



RESOLUTION No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION DENYING THE APPEAL FILED BY LEROY BAKELMUN, ET AL. (APPELLANTS) REGARDING THE PLANNING COMMISSION'S SEPTEMBER 24, 2015 ADOPTION OF A MITIGATED NEGATIVE DECLARATION (EIS14-012) AND APPROVAL OF A USE PERMIT AND MANAGEMENT PLAN FOR THE NORTH STAR WATER TREATMENT PROJECT (U14-009, MGT14-015) ON PROPERTY LOCATED AT 12509 ALLISON RANCH ROAD, GRASS VALLEY (APNS 22-120-28, -35; 22-160-27; 29-290-26; 29-350-03, -04, AND -016), AND UPHOLDING THE PLANNING COMMISSION'S ACTIONS ON THE PROJECT, SUBJECT TO MODIFIED CONDITIONS OF APPROVAL

WHEREAS, following closure in the mid-1900s of several underground hardrock gold mines, including the Massachusetts Hill Mine, North Star Mine, New York Hill Mine, on the property currently known as the 740-acre "North Star Property," comprising APNs 07-540-63; 07-550-12; 22-120-28, -33, -35, -39; 22-130-27; 22-160-27; 22-300-29, -31; 29-290-28, -42; 29-350-02, -03, -04, -16; 36-380-42, groundwater levels have recovered and now drain through the historical tunnels toward and into Wolf Creek, and that in doing so collect naturally occurring heavy metals, including iron, manganese, and arsenic; and

WHEREAS, in 2000 the City of Grass Valley (City) exposed the portal of the Drew Tunnel on the City's waste water treatment plant property (APN 29-290-26) during expansion of the plant, and the City subsequently began treating the drainage at its plant; and

WHEREAS, after a characterization of the water draining from the Drew Tunnel, the Central Valley Regional Water Quality Control Board (Regional Water Board) found that the water contained levels of iron and manganese above the Secondary Maximum Contaminant Levels (MCLs) for drinking water, and required the City to route the water from Drew Tunnel to the treatment plant for clean-up; and

WHEREAS, as noted in Regional Water Board's Cease and Desist Order No. R5-2010-0050 to the City of Grass Valley, the mine drainage impacted City treatment plant operational functionality as it reduced the effectiveness of the nitrification and denitrification biological system due to the cold temperature and low pH of the influent; and

WHEREAS, in 2009, the City and Newmont USA Limited (Applicant) entered into a Settlement Agreement that required Applicant to remove the Drew Tunnel water from the City's treatment plant and treat the water at a separate facility; and

WHEREAS, in 2012, the Report of Waste Discharge for the Drew Tunnel filed by Applicant established Applicant's responsibility for the cleanup of the water at the Drew Tunnel on APN 29-290-26; and

WHEREAS, in 2014, Applicant constructed and began operating a temporary green sand filtration system on the City's property at APN 29-290-26, and effluent is discharged from this system to Wolf Creek under a Limited Threat Discharge Permit from the Regional Water Board; and

WHEREAS, the Settlement Agreement also stipulates that Applicant construct a permanent treatment system that is not located on the City's property for the Drew Tunnel drainage, and provides for Applicant to purchase a portion of the City's treatment plant property on APN 29-290-26 for the installation of a pump station and piping to collect and convey the Drew Tunnel drainage to the permanent treatment system; and

WHEREAS, while addressing a water quality complaint of yellowish material leaching to Wolf Creek in 2008, the Regional Water Board identified a mine adit, pipe culvert, and spring on APN 29-350-16, which were found to contain iron and manganese at concentrations that threatened to impact beneficial uses in Wolf Creek, and the adit and pipe culvert periodically contain arsenic at concentrations that exceed the Primary MCL; and

WHEREAS, on August 15, 2014 the Regional Water Board issued Cleanup and Abatement Order R5-2014-0706 to Applicant for the mine adit, pipe culvert, and spring on APN 29-350-16, which requires Applicant to treat the drainage at those mine features to meet effluent limitations for the Primary MCL for arsenic and Secondary MCLs for iron and manganese, and provides a timeline for abatement milestones, with a December 31, 2015, deadline for completion of the North Star Water Treatment Plant construction; and

WHEREAS, on December 31, 2014, Applicant submitted the application for a Use Permit, Management Plan, and an Initial Study (U14-009, MGT14-015, EIS14-012) proposing the construction and operation of a groundwater collection, conveyance, and treatment system at 12509 Allison Ranch Road, Grass Valley (APNs 22-120-28, -35; 22-160-27; 29-290-26; 29-350-03, -04, and -016); and

WHEREAS, the City of Grass Valley has deferred its lead agency role for the portion of the North Star Water Treatment Project on APN 29-290-26 to the County of Nevada; and

WHEREAS, noticing requirements were met and exceeded for the September 24, 2015, Planning Commission public hearing as parcel owners at least 500 feet from the northern end of the project site, 1000 feet around the treatment ponds, and ½-mile (2,640 feet) south of the project area down Allison Ranch Road were notified of the hearing; and

WHEREAS, on September 24, 2015, after a duly noticed public hearing, the Nevada County Planning Commission considered the application and public testimony before taking action to adopt a Mitigated Negative Declaration and approve the use permit and management plan, subject to revised conditions of approval; and

