

From: [Ferguson, Tracey](#)
To: [Patricia Larkin](#)
Cc: [Rogers, Kristina](#); [Clerk of the Board - Shared Mailbox](#); [Ryan Gallagher](#); [Ellison Folk](#)
Subject: RE: Vested Rights Petition for Engels-Superior Mines
Date: Wednesday, March 20, 2024 9:15:00 AM
Attachments: [image002.png](#)
[image003.png](#)

Hello Ms. Larkin – confirming receipt of the email and attachment.

Tracey Ferguson, AICP
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From: Patricia Larkin <larkin@smwlaw.com>
Sent: Wednesday, March 20, 2024 9:08 AM
To: Ferguson, Tracey <TraceyFerguson@countyofplumas.com>
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Subject: Vested Rights Petition for Engels-Superior Mines

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Dear Ms. Ferguson:

Attached please find a letter from Shute, Mihaly & Weinberger LLP on behalf of the Feather River Watershed Alliance regarding the US Copper's Vested Rights Petition. Please confirm receipt of this email and attachment. Should you have any trouble accessing the file, please contact Ryan Gallagher.

Patricia Larkin
Legal Secretary



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March 20, 2024

Via Email Only

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Re: Vested Rights Petition for Engels-Superior Mines

Dear Ms. Ferguson:

On behalf of our client, the Feather River Watershed Alliance, we write regarding the “Verified Request for Determination of Vested Rights for the Engels-Superior Mines” (“Petition”) submitted to the County of Plumas (“County”) by US Copper Corp. The Petition seeks a determination that US Copper holds a vested right to mine “copper, gold, silver, and construction aggregate” on approximately 736 acres of land in the unincorporated County (the “Property”).¹ Portions of the Property were home to the now-defunct Engels and Superior Mines, which have been closed for nearly a century.

The County must deny the Petition for multiple reasons. First, and most importantly, there simply has never been a vested right to mine for copper, gold, or silver on the Property.² As US Copper acknowledges, the relevant “vesting date” for any right

¹ US Copper initially sought a determination that it holds a vested right to mine ten parcels, totaling approximately 967 acres. It has since amended the Petition to exclude eight of those parcels, leaving the two parcels that comprise the current Property.

² As discussed below, we acknowledge that in 2011, the County purported to recognize a limited vested right to quarry aggregate on a very small portion of the Property. Unless otherwise stated, this letter uses the term “vested right(s)” to refer to any *additional* right to mine on the Property that exceeds the scope of the County’s 2011 determination.

to mine is 1958, when the County adopted its first zoning ordinance. The problem for US Copper is that its predecessors in interest were not mining the Property in 1958, *and had not been for nearly thirty years*. Under the vested rights doctrine, US Copper's predecessors could not have acquired a right to continue a use that was not actually occurring when it became nonconforming.

Second, even if US Copper's predecessors had attained a vested right in 1958, that right has long since been abandoned. The County's own ordinances and the State Mining and Reclamation Act ("SMARA") are clear that any vested right to mine the Property has been abandoned by operation of law. And even if the abandonment were not automatic, the historical record plainly shows that US Copper's predecessors intended to abandon—and *did* abandon—any right to mine the Property. In short, common sense and blackletter law all point to the same conclusion: US Copper does not have a vested right to operate a mine that has been closed for 94 years.

Finally, even *if* some vested right to mine the Property existed, and even *if* that right had not been abandoned, the County still must deny the Petition. US Copper is demanding that the County grant it an open-ended entitlement to mine from the entire Property whatever materials it can find, in whatever quantities it desires, via whatever methods it chooses. This is not how vested rights work. It is US Copper's burden to supply actual evidence proving that it retains a right to extract particular materials, from certain areas of the Property, using specific techniques. The Petition does not even attempt to provide this proof. What limited information the Petition does provide would not be enough for a reviewing court to conclude that US Copper holds any vested right to mine the Property. It should not be enough for the County, either.

To be clear, our client does not necessarily oppose all redevelopment of the former Engels and Superior Mines. The mining industry unquestionably helped shape this County's history. And it can be a constructive part of its future, too—provided that any proposals to restart large-scale mining first receive the careful scrutiny that the public deserves and state law requires. What our client *does* oppose are cynical efforts to bypass these normal avenues of environmental review and community input by misusing the vested rights doctrine.

I. The Petition ignores foundational elements of vested rights law.

The Petition's barebones legal discussion omits several principles that are essential to understanding the vested rights doctrine and legal nonconforming uses. *See*

Petition (“Pet.”) 13–17.³ Critically, “[t]he ultimate purpose of zoning” is “to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected.” *Dienelt v. County of Monterey* (1952) 113 Cal.App.2d 128, 131; *see also City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 459 (emphasizing “pre-existing nonconforming uses” are not meant to be “perpetual”). Given this aim to “eliminate nonconforming uses, courts throughout the country”—including the California Supreme Court—“follow a strict policy against their extension or enlargement.” *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 687. And neither courts nor the County hold “the power to waive or consent to violation of the zoning law.” *Hansen Brothers Enters., Inc. v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 564.

Additionally, the party *asserting* a vested right bears the “burden of proving its vested rights claim.” *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 629 (citing *Hansen Brothers*, 12 Cal.4th at 564). Taken together, this means that it is US Copper’s demanding task to prove that it retains a vested right to resume mining operations on the Property, despite the state’s strong public policy interests in weeding out nonconforming uses over time.

II. Because all mining stopped long before 1958, there has never been a vested right to mine on the Property.

Some vested rights cases can be complicated and fact-intensive. This is not one of them. The law is clear that a property owner can attain a vested right only “to continue a use *which existed at the time zoning regulations changed* and the use thereafter became a nonconforming use.” *Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348, 1353 (citing *Hansen Bros.*, 12 Cal.4th at 540 n.1) (emphasis added). Therefore, “a use must be present *at the time* a law takes effect, to be considered a nonconforming use.”⁴ *Hardesty v. State Mining & Geology Bd.* (2017) 219 Cal.Rptr.3d

³ The Petition is sequentially paginated, but its hundreds of pages of exhibits are not. For convenience, this letter cites to both the Petition and its exhibits based on the page numbers of the “Full Package” PDF document available on the County’s website here: <https://www.plumascounty.us/DocumentCenter/View/47729/Request-for-Vested-Rights-Determination-Engels-Superior-Mine---Full-Package?bidId=>.

⁴ Consistent with these basic legal principles, section 61311 of the County’s 1958 Ordinance Code states that a “lawful *use* of land . . . *existing at the effective date of* [this ordinance], although such does not conform with the provisions hereof, may be continued.” Pet. 130 (emphases added).

28, 42; *see also id.* (collecting cases); *Keep the Code, Inc. v. County of Mendocino* (Cal. Ct. App. 2018) 2018 WL 6259477, at *4 (“[I]f at the time a zoning ordinance creates a nonconforming use the landowner is not using the land for that purpose, no vested right is created that can be transferred to a successor owner.”);⁵ *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 286 (“Nonuse is not a nonconforming use.”).

In the mining context, this means that a vested right cannot attach to “dormant mines.” *Hardesty*, 219 Cal.Rptr.3d at 42. Rather, it is the applicant’s “burden to prove [that its predecessor] was conducting a nonconforming [mining] use *at the time the law changed.*” *Id.* at 43; *see also Keep the Code*, 2018 WL 6259477, at *4 (agreeing that because an owner “was not *using* the property as a commercial quarry and aggregate business on” the vesting date, “a nonconforming use did not exist that could be transferred to” a succeeding owner (emphasis added)). Additionally, it is the “*use* of the land,” not the owner’s identity, that determines the right to continue a use. *Hansen Bros.*, 12 Cal.4th at 540 n.1 (emphasis added).

These straightforward rules require that the County deny the Petition. As US Copper has correctly recognized, the critical vesting date here is July 8, 1958. That is when the County first adopted a comprehensive zoning ordinance that required a use permit for any mining activity on the Property. *See* Pet. 13–14, 21; *see also* Pet. 131–32 (Ex. 14; 1958 County Ordinance Code).

But the Petition does not include *any* evidence that mining was actually occurring on the Property in July 1958. In fact, the Petition barely discusses the 1950s at all. *See* Pet. 12–13. The reason for this is obvious: By 1958, the Engels and Superior Mines had been closed for nearly thirty years. There was no mining occurring on the Property. *See* Pet. 11–12. As US Copper admits, both mines had stopped operating in 1930. Pet. 5, 11; Pet. 40–41 (Ex. 1); Pet. 56 (Ex. 3). All attempts to revive their operations over the next few years failed entirely. Pet. 11. And, by 1938, all equipment had been removed from the mines and the mineshafts had been allowed to flood. Pet. 12; Pet. 63 (Ex. 5); Pet. 65 (Ex. 6). Operations never resumed. Accordingly, mining was not an ongoing “use” of the Property in 1958 and no one could have acquired a vested right to continue it.

The *only* historical evidence that the Petition provides of actual activities on the Property at *any* time in the 1950s—let alone in the crucial 1958 vesting year—is a

⁵ Although *Hardesty* and *Keep the Code* are not published decisions, they provide a strong indication of how a court is likely to approach similar vested rights issues. Copies of these decisions are included as **Attachment A** and **Attachment B** to this letter.

two-page, unauthenticated “transcript” of a 2023 interview with CEMCO’s President, Norman Lamb. *See* Pet. 430–31 (Ex. 17). This document simply drives home how baseless the Petition is. In it, Mr. Lamb vaguely explains that an entity called “Indian Valley Chemical Company” had “tr[ie]d” to implement “some process” for extracting “minerals” from sand tailings left over on a portion of the Property. *See* Pet. 430. This proposal never materialized. *See id.* Indeed, Mr. Lamb directly refuted the interviewer’s suggestion that an entity was “actually doing some sort of mining” during this time, instead explaining that the project’s financial backers “lost all of” the money they had invested in the venture. *Id.* Mr. Lamb was even equivocal about when these events actually occurred, recounting it “was in the 40s. Yeah, or 50s, right in there.” *Id.* This does not come remotely close to carrying US Copper’s evidentiary burden that mining was actually occurring on the Property in July 1958.

Courts have rejected vested rights claims in these exact circumstances. For example, in *Hardesty*, a property owner claimed a vested right to reopen a gold mine that had last operated in the 1940s. 219 Cal.Rptr.3d at 28. The relevant vesting date was 1976, when the enactment of SMARA imposed new permitting and reporting requirements on all mines in the state. *Id.* However, the historical record indicated that the property “was essentially dormant” from World War II through the end of the 1980s, apart from reports of “sporadic, limited mining involving only a very small portion of the property.” *Id.* Thus, the rights claimant “fail[ed] to describe what, if anything was happening on the property *on or immediately before*” the relevant vesting date. *Id.* On these facts, the court had no trouble concluding that a vested right to mine had never arisen, since there was no evidence that mining was actually occurring in 1976. *See id.* at 42–43; *see also Keep the Code*, 2018 WL 6259477, at *3–4 (concluding no vested right arose when the record was “devoid of any credible or reliable evidence” that a quarry was actually operating on the vesting date). The same is true here. As *Hardesty* put it, “the fact that mines were worked on the property years ago does not necessarily mean any surface or other mining existed” in 1958, “such that any right to . . . mine was grandfathered.” *Id.* at 31.

It also makes no difference what entity owned the Property in 1958 or whether that party had ties to the mining industry. The caselaw, including *Hansen Brothers*, is clear that what matters is whether the relevant nonconforming *use* was occurring on the vesting date. *See Hansen Bros.*, 12 Cal.4th at 540 n.1; *Hardesty*, 219 Cal.Rptr.3d at 42. US Copper did not—and cannot—provide evidence that mining was actually occurring on the Property in 1958. The County must deny the Petition on this basis alone.

III. Even if a vested right had existed, it has since been abandoned.

No owner of the Property has ever attained the vested right that US Copper is now asking the County to recognize. But even if they had, the right to carry out a legal nonconforming use is not permanent. Rather, a vested right is lost upon abandonment of the nonconforming use. *See Hansen Brothers*, 12 Cal.4th at 569. That is exactly what would have occurred here, had a vested right existed.

A. The vested right would have been abandoned by operation of law.

Any vested right to mine precious metals on the Property would have been lost *automatically* for two separate reasons. First, section 61131(a) of the County's 1958 Ordinance Code stated that if a legal "non-conforming use is discontinued for a period of one year, any future use shall be in conformity with the provisions of this chapter, unless and until a use permit shall first have been secured." Pet. 131 (Ex. 14).⁶ That is, once a property owner had halted a legal nonconforming use for long enough, they lost any vested right to continue that use by operation of law.

Section 61131(a) and the undisputed historical record provide a straightforward basis to deny the Petition. Even if there were evidence that mining was occurring on the Property through July 8, 1958—and, to be clear, there is not—there is *no* evidence of mining activity of any kind from 1958 through at least 1961, a period of approximately three years.⁷ *See* Pet. 11–12 (citing no evidence of mining activity in this

⁶ A virtually identical provision remains in the current County Code. *See* Plumas Cty. Planning & Zoning Code § 9-2.502(d)(3) ("The lawful nonconforming use of land . . . , if discontinued for a period of one year, may be resumed only upon the issuance of a special use permit.").

⁷ Even this "evidence" of limited mining activity in the early 1960s is dubious. The Petition asserts that "[a] few thousand tons of ore was mined from the Superior Mine by a lessee in the early 1960's," but cites no contemporary sources in support of this claim. *See* Pet. 13. Instead, it cites (1) a technical study prepared in 2014 for a different mining company, which does not itself cite any sources; and (2) a state geologist's report from 1966, which observes only that "[s]mall scale activity was noted in 1961 and 1962 at the Engels and Superior mines in Plumas County." *See id.*; Pet. 47 (Ex. 2); Pet. 77 (Ex. 11). These sources also provide no information about the identity of the party that was carrying out the mining operations.

period). Thus, under the County’s own zoning code, any vested right was abandoned by the start of the 1960s.

The California Supreme Court’s *Hansen Brothers* decision is entirely consistent with this analysis. There, the Court discussed a provision of the Nevada County Code that is materially identical to section 61131(a). *See* 12 Cal.4th at 568–71 (discussing then-Nevada County Development Code section 29.2(B)). Because it ultimately concluded that the nonconforming “use” at issue had never been discontinued at all, the Court explicitly declined to rule on whether the Nevada County provision “is intended to automatically terminate all nonconforming uses whenever the use has ceased for” longer than the statutory period of one year. *Id.* at 571 n.30. However, the Court voiced no doubts about whether the code provision would terminate a nonconforming use automatically when—as here—*all* activities associated with the use had ceased for the statutory period.⁸ *See id.*; *see also id.* at 571 (“This is not to say that future inactivity at the mine may not result in termination of that vested right . . .”).

Other cases decided after *Hansen Brothers* indicate that the Board should give section 61131(a) its plain meaning and find that any vested right to mine gold has been automatically lost through discontinuance of the use. In *Stokes*, the court analyzed the effect of a municipal regulation that automatically voided any right to resume a nonconforming use after it had been discontinued for a three-year period. 52 Cal.App.4th at 1354 & n.4. After discussing the *Hansen Brothers* opinion at length, *see id.* at 1354–56, the court determined that the case “d[id] not assist” the vested rights applicant, *id.* at 1355. It emphasized that unlike in *Hansen Brothers*, *all* relevant uses of the subject property had stopped for a period of seven years, and thus any right to resume the previous nonconforming use had been lost. *Id.* at 1355–56. Significantly, the court went on to hold that although the municipal permitting board had *also* found “that the prior owners had intended to abandon the . . . nonconforming use,” this additional finding of intent was “not necessary,” given the code’s automatic termination provision. *Id.* at 1356.

The County should follow *Stokes* and apply the express language of section 61131(a). After mining became a nonconforming use in 1958, there was no evidence of

⁸ The Court, noting the “seasonal[ity]” of the aggregate quarrying business, did express some skepticism that a property owner could automatically lose a vested right to quarry if it were to cease the literal activity of quarrying for longer than the statutory period—provided, however, that the owner was still selling aggregate from its stockpiled stores throughout the time that quarrying was paused. *See id.* But in this case, once mining had ceased by 1930 and all equipment had been removed by 1938, all activities associated with copper, silver, and gold mining also ended.

any mining activity on the Property for another three years. As a result, section 61131(a) *requires* that the County deny the Petition. *See Hansen Brothers*, 12 Cal.4th at 564 (emphasizing the County lacks authority to consent to violations of its own zoning laws).

Even putting aside the County’s own ordinances, the state’s flagship mining law—SMARA—would separately require the County to find that any vested right to mine the Property has now been abandoned. Similar to the County’s ordinance code, SMARA requires that all mines in the state comply with certain permitting and reporting rules. *See, e.g.*, Pub. Res. Code § 2770 (setting forth requirements for operating permits and reclamation plans); *see also id.* § 2207 (providing, in a different chapter of the Public Resources Code, that all mine owners must submit an annual report to the state regarding their mine’s operations). SMARA also exempts from *some* of these requirements mines that are operating pursuant to a vested right—that is, mines that were already in operation when SMARA took effect in 1976. *See id.* § 2776.

However, several of SMARA’s requirements and other provisions of the Public Resources Code apply to *all* mines, regardless of whether they are operating under a vested right. Among these universally applicable rules is a requirement that, within 90 days of a mine becoming “idle,” the mine operator submit an “interim management plan” describing the measures the operator will take to maintain the mine site until production resumes. *See* Pub. Res. Code § 2770(h)(1). As relevant here, SMARA defines an “idle” mine as one that “has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more.” *Id.* § 2727.1. If a mine remains “idle” for more than one year without an interim management plan having been approved, SMARA provides that the mine *must* “be considered abandoned” and the operator must commence reclamation of the mine site. *Id.* § 2770(h)(5).

As discussed below, we strongly dispute that the Property’s previous owners continuously “inten[ded] to resume” mining operations. However, even assuming that such an intent existed, it is obvious that all “production” of copper, silver, and gold on the Property has been “curtailed” since SMARA took effect in 1976. *See* Pet. 12–16 (providing no evidence of metal extraction between 1962 and present). Accordingly, the Property’s mines have been “idle” within the meaning of SMARA for 47 years—all without any interim management plans ever having been prepared or adopted. Under

these circumstances, SMARA requires that the County consider the mines “abandoned.” Pub. Res. Code § 2770(h)(5).⁹

Notably, the County of Nevada recently denied a similar vested rights petition on these very grounds.¹⁰ In that matter, a company petitioned for recognition of a vested right to redevelop the Idaho-Maryland Mine near Grass Valley, a long-closed gold mine that had last operated in the mid-1950s. *See* Att. C at 4–5. Nevada County staff ultimately recommended denying the petition on numerous bases. *See id.* at 25–44. One of the specific grounds for denial was that the property’s prior owners had failed to prepare an interim management plan once the mine became “idle,” and thus SMARA *required* that Nevada County find the mine “abandoned.” *Id.* at 16, 43–44. The County must deny US Copper’s Petition for the exact same reason.

B. The historical record also shows that any vested right was abandoned.

For the reasons explained above, the County need not and should not delve into the historical record to examine whether previous Property owners intended to abandon any vested right to mine. But if the County were to go down that path, there is more than sufficient evidence to demonstrate abandonment.¹¹

⁹ Plumas County serves as the “lead agency” for all mining operations in the County under SMARA. *See* Pub. Res. Code § 2728; Plumas Cty. Planning & Zoning Code § 9-5.01 (explaining that Chapter 5 of the County’s Planning & Zoning Code implements SMARA); *see also* Plumas Cty. Planning & Zoning Code §§ 9-5.02, 9-5.11 (setting forth a definition of “idle” and requirements for interim management plans that are virtually identical to SMARA’s).

¹⁰ *See* “Board of Supervisors Denies Rise Grass Valley’s Vested Rights Petition,” County of Nevada (Dec. 14, 2023), <https://www.nevadacountyca.gov/CivicAlerts.aspx?AID=7112>; Katharine L. Elliott & Diane G. Kindermann, *In Re: Idaho-Maryland Mine Vested Rights Petition* (Nov. 28, 2023), <https://www.nevadacountyca.gov/DocumentCenter/View/51714/2-Staff-Report>. The staff report prepared by Nevada County Counsel and an outside law firm is also included as **Attachment C** to this letter.

¹¹ Abandonment of a vested right requires both an “intention to abandon” and an accompanying “overt act, or failure to act.” *Hansen Brothers*, 12 Cal.4th at 569. However, the caselaw is unequivocal that the intention to abandon a nonconforming use can be inferred entirely from a property owner’s conduct. *See, e.g., id.*; *Gerhard v. Stephens* (1968) 68 Cal.2d 864, 890 (holding a court is capable of “reasonably

First, both the fact that no metals have been mined on the Property in at least six decades and the fact that mining was discontinued for decades longer than the one-year deadline in section 61131(a) are strong evidence of abandonment. Virtually all cases recognize that long lapses in use are evidence of an intent to abandon. *Stokes*, 52 Cal.App.4th at 1355–56; *Hardesty*, 219 Cal.Rptr.3d at 45 (emphasizing property owner did not “actually mine for many, many years”); *Hansen Brothers*, 12 Cal.4th at 569 (“[T]he duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.”). Moreover, *Hansen Brothers* noted that in all jurisdictions, nonuse for longer than a statutory deadline provides additional proof of abandonment. *See* 12 Cal.4th at 569 (explaining different jurisdictions have viewed such nonuse as either (1) being *sufficient* to prove abandonment, regardless of intent; (2) creating a *presumption* of abandonment; or (3) providing *evidence* of abandonment). Put simply, when a site goes unmined entirely for well over half a century, it is clear evidence that the Property’s owners did not intend to continue mining.

Second, the *manner* in which mining ceased provides clear evidence of an intent to abandon. Within eight years of the mines closing in 1930, all mining equipment had been removed and the underground workings flooded. Pet. 12; Pet. 63 (Ex. 5); Pet. 65 (Ex. 6); *see also* Pet. 444 (Ex. 20) (“During the 1930s, the mining and milling plant . . . were dismantled and sold.”). Several of the directors of the mining company that owned the Property resigned. Pet. 42 (Ex. 1). All proposals to restart mining in the next decade failed. *See* Pet. 12.

Although “fluctuating mineral prices *may* induce an operator to close a mine temporarily, . . . that does not mean *all* gold mines were closed because of low prices, with the intent to reopen when profitable.” *Hardesty*, 219 Cal.Rptr.3d at 44. The closing of the Engels and Superior Mines was not the sort of temporary pause in operations to wait out a fluctuating market that can stave off abandonment. *See Hansen Brothers*, 12 Cal.4th at 569 (citing a North Carolina case in which “[t]here, as in [*Hansen Brothers*], the plant, equipment, inventory, and utilities were maintained throughout the [nonuse] period and the plant could be made operational within two hours”); *id.* at 570 n.29 (providing an example of a dairy business that discontinues the butter making portion of its operations “for several months when the demand for butter was low” and

infer[ring]” an intention to abandon from a property owner’s “conduct”); *Pickens v. Johnson* (1951) 107 Cal.App.2d 778, 788 (recognizing “abandonment is a matter of intent which may be proved by the acts and conduct of the party who is alleged to have abandoned” the interest).

“stored butter was adequate to meet the need”). Rather, by the early 1940s, there simply were no mining facilities left to operate on the Property.

Third, the historical record includes lengthy periods in which the owner of the Property plainly did not intend to continue mining. Especially notable is the over decade-long period from 1993 to 2006. In 1993, the mining company that had leased the Property for the previous three decades cancelled its lease. Pet. 5, 13, 15; Pet. 433 (Ex. 18); Pet. 444 (Ex. 20). For the for the next 13 years, no activity even remotely associated with mining occurred on the Property.¹² See Pet. 15–16. Indeed, the Property’s owners had decided to take their business in a completely different direction: By 1995, the California-Engels Mining Company (“CEMCO”) had reached an agreement to manage the entire Property for long-term timber harvesting—a use entirely incompatible with large-scale surface mining. See Pet. 444; CEMCO, *Form 10-K – Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 1995* (May 5, 1996) (included as **Attachment D**). This use of the Property for purposes inconsistent with mining is strong evidence of an intent to abandon any vested right to mine. See *Stokes*, 52 Cal.App.4th at 1356 (endorsing municipality’s finding that prior owners showed intent to abandon nonconforming bathhouse use when they filed an application to convert the building to a senior center/shelter).

Fourth, as early as 1990, state agencies responsible for overseeing mines and mine safety considered the mines abandoned. In a 1990 report prepared by the California Department of Health Service’s Toxic Substances Control Program,¹³ the Engels Mine was expressly described as an “abandoned copper mine” that had “ceased operation in 1930.” Cal. Dep’t of Health Servs., Toxic Substances Control Program, *Preliminary Assessment 3* (Apr. 16, 1990) (included as **Attachment E**); see also *id.* at 16 (referencing a 1970 report from the state’s Division of Mines and Geology that found all production at the Engels and Superior Mines had halted in 1930). Reports from the

¹² Thus, the Petition is incorrect when it alleges that the Property was “continuously . . . leased to a series of mine operators and exploration companies, all of whom occupied the Mines with the intent to continue the vested mining operation.” Pet. 22.

¹³ In 1991, the Toxic Substances Control Program was reorganized as the current Department of Toxic Substances Control (“DTSC”). See “Our History,” DTSC (2024), <https://dtsc.ca.gov/about-dtsc/our-history/>. DTSC remains responsible for the assessment and remediation of abandoned mines in California. See “Abandoned Mine Lands,” DTSC (2024), <https://dtsc.ca.gov/abandoned-mine-lands/>.

Department's "Abandoned Site Program Information System" also characterized the mining operations as "inactive" based on a site visit conducted in October 1989. *Id.* at 6.

Fifth, even apart from neglecting to develop an interim management plan, US Copper and the Property's prior owners have failed to comply with other provisions of the Public Resources Code and the County's Planning & Zoning Code. Each of these failures shows that the Property's owners never genuinely intended to resume mining operations on the site:

- SMARA required that all "person[s] with an existing surface mining operation who has vested rights" submit a reclamation plan to their local lead agency by 1988. Pub. Res. Code § 2770. There is no evidence that any Property owner ever did. Indeed, neither the Engels nor the Superior Mine appears in the state's current database of SMARA mines.¹⁴
- The Public Resources Code separately requires that all mine operators submit an annual report to the state describing, among other things, whether their mine is "active, idle, reclaimed, or the process of being reclaimed." Pub. Res. Code § 2207(a); *see also* Plumas Cty. Planning & Zoning Code § 9-5.12 (imposing similar annual reporting requirements); *Hardesty*, 219 Cal.Rptr.3d at 34 & n.6 (indicating property owners claiming a vested right to mine are also required to file these annual reports). There is no evidence that a Property owner has *ever* filed one of these annual reports.

To counter this voluminous evidence of abandonment, US Copper has offered only scattered reports of exploratory drilling efforts in the 1960s and early 1970s, none of which resulted in the resumption of mining operations on the Property. *See* Pet. 13–14. Then, *after a thirty year gap*, similarly scattered and fruitless exploration efforts resumed in the mid-2000s. *See* Pet. 16. These futile, sporadic activities do not come close to demonstrating a continuous intent to resume mining operations on the Property. *See Hardesty*, 219 Cal.Rptr.3d at 35, 45 (emphasizing mere "hope[s]" and "dreams" of resuming mining cannot prevent abandonment of a vested mining right). Any vested right to mine has been abandoned.

Notably, Nevada County recently found that a vested right to conduct gold mining operations had been abandoned based on very similar historical evidence of

¹⁴ Available at <https://maps.conservation.ca.gov/mol/index.html>.

abandonment. *See* Att. C at 25–41 (citing (1) a multi-decade lapse in all gold mining operations on the property, (2) the fact that all mining equipment was removed when the mine ceased operations, (3) the fact that later owners used the property for business operations that did not involve mining, and (4) current and past property owners’ failure to comply with SMARA’s reporting and remediation requirements and the county’s own mining regulations). There is no basis for the County to reach a different conclusion here.

IV. In any event, the County cannot grant US Copper’s defective Petition.

For the reasons set forth above, there is no viable vested rights claim to be made in this case. A vested right to mine never arose in 1958 and, if it had, it has now been abandoned. But even putting aside these multiple fatal problems, the County still would need to deny the Petition. This is because US Copper has not actually offered any evidence to prove the specific elements of the vested right it is seeking.

A. US Copper has not proven the geographic or operational scope of the vested right.

Once again, it is necessary to start with some basic legal principles that the Petition conveniently omits. First, the vested rights applicant bears the burden of proof as to *each element* of its vested rights claim. *See Calvert*, 145 Cal.App.4th at 629; *Hansen Bros.*, 12 Cal.4th at 564. In the mining context, these elements include, among other things, the geographic extent of the vested right, the specific materials to be mined, and the methods used to mine them. *See Hansen Bros.*, 12 Cal.4th at 542–75 (examining each of these elements in turn). Second, even where a vested right exists, “[i]ntensification or expansion of the existing nonconforming use, or moving the operation to another location on the property,” is never allowed. *Hansen Bros.*, 12 Cal.4th at 552. These core limitations on vested rights apply even in the mining context. *Id.*

Starting with the geographic scope of the vested right, the Petition claims an entitlement to mine anywhere on the more than 700-acre Property. *See* Pet. 21, 25. In support, the Petition notes only that (1) mining operations on the Property were expansive until 1930, (2) mining operations “continued . . . through the 1940s and 1950s,”¹⁵ and (3) CEMCO owed the entire Property on the vesting date. Pet. 21.

Hansen Brothers demands vastly more than this “evidence” the Petition provides. In that decision, the California Supreme Court made clear that the geographic

¹⁵ To reiterate, this claim about mining operations in the 1940s and 1950s is unsupported and inaccurate for the reasons addressed at length above.

scope of any vested right to mine is limited to those areas either (1) where mining was *actually* occurring on the vesting date, or (2) where the property’s owner exhibited an objective intent to expand mining *at the date of vesting*. *Hansen Bros.*, 12 Cal.4th at 542–43; *see also id.* at 543 (emphasizing there must be “objective evidence of the owner’s intent to expand a mining operation” *and* “that intent [must have] existed at the time of the zoning change”); *id.* at 555–56 (explaining a vested right to mine “the entire . . . parcel on which the nonconforming use is recognized requires more than the use of a part of the property for that purpose” on the vesting date).

As discussed above, the Petition here includes *no* information about what was happening on the Property in July 1958—no evidence about where mining was *actually* occurring (or even *had* occurred in previous decades), and certainly no evidence about what other portions of the Property the owners *objectively intended* to mine in the future. Therefore, like in *Hansen Brothers* itself, the record here does not allow the County to grant the vested right the applicant is seeking. *See id.* at 543 (refusing to endorse the applicant’s exact vested rights claim because the record did not include adequate evidence about “the extent of the area over which an intent to [mine] was objectively manifested” in the vesting year).

There are similar problems with the operational scope of US Copper’s vested rights claim. Although the Petition is vague, it suggests that US Copper is seeking a vested right to mine copper, gold, silver, and aggregate in effectively unlimited quantities, via whatever mining methods—surface or subsurface—the operator might choose. *See Pet.* 22, 25. For support, the Petition observes only that the former mines on the Property employed diverse methods to extract “millions of tons” of these various materials. *Pet.* 22.

Again, *Hansen Brothers* and other vested rights cases require much more. First, these cases are clear that a vested right attaches to the “particular *material* that is being excavated.” *Hansen Bros.*, 12 Cal.4th at 557 (emphasis added); *see also id.* (citing *County of Du-Page v. Elmhurst-Chicago Stone Co.* (Ill. 1960) 165 N.E.2d 310, 313, which held a vested right is limited to “the particular asset” being mined); *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal.App.2d 217, 228 (concluding a vested right to extract sand and premix concrete materials did not include a right to crush rocks for use in concrete premixing); *Calvert*, 145 Cal.App.4th at 625 (questioning how the “alleged vested right” to *aggregate* mining could have been “continuous,” since the subject site had historically hosted two distinct mining operations—“gold mining[,] and not simply aggregate mining”). Thus, it matters what, if any, specific materials were actually being mined on the Property in July 1958. But that information is missing from the Petition entirely.

Additionally, a vested right in the mining context is also limited to the *methods* of extraction. *See Paramount Rock Co.*, 180 Cal.App.2d at 228. In *Hardesty*, for example, the court emphasized that a vested right to engage in *subsurface* mining would not encompass a right to engage in *surface* mining, even if the surface mining would seek the same materials. *See* 219 Cal.Rptr.3d at 43–44. And, in *Hansen Brothers*, the court contemplated that a shift from aggregate extraction to rock quarrying might amount to such a “substantial change” in mining operations that rock quarrying would fall outside of the scope of the vested right. *See* 12 Cal.4th at 575 n.32. In short, it is critical that the Petition disclose what mining methods were being employed on the Property in 1958, what methods US Copper is now planning to use, and whether those methods differ. Yet none of this information is provided in the Petition.

Finally, US Copper must prove that it is not planning to extract so much material from the Property that it would amount to a substantial change from the previous mining operations. *See Hansen Bros.*, 12 Cal.4th at 575. Even the Petition nominally recognizes this limitation. *See* Pet. 25 (referencing the “substantial change” rule). But the Petition does not provide nearly enough information about *either* the quantities of material that were being extracted in 1958 *or* the amounts that US Copper plans to extract in the future for the County to make such a “substantial change” determination.

B. The County’s 2011 vested rights determination is irrelevant.

The Petition also tries a different approach to establishing a vested right. It repeatedly references the fact that in 2011, the County found that Turner Excavating Inc. holds a vested right to quarry aggregate on a 2.88-acre portion of the Property. *See, e.g.*, Pet. 6, 16, 23. And it then then contends that this determination somehow both “applies to the entire” 736-acre Property, and also grants US Copper a right to mine other materials in addition to aggregate. *See* Pet. 23. Every part of this argument is wrong.¹⁶

¹⁶ We do not contest the validity of the County’s 2011 vested rights determination here. As discussed in-text, this limited right to quarry aggregate is irrelevant to the Petition. However, it bears emphasizing that the 2011 determination may well have been illegal. The law is clear that “if an entity claims a vested right pursuant to SMARA to conduct a surface mining operation that is subject to the diminishing asset doctrine, that claim must be determined in a public adjudicatory hearing that meets procedural due process requirements of reasonable notice and an opportunity to be heard.” *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 617. There is no indication that the County ever provided the required notice and hearing before it issued the 2011 determination. Rather,

Initially, it is obvious from the negative declaration and the related materials that the County prepared in conjunction with Turner’s proposal that the vested right the County recognized in 2011 was exceedingly narrow. These materials repeatedly emphasize that the *geographic* extent of the County’s determination was limited to 2.88 acres, *see* Att. E at 1, 2; that the only *material* to which the determination applied was “aggregate,” *id.* at 1, 2; and that the *volume* of extraction would be limited to 100,000 cubic yards of material, *id.* at 1, 9. *See also id.* at Ex. 3 (Turner’s vested rights request letter, in which it seeks a right to mine only “aggregate” and “rock”). Turner’s own reclamation plan for the quarrying activities recognized that additional County approvals would be needed to mine even *aggregate* beyond the 2.88-acre scope of the County’s 2011 rights determination. *See id.* at Ex. 1, p. 13 (explaining, under a heading labeled “Future Mining of Site,” that the “area excavated under this reclamation plan is limited to the pile of tunnel overburden and no material will be left after mining concludes. Other existing piles of tunnel overburden at nearby areas, not associated with this plan *may be mined under separate approvals*” (emphasis added)). Plainly, the County’s 2011 rights determination was nowhere near as expansive as US Copper now claims, and neither the County nor Turner thought that it was.

The law is also clear that the County’s 2011 determination could never authorize the vastly expanded right that US Copper now seeks. As noted above, *Hansen Brothers* emphasized that the scope of a vested right in the mining context is limited to “the *particular material* [that] is being excavated.” *Id.* at 557 (emphasis added); *see also Paramount Rock Co.*, Cal.App.2d at 228; *Calvert*, 145 Cal.App.4th at 625. No matter what US Copper might claim, a vested right to quarry aggregate on 2.88 acres of land is not the same as a vested right to mine copper, gold, and silver on over 700 acres of land.

In sum, the County simply cannot grant the Petition. A vested right to mine the Property never arose in July 1958 and, even if it had, it has now been abandoned for decades. But even if it were possible that US Copper could hold a vested right to resume copper, gold, and silver mining on the Property, the Petition includes none of the proof that would be necessary for the County to recognize that right. US Copper is effectively

it appears that the County granted the vested right *one day* after the applicant sent a letter seeking the determination. *See* Pet. 60 (Ex. 4) (letter from County’s Planning Director, dated October 21, 2011, stating he “agree[s] with [applicant’s] arguments” in its “letter of October 20, 2011” that “this aggregate site is vested”); *see also* County of Plumas, Negative Declaration Number 661 for Permit to Mine/ Reclamation Plan at Ex. 3 (June 27, 2012) (included as **Attachment F**) (providing Turner Excavating Inc.’s October 20, 2011, vested rights determination request letter).

asking the County for a blank check to mine whatever it wants, however it wants. The law does not permit the County to give it one.

Our client appreciates the opportunity to comment on this matter of grave concern for the residents of Plumas County. Restarting large-scale mining operations on the Property would have massive environmental, social, and economic consequences that will last for decades. These potential impacts demand careful planning and analysis. And US Copper now has the opportunity to work with the public, expert agencies, and local decisionmakers to ensure that the effects of any proposed activities are fully disclosed and addressed. But filing a frivolous application for vested rights is not a good start. The County must deny the defective Petition so that a real dialogue about the consequences and propriety of US Copper's proposals can begin.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ryan K. Gallagher



Ellison Folk

Attachments

- A. *Hardesty v. State Mining & Geology Bd.* (2017) 219 Cal.Rptr.3d 28
- B. *Keep the Code, Inc. v. County of Mendocino* (Cal. Ct. App. 2018) 2018 WL 6259477
- C. Katharine L. Elliott & Diane G. Kindermann, *In Re: Idaho-Maryland Mine Vested Rights Petition* (Nov. 28, 2023)

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- D. California-Engels Mining Company (CEMCO), *Form 10-K – Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 1995* (May 5, 1996)
- E. California Department of Health Services, Toxic Substances Control Program, *Preliminary Assessment* (Apr. 16, 1990)
- F. County of Plumas, Negative Declaration Number 661 for Permit to Mine/Reclamation Plan (June 27, 2012)

cc: Office of County Counsel, Plumas County, kristinarogers@countyofplumas.com
Board of Supervisors, Plumas County, pcbs@countyofplumas.com

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ATTACHMENT A



KeyCite Red Flag - Severe Negative Treatment

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Court of Appeal, Third District, California.

Joe HARDESTY et al., Plaintiffs and Appellants,

v.

STATE MINING AND GEOLOGY
BOARD, Defendant and Respondent.

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Synopsis

Background: Landowners filed petition for writ of mandamus challenging State Mining and Geology Board determination they lacked vested right to conduct surface mining on their property. The Superior Court, Sacramento County, No. 34-2010-80000594-CU-WM-GDS, Timothy Frawley, J., affirmed, and landowners appealed.

Holdings: The Court of Appeal, [Duarte, J.](#), held that:

[1] federal mining patents, alone, did not establish that landowners had vested right to surface mine;

[2] grandfather provision of Surface Mining and Reclamation Act of 1975 (SMARA) did not apply; and

[3] any vested right to surface mining pursuant to grandfather provision of SMARA had been abandoned.

Affirmed.

Procedural Posture(s): On Appeal; Review of Administrative Decision.

West Headnotes (17)

[1] **Mandamus** 🔑 Presumptions and burden of proof

Mandamus 🔑 Scope of inquiry and powers of court

Mandamus 🔑 Scope and extent in general

Mandamus 🔑 Presumptions

The reviewing court, like the trial court considering petition for writ of mandamus, may not reweigh the evidence, and is bound to consider the facts in the light most favorable to the State Mining and Geology Board, giving it every reasonable inference and resolving all conflicts in its favor.

[More cases on this issue](#)

[2] **Mandamus** 🔑 Record and assignments of error

Landowners challenging trial court's mandamus affirmance of State Mining and Geology Board determination they lacked vested right to conduct surface mining forfeited any intended dispute regarding the facts, where landowners' briefing consistently drew evidentiary inferences in the light most favorable to themselves, and landowners persistently refused to acknowledge the facts supporting the Board's and the trial court's conclusions.

[3] **Mines and Minerals** 🔑 Right to patent in general

Since the Civil War, after locating a claim and performing certain work and other requirements, the holder of a perfected mining claim may secure a patent to the land by complying with the requirements of the Mining Act and regulations promulgated thereunder and, upon issuance of the patent, legal title to the land passes to the patentholder.

[4] Federal Preemption 🔑 Property

The State is free to enforce its criminal and civil laws on federal land so long as those laws do not conflict with federal law.

[5] Federal Preemption 🔑 Particular Subjects; Preemption by Particular Laws

The Property Clause itself does not automatically conflict with all state regulation of federal land; rather, absent consent or cession, a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause, and when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. U.S. Const. art. 4, § 3, cl. 2; U.S. Const. art. 6, cl. 2.

[6] Environmental Law 🔑 Regulation and protection in general

Environmental concerns about mining and its after-effects are legitimate matters for state regulation.

[7] Mines and Minerals 🔑 Federal Law and Regulations

The general purpose of federal mining laws is to delineate the real property interests of miners vis-à-vis each other and the federal government.

[8] Federal Preemption 🔑 Mines and minerals; oil and gas drilling**Mines and Minerals** 🔑 State law and regulations in general

The one area where federal mining law intends to displace state law is with respect to laws governing title; in other areas, state and local law are granted free rein.

[9] Mines and Minerals 🔑 State law and regulations in general

Federal mining patents, alone, did not establish that landowners had vested right to surface mine under grandfather provision of Surface Mining and Reclamation Act of 1975 (SMARA) absent county mining permit; landowner was required to comply with environmental regulations, as well as show active surface mining was occurring on the effective date of SMARA, or at the very least show objective evidence that the then-owner contemplated resumption of such surface mining activities. Cal. Pub. Res. Code § 2776.

[More cases on this issue](#)

[10] Mines and Minerals 🔑 State law and regulations in general

Grandfather provision of the Surface Mining and Reclamation Act of 1975 (SMARA) does not extend to truly dormant mines. Cal. Pub. Res. Code § 2776.

[11] Zoning and Planning 🔑 Discontinuance or Abandonment

Neither a dormant nor an abandoned use is a nonconforming use.

[12] Zoning and Planning 🔑 Purpose
Zoning and Planning 🔑 Enlargement or Extension of Use

The ultimate purpose of zoning is to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected; given this purpose, courts should follow a strict policy against extension or expansion of those uses, and that policy necessarily applies to attempts to continue nonconforming uses which have ceased operation.

[13] Mines and Minerals 🔑 State law and regulations in general

Evidence was sufficient to support State Mining and Geology Board finding that surface mining of property had not been in effect on or before date of Surface Mining and Reclamation Act of 1975 (SMARA), nor had surface mining been a continuous use of the property since that date, and thus SMARA's grandfather provision did not apply to exempt landowners from need to obtain county permit for surface mining even if landowners had federal mining patents; mine was originally used for hydraulic, drift, and tunnel mining, rather than surface mining, evidence established that no mining had occurred for decades, and landowners' predecessor purchased mine while in state of disuse and had certified that mine was closed in order to sell it. *Cal. Pub. Res. Code § 2776*.

[More cases on this issue](#)

[14] Zoning and Planning 🔑 Continuance or change of use in general

The continuance of a nonconforming use is a continuance of the same use, and not some other kind of use.

[15] Mines and Minerals 🔑 State law and regulations in general

Evidence was sufficient to support State Mining and Geology Board finding that any vested right to surface mining of landowners' property without a county permit pursuant to grandfather clause of Surface Mining and Reclamation Act of 1975 (SMARA) had been abandoned; landowners' predecessor, in an effort to sell the property, had made certified statement to the government that the mine had been closed with no intent to reopen it, and neighbors stated that there had been no signs of operational surface mining of any kind for 50 years. *Cal. Pub. Res. Code § 2776*.

[More cases on this issue](#)

[16] Zoning and Planning 🔑 Discontinuance or Abandonment

Abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) an intention to abandon, and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use.

[17] Zoning and Planning 🔑 Cessation of use

Mere cessation of use does not of itself amount to abandonment, although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 888.

***30** (Super. Ct. No. 34-2010-80000594-CU-WM-GDS)

EDITORIAL LISTING

APPEAL from a judgment of the Superior Court of Sacramento County, [Timothy Frawley](#), Judge. Affirmed.

Attorneys and Law Firms

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Opinion

[Duarte, J.](#)

In this suit under the Surface Mining and Reclamation Act of 1975 (SMARA) (*Pub. Resources Code § 2710 et. seq.*),¹ plaintiffs Joe and Yvette Hardesty (collectively, Hardesty), attack findings by the State Mining and Geology Board (Board). The Board's disputed findings conclude there are no vested rights to surface mine at the Big Cut Mine in

El Dorado County (County, not a party herein). The findings in effect deny Hardesty a “grandfather” exemption from the need to obtain a County mining permit. (See § 2776, subd. (a).) The trial court denied Hardesty's mandamus petition, and Hardesty timely appealed from the ensuing judgment.

On appeal, Hardesty raises both substantive and procedural claims.

Substantively, in three somewhat interconnected claims, Hardesty contends the Board and the trial court misunderstood the legal force of his 19th century federal mining patents. He asserts they establish a vested right to surface mine after the passage of SMARA without the need to prove he was surface mining on SMARA's operative date of January 1, 1976. He argues that the Board and trial court misapplied the law of nonconforming uses in finding Hardesty had no vested right and separately misapplied the law in finding that his predecessors abandoned any right to mine. These contentions turn on legal disputes about the SMARA grandfather clause and the force of federal mining patents.

As we will explain, the *facts*, viewed in favor of the Board's and trial court's decision, undermine Hardesty's claims. A federal mining patent—a deed perfected after working a mining claim—has no effect on the application of state regulation of mining. This point was made emphatically in a *31 recent California Supreme Court case, *People v. Rinehart* (2016) 1 Cal.5th 652, 206 Cal.Rptr.3d 571, 377 P.3d 818 (*Rinehart*), about which we solicited supplemental briefing. Simply put, the fact that mines were worked on the property years ago does not necessarily mean any surface or other mining existed when SMARA took effect, such that any right to surface mine was grandfathered.

Procedurally, Hardesty alleges the Board's findings do not “bridge the gap” between the raw evidence and the administrative findings. Hardesty also challenges the fairness of the administrative process itself, alleging that purported ex parte communications by the Board's executive director, Stephen Testa, tainted the proceedings. However, we agree with the trial court's conclusions that, on this record, neither of these procedural claims proves persuasive.

Accordingly, we shall affirm the judgment denying the mandamus petition.

BACKGROUND

Preliminary Observations

[1] We first note that Hardesty's briefing consistently draws evidentiary inferences in the light most favorable to himself, contrary to the appropriate standard of review, which requires us to draw inferences in favor of the judgment. (See *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824, 85 Cal.Rptr.2d 696, 977 P.2d 693 [“Even when...the trial court is required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal...is the substantial evidence test”].) “The reviewing court, like the trial court, may not reweigh the evidence, and is ‘bound to consider the facts in the light most favorable to the Board, giving it every reasonable inference and resolving all conflicts in its favor.’ ” (*Jaramillo v. State Bd. for Geologists & Geophysicists* (2006) 136 Cal.App.4th 880, 889, 39 Cal.Rptr.3d 170.) Hardesty also presumes that any evidence that was not directly contradicted—including expert evidence—must be accepted as true, contrary to applicable standards. (See *Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660, 134 P.2d 788 [“Provided the trier of the facts does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted”]; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890, 92 Cal.Rptr. 162, 479 P.2d 362 [rule applies to expert witnesses] (*Foreman & Clark*).)

[2] Hardesty's contentions are unnecessarily muddled by his persistent refusal to acknowledge the *facts* supporting the Board's and the trial court's conclusions. “[Hardesty] has not waived the legal issues [he] raises. But in addressing [his] issues we will not be drawn onto inaccurate factual ground.” (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291, 130 Cal.Rptr.2d 436 (*Western Aggregates*).) Because Hardesty does not portray the evidence fairly, any intended factual disputes are forfeited.² (See *Foreman & Clark, supra*, 3 Cal.3d at p. 881, 92 Cal.Rptr. 162, 479 P.2d 362; *Western Aggregates, supra*, 101 Cal.App.4th at pp. 290-291, 130 Cal.Rptr.2d 436.)

In 2009, Hardesty filed a Request for Determination (RFD) of his vested rights—later augmented by a 2010 supplement—outlining his legal and factual positions. The RFD includes a declaration of counsel that purports to affirm the truth of *32 the facts contained in hundreds of pages of attachments. The attachments include an unpublished decision of this court in a tangentially related case, *Tankersley v. State Mining &*

Geology Bd. (Jan. 31, 2006, C049372) 2006 WL 225528, 2006 Cal.App.Unpub.Lexis 835 (nonpub. opn.) (*Tankersley*), and extracts of private and apparently unsworn interviews of witnesses by Hardesty's counsel.³ Hardesty also presented extracts of depositions taken in separate litigation between a non-party herein and his predecessors (*Legacy Land Co. v. Donovan*, El Dorado Super. Ct. No. PC20020116(*Legacy Land*)), with no indication that the opposing side in that case had the same motivation to cross-examine as would an opponent of Hardesty's RFD. Some of these weaknesses in Hardesty's evidentiary submissions were pointed out at the Board hearing.

At the hearing itself, Hardesty bore the burden of proof. (Cal. Code Regs., tit. 14, § 3950.)⁴ A Board regulation provides that “[r]elevant evidence in a proceeding for determination of a claim of vested rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested right[s].” (Regs., § 3963, italics added.) The Board evidently interprets this regulation to mean that “[t]estimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the [Board].” But the fact the Board may accept as true “material” which would not qualify as evidence in a court of law does not mean it was compelled to accept as true all material contained in Hardesty's documents. Instead, the flaws we have noted above, and others, gave the Board ample, rational grounds to reject much of Hardesty's evidence. (See *Hicks v. Reis*, supra, 21 Cal.2d at pp. 659-660, 134 P.2d 788.) Further, the Board also considered contrary evidence, principally contained in detailed written proposed findings drafted by Testa. These findings were based on Testa's investigation, as well as statements by members of the public at the hearing—statements not mentioned in Hardesty's briefs. Thus to the (great) extent that Hardesty's briefing is based on the implicit view that the Board and trial court were somehow compelled to accept his evidentiary submissions as true, the foundation of his briefing is undermined.

On the other hand, facts asserted by Hardesty in the trial court or on appeal may be deemed as admissions, and we may also accept as true facts agreed by the parties in their briefing on appeal. (See *Fremont Comp. Ins. Co. v. Sierra Pine* (2004) 121 Cal.App.4th 389, 394, 17 Cal.Rptr.3d 80; *County of El Dorado v. Misura* (1995) 33 Cal.App.4th 73, 77, 38 Cal.Rptr.2d 908.)

We make these observations at the outset, to explain our upcoming rejection of Hardesty's many factual assertions that *33 are supported only by references to material that the Board and trial court were free to find was either inaccurate or simply unpersuasive as to the particular subject addressed.

The Basic Facts and Findings

Hardesty owns about 150 acres near Placerville, now known as the Big Cut Mine, but once known—if perhaps only in part—as the Landecker mine. For purposes of appeal, we accept that his property was formed from 19th century federal mining patents.

The land was mined for gold until the 1940's. During World War II, gold mining was restricted by the federal government to shift mining resources to minerals necessary for military purposes. (See *United States v. Central Eureka Mining Co.* (1958) 357 U.S. 155, 157-161, 166-169, 78 S.Ct. 1097, 1098-1101, 1103-1105, 2 L.Ed.2d 1228, 1230-1232.) A property history contained in Hardesty's RFD supplement concedes “There are no records presently available...to show what kind of mining business [Stanley Triplett, the owner from 1921 to 1988] conducted on the property after the war.” The trial court found that through the 1970's, the property “was essentially ‘dormant.’ At most, there was sporadic, limited mining involving only a very small portion of the property during this period, and there is virtually no evidence that those mining activities ‘continued’ to exist at the time SMARA was enacted [effective January 1, 1976].” However, Hardesty's RFD sought to establish a vested right to mine the property for gold, sand, and gravel (as well as diamonds and platinum).

Although the wartime mining order was lifted in 1945, Hardesty contends that the purported loss of mining equipment during the war “and low gold prices, made it largely infeasible to resume mining”—a point we address in more detail, *post*, in our Discussion. The record contains a document showing the ounce price for gold was about \$36 in 1970, rose to about \$160 by 1975, shot up in 1980, and then fell significantly.

Clinton and Kathleen Donovan (Donovan) bought the land in 1988 from Stanley Triplett, who we accept had owned it since 1921. Donovan contracted to sell to Legacy Land, but the deal did not go through—leading to litigation—and he sold the property to Hardesty in 2006.⁵

The part of Hardesty's RFD outlining the history of the property consolidates the broad Triplett period of ownership, 1921-1988, but fails to describe what, if anything was happening on the property *on or immediately before* January 1, 1976.

The trial court found that in the 1990's, unpermitted surface (open-pit) aggregate and gold mining began, different in nature from the "hydraulic, drift, and tunnel" mining that historically had been conducted on the land. The RFD alleged the new proposed open-pit mining was safer and better for the environment. Donovan had allowed Barney's Sand and Gravel (Barney's) to mine on the property beginning about 1992, Legacy Land bought out Barney's around 1994, and also attempted to buy the property itself from Donovan, but, as indicated, that deal was not consummated and instead led to litigation.

Our *Tankersley* decision involved what was described as the Donovan Ranch Property, but which the RFD treats as the same property at issue herein. According to *Tankersley*, "In 1998, [the County], the *34 SMARA lead agency at the time, declared the mining site *closed and reclaimed*. [¶] By 2002, the Board had assumed authority over surface mining operations at the Property. On November 12, 2002, the State Office of Mining and Reclamation (OMR) and the County inspected the Property and determined that 20 to 25 acres had been disturbed by surface mining operations. The Board notified the Donovans of the results of the inspection and instructed them to cease all mining operations until they obtain a reclamation plan, financial assurances, and any necessary County permit." (Italics added.) During those proceedings, the Hardestys and Churches declared that they accepted full financial responsibility for reclamation of the land; Tankersley also claimed to be a partner in the mining operations, and all those parties (the Hardestys, the Churches, and Tankersley) were appellants.

As an alternative to the finding of no vested right, based on the lack of mining as of the date SMARA took effect, which we discuss in more detail, *post*, the Board and the trial court found that any right to mine had been abandoned. On a required state reporting form in 1998, Donovan checked a box to indicate the mine was "Closed with no intent to resume." This document stated reclamation was in progress. On the 1999 reporting form, Donovan checked a box to indicate the mine was "Closed-reclamation certified complete by Lead Agency." But in prior years, Donovan had checked a box stating the mine was "Active." This change in reporting shows

Donovan knew the difference between an "Active" mine, a "Closed" mine, and a mine that was both closed and for which reclamation had been completed.⁶

A letter submitted by the County to Testa in 2010 explained that Donovan "always asserted that he was not mining, but was only searching for gold as a hobby and used the gravel for on-site road work" and Donovan had not provided any records showing "continuous mining having occurred since the 1940s to the present time."

The trial court upheld the Board's finding that any right to mine had been abandoned, finding "a clear manifestation of intent to discontinue mine operations during the period from the 1940s until the early 1990s, and again when Mr. Donovan intentionally 'closed' the mine to facilitate a sale of the property."

There is no evidence that Triplett regularly mined the property after World War II, only vague and disconnected items showing sporadic activity. For example, some 1960's batteries and various dated tunnel markers were found, but there was no direct evidence why they were there or who put them there. In May 1971, Triplett wrote to a potential buyer, describing the property as *not* in a saleable condition, and *35 describing some of its history. This included his belief in the possible location thereon of part of the "deep blue lead" that had proven rich in other places. Although he stated whether "the deep channel can be worked profitably or not, is speculation," he believed it had possibilities, and his intent would be to find a rich investor so that "if expectations failed, losses could be written off." Nothing in the letter hints at any active mining, and as the Board contends, it at best expresses Triplett's *hope* that mining—but not necessarily surface mining—would resume. Triplett's nephew, a geological engineer named Jim Brune, declared Triplett spoke with him about his belief in the deep blue lead, as well as where on the property Triplett "speculated the vein ran" and Triplett's purported intent to mine the property. Aerial photographs beginning in 1952 show some roads that were later expanded, but there was no hard evidence of what they were used for before 1976, and by Hardesty's own interpretation, they covered but a fraction of the property.

Significantly, at the Board hearing, *Hardesty's counsel conceded the mine was dormant until at least the late 1980's*, although counsel attributed this to market forces. Hardesty submitted other evidence, but the Board and the trial court could rationally reject it. There was no hard evidence, such as

production records, employment records, equipment records, and so forth, showing any significant mining after World War II.

SMARA and Hardesty's Legal Attacks

As indicated, the key date for SMARA purposes is January 1, 1976, when the law became operative. SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (§ 2770, subd. (a).) At the time of the hearing, the Board served as the lead agency for SMARA purposes in the County, although the County retained permitting authority. (See § 2774.4, subd. (a).) Persons with existing surface mining operations were required to submit reclamation plans by March 31, 1988. (§ 2770, subd. (b).) Absent an approved reclamation plan and proper financial assurances (with exceptions not applicable herein) surface mining is prohibited. (§ 2770, subd. (d).)⁷

SMARA was enacted with the knowledge that many miners had extant private property rights, and the Legislature wanted to avoid paying compensation therefor. (See § 2713; *Surface Mining Operations—Vested Rights—Permit, Reclamation Requirements*, 59 Ops.Cal.Atty.Gen. 641, 644-645 (1976)(*Surface Mining*)). Accordingly, SMARA included the following grandfather provision, to avoid any property “takings” claims:

“No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues; provided, however, that *no substantial changes may be made in any such operation except in accordance with the provisions of this chapter*. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has, in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, *diligently commenced surface mining operations* and incurred substantial liabilities for work and materials necessary therefor....

*36 “A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the lead agency and receive, within a reasonable period of time, approval of a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the lead agency prior to January 1, 1976....

“Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands *on which surface mining operations were conducted prior to January 1, 1976.*” (Former § 2776, Stats. 1975, ch. 1131, § 11, italics added.)⁸

The first paragraph of section 2776 forms the core of Hardesty's legal attacks on the Board's decision, because he is of the view that he established a vested right to mine through his 19th century mining patents and uncontested pre-World War II mining activity, in addition to his contested claims—impliedly rejected by the Board and trial court—of post-World War II mining activity. However, the italicized portion of the statute speaks of vested rights to *surface* mining, not *any* mining. “Surface mining involves stripping off the top of an area to reach minerals, in contrast to boring down through tunnels or shafts to extract them.” (*Rinehart, supra*, 1 Cal.5th at p. 671, fn. 10, 206 Cal.Rptr.3d 571, 377 P.3d 818.)

Hardesty's mandamus petition alleged his predecessors-in-interest acquired vested rights to mine via federal mining patents, and he alleged “completion of a valid mining ‘location’ vests equitable title in the locator, authorizes the locator to hold and mine the claim *indefinitely*, and creates a transferrable property interest.” (Italics added.) His position is that this “vesting” under federal law equates to a “vested” right under SMARA, regardless of whether mining was still being conducted when SMARA took effect, or of the nature or scope of such mining.

After a public hearing, the Board adopted proposed findings prepared by Testa, and found the evidence did not support Hardesty's claim. On June 10, 2010, after receipt of objections from Hardesty's counsel as to several findings, the Board formally denied Hardesty's claim.

On July 9, 2010, Hardesty filed a mandamus petition to set aside the Board's action, and on January 6, 2015, filed the instant amended petition.

The trial court denied the petition after a hearing on March 27, 2015, and Hardesty timely appealed from the ensuing judgment.

The Board's Findings in Detail

As stated, the Board adopted proposed findings prepared by Testa, some of which reference documents submitted within *37 Hardesty's RFD. These findings included the following.

