

Date: March 30, 1981

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MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Miss Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Mrs. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Chris Brown, Comstock Historic District Commission
Alice Byrne
Guy Louis Rocha, State, County and Municipal Archives
R.W. DeLa Mare, De La Mare Mines, Inc.
Mert Crouch
Larry Wahrenbrock
Tom Maxwell, Sutro Tunnel
Joseph J. Ricci, Lyon County Comm.
Richard Harris, Mining Attorney
Joyce Hall, Division of Mineral Resources
Bob Warren, Nevada Mining Association
Jim Schryver, Sutro Tunnel Coal., Inc.
Julie Oelsner, UNR Intern - Dini
Diane Campbell, Nevada Miners & Prospectors Association

Chairman Stewart called the meeting to order at 8:10 a.m. and began with the hearing on AB 112.

AB 112: Limits exercise of eminent domain to take land in historic districts for use in mining or related activities.

Chairman Stewart stated there were two proposed amendments to AB 112. He explained that Amendment No. 352 (EXHIBIT A) provides a different method of gaining eminent domain by strictly private companies. It will not only apply to mining companies, but also to beet companies and certain other non-governmental entities which have powers of eminent domain. The amendment provides that any of these companies must first have a hearing before a board of county commissioners for the county in which the historic district lies. At that hearing, there must be a

showing that taking of the property would be for a public use and that it is necessary for that public use. There must be a further showing that it would be of great public benefit to the community in which the real property is situated and will not be significantly harmful to historic landmarks or features. In the event those requirements are met, the board of county commissioners must certify eminent domain. In the event the mining company does not agree with the determination of the board of county commissioners, they can proceed with an eminent domain procedure in court on a showing that the board's decision was arbitrary and capricious or not supported by substantial evidence.

Mrs. Cafferata explained that Amendment No. 351 (EXHIBIT B) removes mention of the sugar beet industry and addresses the eminent domain of anybody, public or private. It was her feeling that if the government is going to put a road through, they should be required as well to hold a public hearing. She indicated that the amendment is not limited to historic districts, but goes to the entire state. The amendment requires that the entity which wishes to exercise eminent domain, must give notice, hold a hearing in a convenient location, and prepare a transcript as part of any court proceeding.

Mrs. Cafferata read from an article which appeared in the Nevada State Journal on March 17, 1981, which quoted Congressman Jim Santini as pointing out that from the list of minerals identified as critical to the nation's welfare, there are 32 being actively produced and explored in Nevada.

Mr. Price asked if Mrs. Cafferata's amendment intended that the company or utility itself would actually conduct the required hearing. She stated yes, and that they would have to post in the newspaper and rent the facilities in which to conduct the meeting. They would then listen to testimony from the citizens, a transcript of which would be prepared and used in the event of a court proceeding. Mr. Price expressed his feeling and experience that the person who conducts a meeting has a great deal of power and can conduct the meeting in certain ways. He was opposed to the idea that the company with a vested interest in the outcome of a hearing would have great power to direct testimony and move a meeting. He did not feel that any party with an interest in the proceeding would be the proper party to conduct the hearing. He added that this could apply to either party: the mining company or the historical district.

Chris Brown, Vice Chairman of the Comstock Historic District Commission, read from his prepared statement, attached as EXHIBIT C. Mr. Brown stated that when preparing his statement he was not aware of Amendment No. 351, and this statement does not address that amendment.

Chairman Stewart pointed out that if the county commission is required to conduct the hearing, the historic commission would be allowed to take and advocate their position in front of the county commissioners. He agreed with Mr. Brown that the amendment shifts the initial determination from the historic district to the elected body of the county commissioners, but does not eliminate input from the historic district. Mr. Brown pointed out that the county commissioners already have hearings on any activity in its county. Mr. Stewart commented that there are some matters heard such as use permits, and did not feel a use permit could be denied on the grounds that they may exercise some eminent domain proceedings, especially since the statutes specifically provide for that.

Mr. Beyer asked what the Historic Commission's function is. In response, Mr. Brown read from NRS 384 at "Declaration of Public Policy", attached as EXHIBIT D. He added that the Commission meets on a monthly basis in Virginia City where any person with a project in mind involving building, tearing down, or putting in a new road or fence, etc., must gain approval of the 9 member commission. He added that the commission has legal counsel but he is not always present at the meetings, with that counsel coming from the AG's office.

Mr. Beyer's understanding from what Mr. Brown read is that the commission's function is basically to maintain an historical atmosphere, setting or the aesthetics of the district. In light of some of the technicalities which occur in the denying or approving eminent domain, Mr. Beyer felt it might be beyond the scope of the commission as defined by statute. Mr. Brown stated that the commission only makes recommendations and added that the commission could end up with a finding that the proposed project is not appropriate to the historic district and would be damaging to the historic district, in which case there are provisions for further proceedings in the event the individual does not agree with the commission's findings. Mr. Beyer pointed out that at line 5 of the bill, the commission has the power to approve or deny the use of eminent domain which he felt was beyond the legal responsibility of the commission. Mr. Brown felt it important for all the bodies to be involved and did not discount the fact that the county commission must also have a hearing, but commented that the amendment as proposed removes the historic district from the picture altogether. It was Mr. Beyer's feeling that the county commission would be the proper body to make a finding on the question of eminent domain.

Mrs. Cafferata read a portion of NRS 384 which states that "this section is not intended to discourage the exploration, development or extraction of mineral resources." Mr. Brown felt that section refers to forming historic districts.

Alice Byrnes testified next stating that she served on the historic commission in the past for 8 years. It was her statement that the historical commission is not politically motivated, but is appointed by the Governor. In setting up the historical district, all the trials and tribulations which can arise were seen. She commented that just when the commission feels it is doing well, mining operations come in. She stated they were not opposed to mining, but opposed to the "terrible gash" left in the hillside by Houston Oil. The citizens at that point question why the historical commission allowed it to be done. Mrs. Byrnes stated that at the time, houses were sold, in the spirit of cooperation, at an outrageous price, resulting in an increase in the taxes. It was her feeling that the county commissioners had very little input or power in what was going on since they went along with it from the beginning.

Mr. Price asked if there were actual hearings held by the historical commission prior to the expansion of those activities. Mrs. Byrnes stated that it was said that mining superseded any powers of the commission and there were no hearings held. She commented that, as an example, mobile homes are not allowed in a historic area and mobile homes were moved onto the mining claims, with the commission being powerless to move against them. She added that provision may have since been eliminated. Mr. Price's reading of the statute indicated there were provisions for hearings and appeals to court. Mrs. Byrnes stated there were hearings conducted by the mining company and the county commissioners in the courthouse, but those hearings were not advertised as being public. She added that as a public effort by Houston, there was an open meeting held in the courthouse to get the people together to explain what the mining company was doing.

To Mrs. Cafferata's question about the county commissioners demanding a lot of money from Houston, Mrs. Byrnes stated that Houston offered \$1,000,000 to replace the roadside, if they were to move the road, but had already expended so much in moving houses the money was no longer available. She added that about two weeks ago they were still waiting to hear from Houston regarding whether or not they were going to make repairs. She was not aware of any meetings held between the county commissioners and Houston on these things.

Guy Louis Rocha, the State Archivist, testified by saying that accepting the premise that private, unregulated corporations may exercise domain under NRS 37.010, the question that presents itself is what constitutes a public use. In referring to one amendment, great public benefit to the immediate community constitutes a public use. The sugar beet industry was able to acquire the right of eminent domain in 1911 on the grounds that it would be a great public use in the Newlands project, or the immediate area.

Given this definition of public use, practically any industry, including gaming, warehousing or agriculture, could argue that condemnation of properties for their respective industry could be of great public benefit to the immediate community and try to obtain favorable legislation for inclusion under NRS 37.010.

Mr. Rocha stated that public use is very localized in this instance and many industries can argue that condemnation will have, in their opinion, a positive effect on that local community. At the present it addresses sugar beets and mining, but leaves open any particular industry that can demonstrate it is a public use to the immediate locale. His concern with the bill is the definition of "public use".

Mr. Stewart pointed out that under Amendment No. 352, they would also have to show that their industry would not be harmful to the historic landmark. Mr. Rocha felt that the important consideration is who determines that significance. If there is a historic commission, he assumed they would take an advocate role at commission hearings, but in other areas where there is not a constituted body, it is important that someone take that advocate role.

