TO: **Planning Commission**

SUBJECT: ***DRAFT* Minor Impact Decision**
ITC Resources
LUC #2014-18

PREPARED BY: **Neal Starkebaum, Assistant Director**
Gunnison County Community Development Department

DATE: **Planning Commission Meeting of August 15, 2014**

LANDOWNER: **V.M.C. Mining Company**
820 W. Virginia
Gunnison, CO 81230

APPLICANT: **ITC Resources, LCC**
135 Meeker Street
Delta, CO 81416

PROJECT SUMMARY:
The request is for a land use change permit to conduct mineral exploration. The exploration project will drill nine access holes, on five drill pads, located on existing surface disturbance at the project site. Operational elements include:

- Only one drill site operated at a time.
- All cuttings and fluids will be managed and confined to a containment trough and the core holes backfilled and capped.
- All water will be trucked to the site.
- Drilling will be conducted only during daylight hours.
- Total area to be impacted is approximately .3 acres.
- Drilling will be completed this fall.

IMPACT CLASSIFICATION: The application was classified as a Minor Impact Project by Planning staff, pursuant to *Section 6-102: Projects Classified as Minor Impact Projects, O. Small New or Expanded Mining Operation.* A new, or expansion of a mining operation that operates for no more than 180 days per year, produces fewer than 10,000 tons of ore/waste per year and affects no more than two surface acres of land, pursuant to Division 9-400: *Exploration, Extraction and Processing of Minerals and Construction Materials.* The proposed operation will operate less than 180 days per year, produce fewer than 10,000 tons of ore/waste per year, and will not affect more than two surface acres of land. Mining Operation includes exploration.

CONFIDENTIALITY REQUIREMENT:
Pursuant to State law, Colorado Revised Statute 34-32-113 (3) and under the authority of the Colorado Division of Reclamation, Mining and Safety:

> **34-32-113. Prospecting notice - reclamation requirements - rules.** (3) All information provided to the board in a notice of intent to conduct prospecting or a modification of such a notice is a matter of public record subject to the open records act, part 2 of article 72 of title 24, C.R.S., including, in the case of a modification, the original notice of intent; except that information relating to the mineral deposit location, size, or nature and, as determined by the board, other information designated by the operator as proprietary or trade secrets or that would cause substantial harm to the competitive position of the operator shall be protected as confidential information by the board and shall not be a matter of public record in the absence of a written release from the operator or until a finding by the board that reclamation is

satisfactory. Such information designated as exempt shall remain confidential until a final determination by the board. The board shall promulgate rules implementing this subsection (3) and shall consider information including the timing of the disclosure of the operator's identity.

Colorado Division of Reclamation, Mining and Safety Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, Effective September 30, 2010. Rule 5: Prospecting Operations. 5.1.2 Application Requirements. (h) (i):

Designation of information believed by the applicant to be confidential including information relating to the mineral deposit location, size or nature, and information believed by the applicant to be proprietary or trade secret or that would cause substantial harm to the competitive position of the applicant. The applicant may designate its identity as confidential if the applicant believes that disclosing its identity would cause substantial harm to its competitive position. The requirements and provisions of Rule 1.3(4)(B) shall apply to any designation as to identity. The applicant shall distinguish in the submittal between those portions of the NOI that are confidential because they relate to mineral deposit location, size or nature and those portions of the NOI the applicant believes are proprietary, trade secret or harmful to its competitive position. Those portions of the NOI that are not designated as confidential will be available as public record.

Section 9-403: Permit Submittal Requirements for Mining Operations. B. DRMS and other Agency Application Contents shall be Accepted. To the maximum extent feasible, information supplied by the applicant within an application submitted to the Colorado Division of Reclamation Mining and Safety (DRMS), and any other state or federal agency, shall be accepted by Gunnison County to meet submittal requirements required by this Section.

The applicant has requested that the information regarding the location of the deposit and any information regarding the deposit be kept confidential. Pursuant to state statute, all information regarding the location of the property, maps of the drilling program or identification of the size or nature of the deposit, etc. shall remain confidential and shall not be released to the public.