The property is located in an area within the County now zoned so as to generally prohibit surface mining within 10,000 feet of any residence absent a finding that the project would not have any adverse impact on the environment and would not discourage residential use. No evidence of post-World War II mining “other than recreational, was presented.” No production records (such as drill logs, evidence of amount of material extracted, or “historic or current sales records”) were produced by Hardesty. “A 1966 date appears written on a tunnel wall; however, there is no evidence correlating the existence of that mark with any mining activity.” “Access roads are evident in various aerial photographs; however, there is no adequate evidence to demonstrate that such roads were haul roads used for mining purposes.” Unpermitted surface mining by Barney’s beginning around 1991 was halted by the County and the Board, and “[r]eclamation was completed to the County’s satisfaction in 1998.” Further unpermitted mining occurred in 2002-2003, until halted by the County. The County never made a finding of vested rights. No reclamation plan had been submitted by the SMARA deadline of March 31, 1988. Donovan “did not demonstrate an objective manifestation of intent to mine all” the property and “No documents or evidence were presented to support the overall scale of historic production conducted by” Donovan.⁹

The Board made several “Conclusions of Law,” in part as follows: Hardesty had the burden of proof by a preponderance of the evidence to show vested rights to surface mine. For planned expansion, Hardesty had to produce evidence of clear intent to expand “ ‘measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting [his] right to continue surface mining operations without a permit.’ ” (Partly quoting Regs., § 3963, italics omitted.) “No evidence demonstrating authorization to mine was granted from the mid-1940s to January 1, 1976, or to the present date as well.”¹⁰ “The cessation of mining activities subsequent to World War II, lasting through the 1990s and, even then, commencing for a brief period without authorization from [the] County and without submission and approval of reclamation plans and financial assurances as required by SMARA, coupled with a succession of land owners who did not conduct commercial mining operations during that period, precludes reliance on the pre-World War II historic gold mining operations as a basis for establishing a current vested right to mine” the property. “The historical record regarding gold mining prior to World War II, and the subsequent conduct of owners of the subject property demonstrates clear and knowing intent...to waive, abandon,

*38 or otherwise forego any vested right that may have pertained to those pre-World War II mining efforts.”

A formal resolution recites the Board accepted Testa’s findings “and determined that a preponderance of evidence did not exist that demonstrated Big Cut Mine has vested rights” and the “Board denies the claim of vested right of Big Cut Mine’s proposed surface mining operation located in the County.”

The Trial Court’s Ruling in Detail

The trial court found the Board’s decision adequately linked the evidence with the findings. The trial court agreed with Hardesty that the party asserting abandonment had the burden of proof, but rejected Hardesty’s claim that the Board shifted the burden of proof on this issue to Hardesty, as nothing in the Board’s findings addressed the point one way or another, and “it is presumed that the Board acted properly.” The trial court granted a motion to augment the record with declarations from Testa, Will Arcand, and Richard Thalhammer, described, *post*, and found no improper *ex parte* communications occurred.

The trial court also rejected Hardesty’s view that the federal patents vest in him a right to mine the property regardless of what was happening on the effective date of SMARA, finding a lawful nonconforming use must be extant on such date.

Separately, the trial court found that even if Hardesty’s legal view were correct, “the evidence shows there were substantial changes in the use of the property” in that “there is virtually no evidence of mining activities during the period from the 1940s through the 1980s” and even if there were, “aerial photos suggest any mining was limited to at most about six-tenths of an acre. For the vested right to include the remainder of the...property, [Hardesty] would have to produce objective evidence demonstrating that the owners clearly intended, on the effective date of [SMARA], to expand mining in to the remainder of the property. There is no such evidence in the record.” Further, the nature of the mining had shifted from hydraulic, drift, and tunnel mining, to open-pit (that is, *surface*) mining, reflecting a substantial change in use.

Finally, the trial court found any vested right that may have existed had been abandoned: “There is a clear manifestation of intent to discontinue mine operations during the period from the 1940s to until the early 1990s, and again when Mr. Donovan intentionally ‘closed’ the mine to facilitate a sale of the property.”

Accordingly, the trial court denied Hardesty's administrative mandamus petition.

DISCUSSION

I

Vested Rights Claims

Hardesty contends that the existence of federal mining patents confers vested mining rights forever, and that the Board and trial court erred by adding additional requirements, namely, continued mining operations, to find a vested right under SMARA. He further contends the trial court misapplied the “nonconforming use” zoning doctrine and thereby reached an erroneous conclusion. He adds that the Board and trial court misapplied the doctrine of abandonment. Because these three contentions of legal error overlap, we address them together.

Hardesty principally relies on the first paragraph of section 2776, arguing that he has a vested right to mine the property at issue. In his view, his federal mining patents, which would have been issued only upon proof of actual mining operations—though ***39** not necessarily *surface* mining operations—not only conveyed title to the property, they conveyed a vested right to mine. He contends that because those patents predate 1976, he is covered by section 2776's grandfather provision.

As we will explain, we agree the patents conferred on Hardesty vested rights *as a property owner*, but that is not the same as a vested right *to mine* the property absent compliance with state environmental laws. The Board and the trial court correctly concluded Hardesty had to show active surface mining was occurring on the effective date of SMARA, or at the very least show objective evidence that the then-owner contemplated resumption of such activities. Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that *any* mining was occurring or any intent to mine existed on the relevant date. Further, the Board and trial court correctly applied the “nonconforming use” and abandonment doctrines to the facts herein.

A. Legal Effect of a Federal Mining Patent

[3] Early federal policy had been to reserve federal lands, but this shifted after the Civil War due to the need to pay

off the ensuing national debt, and the West—then almost entirely owned by the federal government—was opened to mineral exploration. (See *Western Aggregates*, *supra*, 101 Cal.App.4th at pp. 293-294, 130 Cal.Rptr.2d 436.) Since that time, after locating a claim and performing certain work and other requirements, the “holder of a perfected mining claim may secure a patent to the land by complying with the requirements of the Mining Act and regulations promulgated thereunder...and, upon issuance of the patent, legal title to the land passes to the patentholder.” (*California Coastal Comm'n v. Granite Rock* (1987) 480 U.S. 572, 575-576, 107 S.Ct. 1419, 1422, 94 L.Ed.2d 577, 588(*Granite Rock*); see *Pathfinder Mines Corporation v. Hodel* (9th Cir. 1987) 811 F.2d 1288, 1291.)¹¹

[4] **[5]** **[6]** But “ ‘the State is free to enforce its criminal and civil laws’ on federal land so long as those laws do not conflict with federal law. [Citation.] The Property Clause itself does not automatically conflict with all state regulation of federal land. Rather,...[a]bsent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. *And when Congress so acts*, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause.’ ” (*Granite Rock*, *supra*, 480 U.S. at pp. 580-581, 107 S.Ct. at p. 1425, 94 L.Ed.2d at p. 591, italics added; see *State Regulation of Mining in Death Valley National Monument*, 60 Ops.Cal.Atty.Gen. 162, 163 (1977) [“California can regulate all mining within the Death Valley National Monument...regardless of land ownership status, pursuant to [SMARA], subject to preemption in particular instances of conflict with federal law”].) It is well settled that environmental concerns about mining and its after-effects are legitimate matters for state regulation. (See *Death Valley*, *supra*, 60 Ops.Cal.Atty.Gen. 162; *State ex rel. Andrus v. Click* (1976) 97 Idaho 791, 798-799, 554 P.2d 969, 976-977 (*Andrus*).)

Indeed, in a case involving a *different* open-pit mine also operated by Hardesty, ***40** we rejected his view that a “vested right” to mine under SMARA obviates the need to comply with state environmental laws: “Hardesty has cited no authority standing for the proposition that the holder of a vested mining right is exempt from complying with California's air pollution laws.” (*Hardesty v. Sacramento Metropolitan Air Quality Management Dist.* (2011) 202 Cal.App.4th 404, 427, 136 Cal.Rptr.3d 132.)

The United States Supreme Court has acknowledged that some state laws, although purportedly passed to regulate mining, could have the effect of halting all productive use of federally patented mining areas. “The line between environmental regulation and land use planning will not always be bright; for example, one may hypothesize a state environmental regulation so severe that a particular land use would become commercially impracticable.” (*Granite Rock, supra*, 480 U.S. at p. 587, 107 S.Ct. at p. 1428, 94 L.Ed.2d at p. 595.) But the high court went on to hold that this result was *generally permissible*, and only precluded where a *direct conflict* between a state and a federal law was presented. (*Id.* at pp. 587-588, 107 S.Ct. at pp. 1428-1429, 94 L.Ed.2d at pp. 595-596.)

[7] [8] In a recent case involving a state prohibition (a moratorium) on dredge mining, our Supreme Court rejected the view that state laws that impact or even halt mining necessarily conflict with federal mining laws. Instead, the general purpose of federal mining laws is to delineate “the real property interests of miners vis-à-vis each other and the federal government.” (*Rinehart, supra*, 1 Cal.5th at p. 663, 206 Cal.Rptr.3d 571, 377 P.3d 818.) “[T]he one area where the law *does* intend to displace state law is with respect to laws governing title. In other areas, state and local law are granted free rein.” (*Ibid.*) “The mining laws were neither a guarantee that mining would prove feasible nor a grant of immunity against local regulation, but simply an assurance that the ultimate original landowner, the United States, would not interfere by asserting its own property rights.” (*Id.* at p. 666, 206 Cal.Rptr.3d 571, 377 P.3d 818.) “[I]f Congress intended to do more, we can reasonably infer it would have said so. It did not; indeed, quite to the contrary, it specifically noted the continuing obligation of miners with possessory interests, such as *Rinehart*, to obey state law. [Citations.] Collectively, the text and legislative history reveal no intent to displace state law.” (*Id.* at p. 667, 206 Cal.Rptr.3d 571, 377 P.3d 818.)

Most of the cases relied on by Hardesty which address vested mining rights involve disputes between competing private claimants, not between miners and government entities seeking to regulate them, and most predate *Granite Rock*. (See, e.g., *Watterson v. Cruise* (1918) 179 Cal. 379, 176 P. 870 [competing claim locators sought injunction]; *Ames v. Empire Star Mines Co., Ltd.* (1941) 17 Cal.2d 213, 110 P.2d 13 [injunction and accounting]; *Favot v. Kingsbury* (1929) 98 Cal.App. 284, 287-289, 276 P. 1083 [suit to restrain issuance of state patent to competing claimants]; *Brown v. Luddy*

(1932) 121 Cal.App. 494, 503-504, 9 P.2d 326 [quiet title]; *Montgomery v. Gerlinger* (1956) 146 Cal.App.2d 650, 304 P.2d 93 [quiet title].)

In his reply brief, Hardesty “does not dispute that a state may impose permit requirements that qualify as ‘environmental regulation.’ ” He then cites cases holding that regulations were found preempted by federal mining law. His evident view is that if he cannot comply with a state law regarding vesting of nonconforming use (i.e., SMARA), that state law necessarily impairs his right to mine contrary to federal law. But, as just explained, *Rinehart* rejects this view of the law.

*41 For example, Hardesty relies heavily on *South Dakota Mining Ass’n, Inc. v. Lawrence County* (8th Cir. 1998) 155 F.3d 1005, where a local ordinance prohibited new permits for surface mining, and companies that had mined for many years sued to enjoin the ordinance. (*Id.* at p. 1007.) *Lawrence County* held the ordinance was preempted because “The ordinance’s de facto ban on mining on federal land acts as a clear obstacle to the accomplishment of the Congressional purposes and objectives embodied in the Mining Act.” (*Id.* at p. 1011.) However, our Supreme Court summarized *Lawrence County* and *rejected* its analysis as follows:

“We do not disagree that Congress adopted a real property regime in the Mining Law of 1872 with the larger purpose in mind of encouraging ongoing mineral exploration across the West. Where we part company is with the conclusion that such general, overarching goals would be frustrated by state and local determinations that the use of particular methods, in particular areas of the country, would disserve other compelling interests. Congress could have made express that it viewed mining as the highest and best use of federal land wherever minerals were found, or could have delegated to federal agencies exclusive authority to issue permits and make accommodations between mining and other purposes. It did neither, instead committing miners to continued compliance with state and local laws (30 U.S.C. § 26) and endorsing limits on destructive mining techniques imposed under such laws [citation]. These actions cannot be reconciled with the view that Congress intended preemption of such state and local determinations.” (*Rinehart, supra*, 1 Cal.5th at p. 672, 206 Cal.Rptr.3d 571, 377 P.3d 818.)

Thus, *Rinehart* ejected the view that state laws that make mining more difficult or even impracticable necessarily conflict with Congressional intent, and we are bound to do the

same. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.)

Hardesty also relies on *Brubaker v. Bd. of County Commrs., El Paso County* (Colo.1982) 652 P.2d 1050, where holders of unpatented mining claims unsuccessfully sought local permits for test drilling approved by the federal government to see if they had located “valuable mineral deposits under federal mining law.” (*Id.* at p. 1052.) *Brubaker* held the local entity sought “to prohibit the very activities contemplated and authorized by federal law” and therefore presented an obstacle to federal policy. (*Id.* at pp. 1056-1057.) However, as explained by our Supreme Court, *Brubaker* was decided before *Granite Rock*, and therefore is not persuasive. (*Rinehart, supra*, 1 Cal.5th at p. 671, 206 Cal.Rptr.3d 571, 377 P.3d 818.) Further, other cases have recognized the legitimacy of applying environmental laws, even if they increase the costs of mining. (See *Andrus, supra*, 97 Idaho at p. 797, 554 P.2d at p. 975 [“Neither the requirement of obtaining a permit or of restoring the land render it impossible to exercise [mining] rights specifically granted by the federal legislation, although they may make it more difficult”].)

SMARA itself does not preclude Hardesty from mining. SMARA was enacted with respect for extant mining operations and merely requires assurances that surface mining operations develop adequate reclamation plans, a neutral state environmental rule. It also allowed *then-active* surface mines to bypass the need to obtain a local permit. The fact that application of SMARA's requirements to a particular operation might make it more expensive to *42 mine, perhaps to the point where mining is infeasible, is not precluded under *Rinehart*. (See also *Andrus, supra*, 97 Idaho at p. 797, 554 P.2d at p. 975.)

[9] To the extent Hardesty contends he has a vested right to *surface mine* under section 2776, he simply failed to carry his burden to prove any substantial *surface* mining on the property had been conducted by that date. As the trial court found, substantial evidence shows that prior mining had been hydraulic, tunnel, and drift mining, not surface mining, which began in the 1990's, and which represented a substantial change, contrary to former section 2776's requirement “that no substantial changes may be made in any such operation except” according to SMARA's terms. The evidence before the Board supports this finding.

Accordingly, federal mining patents, alone, do not satisfy section 2776.¹²

B. Proof of a Nonconforming Use

[10] To show he had a vested right to engage in mining on the property, Hardesty's briefing emphasizes evidence of mining on the property before 1976. However, Hardesty failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect. SMARA was designed to allow *existing, operating* surface mines to continue operating after its effective date without the need to obtain local permits. SMARA's grandfather provision does not extend to truly dormant mines.

[11] [12] *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 48 Cal.Rptr.2d 778, 907 P.2d 1324 (*Hansen Brothers*)—consistent with a long line of zoning cases—holds that a use must be present *at the time* a new law takes effect, to be considered a nonconforming use. (*Id.* at pp. 540-568, 48 Cal.Rptr.2d 778, 907 P.2d 1324; see *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 323, fn. 8, 106 Cal.Rptr.3d 502, 226 P.3d 985 [“the traditional protection for nonconforming uses established *at the time* zoning restrictions become effective”], italics added; *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339, 346, 329 P.2d 522 [“A nonconforming use is a lawful use existing *on the effective date* of the zoning restriction and continuing since that time in nonconformance to the ordinance”], italics added.) Neither a dormant nor an abandoned use is a nonconforming use. (*Hansen Brothers, at p. 552*, 48 Cal.Rptr.2d 778, 907 P.2d 1324 [“Nonuse is not a nonconforming use”].) As stated by our Supreme Court, “ ‘The ultimate purpose of zoning is...to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected.’ [Citation.] We have recognized that, given this purpose, courts should follow a strict policy against extension or expansion of those uses. [Citation.] *43 That policy necessarily applies to *attempts to continue nonconforming uses which have ceased operation.*” (*Hansen Brothers, at p. 568*, 48 Cal.Rptr.2d 778, 907 P.2d 1324, italics added.)

[13] It was Hardesty's burden to prove he was conducting a nonconforming use *at the time the law changed*. (See *Hansen Brothers, supra*, 12 Cal.4th at p. 564, 48 Cal.Rptr.2d 778, 907 P.2d 1324; *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 629, 51 Cal.Rptr.3d 797 (*Calvert*); *Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804, 61 Cal.Rptr. 29 [“The burden of proof is on the party asserting a right to

a nonconforming use to establish *the lawful* and continuing existence of the use *at the time* of the enactment of the ordinance”], second italics added.) Here, the relevant date is January 1, 1976, when SMARA took effect. The evidence, construed in the light most favorable to the Board's and the trial court's decisions, shows that no mining had been occurring for decades. Because, as explained, *ante*, Hardesty has forfeited any evidentiary contentions by portraying the evidence in the light most favorable to himself, we are not obliged to respond point-by-point to his many misstatements of the facts on this issue.

In *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348, 61 Cal.Rptr.2d 181, Stokes bought a vacant property in 1993 that had been used as a bathhouse, but not for at least seven years. In 1985, new zoning rules took effect. (*Id.* at p. 1351, 61 Cal.Rptr.2d 181.) Local laws allowed legal, nonconforming uses to continue unless, inter alia, they had been discontinued or abandoned, and deemed a three-year period of disuse to reflect an intent to abandon. (*Id.* at pp. 1351-1352, 61 Cal.Rptr.2d 181.) Stokes obtained permits and began work, but was stopped on the ground the long vacancy meant he had to obtain a conditional use permit. (*Id.* at p. 1352, 61 Cal.Rptr.2d 181.) A local board upheld the stop order in part because the bathhouse had been closed for at least three years. (*Id.* at pp. 1352-1353, 61 Cal.Rptr.2d 181.) Acknowledging that mere discontinuance of use does not *necessarily* reflect an intent to abandon, though it is a factor that may help show abandonment, *Stokes* explained that “Stokes's predecessors had completely vacated the building for seven years and the building had not been used for *any* purpose at the time [Stokes] took possession. There are no facts to which Stokes can point as evidence the prior owners intended to and in fact did continue to operate the property as a bathhouse or for a related use.” (*Id.* at pp. 1355-1356, 61 Cal.Rptr.2d 181.)

Here, the evidence shows Donovan bought a mine already in a state of disuse, much as Stokes bought a long-closed bathhouse. (See also *Walnut Properties, Inc. v. City Council* (1980) 100 Cal.App.3d 1018, 1024, 161 Cal.Rptr. 411 [party bought a closed movie theater, “In other words, the property was not being put to a lawful use which use continued up to and after the time the use became unlawful or nonconforming”].) Donovan then certified to the government that the mine was closed in order to sell it. In the *Legacy Land* depositions, Donovan testified his intent in trying to sell the property “was to let them buy the property and [then] move on”; his wife in turn testified “everything was going to be

closed so we could move and have our life together.” This vitiates the claim he did not know what he was doing, or that he retained some subjective intention to mine, or have his successors mine the property, as Hardesty contends.

[14] Further, the record shows a proposed significant *change* in use since pre-1976 times. “The continuance of a nonconforming use ‘is a continuance of the same *44 use and not some other kind of use.’ ” (*County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 688, 234 P.2d 972; see *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651, 255 P.2d 772 [“enlargement of plaintiffs’ trailer court to accommodate 30 more trailers is clearly a different use”]; *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-447, 263 P.2d 321.) Surface mining is a changed use on Hardesty's property, when contrasted with the pre-SMARA use. Nor can Hardesty persuasively rely on post-1976 *unpermitted* surface mining—twice halted by the government—to show that surface mining was an extant use before 1976.

C. Abandonment

[15] As an alternate basis for decision, the Board and the trial court found any right to mine was abandoned.

Preliminarily, we agree with Hardesty that extractive industries like mining often exist at the mercy of market forces. If the price dips, an operator may scale back or cease active operations, while retaining the intention to resume operations when prices recover. As an illustration of this, *Hansen Brothers* described a sister-state case where “the failure to operate a concrete mixing facility for six months during a business slowdown, while the operator filled orders from another plant, was *not* a cessation of operation. There...the plant, equipment, inventory, and utilities were maintained throughout the period and the plant could be made operational within two hours.” (*Hansen Brothers, supra*, 12 Cal.4th at p. 569, 48 Cal.Rptr.2d 778, 907 P.2d 1324, italics added.) The question in such cases is whether there is an intent to abandon or permanently cease operations, or instead a business judgment that a temporary—even if prolonged—hiatus should be made. Otherwise, as Hardesty suggests, an operator might be forced to continue operations at a loss—perhaps for decades—in order to await market recovery at some unknowable future point.

But this does not mean that every operator who closes a mine because of economic reasons retains an intention to reopen the mine one day, *although* we accept Hardesty's theoretical point

that fluctuating mineral prices *may* induce an operator to close a mine temporarily while retaining the intention to reopen, to ride out the market. (See *Hansen Brothers, supra*, 12 Cal.4th at pp. 545-546, 569, 48 Cal.Rptr.2d 778, 907 P.2d 1324) [demand for mined aggregates fluctuates with the market; temporary closure during a business slowdown does not of itself constitute abandonment]; accord, *Pardee Construction Co. v. California Coastal Com.* (1979) 95 Cal.App.3d 471, 475, 481-482, 157 Cal.Rptr. 184 [after building most planned units, developer allowed permits to lapse during a recession, but intended to complete remaining units when “sales warranted their construction”; held, no abandonment of vested right]; cf. (*Miscovich v. Tryck* (Alaska 1994) 875 P.2d 1293, 1296 [“Because government control held gold prices at \$35 per ounce...mining was not economically feasible”].) But that does not mean *all* gold mines were closed because of low prices, with the intent to reopen when profitable. In other words, the fact national gold prices were low until shortly before SMARA took effect (January 1, 1976) does not *compel* a finding that future mining was intended by Hardesty's predecessors.

[16] [17] As stated by *Hansen Brothers*, in the zoning context, “[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use [citation]. Mere cessation of use does *45 not of itself amount to abandonment although *the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned* [citation].” (*Hansen Brothers, supra*, 12 Cal.4th at p. 569, 48 Cal.Rptr.2d 778, 907 P.2d 1324, italics added.) Apart from adding his view that precedent states abandonment must be shown by clear and convincing evidence by the party relying on abandonment, Hardesty does not dispute the *Hansen Brothers* test as to abandonment.

Hardesty relies on cases such as *Gerhard v. Stephens* (1968) 68 Cal.2d 864, 69 Cal.Rptr. 612, 442 P.2d 692, which held “abandonment hinges upon the intent of the owner to forego all future conforming uses of his property and the trier of fact must find the conduct demonstrating the intent ‘so decisive and conclusive as to indicate a clear intent to abandon.’” (*Id.* at p. 889, 69 Cal.Rptr. 612, 442 P.2d 692.) Assuming that equates to “clear and convincing” evidence, we find it difficult to conceive of clearer evidence of an intent to abandon than a certified statement by the owner to the government that the mine has been closed with no intent to

reopen it, and the Board and the trial court could rationally find Donovan's statement meant what it said. Indeed, at the hearing one Board member gave his opinion that “the statements signed by the operator that the site is abandoned and reclamation is complete really [are] dispositive at this point and that bell cannot be un-rung by creative discussion later.” Although the statement of one Board member does not necessarily reflect the views of the entire Board, here it would be rational for the whole Board to adopt that view.¹³

As for Hardesty's view that the Board misapplied both the *standard* of proof and *burden* of proof, the Board found “clear and knowing intent” by Hardesty's predecessors to abandon. In our view, that was an adequate finding under a “clear and convincing” standard, particularly because, like the trial court did, we must presume the Board applied the correct law. (Evid. Code, § 664 [presumption that official duty has been performed]; see *Milligan v. Hearing Aid Dispensers Examining Com.* (1983) 142 Cal.App.3d 1002, 1008, 191 Cal.Rptr. 490.) Further, the clear tenor of the factual findings, given the evidence, renders irrelevant any error about who bore the burden of proof.

Here, the evidence of abandonment was overwhelming. Although possibly Triplett had dreams of someone finding the elusive deep blue lead, he did not actually mine for many, many years. Further, a person's subjective “hope” is not enough to preserve rights; a desire to mine when a land-use law takes effect is “measured by objective manifestations and not by subjective intent.” (*Calvert, supra*, 145 Cal.App.4th at p. 623, 51 Cal.Rptr.3d 797.) Critically, Donovan certified to the government that all mining had ceased, *with no intent to resume*, which was uniquely persuasive evidence of abandonment. Indeed, it is difficult to conceive of clearer evidence that the mine was permanently closed than Donovan's certification, which is direct evidence of Donovan's intent to classify the mine as closed with no intent to reopen. Hardesty contends Donovan was illiterate, and that Donovan had been directed how to fill out the forms by a County employee and therefore the forms do not accurately reflect his true intentions, which purportedly *46 were that the property should always be mined. These points were discussed at the Board hearing, and the Board and the trial court were free to weigh the evidence and find the documents Donovan filed meant what they said.

Moreover, two public commentators gave significant statements relevant to abandonment, not rebutted at the hearing and not mentioned in Hardesty's briefs. First, Mary

Harris-Nugent, whose family has owned the Harris Ranch bordering the Big Cut Mine property since “the mid-1800’s” and who had personally lived on the family ranch for 52 years, stated “to my knowledge, there has been no operational surface mining of any kind...during my lifetime. [¶] The property has remained dormant and abandoned until Mr. Donovan purchased it. He built his home and a road to his ranch and that is about all the activity we [have] seen as the closest neighbors to him.” Second, a neighbor of hers, Gail Taxera, has lived on Harris Road, a mile from the proposed mine, for over 50 years and had “never heard or seen signs of active mining with the exception of the activities during the time the Donovans occupied the property.” (Recall that the Donovans did not buy the property until 1988, well after SMARA took effect.) The Board could rationally accept these public statements, corroborated by other information before the Board. They dovetail with Donovan’s own documentation showing he ceased mining with no intention to resume.¹⁴ Thus, viewed through the appropriate lens, overwhelming evidence supports the Board’s and the trial court’s findings of abandonment.

Even if the Board erred in assignment of the burden of proof, the trial court did not, and Hardesty has failed to show the outcome at the Board would have differed.

II–III **

DISPOSITION

The judgment is affirmed. Hardesty shall pay the Board’s costs of this appeal. (See [Cal. Rules of Court, rule 8.278\(a\)](#).)

We concur:

[Nicholson](#), Acting P.J.

[Butz](#), J.

All Citations

219 Cal.Rptr.3d 28, 17 Cal. Daily Op. Serv. 4501, 2017 Daily Journal D.A.R. 4492

Footnotes

* Pursuant to [California Rules of Court, rules 8.1105](#) and [8.1110](#), this opinion is certified for publication with the exception of parts II and III of the Discussion.

1 Further undesignated statutory references are to the Public Resources Code.

2 Hardesty’s trial court papers reflected the same flaw, which the Board pointed out to the trial court.

3 Under Board regulations, “All information submitted pursuant to this section shall be accompanied by a declaration or affidavit attesting to the true and accurate nature of the materials provided.” (Regs., § 3952.) Hardesty’s lengthy 2010 RFD supplement does not appear to have been accompanied by a declaration. However, the parties treat the supplement with the same dignity as the material contained in the RFD. We will do the same.

Because it was part of Hardesty’s evidentiary submission, the Board could credit the facts stated in the unpublished [Tankersley](#) opinion, although the case is not citable by a California court. (See [Cal. Rules of Court, rule 8.1115](#).) We reference it only insofar as it was part of the evidence before the Board; we do not treat it as a legal precedent.

4 Further references to “Regs.” are to title 14 of the California Code of Regulations.

5 The Board agrees Triplett took control of the property in 1921 and accepts Hardesty’s present ownership for purposes of this case.

- 6 Each form was signed under the following statement: “I certify that the information submitted herein is complete and accurate (failure to submit complete and accurate requisite information may result in an administrative penalty as provided for in [Public Resources Code Section 2774.1](#).)” The yearly report is required by section 2207, which has always required a mine owner or operator to specify “[t]he mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.” (§ 2207, subd. (a)(6); see Stats. 1990, ch. 1097, § 2, p. 4575.) Under the law in effect at the time of Donovan's reports, “ ‘Idle’ means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, *with the intent to resume those surface mining operations at a future date.*” (Former § 2727.1, italics added, see Stats. 1990, ch. 1097, § 3, p. 4578.) Therefore, had Donovan retained an intention to resume operations at a later date, he could have so declared on the annual forms, which contained a box to indicate the mine was idle, rather than closed.
- 7 Section 2770 and some other sections were recently amended. (See Stats. 2016, ch. 7, § 5.) We cite to the provisions in effect during the trial court litigation, as do the parties.
- 8 Some of this language incorporates the general definition of “vesting” as used in building development cases. (See [Avco Community Developers, Inc. v. South Coast Regional Com. \(1976\) 17 Cal.3d 785, 791, 132 Cal.Rptr. 386, 553 P.2d 546](#) [“if a property owner has performed *substantial work and incurred substantial liabilities* in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit”], italics added.) It is also consistent with language from the then-recently adopted California Coastal Zone Conservation Act. (Former § 27404; see Ballot Pamp., Gen. Elec. (Nov. 7, 1972), text of Prop. 20, p. 32 [generally, a permit holder who “diligently commenced construction and performed substantial work...and incurred substantial liabilities” before act adopted was not required to obtain a regional coastal commission permit, if no substantial changes were made to the development]; see [Urban Renewal Agency v. California Coastal Zone Conservation Com. \(1975\) 15 Cal.3d 577, 582-584, 125 Cal.Rptr. 485, 542 P.2d 645](#).)
- 9 There is a claim that at some point Donovan gave Legacy Land a box of documents detailing mining activities on the property, in aid of negotiating a sale of the property, but that those documents were lost to him, evidently after Legacy Land declared bankruptcy. This claim did not have to be believed.
- 10 This finding may be overbroad, as it is not clear any entity required “authorization” for surface mining before a County ordinance was adopted in 1979, as Hardesty insists. But this does not change the lack of proof his predecessors “commenced *surface* mining operations” (§ 2776, italics added) before SMARA took effect in 1976. Contrary to Hardesty's reading, the Attorney General did not opine that the lack of need of further approvals *precludes* a finding of substantial changes in the nature of the mining, but opined that each case turned on its particular facts—i.e., whether changes were substantial—and that needing further approvals would “certainly constitute” a substantial change. ([Surface Mining, supra, 59 Ops.Cal.Atty.Gen. at pp. 643, 655-656](#).)
- 11 We accept for purposes of this appeal that Hardesty's predecessors performed the work then required by the federal government. (See [Rogers v. De Cambra \(1901\) 132 Cal. 502, 505-506, 64 P. 894](#) [federal land officials presumed to have followed proper procedures].)
- 12 Because Hardesty has not yet applied for a permit, it would be premature to hold that the permit process directly conflicts with some specific federal law. (See [Granite Rock, supra, 480 U.S. at pp. 588-589, 107 S.Ct. at pp. 1428-1429, 94 L.Ed.2d at pp. 596-597](#) [party sought injunctive and declaratory relief, did not know what permit requirements would actually be imposed, and therefore was limited to arguing that no permit could be required under any circumstances].) References in the record and briefs to a 1979 County permit ordinance are unnecessary to address, because this appeal does not turn on it, nor were the Board's or trial court's findings hinged on noncompliance therewith, although an extraneous portion of the trial court's ruling

references it and Testa's report mentioned it to explain that two separate periods of *post*-SMARA surface mining (by Barney's and by Donovan) were "unpermitted."

13 A leading treatise states that "[a]n abandonment may be effected by an instrument of relinquishment filed in the land office." (2 Lindley on Mines (3d ed. 1914) Abandonment and Forfeiture, § 644, p. 1601.) Here, Donovan filed with the government an instrument stating with exquisite clarity his intent to discontinue mining, consistent with the treatise.

14 Hardesty suggests Donovan's declarations applied to only a very small part of the entire property. Even if true, that point would not account for decades of nonuse and lack of hard evidence of mining on the rest of the property.

** See footnote *, *ante*.

ATTACHMENT B

 KeyCite Red Flag - Severe Negative Treatment
Unpublished/noncitable

2018 WL 6259477

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 3, California.

KEEP THE CODE, INC., Plaintiff and Respondent,

v.

COUNTY OF MENDOCINO et

al., Defendants and Appellants;

Frank J. Dutra et al., Real Parties

in Interest and Appellants.

A147544

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Filed 11/30/2018

(Mendocino County Super. Ct. No. SCUKCVPT1464207)

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Opinion

Jenkins, J.

*1 In 1972, the County of Mendocino amended its zoning ordinance to require landowners to secure a use permit to operate a commercial quarry and aggregate business on their property. Thereafter, in 2013, Northern Aggregates, Inc. (NAI) sought an exemption from the use permit requirement for its commercial quarry and aggregate business known as the Harris Quarry (quarry). The county granted NAI's request, finding that NAI had a vested right to operate its commercial quarry and aggregate business as a nonconforming use under the amended ordinance. Keep The Code, Inc. (KTC), a

nonprofit organization, petitioned the trial court for a writ of mandate directing the county to set aside its vested right determination. After reviewing the administrative record and exercising its independent judgment, the court found NAI had no vested right to operate its business as a nonconforming use and set aside the county's contrary determination. We affirm.

PROCEDURAL BACKGROUND

On March 21, 2013, NAI filed an application with the county seeking a determination that it had a “vested right to conduct aggregate operations, including mining, conveying, screening, crushing, sorting, blasting, stockpiling, storing, transporting and selling aggregate on [its] 91-acre site” as a nonconforming use under the county's zoning ordinance. Following an investigation by county staff and a public hearing, the county's board of supervisors issued Resolution No. 14-068, on May 20, 2014, in which it was determined that NAI had a vested right to operate its commercial quarry and aggregate business as a nonconforming use.

KTC¹ filed a petition for a writ of mandate ([Code Civ. Proc., § 1094.5](#)) seeking to set aside Resolution No. 14-068. NAI and the county opposed the petition. Following argument by counsel, the trial court granted the petition and entered judgment in favor of KTC. A peremptory writ issued directing the county to set aside Resolution No. 14-068. NAI and the county filed timely notices of appeal.

DISCUSSION

A. Applicable Law

1. Common Law Concerning Vested Rights for Nonconforming Uses

As both the county and the trial court recognized, in *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533 (*Hansen*), our Supreme Court set forth the well-settled law in California governing nonconforming uses.

“A zoning ordinance or land-use regulation which operates prospectively, and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not

bring about a compensable taking unless all beneficial use of the property is denied. [Citations.] However, if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid. [Citations.] Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. ‘The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.’ [Citation.]

*2 “Accordingly, a provision which exempts existing nonconforming uses ‘is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.’ [Citations.] The exemption may either exempt an existing use altogether or allow a limited period of continued operation adequate for amortization of the owners’ investment in the particular use. [Citations.]” (*Hansen, supra*, 12 Cal.4th at pp. 551-552.)

Nonetheless, “pre-existing nonconforming uses” are not meant to be “perpetual.” (*City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 459.) The policy of the law is for the elimination of any nonconforming use because its presence “endangers the benefits to be derived from a comprehensive zoning plan.” (*Ibid.*) Accordingly, and consistent with this policy, it has been held that “ ‘land which has not been used ... would not create a nonconforming use’ ” (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 285-286 (*Hill*)), and attempts to continue nonconforming uses are barred when nonconforming uses have ceased operation (*Hansen, supra*, 12 Cal.4th at p. 568).

The *Hansen* court acknowledged that the principles applicable to nonconforming uses “[do] not apply neatly to surface mining operations.” (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 623, citing *Hansen, supra*, 12 Cal.4th at pp. 553-556.) “Unlike other nonconforming uses of property which operate within an existing structure or boundary, mining uses anticipate extension of mining into areas of the property that were not being exploited at the time a zoning change caused the use to be nonconforming. The question thus arises whether this extension is a prohibited expansion of a nonconforming use into another area of the property [T]he answer is a qualified ‘no’ under the

‘diminishing asset’ doctrine, an exception to the rule banning expansion of a nonconforming use that is specific to mining enterprises.” (*Hansen, supra*, at p. 553.) The qualification to the application of the diminishing asset doctrine is that “[a] vested right to quarry or excavate the entire area of a parcel on which the nonconforming use is recognized requires more than the use of a part of the property for that purpose when the zoning law becomes effective In addition there must be evidence that the owner or operator at the time the use became nonconforming had exhibited an intent to extend the use to the entire property owned at that time.” (*Id.* at pp. 555-556, fn. omitted.)

2. Relevant Statutory Law Concerning Vested Rights for Surface Mining Operations in Mendocino County

Before mid-July 1972, no use permit was required for the operation of a commercial quarry and aggregate business on property in the county. Effective on July 20, 1972, the county’s board of supervisors amended the county code to require a use permit to operate a commercial quarry and aggregate business on property in the county, including the Harris Quarry. (Mendocino County Ordinance No. 963, amending former ch. 20, art. II of Mendocino County Code.) Thereafter, in 1975, the state adopted the Surface Mining and Reclamation Act of 1975 (see *Pub. Resources Code*, § 2710 *et seq.*, added by Stats. 1975, ch. 1131, § 11, pp. 2793-2803) (hereinafter SMARA).² Effective January 1, 1976, SMARA required a person to secure a use permit to conduct certain surface mining operations, which included a commercial quarry and aggregate business on property in the county. (Former § 2770, added by Stats. 1975, ch. 1131, § 11, p. 2799; see §§ 2729 [mined lands defined], 2735 [surface mining operations defined].) Of significance here, SMARA excepted from the use permit requirement surface mining operations for which a person had a “vested right” to conduct such operations before January 1, 1976. (Former § 2776, added by Stats. 1975, ch. 1131, § 11, p. 2801.) SMARA also designated the county to act as the “lead agency” to enact local legislation establishing procedures for the approval of use permits to conduct surface mining operations in the county in accord with state policy. (Former §§ 2728, 2774, added by Stats. 1975, ch. 1131, § 11, pp. 2795, 2800; see § 2734 [“ ‘[s]tate policy’ means the regulations adopted by the [State Mining and Geology Board] pursuant to Section 2755”].) Thereafter, in 1979, the county’s board of supervisors amended the county code to implement regulations relative to surface mining operations in the county. (Mendocino County Code, former §

22.16.060.) Consistent with the state law, Mendocino County Code former section 22.16.060 excepted from the use permit requirement surface mining operations in the county for which a person had a “vested right” before January 1, 1976.³

B. Trial Court's Decision

*3 The court found that when the county amended its code on July 20, 1972, making a commercial quarry and aggregate business a nonconforming use, the property on which the quarry was situated was owned by Christ's Church of the Golden Rule (Church). The Church had acquired the property in 1963, and continued to own it until 1983. The court further found that for the entirety of the Church's ownership of the property (spanning the 1972 and 1979 amendments to the county code and the 1976 enactment of SMARA), the record was “absolutely devoid” of any credible or reliable evidence demonstrating that the Church *operated* the quarry as a commercial venture, had expended “any money in connection with quarrying activities and/or rock crushing or screening,” or had incurred “any liabilities ‘for work and materials necessary’ ” for surface mining operations. In so ruling, the court relied, in pertinent part, on written statements submitted by Tracy Livingston and Richard Tyrrell, who were members of the Church during its ownership of the property. The court found the Church members had “declared credibly and with sufficient personal knowledge” that the Church did not operate the quarry on a commercial basis and did not intend to expand quarry operations during its ownership. The court further found that the statements of Livingston and Tyrrell were more reliable than other declarations and statements of Frank Dutra, Bud Garman, and Wayne Waters, who described some rock removal activities that occurred on the site at various times preceding and shortly following July 20, 1972.

Additionally, the court found that assuming a vested right to operate a commercial quarry and aggregate business as a nonconforming use existed on July 20, 1972, there was no evidence that would allow for the substantial expansion of the quarry “without a use permit ... as a ‘diminishing asset’ operation” under *Hansen, supra*, 12 Cal.3d 540. In so finding, the court was mindful “that the quarry and aggregate business is seasonal and cyclical and that the court should assess the continuity of the operation in the light of the historical pattern. ([Mendocino County Code, former §] 22.16.060).” But, the court again relied on the statements of Livingston and Tyrrell, which demonstrated that during its ownership the Church had not operated the quarry on

a commercial basis and did not intend to expand quarry operations. The court further found that even if it accepted the evidence offered by Dutra, Waters, and Garman, there were still substantial periods of approximately three years and four years of inactivity at the quarry site, which could not be attributed to the seasonal nature of the business, use of stockpiled material, or the use of other onsite resources. The court also rejected appellants' contention that a comparison of aerial photographs taken before and after July 1972 indicated a substantial increase in quarry activity from which the court could arguably determine the Church's intent to expand quarry operations. The court stated that, “[a]part from the fallacy of that argument, a comparison [of] the outline of the quarry boundaries as *actually delineated* on the photographs [record citations to “1965” aerial photograph and “1974 or 1981” aerial photograph] does not support that argument. Measuring each outlined area in cross-sectional directions at the widest points indicates that the outlined site on the 1974/81 aerial is no larger tha[n] the outlined site on the 1965 photo.”⁴

C. Appellants' Contentions

1. Trial Court's Legal Determinations

Appellants make various arguments challenging the trial court's legal determinations, none of which requires reversal.

Appellants, throughout their briefs, complain about isolated statements made by the trial court relative to the law governing nonconforming uses. However, appellants' overarching claim of error is that NAI's right to operate its business as a legal nonconforming use was governed solely by the court's evaluation of how the property was used at the time it first became nonconforming on July 20, 1972, during the Church's ownership. According to appellants, the county's interpretation of its code allowed NAI to operate its business as a nonconforming use based on the use of the property for that purpose by *any* predecessor owner who incurred substantial liabilities *at any time*. As we now explain, we see no merit to appellants' arguments.

*4 First, as noted above, “[a] legal nonconforming use is one that existed lawfully before a zoning restriction became effective and that is not in conformity with the ordinance when it continues thereafter.” (*Hansen, supra*, 12 Cal.4th at p. 540, fn. 1.) Thus, whether a landowner can claim a right to a nonconforming use is to be determined by the use of the land

at the time the use became nonconforming under the zoning ordinance restricting such use. (*Ibid.*) Accordingly, the trial court's finding, with which we concur, that July 20, 1972, was the appropriate date to determine the existence of a right to a nonconforming use, is consistent with the law. (*Id.* at p. 560.) In addition, the law of nonconforming uses provides that once a landowner acquires a right to use the property as a nonconforming use, the established (vested) right to continue the nonconforming use is a property right that can be transferred to a successor owner. (59 Ops.Cal.Atty.Gen. 641, 656-658 (1976).) Conversely, if at the time a zoning ordinance creates a nonconforming use the landowner is not using the land for that purpose, no vested right is created that can be transferred to a successor owner. (See *Hansen, supra*, at p. 568; *Hill, supra*, 6 Cal.3d at pp. 285-286 [“ ‘land which has not been used ... would not create a nonconforming use’ ”].) Because the trial court here found that the Church was not using the property as a commercial quarry and aggregate business on July 20, 1972, a nonconforming use did not exist that could be transferred to NAI as a successor owner.

We also conclude that appellants' arguments are “clearly at variance with” the pertinent language in the county code, as well as SMARA. Both the state law and the county code provisions under review provide, in pertinent part, “*A person shall be deemed to have vested rights [in a nonconforming use] if ... the person has*” (§ 2776, subd. (a), italics added) or “*he has*” (Mendocino County Code, § 22.16.150, subd. (A), italics added; see *id.*, former § 22.16.060) “diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations” before the effective dates of the law. (§ 2776, subd. (a); Mendocino County Code, § 22.16.150, subd. (A); see *id.*, former § 22.16.060.) As a codification of the common law of nonconforming uses, the pertinent statutory language “suggests that the [law] extends [a vested right] only to those persons whose reliance upon existing permits or authorization induced them to initiate substantial performance of their projects and to incur substantial liabilities in connection therewith” *at the time the use became nonconforming because of the change in the law.* (*Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 586 [interpreting statutory language in former § 27404, a vested rights exemption provision essentially like § 2776].) Here, as we have noted, the Church had not diligently commenced and incurred substantial liabilities for work and material necessary for the operation of a commercial quarrying and aggregate business at the time the

use became nonconforming. Consequently, the Church had not acquired a vested right that could be transferred to NAI as a successor owner. Moreover, appellants' expansive view of the statutory language is in contravention of the basic tenets of statutory construction. As our Supreme Court has cautioned, we do not presume that legislatures intend, when enacting statutes, “ ‘to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied.’ [Citations.]” (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1325.) Instead, “ ‘[a] statute will be construed in light of common law decisions, unless its language ‘ ‘clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter ...’ ” ’ ” (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.) Appellants here have failed to cite to any statutory language or other relevant authority that the state or county intended, when enacting SMARA and the county code provisions, to depart from the common law governing nonconforming uses. To accept appellants' broad construction of the statutory language would require us to abrogate those common law rules governing nonconforming uses, which we decline to do.

2. Trial Court's Burden of Proof and Factual Findings

*5 Appellants also make various arguments challenging the burden of proof imposed on the parties and the trial court's factual findings.

We first address appellants' assertion that the court misapplied the burden of proof in determining whether appellants acquired vested rights in the operation of the quarry. Appellants' legal argument, asserting that the court shifted the burden of proof to them, is based on a single sentence plucked from the court's decision which states: “Even allowing for the 1976-78 purchases [of aggregate] reported ..., there is no evidence of the operation of a *commercial* quarry and aggregate business during the periods of 1963-75 and 1979-82.” Appellants argue this language supports their contention that the court required appellants, rather than KTC, to present “evidence” establishing the operation of a commercial quarry during the years referred to by the court.

However, our review of the record establishes that the trial court did not err in its application of the required burden of proof. In resolving the parties' dispute, the court stated that NAI, as the party asserting a right to a nonconforming use, had

the burden of proving before the county board of supervisors that, on July 20, 1972, when quarry operations first became a nonconforming use, “(1) [the] quarry operations had been diligently commenced ...; and (2) ... the owner/operator had incurred substantial liabilities in reliance on the nonconforming use status.” The court also indicated that KTC, as the petitioner in the trial court, had the burden of proving that the county's finding in favor of NAI was not supported by the weight of the evidence, in order to establish an abuse of discretion justifying the issuance of the requested writ. (Code Civ. Proc., § 1094.5, subd. (c).) The court then turned to evaluate whether KTC had met its burden. In doing so, the court accorded the county's findings “a strong preference of correctness” but found that KTC had overcome any “presumption of correctness,” which enabled the court to “substitute its own judgment to reject the findings” of the county board of supervisors once the court had “examined those findings under the appropriate standards.” Given this record, we soundly reject appellants' argument that the court improperly shifted the burden of proof to them.

We further conclude that appellants' challenge to the trial court's factual findings fares no better than their legal challenge, discussed above. The law governing our review of the court's factual findings is well established. “In exercising its independent judgment,” as in this case, “a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817 (*Fukuda*).) Nonetheless, “the presumption provides the trial court with a starting point for review—but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings.” (*Id.* at p. 818.) “[I]n exercising its independent judgment ‘the trial court has the power and responsibility to weigh the evidence at the administrative hearing and to make its own determination of the credibility of witnesses.’ [Citation.]” (*Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658.) On appeal, when an administrative adjudication is subject to the independent judgment test of review, “ ‘California fixes responsibility for factual determination[s] at the trial court rather than the administrative agency tier of the pyramid as a matter of public policy.’ ” (*Id.* at p. 659.) Consequently, “our review of the record is limited to a determination whether substantial evidence supports the trial court's conclusions and,

in making that determination, *we must resolve all conflicts and indulge all reasonable inferences in favor of the party who prevailed in the trial court.* [Citations.]” (*Id.* at pp. 659-660, italics added; see *Fukuda, supra*, 20 Cal.4th at p. 824.)

*6 Appellants first contend there was “ample evidence” in the record to support the county's findings that “a person [had] ‘diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations’ ” at the time the use became nonconforming in 1972, during the Church's ownership. Appellants fail, however, to acknowledge the standard of review we employ in reviewing the court's factual findings. Under the governing standard, we review the record to determine whether there is substantial evidence that supports the court's findings, not those of the county. Applying the correct standard, we have no trouble concluding that evidence exists to support the court's findings. Specifically, the court reasonably relied on the statements of church members Livingston and Tyrrell, who credibly asserted that the Church had not used the property as a commercial quarry and aggregate business at any time during the entirety of its ownership, which included when the use became nonconforming in 1972. While there was other evidence in the record that might have supported a contrary finding, as the court acknowledged, it was free to conclude such evidence was not sufficient to substantiate NAI's claim of a vested right to operate a commercial quarry and aggregate business as a nonconforming use.

Additionally, we see no merit to appellants' argument that the trial court erred by relying on the statements submitted by Livingston and Tyrrell, while discounting the declarations of Dutra and Waters, the statement of Bud Garman, and statements made by members of the county board of supervisors. “It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility. [Citation.]” (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) Moreover, appellants' reliance on *San Diego Unified School Dist. v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1146, does not assist them here. Unlike the trial court in *San Diego Unified School Dist.*, the trial court here explained its reasons for accepting the statements of the Church members and the basis for its rejection of the declarations and statements of other witnesses. Nor does the fact that the court did not mention certain evidence, as appellants assert, require reversal. It was the court's role to review the administrative record,

and “we presume the court performed its duty.” (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324; Evid. Code, § 664.) Implicit in its ruling, the court found the evidence cited by appellants did not demonstrate that the Church was using or intended to use the property as a commercial quarry and aggregate business at the time the use became nonconforming. Appellants insist that “[a] composite aerial photo, comparing 1974 activity with prior quarry boundaries, shows the significant expansion of the quarry floor during the Church's ownership.” However, whether there was a “significant” expansion of the quarry floor, from which a reasonable inference could be drawn that the property was being used as a commercial quarry and aggregate business during the Church's ownership, was a question of fact for the court as the trier of fact. The individual aerial photographs of the quarry site are fuzzy and do not delineate to the naked eye either structures, equipment, or stockpiles on the property, or, more significantly, that the property was being used as a commercial quarry and aggregate business. The photographs are annotated with circled areas, purportedly showing “the quarry;” arrows pointed at certain areas, purportedly showing, “structure;” and “apparent stockpile or equipment.” The court was not required to accept appellants' descriptions of what was visible in the aerial photographs or what was visible in the consultants' composite photograph, which was created by overlaying the consultants' interpretation of individual aerial photographs.⁵ “ [A]s a general rule, “[p]rovided the trier of fact does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted. [Citations.]” [Citation.] This rule is applied equally to expert witnesses.’ [Citation.] The *exceptional* principle requiring a fact finder to accept uncontradicted expert testimony as conclusive applies *only* in professional negligence cases where the standard of care must be established by expert testimony.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 632.) Nor are we persuaded by appellants' argument that the court made two prejudicial errors in its analysis of the evidence relative to various dates

and differing scales on the individual aerial photographs. If appellants believed the court's decision was improperly influenced by the various dates or differing scales on the photographs, they could have brought the purported error to the court's attention by an appropriate objection under *Code of Civil Procedure* section 657 (motion for a new trial) or section 663 (motion to vacate judgment). (See *Thompson, supra*, 6 Cal.App.5th at pp. 981-982.) Their failure to do so indicates they did not deem the purported errors to be prejudicial, and we too find no prejudice.

*7 We conclude our discussion by noting that appellants' “elaborate factual presentation” in their briefs, simply put, is an attempt to reargue on appeal factual issues that were decided adversely to them at the trial, which is “contrary to established precepts of appellate review,” and “[a]s such, it is doomed to fail.” (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.) Having determined the trial court did not err in making its factual findings or in applying the parties' respective burdens of proof, we see no merit to appellants' claims of error on these grounds.⁶

DISPOSITION

The judgment is affirmed. Respondent Keep The Code, Inc. is awarded costs on appeal.

We concur:

Pollak, Acting P. J. *

Ross, J. †

All Citations

Not Reported in Cal.Rptr., 2018 WL 6259477

Footnotes

- 1 In its petition, KTC describes itself as “a California non-profit corporation whose members include persons and entities who object to the unlimited expansion of and lack of sufficient environmental protection for mining activities at the Harris Quarry. Keep The Code's mission is to preserve and protect for the general public the natural environment, agriculture, and rural character of Mendocino County.”

- 2 All further unspecified statutory references are to the Public Resources Code. While SMARA has been amended since this litigation, the amendments are not relevant to our resolution of this appeal.
- 3 Section 2776, subdivision (a) currently reads: “(a) No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.” (Amended by Stats. 2006, ch. 538, § 560, pp. 4429-4430.)

Similarly, and using almost identical language to that used in SMARA, and as originally enacted in 1979, the vested rights ordinance in Mendocino County Code former section 22.16.060 provided, in pertinent part, as follows: “No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues; provided, however, that no substantial changes may be made in any such operation except in accordance with the provisions of this chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has, in good faith, and in reliance upon a permit or other authorization if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.”

Mendocino County Code section 22.16.150, subdivision (A), adopted in 1999, currently provides: “No person who has obtained [a] vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this Chapter as long as such vested right continues and no substantial change is made in that operation. Any substantial change in a vested surface mining operation subsequent to January 1, 1976, shall require the granting of a permit pursuant to this Chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has, in good faith, and in reliance upon a permit or other authorization if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the issuance of a permit related to the surface mining operation shall not be deemed liabilities for work and materials.”

- 4 The trial court found that, “[b]ased on the scales provided on each phot[o], the area outlined in the 1965 photo is approximately 335' x 240[']. That outlined in the 1974/81 photo is approximately 225' x 125'.”
- 5 To the extent appellants assert that the trial court engaged in an “unauthorized private investigation” regarding the photographs and composite drawings of the quarry, we reject the assertion. The court was at liberty both to review the evidence and to determine the weight to assign to it. Thus, we conclude the court's review of the photographic evidence and its determination of the weight to assign the disparities in the composite overlaying the photographs was well within the ambit of the court's function as the trier of fact.
- 6 Considering our determination, the parties' remaining contentions do not need to be addressed.
- * On Monday, November 26, 2018, the Commission on Judicial Appointments confirmed the Governor's appointment of Justice Pollak as the Presiding Justice of Division Four of this court.

† Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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ATTACHMENT C



**NEVADA
COUNTY**
CALIFORNIA



**In Re:
IDAHO-MARYLAND MINE
VESTED RIGHTS PETITION
Dated September 1, 2023**

**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum**

November 28, 2023

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NEVADA COUNTY BOARD OF SUPERVISORS
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NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum

MEETING DATE: December 13, 2023

TO: Board of Supervisors

FROM: Katharine Elliott, County Counsel

Brian Foss, Planning Director
Diane Kindermann, Abbott and Kindermann, Inc.

SUBJECT: Public Hearing to Consider the Idaho-Maryland Mine Vested Right Petition dated September 1, 2023 prepared by Braiden Chadwick and Ryan W. Thomason of Mitchell Chadwick, LLP, on Behalf of Joseph Mullin, Rise Grass Valley, Inc. (“**Petitioner**”) for a Formal Determination by the County of Nevada (“**County**”) Concerning the Existence and Scope of Vested Mining Rights to Mine the 175.64-acre “Idaho Maryland Mine”(“**Petition**”) Comprised of the 119-acre Brunswick Industrial Site Assessor’s Parcel Numbers (APNs): 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, 009-630-039 (“**Brunswick**”); and the Centennial Industrial Site APNs: 009-550-032, 009-550-037, 009-550-038, 009-550-039, and 009-560-036 (“**Centennial**”) (collectively, the “**Subject Property**”)

PETITIONER: Rise Grass Valley, Inc.

REPRESENTATIVE: Braiden Chadwick, Mitchell Chadwick LLP

STAFF RECOMMENDATION:

- I. Environmental Action: Find the action statutorily exempt pursuant to Section 15378 of the California Environmental Quality Act (“**CEQA**”) Guidelines from the requirement to prepare an Environmental Impact Report (“**EIR**”) or a Negative Declaration, for the approval of a Resolution finding that the Applicant does not have a vested right to mine due to abandonment of the mining uses at the Subject Property (“**Resolution**”). The County’s action to adopt the Resolution does not constitute a project that is subject to CEQA and the CEQA Guidelines.

- II. Action: Adopt the Resolution finding that neither the Petitioner nor any other party has a vested right to mine at the Subject Property, as the mining use was abandoned (**Attachment 1**).

FUNDING:

No budget amendments are required.

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ATTACHMENTS:

1. Resolution
2. Idaho-Maryland Mine Vested Right Petition
3. County's Responses to Petitioner's Facts and Evidence in Vested Rights Petition; including County Exhibits 1001-1027

STAFF COMMENT:

This Board Agenda Memorandum shall be read in conjunction with the County's Responses to Petitioner's Facts and Evidence in the Vested Rights Petition including County Exhibits 1001 to 1027 ("**County's Responses**"), **Attachment 3** hereto, which is incorporated herein by reference. The County's Responses chronologically respond to the facts raised in the Petition in the order in which those facts are set forth.

SITE DESCRIPTION

The Subject Property is located within unincorporated western Nevada County on approximately 175.64 acres, consisting of the Brunswick and Centennial Sites.

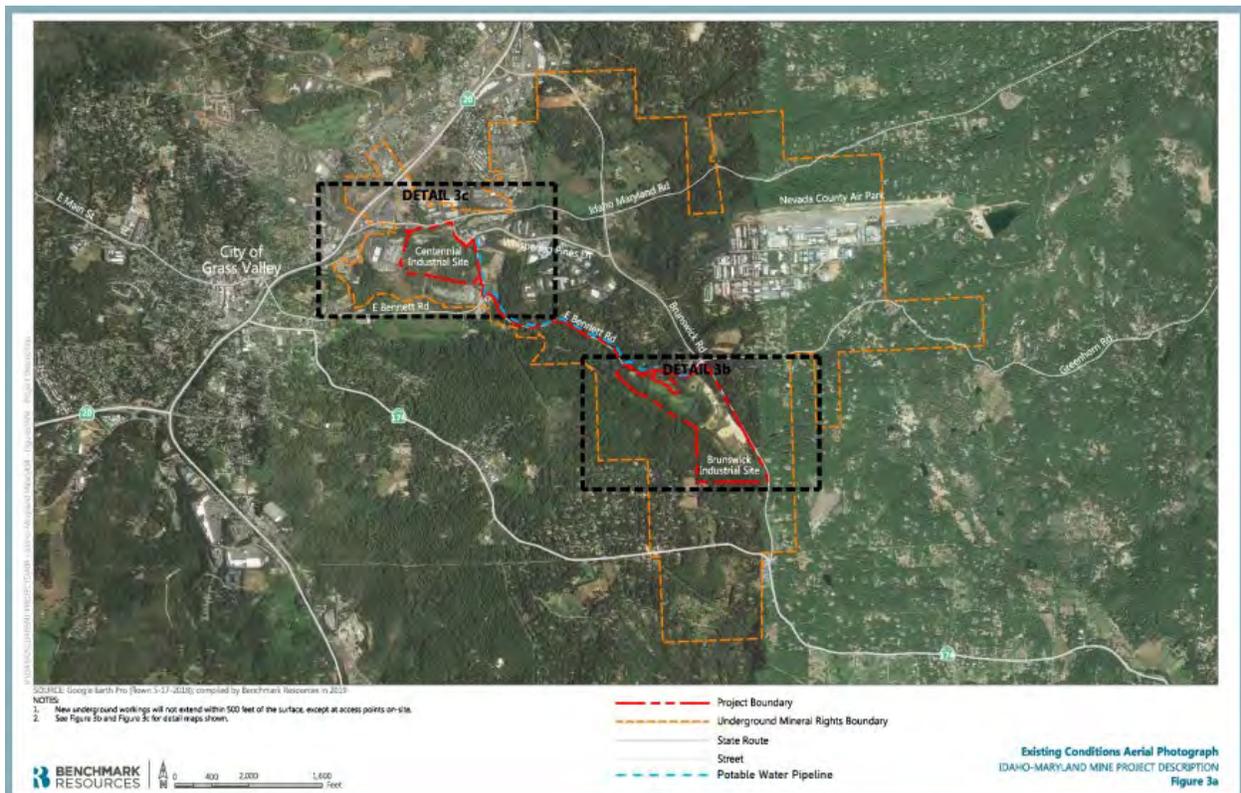


Figure 1: Location Map

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Both Brunswick and Centennial are located within unincorporated western Nevada County and are owned by the Petitioner. The approximately 119-acre Brunswick Site is located southwest of the intersection of East Bennett and Brunswick Roads and is comprised of Assessor's Parcel Numbers (APNs): 006-441-003 (12503 Brunswick Road), 006-441-004 (12625 Brunswick Road), 006-441-005 (12791 Brunswick Road), 006-441-034 (12381 Brunswick Road), 009-630-037 (12369 East Bennett Road), and 009-630-039 (12301 Millsite Road).

