9th day of January, 2015, by United States mail, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this document does not contain a social security number.

2015 JAN -9 PM 4:25

TANY L. THOMAS
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Kathy Thomas

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO COMSTOCK RESIDENTS ASSOCIATION'S OPENING BRIEF IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW

INTRODUCTION

Plaintiffs/Petitioners (collectively "CRA") ask this Court to reverse the decision of Defendant/Respondent, Lyon County Board of Commissioners (the "BOARD") granting an application for master plan amendment and zone change (the "Application") filed with Lyon County by Defendant/Respondent, Comstock Mining Incorporated ("CMI"). CRA's nearly forty pages of arguments can be boiled down to a few simple, but meritless arguments. CRA's primary argument is that the BOARD should not have changed the master plan and zoning on the subject property simply because the master plan and zoning designations on that property had been in place for more than forty (40) years.

1 CRA does not and cannot dispute, however, that the Nevada legislature has created
2 laws empowering the BOARD to do just that. That the prior master plan and zoning
3 designations had been in place for a certain period of time does not create a barrier to the
4 change process. To hold otherwise would be to disregard binding law that is directly on point.
5 The Court should first note that there is indeed a mechanism that specifically allows for
6 changes to master plans and zoning designations, regardless of the duration that those plans
7 and designations might have existed in the past. That mechanism is found in NRS Chapter
8 278 and was strictly followed by the BOARD in granting CMI's Application.

9 The bulk of CRA's remaining arguments are essentially assertions that there was
10 opposition before the BOARD in to granting CMI's Application. Neither the BOARD nor CMI
11 actually disputes that there was opposition in granting CMI's Application. Instead, the
12 BOARD and CMI merely assert that there was substantial support and evidence to support
13 the BOARD's decision to grant CMI's Application. All that this Court is tasked with is
14 reviewing the agency record (the "Record") before it to ascertain whether the evidence upon
15 which the BOARD relied was sufficient to support the decision that it made. City of Reno v.
16 Citizens for Cold Springs, 236 P.3d 10, 15 (Nev. 2010).

17 STANDARD OF REVIEW

18 CRA points out that this Court must review the BOARD's decision under an abuse of
19 discretion standard, which it asserts can be shown if the BOARD (a) failed to adhere to
20 applicable law or (b) failed to make a rational decision based on the evidence presented to it.
21 CRA Opening Brief, p. 24, ll. 5-16. CRA misstates the standard of review applicable to this
22 matter. In support of its assertions regarding the standard of review, CRA cites Kay v. Nunez,
23 122 Nev. 1100, 146 P.3d 801 (2006); Nova Horizon, Inc. v. City Council of Reno, 105 Nev.
24 92, 769 P.2d 721 (1989); Serpa v. County of Washoe, 111 Nev. 1081, 901 P.2d 690 (1995).

25 In Kay v. Nunez, the Nevada Supreme Court stated that the district court's task is to
26 review "the agency record to determine whether the Board's decision is supported by
27 substantial evidence." 122 Nev. at 1105. Further, in Nova Horizon, the Nevada Supreme
28 Court noted that actions of zoning authorities are presumed valid and are reviewed only for

1 support by substantial evidence. 105 Nev. at 94-96. Finally, in Serpa, the Court stated that
2 land use and zoning decisions should be upheld if it is supported by substantial evidence.
3 111 Nev. at 1085. None of the cases cited by CRA enlarge this Court's task beyond a review
4 of the Record to determine whether the BOARD's decision was supported by substantial
5 evidence. CRA fails to address the meaning of "substantial evidence," which is defined
6 plainly as evidence that "a reasonable mind could accept as sufficient to support a
7 conclusion." Citizens for Cold Springs, 236 P.3d at 15.

8 BURDEN OF PROOF

9 CRA next asserts that CMI has the burden of proving that its Application should have
10 been granted by the BOARD. CRA Opening Brief, p. 24, ll. 14-16. In support of its assertion,
11 CRA cites Coronet Homes, Inc. v. McKenzie, 84 Nev. 250, 439 P.2d 219 (1968). CRA's
12 understanding of the burden of proof in this matter is erroneous and should be disregarded.
13 In Coronet Homes, the Nevada Supreme Court merely recognized that, in land use
14 proceedings before the Board of Commissioners, the burden is on the applicant to present
15 evidence to the Board of Commissioners that the changes requested are warranted under
16 applicable statutes. The case says nothing about the burden of proof in judicial review of the
17 administrative agency's findings.

18 As noted in Respondents' opening brief, however, Nevada authority clearly places the
19 burden of proof in judicial review on the party challenging the agency's decision below. See
20 e.g., City Council of City of Reno v. Irvine, 102 Nev. 277, 278, 721 P.2d 371, 372 (1986); see
21 also NRS 233B.135(2). In fact, zoning and planning actions by local governments are
22 presumed to be valid. Nova Horizon, 105 Nev. at 94-96

23 THE RECORD

24 CRA argues that the Record is incomplete based on assertions that it does not contain
25 electronic communications by and among individual members of the BOARD that are
26 allegedly contained on those members' personal devices and personal email accounts. CRA
27 Opening Brief, p. 26. Not only does CRA not set forth any evidence that any such
28 communications even exist or that such communications are part of the Record, this Court

1 has already denied CRA's Motion to Amend the Complaint to add allegations concerning this
2 issue. See Court's Order Denying Motion to Amend dated December 3, 2014. The Record is
3 complete and the matter of communications stored on personal devices is not at issue here.
4 Moreover, the Record in this matter was filed with the Court on June 6, 2014, but CRA, in a
5 seeming effort to further delay these proceedings, has waited until now to object to the
6 Record.

7 **CHANGED CIRCUMSTANCES ARE NOT REQUIRED UNDER NEVADA LAW**

8 CRA spends a significant amount of time outlining prior Lyon County decisions and
9 actions affecting the land use and zoning on the property that is the subject of the BOARD's
10 decision at issue here. See generally CRA Opening Brief, p. 3-20. To the extent that CRA
11 has accurately referenced and quoted from each of the 1971 Lyon County Master Plan, the
12 1986 proceedings concerning Nevex Mining Company, the 1990 Lyon County Master Plan,
13 the 2002 West Central Lyon County Land Use Plan, and the 2010 Lyon County Master Plan,
14 the BOARD and CMI admit that those documents and proceedings state what they state.
15 However, that those documents have not previously contained the zoning and master plan
16 designations that the BOARD has now authorized is of no consequence to the fact that NRS
17 Chapter 278 and Title 10 of the Lyon County Code specifically allow the BOARD to amend
18 the master plan and zoning designations.

19 The Court should give little or no weight to the Nevex application. In 1986 Nevex
20 Mining Company sought a Special Use Permit for an open pit mine which was considered at
21 the same time as the Nevex Gold application for a zone change. Record, 772. During the
22 Planning Commission and Board of County Commission discussion of those applications,
23 subjects such as reclamation, mining, and other matters directly related to the mining permit
24 sought by Nevex weighed on the decision. To compare that decision to the CMI application is
25 a comparison of apples and oranges and should not be considered by the Court. For this
26 reason alone, the Court should not rely on any information from the Nevex applications.

27 CRA would have the Court consider each and every prior land use decision going back
28 to 1971 on the basis that federal case law suggests that federal agencies cannot depart from

1 prior norms without clearly demonstrating changed circumstances. See CRA Opening Brief,
2 p. 24-25, 27-28. In support thereof CRA cites Atchison, T.&S.F. Ry. Co. v. Wichita Bd. of
3 Trade, 412 U.S. 800; Northwest Environmental Defense Center v. Bonneville Power
4 Administration, 477 F.3d 668 (9th Cir. 2007); and Ramasrakash v. Federal Aviation Authority,
5 346 F.3d 1121 (D.C. Cir. 2003), all of which are federal decisions involving decisions of
6 federal agencies and rely on federal standards of review that differ from established Nevada
7 standards.

8 In Atchison, the United States Supreme Court reviewed a decision of the Interstate
9 Commerce Commission and recognized that Congress had granted that agency the authority
10 to regulate interstate transportation policy. 412 U.S. at 806. Federal courts are tasked with
11 reviewing the aforementioned agency's decisions, but federal regulations apparently do not of
12 themselves provide for a review of the agency record, only the decision itself. Id. generally at
13 806 et. seq. Thus, the federal courts have adopted and the United States Supreme Court
14 recognizes that the federal agency must set forth the rationale for the agency's decision,
15 particularly when the decision departs from prior norms. Id.

16 Northwest Environmental Defense Center and Ramasrakash involve similar federal
17 agency decisions for which no review of the evidence upon which those agencies relied is
18 required. Therefore, the agencies, in departing from prior norms, were required to set forth
19 the rationale for doing so.

20 The aforementioned federal cases are inapposite to the matter at hand. Judicial
21 review of Nevada agency decisions, unlike review of federal agency decisions, specifically
22 calls for a review of the local government's record, which is defined as the evidence
23 presented to the governing board that resulted in the final decision of the agency. See NRS
24 233B.131(1). Thus, this Court has access to and must review the evidence resulting in the
25 BOARD's decision to grant CMI's Application, nothing more. If the evidence before the
26 BOARD was sufficient to support the BOARD's decision, this Court must uphold that decision.
27 It matters not that the BOARD's decision is a departure from prior norms. This is especially
28 true in light of the fact that NRS Chapter 278 and Title 10 of the Lyon County Code

1 specifically authorize a departure from prior zoning and master plan designations upon the
2 process prescribed therein. The Board is required by those same statutory provisions to
3 evaluate the application before it based on the standards set forth therein, and cannot rely
4 solely on previous decisions on entirely distinct and different matters. The Board cannot be,
5 and is not constrained or restricted by the decisions of prior governing bodies, and in fact, the
6 Board must make its decisions based on the application before it and the applicable
7 standards. By definition, a master plan amendment requires a change in a previous land use
8 decision. As stated in the County Planning Recommendation, "a master plan amendment is
9 the most discretionary decision that Planning Commission and Board of County
10 Commissioners can make regarding land use." Record, p. 1187.

11 Further, except to the extent that Lyon County's prior land use decisions were
12 presented as evidence to the Board in connection with CMI's Application, those decisions are
13 outside the scope of this Court's review. The Court may not consider evidence beyond what
14 was presented to the BOARD and its review must be confined to the Record. See Carson
15 City v. Lepire, 112 Nev. 363, 914 P.2d 631 (1996); see also NRS 233B.135.

16 Lastly, the BOARD did indeed explain its decision as required by Lyon County Code
17 and its explanations are a part of the Record. For instance, the motion to approve the master
18 plan amendments included the following findings:

- 19 • The applicant has demonstrated that the amendment is in substantial compliance
20 with and promotes the Master Plan goals, objectives and actions in that it is in
21 keeping with applicable guiding principles, goals, policies and strategies;
- 22 • The proposed amendment is compatible with the actual and planned adjacent land
23 uses, and reflects a logical change in land uses in that the amendment would
24 decrease the density of residential development;
- 25 • The proposed amendment has demonstrated a response to changed conditions or
26 further studies that have occurred since the Master Plan was adopted by the Board,
27 and the requested amendment represents a more desirable utilization of land;
- 28 • The proposed amendment will not adversely affect the implementation of the
Master Plan goals, objectives and actions and will not adversely impact the public
health, safety or welfare;
- The proposed amendment will promote the desired pattern for the orderly physical
growth of the County, maintains relatively compact development patterns, and
guides development of the County based on the least amount of natural resource
impairment and the efficient expenditure of funds for public services;
- The proposed amendment is compatible with the surrounding area, and the goals
and policies of the Comprehensive Master Plan;

- The proposed amendment will have no major negative impacts on transportation services, and facilities;
- The proposed amendment will have minimal effect on service provision, including adequacy or availability of facilities or services, and is compatible with existing and planned service provision;

Record, p. 529-30. Each of these findings is supported by evidence in the record, including but not limited to, the various presentations, comments, documents, maps, and the Board's own knowledge of existing conditions in the area.

EVIDENCE IN THE RECORD SUPPORTS THE BOARD'S DECISION

1. The Board Did Not Authorize Mining

CRA spends additional, significant amounts time arguing that CMI's Application is inconsistent with the 2010 Lyon County Master Plan. CRA's argument is simply that mining is incompatible with the residential nature of Silver City. There are at least two (2) problems with CRA's arguments.

First, the BOARD's decision to grant CMI's Application does not authorize CMI to conduct any mining activities on the land. Indeed, during the BOARD's deliberations, each of the individual commissioners clearly expressed that they were not authorizing any mining activity by granting CMI's Application and that any mining to be conducted on the subject property would require a special use permit. Record, p. 529-31; see also Recording of January 2, 2014 BOARD meeting, CMI #3 at 17:20-59:40.

Second, the subject property is almost entirely outside the boundaries of Silver City. CMI's Application called for master plan and zone changes to approximately 81.63 acres, nearly all of which is outside of Silver City. The BOARD granted CMI's Application with respect to only 71.63 acres, with a portion being removed to protect the viewshed of Silver City residents and to provide an additional buffer.

To the extent that CRA argues that mining activities in or near Silver City will adversely affect Silver City, those arguments are misplaced and premature. No mining activities under the master plan and zoning designations put in place by the BOARD can occur without CMI first obtaining a special use permit. Further, there is nothing in the Record that actually suggests that any mining would ever occur within the boundaries of Silver City. More importantly, CRA's claims and arguments regarding the impacts of mining were all presented

1 to and considered by the BOARD prior to a decision being reached. The record also
2 establishes that mining and mining exploration activities have been conducted in the
3 Comstock and Silver City area for over one hundred years, and patented and unpatented
4 mining claims are included within the subject property. Record, pages 1177; 1284; 1319;
5 1349-1459; 1815-1825 (as illustrative and not comprehensive references). Even though the
6 application does not request authority to mine, the Board may certainly consider historic
7 mining uses and the patented and unpatented mining claims in deciding whether to approve
8 the CMI application.

9 Third, the changes approved by the Board in this case are reasonable and justifiable.
10 As stated in the County's professional planning staff recommendation: (1) the parcels in the
11 application are not served by a municipal water system and to do so would require significant
12 improvements; (2) the parcels are not served by a sewer system, and the Silver City area is
13 not well suited to individual or on site sewer systems; (3) the parcels are generally
14 undeveloped. Record, p. 1175. Additional justification for the approval is found in the
15 presentation by Mark Rotter, P.E., and the Manhard Engineering Report, which show, for
16 example, that the changes represent a more reasonable use of the property; less density;
17 continued historic uses; economic advantages for the County; less demand for county
18 services; and, more reasonable, orderly and fiscally responsible development and growth in
19 the area. Record, pages 1279-1347. These reports, along with the extensive testimony and
20 presentations, either individually or collectively, constitute substantial evidence to support the
21 Board's decisions on the master plan amendment and zone changes.

22 Finally, CRA fears that the BOARD should have considered mining activity in
23 considering CMI's Application, even though CMI's Application did not ask the BOARD to
24 approve any mining activity "otherwise it never will have the opportunity to do so." CRA
25 Opening Brief, p. 35, ll. 10-12. Notwithstanding that the BOARD clearly will have the
26 opportunity to consider mining activity if and when CMI files an application for a special use
27 permit, which it is required to do in order to perform such activity, CRA relies on and
28 misrepresents California case law that is wholly inapplicable to this case. In City of Redlands

1 v. County of San Bernardino, 96 Cal.App.4th 398, 406-08 (2002), the California appellate
2 court finds that the administrative agency was required by the California Environmental
3 Quality Act to consider all **environmental** impacts of proposed master plan amendments.
4 There is no equivalent requirement in Nevada. More importantly, contrary to CRA's
5 misrepresentation of the above-reference case, there is no requirement, either in Nevada or
6 in California, that the BOARD consider "all potential consequences arising from amendments
7 to its General Plan." CRA Opening Brief, p. 35, ll. 12-14. The Board was not required to
8 consider uses that were not at issue in CMI's Application and expressly did not authorize any
9 mining activity on the subject property.

10 **2. CMI's Application was Based on Expert's Reports and Findings**

11 CRA claims that CMI's Application "contained no expert reports." In fact, CMI's
12 Application was prepared by Manhard Consulting, a firm with engineers, surveyors, architects,
13 and land use planners, who compiled an extensive report, which formed CMI's Application.
14 Record, p. 549-621. It is unclear why CRA would deem this not to be an expert report. If
15 ever there was a report prepared by experts in the field of land use planning, CMI's
16 Application would seem to be it. Furthermore, CMI's Application was presented at the
17 January 2, 2014 BOARD meeting by Mark Rotter, a civil engineer with extensive land use and
18 planning experience in Lyon County. Mr. Rotter presented for nearly thirty minutes with the
19 members of the BOARD asking questions throughout. Recording of January 2, 2014 BOARD
20 meeting, CMI #1 at 23:10-50:30. Mr. Rotter presented an analysis of historical land uses in
21 and around the subject property. Id. beginning at 25:50. He further testified that the
22 Application would not allow mining on the property, but that a special use permit would have
23 to be obtained prior to any mining of the subject property. Id. beginning at 34:00.

24 Mr. Rotter presented testimony and photographic evidence of CMI's efforts to preserve
25 the historic quality of the Comstock, which includes expending, as of that date, more than \$1
26 million in historic restoration and preservation efforts. Id. beginning at 41:15. He also pointed
27 out the inconsistency of the current zoning and master plan designations, which allow
28 medium residential density, and the topography of the subject property, which is not at all

1 suitable for dense residential development. He noted that, even if no mining ever occurs on
2 the property, the requested master plan amendment and zone change would be the most
3 appropriate master plan and zoning designations for the property. Id.; Record, p. 1284-1312.

4 CMI's Application was supported by substantial expert testimony and exhaustive
5 evidence. In addition, the applications were supported by many residents of Silver City and
6 Lyon County. Record, 1486-1509; 529-530.

7 **THE BOARD'S ACTION IS A DISCRETIONARY DECISION**

8 CRA continues to harp on the fact that CMI made political contributions to individual
9 members of the BOARD. CRA Opening Brief, p. 13-15, 36. This Court has already ruled that
10 CMI violated no law in making said contributions and that individual members who received
11 said contributions were permitted to deliberate on CMI's Application. See Court's Order
12 Granting in Part and Denying in Part Motion to Dismiss, ¶¶ 13-16. Whether CRA likes it or
13 not, land use decisions are discretionary political decisions. They are ultimately made by
14 elected officials. So long as the decisions are supported by substantial evidence as the
15 BOARD's decision here was, those decisions must be upheld. This Court should not and is
16 not empowered to substitute its opinion for the opinion of the duly elected members of the
17 Lyon County Commission.

18 CRA would have the Court accept that Nova Horizons, *supra*, and American West
19 Development, Inc. v. City of Henderson, 111 Nev. 804, 898 P.2d 110 (1995), demonstrate a
20 willingness by Nevada courts to overturn planning decisions that are based on political
21 pressures. Again, CRA misrepresents the law. In Nova Horizons, the Supreme Court
22 overturned a decision to deny a zone change application on the basis that the agency's
23 decision was not based on substantial evidence before it. 105 Nev. at 96-98. There is no
24 discussion about political pressures influencing the agency.

25 CRA likewise misrepresents American West Development. In that case, contrary to
26 CRA's assertion, a municipality denied a developer's zoning application. The developer
27 thought the denial was based on political pressure, but that issue was not analyzed by the
28 Supreme Court, who remanded to the municipality on entirely separate grounds. 111 Nev. at

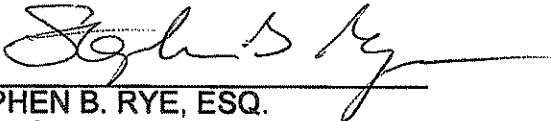
1 807-09. There is no legal or evidentiary basis upon which this Court should overturn the
2 BOARD's decision in this case.

3 CONCLUSION

4 While CRA has outlined evidence against granting CMI's Application, it has not
5 demonstrated that the BOARD's decision was not based on substantial evidence before it in
6 favor of granting CMI's Application. Arguments in CRA's Opening Brief with regards to
7 political contributions, changed circumstances, mining activity, etc. do nothing to alter the fact
8 that the BOARD's decision was based on substantial evidence. For these reasons,
9 Respondents respectfully request that the Court uphold the BOARD's decision to grant CMI's
10 Application.


11 DATED this 9th day of January 2015.

12 STEPHEN B. RYE
13 DISTRICT ATTORNEY

14 By: 
15 STEPHEN B. RYE, ESQ.
16 District Attorney
17 31 South Main Street
18 Yerington, NV 89447
19 775-463-6511

20 Attorney for Respondent
21 Lyon County Board of Commissioners

ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

22 By: 
23 JAMES R. CAVILIA, ESQ.
24 Nevada State Bar No. 3921
25 JUSTIN TOWNSEND, ESQ.
26 Nevada State Bar No. 12293
27 PO Box 646
28 Carson City, NV 89702
775-687-0202

Attorneys for Respondent
Comstock Mining Incorporated

Certificate of Mailing

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 9th day of January, 2015, a copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO COMSTOCK RESIDENTS ASSOCIATION'S OPENING BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW** was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative

Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

Dated this 9th day of January, 2015.



Employee

Case No. 14-CV-00128

Dept. No. II

2015 JAN 16 PM 1:46

The undersigned hereby affirms this
document does not contain a social security
number.

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

MEMORANDUM OF POINTS AND AUTHORITIES
IN REPLY TO COMSTOCK RESIDENTS ASSOCIATION'S OPPOSITION BRIEF IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW

INTRODUCTION

Plaintiffs/Petitioners (collectively "CRA") seek to distract the Court from the very simple task at hand. CRA alleges that Defendant/Respondent, Lyon County Board of Commissioners (the "BOARD") abused its discretion by granting an application for master plan amendment and zone change (the "Application") filed with Lyon County by Defendant/Respondent, Comstock Mining Incorporated ("CMI").

A claim against an administrative body for abuse of discretion seeks to ascertain whether that body acted arbitrarily or capriciously. See Barnum v. Williams, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968) and Karadanis v. Bond, 116 Nev. 163, 167, 993 P.2d 721, 724 (2000); see also, Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, 96

P.3d 756, 760 (2004) and Helms v. State of Nevada, Div. of Environmental Protection, 109 Nev. 310, 313, 849 P.2d 279, 281 (1993). An administrative decision is arbitrary and capricious only when it "lacks support in the form of substantial evidence." Stratosphere, 120 Nev. at 528 (quoting Tighe v. Las Vegas Metro. Police Dept., 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994)).

If the BOARD's decision was supported by substantial evidence, the BOARD did not abuse its discretion. The evidence that was before the BOARD is all that the Court must look to – not to determine whether the evidence was of a kind that would be acceptable to the Court in making the decision the BOARD was required to make, but only to determine whether a reasonable mind could accept the evidence as sufficient to support the BOARD's decision. See City of Reno v. Citizens for Cold Springs, 236 P.3d 10, 15 (Nev. 2010) (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

Thus, CRA's arguments about political influence, open pit mining, alternative uses for the property, etc. are inapposite. Was the BOARD's decision supported by substantial evidence? That is all that the Court must answer.

ARGUMENT

1. Master Plan Amendment and Zone Change were necessary before further mineral exploration efforts on the property could be performed.

Prior land use and zoning designations for the six (6) parcels making up the subject property were as follows:

Parcel	Master Plan	Zoning	Land Use
1	Resource	NR1	Vacant
2	Suburban Residential	NR1	Vacant
3	Resource	NR1	Vacant
4	Suburban Residential	NR1	Vacant
5	Suburban Residential	NR1	Vacant
6	Suburban Residential	NR1	Vacant/Abandoned Mining facilities

Record at p. 118.

1 The Suburban Residential land use category is defined as high density and is optimal
2 for apartments, duplexes, and single family units at 5 to 10 units per acre (or lot sizes ranging
3 in size from .1 acre to .2 acres). See Id. at 121. Zoning allowed under the suburban
4 residential category are NR1, NR2, NR3, and MHP. As noted above, the zoning on the
5 subject property was NR1, which allows for high density single family residences and related
6 uses. See Lyon County Code § 10-03-09.

7 The Resource land use category is defined as low density property (one dwelling unit
8 per 40 acres) that is generally in remote or rural parts of Lyon County and is used for
9 resource uses including but not limited to mining. The NR1 zoning is inconsistent with the
10 Resource designation as it does not allow for permitted or special uses that would otherwise
11 be authorized on Resource-designated lands.

12 CMI's Application sought changes to the land use and zoning designations as follows:

Parcel	Master Plan	Zoning
1	Resource	RR5
2	Rural Residential	RR3
3	Rural Residential	RR3
4	Rural Residential	RR3
5	Rural Residential	RR3
6	Rural Residential	RR3

20 Record at p. 118,

21 The Rural Residential designation is defined as rural density allowing from 1 dwelling
22 unit per 20 acres to 1 dwelling unit per 5 acres. The RR3 zoning designation allows for not
23 more than 1 dwelling unit per 5 acres. Mining is a special use under the RR3 designation
24 (requires separate application and approval for special use permit). See Lyon County Code §
25 10-03-04. Similarly, the RR5 zoning designation allows for not more than 1 dwelling unit per
26 20 acres and mining is a special use thereunder. See Id. at § 10-03-06.

27 CMI intends to explore for minerals on the property, and if minerals are found in
28 sufficient quantities, CMI may apply for a special use permit to mine the property. CRA

1 correctly asserts that CMI could have explored for minerals on the property under the prior
2 land use and zoning designations. CRA Opposition Brief, p. 3, ll. 5-7. However, to do so
3 under the prior designations was sure to be a waste of time and money as mining is neither a
4 permitted nor a special use under the prior designations. In order to justify the expense of
5 performing mineral exploration on the property, it was necessary to amend the land use and
6 zoning to allow for the potential of mining uses on the property. Contrary to CRA's assertions
7 that CMI was attempting to dupe the BOARD, CMI's intentions in this regard were clearly set
8 forth for the BOARD. Record at p. 529.

9 The BOARD's decision to amend the land use and zoning designations as set forth
10 above does not, in and of itself, authorize mining uses. As noted above, the Lyon County
11 code requires further applications to Lyon County in order to obtain a special use permit to
12 conduct mining on the property. CRA's concerns are irrelevant to the decision currently being
13 reviewed and will be addressed if and when CMI applies for a special use permit to conduct
14 mining activities.

15 Taking into account evidence concerning the topography, development potential, and
16 proximity to infrastructure of the subject property, Record at p. 119 et seq., the BOARD was
17 justified in making the foregoing changes.

18 **2. Evidence of public comment for and against CMI's Application is evidence in**
19 **itself that a reasonable mind could accept to support the BOARD's decision.**

20 CRA takes exception to the BOARD's and CMI's assertion that testimony for and
21 against the Application and evidence considered by the Board is evidence in and of itself that
22 supports the BOARD's decision. In particular, CRA objects to the BOARD's and CMI's
23 assertion that, even if the evidence was not detailed for the Court, the Court could find that
24 the BOARD's decision was based on the substantial evidence before it. CRA Opposition
25 Brief, p. 3, ll. 15-25.

26 CRA ignores the authority cited by the BOARD and CMI that supports just such a
27 notion. In McKenzie v. Shelly, 77 Nev. 237, 240, 362 P.2d 268, 269 (1961), the Nevada
28 Supreme Court reasoned as follows:

1 "The record shows that at the public hearing which was properly noticed,
2 eight witnesses testified against and eleven in favor of the requested
3 amendment of the land use plan. All persons wanting to speak for or
4 against the requested amendment were given an opportunity to do so.

5 It would serve no purpose to detail the nature of all the evidence
6 presented at the public hearing. It does appear from the record that the
7 Board's action was based not only on such oral evidence, but also upon a
8 map of the general plan and upon its own knowledge of existing
9 conditions. Also, over one thousand signed written communications were
10 submitted to the board."

11 See also, Respondents' Joint Opening Brief, p. 11, ll. 15-24.

12 CRA would have the Court believe that the BOARD and CMI have not detailed the
13 evidence that was before the BOARD in any fashion. This is simply not true. Indeed, in
14 Respondents' Joint Opening Brief, the BOARD and CMI refer the Court to and detail the
15 evidence contained in the Record upon which the BOARD based its decision. See generally,
16 Respondents' Joint Opening Brief, p. 3-10.

17 The Record reflects that the BOARD was presented with substantial evidence in the
18 form of presentations from experts on both sides, that members of the public spoke both in
19 favor of and against the Application, and that there were substantial amounts of documentary
20 evidence in favor of granting the Application. There is substantial evidence to support the
21 decision of the BOARD to grant CMI's Application.

22 **3. The current zoning is consistent with the topography.**

23 CRA asserts that the zoning change granted by the BOARD is inconsistent with CMI's
24 stated concerns regarding the prior zoning and the topography of the subject property. In
25 support thereof, CRA refers the Court to a statement by Lyon County planning staff that the
26 flatter lands were requested for lower density zoning (RR5) than the steeper lands (RR3).
27 CRA Opposition Brief, p. 5, ll. 3-10. What CRA and the Lyon County planning staff ignored is
28 that the land on which the lower density zoning was requested was already designated as
Resource land under the 2010 Lyon County Master Plan. CMI did not seek to change that
designation. Record at p. 118 (noting no change in the master plan designation for Parcel 1,
which is the flatter land referenced by CRA and the Lyon County planning staff). The RR5
zoning is consistent with the Resource land use designation whereas the RR3 zoning would

1 not be consistent therewith. On the other hand, the RR3 zoning is consistent with the Rural
2 Residential land use designation while the RR5 zoning would not be consistent therewith.

3 CRA would also have the Court ignore that the zone change approved by the BOARD
4 is a "down zone" of all the subject property. Record at p. 119. Prior zoning called for high
5 density in the steep areas of the subject property notwithstanding that such high density
6 would be entirely impractical if not impossible. The current zoning approved by the BOARD is
7 far more consistent with the topography of the land as well as the historic and current use of
8 surrounding lands.

9 **4. Nobody objected to the proposal to reduce the acreage subject to the master**
10 **plan amendment and zone change.**

11 At the beginning of the BOARD's January 2, 2014 meeting, Jeff Page (not
12 Commissioner Keller as asserted by CRA) disclosed a proposed reduction in the scope of
13 CMI's Application that would reduce the amount of acreage under consideration for a master
14 plan amendment and zone change. Record at p. 528. The purpose of the proposed
15 reduction was to address CRA concerns regarding viewshed as discussed later by
16 Commissioner Keller in the above-reference meeting. Id. at 529; see also Recording of
17 January 2, 2014 BOARD meeting, CMI #1, beginning at 1:40:20.

18 After the foregoing discussions of the proposed acreage reduction, the public was
19 given the opportunity to comment on CMI's Application and did comment on this subject
20 during nearly two (2) hours of public testimony. See Recording of January 2, 2014 BOARD
21 meeting, CMI #2 00:15-1:34:20 & CMI #3 00:00-16:50. Not one person objected to the
22 proposed acreage reduction. That is the evidence that was before the BOARD. CRA's
23 objections at this stage are entirely too late. To reiterate, the Court is only to look at the
24 evidence that was available to the BOARD.

25 The only evidence in the Record to which CRA points to support its arguments on this
26 issue is a self-serving drawing of what Silver City's viewshed would allegedly be if open pit
27 mining were to occur on the subject property.¹ CRA Opposition Brief, p. 5, ll. 24-26 (referring

28 ¹ The drawing is something CRA gave to residents of Silver City to scare them and is attached in the Record to a letter
from one such resident who calls CRA out on the scare tactics. See Record, p. 1754-1755.

1 to Record at p. 1755). Open pit mining is not the subject of CMI's Application and the
2 aforementioned drawing does not take into account the acreage reduction.

3 **5. CRA's interpretation of NRS 278.220 is illogical.**

4 CRA's spends a great deal of time addressing NRS 278.220(4), which states as
5 follows:

6 No change in or addition to the master plan or any part thereof, as
7 adopted by the planning commission, may be made by the governing
8 body in adopting the same until the proposed change or addition has
9 been referred to the planning commission for a report thereon and an
attested copy of the report has been filed with the governing body. Failure
of the planning commission so to report within 40 days, or such longer
period as may be designated by the governing body, after such reference
shall be deemed to be approval of the proposed change or addition.

10 CRA interprets the foregoing statutory language to mean that any governing body
11 decision that differs from that of the planning commission must be referred back to the
12 planning commission before the governing body can take any final action. Thus, here the
13 Planning Commission would have all power necessary to stop the BOARD from making any
14 decision it disagrees with, which is entirely contrary to the provisions of NRS Chapter 278,
15 which give ultimate authority over land use matters to the BOARD. Under CRA's reasoning,
16 any BOARD decision that differs with the Planning Commission recommendations can never
17 be final unless the Planning Commission approves it. Surely this is not the intent of NRS
18 278.220(4) and if it were, it would be impermissible under the basic principle that the final
19 authority must lie with the duly elected body.

20 The undisputed facts of this case are that the Planning Commission considered CMI's
21 Application and recommended to the BOARD that the Application be denied. The BOARD
22 disagreed with the Planning Commission, voted to approve the Application, and referred its
23 decision under NRS 278.220(4) back to the Planning Commission for a report. The Planning
24 Commission submitted a report back to the BOARD and the BOARD accepted the report, but
25 declined to take any further action thereon.

26 At most, what NRS 278.220(4) does is delay when the BOARD's action becomes final.
27 It does not, however, determine whether the BOARD's decision is final. The BOARD's
28 decision became final once the Planning Commission submitted its report to the BOARD and

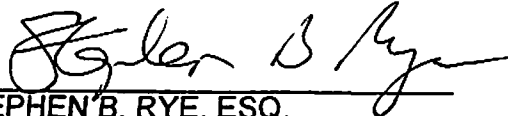
1 the BOARD declined to alter the decision it had made on January 2, 2014. This is the only
2 logical interpretation of NRS 278.220(4).

3 **CONCLUSION**

4 The Record clearly reflects that the BOARD's decision was based on the substantial
5 evidence before it. As such, the Court must find that the BOARD did not abuse its discretion
6 in granting CMI's Application for master plan amendment and zone change. On that basis,
7 Respondents respectfully request an Order denying CRA's Petition for Judicial Review.


8 DATED this 16th day of January 2015.

9 STEPHEN B. RYE
10 DISTRICT ATTORNEY

11 By: 
12 STEPHEN B. RYE, ESQ.
13 District Attorney
14 31 South Main Street
15 Yerington, NV 89447
16 775-463-6511

17 Attorney for Respondent
18 Lyon County Board of Commissioners

ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.

By: 
JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
PO Box 646
Carson City, NV 89702
775-687-0202


Attorneys for Respondent
Comstock Mining Incorporated

Certificate of Mailing

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 16th day of January, 2015, a copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN IN REPLY TO COMSTOCK RESIDENTS ASSOCIATION'S OPPOSITION BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

Dated this 16th day of January, 2015.



Employee

1 Case No. 14-CV-00128

2 Pursuant to NRS 239B.030, the undersigned
3 affirms that the following document does not
4 contain the social security number of any person.

2015 JAN 20 PM 1:54

5 JOHN L. MARSHALL
6 SBN 6733
7 570 Marsh Avenue
8 Reno, Nevada 89509
9 Telephone: (775) 303-4882
Attorney for Petitioners Comstock
Residents Association, Gayle Sherman, Joe
McCarthy

COURT REPORTER
THIRD JUDICIAL DISTRICT
KATHY THOMAS
DEPUTY

10 IN THE THIRD JUDICIAL DISTRICT COURT
11 OF THE STATE OF NEVADA
12 IN AND FOR LYON COUNTY

13 COMSTOCK RESIDENTS ASSOCIATION,
14 GAYLE SHERMAN, JOE McCARTHY

15 Petitioners,

16 v.

ORAL ARGUMENT REQUESTED

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Respondents,
21 _____/

22
23 COMSTOCK RESIDENTS ASSOCIATION'S REPLY
24 BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW
25
26
27
28

1 I. INTRODUCTION

2 In order to defend its action adding a wide range of inappropriate uses to Comstock
3 Mining Inc.'s ("CMI") property in and adjacent to Silver City, Lyon County blithely ignores or
4 claims irrelevant three major and fatal mistakes. First, Lyon County dismisses entirely its own
5 prior history of planning and zoning decisions – enforcing and increasing protections of Silver
6 City from mining and other similar uses – in order to incorrectly characterize its action as an
7 abstract land use change. Second, in order to avoid a slew of Master Plan goals and policies
8 directly inconsistent with adding new mining use and similarly incompatible uses, Lyon County
9 argues that it need not weigh the potential impacts associated with those new uses. Third, Lyon
10 County argues it has no obligation to present a complete record and that conclusory statements
11 contained therein constitutes substantial evidence. In this Reply Brief in support of its Petition
12 for Judicial Review, the Comstock Residents Association, Gayle Sherman and Joe McCarthy's
13 (collectively "CRA") demonstrate Lyon County's failure to comply with basic planning law.
14

15 II. ARGUMENT

16 A. Lyon County Cannot Ignore Its Multiple Past Land Use Decisions

17 In its Opening Brief, CRA set forth Lyon County's prior treatment of land use for CMI's
18 holding for 40 years. Opening Brief at 3-12. Lyon County's position of disallowing
19 incompatible uses such as mining on CMI's property within Silver City is incredibly consistent,
20 repeated and, over the years, progressively stronger and stronger and more and more detailed.
21 *Id.* The 2010 CMP culminates this history with land use determinations that separates mining
22 from residential uses in Silver City, expressly prohibits locating new mining uses in or adjacent
23 to adversely affected residential communities, specifically protects the historic nature and
24 appearance of the Comstock-era Silver City; and promotes broad-based community planning on
25 issues directly affecting the community. CRA's Opening Brief at 8-9.
26
27
28

1 In their joint Memorandum of Points and Authorities in Opposition to [CRA's] Opening
2 Brief (filed January 9, 2014), Lyon County and CMI pretend that the county initially applied an
3 incorrect land use designation some 40 years ago and it is simply correcting that error now.
4 Lyon County then relies upon general authority in NRS Chapter 278 to amend land use
5 designations and zoning as a shield them from explaining what circumstances have changed in
6 order to justify such a radical and inconsistent shift in policy. Lyon County and CMI, however,
7 cannot revise the applicable history because in order to avoid arbitrary action, it must explain its
8 sharp departure from prior decisions.
9

10 For example, in 1986 Lyon County rejected as inconsistent with its then, weaker
11 1971 master plan, an application by another mining company to change land use designation and
12 zoning to allow a mining use. Lyon County and CMI argue that the Court should ignore that
13 prior action because Nevex Mining Company also applied for a Special Use Permit ("SUP") if
14 its master plan and zoning amendment application was granted. Opposition at 4. The
15 Respondents assert that because the Planning Commission and County Commission consider
16 evidence on the impact of the intended use of the property (i.e., mining), the actions on essential
17 the same master plan and zoning applications are like "apples and oranges." In other words,
18 Lyon County and CMI argue that, in 1986, the Commission considered the potential effect of
19 the permissible uses sought to be added to the property's zoning (i.e., mining) and therefore
20 appropriately denied Nevex's master plan/zoning change application; and in 2014, the County
21 Commission did not consider the impacts from proposed added uses like mining and therefore
22 the decisions are not comparable.
23

24
25 Lyon County and CMI's distinction – rather than helping their cause – illustrates why the
26 historical context must be considered in order to determine whether an abuse of discretion
27 occurred. Because Lyon County has repeatedly, consistently and with increasing vigor rejected
28

1 exactly the type of uses CMI sought in their application based on, *inter alia*, the incompatibility
2 of those uses with the existing residential uses, it cannot now reverse those prior decisions
3 without explaining what changed circumstances occurred to render the basis for those repeated
4 prior decisions inapplicable. It is the comparison of past-articulated positions with an attempt to
5 totally reverse it without explanation that makes the cases cited by CRA on changed
6 circumstances apposite. Opening Brief at 27-28. While Lyon County and CMI try to
7 distinguish these cases based on the federal nature (Opposition at 5-6), the true applicability
8 rests not on the underlying statutory scheme but the illustration why policy reversal without an
9 articulated explanation for the shift in position are arbitrary and capricious.
10

11 No one disputes that Lyon County has the discretion to amend the 2010 CMP and change
12 the applicable zoning for the CMI properties. In order to exercise that discretion rationally,
13 however, Lyon County must explain how it could completely reverse its prior repeated,
14 consistent and strengthened position. Since Lyon County choose not to provide such an
15 explanation, its decision to approve CMI's application to add new uses including mining was
16 arbitrary, capricious and an abuse of discretion.¹
17

18 **B. Lyon County Cannot Ignore a Host of Inconsistent Master Plan**
19 **Policies by Choosing not to Consider Authorized but Incompatible**
20 **Uses**

21 As discussed above, changing the Master Plan designation and zoning to allow
22 consideration of mining on CMI's property violated a host of directly applicable master plan
23

24 ¹ Lyon County argues that it provided an "explanation" of its action with its adopted findings.
25 Opposition at 6-7 (citing Record on Appeal ("ROA") 529-530). Even a cursory read of those
26 findings, just a reiteration of the code required language, indicates that they are entirely
27 conclusory in nature and provide no actual explanation to support the radical shift in policy.
28 For example, the County Commissioners found that "[t]he proposed amendment has
demonstrated a response to changed conditions or further studies have occurred since the
[2010] Master Plan was adopted by the Board" Opposition at 6. However, Lyon County
has pointed to no changed conditions or any new studies not available at the time of the
adoption of the 2010 CMP.

1 provisions. See e.g. ROA 1180 (Policy LU 1.4) (“Industrial uses, including extractive
2 industries, will occur in areas that are designated on the County-wide Land Use Plan. New
3 industrial uses should only be located in areas that do not adversely impact existing residential
4 settlements.”). In their Opposition, Respondents avoid all discussion of these inconvenient
5 CMP provisions by not considering any potential adverse impacts from mining. Lyon County
6 and CMI argue – without citation to authority – that, “the Board was not required to consider
7 uses that were not at issue in CMI’s Application and expressly did not authorize any mining
8 activity on the subject property.” Opposition at 9. The Respondents suggest that any concerns
9 regarding the new potential uses authorized by the new zoning were “misplaced and premature”
10 because an actual future use will require a separate permitting process. *Id.*, at 7.

12 CMI’s Application, however, was only about obtaining the ability to mine on their
13 property. CMI filed the application expressly for “the purpose of pursuing continued mineral
14 exploration, development and the economic mining potential of the subject property.” ROA
15 155. Thus under Lyon County’s own standard, since CMI put mining use “at issue,” the County
16 Commission should have considered the adverse affects from it (and other potential new uses).

18 Moreover, Lyon County’s past action and current review of CMI’s application is entirely
19 inconsistent with its present litigating position that the effects of mining should not be
20 considered at this time. For example, in 1986 the County Commissioners considered both the
21 pros and cons of mining when denying Nevex’s application to change the master plan/zoning
22 yet the Lyon County now takes the position that it’s Commissioners cannot do so when it
23 granted CMI’s same application. In addition, Lyon County now contends that its County
24 Commissioners may consider the positive effects of mining when making consistency findings
25 on CMI’s application but considering of adverse impacts is “misplaced and premature.”
26 Compare Opposition at 7 with *id.* at 9. The individual County Commissioners exhibited the
27
28

1 same inconsistency of position at the January 2, 2014 hearing. Commissioner Fierro stated he
2 was pro-mining on the one hand (i.e., desirous of certain alleged benefits) but that he was
3 precluded from considering mining's adverse impacts in response to comments from CRA.
4 Compare ROA 531 (Commissioner Fierro comments supporting mining) with Audio of January
5 2, 2014 County Commission Meeting at 46:17, 53:23 (Comments of Commissioner Fierro in
6 response to CRA's comments). Finally, at the same time Lyon County and CMI argue the
7 Commissioners were precluded from considering adverse impacts from mining on Silver City as
8 their excuse to ignore inconvenient inconsistencies with the 2010 CMP, they tout Commissioner
9 Keller's last minute proposal that allegedly provided a buffer and viewshed protection from
10 mining activities. Opposition at 7.²

12 In sum, Lyon County constructed a one-sided legal theory to enable it to consider only the
13 positive impacts from future mining when considering CMI's application and expressly
14 precluded itself from considering the negative under the guise that no actual mining had been
15 approved. Such a construct not only violates common sense, it is inconsistent with (1) statutory
16 law (see NRS 278.250(2)(k) ("The zoning regulations must . . . be designed: [99] [t]o ensure the
17 protection of existing neighborhoods and communities . . ."), and (2) and case law (see
18 *Enterprise Citizen Action Committee v. Clark County*, 112 Nev. 649, 659-660 (1996)
19 (disallowing a sharp land use theory constructed to avoid the County Commission from
20 considering the full impact of a new industrial use added to a property adjacent to existing
21 neighborhoods).³

24
25 ² As demonstrated in CRA's Opposition Brief (at 5-6), there is no evidence in the record that
Commissioner Keller's proposal would provide any buffer or viewshed protection.

26 ³ *Enterprise Citizen Action* also illustrates CRA's arguments on the burden of proof and
27 Respondents' mischaracterization in their Opposition (at 3). No one disputes that in front of
28 Lyon County, CMI bore the burden of establishing a need for a master plan amendment and
zoning change. See LCC 10.12.09(C)(5) ("The burden of establishing that a master plan
amendment is consistent with the purposes of this title is on the applicant."). In *Enterprise*

1 Under Nevada law, Master Plan and zoning designations carry with them a weight of
2 appropriateness for the assigned uses. See e.g., *Nova Horizons v. City of Reno*, 105 Nev. 92, 95
3 (1989). It is imperative therefore that prior to radically changing the 2010 CMP and applicable
4 zoning, the County Commissioners must consider the impacts from those uses and their
5 consistency with the master plan. Since Lyon County did not do so, its action was an abuse of
6 discretion; that it did not approve a specific mining project is irrelevant to the review of the
7 appropriateness of the CMP amendment and zoning change.
8

9 C. **The Record Is Incomplete And Respondents Egregiously**
10 **Misrepresents Its Contents**

11 1. Lyon County fails to certify that the record contains all
12 communications considered by County Commissioners

13 Lyon County and CMI do not dispute that a complete record of the proceeding below is
14 critical to this Court's review. Opposition at 3-4. Lyon County and CMI also do not dispute
15 that County Commissioners communicated among themselves and with CMI communicated
16 using private devices such as cellular phones and computers. *Id.*; see also ROA 2927
17 (Commissioner Hastings identifying existence of communication with Commissioner Keller
18 regarding CMI's application but no record of actual communication in the official Record on
19 Appeal). Furthermore, Lyon County and CMI do not dispute that the County did not receive all
20 records of such communications. Indeed, Lyon County contends that it has no obligation to
21 search for or even provide such records. See CRA's Motion to Augment/Request for Judicial
22 Notice, Exhibit E. Thus, Lyon County cannot certify to this Court that its record of proceeding
23 below is complete. See e.g., NRS 233B.131(1) (Nevada Administrative Procedures Act
24

25 *Citizen Action*, the Nevada Supreme Court invalidated a County Commission's action as
26 lacking in substantial evidence because the applicant below had failed to carry its similar
27 burden before the Commission to demonstrate hardship. *Id.*, 112 Nev. at 654. Here, as
28 deliberately pointed out by Lyon County staff, CMI failed to present the Lyon County
Commission with evidence that its proposed amendment and zone change was consistent with
2010 CMP.

1 requiring the “entire record of proceedings under review” to be submitted to the reviewing
2 court by the defendant public agency) (emphasis added).

3 Instead of assuring this Court that it has provided all records of communication between
4 Commissioners and CMI, Lyon County asserts several makeweight arguments. First, Lyon
5 County argues that CRA (the one without the missing records) has presented no evidence that
6 such records exist. Opposition at 3. As demonstrated above, however, the record contains
7 evidence (i.e., reference to undocumented communications) and more to the point, Lyon County
8 fails to certify to the Court that the record in facts contains all the communications among the
9 Commissioners themselves and with CMI. Indeed, Lyon County asserts to this Court that these
10 records of relevant communications are “not at issue here.” *Id.* at 4. Since Lyon County cannot
11 certify to this Court that the Record on Appeal in this case contains all of the items considered
12 by the Lyon County Commissioners, the Court should either grant CRA’s petition or require
13 Lyon County to certify that the record contains all relevant records of communications (whether
14 on public or private devices) considered by the County Commissioners during the pendency of
15 CMI application.⁴

18 2. The Record does not contain substantial evidence supporting CMI’s
19 application

20 Finally, Lyon County and CMI take substantial liberties with the record in its Opposition
21 Brief to claim that it contains substantial evidence supporting CMI’s application to reverse the
22 2014 CMP and applicable zoning. For example, Lyon County and CMI claim, without citation
23 to any document in the ROA, that after adoption of Commissioner Keller’s last minute proposal,
24 “the subject property is almost entirely outside of the boundaries of Silver City.” Opposition at
25

26 ⁴ Lyon County and CMI also argue that because the Court required CRA to file a separate
27 lawsuit to address their Nevada Public Records Act request, the completeness of the record in
28 this case cannot be raised. Opposition at 4. However, the existence of a public records act
request does not, and should not excuse Lyon County from complying with its obligation to
provide the Court with the entire record considered by the County Commissioners.

1 7. A quick examination of the Silver City town limits as set forth in CMI's own application
2 proves the opposite. ROA 133 (parcels 2, 4, 5, 6 in within dashed town limits); ROA 855 (post-
3 action map showing parcels 2, 4, 5 within town boundaries).

4 Next, Lyon County and CMI represent to the Court that "nothing in the Record that
5 actually suggests that any mining would ever occur within the boundaries of Silver City."
6 Opposition at 7. The record, to the contrary, is replete with CMI's representations that it
7 pursued its application specifically to facilitate the "exploration, development and economic
8 potential" of its property, the bulk of which lies within the Silver City boundary. ROA 155, see
9 also ROA 184-268 (a CMI sponsored report touting, *inter alia*, the mineral resources of the
10 Dayton site). Similarly, Respondents argue that historic mining had occurred on the property
11 and that a less dense residential use would be beneficial to the County. Opposition at 8.
12 However, not only does CMI – a mining company – admits that its intended use of the property
13 is for mining, not residential development, but as explained (CRA Opposition Brief at 4),
14 nothing prevents less dense development from occurring on the property with the prior land use
15 designation and zoning. Indeed, if CMI's intent was to downzone its property for less dense
16 residential development, it could have done so without incorporating mining and other
17 industrial uses under the RR-1 (one acre) or RR-2 (two acres) designations. See LCC 10.03.02,
18 03. But CMI did not because it desires to mine, not build houses. As consequence, Lyon
19 County Commissioners should have considered the impacts associated with the intended use of
20 the property and make consistency finding thereon.
21
22
23
24
25
26
27
28

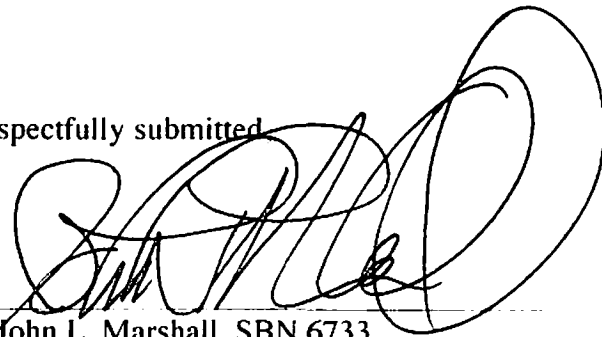
III. CONCLUSION

As set forth above, CRA's Petition for Judicial Review should be granted, Lyon County's action approving the change in Master Plan and zoning designations vacated, and the matter remanded back to the County with directions to deny CMI's application.

Dated: January 20, 2015.

Respectfully submitted,

By


John L. Marshall, SBN 6733
570 Marsh Avenue
Reno, NV 89509
775.303.4882

Attorney for Petitioners CRA, Gayle Sherman, Joe
McCarthy

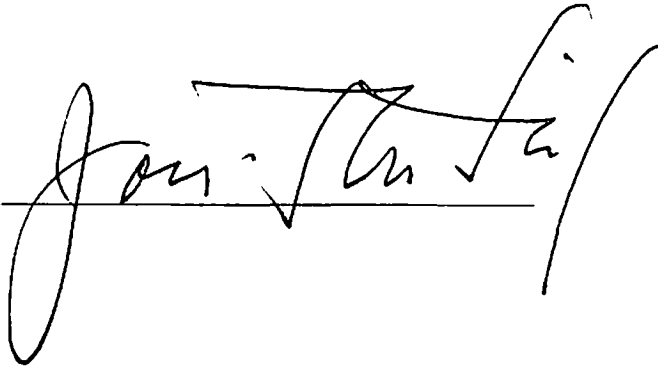
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief in Support of Petition for Judicial Review was served on the parties by mailing a copy thereof on the 20th day of January, 2015, by United States mail, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703

A handwritten signature in black ink, appearing to read "James R. Cavilla", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping underline.

1 Case No. 14-CV-00128

2 Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Sceirine DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

8
9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 ORDER DENYING PETITION FOR JUDICIAL REVIEW

17 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe
18 McCarthy, (collectively "CRA") filed a Complaint for Injunctive and Declaratory
19 Relief/Petition for Judicial Review on January 31, 2014. The Complaint alleged four causes
20 of action: (1) Violations of Nevada Open Meeting Law; (2) denial of Due Process; (3) Abuse
21 of Discretion; and (4) Violation of NRS 278.220. Comstock Mining, Inc. ("CMI") filed its
22 Answer on March 28, 2014. Lyon County filed its Answer on March 27, 2014. On June 6,
23 2014, Lyon County submitted to the Court a Motion to Dismiss or in the alternative Motion
24 for Summary Judgment in which CMI joined, requesting that the Court dismiss the first,
25 second and fourth causes of action (the "Motion to Dismiss"). On December 3, 2014, the
26 Court issued an Order Granting in Part and Denying in Part the Motion to Dismiss and
27 dismissed the first and second causes of action. The Court further ordered the parties to
28

1 prepare and the parties did prepare a briefing schedule on the third and fourth causes of
2 action (collectively the "Petition for Judicial Review").

3 After being fully briefed, this matter came before the Court for hearing on April 20,
4 2015. James R. Cavilia, Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd.,
5 appeared representing CMI. Stephen B. Rye, Lyon County District Attorney, appeared
6 representing Lyon County. John L. Marshall, Esq. appeared representing CRA. The Court
7 reviewed the pleadings and all documents on file, the applicable law, and considered the
8 arguments of the parties.

9 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
10 of Law, and Orders.

11 **Findings of Fact:**

- 12 1. The entire record on appeal (the "Record") has been presented to the Court and
13 the Court has reviewed it in its entirety.
- 14 2. The Record contains testimony and evidence both in favor of and against CMI's
15 Application for a Master Plan Amendment and Zone Change (the "Application").
- 16 3. The Record reflects that there was presented to the governing body testimony
17 from the public, surveyors, engineers, land use planners, CRA members, CRA's
18 attorney, and environmental experts.
- 19 4. The Record further reflects that Lyon County considered the environmental
20 impacts and the compatibility of the requested changes to the surrounding area
21 and whether the changes were permitted under and consistent with the goals and
22 policies of the Lyon County Comprehensive Master Plan.
- 23 5. On December 10, 2013, the Lyon County Planning Commission considered CMI's
24 Application and voted to recommend that the Lyon County Board of
25 Commissioners deny the Application. Thereafter, Lyon County planning staff
26 prepared and delivered to the Board of Commissioners reports on the Planning
27 Commission's action with respect to the Application.

- 1 6. The Board of Commissioners considered CMI's Application on January 2, 2014
2 and, after a public hearing in which the testimony and evidence outlined above
3 were presented, deliberated and voted to approve a Master Plan Amendment and
4 Zone Change.
- 5 7. On January 30, 2015, the Board of Commissioners sent a letter to the Planning
6 Commission notifying the Planning Commission of its decision approving the
7 Application.
- 8 8. On February 11, 2014, the Planning Commission held a regularly-scheduled
9 meeting and considered the Board of Commissioners' decision on the Master
10 Plan Amendment and determined therein to prepare and send a report back to
11 the Board of Commissioners in which they expressed their concerns regarding the
12 Board's decision.
- 13 9. On March 6, 2014, the next available regularly-scheduled Board of
14 Commissioners meeting, the Board considered the Planning Commission's report
15 and voted unanimously to acknowledge receipt of the same.

16 **Conclusions of Law:**

- 17 1. It is well-settled law in Nevada that the Court is constrained in judicial review of
18 land use and zoning decisions to a review of the Record for abuse of discretion
19 and that the Court may not substitute its judgment for that of the Lyon County
20 Board of Commissioners absent a showing of manifest abuse of discretion.
21 McKenzie v. Shelly, 77 Nev. 237, 362 P.2d 268 (1961); City Council of Reno v.
22 Irvine, 102 Nev. 277, 721 P.2d 371 (1986).
- 23 2. The Lyon County Board of Commissioners' decision to approve the Application to
24 amend the master plan and zoning will not be overturned absent a showing that
25 said decision lacks support in the form of substantial evidence. Stratosphere
26 Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).
27 Substantial evidence is that which a reasonable mind could accept as sufficient to
28

1 support a conclusion. City of Reno v. Citizens for Cold Springs, 126 Nev. 27, 236
2 P.3d 10 (2010).

- 3 3. The Record contains substantial evidence, as noted in the Findings of Fact
4 above, which a reasonable mind could accept as sufficient to support the Board of
5 Commissioners' decision to amend the master plan and zoning.
- 6 4. The Board of Commissioners, in relying on the substantial evidence before it, did
7 not abuse its discretion in amending the master plan and zoning and, whether or
8 not the Court agrees with the Board's decision, the Court will not disturb the
9 decision of the Board of Commissioners.
- 10 5. NRS 278.220(4), which requires that the Board of Commissioners refer its
11 decision to amend the master plan to the Planning Commission for a report, is
12 ambiguous.
- 13 6. The Planning Commission was provided notice of the Board of Commissioners'
14 decision and reported back to the Board of Commissioners, and the Court
15 concludes that NRS 278.220(4) does not require the Board to vote again after
16 receipt of the Planning Commission's report.
- 17 7. The actions of the Board of Commissioners in reporting its decision to the
18 Planning Commission and subsequently accepting the Planning Commission's
19 report complied with NRS 278.220(4).

20 Based on the foregoing, and good cause appearing,

21 IT IS HEREBY ORDERED that the Petition for Judicial Review is DENIED in its
22 entirety.

23 IT IS FURTHER ORDERED that judgment is entered in favor of
24 Defendants/Respondents on the Third and Fourth Causes of Action.

25 Dated this 5th day of ^{June} ~~May~~, 2015.

26 
27 _____
28 DISTRICT JUDGE

1 Case No. 14-CV-00128

2 Dept. No. II

FILED
2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Sceirine DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

8
9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER GRANTING IN PART AND DENYING IN PART**
17 **PLAINTIFFS' MOTION TO AUGMENT RECORD**

18 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe
19 McCarthy, (collectively "CRA"), filed a Motion to Augment the Record on December 16,
20 2014. Defendant/Respondent, Lyon County, and Defendant/Respondent, Comstock
21 Mining, Inc. ("CMI"), jointly filed an Opposition to the Motion on January 2, 2015. CRA filed
22 Reply on January 9, 2015.

23 This matter came before the Court for hearing on April 20, 2015. James R. Cavilia,
24 Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd., appeared representing CMI.
25 Stephen B. Rye, Lyon County District Attorney, appeared representing Lyon County. John
26 L. Marshall, Esq. appeared representing CRA. The Court reviewed the pleadings and all
27 documents on file, the applicable law, and considered the arguments of the parties.
28

1 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
2 of Law, and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to augment the record on appeal (the "Record") by adding thereto the
5 entirety of the 2010 Lyon County Comprehensive Master Plan (the "Master Plan"),
6 certain emails between Plaintiff/Petitioner Gayle Sherman and Lyon County
7 Commissioner Vida Keller, and certain letters from John L. Marshall, Esq. to Lyon
8 County Commissioners Bob Hastings and Vida Keller.
- 9 2. CRA also requests that the Court take judicial notice of the official minutes of the
10 December 23, 2010 meeting of the Lyon County Board of Commissioners,
11 portions of election contribution reports for Lyon County Commissioners Bob
12 Hastings, Vida Keller, and Chuck Roberts, and a May 2, 2014 letter from the Lyon
13 County District Attorney's Office to John L. Marshall, Esq. concerning a public
14 records request.
- 15 3. Lyon County and CMI consented to the Court taking judicial notice of the entirety
16 of the Master Plan, although all relevant portions thereof are already included in
17 the Record. Lyon County and CMI also stipulated to the addition to the Record of
18 the emails between Plaintiff/Petitioner Gayle Sherman and Commissioner Keller
19 and the letters from John L. Marshall, Esq. to Commissioners Hastings and Keller.

20 **Conclusions of Law:**

- 21 1. In judicial review of land use and zoning matters, all that the Court may consider
22 is the evidence that was available and presented to the governing body when the
23 final decision was made. City of Reno v. Citizens for Cold Springs, 126 Nev. 27,
24 236 P.3d 10 (2010); NRS 233B.135(1)(b).
- 25 2. Except for those items to which Lyon County and CMI have consented, the items
26 CRA seeks to have added to the Record were not part of the Record before the
27 governing body and may not be considered by the Court in this action.


28 ///

1 Based on the foregoing, and good cause appearing,

2 IT IS HEREBY ORDERED that the Motion is GRANTED as to those items to which
3 Lyon County and CMI specifically stipulated, which are (a) that the Court take judicial notice
4 of the entirety of the Master Plan, which is included as Exhibit A to CRA's Motion; (b) that
5 the Record is augmented to include the emails between Plaintiff/Petitioner Gayle Sherman
6 and Commissioner Keller, which are included as Exhibit D to CRA's Motion; and (c) the
7 letters from John L. Marshall, Esq. to Commissioners Hastings and Keller, which are
8 included as Exhibit F to CRA's Motion.

9 IT IS FURTHER ORDERED that the remaining portions of the Motion are DENIED.

10 Dated this 5th day of ^{June} ~~May~~, 2015.

11 
12 DISTRICT JUDGE

1 Case No. 14-CV-00128

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.

FILED

2015 JUN 10 PM 2:01

TANYA SCERHNE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

KATHY THOMAS
DEPUTY

6
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
15 INCORPORATED,

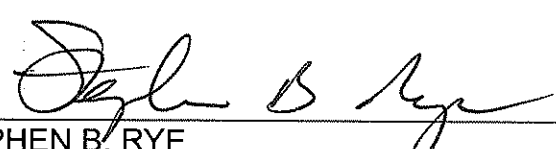
16 Defendants/Respondents,

17 **NOTICE OF ENTRY OF ORDER**

18 Please take notice that the Court entered its Order Granting in Part and Denying in Part
19 Plaintiffs' Motion to Augment Record on June 5, 2015. A copy of the Order is attached hereto.

20 DATED this 10 day of June, 2015.

21 ROBERT L. AUER
22 DISTRICT ATTORNEY

23 By: 
24 STEPHEN B. RYE
25 CHIEF DEPUTY DISTRICT ATTORNEY
26 31 South Main Street
27 Yerington, NV 89447
28 775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 10th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 10th day of June, 2015.



Employee

1 Case No. 14-CV-00128

2 Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Sceirine DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

8
9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER GRANTING IN PART AND DENYING IN PART**
17 **PLAINTIFFS' MOTION TO AUGMENT RECORD**

18 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe
19 McCarthy, (collectively "CRA"), filed a Motion to Augment the Record on December 16,
20 2014. Defendant/Respondent, Lyon County, and Defendant/Respondent, Comstock
21 Mining, Inc. ("CMI"), jointly filed an Opposition to the Motion on January 2, 2015. CRA filed
22 Reply on January 9, 2015.

23 This matter came before the Court for hearing on April 20, 2015. James R. Cavilia,
24 Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd., appeared representing CMI.
25 Stephen B. Rye, Lyon County District Attorney, appeared representing Lyon County. John
26 L. Marshall, Esq. appeared representing CRA. The Court reviewed the pleadings and all
27 documents on file, the applicable law, and considered the arguments of the parties.
28

1 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
2 of Law, and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to augment the record on appeal (the "Record") by adding thereto the
5 entirety of the 2010 Lyon County Comprehensive Master Plan (the "Master Plan"),
6 certain emails between Plaintiff/Petitioner Gayle Sherman and Lyon County
7 Commissioner Vida Keller, and certain letters from John L. Marshall, Esq. to Lyon
8 County Commissioners Bob Hastings and Vida Keller.
- 9 2. CRA also requests that the Court take judicial notice of the official minutes of the
10 December 23, 2010 meeting of the Lyon County Board of Commissioners,
11 portions of election contribution reports for Lyon County Commissioners Bob
12 Hastings, Vida Keller, and Chuck Roberts, and a May 2, 2014 letter from the Lyon
13 County District Attorney's Office to John L. Marshall, Esq. concerning a public
14 records request.
- 15 3. Lyon County and CMI consented to the Court taking judicial notice of the entirety
16 of the Master Plan, although all relevant portions thereof are already included in
17 the Record. Lyon County and CMI also stipulated to the addition to the Record of
18 the emails between Plaintiff/Petitioner Gayle Sherman and Commissioner Keller
19 and the letters from John L. Marshall, Esq. to Commissioners Hastings and Keller.

20 **Conclusions of Law:**

- 21 1. In judicial review of land use and zoning matters, all that the Court may consider
22 is the evidence that was available and presented to the governing body when the
23 final decision was made. City of Reno v. Citizens for Cold Springs, 126 Nev. 27,
24 236 P.3d 10 (2010); NRS 233B.135(1)(b).
- 25 2. Except for those items to which Lyon County and CMI have consented, the items
26 CRA seeks to have added to the Record were not part of the Record before the
27 governing body and may not be considered by the Court in this action.

28 ///

1 Based on the foregoing, and good cause appearing,

2 IT IS HEREBY ORDERED that the Motion is GRANTED as to those items to which
3 Lyon County and CMI specifically stipulated, which are (a) that the Court take judicial notice
4 of the entirety of the Master Plan, which is included as Exhibit A to CRA's Motion; (b) that
5 the Record is augmented to include the emails between Plaintiff/Petitioner Gayle Sherman
6 and Commissioner Keller, which are included as Exhibit D to CRA's Motion; and (c) the
7 letters from John L. Marshall, Esq. to Commissioners Hastings and Keller, which are
8 included as Exhibit F to CRA's Motion.

9 IT IS FURTHER ORDERED that the remaining portions of the Motion are DENIED.

10 Dated this 5th ^{June} day of ~~May~~, 2015.

11
12 
13 DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Office of the District Attorney
Lyon County, State of Nevada
801 Overland Loop, Suite 308, Dayton, Nevada 89403 • 31 South Main Street, Yerington, Nevada 89447 • 965 East Main Street, Fernley, Nevada

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 14-CV-00128

Dept. No. Senior Judge

The undersigned hereby affirms this document does not contain a social security number.

FILED
2015 JUN 15 PM 2:57
TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
DeAnn Peebles DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

VS.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

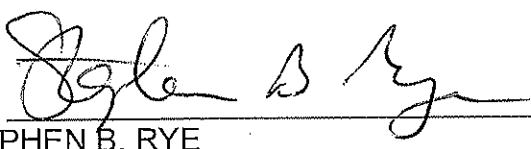
Defendants/Respondents,

NOTICE OF ENTRY OF ORDER

Please take notice that the Court entered its Order Denying Petition for Judicial Review on June 5, 2015. A copy of the Order is attached hereto.

DATED this 15th day of June, 2015.

STEPHEN B. RYE
DISTRICT ATTORNEY

By: 
STEPHEN B. RYE
DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners

Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 15th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 15th day of June, 2015.



Employee

1 Case No. 14-CV-00128

2 Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Sceirine DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

8
9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

17 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe
18 McCarthy, (collectively "CRA") filed a Complaint for Injunctive and Declaratory
19 Relief/Petition for Judicial Review on January 31, 2014. The Complaint alleged four causes
20 of action: (1) Violations of Nevada Open Meeting Law; (2) denial of Due Process; (3) Abuse
21 of Discretion; and (4) Violation of NRS 278.220. Comstock Mining, Inc. ("CMI") filed its
22 Answer on March 28, 2014. Lyon County filed its Answer on March 27, 2014. On June 6,
23 2014, Lyon County submitted to the Court a Motion to Dismiss or in the alternative Motion
24 for Summary Judgment in which CMI joined, requesting that the Court dismiss the first,
25 second and fourth causes of action (the "Motion to Dismiss"). On December 3, 2014, the
26 Court issued an Order Granting in Part and Denying in Part the Motion to Dismiss and
27 dismissed the first and second causes of action. The Court further ordered the parties to
28

1 prepare and the parties did prepare a briefing schedule on the third and fourth causes of
2 action (collectively the "Petition for Judicial Review").

3 After being fully briefed, this matter came before the Court for hearing on April 20,
4 2015. James R. Cavilia, Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd.,
5 appeared representing CMI. Stephen B. Rye, Lyon County District Attorney, appeared
6 representing Lyon County. John L. Marshall, Esq. appeared representing CRA. The Court
7 reviewed the pleadings and all documents on file, the applicable law, and considered the
8 arguments of the parties.

9 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
10 of Law, and Orders.

11 **Findings of Fact:**

- 12 1. The entire record on appeal (the "Record") has been presented to the Court and
13 the Court has reviewed it in its entirety.
- 14 2. The Record contains testimony and evidence both in favor of and against CMI's
15 Application for a Master Plan Amendment and Zone Change (the "Application").
- 16 3. The Record reflects that there was presented to the governing body testimony
17 from the public, surveyors, engineers, land use planners, CRA members, CRA's
18 attorney, and environmental experts.
- 19 4. The Record further reflects that Lyon County considered the environmental
20 impacts and the compatibility of the requested changes to the surrounding area
21 and whether the changes were permitted under and consistent with the goals and
22 policies of the Lyon County Comprehensive Master Plan.
- 23 5. On December 10, 2013, the Lyon County Planning Commission considered CMI's
24 Application and voted to recommend that the Lyon County Board of
25 Commissioners deny the Application. Thereafter, Lyon County planning staff
26 prepared and delivered to the Board of Commissioners reports on the Planning
27 Commission's action with respect to the Application.

- 1 6. The Board of Commissioners considered CMI's Application on January 2, 2014
2 and, after a public hearing in which the testimony and evidence outlined above
3 were presented, deliberated and voted to approve a Master Plan Amendment and
4 Zone Change.
- 5 7. On January 30, 2015, the Board of Commissioners sent a letter to the Planning
6 Commission notifying the Planning Commission of its decision approving the
7 Application.
- 8 8. On February 11, 2014, the Planning Commission held a regularly-scheduled
9 meeting and considered the Board of Commissioners' decision on the Master
10 Plan Amendment and determined therein to prepare and send a report back to
11 the Board of Commissioners in which they expressed their concerns regarding the
12 Board's decision.
- 13 9. On March 6, 2014, the next available regularly-scheduled Board of
14 Commissioners meeting, the Board considered the Planning Commission's report
15 and voted unanimously to acknowledge receipt of the same.

16 **Conclusions of Law:**

- 17 1. It is well-settled law in Nevada that the Court is constrained in judicial review of
18 land use and zoning decisions to a review of the Record for abuse of discretion
19 and that the Court may not substitute its judgment for that of the Lyon County
20 Board of Commissioners absent a showing of manifest abuse of discretion.
21 McKenzie v. Shelly, 77 Nev. 237, 362 P.2d 268 (1961); City Council of Reno v.
22 Irvine, 102 Nev. 277, 721 P.2d 371 (1986).
- 23 2. The Lyon County Board of Commissioners' decision to approve the Application to
24 amend the master plan and zoning will not be overturned absent a showing that
25 said decision lacks support in the form of substantial evidence. Stratosphere
26 Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).
27 Substantial evidence is that which a reasonable mind could accept as sufficient to
28

1 support a conclusion. City of Reno v. Citizens for Cold Springs, 126 Nev. 27, 236
2 P.3d 10 (2010).

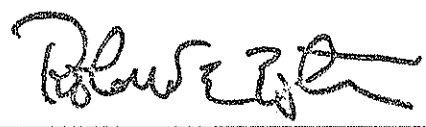
- 3 3. The Record contains substantial evidence, as noted in the Findings of Fact
4 above, which a reasonable mind could accept as sufficient to support the Board of
5 Commissioners' decision to amend the master plan and zoning.
- 6 4. The Board of Commissioners, in relying on the substantial evidence before it, did
7 not abuse its discretion in amending the master plan and zoning and, whether or
8 not the Court agrees with the Board's decision, the Court will not disturb the
9 decision of the Board of Commissioners.
- 10 5. NRS 278.220(4), which requires that the Board of Commissioners refer its
11 decision to amend the master plan to the Planning Commission for a report, is
12 ambiguous.
- 13 6. The Planning Commission was provided notice of the Board of Commissioners'
14 decision and reported back to the Board of Commissioners, and the Court
15 concludes that NRS 278.220(4) does not require the Board to vote again after
16 receipt of the Planning Commission's report.
- 17 7. The actions of the Board of Commissioners in reporting its decision to the
18 Planning Commission and subsequently accepting the Planning Commission's
19 report complied with NRS 278.220(4).

20 Based on the foregoing, and good cause appearing,

21 IT IS HEREBY ORDERED that the Petition for Judicial Review is DENIED in its
22 entirety.

23 IT IS FURTHER ORDERED that judgment is entered in favor of
24 Defendants/Respondents on the Third and Fourth Causes of Action.

25 Dated this 5th day of ^{June} May, 2015.

26 
27 _____
28 DISTRICT JUDGE

Case No. 14-CV-00128

Pursuant to NRS 239B.030, the undersigned
affirms that the following document does not
contain the social security number of any person.

2015 JUL 14 PM 4:15

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen FEIITY

JOHN L. MARSHALL
SBN 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
Attorney for Petitioners Comstock
Residents Association, Gayle Sherman, Joe
McCarthy

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY

Petitioners,

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Respondents,

**PETITIONERS COMSTOCK RESIDENTS ASSOCIATION
AND JOE McCARTHY'S NOTICE OF APPEAL**

Notice is hereby given that the Comstock Residents Association and Joe McCarthy,
Petitioners above named, hereby appeal to the Supreme Court of Nevada from the following
final judgment and orders entered in this action:

1 1. Order Denying Petition for Judicial Review, entered on June 15, 2015, attached
2 hereto as Exhibit A.

3 2. Order Granting in Part and Denying in Part Plaintiffs' Motion to Augment the
4 Record, entered on June 10, 2015, attached hereto as Exhibit B.

5 3. Order Granting in Part and Denying in Part Motion to Dismiss, entered on
6 December 5, 2014, attached hereto as Exhibit C.

7
8 Dated: July 14, 2015.

9 Respectfully submitted,

10
11
12 By 

John L. Marshall, SBN 6733

570 Marsh Avenue

Reno, NV 89509

775.303.4882

13
14
15 Attorney for Petitioners Comstock Residents
16 Association and Joe McCarthy
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was served on the parties by mailing a copy thereof on the 14th day of July, 2015, by United States mail, postage prepaid to:

Steven B. Rye
District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703

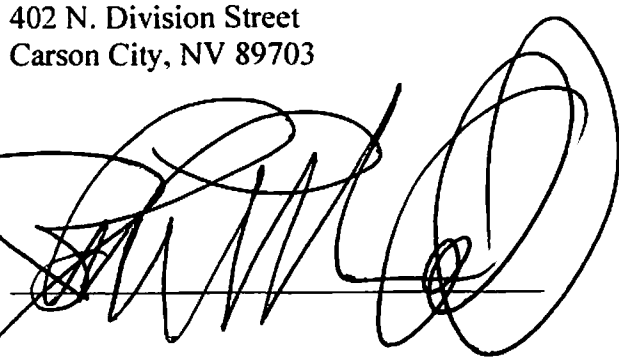
A large, stylized handwritten signature in black ink, likely belonging to James R. Cavilla, is written over a horizontal line. The signature is highly cursive and loops around the line.

EXHIBIT A

E
X
H
I
B
I
T

A

E
X
H
I
B
I
T

A

EXHIBIT A

Case No. 14-CV-00128

Dept. No. Senior Judge

2015 JUN 15 PM 2: 57

The undersigned hereby affirms this document does not contain a social security number.

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DeAnn Peeples
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

NOTICE OF ENTRY OF ORDER

Please take notice that the Court entered its Order Denying Petition for Judicial Review on June 5, 2015. A copy of the Order is attached hereto.

DATED this 15th day of June, 2015.

STEPHEN B. RYE
DISTRICT ATTORNEY

By: 
STEPHEN B. RYE
DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 15th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 15th day of June, 2015.



Employee

Case No. 14-CV-00128

Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Sceirine DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe McCarthy, (collectively "CRA") filed a Complaint for Injunctive and Declaratory Relief/Petition for Judicial Review on January 31, 2014. The Complaint alleged four causes of action: (1) Violations of Nevada Open Meeting Law; (2) denial of Due Process; (3) Abuse of Discretion; and (4) Violation of NRS 278.220. Comstock Mining, Inc. ("CMI") filed its Answer on March 28, 2014. Lyon County filed its Answer on March 27, 2014. On June 6, 2014, Lyon County submitted to the Court a Motion to Dismiss or in the alternative Motion for Summary Judgment in which CMI joined, requesting that the Court dismiss the first, second and fourth causes of action (the "Motion to Dismiss"). On December 3, 2014, the Court issued an Order Granting in Part and Denying in Part the Motion to Dismiss and dismissed the first and second causes of action. The Court further ordered the parties to

1 prepare and the parties did prepare a briefing schedule on the third and fourth causes of
2 action (collectively the "Petition for Judicial Review").

3 After being fully briefed, this matter came before the Court for hearing on April 20,
4 2015. James R. Cavilia, Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd.,
5 appeared representing CMI. Stephen B. Rye, Lyon County District Attorney, appeared
6 representing Lyon County. John L. Marshall, Esq. appeared representing CRA. The Court
7 reviewed the pleadings and all documents on file, the applicable law, and considered the
8 arguments of the parties.

9 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
10 of Law, and Orders.

11 **Findings of Fact:**

- 12 1. The entire record on appeal (the "Record") has been presented to the Court and
13 the Court has reviewed it in its entirety.
- 14 2. The Record contains testimony and evidence both in favor of and against CMI's
15 Application for a Master Plan Amendment and Zone Change (the "Application").
- 16 3. The Record reflects that there was presented to the governing body testimony
17 from the public, surveyors, engineers, land use planners, CRA members, CRA's
18 attorney, and environmental experts.
- 19 4. The Record further reflects that Lyon County considered the environmental
20 impacts and the compatibility of the requested changes to the surrounding area
21 and whether the changes were permitted under and consistent with the goals and
22 policies of the Lyon County Comprehensive Master Plan.
- 23 5. On December 10, 2013, the Lyon County Planning Commission considered CMI's
24 Application and voted to recommend that the Lyon County Board of
25 Commissioners deny the Application. Thereafter, Lyon County planning staff
26 prepared and delivered to the Board of Commissioners reports on the Planning
27 Commission's action with respect to the Application.

6. The Board of Commissioners considered CMI's Application on January 2, 2014 and, after a public hearing in which the testimony and evidence outlined above were presented, deliberated and voted to approve a Master Plan Amendment and Zone Change.
7. On January 30, 2015, the Board of Commissioners sent a letter to the Planning Commission notifying the Planning Commission of its decision approving the Application.
8. On February 11, 2014, the Planning Commission held a regularly-scheduled meeting and considered the Board of Commissioners' decision on the Master Plan Amendment and determined therein to prepare and send a report back to the Board of Commissioners in which they expressed their concerns regarding the Board's decision.
9. On March 6, 2014, the next available regularly-scheduled Board of Commissioners meeting, the Board considered the Planning Commission's report and voted unanimously to acknowledge receipt of the same.

Conclusions of Law:

1. It is well-settled law in Nevada that the Court is constrained in judicial review of land use and zoning decisions to a review of the Record for abuse of discretion and that the Court may not substitute its judgment for that of the Lyon County Board of Commissioners absent a showing of manifest abuse of discretion. McKenzie v. Shelly, 77 Nev. 237, 362 P.2d 268 (1961); City Council of Reno v. Irvine, 102 Nev. 277, 721 P.2d 371 (1986).
2. The Lyon County Board of Commissioners' decision to approve the Application to amend the master plan and zoning will not be overturned absent a showing that said decision lacks support in the form of substantial evidence. Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004). Substantial evidence is that which a reasonable mind could accept as sufficient to

1 support a conclusion. City of Reno v. Citizens for Cold Springs, 126 Nev. 27, 236
2 P.3d 10 (2010).

- 3 3. The Record contains substantial evidence, as noted in the Findings of Fact
4 above, which a reasonable mind could accept as sufficient to support the Board of
5 Commissioners' decision to amend the master plan and zoning.
- 6 4. The Board of Commissioners, in relying on the substantial evidence before it, did
7 not abuse its discretion in amending the master plan and zoning and, whether or
8 not the Court agrees with the Board's decision, the Court will not disturb the
9 decision of the Board of Commissioners.
- 10 5. NRS 278.220(4), which requires that the Board of Commissioners refer its
11 decision to amend the master plan to the Planning Commission for a report, is
12 ambiguous.
- 13 6. The Planning Commission was provided notice of the Board of Commissioners'
14 decision and reported back to the Board of Commissioners, and the Court
15 concludes that NRS 278.220(4) does not require the Board to vote again after
16 receipt of the Planning Commission's report.
- 17 7. The actions of the Board of Commissioners in reporting its decision to the
18 Planning Commission and subsequently accepting the Planning Commission's
19 report complied with NRS 278.220(4).

20 Based on the foregoing, and good cause appearing,

21 IT IS HEREBY ORDERED that the Petition for Judicial Review is DENIED in its
22 entirety.

23 IT IS FURTHER ORDERED that judgment is entered in favor of
24 Defendants/Respondents on the Third and Fourth Causes of Action.

25 Dated this 5th day of ^{June}~~May~~, 2015.

26 
27 _____
28 DISTRICT JUDGE

EXHIBIT B

E
X
H
I
B
I
T

B

E
X
H
I
B
I
T

B

EXHIBIT B

1 Case No. 14-CV-00128

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.

FILED
2015 JUN 10 PM 2:01

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

KATHY THOMAS
DEPUTY

6
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

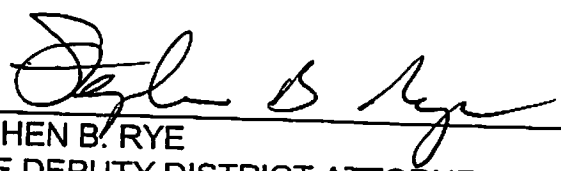
15 Defendants/Respondents,

16 NOTICE OF ENTRY OF ORDER

17 Please take notice that the Court entered its Order Granting in Part and Denying in Part
18 Plaintiffs' Motion to Augment Record on June 5, 2015. A copy of the Order is attached hereto.

19 DATED this 10 day of June, 2015.

20
21 ROBERT L. AUER
DISTRICT ATTORNEY

22
23 By: 
24 STEPHEN B. RYE
25 CHIEF DEPUTY DISTRICT ATTORNEY
26 31 South Main Street
27 Yerington, NV 89447
28 775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 10th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 10th day of June, 2015.


Employee

1 Case No. 14-CV-00128

2 Dept. No. II

2015 JUN -5 PM 1:51

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Sceirine DEPUTY

3
4
5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LYON

8
9 COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF
13 COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

14 Defendants/Respondents,

15
16 **ORDER GRANTING IN PART AND DENYING IN PART**
17 **PLAINTIFFS' MOTION TO AUGMENT RECORD**

18 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe
19 McCarthy, (collectively "CRA"), filed a Motion to Augment the Record on December 16,
20 2014. Defendant/Respondent, Lyon County, and Defendant/Respondent, Comstock
21 Mining, Inc. ("CMI"), jointly filed an Opposition to the Motion on January 2, 2015. CRA filed
22 Reply on January 9, 2015.

23 This matter came before the Court for hearing on April 20, 2015. James R. Cavilia,
24 Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd., appeared representing CMI.
25 Stephen B. Rye, Lyon County District Attorney, appeared representing Lyon County. John
26 L. Marshall, Esq. appeared representing CRA. The Court reviewed the pleadings and all
27 documents on file, the applicable law, and considered the arguments of the parties.
28

1 Good cause appearing, the Court makes the following Findings of Fact, Conclusions
2 of Law, and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to augment the record on appeal (the "Record") by adding thereto the
5 entirety of the 2010 Lyon County Comprehensive Master Plan (the "Master Plan"),
6 certain emails between Plaintiff/Petitioner Gayle Sherman and Lyon County
7 Commissioner Vida Keller, and certain letters from John L. Marshall, Esq. to Lyon
8 County Commissioners Bob Hastings and Vida Keller.
- 9 2. CRA also requests that the Court take judicial notice of the official minutes of the
10 December 23, 2010 meeting of the Lyon County Board of Commissioners,
11 portions of election contribution reports for Lyon County Commissioners Bob
12 Hastings, Vida Keller, and Chuck Roberts, and a May 2, 2014 letter from the Lyon
13 County District Attorney's Office to John L. Marshall, Esq. concerning a public
14 records request.
- 15 3. Lyon County and CMI consented to the Court taking judicial notice of the entirety
16 of the Master Plan, although all relevant portions thereof are already included in
17 the Record. Lyon County and CMI also stipulated to the addition to the Record of
18 the emails between Plaintiff/Petitioner Gayle Sherman and Commissioner Keller
19 and the letters from John L. Marshall, Esq. to Commissioners Hastings and Keller.

20 **Conclusions of Law:**

- 21 1. In judicial review of land use and zoning matters, all that the Court may consider
22 is the evidence that was available and presented to the governing body when the
23 final decision was made. City of Reno v. Citizens for Cold Springs, 126 Nev. 27,
24 236 P.3d 10 (2010); NRS 233B.135(1)(b).
- 25 2. Except for those items to which Lyon County and CMI have consented, the items
26 CRA seeks to have added to the Record were not part of the Record before the
27 governing body and may not be considered by the Court in this action.

28 ///

1 Based on the foregoing, and good cause appearing,

2 IT IS HEREBY ORDERED that the Motion is GRANTED as to those items to which
3 Lyon County and CMI specifically stipulated, which are (a) that the Court take judicial notice
4 of the entirety of the Master Plan, which is included as Exhibit A to CRA's Motion; (b) that
5 the Record is augmented to include the emails between Plaintiff/Petitioner Gayle Sherman
6 and Commissioner Keller, which are included as Exhibit D to CRA's Motion; and (c) the
7 letters from John L. Marshall, Esq. to Commissioners Hastings and Keller, which are
8 included as Exhibit F to CRA's Motion.

9 IT IS FURTHER ORDERED that the remaining portions of the Motion are DENIED.

10 Dated this 5th day of June, 2015.

11
12 
13 DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

E
X
H
I
B
I
T

C

E
X
H
I
B
I
T

C

EXHIBIT C

1 Case No. 14-CV-00128

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.



6
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
15 INCORPORATED,

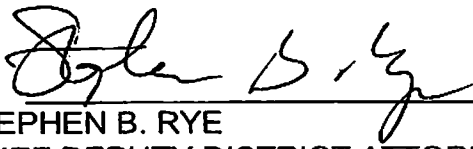
16 Defendants/Respondents,

17 NOTICE OF ENTRY OF ORDER

18 Please take notice that the Court entered its Order Granting in Part and Denying in Part
19 Motion to Dismiss on December 3, 2014. A copy of the Order is attached hereto.

20 DATED this 5 day of December, 2014.

21 ROBERT L. AUER
22 DISTRICT ATTORNEY

23 By: 
24 STEPHEN B. RYE
25 CHIEF DEPUTY DISTRICT ATTORNEY
26 31 South Main Street
27 Yerington, NV 89447
28 775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 5th day of December, 2014, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 5th day of December, 2014.



Employee

Case No. 14-CV-00128

Dept. No. II

2014 DEC -3 PM 12:26

COURT CLERK
THIRD JUDICIAL DISTRICT
DeAnn Peoples
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED,

Defendants/Respondents,

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

Comstock Residents Association, Plaintiff/Petitioner herein, ("CRA") filed a Complaint for Injunctive and Declaratory Relief/Petition for Judicial Review. The Complaint included four causes of action: (1) Violations of Nevada Open Meeting Law; (2) Denial of Due Process; (3) Abuse of Discretion; (4) Violation of NRS 278.220. Comstock Mining, Inc. ("CMI") filed its Answer on March 28, 2014. Lyon County filed its Answer on March 27, 2014. On June 10, 2014, Lyon County filed a Motion to Dismiss or in the alternative Motion for Summary Judgment, requesting that the Court dismiss the first, second and fourth causes of action. CMI filed a joinder in the Motion on June 13, 2014. CRA filed its Opposition to the Motion on July 3, 2014. Lyon County filed its Reply on July 29, 2014.

This matter came before this Court for hearing on September 10, 2014. James R. Cavilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan, Ltd., appeared representing CMI. John L. Marshall, Esq. appeared representing CRA.

1 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon
2 County. The Court reviewed the pleading and all documents on file, the applicable law, and
3 considered the arguments of the parties.

4 On October 23, 2014, the Court held a hearing to issue the ruling on the pending
5 motions before the Court.

6 Good cause appearing, the Court makes the following findings and Order.

7 **Findings of Fact:**

- 8 1. Citizens have alternative methods to pursue some of the claims in the Complaint.
- 9 2. CRA filed a complaint under the Open Meeting Law alleging essentially: (1) that
10 the Board of County Commissioners held a meeting or deliberated outside of an
11 agendized meeting in violation of the Open Meeting law; and, (2) the agenda item
12 was not specific enough, and the Board took action that was not specified on the
13 agenda.
- 14 3. CRA alleges in the complaint that two commissioners met on January 1, 2014, in
15 violation of the Nevada Open Meeting law.
- 16 4. The Complaint does not contain allegations that more than two commissioners
17 met outside of an agendized meeting. CRA alleges in its Opposition that a third
18 commissioner met with a representative of the applicant and that representative
19 was present at the January 1, 2014 meeting.
- 20 5. The complaint and opposition do not include an allegation that supports or
21 establishes any serial meeting.
- 22 6. CRA filed a cause of action for violation of due process based on a conflict of
23 interest of two of the County Commissioners. The thrust of the CRA complaint is
24 that a Commissioner must recuse him or herself when a reasonable person would
25 perceive a conflict of interest.
- 26 7. CRA alleges that Commissioner Keller received compensation from CMI.
- 27 8. Commissioner Keller stated in the record that she consulted with the Nevada
28 Commission on Ethics and the Lyon County District Attorney.

1 9. Commissioner Keller disclosed on the record prior to her decision what her
2 connections were with CMI.

3 10. No person or entity objected at the hearing to Commissioner Keller's participation
4 in the hearing.

5 11. Representatives of CRA were present at the Planning Commission and County
6 Commission public hearings on the CMI Applications.

7 12. CRA alleges that campaign contributions to certain board members rose to the
8 level creating a conflict of interest, and that said members were required to recuse
9 themselves from the decision.

10 13. CRA filed a cause of action alleging that Lyon County did not follow NRS 278.220
11 with respect to the CMI Applications.

12 **Conclusions of Law:**

13 1. A motion to dismiss a claim under NRCP 12(b)(5) tests the legal sufficiency of the
14 claim set out against the moving party and such a motion should be granted if it
15 appears beyond doubt that the plaintiff is entitled to no relief under any set of
16 facts that could be proved in support of the claim. Washoe Medical Center, Inc. v.
17 Reliance Insurance Co., 112 Nev. 494, 915 P.2d 288 (1996).

18 2. The Court must balance the rights granted citizens to challenge acts by the
19 government with the rights of the governing body and rights of citizens who may
20 or may not oppose the actions of the government.

21 3. The Board of County Commissioners' meetings are subject to the Nevada Open
22 Meeting law.

23 4. The allegations in the Complaint together with the factual showing in CRA's
24 opposition brief for a violation of the Nevada Open Meeting law are factually
25 deficient to state claim under the Nevada Open Meeting law.

26 5. A meeting is defined as a gathering of a quorum of members of the public body to
27 deliberate towards a decision. NRS 241.015(2). A quorum is defined as a simple
28 majority of the members of the board. NRS 241.015(5).

- 1 6. The Nevada Open Meeting Law is not intended to inhibit all private discussions of
2 public issues. Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94-
3 95, 64 P.3d 1070, 1075 (2003) (citing McKay v. Board of Cty. Comm'rs, 103 Nev.
4 490, 495-96, 746 P.2d 124, 127 (1987).
- 5 7. The Nevada OML prevents or prohibits collective deliberations or actions where a
6 quorum is present. The complaint alleges that only two County Commissioners
7 were present at the specific meeting held January 1, 2014, alleged to be the
8 violation.
- 9 8. Serial meetings are also prohibited under the Nevada OML if such serial meetings
10 constitute deliberations. In this case, the complaint and opposition brief do not
11 sufficiently allege a serial meeting or any serial deliberation. The facts alleged in
12 the complaint and opposition brief do not constitute a serial meeting as defined in
13 the Nevada Open Meeting Law or pursuant to the Nevada Supreme Court
14 decision of Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d 770 (1998).
- 15 9. The agenda items challenged by CRA for the January 2, 2014, County
16 Commissioner agenda are clear and complete in accordance with NRS 241.020.
- 17 10. The action of the Board of Commissioners did not exceed the scope of the clear
18 and complete agenda items. NRS 241.020(2)(c)(1) requires that discussion at a
19 public meeting cannot exceed the scope of a clearly and completely stated
20 agenda topic. Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d
21 902, 905 (2003). The Board complied with the applicable provisions of Nevada
22 law with respect to the agenda topics.
- 23 11. CRA has not stated a claim under the Nevada Open Meeting Law.
- 24 12. The Commissioners made adequate disclosures related to CMI prior to
25 consideration of the agenda items and decision on the CMI Applications.
26 Therefore, the Commissioners were allowed to deliberate on the matter. See
27 NRS 281A.420(1).
28

- 1 13. A public official who properly discloses the items mentioned in NRS 281A.420(1)
2 is permitted to deliberate and vote on the matter in question unless the "judgment
3 of a reasonable person in the public officer's position would be materially affected
4 by" the disclosed item(s). NRS 281A.420(3).
- 5 14. A public official is presumed not to be materially affected by the gift, loan,
6 significant pecuniary interest, or commitment to another's interests if the benefit to
7 the public officer is not greater than that accruing to any other person affected by
8 the matter in question. NRS 281.420(4).
- 9 15. The complaint does not contain sufficient allegations to support a claim that there
10 was an actual or perceived conflict of interest requiring that any Board members
11 recuse themselves from the decision under the relevant standards set forth in
12 Nevada and federal law.
- 13 16. Nevada law does not require recusal based upon campaign contributions if they
14 are properly reported. See NRS 281A.420(2)(a); Nevada Attorney General
15 Opinion 1998-29.
- 16 17. CRA has not stated a claim for violation of due process in the Complaint in file
17 herein.
- 18 18. The Lyon County Commissioners have ultimate authority to make changes to the
19 master plan pursuant to NRS Chapter 278 and NRS 278.220. If the County
20 violates NRS 278.220, the statute provides a remedy. NRS 278.220 states quite
21 clearly that no change may be made.
- 22 19. NRS 278.220 carries its own remedy in that before that change can be made,
23 which the court understands that the Board of Commissioners has the ultimate
24 authority, it still requires a report by the Planning Commission. When the county
25 makes a change that change may or may not be beneficial and that's the reason
26 that the Planning Commission or why the statute states that the Planning
27 Commission must make a report. The Comstock Residents argue that the county
28

1 put the cart before the horse. The Court agrees. The violation of NRS 278.220 is
2 not dismissed.

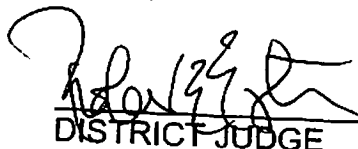
3 Based on the foregoing, and good cause appearing,

4 IT IS HEREBY ORDERED that the Motion to Dismiss with respect to the First Cause
5 of Action, Nevada Open Meeting Law Violation, is GRANTED, and the First Cause of Action
6 is DISMISSED with prejudice and without leave to amend.

7 IT IS FURTHER ORDERED that the Second Cause of Action, Due Process, is
8 GRANTED, and the Second Cause of Action is DISMISSED with prejudice and without
9 leave to amend.

10 IT IS FINALLY ORDERED that the Motion to Dismiss the Fourth Cause of Action,
11 NRS 278.220, is DENIED.

12 Dated this 2nd day of December, 2014.

13
14 : 
15 DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

3 JOHN L. MARSHALL
4 SBN 6733
5 570 Marsh Avenue
6 Reno, Nevada 89509
7 Telephone: (775) 303-4882
8 Attorney for Petitioners Comstock
9 Residents Association & Joe McCarthy

10 IN THE SUPREME COURT OF THE STATE OF NEVADA

11
12 COMSTOCK RESIDENTS ASSOCIATION,
13 JOE McCARTHY

14 Appellants,
15 00128

No. 68433
District Court Case No. 14-CV-

16 v.

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Respondents,
21 _____/

22
23 **JOINT APPENDIX**

24 **VOLUME 27**

25 **PAGES 3625-3748**
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014).....	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015).....	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014).....	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015).....	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014).....	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014).....	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877

135
encroaching zoning, to encroach by enlarging, or preserving, more of the open space that what could be termed an urbanizing area. But then let's focus on the physical constraint of the property to conclude the analysis as to whether or not it is spot zoning. We know that to the south of the property, and we saw that in the view from the south, we saw that it is mountainous, we saw that we are looking at Grizzly Hill. We know that this area extends up along the lower portions, or almost up to the top of Grizzly Hill, and extending all the way down to the lower portions. If you continue the zoning in the way it is, I suppose you could hang 150 houses someplace on this site, but I don't think that makes any sense to do this. I say hang because that's the only way I could see doing it. It is consistent with the zoning that is along the line to the west. That's the line we're talking about. The section line that is in question runs right down through here or right through this area." (Referring to map). "On the other side of that is RR-5, on the other side of that is RR-5. The other line, which runs on the south, is in this area here." (Again, referring to map). "This is RR-5, and extending on further to the south so it's on the other side of what would be the ridge line. That is RR-5. It is consistent with that area to the south of it. The physical constraints, the topography of the property, one could argue, could allow, maybe three dwelling units per acre, ten acres parcels, twenty dwellings. Twenty acre, which might get one or two dwelling per acre. That, to me, does not make any sense, to allow it to continue in the urban area, because it's not an urban area. It doesn't have the physical properties which allow for it to be developed into anything other than the rural setting that is presently there. Silver City, as you can see from the photographs, when you look from the Knapp Residence, you don't look at five or six residences in front of Mr. Knapp's house, or Mr. Young's house. Or when you're looking at it from the Town Site, you don't see an urban area, you see essentially, a rural area. Grizzly Hill is that character and that character should be maintained, and it is not, in my judgment, spot zoning. It is actually, as Mr. DeAguiar said, an internal inconsistency in the General Plan that should be rectified. If there are no more questions, that would conclude our presentation solely on the Land Uses. Now, as Mr. DeAguilera says, it's hard to really stand before you and not talk about what we all know is going to happen to the property. But, certainly we appreciate and understand what Mr. Rogers is saying, while I think it might of helped for all of us to do that, we have to go by the rules that you have outlined, and I would hope the Silver City Resident's Association will do the same when they make their presentation, and stick solely to the issue of the zoning."

There were no questions of Mr. Peek.

Chairman Manor then called for the Silver City Residents Association presenter to the Board.

Mr. John Cobbey, Chairman of the Silver City Town Board, addressed the Board. Mr. Cobbey stated that the residents of Silver City are unified and overwhelmingly opposed to both the requested zoning change and the potential for having an open pit in the middle of their town. He further stated that they simply feel that an open pit operation in the middle of town is not compatible with the lives that the residents want to lead. He said that the town is not anti-mining, and they resent any attempts to portray them in that light. He went on to say that the residents do not feel that a vote by the County Commissioners to deny mining, or deny the zoning change, is going to be construed by the

rest of the mining industry as somehow being anti-mining. He said that the mining industry does not view it that way either. He also said that statements have been made by some that the residents of Silver City are somehow "Johnny-Come-Lately's" who chose to move into a mining camp and now that they are there, don't want to see mining come in. Mr. Cobbey stated that the opposite is true. He further stated that Nevex came in as a "Johnny Come Lately" because when they started their operation, they were most certainly aware of the zoning requirements of the area, and also the requirements of the Special Use permit. Mr. Cobbey concluded by saying that the information that will be presented to the Board today will be adequate for a decision both to deny the zoning change and later, if it had to go that far, the Special Use Permit.

Mr. Gary Owens, representing the Silver City Residents Association, addressed the Board. Mr. Owens stated that the speakers would be addressing both the current zoning of the property, NR-1, and the requested zoning, RR-5, and the permitted uses in the zoning districts. He further stated that there would be testimony on what mining is and what the impacts of mining are. He said that if the Chair felt this out of order, they would respect the Chair's gavel and not address it. He asked the members of the public and the members of the Silver City Residents Association, and others opposed to the application to please stand. Several members of the audience stood.

At this point a slide presentation, prepared by the Silver City Residents Association, was shown to the Board and those in attendance.

Mr. Gary Owen the introduced Ms. Mimi Rodden from the President's Council on Historic Preservation.

Ms. Rodden stated that in response to the applicant's zoning request, she suggested that not only the residents of the area would be affected, but also many other historical places. She stated that the Council does not oppose mining, just destruction of the environment caused by modern technology. She stated that there are less than one thousand historical landmarks in the United States, with five being located in Nevada. She reminded the Board that the Comstock Historic area was one of the first mentioned when the program began in 1961. She stated that it is comprised of 14,760 acres and it is important because of the entire area. Virginia City, Silver City, Gold Hill and Dayton comprise the living areas of the district. Many people in the area and many visitors to the area drive by the large pit in Gold Hill daily. She stated that each day we are reminded of the magnitude of the destruction that modern technology does bring to the land, and what is produced by modern mining methods. She said that we are reminded also of the permanency of the disseminations visible. She also said that open pits are not always safe, pretty, appropriate or necessary. She stated that often when mining in a highly sensitive area, sensitive to the entire world, one has to use special techniques. Ms. Rodden then presented and made comments on slides of the following areas: The overall view of Virginia City, the modern view of Virginia City, the Mexican Mine Site, the Yellowjacket Mine Shaft, the Suro Tunnel Site, an image of dredge tailings at the mouth of Six Mile Canyon, a typical vertical shaft, a picture of the Houston Oil and Mineral Pit at Gold Hill in 1980, the Gypsum mine at Mound House, United Mining Pit in Virginia City in 1985, the Haywood Santiago Pit, Houston Oil and Minerals Pit in Gold Hill in 1985, the overall District looking up Gold Canyon. She then showed computer generated views of the potential of the zoning question. The slides showed the current view of the proposed pit

137
site and the view after mining activity has taken place. Ms. Rodden stated that the historic importance of the district is something that is not only the responsibility of the residents of Nevada, but also the responsibility of all the people in America who care about the history and what it can teach to the children. She further stated that for that reason, this has been designated a National Historical Landmark. Ms. Rodden reminded the Board that there have been some lessons in the recent past, a situation with the Fernley Cement Plant a few years ago, the mining operation of Anaconda in Yerington, the pit filling with water and the alterations to the ground water system. She said that we have had to deal with Houston Oil and Mineral's Operation in Virginia City and Gold Hill with the slippage of the road, the blasting activity that affected the lifestyles. She further stated that it has undermined the integrity of the historic district and altered the way people can live and the way in which they have traditionally lived. She noted that many people had to leave the area. She said that the blasting, the haul roads, the heavy equipment necessary for mining all are things that are measured impacts to the historic integrity of the district. She said that she thinks that the Board should be looking at the secondary impacts of such an activity. She also said that the obvious things are talked about frequently, but the secondary impacts are just as important and they will certainly have a dramatic impact on the economy. She noted that tourism is still the main bloodstream of the State of Nevada and all the tourists who come to Northern Nevada go to see Virginia City and the district. She asked that the Board consider that this has long range impact and it is not the beginning of something small. She asked how long the activity would last in the area, how long the changes would last in the area. She suggested that they would last more than the physical activity of mining. She asked if it is a price the County and residents are willing to pay, or is it too great a price. She asked what the possible areas of mitigation would be to reduce the impact to the National Landmark District.

Commissioner Adams noted that Ms. Rodden said she does not oppose mining. He asked if she had a chance to review the Nevex application with respect to their proposed mitigation measures?

Ms. Rodden replied that she had. She stated that she believes the relocation of the buildings to be unacceptable from a sound preservation view because you cannot relocate something for the convenience of something else. She further stated that the suggested avenues for mitigation for mining are purchase of land and are not appropriate for the retention of the integrity of the District and that is where there is a serious problem.

Commissioner Adams asked if for some chance they (Nevex) purported to be able to 100% mitigate the situation as a result of their operation, would Ms. Rodden change her mind?

Ms. Rodden stated that she would like to know how one mitigates a visual scar that is so obvious for such a long distance in a short period of time. She further stated that perhaps the ideal mitigation would be shaft mining, which is not economically practical, so that the compromise would be reached. She noted that we are talking about a very large visual scar, the relocation of a number of buildings, the impact of the haul roads and a number of other things, the blasting, the noise, and the dust. She did say that they could water, they could replant, they could even build a berm to hide a portion

of the scar, but it would be a number of years before there would be any vegetation on the burn, and the scar still exists in the background. She stated that it is a difficult question. She further stated that she has reviewed the additional information provided by Levee and she does not find it to be sufficient.

Commissioner Cummings asked if Ms. Rodden is suggesting that the Historical Landmark will be destroyed or just endangered?

Ms. Rodden stated that it is endangered now, and has been endangered since 1981 or 1982, by those people who set the standards, that being the National Park Service. She further stated that it is endangered for a number of reasons, the primary reason being the usual scar of the huge pit in Gold Hill, the subsidence of the road, the sloping of the pit, the removal of the families from the seven structures that bordered on the pit because they couldn't exist there with the blasting and the noise. She stated that it threatened the integrity of the district enough to put the district on notice. She further stated that the district is very closely monitored and watched.

Mr. Owens then told the board that he has available Mr. John McClain and Mr. Arvin Tebeau from Resource Concepts, Inc., who would be happy to answer questions regarding reclamation, dust and noise. He stated that they would not be testifying. Mr. Owens introduced the next speaker, Mr. William Jenkins, a real estate appraiser.

Mr. Jenkins gave a presentation on the land values in Silver City and how they will be affected by the Open Pit Mining Operation. Mr. Jenkins presentation was also presented to the Board in written form and is on file as an Exhibit in this matter. Mr. Jenkins, in addition to reading his written presentation, stated that an important thing about a mining operation in Silver City is that it would wipe out any possibility for conventional type financing in the town. He further stated that when someone submits an application to a lender it goes along with an appraisal. A very important part of the appraisal is a section that talks about neighborhood and site, and refers to zoning, and wants to know if a use change is underway, whether there are protections from detrimental conditions and things like that. He said that any appraiser would have to note that there is a mining operation. He went on to say that this would scare the reviewers, however, there is nothing in writing that says they could not approve that loan, but common sense would tell them that residential uses and heavy industrial uses don't mix and there would be nothing to tell them otherwise. In conclusion, Mr. Jenkins stated that the Nevex people have been saying that the subject property cannot be built to a density of seven-thousand square feet and certainly they are right. Mr. Jenkins went on to state that he has looked at the property and just from standing across the street looking at topos and maps, he can identify at least seven homesites. He said that if it was properly engineered, there could be a lot more, maybe twice as much, without disturbing any of the historic structures on the property, including the Dayton Mill Site. He did note that septic tanks are a difficulty throughout the Comstock, but they always manage to get them in. He further noted that there is plenty of water to support seven to fifteen homesites on the property, and if seven homesites were put in it would be a development of one home-site per five acres, which would be permissible under the NR-1 zoning, but not permissible under the RR-5. He stated that there is definitely a residential use for the property, it not condominiums or a full density of one unit per seven-thousand square feet.

Commissioner Adams noted that Mr. Jenkins stated that the zoning is not proper as

it currently exists.

Mr. Jenkins stated that the zoning is proper, very proper. He further stated that if there was to be one unit per five acres, that would be compatible with the NR-zoning, it would be allowable to do that. But if there was R-5 zoning, it could not be done.

Public Works Director Bill German pointed out that what Mr. Jenkins is implying is that the highest and best use of the NR-1 cannot be obtained on this particular property.

Mr. Jenkins stated that the highest and best use is seven to fifteen homes on the property, which can be done on the NR-1 zoning, but not on the R-5.

Commissioner Adams asked Mr. Jenkins if he agrees that the Spot Zoning issue which was the dominant issue with regard to the Planning Commission recommendation, is an appropriate reason for their action on the zoning?

Mr. Jenkins stated that in that it would be an isolated decision, yes, for the benefit of one piece of property.

Commissioner Adams noted that there was some information in the applicant's booklets that he recalled was some references to assessed values and values of the Silver City properties during the early eighties, that reflects a record that values did not decrease, that they in fact increased during the time that there was an increased activity in mining. He asked if Mr. Jenkins was aware of this?

Mr. Jenkins stated that his figures for Silver City show a reappraisal in 1983-1984 and there was a significant rise in the values in Silver City.

Chairman Manor stated that she felt that all areas in the State increased in value at that time. She further stated that it was an indicator of the market, not necessarily mining activity.

Mr. Peek noted that the values went up during the time that the mining was going on at Gold Hill.

Commissioner Adams stated that the only reason he made that reference is because it appears to be the center of some argument with regard to economics. He further stated that he knows that he has read information in the Silver City response with regard to questions on those values.

Mr. Jenkins stated that the reappraisals were before the pit in Gold Hill was started.

Commissioner Adams indicated that the question is do those activities and will this activity affect the values of Silver City as a result of an approval.

Mr. Jenkins stated that it would. He promised that the opening up of a non-compatible industrial type use would impact financing and would wipe out any new construction.

Commissioner Adams asked Mr. Jenkins if he would object to an open pit mine way out in the sagebrush, away from the Silver City Townsite?

Mr. Jenkins stated that he would not object, that he would be for it completely. He said that the company should be encourage to mine, just not in Silver City.

Commissioner Cummings noted that there was mention of an appraisal at Gold Hill. Prior to the pit, he inquired of Mr. Jenkins regarding this.

Mr. Jenkins stated that he spoke with Jack Flanigan who said that the appraisal

was done right before the pit got started.

Commissioner Cummings asked if there was an appraisal after the pit was opened up?

Mr. Jenkins stated that there is one in the process of being done right now and Mr. Flanigan stated that there isn't a whole lot of activity and that the sales are really "flat".

Commissioner Cummings asked if that would affect, or is currently affecting, financing in Gold Hill?

Mr. Jenkins stated that he is not aware of any financing that has gone through since the operation started. He noted that he has just spoke with Mr. Flanigan, he has not done a comprehensive study of the area.

Commissioner Cummings asked if Mr. Jenkins has a percentage of growth for Silver City?

Mr. Jenkins told the Board that he looked at the rise in assessed value starting in 1983-84 and ending in appraisal year 1986-87, a span of three years, which showed an increase of 37%. He said that the obvious thing to do would be to divide it by five since it represents an entire appraisal cycle and that shows a 7 to 10% per year increase in assessed value. Mr. Jenkins noted that he looked to see if that was an isolated phenomena, and indeed, it was right in line with Central Lyon County, per charts provided by the Assessor's Office. He stated that this is an astronomical rate of growth. He further stated that as Carson City grows, the market for Silver City will grow.

There were no further questions for Mr. Jenkins.

Mr. Owens introduced the next speaker, Dr. Jeanne Wendel, a Professor of Economics.

Dr. Wendel presented and commented on slides of charts. The charts indicated the following items: Assessment values. On this item, Dr. Wendel indicated that she had also poke with Mr. Flanigan and he indicated to her that the appraisal values in Gold Hill had nothing to do with the mining. There was some discussion about the appraisals of Mr. Benjamin Wesners property. Dr. Wendel then went over a slide regarding the value of the se. She stated that Nevex has given figures for a number of jobs, employment, taxes generated, benefits that would come from having a more industrial type of use in the neighborhood. She further stated that she felt the taxes, jobs and personal income were ere not overwhelming in comparison to the rest of the County. She then commented on the act that on Nevex' Geologist's Report, under the category 'Ore Reserve Classification', t has just one sentence: "Under the definition cited above this reserve is classified ossible". She stated that reserves can be classified as proven, probable of possible. he further stated that the Securities and Exchange Commission would not allow the use of he words Ore or Reserve in a Security and Exchange Commission filing in connection with ossible reserves because they view them as so "iffy" that they would view that as isleading the public. She said that this indicated how risky or how unlikely or how low uality the information is indicating that there is even something on the property.

Commissioner Adams asked if Dr. Wendel was trying to make a point that the Nevex mployment and tax revenue figures are insignificant?

Dr. Wendel stated that her point was that all businesses generate taxes, mployment and income, but that Nevex is a small business. A business employing ten to

fifteen people is a small business. She went on to say that the taxes that they are paying are not an overwhelming dollar amount. She noted that ten to fifteen jobs, gain them or lose them, "it's not the end of the world".

Mr. Owen told the Board that this would conclude the case of the Silver City Residents Association. He further noted that he would reserve his time to present a closing argument subsequent to the public testimony.

This was acceptable to the Board. Chairman Manor then told those in attendance that the meeting would recess for five minutes and all those wishing to speak would be asked to print their name on a sheet and they would be called to testify.

 A recess was taken.

 Back in session, Chairman Manor presiding.

The first member of the public to speak was Gayle Sherman, a ten year resident of Silver City. Mrs. Sherman told the Board that she recently tried to sell her property and home in Silver City. She stated that the buyers backed out due to the proposed mine. Mrs. Sherman was opposed to the Nevex Project.

Commissioner Cummings asked how far Mrs. Sherman's home is from the proposed pit site?

Mrs. Sherman stated that her home is about mile from the site and her dining room faces the site.

Sandra McCormick, a sixteen year resident of Silver City, addressed the Board. Mrs. McCormick told the Board she has invested her inheritance in a Federal Tax Act Rehabilitation Project in Silver City. She stated that the house which she has had rehabilitated must remain rented for five years. She further stated that this investment is substitute for an IRA or Social Security. Mrs. McCormick told the Board that the open pi mining project could seriously affect her investment. Mrs. McCormick was opposed to the Nevex project.

Casey Mulhern, an employee of Nevex Gold Company, presented a song, which he wrote, regarding the mining project. Mr. Mulhern was in favor of the Nevex project.

Bob Elston, a sixteen year resident of Silver City, addressed the Board. Mr Elston stated that he has a business in the community. He further stated that he has invested a large amount of money in his home and in his business. He noted that he would not have done that if he did not have the protection of the NR-1 zoning. Mr. Elston was opposed to the Nevex project.

Jeff Smith, an employee of Nevex Gold Company, addressed the Board. Mr. Smith told the Board that Nevex may not employ as many people as the University of Nevada, but they are people nonetheless, and their jobs are important to them and their families. He went on to say that mining has made significant contributions in the past to the State and to Lyon County. He stated that he believes it can again make significant contributions Mr. Smith told the Board that if the employees of Nevex are going to lose their jobs now because mining has become unfashionable, then he hoped that someone would be ready to pledge their support to the employees and their families.

Lori Costen, Silver City resident and Vice-Chairman of the Silver City Town

Board, addressed the Board. Ms. Costen noted that the last time she was before the Board it was to discuss the Silver City Town Budget. She stated that the decision the Board makes today will impact Silver City far more than any budget. Ms. Costen told the Board that it has been said that the Lyon County Mining Ordinance will kill mining in Nevada. She indicated that this is not true. Ms. Costen was opposed to the Nevex project.

Susan Stornetta, Silver City resident, addressed the Board. Mrs. Stornetta told the Board that her home is her major life investment and the zoning change that is proposed will threaten her property value. She stated that it is insulting that Nevex wants to mine such a low grade ore body just in order to keep the mill going and to employ the people who come down from Montana, at a time when they can't strip mine coal in Montana. She stated that the people who are involved in mining could find ore somewhere else and continue to come here and keep the mill going. She indicated that the ore body is not that intense. Mrs. Stornetta was opposed to the Nevex project.

Bonnie Brown, a thirteen year resident of Silver City, addressed the Board. Mrs. Brown told the Board that her family has a house directly across the highway from the proposed pit. She asked that the zoning change not be approved. She stated that they live in the narrow part of the canyon and look directly up the hillside at the old structures and the headframes. She went on to say that since they are within the townsite, that residential property is very important to them. She stated that her family would certainly prefer housing. Mrs. Brown was opposed to the Nevex project.

Jonathan Davis, an eight year resident of Silver City, addressed the Board. Mr. Davis told the Board that he was a member of the Citizens Panel that wrote the Special Use Permit Ordinance in Lyon County. Mr. Davis stated that since that time he has been harassed about the ordinance. He stated that he brings over \$80,000.00 a year into Lyon County by commuting daily to Reno. He further stated that he bought his house in 1979 for \$50,000.00 and is currently involved in rebuilding it for an additional \$20,000.00. Mr. Davis stated that at present it is not legal to mine the rock, nor is it possible to make a profit on gold and silver in Grizzly Hill. He further stated that at present a lot of people have invested legally in Silver City. He said that the Board has before it a group of speculators who, although they know it is not legal to do it, are asking the Board to change the law so "they can make a buck". Mr. Davis said that it would be changed at the expense of those who have legally made their investments. Mr. Davis was opposed to the Nevex project.

Darrell Scholle, an employee of Nevex Gold Company, addressed the Board. Mr. Scholle noted that he is not from Montana, he has been a resident of Lyon County for two years. He stated that if he doesn't have his job to support his wife and two children, who will support them? Mr. Scholle stated that he does not understand how the land value can go down when the County is and will continue to grow. On the subject of the open pit, Mr. Scholle told the Board that he has one near his home in Dayton, and does not mind the affects of it. Mr. Scholle was in favor of the Nevex project.

Edward Burnet, a one year resident of Silver City, addressed the Board. Mr. Burnet told the Board that he had an opportunity to move to Silver City and purchase a house. He noted that it is a lease option deal and he is concerned about being able to eventually finance. Mr. Burnet was opposed to the Nevex project.

Ted Lord, six year resident of Silver City, addressed the Board. Mr. Lord told

the Board that he purchase a home in Silver City and spent \$40,000.00 remodeling an adding on and decided at that time it was appropriate to refinance because the home met all the Uniform Building Codes. He stated that he contacted four lending institutions in the State of Nevada. He further stated that they told him that everything was fine except for that the home is in a mining town and they don't lend in mining towns. Mr. Lord said that he told them it was zoned residential and they said the zoning could be changed. He indicated that he then contacted a mortgage broker who suggested that he try a California Institution. He said that they did find a Mortgage Company in California who lent him the money. He went on to say that since then, when the pit issue came up, he contacted FHA to see their feelings about it. He said that they would not loan there if there is active mining going on. Mr. Lord asked for a letter to that effect and FHA refused. He stated that he contacted FHA Legal Counsel in San Francisco and they told him that legally they cannot deny the loan for that reason, unless the pit is on the actual property, but emotionally they would because there is a loophole that says the application won't meet the requirements of FHA and they are not required to go into detail. Mr. Lord was opposed to the Nevex project.

Mr. Allen Frenzel, a six year Silver City resident, addressed the Board. Mr. Frenzel told the Board that he lives on Dayton Toll Road just across from the proposed mine site. He stated that he does not care about the property values. He told the Board that he likes to hear the sound of chickens next door, not the sound of bulldozers. Mr. Frenzel was opposed to the Nevex project.