SURROUNDING LAND USES:
Private patented mining claims, Bureau of Land Management lands.

PLANS/REPORTS/SUBMITTALS:
Plans, reports, and other submittal documents informing this Decision include, but are not limited to:

- Land Use Change Application, LUC No. 2014-18.

This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application; including all exhibits, references and documents as included therein.

<u>REVIEW AGENCY REFERRAL COMMENTS:</u>
Comments were received from the following agencies:

Gunnison County Wildlife Conservation Coordinator:
Comments from Jim O. Cochran, Gunnison County Wildlife Conservation Coordinator were received in a memo dated July 29, 2014:

> "Because parts of this proposed activity occur within Tier 1 Gunnison Sage-grouse habitat, I consulted with Colorado Parks and Wildlife staff. It was their opinion that an onsite assessment was not necessary for the proposed level of activity, considering existing habitat disturbances. This was in agreement with my assessment.

Based on this analysis, a review of the data available, and the nature of the proposed building envelope change, I find that the proposed activity will not adversely impact Gunnison Sage-grouse or their habitats more than has already occurred. This finding applies only to the proposed activity. Any changes to that activity or new proposed activities must be reviewed on their own merit.
To avoid and/or minimize the impacts to Gunnison Sage-grouse and their habitats due to the proposed activity, the following conditions will be applied to all permits issued by Gunnison County for activities on this parcel:

1) Per Section 11-106 G.3.d.1. of the *Gunnison County Land Use Resolution,* dogs and cats must be kept under appropriate control, by means which may include kenneling or other physically secure methods to ensure that negative effects to wildlife from pets do not occur. This includes construction workers' pets.

2) During the period March 15 to May 15 annually, no exploration activities shall be allowed. This shall include any access to the sites, whether direct exploration is involved or not. No exception for this activity shall be authorized.

3) Any equipment brought onto the site must be cleaned prior to transport to the site to remove all dirt, plant parts and material that may carry noxious weed seeds onto the property and/or adjacent areas. Noxious weeds shall be those specified as State of Colorado List A, B or C plants. Of particular concern relative to sage-grouse is "cheatgrass", *Bromus tectorum*. Equipment shall be inspected in Gunnison or at a pre-arranged staging area by a representative of Gunnison County.

4) Disturbed areas shall be reseeded with an approved seed mix. CPW and/or NRCS are available to help identify an appropriate seed mix. All reclamation activities, including seed application and final grading must be completed according to NRCS guidance on timing of reclamation plantings at this elevation and latitude.

5) Property owners must control or attempt to eradicate any noxious weeds that occur on the property. A list of noxious weeds may be found in the Colorado Noxious Weed list: http://www.colorado.gov/cs/Satellite?c=Page&cid=1174084048733&pagename=Agriculture-Main/CDAGLayout The Gunnison County Weed Management Program should be contacted (970-641-4393) for additional information and technical assistance.

Additionally, the applicant is advised that the Gunnison Sage-grouse is proposed for listing under the Federal Endangered Species Act (ESA). If the species is listed, the Federal government may require additional mitigation or other actions beyond those found necessary by Gunnison County for activities that may result in "take" of the species, including loss of or impacts to Gunnison Sage-grouse habitat. Gunnison County has not been informed by the Federal government as to whether a separate Federal authorization will be required for this activity if the grouse is listed."

APPLICABLE SECTIONS OF THE *GUNNISON COUNTY LAND USE RESOLUTION:*

Section 11-103: *Development in Areas Subject to Flood Hazards*.
The project area is not within any mapped 100-year flood plains, according to FEMA mapping.

Section 11-104: *Development in Areas Subject to Geologic Hazards*.
The project area is not mapped for geologic hazard areas, according to County mapping. No geologic hazards have been identified or disclosed.

Section 11-105: *Development in Areas Subject to Wildfire Hazards.*
The project is within an area that is mapped as low to moderate for wildfire hazards, according to County mapping.

Section 11-106: *Protection of Wildlife Habitat Areas.*
The project area is within Gunnison Sage-grouse habitat. Comments were received from Jim Cochran, Gunnison County Wildlife Conservation Coordinator, dated July 29, 2014.

