

# TELLER COUNTY PLANNING COMMISSION

Regular Meeting: Tuesday July 11, 2017

## Agenda Item II

**Consideration of** a request by the Cripple Creek & Victor Gold Mining Company (CC&V) to amend the Teller County Zone District Map to expand the Cripple Creek Mining Overlay District (CCMOD) by 86 acres of land zoned Agricultural (A-1) located in the Northeast Quarter of Section 24 and the Southeast Quarter of Section 13, Township 15 South, Range 70 West and across the Southwest Quarter, the Northwest Quarter, and the Northeast Quarter of Section 18, Township, Township 15 South, Range 69 West of the 6<sup>th</sup> Principal Meriden, Teller County, CO (Cripple Creek & Victor Gold Mining Company, 100 North 3<sup>rd</sup> Street, Victor Colorado 80860).

### STAFF REPORT File No. LUR-Z17-0003

**APPLICANT:** Cripple Creek & Victor Gold Mining Company (CC&V)

**REPRESENTATIVE:** Mr. Erik Munroe, (CC&V)

**REQUEST:** A request to amend the Teller County Official Zone District Map to expand the Cripple Creek Mining Overlay District (CCMOD) by 86 acres in the vicinity of Poverty Gulch to incorporate the Chicago Tunnel/Proper Adit Mine Permit [No. M-1988-026] Area into the Cresson Project. [See **Appendix A** for location map and CC&V additional Map Revision 4]

**STAFF:** Dan Williams, Teller County Planner

**LEGAL DESCRIPTION:** A parcel of land over portions of patented mineral surveys located in the Northeast Quarter of Section 24 and the Southeast Quarter of Section 13, Township 15 South, Range 70 West, and across the Southwest Quarter, the Northwest Quarter, and the Northeast Quarter of Section 18, Township 15 South, Range 69 West of the 6<sup>th</sup> Principal Meridian

**ZONE DISTRICT:** Agricultural (A-1)/CCMOD  
[see **Appendix A** for Zoning Map of the area]

**Publication Date:** June 21, 2017  
**Posted Notice:** June 11, 2017  
**Staff Report Date:** June 16, 2017

**STAFF RECOMMENDATION:** Approval with Conditions

### 1. **SUMMARY OF REQUEST**

This request proposes a Map Change to the Cripple Creek Mining Overlay District (“CCMOD”), which is a zone district map incorporated as an appendix to the Teller County Land Use Regulations at Appendix A. The Applicant, CC&V, is requesting this map change due to changed economic and

technological conditions with its mine property involving underground mining associated with the Chicago Tunnel and Proper Adit Mine. The Colorado Division of Reclamation and Mining Safety (DRMS) approved Amendment 11 on February 8, 2017. A portion of the approved Amendment 11 permit included the addition of underground mining as a method to be used by CC&V for extracting resources. The Chicago Tunnel/Proper Adit mine was identified as a suitable pre-existing and previously permitted area for initiating underground exploration and potential underground development.

Although located on land owned by CC&V and historically used for underground mining, the facility lies outside of the current Cripple Creek Mining Overlay District (CCMOD) and was approved by the DRMS as a Section 110 Limited Impact Mine Permit, No. M-1988-026, and by Teller County under a Conditional Use Permit in 1988. The CCMOD was designed, authorized and implemented 12 years later. If approved, this request would align the State of Colorado DRMS permit, No. M-1988-026 under the current DRMS Cresson Project permit, M-1980-244, placing all mining conducted by CC&V under one Section 112(d) reclamation permit. Placing all mining under one DRMS permit will serve DRMS and Teller County and the public good by placing the Chicago Tunnel and the Proper Adit under the more stringent and modern safety and reclamation rules found in the Section 112 (d) permit. This permit will enable Teller County to assess impacts through the technical revision, minor modification, or amendment process for the Chicago Tunnel area in addition to other mining operations already inside of the current CCMOD. Additionally, placing all operations involving the Chicago Tunnel and the Proper Adit mine under one DRMS permit will streamline the State approval process and will provide increased operational flexibility to CC&V.

The 1988 CUP and DRMS permit M-1988-026 allowed for the removal of ore from the Proper Mine through the Chicago Tunnel where it was then transported to the Carlton Mill near Victor for processing. Although the CUP and M-1988-026 permit is still in effect, mining methods, ore processing techniques and technologies, the location of processing facilities, changes in mine ownership and the creation of the CCMOD as part of Teller County Land Use Regulations 12 years after these permits were issued, make their current use cumbersome, inefficient and inappropriate. Expanding the CCMOD will bring the Chicago Tunnel/Proper Adit under one state permit with complete oversight for all mining associated with CC&V [ DRMS Mine Development Permit No. M-1980-244]. This 112(d) DRMS permit will allow for more stringent oversight by both the State of Colorado DRMS and Teller County while providing increased operational flexibility for CC&V.

This proposed Map change leaves intact and does not affect in any way, the Victor-Goldfield Buffer Area or the Cripple Creek Historic/Recreation Area. It fully maintains the historic buffer areas currently in place between local municipalities and the Applicant and does not affect any existing historic structures. This buffer area and its guidelines are contained in the *“Contractual Agreement for Victor-Goldfield Buffer Area and Cripple Creek Historic/Recreation Area related to the Cripple Creek Mining District”* which was recorded on June 27, 2000 at Reception No. 506476, the excerpt of which is contained in Appendix D of this Staff Report.

Pursuant to our Land Use Regulations, “Teller County recognizes that State and Federal agencies have programs in place to permit, inspect, and enforce requirements at mining operations to assure protection of the environmental resources associated with such mining operations. It is the intent of Teller County to assure that the local land use planning and zoning requirements are addressed

without unnecessary duplication of or in contradiction with, the pertinent State and Federal requirements.”

CC&V applied to amend its existing State Permit [Permit No. M-1980-244] on December 16, 2015. Amendment 11 was approved by the Colorado Division of Reclamation and Mining Safety (DRMS) on February 8, 2017. A portion of the approved permit included the addition of underground mining as a method to be used by CC&V for extracting resources. Teller County staff agencies fully participated in the DRMS referral process which included the stipulation that any expansion of the CCMOD to include the Chicago Tunnel and Proper Adit mine, would require a Map Amendment pursuant to our Land Use Regulations, with subsequent application of Amendment 11 itself, for consideration by the Board of County Commissioners.

This Map Amendment and change to the Teller County Official Zone Map to expand the CCMOD, is a required first step by Teller County for CC&V to operate under its issued DRMS State permit for underground mining operations related to the Chicago Tunnel and the Proper Adit mine. **A subsequent application to Teller County will address Amendment 11 specific uses and details and will not be covered in this report. This report will focus solely on the CCMOD Boundary Expansion consideration.**

**Background.** Pursuant to Appendix A, Section 1, Teller County Land Use Regulations (LUR) General Provisions, - Purpose and Intent, *“The Cripple Creek Mining Overlay District (CCMOD) recognizes the historical precious metal mining area of the Cripple Creek Mining District (District), established in 1891. These regulations have been developed exclusively to address precious metal mining within the CCMOD based on the established boundaries of, and the unique conditions found in, the historic precious Mining District, the abundance of historic precious metals mining in the District, and the recent and ongoing permitting and precious metals mining in the district”*.

The CCMOD Regulations were approved and adopted by the Board of County Commissioners of Teller County on June 28, 2007 to take force and effect from and after that date. They superseded and replaced in their entirety those listed in “Appendix CC-10 Cripple Creek Mining and Overlay District” regulations of the Teller County Land Use Regulations originally adopted by the Board of County Commissioners on May 25, 2000 [Resolution No. 5/25/00 (44) recorded at Reception No. 505622].

This expansion request, to incorporate the Chicago Tunnel and Proper Adit Mine, is the first expansion of the CCMOD since its inception. While the request is to expand the boundaries of the CCMOD, it is not an expansion of historic use as the Chicago Tunnel and the Proper Adit was previously approved under a 1988 Teller County Conditional Use permit and by the State DRMS under M-1980-026.

As part of this request and pursuant to Section 2.11.C.2 of the Teller County Land Use Regulation (TCLUR) process for a Map change, a boundary survey of the affected area [expansion area] was conducted and is reflected in the Map Detail provided with the application and in included maps. As part of the DRMS and Teller County process, the Applicant confirmed property ownership, access, easements and other arrangements involving adjacent and adjoining properties to the Amendment 11 Boundary Area. Both the DRMS State Process and the Teller County process

required timely notification of all adjacent and adjoining property owners. That said, pursuant to Section 1.E.3 *Rules of Construction for these CCMOD Regulations – Private Agreements*, “Teller County shall not be responsible for monitoring or enforcing private agreements, including easements, covenants, deed restrictions, or other agreements between parties. The County shall apply the applicable regulation, statute or ordinance, regardless of any more restrictive or more permissive private agreement.”

In addition to Federal, State, and County agencies, the incorporated cities of Cripple Creek and Victor were provided all materials included in the requested and their comments are included in Appendix B.

**Site Description.** The current CCMOD acreage is **5,988 acres**. The requested expansion to the CCMOD proposes an increase of acreage to **6,074**, a net increase of **86** acres and represents a **1.4%** increase in the size of the CCMOD. The additional acreage associated with Amendment 11 and this initial request to amend the CCMOD boundary and the Teller County Official Zone District Map, is associated with the Chicago Tunnel and the Proper Adit Mine, an underground mine that was approved by DRMS [M-1980-026] and Teller County in 1988 through the use of a Conditional Use Permit (CUP). While still in effect, the CUP and DRMS permit area lie outside of the CCMOD Boundary, which was developed 12 years after the two permits were approved. Although the Chicago Tunnel and Proper Adit site only occupies 5.16 acres, associated materials, equipment, and existing roads and access, all on property owned by CC&V, necessitate the need for 86 acres to fully incorporate potential Chicago Tunnel –related activities within the CCMOD.