Mike Donovan, a Silver City resident, addressed the Board. Mr. Donovan told the Board that he has an existing mill in Silver City. He stated that he has a house that has been in his family since 1907. Mr. Donovan stated that the house is under a VA loan. He pointed out that all the people living in Silver City chose to move into a town that was a mining town prior to their coming there. He stated that no one can tell him the value and history of his mill, of his father and grandfather and what mining means to the State of Nevada. He noted that you look at what mining does for the rest of the State. He said that most of the rest of the counties have some mining going. He noted that the mining community of Silver City was there long before any of the people who live there now were even born. He stated that there is more mining in the State of Nevada than there is in most of the Western States because of Nevada's attitude toward mining. He told the Board that they have a choice to make, and it's far reaching beyond this project. He stated that the people made their choices and they should have to live with it instead of trying to change everything that is around them. Mr. Donovan was in favor of the Nevex project.

Chairman Manor then called for Mr. Gary Owen, representing the Silver City Residents Association, to give his closing remarks.

Mr. Owen made the following closing statement (verbatim from the tape recording of the meeting): "Madam Chair and Members of the County Commission, again, my name is Gary Owen. I'm the attorney for the Silver City Residents Association and we are here in opposition to the appeal filed by the Nevex Mining Company. Prior to my substantive remarks, I would ask that the administrative record of this proceeding reflect the following documents, if I have the concurrence of the Commission: 1) The Nevex application, consisting of two volumes and two volumes of supplemental documents which were recently filed; 2) The Silver City Residents Association response to the original applica-

tion and Mr. Jenkins Report which was filed with you today; 3) The summary transcript, excellently prepared by Ms. Glock, of the Planning Commission meeting June 17, 1986, tape recordings of that Planning Commission meeting which I have to submit to you, and I will do so after this meeting, maps, graphics, photographs of the Planning Commission hearing and the hearing today, introduced and discussed, all correspondence to the Board of County Commissioners and the Planning Commission and finally the Master Plan of Lyon County, 701 Planning Project dated August 1971 and the zoning map related thereto. Those I request be in the administrative record for the purpose of the consideration of the zoning as opposed to the Special Use Permit. It's going to be somewhat difficult, but that's the relevant matter that we're looking at here today. Is that acceptable Madam Chairman?"

The Board agreed with these exhibits and ordered them marked and admitted into the record.

Mr. Owen continued as follows: "Let's talk about planning and zoning. That's what we're here today for. The rezoning request that's before you today must be consistent with the goals and policies and the standards of your Master Plan. We respectfully submit it is not, that the zoning MR-1 is, and to do that we don't refer to what the witness for the appellant, Mr. DeAguilera, refers to as several themes involving planning and zoning in Lyon County. Well, we can all extract themes from a General Plan, but this General Plan isn't built on just themes, it's built on some specifics. Now let's take a look at those just for a moment here. First of all, the plan sets forth land use standards, one referred to earlier by Mr. Jenkins, 'objectionable, hazardous, dangerous and incompatible uses of land should be prevented from intruding upon residential uses' - page 48. Also on page 48 - 'new development should be specifically oriented to unique topographic and landscape concerns with a strong emphasis on averaging densities, and I would like you to recall that specifically and with emphasis, 'averaging density'. Number three, Industrial lands - 'You should reserve the land properly zoned for industry in relation to other uses and avoid intrusion industry into incompatible or other uses, such as residences' - page 49. The plan also, in Chapter 9, identifies the problems. Of course, it was foreseeable back in 1971, that Lyon County, a county growing at that point and this point, at tremendous rate, was going to have some population problems. So the question is is what's the quality of the growth going to be. Well, on page 67 of the plan it says, 'only ordered development is necessary to equate to this growth, and need not be subservient to it. It is therefore stipulated that county policy will be oriented to proper and intelligent development and not exploitation'. Now let's check into the goals and policies of the plan, set forth in Chapter 11. Page 101 - Goal - 'Encourage and require community development in keeping with the County's adopted General Plan'. The Planning Commission, when it took it's action in June, did not say that the General Plan and this zoning request are consistent. The transcript, which will be before you, of that meeting, says that by amending the zoning, we're not changing the Master Plan. That's all they said. They never made a finding of consistency and there's no way you can make those words out of what the words are in that transcript. Goals and Policies, Number 1 - Protect the environment, encourage community attractiveness by developing methods to enhance visual appeal, control unsightly conditions, especially if visible from highways'. These again are plans and goals from your Master Plan Text. C - 'Protect open view', this is on page 101, 'Water sheds, natural and manmade amenities from development that

would destroy ecological values and reduce the county's desirability to the local resident and tourist.' Page 103 said, if we're going to go through this planning exercise, basically, the zoning ordinance we had back then isn't going to cut it. So we're going to have to review that zoning ordinance and come up with a new ordinance, and that's what happened. That new ordinance prescribed the exact zoning which is present on this property today, NR-1, and one thing that hasn't really been touched on too much, thus far, is that NR-1 property is within the Townsite, the townsite boundaries of Silver City. The RR-5 that you see there on the west and on the south, assuming up is north, which it isn't (referring to map), anyway, the RR-5 adjacent, that's outside the town boundaries. I think that is an extremely significant point for you to consider today. Do you think the zoners wanted a mine in the Town site. Had they wanted a mine in the townsite, don't you think they would have zoned it appropriately. They did not, and I submit their act speaks for itself. It was a purposeful act of zoning and planning. Page 103 and 104, again the Goals and Policies - 'Encourage use of natural resources to meet tourist needs by way of historical sites and increased tourist use.' We all know the importance, both federally and statewide, as Ms. Rodden testified, to the historic district and it's amenities in the Comstock. It's one of the very few in the United States. It has a dignity equal to that of the Statue of Liberty. It has a dignity that is a very important part of our nation. It has a dignity very important to this State. It has a dignity important to the western United States and, I submit, to this country as a whole. Again, Goal and Policy, page 10: - 'Keep non-compatible and disruptive land uses be phased out of residential zones. The county should provide zoning and other regulation to improve neighborhood stability and increase property values and desirability'. That's why we had discussion today about property values and desirability. That's certainly germane to a zoning and planning exercise. That's what is before you today, as opposed to the use permit. We must always consider the stability and the property values that are going to result, one way or another, from a zoning or a re-zoning. Now let's talk about what the RR-5 request does and how it squares with the standards and the comments and the plans and goals of you plan. Let's see how they square. Does the land use plan and the General Plan allow mining in Silver City. NR-1 speaks for itself, the answer to that is no. I submit that was a deliberate planning act to protect the townsite of Silver City, its residents, its commercial development along the strip and its ability to grow as an urbanizing area which was recognized at Plate 12 on page 70 of the Master Plan. It is an urbanizing area it was recognized as that in 1971 and I submit to you, that's what it is today. Secondly with the proposed pit, which is in generic terms, an RR-5 matter, because the RR-5 permit mining, is that going to have any proximity to the homes in the area, because your plan requires a separation of 'living and non-living areas'. I would submit to you there's no separation. If you look at this map and see the outline of the subject property, there's no separation between that property and the residences and commercial businesses in Silver City. You have, in essence then, an urbanizing area into which this application would encroach with a massive industrial project. The pit, therefore, equals intrusion into designated and developing residential area. It's one of the specific concerns of you Master Plan. The pit, or excuse me, RR-5 zoning, in this case, which permits mining as we all know, would conflict with the historical emphasis for a tourist attraction and economy in this area. The lifeblood, the economy of the Comstock, at this point in time, is

145

146

tourism. The economy is dependent upon people driving up there and having an ambience and an experience of wow, this happened back when and this is important. I'd like my kids to learn about this. I'd like to know about it myself. I want to come back someday. I might spend some bucks here. I might want to come here and live here. I might want to even restore one of these dwellings. If you're going to have that kind of emphasis, which your plan has, to allow mining within that very sight, I would respectfully submit you'll deviate from the historical emphasis your plan prescribes. Damages to individual appeal of Silver City, I think the graphics themselves speak to that issue. Now let's talk about whether NR-1 is a proper zone. We've had quite a bit of discussion about that. Is this really an appropriate zone for this property? First of all, the NR-1 zoning was a purposeful endeavor by this body after lengthy hearings. There's a Court Case, the Griffin Case, that attests to it. Hearings which said, basically, in this instance it seems to make more sense to have it NR-1 than something else. I'd wonder why. I haven't read all those transcripts, but it seems to me we have a townsite here. We have an intricate unit. We have a unit of an urbanizing area. Would it make sense to zone that for something that would allow mining. I submit not, and I submit that's why it didn't have it. The zoning NR-1 permits single family dwellings on lots in excess of seven-thousand square feet. I emphasize "in excess of". No one, nowhere, can tell you that you have to put one house on every seven-thousand square feet of that land. That's just not proper planning, it's not done. I would submit to you that most planning entities, the applicants before them, probably come in with a compromise on the density. Rarely do you see the maximum density allowed unless it's just absolutely sterling and there's no questions about it. Usually you come in, okay, the maximum is so many units, but we're going to go in for less. Therefore, that's a minimum. Seven-thousand square feet is a minimum. It's not a must. It doesn't say thou shalt develop this every seven-thousand square feet for a home. Now, the mine site, as I understand it today, maybe I have a misimpression, I thought the zone request was for twenty acres. I guess it's more like thirty five. But nevertheless, we've also been told about a twenty-five acre buffer site, which is just to the north. That's about a forty acre parcel, apparently owned by Mr. De La Mare, that's involved in this entire process, because the position of Nevex is if we're going to have this mine on this site we're going to buffer it and make a living versus non-living buffer by this twenty-five acres. It's interesting to note in their papers, however, that they concede that the twenty-five acre so called buffer site, can itself be used for residences. So you ask yourself - now wait a minute, we've got forty acres. Can't we use this for residences. Oh, but look, you can't handle quite the number of units over here because this is steep on the Nevex Pit site. You have a section of your ordinance which addressed that problem directly. Section 20.69.100 of your zoning ordinance. It says 'Areas over two acres which are difficult of optimum use, due to topographic nature, may be subdivided into lots or parcels of average density, equal to the respective zone classifications provided you don't exceed a certain minimum lot size'. I short, you could take the immanence of the steep property and put them down on the lower and flatter lands and give this land a manifestly reasonable use. Granted, it may not be the total number of units if you took seven-thousand square feet and divided it into this total acreage, but I submit to you you have a reasonable beneficial use. This section allows you to average densities. The plan even envisioned you averaging densities. So what you do is you take the units off a place

where they might not fit exactly right and you put them in another place and you give the a little break on the density. It's kind of like a P.U.D. I'm not suggesting P.U.D.s or condominiums, because I submit this parcel to be used for single families, very easily that is a reasonable use. In response to Mr. German's remark about what was the highest and best use, the law is clear as enunciated by the highest court in this land, the zoning need not effect the highest and best use. It must effect only a reasonable use and without a doubt, you have a reasonable use here under your current zoning constitution. Further, the emphasis upon whether NR-1 is appropriate versus RR-5, is a bit of bogus issue. I use bogus in all respect, simply to mean that that isn't really the point. The point of this is are we going to allow a mine here. It's not whether we're going to allow more residential units or a different residential zoning. The point is are we going to zone this land RR-5 for a mine. We can't possibly divorce our minds from the fact that this is for a mine, even though we're not into the merits of the permit, but the application speaks of a rezoning for a mine. That has nothing to do with how many residential units make sense in NR-1, or how many residential units make sense in another one. The point is you need not require that this land be used for a mine, and that the zoning application, the zoning of NR-1 is entirely appropriate to keep it that way, and rezoning that says you must use this for a mine, I submit to you, is not a proper application. Regarding the spot zoning issue, to which Mr. Peek alluded, I think he, respectfully, agrees to a degree with what I said. I won't say he conceded anything. Briefly, do think it's spot zoning because you can't ignore the townsite boundaries. The RR-5 land is outside the townsite boundaries. This is an encroachment inside the townsite boundaries for one purpose, that's to put a mine on it. That, for the benefit of a single party, in this case Nevex Gold Company, I respectfully submit to you, could be upheld a spot zoning. It's certainly not to the public benefit. That's one of the criteria. is

zoning for the public beneficial, or is it private? Madam Chairman, my time shows me four minutes. Correct me if I'm wrong. Therefore, I would submit to you that RR-5 zoning violates your very Master Plan, without a doubt. Now, in conclusion, Nevex, not the Silver City residents, but Nevex, bears the burden in this case. I would submit to you they have a very heavy burden because we have a lengthy planning process here. It's taken over a decade to come to this. This wasn't done by some whimsical thought. NR-1 wasn't just thrown in there because, hey that sounds great. That was a deliberate process and Nevex has to prove to you why that process wasn't carried out correctly. I would submit that it's a very heavy burden and it would be difficult to me. Your action, or course as you well know, is discretionary. Nothing says you have to grant this permit. I won't dwell on that because I'm sure you're more familiar with that part of the law than I am. Let's talk about mining though, generically, in terms of an RR-5 zoning. Mining is never given, legally it's not a given here because it's not zoned for it. Practically, and we discussed earlier, the economic practicability of residences, so I think I can just chat a moment about the economic practicability of mining. Mining is something that's somewhat speculative. I think we can all agree to that. I'm not sure I'm convinced that this is nothing more than pure speculation, from the standpoint of the economic structure and productivity of this mining versus the economic productivity of the residences. It's a risky request to have you rezone this land. Who bears the risk? Nevex bears a portion of it, I'm sure. They are going to invest time and money, and already have substantially. They

have excellent counsel and they are doing their very best. But do the people of Silver City and the people of Lyon County bear a risk? Absolutely. They bear the greater risk because this mining, if this zone were allowed, you're going to look at short term mining windfall and perhaps a problem, at the expense of a permanent scar damaging the tourist industry, the history, the lives and property of people who live in that area. There's where the risk really lies. In short, this is the very exploitation, I would submit, that our plan prohibits. If you deny this request, lady and gentlemen, you don't send an anti-mining message to the county, to the state and to the nation that Nevada and Lyon County is anti-mining. You don't do that at all. What you say is you want orderly, well planned sensible growth. This has an historical ambience to it that the normal mining situation just doesn't have. Mining has it's place and is an important thing in our state. Not for this place and not this time. Now, if you grant the permit or if you grant the change of zone, you're going to convey exactly the contrary message. You're going to tell the people of this state, of this county and maybe of the nation, because historical people all over the United States are interested in this, you're going to tell them that the tide of boom-bust is right back into Lyon County and you may be powerless to stand that tide. Finally, we ask for a vote for Lyon County's land, it's people, it's future and it's past. That's my conclusion Madam Chairman. We respectfully request that you deny the permit for the zone change. I'll be glad to answer any questions."

The Board reserved their questions until after Mr. Peek made his closing statement.

Mr. Stephen Peek, representing Nevex Gold Company, made the following closing statement (verbatim from the tape recording of the meeting): "Madam Chairman, my presentation in rebuttal is going to be broken into two sections, one will be presented by Mr. DeAguilera, addressing specifically the planning and the zoning issues. He is the expert in that field, I am not. I'm going to turn the podium over to him, allow him fifteen minutes and at the conclusion of his, take another fifteen minutes, because by my calculations we have about a half an hour left. If you think that's too much....."

Chairman Manor indicated to Mr. Peek that he has forty five minutes to make his presentation.

Mr. DeAguilera made the following remarks to the Board: (verbatim from the tape recording of the meeting): "Madam Chairman, Members of the Commission, this is a really tough one. I've been a City Planner, on the other side of the fence, as you are public servants, I was a City Planner for eleven years and sat through a hundred of these zoning hearings or more. This is one of the toughest ones I can remember sitting through. There are very legitimate concerns on both sides of these issues. I'm glad, personally, that we're hearing only zoning and not mixing in the mine project, because that makes it even much more complicated, so my job is easier because we're talking zoning, rather than the mining project itself, I'm glad for that. The zoning issue, it was stated by the appraiser and eluded to by the attorney that the zoning that exists now on this property which allows seven-thousand square foot lots as a maximum density was intentionally put here to preclude certain uses, specifically mining, I guess. This notion of zoning to preclude uses has a term and it's called exclusionary zoning. It's a legal term and it's term used in the planning profession as well. City Planners do not support exclusionary zoning. It's been used for a variety of purposes, some of them not very honorable pur-

poses, but the concept of zoning to exclude uses is not really ^{good} ~~good~~ planning, and it's not what city planning is all about. Can you imagine that, since ^{we} ~~we~~ refer to the Master Plan as a vision of what the community should be twenty years in ^{the} ~~the~~ future, let's turn the around then, let's say the zoning and the Master Plan are based on what we don't want to happen. So now the Master Plan is a vision of what we don't ^{want} ~~want~~ to be happening twenty years in the future. Well, you can see that would turn the ^{whole} ~~whole~~ notion of planning around the General Plan, the Master Plan, upside down. The notion ^{of} ~~of~~ zoning to exclude certain uses is not what zoning is about, and not what Master Planning is about. The Master Plan is a vision of what we expect and want to have sometime in the future. Ten or twenty years, whatever the plan is set on. I think that Mr. Smith, who is a very well known planner, understood that fact as well. I think there was an oversight when this property was zoned to allow seven-thousand square foot lots. Now, if we were talking about a property that was zoned to allow five acre lots, and then we were talking about is the right density five acre lots or ten acre lots, then this would all make a little bit more sense that, in fact, maybe it was zoned, but not quite correctly, and maybe it's okay to have it zoned for five acre lots instead of ten acre lots. We're talking about some property here that's zoned to allow seven-thousand square foot lots. Now we can say, well, but we really don't plan to have seven-thousand square foot lots there, and you can build on five acre lots even though the zoning allows seven-thousand square foot lots, and let's consider the planning logic to that for a moment. Let's say that we zoned this land, or an land in your community, for seven-thousand square foot lots, but we really know that the physical limitations of the land dictate that the zoning, that the use of the land, should be five or ten acre lots, as was referred to by the Appraiser as maybe being the right use for the land. Can you imagine that when Master Plans are prepared, and they show a density, seven-thousand square foot lots for example, the School Districts, the Fire Districts, the Water District, where there's Sewer Districts the Sewer Districts, the Power Companies, every single public agency that has to individually Master Plan for infrastructure, for power lines, for sewer, water, for police protection, fire protection all of them then go off and base their plans on the density that you showed on your Master Plan. You showed seven-thousand square foot lots and now everybody is out there planning for growth at seven-thousand square foot lots and everybody invests all this money in infrastructure for seven-thousand square foot lots and then the developer comes in and say, oh, I only want to build five acre lots so I don't need all your services. Here we've left all these public agencies holding the bag. They've invested all this money in infrastructure to support a density that they were told, by the Planning Agency, was being Master Planned, but no, we really didn't mean that. What we really meant was five acre lots. That's just not the way planning works. In fact, you have two other zoning district classifications: one, the RR-3 and one, the RR-4, that specifically allow five to ten acre lots. But this zoning for seven-thousand square foot lots as represented, for the purpose of excluding certain uses, knowing that the density couldn't happen anyway, or if it did happen, the environmental consequences would be so severe that we wouldn't want it to happen anyway, I'm talking about the grading and the visual impacts of developing this land for seven-thousand square foot lots, would be very horrendous as well. It doesn't make sense. The fact is there was an error made in zoning this property for seven-thousand square foot lots. It should not be zoned for seven-thousand square foot

lots, that error should be corrected procedurally, irrespective of the issue of the mine itself. The mining issue will come up in a Special Use Permit hearing, and there have been preparations made for that Special Use Permit hearing. Our company has prepared subdivision control plans, visual impact exhibits, which we have not presented because you said you wanted to do the zone first. When we get to that point we will present those things and we'll see how well we can mitigate the impacts of this mine. That's going to be the difficult problem, is mitigating the impacts of this mine. Nobody is ignoring that. We just haven't gotten there yet, but to state that the seven-thousand square foot lot zoning of this property is correct, it can't be justified on the basis of any legitimate city planning principal. The notion of spot zoning has been addressed. The RR-5 zoning that's being requested is adjacent to RR-5 zoning, again, the underpinning of your General Plan and the underpinning, in fact, of Nevada State planning law, is that development should occur which is commensurate with the physical limitations of the land. This land, the physical limitations, won't allow this land to be properly developed, environmentally soundly developed, for seven-thousand square foot lots. With respect to this notion of spot zoning, as I said, we're adjacent to property that's adjacent to RR-5, so it's not spot zoning. Furthermore, the notion of spot zoning is a notion that goes back many years in planning, to times before we had Master Plans. We would zone and that would be the only thing we had. Ever since there have been Master Plans, if the zoning is compatible with the Master Plan it is, by definition, not spot zoning. In this case the rezoning of this property to RR-5 is compatible with the Master Plan, and, in fact, is dictated by the Master Plan. I don't really see an alternative, except to zone this to RR-5, because it's not properly zoned right now, according to the Master Plan, and according to State planning law in Nevada. So spot zoning is really not an issue here and it really has not been an issue in the planning profession, ever since the requirement for Master Plan and that zoning conform to the Master Plan. If you conform to the Master Plan, it's not going to be spot zoning. The Master Plan provided for it. There is a separation proposed between living spaces and the mine, of some twenty acres and it's been pointed out that that twenty acres is not included in the zone change. I suppose that you could initiate, of your own accord, a rezoning of that twenty acres to a lower density, or you could, I suppose, ask the applicant what their thoughts are about backing up this proposal with this twenty acre area becoming a buffer. That could be worked out. The last point is the notion of this transferring density, the attorney pointed out that your zoning ordinance allows for the transfer of the density off the steeper areas onto the flatter areas and that's the way in which you can define this zoning to be compatible with the General Plan. That is, you would transfer the seven-thousand square foot lot density to a flatter area. There's not very many flat areas, but beside that, we're dealing with such a large density allocation in seven-thousand square foot lots. If we're dealing with five acre or ten acre lot zoning and you transfer it and you have a few units in a relatively flatter spot, maybe you could get away with transferring the density and determining that the zoning is compatible with the Master Plan. My conclusion, my staffs conclusion, we talked about this within our company at length and we're all city planners, is that we can tell you with certainty the zoning that you have there right now is not compatible with your Master Plan as your Master Plan is written. It should be changed and then we'll have a tougher issue to deal with, and that's the mine. Thank you."

Mr. Owen, with Mr. Peek's concurrence, entered two additional documents into the record: The General Plan Map of Lyon County and the Land Use Plan.

Mr. Stephen Peek, representing Nevex Gold Company, made the following closing statement (verbatim from the tape recording of the meeting): "Madam Chairman, Members of the Commission, once again, my name is Stephen Peek. I represent Nevex Gold Company, who is the applicant for the Change of Land Use from NR-1 to RR-5. As you know, when we first got up this morning, about five hours ago, and addressed this Board, my first question to you was do you wish to hear item four and five together, because it certainly made a significant difference in the way we made our presentation. The consensus of the Board at that time, as was the advice of the District Attorney, that only item four was the item that was going to be heard. Item four on your agenda is the Appeal of Nevex Gold Company from a denial of a Change of Land. We made our presentation based upon the Board and the Board's direction. In opposition we saw a slide show. What did we see in the slide show? What I saw, most importantly, was a mining area. A mining district. Albeit, historic in nature, but still an area where mining has occurred since the early 1860's, and actually long back before that. Some would have you believe that mining has stopped in this area but no, mining has not stopped in this area, in fact, mining has continued to occur. I think you all saw throughout that presentation of the slide show a mining area. What else did we see after that? We listened to a presentation about the historical nature of the Comstock District and the fact that it is designated as a National Historic Landmark and the fact that it is on an endangered list because of the work of Houston Oil Company at the Con-Imperial Pit. I thought to myself, though, well wait a minute. I'm not Houston Oil Company. I'm Nevex Gold Company. Why should I get tarred by the same brush as Houston Oil. Then I reminded myself that I was here only on the zone change, the zoning application. Then I thought, with respect to the historic district, that it would be appropriate to remind those who made the presentation from the historic district, that the historic districts created under Nevada Revised Statute, Chapter 384, provide as follows, under 384.005, which created Historic Districts, 'This section is not intended to discourage the exploration, development or extraction of mineral resources'. That was when the State of Nevada created the Comstock Historic District. They didn't deny the availability of those areas for continued mining. Also, as I stood before you, I looked up there to the Lyon County flag and it's seal and I see that one third of that consists of mining. Mining has been an important part of this County and this County's development. When I was growing up I spent an awful lot of time at Talapoosa, Ramsey, up at Churchill Butte, Como, and those areas that are early mining areas in Lyon County. Then we heard from the appraiser who told us he did not feel it suitable for zoning because it should exclude uses rather than permit uses. It was negative in character rather than positive in nature. But the conclusion, of course, that the appraiser drew, and by the way, he's the same appraiser that did the appraisal, or excuse me, worked for Mr. Alves, who did the appraisal of Mr. Wesners house in 1981 when Mr. Alves, and Mr. Jenkins worked for him, appraised Mr. Wesners house at \$165,000.00. He's now telling us that when he worked for Mr. Alves and he was appraising for Houston Oil, that Mr. Wesners house had a lot of value. Now, he's on the other side and he's telling you that the values are very suspect. I placed before you an exhibit that shows the Gold Hill area and what has happened to assessed values in the Gold Hill area. It's the same exhibit which Ms. Hanor

151

showed you earlier. What it shows is that there has been an increase in assessed valuations in the Gold Hill area during the operation of the Con-Imperial Pit from 1979 to 1982. I grant you, and I know that we all can argue back and forth as to whether there was a reappraisal or not a reappraisal, the fact of the matter is values increased during that operation of the Gold Hill property, the Con-Imperial Pit. They didn't decline, there is a decline in value, and now there's a leveling off of that. One thing I think is notably absent, as well, is Mr. Wesners appraisal that he presently has, which I'm sure that if it said that it's only worth \$85,000.00 because the Gold Hill Mine, or the Con-Imperial Pit, is located close to his property, Mr. Wesner would have presented that as a piece of evidence to you. But I think he, like everybody else, recognizes that there are many factors that go into a valuation of property. But if it were solely that which caused the reduction, I know Mr. Wesner would have that appraisal right here for you today, but he doesn't. What else did the appraiser say? He said that the property probably, in his judgment, would allow seven to fourteen dwelling units. He first said seven, then when pressed, got up to fourteen dwelling units. That, I guess, is approximately RR-3 zoning, which is one dwelling unit per five acres. I think that he's probably in the ballpark at someplace around one to seven dwelling units on that property because of the physical constraints of the property. Perhaps we should be talking about RR-3, but one of the things I found consistent as a thread, throughout the presentation, and which I find consistent in evaluating material, is that Silver City, contrary to Raymond Smiths remarks that it is an urbanizing area, is not an urbanizing area. I know, as I stand here before you today, that if I were an attorney representing an applicant for one hundred and fifty dwelling units on this property, that this same body would be gathered here to oppose the application, because it doesn't make sense to put that many dwelling units on that size of a parcel. Even if you were to average the density and try to build in the lower part of it, it would not allow for that kind of development. Now I have the photographs before you. The view of the Buckeye Mine, which is to the East and South of the townsite. You see, over here to my right, you don't see an urban setting. What you see is a rural setting. Then you look at the view from the Town Hall, which is located in the center of town, looking southward toward the mine, you see houses, yes, but what is notably absent is the urban atmosphere. I thought, in listening to Mr. Owen and others, that I was talking about downtown Reno, but I'm not. I'm talking about an area that is rural in character and rural in nature. It certainly has an ambience. It has a character and quality of life that we all recognize is important to these residents. But to stand before all of us and to say that it is properly zoned at NR-1, which we all know is improper, I think doesn't make sense. What else you note about the character and the size of the property is the steepness of it. Also, the existence of disturbed sites already on the property. The existence of the Dayton Mill and the Headframe of historical significance. It isn't going to be removed. Then you have, over here on my left (referring to pictures) and your right, the other review from the south, as you come up the hill. You're not coming up into an urban area. In fact, I don't see a house in that photograph, and that's taken from the South, looking at Grizzly Hill on your left. You don't see an urban area. You don't even see an urbanizing area. What you see is a hillside, rather steep in character, which is consistent with the development of low density residential. Then we heard, of course, lastly, from Dr. Wendel who talked, again, about the appraised

152

JA3642

values, and I don't know that either one wins those kinds of issues on the appraisals value, but I do know one thing is that we're talking about a Change of Land Use first. The mining and the mine comes afterwards. The mine comes by Special Use Permit and addressed in the sound discretion of this Board as to whether, if the property has to be zoned, should you allow a mine. There are areas within your ordinance of evaluating the application. So, will the change of land use reduce the values in the area? I submit that it will not, standing alone. Let's address that issue solely, not the issue of, just because it permits by Special Use Permit, a mine, that it should be denied. That is a good planning and should not be a reason for your denial. The Master Plan that we talk about. The Master Plan, I think, is important to all of us because it is a guide. Mr. Owen quotes from the Master Plan about character, of topographic considerations, historical preservation, scenic preservation, because what we have is borrowed open space here. Mr. De la Mares property is borrowed open space. It's being used by everybody to enjoy the ambience of their own property. But let's look at the goals and policies. In Chapter Eleven, 'Mineral resources should be properly managed and appropriate means be developed to insure proper mining and milling operations and restoration of areas to a condition compatible with the surrounding region'. So it's consistent with the General Plan. Mining should be recognized as a major factor in this county's economy and it's continuing growth. The potential problems of air, water and land pollution should be recognized that proper controls be established to insure proper mining activities. That's again addressed in the Special Use Permit, where you have those kinds of controls inherent as part of your statute. Again, reading the recommendations in your goals and policies 'mineral productivity should be recognized as a legal use, subject to Special Use Permit review and performance standards in any area of the County'. One area where it certainly would be permitted is in that area where historically there has been mineral extraction for the last hundred years. I say the last hundred years because mining has not stopped in this area and, in fact, this site was mined thirty-six years ago, thirty-eight years ago, in 1948. 1949 was the last mining operation on this site. The milling continued until 1950. Again, one of the conclusions, item #4, 'Agriculture and mining will continue to be the dominant employment and economic elements in the County, although there is strong potential for future industrial park activities, especially for warehousing, light manufacturing and related activities', one of those items in your General Plan. One of the key issues too, I think that Mr. German raised and I agree with Mr. German's comment which is, is it a proper zoning if the property itself, if the physical constraints on the site limit the development of the property to its highest and best use. I submit to you the answer to that is it is improper zoning if it does not allow it to be developed to its highest and best use. We can't talk about averaging because we all know, as you look at it here in the view from the Townsite, from the Buckeye Mine and from the Knapp residence that there isn't a site there that would allow development of anywhere between 120 to 150 or 60 single family clustered homes, because that's the averaging of the density that would be permitted on that site. We all know that's a ludicrous development of that piece of property. To say that, well you can, it's only a minimum, begs the question, because the real issue is, if the highest and best use is about seven dwelling units per acre at the most, then that should be the more appropriate zoning, whether that be RR-3 or RR-5 that is in keeping with the rural character of Silver City. In conclusion, then, I would,

ask that you overturn the denial of the Change of Land Use by the Lyon County Planning Commission, and change the land use from it's current NR-1 to RR-5, as being consistent with the unique topographic characteristics and the rural setting of Silver City, and, lastly, consistent with the historical mining, and I'm not afraid to stand here and say mining. Mining is important to this community, mining is important to Lyon County and mining can occur in a responsible manner. It does not have to be the example of Houston Minerals and the Con-Imperial Pit. It can be done in a responsible fashion, and we don't have to talk about strip mining, because strip mining happens to be the bad word. Let's use the word strip mine. Let's talk about a responsible open pit operation that takes into consideration the needs and concerns of the neighborhood, and whatever concerns there are, that it can be mitigated against. Thank you very much."

Commissioner Adams stated that the problem he has is the legal status of the townsite boundary because apparently, in trying to decipher the determination as made by the Planning Commission, it was very important what part the townsite boundary played with respect to the spot zoning. Mr. Adams further stated that if it is looked at from a merit of graphic zoning, this is not spot zoning since it is adjoined on the west and the south by RR-5.

Mr. Owen stated that if the townsite boundary, which represents the town of Silver City, is used that there is indeed a spot zoning issue because of a RR-5, permissive mining, zone located in the townsite. He went on the say that there is no RR-5 in the townsite. It is mostly NR-1, with a little commercial and limited amount of light industrial.

Mr. Peek stated that he does not know what created the configuration of the boundaries of the townsite of Silver City when it was created some years ago. He said that, as to spot zoning, the fact that there is a townsite and the fact that there is a rural area outside it, should not have any effect on the issue of spot zoning. Mr. Peek stated that spot zoning because there is a townsite, is not an issue. He noted that there is R-5 adjoining the property on the south, and there is RR-5 adjoining it on the west. He further stated that it is a zoning that is proper in Lyon County. He said that when they refer to "spot zoning for the benefit of one", then every zone change is for the benefit of one, but the physical characteristics and constraints of the property must be taken into consideration in evaluating the zone change. He went on to say that just because it's in the townsite does not make it right, it also doesn't make it spot zoning it it is zoned.

Commissioner Adams stated that he did not have time to review the minutes of the Planning Commission word for word, however, he was aware that it had a great part in the it. Mr. Owens stated that the matter before the Board today is a De Novo Review, that the Planning Commission decision does not bind the Board. They can look at the evidence and make their own decision. He stated that the planners of Lyon County felt, back in the 1970's, that it made sense to draw specific zoning configurations within the townsite boundary. He further stated that he feels that it was a purposeful, intelligent decision.

District Attorney Bill Rogers stated that it is true that the boundaries as shown on the map are the boundaries of the historical townsite that has existed for over a hundred years. He further stated that it is the boundary which was adopted by the County.

154

155
in the early 1970's as a zoning boundary, however, as a legal significance, it is the service area in which, under the prior water agreements, a person is entitled to hook onto the water which comes down from Virginia City, and ultimately through the flume from Mariette Lake. He stated that it has an ongoing legal significance in that it is available for more dense development in that a person can hook onto the existing water system, and that's the only real legal significance, other than the historical aspect.

Commissioner Adams stated that in his judgment he would look at this and say that, on the face, it is not spot zoning.

Mr. Owen stated that this is a very unique situation with respect to the townsite and the services within the townsite.

Commissioner Cummings asked a question of Mr. DeAguilera. He asked if he (Mr. DeAguilera) had indicated that the seven-thousand square foot zoning was exclusionary?

Mr. DeAguilera stated that if the zoning was purposely put there to keep certain uses out, then it would be exclusionary zoning, the use of zoning to keep certain things out.

Commissioner Cummings indicated that he got the impression that Mr. DeAguilera felt it was put there purposely for exclusionary purposes.

Mr. DeAguilera told Commissioner Cummings that this was represented by several people who testified in opposition to the zone change, that there was a purposeful act of zoning this property to seven-thousand square foot lots for the purpose of keeping certain uses out. Mr. DeAguilera reiterated that this is not good planning.

Commissioner Cummings asked if they were five acre lots, wouldn't that be exclusionary with respect to mines?

Mr. DeAguilera again stated that if the purpose of the zoning was there to keep something out, then that is exclusionary zoning. He further stated that planning should be done on the basis of what is desired there in the future and what the physical constraints and opportunities of the landscape dictate and can be used for.

Commissioner Cummings stated that he understands planning to have exclusionary clauses, that this is the purpose of it.

Mr. DeAguilera stated that this exclusionary planning has been criticized by the Courts and the planning profession. He further stated that planning should be used as a positive thing, not a negative.

Commissioner Cummings stated that there is some talk about the proposed buffer zone. He asked if this is the De La Mare Land?

Mr. Peek stated that there are two potential buffer zone, one portion belonging to Mr. De La Mare and one portion belonging to BUM. Mr. Peek showed the Board, on the map, that the buffer zone exists on the north side of the proposed property, on the north face of Grizzly Hill. He also noted that the Dayton Hill Site would serve as a buffer, and would retain its historical significance. He noted that it would not allow any development to occur.

Commissioner Adams pointed out that it would be a graphic buffer, but not necessarily a visual buffer.

Mr. Peek agreed, stating that it would be a buffer, along with State Route 341, between living and non-living areas.

Mr. Owen stated that on page 22 of the Nevex Supplement is the following

156

paragraph, "In addition to the above listed mitigation measures, a twenty-five acre portion of the property abutting the existing residential and commercial area to the north of the mining site will not be disturbed. While currently zoned for seven-thousand square foot lots, it is unlikely that the property, because of the character and the topography, will ever be developed at that density. That area will have to separate the living areas from the non-living areas as required by the General Plan." Mr. Owen stated that this is private land, not BLM land.

Commissioner Adams stated that the best of both worlds would be for the land to be already zoned RR-5 and no mining allowed by Special Use Permit, however, it's not that way. Mr. Adams stated that the Board must deal in terms of a density that he cannot see happening. He wondered if the residents might face the same environmental threat from a heavy residential development on that site as they feel they will face from the mine. He noted that after a development, the residents would look out on a lot of homes on the hillside, where with the mine, they would look out on an area, supposedly mitigated by the mining company.

Mr. Owen disagreed with Commissioner Adams that the impacts are anywhere near what they would be from the mining project. He also disagreed that every seven-thousand square feet would have to be used. Mr. Owen stated that it very rarely occurs when a developer comes in and gets everything.

Mr. Peek stated that there are tunnels and slopes on the property as it now exists. He further stated that for anyone to suggest that it would make good economic, practical or safety sense to put a residential development on the property, without destroying the existing shafts, would not make good planning sense.

Chairman Manor then stated that enough testimony had been heard. She asked for my feelings from the Board.

Commissioner Cummings made the following statement (verbatim from the tape recording of the meeting): "I have listened to nearly a years worth of input, and this is probably the most difficult, easily the most difficult issue, that's faced me since I've been on the Board. I feel that there is certain quality to both arguments and I really feel that I've made friends on both sides of this issue, and there are no bad guys as far as I'm concerned, on this issue. I'm sure there's one side that won't consider me a friend after this motion but that's not the way I feel. I hereby move to deny the request for rezoning by Nevex Gold, Inc., based upon the following findings of fact, which I find to be supported by substantial evidence in the record as follows: After a four hour presentation on June 17, the Planning Commission, by vote of five to two, recommended denial of the Nevex rezoning request considered today. Two: In reference to requirements for zoning established by NRS Section 278 and 250, we find A) that the Nevex rezoning request does not comply with the Lyon County Master Plan. B) The proposed rezoning does not promote the conservation of open space or protect the natural and scenic resources from unreasonable impairment. C) The proposed rezoning would have both an immediate and long-term adverse financial impact to Silver City and the Comstock National Historical Landmark. D) The proposed rezoning does not promote the health and general welfare of the Silver City area. E) The proposed rezoning is not compatible with the Silver City area and does not encourage the most appropriate use of land in the Silver City Townsite. Item 3) There is no land in Silver City Townsite zoned RR-5, and the present zoning is

157

predominantly residential in nature. 4) The proposed rezoning would significantly harm the integrity of the Comstock Historic District and the National Landmark District. 6) The proposed rezoning violates the following expressed goals: A) To manage national resources in a beneficial way. B) To improve neighborhood stability and increase property values by preventing incompatible and disruptive land uses."

Commissioner Ward seconded the motion. Chairman Manor called for the question on the motion.

Commissioner Adams stated that he would respectfully disagree with some of the points made in the motion and clarified the fact that he feels the issue of spot zoning was wrongfully interpreted by the Planning Commission. He further stated that when RR-5 is contiguous to the property, it cannot be considered spot zoning. He also stated that the zoning is being used as a hammer with respect to the proposed request. He further stated that the Special Use Permit process is a much more applicable way for the Board to address the basic issue of the mining project itself. He told the Board that they were making a mistake and would have to deal with it in the future.

Chairman Manor asked for a poll of the Board: Lommori - Aye. Cummings - Aye.

Ward - Aye. Adams - No. Manor - Aye.

There being no further business to come before the Board, recess was declared.

(A verbatim tape recording of this meeting has been made and by reference becomes part.)

BOARD OF LYON COUNTY COMMISSIONERS

ATTEST:

Andrea Manor - Chairman

W. J. Parr - Lyon County Clerk

JA3647

Case No. 14-CV-00128

Dept. No. II

The undersigned hereby affirms this document does not contain a social security number.



2014 JUN 13 PM 4:28

TANYA SCERIF
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT



IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McARTHY

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK MINING
INCORPORATED

Defendants/Respondents,

**JOINDER TO DEFENDANT LYON COUNTY BOARD OF COMMISSIONERS'
MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COMES NOW Defendant/Respondent, COMSTOCK MINING INCORPORATED., a Nevada corporation (hereinafter "CMI"), by and through its counsel, ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., and hereby joins in Defendant, LYON COUNTY

///

///

///

///

///

///

1 BOARD OF COMMISSIONERS' Motion to Dismiss , or in the Alternative, Motion for Partial
2 Summary Judgment.

3 DATED on this 12th day of June, 2014.

4 ALLISON, MacKENZIE, PAVLAKIS,
5 WRIGHT & FAGAN, LTD.
6 P.O. BOX 646
7 Carson City, Nevada 89702
8 Phone (775) 687-0202
9 Fax (775) 882-7918

10 By: 

11 James R. Cavilia, Esq.
12 Nevada State Bar No. 3921
13 Justin Townsend, Esq.
14 Nevada State Bar No. 12293
15 Attorneys for COMSTOCK MINING,
16 INCORPORATED
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,
3 MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date, I
4 caused the foregoing document to be served to all parties to this action by:

5 ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States
6 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

7 ☐ Hand-delivery
8 ☐ Facsimile
9 ☐ Federal Express, UPS, or other overnight delivery
10 ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
11 [NRCP 5(b)(2)(D)]

12 fully addressed as follows:

13 John L. Marshall, Esq.
14 570 Marsh Avenue
15 Reno, NV 89509
16 *Attorney for Plaintiffs/Petitioners,*
17 *Comstock Residents Association, Gayle Sherman,*
18 *Joe McCarthy*

19 Stephen B. Rye, Esq.
20 Chief Deputy District Attorney
21 31 South Main Street
22 Yerington, NV 89447
23 *Attorney for Respondent/Defendant,*
24 *Lyon County Board of Commissioners*

25 DATED this 12th day of June, 2014.

26 
27 Nicole D. Kennedy
28

1 Case No. 14-CV-00128

2 JOHN L. MARSHALL

3 SBN 6733

4 570 Marsh Avenue

5 Reno, Nevada 89509

6 Telephone: (775) 303-4882

7 Attorney for Plaintiffs/Petitioners Comstock

8 Residents Association, Gayle Sherman, Joe

9 McCarthy

2014 JUL -3 PM 2:21

COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY

Plaintiffs/Petitioners,

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,

MOTION TO AMEND COMPLAINT/PETITION

I. INTRODUCTION

Pursuant to NRCP 15(a), Plaintiffs/Petitioners Comstock Residents Association, Gayle Sherman and Joe McCarthy (collectively "CRA"), hereby move the Court to grant leave to amend their Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate/Judicial Review ("Complaint/Petition") to add a claim against Defendant/Respondent Lyon County Board of County Commissioners for violation of the Nevada Public Records Act ("NPRO") because the Commissioners failed to produce public records regarding

1 communication with Defendant/Respondent Comstock Mining Incorporation's ("CMI")
2 application to allow mining uses within Silver City. See Proposed Amended
3 Complaint/Petition, attached hereto as Exhibit A. CRA seeks leave to amend as the
4 Commissioners and CMI have answered and refuse to stipulate to the proposed amended
5 pleading.

6
7 II. BACKGROUND

8 Pleading history: Plaintiffs/Petitioners CRA filed this action on January 31, 2014 to
9 challenge Lyon County's January 2, 2014 approval of CMI's application to allow mining uses
10 within Silver City. CRA pleads four causes of action: (1) violations of the Nevada Open
11 Meeting Law, (2) violation of due process, (3) judicial review for abuse of discretion, and (4)
12 violation of NRS 278.220 (failing to follow master planning process). Defendants/Respondents
13 Lyon County and CMI filed their answers on or about March 28, 2014. On April 1, 2014,
14 assigned Judge Aberasturi recused himself and transferred the case to Department 1. On May 2,
15 2014, Judge Rogers recused himself and sought assignment from the Supreme Court of a Senior
16 Judge. On June 10, 2014, this case was assigned to Judge Estes. On June 9, 2014, Lyon
17 County filed a motion to dismiss the First, Second and Fourth Causes of Action (Defendant
18 CMI thereafter joined in the County's motion). CRA files its Opposition contemporaneous with
19 this Motion to Amend.
20
21

22 Factual Background of Proposed Amendment: To support of their claims in this action,
23 CRA submitted an NRS Chapter 239 Public Records request to Lyon County on February 11,
24 2014. CRA requested all records of communication regarding CMI to or from the
25 Commissioners regardless of whether they occurred on devices owned by the County or the
26 Commissioners. Lyon County thereafter provided a partial response of records. Since Lyon
27 County does not provide its Commissioners with cell phones or computers, its Commissioners
28

1 use their own private devices to conduct their public business. The public records provided by
2 Lyon County included some emails to and from Commissioners using their private addresses.
3 Amended Complaint/Petition at ¶¶ 111-114. It is clear from these records that the
4 Commissioners conducted their communications on CMI's application through private devices.
5 *Id.*

6
7 Lyon County, however, did not provide all public records from the Commissioners private
8 devices. The County contended that it "does not provide cellular phones for the County
9 Commissioners, and as such, Lyon County does not maintain any of those records and they are
10 not public records pursuant to NRS Chapter 239." Amended Complaint/Petition at ¶115.
11 Thus, CRA's proposed Fifth Cause of Action (¶¶ 143-150) presents a straightforward issue: can
12 Lyon County avoid producing records that would otherwise clearly be public solely because the
13 Commissioners used private devices to create them?

14
15 Resolution of this question is important not only for enforcement of the fundamental
16 principles of the NRPA but is also directly related to the composition of the official record
17 facilitating the review by this Court of Lyon County's action on CMI's application (CRA's
18 Third Claim for Relief). The "official" record submitted to the Court by Lyon County with its
19 Motion to Dismiss excludes all of communications between and among the Commissioners and
20 CMI unless (1) the Commissioners provided copies of such records to County staff when
21 requested or sent such records to staff as either the addressee or as a "cc". Therefore the record
22 provided by Lyon County is incomplete because it excludes an unknown number of directly
23 relevant records that would otherwise be public but for the fact of the device on which they
24 originated.

25
26 CRA requested that Lyon County and CMI stipulate to the proposed Amended Complaint/
27 Petition. Both parties refused; CRA thus files this motion.
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6

7
8
9
10
11
12
13
14
15
16
17
18

19
20
21

22

23

24

25

26

17

8

Attorney for Plaintiffs/Petitioners CRA, Gayle
Sherman, Joe McCarthy

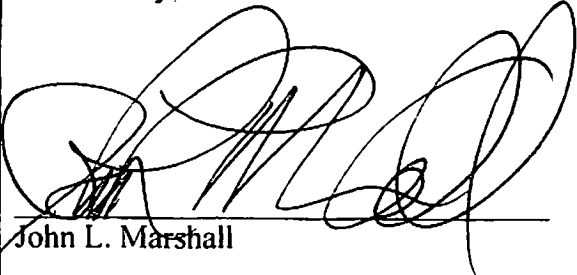
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRS 239B.030, the undersigned affirms that the preceding document does not contain the social security number of any person. I hereby certify that the foregoing Motion to Amend was served on the parties by mailing a copy thereof on the 3rd day of July, 2014, by United States mail, postage prepaid to:

Steven B. Rye
Chief Deputy District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703



John L. Marshall

EXHIBIT A

E
X
H
I
B
I
T

A

E
X
H
I
B
I
T

A

EXHIBIT A

1 Case No. 14-CV-00128

2 JOHN L. MARSHALL

3 SBN 6733

4 570 Marsh Avenue

5 Reno, Nevada 89509

6 Telephone: (775) 303-4882

7 Attorney for Plaintiffs/Petitioners Comstock

8 Residents Association, Gayle Sherman, Joe

9 McCarthy

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE McCARTHY

Plaintiffs/Petitioners,

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF/
PETITION FOR WRIT OF MANDATE OR JUDICIAL REVIEW**

I. INTRODUCTION

1. Plaintiffs/Petitioners Comstock Residents Association ("CRA") members, Gayle Sherman and Joe McCarthy are residents of the Comstock including Silver City, Lyon County, Nevada. In this lawsuit they challenge the January 2, 2014 action of the Defendant Lyon County Board of Commissioners ("BOC") to reverse decades of prior precedent – and contrary to the recommendation of its own Planning Commission and professional planning staff – and grant a version of Defendant Comstock Mining Incorporation's ("CMI") application to allow

1 mining uses within Silver City. Because Lyon County provided no basis to depart from its prior
2 precedent, acted contrary to law and without proper notice and record support, and was unduly
3 influenced, Plaintiffs/Petitioners ask that Lyon County BOC's January 2, 2014 action be
4 reversed.

5 6 II. PARTIES

7 2. Plaintiff/Petitioner CRA is a not-for-profit organization incorporated in Nevada
8 and through its members appeared at appropriate public hearings and objected to the CMI's
9 application to allow mining uses within Silver City. Members of CRA live, work, recreate
10 and/or commute in the Comstock Historic District in general and more specifically in Silver
11 City.

12 3. Plaintiff/Petitioner Gayle Sherman lives in Silver City at 100 Grant Street. Ms.
13 Sherman first purchased her home in 1976 and lived there for many years until she had to sell
14 her home to pay for her son's college education. Ms. Sherman repurchased her old home in
15 2001 after, and in express reliance upon, Lyon County's 1986 denial of Nevex Gold's
16 application to make the same land uses changes as CMI obtained.

17 4. Plaintiff/Petitioner Joe McCarthy and his wife Ann purchased land from 2003 to
18 2006 and built their Silver City home in 2006 and have been living there since 2007. Prior to
19 purchasing their land and building their house, Mr. and Ms. McCarthy diligently researched the
20 applicable land uses allowed within Silver City and specifically determined that mining was not
21 a permitted use on lands within Silver City now owned by CMI.

22 5. Defendant Lyon County Board of Commissioners is the governing body of a
23 subdivision of the State of Nevada and pursuant to NRS Chapter 278 possesses the authority
24 and responsibility to regulate land use for the benefit of the public within Lyon County, Nevada.
25 Defendant Lyon County Board of Commissioners is composed of individual members Bob
26
27
28

1 Hastings (District 1), Vida Keller (District 2), Ray Fierro (District 3), Joe Mortenson (District
2 4), Virgil Arellano (District 5). These members are sued in their official capacity.

3 6. Defendant CMI, a mining corporation, owns and or controls lands within the
4 Comstock generally and specifically within and adjacent to Silver City. In 2013, CMI applied
5 to Lyon County to amend the Lyon County Master Plan and applicable zoning for “the purpose
6 of pursuing continued mineral exploration, development and the economic mining potential of
7 the subject property.” In order to mine its property within Silver City, CMI needed to undue
8 years of prior planning and reverse multiple Lyon County BOC decision. CMI’s application
9 sought to change the long-standing aster Plan land use designations and zoning for their
10 property in and adjacent to Silver City from its current Suburban Residential (where mining is
11 not permitted) designation to Rural Residential (where mining is permitted). CMI’s application
12 to add mining uses by seeking a Master Plan amendment and Zoning change is referred to
13 herein as CMI’s “2013 Application.”
14
15

16 **III. BACKGROUND**

17 **A. The Comstock Historic District, Silver City and Lyon County’s Prior Land Use** 18 **Decisions**

19 7. The Virginia City National Historic Landmark represents a truly unique piece of
20 Nevada and national cultural history. The site of the single most productive mining strike in
21 history, the Comstock brought tens of thousands of people to Nevada, generated enormous
22 wealth and created the towns of Virginia City, Gold Hill and Silver City, the second largest
23 metropolitan center in the Far West at the time. The Virginia and Truckee Railroad (recently
24 restored as a recreational/tourist railroad) was constructed to service the mines, and important
25 advances in unionizing and labor standards occurred in the Comstock during the 1860’s. The
26 Comstock also generated significant technological achievements in the mining industry later
27
28

1 incorporated worldwide. Because of the Comstock, Nevada became a territory in 1861 and a
2 state on October 31, 1864.

3 8. Recognizing its critical cultural resource value to the citizens of Nevada and the
4 Nation, the United States first designated the Virginia City Historic District as a National
5 Historic Landmark on July 4, 1961.

6 9. The National Park Service lists the site as in a threatened condition as a result of
7 recent surface mining:

8
9 Several contributing buildings, a portion of the historic highway at
10 Greiner's Bend, and the entire mountainside adjacent to Gold Hill are in
11 danger of sliding into an inactive mining pit developed in the 1970s. **The**
12 **cumulative effect of contemporary surface mines within the central**
13 **corridor of the district has been a gradual destruction and**
14 **disintegration of the historic landscape that constitutes the visual**
15 **heart of the historic district.**

16
17 10. In 1969, the Nevada Legislature enacted Chapter 384 of the Nevada Revised
18 Statutes to create the Comstock Historic District ("CHD"). The Comstock Historic District Act,
19 as NRS 384.010 to 384.210 is known, is the only Comstock-specific legislation designed to
20 protect this amazing site of Nevada history and national heritage.

21
22 11. In the Comstock Historic District Act, the Nevada Legislature decreed that it is
23 "the public policy of the State of Nevada to promote the educational, cultural, economic and
24 general welfare and safety of the public through the preservation and protection of the
25 structures, sites and areas of historic interest and scenic beauty" of the CHD. NRS 384.020
26 (emphasis added).
27
28

1 12. Silver City, Nevada, is one of the few residential communities identified in Lyon
2 County. It is one of two communities Lyon County dedicated as a living, historic community.

3 13. As modern planning and zoning emerged for the Silver City area, it retained this
4 historical backdrop as its foundation, and overlaid a modern transect of desired development.
5 The Silver City Town Site has been envisioned consistently as having a commercial core with a
6 small industrial zone which includes some historic mills and mines, all surrounded by
7 residential development. Beyond the boundaries of the Town Site, land use has consistently
8 been designated for less dense development and open space. Using different designations with
9 different names, this basic concept has carried through generations of land use plans and
10 continues today.
11

12 14. In 1971, Lyon County enacted its first master plan and related zoning. It planned
13 and zoned Silver City like all the other towns in the county: urban appropriate uses and densities
14 within the town and rural uses and densities outside of town.
15

16 15. Since Lyon County's original planning for Silver City it has consistently and
17 uniformly determined that the basic urban/rural distinction meets the needs of the Silver City
18 community and the county as a whole.
19

20 16. In 1986, Nevex Mining Company applied to Lyon County to change the land use
21 and zoning designations for property within Silver City from urban uses to rural uses to allow
22 mining within the town (Nevex applied at the same time for a special use permit to mine). The
23 Lyon County Commission denied Nevex's proposed land use and zone changes specifically
24 finding that Nevex's application for more rural uses and densities violated its Master Plan and
25 was otherwise inappropriate.
26

27 17. In 1986, the Lyon County BOC, offered a long, comprehensive list of "findings of
28 fact" supporting the denial, including that, "[t]he proposed rezoning violates the following

1 expressed goals of the county's master plan: To manage natural resources in a beneficial way;
2 To improve neighborhood stability and increase property values by preventing incompatible and
3 disruptive land use." Other specific findings include:

- 4 a. After a four hour presentation on June 17 [1986], the Planning Commission, by
5 vote of five to two, recommended denial of the Nevex rezoning request considered
6 today.
- 7
8 b. In reference to requirements for zoning established by NRS Section 278 and 250,
9 we find (A) that the Nevex rezoning request does not comply with the Lyon
10 County Master Plan. (B) The proposed rezoning does not promote the
11 conservation of open space or protect the natural and scenic resources from
12 unreasonable impairment. (C) The proposed rezoning would have both a long-
13 term adverse financial impact to Silver City and the Comstock National Historic
14 Landmark. (D) The proposed rezoning does not promote the health and general
15 welfare of the Silver City area. (E) The proposed rezoning is not compatible with
16 the Silver City area and does not encourage the most appropriate use of land in the
17 Silver City Townsite.
- 18
19 c. There is no land in the Silver City Town site zoned RR-5, and the present zoning is
20 predominantly residential in nature.
- 21
22 d. The proposed rezoning would significantly harm the integrity of the Comstock
23 Historic District and the National Landmark District.
- 24
25 e. The proposed rezoning violates the following expressed goals: (A) to manage
26 national resources in a beneficial way. (B) To improve neighborhood stability and
27 increase property values by preventing incompatible and disruptive land uses.
- 28

1 18. In 1990, Lyon County affirmed its 1986 decision when it adopted a new Master
2 Plan and maintained the same urban/rural land use designations for Silver City.

3 19. Lyon County approved two goals for Silver City in the 1990 Master Plan:

4 Goal #1 – To maintain, promote, and secure the historic character of the community and
5 to prevent the destruction or degradation of the historic character. Objective: Lyon
6 County should support the Comstock Historic District Commission in its legislative
7 mission.

8 Goal #2 – Lyon County should review all new development proposals with the intent to
9 protect the riparian ecology associated with Gold Canyon and American Ravine, with the
10 intent of protecting water quality, minimizing flooding, erosion and sedimentation, and
11 preserving natural drainage, habitat, and aesthetic functions.
12

13 20. In 2002, Lyon County again examined the appropriate land use designations for
14 Silver City and its environs and in the West Central Lyon County Land Use Plan again
15 designated Silver City as appropriate for urban uses and densities.
16

17 21. The West Central Lyon County Land Use Plan concludes that Silver City has the
18 potential for continued limited growth with only half of the potential home sites developed. The
19 plan for slow growth of the community was acknowledged, as was the historic nature of the
20 town's architecture and the context of the community within the Comstock Historic District and
21 the Virginia City National Historic Landmark. In the plan, Lyon County stated that Silver City
22 did not have the kind of development potential they saw in Dayton Valley, but instead hoped for
23 gradual residential and commercial growth of Silver City while maintaining the community's
24 historical integrity.
25
26
27
28

1 22. In the West Central Lyon County Land Use Plan, the Lyon County BOC adopted
2 specific goals for Silver City that articulated future direction and continuation of earlier policies
3 set out in previous master plans as follows:

4 a. To recognize, enhance, and protect the unique character of Silver City.
5 Among the actions set forth to implement this Goal was “to maintain that scale and primary
6 residential character by retaining the existing Master Plan designation and zoning categories.”
7

8 b. To preserve the scale of the community by architectural review that is
9 sensitive to how new structures fit into the existing fabric. Among the actions set forth to
10 implement this Goal was “to preserve the existing pedestrian character by maintaining alleys,
11 soft paving approaches, and relatively narrow streets.”

12 c. To promote the revitalization of the commercial corridor by promoting
13 reinvestment.
14

15 d. To preserve and strengthen the existing infrastructure, i.e., water,
16 roadways, drainage, and public facilities. Among the actions set forth to implement this Goal
17 was “Lyon County shall provide an infrastructure inventory and deficiency evaluation and
18 report. Lyon County shall provide a long term if modest capital improvement commitment (i.e.,
19 20 years) that methodically addresses these deficiencies.” Also included was an action “to
20 implement and actively oversee the ‘dark sky’ ordinance.”
21

22 e. To focus on encouraging tourist-oriented historic activities that do not
23 degrade the quality of life central to Silver City’s uniqueness. Among the actions set forth to
24 implement this Goal was “to actively support the efforts of residents to preserve and improve
25 their property.”

26 f. To limit earth disturbance or above-ground mining activities that create
27 visual scarring or that disrupt the fabric of the community. The only action set forth to
28

1 implement this Goal was "Lyon County shall establish a land use policy that minimizes the
2 impact of mining and other significant earth-disturbing activities that degrade quality of life."

3 g. To maintain the primary focus of the community as residential. The only
4 action set forth to implement this Goal was "to urge the Board of County Commissioners to
5 carefully consider all zone changes or Master Plan amendments that would substantially alter
6 the character and identity of Silver City."
7

8 23. Because of its historic value and scenic beauty, Storey County recently prohibited
9 new open pit mines within its portion of the heart of the Comstock –following Highway 342
10 from just north of Silver City through Gold Hill and into Virginia City.

11 **B. Development and Adoption of the 2010 Lyon County Comprehensive Master Plan**

12 24. In December 2010, Lyon County adopted a new, fully vetted County-wide
13 Comprehensive Master Plan (2010 Comprehensive Master Plan). For the fifth time, it
14 specifically considered the appropriate land uses for Silver City.
15

16 25. During the development of the 2010 Comprehensive Master Plan, numerous public
17 hearings and community workshops were held throughout Lyon County. The community
18 workshops concentrated on developing the county-wide land use map as well as the language to
19 be included in the text. Development of the 2010 Comprehensive Master Plan was a standing
20 item on Lyon County Planning Commission meetings from September of 2005 to its adoption in
21 late 2010.
22

23 26. The 2010 "Comprehensive Master Plan is the culmination of four years of
24 dialogue and analysis that has included a wide array of participants including the Board of
25 Commissioners, the Planning Commission, community advisory councils, County staff and the
26 community at large. A series of community meetings, open house events and workshops were
27 held throughout the county to obtain citizen input and recommendations, including eight
28

1 meetings on issues identification in March 2007, eight community meetings and two joint
2 Planning Commission/Board of Commissioners sessions on community vision in April and
3 September 2007, six meetings in November 2008 in goals and policies, fourteen meetings in
4 January, April and May 2009 on land use maps, six meetings in July 2009 on land use goals and
5 policies, and finally eleven sessions in October 2009 and March 2010 on the overall County-
6 wide Comprehensive Plan.” 2010 Comprehensive Master Plan at 1.10-1.11.
7

8 27. On December 23, 2010, the Lyon County Board of Commissioners held a public
9 hearing to consider adopting the 2010 Comprehensive Master Plan. The only public comment
10 at the December 23, 2010 BOC hearing were Silver City residents that expressly supported the
11 proposed the Master Plan as it applied to Silver City as recommended by the Planning
12 Commission. Lyon County Board of Commissioners thereafter unanimously adopted the same
13 planning designations for Silver City.
14

15 28. The 2010 Comprehensive Master Plan states that it “represents a future vision of
16 Lyon County along with recommendations for achieving that vision. The ideas of the Plan are a
17 distillation of the community's many desires, tempered by what seems necessary, feasible, and
18 reasonable.”
19

20 29. The 2010 Comprehensive Master Plan is organized in two tiers: a County-wide
21 Component and more specific Community Plans.
22

23 30. The County-wide Component of the 2010 Comprehensive Master Plan provides
24 for the overall foundation and framework for directing the County's future growth and
25 development. The County-wide Component is the umbrella document that applies to all of the
26 unincorporated area of Lyon County. It represents the overall vision, goals and policy direction,
27 generalized land use patters for the entire County, and the land use designations for lands
28

1 outside of defined communities. The County wide-Component provides guidance for the
2 preparation of the more specific Community Plans.

3 31. The Community Plan tier of the 2010 Comprehensive Master Plan presents the
4 specific vision, goals and policy direction, and land use pattern for each identified community
5 as determined through the community planning process. Community Plans are designated for
6 existing established communities. These maps provide detailed views of the community's
7 desired growth and development for the future taking into consideration each community's
8 unique character, opportunities and constraints. The County will work with each community to
9 complete Community Plans, including Community Land Use Plans in each community.
10

11 32. Lyon County intended the 2010 Master Plan to at least "serve for about 10 years."
12 2010 Comprehensive Master Plan at 1.8.

13 33. The 2010 Comprehensive Master Plan "is comprehensive because the elements
14 cover a broad range of development and growth issues which can be influenced significantly by
15 the County Planning Commission, Board of Commissioners and other governing authorities and
16 agencies. The Plan is general because the recommendations are broad. The plan is long-range
17 because consideration is given to the problems and opportunities which may arise over the next
18 twenty or so years. The Plan is dynamic because there will be amendments to adapt to new
19 situations and meet new challenges over time." 2010 Comprehensive Master Plan at 1.8.
20

21 34. No new situation or new challenge has presented itself in Silver City since the
22 adoption of the 2010 Comprehensive Master Plan.
23

24 35. The 2010 Comprehensive Master Plan contains policies and goals that are County-
25 wide in nature as well as specific to its eight diverse communities, including Silver City. The
26 following excerpts from the Master Plan are relevant to CMI's 2013 Application.
27
28

1 a. Policy LU 1.1: "Follow development patterns as established on
2 Countywide Land Use Plan or a more specific Community Plan. The Community Plan
3 envisioned for Silver City has not yet been initiated by Lyon County." Until a Community Plan
4 is adopted, the Countywide Land Use Plan will be the guide.

5 b. Policy LU 1.4: "Locate industrial development as designated on County-
6 wide Land Use Plan or determined by criteria. Industrial uses, including extractive industries,
7 will occur in areas that are designated on the County-wide Land Use Plan. New industrial uses
8 should only be located in areas that do not adversely impact existing residential settlements."

9 c. Policy CC 1.3: "Design Tailored to Communities. New development in
10 Lyon County should address and respect the unique character of communities within the county.
11 Strategies: develop Community Plans to identify typical or desirable design elements that
12 maintain or promote the community's desired image. Adopt County-wide standards that allow
13 the flexibility to address specific design needs for individual communities in Lyon County." In
14 Silver City, this means maintaining the historic character of development in the Town Site,
15 continuing the architectural standards within the Comstock Historic District, retaining or
16 restoring existing historic structures, and limiting new development to those proposals that fit
17 with the historic image of Silver City.

18 d. Goal CC-3: Heritage (under Community Character and Design, Chapter 5).
19 "Historic places, structures, and landmarks in the county will be preserved and will provide an
20 opportunity for residents and visitors to learn about and celebrate our heritage."

21 e. Policy CC-3.1: "Maintain and restore historic resources. Lyon County will
22 encourage and support efforts to preserve and restore registered historic structures, and
23 landmarks, and districts. Strategies: Revise zoning to encourage historic use and development
24 patterns including mixed-use structures and districts. Within historic districts, promote historic
25
26
27
28

1 design elements, features, and context, and prohibit building design that compromises the
2 integrity of the historic community character. Within historic districts, limit new land uses that
3 would pose a risk to historic structures or the historic character of the district. Promote the
4 preservation of historic landscape features to maintain historic settings and the integrity of
5 historic resources within historic districts.”

6
7 f. Goal NR 9: Mining and Resource Extraction (under Natural Resources and
8 Environment, Chapter 6). Lyon County will promote the continued development of mineral and
9 aggregate resources while working to prevent and reduce conflict between mining and other
10 resource extraction activities and residential, commercial and industrial development.

11 g. Policy NR-9.3: Mitigate Operations. “To the extent possible, Lyon County
12 will require resource extraction projects to mitigate adverse operational impacts on such items
13 as public infrastructure, traffic, agricultural operations, residential and commercial land uses,
14 the visual character of the area, etc.” Silver City is an existing community with residential,
15 commercial and industrial areas that would be adversely affected by the mining activities
16 envisioned by CMI there were similar to the impacts anticipated for the proposed Nevex mine
17 in 1986.

18
19 h. Goal CP-1: Support Diversity. “Lyon County will celebrate and support
20 the diversity of character among communities in the county.”

21
22 i. Policy CP-1.1: Recognize Diversity of Communities. Lyon County
23 planning efforts and regulations will consider the unique aspects of communities in the county,
24 and will allow for variation and exceptions to address key aspects of their diversity.”

25 j. Goal CP-3: Community Plans. “Lyon County will support community-
26 based planning efforts that elaborate community-specific goals that are developed with strong
27 public consensus.”
28

1 36. The communities within the Comstock Historic District, including Silver City, are
2 the oldest in Lyon County, representing a unique aspect of historic development within the
3 County. Embracing the historic character of Silver City and supporting planning actions and
4 designations that are consistent with Silver City's heritage is consistent with the intent of this
5 Goal. It is anticipated that the Community Plan process will begin soon for Silver City, which
6 is identified as one of eight existing, established communities in Lyon County for which a
7 Community Plan is required under the Comprehensive Master Plan. Because the Community
8 Plan is intended to tier off the Comprehensive Master Plan, maintaining the Master Plan
9 decisions for Silver City is critical to the continuity and consistency of this process.
10

11 37. As with prior land use plans in Lyon County, the 2010 Comprehensive Master
12 Plan embraced the historic nature and slow pace of development in Silver City, acknowledging
13 that: "Over the past 30 years residential infill and limited commercial endeavors have occurred
14 on existing historic properties in Silver City. The pace of development has been slow for a
15 variety of reasons, including challenging topography, limited water and sewer infrastructure,
16 and an array of patented and unpatented mining claims."
17

18 38. The 2010 Comprehensive Master Plan also states "Silver City has a strong sense of
19 identity and prides itself on its cohesive small town atmosphere. The community treasures its
20 historic buildings and landscape features, as evidenced by the preservation and rehabilitation of
21 many original structures. New construction is regulated for exterior architectural features by the
22 Comstock Historic District Commission."
23

24 39. The 2010 Comprehensive Master Plan establishes the entire area within the Silver
25 City Community Boundary as an Historic Character District, defined as follows: "Historic
26 Districts include those areas in and around lands included in the Comstock Historic District and
27 Silver City or other future historic designations to preserve existing historic character or to
28

1 promote 'historic' architectural design elements. Tools might include mixed-use, design
2 guidelines and conservation easements."

3 40. The lands within the Community Boundary for Silver City will also be the subject
4 of a Community Plan for Silver City. The lands owned by CMI that are proposed for the
5 Master Plan Amendment and Zoning Map Change are all included within the Community
6 Boundary. Therefore, all of the Comstock Mining lands included in its application are within
7 the Historic Character District.
8

9 41. In addition to the Character Districts, the Land Use Plan Map for Silver City
10 establishes Land Use Categories. In keeping with the historical pattern of planning and zoning
11 for Silver City, the lands proposed for Master Plan Amendment and Zoning Map Change are
12 generally divided between a Suburban Residential designation within the Town Site boundary,
13 and a Resource designation outside that boundary.
14

15 42. CMI proposes to change this Suburban Residential designation within the Silver
16 City Town Site to Rural Residential which typically includes zoning such as RR-3 and RR-5
17 where mining could be allowed under a Special Use Permit. Rural Residential planning and
18 zoning (except RR-1) have never been included within the Silver City.
19

20 43. CMI's owns or controls over 6,000 acres of land outside of Silver City in the
21 Comstock, a significant portion of which are classified as appropriate for mining.

22 44. Prior to adoption of the 2010 Comprehensive Master Plan Defendant CMI,
23 objected to the proposed land use designations for their property within Silver City – which they
24 desired to mine. Lyon County rejected CMI's request.

25 **C. Public Reliance on Stable Silver City Master Planning**
26
27
28

1 45. Over the years, Nevada citizens purchased/and or invested in property and
2 businesses within and around Silver City as a result of, and in reliance on, these public,
3 deliberate and consistent land use decisions.

4 46. For example, after Lyon County 1971 Master Plan, Chris and Bonnie Brown
5 purchased land and built their home in 1977. As described above, Gayle Sherman moved a
6 house to her Silver City lot and in 1984 undertook an extensive remodel. In 1985, Darlene and
7 John Cobbey purchased a lot on Main Street, Silver City, with historic structures and made
8 extensive restorations and renovations of them.

9 47. After Lyon County BOC denied Nevex Gold's application to change the Silver
10 City land use to allow mining, citizen investment continued. In 1987 Karen Kreyeski purchased
11 her home on Vivian Street and under took a major remodel including the addition of a master
12 suite, detached garage and utility room. In 1990, Dan and Janet Rose purchased land on Vivian
13 Street and built a house thereon shortly after.

14 48. In 1992, after Lyon County adopted the revised Master Plan in 1990, Deborah
15 Nicholson purchased her home on Buckeye Street in Silver City as did Wil and Carol Godwin
16 in 1999 on Dayton Toll Road. In 2001, Gayle Sherman repurchased her home on Grant Street
17 and Jeff Nicholson and Jean Legassick purchased their house on 2nd Street.

18 49. In 2002, Lyon County confirmed the land use for Silver City in the West Central
19 Lyon County Master Plan and Jack and Lorraine Richmond purchased their on The Golden
20 Road. In 2004 Suzanne Cassidy purchased her historic home on Main Street as did Allison
21 Woodman and Allen Jackson. In 2006, Chad and Judi Olsen purchased land and built their
22 home. In 2007, Cyndy Etchegoin purchased her home and Joe and Ann McCarthy built their
23 home on land acquired from 2003 to 2007.

1 50. As residents bought and invested in Silver City, the community grew as well. In
2 the late 1960's in Silver City began a slow change from the old to the new as an influx of young
3 people bought land in what was truly a ghost town. The few remaining mining widows were
4 respectfully integrated into the newcomer's enthusiasm and interests. The Fire Department
5 was revitalized as was the town advisory council. Houses were restored and newly built,
6 children were born and families established. In this rebirth of Silver City, the blending of the
7 old-timers and the newcomers resulted in a refreshing freedom of expression and robust
8 community involvement. The Silver City Schoolhouse became the Silver City Community
9 Center, the heart of a unique town life that values individual independence and treasures the
10 collective act of building a community from the bones of the past.
11

12 51. In the 1980's and the 1990's more homes were built as more newcomers (this time
13 artists, teachers and archeologists) found the charms of small town life attractive. When the
14 Silver City Community Center burned to the ground in 2003, the community rallied around the
15 restoration and rebuilding of the center, donating thousands of hours to reclaim artifacts, restore
16 the building and navigate political obstacles that impeded the historically accurate rebuild of the
17 center. With stubborn perseverance, the Silver City Community Center was lovingly and
18 carefully rebuilt and the community became stronger for it. It is now a place reserved for
19 spirited local governance, fellowship and fun and is the physical embodiment of Silver City's
20 journey from ghost town to thriving community.
21
22

23 **D. Advent of CMI's Unprecedented Money Influence in the Comstock**

24 52. Since its recent entry into the Comstock, CMI has sought to purchase influence in
25 a variety of ways, initiated in Storey County and then perfected in Lyon County. In Storey
26 County where it needed various special land use permits, CMI contributed to County
27
28

1 Commissioner election campaigns and hired the father of the sole planner employed by Storey
2 County.

3 53. Once it had received the approvals it needed in Storey County, CMI turned its
4 attention to Lyon County as it needed to change the Silver City land use designations in order to
5 mine on that portion of its ownership in Lyon County.

6 54. In December 2010, when it adopted the 2010 Master Plan and ignored CMI's first
7 reclassification request, the Lyon County BOC consisted of Chairman Joe Mortenson, Vice-
8 chair Chuck Roberts, and Commissioners Phylliss Hunewill, Ray Fierro and Larry McPherson.
9 Vice-chair Chuck Roberts represented District I, which includes Silver City. Commissioner
10 Roberts made clear that he favored maintaining the longstanding land use designations in Silver
11 City. As a result of the 2010 election, Vida Keller replaced Commissioner Larry McPherson.
12

13 55. In order to gain the vote of the District I Commissioner, CMI needed to replace
14 Vice Chair Roberts. Vice chair Roberts came up for reelection in 2012.
15

16 56. In the 2012 election, CMI threw its huge corporate and unprecedented support
17 behind Bob Hastings, the challenger to Commissioner Roberts.

18 57. CMI and its related companies contributed \$17,500 in cash to Bob Hastings to
19 insure his election. CMI's cash contributions were approximately 60 percent Mr. Hastings'
20 cash contributions that year.
21

22 58. CMI's cash contributions to Mr. Hastings election campaign in 2012 were
23 unprecedented in scale. According to Nevada Secretary of State records, CMI's cash
24 contribution to Bob Hastings dwarfed all prior contributions to any candidate from a single
25 interest by 350 percent.

26 59. CMI cash contribution to Bob Hastings was more than any other Lyon County
27 BOC candidate has ever raised in **total** contributions (cash and in kind) in any other BOC
28

1 election. The average Lyon County BOC candidate since 2008 has raised \$7,379 in these other
2 races according to reports posted by the Nevada Secretary of States. CMI's \$17,500
3 contribution more than doubled this average campaign fund raising.

4 60. CMI's contribution to Bob Hastings equaled the total amount of cash contributions
5 raised by Vice-chair Roberts during the 2012 District I race. Without CMI's cash contributions,
6 Mr. Roberts would have outraised Mr. Hastings in all contributions by \$25,716 to \$12,059.
7

8 61. Plaintiffs/Petitioners are informed and believe that CMI also contributed to Mr.
9 Hastings' campaign significantly in other ways. During the 2012 campaign, CMI held
10 "Community Open Houses" within Mr. Hastings' election district, and provided free food,
11 drinks and music. At these "Open Houses," CMI, Plaintiffs/Petitioners are informed and
12 believe, introduced Mr. Hastings, allowed him to speak and promote his election.
13

14 62. In the November 2012 election, Bob Hastings defeated Mr. Roberts in the election
15 for District I Commissioner.

16 63. After CMI's overwhelming support for Commissioner Hastings and in opposition
17 to a perceived opponent provided the following blunt message to the other BOC members: if
18 CMI perceives a commissioner as unfriendly to its position, CMI will fund an opponent who is
19 friendly.
20

21 64. CMI also makes strategic hiring decisions of those related to important decision
22 makers, as it did in Storey County.

23 65. In Lyon County, CMI hired either Keller Rebuilders (owned by Commissioner
24 Keller and her husband) or Commissioner Keller's husband directly to work CMI owned or
25 controlled buildings and structures in the Comstock. CMI thereafter created a foundation,
26 apparently only supported by CMI contributions, and hired either Keller Rebuilders or
27 Commissioner Keller's husband to continue work on CMI owned or controlled buildings and
28

1 structures in the Comstock. Commissioner Keller's husband is currently working for CMI's
2 foundation on a one year contract. This contract began in the Spring of 2013 and is therefore
3 due to expire in the Spring of 2014. When Commissioner Keller considered CMI's 2013
4 Application, her husband's employment contract was due to expire shortly thereafter.

5 66. According to her Nevada Financial Disclosure Forms, in 2013 and 2014 Ms.
6 Keller received income from only four sources: Lyon County (\$26,136 annually), Priceless
7 Realty Inc., Keller Rebuilders/Consulting, and Lakeview Plaza LLC. Plaintiffs/Petitioners are
8 informed and believe that Commissioner Keller and her husband owe Lyon County over \$8,000
9 in real property taxes.
10

11 67. Plaintiffs/Petitioners are concerned that if Commissioner Keller and her husband
12 sole source of income outside of their contracts with CMI is Commissioner Keller's Lyon
13 County salary, Ms. Keller's possess a powerful incentive to maintain good relations with CMI
14 and improve CMI's business opportunities.
15

16 68. CMI also employed Commissioner Hasting's wife in relation to certain events it
17 put on.

18 69. CMI also hired Commissioner Hasting's daughter's boyfriend as an equipment
19 operator.
20

21 70. In addition to directly hiring family members, CMI contributes to causes favored
22 by Commissioners. For example, Commissioner Hastings has stated, "Comstock Mining has
23 worked with me to help support several charities, including the Mason Valley Boys & Girls
24 Clubs – Dayton Units."

25 **E. With Influence In Place, CMI Applies to Change Silver City Land Uses Designations**
26
27
28

1 71. In August 2013, CMI applied to Lyon County to change the land use designations
2 and zoning within Silver City from more urban to more rural which would allow industrial uses,
3 such as mining, which heretofore had been prohibited.

4 72. CMI, a mining company, filed its 2013 Application in order to mine the property,
5 stating the application was for “the purpose of pursuing continued mineral exploration,
6 development and the economic mining potential of the subject property.”

7
8 73. CMI’s 2013 Application was, for all intents and purposes, the same application for
9 land use designation changes filed by Nevex Gold and rejected by Lyon County in 1986.

10 74. CMI’s 2013 Application contained no expert reports and based its request for
11 zoning change primarily on an assertion that all prior Lyon County land use decisions had been
12 in error.

13 75. CMI’s 2013 Application failed to specify any change in conditions in Silver City
14 or Lyon County.

15
16 76. CMI’s 2013 Application failed to address the express policies in the 2010 Master
17 Plan that were contrary to CMI’s request to locate an industrial use, such as mining, with Silver
18 City.

19 77. The citizens of Silver City overwhelmingly oppose CMI’s 2013 Application.
20 Approximately 75 percent of the 146 registered voters in Silver City oppose CMI’s 2013
21 Application and signed a petition to that effect.

22
23 78. Lyon County has created a system of town advisory councils to provide input of
24 the directly affected communities on issues of concern.

25 79. In September 2013, the Silver City Advisory Council considered CMI’s 2013
26 Application and unanimously voted to recommend that it be denied.

27 **F. Lyon County Planning Staff and Planning Commission Reject CMI’s Application**
28

1 80. Upon receipt of CMI's 2013 Application, Lyon County Planning Department staff
2 began to analyze it and compare it to the policies and guidance contained in the 2010 Master
3 Plan.

4 81. In addition, Plaintiffs/Petitioners completed a thorough legal, planning,
5 environmental, economic and historical evaluation of CMI's 2013 Application.
6 Plaintiffs/Petitioners submitted their final collated expert report to Lyon County. The final
7 report established not only consistency of Lyon County's many prior decisions on the same
8 question, but also inconsistency, and adverse economic, environmental, and social impacts of
9 CMI's proposed industrial uses within Silver City.
10

11 82. Upon an exhaustive review of the CMI's 2013 Application and
12 Plaintiffs/Petitioners' final report, Lyon County's professional planning staff recommended that
13 CMI's application be denied, based on the following considerations:
14

15 a. Industrial land uses requested by the application were in conflict with
16 multiple 2010 Master Plan policies.

17 b. No change in conditions has occurred to justify so altering the longstanding
18 land use designations within Silver City.

19 c. The proposed reduction in density would make needed town infrastructure
20 improvements less likely.
21

22 d. As envisioned by the 2010 Master Plan, a land use change of such a
23 magnitude should be considered, if at all, during the development of the Silver City Community
24 Plan.

25 83. Lyon County originally agendized CMI's 2013 Application for October 8, 2013.

26 84. After CMI received Lyon County planning staff's Staff Report recommending
27 denial of CMI's 2013 Application, Plaintiffs/Petitioners are informed and believe that CMI
28

1 contacted upper level Lyon County management and held a meeting attended by both members
2 of the Planning Commissioners and BOC and the Lyon County Manager. Lyon County has
3 never disclosed what was discussed at this meeting.

4 85. A large number of Silver City residents attended the October 8, 2013 Planning
5 Commission meeting.

6 86. After the Planning Commission had already approved its agenda for the day, while
7 keeping the public at the meeting for more than an hour, CMI and Lyon County staff announced
8 that they had agreed to seek a continuance to the next Planning Commission meeting in
9 November. Although CMI and Lyon County both had advance knowledge of their proposed
10 request, neither party alerted Silver City residents or their representatives of the likely
11 continuance of the hearing for which residents travelled to Yerington to participate in.
12

13 87. November 12, 2013, the Lyon County Planning Commission held a public hearing
14 on CMI's 2013 Application.
15

16 88. During its presentation on its application, CMI provided no expert testimony to
17 counter or address the evidentiary record created by Plaintiffs/Petitioners and the Lyon County
18 Planning Department. Instead, CMI presented a totally new presentation, not provided to any
19 one in advance, regarding exact boundaries of the original Silver City town site. The Planning
20 Commission chastised CMI for the introduction of last minute information not shared with the
21 obviously interested parties.
22

23 89. Both Commissioner Hastings and Keller attended the November 2013 Planning
24 Commission during the hearing on CMI's 2013 Application.

25 90. After hearing hours of public testimony, the Planning Commission adopted the
26 recommendation of its professional staff and recommended – by a 4 to 1 vote – that the BOC
27 deny CMI's application.
28

1 91. In making its recommendation, the Planning Commission found the following:

2 “A. The proposed amendment is not in substantial compliance with, nor
3 promotes the Master Plan goals, objectives and actions in that it is not in keeping with the
4 majority of applicable guiding principles, goals, policies, strategies and community description
5 contained in the 2010 Lyon County Comprehensive Master Plan, County-wide Component.
6

7 B. The proposed amendment would result in land uses which are incompatible
8 with the actual and planned adjacent land uses, and does not reflect a logical change in land use
9 in that the amendment would change the planned character and intensity of residential
10 development and enables the potential development of a land use incompatible with the actual
11 and planned adjacent and predominant residential land uses.
12

13 C. The proposed amendment fails to identify or respond to changed conditions
14 or further studies that have occurred since the Master Plan was adopted by the Board, and the
15 requested amendment does not represent a more desirable utilization of land.

16 D. The proposed amendment will adversely affect the implementation of the
17 Master Plan goals, objectives and actions, and will adversely impact the public health, safety or
18 welfare.
19

20 E. The proposed amendment does not promote the desired pattern for the
21 orderly physical growth of the County as set forth for the Silver City community in the
22 2010 Lyon County Comprehensive Master Plan, County-wide Component.

23 F. The existing Comprehensive Master Plan and/or any related element
24 thereof is not in need of the proposed amendment.

25 G. The proposed amendment is not compatible with the surrounding area, and
26 the goals and policies of the Comprehensive Master Plan, particularly those related to Silver
27 City.
28

1 H. The proposed amendment will have effects on service provision, including
2 adequacy or availability of facilities and services, and is not compatible with existing and
3 planned service provision.

4 I. Deviation from the strict adherence to the Comprehensive Master Plan
5 would result in a situation neither intended nor in keeping with other key elements and policies
6 of the Plan.

7
8 J. The proposed Plan amendment will not promote the public welfare and will
9 be inconsistent with the goals and policies of the Comprehensive Master Plan and the elements
10 thereof, and

11 K. The burden of proof has not been met by the applicant in their application
12 to warrant a change in the Master Plan at this time.”

13
14 92. The Planning Commission’s findings mirrored the BOC’s 1986 findings on the
15 similar Nevex Gold Master Plan amendment application.

16 93. For at least the last two years, the Lyon County BOC has upheld every positive
17 recommendation of the Lyon County Planning Commission.

18 **G. Without Explanation, Lyon County BOC Reverses its Own Prior Findings, its**
19 **Professional Staff and Planning Commission Recommendations and Approves CMI’s**
20 **Application**

21
22 94. Lyon County agendized CMI’s 2013 Application to be heard by the BOC at its
23 January 2, 2014 meeting.

24 95. At the beginning of the January 2, 2014 meeting, Commissioner Keller announced
25 she had a new action for consideration by the BOC. Commissioner Keller indicated she had
26 contacted BOC members and CMI to discuss her proposal. Although Commissioner Keller
27 characterized the new proposal as a “compromise” offered on behalf of the Silver City
28

1 residents, she never contacted any representative of the Silver City Town Board or concerned
2 residents to discuss the new alternative.

3 96. On January 1, 2014, Commissioner Keller and her husband, a CMI employee, met
4 privately with BOC Chair Joe Mortensen and the Lyon County Manager. Plaintiffs/Petitioners
5 are informed and believe that Commissioner Keller, her husband, Commissioner Mortensen and
6 the County Manager then met with CMI's CEO and its consultant. Despite meeting the day
7 before with CMI's CEO and its consultant, Commissioner Keller informed the public during the
8 January 2 meeting that she had only been working with CMI's consultant.

9 97. Commissioner Keller has had extensive contacts with CMI. Commissioner Keller
10 refused to meet with representatives of Silver City despite repeated invitations.

11 98. Even though they had advance knowledge of the new proposal, no BOC member
12 or Lyon County staff contacted Silver City residents or their known representatives to either
13 discuss the proposal or provide any notice of the intent to introduce it during the January 2,
14 2014 hearing.

15 99. Commissioner's Keller's new proposed action substantially modified the
16 boundaries of the proposed area for land use designation changes. Commissioner Keller's new
17 action represents a substantial, and heretofore undisclosed amendment to CMI's 2013
18 Application.

19 100. CMI's 2013 Application proposed to change land use designations for their
20 ownership within Silver City. The proposed change in land use and zoning designation would
21 permit CMI to pursue further permits for a range of new using including industrial type uses
22 such a mining, feed lots, etc. Some of these uses were classified as "allowed," which means
23 that CMI could pursue themwith an ordinary permit application. Other of the new uses, such
24
25
26
27
28

1 as the industrial one including mining, could only be pursued after obtaining a "special" use
2 permit.

3 101. When Lyon County's professional planning staff assessed the appropriateness of
4 CMI's application, it analyzed the full range of potential uses, including special uses such as
5 mining, that could occur under the proposed land use changes.

6 102. In direct contravention to their professional planning staff analysis and the BOC's
7 many prior considerations of the same basic planning decision such as the 1986 Nevex Gold
8 application, BOC members in favor of the application determined that they could only consider
9 the allowed uses during their discussion of CMI's 2013 Application. These members
10 determined that they could not consider the potential impacts of special uses, such as mining
11 and other industrial uses, at this stage in the land use planning determination.

12 103. During the January 2, 2014 hearing, CMI presented no expert testimony to
13 counter the factual record regarding the adverse impacts of its 2013 Application. The record is
14 devoid of any evidence of actual benefits to the public resulting from the 2013 Application.
15 The record is also devoid of any changed circumstances in Silver City or its environs to justify
16 a change in Lyon County's long-standing and consistent land use policies for Silver City.

17 104. After public comment, the BOC held an abbreviated discussion consistent with
18 their constrained view of the allowable impacts to consider and voted, 4 to 1 to overturn the
19 Silver City Advisory Council, its professional planning staff recommendation, and the
20 recommendation of its Planning Commission, and grant Commissioner Keller's new amended
21 CMI 2013 Application.

22 105. The findings made by the BOC on January 2, 2014 to approve the revised CMI
23 application are legally and factually inconsistent with the Lyon County BOC's prior decisions
24 approving the 1971 Master Plan, the 1986 denial of the same application by Nevex Gold,
25
26
27
28

1 approving the 1990 Lyon County Master Plan, approving the 2002 Lyon County West Central
2 Master Plan and the 2010 Lyon County Comprehensive Master Plan.

3 106. The Lyon County BOC did not refer the amended 2013 Application for a Master
4 Plan amendment to its Planning Commission for a report prior to taking action on the
5 application.

6
7 107. Instead, Lyon County BOC referred the amended Master Plan amendment to the
8 Planning Commission for a report **after** the BOC approved the amendment.

9 **H. Adverse Effects of BOC's Action on Silver City Residents**

10 108. CRA members, who include many Silver City residents, and Gayle Sherman and
11 Joe McCarthy will be adversely affected by the BOC's approval of the CMI's revised 2013 in
12 the following ways:

13 a. Plaintiffs/Petitioners did not receive prior notice and an opportunity to
14 prepare for the actual application acted on by the BOC on January 2, 2014.

15
16 b. Plaintiffs/Petitioners were excluded from communications between BOC
17 members that would otherwise have been public.

18 c. CMI's existing mineral exploration in Silver City and surface mining in
19 the adjacent Lucerne Pit. CMI's past and present exploration and mining activities cause
20 degraded visual conditions, loud industrial noises within a quiet residential area, dust and dirt
21 on roads and in the air, and increased traffic on nearby roads including trucks and other
22 industrial equipment. The change in land use designations and zoning from prohibiting
23 industrial uses such as mining in Silver City will likely cause these present adverse effects to
24 increase.
25
26
27
28

1 d. The change in land use designations and zoning from prohibiting
2 industrial uses such as mining to allowing it under a special use permit will reduce the value of
3 Plaintiffs/Petitioners' property.

4 e. Surface mining, made possible by the change in land use will exacerbate
5 and accelerate the destruction of the CHD. Road building, cuts and fills, trenching, drill pads,
6 and subsequent associated surface mining activities, as noted by the National Park Surface
7 individually and cumulatively degrade the unique character of the CHD. In addition, the noise
8 associated with the proposed activities will substantially alter the character of the CHD. As
9 CRA members have testified, the construction, drilling and other activities associated with
10 CMI's past and current mineral exploration and mining have significantly altered the aural
11 landscape in the CHD and efforts to attenuate have proven unsuccessful.
12

13 f. Mining operations can generate dust from mining and mineral processing
14 operations and associated truck traffic, releasing particulates, nitrous oxide, sulfur dioxide, and
15 carbon monoxide from the equipment used to mine and process ore minerals. These emissions
16 can generate smog and other forms of air pollution that may impact local air quality. Mine
17 sites can also have increased concentrations of specific metals and salts in water used in – or
18 runoff from – mine sites. Acid mine drainage is a phenomenon that can occur when rock
19 containing sulfides is exposed to air and water. The water can become acidic and often carries
20 elevated levels of toxic metals. Acid mine drainage occurs most frequently in association with
21 metals mines [such as gold and silver mines] and can affect water quality. Pit lakes, another
22 water quality concern during and after mine closure, are created when mining is completed in a
23 pit and dewatering pumps are turned off, allowing groundwater to flow back into the pit.
24 Similar concerns about the acidity and concentration of heavy metals in these water bodies
25 arise in association with metals mines. Changes in water quality and quantity can affect not
26
27
28

1 only human health but also wildlife habitat and ecosystem health. Environmental impact
2 assessment processes often intensively focus on bio-diversity issues in Nevada, and as a
3 consequence, operating plans require significant dedication to design of mitigation and
4 management efforts.

5 g. The change in land use to rural versus urban densities will it more difficult
6 for infrastructure improvement for Silver City that would improve the citizens' quality of life.

7
8 **I. Timely Commencement of this Action**

9 109. On January 8, 2014, the Office Manager to the Lyon County Commissioners and
10 County Manager distributed to CMI and a Silver City Town Advisory Board member an email
11 with the subject line "Planning Final Action 01/02/2014." The email attached letters dated
12 January 7, 2014 that describes the BOC's final action granting Commissioner Keller's revised
13 CMI 2013 Application. While no evidence exists that this notice of final action has been filed
14 with the Clerk of the Lyon County or another entity identified by Lyon County as clerk to the
15 BOC, Lyon County contends that "the date of the email, January 8, 2014, [is] the filing date
16 with the clerk's office" sufficient to trigger the NRS 278.0235 25-day limitation period.

17
18 110. Plaintiffs/Petitioners file this action within 25 days of Lyon County's January 8,
19 2014 notice of final action.

20
21 **J. Nevada Public Records Act**

22 111. The Nevada Public Records Act ("NPR") (NRS Chapter 239) provides the
23 public the right to inspect and copy public records created and held by government entities. In
24 relevant part, the NPR defines a "government entity" as "(a) An elected or appointed officer
25 of this State or of a political subdivision of this State; (b) An institution, board, commission,
26 bureau, council, department, division, authority or other unit of government of this State,
27
28

including, without limitation, an agency of the Executive Department, or of a political

subdivision of this State" NRS 239.005(a), (b). Public records include XX.

112. On February 11, 2014, Plaintiffs/Petitioners submitted to the Lyon County Board of County Commissioners and Lyon County staff a request for all public records pursuant to the NPRA and related to CMI's Application for Master Plan Amendment and Zoning Change (PLZ-13-0050, 0051), including but not limited to all records of communication regarding CMI to or from the Commissioners regardless of whether they occurred on devices owned by the County or the Commissioners.

113. Lyon County Commissioners utilized private email and cellular phones to

communicate with each other, staff and members of the public including CMI and its

representatives, regarding CMI's activities in Lyon County, including CMI's application

considered by Lyon County on January 2, 2014.

114. Lyon County responded to Plaintiffs/Petitioners' NPRA request and provided,

inter alia, copies of phone records, emails and other records in electronic form as long as those

records were created and or stored on county-owned and controlled equipment.

115. Lyon County refused to provide any record created or stored by an individual

County Commissioner, stating: "Lyon County does not provide cellular phones for the County

Commissioners, and as such, Lyon County does not maintain any of those records and they are

not public records pursuant to NRS Chapter 239."

116. On XX, Lyon County provided CRA with a list of documents withheld as

privileged.

FIRST CAUSE OF ACTION

(Violations of Nevada Open Meeting Law)

1 117. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
2 116 inclusive, of this Complaint/Petition, as if fully set forth below.

3 118. Nevada's Open Meeting Law, NRS Chapter X, requires that Lyon County BOC
4 give proper notice of what it will consider taking action at each meeting.

5 119. Nevada Open Meeting Law also outlaws BOC members from deliberating outside
6 of noticed public meetings.

7 120. Lyon County BOC violated both Nevada Open Meeting requirements by failing to
8 agendize the action actually taken and deliberating on the action outside of a public hearing.

9 121. Since Lyon County BOC approval of Commissioner Keller's proposal violated
10 Nevada's Open Meeting Law, it is void.

11 122. A real, live and present controversy exists between Plaintiffs/Petitioners and
12 Defendants/Respondents.

13 SECOND CAUSE OF ACTION

14 (Denial of Due Process)

15 123. Plaintiffs/Petitioners re-allege and incorporate by reference, Paragraphs 1 through
16 122 of this Complaint, as if fully set forth below.

17 124. The Due Process Clause of the United States and Nevada Constitutions, as well as
18 Nevada Ethics in Government Act, guarantee citizens that decisions made by government
19 officials shall be free from undue influence. These laws provide that where a reasonable person
20 would perceive a conflict of interest on the part of government official when he or she considers
21 a matter, the government official must recuse himself or herself from consideration of that
22 matter.

23 125. Commissioner Keller received income from CMI before and during her
24 consideration of that company's application to expand its mining opportunities and thereby
25 expand resources available to continue to hire Commissioner Keller's husband.

26 126. Commissioner Keller's receipt of money from CMI in this instance disqualifies her
27 from participating in the consideration of CMI's 2013 Application.
28

127. CMI's unprecedented and outsized cash contributions to Commissioner Hastings's election campaign, as well as CMI's employment of Commissioner Hastings' wife and daughter's boyfriend and CMI's contributions to Commissioner Hastings' preferred charities, also poses a perceived or actual conflict of interest and disqualifies him from participating in the consideration of CMI's 2013 Application.

128. Plaintiffs/Petitioners' due process rights were therefore violated by the participation of Commissioners Keller and Hastings during consideration of CMI's 2013 Application.

THIRD CAUSE OF ACTION

(Abuse of Discretion)

129. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through 128 inclusive, of this Complaint/Petition, as if fully set forth below.

130. Pursuant to the Nevada Revised Statutes, Lyon County possesses the authority to control land uses within its boundaries. The Nevada Legislature empowered counties to regulate land uses for the public health, convenience, safety and welfare and promotion of the general good of its communities through NRS Chapter 278.

131. On each and every of the five separate occasions in which it addressed the exact same land use designation question (the most recent being in 2010), the Lyon County BOC found that the appropriate land use designation for the CMI's parcels in Silver City was urban and not industrial. In 1986, Lyon County BOC expressly found that the land use designations request by CMI in its 2013 Application were contrary to the good of the community and contrary to the 2010 Comprehensive Master Plan.

132. Since 2010, no changes in circumstances have occurred to justify a change in land use designations.

133. The revised CMI 2013 Application substantially conflicted with the adopted 2010 Comprehensive Master Plan.

1 134. The record before the Lyon County BOC fails to contain the evidence necessary
2 to support the findings made by the BOC on January 2, 2014, that directly contradicted the
3 findings made by the BOC on the five prior times it addresses the same question.

4 135. The Lyon County BOC abused its discretion when it refused to consider the full
5 range of uses contemplated CMI's 2013 Application.

6 136. Spot zoning is "zoning with disregard for the welfare of the whole community, for
7 the benefit of a few or in violation of a comprehensive plan." *Save a Valuable Environment v.*
8 *City of Bothel*, 576 P.2d 401, 405 (Wash. 1978). Such zoning is arbitrary and capricious, as it
9 disregards the emphasis upon consistency of rezoning with existing land uses. Lyon County
10 BOC's action approving CMI's amended 2013 Application constitutes illegal spot zoning as it
11 disregards the welfare of the whole community to the benefit of a mining company.

12 137. Lyon County BOC's action approving CMI's amended 2013 Application was
13 therefore contrary to law.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of NRS 278.220)**

16 138. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
17 137 inclusive, of this Complaint/Petition, as if fully set forth below.

18 139. NRS 278.220(4) mandates that "[n]o change in or addition to the master plan or
19 any part thereof, as adopted by the planning commission, made be made by the governing board
20 in adopting the same until the proposed change or addition has been referred to the planning
21 commission for a report thereon"

22 140. When the Lyon County BOC revised and then adopted CMI's Application it made
23 a change and/or an addition to the master plan that had not been heard by the Planning
24 Commission.

25 141. Instead, the Lyon County BOC first acted upon the changed/added proposed
26 Master Plan amendment and then referred the amendment to the Planning Commission for a
27 *post hoc* report.

28 142. Lyon County BOC therefore violated NRS 278.220(4).

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of NPRA)**

3 143. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through
4 142 inclusive, of this Complaint/Petition, as if fully set forth below.

5 144. On February 11, 2014, Plaintiffs/Petitioners served upon Lyon County BOC
6 members a NPRA request for records regarding CMI.

7 145. On April 25, 2014, Lyon County denied Plaintiffs/Petitioners' NPRA request as to
8 those records held by individual Lyon BOC members, asserting these records were not public
9 records within the meaning of the NPRA.

10 146. Because the NPRA obligates "governmental entities" – defined to include
11 individual county commissioners – to preserve and produce records made in the course of their
12 official duties, Lyon County BOC violated the NPRA by not producing all public records
13 responsive to Plaintiffs/Petitioners' NPRA request.

14 147. The NPRA also requires Lyon County to provide Plaintiffs/Petitioners with the
15 basis for withholding any public record as privileged.

16 148. Based on information and belief, Lyon County has withheld public records public
17 but in violation of the NPRA failed to provide Plaintiffs/Petitioners with any basis for
18 withholding public records.

19 149. The NPRA authorizes members of the public to bring an action to compel the
20 production of public records where a governmental entity has refused to comply with NPRA
21 requirements.

22 150. Plaintiffs/Petitioners therefore request this Court order the Lyon County BOC to
23 respond to Plaintiffs/Petitioners' NPRA request and if it withholds any records as confidential
24 to provide the basis for doing so.

25 **REQUEST FOR RELIEF**

26 WHEREFORE, as a result of the approval of the revised CMI 2013 Application,
27 Plaintiffs/Petitioners request judgment in their favor as follows:
28

- 1 1. That the Court declare that Lyon County BOC violated the Nevada Open Meeting
- 2 Law;
- 3 2. That the Court declare that Lyon County BOC denied Plaintiffs/Petitioners their
- 4 due process rights;
- 5 3. That the Court declare that Lyon County BOC abused its discretion and/or acted
- 6 contrary to law;
- 7 4. That the Court declare that Lyon County BOC violated NRS 278.220 by failing to
- 8 refer the revised proposed Master Plan amendment to its Planning Commission prior to
- 9 adopting it;
- 10 5. That the Court declare that Lyon County BOC violated the NPRA by failing to
- 11 produce all public records responsive to CRA's NPRA request;
- 12 6. That the Court mandate that the adoption by Lyon County BOC of the revised
- 13 2013 Application is null and void.
- 14 7. That this Court issue an injunction enforcing the declarations issued above;
- 15 8. For Plaintiffs/Petitioners costs associated with this action;
- 16 9. To the extent permitted by law, for an award of reasonable attorneys' fees; and,
- 17 10. For such other and further relief as the Court may deem just and proper.

18 Dated: July 3, 2014.

19 Respectfully submitted,

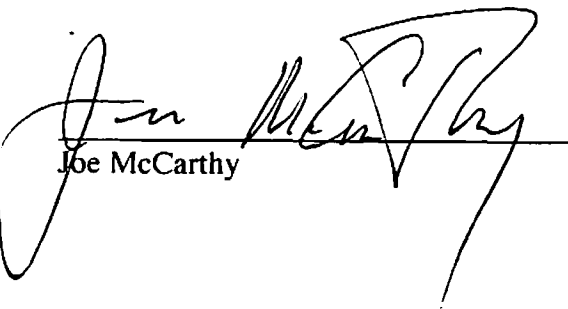
20
21 By _____
22 John L. Marshall, SBN 6733
23 570 Marsh Avenue
24 Reno, NV 89509
25 775.303.4882

26 Attorney for Plaintiffs/Petitioners CRA, Gayle
27 Sherman, Joe McCarthy
28

AFFIDAVIT/VERIFICATION

I, Joe McCarthy, a member of the Board of Directors of Plaintiff CRA and a named Plaintiff/Petitioner, have read the foregoing Complaint/Petition and know the contents thereof; that the contents thereof were prepared with the assistance and advice of counsel for CRA. The contents of the Complaint, subject to inadvertent or undiscovered errors, are based upon and therefore limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of this Complaint, are true to the best of my knowledge, information and belief. I reserve the right to make any changes in the contents of this Complaint if it appears at any time that omissions or errors have been made or that more accurate information becomes available.

Dated: July 3, 2014.



Joe McCarthy

Case No. 14-CV-00128

JOHN L. MARSHALL

SBN 6733

570 Marsh Avenue

Reno, Nevada 89509

Telephone: (775) 303-4882

Attorney for Plaintiffs/Petitioners Comstock

Residents Association, Gayle Sherman, Joe

McCarthy

2014 JUL -3 PM 2:21

TANYA L. ANDERSEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY

Plaintiffs/Petitioners,

v.

ORAL ARGUMENT REQUESTED

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,

OPPOSITION TO MOTION TO DISMISS

I. INTRODUCTION

For decades, Defendant Lyon County continuously reinforced its longstanding policy excluding mining uses from within the Silver City townsite. After Defendant Comstock Mining Inc. ("CMI") obtained control of mining claims within Silver City, funding the election of a more-friendly candidate, Commissioner Hastings, in order to prevent the reelection of a Lyon County Commissioner supportive of the mining ban. CMI also contributed to Commissioner Hastings' favored charities and employed his wife and daughter's boyfriend. Commissioner

1 Hastings thereafter actively participated, advocated and voted in favor of reversing Lyon
2 County's mining ban to allow CMI the opportunity to open pit mine within Silver City.

3 One a different tack, CMI curried favor with another Commissioner – Vida Keller – by
4 hiring her husband to perform substantial construction work on historic mining structures on
5 CMI's mining sites. The money provided to Commissioner Keller and her husband by CMI
6 likely represents a substantial part of their annual income as they cannot afford to even pay their
7 own Lyon County property taxes. Commissioner Keller thereafter actively participated,
8 advocated and voted in favor of reversing Lyon County's mining ban to allow CMI the
9 opportunity to open pit mine within Silver City.
10

11 Right before the hearing on CMI's application to allowing mining uses, a majority of the
12 Lyon County Commissioners and CMI collaborated to produce a "compromise" proposal
13 agreeable to them. Lyon County did not provide advance notice of this new proposal or the
14 basis for it until the day of the meeting.
15

16 Plaintiffs/Petitioners Comstock Residents Association, Gayle Sherman and Joe McCarthy
17 (collectively "CRA"), homeowners within Silver City, filed this lawsuit to overturn Lyon
18 County's abrupt reversal of the longstanding Silver City mining ban on a variety of grounds,
19 including, but not limited to, that the County's actions violated the Nevada Open Meeting Law
20 and the procedural requirements of NRS 278.220(4) and CMI's influence over the Lyon
21 Commission violated their due process rights. Defendant/Respondent Lyon County Board of
22 County Commissioners ("County") now moves to dismiss these claims.
23

24 CRA hereby oppose the County's Motion to Dismiss or, in the alternative, Motion for
25 Partial Summary Judgment ("Motion to Dismiss"). The County asks the Court to dismiss
26 CRA's First, Second and Fourth Claims for Relief based on a variety of arguments seeking to
27 excuse its Board of Commissioners' conduct. However, CRA's Complaint for Declaratory and
28

1 Injunctive Relief/Petition for Writ of Mandate or Judicial Review (“Complaint/Petition”)
2 alleges adequate facts that if proven constitute legitimate causes of action. The Court should
3 therefore deny the County’s Motion to Dismiss.

4 II. STANDARD OF REVIEW

5 A motion to dismiss “is subject to a rigorous standard of review Accordingly, th[e]
6 court will recognize all factual allegations in [the] complaint as true and draw all inferences in
7 its favor. [The] complaint should be dismissed only if it appears beyond a doubt that it could
8 prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew v. City of North Las*
9 *Vegas*, 124 Nev. 224, 227-228 (2008).

11 III. ARGUMENT

12 A. CRA Properly Pleads Alternative Forms

13 CRA alleges that the County’s action of overturning the longstanding prohibition on
14 mining in Silver City is illegal under four separate causes of action, violations of the Open
15 Meeting Law and due process (First and Second Causes of Action), an abuse of discretion
16 (Third Cause of Action) and violation of NRS 278.220 (Fourth Cause of Action). CRA labels
17 its pleading of these four claims for relief using both the traditional “complaint” and “petition”
18 forms, including a petition for writ of mandate and alternatively for judicial review. In its
19 Motion, the County initially seeks to dismiss CRA’s First, Second and Fourth Claims for Relief
20 by arguing that *Kay v. Nunez*, 122 Nev. 1100 (2006) requires all land use actions must be
21 brought pursuant to NRS 278.3195 as petitions for judicial review. Motion to Dismiss at 6-8.
22 The Court should deny this portion of the County’s motion on a variety of grounds.

23 First, the County improperly uses a NRCP 12(b)(5) motion to seek dismissal of individual
24 causes of action based on the labeling of the entire pleading. As noted above, CRA’s
25 Complaint/Petition challenges the County’s action of reversing the mining ban under a variety
26
27
28

1 of theories, each plead as a separate cause of action. As discussed below, it is unclear how such
2 a pleading should be entitled – as a complaint, a petition for writ of mandate, or a petition for
3 judicial review – given the number and variety of illegalities alleged. Under its first argument,
4 the County seeks to dismiss all claims (other than the Third Cause of Action) because CRA
5 seeks “declaratory relief, injunction and petition for writ of mandate” Motion to Dismiss
6 at 8. The County’s argument, however, goes to the specific form of relief requested in CRA’s
7 Request for Relief rather than the substance of the claim actually pled in the First, Second and
8 Fourth Causes of Action. Regardless of the how CRA labeled its entire pleading, that choice
9 provides no basis to dismiss individual claims for relief.
10

11 Second, it seems that the County’s real purpose in raising this argument as a NRCP
12 12(b)(5) “defense” is to limit the scope and standard of review applicable to the range of claims
13 presented to the Court. See Motion to Dismiss at 8:8-14 (arguing all claims should be limited to
14 official record and reviewed under the substantial evidence test). However, CRA pleads a
15 number of causes of action that are not subject to the limitation of a standard judicial review
16 action. For example, CRA alleges a violation of due process as a result of the obvious potential
17 for unacceptable bias presented by CMI’s use of money to influence elections and individual
18 County Commissioners. CRA should be entitled to discovery to prove its allegations –
19 particularly where the County has refused to add to the official record or produce as public
20 records all communications between CMI and individual commissioners. See CRA’s Motion to
21 Amend, filed contemporaneously herewith.
22
23

24 Third, the basis for County’s argument – NRS 278.3195 (and therefore *Kay*) – does not
25 apply to this action by its express terms. NRS 278.3195 applies where a local jurisdiction has
26 created a zoning board of adjustment or lodged in its Planning Commission or hearings officer
27 the right to make a final decision on matters that come before it (see e.g., NRS 278.030
28

1 (planning commissions), 262 (hearing examiners), 270 (boards of adjustment). If a local
2 jurisdiction has so delegated the power to approve a land use request, the governing body of that
3 local jurisdiction, pursuant to NRS 278.3195(1), must then provide a right of appeal (absent
4 specific exceptions) to the governing body itself. NRS 278.3195(4) thereafter creates a right to
5 seek judicial review of the governing body's final decision on such an appeal.
6

7 In the present case, however, Lyon County did, and does not, delegate decisionmaking
8 regarding master plan or zoning amendments; it keeps the final decision for itself. See Motion
9 at 17:9-12 ("the Board of Commissioners[] has the ultimate authority to enact planning and
10 zoning regulations regardless of reports and recommendations made by the [Planning]
11 Commission'). Thus the Lyon County Planning Commission only "recommends" actions to the
12 County Commission, no appeal of any prior decision is necessary or required. *Id.* at 18:8-10.
13 Since the present master plan and zoning change to allow CMI mining activity did not arise
14 from an NRS 278.3195 appeal, its "judicial review" language does not apply. Likewise the
15 Nevada Supreme Court's holding in *Kay*, which in fact arose from an NRS 278.3195 appeal to a
16 governing body, is inapposite. CRA has pled both the traditional writ of mandamus and judicial
17 review out of an abundance of caution given the Nevada Supreme Court's broad language.
18

19 In sum, CRA's labeling of its pleading with alternative forms poses no defect
20 necessitating dismissal of particular claims contained therein.
21

22 B. CRA States A Claim Under the Open Meeting Law

23 The Nevada Open Meeting Law ("OML") protects and enhances public participation in
24 government decisionmaking. It does so by, *inter alia*, requiring a public agency to clearly and
25 specifically agendize all items it intends to take action upon and to conduct all meetings openly
26 and in public. See NRS 241.020. Moreover, public agencies must recognize that a "higher
27 degree of specificity [for agenda items] is needed when the subject to be debated is of special or
28

1 significant interest to the public,” *Sandoval, v. Board of Regents*, 119 Nev. 148, 154-155
2 (2003). Strict adherence to these principles allows the public advance notice of proposals to be
3 considered and to witness and participate in decisions affecting their vital interests. *Id.* at 154.
4 In its Complaint/Petition, CRA alleges two violations of the OML: (1) that members of the
5 Lyon County Commission deliberated outside of a public meeting by creating a “compromise”
6 proposal, and (2) failed to provide the public with timely notice of the new proposal.
7 Complaint/Petition at ¶¶ 95-99, 108a, 108b, 111-115.
8

9 A public body cannot avoid the OML’s prohibition on discussing and deliberating towards
10 a decision outside a public meeting by doing so serially – known as a walking quorum. See
11 NRS 241.015(2)(a)(2); *Del Pappa v. Board of Regents*, 114 Nev. 388 (1998); *Dewey v.*
12 *Redevelopment Agency of the City of Reno*, 119 Nev. 87, 99 (2003). Here, it appears that a
13 quorum of the Lyon County Commissioners conducted a serial meeting to prepare an agreed
14 upon “compromise” proposal for the upcoming public meeting. First, on December 30, 2013
15 (several day before the January 2, 2014 public meeting) CMI’s representative met with
16 Commissioner Fierro to discuss CMI’s application. Audio CD of January 2, 2014 County
17 Commission Meeting, filed by Lyon County (“1/2/14 Audio CD”). Then, on December 31,
18 2013, CMI’s representative sent to Commissioner Fierro via email a map of the parcels in
19 question. OR 002827 (Lyon County only provided a copy of the email not the attached map in
20 the official record). The next day, January 1, 2012, Commissioner Keller held several meetings
21 with CMI’s representatives, Commissioner Mortensen, and County Manager Jeff Page (and
22 strangely, Commissioner Keller’s husband). 1/2/14 Audio CD. Later that same day, CMI’s
23 representative email to the County Manager a map of the “compromise” proposal worked out in
24 these serial meetings. OR 002889.
25
26
27
28

1 Thus, it appears at this pre-discovery stage, that a quorum of three of the five Lyon
2 County Commissioners discussed and deliberated on an alternative proposal that was then
3 presented to the public for the first time the next day. See 1/2/14 Audio CD (Comments of
4 Mark Rotter stating that the “compromise” proposal was in response to a discussion about
5 removing the northern end and the Dayton Consolidated sites). Such a process would violate
6 the OML. See *Del Pappa v. Board of Regents*, supra. At this pleading stage, therefore, the
7 Court should deny Lyon County’s Motion to Dismiss and permit the discovery phase of this
8 case to proceed.
9

10 Next, Lyon County had advance notice that its Commissioners would propose a
11 substantially different proposal than what the public would be expecting – without any advance
12 notice to the public, indeed purposefully keeping the public ignorant of what was to come.
13 CRA alleges that Lyon County did not provide adequate notice of actual action taken by Lyon
14 County; a proposal made by Commissioner Keller publically disclosed for the first time at the
15 January 2, 2014 meeting. The proposal was discussed prior to the hearing with the CMI (the
16 applicant) and at least three County Commissioners (a quorum). At no time had such a proposal
17 and the basis for it had ever been discussed or disclosed to the public or CRA.
18
19 Complaint/Petition at ¶ 99, 114.
20

21 Unfortunately, waiting until the day of the hearing to substantially change the nature of the
22 hearing is the routine practice for the consideration of CMI’s application. When the Lyon
23 County Planning Commission held the first hearing on CMI’s application, Lyon County
24 disclosed at the meeting that it had met with CMI the day or two prior to the hearing and
25 determined to continue the hearing because the Lyon County staff report recommended denial
26 of the application. Although Lyon County or CMI could have notified CRA in advance of the
27 hearing, they forced CRA members and the interested public to take the day off work, pay its
28

1 consultants, and make the substantial drive to Yerington to attend the meeting that was then
2 continued. OR at 002938 (Lyon County had 6 day notice of continuance). Next, at the
3 rescheduled Planning Commission hearing, CMI presented entirely new argument for why its
4 application should be granted without prior disclosure to the Lyon County Staff, Planning
5 Commission, CRA or the public. And finally, Lyon County Commissioners and CMI created a
6 new proposal to present at the day of the January 2, 2014 hearing.
7

8 The proposal between CMI and the County worked out by three of the Commissioners
9 was made to allegedly to "address the viewshed" issue. 1/2/14 Audio CD (Comments of
10 County Manager Jeff Page). CMI characterized the proposal to provide adequate buffers (*id.*
11 (comments of Mark Rotter). Commissioner Keller stated that she "reached out" to CMI after
12 "listening to concerns of the Silver City residents" about the viewshed. (Although
13 Commissioner Keller met repeatedly with CMI, she refused to meet with residents of the Silver
14 City community (Complaint/Petition at ¶ X).) At the hearing, the mechanics of the Keller
15 "compromise" proposal required extensive explanation. 1/2/14 Audio CD (Comments of Mark
16 Rotter and colloquy with Commissioner Arelliano). Indeed, when Commissioner Keller came
17 to make the motion to approve her "compromise" proposal she had to list a string of assessor
18 parcel numbers excluded from CMI's agendized application, parcel numbers apparently pulled
19 out for a specific purpose – viewshed protection – without any prior public disclosure of the
20 rationale or identity or location. The public, and CRA, was therefore left without a legitimate
21 opportunity to comment on whether or not the proposed parcels were indeed those mapped and
22 more importantly whether those parcels when removed from possible open pit mining provide
23 any viewshed protection. Under these circumstances, where the County itself had prior notice,
24 the changes represented a substantial modification in application and rationale for the proposal,
25 CRA's allegations – that the agenda item listing only CMI's original proposal was inadequate
26
27
28

1 for OML purposes – adequately states a cause of action and the County’s Motion should be
2 denied.

3 C. CRA States A Due Process Claim

4 Due Process protects citizens “when ‘the probability of actual bias on the part of the judge
5 or decisionmaker is too high to be constitutionally tolerable.’ ” *Caperton v. Massey Coal*
6 *Company*, 556 U.S. 868, 872 (2009) quoting *Withrow v. Larkin*, 421 U. S. 35, 47 (1975); see
7 also *Gilman v. Nevada State Board of Veterinary Med. Examiners*, 120 Nev. 263, 269
8 (2004)(clarified on other grounds in *Nassiri v. Chiropractic Physicians’ Bd.*, 130 Nev. Adv. Op.
9 27 (April 3, 2014)). CRA’s Complaint/Petition sets forth how, under the facts of this case, “the
10 probability of actual bias” is constitutionally intolerable because of the influence of CMI upon
11 the Lyon County Commission. These allegations, accepted as true for the purposes of this
12 motion, include:
13
14

15 In December 2010, when it adopted the 2010 Master Plan and ignored
16 CMI’s first reclassification request, the Lyon County BOC consisted of
17 Chairman Joe Mortenson, Vice-chair Chuck Roberts, and Commissioners
18 Phyliss Hunewill, Ray Fierro and Larry McPherson. Vice-chair Chuck
19 Roberts represented District I, which includes Silver City. Commissioner
20 Roberts made clear that he favored maintaining the longstanding land use
21 designations in Silver City. As a result of the 2010 election, Vida Keller
22 replaced Commissioner Larry McPherson.