Mr. Stewart commented that this bill only goes to historic districts. He agreed that if the landmark did not fall within a historic district, this provision may not come into play. Mr. Rocha stated that in the historic districts, the only one having a commission at this point in time is the Comstock Commission. It is therefore important that there be an advocate group for historic preservation. He felt there is the possibility that other industries might try to get favorable legislation upon a showing that there would be no negative effect on historic districts.

Rod De La Mare, President of De La Mare Mines, Inc., stated that he owns a good part of the Comstock Lode, practically everything from the Cabin in the Sky to Spring Valley. He added that he is a geologist and has been around the Comstock for close to 50 years. He felt this bill unnecessary since Houston has said they aren't going to use it any more. Mr. De La Mare stated he would not let them mine in Silver City.

Mr. De La Mare indicated he has several million tons of good open pit ore, costing him a few million dollars, which has been consolidated for about 12 years. He added that the historic commission has put two of the most historical things out of business on the Comstock, those being the Comstock Assay Office and his tourist mine. He stated that the mining litigation is hurting the government where they should have a net proceeds of mines tax coming in, it is all taken off as a result of the litigation.

With reference to the eminent domain problem, a lot of those people are living on his patented claims in Silver City and have filled up his shafts with garbage and sewage. Mr. De La Mare stated that if it weren't for eminent domain you wouldn't be able to walk past your neighbor's house.

Mr. De La Mare commented that new management has taken over Houston and they are a responsible company. He left a copy of a letter written to Houston International Minerals Corporation, attached as EXHIBIT E.

Mr. Price asked what Mr. De La Mare meant by saying that people had built homes on his patented claims. Mr. De La Mare stated they have an easement to run water and power lines over his property and there are homes built on patented claims. He felt he could probably have their utilities cut off. Mr. Price commented that the questions Mr. De La Mare had raised in his mind confirmed his opinion that perhaps the mining companies do have too much power. Mr. De La Mare commented that about 15 years ago a group of people came in and wanted to fill up all the shafts and did fill up a couple of his and one of Hughes'. He commented that when Hughes moved into the Comstock, everyone wanted to sell out to him, with the ones hollering the loudest getting the most money. As far as the old timers go, he felt they were all right, but a lot of the people in there now are opportunists.

Mert Crouch of Silver City stated he was just an interested citizen living in the Comstock area. He raised the question of if this law did not currently exist, how would he build a law to foster minerals development and extraction as a public benefit. He did not feel it would be written as it currently exists. He felt they should be called important industries rather than paramount. He felt there should be some balance in the law so that if a mining company is to produce, they can't be absolutely stopped by someone ringing claims around them. He felt they should be able to condemn a piece of those claims in order to get in.

Mr. Crouch commented that a road must have continuity, as with railroads and power lines, and should not have a piece cut out. He stated that what bothers him is the "furry term public good". He used as an example the case of the cost of \$.50 a ton to dump one place, when they could save that by condemning private property closer. He did not feel this was a good use of eminent domain with no recourse on the part of the property owner. He added that he would not even attempt to fight it since the mining company would succeed as a public good. He liked Mrs. Cafferata's amendment, with the exception of the hearings, stating that the question would still have to be tried and the landowner would still lose.

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Mr. Crouch felt "public good" should be better defined so that an entity, as a public good, can do something capricious. He added that the public should have some recourse.

Chairman Stewart commented that as in the example given by Mr. Crouch in condemning property for dumping, one of the issues to be resolved is whether or not that condemnation is necessary. He agreed that if the entire eminent domain laws were to be re-written, they would not be the same. To the subdivisions on public use, the property is necessary for public use, intended for public use, will be a great public benefit, are all creative tests which have been utilized in the courts for years in making a determination on eminent domain. Mr. Crouch's concern was in viewing the entity as a public good with that company superseding private rights. He felt this was being taken care of in historic areas, but expressed concern over the other areas not designated as historic areas.

Mrs. Cafferata asked if Mr. Crouch knew what had taken place in Storey County. Mr. Crouch stated that to his knowledge Houston Oil did not have to get a permit from the county to mine, but the county wanted them to, which they did. He added that he went to a few meetings held by the public, with the commissioners being present and a member of Houston Oil giving presentations. He pointed out that there was a Houston I and Houston II, with Houston I doing as it pleased and Houston II saying it would not condemn but would buy the property.

Larry Wahrenbrock stated he is a citizen of Silver City, a planning consultant by profession, and was a member of the special committee in Lyon County which developed the local ordinance to control mining. He felt that the law of eminent domain is a power which was given to the state to be used in specific purposes such as building roads, railroads, power lines, and other things for public benefit. In 1872, that law was amended to include and extend that power to the mining industry. When Houston Oil came in, a review of the Nevada law showed them that they could condemn property and use it for whatever they wanted as long as it was mining related, a definition which can be broadly construed. He added that at that time Storey County had that property zoned open forestry, which permitted mining activities to occur without application for a special use permit or zoning changes. As a result, the county could only ask the mining company to present their mining plan, which was done under public pressure. Mr. Wahrenbrock pointed out that most of the public pressure came from outside of Storey County, and particularly from Silver City whose only free flowing stream came from the main watershed in which the company was going to have its cyanide leach. At that point, Lyon County's zoning ordinances were amended so that mining companies, depending upon the size of their operation, must obtain special use permits and

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go through a public hearing process. They must specifically delineate how much land will be disturbed, where the dumps will be, where the roads will be, and what their hours of operation will be.

Mr. Wahrenbrock stated that as a result of the ordinance change in Lyon County, there was an outcry from the mining industry saying this was an attempt to stop mining and advocacy of precedent setting legislation on a local level which would spread through the 11 western states and discourage mining in all phases. He felt that since that enactment, the mining companies which have come into Lyon County have had not problem at all. He pointed out the open pit operation in Spring Canyon by Mr. Lund, and underground operation in Silver City and another underground operation in Virginia City.

Mr. Wahrenbrock felt that as the legislation stands now, any industry can come in and request that it be granted the power of eminent domain, such as the leatherworking industry and the gaming industry. He suggested that his property in Silver City has a lower property value because it is in or near an active mining operation or a known ore body. With the law as it stands, property appraisers take into consideration the possibility of condemnation, therefore, reducing the value on the open market.

It was Mr. Wahrenbrock's feeling that if the committee kills the bill, it is condoning the mining industry's position of carte blanche power of eminent domain and the right of condemnation. Passing the bill as it stands provides limited protection to citizens in historic districts, but does not limit the rights or powers of the mining industry. He recommended amendments which would eliminate the sugar beet industry and mining. That would leave the public utilities, aviation, roads and state highways, and all of the unquestioned public uses typically concerned with general good. Eliminating the mining industry's rights to exercise eminent domain in historic districts only, would then cause the mining lobbyists to fight against the creation of any new historic districts in the State of Nevada. He pointed out that there are only two historic districts now, Genoa and the Comstock Historic District, with the latter being a Federal Landmark. He felt that limiting this to historic districts would put the people in other areas in jeopardy of losing their property.

Mr. Wahrenbrock favored Mrs. Cafferata's amendment with the exception that it still gives mining the eminent domain powers. Mrs. Cafferata commented that railroads, public utilities, telegraph, telephone, electric companies, etc. are all privately owned industries with rights of eminent domain. Mr. Wahrenbrock commented that these industries have other regulatory agencies where mining does not.

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Richard Harris, a mining attorney practicing out of Reno, stated the eminent domain is an essential law to the mining industry. Although being a mining attorney representing mining companies as a rule, Mr. Harris stated he opposed Houston Oil during its activities on the Comstock and represented several of the landowners, resulting in a good deal of the turn around in Houston's activities. He added that Houston Oil is not highly regarded among members of the mining industry.

To the need for eminent domain, Mr. Harris illustrated a case where a client had leased and located a number of mining claims very close to the heart of an ore body. He explained that a lode claim has a dimension of 1,500 ft. by 600 ft., with a location monument on each with a Notice of Location posted. As a result of someone locating claims overlapping a portion of those claims, there was an area of approximately 10 acres which would have to be reclaimed at a great cost. In the event that price could not be met, the entire operation would be forestalled. Had those claims been located in Nevada, the client could have sought condemnation of that technical fraction of land, resulting in appraisals of the true value of the property. As it was, the client had to pay whatever price was demanded by the property owner or cease operations.

Mr. Harris felt that AB 112 is in direct response to the abuse of power exercised by Houston Oil and Minerals. He stated that prior to undertaking representation of the landowners against Houston, his clients had indicated complete support since Houston had demonstrated the unwarranted and improper use of eminent domain. After attempts to negotiate with Houston for the sale of a piece of property, Houston brought an eminent domain action, contrary to its promises to the people in Gold Hill. At that point Mr. Harris and another attorney prepared a complaint against Houston which was never filed due to the settlement of \$750,000.

