

**STATEMENT OF BARRY CONATY, HOLLAND & HART, LLP  
ON BEHALF OF THE CITY OF HENDERSON, NEVADA**

**Before the  
HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES**

**On  
H.R. 2512  
THE THREE KIDS MINE REMEDIATION AND RECLAMATION ACT**

**December 13, 2011**

Chairman Lamborn and members of the Subcommittee, my name is Barry Conaty. I am a partner with the law firm of Holland & Hart, LLP and I thank you for the opportunity to appear on behalf of the City of Henderson, Nevada and its Redevelopment Agency to discuss H.R. 2512, the Three Kids Mine Remediation and Reclamation Act. Specifically, I would like briefly to address, from Henderson's perspective, the policy rationale behind the provision of the bill which would obligate the Secretary of the Interior to administratively adjust the fair market value of the 948 acres of Federal land proposed for conveyance based on a reasonable approximate estimation of the costs to investigate and remediate both the Federal land and the 314 acres of private land included in the overall 1,262-acre project site.

Manganese is essential to iron and steel production and during the 1940s and 1950s, the Three Kids Mine was one of the primary domestic sources of

manganese in the United States. Historical documents gathered from the National Archives indicate that the United States was integrally involved in mining and milling operations at the Three Kids Mine site during this period. In addition, the United States leased portions of the private land at the site until 2003 for the storage of Federal stockpiles of manganese.

In 1942, the Defense Plant Corporation (DPC), a federal instrumentality, acquired from Manganese Ore Company surface rights to approximately 446 acres at the site, including most of the now-private land, for the development of an ore processing mill and related facilities. The DPC contracted with Manganese Ore Company to construct the mill. Title to the plant site and mill facilities was vested in the DPC.

The DPC leased the plant site and mill facilities to another federal instrumentality, the Metals Reserve Company (MRC), which in turn entered into contracts with Manganese Ore Company for the procurement of crude ore, the operation of the mill, and the purchase of manganese nodule output for national defense purposes. The DPC and MRC contracts vested the Federal government with rights to approve all significant aspects of the construction and operation of the mine and mill, which included the use of large tailings ponds that today contain several million cubic yards of contaminated waste material up to sixty feet in depth.

The WWII-era mill was deactivated in 1944, although Federal ore stockpiles remained at the site. The DPC interests transferred first to the War Assets Administration, which tried unsuccessfully to sell the mine facilities, and then to the General Services Administration. In the early 1950s, the mill was updated and the mine and mill were reactivated by Manganese, Inc. under contracts with the GSA. In 1955, Manganese, Inc. purchased the real property at the Site that had been under Federal ownership. Manganese, Inc. continued to mine and beneficiate ore for the United States under the GSA contracts until closure of the mine and mill in 1961. In addition, until 2003 private land at the site was leased to the GSA and, later, the Defense Logistics Agency, for the storage of processed manganese nodules under the Federal strategic materials stockpile program.

These mining, milling, stockpiling, and associated activities resulted in extensive environmental contamination of the project site, including most of the now-private land and substantial portions of the Federal land.

The Comprehensive Environmental Response, Compensation, and Liability Act, often referred to as CERCLA or the "Superfund" statute, imposes strict as well as joint and several liability on certain classes of "potentially responsible parties" or "PRPs" for response costs incurred by the state, the Federal government and third parties in cleaning up a contaminated site. PRPs can include the United States. In relevant part, PRPs include: (1) current owners and operators of a

facility where hazardous substances are being or were released; (2) persons who owned or operated a facility at the time of disposal of hazardous substances; and (3) persons who by contract "arranged for" the disposal of hazardous substances.

Federal CERCLA caselaw indicates that the United States could be held liable as a PRP with respect to environmental contamination conditions at both the Federal and private lands at the project site, including: (1) as the current "owner" of the Federal land; (2) as a former "owner" of the now-private land at the time hazardous substances were disposed between 1942 and 1955; (3) as an "operator" of the mine and mill site from 1942 through the 1950s; (4) as an "arranger" of the disposal of hazardous substances during the same period; and/or (5) as an "owner" or "operator" of the manganese stockpile site until 2003.

Henderson recognizes that the adjudication of CERCLA liability ultimately is a fact-specific inquiry. Apportioning liability for environmental harm caused by mining and milling operations that took place at the Three Kids Mine site over half a century ago would be a difficult and costly process, and it is not clear that there are other viable PRPs in addition to the United States.

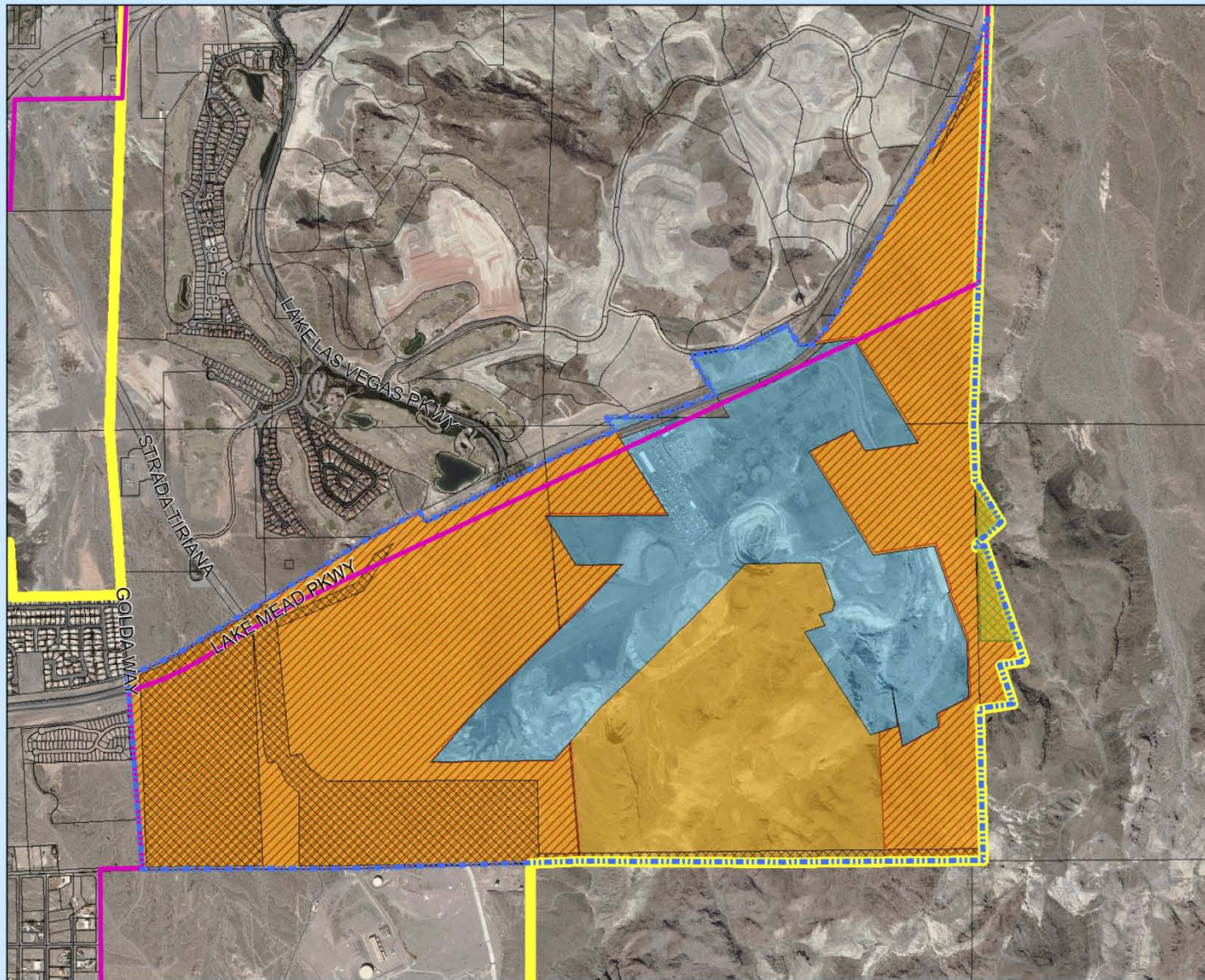
Henderson, its Redevelopment Agency, and the Nevada Division of Environmental Protection, have been working, in coordination with the Department of the Interior, to craft and implement a cleanup strategy for the Three Kids Mine site that would avoid any protracted dispute over responsibility for the



costs of cleanup and that instead would focus resources on permanently solving environmental contamination problems at the site.