23 In order to gain the vote of the District I Commissioner, CMI needed to
24 replace Vice Chair Roberts. Vice chair Roberts came up for reelection in
25 2012.

26 In the 2012 election, CMI threw its huge corporate and unprecedented
27 support behind Bob Hastings, the challenger to Commissioner Roberts.

28 CMI and its related companies contributed \$17,500 in cash to Bob
Hastings to insure his election. CMI’s cash contributions were
approximately 60 percent Mr. Hastings’ cash contributions that year.

CMI’s cash contributions to Mr. Hastings election campaign in 2012 were
unprecedented in scale. According to Nevada Secretary of State records,
CMI’s cash contribution to Bob Hastings dwarfed all prior contributions to
any candidate from a single interest by 350 percent.

1 CMI cash contribution to Bob Hastings was more than any other Lyon
2 County BOC candidate has ever raised in total contributions (cash and in
3 kind) in any other BOC election. The average Lyon County BOC
4 candidate since 2008 has raised \$7,379 in these other races according to
5 reports posted by the Nevada Secretary of States. CMI's \$17,500
6 contribution more than doubled this average campaign fund raising.

7 CMI's contribution to Bob Hastings equaled the total amount of cash
8 contributions raised by Vice-chair Roberts during the 2012 District I race.
9 Without CMI's cash contributions, Mr. Roberts would have outraised Mr.
10 Hastings in all contributions by \$25,716 to \$12,059.

11 Plaintiffs/Petitioners are informed and believe that CMI also contributed
12 to Mr. Hastings' campaign significantly in other ways. During the 2012
13 campaign, CMI held "Community Open Houses" within Mr. Hastings'
14 election district, and provided free food, drinks and music. At these
15 "Open Houses," CMI, Plaintiffs/Petitioners are informed and believe,
16 introduced Mr. Hastings, allowed him to speak and promote his election.

17 In the November 2012 election, Bob Hastings defeated Mr. Roberts in the
18 election for District I Commissioner.

19 After CMI's overwhelming support for Commissioner Hastings and in
20 opposition to a perceived opponent provided the following blunt message
21 to the other BOC members: if CMI perceives a commissioner as
22 unfriendly to its position, CMI will fund an opponent who is friendly.

23 CMI also makes strategic hiring decisions of those related to important
24 decision makers, as it did in Storey County.

25 In Lyon County, CMI hired either Keller Rebuilders (owned by
26 Commissioner Keller and her husband) or Commissioner Keller's husband
27 directly to work CMI owned or controlled buildings and structures in the
28 Comstock. CMI thereafter created a foundation, apparently only
supported by CMI contributions, and hired either Keller Rebuilders or
Commissioner Keller's husband to continue work on CMI owned or
controlled buildings and structures in the Comstock. Commissioner
Keller's husband is currently working for CMI's foundation on a one year
contract. This contract began in the Spring of 2013 and is therefore due to
expire in the Spring of 2014. When Commissioner Keller considered
CMI's 2013 Application, her husband's employment contract was due to
expire shortly thereafter.

According to her Nevada Financial Disclosure Forms, in 2013 and 2014
Ms. Keller received income from only four sources: Lyon County
(\$26,136 annually), Priceless Realty Inc., Keller Rebuilders/Consulting,
and Lakeview Plaza LLC. Plaintiffs/Petitioners are informed and believe

1 that Commissioner Keller and her husband owe Lyon County over \$8,000
2 in real property taxes.

3 Plaintiffs/Petitioners are concerned that if Commissioner Keller and her
4 husband sole source of income outside of their contracts with CMI is
5 Commissioner Keller's Lyon County salary, Ms. Keller's possess a
6 powerful incentive to maintain good relations with CMI and improve
7 CMI's business opportunities

8 CMI also employed Commissioner Hasting's wife in relation to certain
9 events it put on.

10 CMI also hired Commissioner Hasting's daughter's boyfriend as an
11 equipment operator.

12 In addition to directly hiring family members, CMI contributes to causes
13 favored by Commissioners. For example, Commissioner Hastings has
14 stated, "Comstock Mining has worked with me to help support several
15 charities, including the Mason Valley Boys & Girls Clubs – Dayton
16 Units."

17 Complaint Petition at ¶¶54-70. In addition, as described above, CMI played a central role in
18 circumventing the OML by shuttling between Commissioners to achieve a majority of
19 Commissioner support for a "compromise" proposal outside of an agenda'd, public meeting.
20 *Supra.*

21 Lyon County, while paying lip service to the importance of the Due Process guarantees of
22 both the United States and Nevada Constitutions, disavows any application of those protections
23 here. The County first argues that CRA members do not allege that their property interests have
24 been adversely affected by the Commissioners' conduct. Motion at 13:7-10. Lyon County
25 ignores the express allegations of the Complaint/Petition establishing (1) the
26 Plaintiffs/Petitioners' individual property interests in their homes and businesses in Silver City
27 (*id.*, at ¶¶2-4, (2) how CRA members and individual parties relied upon the longstanding master
28 plan and zoning designations prohibiting mining on the CMI lands within Silver City (*id.*, at 46-
51), and (3) how the Commissioners' action adverse affects them, including that, "[t]he change
in land use designations and zoning from prohibiting industrial uses such as mining to allowing

1 it under a special use permit will reduce the value of Plaintiffs/Petitioners' property." *Id.*, at
2 ¶108. Thus, notwithstanding the County's flippant statement to the contrary, CRA's allegations
3 establish a sufficient property interest and how those interests are adversely affected by the
4 Commissioners' action.

5 The County next argues that no due process claim may be established as a matter of law
6 because it contends CRA has not alleged that the conduct of individual Commissioners violate
7 the Nevada Ethics in Government Act (NRS Chapter 281A). Motion at 13-16. For example,
8 the County argues that no violation of the Nevada Ethics in Government Act occurred when
9 the County argues that no violation of the Nevada Ethics in Government Act occurred when
10 CMI funded Commissioner Hastings election, supported his chosen charities and employed his
11 wife and daughter's boyfriend, and then voted on CMI's land use application. Motion at 15-16.
12 While County's assertion may or may not be true, it is irrelevant for due process purposes as
13 established by the United States Supreme Court in *Caperton v. Massey Coal Company*. In
14 *Caperton*, the Supreme Court held that the Due Process Clause not only applied to a mining
15 company's overwhelming funding of a judicial candidate – an act not in violation of state
16 election law and likely constitutionally protected speech¹ – but that due process precluded the
17 participation of the successful candidate in the mining company's case before the West Virginia
18 Supreme Court.
19

20 Thus, CRA does not need to allege that CMI's influence or the Commissioners' conduct
21 violated the Nevada Ethics in Government Act; only that such conduct created "the probability
22 of actual bias on the part of the . . . decisionmaker [that] is too high to be constitutionally
23 tolerable." For Commissioner Hastings, CRA's allegations of CMI funding of his campaign
24 and other actions supporting his interests and family create a triable issue of whether a due
25 process violation occurred through his participation in CMI's application.
26
27

28 ¹ See *McCutcheon v. FEC*, 572 U.S. ____ (2014).

1 Similarly, and perhaps more blatantly, Commissioner Keller's participation in a matter in
2 which she had a financial interest triggers due process protections. As alleged in the
3 Complaint/Petition (at ¶¶ 65-66) Commissioner Keller received income from CMI through her
4 husband's contract with CMI and its surrogate foundation.² The current contract for restoration
5 work from CMI's foundation was funded through a percentage of gross proceeds from CMI's
6 mining activities – i.e., the more mining CMI conducted, the more money would be available to
7 employ Mr. Keller. The money the Kellers received from CMI likely constituted a substantial
8 portion of their joint income, as Ms. Keller disclosed no other major source of income and could
9 not afford to keep her property taxes current. CMI's application before the Commission was to
10 expand the area in which mining could occur. Thus, Ms. Keller had a pecuniary interest –
11 distinct from the general public – in maintaining the mining opportunities for CMI and staying
12 in its good graces. The Nevada Ethics Commission has found equal and lesser interests to
13 require recusal because of the threat of or an actual conflict of interest. See e.g., *Carrigan v.*
14 *Commission on Ethics*, 129 Nev. Adv. Op. 95, 313 P.3d 880, 883-884 (2013) (project proponent
15 represented by a friend and campaign manager of city councilman who provided councilman
16 with material benefits required recusal of the councilman); Nevada Commission on Ethics,
17 Abstract of Opinion, Request for Opinion No. 12-69A (August 9, 2013)(an indirect pecuniary
18 interest arising from a business relationship with proponents of a proposed local ordinance
19 amendment that would significantly affect those proponent businesses, sufficient to require
20 recusal under the "reasonable person" standard of NRS 281A.420.). Thus, the participation of
21
22
23
24

25 ² Lyon County attempts to minimize Commissioner Keller's pecuniary interest by labeling it not
26 hers but her husband's. Motion at 14:25-26. CMI may have contracted with Ms. Keller's
27 husband, but in this community property state, Ms. Keller has a direct pecuniary interest in that
28 contract and income. NRS 123.220, 123.225; *Hardy v. Commissioner*, 181 F.3d 1002 (9th Cir.
1999). (wife was liable for the payment of federal income taxes on one-half of the income
earned by her husband during their marriage. NRS 123.220 and 123.225 grant each spouse a
one-half vested interest in the other spouse's income upon receipt.)

1 Commissioner Keller not only violated the Nevada Ethics in Government Act but also the
2 United States and Nevada due process constitutional guarantees. CRA has therefore pled a
3 cognizable claim for relief in its Second Cause of Action.

4 D. Judicial Relief Available Under NRS 278.220 (Fourth Claim for Relief)

5 NRS 278.220(4) mandates that Lyon County follow a certain order of procedures when
6 amending its master plan. “No change in or addition to the master plan or any part thereof, as
7 adopted by the planning commission, may be made by the governing body in adopting the same
8 until the proposed change or addition has been referred to the planning commission for a report
9 thereon and an attested copy of the report has been filed with the governing body.” *Id.*
10 (emphasis added). In its Motion, Lyon County admits that the action of the County
11 Commission triggered NRS 278.220(4) – “the commissioners’ decision on the Master Plan
12 Amendment is a final action but it needs to be sent back to the planning commission for a
13 report.” Motion at 17:20-21. Despite this admission and the express language of NRS
14 278.220(4), Lyon County argues that CRA fails to state a claim because “the statute does not
15 require that the proposed master plan change go back to the [Planning] Commission for a report
16 prior to the Board of Commissioners voting on the proposed action.” Motion at 17:25-27.

17 Lyon County may only make such an argument by ignoring the express language and
18 purpose of NRS 278.220(4). The plain language of NRS 278.220(4) states that the Lyon
19 County Commission can make “no” change in the Master Plan “until” the proposed change has
20 been referred to the Planning Commission. The timing requirement of the statute comports with
21 the intent of master planning set forth in NRS Chapter 278 overall. The Planning Commission
22 initially prepares the master plan under NRS 278.150(1): “The planning commission shall
23 prepare and adopt a comprehensive [master] plan . . .” The master plan may only then be
24 adopted by the governing body of the local government (i.e., the County Commission). NRS
25
26
27
28

1 278.220(1) ("Upon receipt of the certified copy of the master plan, or of any part thereof, as
2 adopted by the planning commission, the governing body may adopt [it]."). NRS 278.220(4)
3 then limits the authority of the governing body by prohibiting the governing body from adopting
4 any change not referred by the planning commission until the planning commission first hears
5 and reports on the governing body's proposal. In this way, the Legislature ensured that master
6 planning proposals will be first considered by the planning commission and only then referred
7 to the governing body for consideration for adoption regardless of whether they arise first with
8 planning commission or the governing body.
9

10 Therefore, contrary to Lyon County's strained interpretation of NRS 278.220(4), the
11 Commission's proposal – that Lyon County admits triggered NRS 278.220(4) – must have been
12 referred to the Planning Commission first before it could be adopted by the County
13 Commission. The benefits of this process are clear: (1) it would provide notice and an
14 opportunity to comment by the public on the proposal, (2) it would allow the Planning
15 Commission to exercise its judgment on the proposal and the County Commissioners'
16 justification for it (i.e., whether it actually provided added viewshed protection), and (3) the
17 County Commission could then act upon the proposal with the considered recommendation of
18 their own appointed Planning Commission. In its rush to act, Lyon County violated the
19 prescribed statutory process and short-changed itself and the public.
20
21

22 Lyon County next argues that since NRS 278.220(4) contains no specific remedial clause
23 for violations of its provisions and the fact that the County Commission is the final planning
24 arbiter, the Court could grant no meaningful relief to CRA. Motion at 17-18. The County
25 conveniently ignores that the Nevada Supreme Court invalidates actions taken in violation of
26 procedural statutory requirements on NRS Chapter 278.220. See e.g. *Falcke v. Douglas*
27
28

1 County, 116 Nev. 583 (2000), see also *Enterprise Citizens Action Committee v. Clark County*,
2 112 Nev. 649 (1996) (county approval of a variance in violation of Chapter 278 invalidated).

3 In sum, NRS 278.220 applies to the County's action, requires the County Commission to
4 first submit its proposal to the Planning Commission, and the Court make grant relief to CRA
5 invalidating the Commission's adoption of the proposal should it find a statutory violation. The
6 County's Motion to Dismiss CRA's Fourth Cause of Action should therefore be denied.
7

8 III. CONCLUSION

9 As set forth above, Plaintiff/Petition CRA alleges viable claims for relief under the
10 Nevada Open Meeting Law, the United States and Nevada Constitutional due process
11 guarantees, and the procedural protections of NRS 278.220(4). CRA therefore requests the
12 Court deny Lyon County's Motion to Dismiss CRA's First, Second and Fourth Causes of
13 Action.
14

15 Dated: July 3, 2014.

16 Respectfully submitted,
17 
18

19 By

John L. Marshall, SBN 6733
570 Marsh Avenue
Reno, NV 89509
775.303.4882

22 Attorney for Plaintiffs/Petitioners CRA, Gayle
23 Sherman, Joe McCarthy
24
25
26
27
28

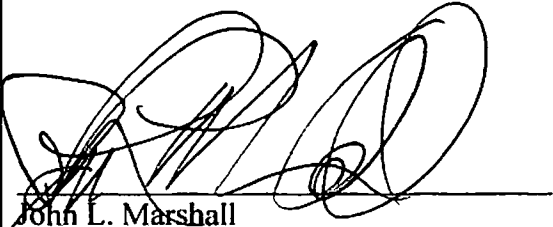
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRS 239B.030, the undersigned affirms that the preceding document does not contain the social security number of any person. I hereby certify that the foregoing Opposition to Motion to Dismiss was served on the parties by mailing a copy thereof on the 3rd day of July, 2014, by United States mail, postage prepaid to:

Steven B. Rye
Chief Deputy District Attorney
31 S. Main Street
Yerington, NV 89447

James R. Cavilla
Allison, MacKenzie, Pavlakis, Wright & Fagan
402 N. Division Street
Carson City, NV 89703


John L. Marshall

1 Case No. 14-CV-00128

2 Dept. No. II

3 The undersigned hereby affirms this
4 document does not contain a social
5 security number.

2014 JUL 25 PM 3:34

TATIANA SOROKINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson CITY

6
7
8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF LYON

10 COMSTOCK RESIDENTS ASSOCIATION,
11 GAYLE SHERMAN, JOE McARTHRY

12 Plaintiffs/Petitioners,

13 vs.

14 LYON COUNTY BOARD OF
15 COMMISSIONERS; COMSTOCK MINING
16 INCORPORATED

16 Defendants/Respondents,
17

18 **OPPOSITION TO PLAINTIFFS/PETITIONERS'**
19 **MOTION TO AMEND COMPLAINT/PETITION**

20 COMES NOW Defendant/Respondent, COMSTOCK MINING INCORPORATED, a
21 Nevada corporation (hereinafter "CMI"), by and through its counsel, ALLISON, MacKENZIE,
22 PAVLAKIS, WRIGHT & FAGAN, LTD., and hereby opposes Plaintiffs/Petitioners' Motion to
23 Amend Complaint Petition. This Opposition is based on the Memorandum of Points and Authorities

24 ///

25 ///

26 ///

27 ///

28 ///

1 filed herewith and upon all other papers and pleadings on file herein.

2 DATED on this 24th day of July, 2014.

3 ALLISON, MacKENZIE, PAVLAKIS,
4 WRIGHT & FAGAN, LTD.
5 P.O. BOX 646
6 Carson City, Nevada 89702
7 Phone (775) 687-0202
8 Fax (775) 882-7918

9 By: 

James R. Cavilia, Esq.
Nevada State Bar No. 3921
Justin Townsend, Esq.
Nevada State Bar No. 12293
Attorneys for COMSTOCK MINING,
INCORPORATED

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This lawsuit was initiated by the filing of a Complaint on January 31, 2014 by
5 Plaintiffs/Petitioners COMSTOCK RESIDENTS ASSOCIATION, GAYLE SHERMAN, and JOE
6 McCARTHY (collectively, "CRA"). The Complaint names CMI and the LYON COUNTY BOARD
7 OF COMMISSIONERS (the "COUNTY") as Defendants/Respondents and alleges four (4) causes
8 of action: (1) Violations of Nevada's Open Meeting Law, (2) Denial of Due Process, (3) Abuse of
9 Discretion, and (4) Violation of NRS 278.220. CRA now seeks leave to amend its Complaint to add
10 a fifth cause of action for violations of Nevada's Public Records Act.

11 CRA's First, Second, and Fourth Causes of Action are the subject of a pending
12 Motion to Dismiss filed by the COUNTY and joined by CMI. CRA's proposed Fifth Cause of
13 Action should not be permitted to move forward for essentially the same reasons the COUNTY and
14 CMI have moved to dismiss CRA's First, Second, and Fourth Causes of Action.

15 CMI is not liable to CRA under any theories advanced by CRA, including CRA's
16 proposed Fifth Cause of Action. Nevertheless, CMI is an interested party to this lawsuit's outcome.
17 The underlying facts of this case are (1) that CMI applied in 2013 for an amendment to the Lyon
18 County Master Plan and a zone change with regard to certain real property situated within Lyon
19 County near the town of Silver City, (2) that CRA opposed the application, and (3) after a public
20 hearing, the COUNTY granted the Master Plan amendment and zone change for a portion of the real
21 property.

22 One of CMI's primary purposes in making the aforementioned application was to
23 economically justify and support further mineral exploration efforts on the subject property. Upon
24 the COUNTY's approval of said application, CMI is now justified through aligned master plan and
25 zoning designations to move forward with its mineral exploration efforts as mining may now be
26 ultimately allowed under the current zoning upon the issuance of a special use permit. In other
27 words, CMI could not justify investing substantial sums of money in mineral exploration and
28 development if mineral extraction is not legally permitted. Contrary to CRA's numerous inferences

1 to the contrary, CMI is not permitted to perform actual mining operations on the property without
2 first obtaining a special use permit. Nevertheless, the filing of this lawsuit and the pendency of this
3 action are causing CMI to delay its mineral exploration efforts until this lawsuit is finally resolved.

4 Nevada law is clear that, in land use planning and zoning matters, the decisions of
5 political subdivisions are subject only to judicial review for allegations of abuse of discretion. For
6 this reason the COUNTY moved to dismiss all causes of action except CRA's Third Cause of
7 Action, which is an action for judicial review of COUNTY's action in granting CMI's application
8 for a master plan amendment and zone change. All other causes of action alleged by CRA are not
9 authorized by Nevada law and only serve to further delay the Court's review of the Record before
10 it to determine whether the COUNTY abused its discretion. The proposed Fifth Cause of Action is
11 no different. Alleged violations of Nevada's Public Records Act have no bearing on this Court's
12 review of the Record to determine whether the COUNTY abused its discretion in approving CMI's
13 application.

14 CMI's only interest in this case is the Court's review of the Record to determine
15 whether the COUNTY's approval of CMI's application will stand. As such, this case should be
16 restricted to a judicial review and all other causes of action should be dismissed. No further causes
17 of action that are unrelated to the Court's review of the Record should be added, because to do so
18 only serves to delay CMI's ability to move forward with the use of its property in accordance with
19 its current Master Plan designation and zoning. For these reasons, CMI respectfully requests an
20 order denying CRA's Motion to Amend the Complaint/Petition.

21 II.

22 LEGAL STANDARD

23 NRCP 15(a) provides in relevant part that "a party may amend the party's pleading
24 only by leave of court or by written consent of the adverse party; and leave shall be freely given when
25 justice so requires." Neither CMI nor the COUNTY have consented to an amendment to the
26 Complaint/Petition. Therefore, CRA must obtain leave of the Court to amend the
27 Complaint/Petition.

1 While leave to amend shall be freely given when justice so requires, the Court may
2 in proper cases deny a motion to amend. Stephens v. Southern Nevada Music Co., Inc., 89 Nev. 104,
3 507 P.2d 138 (1973). Furthermore, “a motion for leave to amend pursuant to NRCP 15(a) is
4 addressed to the sound discretion of the trial court, and its action in denying such a motion will not
5 be held to be error in the absence of a showing of abuse of discretion. Kantor v. Kantor, 116 Nev.
6 886, 891, 8 P.3d 825, 828 (2000) (internal citations omitted).

7 III.

8 ARGUMENT

9 **A. The Court should deny the Motion to Amend because the adding of a**
10 **new claim will cause undue delay to CMI and will be burdensome and**
11 **prejudicial to CMI.**

12 In Nevada, “[s]ufficient reasons to deny a motion to amend a pleading include undue
13 delay, bad faith or dilatory motives on the part of the movant.” Id. at 891. In this case, the adding
14 of a new claim will cause undue delay to CMI. The proposed Fifth Cause of Action contains no
15 allegations against CMI and has no bearing on CMI’s interests in this case. Nevertheless, to grant
16 CRA’s motion and allow CRA to add the new claim will require CMI to file a new answer and
17 potentially other pleadings. That the Court would have to consider and decide a new issue is sure
18 to delay to the resolution of this case as well.

19 Moreover, it is likely, as will be shown below, that the COUNTY would file a new
20 motion to dismiss on largely the same grounds as the pending motion to dismiss CRA’s First,
21 Second, and Fourth Causes of Action. In such an instance, CMI would likely join in the COUNTY’s
22 new motion. In any event, the adding of a new claim only serves to cause CMI to have to file
23 additional pleadings with the Court on claims that have nothing to do with CMI. For these reasons,
24 the adding of the proposed new claim is especially burdensome and prejudicial to CMI.

25 The delays inherent in adding a new claim unduly delay CMI from moving forward
26 with the use of its property. CMI requests only that the Court promptly review the Record and
27 determine whether the COUNTY abused its discretion in granting CMI’s application.

28 ///

///

1 **B. CRA's proposed Fifth Cause of Action is futile as it could be defeated by**
2 **a motion to dismiss.**

3 Nevada courts have recognized that a motion to amend may be denied where the
4 proposed amendments are futile. See Adamson v. Bowker, 85 Nev. 115, 121, 450 P.2d 796, 800
5 (1969). An amendment is futile when it can be defeated by a Motion to Dismiss. See Jablonski v.
6 Pan American World Airways, Inc., 863 F.2d 289, 292 (3rd Cir. 1988); Wilson v. American Trans
7 Air, Inc., 874 F.2d 386, 392 (7th Cir. 1989).

8 NRCP 12(b)(5) provides that the defense of the "failure to state a claim upon which
9 relief can be granted" can be made by motion. A motion made pursuant to NRCP 12(b)(5) tests the
10 legal sufficiency of the claim set out against the moving party and such motion should be granted
11 if it appears to a certainty that claimant is entitled to no relief under any set of facts which could be
12 proved in support of the claim. Washoe Medical Center, Inc., v. Reliance Insurance Co., 112 Nev.
13 494, 915 P.2d 288 (1996).

14 As noted above, the underlying facts of this case are that CMI applied for a master
15 plan amendment and zone change and the COUNTY granted CMI's application. The COUNTY is
16 afforded discretion in land use planning and zoning matters. See NRS Chapter 278. CRA seeks to
17 overturn the COUNTY's decision. The only mechanism for doing so is a petition for judicial review.
18 See NRS 41.032; NRS 278.0233; Redrock Valley Ranch, LLC v. Washoe County, 254 P.3d 641, 644
19 (Nev. 2011); Kay v. Nunez, 122 Nev. 1100, 1102 146 P.3d 801, 803 (2006).

20 On the foregoing basis, the COUNTY and CMI have moved to dismiss all claims
21 except CRA's claim that the COUNTY abused its discretion in granting CMI's application, which
22 requires a judicial review. The same argument applies to CRA's proposed Fifth Cause of Action.
23 There is nothing in Nevada's Public Records Act that could possibly serve as the basis for the Court
24 reversing the COUNTY's decision to grant CMI's application.

25 Moreover, CRA's proposed Fifth Cause of Action is based on allegations that the
26 COUNTY has not produced all records it is required to produce under NRS Chapter 239.
27 Specifically, CRA alleges the COUNTY should have to produce personal cell phone and email
28 records of individual COUNTY Commissioners. Motion 3:7-14.

1 NRS 239.010 contains the mandate that a governmental entity produce for public
2 inspection all non-confidential books and records. NRS 239.010 provides as follows:

3 A person may request a copy of a public record in any medium in
4 which the public record is readily available. An officer, employee or
5 agent of a governmental entity who has legal custody or control of a
6 public record:

7 (a) Shall not refuse to provide a copy of that public record in
8 a readily available medium because the officer, employee or
9 agent has already prepared or would prefer to provide the
10 copy in a different medium.

11 (b) Except as otherwise provided in NRS 239.030, shall, upon
12 request, prepare the copy of the public record and shall not
13 require the person who has requested the copy to prepare the
14 copy himself or herself.

15 Thus, a governmental entity is only required to produce public records over which
16 it has legal custody and control. The COUNTY informed CRA that it does not have custody or
17 control over the individual Commissioners' cell phones. Motion 3:8-10. As such, personal cell
18 phone and email records of individual Commissioners are not public records. Thus, there is no set
19 of facts that if proven will support a claim under the Nevada Public Records Act. Likewise, even
20 if CRA can prove a violation of the Nevada Public Records Act, such a violation does nothing to
21 support their effort to reverse the COUNTY's decision to grant CMI's application for a master plan
22 amendment and zone change. CRA's proposed Fifth Cause of Action cannot survive a motion to
23 dismiss.

24 CRA's Motion to Amend the Complaint/Petition does not add a justiciable cause of
25 action and, for this reason, the Court would be well within its discretion to deny the Motion. See
26 Burnett v. C.B.A. Sec. Service, Inc., 107 Nev. 787, 820 P.2d 750 (1991).

27 IV.

28 CONCLUSION

CRA's proposed Fifth Cause of Action has no bearing on CMI's interests in this case
and will cause undue delay to CMI's interests. CRA's proposed Fifth Cause of Action is not related
to the Court's determination of whether the COUNTY abused its discretion and cannot survive a

///

1 motion to dismiss. For these reasons, CMI respectfully requests an order denying CRA's Motion
2 to Amend the Complaint/Petition.

3 DATED on this 24th day of July, 2014.

4 ALLISON, MacKENZIE, PAVLAKIS,
5 WRIGHT & FAGAN, LTD.
6 P.O. BOX 646
7 Carson City, Nevada 89702
8 Phone (775) 687-0202
9 Fax (775) 882-7918

10 By: 

11 James R. Cavilia, Esq.
12 Nevada State Bar No. 3921
13 Justin Townsend, Esq.
14 Nevada State Bar No. 12293
15 Attorneys for COMSTOCK MINING,
16 INCORPORATED
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,
3 MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date,
4 I caused the foregoing document to be served to all parties to this action by:

- 5 ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United
6 States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
7 ☐ Hand-delivery
8 ☐ Facsimile
9 ☐ Federal Express, UPS, or other overnight delivery
10 ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
11 [NRCP 5(b)(2)(D)]

12 fully addressed as follows:

13 John L. Marshall, Esq.
14 570 Marsh Avenue
15 Reno, NV 89509
16 *Attorney for Plaintiffs/Petitioners,*
Comstock Residents Association, Gayle Sherman,
Joe McCarthy

17 Stephen B. Rye, Esq.
18 Chief Deputy District Attorney
19 31 South Main Street
20 Yerington, NV 89447
Attorney for Respondent/Defendant,
Lyon County Board of Commissioners

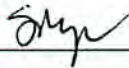
21 DATED this 24th day of July, 2014.

22
23 Nicole D. Kennedy
24 Nicole D. Kennedy
25
26
27
28

1 Case No. 14-CV-00128

2 Dept. No. II

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.



2014 JUL 28 PM 3:36

TANYA SCORING
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DeAnn Peeples DEPUTY

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
15 INCORPORATED,

16 Defendants/Respondents,

17 LYON COUNTY BOARD OF COMMISSIONERS' OPPOSITION TO MOTION
18 TO AMEND COMPLAINT/PETITION

19 Defendant LYON COUNTY BOARD OF COMMISSIONERS (referred to as COUNTY),
20 by and through ROBERT L. AUER, Lyon County District Attorney, and STEPHEN B. RYE,
21 Chief Deputy District Attorney, hereby files this Opposition to the Plaintiffs/Petitioners Motion
22 to Amend Complaint/Petition. This motion is made and based upon the documents on file
23 herein, the applicable law, the attached points and authorities, and any arguments at a
24 hearing on this matter.

25 //

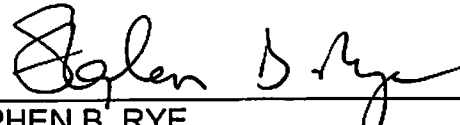
26 //

27 //

28 //

1 DATED this 28th day of July, 2014.

2
3 ROBERT L. AUER
DISTRICT ATTORNEY

4
5 By: 
6 STEPHEN B. RYE
7 CHIEF DEPUTY DISTRICT ATTORNEY
8 31 South Main Street
9 Yerington, NV 89447
10 775-463-6511

11
12 Attorney for Respondent/Defendant
13 Lyon County Board of Commissioners
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

RELIEF REQUESTED

Lyon County requests that this Court deny the Motion to Amend Complaint/Petition filed by the Plaintiffs for the reasons set forth herein.

BACKGROUND

The Comstock Residents Association, Gayle Sherman and Joe McCarthy, Plaintiffs/Petitioners herein ("CRA"), filed their complaint on January 31, 2014. The Complaint/Petition names Comstock Mining Incorporated ("CMI") and the Lyon County Board of Commissioners as defendants/respondents. CRA alleged four causes of action: (1) violations of Nevada's Open Meeting Law; (2) Denial of Due Process; (3) Abuse of Discretion; (4) Violation of NRS 278.220. CRA now requests leave to add a cause of action for violations of the Nevada Public Records Act, NRS Chapter 239.

The claims related to the Public Records Act do not arise out of the decision of the Board of County Commissioners on the CMI Application. In February 2014, CRA made a public records request for "access to any and all records related to Comstock Mining Inc. Application for Master Plan Amendment and Zoning Change." Lyon County provided the public records requested by CRA. CRA now claims that private telephone and private computer records as subject to the Nevada Public Records Act.

On June 10, 2014, Lyon County filed a motion to dismiss all causes of action other than the judicial review in this matter. CMI joined in the motion to dismiss. Nevada law provides that planning and zoning decisions by public bodies are subject only to review for abuse of discretion. For that reason, Lyon County has moved to dismiss the other causes of action in the Complaint. The same rationale applies to the additional cause of action for an alleged violation of the Nevada Public Records Act. The Court should not allow the Plaintiffs/Petitioners to amend when the only matter properly before this court should be the judicial review of the decision of the Lyon County Board of Commissioners.

//
//
//

ARGUMENT

1. LEGAL STANDARD

NRCP 15 governs the amendment of pleadings, and provides, in relevant part, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." NRCP 15(a). Lyon County does not consent to the amendment of the complaint; therefore, leave of court is required to file the amended complaint.

NRCP 15(a) provides that leave to amend shall be freely given when justice so requires, however, that does not mean that a trial judge may not, in a proper case, deny a motion to amend. If that were the intent, leave of court would not be required. A motion for leave to amend is addressed to the sound discretion of the trial court and its action in denying the motion should not be held to be error unless that discretion has been abused. Stephens v. S. Nevada Music Co., Inc., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)(citations omitted). The requirement that the amending party acquire leave of the court suggests that there are instances in which leave should not be granted. Brown v. Capanna, 105 Nev. 665, 668, 782 P.2d 1299, 1301 (1989)(citing Ennes v. Mori, 80 Nev. 237, 243, 391 P.2d 737, 740 (1964)). This case is one such instance where the court should deny the request.

2. The Motion to Amend Should be Denied because the New Cause of Action Would Be Subject to a Motion to Dismiss or Motion for Summary Judgment

A motion to amend may be denied where the proposed amendment is futile. Adamson v. Bowker, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969). Leave to amend need not be granted if the proposed amended complaint would be subject to dismissal. Ritzer v. Gerovicap Pharm. Corp., 162 F.R.D. 642, 645 (D. Nev. 1995). Courts have discretion to deny leave to amend a complaint for "futility," which includes the inevitability of a claim's defeat on summary judgment. Johnson v. Am. Airlines, Inc., 834 F.2d 721, 724 (9th Cir. 1987).

1 In this case, CRA's Public Records Cause of Action is subject to dismissal or, in the
2 alternative, summary judgment, and therefore the amendment would be futile. A complaint
3 cannot be dismissed for failure to state a claim unless it appears beyond a doubt that the
4 plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to
5 relief. Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). As outlined in detail
6 in the Motion to Dismiss filed by Lyon County, the only cause of action available to CRA to
7 challenge the decision of the Board of County Commissioners and reverse that decision on
8 the CMI zone change and master plan amendment is a petition for judicial review. NRS
9 278.0233; Kay v. Nunez, 122 Nev. 1100, 1102, 146 P.3d 801, 803 (2006); City of Reno v.
10 Citizens for Cold Springs, 126 Nev. Adv. Op. 27, 236 P.3d 10, 15 (2010)("we conclude that
11 the petition for judicial review was the proper mechanism to review decision of City
12 Council"). CRA can state no set of facts entitling them to relief for the Board's decision on
13 the CMI Application under the proposed Public Records Act cause of action. For that
14 reason, the amendment would be futile.

15 The cause of action also fails to state a cause of action under the Public Records
16 Act, and therefore is subject to dismissal or summary judgment. The proposed Amended
17 Complaint states that "Lyon County refused to provide any record created or stored by an
18 individual County Commissioner." See Amended Complaint, ¶115. This is an untrue
19 statement as evidenced by the record filed in this matter. There are several emails made
20 by Commissioners that are included in the record and documents provided to CRA by Lyon
21 County. The County refused to provide private cellular phone records and private email
22 records, as those are not public records under the act.

23 CRA states in ¶111 of the Amended Complaint that the Nevada Public Records Act
24 provides the public the right to inspect and copy public records created and held by
25 government entities. NRS 239.010 provides in part, "all public books and public records of
26 a governmental entity must be open at all times during office hours to inspection by any
27 person, and may be fully copied or an abstract or memorandum may be prepared from
28 those public books and public records." The statute requires that the governmental entity

1 have legal custody or control of the records. The Nevada Supreme Court has determined
2 that billing statements of publicly owned cell phones are public records subject to
3 disclosure. See DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty., 116 Nev. 616, 621, 6
4 P.3d 465, 468 (2000). Nevada has not directly addressed the issue of privately owned
5 devices, but other courts have.

6 The Maryland Court of Appeals stated in a case involving a request for telephone
7 records related to the Governor, as follows:

8 "It seems obvious that bills or records of telephone calls, made by a
9 government official or members of the official's family from their personal
10 telephones in the family's private home, would not be considered "public
11 records" within the meaning of the Act. In light of one's reasonable expectation
12 of privacy in his or her own home, such records would be "private."

13 Office of Governor v. Washington Post Co., 360 Md. 520, 537, 759 A.2d 249, 258 (2000).

14 Although a slightly different analysis, the same rationale applies in this case. The records
15 requested by CRA are private because they are not provided or paid for by the County, the
16 records are not maintained by the County or accessible by the County, and they are not
17 controlled by the County. It simply is not feasible or plausible to require the County to
18 provide such information or to consider such documents public records.

19 The Colorado Court of Appeals discussed a matter related to private telephone bills,
20 stating as follows:

21 "The inherent function of any bill, such as the cell phone billing statements
22 here, is for the provider of services or goods to obtain payment, *see Black's*
23 *Law Dictionary* 846 (8th ed.2004) (an invoice is a list of goods or services
24 furnished by seller to buyer, specifying price or terms of sale), and, as noted,
25 the payment of a private bill, such as here, is an inherently private function.
26 Indeed, if the possibility of some future official use could transform an
27 otherwise private document, such as a personal bill, into a public record
28 merely because it is kept by a public official or employee, then almost any
document kept by a public official or employee could be subject to CORA's
disclosure requirements. CORA does not reach so far. As the supreme court,
in discussing *Wick*, stated, "simply because a document was 'made' [and we
would include here, 'kept'] during one's tenure as a public official does not
render it a public record." *Denver Pub'g Co.*, 121 P.3d at 195-96 (quoting
Wick, 81 P.3d at 365)."

29 Denver Post Corp. v. Ritter, 230 P.3d 1238, 1244 (Colo. Ct. App. 2009) aff'd, 255 P.3d
1083 (Colo. 2011).

1 CRA seeks an order from this Court declaring that private email and cellular
2 telephone records are public records, even though Lyon County does not pay for, provide or
3 maintain any such records. Based on the foregoing, it is clear that the documents
4 requested by CRA and those that are the subject of the Amended Complaint are not public
5 records. For that reason, Lyon County is entitled to order of dismissal or order granting
6 summary judgment on the Fifth Cause of Action. As such, any amendment would be futile,
7 and the Court should deny it.

8 **3. The Nevada Public Records Act Cause of Action Does Not Involve CMI**

9 This Court should deny the Motion to Amend Complaint/Petition because the
10 proposed amendment does not involve CMI. It is strictly limited to a legal issue involving
11 Lyon County. The amendment will cause unnecessary delay for CMI on final resolution of
12 in important land use decision. The inherent delays with the amendment, such as a likely
13 motion to dismiss filed by Lyon County, unduly delay the County and CMI from finalizing the
14 land use for the subject property. Undue delay or dilatory motives on the part of the movant
15 are sufficient reasons to deny a motion to amend. Kantor v. Kantor, 116 Nev. 886, 891, 8
16 P.3d 825, 828 (2000).

17 **CONCLUSION**

18 Based on the foregoing, the COUNTY respectfully requests that this Court deny the
19 Motion to Amend Complaint/Petition filed by CRA. CRA's proposed Fifth Cause of Action
20 has nothing to do with the decision on the land use application filed by CMI and will only
21 muddy the waters.

22 //

23 //

24 //

25 //

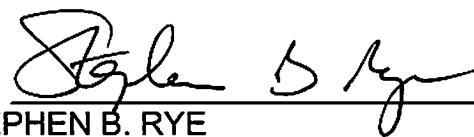
26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated this 28th day of July, 2014.

ROBERT L. AUER
DISTRICT ATTORNEY

By: 
STEPHEN B. RYE
CHIEF DEPUTY DISTRICT ATTORNEY
31 South Main Street
Yerington, NV 89447
775-463-6511

Attorney for Respondent/Defendant
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 28th day of July, 2014, a copy of the foregoing was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 28th day of July, 2014.

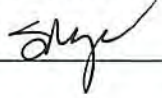


Employee

1 Case No. 14-CV-00128

2 Dept. No. II

3 The undersigned hereby affirms this
4 document does not contain a social security
5 number.



FILED
2014 JUL 28 PM 3:36

TANYA SCHEINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

DeAnn Peoples DEPUTY

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF
14 COMMISSIONERS; COMSTOCK MINING
15 INCORPORATED,

16 Defendants/Respondents,

17 **LYON COUNTY BOARD OF COMMISSIONERS REPLY TO OPPOSITION TO MOTION
18 TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 Defendant LYON COUNTY BOARD OF COMMISSIONERS (referred to as COUNTY),
20 by and through ROBERT L. AUER, Lyon County District Attorney, and STEPHEN B. RYE,
21 Chief Deputy District Attorney, hereby files this Reply to Opposition to Motion to Dismiss or, in
22 the alternative, Motion for Partial Summary Judgment. This reply is made and based upon the
23 documents on file herein, the applicable law, and the attached points and authorities.

24 ///

25 ///

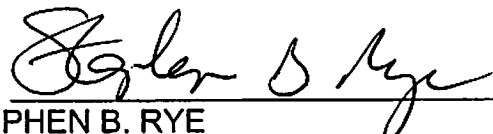
26 ///

27 ///

28 ///

1 DATED this 28th day of July 2014.

2
3 ROBERT L. AUER
DISTRICT ATTORNEY

4
5 By: 
6 STEPHEN B. RYE
7 CHIEF DEPUTY DISTRICT ATTORNEY
8 31 South Main Street
9 Yerington, NV 89447
10 775-463-6511

11
12 Attorney for Respondent/Defendant
13 Lyon County Board of Commissioners
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs/Petitioners, COMSTOCK RESIDENTS ASSOCIATION, GAYLE SHERMAN, and JOE McCARTHY (hereinafter collectively "CRA") seek to distract the Court from the issues at hand. From the start of the Opposition, CRA tries to impugn the character of County Commissioners Hastings and Keller by misrepresenting and/or ignoring the record before this Court. Opposition 1:23-2:15. CRA further misleads the Court by stating that the Board of County Commissioners and Lyon County voted to allow CMI the opportunity to open pit mine within Silver City, when in fact, the County has not approved an open pit mine (not to mention CMI never stated they intended to open pit mine on the property or in Silver City). Opposition 2:1-2; 2:9-10. These allegations are not only false, but are intended only to inflame the court and distract from the legal issues presented in the County's Motion to Dismiss.

CRA's Opposition is laced with references to a "mining ban" within Silver City. The truth is that there is no such ban and never at any time does CRA point to anything in the record or anywhere else to support its inflammatory notion that such a ban does or ever did exist. Indeed, Lyon County Code, Title 10, Chapter 10 contains specific mechanisms for acquiring permits to mine within the Comstock Historic District of which the Silver City town site is a part. See Lyon County Code 10.10.01 et al. These mechanisms have been in place generally since at least 1988. Thus, contrary to CRA's multiple assertions of a mining ban, mining uses are specifically allowed in and around Silver City under guidelines and procedures set forth in longstanding Lyon County ordinances.

Moreover, at issue in this case is Defendant/Respondent COMSTOCK MINING INC.'s (hereinafter "CMI") application for Master Plan Amendment and Rezoning of approximately 87.2 acres, only a very minor portion of which is within the boundaries of the Silver City town site. Finally, while CRA makes a grand showing of the COUNTY's "abrupt reversal of the longstanding Silver City mining ban," Opposition 2:18-19, CRA ignores that Nevada statutes specifically authorize the COUNTY to amend master plans and zoning designations. See NRS 278.15 et al. The COUNTY followed the guidelines set forth therein, including opening

1 the issue up to public comment during a meeting held pursuant to NRS Chapter 241,
2 Nevada's Open Meeting Law.

3 In addition, the amendments sought by CMI and granted by the COUNTY do not
4 actually permit any mining in any of the affected property. CMI would still be required to
5 obtain a special use permit before conducting any actual mining of the property. The County
6 approved a Master Plan Amendment from Suburban Residential and Resource to Rural
7 Residential and zone changes consistent with the Master Plan Amendment.

8 The Lyon County Board of Commissioners, after consideration of the record, public
9 comment, and the CMI Application, decided in an open and public meeting to amend the Lyon
10 County Master Plan and zoning designations for approximately 71.63 acres, a reduction from
11 the original application that included 87.2 acres. Nevada law provides for judicial review of
12 such decisions for a determination of whether those empowered to make such decisions
13 abused their discretion. See NRS 278.0233; see also Redrock Valley Ranch, LLC v. Washoe
14 County, 254 P.3d 641 (Nev. 2011).

15 CRA mistakenly contends that this case is different than Kay v. Nunez, 122 Nev. 1100
16 (2006) and argues that the reasoning in Kay does not apply to this case because NRS
17 278.3195 does not apply to this action. However, the Nevada Supreme Court has expressly
18 rejected that argument. The Nevada Supreme Court stated in City of Reno v. Citizens for
19 Cold Springs:

20 "The City continues to argue on appeal that the proper vehicle for respondents'
21 challenge was a writ of mandamus. According to the City, a petition for judicial
22 review is improper in this case because the City's enactment of Ordinance 5809
was a legislative act that is not subject to NRS 278.3195(4). However, we
conclude that the petition for judicial review was the proper mechanism.

23 . . .
24 In this case, we consider two procedural issues raised by the parties: (1)
25 whether the City complied with NRS 278.0282 when passing the amendments to
26 the Reno Master Plan in Resolution 6712, and (2) whether the City complied
27 with former RMC section 18.06.404(d)(1)(b) when rezoning the subject property
in Ordinance 5809. Because these issues are procedural and do not require this
court to consider the substance or content of the enactments, we conclude that
a petition for judicial review was the proper vehicle for respondents' challenge.
See *Voelckers*, 460 N.Y.S.2d 8, 446 N.E.2d at 767-68.

1 City of Reno v. Citizens for Cold Springs, 126 Nev. Adv. Op. 27, 236 P.3d 10, 15 (2010). The
2 facts are the same in the case at bar. CRA seeks a court review of whether the County
3 complied with Nevada law when approving the Master Plan Amendment, and whether the
4 County complied with Nevada law when it approved the zone change.

5 Judicial review is the proper (and only proper) mechanism by which this Court should
6 hear this matter. All other causes of action alleged by CRA, including its First, Second, and
7 Fourth Causes of Action, are not authorized actions and should be dismissed for failure to
8 state a claim upon which relief may be granted. Furthermore, if CRA's First, Second, or
9 Fourth Causes of Action are permitted to move forward, there are no genuine issues of
10 material fact with respect thereto and summary judgment thereon in the COUNTY's favor is
11 appropriate.

12 ARGUMENT

13 1. CRA IGNORES AUTHORITY THAT THIS CASE SHOULD BE LIMITED TO A 14 JUDICIAL REVIEW

15 In its Motion to Dismiss, the COUNTY argues that Nevada law dictates that actions
16 against political subdivisions in land use planning and zoning matters are limited to a
17 petition for judicial review of allegations of abuse of discretion. See Motion 7:1-7. In
18 support thereof, the COUNTY cited NRS 41.032 (granting immunity to Nevada political
19 subdivisions and their employees from claims that are based on the exercise or failure to
20 exercise discretionary functions assigned thereto); NRS 278.0233 (containing the only
21 exception to NRS 41.032, which authorizes an action for judicial review of allegations of
22 abuse of discretion in land use matters); Redrock Valley Ranch, LLC, 254 P.3d at 644
23 (affirming that the decision-making power of those making land use decisions is
24 discretionary and an action against those exercising such authority is limited to a judicial
25 review of the record); and City of Las Vegas v. Laughlin, 111 Nev. 557, 558, 893 P.2d 383,
26 384 (1995) (noting that such actions are actions for judicial review and the Court will be
27 limited to a review of the record to determine if the land use decision was supported by
28 substantial evidence).

1 CRA neglected to address any of the foregoing authorities. Instead, CRA points the
2 Court to an issue that is not actually at issue in the instant Motion. CRA improperly asserts
3 that the COUNTY seeks dismissal of CRA's individual causes of action based on the
4 "labeling of the entire pleading." Opposition 3:25-27. This is not the case. As noted above
5 and in its Motion, the COUNTY seeks dismissal of CRA's First, Second, and Fourth Causes
6 of Action because Nevada law mandates that this be nothing more than an action for judicial
7 review to determine whether the COUNTY abused its discretion in approving CMI's
8 application for a master plan amendment and zone change.

9 CRA urges the Court to allow its Complaint to stand on the basis that it has pled
10 "causes of action that are not subject to the limitation of a standard judicial review action."
11 Opposition 4:15-17. Again, CRA fails to address NRS 41.032, which provides immunity for
12 political subdivisions and their officers in the performance of their discretionary duties. Land
13 use decisions are discretionary. See Redrock Valley Ranch, LLC, 254 P.3d at 644. The
14 only exception to NRS 41.032 is NRS 278.0233, which authorizes only a judicial review
15 action of allegations of abuse of such discretion. CRA is not permitted to bring any action
16 against the COUNTY other than one for judicial review. The Court should consider CRA's
17 failure to address these authorities as an admission that they apply to this case. Indeed,
18 they do apply and CRA's action should be limited to a judicial review of the record.

19 **2. THE COUNTY DID NOT VIOLATE THE NEVADA OPEN MEETING LAW**

20 CRA's allegation that the COUNTY violated the Open Meeting Law involves only the
21 application of a statute, namely NRS 241, to the facts. The facts are not in dispute and are
22 contained in the Record. Application of a statute to the facts is purely a question of law for
23 which summary judgment is entirely appropriate. See State Farm Mut. Auto Ins. Co. v.
24 Cramer, 109 Nev. 704, 857 P.2d 751 (1993). As will be shown herein, application of
25 relevant statutes indicates that the COUNTY did not violate the Open Meeting Law.

26 CRA argues that the COUNTY violated the Open Meeting Law (NRS 241) in two
27 ways: (1) that the COUNTY did not properly agendize the actions it would consider at
28 its January 2, 2014 meeting and (2) that a majority of the COUNTY Commissioners

1 deliberated outside of said meeting. Neither in its Complaint nor in its Opposition does CRA
2 allege facts to support these claims. In order to survive a motion to dismiss, the allegations,
3 which the court should accept as true, must be legally sufficient to constitute the elements of
4 the claim asserted. Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc., 125 Nev. 818, 823,
5 221 P.3d 1276, 1280 (2009) (citations omitted). In this case, even if you take each
6 allegation in the complaint as true, the allegations are insufficient to state a claim under
7 Nevada's Open Meeting Law, and the cause of action must be dismissed.

8 **A. AUTHORITIES CITED BY CRA DO NOT SUPPORT CRA'S CLAIM THAT**
9 **A QUORUM OF THE COUNTY COMMISSIONERS MET OUTSIDE OF A**
10 **PUBLIC MEETING**

11 CRA alleges in its Opposition (for the first time) that a majority of the COUNTY
12 Commissioners deliberated towards a decision outside the January 2, 2014 meeting by
13 doing so serially. Opposition 6:9-10. In support thereof, CRA cites NRS 241.015(3)(a)(2)¹
14 and two Nevada cases: Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d 770 (1998)
15 and Dewey Redevelopment Agency of the City of Reno, 119 Nev. 87, 64 P.3d 1070 (2003).

16 NRS 241.015(3)(a)(2) indicates that a meeting takes place when the members of a
17 public body meet in a series of gatherings, where in all such individual gatherings less than
18 a quorum of said members is present but collectively a quorum is present and that the
19 series of gatherings was held with specific intent to avoid the provisions of NRS 241. CRA
20 alleges that such a series of gatherings took place by certain members of the COUNTY
21 Commission prior to its January 2, 2014 meeting to deliberate and prepare a modified
22 proposal regarding CMI's application. Opposition 6:9-27.

23 In Del Papa, the Court held that a serial meeting of the Nevada Board of Regents
24 occurred when individual regents used electronic communications amongst each other to
25 deliberate towards a decision. 956 P.2d at 778. In that case, the serial gatherings included
26 only members of the public board who discussed with one another a decision that was
27 ultimately made outside of a public meeting.

28
¹ Erroneously cited by CRA as NRS 241.015(2)(a)(2).

1 Curiously, CRA cites Dewey, which held that no violation of the Open Meeting Law
2 occurred where back to back staff briefings each involving less than a quorum of the public
3 board were held and there was no evidence that said meetings "involved the kind of
4 exchange of information and collective discussions present in the faxed distributions and
5 serial telephonic communications identified in [Del Papa]." 64 P.3d at 1078. The facts in
6 Dewey are that while a quorum of the public board met in a series of gatherings at which the
7 same information was discussed, the board members did not exchange information or
8 discuss the issues with one another outside of a public meeting. For these reasons, the
9 Court held that no meeting occurred in violation of NRS 241.

10 The facts alleged by CRA in the instant case are easily distinguished from the facts of
11 Del Papa. Moreover, Dewey supports the COUNTY's assertion that no meeting of the
12 COUNTY Commissioners occurred outside of the January 2, 2014 meeting.

13 Here, CRA alleges that CMI representatives first discussed its application with
14 Commissioner Fierro in person on December 30, 2013 and then sent an email to
15 Commissioner Fierro on December 31, 2013 containing a map of the parcels subject to its
16 application. Opposition 6:15-22. CRA then alleges that CMI representatives had meetings
17 with Commissioners Mortensen and Keller (and others who are not on the COUNTY
18 Commission) on January 1, 2014. Opposition 6:22-24. CRA ties these events together to
19 support its assertion that a majority of the COUNTY Commissioners met to deliberate the
20 modified proposal. Unfortunately, the events are not tied to together, which is fatal for CRA.
21 The only allegation related to Commissioner Fierro meeting with other Commissioners
22 (although that allegation is even unclear in the opposition) arises in the Opposition. The
23 Court must look to the allegations in the Complaint/Petition, and those allegations, even if
24 true, fail to state a claim that the Commissioners deliberated or met as those terms are
25 defined in the law.

26 First, there is no evidence that the communications with Commissioner Fierro had
27 anything to do with any modified proposal. Indeed, the email to Commissioner Fierro on
28 December 31, 2013, which was referenced by CRA in its Opposition, was from Manhard

1 Construction, not from anyone at CMI. Moreover, the email only states that it contains as an
2 attachment "a map of the Comstock Mining Master Plan Amendment and Zone Change
3 parcels in Silver City with topography and an image." Record, 002827. There is no
4 indication that this email or any other communication by anyone with Commissioner Fierro
5 had anything to do with the modified proposal discussed at the January 2, 2014 meeting.

6 Second, and more to the point, there is absolutely no evidence offered by CRA that
7 Commissioner Fierro discussed or exchanged any information with Commissioners Keller
8 and/or Mortensen prior to the January 2, 2014 meeting. As such, under the standards set
9 forth in Del Papa and Dewey, no deliberations or meeting of said Commissioners occurred
10 outside of the public meeting.

11 Moreover, regardless of any communications between the Commissioners and CMI,
12 no actions were taken or decisions made. Indeed, there is no evidence that any
13 Commissioner, either individually or in concert with other Commissioners deliberated
14 towards any decision on CMI's application prior to the January 2, 2014 meeting. The
15 decision to amend the Lyon County Master Plan and to change the zoning were ultimately
16 taken in an open meeting with the input of the public, including CRA. There is no evidence
17 at all to suggest the Commissioners intended to avoid the provisions of NRS 241.

18 At most, the Complaint alleges that two Commissioners met to discuss a modified
19 proposal to reduce the acreage of CMI's application. Two out of five commissioners is not a
20 quorum. "Deliberation," "quorum" and "meeting" are terms defined in the law. The
21 allegations do not meet those definitions or comport with any judicial decisions interpreting
22 those definitions. Therefore, even if the Court accepts the facts alleged here by CRA as
23 true, they do not in any way support a finding that a quorum of the COUNTY Commission
24 met to deliberate towards a final decision outside of a public meeting. All actions taken by
25 the COUNTY were taken in compliance with the Open Meeting Law.

26 //

27 //

**B. THE AGENDA FOR THE JANUARY 2, 2014 MEETING PROPERLY
NOTICED THE ACTION TO BE TAKEN THEREIN**

CRA argues without any supporting authority whatsoever that the reduced acreage proposal adopted at the January 2, 2014 meeting by the COUNTY was a "substantial" change to the proposal noticed in the agenda to said meeting. Opposition 7:10-12. In reality, the action taken by the COUNTY was entirely within the scope of the proposed action noticed on the agenda. The actual agenda item is quoted in the COUNTY's Motion at 9:14-21, and, as stated therein, called for discussion of potential land use and zoning changes affecting approximately 87.2 acres. At the meeting, a proposed change thereto was introduced calling for a reduction in the amount of acreage to be subject to said changes – ultimately the adopted change affected only 71.63 acres. This was not a substantial change, it was a reduction that can only be said to have benefitted CRA in relation to the original CMI application. Indeed, the proposal to reduce the acreage subject to the Master Plan amendment and zone change was a direct response to a CRA concern – protection of the Silver City viewshed. See Record 000528-000529.

Furthermore, CRA fails, again, in its Opposition to address Nevada authority cited by the COUNTY in support of the instant Motion. The COUNTY cited various case law and statutory authority for the proposition that the ultimate decision made by the COUNTY in the January 2, 2014 meeting was entirely within the scope of the topic placed on the agenda therefor. See e.g., Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d 902, 905 (2003) and NRS 241.020(2)(c)(1). The COUNTY did not discuss items outside of the scope of the agenda and CRA has not alleged any fact to the contrary nor has CRA cited any authority for the proposition that an action taken to reduce the scope and effect of an agenda item is improper.

Moreover, as noted by CRA in its Opposition and as evidenced by the Record, the proposal to reduce the amount of acreage subject to the master plan amendment and zone change was actually discussed in an open meeting subject to public comment. See Opposition 8:15-22. In addition, it is curious that CRA objects to the acreage reduction

1 proposal now and complains that CRA was not left with an opportunity to review the
2 reduction of acreage for which the master plan amendment and zone change were sought
3 prior to its adoption by the COUNTY, but there is nothing in the Record to indicate that CRA
4 or anyone else objected specifically to the reduction. CRA, and the rest of the public, was
5 given an opportunity to publicly comment on the proposal to reduce the amount of acreage
6 subject to the master plan amendment and zone change and nobody objected thereto.

7 Finally, it is also curious that CRA's objection on this point at this stage is that CRA
8 was "left without a legitimate opportunity to comment on whether or not the proposed
9 parcels were indeed those mapped and more importantly whether those parcels when
10 removed from possible open pit mining provide any viewshed protection." Opposition 8:22-
11 25. If this is CRA's only complaint, CRA has certainly had time to verify these issues in the
12 time that has elapsed since the January 2, 2014 meeting. Nonetheless, CRA makes no
13 argument here that the rationale given at the January 2, 2014 meeting for removing those
14 parcels from consideration is false. Therefore, it must follow that, even if a subsequent
15 meeting were to take place, CRA would have nothing on which to base an objection that the
16 reduced acreage does not provide viewshed protection to residents of Silver City.

17 In sum hereof, CRA cites no authority whatsoever to contradict the COUNTY's cited
18 authorities that action taken within the scope of an agenda item, when such action
19 constitutes a reduction in the scope and effect thereof, is proper. Moreover, CRA offers no
20 authority or any cogent argument that the action ultimately taken was not discussed at the
21 January 2, 2014 meeting. For these reasons, the Court, in applying Nevada's Open
22 Meeting Law, should enter an order for summary judgment in favor of the COUNTY.

23 **3. THE COUNTY HAS NOT VIOLATED ANY DUE PROCESS RIGHTS OR THE**
24 **NEVADA ETHICS IN GOVERNMENT ACT**

25 None of the authorities cited by CRA in support of its argument that due process
26 required recusal of Commissioners Keller and Hastings are applicable to the facts of this
27 case. Moreover, CRA conveniently ignores that Commissioners Keller and Hastings
28 consulted with the Lyon County District Attorney and the Nevada Commission on Ethics in

1 determining that they were not required by the Nevada Ethics in Government Act to recuse
2 themselves from consideration of CMI's application.

3 CRA, in its Complaint asserts that the COUNTY violated the Nevada Ethics in
4 Government Act, but in its Opposition argues that "CRA does not need to allege that CMI's
5 influence or the Commissioners' conduct violated the Nevada Ethics in Government Act."
6 Opposition 12:20-22. CRA instead relies on federal case law applying non-Nevada law for
7 the proposition that the standard for determining whether a public officer should recuse him
8 or herself is "the probability of actual bias on the part of the decisionmaker that is too high to
9 be constitutionally tolerable." Opposition 12:22-24 (quoting Caperton v. Massey Coal
10 Company, 556 U.S. 868, 872 (2009). CRA ignores that Nevada, unlike West Virginia,
11 whose law was applied in Caperton, has codified the standard by which a Court would
12 determine whether a public officer was required to recuse him or herself.

13 The standard in Nevada is that a public officer is not required to recuse him or herself
14 unless the "judgment of a reasonable person in the public officer's position would be
15 materially affected by" specifically enumerated items for which public disclosure is required.
16 NRS 281.420(3). Thus, the standard in Caperton is not the standard to be applied here.

17 CRA does not dispute that Commissioners Keller and Hastings properly disclosed the
18 items required of them by NRS 281. Instead CRA resorts to unfounded and inflammatory
19 accusations implying that Commissioner Keller's only source of income was her husband's
20 income from his work for CMI. It must be pointed out that CRA at various times asserts,
21 without offering any evidence whatsoever, that Commissioner Keller is in dire financial
22 straits and is delinquent in her tax obligations. See Opposition 13:8-10. This is a blatant
23 attempt to use judicial resources to engage in political mudslinging and is reprehensible
24 given the lack of any evidence offered.

25 CRA cites Nevada Attorney General's Opinions in support of its arguments that the
26 alleged benefits accrued by Commissioners Keller and Hastings rise to the level requiring
27 recusal from deliberating on CMI's application. Opposition 13:14-23. CRA ignores,
28 however, that both Commissioners Keller and Hastings consulted with the Nevada

1 Commission on Ethics, who indicated to them that the items disclosed to the public would
2 not require recusal from deliberations on CMI's application. See Record at 000515-000518.
3 Thus, it is unlikely that any Attorney General's Opinion would be issued to support CRA's
4 assertion that violations of the Ethics in Government Act occurred in this case.

5 Finally, as is the pattern throughout CRA's Opposition, CRA fails to address specific
6 authority cited by the COUNTY in its Motion. With regard to CMI's contributions to
7 Commissioner Hastings' election campaign, CRA does not refute cited Nevada case law
8 indicating that campaign contributions are not conflicts of interest that require recusal. See
9 Nevada Attorney General's Opinion 1998-29.

10 There is no authority to suggest that Commissioners Keller and Hastings should have
11 recused themselves from deliberating on CMI's application. Again, this cause of action
12 requires application of statute to facts contained in the Record. For these reasons,
13 judgment thereon in COUNTY's favor is appropriate.

14 **4. THERE IS NO RELIEF THAT CAN BE GRANTED FOR ANY ALLEGED**
15 **VIOLATION OF NRS 278.220**

16 CRA's argument in support of its Fourth Cause of Action is that NRS 278.220(4)
17 "limits the authority of the governing body by prohibiting the governing body from adopting
18 any change not referred by the planning commission until the planning commission first
19 hears and reports on the governing body's proposal." Opposition 15:3-6. This is a gross
20 misrepresentation of the statute. NRS 278.220(4) actually indicates only that the governing
21 body, in this case the COUNTY Commission, must submit any changes to the master plan
22 to the Planning Commission for a report thereon.

23 The COUNTY has not violated NRS 278.220. CRA's interpretation of NRS 278.220
24 makes no sense. Logically and legally, the COUNTY Commission cannot take any action
25 without holding a public meeting pursuant to NRS 241. The COUNTY held a meeting on
26 January 2, 2014 at which it determined to make a change to the Lyon County Master Plan.
27 The Record indicates that the COUNTY and the public were informed by Planning Director,
28

1 Rob Loveberg, that said change had to be referred back to the Planning Commission for a
2 report. Record at 000531.

3 CRA's interpretation of NRS 278.220 would have the COUNTY first deliberate a
4 change to the Master Plan (outside of a public meeting?), refer a proposed change back to
5 the Planning Commission for a report, and then discuss the proposed change in a public
6 meeting after the Planning Commission files a report with the COUNTY Commission.
7 Obviously, NRS 278 empowers the COUNTY Commission to make ultimate decisions on
8 land use matters. CRA does not dispute this. CRA also does not dispute that the COUNTY
9 has referred its decision to the Planning Commission for a report. CRA also does not
10 provide any statutory or other authority to indicate that the COUNTY would have to alter its
11 decision in any way based on any report that could be filed by the Planning Commission.

12 CRA falsely indicates that the Nevada Supreme Court "invalidates actions taken in
13 violation of procedural statutory requirements on NRS Chapter 278.220" and cites in
14 support thereof Falcke v. Douglas County, 3 P.3d 661, 116 Nev. 583 (2000) and Enterprise
15 Citizens Action Committee v. Clark County, 918 P.2d 305, 112 Nev. 649 (1996). In Falcke,
16 the Nevada Supreme Court invalidated a Douglas County code provision that was in conflict
17 with NRS 278.220. It did not invalidate any action taken, as CRA would have the Court
18 believe. Moreover, as indicated in the COUNTY's Motion, the Supreme Court, in Falcke,
19 specifically noted that "the plain language of NRS 278.220 does not require that the Board's
20 decision comport with the Planning Commission's decision." Falcke, 3 P.3d at fn. 4.

21 Moreover, in Enterprise Citizens, the Supreme Court invalidated a Board's decision
22 to alter zoning that was in conflict with the county's Master Plan. The Board in that case
23 was not amending the Master Plan pursuant to NRS 278.220. That case is obviously
24 distinguishable from the instant case, where the COUNTY in this case amended the Master
25 Plan so that the requested zone change would not conflict therewith.

26 There is no case law to support a finding that the COUNTY's decision to amend the
27 Lyon County Master Plan violates NRS 278.220 or that such a violation could result in a
28 court reversing the COUNTY's decision. Indeed, the case law cited by both the COUNTY

1 and CRA, namely Falcke, indicates that the Court should not do so. For this reason, there
2 is no relief that may be granted under CRA's Fourth Cause of Action. Moreover, CRA's
3 Fourth Cause of Action calls for the application of statute, thus rendering it ripe for summary
4 judgment.

5 **CONCLUSION**

6 CRA ignores authority cited by the COUNTY for the proposition that this case must
7 be limited to an action for judicial review to determine whether the COUNTY abused its
8 discretion in granting CMI's application. Likewise, CRA ignores authority and makes no
9 valid arguments for maintaining its First, Second, or Fourth Causes of Action. Dismissal of
10 or summary judgment on said causes of action is appropriate. For these reasons, the
11 COUNTY respectfully requests an order granting its Motion.

12 Dated this 28th day of July, 2014.

13
14 ROBERT L. AUER
DISTRICT ATTORNEY

15
16 By: 

17 STEPHEN B. RYE
18 CHIEF DEPUTY DISTRICT ATTORNEY
19 31 South Main Street
20 Yerington, NV 89447
21 775-463-6511

22 Attorney for Respondent/Defendant
23
24 Lyon County Board of Commissioners
25
26
27
28

Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 28th day of July, 2014, a copy of the foregoing was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.
570 Marsh Ave.
Reno, NV 89509

James R. Cavilia, Esq.
Allison, MacKenzie, Pavlakis
Wright & Fagan, Ltd.
402 N. Division Street
Carson City, NV 89703

Dated this 28th day of July, 2014.



Employee

Case No. 14-CV-00128

JOHN L. MARSHALL

SBN 6733

570 Marsh Avenue

Reno, Nevada 89509

Telephone: (775) 303-4882

Attorney for Plaintiffs/Petitioners Comstock

Residents Association, Gayle Sherman, Joe

McCarthy

FILED
2014 AUG -4 AM 8:56

TANYA SCARINO
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Scarino DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,
GAYLE SHERMAN, JOE MCCARTHY

Plaintiffs/Petitioners,

v.

LYON COUNTY BOARD OF
COMMISSIONERS; COMSTOCK
MINING INCORPORATED

Defendants/Respondents,
_____ /

**CRA'S REPLY TO LYON COUNTY AND CMI'S OPPOSITION TO
MOTION TO AMEND COMPLAINT/PETITION**

I. INTRODUCTION

Plaintiffs/Petitioners Comstock Residents Association, Gayle Sherman and Joe McCarthy (collectively "CRA") hereby reply to Defendant/Respondent Lyon County Board of County Commissioners and Comstock Mining Inc.'s Oppositions to CRA's Motion for Leave to Amend its Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate/Judicial Review ("Complaint/Petition") to add a claim for violation of the Nevada Public Records Act

1 (“NPRA”). Lyon County and CMI oppose CRA’s Motion to Amend because they contend
2 CRA’s NPRA claim would be futile and would prejudice CMI.

3 As demonstrated herein, CRA’s NPRA claim is not futile because it results in the
4 straightforward application of the plain language of the NPRA so that public officials cannot
5 hide otherwise public records by sending or receiving them on private electronic devices. Far
6 from seeking private records, CRA in this case seeks only the public records that the Lyon
7 County Commissioners sent or received when communicating with themselves and CMI over
8 the public issue of whether to allow mining uses on CMI land within Silver City; i.e., the
9 records created when conducting the public’s business.

11 **II. ARGUMENT**

12 A. CRA’s NRPA Claim Will Be Successful Because Commissioners Cannot 13 Escape the NPRA By Conducting Their Public Business On Private Devices

14 Reduced to its essence, Lyon County and CMI argue that CRA’s NRPA claim would be
15 futile because the county administration offices do not have possession of records created or
16 received by the individual Commissioners on their private devices during the course of their
17 official business (unless the Commissioners happened to forward those records to the county
18 offices). See e.g., Lyon County Opposition at 7:1-7 (records created in course of official
19 business are not public because “Lyon County does not pay for, provide or maintain such
20 records.”) The NPRA, however, makes no such distinction.

22 The NPRA imposes obligations on a “government entity” to maintain and disclose public
23 records. See e.g., NRS 239.050 (requiring a governmental entity to provide copies of public
24 records). The NPRA defines a “governmental entity” as including “[a]n elected or appointed
25 officer of this State or of a political subdivision of this State.” NRS 239.005(5)(a). The
26 individual Lyon County Commissioners are, without a doubt, “elected officers” of a political
27 subdivision of the State of Nevada and are therefore subject to NRS 239.010.

1 This straightforward application of NRS Chapter 239 comports with the Legislative
2 findings and declaration that public access to records of the public's business "foster[s]
3 democratic principles," that the NPRA "must be construed liberally to carry out this important
4 purpose" and that any exception to the release of such records be "construed narrowly." NRS
5 239.001; see also *PERS v. Reno Newspapers, Inc.*, 129 Nev. __, 26 P.3d __ (2013) ("The Act's
6 purpose is to promote government transparency and accountability by facilitating public access
7 to information regarding government activities.") Contrary to these principles, Lyon County
8 desires to construe the obligation of government entities very narrowly by applying that term to
9 mean just the countywide administration. Such a construction would encourage public officials
10 to conduct public business on their own private devices in order to avoid public disclosure and
11 would be directly contrary to the Legislature's statutory direction.
12

13 Because NRPA's statutory direction is clear, Lyon County's citation to cases from other
14 jurisdictions is inapposite. Indeed, the more apposite decisions address directly the conduct at
15 issue here: records created by individuals when conducting public business on private devices.
16 See e.g., *City of Champaign v. Lisa Madigan*, 2013 IL App (4th) 120662 (city alderman
17 communication about public business on private devices constituted public records); Mississippi
18 Ethics Commission, Public Records Opinion No. R-13-023 (April 11, 2014) (finding text
19 messages sent in official role to be public records notwithstanding their creation or reception on
20 a mayor's private cell phone); but cf. *City of San Jose v. Superior Court*, 225 Cal.App.4th 75,
21 withdrawn and review granted by 326 P.3d 976, 173 CalRepor.3d 46 (2014) (Court of Appeals
22 opinion, reversing trial court's holding that emails, texts and voicemails regarding public
23 business on private devices were public records, now before the California Supreme Court).
24

25 More to the point, the Court need not finally decide the merits on this Motion to Amend.
26 All CRA must do is present a facially cognizable claim under the NPRC. CRA's proposed Fifth
27
28

1 Claim for Relief presents just such a claim: can a governmental entity avoid producing
2 otherwise public records sent or received in the course of conducting public duties simply
3 because the records were sent or received on private devices. As set forth in CRA's proposed
4 Amended Complaint (at ¶¶ 111-114, 143-150) and Motion to Amend, and not disputed in the
5 County's Opposition, elected officers of Lyon County used their private devices to conduct
6 public business regarding CMI and its application to allow mining uses on its property in Silver
7 City. See e.g., Official Record at 002894 (Email from Commissioner Hastings to
8 Commissioner Keller using private email accounts). It is also not disputed that Lyon County
9 refused to produce all of the records (except for the ones the individual commissioners had
10 provided to the County), claiming that since the County administrative government did not have
11 possession of these records, they were not public, regardless if they were sent or received when
12 conducting the public's business. Proposed Amended Complaint at ¶ 115 ("Lyon County does
13 not provide cellular phones for the County Commissioners, and as such, Lyon County does not
14 maintain any of those records and they are not public records pursuant to NRS Chapter 239.").

17 Given that the NPRA defines the "governmental entity" obligated to provide the public
18 records as including individual "elected officials," CRA's claim is not futile under the NPRA.
19 See e.g., NRS 239.010(4) ("An officer, employee or agent of a governmental entity who has
20 legal custody or control of a public record: [¶] (a) Shall not refuse to provide a copy of that
21 public record in a readily available medium because the officer, employee or agent has already
22 prepared or would prefer to provide the copy in a different medium. [¶] (b) Except as otherwise
23 provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall
24 not require the person who has requested the copy to prepare the copy himself or herself.")

25
26 Lyon County also argues that CRA's NPRA claim is futile because "the only cause of
27 action available to CRA to challenge the decision of the Board of County Commissioners and
28

1 reverse that decision on the CMI zone change and master plan amendment is a petition for
2 judicial review. [Citations omitted.] CRA can state no set of facts entitling them for relief for
3 [sic] the Board's decision on the CMI Application under the proposed Public Records Act cause
4 of action." Lyon County Opposition at 5:6-13). CRA's NPRA claim, however, does not seek
5 to overturn Lyon County decision to change the longstanding master plan and zoning
6 designations for CMI's Silver City property.¹

8 Instead, CRA seeks relief from this Court to force Lyon County Board of Commissioners
9 to produce all public records related to CMI and its application as authorized by NRS 239.011
10 (If a request for public records is denied, "the requester may apply to the district court in the
11 county in which the book or record is located for an order" permitting inspection or production
12 of a copy.). A petition for writ of mandate is the appropriate vehicle to bring such a judicial
13 action. *PERS v. Reno Newspapers, Inc.*, 129 Nev. ___, 313 P.3d at 223; *Reno Newspapers, Inc.*
14 *v. Gibbons*, 127 Nev. ___, 266 P.3d 623 (2011). CRA may then use those records to complete
15 the "official" record submitted by Lyon County and to establish CRA's Nevada Open Meeting
16 Law, due process and the NRS Chapter 278 claims. Since CRA does not seek to overturn Lyon
17 County's master plan and zoning decisions with its NRPA claim, Lyon County's objection
18 should be rejected. CRA Motion to Amend is therefore not futile and should be granted.
19
20
21
22
23

24
25 ¹ Lyon County references its Motion to Dismiss briefing to bolster arguments in its Opposition
26 that CRA's Open Meeting Law claims should be dismissed because they allegedly cannot result
27 in the invalidation of Lyon County's decision to change the master plan and zoning. Lyon
28 County Opposition at 3:20-26. However, the Open Meeting Law expressly provides for
invalidation of action taken in violation of its terms (NRS 241.036 ("Actions taken in violation
of chapter void")) and judicial remedies for violation of equal protection are the same (*Caperton*
v. Massey Coal Company, 556 U.S. 868, 872 (2009)).

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

4 JOHN L. MARSHALL
5 SBN 6733
6 570 Marsh Avenue
7 Reno, Nevada 89509
8 Telephone: (775) 303-4882
9 Attorney for Petitioners Comstock
10 Residents Association & Joe McCarthy

11
12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 COMSTOCK RESIDENTS ASSOCIATION,
14 JOE McCARTHY

15 Appellants,
16 00128

No. 68433
District Court Case No. 14-CV-

17 v.

18 LYON COUNTY BOARD OF
19 COMMISSIONERS; COMSTOCK
20 MINING INCORPORATED

21 Respondents,
22 _____/

23 **JOINT APPENDIX**

24 **VOLUME 26**

25 **PAGES 3575-3624**
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014).....	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015).....	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014).....	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015).....	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014).....	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014).....	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877

APPENDIX VII INCREMENTAL REVENUES RESULTING FROM NEW DWELLING/COMMERCIAL CONSTRUCTION

I. Property Taxes-Residential

- Assumptions:
1. Population will grow 3.3% annually countywide. (Mid-range projection)
2. 2.7 people per dwelling unit.
3. 65% of new dwelling units will be mobile homes; 35% single family.
4. Average cost of single family home is \$65,000 inflated 3% annually.
5. Average cost of mobile home is \$26,000 inflated 3% annually.
6. Tax rate will remain at \$-3822.

	Fiscal Year Ending									
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Population	19,150	20,806	21,102	22,151	23,467	24,739	26,310	27,577	29,736	31,519
Popul. Growth	1146	1269	1316	1346	1420	1518	1560	1637	1759	1855
# of New Dwelling Units	421	468	472	488	526	555	595	617	651	725
No. of SF Units	255	269	283	299	315	331	351	370	391	435
Cost per Unit	\$65,000	\$68,250	\$71,603	\$75,246	\$79,000	\$82,954	\$87,106	\$91,452	\$96,025	\$100,836
Total Cost	\$16,355,250	\$18,356,250	\$19,312,451	\$20,310,339	\$21,825,353	\$22,611,520	\$24,586,772	\$25,902,487	\$27,537,316	\$29,571,552
Assessed Value	\$5,155,535	\$5,417,439	\$5,703,428	\$5,915,459	\$6,214,911	\$6,467,067	\$6,785,270	\$7,114,671	\$7,458,113	\$7,816,137
Property Tax	\$33,700	\$37,400	\$41,400	\$45,900	\$50,100	\$55,200	\$62,200	\$65,000	\$76,500	\$81,900
No. of Mobile Homes	179	179	189	199	208	222	234	247	261	298
Cost per Unit	\$25,000	\$27,200	\$29,655	\$30,000	\$31,003	\$33,183	\$35,442	\$36,585	\$38,111	\$40,215
Total Cost	\$4,475,000	\$4,879,180	\$5,556,195	\$5,976,190	\$6,616,156	\$7,363,639	\$8,413,613	\$9,035,332	\$10,000,397	\$11,007,317
Assessed Value	\$1,316,163	\$1,711,410	\$1,895,817	\$2,109,135	\$2,246,113	\$2,377,845	\$2,651,165	\$2,862,365	\$3,103,111	\$3,400,512
Property Tax	\$5,000	\$10,000	\$11,000	\$12,200	\$13,100	\$15,000	\$16,000	\$18,100	\$20,100	\$25,000
TOTAL Property Tax	\$12,700	\$17,400	\$22,400	\$28,100	\$64,200	\$71,200	\$78,200	\$83,100	\$96,600	\$106,900

II. Property Taxes-Commercial

- Assumptions:
1. 65,000 sq. ft. of new property built each year @ 115 per sq. ft. Inflated 3% annually.
2. Property Tax Rate will remain at \$-3822.

Sq. Feet	15,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000
Cost/Sq. Ft.	\$15	\$17	\$19	\$21	\$23	\$25	\$27	\$29	\$31	\$33
Total Cost	\$225,000	\$1,102,500	\$1,232,500	\$1,365,000	\$1,497,500	\$1,632,500	\$1,770,000	\$1,910,000	\$2,052,500	\$2,197,500
Assessed Value	\$700,750	\$715,100	\$740,317	\$767,167	\$794,190	\$821,563	\$849,193	\$877,142	\$905,417	\$934,033
Property Tax	\$5,370	\$6,310	\$6,550	\$6,700	\$6,920	\$7,100	\$7,320	\$7,500	\$7,720	\$7,950

III. Bldg. Permits, Transfer Tax, Mobile Home Permits

- Assumptions:
1. Building Permits-Residential: Average of 1201 per dwelling unit based on current rates. Inflated 3% annually.
Commercial: Average of 1197 based on 3 permits of 15,000 square feet each, inflated 3% per year.
2. Transfer Tax: County receives 30% of tax calculated on 3% rate per \$500 valuation.
County's share decreases if 3 incorporated cities.
3. Mobile Home Permits: 160 per dwelling unit, inflated 3% annually.

Appendix VII
Page 2

Fiscal Year Budget

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Building Permit - Residential:													
No. of New Building Starts	235	235	269	283	299	315	323	351	370	391	412	435	459
Building Permit Revenue	\$74,190	\$74,190	\$82,032	\$90,930	\$100,727	\$112,391	\$123,635	\$136,325	\$151,033	\$168,031	\$186,110	\$206,196	\$228,111
Building Permit - Commercial:													
3 Buildings/yr.	01,473	01,473	01,507	01,626	01,703	01,790	01,880	01,974	02,073	02,176	02,285	02,399	02,519
	01,119	01,119	01,610	01,032	05,116	05,371	05,600	05,822	06,038	06,259	06,485	06,710	06,938
Total Building Permits	\$76,327	\$76,327	\$86,723	\$93,010	\$107,852	\$118,462	\$129,235	\$142,437	\$157,907	\$174,360	\$192,315	\$212,391	\$235,052
Mobile Home Permit	650	650	663	665	669	673	677	680	681	689	693	696	703
Mobile Home Permit Revenue	\$10,185	\$10,185	\$11,261	\$12,500	\$13,617	\$15,229	\$16,992	\$18,483	\$20,351	\$22,097	\$24,586	\$26,313	\$28,307
Transfer Tax	016,100	016,100	016,153	016,110	016,276	016,477	016,736	016,991	017,551	017,750	018,162	018,597	019,510

PART III
LYON COUNTY FISCAL PLAN

AREAS FOR FUTURE STUDY

Interviews with members of the Lyon County Board of Commissioners, Department Heads, employees, and residents identified many ideas and opportunities which could lead to increased revenue, cost savings and/or operational improvements in County services. The Consultant has also included some issues or areas which merit further study due to their potential financial impact on the County in years to come.

It is not within the scope of the Master Plan contract to address the study areas listed below. They are included only for the Board's use for planning purposes.

FUTURE STUDY AREAS

1. Staffing of Satellite Offices: In Dayton and Fernley, the sharing of staff between departments should be pursued. For instance, could secretarial staff between the District Attorney's and Sheriff's offices be shared; or between the Sheriff and Justice Courts? The cost of hiring two parttime employees may be higher than hiring just one, given the cost of benefits, especially health insurance.
2. Investment Pool: Investigate the possibility of joining an investment pool with other jurisdictions, pooling the County's idle cash with others to get a higher interest rate.
3. Public Defender: Analyze the cost of hiring an in-house Public Defender or contracting with a private firm vs. the current service delivery method of contracting with the State. If the savings are not evident now, re-analyze the situation every few years.
4. Classification and Pay Plan: Review the C&P plan not only for competitiveness with other jurisdictions but for equity within the classifications when compared to one another. Conduct an occupational survey to distinguish more accurately the knowledge, experience and level of responsibility required by each job.
5. Fire Protection: Conduct a long-range study regarding the need, timing and cost of assuming a paid fire staff. How, when, where should it be phased in?

6. Parks Maintenance: Analyze need and cost of paid maintenance workers vs. volunteers. Identify the service levels desired; assure liability issues are well addressed regarding volunteers.
7. Vehicle Fleet:
Analyze cost and benefits of starting a depreciation fund and depreciation schedule for County light and heavy equipment.
Review use of current fleet to determine if size fits the County's needs and if use of vehicles is balanced and adequate.
Determine if a car pool vs. assigned cars is a better use of the fleet.
Review policy of one vehicle assigned to each patrol Sheriff Deputy - are there cost-saving alternatives?
8. Equipment Maintenance: Review impact on in-house equipment maintenance operation if depreciation schedule is initiated.
9. Justice Court Bailiffs: Analyze feasibility of hiring bailiff not only for court room security but for collection of delinquent fines and forfeitures. Could his/her salary be paid for by collection efforts?

Analyze feasibility of hiring collection agency to collect delinquent fines and forfeitures.
10. Public Works Maintenance Schedules: For planning and budgetary purposes, 3-5 year maintenance schedules should be developed for County buildings and parks, and County maintained roads.
11. Building Permit Fees: Opportunities exist to increase revenues by updating the fee schedule for building permits. A comparison with other Counties should be made as a starting point.
12. Incorporated Cities: The possibility of either Fernley or Dayton or both incorporating will have an impact on the County's revenues and expenditures. Many of the State Statutes exclude revenue to the County if there are two or more incorporated cities (Basic CCRT, Cigarette Tax). An in-depth study documenting these impacts is needed for planning purposes.
13. Fines and Forfeitures: On a per capita basis, revenue from fines and forfeitures has decreased over the past few years. The reasons for this should be ascertained. Is it fewer fines being levied, poor collection

procedures, or a combination of both?

14. Licenses, Service Charges, Etc.: An overall review of the County's fee structures should be undertaken to determine where Statutes/Ordinances allow increased fees.
15. Budget Reorganization: Budget review and understanding could be enhanced by combining some department's budgets in the General Fund, thus reducing the overall number of departments. For example:
 - a. either combine cemeteries into one department, "Cemeteries", with one line item for each location; or combine under Public Works Department.
 - b. combine Town budgets into one department with one line item for each town; or combine under Parks Department.
 - c. combine Dayton Complex and Fernley Complex and Grounds under Buildings and Grounds Department.
16. Agricultural Extension Fund: A combination of property tax and SCCRT is allocated to this Fund. Together they exceed the 1 cent on property tax mandated by Statute. FY 1988-89 has a budget of \$36,821 versus the 1 cent amount of \$25,831. A review of the County's funding policy and practice is warranted.
17. Road Department Hours of Operation: Due to the geographic size of the County and the resultant travel time for Road Department employees to get to the work site, the County should analyze the feasibility and cost savings inherent in a 4 /10 work week (4 days a week with 10 hour days).

The following Master Plan Land Use Designations are utilized on the Master Plan Map. They are provided to show generalized land use patterns based on the environmental constraints and weighed against existing given circumstances:

LOW DENSITY RESIDENTIAL -- Lot and parcel sizes would include the basic "rural residential" zone districts from 10 acre minimums to one acre minimums. It should be noted that mapped agricultural areas should be kept at 20 acre minimums. Many variations exist in this land use classification and the Master Plan is not to be misrepresented that it encourages all one acre minimums. Populations projections in this land use will consider an average 5 acres per family unit.

MEDIUM DENSITY RESIDENTIAL -- Lot and parcel sizes would include the basic "estate zone districts" from 12,000 square feet to 1/2 acre. Populations projections in this land use will consider an average of three (3) family units per acre.

HIGH DENSITY RESIDENTIAL -- Lot and parcel sizes would include the basic "non-rural zone districts" which would include all parcels below 12,000 square feet. Population projections in this land use will consider an average of eight (8) family units per acre.

COMMERCIAL LAND USE -- This land use would include the basic C-1 and C-2 zone districts and the related uses permitted in the current code.

INDUSTRIAL LAND USE -- This land use would include the basic industrial zones, M-1 and M-E, and the related uses permitted in the current code.

PUBLIC LANDS/OPEN SPACE -- This land use designation basically is controlled by the federal and state government. Any private lands within this designation should be entitled to a single family unit for each existing parcel. All other land use activities should be covered in the current code (as may apply).

AGRICULTURAL USE -- This land use would include the basic zone designation RR-5 (20 acres). The primary purpose for this designation, however, is to identify all existing agricultural and cultivated land.

Density allocations, population projections and design criteria should take into account the above land use patterns and their respective area and holding capacities for future planning.

LYON COUNTY COMM. DEVELOPMENT
PLANNING AND BUILDING DIVISION
27 SOUTH MAIN STREET
VERINGTON, NEVADA 89447

LAND OWNERSHIP:

The initial step in developing a plan for Lyon County is to determine what lands lie within the County's responsibility for planning. Of the 1,295,360 acres that comprise Lyon County only 357,117 acres do not belong to the federal or state governments. A little more than 10% of that total belongs to Southern Pacific Railroad. One hundred fifteen acres of the remaining land belongs to the County or is other-wise tax exempt. Only approximately one-third of the County's total acreage is subject to county zoning control. The total acreage, however, is analyzed in Land Capability.

It is inappropriate to say that the residents of Lyon County have no say in the land use of two-thirds of the County. In recent years federal and state agencies have relied more and more upon county, regional and municipal planning staffs for significant input to their own planning efforts. This effort, plus the mandatory public hearing process, gives county citizens a growing role in determining how their federal and state neighbors use these public lands.

For that reason, the planning most recently adopted for this two-thirds of the County is included in this plan in a summarized form. Details of these General Development and Resource Management Plans are available from the appropriate agencies. Through Lyon County's Policy Plan for Public Lands, the Master Plan for the County becomes linked with the agency plans to form a cohesive and comprehensive program for the County's entire acreage.

Since mother nature is no respecter of political or ownership boundaries, attempts to develop land use plans must be tied to the geology and natural systems and processes of the land. In terms of land ownership, that means that planning for adjacent parcels is very much dependent upon the interaction between the two. Sound planning, therefore, is not only an attempt to maximize the highest and best use of our natural resources, it also attempts to keep the planners from being caught between adversarial landowners. For that reason, land use and ultimately zoning must be structured to provide buffers between incompatible uses.

The development of Lyon County's mineral resources offers a conspicuous example of the need to identify these incompatible land uses. The county planning department maintains and updates mineral maps containing information on patented and possessory mining claims. These maps can provide the planning commission, property owners and land developers with specific locational data sufficient to mitigate conflicts caused by residential development in areas of mineral resources and vice versa. These maps are of considerable significance in the achievement of responsible and informed land use decisions and are, by reference, hereby made a part of the Land Use Section of the Lyon County Master Plan.

TOPOGRAPHY

The whole Great Basin is a colorful result of a number of physical forces which are constantly shaping the surface of our planet. The push and pull of continental plates moving over and under each

other is responsible for creating the mountain ranges which form a pattern of north to south ridges with broad, nearly flat valleys between rugged rocky crags and the broad meander plains of ancient waterways. Areas where the continental plate has been stretched thin have occasionally fractured, letting the seething magma beneath erupt to add additional interest to the landscape. Some volcanic vents still exist close to the surface to provide heat to water aquifers creating hot springs.

Lyon County's topography is typical of the remainder of the Great Basin. A mountainous spine traverses the County from the Virginia Mountains northwest of the County to the East Walker River canyon in the County's southeast corner. That spine is cut through in the north of the County by the Carson River and toward the south end of the County by the West Walker River. The Pine Nut Mountains and Singatse Range between the rivers form a formidable barrier between Mason Valley and Smith Valley.

At the extreme north end of the County, the Fernley area lies on the periphery of a Truckee River meander plain that blends into the wetlands and flats on the extreme edge of the Carson Sink flood plain. Slope analysis as a major consideration of land capabilities is derived from topography as we consider lands most suitable for development.

SOILS:

Where the alluvial valley soils are able to drain into moving waterways, the toxic elements are leached from them rendering these areas quality agricultural lands needing only water to sustain high crop yields. The Soil Conservation Services Soil Survey of Lyon County provides an inventory of soils throughout the County.

Good agricultural areas in Lyon County cover a relatively small portion of the land area. For reasons just described, they lie adjacent to or within the meander plain of the County's rivers. A factor which is considered in land capability relating to soils is stability. For instance, it is difficult to place a structure on sandy soils which in such case the capability of such an area to support development would be bad.

The northern tip of the County is primarily alkali flat and marshy area, depending upon the amount of seasonal rainfall. The Fernley area was included in the Newlands project which distributes Truckee River water over select agricultural soils. Consequently, the Farm District band paralleling the Fallon Highway resembles a typical midwestern farm area.

The rolling hills to the south of Fernley are a barren high desert range land. The alluvial slopes marking the northern reach of the Carson River watershed are also barren. These soils are subject to a rapid sheet run off during heavy rains, with too much slope to encourage leaching when the hills do receive rain. Soils within close proximity to the Carson River from Dayton to Fort Churchill are quite productive. The flats where the river empties into the Lahontan Reservoir are not conducive to leaching action becoming marshlands and alkali flat, with cottonwood trees and willows marking the river shorelines.

The broad meander plain and Walker River valley known as Mason Valley contains the largest area of arable land in the County. The Valley lends itself to easy irrigation and the soils have been ren-

LAND OWNERSHIP:

The initial step in developing a plan for Lyon County is to determine what lands lie within the County's responsibility for planning. Of the 1,295,360 acres that comprise Lyon County only 357,117 acres do not belong to the federal or state governments. A little more than 10% of that total belongs to Southern Pacific Railroad. One hundred fifteen acres of the remaining land belongs to the County or is other-wise tax exempt. Only approximately one-third of the County's total acreage is subject to county zoning control. The total acreage, however, is analyzed in Land Capability.

It is inappropriate to say that the residents of Lyon County have no say in the land use of two-thirds of the County. In recent years federal and state agencies have relied more and more upon county, regional and municipal planning staffs for significant input to their own planning efforts. This effort, plus the mandatory public hearing process, gives county citizens a growing role in determining how their federal and state neighbors use these public lands.

For that reason, the planning most recently adopted for this two-thirds of the County is included in this plan in a summarized form. Details of these General Development and Resource Management Plans are available from the appropriate agencies. Through Lyon County's Policy Plan for Public Lands, the Master Plan for the County becomes linked with the agency plans to form a cohesive and comprehensive program for the County's entire acreage.

Since mother nature is no respecter of political or ownership boundaries, attempts to develop land use plans must be tied to the geology and natural systems and processes of the land. In terms of land ownership, that means that planning for adjacent parcels is very much dependent upon the interaction between the two. Sound planning, therefore, is not only an attempt to maximize the highest and best use of our natural resources, it also attempts to keep the planners from being caught between adversarial landowners. For that reason, land use and ultimately zoning must be structured to provide buffers between incompatible uses.

The development of Lyon County's mineral resources offers a conspicuous example of the need to identify these incompatible land uses. The county planning department maintains and updates mineral maps containing information on patented and possessory mining claims. These maps can provide the planning commission, property owners and land developers with specific locational data sufficient to mitigate conflicts caused by residential development in areas of mineral resources and vice versa. These maps are of considerable significance in the achievement of responsible and informed land use decisions and are, by reference, hereby made a part of the Land Use Section of the Lyon County Master Plan.

TOPOGRAPHY

The whole Great Basin is a colorful result of a number of physical forces which are constantly shaping the surface of our planet. The push and pull of continental plates moving over and under each

14 CV 00128 - 003482
LYON COUNTY
other is responsible for creating the mountain ranges which form a pattern of north to south ridges with broad, nearly flat valleys between rugged rocky crags and the broad meander plains of ancient waterways. Areas where the continental plate has been stretched thin have occasionally fractured, letting the seething magma beneath erupt to add additional interest to the landscape. Some volcanic vents still exist close to the surface to provide heat to water aquifers creating hot springs.

Lyon County's topography is typical of the remainder of the Great Basin. A mountainous spine traverses the County from the Virginia Mountains northwest of the County to the East Walker River canyon in the County's southeast corner. That spine is cut through in the north of the County by the Carson River and toward the south end of the County by the West Walker River. The Pine Nut Mountains and Singatse Range between the rivers form a formidable barrier between Mason Valley and Smith Valley.

At the extreme north end of the County, the Fernley area lies on the periphery of a Truckee River meander plain that blends into the wetlands and flats on the extreme edge of the Carson Sink flood plain. Slope analysis as a major consideration of land capabilities is derived from topography as we consider lands most suitable for development.

SOILS:

Where the alluvial valley soils are able to drain into moving waterways, the toxic elements are leached from them rendering these areas quality agricultural lands needing only water to sustain high crop yields. The Soil Conservation Services Soil Survey of Lyon County provides an inventory of soils throughout the County.

Good agricultural areas in Lyon County cover a relatively small portion of the land area. For reasons just described, they lie adjacent to or within the meander plain of the County's rivers. A factor which is considered in land capability relating to soils is stability. For instance, it is difficult to place a structure on sandy soils which in such case the capability of such an area to support development would be bad.

The northern tip of the County is primarily alkali flat and marshy area, depending upon the amount of seasonal rainfall. The Fernley area was included in the Newlands project which distributes Truckee River water over select agricultural soils. Consequently, the Farm District band paralleling the Fallon Highway resembles a typical midwestern farm area.

The rolling hills to the south of Fernley are a barren high desert range land. The alluvial slopes marking the northern reach of the Carson River watershed are also barren. These soils are subject to a rapid sheet run off during heavy rains, with too much slope to encourage leaching when the hills do receive rain. Soils within close proximity to the Carson River from Dayton to Fort Churchill are quite productive. The flats where the river empties into the Lahontan Reservoir are not conducive to leaching action becoming marshlands and alkali flat, with cottonwood trees and willows marking the river shorelines.

The broad meander plain and Walker River valley known as Mason Valley contains the largest area of arable land in the County. The Valley lends itself to easy irrigation and the soils have been ren-

dered productive over the years. The southern14 CV 00128 v. 003483
extends well into the southern end of the County between the West and
East forks of the Walker River. LYON COUNTY

Smith Valley is encapsulated by high mountains on all sides with a broad valley of fertile soil that stretches to the (sometimes) Artesia Lake on the north and the meander plain of the West Walker River to the south. The alluvial fan areas at the base of the Singatse Range provide broad stretches of high desert range land on the periphery of the valley's highly productive ranches.

WATER:

There is no natural element with a greater impact upon land use than water. Lyon County, like the whole of Nevada, lies on the wrong side of the Sierra Nevada to receive much seasonal rainfall. The runoff from the mountains, therefore, becomes quite precious. Over the years a network of canals carrying river waters to fields throughout the County's fertile valleys have made the County's ranches very productive.

There are always trade-offs to be considered in prioritizing the use of water resources. It becomes difficult to achieve a balance that satisfies man's commercial needs while keeping nature's ecological systems intact.

Nothing is more illustrative of this dilemma than the 1988 East Walker River catastrophe. With drought conditions threatening to reduce crop yields to the point of heavy financial losses for Mason Valley ranchers, they demanded the last acre feet of stored water in the reservoirs at the headwaters of the East Walker River. It was, after all, stored for their use.

The consequences of this priority demand were known in advance of the release of the water. The dregs of the stored water carried considerable silt downstream with it which had an effect on the fish population.

At the same time, the contest between the Newlands Project farmers and the Paiute Tribe at Pyramid Lake and conservationists of the Stillwater Wildlife Refuge was reaching a critical level. When water resources drop below what is considered normal reserves or the level at which there is a stable balance between all demands, something has to give. The distribution of water rights among landowners is subject to the same kind of delicate balance. The division of land and subsequent distribution of water rights must be given very thoughtful consideration. Recreation and tourism were at an extremely low use as rivers and Lahontan Reservoir were depleted.

SEISMIC ACTIVITY:

The southern two-thirds of the county contains several earthquake faults. The county is a part of the Seismic Zone 3 land along the eastern slopes of the Sierra Nevada. Although there are no recorded epicenters in Lyon County, the map does show evidence of considerable seismic activity in Douglas County, the western neighbor, clustered not too far from the common county line.

The presence of existing known faults both within and immediately outside of the County suggests prudence in the selection of building sites and construction types. The building codes adopted by the County reflect requirements for Zone 3 design.

LYON COUNTY

In addition to the potential dangers from seismic activity is the side benefit - the presence of geothermal waters. Industry is just beginning to focus on the full potential of prudent use of this energy source. The County should encourage the development of industries that can take advantage of geothermal waters, such as the power plant at Wabuska. At the same time, the nostalgia of those residents who used to bathe in the hot springs is recognized. This is another good commercial use of the waters.

LAND CAPABILITY ANALYSIS:

In order to develop and utilize a Master Plan, comparisons must be made to find conflicts between existing and proposed land use with soil types, excessive slopes, flood-prone areas, and other natural and environmental characteristics.

The assumption is first made that the existing established communities within Lyon County will not change, regardless of natural or environmental constraints. An exception might be argued that if Stagecoach, for instance, should run out of domestic water, or if like in the old days the economic base of a small reliant community fails and everyone relocates. The land capability system is imposed to identify land areas most suitable to support and expand existing and proposed concentrations of people. By comparing all the natural and environmental elements with one another, the most desirable areas for further or new growth and development will stand out, and thus provide direction for future land use considerations.

Master Plan constraint maps provide additional information for analyzing the land use capabilities in Lyon County.

CHAPTER IV -- SECTION C
PLAN ORGANIZATION AND ADMINISTRATION

The Master Plan, after approvals by the Planning Commission and adoption by the County Commissioners, is a policy document to be enforced by all levels of county government. The Master Plan must continually be compared to land use change requests and zoning patterns. Deviations are not considered consistent with the policies adopted by this plan. There are provisions for amendment to this plan; however, they require a strict series of notices and hearings which are outlined in the Nevada Revised Statutes, Chapter 278.

The Planning Commission is the advisory board with the chief responsibility for Master Plan administration. The Planning Administrator is the administrator for day-to-day planning functions and as such reviews applications and follows procedures at the direction of the Planning Commission and the County Commissioners.

Coordinating Development of the General Plan and the Capital
Improvement Program

The development and adoption of the Master Plan will serve as a guide for orderly and harmonious growth patterns for both the private and public developments within the County. The various controls such as building regulations, zoning ordinances, subdivision ordinances, etc., are the means by which the objectives as set forth in the Master Plan are implemented. For optimum utilization of the Master Plan, it is essential to assure proper priorities in acquisition, timing, and construction of public facilities by sound financing methods.

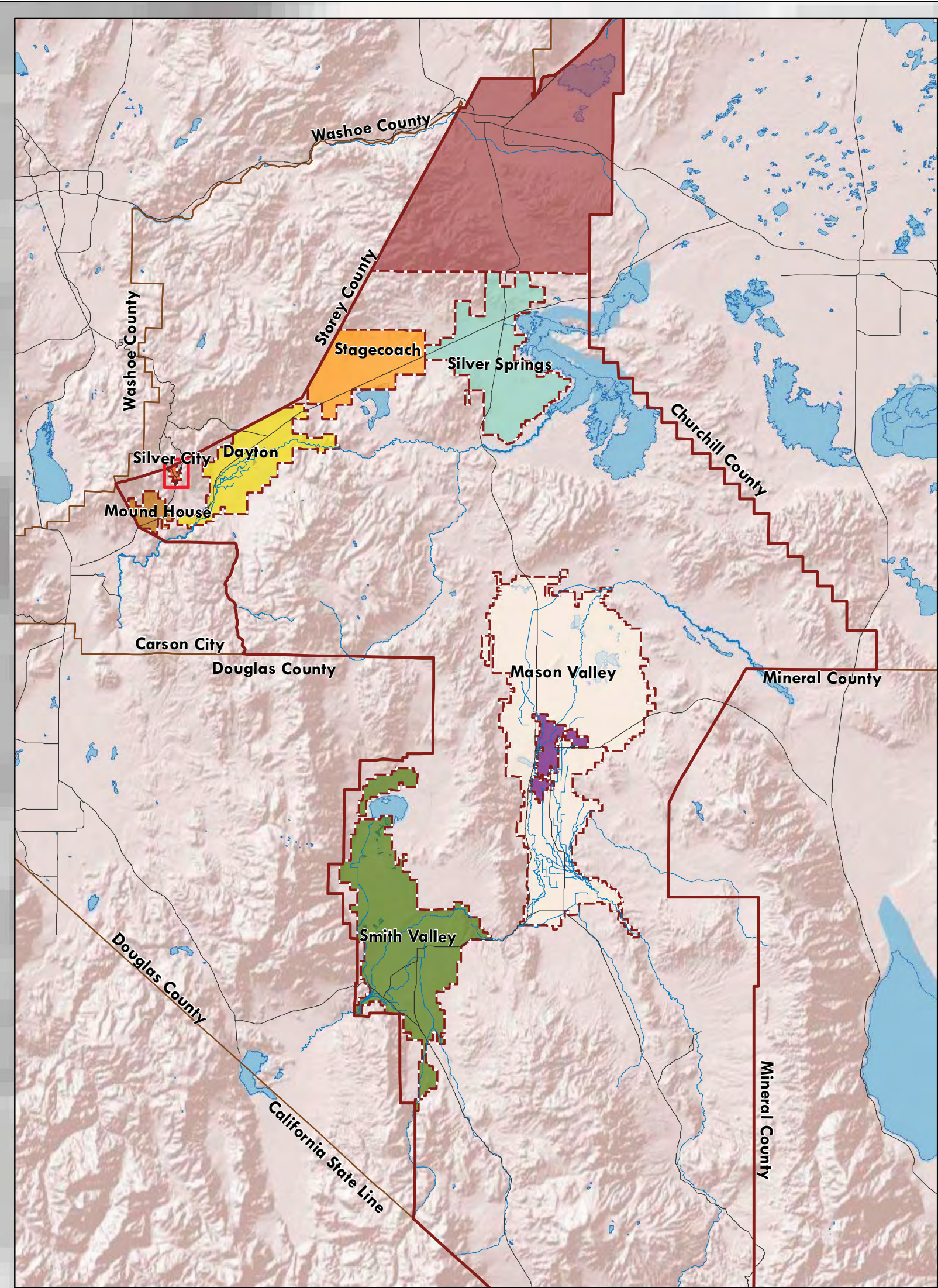
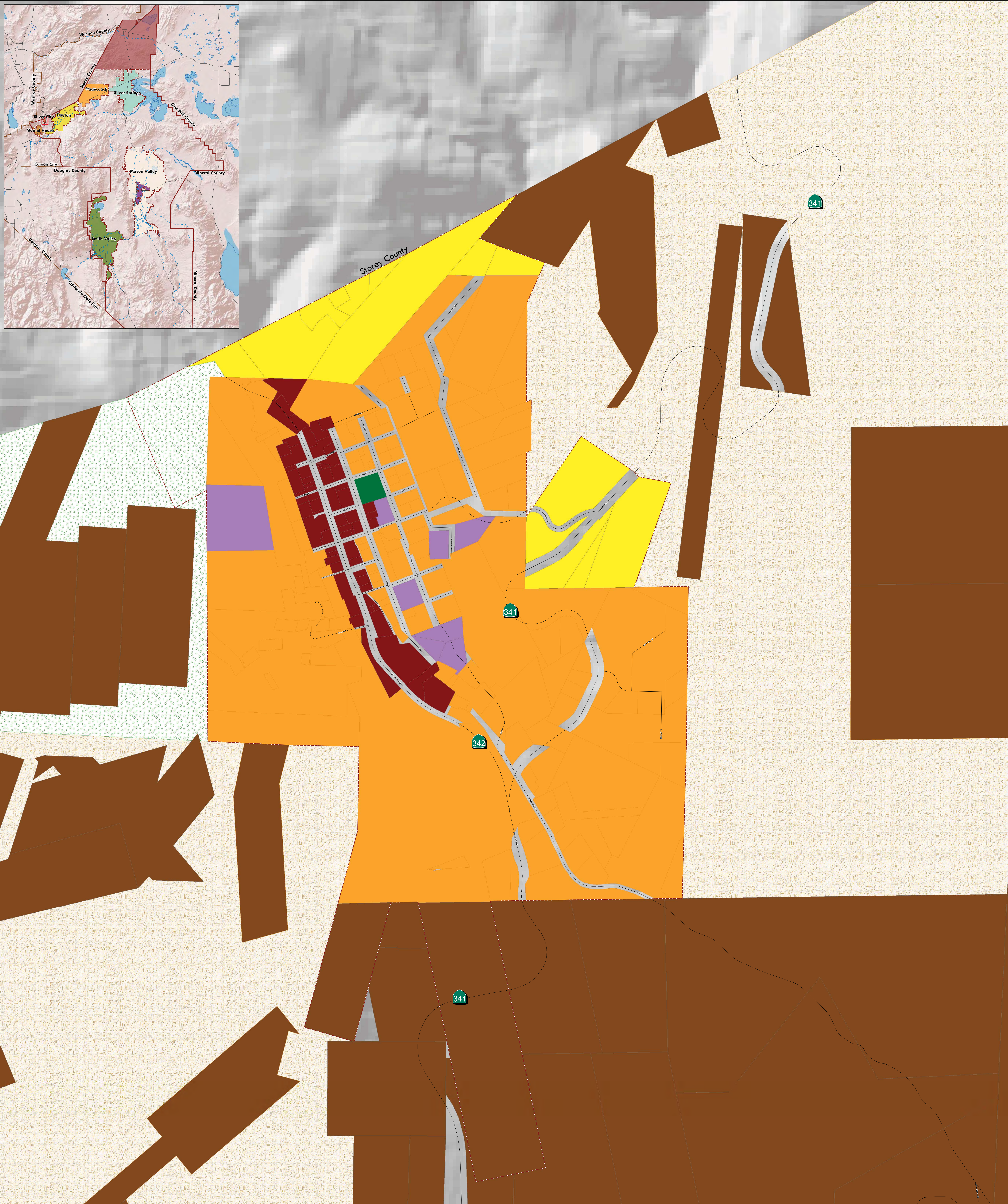
Alternate Fiscal Means

There are a variety of programs which can be utilized in financing public improvements:

A. Borrowing - The debt burden of a community must at all times be in balance with its debt paying capacity. This balance can best be achieved by staying within safe borrowing limits. A safe borrowing index is the ratio of indebtedness to full taxable values (10 percent and less is considered safe, 10 percent to 15 percent is a doubtful zone, and 15 percent or more is considered hazardous). The 10 percent rule should be modified in communities where rapid construction is occurring or where tax procedures lead to a lag in the addition of tax values to the tax base. Another safe index that can be considered is where 5 percent of the principal plus the total interest requirement for the year does not exceed 25 percent of a normal budget.

As a general rule, however, bonds should not be issued for a term longer than 30 years. Before bonds are issued, a definite plan for repaying the money should be known. Borrowing should be related to the stability of the community. At times, interest rates on municipal bonds have been low and sometimes low-cost federal loans have been available for certain capital improvements. Periods of low money rates are always the best time to construct facilities on an accelerated basis, while during periods of high interest rates, it is wise to postpone the construction of all but the most urgently needed facilities.

B. Lease Purchase - Local governments utilizing the lease purchase method prepare specifications for a needed public works project and have it constructed by a private entity. The facility is then leased by the government at an annual or monthly rental. At the end of the lease period, the title to the facility can be conveyed to the government without any future payments. The rental over the years will have paid the total original cost plus interest. Localities in some states have used this method to avoid the necessity of bond elections or to avoid debt limits. This type of financing has usually proved to be excessively costly. In addition, its legality has been questioned in some states; in others, the obligation is considered as part of the municipal debt.



COUNTY-WIDE LAND USE MAP - SILVER CITY

Legend

Railroads	Land Use	CITY OF YERINGTON	EMPLOYMENT	INDUSTRIAL	OPEN SPACE	PUBLIC/QUASI PUB	SPECIFIC PLAN
Community Boundaries	AGRICULTURE	COMMERCIAL	FUTURE PLANNING AREA	JOINT PLANNING AREA	PARKS	RESOURCE	SUB
	CITY OF FERNLEY	COMMERCIAL MU	HC MU	LDR	PUBLIC LAND	RR	TRIBAL



WEST CENTRAL LYON COUNTY FINAL LAND USE PLAN



230 S. Rock Ste. 20
Reno, NV 89502
(775)332-4920
fpe@fpe-reno.com

NOVEMBER 2002

JA3593



14 CV 00128 - 003488
LYON COUNTY

FINAL

Central Lyon County Land Use Plan

Introduction

In January 2000, the Lyon County Board of County Commissioners approved a Professional Services Agreement with FPE Engineering & Planning to compose a Land Use Plan for the Dayton, Moundhouse, and Silver City portions of Lyon County. A 13-member panel, known as the Master Plan Advisory Committee, chaired by William Miles was put in place to oversee the consultants work. This draft represents the summation and conclusion of approximately two (2) years of work by both the consultants and the committee.

The committee initially held a series of technical workshops with the various providers of public facilities and services covering areas such as public safety, fire, public works, utilities, transportation, parks, schools, etc. The committee also heard from federal agencies such as the Bureau of Land Management.

The three (3) areas addressed in the context of the Land Use Plan are the Dayton Valley Area, The Moundhouse area and Silver City. All there have unique land use characteristics and developmental issues.

FINAL

Dayton

This is a community with a couple of identities. One is the older core with the desire to preserve its historic character, scale, and proportion. Currently, it is mixed in use with residential and commercial uses side by side. The older core has a tremendous historic connection to the Comstock Lode and is both part of the historic district and has landmark status. These designations have brought mixed blessings. The core buildings and general condition of the buildings has a historic proportion and is a point of community pride. On the other hand, it appears that there has been little or no re-investment in the community. A part of the problem could be a lack of market demand for the setting or, a lack of coherent rules and general direction.

The core also has the typical issues in regards to lack of structures conforming with modern seismic requirements because of the lack of reinforced steel in the frames. There is also not a coherent parking program for current intensification or special events.

Dayton has two identities. The one previously outlined is a historic core and the other is that of a growing suburban community on the State Highway 50 corridor. Within this context there are four distinct areas.

The "new town" created around the Arnold Palmer Golf Course. This is a mixed use area but has many of the components of the community in the form of the High School, Library, Senior Citizens Center, Golf Course, and a variety of housing and some employment in the form of industrial.

The second area is located north and west of the Highway 50 corridor and is a traditional single family community with predominantly 6,000 square foot lots, a general commercial corridor, and neighborhood facilities. This area is healthy and appears to be growing at a strong clip. The affordability of the housing product and its proximity to Carson City employment as well as being relatively out in the country make it appealing. The primary landowner developers of Landmark Homes have huge plans for an additional 6,000 dwelling units within their buildout program. This appears to be an area where land use conflict is at a minimum. This speaks to the fact that the developer has done his homework, the housing product is well received, and the intensity is compatible with the surroundings.

Also aside, the "new town" has a perceived unit capacity of 3,000 additional units but the infrastructure constraints appear to be more significant. Mr. John Evasovic has spoken to the issue of some major drainage improvements within the industrial context. There appear to be some utility capacity constraints as well.

The third area can be generally described as the river district. This is an area along the Carson River which has large lot single family homes a safe distance from the floodway - flood plain.

There are also large ranches in this corridor. The owners of these lands have reasonable developmental expectations based on the development of surrounding properties, and existing master plan designations.

FINAL

The existing development along the river district is somewhat west of the main course of the Carson River and is elevated from the flood plain. It is also physically depressed from Highway 50 corridor noise and visual impacts. It is a unique and somewhat cloistered community. This area has had some more divisive public hearing debate and testimony relating to lot size and transitional zoning. The Rolling A Ranch generally abuts it and there is impetus to acquire a significant portion of Rolling A for permanent open space.

The fourth area is known as the Mark Twain Stagecoach area. This area is at the northwest edge of the Dayton corridor and some of this area physically overlaps with Storey County. This area has ranchette type of housing with a mix of well and poorly maintained properties. The political boundary with Storey County causes some public service and safety concerns because most of the impacts accrue to Lyon County but none of the tax revenue. The development of this area does appear to have a builder operating on an ongoing basis.

A major issue is the commercial corridor and the depth of the corridor to the transitional or adjoining uses. It is prudent to limit the number of access points along such a corridor. Since it operates as a state highway its primary function is to carry traffic through the area at a high speed. This goal runs counter to the local residents wanting ease of transition access and safe pedestrian speeds. A primary focus of the land use plan effort will be the determination of how much commercially designated land will be required for the 20 year horizon. What distance requirements will be established by NDOT for intersections, depth of corridor, and public improvements along corridor.

During the final hearings it was reiterated that the Dark Sky ordinance be implemented. This ordinance is intended to limit light pollution and the cumulative effect of man made lighting on the night sky.

FINAL

Town of Dayton Master Plan Goals

What should the goals of the land use component of the Master Plan be for the Town of Dayton?

Goal 1: To provide for the orderly growth of the Town of Dayton in keeping with the natural and environmental constraints of the area.

Actions:

- To promote planned development or developments that take into account topographic variations, flooding issues, common open space, and adjoining uses.
- To allow for developments that are mixed use in nature that incorporate neighborhood services such as support commercial or offices within a residential concept.
- To insure that utilities are adequately sized and installed in relation to the build out of a specific development.
- To promote a land development pattern the reflects the surrounding and adjoining uses, incorporates buffers and creates a coherent pattern.
- To evaluate existing regulatory conditions as to the placement and conditioning of multi-family developments especially within existing single-family areas.

Goal 2: To coordinate the sizing and installation of necessary utilities to support the plan area growth at build-out.

Actions:

- To evaluate the existing capital improvements program and utility program in light of the land use program.
- To identify locations for water tanks, sewer lift stations, future sewer ponds, etc, in light of the infrastructure sizing requirements and location of development.
- To determine the appropriate utility corridors, right-of-way, and easements necessary to accomplish the goals of the plan and protect them.
- To establish the proper river/bridge crossing in light of the need to establish a 2nd connection from east to west across the river.

Goal 3: To preserve the environmental setting of the community by protecting the river corridor in terms of limiting any development in the floodway and minimizing impacts in the floodplain. Also, protecting scenic vistas and natural features by limiting physical development that results in scarring.

Actions:

- That Lyon County work with FEMA, the State and the Army Corps of Engineers to develop a corridor protection program to preserve open space, identify/protect flood prone areas, and to allow for a system that allows for development but that protects the river corridor.
- To establish on-site density transfer from areas that are "non" developable to areas that are. This is particularly important in the river corridor area. It is also important when the community moves into the foothills.

FINAL

The example of this on site density transfer would be if the acreage is, for example 600 acres and that the intensity allowable relative to density is two units per acre, that the development would be allowed 1,200 units. The projected areas would not be penalized relative to land use intensity and the intensity is transferred to the more developable portions of the site.

- To work with Bureau of Land Management to establish an open space plan that takes into account protection of the foothills and mountains in the Dayton Valley. This plan would create linkages in the open space along the river up into the foothills.

Goal 4: Providing for a variety of housing in the community to address the needs of all segments of the Dayton community.

Actions:

- To critically evaluate the existing lot size categories, allowable uses, developmental controls within the existing Lyon County regulations.
- To determine which housing types are to be encouraged in specific areas given surrounding land uses, topography, etc.

Goal 5: To create a permanent open space program that protects environmentally sensitive areas, allows for neighborhood park, and allows for community park facilities that appear the 20 year need.

Actions:

- To create a system that allows for open space to be protected that does the following:
 1. not unduly burden the public
 2. has a maintenance and funding source
 3. is a combination of privately and publically maintained lands
 4. to encourage the utilization of conservation easements to protect open space but to also compensate landowners for some land value
 5. to locate neighborhood parks that are convenient to existing and future neighborhoods
 6. that the Board of County Commissioners establishes a park district and create an ordinance creating a park construction tax for the purposes of open space in residential areas.
 7. to create an open space network that connects the river, through developments to the foothills, where possible.
 8. to work with BLM to identify properties to be converted from BLM to Lyon County, Nature Conservancy, State lands, or other methods of permanent open space.
 9. to establish equitable funding systems for identification, acquisition and perpetuation of regional open space.
 10. that all developments provide a minimum of 20 percent open space.

FINAL

11. that Lyon county create a landscaping ordinance that specifies that residential, commercial or industrial development have amounts of open space.

Recommended minimums are:

- | | |
|-----------------------|-----|
| - Residential | 20% |
| - Multi-family | 25% |
| - Professional Office | 25% |
| - Commercial | 15% |
| - Industrial | 10% |
| - Public Facilities | 20% |

Goal 6: To allow for a transportation network that allows for a coherent 20 year build out in the community.