It was Mr. Harris' opinion that the amendments proposed are unnecessary because in the one instance in his career as a mining attorney where eminent domain was employed, the law worked very well due to built-in safeguards to prevent the abuse of the power of eminent domain. He stated that in his experience, nearly all the mining companies are responsible and have never used the power of eminent domain, but would be comforted to know it is available in a situation where denied access across someone's property.

It was Mr. Harris' general feeling that the law is fine as it stands. There are no amendments necessary because there are safeguards built into the system. To Amendment No. 352, Mr. Harris expressed concern over the extensive use of "public use" since it is the same language as appears in the California statutes. The Supreme Court of California has interpreted that to

mean that a private mining operation cannot use eminent domain. This leads to the situation in which only a governmental agency that recovers a mining property through failure to pay taxes and then decides to develop or lease it can actually use eminent domain.

Mr. Harris favored Mrs. Cafferata's amendment, stating it was good business and politics to involve the citizenry in an operation which will affect them considerably.

To Mr. Brown's earlier comments, Mr. Harris pointed out that the existing bill seems to very nearly give an absolute right of refusal to the historic commission. He felt that a rather considerable power given to a board with very narrow interests. He stated he was not against the historic districts, but expressed his desire to see the development of minerals strategic to the United States. He added that gold has electronic applications, is widely used in the aerospace industry and in defense. Gold is a better conductor than copper and certain electronic components are made of gold.

In response to Mr. Price's comments about the easements across Mr. De La Mare's patented mining claims, Mr. Harris suggested that under law there are easements by prescription and NRS 533 allows condemnation for water lines and ditches for the purpose of conveying water.

To Chairman Stewart's Amendment No. 352, Mr. Harris expressed concern in putting eminent domain in the hands of the county commissioners, since it is a highly politicized body. He felt the courts are a more quiet and deliberate forum in which the right is more properly exercised. He asked the committee to consider whether this proposal does not abridge the rights of the courts unduly and questioned the problem of a separation of powers. Mr. Harris suggested that a responsible mining company will always approach the board of commissioners out of a sense of community and good business, whether required to or not.

It was Mr. Harris' position that he would rather not see the law amended because it works well. If there is to be an amendment, he stated he supports Mrs. Cafferata's amendment since it makes community involvement mandatory.

Chairman Stewart commented that public use is a term that has been in Nevada statutes since 1911 and if there were going to be a problem with the term it should have come to light before now. Mr. Harris agreed, but felt by diluting the effect of the law, it might be an invitation for an urban court to redefine the nature of public use.

To Mr. Harris' earlier comments about politicizing the issue of eminent domain, Chairman Stewart commented that the issue of public use and public good might be better determined by those people elected by the public. Mr. Harris stated that his concern stems from the fact that since the adoption of new county ordinances in Lyon County, mining companies shy away from that area due to the uncertainty in the law. Chairman Stewart commented that Arizona has a lot more mining than Nevada and asked if they had eminent domain there. Mrs. Cafferata read from a copy of the Arizona statute which gives them the right-of-way to dispose of mine, mill wastes and tailings. She added that Nevada and Utah have the strongest statutes.

Mr. Harris explained that his concern is if a question of eminent domain were to come up within a short time of a county election, the county commissioners might tend to count voices and heads. If there are 300 citizens of a community packing a boardroom and 1 or 2 representatives of a mining company, then perhaps the considerations of incomes, jobs, etc. might be over-ridden by actual head counting.

Mr. Harris stated he had taken a poll of the mining attorneys in the state and found that only one law firm has ever used eminent domain, but when it is needed it should be available to the mining companies. He added that district judges are also members of the community and take into account the merits of each case.

Chairman Stewart asked if Mr. Harris felt a judge would have the authority to deny eminent domain merely because it might interfere with some historic landmark. Mr. Harris did not know, but felt that if a private landowner presents competent evidence through the person of a mining engineer that there are alternative sites for use and disposal, then the court could make a determination that the site sought by the mining company was not the best one.

In the case of someone possibly wanting to sell the 4th Ward School for \$100,000, Chairman Stewart asked if there shouldn't be other people who ought to have a little say in whether the school should be sold for an air tunnel. Mr. Harris commented that through building permits and special use permits, many of the counties provide for a review by some board before such activities can be undertaken, providing a mechanism in the county that allows the county to have some power of review.

Mr. Price asked Mr. Harris what chance he felt a bill giving mining companies the right of eminent domain would have if no such right currently existed. Mr. Harris agreed it would have no chance. To Mr. Harris' comments that mining companies very seldom use eminent domain, Mr. Price asked how many of those

companies often use the implied threat of eminent domain as a means of acquiring property. Mr. Harris stated he had asked his more experienced colleagues that question, and the general response had been no. He added that eminent domain in this state has been exercised in the last 20 years only a couple of times and by the same law firm in each instance. He pointed out that by obtaining land through the threat of the exercise of eminent domain, the contract could at some later date be voided by the landowner on the grounds of duress.

Mr. Price asked if the attorney for a mining company generally acts as the first contact in negotiations for a desired piece of property. Mr. Harris stated that larger companies have specialized land acquisition personnel who will generally make the first contact with a private individual and usually will only call in an attorney as a last resort. Mr. Price pointed out that if the landmen made implied threats, the attorneys might not even be aware of those threats.

Mr. Price commented that the average citizen would not be able to afford the cost of going to court against a mining company over a piece of land. Mr. Harris stated these cases are handled on a contingent fee basis, whereby the parties do not even have to advance expenses and if the suit is lost, pay nothing.

To Mr. Price's question about the constitutionality of Amendment No. 352 in placing the decision in the hands of the county commissioners, Mr. Harris stated that where an administrative body such as the county commissioners have made a decision and thereafter there is an attempt to overturn it on the basis of being arbitrary, capricious, etc., that is very hard to do. The practical consequence of Amendment No. 352 would mean that whatever the county commissioners decided for whatever reason, that is the way it would remain, cutting the court out unless there has been a gross abuse of discretion or process.

To Mr. Price's question about the necessity of county regulations, Mr. Harris commented that there should be some level of review and control which is generally provided through special use permits and county building permits. There would be another level of control provided by Mrs. Cafferata's amendment. On the other hand, Mr. Harris expressed concern over something so pervasive and all-inclusive as the Lyon County ordinance. He added that it is difficult to say how much power should be invested in the counties and how much left to the courts.

Mrs. Cafferata asked about the California laws and if the governmental bodies acquired property, they could then use eminent domain for mining. Mr. Harris felt this the only means whereby the eminent domain statute in the California laws could be exercised.

He elaborated by saying that the California Supreme Court has held specifically on two or three occasions that a private mining company may not use eminent domain to acquire land for mining, tailings, disposition or even for access. Therefore, since a private company is divested of these rights, the statute can only have meaning if a governmental entity uses these rights. As an example, when a county recovers certain patented mining claims for failure to pay back taxes, it might then lease or propose to sell the property outright to a mining company. In order to generate jobs and so forth in a county with depressed circumstances, Mr. Harris suggested the county itself might be able to use eminent domain to acquire adjacent lands, rights of way, etc. for the so-called public purpose.

Mrs. Cafferata asked for an explanation of patented mining claims. Mr. Harris stated that a patented mining claim is one in which the United States government has given full fee title to an individual who has proved a mineral discovery and who has operated the property. This is the fullest form of patent, in which there are both surface and mineral rights deeded to a private individual. There are, in addition, severed forms of title in which the surface rights are distinct from the mineral rights. An example of this is in Elko where the federal government, through surface patents, gave certain ranchers and landowners fee title to the surface for purposes of grazing and agriculture, but the United States reserved to itself the mineral rights underneath and granted private persons the right to come in and locate claims on private lands and actually mine there. Another example is Virginia City.

Mrs. Ham asked what rights property owners have if the government wants to take their land. Mr. Harris stated he is not a condemnation attorney, but through his family's experience the only issue was the payment to be received. He was not sure what rights are available in those instances.

Assemblyman Dini testified next and stated that with regard to Lyon County's land use ordinance, no one has been denied under that ordinance and no one has tried to get the county commissioners to repeal it. He felt that the argument about discouraging mining companies to come into that county is a bad argument because if the value of the ore is there, they will be there whether wanted or not.

