

**ORDINANCE NO. 2020-01**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, COLORADO FOR THE REGULATION OF LAND USE, DEVELOPMENT AND ACTIVITIES UPON ANY PROPERTY WITHIN UNINCORPORATED SAN JUAN COUNTY CONTAINING MINE WASTE SOURCE AREAS WHERE RESIDUAL MINE WASTES AND REMEDIATION COMPONENTS EXIST, SPECIFICALLY INCLUDING THE BONITA PEAK MINING DISTRICT SUPERFUND SITE**

**WHEREAS**, San Juan County (the “County”) has jurisdiction over Mine Waste Source Areas, as defined herein, where residual mine wastes and remediation components exist, and the Board of County Commissioners adopts this Ordinance to control and regulate land use at all such Mine Waste Source Areas within unincorporated San Juan County, specifically including, but not limited to, the Bonita Peak Mining District Superfund site, pursuant to authority granted in C.R.S. § 29-20-104 and C.R.S. § 30-11-101, *et seq.*; and

**WHEREAS**, the United States Environmental Protection Agency (“EPA”) and the Colorado Department of Public Health and Environment (“CDPHE”) have and will conduct Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) response actions including, but not limited to, response actions selected in the Interim Record of Decision dated May 20, 2019 (“IROD”) and possible other future CERCLA response actions, at portions of the Bonita Peak Mining District Superfund Site (collectively referred to as “CERCLA response actions”), in San Juan County; and

**WHEREAS**, properties where CERCLA response actions have occurred within the Bonita Peak Mining District (“BPMD” or “Site”) are more fully described in the inventory of Remediated Mine Waste Source Areas, **attached hereto as Attachment A** (“Inventory”), and as may be modified from time to time and maintained within the Office of the San Juan County Clerk and Recorder for public viewing. Specifically, the subject CERCLA response actions may include: managing acidic water discharging from mine portals with diversion trenches; diverting storm water around mine waste piles; maintaining existing mine portal sediment ponds; excavating in-stream mine wastes; and containing and isolating contaminated soils at mine-impacted recreation staging areas using covers; and

**WHEREAS**, prior to the BPMD Superfund site listing, non-CERCLA reclamation measures were implemented on other Mine Waste Source Areas in San Juan County within and beyond the BPMD. These sites may be more fully described in the Inventory, as may be modified from time to time and maintained within the Office of the San Juan County Clerk and Recorder for public viewing. Specifically, the subject non-CERCLA reclamation measures may include: managing acidic water discharging from mine portals with diversion trenches; diverting storm water around mine waste piles; maintaining existing mine portal sediment ponds; excavating in-stream mine wastes; and containing and isolating contaminated soils at mine impacted recreation staging areas using covers; and

**WHEREAS**, although the CERCLA response actions are conducted to protect human health and the environment in accordance with the National Contingency Plan (40 C.F.R. Part 300), residual mine waste will remain at many of the BPMD Remediated Mine Waste Source Areas, including all of the IROD Mine Waste Source Areas. Likewise, residual mine waste remains at the non-CERCLA Remediated Mine Waste Source Areas. Contact with residual mine waste could result in unacceptable human exposure to lead and arsenic; and

**WHEREAS**, the CERCLA response actions and non-CERCLA reclamation measures include engineered components such as diversion trenches, sediment ponds and covers that will not function as intended if disturbed; and

**WHEREAS**, the Colorado Environmental Covenants Law, C.R.S. § 25-15-320(2), requires environmental covenants for environmental remediation projects related to remedial decisions made after July 1, 2001, that result in residual contamination levels determined safe for one or more specific uses, but not all uses, or where engineered features or structures are incorporated requiring monitoring, maintenance or operation or that will not function as intended if disturbed. Environmental covenants are only required for remedial decisions made pursuant to the: Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921-6939e, 6972, 6973 and 6991-6991i; CERCLA, 42 U.S.C. § 9601, *et seq.*; Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 *et seq.*; Colorado Radiation Act, C.R.S. §§ 25-11-101 to 114 and 301-205; Colorado Hazardous Waste Act, C.R.S. §§ 25-15-310 to 328; and Colorado Solid Waste Disposal Sites and Facilities Act, § 30-20-100.5 *et seq.*; and