Actions:

- To protect all proposed transportation corridors in light of future private and public land use actions.
- To work closely with NDOT. To define the Highway 50 corridor including:
 1. protected right-of-way necessary for plan build out.
 2. exploration of frontage road potential along Highway 50 corridor.
 3. definition of the roadway section of Highway 50 allowing for:
 - a. ultimate right-of-way
 - b. pedestrian/bicycle lane
 - c. openings to cross streets
 - d. deceleration lanes
 - e. landscaping buffer
 - f. soundwalls for residential developments
- Connection of Master Plan roadway corridors with capital improvement program.
- Develop an understanding of long term of the cost of roadway improvements in today's dollars for 20 year projection.
- Coordinate with NDOT relative to the 2nd bridge crossing as to its location in relation to Highway 50.
- Model traffic projections from land use to determine required land widths and other potential forms of transportation improvements.

Goal 7: To protect and enhance the existing historical context and identity of the community in its relationship to the Comstock as well as its connections to other component parts of the Comstock within Lyon County (Silver City) and outside (Virginia City).

Actions:

- To establish a mixed use zoning classification for historical Dayton that allows for the combination of commercial, retail, public facilities, residential, and even to allow for residential above and commercial below in the same structures.
- To preserve the existing character and identity of the Historic Core of Dayton by promoting in-fill that is historically authentic.
- To preserve the character by promoting infrastructure design that is compatible with the existing.
- To promote the availability of off street parking by acquiring vacant lots in concert with the plan and landscaping/paving/stripping and providing it to the general public.

FINAL

- To develop a "main street" program that promotes small business, historic rehabilitation complimentary street furniture, lighting, and the like in a Handbook available to all private development and followed by the public agencies.
- To pursue securing grant monies to allow for facade loans to property/business owners to upgrade their properties.
- To promote the location of public facilities that compliment the long term strengthening of the historic Comstock theme. These facilities could include:
 1. replication of structures/business operating in the 19th century
 2. a train station connected back to the Virginia City/Moundhouse program
- To secure architectural services from professional who can work with private landowners to refine their developmental concepts.
- To do a complete infrastructure inventory to determine what deficiencies exist and which should be corrected by the public and which should be privately corrected as a condition of approval.

Goal 8: To allow for the orderly placement and coordination of necessary public facilities, i.e., schools, fire stations, governmental permitting offices, courts, senior citizens facilities, libraries that create and enhance the "quality of life" of Dayton.

Actions:

- To have any or all plans indicating future potential public facilities reviewed by the appropriate agencies, i.e., School Board, Board of Directors of the Fire District, as well as the Board of County Commissioners.
- To recommend to the Lyon County Board of County Commissioners that a permit center be set-up in Dayton that has public information relating to planning/zoning, permit processing and any other land use information pertinent to this portion of the County. It is further recommended that a satellite planning, building, development review office be set up in Dayton to respond to the needs of the public where much of Lyon County's growth is occurring.
- That the Dayton utilities incorporate prior to public review and approval by the board of the County Commissioners the location of proposed/required public infrastructure.
- That the County Commissioners evaluate growth demands upon existing facilities such as the Senior Citizens center and develop a facilities plan.
- That purveyors of private utilities such as Sierra Pacific Power, the telephone, and cable companies utilize the plan map to determine their future needs relative to utility growth.

Goal 9: To encourage "Smart Growth" initiatives that conserve land, protect open space, and reduce energy consumption.

Actions:

- To promote land use decisions that reduce unnecessary trips leading to unnecessary consumption of fuel.
- To limit construction in the flood plain and eliminate it in the floodway. To future refine Carson River hydrology in anticipation of the next flood.
- To promote entrance statements, landscape buffers and other quality of line design measures public or privately designed.
- To maximize the utilization of the existing state park within the plan area boundaries.
- To promote the existing industrial/employment/business center and create a similar

FINAL

complimentary employment center on the west side of Highway 50.

Goal 10: To disseminate the contents of the plan to elicit broad based understanding and support for the contents of the plan.

Actions:

- To disseminate the contents of the plan during the next few months through newspapers, school bulletins, radio, television, and town meetings so that the public has a strong understanding of the plan contents.

Goal 11: To promote coordination of the plan contents with various regulatory agencies that affect the future development of the community including:

1. Nevada Department of Transportation
2. Subconservancy District
3. Comstock Historic District
4. Dayton Fire District

Actions:

- To make available plan contents to the various agencies for their review and comment prior to public approval of the plan.

Goal 12: To encourage the creation of an equitable impact fee system.

Actions:

- To evaluate the infrastructure requirements necessary to support the 20 year plan build-out and to address needs for water, sewer, storm drainage, transportation, police, fire, and public works.
- That the infrastructure be sized properly and that the fee system allow for credits for over sized installations.

FINAL

Dayton Master Plan Conclusions

- The agricultural base of the community is gradually being converted to suburban land uses.
- The water rights must be protected relative to retention in the basin.
- There is a critical need to create a corridor plan for Highway 50 and the land uses that front/interface on a cooperative basis between the Nevada Department of Transportation and Lyon County.
- There is a critical need to define the river corridor relative to open space, flood control, and adequate setbacks of development.
- The Dayton area is projected to grow in a mixed use pattern with a forecast population of 30,000 to 35,000 within the 20 year horizon.
- The historic connection of the Comstock with Silver City, Dayton, and Moundhouse connecting by Historic Railroad corridors and significant places compliments the existing character and enhances tourism.
- Neighborhood parks should be located in newly developing residential areas at a size of three (3) to five (5) acres. These should be placed approximately in relation to 400 to 500 homes. The committee strongly urges the County Commission to adopt the park construction tax for this plan area.
- That the County Commission seriously study existing animal migration patterns within Dayton Valley, Moundhouse, and Silver Springs and seek measures that protect these corridors.
- That Lyon County put in place land use review mechanisms that allow for planned unit developments that promotes privately provided, dedicated open space.

FINAL

Moundhouse

The Moundhouse Community has been an industrial area since the early Comstock mining boom. The flattened land between the mines and the river became a staging area for oar processing for the Comstock. Today, the area is a mixture of older industrial, mining uses, a variety of residential housing, and newer industrial uses with an industrial, commercial strip bisecting the area.

Moundhouse has a number of land use challenges. First, there is a need to create a clear corridor definition along the Highway 50 interface. This condition warrants the creation of an industrial, commercial zoning category.

Second, the quality of residential housing must be elevated by better conditioning, approval conditions, and code enforcement policies for existing properties.

Third, the residential and industrial uses require better buffers. This is especially true in the south Moundhouse area with its wrecking and junk yards.

Fourth, like Silver City and Dayton, the Comstock historic connection must be maintained to establish linkage and future tourism activities. Hence, the identification of existing and proposed railroad corridors and train station locations.

Fifth, it is the stated goal of the Advisory Committee that the brothel, as land use, be located on the south-side of Highway 50. This means that within the Moundhouse area that any future expansions or additions be limited to the area south of Highway 50 in the industrial zone.

Sixth, the Moundhouse area will also have protected open space corridors to allow for access to the foothills, animal migration, and an open space buffer.

Seventh, it is urged that Lyon County soon approach BLM to earmark and identify properties that should be preserved for permanent open space.

FINAL

Moundhouse Master Plan Goals

What should the goals of the land Use component of the Master Plan be for Moundhouse?

Goal 1: To create an orderly pattern that protects existing uses and allows for a constructive build out scenario.

Actions:

- To evaluate the existing Lyon County developmental requirements in light of Moundhouse industrial development and to strengthen design review.
- To consider a zoning/code enforcement program that cleans up certain eyesores and substandard properties.

Goal 2: To create better boundaries between the various land use districts.

Actions:

- To promote landscape and perimeter wall buffers between the various use districts. This is strongly recommended where industrial butts up against residential. These buffers between private property can be 20' - 40" with trees and masonry walls.

Goal 3: To better define the Highway 50 corridor as it traverses the community.

Actions:

- To define the land use mix in the industrial commercial land use.
- To establish the depth of the industrial commercial corridor along Highway 50.
- To determine appropriate signage along Highway 50 relative to land use.
- To study the existing driveway pattern and with NDOT determine if there is any opportunity for consolidation of driveways, better setbacks for future developments, and shared driveways.
- To determine as in the case of Dayton, what the roadway section should be, relative to the following:
 1. right-of-way
 2. turning pockets
 3. bicycle paths/pedestrian corridor
 4. landscaping
 5. deceleration lanes

Goal 4: To upgrade or remove land uses that are detrimental to the highest and best uses of land within the community

Actions:

- To work with Lyon County Administration to do the following:
 1. Clarify and define what constitutes a zoning violation.
 2. Incorporate the language into ordinance with enforcement power.
 3. Secure support from the District/County Attorney as to seeking compliance with the ordinance.
 4. Approach the property owners and business owners about property maintenance standards should be followed.
 5. Secure a commitment from Lyon County to fund a code enforcement program.

FINAL

Goal 5: To work with the existing utility providers within Lyon County or with adjoining communities to correct the sanitary sewer/water supply issues long term in the community.

Actions:

- To coordinate with Lyon County utilities in terms of creating an equitable solution to the long term utilities needs of Moundhouse including:
 1. Exploring the possibility of constructing a sewer line pumping effluent to Dayton.
 2. Exploring same with Carson City.
- To coordinate with State Environmental Protection Services relative to water quality/groundwater protection standards relative to future development.

Goal 6: To continue the industrial employment base, strengthen the newly developing areas and generally upgrade developmental expectations in this area.

Actions:

- To evaluate developmental standards within the industrial districts relative to the following:
 1. allowable uses
 2. uses requiring a Special Use Permit
 3. prohibited uses
 4. parking requirements
 5. landscaping requirements
 6. building types

Goal 7: To protect the historic rail corridors that exist within the community and their linkages to Virginia City - Carson - Dayton.

Actions:

- To identify and protect those Historic Rail corridors that exist and to establish corridor connections or linkages that are currently missing.
- To determine what future facilities may be appropriate in the Moundhouse venue that connect with Silver City, Dayton, and eventually Carson City.

Goal 8: To promote an industrial commercial land use classification that takes into account the industrial nature of the corridor but does it within a Highway commercial context.

Actions:

- To evaluate sample ordinances that create an industrial and commercial district and to tailor make a district that meets the needs of Moundhouse. This would include residents, business owners, land owners, and people traversing the central corridor.

Goal 9: To incorporate in all new developments better buffer standards specifically between residential and industrial as well as along Highway 50. These standards should focus upon:

- appropriate wall treatments
- appropriate landscaping widths
- appropriate landscaping materials
- open space buffer with natural materials

Goal 10: To respect the role that mining has played in the history of the community.

FINAL**Silver City**

Silver City was first settled by placer miners working in Gold Canyon in the late 1850s. It was the second community to be settled in the area after the discovery of placer gold near Dayton in 1849. Numerous mining claims were and are located in and about the town but, perhaps, its major contribution to the development of the Comstock Lode was as a supply and freighting center. As such, it is an integral part of the Comstock Lode and the history of Nevada.

The town is located about 4 miles northwest of Dayton and 3 miles south of Virginia City. Both State Highways 341 and 342 pass through the community. Highway 342 begins in Silver City and follows a very steep route up Gold Canyon to Virginia City. Highway 341 connects with U.S. Highway 50 four miles south of town and, after passing through the town, follows a more moderate grade to Virginia City and beyond to Reno.

The residential component of the community has approximately 200 home-sites or lots, of which approximately 100 are developed. The architecture of the area has a historic leaning and is somewhat eclectic. The Community is located within the state Comstock Historic District and the federal Virginia City National Historic Landmark District (see: <http://tps.or.nps.gov/nhi>). The Comstock Historical District Commission was formed (N.R.S. 384) in 1971 by the Nevada Legislature and is responsible for maintaining the historical integrity of the exterior facade of buildings and other structures in the District. The commission acts as an architectural review board and a Certificate of Appropriateness must be received before exterior repair, remodel, restoration or new work is started on any building in the District.

In addition to the two state highways there are only about 1500 feet of paved streets in the town and some of the old roads are hardly more than tracks weaving around sagebrush and rock outcroppings. Before additional streets are paved it will be necessary to develop a storm drainage system since flooding often accompanies summer thunderstorms. During winter and when covered with snow and/or ice some of these roads are very hazardous.

The water supply of the community is a part of the Virginia City water supply system, maintained and operated by the Storey County Public Works Department. Although few serious problems have resulted from this arrangement, some residents believe that ultimate control of the town's water system should be exercised by Lyon County elected officials. The original system was constructed in the 1870's; repairs and upgrading have been undertaken on an "as needed" basis and it should be recognized that the needs of Storey County water consumers are, due to political necessity, paramount to those of Silver City. At present Storey County allows only two "will serve" water permits per year to the town. A Nevada supreme Court decision (Franktown Water Agreement).

Significant capital improvements will be required to the existing system sometime in the near future and Lyon County officials should be prepared to help finance these improvement. Since Storey County's policy of allowing only two "will serve" water permits per year to Silver City, it appears that the available water will allow for the infill development of existing lots.

The town does not have a community sewage collection system or treatment facility. Septic tanks on individual parcels are used throughout the town. Even with highly mineralized ground, no significant problems have occurred to date. With a limited and widespread number of potential building lots

FINAL

available, this situation should not change in the future. However, future clean water or other environmental legislation could foreseeable create problems for owners of existing septic systems.

As with Virginia City, portions of Dayton, and Moundhouse, there are railroad corridors, historic trails, and old wagon roads into and through the community that physically form a connection to the mining past. These transportation routes comprise an important element in the historic fabric of the community. Protection of these corridors and rail right-of-ways must be perpetuated.

The northern boundary of Silver City approximates the boundary between Lyon and Storey counties. Geographically and historically, the town is more closely aligned to Virginia City than the burgeoning community of Dayton.

The Community Center located in the original 1867 School House adjacent to the historic town park. Recently completely renovated, this is the symbolic and cultural center of the community and a source of pride to residents. About 1/4 mile to the south of the Community Center is Silver City's new three-bay firehouse manned by solely volunteer firefighters. The town's cemetery is well maintained and contains graves dating back to 1857, two years before the discovery of the Comstock Lode and seven years prior to Nevada achieving statehood.

Two canyons (American Ravine and Gold Canyon) traverse Silver City. The head of American Ravine is in American Flat, about two miles to the west of the town. Numerous springs in American Flat and in the ravine provide a fairly steady flow of water sufficient in quantity to provide the kids in town their first experience with a fishing pole; in the past the stream has been stocked by Nevada Fish and Game. There are no flood cone designations on this creek.

The head of Gold Canyon is in Gold Hill about three miles to the north. Water flows in the bed of the canyon very rarely and it can be completely dry for several years running. Occasional flash flooding during summer thunderstorms has resulted in about a mile of the normally dry streambed being designated a 100 year flood zone by the Federal Emergency Management Agency (see: Lyon Co., Nevada, Unincorporated Areas, Panel 137, Community Panel Number 320029 0137 B). Gold Canyon continues southeasterly to Dayton, about five miles distant.

Discovering gold in the creek gravels in 1849 at Dayton, early placer miners and prospectors followed this canyon upward to Gold Hill where the momentous discovery of the Comstock Lode was made. The southern portion of the creek, below town, offers a potential recreation amenity and there is considerable support in the town for a historic trail leading up the canyon from Dayton to Silver City. Most of the riparian land, outside the town limits, is presently undeveloped.

Currently there are three General Land Use categories that guide future infill development of Silver City. The predominant land use is residential and this land use category affects about 80 percent of the total land. The zoning classifications of NR-1 and RR-1 have been assigned to the properties and this is a typical low traditional density residential community. The second classification is General Commercial of C-2 that forms a one block deep corridor on either side of Highway 342 through the center of town. The third is a M-1, industrial land use classification that occupies a southern central position around historically valuable mine and mill properties.

FINAL

Analysis

The community has some unique characteristics which are the direct result of the discovery in 1859 and development of the Comstock Lode. The town was surveyed, patented and developed well before the existence of local, state and federal government imposed zoning, parceling, and environmental regulations. A considerable part of the town's historical significance can be attributed to this fact and which results in an intermix of land uses and lot sizes not to be found in 20th century communities.

Patented and unpatented mining claims exist within and adjacent to the town boundaries which act to limit potential growth. Topographic and geological factors also create barriers to profitable land development of the type transforming the Dayton Valley.

Silver City's water supplier, Storey County Public Works Department, limits the number of new hook-ups to two per year. Sewage disposal is limited to septic tanks and only on those parcels having soils which meet Nevada State Environmental Health percolation rates.

The community has retained much of its historic heritage. The commercial corridor, along Hwy 342, has seen better days but there are functioning businesses. Some financial planning and support by the county would benefit the commercial district.

The industrial land classification of M-1 at the southern entrance of the town site gives pause for reflection in that it is an entrance corridor to the community. The initial view is of the buildings and hoisting frame of the historic 'Dayton Consolidated Mine and Mill'. Several hundred yards further is the mill property. The buildings on both of these properties are in a state of deterioration. These properties are of significant historical value. Restoration or renovation of these properties would definitely enhance the historic fabric and economic potential of the community.

Silver City appears to have a high percentage of eclectic and unique housing constructed since the 1960's. Most of this housing is out of the viewshed of the major arteries leading to Virginia City and the corridor used by visiting tourists largely reflects the historic nature of the area.

FINAL

Silver City Master Plan Goals

What should the goals of the land use component of the Master Plan be for Silver City?

Goal 1: To recognize, enhance, and protect the unique character of Silver City.

Actions:

- To generate architectural guidelines and building codes that compliment and promote the current character of this community.
- To maintain that scale and primary residential character by retaining the existing Master Plan designation and zoning categories.
- To notify the Silver City Town Advisory Board of building restoration/improvement programs which would be of benefit to the community and property owners.

Goal 2: To preserve the scale of the community by architectural review that is sensitive to how new structures fit into the existing fabric.

Actions:

- To compliment the existing architectural review (Comstock Historic District Commission) by generating, at some point in time, desirable visual representations.
- To preserve the existing pedestrian character by maintaining alleys, soft paving approaches, and relatively narrow streets.

Goal 3: To promote the revitalization of the commercial corridor by promoting reinvestment.

Actions:

- To address the commercial corridor to potential users encouraging some mixed uses, i.e., commercial, professional, office, and housing.
- To request from Lyon County to create a Loan or incentive program for commercial rehabilitation. This program can focus on needed structural repairs, seismic retrofits, historical building facades, etc. This would be architecturally consistent with adopted standards.
- To ensure that all county departments notify the Silver City Town Advisory Board of new, expanded or otherwise modified development programs of potential benefit to the town and commercial property owners.

Goal 4: To preserve and strengthen the existing infrastructure, i.e., water, roadways, drainage and public facilities.

Actions:

- Lyon County shall provide an infrastructure inventory and deficiency evaluation and report.
- To determine design criteria for street pavement sections, drainage improvements, pedestrian connections, etc.
- Lyon County shall provide a long term if modest capital improvement commitment (i.e., 20 years) that methodically addresses these deficiencies.
- To implement and actively oversee the 'dark sky' ordinance.

FINAL

Goal 5: To focus on encouraging tourist oriented historic activities that do not degrade the quality of life keying on Silver City's uniqueness.

Actions:

- To pursue any complimentary historical experiences, I.E., walking tours, hiking trails, significant building identification, history/information kiosk, etc.
- To actively support the efforts of residents to preserve and improve their property.
- To advertise community activities that promote the historical authenticity of the community.

Goal 6: To recognize and support improvements to and maintenance of historical transportation routes, railroad connections, and other public facilities that link Silver City to its surroundings.

Actions:

- To document corridor connections to Virginia City, Moundhouse, and Dayton of the various railroad corridors that traverse the area.
- To document and preserve historic transportation routes, i.e. Dayton-Silver City Toll Road, Virginia & Truckee Ry right-of-way.
- To include a Gold Canyon historic interpretative trail in the county Recreation Plan.
- Include final restoration of Silver City's original firehouse in budgetary considerations as appropriate and support efforts to utilize this structure as a cultural resource for the benefit of the community.

Goal 7: To promote the preservation of existing public facilities.

Actions:

- To critically evaluate those essential public facilities and the types of physical/preservationist up-grades that they require.
- To pursue a variety of funding sources, i.e., CDBG, State of Nevada, EDA, etc., that can be used to preserve, improve and upgrade public facilities.

Goal 8: To limit any earth disturbance or above ground mining activities that create visual scaring or that disrupt the fabric of the community.

Actions:

- Lyon County shall establish a land use policy that minimizes the impact of mining and other significant earth disturbing activities that degrade quality of life.

Goal 9: To encourage continued citizen participation in the planning process.

Actions:

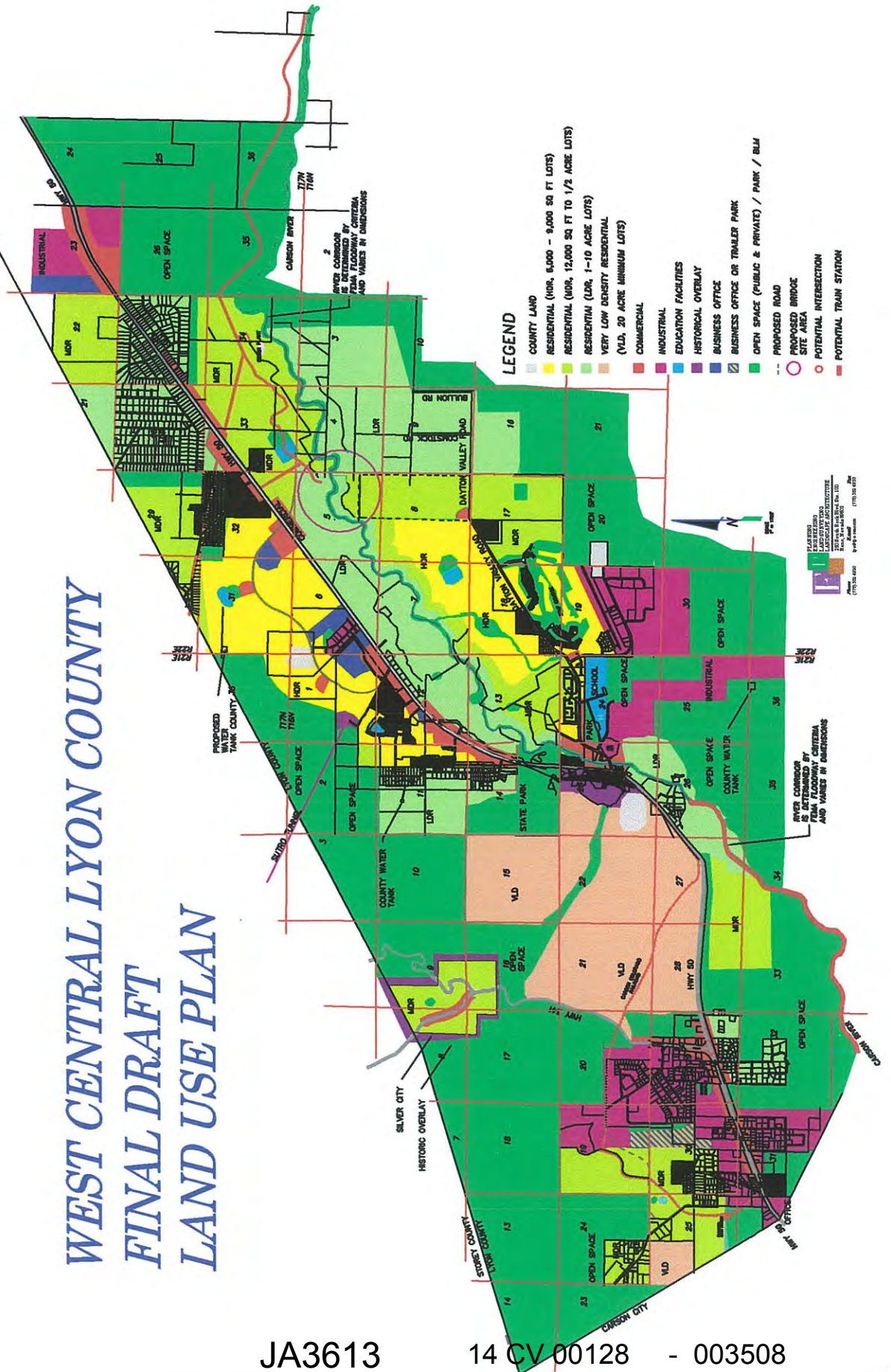
- To continue the broad based citizen participation process in terms of high levels of participation and involvement in what occurs in the community.

Goal 10: To maintain the primary focus of the community as residential.

Actions:

- To urge the Board of County Commissioners to carefully consider all zone changes or Master Plan amendments that would substantially alter the character and identity of Silver City.

WEST CENTRAL LYON COUNTY FINAL DRAFT LAND USE PLAN





December 13, 2010

RECEIVED

DEC 13 2010

LYON CO. COMM.

Chairman Joe Mortensen
Lyon County Board of Commissioners
Lyon County Administrative Complex
27 South Main St.
Yerington, NV 89447

RE: Final Draft - County Wide Component of the Comprehensive Master Plan
Request for Resource Land Use Designation for Specific Mining Properties

Dear Chairman Mortensen,

Comstock Mining, Inc., (the Company) in conjunction with Mr. and Mrs. Allan G. Fiegehen and Ida Consolidated Mines Inc., respectfully request that the following parcel be re-designated into the "Resource" category for the purpose of its Land Use Designation in the County Wide Component of the Comprehensive Master Plan. This parcel is a portion of a contiguous, 182 acre block of private property in Lyon County (together with surrounding unpatented mining claims, collectively the "Dayton Resource Area") that was acquired by the Company for its mineral resource potential. The approximate location of the property is highlighted on the attached copy of your "County-Wide Land Use Map – Silver City".

The specific parcel number requested to be re-designated in the "Resource" category is:
APN 008-091-01 (portion north of Silver City town line)

The following adjacent parcels appear on this map to be already categorized as "Resource" in your draft document. The Company respectfully agrees with this designation, but we would like to make sure that the entirety of these parcels is categorized as "Resource".

APN 008-091-01 (portion south of Silver City town line)
APN 016-121-01
APN 016-101-08
APN 016-111-02
APN 016-111-03

APN 016-121-10
APN 016-121-11
APN 016-121-12
APN 016-121-22
APN 016-121-23
APN 016-121-24
APN 016-121-25

The Company's request for re-designation of the parcel is based on the presence of valuable mineral resources on this property. To quote from Chapter 6, "Natural Resources and Environment" of the Master Plan Final Draft, Policy NR 9.1, "Lyon County will endeavor to guide development away from areas where minerals and aggregate extraction is currently occurring and where significant resources are known to exist."

These properties demonstrably contain significant mineral resources. Most of this property gained the status of "Patented Mining Claim" and was transferred from federal ownership to private land ownership after proving the presence of valuable minerals to the satisfaction of the federal government. On August 31, 2010, Behre Dolbear, a respected, independent Mineral Industry Advisor hired by the Company, issued a technical report on the Company's mining projects (see the full Technical Report as Appendix A, attached). Among other findings, the report validated a measured, indicated, and inferred resource in the Dayton Resource Area containing 199,000 ounces of gold and containing 1,570,000 ounces of silver. The Company believes the potential of the Dayton Resource Area far exceeds the aforementioned resource and that the completion of our exploration, resource planning, and ultimate implementation of the Company's mine plans will not only create meaningful, long-term jobs in Lyon County but result in millions of dollars in direct tax revenue for the county during the life of the mine.

Comstock Mining Inc. acquired this package of property through a lease agreement in November 2008, and two separate exploration licenses in July and August 2010, all with definitive options to purchase the patented and unpatented mining claims and patented town site lots. The agreement between the Company and the current owners was based on the presence of valuable minerals, and the expectation that the Company would be able to profitably mine the valuable minerals contained on the property.. We believe the Resource category is the proper designation for these properties, and that any designation of this property that hinders the ability to extract

the minerals will result in a significant loss of value for both the Company and the current owners.

We recognize the time, energy and effort expended in bringing the Draft - County Wide Component of the Comprehensive Master Plan to its current stage. We recently acquired the rights to these properties and regret that our request is being made in the latter stages of the draft approval process.

On December 7, 2010 our Senior Engineer, Dennis Anderson, P.E. and I attended the Silver City Advisory Council meeting for the purpose of introducing the Company and ourselves and advising the Council that we planned on submitting this request for Resource Categorization into your process. We also discussed our current mineral exploration drill program with the council members and all others in attendance. We are on their agenda for an introductory presentation of the Company on January 4, 2011, at 7 pm. We appreciate the Silver City Advisory Council's openness and willingness to engage in dialog about mineral resource exploration and development in northern Lyon County, the Silver City area and Storey County.

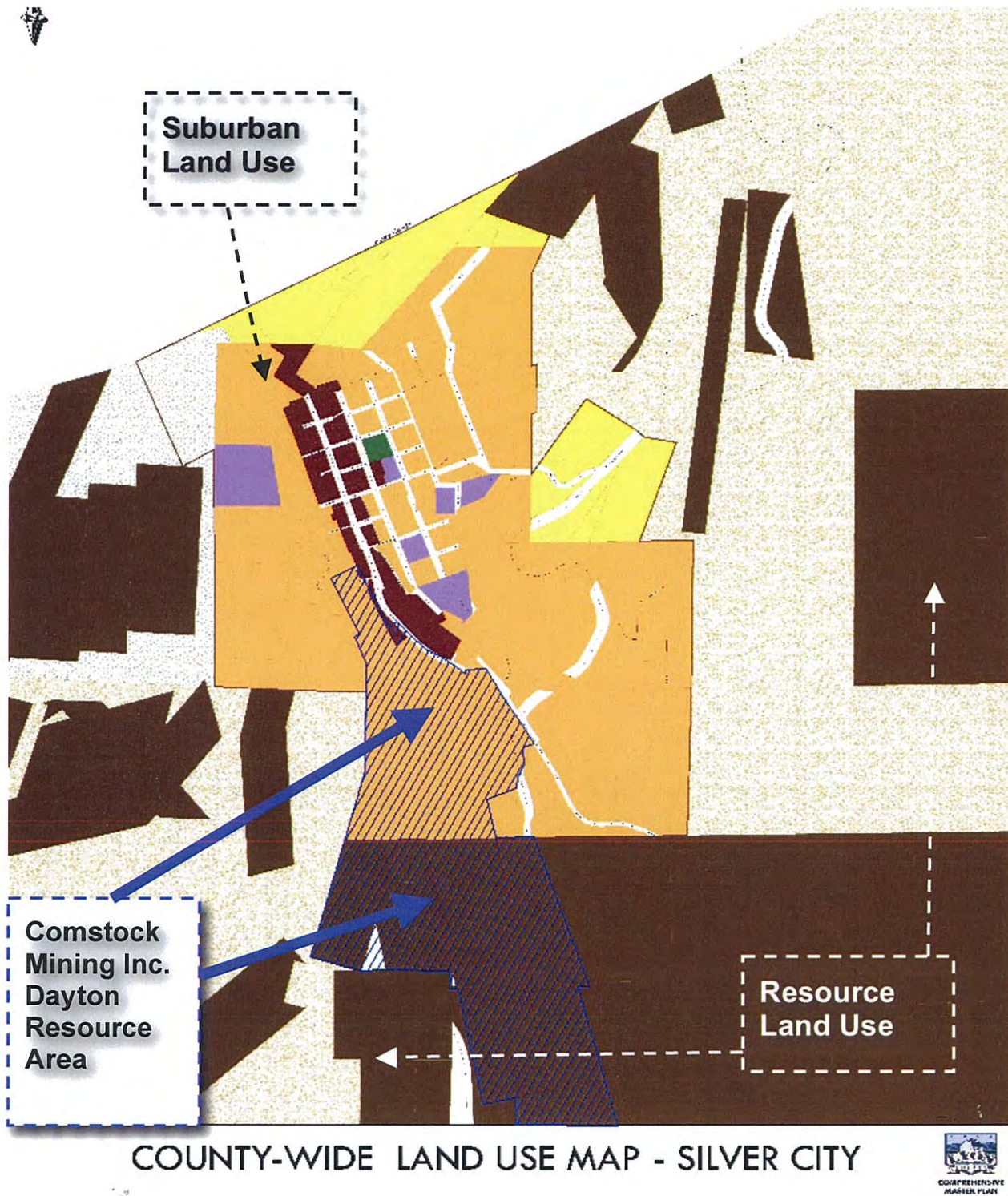
Please feel free to call me with any questions or clarifications needed regarding our reasonable request for an appropriate land use designation as "Resource" on mineral lands, which is consistent with the historic and present use of the properties. Thank you for your consideration of our request and we look forward to business opportunities and continued open communication with and in Lyon County over the coming years.

Sincerely yours,



Corrado De Gasperis
President and Chief Executive Officer
Comstock Mining Inc.

cc: Silver City Advisory Council
Chairman Virgil Arellano, Lyon County Planning Commission
Mr. Bill Nance, Comstock Mining Inc. Board Chairman



FINANCIAL REPORT.

County Clerk Joe Parr told the Board that the total County balance is \$3,744,386.88.

PERSONNEL OFFICE.

Personnel Officer Kathie Harrison presented a hire slip for Sara Hudge as a replacement dispatcher.

Ms. Harrison told the Board that Road Superintendent Jim Purrell has hired a high school boy to work for two weeks until school starts. This is on the On-The-Job Training Program.

BOOK 2, PAGE 129

NEVEX GOLD COMPANY PLANNING COMMISSION APPEAL.

This being the time publicly noticed for this hearing, Chairman Manor stated that Mr. Stephen Peek, representing Nevex Gold Company, would be allowed to give his presentation on Nevex and then Mr. Gary Owens, representing Silver City Residents Association would be allowed to make his presentation. She then stated that each person wishing to speak would sign a list expressing their desire to speak. They would then be called upon and would have three minutes to speak. Closing arguments from both sides would then be heard.

Mr. Stephen Peek, representing Nevex Gold Company, addressed the Board. Mr. Peek made the following presentation (verbatim from the tape recording of the meeting):

"Madam Chair, Members of the Commission, my name is Stephen Peek. I represent Nevex Gold Company, the applicant for a Change of Land Use for an area in the Silver City Townsite. I know that we are item number four on the agenda and that item number five on the agenda is the appeal of Nevex Gold Company of the Special Use Permit application. I would like first to address the Commission procedurally to find out if during the course of the presentation it would make good sense for us to present both the zone change application, as well as the application for the Special Use Permit, in a combined framework to the Commission. The reason why I ask that question of you is certainly, everybody here in the audience, as well as the Commission, knows that the purpose of the Change of Land Use is coupled with an application to extract gold and silver laden ore from Grizzly Hill. Without addressing that issue I think we don't really get to the guts of why we're here, which is the Land Use Change, as well as the Special Use Permit. I ask that only of the Commission as to what is their pleasure, I can only address the Change of Land Use first if you wish, or I can do a combination of both."

Chairman Manor asked District Attorney Bill Rogers if the project would have something to do with the merits of the Zone Change?

Mr. Rogers told the Board that the preliminary question that the Board must address is the Zone Change question. He stated that without the Zone Change, there need not be any consideration of the Special Use Permit Application. He further stated that the other point is that the Planning Commission has never considered the merits of the Special Use Permit because their preliminary action in recommending denial of the re-zoning precluded their consideration of the Special Use Permit on the merits. Mr. Rogers suggested that the Board, as a preliminary matter, consider the re-zoning as it stands alone. He went on to say that in the event the re-zoning is denied, the issue dies in that the Board cannot, at that point, grant the Special Use Permit. Mr. Rogers further recommended that in the event the Board grants the zoning, the Board should refer the

after back to the Planning Commission for consideration for the merits of the Special Use permit.

The Board members agreed with the District Attorney that the Zone Change Only could be considered at this time.

Mr. Peek asked if it was his understanding that the hearing would solely address the Change of Land Use itself, and not the issue of the project?

The Board confirmed that this was the case.

Mr. Peek continued with his opening statement as follows (verbatim from the tape recording of the meeting):

"I stand before you representing Nevex Gold Company as the applicant for a Change of Land Use of an approximately thirty acre site in the southwest Section of the Silver City Townsite. The Change of Land Use that is requested is a change from NR-1, or one dwelling per seven-thousand square feet, to RR-5, or one dwelling unit per twenty acres. With me as well today, and who will also make part of the presentation, is Jim DeAguilera of the Planning Group. Jim and his company are primarily responsible for the preparation of what you have been given, which is a Supplemental Summary and some Technical Appendices, which were handed out to the Commission late last week and to the Silver City Residents Association as well. First, I think the discussion of the Silver City Townsite and its historical interest is important, as well as a discussion of the property and the property's historical interest is important. The proposed Change of Land Use is what has been termed by all of us as the Grizzly Hill. It is just that. It is a hillsite. Lying below the hillside is the site of the Dayton Mill and part of the Dayton Mine and the mine shaft that was dug in the 1870's to the depth of 700 vertically and an incline of some 1,020 feet. It is a property and an area that has been mined in the 1870's, and it has again mined in the 1930's and in the 1940's. The hillside itself, I think, is described aptly by Milton Sharpe in his response on behalf of the Silver City Residents Association. I'm quoting from Mr. Sharpe's presentation: 'The topography: The terrain is quite rugged, ground slopes are generally quite steep. Soils: Surface mantle is probably quite shallow underlined by massive rock formations. Access: The property is generally accessible from State Highway 341 and 342. Because of the steepness of the terrain, vehicular access would be somewhat difficult. Water supply: Silver City is provided with water from the Virginia City Water Company. Water to accommodate additional development is available and water mains are located at State Highway 341'. I don't know whether water is available for maximum density of the property which is about 200, well, 150 to 200 dwelling units is what the property would allow. I'm not sure that it has that kind of capability in the water system, but certainly water is available. 'Utilities: Power is available in the vicinity. Waste Water Disposal: There are no sewage collection and treatment facilities at Silver City. Development of individual sewage treatment units will be difficult because of the soil condition.' Again, I doubt very seriously that the property could support its maximum density as NR-1, which if you assume seven dwelling units, five to seven dwelling units per acre, would get you 150 to 200 dwelling units. Drainage Erosion Control: Because of the steepness of the terrain and the soil condition, drainage and erosion control must be carefully considered in design of any development proposal. Development: Potential of the property is certainly limited by physical and environmental features. Intensive urbanizations will not be feasible, but

access availability, water supply availability and power supply provide possibilities for development which might not be feasible for more remotely located properties. I think that's an excellent summary of the physical topography and condition of the site itself. It is adjoined from the South by RR-5 property, and is adjoined on the West by RR-5 property. There is a natural physical barrier on the North of the property, which is the North slope and the peak of Grizzly Hill. It is bounded by physical constraints on the East side of the property, separating it from living and non-living areas, by State Route 341. Certainly in the development of any property one has to consider the physical constraints. I think that Jim DeAguilera, who will follow me, will present to you in his presentation a very good description of the physical characteristics of the property, and the limitations that the property, in its presently zoned use, have. I think as I was coming down here this morning I was thinking to myself, and likewise while I was up on the property visiting, that given the physical characteristics of the property, the only thing that I could see for development to the maximum density would be a condominium project clustered in some area right along the highway on what is the level site. That doesn't make any sense to me because that would require a sewage disposal, a large urban sewage disposal system, and also, as I was thinking, if you were to put a condominium project or cluster development there to the maximum use, you would certainly have to take out the Dayton Mill. That doesn't make any sense to me because that's an important historical structure that should be maintained and needs to be protected. Then I got thinking if you were to go up and do what I've seen happen in other jurisdictions is to just sort of flatten the hillside. That doesn't make any sense to me either. Even then you wouldn't be able to get enough dwelling units per acre to justify that. So, with that in mind in some of those spots, I am going to turn the podium over to Jim DeAguilera from the Planning Group."

Commissioner Adams asked if Mr. Peek would be addressing the specific issues or why the Planning Commission recommended denial of the proposed Change of Land?

Mr. Peek stated that this would be addressed by Mr. DeAguilera. He further stated that if the Board focuses on the reason for denial, which is the spot zoning issue Mr. DeAguilera would address that.

Mr. Jim DeAguilera, the Planning Group, addressed the Board. Mr. DeAguilera gave a presentation as follows: (verbatim from the tape of the meeting) "My name is Jim DeAguilera and I am President of the Planning Group, City and Regional Planners. Our company prepares general plans, zoning ordinances, environmental impact reports for cities and counties. We worked with the MX Oversight Committee. We were selected in National Competition to prepare the general plans for Hoopa and Virgin Valleys, for example. We prepared the general plan for a small community that received the American Planning Association award for the outstanding general plan last year. General plans and zoning are kind of our business, as well as environmental impact reports. My office and my residence is in Reno, Nevada. We were asked to look at this question of general plan and zoning compatibility of this proposed mining operation, by the mining company and their attorney. Since we frequently represent cities and counties, we tend to approach the subject in the same way, whether we're hired by a developer, a mine company or a city or county. We try to look at the situation in the same fashion. With respect to the question of zoning, first of all, zoning, of course as you know, must be compatible with

the general plan. The Planning Commission, and your Planning Staff, have determined that the requested re-zoning is, in fact, compatible with the General Plan. Your General Plan contains two major land use categories, the category of Urbanizing Area and the category of Mountain and Forest Area. Those two categories, or land use districts, are shown on the map portion of your General Plan. General Plans, and the one that was prepared for your county by Raymond Smith and is a very comprehensive plan, General Plans consist of two parts. They have a map, they have the written text. The principal of planning and planning law is that the two must be compatible, that is you must refer to the report or the text, to the policy statements, to the goals and objectives in the text to arrive at what a piece of land should be shown for on the map. In that regard we've gone through your General Plan and we've identified numerous of policies and statements of support for mineral extraction in your county, and certainly your county has a long history of mineral extraction activities, and certainly there is support for mining in your General Plan, as one would expect to find in a county such as yours. In fact, the property that's being considered for the re-zoning, as shown on one of the plates, or exhibits, in your General Plan, as an area having Silver resources, plate three of your General Plan. The other thing that we've picked up as we've read your General Plan is the notion, the concept, the policy that development in your county must be consistent with the physical limitations of the land to support the development being proposed. There are three things that kind of stand out in reading your General Plan: the protection of natural scenic resources, the preservation of historic sites and the promotion of tourism and industry, and the responsible extraction of mineral resources is called out as one of the important goals of your General Plan. It's interesting from a land use planning standpoint when we talk about the notion of compatible land use planning. Almost every use of the land, the county Commissioners and the county Planning Commission can select where that use should be located in order to have compatible land use planning. Mineral Extractions are an exception to that rule. Minerals must be extracted, obviously, where the mineral is at. You can't simply say we don't want you to mine here, we'd rather you'd mine over here because it's more compatible from a land use standpoint. It's an exception to this rule of placing land uses in a way that they are automatically compatible. Minerals must be extracted where the mineral is at. In looking at this question of zoning for this property we did, as Stephen pointed out, pick up on the fact that the property right now is zoned to permit seven-thousand square foot lots. Residential development with seven-thousand square foot lots. The proposed zoning, on the other hand, of RR-5 would limit the density of the development to twenty acre minimum parcel sizes for residential development. Under either case the physical limitations, the steepness of the property, the ast mining of the property, we believe do not render the land suitable for residential development of any significant intensity. Our conclusion, after reviewing your General Plan, reviewing your Zoning Ordinance and looking at the property as planners, is that the property is not appropriately zoned right now, irrespective of the question of mining. We think that's probably the simplest decision that you have in front of you in the next few days or few weeks. The property is clearly not appropriately zoned for residential seven-thousand square foot lots. It is what we call in planning and planning law an internal inconsistency within your zoning and your General Plan. That is, to have property zoned in a way that's not compatible with your own General Plan, is in fact contrary to good

132

planning and contrary to planning law as well. It's called an internal inconsistency within your zoning and General Plan. Steve has touched upon the fact that we looked the property with respect to its potential for residential development according to the existing zoning of seven-thousand square foot lots. The provisions for water and sewer service limit its suitability for that kind of use. The site has drainage problems that would affect its suitability for that kind of use. Very importantly, the past mining activities on the site have created a situation where if it were developed for residential development, there could be settling problems with the underground mining and shafts that exist on the property. There may also be various traces of mineral resources on the property that would affect its suitability for residential development as well, although those studies have not been done. Site access and road maintenance are questions about the property's suitability for seven-thousand square foot lots, and again, the septic systems that would have to be used are questionable. Certainly the steepness of the property is the main objection to development of the property for seven-thousand square foot lots. So in conclusion, I'll leave some time for questions, our professional judgment and we've been doing City Planning for a long time, is the property is not properly zoned right now, and that's probably the easiest question that we were asked to address. The questions of mining and visual impacts of mining, the impacts on the community and the people who live there, those are more difficult questions to deal with and we will have to deal with those next."

Chairman Manor thanked Mr. DeAguilera and asked if there were any questions from the Board.

Commissioner Adams asked Mr. DeAguilera if he would go so far as to say that mining operation should be placed in the middle of the City of Los Angeles, since he talked about compatible land uses and not being able to apply that to minerals and mining.

Mr. DeAguilera qualified the statement by saying that there are ways in which the impacts of mining activity on adjacent land uses can be mitigated. He stated that he could go into that in considerable detail when the Special Use Permit is addressed. He said that the question of whether you would mine for mineral resources in the middle of Los Angeles would depend on the value of the resource being mined, the community conditions need for that resource. He stated that if it were a time of war and there was a mineral resource in the middle of Los Angeles that was critical to extract for national defense, then yes, there would be a plan prepared to extract the resource out of the middle of Los Angeles.

There were no further questions from the Board of Mr. DeAguilera at this time. Mr. DeAguilera did note that he has visuals which portray before and after mining. He further noted that he could forego reviewing the after mining pictures. The Board then reviewed the pictures of the property as they relate to the zoning of the property.

Commissioner Cummings asked if the mining operation would affect the top of the hill.

Mr. DeAguilera stated that the mining operation would not, however, a residential development might, since that would be the best building site.

Commissioner Adams asked if Mr. DeAguilera agrees or disagrees with the inconsistencies as to where the top line of the pit will be with regards to visual impact or

Silver City.

Mr. DeAguilera stated that he has super-imposed on the photographs exactly what that would consist of. He further stated that he was reluctant to get ahead of himself in the presentation. He then, upon the Board's direction, presented the pictures. The pictures showed the burm and the extent of the scar. He stated that Silver City would not see the pit, however, they would see the benches and the cut slope, which would be revegetated. He stated that there was too much confusion at the Planning Commission and it was not good for either side to have that type of confusion going on.

Commissioner Cummings asked Mr. DeAguilera, as a planner, how many homes the area would support?

Mr. DeAguilera stated that it would depend on how much the hill was graded. He further stated that there is about thirty-five acres involved in the re-zoning request and at seven-thousand square foot lots, taking out at least twenty to twenty five percent for roads. He stated that it would take a lot of grading.

Commissioner Cummings asked if he agreed that the seven-thousand square foot lots could be feasible in the area?

Mr. DeAguilera stated that the economics would be real questionable. He further stated that from an environmental standpoint the impacts would be tremendous.

Chairman Manor asked what Mr. DeAguilera would consider feasible for residential development on the property?

Mr. DeAguilera stated that he feels the twenty acre minimum parcel size is probably close. Mr. DeAguilera told the Board that he was trying to avoid getting into the special use permit. He also told the Board that he would get into it if they wished.

Commissioner Cummings stated that he did not wish for this to happen. He noted that the Board was just curious.

There were no further questions from the Board for Mr. DeAguilera at this time.

Mr. Peek again addressed the Board as follows (verbatim from the tape recording of the meeting): "An issue that was touched on by the Planning Commission, and one of the primary basis for their denial, was the issue of Spot Zoning. Spot Zoning, certainly I think that Mr. Owens in his remarks, in his written remarks, is somewhat descriptive, which is that it's zoning for the benefit of one, rather than zoning for the benefit of the general public. The focus, I think, that was made in the opposition was that surrounding the site, and by definition of the Town Site, created an area that was solely residential and solely urbanizing for solely high density residential, and that any time you allow an encroachment into that residential community, you were creating spot zoning. That is a very loose definition of spot zoning. Spot zoning to me, and what I have seen historically, and I think you would all agree, is that if I wanted to take a part of this residential area and I wanted to put up a 7-11 or I wanted to put up a Raley's Grocery Store or I wanted to put up a Cleaners and I needed commercial zoning when there was already commercial zoning along the Main Street, that would be because it was surrounded entirely by RR-1 or similar urban uses, would be spot zoning. It would be solely for the benefit of that one individual enterprise in that solely residential community. That, I think, is probably the best example of Spot Zoning, but what we have here is RR-5 immediately adjacent to the South of the property and we have RR-5 immediately adjacent to the West of the property. So it is not spot zoning. It's, certainly one could argue, an

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

3 JOHN L. MARSHALL
4 SBN 6733
5 570 Marsh Avenue
6 Reno, Nevada 89509
7 Telephone: (775) 303-4882
8 Attorney for Petitioners Comstock
9 Residents Association & Joe McCarthy

10 IN THE SUPREME COURT OF THE STATE OF NEVADA

11
12 COMSTOCK RESIDENTS ASSOCIATION,
13 JOE McCARTHY

14 Appellants,
15 00128

No. 68433
District Court Case No. 14-CV-

16 v.

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Respondents,
21 _____/

22
23 **JOINT APPENDIX**

24 **VOLUME 25**

25 **PAGES 3501-3570**
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014).....	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015).....	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014).....	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015).....	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014).....	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014).....	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877

LYON COUNTY

TABLE 4. HISTORIC SITE DATA.

REEDS STATION (Continued)

This was the name of the 1860-1861 Pony Express stop. G. W. Reed owned the station for whom it was named (Bray 1913). It was earlier named Millers Station when it was a stop on the Carson River Route of the Emigrant Trail. Martin Cooney ranched here later and the place was called Cooneys Ranch. Camp Hays, a short-lived military camp, existed here in 1860.

ROCK POINT MILL, Lyon Co.
(C. C. Stevenson Mill, Nevada Reduction Works)

CrNv-03-1606

Location: 1 mile north of Dayton
Elevation: 4360'
Map: USGS Dayton 15'
Ownership:
Recorded by: A. McLane, 28 July 1980
Reference: Paher (1970:64)

C. C. Stevenson (later a Nevada governor) built the Rock Point Mill in 1861 with 40 stamps at a cost of \$75,000. Later additions brought the mill up to 56 stamps and the cost of equipment to \$170,000.

This may be same location as Mineral Rapids.

RUTH MINE, see B, H, and V MINE

SAN FRANCISCO MILL, Lyon Co.

CrNv-03-1607

Location: North side of Carson River about 800 feet east of Eureka Mill
Elevation: 4440'
Map: USGS New Empire 7.5'
Ownership:
Recorded by: A. McLane, 16 July 1980
Reference: This report.

Information on this site isn't available at the present, but is located on certain early maps.

TABLE 4. HISTORIC SITE DATA.

SILVER CITY, Lyon Co.

CrNv-03-1608

Location: 3.5 miles south of Virginia City
 Elevation: 4923'
 Map: USGS Virginia City 7.5'
 Ownership: Private
 Recorded by: A. McLane, 23 June 1980
 Reference: Mordy and McCaughey (1968:125)

"Silver City is on State Route 80, three miles south of Virginia City, in Gold Canyon. Founded in 1859 on the strength of small mines in the immediate vicinity, Silver City within two years' time had grown to a population of 1000 and had numerous businesses, including hotels, stores, butcher shops, drug stores, blacksmith shops, and numerous fine dwellings. Silver City's distinctive features included the large mills built to handle Comstock ores, and the presence of large stables and barns for freighting facilities. Milling and freighting were actively carried on during the 1860s, but the mines did not possess sustaining ledges. When Comstock mining declined after 1878, the local mills slowed in production, and the town of Silver City soon became a hamlet. The town still has a small population, a few businesses, and several abandoned dwellings."

SIMPSON, Lyon Co.
(The Colony)

CrNv-03-1948

Location: West side of Smith Valley, 8 miles north-northwest of Wellington
 Elevation: 4770'
 Map: USGS Wellington 15'
 Ownership: Private
 Recorded by: A. McLane, 23 September 1980
 Reference: Harris (1973:47)
 Paher (1970:86)

A cooperative community named The Colony was laid out here in the late 1800 s by a group of Californians. Advertising lured settlers here in 1919-1920 to farm 80-acre tracts, but the scheme failed. Simpson Post Office served the community from November 13, 1913 to November 30, 1943. The farms have since been consolidated into large holdings.

SMITH, Lyon Co.

CrNv-03-1949

Location: In Smith Valley, 4 miles northeast of Wellington
 Elevation: 4780'
 Map: USGS Wellington 15'
 Ownership: Private
 Recorded by: A. McLane, 23 September 1980
 Reference: Smith (1913:224-225)

LYON COUNTY

SMITH (continued)

The region around Smith was settled in August, 1859, when a party of cattlemen consisting of R. B. Smith, Cyrus Smith, Timothy B. Smith, Chandler Stratton, Simon Baldwin, John A. Rodgers, Bill Patterson and others drove a herd of cattle into the valley from California. The drive was precipitated by a dry winter, which left the range along the San Joaquin River in a poor state. The stockmen decided to move into the valley after hearing glowing tales from emigrants of abundant grass. The name Smith was selected because of the predominance of "Smiths" in the party.

SMITH TRAIL (1827), California and Nevada

CrNv-03-1364

Map: Walker Lake, 1:250,000

Jedediah S. Smith and companions crossed Ebbetts Pass on May 27, 1827 and made camp, possibly on Nobel Creek, 1.75 miles northwest of Silver Peak. Here they were attacked by Washoe Indians rolling stones at them from a high bluff. However, no harm was done. After several days they proceeded eastward across rough terrain and likely crossed Wolf Creek at Wolf Creek Meadows. The creek flows into East Fork Carson River where Smith followed it to its junction with Silver Creek. They made camp here on May 29. The following day they followed Monitor Creek and crossed Bagley Valley (the disjunct BLM Markleeville Unit) via Heenan Creek.

The group entered Antelope Valley from Slinkard Creek and made camp on the east side of West Walker River. It appears that they followed the river to (present-day) Wellington and from here struck a course east across the north end of the Pine Grove Hills. They crossed Pine Grove Flats to a low gap in the Cambridge Hills and made camp on May 31 on East Walker River near the Rafter Seven Ranch. The next day, June 1, they crossed the Wassuk Range probably via Wheeler Pass and made camp at the south end of Walker Lake.

Smith recuperated here a couple of days and narrowly escaped an encounter with several Paiute Indians. The next camp was in Soda Spring Valley northwest of Luning. The party traversed northeastward over Gabbs Valley Range by way of Calavada and Petrified summits. From Fingerock Wash the trio moved eastward into Ione Valley and soon passed the south end of the Toiyabe Range on their way to a Mountain Man rendezvous at Bear Lake, Utah (Brooks, 1977).

SPUR X, Lyon Co.

CrNv-03-1950

Location: South of Carson River, 1 mile west of Susans Bluff
 Elevation: 4280'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 10 September 1980
 Reference: Turner (1964:endpaper map)

This was a spur on the Carson and Colorado Railroad.

TABLE 4. HISTORIC SITE DATA.

STOCKTON WELL, Lyon Co.

CrNv-03-1951

Location: North of Churchill Butte and 3 miles southwest of Silver Springs

Elevation: 4290'

Map: USGS Churchill Butte 15'

Ownership: Private

Recorded by: A. McLane, 9 September 1980

Reference: Nevada Emigrant Trail Marking Committee, Inc. (1978:22-23)

The old Stockton Well was a stop on the Carson River Route of the Emigrant Trail and was subsequently the largest station on the trail.

SUTRO, Lyon Co.

CrNv-03-1609

Location: At entrance to Sutro Tunnel, 3 miles north-northeast of Dayton

Elevation: 4438'

Map: USGS Flowery Peak 7.5'

Ownership: Private

Recorded by: A. McLane, 25 July 1980

Reference: Mordy and McCaughey (1968:126)

"Sutro was established in the late 1860s, when Adolph Sutro was finishing plans for his tunnel to drain the Comstock and to provide transportation to the mills. When he finally began construction on October 19, 1869, the town became the home of the miners and workers he employed in the tunnel. Sutro envisioned a huge town there in the valley, and in the 1870s it did have a large number of residents and its own newspaper, the Independent. After the tunnel was completed in the early 1880s, however, the mines of the area had already begun to decline. The town of Sutro was soon deserted. Sutro built a mansion high on a hill overlooking the town, and once entertained such men as General Ulysses S. Grant. The mansion fell into ruin with the town, and eventually burned. Today, there are only slight traces of foundations to mark the site of the town, but the mill, office, stables, and shops still stand at the mouth of the tunnel."

SUTRO TUNNEL, Lyon Co.

CrNv-03-1610

Location: Sutro

Elevation: 4480' (portal)

Map: USGS Flowery Peak 7.5'

Ownership: Private

Recorded by: A. McLane, 28 July 1980

Reference: Moore (1969:25)

This famed adit was promoted by Adolph Sutro to drain water from the Comstock mines. The four-mile long adit was built between 1868-1878. The portal at the base of Flowery Ridge is still intact, but the adit is badly caved.

TABLE 4. HISTORIC SITE DATA.

TALAPOOSA, Lyon Co.

CrNv-03-1952

Location: In the Virginia Range 4 miles northwest of Silver Springs
Elevation: 5320'
Map: USGS Churchill Butte 15'
Ownership: (BLM)
Recorded by: A. McLane, 9 September 1980
Reference: Lincoln (1923:132-133)
Moore (1969:24)
Paher (1970:76-77)

Virginia City prospectors discovered gold and silver in the district as early as 1864. Minor production prior to 1939 amounted to \$12,401. For 1939 to 1942, 7,530 tons of ore were removed, valued at \$304,151.

THE COLONY, see SIMPSON

THE WELL, see HOOTON WELLS

THOMPSON, Lyon Co.

CrNv-03-1953

Location: 1½ miles northwest of Wabuska
Elevation: 3960'
Map: USGS Wabuska 15'
Ownership: Private
Recorded by: A. McLane, 15 September 1980
Reference: Harris (1973:50)
Paher (1970:79-81)

Thompson was a smelter town processing copper ores from the Singatse Range. Construction started on the first smelter in 1910 and was completed in 1912 when it began treating 700 to 1,000 tons of copper daily. The second furnace was installed in 1913 and 1914. After the second stock was completed, the town grew with stores, saloons, an auto repair shop, and soon reached a population of 350.

The smelters ceased operation in late 1914. It reopened from 1917-1919. One smelter was reactivated in 1926 but was closed down and dismantled within two years.

Thompson had a post office from June 28, 1911 to June 30, 1920 (Harris 1973:50).

LYON COUNTY

TOLL HOUSE, Lyon Co.

CrNv-03-1611

Location: On the old road in El Dorado Canyon, 4.3 miles southeast of Dayton
 Elevation: 5120'
 Map: USGS Dayton 15'
 Ownership:
 Recorded by: A. McLane, 19 April 1980
 Reference: Wheeler (1877:map)

No other information available at this time.

TWIN FLAT, Lyon Co.

CrNv-03-1612

Location: North side of Silver City
 Elevation: 5120'
 Map: USGS Virginia City 7.5'
 Ownership: Private
 Recorded by: A. McLane, 28 July 1980
 Reference: Ansari and McLane (1978-1980)

Twin Flat was an 1860 s satellite settlement of Silver City. The town consisted of about 12 mill hands and their families. Florence L. Bray (1913), quoting March 28, 1868 Gold Hill Daily News, relates that two sets of twins were born here in 1864, giving the place its name.

TOLL RANCH, see WEEKS

TOLLES, see WEEKS

WABUSKA, Lyon Co.

CrNv-03-1955

Location: On Alternate U. S. Highway 395, 11 miles north of Yerington
 Elevation: 4299'
 Map: USGS Wabuska 15'
 Ownership: Private
 Recorded by: A. McLane, 15 September 1980
 Reference: Mordy and McCaughey (1968:126)

"Wabuska (sometimes spelled Waubuska) began in the early 1870s as a supply town for the farming activities in northern Mason Valley. A post office was established in 1874, and the community had two stores at that time. In the spring of 1881, the tracks of the Carson and Colorado Railroad reached this point, and for many years Wabuska was a minor station on the C & C. In 1909 construction of the Nevada Copper Belt Railroad was begun and ran from there south past Yerington to Ludwig. Thereafter, Wabuska became a major transfer point and shipping center. The town was the terminus of the NCB, as well as a connection with the Nevada and California Railway (formerly the Carson and Colorado).

"In 1947 the Nevada Copper Belt Railway was abandoned, but Wabuska still possesses a minor station on the Southern Pacific Railroad. A bar, store and post office, and a few houses are left today."

LYON COUNTY

CrNv-03-1956

WABUSKA QUARRY, Lyon Co.

Location: About 2 miles northwest of Wabuska
 Elevation: 4520'
 Map: USGS Wabuska 15'
 Ownership: (BLM)
 Recorded by: A. McLane, 15 September 1980
 Reference: Moore (1969:39)

Triassic-Jurassic limestone outcrops and "a small vertical kiln was operated in the 1910 s at Wabuska to convert a limited tonnage of limestone to lime."

WABUSKA SALT MARSH, Lyon Co.

CrNv-03-1957

Location: North edge of Mason Valley, about 2 miles northeast of Wabuska
 Elevation: 4300'
 Map: USGS Wabuska 15'
 Ownership: Private/BLM
 Recorded by: A. McLane, 16 September 1980
 Reference: Moore (1969:40)

"In the 1930's sodium sulfate was recovered by the American Sodium Corp. and shipped to Washington and Oregon for use in paper processing."

WASHOUT, Lyon Co.

CrNv-03-1958

Location: In Churchill Canyon, 2.25 miles south of Ft. Churchill
 Elevation: 4226'
 Map: USGS Churchill Butte 15'
 Ownership: BLM
 Recorded by: A. McLane, 11 September 1980
 Reference: Turner (1964:endpaper map)

A siding on the former Carson and Colorado Railroad.

WEEKS, Lyon Co.

CrNv-03-1959

(Bucklands, Tolles, Tolles Station)

Location: On U. S. Alternate Highway, about 8 miles south of Silver Springs
 Elevation: 4207'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 11 September 1980
 Reference: Ansari and McLane (1977-1980)
 Bray (1913)
 Mason (1976)
 Paher (1970)
 Robinson (1977)

Weeks was a trading post and a Pony Express Station called Bucklands when Samuel S. Buckland constructed substantial buildings here in 1861. In November 1861, Bucklands was designated the seat

TABLE 4. HISTORIC SITE DATA.

WEEKS (Continued)

of Churchill County; however, a later boundary change put the station in Lyon County. The station declined after 1875 when stage traffic declined. The site was later called Tolles or Tolles Station (or Toll Ranch) and finally acquired its present name (Bray 1913; Paher 1970; Mason 1976).

After nearby Fort Churchill was abandoned in 1869, "...Sam Buckland bought the removable lumber for \$750, and built the large, white, two-story frame building still remaining on the ranch near the highway bridge." (Robinson (1977)

WELLINGTON, Lyon Co.

CrNv-03-1960

Location: Major town in Smith Valley
Elevation: 4820'
Map: USGS Wellington 15'
Ownership: Private
Recorded by: A. McLane, 9 November 1980
Reference: Carlson (1974:243)

"The town was established in territorial days, first as a stage station owned by Jack Wright and Len Hamilton. The name honors Daniel Wellington who bought the station and established a stage line to Aurora in 1863."

WELLINGTON AND REESE RIVER ROAD

CrNv-03-1961

According to Maule (1938:22), this road was explored by the Reese party under direction of J. H. Simpson in 1860. Much of the route is shown on early cadastral survey plats. The route was never popular, likely due to competition from the Pony Express route to the north.

Daniel Wellington was granted a franchise to operate this toll road in 1864. It appears that the franchise was never exercised.

East of Wellington, the road crossed the Wassuk Range near Reese River Canyon, then past Double Spring east of Schurz, and on through Dead Horse Wells toward Austin (recorded by A. McLane, 9 November 1980).

TABLE 4. HISTORIC SITE DATA.

WESTERN NEVADA MINE, Lyon Co..

CrNv-03-1962

Location: East side of Singatse Range, 2.3 miles west-southwest of
Mason
Elevation: 5500'
Map: USGS Yerington 15'
Ownership: Private
Recorded by: A. McLane, 27 September 1980
Reference: Knopf (1918:57)
Moore (1969:26)

The Western Nevada ground was thoroughly explored in the early 1900's with an adit 1,000 feet long and a winze 400 feet deep. During 1944 and 1945, 3,700 tons of ore were mined, valued at \$40,000.

WICHMAN, Lyon Co.

CrNv-03-1963

Location: West side of East Walker River, about 32 miles southeast of
Yerington
Elevation: 5043'
Map: USGS Mt. Grant 7.5'
Ownership: Private
Recorded by: A. McLane, 11 October 1980
Reference: Carlson (1974:246)

This ranch served as a post office from 1911 to 1941.

WILLIAMS STATION, Lyon Co.
(Honey Lake Smiths)

CrNv-03-1964

Location: Under Lahontan Reservoir, 2.7 miles east-southeast of
Silver Springs
Elevation: 4150'
Map: USGS Silver Springs 15'
Ownership: State of Nevada
Recorded by: A. McLane, 11 September 1980
Reference: Gianella (1960)
Mordy and McCaughey (1968:127)

"Williams Station was established in 1859 on the north bank of the Carson River, as a facility for trading with westbound emigrants. On May 7, 1860, the station house was burned and several men were

TABLE 4. HISTORIC SITE DATA.

WILLIAMS STATION (Continued)

killed in an attack attributed to the Paiute Indians. The incident touched off the short-lived Indian war, in which many lives were lost by both sides.

"Rebuilding of the station was done by 'Honey Lake' Smith in 1861. Smith operated the station for several years, until the construction of the Central Pacific Railroad and the use of other trails caused it to fall into disuse. Except when exposed by low water, the site of the station is now submerged under the waters of Lake Lahontan."

The 1868 cadastral survey shows this site as an "Adobe House."

WOODWORTH MILL, Lyon Co.

CrNv-03-1613

Location: On Carson River about 1.1 miles southwest of Dayton

Elevation: 4980'

Map: USGS Dayton 15'

Recorded by: A. McLane, 16 July 1980

Reference: Dangberg (1975:346;photo:341)

Not much information presently available. The mill may have been built in 1859. Thomas J. Tennant testified in 1893 that Joseph Woodworth ran an arrastre at that time.

YERINGTON, Lyon Co.
(Greenfield, Pizen Switch)

CrNv-03-1965

Location: Major community in Mason Valley

Elevation: 4384'

Map: USGS Yerington 15'

Ownership: Private

Recorded by: A. McLane, 23 September 1980

Reference: Ansari and McLane (1977-1980)

Yerington started as the crossroad settlement on the old trails in this part of Nevada. Quickly, a saloon was thrown up where old trail hands and the like could clear the alkali out of their parched throats. The crossroads soon became known as Pizen Switch - the "Pizen" for the word poison. According to the Lyon County Times (May 22, 1880), James Hayes got on a terrible drunk and said the whiskey was poison. So he drank vinegar bitters and to him this suggested the name Pizen Switch.

As ranching in the area increased, the citizenry rebelled and warned that they better hadn't hear that name again. Pizen Switch was quickly changed to Greenfield, indicative of the green pasturage caused by irrigation. Greenfield didn't last long, either. The town was renamed Yerington, a gesture to Henry M. Yerington, President and Superintendent of the Carson and Colorado Railroad, in hopes that he would bring the line through the community. Mr. Yerington was the builder, and in partnership with Duane L. Bliss, of the Lake Tahoe Railroad.

TABLE 4. HISTORIC SITE DATA.

YERINGTON (continued)

Yerington, however, ignored the townspeople and the nearest station to the city was Wabuska, built in 1881, 13 miles north of Yerington. It was mining, not farming, that brought a rail line to Yerington. It was 19 years later, during January 1910, that the Nevada Copper Belt Railroad reached the town, being pushed through to the copper mines at Ludwig.

The 1970 population for Yerington was 2,010.

YERINGTON STATION, Lyon Co.

CrNv-03-1966

Location: 1½ miles west of Yerington
Elevation: 4420'
Map: USGS Yerington 15'
Ownership: Private
Recorded by: A. McLane, 25 September 1980
Reference: USGS Yerington District (map) 1915

A station on the Nevada Copper Belt Railroad.

Additional Historic Sites in Lyon County (South) -----

Pine Grove

Location: 20 miles south of Yerington, 5 miles west of Pine Grove Flat.

Reference: Paher (1970)

William Wilson was led by an Indian to gold-bearing rock in 1866. Within two years the camp had a post office, news paper, two steam-powered stamp mills and three arrastras. Population peaked at 600 in early 1870's. Sporadic activity continued into the twentieth century to the present. Mill foundation and few wooden buildings

Post Office 1868-1912

Rockland

Location: 3 miles southwest of Pine Grove

Reference: Paher (1970)

Discovery of gold in 1868 established this mining camp with a peak population of 100-150 by 1870 with stores saloons and a ten-stamp mill in near-by Bridgeport Canyon. Stone ruins and few wooden buildings

Post Office 1871/72, 1877, 1906-1909

Carson-Aurora Stage Route

Location: follows SR 338 through Lyon County via Wellington turning east 4 miles south of Sweetwater to Aurora

Early road (1860's-1880's) between Carson City and Aurora

Sulfur

Location: 11 miles southeast of Wellington on SR 338

Reference: Paher (1970)

Stage station on Carson-Aurora Stage Route that was active 1860's and 1870's. Picturesque stone ruin

Wiley's Station

Location: 3 miles south of Sulfur on SR 338

Reference: Paher (1970)

Stage Station on Carson-Aurora Stage Route. Stone house

Dalzell Station

Location: 1 mile south of Wiley's on SR 338

Reference: Paher (1970)

Site of stage station on Carson-Aurora Route

Sweetwater

Location: 24 miles south southeast of Wellington on SR 338

Reference: Paher (1970)

Began as stage station 1860's on Carson-Aurora Route.
By early 1900's Sweetwater was a village of 50 with stores, a hotel and saloon. Site is now part of a ranch
Post Office 1870-1925

Elbow

Location: 6 miles southeast of SR 338 (4 miles southeast of Sweetwater).

Reference: Paher(1970)

Where the East Walker River makes a sweeping turn, a stage station was established in the early 1860's. Stationkeeper "Elbow Jake" raised cattle and ran a small dairy. Marker
Post Office operated briefly in 1881

The Sonora Emigrant Route

Reference: Thomas Hunt "Ghost Trails to California" (1974)

Leaving the Mormon Carson Route some where in the vicinity of present Lake Lahotan, this route followed Carson River southwest to the site of the future Fort Churchill dropping south to the Walker River, south through Mason Valley. To avoid the difficult Wilson Canyon, the trail went further south and then west over the hills near Mickey Canyon into Smith Valley, across to the West Walker River at a point near Wellington. Although this Route was used by the first California emigrant train, the Bartleson and Bidwell party in 1841, it was avoided by most early emigrants because of the difficulty encountered crossing the Sierras at Sonora Pass.

TECHNICAL APPENDIX 1

REVIEW PROCEDURES

County review of proposed undertakings shall occur in a maximum of four steps:

- Step 1. Review by Building Department, or by Public Works Department if public undertaking.

Does the undertaking involve ground surface disturbance?

If no, go to Step 3.

If yes, go to Step 2.

- Step 2. Building Department or Public Works Department directs proposal to Planning Department. Planning Department directs proponent to initiate appropriate archaeological studies:

- A. Identify all archaeological resources in the area of the undertaking.

If no resources are present, go to Step 3.

- B. Evaluate the significance of identified resources.

If identified resources are determined not significant, go to Step 3.

- C. Assess the effects of the proposed undertaking on identified resources determined significant.

If there will be no adverse effects on identified resources, go to Step 3.

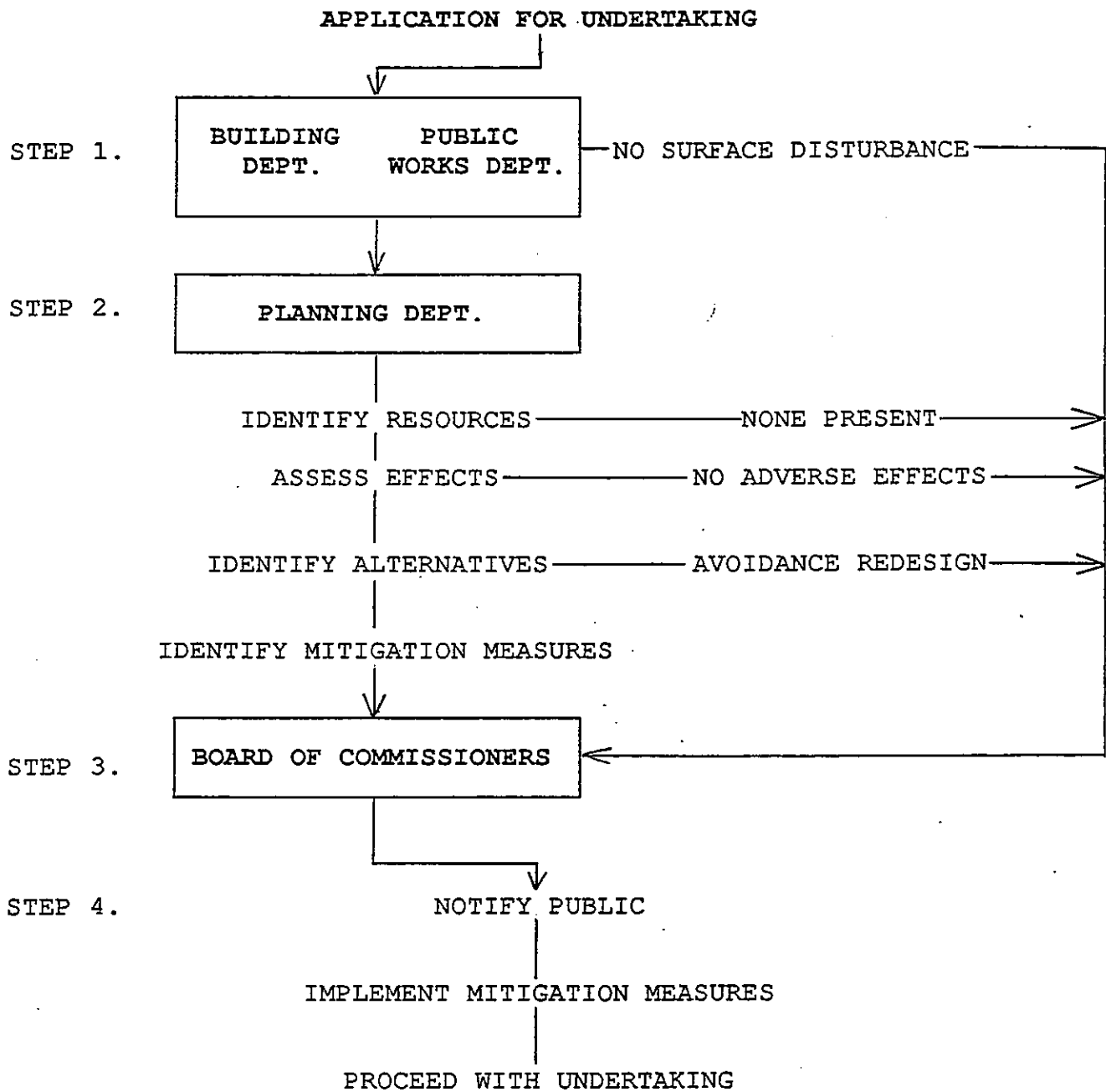
D. If there will be adverse effects on significant resources, identify mitigation alternatives.

If significant resources can be avoided through project redesign, go to Step 3.

Step 3. Planning Department directs proposal and archaeological review documentation and mitigation recommendations to Board of Commissioners. Commission responds to application package.

Step 4. Public is notified of Commission decision. The undertaking may proceed upon completion of required mitigation measures.

LYON COUNTY ARCHAEOLOGICAL RESOURCE REVIEW PROCESS



TECHNICAL APPENDIX 2
ARCHAEOLOGICAL RESOURCE EVALUATION

2.0 DEFINITION

The evaluation of archaeological resources must be conducted in three phases. The results of one study define the conduct of the next, or demonstrate that further studies are unwarranted. The results of each phase shall be presented in a professional report.

Phase 1 Studies (Survey) are intended to identify the presence of archaeological sites in the area of a proposed undertaking, to assess the significance of identified sites, and to evaluate potential project effects on the sites.

Phase 2 Studies (Testing) are intended to gather any additional data necessary to assess significance of archaeological resources identified in Phase 1 Studies, to evaluate potential project effects on archaeological sites, and to plan mitigation of adverse effects on significant archaeological sites. Phase 2 Studies must be designed on a project-specific basis, to meet the particular needs of each case. Phase 2 Studies shall be guided by a technical approach that clearly identifies study goals and articulates the proposed methods of data collection and analysis with the goals.

Phase 3 Studies (Data Recovery) are intended to mitigate adverse effects by recovering data from archaeological resources valued for their information content. Phase 3 Studies must be designed on a project-specific basis, to meet the particular needs of each case; such studies are indicated when archaeological site avoidance through project redesign is not feasible. Phase 3 Studies must be guided by a research design that clearly articulates the scope of mitigation with defined research goals and proposed methods of data collection and analysis. The research design/work plan should be based on information developed in the prior Phase 1 or Phase 2 Study of the affected site or structure.

All studies shall be conducted and reported by qualified professional archaeologists who hold a Nevada State antiquities permit. Qualifications guidelines appear in Technical Appendix 3.

2.1 PHASE 1 STUDIES

2.1.1 Documents Review

Phase 1 Study will include a documents review which will identify all previously recorded archaeological sites. Documents relevant to Lyon County are maintained by the BLM Carson City District Office, by Toiyabe National Forest, by Nevada State Museum, and by Nevada Division of Historic Preservation and Archaeology. In addition, current listings of properties nominated to or entered in the National Register of Historic Places shall be reviewed.

2.1.2 Field Inventory

A field examination of the area of the proposed undertaking is necessary to verify the presence and condition of previously-recorded archaeological sites, and to identify unrecorded sites. Field survey techniques shall be designed to locate the full range of prehistoric and historic archaeological sites that may occur in Lyon County.

Any archaeological sites or isolated finds newly identified during survey shall be recorded on Intermountain Antiquities Computer System forms (see Technical Appendix 4), the standard recording format used throughout the State of Nevada.

2.1.3 Significance Evaluations

If the results of Phase 1 documents review and field inventory provide sufficient information, assessments of the significance of identified sites shall be included in the Phase 1 Study Report. If more information about site boundaries, constituents, or context is required for an adequate assessment, a recommendation for a Phase 2 Study to obtain the necessary information shall be made.

Significance assessments shall be guided by National Register of Historic Places significance criteria, as follow:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling and association, and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

2.2 PHASE 2 DATA COLLECTION

Phase 2 data collection focuses on defining the constituents of identified archaeological sites and their vertical and horizontal extent, so that questions of site integrity and research potential may be addressed in significance assessment, and so that the area of potential effect can be defined in impact evaluation and development of mitigation measures.

Data collection methods should be selected on a site-specific basis. They may include a number of subsurface exploration techniques, including excavation of auger holes, test pits, or trenches. Excavation may be by hand or by machine, depending upon project requirements.

Avoidance is the preferred measure for mitigating adverse effects on archaeological sites. Consequently, project redesign to avoid adverse effects should be attempted whenever possible.

Other mitigation measures should be tailored to the identified values of the affected resources, and the nature of effects. For example, damage or destruction of archaeological sites valued for their information content can be mitigated by data recovery programs (Phase 3 Studies). Damage or destruction of historic structures valued for their exemplary status can in some cases be mitigated by preparation of a detailed record, including architectural drawings and photographs. Preservation or restoration of parts of historic structures may be appropriate mitigation.

2.3 PHASE 3 DATA COLLECTION

Phase 3 data collection is directed at recovering information from an archaeological site prior to its damage or destruction.

Data collection may include archaeological techniques such as controlled surface collection, mapping, and subsurface excavation of units of varying size. Archival research and interviews may be undertaken to collect historic or ethnohistoric information, and photographs and architectural drawings may be prepared to provide a permanent record of structures subject to project effects.

Consistent with the mitigative goals for which such studies are undertaken, Phase 3 reports should demonstrate the information values that are inherent in the investigated resource, showing what was learned from the investigation. The

report should present raw data and also the results of data analysis, applying the recovered information to address research questions that were initial goals of analysis, as identified in the research design.

CHAPTER III
FISCAL PLAN

The Lyon County Fiscal Plan was developed through a review and analysis of past financial and audit reports, extensive interviews with Department Heads and Managers and input from residents obtained at public hearings held around the County.

The plan examines in Part I the financial history of the County over the past four fiscal years; Part II presents revenue and expenditure projections through the year 2000, and Part III suggests areas of future study to enhance the operational efficiency of the County. The primary findings of the Plan follow.

Part I: Financial History, FY 1984-85 to FY 1987-88

o Lyon County revenues are increasing annually but increasing at a decreasing rate. Annual increases were 13%, 7% and 2% for FY 84-85 thru FY 87-88. (NOTE: FY87-88 data represent budgeted, not audited figures.)

o Intergovernmental Revenues and Miscellaneous Revenues (service charges, fines and forfeitures, licenses/permits and miscellaneous revenues) show a decrease.

o Opening Fund Balance averaged 23% of the total revenues; Property Taxes and Sales Tax averaged 42%.

o Expenditures, excluding ending fund balances, increased 9%, 5% and 24% over this time frame.

o Countywide salaries and benefits represent 51% of expenditures, and among all the public services provided by the county, Highways and Streets had the largest percentage of expenditures at 32%.

Part II: Revenue and Expenditure Projections, FY 1989-90 to FY 1999-2000

The projections show expenditures exceeding revenues in each year of the projection period. It is important to note that the expenditures reflect Department Heads' best estimates as to what resources they will need to provide public services, given a 5.5% annual increase in population.

The projections have not been approved by the Board of County Commissioners nor did the Board participate in their development. Further, and most important, local governments must

submit balanced budgets to the State and local governments cannot "deficit spend" - spend more than they have in revenues.

Therefore, the deficits shown in this plan will not survive the budget and spending review process of Lyon County. They are presented here as part of the planning process, reflecting the public service needs as estimated by Department Heads.

- o Projected expenditures exceed projected revenues in each year of the projection period.

- o The amount of the deficits range from \$484,000 in FY 1990 to \$2.4 million in FY 1995.

- o Revenues are projected to increase 6-7% annually while expenditures increase 4% to 12% depending on the year.

- o Theoretically, deficits can be eliminated by increasing revenues, reducing expenditures or a combination of both.

- o However, the County cannot eliminate the deficits through revenue increases alone. The County has discretion - the ability to raise revenues - over only about 9% of the total revenues, and the amount of the increase is limited by State law.

- o Expenditure projections must be reduced to balance the budgets.

PART I
LYON COUNTY FISCAL PLAN

FINANCIAL HISTORY
FY 1984-85 to FY 1987-88

Exhibit I, following Page 5, presents revenue and expenditure history for FY 1985 through FY 1988 for those Lyon County funds contained in the Lyon County budget which are supported by Property Taxes. The funds include:

- o General
- o Road
- o Streets and Highways
- o General, Medical and Special Indigent
- o Agriculture Extension
- o Surplus Building and Maintenance
- o Capital Projects
- o Debt Service

Funds are presented on an individual basis in Exhibit I, pages 3-11, with revenues broken down by funding source and expenditures broken down by function (public safety, general government, culture and recreation, etc.) and/or by category (salaries, services, capital outlay). Summary charts combining all the funds can be found on Pages 1, 2, and 12.

Analysis of Historical Trends

A. REVENUES - COMBINED FUNDS:
Page 1 of Exhibit I

1. Total Revenues for the 10 funds listed above were:
 - \$ 7,827,857 in FY 84-85
 - \$ 8,879,894 in FY 85-86
 - \$ 9,503,685 in FY 86-87
 - \$ 9,735,826 in FY 87-88 (Budgeted)
2. Total Revenues have increased 13%, 7% and 2% from FY 85 to FY 88 respectively. It should be noted that the 2% increase reflects the increase of budgeted FY 88 figures over actual FY 87 figures. Thus, the increase could be low as budgeted revenues are historically conservative.
3. Total Revenues are increasing annually but increasing at a decreasing rate. This is attributable to a decrease in Intergovernmental Revenues, primarily grants, and to

Miscellaneous Revenues, which combines Service Charges, Fines and Fees, Licenses/Permits, and Miscellaneous revenues.

Intergovernmental Revenues show a 36% increase for FY 85 to FY 86, followed by 8% and 11% decrease from FY 86 to FY 88. Miscellaneous Revenues show a 27% increase for FY 85 to FY 86, followed by 7% and 27% decrease from FY 86 to FY 88.

4. Opening Fund Balance has remained healthy, averaging 23% of the total revenues over the four year period. It continues to increase each year, going from \$1.7 million in FY 84-85 to \$2.6 million in FY 87-88.

5. For the last four years, Lyon County has relied on the following distribution of resources to fund public services:

<u>Resource</u>	<u>Ave. Ann'l. Distribution</u>	<u>Total Resources</u>
Opening Fund Balance	23%	\$ 8.5 m
Property Taxes	13%	\$ 4.3 m
SCCRT	29%	\$10.5 m
PILT	5%	\$ 1.7 m
Intergovernmental	14%	\$ 5.1 m
Other/Miscellaneous*	12%	\$ 4.3 m
Transfers In	4%	\$ 1.5 m
	100%	\$35.9 m

*Includes Licenses/Permits, Fines/Fees, Service Charges and Miscellaneous.

6. Future Revenue Issues:

o The fiscal impact that incorporation of a second Lyon County city will have on revenues should be analyzed. State Statutes mandate how certain revenues will be shared among cities and counties. When there are two or more incorporated cities within the County, some revenues are lost to the counties such as Basic CCRT and Cigarette Tax. SCCRT revenues will also be affected with the addition of another incorporated city.

o The reasons for the decrease in Intergovernmental Revenues and Miscellaneous Revenues should be analyzed. An action plan to stem this trend should be developed.

o Opening Fund Balance is increasing at a greater magnitude than any other revenue category - 27% and 14% over the last three fiscal years. Opening Fund Balance represents almost 25% of the operating revenues. For planning purposes, the County

must be aware of its reliance on this revenue source.

B. EXPENDITURES - COMBINED FUNDS:
Page 2 of Exhibit I

1. Total Expenditures, excluding Ending Fund Balances, for the 10 funds listed above were:

\$6,019,634	FY 84-85
\$6,582,331	FY 85-86
\$6,882,101	FY 86-87
\$8,564,917	FY 87-88

2. Expenditures, excluding Ending Fund Balances, increased 9%, 5% and 24% respectively for FY 85 through FY 88.

The large increase of 24% in FY 88 reflects the Board's action to budget more of the anticipated opening fund balance than in previous years, thus reducing the ending fund balance.

FY 84-85	77% of Resources Expended,	23% Ending Fund Bal.
FY 85-86	74% of Resources Expended,	26% Ending Fund Bal.
FY 86-87	72% of Resources Expended,	28% Ending Fund Bal.
FY 87-88	88% of Resources Budgeted,	12% Ending Fund Bal.

3. Expenditures by Category: Expenditures, excluding Ending Fund Balances, were distributed by category over the last four years as follows:

<u>Category</u>	<u>Ave. Ann'l. Distribution</u>	<u>Total Expenditures</u>
Salaries/Benefits	51%	\$14.3 m.
Services/Supplies	31%	\$ 8.5 m.
Capital Outlay	14%	\$ 4.0 m.
Transfers Out	4%	\$ 1.2 m.
	100%	\$28.0 m.

4. Capital Outlay expenditures increased 130% from FY 87 to FY 88 indicating the Board's long-range planning efforts to improve and add to the capital infrastructure.

5. Total Expenditures by Function: The distribution of expenditures by function over the past four years is as follows:

<u>Function</u>	<u>Ave. Ann'l. Distribution</u>	<u>Total Expenditures</u>
General Gov't.*	30%	\$10.7 m.
Public Safety	22%	\$ 8.1 m.
Judicial	6%	\$ 2.1 m.
Culture/Recreation	3%	\$ 1.1 m.
Highways & Streets	32%	\$11.3 m.
Health & Sanitation	2%	\$.7 m.
Welfare	4%	\$ 1.5 m.
Debt Service	1%	\$.4 m.
	100%	\$35.9 m.

*General Government includes Recorder, Clerk, Assessor, Comptroller, Data Processing, District Attorney, Buildings and Grounds, Agriculture Extension, and expenditures for County's liability and property insurance, legal advertising, postage, and consulting projects.

6. The General Government function increased 45% from FY 85 to FY 88. If capital improvement expenditures (Bluestone Building, Courthouse Annex, and Fernley Complex) were removed, however, the General Government function would show a 17% increase.

The Judicial function increased 48% from FY 85 to FY 88. The addition of a second District Court accounts for the increase.

The Health and Sanitation function decreased 50% over this time period. While operating costs remained stable, capital improvement expenditures were decreased, thus accounting for the overall decrease.

C. INDIVIDUAL FUNDS:

Pages 3 - 11 of Exhibit I; Summary on Page 12.

1. The General Fund commands the biggest portion of the resources, averaging 65% over the past four years. The distribution is as follows:

<u>Fund</u>	<u>Ave. Ann'l. Distribution</u>	<u>Total Resources</u>
General	65%	\$23.3 m.
Road/Sts & Hwy	19%	\$ 6.8 m.
Indigent	4%	\$ 1.3 m.
Agri.Extension	.5%	\$.2 m.

<u>Fund</u>	<u>Ave. Ann'l. Distribution</u>	<u>Total Resources</u>
Surplus Bldg/Mtnc.	8%	\$ 2.8 m.
Debt Service	.5%	\$.3 m.
Total	100%	\$35.9 m.

2. The annual percentage distribution of these funds, Page 12 of Exhibit I, remained fairly constant over the four year period except for the General Fund and Capital Projects/Surplus Building Funds. From FY 1987 to FY 1988, the percentage distributed to the General Fund fell by 7% while the percentage distributed to the Capital Projects/Surplus Building Funds increased 4%.

EXHIBIT I LYON COUNTY FINANCIAL HISTORY

SUMMARY OF RESOURCES BY TYPE: FY84-85 TO FY87-88

	Actual FY84-85	Actual FY85-86	Actual FY86-87	Budget FY87-88	TOTAL	PERCENT of TO
Opening Fund Balance	\$1,744,990	\$1,808,223	\$2,297,563	\$2,621,584	\$8,472,360	23%
Property Tax	\$897,610	\$1,072,147	\$1,135,805	\$1,223,043	\$4,328,605	12%
SCCET	\$2,226,703	\$2,383,471	\$2,814,684	\$3,057,057	\$10,481,915	29%
PILT	\$425,944	\$432,248	\$447,016	\$450,000	\$1,755,208	5%
Intergovernmental	\$1,077,373	\$1,471,087	\$1,346,627	\$1,200,347	\$5,095,434	14%
Other/Misc.	\$1,001,143	\$1,267,105	\$1,178,184	\$858,030	\$4,304,462	12%
Transfers In	\$454,094	\$445,613	\$283,806	\$325,765	\$1,509,278	4%
TOTAL RESOURCES	\$7,827,857	\$8,879,894	\$9,503,685	\$9,735,826	\$35,947,262	
% Change		13%	7%	2%		

Funds included in Exhibit I are those funds in the Lyon County budget which are supported by property taxes, specifically:
General, Road, Street and Highway, Indigent, Ag. Extension,
Debt Service, Surplus Building and Capital Projects Funds.

EXHIBIT I, Page 2

SUMMARY OF EXPENDITURES BY CATEGORY: FY84-85 TO FY87-88

	Actual FY84-85	Actual FY85-86	Actual FY86-87	Budget FY87-88	TOTAL	% of TOTAL	% of GRAND TOTAL
Salaries/Benefits	\$3,126,666	\$3,356,758	\$3,754,054	\$4,074,507	\$14,311,985	51%	40
Services/Supplies	\$1,991,274	\$2,156,701	\$2,047,383	\$2,341,109	\$8,536,467	30%	23
Capital Outlay	\$728,254	\$743,751	\$770,583	\$1,769,391	\$4,012,079	14%	11
Transfers Out	\$173,440	\$325,121	\$309,981	\$379,910	\$1,188,452	4%	3
TOTAL	\$6,019,634	\$6,582,331	\$6,882,101	\$8,564,917	\$28,048,983		
% Change		9%	5%	24%			
Ending Fund Balance	\$1,808,223	\$2,297,563	\$2,621,584	\$1,170,909	\$7,898,279		22
% Change		27%	14%	-55%			
GRAND TOTAL	\$7,827,857	\$8,879,894	\$9,503,685	\$9,735,827	\$35,947,262		
% Change		13%	7%	2%			

SUMMARY OF EXPENDITURES BY FUNCTION: FY84-85 - FY87-88

	Actual FY84-85	Actual FY85-86	Actual FY86-87	Budget FY87-88	TOTAL	% Chg FY85- FY88	% of GRAND TOTAL
General Govt	\$2,223,823	\$2,535,832	\$2,733,561	\$3,223,464	\$10,716,680	45%	30
Public Safety	\$1,723,028	\$2,086,583	\$2,232,185	\$2,037,872	\$8,079,668	18%	22
Judicial	\$427,517	\$475,192	\$558,409	\$632,072	\$2,093,190	48%	6
Culture/Recreation	\$287,716	\$201,673	\$262,419	\$344,401	\$1,096,209	20%	3
Highways & Streets	\$2,453,204	\$2,890,348	\$3,089,633	\$2,915,372	\$11,348,557	19%	32
Health & Sanitation	\$193,698	\$262,408	\$129,918	\$97,689	\$683,713	-50%	2
Welfare	\$398,113	\$297,336	\$384,182	\$411,926	\$1,491,557	3%	4
Debt Service	\$120,758	\$130,521	\$113,378	\$73,030	\$437,687	-40%	1
GRAND TOTAL	\$7,827,857	\$8,879,894	\$9,503,685	\$9,735,826	\$35,947,262		

Ending Fund Balances for General, Surplus Building, and Capital Projects Funds are divided evenly among General Government, Public Safety and Highways and Streets functions.

EXHIBIT I, Page 3

LYON COUNTY FINANCIAL HISTORY -- GENERAL FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual
REVENUES									
Opening Fund Balance	\$1,057,504	21%	\$1,041,134	18%	\$1,515,306	23%	\$1,791,926	30%	23%
Property Tax	\$461,993	9%	\$514,936	9%	\$569,115	9%	\$515,888	9%	9%
Licenses/Permits/Fees	\$203,065	4%	\$265,742	5%	\$306,041	5%	\$211,700	3%	4%
Intergovernmental									
MVP Tax	\$243,463	5%	\$307,380	5%	\$356,354	5%	\$352,509	6%	5%
Basic SCCRT	\$279,306	6%	\$306,843	5%	\$336,030	5%	\$297,980	5%	5%
SCCRT	\$1,525,980	31%	\$1,627,246	29%	\$1,942,273	30%	\$2,162,013	36%	31%
Cigarette Tax	\$185,105	4%	\$188,845	3%	\$199,650	3%	\$187,449	3%	3%
PILT	\$425,944	9%	\$432,248	8%	\$447,016	7%			6%
State Grants	\$55,745	1%	\$120,775	2%	\$151,071	2%			1%
Other	\$83,244	2%	\$66,370	1%	\$81,494	1%	\$64,580	1%	1%
Service Charges	\$182,874	4%	\$184,708	3%	\$200,325	3%	\$158,600	3%	3%
Fines & Forfeits.	\$141,690	3%	\$207,116	4%	\$171,705	3%	\$135,000	2%	3%
Miscellaneous									
Tax Penalties	\$105,751	2%	\$172,499	3%	\$109,092	2%			2%
Interest	\$2,315	0%	\$121,197	2%	\$120,000	2%	\$180,000	3%	2%
Other	\$37,571	1%	\$39,639	1%	\$16,148	0%			0%
Subtotal	\$4,991,550		\$5,596,678		\$6,521,620		\$6,057,645		
Percent Change			12%		17%		-7%		
Transfers In			\$96,000	2%					0%
TOTAL REVENUES	\$4,991,550		\$5,692,678		\$6,521,620		\$6,057,645		
EXPENDITURES BY FUNCTION									
General Government									
Executive Activity	\$693,995	18%	\$596,030	14%	\$669,101	14%	\$805,354	15%	15%
Recorder	\$83,733	2%	\$77,661	2%	\$89,944	2%	\$99,069	2%	2%
Assessor	\$277,828	7%	\$292,373	7%	\$333,024	7%	\$363,812	7%	7%
District Attorney	\$190,889	5%	\$192,876	5%	\$239,377	5%	\$262,322	5%	5%
Comptroller	\$106,741	3%	\$114,284	3%	\$124,405	3%	\$129,544	3%	3%
Buildings & Grds.	\$292,753	7%	\$314,358	8%	\$340,763	7%	\$319,200	6%	7%
Public Safety	\$1,157,482	29%	\$1,327,060	32%	\$1,385,824	29%	\$1,501,079	29%	30%
Judicial	\$427,517	11%	\$475,192	11%	\$558,409	12%	\$625,072	12%	12%
Parks/Pairgrds	\$90,680	2%	\$51,237	1%	\$85,913	2%	\$67,289	1%	2%
Library	\$80,234	2%	\$82,146	2%	\$114,800	2%	\$125,211	2%	2%
Highways & Streets									
Public Works	\$120,049	3%	\$110,322	3%	\$129,072	3%	\$160,978	3%	3%
Building Dept.	\$69,807	2%	\$78,924	2%	\$101,346	2%	\$120,206	2%	2%
Maintenance Shop	\$126,069	3%	\$146,296	4%	\$144,448	3%	\$159,252	3%	3%

Exhibit I, Page 4

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual %
Health & Sanitation	\$103,202	3%	\$72,121	2%	\$72,916	2%	\$77,569	2%	2%
Intergovt Grants		0%	\$46,000	1%	\$75,000	2%	\$55,933	1%	1%
Subtotal	\$3,820,979		\$3,976,880		\$4,464,342		\$4,871,890		
Transfers Out	\$129,437	3%	\$200,492	5%	\$265,352	6%	\$148,857	3%	4%
Contingency							\$146,082	3%	1%
TOTAL EXPENDITURES	\$3,950,416		\$4,177,372		\$4,729,694		\$5,166,829		
ENDING FUND BALANCE	\$1,041,134	26%	\$1,515,306	36%	\$1,791,926	38%	\$890,816	17%	

EXPENDITURES BY CATEGORY

Salaries/Benefits	\$2,483,103	63%	\$2,696,013	65%	\$3,023,734	64%	\$3,298,989	64%	64%
Services/Supplies	\$1,284,236	33%	\$1,242,213	30%	\$1,364,369	29%	\$1,572,401	30%	30%
Capital Outlay	\$53,640	1%	\$54,654	1%	\$76,239	2%	\$500	0%	1%
Transfers/Conting.	\$129,437	3%	\$184,492	4%	\$265,352	6%	\$294,939	6%	5%
TOTAL	\$3,950,416		\$4,177,372		\$4,729,694		\$5,166,829		

EXHIBIT I, Page 5

LYON COUNTY FINANCIAL HISTORY - ROAD FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY 86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual
REVENUES									
Opening Fund Balance	\$135,582	9%	\$224,643	13%	\$206,274	13%	\$145,933	9%	11%
Property Tax	\$304,615	19%	\$345,088	20%	\$348,469	22%	\$375,610	24%	21%
Gas Tax	\$289,025	18%	\$294,050	17%	\$310,404	19%	\$312,076	20%	19%
SCCET	\$361,632	23%	\$385,630	23%	\$460,285	29%	\$512,360	32%	27%
State Reimbursement	\$85,267	5%	\$107,916	6%		0%	\$60,000	4%	4%
Other	\$21,347	1%	\$53,414	3%	\$56,366	4%	\$40,000	3%	3%
Subtotal	\$1,197,468		\$1,410,741		\$1,381,799		\$1,445,979		
Percent Change			18%		-2%		5%		
Transfers In (1)	\$365,870	23%	\$280,463	17%	\$214,656	13%	\$133,857	8%	15%
TOTAL REVENUES	\$1,563,338		\$1,691,204		\$1,596,455		\$1,579,836		
EXPENDITURES BY FUNCTION									
Highways and Streets	\$1,233,172	92%	\$1,273,045	86%	\$1,304,968	90%	\$1,313,061	89%	89%
Waste Coll/Disposal	\$81,813	6%	\$187,549	13%	\$121,218	8%	\$133,857	9%	9%
Subtotal	\$1,314,985		\$1,460,594		\$1,426,186		\$1,446,918		
Transfers Out	\$23,710	2%	\$24,336	2%	\$24,336	2%	\$24,336	2%	2%
TOTAL EXPENDITURES	\$1,338,695		\$1,484,930		\$1,450,522		\$1,471,254		
ENDING FUND BALANCE	\$224,643	17%	\$206,274	14%	\$145,933	10%	\$108,582	7%	
EXPENDITURES BY CATEGORY									
Salaries/Benefits	\$602,810	45%	\$616,592	42%	\$673,154	47%	\$720,996	49%	46%
Services/Supplies	\$477,228	36%	\$647,042	44%	\$335,082	23%	\$387,778	26%	32%
Capital Outlay	\$163,572	12%	\$125,272	8%	\$282,875	20%	\$253,421	17%	14%
Intergov't. Expend.	\$71,375	5%	\$71,688	5%	\$129,075	9%	\$84,723	6%	6%
Transfers	\$23,710	2%	\$24,336	2%	\$24,336	2%	\$24,336	2%	2%
TOTAL	\$1,338,695		\$1,484,930		\$1,450,522		\$1,471,254		

(1) FY1984-85 includes \$100,702 from Proceeds from Purchase Agreement.

EXHIBIT I, Page 6

LYON COUNTY FINANCIAL HISTORY - STREET AND HIGHWAY FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual %
REVENUES									
Opening Fund Balance							\$34,047	13%	8%
Optional Gas Taxes					\$166,461	100%	\$223,733	87%	92%
TOTAL REVENUES					\$166,461		\$257,780		
EXPENDITURES									
County Road					\$122,885	93%			29%
Fernley Road					\$9,529	7%			2%
Capital Outlay							\$290,733	100%	69%
TOTAL EXPENDITURES					\$132,414		\$290,733		
ENDING FUND BALANCE					\$34,047		(\$32,953)		

EXHIBIT I, Page 7

LYON COUNTY FINANCIAL HISTORY - INDIGENT FUNDS

(Includes General Indigent, Medical Indigent and Special Medical Indigent)

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY 86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual
REVENUES									
Opening Fund Balance	\$97,812	47%	\$106,874	36%	\$164,818	43%	\$192,047	47%	43%
Property Tax	\$60,045	29%	\$131,555	44%	\$136,711	36%	\$148,385	36%	37%
SCCET	\$46,932	23%	\$50,047	17%	\$59,736	16%	\$66,494	16%	17%
Grants	\$830	0%	\$6,707	2%	\$15,025	4%		0%	2%
Miscellaneous	\$2,494	1%	\$2,153	1%	\$2,892	1%		0%	1%
TOTAL REVENUES	\$208,113		\$297,336		\$379,182		\$406,926		
Percent Change			43%		28%		7%		
EXPENDITURES									
Salaries/Benefits	\$25,020	25%	\$26,897	20%	\$32,702	17%	\$32,831	12%	17%
Services/Supplies	\$62,071	61%	\$87,901	66%	\$135,111	72%	\$218,454	81%	73%
Paynt to Accident Victims	\$14,038	14%	\$15,439	12%	\$16,396	9%	\$17,864	7%	9%
Capital Outlay	\$110	0%	\$2,281	2%	\$2,926	2%		0%	1%
TOTAL EXPENDITURES	\$101,239		\$132,518		\$187,135		\$269,149		
ENDING FUND BALANCE	\$106,874	106%	\$164,818	124%	\$192,047	103%	\$137,777	51%	

EXHIBIT I, Page 8

LYON COUNTY FINANCIAL HISTORY - AGRICULTURAL EXTENSION

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY 86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual :
REVENUES									
Opening Fund Balance	\$11,698	31%	\$11,123	28%	\$14,169	31%	\$17,723	34%	31%
Property Tax	\$13,475	35%	\$15,207	38%	\$15,254	33%	\$16,434	31%	34%
SCCRT	\$12,853	34%	\$13,705	34%	\$16,359	36%	\$18,210	35%	35%
TOTAL REVENUES	\$38,026		\$40,035		\$45,782		\$52,367		
Percent Change			5%		14%		14%		
EXPENDITURES									
Salaries/Benefits	\$15,733	58%	\$17,256	67%	\$18,464	66%	\$21,691	61%	63%
Services/Supplies	\$5,790	22%	\$6,119	24%	\$6,894	25%	\$10,475	30%	25%
Capital Outlay	\$5,380	20%	\$2,491	10%	\$2,701	10%	\$3,200	9%	12%
TOTAL EXPENDITURES	\$26,903		\$25,866		\$28,059		\$35,366		
ENDING FUND BALANCE	\$11,123	41%	\$14,169	55%	\$17,723	63%	\$17,001	48%	52%

EXHIBIT I, Page 9

LYON COUNTY FINANCIAL HISTORY - CAPITAL PROJECTS FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY 86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual
REVENUES									
Opening Fund Balance	\$35,000	8%	\$132,863	31%	\$66,411	36%	\$94,757	29%	26%
Property Tax	\$18,651	6%	\$21,490	5%	\$21,988	12%	\$23,818	7%	7%
Business Licenses	\$90,000	29%	\$96,000	23%	\$96,000	52%	\$96,000	30%	31%
Grants	\$34,463	11%	\$175,920	41%					17%
Interest	\$120,000	39%							10%
Subtotal	\$288,114		\$426,273		\$184,399		\$214,575		
Percent Change			48%		-57%		16%		
Transfers In (1)	\$17,000	6%					\$106,937	33%	10%
TOTAL REVENUES	\$305,114		\$426,273		\$184,399		\$321,512		
EXPENDITURES									
General Government	\$25,904	15%		17%	\$61,214	68%	\$67,000	21%	16%
Public Safety	\$59,529	34%	\$73,892	21%	\$13,119	15%	\$70,400	22%	23%
Parks	\$76,105	44%	\$2,624	1%		0%		0%	8%
Library		0%	\$19,059	5%	\$1,531	2%		0%	2%
Health and Sanitation	\$11,713	7%	\$168,287	47%		0%		0%	19%
Highways and Streets		0%		0%	\$13,778	15%	\$135,137	42%	16%
Judicial		0%		0%		0%	\$7,000	2%	1%
Subtotal	\$172,251		\$263,862		\$89,642		\$279,537		
Transfers Out			\$96,000	27%			\$40,342	13%	14%
TOTAL EXPENDITURES	\$172,251		\$359,862		\$89,642		\$319,879		
ENDING FUND BALANCE	\$132,863	77%	\$66,411	18%	\$94,757	106%	\$1,633	1%	

EXHIBIT I, Page 10

LYON COUNTY FINANCIAL HISTORY - SURPLUS BUILDING AND MAINTENANCE RESERVE FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY 86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Average Annual
REVENUES									
Opening Fund Balance	\$417,382	65%	\$292,178	45%	\$331,177	61%	\$337,043	33%	49%
Property Tax	\$38,831	6%	\$43,871	7%	\$44,268	8%	\$142,908	14%	10%
Licenses/Permits/Fees	\$11,295	2%	\$15,765	2%	\$12,345	2%			1%
Grants	\$100,231	16%	\$203,124	31%	\$66,168	12%			13%
PILT							\$450,000	45%	16%
Interest	\$65,333	10%	\$73,509	11%	\$67,021	12%	\$36,730	4%	9%
Miscellaneous	\$10,000	2%	\$18,214	3%	\$20,243	4%			2%
Subtotal	\$643,072		\$646,661		\$541,222		\$966,681		
Percent Change			1%		-16%		49%		
Transfers In	\$2,700	0%					\$40,342	4%	2%
TOTAL REVENUES	\$645,772		\$646,661		\$541,222		\$1,007,023		
EXPENDITURES									
General Government	\$25,229	7%	\$222,584	71%	\$78,709	39%	\$615,979	64%	51%
Public Safety	\$1,292	0%			\$32,000	16%	\$154,000	16%	10%
Highways & Streets			\$20,000	6%					1%
Culture & Recreation	\$37,997	11%	\$46,607	15%	\$60,175	29%	\$151,901	16%	16%
Health & Sanitation	\$78,783	22%	\$6,000	2%	\$13,002	6%	\$20,120	2%	6%
Welfare	\$190,000	54%		0%		0%		0%	10%
Subtotal	\$333,301		\$295,191		\$183,886		\$942,000		
Transfers Out	\$20,293	6%	\$20,293	6%	\$20,293	10%	\$20,293	2%	4%
TOTAL EXPENDITURES	\$353,594		\$315,484		\$204,179		\$962,293		
ENDING FUND BALANCE	\$292,178	83%	\$331,177	105%	\$337,043	165%	\$44,730	5%	

EXHIBIT I, Page 11

LYON COUNTY FINANCIAL HISTORY - DEBT SERVICE FUND

	FY 84-85 Actual	% of TOTAL	FY 85-86 Actual	% of TOTAL	FY86-87 Actual	% of TOTAL	FY 87-88 Budget	% of TOTAL	Aver Annual
REVENUES									
Opening Fund Balance	\$12	0%	(\$592)		(\$592)		\$8,108	15%	2%
Hilbish Loan Payments	\$7,386	10%	\$17,149	20%					9%
Miscellaneous	\$22	0%			\$6	0%			
Tranfers In:									
Surplus Bldg. Mtnc.	\$20,293	27%	\$20,293	24%	\$20,293	30%	\$20,293	38%	29%
Road Fund	\$23,710	31%	\$24,336	28%	\$24,336	35%	\$24,336	46%	34%
General Fund	\$24,521	32%	\$24,521	29%	\$24,521	36%			26%
TOTAL REVENUES	\$75,944		\$85,707		\$68,564		\$52,737		
Percent Change			13%		-20%		-23%		
EXPENDITURES									
Principal	\$55,981	73%	\$71,103	82%	\$50,976	84%	\$44,222	89%	82%
Interest	\$20,555	27%	\$15,196	18%	\$9,480	16%	\$5,192	11%	18%
TOTAL EXPENDITURES	\$76,536		\$86,299		\$60,456		\$49,414		
ENDING FUND BALANCE	(\$592)		(\$592)		\$8,108	13%	\$3,323	7%	

EXHIBIT I, Page 12

LYON COUNTY FINANCIAL HISTORY
Individual Funds

	Actual FY84-85	% of Total	Actual FY85-86	% of Total	Actual FY86-87	% of Total	Budget FY87-88	% of Total	Average Annual %
General Fund	\$4,991,550	64%	\$5,692,678	64%	\$6,521,620	69%	\$6,057,645	62%	65%
Road/Sts & Hwys	\$1,563,338	20%	\$1,691,204	19%	\$1,762,916	19%	\$1,837,616	19%	19%
Indigent	\$208,113	3%	\$297,336	3%	\$379,182	4%	\$406,926	4%	4%
Agriculture Extension	\$38,026	0%	\$40,035	0%	\$45,782	0%	\$52,367	0%	0%
Capital Projects	\$305,114	4%	\$426,273	5%	\$184,399	2%	\$321,512	3%	3%
Surplus Bldg/Maintenance	\$645,772	8%	\$646,661	7%	\$541,222	6%	\$1,007,023	10%	8%
Debt Service	\$75,944	1%	\$85,707	1%	\$68,564	1%	\$52,737	0%	1%
TOTAL	\$7,827,857		\$8,879,894		\$9,503,685		\$9,735,826		

PART II
LYON COUNTY FISCAL PLAN

REVENUE AND EXPENDITURE PROJECTIONS
FY1989-90 TO FY1999-2000

This section projects revenues and expenditures through the fiscal year 2000 for those Lyon County Funds contained in the Lyon County budget which are supported by Property Taxes. The projections are presented in two Exhibits as follows:

Exhibit A, pages 1-4, displays Revenue Projections for the following funds:

General	Unemployment	Ag. Extension
Road	Victims Sex'l Asslt.	Fair/Rodeo
Indigent	Special Indigent	Med.Indigent
Juv.Probation	Surplus Bldg. Mtnc.	Capital Projects
Assessment		
Silver & Gold	Silver & Gold Nutrition	Debt Service
Victims Domes.	Reg'l. Transportation	Just.Court
Violence		Assessment

Exhibit B, pages 1-11, displays Expenditure Projections for the above funds.

Appendices I thru VII present supporting documentation for the projections made in Exhibits A and B, specifically:

Appendix I:	Juvenile Detention Analysis
Appendix II:	Summary of Additional Staffing
Appendix III:	Salary and Benefits Schedule for Additional Staff
Appendix IV:	Capital Outlay Requirements - Purchase and Replacement Costs
Appendix V:	Capital Outlay for Additional Employees
Appendix VI:	Space Requirements for Additional Positions
Appendix VII:	Incremental Revenues Resulting from New Dwelling/Commercial Construction

In projecting revenue and expenditures, numerous assumptions are made and specific methodology followed. These are clearly laid out by revenue source and by operating department in the Exhibits so that Lyon County officials can not only audit the development of the projections but also modify any of the planning assumptions and thus the projections.

Several overriding assumptions and methodologies apply to the entire analysis, and they are as follows:

- o Only those funds which are contained in the

Lyon County Budget and which are supported by Property Taxes are projected. They are listed above.

- o Except for the Silver and Gold Funds, grant revenues and expenditures are excluded because of the difficulty in projecting grant fund availability and need.
- o Transfers from and into Funds are omitted as they balance each other.
- o Salary/Benefits are projected to increase 5% annually; both Cost of Living and Merit increases are assumed to be covered under the 5%.
- o Ongoing, normal Services/Supplies expenditures are increased 5% annually.
- o An annual inflation rate of 5% is used to project increases in building costs, capital outlay costs, etc.
- o Revenue projections in general assume a 5.5% annual population growth and an inflation rate of 5% annually. See specific revenue source for methodology.
- o Expenditure projections are based on interviews with Department Heads and Managers. The projections reflect currently available information regarding service levels and resource needs within the context of a 5.5% annual growth in population.

REVENUE/EXPENDITURE COMPARISON:

As can be seen from the "Summary of Revenues and Expenditures", following page 5, total revenues in the County are projected to increase about 6% - 7% annually from 1992 on. Total revenues range from \$9.8 million in 1990 to \$15.9 million in the year 2000.

Annual percentage increases of expenditures range from 4% to 12% during this time frame. Projected expenditures exceed projected revenues in every year from 1990 on, resulting in a deficit of \$484,000 in 1990, reaching a high of \$2.4 million in 1995, and culminating in the year 2000 with a deficit of \$1.7 million.

The size of the deficit begins to decrease in 1996 and continues to decrease through 2000 primarily because the number of new positions estimated by Department Heads to be needed to provide public services begins to decrease. (See Appendix II.)

OPTIONS TO REDUCE/ELIMINATE DEFICIT:

Several important considerations regarding the development and execution of this Plan should be noted when reviewing the revenue-expenditure projections:

1. The expenditure projections result from interviews with Lyon County Department Heads who estimated what resources (staff, equipment, space) they would need through the year 2000 to maintain current public service levels.
2. The revenue and expenditure projections have not been approved by the Board of County Commissioners and they have been developed without benefit of the Board's participation.
3. It is assumed that the Board's input will occur when it reviews, approves or disapproves department spending requests during the annual budget review process conducted each Spring.
4. State law requires that local governments submit a balanced budget to the State and further mandates that local governments can not "deficit spend" - they cannot spend more than they have in revenues. Therefore, the deficits shown in this Plan will not and cannot survive the budget and spending review process of Lyon County.
5. These projections should be considered as a planning document only, a document which lays out the cost of public services over the next 12 years, given Department Heads' estimates. The ability and willingness of Lyon County residents to pay for these services will be determined through public hearings and the budget review process.

Deficits can be eliminated by increasing revenues, decreasing expenditures or a combination of both. Lyon County's discretion to raise revenues, however, is severely restrained by State law and by the Federal budget. When this constraint is coupled with the size of the deficits from 1991 on, it can be argued unequivocally that revenue increases alone will not eliminate the deficits. Expenditure projections must be reduced.

In most governmental jurisdictions, citizens want more in public services than they are willing or able to pay for; Lyon County is no exception. Financing public services in Lyon County

is further complicated by the fact that the county is large geographically with a dispersed population, making the provision of public services more expensive and difficult. Additionally, the County has a low property tax base (one cent on the tax rate equals \$25,000), thus limiting the importance that property tax revenues can play in funding needed public services.

Finally, as mentioned above, the amount of revenue over which Lyon County has discretion - the ability to increase - is very limited. In 1990, revenue is projected to be \$8.7 million; of this amount, the Board of County Commissioners has discretion over roughly \$800,000 or 9% of the total revenues. The analysis is as follows:

Revenue Source	1990 Projected	Comments
Property Tax	\$1.6 m.	Can raise to State limit; about \$100,000 increase
Sales Tax	\$3.4 m.	No discretion
Licenses/Permits	\$.5 m.	Discretion over about \$350,000 Can raise to State limit
Other Governments	\$2.4 m.	No discretion
Fines and Forfeit.	\$.2 m.	Can raise to State limit
Miscellaneous	\$.4 m.	Discretion on about \$.1 m. Can raise to State limit
Charges for Serv.	\$.07m.	Can raise to State limit
Total	\$8.6 m.	

Increasing revenues, then, cannot by itself solve the deficit problem. To put the problem in perspective, even if State law permitted a doubling of the county's discretionary revenues from \$800,000 to \$1,600,000, the deficit in 1991 would not be eliminated but would still remain at about \$900,000. As noted above, expenditures must be reduced to eliminate the deficit.

Several revenue options exist that will help to reduce the deficit, and they are listed below. All will have to undergo public scrutiny and quite possibly, the scrutiny and approval of the State Department of Taxation.

1. State law allows a maximum Lyon County tax rate of \$0.5823; the current tax rate levied is \$0.5447, a difference of \$0.0376 which would generate an additional \$97,000 in property taxes.
2. Building permits and plan check fees could be

raised to meet allowances in the Uniform Building Code, resulting in an additional \$100,000 annually as estimated by Lyon County's Public Works Director.

3. Nevada statutes authorize imposition of impact fees to finance the cost of capital improvements benefitting new developments. To the extent that impact fees can be imposed without undue, adverse effect upon economic growth, Lyon County should pursue this revenue source to offset the cost of capital improvements servicing a growing population."
4. The County should review its fee structure on service charges, licenses, permits, fines and fees to determine the potential increase in revenues allowed by State law. Additionally, efforts to collect outstanding fines and forfeitures should be pursued.
5. The possibility and feasibility of the County pooling its idle cash with an investment pool should be explored to see if a higher interest rate can be obtained.