Mr. Sader asked Mr. Dini if he, as the author of the bill, favored either of the amendments at this point. He felt that Mr. Stewart's amendment is more apropos than Mrs. Cafferata's since historical districts need to be protected and since the county commissioners know what the people of their county want.

Mrs. Cafferata asked when the Lyon County ordinances were passed and what effect they have had on mining in Lyon County since then. Mr. Dini stated there is currently a lot of mining activity in Lyon County, with drilling companies working around the clock. Most of the activity is in the undeveloped areas next to the Mineral County line. In the Yerington area, the Anaconda Mine closed and is currently under a divestiture order to sell the mine to someone else. There is other property which has been drilled in the Mason Valley area, close to the airport. Mr. Dini stated that it was necessary to move the airport in order to develop that property and there was no negotiation with the city for the relocation of the airport. He continued by saying that the special use permit ordinance was put in because the Silver City residents were afraid that Houston would develop an open pit mine right next to Silver City. There were public hearings held with a lot of input from the citizens. With Silver City lying in the Comstock Historic District, the commissioners felt strongly enough to enact the ordinance.

Mr. Dini did not feel that the Lyon County Commissioners would deny anyone the privilege of mining in the county. The only area that could be in contention would be around Silver City. In the event Houston wants to expand, they will have to go into and mine and it will be determined by the county commissioners. Mr. Dini stated that at that time he was against the ordinance being enacted in Lyon County, but that he has a lot of confidence in the Lyon County Commissioners' integrity to consider each case on its merits.

Mr. Dini stated he did not have the fear that mining is being discouraged from that area. With the exception of the Comstock Historic area, the remainder of Lyon County is open for mining with good properties in the East Walker area which will be developed.

Mrs. Cafferata asked what kind of revenues mining generates for Lyon County. Mr. Dini felt it was minor at the present, stating that at the height of Anaconda's operation the tax base was \$18,000,000 per year, with Anaconda paying 55% of the taxes in Lyon County at that time. He added that when the price of copper went down and the operating costs went up, the net proceeds began declining, with the mine closing down about three years ago. The other mining is around the Fernley area where they mine the product for Nevada Cement.

Chairman Stewart called a recess at 10:45 a.m.

At 1:50 p.m., Chairman Stewart reconvened the meeting and asked for further testimony on AB 112.

Joyce Hall, Administrator of the Division of Mineral Resources, stated she chose not to take a position either for or against AB 112, the amendments, or the concept of eminent domain itself. Ms. Hall continued her testimony consistent with the attached EXHIBIT F.

To Mr. Price's earlier question as to who makes the first contact with prospectors and small companies, Ms. Hall stated that quite often with a medium sized company, the geologist in the field will make the first contact. She felt geologists to be quite straight forward and added that she had initiated negotiations herself when in exploration. She indicated at that point in time she never considered the concept of eminent domain, being interested only in establishing a good relationship with the people and trying to make the best negotiations possible. It was her feeling that most landmen are professionals who are extremely concerned with establishing a good relationship and making a fair deal.

Mr. Price asked for an explanation of Ms. Hall's duties as Administrator of the Division of Mineral Resources. Ms. Hall stated that the Division of Mineral Resources is one of the divisions of the Department of Conservation and Natural Resources. Statutory responsibilities involve regulating the oil and gas industry in the state, exploration and development of oil and gas resources, studying means of furthering oil, gas and mining industries in the state, as well as monitoring activities of the Federal government as they affect those industries in Nevada. She continued by saying that they are quite busy supplying information to people who are exploring and active in the state, as well as monitoring what the Federal government is doing.

Mr. Price expressed concern over state agencies taking an advocacy position, on either side of the question, rather than administering the law as it is passed or repealed by the legislature. It was his feeling that the duty of the agency should be to administer the law, whatever it is, to the best of their abilities and not necessarily to be appearing before committees with recommendations. He commented that there are some states that do not allow agencies to appear before their committees unless called upon to give facts and figures.

Ms. Hall indicated she understood Mr. Price's concern, but felt that since she had personal knowledge and contacts with people in the industry who had expressed reluctance to work in Lyon County she should recount those experiences. She added again that she was not taking a position on the bill.

Chairman Stewart commented that he was glad Ms. Hall had appeared and alluded to the existence of mining activities in other states which did not have eminent domain provisions. Ms. Hall suspected that although there would still be a great deal of exploration in Nevada, it is difficult to measure how much does not go on because of a particular situation. She commented that Arizona has a lot of copper resources and at this point exploration has probably fallen off drastically there because of the price of copper. It is very difficult to quantify, and it becomes necessary to get an indication from people in industry as to what sorts of things they consider when going into an area or state.

Chairman Stewart pointed out testimony that indicated that mining companies have the right of eminent domain and do not exercise it to any great extent, to which Ms. Hall responded that the reason was probably because they try to exhaust every other alternative first and use it only as a last resort.

Bob Warren, Executive Secretary of the Nevada Mining Association, stated that following his previous testimony, he was questioned by members of the committee as to the validity of some of his statements and was asked to get some legal opinions. To the statement that AB 112 appears to be unconstitutional, Mr. Warren indicated that had been corrected by including everyone in the language of the amendment. Mr. Warren then asked for clarification of the intent of Amendment No. 352 at the bottom of page 1 which deletes Section 2. Chairman Stewart explained that the deletion of Section 2 would leave NRS 37.010 exactly as it presently exists, simply removing it from the bill and not repealing it.

Addressing his prior statement that AB 112 as written to allow the county commissioners, previously the historic district, to deny eminent domain at its discretion is unnecessary because there is ample authority now within the jurisdiction of the county commissioners, planning commissions, and the historic districts to neuter any attempts to use eminent domain; Mr. Warren referred to Chairman Stewart's earlier questions to Mr. Harris. He read from a letter addressed to the committee that the county commissions do indeed have authority to zone all of the land within a historic district for non-mining if they wish. Chairman Stewart asked what kind of zone they could use. Mr. Warren stated they could zone it for residential, commercial, historic, tourist and other things, but leave the word mining out, thereby requiring the mining companies to appear before them in order to request use for mining purposes. Chairman Stewart asked what zone now exists for Gold Hill. Mr. Warren indicated that is essentially what happened, although not quickly enough. The county commissioners required the mining company to go before them at public hearings and get a zoning variance since the area was zoned for agriculture. He added that the hearings were publicized in the newspapers and conducted by the county commissioners.

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Mr. Warren added that the permit would stipulate what activities could take place, but the commissioners did not anticipate everything. There was one piece of land which they did not stipulate a use for and the company did exercise eminent domain to use that land. He stated that the county commissioners could stipulate that the entire district shall not be used for any mining purpose except by permit.

To the discussion earlier about the razing under the 4th Ward School, Mr. Warren stated that the commission has the power to have declared that a historical area which cannot be disturbed for any reason. Referring to Mr. Brown's earlier comments, Mr. Warren stated that the research of his attorneys showed that the Comstock Historic District requires that before anyone can paint, expand, modify, alter, reduce or demolish a building, he must get a certificate of appropriateness from the Comstock Historic District Commission. Chairman Stewart thought there was a provision that stated it was not to interfere with any mining going on. Mr. Warren stated that was the intent, but they do have that power if they wish to use it, adding that it would then be futile for someone to raze underneath a structure when the county and Historic Commission has already declared it untouchable. They could even declare the entire district untouchable and require that the mining company only mine according to permit, which could even include vacant land.

Chairman Stewart asked if the mining companies now in Virginia City were mining under a permit. Mr. Warren stated that Houston Oil is mining under the variance permit in Gold Hill, which stipulates what hours they could operate, the size of the pit, and all the things they can do. Chairman Stewart commented that in Virginia City, where mining has gone on for 100 years or so, the county commissions come in now and require a special use permit. He suspected that those particular counties do not have that kind of procedure, unless recently adopted. Mr. Warren stated that Lyon County had this on their books before Houston ever came up which is why Houston made application for a permit to mine. Storey County did not have the ordinance, so they enacted one which is more comprehensive and can be as comprehensive as the commissioners wish. If Houston Oil wishes to expand its pit, it must get a new permit, as with anything beyond what they are presently permitted for.

To a question asked earlier about the reason for holding a hearing if the hearing has no power, Mr. Warren felt that holding public hearings on the record would prevent abusive use of eminent domain as in the case of Houston Oil as well as protect the historic districts.

Mr. Warren continued by saying that the Lyon County ordinance is a tough ordinance which tends to discourage mining, but the Mining Association supported it in an attempt to arrive at a balance of controls necessary to preserve the public welfare and historic buildings as well as permit mining.