**WHEREAS**, BPMD response actions, including those in the IROD, are selected pursuant to CERCLA and after July 1, 2001, thus triggering the requirement for environmental covenants at BPMD Remediated Mine Waste Source Areas. The non-CERCLA remediation measures were not conducted pursuant CERCLA or other statutes listed in the recital above, many of which were completed prior to July 1, 2001, and therefore are not subject to the environmental covenant requirement; and

**WHEREAS**, C.R.S. § 25-15-320(3)(b) authorizes CDPHE to waive the requirement for an environmental covenant for parcels of land where the owner does not grant an environmental covenant under C.R.S. § 25-15-320 and where the County, City, or municipality having jurisdiction over the affected land has enacted an ordinance or resolution imposing the relevant environmental use restrictions, and has entered into an intergovernmental agreement with CDPHE; and

**WHEREAS**, the County finds that this Ordinance is necessary to protect human health and the environment and to maintain remediation measures, including engineered components at the subject CERCLA and non-CERCLA Remediated Mine Waste Source Areas.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, COLORADO** as follows:

**Section 1. Title.**

This Ordinance shall be known and referred to as the San Juan County and Bonita Peak Mining District Environmental Regulations.

**Section 2. Authority to Promulgate Ordinance.**

The Board of County Commissioners has authority to regulate land use, development and activities in hazardous areas pursuant to C.R.S. § 29-20-104, and to adopt and enforce ordinances and resolutions regarding health, safety and welfare pursuant to C.R.S. § 30-11-101, *et seq.*

**Section 3. Purpose.**

The Board of County Commissioners of San Juan County, Colorado, finds and declares that residual contamination following remediation at Mine Waste Source Areas may pose a threat to the health, safety, and welfare, of the citizens of San Juan County, Colorado. The Board of County Commissioners also finds and declares that the land use restrictions are necessary to protect remediation measures, including engineered components at Remediated Mine Waste Source Areas.

**Section 4. Scope of Ordinance.**

This Ordinance shall apply to all Remediated Mine Waste Source Areas located within unincorporated San Juan County. Remediated Mine Waste Source Areas are hereby defined as any portion of real property upon which mine waste and any remediation components designed to contain, treat, divert, avoid or otherwise address any aspect of such mine waste, are located, either partially or wholly. Remediated Mine Waste Source Areas may be more fully described in the Inventory, and as may be modified from time to time and maintained within the Office of the San Juan County Clerk and Recorder for public viewing. The determination as to whether a specific property is subject to this Ordinance shall be made by the CDPHE and/or the County. This Ordinance is intended to create an additional permitting process applicable to Remediated Mine Waste Source Areas, in addition to any process required by the San Juan County Zoning and Land Use Regulations. Nothing herein shall be construed as limiting the scope or the authority of the San Juan County Zoning and Land Use Regulations, or any other applicable local, state or federal law, rule or regulation.

## **Section 5. Regulation of Land Use Activities.**

### **A. Regulation of Excavation Activities at Remediated Mine Waste Source Areas**

- (1) No excavation, drilling, grading, digging, tilling, or any other soil-disturbing activity is allowed within any Remediated Mine Waste Source Areas containing residual contamination at levels that have been determined to be safe for one or more specific uses, but not all uses, including mine tailings, waste-rock impoundments, or engineered structures or features that require monitoring, maintenance, or operation or that will not function as intended if it is disturbed, except as authorized in a remedial decision document or with the prior written authorization of CDPHE as set forth in this Section 5.

