TO:	**Planning Commission**
SUBJECT:	***DRAFT* Minor Impact Decision** **Seaglass Holding Inc.** **Powderhorn Exploration Project** **LUC #2011-32**
PREPARED BY:	**Neal Starkebaum, Assistant Director** **Gunnison County Community Development Department**
DATE:	**Planning Commission Meeting of February 3, 2012**
LANDOWNER:	**Bureau of Land Management** **U.S. Department of Interior** **216 N. Colorado** **Gunnison, CO 81230**
APPLICANT:	**Seaglass Holding, Inc.** **12 N. Washington Street** **Montoursville, PA 17754**
REPRESENTED BY:	**Greg Schifrin** **Minex Exploration** **120 E. Lake Street, Suite 401** **Sandpoint, ID 8386**

PROJECT SUMMARY:
The request is for a land use change permit to conduct mineral exploration in the Powderhorn area. The purpose of the exploration project is to quantify the extent, volume, grade and type of mineralization in the exploration area for rare earth minerals, to determine if further exploration and/or mining development is warranted. Exploration operations will include surface and subsurface activities including soil sampling, rock sampling stream sediment sampling and geophysical sampling. The focus will be primarily on core drilling in order to develop a more complete 3D model of the subsurface mineralization. Drilling will take place at five locations, with 2-3 holes drilled per site. The drilling program depths will be 200' to 500' at each site. Drill pads will be approximately 20' x 35' with a staging area in the immediate vicinity. The project locations are located entirely on unpatented federal lands. There will be 1-8 persons in the exploration area depending upon the specific activities being carried out: 1-3 geologists and 1-4 support staff, including geotechs, drillers and equipment operators. There will be only one drill site operated at one time, with one to two shifts per day.

The project area is entirely located on Bureau of Land Management lands and is in the Powderhorn area that contains a substantial number of unpatented mining claims that have been subject to periodic exploration activities.

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.

LOCATION:
The project area is located in two locations; one approximately 8.5 miles south of Powderhorn in the vicinity of Rudolph Hill, accessed from the County Road 27 network and one approximately 6 miles northwest of Powderhorn, west of County Road 26. The Rudolph Hill sites: Site No. 1 is located within Section 24, Township 46 North, Range 2 West, N.M.P.M., and Site No. 2 is located within Section 24, Township 46 North, Range 1½ West, N.M.P.M. The County Road 26 sites: Sites No. 3, 4 and 5 are located within Sections 4 & 10, Township 47 North, Range 3 West, N.M.P.M.

SURROUNDING LAND USES:
The project area is located entirely on 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. 2011-32, including maps, documents and exhibits.

SUBMITTALS RECEIVED AFTER INITIAL APPLICATION:

- *Notice of Powderhorn Project Exploration Drilling Program, Notice of Intent, No. P-2011-024, Completeness and Approval,* Division of Reclamation, Mining and Safety, G. Russell Means, Environmental Protection Specialist II, dated October 4, 2011.
- Maps of live water, submitted by Minex Exploration, dated January 20, 2012.
- Letter of January 19, 2012, Greg Schifrin, Seaglass Holding Corp., noting cultural resources response, corrected seed mix for reclamation.

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.

BUREAU OF LAND MANAGEMENT COMMENTS:
Brian St. George, Field Manager, Gunnison Office, Bureau of Land Management (BLM), noted at the January 6, 2011 Planning Commission work session that no federal action was required for this exploration activity on federal lands. Additionally, he noted that the subject BLM roads are closed to the public.

REVIEW AGENCY REFERRAL COMMENTS:
Comments were received from the following agencies:

Gunnison County Public Works Department:
Comments from Allen Moores, Public Works Department were received on January 12, 2012:

a. *"This project will be using CR. 26 to access 3 of the proposed sites, and C.R. 27 to access the other 2 sites. Impacts to either County Road will be minimal. It should be noted that there is no winter maintenance on CR 26. If winter access is to be considered, the applicant should contact our office, to apply for the required permits.*

b. *This proposal will be using existing BLM roads and we would see no need for improvements, especially in the Sapinero Mesa area where Sage Grouse is an issue.*

c. *No parking or unloading of equipment will be allowed on the County Roads."*

Gunnison County Wildlife Conservation Coordinator:
Comments from Jim O. Cochran, Gunnison County Wildlife Conservation Coordinator were received in a memo dated January 12, 2012. He notes:

"The applicant submitted a Gunnison Sage-grouse Pre-application Conference Request for exploration drilling on mining claims located in the Rudolph Hill and Goose Creek (Sapinero Mesa) areas. The Rudolph Hill locations are not within mapped Gunnison Sage-grouse habitat.