In light of the extensive involvement of the United States in historical mine and mill operations on both the Federal and private lands at the site, Henderson believes it only appropriate for the estimated costs of cleaning up the entire site to be addressed by the Secretary of the Interior in administratively adjusting the fair market value of the 948 acres of Federal land as would be required under H.R. 2512. It is the assemblage of the Federal land with the private land as facilitated by the legislation that makes remediation of the entire site feasible and economically practicable. Moreover, under the bill the United States would receive a release of liability for pre-existing environmental contamination conditions on both the Federal and private lands upon issuance of the Patent for the Federal land.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on behalf of the City of Henderson and its Redevelopment Agency on H.R. 2512. I would be happy to answer any questions that you might have.



## Three Kids Mine Project Site Map

- Three Kids Mine Project Site
- SNPLMA Disposal Boundary
- City of Henderson Municipal Boundary
- Permanent Easements
- Area of Critical Environmental Concern (approx. 9.5 acres)
- Bureau of Reclamation Withdrawn Public Lands
- BLM Administered Public Lands
- Three Kids Mine Private Patented Property

0 330 660 1,320 1,980 2,640 Feet

NOTE: Map intended to be printed on Tabloid (11"x17") size paper from the original document. Map scale will not be accurate when printed from the PDF and enlarged or reduced.



Geographic Information Systems  
Community Development



map created: 17 December 2007  
map revised: 5 May 2011

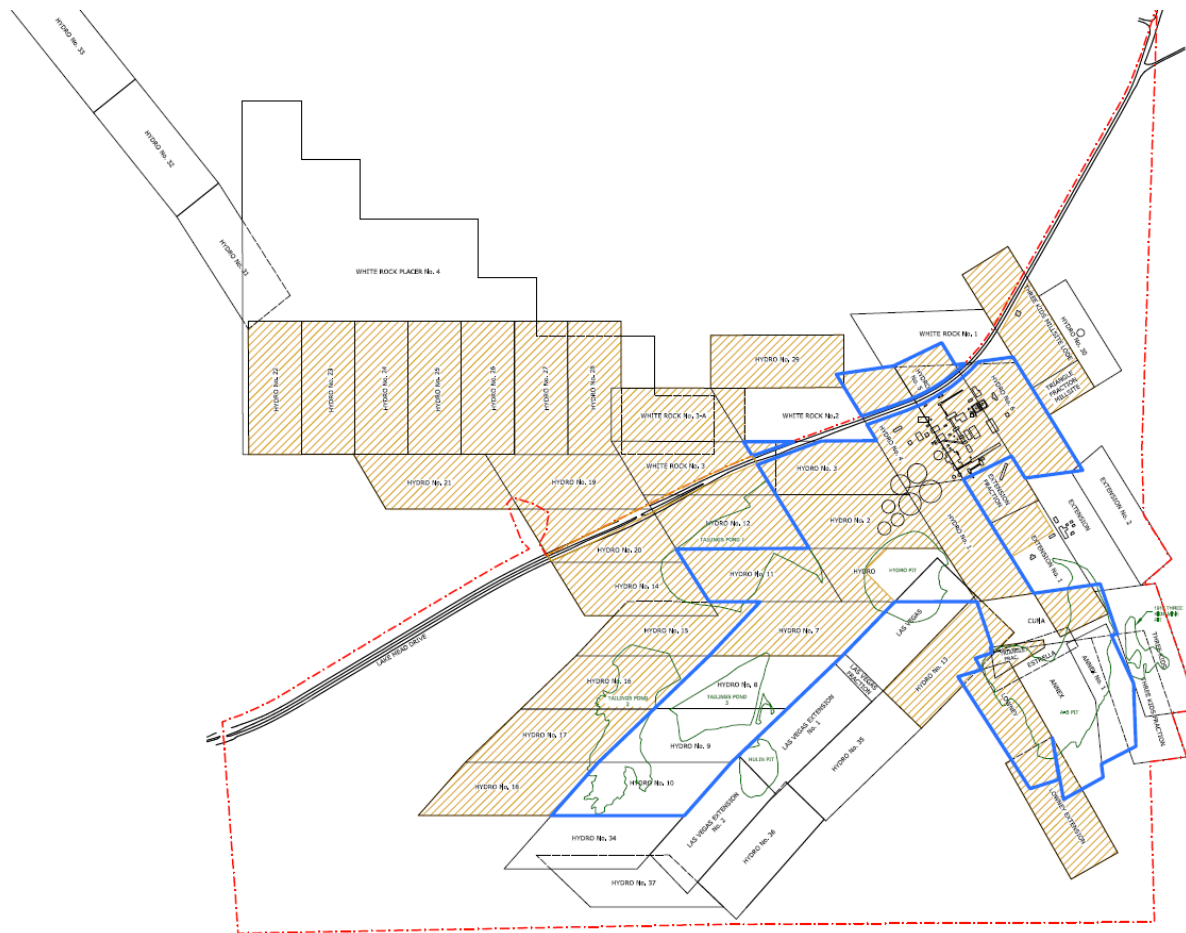
P:\projects\dev\2011\LakeMead\ThreeKidsMine\ThreeKidsMineProjectSite.mxd







J. J. McCall







## KEY

-  Claims deeded to United States (through Metals Reserve Company or Defense Plant Corporation) between 1942 and 1944
-  Current Private Property Boundary
-  Project Site Boundary; lands inside Project Site Boundary which are not Private, are Public Lands
-  Tailings Pond and Pit Locations

## NOTES

Drawing does not constitute a survey.

SOURCES: Load claim map of the Three Kids Mine Group, Map #216437, record book 257, Clark County Records Office, 1972. Map: Three Kids Mine Location of Ore and Additional Stockpile Areas, cartographer unknown, 1944. Plat sheets A, B, and C of Mineral Survey 4743, Public Land Office, Reno, Nevada, 1938. Additional multiple historical sources including grant, bargain, and sale documents from 1942 to present.