### **B. Remediated Mine Waste Source Area Permit – CDPHE Consult Required**

- (1) Any application to the County for any building permit, zoning, subdivision, planned unit development, use by right, special review use, or any development activity (“Permit application”) that will result in any soil-disturbing activity within the boundary of a Remediated Mine Waste Source Area shall be preceded by an application for consultation with CDPHE.
- (2) CDPHE consultation prior to a County Permit application may be requested by any person having an interest in the property for which a County Permit will be sought. At a minimum, the consultation application must include:
  - (a) A general site plan showing the major details of the proposed development, consisting of the location of building and structures, off-street parking and loading areas, service and refuse areas, means of ingress and egress, major landscaping and screening proposals, and signs and pedestrian areas, or a relevant summary of the development activity proposed to be conducted within the boundaries of the Remediated Mine Waste Source Areas;
  - (b) A time schedule for the proposed development;
  - (c) A plan for maintaining the integrity of any engineered component of the remedial action; and
  - (d) Any other information the applicant believes will support his or her request.
- (3) Prior to proceeding to the CDPHE consultation and County Permit process, any applicant may request a determination as to whether the subject property is within a Remediated Mine Waste Source Area. Upon written request, the CDPHE and the County shall make such a determination within a reasonable period of time. Said time-frame may be impacted by such factors as weather, snowpack, and general access. The applicant, upon

such a request, shall provide a survey plat as well as a corresponding survey staking of the subject site, as may be required by the County and CDPHE. The determination regarding inclusion or exclusion of a specific property is subject to change for reasons including but not limited to changes on the ground, current or proposed remediation measures, and/or the discovery or processing of additional information.

- (4) The following activities shall be exempt from the County Permit and CDPHE authorization processes set forth herein:
  - (a) Operations, inspection and maintenance activities undertaken at a Remediated Mine Waste Source Area by EPA, CDPHE or their duly authorized contractors;
  - (b) Operations, inspection and maintenance activities undertaken at a Remediated Mine Waste Source Area by the County or their designee(s);
  - (c) Any other activity exempted from the provision of this Ordinance pursuant to the joint written consent of the County and a duly authorized representative of CDPHE.

#### **C. CDPHE Consultation Review and Results**

- (1) Within a reasonable time following written submittal of a consultation application to the CDPHE representative, along with the minimum required application information and any additional information requested, the CDPHE representative shall prepare a letter to the County setting forth the position of the CDPHE as to the permit being sought. The letter shall include either: 1) a denial of authorization to proceed; 2) authorization to proceed with the permit as described in the application; 3) authorization with conditions; or 4) a determination by the CDPHE to participate in the County Permit process, with a final position to be deferred.

#### **D. County Permit Application**

- (1) Following receipt of CDPHE's written authorization, authorization with conditions, or request to participate jointly in the County Permit process, the County shall proceed with processing the application pursuant to the San Juan County Zoning and Land Use Regulations. If CDPHE is participating in the County Permit process prior to issuing authorization, said authorization or denial by CDPHE may be determined at any point during the County Permit process. Final Authorization by CDPHE and final issuance of a County Permit shall authorize CDPHE to review and work with the County Permit recipient to assure no activity disturbs the engineered features of the remediated areas of the property unless authorized in a remedial decision document.

## **E. No Development without Permit**

- (1) No application for any building permit, zoning, subdivision, planned unit development, use by right, special review use, or any other development activity that will result in any soil-disturbing activity within the boundaries of a Remediated Mine Waste Source Area shall be allowed until such time as the property owner or applicant has secured CDPHE's written authorization and a County Permit, and has fully complied with any conditions set forth in the Permit. The issuance of CDPHE's written authorization shall be a condition precedent to any soil-disturbing activity within the boundaries of a Remediated Mine Waste Source Area.

## **Section 6. Violations and Penalties.**

**A.** This Ordinance may be enforced pursuant to the provisions of the San Juan County Zoning and Land Use Code and C.R.S. §§ 30-28-124, 124.5, 209 and 209.5. Violation of any provision of this Ordinance, or a Permit issued pursuant to Section 5, shall constitute a violation of the San Juan County Zoning and Land Use Code which shall carry such penalties and entitle the County to seek such remedies as are provided by the San Juan County Zoning and Land Use Code or state law.

**B.** Any person who violates the Ordinance or a Permit Section shall also be guilty of a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of not more than one thousand (\$1,000) dollars for each separate violation.