WHEREAS, on October 5, 2015, Leroy Bakelmun, Sally Ka, Maxwell Ka, Jason Petersen, Zora Biagini, Judith Connolly, Kathryn Connolly, Wils Riley, Ken Robinson, Sabrina Robinson, Susanne Runion, Daren Runion, Tom Hollenbeck, Susan Hollenbeck, Deon Jonutz, Lisa Jonutz, and Brandon Jonutz (Appellants), filed a timely appeal to all of the Planning Commission's actions taken on September 24, 2015; and

WHEREAS, on October 13, 2015, the Board of Supervisors agreed to accept the appeal as to the Planning Commission's actions on the Use Permit, Management Plan, and the adoption of the Mitigated Negative Declaration and scheduled the appeal for hearing on November 10, 2015; and

WHEREAS, on November 10, 2015, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal and denied the appeal.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct;
2. There is no substantial evidence in the record supporting a fair argument that the proposed project, as mitigated and conditioned, might have any significant adverse impact on the environment;
3. The Mitigated Negative Declaration (EIS14-012) reflects the independent judgment of the Planning Commission and the Board of Supervisors, and the mitigation measures contained therein and imposed as conditions of the project, and agreed to by the applicant, will reduce potentially significant impacts to less than significant levels;
4. The modifications to the Conditions of Approval shown in Exhibit "A" to this Resolution, including Condition A.1 noting the reduction in the staging area footprint, Condition A.7 to revise the landscape plan for consistency with the reduced staging area, and Condition A.25 to shorten the construction hours to Monday through Friday, which have been agreed to by the applicant, are consistent with the intent of the mitigation measures listed in the Initial Study, and will provide an equal or more effective mitigation to those impacts consistent with Section 15073.5.c of the CEQA Guidelines;
5. The project, including the Use Permit and Management Plan, has been reviewed pursuant to the California Environmental Quality Act and the County's environmental review guidelines (Nevada County Land Use and Development Code Chapter 13), and that there is no substantial evidence in the record supporting a fair argument that the proposed project, as mitigated and conditioned, might have any significant adverse impact on the environment;
6. The location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California;
7. The issuance of the Management Plan is consistent with the provisions of Section 4.3. Resource Standards of the Nevada County Land Use and Development Code, in that encroachment into watercourse setbacks is necessary in order to provide project infrastructure;
8. Minimization of impacts to waterways and associated habitat has been attained through the incorporation of mitigation measures identified by Ecosynthesis in the Management Plan dated December 19, 2014;
9. This project as conditioned and mitigated is consistent with the Nevada County General Plan goals, objectives and policies, and with the SDA and RES General Plan land use map designations applicable to this project site;
10. The proposed use is allowed within and is consistent with the purpose of the IDR and RA-1.5 zoning districts within which the project is located, which allow quasi-public uses with an approved use permit;
11. The proposed use and any facilities, as conditioned, will meet all applicable provisions of the Land Use and Development Code or a same practical effect of those provisions, including design and siting to meet the intent of the Site Development Standards, mitigating the impact of development on environmentally sensitive resources;

12. The site for the proposed use is adequate in size, shape and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon, without compromising site development standards;
13. Allison Ranch Road, which serves the project, is a County-maintained road adequate in size, width, and pavement type to carry the quantity and kinds of traffic generated by this project for facility maintenance;
14. With the revised mitigation measures and conditions of approval provided in Exhibit "A" to this Resolution, the proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area;
15. This use permit, proposing a water treatment facility, is consistent with the intent of the standards, and provisions of the Nevada County Zoning Ordinance;
16. Adequate provisions exist for emergency access to the site;
17. Based on the comments received and conditions applied from the Nevada County Department of Public Works, Nevada County Environmental Health's Vector Control Division, and Nevada County's Fire Marshal's Office, adequate public services exist in the immediate area to support the project including vector control and safe and adequate roads, and no access issues exist for the site;
18. All feasible mitigation measures have been imposed upon the project to offset the impacts this project may have on aesthetics, agricultural and forestry resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use planning, noise, transportation and circulation, and utilities and service systems; and
19. The revised conditions listed in Exhibit "A" to this Resolution, are the minimum necessary to protect the public's health, safety and general welfare.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby modifies three of the Conditions of Approval as follows: Condition A.1 is modified to note the reduced construction staging area, eliminating the southernmost 18,500 square feet of staging area; Condition A.7 is modified to indicate that the Landscape Plan would reflect the change to the staging area identified in Condition A.1; Condition A.25 is modified to eliminate Saturdays from the allowable construction times. All modifications are reflected in the Revised Conditions of Approval, set forth in Exhibit "A" to this Resolution.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the appeal of Leroy Bakelmun et al, and upholds the decision of the Planning Commission to adopt a Mitigated Negative Declaration (EIS 14-012) and approve the Use Permit (U14-009) and Management Plan (MGT14-015) for the North Star Water Treatment Project located at 12509 Allison Ranch Road (APNs 22-120-28, -35; 22-160-27; 29-290-26; 29-350-03, -04, AND -016) in unincorporated Nevada County based on the findings as set forth herein and adoption of the Revised Conditions of Approval set forth in Exhibit "A."

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure section 1094.6.