To Mr. Price's earlier comments that mining companies already have too much power, Mr. Warren commented that if they abuse that power, any power is too much. However, if used under the constraints of the court system as pointed out by Mr. Harris, he felt it appropriate in areas where there is a legitimate need to exercise that power.

To earlier concern expressed about building a leach dam, Mr. Warren stated that the State Division of Water Resources carefully controls all tailings and dams for structure so that they will not pollute the water, as well as controls by the Air Quality Division for dust.

Mr. Warren stated he did not favor Amendment No. 352, but in the event it was used, he suggested eliminating the word "immediate" at Section 1, Page 1, subsection 2, which reads "the immediate community or area in which the real property is situated." He felt the word "immediate" could be expanded upon in interpreting the language.

Mr. Warren felt Mrs. Cafferata's amendment to be quite comprehensive through the inclusion of all companies which have the right of eminent domain, as well as the requirement for public hearings. It was his feeling that the weight of public opinion will prevail and mining companies will pursue a reasonable course once they realize the position and attitude of the community.

Mr. Price once again expressed concern over a company conducting such a hearing. Mr. Warren agreed and suggested the language be amended to permit the county to hold a public hearing, with the historic district holding as many hearings prior to that as it wishes.

Mr. Price suggested that reducing somewhat the tremendous power of the mining companies is not an attempt to discourage mining. Mr. Warren felt that reducing the right of the mining companies to mine could become more restrictive at some future point due to the number of people opposed to mining activities.

Mr. Sader pointed out that Mrs. Cafferata's amendment speaks to anywhere in the state, not just historic districts, and asked if Mr. Warren supported that concept. Mr. Warren suggested it be amended to the original concept of this bill to protect historic districts.

Referring to Amendment No. 352, Mr. Sader asked if Mr. Warren would prefer to have the court decide the issue of eminent domain or, as in the amendment, have the county commissioners decide that issue. Mr. Warren stated that most of the members of his association would prefer that it be decided in the calmer, more reasonable environment of a courtroom rather than in the heat of bitter animosity between two clashing forces. Mr. Sader pointed out that a county commission in most cases can probably act within 30 to 60 days on a request for eminent domain, whereas it can take a court 1 to 3 years to make that decision. It was his feeling that a mining company would prefer to get a determination quickly rather than to wait an extended period of time. Mr. Warren indicated he would have to get feelings on that from his members.

Mrs. Cafferata asked what the background was on the Houston Oil matter. Mr. Warren stated that when Houston Oil did exploration in that area, they purchased claims from the Suma Corporation, Howard Hughes, and other individuals. It was their first venture into the mining industry and they were spending a lot of money around the state and other states looking for minerals with nothing coming in. When they found something which appeared mineable, the staff was instructed to go into production. The Houston attorneys felt that under Nevada statute, a permit might not be necessary if the company wanted to go to court. The Houston people preferred to go to the county for a permit and went to the Planning Commission, where there were at least two hearings held, and after numerous hearings with the Planning Commission and the County Commission an agreement was arrived at where Houston was permitted to do certain things only. At some later point, Houston found it needed property for a dump and commenced negotiations with the property owners. The property owners complained that Houston did not recognize an appropriate appraisal for their property, and would not proceed as a result. At that point, Houston exercised the right of eminent domain and began dumping on the property, injuring its value. The property owners then brought action against Houston for being arbitrary and capricious and for failing to live up to their permit. Houston then settled out of court with the property owners.

Mr. Warren continued by saying that Houston later brought in a new team of personnel in an attempt to become a reasonable and honorable company. As a result, Houston offered a million dollars to a foundation which the Storey County Commission could use for any public purpose, which resulted in the hearing erroneously referred to earlier, held by the County Commission. Ultimately, the costs of Houston's operations have exceeded the economics of recovery because of various stipulations made upon the company and because of the company's own erroneous approach in some areas, and Houston is proposing to mine just the area for which they are already permitted. Mr. Warren added that Houston will be apply-

ing to the County Commissioners to mine in Lyon County and will have to comply with the regulations which are encompassed by the new county ordinance.

Jim Schryver, President of Comstock Tunnel and Drainage Company, stated that his company has 2,500 stockholders, many of whom live in Nevada on the Comstock. Mr. Schryver added that he is fourth generation of a family involved in mining on the Comstock and a resident of Gold Hill. He indicated that he attended all of the official hearings, many of the committee hearings, and many of the informal citizens meetings related to the mining activity on the Comstock which was instrumental in the drafting of AB 112. Mr. Schryver stated that his company is the owner of the mining claims and most of the surface property being used in the current mining operation in Gold Hill. He expressed concern over the historical aspects which motivated this legislation and commented that it was his feeling that renewed mining activity is more historical than a dead mining town.

Mr. Schryver stated he testified at the hearings originally establishing the Comstock Historic District (then Virginia City Historical District) and supported the establishment of the district. He felt AB 112 adequately protects the district and the results of the conflict relating to Houston's mining activities have largely been resolved. It was Mr. Schryver's opinion that the mining use of the property precedes any other use and, therefore, is entitled to at least equal or more rights than any other property uses.

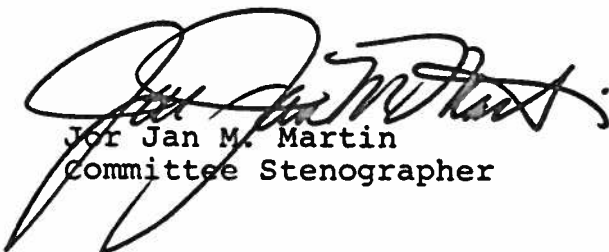
Mr. Schryver commented that he was involved in the Gold Hill case which Mr. Harris mentioned, negotiating for properties as a real estate agent. Two of the property owners sold willingly at prices considerably in excess of the appraisal. He urged the committee to recognize the good results of mining, such as the creation of about 140 new jobs, as well as the growth of the Gold Hill community. He recommended that the committee take no action on AB 112, with his second choice being the Cafferata amendment.

Diane Campbell, representing the Nevada Miners and Prospectors Association, stated her organization has approximately 400 members consisting of the small miners and mineral locators for the large companies. She stated that if large companies are discouraged from coming into an area, the small miners and prospectors are not going to go into that area either. She commented that there is no large mine running in the United States which was not found by a prospector and brought to the attention of the large company.

Mrs. Campbell stated that there is currently a shortage of strategic metals and the Federal government is appropriating approximately \$100,000,000 to stockpile these depleted metals and added it would be desirable for Nevada to get a piece of this action. Discouraging the larger mining companies from coming into Nevada by broadening the law would not assist in bringing those monies into the state.

Chairman Stewart stated the committee would continue the matter in the morning, March 31, and adjourned the meeting at 2:50 p.m.

Respectfully submitted,



Jor Jan M. Martin
Committee Stenographer

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION	Assembly	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Assembly</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. <u>112</u>	<u>Joint</u>
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		<u>Resolution No.</u>
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>	BDR <u>3-514</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by <u>Committee on Judiciary</u>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>		

Amendment N^o 352

Replaces Amendment No. 290.
Conflicts with Amendment No. 351.

Amend section 1, page 1, by deleting lines 3 through 6, and inserting:

"1. Before any person, other than a government or public utility, may exercise the right of eminent domain to take any real property within a historic district organized under chapter 384 of NRS, he must first obtain the approval of the board of county commissioners of the county in which that real property is situated. This consent must not be withheld if the person seeking to exercise the right of eminent domain shows that:

- (a) The property will be put to a public use;
- (b) The property is necessary for that public use; and
- (c) The intended public use will be of great public benefit to the immediate community or area in which the real property is situated and not significantly harmful to historic landmarks or features.

2. In any subsequent judicial proceeding to condemn that real property, the determinations of the board of county commissioners whether the property will be put to a public use and whether it is necessary for that use are binding upon the court, separately, unless the court specifically finds that the determinations were:

- (a) Arbitrary and capricious; or
- (b) Not supported by substantial evidence."

Amend the bill as a whole by deleting section 2.

To: E & E
LCB File
Journal
Engrossment
Bill ✓

Drafted by DGS:smc Date 3-26-81

Amend the title of the bill by deleting the second and third lines and inserting:

"to appropriate land in a historic district; and providing other matters properly relating thereto."

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION Assembly.....	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to.....	Assembly.....
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. 112	Resolution No.
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>	BDR.....	3-514
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>	Proposed by.....	Assemblyman Cafferata
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>		
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>		

Amendment N^o 351

Conflicts with Amendment No. 352.