**C.** The penalty assessment procedure provided in C.R.S. § 16-2-201 shall be followed for any violation of this Ordinance. Any person found in violation pursuant to subsection (A) of this Section 6 shall be assessed a penalty by the apprehending peace officer or by the County Code Enforcement Officer. The penalty assessment shall be a summons and complaint which:

- (1) identifies the alleged offender by name, address and social security number (if available);
- (2) specifies the offense with which the person is charged;
- (3) states both the applicable maximum one thousand (\$1,000) fine and maximum six (6) months jail sentence (if convicted and sentenced by the Court) and the violator's option to instead voluntarily pay a fine of five hundred (\$500) dollars payable to the County Treasurer; and
- (4) states the requirement that the alleged offender either pay the optional five hundred (\$500) fine to the County Treasurer in person or by mail within fourteen (14) days of the issuance of the penalty assessment or else appear to answer the charge before the County Court at 9:00 a.m. on the date of its next regular session at the San Juan County Courthouse.

Any person who chooses to acknowledge his or her guilt may, within fourteen (14) days of the date of issuance of the penalty assessment, voluntarily pay a fine of five hundred (\$500) to the San Juan County Treasurer either in person or by mail at the address as shown on the penalty assessment. Any such payment shall be accompanied by a copy of the penalty assessment signed by said person acknowledging his or her guilt. Payment of the foregoing fine shall relieve the person receiving the penalty assessment of any further obligation to appear in the County Court to answer the offense charged in the penalty assessment.

**D.** When imposing a fine under this Ordinance, the Court shall separately state, as a part of the total fine, the surcharge specified in C.R.S. § 24-4.2-104(1). The defendant shall also pay Court costs and docket fees.

**E.** Pursuant to C.R.S. § 25-15-322, this Ordinance, and the Intergovernmental Agreement referenced herein, whenever CDPHE and/or the County finds that any person is or has been in violation of any requirement of this Ordinance or a Permit as it relates specifically to property or actions at a Remediated Mine Source Area, CDPHE and/or the County may bring suit in district court for injunctive relief, enforcement of this Ordinance, or a Permit, and recovery of attorneys' fees and costs for any such enforcement action pursuant to C.R.S. § 25-15-322. CDPHE may also issue an administrative order identifying the factual and legal elements of such violation and requiring the person to comply with any such requirements to remedy the violation. All remedies for violations of this Ordinance shall be cumulative.

#### **Section 7. Prosecution.**

All prosecutions pursuant to Section 6(A)-(D), shall be by the 6<sup>th</sup> Judicial District, District Attorney according to the Colorado County Court Rules of Criminal Procedure in the San Juan County Court. The simplified county court procedures set forth in part 1 of article 2 of title 16, C.R.S., shall be applicable to the prosecution of violations of this Ordinance.

#### **Section 8. Severability.**

If a Court of competent jurisdiction shall hold any part of this Ordinance void or unconstitutional, such part shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions of the Ordinance.

#### **Section 9. Disposition of Fines, Fees, and Forfeitures.**

All fines and forfeitures obtained through enforcement actions initiated under Section 6 for violations of the provisions of this Ordinance shall be paid into the treasury of San Juan County upon payment of said fines and forfeitures.

#### **Section 10. Effective Date.**

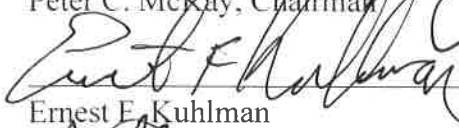
This Ordinance shall be in full force and effect thirty days after publication of the Notice of Adoption in the *Silverton Standard*.

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**INTRODUCED, FIRST READING AND ORDERED PUBLISHED IN FULL** this 12<sup>th</sup> day of November, 2020.

**ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL** this 15<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Peter C. McKay, Chairman

  
\_\_\_\_\_  
Ernest E. Kuhlman

  
\_\_\_\_\_  
Scott Fetchenhier

ATTEST:

  
\_\_\_\_\_  
Ladonna Jaramillo



## ATTACHMENT A

Claim Name	Parcel ID Number	Mineral Survey Number	Patent
A J BRILEY	47770000040003	2600	15955
A P HILL	47750160050027	1922	12437
ACHILLES	48310180010102	2580	17219
ADVENTURE	47750140050004; 47750140050044	14443	36006
ALICE	47750160050027	17371	43397
AMERICAN EAGLE	47750160050013	13270	32580
AMERICAN EAGLE M S	47750160050012	13270	32580
ANGLO SAXON	47750160050028	14875	40966
ANGLO SAXON PLACER	47750310040007	16687	41909
ANIMAS BELLE	47750110050006	4854	17904
ANN HARRIS PLACER (PARCEL C of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010039	11596	28491
AQUILLA	48310180010102	42	1834
BANDORA	48270000030023	7416	23280
BASTILE	47750160050017; 47750160050172; 47750160050173	15680	46082
BELCHER	47750160050013	2044	14878
BEN BUTLER	45690250050006	1291	25653
BEND PLACER	48290090010033	11596	28491
BENJAMIN FRANKLIN	47750140050004; 47750140050044	1011	7817
BERDILLA	47750180040005	1524	11398
BLAIR MOUNTAIN PLACER	48290100010012	16469	43204
BLAIR PLACER (part)	48290090010043	841	7983
BOSTON	45690360050004	54	3294
BREWSTER	47770240040002	15697	36439
BROOKLYN	47750190040007; 47750190040071	18982	298380
BROUILLET	47750310010009	19125	258712
BUENA VISTA	48290000010013	14012	34052
BULLION KING	47770000040003	2604	16060
BURROWS #2	45690360050006	107	3910
BYRON	47730170050013	419	6473
BYRON M S	47730170050010	419	6473
C H MILL SITE	48290090010033	20594	1126475
CARBON LAKE	47770130040019	1177	9128
CATARACT	48270000030023	20459	1050666
CLIPPER	47750140050002	1689	14301
COMET	47750120050005	17034	41816
CONGRESS	47770240040006; 47770240040111	1259	10127
CYNIC	47730170050001	126	2985
DEAN B	47750160050016	16795	40581
DEWITT	45690360050004	52	3271
DOOLEY	47750190040009; 47750200040007	18624	149242
E PLURIBUS	47750090050008	520	6060
EDWARD	47730170050001	210	5944
EUREKA POWER M S	47730190050014	16977	42149
EVENING STAR	47750120050004; 47750120050041; 48290120010111	17034	41816
FAMILY	45690360060002	4801	17907
FATTED CALF	47750100050001	18247	110836
Forest Lily MS	47730080050002	4835	18679
FOREST QUEEN #10	47730310050001	18843	156409
FRANKLIN	45690360050006	1739	11030
GALENA QUEEN	47770130040005; 47770130040053; 47770130040054; 47770130040055; 47770130040056; 47770130040057	2061	15364
GEM	48270040040005	13249	32742
GOLD	48290090010043	14012	34052
GORILLA	47750010010001	17549	43631
GOVERNOR	47750160050027	17371	43397
GOVERNOR	48270040040006	13249	32742
GRAND MOGUL	47750100050009	521	5970
GRAY COPPER	47750090050018	20377	1035597
GREENFIELD	45690360050018	49	3143
H M MILL SITE	48290090010010	20595	1120728
H V B MILL SITE	48290090010043	20594	1126475
HARRISON M S	47750160050028	14710	37311
HERBERT PLACER	47750210050011	13562	35681
HERCULES	47750180040044	18626	139274
HIDDEN HAND	47750140050004; 47750140050045	1658	14262
HIDDEN TREASURE	47750110050121	5010	17563
HIGH JACK	45710300050005	20470	1062852
Howardsville MS	48290020010022	9883	27301
HOWARDSVILLE PLACER (buildable portion)	48290010010091; 48290010010091	942	6908
I X L	47750160050027	1923	37468