Expanding the CCMOD to encompass the Chicago Tunnel and the Proper Adit Mine will bring any and all future proposed or potential mining activity at that facility into compliance with all current Teller County CCMOD, Appendix A, Land Use Regulations and DRMS 112(d) reclamation regulations. The 1988 existing CUP will be extinguished as part of the subsequent Amendment 11 request approval once this Map Change Request is complete.

Additionally, placing the Chicago Tunnel and Proper Adit Mine inside of the CCMOD will provide operational flexibility for CC&V while enabling State and County oversight through the use of Technical Revisions, Minor Modifications and Amendment requests under the 112(D) permit.

**Existing Structures and Improvements.** **Expanding the CCMOD to incorporate** the Chicago Tunnel and Proper Adit does not include any proposal for new structures or development as part of the Map Amendment request.

**Zoning.** The site is currently zoned A-1 and abuts other agricultural (A-1) zoned properties, which exist in the form of mining claims in all directions around the CCMOD and specifically in the area around the Chicago Tunnel. Chicago Tunnel site is contiguous with existing CC&V mining operations.

The CCMOD represents a special mining zoning district within Teller County. The area immediately to the east of the site and outside of the CCMOD and State DRMS Permit 11 Boundary is the City of Cripple Creek. No zoning change from A-1 to another zone is contemplated in this request, just an expansion of the Boundary line to include the Chicago Tunnel and the Proper Adit. [See **Appendix B** for site and surrounding zoning]

**LUR Maps.** The base LUR map is the Teller County Official Zone District Map and amendments to this map can occur from time to time. A request to amend the LUR map requires consideration and recommendation by the Planning Commission and subsequent approval by the Board of County Commissioners.

**Infrastructure.** This Map Amendment request addresses the movement of the CCMOD Boundary only. Moving the boundary will not affect currently existing infrastructure.

**Access.** Access to the CCMOD, as a result of this map change, is unaffected and is not being modified by this request.

## 2. SUBMITTAL REQUIREMENTS

SUBMITTAL REQUIREMENT	STAFF COMMENT
<i>Section 3.2</i>	
Application Form	Submitted
Title Commitment, Title Guarantee, Attorney's Title Opinion, or O&E	Submitted
Adjacent Property Owners (APO) List	Submitted
APO labels	Submitted
Written statement or narrative describing request, reasons for request, and how the standards for a <b>Land Use Regulation change</b> are met	Submitted
<i>Section 2.11.C.1.a - b Text Change</i>	
<b>a. <u>Use Change.</u></b> Where the change proposed is a change in use or addition of a new use in a particular zone district, Applicant shall submit a written analysis of the considerations set forth in <i>Section 2.1.D Determination of Similar Use</i> .	Not Applicable
<b>b. <u>Specific Language.</u></b> Where the change proposed amends the text of these Regulations, the precise wording of the proposed new text shall be provided.	Not Applicable
<i>Section 2.11.C.2 Map Change (LUR Map Change or Rezoning)</i>	
<b>2. <u>Map Change.</u></b> If the development permit application requests an amendment to the Official Zone District Map ("rezoning") or a regulatory map incorporated into an appendix of these Regulations, it shall include a boundary survey of the subject property, prepared by a State of Colorado Licensed Professional Land Surveyor. The survey shall accurately describe the dimensions of the subject property, including its size in square feet or acres, and shall be accompanied by a written statement or map describing the present zone district and existing uses of the subject property and all adjoining and adjacent properties, together with a site plan prepared in accordance with <i>Section 7.4 Site Plan for Applications</i>	Submitted (version 4 Map)

SUBMITTAL REQUIREMENT	STAFF COMMENT
<i>Other than Building Permit</i> showing the property's proposed zone district, land use, and density. The timing for the future development of the property shall be stated.	



### 3. REVIEW AGENCY RESPONSES

REVIEW AGENCY	COMMENTS
Teller County Attorney	Comments contained throughout Staff Report.
City of Cripple Creek	See emails dated May 2 and May 17, 2017. First email had concerns about 27- acre portion in Cripple Creek View shed and asked CC&V to demonstrate need. May 17, 2017 letter as a result of May 11, 2017 meeting withdraws formal or implied objection. Ray G. DuBois, City Administrator, City of Cripple Creek
City of Victor	See email dated May 1, 2017. Minimal impact to Victor. “There is potential that future intrusions may not be acceptable”. Debra Downs, City Administrator, City of Victor.
Colorado Parks and Wildlife	See letter dated April 24, 2016. Recommended 250-meter buffer around Townsend Big-eared bat roost sites and 8-foot tall woven wire fence to protect wildlife. Cody Wigner, Acting Area Wildlife Manager, CPW.
Colorado Department of Transportation	See letter dated May 1, 2017. The Department has no issue with the change in mining boundaries. However, with Amendment 11 submittal, CDOT requests traffic analysis of the impacted state highway corridors SH 24 and SH 67. Valerie Sword, Permits Manager.
Colorado Division of Water	See letter dated May 1, 2017. It does not appear the Applicant is proposing any change or expansion in use of surface or ground water at this time. This office has no objections. Caleb Foy, P.E., Water Resource Engineer.
Bureau of Land Management (BLM)	See email dated May 2, 2017. No concerns or issues at this time. Keith E. Berger, Field Manager, Bureau of Land Management, Canon City
US Forest Service (USDA)	See email dated May 1, 2017. The USFS does not have property near the proposed expansion. Joshua Voorhis, District Ranger, South Park Ranger District, Pike/San Isabel National Forest
Colorado Division of Reclamation Mining and Safety	See letter dated May 1, 2017. The Division is formally providing notice to the Teller County that CC&V has submitted all necessary documentation pursuant to and satisfactory to the Division for Amendment 11. Timothy A. Cazier, P.E., Environmental Protection Specialist, DRMS

### 4. DISCUSSION OF MAJOR CONCERNS AND ISSUES

Staff has no major concerns with this request. Pursuant to guidance contained in our Teller County Land Use Regulations, “Teller County recognizes that State and Federal agencies have programs in place to permit, inspect, and enforce requirements at mining operations to assure protection of the environmental resources associated with such mining operations. It is the intent of Teller County to assure that the local land use planning and zoning requirements are addressed without unnecessary duplication of or in contradiction with, the pertinent State and Federal requirements”. Federal and

State agencies were formal agency referrals to include the Division of Reclamation and Mining Safety (DRMS) in the Teller County Process to amend our map, and we participated in the DRMS process for their oversight of proposed Amendment 11.

DRMS has primacy for mining, reclamation and safety within the State of Colorado and their Amendment 11 Permit Boundary surrounding the CC&V mine contains within it the CCMOD Boundary. The exact location, movement or contraction of the CCMOD boundary itself and the standards which are applied for rationale for its movement, to include expansion or contraction, are at the discretion of Teller County and the Board of County Commissioners. Additionally, the adjacent cities of Victor and Cripple Creek were consulted; their comments considered and are available for closer examination in **Appendix C**.

It is important to note that the 86 acre proposed expansion of the CCMOD is on land which consists of mining claims that have been historically owned by CC&V and historically used for mining and lie inside of the DRMS permit boundary. There is an historical recreation buffer and City limits boundary that are unaffected by this proposed expansion. The City of Cripple Creek did raise concern on an approximately 27-acre portion which is located on a visible hillside just above the southeast limits of the city. Subsequent meetings between the City of Cripple Creek and the CC&V mine resulted in assurances that CC&V has no plans to mine in the area of concern and any plans in the future would involve consultation with the City. As a result of the May 11, 2017 meeting between the City of Cripple Creek and CC&V, the City withdrew its formal or implied objections to the CCMOD Map Change. Victor, through its City Administrator, indicated minimal impact to the City with the proposed change [which is near Cripple Creek]. Victor does note that as the mine moves closer to the Victor Community that the Historic Buffer Area is referenced and that future intrusions may not be acceptable to their citizens.

This proposed Map Amendment expanding the CCMOD does not impact in any way the Historic Recreation Buffer or the Agreement, does not impact historic structures or intrude into the City limits of either Cripple Creek or Victor and is proposed for land comprised of mining claims, owned by CC&V which have been historically used for the mining of precious metals [gold].

No new uses are being proposed as underground mining of the Chicago Tunnel and Proper Adit mine complex were approved in 1988 through a Teller County Conditional Use Permit. Placing that facility inside the CCMOD will provide increased flexibility to CC&V and allow appropriate oversight to Teller County through the Technical Revision, Minor Modification, or Amendment process which depend largely on impacts to the County

**Public Comment.** Notices of this Planning Commission meeting were sent to all adjacent property owners. As of the writing of this report, no written comment was received.