LYON COUNTY FISCAL PLAN
SUMMARY OF REVENUES AND EXPENDITURES

	Fiscal Year Ending										
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	2000
Operating Fund Balance	\$2,031,000	\$1,158,000									
Revenues	\$8,332,000	\$8,697,000	\$9,215,000	\$9,771,000	\$10,366,000	\$11,005,000	\$11,630,000	\$12,426,000	\$13,217,000	\$14,068,000	\$15,972,000
TOTAL REVENUES	\$10,423,000	\$9,855,000	\$9,215,000	\$9,771,000	\$10,366,000	\$11,005,000	\$11,630,000	\$12,426,000	\$13,217,000	\$14,068,000	\$15,972,000
Annual % Increase		-5%	-5%	6%	6%	6%	6%	6%	6%	6%	1%
EXPENDITURES	\$9,267,000	\$10,339,000	\$10,961,000	\$11,535,000	\$12,216,000	\$12,891,000	\$14,032,000	\$14,834,000	\$15,431,000	\$16,101,000	\$17,353,000
Annual % Increase		12%	6%	6%	5%	5%	9%	5%	5%	4%	5%
ENDING FUND BALANCE	\$1,158,000	\$(484,000)	\$(746,000)	\$(1,814,000)	\$(1,850,000)	\$(1,889,000)	\$(2,402,000)	\$(2,258,000)	\$(2,214,000)	\$(2,036,000)	\$(1,381,000)

LYON COUNTY FISCAL PLAN
REVENUE PROJECTIONS

EXHIBIT A

This Exhibit combines and projects revenues for the following funds:

Fiscal Year Ending	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
General													
Road													
Indigent													
Med. Indigent													
Special Indigent													
Ag. Extension													
Unemployment													
Victims Sex'l Assault													
Victims Bldg. Mtn.													
Capital Projects													
Reg'l Transportation													
Debt Service													

PROPERTY/SALES TAX

Basic CCRT

	\$308,298	\$419,362	\$452,911	\$489,144	\$528,275	\$570,537	\$616,180	\$665,475	\$718,712	\$776,209	\$838,306	\$905,371
--	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------

Assumptions - Basic CCRT:

1. Basic CCRT is a point of origin tax, representing .5 cents of total 5.75 cents sales tax levied on each \$1 of sales. The County divides the tax with the City of Yerington based on population percentages.
2. If two incorporated cities in County, the County loses this revenue source.
3. Revenue increase of 8% annually based on history and projected population increase of 5.5% per year.

SCCRT

	\$2,877,202	\$3,049,836	\$3,232,824	\$3,426,794	\$3,632,401	\$3,850,345	\$4,081,366	\$4,326,248	\$4,585,823	\$4,860,972	\$5,152,631	\$5,461,788
--	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

Assumptions - SCCRT:

1. SCCRT represents 1.75 cents of total 5.75 cents sales tax levied on each \$1 of sales.
2. Distributed to Counties, Cities and Special Districts based on formula incorporating assessed value and property tax rates.
3. Revenue increase of 6% based on historical data.

Property Taxes

Existing Property	\$1,501,483	\$1,549,417	\$1,614,341	\$1,716,953	\$1,858,020	\$1,978,537	\$2,109,283	\$2,251,428	\$2,405,934	\$2,574,118	\$2,757,432	\$2,951,266
New Property-Residential	142,700	147,400	152,400	157,400	164,300	171,300	178,900	187,400	196,900	207,300	218,500	230,500
New Commercial	\$4,130	\$4,330	\$4,550	\$4,780	\$5,020	\$5,270	\$5,530	\$5,810	\$6,100	\$6,400	\$6,700	\$7,000
Subtotal-Property Taxes	\$1,501,483	\$1,596,447	\$1,696,071	\$1,803,903	\$1,920,900	\$2,047,847	\$2,185,853	\$2,335,858	\$2,499,144	\$2,677,118	\$2,871,132	\$3,082,766

Assumptions - Property Taxes:

1. Existing property will increase in value 3% per year, thus increasing tax revenue 3% per year. Tax rate remains constant at \$0.5822.
2. See Appendix VII for assumptions and calculations on new residential and commercial property.

Total Property/Sales Tax

	\$4,769,983	\$5,065,443	\$5,381,806	\$5,719,840	\$6,081,577	\$6,468,730	\$6,883,399	\$7,327,581	\$7,803,479	\$8,314,300	\$8,862,069	\$9,450,465
--	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

LICENSES AND PERMITS

Business Licenses	\$107,000	\$112,865	\$119,094	\$125,644	\$132,554	\$139,845	\$147,536	\$155,651	\$164,211	\$173,243	\$182,824	\$192,824
-------------------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------

Fiscal Year Ending

MPRII, 112

2001

- ## Summary

- deviation:**

- 14 CV 00128 - 003448
LYON COUNTY.

Revenue Projections
Page 3

Assumptions:

1. A total of 7 cents is collected for County use, 5.35 cents return to point of origin.
2. Revenue increase based on increase population projection of 5.35 annually.

Fiscal Year Ending

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Property Transfer Tax-Dev Fee/Reliage	116,340	118,353	120,370	122,386	124,402	126,417	128,436	130,451	132,466	134,481	136,496	138,511	140,526
- Brict. Buell.	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000	235,000
Subtotal-Transfer Tax:	351,340	353,353	355,370	357,386	359,402	361,417	363,436	365,451	367,466	369,481	371,496	373,511	375,526

Assumptions:

1. See Appendix VII for assumptions and calculations on new dwellings tax.
2. The firm rate of existing dwellings will remain constant.

Other

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	191,834	196,249	200,664	205,079	209,494	213,909	218,324	222,739	227,154	231,569	235,984	240,399	244,814

Assumptions:

1. Revenues included are liquor tax, Permit Fee, contract, and Forest Service fee.
2. Increase 3% per year; liquor tax and fee with no increase, and Permit Fee. Increased 3% per year for inflation.

Total Other Government

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	32,307,601	32,825,371	33,343,141	33,860,911	34,378,681	34,896,451	35,414,221	35,931,991	36,449,761	36,967,531	37,485,301	38,003,071	38,520,841

FINDS AND FORTIFICATIONS

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	1151,650	1159,351	1167,052	1174,753	1182,454	1190,155	1197,856	1205,557	1213,258	1220,959	1228,660	1236,361	1244,062

Assumptions:

1. Increase based on population; increased 5.35 per year.
2. On a per capita basis, this revenue source has decreased over the past 3 years, from \$11.71 in 1988 to \$7.75 in 1990.

MISCELLANEOUS

Interest

\$130,000

Assumptions:

1. No interest projected after FY1990 as expenditures exceed revenues and no opening fund balance.

Bellin. For Penal.

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	1225,610	1232,810	1240,010	1247,210	1254,410	1261,610	1268,810	1276,010	1283,210	1290,410	1297,610	1304,810	1312,010

Assumptions:

1. Revenue will increase in proportion to population, 5.35 annually.

Other Misc.

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	976,750	985,563	994,376	1003,189	1012,002	1020,815	1029,628	1038,441	1047,254	1056,067	1064,880	1073,693	1082,506

Revenue Projections
Page 6

Assumptions - Other Miscellaneous:

1. Increased 15% based on past two years increase of 15% and 15%.

Fiscal Year Ending

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Silver & Gold Seva.	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000	\$160,000

Assumptions:

1. Revenues include state and federal funds as well as project income.
2. Aid constant assuming Federal funding will remain at same level or decrease.

Total Miscellaneous	\$501,875	\$407,163	\$423,461	\$451,139	\$479,491	\$512,351	\$546,307	\$589,143	\$635,059	\$686,928	\$745,301	\$811,414
---------------------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------

CHARGES FOR SERVICES

	\$72,000	\$73,110	\$74,309	\$75,497	\$77,935	\$79,191	\$81,881	\$82,705	\$85,359	\$86,417	\$87,768	\$88,583
--	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------

Assumptions:

1. Revenues primarily comprised of prisoners' board and fairgrounds service charges.
2. Revenues increased 3% annually based on trends.

GRAND TOTAL REVENUES	\$8,332,000	\$8,637,000	\$8,815,000	\$9,171,000	\$9,366,000	\$9,605,000	\$9,850,000	\$10,111,000	\$10,426,000	\$10,737,000	\$11,061,000	\$11,395,000	\$11,732,000
----------------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	--------------	--------------	--------------	--------------	--------------	--------------

REVENUE SUMMARY

Property/Sales Tax	\$4,365,393	\$4,565,613	\$4,781,606	\$5,014,110	\$5,261,577	\$5,524,730	\$5,803,319	\$6,097,341	\$6,406,891	\$6,727,941	\$7,060,619	\$7,405,059	\$7,760,015
Licenses/Permits	\$529,288	\$552,823	\$578,181	\$605,411	\$634,697	\$666,061	\$699,553	\$735,216	\$773,095	\$813,253	\$855,769	\$900,703	\$948,125
Other Governments	\$2,307,601	\$1,612,391	\$2,565,631	\$2,706,032	\$2,460,619	\$2,921,819	\$3,191,781	\$2,787,316	\$3,367,328	\$3,603,835	\$4,031,214	\$4,286,213	\$4,561,325
Fees/Forfeitures	\$151,619	\$159,391	\$168,139	\$178,011	\$187,668	\$198,200	\$209,702	\$216,602	\$222,735	\$228,135	\$232,936	\$238,010	\$243,287
Miscellaneous	\$301,815	\$402,463	\$423,461	\$451,139	\$479,491	\$512,351	\$546,307	\$589,143	\$635,059	\$686,928	\$745,301	\$811,414	\$885,583
Charges for Services	\$172,869	\$173,440	\$174,603	\$175,497	\$177,935	\$179,191	\$181,881	\$182,705	\$185,359	\$186,417	\$187,768	\$188,583	\$189,323
GRAND TOTAL	\$8,332,000	\$8,637,000	\$8,815,000	\$9,171,000	\$9,366,000	\$9,605,000	\$9,850,000	\$10,111,000	\$10,426,000	\$10,737,000	\$11,061,000	\$11,395,000	\$11,732,000

APPENDIX A
LYON COUNTY FISCAL PLAN
EXPENDITURE PROJECTIONS

This Exhibit contains and projects expenditures for the following funds:

General
Special Indigent
Ad. Attention
Folr/Bode
Unemployment
Justice Ct. Attention
Medical Indigent
Victims Sex't Assault
Victims Dom. Violence
Juv. Prob. Attention
Seraphim Bldg. Blue.
Capital Projects
Debt Service
Silver and Gold
Silver/Gold Nutrition

GENERAL FUND

A. GENERAL GOVERNMENT

	Fiscal Year Ending:												
	1984	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
GEN'L SUPPORT SERVICES													
Prop/Liab. Ins	\$250,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Advert/Printing	484,000	430,000	431,500	432,075	436,729	436,465	438,210	440,203	442,213	444,224	446,236	448,247	450,259
Postage	814,000	814,000	815,750	816,500	817,250	818,000	818,750	819,500	820,250	821,000	821,750	822,500	823,250
Gr. Citizens Grant	127,000	127,000	127,450	127,900	128,350	128,800	129,250	129,700	130,150	130,600	131,050	131,500	131,950
Spec.Prog/Consult	474,000	474,000	475,000	476,000	477,000	478,000	479,000	480,000	481,000	482,000	483,000	484,000	485,000
Miscellaneous	1166,223	1166,223	1167,223	1168,223	1169,223	1170,223	1171,223	1172,223	1173,223	1174,223	1175,223	1176,223	1177,223
Contingency	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122	435,122
	\$316,359	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Subtotal	\$316,359	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Assumptions - General Support Services													

1. Annual inflation of 3% applied to Advert/Printing, Postage and Miscellaneous.
2. Gr. Citizens Grant increased 10% annually from FY 90 on to compensate for an increase in Federal funding.
3. Miscellaneous increased 5% from FY 91 on; includes drug and alcohol abuse programs; Provision for merit increases has been removed and applied to individual operating departments from FY 90 on.

COMMISSIONERS

Salaries/Benefits	\$104,195	\$122,178	\$135,473	\$148,247	\$161,359	\$174,827	\$188,668	\$202,902	\$217,537	\$232,569	\$248,000	\$263,935
Services/Supplies	\$16,250	\$16,500	\$16,750	\$17,000	\$17,250	\$17,500	\$17,750	\$18,000	\$18,250	\$18,500	\$18,750	\$19,000
Subtotal	\$120,445	\$138,678	\$152,223	\$165,247	\$178,609	\$192,327	\$206,418	\$220,902	\$235,787	\$251,069	\$266,750	\$282,935
Assumptions - Commissioners:												
1. Additional Staff: 3 Clerk in FY 1993.												

CLERK/TRANSPORT

Salaries/Benefits	\$137,778	\$157,452	\$178,126	\$198,800	\$219,474	\$240,148	\$260,822	\$281,496	\$302,170	\$322,844	\$343,518	\$364,192
Services/Supplies	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000
Election Expenses	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000
Subtotal	\$180,778	\$200,452	\$221,126	\$241,800	\$262,474	\$283,148	\$303,822	\$324,496	\$345,170	\$365,844	\$386,518	\$407,192

LYON COUNTY DEPARTMENT PROJECTIONS

Page 2

Assumptions - Clerk/Treasurer:

1. Additional Staff: 1 Clerk Trainee in FY 1999
2. Election expense has been increased by 20% in odd numbered years.

Fiscal Year Budget:										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
BUDGET										
Salaries/Benefits	\$83,469	\$87,510	\$109,439	\$105,471	\$137,154	\$135,723	\$172,559	\$151,417	\$175,284	\$181,010
Services/Supplies	\$15,100	\$16,650	\$17,103	\$18,257	\$19,276	\$20,238	\$21,250	\$22,313	\$23,400	\$24,521
Subtotal	\$98,569	\$104,160	\$126,542	\$123,728	\$156,430	\$155,961	\$193,809	\$173,730	\$198,684	\$205,531

Assumptions - Recorder:

1. Additional Staff: .5 Deputy Recorder in FY 1999 and 1.0 in FY 1999.

ASSUMPTION										
Salaries/Benefits	\$37,312	\$37,312	\$36,210	\$39,821	\$41,712	\$43,297	\$45,962	\$49,760	\$50,506	\$51,250
Services/Supplies	\$31,500	\$36,550	\$36,570	\$40,256	\$44,061	\$46,264	\$48,571	\$51,006	\$53,466	\$55,951
Subtotal	\$68,812	\$73,862	\$72,780	\$80,077	\$85,773	\$89,561	\$94,533	\$100,766	\$103,972	\$107,201

Assumptions - Assessor:

1. Additional Staff: 1 Data Entry Clerk in FY 1999; 1 FY Appraiser in FY 1999, 1996, and 1999.
2. OIR for additional vehicles purchased in FY 92, 96 and 99 are included. (See Appendix IV.)

DISTRICT ATTORNEY										
Salaries/Benefits	\$22,312	\$27,110	\$26,977	\$32,877	\$34,013	\$35,174	\$37,459	\$38,176	\$41,544	\$42,210
Services/Supplies	\$39,000	\$39,000	\$31,500	\$33,075	\$34,729	\$36,405	\$38,208	\$40,203	\$42,413	\$44,431
Subtotal	\$61,312	\$66,110	\$58,477	\$65,952	\$68,742	\$71,579	\$75,667	\$78,379	\$83,957	\$86,641

Assumptions - District Attorney:

1. Additional Staff: 1 Investigator in FY 1999 (Jan, '99); 1 Secretary in FY 1999 to be located in Penning; 2 Deputies in FY 99 in Dayton and Penning; 1 Secretary in FY 1996 and FY 1999 in Termination. (1 secretary in FY 99 in Dayton to be shared with Sheriff; cost shown in Sheriff's budget.

COMPTROLLER										
Salaries/Benefits	\$37,425	\$105,156	\$110,414	\$115,976	\$141,271	\$146,460	\$155,082	\$163,555	\$171,840	\$180,470
Services/Supplies	\$22,120	\$31,500	\$36,150	\$38,572	\$40,459	\$42,102	\$43,806	\$45,576	\$47,410	\$49,316
Subtotal	\$59,545	\$136,656	\$146,564	\$154,548	\$181,730	\$188,562	\$198,888	\$209,131	\$219,250	\$229,786

Assumptions - Comptroller:

1. Additional Staff: 1 Account Clerk in FY 1997.

LYON COUNTY INFRASTRUCTURE PROJECTIONS
Page 3

	Fiscal Year Budget:										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
DATA PROCESSING											
Salaries/Benefits	102,500	105,000	105,300	102,165	106,103	100,223	104,235	101,146	107,050	110,110	112,130
Services/Supplies	95,000								100,639	105,671	105,035
Capital Outlay											100,431
Subtotal	197,500	105,000	105,300	102,165	106,103	100,223	104,235	101,146	107,689	115,781	217,566

Assumptions - Data Processing:

1. Additional Staff: 1 Programmer in FY1999, thus eliminating outside contract for software support estimated at \$24,300 in FY 1998.

TOUR SUPPORT											
Services/Supplies	115,000	117,320	123,600	130,000	133,339	136,000	138,310	142,023	145,385	149,015	152,172
Subtotal	115,000	117,320	123,600	130,000	133,339	136,000	138,310	142,023	145,385	149,015	152,172

Assumptions - Tour Support:

1. Includes Tours of Bureau, Dayton, Silver City, Silver Springs, Statecoach, and Roundhouse. Estimates from FY 1999 on based on actual FY 1998 expenditures of \$22,700, increased 15 annually which is assumed value growth from FY 1998 to FY 1999.
2. FY 1998 reflects estimated expenditures, not budgeted; FY 1999 reflects unexpended funds from FY 1998.

B. PUBLIC SAFETY

SHERRIFF (including Search & Seizure)											
Salaries/Benefits	61,237,407	61,312,310	61,532,000	61,710,205	61,805,235	61,919,107	62,041,472	62,166,203	62,290,023	62,411,514	62,531,589
Services/Supplies	122,100	120,100	120,120	120,131	120,118	120,113	120,102	120,092	120,081	120,070	120,059
Subtotal (Sheriff)	61,359,507	61,432,410	61,652,120	61,830,336	61,925,353	62,039,220	62,161,574	62,286,295	62,410,104	62,531,584	62,651,648

Assumptions - Sheriff's Department:

1. Additional Staff: FY 99 - 1 Deputies for patrol.
FY 99 - 1 Deputies for Investigation Unit; 1 Deputy each for Forestry and Technology; 1 Secretary for Dayton (to be shared with D.A.); 2 Dispatchers and 1 Records Clerk for Investigation.
FY 99 - 1 Deputy each for Forestry, Dayton and Smith Valley.
FY 99 - 1 Deputy for Dayton; 1 Secretary for Silver Springs.
FY 99 - 1 Deputy each for Forestry, Dayton and Silver Springs (1 each).
2. Uniform allowance is included with benefits.
3. Operating cost for 931 units included in Services/Supplies at \$14,000 for FY 99, inflated 3% annually thereafter.
4. 0.4 for additional vehicles purchased in FY 99, 98 and 95 are included. (See Appendix IV.)

LYON COUNTY EXPENDITURES
Page 6

	Fiscal Year Budget:										
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
EMERGENCY MGMT AND SAFETY											
Salaries/Benefits	\$19,000	\$23,516	\$31,021	\$35,003	\$37,023	\$101,874	\$106,460	\$112,315	\$115,931	\$123,029	\$130,020
Services/Supplies	\$3,350	\$6,100	\$6,405	\$7,015	\$7,315	\$8,175	\$8,583	\$9,012	\$9,356	\$9,596	\$10,133
Subtotal	\$22,350	\$29,616	\$37,426	\$42,018	\$44,338	\$110,049	\$115,043	\$121,327	\$125,287	\$132,625	\$140,153
Assumptions - Emergency Mgmt and Safety:											
1. Additional Staff: 1 Risk Management/Safety Analyst, .5 Secretary and 1 Mgt. Worker											
for hazardous waste monitoring-all added in FY 96.											
C. JUDICIAL											
DISTRICT COURT											
Salaries/Benefits	\$59,340	\$66,643	\$70,375	\$75,315	\$78,591	\$105,110	\$121,915	\$128,011	\$134,412	\$142,132	\$149,435
Services/Supplies	\$15,350	\$16,095	\$17,400	\$18,321	\$19,157	\$23,263	\$23,537	\$24,353	\$25,071	\$25,709	\$26,455
Capital Outlay	\$12,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal	\$86,690	\$82,738	\$87,775	\$93,636	\$97,748	\$128,373	\$145,452	\$152,364	\$159,483	\$167,841	\$175,890
Assumptions - District Court:											
1. A new Judge in FY 2000. Staff to assist Judge - 1 Secretary											
1 Law Clerk, 1 Bailiff, .5 Juvenile Evaluator. Judge's salary											
paid by State.											
2. Churchill County pays 1/3 of new positions.											
JUSTICE COURTS											
Salaries/Benefits	\$222,485	\$238,363	\$261,490	\$270,853	\$278,165	\$441,618	\$463,459	\$481,484	\$501,239	\$521,790	\$543,629
Services/Supplies	\$104,715	\$109,166	\$113,309	\$117,111	\$120,603	\$145,355	\$152,523	\$160,254	\$167,266	\$174,680	\$182,514
Subtotal	\$327,200	\$347,529	\$374,799	\$387,964	\$398,768	\$586,973	\$616,002	\$641,738	\$668,505	\$696,470	\$726,143
Assumptions - Justice Courts:											
1. Additional Staff: 1.5 Court Clerks in FY 1999, .5 each in Carson											
Valley, Persley and Dayton. 1.8 Bailiff in FY 1999 for Dayton.											
2.8 Court Clerks in FY 1999 in Persley and Dayton. .5 Court											
Clerk in Carson Valley in FY 1995.											
2. Fund 016, Jt.Ct. Special Assessment, is included.											
JUVENILE PROBATION											
Salaries/Benefits	\$132,480	\$134,354	\$151,327	\$150,632	\$150,245	\$216,160	\$221,813	\$230,309	\$235,934	\$241,221	\$247,412
Services/Supplies	\$23,635	\$25,255	\$26,400	\$27,493	\$28,456	\$31,332	\$32,529	\$33,505	\$34,565	\$35,611	\$36,754
Subtotal	\$156,115	\$159,609	\$177,727	\$178,125	\$178,701	\$247,492	\$254,342	\$263,814	\$270,500	\$276,832	\$284,166

1. No additional staff anticipated; budget increased \$2 annually.

LYON COUNTY REVENUE PROJECTIONS
Page 6

Five Year Budget:

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000

B. PUBLIC WORKS

PAVING AND RECREATION

Salaries/Benefits	931,701	939,819	971,553	975,131	975,131	975,131	975,131	975,131	975,131	975,131
Services/Supplies	997,520	1,066,513	1,117,631	1,123,530	1,123,530	1,123,530	1,123,530	1,123,530	1,123,530	1,123,530
Subtotal	1,929,221	2,006,332	2,089,184	2,098,661	2,098,661	2,098,661	2,098,661	2,098,661	2,098,661	2,098,661

Accomplishments - Parks and Recreation:

1. Additional staff: 1 Muc. Worker and 2 seasonal Muc. Workers in FY 90.
2. Includes Parks, M.V. Solving Pool and Fairgrounds.
3. OAS for sewer and pickup purchased in FY 90 are included. (See Appendix IV.)
4. Includes \$12,516 in FY 91 for Termination Parks (shown in Dept. 110 in Budget).

PUBLIC BUILDINGS AND GROUNDS

Salaries/Benefits	938,200	946,319	978,555	980,199	980,199	980,199	980,199	980,199	980,199	980,199
Services/Supplies	937,350	946,750	954,210	956,640	956,640	956,640	956,640	956,640	956,640	956,640
Telephone	932,400	946,650	954,000	956,227	956,227	956,227	956,227	956,227	956,227	956,227
Utilities	930,250	946,350	954,100	956,161	956,161	956,161	956,161	956,161	956,161	956,161
Subtotal	3,738,200	3,790,019	3,836,915	3,843,227	3,843,227	3,843,227	3,843,227	3,843,227	3,843,227	3,843,227

Accomplishments - Buildings:

1. Budget Departments 1116, 117, 120 and 121 Included - Buildings, Grounds, Dayton and Penley Complexes.
2. Additional Staff: 1 Muc. Worker in FY 1990 for 2 years only.

PUBLIC WORKS

Salaries/Benefits	939,250	947,450	979,210	980,854	980,854	980,854	980,854	980,854	980,854	980,854
Services/Supplies	940,120	948,320	980,080	981,724	981,724	981,724	981,724	981,724	981,724	981,724
Subtotal	1,879,370	1,895,770	1,959,290	1,962,578	1,962,578	1,962,578	1,962,578	1,962,578	1,962,578	1,962,578

Accomplishments - Public Works:

1. Includes Public Works, 1144 Dept., and Translator.
2. Additional Staff: 1 Building Inspector in FY 1990 for Termination; 2 Building Inspectors in FY 1995, one for Dayton and one for Silver Springs; 1 Secretary in FY 1995 in Termination.
3. OAS for additional vehicles purchased in FY 90 and 95 are included. (See Appendix IV.)

MAINTENANCE SHOP

Salaries/Benefits	940,410	948,610	980,370	982,014	982,014	982,014	982,014	982,014	982,014	982,014
Services/Supplies	940,410	948,610	980,370	982,014	982,014	982,014	982,014	982,014	982,014	982,014
Subtotal	1,880,820	1,897,220	1,960,740	1,964,028	1,964,028	1,964,028	1,964,028	1,964,028	1,964,028	1,964,028

LYON COUNTY DEPARTMENT PROJECTIONS
Page 7

Assumptions - Maintenance Shop:
1. Maintenance Shop is responsibility of Road Department, not Public Works.

Direct Year Budget:

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
G. HEALTH AND SANITATION													
PUBLIC HEALTH													
Salaries/Benefits	938,453	938,323	938,175	938,105	938,031	937,957	937,883	937,809	937,735	937,661	937,587	937,513	937,439
Services/Supplies	605	61,300	61,365	61,433	61,505	61,578	61,653	61,728	61,803	61,878	61,953	62,028	62,103
Subtotal	939,058	938,923	938,540	939,538	939,536	939,535	939,536	939,537	939,538	939,539	939,540	939,541	939,542
Assumptions - Public Health:													
1. 1 Community Health Nurse and 1 Secretary in FY 1998; 1 Community Health Nurse and 1 C.H. Typist in FY 1997.													
2. State pays for 50% of Community Health Nurse.													
COMMUNITY HEALTH													
Salaries/Benefits	915,107	915,508	915,910	916,312	916,715	917,117	917,520	917,923	918,326	918,729	919,132	919,535	919,938
Services/Supplies	916,301	917,100	917,900	918,700	919,500	920,300	921,100	921,900	922,700	923,500	924,300	925,100	925,900
Subtotal	1,831,408	1,832,608	1,833,810	1,835,012	1,836,215	1,837,417	1,838,620	1,839,823	1,841,026	1,842,229	1,843,432	1,844,635	1,845,838
Assumptions - COMMUNITY HEALTH:													
1. No additional staff projected.													
2. Budget increased 3% annually.													

TOTAL GENERAL FUND
(Total is rounded to nearest '000)

GENERAL FUND SUMMARY

Salaries/Benefits	938,453	938,323	938,175	938,105	938,031	937,957	937,883	937,809	937,735	937,661	937,587	937,513	937,439
Services/Supplies/Other	605	61,300	61,365	61,433	61,505	61,578	61,653	61,728	61,803	61,878	61,953	62,028	62,103
TOTAL	939,058	938,923	938,540	939,538	939,536	939,535	939,536	939,537	939,538	939,539	939,540	939,541	939,542

LYON COUNTY EXPENDITURE PROJECTIONS
Page 8

Fiscal Year Ending

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
ROAD FUND												
PUBLIC WORKS												
Salaries/Benefits	\$68,357	\$74,552	\$78,552	\$79,552	\$79,552	\$79,552	\$79,552	\$79,552	\$79,552	\$79,552	\$79,552	\$79,552
Services/Supplies	\$64,160	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410	\$72,410
Subtotal	\$132,517	\$146,962	\$150,962	\$151,962	\$151,962	\$151,962	\$151,962	\$151,962	\$151,962	\$151,962	\$151,962	\$151,962

Assumptions - Public Works:

1. Starting in FY 90, private contractors will assume part of dump operation. County staff will probably be reduced or realigned. Discussions with department heads indicate funding should remain at FY 89 level.

ROAD DEPARTMENT

Salaries/Benefits	\$151,229	\$152,910	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165	\$153,165
Services/Supplies	\$108,401	\$117,931	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164	\$119,164
Capital Outlay	\$253,421	\$361,571	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338	\$379,338
Subtotal	\$513,051	\$631,412	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667	\$651,667

Assumptions - Roads:

1. No additional staff anticipated.
2. 5% increase annually in salaries, services/supplies and capital outlay.
3. Transfer to Debt Service omitted.
4. Provision for lease purchase of equipment will continue through FY 2000.

TOTAL ROAD FUND

	\$1,416,310	\$1,559,242	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316	\$1,631,316
--	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

INDICENT FUNDS

Salaries/Benefits	\$25,821	\$27,123	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151	\$27,151
Services/Supplies	\$10,275	\$11,409	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410	\$11,410
Accident Account	\$17,864	\$17,301	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314	\$17,314
Supplemental Medical	\$71,151	\$77,524	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175	\$77,175
TOTAL INDICENT FUNDS	\$225,011	\$233,357	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040	\$232,040

Assumptions - Indigent Funds:

1. The above estimates include Fire Fund: Indigent, Medical, Special Indigent, Aid to Domestic Violence and Victim of Sexual Assault.
2. Additional Staff: 3 Secretary in FY 1990 and 1 Social Worker in FY 1995.
3. Accident Account reflects 3/4 cent on tax rate, estimated to increase 6% annually.
4. Supplemental Medical reflects 3 cents on the tax rate, estimated to increase 6% annually.

LYON COUNTY EXPENDITURE PROJECTIONS
Page 3

Fiscal Year Ending

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000

SURPLUS BUILDING RESERVE FUND

Capital Outlay 1942,400 1538,000 1519,000 1673,271 1594,523 1724,029 1752,233 1700,409 1810,667 1844,751 1876,195 1908,001 1910,259

- Assumptions: Surplus Building Reserve Fund
1. Transfers to Debt Service not included in PT 88.
2. PT 1989 estimate excludes emergency funding from PT 1988
3. PT 1989 as expenditure estimates based on bond policy of 6 cents of tax rate plus 91% funding (6 cents equivalent included 55 annually)
4. Major building program completed in PT 1989 (Bluebonnet, Teralee Complex, Courthouse Annex, Jail) sufficient for growth through 1995.
5. Unexpended funds will be reserved for major anticipated building needs, specifically:
- Acquisition and development of shops in Teralee and Teralee in PT 1996.
- Construction of additional District Court room and auxiliary offices in PT 2000;
- Construction/leasing of space for additional partitions; see Appendix VI for anticipated space needs.
- Jail expansion of 16 beds in 2000; Silver Springs Substation needed.
- Juvenile Detention Facility in PT 1994.
- South Valley Library expansion in PT 1993.
- Teralee corporation yard in 1990 or 1991.

DEBT SERVICE FUND

Refundal Interest 916,222 925,553 926,992 928,137 929,650 931,142 932,700 934,235 935,851 937,454 939,047 940,631 942,203
TOTAL DEBT SERVICE FUND 15,192 16,591 16,835 17,137 17,413 17,689 17,965 18,241 18,517 18,793 19,069 19,345 19,621

- Assumptions: Debt Service
1. Current level of debt expenditures will increase 5% annually, area through current debt will be paid off. Assume level of debt will remain constant with inflationary increase.
2. Some debt in shown in operating departments (Roads, Depts for heavy equipment purchases).

AGRICULTURAL EXTENSION FUND

Salaries/Institute 121,691 124,095 126,499 128,903 131,307 133,711 136,115 138,519 140,923 143,327 145,731 148,135 150,539
Services/Supplies 110,475 110,023 111,556 111,716 112,300 112,884 113,468 114,052 114,636 115,220 115,804 116,388 116,972
Capital Outlay 93,200 91,900 91,500 91,100 90,700 90,300 90,000 89,600 89,200 88,800 88,400 88,000 87,600
TOTAL AG. EXTENSION 305,366 306,018 309,555 311,719 314,307 316,895 319,483 322,071 324,659 327,247 329,835 332,423 335,011

Assumptions - Agricultural Extension:

1. Additional Staff: 1 Clerk Typist in PT 1992

LYON COUNTY BUDGET PROJECTIONS
Page 10

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Fiscal Year Budget													
UNEMPLOYMENT FUND													
Services/Supplies	\$10,000	\$26,382	\$21,315	\$22,339	\$23,456	\$24,639	\$25,860	\$27,133	\$28,511	\$29,916	\$31,430	\$33,005	\$34,655
Assumptions - Unemployment Fund:													
1. Increased \$5 annually to build reserve.													

CAPITAL PROJECTS FUND													
Ongoing Cap. Outlay	\$279,537	\$121,953	\$151,107	\$135,552	\$142,340	\$149,457	\$156,910	\$164,717	\$172,816	\$181,255	\$190,110	\$200,247	\$210,702
Add'l Capital Outlay		\$177,025	\$157,335	\$157,335	\$151,235	\$170,065	\$181,535	\$211,455	\$172,215	\$139,835	\$129,735	\$157,485	\$147,270
TOTAL CAPITAL PROJECTS	\$279,537	\$122,953	\$308,442	\$292,887	\$293,575	\$319,522	\$338,445	\$376,172	\$345,031	\$321,090	\$320,845	\$357,732	\$357,972
Assumptions - Capital Projects Fund:													
1. Interfund transfers are omitted in estimates.													
2. Ongoing Cap. Outlay reflects \$5 annual increase using FY 1989 as base year.													
3. Add'l Capital Outlay reflects office equipment, vehicles and other equipment for additional positions or needs, plus depreciation or replacement costs.													
See Appendix IV for breakdown.													

REGIONAL TRANSPORTATION FUND													
Capital Outlay	\$290,723	\$155,029	\$101,355	\$507,022	\$135,420	\$555,311	\$397,037	\$621,495	\$664,540	\$701,009	\$739,619	\$780,130	\$823,240
Assumptions - Regional Transportation:													
1. Expenditures based on revenue estimates of 4 cents as the tax, inflated 5.5% annually.													

LYON COUNTY EXPENDITURE PROJECTIONS
Page 11

	Fiscal Year Ending										
	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	2000
SILVER AND GOLD FUNDS											
Salaries/Benefits	174,460	182,403	186,913	191,250	195,335	199,648	204,190	208,961	213,962	219,195	224,660
Services/Supplies	219,546	227,391	235,057	242,710	250,355	258,000	265,645	273,290	280,935	288,580	296,225
TOTAL SILVER AND GOLD	393,996	409,794	421,970	433,960	445,690	457,648	469,835	482,251	494,897	507,775	520,885

Assumptions - Silver and Gold Funds:

1. Funds 019 and 010 combined; Silver and Gold Fund and Silver and Gold Restrictions Fund.

2. Salaries increased 3% per year.

3. Services/Supplies equals the difference between \$160,000 (estimated revenue) and salaries requirement.

4. In General Fund, St. Citizens Grant expenditures increased 10% per year.

PALM AND BODDO	\$15,183	\$15,400	\$15,600	\$16,410	\$17,251	\$18,109	\$18,986	\$19,877	\$20,785	\$21,719	\$22,685
----------------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------

Assumptions - Palm and Boddo:

1. Expenditures increased at 2% annually for FY 1989 on to reflect projected 2% increase in revenue.

Charges for services (\$18,000 budgeted) assumed to cover expenses.

TOTAL OTHER FUNDS	\$1,530,000	\$1,571,000	\$1,604,000	\$1,635,000	\$1,665,000	\$1,695,000	\$1,725,000	\$1,755,000	\$1,785,000	\$1,815,000	\$1,845,000
-------------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------

OTHER FUNDS SUMMARY

Salaries/Benefits	954,378	974,302	994,200	1,014,167	1,034,118	1,054,053	1,073,973	1,093,878	1,113,768	1,133,643	1,153,503
Services/Capital Outlay	92,675,237	94,820,352	96,965,470	99,110,585	101,255,700	103,400,815	105,545,930	107,691,045	109,836,160	111,981,275	114,126,390
TOTAL	93,629,615	95,794,654	98,059,670	100,324,752	102,590,818	104,855,868	107,121,903	109,387,923	111,653,943	113,919,968	116,185,993

TOTAL EXPENDITURES - ALL FUNDS

General	\$5,017,000	\$5,096,000	\$5,175,000	\$5,254,000	\$5,333,000	\$5,412,000	\$5,491,000	\$5,570,000	\$5,649,000	\$5,728,000	\$5,807,000
Other	\$1,530,000	\$1,571,000	\$1,604,000	\$1,635,000	\$1,665,000	\$1,695,000	\$1,725,000	\$1,755,000	\$1,785,000	\$1,815,000	\$1,845,000
TOTAL	\$6,547,000	\$6,667,000	\$6,779,000	\$6,889,000	\$7,000,000	\$7,107,000	\$7,216,000	\$7,325,000	\$7,434,000	\$7,543,000	\$7,652,000

APPENDIX I JUVENILE DETENTION ANALYSIS

MODEL: Carson City Facility
 10 Beds, 12,000 sq. ft.
 Average Daily Occupancy - 12 beds (includes Juveniles from Douglas County)
 Carson City Population - 35,559
 FY 1988 Budget - \$500,200; Average Daily Cost \$1,370.
 Average Daily Cost Per Juvenile - \$118 (\$1,370/12)
 FY Staffing: 13 Counselors, 1 Cook.
 Construction Cost in 1979 - \$1,100,000

ALTERNATIVE I: Contract with Carson City to House Lyon County Juveniles

Assumptions: 1. Mandate to start separate housing will occur in FY 1989.

2. Average Daily Occupancy will start at 1, growing to 10 in FY 1990 when County pop. reaches 35,000.
3. FY 1988 contract cost of \$118/day/juvenile will increase 5%/year.

4. 5 Probation Officer hired to transport/counsel.
 Vehicle depreciation and operating expenses included.

	Fiscal Year Ending:										
	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Avg. Occup/Day			1	1.5	2	3	4	5	6	7	8
Cost/Day/Inv.	\$114	\$120	\$126	\$132	\$139	\$145	\$151	\$158	\$165	\$172	\$179
Housing Cost			\$126	\$198	\$278	\$357	\$436	\$515	\$594	\$673	\$752
Staff			\$15,015	\$22,523	\$33,784	\$45,176	\$56,568	\$67,960	\$79,352	\$90,744	\$102,136
Vehicle			\$13,215	\$19,823	\$29,734	\$39,646	\$49,558	\$59,470	\$69,382	\$79,294	\$89,206
Total			\$28,230	\$42,346	\$63,518	\$84,692	\$105,864	\$127,036	\$148,208	\$169,380	\$190,552

ALTERNATIVE II: Build/Operate Lyon County Juvenile Detention Facility

Assumptions: 1. A minimum of 5 Counselors and 1 cook to operate facility.

2. Services/Supplies calculated at 33% of personnel costs.
3. Churchill County pays for 1/2 of costs.
4. Construction cost (1988) = \$2.3 million (\$110/sq. ft. x 20,000 sq. ft.); bond construction cost-20 yrs; 9% int. \$251,457 per year PM

	Fiscal Year Ending:										
	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Salaries/Headfile					\$168,720	\$253,080	\$337,440	\$421,800	\$506,160	\$590,520	\$674,880
Services/Supplies					\$56,270	\$84,411	\$112,552	\$140,693	\$168,834	\$196,975	\$225,116
Principal/Interest					\$251,457	\$251,457	\$251,457	\$251,457	\$251,457	\$251,457	\$251,457
Total:					\$476,447	\$588,948	\$701,449	\$814,950	\$927,451	\$1,040,952	\$1,153,453
Lyon County Share					\$238,224	\$294,474	\$350,725	\$407,475	\$464,226	\$520,976	\$577,727

APPENDIX II SUMMARY OF ADDITIONAL STAFFING

Department	Fiscal Year Budget:														TOTAL
	88	89	90	91	92	93	94	95	96	97	98	99	00	BT 0127	
Commissioners	0.5													0.5	
City/Treasurer	1.0													1	
Recorder	0.5													1.5	
Assessor		0.5						1.0						1.5	
			1.0	1.0				1.0		1.0				4	
P.A.	1.0	1.0				2.0		1.0	1.0					6	
Comptroller					1.0									1	
Data Processing									1.0					1	
Library	1.5	1.0	0.5	0.5		1.0	1.0							5.5	
Sheriff	3.0	3.0	3.0	2.0										10	
Invest./Hous./Welfare	2.5							3.0						2.5	
District Courts														2.5	
Justice Courts	1.5			2.0	2.0	0.5								5	
Juv. Probation	1.0													1	
Juv. Detention	0.5													0.5	
Public Works	3.0													6.5	
Public Health														6	
				1.5					1.5					3	
Ag. Extension										1.0				2	
Indigent Funds	0.5							1.0						1.5	
TOTAL	1.0	10.5	4.5	1.0	2.0	3.0	10.5	6.0	1.5	1.0	1.0	2.5	11.5		

APPENDIX III SALARY AND BOUNTIES SCHEDULE FOR ADDITIONAL STAFF

Assumptions: 1. Additional staff hired at entry level.

2. Salary increase of 3% annually.

3. Benefits calculated at 33% of salary for all except sheriff deputies.
(Retirement 10%; Health benefits 17.40/yr.; Workers Comp. \$15/yr.;
applied to average salary of \$15,000)

4. Sheriff Deputies' benefits calculated at 33% of salary.

Fiscal Year Budget:

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
City-Rep; Ct. Clk;	\$12,239	\$12,451	\$12,663	\$12,875	\$13,087	\$13,299	\$13,511	\$13,723	\$13,935	\$14,147	\$14,359	\$14,571
Asst. Clk; Data Clk;	\$16,150	\$16,362	\$16,574	\$16,786	\$16,998	\$17,210	\$17,422	\$17,634	\$17,846	\$18,058	\$18,270	\$18,482
Dep. Recorder I;												
Treasurer Trainee												
Library Aide	\$10,169	\$10,381	\$10,593	\$10,805	\$11,017	\$11,229	\$11,441	\$11,653	\$11,865	\$12,077	\$12,289	\$12,501
Librarian	\$11,159	\$11,371	\$11,583	\$11,795	\$12,007	\$12,219	\$12,431	\$12,643	\$12,855	\$13,067	\$13,279	\$13,491
Admin-Jocyl I	\$17,430	\$17,642	\$17,854	\$18,066	\$18,278	\$18,490	\$18,702	\$18,914	\$19,126	\$19,338	\$19,550	\$19,762
Appraiser I; Mng. Vnc	\$17,430	\$17,642	\$17,854	\$18,066	\$18,278	\$18,490	\$18,702	\$18,914	\$19,126	\$19,338	\$19,550	\$19,762
Journl Master	\$14,400	\$14,612	\$14,824	\$15,036	\$15,248	\$15,460	\$15,672	\$15,884	\$16,096	\$16,308	\$16,520	\$16,732
Deputy Sheriff	\$16,295	\$16,507	\$16,719	\$16,931	\$17,143	\$17,355	\$17,567	\$17,779	\$17,991	\$18,203	\$18,415	\$18,627
Deputy Sheriff	\$21,650	\$21,862	\$22,074	\$22,286	\$22,498	\$22,710	\$22,922	\$23,134	\$23,346	\$23,558	\$23,770	\$23,982
California Allow.	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75
Dispatcher	\$14,410	\$14,622	\$14,834	\$15,046	\$15,258	\$15,470	\$15,682	\$15,894	\$16,106	\$16,318	\$16,530	\$16,742
Prob. Officer;	\$19,000	\$19,212	\$19,424	\$19,636	\$19,848	\$20,060	\$20,272	\$20,484	\$20,696	\$20,908	\$21,120	\$21,332
Programmer; Nurse;	\$25,000	\$25,250	\$25,500	\$25,750	\$26,000	\$26,250	\$26,500	\$26,750	\$27,000	\$27,250	\$27,500	\$27,750
Law Clk; Bksh M. Anly												
Deputy P.A.	\$22,000	\$22,220	\$22,440	\$22,660	\$22,880	\$23,100	\$23,320	\$23,540	\$23,760	\$23,980	\$24,200	\$24,420
Rdgs Inspector I;	\$14,172	\$14,384	\$14,596	\$14,808	\$15,020	\$15,232	\$15,444	\$15,656	\$15,868	\$16,080	\$16,292	\$16,504
Social Worker	\$17,430	\$17,642	\$17,854	\$18,066	\$18,278	\$18,490	\$18,702	\$18,914	\$19,126	\$19,338	\$19,550	\$19,762

APPENDIX IV CAPITAL OUTLAY REQUIREMENTS - PURCHASE AND REPLACEMENT COSTS

A. OFFICE EQUIPMENT FOR ADDITIONAL STAFF
PURCHASE COST

	Fiscal Year End/ies											
	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	2000
Recorder												
Deputy "A"			12,435									
Assistant								43,615				
Data Ctlr "A"				12,975								
Appraiser "A"					13,125				13,600		11,295	
District Attorney												
Secretary "A"				13,610								
Deputy D.A. "A"				15,350					11,695	15,165		
Consolidator												
Act. Ctlr. "A"					43,125							
Data Processing												
Programmer "A"												
Sheriff									13,800			
Secretary "A" in			13,415	13,155								
Records Ctlr "A"			13,155									
Safety												
First Assistant "A"			12,415									
District Courts												
Secretary "A"												
Law Ctlr "A"												
Justice Courts												
Balliff "A"												
Cl. Clerks "A"												
Balliff "A"			13,415			10,950		16,160				12,310
Jur. Probation			11,650									11,460
Secretary "A"			16,510									11,320
Prob. Office "A"												
Jur. Detention								110,415				
Prob. Office "A"			12,215									
Library									17,210			
Librarian "A"			12,515									
Public Works							13,115	13,615				
Bldg. Inspector "A"			11,620									
Secretary "A"									14,110			
Public Health									11,110			
Nurse "A"					11,110					12,210		
Clt. Trpnt "A"					11,115					11,910		
Indigent Fund												
Social Wkr "A"			12,415									
Secretary "A"								11,415				
Ad. Extension												
Clt. Trpnt "A"					13,115							13,610

11 Sheriff secretary in Dayton in FY 1990 shared with District Attorney.

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

3 JOHN L. MARSHALL
4 SBN 6733
5 570 Marsh Avenue
6 Reno, Nevada 89509
7 Telephone: (775) 303-4882
8 Attorney for Petitioners Comstock
9 Residents Association & Joe McCarthy

10 IN THE SUPREME COURT OF THE STATE OF NEVADA

11
12 COMSTOCK RESIDENTS ASSOCIATION,
13 JOE McCARTHY

14 Appellants,
15 00128

No. 68433
District Court Case No. 14-CV-

16 v.

17 LYON COUNTY BOARD OF
18 COMMISSIONERS; COMSTOCK
19 MINING INCORPORATED

20 Respondents,
21 _____/

22
23 **JOINT APPENDIX**

24 **VOLUME 24**

25 **PAGES 3375-3500**
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014)	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015)	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014)	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015)	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014)	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014)	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877

LYON COUNTY

Comstock Industrial Park consists of about 600 acres. There are few business/industrial facilities in the Park and they are located in a very random way. The Paugh motorcycle part chromeplating plant is a major industry. Other industries in the area are widely varied. Kennedy Fisher (fishing rod manufacturer), Tahoe Tronics (electronics), Sierra Log Homes, Conifer Logs (log homes), a truss fabricator and a contractor are examples.

Situated above the Comstock Industrial Park is the Lyon County landfill which serves the western Lyon County area.

Sierra View Estates is zoned RR-3 (5 acres), and is about 80% occupied with homes on one acre lots that were grandfathered in. The open area to the south contains some custom built homes. Most are 5 acre parcels; however, there are some that are only 2 acres. There is subdividing in this vicinity, but it is sparsely occupied.

DAYTON:

The primary commercial area is along Highway 50 with some businesses remaining in the historic Main Street area. The Main Street area is within the Comstock Historic District and construction is subject to architectural review by the District Commission. Only a portion of the Old Town area was included in the District.

Just east of the main commercial area, between Highway 50 and the Carson River, is the Dayton State Park.

In the Winters Ranch area are custom built homes on RR-1 (1 acre) parcels. The area is well built out and well maintained. The newly completed County Maintenance Facility is located in this vicinity.

The River Village Subdivision is a nice subdivision of tract homes in the \$70,000 range. It is close to being built out.

Quail Ridge, which includes 6,000 sq. ft. parcels, has, of this date, sold 250 family homes. The lots are being rapidly built out with sales easily keeping pace with construction.

The Industrial Park contains Bruce Industries with 147,500 sq. ft. of facility and employs 450 people. The Lynx Golf facility is a 60,000 sq. ft. building and will employ around 60 persons. The Spencer Nahm facility sits on 2.86 acres and will employ 20 persons when their 17,000 sq. ft. facility is completed.

The Dayton Valley Ranches parcels are zoned RR-3 (5 acres) and have good quality stick built homes on the parcels.

In the Rosepeak Highlands, mobile home sites are available. This is a new subdivision just being developed. The older Rosepeak area was originally RR-2 (2 acres) with trailer overlay, changed to RR-1 (1 acre) with trailer overlay. The mobile homes in the subdivision are scattered among vacant lots with roughly 50% utilization. The appearance of the area is very similar to most predominantly mobile home neighborhoods in the County.

MASON VALLEY:

LYON COUNTY

The old Mason Townsite consists of 45' x 140' lots with trailer overlay, an E-2 (1/2 acre) subdivision and a mobile home park. Most of the small lots are occupied by mobile homes. The E-2 subdivision is about one-third built out. The trailer overlay zoned lots are served by a private community water system, however, septic systems are used for sewage disposal. There is a small M-I (heavy industrial) zone to the south of the E-2 zoned land containing packing facilities for onions and potatoes and a batch plant. A cattle feed lot is nearby.

The Sunny Grove subdivision, zoned RR-1 (1 acre), is mostly stick built with an 80% to 90% build out.

The south end of the valley is nearly all agricultural. The Borsini and Snyder ranches cover a significant area. There are several nice homes scattered among the ranches.

The predominant crop in the valley is alfalfa. There are some onion, garlic, and grain fields in the southeast end of the valley. The fields are irrigated by canals fed from the Walker River. There are very active feed lots and a dairy production unit within that immediate area also.

The Panavista Estates near Yerington contain mostly 1 1/2 - 2 acre parcels which were grandfathered into an RR-5 (5 acres) zone. These are rather well kept stick built homes. The Estates are about 40% built out.

The predominant crop in the valley is alfalfa. There are some onion, garlic, and grain fields in the southeast end of the valley. The fields are irrigated by canals fed from the Walker River. There are very active feed lots and a dairy production unit within that immediate area also.

There is an area on the extreme north edge of the Valley zoned RR-3 (5 acres) with trailer overlay. There are several smaller lots that were grandfathered in. Utilization of these lots is sparse and the existing homes are widely scattered through the zone.

The Mason Valley residents have created their own trap shooting facility, complete with club house. It is beginning to attract significant shooting events.

The nearby Bybee Lane Parcels are sparsely developed and the El Rancho Estates have a few homes. The Meadow Downs and Cottonwood Terrace Estates are zoned RR-1 (1 acre) with stick built homes and only about 40% built out. There are two grandfathered mobile units there. All of this area is served by a network of septic systems.

The old Anaconda Mine site is being utilized for mining-related activities and in very recent months that activity has accelerated considerably. Many of the homes in what is known as Weed Heights are being renovated and used as residences by a number of families.

Sunset Hills, just north of the Anaconda tailing dump, is zoned RR-2 (2 acres) with trailer overlay. It contains a mix of mobile and stick built homes at about 50% build out.

On the south side of Yerington are the Fairway Estates - adjacent to the golf course. These are custom built homes on 1/4 acre lots. There is a private water service system for the area, however, they are on individual septic systems. 52

WABUSKA:

LYON COUNTY

In the north end of Mason Valley, near where Highway 95 Alternate crosses the Southern Pacific Railway tracks, is a small bar which is all that remains of what was once a busy station on the Carson and Colorado Railroad. Today it has the distinction of being an industrial area at the head of the valley. On the east side of the highway and just north of the tracks is the O'Sullivan Plastics plant which has expanded rapidly since its location there. To the north of the Hot Springs, Tadd Enterprises is currently using the geothermal waters for an array of economic development activities. Due east of Wabuska is the Sierra Pacific Power Co. geothermal binary plant. The remainder of the alluvial plain at the foot of the Desert Mountains north of the railroad is largely desert in nature. There are large blocks of industrial land use zoning in this area.

SMITH VALLEY:

The Wilson Canyon, through the Singatse Range, connects Mason and Smith Valleys. This narrow portion of the Walker River water course is a very popular, scenic location for family camping, picnics and fishing. There are several state-operated, no-fee camp sites along the highway.

On the Smith Valley side of the canyon is the "Walker River Resort" RV park and campsites and other privately owned land along the river.

The Smith Valley High School is located near the Smith commercial district. There is a large dairy located closeby and there are a number of ranch, feedlot, and other dairy operations. Also located in the area is an equipment sales outlet.

There is a feed lot on the eastern edge of the Valley. The County landfill is at the junction of Day Lane and Delphi Road. In the general vicinity is a small airstrip and the hanger for Rosaschi Crop Dusters.

On Casebolt Road there are five acre parcels for homes. Five homes now are located on five of the parcels. There are also 5 acre parcels on Miller Ridge Road that are available for residential construction. There is an active trucking operation and heavy equipment operation located in the area.

The Artist View Ranchos are RR-3 (5 acres) parcels which have just recently begun to accommodate housing units. These are stick built, tract-type homes. There is extensive land area, not agriculture-related, in this area that is available for future residential development.

Valley View Estates are RR-3 (5 acres) stick built lots. Development is sparse and scattered. There are RR-3 (5 acres) lots around the subdivision containing scattered homes.

Sayre Acres is an RR-2 (2 acres) subdivision with trailer overlay.

Wellington is a significant commercial area in the valley. The concrete enterprise, Walker River Precast, is a notable business as well as the Heyday Inn, Wellington Mercantile, a John Deere Dealership, and an RV Park located adjacent to the Walker River. Commercial and residential uses are intermingled in Wellington.

Dressler Park and the Community Center are the development in Wellington.

JA3377

14 CV 00128 - 003272

LYON COUNTY

SILVER CITY:

State Route 341 (becoming 342 at the truck route south of town) carries tourist traffic to and from Virginia City through the original commercial district of Silver City. Silver City is located entirely within the Comstock Historic District and is the scenic route through the District. Some of the original commercial buildings are still standing, portraying historic atmosphere that tourists enjoy.

The prominent elements of this mountainside mining town are the head works of the Dayton Shaft, west of the highway, and at the site of the Donovan Mill, at the south end of town. The process buildings, vats and machinery of the Dayton Mill have been standing pretty much as they were since the closure of the mill in 1957; however, the mill is still considered to be a viable industrial property and future operations may occur.

East of the highway and the commercial district are a few older residences that are occupied in a random fashion. There are some new homes mixed with many older homes. An active effort to restore the old Cemetery is being undertaken by many volunteer citizens. The old school facility is being used as a community hall. Many of the parcels in Silver City do not have residential or commercial units on them.

SILVER SPRINGS:

Land use in Silver Springs is pretty well characterized by the pattern of existing zoning with sparse utilization. The commercial strips along Highway 50 from Stagecoach to east of the "crossroads" (the junction of US50 and 95-A) and south along Highway 95-A contain a few scattered businesses. The RR-1 (1 acre) residential areas around the crossroads are well utilized southeast of the highway intersection but sparse elsewhere.

There are about 6,000 lots in the Silver Springs area ranging in size from 50' X 100' town lots to 5 acre parcels and nearly all with trailer overlay. There are some larger parcels on the periphery and adjacent to Lahontan State Park that are not trailer overlay. Very few of the residential, commercial or industrial parcels are occupied. There are also very few stick built homes in the area.

The Spring Subdivision near Idaho and Citrus is zoned E-1 (12,000 sq. ft. lots), no trailer overlay. The entire subdivision consists of 92 lots, none of which have been built on.

The industrial park northeast of the Highway 50 / 95-A intersection contains the operations of the Gopher Construction gravel pit, Silver Springs Mining, Lubcon, and Petroleum Recovery, and a lot of vacant land.

There is a very good airplane landing strip that is being used and it commands a sizeable area of land that adjoins many acres owned by the Bureau of Land Management. The airport lease was acquired by new owners in 1989. There are plans being developed for long-range commercial and business development on the airport grounds and surrounding the airport. The pending development plans are suitable for the airport/commercial/industrial zone when it is created.

LYON COUNTY

Overall economic growth is being aggressively pursued by the Economic Development Authority of Silver Springs to provide local employment for area residents. Present community assets include an airstrip, railroad, major highways, state parks, ample water, local retail businesses and some light industry. Future development, utilizing these assets, is contingent on compatible land use along U.S. Highway 50 and 95-A, the Ramsey/Weeks Cutoff, the railroad spur line, airstrip and surrounding land. EDASS, Inc., is supporting the new owners of the Silver Springs Airport (BLM) lease in their development plans. Silver Springs will need the support of Lyon County to develop the necessary infrastructure for the growth expected in the next ten (10) years.

CHAPTER II -- SECTION F
POPULATION

Lyon County's population is widely scattered with concentrations in several population centers and along the arterial roadways, separated by broad expanses of open land where few or none reside. During most of the county's history population fluctuations followed the bonanza/borrasca trend of mining activity while relatively steady agricultural activity dampened to some extent the population ebb and flow.

Much of Lyon County's present population consists of immigrants. For example, between 1975 and 1980 nearly 5,500 persons moved into the county while approximately 2,600 persons moved out for a net gain of more than 2,800, and 46.7 percent of the persons who immigrated to the county came from other Nevada counties. More recent statistics are unavailable, but that ratio is believed to have continued during the 1980s.

Lyon County has experienced consistent population growth since the late 1950s. Between 1980 and 1984 the population increased by 19.2%, and another 22% between 1984 and 1987.

The 1980 distribution of population by race indicated a very small percentage of minorities. The 6.2% classified as minorities is much less than the 12.5% compiled for the state and 16.9% for the nation during that year.

The trend of the 1980s was for that portion of Lyon County adjoining and north of the Carson River to experience rapid population growth. By contrast Mason and Smith Valleys increased population at a much slower rate.

Significantly, the north county population growth was not accompanied by a proportionate increase in job opportunities. Some increase in industrial activity has provided more jobs, but not enough to support the marked increase in population. Clearly Fernley and the Highway 50 corridor have become "bedroom communities", Fernley for Reno and the Highway 50 corridor for Carson City.

(Note: The eastern segment of the Highway 50 corridor -- Silver Springs, Stagecoach -- to some extent has become a retirement community where residential growth is not tied to availability of employment.)

"Bedroom" growth is limited primarily by drive time between the most distant bedroom areas and job locations. It takes approximately 35-40 minutes to drive from Fernley to downtown Reno. It takes approximately 15-20 minutes to drive from the Dayton Valley, the western segment of the Highway 50 corridor, to the Capitol Complex in downtown Carson City, 30-35 minutes from Silver Springs to the same destination. Apparently a drive time of up to 40 minutes is acceptable to persons who work in the metropolitan centers but prefer to reside in Fernley and/or the Dayton Corridor, either because of reduced housing cost or desire for a more rural atmosphere than the Reno-Sparks and Carson City areas now afford.

LYON COUNTY

Major residential developers apparently share the assumption that Fernley and the Dayton Corridor are within acceptable drive time from Reno-Sparks and Carson City, respectively. A major Reno real estate developer is proceeding apace with a 501-unit subdivision in Fernley aimed at low to medium income buyers. For many lower middle income Reno workers Fernley developments represent the only opportunity to qualify financially for a new home.

In the Dayton area a golf course centered development with a potential buildout of 5,022 medium and expensive units is underway. Smaller scale developers continue to cater to lower income buyers in both Fernley and the Dayton Corridor/Moundhouse areas. Adding to population growth pressure in the Dayton Corridor/Moundhouse area is the fact that Carson City presently is subject to a self-imposed annual population growth limit of 3 percent. A related housing availability factor is that Douglas County apparently is discouraging development along its northern boundary adjacent to Carson City. Lyon County's Dayton Corridor presents the only new housing alternative available within acceptable drive time to Carson City and its state government employment complex.

Fernley and the Dayton Corridor contain thousands upon thousands of acres which could be used for residential purposes. There is sufficient land in those areas to accomodate another Reno-Sparks and Carson City combined. However, both areas are near desert, further removed from Sierra water sources than either Reno-Sparks or Carson City. The limiting factor to population growth for north Lyon County clearly is the amount of water which can be developed for or transferred to municipal/industrial, domestic purposes. So long as there is sufficient water to sustain development, the "bedrooming" of north Lyon County will continue, independent of any development of more basic employment opportunities. Any actual increase in basic employment opportunities will only accelerate the population growth trend apparent in the past decade.

By contrast the increased drive time from Mason and Smith Valleys -- 1 to 1¼ hours to Carson City and 1¼ to 1½ hours to Reno -- apparently exceeds the drive time which has been acceptable to most persons employed in Reno-Sparks and Carson City, although a small number of commuters make that drive daily. At least there is a reasonable inference to be drawn from the fact that the north half of the county has experienced rapid population growth while Mason and Smith Valleys have grown at a much slower rate. Population fluctuation in the south half of Lyon County appears to be much more closely related to the availability of employment in Mason and Smith Valleys.

Traditionally the base employment in Mason Valley and Smith Valley has been in agriculture and mining, the area's "base industries." Secondary, service job opportunities in the two south valleys have fluctuated according to the size of employment in the base industries. Agricultural employment has been more stable, but also is less susceptible to growth. In fact modern mechanized agriculture has resulted in some reduction in agricultural employment. Mining employment, which plummeted with the closure of the Anaconda operation at Weed Heights, has shown some signs of a degree of recovery.

In recent years there have been various proposals for retirement subdivisions in the Yerington area, but no such developments have materialized as yet. Realization of one or more such proposals could result in a substantial population increase in the south half of the county.

Availability of water, which appears to be the factor which will limit population growth in the north half of Lyon County during the ensuing 15 years, does not appear to be as critical in the south half. The Walker River system is not at this time subject to demands from metropolitan areas for municipal water or extensive demands for water for wildlife-oriented purposes. Should it become necessary, conversion of a small amount of the agricultural water rights in Mason and Smith Valleys would meet municipal/domestic water needs for many, many years.

Inferences which can be drawn from the foregoing:

1. The Fernley area can anticipate continued growth at or in excess of the growth rate of the '80s as it continues to provide a less expensive, more rural residential alternative for Reno-Sparks workers. An increase in employment opportunities in the immediate area would further accelerate population growth.
2. The Dayton Corridor also can anticipate continued growth at or in excess of the growth rate of the '80s because of availability, the fact that it provides a less expensive alternative than Carson City and Douglas County and a more rural alternative than Carson City. Here, too, any increase in employment opportunities in the immediate area would further accelerate population growth.
3. Availability of water for municipal/industrial and domestic purposes is the factor which will limit or control population growth in the north half of Lyon County. Employment opportunities, either in the immediate area or in the adjacent metropolitan areas, will provide jobs for as many persons as can be supplied with water.
4. Significant population growth in the south half of the county will occur only if job opportunities increase, either through a resurgence of mining activity or the development of other "basic" employment to provide jobs to sustain increased population.

PLANNING CONCLUSIONS:

If Lyon County wishes to attain or even approach the population potential for the north half of the county, it must secure and be able to deliver an adequate supply of municipal/industrial and domestic water to meet the needs of the selected population goal. No population growth estimates can be considered valid unless the limitation of water availability is factored into such projections.

In the south half of the county substantial population growth can be attained only by provision of sufficient employment opportunities to support that growth. While water availability eventually may become a factor limiting population, such will not occur within the immediate future.

The following tables provide data concerning changes in the various components that make up the population profile of Lyon County. These include births and deaths, per capita income, population forecasts, age grouping, and some comparisons to other counties.

COUNTY GROWTH PATTERNS
1920 to 1987

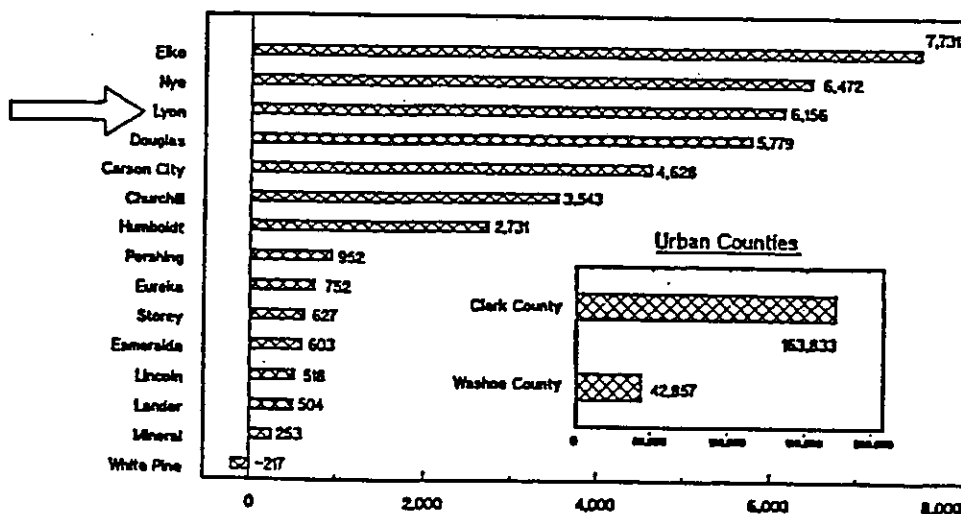
Year	LYON COUNTY			
	County a) Population	Annual b) % Change	% of State Population	Population c) Rank
1920	4,078	-	5.28	7
1930	3,810	-0.68	4.18	7
1940	4,076	0.69	3.70	8
1950	3,679	-1.03	2.30	10
1960	6,143	5.27	2.38	8
1970	8,221	2.96	1.68	7
1980	13,594	5.16	1.70	7
1981	14,300	5.19	1.68	6
1982	14,850	3.85	1.69	6
1983	15,450	4.04	1.71	6
1984	16,200	4.85	1.74	6
1985	17,050	5.25	1.76	6
1986	17,950	5.28	1.78	6
1987	19,750	10.03	1.88	6

- a) The county population figures for the decades 1920 through 1980 are the final Census counts taken by the Bureau of the Census. The population numbers for the years 1981 through 1987 are the State of Nevada's official year to year population estimates.
- b) For the years 1920 through 1980, the figures represent the Census to Census (decade to decade) average annual percent change. For the years 1981 through 1987, the figures represent the year to year annual percent change.
- c) Population rank represents the size of each county's population compared to all other counties for the years indicated.

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of the Population-Nevada, 1920 to 1980. Bureau of Business and Economic Research, College of Business Administration, University of Nevada-Reno, Population of Nevada's Counties and Incorporated Cities, October 1987.

POPULATION OF NEVADA COUNTIES, RANKED BY AMOUNT
OF POPULATION CHANGE, 1980 TO 1987

Rural Counties



SOURCE: Nevada Department of Taxation and the University of Nevada-Reno, College of Business Administration, Bureau of Business and Economic Research, Official State Population Estimates — December 1987.

Number of Births by County of Residence in Nevada
1970 to 1987

County	1970	1975	1980	1981	1982	1983	1984	1985	1986	1987
Carson City	268	312	522	501	496	459	510	472	511	492
Churchill	182	172	229	245	252	258	277	319	290	317
Clark	5,724	5,381	7,797	8,255	8,501	8,371	8,673	9,125	9,536	10,130
Douglas	112	134	255	282	301	286	310	362	341	309
Elko	248	286	328	389	433	412	405	425	408	439
Esmeralda	16	14	12	20	24	25	13	32	19	18
Eureka	24	14	29	25	30	33	20	17	15	20
Humboldt	118	129	199	226	216	189	194	162	203	189
Lander	56	88	116	114	109	110	93	83	72	80
Lincoln	58	58	96	82	82	68	55	57	52	50
Lyon	152	160	269	245	257	252	260	269	266	251
Mineral	132	106	110	114	101	98	111	92	80	100
Nye	78	92	147	221	224	195	219	201	207	200
Perkins	46	52	60	69	69	69	61	56	63	73
Storey	8	12	20	13	19	23	24	23	28	17
Washoe	2,118	1,868	2,919	3,103	3,273	3,265	3,395	3,493	3,660	3,769
White Pine	232	178	150	173	151	145	123	105	104	115
Statewide	9,572	9,056	13,258	14,078	14,538	14,258	14,745	15,293	15,855	16,569

SOURCE: Nevada Department of Human Resources, Health Division, Office of Vital Records, Nevada Vital Statistics Report, various years.

Number of Deaths by County of Residence in Nevada
1970 to 1987

County	1970	1975	1980	1981	1982	1983	1984	1985	1986	1987
Carson City	134	157	272	240	327	285	304	347	323	361
Churchill	111	127	142	156	126	155	141	170	153	159
Clark	1,915	2,267	3,192	3,200	1,598	3,645	3,788	4,123	4,254	4,582
Douglas	50	66	122	90	106	103	137	140	144	156
Elko	147	146	149	151	135	177	152	164	124	176
Esmeralda	9	9	11	10	13	9	13	9	17	13
Eureka	8	10	8	6	10	5	11	7	9	11
Humboldt	71	70	72	73	81	66	87	82	83	66
Lander	20	22	28	31	25	25	25	30	28	39
Lincoln	20	34	38	27	34	25	37	34	36	43
Lyon	73	78	138	111	144	134	136	167	165	193
Mineral	55	50	59	74	52	72	58	72	62	73
Nye	68	54	88	101	78	91	90	92	106	99
Perkins	39	39	45	29	25	39	33	38	24	33
Storey	13	13	12	6	11	14	13	10	14	13
Washoe	1,024	1,248	1,391	1,436	1,464	1,456	1,575	1,649	1,697	1,720
White Pine	99	89	85	100	97	89	94	87	80	79
Statewide	3,856	4,479	5,852	4,967	6,326	6,330	6,694	7,221	7,319	7,816

SOURCE: Nevada Department of Human Resources, Health Division, Office of Vital Records, Nevada Vital Statistics Report, various years.

Nevada's Population
by Selected Age Grouping
1985 and 1990 Estimates

1985

County	Selected Age Groupings					Total
	Under 1 Year	1 - 14 Years	15 - 64 Years	65 Years & Over	75 Years & Over	
Carson	6,203	493	24,402	4,302	1,486	35,400
Churchill	3,060	265	9,693	2,432	1,076	15,450
Clark	9,924	114,416	397,510	50,290	15,358	572,140
Douglas	4,106	411	16,588	2,095	627	23,200
Elko	4,890	363	15,088	2,509	1,003	22,850
Esmeralda	221	17	948	194	60	1,380
Eureka	318	44	992	96	54	1,450
Humboldt	2,528	211	8,117	1,024	386	11,880
Lander	1,090	119	3,058	233	56	4,500
Lincoln	1,006	103	2,435	656	222	4,200
Lyon	3,453	294	10,927	2,376	860	17,050
Mineral	1,166	102	3,934	828	314	6,030
Nye	3,054	232	10,036	1,528	413	14,850
Pershing	683	65	2,355	507	219	3,610
Storey	298	32	1,275	175	37	1,780
Washoe	36,256	3,633	161,472	23,059	8,705	224,420
White Pine	1,498	104	4,735	1,223	557	7,560
Statewide	79,754	120,904	673,565	93,527	31,433	967,750

1990

County	Selected Age Groupings					Total
	Under 1 Year	1 - 14 Years	15 - 64 Years	65 Years & Over	75 Years & Over	
Carson	585	7,001	26,892	5,484	2,080	39,962
Churchill	300	3,298	10,440	3,057	1,423	17,095
Clark	12,829	143,732	485,882	72,934	26,228	715,377
Douglas	560	5,294	21,108	3,109	1,101	30,071
Elko	416	5,536	17,083	3,255	1,417	26,290
Esmeralda	17	220	954	219	68	1,410
Eureka	60	404	1,197	119	76	1,780
Humboldt	254	2,983	9,449	1,352	571	14,038
Lander	144	1,234	3,323	280	85	4,981
Lincoln	107	953	2,256	715	260	4,031
Lyon	346	3,917	12,310	3,063	1,193	19,636
Mineral	95	917	3,530	901	364	5,443
Nye	270	3,657	11,566	2,026	642	17,519
Pershing	73	715	2,555	625	295	3,968
Storey	40	341	1,444	227	62	2,052
Washoe	4,661	41,313	187,317	11,107	12,953	264,398
White Pine	112	1,532	5,386	1,697	815	8,727
Statewide	20,869	223,047	802,692	130,170	49,633	1,176,778

SOURCE: Nevada Department of Human Resources, Division of Health Resources and Cost Review, 1987 Staff Memorandum, Population Estimates.

NOTE: The 1985 and 1990 age groupings were based on the State of Nevada's 1985 official population estimates and preliminary forecasts issued in June 1987.

LYON COUNTY POPULATION FORECAST
Distributed by Subarea
Low Range Forecast

AREA	1987 POPULATION	ANNUAL RATE	1990 POPULATION	ANNUAL RATE	2000 POPULATION	ANNUAL RATE	2010 POPULATION
YERINGTON	2,670	1.02	2,830	1.02	3,450	1.02	4,210
MASON VALLEY	3,850	1.01	3,970	1.01	4,390	1.01	4,850
SMITH VALLEY	1,190	1.015	1,240	1.015	1,440	1.01	1,590
FERNLEY	4,940	1.04	5,560	1.04	8,230	1.04	12,180
DAYTON/MARK TWAIN	3,340	1.045	3,810	1.045	5,920	1.04	8,760
SILVER CITY/MOUNDHOUSE	990	1.045	1,130	1.04	1,670	1.03	2,240
SILVER SPRINGS/STAGECOACH	2,770	1.03	3,040	1.03	3,900	1.03	5,140
LYON COUNTY	19,750	1.03	21,580	1.03	29,000	1.03	38,970

1987 population figures are based on the State of Nevada's official state estimate of July 1, 1987.

Distribution by population area is calculated using Sierra Pacific Power Company's number of residential hookups multiplied by 2.7 residents per hookup. The distribution was compared to data collected by the County Clerk in December, 1987, on driver's licenses, school enrollment, voter registration and telephone hookups.

ASSUMPTIONS:

1. The Low-Range Forecast projects that the Countywide growth rate will be lower than either the annual average Statewide rate of 4% experienced from 1980-87 or the annual average Countywide rate of 6% from 1975-87.
2. Fernley, Dayton, and Silver City/Moundhouse will grow faster than the Countywide rate; the three will experience similar rates of growth.
3. For Silver City/Moundhouse, the rate of growth will decline over time due to land availability.
4. Smith Valley/Wellington, Yerington and Mason Valley will grow slower than the Countywide rate.
5. No assumptions have been made regarding annexation by Yerington of surrounding land.
6. Silver Springs and Stagecoach will grow faster than the county wide rate. Silver Springs will grow at a faster rate than Stagecoach. Silver Springs will be the fastest growing area in the county over the next five to ten year period. Stagecoach will decline in rate of growth in the years ahead primarily because of water availability.

LYON COUNTY POPULATION FORECAST
 Distributed by Subarea
 Midrange Forecast

AREA	1987 POPULATION	ANNUAL RATE	1990 POPULATION	ANNUAL RATE	2000 POPULATION	ANNUAL RATE	2010 POPULATION
YERINGTON	2,670	1.03	2,920	1.03	3,920	1.03	5,270
MASON VALLEY	3,850	1.02	4,090	1.02	4,990	1.02	6,080
SMITH VALLEY	1,190	1.025	1,280	1.025	1,640	1.02	2,000
FERNLEY	4,940	1.075	6,140	1.07	12,080	1.06	21,630
DAYTON/MARK TWAIN	3,340	1.08	4,210	1.075	8,680	1.06	15,540
SILVER CITY/MOUNDHOUSE	990	1.08	1,250	1.075	2,580	1.06	4,620
SILVER SPRINGS/STAGECOACH	2,770	1.06	3,300	1.06	5,720	1.05	9,380
LYON COUNTY	19,750	1.055	23,190	1.055	39,610	1.05	64,520

1987 population figures are based on the State of Nevada's official state estimate of July 1, 1987.

Distribution by population area is calculated using Sierra Pacific Power Company's number of residential hookups multiplied by 2.7 residents per hookup. The distribution was compared to data collected by the County Clerk in December, 1987 on driver's licenses, school enrollment, voter registration and telephone hookups.

ASSUMPTIONS:

1. The Mid-Range Forecast projects that the Countywide growth rate will be higher than the annual average Statewide rate of 4% from 1980-87, but slightly lower than the annual average Countywide rate of 6% from 1975-87.
2. Fernley, Dayton, and Silver City/Moundhouse will grow faster than the Countywide rate; the three will experience similar rates of growth.
3. For Silver City/Moundhouse, the rate of growth will decline over time due to land availability.
4. Smith Valley/Wellington, Yerington and Mason Valley will grow slower than the Countywide rate.
5. No assumptions have been made regarding annexation by Yerington of surrounding land.
6. Silver Springs and Stagecoach will grow faster than the county wide rate. Silver Springs will grow at a faster rate than Stagecoach. Silver Springs will be the fastest growing area in the county over the next five to ten year period. Stagecoach will decline in rate of growth in the years ahead primarily because of water availability.

LYON COUNTY POPULATION FORECAST
Distributed by Subarea
High Range Forecast

AREA	1987 POPULATION	ANNUAL RATE	1990 POPULATION	ANNUAL RATE	2000 POPULATION	ANNUAL RATE	2010 POPULATION
YERINGTON	2,670	1.07	3,270	1.06	5,860	1.04	8,670
MASON VALLEY	3,850	1.04	4,330	1.03	5,820	1.03	7,820
SMITH VALLEY	1,190	1.05	1,380	1.04	2,040	1.03	2,740
FERNLEY	4,940	1.14	7,320	1.08	15,800	1.07	31,080
DAYTON/MARK TWAIN	3,340	1.14	4,950	1.085	11,190	1.075	23,060
SILVER CITY/MOUNDHOUSE	990	1.14	1,470	1.085	3,320	1.07	6,530
SILVER SPRINGS/STAGECOACH	2,770	1.09	3,570	1.08	7,690	1.05	12,720
LYON COUNTY	19,750	1.10	26,290	1.07	51,720	1.06	92,620

1987 population figures are based on the State of Nevada's official state estimate as of July 1, 1987.

Distribution by population area is calculated using Sierra Pacific Power Company's number of residential hookups multiplied by 2.7 residents per hookup. The distribution was compared to data collected by the County Clerk in December, 1987 on driver licenses, voter registration, school enrollment and telephone hookups.

ASSUMPTIONS:

1. The High-Range 87 and the annual average Countywide rate of 6% from 1975-87. It parallels the growth rate in Fernley, Dayton and Moundhouse/Silver City of 9% over the past few years.
2. The High-Range Forecast's Countywide growth rate decreases over time as it is assumed that a high rate cannot be sustained for a long period.
3. Fernley, Dayton, and Silver City/Moundhouse will grow faster than the Countywide rate; the three will experience similar rates of growth.
4. For Silver City/Moundhouse, the rate of growth will decline over time due to land availability.
5. Smith Valley/Wellington, Yerington and Mason Valley will grow slower than the Countywide rate.
6. No assumptions have been made regarding annexation by Yerington of surrounding land.
7. Silver Springs and Stagecoach will grow faster than the county wide rate. Silver Springs will grow at a faster rate than Stagecoach. Silver Springs will be the fastest growing area in the county over the next five to ten year period. Stagecoach will decline in rate of growth in the years ahead primarily because of water availability.

The Lyon County population forecasts, distributed by the State of Nevada's official state estimate as of July 2, 1987 using Sierra Pacific Power Company's number of residential hookups by 2.7 residents per hook up, compare favorably with the Master Plan writers population computations.

The July 1, 1989, Lyon County Tax Roll of residence property type by tax area figure of 7,982 residences was multiplied by the factor of 2.7 residents per household and totals a 21,551 population as of July 2, 1989. This population figure is almost the same as the low range forecast table for 1990 and would be on target with the midrange forecast table for 1990 if the 1989 population was projected one year to 1990.

It is anticipated that there will be a 7 to 9% increase in Lyon County population each year for the next ten year period.

CHAPTER II -- SECTION G
PUBLIC SERVICES

PUBLIC BUILDINGS:

Community buildings influence growth patterns. A well developed public building plan for a county provides decision makers the opportunity to utilize desirable land use patterns through careful planning.

Public buildings provide a network to house the physical, social, cultural and safety requirements of the county population. Demands by the public for more and varied public buildings is increasing. Pressures on county government are increasing to provide more services. A plan and policy is required to meet long term service needs and along with that must be a long term plan for public buildings to adequately house the expanding public services. It is important that a financial plan reflect the construction costs of a public buildings plan. Adequate long range funds for construction are vital to the total planning process.

At present there are a number of public building projects planned for Lyon County. It should be emphasized that all of the projects connected with the fiscal year 1988/89 Surplus Building Maintenance and Reserve Fund are intended to provide optimum facilities for long-range growth.

Some of the following projects will be completed in 1989, some in 1990 and perhaps even in 1991. These projects will relieve some of the pressure for awhile but the relief is, for the most part, a matter of immediate expediency.

The projects are:

1. McAtee Building, Silver Springs
2. Stagecoach Community Center
3. Fairgrounds Multipurpose Building, Mason Valley
4. Bluestone Building, Dayton
5. Lyon County Public Safety Complex, Yerington
6. Fernley Complex & Justice Court
7. Lyon County Courthouse Remodel/Expansion (completed in 1988 but allows room for expansion), Yerington
8. Silver Springs Library (new)
9. Fernley Library (new)
10. Courthouse retrofit
11. Dayton Complex (remodel)

A complete list of county facilities follows:

LYON COUNTY MAINTAINED BUILDINGSMASON VALLEY AREA:

Public Safety Complex

Main Library

Courthouse and Annex

Public Works Building

Road Department Building

Yerington Senior Citizens Center

Lyon County Museum

Road Side Rest - Hwy. 339
(State owned, County maintained)

Fairgrounds

STAGECOACH AREA:

Community Center

Fire Department (belongs to
Central Lyon County Fire Dist.)DAYTON AREA:

Dayton Complex

Senior Citizens Center

Community Center

Bluestone Building

MOUND HOUSE AREA:Fire Department (belongs to
Central Lyon County Fire Dist.)SILVER CITY AREA:

Community Center

Fire Department (belongs to
Central Lyon County Fire Dist.)FERNLEY:

Old Sheriff's Substation

Public Health Nurse Building

Fernley Complex

Fernley Justice Court

Road Maintenance Yard

Parks Facilities

Senior Citizens Center

MASON AREA:

Mason Community Center

SMITH VALLEY AREA:

Library (rented building)

Sheriff's Office/Courthouse

Road Maintenance Building

SILVER SPRINGS AREA:

McAtee Building

Senior Citizens Center

Sheriff's Substation

Road Maintenance Yard

Animal Control Office/Kennels

Silver Springs Parks Facilities

Silver Springs Library

LYON COUNTY LIBRARY

LYON COUNTY

The Lyon County Library System serves the residents of a large and sparsely populated county that includes two fast growing areas. One of these areas is presently being served by the Fernley Branch Library, the other is in the Dayton area. Thought and planning must be given to the coming need for a branch library to serve the residents of the Dayton area, to provide materials to satisfy the need for information, further educational and recreational and creative use of leisure time. Library branches are also located in Smith Valley and Silver Springs. The Main Library is located in Yerington.

LYON COUNTY MUSEUM

The Lyon County Museum is located at 215 South Main Street, Yerington, a block south of the Lyon County Courthouse. It consists of a main building and annex, a general store, natural history building, blacksmith shop, and schoolhouse.

The museum was the result of Yerington's 9 Day Bicentennial Celebration in 1976. The \$2,000 profit from the celebration was dedicated to the formation of a museum. Volunteer enthusiasts organized the Lyon County Museum Society and on May 26, 1978 the museum was opened to the public. The loan on the building was paid by the county. The annex was made possible by a grant from the Max C. Fleischman Foundation. The building was originally the Baptist Church in Mason across the Walker River from Yerington. The church was built in the 1920's and as the population shifted to Yerington, the church was moved to Yerington. Eventually, it became the Seventh Day Adventist Church. In 1977, the Seventh Day Adventists built their own church and the building was acquired by the Museum Society.

The museum is organized and maintained by volunteers. Adjoining property was bought by the museum and is occupied by the store, natural history building, blacksmith shop, and schoolhouse. These buildings have been donated to the museum; the store was once on Main Street, the barn from the lot now occupied by American Federal, the natural history building was once the Gallagher Schoolhouse, the schoolhouse is the East Walker Schoolhouse.

Admission is free. Hours are Saturdays from 10:00 a.m. until 4:00 p.m., Sundays from 1:00 p.m. until 4:00 p.m. and weekdays by appointment. Funding is by donations, memberships, memorials, and fund raisers. Meetings are open to the public. The museum's goal is to educate, preserve the history of the county, and to provide cultural exhibits and events for the public.

LYON COUNTY SCHOOL DISTRICT

Planning for additional school district sites and facilities has been an ongoing activity for many years.

In July of 1989 at a school board meeting in Yerington, reports were given by lay committees from the various attendance areas concerning future planning for school district facilities.

The following are summaries of those reports:

Smith Valley Committee

The committee reported that enrollment was down, however, there is an influx of students at the lower grades. The committee recommended building classrooms to replace the modulars and add at least one or two rooms. It is recommended that another shop classroom be built away from the high school building, which would leave two classrooms available for music and humanities classes. It was indicated by the committee that consideration must be given to reducing class sizes to add to the quality of education.

Mason Valley Committee

It was reported that heavy increase in enrollment is not anticipated.

There is a real need for all school buildings in Yerington except for the kindergarten to be insulated.

The committee suggested that there is a need for additional bus garage maintenance and storage facilities. Also, the existing warehouse should be expanded. The committee also indicated that each high school in the District should have a vocational facility similar to Yerington High School.

The committee also recommended that the bond issue includes restoration of the old Yerington Elementary Building so that the ownership could be transferred to some other entity. It was noted that there is a very high maintenance cost for the building.

Silver Springs Committee

It was pointed out that the Silver Springs Elementary School was not large enough to serve the area when constructed. There is good evidence that the population of Silver Springs will continue to grow. The present facility should be expanded to serve up to 500 students. Additionally, landscaping should be completed and there should be an adequate garage and fuel tank constructed.

Consideration should be given to construction of a junior high in Silver Springs. Additionally, consideration should be given for Stagecoach students to attend in Silver Springs.

Dayton Committee

LYON COUNTY

There is every indication that Dayton and Lyon County are the fastest growing areas in the State. At present, there is a new residence being sold in the Dayton area every 6 days. The committee estimates that in 10 years that the Dayton area will be 50% larger than the entire population of Lyon County today.

The committee indicated that the Eldorado Lakes Development project, a 2000 acre planned community, is rapidly expanding with additional industries on the way. The development was approved for 3000 residential units and 10,000 people are expected in 5-10 years.

It was reported by a committee member that there is considerable industrial growth in the Mound House area.

The committee indicated that new school construction must commence in Dayton. It is recommended that the present high school be utilized as a junior high and that a new high school be constructed next to the athletic field.

Other facility proposals by the committee indicated that there should be a K through 8 school in Silver Springs, and that there should be expansion of Dayton Elementary School to original design, with additional classrooms and expansion of the square footage of the multi-purpose room.

Fernley Committee

The committee has a number of concerns about facilities. Most of the community favor a bond issue. The major concern was not to go on double sessions.

The committee recommended building a second elementary school in Fernley and an intermediate school in the Silver Springs/Stagecoach area to relieve the Fernley Schools of those students attending from Silver Springs and Stagecoach. The committee also recommended a wing be added to the Fernley Intermediate School to accommodate 200 additional students for a total of 600 students at that school. A vocational facility should be added to the Fernley High School.

Facilities Needs Document

In August, 1987, with the assistance of the Research and Educational Planning Center, University of Nevada, Reno, a facility needs document and a facility costs document were completed.

Data from those documents shows a 10 year enrollment projection which indicates the facility requirements for that 10 year enrollment growth pattern by attendance area as follows:

DAYTON ATTENDANCE AREAELEMENTARY

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	387	
1996-97	912	24

HIGH SCHOOL

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	342	22
1996-97	806	

Facility Recommendations:

- 1) Build an expandable elementary school
- 2) Build an expandable intermediate school
- 3) Build a vocational facility at Dayton High School
- 4) Expand and complete the Dayton High School facilities

this issue by looking at the firms that may be tied directly or indirectly to the local user sector. Retailers, barbers, drug stores, dentists, fast food shops, bars and others deal directly with the local product or service user.

Light industry, bott97	1093	29
------------------------	------	----

INTERMEDIATE

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	389	
1996-97	917	24

HIGH SCHOOL

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	366	
1996-97	863	23

Facility Recommendations:

- 1) Build an expandable elementary school
- 2) Expand the facilities at the intermediate school to house approximately 1000 students
- 3) Build a vocational facility at Fernley High School
- 4) Expand and complete high school facilities

SILVER SPRINGS ATTENDANCE AREAELEMENTARY

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	177	
1996-97	275	4.5

INTERMEDIATE

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	105	(no facility now)
1996-97	163	7

Facility Recommendations:

- 1) Complete the Silver Springs Elementary facility by adding a wing and multipurpose room
- 2) Build an expandable intermediate school
- 3) Build a transportation facility to store service buses

SMITH VALLEY ATTENDANCE AREAELEMENTARY

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	107	
1996-97	146	3

HIGH SCHOOL

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	87	
1996-97	119	2.5

Facility Recommendations:

- 1) Add four rooms to Smith Valley Elementary School
- 2) Add a vocational facility at Smith Valley High School

YERINGTON ATTENDANCE AREAELEMENTARY

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	435	
1996-97	593	6.5

INTERMEDIATE

<u>School Year</u>	<u>Enrollment</u>	<u>Additional Classrooms</u>
1987-88	283	
1996-97	386	4.5

HIGH SCHOOL

Enrollment based on 0% growth per year - no additional classrooms required from 1987-1996.

Facility Recommendations:

- 1) Add 4-6 classrooms at Yerington Intermediate School
- 2) Upgrade/repair Yerington Elementary School, Yerington Intermediate School and Yerington High School

County School District Facilities

Recommendations:

- 1) Expand and upgrade bus maintenance facility
- 2) Expand and upgrade warehouse facility
- 3) Add classrooms for adult/continuing education and a Professional Development Center

SCHOOL DISTRICT FACILITY RECOMMENDATION SUMMARY

DAYTON:

- 1) Build an additional elementary school to house up to 500 students
- 2) Build an additional intermediate school to house up to 1000 students
- 3) Add 8-10 classrooms to the existing high school with appropriate additional facilities
- 4) Add a vocational building to the Dayton High School campus

FERNLEY:

- 1) Build an additional elementary school to house up to 500 students
- 2) Add to the intermediate school to expand its capacity to 1000 students
- 3) Add 8-10 classrooms to the high school with appropriate additional facilities
- 4) Add a vocational building to the Fernley High School

SILVER SPRINGS:

- 1) Complete the construction of the Silver Springs Elementary School, including the addition of another wing, multi-purpose room, with appropriate additional facilities
- 2) Build an intermediate school in the Silver Springs area to house up to 500 students
- 3) Build a transportation facility capable of handling minor bus maintenance and storage

SMITH VALLEY:

- 1) Add 4 classrooms to the elementary school
- 2) Add a vocational facility at the high school

YERINGTON:

- 1) Make necessary repairs and upgrade Yerington High School
- 2) Add additional classrooms (4-6) to Yerington Intermediate School
- 3) Upgrade and repair Yerington Elementary and Intermediate Schools
- 4) Convert the old Yerington Elementary School to a community auditorium

LYON COUNTY

COUNTY FACILITIES:

- 1) Expand and upgrade bus maintenance facility
- 2) Expand the warehouse facilities
- 3) Add classrooms for Adult Education and Professional Development Center

These study data were offered as estimates of enrollment and facility requirements to be used as a base for future planning and to determine fiscal requirements.

General obligation school building bonds of \$9,800,000 were sold on February 14, 1989 to start the new facility and building upgrading activities to allow the school district to keep pace with the growth that is taking place in most areas of Lyon County.

The growth will be unevenly distributed among the school attendance areas. Some growth will be in spurts, other areas will have predictable patterns of growth, while one or possibly two school attendance areas of the district will grow faster than anyone had imagined.

It is vital that land parcels in each attendance area be identified soon as potential sites for school facilities.

In conclusion, the table below provides data for first month enrollment for the 1986-87, 1987-88, and 1988-89 school year.

The data indicate accelerated growth at the Dayton Elementary School and steady growth at the Dayton High School, Fernley Elementary, and Fernley Intermediate School.

An interesting change in enrollment is noted by asterisks for the Yerington Elementary School and the Yerington Intermediate School for the ninth month of the 1988-89 school year. Each of those two schools had a realistic gain in students for the last part of the year. Usually the enrollment declines a little in most schools toward the end of the year. What caused the gain in students is not known.

LYON COUNTY SCHOOL DISTRICT STUDENT ENROLLMENT OVERVIEW BY SCHOOL LEVEL
FIRST MONTH ENROLLMENT (1986-87-88)

	<u>1986</u>	<u>1987</u>	<u>1988</u>
Dayton Elementary School	383	435	527
Dayton High School	342	355	392
Fernley Elementary School	461	496	507
Fernley Intermediate School	385	419	437
Fernley High School	408	421	398
Silver Springs Elementary School	164	156	166
Smith Valley Elementary School	106	118	125
Smith Valley High School	82	84	84
Yerington Elementary School	425	455	455 (489)*
Yerington Intermediate School	295	304	307 (330)*
Yerington High School	300	301	302

* Ninth month enrollment - a 7% increase over first month enrollment for 1988-89

TRUCKEE-CARSON IRRIGATION DISTRICT

Early History Pre-Truckee-Carson Irrigation District

The early settlers of the project area irrigated by simple diversions, relying on natural flow for their water supply. Prior to the Reclamation Act of 1902, there were 20,000 acres of land under cultivation that had natural-flow water rights.

Investigations

Prior to 1902 there were occasional water resource investigations in the Truckee and Carson River basins. In the summer of 1902, the newly-organized Reclamation Service initiated a program to survey for storage reservoirs, including Lake Tahoe and the present Lahontan Reservoir and canal system sites. The Truckee-Carson Project, later called the Newlands Project, was among the first five projects to be built by the Reclamation Service, which became the Bureau of Reclamation in 1923.

Authorization

The Newlands Project, originally called the Truckee-Carson Project, was authorized by the Secretary of the Interior on March 14, 1903. The Omnibus Adjustment Act of May 25, 1926 contained provisions to reduce the original scope of the Newlands Project and to establish specific repayment obligations.

Construction

Construction began in 1903, the same year the project was authorized. The first construction specification issued by the Reclamation Service was for the Truckee River Diversion Dam, now named the Derby Diversion Dam, which was completed in June, 1905. By September, 1905, the Carson River Diversion Dam and main distribution canals for the Carson Division had been completed. The Truckee Canal and a timber chute to the Carson River (the chute was later replaced by one of concrete which discharges into Lahontan Reservoir) were completed in November, 1906. This permitted the diversion of Truckee River water for use in the Carson Division for the first time in 1907. Construction of Lake Tahoe Dam was completed in 1913. The United States assumed control of the dam at the outlet of Lake Tahoe along with appurtenant lands on July 1, 1915, pursuant to a decree of the United States District Court dated June 4, 1915. Lahontan Dam, the main storage facility for the project, was completed in 1915.

Operating Agency

Under terms of the contract of December 18, 1926, the operation and maintenance of the project were transferred to the Truckee-Carson Irrigation District (TCID) on December 31, 1926. This contract was terminated by a court order in 1983. TCID currently operates the Newlands Project under a temporary operation and maintenance agreement which has been in effect since February 14, 1984.

TCID PROJECT COMPONENTS

Water Delivery System

The water delivery system for the Newlands Project consists of 2 major storage reservoirs, 2 major diversion dams, and approximately 375 miles of canals, laterals, and sublaterals, located in the Truckee and Carson River basins of California and Nevada.

The uppermost reservoir on the project, Lake Tahoe, is controlled by Lake Tahoe Dam, an 18-foot high concrete slab and buttress structure with 17 slide gates. By controlling the top 6 feet of Lake Tahoe, the dam creates a reservoir with a capacity of 732,000 acre-feet and regulates the releases from Lake Tahoe into the Truckee River.

Approximately 20 miles downstream from Reno, water for project purposes is diverted from the Truckee River into the Truckee Canal at Derby Diversion Dam. The dam is a concrete gate structure 31 feet high with an embankment wing. It has a hydraulic height of 15 feet and controls diversions of up to 1500 cfs into the Truckee Canal through 9 slide gates. The flow into the river is controlled by 13 slide gates and one 25-foot hinged drop gate.

The Truckee Canal extends approximately 32.5 miles from Derby Diversion Dam on the Truckee River to Lahontan Dam on the Carson River. The canal has a design carrying capacity of 1500 cfs at the head; however, current capacity is approximately 800 cfs. The Truckee Canal serves approximately 6200 acres of water-righted land, which comprise the Truckee Division, either directly or through laterals and sublaterals. The Truckee Canal also delivers water to Lahontan Reservoir to supplement the natural flow of the Carson River and provide more reliable water service to Carson Division lands.

Lahontan Dam is a 162-foot high zoned earth filled structure with a hydraulic height of 120 feet, a crest length of 1325 feet, and a total storage capacity of 317,300 acre-feet. The outlet works at Lahontan Dam has a capacity of 2000 cfs which can be released to the Carson River. Facilities at Lahontan Dam also include a power plant with three 640 Kw generators for a total output of 1920 Kw, and an outlet to Rock Dam Ditch, a lateral providing irrigation service to lands along the river between Lahontan Dam and Carson River Diversion Dam.

Carson Diversion Dam is located on the Carson River about 5 miles downstream from Lahontan Dam and is the major diversion point for irrigation water to serve the lands in the Carson Division. The dam is a 23-foot high concrete gate structure with a hydraulic height of 14 feet and a crest length of 241 feet. The two major diversions from Carson River Diversion Dam are the T canal, regulated by 2 slide gates and serving lands north of the river; and the V canal, regulated by 3 slide gates and serving lands south of the river. The flow of the Carson River is regulated by 17 slide gates and one 25-foot drop gate.

Project facilities below Carson River Diversion Dam are primarily distribution facilities within the Carson Division to serve approximately 67,600 water-righted acres and drainage facilities to handle return flows.

LYON COUNTY

Lands north of the Carson River are served primarily by the T canal. The only other designated canal system north of the Carson River is the N canal. There is presently 1 reregulating reservoir which is utilized in the T canal system, Old River Reservoir, which is located near the lower end of the T canal.

The primary diversion to lands south of the Carson River is the V canal. There were several other designated canal systems south of the river, including the A, L, S, G, D, and E canals, which are fed directly or indirectly from the V canal. Three reregulating reservoirs, Sheckler, S-line, and Harmon, are currently utilized in the area south of the river. In addition to Carson Diversion Dam, there are 2 other diversion dams on the Carson River: Coleman Dam, which diverts water to the S canal; and Sagouspi Dam, which diverts water to the D canal.

The water delivery system provides water through canal and lateral turnouts to an estimated 1500 farm head gates and numerous livestock watering locations. Examples of the nomenclature used to designate canals, laterals, and canal structures follows:

- T canal - a main canal, usually the primary canal in a sub-district
- S6 - the sixth lateral diverting flows from the S canal
- S6-2 - the second sublateral diverting flows from the S6 lateral
- V-C3 - the third check structure on the V canal
- L1-T3 - the third turnout structure on the L1 lateral

Drainage System

There are approximately 350 miles of drains within the project, nearly all of which are deep, open drains. The drains in the Truckee Division terminate in Fernley Wildlife Management Area. The drains in the Carson Division north of the river return to the river and the drains south of the river terminate in Carson Lake Pasture, or Stillwater Wildlife Management Area.

Other Project Features

The project includes two power plants, one constructed by Reclamation at Lahontan Dam, with a capacity of 1920 Kw, and another on the V canal with a capacity of 800 Kw, constructed by TCID. TCID has also constructed approximately 73 miles of power lines. Sierra Pacific Power Company operates all of the power facilities under contract with TCID.

Newlands Project return flows and spills are utilized in 3 main wildlife areas: Fernley Wildlife Management Area, Carson Lake Pasture, and Stillwater Wildlife Management Area.

The Fernley Wildlife Management Area, located 35 miles east of Reno near Interstate 80, includes 7,000 acres of land, a small 270 acre reservoir and is managed by the Nevada Department of Wildlife. There are no developed recreation facilities. Hunting and fishing are permitted as the wildlife area provides habitat for upland game and waterfowl migrating along the Pacific Flyway.

LYON COUNTY

The Carson Lake Pasture, managed by TCID, abuts the South Carson Division and includes about 31,000 acres of custodial land owned by the United States but used by TCID. Approximately 13,000 acres are used as irrigated pasture which is leased to local farmers. The majority of its water, originating at Lahontan Reservoir, arrives as irrigation return flow from the South Carson Division.

The Stillwater Wildlife Management Area, located 60 miles north-east of Reno, encompasses 140,000 acres of high desert vegetation, barren sand dunes, and water. Management is provided by the U.S. Fish and Wildlife Service. Fishing and hunting are permitted. This area provides habitat for upland game and migratory waterfowl along the Pacific Flyway.

Irrigable Area

There are about 73,000 acres of irrigable land with water rights in the District.

Character of Soil in Irrigable Area

The topography ranges from gently rolling to flat with smooth nearly level areas predominating. The soils range from sands to clays with medium textures predominating. Wide variations in subsoils and substrata occur.

Crops

The predominant crop in the Newlands Project is alfalfa, which accounts for approximately 68 percent of all irrigated crops in the project area. Other forage crops and pasture are raised on another 20 per cent of the project area. Cereal crops, such as barley and wheat, account for 11 percent of the project irrigated acreage and a small amount of vegetable crops make up the remainder of the irrigated crops.

Annual Rainfall

Average rainfall for the District is 5.20 inches.

Range of Temperature

The temperature range varies from a low of 25 degrees F. below zero to a high of 106 degrees F. with an average temperature of 50.8 degrees F.

Principal Markets for Crops

Principal markets for project fresh produce are the cities and towns of western and central Nevada. The larger and heavier shipments, such as baled alfalfa hay, alfalfa meal, and livestock are marketed in Nevada and on the west coast with some shipments to the east. Most fresh milk is marketed in the State. The feeding of cattle and sheep brought in from the ranges of the surrounding country provides a market for much of the alfalfa and other crops. Each winter many thousands of cattle are fed in the valley before being shipped to market.

TRUCKEE-CARSON IRRIGATION DISTRICT OPERATIONS

TCID employs approximately 50 people to operate and maintain project facilities.

Water regulation activities in the District are supervised by the water master and carried out by 12 ditch riders. TCID utilizes historical practice and orifice or weir measurements to regulate and adjust flows in the distribution system. TCID operates and maintains approximately 60 water stage recorders in the project area.

The annual budget for TCID is about \$3 million, which is collected from operation and maintenance (O&M) fees, power revenue, and pasture leases.

MASTER PLAN IMPACT CONSIDERATION FOR TCID

1. There should be no use of TCID easements for roads. That is, roads should not be considered overlaying TCID easements for drains and canals.
2. Because of expanding growth in the Fernley area, there should be some consideration given to storm drainage runoff. Currently, developers desire to discharge their surface drainage into the TCID's canals and drains. The problems with water quality in the wetlands and wildlife areas receive more attention each day and discharge of water that may contain materials unsuitable for wetlands will likely be restricted in the future.
3. In the subdivision or parceling process, District easement and policies should be addressed to plan for future growth and development. Will the Fernley area provide for small water-righted parcels or establish zoning requirements which provide for agricultural areas? TCID's current policy is to require a minimum of 20 acres for water-righted parcels. TCID has developed requirements for small water-righted parcels which require measures to conserve water and require the property owners to form an irrigation association to schedule and manage the water for irrigation.
4. An area of concern is the acquisition of water rights for future growth in the Fernley area as well as the potential of water being transferred to upstream or downstream users.
5. The Truckee Canal may be concrete lined when financial resources are available. What impact on local water resources would this create?
6. The potential piping of effluent from Reno/Sparks to a wetland near Fernley to solve water quality concerns in the Truckee River should be addressed. What are the impacts?
7. There is always a realistic problem of effluent being discharged either by accident or on purpose into the Truckee River. If the Town of Fernley uses surface water for domestic purposes, then the potential high costs of treating that water must be addressed in light of the demanding standards of the Federal Clean Water Act.

WALKER RIVER IRRIGATION DISTRICT LYON COUNTY

Currently the Walker River Irrigation District has 560 active users. There are some 78,800 water-righted acres for which irrigation water is supplied. Eight employees operate within a \$385,000 budget.

The origins of the Walker River Irrigation District can be traced to June 10, 1902, at which time a suit was filed in the U.S. District Court for the State of Nevada. The suit, entitled Pacific Livestock Company, a Corporation, Complainants, v. Thomas B. Rickey, et al, Defendants was to adjudicate the relative rights of the water users of the Walker River. The suit was intermittently before the court until March 3, 1919, at which time a final decree was entered by the Honorable E.S. Farrington.

The Walker River Irrigation District was formed on April 14, 1919. At that time, the District encompassed all the irrigable land of the East, West, and Main Walker Rivers and tributaries in the State of Nevada, with the exception of the Walker Rivers set forth in Decree No. 731 which were adjudicated on vested right in priority from 1860 to 1907.

On September 19, 1919, the electors of the District authorized a bond issue of \$918,500 for the purpose of reservoir construction to conserve run-off.

From the State Engineer's Report, January 1, 1931 to June 30, 1932, the following summary is found under "Future Development in Nevada".

"4. Walker River -- The Walker River Irrigation District is at this time in financial difficulties, but will be refinanced and paid out. This district needs more storage, and further units can be constructed on the West Walker River, and on the East Walker River, when they are required. This project eventually will be rounded out and will materially increase the taxable values of the State."

In the same report under "Summary of the Work of the State Engineer, Special Work", the following statement is found.

"5. Working with the Walker River Irrigation District in connection with refinancing arrangements with the bondholders, and efforts to secure Federal financing through Congress. This will entail an engineering and economic survey of this important project."

The State Engineer's Report of 1932-1934 stated that, "The necessary funds have been allotted the district by the Reconstruction Finance Corporation to refinance the outstanding bonded indebtedness on a 65% basis. The money has not as yet been actually made available to the district."

Litigation relative to the waters of the Walker River has included one additional notable case.

On July 3, 1924, a suit was filed in U.S. District Court by the United States in behalf of the Indian lands on the Walker River Indian

LYON COUNTY

Reservation on the grounds that the United States was not made a defendant in the original suit brought by the Pacific Livestock Company.

In 1936, the State's Federal District Court announced its decision in U.S. vs. Walker River Irrigation District, et al.: "This court is not moved to give a decree destroying the rights of the white pioneers."

An appeal brought a reversal, but, not to the maximum extent of the waters requested by the United States for the Walker River Indian Reservation.

A basis of finding was the priority date of November 29, 1859. The oldest water right above the reservation was established in 1860. Therefore, the reservation was found to have the first right to water from the river.

In the interim period to date, there have been numerous changes in the District's configuration, the amount of acreage irrigated, the number of active users in planning programs, and in interpretation of laws.

According to a memorandum prepared by Robert Erickson of the Legislative Counsel Bureau and dated February 18, 1983, the Walker River Irrigation District is one of three such districts in Nevada. At the time of the writing, surface water sources became the determining factor in application of NRS Chapter 539 in which "traditional irrigation districts" are defined.

Another memorandum, dated January 3, 1985, and prepared by Carole Richmond of the Legislative Counsel Bureau, concerns "Planned Diversion of the Walker River for the Los Angeles Water District". Stated within that writing, Pete Morros, State Engineer, had cited the Federal decree in the United States vs. Walker River Irrigation District (1936) in which distribution rights were determined. Any unappropriated waters (those in excess of that distributed through the decree) were at the time apportioned to Nevada and California through the California-Nevada Interstate Compact. Article 8 of the Compact provides that California will receive 35% of such waters and Nevada 65%. The Compact further stipulates that "unappropriated water may not be removed from the Walker River Basin".

In the decades since the inception of the Walker River Irrigation District, numerous studies have been conducted. Some have been topic specific, such as Hydrology Studies, Walker River Irrigation District, prepared by Donald R. Warren Co. Engineers, Los Angeles, California, 1953. Of particular importance is the series Water for Nevada, a legislatively mandated comprehensive water resource plan which was submitted to the 1975 Nevada State Legislature.

The following are excerpts from the State of Nevada, Water Planning Report, Special Summary Report, Nevada State Water Plan, November, 1974.

Alternate Plans for Water Resource Use
Walker River Basin, Area 1

This water planning report, the first in a series of six, considers the range of possible alternative uses in which the water resources of the Walker Basin could be employed. The report basically outlines environmental quality and economic efficiency objectives for use of the available water in the basin. To analyze the impact of either of these objectives, a plan was developed which would show the expected future trends of the basin's major activities without international deviations based upon objectives. The center of attention is directed toward the decline of Walker Lake by 60,000 acre-feet per year, flooding throughout the basin, irrigation requirements, and recreation needs.

There were two environmental alternatives offered. The first would be a plan directed toward the maintenance of the lake at its present level, while the second emphasized development and use of water upstream without regard to the lake level. Both alternatives noted that fishing was the main recreational activity in the basin.

The economic efficiency alternative discussed possible reservoir sites for recreation, irrigation, flood protection and fishery enhancement. The plan outlines the projected needs with and without the large water requirements projected for the mining industry in the basin. Several possibilities to save Walker Lake were also studied in the economic efficiency plan.

There are issues and decisions inherent in the alternative plans presented where the following conclusions and recommendations are appropriate and worthy of specific mention in the following summary of the Water Planning Report (1974):

"There is not sufficient water in the Walker River system to satisfy present and projected requirements upstream and yet maintain Walker Lake as a viable fishery as it presently exists. Water levels will continue to decline and salinity will continue to increase.

Water rights confirmed both by decree from the Federal District Court and in appropriations through State procedures must be recognized in administering water supplies of the system.

It has been suggested that extensive studies such as state-federal task forces be created to further evaluate water uses and practices within the Walker River Basin. Many of the findings of the Pyramid Lake Task Force can be applied, at least in concept, to the Walker River system. It is doubtful that another task force effort would yield significant new data or information.

Means of maintaining the Walker Lake fishery by introducing new species that can adjust to increased salinity should be explored. Also, replacement of fishery pressures to upstream reservoirs should be considered.

The potential for desalting the Walker Lake is described in the special planning report, "The Future Role of Desalting in Nevada".

The only apparent means of maintaining the existing level of Walker Lake would be to acquire existing water rights upstream for transfer to Walker Lake. No recommendation is made for a legislative determination in this matter.

It is recommended that the allocation of water set forth in the California-Nevada Interstate Water Compact be recognized and preserved."

Master Plan Impact Consideration for WRID

1. Water courses must be protected from encroachment, occupation and other negative uses. Written protective easements should be required.
2. A reasonable distance between rights-of-way, ditches and any proposed structures should be established in order to protect all interests and provide for safety in burning and cleaning ditches and rights-of-way.
3. Specification standards for road crossings, parcel access and fences should be established through a joint effort between the county and the irrigation district.
4. Any use of the drainage network must be approved by WRID.
5. Ag surface and underground water rights should be removed prior to any parcelling of an ag operating unit. (A serviceable ag unit is 20 acres or more.)
6. Any application submitted to the county for a parcel map or subdivision map within the jurisdictional area of the WRID should be forwarded to the irrigation district for review. Every effort should be made to notify affected or potentially affected ditch companies and neighboring property owners.
7. Subdividing of water-righted land should not be permitted unless the applicable water rights are transferred to other agricultural lands, or unless the subdivider can provide, at his own expense, an approved method to supply water to the land to be subdivided.
8. Proposed subdivisions which require access across irrigation or drainage ditches should be denied.
9. Ditch companies possess the right to access any irrigation or drainage ditch or right-of-way within the WRID system for the purpose of regular maintenance and cleaning.
10. Any ditch which is required to be relocated or realigned as the result of the parcelling or subdividing of land should be concrete-lined and maintained for a period of five (5) years at the sole cost of the developer.
11. Any fences, bridges or other structures necessary to facilitate the development of parcelled or subdivided land should be the responsibility of the developer. Location of such structures should be coordinated through the county and WRID to avoid conflict with ditch or right-of-way maintenance.

FIRE PROTECTION

Fire protection within Lyon County is provided by four autonomous fire protection districts and the City of Yerington. Three of the fire protection districts operate emergency medical services in addition to fire protection duties. The predominate personnel force is composed of volunteers from the various regions. At the present time there are approximately 240 persons involved in volunteer fire and emergency medical services.

The four fire protection districts serving Lyon County include:

- (1) Mason Valley Fire Protection District
 - a. Fire suppression
 - b. Rescue
 - c. Emergency medical services
- (2) North Lyon County Fire Protection District
 - a. Fire suppression
 - b. Rescue
- (3) Central Lyon County Fire Protection District
 - a. Fire suppression
 - b. Rescue
 - c. Emergency medical services
- (4) Smith Valley Fire Protection District
 - a. Fire suppression
 - b. Rescue
 - c. Emergency medical services

The City of Yerington provides for protection within the municipal boundaries of the city and in conjunction with the Mason Valley Fire Protection District, through an interlocal agreement.

MUTUAL AID

The four fire protection districts and the City of Yerington are all tied together through individual mutual aid agreements which were established in 1986. Other agencies participating in mutual aid agreements with Lyon County agencies include:

- (1) The Nevada Division of Forestry
- (2) Eastfork Fire Protection District (Douglas County)

MUTUAL AID (Continued)

- (3) BLM
- (4) Carson City Fire Department
- (5) Truckee Meadows Fire Protection District
- (6) U.S. Forest Service

Most areas of Lyon County fall within the jurisdictional boundaries of one of the four fire protection districts. There are, however, areas of general county which are excluded from the boundaries of fire protection districts (See map FP-1). Much of the general county area is wildland and sparsely populated. The BLM provides fire protection to these areas, with the first response coming from the closest fire protection district.

Other areas served by the various fire protection districts include:

- (1) Campbell Ranch Indian Reservation
- (2) Yerington Indian Colony (City of Yerington)
- (3) Nevada Fish and Game Preserve (Mason Valley area)
- (4) Nevada Wildlife Preserve (Fernley area)
- (5) Wadsworth Indian Reservation (Fernley area)

TAX STRUCTURE AND AUTHORITY

Each fire protection district has its own established tax rate under the authority of NRS 474 and 318 Districts and is administered by the Department of Taxation and Lyon County.

Individual tax rates and assessed value by area include:

SCHEDULE FP-2

<u>FIRE DISTRICT</u>	<u>1989/90 RATE</u>	<u>ASSESSED VALUE</u>
Mason Valley Fire	.1551	\$ 46,785,540.00
North Lyon County	.1319	68,208,599.00
Smith Valley	.0677	18,591,396.00
Central Lyon County	.1816	105,946,185.00

MASON VALLEY FIRE PROTECTION DISTRICT

(The following information and projections are related to the operation of the Mason Valley Fire Protection District and the City of Yerington Fire Department.)

The Mason Valley Fire Protection District encompasses approximately 300 square miles of area. Over 30% of the area maintains a population of approximately 6,500 persons.

MASON VALLEY FIRE PROTECTION DISTRICT (Continued)

The City of Yerington and the township of Mason lie within the Mason Valley Fire Protection District.

The fire district operates out of one main station and a station annex adjacent to the main station. The department responded to over 500 runs in 1988, of which 396 were emergency medical calls.

PERSONNEL

At the present time the fire protection district employs the following staff in conjunction with the City of Yerington:

One (1) Chief of Operations/Administration - This position is funded 50% by the fire protection district and 50% by the City of Yerington. Principle job duties include fire suppression, emergency medical services, overall administration of department affairs including budget management, fire inspections and investigation, general maintenance. This is a full-time position.

One (1) Firefighter/EMT - This position is funded 75% by the fire protection district and 25% by the City of Yerington. Principle job duties include fire suppression, emergency medical services, general maintenance. This is a full-time position.

One (1) Secretary/Bookkeeper - This position is funded 50% by the fire protection district and 50% by the City of Yerington. Principle job duties include general office duties, reception and data processing skills. This is a part-time position.

The paid fire suppression staff is supplemented with 38 volunteer firefighters and emergency medical personnel. Their membership is governed by the by-laws of the Yerington Volunteer Fire Department, Inc.

Personnel considerations are becoming a very important concern for the Mason Valley Fire Protection District. Current employment trends and other sociological changes of the day are presenting severe manpower shortages during the hours of 8:00 AM and 5:00 PM, seven days a week. A report titled Volunteer Firefighters in the United States: A Sociological Profile of America's Bravest, written by Kenneth B. Perkins, Ph.D. points out that the current state of the fire service has become too demanding in both time and qualifications for many individuals.

PERSONNEL (Continued)

The Mason Valley Fire Protection District and the Yerington Volunteer Fire Department are not exempt from this broad statement regarding the participation of volunteers.

The Mason Valley Fire Protection District and the City of Yerington will undoubtedly be able to rely less and less on the volunteer concept and will have to augment the volunteer support with additional paid positions.

EQUIPMENT AND FACILITIES

The Mason Valley Fire Protection District maintains part ownership of one main fire station, located at 23 Pacific Street. The City of Yerington maintains an interest in the remaining one half of each building.

The Mason Valley Fire Protection District owns and maintains in its entirety the following pieces of equipment:

- 1 - 1000 GPM Ford/Starline, 1986 four-wheel drive engine
- 1 - 750 GPM American LaFrance, 1972 engine
- 1 - 3000 Gallon water tender, Chevy/YFD built 1978
- 1 - F-100 Ford utility pickup, 1974
- 1 - 1988 E-250 Type III ambulance
- 1 - 1984 E-250 Type II ambulance

The Mason Valley Fire Protection District, through joint ownership with the City of Yerington, also can include the following pieces of equipment:

- 1 - 1250 GPM FMC engine, 1987
- 1 - 1984 Chevy mini-pumper/rescue truck

The Mason Valley Fire Protection District, through an equipment loan program offered by the Nevada Division of Forestry, can include the following piece of equipment:

- 1 - 1957 Dodge/YFD built 2200 gallon water tender

STATISTICS FOR FIRE SUPPRESSION

The following represents a four year average for fire alarms responded to by the Mason Valley Fire Protection District from 1985 to 1988:

Total fire alarm (average annual alarms).....145 alarms

STATISTICS FOR FIRE SUPPRESSION (Continued)

The Mason Valley Fire Protection District sustained \$137,000.00 fire loss in 1988. The total loss for the entire area served by the fire department, i.e. City of Yerington and Mason Valley Fire Protection District was \$183,000.00. The Mason Valley Fire Protection District accounted for 74% of the total fire loss.

Total fire loss for Lyon County in 1988 was estimated at \$379,000.00

The Mason Valley Fire Protection District accounted for 37% of the total fire loss for Lyon County.

Fire Loss by District/City

Mason Valley Fire Protection District	\$138,000.00	37%
Central Lyon County Fire Protection District	120,000.00	31%
North Lyon County Fire Protection District	60,000.00	16%
City of Yerington	46,000.00	12%
Smith Valley Fire Protection District	<u>15,000.00</u>	<u>4%</u>
TOTAL	\$379,000.00	

Two civilian fatalities were reported in the Central Lyon County Fire Protection District in 1988. The Mason Valley Fire Protection District saw no fire related fatalities in 1988.

EMERGENCY MEDICAL SERVICES

The Mason Valley Fire Protection District provides emergency medical service to the residents of the fire protection district and the City of Yerington. The Mason Valley Fire Protection District is not under any legal obligation to provide emergency medical service to the City of Yerington, as per a recent State of Nevada Attorney General's opinion.

The fire protection district responds to approximately 400 emergency medical calls each year. The fire district maintains two licensed ambulances staffed to the EMT-D level of care.

The high number of emergency medical responses to senior citizen aged persons is high when compared to other fire protection district responses. Over 65% of all calls made involve persons over the age of 65.

INSURANCE RATING AND FIRE INSPECTION

The Mason Valley Fire Protection District maintains an Insurance Service Organization (ISO) rating of Class 5-7. The last rating evaluation for the protection district was in 1986. The department was combined to include the City of Yerington area and resources. This combination afforded the fire district with a lower rating than was previously achieved.