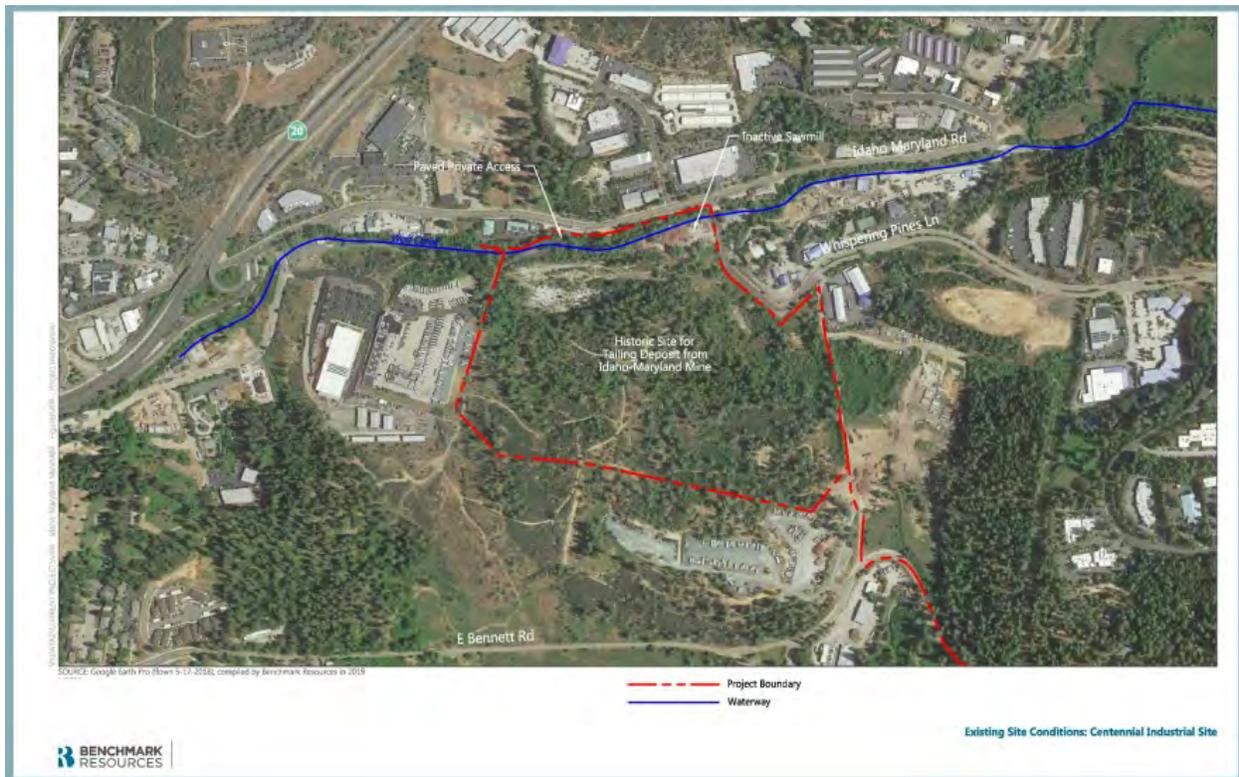


Figure 2: Subject Property (Centennial)

The approximately 56.41-acre Centennial Site is located southwest of the intersection of Idaho Maryland Road and Centennial Drive and is comprised of APNs: 009-550-032, 009-550-037 (10344 Centennial Drive), 009-550-038 (10350 Centennial Drive), 009-550-039 (10344 Centennial Drive), 009-550-040, and 009-560-036 (10350 Centennial Drive).

Petitioner alleges the overall mineral rights boundary encompasses approximately 2,585 acres and generally contains properties surrounding the Subject Property (Brunswick and Centennial), with the majority of additional surface land area located north of the Brunswick Site and east of the Centennial Site. This generally includes most of the Nevada County Airport and surrounding Air Park, as well as property along both sides of Brunswick Road, Greenhorn Road, and Idaho Maryland Road.

The Idaho-Maryland Mine encompasses an extensive system of approximately seventy-three (73) miles of underground tunnels, many raises, four (4) inclined shafts, and two (2) vertical shafts. The surface mining infrastructure at the Subject Property (Brunswick), was dismantled, and removed from the Subject Property and sold off entirely in 1956 and 1957.

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Historically, underground gold mining occurred below the Subject Property, while aboveground portions of the Subject Property were used for various gold mining and processing activities. Several shaft entrances are located on the Brunswick Site. The shafts are covered to prevent access as the operations are abandoned. Other portions of the Subject Property (Brunswick) site include graveled or paved areas from previous land uses.

Current use of the Subject Property (Brunswick) includes the Gold Country Senior Services' community operation, which seeks to cut, store, and distribute firewood to seniors. Recent activities have also included use of the Subject Property (Brunswick) by a contractor performing vegetation trimming for PG&E. After the abandonment of mining in 1956 at the Subject Property (Brunswick), subsequent Subject Property owners obtained use permits for lumber operations or obtained tentative maps for residential uses. After abandonment of mining at the Subject Property (Centennial), one subsequent Subject Property owner obtained a short-term use permit for the harvesting, crushing, screening, and sale of waste rock left from the Idaho-Maryland Mine. The removal of that material was completed within approximately one (1) year. That use permit was then amended to allow importation of materials from an off-site development property for on-site rock processing while the equipment installed for the prior rock removal was still on the site.

The Subject Property (Brunswick) consists primarily of open space, with remnants of the previous sawmill operations still located on site from lumber and sawmill uses approved by the County with separate use permits between 1958 and 1994. The terrain of the open space portion of the Brunswick Site is typical of the lower Sierra Nevada foothills, varying from flat ridges and valleys to gently and moderately sloping hillsides. The Subject Property (Brunswick) is located adjacent to South Fork Wolf Creek with a portion of the creek running through the site and is dominated by mixed hardwood-conifer forests and developed areas, with smaller areas of wetlands and annual grassland.

The Subject Property (Centennial) consists of an existing approximately 5.6-acre engineered fill pad along its eastern boundary; up to approximately 28 acres of graded, revegetated areas; and the remainder consisting of natural habitats, such as montane hardwood-conifer, chaparral, montane-riparian, and annual grassland.

BACKGROUND:

Abandoned Mining Operations:

The Subject Property is a portion of the historic Idaho-Maryland Mine, which is an underground gold mine. The Idaho-Maryland Mine represents the ownership interest of a number of early-day producing mines, including the Eureka, Idaho, Maryland, and Brunswick mines. The mines date back to the mid- to late-19th Century. The Eureka, Idaho, and Maryland Mines were all located on the same vein, which is referred to as the Idaho #1 Vein. Mineralization was first discovered at an outcrop on the Eureka claim in 1851 and the Eureka Mine was a significant gold producer from 1863-1877. Mining at the adjacent Idaho Mine took place from 1867-1893. In the late 1800s, Maryland Gold Quartz Mining Co., which was formed to mine Maryland Mine, purchased the Idaho Quartz Mining Co. and its Idaho Mine. The name of the mine was changed to Idaho-Maryland Mine. In the early 1900s, the Idaho-Maryland Mines Company was formed. In the 1920s, Errol MacBoyle and associates formed a holding company, Idaho Maryland Consolidated Mines, Inc., which purchased the Idaho-Maryland Mine. Subsequently, in the early 1930s, Idaho

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Maryland Consolidated Mines, Inc. acquired the Brunswick Mine from Brunswick Consolidated Gold Mining Company. As terminology can be confusing, it is important to note that “Idaho-Maryland Mine” referred to the entire ownership of several separate mines.

Some historical summaries from myriad sources indicate that the Idaho Maryland Mine produced up to 2,414,000 ounces of gold between 1866 and 1956. In 1941, the Idaho-Maryland Mine employed approximately one thousand (1,000) workers and was one of the largest lode gold mines in California and the United States, based on annual production. The Idaho Maryland Mine has been inactive since abandonment in 1956.

After its final closure in 1956, the Subject Properties and other portions of the Idaho-Maryland Mine tunnels were abandoned and allowed to naturally flood.

Zoning Designation History:

In 1954, the Nevada County Board of Supervisors (“**Board of Supervisors**”) adopted Ordinance No. 196, which was the first ordinance regulating land use in the County. All unincorporated areas of the County, including the Brunswick and Centennial Sites, were zoned "A1", a holding zone requiring a Use Permit for most land uses including mining. In 1967, the Board of Supervisors adopted Ordinance No. 379 to amend Ordinance No. 196, which changed the zoning of those parcels previously zoned “A1” to "U" or Unclassified, another holding district. Both Sites were rezoned to “U” at this time. In 1970, the Board of Supervisors adopted Ordinance 500 to establish new zoning regulations and repeal Ordinances 196, 379, and all other ordinances in conflict. Both sites remained zoned “U” or (Unclassified) at that time.

In 1973, the Board of Supervisors adopted Ordinance 643 establishing the “M1” zoning designation generally on the Brunswick Site. In 1994, the Board of Supervisors adopted Ordinance 1853 to rezone the Subject Property (Brunswick) as “M1-SP” by establishing a Site Performance Combining District designation. The Site Performance Combining District designation includes a Master Plan establishing infrastructure improvement, design themes, and permitted land uses, Moving and Storage Facilities, RV Repair and Storage Lots, Contractors Equipment and Storage Yards, Lumber Yards, Recycling Centers, and other similar type uses for the Nevada County Business and Industrial Center. Sub-surface mining was not included in the permitted uses of the Site Performance Combining District. The Subject Property (Brunswick) is currently zoned “M1-SP.”

In 1973, the Board of Supervisors adopted Ordinance 629 establishing the “M1” zoning designation generally on the Subject Property (Centennial). In 1993, the Board of Supervisors adopted Ordinance 1822 to rezone the Subject Property (Centennial) to “M1-ME” by establishing the Mineral Extraction Combining District designation as required as a Condition of Approval for Use Permit File Number U92-37 to allow for on-site rock harvesting as described in the Subject Property (Centennial) Permit History discussion below. In 1996, the Board of Supervisors adopted Ordinance 1923, which was subsequently superseded by Ordinance 1930 and Ordinance 1959 that rezoned the Subject Property (Centennial) to the “BP” or Business Park zoning designation. In 2016, the Board of Supervisors adopted Ordinance 2407 to rezone the Subject Property (Centennial) to “M1” or Light Industrial as the Base Zoning District with no additional Combining Districts. The Centennial Site currently remains zoned “M1.”

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Subject Property (Brunswick) Permit History:

- | | |
|------|--|
| 1956 | Mining ceased, all mining and processing equipment sold. Subject Property also sold in segments for non-mining activity through 1959. Last segment sold in 1963. |
| 1958 | County Planning Commission (“ PC ”) granted Use Permit to new owner for lumber uses. |
| 1964 | PC approved a Use Permit for a lumber yard and planing mill. |
| 1977 | County Planning Department (“ Planning ”) approved Site Plan to add one (1) sawdust drier. |
| 1986 | PC approved Tentative Map, subdividing Subject Property into five (5) residential and three (3) industrial parcels. |
| 1986 | Planning approved a Ministerial Site Plan to install one (1) lumber sorter. |
| 1987 | Planning approved Ministerial Site Plan to add 896 square feet to existing mill structure. |
| 1990 | Planning approved Ministerial Site Plan to replace a structure at mill. |
| 1994 | Sierra Pacific Industries ceased all sawmill operations. |

By October 1957, all mining had ceased at the Subject Property, and all mining and processing equipment was sold. The Subject Property was also sold over the next few years. All subsequent legal uses of the Subject Property after the abandonment were authorized with Use Permits. In 1958, the Nevada County Planning Commission (“**Planning Commission**”) approved a Use Permit for a sawmill and drying yard on the Brunswick Site (File Number U58-15). In 1964, the Planning Commission initially denied a Use Permit for a lumber yard and subsequently approved a Use Permit for a lumber yard and planing mill on the Subject Property (Brunswick) (File Number U64-31). In 1977, the Nevada County Planning Department (“**Planning Department**”) approved a Site Plan to add a sawdust drier to the operation (File Number SP77-020). In 1986, the Planning Commission approved a Tentative Map, which was subsequently recorded in 1987 subdividing the Subject Property (Brunswick) into eight (8) parcels: five (5) for residential uses, and the other three (3) — which comprise the Subject Property (Brunswick) — for industrial uses (File Number FM 85-7). Also in 1986, the Planning Department approved a Ministerial Site Plan to install one (1) lumber sorter at the mill operation (File Number MSP86-016). In 1987, the Planning Department approved a Ministerial Site Plan to add 896 square feet to an existing structure at the mill operation (File Number MSP87-005). In 1990, the Planning Department approved a Ministerial Site Plan to replace a structure at the mill operation (File Number MSP90-002).

In 1994, Sierra Pacific Industries ceased sawmill operations. The Board of Supervisors then approved a Rezone through adopted Ordinance 1853 to establish a Site Performance Combining

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District Zoning Designation on the Subject Property (Brunswick) to define development standards for a future industrial park to support light industrial uses including Office and Professional uses, Administrative and Research uses, Employment Center Support uses, Sales Office/Showroom uses, Conference Facilities, and other similar type uses (File Number Z93-004). As evidenced by Figure 4, below, which depicts aerial imagery of the site in 2005, all buildings related to the sawmill were removed prior to June 2005. A clay-lined pond, constructed for the sawmill circa 1988, and significant paved areas, remain from the sawmill operation.

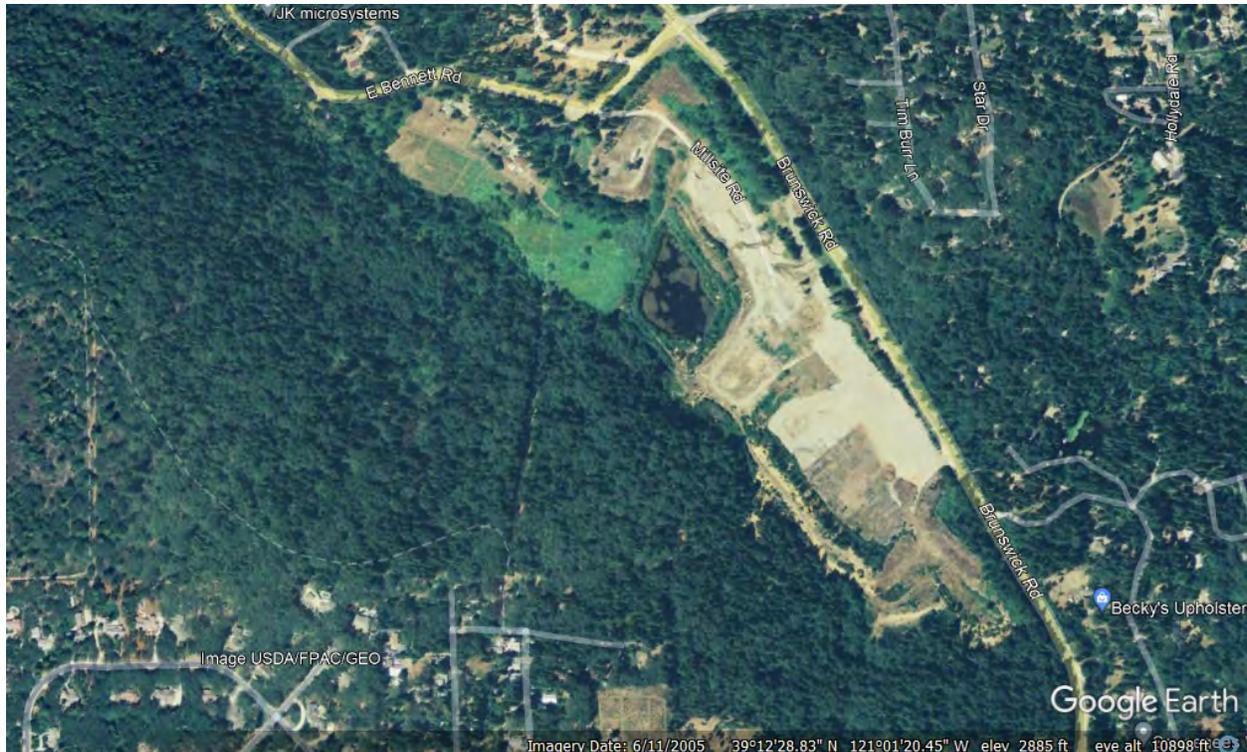


Figure 3: Brunswick Industrial Site 2005 Imagery

Subject Property (Centennial Industrial Site) Permit History:

- | | |
|------|--|
| 1956 | Mining ceased, all mining and processing equipment sold. The Subject Property also sold in segments for non-mining activity through 1959. Last segment sold in 1963. |
| 1980 | PC approved short-term Use Permit and Surface Mining Reclamation Plan for a four-year surface operation harvesting, crushing, screening, and sale of waste rock. |
| 1985 | PC approved amendment to existing Use Permit to allow importation of materials from off-site development property for on-site rock processing. |
| 1985 | PC approved amendment to existing Use Permit to expand surface operation to allow borrow pit and relocate processing plant. |

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- | | |
|------|--|
| 1992 | PC approved Use Permit and Surface Mining Reclamation Plan to expand existing rock harvesting operations on Subject Property (Centennial) (File Number U92-037). |
| 2003 | All operations concluded. Buildings and equipment removed. |
| 2004 | Site reclamation complete. Remaining buildings removed. |
| 2006 | Reclamation completed and financial assurances released. |

By October 1957, all mining had ceased at the Subject Property, and all mining and processing equipment was sold. The Subject Property was also sold over the next few years. All subsequent legal uses of the Subject Property after the abandonment were authorized with Use Permits. In 1980, the Planning Commission approved a short-term Use Permit and Surface Mining Reclamation Plan for a four-(4)-year surface operation on the Subject Property (Centennial) including harvesting, crushing, screening, and sale of waste rock left from the Idaho-Maryland Mine (File Number U79-41). The County understands that operation concluded in one (1) year. In 1985, the Planning Commission approved an amendment to the existing Use Permit to allow importation of materials from an off-site development property for on-site rock processing (File Number U85-025). In 1985, the Planning Commission approved an amendment to the approved Use Permit to expand the surface operation to allow for a six-(6)-acre on-site borrow pit for material to be processed in the rock crushing operation, to relocate the rock crushing and processing plant approximately three-hundred (300) feet, and to reclaim the borrow pit area with a six (6)-acre building pad on the Subject Property (Centennial) (File Number U86-045). In 1992, the Planning Commission approved a Use Permit and Surface Mining Reclamation Plan to expand existing rock harvesting operations on or around the Subject Property (Centennial) (File Number U92-037). In 2003, the operator concluded rock harvesting operations, removed all buildings, and removed all rolling equipment. On April 4, 2004, the operator completed the site reclamation. All buildings related to the rock harvesting and crushing operation were removed. In 2005, the Planning Department provided notice to the Department of Conservation's Office of Mine Reclamation that reclamation was completed, and in 2006 the County of Nevada and the Department of Conservation released their interest on financial assurance for the operation.

As evidenced by Figure 4 below, which depicts aerial imagery of the Subject Property (Centennial) in 2006, all buildings and rolling stock related to the rock crushing operation were removed prior to June 2006.

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Figure 4: Subject Property (Centennial Site) 2006 Imagery

In or around 2005, the parcel containing the majority of the rock harvesting operation permitted on or around the Subject Property (Centennial) (Assessor Parcel Number 009-550-042) was sold to the current property owner, and the parcel was annexed into the City of Grass Valley in 2006 via City of Grass Valley Resolution 06-15 (County of Nevada LAFCo File Number 06-07). In 2006, the City of Grass Valley permitted the existing commercial structure (City of Grass Valley File Number 06BLD-0419), which received final inspections in 2008.

Recent Mining Application History:

(Centennial)

In 1996, in an effort to reopen the abandoned Idaho-Maryland Mine, Emperor Gold “Emgold” Mining Corporation was granted a Use Permit by the Planning Commission to dewater specific underground mine tunnels at the Idaho-Maryland Mine (File Number U94-017). Emgold allowed this permit to expire, and work on the dewatering project never occurred. In 2005, Emgold submitted an application to the City of Grass Valley to annex the Subject Property to the City and for a Use Permit to dewater specific areas of the Idaho-Maryland Mine and commence mining operations. Between 2005 and 2011, the City of Grass Valley initiated an environmental review

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of the application consistent with CEQA. No environmental review document was certified and Emgold subsequently withdrew the annexation and Use Permit application.

Subject Property (Brunswick and Centennial)

Since 2018, the Petitioner has conducted exploration drilling at the Subject Property. In November 2019, the Petitioner submitted a Use Permit application to the Nevada County Planning Department to dewater specified subsurface areas and to extract and process gold from a specified subsurface area of the Idaho-Maryland Mine over an eighty (80)-year permit period. The gold mineralization processing and underground exploration and mining proposed to operate twenty-four (24) hours a day, seven (7) days a week during full operations. On May 11, 2023, the County Planning Commission recommended the County Board of Supervisors deny the project application. Petitioner then filed the Petition on September 1, 2023.

DISCUSSION OF SMARA, COUNTY ORDINANCES, AND ABANDONMENT EVIDENCE:

A. SMARA

The State Mining and Geology Board (“**SMGB**”) is the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 *et seq.* and California Code of Regulations § 3500 *et seq.*) (“**SMARA**”) for the County. SMGB’s authority includes review and approval of reclamation plans, and review and approval of financial assurance cost estimates and mechanisms. The County, however, retains its authority to approve, amend, or deny use permits for surface mining operations, and also to review and determine the existence and scope of vested mining rights. (Cal. Code Regs., tit. 14, § 3950 [“Where the board exercises or assumes some or all of the lead agency’s powers pursuant to [SMARA], the board shall not conduct vested rights determinations”].) Accordingly, the Petitioner’s request for a vested rights determination is properly submitted to and heard by the County.

A vesting date for a use would be the first date on which local zoning laws would otherwise require a Use Permit, or the backup vesting date as set forth in SMARA, whichever date occurs earlier. (See generally *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 453–54.)

No single evidentiary test exists to determine the existence of active surface mining on a vesting date. A petitioner bears the burden of establishing active mining operations on a vesting date. (*Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804.) There is a variety of evidence to consider in determining whether or not a petitioner has met its burden to demonstrate an active mining operation on a vesting date. Such evidence may include, but is not limited to:

- historical photographs of mining operations or of actual surface disturbances, and photographs of haul roads;
- percipient witnesses, *e.g.*, property owners, mining operators, and neighbors of the Subject Property;
- business records such as production records, invoices for mining products, mineral leases for the property, historical mineral production records prepared by the State (dating back to the 1880s) to establish prior mining operations; and

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- County files, e.g., environmental reports, planning records, assessor and tax records, old newspaper articles, and old maps.

The County has considered the Petition and evidence from these categories in making its determination on this Petition.

B. Nevada County Ordinance No. 196 (1954)

In 1954, the Board of Supervisors adopted Ordinance No. 196, which set forth a comprehensive (for the time period) zoning plan for the unincorporated areas of the County. Section 7 of the Ordinance created an A-1 District, which provided that “any use not otherwise prohibited by law is permitted, except that for [specific enumerated uses] a use permit” was required. Among the enumerated uses requiring a use permit was “commercial excavation of natural materials within a distance of one thousand (1,000) feet from any public street, road, or highway.” (*Ibid.*) Accordingly, it appears that mining was occurring on the Subject Property in 1954, following the passage of Ordinance No. 196.

C. Evidence Establishing Abandonment

The County (“**County**”) serves as the Lead Agency in land use jurisdiction and is responsible for implementing the requirements of the County Land Use and Development Code (“**Development Code**”) and SMARA.

This analysis is organized as follows:

- I. Introduction and Overview**
- II. Questions Presented**
- III. Vested Mining Rights Defined**
- IV. County and State Mining Regulation**
- V. Abandonment of the Mining Use**
- VI. The Subject Property’s History, Ownership and Use**
- VII. Analysis**
- VIII. Conclusion**

I. INTRODUCTION AND OVERVIEW

The Petitioner states that it owns the Idaho-Maryland Mine allegedly consisting of 175 acres of surface land and a 2,560-acre mineral estate in the County which we are referring to as the Subject Property. On September 1, 2023, the County received the Petition which includes the Petitioner’s background facts, legal arguments, requests for determinations, and four hundred twenty-nine (429) exhibits thereto (**Attachment 2**). The Petitioner requests that the County make the following determinations regarding its rights to mine the Subject Property:

1. That mining operations commenced at the Subject Property as early as 1851;

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2. That pursuant to the *Hansen Brothers* decision, the range of mining operations included tunneling, underground mining, exploration core drilling, blasting, crushing, sorting, stockpiling, waste rock placement, screening, distribution, transportation, and sales of gold for commercial uses, buildings headframes, hoists, production plants, crushing plants, stamp mills, tailings impoundment dams, sawmills, silos, offices, assaying and engineering, dry storage, compressors, machine and engineering shops, service garages, parking garages, storage buildings, and power lines, along with equipment including conveyor belts, compressors, pumps, boilers, ore bins, power drills, arrastras, skips, locomotives, trams, and trucks and other vehicles, and uses incidental and auxiliary to mining operations;
3. That the scope and intensity of the mining operations expanded over time, including a peak production rate of 410,411 tons of ore per year, in response to market demand.
4. That the County first required a permit to conduct mining operations on October 10, 1954 (Ordinance No. 196) which represents the “vesting date;”
5. That as of the vesting date, the Idaho Maryland Mines Corporation had manifested its intent to conduct underground mining throughout its then-existing mine holdings, including the Subject Property (which includes the entire 2,560-acre reserved subsurface estate), that surface mining operations at the Mine were occurring on at least 175 surface acres, that all 175 acres now comprising the Subject Property were held under single ownership, and that owner at the time of vesting, a mining company, objectively intended to devote the entirety of the Subject Property and 2,560 acres of mineral rights to support subsurface mining operations;
6. That the vested right has not been abandoned; and
7. That the Subject Property has a vested right to produce at least 410,411 tons of ore per year and a greater amount if justified by market conditions.

The facts relating to the history and operation of the Mine are extensive. Staff’s conclusions rely on: a) information set forth in the Petition; b) the County’s Responses (**Attachment 3**); and c) California law, notably Nevada County ordinances and SMARA, and legal principles expounded in court decisions and legal treatises as applied to the facts (collectively, the “**Evidence**”).

Staff has reviewed and analyzed all pertinent Evidence and concludes that whatever right to mine existed as of 1954, if any, has been abandoned commencing in 1956.

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II. QUESTIONS PRESENTED

A. Did Rise's Predecessor Acquire a Vested Right to Mine?

In 1954, Nevada County adopted Ordinance No. 196, which required a use permit for excavation or smelting within one thousand (1000) feet of a public road. The evidence demonstrates that mining activity occurred at the Idaho Maryland Mine beginning in the 1800's. However, the specifics of what activity was occurring in 1954 are unknown. The evidence provided by the Petitioner does not confirm that the activities regulated by Ordinance No. 196 actually occurring at the time the ordinance was passed, or if they occurred within one thousand (1000) feet of a public road.

Accordingly, the Petition lacks sufficient evidence to support an affirmative conclusion regarding the existence or scope of Petitioner's alleged vested right which the Petition claims may have accrued upon the adoption of Ordinance No. 196. An affirmative conclusion regarding the existence or scope of a vested right is unnecessary, however, because the evidence and applicable legal standards demonstrate that any right to mine the Subject Property was abandoned.

B. If There Was a Vested Right, Has it Been Abandoned?

The purpose of vested rights is to protect economic investment by ensuring that the government does not demand an immediate cessation of existing uses of property. However, the factual history confirms that the owners of the Subject Property terminated their mining investment by ceasing operations and liquidating all assets. Over the years of approximately 1956-1959, the Idaho Maryland Mining Company completely divested itself of the gold mining business by liquidating all of its mining equipment through sales and auctions, dividing the formerly mined lands into separate parcels and selling them to various entities for non-mining uses, changing their name to remove "mining," and reinvesting their assets into non-mining business ventures.

Accordingly, Staff has concluded that any right to mine which may have been vested upon adoption of the 1954 zoning ordinance has since been abandoned. Further, each use of the Subject Property since that period of abandonment was either non-mining related or conducted under the various permits required of non-vested rights holders.

III. VESTED MINING RIGHTS DEFINED

In *Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533 (*Hansen Brothers*), the Supreme Court explained the rationale and legal standard for vested rights as follows:

A zoning ordinance or land-use regulation which operates prospectively and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not bring about a compensable taking unless all beneficial use of the property is denied. However, if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be

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invalid as applied to that property unless compensation is paid. Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. “The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.”

Accordingly, a provision which exempts existing nonconforming uses “is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.” The exemption may either exempt an existing use altogether or allow a limited period of continued operation adequate for amortization of the owners’ investment in the particular use.

When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective. [Citation.] Intensification or expansion of the existing nonconforming use or moving the operation to another location on the property is not permitted. [Citation.] “[I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts.” [Citations.] [*Hansen Brothers, supra*, 12 Cal.4th at pp. 551-552.]

The *Hansen Brothers* court further instructed that, “the burden of proof is on the party asserting a right to a nonconforming use to establish the lawful and continuing existence of the use at the time of the enactment of the ordinance.” (*Hansen Brothers, supra*, 12 Cal.4th at p. 564 (quoting *Melton v. City of San Pablo* (1967) 252 Cal.App.2d 794, 804).)

IV. COUNTY AND STATE MINING REGULATION

A. Nevada County Ordinance No. 196 (1954)

In 1954, the County Board adopted Ordinance No. 196, which Ordinance set forth a comprehensive zoning plan for the unincorporated areas of the County. Section 7 of the Ordinance created an A-1 District, which provided that “any use not otherwise prohibited by law is permitted, except that for [specific enumerated uses] a use permit” was required. Among the enumerated uses requiring a use permit was “commercial excavation of natural materials within a distance of one thousand (1,000) feet from any public street, road, or highway.” (*Ibid.*)

Consequently, the County first required a permit to mine in 1954; therefore, any person who seeks a vested right to mine without a permit must show that their operation was a legal nonconforming use since 1954.

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B. California Surface Mining and Reclamation Act of 1975 (“SMARA”), Public Resources Code §§ 2710, et seq.

In 1975, California enacted SMARA whose purpose is to encourage “[t]he production and conservation of minerals” while ensuring that “[a]dverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.” (Pub. Resources Code, § 2712.) “At the heart of SMARA is the general requirement that every surface mining operation have a permit, a reclamation plan, and financial assurances to implement the planned reclamation.” (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 617; citing Pub. Resources Code, § 2770, subd. (a).) Pursuant to section 2770 of SMARA, “a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency.”

Mine owners or operators are also required to submit annual reports to the Supervisor of Reclamation. (Pub. Resources Code, § 2207, subd. (a).) For mines operated under a reclamation plan, the lead agency must inspect the mine at least once per year. (Pub. Resources Code, § 2774, subd. (b)). If the lead agency’s inspection reveals that the mine is not in compliance with SMARA, the agency may issue an order requiring the operator to comply with SMARA, or “if the operator does not have an approved reclamation plan or financial assurances, cease all further activities.” (*Id.* § 2774.1, subd. (a).)

Each mine operating under a SMARA permit must have only one approved reclamation plan which the operator must update and have approved before implementing any “change or expansion . . . that substantially affects the completion of the previously approved reclamation plan,” i.e., a “substantial deviation.” (Cal. Code Regs., tit. 14, § 3502, subd. (d).) Where the operator expands into an area not covered by the approved reclamation plan, the operator must submit an amended plan that “ensures adequate reclamation for the [expanded] . . . operation.” (*Id.* § 3502, subd. (g).) In addition, the lead agency must require financial assurances from the operator to ensure that reclamation is performed as required by SMARA and must adjust the amount of financial assurances annually to account for any additional land disturbances. [Pub. Resources Code, § 2773.1, subd. (a).]

However, those operating under vested rights are exempt from the permit requirement. Specifically:

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be

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deemed liabilities for work or materials. [Pub. Resources Code, § 2776, subd. (a).]

Stated succinctly, if a person has, in good faith and with the requisite authorizations (that is, legally), diligently commenced surface mining operations and incurred substantial liabilities for surface mining work and materials before 1976, that person has a vested right to conduct surface mining operations and need not secure the permit otherwise required by SMARA, provided those vested rights have continued and no substantial changes to the operation have occurred. However, although vested rights holders are not required to obtain a use permit for their mining activities, SMARA still requires a reclamation plan be approved for surface mining “operations conducted after January 1, 1976” and surface mining operations which are, “to be conducted.” (Pub. Resources Code, § 2776, subd. (b).) Section 2770 of SMARA required that vested rights holders submit a reclamation plan for their mining operation by March 31, 1988, or such operation would be prohibited. (*Id.* at § 2770.)

SMARA’s reclamation plan requirements further extend to idle mines. The legislature determined that mines are considered “idle” when they meet the following criteria:

“Idle” means that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years during which an interim management plan has not been approved. [Pub. Resources Code, § 2727.1.]

Within ninety (90) days of a mining operation becoming idle, mine operators are required to submit an interim management plan to the lead agency. (Pub. Resources Code, § 2770.) “The approved interim management plan shall be considered an amendment to the surface mining operation’s approved reclamation plan for purposes of this chapter. The interim management plan shall only provide for necessary measures the operator will implement during its idle status, to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.” (*Ibid.*) The legislature further determined that the consequence of a mine operator failing to comply with this requirement is that the mine must be considered “abandoned:”

Unless review of an interim management plan is pending before the lead agency or an appeal is pending before the lead agency’s governing body, *a surface mining operation that remains idle for over one (1) year after becoming idle, as defined in Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned* and the operator shall commence and complete reclamation in accordance with the approved reclamation plan. (Pub. Resources Code, § 2770, subd. (h)(6), emphasis added.)

C. County’s Post-SMARA Mining Requirements

In 1978, after the adoption of SMARA, the County adopted Ordinance No. 835, enacted in April 1978. This Ordinance amended the County’s Development Code by adding a section entitled “Surface Mining Permit and Reclamation Plan.” Most relevant here is Subsection L-II 31B.4.D.E, which provides:

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A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the Planning Department and receive, within a period of 12 months, approval of a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the County of Nevada prior to January 1, 1976, and the person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan. Nothing in this ordinance shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined land on which surface mining operations were conducted to, but not after, January 1, 1976.

The current version of that Development Code provides, in part, as follows:

Sec. L-II 3.22 Surface Mining Permits and Reclamation Plans

E. Vested Rights. No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, State regulations, and this Section. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, he/she shall obtain County approval of a Reclamation Plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976).

All other requirements of State law and this Section shall apply to vested mining operations.

K. Financial Assurances.

1. To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the County shall require as a condition of approval Security that will be released upon satisfactory performance. The applicant may pose Security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the County and the State Mining and Geology Board as specified in State regulations, and which the County reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Plan.

2. Financial assurances will be required to ensure compliance with elements of the Reclamation Plan.... [¶]

3. Cost estimates for the financial assurance shall be submitted to the Planning Department with the Use Permit and/or Reclamation Plan

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application. The Planning Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. [¶]....[¶]

L. Interim Management Plans.

1. Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit to the Planning Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Use Permit conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the Planning Department and shall be processed as an amendment to the Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.

2. Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP [¶]....[¶]

5. The IMP may remain in effect for a period not to exceed 5 years, at which time the Planning Commission may renew the IMP for another period not to exceed 5 years or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

M. Annual Report Requirements. Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the County Planning Department on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board.

N. Inspections. The Planning Department shall arrange for inspection of a surface mining operation within 6 months of receipt of the Annual Report required in subsection M, to determine whether the surface mining operation is in compliance with the approved Use Permit and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. ...All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

D. County's Regulation of Nonconforming Uses

Generally, a nonconforming use is one which was valid when brought into existence, and due to a subsequent regulation, it is no longer conforming. (*City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 453; 43 Ops.Cal.Atty.Gen. 144, 147 (1964); and *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 285.) The underpinnings of the nonconforming use concept were to develop a strategy for addressing pre-existing uses of land when a new zoning ordinance was introduced or modified.

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Since the introduction of the nonconforming use concept in the 1950's, the trend has been unmistakably to impose increasing restrictions on such uses in order to prevent their becoming further entrenched and to encourage their conversion to conforming uses. (1 Longtin, Cal. Land Use (2nd ed. 1987) Nonconforming Uses and Structures, § 3.82[1], p. 377-378.)

The Development Code provides in part:

Sec. L-II 5.19 Legal Nonconforming Uses and Structures

A. Purpose. Within the zoning districts established by this Chapter, there may be uses and structures which were lawful before the effective date of the applicable terms of the regulations, but which are prohibited, regulated or restricted under the terms of the regulations currently in effect or by future amendments. Relative to such uses and structures, it is the purpose of this Section to:

1. Reduce them to conformity or to eliminate them through abandonment, obsolescence, or destruction due to strict provisions against changes that could perpetuate them.
2. Provide for their regulation and to specify the circumstances and conditions under which they may continue to exist until brought into conformity, removed, or terminated.

B. Legal Nonconforming Uses. A legal nonconforming use is any use lawfully in existence at the time this Chapter or amendments thereto takes effect, although such use does not conform to the provisions of this Chapter. Such use may continue subject to the following:

1. No use shall be:
 - a. Enlarged or intensified,
 - b. Extended to occupy a greater area of land or a portion of a structure than that occupied at the time this Chapter, or any amendment thereto takes effect, or
 - c. Moved in whole or in part to any other portion of the parcel of land occupied at the time this Chapter or any amendment thereto takes effect.
[¶]...[¶]
4. If the use is discontinued for a period of one year or more, any subsequent use shall be in conformity with all applicable requirements of this Chapter, except as follows: a) uses clearly seasonal in nature (i.e., ski facilities) shall have a time period of 365 days or more, b) surface mining

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operations shall comply with the provisions of Section 3.22.L providing for interim management plans.

SMARA does not preempt or usurp traditional city and county regulatory powers. SMARA's author added language to make clear that it did not restrict:

The power of any city or county to regulate the use of buildings, structures and land as between industry, business, residences open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes. [*Id.* Section 2715(f).]

The Development Code and SMARA require that all individuals and operators contemplating surface mining acquire (1) a permit from the County and obtain (2) an approved plan and (3) financial assurances for reclamation prior to commencement. SMARA further requires that all existing or "vested" surface mining operations have an approved reclamation plan and financial assurances to insure implementation of the plan. Otherwise, after April 1979, twelve (12) months after adoption of Ordinance 835, continuance of mining without an approved reclamation plan and financial assurances was impermissible, even if there were mining operations.

V. ABANDONMENT OF THE MINING USE

A. Establishing the Abandonment of The Mining Use

Courts have routinely acknowledged and found that nonconforming uses are not intended to be perpetual. "It was not and is not contemplated that pre-existing nonconforming uses are to be perpetual. The presence of any nonconforming use endangers the benefits to be derived from a comprehensive zoning plan." (*Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 459.) "The ultimate purpose of zoning is . . . to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. [citation] We have recognized that, given this purpose, courts should follow a strict policy against extension or expansion of those uses. [Citation] That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." (*Hansen Brothers, supra*, 12 Cal.4th at p. 568.) Similarly, to determining the scope a vested right, in analyzing whether a vested right has been maintained, or was abandoned, courts look to the objective manifestations of intent by the owner or owners of the property. (*Ibid.*)

Specifically, in *Hansen Brothers*, the Supreme Court described the legal requirements for abandonment of a vested right as follows: "[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use (8A McQuillin, [Municipal Corporations (3d ed. 1994)], § 25.192; 1 Anderson, *American Law of Zoning*, § 6.58). The Supreme Court's discussion in *Hansen Brothers* regarding the factual elements which are demonstrative of the factors of abandonment was not exhaustive and, instead, offered minimal legal standards for abandonment beyond the two-factor test of (1) intent to abandon and, (2) an overt act or failure to act. However, the analysis by the court in *Hansen Brothers*, *Hansen Brothers's* progeny, and other relevant sources have further developed the factual elements that give rise to abandonment.

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1. Length of Time the Nonconforming Use Has Been Suspended

Hansen Brothers made clear that cessation of the nonconforming use, **alone**, would be insufficient to constitute abandonment. (*Hansen Brothers, supra*, 12 Cal.4th at p. 569.) However, the court went on to confirm that the duration for which the nonconforming use has been discontinued **is** a relevant factual consideration "in determining whether the nonconforming use has been abandoned [citation]." (*Hansen Brothers, supra*, 12 Cal.4th at p. 569 [quoting *Union Quarries, Inc. v. Board of County Com'rs* (1970) 206 Kan. 268 [478 P.2d 181, 186-187]; see also *Dusdal v. Warren* (Mich.1971) 196 N.W.2d 778, 781 ["Abandonment in the contemplation of the law is something more than mere nonuser. It is rather a nonuser combined with an intention to abandon the right to the nonconforming use."].) In discussing the *Hansen Brothers* test for abandonment, Derek P. Cole, in his legal treatise *California Surface Mining Law*, states:

"The critical prong of this test is the first, dealing with intention. While closing a mine for a prolonged period might constitute an overt act of cessation, the closure itself does not necessarily indicate that an owner intended abandonment of rights.

...

The longer the cessation of activities, however, the more likely an owner will be found to have abandoned the nonconforming use. As the California Supreme Court noted in *Hansen Bros.*, "the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned." 12 Cal.4th 569. In two cases, nonuse for periods of seven and ten years, coupled with the absence of other preservative activity, reflected an intent to abandon nonconforming mining operations. See, *Lane County v. Bessett* (Or. Ct. App. 1980) 612 P. 2d 297, 301; *Holloway Ready Mix Co. v. Monfort* (Ky. Ct. App. 1971) 474 S.W. 2d 80, 83." (Derek P. Cole, *California Surface Mining Law* (2007) ("Cole"), p. 151-152.)

Similar to the *Lane County* and *Holloway Ready Mix Co.* cases cited by Cole, the court in *Stokes v. Board of Permit Appeals* held that a seven (7)-year period of cessation of a property's nonconforming use as a bathhouse was sufficient to constitute abandonment of the vested right to operate the building as a bathhouse despite zoning changes effecting that use. (*Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348, 1354.)

The plaintiff in *Stokes* argued that, under *Hansen Brothers*, cessation of the property's nonconforming use was insufficient to show the property had been abandoned because the "discontinuance of use is not synonymous with abandonment." (*Id.* at 1354-1355.) However, the *Stokes* court focused on the facts that the nonconforming use had been discontinued for seven (7) years and, during that time, the property was not put to any lawful use, concluding, "[t]hese facts establish more than a temporary vacancy, but rather an intentional decision to abandon the premises." (*Id.* at 1354.) The *Stokes* court compared these facts to *Hansen Brothers*, where the Hansens had only discontinued their nonconforming mining, "for periods of 180 days and up to 3

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years, because stockpiles were sufficient to meet demand.” (*Id.* at 1355.) Based on these differences between the periods of cessation, the *Stokes* court concluded:

“In *Hansen*, plaintiffs were continuously operating some portion of their aggregate production business on the property. Here, by contrast, Stokes's predecessors had completely vacated the building for seven years and the building had not been used for *any* purpose at the time plaintiff took possession. There are no facts to which Stokes can point as evidence the prior owners intended to and in fact did continue to operate the property as a bathhouse or for a related use.” (*Id.* at 1355-1356.)

Read together, *Hansen Brothers* and *Stokes* establish that, while cessation of a nonconforming use *alone* is not determinative of abandonment, the period of time the nonconforming use was discontinued *is* relevant to abandonment and the likelihood of abandonment increases the longer the nonconforming use was ceased. *Hansen Brothers* and *Stokes* further confirm that, in order to avoid a finding of abandonment, the property owner must be able to identify evidence of their objective manifestations of intent to resume the nonconforming use throughout the period the nonconforming use was discontinued.

2. Preparation for Resumption of Nonconforming Property Use

In addition to the length of time a nonconforming use was discontinued, courts place significant emphasis on the objective manifestations of the owner’s intention to resume the nonconforming use in determining whether or not the use has been abandoned. (Cole, *supra*, at pp. 151, 152.) Cole’s treatise on California mining law again provides relevant guidance on this element of abandonment:

“Yet, even in an economic downturn, an owner cannot maintain the right to continue a nonconforming use simply by shutting the gates and doing nothing during closure. To reflect an intent to continue, the owner must instead sell, or attempt to sell, stored and stockpiled material. *See, Union Quarries, Inc. v. Bd. Of County Commr’s* (Kan. 1970) 478 P. 2d 181, 187 (although mine had ceased extraction, owner indicated intent to continue operations by selling from stockpiles); *Bither v. Baker Rock Crushing Co.* (Or. 1968) 438 P2d 988, 993 (despite cessation of mining, mine preserved right to continue by selling materials from stockpiles). The operator must also keep the plants and equipment in good order for prompt resumption of activity. *See S. Equip. Co., Inc. v. Winstead* (N.C. Ct. App. 1986) 342 S.E. 2d 524, 527. *But see County of DuPage v. K-Five Constr. Corp.* (Ill. App. Ct. 1994) 642 N.E. 2d 164, 165, 168 (dismantling plant in absence of asphalt production for ten years reflected intent to abandon such production). The operator must also continue making royalty or lease payments as it may be required to pay others *See Union Quarries*, 478 P. 2d 187.” (Cole, *supra*, at 151.)

Cole highlights that an operator must demonstrate their intention to continue a nonconforming use by maintaining the operation in such a way that they are prepared to resume the nonconforming

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activities. The *Southern Equipment Co.* case cited by Cole was also relied upon by the *Hansen Brothers* court who, in finding that the vested right had not been abandoned, noted:

In *Southern Equipment Co. v. Winstead* (1986) 80 N.C.App. 526 [342 S.E.2d 524], the court held that under the applicable ordinance the failure to operate a concrete mixing facility for six months during a business slowdown, while the operator filled orders from another plant, was not a cessation of operation. There, as in this case, the plant, equipment, inventory, and utilities were maintained throughout the period and the plant could be made operational within two hours. (*Hansen Brothers, supra*, 12 Cal.4th at p. 569.)

The court in *Hansen Brothers* further explained that, despite episodic cessations of the nonconforming mining activities during economic downturns, the Hansen Brothers continued to operate their business by selling from stockpiles and maintaining their operations in working order to resume mining activities when the market became economically viable again. (*Id.* at 570-571.) So, while *Hansen Brothers* does not require that nonconforming mining activities have been continuously performed in order to avoid abandonment of the vested right, it does require that the intent to resume said activities be demonstrated throughout the period of cessation.

3. Intent to Resume Nonconforming Use Must Have Been Maintained by Previous Owners of the Property

Pertinent to Rise's instant petition is the effect of parcels changing hands after the initial zoning changes which made the then-existing uses nonconforming. As explained in more detail below, it has been nearly seventy (70) years since the County's 1954 zoning ordinance and, in that time, the historic Subject Property has been separated into various parcels and sold to multiple separate owners. California law establishes that, in order for the vested right to have survived to the present, the vested right must have persisted through each of the interim owners from the time the initial use became nonconforming.

The court in *Hansen Brothers* states that, where an owner is seeking to assert a vested right to a nonconforming use over multiple parcels that were acquired after the zoning change, the previous owners must have themselves maintained a vested right to that nonconforming use. (*Id.* at 557-558.) The abandonment of a vested right by a previous owner was demonstrated in the *Stokes* case. In *Stokes*, after ceasing the nonconforming use, as a bathhouse, the previous owner filed an application to permit converting their property into a senior center, which was a permitted use. (*Stokes, supra*, 52 Cal.App.4th at p. 1356.) The Board of Permit Appeals found that the application demonstrated an intent to abandon the nonconforming use, which had been ceased, and the Court of Appeal states that this intent to abandon, "is a separate ground for defeating a nonconforming use."

Accordingly, for a nonconforming use to persist through changes in ownership across the various parcels, the vested right must have been maintained by each of the interim owners. This means that, to the extent these interim owners did not put the properties to the nonconforming use, they must have performed objective acts evidencing their intent to do so in the future. Otherwise, any vested right to that nonconforming use would be abandoned.

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B. The Burden of Proof for Abandonment

In *Hansen Brothers*, the Supreme Court does not explicitly state which party has the burden of proving abandonment of a vested right. In *Palico Enterprises, Inc. v. Beam* (2005) 132 Cal.App.4th 1482, 1497-1498, the Court of Appeal also does not state which party has the burden of proving abandonment of a nonconforming use. Nevertheless, the court's explanation as to why the party that advocated for abandonment failed to persuade the court appears to be an implicit recognition that such party had the burden of proof on that issue.

Courts in other states, however, that rely on the same secondary authority cited in *Hansen Brothers* have held that the burden of proving abandonment of a vested right is on the party asserting abandonment, which normally is the local governmental agency. For example, the Washington Court of Appeal held:

However, once the landowner establishes that a legal nonconforming use existed, the burden shifts to the municipality asserting that the nonconforming use was abandoned to show that the landowner abandoned or discontinued the use after the enactment of the relevant zoning ordinance. [*McMilian v. King County* (Wash.Ct.App. 2011) 255 P.3d 739, 745 (citing *Van Sant v. City of Everett*, 69 Wn. App. 641, 648, 849 P.2d 1276 (1993), which quotes 8A Eugene McQuillin, *The Law of Municipal Corporations* § 25.191 (3d ed. 1986 rev.)).]

The Washington court went on to explain:

King County attempts to misplace the burden on the landowner, *McMilian*, to establish that the alleged legal nonconforming use was not abandoned after 1958. However, once a landowner has proved that a valid nonconforming use was lawfully established at the time the relevant zoning code was enacted, the burden of proving that a nonconforming use was subsequently abandoned, such that it should no longer be recognized, is properly placed on the party asserting abandonment, here King County. [*Id.* at p. 745, fn. 4.]

(See *Dusdal v. Warren*, supra, 196 N.W.2d at p. 781 [“The burden of proving abandonment was on the city.”])

Additionally, California courts have held in other circumstances that the party asserting abandonment has the burden of proving abandonment. (See, e.g., *Group Property, Inc. v. Bruce* (1952) 113 Cal.App.2d 549, 559 [where defendant argued the plaintiff abandoned an option to purchase leased property, “[a]bandonment is never presumed, but must be made to appear affirmatively by the party relying thereon”]; *Weideman v. Staheli* (1948) 88 Cal.App.2d 613, 616 [where plaintiffs contended that an easement had been abandoned, “the burden rests upon the party alleging abandonment to prove the same by satisfactory and competent evidence”].)

Furthermore, the general rule is that a party making a claim must provide the evidence to support that claim. (See *Washington v. Washington* (1949) 91 Cal.App.2d 811, 813 [“Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative

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allegation (Code Civ. Proc., § 1869), but the party holding the affirmative of the issue must produce evidence to support it, and if such evidence is not produced the finding must be against such party. (Code Civ. Proc., § 1981). *See, e.g., La Prade v. Dept. of Water & Power* (1945) 27 Cal.2d 47, 51.)

Regardless, as explained in full, below, Staff believes that, under any standard of review, the evidence supports a finding that if a vested right to mine ever existed it has since been abandoned.

VI. THE SUBJECT PROPERTY'S HISTORY, OWNERSHIP AND USE

This Staff Report provides a thorough discussion of the history, ownership and use of the Subject Property in the Site Description and Background, the Analysis section entitled "Evidence Establishing Abandonment," and in the County's Responses in **Attachment 3**.

VII. ANALYSIS

A. Whatever Mining Activities Were Occurring At The Subject Property When The County Ordinance Was Adopted In 1954 Were Abandoned by 1956

In 1956, the owners of the Subject Property ceased operations, sold all mining equipment by 1957, and then sold all of the Subject Property over the next couple of years. The owners of the Subject Property purposefully eliminated the mining uses to which the Subject Property had previously been put. The record before the County demonstrates that there has been no continuity of mining on the Subject Property for over sixty-five (65) years. The area of mining operations contracted in the early 1950s, ceased in 1956, and then the Subject Property was sold off for non-mining purposes. Contrary to what the Petitioner states, there has been no continuity of intent to mine, nor have there been continuous overt acts demonstrating that intent to mine for over sixty-five (65) years. Therefore, the mining use was abandoned.

B. Mining Activities at the Subject Property Were Abandoned as of 1956

1. Idaho Maryland Mines Corporation began selling off portions of the Subject Properties in 1954

Beginning in 1954, the owner of the Subject Property began to sell off portions of the Subject Property. Even as to those portions of the Subject Property that were sold off by Idaho Maryland Mines Corporation in 1954 with a reservation of the subsurface mineral rights (Response to Facts, No. 5), that reservation did not indicate an intent to resume mining in the future. "The history of mineral development in the United States is marked by speculative practices to reserve 'rights' that may in the future be sold, and which may or may not be bona fide. Not all historical actors who have reserved such "rights, moreover, have possessed a viable future plan for exploitation of those 'rights'." (S. Miltenberger, Ph.D., Principal & H. Norby, M.A., Senior Historian, *Peer Review Comments, Idaho-Maryland Mine Vested Right Petition* ("**Historian**"), Comment No. 75.) Thus, Petitioner's statement that "[t]he only plausible reason for requiring these exclusions in the deeds is that the company intended to resume underground mining operations at these properties in the future" is incorrect and is sheer speculation.

Also, contrary to the assertions in the Petition, half of the properties sold off in 1954 that are discussed by Petitioner did *not* include a reservation of the mineral rights. (Response To Facts,

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No. 5; Pet. Exhibits 181, 183.) Such sales of the Subject Property without any reservation of mineral rights certainly demonstrated an intent to abandon mining operations.

2. Mining Activities Stopped in 1956, and Additional Properties are Sold Off, Which Evidence an Intent to Abandon the Mining

In February 1955, dozens of employees are terminated, and development is limited solely to tungsten exploration. (Jack Clark, *Gold In Quartz* (“Clark”) pp. 242-243.) In July 1955, a local newspaper reported that the President of Idaho Maryland Mines Corporation stated that the firm was “in ‘critical’ condition” and may have to “discontinue operations.” (County’s Response, No. 7, **Attachment 3**.)

During 1955, additional portions of the Subject Property are sold off for non-mining uses. Contrary to Petitioner’s assertions, the deeds to nearly all of the properties sold in 1955 did *not* include any reservation of mineral rights (Response to Facts, No. 8; Pet. Exhibits 189, 190, 191, 192.) Again, that demonstrated an intent to abandon mining operations. As to the single deed that did include such a reservation of mineral rights, that is not an indication of an intent to resume underground mining in the future. (Historian, Comment No. 75.)

Then on December 27, 1955, all gold mining activities ceased at the Idaho Maryland Mine. (Clark, p. 252; Pet. Exhibit 216; Response to Facts, No. 9.) Even Petitioner concedes that there was a “Cessation of Gold Mining Activities.” (Petition, p. 4.) “A small crew of men began removing all trolley motors, ore cars, mucking machines, drills, hoses, slushers, etc., from all levels below the 2000-foot level, including the 3280-foot level.” “Now that gold mining had ceased, the *future of the mine focused entirely* on the production of tungsten.” (*Ibid.* (emphasis and underline added).) But then, as Petitioner explains, “the Board of Directors of the Idaho Maryland Mines Corporation orders on September 25th [1956] the cessation of nearly all tungsten production, the unoccupancy of the Idaho shaft, and that the mines be allowed to flood to the 1,450-foot level of the Mine.” (Petition, p. 37.)

In 1956, Idaho Maryland Mine Corporation sells off even more properties. Contrary to Petitioner’s assertions, the fee title to *all* of the properties cited by Petitioner, are sold off in their entirety, with *no* reservation of mineral rights. (Response to Facts, No. 11; Pet. Exhibits 200, 201, 202, 203, 206, 208.) That even includes the Brunswick sawmill site. (Response to Facts, No. 11; Pet. Exhibit 205.)

Thus, *all* mining activities at the Idaho Maryland Mine ceased in 1956. This case is completely different from *Hansen Bros. Enterprises v. Board of Supervisors*, *supra*, 12 Cal.4th 533, where there was an “aggregate production business, of which mining for the component is an aspect” and “mining uses of the Hansen Brothers’ property are incidental aspects of the aggregate production business,” where the quarry was inactive but there was a “*continuing* aggregate business,” and where “the aggregate business has *not been discontinued*” and “the aggregate business itself has *not been discontinued*.” (*Id.* at pp. 565, 566, 569-570). (Emphasis added.) Petitioner’s representations to the Board that the “operations had been ceased for years” in the *Hansen Brothers* case. (Chadwick letters to Board, November 14, 2023, p. 12), is patently false. Here, by contrast, all mining completely *stopped* in 1956, and all “uses normally incidental and auxiliary to the nonconforming uses” (*id.* at p. 565) had *ceased*. Thus, unlike the aggregate business in *Hansen Brothers*, the mining operations at the Idaho-Maryland Mine were abandoned.

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3. All Of The Mining Equipment Was Sold Off In 1957, and the Mine Buildings Were Eventually Removed, Which Evidence an Intent and Overt Actions to Abandon the Mine

Page 252 of the Clark book describes the complete liquidation of mining equipment at the Idaho Maryland Mine in 1957. Petitioner omits any reference to that page, and intentionally omits that page in its Appendix. The relevant portion of page 252 states the following:

A Successful Auction-1957

After the mine closed, the salvage crew continued removing equipment from underground. On March 15, 1957, the last cage of items was hoisted to the surface in the New Brunswick shaft. The electric power to the mine then was disconnected at the Brunswick substation. These two great gold producers became a casualty of the low price of gold and an inflated economy that left gold mining in its wake.

On April 30, 1957, Nevada County Tax Collector Alma Hecker and Auditor/Controller John T. "Tom" Trauner jointly announced the good news that the county of Nevada and two school districts had received a check for \$102,291.98 from the Idaho Maryland Mines Corp. for payment of local taxes. That amount included \$34,930.33 for the current fiscal year, and \$67,361.56 for delinquent taxes and late penalties. Payment of these taxes was made possible by the sale of mining equipment owned by the mine. The Milton J. Wershow and David Weisz companies of Los Angeles had been employed to auction off all saleable equipment and buildings. Beginning on May 21, 1957, a two-day auction was held at the New Brunswick mine to liquidate over 1400 lots of equipment and structures. These involved everything from the Old Brunswick, New Brunswick, and what remained of the Idaho Maryland mines. Buyers representing mining companies from many parts of the world, cities, counties, lumber mills, and interested people came to participate. Over 1,000 reviewed the items that were neatly arranged throughout the mine yard and in buildings.

The auction was a huge success, with the bidding brisk at times. Management was quite satisfied with the outcome, especially for the prices received for items such as the Marcy 86 ball mills, hoists, headframes and compressors. President Bert C. Austin announced that the money received would satisfy all outstanding debts and leave the corporation with a surplus of cash. [Clark, p. 252.]

Petitioner also omits any reference to (and excludes from its Appendix) the pages of the Clark book that contain a photograph of the Brunswick site with this statement: "For many years after most of the buildings had been removed, this was all that was visible of the New Brunswick mine. Finally only the silo remained." That removal of buildings is also depicted in the photographs on page 251 of Clark, which photographs from the Clark book are also omitted in Petitioner's Appendix.