0 700 1400 FEET





S. J. McCarroll





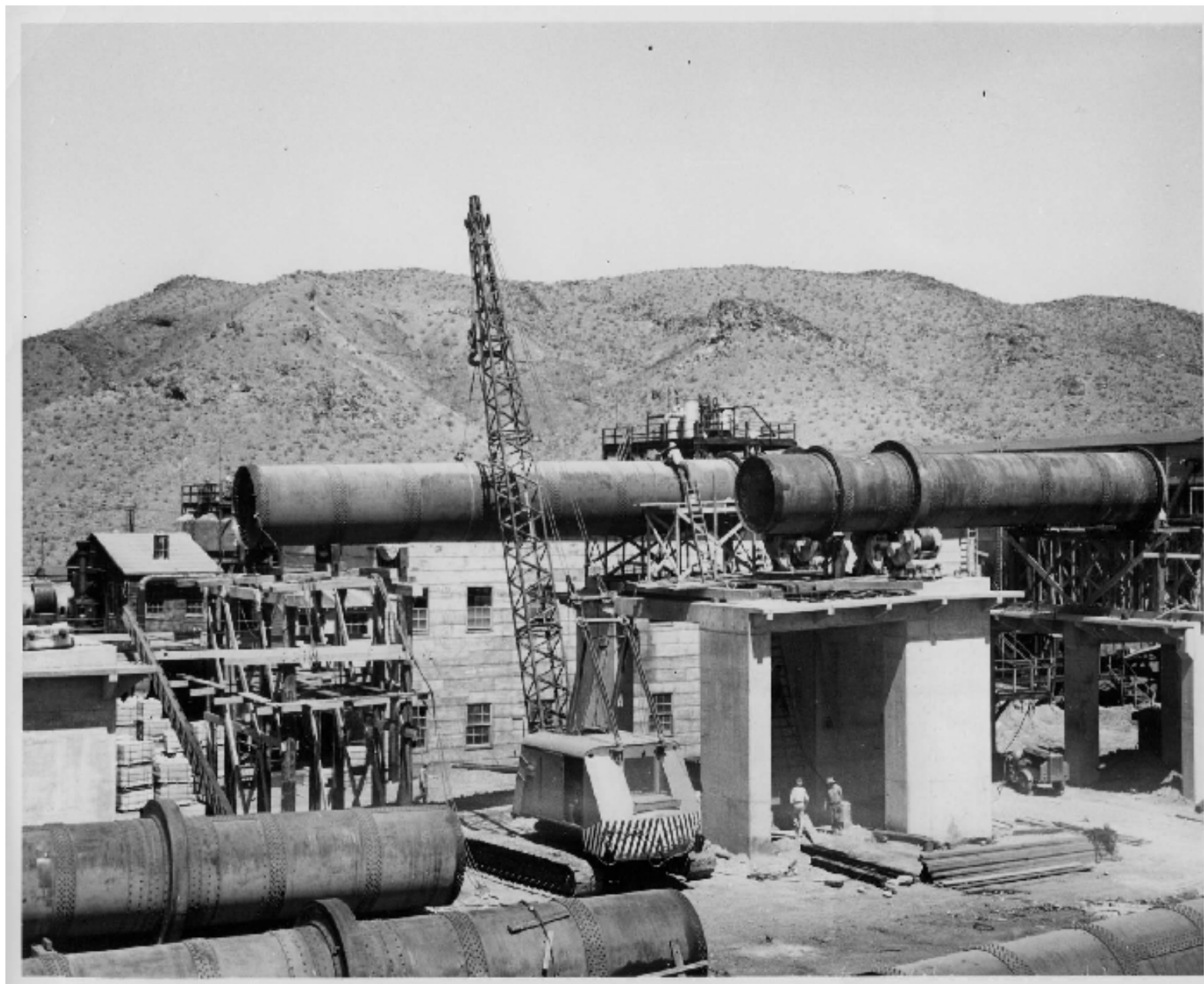




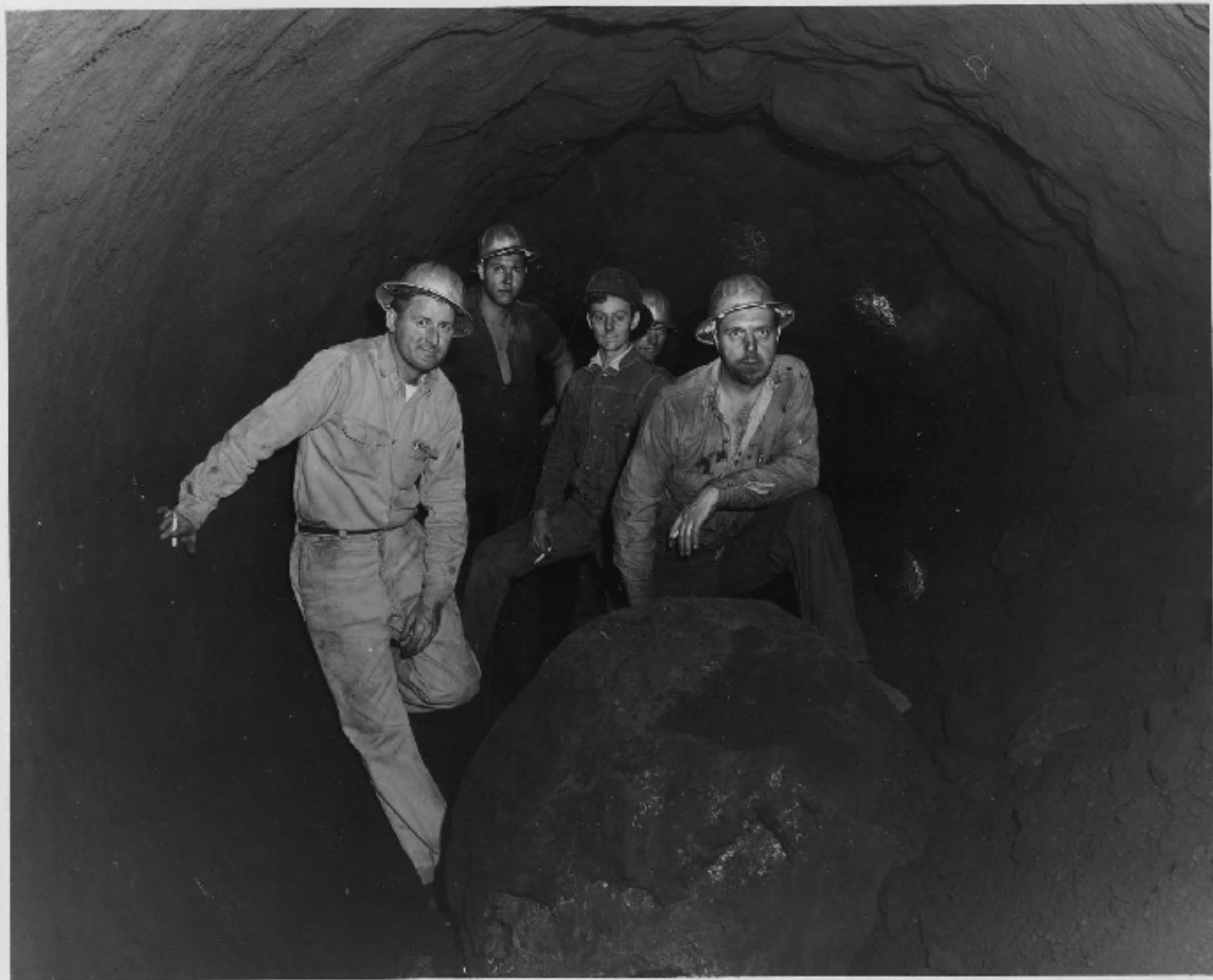
















#### KEY

- PHONE/CONTROL LINE
- POWER LINE
- WATER LINE
- STATE HIGHWAY
- UNIMPROVED ROAD
- PHONE/POWER LINE TO LAKER PLAZA
- RIVER MOUNTAINS TRAIL

#### NOTES

SOURCE: 2005-2007 FIELD DATA. AERIAL IMAGE FROM 2007  
CLARK COUNTY ASSESSOR DATA.