## **5. STAFF FINDINGS**

The purpose of *Section 2.11* is to provide a means for changing the boundaries of the Official Zone District Map (“rezoning”), and for changing the text of these Land Use Regulations. It is not intended to relieve particular hardships, or to confer special privileges or rights on any person,



individual, firm, corporation, partnership, or other entity, but only to make necessary adjustments in light of (1) changed conditions, and (2) the purposes, goals, objectives and policies of all applicable legislatively adopted Teller County master plan(s) or map(s). (*Section 2.11.A*)

The wisdom of amending the text of these Land Use Regulations or the Official Zone District Map or any other map incorporated in these Regulations is a matter committed to the legislative discretion of the Board of County Commissioners and is not controlled by any one factor. In determining whether to adopt, adopt with modifications, or disapprove the proposed amendment, the Planning Commission and Board of County Commissioners shall consider the following: (*Section 2.11.E*)

CRITERIA	STAFF FINDINGS
<i>Section 2.11.E.1 Text Amendment or Rezoning</i>	
<p>a. <b><u>Consistent with Master Plan.</u></b> Whether the proposed amendment is consistent with the purposes, goals, objectives and policies of all applicable legislatively adopted Teller County master plan(s) or map(s).</p>	<p><b>This standard is met.</b> The proposed map amendment is consistent with the purposes, goals, objectives and policies of the Teller County Growth Management Plan and more relevantly, the purpose of the CCMOD Boundary. It is also consistent with the Southeast Teller County Regional Plan, maintains the historic buffer areas and proposes use of an existing and approved tunnel.</p>
<p>b. <b><u>Changed Conditions.</u></b> Whether the proposed amendment is necessitated by a change in economic, population, technological or other conditions requiring amendment to these Regulations or modification of zone district standards, and whether it is in the interest of the public health, safety, and welfare to amend the Land Use Regulations and/or encourage a new use or density in the area.</p> <p>(1) <b><u>Planned Unit Development.</u></b> Changed conditions are not a prerequisite for adoption of a rezoning to PUD.</p>	<p><b>This standard is met.</b> The proposed map amendment is necessitated by a change in economic and technological conditions. New ownership of CC&amp;V, new technologies for underground mining, and the desire to streamline all mining activities using current Teller County Land Use Regulations under the CCMOD Appendix to the LUR necessitate this change. There is no new use proposed, there is an existing 1988 CUP which will be extinguished once the area affected by that CUP is brought into the CCMOD.</p>
<p>c. <b><u>Effect on Natural Environment.</u></b> Whether the proposed amendment would result in adverse impacts to the natural environment, including water, air, noise, storm water management, wildlife habitat, vegetation, and wetlands, that cannot be substantially mitigated.</p>	<p><b>This standard is met.</b> The proposed map amendment does not result in adverse impacts to the natural environment. Currently the Chicago Tunnel has been opened to exploration only and has remained within the DRMS guidelines. Any future underground development proposed beyond the scope and scale of what is already permitted, would have to be approved by DRMS, to include mitigation measures if</p>

CRITERIA	STAFF FINDINGS
	necessary and Teller County would be a referral agency for any Technical Revision.
<p><b>d. <u>Community Need.</u></b> Whether the proposed amendment addresses a demonstrated community need.</p>	<p><b>This standard is met.</b> The proposed map amendment recognizes and does not violate the Historic Recreational Buffer areas which serve a community need for historical preservation. Placing the Chicago Tunnel under a DRMS 112 (d) and inside of the CCMOD will increase appropriate County and State oversight. Additionally, fencing is being constructed to protect wildlife and to prevent accidental trespass into hazardous areas providing increased safety to Teller County residents and its wildlife.</p>
<b><i>Section 2.11.E.2 Rezoning/Map Amendment additional criteria</i></b>	
<p><b>a. <u>Compatible with Surrounding Uses.</u></b> Whether the proposed rezoning is compatible with existing and other uses allowed in the zone districts surrounding the subject land, and is the appropriate zone district for the land, considering its consistency with the purpose and standards of the zone district proposed;</p>	<p><b>This standard is met.</b> The proposed map amendment is compatible with existing and other uses allowed in the zone districts surrounding the subject land, and is appropriate for the site itself. The Amendment allows expansion on property already owned by CC&amp;V. Further, the parcels which comprise the expansion are patented mining claims which have historically been used for mining. Bringing them into the modern CCMOD will allow appropriate oversight by Teller County and the State of Colorado DRMS and increase CC&amp;V flexibility for operations inside of the CCMOD. Zoning for mining claims will remain A-1 within the CCMOD boundary.</p>
<p><b>b. <u>Development Pattern.</u></b> Whether the proposed rezoning would result in a logical, orderly, economical, and efficient development pattern; and</p>	<p><b>This standard is met.</b> The proposed map amendment bringing the Chicago Tunnel and Proper Adit Mine into the CCMOD will result in a logical, orderly, economical, and efficient development pattern contiguous with surrounding development</p>
<p><b>c. <u>Infrastructure.</u></b> Whether the resulting development can logically be provided with the necessary infrastructure, public improvements, and services.</p>	<p><b>This standard is met.</b> The resulting development can logically be provided with the necessary infrastructure, public improvements, and services. Preliminary infrastructure needs will be identified in the subsequent Amendment 11 development application.</p>

## 6. **RECOMMENDED MOTION**

The Teller County Planning Commission recommends to the Board of County Commissioners that it APPROVE the request of the Cripple Creek & Victor Gold Mining Company (CC&V) to amend the Teller County Zone District Map to expand the Cripple Creek Mining Overlay District (CCMOD) by 86 acres of land zoned Agricultural (A-1) located in the Northeast Quarter of Section 24 and the Southeast Quarter of Section 13, Township 15 South, Range 70 West and across the Southwest Quarter, the Northwest Quarter, and the Northeast Quarter of Section 18, Township, Township 15 South, Range 69 West of the 6<sup>th</sup> Principal Meriden, Teller County, CO, incorporating staff's findings as contained in the Staff Report dated June 16, 2017, and further finding that the application complies with such pertinent, individual conditions of use specified in the granting of a Map Amendment, is compatible with the general provisions of the Teller County Land Use Regulations, and that satisfactory provisions and arrangements have been made concerning the criteria for approval, and with adoption of the following **CONDITIONS OF APPROVAL**:

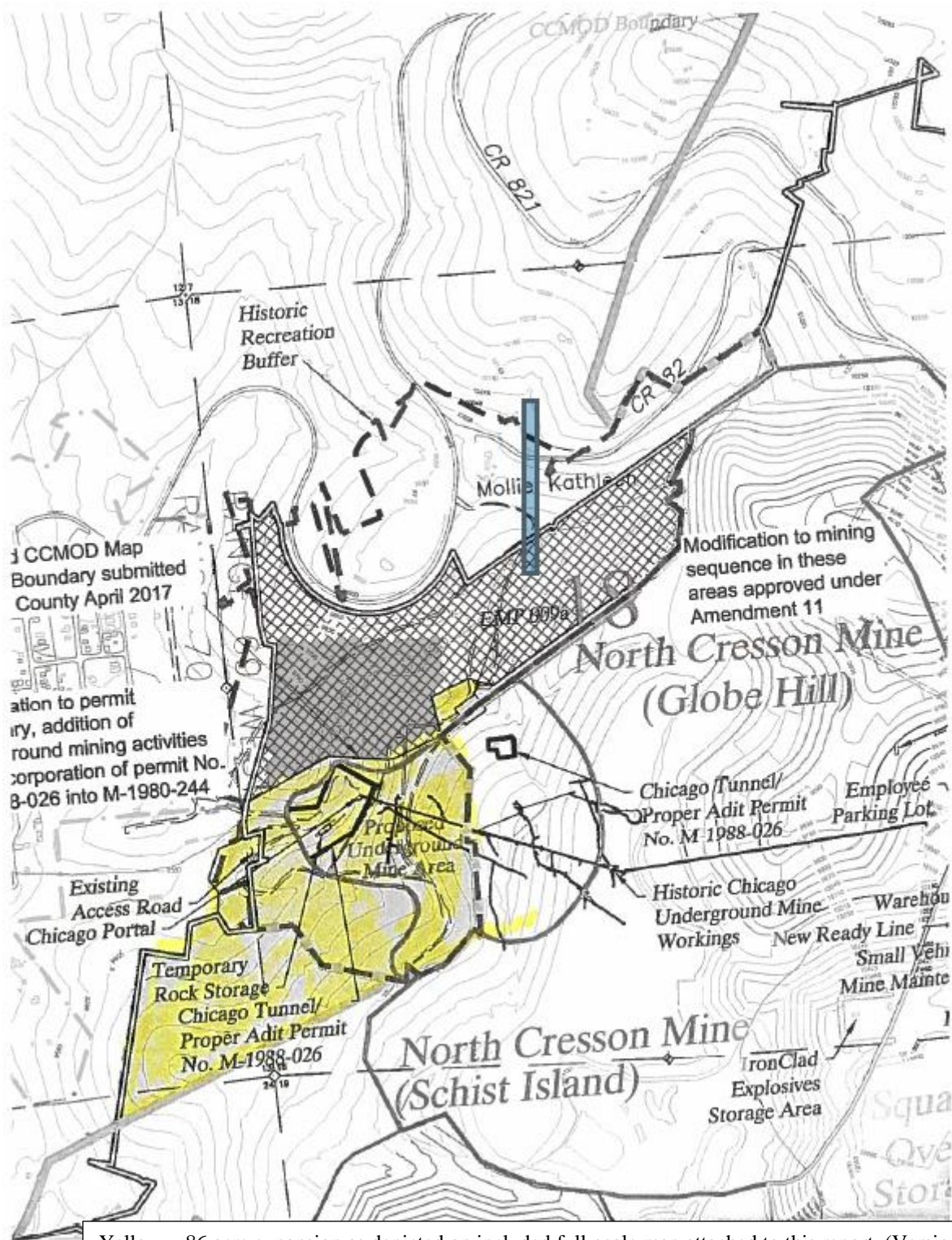
- A. Any subsequent rezoning application for this land shall be based on the uses and area contained within the Cripple Creek Mining Overlay District (CCMOD), Appendix A to the Teller County Land Use Regulations effective January 1, 2008, specifically Section 1. A, General Provisions, Purpose and Intent.
- B. Approval of this LUR Map Amendment does not imply, indicate nor suggest approval or likelihood or availability of approval of, nor does it in any way approve or grant, any subsequent necessary zoning, platting or other development applications or requests.
- C. Unless otherwise modified by these conditions, all material representations of the Applicant in its submittal material and in public hearings shall be considered binding.