Amend the bill as a whole by deleting section 1 and renumbering section 2 as section 1.

Amend sec. 2, page 2, line 11, by deleting "[Mining,] Except as" and inserting "Mining,".

Amend sec. 2, page 2, line 12, by deleting "limited by section 1 of this act, mining,".

Amend sec. 2, page 2, line 39, by inserting an open bracket before "Pipe".

Amend sec. 2, page 2, line 42, by inserting a closed bracket after "13.".

Amend sec. 2, page 2, line 45, by deleting "14." and inserting: "[14.] 13.".

Amend sec. 2, page 2, line 47, by deleting "15." and inserting: "[15.] 14.".

Amend sec. 2, page 2, line 49, by deleting "16." and inserting: "[16.] 15.".

Amend the bill as a whole by adding a new section, designated section 2, following section 2, to read as follows:

"Sec. 2. NRS 37.060 is hereby amended to read as follows:

37.060 1. Before any proceeding is brought under this chapter by any public body or private person, the body or person shall:

(a) Give notice by publishing a statement in a newspaper of general circulation published in the county in which the property

To: E & E
LCB File
Journal
Engrossment
Bill

Drafted by DGS:smc Date 3-26-81

is located or, if there is no newspaper published in the county, in a newspaper which has a general circulation in the county, at least once a week for 3 weeks, of the location of the property, the purpose for which it is to be taken, and the date, time and place of the hearing;

(b) Hold a hearing on the day and at the time and place announced in the notice, and give any interested person an opportunity to make comments relating to the proposed condemnation, except where the comments are unreasonably repetitive; and

(c) Include a transcript of the hearing with the complaint when it is filed with the district court.

2. All proceedings under this chapter [shall] must be brought in the district court for the county in which the property or some part thereof is situated. The complaint [in such cases] must be verified, and the party instituting [any such] the proceedings shall file with the recorder of each county in which any of the property is situated a notice of the pendency of the action.

2. From the time of [such] filing every purchaser or encumbrancer whose conveyance or encumbrance is not then recorded or docketed shall be deemed a subsequent purchaser or encumbrancer and [shall be] is bound by the proceedings to the same extent and in the same manner as if he were a party therein. He may intervene in the manner provided by NRS 37.080."

Amend the title of the bill to read as follows:

"AN ACT relating to the power of eminent domain; withdrawing provisions granting that power to manufacturers of beet sugar; requiring a public hearing before filing of a complaint in district court; and providing other matters properly relating thereto."

March 29, 1981

EXHIBIT C

Statement by Chris Brown

Vice-Chm. Comstock Historic District Commission

The Comstock Historic District Commission is charged by the State of Nevada to preserve and protect the remaining Historic Artifacts within the prescribed District boundaries. The District is also recognized on a National level by U.S. Department of Interior, as a National Register District.

AB 112 as presented would cause the persons or company involved in a mining operation wishing to exercise the Power of Eminent Domain to obtain consent of the Comstock Historic District Commission (CHDC). We feel this is very important to the administration of the District because; Currently the greatest threat to Preservation within the District is Open Pit Mining for Precious Metals. If this Commission has no jurisdiction over the Power of Mining Companies to remove any Structure or Site in the District we can not perform our Duties as set forth in NRS 384.

The Historic remains are a finite resource, valued by the entire Nation. We must consider what is in the best Public Interest. The State of Nevada also deems Mineral Exploration to be in the Public Interest.

If a Mining Co. wants to use a piece of land for their Operation, they may condemn the place, force the owners to sell, then use the place for anything they want, for example; haul roads, ore dumps or any related activity. This land could be the 4th Ward School, or even the Storey County Court House.

So, passage of AB 112 would require the Mining Company to justify the necessity obtain consent of the C.H.D.C. before appropriating the land. The Historic Commission is the one forum where the public has the benefit of professional expertise, access to relevent information of the field in question.

In view of these points, the proposed amendment is not in the best Public Interest, as it prevents the C.H.D.C. from having any input in the procedure. Rather, it puts the responsibility in the hands of a County Commission. Eliminating the C.H.D.C., that has nothing monetarily to gain, is impartial to the economic benefits to the County, removes an advocate of the Public Benefit from the procedure of condemnation.

Therefore I urge this committee to pass this Bill, AB 112 as referred.

HISTORIC DISTRICTS

384.005

GENERAL PROVISIONS

384.005 Power of counties to establish historic districts: Public hearings; adoption, contents of ordinances.

1. Any county may establish a historic district, the boundaries of which do not include the Comstock historic district, for the purpose of promoting the educational, cultural, economic and general welfare of the public through the preservation, maintenance and protection of structures, sites and areas of historic interest and scenic beauty.

2. Before establishing any historic district, the board of county commissioners shall hold a public hearing after giving notice of the time and the place of the hearing in a newspaper of general circulation in that county. The notice must be published once a week for 3 consecutive weeks and include the purpose of the hearing and the boundaries of the proposed district. At the hearing any person may appear in support of or in opposition to the establishment of the proposed district.

3. Within 15 days after the hearing, the board shall:

- (a) Establish the historic district and fix its boundaries; or
- (b) Determine not to establish the historic district.

4. If the historic district is established, the board may adopt any ordinances it determines are in the best interest of the historic district in accordance with the purposes expressed in subsection 1. An ordinance establishing a historic district must:

- (a) Contain criteria which substantially achieve the preservation and rehabilitation of buildings of historic significance to the district; and
- (b) Provide for a designated review board with the power to review proposed alterations to structures within the district.

5. This section is not intended to discourage the exploration, development or extraction of mineral resources.
(Added to NRS by 1979, 643)

COMSTOCK HISTORIC DISTRICT ACT.

384.010 Short title. NRS 384.010 to 384.210, inclusive, may be cited as the Comstock Historic District Act.
(Added to NRS by 1969, 1635; A 1977, 1212; 1979, 638)

384.020 Declaration of public policy. It is hereby declared to be the public policy of the State of Nevada to promote the educational, cultural, economic and general welfare and the safety of the public through the preservation and protection of structures, sites and areas of historic interest and scenic beauty, through the maintenance of such landmarks in the history of architecture, and the history of the district,

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state and nation, and through the development of appropriate settings for such structures, sites and district.

(Added to NRS by 1969, 1635)

384.030 Definitions. As used in NRS 384.010 to 384.210, inclusive:

1. "Commission" means the Comstock historic district commission.

2. "Exterior architectural features" means the architectural style, general design and general arrangement of the exterior of a structure, including the kind and texture of the building material, the type and style of all windows, doors, light fixtures and signs, color, and other appurtenant fixtures.

3. "Historic district" means an area within which structures and places of historical interest are under the protection of the commission.

4. "Structure" means any building for whatever purpose constructed or used, houstrailer as defined in NRS 484.069, mobile home as defined in NRS 484.0795, stone wall, fence, light fixture, step, paving, advertising sign, bill poster and any fixture appurtenant thereto, but does not include structures or signs of a temporary nature such as those erected for celebrations or parades.

(Added to NRS by 1969, 1635; A 1973, 672; 1977, 1212; 1979, 638)

384.040 Comstock historic district commission: Creation; number, appointment of members. The Comstock historic district commission, consisting of nine members appointed by the governor, is hereby created.

(Added to NRS by 1969, 1635; A 1977, 1213; 1979, 639)

384.050 Qualifications, compensation, travel expenses of members; officers of commission.

1. The governor shall appoint:

(a) One member who is a county commissioner of Storey County.

(b) One member who is a county commissioner of Lyon County.

(c) One member who is the administrator or an employee of the division of historic preservation and archeology of the state department of conservation and natural resources.

(d) Two members who are persons licensed to practice architecture in the State of Nevada.

(e) Four members who are persons interested in the protection and preservation of structures, sites and areas of historic interest and are residents of the district.

2. The commission shall elect one of its members as chairman and another as vice chairman, who shall serve for a term of 1 year or until their successors are duly elected and qualified.

3. Each member of the commission is entitled to receive a salary of \$40 for each day's attendance at a meeting of the commission and the per diem allowance and travel expenses provided by law.

(Added to NRS by 1969, 1636; A 1971, 285; 1973, 667; 1977, 1213; 1979, 639)

HISTORIC DISTRICTS

384.100

384.060 Meetings; quorum.

1. Meetings of the commission shall be held at such times and places as the chairman or a majority of the commissioners may designate, or as shall be established by the regulations adopted by the commission.