0 1000 FEET



SCALE: 1" = 915'



#### FIGURE 3

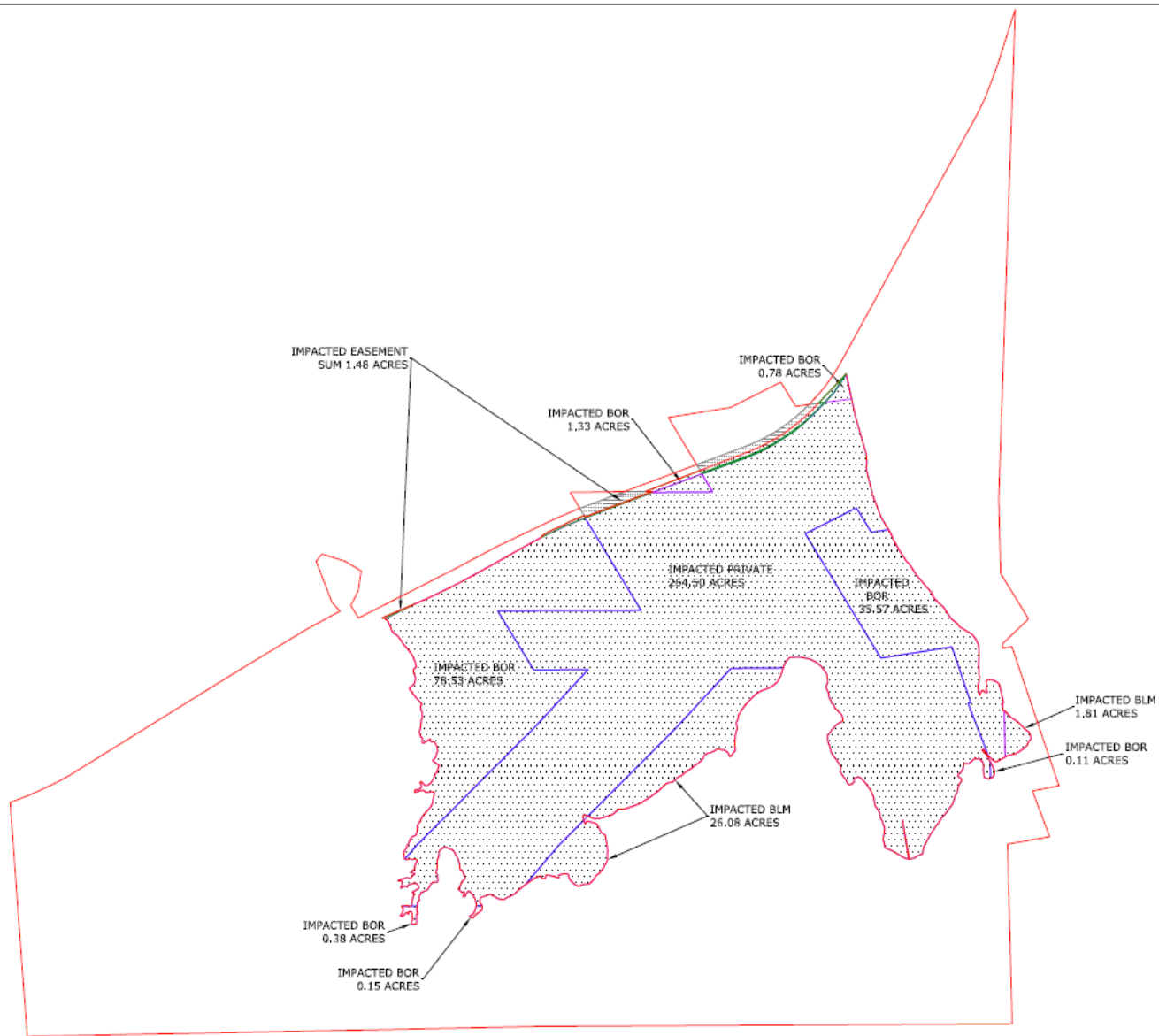
TKM LAYOUT 2007 ON AERIAL

THREE KIDS MINE AND MILL SITE

DESIGNED: CTA 01/03/08

DRAWN: CTA 01/03/08

APPROVED: MS 01/03/08





A photograph of a desert landscape with a closed mine entrance. In the foreground, a red metal gate is partially visible. Behind it, a white sign with a maroon border is mounted on a wooden post. The sign contains the text 'NO TRESPASSING', 'CLOSED MINE', 'TRESPASSERS WILL BE PROSECUTED', and 'NRS 206.270'. In the background, there is a rocky hillside and a dark structure with graffiti.

**NO TRESPASSING**  
**CLOSED MINE**  
**TRESPASSERS WILL**  
**BE PROSECUTED**

NRS 206.270















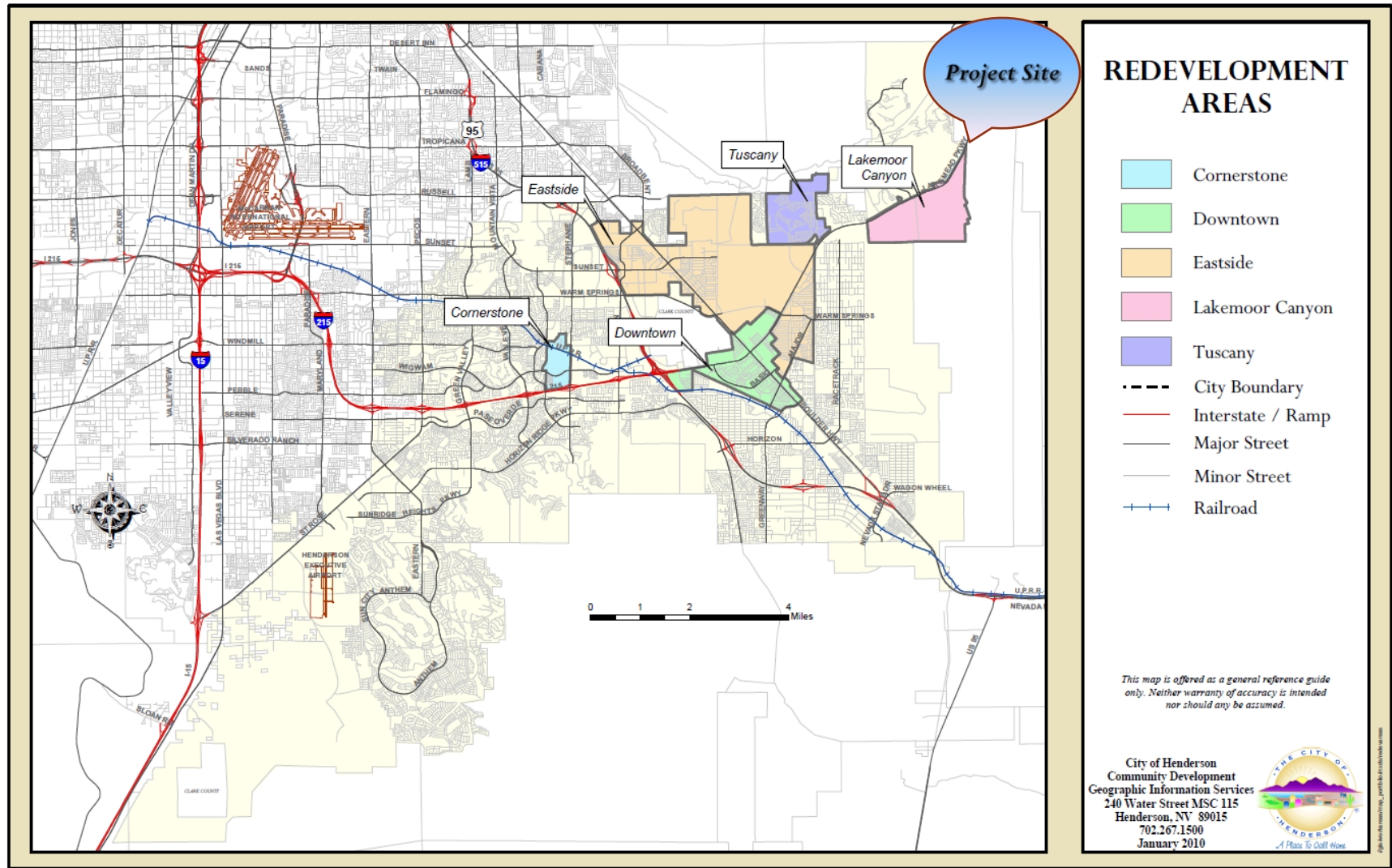


# Three Kids Mine and Mill Site Remediation and Redevelopment Project

City of Henderson, Nevada  
City of Henderson Redevelopment Agency

*October 2011*

# Location of 1,262-Ac.\* Project Site



HENDERSON, NEVADA

\*All acreages approximated on best current information.