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- **STAFF REPORT**
  - **APPLICANT PRESENTATION**
  - **PUBLIC COMMENT**
  - **APPLICANT RESPONSE**
  - **PLANNING COMMISSION DELIBERATION & MOTION**

## **APPENDIX A: MAPS**





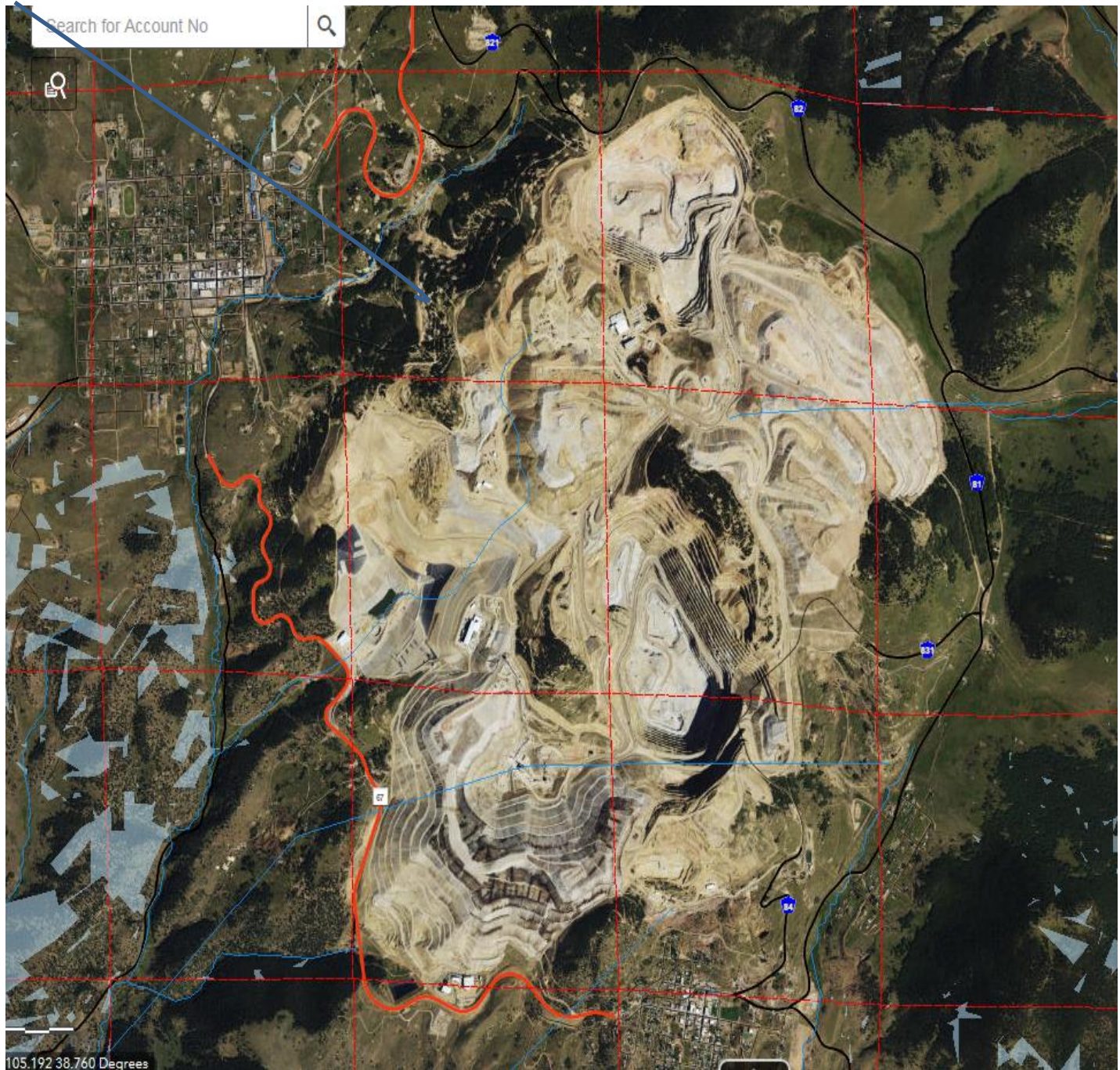


Yellow = 86 acre expansion as depicted on included full-scale map attached to this report, (Version 4 at Appendix G). Hatched area is 67-acre reduction as part of Amendment 11 processed through the State of Colorado DRMS which contracts the Amendment 11 Permit Area simultaneously with the 86-acre expansion of the CCMOD. Expansion will bring the 1988 CUP approved Chicago Tunnel/Proper Adit Permit No. 1988-026 into the DRMS Mine Development Permit No. M-1980-244 increasing both operational flexibility and Teller County oversight through current regulations and processes.



Vic of M-1988-026 CUP Chicago Tunnel/Proper Adit Mine proposed to be integrated into M-1980-244 and placed inside the expanded CCMOD. The M-1980-244 is a DRMS 112(d) permit, which is more stringent than the 110-limited impact currently in place

## Aerial Photo 1

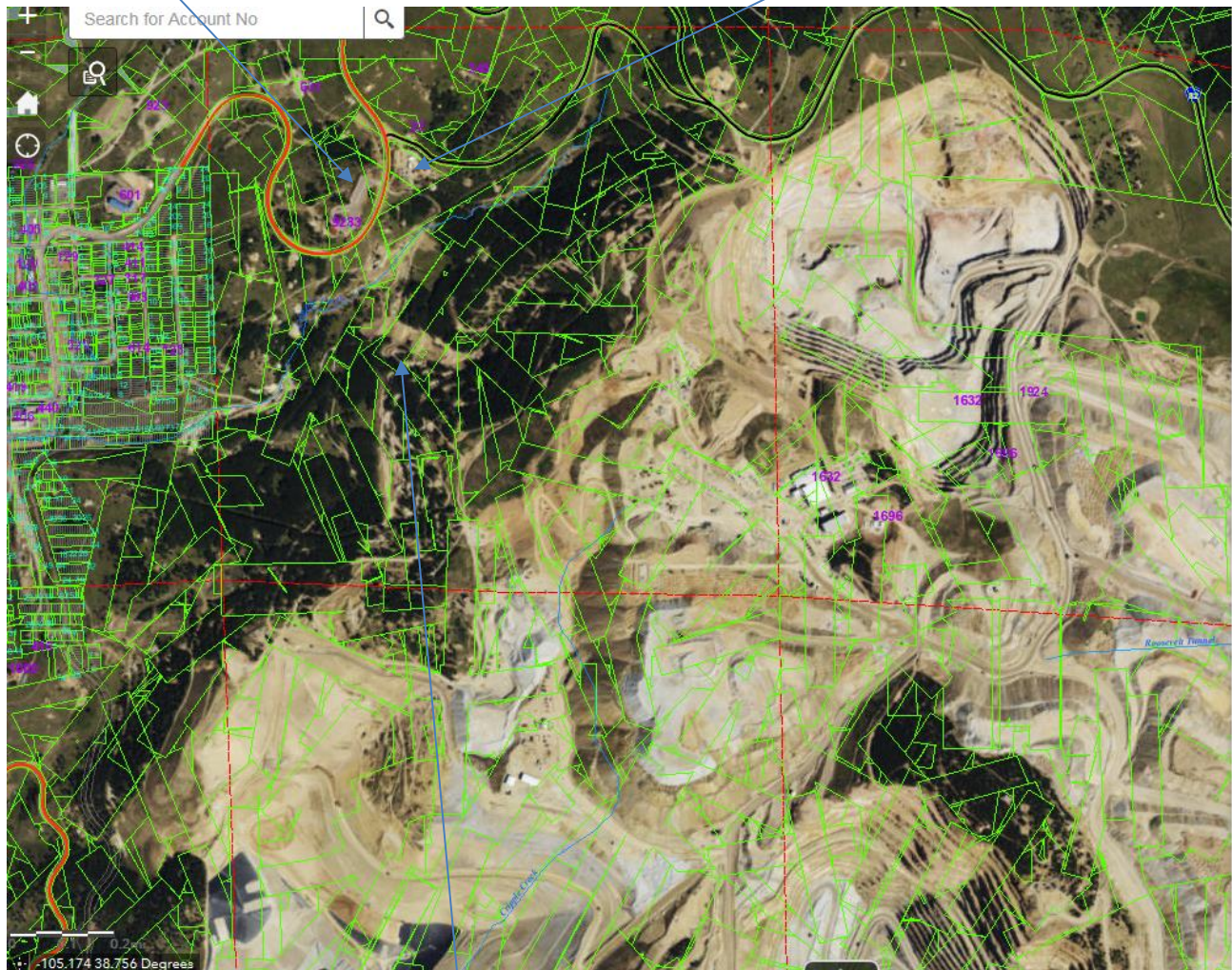




## Aerial Photo 2

Mollie Kathleen

Heritage Center



Chicago Tunnel and Proper Adit Mine

## **APPENDIX B: REFERRAL AGENCIES**

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**Williams, Dan**

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**From:** Ray DuBois <rdubois@cripple-creek.co.us>  
**Sent:** Tuesday, May 02, 2017 1:51 PM  
**To:** Williams, Dan  
**Cc:** Bruce Brown  
**Subject:** Cripple Creek & Victor Gold Mining Company - CCMOD Map Change Application  
**Attachments:** 20170126\_DRMS\_AM11BoundaryModIntentLetter\_CM.pdf

Dear Mr. Williams:

Via this email, the City of Cripple Creek (City) submits its comments pertaining to the Cripple Creek Mining Overlay District (CCMOD) Map Change Application submitted by the Cripple Creek & Victor Gold Mining Company (CC&V) bearing the date March 2017.