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The removal of all mining equipment and all buildings (except the silo) from the Subject Property materially distinguishes this case from *Hansen Bros.* There, the Court noted: “[I]n this case, the plant, equipment, inventory, and utilities were *maintained* throughout the period and the plant could be made operational within two hours.” (*Id.* at p. 569 (emphasis added).) But here, the “use of all structures necessary or incidental thereto” (*Id.* at p. 566) came to an end at the Idaho Maryland Mine. Thus, the fact that all mining equipment and all buildings (except the silo) were removed from the Subject Property in March 1957 is conclusive evidence of both an intention to abandon the mine, and an overt act that carries the implication the owner of the remaining Subject Properties and operator of the mine does not claim or retain any interest in the right to whatever nonconforming use existed in October 1954.

A July 1957 news article cited by Petitioner states that “[l]arge-scale mining at the Idaho-Maryland [mine] ended when the company filed its stockpile quote of tungsten for the government,” that “[t]he *removal of pumps, compressors, hoists, mine rails* and other salvage jobs is going ahead,” that “[m]ine officials, questioned concerning the future, are hopeful but *not optimistic*,” that “[t]he cessation of active gold mining in the underground workings of the Idaho Maryland Mines Co. . . . marks the *end of an era*,” and that “the once great gold mining industry at Grass Valley, Calif. has *rolled to a halt, perhaps permanently*.” (Pet. Exhibit 209 (emphasis added); Response To Facts, No. 12.) “[A] veteran miner gazed at the rusting equipment of a deserted shaft and shook his head sadly. ‘Something better happen,’ he said, ‘and it had better be quick. Otherwise, we may as well *leave all this gold to the ages*.’” (Pet. Exhibit 416.)

4. The Subject Property Was Divided Up, Which Evidences an Intent and Overt Actions to Abandon Mining on the Subject Property.

Additional portions of the Subject Property are sold off in 1957. (Petitioner omits from its Appendix page 249 from the Clark book, which includes a photograph with the statement: “A salvage crew prepares *the Subject Property* for sale.” (Emphasis added.)) Contrary to Petitioner’s assertions, the properties are *not* “always” sold in 1957 “with a reservation of the mineral estate and the continuing right to explore and develop the Mine in the future.” (Response To Facts, No. 13; Pet. Exhibit 212.) The County’s Response to Facts, No. 13, demonstrates that Petitioner is simply wrong when it argues that: “In every instance, the Company expressly reserved both the mineral estate and mining rights. . . . (Letter to Clerk of Board of Supervisors from G. Braiden Chadwick, dated November 15, 2023.) Even the reservations of the mineral estate in the Quitclaim Deeds to Sierra Nevada Memorial Hospital, which are highlighted by Petitioner, were “subject to the express limitation that the foregoing reservation shall not include any right of entry upon the surface of said land.” (Pet. Exhibits 213, 214; Response To Facts, No. 13.) Those continuing sales of portions of the Subject Property evidence an intention to abandon the Idaho Maryland Mine. Again, even deeds that contain reservation of the mineral rights do not necessarily indicate an intent to resume mining in the future, contrary to Petitioner’s assertions. (Historian, Comment No. 75.)

Then in 1959 and 1960, the Idaho Maryland Mines Corporation transferred additional portions of the Subject Properties. Petitioner asserts that an August 1959 transfer to Oliver Investment Company, and immediate transfer to Sum-Gold Corporation Inc., reserved mineral rights. (Petition, pp. 38-39, 70; Pet. Exhibit 218; Response to Facts, No. 15.) However, the minutes of the “one meeting of the Board of Directors of Idaho Maryland Mines Corporation (Exhibit 216)

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are “not produced in their entirety, however - in fact it does not appear that any of the corporate minutes proffered as evidence in the petition are - which makes it making it difficult to evaluate if all relevant information is presented.” (Historian, Comment No. 37.) Furthermore, Petitioner simply avoids any discussion of the fact that only a few months later, in January 1960, the Board of Idaho Maryland Mines Corporation authorized the sale to “Sum-Gold Corporation approximately 2,500 acres of mineral rights, which have heretofore been abandoned by non-payment of taxes.” (Pet. Exhibit 217, p. 127; Response to Facts, No. 15.) Petitioner similarly omits whatever deeds were used to effectuate such transfer of mineral rights to Sum-Gold Corporation in early 1960.

C. No Mining Activity Occurred in the 1960s or 1970s, Thereby Evidencing an Intent to Abandon The Mine.

1. The Corporation Eliminates The Word “Mines” From its Name

Idaho Maryland Mines Corporation changed its name to Idaho Maryland Industries Inc. in 1960, thereby eliminating the word “Mines” from its name (Petition, p. 39), while at the same time the Corporation’s Board discussed “the advisability of selling certain mineral rights belonging to the Corporation.” (Pet. Exhibit 217, p. 168; Historian, Comment No. 39.) Then, when the Corporation files for bankruptcy in 1962 (Petition, p. 40) there is no mention in the news article cited by Petitioner of anything relating to mining activities. (Pet. Exhibit 223; Response to Facts, No. 18.) Those facts are further evidence that the Corporation had abandoned its mining operations at the Idaho Maryland Mine.

2. The Ghidottis Did Not Undertake Any Efforts to Resume Mining at Any Time in the 1960s

Idaho Maryland Industries Inc. auctioned 2,630 acres of mineral rights and 78.531 acres of surface rights of the Subject Property in 1963 and sold them to William and Marian Ghidotti. (Petition, p. 40; Pet. Exhibits 224, 225.) The Ghidottis purchased the property as an investment. The fact that William Ghidotti bought those rights with “no immediate plans” (Pet. Exhibit 226), along with the fact that the Ghidottis never took any actions throughout the 1960s to resume mining on the Subject Property demonstrates that the Idaho Maryland Mine had been abandoned that entire decade.

Many of the Petitioner’s arguments rely upon the statements in a Declaration of Lee Johnson. (Petition, pp. 40, 70-71; Pet. Exhibit 227.) Petitioner repeatedly relies upon Mr. Johnson’s “understanding” of what the Ghidottis “believed,” even though Mr. Johnson’s statements lack foundation, and there is no evidence that they are based on his personal knowledge. (Responses to Facts, Nos. 19, 20, 25, 29, 30.) Additionally,

As a historical source, a declaration such as Lee Johnson’s (Exhibit 227) is problematic, particularly for the factual assertions made here. Both historical study and scientific research have revealed the unreliability (and even instability) of human memory. Historical interpretation is based upon a critical examination of documentation made at or near the occurrence of an event. Memoirs and reminiscences often drafted years after an event are consulted as sources but treated with caution. Corroboration from sources closer or contemporaneous in time with the events described are

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frequently sought. Relying on this declaration to ascertain William and Marian Ghidotti's thoughts or intentions - in the absence of independent supporting documentation - is methodologically suspect for a historian. [Historian, Comment No. 44.]

Thus, the Declaration of Lee Johnson cannot be used to support a conclusion about the "intent" of William and Marian Ghidotti not to abandon Idaho Maryland Mine.

Also, Petitioner's assertions about William Ghidotti purportedly being an owner of stock in mining companies, a "gold investor," "gold enthusiast" and collector of "gold and quartz specimens" (Petition, pp. 40, 41, 70-71) do not indicate an intent by Mr. Ghidotti to resume mining on the Subject Properties. (Response To Facts, Nos. 19.) Indeed, the fact that "William Ghidotti "reportedly was open to offers to purchase 'the mineral rights' raises a historical question as to his motivations. Was his interest mostly or exclusively speculative? If so, how much intent to mine or revive mining operations can be fairly ascribed to Ghidotti?" (Historian, Comment No. 41.)

3. Whatever Removal of Waste Rock Occurred in The 1960s, That Activity Did Not Evidence an Intent to Resume Mining

Even if some waste rock was removed from the surface of the Subject Property in the 1960s, that did not constitute a continuation of the mining activities that were nonconforming as of 1954. Indeed, even Petitioner does not allege that the mere removal of rock constitutes "mining." (Petition, p. 71.) That is in accord with *Hansen Bros.* After concluding that the nonconforming use in that case was "aggregate production," the Court explains:

Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine. This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material. [12 Cal.4th at p. 571.]

Here, there were no mining activities that occurred on the Subject Property after 1956 when mining ceased. At most, the Subject Property constituted a place for storage and sales of stockpiled mine tailings, where for a period of a few months in 1964 or 1965 a third party came on to the site to crush and haul off waste rock for the construction of the local freeway. (Petition, pp. 40, 71; Pet. Exhibit 231; F.D. Calhoun, *California Gold And The Highgraders: True Stories of the Mines and the Miners* ("Calhoun") (Pet. Appendix F).) That waste rock was "already broken, hard rock [that] lay in great heaps in the waste dump at the Brunswick Mine." (Calhoun (Pet. Appendix F), p. 352-353.) Nothing in Ms. Ghidotti's discussion about that event indicated an intent to resume mining on the Subject Property. (Response To Facts, No. 40.) "[T]he activity described at the site is not focused on any revival of mining under the Ghidottis' ownership but rather on the sale 'of crushed rock left over from past mining operations.'" (Historian, Comment No. 41.) "It is not clear from the sources provided that the Ghidottis intended to use what this petition refers to as the 'Centennial Industrial Site' for any activities outside of crushing and selling waste rock." (Historian, Comment No. 77.) "During this nine (9)- [year] period the only evidence of activity at the historical Idaho-Maryland Mine presented is of the operation of a rock crusher and the removal of 'mine rock wastes and mill sand.' It is unclear of how indicative this was of an intent to resume

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gold mining operations.” (Historian, Comment No. 42.) The fact that the County in 1980 found that rock crushing activities on the Subject Properties constituted an “expansion” of an existing nonconforming use, coupled with the fact that North Star Rock Company applied for a conditional use permit to engage in such rock crushing on the property owned by Marian Ghidotti, also demonstrate that the mining activities as a vested right had been abandoned on the Subject Properties as of the 1960s.

Petitioner also alleges that crushing the rock constituted “mining.” Petitioner asserts: “As a result of a shortage in financing, active material sales were reduced, and the Mine was held in a state of suspension with intent to resume mining operations when possible until the resumption of mining, crushing and material sales activities in the 1960’s and 1970’s.” However, “[c]omponent parts of Idaho-Maryland Mine were sold to various entities after the gold mine closed. There does not appear to have been a single entity holding the historical mine ‘in suspension’ as claimed by Petitioner for future gold mining development. The waste rock crushing, removal, and sales that began in 1964 was not described contemporaneously as a resumption of historical gold mining operations.” (Historian, Comment No. 81.) Such rock crushing activities were not a mining activity that prevented the abandonment of the Idaho-Maryland Mine.

4. Any Sawmill Activities That Occurred on Any of The Subject Property Since 1956 Was Not Connected in Any Way With The Mining Activities at The Subject Property.

Petitioner alleges that the “mining operations” that are still visible at the Brunswick Industrial Site include “tree clearing to fuel the Brunswick sawmill,” and that “the sawmill was originally constructed for the exclusive use and benefit of mining operations and continued to operate during the 1960’s and 1970’s pursuant to Use Permits U58-15, U64-30, and U64-31.” (Petition, p. 60-61.) Petitioner also alleges that “the sawmill was, at the time of its construction, an auxiliary use of the Subject Property, with the purpose of facilitating the mining operation.” (Petition, p. 63.) However, “[t]he presented history of this sawmill is not complete and does not follow the operations or longevity of this sawmill. It is unclear how long the initial sawmill was operational, and to what degree, if any, it was supporting mining after the 1940s.” (Historian, Comment No. 71.) “Exhibits 159, 162, and 386 cited in Footnote 631 [of the Petition] and Exhibit 387 cited in Footnote 632 [of the Petition] date to the 1940s and do not give any indication as to whether or not the Brunswick sawmill supported mining activities in the 1950s. The only cited source that dates to the 1950s is Exhibit 380 in Footnote 631 and it is a ‘Flowsheet of the Brunswick Mill,’ with no apparent reference to a sawmill.” (Historian, Comment No. 72.) Also, the Brunswick sawmill site was completely severed, both surface and subsurface mining rights, from the rest of the Subject Property by Idaho Maryland Mine Corporation in 1956. (Pet. Exhibit 206.) Furthermore, the fact that use permits were requested, and then issued by the County in 1958 and 1965 demonstrates that the operation of a sawmill on the site was not considered by either the property owner or the County to be a use conducted pursuant to a vested right. In addition, “[t]here is evidence (Exhibit 167) that by the 1940s, the Idaho-Maryland sawmill was operating in part to produce commercial lumber. Exhibit 215 is suggestive that a new sawmill was constructed after Summit Valley Pine Mill, Inc. was issued a use permit by Nevada County.” (Historian, Comment No. 68.)

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5. Even When The Prices of Gold Shot Up in the 1970s, and the Market Conditions Were Therefore Favorable to Resume Mining, the Owners of the Subject Property Nevertheless Made No Efforts to Resume Mining

Petitioner asserts that, “[a]s all authorities on the subject make clear, a fundamental component of any mining operation is monitoring market conditions, like those outlined above, and holding properties in reserve as inventory until extraction and production operations are financially sensible and can recommence.” (Petition, p. 72.) Therefore, Petitioner argues that “due to market conditions which stagnated the price of gold, extraction and production operations were idled until the market conditions altered such that resuming such operations would be financially sensible – i.e., when the price of gold increased.” (Petition, p. 72.) However, when the price of gold did increase, dramatically, in the 1970s (way higher than Petitioner’s evidence concedes is the threshold for resuming mining activities (Petition, p. 41; Pet. Exhibits 58, 269, 276)), neither the owners of the subsurface mineral rights nor the owners of the surface estate on the Subject Property engaged in activities to resume mining activities on the Subject Property. (Response To Facts, No. 26.) If, as Petitioner asserts, that the management of the Idaho Maryland Mines Corporation believed that gold prices increasing in the future “would justify reopening the Mine” (Petition, p. 72, citing Exhibits 418, 419, 420, 421, 422), then the fact that the owners of the Subject Properties did not resume gold mining in the 1970s despite the high gold prices demonstrates that such owners did not have any intent to resume mining at the Idaho Maryland Mine. In short, mining activities were abandoned because no effort to resume mining occurred during favorable market conditions in the 1970s.

Marian Ghidotti did not pursue any of the activities that Petitioner states constitute “a manifestation of intent to utilize the entirety of the surface to support subsurface gold mining operations.” (Petition, p. 59.) Ms. Ghidotti did not use the surface for mining use, for stockpiling material from the mine, for using roads for mining, for maintaining infrastructure for mining, or for site preparation or exploration for mining. The Petitioner’s implied excuses for Ms. Ghidotti not engaging in mining activities are unavailing. Petitioner has failed to cite any case where the court has recognized resistance from environmental groups, ‘anti-mining sentiments’ from neighboring residents, or ‘political opposition’ to mining (Petition, p. 41) as valid excuses to delay mining activities so as to prevent abandonment when “the price of gold is now rising.” (Petition, p. 41.) Even if those may be valid considerations, Petitioner’s own evidence demonstrates such resistance to mining operations can be overcome, if the owner truly had an intention to resume mining. (Pet. Exhibits 243, 262; Response to Facts, No. 26.)

Furthermore, the fact that Ms. Ghidotti “acquires several mining claims which she *subsequently sells* throughout the 1970’s” (Petition, p. 41 (citing Pet. Exhibits 236, 237, 238, 239, 240, 241, 242)(emphasis added))), and the fact that she only purchased “surface lands ... contiguous to the Centennial Industrial Site” rather than the fee simple or the mineral rights (Petition, p. 4; Pet. Exhibit 248; Response To Facts, No. 29), are evidence that Ms. Ghidotti had no intention to resume mining on the Subject Properties.

6. Marian Ghidotti’s Purported Insuring of “The Mine” Fails to Evidence Any Intent for Mining

Ms. Ghidotti allegedly “insured the Mine as a mining asset in 1977.” (Petition, p. 42.) However, the purported evidence provided by Petitioner (a) fails to indicate what was “the Mine” that was

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insured; (b) fails to indicate what “the Mine” was insured for; (c) fails to indicate that the purported insurance policy covered the mine as an asset, or whether the policy solely protected Ms. Ghidotti from liability for uses on the surface; and (d) fails to explain why Ms. Ghidotti would insure “the Mine” for only one year, over fifteen (15) years after she acquired ownership of the Subject Properties. Petitioner does not even produce a copy of any insurance policy with the Petition to back up any of the statements about that insurance event in 1977. Indeed, the statement about “insur[ing] the Mine as a mining asset” is vague and ambiguous; how and why would an insurance policy even do that if there are no mining operations going on? Thus, the alleged insurance policy in 1977 does not establish Ms. Ghidotti’s intent to resume mining on the Subject Property.

7. The Long Cessation of Mining Activity on the Subject Properties Evidences an Intent to Abandon The Idaho Maryland Mine

Petitioner argues that “[i]t has long been recognized that mining property rights are not abandoned by a lapse of time,” and that “the California Supreme Court found that suspension of mining activity alone does not constitute abandonment of the vested use.” (Petition, p. 54 & fn. 554, citing *Hansen Brothers, supra*, 12 Cal.4th at p. 570, fn. 28).) In fact, what the Court actually stated in *Hansen Brothers*. is that “[m]ere cessation of use does not of itself amount to abandonment *although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.*” (12 Cal.4th at p. 569.) Here, the nearly seventy (70)-year cessation of mining activities on the Subject Property demonstrates abandonment. Petitioner fails to cite any case where a court has held that a nonconforming use was not abandoned after such a lengthy period when the nonconforming use had ceased. The position taken by Petitioner in this case would thwart the public policy recognized in *Hansen Brothers* to reduce nonconforming uses:

“The ultimate purpose of zoning is ... to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interest of those affected.” We have recognized that, given this purpose, courts should follow a strict policy against extension or expansion of those uses. That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation. [*Id.* at p. 568, citations omitted.]

Petitioner does not deny that mining activities ceased at the Idaho Maryland Mine for a very long period of time. That fact, in addition to the fact that no mining equipment or buildings to conduct mining operations existing on the site during that entire time since 1957, warrants the conclusion that mining at the Idaho Maryland Mine was abandoned.

D. When it Occasionally Issued Conditional Use Permits, The County Did Not Recognize Any Vested Rights for The Subject Property

In 1958, the County issued a use permit (U58-15) that authorized the *construction* and operation of a sawmill on the Brunswick site. (Response to Facts, No. 14; Pet. Exhibit 215.) The issuance of that use permit demonstrates the applicant Summit Valley Pine Mill, Inc.’s and the County’s understanding that there was no vested right for such use, because a vested right would have precluded the need for such a permit.

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The fact that North Star Rock Products applied in 1979 for a conditional use permit for a rock crushing operation (Petition, p. 42; Pet. Exhibits 251) demonstrates the understanding by the owner (Ms. Ghidotti) and the North Star Rock Products that vested rights did not exist on the site for such rock crushing operation. That application provided that “Aggregate only; no precious metal extraction” (Pet. Exhibit 251) further evidencing an understanding that mining operations to extract gold were not allowed. The consultant for the applicant stated:

Existing Uses

The project site is unused except for the occasional removal of rock and sand waste by the owner of the property. Lumber is also stored on the property.

Existing Structures

The only remaining structures on the site are two concrete towers which were used as the mill sand pond overflows and a small rock bridge abutment [Environmental Information Form: Idaho-Maryland Mine Rock Crushing Project, p. 10 (Exhibit 251).]

Thus, the consultant for the applicant recognized that the rock crushing operations, if any, had long since stopped and the equipment for such rock crushing, if any existed, was no longer on the property. The consultant’s statements evidence abandonment of rock crushing operations on the property, even if they had existed fourteen (14) years earlier in the mid-1960s.

When the County granted conditional use permit U79-41 for such rock crushing operation in 1980 for a maximum period of four (4) years (Petition, pp. 42, 68; Pet. Exhibit 251, p. 26; Pet. Exhibit 254, p. 10; Response to Facts, Nos. 31, 32), neither the Board of Supervisors nor the Planning Commission ever made a formal determination of vested rights. (Exhibit 252.) Indeed, “the intended activities to be covered by the use permit do not appear consistent with historical gold mining activity.” (Historian, Comment No. 47.)

Petitioner’s argument that the County’s permit “recognized the rock crushing activities as a vested right” (Petition, p. 71) is simply false. County staff wrote in a Memorandum that “[t]his permit is being processed as an *alteration* of an existing, non-conforming use.” (Pet. Exhibit 251) (emphasis added).) The County Staff report (Pet. Exhibit 252) similarly states that the rock crushing was an “expansion” of the existing non-conforming use. The Staff report explains: “It is noted that the provisions of the ‘M1’ Light Industrial District in which the subject property is located do not allow gravel harvesting and processing as permitted or conditionally permitted uses. However, the property owner has indicated that mine rock has been sold and taken from the property continuously since the mine closed, and so *this use permit application is for expansion of an existing, non-conforming use by the addition of a crusher and screening plant.*” (Pet. Exhibit 252 (emphasis and underline added).) Thus, rock crushing was an “alteration” or “expansion” of the “existing, non-conforming use” that was described by the consultant for the applicant as the “occasional removal of rock and sand wastes by the owner of the property.” County Staff never recognized the rock crushing activities as the “existing, non-conforming use.”

The fact that the Minutes of the Planning Commission hearing for Permit U79-41 states that “[t]he Hansen operation is predicated to last 200 years, and the Abbott operation is predicted to last 4 years” (Pet. Exhibit 254, pp. 10-11), demonstrates that the County unequivocally distinguished the

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rock crushing activity here from the aggregate production operations described in the *Hansen Brothers* case.

Furthermore, the comment at that hearing that “Mrs. Ghidotti who owns the property intends to put it to some use other than a horse ranch in the future, because it is zoned Industrial, and there has been some consideration of re-opening the mine because of the price of gold” (Pet. Exhibit 254, p. 11) is not any recognition of any vested rights to resume mining on the Subject Property. That statement implicitly recognizes that “Re-opening the mine” could potentially be accomplished with a conditional use permit. Also, that statement indicates “that Marion Ghidotti (the owner, ca. 1980) was using the property as ‘horse ranch’ and was ‘consider[ing]... re-opening the mine because of the price of the gold.’ This implies that the historical Idaho-Maryland Mine was closed, and no mining operations were occurring.” (Historian, Comment No. 7.)

Petitioner argues that “the County has already approved and acknowledged the vested right to continue mining operations at the Subject Property as of 1980.” (Petition, p. 67.) Not so. The Planning Department’s “Notice Of Conditional Approval: Use Permit Application, for Use Permit No. U79-41 (Pet. Exhibit 252) explicitly states: “The use permit covers only removal of mine waste and processing to restore the site to its original contours. Earth excavation for a borrow pit is not included.” Also, the Notice states: “No material beyond the depth of rock waste material shall be removed from the site.” At no time did the Planning Commission make any findings or determination either in the Notice (Pet. Exhibit 252) or at the public hearing (Pet. Exhibit 254) of the scope of the vested rights of the Idaho Maryland Mine. (Response To Facts, No. 32.) In short, Petitioner’s allegation that “the County vested the right to mine for the entire Vested Subject Property” (Petition, p. 67) is simply wrong.

E. Other Actions and Omissions by the Owners of The Subject Property in the 1970s and 1980s Demonstrate an Intent to Abandon The Mining Use

1. There is No Credible Evidence that Marian Ghidotti Left The Subject Property to the BET Group Because of Her Expectation that the BET Group Would Resume Mining

Petitioner argues that Marian Ghidotti left the “Subject Property to the BET Group” because “she believed the group would be capable of resurrecting the Mine,” because she “knew that each of these individuals wished for the Mine to resume operations, and believed they could make this happen using their professional skills and training,” and “because of her belief that they had the wherewithal and skillset to facilitate the development of the Subject Property back into production.” (Petition, pp. 5, 42-43.) There is no credible evidence to support those assertions. Petitioner cites the Declaration of Lee Johnson, which lacks foundation and personal knowledge of these matters. (Responses To Facts, No. 33.) That statement about what another person other than the declarant (i.e., Ms. Ghidotti) thought or believed or knew is sheer speculation without any substantial evidence in support. (*See People v. Perez* (1992) 2 Cal.4th 1117, 1133 [“To be sufficient, evidence must of course be substantial. It is such only if it “reasonably inspires confidence and is of ‘solid value.’ By definition, ‘substantial evidence’ requires evidence and not mere speculation.”]) That statement about what another person other than the declarant (i.e., Ms. Ghidotti) “knew,” and about what yet three other persons who comprised the BET Group “wanted,” constitutes multiple layers speculation without any substantial evidence in support. (*Ibid.*) Furthermore, “[t]he source(s) of Ghidotti’s belief - both why she possessed this stated

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conviction and the recordation of her conviction - are unstated here. Individual beliefs, without attribution to documentation, cannot be evaluated historically.” (Historian, Comment No. 8.)

Also, “[a]s a historical source, a declaration such as Lee Johnson’s (Exhibit 227) is problematic, particularly for the factual assertions made here. Both historical study and scientific research have revealed the unreliability (and even instability) of human memory. Historical interpretation is based upon a critical examination of documentation made at or near the occurrence of an event. Memoirs and reminiscences often drafted years after an event are consulted as sources but treated with caution. Corroboration from sources closer or contemporaneous in time with the events described are frequently sought. Relying on this declaration to ascertain William and Marian Ghidotti’s thoughts or intentions - in the absence of independent supporting documentation - is methodologically suspect for a historian.” (Historian, Comment No. 44.)

For example, the statement in the Declaration of Lee Johnson that “[t]he entire time Marian Ghidotti and Bill Ghidotti owned the Mine ... neither thought the Property would be used for anything except for mining and were convinced that the Mine would be operational again in the future” (Pet. Exhibit 227) is sheer speculation without any substantial evidence in support. (*See People v. Perez, supra*, 2 Cal.4th at p. 1133.) Nowhere does Mr. Johnson state where he obtained his knowledge of what Marian Ghidotti and Bill Ghidotti “thought.”

Similarly, there is no evidence whatsoever presented by Petitioner supporting the assertion that, “[Marian Ghidotti and Bill Ghidotti] thought they could potentially reopen the Mine themselves.” (Petition, p. 43.) No evidence in the Declaration of Lee Johnson (Pet. Exhibit 227) supports or even mentions that assertion. Nor is there any evidence presented by Petitioner that demonstrates any efforts actually taken by either Marian Ghidotti or Bill Ghidotti to “reopen the Mine themselves.” Such allegations are simply made up by the Petitioner.

2. The Owners of The Subject Property Did Not File a Notice of Intent to Preserve an Interest in The Subsurface Mineral Rights Until 1989, Many Years After the Marketing Title Act was Enacted

Petitioner points out that the BET Group in 1989 “records a Notice of Intent to Preserve Interest in all mineral rights and interests in minerals.” (Petition, p. 45.) However, that action by the BET Group does not refute the conclusion that mining at the Idaho Maryland Mine was abandoned. The “Notice of Intent to Preserve Interest” was recorded on December 8, 1989, “pursuant to Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).” (Pet. Exhibit 275.) That recordation took place over seven (7) years after the enactment of the Marketable Record Title, Civ. Code 880.020, *et. seq.*, by Stats. 1982 ch. 1268 § 1. Civil Code section 880.310 provides:

- (a) If the time within which an interest in real property expires pursuant to this title depends upon recordation of a notice of intent to preserve the interest, a person may preserve the person’s interest from expiration by recording a notice of intent to preserve the interest before the interest expires pursuant to this title. Recordation of a notice of intent to

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preserve an interest in real property after the interest has expired pursuant to this title does not preserve the interest.

- (b) Recordation of a notice of intent to preserve an interest in real property does not preclude a court from determining that an interest has been abandoned or is otherwise unenforceable pursuant to other law, whether before or after the notice of intent to preserve the interest is recorded and does not validate or make enforceable a claim or interest that is otherwise invalid or unenforceable. Recordation of a notice of intent to preserve an interest in real property creates a presumption affecting the burden of proof that the person who claims the interest has not abandoned and does not intend to abandon the interest. [Emphasis added.]

The Petitioner does not explain why the BET Group waited over six (6) years after the enactment of Civil Code section 880.301 to record the Notice of Intent. Furthermore, the BET Group's recording of the Notice of Intent did not validate any interest that was otherwise invalid or unenforceable as of the time the Notice was recorded. (Civ Code, § 880.310, subd. (b); 5 Miller & Starr, Cal. Real Estate (3d. ed. 2000) § 11.62, p. 168.) Indeed, the filing of a Notice of Intent to Preserve Interest (Pet. Exhibit 275) appears to be affirmative evidence of an intent to retain whatever mineral rights may have been held by Bouma, Erickson, and Toms. However, no explanation is offered as to why Bouma, et al., made this filing in 1989. From a reading of the historical evidence presented thus far in the petition, the filing would appear to reflect concern that a question surrounded the purported efficacy of the rights, that a threat of extinguishment existed. (Historian, Comment No. 58.)

In short, the recordation of the Notice of Intent does not avoid the conclusion, and actually supports the conclusion, that any vested mining rights that existed in 1954 for the Idaho Maryland Mine were abandoned.

3. The Successors to Marian Ghidotti, and the Predecessors to Rise Gold, Sold Off a Portion of The Subject Property for Residential Purposes

In the 1980s, the successors of the Ghidottis, the BET Group, sold off a portion of the surface area of the Subject Properties for residential development. (Petition, pp. 5, 44, 73; Pet. Exhibit 263.) That evidenced their intent to abandon the mine as to those sold-off properties because (1) the gold prices were very high during that time (Pet. Exhibit 58); (2) creating neighboring residential homes would actually create the very "anti-mining" residential environment that Petitioner infers prevents gold mining activities in the 1970s and 1980s (Petition, pp. 41, 43); and (3) the real estate broker for the BET Group has stated: "*At no time during my representation of the BET Group did they ever consider reopening or operating any mining activity. They were well aware of the toxic contamination on site and had limited resources to deal with soil contamination, let alone reopening and operating a gold mine.*" (Declaration of Charles W. Brock, ¶5.) Furthermore, the fact that the residential lots were sold off with a reservation of the mineral rights (Petition, pp. 44-45; Pet. Exhibits 265, 266, 267, 270, 271, 272, 273.) does not indicate an intent to resume mining at the Idaho Maryland Mine. "Reservation of mineral and other subsurface rights with the creation

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of residential subdivisions is fairly typical, and in the absence of other evidence of an intent by BET Group to mine this alone does not support such a claim.” (Historian, Comment No. 56.)

4. The Use Permits Sought in the 1980s And 1990s do Not Evidence a Vested Right to Mine

The “multiple applications for permits consistent with the intent to reopen the Mine and resume mining activities” in the late 1980s and early 1990s (Petition, pp. 71 -74) is evidence that the owners of the Subject Property understood that such “permits” were needed for such activities, and that such activities could not be conducted pursuant to any vested rights. Furthermore, at no time during the issuance of those permits did the County recognize any vested rights for mining. For example, “[i]nto 1985, no evidence is presented as to an effort to revive mining at the historical Idaho-Maryland Mine. North Star Rock Company instead continues its operations under an amended use permit.” (Historian, Comment No. 53.) Use Permit U85-025, is then granted at North Star Rock Company’s request in 1985 (Petition, p. 43; Pet. Exhibits 259, 260) because the company had “processed mine tailings from these historic mines until 1985 when the tailings were exhausted.” (Pet. Exhibit 278.) County Staff explained:

[T]his application is a proposed amendment to one issued in 1979 by the Nevada County Planning Commission (U79-41). That permit was issued to this applicant for the purposes of processing existing mine rock left on-site from earlier quartz mining activities. The purpose of processing this material was to crush it to produce road base rock material. *These on-site deposits are currently exhausted.* The primary purpose of this application is to receive the graded material to be taken from the proposed (and not yet approved) Wolf Creek Plaza site adjacent and to the south-west and also to process rock material extracted through that grading process. The graded material taken from the Wolf Creek Plaza site will be placed in an engineered fill on this site as part of this application. [Pet. Exhibit 259, emphasis added.]

The use permit was similar to that issued earlier in 1980. Specifically, the “Notice Of Conditional Approval Use Permit Application,” for Use Permit No. U85-25, includes condition number 11, which states that “[t]he use permit covers only removal of mine waste and processing to restore the site to its original contours,” and condition number 12, which states that “[t]his permit covers the processing of rock material from off-site locations for a maximum of five years.” (Pet. Exhibit 260.) The Notice also provides that “No material beyond the depth of rock waste material shall be removed from the site.” (Pet. Exhibit 260.) In short, under Use Permit U85-025 the County still did not recognize any vested right for mining activities at the Idaho-Maryland Mine.

Furthermore, the actions and studies performed for the BET Group or lessees of the BET Group demonstrated that any vested rights for mining at the Idaho Maryland Mine had been abandoned. For example, in 1989 the “Proposal: Permitting Feasibility Study, Reactivation Project for the Idaho-Maryland-Brunswick Mine” (Pet. Exhibit 262) states: “Last production from the complex occurred in 1956 and *the mine has been idle for the last 32 years.*” (Emphasis added.)

Also, the additional use permit obtained by North Star Rock Products, Inc. in 1992 (Petition, pp. 45-46, 73), demonstrates that the company still understands that its operations at the Idaho

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Maryland Mine site required a use permit, and could not be conducted pursuant to any vested rights. (Responses To Facts, No. 43.) Also, the issuance of such use permit again did not represent the County's recognition of any vested rights, as the permits were limited in duration and use. (Responses To Facts, No. 43. See Pet. Exhibit 278 [10-year limit; "No expansion of current mining methods or product sales is proposed"].)

In addition, there is no indication by any of the companies that leased the Subject Properties from the BET Group that they understood there were existing vested rights to mine at the Idaho-Maryland Mine. For example, Mother Lode Gold Mines "options the Subject Property" and enters a "mining lease" with BET Group, but then relinquished its interest after only three (3) years. (Petition, 44-45; Pet. Exhibit 276.) "No explanation is given why Mother Lode Gold Mines 'relinquishes and returns the Subject Property' to BET Group only 3 years after acquiring its option. This once again raises questions as to the state of knowledge regarding the historical Idaho-Maryland Mine's viability." (Historian, Comment No. 59.) Then Consolidated Del Norte Ventures leases the Subject Properties from the BET Group (Petition, pp. 45-46; Pet. Exhibit 276), but "[n]o explanation is given for why Consolidated Del Norte Ventures relinquished its lease 2 years later." (Historian, Comment No. 60.) Those companies never indicated that there were vested rights to mine at the Idaho-Maryland Mine.

Then Emperor Gold Corporation (later Emgold Mining Corporation) leases the Subject Properties from the BET Group, holds an option to purchase the properties, obtains a permit to dewater the mine, and conducts exploration surface drilling. (Petition, pp. 46-48.) Emgold states the following in an announcement on June 17, 2003, which recognized the necessity to obtain a conditional use permit to reopen the mine, and not do so via vested rights:

Emgold, through its wholly owned subsidiary, Idaho-Maryland Mining Corporation (formerly Emperor Gold (U.S.) Corp.) is also preparing the necessary documentation to submit applications to acquire a Use Permit to construct a decline and surface facilities to continue with the underground exploration and development of the Idaho-Maryland and ultimately put the mine back into production. It is anticipated that permitting will cost approximately US\$500,000 and is expected to take fifteen to twenty-four months to complete. Emgold is confident that it will be able to obtain a *Use Permit* for the Idaho-Maryland. Since the early 1960's, 37 gold mines have applied for *permits in California and all have been approved and allowed to go into operation. Since 2002 three gold mines have received Use Permits to operate in California.* [Pet. Exhibit 294, emphasis added.]

An Emgold Press Release similarly stated: "The City of Grass Valley, California (the 'City') is nearing completion of the Draft Environmental Impact Report ('DEIR') for the Idaho-Maryland Gold Mine Project (the 'Project') which is expected to be published in late September or early October of 2008." (Pet. Exhibit 303.) "It is expected that the FEIR will be certified near the end of 2008. Upon approval of the Project by the Planning Commission and City's Council a *Conditional Mine Use Permit* will be issued for the Project." (Pet. Exhibit 303, emphasis added.) Again, Emgold announced: "The Planning Commission [for the City of Grass Valley] will be asked to review the entitlements for the Project which include a *Conditional Mine Use Permit (CMUP)*." (Pet. Exhibit 304.) "These are additional applications that were included as submissions to the City that also require *formal approval to allow the Project to move forward.*" (Pet. Exhibit 304,

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emphasis added.) “Assuming the FEIR is certified and entitlements approved by City Council, *final operating permits* would be obtained for the Project.” (Pet. Exhibit 304, emphasis added.) “Emgold is permitting the operation of a 2,400 ton per day gold mine and gold processing facility as part of the Idaho-Maryland Project. Upon successful *completion of mine permits*, Emgold’s plan is to become a mid-tier producing gold company within the next 5 years.” (Pet. Exhibit 304, emphasis added.) After Emgold allows the lease and purchase agreement to expire, the advertisement to purchase the Subject Properties from the BET Group states: “From 2002 to 2012, Idaho Maryland Mining Corporation, a subsidiary of Emgold Mining Corp., under agreement with the mine owners, conducted studies, investigations, sampling, testing, etc. at the Idaho Maryland Mine and applied to California and local regulating agencies for *permission to reopen the mine*.” (Pet. Exhibit 307, emphasis added.)

Thus, the companies that sought to resume mining on the Subject Property understood that a use permit would be needed to mine because there is no vested right. None of their efforts to resume mining support the Petitioner’s position that there presently are vested rights to mine the Subject Property.

5. Sierra Pacific’s Application to Rezone the Property in December 1993, Demonstrates an Intent Not To Engage in Mining

Petitioner mentioned that in 1993 “Nevada County rezones the sawmill property, including ET Acres Lot 8, to M1-SP to allow for ‘service maintenance and repair, manufacturing and processing, warehousing and distribution facilities ... office, professional and conference facilities.’” (Petition, p. 46 (citing Pet. Exhibits 281, 282).) Petitioner highlights the statement in the Minutes of the Board of Supervisors Meeting on December 14, 1993, that a representative of Sierra Pacific explained the Company’s intent to use the site for “industrial purposes.” (Id., p. 46 (citing Exhibit 282).) However, Petitioner omits the Staff analysis that explains: “As a result, [the rezone] would also show that the County prefers some type of mixed industrial/business park uses.” (Pet. Exhibit 282, p. 425.) Indeed, the rezone imposes “more restrictive site development standards than would otherwise apply.” (Exhibit 282, p. 426.) The “examples” of “industrial” uses in the Ordinance under those development standards does not include mining at all. (Pet. Exhibit 281 (Ordinance No. 1853) pp. 17-18.) Thus, contrary to Petitioner’s argument, mining was not intended by Sierra Pacific for that “sawmill property, including BET Acres Lot 8.”

6. The BET Group Did Not Sell Off The Subject Property they Still Owned to Rise Gold as a Mine, and Even Rise Gold Recognized the Need to Obtain a Conditional Use Permit

The real estate broker even commented to the newspaper: “We are not selling a mine.” (Declaration of Charles W. Brock, ¶ 7). Indeed, the asking price was not based on comparable sales of existing mining assets or properties, or potential gold reserves on the Subject Property, but on “comparable sales of similarly zoned light industrial and residential properties.” (Declaration of Charles W. Brock, ¶ 7.)

After Petitioner purchased the Subject Property, and after it conducted an exploration drilling program, Petitioner “applie[d] to the County of Nevada for a *use permit to re-open the Idaho-Maryland Mine* and is fully financed to complete the *permitting* process.” (Petition, p. 49

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(emphasis added).) Thus, even Petitioner recognized that a conditional use permit would be needed, because there is no vested right to mine.

Petitioner argues that “courts have determined that applying for and/or acquiring a use permit does not abandon or otherwise extinguish a vested right,” citing *Goat Hill Tavern v. city of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1529, in support of that premise. (Petition, p. 55.) However, *Goat Hill Tavern* never discusses that premise, and never makes such a rule. In that case, “Goat Hill Tavern ha[d] been in operation for over 35 years as a legal nonconforming use. Ziemer invested over \$1.75 million in its refurbishment, including substantial exterior facade improvements undertaken at the city's behest. He then sought a conditional use permit to allow the addition of a game room, which was granted on a temporary basis.” (*Ibid.*) Not only are those facts distinguishable from the abandonment of a “legal nonconforming use,” the court in that case never considered or decided the rule of law suggested by Petitioner. “It is axiomatic that cases are not authority for propositions not considered.” (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.) Thus, the case law cited by Petitioner does not support Petitioner’s position; and the fact that Petitioner, Emgold and others have sought use permits to conduct activities on the Subject Properties indicates a consistent and unbroken understanding (until 2023) that a conditional use permit, and not vested rights, was needed in order to resume mining activities at the Idaho Maryland Mine.

F. Petitioner Has Failed to Comply With State Law and the County Development Code for Reclamation Plans and Annual Reporting and Such Failure Means The Mine is Considered Abandoned According to State Law

In Petitioner’s letter dated November 16, 2023, it alleges that Public Resources Code section 2776, subdivision (c), should be interpreted as stating that the owners of the Subject Properties were never required to submit a reclamation plan and are not required to submit annual reports. (Chadwick Letter to the Board, November 16, 2023, p. 11.) This interpretation is inconsistent with the plain reading of the statute and would render portions of SMARA meaningless.

1. SMARA’s Reclamation Plan Requirements Apply to Mine Owners Even If They Possess Vested Rights

Public Resources Code section 2776, subdivision (c), states, “nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.” (See also Nevada County Development Code Section L-II 31B.4.D.E.) Notably, reclamation is a term defined in the statute as follows:

“Reclamation” means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil

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compaction, slope stabilization, or other measures. (Pub. Resources Code, § 2733.)

Read with this definition in mind, Public Resources Code section 2776, subdivision (c) means that, SMARA does not require the retroactive submission of a reclamation plan for the mining activity previously conducted. Put another way, SMARA looks forward, not backward. In that regard, SMARA requires a reclamation plan for all mining activity conducted or to be conducted after January 1, 1976. (Pub. Resources Code, § 2776, subd. (b).) A contrary interpretation would render Public Resources Code section 2770, subdivision (b) meaningless – “A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988.” This is also supported by the current version of the County’s Development Code, which provides in pertinent part:

Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, he/she shall obtain County approval of a Reclamation Plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976). (Nevada County Development Code Section L-II 3.22(E).)

Accordingly, SMARA and the County’s reclamation plan requirements do apply to vested rights holders. The Petitioner’s failure to comply constitutes additional evidence of their lack of intent to mine.

2. Contrary to Petitioner’s Assertions, Pub. Resources Code Section 2776(C) Does Not Negate the Annual Reporting Requirements of Section 2207

Petitioner’s November 16, 2023 letter further asserts that the annual reporting obligations of mine owners codified in Public Resources Code section 2207 are negated by Public Resources Code section 2776, subdivision (c). However, the language of section 2776, subdivision (c) is limited to Chapter 9, SMARA, of Division 2, Geology, Mines, and Mining, of the Public Resources Code, and is further limited to not requiring the reclamation of pre-1976 surface mining. (Pub. Resources Code, § 2776, subd. (c), [“Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.”].) Annual reporting is a requirement applicable to either owners or operators of mines within California which is separate from SMARA’s reclamation plan provisions. (Pub. Resources Code, § 2207.) Rather, the annual reporting requirements are part of Chapter 2, the California Geological Survey, and require mine owners to report, in part, “the mining operation’s status as active, idle, reclaimed, or in the process of being reclaimed.” (Pub. Resources Code, § 2207.)

Accordingly, the owner or operator of the Subject Property was required to submit an annual report pursuant to Public Resources Code section 2207. However, the County is unaware of, and the Petitioner has failed to provide, any documents indicating this has occurred. This failure further demonstrates the lack of intent to mine.

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3. The Actions of Petitioner's Predecessors in Interest in Permitting Rock Processing and Submitting a Reclamation Plan for The Idaho-Maryland Mine Demonstrate The Petitioner Understands The Mine Must Comply With SMARA

In 1980, the then owners of the Subject Property obtained Use Permit U79-41 for the “harvesting, crushing, screening, and sale of existing mine rock and tailings at the Centennial Industrial site.” (Petition, p. 42.) The Petitioner asserts that these surface activities of harvesting and processing waste rock are inextricably linked to the regular operations of the gold mine. (November 16, 2023 Letter to the Board, p. 11.) If Petitioner is correct that the two activities are inherently part of the same operation, then the use permit received in 1980 would not have been necessary if they possessed a vested right for those activities.

With that in mind, Use Permit U79-41 *was* obtained and a Surface Mining Reclamation Plan for the Idaho-Mayland Mine Rock Crushing Project (the “Reclamation Plan”) was required:

This use permit application involves only about 40 acres out of the 110 acres, and this 40 acres [sic] is covered with mill sand and rock left from the historic hard rock mining operation. The application and reclamation plan indicates that approximately 400,000 to 500,000 tons of rock (270,000 cubic yards) and 10,000 tons of mill sand will be removed from the site. It is intended that the site will then be restored to its original contours and form, reclamation plan and ARC memo are attached for a complete understanding of the project which will also include a crusher and screening plant to process the waste rock and sand. (Petition, Exhibit 251, 1980 Use Permit No. 79-41.)

The Reclamation Plan required that the 40 acres involved in the 1980’s rock crushing operations be reclaimed and restored to a condition that was either (1) graded to the contours of the land before it was covered with waste rock, or (2) leveled with a culvert drainage pipe installed to prepare the land for an “easy transition” to alternate uses. (Petition, Exhibit 251, Reclamation Plan, ¶ 23(a).) It was further required that reclamation of the site, “will end surface mining and storage of the waste rock.”

4. When Petitioner's Mine Went Idle, They Were Required to Comply With SMARA and the County Development Code to Avoid Abandonment

As explained in Section D(IV)(B), above, SMARA defines a mine as “idle” when its production has been curtailed for at least one year *and* there is an intention to resume mining activities in the future. (Pub. Resources Code, § 2727.1.) Within ninety (90) days of a mining operation becoming idle, mine operators are required to submit an interim management plan to the lead agency. (Pub. Resources Code, § 2770 and Nevada County Development Code Section L-II 3.22(L).) The County is unaware of, and Petitioner has failed to provide, any evidence of any interim management plan for the Centennial Site when surface processing operations ceased. Accordingly, if the mining activities have stopped and there is no interim management plan, then state law dictates that the cessation cannot be considered an “idle mine” under Cal. Pub. Resources Code

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section 2727.1 (i.e., cessation with an intent to resume mining). Instead, the mine is considered abandoned.

This is consistent with California case law and policy concerning zoning changes and the temporary nature of nonconforming property uses. (See *Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 459 [“It was not and is not contemplated that pre-existing nonconforming uses are to be perpetual”].) Further, SMARA’s statutory provision defining an “idle” mine as, in part, a mine in which the operator intends to resume mining activities in the future and its provision establishing abandonment of the mining operation as the consequence of failure to comply with SMARA’s interim management plan requirements during the mine’s period of idleness are referential to one another. (See Pub. Resources Code, §§ 2727.1 and 2770(h)(6).) Read together, these portions of the statute reflect a policy determination by the California Legislature that mining operators who have curtailed production of their mine cannot be considered to have the intent to resume mining operations in the future, and therefore maintain the status of “idle,” if they do not comply with SMARA. Failure to have a reclamation plan in place, and submit an interim management plan for idle mines, means the operator has chosen to abandon their mine, pursuant to state law.

Nevada County’s Development Code further supports the interim management plan requirement:

If the [nonconforming] use is discontinued for a period of one year or more, any subsequent use shall be in conformity with all applicable requirements of this Chapter, except as follows: a) uses clearly seasonal in nature (i.e., ski facilities) shall have a time period of 365 days or more, b) surface mining operations shall comply with the provisions of Section 3.22.L providing for interim management plans. (Nevada County Development Code Section L-II 5.19(B)(4).)

Therefore, as Petitioner has failed to submit an interim management plan following the cessation of mining activity on the Subject Property, whether gold mining or otherwise, state and local law compel a determination that the mining use of the Subject Property has been abandoned.

VIII. CONCLUSION

Pursuant to the Petitioner’s requests, the County makes the following determinations with regard to the Subject Property:

1. Mining operations were abandoned at the Subject Property commencing as early as 1956;
2. Neither the Petitioner nor any other party has a vested right to mine at the Subject Property.

PUBLIC TESTIMONY RECEIVED REGARDING VESTED RIGHTS:

The County of Nevada received testimony from multiple residents, property owners, or other individuals with knowledge of historical activities on the Subject Property. No testimony was received that provided evidence of subsurface mining operations since 1957.

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ENVIRONMENTAL REVIEW:

The County's action to approve the Resolution finding that neither Petitioner nor any other party has a vested right to mine at the Subject Property as the mining use was abandoned does not constitute a discretionary action subject to CEQA. The CEQA Guidelines define a "discretionary project" as a "*project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.*" (Cal. Code Regs., tit. 14, § 15357, emphasis added).

In this case, the County is functioning in a quasi-judicial capacity to make findings of fact based on a review of evidentiary materials supplemented by the Petitioners to support its claim of vested mining rights (i.e., a property right). The County's findings of fact are based on other evidentiary materials in the record including the County's own investigation of the facts, evidence received from the community and evidence received from federal, state or local regulatory agencies. County staff note that future actions to approve a Reclamation Plan or other land use entitlement may be subject to environmental review pursuant to CEQA and Guidelines.

SUMMARY:

In conclusion, staff recommend that the Board of Supervisors make a finding that the Petitioner has abandoned the mining use on the Subject Property. If the Board of Supervisors makes this finding, and if the Petitioner intends to pursue mining operations at the Subject Parcel, the Petitioner would be required to obtain a Use Permit. Therefore, this determination regarding vested rights is exempt from CEQA because it is not a project as defined by CEQA Guidelines Section 15378.

RECOMMENDATION:

Nevada County staff recommend that the Board of Supervisors take the following actions:

- I. Environmental Action: Find the action statutorily exempt pursuant to section 15378 of the CEQA Guidelines from the requirement to prepare an EIR or a Negative Declaration for the approval of a Resolution finding that the Petitioner does not have a vested right to mine due to abandonment of the mining uses at the Subject Property ("**Resolution**"). The County's action to adopt the Resolution does not constitute a project that is subject to CEQA and the CEQA Guidelines.
- II. Action: Adopt the Resolution finding that neither the Petitioner nor any other party has a vested right to mine at the Subject Property, as the mining use was abandoned (**Attachment 1**), and make the following findings, pursuant to Chapter 9 of the California Public Resources Code, Sections 2710, *et seq.*, known as the "Surface Mining and Reclamation Act of 1975," and Nevada County Land Use and Development Code Section L-II 3.21:

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- A. That the proposed action is consistent with SMARA statutes and regulations; and
- B. That the County has regulatory authority and responsibility as the SMARA lead agency pursuant to Section L-II 3.22.D.1 of the Nevada County Land Use and Development Code and Public Resources Code Section 2728; and
- C. That the proposed action is deemed necessary to protect the public health, safety, and general welfare.

Item Initiated by: Katharine Elliott, County Counsel

Approved by: Brian Foss, Planning Director

ATTACHMENT D

-----BEGIN PRIVACY-ENHANCED MESSAGE-----

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PUBLIC DOCUMENT COUNT: 2
CONFORMED PERIOD OF REPORT: 19951231
FILED AS OF DATE: 19960522
SROS: NONE

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME:	CALIFORNIA ENGELS MINING CO
CENTRAL INDEX KEY:	0000016317
STANDARD INDUSTRIAL CLASSIFICATION:	FORESTRY [0800]
IRS NUMBER:	940357560
STATE OF INCORPORATION:	CA
FISCAL YEAR END:	1231

FILING VALUES:

FORM TYPE:	10-K/A
SEC ACT:	1934 Act
SEC FILE NUMBER:	000-04819
FILM NUMBER:	96570734

BUSINESS ADDRESS:

STREET 1:	117 CRESCENT ST
STREET 2:	P O BOX 778
CITY:	GREENVILLE
STATE:	CA
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BUSINESS PHONE:	9162846191

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SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549
Form 10-K

Annual Report Pursuant to Section 13 or 15 (d) of the Securities
Exchange Act of 1934 for the Fiscal Year Ended December 31, 1995
Commission File No. 1-3871

CALIFORNIA-ENGELS MINING COMPANY

Incorporated in the State of California
IRS Employer I.D. No. 94-0357560

117 Crescent Street
P. O. Box 778
Greenville, California 95947-0778
Telephone Number (916) 284-6191

SECURITIES REGISTERED PURSUANT TO SECTION 12 (b) OF THE ACT

Title of Each Class - Capital Stock, par value, \$0.25 per share.

Number of Shares outstanding: 761,257.6

Indicate by check mark whether the registrant (1) has filed all
reports required to be filed by Section 13 or 15 (d) of the
Securities Exchange Act of 1934 during the preceding 12 months, and
(2) has been subject to such filing requirements for the past 90
days. Yes: X No:

As of March 3, 1995, 761,257.6 capital shares were outstanding,
and the aggregate market value of the common shares of California-
Engels Mining Company held by nonaffiliates was approximately
\$348,181.

Documents Incorporated by Reference: NONE

ITEM 1. BUSINESS

Registrant was incorporated under the laws of the State of California on July 12, 1922, under the name of California Copper Corporation, as a holding company for the shares of Engels Copper Mining Company which was incorporated under the laws of the State of California on June 19, 1901. Engels Copper Mining Company was merged into California Copper Corporation on March 3, 1936, and the name of the merged company was changed to California-Engels Mining Company. Exploration and development commenced at the Engels Mine, Lights Creek Mining District, Plumas County, California, upon organization of Engels Copper Mining Company; but it was not until 1914 that milling facilities were available and actual production of copper started. From 1914 until operations were suspended due to the low price of copper in July, 1930, approximately 4,700,000 tons of ore were mined from the Engels and Superior mines and milled producing 160,170,000 pounds of copper and substantial values in gold and silver. Out of profits of this operation, the Registrant retired a bond issue of \$500,000 and paid out more than \$1,285,000 in dividends. During the 1930's the mining and milling plant, Engelmine townsite and the Indian Valley Railroad subsidiary were dismantled and sold.

Registrant's mining properties have been continuously leased from September, 1947, to March, 1951; from March, 1951, to December, 1959; from November, 1960, to October, 1979; from August, 1980, to August, 1990; and from November, 1990, to April 1993. The lessee from 1964 to 1993 was Placer Dome U.S. Inc., San Francisco, the U.S. Subsidiary of Placer Dome Inc., Vancouver, B.C., Canada. The Mining Lease With Option to Purchase dated November 1, 1990, between the Registrant (Lessor) and Placer Dome U.S. Inc. (Lessee) was terminated by Placer Dome U.S. Inc. effective April 20, 1993. Registrant has received a substantial amount of technical data on its mining properties. Thousands of feet of drill core from the Superior Mine, Sulphide Ridge and the Engels Mine are stored at Crescent Mills, California.

During the 1960's and 1970's Placer Dome U.S. Inc. conducted an exploration and development program on Registrant's Superior Mine, Sulphide Ridge property and Engels Mine. They identified two large porphyry-type copper bearing zones and estimated that the Superior Mine contains 72 million tons of 0.384 percent copper at a 0.2 percent cutoff, plus some silver credit; and the Sulphide Ridge area contains an undetermined large tonnage of low-grade material estimated to grade approximately 0.25 percent copper. The Engels Mine is estimated to contain 6.6 million tons of 0.781 percent copper amenable to bulk mining methods. Other exploration targets remain to be tested including an intensely sheared area in the quartz monzonite southeast of the Superior Mine and north of Superior Ridge, the Quigley Prospect; the area between the Superior and Engels mines in the quartz monzonite near its contact with the coarse grained granite; along the main fault zone and the metavolcanic, quartz diorite, gabbro contact northeast of the Engels Mine; and an indicated quartz monzonite intrusive beneath the Engels Mine where a deep ore system could be found. These deposits and prospects are not deemed economically attractive under current conditions for the mining industry in California and the United States.

Registrant is subject to a State of California General Industrial Activities Storm Water Permit. During the year, pursuant to the Registrant's Storm Water Pollution Prevention Plan, silt fences, catch and evaporation basins and storm records were maintained.

Effective February 14, 1995, Registrant reached an agreement with Shasta Land Management Consultants, Redding California, to prepare a Non-Industrial Timber Management Plan to allow for future timber harvests and a Forest Management Plan to qualify for landowner assistance programs for forest improvement programs on Registrant's 938.12 acres on Lights Creek and 204.75 acres in Genesee Valley. The archaeological survey required by the plan began in August 1994, proceeded during 1995 and will continue in 1996 by two contract archaeologists.

Application was made to the Plumas County Planning Department during the year for a General Plan Zone Change of 162.12 acres along Lights Creek to Important Timber and Prime Mining. The change became effective February 13, 1996.

ITEM 2. PROPERTIES

(a) Registrant is the fee owner of 36 patented lode mining claims totaling 736 acres, plus 162.12 acres of other patented land and holds eight unpatented lode mining claims totaling approximately 160 acres by right of location. All claims and patented land are located at Engelman, Lights Creek Mining District, Plumas County, California. On August 31, 1995, Registrant completed the purchase of 40 acres of patented land at 6000 Diamond Mountain Road, on Lights Creek within two miles of the above property. None of the claims or patented lands are subject to any encumbrance. Pursuant to the provisions of Section 314 of Public Law 94-579 of the Federal Land Policy of 1976, all unpatented mining claims owned by the Registrant are recorded with the Bureau of Land Management. A Certification of Waiver of payment of the 1995 Maintenance Fee for unpatented mining claims was filed with the Bureau of Land Management for the assessment year ending August 31, 1995.

(b) The Registrant is the fee owner of 11 patented lode mining claims totaling 204.75 acres and 184.20 acres of deeded mineral rights in the Genesee Mining District, Plumas County, California. None of the patented claims and mineral rights are subject to any encumbrance.

ITEM 3. LEGAL PROCEEDINGS

None

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None

ITEM 5. MARKET FOR THE REGISTRANT'S CAPITAL STOCK AND RELATED SHAREHOLDER MATTERS

(a) Principal Markets.

Registrant's shares of Capital Stock are traded in the over-the-counter market and quoted in the "pink sheets" which are published daily by the National Quotation Bureau, Inc.

<TABLE>

The following table shows the high and low bid prices of Registrant's Capital Shares in the Over-the-Counter Market for the past two years:

<CAPTION>

	High Bid	Low Bid
<S>	<C>	<C>
1995 Market Price	\$.75	\$.50
1994 Market Price	\$.75	\$.25

</TABLE>

(b) Approximate number of holders of capital stock.

The approximate numbers of holders of record of Registrant's Capital Stock as of March 8, 1996, is 959.

(c) The Registrant has never paid a dividend on its Capital Stock because it has had an accumulated operating deficit since the merger in 1936. The Board of Directors of the Registrant is endeavoring to maintain a strong liquid position so that funds are available for the maintenance of its mining properties and development of its timber resource. It is not the intention of the Registrant to pay dividends in the foreseeable future.

<PAGE>

ITEM 6. SELECTED FINANCIAL DATA

<TABLE>

Year Ended December 31

<CAPTION>

Selected Financial Data	1995	1994	1993	1992	1991
<S>	<C>	<C>	<C>	<C>	<C>
Operating Revenues	25,202	22,935	23,835	43,876	21,828
Net Income (Loss)	(2,719)	(9,024)	54,455	19,534	11,149
Income (loss) from continuing operations per capital share	(.004)	(.0118)	.0715	.0257	.0147
Total Assets	355,732	338,175	354,647	301,478	78,008
Working Capital	22,830	12,032	59,876	59,081	78,395
Shareholder's Equity	355,682	329,325	336,174	281,718	262,187

</TABLE>

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL

CONDITION AND RESULTS OF OPERATIONS

(a) Financial condition, changes in financial condition and results of operations.

(1) Liquidity and capital resources.

During seventeen years, the Board of Directors of the Registrant has endeavored to increase working capital, total assets and shareholder's equity in the event that its lessee, Placer Dome, U.S. Inc., terminated its Mining Lease With Option to Purchase agreement and return the mining properties to the Registrant. This event occurred effective April 20, 1993. Changes in working capital, total assets and shareholder's equity for the past five years are summarized as follows:

<TABLE>
<CAPTION>
Changes

	1995	1994	1993	1992	1991
Working Capital (\$)	22,830	12,032	59,876	59,081	78,395
Total Assets	355,732	338,175	354,647	301,478	278,008
Shareholders Equity	355,682	329,325	336,174	281,718	262,187

</TABLE>

The objective of the Board of Directors of the Registrant is to maintain a strong financial position so that funds are available for the maintenance of its mining properties and development of its timber resource.