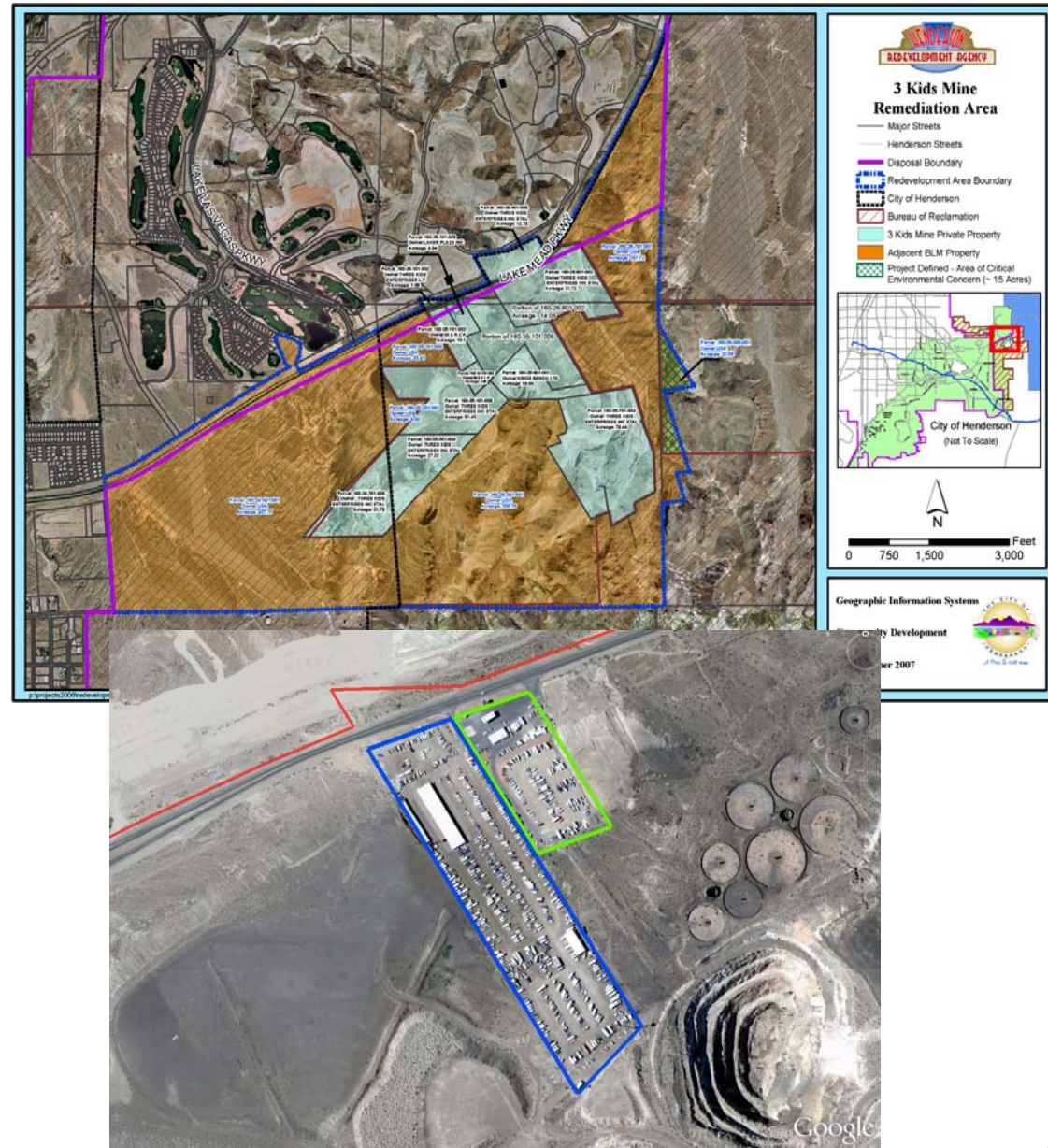


# Location of 1,262-Ac. Project Site



# Current Land Ownership

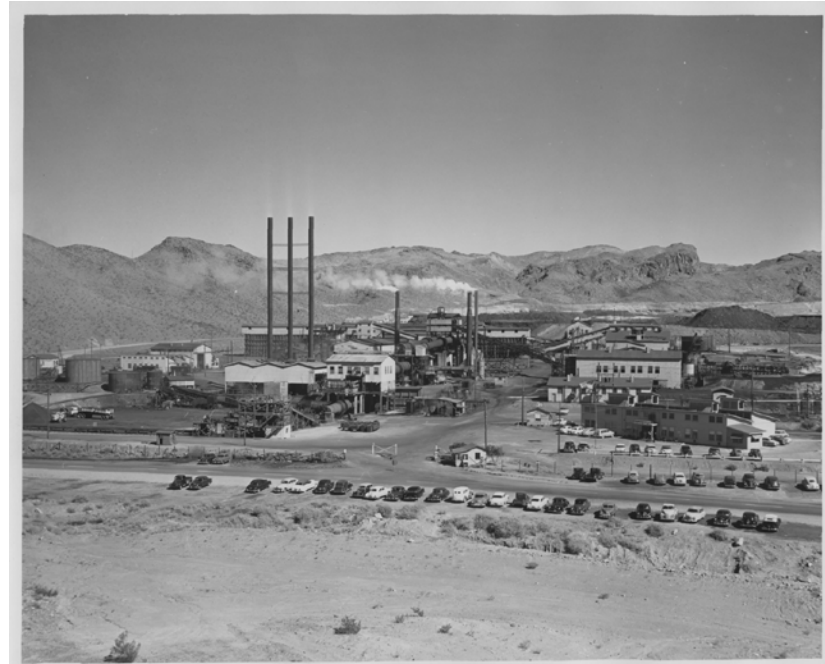
- ❑ Project Site = 1,262 ac.
- ❑ Located mostly outside SNPLMA Disposal Boundary.
- ❑ Federal Lands = 948 ac.
  - 6 Parcels
  - BLM: 253 ac.
  - BuRec: 695 ac.
- ❑ Private Lands = 314 ac.
  - 12 Parcels
- ❑ Project Site inactive except for two small commercial facilities on Private Lands.
  - Gas Station (5 ac.)
  - Boat Storage Yard (14 ac.)