The City would like to begin by stating that the management of CC&V was very understanding in addressing concerns raised by the City regarding a historical area in Poverty Gulch that was included in their permit Amendment 11 application submitted to the State of Colorado. The CCMOD Map Change Application as currently submitted to Teller County substantially represents the commitments that CC&V made to change certain boundaries. Attached herewith is the letter correspondence, dated January 26, 2017, from CC&V to the state Division of Reclamation, Mining and Safety confirming their intent to alter the proposed permit boundary and CCMOD boundary in Poverty Gulch.

(Note: Due to technical difficulties, the City is not able provide a scanned document to include with this email that would clearly depict an area described immediately below; however, we have attempted to sufficiently describe a stretch of the CCMOD boundary addressed below. We apologize for any inconvenience or confusion.)

With regard to concerns with proposed changes to the current CCMOD boundary, the City wishes to understand the desire or need by CC&V to alter an approximate 2,200 ft. length of the CCMOD boundary that currently runs in a SW-NE direction, with the approximate midpoint of the said boundary line being approximately 200 ft. NW of the corner of sections 13, 18, 19 and 24 as shown on the drawing titled "Poverty Gulch Boundary Detail" dated 02-27-2017. CC&V is proposing to adjust the line in the NW direction to align with the mine's permit boundary.

To the City's knowledge, CC&V is not proposing mining operations in this area that encompasses approximately 27 acres located on a hillside just above the SE limits of the City. Given the viewshed and environmental impacts that mining would cause, the City feels that CC&V should demonstrate the need to alter the longstanding CCMOD boundary in this area.

Other than the concern noted above, the City has no objections to the CCMOD map changes being proposed by CC&V.

Regards,

**Raymond G. (Ray) DuBois**  
City Administrator  
City of Cripple Creek  
P.O. Box 430  
337 E. Bennett Avenue  
Cripple Creek, Colorado 80813-0430  
Office: 719-689-3316  
Cell: 719-659-2489  
Fax: 719-689-3288



**Williams, Dan**

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**From:** Ray DuBois <rdubois@cripple-creek.co.us>  
**Sent:** Wednesday, May 17, 2017 7:55 PM  
**To:** Williams, Dan  
**Cc:** Bruce Brown; tom litherland; Lisa Becker; Jack Henris  
**Subject:** CC&V Gold Mining Company, CCMOD Map Change Application - Withdrawal of Objections, City of Cripple Creek  
**Attachments:** CCV CCMOD Map Change Application May 2017.pdf

Dear Mr. Williams:

On May 2, 2017, the City of Cripple Creek (City) submitted comments related to the CCMOD Map Change Application submitted by the Cripple Creek & Victor Gold Mining Company (CC&V). Because of the proximity of an area of concern to the City (noted on the attached map), the City requested that CC&V demonstrate the need to alter the longstanding CCMOD boundary. The City is concerned about the potential environmental impacts and the definite viewshed impacts that mining activities could and would cause to the City if mining activities were conducted in this area.

On Thursday, May 11, 2017, representatives of CC&V (Jack Henris, VP & GM; and Lisa Becker, External Relations Manager) met with representatives of the City (Bruce Brown, Mayor; Tom Litherland, Councilman; and Ray DuBois, City Administrator) to discuss the City's concerns and CC&V's mining plans.

While it is the City's opinion that CC&V did not present a compelling reason for modifying the CCMOD boundary in the area of concern, the City nonetheless understands the reasoning for the request made by CC&V, and further, Mr. Henris and Ms. Becker provided verbal assurances that:

1. CC&V has no current plans to conduct mining related activities in the area of concern.
2. CC&V received a request from the Colorado Department of Reclamation, Mining and Safety (DRMS) to 'clean-up' the many boundaries on the state mining permit map, and that aligning the CCMOD with the mine's state permit boundary is partly in response to the request made by the state.
3. Even though CC&V has no mining activities currently planned in the area of concern, if, in the unlikely event, any mining activities are ever planned in the future in the area of concern, CC&V will discuss such plans with the City, and that the City will have an opportunity to comment on and voice any objections to such planned mining activities to the proper regulatory authorities.
4. CC&V agreed to act in good faith and give consideration to entering into a use agreement with the City for the area of concern.

In consideration for the assurances above, and with the formal documentation of these assurances by the County of Teller, the City of Cripple Creek withdraws any formal or implied objections to the CCMOD Map Change Application submitted by the Cripple Creek & Victor Gold Mining Company. Please note that the City is not conditionally withdrawing its concerns based on performance related to the four items noted above, but rather, the City places its trust in CC&V to act in good faith.

If you have any questions, please do not hesitate to contact me.

Regards,

*Raymond G. (Ray) DuBois*  
City Administrator  
City of Cripple Creek  
P.O. Box 130

## Williams, Dan

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**From:** Debra Downs <[ddowns@cityofvictor.com](mailto:ddowns@cityofvictor.com)>  
**Sent:** Monday, May 01, 2017 9:30 AM  
**To:** Williams, Dan  
**Subject:** Response to CC&V Map Change Application

Mr. Williams,

The City of Victor has reviewed the proposed CCMOD Map Change Application. The map changes have minimal impact to Victor. Of course, we want to make certain as the mine moves closer and closer to our community that the Historic Buffer Agreement is referenced. There is a potential that future intrusions may not be acceptable to our citizens.

Thank you,

*Debra Downs*

City Administrator  
City of Victor  
500 Victor Ave  
P.O. Box 86  
Victor, CO 80860  
719-689-5641 (phone)  
719-689-2703 (fax)  
[ddowns@cityofvictor.com](mailto:ddowns@cityofvictor.com)  
Website: [www.cityofvictor.com](http://www.cityofvictor.com)







## COLORADO

### Parks and Wildlife

Department of Natural Resources

Southeast Region, Area 14  
4255 Sinton Road  
Colorado Springs, CO 80907  
P 719.227.5200 | F 719.227.5223

April 24, 2016

Dan Williams  
County Planner  
Teller County Planning Department  
PO Box 1886  
Woodland Park, 80863

RE: Cripple Creek and Victor Gold, Cresson Project, CCMOD Map Change Application

Dear Mr. Williams,

Colorado Parks and Wildlife (CPW) is in receipt of the above referenced permit application and is familiar with the site located at or near Section 20, Township 15S, Range 69W, 6<sup>th</sup> Principal Meridian in Teller County. CPW staff offers the following comments for your consideration.

The mission of CPW is to perpetuate the wildlife resource of the state, to provide a quality state park system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources. Our goal in responding to land use proposals such as this is to provide complete, consistent, and timely information to all entities who request comments on matters within our statutory authority.

Colorado Parks and Wildlife recommends a 250 meter buffer around Townsend's big-eared bat roost sites. The Townsend's big-eared bat is a state species of concern, and is susceptible to disturbance. The bat is known to occur near mining areas, specifically near the Cripple Creek and Victor Gold Mine.

CPW suggests care be taken during mining to avoid excess erosion or disturbance of more land than necessary to accomplish the project. We also suggest the area be reasonably reclaimed following mining. We recommend reusing the original top soil that is removed from the surface by placing it back in its original location after mining is completed. Once the original top soil is in place, we recommend planting the disturbed areas with native vegetation that matches the native vegetation already present in the surrounding area.

CPW recommends the development and implementation of a noxious weed control plan for the site. All disturbed soils should be monitored for noxious weeds and noxious weeds should be actively controlled until native plant revegetation and reclamation is achieved.

As mentioned in a previous letter to the Division of Reclamation Mining and Safety (DRMS) Colorado Parks and Wildlife recommends preventative measures to minimize harmful impacts to wildlife throughout the site. One preventative measure is an eight foot tall woven wire wildlife fence installed where there is a potential for wildlife to fall into a high wall pit or come into contact with harmful chemicals. The fence could be installed around the perimeter of the site instead of around each individual hazard. CPW also recommends that the fence have one way wildlife escape structures where appropriate to prevent wildlife from getting trapped in between a fence and a hazard.

CPW also recommends that when mining operations result in exposed water that is harmful and could be accessed by any wildlife, those pits/ponds should be constructed with additional protection for wildlife. Where necessary to protect public health, safety and welfare, or to prevent significant adverse environmental impacts resulting from access to a hazard by wildlife and migratory birds, operators should install appropriate netting and/or fencing.

Additionally, CPW recommends that roads leading into areas containing harmful chemicals have a gate or two cattle guards back to back to prevent wildlife from entering. Two cattle guards are necessary to prevent wildlife from entering as they can generally jump across one cattle guard.

Thank you for the opportunity to comment on the Cresson Project. If you have any questions or require additional information please contact District Wildlife Manager Tim Kroening at 719-227-5281 or via e-mail [Tim.Kroening@state.co.us](mailto:Tim.Kroening@state.co.us).