<PAGE>

(2) Results of operations.

Registrant's principal sources of income are from interest, dividends, capital gains, sale of rock and the sale of timber. there is no assurance that any of the sources of income will continue at current rates into the future. The termination of the Mining Lease with Option to Purchase agreement substantially increased Registrant's property maintenance expenses.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Financial statements relying on Rule 3-11 of Regulation S-X which allows the filing of unaudited statements of inactive registrants are listed in the index to financial statements and schedules, and are included under PART IV, Item 14, of this report.

ITEM 9. DISAGREEMENTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

There were no disagreements on accounting and financial disclosure matters required to be disclosed in this item.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

<TABLE>

(a) Identification of Directors.

<CAPTION>

Directors Name and Age	Positions and Offices	Year First Elected	Principal Occupation
Norman A. Lamb (59) Greenville, CA	President & Director	1978	Mining Executive
Thomas J. Reardon (74) Daly City, CA	Vice President & Director	1975	Retired
James E. Brousseau (64) Vallejo, CA	Secretary-Treasurer & Director	1987	Mining Executive
Richard C. Poulton (52) San Mateo, CA	Director	1993	Senior Account Executive FIServ, Inc.

</TABLE>

There are no arrangements or understandings between any of the foregoing persons and any other person or persons pursuant to which

any of the foregoing persons were named as directors.

<TABLE>

(b) Identification of Executive Officers.

<CAPTION>

Name of Officer	Age	Office Held
Norman A. Lamb	59	President
James E. Brousseau	64	Secretary-Treasurer

</TABLE>

There are no arrangements or understandings between any of the foregoing persons and any other person or persons pursuant to which any of the foregoing persons were named as executive officers.

(c) Identification of certain significant employees.

None

(d) No family relationships exist between any of the above named directors and executive officers of the Registrant.

(e) Business experience.

(1) Norman A. Lamb is a Mining Executive and an officer and director of several public mineral companies. He serves the Registrant as President, was Secretary-Treasurer until November 16, 1987, and has been a Director since 1978.

(2) Thomas J. Reardon is retired and formerly was a Department Manager for Foremost Dairies. He serves the Registrant as Vice-president and has been a director since 1975.

(3) James E. Brousseau is a Mining Executive and an officer and director of several public mineral companies. He was elected Secretary-Treasurer and a Director on November 16, 1987.

(4) Richard C. Poulton is a Senior Account Executive, Electronic Banking Services Division, FIServ Inc. He was elected a Director of the Registrant on March 27, 1993.

(5) Leola M. Schwarz passed away on October 28, 1993, at the age of 95. She had served as a Director since 1976, was the mother of Thomas J. Reardon, an officer and director of the Registrant, and the widow of Paul W. Schwarz, an officer and director of the Registrant from 1954 to 1978.

(f) Involvement in certain legal proceedings.

There have been no events under any bankruptcy act, no criminal proceedings and no judgments or injunctions material to the evaluation of the ability and integrity of any director or executive officer during the past five years.

(g) Compliance with Section 16(a) of the Exchange Act

Registrant is not aware of any person who at any time during the year 1995 was a director, officer or beneficial owner of more than 10 percent of Registrant's capital stock who failed to file on a timely basis reports required by Section 16(a) during 1995 or prior years.

ITEM 11. Executive Compensation

<TABLE>

(a) Cash Compensation.

<CAPTION>

Name of individual or number in group	Capacity	Cash Compensation
Norman A. Lamb	President	\$0.00
Officers and Directors as a group - Four persons including those named above.		\$0.00

</TABLE>

(b) Compensation pursuant to plans.

During the fiscal year, Norman A. Lamb was reimbursed for out-of-pocket expenses and mileage.

(c) Other compensation.

None

(d) Compensation of directors.

During the fiscal year, directors waived a fee of \$500 each for their services as directors.

(e) Termination of employment and change of control arrangement.

None

<PAGE>

ITEM 12. Security Ownership of Certain Beneficial Owners and Management

(a) Security ownership of certain beneficial owners.

<TABLE>

The following table shows, as of March 8, 1996, the number of shares of Capital Stock held by every person owning of record or known by the Registrant as owning beneficially more than five percent of the outstanding stock:

<CAPTION>

Security Ownership of Certain Beneficial Owners

Title of Class	Name and Address of Owner	Amount and Nature of Ownership	Percent of Class
<S>	<C>	<C>	<C>
Capital Stock Par Value \$0.25/share	Norman A. Lamb P. O. Box 778 Greenville, CA 95947	164,113 shares owned of record and beneficially*	21.6%
	Poulton Trust 551 West 30th Ave San Mateo, CA 94403	50,253 shares owned of record	6.6%
	Thomas J. Reardon 162 E Market St Daly City, CA 94403	81,620 shares owned of record and beneficially**	10.7%
	State Controller State of CA Div. of Unclaimed Property P.O. Box 942850 Sacramento, CA 94250	97,657.4 shares owned of record	12.8%

</TABLE>

* Includes 85,595 shares owned by Nevex Corporation, a Nevada corporation and wholly owned subsidiary of Jenex Gold Corporation, a Washington Corporation, of which Mr. Lamb is President, a Director and majority shareholder.

** Includes 74,508 shares owned by Thomas J. Reardon, Edward P. Reardon, Michael T. Reardon and Frank J. Reardon, as joint tenants with right of survivorship.

<PAGE>

(b) Security ownership of management.

<TABLE>

The following table shows as of March 8, 1996, all shares of Capital Stock beneficially owned by all directors and all directors and officers of Registrant as a group:

<CAPTION>

Capital Stock Beneficially Owned

Title of Class	Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
<S>	<C>	<C>	<C>
Capital Stock Par Value \$0.25 per share	James E. Brousseau	86,595 shares owned of record and beneficially*	11.4%
	Norman A. Lamb	164,143 shares owned	21.6%

	of record and beneficially**	
Richard C. Poulton	50,253 shares owned beneficially***	6.6%
Thomas J. Reardon	81,620 shares owned of record and beneficially****	10.7%
All directors and officers as a group (four persons)	297,016 shares	39.0%

</TABLE>

* Includes 85,595 shares owned by Nevex Corporation, a Nevada Corporation, and wholly owned subsidiary of Jenex Gold Corporation, a Washington corporation, of which Mr. Brousseau is Secretary-Treasurer, a Director and substantial shareholder. Mr. Brousseau may be deemed to have shared voting and investment power with respect to such shares.

** Includes 85,595 shares owned by Nevex Corporation, a Nevada corporation and wholly owned subsidiary of Jenex Gold Corporation, a Washington corporation, of which Mr. Lamb is President, a Director and majority shareholder. Mr. Lamb may be deemed to have shared voting and investment power with respect to such shares.

*** Includes 50,253 shares owned by the Poulton Trust, of which Mr. Poulton is co-trustee. Mr. Poulton may be deemed to have shared voting and investment power with respect to such shares.

**** Includes 74,508 shares owned by Thomas J. Reardon, Edward P. Reardon, Michael T. Reardon and Frank J. Reardon, as joint tenants with right of survivorship. Mr. Thomas J. Reardon may be deemed to have shared voting and investment power with respect to such shares.

<PAGE>

(c) Changes in control.

Mr. Lamb may be deemed the "parent" or a "control person" of Registrant, as those terms are defined under the Securities Exchange Act of 1934, as amended. There are no arrangements known to Registrant the operation of which may at a subsequent date result in a change of control of Registrant.

ITEM 13. Certain Relationships and Related Transactions

None

PART IV

ITEM 14. Exhibits, Financial Statements, Schedules and Reports on Form 8-K

(a) Financial Statements:	Page
Balance Sheets as of December 31, 1995 and December 31, 1994.	F 2-3
Statements of Operations and Accumulated Deficit for the Years Ended December 31, 1995, December 31, 1994, and December 31, 1993.	F 4-5
Statements of Cash Flows for the years ended December 31, 1995, December 31, 1994, and December 31, 1993.	F 6-7
(b) Notes to Financial Statements	F 8-12
(c) Exhibits	
EX-27 Financial Data Schedule.	
(d) No reports on Form 8-K were filed during the last quarter of 1995.	

<PAGE>

SIGNATURES

Pursuant to the requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused

this report to be signed on its behalf by the undersigned,
thereunto duly authorized.

CALIFORNIA-ENGELS MINING COMPANY
Registrant

By Norman A. Lamb
Norman A. Lamb, President and
Chief Executive Officer

Date: March 31, 1996

Pursuant to the requirements of the Securities Exchange Act of
1934, this report has been signed below by the following persons on
behalf of the Registrant and in the capacities and on the dates
indicated.

By Norman A. Lamb
Norman A. Lamb
President and Director
March 31, 1996

By Thomas J. Reardon
Thomas J. Reardon
Vice-President and Director
March 31, 1996

By James E. Brousseau
James E. Brousseau
Secretary-Treasurer
Chief Financial and Accounting
Officer, March 31, 1996

By Richard C. Poulton
Richard C. Poulton
Director, March 31, 1996
<PAGE>

CALIFORNIA-ENGELS MINING COMPANY
(A California Corporation)

FINANCIAL STATEMENTS

DECEMBER 31, 1995

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

BALANCE SHEETS

DECEMBER 31, 1995 AND 1994

(Unaudited)

<TABLE>

ASSETS

<CAPTION>

	1995	1994
	-----	-----
<S>	<C>	<C>
CURRENT ASSETS		
Cash and cash equivalents	\$ 22,830	\$ 12,032
Current portion of deeds of trust - Note 5	\$ 7,241	\$ 6,051
Total Current Assets	\$ 30,071	\$ 18,083
PROPERTY AND EQUIPMENT		
Furniture and equipment	\$ 33,775	\$ 6,017
Land	116,696	78,696
Timber Management Development	\$ 33,571	\$ -
Less: Accumulated depreciation	\$ (9,025)	\$ (5,866)
Total Property and Equipment	\$ 175,017	\$ 78,847
OTHER ASSETS		
Marketable securities - Note 6	\$ 95,205	\$ 178,079
Deeds of trust - Note 5	55,439	63,166
Total Other Assets	\$ 150,644	\$ 241,245
Total Assets	\$ 355,732	\$ 338,175

</TABLE>

The accompanying notes are an integral part of these financial statements.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

BALANCE SHEETS

DECEMBER 31, 1995 AND 1994

(Unaudited)

<TABLE>

ASSETS

<CAPTION>

	1995	1994
	-----	-----
LIABILITIES AND STOCKHOLDERS' EQUITY		
<S>	<C>	<C>
LIABILITIES		
Accrued expenses	\$ 50	\$ 8,050
Income tax payable	-	800
Total Liabilities	\$ 50	\$ 8,850
STOCKHOLDERS' EQUITY		
Common stock, par value \$.25:		

California-Engels Mining Company, 761,257.6 shares issued and outstanding in 1995 and 1994	\$ 190,315	\$ 190,315
Unrealized gain on investments - Note 6	31,251	2,175
Reduction surplus	\$2,801,249	\$2,801,249
Accumulated deficit	(2,667,133)	(2,664,414)
Total Stockholders' Equity	\$ 355,682	\$ 329,325
Total Liabilities and Stockholders' Equity	\$ 355,732	\$ 338,175

</TABLE>

The accompanying notes are an integral part of these financial statements.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

STATEMENTS OF INCOME AND ACCUMULATED DEFICIT

FOR THE YEARS ENDED DECEMBER 31, 1995, 1994 AND 1993

(Unaudited)

<TABLE>

<CAPTION>

	1995	1994	1993
	-----	-----	-----
<S>	<C>	<C>	<C>
REVENUE			
Timber revenue	\$ 2,125	\$ 175	\$ 575
Dividend income	7,095	11,786	10,837
Interest income	9,796	10,660	12,273
Miscellaneous income	6,186	314	150
Total revenue	25,202	22,935	23,835
OPERATING AND GENERAL EXPENSES			
Depreciation	3,159	124	149
Reclamation plan expense	4,000	3,233	-
Insurance	4,430	3,500	-
Management fees	-	8,000	8,000
Interest	262	58	1
Office and storage rents	4,110	3,983	3,600
Office expenses	1,695	521	1,075
Professional fees	1,275	850	1,270
Taxes and licenses	6,487	4,615	11,254
Travel and per diem	1,084	3,925	3,100
Miscellaneous	343	409	383
Repairs and maintenance	4,260	2,339	-
Total operating and general expenses	\$ 31,105	\$ 31,557	\$ 28,832
Net income (loss) from operations	\$ (5,903)	\$ (8,622)	\$ (4,997)
OTHER INCOME			
Gain on sale of securities	\$ 1,443	\$ 246	\$ 73,217
Tax benefit - federal carryback	2,541	-	-
Total other income (expense)	\$ 3,984	\$ (246)	\$ 73,217
Federal and California income taxes	\$ (800)	\$ (648)	\$ (13,765)
Net income (loss)	\$ (2,719)	\$ (9,024)	\$ 54,455

</TABLE>

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

STATEMENTS OF INCOME AND ACCUMULATED DEFICIT

FOR THE YEARS ENDED DECEMBER 31, 1995, 1994 AND 1993

(Unaudited)

<TABLE>

<CAPTION>

	1995	1994	1993
	-----	-----	-----
<S>	<C>	<C>	<C>
ACCUMULATED DEFICIT, Beginning of year	\$(2,664,414)	\$(2,655,390)	\$(2,709,845)
ACCUMULATED DEFICIT, End of year	\$(2,667,133)	\$(2,664,414)	\$(2,655,390)
EARNINGS (LOSS) PER SHARE	\$ (0.004)	\$ (.0118)	\$ 0.0715

</TABLE>

The accompanying notes are an integral part of these financial statements.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 1995, 1994 AND 1993

(Unaudited)

<TABLE>

<CAPTION>

	1995	1994	1993
	-----	-----	-----
<S>	<C>	<C>	<C>
CASH FLOWS FROM OPERATING ACTIVITIES			
Net Income (loss)	\$ (2,719)	\$ (9,024)	\$ 54,455
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation	3,159	124	149
Amortization of GNMA discount	(499)	(495)	(1,058)
Gain on sale of securities	(1,443)	(246)	(72,323)
(Increase) decrease in:			
Dividends receivable	-	523	523
Increase (decrease) in:			
Taxes payable	(800)	(9,327)	7,880
Accrued expenses	(8,000)	(296)	1,346
Net cash provided (used) by operating activities	\$(10,302)	\$(18,741)	\$(10,074)

<CAPTION>

CASH FLOWS FROM INVESTING ACTIVITIES

	<C>	<C>	<C>
<S>	<C>	<C>	<C>
Additions to notes receivable	-	-	(36,784)
Payments received on notes receivable	6,537	5,407	2,912
Purchases of securities and investments	(285)	(60,627)	(76,688)

Proceeds from sale of securities	113,511	25,246	127,453
Deposit to principal GNMA	666	871	4,489
Capital Expenditures	(99,329)	-	-
Net cash provided (used) by investing activities	21,100	(29,103)	21,382

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 1995, 1994 AND 1993

(Unaudited)

<TABLE>

<CAPTION>

CASH FLOWS FROM FINANCING ACTIVITIES

<S>	<C>	<C>	<C>
Payments on loan	-	-	(10,513)
Net cash provided (used) by financing activities	-	-	(10,513)

Net increase (decrease) in cash and cash equivalents	\$ 10,798	\$ (47,844)	\$ 795
---	-----------	-------------	--------

<CAPTION>

CASH AND CASH EQUIVALENTS,

<S>	<C>	<C>	<C>
Beginning of Year	\$ 12,032	\$ 59,876	\$ 59,081

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CASH AND CASH EQUIVALENTS,

<S>	<C>	<C>	<C>
End of Year	\$ 22,830	\$ 12,032	\$ 59,876

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	1995	1994	1993
	-----	-----	-----
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION			
<S>	<C>	<C>	<C>
Cash paid during the year for:			
Income taxes	\$ 800	\$ 9,975	\$ 2,454
Interest	\$ 262	\$ 58	\$ 1

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SUPPLEMENTAL DISCLOSURE OF NON CASH INVESTING ACTIVITIES

<S>	<C>	<C>	<C>
Dividends Reinvested	\$ -	\$ 563	\$ 271
Increase in unrealized gain on marketable securities	\$ 29,076	\$ 2,715	\$ -

</TABLE>

The accompanying notes are an integral part of these financial statements.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1995 AND 1994

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company's books are maintained on the accrual method of accounting.

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Mineral and Timber Lands

Mineral lands and depreciable property are stated at book value less accumulated depletion and depreciation. Depreciation is calculated using the declining balance method over five to seven year lives. Timber depletion is calculated based on units of

production.

Cash and Cash Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

NOTE 2 - MINING CLAIMS AND FEE LAND OWNED

At December 31, 1995, the Company was the owner of 36 patented lode mining claims and eight unpatented lode mining claims comprising the Engels and Superior Mines and 162.12 acres of patented lands at Engelmine, Lights Creek Mining District, Plumas County, California. The unpatented mining claims are contiguous to the patented mining claims. In addition, the Company purchased during the year 40 acres of patented land at 6,000 Diamond Mountain Road within two miles of the above property.

At December 31, 1995, the Company was the owner of 11 patented lode mining claims and 184.20 acres of deeded mineral rights on Ward Creek in the Genesee Mining District, Plumas County, California.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

NOTE 3 - VALUATION OF MINERAL LANDS - DEFERRED INCOME TAXES

The Mineral lands carried on the books at a value of \$10,000 less depletion have a historical cost basis from June 19, 1901 of \$1,000,000. Beginning in 1913, different valuations were placed on these lands by the Commissioner of Internal Revenue. Under instructions by the Commissioner the values of the land were written up on the books to a high of \$4,500,000 on February 23, 1928.

In 1934, because of depressed conditions, the mineral lands were written down to \$10,000 without any tax benefit. In the event of a sale of these lands the recognized gain for tax purposes will be substantially reduced or eliminated. Consequently a deferred tax asset of approximately \$340,000 has been offset by a corresponding valuation allowance of approximately \$340,000 due to the unlikelihood of the sale of the property in the near future.

Current generally accepted accounting principles dictate carrying properties such as these lands at historical cost or the lower of cost or market value. It is estimated that the current market value of the properties meets or exceeds the \$1,000,000 historical cost basis; however, due to the length of time the Company has reported the land values at the written down value of \$10,000, a change to the cost method has not been deemed appropriate for reporting purposes.

NOTE 4 - GENERAL

Pursuant to the provisions of Section 314 of Public Law 94-579 of the Federal Land Policy of 1976, all unpatented mining claims owned by the Company are recorded with the Bureau of Land Management. A Certification of Waiver of payment of the 1996 maintenance fee for unpatented mining claims for assessment year ended August 31, 1995, was filed with the Bureau of Land Management on August 14, 1995.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

NOTE 5 - DEEDS OF TRUST

<TABLE>

Trust deed notes receivable at December 31, 1995 and 1994 consist of the following:

<CAPTION>

1995			1994	
Due within	Due after	Total	Total	
<C>	<C>	<C>	<C>	<C>

<S>
Douglas R.
Friedrich

9% Note secured by

Plumas County, California real property	\$ 2,556	\$ 36,859	\$ 39,415	\$ 41,752
Less unamortized discount	(677)	(3,505)	(4,182)	(4,852)
Total	\$ 1,879	\$ 33,354	\$ 35,233	\$ 36,900

Robert F. Carmody 10% Note secured by Plumas County, California real property	\$ 3,490	\$ 8,867	\$ 12,357	\$ 15,516
---	----------	----------	-----------	-----------

John and Tina Tucker 9% Note secured by Plumas County, California real property	\$ 1,872	\$ 13,218	\$ 15,090	\$ 16,801
---	----------	-----------	-----------	-----------

Total	\$ 7,241	\$ 55,439	\$ 62,680	\$ 69,217
-------	----------	-----------	-----------	-----------

NOTE 6 - MARKETABLE SECURITIES

The Company has adopted Statement of Financial Accounting Standards (SFAS) No. 115, Accounting for Certain Investments in Debt and Equity Securities, and has applied the provisions of the Statement as of January 1, 1994. The effect of the change in the method of accounting for certain investments as of January 1, 1994 is reported as a separate component of stockholders' equity.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

The investment securities portfolio was comprised of items classified as available for sale and held to maturity, and in accordance with the provisions of SFAS No. 115 they are recorded on the balance sheet at their estimated market value and amortized cost respectively.

At December 31, 1995, the securities held as available for sale had an aggregate market value of \$90,542 and an original cost of \$59,147. The held to maturity security's cost of \$4,663 approximates market.

At December 31, 1994, the securities held as available for sale had an aggregate market value of \$173,246 and an original cost of \$171,071. The held to maturity security's cost of \$4,833 approximates market.

The net unrealized gain in the portfolio is reported as a separate component of stockholders' equity.

NOTE 7 - RECLASSIFICATION

For comparability, the 1994 financial statements reflect reclassification where appropriate to conform to the financial statement presentation used in 1995.

NOTE 8 - CONCENTRATION OF CREDIT RISK

The Company places its temporary cash investments with financial institutions and limits the amount of credit exposure to any one financial institution.

NOTE 9 - FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts reflected in the balance sheets for cash and deeds of trust their respective fair values. The Company estimates that the fair value of all financial instruments at December 31, 1995, does not differ materially from the aggregate carrying values of its financial instruments recorded in the accompanying balance sheet. The company does not currently hold any financial instruments for trading purposes.

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<PAGE>

CALIFORNIA-ENGELS MINING COMPANY
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1995 AND 1994

The estimated fair value amounts have been determined by the

Company using available market information and appropriate valuation methodologies. Considerable judgement is necessarily required in interpreting market data to develop the estimates of fair value, and, accordingly, the estimates are not necessarily indicative of the amounts that the Company could realize in a current market exchange.

NOTE 10 - CONCENTRATION OF ACTIVITY

The Company's principal line of business is development of mineral and timber properties. The principal revenue sources currently consist of timber sales and investment income. The Company's properties are located in the western United States.

NOTE 11 - CONTINGENT LIABILITIES

The Company is not a defendant in any legal proceeding nor is there any litigation in progress, pending or threatened against the Company.

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<SEQUENCE>2

<DESCRIPTION>EXHIBIT 27 FINANCIAL DATA SCHEDULE FOR 1995
CALIFORNIA-ENGELS MINING COMPANY FORM 10-K

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<PERIOD-START> JAN-01-1995

<PERIOD-END> DEC-31-1995

<PERIOD-TYPE> YEAR

<EXCHANGE-RATE> 1

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<C>

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<PP&E> 184,042

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<CURRENT-LIABILITIES> 50

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<TOTAL-LIABILITY-AND-EQUITY> 355,732

<SALES> 2,125

<TOTAL-REVENUES> 29,186

<CGS> 0

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<INTEREST-EXPENSE> 262

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-----END PRIVACY-ENHANCED MESSAGE-----

ATTACHMENT E

(01/12/90)

ABANDONED SITE PROGRAM INFORMATION SYSTEM
FACILITY PROFILE REPORT

PAGE 42

COUNTY: PLUMAS

REGION: NORTHERN CALIFORNIA

FILE NUMBER FACILITY

32-10-0003 ENGLE MINE
DIAMOND MOUNTAIN ROAD
TAYLORSVILLE, CA 96020

OPERATOR

LAND OWNER

916-258-2111

000-000-0000

FUND SOURCE: SITE SURVEY PROGRAM
ACTION STATUS: PA REQ. (HIGH)

DATE: 02-07-89

DATE

ACTION

COMMENT

12-15-88	2101 FACILITY IDENTIFIED	1 CO ENVIRONMENTAL HEALTH - HAZ WASTE PLAN
01-05-89	1020 ALIAS ADDRESS	1 SE 1/4 SECT 4, T27N, R11E, MBDM
	2401 SITE SCREENING DONE	1 UNDERGROUND SILVER AND COPPER MINE, NEED 2 MORE INFO. RECOMMEND PAH 3 MINE IS SIMILAR TO OTHER SUPERFUND SITES

PRELIMINARY ASSESSMENT
DEPARTMENT OF HEALTH SERVICES
TOXIC SUBSTANCES CONTROL PROGRAM

Site: Engel Mine
Diamond Mountain Road
Taylorsville, CA 96020

County: Plumas

ASPIS: 32-10-0003

EPA ID Number: None

Prepared By: Karl Palmer
Site Mitigation Unit
Rural County Survey Program
(916) 322-2879

Date: April 6, 1990

Recommendation: No Further Action

Supervisor: Don Plain

Supervisor's
Signature: *Donald R. Plain*

Date: *4/10/90*

SITE DESCRIPTION AND HISTORY

The Engel Mine, an abandoned copper mine, is located in the northeastern corner of Plumas County, about nine miles north of Taylorsville (T 27N, R 11E, Sec. 17) off of Diamond Mountain Road (See Figure 1)(Reference #1). The site is currently owned by the California Engels Mine Company (Plumas County Assessor's Parcel numbers 007-090-01 and 007-090-02) (Reference #2).

The Engel Mine is the northernmost mine in the Plumas Copper Belt. The California Division of Mines and Geology describes the Plumas Copper Belt as "California's most significant zone of copper-iron sulfide mineralized rock that is either wholly within or closely associated with granitic intrusions (Reference #3)." The Engel Mine location was discovered by Harry and Bill Engel of the Pacific Brass and Lock Foundry in 1878. The Engel Copper Mining Company was incorporated in 1906 and plans were made to build a 500 ton blast furnace to process the copper. However, the U.S. Forest Service would not allow the Engels to build the blast furnace on the grounds that it would cause degradation of Lights Creek and the surrounding forests (Reference #4).

Copper ore was mined from shafts cut into the steep hillsides. The ore was then sent to the top story of the mill where a ball mill pulverized the ore into a powder (A ball mill is a giant cylinder containing hundreds of steel balls which is filled with the ore and rotated). The powdered ore was then gravity fed to the next lower level of the mill where it was mixed with pine oil and agitated in floatation cells. Copper metal has an affinity to pine oil, thus the metal would float to the surface where it was skimmed off and the waste rock removed. The concentrated ores were then sent, with the aid of gravity, down the mill to railcars for shipment (Reference #4).

Engel Mine operated from 1916 to 1930 and produced in excess of two million tons of ore. The mine ceased operations in early 1930 when the price of copper fell (Reference #3).

APPARENT PROBLEM

The primary concern at the Engel Mine is the potential contamination of Light's Creek and ground water by metals, particularly copper. File checks and interviews were conducted at the Central Valley Regional Water Quality Control Board (CVRWQCB), the Department of Health Services' Toxic Substances Control Program (TSCP), the Department of Fish and Game, U.S. Forest Service, and the Plumas County Environmental Health Department. No information indicating that any problem existed at the Engel Mine site was found (References #5, #6, and #7).

The CVRWQCB conducted site inspections in March of 1985 and May of 1986. Samples were analyzed for copper and electrical conductivity. Sample results showed that EC was less than 200 and that copper was not at highly elevated levels (Reference #6). Specific sample results were not located. The CVRWQCB did at one time have a waste discharge requirement for the site, but no longer feels the site is a problem (Reference #6). Furthermore, the geology of the Engel Mine site does not have notable quantities of pyrite (8). This is significant since the primary source of acid mine drainage (AMD) is the oxidation of pyrite to form sulfuric acid. AMD thus results in the the leaching of metals into ground and surface waters. The low potential for the generation of AMD at the Engel mine makes metal contamination problems less probable.

HRS FACTORS

HRS factors were not evaluated at this site due to the lack of any apparent problem.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion:

Based on file searches and interviews with the various health and environmental agencies, the Engel Mine, which operated as a copper mine between 1916 and 1930, does not currently appear to pose a threat to human health or the environment. Sampling of Light's Creek conducted by the CVRWQCB indicated that copper contamination was not a problem. Although other trace metals were not sampled for, there is no evidence that they pose any problems.

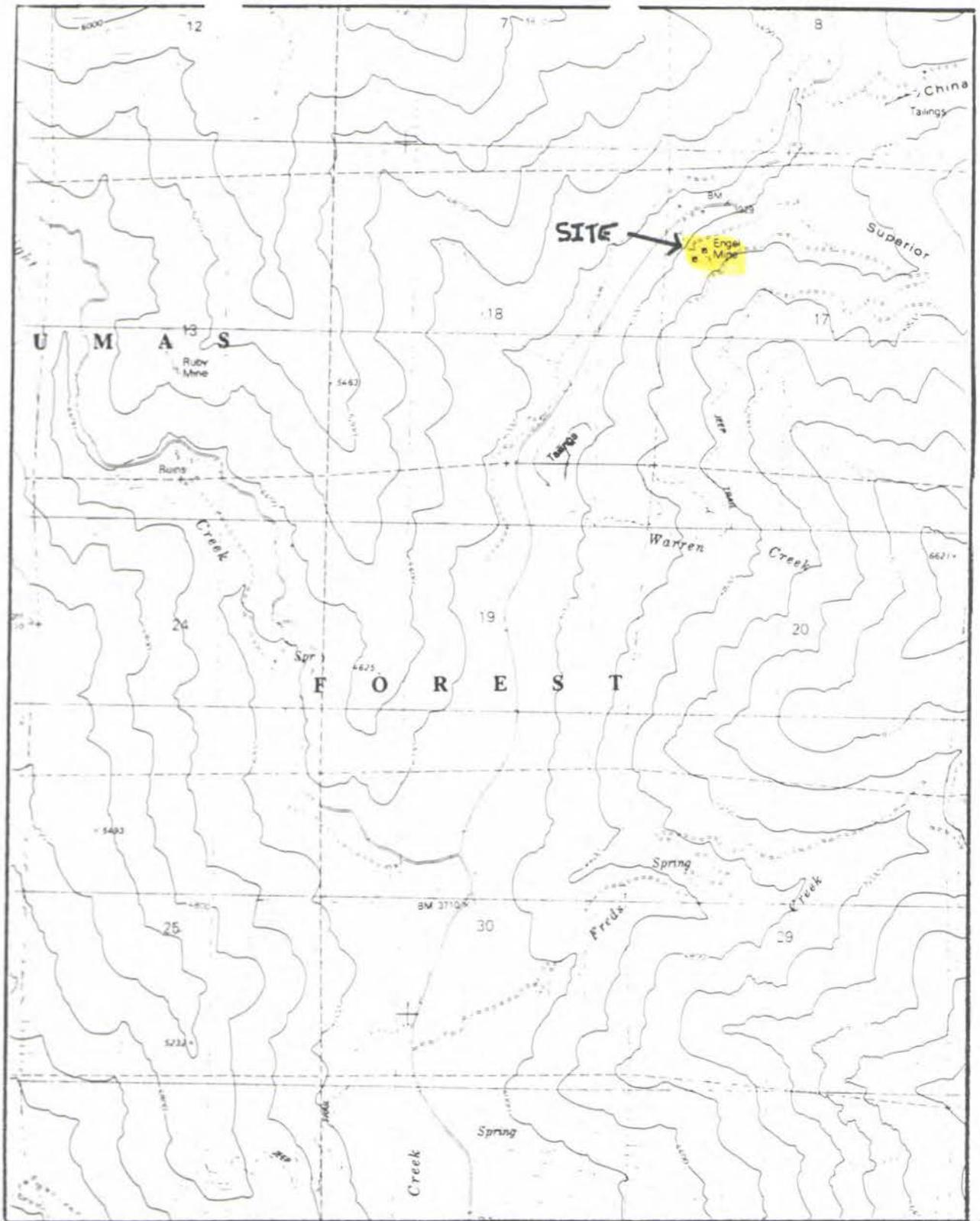
Recommendation:

It is recommended that no further action be pursued at the Engel Mine site at this time.

REFERENCES

1. U.S. Geological Survey Quadrangle Maps of the US, Moonlight Peak, CA Quadrangle, 1980.
2. Plumas County Assessor's Maps and Recorder, TRW Real Estate Information Services, 1989/90.
3. Trace Elements in the Plumas Copper Belt, Plumas County California, Special Report 103, California Division of Mines and Geology, 1970.
4. Boyton, James E. "Mainline to Valhalla - Part 1". Steam Forever, Volume 1, Issue 4, Feather River Short Line Railroad, August 1989.
5. Agency Contact Record, September, 1989 - April, 1990
6. Interview of Ed Crawford, CVRWQCB, by Jane Vorpapel, TSCP. October 13, 1989.
7. Driveby inspection and photos, Jane Vorpapel, October 25, 1989.
8. Boyle, E.M. Mines and Mineral Resources of Plumas County, California State Mining Bureau. December, 1918.

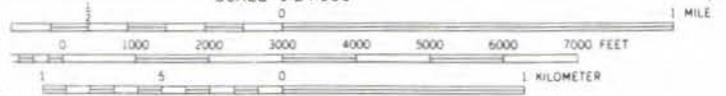
REFERENCE 1



ROAD CLASSIFICATION

- | | | | |
|---------------------------------|-------|---|-------|
| Primary highway, hard surface | ————— | Light-duty road, hard or improved surface | ————— |
| Secondary highway, hard surface | ————— | Unimproved road | |
| Interstate Route | ⬡ | U S Route | ⬢ |
| | | State Route | ⊙ |

SCALE 1:24,000



CONTOUR INTERVAL 80 FEET
 SUPPLEMENTARY CONTOUR INTERVAL 20 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929

MOONLIGHT PEAK, CALIF.

NE 1/4 GREENVILLE 15' QUADRANGLE
 N4007 5-W12045/7 5

1980

DMA 1864 III NE—SERIES V895



QUADRANGLE LOCATION

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092
 DER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

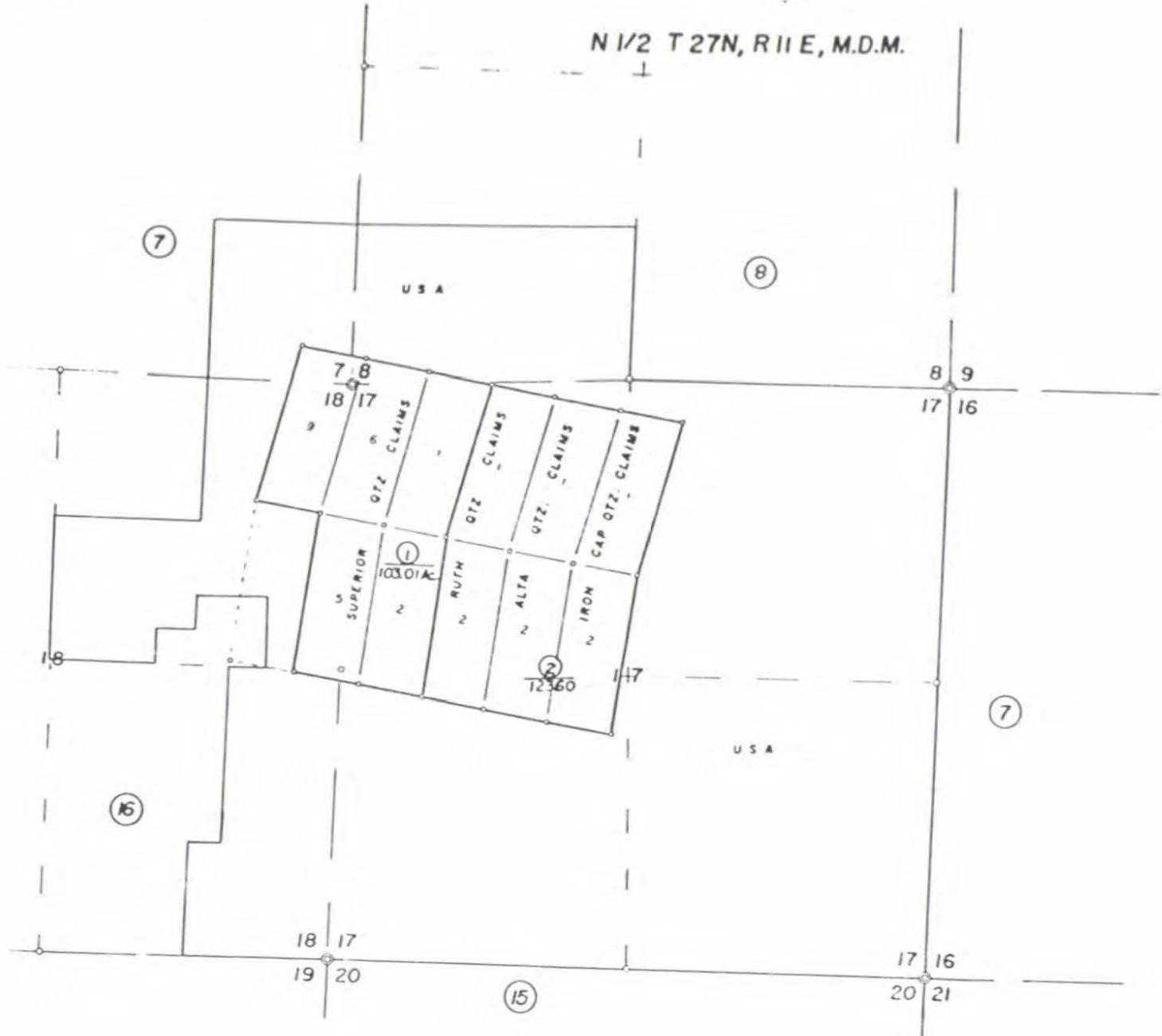
FIGURE 1

REFERENCE 2

Tax Area Code
53-001

7-09

N 1/2 T 27N, R 11 E, M.D.M.



NOTE - Assessors Block Numbers Shown in Ellipses
Assessors Parcel Numbers Shown in Circles

Current to
1/1/0

007 070 01	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1972	216-0164	438 LND
007 070 02	53001	WALKER WALTER W ET AL C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1972	216-0164	7,360 LND
007 070 04	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1972	216-0164	14,720 LND
007 070 05	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1972	216-0164	14,720 LND
007 070 06	53001	CHY COMPANY THE 2555 3RD STREET #200, SACRAMENTO CA 95818	1969	191-0447	29,440 LND
007 070 07	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1972	216-0164	22,080 LND
007 070 08	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1980	336-0372	5,520 LND
007 070 09	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1987	460-0540	2,320 LND
007 070 09	53001	EASTWOOD MINERALS & ENERGY CO A CA CORP P O BOX 868, HOUSTON TX 77001	1985	421-0317	252 LND
007 070 10	53001	WALKER WALTER W ET AL #7 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1987	460-0540	18,274 LND
007 070 10	53001	EASTWOOD MINERALS & ENERGY CO A CA CORP P O BOX 868, HOUSTON TX 77001	1985	421-0317	1,980 LND
007 070 12	53001	WALKER WALTER W ET AL #1 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1987	471-0503	558 LND
007 070 13	53001	WALKER WALTER W ET AL #3 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1987	471-0508	3,480 LND
007 070 14	53001	WALKER WALTER W ET AL #3 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099	1987	471-0508	17,400 LND

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VACANT LAND BY PARCEL		PLUMAS	1988-89		PAGE 112
PARCEL NO.	TRA	OWNER ADDRESS	ZIP	DOCUMENT DATE / NO.	ASSESSED VALUES
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007 080 01	53001	CALIFORNIA ENGLES MINING CO P O BOX 471, VALLEJO CA	94590	1979 322-0068	54,804 LND
007 080 02	53001	CALIFORNIA ENGLES MINING CO P O BOX 471, VALLEJO CA	94590	1979 322-0068	27,520 LND
007 080 03	53001	CALIFORNIA ENGLES MINING CO P O BOX 471, VALLEJO CA	94590	1979 322-0068	15,598 LND
007 090 02	53001	CALIFORNIA ENGLES MINING CO P O BOX 471, VALLEJO CA	94590	1979 322-0068	11,876 LND
007 100 01	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1980 336-0372	10,408 LND
007 100 03	53001	BROWN FLETCHER L 1/2 ET AL C/O ALBRECHT KELLY ATT, 1440 LINCOLN STREET, OROVILLE CA 95965	95965	1987 453-0598	4,435 LND
007 100 04	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1980 336-0372	13,734 LND
007 100 07	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1980 336-0372	7,360 LND
007 100 08	53001	BROWN FLETCHER L 1/2 ET AL C/O ALBRECHT KELLY ATT, 1440 LINCOLN STREET, OROVILLE CA 95965	95965	1987 453-0598	29,506 LND
007 100 11	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1987 471-0507	7,485 LND
007 100 12	53001	WALKER ARCHIE D JR ET UX TRSTS C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1987 471-0507	11,600 LND
007 100 13	53001	WALKER WALTER W ET AL #3 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1987 471-0508	2,320 LND
007 100 14	53001	WALKER WALTER W ET AL #3 C/O W M BEATY & ASSOCIATES INC, P O BOX 898, REDDING CA 96099		1987 471-0508	7,172 LND
007 110 01	55000	WEMPLE DONALD J ET AL WEMPLE RANCH, MILFORD CA	96121	1983 399-0182	7,360 LND
007 110 02	55000	BAILEY LAHMI J 1/3 INT HIDDEN ACRES M H PARK SP 41, SUSANVILLE CA	96130	1985 432-0095	2,454 LND
007 110 02	55000	WEMPLE DONALD J ET AL 2/3 INT WEMPLE RANCH, MILFORD CA	96121	1983 399-0182	4,907 LND

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CALDWELL CHARLES E & PAULETTE TRUSTEES	620 FATHOM DRIVE, SAN MATEO CA 94404	102 193 01	423-0165	1985	25,394.0%
CALDWELL DOUGLAS ET AL	20 INGTON ST, GRIDLEY CA 95948	102 652 0	276-0400	1977	87,799.84%
CALDWELL EARL G JR & ANNITA K H/W	P O BOX 3378, QUINCY CA 95971	115 031 41	448-0095	1986	50,980.69%
CALDWELL JACK AND COLLEEN D	BOX 105, CHESTER CA 95020	100 142 12	203-0337	1971	31,760.72%
CALDWELL RALPH W & DONNA R H/W	P O BOX 1723, PORTOLA CA 96122	125 440 10	354-0299	1982	139,234.88%
CALDWELL ROBERT C & DOROTHY A	25451 VIA MACARENA, VALENCIA CA 91355	129 103 05	394-0677	1983	75,083.68%
CALDWELL WILLIAM E & IONA	P O BOX 124, BLAIRSDEN CA 96103	130 112 11	174-1193	1966	50,707.81%
CALER ALBERT W & TERESE M	39139 11TH STREET, PALMDALE CA 93550	106 140 06	215-0580	1972	7,831.0%
CALGON MINING INC A CALIF CORP	P O BOX 38, CANYONDAM CA 95923	001 362 06	432-0292	1985	26,530.39%
CALHOON JOHN C & LEOTA J	202 PENINSULA DRIVE, LAKE ALMANOR CA 96137	104 123 09	279-0002	1977	79,302.53%
CALHOON LEROY & ELEANOR	1275 PARADISE DRIVE, MARTINEZ CA 94553	113 030 12	476-0689	1988	10,137.72%
CALHOON WAYNE R & MERILYN G	490 SOUTH P STREET, LIVERMORE CA 94550	104 174 12	170-0855	1965	29,105.58%
CALICO CATTLE CO AGRICULTURE DBA, SEC	1440 LINCOLN STREET, OROVILLE CA 95965	004 170 03	453-0596	1987	60,666.37%
CALLOS CLYBORD, DBA, SEC	P O BOX 1958, PORTOLA CA 96122	126 085 01	433-0360	1985	34,839.85%
CALICOPIA CORP	P O BOX Y, RANCHO MIRAGE CA 92270	009 080 01	367-0162	1983	64,799.0%
CALICOPIA CORP	P O BOX Y, RANCHO MIRAGE CA 92270	009 090 01	367-0162	1983	79,235.0%
CALICOPIA CORP	P O BOX Y, RANCHO MIRAGE CA 92270	009 090 02	367-0162	1983	7,629.0%
CALICOPIA CORP	P O BOX Y, RANCHO MIRAGE CA 92270	009 100 09	367-0162	1983	25,637.0%
CALIFORNIA DISTRICT OF THE WESLEYAN CHURCH	P O BOX A, CHESTER CA 96020	100 302 18	364-0502	1982	71,400.79%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 080 02	322-0068	1979	28,070.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 160 02	475-0501	1988	2,448.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 160 03	475-0501	1988	16,830.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 160 07	447-0104	1986	10,200.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 160 09	475-0501	1988	26,520.0%

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OWNER	MAILING ADDRESS	PARCEL NUMBER	DOCUMENT NO. / DATE	TXBL VALUE EX %1M
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 160 10	447-0104 1986	35,496.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 170 06	475-0272 1988	5,659.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 170 07	475-0272 1988	15,737.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 080 01	322-0068 1979	55,900.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 080 03	322-0068 1979	15,910.0%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 090 01	322-0068 1979	27,334.17%
CALIFORNIA ENGELS MINING CO	P O BOX 778, GREENVILLE CA 95947	007 090 02	322-0068 1979	12,114.0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	005 420 08	476-0016 1988	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	006 021 01	238-0528 1974	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	006 021 02		0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	010 080 22		0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	011 160 06	474-0361 1988	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	011 160 07	474-0361 1988	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	011 180 03	474-0361 1988	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	011 190 01	474-0361 1988	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	011 200 09	474-0361 1988	0%
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CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	115 291 01	170-1099 1965	0%
CALIFORNIA STATE OF	NO MAILING ADDR FOR THIS OWNER	125 139 01	276-0576 1977	0%
CALIFORNIA STATE OF BEACHES AND PARKS	NO MAILING ADDR FOR THIS OWNER	006 180 28		0%
CALIFORNIA STATE OF BEACHES AND PARKS	NO MAILING ADDR FOR THIS OWNER	006 180 29	374-0564 1983	0%
CALIFORNIA STATE OF BEACHES AND PARKS	NO MAILING ADDR FOR THIS OWNER	006 190 04		0%
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CALIFORNIA STATE OF DEPT PUBLIC WORKS	NO MAILING ADDR FOR THIS OWNER	025 100 26	371-0211 1983	0%
CALIFORNIA STATE OF DEPT OF PUBLIC WORKS	NO MAILING ADDR FOR THIS OWNER	025 110 13		0%

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OWNER	MAILING ADDRESS	PARCEL NUMBER	DOCUMENT NO. / DATE	TXBL VALUE EX %1M
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PARCEL NO.	TRA	OWNER ADDRESS	ZIP	DOCUMENT DATE / NO.	ASSESSED VALUES
007 150 01	53004	WILBUR KA G P O BOX 4 COLUSA CA	95932		34,410 LND 1,513 IMP 35,923 NET
007 160 02	53001	CARMODY ROBERT F ET AL 573 RIVIERA CIRCLE, LARKSPUR CA	94939	1987 461-0337	2,861 LND
007 160 03	53001	CARMODY ROBERT F ET AL 573 RIVIERA CIRCLE, LARKSPUR CA	94939	1987 461-0337	19,716 LND
007 160 07	53001	CALIFORNIA ENGELS MINING CO C/O LAMB NORMAN A, P O BOX 471, VALLEJO CA	94590	1986 447-0104	10,000 LND
007 160 08	53004	U S A NO MAILING ADDRESS FOR THIS OWNER			LND
007 160 09	53001	CARMODY ROBERT F ET AL 573 RIVIERA CIRCLE, LARKSPUR CA	94939	1987 461-0337	32,232 LND
007 160 10	53001	CALIFORNIA ENGELS MINING CO C/O LAMB NORMAN A, P O BOX 471, VALLEJO CA	94590	1986 447-0104	34,800 LND
007 170 01	53004	CALIFORNIA ENGELS MINING CO C/O LAMB NORMAN A, P O BOX 471, VALLEJO CA	94590	1986 447-0104	16,140 LND
007 170 03	53002	CALIFORNIA ENGELS MINING CO C/O LAMB NORMAN A, P O BOX 471, VALLEJO CA	94590	1986 447-0104	34,060 LND
007 180 01	53004	SPITZER TRAVIS TRUST #1 ET AL 1011 NORTH CRESCENT DRIVE, BEVERLY HILLS CA	90210	1984 401-0488	21,848 LND
007 180 02	53004	SPITZER TRAVIS TRUST #1 ET AL 8112 FLORENCE AVE CALLER 7031, DOMNEY CA	90241	1984 401-0488	98,838 LND
007 190 07	53004	U S A NO MAILING ADDRESS FOR THIS OWNER			LND
007 190 08	53004	U S A NO MAILING ADDRESS FOR THIS OWNER			LND
007 190 09	53004	WATTENBURG WILLARD H C/O FEATHER RIVER PROPERTIES, P O BOX 702, GREENVILLE CA	95947	1980 331-0259	12,114 LND
007 190 10	53004	WATTENBURG WILLARD H C/O FEATHER RIVER PROPERTIES, P O BOX 702, GREENVILLE CA	95947	1980 331-0259	10,387 LND
007 190 11	53004	WATTENBURG TANYA LYNN C/O WATTENBURG WILLARD H, P O BOX 316, GREENVILL	95947	1987 454-0257	4,638 LND
007 190 12	53004	WATTENBURG TANYA LYNN C/O WATTENBURG WILLARD H, P O BOX 316, GREENVILL	95947	1987 454-0257	8,341 LND
007 190 13	53004	WATTENBURG KIRA JANE ET AL C/O WATTENBURG WILLARD H, P O BOX 316, GREENVILL	95947	1987 454-0256	3,323 LND
007 190 14	53004	WATTENBURG KIRA JANE ET AL C/O WATTENBURG WILLARD H, P O BOX 316, GREENVILL	95947	1987 454-0256	11,285 LND

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PARCEL LIST	PLUMAS	1987-88	PAGE 198		
PARCEL NO.	TRA	OWNER ADDRESS	ZIP	DOCUMENT DATE / NO.	ASSESSED VALUES
007 190 15	53004	MHELAN LAURIE ANN P O BOX 864, FOREST FALLS CA	92339	1983 367-0319	7,325 LND
007 190 16	53004	MHELAN LAURIE ANN P O BOX 864, FOREST FALLS CA	92339	1983 367-0319	31,049 LND
007 190 17	53004	MID VALLEY TRACTOR CO P O BOX 248, GRIDLEY CA	95948	1981 343-0146	5,357 LND
007 190 18	53004	MID VALLEY TRACTOR CO P O BOX 248, GRIDLEY CA	95948	1981 343-0146	32,579 LND
007 190 19	53004	MID VALLEY TRACTOR CO P O BOX 248, GRIDLEY CA	95948	1981 343-0146	32,797 LND
007 190 20	53004	MARTELLARO CARL D & ANDREA L H/W BOX 20 D COHASSET STAGE, CHICO CA	95926	1983 390-0125	31,212 LND
007 190 21	53004	WATTENBURG ERIC JOHN C/O WATTENBURG WILLARD H, P O BOX 316, GREENVILL	95947	1987 454-0258	14,095 LND
007 190 22	53004	PETERSON JOEL ET AL C/O TIDEWATER SAND & GRAVEL CO, 4501 TIDEWATER AVE, OAKLAND CA	94601	1982 351-0495	34,298 LND
007 190 23	53004	SOPER WHEELER COMPANY P O BOX 359, STRAWBERRY VALLEY CA	95981		3,726 LND
007 200 01	53004	SOPER WHEELER COMPANY P O BOX 359, STRAWBERRY VALLEY CA	95981		3,582 LND
007 200 02	53004	SOPER WHEELER COMPANY P O BOX 359, STRAWBERRY VALLEY CA	95981		1,753 LND
007 200 03	53004	NORTON WILLARD G AND MARY H 7624 WOODGLEN DR, FAIR OAKS CA	95628	1970 196-0401	25,133 LND
007 210 01	53004	MOORMAN RICHARD 1/2 ET AL P O BOX 93, QUINCY CA	95971	1985 424-0648	34,731 LND
007 220 02	53004	HOLMES ROBERT A & JUANITA B 2882 NORTH VALLEY RD, GREENVILLE CA	95947	1976 262-0472	16,897 LND
007 220 04	53004	SIMPSON LOLA M ET AL 1107 NORTH ROAD, BELMONT CA	94002	1977 271-0043	11,833 LND
007 220 05	53004	STANDLEY GEORGE A PO BOX 1896, PORTOLA CA	96122	1975 244-0706	12,056 LND
007 220 06	53004	RIGHT A D 2301 ODDIE BLVD, REMO NV	89512	1987 463-0511	11,828 LND
007 220 07	53004	SILVA LAWRENCE J JR & TRUDI L H/W 3500 G STREET, ANTIOCH CA	94509	1987 464-0575 PHN-(415) 778-1018	11,126 LND 6,100 IMP 17,226 NET
007 220 08	53004	HORSTKAMP BERNARD A & GAYLEEN 1141 4TH AVE, NAPA CA	94558	1975 246-0655	9,053 LND 24,705 IMP 33,758 NET

REFERENCE 3

TRACE ELEMENTS IN
THE PLUMAS COPPER BELT,
PLUMAS COUNTY, CALIFORNIA

By Arthur R. Smith
Geologist, California Division of Mines and Geology,
San Francisco, California

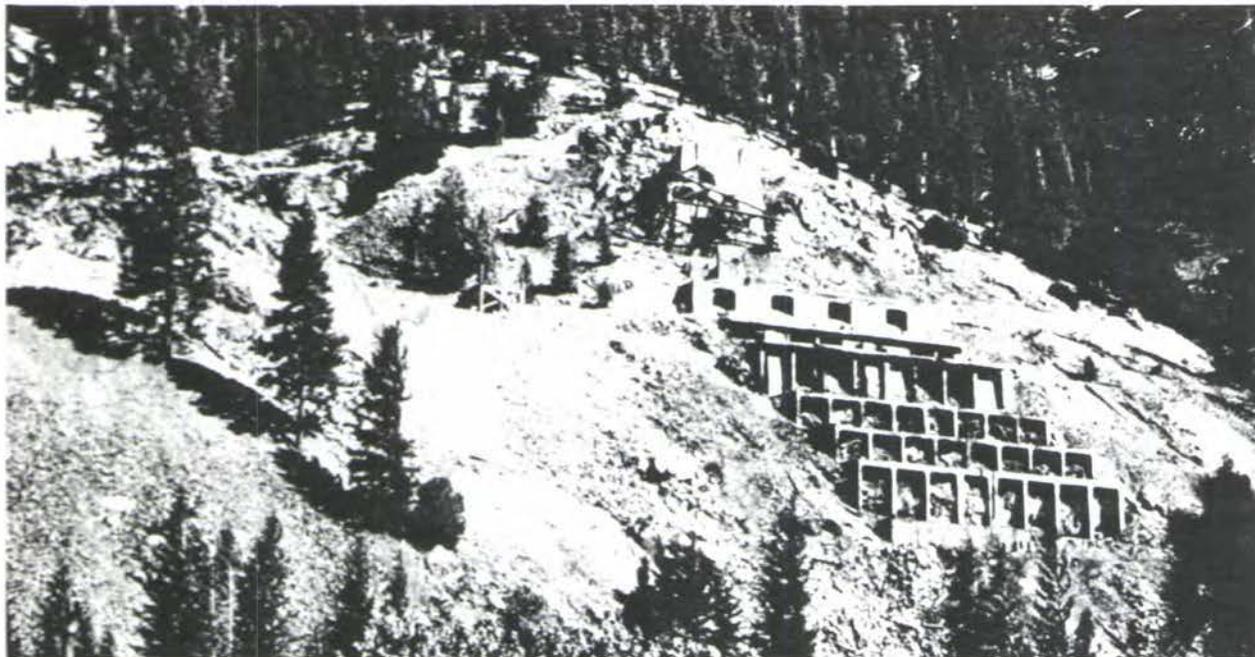


Photo 1. Superior mine area and mill site foundation. The area, in Sec 17, T 27 N, R 11 E, is underlain by the quartz monzonite of Lights Creek. The photo was taken from the level of the creek, which flows north-northeast through the pluton.

SPECIAL REPORT 103

California Division of Mines and Geology
1416 9th St., Sacramento 95814, 1970

APPENDIX

Analytical Methods

SAMPLING

Composite samples (131) of granitic rocks were collected for analysis. Spectrographic analyses were made on the heavy mineral fraction of each sample; in addition, the light mineral fraction in some samples, and/or the total sample, were analyzed for comparison. Each sample consisted of about 11 individual specimens, each specimen weighing 250 to 400 grams collected from different outcrops within a 500 to 1,200 square foot area. This composite sample approach was used to reduce the effects of variation in metal content between outcrops. After removing weathered surfaces, most samples then weighed about 2.3 kilograms.

The samples were reduced in a Braun jaw crusher with semi-steel jaws and Braun pulverizer with ceramic plates. The crushed material was split to about a 90-gram sample, pulverized to -80 mesh, and the -80 to +325 mesh fraction, or a split thereof, was separated in bromoform (S.G. 2.82) using a centrifuge. The heavy portion (S.G. > 2.82) included: magnetite, hornblende, biotite, pyroxene, chlorite, epidote, tourmaline, sphene and sulfide minerals. This separation removed more than 95 percent of the heavy minerals.

The heavy mineral separate represented between 6 and 16 percent of the total rock by weight and weighed from two to seven grams. About one gram of this was split out and ground to -200 mesh for spectrographic analysis.

SPECTROGRAPHIC PROCEDURE

A 70-milligram portion of the -200-mesh heavy mineral fraction for each sample was weighed on a semi-micro balance and mixed with 30 milligrams of buffer*. This mixture was pelletized by compressing in a die at 6,000-8,000 pounds per square inch for about one minute.

Analyses for 10 elements were made by d-c arc emission spectroscopy, using a Jarrell-Ash 3.4 meter Ebert spectrograph. The compressed pellets were mounted in 1/4 inch diameter electrodes (Graf-Gard Spectrodes, type 23), and burned in pure argon at 5 liters/minute using a Stallwood jet. Exposures were made at 2,300-3,000 Å for 45 seconds with an arc gap of 3 1/2 to 4 millimeters and a current of 20 amperes. A 12-micron slit and a 4-step sector were used which permitted 12 samples to be run on each Kodak SA-1 plate. The plates were developed in D-19 Kodak developer for 4 1/2 minutes and read with a Jarrell-Ash Model 21-000 Comparator Microphotometer using a prepared set of artificial standards for comparison.

Detailed analytical results for each sample are contained in an open-file report of the same title at the California Division of Mines and Geology, in the Ferry Building, San Francisco, California.

*Buffer mixture consisted of 1 part K_2SO_4 mixed with internal standards BeO and CdO , which was fused, ground, and added to one part of Ga_2O_3 and three parts by weight of pelleting-type graphite.

Description of the Engels, Superior, and Walker Mines

The Superior and Engels mines were active between 1916 and 1929. After the fall in the price of copper in early 1930, operations were suspended. Published figures for total production from both the Engels and Superior mines indicate that two million tons of ore was produced in the Superior mine. Old mine records, which include data from some exploratory holes, indicate that some low-grade ore remains.

Table 7 in the appendix presents production statistics available from the Annual Reports of the State Mineralogist, the Mines Register and from company annual reports. About 161.5 million pounds of copper was recovered from 4.5 million tons of ore at the Engels and Superior mines between 1915 and 1930. The main years of mining at the Walker mine were from 1918 to 1931 and from 1935 to 1941. A tabulation of available production figures for the Walker mine is included in the appendix (table 8).

ENGELS MINE

The ore body of the Engels mine is tabular, plunges steeply northward, and trends N. 60° E. and extends from the main shaft in Sec 4 into Sec 9, T 27 N, R 11 E toward the Superior mine, about two miles distant. Although the ore body occurs in an intrusive rock of different composition than that of the quartz monzonite of Lights Creek, it is only 1,500 to 2,500 feet from the eastern border of the Lights Creek stock (fig. 1) and ranges from 500 to 800 feet higher in elevation.

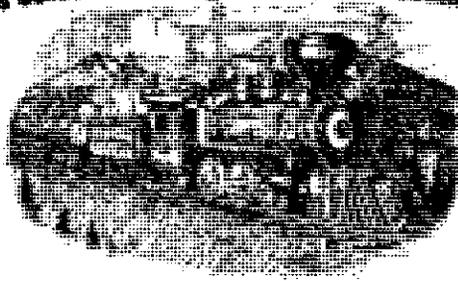
The ore consisted of about equal proportions of disseminated chalcopyrite and bornite within sheared quartz diorite and diorite. An intrusive relationship with a hornblende gabbro pluton was reported in the underground workings. The surface extent of the hornblende gabbro was not determined because of its poor exposure.