Fire inspections for the Mason Valley Fire Protection District are conducted by both volunteer and paid staff. Volunteer inspections are limited to the prefire planning of property and risk assessment. Official plan review and inspection is conducted by department staff and in accordance with the most current additions to the Uniform Building and Fire Codes. Lyon County Code requirements and those of the Nevada State Fire Marshal are also administered under the respective jurisdiction.

TRAINING

Firefighter training is administered and arranged by the volunteer fire department. The department averages 30 fire training sessions per year. The basics of firefighting are emphasized as part of the annual training. The Mason Valley Fire Protection District does provide funding for training of volunteer forces.

EMERGENCY SYSTEM ACCESS

Lyon County recently installed a county wide 911 Emergency Calling System. The Mason Valley Fire Protection District area and the City of Yerington were the only areas served by 911 service prior to the county's master system.

HAZARDOUS MATERIALS INCIDENT RESPONSE

The Mason Valley Fire Protection District does not have a recognized hazardous materials response team. The fire department will respond to hazardous material incidents for the purpose of mitigation if the incident is within their level of training. At the present time, general hazardous material response is at the basic level of training and material recognition.

GOALS, RECOMMENDATIONS AND PROPOSALS

* Personnel considerations must receive more attention in future years. The ability to recruit new volunteer firefighters is becoming a difficult task when one considers the amount of time and qualifications which are now required. The use of volunteer firefighters for this area at the present time and foreseeable future as the primary source of manpower will be extremely difficult. A blend of paid firefighters and a dedicated number of volunteers offers one possible solution. The Mason Valley Fire Protection District is progressing in that direction at a present rate of one additional paid firefighter every two or three years.

* Fire suppression equipment within the Mason Valley Fire Protection District is adequate to serve the needs of the community at the present time. Future apparatus replacement and/or additions may include a joint acquisition with the City of Yerington of a 75' aerial device (1994) and a quick attack fire pumper.

* The current location of the fire station is adequate to serve the needs of the area. Areas which may necessitate the construction of additional fire stations include the following:

1. Mason Townsite
2. The area east of Yerington on Highway 95-A
3. The area north of Yerington, i.e. Wabuska area

The location of future fire station development will also be influenced by current City of Yerington annexation plans which include the Mason Townsite and Green Acres.

* Fire department consolidation and contractual arrangement between the City of Yerington and the Mason Valley Fire Protection District must be a priority consideration. The city and fire district are currently negotiating a service contract. Under the proposed contract, the City of Yerington would contract its fire protection service and all related services out to the much larger fire protection district.

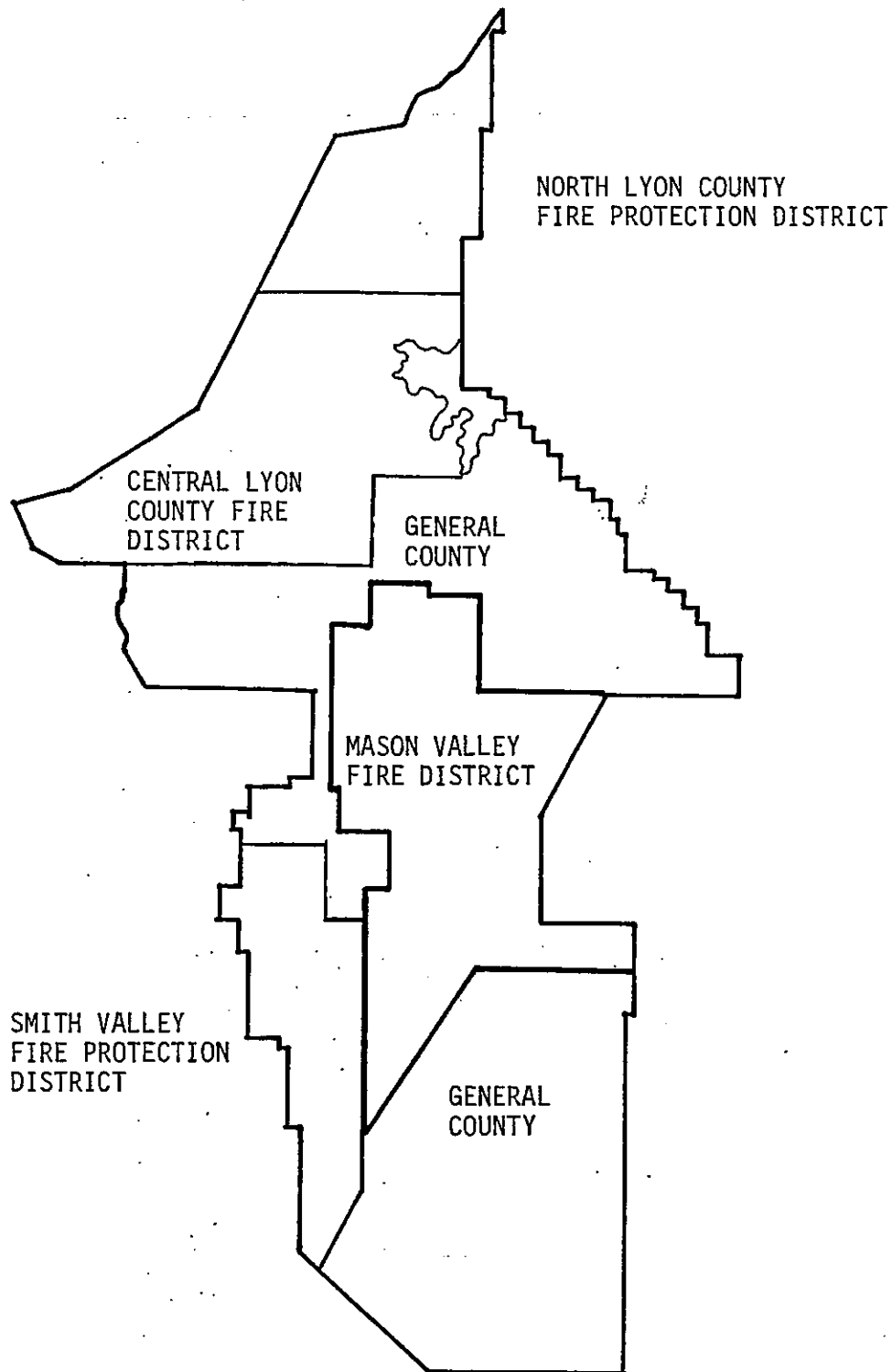
* One additional consideration which should be investigated would be a consolidated county fire department. With proper management and employed personnel, this option may be more feasible financially, however very difficult to implement politically.

GOALS, RECOMMENDATIONS AND PROPOSALS (Continued)

* Emergency Medical Services as provided by the Mason Valley Fire Protection District have undergone major changes over the past few years. The service has developed into a very progressive system. Funding for service is based on a user fee structure and enterprise fund. The Mason Valley Fire Protection District must consider the continued expansion of the system over the next five years to include the following:

1. Additional paid personnel
2. One additional (back-up) ambulance
3. Intermediate life support

* Hazardous materials response must be addressed by all Lyon County area fire districts and the City of Yerington. Additional training and equipment will be required to mitigate hazardous material incidents. A centralized equipment cache and regional teams may offer the most appropriate solution from a financial standpoint.



LYON COUNTY FIRE PROTECTION DISTRICTS

CHAPTER II -- SECTION H
RECREATION

One of the elements of the quality of life enjoyed by Lyon County residents is the diversity of recreational opportunities available to them. Recreational-oriented business opportunities provide another dimension to the County's economic base, with out-of-county visitors attending some of the attractions. Residents and visitors alike enjoy hunting, fishing, backpacking, picnicking, water sports, scenic areas, and historic sites in the County.

TOIYABE NATIONAL FOREST:

Existing recreational sites are to be managed under present standards and guidelines. Provision has been made to build 12 new recreational sites throughout the forest and remodel existing sites to accommodate a peak load of 5,515 persons at one time. The present plan provides for the construction of 100 miles of additional dispersed recreation trails and operating 100% of existing campgrounds and picnic areas at full service.

A federal forest plan covering a 50 year span calls for 135,000 acres of wildlife habitat improvement. The plan is designed to accommodate growth by increasing use from 5,167,000 wildlife and fish user-days (WFUDs) in the first period (decade) to 6,770,000 WFUDs in the fifth 10 year period.

The Lyon County plan, with respect to the Toiyabe National Forest, should continue cooperation with the USFS, insofar as possible, to keep this valuable natural resource accessible to residents and visitors. The privately owned lands along the rivers should be managed to maintain uses compatible with USFS planning for the forest.

OPEN RANGE:

Nevadans tend to utilize their off-road vehicles and the opportunities afforded by the broad stretches of open space to drive into and enjoy the remote areas. Those opportunities are certainly abundant in Lyon County. These environments are also the habitats of non-game animals and game birds. Lyon County should continue its cooperation with the Bureau of Land Management in the management of privately owned parcels adjacent to BLM lands.

WETLANDS:

Lyon County's wetlands are a significant component in the environments that provide migratory stop-overs and summer habitats along the Pacific Flyway. This brings a large number of game birds to the county annually. As is the case worldwide, these sensitive environments have been disappearing rapidly or are becoming polluted death traps for the flora and fauna dependent upon them for existence. Lyon County should continue its cooperation with the state and federal agencies responsible for the preservation of the wetlands. Again, responsible management of privately owned land adjacent to the wetlands should be high among the county's priorities.

LAHONTAN RESERVOIR AND STATE PARK

LYON COUNTY

The Bureau of Reclamation holds title to the reservoir which is Lyon County's most popular playground. A long term agreement between the Bureau of Reclamation, the Truckee-Carson Irrigation District (TCID) and the Nevada State Park System regulates the use of the reservoir and surrounding lands. The Department of Fish and Game enforces the Fish and Game Code and the State Boating law. It also manages the fish and game habitats.

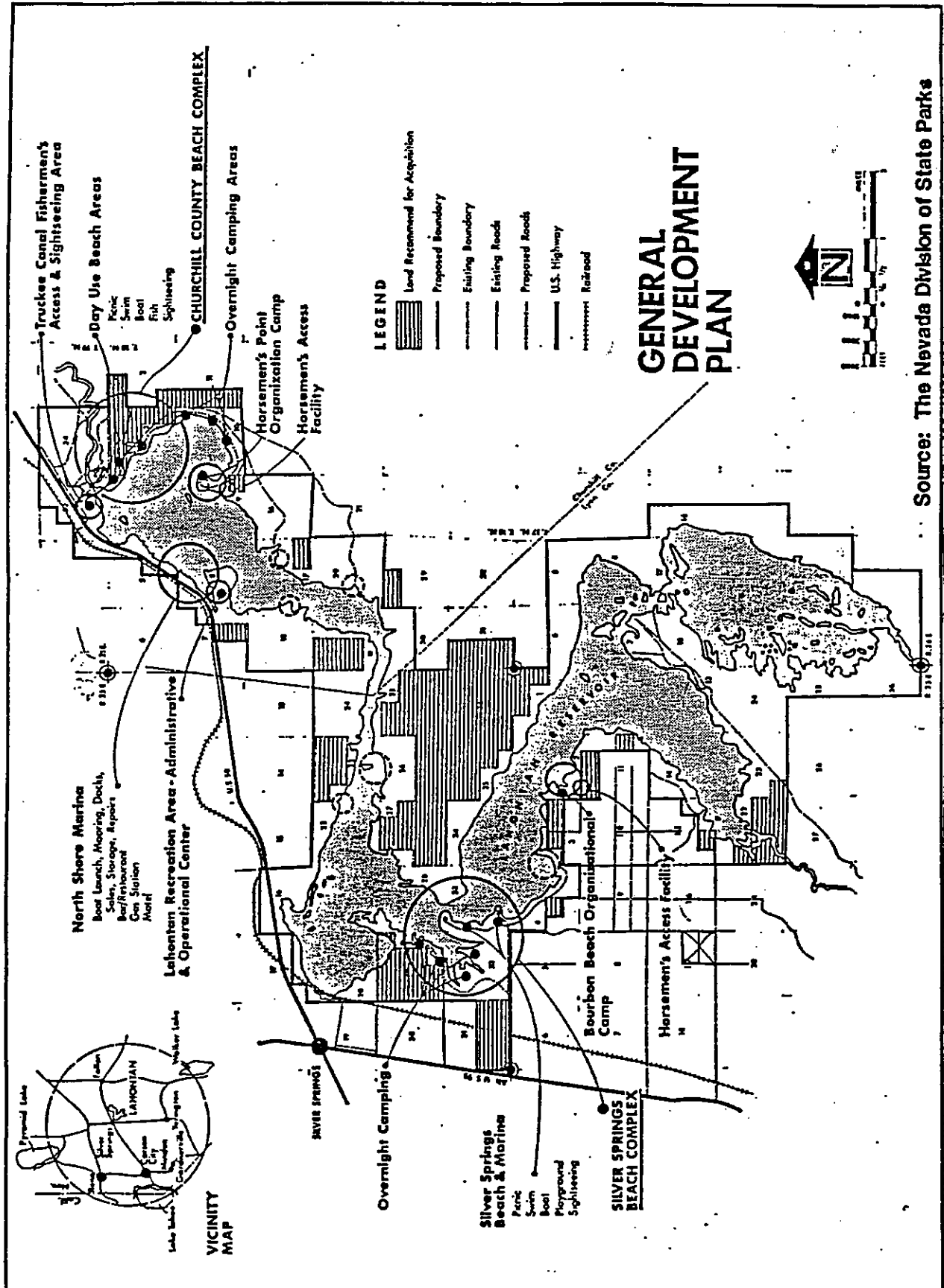
Following are drawings depicting planning done for the Nevada State Park System in 1974. The master planning for what is now a state park at Lahontan has not been made current because a stable, long term lake level has been in question. So long as the Paiute Tribe is protesting diversions from the Truckee River, the future of the reservoir is uncertain.

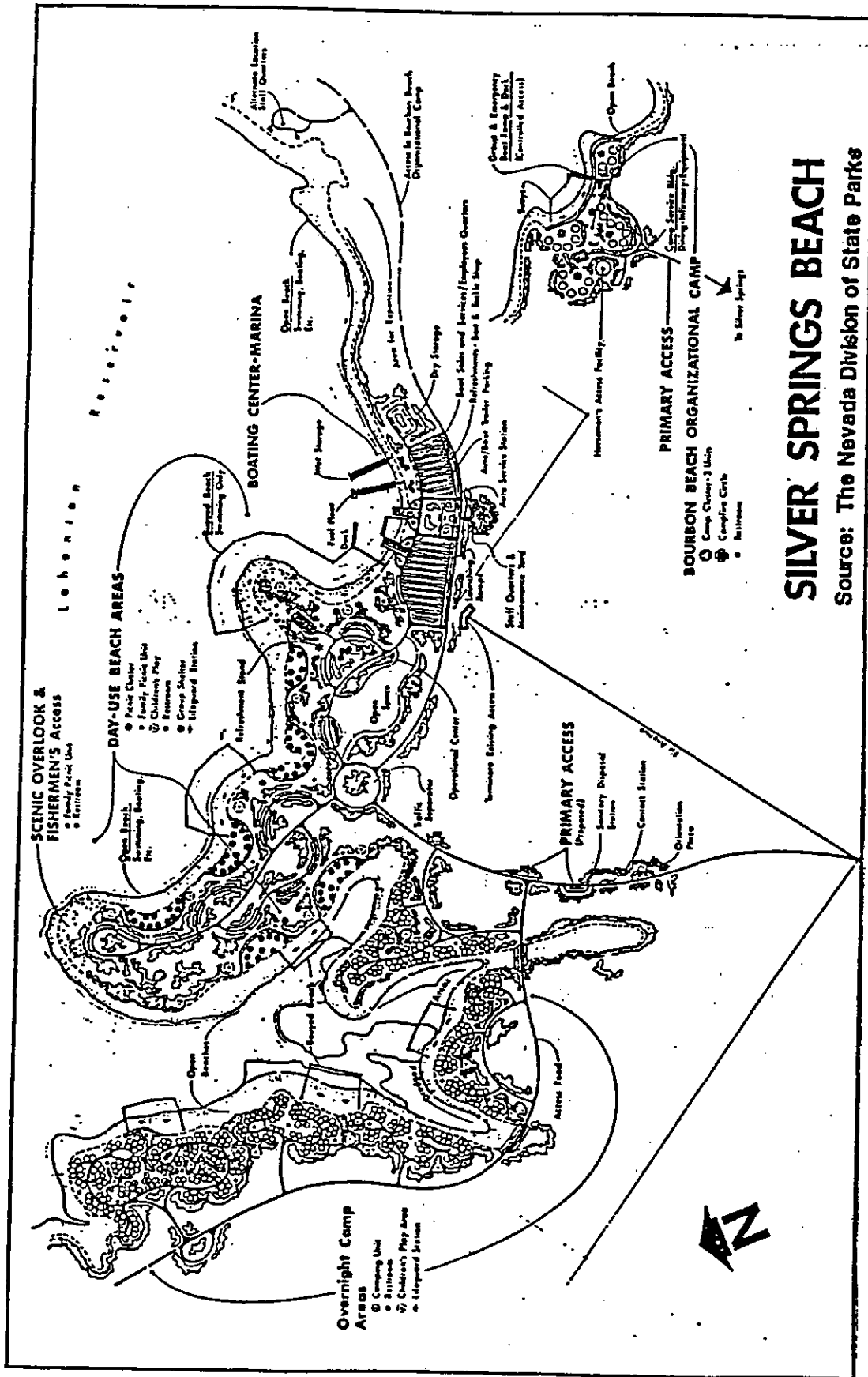
Lahontan provides boating, water skiing, fishing, camping and picnicking opportunities for visitors. Fishermen primarily catch white bass, white catfish, white crappies and bullheads. Through stocking and downstream migrants from source waters, the reservoir has developed a population of rainbow trout, brown trout, silver salmon, and kokanee salmon. Also available are large-mouthed bass, yellow-perch and channel catfish. The waters also contain crayfish and bullfrogs.

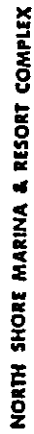
There are Great Basin Canadian geese nesting grounds on some of the islands. There are also breeding colonies of herons, egrets, pelicans, cormorants, grebes and coots among the islands. Shore birds consist of several species of sand pipers, blacknecked still and avocet, among others.

A number of raptors utilize the area for feeding and nesting. One may see a Golden Eagle, Perigrine Falcon and an occasional Bald Eagle among the cottonwood trees. Beaver, muskrat and raccoon inhabit the area near the Carson River inlet.

Under normal circumstances the level of the lake can vary as much as 60 feet. More typically the annual variation averages about 30 feet. The purpose of the reservoir is to impound spring thaw run off from both the Carson and the Truckee Rivers and even the flow to Fallon farmers.



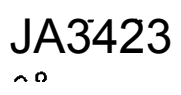




NORTH SHORE MARINA

Source: The Nevada Division of State Parks

**LAHONTAN RECREATION ADMINISTRATION
& MAINTENANCE CENTER**



LYON COUNTY

FORT CHURCHILL STATE PARK:

Fort Churchill is one of Lyon County's historic landmarks which has become the focus of a State Park. The ruins of the old Fort are being maintained in a state of arrested decay. The Samuel Buckland campground provides some sites for overnight camping and the area between the railroad tracks and the river accommodates daytime visitors.

The new master plan for the park is being completed. The following map is a "preview" of the direction that the new park plan is taking. As can be seen on the map, there is a R&PP (Recreational and Public Purpose) application pending to add more land to the park.

The new plan is structured around interpretation of the ruins as the park's primary function. As previously stated, the ruins will remain in a state of arrested decay. There will be no attempt to reconstruct them. Plans call for a visitor center complex that will provide an example of the general appearance of the original buildings.

The loop trail around the buildings will include at least one interpretive sign per building explaining the purpose, construction methods, and people who used the building. One building will be more accessible for closer inspection with a loop trail through it.

It is planned to establish a quad in the manner of the original parade grounds to not only provide visitors with a feel for the original fort, but also to accommodate black powder groups in their drills and filming sessions. There will also be a black powder shooting range with parking and a primitive group campground at the canyon mouth north of the ruins.

The Samuel Buckland campground will be improved and expanded to include hike-in and canoe camping. A new shower building will be included. The Pony Bob Haslam group area will be modified to serve tent campers and RV's when a new day-use group area is completed. Recreational facilities will provide for volleyball, horseshoes, and group barbeque.

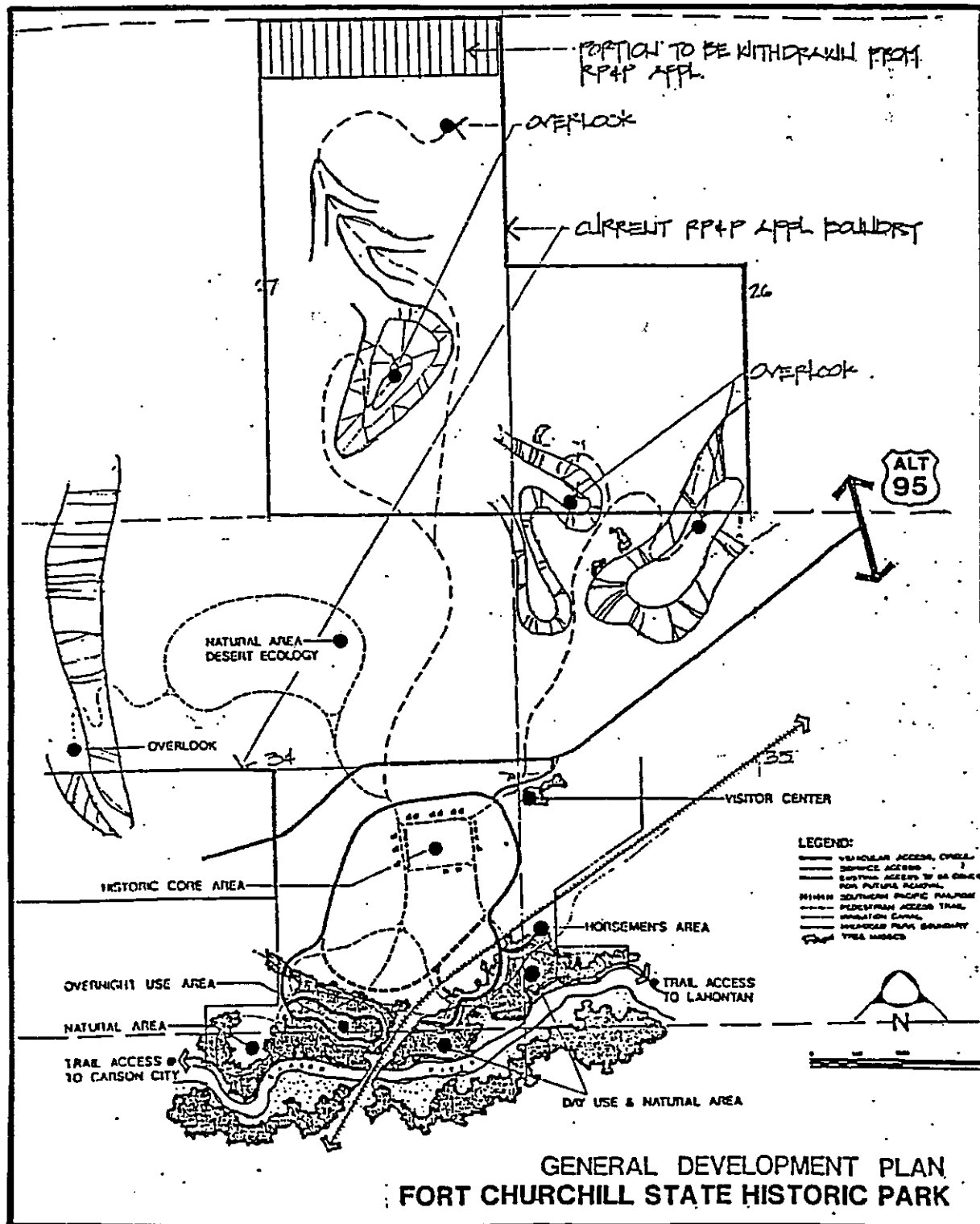
Each use area will include interpretive facilities to add to the appreciation and understanding of the Fort's historical and natural values as well as the flora and fauna of the area. The park will include a natural area for studying desert ecology.

There will be an equestrian area located where it will have the least impact on the park's ecology. It may include a horse trailer parking area with 20 parking sites, a series of tie rocks and a primitive group campground.

LYON COUNTY

The visitor center complex will be built around the existing visitor center/museum with structures designed to be in harmony with the original structures without attempting to replicate them. The arrangement of the new structures is intended, however, to simulate the arrangement of the originals. A proposed display shelter is intended to encompass the existing comfort station and shop and provide shelter for some of the larger artifacts.

The Nevada Division of State Parks is interested in cooperating with the current owners of Buckland's Station, currently known as Weeks. The structure (Buckland's House or Towle House) stands on the Buckland ranch where Samuel Buckland established a trading post and immigrant station. Twelve miles east is the Hooten Wells Pony Express Station which should be protected.



Source: The Nevada Division of State Parks

DAYTON STATE PARK:

The recommended development for Dayton State Park centers on two distinct areas - the Rock Point Mill site and the Carson River flood plain. The following map delineates the aspirations for the park.

The Rock Point Mill site in the upper park portion will have parking and comfort facilities in conjunction with a major interpretive display at the beginning of a self-guided walking tour of the ruins. The plan recommends that the 20 acre Rock Point Mill site be included in the Comstock Historic District.

Other plans for the upper park include an equestrian station located along the old Pony Express Trail. The hope is to utilize the Pony Express Trail to provide a riding connection between Virginia City and Fort Churchill. The site will also provide other facilities for limited day-use.

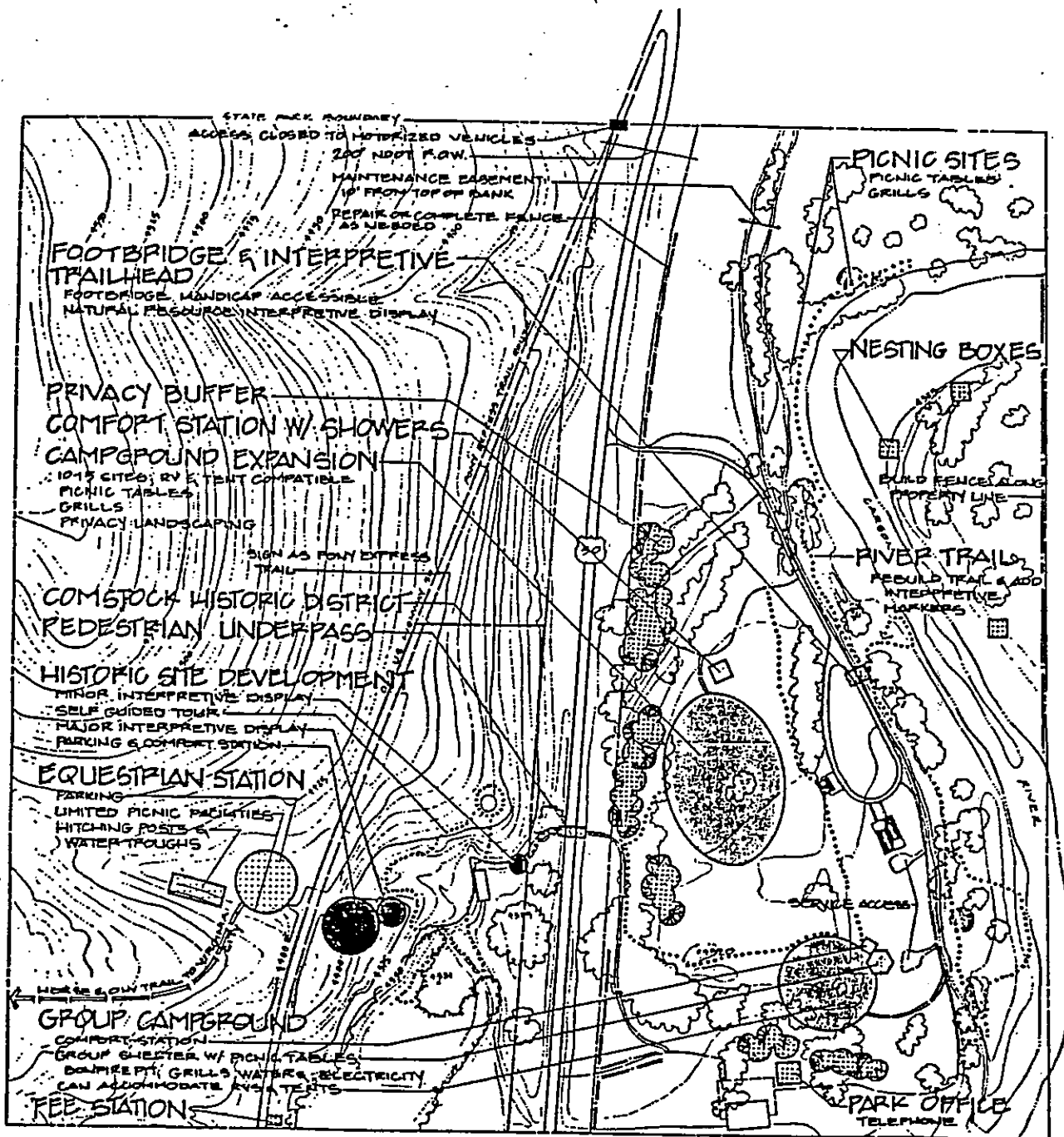
An underpass will connect the upper park and the lower park for both vehicular and pedestrian traffic.

Plans for the lower park call for a second campground loop, increasing available spaces from 10 to 20 or 25. The units will include a parking/RV space, tent pad, table, barbeque grill or fire ring, and landscaping or shade structures. All sites will be buffered from Highway 50 by a dense planting of trees.

A group camp facility will accommodate up to 15 RVs or tents. Besides the individual campsites there will be a group shelter and bonfire ring. The shelter will provide a sink, 110V outlets, tables and grills. There will be a comfort station nearby.

Family picnic sites will be increased. An additional foot bridge across Cardelli Ditch will be provided for more access. The foot bridge and several picnic sites will be accessible to wheelchairs.

The river trail will be rebuilt with an interpretive kiosk at the trailhead and signs along the way. Occasional benches will accommodate the limited hikers and occasional spurs in the trail will allow others access to the river.



LEGEND:

- Historic
- Camping/Picnicking
- Equestrian
- Miscellaneous
- Access: Foot Trails, Roads

RECOMMENDED PLAN

DAYTON STATE PARK DEVELOPMENT PLAN

SCALE

0 100' 200' 400' 600'



1987

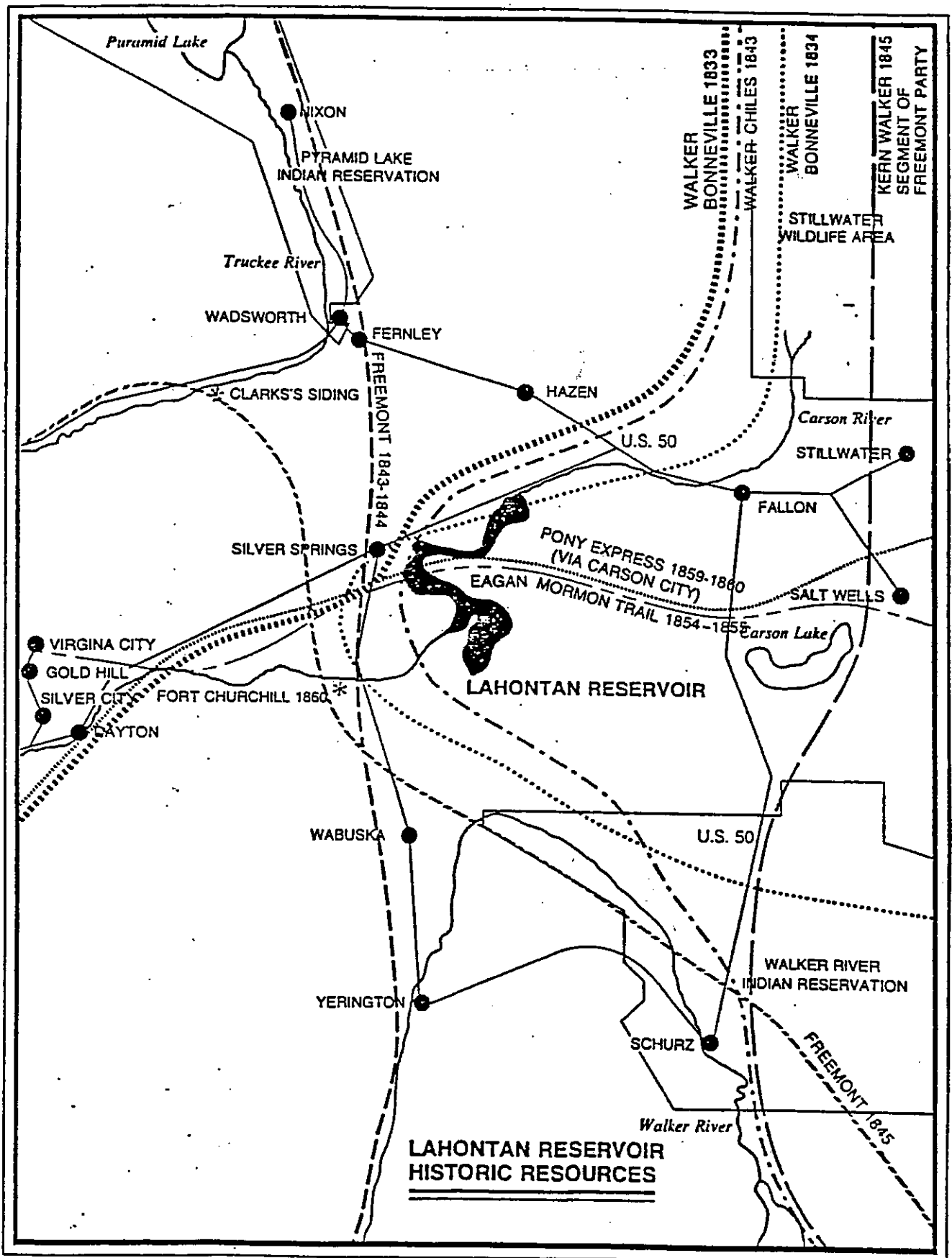
An Element of the Nevada State Park System Plan

Source: The Nevada Division of State Parks

OTHER CULTURAL RESOURCES:

The northern portion of the county is rich with historical sites and artifacts. The Lahontan Reservoir area has many immigrant trails and explorer routes. In addition to the obvious historic ruins of Fort Churchill and Rock Point Mill, there are Pony Express Station sites, Buckland Station, and a number of Comstock related sites. Most of the old town area of Dayton and all of Silver City lie within the Comstock Historic District.

Many residents of both Dayton and Silver City have expressed a desire for interpretive centers in these locations. While the county is in no position to fund those undertakings, it should be stated in this plan that the value of the County's heritage is recognized and officials support citizens' efforts to achieve greater tourist interest in the sites. Not only do these sites contribute to the sense of importance of the residents, but they have a potential for increasing the tourism economy if handled with sensitivity.



Source: The Nevada Division of State Parks

LYON COUNTY

COUNTY AND COMMUNITY PARKS:

Lyon County has a number of community parks that are largely the products of local volunteers who have taken the initiative to create places to play. While the county provides abundant opportunities for hunting, fishing, camping, picnicking and boating, places to get a group together for a Sunday afternoon softball game or a neighborhood volleyball game are sparse. Community parks in Lyon County (exclusive of the City of Yerington) are:

1. Fernley In-Town Park (Desert Park)
2. Fernley Out-of-Town Park
3. Green Valley Estates (planned)
4. Community park on BLM land near Fernley (planned)
5. Silver Springs Penny Park
6. Silver Springs / Stagecoach Community Park
7. Dayton River Road Park
8. Dayton School Park
9. Silver City Community Park
10. Smith Valley's Dressler Park
11. Stagecoach Park
12. Mason Community Park
13. Mound House community park (planned)

In addition is the Highway 339 Road Side Rest south of Yerington, Mason Valley's Swimming Pool and Park and Littel Street Park, located in the City of Yerington. Lyon County also has a well developed County Fair Grounds. Fernley has recently formed a municipal swimming pool district, which will add to summer fun opportunities. Also available for public use is the Pine Grove area south of Yerington, the East and West Walker Rivers, the Carson River, and other opportunities for fishing, camping, hiking, and exploring throughout the county.

CHAPTER II -- SECTION I
TRANSPORTATION

A. TRANSPORTATION

The projections of the Nevada Department of Transportation indicate that, for the most part, the national, state and county roadway network in Lyon County is sufficient to serve growing demands for years to come.

A significant exception is Highway 50 from Carson City to Silver Springs - particularly the stretch west of Dayton. That stretch will receive the attention of NDOT soon by way of widening the highway to four lanes. The county is pressing the issue of the dangers to drivers and pedestrians alike at intersections of Highway 50 with Dayton's streets and along Highway 50 East through Mark Twain and Stagecoach to Silver Springs. A traffic light has been recently placed in downtown Dayton on Highway 50 to aid traffic flow to and from the elementary and high school area.

Another area of concern has been the intersection and overpass connecting Fernley's eastern Interstate 80 interchange with Alternate 95 to Fallon. That situation is now under construction scheduled for completion by the winter of 1989.

Continued maintenance is the primary problem so far as the State's roadway network is concerned. Much of Alternate 95 between Wabuska and Silver Springs was virtually rebuilt in 1988. The Smith Valley Road and the Sweetwater Road were chip sealed. Walker River bridges south of Yerington have been totally rebuilt this past year.

As growth progresses, the recurring request for consideration of a more direct link between Dayton and Yerington will certainly become stronger.

BUS SERVICE:

Lyon County is currently served by LTR Bus Lines with stops at Fernley and Yerington. The service is insufficient to provide commuter service for those working out of the county. The Nevada Department of Transportation's planning recommendation for transit establishes a minimum of the following standards:

- * Elderly and Handicapped Paratransit - At least one vehicle operational in any community with a population of 1,000 or more.
- * Urban Transit Systems in any community over 30,000 population. At least one taxicab in any community with 5,000 or more.
- * Intercity Transit in Three Categories:
 1. Daily roundtrip service connecting all county seats and communities of 5,000 or more.
 2. Twice weekly roundtrip service for communities of 2,000 to 5,000 population.
 3. Commuter transportation for Carson City - Reno - Stateline - Minden.

LYON COUNTY

Periodically, Nevada legislators are presented with a plan to provide commuter transit service in a loop that includes Carson City, Reno, Fernley, Silver Springs, and Dayton. As bedroom community populations increase in Lyon County, that service seems more and more desirable.

There are numerous possibilities for transit systems. Some are simply not viable in Lyon County at the present. This could change as the population grows in the county. Currently the primary transit systems are the Las Vegas-Tonopah-Reno (LTR) Stage Line and Sierra Nevada State Lines for bus service and van service as provided by Urban Mass Transit Administration (UMTA) grants for elderly and handicapped and operated by local organizations around the county.

Las Vegas Tonopah Reno Stage Line

This private bus service leaves Reno for Fernley, Silver Springs (flag stop), Yerington and on down to Las Vegas via Tonopah. It returns the opposite way. Currently the service is not very convenient to the county since it goes through in the evening to the south and early morning to the north.

Sierra Nevada Stage Lines

This private bus service with some subsidy travels on Mondays and Fridays from Reno to Ely via Fernley and returns the opposite way. It also makes two round trips a day to Fallon from Reno via Fernley.

Elderly and Handicapped Vehicles

The federal government provides matching grants up to 80% of capital acquisitions for primarily vans to provide local transportation for elderly and handicapped residents. Most of the transportation is used to transport people for meals, shopping, medical, and related needs. Currently Fernley has five vehicles and Yerington has three. Some of the vehicles travel to other communities. The Nevada Department of Transportation administers the program locally.

B. STREETS AND HIGHWAYS

Establishing and maintaining an adequate roadway system is one of the most important factors in the overall planned development of Lyon County. Nearly all commercial, recreational, educational, and residential activities depend upon safe and efficient roads and highways.

There are currently a variety of roadway types within the county, ranging from paved high speed interstate highways to unpaved, poorly drained rural collectors. Ownership and maintenance responsibility is shared between the City of Yerington, the County, the Nevada Department of Transportation (NDOT), and the Bureau of Land Management (BLM). The roads covered by this policy plan include all of the roads except Interstate 80, located on the north boundary of the county, and the city roads maintained by Yerington.

Between 1985 and 1987, several assessments of the county roadway system were prepared by the Lyon County Road Department and the Nevada Department of Transportation. Over 974 miles of roadways

LYON COUNTY

were identified within Lyon County boundaries, with about 450 miles maintained by the Lyon County Road Department. Lyon County maintains about 131 miles of paved roadways and 319 miles of gravelled or unsurfaced roads. A breakdown by surface type was presented in the "Road System Report", prepared by the Lyon County Road Department, in December 1985. Lyon County maintains about 131 miles of paved roadways and 319 miles of gravelled or unsurfaced roads.

The county-maintained road system functions reasonably well with limited maintenance since weather and traffic conditions are not severe. Additionally, Lyon County relies on federally assisted construction and maintenance administered by the Nevada Department of Transportation. Through an annual review process as well as project specific requests, Lyon County is able to provide input to the NDOT short range and intermediate range plans. Federal assistance is offered under a variety of funding options. There are about 218 miles of asphalt paved roads and highways maintained by NDOT.

The following roadway functional classifications coincide with the national standards of the American Association of State Highway and Transportation Officials (AASHTO). The nine functional classifications listed are defined in terms of purpose, right-of-way width, access control, and speed. These characteristics are "typical" as variations will occur depending on terrain, urban versus rural locations, abutting land uses, and other factors.

Freeway. Freeways are intended to move large volumes of traffic at high speeds through and between urban centers. No direct access to abutting properties is permitted, and all intersections are grade-separated. The only portion of freeway is I-80 near Fernley.

Expressway. Expressways are divided major arterials for through traffic with full or partial control of access and generally with grade-separation at major intersections. No facility in Lyon County currently falls within this classification.

Major Arterial. Major arterials provide a means to move large volumes of traffic between areas of the county at moderate speed. Access is limited by design, such as backing properties to the right-of-way. Access points are at a minimum of one-quarter mile spacings. Acceleration and deceleration lanes may be used at access points. Most state and federal highways in Lyon County are in this category.

Minor Arterial. Minor arterials move lesser volumes (compared to major arterials) of through and local traffic at moderate speeds. Although the number of access points is generally limited, in older neighborhoods minor arterials serve a secondary purpose of providing access to abutting properties when no reasonable alternative access is available. Major intersections are signal controlled and exclusive turn lanes are often used.

Urban Collector. Collectors link neighborhood areas with the arterial street network and provide access to abutting properties.

Scenic Collector. The scenic corridor functional classification is a special category which gives neighborhood visual impacts the same importance for design purposes as the movement of traffic. Scenic corridors are a relatively new facility type. No roadways in Lyon County currently fall within this category.

LYON COUNTY

Rural Collector. Rural collectors generally satisfy travel within outlying, less intensely developed portions of the county. Predominant travel distances are shorter than on arterial routes, and the design and construction standards reflect the rural character of the facility.

Local Street. Local streets serve the sole purpose of providing access to abutting properties.

Emergency Access Route. Emergency routes are roadways designed specifically to provide alternate ingress and egress in the event of emergencies.

Measuring Level of Service

The criteria used to determine the level of service on streets and highways is a comparison between the actual volume and the maximum capacity measured in vehicles per lane per hour or as a 14-hour volume.

The four levels of service are classified as "A" to "D". Service level "A" is the highest quality of service with free flow of traffic and very little or no restriction of speed. Service level "D" is a forced flow condition where speeds may, for a short time, drop to zero. Service level "C" is considered to be an acceptable level of service under normal operating conditions. The accepted "C" level of service (LOS) for each type of facility is shown in table below. Generally, the roadways in Lyon County deliver levels of service "A" and "B", however, potential problem areas exist on U.S. 50 between Carson City and Dayton.

LEVEL OF SERVICE (LOS) BY FACILITY TYPE

Facility	LOS "C"	
	Volume/Lane/Hour	Volume/Facility/24 hours
4-Lane Major Arterial	1,100	28,000
4-Lane Minor Arterial	800	25,000
2-Lane Collector	600	12,500
2-Lane Local Street	500	10,000

In addition to evaluating the roadway serviceability on the basis of geometry and traffic loading, it is important to rate each road on the basis of its structural type and integrity. This can be accomplished by a variety of methods ranging from a simple listing of roads and surfacing types to a computerized model of the roadway network using a state-of-the-art pavement management system. The benefit of the more complex costs far enough in advance and in accordance with an accepted management program would ensure that each dollar is used where it will ultimately do the most good.

Based on the street capacities, the level of service, and the existing condition of the street, it is possible to identify and prioritize deficiencies and projected needs for the current roadway system. The Lyon County Road Department and the Nevada Department of Transportation can then undertake transportation improvement programs with short, intermediate, and long-range objectives for the necessary action to correct the deficiencies. The corrective actions may require a multi-year time frame for completion and necessitate reviewing population and land use projections to predict future system deficiencies.

Based on a review of historic traffic counts prepared by the Nevada Department of Transportation, and the population projections presented elsewhere in this document, it appears probable that the following will occur:

- o Traffic loads will increase at approximately the same rate and in the same geographic areas as the mid-range population forecasts (i.e., six percent in North Lyon County, two to three percent in South Lyon County, annually).
- o The rate of traffic growth during the next 10 to 20 years will be roughly equivalent to the rate of traffic growth during the past 10 years. This rate has accounted for an increase of over 60 percent in traffic flow in the Fernley, Dayton, and Silver Springs areas; and about 30 percent in the Yerington, Mason Valley, and Smith Valley areas.

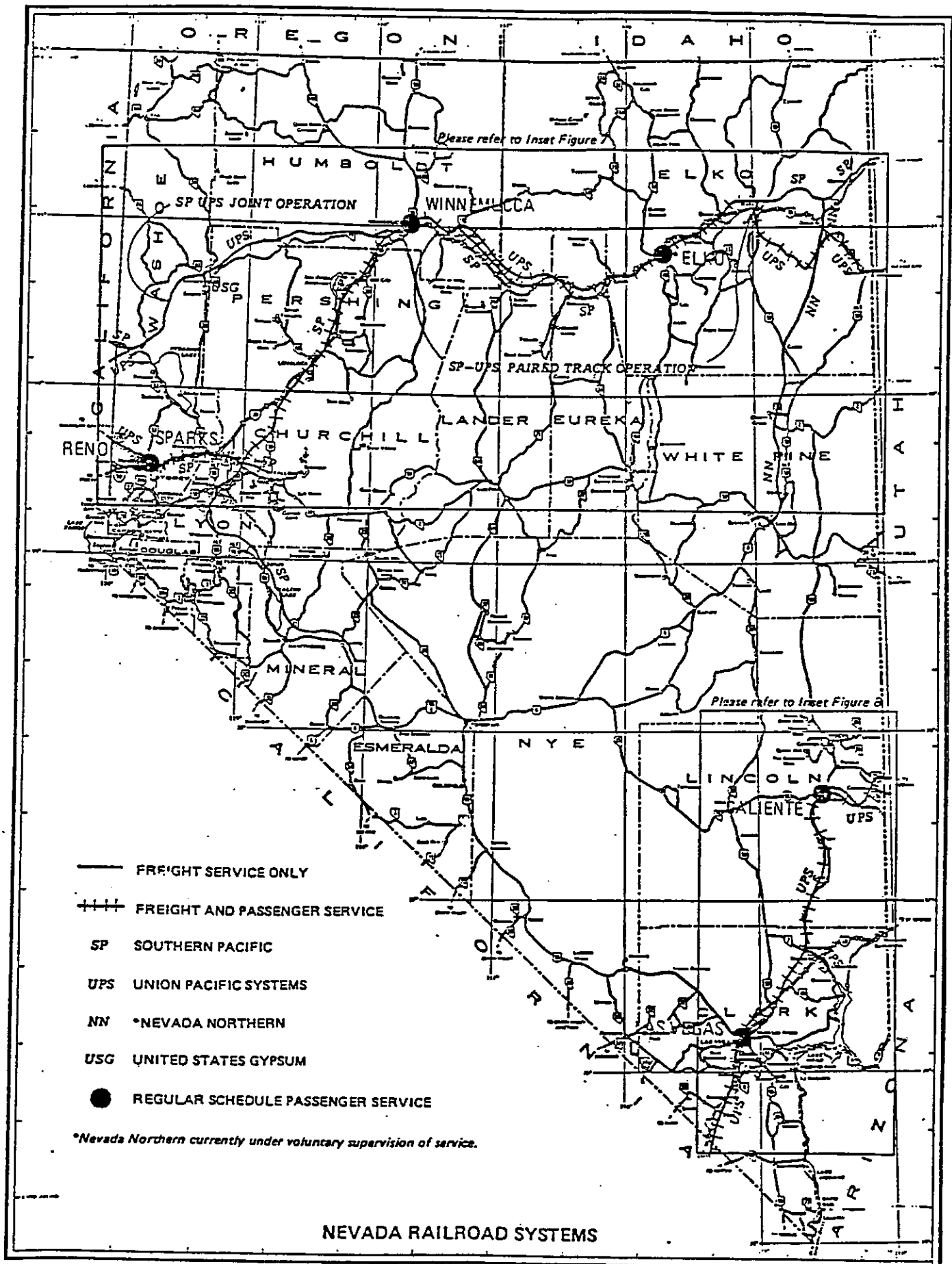
C. RAILROAD

Rail transportation in Lyon County has been in a distressed state for some time. Other than the main line of Southern Pacific cutting across the northern tip of the county, the only rail line left is Southern Pacific's Mina branch line. Freight handling on that line is insufficient to cover operating and maintenance costs.

Several problems plague the railroad. The condition of the trackage is deteriorating rapidly. The 130 miles of the line between Hazen and Mina is classified FRA Class 1 and Class 2, which is to say that rails over most of the length are too light to carry 100 ton cars and lie on inferior ties and ballast. Current weight restrictions are Hazen to Wabuska - 281,000 pounds and Wabuska to Mina - 263,000 pounds. The line has 6 public crossings with flashers and gates, 35 public at-grade crossings and 25 private crossings. Rail conditions allow speeds up to 25 miles per hour on a portion of the line, but much of the route is held below 10 mph because of curves and track conditions.

In addition to the track condition, Southern Pacific is dealing with litigation by the Walker River Paiute Tribe for illegal passage through their reservation. The tribe is considering an offer to own and operate the Mina branch line in settlement. Private operation of the line could reduce overhead and improve operational efficiencies considerably under proper management.

Were the line to be abandoned, mining operations would have to resort to trucks to haul raw ore to processors. At least one manufacturer would have to relocate, taking in excess of two million dollars gross revenue and a significant number of jobs out of the county. Lyon County officials should continue to do what they can to keep the rail line from being abandoned.



Source: Nevada Department of Transportation

JA3437

An existing spur of the Southern Pacific extends from the north through Lyon County to Mina on the south.

According to the Nevada Rail Plan 1987 update by the Nevada Department of Transportation, litigation by the Walker River Indian Tribe claimed, and was subsequently upheld by the Supreme Court, that the railroad right-of-way through the reservation was operated without proper authorization from Congress. The litigation is being settled, but the results are not known.

The railroad is still in limited operation but, as the study indicates, is in need of repair. The rail users according to the study are: one in Silver Springs, two in Wabuska, and two in Yerington, in addition to the users in Mineral County to the south. The NDOT report states, "as mentioned without investment, this line beyond Wabuska is expected to lose direct rail service". The state estimated a cost of about \$400,000.00 to rehabilitate the track structure on the Mina line from the south of Wabuska to Schurz and south of Thorne to Mina. Federal matching funds may be available if state and local contributions are raised.

D. AIRPORTS

Lyon County now has four public use airports: Yerington Municipal, Silver Springs (formerly known as "Lahontan"), Farias Wheel at Wellington, and the new strip of John Lawrence (Nevada) Inc., commonly known as the Dayton Valley Airport, at Dayton. Yerington Municipal and the Silver Springs Airport are listed in the National Airport System Plan.

The following forecasts for Lyon County airports were published by the Nevada Department of Transportation in their 1987 Airport System Plan, Technical Supplement:

Associated City: Silver Springs
Airport Name: Silver Springs
Planning Region: LV Airfield Design Criteria: State Emergency
 13113.4
Annual GA Operations per Based Aircraft: 33
Percentage Itinerant GA Operations: Est. 0
Annual Airfield Capacity: 100,000

FORECAST

Based GA Aircraft	Annual Operations				Passenger Enplanements
	GA	Air Carrier	Commuter	Total	
1985	3	0	0	100	0
1990	3	0	0	100	0
2000	4	0	0	100	0

Airfield Development Needs					
1985	10				
1990	10				
2000	10				

Comments:
 Recent name change from "Lehonton"
 Public Use Airport
 NABP: No

Associated City: Yerington
Airport Name: Yerington Muni
Planning Region: LV Airfield Design Criteria: Basic Utility
 13163
Annual GA Operations per Based Aircraft: 384
Percentage Itinerant GA Operations: .31
Annual Airfield Capacity: 153,000

FORECAST

Based GA Aircraft	Annual Operations				Passenger Enplanements
	GA	Air Carrier	Commuter	Total	
1985	26	10,000	0	0	10,000
1990	26	12,000	0	0	12,000
2000	34	15,000	0	0	15,000

Airfield Development Needs					
1985	\$333,000	Taxiway, VASI, Rail			
1990	10				
2000	10				

Comments:
 Public Use Airport
 NABP: Yes

Associated City: Wellington
Airport Name: Farlee Wheel
Planning Region: CV Airfield Design Criteria: N/A
 13159.51
Annual GA Operations per Based Aircraft: 227
Percentage Itinerant GA Operations: 10
Annual Airfield Capacity: Unknown

FORECAST

Based GA Aircraft	Annual Operations				Passenger Enplanements
	GA	Air Carrier	Commuter	Total	
1985	11	2,500	0	0	2,500
1990	12	2,500	0	0	2,500
2000	14	3,000	0	0	3,000

Airfield Development Needs					
1985	10				
1990	10				
2000	10				

Comments:
 Public Use Airport

JA3439

Much of the following information was obtained from the Nevada Airport System Plan Technical Supplement (NDOT - 1987).

The Fernley Airport is, according to NDOT, a dirt strip, not very long, and not listed as an official 'public use' airport.

The Silver Springs Airport had, in 1985, an annual estimated general aviation operation of 33.

The Yerington Municipal Airport had recent taxiway improvements and is in generally good condition. It had 26 based aircraft in 1985, and an annual estimated general aviation operations per based aircraft of 384.

The Farias Wheel Airport near Wellington was initially conceived as a residential airport park something like Cameron Park near Placerville in California. In 1985, it had eleven based aircraft for 227 estimated general aviation operations.

The new airport near Dayton is being developed by John Lawrence (Nevada), Inc. Its 5400 foot length is projected to be extended to 7000 feet. It has been designed as part of the comprehensive development plan that locates residential units to the north and industrial developments to the south. It is not yet included in the Nevada Airport System Plan, but likely will be included in future plans.

Nearness to Reno-Cannon International Airport and limited population within the county eliminates the need for commercial passenger service throughout the County. Airports for private, commercial, and transportation, however, are an integral part of the total transportation system.

CHAPTER II -- SECTION J
SEISMIC

LYON COUNTY

DATA AND BACKGROUND

Fernley/Silver Springs/Stagecoach Area

The northern portion of Lyon County is almost totally free of recognized seismic activity. Almost no faulting has been mapped in the Fernley/Silver Springs/Stagecoach area. The area occasionally experiences tremors which are centered some 50 miles east of Fallon in an area which has been seismically active in recent years. No epicenters have been recorded in this area since seismographic records have been maintained.

Dayton/Mound House/Silver City Area

Some seismic activity has been recognized in this area, which immediately adjoins Carson City (Eagle Valley) where extensive faulting has been mapped and thermal springs have been developed. Seismologists generally classify faulting in this area as ancient (more than 1.5 million years old). This area occasionally experiences tremors which are centered east of Fallon. The adjoining Eagle Valley faulting is not believed to be geologically recent. No epicenters have been recorded in this area since seismographic records have been maintained.

Mason Valley/Smith Valley/Southern Lyon County

Southern Lyon County has more recognized seismic activity than the northern and western areas. Most of the faulting in this area is geologically ancient, although a few fault zones are much less than 1.5 million years old. Extensive geologically recent faulting is found just across the line in Douglas County, west of Smith Valley. There is continuing geothermal activity at the north end of Mason Valley in the Wabuska area, and at the north end of Smith Valley adjacent to the Pine Nut Range. Most of the fault zones in southern Lyon County are range-front faults. Like the rest of Lyon County, the area occasionally experiences tremors which are centered east of Fallon. No epicenters have been recorded in this area since seismographic records have been maintained.

Lyon County Generally

Lyon County is classified as Seismic Zone 3, a classification which includes most of the land on and adjacent to the eastern slopes of the Sierra Nevada.

The foregoing data is derived primarily from a geologic map of Nevada compiled by John H. Stewart and John E. Carson, and data compiled by G.F. Hayes and J.G. Moore. An accompanying seismic constraint map illustrates the data.

DISCUSSION OF SEISMIC IMPLICATIONS

The presence of known faulting in the western and southern portions of the County suggests prudence in the selection of building sites and construction types. Current county building codes are predicated upon requirements for Zone 3 design. Zone 3 requirements appear to be adequate to protect Lyon County residents to the extent that seismic activity can be predicted and guarded against.

The presence of geothermal waters in Lyon County is a potential benefit; geothermal energy could become a significant energy source. Industry has attempted to use Lyon County geothermal resources, but truly effective utilization has not been achieved. More modern, state-of-the-art practices may yet make it possible to establish continuing beneficial use of Lyon County's geothermal waters. At worst, hot springs within the county may again be utilized for recreational purposes, as they have been used from time to time during the past century. (Also see Geothermal Resources in Chapter II -- Section B)

CHAPTER II -- SECTION K
SOLID WASTE MANAGEMENT

STATUS OF FACILITIES - 1989.

Lyon County operates four public landfill sites. The four sites serve all of the unincorporated area of Lyon County. Additionally, the Mason Valley landfill is used by residents of the incorporated City of Yerington. Three landfills are Class I facilities, meaning that an attendant is present when the landfills are open for business. The fourth landfill is a Class III (unmanned) facility. Landfill locations are:

1. Dayton-Moundhouse. Class I.
2. Fernley-Silver Springs. Class I.
3. Mason Valley (Yerington). Class I.
4. Smith Valley. Class III.

The three Class I landfills are open five days per week, and closed Tuesdays and Wednesdays. Although considered as "manned" landfills, the attendants generally function as heavy equipment operators covering refuse rather than as guards or intake inspectors.

The Dayton-Moundhouse landfill is located in an abandoned open pit mine which has been deeded to Lyon County. The other three landfills are located on federally-owned land leased from the Bureau of Land Management.

The estimated usable lives of the landfills varies greatly, from perhaps 5 years at Mason Valley (Yerington) to 20 years or more at Dayton-Moundhouse at current rates of usage. Rapid population growth in the Fernley and Dayton Corridor areas could sharply reduce the usable lives of the Dayton-Moundhouse and Fernley-Silver Springs landfills. Usable life of the landfills correlates directly with the population utilizing the facilities.

The Dayton-Moundhouse landfill is particularly subjected to usage by persons who are not residents of Lyon County because of its proximity to Carson City. Lyon County has attempted to control landfill usage by issuing windshield stickers to county residents. Since the county has not posted guards at the various sites, and without some sort of inspection at the point of entry, it is relatively simple for nonresidents to use the Lyon County landfills. The lack of control at the Dayton-Moundhouse landfill could greatly reduce the usable life of that facility for Lyon County residents.

The landfills as of 1989 are operated by the Lyon County Road Department. Part of the overhead cost of landfill operations does not appear in the landfill budget, but is absorbed in other sections of the road department budget. Actual cost of landfill operations is estimated at \$530,000.00. Lyon County obtains no revenue from landfill operations, which are utilized by private and commercial entities, including the City of Yerington collection franchisee, at no charge.

STATUS OF SERVICES - 1989.

Prior to 1989 three different companies held franchises to provide garbage collection service in different areas of Lyon County. With all three franchises terminating early in 1989, the County sought proposals for future service on a countywide basis, as well as for the several areas. After lengthy reviews and negotiations the Board of County Commissioners awarded a franchise for garbage collection throughout the county (excluding the City of Yerington) to a subsidiary of Reno Disposal which previously had held a franchise for the Fernley area. The new franchisee promptly subcontracted with the holder of the City of Yerington franchise, who also had provided service to a small unincorporated area, to provide service in Mason Valley and Smith Valley. The franchisee pays a small franchise fee to Lyon County.

The franchisee presently utilizes the landfills operated by Lyon County, but the franchise authorizes Lyon County to require the franchisee to establish a landfill in Lyon County for its own use. At mid-1989 the franchisee was investigating potential landfill sites, but Lyon County had not given notice to the franchise holder to establish its own facility.

The county-wide franchise does not require residential or commercial garbage generators to use the franchisee's collection services. Generators who choose to do so may haul their garbage and dump at the landfills at no charge.

IDENTIFIABLE PRESENT AND FUTURE PROBLEMS.

Limited Useful Life of Mason Valley (Yerington) Landfill.

Estimates of the useful life of the Mason Valley (Yerington) landfill vary from 3 to 10 years, with an estimate of 5 years apparently the most accepted. Accurately estimating the usable life of this landfill is particularly difficult because the facility is situated on rough terrain and in a flood zone, realistically a very poor site for a landfill. Whatever the remaining useful life, the Mason Valley (Yerington) landfill does not represent a long-term solution to the solid waste disposal requirements of the Mason Valley area.

The Mason Valley landfill serves a peculiar need for area ranchers and farmers as a dumpsite for dead animals and spoiled agricultural products.

BLM Will Not Lease Additional Landfill Sites.

Three of Lyon County's landfills are located on land leased from the federal Bureau of Land Management. Because of the liability which attaches to landfill sites, the BLM no longer will lease landfill sites to local governments. At one point during 1989 federal regulations required local governments to purchase landfill sites from the BLM at fair market value. The regulations are to be amended to permit purchase for "recreation/public purposes" at less than fair market value. Upon taking title to a landfill site a local government becomes responsible in perpetuity for the proper use and care of that site.

LYON COUNTY

Lyon County could obtain new or additional landfill sites on federal land by accepting title and the responsibility of perpetual care of such sites.

Lyon County Presently Liable for Improper Dumping.

Federal and state environmental regulations presently forbid disposal of numerous substances in landfills. The prohibited substances include many which are classified as hazardous wastes or hazardous materials, petroleum wastes and similar wastes. Lyon County is responsible under federal law for the cleanup of any prohibited wastes.

If Lyon County is to operate its existing landfills in a lawful manner, and without incurring unacceptable liability for cleanup of prohibited materials, it must control landfill access. Proper control would include complete fencing of the landfill sites and placing of guards at landfill entrances. The cost of such a program would more than double the present landfill budget.

More Stringent Federal Regulations Due in 1991.

Federal environmental agencies have published draft regulations which are scheduled to take effect in 1991. If the regulations as finally adopted are similar to the draft version, the new rules will have a major, costly effect on Lyon County.

Increased cost of landfill closures. Under existing regulations Lyon County is responsible for long-term care of its landfill facilities; however, if existing landfills are closed prior to 1991, the cost of closure will be substantially less. Basically, unless a specific problem is identified which must be cleaned up, a landfill can be closed without great cost. After 1991 requirements for monitoring wells and other closure mandates will greatly increase the cost of closure.

Increased cost of landfill operations. After 1991 it will be impossible for Lyon County to operate landfills without the fencing and guards which it should have in place now to minimize its liability. The cost of fencing and guards will be great, but the draft regulations include an even more costly requirement for installation of liners under all new dump areas. The liners must be impermeable to liquids. Cost of the liners is estimated at \$100,000.00 per acre, four million dollars for a 40-acre dump.

ALTERNATIVES.

County-operated or Privately-operated Landfills?

Award in 1989 of a county-wide garbage collection franchise to a company which has the financial ability to establish and operate a private landfill to service Lyon County establishes two options for future solid waste disposal in the county -- (1) continuation of county operation, or (2) establishment of a privately operated landfill or landfills. The county's governing board must make the policy decision as to which option to adopt. That decision should be made

LYON COUNTY

very soon so that if the decision is in favor of a privately operated landfill the county can proceed with closure of its landfills prior to the 1991 effective date of new, costly federal closure rules.

Continued county operation of landfills would require a substantial additional commitment of county financial resources for manpower and materials. Dependable estimates are difficult to come by, but it appears that compliance with the 1991 federal standards could triple or quadruple the 1989 cost of dump operations -- from \$530,000.00 to somewhere between \$1,500,000.00 and \$2,000,000.00. The increased expense would require either:

- (1) A substantial tax increase, or
- (2) Institution of user charges ("tipping fees") to supplement or replace taxes as a revenue source for the landfill budget, or
- (3) Some combination of alternatives one and two.

Conversion to a privately operated landfill system also could be expensive, although perhaps not as costly as continued county operation. The countywide garbage collection franchisee has proposed establishment of "transfer stations" at or near the existing landfill sites. Garbage would be trucked from the transfer stations to a large landfill, either the franchisee's present landfills near Reno or a new landfill in Lyon County. A variety of options are available with a variety of costs for the county and residential and commercial garbage generators. Among them:

- a. Eliminating almost all county budget expense for landfills by:
 - (1) Mandating by ordinance that all residential and commercial generators use the collection service, in which event the franchisee would provide a private landfill at no cost to the county and taxpayers, or
 - (2) Allowing residential and commercial generators to continue to haul their garbage to transfer stations, and charging them a tipping fee for dumping. The tipping fee could be:
 - (a) Large enough to pay for the cost of hauling garbage from the transfer station to the landfill, eliminating any county subsidy, or
 - (b) Supplemented by payments from county tax revenues to allow a smaller tipping fee encouraging use of the transfer stations.

- b. Continuation of the free dumping ~~in Nevada~~ ^{LYON COUNTY} which Lyon County residents have enjoyed by redirection of the tax funds now used for land-fill operations to subsidize the cost of hauling garbage from the transfer stations to a privately operated landfill.

- (1) It is uncertain as of mid-1989 whether the \$530,000.00 which Lyon County is spending on landfill operations is sufficient to subsidize the cost of hauling free-dumped residential and commercial garbage. If not, options include:
- (a) Increasing the tax revenue devoted to solid waste disposal expense so free dumping can continue, or
 - (b) Requiring commercial generators to use the franchisee's service, which would reduce the amount of garbage subject to hauling subsidy, or
 - (c) Charging a nominal tipping fee to supplement the tax moneys used to subsidizing hauling from transfer stations to a central dump.

Multiple Landfills or One Centrally-located Landfill?

The advent of the 1991 federal regulations, if adopted in their proposed form, will spell the end of the era of small, multiple landfills serving local areas. Certain economies of scale favor large, central operations. Fewer guards are required, reducing labor costs. Garbage can be stacked higher (deeper) to minimize the expense of the \$100,000.00 per acre liners mentioned above. Whether a central landfill is county operated or privately operated, it seems probable that the present multiple landfill system enjoyed by Lyon County must be terminated.

Regional Landfill a Possible Alternative

Another alternative, which could be developed either as privately operated or publicly operated, is a regional landfill which might serve all or parts of Lyon, Douglas, Churchill and Washoe Counties, Carson City, and South Lake Tahoe, California. Some preliminary discussions about such a regional facility have been instituted by consultants for Douglas County. Lyon County's new county-wide franchisee has expressed interest in establishing a regional facility on a private basis if a suitable site could be found.

Regional Incinerator/Generator a Possible Alternative

Some preliminary discussions have occurred concerning construction of an incinerator/generator which would serve all of northwestern Nevada and the Lake Tahoe portion of California. Such incinerator/generators have been proven practical in other parts of

the country if there is a sufficient volume of garbage (LYON COUNTY
day appears to be the minimum amount) and if the facility can be
designed so it does not cause degradation of air quality standards.
Lyon County's new county-wide franchisee has made preliminary investi-
gation of this alternative. The conclusion at this time is that the
total daily garbage volume from northwestern Nevada and the Lake Tahoe
area approaches the 500 tons per day threshold. A regional
incinerator/generator which would service Lyon County and adjacent
areas may become economically feasible within 10 to 15 years. Again,
such a facility could be operated privately or publicly.

Lyon County in recent years has experienced an influx of industries involved in processing hazardous and/or toxic wastes. The County has responded to this situation by adopting what is believed to be the first medical waste ordinance in the United States, a hazardous waste ordinance which has been used by the State of Nevada as a guide for a model ordinance for other rural Nevada counties, and a hazardous materials ordinance.

Existing hazardous waste facilities include a company located near Yerington (Weed Heights) which disassembles electrical equipment that has been contaminated by PCBs (polychlorinated biphenyls). The industrial area of the unincorporated Town of Fernley is the site of a facility which reprocesses liquids which have been contaminated with heavy metals.

Elsewhere in the County, there are various industries which produce hazardous wastes as a byproduct of their operations.

The fact that hazardous waste processing facilities have been located near Yerington and Fernley does not mean that additional installations of that sort will be located in adjacent areas. The Lyon County Hazardous Waste Ordinance has adopted siting criteria for such facilities which duplicates the criteria adopted by the State Environmental Protection Commission in the Nevada Administrative Code. Particularly significant among those criteria are declarations that such facilities may not be sited within one mile of any residence, or in areas where the ground water level is near the surface. Lyon County also feels that no residence should be sited within one mile of any such facility. Those two criteria probably will prevent expansion of the Yerington and Fernley operations at their present sites.

This comprehensive plan does not attempt to designate locations where hazardous waste storage/processing facilities may be sited in the future. The need for services, the inherent danger, the type of ameliorative measures to be required generally are unique to a particular facility. Necessarily, then, Lyon County must treat such industries on an ad hoc basis, controlling them through the Hazardous Waste Permit application required by the ordinance and the Special Use Permit application required by the County's zoning ordinance. The ordinances allow the County to impose on the siting and operation of such facilities any and all conditions which the County's planning commission and governing board find necessary to protect the health and welfare of the communities and county.

No medical waste facilities exist in Lyon County at present. The current ordinance was adopted in response to a proposal to establish an incinerator for medical ("red bag") waste in the County. The ordinance establishes strict criteria for the operation of medical waste incinerators and for the storage and disposal of medical waste. The ordinance was derived from federal Environmental Protection Agency recommendations for medical waste treatment and disposal.

Hazardous materials are not as pervasively regulated by Lyon County. Where such materials are used as raw materials or in

LYON COUNTY

industrial processes, they are not considered to be hazardous wastes until they are discarded. Such materials are subject to state and federal reporting and storage regulations, but until they become "wastes" they are not subject to stringent siting requirements.

SUMMARY:

1) Lyon County's hazardous waste and medical waste ordinances appear to adequately control siting and operation of such facilities. Continued enforcement of the existing ordinances should adequately protect the health and welfare of county residents while allowing for further industrial development in these areas if such appears desirable.

2) Lyon County's hazardous materials ordinance is much less restrictive, a reflection of the County's continued efforts to attract an industrial base. The County must continually evaluate the effect of this ordinance, the balance between the need to attract industry and jobs and the need to protect the health and welfare of county residents. If the balance presently attained proves not to be a balance in fact, the ordinance must be adjusted to reattain equilibrium between those competing interests.

CHAPTER II -- SECTION M
CULTURAL RESOURCES

Realization of the importance of Nevada's cultural resources is evidenced through the passage of Assembly Concurrent Resolution 36 by the 1987 Nevada State Legislature. This Concurrent Resolution established one of only six interim study committees which was charged with the responsibility to study the preservation and promotion of Nevada's cultural resources.

The 1989 Session of the Nevada State Legislature took action on numerous proposals borne of the interim study committee. Inclusion of a Cultural Resources section in this document is mandated through the passage and enactment of Senate Bill 15.

NRS 278.160, §1 was amended by adding thereto a section pertaining to cultural resources which reads as follows:

278.160, §1 (d) Historical properties preservation plan. An inventory of significant historical, archaeological and architectural properties, a statement of methods to encourage the preservation of those properties and provisions for surveys to identify such properties before their development.

Existing laws and regulations do not merely encourage, but clearly mandate the preservation of certain cultural resources and also contain provisions for the survey of cultural resources.

The history of Lyon County can be maintained and understood through preserving the sites that represent historical events, activities, and places in Lyon County.

The cultural resources of Lyon County are varied and colorful. They include such sites as:

Native American petroglyphs in various places throughout the County.

Emigrant Trail, Pony Express, and Wells Fargo stations.

Comstock Historic District

Railroads

Historic mines and ghost towns.

Various historic structures.

It is by identifying and describing these resources that they can be preserved so that present and future generations can understand the past social and economic influences in Lyon County.

LYON COUNTY

Of particular historic interest are the Lyon County properties listed on the National Register of Historic Places. They are indicated as follows by area in Lyon County and the date they were certified:

CERTIFICATION/
DATE CERTIFIED

Lyon County	
Weeks Vicinity	
Fort Churchill	
U.S. 95-A, 8 mi. S. of U.S. 50	Listed
Reference No. 66000456	10/15/66
Yerington	
I.O.O.F. Building, Mason Valley	
1 S. Main St.	Listed
Reference No. 83001111	8/4/83
Lyon County Courthouse	
31 S. Main St.	Listed
Reference No. 83001112	3/24/83
Yerington Grammar School	
112 N. California St.	Listed
Reference No. 84002075	8/16/84
East Walker Petroglyph Site	
Address Restricted	Listed
Reference No. 80002468	7/24/80

Archaeological resources include prehistoric and historic deposits. Prehistoric deposits, those that predate the mid-Nineteenth Century, are the result of the residence of Native Americans in what is now Lyon County for thousands of years. Historic deposits, from the period when written evidence of County history is available, were left by Native Americans and by a succession of new arrivals beginning with the early Euro-American explorers and fur trappers, followed by emigrants to California, and then by settlers who chose the environs of Lyon County to pursue mining and ranching and other supporting endeavors. Archaeological deposits often contain or embody connections to the past that merit consideration in the planning process.

Significant archaeological sites can include, but are not necessarily limited to, the following types:

Prehistoric

Open scatters of cultural remains (such as those known in the Carson Desert); Rockshelters; Petroglyphs (such as those along the East Walker River and in Silver City); Bedrock Mortars (such as those in the extreme western part of the County); Human Burials; Lithic Quarries; Structural Ruins (such as rock rings that occur in the Pinenut Mountains).

Historic

Industrial Sites (such as millsites along the Carson River); Habitation Sites (such as early ranch facilities); Trails and transportation routes, and associated facilities (such as the Pony Express Trail and way stations); Landmarks; Monuments (such as the ruins of Ft. Churchill); Ghost Towns (such as that of Como).

Partial listings of known historic and prehistoric archaeological sites follow.

A PARTIAL LISTING OF KNOWN PREHISTORIC PERIOD SITES IN LYON COUNTY

after

Pendleton, L.S.A., A.R. McLane, and D.H. Thomas
1982 Appendix G:Table 3. In Cultural Resource Overview
Carson City District, West Central Nevada. Cultural
Resource Series No. 5, Part 2, Bureau of Land Management,
Nevada State Office, Reno.

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Pinto	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Uniface	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly1	Alkens (1978c) Bard (1976) Busby, Flemming, Hayes & Nissen (1978) Heizer & Baumhoff (1962:41-45) LeBoron (1924) Mallery (1886:24-25; 1893:95) Mayer (1975) Nissen (1974, 1975a, 1981) Rusco (1973) Steward (1929:139-141, 144-145)	Zachman/BIM/ 1976								x										Ntl. Reg. Entry 5/3/77 + bifaces, p.p. fragments Wheeler reports excav. by A. LeBoron, 1924
26Ly2		Calhoun & Orr/ NSM/1953 Elsasser/UCAS									x									+ unid. p.p.'s, shell & bone
26Ly3	Fliston (1978)	Wheat/NSM/1958								x	x									+ graver or drill
26Ly4	Heizer & Baumhoff (1962:45-47, Fig. 96, Pl. 9) Rusco & Dansie (1977) Steward (1929:144, Pl. 68 & 69)									x	x		x					x x		Pigment in pecked glyphs
26Ly5	Grosscup (1974:11) Heizer & Baumhoff (1962:47) Park (1934)	Wheat/UCAS/																x		3 small sticks, pictographs, cave reportedly has medicin- al properties for the Paiute

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Steamed	Concave Base	Pinto	Humboldt	Elko	Martins	Rosagrate	DSN	Cottonwood	Uniface	Ground Stone	Bead	Bone Tool	Peristyles	Bed Rock	Rock Art	Cultural Affili	Remarks
26Ly6		Wheat/UCAS									x	x								+ arrowshaft & straightener
26Ly7	Heizer & Baunhoff (1962:47,54) Mallery (1893:92-93, Fig. 54) Nissen (1981) Rusco (1973) Simpson (1876:87) Steward (1929:143-144)									x							x			All ref. mention Fulton (pers. comm.) Relocated by Heizer & Baunhoff
26Ly8	Dansie (1975b)	Roust/UCB/1951								x										+ unid. lg. p.p.'s
26Ly9	Grosscup (1974:11) Heizer & Baunhoff (1962:48) Simpson (1876:87)																x			
26Ly10		Grosscup/UCAS/ 1952																		
26Ly11	Elston (1978)	Grosscup/NSM/ 1952										x								
26Ly12	Nevada American Guide Series (1940:268) Warren & Tuohy (1976) Hardesty (1978a)	Grosscup/UCAS/ 1953																		
26Ly13		Grosscup/UCAS/ 1953								x										H 1860-1871 Ft. Churchill See Table 4
26Ly14		Grosscup/UCAS/ 1955										x								

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Stemmed Pinco Base	Pinto	Humboldt	Elko	Martins	Rosegate	Cottonwood	Uni Face	Ground Stone	Bone Tool	Perishables	Rock Art Mortar	Rock Art	Cultural Affili	Remarks
26Ly15		Grosscup & Wheat/UCAS/ 1955								x							+ unid. p.p.'s
26Ly16		Grosscup & Wheat/UCAS/ 1955							x								+ unid. p.p.
26Ly17	Dansie (1975b)	Grosscup/UCAS/ 1955															H Desert Well Station
26Ly18		Wheat & Grosscup/UCAS/ 1955							x								
26Ly19(A & B)	Elston (1978)	Heizer & Elsasser/UCAS/ 1955 G. W. Smith							x								+ unid. p.p.'s & shell
26Ly20		G. W. Smith & Elsasser/UCAS/ 1958															Illegible site form
26Ly21		Haines/UCAS/ 1958							x								+ unid. p.p.'s, drills, knives
26Ly22		Rozaire & Wheat/ NSM/1963							x								Unid. p.p.'s, hammerstone, bone, shell, fire cracked rock
26Ly23	Rusco & Dansie (1977:9)	Rozaire/NSM/ 1963		x	x				x								Poss. pinon gathering camp + drills
26Ly24		Informant to York/NSM/1973															+ hist. debris Unid. p.p.'s

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Stemmed	Concave Base	Pinto	Humboldt	Elko	Martis	Rosegate	DSN	Cottonwood	Gravel	Ground Stone	Bead	Bone Tool	Peristyles	Burial	Bed Rock Mortar	Rock Art Mortar	Cultural Affili	Remarks
26Ly26		Hester, Heizer, Bard & Fleming/ UCAS/1974 Wilson to Heizer/UCAS/ 1969																			x x R = rock carins RA = G. B. curvilinear
26Ly27	Rusco (1975) Seelinger (1976a)	Hester, Heizer, Bard & Fleming/ UCAS/1974																			x + charcoal
26Ly29	Seelinger (1976a)	Tuohy/NSM																			+ mortar
26Ly30	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975																			+ poss. hearth
26Ly31	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975																			+ mortar
26Ly32	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975																			
26Ly33	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975																			
26Ly34	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975																			

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Stemmed	Pinto	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Unifac	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly35	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975								x	x									Illegible site form
26Ly36	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975								x	x									Illegible site form
26Ly37	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975								x	x									Illegible site form
26Ly38	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975									x									+ hammerstone & FCR's
26Ly39	Rusco & Tuohy (1975)	Dansie & White/ NSM/1975								x										+ p.p. tip
26Ly40	Rusco & Tuohy (1975)?																			
26Ly42	Rusco & Dansie (1977:10)	Poland/BLM/1975								x			x							+ drill
26Ly43	Seelinger (1976a)	Dansie & Reno/ NSM/1974		x																"Clovis Pt."
26Ly44	Dansie (1976b)	Dansie/NSM/1976								x										
26Ly45	Dansie (1976b)	Adams Dansie/ NSM/1976								x	x									+ bifaces, p.p. frags. & gravers
26Ly46		No form - cat. sheet								x										

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Pinto	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Unifrac	Ground Stone	Bead	Bone Tool	Perishables	Burial	Rock Art	Rock Mortar	Rock Alignment	Cultural Affili	Remarks
26Ly47		No form - cat. sheet									x											
26Ly48		Petty & Hunt/ NAA/1976					x	x														
26Ly49		Hunt/NAA/1976					x				x											+ bifaces
26Ly50		Rohstaller/BLM/ 1977																				Drill
26Ly51	Seelinger (1978b)	Seelinger & Clerico/NSM/ 1977									x											
26Ly52	Seelinger (1978b)	Seelinger & Clerico/NSM/ 1977									x											+ knives
26Ly53	Seelinger (1978b)	Seelinger & Clerico/NSM/ 1977									x											+ knives
26Ly54	Seelinger (1978b)	Seelinger & Clerico/NSM/ 1977									x											Rock circles + biface
26Ly55	Hauck (1976)	Hauck/AERC/1976									x											+ chopper
26Ly56	Hauck (1976)	Hauck/AERC/1977									x											+ bifaces & unid. p.p.'s
26Ly57	CR3-209P NSM & 10-35	Hato/FE/BLM/1978									x											

TABLE 3. DATA SUMMARY.

TABLE 3. DATA SUMMARY.																						
Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Stemmed	Concave Base	Pinto	Humboldt	Elko	Martins	Rosagate	DSN	Cottonwood	Unit Face	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Rock Alignment	Cultural Affili	Remarks
26Ly58	Hatoff & Brigham (1976)	Hatoff/BLM/1976																				P.p. fragment
26Ly59		Walstrom/NWR/ 1973																				
26Ly60	Kuffner (1978)	Kuffner/NSM/ 1978																				Historic debris less than 50 years old
26Ly61		Ruhstaller/BLM/ 1978						x														
26Ly62	Budy (1979) & 3-295P	Ripple/NSHD/ 1979																				
26Ly63	McNeill & Turner (1979)	McNeill & Jerrrens/NSHD/ 1979						x			x											+ mollusk shells, purple glass, coal, tin cans
26Ly64	McNeill & Turner (1979)	McNeill & Jerrrens/NSHD/ 1979									x											+ historic debris
26Ly65	McNeill & Turner (1979)	McNeill & Jerrrens/NSHD/ 1979									x											+ historic & aboriginal debris, roads & building foundations
26Ly66 & 67	Galloway (1947)	Elston/NAS/1979					x															RA = Stillwater faceted style
26Ly68		Nissen, Heizer, Blindman & Fleming/UCAS/ 1974																				x

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Plinto	Rumboldt	Eiko	Martis	Rosegate	DSN	Cottonwood	Unitface	Ground Stone	Bead	Bone Tool	Perishables	Bed Rock Mortar	Rock Art	Rock Alignment	Cultural Affili	Remarks
26Ly69		Fleming & Nissen/UCAS/ 1974		x							x							x			+ biface R = rock wall
26Ly70	Nissen (1975a)	Hayes, Fleming & Nissen/UCAS/ 1974						x	x		x							x			R = rock wall
26Ly71	Nissen (1975a)	Nissen & Shimamura/ UCAS/1974																	x		
26Ly72	Nissen (1975a)	Nissen, Fleming Hayes & Shimamura/ UCAS/1974					x	x			x							x			R = long rock wall on game trail
26Ly73	Nissen (1975a)	Nissen, Hayes & Fleming/ UCAS/1974									x							x			+ preform & broken reworked P.P.
26Ly74	Nissen (1975a)	Fleming, Hayes & Nissen/UCAS/ 1974																x			R = 2 rock walled depressions
26Ly75	Nissen (1975a)	Nissen, Hayes & Fleming/ UCAS/1974																x			R = 3 rock walled depressions
26Ly76	Nissen (1975a)	Nissen, Hayes & Fleming/ UCAS/1974																x			25 rock art boulders, likely part of Ly2 (E. Walker River Petroglyph Site) RA = scratched & G. B. representational

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed Pinco Base	Humboldt Elko	Mattis Rosegate	DSN Cottonwood	Uniface Ground Stone	Bead Bone Tool	Perishables Burial	Bed Rock Mortar	Rock Art Cultural Affiliations	Remarks
26Ly77	Nissen (1975a)	Nissen, Hayes & Fleming/UCAS/ 1974		?	x	x				x		RA = 120 rock art boulders May be connected to Ly2. Scratched & pecked G.B. rectilinear & representa- tional
26Ly78	Nissen (1975a)	Nissen, Hayes & Fleming/UCAS/ 1974										RA = 2 rock art boulders G.B. curvilinear
26Ly79	Nissen (1975a)	Nissen, Fleming & Hayes/UCAS/ 1974								x		RA = 4 rock art boulders G.B. curvilinear
26Ly80	Muir (1961) Nissen (1975a)	Nissen, Fleming & Hayes/UCAS/ 1974								x		R = "stone dummies"
26Ly81	Nissen (1975a)	Hayes/UCAS/1974				x						RA = G.B. curvilinear, rectilinear & representa- tional + unid. p.p.
26Ly82	Warfield, Jessup, DiAndrea & Fleming/UCAS/ 1974									x		
26Ly84		Elston (1979)										R = rock rings lining depression
26Ly85		Elston (1979)										

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Humboldt	Elko	Martins	Rosegate	Cottonwood	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Rock Alignment	Cultural Affili	Remarks
26Ly88	Hatoff & Botti (1980a)	Botti/HUM/1980							x										Cache of 37 obsidian bifaces - report pending
26Ly89	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly90	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly91	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly92	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly93	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly94	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly95	Hatoff & Botti (1980a)	Botti/HUM/1980							x										p.p. tip
26Ly96	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly97	Hatoff & Botti (1980a)	Botti/HUM/1980							x										
26Ly98	Hatoff & Botti (1980a)	Botti/HUM/1980							x										+ historic debris
26Ly99	Hatoff & Botti (1980a)	Botti/HUM/1980							x										Biface fragment

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	Remarks
26Ly86	Elston (1979)		Cultural Affiliations
			Rock Art Alignment
			Rock Rock Mortar
			Burial
			Pertishables
			Bone Tool
			Bead
			Ground Stone
			Unifaced
			Cottonwood
			DSN
			Rosegate
			Martins
			Eiko
			Humboldt
			Pinto
			Concave Base
			G.B. Stemmed
26Ly87	Elston (1979)		

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed Pinto Base	Humboldt Elko	Mattis Rosegate	USN Cottonwood	Ground Stone	Bead	Bone Tool	Peristyles	Bed Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly102	Jerrens (1971)	From report				x	x				x	x		RA = G.B. curvilinear abstract R = rock circled depressions
26Ly103		Elston & Winters/NAS/ 1968 & 1975												
26Ly104	Davis & Rusco (1974)	Davis & Clerico/ NAS/1974		x							x	x		RA = pecked, scratched & pictographs, caves. G.B. representational
26Ly105	Davis & Rusco (1974)	Davis & Clerico/ NAS/1974					x							
26Ly106	Davis & Rusco (1974)	Davis & Clerico/ NAS/1974					x							
26Ly107	Dansie (1975b) Davis & Rusco (1974)	Davis & Clerico/ NAS/1974					x							Illegible site form + pt. base
26Ly108	Dansie (1975b) Davis & Rusco (1974)	Davis & Clerico/ NAS/1974					x							
26Ly109	Dansie (1975b) Davis & Rusco (1974)				x		x							
26Ly111		J. O. Davis/ NAS/1976												+ preform & unid. p.p.'s, bone fragments
26Ly112	Elston (1978)	From report												H 19th century historic dump

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	C.B. Stemmed	Concave Base	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Grain	Ground Stone	Bone Tool	Perishables	Bed Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly116	Elston (1978)	Keirns/NAS/1978								x								
26Ly118	Elston (1978)	Keirns/NAS/1978								x								+ p.p. tip
26Ly119	Elston (1978)	Keirns/NAS/1978								x								H Recent historic dump
26Ly120	Elston (1978)																	H Old stamp mill
26Ly121	Elston (1978)																	H 19th century trash pile
26Ly122	Elston (1978)																	H Historic canal
26Ly123	Elston (1978)																	
26Ly124	Elston (1978)	Keirns/NAS/1978								x								
26Ly125	Elston (1978)	Keirns/NAS/1978								x								H 2 concrete pillars
26Ly126	Elston (1978)																	

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Humuloid	Elko	Maria	Rosegate	DSN	Cottonwood	Ground Stone	Bead	Bone Tool	Perishables	Burial	Rock Art Mortar	Rock Art Alignment	Cultural Affili	Remarks
26Ly201	Hagerty (1970b:75-76)	Hagerty/UCD/ 1969	x	x	x	x	x	x	x	x	x								+ drills, knives, h.s. & choppers
26Ly202	Hagerty (1970b:76)	Hagerty/UCD/ 1969			x	x	x	x	x	x	x					x			R = 3 house rings; tinklers, knives, shaft straightener, drills & charcoal
26Ly203	Hagerty (1970b:77)	Hagerty/UCD/ 1969				x	x	x	x	x	x			x					+ drills, knives & choppers
26Ly204	Hagerty (1970b:77-78)	Hagerty/UCD/ 1969				x	x		x	x	x					x			R = 2 house rings; lg. knife
26Ly205	Hagerty (1970b:78)	Hagerty/UCD/ 1969							?	x									+ shaft straightener, chopper
26Ly206	Hagerty (1970b:79)	Hagerty/UCD/ 1969								x						x			R = 3 house rings
26Ly207 (50)	Hagerty (1970b:79-80)	Hagerty/UCD/ 1969							x	x	x								Possible gales dangl + historic debris
26Ly208	Hagerty (1970b:104-105)	Hagerty/UCD/ 1969		x				x	x	x	x								+ PCR's
26Ly209	Hagerty (1970b:105-106)	Hagerty/UCD/ 1969							x	x									+ unid. p.p. frags.
26Ly210	Hagerty (1970b:80)	Hagerty/UCD/ 1969 Ruhstaller/BIM/ 1978						x	x	x	x								+ biface, knife & "lg. subtriangular pt. with convex base"
26Ly211	Hagerty (1970b:81)	No form								x									+ drill

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Pinto	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly222		Dansie/NSM/1971									x	x								+ und. p.p. fragments
26Ly223	Dunbar & Brigham (1976b)	Dunbar/BLM/1976									x									
26Ly224	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly225	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976																		No data
26Ly226	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly227	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly228	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly229	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly230/231	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976									x									
26Ly232	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976																		No data
26Ly233	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976																		2 chert core fragments
26Ly234	Steinberg & Thompson (1976)	Dansie/NSHD/ 1976																		H Historic debris

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Pinto	Humboldt	Elko	Martins	Rosegate	Cottonwood	Uniface	Ground Stone	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly236	Dunbar & Brigham (1976a) & 3-193P	Dunbar/BLM/1976						x	x	x								Quarry, hunting blinds & hist. house foundation & debris
26Ly237	Dunbar & Brigham (1976a) & 3-193P	Dunbar/BLM/1976							x									Quarry
26Ly238	Seelinger (1976a)	Seelinger/NSM/ 1976								x								Biface
26Ly239	Seelinger (1976a)	Seelinger/NSM/ 1976																Core fragment
26Ly240	Seelinger (1976a)	Seelinger/NSM/ 1976																RA = unusual fish motif; G.B. representational, curvilinear
26Ly241	Seelinger (1976a)	Seelinger/NSM/ 1976								x								+ p.p. tip
26Ly242	Seelinger (1976a)	Seelinger/NSM/ 1976																Possible hearth, FCR's
26Ly243	Seelinger (1976a)	Seelinger/NSM/ 1976								x								
26Ly244	Seelinger (1976a)	Seelinger/NSM/ 1976																
26Ly245	Seelinger (1976a)	Seelinger/NSM/ 1976																
26Ly246	Seelinger (1976a)	Seelinger/NSM/ 1976																

Nevada State Museum

LYON COUNTY

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Concave Base	Pinto	Humboldt	Elko	Martins	Rosegate	Cottonwood	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly261	Hatoff & Botti (1980a)	Botti/HLM/1980								x									H Historic debris
26Ly262	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly263	Hatoff & Botti (1980a)	Botti/HLM/1980							x										
26Ly264	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly265	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly266	Hatoff & Botti (1980a)	Botti/HLM/1980								x									H Historic debris
26Ly267	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly268	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly269	Hatoff & Botti (1980a)	Botti/HLM/1980						x											
26Ly270	Hatoff & Botti (1980a)	Botti/HLM/1980								x									
26Ly271	Hatoff & Botti (1980a)	Botti/HLM/1980																	+ Levi's snap - near modern dump
26Ly272	Hatoff & Botti (1980a)	Botti/HLM/1980								x									

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed Concave Base	Pinto	Humboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Unit Face	Ground Stone	Bead	Bone Tool	Perishables	Burial	Red Rock Mortar	Rock Art	Cultural Affili	Remarks
26Ly273	Hatoff & Botti (1980a)	Botti/BIM/1980																		Biface tip
26Ly274	Hatoff & Botti (1980a)	Botti/BIM/1980								x										"Modified obsidian chunk"
26Ly275	Hatoff & Botti (1980a)	Botti/BIM/1980								x										+ Historic debris
26Ly276	Hatoff & Botti (1980a)	Botti/BIM/1980																		
26Ly277	Hatoff & Botti (1980a)	Botti/BIM/1980								x										
26Ly278	Hatoff & Botti (1980a)	Botti/BIM/1980									x									Biface tip fragment
26Ly279	Hatoff & Botti (1980a)	Botti/BIM/1980																		
26Ly280	Hatoff & Botti (1980a)	Botti/BIM/1980								x										
26Ly281	Hatoff & Botti (1980a)	Botti/BIM/1980								x										
26Ly282	Hatoff & Botti (1980a)	Botti/BIM/1980								x										
26Ly283	Hatoff & Botti (1980a)	Botti/BIM/1980								x										
26Ly284	Hatoff & Botti (1980a)	Botti/BIM/1980								x										

TABLE 3. DATA SUMMARY.

Nevada State Museum	References	Recorder/ Institution/ Date	G.B. Stemmed	Pinto	Bumboldt	Elko	Martins	Rosegate	DSN	Cottonwood	Unitface	Ground Stone	Bead	Bone Wool	Perishables	Burial	Red Rock Mortar	Rock Art	Rock Art Alignment	Cultural Affili	Remarks
26Ly285	Hatoff & Botti (1980a)	Botti/BLM/1980								x											
26Ly286	Hatoff & Botti (1980a)	Botti/BLM/1980								x											
26Ly287	Hatoff & Botti (1980a)	Botti/BLM/1980				?				x											
26Ly288	Hatoff & Botti (1980a)	Botti/BLM/1980								x											
26Ly289	Hatoff & Botti (1980a)	Botti/BLM/1980								x											
26Ly290	Hatoff & Botti (1980a)	Botti/BLM/1980									x										
26Ly291	Hatoff & Botti (1980a)	Botti/BLM/1980									x										
26Ly292	Hatoff & Botti (1980a)	Botti/BLM/1980									x										
26Ly299	Cr3-463N	Botti/BLM/1980									x										

APPENDIX G 6

A PARTIAL LISTING OF KNOWN HISTORIC PERIOD SITES IN LYON COUNTY

after

Pendleton, L.S.A., A.R. McLane, and D.H. Thomas
1982 Appendix G:Table 4. In Cultural Resource Overview
Carson City District, West Central Nevada. Cultural
Resource Series No. 5, Part 2, Bureau of Land Management,
Nevada State Office, Reno.

TABLE 4. HISTORIC SITE DATA. LYON COUNTY

ADOBE STATION, Lyon Co.

CrNv-03-1615

Location: Several hundred feet north of U. S. Highway 50, about 3.5 miles northeast of Dayton
Elevation: 4350'
Map: USGS Flowery Peak 7.5'
Ownership: Private
Recorded by: A. McLane, 4 August 1980
Reference: This report.

This station was built on the original emigrant trail between Ragtown and Carson City.

AMERICAN FLAT TUNNEL, Lyon Co.

CrNv-03-1578

Location: One mile due west of Silver City
Elevation: 5560'
Map: USGS Virginia City 7.5'
Ownership: Private
Recorded by: A. McLane, 28 July 1980
Reference: Ansari and McLane (1978-1980)

Former station on the Virginia and Truckee Railroad. The site is just west of the railroad tunnel that penetrated a low ridge and lies south of American Flat, hence the name.

APPIAN, Lyon Co.

CrNv-03-1908

Location: In Churchill Valley, 2 miles south-southeast of Silver Springs
Elevation: 4185'
Map: USGS Silver Springs 15'
Ownership: Private
Recorded by: A. McLane, 12 September 1980
Reference: Myrick (1962b:181)

Appian, west of Lahontan Reservoir, is a siding on the Southern Pacific Railroad segment from Hazen to Churchill that was built in 1905.

ARGO, Lyon Co.

CrNv-03-1909

Location: 5 miles east of Fernley
Elevation: 4075'
Map: USGS Two Tips 15'
Ownership: Private
Recorded by: A. McLane, 26 May 1980
Reference: This report

Argo is a side track on the Southern Pacific Railroad, which was built in 1902.

LYON COUNTY

CrNv-03-1910

B, H and V MINE, Lyon Co.
(Ruth Mine)

Location: On Churchill Butte, 2.5 miles north-northwest of Ft.
Churchill

Elevation: 5060'

Map: USGS Churchill Butte 15'

Ownership: BLM

Recorded by: A. McLane, 11 September 1980

Reference: Moore (1969:24)

Several scheelite prospects are located on Churchill Butte. The B, H and V Mine shipped 38 tons of sorted ore in 1943-1944, assaying 0.6 percent tungsten.

BIRDSALL AND CARPENTER MILL, see LYON MILL

BLUE JAY MINE, Lyon Co.

CrNv-03-1911

Location: On Blue Jay Butte, 4 miles east of Yerington

Elevation: 4900'

Map: USGS Yerington 15'

Ownership: Private

Recorded by: A. McLane, 23 September 1980

Reference: Moore (1969:28)

This is an early copper mine; however, there is no recorded production.

BLUESTONE COPPER COMPANY RAILROAD, Lyon Co.

CrNv-03-1912

Location: On east side of Singatse Range, between Mason and Bluestone
Mine ore bins

Elevation: 4480+'

Map: USGS Yerington 15'

Ownership: Private

Recorded by: A. McLane, 25 September 1980

Reference: Moore (1969:26)

Myrick (1962b:227;photos:220-221)

This two and one-half mile standard gauge line was built in 1917 to transfer the Bluestone copper ores from the mine to the Nevada Copper Belt Railroad. The ores were smelted at Thompson, about 16 miles to the north. The main production from the mine was from 1917 through 1920 (Moore 1969:26), the probable dates of the railroad.

TABLE 4. HISTORIC SITE DATA.

LYON COUNTY

BLUESTONE MINE, Lyon Co.

CrNv-03-1913

Location: East side of Singatse Range, 4 miles southwest of Yerington
 Elevation: 5400'
 Map: USGS Yerington 15'
 Ownership: Private
 Recorded by: A. McLane, 25 September 1980
 Reference: Knopf (1918:50)
 Moore (1969:26)

The Bluestone Mine is the oldest in the district. It supplied natural bluestone to the amalgamating mills on the Comstock Lode in the 1870 s. A small smelter was built near the mine later, but high fuel costs (hailed from the railroad at Wabuska) soon brought the operations to a close.

In 1917 the mine became productive, supplying 1,000 tons of ore a day to the Thompson smelter. The main production was from 1917 through 1920, when 400,000 tons with a gross value of \$3,570,000 were reported. Later production, from 1924 to 1930, is credited to the Mason Valley Mines Company.

BLUESTONE SMELTER, Lyon Co.

CrNv-03-1914

Location: East side of Singatse Range, 4/10 mile east of Bluestone Mine
 Elevation: 5080'
 Map: USGS Yerington 15'
 Ownership: Private
 Recorded by: A. McLane, 27 September 1980
 Reference: Knopf (1918:50)
 USGS Yerington District (map) 1915

This smelter was built in the 1880 s to process the copper ore from the Bluestone Mine. The high cost of fuel, which had to be hauled from the railroad at Wabuska, soon brought the operations to a close.

BROWNS JUNCTION, Lyon Co.

CrNv-03-1915

Location: On old Central Pacific Railroad, 1.5 miles east of Wadsworth
 Elevation: (4160')
 Map: USGS Wadsworth 15'
 Ownership: Private
 Recorded by: A. McLane, 26 May 1980
 Reference: Myrick (1962b:50)

This station was on the new Central Pacific Railroad line to Wadsworth. This segment (New Junction to Wadsworth) was abandoned in 1905-1906.

TABLE 4. HISTORIC SITE DATA.

BUCKLANDS, see WEEKSCAMP HAYS, see REEDS STATION

CARSON AND COLORADO RAILROAD

CrNv-03-1614

Reference: Mordy and McCaughey (1968:239)

"The Carson and Colorado Railroad was originally a narrow-gauge line built by D. O. Mills between 1880 and 1883. The trackage began at Mound House on the Virginia and Truckee Railroad, ran southeast and by Walker Lake on the eastern side, then turned toward California, and terminated in the Owens Lake Valley. Hawthorne was established as a result of the line. In 1883 a spur was run into Candalaria.

"In 1882 a corporate reorganization caused the name to be changed to the Carson and Colorado Railway. Later, in March, 1900, the C&C was sold to the Southern Pacific Railroad. The Tonopah boom, which began the next year, increased the line's activity, and in 1904 the Tonopah and Goldfield Railroad was connected with the C&C at Tonopah Junction.

"A major difficulty with the operation of the line occurred after the Southern Pacific purchase. The only way to connect with the main SP line was to tranship cargo to the V&T at Mound House, then change it from narrow-gauge cars to standard-gauge cars at Reno. To overcome that expensive operation, the SP built a cut-off which ran from Churchill in Lyon County, to their main line at Hazen near Fallon. Coincidentally, they widened the old C&C track to standard-gauge in 1904-05. As a result of the rebuilding, a corporate reorganization took place, and the name was changed to the Nevada and California Railway.

"During the 1930s, 40s and 50s various sections of the line were gradually eliminated. Today, Mina is the terminal point on the southern end of the line."

CARSON RAPIDS CITY, see MINERAL RAPIDS

CASTING COPPER MINE, Lyon Co.

CrNv-03-1916

Location: West side of Singatse Range, immediately south of the townsite of Ludwig

Elevation: 5100'

Map: USGS Wellington 15'

Ownership: Private

Recorded by: A. McLane, 23 September 1980

Reference: Moore (1969:27)

"To 1914, 29,000 tons of (copper) ore were mined, and in the war period of 1916 through 1919, 128,000 tons valued at \$2,250,000 were produced. Total production was 454,637 tons valued at \$4,265,942."

TABLE 4. HISTORIC SITE DATA.

C. C. STEVENSON MILL, see ROCK POINT MILLCHINATOWN, see DAYTON
CHURCHILL, Lyon Co.

CrNv-03-1917

Location: In Churchill Canyon, 1.5 miles south of Ft. Churchill
 Elevation: 4214'
 Map: USGS Churchill Butte 15'
 Ownership: BLM/Private
 Recorded by: A. McLane, 11 September 1980
 Reference: Myrick (1962b:168,181)
 Turner (1964:opposite p. 8)

Churchill (or Ft. Churchill) was a station on the Carson and Colorado Railroad, 26 miles from Mound House. Ground was broken for the C and C in 1880. Southern Pacific gained control of the C and C and eliminated the 26 mile section when a new link was built from Hazen to Churchill in 1905.

CLIFTON, Lyon Co.

CrNv-03-1918

Location: South of Carson River, 3/4 mile west of Susans Bluff
 Elevation: 4280'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 10 September 1980
 Reference: Myrick (1962b:168)

Clifton was a siding on the Carson and Colorado Railroad. Work officially began on the line, at Mound House, on May 31, 1880.

CLINTON, see DAYTON

COLONY, Lyon Co.

CrNv-03-1919

Location: About 3 miles northwest of Hudson in Smith Valley
 Elevation:
 Map: USGS Wellington 15'
 Ownership: BLM
 Recorded by: A. McLane, 23 September 1980
 Reference: Myrick (1962b:215)

This was a station on the Copper Belt Railroad between Hudson and Ludwig. Without additional research, the station cannot be located precisely, but it was probably just southeast of Nordyke Pass.

COMO, Lyon Co.

CrNv-03-1579

Location: In north end of Pine Nut Mountains, 3 miles north Lyon Peak
 Elevation: 7120'
 Map: USGS Como 15'
 Ownership: (Private/Public)
 Recorded by: A. McLane
 Reference: Mordy and McCaughey (1968)
 Myrick (1962 a ; photos)

TABLE 4. HISTORIC SITE DATA.

COMO (Continued)

Gold and silver were discovered here in the early 1860 s. However, base ores were soon reached and the town only lasted three years. Brief revivals occurred in 1879-1881, 1919-1920, and 1934-1935.

"Como has several remnants. On approach to town is found a five-stamp crusher. At the old townsite itself are the remains of two stone buildings, which Alf Doten, famous Nevada journalist, reportedly help erect. Foundations, shafts and a collapsed wooden structure are also present."

COONEYS RANCH, see REEDS STATION

DANEY MINE, Lyon Co.

CrNv-03-1580

Location: 2 miles west-southwest of Dayton
 Elevation: 4640'
 Map: USGS New Empire
 Ownership:
 Recorded by: A. McLane, 28 July 1980
 Reference: Moore (1969:25)

This was one of the most productive mines on the Silver City fault.

DARWIN, Lyon Co.
(Patina)

CrNv-03-1920

Location: On Southern Pacific Railroad, 4 miles west of Hazen
 Elevation: 4075'
 Map: USGS Two Tips 15'
 Ownership: Private
 Recorded by: A. McLane, 26 May 1980
 Reference: Myrick (1962b:50)

Darwin, also called Patina, is a siding on the Southern Pacific Railroad. This segment of the railroad was opened in October 1902.

DAYTON, Lyon Co.

CrNv-03-1581

Location: On U. S. Highway 50 11 miles northeast of Carson City
 Elevation: 4360'
 Map: USGS Dayton 15'
 Ownership: Private
 Recorded by: A. McLane, 11 June 1980
 Reference: Carlson (1974:92-93)

In 1853 Spafford Hall erected a log house here which was called Halls Station or Gold Creek Station. A year later James McMarlin bought the post and it became known as McMarlin's Station. Over

TABLE 4. HISTORIC SITE DATA.

DAYTON (Continued)

the next few years the settlement went through several name changes until 1861 when the town was officially named for John Day who plotted the town. Day was elected Surveyor General of Nevada in 1868, 1870 and 1874. A post office was established here on January 15, 1862.

Before a building was established here, the emigrants called the site Ponderers Rest. Dayton's other names have been: Halls Station, Gold Creek Station, McMarlins Station, Chinatown, Clinton and Nevada City.

DAYTON LIME WORKS, Lyon Co.
(Blanchard Lime Quarries, El Dorado Canyon Quarry)

CrNv-03-1582

Location: North end of Pine Nut Mountains, 2.3 miles south-southeast
of Dayton

Elevation: 4800'

Map: USGS Dayton 15'

Ownership:

Recorded by: A. McLane

Reference: Mining and Scientific Press (1876:Aug. 5)
Moore (1969)

Moore makes this statement: "...a travertine terrace has been built up by surface deposition from hot springs, now inactive. During active mining on the Comstock Lode, the travertine was burned for lime in several stone kilns " (1969:39).

A substantial article in Mining and Scientific (1876) states that Mr. H. C. Blanchard owns and supervises the Dayton lime works. At that time, three kilns burned on the average 90 tons per week. The kilns were built on the northernmost of two lime (sinter) knolls, each about 60 feet high. Analysis showed that the rock contained 51.38 per cent lime.

A well-regulated boarding house had been constructed, and in some cases workmen were employed in double shifts. Some 4,000 feet southeast of the kilns is a spring (Limekiln) that was developed and water piped to the quarry.

The Scientific Press correspondent notes that the quarries "daily presents an animated appearance, and the bright light from the burning kilns of a night show that an enterprising spirit of industry has found a home among the barren knolls and buttes of El Dorado Canyon."

A larger kiln was planned to be erected. And this investigator noted several years ago a kiln in reasonable shape on the east side of El Dorado Canyon, just north of Limekiln Spring, in NW $\frac{1}{4}$, Sec. 6, T15N, R22E. Wood choppers were also engaged in supplying the kilns. Sandstone situated a short distance from the quarries was used in building the kilns. The sandstone was

DAYTON LIME WORKS (Continued)

also used as building material in Dayton and Silver City. This area needs field investigation to determine what can be restored of its historical values. This phase of Nevada history has equally been overlooked and not interpreted.

DAYTON MINE, Lyon Co.

CrNv-03-1583

Location: 1/2 mile south-southeast of Silver City
Elevation: 5000'
Map: USGS Virginia City 7.5'
Ownership: Public
Recorded by: A. McLane, 28 July 1980
Reference: Moore (1969:25)

This was one of the most productive mines on the Silver City fault.

DAYTON, SUTRO AND CARSON VALLEY RAILROAD, Lyon Co.

CrNv-03-1584

Location: Dayton
Elevation: (4360')
Map: USGS Dayton 15'
Ownership:
Recorded by: A. McLane, 24 May 1980
Reference: Myrick (1962b: 210-213)

The first train to service the mills and ore in Dayton was a horse-drawn affair 1/2 mile long, built by Fred Birdsall in 1869. A two-mile three-foot gauge grade commenced in the same area in April 1881. The new Dayton, Sutro and Carson Valley Railroad was completed in early June. With adjustments in the line, the railroad continued service until about 1900; the exact end of operations date not known.

DELPHI, Lyon Co.

CrNv-03-1921

Location: Northeast side of Smith Valley, 3 miles southwest of Ludwig
Elevation: 4680'
Map: USGS Wellington 15'
Ownership: Private
Recorded by: A. McLane, 22 September 1980
Reference: Myrick (1962b:226)

The Nevada Copper Belt Railroad established a construction camp at the Delphi Springs in 1911 as the grade was cut from Hudson to Ludwig.

TABLE 4. HISTORIC SITE DATA.

DEVILS GATE TOLL HOUSE, Lyon Co.

CrNv-03-1585

Location: In Gold Canyon, immediately northwest of Silver City
 Elevation: 5160'
 Map: USGS Virginia City 7.5'
 Ownership: (Private)
 Recorded by: A. McLane, 26 July 1980
 Reference: Paher (1970:31-32; photo)

The Devils Gate Toll House was on the main route to Gold Hill and Virginia City and was probably built shortly after late 1859. With the decline of the Comstock, Devils Gate also declined.

DOUGLAS MILL, see LYON MILL

DOUGLAS HILL MINE, Lyon Co.

CrNv-03-1922

Location: West side of Singatse Range, 1/2 mile east of the site of Ludwig
 Elevation: 5400'
 Map: USGS Wellington 15'
 Ownership: Private
 Recorded by: A. McLane, 23 September 1980
 Reference: Moore (1969:27)

From 1883 to 1891, this copper mine had a production of \$271,804.
 "From 1911 through 1914, 68,905 tons of ore were produced."

EUREKA MILL, Lyon Co.

CrNv-03-1586

Location: North side of the Carson River, 7/10 mile east-northeast of Carson City boundary
 Elevation: 4470'
 Map: USGS New Empire 7.5'
 Ownership:
 Recorded by: A. McLane, 16 July 1980
 Reference: Dangberg (1975:328-338; photos)
 Myrick (1962 b:163-165; photos)

The mill was built in 1861 and burned down during May 1892. William Sharon, Union Mill and Mining Co. president, owned the mill before 1875.

EUREKA MILL RAILROAD, Lyon Co. & Carson City

CrNv-03-1587

Location: North side of the Carson River extending east of Carson and Colorado Railroad
 Elevation: ca. 4480'
 Map: USGS New Empire 7.5'
 Recorded by: A. McLane, 16 July 1980
 Reference: Myrick (1962 b:163-165; photos)

TABLE 4. HISTORIC SITE DATA.

EUREKA MILL RAILROAD (Continued)

The Eureka Mill Railroad was completed in March 1872 by the Union Mill Co. It was a narrow gauge line only 1.12 miles long. The V&TRR dropped ore down a 400-foot tramway to the EMRR. Here 10 5-ton ore cars, horse-drawn, took the ore to the mill on the 2-1/2 foot gauge. Subsequently, Porter Locomotive Works engines replaced the horses.

From the Eureka Mill Dam, the railroad used the mill's flume and the last half mile the train had a slight downgrade. High trestles crossed two canyons, but despite difficult construction, the line was held to \$20,000.

The line was dismantled sometime after February 1906. But, was idle for 14 years prior to that time as the Eureka Mill burned in 1892.

FERNLEY, Lyon Co.

CrNv-03-1923

Location: In northwest Lyon County 2.5 miles southwest of Wadsworth
 Elevation: 4153'
 Map: USGS Wadsworth 15'
 Ownership: Private
 Recorded by: A. McLane, 4 September 1980
 Reference: Ansari and McLane (1978-1980)

Fernley was an agricultural community developed about 1905. The 1970 population was 900. The community has flourished in the last decade as a "bedroom community" for workers commuting to Reno.

FORT CHURCHILL, Lyon Co.

26Ly12

Hs-27-03-10
 CrNv-03-312

Location: North of Carson River, 1 mile west of Weeks
 Elevation: 4266'
 Map: USGS Churchill Butte 15'
 Ownership: State of Nevada
 Recorded by: A. McLane, 11 September 1980
 Reference: Mordy and McCaughey (1968:121-122)

"Fort Churchill was established in August 1860, on the banks of the Carson River near Buckland's Station. It was the first and the largest Army post in Nevada. Named in honor of the Inspector General of the Army at that time, General Sylvester Churchill, the fort was constructed at the request of Nevada citizens, who had been aroused by the Paiute's victory in the first battle of the Pyramid Lake Indian War.

"Construction of Fort Churchill began in late 1860. The buildings which included barracks, officers' quarters and a guardhouse, as

LYON COUNTY

FT. CHURCHILL (continued)

well as other structures, were made of adobe and faced on a central square. Because of the Civil War, the troops which occupied the post between 1861 and 1865 were mostly volunteers from California and Nevada. During this period, the fort served to protect the Overland Stage and Mail and the Pony Express routes. It was also the main headquarters and supply point for the Nevada Military District.

"After the Civil War, the volunteers were discharged and the post was occupied by regular U. S. Army troops. Various companies were at Churchill in September, 1869. The fort was abandoned at that time, because of the decline of the Indian threat, the construction of the Central Pacific Railroad, and the increase of European immigrants in the area. The buildings were transferred to the Central Land Office, and later were sold to private individuals.

"The remains of the buildings at Fort Churchill are primarily adobe skeletons, from which the general shape of the fort can be discerned. The site is a State Historical Park, with camping and fishing facilities along the nearby Carson River."

FRANKLIN MILL, Lyon Co.

CrNv-03-1589

Location: On the Carson River, 2.2 miles southwest of Dayton

Elevation: 4400'

Map: USGS Dayton 15'

Ownership:

Recorded by: A. McLane, 16 July 1980

Reference: Dangberg (1975:339-341;photos)

The mill was built in 1860 and was not operating in 1893. Maps consulted locate the mill on the north side of the river. A photograph of the mill taken in 1876 shows the mill on the south side.

FREMONT TRAIL (1844), California and Nevada

CrNv-03-1363

Map: Reno and Walker Lake, 1:250,000

Recorded by: A. McLane, 13 July 1980

After camping near (present-day) Nixon on January 15, 1844, John C. Fremont moved south along the Truckee River, through the present town of Fernley. Three days, January 17-19, were spent exploring the Carson River in Churchill Valley. They passed on south through Mason Valley, then for a short distance along East Walker River, and over Rough Creek and Bodie Mountains into Bridgeport Valley.

The explorers spent two days traveling over the snow until the sharp spires of Sawtooth Ridge, on the Sierra crest, forced them north again. Forming a large U-shaped trail, they re-entered Nevada through Antelope Valley, following the present alignment of U. S. Highway 395 to a point where East Fork Carson River enters Carson Valley.

They reached this point on January 31. The next two days were spent crossing the river, then traveling back south down Long Valley, across Diamond Valley and back down to the Carson River two miles northeast of (present) Marbleville. They moved to Grover Hot Springs on February 3 and spent the remainder of the time until February 20 assembling the party at the Sierra crest between Elephants Back and Carson Pass.

TABLE 4. HISTORIC SITE DATA.

GATES WELL STATION, Lyon Co.

CrNv-03-1616

Location: 10 miles northeast of Dayton, just a few hundred feet south of U. S. Highway 50
Elevation: 4360'
Map: USGS Churchill Butte 15'
Ownership: Public
Recorded by: A. McLane, 4 August 1980
Reference: Carlson (1974:118)

Named for its owner, this was an old station on the early wagon road (original emigrant trail) east of Dayton.

GOLD AND SILVER PROSPECT, Lyon Co.

CrNv-03-1590

Location: At the head of Bull Canyon in the northern Pine Nut Mountains, 1-3/8 miles northeast of Rowe Peak
Elevation: 6600'
Map: USGS Como 15'
Ownership:
Recorded by: A. McLane, 12 April 1980
Reference: This report.

The topographic map indicates an open-pit and adit here. A building in ruins is also shown. Moore (1969:plate 2) shows this as a gold and silver prospect.

GOLD CANYON FLAT DIGGINGS, see DAYTON

GOLD CREEK STATION, see DAYTON

GYPSUM MINE, Lyon Co.

CrNv-03-1925

Location: West side of Singatse Range, 200 feet west of the Ludwig Copper Mine
Elevation: 5160'
Map: USGS Wellington 15'
Ownership: Private
Recorded by: A. McLane, 22 September 1980
Reference: Moore (1969:26,32)

The Gypsum Mine is an open pit about 80 feet deep. This gypsum has been mined intermittently since 1911. The mine was inactive in the 1960 s, but still principally owned by Ideal Cement Company.

TABLE 4. HISTORIC SITE DATA.

CrNv-03-1591

HALFWAY HOUSE, Lyon Co.
(Devils Gate Toll House, Summit Station)

Location: North side of U. S. Highway 50, 2.5 miles northeast of
Empire City

Elevation: (4961')

Map: USGS New Empire 7.5'

Ownership:

Recorded by: A. McLane, 19 July 1980

Reference: Carlson (1974:129)

There is conflicting information on this stage station (e.g.;
Paher 1970:16,71). This stage station was built about 1861 and
served as a polling place until moved to Mound House.

HALLS STATION, see DAYTON

CrNv-03-1592

HAYWARDS, Lyon Co.

Location: One mile west-southwest of Silver City

Elevation: 5440'

Map: USGS Virginia City 7.5'

Ownership: (Public)

Recorded by: A. McLane, 25 June 1980

Reference: Ansari and McLane (1977-1980)

Haywards was a station on the former Virginia and Truckee Railroad.

CrNv-03-1926

HAWS, Lyon Co.
(Stone House)

Location: 1/8 mile north of U. S. Highway 50 and 3.3 miles east of
Silver Springs

Elevation: 4220'

Map: USGS Silver Springs 15'

Ownership: Private

Recorded by: A. McLane, 11 September 1980

Reference: Nevada Emigrant Trail Marking Committee, Inc. (1978:22)

This station was one of the earliest stations along the Emigrant
Trail. The ruins are marked by Carson River Route Marker Number
11. The BLM cadastral survey of 1868 designates the site as
"Stone House."