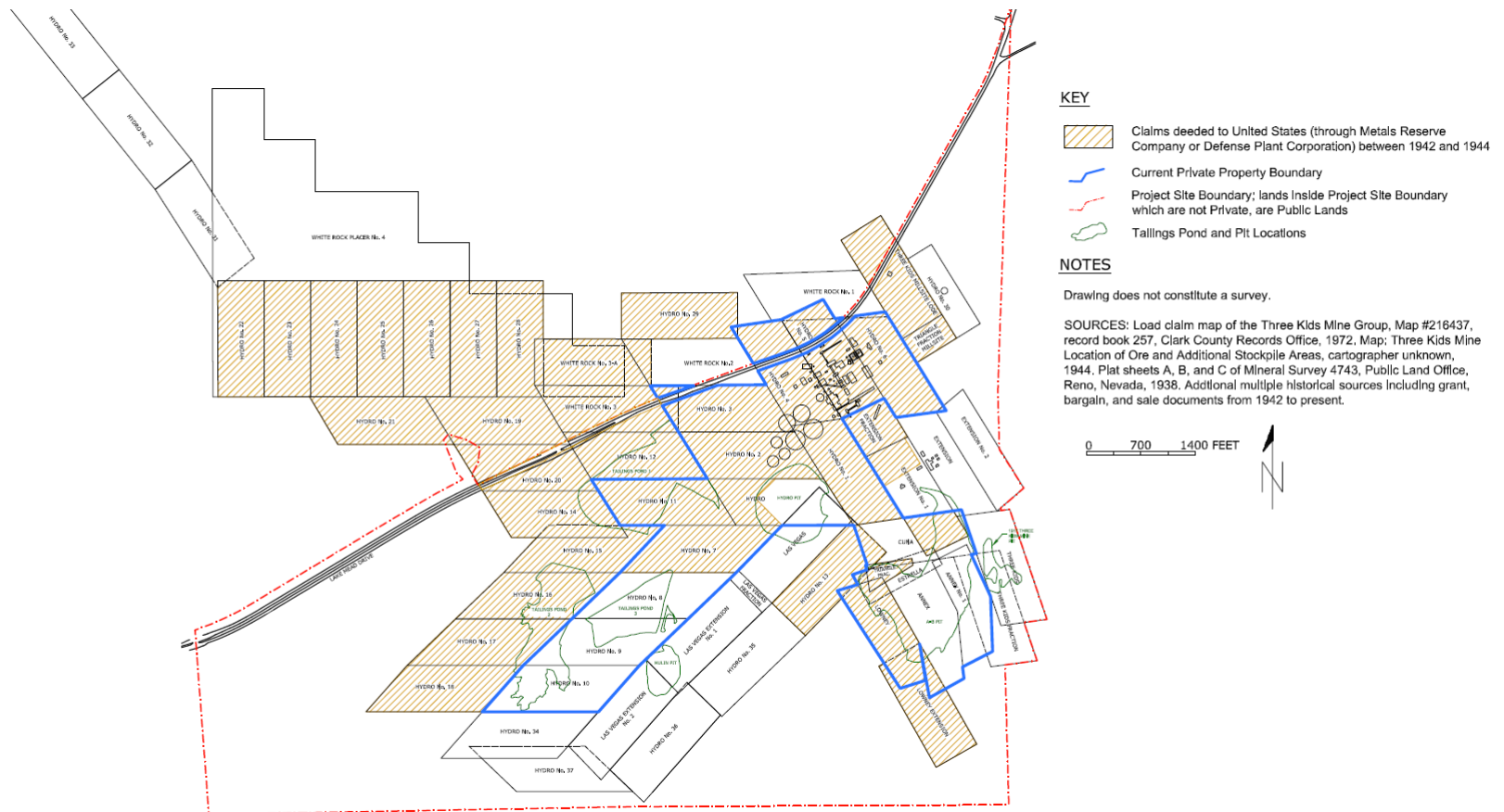
# Site History

- ❑ Over 400 acres of Site operated as open pit manganese mine and processing facility from 1917 to 1961.
- ❑ The United States, through the Defense Plant Corporation (DPC), owned 446 acres of the Project Site from 1942 to 1955.
- ❑ DPC leased site to U.S. instrumentality Metals Reserve Company (MRC).
- ❑ Under contract with MRC, Manganese Ore Company constructed mill and operated 1942-1944 to produce manganese for national defense.
- ❑ WWII-era was period of highest intensity of operations at Project Site.
- ❑ United States contracted with Manganese, Inc. to beneficiate federally-owned ore 1950 to 1959.
- ❑ Federal stockpiling of manganese nodules on leased Private Lands until 2003.
- ❑ Operations ceased in 1961 and Project Site has been essentially abandoned ever since.





# WWII-Era Federal Mining Claims



# Historical Operations

(ca. 1943)



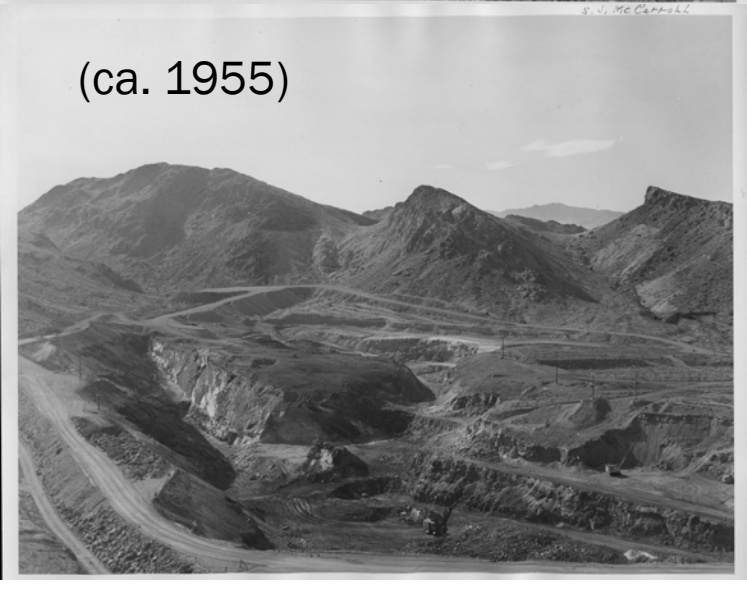
(ca. 1943)



(ca. 1953)



(ca. 1955)

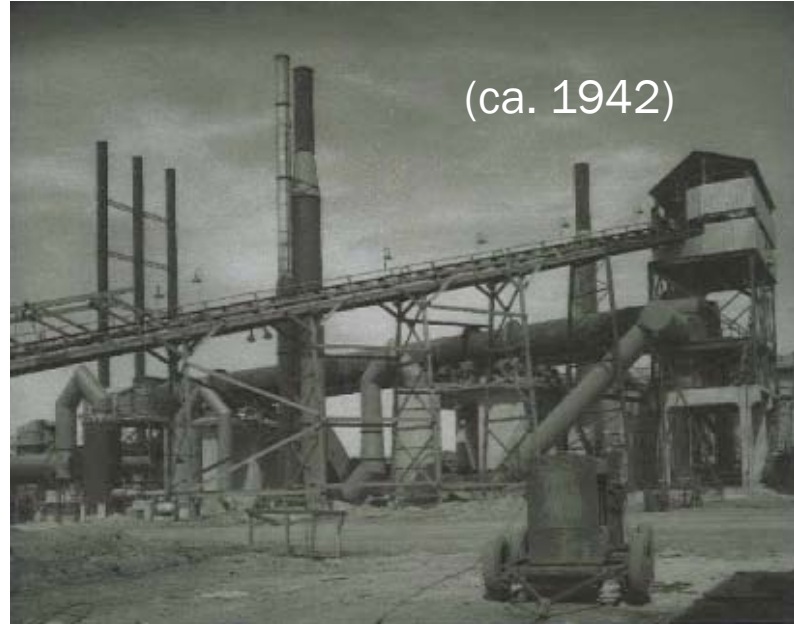


# Historical Operations

(ca. 1944)



(ca. 1942)



(ca. 1942)



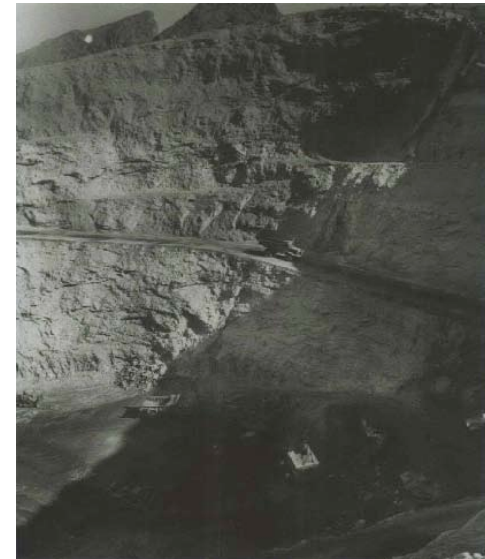
(ca. early 1950s)