The ore minerals were in sheet-like forms roughly parallel to the strike of the ore body, thus imparting a streaked appearance to the ore. The shearing is thought to have resulted from flow cleavage developed during final magmatic emplacement. In the main ore body, the layers may be scattered throughout the shear zone that ranges from 40 to 50 feet in width. There were numerous concentrations of the ore into one or two layers, each one to three feet wide. Magnetite, ilmenite, biotite, hornblende, orthoclase, tourmaline, and quartz are gangue minerals. Workings in 1928 totalled about 12 miles of drifts, cross-cuts, and raises on 15 levels; ore was mined by shrinkage stoping, with stope dimensions as large as 600 feet long, 40 feet wide, and over 1,000 feet high (Averill, 1928).

By 1930, the mine had been developed by a series of 10 adit levels, of which No. 10 adit with a length of 8,357 feet was the main haulage level; a winze sunk from this adit opened up Levels 11 to 15. The Engels ore body has been mined to a depth of 1,300 feet. In its longest part, on the seventh level, it extends 800 feet with a maximum width of 100 feet.

REFERENCE 4

FEATHER RIVER SHORT LINE RAIL ROAD



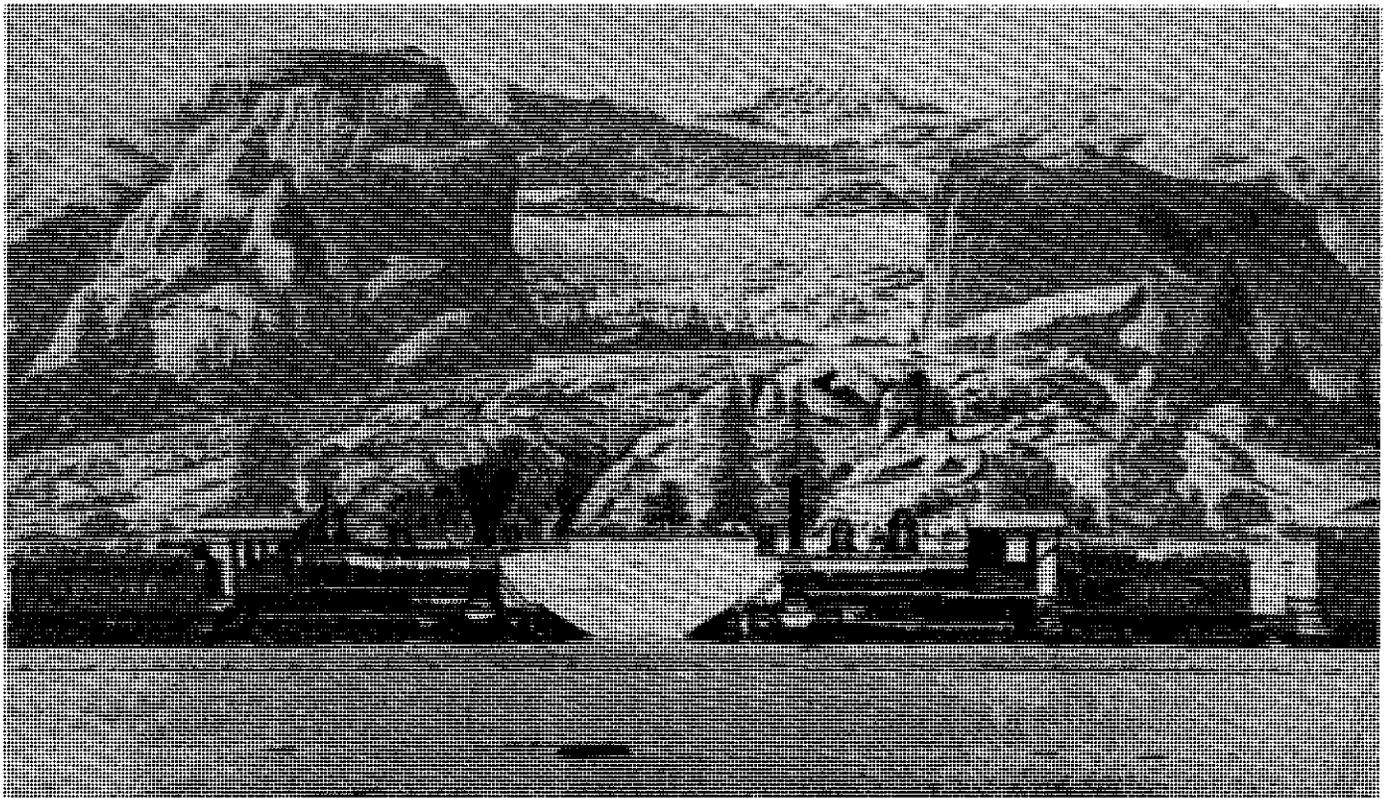
STEAM FOREVER

Volume 1

OFFICIAL PUBLICATION OF THE FEATHER RIVER SHORT LINE R.R.

Issue 4

August 1989



On Feb. 18, 1939, the Golden Gate International Exposition opened for a two-year run on Treasure Island on San Francisco Bay. In honor of the 50th anniversary of the fair, a story on the steam engines that were featured in the Cavalcade productions is in this issue of Steam Forever. Pictured are Nevada Central Engines 5 and 6 as the *Jupiter* and Union Pacific 119, recreating the historic Gold Spike ceremony at Promontory, Utah in 1869.

Dan McKellips—J.E. Boynton collection

Feather River
Short Line Railroad
Inc. 1958
5484 Chandler Road
Quincy, CA 95971
(916) 283-0334



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The Feather River Short Line is a non-profit organization registered with the State of California on December 24, 1958. It is dedicated to the preservation of our precious steam railroad heritage.

A Short Line on Short Line #8

Betty J. Boynton

The dictionary states that "restoration" is the act of making something old like new again. But to Jim Boynton and the "mighty few" who tackled the complete restoration of Engine 8 in July, 1984, the statement was all too simple. Restoration was far from spraying on paint, a shot of oil and hopping aboard to take a ride. It meant many long hours of work to remove and find replacements of old parts, grinding off grime and countless layers of paint right down to bare metal and days in the firebox replacing firebricks. There were ruined clothes, sore muscles and restless nights wondering how to solve a problem. Such an undertaking separated the men from the boys and the dedicated from the dreamers. Engine 8 is now 90% restored and special thanks is given to those who gave of their time and knowledge, even if for an hour or two, to Jim and the faithful volunteers.

Special Thanks...

To Road Foreman of Engines Errol Spangler for cleaning and adjusting the brushes on the turbo generator (let there be light). He also worked as passenger brakeman during our steam days and is a member of the illustrious "Santa Fe Caboose Boys", very special friends of #8 who are always ready to lend a hand. We thank them all.

Chief Electrician Mike Attama for welding and applying builder's plate attachment bolts to the engine smokebox.

Director John Marvin for his dedicated all-around restoration work that has added up to many hours. He is the senior steam fireman and noted buddy of #8.

Engineer Steve Jackson for his relief firing duties on our steam days. He also donated two classification lights which are now proudly displayed on #8's front end on running days. Two green flags above the lights making an impressive shot for photographers. Steve was also in on the "dirty work" of restoration.

Supt. of Pipes, Valves and Fittings Gordon Wollesen for helping with the engine air brake system and tender draft gear. He has been a conductor on our steam days.

Road Foreman of Engines Iver Gregory for the excellent job he did cutting and assembling the small windows for above the boiler head and the doors for access to the engine running boards. Jim Boynton painted and finished them to match the cab interior roof and they will be installed by John Marvin.

Supt. Hank Stiles for assisting with air brake problems and on the tender draft gear. He also is a conductor on the steam days and in training as fireman on #8.

V.P. Robert Rohwer, Jr. and Trainmaster John Rohwer for traveling many miles to help in the operation of #8. They are always glad to handle the paint brushes and the "dirty work".

Engineer Norman Holmes for his assistance on the tender draft gear. Museum Asst. Gen. Mgr. Hap Manitt for acquiring materials and tools for our work. He is known as a professional "conniver" and A-1 "Go-Fer".

The ladies of the project will now take a bow... V.P. Charlene Marvin and

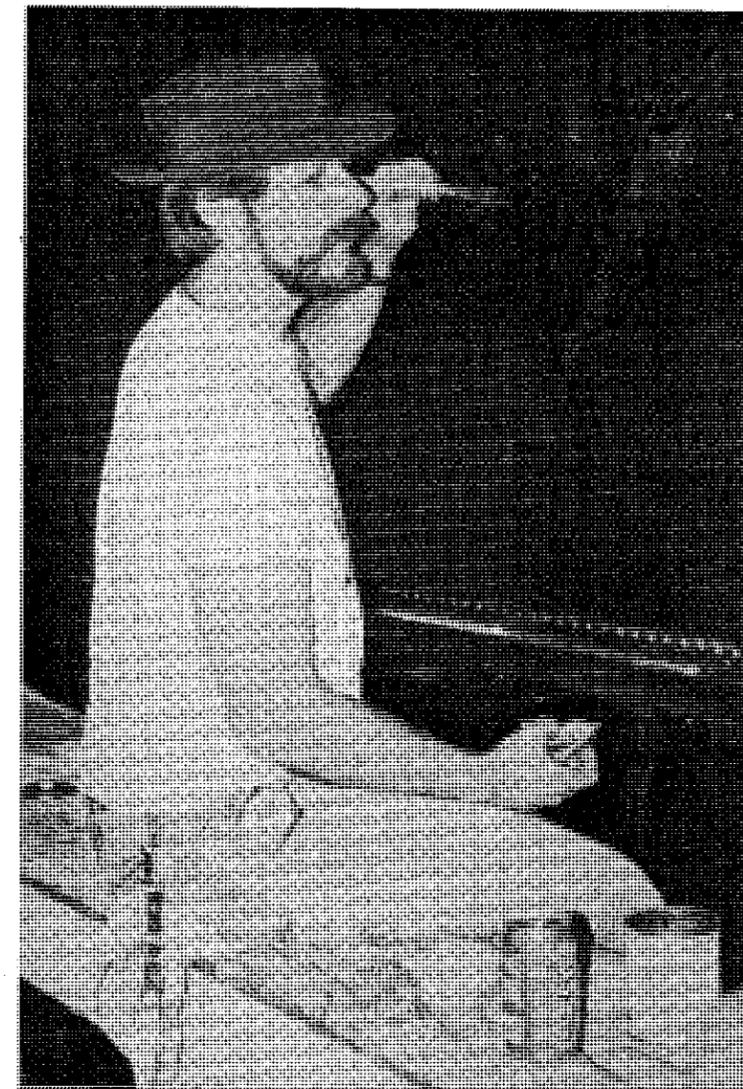
It's Done

Kevin Bunker, shown here at work, has now completed the lettering and logo on Engine 8's tender and cab. The work was started last year, but due to heavy work schedules, Kevin was not able to return until this June 16 to finish the outstanding job. Kevin was long associated with the Sacramento State Railroad Museum as a researcher on authentic lettering and painting of historical railroad equipment. We are very appreciative of the effort and time he donated to our little railroad. Our engine now carries authentic Baldwin-type lettering and a colorful green and gold logo.

Kevin is a Feather River Short Line V.P., Director of Research and Art and is a locomotive fireman trainee on #8.

Kevin's talents are also displayed on T-shirts he designs and the authentic detailing and painting of model engines. We appreciate his sharing of talents with us.

Thank you, Kevin, for a job well done!



Short Line, continued

Director-Sec. Tres. Betty Boynton. Charlene has sacrificed many fingernails while scraping paint on the caboose in preparation for the big make-over, and is responsible for the comfortable cushion on the engineer's seat of #8. Your author is mastering the technique of engine washing and wiping and the art of transferring the grease and grime from the running gear to her clothes and bringing it home. *All for the love of #8!*

The thrills and rewards of five years of labor were realized in the three running week-ends of the Feather River Short Line 8. The engine is beautiful and really knows how to "strut her stuff". On May 13, 1989, in spite of bad weather, she was out in all her glory. When the storm cleared, it presented impressive lighting for the cameras of Nils Huxtable of "Steam Scenes" in Vancouver, B.C. The steam hung in the cool air and Jim Boynton made many impressive steam runs, pulling freight cars of the FRRS. There is a possibility that #8 will be in one of the "Steam Scenes" calendars in 1990! The Short Line also operated on May 14.

With improved weather, the June 10-11 and July 8-10 week-ends attracted many steam lovers. Engine 8 did not let them down, she performed in the Hi-Class manner she is known for. The years of restoration were hard on the little "puffer" too, but she is now enjoying the reward of patience along with her good friends who cared.

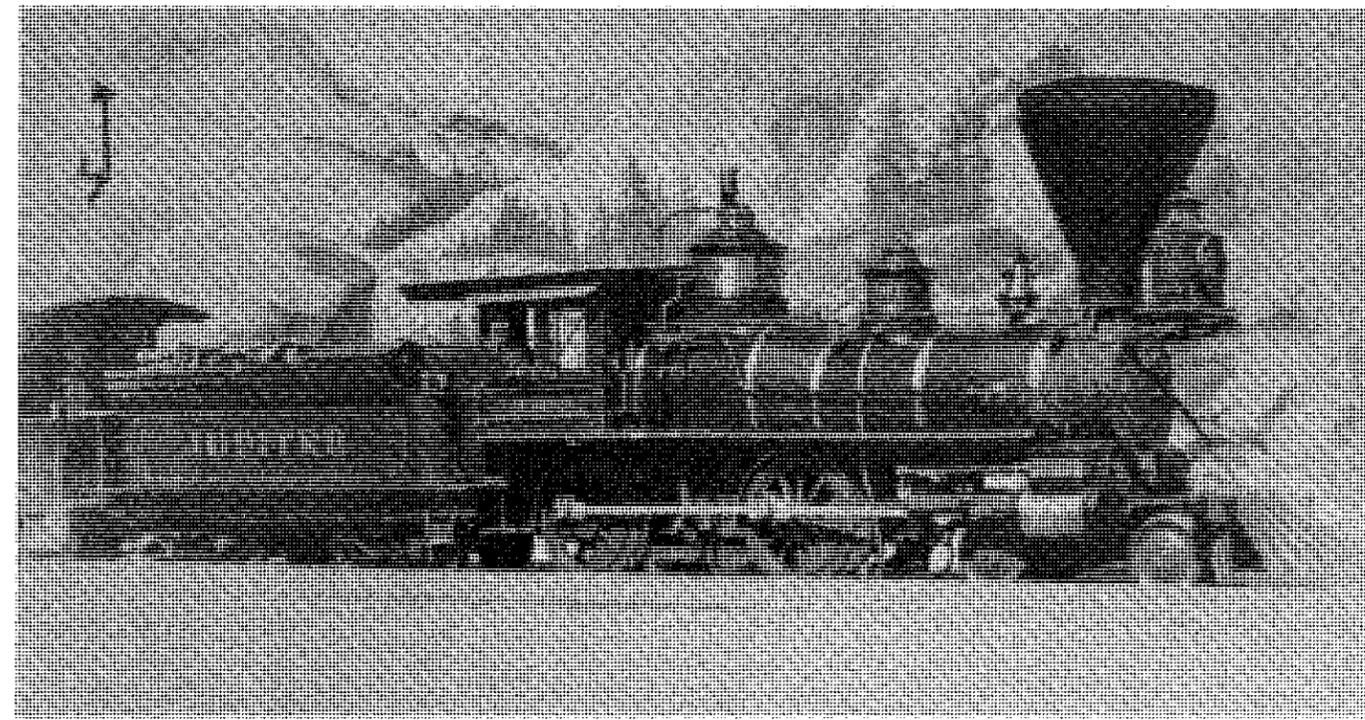
Feather River Short Line's Gen. Mg. Jim Boynton has been selected to be Grand Marshall of the Feather River Railroad Days Parade in Portola on Aug. 26, 1989. Parade Committee member Romaine Miller stated the honor was long overdue for Jim's lifetime of devotion to railroading as a career and for the preservation of steam railroading history in print and photographs since 1932. His labor of love in restoring and operating his beloved Engine 8 represents a true "train lover". Ask #8, she knows!

Railroading at the Fair

By Ted Wurm

Both San Francisco and New York City featured great World Fairs just before the start of what the British refer to as the "1939-45 War" (WW 2). San Francisco's fair was to celebrate completion of the Bay Area's two great bridges. The affair in New York had tremendous national publicity and major railroad participation. Our fair was on man-made Treasure Island in the middle of San Francisco Bay; it was a disappointment to local railroad enthusiasts.

Railroad and other transportation displays (the largest, a new Greyhound bus) were in the Vacationland Building and consisted mainly of films, photos, dioramas, and posters. Three featured operating model railroads: Union Pacific, Southern Pacific, and the California-Nevada Railroad Historical Society. Static displays were offered by WP, Santa Fe, D&RGW, C&NW, PRR, and the Pullman Company. The only real railroad operation at the Golden Gate International Exposition, as it turned out, was narrow gauge—two trains running on the 400-foot stage of "Cavalcade of the Golden West." This was a 75-minute presentation of four centuries of western U.S. history (written by Art Linkletter).



Engineer Dan McKellips sits proudly on *Jupiter*, portrayed by Nevada Central engine 5 on the huge 400-foot stage of the Cavalcade production. Dan liked to "lay on the whistle" when the engines were fired up to let everyone know all over Treasure Island that the engines were ready to go.

Dan McKellips—J.E. Boynton collection

A major part of "Cavalcade" showed completion of the First Transcontinental Railroad. Locomotives representing Central Pacific 4-4-0 *Jupiter* and Union Pacific No. 119 actually steamed onto center stage three times a day, whistles blowing, steam billowing overhead, audience (it sometimes filled the 7,000 seats) jumping up and cheering. Entering from the left was a beautiful 4-4-0 playing the role of Central Pacific *Jupiter*. From the right wings softly emerged a polished 2-6-0 in the role of UP 119. Both were actually three-foot-gauge engines in their 60's, that only two years earlier had been stuck away in a dusty engine shed in central Nevada—relics of the abandoned Nevada Central Railroad.

Southern Pacific had approached the Virginia & Truckee Railroad in 1938 inquiring about the availability of engines 11 and 18 for use at the forthcoming fair on Treasure Island. They were quoted \$1,750 each and nothing further was mentioned, probably because Gilbert Kneiss of the Railway & Locomotive Historical Society had acquired the two Nevada Central locos for the Society and presumably offered them to the Fair officials in return for restoration to good operating condition. The relatively small Nevada locos, accompanied by two ancient coaches, arrived at Oakland in gondola cars and were soon

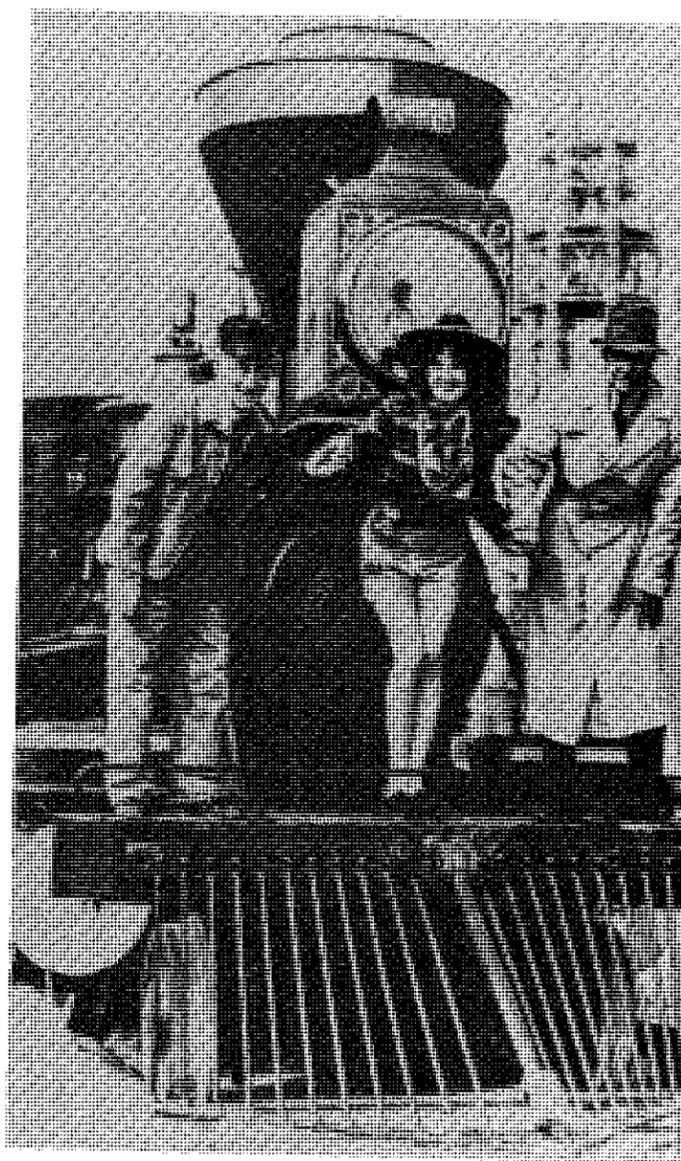
barged over to Treasure Island to be made ready for the Fair's opening day on February 18, 1939. Both locomotives had interesting historical backgrounds and were destined for iron horse immortality.

Nevada Central No. 5, built by Baldwin in 1876, had started life as *Sonoma* No. 12 of North Pacific Coast (NPC) Railway, running from Sausalito to the redwood-lumbering area of Duncan's Mills in California. Only three years later, in one of NPC's financial

depressions, *Sonoma* was sold to the Nevada Central (NC) and spent the next half century on the 87-mile semi-desert run between Battle Mountain and Austin. Acting for UP 119 at the Fair was former Nevada Central No. 6, an 1879 Baldwin, which had a "boomer" career before joining NC in 1924. It started life as Utah & Northern 13, was soon sold to Nevada's Golconda & Adelaide. In 1914 the little Mogul was sold again, this time to nearby Nevada Short Line, where it worked for six years as No. 1 before going over to NC.

The two old desert veterans, being products of the appropriate era, fittingly portrayed their "First Transcontinental" roles and had earned accolades for their steaming performances on the massive stage at Treasure Island. The following decades certainly detracted from the World's Fair glory however, as the engines were shunted about the Eastbay area from one temporary storage place to another. In view of the fact, however, that *any* place for ancient steam locomotives was extremely difficult to find for the next 30 years, we are fortunate that these two were kept through the hard work of Gilbert Kneiss and fellow members of the Pacific Coast Chapter, R&LHS.

During the war years and up to about 1947 *Jupiter* and 119 were placed with their old coaches and two former Virginia & Truckee engines (*J.W. Bowker* and *Empire*) on temporary tracks behind eight-foot-high board fencing on a vacant lot across from SP's Berkeley station. There was no roof, but at least vandals were kept out and wild blackberry vines almost covered the old Baldwin beauties. Gilmore Steel Co. on the Oakland Estuary offered a sanctuary for a couple of years that were notable for heavy vandalism. When Gil Kneiss came into the hierarchy at Western Pacific, the World's Fair engines and cars were placed on WP flatcars and stored inside WP's Oakland roundhouse. In October, 1964, they had to be moved again, this time to the Bay Bridge maintenance building (former Bridge Railway maintenance) near the bridge toll booths. There they were secure and sheltered on a temporary center track, between the pits, until the welcome call came to move them in 1977 to the budding California State Railroad Museum at Sacramento, which opened in May 1981. Former NC No. 5 as NPC *Sonoma* is lavishly displayed on the museum's main floor with a passenger train of 1880's style while No. 6, the 2-6-0, is displayed up above with its narrow-gauge freight train on Nevada Short Line rails.



Shown in a publicity photo for the Fair in 1938 is Virginia and Truckee R.R. 21 (*J.W. Bowker*). Pictured left to right are Dan McKellips, engineer; Marie Dowell, theme girl; and Gilbert Kneiss, who became V.P.-Public Relations for the Western Pacific R.R. Gilbert was a well-known railroad expert and Dan was the first #1 engineer on the Western Pacific as well as a vice-president of the Short Line. The unfinished Tower of the Sun is in the background.

James E. Boynton collection

This article would not have been complete without assistance from Fred A. Stindt, President Emeritus, Railway & Locomotive Historical Society.



SHORT LINE CINDERELLA

THE SAGA of ENGINE 8 and the FEATHER RIVER SHORT LINE

By Betty Boynton

PART 3



Engine 8...The Star

On December 24, 1958, the Rails received a Christmas present, complete with a gold seal and the signature of the Secretary of State Frank M. Jordan. The Feather River Short Line was now officially registered with the State of California as a non-profit organization. The Rails were really "on a roll" and many ambitious plans kept the energetic group in high gear. Richard Reynolds of the Western Pacific Passenger Department (an official of the Bay Area Electric R.R. Association) was interested in the mountain setup and held a meeting at the W.P. Building in San Francisco. Members of leading railroad clubs were there, and it was discussed that a "friendly merger" might be arranged with the Short Line. This would enable the bay area groups to bring up some of their equipment and operate along with the Short Line steam engine. A committee was formed to visit Quincy and many plans surfaced. Among them was to get the Quincy Junction depot (which was up for grabs) and bring it into town for a steam museum. On January 24, 1959, Mr. Reynolds and eleven representatives of the governing boards of active rail clubs in the bay area arrived at Quincy Junction on the W.P. Budd car. After looking things over, an afternoon of riding the Quincy R.R. across the American Valley was planned. But the compressor of the engine developed a crack and a hasty replacement from Engine 8 failed to work. Nothing was left but the diesel to entertain the visitors. At a meeting that night, it was decided that perhaps the long distances involved in bringing up the bay area equipment would present too many problems as well as expense. The plans were "put on a siding" for future consideration that never came about. Undaunted, the Rails moved on... Engine 8 was going to make a movie!

For many months the Rails had been in contact with Warner Bros. and a satisfactory contract was signed with Production Manager John Veitch for filming in late April and early May. The picture was *Guns of the Timberland* and was the classic saga of the wars between the early loggers and the ranchers. It would star Alan Ladd (the logger) and Jeanne

Crane (the lovely lady rancher). Alan Ladd, however, was very dissatisfied with the script and insisted that a young radio-TV writer from Texas named Aaron Spelling be brought in for consultation. Although the two had never met, Aaron Spelling was making a name for himself for his excellent writing. Upon meeting, they became fast friends, a bond that lasted all of Alan Ladd's lifetime. Aaron Spelling had never considered being a producer, but Alan Ladd persuaded him to produce this picture, thus launching him on a career as one of Hollywood's most successful producers. The script was written by Aaron Spelling and Joseph Petracca and directed by Robert D. Webb. Plumas County was chosen because it could provide every location required, the beautiful ranch country of Sierra Valley, mountains thickly covered with timber and most important, a genuine logging engine ready to go. The contract stipulated that the equipment be repainted, turned around at Keddie and the services of Solon Luzzadder be available for the duration of the contract. Solon became the typical stage mother and rounded up all available Rails to help prepare #8 for her big screen debut.

On a glistening April day, with the American Valley wall-to-wall green with lush new grass and the surrounding snow-capped mountains looking down like inquisitive white-haired grandmothers, Solon put an eager and willing Engine 8 through her paces. Short Line members, W.P. engineers Jim Boynton and Robert Larson were along to make sure all was in good order before the arrival of the film crew. Befitting the period, loads of wood were stacked on the tender and new lettering was on the tender side. Jim is now General Manager and project foreman of the Short Line and Robert is a U.P. engineer. They remain the only two engineers qualified by Solon Luzzadder to operate #8. Solon made many more "fun runs" before he was satisfied that #8 was A-1.

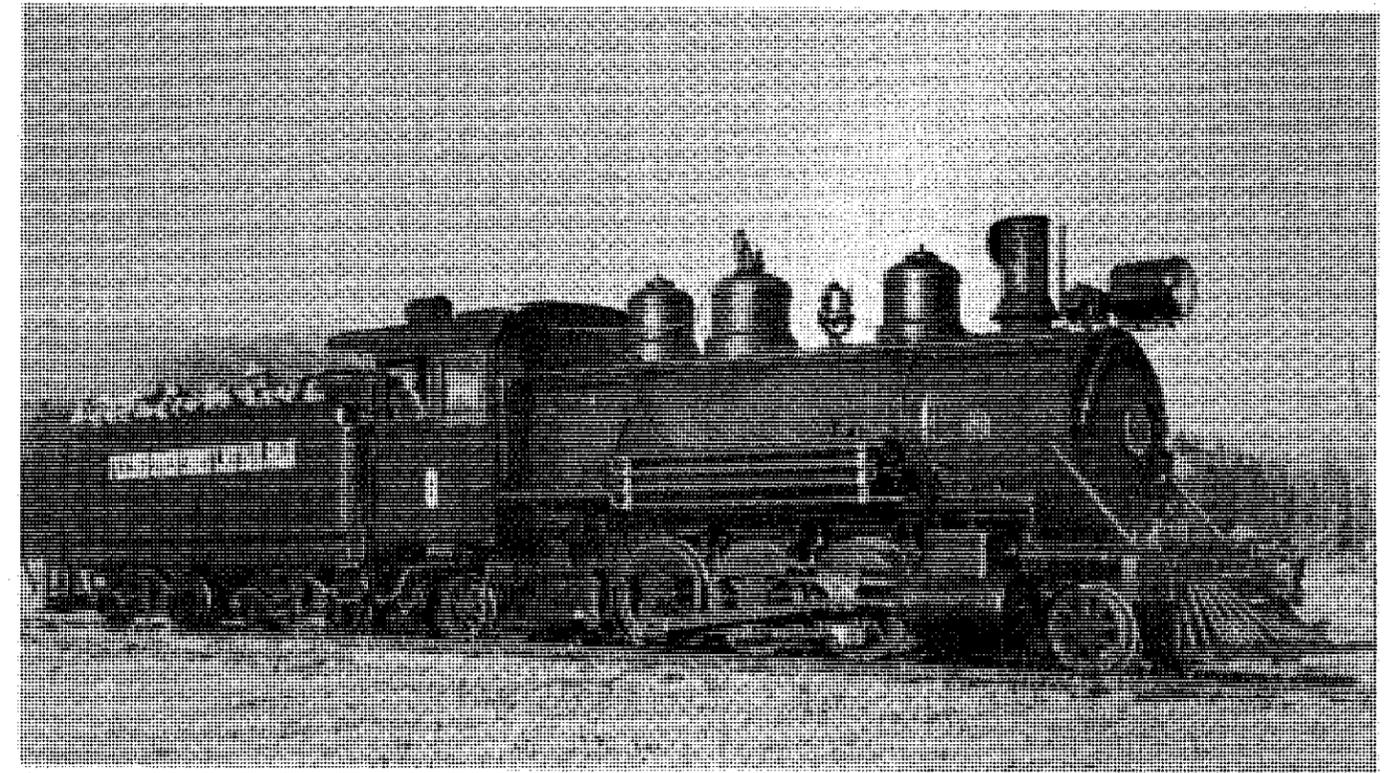
On April 26, 1959, the advance crew of 145 people arrived in Quincy in trucks and vans loaded with film making paraphernalia. The crew was lodged in every motel, hotel and private room in town. Alan Ladd stayed at the Ranchito Motel and Jeanne Crane was

at the Quincy Hotel. Aaron Spelling and his actress wife, Caroline Jones, visited briefly. An extra telephone operator was put on to handle the increase of calls flooding the Quincy switchboard. The cast included: Noah Beery, Jr., Gilbert Roland, Lyle Bettger, Regis Toomey, and was the film debut of Alan Ladd's daughter Alana, and teen-age singing idol, Frankie Avalon as the young lovers. On one occasion, a group of Quincy school girls chased Frankie Avalon down Main St. until he finally found refuge in the Ayooob Department Store.

On May 1, bad weather kept the filming indoors, so the Quincy Grange Hall was converted into a sheriff's office and no production time was lost. On May 2, shooting took place at the Capitol club on Main St., one of the oldest bars in the county. It had a massive backbar that had been brought around the Horn, presenting the perfect setting for the lusty loggers to live it up and even enjoy a brawl or two. A large black curtain had been draped over the building front and many a curious resident who peeked inside was

invited in to enjoy the free lunch. On May 4, filming resumed at Blairsden where the depot was renamed "Deepwell". The logging and fire scenes were filmed in this area. Costumed extras were on hand from Quincy and Engine 8 was very much in evidence. While resting in a tent between scenes, Alan Ladd became ill and a doctor and ambulance were dispatched from Portola. Although the star was able to resume work, the illness was never publicly discussed. The balance of the work was done at Little Last Chance Canyon and the Guidici Ranch in Sierra Valley, some of the most beautiful country in eastern Plumas County. It was a reluctant crew that had to leave when their work was done and many compliments were expressed about the area and the hospitality. A parting "gift" from Quincy doctors for the crew was a flu shot for everyone to ward off any "mountain spring flu".

Engine 8 did the Feather River Short Line proud with her stellar performance. She opened the picture racing through the picturesque Plumas County tim-



Short Line Engineer Jim Boynton runs Engine 8 across the American Valley in April, 1959 making test runs before the movie crew arrived on April 26. The wood stacked on the tender was merely for effect. #8 was originally a wood burner but was later converted to burn oil fuel.

Robert R. Larson photo

ber country on Western Pacific tracks hauling two open cars full of happy loggers lustily singing "Cry Timber". The song was written by Sy Miller. What a sight to see #8 steaming across the awesome Clio Bridge, smoke drifting into the brilliant blue May sky, every part working to perfection. Under these circumstances, no wonder the jolly loggers kept singing! Engine 8 closed the picture slowly pulling out of "Deepwell" with Alan Ladd and Jeanne Crane, their differences on hold, embracing in one of the open cars. Pretending not to notice, the faithful caboose followed as the little train faded down the track. The movie was distributed in 1960 under the Jaguar label.

Although the picture never won any awards (except one for longevity), it can still be seen on television. Much good will and financial benefits were realized by the community and the Short Line. Many of the movie crew returned later with their families on vacation and four bought property in the area. Aaron Spelling and Alan Ladd requested memberships in the Short Line and became vice-presidents on May 4, 1959.

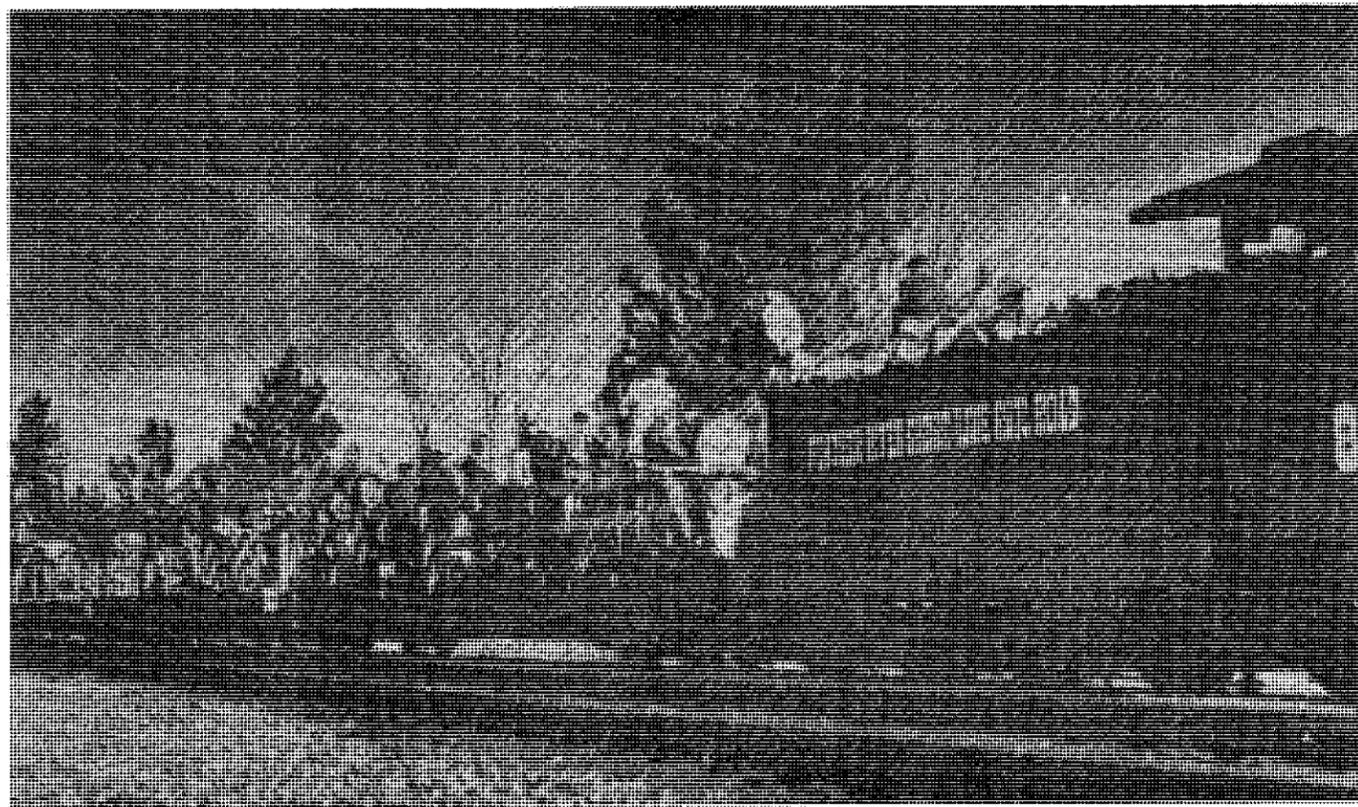
The bill to Warner Bros. from the Short Line read:

Minimum Charge	\$750.00
Painting Equip.	115.00
Turning engine at Keddie	127.50
Wages to Solon Luzzadder (40 hrs. at \$3.50 per hour)	140.00
Total \$1,132.50	

The production crew also left a full tender of oil for the engine. Payment of this bill allowed the Rails to pay a bill for \$594.31 to the Feather River Lumber Co. for parts and various items they had purchased. . . and still put money in the treasury.

If #8 felt wistful when the excitement of "stardom" was over, the Rails did not let her sit idle for long. There was a big Bay Area excursion scheduled for Memorial Day and many more plans were on the burner. *And the Rails moved on!*

"Into the Financial World" next.



On May 4, 1959, the *Guns of the Timberland* film crew and Engine 8 headed for the Blairsdon area to film outdoor scenes for the production.

FRSL photo

Mainline to Valhalla — Part 1

By James E. Boynton

Valhalla. Indian Valley. What do these mythical names have in common? Simply stated, Valhalla was the great meeting place where Norseman Odin feasted the souls of heroes who bravely fell in battle. Indian Valley is the last resting place for railroaders who braved the trials and tribulations of the steel rails. Their last resting place was described in a romantic ode of yore—*Indian Valley*.

This fabulous valley was situated high in the mountains surrounded by peaks of rock candy topped with whipped cream. The verdant valley floor was dotted with soda pop springs, so goes the story! This mystic landscape was a fitting environment for the "great roundhouse in the sky". Albeit, Indian Valley originally existed in song and myth—a real honest-to-goodness Indian Valley was traversed by a gone-forever steel-trussed Indian Valley R.R.

The railroad existed in Plumas County of California and it ran between copper mines at Engles to an interchange connection with mainline Western Pacific R.R. at Paxton. It all started in the 1850's when gold fever reached epidemic proportions in California, spawned by John Marshall's surprisingly colorful millrace at Coloma. Fanning out from the Sierra foothills, prospectors surmised that they would discover the elusive Mother Lode by ascending to the high mountain valleys. Prospectors reconnoitering in the Lights! Creek area near Taylorville were dismayed at the meager gold discoveries found in the region (only about \$500,000) and knew that the elusive Lode was elsewhere. Unlike Midas, not everything was to turn to gold at the miners' touch. As if the gods were to mitigate their abysmal prospects, reward from heaven arrived with the discovery of rich copper ore known as Bornite² in the mid-1870's.

Henry Engles of the Pacific Brass & Lock Foundry in San Francisco had sent his two young sons, Henry Jr. and Bill looking for copper. In

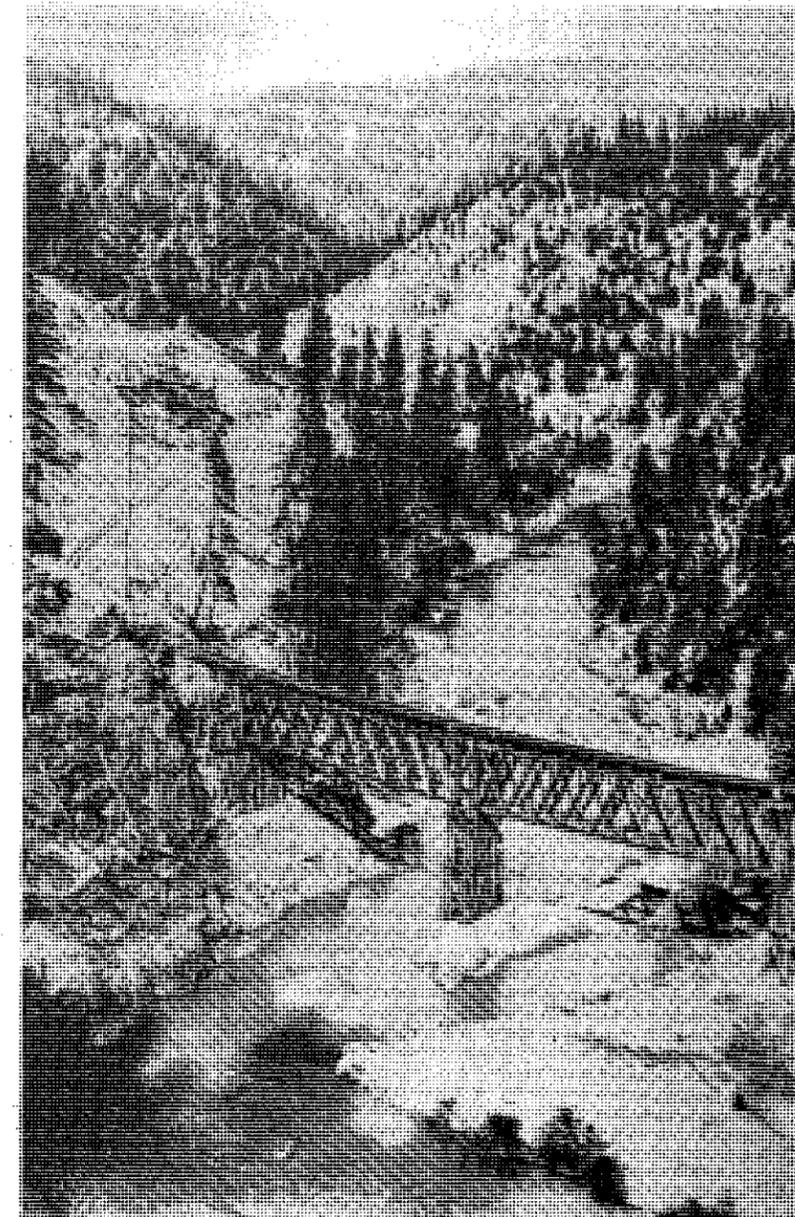
1878, the boys hit their desired prospect in the North Arm of Indian Valley in the Lights Creek Canyon. An elated Henry Sr. was now unshackled from the terrible expense of purchasing copper from the Lake Superior mines. The location was named Engles³ and the first ore mined was so rich assayists predicted that the gold and silver associated with the copper would pay all operating costs. Transporting the ore to smelters became a management headache because of the rough terrain of this remote area. The ore was originally handled in rudimentary wagons towed by primitive caterpillar tractors built by Holt Manufacturing Co. The sacked ores were transferred to Mack trucks at a favorable intermediate point and then taken for transfer to the Western Pacific at Keddie. In an obvious attempt to simplify the logistics the company decided in 1911 to build a 500 ton blast furnace at Engles.

U.S. Forest Service and other interested government agencies prudently refused to grant permission to operate the smelter because of the terrible damage such an operation would have on the environment. Memories of devastated forests and copperiferous poisoned streams were hard to forget. Bad images were burned into the brains of those who had visited Kennett, California and other smelter operations. The poisonous gasses had completely denuded the local mountains and the streams ran green with lifeless slop.

Realizing a lost battle, Engles Copper Mining Co. reorganized in 1914 and opted for the floatation cell method of concentrating their ores. This brilliant burst of technology paved the way for a more effective means of transport by railroad.

The spectre of a European war was on the horizon and management was in a most propitious position to capitalize on war's insatiable appetite for copper and brass. The copper hauling railroad was to become a total necessity and not by any stretch of the imagination a luxury.

The tunnels and adits of the mine at Engles were located high on the side of Lights Canyon. This placed the whole operation in a most advantageous position; able to utilize the forces of gravity in the



Winter overview from Western Pacific mainline showing Indian Valley R.R. open deck double span Howe Truss bridge just east of Paxton. View looks down stream (E. Branch—No. Fk. Feather River) and Paxton water tank can be seen on W.P. at upper left of photo. Indian Valley facility is just around the curve at the top of the grade in this photo taken in Jan. 1916.

Photo—J.E. Boynton coll.

movement of the heavy ores. The mining buildings were fastened to the steep rocky side of Lights Canyon with heavy steel reinforced foundations that still exist today. Basically the processing of the ore started in the upper elevation at a ball mill where ore was rolled in huge metal cylinders with countless steel balls about four inches in diameter. This method eliminated

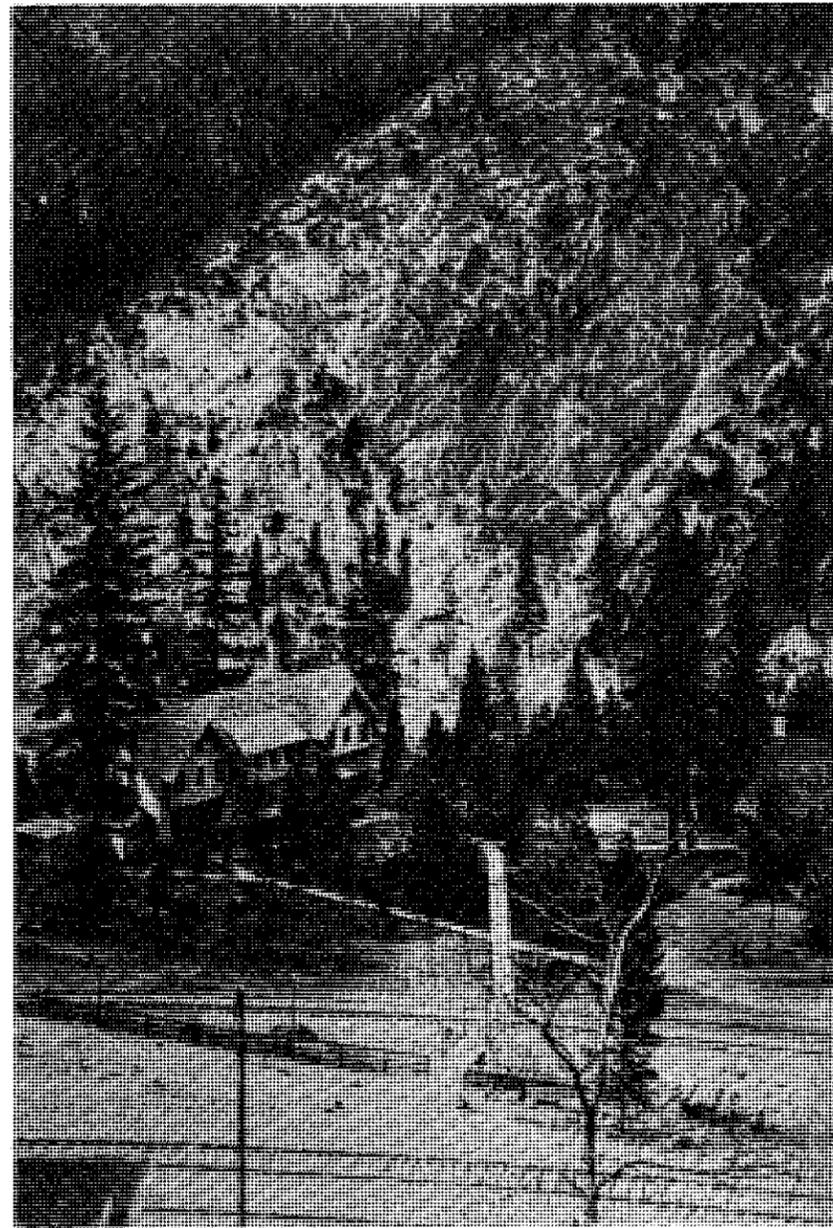
the antdated process of pulverizing ores in a stamp mill. The ball mill effectively powdered the ore and gravity fed it into a lower level where it was mixed with pine oil and agitated in floatation cells. The metals in the slurry had an affinity for the pine oil and floated to the surface where it was skimmed off. The worthless waste rock was removed from the cell as the deposit accumulated. The concentrated ore was then separated from the oil and sacked. Gravity aided in sending the heavy concentrates to a warehouse at the bottom of the canyon. This sophisticated operation was so efficient that it out produced their present method of transport, so in late September 1915 the copper company ran it's preliminary survey for a railroad.

In conversations with Indian Valley R.R. Engineer Solon Luzzadder, I was told that he happened to be having lunch at Engles when Gen. Manager Elmer E. Paxton of the copper company entered the cook house. He was in the company of several high ranking W.P. officers and they immediately became involved in serious discussion concerning the intended railroad. Embarrassed, Solon decided to quietly retreat but was asked by the planners to stay and listen to their contemplations. Little did he know that he was getting in on the "ground floor" of a planned railroad that would eventually employ him as one of their locomotive engineers.

The original plan was to build the Indian Valley R.R. along the east side of Indian Creek on the present route of Western Pacific's Northern California Extension (highline) to Keddie. The prospect of drilling five tunnels would prove too costly so this plan was immediately dismissed. The consortium then talked over a plan to meet Western Pacific tracks at Twain, about eight miles west of Paxton. This connection would have involved a switch-back and a grade of about 3% to climb the canyon wall up to W.P. tracks.

After many sessions, the planners decided to make the interchange at Paxton, high on the canyon side west of Keddie. This plan would involve a huge bridge over the East Branch of the North Fork, Feather River just west of the confluence of Spanish and Indian Creeks. A very steep grade of about 6% would be necessary to carry the rails up into Paxton. Undaunted, even in the face of such difficult terrain, engineers reluctantly decided on this route.

The planned bridge would be a double span, open deck Howe Truss built on a curve of wooden beam construction. Much trestle work was necessary to complete the north end of the span to a point near the first passing track known as Long Siding. Emmett Gilmore, a Western Pacific locomotive fireman who was firing for me on an Oakland yard "goat", told me how his father C.P. Gilmore built the bridge. The project was indeed awesome. Huge supplies of timbers and materials came via Western Pacific and were lowered down the 6% to the precipitous edge of the canyon high above the river. Here the concrete abutment for the tremendous bridge was established to anchor the south end of the structure. The massive concrete footings supporting the center portions of the Howe Truss are still visible to this day standing forlornly among the bleached boul-



Indian Valley R.R. owned hotel at Paxton, CA about 1920. Once called Rainbow's End because of multicolored rock formation in background. Near tracks are Western Pacific and track crossed by walkway is Indian Valley R.R. track climbing the hillside to interchange just west of W.P. depot. Corner of enginehouse can be seen at lower right of photo and present highway 70 was cut into base of cliff in background on other side of river. The lodge still exists today although somewhat altered by fire damage in later years.

Guy L. Dunscomb collection.

ders.

Gilmore's work as Supervisor of Bridges and Buildings for W.P. certainly qualified him for this demanding project and the bridge survived with minimum maintenance until the end of the railroad. Engineer Luzzadder often told me that in the last years of operation the little 2-8-0 locomotives set up a rolling motion on the bridge and it made a normally uninteresting trip very exciting. Timidness was certainly not a requirement in this operational procedure that called for a "run like hell" trip over the bridge attacking the 6% and the sharp curve just off the south abutment. Long Siding was established just north of the Howe Truss so that trains originating at Engles could be broken into cuts short enough to pull up the heavy grade without stalling. Doubling the hill was a planned operation and it sometimes worked into a triple.

Someone, completely disregarding the principles of good railroad practice, suggested that the Indian Valley R.R. be built to narrow gauge. Willis J. Walker of the lumber empire at Westwood had planned to connect with the Indian Valley at Forgay Point, a few miles north of Crescent Mills. His standard gauge Northern California railroad was to roughly follow the course of the present Western Pacific "Highline" from Westwood to Forgay

Point. The ludicrous narrow gauge plan was dispensed of immediately because any sane railroad planner could see the absurdity in building a narrow gauge railroad with standard gauge interchange at two points. The reloading of the extremely heavy commodities into standard gauge cars was based upon faulty judgement and the operation of the newly planned railroad would become and exercise in futility.

The Forgay Point connection would give the Walkers the long dreamed of interchange with Western Pacific via the Indian Valley R.R. The freight rates imposed on their finished lumber traffic were becoming oppressive and Southern Pacific's connection via Susanville amounted to a transportation monopoly. Western Pacific's building of the N.C.E. resulted in the death of the Northern California R.R. and new life into moderating rate structures. Walker could now interchange directly with the new W.P. line at Red River Jct. and Westwood proper.

¹ Ephraim Light, pioneer settler

² Bornite CU5 Fe S4

³ Engles Copper Mining Company, incorporated in 1906



Englemine in Lights Creek Canyon located in the North Arm of Indian Valley. Railroad depot is seen in the foreground as train from Paxton arrives at lower right. Employees working the upper reaches of the mill must have felt they did a days work just climbing the hundreds of steps on the stairway to the plant. The pipe on the falsework crossing the railroad carried water to the company dormitory built on the west side of the canyon. The only remains left of this once busy enterprise are concrete foundations and twisted steel beams of the headworks. Photo ca. 1920. J.E. Baynton collection.

Special Notice

In answer to many inquiries, the donation box for the Short Line, located in the cab of Engine 8, is the only receptacle available to us at the museum. The restoration work is made possible by donations in the box, by mail and from our membership fees. Starting in the next issue of STEAM FOREVER, we will acknowledge the members whose generosity is helping to preserve our little railroad.

Roundhouse in the Sky

We sadly report the passing of Short Line member, Treasurer Tom Lilley. He was also a member of the "Santa Fe Caboose Boys" group and his assistance and friendship will be greatly missed.

Other Information

- We recommend the special tours of the coal mine railroads now being conducted under the direction of Traci Parent at the Black Diamond Museum located near Pittsburg and Antioch. Rare photographs of the operations from Short Line V.P. Dan McKellips-Gen. Mgr. Jim Boynton's collection are featured. The photos were enlarged by Jim.
- Executive V.P. Don McBride and Mrs. McBride have presented the Short Line with many rare and valuable works of railroad art for the proposed museum in our future plans. They have made many cash donations that have helped our work. They are the owners of the Eilley-Orum Antique Shop and The Bucket of Blood Saloon in Virginia City, NV. *Thank you.*
- Jim Boynton and Guy Dunscomb have been close friends for over fifty years. It is with much pride we announce that Guy's son Don, his partner in Guy L. Dunscomb & Son, Railroad Publications, has now joined the staff of STEAM FOREVER. With his expert assistance, we will continue to publish a high-quality, informative newsletter for our valued members. Don is now working with Guy on a new publication, "Southern Pacific Steam Pictorial", featuring 11 x 17 photographs. The Dunscomb name is held in the highest esteem in the railroad world, so we will certainly keep you posted on the progress of the publication.

FEATHER RIVER SHORT LINE RAILROAD

Official Membership Application

(Please Print)

NAME _____

ADDRESS _____

CITY, STATE & ZIP _____

TITLE REQUESTED _____

YOUR PRESENT EMPLOYMENT _____

Lifetime membership \$15.00. Please mail to:

Betty J. Boynton Sec. Treasurer, Feather River Short Line R.R., 5484 Chandler Road, Quincy, CA 95971

REFERENCE 5

AGENCY	CONTACT	DATE	RESPONSE
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, 3443 ROUTER RD SACRAMENTO, CA 95827	ED CRAWFORD	10-3-89	Knew of site - Did inspection
REGIONAL WATER QUALITY CONTROL BOARD Redding Branch 100 East Cypress Ave Redding, CA 96002	George Day Jim Pidri	9/26/89	No files found
Dept of Health Services TOXIC SUBSTANCE CONTROL 4250 POWER INN RD SACRAMENTO CA 95826	Permit file Room	9-8-89	No files found
DHS TOXIC SUBSTANCE CONTROL PROGRAM 93 SCRIPPS DR SACRAMENTO CA	Site Mitigation file Room Richard Hill	9-8-89	No files found
DHS TOXIC SUBSTANCE CONTROL PROGRAM 4410 PELERIN RD SACRAMENTO	Jim Pafarano	9-8-89	No information
CALIF. STATE DEPT. FISH & GAME 701 NIMBUS RD RANCHO CORDOVA, CA 95670	John Nelson	10-6-89	No files found
CALIF STATE DEPT FISH & GAME Locust Redding CA	Harry Reetzinwald	9-27-89	Files in Sac. Did not investigate site during his assignment at Plumas
Plumas County Environmental Health Dept Quincy, CA 95971	Bill Crigler		Identified site on initial contact with Rural County Survey Staff
US Forest Service Plumas National Forest Quincy, CA 95971 263-2050	Clay Clifton hydrologist	7/5/90	Knew of site but said he knew of no problems there. Site is not on their list of priority sites.

REFERENCE 6

MEMO TO FILE

Name: Ed CRAWFORD Date: 11-3-89
 Firm: RWQCP, CENTRAL VALLEY Time: 1:15
 Address: 3443 ROUTIER Road Person Taking or Making ^{initials} Gett: Jane Vasquez
SACRAMENTO, 95827
 Telephone No.: (916) 361-5652

Subject: Plumas County Potential Sites - ENGLE MINE
 Message: I met with Mr Crawford to speak with him about
some possible abandoned sites which he may have inspected
while he was working on Plumas County. We tried to
find files on the sites but all the files have been sent
to the Redding office. The micro fiche files have also been
sent to Redding. Ed mentioned that some of the files
had been destroyed or thrown away.

Ed has been out to the mine in March 1985 & May 86.
He took samples near the tailings which were sluffing
into the creek. The conductivity was less than 250.
The copper was not at highly elevated levels. The sample
results are unavailable but he feels if they had been
high he would have pursued the site with further
ACTION. The OWNER/OPERATORS were Calhoun Co + Nye
Copper Company. Samples analyzed by Dept of Water Resources,
Bryte Lab. The mine had waste discharge requirements at
one time. Ed feels the mine is not a problem because the
water flows right through and doesn't sit on the tailings.
Lights Creek is the drainage affected. Greenville Forest
service may have info. Very large operation.