CrNv-03-1593

HERCULES MINE, Lyon Co.

Location: 2-1/2 miles northeast of Rowe Peak at the north end of the
Pine Nut Mountains and 1/2 mile southeast of Barton Springs

Elevation: 6200'

Map: USGS Como 15'

Ownership:

Recorded by: A. McLane, 10 May 1980

Reference: Moore (1969:plate 2)

TABLE 4. HISTORIC SITE DATA.

HERCULES MINE (Continued)

This mine isn't recorded in the literature, but a map by Moore shows the mine as a gold prospect. The topographic map shows a building below the mine. The nearby Como mines were discovered in the early 1860 s.

HERSTEN, Lyon Co.

CrNv-03-1927

Location: On old Central Pacific Railroad line, about 3 miles east of Wadsworth
 Elevation: (4160')
 Map: USGS Two Tips 15'
 Ownership: Private
 Recorded by: A. McLane, 26 May 1980
 Reference: Myrick (1962 b:50)

Hersten was a small station on the Central Pacific Railroad. This section was built during July and August 1868.

HINDS HOT SPRINGS, see NEVADA HOT SPRINGS

HONEY LAKE SMITHS, see WILLIAMS STATION

HOOTON WELLS, Lyon Co.
 (The Well)

CrNv-03-1928

Location: In southeast Churchill Valley, 11 miles east of Weeks
 Elevation: 4200'
 Map: USGS Silver Springs 15'
 Ownership: BLM
 Recorded by: A. McLane, 12 September 1980
 Reference: deQuille (1963:23)
 Mason (1976:15)

Located on the Simpson Road, Hooton Wells may have been a Pony Express Station. "There was no station present when Sir Richard Burton passed this way in October of 1860. Rock ruins remain.... These were probably used by the Pony for its last few months and later during freight and staging efforts." (Mason 1976:15)

Dan de Quille (1963:23) gives additional information concerning this site, which he called The Well in June of 1861: "The Well is a new station on the Overland Mail route twelve miles from Buckland's....about noon we reached the Well, and found, besides a well of very good water, a canvas house in the course of construction, and one young white man."

LYON COUNTY

CrNv-03-1929

HUDSON, Lyon Co.
(Smithvale)

Location: On north side of West Walker River in Smith Valley, 4 miles northeast of Smith
Elevation: 4740'
Map: USGS Wellington 15'
Ownership: Private
Recorded by: A. McLane, 21 September 1980
Reference: Mordy and McCaughey (1968:122)

"The Nevada Copper Belt Railroad began operation in 1909, and its plans included the construction of a station in Smith Valley, which would bear the name Smithvale. Before the line ever reached this point, however, the station's name had been changed to Hudson. A townsite was platted and a wye was constructed in 1910, but the population never exceeded a dozen people. The station was important to the farmers of Smith Valley, and when service to Ludwig was discontinued in 1933, passenger and freight lines still ran to Hudson. Finally, in 1946, competition from motor traffic forced the line to discontinue operation. All of the residents soon left, and little remains today to even mark the site. The station building is now a residence on a ranch in northern Smith Valley."

JOHNTOWN, Lyon Co.

CrNv-03-1542

Location: In Gold Canyon about 1.75 miles northwest of Dayton
Elevation: 4720'
Map: USGS Dayton 15'
Ownership:
Recorded by: A. McLane, 4 August 1979
Reference: Paher (1970:69)

Emigrants found gold in Gold Canyon as early as 1851. During the late 1850 s, Johntown was the only mining camp of consequence in the region, with nearly 200 persons sluicing the gravels when there was enough water in the springtime. Johntown took its name from the "John Chinaman" who worked the abandoned gravels left by other prospectors.

The great silver strike in Virginia City during late 1859 eclipsed Johntown. However, dredges worked the gold canyon gravels up until World War II.

KOSSUTH MINE, Lyon Co.

CrNv-03-1593

Location: About 7/10 mile southeast of Silver City
Elevation: 5040'
Map: USGS Virginia City 7.5'
Ownership: Private
Recorded by: A. McLane, 28 July 1980
Reference: Ansari and McLane 1978-1980

Little work was done here until a shaft was sunk in 1873. Little profitable ore was found below the 350-foot level.

TABLE 4. HISTORIC SITE DATA.

LEWIS COAL MINE, Lyon Co.

CrNv-03-1930

Location: In southwest Lyon County, about 2.5 miles south of the Lewis Ranch
Elevation: 5760'
Map: USGS Mt. Grant 15'
Ownership: BLM
Recorded by: A. McLane, 11 October 1980
Reference: Moore (1969:40)

"The deposit has been known since the early 1900's but has had no significant production because of its remote location and the low rank of the coal."

LIME KILN, Lyon Co.

CrNv-03-1594

Location: East side of El Dorado Canyon, 3 miles southeast of Dayton
Elevation: 4720'
Map: USGS Dayton 15'
Ownership:
Recorded by: A. McLane, 20 July 1980
Reference: This report.

Stone structure located here during early 1960 s and author marked on map a "furnace."

LUDWIG, Lyon Co.
(Morningstar)

CrNv-03-1931

Location: West base of the Singatse Range, 1/2 mile west of Douglas Hill Mine
Elevation: 5080'
Map: USGS Wellington 15'
Ownership: Private
Recorded by: A. McLane, 22 September 1980
Reference: Mordy and McCaughey (1968:123).

"Ludwig's first discoveries were made in the 1860s when small amounts of silver ore were sent to the Comstock mills for reduction. It was not until 1907, however, that significant development took place, following the discovery of copper ore in the area.

"In 1911, Ludwig became the terminus of the Nevada Copper Belt Railroad. This caused the Nevada Douglas Company, owners of the property, to step up production. The camp's most active years (were) 1912-1914. Shipments of copper ore stopped after 1923, but gypsum was actively mined until after 1930. The remains of Ludwig include huge mill ruins and the foundation and vault of a bank. Mill vats and mining machinery are among the ruins."

LYON COUNTY

TABLE 4. HISTORIC SITE DATA.

LUDWIG MINE, Lyon Co.

CrNv-03-1932

Location: On west side of Singatse Range, 1/2 mile north-northwest of the site of Ludwig

Elevation: 5200'

Map: USGS Wellington 15'

Ownership: Private

Recorded by: A. McLane, 22 September 1980

Reference: Moore (1969:26)

This is a copper mine. "In 1906 and 1907, a production of \$184,000, 3,000 tons of ore, was reported. In 1912 and 1913, railroad shipments, mainly from the Ludwig Mine, amounted to 180,000 tons valued at \$1,800,000."

LUVA, Lyon Co.

CrNv-03-1933

Location: About 2 miles east of Fernley

Elevation: (4128')

Map: USGS Two Tips 7.5'

Ownership: Private

Recorded by: A. McLane, 26 May 1980

Reference: Myrick (1962 b:50).

This station was the beginning of the Eagle Salt Works Railroad. B. F. (Benjamin Franklin) Lute built a two-mile segment to the original Central Pacific Railroad line in 1903, and used 13 miles of the old bed to Eagle Salt Works.

LYON, Lyon Co.

CrNv-03-1934

Location: South side of Carson River, 4.75 miles west of Ft. Churchill

Elevation: 4280'

Map: USGS Churchill Butte 15'

Ownership: Private

Recorded by: A. McLane, 10 September 1980

Reference: Turner (1964:endpaper map)

Lyon was a siding on the Carson and Colorado Railroad.

LYON MILL, Lyon Co.

CrNv-03-1595

(Birdsall and Carpenter Mill, Douglas Mill)

Location: South edge of Dayton

Elevation: 4360'

Map: USGS Dayton 15'

Ownership:

Recorded by: A. McLane, 28 July 1980

Reference: Carlson (1974:160)

"An early mill located on a hillside on the southwest edge of Dayton in Lyon County, was built in 1865 and so named. Having been built by Fred Birdsall and a man named Carpenter, it was also known as the Birdsall and Carpenter, and later Douglas(s). for J. M. Douglas of Virginia City who purchased it in 1882."

TABLE 4. HISTORIC SITE DATA.

MANSEAUS HALFWAY HOUSE, Lyon Co.

CrNv-03-1935

Location: 4½ miles west of Ft. Churchill
 Elevation: 4240'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 10 September 1980
 Reference: Nevada Emigrant Trail Marking Committee, Inc. (1978:24)

This site is at Break A Heart Ranch. The Manseaus Halfway House was a station on the freight road (on the alternate route of the Carson River Emigrant Trail) between Carson City and Ft. Churchill.

MASON, Lyon Co.

CrNv-03-1936

Location: In Mason Valley, 2.5 miles southwest of Yerington
 Elevation: 4423'
 Map: USGS Yerington 15'
 Ownership: Private
 Recorded by: A. McLane, 23 September 1980
 Reference: Mordy and McCaughey (1968:123)

"Mason gained initial prominence in May 1910, when Railroad Day was celebrated after the Nevada Copper Belt Railroad had been built to the south end of Mason Valley, on its way to Smith Valley and Ludwig.

"The railroad built an engine house at this point on the line, and the town was the terminus of the Bluestone Copper Company Railroad, a standard-gauge line which extended two and one-half miles west from Mason to the Bluestone Mine. There were several businesses in Mason, including a general store and a hotel. Both are still standing, but the former is no longer operating."

MASON VALLEY MINE, Lyon Co.

CrNv-03-1937

Location: East side of Singatse Range, 4 miles southwest of Yerington
 Elevation: 5100'
 Map: USGS Yerington 15'
 Ownership: Private
 Recorded by: A. McLane, 25 September 1980
 Reference: Knopf (1918:51-52)
 Moore (1960:26)

Between 1870 and 1875 the Mason Valley Mine furnished considerable bluestone to the Comstock mills. The Mason Valley Mines Company acquired the property in March 1907 after which began an active exploration program. Copper was not produced until January 6, 1912 when its smelter 16 miles north at Thompson went into operation. The mine produced until 1930 with a lull from October 1914 through 1916.

The mine produced 1,701,794 tons of ore with a gross value of \$2,735,881. Some of this production came from the adjacent Bluestone and Malachite. An aerial tramway transported the ore to the Nevada Copper Belt Railroad at Mason.

TABLE 4. HISTORIC SITE DATA.

MASON VALLEY MINE TRAMWAY, Lyon Co.

CrNv-03-1938

Location: Just west of Mason on east side of Singatse Range

Elevation: 4500+'

Map: USGS Yerington 15'

Ownership: Private

Recorded by: A. McLane, 25 September 1980

Reference: Knopf (1918:52)

USGS Yerington District (map) 1915

The former 6,250-foot tramway hauled ore from the Mason Valley Mine to a spur on the Nevada Copper Belt Railroad at Mason. The mine was active from 1912 to 1930.

McCONNELL MINE, Lyon Co.

CrNv-03-1939

Location: East side of Singatse Range, 2.2 miles southwest of Mason

Elevation: 5600'

Map: USGS Yerington 15'

Ownership: Private

Recorded by: A. McLane, 27 September 1980

Reference: Knopf (1918:55-56)

Moore (1969:27)

The mine consists of a large glory hole and a shaft 400 feet deep. Production began in March 1912 at the rate of 50 tons daily. By November 1913 the mine produced 14,702 tons of copper, having a gross value of \$106,785. In 1944 and 1945, 700 tons were produced at a value of \$11,000.

McMARLINS STATION, see DAYTON

MILLERS STATION, see REEDS STATION

MINERAL RAPIDS, Lyon Co.
(Carson Rapids City)

CrNv-03-1596

Location: 1 mile north of Dayton

Elevation: 4360'

Map: USGS Dayton 15'

Ownership:

Recorded by: A. McLane, 28 July 1980

Reference: Ansari and McLane (1978-1980)

Though stated by historians as an alternate name for Dayton, Angel (1881:503) states that a town was laid out here (at Mineral Rapids Mill) "...which was intended to eclipse Dayton, but it did not." "Mineral Rapids Q. M." is shown on Bancroft's 1862 map of the "Washoe Silver Region," about 1/2 mile north of Dayton. Carson Rapids City is shown on an 1860 map and Florence L. Bray (1913) believes that this is the same as Mineral Rapids.

This may be at same location as Rock Point Mill. More research needed here.

TABLE 4. HISTORIC SITE DATA.

MOUND HOUSE, Lyon Co.

CrNv-03-1597

Location: 1/4 mile north of U. S. Highway 50, about six miles northeast of Carson City

Elevation: 4920'

Map: USGS New Empire 7.5'

Ownership:

Recorded by: A. McLane, 13 April 1980

Reference: Beebe and Clegg (1949:39)

Mordy and McCaughey (1968:123-124)

Myrick (1962b:161)

"The site of Mound House was about one-half mile north of U. S. Highway 50, at a point about five miles west of Dayton. The station and the siding at Mound House were built in 1871, simply as a wood and water stop on the Virginia and Truckee Railroad. For the 9 years following Mound House stayed relatively the same, except for the addition of a post office in 1877. Then in 1880 D. O. Mills, William Sharon, and H. M. Yerington, of the V&T, decided to build a narrow-gauge railroad from Mound House to the mining camps of southern California. When completed, the new line was named the Carson and Colorado Railroad, and it turned Mound House into a booming shipping point. With the addition of the Tonopah boom of the early 1900s, it almost had more traffic than it could handle.

"The Southern Pacific Railroad purchased the C&C but quickly became very dissatisfied with the operations of the V&T, from its transfer point at Reno to the depot at Mound House. To correct this, the Southern Pacific built a short line from its own station at Hazen, to intersect the C&C at Churchill. This successfully by-passed the V&T, but it also by-passed Mound House. The Hazen Cut-Off eventually forced the Virginia and Truckee out of business. The narrow-gauge was abandoned from Mound House to Burton in 1934, as was the V&T track from Carson to Virginia City in 1938. This left Mound House with no reason for existence, and within the next few years, it was completely abandoned." (Mordy and McCaughey, 1968)

MOUND HOUSE MINE, Lyon Co.

CrNv-03-1598

Location: 6 miles northeast of Carson City

Elevation: 5300'

Map: USGS New Empire 7.5'

Ownership:

Recorded by: A. McLane, 11 August 1980

Reference: Moore (1969:34)

Rock gypsum and gypsite have been mined from the mine and processed at Mound House between 1914 and 1920. The Pacific Portland Cement Co. operated two plaster plants here and produced gypsum valued at \$451,982. During the mid-1960 s, small amounts of gypsum were being produced mainly as a soil conditioner.

MORNINGSTAR, see LUDWIG

TABLE 4. HISTORIC SITE DATA.

NEVADA CITY, see DAYTON

NEVADA COPPER BELT RAILROAD, Lyon Co.

CrNv-03-1941

Reference: Mordy and McCaughey (1968:124)

"The Nevada Copper Belt Railroad was built in 1900 to connect the mine at Ludwig in Smith Valley with Wabuska on the Southern Pacific's line in Mason Valley, a distance of thirty-eight miles. Construction of the line resulted in the settlement of the community of Hudson, at the exit of Wilson Canyon. Operations over the road were sporadic after 1930, and it ended operations in March, 1947."

NEVADA HOT SPRINGS, Lyon Co.
(Hinds Hot Springs)

CrNv-03-1942

Location: On northwest side of Smith Valley, 10 miles north-northwest of Wellington

Elevation: 4640'

Map: USGS Wellington 15'

Ownership: (BLM) border

Recorded by: A. McLane, 22 September 1980

Reference: Maule (1938:30)

This was a station on the road from Dayton to Wellington. John Fairchilds took up the property in February 1861. He sold half interest to Duncan Campbell and in the late 1860 s John C. Hinds bought the property. Troops from Ft. Churchill were stationed here in the early 1860 s.

NEVADA REDUCTION WORKS, see ROCK POINT MILL

TABLE 4. HISTORIC SITE DATA.

NEW JERUSALEM, Lyon Co. CrNv-03-1599

Location: 15 miles east of Dayton along the old Carson and Colorado
Railroad grade
Elevation: 4361'
Map: USGS Dayton 15'
Ownership:
Recorded by: A. McLane, 22 July 1980
Reference: Bray (1913:216)

This old ranch was owned by an atheist named Al Perkins. The ranch was called New Jerusalem in contempt for the man.

NEW JUNCTION, Lyon Co. CrNv-03-1944

Location: 1 mile east of Fernley
Elevation: (4151')
Map: USGS Two Tips 15'
Ownership: Private
Recorded by: A. McLane, 26 May 1980
Reference: Myrick (1962^b:50)

New Junction on the new segment (1902) of the Central Pacific Railroad served as a turnoff to Wadsworth. This short section from New Junction was abandoned during 1905-1906.

NEWMAN STORE, Lyon Co. CrNv-03-1943
(Camel Corrals)

Location: On the Carson River just east of Susans Bluff
Elevation: (4240')
Map: USGS Churchill Butte 15'
Ownership: BLM
Recorded by: A. McLane, 23 April 1980
Reference: Maule (1938)

Location only shown by Maule on Wabuska sheet as being in existence in 1862.

TABLE 4. HISTORIC SITE DATA.

NEW YORK HOUSE, Lyon Co.

CrNv-03-1600

Location: About 3 miles west of Dayton, 1/2 mile north of the present junction of U. S. Highway 50 and Nevada Route 17
Elevation: (4760')
Map: USGS New Empire 7.5'
Ownership:
Recorded by: A. McLane, 28 July 1980
Reference: Ansari and McLane

New York House was located on the east stage route out of Carson City. It is located on Bancrofts 1862 "Map of the Washoe Silver Region of Nevada Territory" and an 1881 map of the Carson and Colorado Railroad.

NORDYKE, Lyon Co.

CrNv-03-1945

Location: West side of Mason Valley, 7 miles south-southwest of Yerington
Elevation: 4480'
Map: USGS Yerington 15'
Ownership: Private
Recorded by: A. McLane, 23 September 1980
Reference: Carlson (1974:178)
Myrick (1962:216-217)

This is an early settlement which had a quartz and flour mill. The name Nordyke is taken from the Nordyke and Marmon machinery that was installed in the flour mill. The post office was established June 13, 1892. The town subsequently became important as a station for the Nevada Copper Belt Railroad by November 30, 1910. The post office was removed January 15, 1914 after the town declined.

OLD LOG HOUSE, Lyon Co.

CrNv-03-1946

Location: Under Lahontan Reservoir, 3.7 miles east of Silver Springs
Elevation: 4150'
Map: USGS Silver Springs 15'
Ownership: State of Nevada
Recorded by: A. McLane, 11 September 1980
Reference: BLM Township Plat 1868

This feature is located on the 1868 cadastral survey.

OLD THISBE, Lyon Co.

CrNv-03-1947

Location: On old Central Pacific Railroad right-of-way, 4.5 miles east of Wadsworth
Elevation: (4155')
Map: USGS Two Tips 15'
Ownership: Private
Recorded by: A. McLane, 26 May 1980
Reference: Myrick (1962b:50).

Old Thisbe siding was on the original Central Pacific Railroad. This segment was completed during July and August 1868.

LYON COUNTY

TABLE 4. HISTORIC SITE DATA.

PALMYRA, Lyon Co.

CrNv-03-1601

Location: In Pine Nut Mountains one mile west of Como

Elevation: 6440'

Map: USGS Como 15'

Ownership:

Recorded by: A. McLane, 20 July 1980

Reference: Mordy and McCaughey (1968:124)

Myrick (1962, a)

"Palmyra was located below the town of Como, twelve miles by road southeast of Dayton. Palmyra was the first town to be built in the Palmyra Mining district, two years before the more famous Como was established. Consequently, the post office for the district was located here, and the camp also had a small business district to serve the 400 individuals in the vicinity. With the advent of Como, many people at Palmyra relocated in the newer town. The camp of Palmyra declined after 1865, and was never revived (Mordy and McCaughey (1968)).

PATINA, see DARWINPONDERERS REST, see DAYTON

PONY MEADOWS MINE, Lyon Co.

CrNv-03-1602

Location: About 2 miles northeast of Como in the Pine Nut Mountains

Elevation: 6400'

Map: USGS Como 15'

Ownership:

Recorded by: A. McLane, 10 May 1980

Reference: Moore (1969:25-26)

The topographic map shows an open-pit mine here with a building. Other buildings are immediately south by a spring. Evidently, a small mining camp was located here. Moore makes this comment: "...the Pony Meadows mines are located along a series of gold and silver veins. In 1929 a small mill was constructed to treat the ores from this area."

LYON COUNTY

TABLE 4. HISTORIC SITE DATA.

RAMSEY, Lyon Co.

CrNv-03-1603

Location: 23 miles east-southeast of Reno at the east end of Flowery Range
 Elevation: 5400'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 28 June 1980
 Reference: Mordy and McCaughey (1968:125)

"The site of Ramsey was nine miles west-northwest of Silver Springs, near the Storey-Lyon County border. Tom and Bladen Ramsey, from Goldfield, discovered the Ramsey-Comstock gold-silver mine in the winter of 1905. Other miners soon arrived at the location, and the town of Ramsey was begun in the summer of 1906. It soon had a post office, a newspaper and an amalgamating mill in operation. The boom lasted only a few years, however, and most of the town consisted of frame buildings and tents, with only a few really substantial structures. By the 1910s, most of the original 600 residents had departed, and the camp became nearly deserted. A number of mining properties were worked out in the 1930s and 1940s, and most of the recorded production came from this period. The town was completely deserted by World War II, and today nothing but mine dumps and mill tailings remain."

RAMSEY-COMSTOCK MINE, Lyon Co.

CrNv-03-1604

Location: 8/10 mile northeast of Ramsey (site)
 Elevation: 5440'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 28 July 1980
 Reference: Moore (1969:24)

This was the original mine and largest producer in the Ramsey Mining District.

REEDS STATION, Lyon Co.

CrNv-03-1605

(Cooneys Ranch, Camp Hays, Millers Station)

Location: 7 miles northeast of Dayton on the north side of the Carson River
 Elevation: 4280'
 Map: USGS Churchill Butte 15'
 Ownership: Private
 Recorded by: A. McLane, 28 July 1980
 Reference: Ansari and McLane (1978-1980)

1 Pursuant to NRS 239B.030, the undersigned
2 affirms that the following document does not
3 contain the social security number of any person.

4 JOHN L. MARSHALL
5 SBN 6733
6 570 Marsh Avenue
7 Reno, Nevada 89509
8 Telephone: (775) 303-4882
9 Attorney for Petitioners Comstock
10 Residents Association & Joe McCarthy

Electronically Filed
Dec 09 2015 08:48 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

11
12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 COMSTOCK RESIDENTS ASSOCIATION,
14 JOE McCARTHY

15 Appellants,
16 00128

No. 68433
District Court Case No. 14-CV-

17 v.

18 LYON COUNTY BOARD OF
19 COMMISSIONERS; COMSTOCK
20 MINING INCORPORATED

21 Respondents,
22 _____/

23 **JOINT APPENDIX**

24 **VOLUME 23**

25 **PAGES 3251-3374**
26
27
28

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document (date filed)</u>	<u>Volume:Page</u>
Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (1/31/2014)	1:0001
Comstock Mining Incorporated's Answer to Complaint (3/28/2014)	1:0053
Comstock Residents Association's Opening Brief on Petition for Judicial Review (12/16/2014)	28:3837
Comstock Residents Association's Opposition Brief in Support of Petition for Judicial Review (1/9/2015)	28:3894
Comstock Residents Association's Reply Brief in Support of Motion to Augment Record (1/9/2015)	28:3888
Comstock Residents Association's Reply Brief in Support of Petition for Judicial Review (1/20/2015)	28:3926
CRA's Notice of Supplemental Authority re Motion to Amend (10/14/2014)	28:3754
CRA's Reply to Lyon County and CMI's Oppositions to Motion to Amend Complaint/Petition (8/5/2014)	27:3746
Joinder to Defendant Lyon County Board of Commissioners' Motion to Dismiss (6/13/2014)	27:3648
Joint Opposition of Respondents Lyon County Board of Commissioners and Comstock Mining Incorporated to Motion to Augment Record (1/2/2015)	28:3881
Lyon County Board of Commissioners' Answer to Complaint (3/27/2014)	1:0038
Lyon County Board of Commissioners' Motion to Dismiss or, in the Alternative, Motion for Partial Summary Judgment (6/10/2014) ...	1:0082

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Document (date filed)</u>	<u>Volume:Page</u>
Lyon County Board of Commissioners’ Opposition to Motion to Amend Complaint/Petition (7/29/2014)	27:3721
Lyon County Board of Commissioners’ Reply to Opposition to Motion to Dismiss (7/29/2014).....	27:3730
Lyon County’s Objection to Court’s Consideration of CRA’s Supplemental Authority (10/16/2014)	28:3757
Memorandum of Points and Authorities in Opposition to Comstock Residents Association’s Opening Brief in Support of Petition for Judicial Review (1/12/2015).....	28:3905
Memorandum of Points and Authorities in Opposition to Petition for Judicial Review (12/15/2014).....	28:3785
Memorandum of Points and Authorities in Reply to Comstock Residents Association’s Opposition Brief in Support of Petition for Judicial Review (1/16/2015).....	28:3917
Motion to Amend Complaint/Petition (7/3/2014)	27:3651
Motion to Augment Record and/or Request for Judicial Notice (12/16/2014)	28:3812
Notice of Assignment by Clerk [Senior Judge Estes] (6/10/2014).....	1:0079
Notice of Entry of Order [Denying Motion to Amend Complaint/Petition] (12/8/2014).....	28:3772
Notice of Entry of Order [Granting in Part and Denying in Part Motion to Dismiss] (12/8/2014)	28:3777
Notice of Entry of Order [Granting in Part and Denying in Part Plaintiffs’ Motion to Augment Record] (6/10/2015)	28:3944
Notice of Entry of Order [Denying Petition for	

1	Judicial Review] (6/15/2015).....	28:3949
2	<u>Document (date filed)</u>	<u>Volume:Page</u>
3		
4	Objection to Court’s Consideration of CRA’s Supplemental	
5	Authority (10/21/2014)	28:3760
6	Opposition to Motion to Dismiss (7/3/2014)	27:3695
7	Opposition to Plaintiffs/Petitioners’ Motion to Amend	
8	Complaint/Petition (7/25/2014)	27:3712
9	Order Denying Petition for Judicial Review (6/5/2015).....	28:3937
10	Order Denying Plaintiffs [sic] Motion to Amend (12/3/2014)	28:3793
11		
12	Order Granting in Part and Denying in Part Motion to	
13	Augment Record (6/5/2015)	28:3941
14	Order Granting in Part and Denying in Part Motion to Dismiss (12/3/2014)	28:3766
15	Order of Recusal [Judge Rogers] (4/1/2014)	1:0071
16	Order of Recusal [Judge Aberasturi] (5/2/2014)	1:0076
17		
18	Petitioners Comstock Residents Association and Joe McCarthy’s	
19	Notice of Appeal (7/14/2015)	28:3955
20	Record on Appeal (6/10/2014)	1:0102
21	Supplement to Record on Appeal (1/2/2015)	28:3877
22		
23		
24		
25		
26		
27		

from undesirable influences or intrusions, stabilizing property values by defining a certain knowledge of future allowable uses and by establishing population density standards to prevent overcrowding of land. While the General Plan is a long range guide to the future land development, a zoning ordinance is designed to be a short range measure. As a result, the zoning map will not necessarily look like a plan because it is more detailed and must more accurately reflect current conditions.

Subdivision Code. A subdivision ordinance regulates the development of private lands by establishing certain standards to insure that such development relates to the overall benefit of the area. Most modern subdivision regulations require that suitable sites be reserved for necessary public facilities, that natural land assets be recognized and preserved, that streets be located and designed to conform with community goals. A subdivider is free to submit any design for a proposed subdivision which conforms to these standards, but the Planning Commission may require changes to gain a more workable plan or one that fits better to the adopted plan.

There are other ordinances that may provide important benefits to the long range development of the community. These include such specialized concerns as housing codes, mobile home (and trailer court) controls, outdoor advertising restrictions, etc. These are discussed as follows:

Housing Code as a Tool for Upgrading County Housing Conditions. It is generally recognized that the quality of housing has a tremendous influence on community welfare and citizen well-being. It is clear that the quality of housing involves the condition of the dwelling unit and its equipment and facilities. To develop and maintain an acceptable level of housing conditions, two related actions are involved: Preservation of housing that is in good condition and restoration to a clean, sanitary and useful condition of dwelling units that are deteriorated. Maintenance of housing quality is not usually covered by building codes or zoning regulations and many communities depend upon a Housing Code for help in maintaining housing quality. A new Housing Code, while not a part of this contract, would appear to be a desirable feature for a future "better" Lyon County.

Mobile Home Controls. Since it is obvious that a great deal of recent new housing in the county has been mobile homes, certain minimum standards and controls regulating the placement, spacing and protection of these elements, especially in mobile home "courts" should be instituted. A model ordinance ("Mobile Home & Recreational Vehicle Control") to that effect has been prepared and submitted.

Planned Unit Development. "Planned Unit Development" in urban areas is a device within the zoning ordinance which allows for a variety of uses to be designed as a single unit with the various uses harmoniously planned to provide all necessary services within the one zone. Generally, this tech-

It is often assumed that zoning is planning! Zoning, while important, is still limited. Zoning cannot guide the layout of new streets, the selection of a new school site, the ease of traffic flow, or many other aspects of community life. Zoning does perform a regulatory function but it cannot provide all the constructive planning required for a healthy community life.

Lyon County has both a zoning and a subdivision control ordinance, both dating from about 1968, and copied essentially from ordinances then in effect in Douglas County. A new subdivision ordinance, reflecting strong ecological attitudes and administrative controls has been drawn and submitted as part of this contract. A new zoning ordinance should also be derived, following more local understanding of the General Plan objectives and methods.

The General Plan marks the initial step in what must be a continuing process of decision-making concerning the future of Lyon County. Further steps involve the translation of the derived plan policies into more specific proposals for subsequent action. Also, a means of implementation must be developed that will assure consistent actions among all levels of both the public and private sectors concerned with accomplishment.

One of the greatest problems in any adequate development consideration is the difficulty of financing for residential uses. FHA and lending institutions are reluctant to underwrite loans in rural and unprotected areas or those without guarantees of long-range stability usually associated with such rural areas.

Lyon County is one of the very few counties within the State which still does not have a separate recommending Planning Commission. It is strongly recommended that a six-man Planning Commission, broadly reflective of the entire county, be appointed at once!

Some of the more pertinent recommendations in these fields are:

- * Appoint a Lyon County Planning Commission to institute implementation of the General Plan within an integrated planning process.

- * Seek official and citizen concurrence with goals, development policies, and proposals of the General Plan.

- * Develop a close knowledge and cooperation to programs conducted or contemplated by State and Federal agencies.

- * Develop procedures for referral and response to significant public and private development proposals within the county.

- * Develop a county information system and data bank to provide a consistent view of development trends and other information essential to the effective operations of government and the private sector.

14 CV 00128 - 003147
LYON COUNTY
nique is useful when developing large projects, but also may be used on small lot developments, particularly with multiple residence (townhouse) designs. This approach is rapidly gaining favor throughout the country and can be expected to continue to increase in the future.

Billboards. Billboards and signs are somewhat of a problem, but not as much as might be expected. While there are a number of them, they are (at least as yet) not objectionable, especially to the traveler weary of miles of open desert. Many are, however, "homegrown" jobs and are in sad states of disrepair. Billboard ordinances establishing minimum standards, construction requirements, spacing limits, etc., may be desirable to closer fit the local situation and to restrict billboards along the scenic routes.

(3) Enforcement and Administration: Controls regulating development are of little use in realizing the objectives of a General Plan unless they are adequately administered by competent personnel. Poor or improper enforcement of the regulations encourages a lack of confidence to develop on the part of private enterprise and a gradual disrespect develops. For an area such as Lyon County, a knowledgeable Building Inspector with a practical background in building construction, plumbing and electrical work, and one with a working understanding of the zoning ordinance and subdivision regulations, is the best solution and is already in effect. It is also important that complete records be kept and that necessary information is obtained on forms, suitably completed and filed by all applicants for development permits.

(4) Continuing Functions: Periodically, development projects will be presented to the county for review. In some cases, these projects may not conform to the General Plan and the County Commissioners will be faced with the decision to either follow the Plan or to "allow" the proposal. To determine the best alternative, the County Commission must continuously re-evaluate the principles and recommendations of the General Plan as they are affected by the proposals and weigh them against the contemplated development and its effect upon Lyon County. If changing conditions and technology indicate the General Plan should be changed, then it should be; but if the General Plan or the elements of it that are being contested are found to still be valid, then the General Plan should be upheld and the proposal be required to be changed to conform with the Plan (or not proceed at all).

In order for the planning function to be efficacious and operative within the planning area, it is vital that a continuing means of staffing, administration and followup be instituted and followed. To this end, some form of "on going" staff action to serve the Board of County Commissioners is extremely desirable. Lyon County has not previously exercised any form of planning program; this 701 study now provides the technical basis for planning, but a technical effort and advice on everyday and routine planning action as well as successive activities in light of Master Plan goals

is necessary. This is extremely important in view of the new large developments currently being developed in the county. This "staff" should meet with the County Commission at stated intervals, conduct technical correspondence as necessary, provide mapping in relation to changes and variances, aid in subdivision design and review, "push" for recreation and tourism development and, in general, provide support and interest to a continuing planning function.

(5) Public Involvement: One of the more effective means of insuring follow-through on comprehensive plan proposals is the use of citizen organizations. Consciously or not, most citizens will oppose a measure if they do not understand it. It is, therefore, important that the citizens not only understand, but have a constructive part in the development of the finally considered proposals. A range of social and service organizations motivated by a desire to shape public opinion and to provide action for community betterment can be found in most communities. The Planning Commission is also a good example of a citizen's committee to advise local government, but to advise only and not to usurp the rights and prerogatives of government. The advice, time and effort that these citizen groups can give to help local government implement some of the public improvement programs on a continual basis is quite significant and generally very desirable in forming a feeling in the citizenry of a partnership in local government in accomplishing a better place in which to live.

(6) Coordination: The greatest challenge for plan implementation is to achieve systematic and effective coordination among all levels of government and the many public agencies operating or having specific interest in Lyon County. The General Plan must be correlated continuously through a close liaison and coordination with the County Planning Commission and others, subjected to duly noticed public hearings, and finally (an amended version) adopted by the Board of County Commissioners as the official development policy for guidance in decision making, capital budgeting, and administration. Related legal controls such as a new zoning ordinance, subdivision ordinance, mobile home and recreational vehicle ordinance, etc., are a part of the program.

(7) Financing: As no plan is better than its potential for realization, no program is better than its means to accomplishment through proper financing means. There are a variety of methods as indicate below. Each has its own merits, however the one most popular is probably the General Obligation Bonds. The Pay-As-You-Go type of financing is also popular, but sometimes involves a wait of years before a project can be financed completely.

General Obligation Bonds: Projects providing community benefits may be financed by general obligation bonds. Through this method, the taxing power of the jurisdiction is pledged to pay interest upon and retire the debt. General obligation bonds can be sold to finance permanent types of improvements such as schools, municipal buildings, parks, and recreation

Church groups, school associations, lodges, service clubs, political groups and professional organizations are good examples of citizen groups that can be solicited to help form a Beautification Advisory Committee, a County Paint-up-Fix-up and Weed Removal Committee, an Industrial Development Committee, or a Park and Recreation Committee.

Recognition: The importance of planning education cannot be too emphasized. There are several ways to effect this:

- * Solicit citizen aid in the preparation of the plan.
- * Publish and distribute the complete plan widely.
- * Include a study of the plan in the school curriculum, using the plan as a text and encouraging basic field research.
- * Public presentations of the plan by members of the planning commission, governing body and other interested parties.
- * A strong and active Community Plan Association, a citizen planning group to be unlimited in membership -- voluntary and self-perpetuating.

Little or any of this now exists within the area.

facilities. General obligation bonds may be sold for a specific purpose, more commonly, serial electorate and are issued as either sinking fund or, more commonly, serial bonds.

14 CV 00128 - 003149
LYON COUNTY

Revenue Bonds: Revenue bonds frequently are sold for such projects as water and sewerage systems, stadiums, swimming pools, airports, and other revenue producing facilities. Such bonds usually are not included in state imposed debt limits, as are general obligation bonds, because they are not backed by the full faith and credit of the local jurisdiction. For this same reason, interest rates are almost always higher than are general obligation bond interest rates and voter approval is seldom required. However, care must be taken to assure that estimated net earnings of new facilities are realistic.

Lease Purchase: Local governments utilizing the lease-purchase method prepare specifications for a needed public works project and take steps to have it constructed by a private company or authority. The facility is then leased by the municipality at an annual or monthly rental. At the end of the lease period, the title to the facility can be conveyed to the municipality without any future payments. The rental over the years will have paid the total original cost plus interest. Localities in some states have used this method to avoid the necessity of calling bond elections or to avoid debt limits. This type of financing has sometime proved to be excessively costly. In addition, its legality has been questioned in some states; in others, the obligation is considered as part of the municipal debt.

Pay-As-You-Go: Pay-as-you-go is the financing of improvement projects from current revenues. Such revenues may come from general taxation, fees, charges for services, special funds, or special assessments. Advantages of this method include the saving of interest costs on borrowed money and providing for greater future budget flexibility. The major disadvantage is the need to have uncommitted cash available, which often precludes the financing of extensive capital improvements in a small community. Reserve fund financing is a variation of the pay-as-you-go method. Under this procedure, funds are accumulated in advance for the construction of capital projects. The accumulation may result from surplus or "ear-marked" operational revenues that are set aside, depreciation accounts, or from the sale of capital assets.

Authorities and Special Districts: Authorities and special districts are created in most cases to manage facilities that are supported by user charges. Toll roads and water and sewerage systems are examples of such facilities. Special districts with power to tax are also created for the purpose of issuing bonds and constructing facilities; however, its use also creates many problems. Chief among these is the scattering of governmental responsibility. Moreover, the debt incurred by an authority or special district is still a part of a community's total financial obligation even where it is not counted in the debt limit of a general purpose government.

LYON COUNTY

The possibility of obtaining private gifts for certain facilities -- parks, community centers, or libraries -- from individuals, corporations and foundations should also be explored. Before defining what projects should be provided by the government, an effort should be made to discover if some non-public group can provide a part of a needed program. For example, private groups or business leaders may be persuaded to build off-street parking structures or provide parking lots if the local government has insufficient funds. Civic associations or business clubs have provided parks and playgrounds in many communities.

Special Assessments: Public works programs financed most equitably by special assessments are those that benefit certain properties more than others. Local improvements often financed by this method include street paving, sanitary sewers, and water mains.

Joint Financing: The proposed program might be surveyed to determine whether certain projects are equally beneficial to other governmental agencies, authorities, or special districts and if joint financing can be arranged. Such cooperation may bring about projects that would otherwise have to be deferred for many years and, thus, can result in better service and lower costs for the area.

Outside Sources: State and federal grants-in-aid programs are frequently available to plan, construct, and finance capital improvements. A number of these programs are listed below:

a. **Urban Planning Assistance Program (Sec. 701, Housing Act of 1954, as amended):** Provides assistance to counties, small communities, groups of communities having less than 50,000 population, or regional planning agencies, for comprehensive land use planning and transportation, school, or other public facility planning. For small communities, funds are also available through the Farmers Home Administration.

b. **Open Space Land Program (Sec. 702, Title VIII, Housing Act of 1961):** Provides grant assistance for the acquisition, development and/or improvement of developed or undeveloped land suitable for park and recreation purposes.

c. **Advances for Public Works Planning (Sec. 702, Housing Act of 1954):** Provides interest-free loans to finance preliminary or final plans for all types of public works projects.

d. **Grants for Basic Water and Sewer Facilities (Sec. 702, Title VIII, Housing & Urban Development Act of 1954):** Provides federal grants to assist a community in constructing or expanding basic facilities needed to promote efficient and orderly growth. For small areas, grants for this purpose are also available through the Farmers Home Administration.

e. **Public Facility Loans (Housing Amendments of 1955):** Provides long-term loans to small communities for the construction of needed public works where such credit not otherwise available.

f. **Grants for Advance Acquisition of Land (Sec. 704, Housing & Urban Development Act of 1965):** Provides grants to cover the interest cost of a loan incurred to finance acquisition of land sites for public works and facilities needed in the near future. Construction must be begun within five years after grant is approved.

g. **Grants for Neighborhood Facilities (Sec. 703, Housing & Urban Development Act of 1965):** Provides federal grants to cover costs of developing multi-purpose facilities to be used for neighborhood health, recreation, social or similar community service facilities.

h. **Historic Preservation Program (Sec. 709, Title VII, Housing Act of 1961):** Provides matching grants to meet the cost of acquisition, restoration, or improvements of sites, structures, or areas of historic or architectural significance in urban areas.

LYON COUNTY

G. Capital Budgetting:

A systematic budgetting procedure is important to all Nevada Counties. The General Plan will provide the physical basis for determination of needed improvements and acquisitions commensurate with anticipated future populations and developments and enable initial steps toward the future promulgation of a full-scale capital budgetting procedure on a continuing administrative basis. The Plan also recommends priorities in developments for recreation planning. This section outlines the elements of long-range capital budgetting, explains its purposes and benefits, and endeavors to answer basic related questions. Long range financial planning is not a requirement for Federal assistance in development of a General Plan, but it is a necessary element in planning functions.

Coordinating Development of the General Plan and the Capital Improvement Program: The development and adoption of the General Plan will serve as a guide for orderly and harmonious growth patterns for both the private and public developments within Lyon County. The various controls such as building regulations, zoning ordinances, subdivision ordinances, etc., are the means by which the objectives as set forth in the General Plan are implemented. To supplement the controls, for optimum utilization of the General Plan, and to assure proper priorities in acquisition, timing and construction of public facilities by sound financing methods, it is essential that a capital improvement program be developed.

Capital Improvement Program: The broad purpose of a Capital Improvement Program is to facilitate the development of needed public improvements. The initial acquisition or construction of these facilities together with improvements and additions such as parks, playfields, water and sewerage systems, streets, public buildings, fire and police facilities, etc., are called "capital improvements" regardless of how obtained -- by purchase, gift or condemnation. The funds expended for such facilities is usually referred to as "capital expenditures." The basic function of the Capital Improvement Program is to determine the priority and sequence of projects and the length of time necessary to carry them out. It also estimates the costs of the program, the estimation of revenues from tax sources, and the financing methods to be used to implement the program. Obviously, operating and maintaining expenditures of the county come first, then the expenditures for capital improvements.

Determining Priorities: Various criteria have been proposed to aid in the determination of priorities. The following generalized list may be used as a guide to assist in scheduling:

1. Protection of life
2. Public health and welfare
3. Protection of property

JA3256

The Capital Improvement Program covers a desired period of years and could cover the same time period as the General Plan when related to a long-range financial plan.

The State of Nevada recently published a thorough analysis of the capital budgetting procedure. See "A Capital Improvements Programming Guide for Nevada's Political Subdivisions," issued through the Nevada State Planning Board in Carson City in June of 1970.

4. Conservation of resources
5. Maintenance of physical property
6. Level and provision of public service
7. Citizen demand and population growth

The propriety and sequence of the various projects is generally determined by the Planning Commission. However, to make certain that no desirable items have been overlooked, county department heads and administrators of other agencies concerned should submit information regarding capital improvements which they believe necessary in the immediate future. Suggestions from legislators, civic groups, organizations and individual citizens is very desirable.

Factors for Determining Number of Years of a Program: If a Capital Improvement Program is part of a long-range financial program, it may cover a longer period of time. If developed separately, a reasonable period of time is considered to be 5 or possibly 6 years. Most communities have found that this amount of time for programming of public improvements eliminates many uncertainties. Public support is generally better for a 5-year program since they feel that the projects will be carried out soon enough for them to take full advantage of it. Since references have been made to a long-range financial planning program, an explanation of this process seems to be in order. In this type of program the capital improvements plan is one of the elements of an overall program requiring longer periods of time to accomplish; the elements as outlined are:

- Elements:
1. Public Services Program,
 2. Capital Improvement Program,
 3. Long-term Revenue Program,
 4. The Capital Budget, and
 5. The Annual Operating Budget.

However, in considering the Capital Improvements Program by itself, the following criteria are generally considered for determining the actual number of years needed for the program.

- a. The level and adequacy of services desired,
- b. The economy of the community and cost factors of the projects, and
- c. Population growth and character estimates.

Estimating Available Revenues: An estimate of the revenues that are available under current fiscal policies will provide a base for determining how revenues can be increased and expenditures decreased. Such an estimate will take into consideration trends in assessed valuations, in property tax rates, in sources of revenue other than property taxes, property and investment earnings, reserves and/or surpluses carried over, probable shares in state-collected, locally shared taxes, and probable state and federal aid. Property tax limits and local attitudes must be considered also.

Benefits of Long-Range Community

Improvement Planning: In addition to obtaining the confidence of individual citizenry by using his tax dollar in an efficient business-like manner from which he receives direct results, it means that:

- a. Projects are carried out in accordance to a predetermined need and the community's ability to pay.
- b. Impartial treatment is given to every section of the community, eliminating special interest projects.
- c. Required bond issues and tax income can be foreseen and adequate provisions can be made for them.
- d. Public works programs can be planned and coordinated over several years to eliminate purchase of unneeded equipment and maintaining unnecessary personnel.
- e. Actual construction of some projects can be deferred and tailored to meet construction activity.
- f. Determines which county owned properties and properties acquired from tax sales should be retained for future use rather than sold.
- g. The relation of the projects to each other can be considered, especially with respect to proper timing.

H. Lands Disposition: One of the many ways to effectuate a plan lies in the intelligent manipulation of the public land resource. In this case of Lyon County is considerable and important.

During recent years, the Bureau of Land Management (which still owns a vast majority of the county) has become strongly committed to a multiple use concept for the public lands and is now engaged in detailed studies leading to a program of transfer, blocking and/or reservation for public purposes. The county feels that such a program should relate to locally derived goals as well, with sufficient regard to such features as range reservation, recreation development, points of tourist interest and attraction, and mining possibilities. One of the major impacts of this plan was a derivation of a program advocating the proper disposition of the BLM administered "public" lands in Lyon County. Many of the studies to date have been oriented along these lines. A final map was included in the General Plan series indicating a recommended pattern of such land designations. It was based on the following textures of potential disposition:

- * Lands most suited for immediate disposition - operable or applicable laws:
 - a. Public Sales Act of 1964
 - b. Taylor Grazing Act
 - c. Mining Laws (various)
 - d. Recreation & Public Purposes
- * Lands to be managed but subject to the following laws for either management or disposition:
 - a. Desert Land Act
 - b. Taylor Grazing Act
 - c. Public Sales Act of 1964
 - d. Multiple Use Classification
 - e. Mining Laws (various)
- * National Forests.
- * Lands subject to special consideration for recreation but still subject to management or disposition under the following acts:
 - a. Public Sales Act of 1964
 - b. Multiple Use Classification
 - c. Taylor Grazing Act
 - d. Mining Laws (various)
 - e. Recreation & Public Purposes
- * Lands not needed for immediate transfer but should be managed and/or disposed of subject to the following:
 - a. Multiple Use Classification
 - b. Public Sales Act of 1964
 - c. Taylor Grazing Act
 - d. Mining Laws (various)

The 1964 Public Land Law established three major aspects for the use of the public domain: (a) it established the Public Land Law Review Commission, (b) it allowed public agencies to purchase land at nominal rates for certain public purposes, and (c) it allows the classification of lands for "multiple use." Under this approach there are 10 uses to be considered; they are: the grazing of livestock, development of wildlife habitat, mineral production, industrial development, human occupancy, recreation, wilderness preserve, watershed preservation, protection of public values, timber production.

11 goals & policies

That Lyon County develop a comprehensive General Plan defining the existing and potential needs of the county.

- * That coordination and cooperation be established among all concerned agencies.
- * That county-wide citizen participation be encouraged during the General Plan development and throughout the continuing planning process.
- * That the General Plan encompass the adopted Goals.
- * That the county provide a continuing planning process review and update.

That the county encourage and require community development in keeping with its adopted General Plan.

- * That the county programs be in keeping with the intent of the adopted General Plan.
- * To achieve a balanced arrangement of land uses which meet long-range as well as immediate physical, social and economic needs.
- * To define the proper relationships among public and private uses of land and to direct the optimum utilization of land and other resources.
- * To encourage a variety of living environments to accommodate all segments of the population.

That Lyon County protect its environment and encourage community attractiveness by developing methods to enhance visual appeal.

- * That means should be found to control unsightly conditions throughout the county, especially those areas visible from the highways.
- * That unsightly conditions created by dumping of car bodies and rubbish be prevented.
- * That visual appeal be encouraged by preventing excessive and tasteless signs, rehabilitation or removal of blighted structures, and by encouraging individual property beautification.
- * That the county enforce an anti-litter program and an overall beautification program be instituted.
- * To foster community attractiveness and civic improvement by encouraging voluntary county-wide cleanup programs.
- * That solutions should be found to improve unsightly refuse dump sites.

That the county protect its water resources, rangelands, mountains, open views, watersheds, natural and man-made amenities from development that would destroy ecological values and reduce the county's desirability to the local resident and tourist.

- * That the county recognize and protect the value of its natural areas.
- * That mutually acceptable programs with respective property owners of these natural assets be evolved to preserve them for public use.

LYON COUNTY

- * That historic evidences and significant cultural amenities be preserved as an interesting and intregal part of Lyon County.
- * That the county develop and enforce regulations necessary to control water pollution and air pollution and to recognize the need for ecological considerations in the development of the General Plan.
- * That the county investigate State and Federal aid programs for open space recreation and development of Federal lands in keeping with the General Plan.

Management of Natural Resources in a manner beneficial to the region.

- * Mineral resources should be properly managed and appropriate means be developed to insure proper mining and milling operations and restoration of areas to a condition compatible with the surrounding region.
- * Timber harvesting on both public and private lands should be managed to assure maximum protection of watersheds and to prevent soil erosion.
- * Retention of flood plains, streams and rivers in a natural state and encouragement of their conservation to minimize flood damage.
- * To encourage improvement and maintenance of fish and wildlife habitat.
- * Unique natural sites, scenic views and amenities, archeological sites and other significant natural assets should be recognized and effective means be established to preserve their value.
- * To protect the water resources for the present and future beneficial use of all county residents.
- * Federal grazing lands should be upgraded and improved.
- * Habitat and environment be preserved to provide dependable and good quality forage for domestic livestock and wildlife.
- * To encourage timber and watershed management and to promote beneficial conservation programs.
- * That a program of "blocking" of vacant public lands be developed and effectuated.
- * That proper range management be continued to improve areas and upgrade Federal grazing lands.

That a community facilities development program be established and related to the General Plan.

- * To survey existing community facilities and services and relate the community needs to the capital improvement program.
- * That the county investigate the need for a multi-purpose center, new jail facility, county library and museum, fire protection facilities and other county public needs.
- * To correlate the location and design of streets, schools, parks and all community facilities with the intent and purpose of the General Plan.
- * That solutions should be found to control proliferation of dump sites and provide adequate refuse disposal sites and disposal methods.

CODES & ORDINANCES

That the county review the subdivision ordinance to reflect the General Plan features.

- * That it be recognized that subdivision control is a tool to effectuate the General Plan and should be reviewed to insure conformity with community desires.
- * That the subdivision controls reflect new concepts in land division and prevent premature land development which in turn provides orderly growth.
- * That the subdivision controls reflect the climatic, topographic, aesthetic and industrial factors of Lyon County.
- * That subdivisions utilize architectural controls to create quality in development and protect property values.

That the county review mobile home and recreational vehicle controls to reflect their role in the community.

- * That the county recognize mobile homes as a viable and popular living form and that appropriate regulations are needed to insure their compatibility in the community.
- * To recognize the impact of the recreational vehicle and its related uses and develop proper controls for the location and installation of recreational vehicle parks.

That the existing zoning ordinance be reviewed to insure conformance with the General Plan.

- * That it be recognized that zoning is but one of the many tools to effectuate the General Plan and that careful review is necessary to insure conformance with community goals and the General Plan.
- * To provide zoning categories which accommodate and more adequately apportion land uses where found necessary.

That enforcement of all ordinances and codes be established policy.

- * Lyon County maintain adequate inspection to assure county-wide enforcement of all codes and ordinances.

PARKS & RECREATION

That the county encourage the use of its natural resources to meet tourist needs.

- * To encourage private enterprise in the field of tourist recreation.

JA3261

- 14 CV 00128 - 003157
LYON COUNTY
- * That information centers concerning the recreational opportunities be established and maintained.
 - * That campgrounds, ghost towns, historical sites and other attractions be emphasized for increased tourist use.
 - * That a program for the erection of appropriate directional signs to better inform tourists of local scenic, recreation and historic attractions be established.
 - * To identify all existing and potential recreation sites within the county and program the development of these resources in keeping with the General Plan.
 - * To encourage recreational development of the Lahontan Reservoir by means of the Bi-County Recreational Commission of Lyon and Churchill Counties.
 - * That vigorous community programs be undertaken to stimulate the tourist attractions of Lyon County.

That diversified recreational facilities be provided for all age groups for local residents and tourists.

- * To protect the Carson and Walker Rivers as parkways, recreation sources and beautification elements.
- * Develop and administer a system of scenic roads.
- * Provide and preserve a system of pedestrian and equestrian trails.
- * That specialized recreation programs be oriented to teenagers, pre-schoolers and adults on a year-round basis.
- * That a program of maximum recreational use be made of existing public lands in order to insure minimum public expense.
- * That special attention should be given the development of water-oriented recreation.

That Lyon County foster the development and expansion of community and neighborhood recreational facilities to serve present and future needs in keeping with the county's long-range General Plan proposals.

- * That a long-range parks and recreation program be developed to meet the present and future residential needs.
- * That a system of adequate fire protection for rural public and private lands be developed.
- * That optimum use of public lands be encouraged to help fill the recreation needs.
- * That the county vigorously encourage the development of a master plan for recreation facilities in all areas of the county.
- * That new camp and recreation facilities at specific locations as defined in the General Plan be developed.
- * That certain defined wilderness areas be preserved in a primitive state with minimal access provisions and no development.
- * That overnight campgrounds be developed in areas related to urban centers.
- * That State and Federal financial assistance be encouraged in the preservation of open spaces and the development of these areas for public recreation use.

RESIDENTIAL

That residential improvements be in keeping with individual neighborhood desires based upon a priority system of storm drainage, street paving, street lighting, etc.

- * That there be an effort to improve the existing building quality in residential areas by removal, rehabilitation and new construction.
- * To encourage continued neighborhood beautification by landscaping, tree planting, and fostering citizen pride in community attractiveness.
- * That a comprehensive street lighting, drainage, sewer and water plan be considered high priority items.

That non-compatible and disruptive land uses be phased out of residential zones and appropriate building regulations established to preserve property values.

- * That the county endeavor to provide protection through zoning, subdivision, building, sign, pollution and other regulations in order to improve neighborhood stability and increase property values and desirability.
- * That new development be controlled to insure undue economic burdens.
- * That population density be controlled by ordinances and other means to insure a balance between the provision of public services and the resultant increased public costs.

To recognize and assist in the endeavor to provide an adequate supply of new and attractive housing for all citizens and to encourage new residential activity.

- * To provide leadership and direction in the field of housing needs by developing a long-range housing program, county-wide in scope.

COMMERCIAL USES

That a balanced arrangement of commercial activities be encouraged by reasonable compactness of uses which provide shopper convenience and area drawing power.

- * To prevent strip commercial and spot commercial development.
- * To encourage general clustering of compatible commercial uses.
- * That tourist oriented commercial uses be reflected in the General Plan with appropriate land use regulations and encouragements.

That parking and access regulations for commercial uses be closely examined and updated to fulfill present and future needs.

- * That provisions for offstreet parking be reviewed to insure conformity

- * That landscaping of parking lots be encouraged to improve aesthetic values and to blend in with the area rather than create unsightly areas of asphalt.
- * That pedestrian and vehicular movements be separated for safe, functional and convenient circulation.

That the county encourage the business community to enhance and beautify the character of commercial areas.

- * To encourage business organizations to sponsor beautification and property improvement programs.
- * That the county encourage a program established in cooperation with the property owners for removal of substandard buildings and property improvement along commercial streets with emphasis on code enforcement concerning public health, safety and general welfare. This program should include beautification, relocation of overhead wiring and sign control.
- * The county develop an architectural review committee to review and influence building design in commercial areas.

That non-compatible and disruptive land uses be discouraged and emphasis be placed on convenient, compatible commercial development.

- * That residential uses be discouraged in predominately commercial areas.
- * That transition and buffer areas be provided to separate shopping, working and living areas.
- * That no new auto junk yards be allowed on highway approaches to urban areas and existing yards be fenced in an approved manner to shield unsightly appearance.
- * That commercial zoning categories be developed to encourage compatible uses.

INDUSTRIAL & ECONOMIC

That the county protect its valuable agricultural industry and encourage its continued growth.

- * To protect the irrigation and water resources of Lyon County and to assist in the continued beneficial use of water.
- * That the county preserve its agricultural lands by proper zoning and control of land development.
- * That efforts be made towards the orderly expansion and increased productivity of livestock raising.
- * That this activity be recognized as a major factor in the county's economy and its continued growth.

That the county protect its valuable mining industry and encourage its orderly and proper development.

- * That this industry be recognized as a major factor in the county's economy and its continued growth.
- * That the county develop zoning categories that will insure the industry's future and its compatible place within the community.
- * That potential problems of air, water and land pollution be recognized and proper controls be established to insure proper mining activities which in turn protect the future of the mining industry.

That the county carefully evaluate general industrial development to insure conformance with the General Plan.

- * To encourage industrial development of suitable lands in an orderly fashion.
- * To restrict residential uses in industrial areas.
- * To regulate development and provide standards as necessary for the protection of adjacent land use, general community welfare and protection of industry.
- * To investigate the county's economic resources, problems and needs in an effort to improve the economic well-being.

PUBLIC UTILITIES

That the county coordinate utility planning with community growth and in accordance with the General Plan.

- * Long-range planning, financing and construction of water, sewage disposal, drainage facilities and electrical needs should be coordinated with the General Plan proposals to insure economic and adequate utility services.

TRANSPORTATION SYSTEM

That the traffic circulation system in Lyon County be so oriented to provide maximum public service and convenience with the minimum expense to the public both in terms of time and money.

- * That road systems connecting to adjacent jurisdictions be considered and related.
- * That major streets be designed and constructed to maximize traffic flow, reduce traffic congestion points, minimize cost by long-range planning and capital improvement programming.
- * That minor streets within the county's circulation system be oriented to serve residential uses and not be designed to function as major bypasses or alternate routes to major trafficways.
- * That future traffic problems likely to be generated by recreational attractions be recognized.

JA3265

That the master transportation plan be founded on maximum public service with minimum hazards.

- * That school facilities located throughout the county be given special traffic considerations and protection in order to maximize safety.
- * That property owners along major streets be protected by adequate building setbacks and/or limited access where possible and necessary.
- * That special consideration be given to pedestrian movements and rubber-tired vehicle trafficways in order to insure maximum separation, protection and convenience to both.
- * That major congestion and high accident rate points be studied and corrected.
- * That a comprehensive drainage plan be closely related to the master streets and highways circulation plan.
- * That adequate intersection controls and lighting be installed where necessary, related to a program established to insure county-wide improvement.

That the construction and improvement of highways include a program of landscaping and beautification.

- * That a landscaping program coincide with construction of major highways in specific areas where surrounding development requires compatibility.
- * That design concepts and details be closely scrutinized to insure overall compatibility with local needs and desires in terms of function and beauty.
- * That drainage channels and grade separations be so treated as to be beneficial to community aesthetics.

That the airport and rail systems of Lyon County be related into the total transportation program.

- * That adequate air space controls be established to protect surrounding properties and airport needs.
- * That the airport system be studied to insure that adequate provisions are made to serve the needs of the county.
- * That the railroad alignments and crossings relate to the local traffic situation.

*recommendations:

1. Lyon County should create and appoint a Planning Commission to consist of six persons, broadly reflective of countywide geographic and economic interests, together with a three-man ex-officio (County Engineer, Building Inspector, and one County Commissioner).
2. Lyon County should take steps to fund a continuing planning administration, especially in the fields of subdivision review and control, revised land use (zoning) and precise planning of specific subareas.
3. Lyon County should take steps to acquire certain key lands for future public purposes. These include:
 - a. A parcel northerly of the Yerington Airport for potential expansion and control approach zones.
 - b. Several lots in the Dayton area for a new community center.
 - c. A number of lots and parcels in the Silver Springs-Lahontan area.
4. Lyon County should institute a joint program with the Bureau of Land Management to agree on a land's disposition (and acquisition) program within the county in order to "block" certain lands, establish multiple-use boundaries, and permit the release of certain defined areas.
5. Lyon County should initiate a program of scenic route designations as indicated on the Transportation Plan and implement same through appropriate legal controls.
6. Lyon County should review the precise zoning in each subarea in relation to the overall General Plan (and subarea studies) and make appropriate changes as desirable.
7. Lyon County should adopt immediately the revised Subdivision Ordinance and insure its continuing functional application.
8. Lyon County should (fanatically) guard its reserves of Bureau of Land Management and Forest Service open space areas and resist massive land "exchanges" for speculative rural land development.
9. Lyon County should review its policy concerning the location of mobile homes and remove the present TR overlay in certain rural parts of the county.
10. Lyon County should emphasize the recreation potential of the Lahontan Reservoir, the Carson River, and portions of the Walker River.
11. Lyon County should recognize a (limited) industrial potential related to the railroad and power plant in the Wabuska portion of Mason Valley and designate certain areas for that purpose. Mineral productivity should be recognized as a legal use, subject to Special Use Permit review and per-

JA3267

formance standards, in any area of the county.

12. Lyon County should require all tax reverted lands to be reviewed by the planning function for possible public use.

13. Lyon County should take positive steps to protect and preserve the agricultural industry by establishing very low density zoning classifications on prime agricultural lands and prevent "premature" subdivisions, especially in agricultural areas.

14. Lyon County should take immediate steps to improve the water system in Dayton and the sewer system in Fernley.

*conclusions:

1. The current level of economic activity in Lyon County is somewhat limited but healthy and is growing at a constant rate of 2-3%/year.

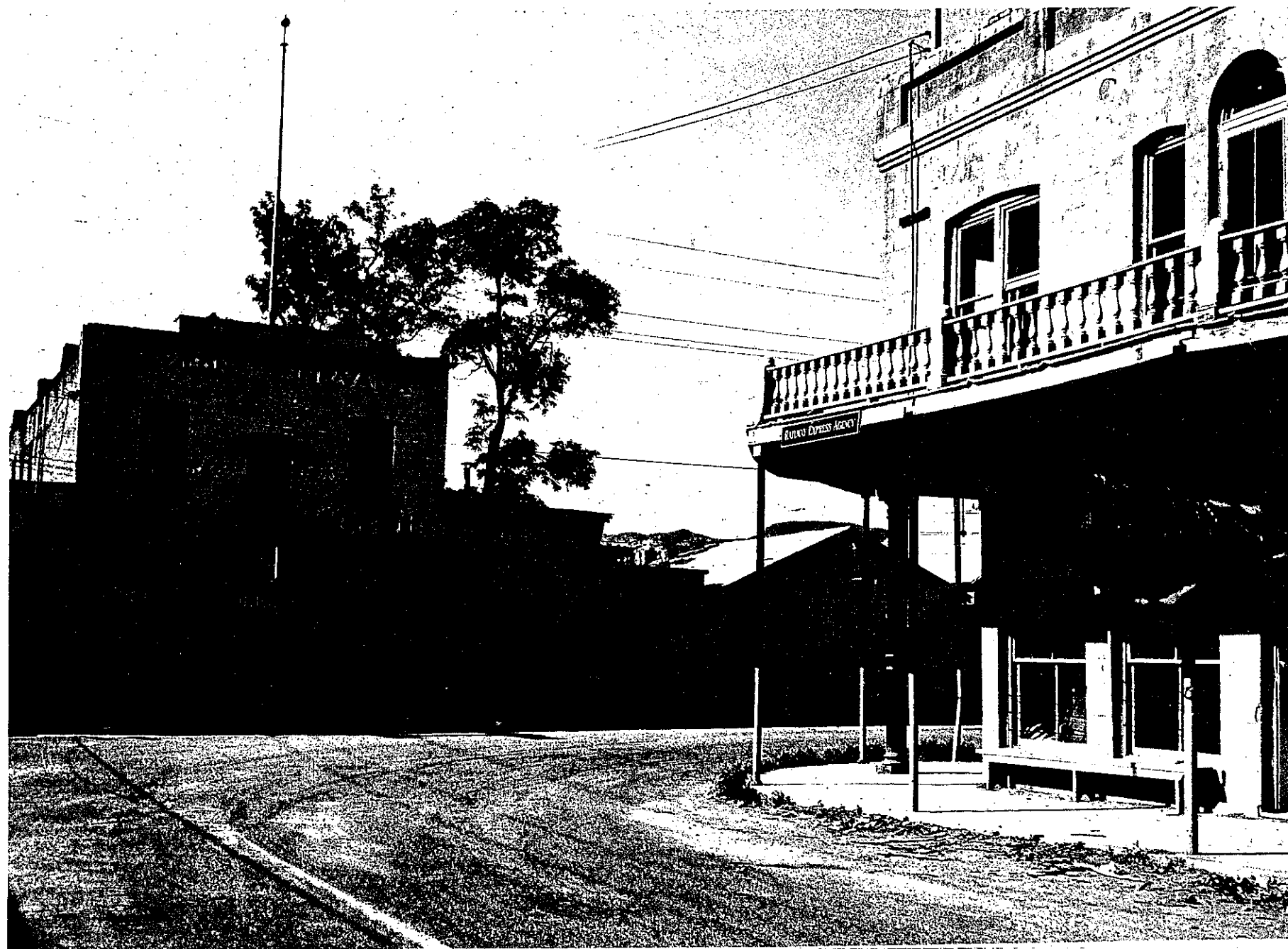
2. Lyon County has some potentials for increased tourism -- as an economic force. Additional tourist volumes have already resulted from the improvement of US 95 to Federal standards. Additional promotion to this end is desirable.

3. There is some public responsibility in attempting to further the economic activities of the area. This is best established through the application of various police power regulations (subdivision and zoning controls, for instance), determining and anticipating land uses and demands, and seeking State and Federal support for certain transportation and recreation projects.

4. Agriculture and mining will continue to be the dominant employment and economic elements in the county, although there is a strong potential for future "Industrial Park" activities, especially for warehousing, light manufacturing (assembly), and related activities.

5. Lyon County has some great (but largely unknown and unrecognized) assets, including space, clean air, water, power and access.

6. Lyon County has a large potential for increased residential activity in the county, partly as bedroom communities for Carson City and Reno and partly as retirement areas -- such as Silver Springs.



JA3269

$$\begin{array}{c} \text{---} \\ | \\ \text{---} \end{array}$$

Community services

ing, the County Commissioners have not "withdrawing" funds for the immediate con-

- [illegible]

of 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681

Functional priority

- development requirements,
- performance and adaptation,
- socialising functions,
- individual learning,

coordination, and financing.

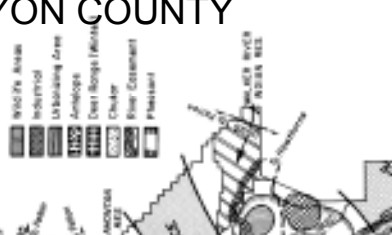
of micro-managing community care of Long County. Further, because the transition of CCR to plan facilities into new special needs for children's services.

to prevent OC hypersecretion must be delayed than with aromatase inhibitors.

Urban assumed that getting it right: finding, where appropriate, an individual, finding exactly the right person for the job, and then

school sites, name of teacher, telephone number, name of community group, and name of community site.

LY



- 14-00000. There were
no significant differences
between the two groups.

any animal due to non-invasive handling. The above treatment plant is designed to a 5-year period, requiring

of children and adolescents. *Psychological Science*, 19, 101-109.

the family then with some suggestions for the future. This is an important need for the layman whose opinion is rarely put to use in decisions.

cause computer.

Community services

ing. The County Commissioners have the "slacking" fund for the immediate re-planting of 300-4000 plants of permanent collection. The county of 2000000 has the 1110 10425 of the same the slacking and have plans for 2000000 of 1000 210000 1000-200000 permanent forest com-

are about 100,000/year and no different

community services

[illegible]

Abstract: Long County now has 4 elementary schools and 3 high schools with a total of 385 classrooms (180 90/21-90/2000 room, 210/2000, 90/2000 and 90/2000). Based upon a detailed classroom size of 25 students, there would be a total of about 100 classrooms to serve current enrollment. The new construction will provide only needed space.

(comment): The only more problem at the moment appears to be at Potholes where a mutation (statistic was mistakenly framed in 1998 under the name of Chapter 116, General Improvement P0451107 AGC, Serial 10 0195,005). The above treatment plant has had a pump operating around due to maintenance breakdown, although it is designed to a 5,000 gallons capacity.

NOTE: The PULSING MOTOR SYSTEM was recently transferred from the Department of Mechanical Engineering to the Department of Industrial Engineering.

Library: The existing building is located in the Court House in Stratford. However the quarters are cramped and inadequate. A new midsize library, similar to those recently completed at

pollution protection. Present police protection appears adequate and equal to the recommended standards of two per 1,000 of the population. The County Sheriff's Office has the

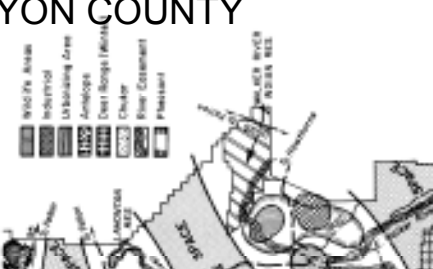
more the more progress, the more the more progress.

Tests of Significance. Tests generated by data were given special labels:

- *transformational grammar*
- *transformations* – map sentences
- *movement* – self-substituted
- *constituent structure*
- *public domain*
- *closed class*
- *open class*

The company plan under The Internal Revenue Code is to use the proceeds of the offering to fund the development of a new line of products. The company plan under The Internal Revenue Code is to use the proceeds of the offering to fund the development of a new line of products.

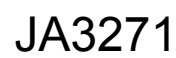
It is often assumed that getting 12-15,000-17,000 ft. of logging, when required, in a small tract, having access only to the forest of one stream, selection of a commercial site, use of small logs or very small aspects of country etc., including also getting a regulatory agency, for it often involves all the administrative planning required for a forestry operation (11).

[illegible]

The map shows the Gulf of Mexico coastline from Texas to Florida. Sampling stations are marked with numbers 1 through 10. A legend titled 'EXPLANATION' defines the symbols:

- Aluminum: represented by a box with diagonal lines from top-left to bottom-right.
- Sedimentary Rocks: represented by a box with horizontal lines.
- Volcaniclastic Rocks: represented by a box with a brick-like pattern.
- Beach: represented by a box with a wavy pattern.
- Asphaltic Rocks: represented by a box with a dotted pattern.
- Reef: represented by a box with a cross-hatch pattern.

 Other features include 'SALT FLATS' and 'SALT PANS' in the northern part of the Gulf, and 'GULF OF MEXICO' labeled in the center.





Land Use, Economy and Growth

ADOPTED – December 23, 2010

Contents – Chapter 3

Land Use, Economy and Growth	3.3
Goal LU 1: Orderly Growth Patterns	3.4
Goal LU 2: Services Coordinated with Growth	3.6
Goal LU 3: Diverse Economy	3.6
Goal LU 4: Viable Agriculture	3.7
Goal LU 5: Encourage Resource Sensitive Growth.....	3.9
Land Use Plan	3.9
The Land Use Plan Contents and Purpose.....	3.9
Overall Land Use Plan Approach - Community Core Concept	3.9
Basic Mapping Components	3.10
Land Use Plan Contents.....	3.10
Lyon County Communities.....	3.10
Eight Communities	3.11
Dayton	3.11
Fernley.....	3.12
Mason Valley.....	3.12
Mound House	3.12
Silver City.....	3.13
Silver Springs.....	3.13
Smith Valley	3.13
Stagecoach.....	3.14
Communities Map.....	3.14
County-wide Communities Map	3.15
Character Districts	3.16
Character Districts Map Description	3.16
Five Character Districts	3.16
Rural Districts	3.16
Suburbanizing Districts	3.16
Historic Districts	3.16
General County.....	3.16
County-wide Character District Map.....	3.17
County-wide Land Use Plan	3.18
County-wide Land Use Plan Map(s).....	3.18
The Map and County-wide Land Use Categories.....	3.18
1. Agriculture and Resource Lands	3.18
2. Residential	3.18
3. Commercial / Mixed-Use	3.18
4. Employment.....	3.19
5. Public / Community Facilities and Other Lands	3.19
6. Overlay Designations	3.19
The County-wide Land Use Map(s).....	3.19
County-wide Land Use Categories Table	3.19
Discussion of Designations on the County-wide Land Use Plan	3.23
Airport Influence Areas	3.23
1. Dayton Airport	3.24
2. Farias Wheel Airport	3.24
3. Rosaschi Airpark	3.24
4. Silver Springs Airport	3.24



Land Use, Economy and Growth

ADOPTED – December 23, 2010

5. Yerington Airport	3.24
Future Planning Areas	3.24
1. Mason Valley/East of Yerington	3.25
Specific Plan Areas.....	3.25
Planning Incentive Overlay	3.25
Re-Planning	3.26
Clustering.....	3.26
Non-Contiguous Density Transfer	3.26
Planning Incentive Overlay Areas	3.26
1. Dayton, North of Highway 50	3.26
2. Dayton/Carson River.....	3.27
Incorporated Cities and Coordinated Planning	3.27
City of Fernley	3.27
City of Yerington	3.27
Lyon County Communities Land Use Maps.....	3.27
Community Land Use Plans – A Guide	3.27
Community Land Use Plan Categories	3.27
Community Land Use Plan Categories Table.....	3.27
Land Use Categories (Organized by General Land Use Types).....	3.28
Agriculture, Open Space, Hazardous and Environmentally Sensitive Land Options	3.41
Clustering	3.41
Eligibility Criteria.....	3.41
Non-Contiguous Density Transfer.....	3.42
Criteria for “Sending Properties”	3.42
Criteria for “Receiving Properties”	3.42
Transfer of Development Rights (TDRs).....	3.43
What Would it Take to Establish a TDR Program?	3.43
Density Transfer Charges (DTCs)	3.43
What Would it Take to Establish a DTC Program?.....	3.43



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Land use patterns in Lyon County have not only been shaped by County regulations and development decisions, but also by physical factors such as topography and water availability. Throughout most of its history, Lyon County has been characterized by a number of compact communities and rural settlements spread over a landscape of valleys and mountains, farm/ranch lands, rivers, and extensive undisturbed areas. For years, the County has been noted for its rural character and image, its historical heritage, and its slow-paced rural way of life.

The rapid growth in the region has brought changes to the County: changes welcomed by many, lamented by others, but of concern to all. Inevitably, in such a process, Lyon County and its communities have been affected by development, increased traffic volumes, encroachment into floodplains, services stretched to meet needs, and a declining agricultural land base.

Future development will be influenced by factors such as population trends, employment growth, and water availability. Lyon County desires to be able to provide employment opportunities for its residents as well as a diverse choice of housing types, commercial services, recreational opportunities and community character.

The County's purpose is not to restrict future growth but to direct it in a way that minimizes negative impacts while offering residents a range of choices and promoting job creation. The County seeks to successfully accommodate growth and consciously decide how development should occur to achieve a more efficient pattern for future development. Lyon County intends to ensure the county's long-term viability by using methods to guide new development to locations where adequate public infrastructure such as roads, water, sewer, schools, and related facilities, is available or can be provided most efficiently and cost effectively, promoting infill development, and providing incentives for quality development.

Lyon County sees more growth and development occurring in and around the existing community cores (its towns and established settlement areas) with more focus on balancing residential, employment, and retail land uses. Less growth is desired in the remote unincorporated areas (outside of community cores). The County also desires to continue agricultural production and the retention of agricultural lands, but allow residential development especially in alternative rural patterns such as clustering, through incentives and density transfer mechanisms. Incentives and density transfer mechanisms are also desired to promote alternative development patterns and the conservation of areas of environmental significance or hazardous features.

Land Use, Economy and Growth

Lyon County will grow in an orderly fashion concentrating development within designated community cores, maintaining the diversity characterized by its settlement patterns and landscapes, providing jobs as well as housing, and sustaining quality public services and facilities.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Countywide Goals, Policies and Actions

Goal LU 1: Orderly Growth Patterns

Direct and manage development in the county so that it is orderly and fiscally responsible.



Policy LU 1.1: Follow Development Patterns as Established on Countywide Land Use Plan or a More Specific Community Plan

Future development of Lyon County will be consistent with the Countywide Land Use Plan or a more specific Community Plan, if one has been adopted. The Countywide Land Use Plan will guide future growth and development by defining appropriate land use types, densities, and character in different locations including cities and towns, suburbanizing areas, rural areas, farm and ranch land, hillsides, and public lands. The county's future urban and suburban growth will develop largely around existing communities.

Strategies:

- ◆ Use the Countywide Land Use Plan and adopted Community Plans as a guide for decision-making on development approvals.
- ◆ Pursue the resources needed to accelerate completion of Community Plans, to serve as more detailed guides for the county.
- ◆ Establish a demand based zoning strategy based on population projections and potential-to-actual development ratio, infrastructure capacity and distance to services.

Policy LU 1.2: Residential Development Patterns in Neighborhoods

New residential development, particularly in suburbanizing areas, will be designed to reinforce “neighborhoods” as the primary building blocks of the county’s residential areas. Features of this approach include attractive streetscapes; trail connections and sidewalks that link together residential, recreational, and commercial areas; parks and other common features that serve as gathering places; and a connected pattern of streets. The overall intent of this policy is that housing areas be designed as livable communities, not just subdivisions.

Strategies:

- ◆ Consider developing neighborhood design guidelines, to establish the basis for reviewing



Land Use, Economy and Growth

ADOPTED – December 23, 2010



subdivision proposals.

- ◆ Explore incentives for higher density infill residential in close proximity to existing public facilities and commercial land uses, such as pro-rated utility hook-up fees, modified road tax computation, etc.
- ◆ Require development in suburbanizing areas to provide mix of housing options.
- ◆ Consider the adoption of a “transect” style development code to facilitate development at appropriate densities in relation to employment and service uses.

Policy LU 1.3: Commercial and Mixed-Use Development to be Located in Centers.

Non-residential development will occur in defined and planned mixed-use centers, rather than in a linear pattern along roads, and in locations that are designated on the County-wide Land Use Plan. New suburban and rural residential development will be located near existing and future community centers.

Strategies:

- ◆ Consider developing commercial design guidelines, to establish the basis for reviewing development plans for commercial and mixed-use development.
- ◆ Explore incentives to encourage compact, nodal commercial development, such as density trades, public/private infrastructure cost sharing, tax-increment financing, etc.
- ◆ Revise county development code to allow performance based use standards.
- ◆ Revise development standards to consider proximity and efficiency of pedestrian access to commercial uses.



Policy LU 1.4: Locate industrial development as designated on County-wide Land Use Plan or determined by criteria.

Industrial uses, including extractive industries, will occur in areas that are designated on the County-wide Land Use Plan. New industrial uses should only be located in areas that do not adversely impact existing residential settlements.

Strategies:

- ◆ Develop and maintain a database of lands in the county that are suitable for industrial uses.
- ◆ Consider developing a set of siting criteria to be used in determining the suitability of sites for industrial and





Land Use, Economy and Growth

ADOPTED – December 23, 2010

extraction uses.

- ◆ Establish performance standards in areas of noise, odor, dust, traffic generation, etc.

Goal LU 2: Services Coordinated with Growth

Future residential development will be coordinated with development of schools, parks, libraries, and other public services so as to maintain or improve per resident service levels.

Policy LU 2.1: Residential Development in Areas with Services

Urban and suburban development will only locate in Suburbanizing Districts where municipal water and sewer can serve it and that are close to other municipal services and not “leapfrog” into rural areas. Conversely, low-density rural development should not occur in existing or planned suburbanizing areas.

Strategies:

- ◆ Adopt a policy of not approving rezoning of land for urban/suburban-level uses in rural areas (i.e., Rural Districts and General County).
- ◆ Ensure that plans are in place for required services to occur concurrently with all proposed development.
- ◆ Do not approve new development if it will result in an unacceptable reduction of service levels for infrastructure. Appropriate mitigation may be provided with construction or through proportionately levied impact fees or other such mechanisms to prevent or offset a reduction of service levels.

Policy LU 2.2: Service Levels to Vary by Character Areas

Service levels in the county will vary, with rural and other outlying areas generally being located further from services than urban and suburban development.

Strategies:

- ◆ Consider adopting level-of-service standards that vary by character area, recognizing that it is less cost effective to serve rural and outlying areas.

Goal LU 3: Diverse Economy

The economy will continue to be strong and diverse; attracting businesses that employ residents in primary jobs, as well as service jobs that meet the needs of local residents.

Policy LU 3.1: Diverse Economic Base

The county will continue to support a diverse base of jobs to provide for a broader range of employment opportunities

3.6



Land Use, Economy and Growth

ADOPTED – December 23, 2010



that are geographically distributed to be near to population centers.

The county will support economic diversification throughout the county to more fully utilize the broad range of skills, knowledge and abilities inherent in our workforce.

Strategies:

- ◆ Work with economic development agencies and community groups to identify economic assets and development opportunities.
- ◆ Identify opportunities for complementary business cooperation, e.g., agriculture and ag-support operations.
- ◆ Encourage the development of a local/regional industrial database to encourage vertical integration and production efficiencies.
- ◆ Establish appropriate zoning districts, such as mixed-use commercial, employment, etc.
- ◆ Encourage business “incubator” programs geared to regional needs.
- ◆ Encourage the expansion and development of compatible industry programs to encourage cross-fertilization within industry sectors.
- ◆ Develop performance zoning to eliminate complexity and uncertainty of “special use permit” system.

Policy LU 3.2: Business and Industry Locations that are Consistent with Future Land Use Plan

Encourage commercial and industrial development to locate in designated locations shown on the Future Land Use Plan, where public facilities exist or are planned to accommodate such development cost-effectively. The County-wide Land Use Plan will reserve adequate lands for jobs and industry.

Strategies:

- ◆ Use the Countywide Land Use plan and Community Plans as a guide to determine appropriate locations for business and industry.
- ◆ Coordinate Industrial land use designation with planned infrastructure and road development.

Goal LU 4: Viable Agriculture

Enhance the economic viability of agricultural lands and promote opportunities for rural and agricultural support uses that conserve and enhance our agricultural and rural way of life.

Policy LU 4.1: Encourage the Continuation of an Agricultural Lifestyle in appropriate rural areas of the County.



Land Use, Economy and Growth

ADOPTED – December 23, 2010



Celebrate the County's agricultural past through land-use policies and programs designed to encourage ranching and farming activities.

Strategies:

- ◆ Strive to preserve water rights to ensure continued agricultural potential.
- ◆ Develop tools to help retain agricultural lands.
- ◆ Develop an agricultural zoning district.



Policy LU 4.2: Encourage Voluntary Options to Conserve Agriculture Lands

The county will encourage the use of voluntary tools to conserve intact agricultural lands and cluster residential development on land of marginal agricultural value. The intent is to maintain agricultural densities in rural areas, but allow landowners to transfer density from lands in active production or lands of higher agricultural value to lands suitable for development or land of marginal agricultural value. (see page 3.41 for more information on agricultural lands options).

Strategies:

- ◆ Encourage non-contiguous parcel density transfers away from productive lands.
- ◆ Encourage clustering of homes away from productive, irrigated agricultural lands.
- ◆ Explore the creation of a transfer of development rights program.
- ◆ Explore the creation of a density transfer charge program.



Policy LU 4.3: Agricultural Support Uses

Allow a range of land use options for agricultural lands as a means of promoting opportunities for large parcels of land to remain agriculturally productive and economically viable. Recognize and provide flexibility for farmers and ranchers to be able to respond to future economic opportunities (where agriculture plays an increasing role in providing new types of plant-based and renewable energy as well as food).

Strategies:

- ◆ Adopt performance standards for all types of development that address conflicts among various uses.
- ◆ Revise zoning ordinances to allow wider range of activities within agricultural districts.





Land Use, Economy and Growth

ADOPTED – December 23, 2010

Goal LU 5: Encourage Resource Sensitive Growth

Development will be designed to reduce energy use and minimize environmental impacts.

Policy LU 5.1: Encourage Resource-Sensitive Growth and Sustainable Design

The county will encourage development that incorporates the principles of sustainable design and that reduces energy and resource consumption and impacts on the environment, by:

- Minimizing resource consumption, energy use, and water use;
- Using renewable energy sources and locally produced materials;
- Exploring and encouraging alternatives to toxic pesticides and herbicides; and
- Using programs such as LEED™ (Leadership in Energy Efficiency and Design), United States Department of Energy's Building America Program, and Energy Star, and other standards for energy efficiency.

Strategies:

- ◆ Consider the possibility of adopting sustainable building practices.
- ◆ Discourage suburban density development outside community core areas.
- ◆ Require all residential development to provide appropriate multi-modal connection to commercial, employment and public facility uses based on factors such as density and distance.
- ◆ Develop incentives to limit development in environmentally sensitive areas such as floodplains and critical wildlife habitat.
- ◆ Develop guidelines to encourage solar power generation, heating and cooling.
- ◆ Develop guidelines for low water use landscape designs.

Land Use Plan

The Land Use Plan Contents and Purpose

The Land Use Plan contains the Character District map, the County-wide Land Use Plan Maps, and a guide to the Community Plans and more detailed land use. It is intended to be used as a tool for elected and appointed officials, staff and administrators, and the community for evaluating and making decisions about the location of land uses within the county.

Overall Land Use Plan Approach - Community Core Concept

Early in the process of developing this Master Plan and based on input from the community and county leadership, an overall approach for future growth and development in the county was identified and is



Land Use, Economy and Growth

ADOPTED – December 23, 2010

referred to as the Community Core Concept. Under this approach, Lyon County would see more growth and development occurring in and around the existing community cores (its towns and established settlement areas) with more focus on balancing residential, employment, and retail land uses. The concept encourages less growth in the remote unincorporated areas (outside of community cores). The agricultural areas around Smith and Mason Valleys would primarily continue for agricultural production, but would allow residential development especially in alternative rural patterns such as clustering, through such mechanisms as transfer of development rights and non-contiguous density transfers. In addition, the concept promotes alternative development and conservation approaches for areas of environmental significance or hazardous features, such as steep slopes, wetlands, or floodplains.

Basic Mapping Components

The basic components of the Land Use Plan include:

1. Community Boundaries Map
2. Character Districts Map
3. Countywide Land Use Plan Map(s)
4. Lyon County Communities Land Use Plan Maps

Each of these maps provide a framework for future development in Lyon County — from the broadest to most specific level — with the Character Districts broadly defining desired character of larger regions, and the Community Land Use Plan Maps containing specific, parcel-level detail, with standalone maps for each community.

The mapping and land uses are not intended to change stable, developed areas within the county — their primary focus is on places where new development will occur in the future and where some redevelopment could occur over time. The land use categories should allow future neighborhoods and mixed-use centers to become distinctive, diverse places with a mix of compatible activities, while balancing objectives for conservation in rural and agricultural areas. The categories and criteria also provide some flexibility to respond to market conditions.

Land Use Plan Contents

The Land Use Plan contains sections to address each of the mapping components addressed above. The land use categories shown on the County-wide Land Use Plan map are described in the table on page 3.33. Design principles are addressed at the end of Chapter 5, Community Character and Design. The principles for design and development and criteria address the following types of development:

- Mixed-use centers,
- Highway corridor mixed-use,
- Suburbanizing neighborhoods,
- Agricultural land options,
- Planning Incentive Areas

Lyon County Communities

Lyon County's large land area, cultural diversity and mountains and valleys have all contributed to the formation of distinct and varied population centers within its borders. The county territory includes several population centers as well as large, rural, low-density areas. The diversity of these population centers is reflected in their different growth patterns, character and personality. For planning purposes it is helpful to divide the County into geographic planning areas, for the sake of organizing data and information, and recognizing and describing each area's distinct characteristics.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

In this Comprehensive Master Plan the County's geographic planning areas have been assembled into several "communities" that reflect, for each, a sense of place, identity and character. The successful implementation of this Comprehensive Master Plan will require that these differences be respected and integrated into each of the community plans envisioned by this Plan.

Eight Communities

Eight communities have been identified and form the basis for the implementation of the Community Core Focus concept upon which this Comprehensive Master Plan is based. The communities are listed below.

- Dayton
- Fernley
- Mason Valley
- Mound House
- Silver City
- Silver Springs
- Smith Valley
- Stagecoach

While a more complete description of each of the communities will be developed in the community plans, the following community descriptions should serve as a general guide when considering the implications of the Master Plan County-wide Component on individual communities.

Dayton

The Dayton area has grown from a bustling mining community with roots in the Comstock Lode silver and gold booms of the 1800's, to farming and ranching along the fertile and easily irrigated Carson River corridor, to master planned golf community, to bedroom community to nearby Carson City and Reno. Of the unincorporated communities of Lyon County, Dayton has experienced the highest rate of growth of any area, and will continue to fill the role as the county's residential and economic growth center due to its' extensive water and sewer infrastructure, proximity to major population and employment centers, and surplus of available land in all land use categories.

Bisected by the Carson River, the Dayton area encompasses four distinct neighborhoods: the historic "Old Town", the south side of the river, the Sutro commercial/residential area, and the Mark Twain area. Old Town Dayton contains a significant number of historically important structures and provides an opportunity to capitalize on the community's role in the settlement and development of the State of Nevada. Well served by water and sewer, Old Town Dayton's preservation and future development will borrow significantly from the past, with mixed-use structures, limited setbacks and narrow streets, providing the basis for a vital small-scale, pedestrian friendly commercial center.

The area south of the river will see continued residential development as already master planned communities complete their build-out. Commercial development south of the river will be focused primarily on serving residential neighborhoods, while expansion of industrial activity may be hampered by the lack of transportation infrastructure. Much of the Carson River's floodplain within the Dayton area is on the south side of the river, where existing ranches and agricultural lands provide safe and unhindered flood storage capacity. As development in the area increases, protection of this resource will be critical to the health and safety of the area.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

The Sutro area, with its community retail hub, and Mark Twain, with its sprawling residential development will eventually become neighborhoods within a larger greater Dayton area focused on the planned Traditions Development, which is envisioned to serve as the economic center of the Dayton Valley area.

Fernley

The following description of Fernley is taken from the City of Fernley's Master plan:

The City of Fernley encompasses approximately 163 square miles. Located in Lyon County, Fernley is approximately 33 miles east of Reno-Sparks metropolitan area on Interstate 80. Several major state transportation routes, including US Highway 50A and US Highway 95A, and rail (freight) service weave through the city and shaped the historic development patterns. The Truckee River flows east and then north into Pyramid Lake before reaching Fernley. A tributary of the Truckee River, the Truckee Canal, which is maintained by the Truckee Carson Irrigation District, enters the City of Fernley from the west and parallels US Highway 50A before turning south in Churchill County and flowing into the Lahontan Reservoir. The Truckee Canal historically provided the water resources for the agricultural community that evolved in Fernley. Farm District Road, as its name implies, formed the backbone of the historic agricultural community. More recently, agricultural parcels are being transformed into residential subdivisions and commercial centers.

It must be noted that there are parcels of property within the city's jurisdictional boundaries that have not been annexed into the City of Fernley and remain within the unincorporated area of Lyon County.

Mason Valley

Mason Valley is a picturesque agricultural, mining and regional commercial center surrounded by mountain ranges of colorful canyons, and high desert vegetation. The City of Yerington, the Lyon County seat, lies on the valley's western side just north of where the West and East Forks of the Walker River come together and flow through the valley. Irrigation ditches branch out to carry water to the green fields and ranches where onions, alfalfa, grass hay, pasture grass, grains, and other crops grow. Cottonwood trees add seasonal color and mix with the native vegetation of sagebrush and rabbit brush. In addition to onion and hay fields, livestock, feedlots and dairies, other agricultural businesses add to the general rural character of the region. A full range of commercial and industrial businesses are located in Yerington, as well as government offices. Residents enjoy the rural character, convenience of local services, variety of housing opportunities, with low density residential development outside of the City of Yerington, surrounding open lands and an abundance of recreation opportunities.

Mound House

Mound House sprang up in the mid to late 1800's to serve the mining communities of the Comstock district. Throughout its history, Mound House has been characterized by a combination of industrial, commercial, and residential land uses. Sitting on one side of the Carson City line, and bisected by US 50, Mound House has the highest concentration of industrial land uses in Lyon County, providing employment to county residents and revenues to the county coffers. Residential uses in the Mound House area tend to exist on the edges of the commercial/industrial zone, although live/work arrangements are prevalent on industrial properties.

Further development for either residential or commercial/industrial uses beyond current levels will require expansion of water and sewer systems, and improvements to the transportation network to allow better circulation and access.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Silver City

Silver City, situated in lower Gold Canyon, represents the first settlement in Nevada based on mining activity. The town is located about 4 miles northwest of Dayton, the site of Nevada's first gold discovery, and 3 miles south of Virginia City along Highways 341 and 342. Approximately 200 home-sites and 100 houses, along with some historic commercial and industrial buildings, comprise the historic town site which is an integral part of the Comstock Historic District – a National Landmark Historic District.

Over the past 30 years residential infill and limited commercial endeavors have occurred on existing historic properties in Silver City. The pace of development has been slow for a variety of reasons, including challenging topography, limited water and sewer infrastructure, and an array of patented and unpatented mining claims. The existing water service infrastructure dates to the late nineteenth century, when a water system to supply the mining operations and settlement demands of the Comstock communities was constructed. This aging water system and a lack of a sewer system limit growth in Silver City. Additionally, title issues due to the historic nature of the town site and complications based in local zoning and building codes, have limited development.

Silver City has a strong sense of identity and prides itself on its cohesive small town atmosphere. The community treasures its historic buildings and landscape features, as evidenced by the preservation and rehabilitation of many original structures. New construction is regulated for exterior architectural features by the Comstock Historic District Commission.

Silver Springs

The Silver Springs community is located in a large bowl-shaped valley dominated by the Lahontan Reservoir in the north central part of Lyon County. Silver Springs has grown from a crossroads and resting spot on the trail west to a sprawling community intended to capitalize on the recreational opportunities offered by the lake and its position at the crossroads of two of Nevada's main highways, US 50 and 95A. Since its inception in the 1950's, Silver Springs has seen itself as a growth center ready to capitalize on its transportation infrastructure, easily developed terrain, and position at the center of the county.

The Silver Springs community is centered on the intersection of US 50 and Hwy 95A, with ample vacant and underdeveloped land suitable for commercial, industrial and higher density residential use immediately adjacent to the existing core. The Silver Springs airport and the proposed USA Parkway connection at US 50 offer opportunities to focus future development, create circulation patterns and commercial/residential densities capable of supporting sustainable economic activity without fundamentally changing the rural nature of the existing low density residential development and substantial public lands that surround the existing core.

Smith Valley

Smith Valley is a scenic agricultural community, surrounded by mountain ranges of pinion forests, colorful canyons, and high desert vegetation. The West Walker River flows through the center of the valley, and irrigation ditches branch out to carry water to the green fields and ranches where pasture grass, grains, grass hay, and alfalfa grow. Cottonwood trees add seasonal color and mix with the native vegetation of sagebrush, wild peach, and rabbit brush. Cattle and sheep graze in the valley and surrounding mountains and are sometimes seen trailing along the roads to new feeding ground. In addition to livestock, feedlots and nursery stock businesses add to the general rural character of the region. Non-agricultural businesses located in the two village center areas of Smith and Wellington include auto repair, dental and legal services, restaurants, bars, beauty salons, and mini-markets. Residents throughout Smith Valley participate in many types of home-based businesses. Residents enjoy the agricultural fields, low-density housing, recreation on public lands, as well as, an abundance of wildlife.

The community cherishes its rural environment, beautiful sunrises, sunsets, starry night skies, and fresh air.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Dressler Park, the Community Hall, and the Smith Valley Library, are examples of community pride, volunteer spirit, and the communities unique character. Historic buildings such as the Heyday Inn and Hoyer Mansion serve as links with the past. Residents of Smith Valley continue to want this rural setting with its sense of community.

Stagecoach

Located along US 50 between Dayton and Silver Springs, Stagecoach has developed as a largely rural community with limited infrastructure and few public or commercial services. Suburban density developments are concentrated at the eastern edge of the community in the vicinity of the intersection of US 50 and Cheyenne Trail. Expanding out from the core area, large lot land divisions have left the majority of the community undeveloped and open. This development pattern contributes to large expanses of open terrain and unobstructed sagebrush habitat that define the community's character.

Limited water combined with soils that are unsuited to high density residential uses will limit future development to the existing core where infrastructure to support a range of commercial, employment, and residential uses will be most economically feasible. A large playa, subject to frequent inundation, makes up the bulk of the land area south of US 50, and is considered unsuitable for development due to its soils and function as floodplain.

Communities Map

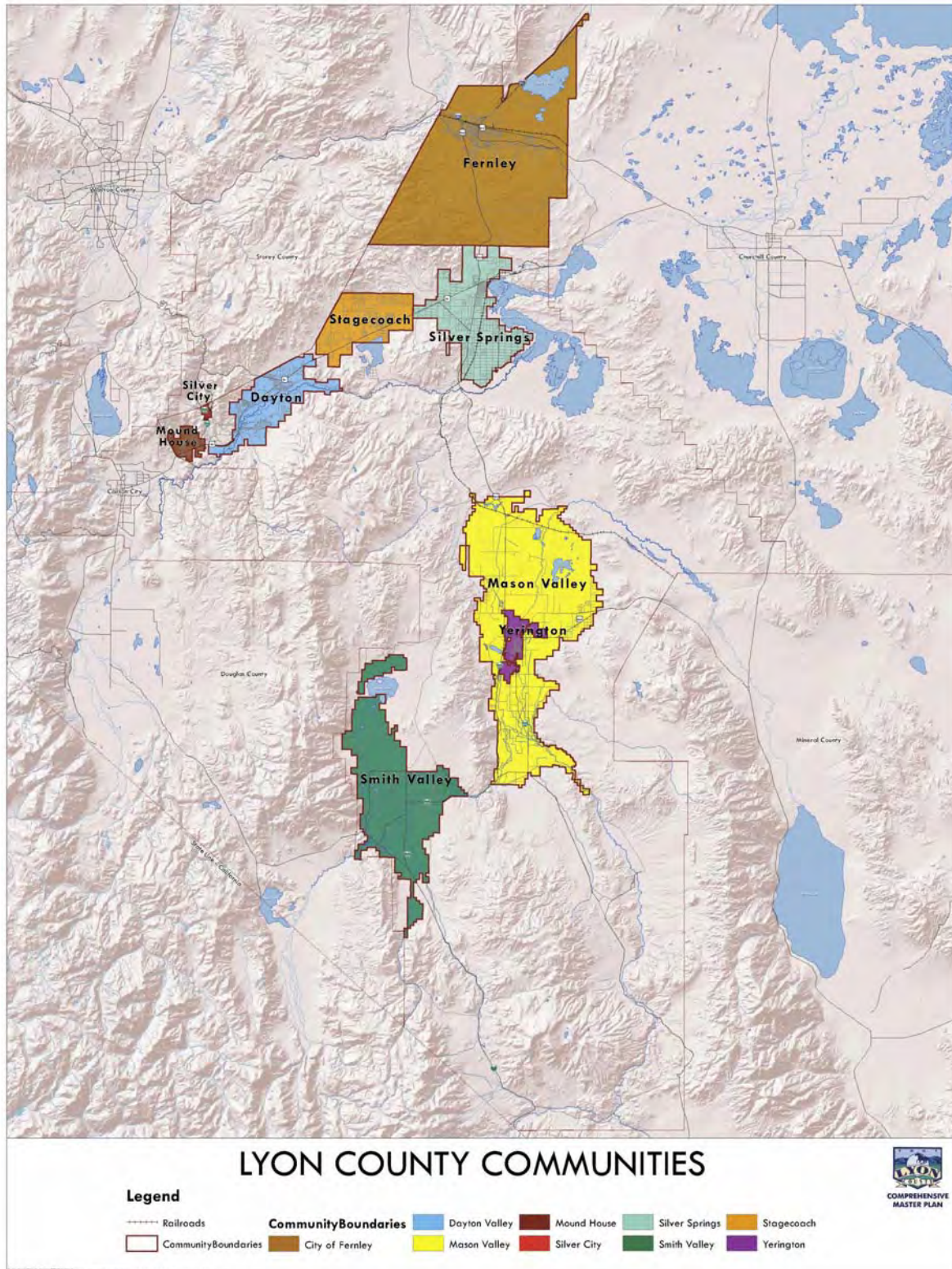
The map below outlines the boundaries of communities in the County. The communities serve as the basic framework for the County plan.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

County-wide Communities Map





Land Use, Economy and Growth

ADOPTED – December 23, 2010

Character Districts

Character Districts Map Description

"Character" can generally be thought of as the look or feel of a place, including: the built environment, land use patterns, street patterns, open lands, and general density or intensity and type of uses. The purpose of the Character Districts Map is to help define, maintain, or enhance desired character of development or intensity in particular areas of the county.

Five Character Districts

Character Districts provide guidance to the type, intensity, density, and general development standards for uses intended to occur within their boundaries. They control and modify the land use designations to achieve the type and character of development desired in communities. These Districts are defined areas within communities. A community may have one or more Character Districts within its boundary. The following character districts are described in the sections that follow:

- Rural districts,
- Suburbanizing districts,
- Historic districts,
- Future Plan Areas, and
- General County.

Rural Districts

Rural Districts include those areas that are predominately low density residential development with limited neighborhood commercial uses. They may or may not have agricultural land uses or grazing lands. Improvement standards will reflect the "rural" character of the area. Rural districts are not likely to have municipal water and sewer. Roads are likely to have dirt shoulders, some equestrian paths as well as bike facilities within road rights-of-way.

Suburbanizing Districts

Suburbanizing Districts include those areas that are predominately medium to high density residential development with regional/community commercial, neighborhood, industrial and employment uses. Improvement standards will reflect the "suburban" character of these areas and will include requirements for municipal water and sewer, roadway design appropriate to the planned land uses, landscaping of public areas, and pedestrian facilities (sidewalks and paths). Roads are likely to have some bike and pedestrian facilities within road rights-of-way or separate paths.

Historic Districts

Historic Districts include those areas in and around lands included in the Comstock Historic District and Silver City or other future historic designations to preserve existing historic character or to promote "historic" architectural design elements. Future historic districts could also be designated where the intent is to promote new compatible development that is in keeping with the "historic" development patterns and architectural design elements to create more vitality. Tools might include mixed-use, design guidelines and conservation easements.

General County

Lands outside the boundaries of defined community boundaries are classified as General County. These lands are rural or resource lands or public lands, and are intended to remain largely undeveloped or with

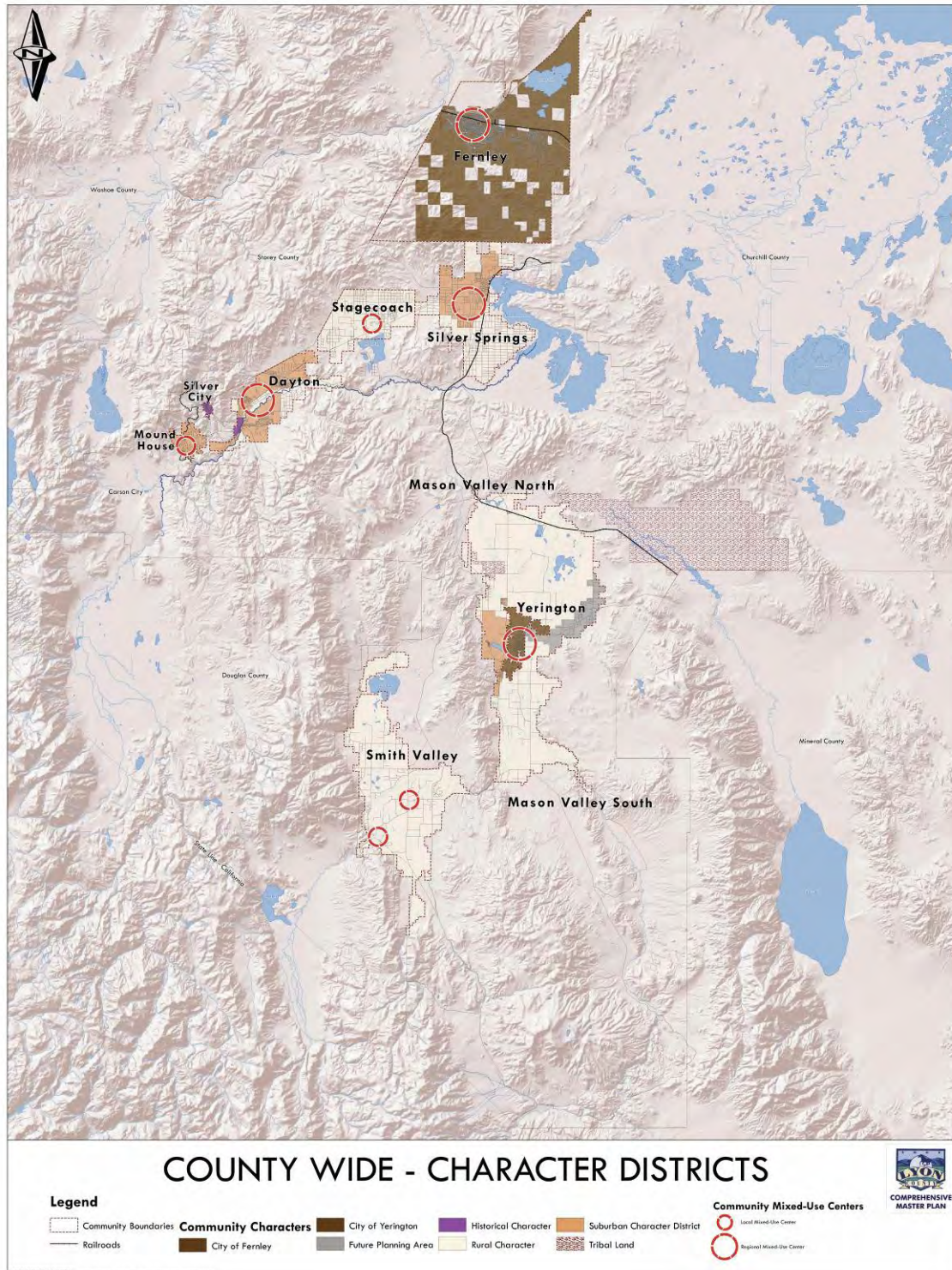


Land Use, Economy and Growth

ADOPTED – December 23, 2010

very low intensity development within the Master Plan's planning horizon. The development standards applicable to General County lands are the same as those for Rural Character Districts.

County-wide Character District Map





Land Use, Economy and Growth

ADOPTED – December 23, 2010

County-wide Land Use Plan

County-wide Land Use Plan Map(s)

The intent of the County-Wide Land Use Plan Map(s) is to show the generalized land use patterns for the entire County and the land use designations for lands outside of defined communities. This Plan map(s) provides an overall view of the County's desired development pattern. The county-wide categories, which are very general and the broadest categories to be mapped, encompass the more specific community plan land use designations, as shown in the land use categories table in this section. The County-wide Land Use Plan map(s) provides broad direction for the land uses intended within communities and the County. (Note: The Land Use Plan designations are shown in the blue column in the master table beginning on page 3.28.) Until a Community Plan is adopted, the County-wide Land Use Plan will be the guide.

Land Use Categories shown are generally consistent with Lyon County zoning and do not remove or vastly change owner entitlements to properties. However, some categories suggest a slight refocus of future development patterns to better achieve Comprehensive Plan Goals. For example, the intent for lands designated as "Highway Corridor Mixed-Use" is to gradually transition away from the strip commercial pattern along the county's highways to become a more cohesive mix of uses with offices, residential, and commercial that is focused in centers. Likewise, some of the lands in Smith Valley that are zoned for Rural Residential are shown as Agriculture, because the intent is that they are part of a larger agricultural area where options for landowners to conserve lands, do clustered development, or transfer density to more concentrated rural development areas is desirable. The Agriculture designation does not imply a change in potential development units from current zoning.

Proposals for development must be consistent with the categories and centers shown on the County-wide Land Use Plan or applicable Community Land Use Plan, or be consistent with locational criteria for centers described later in this chapter. The plan amendment procedures section of this plan describes what developers must do when a proposal is not consistent with the land uses defined herein.

The Map and County-wide Land Use Categories

The maps show the following land use categories which are grouped under five major types in later pages of this plan. For each category, the plan describes uses, density, and general characteristics.

1. Agriculture and Resource Lands

Includes:

- Agriculture
- Resource
- Public Lands

2. Residential

Includes:

- Rural Residential
- Low Density Residential
- Suburban Residential

3. Commercial / Mixed-Use

Includes:

- Commercial,
- Commercial Mixed-Use, and



Land Use, Economy and Growth

ADOPTED – December 23, 2010

- Highway Corridor Mixed-Use

4. Employment

Includes:

- Industrial, and
- Employment

5. Public / Community Facilities and Other Lands

Includes:

- Parks,
- Open Space,
- Public/Quasi-Public
- Tribal Lands, and
- Specific Plan

6. Overlay Designations

The plan also includes provisions for Overlay Designations, including:

- Airport Influence Area
- Cooperative Planning Area
- State-Designated Historic Areas
- Future Plan Areas, and
- Planning Incentive Areas

The County-wide Land Use Map(s)

The County-wide Land Use Maps are contained in Appendix A – Land Use Maps of this County-wide Component of the Comprehensive Master Plan.

County-wide Land Use Categories Table

This table includes the land use types and specific categories that are shown on the County-wide Land Use Plan maps. It also lists the related more detailed categories that may apply in a Community Land use Plan. (See the Community Land Use Categories table on page 3.28 for additional detailed description and zoning designations.)

Countywide Land Use Category	Community Plan Land Use Categories	Density Range	Description/ Characteristics and Examples of Uses
AGRICULTURE AND RESOURCE LANDS			
Agriculture	<ul style="list-style-type: none"> ✓ Irrigated Agriculture (private) ✓ Range and Non-Irrigated Agriculture (private) 	1 du per 20 acres	Characteristics: Private properties under production. Residential density may be clustered or transferred (See Agriculture Land Options). Examples of uses: irrigated land for production of crops, pasture and grazing land. Agricultural related commercial and limited industrial uses, and other limited commercial and tourist commercial uses compatible with the agricultural use of the land and rural character.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Countywide Land Use Category	Community Plan Land Use Categories	Density Range	Description/ Characteristics and Examples of Uses
Resource	✓ Resource (private)	1 du per 40 acres or one-sixteenth of a section as described by a government land office survey, or per existing parcel if less than 40 acres or one-sixteenth of a section	Characteristics: Private property, generally inholdings or located in very remote or rural parts of the County (outside of community boundaries). Within communities may be private property used for resource uses. Examples of uses: Open range and dispersed grazing, mining and large scale energy, general rural residential development at very low densities. Within communities uses such as mining, borrow pit or gravel pit operations, energy projects; may include limited employment/industrial uses complementary to and compatible with surrounding uses.
Public Lands	✓ Public Lands (public)	No density and no minimum size	Characteristics: Public lands managed by the federal and state government. Examples of uses: Grazing, recreation, energy production.
RESIDENTIAL			
Rural Residential	✓ General Rural ✓ Rural Residential	1 du per 20 acres to 1 du per 5 acres	Characteristics: Typically in rural districts and on the edge of suburbanizing areas. Lot sizes vary. Typically not served by municipal utilities. Examples of uses: Single-family residences, ranches, and "farmettes".
Low Density Residential	✓ Low Density Residential	1 du per 5 acres to 1 per 1 acre	Characteristics: Typically at the edge of suburbanizing districts and in rural districts. Lot sizes and layout vary. Typically not served by municipal utilities. Examples of uses: Single-family residences.
Suburban Residential	✓ Medium Density Residential ✓ High Density Residential	1 du per acre to 18 du per acre.	Characteristics: Typically in suburbanizing areas. Neighborhoods should contain a mix of housing types and lot sizes in a neighborhood setting with a recognizable center (with a park, school, or other public use) and connected, useable open space within the neighborhood. Will be served by municipal utilities. High density residential must be located near major roads and near commercial uses. Examples of uses: Single-family residences, duplexes and attached housing.
	✓ Residential Mixed-Use	3 du per acre to 18 du per acre.	Characteristics: This category is designed to create opportunities for higher-density neighborhoods in a suburban-setting to promote neighborhoods with a mix of types and intensities in close proximity to



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Countywide Land Use Category	Community Plan Land Use Categories	Density Range	Description/ Characteristics and Examples of Uses
			commercial and commercial mixed-use districts. Examples of uses: A range of medium to high-density residential housing types with open space, parks, schools, and other public uses.
COMMERCIAL/ MIXED-USE			
Commercial	<ul style="list-style-type: none"> ✓ Neighborhood Commercial ✓ Community/ Regional Commercial ✓ Tourist-Oriented Commercial 	Varies, depending on Character District, from approximately 1 acre (in Rural District) to a hundred acres.	<p>Characteristics: Provides a range of services, varying from small-scale neighborhood-serving commercial to large-format retail centers. Commercial should be located in centers. (See Mixed-Use Centers principles on page 5.6). The county discourages continued expansion of highway-oriented commercial activities.</p> <p>Examples of uses: Smaller specialty retail shops, retail and health services and business services, larger retail, such as supermarkets, hotels and resorts, professional offices.</p>
Commercial / Mixed-Use	✓ Commercial Mixed-Use	Varies, depending on Character District	<p>Characteristics: This category is designed to encourage a more cohesive mix of commercial uses than exist today, including residential, designed in centers. (See Mixed-Use Centers principles on page 5.6.)</p> <p>Examples of uses: A mix of commercial services (see above) with some residential. Mix and scale varies, depending on location in character district.</p>
Highway Corridor Mixed-Use	✓ Highway Corridor Mixed-Use	Varies, depending on Character District	<p>Characteristics: This category is designed to discourage continued development of highway-oriented commercial. (See Highway Corridor Mixed-Use principles on page 5.7.)</p> <p>Examples of uses: A mix of commercial services (see above), offices, and residential. Mix and scale varies, depending on location in character district, but intent is to encourage more residential and office.</p>
EMPLOYMENT			
Industrial	✓ Industrial	Varies, depending on location and Character District	<p>Characteristics: Typically intensive work processes and may involve manufacturing or resource handling.</p> <p>Examples of uses: Light and heavy manufacturing, warehousing and distribution, and variety of other industrial services and operations. Accessory and complementary</p>



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Countywide Land Use Category	Community Plan Land Use Categories	Density Range	Description/ Characteristics and Examples of Uses
			commercial uses oriented to the provision of services for the industrial uses may be incorporated into a master planned industrial park, or through County design and development standards.
Employment	<ul style="list-style-type: none"> ✓ Service Industrial ✓ Employment Mixed-Use 	Varies, depending on location and Character District	Characteristics: Provides concentrated locations for employment, combined with a mix of complementary commercial and residential uses. Examples of uses: Offices, medical facilities, light industrial facilities, educational facilities.
PUBLIC/COMMUNITY FACILITIES AND OTHER LANDS			
Open Space	✓ Open Space (public)		Characteristics: Typically provides recreational linkages between different areas of the County; floodplain, drainage or view protection; and/or wildlife habitat. Public access may be provided with designated trails or bicycle facilities. However, in other areas lands may be left intact as visual buffers along an important scenic area or community boundary.
Parks	✓ Park & Recreation (public)		Characteristics: Intended to provide for the active and passive recreational needs of the community. Examples of Uses: Developed recreation areas, playgrounds, athletic fields, picnic areas, etc.
Public/Quasi-Public	✓ Public/ Quasi-Public/ Community Facilities		Characteristics: Government offices, buildings and facilities; fire stations; electrical substations; etc.
Specific Plan	✓ Specific Plan		Characteristics: Lands intended for future development requiring approval of a specific plan(s) for any master plan designation other than the lands' existing land use designations; generally, but not limited to, Agriculture, Resource, Public Lands or General Rural land use designations
Tribal	✓ Tribal		Characteristics: Walker River Paiute Tribe lands and Yerington Paiute Tribe lands
OVERLAY DESIGNATIONS			
Airport Influence Area	✓ Airport Influence Area		Land around airports affected by airport operations. Recognizes the benefits and potential adverse impacts that may occur within certain distances from public aviation facilities and provides a framework to minimize these impacts as well as protect



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Countywide Land Use Category	Community Plan Land Use Categories	Density Range	Description/ Characteristics and Examples of Uses
			the safety and efficiency of aircraft operations.
Planning Incentive Overlay	✓ Planning Incentive Overlay	Varies by underlying land use designation, character and community.	Lands identified as important opportunities for significant improvement of land use patterns and development types. Incentives for future development may be applied to encourage the preparation of a specific plan(s) for the redistribution of existing approved land use designations and/or any revision of master plan designation(s) other than the lands' existing land use designation(s); generally, but not limited to, Suburban land use designations.

Discussion of Designations on the County-wide Land Use Plan

Airport Influence Areas

The Airport Influence Areas designated on the County-wide Land Use Plan are intended to promote land use compatibility. The designation recognizes the benefits and potential adverse impacts that may occur within certain distances from public aviation facilities and provides a framework to minimize these impacts as well as protect the safety and efficiency of aircraft operations.

In designating the Airport Influence Areas, airport runway length and the type of aircraft operations were considered. The analysis resulted in the creation of two Airport Influence Area templates: 4,500 foot and 6,000 foot airport safety compatibility zones. These templates anticipate noise, safety and regulatory components for airport land use compatibility planning purposes and are made up of the following considerations: 1) Runway Protection Zone, 2) Inner Approach/Departure Zone, 3) Inner Turning Zone, 4) Outer Approach/Departure Zone, 5) Sideline Zone, and 6) Traffic Pattern Zone. The boundaries cover all of an airport's influence area, including portions which are already developed.

During the preparation of Community Plans, it is expected that the specific conditions at the airports will be evaluated and adjustments will be made to the Airport Influence Areas as necessary and consistent with the expectations of the airport proprietor with respect to the future development and use of the airport. It is also expected that the County will establish compatibility planning guidance, prepare airport land use compatibility plans and formulate compatibility policies in the future. These actions would assist the County in reviewing future individual land use proposals and the compatibility or incompatibility of various categories of land uses.

Future compatibility criteria may include such items as:

- Measures which alert prospective property buyers to the existence of overflight impacts within all parts of the airport influence area.
- Recording of deed notices describing airport impacts as a condition for development approval anywhere in the airport influence area where aviation easements are not obtained.
- Policies defining the area within which information regarding airport noise impacts should be disclosed as part of real estate transactions.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

- Requirements for dedication of avigation easements as a condition for development approval for locations where high noise levels exist or are projected to occur and/or the heights of objects need to be significantly restricted.
- Limitations on the heights of structures and other objects necessary to protect airport airspace should primarily be defined in accordance with Federal Aviation Regulations (FAR) Part 77.
- Land uses which produce increased attraction of birds should be avoided in accordance with FAA standards. Activities likely to create visual or electronic hazards to flight (distracting lights, glare, interference with aircraft instruments or radio communication) also should be prevented.

The principal safety compatibility strategy is to limit the number of people (residential densities and nonresidential intensities) in the most risky locations near airports. Additionally, certain types of highly risk-sensitive uses (schools and hospitals, for example) should be avoided regardless of the number of people involved.