The proposed activity is not within 0.6 miles of a Gunnison Sage-grouse lek. It is within mapped Gunnison Sage-grouse Occupied Habitat. An onsite assessment was conducted on January 4, 2012.

Three drill sites, located generally west of County Road 26 on Sapinero Mesa, are proposed. The southerly site has been disturbed, with drilling activity having been completed. We were notified by the Bureau of Land Management (BLM) that the applicant has complied with all Federal requirements. No NEPA review was required. I consulted with BLM Gunnison Field Office Manager Brian St. George and BLM Geologist Dave Lazorchak on my recommended permit conditions and Gunnison Sage-grouse issues.

There are four Gunnison Sage-grouse leks located approximately one mile north of the proposed drill sites. Mr. Martin indicated that grouse have been observed during lekking season distributed in a manner that indicates the leks are part of a "lek complex" that may not be completely mapped. The sage-grouse habitat in the area of the drill sites is in apparent good condition with minimal fragmentation, largely caused by two track roads. Habitats observed included mating (spring), nesting, late summer/fall, and winter. In short, this area is excellent Gunnison Sage-grouse habitat that is used by the bird. The area also provides important habitat for other wildlife species including elk and deer. This is one of the areas that provided critical winter range for these species during the extreme snow winter of 2007-2008, and likely helped prevent an even larger mortality of grouse, elk and deer.

The disturbed site, labeled as Drill Site #5 on the site map submitted, was approximately ½ acre in size. It was stripped of vegetation, including sagebrush. A reclamation pond, which had been observed by County staff in November, had been filled in. Hydrocarbon (oil) contamination was evident on the site. A small amount of trash, which appeared to be remnants of oil sorbent pads, was noted. Drill mud and/or concrete were evident. A dozer had pushed topsoil out into the sagebrush.

The two-track road into the site, from CR 26, was heavily compacted by equipment and vehicle travel. Fragmentation of habitat is a concern and, in this case, would best be addressed through compensatory mitigation. Because of the issues associated with the County requiring surface disturbing activities associated with that type of reclamation on Federal lands, I have not recommended that the County pursue that mitigation.

No evidence of reclamation efforts, such as seeding or scarifying, was evident, beyond filling and leveling. Drill sites #4 and #5 are located on windblown knobs with minimal soil cover and sparse black sagebrush as the primary plant type. Drill site #3 appears to be located in a depression with slightly more soil depth. Mr. Lazorchak noted that the site is actually located on the two-track road. Drill sites #3 and #4 did not appear to be disturbed and were located using the coordinates provided by the applicant. Access to drill sites #4 and #5 was by "closed" two-track road (BLM Travel Management Plan, 2010). Access to drill site #3 was by "open" two-track road. No barriers or signage indicating road status was noted.

Conservation measures for Gunnison Sage-grouse should be implemented to avoid and/or

minimize direct impacts to grouse and their habitats. Because the project is on Federal lands, I have limited my recommendations to non-surface disturbing activities with the exception of the area already disturbed by the proponent. I recommend that the following conditions be applied to any permits/authorizations approved by Gunnison County for this project:

To avoid direct impacts to Gunnison Sage-grouse:

1. 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. County Road 26 is closed to motorized access during this period. No exception for this activity shall be authorized.

2. 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.

To avoid/minimize impacts to Gunnison Sage-grouse habitat:

1. 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 a pre-arranged staging area by a representative of Gunnison County.

2. All disturbed areas shall be reclaimed by grading, scarifying and reseeding. The seed mix shall be approved by the Gunnison Field Office of the Bureau of Land Management. *(the mix proposed by the applicant in the Land Use Change application submitted to Gunnison County is not acceptable)* Proof of approval, and final seed mix formula shall be provided to the Gunnison County Department of Community Development prior to application. Any mulch used shall be State of Colorado certified as weed-free. All piles of dirt, rock and/or plant material shall be raked out prior to seeding. No contaminated areas (hydrocarbons or other) that will prevent growth of desirable plants are allowed."

Colorado Division of Parks and Wildlife:
A referral was sent to J Wenum, Area Wildlife Manager; no comments were received.

Gunnison County Fire Protection District:
A referral was sent to Dennis Spritzer, Fire Marshall, Gunnison County Fire Protection District; no comments were received.

Gunnison County Emergency Management:
A referral was sent to Scott Morrill, Gunnison County Fire Emergency Management; no comments were received.

Montrose Interagency Fire Dispatch:
Comments were received from Amy Stephens, Assistant Center Manager, email of January 19, 2012, noting:

> *"I received a call this afternoon from Jackie with Minex. She asked that I send an email to confirm, with you, that she had contacted us. She actually called last year as well. I have the Lat & Long locations in Goose Creek and Rudolph Hill. We have a map of those locations on our wall in dispatch for reference."*

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 area containing the drill pads is within an area that is not mapped for wildfire hazards, according to County mapping. Comments were received from Amy Stephens, Assistant Center Manager, Montrose Interagency Fire Dispatch, email of January 19, 2012.