# Mining and Milling Process 1942-1961

- ❑ 20% manganese (Mn) was mined from open pits.
- ❑ Mn was crushed, mixed with water, sulfur dioxide, diesel fuel, tall oil soap, Oronite S (alkyl sulfonate), quebracho (powdered wood tannin).
- ❑ Emulsion sent to flotation tanks; Mn oxide and Mn sulfate adhered to petroleum foam (Mn “liquor”).
- ❑ Mn liquor dried, combined with coke, sent through three kilns (calciner, nodulizer, cooling kiln). 65% purity manganese nodules produced.
- ❑ Waste gangue (silica, alumina, lead, arsenic, Mn, iron, petroleum hydrocarbons) generated in flotation process disposed in tailings ponds.
- ❑ Mining and Milling operations ended in Summer 1961.



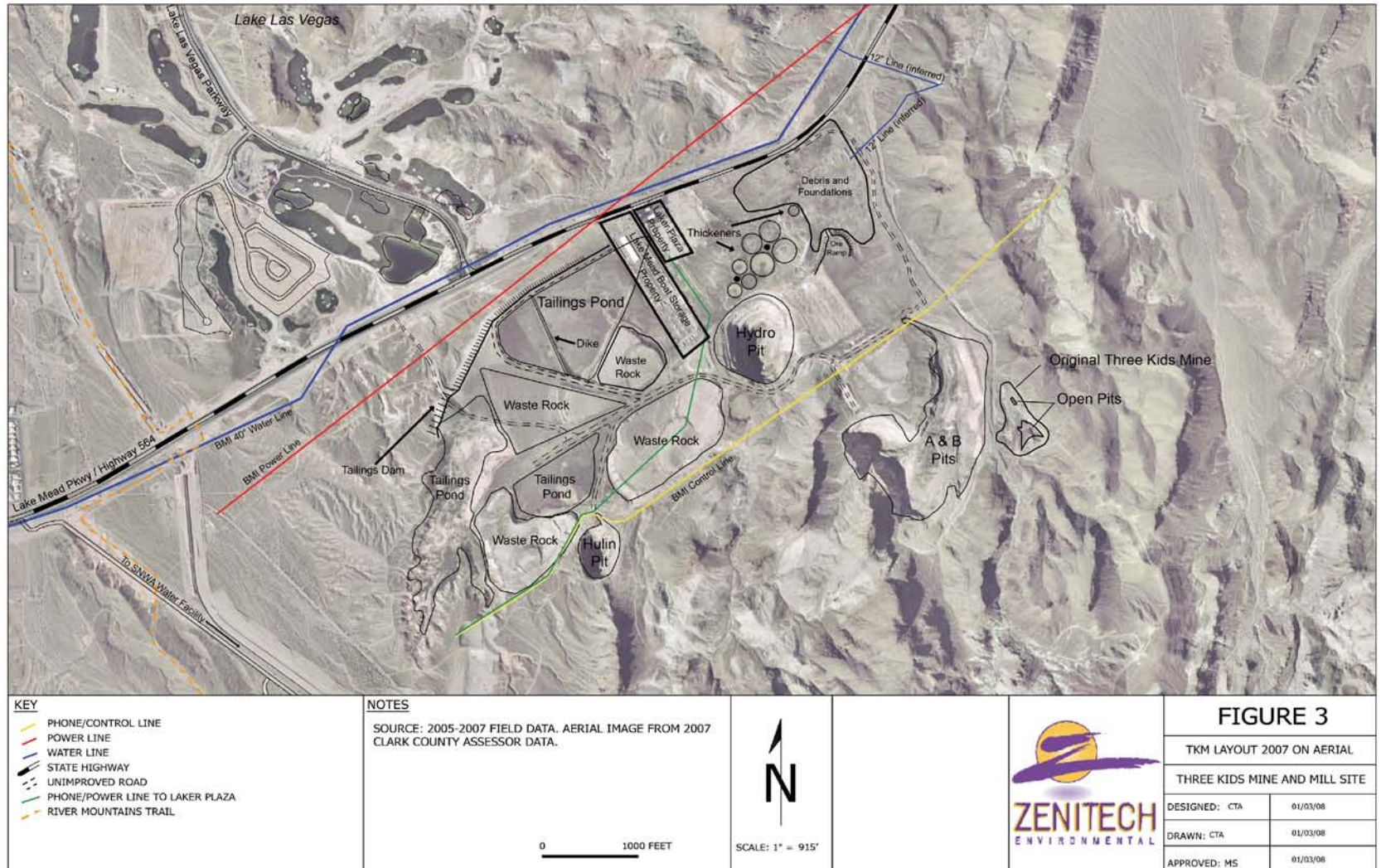
# Site Conditions Today

- Sheer cliff open pits up to 370 feet deep.
- Large volumes of overburden, 10 stories high.
- Tailings Ponds over 60 feet deep; 1.4 million CY.
- Mill facility foundations and remnants present hazards.
- Contaminants include arsenic, lead and other “heavy metals,” petroleum hydrocarbons, occurring over +410 ac. (~146 ac. Federal Lands; ~266 ac. Private Lands).
- Air and surface water contaminant migration pathways of primary concern.
- 12 million CY of mine residue (enough to fill modern sports stadium six times).
- No reclamation for past 50 years. Numerous proposals, but none realistic in terms of cost/scope.
- Encroaching residential development makes remediation imperative.
- Site cleanup a high priority for Nevada Division of Environmental Protection (NDEP).