2. Five members of the commission shall constitute a quorum for all purposes and the affirmative vote of a majority of the members present shall be necessary for the adoption or promulgation of any regulation or order of the commission.
(Added to NRS by 1969, 1636)

384.070 Office: Establishment; records; library.

1. The commission may establish and maintain an office in Virginia City, Storey County, Nevada, in which there shall be at all times open to public inspection a complete record of applications for certificates of appropriateness and their disposition, minutes of the commission's meetings, and any regulations adopted by the commission.

2. The commission shall maintain a library in the office for the purpose of guiding applicants in their design or embellishment of the exterior of their buildings, new or remodeled. The library shall consist of, but not be limited to, documents, paintings, photographs, drawings and histories descriptive of the period which are deemed appropriate and maintained for reference to more comprehensive information in libraries other than the one maintained by the commission.
(Added to NRS by 1969, 1636; A 1971, 285)

384.080 Commission's functions and powers.

1. The commission is vested with all of the functions and powers relating to the administration of NRS 384.010 to 384.210, inclusive.

2. It may, to the extent permitted by money appropriated or otherwise received therefor, employ such technical and clerical personnel, including a building inspector, as may be necessary to the discharge of its duties, and fix their compensation.
(Added to NRS by 1969, 1636; A 1973, 672; 1979, 639)

384.090 Appointment of committees, subcommittees; regulations. The commission may appoint such committees and subcommittees and adopt such reasonable regulations as are necessary to carry out the provisions of NRS 384.010 to 384.210, inclusive.
(Added to NRS by 1969, 1636; A 1979, 639)

384.100 Establishment of historic district in described area: Procedure; alteration of boundaries; housetrailer and mobile homes prohibited, exception.

1. The commission may establish an historic district in such portions of Storey and Lyon counties as it may designate as provided in NRS 384.010 to 384.210, inclusive, embracing an area within which

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historic structures, sites and railroads relating to the Comstock lode and its history are or were located.

2. Before establishing any such district, the commission shall hold a public hearing after giving notice of the time and place of such hearing in a newspaper of general circulation in each county a portion of which is located within the proposed district.

3. Such notice shall be published once a week for 3 consecutive weeks and shall include the purpose of the hearing and the boundaries of the proposed district.

4. At such hearing any person may appear in support of or in opposition to the establishment of such district.

5. Within 15 days after the hearing the commission shall:

(a) Establish an historic district and fix its boundaries; or

(b) Determine not to establish an historic district.

6. If an historic district is established, notice thereof shall be given by one publication in a newspaper of general circulation in each county a portion of which is located within the district.

7. The commission may alter or change the boundaries of the district by following the same procedure as provided in this section for the establishment of a district.

8. After an historic district is established, no housetrailer or mobile home may be placed or established in any area within the district, unless the commission and the board of county commissioners in the appropriate county permit the establishment of a trailer overlay or the location of a mobile home park within the district, upon a finding that such action is needed and that it would not conflict with the historic aspect and character of the affected area.

(Added to NRS by 1969, 1636; A 1971, 285; 1973, 672; 1979, 640)

384.110 Certificates of appropriateness: Approval of exterior architectural features of structures by commission.

1. No structure may be erected, reconstructed, altered, restored, moved or demolished within the historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission. The application for a certificate of appropriateness shall be in such form and accompanied by such plans, specifications and other material as the commission may from time to time prescribe.

2. In its deliberations under the provisions of NRS 384.010 to 384.210, inclusive, the commission shall not consider interior arrangement or use, and shall take no action under NRS 384.010 to 384.210, inclusive, except for the purpose of preventing the erection, reconstruction, restoration, alteration, moving or razing of buildings in the district obviously incongruous with the historic aspects of the district.

3. Nothing in NRS 384.010 to 384.210, inclusive, prevents:

(a) The ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a change of design or material or the outward appearance thereof;

HISTORIC DISTRICTS

384.130

(b) The construction, reconstruction, alteration or demolition of any such feature which the building inspector or similar authority certifies is required by the public safety because of an unsafe or dangerous condition; or

(c) The construction, reconstruction, alteration or demolition of any such feature under a permit issued by a building inspector or similar authority prior to the effective date of the establishment of such district.

(Added to NRS by 1969, 1637; A 1973, 673; 1979, 640)

384.120 Certificates of appropriateness: Public hearings, notice.

1. The commission shall hold a public hearing upon each application for a certificate of appropriateness unless waived in writing by all persons entitled to notice thereof as provided in this section.

2. Within 30 days after the filing of an application for a certificate of appropriateness, Saturdays, Sundays and legal holidays excluded, the commission shall determine the estates and property deemed by it to be materially affected by such application and, unless a public hearing on such application is waived by all persons entitled to notice, shall forthwith cause notice of such application and of the hearing to be held thereon to be given by regular mail, postage prepaid, to the applicant, to the owners of all such estates or property as they appear on the most recent tax list, and to any person who has filed a written request for notice of hearings during the preceding calendar year. The notices shall be mailed at least 10 days prior to the date set for the hearing.

3. The commission may, if it determines the matter to be of sufficient public interest, give an additional notice of the time and place of the hearing by publication in the form of a legal advertisement in a newspaper having a substantial circulation in the district at least 7 days before such hearing.

(Added to NRS by 1969, 1637)

384.130 Determinations by commission. As soon as practicable after such public hearing, or the waiver thereof, but not more than 60 days, Saturdays, Sundays and legal holidays excluded, after the filing of the application for the certificate of appropriateness, or within such further time as the applicant may in writing allow, the commission shall determine:

1. That the proposed erection, construction, reconstruction, restoration, alteration, moving or razing of the exterior architectural feature involved will be appropriate to the preservation of the historic district for the purposes of NRS 384.010 to 384.210, inclusive;

2. That, even though the proposed project may be inappropriate, failure to issue a certificate would involve a substantial hardship to the applicant because of conditions especially affecting the structure involved, but not affecting the historic district generally, and that a

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certificate could be issued without substantial detriment to the public welfare or the purposes of NRS 384.010 to 384.210, inclusive; or

3. That the proposed project is inappropriate.
(Added to NRS by 1969, 1638; A 1979, 641)

384.140 Factors to be considered by commission in passing upon appropriateness.

1. In passing upon appropriateness, the commission shall consider, in addition to any other pertinent factors:

(a) Historic and architectural value and significance;

(b) Architectural style;

(c) Location on the lot;

(d) Position of the structure in relation to the street or public way and whether it is subject to public view from a public place;

(e) General design, arrangement, texture, material, color and size of the exterior architectural features involved and the relationship thereof to the exterior architectural features of other structures in the immediate neighborhood; and

(f) The relationship of the exterior architectural features to well recognized styles of early western architecture of the late 19th and early 20th centuries.

2. A certificate of appropriateness may be refused for any structure the erection, reconstruction, restoration, alteration, moving or razing of which, in the opinion of the commission, would be detrimental to the interest of the historic district or incongruous with the historic aspects of the surroundings and the historic environment of the district.

(Added to NRS by 1969, 1638)

384.150 Issuance, denial of certificate of appropriateness; variations; conditions.

1. If the commission determines that the proposed construction, reconstruction, restoration, alteration, moving or razing of the exterior architectural feature involved will be appropriate, or, although inappropriate, that failure to issue a certificate would result in hardship as provided in subsection 2 of NRS 384.130, or if the commission fails to make a determination within the time prescribed in NRS 384.130, the commission shall immediately issue to the applicant a certificate of appropriateness.

2. In exercising the power to vary or modify strict adherence to the provisions of NRS 384.010 to 384.210, inclusive, or to interpret the meaning of NRS 384.010 to 384.210, inclusive, so as to relieve hardship under the provisions of subsection 2 of NRS 384.130, the commission shall require any variance, modification or interpretation to be in harmony with the general purpose and intent of NRS 384.010 to 384.210, inclusive, so that the general historical character of the district shall be conserved and substantial justice done. In allowing variations,

the commission may impose such reasonable and additional conditions as will, in its judgment, better fulfill the purposes of NRS 384.010 to 384.210, inclusive.

3. If the commission determines that a certificate of appropriateness should not issue, it shall immediately set forth in its records the reasons for such determination, and may include recommendations respecting the proposed erection, construction, restoration, alteration, moving or razing, and shall immediately notify the applicant of such determination by transmitting to him an attested copy of the reasons and recommendations, if any, as set forth in the records of the commission.