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 January 12, 2012.

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 to the Sapinero Mesa project area is via County Road 26 (Sapinero Mesa – Lake City Cut-Off Road) and two track Bureau of Land Management roads, which, according to Brian St. George, Field Manager, Gunnison BLM Field Office, and in accordance with the 2010 Bureau of Land Management Travel Management Plan, are closed to the public.

The access to the Rudolph Hill project area is via County Road 27 (Powderhorn Road) and Bureau of Land Management Road 3045 (Beaver Creek Road). Heavy equipment assoicated with the exploration operation will be transported using standard vehicular haulage.

Potential impacts to County roads have been reviewed by the the County Public Works Department. Comments were received from Allen Moores, Public Works, dated January 12, 2012.

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 areas are in undeveloped areas on Bureau of Land Management lands. 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')

The subject roads are closed to the public. 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 to the Sapinero Mesa project area is via County Road 26 (Sapinero Mesa – Lake City Cut-Off Road) and Bureau of Land Management roads.

The access to the Rudolph Hill project area is via County Road 27 (Powderhorn Road) and Bureau of Land Management Road 3045 (Beaver Creek Road) Heavy equipment assoicated with the exploration operation will be transported using standard vehicular haulage.

Potential impacts to County roads have been reviewed by the the County Public Works Department. Comments were received from Allen Moores, Public Works, dated January 12, 2012.

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 has agreed to 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.**
The project areas are visible to surrounding roads. No residences or other residential uses are located in the immediate area. 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 requested that the operation operate 24 hours/day, in two 12-hour shifts.

   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 or acess to the Sapinero Mesa sites is not permitted on the Sapinero Mesa sites 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.**
   Not applicable, covered by 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:

- January 11, 2012 – Work Session
- January 11, 2012 – Site Visit
- January 20, 2012 – Work Session
- February 3, 2012 – Public Hearing & Work Session

SITE VISIT:
The Commission conducted a site visit on January 11, 2012. The Commission viewed the proposed locations of the drill pad sites and the surrounding areas, and notes that the sites are very remote.

PUBLIC HEARING:
The Planning Commission conducted a public hearing on February 3, 2012, 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 Sapinero Mesa drill sites are located within Gunnison Sage-grouse occupied habitat. Comments from Jim O. Cochran, Gunnison County Wildlife Conservation Coordinator, dated January 12, 2012, identifies 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 locations of the drill sites, 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. The Planning Commission hereby extends the hours of operation to allow 24 hour/day activity, to permit continuous drilling at the sites, until completion of the operation, with the finding that there will be no significant net adverse impacts on human activity, surrounding properties or the community in general, based upon the remote locations of the drill sites.

6. Comments from Allen Moores, Public Works Department, dated January 12, 2012, note that there is no County winter maintenance on County Road 26.

7. The applicant has identified that the drill cuttings and drill material may contain elevated levels of radiation. The Planning Commission therefore finds that it is in the interests of the public and environment for the applicant to provide for radiation testing of the drill cuttings and materials and providing result to the County.

8. 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.

9. 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.

10. 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.*

11. 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 #2011-32, Seaglass Holding Corporation – Minex Exploration, Powderhorn 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 any seasonal closures of County Road 26 (Sapinero Mesa).

3. The applicant shall provide radiation testing of the drill cuttings and materials and provide the results to the Community Development Department, including results of the material testing and ambient background radiation, within 30 calendar days of extraction of the drilling material from

each site.

4. During the period March 15 to May 15 annually, no exploration activities shall be allowed on the Sapinero Mesa sites. This shall include any access to the sites, whether direct exploration is involved or not. County Road 26 is closed to motorized access during this period. No exception for this activity shall be authorized.

5. 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.

6. Any equipment brought onto the sites 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. Equipment shall be inspected in Gunnison or a pre-arranged staging area by a representative of the Gunnison County Public Works Department.

7. The seed mix used for reclamation shall be approved by the Gunnison Field Office of the Bureau of Land Management. Proof of approval, and final seed mix formula shall be provided to the Gunnison County Community Development Department prior to commencement of drilling operations. Any mulch used shall be State of Colorado certified as weed-free. All piles of dirt, rock and/or plant material shall be raked out prior to seeding. No contaminated areas (hydrocarbons or other) that will prevent growth of desirable plants are allowed.

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

9. The applicant shall comply with the applicable standards identified in *Section 9-405: General Development Standards for Mining Operations, Gunnison County Land Use Resolution.*

10. The term of permit for the operations is expressly limited to December 31, 2012.

11. 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.

12. 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.

13. 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.

14. 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.