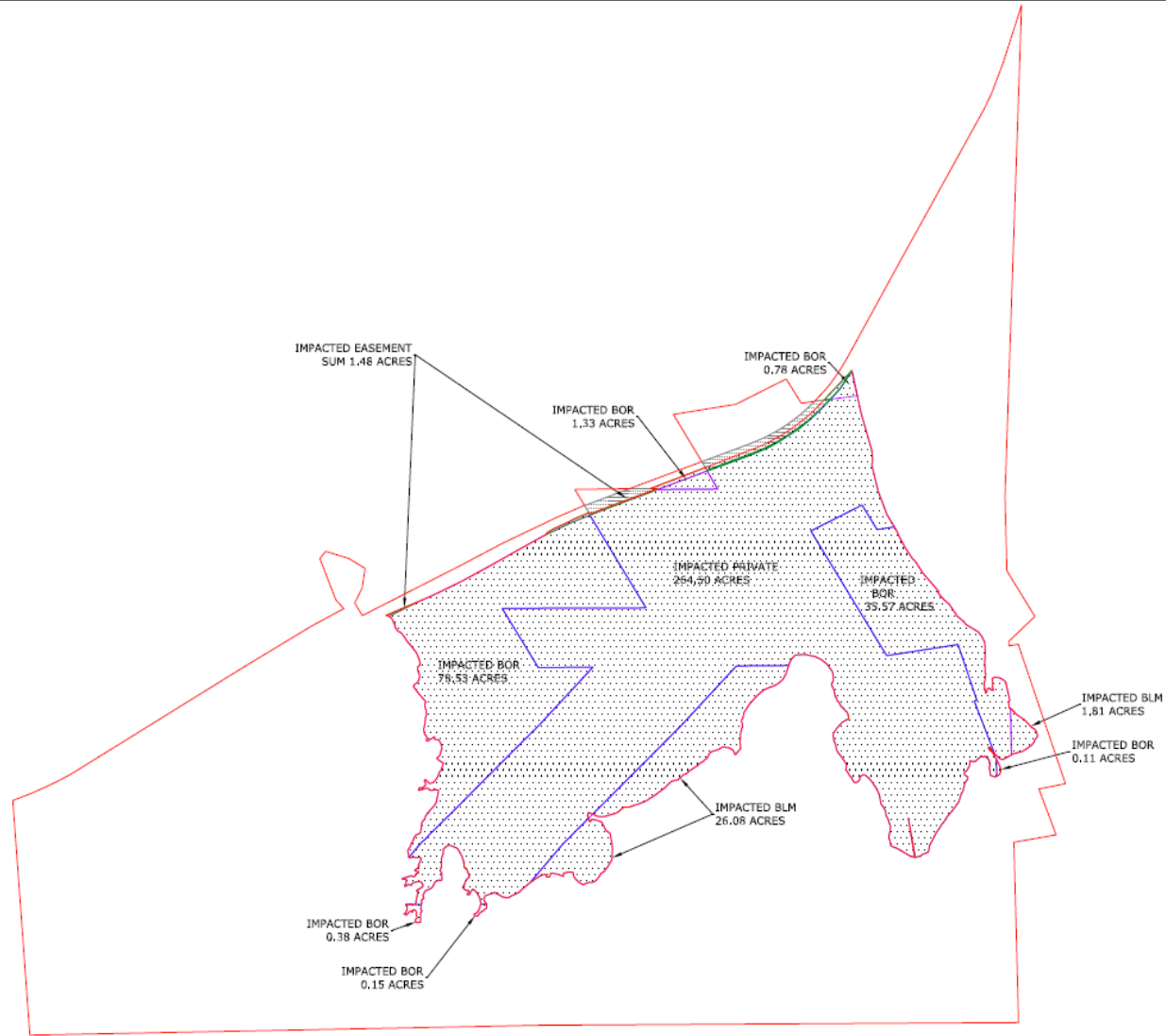




# Footprint of Environmental Concerns



# Footprint of Environmental Concerns



# Milestones in Cleanup and Redevelopment Program

- 2006:** Lakemoor Development, LLC (Developer) secures Option Agreement for undeveloped Private Lands.
- 2007:** Developer and Henderson Redevelopment Agency enter into MOU re: annexation and establishment of redevelopment area.
- 2007:** City of Henderson, NDEP, Henderson Redevelopment Agency, DOI Solicitor's Office, BLM and BuRec commence negotiations on program for cleanup and redevelopment of Project Site.
- 2007:** Parties agree on "Presumptive Remedy" – use on-Site mine pits as repositories for mine residue in appropriately engineered manner.
- 2007:** Developer completes comprehensive Phase I Environmental Site Assessment.
- 2008:** GaiaTech, Inc. prepares Cost Evaluation Report which estimates "reasonable case lower-end" cost of Project Site remediation/reclamation at \$320m.
- 2008:** Developer prepares Phase II Sampling and Analysis Workplan for NDEP review.
- 2009:** City of Henderson annexes Project Site and establishes Lakemoor Canyon Redevelopment Area pursuant to Nevada Community Redevelopment Law.
- 2009:** DOI Appraisal Services Directorate prepares Preliminary Estimate of Value for Federal Lands, "as clean" for "highest and best use" as residential/commercial, at \$100,000-\$200,000/ac. (\$95m-\$180m).
- 2010:** Parties agree on framework for legislative conveyance of Federal Lands to Henderson Redevelopment Agency for purposes of implementing comprehensive cleanup and redevelopment program; BLM Director Abbey issues letter of support for collaborative public/private project.
- 2011:** Three Kids Mine Remediation and Reclamation Act introduced in Congress.
- 2011:** Developer and Henderson Redevelopment Agency enter into Master Redevelopment Planning Agreement.



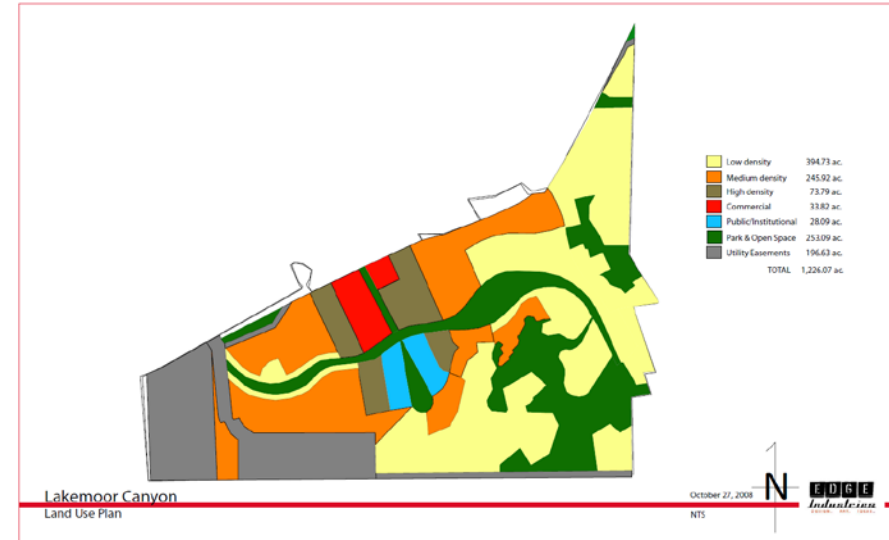
# Three Kids Mine Remediation and Reclamation Act

## H.R. 2512 and S. 1492

- Federal Lands to be conveyed to Henderson Redevelopment Agency at adjusted FMV.
- DOI Secretary to perform FMV appraisal of Federal Lands.
- Secretary to adjust FMV to reflect costs of remediating entire Project Site.
  - Requires use of Phase II environmental site assessment approved by NDEP and conducted in accordance with American Society for Testing and Materials (ASTM) standards.
  - Also requires use of ASTM standard for estimating cleanup costs.
- Mine Remediation and Reclamation Agreement a condition precedent to Patent issuance.
  - Consent Agreement between NDEP and Developer.
  - Requires cleanup of entire Project Site, Federal Lands and Private Lands
  - Requires financial assurance provisions to ensure completion of cleanup.
  - Cleanup must be permanent and appropriately protective of human health and the environment.
- United States vested with release of environmental liability for entire Project Site upon Patent issuance.

# Tax Increment Financing

- ❑ Environmental conditions constitute “blight” under Nevada Community Redevelopment Law (CRL).
- ❑ “Increment” of increased real property taxes flows back to Redevelopment Area over 30-year “capture period.”
- ❑ Developer rights to reimbursement of cleanup and infrastructure costs with Tax Increment funds governed by Disposition and Development Agreement with Redevelopment Agency and City of Henderson.
- ❑ Lakemoor Canyon Redevelopment Area (LCRA) established in 2009.
- ❑ In 2009, LCRA estimated to generate between \$600m-\$700m in Tax Increment over 30 years based on certain density/build-out assumptions.
- ❑ 1,262-acre size of LCRA critical to generate sufficient Tax Increment for Project and provide 4 million CY of “clean” soil needed for Presumptive Remedy.
- ❑ Tax Increment used to fund remediation as well as redevelopment infrastructure (water lines, sewers, roads, etc.).
- ❑ Tax Increment “back loaded” – most Tax Increment generated later in capture period when redevelopment completed.



# Project Site Development Constraints

- ❑ ~900 ac. Developable.
- ❑ Existing Easements.
- ❑ Site Topography Constraints.
- ❑ Residential Density Limits.
- ❑ Recreation/Open Space Requirements.
- ❑ School/Fire/Police Facilities.
- ❑ Presumptive Remedy Soil Demands.
- ❑ Mass Balance Grading.