Sincerely,



Cody Wigner  
Acting Area Wildlife Manager

Cc: Tim Kroening DWM  
SE Regional File  
Area 14 File



**COLORADO**  
Department of Transportation  
Region 2  
Traffic & Safety - Permits  
PO Box 536  
Pueblo CO 81002

May 1, 2017

SH 24 & 67  
Teller County

Dan Williams  
Teller County Planning Dept.  
PO Box 1886  
Woodland Park, CO 80866

RE: Cripple Creek & Victor Gold Mine - Map Changes

Dear Dan:

The Colorado Department of Transportation has reviewed the information submitted with the request for comment on a proposed map change to the mining boundaries of the Cripple Creek & Victor Gold Mine. The proposal will increase the mining area by 70 acres. We have the following comments:

- The Department has no issue with the change in mining boundaries. However, with the Amendment 11 submittal, CDOT requests traffic analysis of the impacted state highway corridors SH 24 and SH 67 before CDOT can recommend approval of the development proposal.
- Drainage to the state highway right of way shall not exceed the undeveloped historic rates. All rates in excess of historic shall be detained on site and released at historic levels.
- All discharges to the CDOT highway drainage system shall comply with the applicable provisions of the Colorado Water Quality Control Act and the Colorado Discharge Permit Regulations, and are subject to inspection by the CDOT and CDPHE.
- All discharges to the CDOT highway drainage system must comply with the applicable provisions of the Colorado Water Quality Control Act and the Colorado Discharge Permit Regulations, and are subject to inspection by the CDOT and CDPHE. CDOT would like to emphasize that this development devise and implement a permanent plan for periodic removal and disposal of sediment from detention facilities and for maintenance of development detention facilities.
- Where detention facilities are required the CDOT MS4 permit requires the applicant to devise and implement a permanent plan for periodic removal and disposal of sediment from detention facilities and for maintenance of development detention facilities. A maintenance plan shall be included in the drainage report. The plan shall indicate the responsible party, the timetable for removal, the method of removal, and the method of sediment disposal.
- Information regarding design, environmental provisions, MS4 permit provisions and/or mitigation techniques can be found at the following CDOT websites:
  - <http://www.dot.state.co.us/DesignSupport/>
  - <http://www.dot.state.co.us/environmental/Newsletter.asp>
- On-premise and off-premise signing shall comply with the current Colorado Outdoor Advertising Act, sections 43-1-401 to 421, C.R.S., and all rules and regulations pertaining to outdoor advertising. Please contact Mr. Mark Nusskern at (719) 546-5433 for any questions regarding advertising devices.
- Any utility work within the state highway right of way will require a utility permit from the CDOT. Information for obtaining a utility permit can also be obtained by contacting Mr. Nusskern.

If you have any questions, please contact me in Pueblo at (719) 546-5407.

905 N Erie Ave, Pueblo CO 81001-2915 P 719.546.5407 F 719.562.5523 [www.codot.gov](http://www.codot.gov)



Sincerely,

Valerie Sword  
Permits Manager

Xc: Andrew  
Davis  
Nusskern  
Lewis/file



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

John W. Hickenlooper  
Governor

Robert Randall  
Executive Director

Dick Wolfe, P.E.  
Director/State Engineer

May 1, 2017

Mr. Dan Williams  
Teller County Community Development Department  
Transmission via email: [WilliamsD@co.teller.co.us](mailto:WilliamsD@co.teller.co.us)

RE: Teller County File Number Z17-0003  
Cripple Creek & Victor Gold Mining Co.  
Secs. 13 & 24, Twp. 15S, Rng. 70W, Sixth P.M.  
Sec. 18, Twp. 15S, Rng. 69W, Sixth P.M.  
Water Division 2, Water District 12

Dear Mr. Williams:

This referral does not appear to qualify as a "subdivision" as defined in Section 30-28-101(10)(a), C.R.S. Therefore, pursuant to the State Engineer's March 4, 2005 memorandum to county planning directors, this office will only perform a cursory review of the referral information and provide comments. The comments do not address the adequacy of the water supply plan for this project or the ability of the water supply plan to satisfy any County regulations or requirements. In addition, the comments provided herein cannot be used to guarantee a viable water supply plan or infrastructure, the issuance of a well permit, or physical availability of water.

The applicant is requesting a Map Change to the Cripple Creek Mining Overlay District boundary in Poverty Gulch to incorporate the Chicago Tunnel mine area into the Cresson Project. According to the submittal, it does not appear the applicant is proposing any change or expansion in use of surface or ground water at this time; therefore, this office has no objections to the requested Map Change so long as the diversion, use, storage, and/or monitoring of surface and ground water at the site is in compliance with all applicable decrees, statutes, rules and regulations.

Should you or the applicant have questions regarding any of the above, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink that reads 'Caleb Foy'.

Caleb Foy, P.E.  
Water Resource Engineer

cc: Steve Witte, Division 2 Engineer (via email)  
Josh Kasper, District 12 Water Commissioner (via email)

## Williams, Dan

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**From:** Krochta, Camille  
**Sent:** Monday, May 01, 2017 10:04 AM  
**To:** Williams, Dan  
**Subject:** JOSH VOORHIS

The Forest Service does not have any property near this proposed expansion. I have made the assumption that the proponent or the County has been in contact with the BLM. The BLM does have quite a bit of property in that area so they may have an interest. The contact for the BLM is Stephanie Carter at 719-269-8551.

Thanks and my apologies if I have caused any delays or other issues.

Josh

**Joshua Voorhis**  
District Ranger

**Forest Service**  
South Park Ranger District,  
Pike/San Isabel National Forests & Cimarron/Comanche National Grasslands

p: 719-836-3867

c: 719-839-1308

f: 719-836-3876

[jvoorhis@fs.fed.us](mailto:jvoorhis@fs.fed.us)

320 Hwy. 285 - PO Box 219

Fairplay, CO 80440

[www.fs.fed.us](http://www.fs.fed.us)



Caring for the land and serving people



**Williams, Dan**

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**From:** Krochta, Camille  
**Sent:** Tuesday, May 02, 2017 3:11 PM  
**To:** Williams, Dan  
**Subject:** FW: BLM Referral Comments

**From:** Berger, Keith [mailto:kberger@blm.gov]  
**Sent:** Tuesday, May 02, 2017 2:52 PM  
**To:** Krochta, Camille <KrochtaC@co.teller.co.us>  
**Cc:** Stephanie Carter <sscarter@blm.gov>  
**Subject:** Re: Referral Comments

Thanks for your patience. We completed our review this morning of Cripple Creek & Victor Mine CCMOD Map Change and have no concerns or issues at this time. Thanks for the opportunity to review.

--

Keith E. Berger  
Field Manager  
Royal Gorge Field Office  
Bureau of Land Management  
3028 E. Main St., Canon City CO.  
719-269-8515 [kberger@blm.gov](mailto:kberger@blm.gov)



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

May 1, 2017

Lynda Morgan  
Teller County Community Development Services  
P.O. Box 1886  
Woodland Park, CO 80866

Re: Cresson Project, Permit No. M-1980-244;  
Amendment 11 (AM-11) Teller County CCMOD

Dear Ms. Morgan:

The Division of Reclamation, Mining and Safety (Division) is formally providing notice to Teller County that CC&V has submitted all necessary documentation pursuant to and satisfactory to the Division for Amendment 11.

If you have any questions, you may contact me at (303)866-8567 x8169.

Sincerely,

Timothy A. Cazier, P.E.  
Environmental Protection Specialist

ec: Dan Williams, Teller County  
DRMS file

## **APPENDIX C: April 13, 1988 Conditional**

**Use Permit Approval letter, key application pages, and legal description of  
Chicago Tunnel**

PLANNING DEPARTMENT

(303) 687-3048



April 13, 1988

Mr. Carl Gerity, Manager of Mining  
Cripple Creek & Victor Gold Mining Company  
P.O. Box 191  
Victor, CO. 80860

RE: Conditional Use Permit Request: Chicago Tunnel/Proper Adit  
Anchoria Leland Dump

Dear Carl;


As you are aware, the Teller County Planning Commission met on April 12, 1988, to consider your request for a Conditional Use Permit to conduct Mining Activities on the following properties:

- Chicago Tunnel/Proper Adit: N $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 18, Township 15 South, Range 69 West - 5.16 acres
- Anchoria Leland Mine Dump: NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 19, Township 15 South, Range 69 West - 8.5 acres

These are two separate Permit requests and this letter will address both requests. After careful consideration and review of your applications, the Teller County Planning Commission approved your requests, with no conditions.

Should you have any questions on the actions of the Planning Commission, please feel free to give me a call.

Sincerely,

  
Kevin I. Petersen  
Planning Director

cc: file

KIP



**Cripple Creek & Victor  
Gold Mining Company**  
Texasgulf Minerals and Metals, Inc. - Manager

**CONDITIONAL USE PERMIT  
APPLICATION**

**CHICAGO TUNNEL/PROPER ADIT**

**TELLER COUNTY, COLORADO**

**MARCH, 1988**

## Cripple Creek & Victor Gold Mining Company

A JOINT VENTURE - Texasgulf Minerals and Metals, Inc. - MANAGER

5932 McIntyre Street Golden, Colorado 80403 (303) 273-2400

Executive Office  
(303) 273-2400

March 10, 1988

Teller County Planning Department  
P.O. Box 1886  
Woodland Park, CO 80863

Attn: Mr. Kip Peterson, County Planner

Re: Teller County Conditional Use Permit Application

Dear Mr. Peterson:

Cripple Creek and Victor Gold Mining Company is making application for a Conditional Use Permit. The permit application is for the mining operations at the Chicago Tunnel and Proper Adit located in Poverty Gulch east of Cripple Creek. This application was prepared in accordance with Article III:5:b:3:A (First Requirement) of the Teller County Zoning Resolution, as amended. Please find attached:

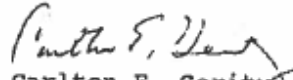
- Check in the amount of \$150.00 for the application fee.
- Completed application form.
- A copy of the Mined Land Reclamation Board permit application is included as an appendix of the county application.