Section 11-107: *Protection of Water Quality*.
No drill pads are located within 125 feet of any identified wetland or water body.

Section 11-108: *Standards for Development on Ridgelines.*
Not applicable.

Section 11-109: *Development that Affects Agricultural Lands.*
The project area is not adjacent to agricultural land or within proximity to agricultural lands.

Section 11-110: *Development of Land Beyond Snowplowed Access*.
No snowplowing is contemplated in the application.

Section 11-111: *Development on Inholdings in the National Wilderness.*
The project area is not located on a National Wilderness inholding.

Section 11-112: *Development on Property Above Timberline.*
The project area is not located above timberline.

Section 12-103: *Road System*.
The access is via a developed Burea of Land Management road.

Section 12-107: *Fire Protection*.
The project area is within and will be served by the Gunnison Fire Protection District. The applicant identified that there will be fire suppression equipment maintained on the drill pads, including but not limited to fire extinguishers.

Section 9-404: Site Location And Setbacks For Mining Operations.

A. Supersedes Locational Standards.

Section 9-404 supersedes locational standards of Section 10-104: *Locational Standards for Commercial, Industrial and Other Non-Residential Development.*

B. Compatibility.
The project is in an undeveloped area. There are no campgrounds, picnic areas, residential areas or other developed sites within the vicinity.

C. Use Of Best Management Practices.
The applicant will use best management practices in the operations.

D. Setbacks.

l. Setbacks for Mining Operations Other Than Construction Processing Operations. Table 5: Setbacks. (Table)

m. Public Roads. (500')
No sites are within 500' to a public road.

n. Water Body. (500')
No drill pads are within 500' of a water body.

o. Federal Wilderness, National Park (1000')
No wilderness, parks are within 1000' of the use.

p. Dedicated Open Space (1000')
No dedicated open space is within 1000' of the use.

q. Residential Structures (500')
No residential structures are with within 500' of the use.

r. Public and Civic Buildings (1,000')
No public or civic buildings are within 1,000' of the use.

s. Public Cemetery (30')
No Cemeteries are located within 30' of the use.

t. Adjacent Property, Ditch, Road R-O-W (30')
The proposed use meets the 30' setback to adjacent property and there are no ditches.

Section 9-405: General Development Standards For Mining Operations.

A. Access And Transportation Plan.
The access is via developed BLM roads.

B. Rock Crusher, Asphalt Plant, Cement Batch Plant.
Not applicable.

C. Impacts on Environmental and Cultural Resources.
Surface disturbance will be minimized for the drill pads. The applicant shall report any cultural resource found during operations.

D. Mine Wastes and Hazardous Materials.
No mine wastes or hazardous materials will be generated by the operations.

E. Visual Impacts.
Due to the limited operational time frame, no long-term significant changes to the existing visual impacts of the site are reasonably likely to result.

F. General Operations.

1. Compliance With MSHA.
Not applicable for MSHA. Compliance with OSHA required.

2. Hours Of Operation.
The applicant has noted that the drilling will take place in one shift, from sunrise to sunset.

a. Temporary Operations Outside the Approved Hours of Operations.
Not applicable.

3. Phasing Of Mining Operations.
There is no phasing for this operation.

4. Fire Protection.
The applicant indicates that they will have on-site fire suppression, including but not limited to fire extinguishers.

5. Fencing.

A. Safety.
No fencing is required.

b. Visibility.
Not applicable.

6. Noise.

a. Noise Mitigation Measures.
Due to the remote locations, no noise mitigation is required.

b. Monitoring.
Not applicable.

c. Maximum Permissible Noise Levels.
The operation is required to comply with the maximum permissible noise levels.

1. **Warning Devices Exempted**. Devices required by MSHA, or the U.S. Department of Labor, are exempt from this standard.
2. **Sage Grouse Breeding Area Noise Limits**.
   Exploration activities are not permitted on the site between March 15 and May 15 to avoid disturbance to area Sage-grouse leks.

G. Post-Operational Land Use.

1. **State And Federal Reclamation Requirements**.
   Applicable.