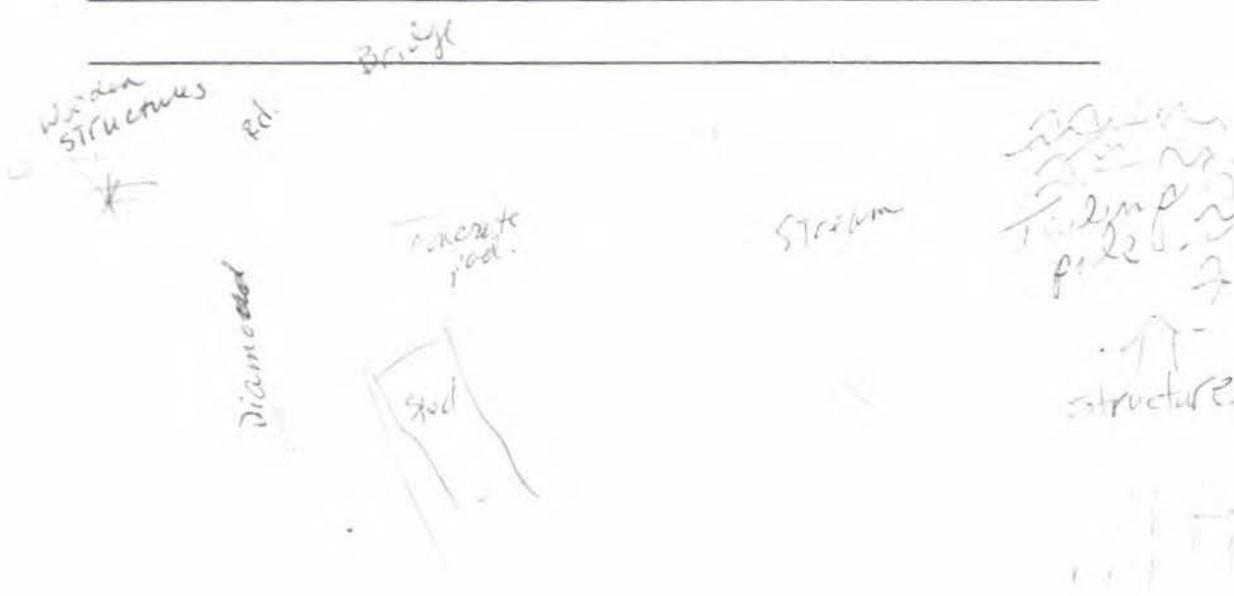
REFERENCE 7

Abandoned Site Program Drive-by Record
Page 2

9. Proximity to sensitive environment/ecosystem Stream along site

10. Map & Comments A graphic site description. In addition to above, draw, describe, and comment on the following: buildings, paving, storage (raw material and products), security, vacant areas, and housekeeping. Also identify streets, landmarks, directions, etc.

Shed with ore samples
Cloudy, under creek



Name: _____

Date: _____



DATE 10/25/89
TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE
 E ESE SE SSE
 S SSW SW WSW
 W WNW NW NNW

WEATHER Clear

SITE ENGEL MINE

PHOTOGRAPHED BY:
J. Vorpagel

SAMPLE ID# (if applicable)

DESCRIPTION: Old foundations of the Engel mine



DATE 10/25/89

TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE

E ESE SE SSE

S SSW SW WSW

W WNW NW NNW

WEATHER Clear

SITE Engel Mine

PHOTOGRAPHED BY:

J. Voronko

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 10/25/89
TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE
E ESE SE SSE
S SSW SW WSW
W WNW NW NNW

WEATHER Partly clear

SITE Angie Mine

PHOTOGRAPHED BY:
J. Vornay

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 10/25/89
TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE
E ESE SE SSE
S SSW SW WSW
W WNW NW NNW

WEATHER P+Clod

SITE Engel Mine

PHOTOGRAPHED BY:
J. Vornaych

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 10/25/89
TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE
E ESE SE SSE
S SSW SW WSW
W WNW NW NNW

WEATHER clear/pt clld

SITE Engel Mine

PHOTOGRAPHED BY:
J. Vorpaugh

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 10/25/89

TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE

E ESE SE SSE

S SSW SW WSW

W WNW NW NNW

WEATHER ENGEL MINE

SITE Engel Mine

PHOTOGRAPHED BY:

J. Vorpayel

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 10/25/89

TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE

E ESE SE SSE

S SSW SW WSW

W WNW NW NNW

WEATHER Clear

SITE ENGEL MINE

PHOTOGRAPHED BY:

J. Vorpayel

SAMPLE ID# (if applicable)

DESCRIPTION: Base of Engel Mine hillside.



DATE 10/25/89
 TIME _____ A.M. (P.M.)
 DIRECTION: N NNE NE ENE
 E ESE SE SSE
 S SSW SW WSW
 W WNW NW NNW

WEATHER _____

SITE ENGEL MINE

PHOTOGRAPHED BY:
J. Vorpapel

SAMPLE ID# (if applicable)

DESCRIPTION: Old foundations



DATE 11/25/89
TIME _____ A.M. (P.M.)
DIRECTION: N NNE NE ENE
 E ESE SE SSE
 S SSW SW WSW
 W WNW NW NNW

WEATHER Clear

SITE ENGEL MINE

PHOTOGRAPHED BY:
J. VORPAGEL

SAMPLE ID# (if applicable)

DESCRIPTION: _____



DATE 11/25/89
TIME _____ A.M. (P.M.)

DIRECTION: N NNE NE ENE
E ESE SE SSE
S SSW SW WSW
W WNW NW NNW

WEATHER Clear

SITE _____

PHOTOGRAPHED BY:
P. Vorpapel

SAMPLE ID# (if applicable)

DESCRIPTION: Downstream from Logel Mine

REFERENCE 8

CALIFORNIA STATE MINING BUREAU

FERRY BUILDING, SAN FRANCISCO

FLETCHER HAMILTON

State Mineralogist

San Francisco

December, 1918

Mines and Mineral Resources

OF

PLUMAS COUNTY

By ERROL MAC BOYLE



CALIFORNIA STATE PRINTING OFFICE
SACRAMENTO

1920

46902

MINES AND MINERALS.

CHROMITE.

Quincy District three prospects were noted which had not produced up to the end of July, 1918.¹

Buttel and Thomas Hughs of Quincy had two locations in Middle Fork of Feather River.

One of Quincy had one undeveloped prospect three miles north of Peak Sawmill.

One of Meadow Valley had two locations which were under R. Young and A. L. Smith of Quincy. Two men had been prospecting late in July, 1918, and hoped to produce a carload.

Chrome Mine.² Owners, McCarty and Hughs, Quincy. A very inaccessible part of the Quincy District on the east side of Middle Fork of Feather River, in Sec. 14, T. 23 N., R. 9 E., northwest of Quincy. The group comprises two claims operated under lease by the Union Chrome Company.

The principal orebody was a lens of solid chromite 6' wide in the center, 80' long; the southern 20' of the orebody had been offset by 5' by a fault. This lens had a northerly strike and was 1/2 mile W. It was said to carry 46% Cr₂O₃.

Developed by an open cut. At the end of July, 1918, had been mined and there was said to be no more in sight.

From this property raises about 3000' in ascending the mountain to the end of a road which, in turn, drops 3000' to Quincy. The distance is of about six miles.

Another chrome property is near Greenville. It is owned by one and Fred Koenig of Greenville and was leased on to E. Vandercook of Oakland, who is reported to have given his lease to the Western Ores Company.

That one car of ore was shipped in 1916 and two cars in 1917, carrying 32% Cr₂O₃. The property was idle in July, 1917.

COPPER.

Copper Mining Company. (See under Gold.)

See under Gold.)

Copper King and Copper Queen Mines. Owners, Wm. H. Bacon, Eureka, Utah.

Sec. 21, T. 26 N., R. 15 E., 13 miles northwest of Doyle (W. P. Ry.) on Squaw Valley Road. Elevation 6300'.

The property contains four claims—the Copper King, Copper Queen, and Pioneer—a total area of 80 acres covering 3000'

Information furnished by U. S. Bureau of Mines.

along the lode. It is situated on the ridge northeast of Last Chance Creek and there is a good stand of pine timber on the property.

The claims are prospects, located in 1914, and only a limited amount of prospecting has been done.

Development work at time of visit in 1913 consisted of a tunnel, 40' long on the Copper Queen and a series of shafts 10' to 20' in depth.

The deposit consists of a quartz vein capped with iron gossan between walls of diorite. It averages 2' in width with a maximum of 4'; strikes northwest, dips vertically and has a proven length on the surface of 3000'. The ore contains chalcopyrite and bornite.

The Golden Horse Shoe group adjoins on the southwest.

Cosmopolitan. (See under Gold.)

El Dorado Group. Owners, Paul Sonognini and L. Dufay, Chilcoat.

Location: Sec. 25, T. 24 N., R. 16 E., 8 miles north of Chilcoat (W. P. Ry.) by road. Elevation 6100'.

This property consists of five claims: the El Dorado No. 1 and No. 2, Bear, Wild Cat and Napoleon, situated on the timbered ridge east of Last Chance Creek. It covers a length along the lode of 3000', and is 70 acres in area.

The property was discovered in 1909 and has been worked off and on since that date. One car of ore, assaying 56% copper, was shipped.

Development work consists of a crosscut tunnel 60' to the vein, cutting it 50' below the outcrop, and a drift easterly for 155'.

The deposit consists of a series of quartz fissure veins in granite. The ore is basic, containing chalcopyrite, bornite, malachite, and azurite. The main vein has a maximum width of 5' with an average of 3', strikes east, and dips 55° N., with a proven length on the surface of 3000'. There is an E.-W. vein 500' south of the main vein with a tunnel on it 25' long, which shows the vein to be 5' wide, and the ore to average 5% to 6% copper.

Equipped with a whim only.

Mohawk mines adjoin on the north.

Engels Mine. Owners, Engels Copper Mining Company, 393 Mills Building, San Francisco; Henry Engels, president; E. E. Paxton, general manager.

Location: Lights Cañon Mining District, Sec. 4 (and others), T. 27 N., R. 11 E., on Indian Valley Railway, 22 miles from Paxton, the junction with the Western Pacific Railway. Elevation 5263'.

Bibliography: U. S. Geol. Survey Bull. 260 and 353. Cal. State Min. Bur. Rept. XII, pages 68-69. Mining and Scientific Press, July 31, 1915. H. W. Turner and A. F. Rogers: A Geologic and Microscopic Study of a Magmatic Copper Sulphide Deposit in Plumas County, Economic Geology, Vol. IX, No. 4, 1914. L. C. Graton and D. H. McLaughlin: Ore Deposition and Enrichment at Engels, California, Economic Geology, Vol. XII, No. 1, January, 1917. Mines Hand Book, 1918.

* The property contains 154 claims, of which 23 are patented. There are two groups, known as Engels and Superior mines, the latter being two and one-half miles south of the Engels mine. The lode is covered for about three miles; there are good outcrops on many of the claims, and the entire area is believed to be well mineralized. In 1917 the company claimed an ore reserve of not less than 3,000,000 tons of ore above the tunnel levels, and total probable reserves of not less than 10,000,000 tons of 2½% copper ore.

Diller mapped the country rock in the vicinity as granodiorite. Rogers describes the rock in which the ore occurs as norite-diorite. He notes granodiorite, some of it rich in biotite, as a differentiation product of the diorite. Graton and McLaughlin describe it as "noritic in character, being composed of plagioclase and slightly subordinate amounts of orthorhombic and monoclinic pyroxenes, and biotite." They observe that it is "probably a basic differentiate of the great Sierra Nevada batholith of granodiorite."

Turner and Rogers described the Engels mine deposit as a magmatic segregation. According to Turner, the ore occurs disseminated through the fresh diorite, in which most of the fractures are post mineral. The metallic oxides and sulphides, as described in their article, appear to have crystallized out from the magma in the same way as the feldspar hornblende, pyroxene and biotite. Quoting Turner, "the ore minerals are largely interstitial between the silicate minerals, and thus later in crystallizing out." In the Superior deposit, on the other hand, the ore minerals are largely deposited along joint planes, and are clearly of secondary origin. These writers, particularly Professor Rogers, came to the conclusion that the development of chalcocite and some covellite by replacement of bornite is the work of ascending, heated alkaline waters.

Graton and McLaughlin, as the result of later studies of the deposit and of many thin sections of the ores, took issue with the above findings. They concluded that:

"1. The ores, instead of being magmatic in the sense that they were initial constituents of the dioritic rock in which they occur, were introduced after the rock had solidified and had suffered notable dynamic and chemical changes, and constitute replacements formed under pneumatolytic and hydrothermal conditions * * *.

"2. Although the possibility of formation of a small amount of chalcocite from ascending solutions can not be absolutely excluded, no satisfactory evidence of chalcocite of replacement origin formed in this way, i. e., by upward secondary enrichment, has come under our observation. Most of the chalcocite and all of the covellite at Engels unquestionably result from replacement of earlier sulphides

through the agency of descending meteoric waters and a competent explanation for all of the chalcocite is to be found in normal downward enrichment." The question of the origin of the rich chalcocite ore is of the utmost importance, as when once determined, it will throw much light on the future of the mine.

The deposit was discovered in the middle '80's by Henry Engels. At that time it was so remote from the railroad that production was nearly out of the question. Nevertheless, some high grade ore is said to have been shipped from the Superior group to Swansea. Assessment work was intelligently done, so that known ore reserves grew larger each year. In 1894 the Engels group, according to the State Mineralogist's Report, comprised three claims, developed by three tunnels, the longest then reported 425' long. In 1912 the same group was proven to a depth of 250', and the copper belt was described as being 1800' wide with a gossan outcrop 300' wide and 2000' long. Over 4000' of development work had been done in five years past on the Engels group, but only about 500' on the Superior group.

In 1911 a 500-ton blast furnace was built, but was never operated on account of government objection to fumes. Early in 1914 the company was reorganized and a minerals separation flotation plant capable of treating a maximum of 225 tons daily, was built at a cost of \$50,000. This plant was put in operation in February, 1915, and gave the mine the distinction of being the first to depend entirely on oil flotation for the recovery of copper sulphides. This process gives a much higher grade concentrate than ordinary water concentration, because of the presence of iron oxides in the ore. An extraction of 77.6% was obtained from an ore said to average 3.8% copper. The concentrate that year averaged 33.82% copper. In ten months, 8,724,494 pounds dry concentrate were made. Development cost 67¢ a ton, mining 40¢, treatment \$1.20, marketing \$1.14 and general expense 78¢. The capacity of the mill was doubled late in 1915.

An electric plant with a maximum capacity of 400 horsepower was built and electricity was brought in over a line two miles long. This proved inadequate and had to be supplemented at once by distillate engines. The property at this time was twenty-six miles from the railroad and there was a grade of 1800' in the last two and one-half miles to the mine. The concentrate, carrying 5% to 6% moisture, had to be sacked and lowered on the tramway to the lower terminal, where it was picked up by trailers drawn by a Holt caterpillar tractor. This delivered it over the worst of the road to trucks which hauled it to Keddie for shipment to the Garfield smelter.

During 1916 the Indian Valley Railway (broad guage) was built twenty-two miles from Paxton to the mine at a cost of \$500,000.

This road is owned principally by the Engels Copper Mining Company. The same year the Great Western Power Company built at a cost of \$150,000 an electric transmission line thirty-eight miles long from its Butte Valley plant to the mine.

Over 14,000' of development work had been done to the end of 1916 in the Engels group, and during that year the Superior group was also opened with very encouraging results. The ore bodies have been opened by tunnels and winzes, and further proven to a depth of 500' below the lowest working level by diamond drilling. The oxidized zone is covered in most places by 6' of soil, but where bare it shows a leached rock stained by malachite, limonite and chrysocolla. The oxidized zone is irregular in its lower limits, merging into mixed chalcocite and carbonates, the richer parts of which have been mined but are now inaccessible. Below this, is the zone of sulphide enrichment which has yielded considerable chalcocite carrying 16% to 20% copper. This zone was 25' thick and dipped gently southwest. This ore gives place to bornite at depths of 100' to 130', with some stringers of chalcocite extending deeper. The ore body has an average width of 40' and maximum of 150'. It strikes N. 80° E. and dips 8° SW. Six tunnel levels have been opened. No. 1, the highest, was run 30' with a 50' raise; No. 2, 810' with 320' of crosscuts and a 75' raise; No. 3, 180' with 110' of crosscuts; No. 4, 1500' with 970' of crosscuts and 260' of raises and winzes, with a stope 400' long, 40' wide and 10' high in 1916; No. 5, drift 1110' with 650' of crosscuts, 200' of raises and a stope 300' by 40' by 70'; and No. 6 the lowest level. Recent work has been on levels 4, 5 and 6, but the extent to which these have been carried to date is not known. The ore body has been proven on the surface and in the upper levels for 1500' on the strike, and had been opened to a vertical depth of 700' at the beginning of 1919.

In the Superior group, developments have been equally gratifying. A main tunnel and shaft are being driven, and it is planned to sink the latter to a depth of 1000'. A stope 500' long was started early in 1919. The ore in the Superior occurs chiefly along joint planes and there are occasional small bodies of high grade.

Pyrite is notably absent from the Engels ore and has been mentioned as occurring at only one place in the Superior. This accounts in large measure for the high grade of copper concentrate obtained. The ore is now chiefly bornite averaging 2.3% copper as milled, giving a concentrate carrying about 25% copper. The total mill capacity of the two plants was said to be 1500 tons a day in April, 1919, and subsequently it was planned to increase the capitalization of the company and bring the mill capacity to 2000 tons a day. The

production in 1918 was about 9,100,000 pounds of copper, costing 16.5¢ a pound to produce. This output made the Engels the largest single copper producing property in the state for the year.

Fordham Copper Property. Owner, Dr. Leonie H. Fordham, Hotel Stewart, San Francisco.

Location: 1 mile northeast of Gibbonville on road to Hepstdam.

The property lies between the ridge which divides Plumas County from Sierra County and the high bedrock ridge which divides Slate Creek from Cañon Creek. It is the bedrock of the gravel which was hydraulicked off Gravel Hill years ago. The length of the 'copper outcrop' is 3000' and its width 600'. The country rock is described as amphibolite schist.

The following assays of samples from this property were made in June, 1917, by Walter L. Gibson (successor to Falkenau Assaying Company), Oakland, California:

	Ounces gold	Ounces silver	Percentage copper
'Oxidized'			
'Chalcopyrite'	.02	.30	3.20
'Covellite'	.04	.28	5.80
'Chlorite schist'	.02	1.14	11.83
'Chlorite schist'	.02	.12	.31
'Chlorite schist'	.02	.10	.30

No work has been done to develop the prospect.

Folsom and Hunter Group. Owners, W. F. Folsom and Robt. L. Hunter, Indian Valley.

Location: Lights Cañon Mining District, 3 miles from Engels mine, thence 28 miles southerly to Keddle (W. P. Ry.).
Bibliography: Diller, J. S., U. S. Geol. Survey Bull. 263. U. S. Geol. Survey. Topo. sheets, Indian Valley, Genesee, Honey Lake.

This deposit of copper ore was located early in 1916 about three miles from the Engels mine by Folsom and Hunter. The vein has been tapped at a depth of 30' by a tunnel and shows a width of from 16' to 18'. Assays run as high as 14% copper, with a little gold and silver.

Golden Horseshoe Copper Mine. (Novak Copper Mine.) Owner, Jas. B. Novak, Eureka, Utah.

Location: Secs. 21 and 28, T. 26 N., R. 15 E., 13 miles northwest of Doyle (W. P. Ry.) on Doyle and Squaw Valley Road. Elevation 6150'.

This property embraces the Golden Horseshoe, Potosi, Mormon, French Cook, Despair, Incubus and Nightmare claims. There is an area of 140 acres, with a length along the lode of 3600'. It is situated on the slope of the ridge northeast of Last Chance Creek and contains a good supply of timber, mostly sugar pine, fir and spruce.

Engle Mine ; Bunker Hill Mine

8-12-98

Engle-1 ^{soil} sample collected in the approximate area of the flume (now gone). Sample location \approx 100 yds w-~~sw~~ of former head frame \rightarrow Grey

Engle-2 soil sample - tailing collected in a "less saturated zone \approx 10' above river bed in large tailing pile w of workings Grey-Black

Engle-3 H₂O sample collected below head frame near river. Sample collected from a seep.

Engle-4 soil sample collected in saturated zone \approx 2' above river bed. Tails extremely fine - clay-like - Black

Engle 5 soil sample collect from Murphy's yard near channel. Sample not collected from lawn.

Event-1 soil sample collected near creek bed

Event-2 water sample collected from pond.

California Environmental Protection Agency
Department of Toxic Substances Control
Hazardous Materials Laboratory (Inorganic Section)
2151 Berkeley Way, Berkeley CA. 94704

HML#: 980121
to: 980127

Phone: (510) 540-3003 or (ATSS) 571-3003

LABORATORY REPORT

Collector's Name: Daniel Ziarkowski
Address: Engle mine & Bunker Hill mine
Diamond Bar, Taylor Ville

Date Collected: 08/12/98
Date Received: 08/14/98
Collector's #: ENGLE-1
to: EVERT-2
Authorization #: HMO3649

Analytical Procedure: pH determined using Accumet 925MP pH meter calibrated with known pH buffers.

Reference: EPA Method # 9040B & 9045C

Analysis Results:

HML NO.	COLLECTOR'S SAMPLE NO.	TYPE OF SAMPLE	DILUTION	pH
980121	ENGLE-1	soil	10--->20	5.28
980122	ENGLE-2	soil	10--->20	8.24
980123	ENGLE-3	Water		7.99
980124	ENGLE-4	soil	10--->20	8.04
980125	ENGLE-5	soil	10--->20	6.40
980126	EVERT-1	soil	10--->20	5.95
980127	EVERT-2	water		7.90

Signatures:

Fatima Hussain
Fatima Hussain
Analyst

8/24/98
Date

Milad Iskander
Milad Iskander
Supervisor

8/24/98
Date

mcdw 8/24/98

HAZARDOUS MATERIALS SAMPLE ANALYSIS REQUEST		1. Authorization Number <u>W M O 3 6 4 9</u>		HML No. <u>98012</u> To <u>980127</u>		2. Page of	
3. Requestor: <u>DANIEL ZIELKOWSKI</u>		4. Phone (916) <u>255-3687</u>		7. TAT Level: <u>1</u> (circle one) Authorized By _____			
5. Address (To Receive Results): <u>DTSC 10151 Crofton Wy, Suite 3, Sacramento, CA 95827</u>		6. FAX (916) <u>255-3697</u>		Authorized By <u>(2)</u> 3 4			
8. Date Sampled <u>8-12-98</u>		9. Codes (fill in all applicable codes)					
10. Activity: <input type="checkbox"/> SCD <input type="checkbox"/> SRPD <input checked="" type="checkbox"/> SMB <input type="checkbox"/> FPB <input type="checkbox"/> SPPT <input type="checkbox"/> ER/CL <input type="checkbox"/> Others		a. Office		01			
11. SAMPLING LOCATION		b. INDEX		5100			
		c. PCA		11005			
		d. MPC					
		e. SITE					
		f. County					
		a. EPA ID No.					
b. Site <u>Engle mine & Bunker Hill mine</u>		c. Address		<u>Diamond Bar</u>		<u>Taylorville</u>	
		Number		Street		City	
		ZIP					
12. SAMPLES							
a. ID	b. Collector's No.	c. Lab No.	d. Sample Type	e. Container Type	f. Size	g. Field Information	
A	ENGLE-11	980121	soil	wms	500ml		
B	ENGLE-12	980122	soil	↓	500ml		
C	ENGLE-13	980123	water	1L65	1L		
D	ENGLE-14	980124	soil	wms	500ml		
E	ENGLE-15	980125	soil	↓	500ml		
F	RIVERT-11	980126	soil	↓	500ml		
G	RIVERT-12	980127	water	1L65	1L		
H							
13. ANALYSIS REQUESTED							
a. <input checked="" type="checkbox"/> pH <u>A,B,C,D,E,F,G,H</u>		f. <input type="checkbox"/> PAHs - 8310		i. <input type="checkbox"/> OP - Pest			
b. <input checked="" type="checkbox"/> Metal Scan <u>A,B,C,D,E,F,G,H</u>		g. <input type="checkbox"/> PCBs		m. <input type="checkbox"/> VOA - 8021			
c. <input type="checkbox"/> Metals (Spec)		h. <input type="checkbox"/> TPH		n. <input type="checkbox"/> VOA - 8260			
d. <input type="checkbox"/> W.E.T.		i. <input type="checkbox"/> Gasoline		o. <input type="checkbox"/> SVO - 8270			
e. <input type="checkbox"/> Flash Point		j. <input type="checkbox"/> Diesel		p. <input type="checkbox"/> TCLP - (specify)			
		k. <input type="checkbox"/> Cl - Pest		q. <input checked="" type="checkbox"/> Sulfate: <u>B, D</u>			
				CN: <u>D, F</u>			
14. SPECIAL REMARKS/ANALYSIS OBJECTIVE:							
15. SUPPLEMENTAL REQUESTS							
16. CHAIN OF CUSTODY							
a.	<u>Daniel Zielkowski</u> Signature	<u>DANIEL ZIELKOWSKI / N S S</u> Name/Title	<u>8/12/98 - 8/13/98</u> Inclusive Dates				
b.	<u>J. George</u> Signature	<u>Jourmal Garcia PHC-44</u> Name/Title	<u>8/14/98 - / /</u> Inclusive Dates				
c.	_____ Signature	_____ Name/Title	<u>/ / - / /</u> Inclusive Dates				
d.	_____ Signature	_____ Name/Title	<u>/ / - / /</u> Inclusive Dates				
17. LAB REMARKS: <u>Drinking H₂O standards for H₂O samples.</u>							

Department of Toxic Substances Control
Hazardous Materials Laboratory

SUPPLEMENTAL _____

(check if Supplemental Request)

AUTHORIZATION REQUEST FORM (ARF)

PART A: (By Requestor - PLEASE PRINT) TAT Level 1 2 3 4

Requestor's Name DAW Ziarkowski Phone (916) 255-3687
 Region/Unit NECCOB FAX (916) 255-3796
 BACK-UP REQUESTOR Fran Anderson Phone (916) 255-3733
 SITE: SAME Eagle Mine; Bunker Hill Mine

Analytical Requests Planned

Analysis	Number of Spls / Type					Analysis	Number of Spls / Type				
	Soil	H2O	Solid	Liq	Other*		Soil	H2O	Solid	Liq	Other
Metal Scan	8	4				Vol Hdspce					
Metal Spec.						SV Screeng					
W.E.T						Vol 8260					
pH	8					SV 8270					
Cyanides	2					(Write in)					
Cl-Pest	1	1				sulfate	2				
OP-Pest											
PAHs						T C L P					
PCBs 8081						Metals					
Gasoline						Volatiles					
Diesel						Semivol.					
TPH						Pesticides					
8021						Herbicides					

Analysis Objective (circle one) a. Waste Characterization b. Treatment Standards
 (circle one) c. Drinking H2O Standards d. Others :

Detection Limit Requirements :
(if diff. than established DLs)

TO →

MAG

Expected Date of Samples Arrival at Lab 8/14/98

PART B: (By STO - HML)

Authorization Number (AN) HMA03649 Expires 8/21/98

Lab to Receive Samples Name: Hazardous Materials Lab
 Address: 700 Heinz St., Ste. 150
 Berkeley, CA 94710

Sample Tracking Officer (STO): Pam Schiro

Today's Date: 8/1/98

TAT Level 1 = 10-15 Days, 2 = 16-30 Days, 3 = 31-45 Days, 4 = when possible (circle one on the top)

* Other: Solvent (Sol), Oil, Paint (Pat), Sludge (Sl)-etc (please specify)

Quality Assurance Summary for ICP

Element	HML Soil QC Sample			Method Blank	Calibration Verification Standard			Duplicate Spiked Sample			HML No.: 980121		Matrix: Soil		
	mg/kg				mg/L	mg/L			Spike Results mg/kg			Unspiked Result (mg/kg)	Spike Added (mg/kg)	% Recovery	
	found	known	%			found	known	%	A:	B:	RPD			A:	B:
As-Arsenic	61.3	63.3	96.8	<0.10	10.3	10.0	103	784	778	0.96	257	500	105	104	
Ba-Barium	40.8	44.7	91.3	<0.010	9.79	10.0	97.9	664	668	0.85	198	500	93.2	94.0	
Be-Beryllium	20.6	21.5	95.8	<0.005	2.03	2.00	102	103	104	0.98	0.82	100	102	103	
Cd-Cadmium	25.0	25.5	98.0	<0.010	10.3	10.0	103	481	478	0.84	7.51	500	94.7	94.1	
Co-Cobalt	19.8	20.7	94.7	<0.05	10.3	10.0	103	506	503	0.83	26.8	500	95.8	95.2	
Cr-Chromium	62.6	69.6	88.3	<0.08	10.0	10.0	100	512	504	1.65	24.1	500	97.8	96.0	
Cu-Copper	33.8	37.7	89.7	<0.10	9.54	10.0	95.4	30500	30800	2.53	18800	12500	93.6	96.0	
Mo-Molybdenum	27.5	30.3	90.8	<0.10	10.3	10.0	103	472	476	0.84	<5.00	500	94.4	95.2	
Ni-Nickel	33.3	35.4	94.1	<0.05	10.2	10.0	102	487	485	0.42	15.0	500	94.4	94.0	
Pb-Lead	30.6	31.0	98.7	<0.10	9.99	10.0	99.9	704	690	2.94	221	500	96.6	93.8	
Se-Selenium	71.4	72.8	98.1	<0.15	10.4	10.0	104	512	517	0.98	<7.50	500	102	103	
Tl-Thallium	118	125	94.4	<0.20	9.83	10.0	98.3	373	362	2.38	<10.0	500	74.6	76.4	
V-Vanadium	33.5	40.9	81.9	<0.06	9.77	10.0	97.7	680	643	7.55	132	500	110	102	
Zn-Zinc	43.8	46.3	94.6	<0.10	10.2	10.0	102	794	779	2.93	275	500	104	101	

Element	HML Liquid QC Sample			Reagent Blank	Inorganic Ventures Reference Standard			Duplicate Spiked Sample			HML No.: 980123		Matrix: Water		
	mg/kg				mg/L	mg/L			Spike Results mg/kg			Unspiked Result (mg/kg)	Spike Added (mg/kg)	% Recovery	
	found	known	%			found	known	%	A:	B:	RPD			A:	B:
As-Arsenic				<30.0	0.99	1.00	99.0								
Ba-Barium				<2.00	0.96	1.00	96.0								
Be-Beryllium				<2.00	0.19	0.20	95.0								
Cd-Cadmium				<3.00	1.00	1.00	100								
Co-Cobalt				<10.0	1.00	1.00	100								
Cr-Chromium				<15.0	0.98	1.00	98.0								
Cu-Copper				<20.0	0.96	1.00	96.0								
Mo-Molybdenum				<10.0	1.00	1.00	100								
Ni-Nickel				<10.0	1.00	1.00	100								
Pb-Lead				<30.0	1.00	1.00	100								
Se-Selenium				<40.0	0.98	1.00	98.0								
Tl-Thallium				<50.0	1.01	1.00	101								
V-Vanadium				<10.0	0.94	1.00	94.0								
Zn-Zinc				<20.0	1.00	1.00	100								

ICP Analyst's Signature: *Fatima Hussain*
 Chemist: Fatima Hussain
 Date Analyzed: 08/26/98

Milad S. Iskander, Supervisor: *[Signature]*

Date: 8/31/98

08/01/98 07:12 FAX 5105403815 HML BERK AQ PARK --- REG 1 SMB

Quality Assurance Summary for ICP

Element	WP 284			Method Blank ug/L	Inorganic Ventures Reference Std			Duplicate Spike Sample			HML No.: 980123		Matrix: WATER	
	ug/L				ug/L			Spike Results			Unspiked Results	Spike Added	% Recovery	
	found	known	% Rec		found	known	% Rec	A:	B:	RPD			A:	B:
Al-Aluminum	828	729	114	<25.0				558	555	0.21	79.0	500	95.4	95.2
As-Arsenic	265	235	113	<7.50	1000	1000	100	72.0	72.8	0.93	18.6	50.0	107	108
Ba-Barium				<0.50	987	1000	98.7	68.4	68.2	0.40	18.4	50.0	100	99.6
Be-Beryllium	236	235	100	<0.50	190	200	95.0	10.8	10.8	0.00	<0.50	10.0	108	108
Cd-Cadmium	42.3	39	108	<0.75	1020	1000	102	50.9	51.3	0.98	<0.75	50.0	102	103
Cr-Chromium	280	281	107	<3.75	1010	1000	101	49.7	48.9	0.60	<3.75	50.0	99.4	100
Cu-Copper				<5.00	939	1000	93.9	192	181	2.60	153	50.0	78.0	76.0
Fe-Iron	788	797	98.9	<25.0				587	578	1.94	119	500	93.6	91.8
Ni-Nickel	225	207	108	<2.50	1010	1000	101	61.6	62.6	1.92	<2.50	50.0	103	105
Pb-Lead	472	435	109	<7.50	1010	1000	101	55.8	53.8	3.64	<7.50	50.0	112	108
Sb-Antimony								To be analyzed by GFAAS.						
Se-Selenium				<10.0	980	1000	98.0	56.7	59.3	5.17	<10.0	50.0	113	119
Tl-Thallium*				<12.5	979	1000	97.9	51.7	53.9	4.74	<12.5	50.0	103	108
Zn-Zinc	441	418	106	<5.00	999	1000	100	65.0	64.8	0.87	18.8	50.0	92.4	91.8

Element	Spex QC7			Reagent Blank ug/L	Spex QC21			Duplicate Spike Sample			HML No.:		Matrix:	
	Reference std				Reference Std			Spike Results			Unspiked Results	Spike Added	% Recovery	
	found	known	% Rec		found	known	% Rec	A:	B:	RPD			A:	B:
Al-Aluminum	1210	1000	121	<100										
As-Arsenic				<30.0	504	500	101							
Ba-Barium	984	1000	99.4	<2.00										
Be-Beryllium				<2.00	481	500	96.2							
Cd-Cadmium				<3.00	512	500	102							
Cr-Chromium				<15.0	507	500	101							
Cu-Copper				<20.0	480	500	96.0							
Fe-Iron				<100	458	500	91.6							
Ni-Nickel				<10.0	512	500	102							
Pb-Lead				<30.0	508	500	102							
Sb-Antimony														
Se-Selenium				<40.0	503	500	101							
Tl-Thallium*				<50.0	489	500	97.8							
Zn-Zinc				<20.0	492	500	98.4							

Note: Thallium to be confirmed by GFAAS.

ICP Analyst's Signature:

Atif R. Kozman

Atif R. Kozman

Chemist's Signature:

Fatima Hussain *Fatima Hussain*

Date Analyzed:

8/28/98

Milad S. Iskander, Supervisor:

Milad S. Iskander

08/01/98 07:12 FAX 5105403615 HML BERK AQ PARK --> REG 1 SMB

California Environmental Protection Agency
Department of Toxic Substances Control
Hazardous Materials Laboratory (Inorganic Section)
2151, Berkeley Way, Berkeley, CA 94704

HML #: 980121 to
980127

Phone: (510) 540-3003 or (ATSS) 571-3003

Collector's Name: Daniel Ziarkowski
Site of Sampling: Engle Mine & Bunker Hill Mine
Diamond Bar
Taylor Ville

Auth. No.: HMO3649
Activity : SMB
Date Collected: 8/12/98
Date Received: 8/14/98

Analytical Procedure: EPA-SW 846
Samples are digested with 1:1 HNO₃ (and 30% H₂O₂, and 1:1 HCl, if applicable) over a hot plate. Digests are cooled, filtered and made to final volume with deionized H₂O. Metal analysis of the digests is by ICPAES (EPA #6010B). Units are ug/L.

Method: 3050B for solids; 3010A for liquids; 3005A for clean water.

HML Number:	980123	980127
Collector's Sample No.:	ENGLE-3	EVERT-2
Sample Type:	Water	Water

Al-Aluminum	79.0	148
As-Arsenic	18.6	<7.50
Ba-Barium	16.4	6.03
Be-Beryllium	<0.50	<0.50
Cd-Cadmium	<0.75	<0.75
Cr-Chromium	<3.75	<3.75
Cu-Copper	153	<5.00
Fe-Iron	119	236
Ni-Nickel	<2.50	<2.50
Pb-Lead	<7.50	<7.50
Se-Selenium	<10.0	<10.0
Tl-Thallium*	<12.5	<12.5
Zn-Zinc	18.8	<5.00

Notes: < = below detection limit of method.

* = Tl will be confirmed by GFAAS.

Sb will be analyzed by GFAAS.

Atif R. Kozman
ICP Analyst
Atif R. Kozman

8/31/98
Date

Fatima Hussain
Chemist's Signature
Fatima Hussain

8/31/98
Date

Mirad S. Iskander, Supervisor

8/31/98
Date

rev. (rev.) 8/31/98

Department of Toxic Substances Control
Hazardous Materials Laboratory

SUPPLEMENTAL _____

(check if Supplemental Request)

AUTHORIZATION REQUEST FORM (ARF)

PART A: (By Requestor - PLEASE PRINT) TAT Level 1 (2) 3 4

Requestor's Name DAN Ziarkowski Phone (916) 255-3687
 Region/Unit NECCOB FAX (916) 255-3796
 BACK-UP REQUESTOR Fran Anderson Phone (916) 255-3733
 SITE: SHAME Eagle Mine ; Bunker Hill Mine

Analytical Requests Planned

Analysis	Number of Spls / Type					Analysis	Number of Spls / Type				
	Soil	H2O	Solid	Liq	Other*		Soil	H2O	Solid	Liq	Other
Metal Scan	8	4				Vol Hdspce					
Metal Spec.						SV Screeing					
W.E.T						Vol 8260					
pH	8					SV 8270					
Cyanides	2					(Write in)					
Ci-Pest	1	1				sulfate	2				
OP-Pest											
PAHs						T C L P					
PCBs 8081						Metals					
Gasoline						Volatiles					
Diesel						Semivol.					
TPH						Pesticides					
8021						Herbicides					

Analysis Objective (circle one) a. Waste Characterization b. Treatment Standards
 (circle one) c. Drinking H2O Standards d. Others:

Detection Limit Requirements :
(If different established DLs)

Expected Date of Samples Arrival at Lab 8/14/98

PART B: (By STO - HML)

Authorization Number (AN) HMA3649 Expires 8/21/98

Lab to Receive Samples Name: Hazardous Materials Lab
 Address: 700 Heinz St., Ste. 150
 Berkeley, CA 94710

Sample Tracking Officer (STO): Pam Schiro

Today's Date: 8/1/98

TAT Level 1 = 10-15 Days, 2 = 16-30 Days, 3 = 31-45 Days, 4 = when possible (circle one on the top)

* Other: Solvent (Sol), Oil, Paint (Pst), Sludge (Sl)-etc (please specify)

ar1/97.aly

TO →

MAG

California Environmental Protection Agency
 Department of Toxic Substances Control
 Hazardous Materials Laboratory (Inorganic Section)
 2151 Berkeley Way, Berkeley, CA 94704

HML #: 980121 to
 980127

Phone: (510) 540-3003 or (ATSS) 571-3003

Collector's Name: Daniel Ziarkowski
 Site of Sampling: Engle Mine & Bunker Hill Mine
 Diamond Bar
 Taylor Ville

Auth. No.: HMO3649
 Activity : SMB
 Date Collected: 8/12/98
 Date Received: 8/14/98

Analytical
 Procedure:
 EPA-SW 846

Samples are digested with 1:1 HNO₃ (and 30% H₂O₂, and 1:1 HCl, if applicable) over a hot plate. Digests are cooled, filtered and made to final volume with deionized H₂O. Metal analysis of the digests is by ICPAES (EPA #6010B). Units are mg/kg.

Method: 3050B for solids; 3010A for liquids; 3005A for clean water.

HML Number:	980121	980122	980126	980124	980125
Collector's Sample No.:	ENGLE-1	ENGLE-2	EVERT-1	ENGLE-4	ENGLE-5
Sample Type:	Soil	Soil	Soil	Soil	Soil
As-Arsenic	257	15.4	<5.00	51.2	5.59
Ba-Barium	198	286	69.0	119	102
Be-Beryllium	0.82	0.95	0.80	0.71	0.64
Cd-Cadmium	7.51	7.14	3.34	4.96	2.60
Co-Cobalt	26.8	30.2	15.4	32.9	13.5
Cr-Chromium	24.1	25.7	29.9	11.8	11.3
Cu-Copper	18800	1260	31.1	2710	216
Mo-Molybdenum	<5.00	<5.00	<5.00	<5.00	<5.00
Ni-Nickel	15.0	16.1	11.6	18.1	7.83
Pb-Lead	221	10.0	10.4	12.7	11.1
Se-Selenium	<7.50	<7.50	<7.50	<7.50	<7.50
Tl-Thallium	<10.0	<10.0	<10.0	<10.0	<10.0
V-Vanadium	132	172	115	111	72.6
Zn-Zinc	275	162	43.0	166	64.5

Notes: < = below detection limit of method.

Atif R. Kozman
 ICP Analyst,
 Atif R. Kozman

8/31/98
 Date

Fatima Hussain
 Chemist's Signature
 Fatima Hussain

8/31/98
 Date

Milad S. Iskander, Supervisor
 ms (aw.) 8/31/98

8/31/98
 Date

California Department of Toxic Substances Control
Hazardous Materials Laboratory
2151 Berkeley Way, Berkeley, CA 94704
415 540 - 3003

HML#: 980121
To: 980127
Coll's #: ENGLE-1
to: EVERT-2

LABORATORY REPORT

Collector's Name: Daniel Ziarkowski
Location: Engle Mine & Bunker Hill Mine
Diamond Bar
Taylor Ville

Auth. No.: HMO3649
Activity: SMB
Date Sampled: 08/12/98
Date Received: 08/14/98

Analytical Procedure Used: About 5 to 10 grams of a well-mixed sample is weighed on a tared container using a top loading balance capable of weighing to the nearest 0.01 g. Sample is dried in an oven at 105 °C for 12 to 24 hours and cooled in a dessicator for 30 minutes. Sample is reweighed to determine the weight of the dry solids remaining.

Reference: HML Method No. 704-S

Analysis Results:

HML NO.	COLLECTOR'S SAMPLE NO.	TYPE OF SAMPLE	% Dry Solids
980121	ENGLE-1	Soil	97.8
980122	ENGLE-2	Soil	83.5
980124	ENGLE-4	Soil	75.0
980125	ENGLE-5	Soil	99.3
980126	EVERT-1	Soil	79.3

Signatures:

Fatima Hussain
Fatima Hussain
Chemist

9/01/98
Date

Milad Iskander
Milad Iskander
Supervisor

9/1/98
Date

ns (kw.) 9/1/98

California Department of Toxic Substances Control
 Hazardous Materials Laboratory
 2151 Berkeley Way, Berkeley, CA 94704
 Ph. (510) 540-3003

HML #: 980121
 to: 980127

Collector's Name: Daniel Ziarkowski
 Location: Engle Mine & Bunker Hill Mine
Diamond Bar
Taylor Ville

Auth. No.: HMO3649
 Activity: SMB
 Date Sampled: 08/12/98
 Date Received: 08/14/98

Quality Assurance
 ‡ Dry Solid Determination

I. Blank Reading (empty weighing vessel)

Blank	Initial weight (g)	Dry weight (g)	Weight change (g)
1.	1.55	1.55	0.00

II. Duplicate Result

HML #	Matrix	Sample Result (%)	Sample Duplicate Result (%)	Mean Result (%)	RPD ‡
980121	Soil	97.7	97.8	97.8	0.10

Fatima Hussain
 Fatima Hussain
 Analyst

9/01/98
 Date

Milad Iskander
 Supervisor

9/11/98
 Date

California Department of Toxic Substances Control
 Hazardous Materials Laboratory
 2151 Berkeley Way, Berkeley, CA 94704
 415 540 - 3003

HML#: 980121
 To: 980127
 Coll's #: ENGLE-1
 to: EVERT-2

LABORATORY REPORT

Collector's Name: Daniel Ziarkowski
 Location: Engle Mine & Bunker Hill Mine
Diamond Bar
Taylor Ville

Auth. No.: HMO3649
 Activity: SMB
 Date Sampled: 08/12/98
 Date Received: 08/14/98

Analytical Procedure Used: About 5 to 10 grams of a well-mixed sample is weighed on a tared container using a top loading balance capable of weighing to the nearest 0.01 g. Sample is dried in an oven at 105 °C for 12 to 24 hours and cooled in a dessicator for 30 minutes. Sample is reweighed to determine the weight of the dry solids remaining.

Reference: HML Method No. 704-S

Analysis Results:

HML NO.	COLLECTOR'S SAMPLE NO.	TYPE OF SAMPLE	% Dry Solids
980121	ENGLE-1	Soil	97.8
980122	ENGLE-2	Soil	83.5
980124	ENGLE-4	Soil	75.0
980125	ENGLE-5	Soil	99.3
980126	EVERT-1	Soil	79.3

Post-It™ brand fax transmittal memo 7671 # of pages > 2

To <u>Daniel Ziarkowski</u>	From <u>F. Hussain</u>
Co.	Co.
Dept.	Phone # <u>(510) 540-3609</u>
Fax # <u>(916) 255-3696</u>	Fax #

(916) 255-3734

Signatures:

Fatima Hussain
 Fatima Hussain
 Chemist

9/01/98
 Date

Milad Iskander
 Milad Iskander
 Supervisor

9/1/98
 Date

ms (aw.) 9/1/98

CA Department of Toxic Substances Control
Hazardous Materials Laboratory
2151 Berkeley Way, CA 94704

HML No.: 980121
To: 980127

LABORATORY REPORT

Collector's Name: Daniel Ziarkowski
Site or Location: Englemine & Bunker Hill Mine
Diamond Bar
Taylor Ville

Auth. No HMO3649
Activity: SMB
Date Sampled: 8/12/98
Date Received: 8/14/98

Analytical Procedure Used: Sample are extracted with deionized water for one hour using a mechanical shaker. Extracts centrifuged, filtered and analyzed by Ion chromatography. Results are in mg/kg for soil and mg/L for liquid.

Reference: EPA Methods 300A

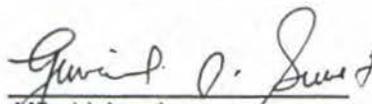
Analysis Results:

HML Number:	Collector's Sample No.:	Type of Sample:	SO4
980122	ENGLE-2	SOIL	<30.0
980124	ENGLE-4	SOIL	65.1

Signatures:


Zaida R. Ilejay
Chemist,

9/8/98
Date


Milad Iskander
Supervisor

9/9/98
Date

ms (kwr) 9/9/98

Department of Toxic Substances Control
Hazardous Materials Laboratory
2151 Berkeley Way, Berkeley, CA 94704
Tel. (510)540-3003

HML#: 980121 to: 980127
Coll's #: ENGLE-1
To: EVERT-2

LABORATORY REPORT

Collector's Name: Daniel Ziarkowski
Location: Engle Mine & Bunker Hill Mine
Diamond Bar, Taylor Ville.

Date Sampled: 8/12/98
Date Received: 8/14/98
Activity: SMB

Analytical Procedure used: The samples are distilled and collected into an absorber-scrubber of 1.25N NaOH solution. The cyanide ion in the absorbing solution is then determined colorimetrically at 578 nm within 15 minutes. Ref. EPA Method 9010.

Analysis Results:
Concentration units: mg/Kg

HML NUMBER:	COLLECTOR'S NO:	SAMPLE TYPE	CN
980124	ENGLE-4	soil	<0.16
980126	EVERT-1	soil	<0.16

Signatures:

Atif R. Kozman
Analyst

9/21/98
Date

Milad Iskander
Supervisor

9/21/98
Date

OK
9/21/98
gssum

HAZARDOUS MATERIALS SAMPLE ANALYSIS REQUEST		1. Authorization Number <u>W M O 3 6 4 9</u>	HML No. <u>980121</u> To <u>980127</u>	2. Page of		
3. Requestor: <u>Daniel Zarkowski</u>		4. Phone (916) 255-3687		7. TAT Level: 1 (circle one) <u>2</u> 3 4 Authorized By		
5. Address (To Receive Results): <u>DTSC 10151 Cropton Wy, Suite 3, Sacramento, CA 95827</u>		6. FAX (916) 255-3697				
8. Date Sampled <u>8-12-98</u>		9. Codes (fill in all applicable codes)				
10. Activity: <input type="checkbox"/> SCD <input type="checkbox"/> SRPD <input checked="" type="checkbox"/> SMB <input type="checkbox"/> FPB <input type="checkbox"/> SPPT <input type="checkbox"/> ER/CL <input type="checkbox"/> Others		a. Office	<u>01</u>			
11. SAMPLING LOCATION		b. INDEX	<u>5100</u>			
		c. PCA	<u>11005</u>			
b. Site <u>Engle mine & Bunker Hill mine</u>		d. MPC				
c. Address <u>Diamond Bar Taylorville</u>		e. SITE				
Number Street City ZIP		f. County				
12. SAMPLES						
a. ID	b. Collector's No.	c. Lab No.	d. Type	e. Container	f. Size	g. Field Information
A	ENGLE-111	980121	soil	wms	500ml	
B	ENGLE-121	980122	soil	↓	500ml	
C	ENGLE-131	980123	water	1L65	1L	
<u>D</u>	ENGLE-141	980124	soil	wms	500ml	
E	ENGLE-151	980125	soil	↓	500ml	
<u>F</u>	RIVERT-111	980126	soil	↓	500ml	
G	RIVERT-121	980127	water	1L65	1L	
H						
13. ANALYSIS REQUESTED						
a. <input checked="" type="checkbox"/> pH <u>A,B,C,D,E,F,G,H</u>		f. <input type="checkbox"/> PAHs - 8310		i. <input type="checkbox"/> OP - Pest		
b. <input checked="" type="checkbox"/> Metal Scan <u>A,B,C,D,E,F,G,H</u>		g. <input type="checkbox"/> PCBs		m. <input type="checkbox"/> VOA - 8021		
c. <input type="checkbox"/> Metals (Spec)		h. <input type="checkbox"/> TPH		n. <input type="checkbox"/> VOA - 8260		
d. <input type="checkbox"/> W.E.T.		j. <input type="checkbox"/> Diesel		o. <input type="checkbox"/> SVO - 8270		
e. <input type="checkbox"/> Flash Point		k. <input type="checkbox"/> Cl - Pest		p. <input type="checkbox"/> TCLP - (specify)		
				q. <input checked="" type="checkbox"/> Sulfate: <u>B, D</u> <u>CN: D, F</u>		
14. SPECIAL REMARKS/ANALYSIS OBJECTIVE:						
15. SUPPLEMENTAL REQUESTS					Initials _____ Date _____	
16. CHAIN OF CUSTODY -						
a.	<u>Daniel V. Zarkowski</u> Signature	<u>DANIEL ZARKOWSKI / HSS</u> Name/Title	<u>8/12/98 - 8/13/98</u> Inclusive Dates			
b.	<u>J. Gardner</u> Signature	<u>J. Gardner PHC-III</u> Name/Title	<u>8/14/98 - / /</u> Inclusive Dates			
c.	_____ Signature	_____ Name/Title	<u>/ / - / /</u> Inclusive Dates			
d.	_____ Signature	_____ Name/Title	<u>/ / - / /</u> Inclusive Dates			
17. LAB REMARKS: <u>Drinking H₂O standards for H₂O samples.</u> <u>CN - assigned to Qtil on 8/18/98</u>						

FIELD

LAB

Department of Toxic Substances Control
Hazardous Materials Laboratory

SUPPLEMENTAL _____
(check if Supplemental Request)

AUTHORIZATION REQUEST FORM (ARF)

PART A: (By Requestor - PLEASE PRINT) TAT Level 1 (2) 3 4

Requestor's Name DAV Ziarkowski Phone (916) 255-3687
 Region/Unit NECCOB FAX (916) 255-3796
 BACK-UP REQUESTOR Fran Anderson Phone (916) 255-3733
 SITE: AAK Eagle Mine ; Bunker Hill Mine

Analytical Requests Planned

Analysis	Number of Spls / Type					Analysis	Number of Spls / Type				
	Soil	H2O	Solid	Liq	Other*		Soil	H2O	Solid	Liq	Other
Metal Scan	8	4				Vol Hdspce					
Metal Spec.						SV Screening					
W.E.T						Vol 8260					
pH	8					SV 8270					
Cyanides	2					(Write in)					
Cl-Pest	1	1				sulfate	2				
OP-Pest											
PAHs						T C L P					
PCBs 8081						Metals					
Gasoline						Volatiles					
Diesel						Semivol.					
TPH						Pesticides					
8021						Herbicides					

Analysis Objective (circle one):
 a. Waste Characterization b. Treatment Standards
 c. Drinking H2O Standards d. Others :

Detection Limit Requirements :
 (if different than established DLs)

TO →

M/G

Expected Date of Samples Arrival at Lab

8/14/98

PART B: (By STO - HML)

Authorization Number (AN) HMA3649 Expires 8/21/98

Lab to Receive Samples Name: Hazardous Materials Lab
 Address: 700 Heinz St., Ste. 150
 Berkeley, CA 94710

Sample Tracking Officer (STO): Pam Schiro

Today's Date: 8/1/98

TAT Level 1 = 10-15 Days, 2 = 16-30 Days, 3 = 31-45 Days, 4 = when possible (circle one on the top)

* Other: Solvent (Sol), Oil, Paint (Pat), Sludge (Sl) etc (please specify)

arl/97.sh

California Environmental Protection Agency
Department of Toxic Substances Control
2151 Berkeley Way, Berkeley CA 94704
Phone: (510) 540-3003 or (ATSS) 571-3003

HML #: 980121 to 980127
Collector's #: ENGLE-1
to: EVERT-2
Authoriz'n #: HMO3649

Laboratory Report for Metal Analysis

Collector's Name: Daniel Ziarkowski
Sample Location: Engle Mine & Bunker Hill Mine
Diamond Bar Taylor Ville

Date Collected: 08/12/98
Date Received: 08/14/98
Activity: SMB

ANALYTICAL
PROCEDURE:

Samples were digested with suprapure nitric acid over a hot plate. The digestates were made to final volume with deionized water. Analysis for Antimony and Thallium is by GFAAS. Units are in micrograms/L.

ANALYSIS:

EPA Method #7041 for Sb & #7841 for Tl.

DIGESTION:

EPA Method #3005A (w/o HCl)

HML No.	Collector No.	Sample Type	Antimony (Sb)	Thallium (Tl)
980123	ENGLE-3	Water	22.5	<1.00
980127	EVERT-2	Water	< 2.50	<1.00

Signatures:

Fatima Hussain
Fatima Hussain
Analyst

9/22/98
Date

Milad S. Iskander
Milad S. Iskander
Supervisor

9/22/98
Date

ms c/w) 9/22/98

HAZARDOUS MATERIALS SAMPLE ANALYSIS REQUEST	1. Authorization Number	HML No. <u>980121</u>	2. Page						
	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;">H</td><td style="width: 20px; height: 20px;">M</td><td style="width: 20px; height: 20px;">O</td><td style="width: 20px; height: 20px;">3</td><td style="width: 20px; height: 20px;">6</td><td style="width: 20px; height: 20px;">4</td><td style="width: 20px; height: 20px;">9</td></tr> </table>	H	M	O	3	6	4	9	To <u>980127</u>
H	M	O	3	6	4	9			

3. Requestor: <u>Daniel Zarkowski</u>	4. Phone (916) <u>255-3687</u>	7. TAT Level: 1 (circle one)			
5. Address (To Receive Results): <u>DTSC</u>	6. FAX (916) <u>255-3697</u>	Authorized By			
<u>10151 Crofton Wy, Suite 3, Sacramento, CA 95827</u>		<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;">2</td><td style="width: 20px; height: 20px;">3</td><td style="width: 20px; height: 20px;">4</td></tr> </table>	2	3	4
2	3	4			

8. Date Sampled <u>8-12-98</u>	9. Codes (fill in all applicable codes)
--------------------------------	---

10. Activity: <input type="checkbox"/> SCD <input type="checkbox"/> SRPD <input checked="" type="checkbox"/> SMB <input type="checkbox"/> FPB <input type="checkbox"/> SPPT <input type="checkbox"/> ER/CL <input type="checkbox"/> Others	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px;">a. Office</td><td style="width: 20px;">0</td><td style="width: 20px;">1</td><td style="width: 20px;"> </td><td style="width: 20px;"> </td><td style="width: 20px;"> </td></tr> <tr><td>b. INDEX</td><td>5</td><td>1</td><td>0</td><td>0</td><td> </td></tr> <tr><td>c. PCA</td><td>1</td><td>1</td><td>0</td><td>0</td><td>5</td></tr> <tr><td>d. MPC</td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td>e. SITE</td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td>f. County</td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </table>	a. Office	0	1				b. INDEX	5	1	0	0		c. PCA	1	1	0	0	5	d. MPC						e. SITE						f. County					
a. Office	0	1																																			
b. INDEX	5	1	0	0																																	
c. PCA	1	1	0	0	5																																
d. MPC																																					
e. SITE																																					
f. County																																					

11. SAMPLING LOCATION	a. EPA ID No.
-----------------------	---------------

b. Site <u>Engle mine & Bunker Hill mine</u>	c. Address <u>Diamond Bar</u> <u>Taylorville</u>	
--	--	--

12. SAMPLES		Sample		Container		g. Field Information
a. ID	b. Collector's No.	c. Lab No.	d. Type	e. Type	f. Size	
A	<u>ENGLE-11</u>	<u>980121</u>	<u>soil</u>	<u>WMS</u>	<u>500ml</u>	
B	<u>ENGLE-12</u>	<u>980122</u>	<u>soil</u>	<u>↓</u>	<u>500ml</u>	
C	<u>ENGLE-13</u>	<u>980123</u>	<u>water</u>	<u>GLASS</u>	<u>1L</u>	
D	<u>ENGLE-14</u>	<u>980124</u>	<u>soil</u>	<u>WMS</u>	<u>500ml</u>	
E	<u>ENGLE-15</u>	<u>980125</u>	<u>soil</u>	<u>↓</u>	<u>500ml</u>	
F	<u>GIVERT-11</u>	<u>980126</u>	<u>soil</u>	<u>↓</u>	<u>500ml</u>	
G	<u>GIVERT-12</u>	<u>980127</u>	<u>water</u>	<u>GLASS</u>	<u>1L</u>	
H						

13. ANALYSIS REQUESTED	f. <input type="checkbox"/> PAHs - 8310	i. <input type="checkbox"/> OP - Pest
a. <input checked="" type="checkbox"/> pH <u>A,B,C,D,E,F,G,H</u>	g. <input type="checkbox"/> PCBs	m. <input type="checkbox"/> VOA - 8021
b. <input checked="" type="checkbox"/> Metal Scan <u>A,B,C,D,E,F,G,H</u>	h. <input type="checkbox"/> TPH	n. <input type="checkbox"/> VOA - 8260
c. <input type="checkbox"/> Metals (Spec)	i. <input type="checkbox"/> Gasoline	o. <input type="checkbox"/> SVO - 8270
d. <input type="checkbox"/> W.E.T.	j. <input type="checkbox"/> Diesel	p. <input type="checkbox"/> TCLP - (specify)
e. <input type="checkbox"/> Flash Point	k. <input type="checkbox"/> CI - Pest	q. <input checked="" type="checkbox"/> Sulfate: <u>B, D</u> <u>CN: D, F</u>

14. SPECIAL REMARKS/ANALYSIS OBJECTIVE:

15. SUPPLEMENTAL REQUESTS	Initials _____ Date _____
---------------------------	------------------------------

16. CHAIN OF CUSTODY	a. <u>Daniel V. Zarkowski</u> Signature	Name/Title <u>DANIEL ZARKOWSKI / HSS</u>	Inclusive Dates <u>8/12/98 - 8/13/98</u>
	b. <u>J. Gaudin</u> Signature	Name/Title <u>JOURNAL GARDIN / PHC-III</u>	Inclusive Dates <u>8/14/98 - / /</u>
	c. _____ Signature	Name/Title _____	Inclusive Dates <u>/ / - / /</u>
	d. _____ Signature	Name/Title _____	Inclusive Dates <u>/ / - / /</u>

17. LAB REMARKS: <u>Drinking H₂O standards for H₂O samples.</u>	
---	--

Department of Toxic Substances Control
Hazardous Materials Laboratory

SUPPLEMENTAL _____
(check if Supplemental Request)

AUTHORIZATION REQUEST FORM (ARF)

PART A: (By Requestor - PLEASE PRINT) TAT Level 1 2 3 4

TO →

Requestor's Name DAN ZAROKOWSKI Phone (916) 255-3657
Region/Unit NECCOB FAX (916) 255-3796
BACK-UP REQUESTOR Fran Anderson Phone (916) 255-3733
SITE: SHAME Engle Mine ; Bunker Hill Mine

Analytical Requests Planned

MG

Analysis	Number of Spls / Type					Analysis	Number of Spls / Type				
	Soil	H2O	Solid	Liq	Other		Soil	H2O	Solid	Liq	Other
Metal Scan	8	4				Vol Hdspce					
Metal Spec.						SV Screeng					
W.E.T						Vol 8260					
pH	8					SV 8270					
Cyanides	2					(Write in)					
Cl-Pest	1	1				sulfate	2				
OP-Pest											
PAHs						T C L P					
PCBs 8081						Metals					
Gasoline						Volatiles					
Diesel						Semivol.					
TPH						Pesticides					
8021						Herbicides					

Analysis Objective (circle one) a. Waste Characterization b. Treatment Standards
c. Drinking H2O Standards d. Others :

Detection Limit Requirements :
(if diff. than established DLs)

Expected Date of Samples Arrival at Lab 8/14/98

PART B: (By STO - HML)

Authorization Number (AN) HMA3649 Expires 8/21/98

Lab to Receive Samples Name: Hazardous Materials Lab
Address: 700 Heinz St., Ste. 150
Berkeley, CA 94710

Sample Tracking Officer (STO): Pam Schio

Today's Date: 8/1/98

TAT Level 1 = 10-15 Days, 2 = 16-30 Days, 3 = 31-45 Days, 4 = when possible (circle one on the top)

* Other: Solvent (Sol), Oil, Paint (Pat), Sludge (Sl)-etc (please specify)

TRACE ELEMENTS IN THE PLUMAS COPPER BELT, PLUMAS COUNTY, CALIFORNIA

By ARTHUR R. SMITH

INTRODUCTION

The Plumas copper belt is California's most significant zone of copper-iron sulfide mineralized rock that is either wholly within or closely associated with granitic intrusions. The belt extends 18 miles from the

Engels and Superior mines on the north to the Walker mine (fig. 1) in a roughly S. 20° E. direction. The center of the belt is about six miles east of Taylorsville, Plumas County.

