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OPINION NO. 2011-11

HISTORICAL COMMISSION; MINING; STATUTES: The Comstock Historical District Commission's authority is limited by NRS 384.110(2) to "preventing the erection, reconstruction, restoration, alteration, moving or razing of buildings" inconsistent with the district's historic appeal. Therefore, the relevant statutes do not grant the Commission the authority to regulate activities, including mining, that may impact the broader landscape of the district.

Michael A. Bedeau, District Administrator
Comstock Historical District Commission
Post Office Box 128, 20 North "E" Street
Virginia City, Nevada 89440

Dear Mr. Bedeau:

You have requested an opinion from this Office regarding the Comstock Historical District Commission's ability to regulate activities that may impact the broader landscape of the District; namely, mining operations.

QUESTION

Does NRS 384.020 provide the Comstock Historical District Commission with statutory authority to regulate mining and other activities that may impact the broader landscape contained within district boundaries?

ANALYSIS

The Comstock Historical District Commission (Commission) is governed by NRS/NAC Chapter 384, and the Commission's objectives are set forth in NRS 384.020:

It is hereby declared to be the public policy of the State of Nevada to promote the educational, cultural, economic and general welfare and the safety of the public through the preservation and protection of structures, sites and areas of historic interest and scenic beauty, through the maintenance of such landmarks in the history of architecture, and the history of the District, State and Nation, and through the development of appropriate settings for such structures, sites and District.

To this end, Nevada law empowers the Commission to prepare, make available, evaluate, and ultimately grant or deny applications for a "certificate of appropriateness." NRS 384.110-384.150, inclusive; and NAC 384.160–170, inclusive. Pursuant to NRS 384.110, "No structure may be erected, reconstructed, altered, restored, moved or demolished within the historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the Commission, . . ." NRS 384.110(1). Further, the statute defines the parameters of the Commission's authority:

In its deliberations under the provisions of [the Comstock Historical District Act], the Commission and its staff . . . shall take no action under [the Comstock Historical District Act], except for the purpose of preventing the erection, reconstruction, restoration, alteration, moving or razing of buildings in the district obviously incongruous with the historic aspects of the district.

NRS 384.110(2) (emphasis added).

In this instance, a constituent property owner claims that NRS 384.020 obligates the Commission to regulate activities that impact the historic landscape and scenic beauty of the district. The constituent asserts that the Commission possesses the mandate and statutory authority to protect these features in the same manner that it exercises its authority to preserve the historical integrity and exterior architectural style of structures within its jurisdiction.

However, the applicable law (NRS/NAC 384) lacks reference to the Commission's purported ability to regulate the broader landscape contained in the district. While it is replete with specific references to the Commission's ability to

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regulate (through certificates of appropriateness) the erection, reconstruction, restoration, alteration, moving, or razing of buildings in the district, it fails to contemplate the broader, surrounding landscape.

In *Harris Associates v. Clark County School District*, 119 Nev. 638, 641-42, 81 P.3d 352, 354 (2003), the Nevada Supreme Court held that when "the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended." In *Meridian Gold Company*, the Court elaborated: "[W]ords in a statute will generally be given their plain meaning, unless such a reading violates the spirit of the act, and when a statute is clear on its face, courts may not go beyond the statute's language to consider legislative intent." *Meridian Gold Co. v. State ex. rel. Dep't of Taxation*, 119 Nev. 630, 633, 81 P.3d 516, 518 (2003) (quoting *Pellegrini v. State*, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001)).

In this case, NRS 384.020 sets forth an aspirational policy statement. The statutes that follow delineate the Commission's composition and jurisdiction, and clearly and unambiguously define the scope of its authority and responsibilities; namely, its ability to issue and deny certificates of appropriateness as they pertain to the erection, reconstruction, restoration, alteration, moving, or razing of buildings in the district.

CONCLUSION

The Comstock Historical District Commission's authority is limited by NRS 384.110(2) to "preventing the erection, reconstruction, restoration, alteration, moving or razing of buildings" inconsistent with the district's historic appeal. Therefore, the relevant statutes do not grant the Commission the authority to regulate activities, including mining, that may impact the broader landscape of the district.

Sincerely,

CATHERINE CORTEZ MASTO
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By:



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