2. **County Priorities.**
   Not applicable.

3. **Reclamation To Be Completed Pursuant To MLRD Reclamation Plan.**
   Applicable, covered by MLRD Division of Reclamation, Mining and Safety.

4. **Revegetation.**
   Applicable, as required by the State Division of Reclamation and Mining Safety.

   a. **Three Year Maintenance Required**.
      Not applicable.

Section 9-406: Additional Financial Security.
Not applicable. No blasting is contemplated in the application.

PLANNING COMMISSION MEETING DATES:
The Planning Commission held meetings on the subject project on the following dates:

- August 1, 2014 – Work Session
- August 15, 2014 – Site Visit
- August 15, 2014 – Public Hearing & Work Session

SITE VISIT:
The Commission conducted a site visit on August 15, 2014. The Commission viewed the proposed locations of the drill pad sites and the surrounding area.

PUBLIC HEARING:
The Planning Commission conducted a public hearing on August 15, 2014. At that time ……

All testimony, both written and oral, is hereby incorporated as part of this record of review and evaluation.

FINDINGS:
The Commission finds that:

1. This Permit is limited to activities described within the "Project Summary" of this application, and as depicted in the narrative and on the exhibits and plans as submitted. Expansion or change of this use will require either an application for amendment of this Permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution.*

2. The application is classified as a Minor Impact Project, pursuant to *Section 6-102: Projects Classified as Minor Impact Projects, O. Small New or Expanded Mining Operation* and review of Section 3-111: Classification of Impact. 8034

3. The project site is located within Gunnison Sage-grouse occupied habitat. Comments from Jim O. Cochran, Gunnison County Wildlife Conservation Coordinator, dated July 29, 2014, identify specific mitigation to protect Gunnison Sage-grouse and avoid and/or minimize direct impacts to the grouse and their habitats.

4. The application complies with *Section 9-405: General Development Standards for Mining Operations*. Potential impacts to visual resources and noise generated by the operation are mitigated by the remote location of the drill sites, the temporary timeframe of the exploration project, lack of development in the immediate vicinity and limitations placed on the operations to eliminate or minimize impacts to Sage-grouse and Sage-grouse breeding areas.

5. Granting this Land Use Change Permit for this specific land use change does not exempt it from compliance with any applicable Colorado or federal statutory and regulatory requirements. A copy of each applicable permit is required to be submitted to the Community Development Department.

6. This review and Decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Department file relative to this application, including all exhibits, references and documents as included therein.

7. This Decision is made in reliance on the present and continued existence of all physical features of the property (geological, topographical and vegetative) cited as mitigating a possible conflict with design standards stated in the *Gunnison County Land Use Resolution*.

8. Review of this application has considered the impact of this proposed use in the context of cumulative impacts to the environment and the community in the context of its compliance with the *Gunnison County Land Use Resolution*, and all other applicable codes and regulations. Approval of this use is based upon the facts presented and implies no approval of a similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

DECISION:
The Gunnison County Planning Commission has reviewed all of the documentation submitted to the County file, including all exhibits, references and documents included therein. Having reached the above cited Findings, the Planning Commission approves LUC #2014-18, ITC Resources, LLC Exploration Project, as a Minor Impact Project, with the following conditions, and directs that such approval be memorialized by recordation of a Certificate of Minor Impact, with the Office of the Gunnison County Clerk and Recorder:

1. This permit is limited to activities described within the "Project Summary" of this application, and as depicted on the site plans submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution.*

2. The applicant shall comply with the conditions identified in the memo from Jim O. Cochran, Gunnison County Wildlife Conservation Coordinator, dated July 29, 2014.

3. The applicant shall employ best management practices for erosion and sedimentation control.

4. The applicant shall comply with the applicable standards identified in *Section 9-405: General*

Development Standards for Mining Operations, Gunnison County Land Use Resolution.

5. The term of permit for the operations is expressly limited to December 31, 2014.

6. Granting this Land Use Change Permit for this specific land use change does not exempt the use from compliance with any applicable State or federal statutory and regulatory requirements.

7. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.

8. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

9. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.