We would also like to request that this application be scheduled for the April 12, 1988 hearing of the Planning Commission.

Please contact Mr. C. Alan Tapp in Victor (689-2977) or myself on matters concerning this application.

I thank you for your attention to this matter.

Sincerely,

  
Carlton E. Gerity  
Manager of Mining

Enclosures



### Introduction

In conformance with Articles II and III of the Teller County Zoning Resolution, as amended, Cripple Creek and Victor Gold Mining Company is seeking a Conditional Use Permit for underground mining operations located about 0.4 mile east of Cripple Creek in Poverty Gulch. The permit would allow for the removal of ore from the Proper Mine through the Chicago Tunnel. The ore would be transported to the company's Carlton Mill near Victor.

This Conditional Use Permit application was prepared in accordance with Article III:5:b:3:A (First Requirement) of the zoning resolution. This option permits the operator to incorporate their Mined Land Reclamation Board (MLRB) permit application in fulfillment of most of the maps and exhibits otherwise required for a Conditional Use Permit application. The additional land use issues identified by the county are addressed in a supplementary manner on the following pages. Unless otherwise noted in the following narratives, all considerations specified in the amended county zoning resolution are discussed in the MLRB application included herein.

### Legal Description

All areas of affected land are situated in Teller County, Colorado and are more specifically described below. All non-public access roads to be used in conjunction with the operation are included in the description or have been permitted under previous Conditional Use Permits.

#### Chicago Tunnel and Proper Adit

The Chicago Tunnel and Proper Adit sites occupy approximately 5.16 acres in the following:

N $\frac{1}{2}$  of the SW $\frac{1}{4}$ , Section 18, T.15S., R.69W., 6th P.M.

## Appendix D

***“Contractual Agreement for Victor-Goldfield Buffer Area and Cripple Creek Historic/Recreation Area related to the Cripple Creek Mining District” – Excerpt***

**CONTRACTUAL AGREEMENT FOR VICTOR-GOLDFIELD BUFFER AREA AND CRIPPLE CREEK HISTORIC/RECREATION AREA RELATED TO THE CRIPPLE CREEK MINING DISTRICT**

THIS CONTRACTUAL AGREEMENT (the "Agreement") is entered into by and between Teller County (the "County") and Cripple Creek & Victor Gold Mining Company ("CC&V") effective on the **Effective Date**<sup>1</sup>, as hereinafter defined. The County or CC&V are sometimes hereinafter referred to individually as a "party" and collectively as the "parties."

WHEREAS, the County, in cooperation with CC&V, the City of Victor, and the City of Cripple Creek, has participated in efforts to develop new planning guidance and land use regulations to address, among other things, areas in which **Mining Activities**, within the Cripple Creek mining district in the Cripple Creek and Victor area would be allowed subject to appropriate regulations that include, among other things, environmental protection and reclamation provisions; and

WHEREAS, CC&V is willing to restrict the use of some of the lands it owns as set forth in this Agreement to address and satisfy the concerns of the City of Victor, and the unincorporated area of Teller County known as Goldfield with respect to future **Mining Activities** near their respective city limits, and to provide historic and recreational opportunities for the City of Cripple Creek; and

WHEREAS, the County and CC&V have determined that an appropriate means to address and satisfy the concerns of the City of Victor, the unincorporated area of Goldfield, and the City of Cripple Creek is to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and CC&V agree as follows:

CC&V covenants and agrees that neither it nor its successors and assigns nor any party in its or their behalf shall undertake **Mining Activities** and/or related activities on or in the **Property** for so long as the following Conditions continue, and at any and all times in the future when the following conditions are satisfied:

**Condition A:** The "**Cripple Creek Mining Overlay District**" and related amendments to the Teller County Land Use Regulations for that District, as set forth on May 25, 2000 a copy of which is attached hereto as Exhibit A, of Teller County, Colorado, (or any successor governmental entity responsible for its administration) is enacted and continues to exist and be enforced, not **Materially Modified** from that in effect on the date of promulgation specified above; and

**Condition B:** **Mining Activities** in the Cripple Creek Mining Overlay District are not prevented from continuing or expanding by local, State, or federal laws or regulations or actions.

Notwithstanding the foregoing, CC&V shall, so long as all required permits are obtained from applicable State, federal, and County agencies, entities, and departments, have the right to (1) engage in **Mining Activities** and/or related activities on and in the **Property** to the extent that such activities do not disturb more than an aggregate of two (2) surface acres for each **Mining Activity**, as hereinafter defined, and/or (2) build and maintain surface facilities or structures necessary or appropriate to conduct underground **Mining Activities** in the **Property** and adjacent properties. **Mining Activities** allowed by this paragraph may not be contiguous.

The foregoing shall be a covenant running with the **Property** and shall inure to the benefit of and be binding upon Teller County and CC&V and their successors and assigns; EXCEPT, however, that this Agreement shall be suspended without further action by CC&V, its successors or assigns, during such time that either or both of the above-described conditions cease to be maintained or are **Materially Modified**.

**1. Definitions.**

(a): For the purposes hereof, the terms "**Mining Activity**" and "**Mining Activities**" shall mean a mining activity which requires and is conducted pursuant to a permit for mining issued by the State of Colorado in accordance with C.R.S. 34-32-101 et seq or any replacement thereof that may be enacted. Notwithstanding the inclusion in such permit, any environmental monitoring, surface-water hydrology management and other similar types of environmental management activities, including environmental resource mitigation, are not a "**Mining Activity**" or "**Mining Activities**" and are considered compatible with the purposes of the **Property** and may be, so long as all required permits are obtained from applicable State, federal, and County agencies, entities, and departments, conducted without limitation by this Agreement.

(b): For the purposes hereof, the term "**Property**" shall mean lands the surface of which is are owned or controlled by CC&V, or by business entities owned by, or owners of, CC&V, located within the Victor-Goldfield Buffer Area and located within the Cripple Creek Historic/Recreation Area, both of which are depicted on the attached Exhibits B and C, respectively.

(c): For the purposes hereof, the term "**Materially Modified**" shall mean Land Use Regulations adopted by the County subsequent to the effective date hereof which modifications materially and adversely affect CC&V's current or anticipated activities in the **Cripple Creek Mining Overlay District** of Teller County. Adoption of maps in the Teller County Land Use Regulations that do not conflict with the **Cripple Creek Mining Overlay District** or that expand the **Cripple Creek Mining Overlay District** shall not be considered to **Materially Modify**. A reduction in the **Cripple Creek Mining Overlay District** shall be considered to **Materially Modify**.



(d): For the purposes hereof, the term "Cripple Creek Mining Overlay District" shall mean: the area delineated on the attached Exhibit A, as this area may be modified in Teller County Land Use Regulations.

2. **Rule Against Perpetuities.** As to any provision of this Agreement, the parties hereto do not intend that there shall be any violation of the rule against perpetuities or any related rule. If any such violation should inadvertently occur, it is the intent of the parties hereto that the appropriate court shall reform the provision to the least extent possible and in such a way as to approximate most closely the intent of the parties hereto within, and to comply with, the limits permissible under such rule or related rules.
3. **Effective Date** shall mean: May 25, 2000
4. **Amendment.** This Agreement shall not be altered, amended or otherwise modified except pursuant to an instrument in writing signed by both of the parties.
5. **Assignment and Binding Effect.** The rights and obligations of the parties shall not be assigned without the prior written consent of the non-assigning party. Subject to the foregoing, the provisions hereof shall extend to and be binding upon the successors and assigns of the parties.
6. **Attorneys' Fees.** In the event of litigation, arbitration or other similar procedure to enforce the provisions of this Agreement, the substantially prevailing party shall recover all reasonable costs, expenses and attorneys' fees incurred in connection therewith.
7. **Entire Agreement.** This Agreement is the entire agreement between the parties concerning the subject matter hereof and supercedes all prior agreements and understandings, written or verbal concerning such subject matter.
8. **Further Assurances.** Each party agrees to take from time to time such actions and execute such additional Instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to the conflict of laws provision thereof.
10. **Severability.** If any provision of this Agreement is invalid or unenforceable, such provision shall be fully severable from this Agreement and the other provisions hereof shall remain in full force and effect and the remaining provisions hereof shall be liberally construed to carry out the provisions and intent hereof.
11. **No Waiver.** No failure or delay of any party in the exercise of any right given to such party hereunder shall constitute a waiver thereof unless the time, if any, specified

herein for exercise of such right has expired, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or any other right. The waiver by a party of any default of any other party hereunder shall not be deemed to be a waiver of any such subsequent default, or other default of such party. No waiver, release or extension of time for performance of any obligations hereunder, or of any right or default, shall be binding against a party, or be admissible in evidence against a party in any action brought to enforce any provision hereof, or for damages by reason of an alleged default of any obligation hereunder, unless such waiver, release or extension is contained in a writing signed by such party.