(Added to NRS by 1969, 1639; A 1979, 641)

384.170 Gifts, devises, bequests: Receipt, expenditure by commission; sales and leases.

1. The commission may accept gifts, donations, devises or bequests of real or personal property for the purpose of enabling it to carry out a program of historic preservation and restoration within the district, and it may expend the same for such purposes. The commission may sell, or lease for periods not to exceed 20 years, real or personal property for use within the district which it may acquire.

2. The commission shall have no power of eminent domain.

(Added to NRS by 1969, 1639)

384.180 Commission recommendations to state, political subdivisions. The commission may recommend:

1. To the state and to political subdivisions within the district appropriate measures to effectuate, supplement, foster and promote the purposes of NRS 384.010 to 384.210, inclusive.

2. To any political subdivision within the district appropriate zoning and traffic regulations, including but not limited to designating mobile home and trailer sites, parking, modes of public transportation, ingress and egress to public streets and alleys, and closing of such streets or alleys or restriction of vehicular traffic thereon in order to effectuate the purposes of NRS 384.010 to 384.210, inclusive, such as restoration of historic modes of travel and safety of pedestrians.

(Added to NRS by 1969, 1639; A 1979, 642)

384.190 Building Inspector's powers; order to stop work.

1. The building inspector employed by the commission may investigate, inspect and examine any structure, place or area in the district, either in connection with an application for a certificate of appropriateness, or at any time to determine whether it is in violation of any provision of NRS 384.010 to 384.210, inclusive, or any regulation or order adopted or issued under authority of NRS 384.010 to 384.210, inclusive.

2. Whenever any work is being done contrary to the provisions of NRS 384.010 to 384.210, inclusive, the building inspector may order the work stopped by notice in writing served on any person engaged in

the doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the commission to proceed with the work.

(Added to NRS by 1969, 1640; A 1973, 673; 1979, 642)

384.200 Penalty for violations; jurisdiction of district court; injunctions.

1. Any person who violates any of the provisions of NRS 384.010 to 384.210, inclusive, or any regulation or order adopted or issued pursuant to the provisions of NRS 384.010 to 384.210, inclusive, shall be punished by a fine of not more than \$500 for each offense. Each day of the violation constitutes a separate offense.

2. The district court of the county in which any property subject to the provisions of NRS 384.010 to 384.210, inclusive, is located has jurisdiction to enforce the provisions of NRS 384.010 to 384.210, inclusive, and any regulations or orders adopted or issued pursuant to the provisions of NRS 384.010 to 384.210, inclusive, and may restrain by injunction violations thereof.

(Added to NRS by 1969, 1640; A 1979, 642)

384.210 Appeals to district court from determinations of commission.

1. Any person aggrieved by a determination of the commission may, within 30 days after the making of such determination, appeal to the district court of the county where the property in question is located.

2. The court may reverse the determination of the commission if it finds that the reasons given for such determination are unsupported by the evidence or contrary to law. The proceeding in the district court shall be limited to the record made before the commission.

(Added to NRS by 1969, 1640)

The next page is 14567

LIBRARIES; MUSEUMS;
HISTORIC PRESERVATION

De La Mare Mines, Ltd.
1604 Pyrenees St.
Carson City, Nv. 89701

March 10, 1981

Attention: Barbara Kitchen

Houston International Minerals Corporation
1325 South Colorado Blvd. Building B
Denver Colorado 80222

Gentlemen:

I leased the Dayton property with an option to buy in 1968. My payments were called minimum royalty payments. I asked my accountant if they were deductible from my income tax, and she said no.

I gave Mineral Engineering a sub-lease on the property, and claimed long term capital gains on my income tax. Later on, the Nevada State Tax Commission tried to levy a 5% Net Proceeds Of Mines Tax, on my payments from Mineral Engineering. It took a concerted effort by myself and other mine owners to convince the State Assembly and Senate that a mine and mill have to be operating and producing a commercial product, before it can be considered as royalty. Joe Diris bill stating same, passed both Houses unanimously.

Since Mineral Engineering leased the Dayton seven years ago, and Houston later; there hasn't been enough work done to even hold the property. This has cost me millions. I estimate several million tons of good open pit ore with little stripping in the Grizzly Hill ore body, near Silver City. One has been mined and developed on every level of the New York shaft in Gold Hill. Not a pound of ore has been milled from either.

I told Mr. Pinjuv a year ago that the Gold Hill Pit was a mistake and he agreed. Mr. Ross de Lipkau really stirred up the comstockers when he threatened eminent domain to acquire some of the properties. This has hurt me and my property more than anyone else.

Recently I went over the property with Mr. Wright and Houston's new mine manager, & tried to help them as much as possible. They both impressed me as knowing what they were doing; so hopefully Tereco will do better when they take over.

Sometime ago I was notified by I.R.S. that they would like to question me about my tax returns, for the years 1978, 1979, & 1980. I explained that Houston's payments were applied to the purchase price of the Dayton property & wouldn't become royalty payments until Houston produces Gold & Silver bullion from the Dayton property. The man agreed. Houston should have heard from I.R.S. by now.


I will expect my April payment on the Dayton, by the 21st of March. As you recall, I explained this to you, some months ago, by telephone.

Sincerely,
De La Mare

1305

CORPORATE ACCOUNT
1325 South Colorado Blvd. Building B
Denver, Colorado 80222

DATE 02-24-81

INVOICE/ CONTRACT	INVOICE DATE	DESCRIPTION	VOUCHER NUMBER	GROSS AMOUNT	DISCOUNT AMT.	NET AMOUNT
467 SYALT Feb 26, 1981	02-13-81	ASSGNMT MINING LEASE 3-21-78 BK	000478	4000.00	00	4000.00
						
TOTALS				4000.00	00	4000.00

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED ABOVE.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT REQUIRED.

Carson City, NV 89701

Gentlemen:

Enclosed find Houston International Minerals Corporation's check number 0033001 in the amount \$4,000.00 covering payment due Feb. 26, 1981 / March 21, 1981 APRIL PAYMENT due on this date Mar 21, under terms of that certain agreement covering property described as:

Various Mining Claims in Devil's Gate & Chinatown Districts,
Lyon County & Gold Hill Mining District, Storey County.

to be credited to the account of: R. W. De La Mare
1604 Pyrenees
Carson City, Nevada 89701

Please acknowledge receipt of this payment by signing and returning a copy of this letter to us in the envelope provided for your convenience.

Sincerely,

HOUSTON INTERNATIONAL MINERALS CORPORATION

Barbara Kitchen
Barbara Kitchen, Assistant Landman

Received this 3rd day of MARCH, 1981.

Hubert P. Chinn Asst. Operations Officer
Name Title

1006

STATE OF NEVADA)
) SS.
COUNTY OF ORMSBY)

On this 11th day of March, 1981 personally appeared
before me, the undersigned Notary Public in and for the County and
State aforesaid, R. W. De La Mare

known to me to be the person described in and who executed the fore-
going instrument, who acknowledged to me that HE executed the same
freely and voluntarily and for the uses and purposes therein mentioned.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year in this certificate first above written.

SEAL Avanell Linford
Notary Public in and for the County
Carson City State of Nevada

My Commission expires Jan 9, 1985



Mr. Chairman, members of the committee, my name is Joyce Hall. I am the Administrator of the Division of Mineral Resources.

I am not here to take a position either in support of or in opposition to AB 112, or the concept of eminent domain.

I would like, instead, to attempt to clear up some of the misconceptions which seem to be springing up in regard to this issue.

The most serious of these relates to the idea that mining companies should not be afforded the right of eminent domain, since it has not been granted to other industries, such as casinos and shopping centers.

There has been previous testimony to the effect that an ore body can only be mined where the forces of nature deposited it. I would like to re-emphasize that fact. Exploration of an ore body is a very long and expensive process. Quite often, a drilling program will produce surprising results and indicate the presence of ore in previously unsuspected areas. A company might then be in a position of having to acquire patented land well along in an exploration and development program. An unreasonable demand by a land-owner might well be the critical factor in the decision as to whether or not to mine, after large expenditures have already been made. The right of eminent domain does not, as you know, allow the seizure of the property without compensation, but rather ^{helps assure} an equitable settlement.

The second misconception is that the loss of this power will not render Nevada unattractive to explorationists. Mining companies commonly conduct extensive studies to determine the political and regulatory climates in an area before they commit sometimes multimillion dollar exploration budgets. Since the passage of Lyon County's mining ordinance, I've received calls from several companies who've expressed a reluctance to work in the County due to the uncertainty represented by that ordinance. The market for many minerals is an international one and domestic companies are forced to compete with foreign producers who often do business at lower costs. Adding regulatory and legal impediments often increases costs of domestic operators.