Five Airport Influence Areas are identified in this Comprehensive Master Plan. The Areas are depicted on the County-wide Land Use - Airport Influence Area Maps contained in Appendix A – Land Use Maps of this County-wide Component.

1. Dayton Airport

The Dayton Airport is a private, general aviation airport. The Airport Influence Area associated with the Dayton Airport is 4,500 feet from any point on the runway.

2. Farias Wheel Airport

The Farias Wheel Airport is a private, general aviation airport. The Airport Influence Area associated with the Farias Wheel Airport is 4,500 feet from any point on the runway.

3. Rosaschi Airpark

The Rosaschi Airpark is a privately operated public, general aviation airport. The Airport Influence Areas associated with the Rosaschi Airpark are 4,500 feet from any point on the runway.

4. Silver Springs Airport

The Silver Springs Airport is a public, general aviation airport owned by Lyon County and operated by Silver Springs Airport, LLC, through a contract with the County. The Airport Influence Areas associated with the Silver Springs Airport is 6,000 feet from any point on the runway.

5. Yerington Airport

The Yerington Airport is a public, general aviation airport owned and operated by the City of Yerington. The Airport Influence Areas associated with the Yerington Airport is 6,000 feet from any point on the runway.

Future Planning Areas

The Future Planning Areas designated on the County-wide Land Use Plan are locations where future development may occur but where additional planning is necessary because of large common ownership, topography, infrastructure and other factors. These are places where a master plan may have designations that are different than the existing land use designations. One area to be considered initially is: (1) Mason Valley/east of Yerington.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

1. *Mason Valley/East of Yerington*

The Future Planning Area East of Yerington is a location where future municipal services will be available (sewer and water). Most of the zoning currently allows for agriculture and very low density development. Developing a plan for the area may entail collaborative planning with the City of Yerington and citizens. Future development of this area should have suburban densities appropriate for municipal services.

Specific Plan Areas

The County-wide Land Use Plan designates four Specific Plan Areas. A Specific Plan designation requires development proposals within the area to be reviewed in a comprehensive manner, based on a set of adopted policies and criteria. Policies address planning issues specific to the area, typically addressing issues such as: land use, character and design, circulation and access, parks and open space, and facilities and services.

1. The Highlands

The Highlands Specific Planning Area is designated for the 20,250 acres of land in the northwestern quadrant of Lyon County located between the Tahoe-Reno Industrial Complex and US Highway 50 in the Silver Springs/Stagecoach area. The intent of this designation is to promote well planned development based on a specific set of goals and policies that complement and focus the general goals of the Lyon County Master Plan and to promote a mix of complementary and compatible residential, public facilities, commercial and industrial uses while addressing adequate infrastructure, open spaces, the natural environment and existing land uses and development patterns.

2. Stagecoach

The Stagecoach Specific Planning Area encompasses a portion of the Stagecoach Community and includes several thousand acres surrounding the heart of the Stagecoach community to the west, north, east and southeast of the community and Highway 50. Its characteristics include several large parcels in common ownership, such as the Crosby Ranch, and a vast area of contiguous vacant 40-acre parcels with potential opportunities for master planning. The county intends for the area to be planned as a cohesive, coordinated, distinct place through the Community Plan and subsequent specific plans.

3. Santa Maria Ranch II

The Santa Maria Ranch II Specific Planning Area encompasses the remaining undeveloped 665 acre portion of the former Winters Ranch in the Dayton Valley/Mound House area of Lyon County. The intent of this designation is to promote well planned mix of complementary and compatible residential and commercial uses while providing open space and protecting the natural environment and wildlife.

4. Ten Mile Hill

The Ten Mile Hill Specific Planning Area encompasses approximately 611 acres of land owned by the Borda Family Trust north and south of US 50 at the extreme eastern boundary of the Dayton Valley Planning Area. The intent of this designation is to promote well planned mix of complementary and compatible residential, commercial and employment uses while providing open space, protecting the natural environment and wildlife, and establishing a clear demarcation between the Dayton Valley and Stagecoach communities.

Planning Incentive Overlay

To promote the use of mixed-use centers, neighborhood design principals, the reduction of hazards and the promotion of open space in large undeveloped areas previously planned for suburban development, and to promote efficient land use patterns, reduction of hazards and creation of open space in large



Land Use, Economy and Growth

ADOPTED – December 23, 2010

undeveloped areas previously planned for rural development, the plan offers incentive based techniques. These techniques are outlined below.

Re-Planning

To encourage more efficient land use patterns, relocating development away from hazards or creating open space within or between communities, the Plan provides for density and use incentives. The county could provide, through incentives, an increase of allowed residential density to encourage more compact, better integrated and more efficient development—through specific plans and/or planned unit developments.

Clustering

To encourage more efficient land use patterns, relocating homes away from hazards or creating open space within or between communities, the Plan provides for clustering development. The county could provide, through incentives, an alternative way for landowners to obtain equity from their land and encourage a more compact form of development—through clustering.

Non-Contiguous Density Transfer

To conserve resources and to place development in locations closer to municipal services, community cores and development of similar density, property owners may transfer density (units) from one property to another. Either one property owner or more than one property owner may work together to transfer potential development units from one “sending property” to another “receiving property.” This is provided that the owner of a sending parcel and the owner of a receiving parcel can agree to a price for the dwelling unit rights to be transferred that the receiver pays. In addition, the owner of the sending parcel must agree to permanently reduce its development capacity and continue open space use, etc. after the sale (e.g., through permanent conservation easements held in trust by a third party and deed restrictions).

To provide an incentive for improved land use patterns, reductions of hazards and provision of open space, land owners and developers would be eligible for bonus residential units based on a schedule to be developed as part of the implementation of this Master Plan. Eligibility would require the transfer of these potential residential units away from incompatible land uses, hazardous areas, and other identified types of land to another parcel that is more suitable for development, as described in criteria that follow.

Planning Incentive Overlay Areas

The County-wide Land Use Plan designates two Planning Incentive Overlay Areas. A Planning Incentive Overlay designation encourages development proposals within the area to be designed and reviewed in a comprehensive manner, improving the underlying pattern of land use designations. Incentives such as increases in density or commercial acreage may be granted to encourage the preparation of a specific plan(s). The specific plan(s) would be based on a set of adopted policies and criteria. Policies address planning issues specific to the area, typically addressing issues such as: land use, character and design, circulation and access, parks and open space, and facilities and services.

1. Dayton, North of Highway 50

The Dayton Planning Incentive Overlay Area north of Highway 50 has an approved master plan (the Traditions project), a portion has an approved Planned Unit Development, and common ownership. It is currently zoned for residential mixed-use and commercial. The intent is to fine-tune the land use designations so that future development contains a viable mix of uses, and so it functions in a cohesive manner with circulation and access from Highway 50 and is compatible with surrounding land uses.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

2. Dayton/Carson River

The Dayton/Carson River Planning Incentive Overlay Area includes the Quilici and Minor Ranches and land along the Carson River easterly of the Minor Ranch. These lands are designated for a mix of land uses including low, medium and high density residential, and commercial. The intent with this designation is to promote a cohesive mix of residential types and more efficient, effective and mixed neighborhoods — varying from lower density neighborhoods near the open space to higher density and mixed residential where it has easy access to arterial roads. Another aim is to conserve open space along the Carson River so it will become a natural asset and amenity for future neighborhoods of the area, part of a countywide open space system, and reduce flood hazards in the built environment.

Incorporated Cities and Coordinated Planning

Lyon County contains two incorporated cities: Fernley and Yerington. The county does not have jurisdiction within city limits, however, outside city limits, cooperative planning will be necessary. This section addresses the two cities.

City of Fernley

The entire Fernley sub-area, encompassing the existing city limits and the unincorporated lands lying between the current City limits and the extended City boundaries created by the Nevada Legislature are designated on the plan. The land uses reflect the current City of Fernley Master Plan and a “cooperative planning area” coincides with the unincorporated lands.

City of Yerington

The City of Yerington is designated on the plan. Yerington’s Master Plan Map (2006) designates land uses within City limits. Beyond City limits, Yerington’s Master Plan includes an Annexation Plan through the year 2025; however the annexation plan does not designate land uses. The City of Yerington’s annexation boundary is shown as “cooperative planning area” on the County-wide Land Use Plan.

Lyon County Communities Land Use Maps

Community Land Use Plans – A Guide

Community Land Use Plan Maps are intended to show the specific land use pattern for each identified community as determined through a community planning process. Community Plans are designated for existing, established communities. These maps provide detailed views of the community’s desired development pattern for the future. The County will work with the communities to complete Community Plans, including Community Land Use Plans, in each community.

Additional information regarding Community Plans may be found in Chapter 10, Communities and Planning.

Community Land Use Plan Categories

Community Plan Land Use Designations are shown in column #2 of the master land use table that follows. The community land use designations provide much higher specificity regarding desired patterns of development and uses for lands inside of defined communities.

Community Land Use Plan Categories Table

This table shows a much greater level of detail for each land use category than the County-wide Land Use Table. This is the “menu” from which communities can build their land use plans.

Land Use, Economy and Growth

ADOPTED – December 23, 2010

**Land Use Categories (Organized by General Land Use Types)**

1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
Agriculture and Resource Lands							
Agriculture	Irrigated Agriculture (private)	1 DU per 20 acres (0.05DU/acre)	Irrigated land used in the production of crops and pasture, and having requisite water rights.	Private property under irrigated cultivation or irrigated pasture generally larger than 40 acres. Residential uses may be clustered or transferred away from agricultural lands to conserve large intact agricultural lands. Agricultural related commercial and limited industrial uses, and other limited commercial and tourist commercial uses compatible with the agricultural use of the land and rural character.	AG VLDR	RR-5	AG, Agriculture
	Range & Non- Irrigated Agriculture (private)	1 DU per 20 acres (0.05DU/acre)	Grazing land, feed-lot, hay stacking yard	Private properties used for non- irrigated livestock grazing or feeding, or non-irrigated lands used in conjunction with a developed ranching or farming operation that are generally larger than 40 acres. Residential uses may be clustered or transferred away from agricultural lands to conserve large intact agricultural lands. Agricultural related commercial and limited industrial uses, and other limited commercial and tourist commercial	AG VLDR	RR-5	NIA, Non- Irrigated Agriculture

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				uses compatible with the agricultural use of the land and rural character.			
Resource	Resource (private)	1 du per 40 acres or one-sixteenth of a section as described by a government land office survey, or per existing parcel if less than 40 acres or one-sixteenth of a section	Open range and dispersed grazing lands; mining and large scale energy projects such as wind and solar facilities; general rural residential development at very low densities. Within community boundaries uses may include limited employment/industrial uses associated with allowed mining, energy and other non-residential uses, which must be complementary to and compatible with surrounding uses.	Private properties located within BLM or USFS lands as in-holdings, or in very rural and/or remote areas of the County away from developed lands or existing utilities and roads that are currently vacant or primarily vacant, located in floodplains or are constrained by other significant environmental or topographic feature (e.g. steep slopes, playas, or access constraints). While properties are entitled to general rural residential development based upon their current zoning, maintaining these properties as open lands where possible is desirable. The county will provide limited services to remote areas. May also include private properties within community boundaries used for resource uses such as mining, borrow pit or gravel pit type operations, energy projects	PL/OS OS	RR-5	RL, Resource Land
Public Lands	Public Lands (public)	No density & no minimum size	BLM, USFS, BOR, State Park	Public lands managed by the federal and state government. Could also encompass large-scale energy production projects.	PL/OS OS	RR-5	PL, Public Land

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
Residential							
Rural Residential	General Rural	1 DU per 20 acres (0.05DU/acre)	Single-family residences, gentleman farms and ranches, etc.	Typically found in rural districts and on the suburbanizing fringe. 20 acre or larger lots for single- family residential development.	AG VLDR	RR-5	RR-20, Rural Residential (20 acre minimum)
	Rural Residential	1 DU per 5 to <20 acres (>0.05-0.2 DU/acre)	Single-family residences, “farmettes” and “ranchettes”, etc.	Typically found in rural districts and on the suburbanizing fringe. Lot size and layout varies. Typically not served by municipal utilities, depending on location in suburbanizing district.	LDR	RR-3 RR-4	RR-5, Rural Residential (5 acre Minimum) RR-10, Rural Residential (10 acre minimum)
Low Density Residential	Low Density Residential	1 DU per 1 to <5 acres (>0.2- 1.0 DU/acre)	Single-family residences.	Typically found in rural districts and on the suburbanizing fringe. Lot size and layout varies. Typically not served by urban or municipal utilities, depending on location in suburbanizing district.	LDR	RR-1 RR-2	RR-1, Rural Residential (1 acre minimum) RR-2, Rural Residential (2 acre minimum)
Suburban Residential	Medium Density Residential	1 DU per 12,000 sf to <1 acre (>1-<4 DU/acre)	Single-family residences and duplexes and attached housing.	Medium-density residential neighborhoods should contain a mix of housing types in a neighborhood setting. Each neighborhood should have a recognizable center. Centers will vary in size and composition, but may include a combination of higher-density residential uses, parks and/or recreation facilities, or civic uses. Neighborhoods should contain	MDR HDR	E-1 E-2	SFR-1/2, Single Family Residential (1/2 acre minimum) SFR-12,000, Single Family Residential (12,000 s.f. minimum)

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				connective open spaces that unify the development and provide transitions between other areas and uses.			
	High Density Residential	5 to 18 Dwelling Units per acre	Apartments, duplexes, fourplexes, condominiums and townhomes. Single Family Residential detached units at 5 to 10 dwelling units per acre.	High density residential is typically found in suburbanizing districts. High Density Residential should be located near major transportation facilities, near commercial uses, or civic centers and near parks.	HDR	NR-1 NR-2 NR-3 MHP	SFR-9,000, Single Family Residential (9,000 s.f. minimum) NSFR, Neighborhood SFR (8,000 s.f. to 4,500 s.f. minimum with variable lot size requirements) MFR, Multi-Family Residential
	Residential Mixed-Use	3-18 dwelling units per acre.	<i>Primary Uses:</i> A range of medium to high-density residential housing types, such as small lot single-family residences, duplexes, patio homes, townhomes, apartments, condominiums, and live-work units. <i>Secondary Uses:</i> Open space, parks, pathways, schools, and other public uses.	Residential mixed-use is designed to create opportunities for higher-density neighborhoods in a suburban setting to promote neighborhoods with a mix of types and intensities of housing. Residential mixed-use is appropriate next to designated mixed-use centers and along major transportation corridors.	HDR	NR-1 NR-2 NR-3 MHP	RMU, Residential Mixed-Use

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
Commercial / Mixed-Use							
Commercial	Neighborhood Commercial	Dependent on Character District Typically around 5 acres, but may vary, ranging from as small as 1-3 acres to as large as 10- 15 acres.	Supermarkets, restaurants, movie rentals, drycleaners, drugstores, filling stations, smaller specialty shops, retail and health services and business and professional offices.	Neighborhood commercial is intended to provide a range of services. It will vary in scale and character. Smaller, limited use centers may be fully integrated into the surrounding neighborhood and be accessed primarily by pedestrian or bicycle; while larger centers will function more independently, providing ample parking and numerous stores.	C	C-1	NC, Neighborhood Commercial
	Community/ Regional Commercial	Typically between 10 and 30 acres.	Typically anchored by large format national retailers, which may provide sales of a variety of general merchandise, grocery, apparel, appliances, hardware, lumber, and other household goods, often under one roof.	Community/Regional commercial will occur in suburban character districts. It is a mix of retail and commercial services in a concentrated and unified center that serves the local community. It may also include larger retail centers with unique stores or characteristics that serve as a regional draw and “one-stop shop” setting. Single use highway-oriented commercial activities will continue to occur in some areas. However, the county generally discourages that pattern of development.	C	C-2	CC, Community Commercial RC, Regional Commercial
	Tourist Oriented	Dependent on Character	Primary Uses: Rural – RV parks, lodges, resorts, etc.	Tourist Oriented Commercial is intended to provide a range of	C	TC RVP	RTOC, Rural Tourist Oriented

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
	Commercial	District	w/rural character, scale and amenities <i>Suburbanizing:</i> Casinos, hotels, RV parks, resorts, etc. with suburban character, scale, and amenities <i>Secondary Uses:</i> Restaurants, smaller specialty shops and retail uses associated with the primary use(s).	tourist oriented services, depending on context: rural or suburbanizing. Will vary in scale and character. These developments are generally located in areas with particular attributes that provide opportunities for multiple tourist oriented uses. Not intended for small casinos, individual RV parks, etc.			Commercial STOC, Suburban Tourist Oriented Commercial
Commercial Mixed-Use	Commercial Mixed-Use	<i>Rural Districts:</i> Density/intensity based on coverage and building height. Typical coverage of between 35% and 50%. <i>Suburban Districts:</i> Typical floor area ratios (FARs) of between 0.35 and 3.	<i>Primary Uses:</i> Commercial retail and offices. In Rural districts: Mixed neighborhood commercial and medium density single family residential. In suburbanizing districts: Commercial and mixed-use residential, including live-work units, based on neighborhood character, access and infrastructure. <i>Secondary Uses:</i> Open space, parks, trails, schools, places of worship, other public uses, and senior housing facilities are also appropriate.	<i>Historic Districts:</i> Unique historic character and importance to the community. Historic land use pattern with mixed commercial and residential uses arranged horizontally and/or vertically. <i>Rural Districts:</i> Traditional settlement land use pattern with mixed commercial and residential uses arranged horizontally and/or vertically. Typically neighborhood commercial and associated uses; may have both single-family and multi-family residential uses. <i>Suburban Districts:</i> Traditional downtown fabric with a compact, pedestrian-friendly scale. The category is intended to allow for and encourage a broader mix of uses than exist today, including high-density residential. It is also	N/A	Some TC	CMU, Commercial Mixed-Use

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				intended to allow for vertical or horizontal mix of uses on sites. Commercial Mixed-use is generally located along major transportation corridors, within designated mixed-use centers. Commercial Mixed-Use development should be located where it may be readily served by existing or future transit and should be designed with clear pedestrian connections to transit stops and surrounding development.			
Highway Corridor Mixed-Use	Highway Corridor Mixed-Use	Dependent on Character District. Typical floor area ratios (FARs) of between 0.35 and 1.5 with residential units	<p><i>Rural Districts:</i> Mixed neighborhood commercial and medium density residential (multi-family)</p> <p><i>Suburban Districts:</i> Typical floor area ratios (FARs) of between 0.5 and 1.5</p> <p><i>Primary Uses:</i> Residential and offices, including live-work units.</p> <p><i>Secondary Uses:</i> Commercial uses that are low traffic generators, open space, parks, trails, schools, places of worship, other public uses, and senior housing facilities are also appropriate.</p>	<i>Rural Districts:</i> Traditional settlement land use pattern with mixed residential and commercial uses arranged horizontally and/or vertically. The category is intended to discourage strip commercial and allow for and encourage a broader mix of uses than exist today, including residential.	N/A	Some commercial zoning districts along the highway	HMU, Highway Corridor Mixed-Use

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
Employment							
Industrial	Industrial	Dependent on Character District	<i>Primary Uses:</i> Light and heavy manufacturing, warehousing and distribution, indoor and screened outdoor storage, and a wide range of other industrial services and operations. <i>Secondary Uses:</i> Accessory and complementary commercial uses may be incorporated into a master planned industrial park, or through County design and development standards.	Uses typically involve more intensive work processes, and may involve manufacturing or basic resource handling.	I	M-1 M-E J-W	LI, Light Industrial HI, Heavy Industrial
Employment	Service Industrial		Light manufacturing, distribution, indoor and screened outdoor storage, and a wide range of other industrial and commercial services and operations.		I	M-1	SI, Service Industrial
	Employment Mixed-Use	Varies depending upon location and development context.	<i>Primary Uses:</i> Employment facilities, such as corporate offices, medical facilities and offices, research and development, service and light industrial facilities, and educational facilities. <i>Secondary Uses:</i> Limited	Suburban character district land use. Intended to provide concentrated areas of employment, combined with a mix of complementary commercial and residential uses Office/Research Park developments may be incorporated into a master	BO BO/TP	N/A	EMU, Employment Mixed-Use

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
			residential, including residential mixed-use and live-work units, or commercial (or combination of the two) uses are encouraged in Employment Mixed-Use areas. Open space, parks, pathways, schools, other public uses, and senior housing facilities are also appropriate.	planned neighborhood, or located in close proximity to residential areas. May include smaller live-work complexes consisting of a single building or several buildings that are not located within a typical office or industrial park setting, but are located on infill sites within established suburbanizing areas of the County. Activities typically take place indoors and outdoor storage or other more industrial types of uses are typically not permitted.			
Public/Community Facilities and Other Lands							
Parks	Park & Recreation (public)	Varies, ranging from as small as 1-3 acres to 40+ acres for regional facilities.	Parks, pathways, and recreational facilities.	Intended to provide for the active and passive recreational needs of the community. Generally provided by the County.	N/A OS	N/A	PF, Public Facilities
Open Space	Open Space (public)		<i>Primary Uses:</i> Publicly owned/managed and accessible lands preserved by the County, other government agencies, or quasi-public (land trusts, non-profit organizations, etc.) for	Open space provides recreational linkages between different areas of the County; floodplain, drainage or view protection; and/or wildlife habitat. Public access may be provided with designated trails or bicycle	PL/OS Not used in the same context OS	RR-5	OS, Open Space

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
			conservation, resource protection, or recreational use. Not lands that are part of a private development (e.g. planned unit development) May also be preserved without public access to protect sensitive natural areas. <i>Secondary Uses:</i> Utilities (e.g. municipal wells or other utility structures).	facilities. However, in other areas lands may be left intact as visual buffers along an important scenic area or community boundary. Open space may be granted to or purchased outright by the County for public use, donated to private land trusts, or protected using another method, such as conservation easements, signage restrictions, and design controls.			
Public/Quasi-Public	Public/ Quasi-Public/ Community Facilities	N/A	Schools, government offices, community centers, fire stations, airports, libraries, hospitals, cemeteries, etc. Also includes facilities needed for essential public services such as electrical substations, water and wastewater facilities, and other similar uses.	Government offices, buildings and facilities; fire stations; electrical substations; etc.	N/A EF	Varies	PF, Public Facilities
Specific Plan	Specific Plan	N/A	Vary by Specific Planning Area	Lands intended for future development requiring approval of a specific plan(s) for any master plan designation other than the lands' existing land use designations; generally, but not limited to, Agriculture, Resource, Public Lands or General Rural land	N/A	N/A	N/A

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				use designations. Three areas that should be considered to initially include this designation are: (1) Stagecoach, (2) Silver Springs, and (3) east of Yerington.			
Tribal	Tribal	N/A	A range of residential and nonresidential uses associated with the Walker River and Yerington Paiute Tribes.	Walker River Paiute Tribe lands; Yerington Paiute Tribe lands	N/A	N/A	N/A
Overlay Designations							
Airport Influence Area	Airport Influence Area	N/A	N/A	Land around airports affected by airport operations. Recognizes the benefits and potential adverse impacts that may occur within certain distances from public aviation facilities and provides a framework to minimize these impacts as well as protect the safety and efficiency of aircraft operations.	N/A	N/A	AO, Airport Overlay
	Cooperative Planning Area	N/A	N/A	An area beyond a municipality's immediate municipal boundaries where suburban level development is not appropriate within the municipal plan's time frame but where development may have an impact on present and future municipal growth patterns. CPAs will	N/A	N/A	N/A

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				be defined in Interlocal Agreements and development standards in these areas will be based on jointly developed plans.			
	Density Transfer (Density Receiving or Future Development)	N/A		Designated receiving or transfer areas for Transfer of Development Rights (TDRs)	N/A	N/A	RA, Receiving Area Overlay TA, Transfer Area Overlay
	Historic	N/A	N/A	Land within the Comstock Historic District.	HO	Historical Overlay	HO, Historic Overlay
	Redevelopment	N/A	N/A	Lands identified as important opportunities for redevelopment.	N/A	N/A	RO, Redevelopment Overlay
Planning Incentive Overlay	Planning Incentive Overlay	N/A	Vary by underlying land use designation, character and community.	Lands identified as important opportunities for significant improvement of land use patterns and development types. Incentives for future development may be applied to encourage the preparation of a specific plan(s) for the redistribution of existing approved land use designations and/or any revision of master plan designation(s) other than the lands' existing land use designation(s); generally, but not limited to, Suburban land use designations.	N/A	N/A	PI, Planning Incentive Overlay

Land Use, Economy and Growth

ADOPTED – December 23, 2010



1 County-wide Plan Land Use Category	2 Community Plan Land Use Designation	3 Density Range/Size	4 Examples of Uses	5 Description/Characteristics	6 1990 Master Plan & WCLC Land Use Plan	7 Current Zoning Districts	8 Zoning District Concepts
				Three areas that should be considered to initially include this designation are: (1) the Minor Ranch, (2) the Quilici Ranch, and (3) the Traditions project.			

DU = Dwelling Unit

FAR = Floor Area Ratio. Floor area ratio means the ratio of floor area permitted on a lot to the size of the lot. It is determined by dividing the gross floor area of all buildings on a lot by the area of that lot. For example, a permitted FAR of 0.5 on a 10,000 square foot lot would allow a building with a total floor area of 5,000 square feet.

sf = square feet

Land Use, Economy and Growth

ADOPTED – December 23, 2010

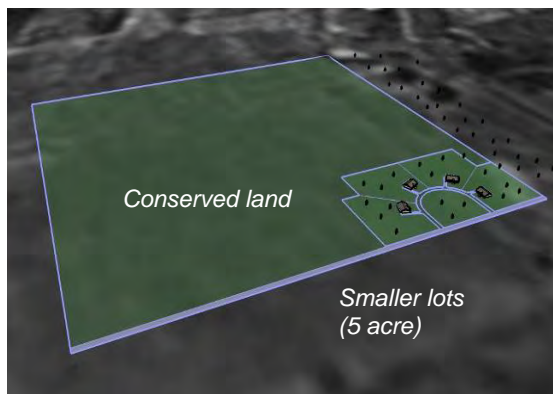
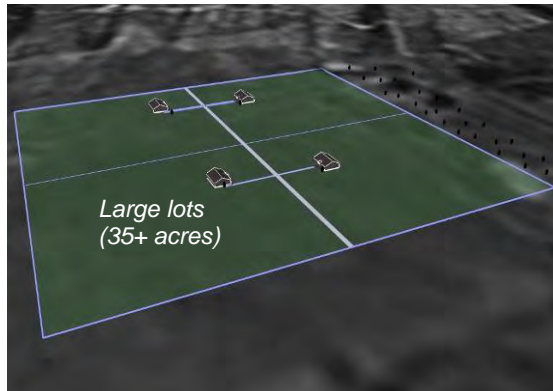


Agriculture, Open Space, Hazardous and Environmentally Sensitive Land Options

In an effort to retain both the agricultural and rural character of large sections of Lyon County, relocate development away from special flood hazard areas and other hazards, promote the creation of open space and help protect lands that are environmentally sensitive, the plan offers several incentive based conservation techniques. These techniques are outlined below.

Clustering

To encourage the retention of larger parcels with the opportunity of continuing agricultural activities, relocating homes away from hazards or creating open space within or between communities, the Plan provides for clustering development. The county could provide, through incentives, an alternative way for landowners to obtain equity from their land and encourage a more compact form of development—through clustering.



Through a clustering program, farmers and ranchers could be eligible for incentives, such as bonus residential lots and units and reductions in minimum lot sizes (to be determined), if they meet criteria below.

Eligibility Criteria

To be eligible, the parcel must:

- Be a minimum number of acres as set forth in an implementing County Code.
- Contain productive agricultural land, useable common open space or conservation area or natural features, such as wetlands and special flood hazard areas.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

In addition:

- Development lots and units must cluster on underutilized land with a minimum size identified in the applicable community plan.
- Development lots and units must be served by continuous paved roadways connected to the County's improved thoroughfare and road system or State highway system, or adequate paved roadways must be constructed as part of any development.
- To use this option, the property owner will need to address its long-term management of the property.
- Restrict further residential development of the conservation area.

Non-Contiguous Density Transfer

To conserve agricultural lands or other resources and to place development in locations closer to municipal services, community cores and development of similar density, property owners may transfer density (units) from one property to another. Either one property owner or more than one property owner may work together to transfer potential development units from one "sending property" to another "receiving property." This is provided that the owner of a sending parcel and the owner of a receiving parcel can agree to a price for the dwelling unit rights to be transferred that the receiver pays. In addition, the owner of the sending parcel must agree to permanently reduce its development capacity and continue agricultural operations, open space use, etc. after the sale (e.g., through permanent conservation or agricultural easements held in trust by a third party and deed restrictions).

To provide an incentive for land conservation, farmers and ranchers would be eligible for bonus residential units based on a schedule to be developed as part of the implementation of this Master Plan if they transfer these potential residential units away from agriculture, ranch and other identified types of land to another parcel that is more suitable for development, as described in criteria that follow.

Criteria for "Sending Properties"

Potential residential density or development units can be transferred away from sending properties. An eligible sending property must meet the following criteria:

- Be a minimum number of acres as set forth in an implementing County Code,
- Contain irrigated agriculture or other historically productive agriculture or natural resources to conserve, or be located within an identified special flood hazard zone or open space area, and
- Retain water rights with the land, if applicable.

Criteria for "Receiving Properties"

For a property to be eligible for receiving additional development units, it must meet the following criteria:

- Be located near a community core and parcels of similar size as would be developed.
- Be served by continuous paved roadways connected to the County's improved thoroughfare and road system or State highway system, or adequate paved roadways must be constructed as part of any development.
- Consist of underutilized agricultural land (i.e., has not been used for farming or ranching in past several years), non-hazardous land, land not considered to be environmentally sensitive, and land not identified for open space.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

Transfer of Development Rights (TDRs)

In a TDR program, a community identifies an area which it would like to conserve (the “Sending Area”) and another area where the community desires more town- or suburban-style development (the “Receiving Area”). Landowners in the sending area are allocated a number of development credits which can be sold to developers wishing to build in the receiving area. In return for selling their development credits, the landowner in the sending area agrees to place a permanent conservation easement on their land. Meanwhile, the purchaser of the development credits can apply them to develop at a higher density than otherwise allowed on property within the receiving area. In Lyon County, a TDR program could be used to conserve agricultural lands that are desired to remain in production, natural resources, or lands subject to identified hazards, and land that is within a suburbanizing area or city or town could serve as a receiving area. The program could be county-wide or localized to a community (e.g., Smith Valley). The broader the area subject to a TDR program, the more likely the program could be successful.

What Would it Take to Establish a TDR Program?

For this approach to be used, the county would need to put the following into place:

- Define Sending Area Locations or Criteria – Define the extent of agricultural areas to be conserved or criteria for designating sending areas.
- Establish Receiving Areas or Criteria – Determine a receiving area (or areas) or criteria, as an area where future growth would occur at higher densities than what current zoning allows.
- Bank or Sell Development Rights – For a property owner within the receiving area(s) to develop at densities higher than current zoning allows, they would need to purchase development rights from a property owner in the sending area or from a bank. The seller of the development rights would need to provide evidence of a permanent conservation easement meeting the protection criteria of the TDR Program. The value for these rights would be determined by the market; however, the county would likely need to establish a basis for the number of rights needed for density increases in the receiving area.

Density Transfer Charges (DTCs)

In a Density Transfer Charge program, the County would accept the payment of fees in lieu of the purchase and/or transfer of development rights. The fees would then be used to purchase conservation and/or agricultural easements, or land from willing sellers. Similar to a TDR program, in Lyon County a DTC program could be used to conserve agricultural lands that are desired to remain in production, natural resources, or lands subject to identified hazards. A Density Transfer Charge program would be different from a TDR program in that it does not require the designation of Receiving Areas or the actual relocation of development. Development rights would be retired and not moved in a DTC program. The program could be county-wide or localized to a community (e.g., Smith Valley).

What Would it Take to Establish a DTC Program?

For this approach to be used, the county would need to put the following into place:

- Define Criteria – Define criteria for designating eligibility. This could include criteria requiring DTC payments for any development above a base density. For example the base density could be defined as the densities granted in zoning designations as of an effective date. The difference between this base density and the Comprehensive Master Plan land use designation, implemented through a re-zoning of land, could be used to determine the amount of development transfer charges due.



Land Use, Economy and Growth

ADOPTED – December 23, 2010

- Establish Priorities for Using DTC Funds – Determine priorities for different lands the County is interested in retaining or protecting. This could include agricultural lands, lands subject to hazards, open space, etc.
- Set and Collect Fees – For a property owner to develop at densities higher than current zoning allows, they would need to pay a fee(s) based on the increased number of units. The County would need to set the per unit fees for single family detached and multi-family units.

LYON COUNTY MASTER PLAN

LYON COUNTY COMM. DEVELOPMENT
PLANNING AND BUILDING DIVISION
27 SOUTH MAIN STREET
VERINGTON, NEVADA 89447

JULY, 1990

LYON COUNTY MASTER PLAN

PREPARED FOR
THE BOARD OF LYON COUNTY COMMISSIONERS

By
THE LYON COUNTY PLANNING COMMISSION
and
THE MASTER PLAN TASK FORCE

LYON COUNTY COMM. DEVELOPMENT
PLANNING AND BUILDING DIVISION
27 SOUTH MAIN STREET
YERINGTON, NEVADA 89447

JULY 1990

BOARD OF LYON COUNTY COMMISSIONERS

ROLAND ADAMS, CHAIRMAN

DON CUMMINGS, MEMBER

MARYANNA HAMER, MEMBER

KEN HARVEY, MEMBER

KATHY JENSEN, MEMBER

LYON COUNTY PLANNING COMMISSION

RENE CARDINAL

NANCY DALLAS

PAUL EDGE

RUSSEL D. ELSEA

GERALD KANE

HAROLD L. SAGE

WINSTON TENNANT

LYON COUNTY MASTER PLAN TASK FORCE

ROLAND ADAMS, CHAIRMAN

RENE CARDINAL, COUNTY PLANNING COMMISSION REPRESENTATIVE

NANCY DALLAS, COUNTY PLANNING COMMISSION REPRESENTATIVE

JACK DAVIS, WESTERN NEVADA DEVELOPMENT DISTRICT

JOHN EVASOVIC, COUNTY PLANNING ADMINISTRATOR

ZANE MILES, COUNTY DEPUTY DISTRICT ATTORNEY

BILL ROGERS, COUNTY DISTRICT ATTORNEY

MIKE TRACY, CARTOGRAPHER

REFERENCES AND ACKNOWLEDGEMENTS

Special recognition and appreciation are given to the following:

- ** The Board of Lyon County Commissioners for their time and effort to bring this Master Plan Update to a positive conclusion.
- ** The Lyon County Planning Commission for their critical and positive review of the Master Plan drafts.
- ** The Master Plan Task Force who, through the donation of their time and efforts, provided extensive information that was utilized in the development of this document.
- ** Western Nevada Development District, through Executive Director Jack Davis, for their valuable assistance, time, and knowledge in compiling this document.
- ** Cashion Callaway and Bob Elston, of Intermountain Research, for their contribution to the Cultural and Historic Resources chapter.
- ** Candace Fox for development of the Fiscal Plan.
- ** All individual input which has been included in the Summary and Findings Report.

LYON COUNTY MASTER PLAN
SUMMARY AND FINDINGS REPORT

The Summary and Findings Report, which is a part of the Lyon County Master Plan, is a compilation of comments received from various individuals during the Master Plan Workshops and is hereby included by reference. The actual document is on file in the Office of the Lyon County Commissioners, 31 South Main Street, Yerington, Nevada, and may be viewed during working hours.

R E S O L U T I O N
of the Lyon County Planning Commission

1 WHEREAS, the Lyon County Planning Commission has held
2 public hearings on the proposed 1990 Lyon County Master Plan
3 prepared by the Lyon County Master Plan Task Force, acting
4 as a committee of the Lyon County Planning Commission; and

5 WHEREAS, the Lyon County Planning Commission has incor-
6 porated into the Master Plan thiose changes in the "Final
7 Draft" thereof which the commission believes to be necessary.

8 NOW, THEREFORE, BE IT RESOLVED that the Lyon County
9 Planning Commission:

10 1. Adopts the 1990 Lyon County Master Plan incorporating
11 those amendments made thereto by the Commission following
12 public hearing, specifically including:

13 A. The narrative document, a copy of which is made
14 a part of this resolution by reference as Exhibit "A";

15 B. The land use map, made a part of this resolution
16 by reference as Exhibit "B";

17 C. All other maps, expressly including:

- 18 1. Fernley - Book I
- 19 2. Carson Plains - Book II
- 20 3. Stagecoach - Book III
- 21 4. Silver Springs - Book IV
- 22 5. Mason Valley, North - Book V
- 23 6. Mason Valley, South - Book VI
- 24 7. Smith Valley - Book VII
- 25 8. Lyon County Base Map
- 26 9. All constraint maps and special purpose
- 27 maps

LYON COUNTY MASTER PLAN

TABLE OF CONTENTS

	<u>PAGE</u>
<u>CHAPTER I -- INTRODUCTION</u>	
A. Introduction.....	1
B. Master Plan Process.....	2
C. General History of Lyon County.....	3
D. Lyon County Goals and Objectives.....	6
<u>CHAPTER II -- ELEMENTS FOR DEVELOPMENT OF THE MASTER PLAN</u>	
A. Community Design.....	23
B. Conservation and Natural Resources.....	27
C. Economic Development.....	33
D. Housing.....	40
E. Land Use (including Public Lands).....	44
F. Population Characteristics.....	56
G. Public Services (including public buildings, education, utilities.....)	66
H. Recreation.....	93
I. Transportation.....	107
J. Seismic.....	116
K. Solid Waste Management.....	118
L. Hazardous and Toxic Materials.....	124
M. Cultural and Historic Resources.....	126
<u>CHAPTER III -- FISCAL PLAN</u>	
Fiscal Plan - Executive Summary.....	198
Part I: Financial History, FY 1984-85 to FY 1987-88.....	200
Exhibit I: Summary of Resources by Type.....	205
Summary of Expenditures by Category and by Function.....	206
Individual Fund History.....	207
Summary of Individual Funds.....	216
Part II: Revenue and Expenditure Projections FY 1989-90 to FY 1999-2000.....	217
Exhibit A: Revenue Projections.....	223
Exhibit B: Expenditure Projections.....	227
Appendix I: Juvenile Detention Analysis.....	238
Appendix II: Summary of Additional Staffing.....	239
Appendix III: Salary and Benefits Schedule for Additional Staff.....	240
Appendix IV: Capital Outlay Requirements - Purchase and Replacement Costs.....	241
Appendix V: Capital Outlay for Additional Employees.....	244
Appendix VI: Space Requirements for Additional Positions.....	245
Appendix VII: Incremental Revenues Resulting from New Dwelling/Commercial Construction.....	246
Part III: Areas for Future Study.....	248
<u>CHAPTER IV -- MASTER PLAN DEVELOPMENT</u>	
A. Land Use Designations.....	251
B. Land Capability Analysis.....	252
C. Plan Organization and Administration.....	256
D. Financial Programming.....	257
E. Plan Implementation.....	259

CHAPTER I -- SECTION A
INTRODUCTION

The process for this plan has been a long and arduous effort for many people to whom Lyon County owes a great debt of gratitude. The Lyon County Planning Commission, the Master Plan Task Force, and the Lyon County Commissioners have each played a major part in the development of this plan through countless hours of public hearings.

The consulting firm which began this plan provided base material, constraint maps, rough draft text, and a draft fiscal plan, all of which have been used in various forms. The policy direction of this plan is a primary result of direction from the summary and finding report as received from the public and said report will be incorporated herein and be made a part hereof.

This plan is not a regulation but rather a policy statement from which ordinances and regulations may be developed. With our expanding growth in the County, particularly in the Dayton and Fernley areas, the need for planning ahead is of utmost importance.

CHAPTER I -- SECTION B
MASTER PLAN PROCESS

The Nevada Revised Statutes, Chapter 278.150, requires the adoption of a comprehensive, long term general plan for the physical development of the County. This plan shall be known as the "Lyon County 1989 Master Plan".

All required subject matters referenced in NRS Chapter 278.160 have been addressed in this plan, either directly or indirectly, and are considered elements of the overall plan. The actual planning process used for the development of the plan is as follows:

	<u>Consultants</u>		<u>Analysis</u>	<u>Planning</u>	<u>County</u>
<u>Planning</u>	<u>Task</u>	<u>Base</u>		<u>Commission</u>	<u>Commission</u>
<u>Commission</u>	<u>Force</u>	<u>Line</u>	<u>Summary</u>	<u>Public</u>	<u>Adoption</u>
		<u>Draft</u>	<u>and</u>	<u>Hearings</u>	
			<u>Findings</u>		
	<u>Western</u>				
	<u>Nevada</u>				
	<u>Development</u>				
	<u>District</u>				

CHAPTER I -- SECTION C
GENERAL HISTORY OF LYON COUNTY

The First Territorial Legislature created Lyon County on November 24, 1861. It was one of nine original counties. At the same time, Dayton was designated the county seat. As to the origin of the county name, two schools of thought exist. One believes the honor belongs to General Nathaniel Lyon, a Union commander. General Lyon was killed in a Civil War battle at Wilson's Creek on August 9, 1861. The second school supports Captain Robert Lyon as being the county's namesake. Captain Lyon, one of Nevada's early pioneers, was a member of the Sierra Guards during the Pyramid Indian Wars of 1860. Contemporary reference works include both name origins.

Several changes were made to the boundaries of the county over the years; however, one of the most important occurred in 1883 when a portion of Esmeralda County was annexed. This annexation to Lyon County included part of what is known as Mason Valley.

Dayton, the first county seat and the county's center of commerce for many years, was named after John Day, the surveyor who laid out the town. The original spelling of the town's name was Daytown. Popular usage brought it to Dayton in 1861. Previous names of the community were Chinatown, Mineral Rapids and Nevada City.

The courthouse in Dayton, a classic structure typically Nevada in its impressive size and building material, burned in 1907.

In 1911 the Nevada State Legislature designated Yerington as the county seat. Yerington, named after H.M. Yerington of railroad and mining wealth, originally was known as Pizen Switch - the name derived from poor whiskey which was sold in saloons built of willows and mud. Culture arrived and the name was changed to Greenfield and later to Yerington. Yerington is one of Nevada's 18 incorporated municipalities.

In the early years of the county, mining was acknowledged as the economic mainstay. Numerous communities were born as mining camps or as centers of transportation or provision supply.

Of particular note in the development of numerous communities was Gold Canyon, a site in western Lyon County. In 1849 gold was discovered in this canyon. During the 1850's miners worked up the canyon, and subsequently the Comstock Lode was discovered.

Silver City, an existing community, was an important part of The Comstock.

LYON COUNTY

Mining continued playing a vital role in Lyon County well into the 20th Century.

Anaconda's extensive operation created a community, known as Weed Heights, near Yerington, and was a major positive economic factor for both the county and the state.

During this decade several heap leach operations have occurred, primarily in the county's western area.

Referring to contemporary production, Nevada Statistical Abstract, 1988, "Minerals Produced in Nevada by County in Order of Monetary Value, 1985", reports that minerals extracted in Lyon County were cement, diatomite, stone (crushed and broken), gold, gypsum, and silver.

Another key site vital to the development of not just Lyon County, but to western Nevada, was Fort Churchill. The fort was Nevada's first, largest, and most important military post. The warring Paiutes' raids on emigrant route stations, together with their causing trouble for travelers and interrupting mail service, caused the Federal Government to order the fort's construction. By the end of 1861 some 600 men were stationed at Fort Churchill. When regular troops were sent to the Civil War, volunteers from California manned the fort. The settling of the Indian troubles and the completion of the Central Pacific which decreased travel on the central Overland Trail demonstrated the fort was no longer needed. In September, 1869, Fort Churchill was abandoned. Fort Churchill is now a State Park and is one of Nevada's National Historic Landmarks.

The importance of early buildings and sites in Lyon County can be found through Nevada's Historical Marker program. Fifteen sites or buildings within Lyon County have been marked. Not to be ignored in the county's history is agriculture. From the early 1860's forward, crops for both man and animal have been raised throughout the county. As early as 1863 hay was grown and harvested in Smith Valley, and the Chinese were engaged in cultivating crops around Dayton. Cattle and sheep have been evident for decades in the county.

Of contemporary agriculture it is important to note the following statement from Nevada Statistical Abstract, 1988.

"Of interest, in 1986, Elko, Churchill, Humboldt, Lyon and Pershing Counties accounted for 66 percent of total farm income in the State. While Churchill and Elko Counties are dependent upon income primarily from livestock (80 and 97 percent, respectively), Humboldt, Lyon and Pershing Counties are more diversified, with farm income divided almost equally between livestock and crop production"

BIBLIOGRAPHY

- CARLSON, Helen S.
Nevada Place Names, A Geographical Dictionary, University of Nevada Press, Reno, 1974.
- DAVIS, Sam P.
History of Nevada, The Elms Publishing Co., Inc., Reno, Nevada and Los Angeles, California, 1913.
- EARL, Phillip
This was Nevada, "Reno Gazette-Journal," Sunday, July 23, 1989, p. 11C, Reno, Nevada.
- HERMANN, Ruth
Gold and Silver Colossus; William Morris Stewart and his Southern Bride, Dave's Printing & Publishing, Sparks, Nevada, 1975.

Nevada Historical Marker Guidebook, edited by Dave Basso, Third Edition, Falcon Hill Press, Sparks, Nevada, 1986.
- PAHER, Stanley
Nevada Ghost Towns & Mining Camps, Howell-North Books, Berkeley, California, 1970.
- SAWYER, Byrd Wall
Nevada Nomads, A Story of the Sheep Industry, Harlan-Young Press, San Jose, California, 1971.
- STATE OF NEVADA, OFFICE OF COMMUNITY SERVICE
Nevada Statistical Abstract, 1988, principal authors John B. Walker and David R. Cowperthwaite, September, 1988.

Unpublished Documents

- STATE OF NEVADA, LEGISLATIVE COUNSEL BUREAU
File, Incorporated Cities, compilation.

The General Nathaniel Lyon Writing Project, sponsored by Lyon County and the Silver City Bicentennial Committee, project director David E. Moore, July, 1976.

CHAPTER I -- SECTION D
GOALS AND OBJECTIVES

The formulation of these goals and objectives are primarily resultant from the many hours of public hearings conducted over the past year.

A goal is a purpose or an ultimate end toward which effort is directed. It represents a benefit to be sought which is general and timeless.

An objective is a specific action that is to be taken to achieve a goal.

The following series of goals and objectives are not listed in any particular order of priority, but rather follow the index of listed elements in Chapter II and Chapter III (the Fiscal Plan).

COMMUNITY DESIGN

General Goal #1

Tailor changes in current zoning to best accommodate commercial development relating to each community's desired commercial potential.

General Goal #2

Preserve the residential integrity of neighborhoods and communities.

Objective:

To protect established residential neighborhoods and communities from development that is inappropriate or detrimental to the preservation of those attributes which make those areas residentially desirable.

Fernley:

Goal #1

Land use conflicts along the TCID canal should be reduced.

Objective:

More careful consideration on addressing land use situations ie. industrial vs. residential, commercial vs. residential, residential vs. agriculture, etc. One possible solution would be to create a buffer zone between uses. The Master Plan map herewith has addressed this issue by eliminating conflicts where possible.

Goal #2

To create traditional downtown area with sidewalks and consolidated shopping areas.

Objective:

Through zoning and planning, consolidate commercial areas by separation from residential and industrial areas. Require innovative landscaping and architectural efforts in what will be downtown area. County should assist in seeking funding for downtown revitalization.

Goal #3

Reduce the conflicts created by mobile/manufactured housing areas intruding on agricultural lands.

Objective:

Reduce areas with mobile home overlay zoning wherever possible through rezoning. Through efforts of Fernley Town Board and residents, along with the Lyon County Planning Commission, determine those areas which are best suited to mobile home occupancy to reduce conflict.

Goal #4

To increase scope and coverage ability of emergency vehicles in servicing Fernley response areas.

Objective:

Locating additional firehouse and equipment in areas which presently require excessive response time. Due to hazardous materials being handled by firms locating in Fernley, opportunity must be provided for fire department members to receive training in order to maintain local capabilities for emergencies resulting from hazardous material accidents.

Silver Springs:

Goal #1

Continued promotion of Silver Springs airport and airport oriented activities.

Objective:

Without this key facility to assist in the attraction of industrial and commercial ventures, growth in Silver Springs could be limited.

Stagecoach:

Goal #1

To improve road surfaces through paving and increased drainage engineering.

Objective:

Complete road surveys by County Road Department to determine

extent of road improvements needed. This schedule is presented annually to the governing body for prioritizing roads via the Regional Transportation Commission.

Goal #2

Work with Nevada Department of Transportation to attempt to construct left turn lanes on Highway 50 corridor.

Dayton:

Goal #1

To preserve the historic heritage of Lyon County for the enjoyment of today's residents and visitors and the edification of future generations.

Objective:

Retain the County's prime historic structures for their aesthetic and commercial value.

Goal #2

Although the park system was addressed under "Recreation Element", it should be added in community design as an integral part thereof. The river corridor through Dayton needs additional public access and the development of park sites and trails should be encouraged.

Objective:

In future development plans, this issue should be considered in proposals near or adjacent to the river. (see Dayton State Park plans in the "Recreation Element")

Goal #3

Preserve and protect the rural character of the Rose Peak area.

Objective:

No further development below what would ordinarily be required to maintain and protect rural atmospheres and lifestyle (i.e., one acre minimum, with horses permitted with trailer overlay as has long been established in Rose Peak Subdivision, Units I, II, III.

Mound House:

Goal #1

To clean up the Highway 50 corridor from county line through to Virginia City turn-off.

Objective:

Encourage special design of the corridor in conjunction with the Nevada Department of Transportation's proposed improvements, which would address design solutions outside and inside rights-of-way.

Goal #2

To improve roads within the residential areas.

Objective:

Through the Regional Transportation Commission, an expanded road improvement program should hasten completion of this goal and objective.

Goal #3

To control commercial development along Highway 50 to improve appearance and image.

Objective:

Request assistance from Lyon County Building Department in issuance of building permits by cooperating with Mound House Advisory Board.

Silver City:

Goal #1

To maintain, promote, and secure the historic character of the community and to prevent the destruction or degradation of the historic character.

Objective:

Lyon County should support the Comstock Historic District Commission in its legislative mission.

Goal #2

Lyon County should review all new development proposals with the intent to protect the riparian ecology associated with Gold Canyon and American Ravine, with the intent of protecting water quality, minimizing flooding, erosion and sedimentation, and preserving natural drainage, habitat, and aesthetic functions.

Mason Valley:

Goal #1

Existing residential streets should be upgraded to a paved standard in the Mason Townsite.

Objective:

Through the Regional Transportation Commission, an expanded road improvement program should hasten completion of this goal and objective. (This goal is also applicable to the northeast quadrant of Mason Valley with the same objective.)

Smith Valley:

Goal #1

To attract commercial activities which will enhance living conditions but will have no detrimental effect on residents.

Objective:

Attempt to attract businesses which by their nature are essential to communities, ie. barber shops, beauty shops, banks, etc.

Goal #2

Attempt to improve upon electrical, telephone, and television translator transmissions.

CONSERVATION AND NATURAL RESOURCES

Goal #1

Retain existing water resources which exist for benefit of Lyon County use: agriculture, residential, and industrial.

Objective:

A. Require all new development to provide existence of dependable and secure water rights to meet the needs of the residents of the subdivision, or a will-serve letter from a utility providing water service necessary to serve the development.

B. Water for agrarian recreational use, ie. golf courses, ball fields, etc., should come from treated effluent wherever possible.

C. Request legislation, both at county and state levels, to allow restriction of or to prevent water or water-rights exportation to areas outside Lyon County. T.C.I.D. also requests that water rights in Lyon County within the Newlands Project stay within the County.

D. Request cooperation from Walker River Irrigation District in assuring water is not exported.

E. Request Nevada State Engineer to commence hydrologic study of water basins in Lyon County to determine quantity and quality of aquifers to assure aquifers are not being depleted beyond their recharging capabilities. Request both the State Engineer and the U.S. Geological Survey to provide periodic reporting of their activities within Lyon County.

Goal #2

To protect and enhance water quality throughout Lyon County.

Objective:

Require handlers of toxic or hazardous materials to provide monitoring capabilities to assure protection from groundwater contamination.

Goal #3

Minimize possibility of flooding and resultant damage.

Objective:

A. In areas where this condition is a possibility, consideration must be given to such things as retention ponds and properly engineered drainage courses in accordance with good engineering practices.

B. Restrict development in areas where flood plain condition exists.

Goal #4

Encourage more extensive use of geothermal sources in Lyon County.

Objective:

Industrial development associations throughout Lyon County should include this as a viable possibility in their advertising brochures and public appearances.

Goal #5

Encourage conservation and rules for developers urging arid type landscaping.

Goal #6

Enter into long-term contracts with ranchers and other quantity users to exchange treated wastewater for fresh water where applicable.

Goal #7

Control soil erosion and slope stability.

Objective:

A. Require contractors to contain/prevent erosion during construction projects.

B. Require new developments to meet grading and drainage design standards for erosion control.

C. Support Soil Conservation Service and Carson Walker Resource Conservation and Development projects.

D. Set developer standards to prevent erosion caused by construction projects.

E. Educated the public to avoid creating common erosion sources.

F. Require grading permits for all grading projects.

G. Require slope stabilization and revegetation or other erosion control methods for earth cut slopes.

H. Establish standards for grading and drainage provision in new developments.

I. Prepare regional storm drainage master plans, drawing on previous work by Carson River Basin Council of Governments and others.

J. Require developers to design for storm-water control and detention in accordance with adopted storm drainage master plan and Flood Damage Prevention Ordinance (Ordinance # 312).

ECONOMIC DEVELOPMENT

Goal #1

To sustain and expand programs with federal and state economic development groups.

Objective:

A. Continue current efforts to expand the work force and create more job opportunities.

B. Improve and increase local retail shopping services.

C. Maintain existing local economic development groups and improve communications and interaction.

HOUSING

Goal #1

To achieve more affordable housing in Lyon County.

Objective:

The need for affordable housing can be met by encouragement from Lyon County for the creation of low cost housing developments.

Goal #2

To encourage solution to disparity in taxation between mobile homes and conventional on-site constructed homes.

Objective:

A. Consideration by local governing body to change mobile home overlay zoning from unrestricted mobile home overlay to certain areas where mobile home zoning requires future conversion to "real property" status.

LYON COUNTY

B. Revise ordinance limiting construction date of manufactured housing that will be allowed for future manufactured housing being brought into Lyon County.

Goal #3

Set standards for mobile home installation pertaining to foundations and skirting.

Objective:

Revision of Lyon County Building Codes to reflect required standards.

Goal #4

New housing should be assessed impact fees as provided for in the Fiscal Plan/Chapter III.

LAND USE

Goal #1

Lyon County shall review all development, special use and/or zone change proposals to ensure that existing and proposed land uses are compatible.

Objective:

A. Lyon County should develop review criteria and design guidelines which promote the general will and welfare while protecting the interest of those making proposals.

B. After adoption of this Master Plan, commence as soon as possible with the process of zoning in relation to said Master Plan.

Goal #2

Preserve agricultural lands.

Objective:

A. Direct development to non-agricultural areas.

B. Pursue agricultural preservation through zoning regulations which would encourage continued use of agricultural lands.

Goal #3

Support mining industry development.

Objective:

Standardize special conditions for mining operations necessary to minimize potential conflicts with adjoining property owners and protect the public health, safety, and welfare. Develop a more equitable process for assessing mining application impacts and mitigation issues.

LYON COUNTY

Policy:

The special use permit process should apply for mining activities (mining definition as per Lyon County Code) unless such activity is in an open space land use designation as defined on the Land Use Map, so long as the use does not impinge on residentially zoned land. The Planning Commission may waive the necessity for a special use permit for mining operations only after public hearing. Any such activity must comply with all applicable state and federal requirements, local building permits and business licenses as may apply.

Goal #4

Establish an airport industrial zone.

POPULATION CHARACTERISTICS

Goal #1

To accommodate population growth in Lyon County by planning for it in order to minimize negative impacts on county services and quality of life.

Objective:

A. To keep a balance in population increases with reasonable county services.

B. Keep abreast of changing events that impose sudden impacts on the county's population in any given area.

PUBLIC SERVICES

Goal #1

To maintain the present program for public building renovation, expansion, and new construction via utilization of "payment-in-lieu-of-taxes" (P.I.L.T.)

Objective:

By utilizing taxes which are not considered permanent, but rather short-term, the County has managed to expand public buildings and facilities without encumbering other taxes used for continuing county operations. The fact that P.I.L.T. monies may one day be terminated fortifies the need to isolate these funds for a specific purpose. The P.I.L.T. plan should be continued for public building expansions.

Goal #2

To produce public education facilities in each populated area. (NOTE: The Lyon County School System is not included in this plan as the School District has adopted its own Master Plan.)

Goal #3

To expand public utilities into growing areas whenever possible.

Objective:

A. As a rule, private operation of water and sewer systems are not a viable enterprise, and then are usually created as a means-to-an-end for developers who wish to construct and expand their projects when the local government is in no position to assist. There are many examples of the County having to take over a badly operating utility. Such practice should be discouraged. As a result of the above, Lyon County should discourage developments reliant on the creation of private utilities to fund both capital improvements and ongoing maintenance and operation without detailed guarantees and surety for faithful performance.

B. Regionalize sewer and water systems in populated areas.

Goal #4

Require emergency response study on all proposed projects for evaluation prior to approval.

Objective:

To recognize the necessity for reasonable response of fire, law enforcement, ambulance, and other emergency services to any given area.

Goal #5

To sustain and perpetuate the volunteer system in fire protection districts.

Objective:

To keep the most efficient, economical, and practical fire protection the County can have.

Goal #6

"In lieu of" impact fees must relate to a factual analysis of the service load of existing development and the incremental cost from the impact of a new development. The last legislative session as reflected in AB 372, as well as case law, requires this type of analysis to insure the equal treatment of all facets of development, old and new.

LYON COUNTY LIBRARY

Goal #7

To increase library use by:

A. Raise public awareness of library services by increasing public relations with news articles, radio public service

LYON COUNTY

announcements

- B. By use of flyers, handouts, bookmarks, newsletters outlining library services
- C. Annual report to commissioners
- D. Involve public in budget increase

Goal #8

Additional Facilities:

- A. Involve residents in planning and funding a building to house Ida Compston Branch Library
- B. Involve industries in providing a building to house a county library branch in Dayton

Goal #9

Concentrate on special collections/material improvement and increased holdings:

- A. Book collection to further reading interest of those taking advantage of literacy programs
- B. Increase large print collection for those with reading disabilities
- C. Increase education videotape library and showings
- D. Improve and increase Nevada collection
- E. Improve and increase geneology collection
- F. Determine funding assistance necessary to develop a special collection, books and videos for Senior Citizens
- G. Increase language collection, both books and cassettes in travel, educational and for those with limited English

Goal #10

As system grows, increase staff with creative minded personnel.

Goal #11

Automation:

- A. Develop automation/circulation services at all libraries
- B. Public accessing of state catalog at all libraries - equipment
- C. Online automation/circulation Silver Springs within 2 years
- D. Online automation/circulation Ida Compston within 5 years
- E. Develop budget and inventory programs

Goal #12

Funding - Develop private funding adequate for special functions, tasks, and equipment which are desirable and which cannot be accomplished within the library's operating budget:

- A. Lions Club - large print books
- B. Form Friends group at Silver Springs to assist with landscaping, etc. at the branch library
- C. Plan annual meeting of Friends, Trustees, and staff to pool ideas

Goal #13

Increase services for juveniles:

- A. Plan programs
- B. Increase video tape collection for children
- C. Improve quality and number of books
- D. Increase volunteer activities for children at branches

Goal #14

Investigate programs state and nation wide and adapt them for Lyon County:

- A. Services for shut-ins, senior citizens and the handicapped
- B. Additional children's programs and services
- C. Humanities/speakers
- D. Other/educational

RECREATION

Goal #1

To retain areas throughout Lyon County that will support game, gamebirds, and fishing for outdoor enthusiasts.

Objective:

A. Support Nevada Division of Wildlife in its efforts to keep areas open for hunting and fishing rights.

B. Private sportsman clubs should be discouraged from denying Lyon County residents rights (such areas as the East and West Walker Rivers).

Goal #2

To create and reserve areas along waterways which can be used as parks, walkways, and river access.

Objective:

When developments occur along waterways, developers must be encouraged to provide open space for parks, walks, and river access as a part of development plans.

Goal #3

To create parks in various communities presently existing in Lyon County as new developments are created.

Objective:

As development plans are shown to the County Planning Department, land being reserved for recreation must be shown as a definite part of all maps and included in the feasibility report.

Goal #4

Encourage entire county to participate in recreational activities which indicate county-wide representation, such as Lyon County Fair and Rodeo, 4-H activities, etc.

Objective:

These activities must be constantly brought to the attention of advisory boards and residents in all areas of Lyon County, encouraging

LYON COUNTY

their participation in order that these will be recognized as county-wide activities.

Goal #5

Promote and encourage the use of water areas for water sports, boating, etc.

Goal #6

Look into the creation of a recreational path from the Carson River to Lahontan Reservoir, along the river.

TRANSPORTATION

Goal #1

Encourage, enhance, and promote efficient transportation within the County to serve the safety, convenience, and economic welfare of residents of Lyon County, visitors, and passers-through.

Objective:

Work toward a comprehensive transportation plan which specifically depicts future routes for vehicular and rail use, pedestrian trails and ways, bicycle trails, etc. so that rights-of-way and easements may be set aside for regional and local continuity during project review.

Goal #2

Maintain, improve, and expand airports within Lyon County.

Objective:

Enhance aircraft use in the County as a major consideration in community development. Airport facilities are essential for expansion in populated areas and areas of high industrial activity.

Goal #3

Refer to Land Use Goals and Objectives, Goal #4.

Goal #4

Set areas aside for future highway development. The County should require and receive updated information with respect to new, planned highway developments from the Nevada Department of Transportation.

Goal #5

Work with Churchill County, Mineral County, and the Schurz Indian Reservation to sustain the railroad and encourage its use.

SEISMIC

Goal #1

Minimize the risk to life and property from seismic activity.

Objective:

Either restrict development in known seismic zones or encourage strong structural requirements to allow for ground movement without endangerment to life, limb, or property.

SOLID WASTE MANAGEMENT

Goal #1

To maintain integrity and security of all Lyon County solid waste landfills.

Objectives:

Proper fencing, monitoring, landscaping, and fee schedule requirements must be established.

Goal #2

Certainty that any franchise with any disposal company chosen by Lyon County creates enough use to pay for dumpsite usage.

Objective:

Frequent review of both usage and contract with franchise holder.

Goal #3

Determination of ultimate responsibility of landfill maintenance and operation.

Objective:

Due to increased cost of landfill operation because of federal standards effective in the year 1991, it is imperative that Lyon County make a determination of the most secure and cost-efficient manner of handling solid waste (as illustrated in Master Plan text). Studies should be undertaken as soon as possible to determine the best opportunity for Lyon County.

Goal #4

Lyon County should address the possibility of recycling through programs and/or laws.

HAZARDOUS AND TOXIC MATERIALS

Goal #1

Make sure that Lyon County's hazardous waste ordinance remains current and incorporate, by amendment, changes necessary to conform with state and federal EPA rules.

Objective:

Review by Emergency Management Director at regular specified times.

Goal #2

Consistent and scheduled inspection of all industries using, storing, or discarding materials considered hazardous or toxic.

Objective:

Schedule to be a part of hazardous materials ordinance and a record of such inspections be maintained in Emergency Management Office.

CULTURAL RESOURCES

Goal #1

Preserve and protect the significant historic and prehistoric archaeological resources of Lyon County. Archaeological resources include prehistoric and historic deposits. Prehistoric deposits, those that predate the mid-nineteenth century, are the result of the residence of Native Americans for thousands of years in what is now Lyon County. Historic deposits, from the period when written evidence of County history is available, were left by Native Americans and by a succession of new arrivals beginning with the early Euro-American explorers and fur trappers, followed by emigrants to California, and then by settlers who chose the environs of Lyon County to pursue mining and ranching and other supporting endeavors. Archaeological deposits often contain or embody connections to the past that merit consideration in the planning process.

Objective:

Activities and development that may adversely affect significant archaeological sites should be subject to County review. Possible review procedures are given in Technical Appendix 1 within Chapter II - Section M. Guidance for evaluating the significance of archaeological sites is provided in Technical Appendix 2, also within Chapter II - Section M.

Objective:

Adverse effects to significant archaeological resources should be avoided through project design. Adverse effects to significant archaeological sites can be avoided by: 1) Planning development so that destruction or alteration of sites is not required; 2) Deeding archaeological sites into permanent conservation easements; 3) Planning parks, green space, or other open space to preserve archaeological sites; 4) Designing construction to prevent contact with archaeological sites.

Objective:

Adverse effects to significant archaeological resources that cannot be avoided through project design should be mitigated. Mitigation can be achieved by the recovery of a representative sample of the archaeological information inherent in the affected site prior to development.

Goal #2

Attempt to identify, mark and maintain known Lyon County historical/cultural sites. Continue to be aware of the possibility of unidentified sites.

Objective:

Pursue grant funding, when available, from federal, state, and private foundations.

Objective:

Encourage volunteer labor and the donation of materials for preservation improvements.

Objective:

Develop/encourage cooperation of Lyon County with appropriate local, state, and federal agencies.

Objective:

Encourage state and federal agencies to transmit any information pertaining to cultural/historic resources in Lyon County.

Goal #3

Encourage utilization of historic sites for any potential benefit to the tourism industry of Lyon County where pertinent.

Objective:

Pursue an active publicity program by promoting cooperation with appropriate entities.

Objective:

Where applicable, enter into contract relationships with private parties to provide necessary services.

Goal #4

Encourage the education of Lyon County residents with respect to areas of historical significance within the county.

Objective:

Cooperate with Lyon County Schools and local, state, and federal agencies to provide educational programs through the utilization of private groups, grants, and public education forums.

FISCAL PLAN

Goal #1

Adjust to directives in the Fiscal Plan with respect to projected budget deficits.

Objective:

To develop a plan over the 10 year period (1990-2000) with consideration of projections toward a policy which considers, in advance, expenditures and revenues to balance without diminishing services.

CHAPTER II -- SECTION A
COMMUNITY DESIGN

Community design in Lyon County cannot be addressed without segregating the individual population centers in the county and recognizing the unique qualities of each of them. Few communities can boast of existing by design and the population centers of Lyon County are no exception. Each is the product of the circumstances leading to their existence and the external forces which have shaped them. There is a strong sentiment among residents in all areas of the county to find a way to take charge of the growth process and force it into designed patterns to both protect and enhance the lifestyles that each community affords.

While community design issues are identified by individual communities, they do apply to some degree countywide.

The County should encourage the use of the planned unit development technique to promote open space, reduce yard size, and attendant water use and insure higher quality design and improvements.

FERNLEY:

Situated initially alongside a transcontinental railroad and eventually astraddle a transcontinental highway, its future appeared tied to providing service to travelers. The advent of the Truckee canal brought the promise of becoming a thriving agricultural center. The community suffered something of a commercial shock when Highway 40 through the heart of town was replaced by the Interstate 80 freeway bypassing the Business District.

In recent years, enterprising developers have targeted Fernley as an opportune location for capitalizing on (a) bedroom community housing for those employed in the Reno/Sparks area but desiring a less urban home environment or more affordable housing; (b) small industries seeking to locate where land and utilities are less expensive and their workers would not be subjected to the stress of urban life or long commutes; and (c) retirement centers for senior citizens who also want to slow down the pace of life and stretch their retirement dollars.

For whatever reasons the expectations have delivered only a modest boost in the community's economic base. Based on the expectations, developers subdivided and began speculative housing construction. The population did expand; however, there has only been a token occupancy of the industrial sites created by developers. The community's residents currently exist in a delicate balance between the enjoyment of a lower cost-of-living (compared to the nearby urban center of Reno/Sparks) and the need for expanded services.

The stretch of Interstate 80 which traverses the northern tip of the county presents a typical dilemma. The sophisticated emergency services required to deal with highway disasters involving medical, criminal or hazardous waste crises on a major scale are beyond the ability of the county to equip and staff and rely on mutual aid agreements with the State and nearby urban centers.

LYON COUNTY

The town is lacking a traditional kind of main street with which to identify. Truck traffic onto Highway 95A and Highway 40 in the heart of the major business district is disturbing to the tranquility of the downtown area. Emergency service to the north of the railroad is subjected to an extended response time because of limited access due to the railroad tracks. The mobile home overlay zoning has produced some conflict in the community with those seeking to preserve the agricultural lands and concern for the effect of mobile homes on other types of housing values. Economic growth with a diversified base is important to most residents. In terms of community design, the sentiment is strong to foster the quiet small-town atmosphere that has attracted residents to Fernley. The community has a Town Board which is unique in Lyon County and is very active in local matters, including the management of Fernley Utilities.

SILVER SPRINGS:

Silver Springs is another community without a well defined central business district or "downtown" area. It lies at the junction of Highway 50 and State Route 95A. Like Fernley, the community is the result of an effort to capitalize on an opportunity that never quite became a fulfilled promise. The nearby Lahonton Reservoir (managed by the Bureau of Reclamation and also a State Park) was expected to provide Silver Springs with enough commerce to support a town. Despite promotional efforts, the community continues to grow slowly.

The community is laid out on a rather flat stretch of high desert. Access to the lake is on either side of the community. Residents would like to see light industry take enough interest in the community to establish an employment base sufficient to keep Silver Springs from becoming a "bedroom" town. They would also like to see a stronger commercial desire to serve locals, travelers and recreationists. The community has an active Advisory Board, which plays a major role in providing local sentiment on issues which affect the area. Roads are a major area concern.

STAGECOACH:

The Stagecoach community lies on a rolling slope north of Highway 50 between Dayton and Silver Springs. The area was subdivided into mini-ranch parcels and is gridded by decomposed granite roads. Residents, for the most part, are families whose breadwinners work outside of the county and couples who have retired and elected the lifestyle afforded by the Stagecoach area. Many of the residences are mobile homes. This community also has an active advisory board. The relationship between Stagecoach and Silver Springs is becoming closer and some joint facilities are beginning to develop in the vicinity of the Ramsey/Weeks Cut-off.

MARK TWAIN:

Mark Twain is another community that consists of subdivided ranchettes on the north side of Highway 50, just east of Dayton. The Pony Express passed through this area and that route, with a station to the east, is of are of interest to the Division of State Parks. Protection of the rural farm character of the community is vital to the residents. Many Dayton Valley residents are concerned that the fertile Carson River lands may become a prime target for more

large developers, and their rural lifestyle is in peril of disappearing in an urban setting. North of the highway, higher density residential is already taking place and the easterly encroachment of Dayton may one day necessitate combining services.

DAYTON:

Dayton became the gateway of the outside world to the Comstock Bonanza when the mother lode drew the world's attention to Nevada. The Carson River provided the closest source of water power for the operation of mills to process the ore. Recovery techniques tended to be experimental and major mines tended to be short-lived. For those reasons, Dayton saw a steady series of mill openings and closings. New mills were constantly being built along the river, occasionally over the foundations of preceding mills. When Lyon County was formed, Dayton was designated the county seat. It was once seriously considered as a state capital site.

The downtown (original) portion of Dayton is partially included in the Comstock Historic District and historic preservation is an obvious priority of the residents. There is a vigorous move toward growth and industrial development as well. Increasing traffic on Highway 50 presents hazards that are a growing concern of the community. The area south of the river, once totally agricultural, is expanding rapidly with new major industrial, residential and commercial areas, all a part of a "planned community" which includes many fine recreational features. This community is served by an active advisory council. Dayton has had the largest population increase in Lyon County (only since 1980).

MOUND HOUSE:

The Mound House community has been an industrial area since the early Comstock mining boom. The flattened land between the mines and the river became a staging and ore processing area for the Comstock. Today the area is still characterized by industrial and commercial development. The major issue in Mound House is control of commercial development along Highway 50 to present a more attractive face to passers-by and prevent hazardous traffic situations from developing on the highway. This community is also served by an active advisory council.

SILVER CITY:

Silver City is the oldest community in Lyon County, even pre-dating Virginia City. In the early days of the mining boom, Silver City's mines rivaled Virginia City's in terms of production. These mines did not produce the bonanza that Virginia City's did, however, and at the height of the Comstock frenzy, Silver City was best known for the stables housing the horses and mules that served the Comstock's demands. By 1861 the community boasted over 1,000 residents.

Silver City is totally contained within the Comstock Historic District, and has an active advisory board. The mining history of the area and the structures from that era are an understandable source of pride.

A key concern of the residents is preserving the existing historic character of the area.

MASON VALLEY:

The City of Yerington is the county seat and is not included in the Master Plan, but is undertaking master plan development separately. Mason Townsite and the environs around Yerington (Mason Valley) are included. This is largely an agricultural rural area with very picturesque green farm areas, typical open sage brush ranches and subdivided ranchettes. Just north of Yerington, the former Carson and Colorado Railroad settlement of Wabuska has begun to blossom as a budding industrial area with a power generation plant to the southeast, a chemical plant near the Southern Pacific Railroad intersection with Hwy 95A, and the geo-thermal industries at the hot springs to the north.

The town of Mason once was a rail stop for a system which terminated in Smith Valley near Ludwig, a historic mining settlement. Mason has an advisory board which has been active but not well attended over the last year or so.

The farming district adjacent to the Paiute Indian Reservation is a well-maintained, attractive district. The tailings from the former Anaconda mine provide a distinctly different type of landscape for the traveler approaching Yerington from the north. The Weed Heights housing is being restored to the county's housing inventory as mining and industrial activities in the vicinity begin to increase.

SMITH VALLEY:

Smith and Wellington lie in a colorful valley in the southern part of the county. The ranchers and farmers who grew up here have deep-rooted concerns for perpetuating the tranquil atmosphere and lush agricultural environment that characterize the Valley. They are also desirous of broadening the economic base of the Valley, primarily to provide more employment opportunities for their children to entice them to stay in, or return to, the Valley. This also requires affordable housing.

A growing concern is the distance from homes in the Valley to professional and commercial services. The residents have expressed a desire to attract basic goods and services to the existing commercial zones in the Valley. The residents of the Valley are very independent and take great pride in a vast volunteer system, which provides many services otherwise required of local government.

CHAPTER II -- SECTION B
CONSERVATION AND NATURAL RESOURCES

LYON COUNTY

Conservation and natural resources of Lyon County represent a fundamental basis for planning future growth. The interdependence of water and mining, water and recreation, water and agriculture, and water and people underlines the fact that water, or lack of it, will remain at the center of all plans and programs for future development. It is apparent that conservation and natural resources play a primary role in a program of economic development. It is also evident that existing land ownership patterns will exert a constraining influence on growth and that competing water uses will determine the type and limits of various economic endeavors.

WATER RESOURCES

Lyon County is neither the most arid nor the richest in water resources of Nevada's counties. While small portions of the county qualify as semidesert, much of the county is relatively well-watered. While the county's supply of water could not be described as plentiful, it appears that under a concept of carefully-planned utilization enough water is available to satisfy most (but not all) historic uses and still accommodate the urban and semiurban growth which is predictable in several areas of the county.

The preceding statement must be qualified. While sufficient water resources to meet Lyon County's needs appear to be available, it is by no means certain that those resources can be utilized within the county. Significant amounts of surface water and underground water are now subject to transbasin diversion, principally by Carson City to provide municipal/industrial water for that burgeoning community. An even greater potential threat to Lyon County's water sufficiency is federal legislation which could strip thousands of acre feet of Carson River water, now appurtenant to Lyon County realty, and transfer those water rights to the terminus of the river for the benefit of waterfowl and shore birds in the wetlands east of Fallon.

Analysis of the population growth potential of the north half of Lyon County and the amount of water currently appurtenant to north Lyon County clearly shows that there is no surplus water available for export to other areas. To the extent that water is diverted to other basins, or is allowed to flow unutilized to the desert sump at the Carson River terminus, north Lyon County will be deprived of the water it clearly needs for the population increase which can reasonably be predicted.

At first glance one might assume that Lyon County is blessed with more than adequate water. Two major rivers -- the Walker and the Carson -- flow through the county. The Fernley area north of the Virginia Range and Lahontan Reservoir on the Carson also benefit from an infusion of water via the Truckee Canal, although northwest Nevada's third major river does not enter Lyon County directly.

It is important to recognize, however, and incorporate that recognition in master planning, that most water in Lyon County -- surface and underground alike -- already is being fully utilized by irrigators, miners, sportsmen, Indian tribes, families, and industries, so that no new uses of the county's water can be accommodated without foregoing some existing water use.

In addition to limitations on quantity, the water resources of Lyon County also have limits on quality and timing. The region lies downstream from developed areas on the Carson and Truckee Rivers, which generate urban runoff degrading water quality. Those rivers and the Walker are subject to agricultural runoff and its concomitant degradation. Substantial water treatment is or will be required before these surface waters can be used for potable purposes.

With regard to timing, all three rivers rely on Sierra Nevada snowpack as their source, making them largely synchronous in drought and flood. As the cities of Reno and Sparks have discovered, the Truckee River provides an ample supply during years of average runoff, but falls short of meeting all of the demands upon it during drought years. The Carson and Walker rivers are even more irregular because they have much less storage capacity than the Truckee system.

Only dams, underground aquifer storage of seasonal surface water, and conjunctive utilization of the surface and underground supplies can provide a dependable perennial supply of water for each major basin. Ranchers in Western Nevada for generations have recognized the value of dual water sources and typically have turned to their wells when streamflow failed to meet their needs.

The use of groundwater cannot be expanded indefinitely, however, without causing the water table to subside and legal problems to explode. State law prohibits mining groundwater, that is, extracting more underground water than is replenished each year.

In Mason Valley and Smith Valley, the south half of the county, population growth estimates do not create any major water problems. Conversion of a small portion of the agricultural water now utilized in those valleys can provide the needs of foreseeable population increases without causing any drastic readjustment for agriculture. Because most of the county's agricultural uses are highly water intensive, conversion of the water utilized on just one property to municipal/industrial use would supply thousands of new residents. One or two such conversions would not drastically affect the agricultural ambience of the two valleys.

(Some planning and capital expenditure would be required to utilize seasonal agricultural water for all-year domestic purposes, but the technology to store surface water in underground aquifers has reached the point where such storage of seasonal surface water is feasible. Underground storage, although it may increase operational costs for domestic water, requires much lower capital expenditure than dams to provide equivalent storage capacity.)

The south half of Lyon County, however, is not the half where extensive population increases are predicted. The north half of the county, where water resources already are in short supply and where the pressure to appropriate water for the benefit of other areas is greatest, is the area expected to face the most dramatic population increases.

Water Supply and Demand -- Municipal/Industrial and Domestic

It is difficult, but not impossible, to make reasonably accurate predictions as to the probable eventual population of north Lyon

LYON COUNTY

County communities, provided one does not have to consider the factor of availability or nonavailability of water for municipal/industrial and domestic purposes. Water clearly is the major control on population growth in the north half of the county; there is plenty of land, but not enough water.

The major question which must be resolved is, "How much water is required per capita?" Once that answer is obtained it is relatively easy to determine how many persons can be accommodated with the available water, or at least how many persons can be accommodated under the various water availability scenarios.

Planners tend to rely on statistics, sometimes too much so. Generalized statistics may not apply to a specific land use situation.

For example, a factor of .23 acre-feet-year per capita has been used as a standard for municipalities in the west. That may be valid in cities; it is not necessarily valid in smaller communities or in areas where larger lots are standard to accommodate individual septic systems.

Larger Lots With Individual Wells Require More Water

The Nevada Revised Statutes allow 1,800 gallons per day, or slightly more than 2 acre feet per year, for individual lots. That is much more than the western municipal standard. (Actual usage by lots on individual wells probably approximates 1.5 AFY because there is little need for irrigation of gardens and landscaping during colder months.) At 2.8 persons per well that calculates to an annual per capita demand of .54 acre feet.

Lyon County zoning presently allows for thousands of lots which probably never will be served by water utilities and must depend on individual wells. As the county's population approaches capacity, the impact of those individual wells on the county's groundwater basins will be major. One thousand well-served lots equals an annual demand of 1,500 acre feet, and every basin in the county has more than that number of lots which will require individual wells at maximum population buildout. Lyon County must plan for this water demand, as well as the water demand for areas served by utilities.

The potential demand for water to serve individual wells is a particularly critical matter in groundwater basins such as the Dayton Groundwater Basin where permits for municipal/industrial/domestic water already far exceed the annual recharge of the basin. When the statutory right of lots served by individual wells is added to the existing permits, it becomes obvious that there is an insufficient ground water supply available in that basin.

Fernley Utilities' Records Show Use .40 AFY Per Capita

(The Fernley Utilities Master Plan is hereby adopted by reference into this Master Plan)

Research done by Fernley Utilities shows a utilization of 1,000 gallons per day, average, per connection, including commercial and industrial uses. Fernley Utilities serves a relatively urban area with smaller residential lots. At an average of 2.8 persons per con-

LYON COUNTY
 nection that calculates to 130,357 GPY or .40 acre feet per year per capita. That may be far more typical of semiurban Lyon County usage than the .23 AFY per capita standard.

Unfortunately it is impossible to determine recent actual use per connection or per capita for Dayton Utilities. That is because Dayton Utilities in recent years has allowed contractors to take large amounts of unmeasured water, thus inflating any per capita calculations. It is believed that per capita water use in the Dayton Utilities service area is comparable to the use recorded by Fernley Utilities.

.45 AFY Per Capita Will Be Required for Lyon Residents

When the areas of Lyon County served by individual domestic wells (larger lots) are considered with the areas served by public or private utilities (smaller lots), it is reasonable to assume that average per capita annual demand for municipal/quasimunicipal/domestic/industrial water is at least .45 acre feet.

This Master Plan concludes that the amount of water required for development in Lyon County, exclusive of water needed for mining and agricultural purposes, is .45 AFY per capita, and the plan declares that public entities and private utilities should acquire sufficient water rights pursuant to Nevada Revised Statutes to provide that amount of water for each development area of the county. The amount of water rights to be acquired should be sufficient to provide for the needs of residents dependent upon individual wells as well as those residents served by water utilities at ultimate buildout.

The calculated municipal/industrial/domestic water needs of each development area of Lyon County, and the amount of groundwater and surface water presently available in each development area, is shown in the accompanying Lyon Water Supply and Demand chart.

LYON MUNICIPAL/INDUSTRIAL/DOMESTIC WATER SUPPLY AND DEMAND

Demand based on projected consumption of .45 acre-feet per capita annually, X high-range county growth projections. Groundwater recharge estimates from State of Nevada Water Planning Report, Vol. 3, 1971; surface water values represent net depletion of surface water traversing each basin using data from same source. Supplemental wells for diverting sub-surface flows are included within surface water rights.

Planning Area Water Basin #	Estimated Water Supply	Current Demand	Projected Demand 2010	Projected Demand (Buildout)
Dayton Valley Basin 103	7,900 GW 23,500 SF 31,400 Total	1,950	13,300	14,800
Smith Valley Basin 107	21,000 GW 31,000 SW 52,000 Total	600	1,200	5,250
Mason Valley Basin 108	2,000 GW 108,000 SW 110,000 Total	2,950	7,450	17,400
Fernley Basin 76	600 GW 51,000 SW* 51,600 Total	2,150	13,900	29,550
Churchill Valley (Silver Springs) Basin 102	1,300 GW 52,000 SW 53,300 Total	1,150	5,650	11,550

* Includes estimated 14,000 AFY infiltration from Truckee Canal into Fernley Aquifer, supplementing 600 AFY natural recharge.

All that water may not be available for Lyon County. Some Dayton Valley groundwater already has been appropriated by Carson City. Private entities and the federal government are preparing to purchase large amounts of Carson River surface water now appurtenant to Lyon County lands with the intention of diverting use of that water to the Stillwater wetlands in Churchill County at the terminus of the river.

Any water which is diverted from use in Lyon County to other areas is water which will not be available to meet the future needs of Lyon County residents.

It is not easy to stop water exports from one basin to another. Nevada statutes and case law describe water rights as private property; the owner may sell it to whomever he chooses. Such transfers must be approved by the State Engineer, but his grounds for disapproval are limited:

"Where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to public interest, the State Engineer shall reject the application and refuse to issue the permit asked for." NRS 533.370

In cases where the proposed transfer is from one county to another, the law provides for notification to the county commission of the county in which the water currently is used. The county may recommend a course of action to the State Engineer, but it is not binding on him. NRS 533.363

Nevada statutes specifically prohibit granting any change of use of lands outside the State of Nevada. NRS 533.520. This provision is particularly pertinent to the Walker River, the headwaters of which are very close to Los Angeles' aqueduct watershed. The effectiveness of this provision is questionable, since the U.S. Supreme Court in 1982 struck down a similar Nebraska law on grounds that it unconstitutionally burdened interstate commerce.

The amounts of water which the above chart shows will be needed by the several Lyon County planning areas at ultimate development hereby are determined in this master plan to be the "reasonably anticipated future needs" of each area as provided in the statute.

LYON COUNTY MUST MOVE QUICKLY TO ACQUIRE THOSE RIGHTS!!

LYON COUNTY

Lyon County also must:

(1) Protect groundwater from potential pollution. Solid waste and Reno-Sparks sewage disposal plans must be watched.

(2) Carefully monitor California actions which affect the Walker River and respond as necessary.

(3) Research with the Carson Water Subconservancy District methods to use surface flows year-round (storage of peak flows in underground aquifers or dammed reservoirs).

(4) Monitoring of Reno-Sparks, Pyramid Tribe, T.C.I.D., and state and federal plans which affect the recreational use of Lahontan Reservoir, and all use of Carson River waters now appurtenant to Dayton Valley and Churchill Valley.

GEOHERMAL RESOURCES

Primary geothermal activity in Lyon County is north of Wabuska adjacent to Highway 95A. Experiments in use of the resource for industrial purposes has not yet proven feasible. The area is zoned industrial if such uses materialize.

SOILS

Many area, particularly Mason Valley, have a seasonal high water table limiting development, especially where there is reliance on septic tanks. Stagecoach and Silver Springs have a high surface content of decomposed granite, unstable in steeper areas. The agricultural lands with good to excellent topsoil are mostly under cultivation in Mason Valley, Smith Valley, along Farm District Road in Fernley, and adjacent to the Carson River.

CHAPTER II -- SECTION C
ECONOMIC DEVELOPMENT

The economic base of a county consists of those activities which provide the basic employment and income on which the rest of the local economies depend.

The first step toward meeting the public problems of an area is a detailed knowledge of its economic base. Knowledge about the economic base is essential to sound public decisions in the form of master plans, zoning, ordinances, transportation plans, renewal programs and other public improvement plans. Public policy towards taxation, distribution of municipal costs and municipal borrowing should take such information into account.

In recent times, a substantial improvement in both the quantity and quality of information about the national economy has bettered the quality of decisions made by public officials and the private sector working on national economy problems.

At the local level, thousands of decisions are made regularly by public officials and the private sector. In the aggregate, these decisions have a great impact on economic growth and the quality of living standards of the county population. A regular flow of sound economic information about the local economy and its economic base would contribute to the quality of decisions made at the local level by public officials and private sector leaders.

We know that there is a fairly close relationship between income and local spending. We can visualize this issue by looking at the firms that may be tied directly or indirectly to the local user sector. Retailers, barbers, drug stores, dentists, fast food shops, bars and others deal directly with the local product or service user. Light industry, bottling plants, printing plants and others only deal indirectly with local consumers.

The existence of an adequate number of firms tied directly to the consumer sector is necessary if consumer goods and services are to be available at the community level. Adequate does not mean, for example, that one expects to find a super shopping center in a small community. It does imply, however, that there will be no shortage of barbershops or gasoline stations. If local consumer serving businesses, for some reason, do not grow to accommodate a growing community, then consumers will readjust their spending patterns to importing more goods by catalog services or going to other communities to purchase products.

The question is: Is it reasonable to suppose that local, direct, consumer serving businesses/industries will grow with the increase of a community's income?

The evidence suggests that these activities do grow as the community expands, deplete as the community population depletes, and remain stable if the community neither grows nor declines. Perhaps the major reason is the ease of entry into consumer serving busi-

LYON COUNTY

nesses. In most cases capital investments are small. In turn, not only do new firms emerge, but existing firms are forced through competition to expand. It should be recognized that the growth of the consumer serving firms does not take place overnight. Increased profits to existing firms act as a signal for others to enter, but a time lag is involved.

Local business growth has risen sharply over the past three year period in Fernley, Dayton, Silver Springs and Mason Valley. Economic growth and development is expanding at a rapid rate.

For economic development to become a reality, adequate public facilities and land that is suitable for development must be readily available. Without the necessary water, sewer, streets, and adequate levels of other public services, many businesses and industries will not be able to expand or relocate in the communities of the county.

To ensure that public facilities and lands are available, local governments must develop and implement sound land use plans. These land use plans must designate where industrial growth may occur, and then be utilized as guidelines for provision of public facilities/services.

Community input from throughout the county indicates a desire to develop a commercial and industrial base to provide needed services and jobs to keep residents from relocating and to reduce commuting to jobs in other cities.

There are currently several private sector groups promoting industrial growth in Lyon County. John Lawrence (Nevada) Inc. has a multi-million dollar project underway near Dayton with an industrial park that contains the county's newest major employers. Mound House is marketing industrial/commercial property and has a large firm from the midwest constructing a large facility. Weed Heights has a new industrial tenant that shows great promise in production of mining related activities. Silver Springs has a group recently formed to attract industrial development. The Dermody Company is marketing industrial park property in Fernley. The Truck Inn has expanded at a phenomenal rate and has plans for future land development in Fernley off Interstate 80. Recently, a new casino facility was constructed and has opened for business near the Warehouse Market Center in Fernley.

Lyon County physically and financially supports economic development on the regional level through:

Northern Nevada Development Authority

Western Nevada Development District (who is assisting the county in preparation of this plan)

In addition, active economic development groups within the county are:

Mason Valley Economic Development Council

Fernley's Invitation to New Development

Economic Development Authority of Silver Springs

The following tables provide the most recent data concerning employment, business/industry, and the economy for Lyon County. This data was prepared by the State of Nevada Employment Security Department:

Total Labor Force	12,280	
Employment	11,630	
Nonagricultural		11,160
Agricultural		470
Unemployment	650	
Unemployment Rate	5.6%	

INDUSTRIAL EMPLOYMENT AND WAGE DATE

Industry	Dec-88 Employment	Oct-Dec 1988 Average Weekly Wage	
		Lyon	Statewide
Total Industries	4,770	\$359	\$418
Mining	80	747	681
Construction	510	510	521
Manufacturing	1,310	377	465
TCPU	240	507	491
Trade	900	237	313
Fire	140	345	447
Service	780	268	401
Government	820	373	485

TOTAL LABOR FORCE THREE YEAR/MONTHLY COMPARISON

	May-89	May-88	May-87	Apr-89
Labor Force	12,280	11,600	10,350	12,370
Employment	11,630	10,950	9,570	11,620
Nonagricultural	11,160	10,280	8,770	11,140
Agricultural	470	670	800	480
Unemployment	650	650	780	750
Unemployment	5.6%	5.9%	7.9%	5.7%

INDUSTRIAL EMPLOYMENT THREE YEAR/MONTHLY COMPARISON

	Dec-88	Dec-87	Dec-86	Nov-88
Total Industries	4,770	4,180	3,860	4,780
Mining	80	90	140	80
Construction	510	350	440	570
Manufacturing	1,310	1,060	750	1,270
TCPU	240	210	170	240
Trade	900	860	830	910
Fire	140	150	110	130
Service	780	680	660	760
Government	820	780	760	820

LYON COUNTY

SIZE OF FIRM BY EMPLOYMENT --- QUARTER = OCT-DEC, 1988

	<u>1988</u>	<u>1987</u>	<u>1986</u>	<u>% CHG</u> <u>1986/1988</u>
Total Number of Firms	464	426	405	14.6%
Less Than 10 Employees	373	336	319	16.9
10-19 Employees	45	51	49	-8.2
20-49 Employees	31	26	24	29.2
50-99 Employees	9	7	6	50.0
100-249 Employees	4	4	6	-33.3
250-499 Employees	1	2	1	0.0
500-999 Employees	0	0	0	---
1000+ Employees	0	0	0	---

SIZE OF FIRM BY EMPLOYMENT --- QUARTER = OCT-DEC, 1988

	<u>FIRMS</u>	<u>%TOTAL</u>	<u>EMPLOYEES</u>	<u>% TOTAL</u>
Total	464	100.0%	4,932	100.0%
Less Than 10 Employees	373	80.4	1,214	24.6
10-19 Employees	45	9.7	593	12.0
20-49 Employees	31	6.7	888	18.0
50-99 Employees	9	1.9	665	13.5
100-249 Employees	4	0.9	582	11.8
250-499 Employees	1	0.2	484	9.8
500-999 Employees	1	0.2	506	10.3
1000+ Employees	0	0.0	0	0.0

NUMBER OF FIRMS BY INDUSTRY --- QUARTER = OCT-DEC, 1988

	<u>1988</u>	<u>1987</u>	<u>1986</u>	<u>% CHG</u> <u>1986/1988</u>
Total Number of Firms	464	426	405	14.6%
Agric., Forest & Fishing	25	20	18	38.9
Mining	11	11	11	0.0
Construction	76	69	68	11.8
Manufacturing	44	40	34	29.4
Transp., Comm. & Pub. Util.	39	39	36	8.3
Trade	129	120	126	2.4
Finance, Ins, & Real Est.	34	31	21	61.9
Services	96	85	78	23.1
Public Administration	10	10	10	0.0
Nonclassif. firms	0	1	3	---

LYON COUNTY

UNEMPLOYMENT RATES FIVE YEAR/MONTHLY COMPARISON
(SEASONALLY ADJUSTED)

<u>DATE</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
1984	6.9	6.8	6.8	7.3	7.0	6.5	6.5	7.3	6.8	7.5	7.4	7.2
1985	7.3	8.0	8.1	8.6	8.6	8.7	8.8	8.5	8.9	8.4	9.4	7.8
1986	7.1	7.7	7.7	7.3	6.4	6.0	6.2	6.3	6.3	6.3	5.9	6.0
1987	6.6	7.3	7.7	7.8	7.9	8.1	7.3	7.2	7.3	7.1	6.6	6.3
1988	6.6	5.8	5.7	5.1	5.9	5.3	4.6	4.8	4.6	5.0	5.2	5.0
1989	6.7	7.4	5.3	5.7	5.6							

Annual Averages 1984 - 7.0%
 1985 - 8.4%
 1986 - 6.6%
 1987 - 7.2%
 1988 - 5.3%

NEVADA & COUNTIES

ANNUAL WAGE & SALARY EARNINGS

1988

	Average Earnings	Rank in State
NEVADA	20,558	
Carson City	19,903	11
Churchill	18,569	13
Clark	20,368	10
Douglas	18,028	15
Elko	18,086	14
Esmeralda	21,543	6
Eureka	32,908	1
Humboldt	21,069	8
Lander	25,488	4
Lincoln	26,211	3
Lyon	17,691	16
Mineral	21,194	7
Nye	29,946	2
Pershing	21,933	5
Storey	17,623	17
Washoe	20,434	9
White Pine	19,274	12

AVERAGE ANNUAL EARNINGS

NEVADA-LAS VEGAS MSA-RENO MSA

1988

	NEVADA	LAS VEGAS MSA	RENO MSA
TOTAL	20,558	20,368	20,434
Mining	33,354	27,587	37,655
Construction	26,016	25,429	26,323
Manufacturing	23,127	23,336	24,579
TCPU	24,703	24,441	25,508
Trade	15,677	15,492	16,952
FIRE	22,051	22,236	22,441
Service	19,308	19,632	18,150
HGR	16,467	17,596	14,393
Government	24,876	26,059	25,117
Federal	28,147	28,089	30,726
State & Local	24,200	25,590	23,870

SOURCE: NEVADA EMPLOYMENT SECURITY DEPARTMENT

LYON COUNTY
WAGE & SALARY EMPLOYMENT
1988 - annual average earnings

	EMPLOYEES	AVERAGE INCOME
TOTAL	4,764	\$ 17,691
Mining	100	28,791
Construction	465	23,943
Manufacturing	1,181	19,000
TCPU	223	26,538
Trade	893	12,133
FIRE	163	17,780
Service	932	13,658
Government	807	19,143

24.8% of Lyon Co. employment is in manufacturing

In conclusion, the State Employment Security data indicates an increase of the labor force in May, 1989, over May, 1987, of more than 20%. The May, 1989, unemployment rate of 5.6% versus the 7.9% of May, 1987, is a substantial change. As we look at the total number firms of 464 in 1988 vs. 405 in 1986, it indicates a steady growth of firms that are expanding the economy of the county. It is very probable that the data for the year 1989 will be greater than those of 1988 because of increasing economic development activities throughout the county so far this year. It should also be noted that Lyon County in 1988 ranked sixteenth out of the State's seventeen counties in annual wage and salary earnings.

CHAPTER II -- SECTION D
HOUSING

One of the strongest desires by a large section of the adult population in the United States is to own a home. Despite changes in life style and greatly increased purchase and maintenance costs for their homes, the majority of American families still desire the ownership of a single family dwelling. This is both a social phenomenon and a usually solid investment by the family since home ownership is one of the few means that a medium income family can use to set aside some of its income from taxes and, concurrently, build equity through the increasing value of the residence.

The residential types typical of Lyon County are the single family home, the mobile home and a few multi-family residences. Single family residences and mobile homes are about equal in number and have been that way for a number of years.

The following table indicates, from 1985 to present, the number of existing residences by property type identified by the tax roll:

LYON COUNTY TAX ROLL NUMBER OF RESIDENCE BY PROPERTY TYPE FOR 1985/86 - 1989/90			
<u>FISCAL YEAR</u>	<u>SINGLE FAMILY # RESIDENCE</u>	<u>MULTI-FAMILY # RESIDENCE</u>	<u>MOBILE # HOME</u>
1985/86	2784	143	2778
1986/87	2860	144	2976
1987/88	3023	148	3066
1988/89	3187	152	3265
1989/90	3384	147	3364

The next table related to housing data in the county clearly indicates where the array of residences are located by tax area and the specific number of residential units by type:

LYON COUNTY

LYON COUNTY TAX ROLL NUMBER OF RESIDENCE PROPERTY
TYPE BY TAX AREA - JULY 1, 1989

TAX AREA	SINGLE FAMILY # RESIDENCE	MULTI-FAMILY RESIDENCE		MOBILE # HOME	AGRICULTURAL RESIDENCE	TOTAL
		#	#UNITS			
YERINGTON	630	69	229	127	3	989
MASON VALLEY	560	10	19	606	198	1,383
SMITH VALLEY	204	4	9	84	118	415
FERNLEY	1,038	44	176	642	40	1,896
SILVER SPRINGS	163	7	10	876	11	1,060
STAGECOACH	53	--	---	398	6	457
CARSON PLAINS	172	--	---	237	7	416
DAYTON	426	10	119	299	19	863
SILVER CITY	74	--	---	3	---	77
MOUND HOUSE	201	5	24	201	---	426
TOTAL	3,521		586	3,473	402	
TOTAL RESIDENCES						7,982

(NOTE: Agricultural residences are single family dwellings and mobile homes not included in the other columns of the table.)

Within Lyon County there is an abundance of vacant land suitable for residential use. Much of this land, county-wide, is undeveloped subdivisions. A practice in the past by developers has been to create large tracts of land and have them zoned to accept mobile homes. Most of these tracts are located on either side of Highway 50 East from Mound House to Silver Springs. Additionally, there are large tracts of land in Fernley zoned for mobile homes. In the area south of Yerington, the town of Mason is nearly all zoned for and occupied by mobile homes. To the east of Yerington, along the Schurz Highway, are additional lands available for mobile home occupancy. In Smith Valley, there is a very small area zoned for mobile homes on the west side of the valley.

In Lyon County mobile homes play an important role in housing the population. Mobile homes are often the only type of housing that young families and retired couples can afford. Mobile homes may be the dominant type of housing for the future if construction and land costs are not compatible with income.

The tax structure of the State of Nevada as presented in Nevada Law does not allow mobile homes to be assessed as real property. The law provides a much more rapid rate of depreciation for tax purposes

LYON COUNTY

to mobile home owners as opposed to a conventional home. Ultimately if mobile homes become the dominant type of housing in Lyon County, it could create a shortfall in ad valorem tax revenues. The County recognizes this and informational hearings have been held to develop data that will provide information to assist the governing body in considering ways and means to alleviate this possibility, should it occur. In addition, help must be sought from the State Legislature to equalize taxing of all housing. The projected fiscal impacts related to this matter are addressed in the Fiscal Plan portion of this document, Chapter III.

MAJOR HOUSING DEVELOPMENTS

In Lyon County two major developments for conventional home subdivisions are being constructed. The largest of these is the John Lawrence (Nevada) Inc. east of Dayton on the former Herrmann Ranch. This development consists of both single and multi-family residences.

Davada Development Corporation, which has since transferred operations to John Lawrence (Nevada) Inc., bought the Herrmann Ranch in December of 1984. River Village, which was the first residential subdivision completed, began construction in September of 1985. From that date to August, 1989, three additional subdivisions have been developed -- Rancho Vista which includes 5 acre parcels, Quailridge which includes 6,000 square foot parcels, and Hillcrest which includes 1/2 acre parcels. As of August, 1989, 250 single family homes have been sold. A number of apartment buildings have been constructed and are fully rented. A fourth 8-plex unit will be built in the near future. The plan is to construct 32 units a year unless demand should warrant more apartment buildings.

When the golf course is completed, it is anticipated that between 200 and 250 single family units will be sold each year. A marketing analysis conducted by Ken Stokes, of John Lawrence (Nevada) Inc., indicates that the above figures are conservative.

In the industrial park of the John Lawrence (Nevada) Inc. development, as of August, 1989, 59 acres of industrial land have been sold. Fifty acres were purchased by Bruce Industries which has a facility of some 147,500 square feet on that land and approximately 450 persons employed. The Lynx Building is on six acres of land with 60,000 square feet of manufacturing space and it is anticipated that 60 persons will be employed. The Spencer Nam facility will sit on 2.86 acres and will employ 20 persons.

It is anticipated by John Lawrence (Nevada) Inc. that industrial land will be developed at approximately 1 acre per month (12 acres per year). This equates to a multiplying factor of 9 jobs per acre sold based on the above information.

Another growing, residential construction company is located in the town of Fernley. The DiLoreto Construction Company is developing a large, residential subdivision of conventional homes. These homes are being constructed on an as-sold basis. It is anticipated, at build out, there will be approximately 500 units.

FUTURE HOUSING REQUIREMENTS

There are a number of conditions that will affect future housing in Lyon County:

- * Dayton will continue to become less of a bedroom community for Carson City and will provide a large number of employees for the expanding industrial base in the Dayton area.
- * Fernley will continue to change from the status of a bedroom community for Reno/Sparks and will expand its employee base to accommodate the fast growing business/industrial complex that is now almost overwhelming.
- * It is anticipated that mobile home parks will multiply to accommodate younger families because of an increase in job opportunities and older retired couples because of the advantageous lifestyle.
- * Public housing for the elderly will become more popular. Longer life expectancy ratios and fixed incomes will not allow many senior citizens to continue to reside solely in the private sector.
- * Mining activities will increase and this will create a housing impact.
- * Increased activities of industrial expansion at Mound House will necessitate additional housing.
- * The City of Yerington and Mason Valley area will have additional companies move into industrially zoned areas, thereby increasing housing demands.
- * Tourism activity will increase at Lake Lahontan and impact the Silver Springs area for business support and a larger employment pool, thus more housing.

There will be a continuing need for new housing in Lyon County in the years ahead to accommodate the growing industrial base and housing for the retired sector of the population.

Lyon County government, other local governments, and the private sector must collectively provide creative approaches to provide more housing as well as stabilizing and maintaining presently established residential areas. Government should introduce innovative zoning techniques and streamline housing processing procedures. Through the adoption of more flexible and innovative approaches for housing and financing of housing, both the public and private business sectors can share the responsibility of assisting the economic development of the county.

Reducing housing costs is another problem. We know that codes and ordinance modification hold only limited potential. Labor, materials and financing costs continue to dominate as principal agents of higher-priced housing. Many additional techniques have been prepared to reduce housing costs. These include cluster zoning, review of subdivision standards, streamlined procedures on the part of the public and private sector, administrative delay reductions, and uniformity in application of building codes. The reduction of standards for the sake of affordable housing is not a good solution. Time and time again it has been noted that affordable housing at the cost of lower quality is not a desirable product. Specific goals and policies for housing must reflect an end product that is affordable, quality housing.

CHAPTER II -- SECTION E
LAND USE

A land use plan is not a law. It carries no penalty. It is a guide to development within the County and a focus on direction.

The relationship between a Land Use Plan and a Zoning Ordinance should be considered. Generally, since the Land Use Plan is a statement of direction, the Zoning Ordinance should only be amended in conformity with the Land Use Plan. Once a Land Use Plan is adopted, non-conformity with the Land Use Plan is ample reason for rejecting an amendment to the Zoning Ordinance. The Zoning Ordinance expresses more closely what is. The plan expresses what should be.

The Land Use Plan is a component of a master plan. Once a Land Use Plan is adopted, other plans for water, sewer, roads, schools, public facilities, and capital improvements of all kinds should be fitted to it. A Land Use Plan is based upon the economy, population trends, environmental factors and heavily upon community goals and objectives. It reflects a picture of the future based on a carefully reasoned understanding of the present and trends for the future.

Land use plans are developed to enhance the supporting network of roads which are required to provide access to areas of the County. Water is supplied in sufficient quantity to support every land use in each portion of the County. Sanitation plans are provided to assure that development does not pollute the environment or jeopardize public health. Schools, parks, and fire protection facilities are provided where they will do the most good and where they will efficiently serve the county population. This all requires a delicate balance.

Overdevelopment, or overly rapid development can overload public facilities, thus defeating the purpose of the plan.

The means to implement the plan include a Zoning Ordinance to regulate development, subdivision regulations to assure that new development neither harms the environment nor overloads existing facilities at the public expense, and a capital improvement program whereby public expenditures are budgeted over several years to achieve the land use priorities.

Before Lyon County became an entity, the land heavily dictated whether people settled or continued west. Lyon County came into being as one of the nine original Territorial Counties designated in an Act that was approved on November 25, 1861, nearly three years before the Nevada Territory became a state. At that time the county was described as mountainous and barren except for the twelve mile stretch of the Carson River at the western edge of the County known as the Carson Valley Bottom.

Early settlers along the Carson River found that the soil was good for agriculture. Run-off draining into the river had leached the alkali from the soil. It had also carried gold into the stream attracting a sizeable number of people with their gold pans and sluice boxes. By 1865 there were twenty-eight mills located around Dayton,

LYON COUNTY

then the Lyon County Seat. The Carson Valley Bottom had become a producer of hay, grain and vegetables, and its mills were processing nearly all of the ore coming out of the Comstock.

To keep the mills going, the nearby Pine Nut Mountains were virtually denuded of trees. A succession of mills were built along the Carson River. There were thousands of mining claims filed within Lyon County. Most of them were not even improved. The Carson and Colorado Railroad was built to link the Virginia and Truckee Railroad at Mound House with Hawthorne. One station was established at Wabuska at the northern end of Mason Valley.

Mining, industry and agriculture developed concurrently along Lyon County's waterways while most of the county could still best be described as "mountainous and barren". In later years the Newlands Project brought agricultural life to the northern end of the county and irrigation canals fed by the Walker River brought cash crops to the ranches along the Walker River in the Smith and Mason Valleys. Development in Lyon County has always been a measure of water availability. Whether it was hydro-power or steam power for mills, canals and irrigation water for crops, or water for livestock and upland game, Lyon County's prosperity has largely been tied to water.

Lyon County consists of 2,024 square miles (1,295,360 acres). 72.4 percent of the land is exempt or owned by some governmental entity. That leaves only 27.6 percent of the county's land on the tax roll.

The county, like much of the Great Basin, is composed of north-south mountain ranges with four major valleys - the Carson Plain, Churchill Valley, Smith Valley and Mason Valley. The county is traversed by the Carson River as well as the West Walker River and East Walker River which converge at the southern end of the Mason Valley to become the Walker River. The elevation varies from 4,050 feet east of Fernley to 8,763 at Lyon Peak.

The average total annual precipitation in Lyon County is about five inches. Average annual temperatures range from thirty six (36) to sixty nine (69) degrees. January temperatures range from fifteen (15) degrees to forty six (46) degrees. In July the temperatures range from fifty (50) degrees to ninety two (92) degrees. The growing season averages 170 days.

The population centers in the county are Fernley, Dayton, Silver Springs, and Yerington. In addition, other population areas include Mound House, Silver City, Mark Twain, Stagecoach, Weed Heights, Mason Valley and Smith Valley.

The county's principal industries remain agriculture, industry and mining. Recent promotional efforts have brought a significant number of manufacturers into the county. Tourism and recreation make a contribution to the economic base. The county's population includes a number of families whose adults work outside of the county and many retired persons who are attracted to the array of favorable lifestyles available in the County.

With 67.2% of the county's area in federal ownership, the Lyon County Policy Plan for Public Lands developed by the county and State Land Use Planning Agency of the Division of State Lands, Department of

Conservation and Natural Resources, State of Nevada, ~~LYON COUNTY~~ authority of Senate Bill 40 of the 1983 Nevada Legislature (NRS 321.7355), Carson City, Nevada adopted in June, 1985, is a very important component of this Master Plan.

The major purpose of the Policy Plan for Public Lands in Nevada is to provide state and locally developed public land management policies to be used by the various federal agencies managing the public lands in Lyon County. The plans are a comprehensive set of measures and policies which are designed to increase the role of Lyon County personnel in determining the management of public lands. Within the plan is a comprehensive description of problems and opportunities relating to Lyon County public lands. With this policy plan, federal land management agencies are better able to know and to respond in a positive fashion to the concerns and needs of Lyon County.

The Lyon County Policy Plan of 1985 pays particular attention to converting some public land to the private sector. The policy is as follows:

1. In Smith Valley, the area north of Day Lane and to Artesia Lake should be disposed of for agricultural, residential or industrial purposes.
2. In Mason Valley all isolated parcels should be disposed of for private agriculture or public uses.
3. Public lands fronting on Highway 95A between Fernley and Silver Springs should be disposed of for residential use. Any existing access to other public lands should be retained.
4. Any public lands in Lyon County between Dayton and Carson City and within approximately half a mile of Highway 50 should be disposed of for commercial/industrial and residential purposes.

With only 31.4% of the land in Lyon County under direct county control and 68.6% of the land under federal and state control, it is essential for a public land policy to be in place.

Federal and state agencies plan for management of their lands, and therefore, become an integral part of Lyon County's planning. Ecological conservation and "best use" dictates that lands adjoining forests, bodies of water, ranges, and parks be programmed for compatible use.

LYON COUNTY

PUBLIC LANDS

Approximately 67% of the land within Lyon County is owned by the federal government. Another 5% is also tax exempt, which leaves not quite 28% of the county land as private land forming Lyon County's tax base.

LYON COUNTY LAND OWNERSHIP

OWNER	AREA (ACRES)	PERCENTAGE
Federal Government	870,091	67.1
State of Nevada	17,749	1.4
Lyon County	1,710	0.1
Indian Tribal Lands	48,693	3.8
Other Tax Exempt Land	115	0.0
Private Owners	<u>357,002</u>	<u>27.6</u>
Total	1,295,360	100.0

Source: State of Nevada, Office of Community Services, Nevada Statistical Abstract, 1983-1984, Page 247.

Most of the federal land is managed by either the Bureau of Land Management (BLM) or U.S. Forest Service (U.S.F.S.) under a multiple use concept. Typical uses are ranching, mining, recreation, and wildlife habitat. A major portion of the south end of Lyon County is part of the Toiyabe National Forest managed by the U.S.F.S. Other significant federal areas include the Lahontan Reservoir, managed by the Bureau of Reclamation; and the Alkali Lake Wildlife Management Area, which is administered by the U.S. Fish & Wildlife Service. The Nevada Department of Wildlife manages the Mason Valley and Fernley Wildlife Management Areas.

EXISTING LAND USE BY AREAFERNLEY:

In the 1970's, a large area east of town was master planned and zoned for residential and industrial development by private capital. Some infrastructure was put in place before the developer, due to economic setbacks, limited his development activities to a large industrial park currently occupied by R. Max Inc., Mission Uniform and Linen, Chem Tech, ARC, and ETICAM, along with two heavy construction firms.

Across Interstate 80 is the fairly new and rapidly expanding Truck Inn enterprise employing 105 people. There is a large area of unoccupied land surrounding the Truck Inn facility.

LYON COUNTY

The Warehouse Market near the East I-80 interchange has attracted a number of small businesses to their location. The most recent business to construct a facility is Sturgeons, which is a casino/ restaurant with gasoline purchase activities. At present Sturgeons has employed 45 persons.

The downtown area of Fernley along old Highway 40 is primarily commercial. There is an array of businesses without a solid core of available goods and services. There is a large commercial zone at the east edge of town at the freeway interchange between I-80 and the cement plant that is lacking in commercial activity. The Cowboy Saloon, Flea Market and Variety Store at the old Highway 40 curve near Interstate 80 and the Nevada Cement Plant are the businesses at the extreme west end of town.

Housing south of I-80 and north of Main Street consists largely of the homes in the Freemont Street area and the Sandia subdivisions. The zoning is mostly NR-1 (single family), NR-2 (multiple family), and RR-1 (one acre) with trailer overlay. The area has two small mobile home parks.

Sandia Subdivision Unit I consists of well-kept tract homes on septic systems with water furnished by Fernley Utilities. Unit II is a few years newer than Unit I and has curbs and gutters. Unit IIIa is a small development consisting primarily of apartment complexes. Unit IIIb is small also and contains duplexes. There is one more unit to be developed of 26 homes. When they are constructed that land area will be built out.

Housing in the Vine Street area, for the most part, consists of mobile homes. There are few vacant lots in this area; however, there are a number of land parcels being farmed that could in the future be prime development for residential use.

South Farm District Road is one of Fernley's newer subdivisions called Green Valley Estates. It is a modular home tract development of 153 units, with an additional 219 units to be put in place. Green Valley Estates is surrounded by vacant land that is zoned RR-3 (5 acres) with trailer overlay. A controversial land use problem exists in Green Valley Estates as the area adjacent to and south of the subdivision is zoned industrial, separated only by the TCID canal. Many complaints of noise and dust have been made to the County resulting from activities in the industrial area.

Southwest of Farm District Road are the Fernley Ranchos. These are also RR-3 (5 acre) units with trailer overlay. The area is sparsely utilized. It is comprised of a relatively comfortable mix of stick-built and mobile homes.

Further east along Farm District Road there are a number of homes. DiLoreto Development is in the process of constructing the second phase of Upland Ranch Estates on the south side of Farm District Road. This phase will include 90 units. The total DiLoreto development, when built out through a number of phases, will total 503 units.

On the north side of Farm District Road is the Flying Circle Subdivision zoned RR-3 (5 acres) with trailer overlay. There are several vacant parcels in the subdivision. The homes in this area are a mix of skirted mobile homes, mobile homes on foundations, modular units, and stick built homes.

LYON COUNTY

Further east are several ranch style homes. A developer is planning to place 500 residences on 1/3 to 1 acre lots complete with an 18 hole golf course. This development is to be located near the apex of Farm District Road and the Fallon Highway.

South at the canal and east of Highway 95A, all the way east to the Fallon Highway, is a large expansion of developing parcels where land sales dominate over home construction. There is a concern which has been expressed by residents a number of times for more orderly development in that area.

To the east, south of Highway 50 just beyond the rodeo grounds, is the Englewood Subdivision. These are RR-2 (2 acre) lots with trailer overlay. The buildout in this subdivision is slow.

In the southwest corner of Fernley is the South Rim Subdivision which is made up of RR-1 (one acre) lots. Homes are in the higher purchase price levels and there are very few undeveloped lots.

A large agricultural area that could, in the future, be utilized for residential/commercial buildout is that area bounded by Stock Lane on the west, Cedar Street on the north, Hardy Lane on the east and the TCID canal on the south.

STAGECOACH:

The Rancho Subdivisions consist of RR-1 (1 acre) parcels with trailer overlay. Rancho I and Rancho II contain a total of 14 parcels that are divided into four lot configurations. The buildout varies from some 40% in some subdivisions to approximately 60% in others. About 50% of the building sites have been occupied. Stagecoach I, II, and III (mostly RR-1 with one acre parcels) have about a 50% buildout.

The agricultural land use of the area is limited to onion production and commercial turf production for residential lawn and landscaping.

There is a community water system known as Stagecoach General Improvement District which was originally privately constructed, subsequently converted to an improvement district pursuant to NRS Chapter 318, and has a Board comprised of local, elected representatives.

There is commercial property along Highway 50 considerably away from the highway because of frontage created by the highway right-of-way. Utilization of the frontage parcels is sparse.

MARK TWAIN:

Mark Twain 10 Subdivision is RR-2 (2 acre) with trailer overlay. The homes are served by a water system maintained and operated by the State and County. Septic tanks comprise the sanitation system. The lot sizes are 1/4 acre. These are standard tract homes with a few lots not yet utilized. There is a large greenbelt through the center of the tract.

LYON COUNTY

Mark Twain 3, 4, and 6 is RR-2 (2 acres) with trailer overlay. The residences are generally mobile homes which usually occupy less than half of each lot area.

Pinenut View is zoned RR-2 (2 acres) with trailer overlay. Most residences are mobile with a few stick-built. The residences are on wells and septic tanks. The development on the south side of Highway 50 is the same. Both are about at the 65% buildout level.

The commercial strip along the highway contains the Carson Plains Market, some small bars, and a few other small commercial businesses. This strip has considerable vacant land. The frontage road access to businesses is sparse with minimal development.

An adjacent area zoned ME (light industrial) contains a metal recycling plant, otherwise the lots are utilized for residences.

The C-2 (general commercial) zone west of Pinenut has a number of unused parcels.

Mark Twain Unit 8 is much like the other Mark Twain units in composition, variety and percentage of vacant lots.

Fort Churchill Road, which is a dirt road leading from the Mark Twain area on Highway 50 to historic Fort Churchill on Highway 95-A, winds through ranch country such as the Chavez Ranch and the Break-a-Heart Ranch. The Hodges Transportation (NATC) military testing grounds is located on this road and is a significant employer.

The Allred Ranch has been parceled for a few scattered residences. These and the 15 or so parcels in the Sutro Ranchettes contain fairly large custom built homes close to the Carson River.

MOUND HOUSE:

Mound House 1 and 2 are zoned RR-2 (2 acres) with trailer overlay. These subdivisions are characterized by mobile homes which have been in place for a number of years. Many units have been added to over the years and most are neatly maintained. The buildout on these parcels appears to be about 60%.

The open area north of Gypsum Mine is zoned RR-3 (5 acres). It is compactly built in spots, leaving roughly 40% of the building sites vacant. Building styles and variety are very unique. There are a few structures that are best described as minimal and some large custom built homes in the area.

The Carson Highland Estates consist of modular housing erected on 4,500 square foot lots and is a planned unit development. The area is fairly new, and compactly and completely built out. A sewer and water system serves the project and the developer is planning to expand the project, seeking County support to administer, maintain, and operate the public works infrastructure.

The Red Rock Road area has some commercially zoned parcels that are partially occupied by businesses. Comstock Industrial Park #1 contains a number of auto salvage yards adjacent to each other in a compact area. Immediately east of the salvage yards are brothels that exist under the County law.