12. Notices. All notices and other required communications ("Notice") to the parties to this Agreement shall be in writing, and shall be addressed respectively as follows:

If to the County: **TELLER COUNTY BOARD OF COUNTY COMMISSIONERS**  
Post Office Box 959  
Cripple Creek, Colorado 80813  
Attn: County Administrator

If to CC&V: **CRIPPLE CREEK & VICTOR GOLD MINING COMPANY**  
100 North Third Street  
Victor, Colorado 80860  
Attn: Anglogold (Colorado) Corp., Manager  
Kenneth A. Klusdahl  
General Manager and Vice President

Notice shall be given (a) by personal delivery to the other party, or (b) by electronic communication, with a confirmation sent by pre-paid certified U. S. mail, return receipt requested, or (c) by pre-paid certified U. S. mail, return receipt requested. All Notices shall be effective and shall be deemed delivered (a) if by personal delivery, on the date of delivery, (b) if by electronic communication, on the date of sending and (c) if solely by U. S. certified mail, three (3) business days after mailing. A party may change its address by Notice to the other party.

13. Recording of Agreement. This Agreement may be recorded in the real property records of Teller County by either party.

14. Specific Performance. The parties hereto and Cripple Creek or Victor shall have the right to enforce specific performance of this Agreement and to injunctive relief.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date.

TELLER COUNTY BOARD OF COUNTY COMMISSIONERS,

By: [Signature]  
Title: Chairman

STATE OF COLORADO )  
COUNTY OF TELLER )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of JUNE, 2000.

by [Signature]  
Witness my hand and Seal [Signature]  
Notary Public  
My Commission Expires: 5-1-01

CRIPPLE CREEK & VICTOR GOLD MINING COMPANY,  
a joint venture,  
AngloGold (Colorado) Corp., Manager

By: [Signature]  
Title: Vice President & General Manager

STATE OF COLORADO )  
COUNTY OF TELLER )

The foregoing instrument was acknowledged before me this 19 day of June, 2000.

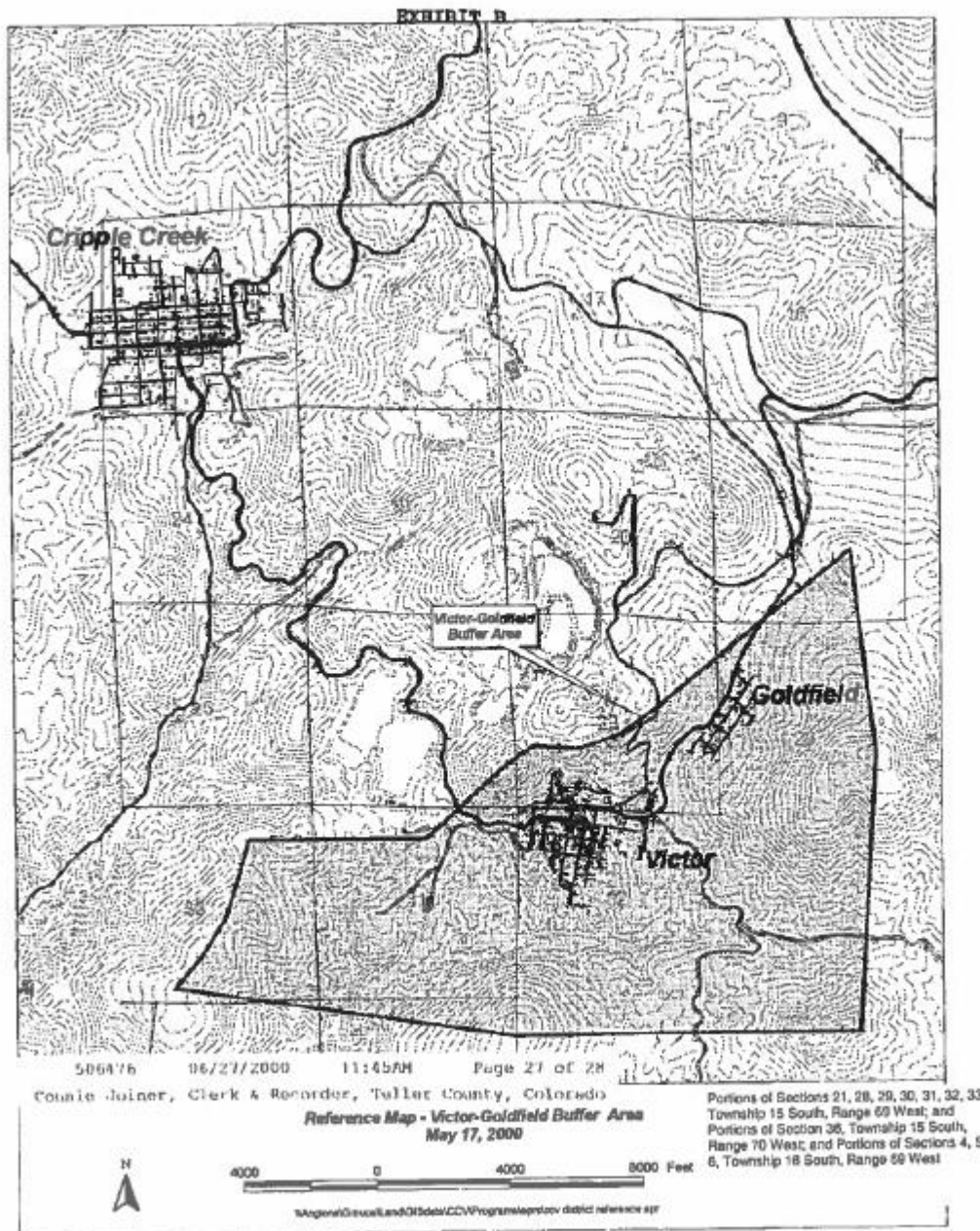
by [Signature]

Witness my hand and Seal

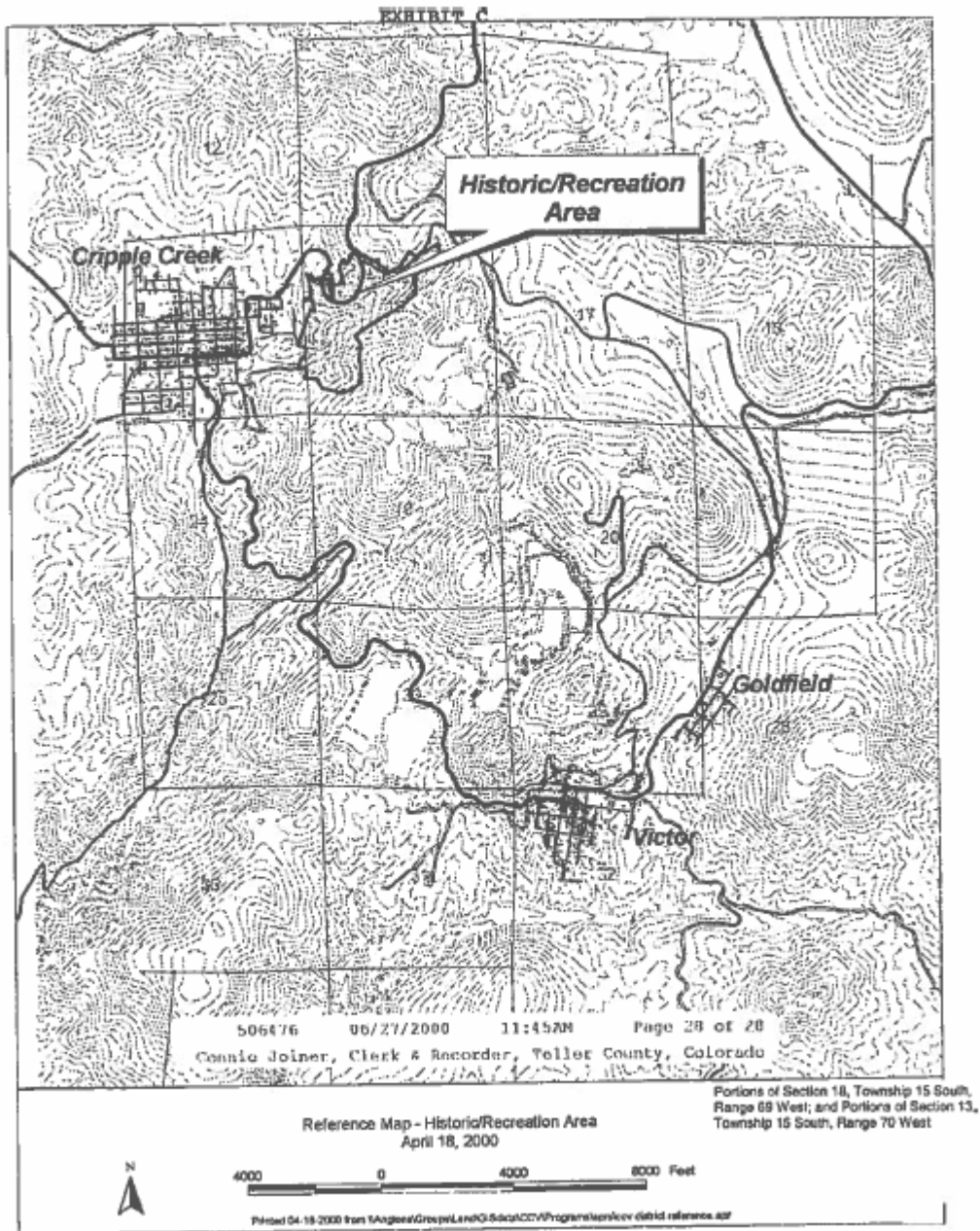
My Commission Expires: \_\_\_\_\_

[Signature]  
Notary Public  
Patricia Allen, Notary  
409 Spicer  
Victor, CO 80850  
My Commission Expires 11-7-03











## **APPENDIX G: PUBLIC COMMENT**



