## ATTACHMENT A

IRON MASK	47750140050004; 47750140050044	14443	36006
IRON SILVER	47770230040012; 47770230040125	4599	16219
JEANNETTE ROUX PLACER (Tailings Pond Part)	48290090010043	11596	28491
JOHN H FRENCH PLACER	47730310050022	45	2490
JOHN H FRENCH PLACER	47730310050021	45	2490
JUNCTION	47770140040008	19335	365180
JUNCTION #1	47770140040008	19335	365180
JUNCTION #2	47770140040008	19335	365180
JUPITER	47750120050061	17034	41816
KANSAS CITY	47750190040006; 47750190040062; 47750190040065	18494	125561
Katy MS	48290110010001	797	7488
KILLARNEY	47770140040007; 47770140040009	2690	17339
L C M MILL SITE	47750210050006	20726	1131333
LA GARITA	47730060050016; 47730060050161	18221	0
LAST CHANCE	47750140050002	17901	110023
LETTER B	47750160050013	2045	14901
LIBBIE BAUDER EXT	47750160050027	17371	43397
LITTLE MARY	47750140050002	2038	15010
LITTLE TODD	48270000030023	7416	23280
LONDON	45690360050018	5961	22971
LONGFELLOW	47770140040008	5341	17913
LUCKY JACK	45710300050005	17907	45542
M B MILL SITE	48290100010006	20595	1120728
M D THATCHER (PARCEL D of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010040	17699	45664
MAY	47750310010009	19125	258712
MINERAL KING	47750180040005	2051	11816
MORNING STAR	47770230040012; 47770230040124	6793	21105
MORNING STAR	47750120050061	17034	41816
MOUNTAIN QUEEN	47750100050001	792	8979
N N MILL SITE	48290100010006	20595	1120728
NATALIE PLACER	47750280050004	15171	39983
NOBLE	48270000030023	7416	23280
None Such MS	48290020010023	1864	23894
OREGON	47750150050001	17233	42968
ORIENTAL	47770230040012; 47770230040125	16099	39190
ORLEANS M S	47750210050021	15061	38352
PARADOX	47770130040110	19343	377099
PARALLEL	45690350060016	18152	240272
PETER PLACER (PARCEL F of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010042	11596	0
PIEDMONI	48290090010035	15112	37830
POLAR STAR M S (PARCEL E of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010041	7608	0
PRIDE OF THE ROCKIES	47750110050121	7628	31534
PRIDE OF THE WEST	48310190010005	41	2250
QUEEN OF THE WEST	45690360060012	1215	9385
RED CLOUD	45690360050006	120	3909
REGULATOR M S (E of Cunningham Creek)	48310180010030; 48310180010031	154	3295
REPUBLIC	47750140050002	12724	31197
RICHMOND	48310190010005	678	8313
RIVER	48290090010035	15112	37830
ROB ROY	47730170050001	499	7784
ROB THE RANTER	47750090050014	778	8834
ROYAL CHARTER	48290110010004	1710	11359
SALEM	47770130040109	1178	15951
SAMPSON M S	47750160050014	1618	11520
SAN JUAN	48290100010004	15112	37830
SELMA #1	47770130040006	19343	377099
SENATOR	47730190050014	16804	40898
SHAMROCK	47750010010002	17549	43631
SILVER LEDGE	47770230040012; 47770230040122	1523	17456
SILVER PITCHER	47770130040005; 47770130040053; 47770130040054; 47770130040055; 47770130040056; 47770130040057	2062	15365
SPARTA	47770240040003	18626	139274
SUCCESS PLACER	47750160050014	1914	11521
T H W MILL SITE (TRACT A)	48290100010006	20595	1120728
T H W MILL SITE (TRACT B)	48290100010006	20595	1120728
THERESA	47750090050008	15968	40372
THERESA M S	47750090050033	15968	40372
THUNDERBERG	47750140050002	1395	9388
TRACT 41 (PARCEL A of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010037	0	186140

ATTACHMENT A

TRACT BB (PARCEL B of Sunnyside Gold Corporation - Perino Boundary Adjustment)	48290090010038	0	186140
TRAIL S 500 FT	48310180010030	130	3096
TURKOIS	47770230040128; 47770230040129	1496	9589
VENUS	47750120050061	17034	41816
Vienna Placer	48290110010005	14057	34524
W M G L	47730060050005	19931	898231
WALKYRIE	47730060050005	19931	898231
WASHINGTON	45690250060015	104	4042
WINNING	47770000040121; 47770000040123	11560	29635
YOUNG	47750090050008	16523	39991
ZOO	47770000040121; 47770000040123	11560	29635