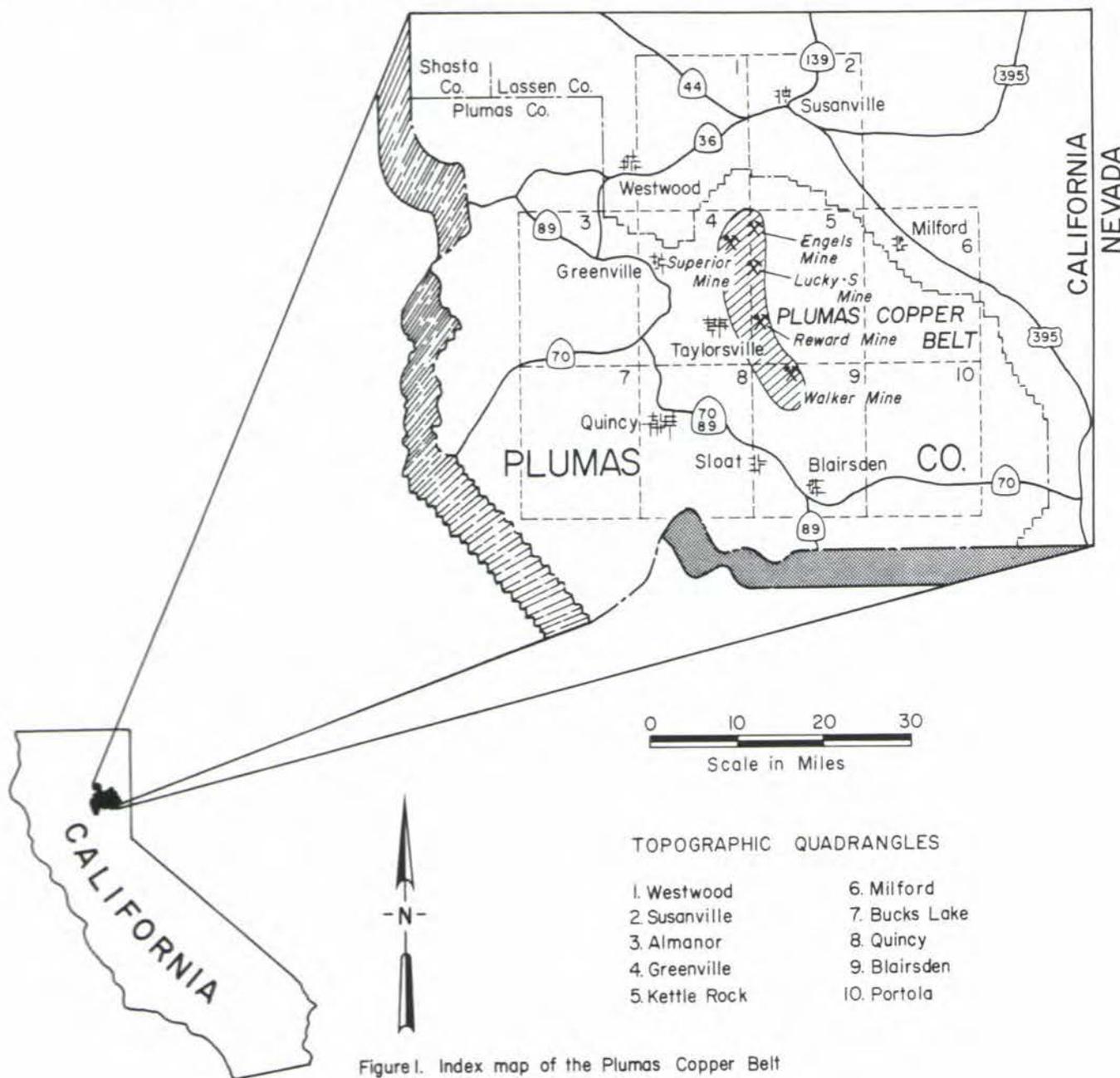


Figure 1. Index map of the Plumas Copper Belt

ATTACHMENT F

**PLUMAS COUNTY
NEGATIVE DECLARATION NUMBER 661**

for

PERMIT TO MINE/RECLAMATION PLAN

**Turner Excavating, Inc., operator
California-Engels Mining Company, owner**

MR 2-11/12-01

**Plumas County
FILED: May 9, 2012**

REVIEW PERIOD

FROM: May 9, 2012 through June 8, 2012

APPROVED/CERTIFIED June 27, 2012

NEGATIVE DECLARATION

It is found that this project will not have a significant effect on the environment because the Initial study uncovered no evidence to the contrary. An attached copy of the Initial Study documents reasons supporting the finding.

Determination by: Rebecca K. Herrin
Title: Senior Planner
Date: April 27, 2012

Written by: Rebecca K. Herrin
Title: Senior Planner
Date: April 27, 2012

SCANNED
by M. Luksic

**PLUMAS COUNTY
Initial Study**

**Permit to Mine/Reclamation Plan
Turner Excavating, Inc., operator
(California-Engels Mining Company, owner)
MR 2-11/12-01**

Date of Initial Study Preparation: April, 2012

Lead Agency Name and Address: Plumas County Planning and Building Services,
555 Main Street, Quincy, CA 95971
(530) 283-6213
beckyherrin@countyofplumas.com

Prepared By: Rebecca Herrin, Senior Planner

Project location: Diamond Mountain Road, Greenville, CA; Assessor's Parcel
Number 007-080-004; Section 8, Township 27 North, Range 11
East, MDM

Applicants: Brian and Lynne Turner, dba Turner Excavating, Inc.

Owner: California-Engels Mining Company

General Plan designation: Important Timber

Zoning: General Forest - GF (Exhibit 2).

Project Description:

See Exhibit 1 – Reclamation Plan for the Number 10-Level Mine, prepared by Deem/Shiningtree, December, 2011.

This is a proposal to mine up to 100,000 cubic yards of construction aggregate from an existing previously disturbed overburden pile. The project will be mined in one section without phasing. Mining will remove the overburden material from the top down until it reaches the original ground surface where the original soil layer still exists. In addition to mining, the project includes a seasonal rock crushing/screening plant, but no permanent structures or buildings. The processing plant will cease operation and be removed from the site when available reserves of aggregate overburden have been exhausted.

Based on the known dimensions of the overburden pile, the amount of material remaining onsite is calculated to be 55,000 cubic yards. Removal of the existing pile will result in the exhaustion of all available material at this location.

The total acreage in reclamation plan is plus or minus 2.88 acres. The total area to be reclaimed is plus or minus 2.88 acres. Final reclamation will be completed within three years after the available reserves have been exhausted. Proposed land uses after reclamation are for timber management. The estimated end of mining is January 1, 2032.

The Number 10-Level Mine is a vested aggregate mine in Plumas County, CA. Mining operations have been conducted under the same ownership at the site since 1901. Originally, mining was conducted to

retrieve ore. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was left near the tunnel entrance.

California-Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964 by numerous private and public entities. Based upon records provided by the owner it appears that approximately 50% of the original pile has been removed by past operators. Due to this long history of continued use, the site has been declared a vested aggregate operation by the County of Plumas (**Exhibit 3**).

Equipment and techniques used to process excavated material will vary. The following description is typical of this type of operation:

Since the material being mined has already been broken down during the process of tunneling, no blasting is required prior to moving material to the processing site.

The overburden aggregate will be harvested with an excavator or loader. Material will be moved to the plant site where it will be deposited into the feeder/grizzly unit or surge pile. Following the crushing/screening process the material will be sorted in stockpiles within the mine area until needed.

Some material may be too fine or soft for incorporation into marketable products. This material will be saved for eventual use during reclamation as a means of enhancing rooting depth and water holding capacity of the soil. Since the overburden is not uniform in size, the final amount of fines is unknown.

The objective of the reclamation program is to clean up the pre-SMARA (Surface Mining and Reclamation Act) mine overburden, restore the original surfaces to a stable condition, prevent erosion, and ensure public safety.

Environmental Setting and Surrounding Land Uses:

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

Site elevations range from 4,176 feet on the northeast end of the reclamation area to 4,123 feet on the southwest. The hills surrounding the site rise over 1000 feet above the mine.

The material being processed is a component of the Mesozoic aged plutonic rocks that dominate the area. The overburden is a mix of quartz monzonite/quartz diorite and is free from mineralization. Since the project only involves the removal of a previously placed pile of overburden to reveal the original ground surface, the structural properties of the underlying geology are not included in the plan.

Mining will be conducted with the goal of uncovering the original soil surface already in place. As soon as a section of the soil is exposed, a 30ft. by 30ft. fenced test plot will be set up to determine the viability of the proposed seed mix.

The site is located at the northern end of the Sierra Nevada geomorphic province at an elevation of 4,160 feet (mean sea level). The climate is Mediterranean, characterized by cool, wet winters and warm, dry summers. The yearly average temperature in the area is approximately 51° F with an average low of 24° F in January and average high of 91° F in July. Annual rainfall, as measured at the Greenville Ranger Station to the south, averages 39.73 inches per year. There are no detailed records of rainfall at the site but it can be assumed that it closely follows this pattern. The majority of the rainfall occurs between November and April with the wettest month being February.

The mine site is adjacent to China Gulch, a tributary of Lights Creek that drains China Gulch to the northeast. The mine is in the lower reaches of the small watershed, which has its headwaters approximately 2 miles to the northeast. Historic mining during the early 20th century resulted in the original drainage bed at this location being filled in with overburden. In order to direct runoff away from the overburden pile, the stream was channeled along the hillside to the west in a ditch. Removal of the pile will not alter the existing flow pattern and no extraction will occur within 10 feet of the stream.

Surveys conducted in support of nearby timber harvest activities have identified the vegetation regime as “Lower Montane Coniferous Forest” and corresponds to the description for this association provided by the California Native Plant Society. The entire area was heavily logged in the 19th and 20th centuries and all mature vegetation in the area is secondary growth. The site is within the boundaries of the massive Moonlight Fire that burned through the area in 2008. The vegetation surrounding the mine was heavily damaged and the predominant vegetation types are now large areas of brush and grass interspersed with unburned mixed stands of Ponderosa Pine, White Fir, Incense Cedar, Sugar Pine, Douglas Fir and Black Oak. The mine area itself consists of one contiguous pile of unvegetated overburden rock. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

The wildlife habitat is characterized as Sierran Mixed Conifer. The presence of year-round water in the surrounding area and relative seclusion of the site makes it suitable for many types of large and small animals including deer, coyote, rabbits, and numerous small rodents, reptiles and amphibians. The mining area itself is devoid of vegetation and surface water and does not currently provide valuable habitat. The site is not within a designated sensitive habitat area. The nearest important wildlife habitat area is deer winter range located approximately 4,000 feet to the southwest of the site. Upon successful reclamation, the site should revert to pre-mining habitat regime as the surrounding area recovers from the 2008 fire.

Properties within the area of the project, including the mine site are designated in the Plumas County zoning code as General Forest (GF). Post mining use of the reclaimed land will be compatible with the General Forest designation.

Relationship to Other Projects:

There are no known related projects proposed in the vicinity of this project.

Other public agencies whose approval is required:

The agencies that will have to issue entitlements if the project is to be undertaken are the Plumas County Department of Public Works and Plumas County Planning and Building Services.

- Encroachment Permit for work in the County road right-of-way - Plumas County Department of Public Works
- Permit to Mine/Reclamation Plan – Plumas County Planning and Building Services
- Department of Conservation, Office of Mine Reclamation – Review of financial assurances, approved Reclamation Plan, Annual Reports, Inspections by Lead Agency

Environmental Factors Potentially Affected

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" and subject to mitigation as indicated by the checklist on the following pages.

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture/Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION:

On the basis of this initial evaluation:

- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case. A NEGATIVE DECLARATION will be prepared.

INITIAL STUDY AND CHECKLIST

Introduction:

This checklist is to be completed for all projects that are not exempt from environmental review under the California Environmental Quality Act (CEQA). The information, analysis and conclusions contained in the checklist are the basis for deciding whether an Environmental Impact Report (EIR) or Negative Declaration is to be prepared. Additionally, if an EIR is prepared, the checklist shall be used to focus the EIR on the effects determined to be potentially significant.

1. AESTHETICS

Environmental Setting:

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

Site elevations range from 4,176 feet on the northeast end of the reclamation area to 4,123 feet on the southwest. The hills surrounding the site rise over 1000 feet above the mine. This rugged topography prevents the site from being viewed from the nearest public vantage points and helps restrict access. The footprint of the vested mine occupies a very small portion of the parcel on which it sits.

The Plumas County General Plan identifies scenic areas, which are designed to maintain and preserve the rural character, representative qualities of historic lifestyles, qualities that attract tourists, and to provide standards for scenic highways. The property is not located within a general plan identified Scenic Area or adjacent to any Scenic Road.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The mine site is located in an isolated area and is not visible from any public roadways or properties.

The mine site is not located adjacent to any designated scenic highways or roadways. The scope of the project is limited to mining, crushing and removing overburden material and will not disturb any trees or rock outcroppings.

The scope of the project is limited to mining, crushing and removing overburden material. Reclamation of the site and revegetation will improve the visual quality of the site. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

Mitigation Measures: No mitigation is required. Because of the limited scope of the project and the remote location of the property from public areas, impacts can be seen as *less than significant*.

2. AGRICULTURE/FOREST RESOURCES

Environmental Setting: Privately owned resource production lands that produce agricultural and timber products are located throughout Plumas County. The county also includes parts of the Plumas, Lassen, Tahoe, and Toiyabe National Forests, which support some timber and biomass production.

Surveys conducted in support of nearby timber harvest activities have identified the vegetation regime as "Lower Montane Coniferous Forest" and corresponds to the description for this association provided by the California Native Plant Society. The entire area was heavily logged in the 19th and 20th centuries and all mature vegetation in the area is secondary growth. The site is within the boundaries of the massive Moonlight Fire that burned through the area in 2008. The vegetation surrounding the mine was heavily damaged and the predominant vegetation types are now large areas of brush and grass interspersed with unburned mixed stands of Ponderosa Pine, White Fir, Incense Cedar, Sugar Pine, Douglas Fir and Black Oak. The mine area itself consists of one contiguous pile of unvegetated overburden rock. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

Properties within the area of the project, including the mine site are designated in the Plumas County zoning code as General Forest (GF). Post mining use of the reclaimed land will be compatible with the General Forest zoning designation.

A Timberland Conversion Permit application must be submitted to CALFIRE when more than three acres of timberland will be converted to a non-forestry land use. The project is proposed on a 2.88 acre non-timberland area where no tree removal is proposed.

A response letter was received from the California Department of Forestry and Fire Protection and is included as **Exhibit 4**.

Plumas County is not mapped under the Farmland Mapping and Monitoring Program. The only area in Plumas County that is mapped is the Sierra Valley.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
<p>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p>				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 1 222O(g)) or timberland (as defined by Public Resources Code section 4526)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

Plumas County is not mapped as part of the Farmland Mapping and Monitoring Program. The Sierra Valley is the only area mapped. The County's "Right to Farm Ordinance" states that impacts from agriculture and timber operations shall not constitute a nuisance provided that operations are lawful and

utilize accepted or best management practices.

There is no agriculturally designated property in the vicinity.

The property is designated as Important Timber and zoned General Forest (GF). Post mining use of the reclaimed land will be compatible with the General Forest designation.

The project does not conflict with existing zoning or cause rezoning of forest land or timber land. The project does not conflict with any designated Timberland Production Zone. The property is designated Important Timber and zoned General Forest (GF). The mine area itself consists of one contiguous pile of unvegetated overburden rock. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

A response letter was received from the California Department of Forestry and Fire Protection (CALFIRE) is included as **Exhibit 4**. CALFIRE has no further comments as the project does not involve any tree removal.

Mitigation Measures: No mitigation is required. It is noted that there are requirements for future harvesting of timber when necessary, and the requirements of CAL FIRE are adequate to address impacts from timber harvesting. The impacts are *less than significant*.

3. AIR QUALITY

Environmental Setting: Within Plumas County, the only pollutant of concern is particulate matter (PM). Plumas County is currently in a “non-attainment” status for State level particulate matter of 10 microns or less in size (PM₁₀). Suspended particulate matter consists of particles small enough to remain suspended in the air for long periods. The sources of particulate matter that could be generated by this project include dust from travel on dirt roads and dust from construction of the project.

Suspended particulate matter can have various adverse effects on human health including asthma, emphysema, and lung cancer. Particulate matter is comprised of various organic and inorganic components including soil, vegetation particles, and pesticide residue. Attainment plans focus on particulate matter ten microns or less (PM₁₀) because the relatively smaller particles are not as readily filtered by the human body as larger particulates.

The Northern Sierra Air Quality Management District submitted a comment letter, included as **Exhibit 5**.

“The project as proposed is not likely to result in significant impacts to air resources. However, an Authority to Construct/Permit to Operate will probably be required from the NSAQMD.”

“For surface disturbance exceeding one acre, a Dust Control Plan is required pursuant to NSAQMD Rule 226:Dust Control.”

“The project site is not mapped as having ultramafic rock or naturally occurring asbestos. However, if ultramafic rock is encountered then the Asbestos ATCM for Construction, Grading, Quarrying and Surface Mining Operations (CCR Title 17, Section 93105) will apply.”

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

This is a proposal to mine up to 100,000 cubic yards of construction aggregate from an existing previously disturbed overburden pile. The project will be mined in one section without phasing. Mining will remove the overburden material from the top down until it reaches the original ground surface where the original soil layer still exists. In addition to mining, the project includes a seasonal rock crushing/screening plant, but no permanent structures or buildings. The processing plant will cease operation and be removed from the site when available reserves of aggregate overburden have been exhausted.

The project is proposed to be served by an existing county road. Private on-site roads serve the project site. These roads have been used in the past for timber harvest and mining/prospecting activities, and will likely be used in the future for the same. Six small shacks that store cores produced during mineral exploration in the surrounding area are located adjacent to the northeast end of the reclamation area.

Dust created by the road use and processing activity has the potential to affect local air quality at various times during operations, but these impacts are minimal. To minimize air quality impacts associated with project-related dust, any activity is required by the NSAQMD to comply with Regulation II, Rule 226: Dust Control. Additionally, the disturbance of more than one acre requires the approval of a Dust Control Plan by the NSAQMD.

The NSAQMD has indicated that an Authority to Construct/Permit will likely be required. Equipment typically subject to permitting includes generator engines and rock crushing and screening machinery.

The material being processed is a component of the Mesozoic aged plutonic rocks that dominate the area. The overburden is a mix of quartz monzonite/quartz diorite and is free from mineralization. There is no indication of the presence of asbestos rock.

Sensitive receptors are facilities where sensitive receptor population groups (children, the elderly, the acutely ill and the chronically ill) are likely to be located. These land uses include residences, schools, playgrounds, child care centers, retirement homes, convalescent homes, hospitals and medical clinics. Because the project would not create substantial pollutant concentrations and there are no sensitive receptors located near the project site, nor any property zoned for such uses, the impact would be less than significant.

Mitigation Measures: No mitigation is required as the impacts can be seen as *less than significant*. The District Rules of the Northern Sierra Air Quality Management District are applicable to the project and the owners/applicants will be provided a copy of the correspondence from the District. Conditions may be applied to the permit to ensure that permitting requirements are followed.

4. BIOLOGICAL RESOURCES

Environmental Setting:

The Number 10-Level Mine is a vested aggregate mine. Mining operations have been conducted under the same ownership at the site since 1901. Originally, mining was conducted to retrieve ore. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was left near the tunnel entrance.

California-Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964 by numerous private and public entities. Based upon records provided by the owner it appears that approximately 50% of the original pile has been removed by past operators.

Page 11 of the "Reclamation Plan for the Number 10-Level Mine" contains descriptions of the resources. The mine site is adjacent to China Gulch, a tributary of Lights Creek that drains China Gulch to the northeast. The mine is in the lower reaches of the small watershed which has its headwaters approximately 2 miles to the northeast. Historic mining during the early 20th century resulted in the original drainage bed at this location being filled in with overburden. In order to direct runoff away from the overburden pile, the stream was channeled along the hillside to the west in a ditch. Removal of the pile will not alter the existing flow pattern and no extraction will occur within 10 feet of the stream.

Surveys conducted in support of nearby timber harvest activities have identified the vegetation regime as "Lower Montaine Coniferous Forest" and corresponds to the description for this association provided by the California Native Plant Society. The entire area was heavily logged in the 19th and 20th centuries and all mature vegetation in the area is second growth. The site is within the boundaries of the massive Moonlight Fire that burned through the area in 2008. The vegetation surrounding the mine was heavily damaged and the predominant vegetation types are now large areas of brush and grass interspersed with unburned mixed stands of Ponderosa Pine, White Fir, Incense Cedar, Sugar Pine, Douglas Fir and Black Oak. The mine area itself consists of one contiguous pile of unvegetated overburden rock. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

The wildlife habitat is characterized as Sierran Mixed Conifer. The presence of year-round water in the surrounding area and relative seclusion of the site makes it suitable for many types of large and small animals including deer, coyote, rabbits, and numerous small rodents, reptiles and amphibians. The mining

area itself is devoid of vegetation and surface water and does not currently provide valuable habitat. The site is not within a designated sensitive habitat area. The nearest important wildlife habitat area is deer winter range (Plumas County General Plan) located approximately 4,000 feet to the southwest of the site. Upon successful reclamation, the site should revert back to the pre-mining habitat regime as the surrounding area recovers from the 2008 fire.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The Plumas County General Plan identifies Important Wildlife Habitat Areas which are intended to avoid significant interference with identified wildlife habitat areas. The project site is not located within any identified Important Wildlife Habitat area.

Historic mining during the early 20th century resulted in the original drainage bed at this location being filled in with overburden. In order to direct runoff away from the overburden pile, the stream was channeled along the hillside to the west in a ditch. Removal of the pile will not alter the existing flow pattern and no extraction will occur within 10 feet of the stream. The overburden pile is stable in the area adjacent to the stream and best practices will be utilized to keep from impacting the stream.

There is no vegetation in the processing area and wildlife is not expected to be impacted. If suitable area is available after reclamation is completed a fenced, 30 foot by 30 foot test plot will be revegetated with a seed mixture. Vegetative success will be monitored for two consecutive years, or until success standards are met without human intervention, following completion of reclamation. Should revegetation not seem attainable after two years, an alternative vegetative planting program, addressing species richness, density, and cover, shall be undertaken. As a part of the revegetation program, noxious weeds will be controlled.

Financial assurances held for reclamation work will be released when the performance standards of the reclamation plan are satisfied. This includes successful establishment of vegetation with no human interference, including but not limited to fertilization, irrigation, weeding, etc. The financial assurance will be in the form of a performance bond or other mechanism as approved by Plumas County.

Although the California Department of Fish and Game did not provide comment, the agency will be reviewing this Negative Declaration during the circulation period. The property owner has indicated that there are existing Streambed Alteration Agreements for all stream crossings obtained as part of the timber harvest activities.

Mitigation Measures: No mitigation is required as impacts are *less than significant*.

5. CULTURAL RESOURCES

Environmental Setting:

This is a proposal to mine up to 100,000 cubic yards of construction aggregate from an existing previously disturbed overburden pile. The project will be mined in one section without phasing. Mining will remove the overburden material from the top down until it reaches the original ground surface where the original soil layer still exists. In addition to mining, the project includes a seasonal rock crushing/screening plant, but no permanent structures or buildings. The processing plant will cease operation and be removed from the site when available reserves of aggregate overburden have been exhausted.

The Number 10-Level Mine is a vested aggregate mine in Plumas County, CA. Mining operations have been conducted under the same ownership at the site since 1901. Originally, mining was conducted to retrieve ore. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was left near the tunnel entrance.

California-Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964 by numerous private and public entities. Based upon records provided by the owner it appears that approximately 50% of the original pile has been removed by past operators. Due to this long history of continued use, the site has been declared a vested aggregate operation by the County of Plumas (**Exhibit 3**).

The area excavated under this reclamation plan is limited to the pile of tunnel overburden and no material will be left after mining concludes. Other existing piles of tunnel overburden at nearby areas, not associated with this plan may be mined under separate approvals and plans in the future.

The property is not located in an area designated as potentially archaeologically significant in the Plumas County General Plan.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource as defined in 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The area has a long history of mining and timber harvesting activities. This operation can be viewed as a continuation of the long pattern of mining on the site. This limited processing operation will utilize existing overburden resources. This project can be seen to have no significant impact on Cultural Resources.

Mitigation Measures: No mitigation is required as impacts are *less than significant*.

6. GEOLOGY AND SOILS

Environmental Setting:

Plumas County is located in the northern part of the Sierra Nevada geomorphic province. The Sierra Nevada province starts in the north at Lassen Peak in the Cascade Range and continues to the south where it meets the Tehachapi Mountains. The Sierra Nevada province is comprised principally of Cretaceous granitic plutons; remnants of Paleozoic and Mesozoic metavolcanic and metasedimentary rocks, and Cenozoic volcanic and sedimentary rocks. The Paleozoic and Mesozoic metavolcanic and metasedimentary rocks were intruded by the granitic plutons approximately 77 to 225 million years ago, resulting in local uplift and deformation of the overlying older rock. Regional uplift and rapid erosion of most of the overlying metamorphic rocks closely followed intrusion of the plutons, exposing the underlying granitic rocks. Continued uplift and erosion, accompanied by volcanic activity and alpine glaciation resulted in the present pattern of deep-walled valleys that characterize the Sierra Nevada.

The Diamond Mountains and Sierra Nevada Range traverse through the County in a northwesterly direction. The Diamond Mountains dominate the eastern portion of the County, while the Sierra Nevada Range dominates the southwestern portion of the County. Between the two mountain ranges is the Plumas Trench. Several faults have resulted in the uplift of the Diamond and Sierra Nevada Ranges, with the northwesterly trending Melones fault traversing through the County and forming the structural boundary between the two ranges. Many of the valleys formed from this fault and were once filled with glacial lakes. The glaciers eroded the underlying granitic rocks on the mountain peaks and formed a vast alluvial meadow system in the headwaters of the Feather River.

The soils in the valleys or low-lying area of Plumas County are dominated by highly erodible granitic and sedimentary deposits. To date, there have been no soil surveys conducted by the U.S. Department of Agriculture, Natural Resources Conservation Services (NRCS) for Plumas County. However, an erosion study conducted by the USDA has shown that soils in Plumas County have low permeability and are prone to erosion from storm water runoff.*

*Draft EIR, Monterey Plus, October 2007.

The material being processed is a component of the Mesozoic aged plutonic rocks that dominate the area (see page 9 of the “Reclamation Plan for the Number 10-Level Mine”). The overburden is a mix of quartz monzonite/quartz diorite and is free from mineralization.

Page 9 of the “Reclamation Plan for the Number 10-Level Mine” also contains a description of the resource. Since the project only involves the removal of a previously placed pile of overburden to reveal the original ground surface, the structural properties of the underlying geology are not discussed in the reclamation plan. All final slopes will match the gentle underlying contours of the exposed slope above the site (approximately 3:1). The surrounding forest slopes show no signs of mass wasting or failure and the final reclaimed surfaces will be free from the risk of significant erosion provided post-mining erosion control measures are in place.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

Plumas County is not listed in Table 4, Special Publication 42 (Cities and Counties Affected by Alquist-Priolo Earthquake Fault Zones as of 12/17/03). The proposed project would not expose people or structures to substantial adverse effects due to impacts from earthquakes or seismic shaking. Like most of California, the site can be expected to be subjected to seismic ground shaking at some future time. As the project appears to be located in an area where the probability of significant ground shaking is low, potential geologic impacts would be less than significant.

The proposed project would not expose people or structures to significant risk due to seismic-related ground failure, including liquefaction. Liquefaction is a phenomenon where loose, saturated, granular soils lose their inherent shear strength due to excess water pressure that builds up during repeated movement from seismic activity. Factors that contribute to the potential for liquefaction include a low relative density of granular materials, a shallow groundwater table, and a long duration and high acceleration of seismic shaking. Liquefaction usually results in horizontal and vertical movements from lateral spreading of liquefied materials and post-earthquake settlement of liquefied materials. Liquefaction potential is greatest where the groundwater level is shallow, and submerged loose, fine sands occur within a depth of approximately 50 feet or less. Due to the type of soils onsite, liquefaction within the project area is unlikely.

The overburden pile being mined was put in place nearly 100 years ago on top of the existing soils. Mining will be conducted with the goal of uncovering the original soil surface already in place. Removal of the overburden pile will not alter the existing stream flow pattern and no extraction will occur within 10 feet of the stream, making it unlikely that substantial soil erosion or loss of topsoil will take place.

Land disturbances on projects of one acre or more requires the landowner to obtain coverage under the General Permit for Stormwater Discharges. The project proponent will need to file a Notice of Intent (NOI), along with a vicinity map, a Storm Water Pollution Prevention Plan (SWPPP), and appropriate fees to the State Water Resources Control Board prior to commencement of activities on site.

During operations, an erosion and pollution control plan shall be applied to the site, unless future changes in stormwater regulations compel the operator to institute stricter measures. This plan has two major objectives:

1. To identify and evaluate sources of pollutants associated with reclamation activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and
2. To identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with reclamation activities in storm water discharges and authorized non-storm water discharges.

During reclamation activities, a copy of this plan will be kept by the foreman at the quarry site. The preparer of this plan is a Certified Professional in Erosion and Sediment Control (CPESC) and a qualified QSD/QSP (Qualified SWPPP Developer and Qualified SWPPP Practitioner for the Construction General Stormwater Permit). The Operator will oversee the plan's implementation. Best Management Practices (BMPs) will be implemented during reclamation activities. If unforeseen circumstances require new and/or revised BMPs, they will be employed immediately. Specific measures used during reclamation may be changed if more economical BMPs with comparable or improved results are identified.-

No septic tanks or wastewater systems are proposed as part of this project. A portable toilet will be used. Sewage from the portable toilet will be hauled by approved hauler and disposed at an approved disposal

site.

Mitigation Measures: No mitigation is required as impacts are *less than significant*.

7. GREENHOUSE GAS EMISSIONS

Environmental Setting: Greenhouse gases (GHG) are gases that trap heat in the atmosphere. GHG are emitted by natural and industrial processes, and the accumulation of GHG in the atmosphere regulates the earth's temperate. Greenhouse gases (GHGs) include carbon dioxide (CO2), methane, halocarbons (HFCs), and nitrous oxide (NO2). CO2 emissions, stemming largely from fossil fuel combustion, comprise about 87% of California emissions. In California, approximately 43% of the CO2 emissions come from cars and trucks. Agriculture is a major source of both methane and NO2, with additional methane coming primarily from landfills. Most HFC emissions come from refrigerants, solvents, propellant agent, and industrial processes, and persist in the atmosphere for longer periods of time and have greater effects at lower concentrations compared to CO2. The adverse impacts of global warming include impacts to air quality, water quality, sea level rise (flooding), fire hazards, and an increase in health related problems. AB32 establishes a state goal of reducing GHG emissions to 1990 levels by the year 2020 (a reduction of approximately 30% from the "business as usual" forecast 2020 emission levels, or a 10% reduction from today's levels).

Assembly Bill 32 (AB32), the California Global Warming Solutions Act, was adopted in September 2006 and requires that statewide GHG emissions be reduced to 1990 levels by the year 2020. This reduction will be accomplished through regulations to reduce emissions from stationary sources and from vehicles. The California Air Resources Board (ARB) is the State agency responsible for developing rules and regulations to cap and reduce GHG emissions. In addition, the Governor signed Senate Bill 97 in 2007 directing the California Office of Planning and Research to develop guidelines for the analysis and mitigation of the effects of greenhouse gas emissions and mandating the GHG impacts be evaluated in CEQA documents. CEQA Guidelines Amendments for GHG Emissions were adopted by OPR on December 30, 2009.

Draft Thresholds of Significance for GHGs were developed and released by ARB in October 2008, but ARB is not taking action on adopting those thresholds, which now serve for informational purposes.

Currently, there are no federal laws regulating GHGs, but on April 17, 2009, the federal EPA formally declared that GHGs are a public health and safety issue, clearing the way for their identification as criteria pollutants that could be regulated under the Clean Air Act.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable plan, policy or				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Impact Discussion:

CO2 is the main component of greenhouse gases. For the proposed project, it is anticipated that CO2 levels would not be substantially significant because the project is not substantially increasing vehicle trips. The project would not contribute to a substantial increase in traffic during the operational phase of the project that could result in a significant increase in GHG emissions because the project would consist of limited vehicle traffic.

Given Northern Sierra Air Quality Management District standards, the project would limit air pollution to the maximum extent feasible. Because the proposed project would be below anticipated thresholds, and would not conflict with any applicable plan, policy or regulation adopted to reduce the emissions of greenhouse gases, this impact would be *less than significant*.

Mitigation Measures: No mitigation is required.

8. HAZARDS AND HAZARDOUS MATERIALS

Environmental Setting: This project is not located on or near a hazardous waste substances site. Some activities and materials onsite could potentially be sources of pollution.

The project site is located within the State Responsibility Area (SRA) for wildland fires. Wildland fire protection is provided by the United States Forest Service through a Memorandum of Understanding with the State Department of Forestry and Fire Protection (CALFIRE).

The project site is not within a district which provides structural fire protection services.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Impact Discussion:

The project site is not listed on the California Department of Toxic Substances Control Hazardous Waste and Substances Site List (Cortese List) and is not near any listed sites or sites known or suspected to contain hazardous materials. A review of regulatory agency databases, which included lists of hazardous materials sites compiled pursuant to California Government Code Section 65962.5, did not identify any sites at or adjacent to the project site that have used, stored, disposed of, or released hazardous materials.

Some activities and materials onsite could potentially be sources of pollution. Pages 16 through 20 of the "Reclamation Plan for the Number 10-Level Mine" contain discussion of those sources. The following potential sources of pollutants exist:

Removal of equipment for crushing and screening operation.

Dust is generated during the dismantling and removal of processing equipment. Sediment remaining from the processing of material is possible. There could be spillage of petroleum products on the ground during removal of diesel tanks and generators.

Physical reclamation of Quarry.

Major activities at the site consist of the following:

1. Finish grading, including elimination of stockpiles.
2. Placement of overburden and topsoil.
3. Seeding.

Dust can be generated from the establishment of final contours, flattening of stockpiles and replacement of overburden and stockpiles. There could be leakage from the equipment. Heavy vehicles associated with

reclamation operations generally include one water truck, front-end loader and a dozer as well as small support vehicles. All heavy vehicles and certain stationary equipment use diesel fuel No. 2 as well as assorted petroleum based lubricants.

During periods of activity, fueling of vehicles occurs at this location, as well as the storage of lubricants for machinery and equipment. These are stored onboard a service truck. Petroleum products could be a source of pollution from spillage during fueling of vehicles and equipment or the filling of tanks or transport of drums and buckets. There could also be leakage from vehicles and equipment.

Sewage generated from the employees is handled by a portable toilet, which will be regularly maintained.

The following measures are proposed as part of the project to address potential issues. These best management practices will also be incorporated into the conditions of project approval.

“Good housekeeping measures in erosion control

“The following good housekeeping practices will be applied on site:

1. Avoid storing erodible overburden/stockpiles near drainage conveyances unless erosion control measures are installed around them.
2. Encourage employees to report any potential erosion concerns to the plant manager.
3. Use of water truck for dust mitigation.”

“Petroleum products and maintenance BMPs include the following:

- “1. Providing secondary containment of diesel tanks, motor oils, and lubricants.
2. Used fluids, filters, and other contaminated materials will be disposed on a regular basis.
3. Used batteries are also properly removed from the site by a registered hauler.
4. Place rags used for cleaning spills in a container for removal from site.
5. Adequately sized drip and drain pans used when removing fluids.
6. Material storage areas and containers are checked daily.
7. Equipment operators are responsible for inspecting and/or maintaining the equipment. Unsafe conditions should be reported to the facility manager or foreman as soon as possible. Company inspections, maintenance, and service significantly reduce the potential for this type of pollution to occur.
8. For all contracted equipment, it is the responsibility of the private contractor to maintain his equipment in a clean and safe manner.
9. Drums and containers will be capped and tilted to allow runoff of water.
10. Equipment and machinery will be well maintained to prevent the leaking of petroleum products.
11. Promptly cleaning up minor spills using absorbent materials such as rags and sand.
12. If a major spill occurs, it will be contained with earthen berms, excavated, stored in a stockpile, and covered with an impervious material.
13. Employee training on fueling, spill response, and cleanup.
14. Inspection of staging areas for any leakage from vehicles and prompt cleanup.

“Miscellaneous BMPs include the following:

1. Non-hazardous solid waste is removed from the site and taken to the County disposal facility.
2. Empty portable toilets on a regular basis.
3. Locate portable toilets away from drainages.
4. Portable toilets will be out of vehicle traffic areas.”

“Best Management Practices (BMPs)

Best management practices (BMPs) are procedures designed to reduce contamination or the potential for contamination of storm water. They can be simple, low cost solutions, such as installation of a water bar. Conversely, BMPs can be as expensive as installing an oil/water separator. BMPs are to be reviewed

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
e) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The overburden pile being mined was put in place nearly 100 years ago on top of the existing soils. Mining will be conducted with the coal of uncovering the original soil surface already in place. Removal of the overburden pile will not alter the existing stream flow pattern and no extraction will occur within 10 feet of the stream, making it unlikely that substantial soil erosion or loss of topsoil will take place.

Land disturbances on projects of one acre or more requires the landowner to obtain coverage under the General Permit for Stormwater Discharges. The project proponent will need to file a Notice of Intent (NOI), along with a vicinity map, a Storm Water Pollution Prevention Plan (SWPPP), and appropriate fees to the State Water Resources Control Board prior to commencement of activities on site.

During operations, the following erosion and pollution control plan shall be applied to the site, unless future changes in stormwater regulations compel the operator to institute stricter measures. This plan has two major objectives:

1. To identify and evaluate sources of pollutants associated with reclamation activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and
2. To identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with reclamation activities in storm water discharges and authorized non-storm water discharges.

During reclamation activities, a copy of this plan will be kept by the foreman at the quarry site. The preparer of this plan is a Certified Professional in Erosion and Sediment Control (CPESC) and a qualified QSD/QSP (Qualified SWPPP Developer and Qualified SWPPP Practitioner for the Construction General Stormwater Permit). The Operator will oversee the plan's implementation. Best Management Practices (BMPs) will be implemented during reclamation activities. If unforeseen circumstances require new and/or revised BMPs, they will be employed immediately. Specific measures used during reclamation may be changed if more economical BMPs with comparable or improved results are identified.-

The total acreage in reclamation plan is plus or minus 2.88 acres. The total area to be reclaimed is plus or minus 2.88 acres. Final reclamation will be completed within three years after the available reserves have been exhausted. Proposed land uses after reclamation are for timber management. The estimated end of mining is January 1, 2032.

The Number 10-Level Mine is a vested aggregate mine in Plumas County, CA. Mining operations have been conducted under the same ownership at the site since 1901. Originally, mining was conducted to retrieve ore. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was left near the tunnel entrance.

California-Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964 by numerous private and public entities. Based upon records provided by the owner it appears that approximately 50% of the original pile has been removed by past operators. Due to this long history of continued use, the site has been declared a vested aggregate operation by the County of Plumas (**Exhibit 3**).

Equipment and techniques used to process excavated material will vary. The following description is typical of this type of operation:

Since the material being mined has already been broken down during the process of tunneling, no blasting is required prior to moving material to the processing site.

The overburden aggregate will be harvested with an excavator or loader. Material will be moved to the plant site where it will be deposited into the feeder/grizzly unit or surge pile. Following the crushing/screening process the material will be sorted in stockpiles within the mine area until needed.

Some material may be too fine or soft for incorporation into marketable products. This material will be saved for eventual use during reclamation as a means of enhancing rooting depth and water holding capacity of the soil. Since the overburden is not uniform in size, the final amount of fines is unknown.

The objective of the reclamation program is to clean up the pre-SMARA (Surface Mining and Reclamation Act) mine overburden, restore the original surfaces to a stable condition, prevent erosion, and ensure public safety.

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

Site elevations range from 4,176 feet on the northeast end of the reclamation area to 4,123 feet on the southwest. The hills surrounding the site rise over 1000 feet above the mine.

The material being processed is a component of the Mesozoic aged plutonic rocks that dominate the area. The overburden is a mix of quartz monzonite/quartz diorite and is free from mineralization. Since the project only involves the removal of a previously placed pile of overburden to reveal the original ground surface, the structural properties of the underlying geology are not included in the plan.

Mining will be conducted with the goal of uncovering the original soil surface already in place. As soon as a section of the soil is exposed, a 30ft. by 30ft. fenced test plot will be set up to determine the viability of the proposed seed mix.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion: The project site is not designated to be of regional or state importance, or of a locally designated mineral resource recovery site. While the operation will result in the use of an overburden pile for construction aggregate, this is not seen as a significant impact or loss of resource.

The requirements of the Surface Mining and Reclamation Act (SMARA) and conditions of permit approval will be satisfied by the project.

Mitigation Measures: No mitigation is required as impacts are *less than significant*.

12. NOISE

Environmental Setting:

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

Site elevations range from 4,176 feet on the northeast end of the reclamation area to 4,123 feet on the southwest. The hills surrounding the site rise over 1000 feet above the mine. This rugged topography prevents the site from being viewed from the nearest public vantage points and helps restrict access. The footprint of the vested mine occupies a very small portion of the parcel on which it sits.

Noise is usually defined as unwanted sound. It is an undesirable by-product of society's normal day-to-day activities. Sound becomes unwanted when it interferes with normal activities, when it causes actual physical harm, or when it has adverse effects on health. The definition of noise as unwanted sound implies that it has an adverse effect on people and their environment. Noise is measured on a logarithmic scale of sound pressure level known as a decibel (dB).

Noise sources occur in two forms: (1) point sources, such as stationary equipment, loudspeakers, or individual motor vehicles; and (2) line sources, such as a roadway with a large number of point sources (motor vehicles). Sound generated by a point source typically diminishes (attenuates) at a rate of 6.0 dB(A) for each doubling of distance from the source to the receptor at acoustically "hard" sites and 7.5 dB(A) at acoustically "soft" sites. For example, a 60-dB(A) noise level measured at 50 feet from a point source at an acoustically hard site would be 54 dB(A) at 100 feet from the source and 48 dB(A) at 200 feet from the source. Sound generated by a line source typically attenuates at a rate of 3.0 dB(A) and 4.5

dB(A) per doubling of distance from the source to the receptor for hard and soft sites, respectively. Sound levels can also be attenuated by man-made or natural barriers.

Sensitive receptors are facilities where sensitive receptor population groups (children, the elderly, the acutely ill and the chronically ill) are likely to be located. These land uses include residences, schools, playgrounds, child care centers, retirement homes, convalescent homes, hospitals and medical clinics.

The project site is located in a isolated area with generally low noise levels.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The Plumas County General Plan Noise Element establishes ambient outside noise levels for land use designations. The average dbA for Important Timber is 50dbA and range is 35 to 60dbA. It is unlikely that this operation, which is located in the middle of a large parcel, would exceed allowable noise levels at the property boundaries. The Noise Element also contains policies and constraints for Local Industrial Noise Sources:

“Temporary and portable industrial operations such as wood processing and gravel recovery must be considered on an individual basis. These facilities, when located within a prime mining or important

timber area, will generally not impact adjacent lands. Locations outside the specified lands may severely impact adjacent land uses and life styles necessitating the institution of mitigative measures.”

This project is located in an area designated for industrial type operations.

Mitigation Measures: No mitigation is required as impacts can be seen to be *less than significant*.

13. POPULATION AND HOUSING

Environmental Setting:

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

No housing is proposed. No additional infrastructure is proposed.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

This project does not involve additional homes or businesses. It does not displace any housing.

Mitigation Measures: No mitigation is required as impacts can be seen as *less than significant*.

14. PUBLIC SERVICES

Environmental Setting: Public services within the unincorporated County are provided by the County of Plumas, state and federal agencies, and numerous special districts, including fire protection districts, school districts, recreation districts, County Service Agencies (CSAs), and Community Service Districts (CSDs).

The following public services are provided to the site:

- Fire:** United States Forest Service through an agreement with CALFIRE for wildland fire protection only.
- Police:** Plumas County Sheriff

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

No increase in the need for services is anticipated through implementation of the project.

Mitigation Measures: No mitigation is required as impacts are *less than significant*.

15. RECREATION

Environmental Setting: Recreational opportunities within Plumas County are varied, ranging from public parks with intensively used recreational facilities, to vast tracts of forest lands and drainage systems, which provide a natural environment for recreation. There are four Recreation Districts within the County.

The project site is not located within a district that provides recreational opportunities.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

No increase in the need for services is anticipated through implementation of the project.

Mitigation Measures: No mitigation is required as impacts can be seen to be *less than significant*.

16. TRANSPORTATION/TRAFFIC

Environmental Setting: The Plumas County street system is composed of a combination of roadways, including state highways, County Roads, Forest Service system roads and private roads.

The mine is located approximately 11 miles northeast of the town of Greenville, CA. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain Road encountered after the historical marker for the Superior Mine. Access is restricted by a locked gate.

The Plumas County General Plan identifies the following constraints and policies applicable to the site: Resource Transportation Route.

Resource transportation routes are those roads which provide primary access to timber and mining resource areas. The Land Use Management for Resource Transportation Routes is to protect resource transportation routes by requiring development to provide alternate access routes, limited access or otherwise ensure continued access to resources.

A memorandum was received from the Plumas County Public Works Department (**Exhibit 6**). Concerns with road access issues raised in the letter will be evaluated in this section.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

The Land Use Management of the Resource Transportation Route is met because access is limited to one encroachment onto Diamond Mountain Road.

The Memorandum from the Plumas County Public Works Department (**Exhibit 6**) raises several issues of concern regarding roadways:

“1. Consultation with the USFS is necessary to ascertain whether or not a special use permit is necessary for use of forest service roadways.”

The representative of the United States Forest Service responded that the agency had “no comment” on the project. The roadways have been in use for timber harvesting, both involving the private lands and the USFS lands.

“5. With respect to impacts on the County Roadway, the following requirements should be reflected as conditions of project approval”

- “a. An encroachment permit shall be obtained from the Plumas County Public Works Department for the access onto Diamond Mountain Road.
- “b. Signs stating ‘Truck Crossing’ or ‘Caution Truck Crossing’ shall be posted on the truck route along Diamond Mtn. Road. In addition, and a ‘Stop’ sign shall be installed at the intersection of the access road and Diamond Mountain Road. These signs shall be installed to the satisfaction of the Plumas County Public Works Department. This signage shall be removed upon cessation of mining activities. Encroachment permits shall be obtained from the Plumas County Public Works Department prior to sign installation.
- “c. The applicant shall be responsible for repairing any ruts or potholes resulting from truck traffic to the satisfaction of the Plumas County Public Works Department.
- “d. The applicant shall be responsible for maintaining the paved portion of the County roadway free from spillage.
- “e. The haul road shall be watered daily to minimize air quality impacts associated with transporting the construction aggregate.”

Issues 5.a. and 5.b. will be addressed through the encroachment permit process. A requirement for the applicant to obtain an encroachment permit will be added to project conditions of approval.

There is no mechanism in County code to require 5.c. It cannot be imposed as a mitigation unless it can be shown that the project traffic, and not the other logging, mining, recreation and residential traffic, is directly creating or worsening the potholes.

Issues 5.d. and 5.e. will be addressed by compliance with the Dust Control Rules of the NSAQMD.

Mitigation Measures: No mitigation is required because the impacts are shown to be *less than significant*.

17. UTILITIES AND SERVICE SYSTEMS

Environmental Setting: Public utilities serving Plumas County include Pacific Gas and Electric (PG&E), Plumas Sierra Rural Electric Coop, Sierra Pacific Power for electricity. Propane and heating oil is a common fuel source used in Plumas County by individual homes and businesses.

Wastewater treatment within the unincorporated County is provided by individual small wastewater systems with some areas served by sewage collection and treatment facilities operated by special districts, County Service Agencies (CSAs), and Community Service Districts (CSDs).

The County contracts with independent haulers for solid waste services.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Impact Discussion:

Sewage generated from the employees is handled by a portable toilet, which will be regularly maintained. Sewage will be hauled by a licensed hauler to an approved disposal facility.

Measures to address stormwater will be conditions of the permit (see discussion under **Hazards and Hazardous Materials** and **Hydrology and Water Quality**, above).

The County Integrated Waste Management Plan, used in planning new facilities and improvements to existing disposal facilities, assumes an annual growth rate of 2.3%. This contrasts with the real annual growth rate from 1980 to 1990 of about 1.3% and the projected post-1990 annual growth rate of about 1%. Since about 26% of the residences in Plumas County are held for seasonal use, the seasonal population can be expected to add a proportional demand. This could be incorporated into seasonal and annual growth rates of about 1.6% and 1.8% respectively. The plan on which the need for substantial new or improved solid waste facilities is based still assumes an annual growth rate sufficient to accommodate the projected growth to which this project would contribute (County Integrated Waste Management Plan; General Plan, pages 35-61)

Mitigation Measures: No mitigation measures are required, as impacts are *less than significant*.

18. MANDATORY FINDINGS OF SIGNIFICANCE

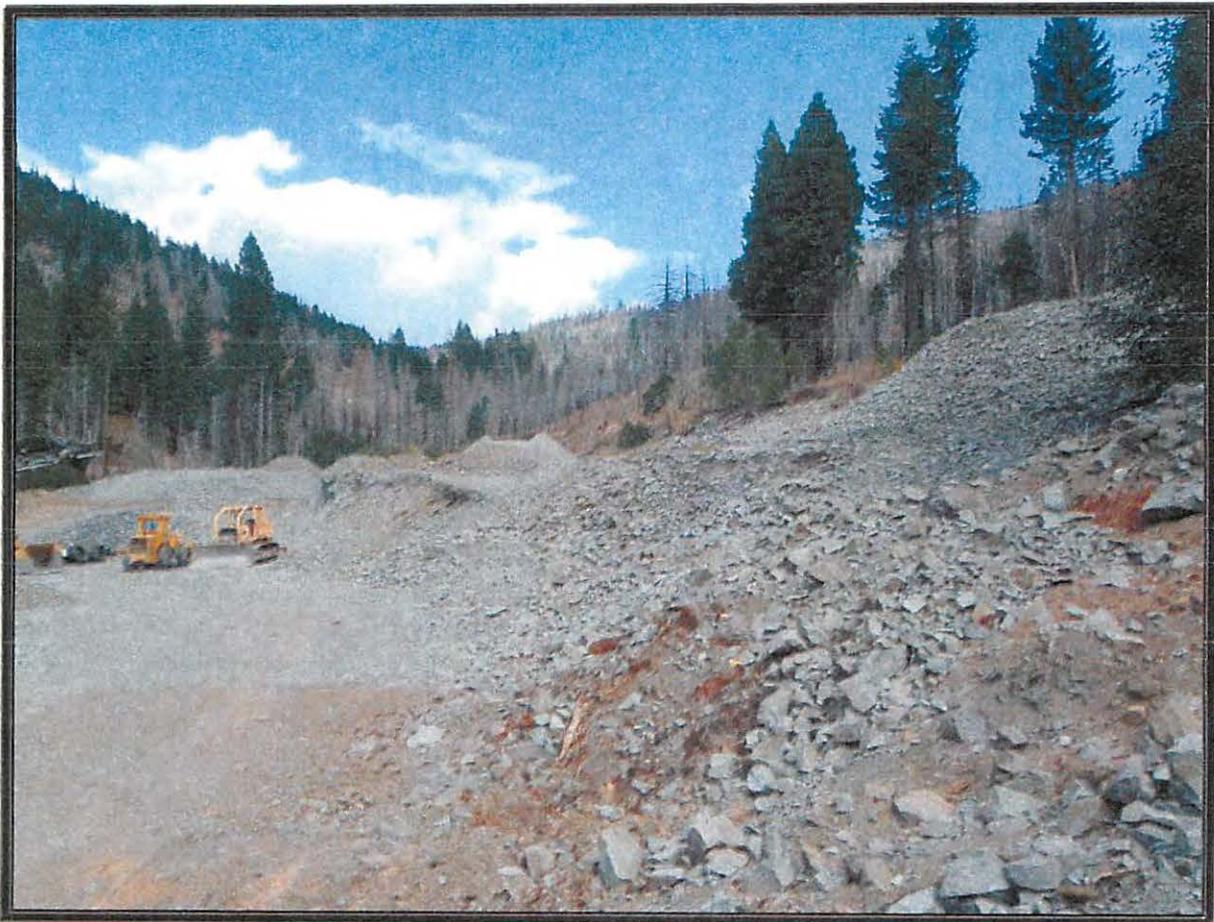
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Initial Study prepared for the proposed project found that the proposed project would not substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, or otherwise adversely affect any rare or endangered plant or animal. The proposed project would not have a cumulatively considerable impact when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects.

EXHIBITS

1. "Reclamation Plan for the Number 10-Level Mine", December 2011
2. Zoning map
3. Letter dated October 20, 2011, RE: Vesting of aggregate source located on APN 007-080-004 and response letter from Randy Wilson, Plumas Director, dated October 21, 2011
4. Letter dated March 19, 2012 from California Department of Forestry and Fire Protection (CALFIRE)
5. Email sent March 27, 2012 from Northern Sierra Air Quality Management District (NSAQMD)
6. Memorandum dated March 13, 2012 from Plumas County Public Works Department

RECLAMATION PLAN
FOR THE
NUMBER 10-LEVEL MINE



DECEMBER 2011

NUMBER 10-LEVEL MINE RECLAMATION PLAN

PROPERTY OWNER:

California-Engels Mining Company
P.O. Box 778
Greenville, CA 95947-0778
(530) 284-6191

OPERATOR:

Turner Excavating Inc.
3586 Woodlake Drive
Lake Almanor, CA 96137
530-596-3953

PLAN PREPARED BY:

Travis Deem, CPESC 3948
740 Melton Court
Red Bluff, CA 96080
530-737-3438

Don Deem, RG 4199 / REA 53
P.O. Box 1198
Murphys, CA 95247
209-728-2519

Date: December 15, 2011

NUMBER 10-LEVEL MINE RECLAMATION PLAN

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NUMBER 10-LEVEL MINE RECLAMATION PLAN

PROJECT SUMMARY:

Project Name: Number 10-Level Mine Reclamation Plan

- A. **California Mine Identification Number:**
None Assigned

- B. **Owner of Property:**
California-Engels Mining Company
P.O. Box 778
Greenville, CA 95947-0778
(530) 284-6191

- C. **Owner of Mineral Rights:**
California-Engels Mining Company
P.O. Box 778
Greenville, CA 95947-0778
(530) 284-6191

- D. **Location:**
Assessor's Parcel Number: 007-080-004 (Plumas County). Section 8 of T27N, R11E,
M.D.B.M. Latitude 40° 12' 34.98" N. Longitude 120° 45' 43.66" W.

- E. **Total parcel size(s):** 509.37 acres

- F. **Total acreage in reclamation plan:** 2.88+- acres

- G. **Total area to be reclaimed:** 2.88+- acres

- H. **Quantity and type of materials to be mined:** Up to 100,000 ± CY of construction aggregate.

- I. **Proposed land uses after reclamation:** Timber management.

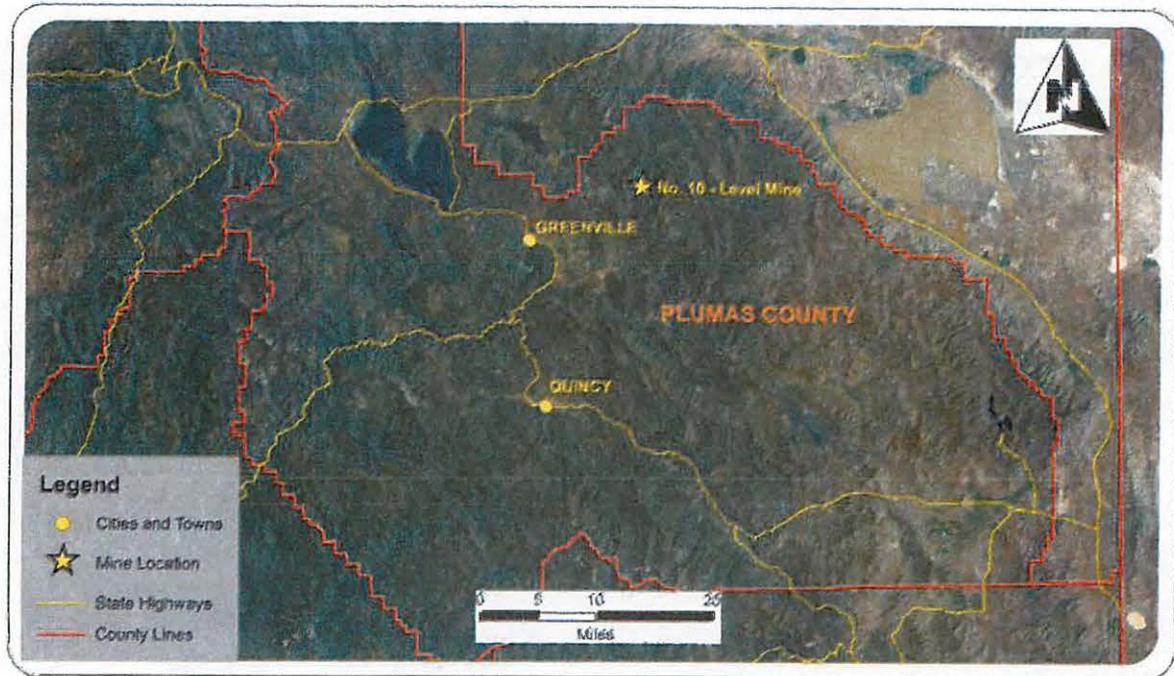
- J. **Estimated end of mining:** Jan 1, 2032.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

INTRODUCTION:

The Number 10-Level Mine is a vested aggregate mine in Plumas County, California. In addition to mining, the project includes a seasonal rock crushing/screening plant. Figure 1, below shows the regional setting of the mine.

Figure 1: Regional Setting



This reclamation plan contains the following topics and sequence:

1. Site location/land use
2. Environmental setting
3. Project description
4. Site reclamation and acceptance of reclamation
5. Reclamation Maps

The reclamation plan is for the life of the mine operation. Final reclamation will be completed within three years after the available reserves have been exhausted. The estimated date for completion of mining is January 1, 2032.

There are three maps prepared for this project. These maps are attached as appendix C at the end of the Reclamation Plan. The maps are as follows:

- Sheet 1 – Existing Conditions
- Sheet 2 – Post Mining Contours
- Sheet 3 – Cross Sections

NUMBER 10-LEVEL MINE RECLAMATION PLAN

EXISTING CONDITIONS:

This section describes the existing site and adjacent lands. The first part is an overall view of where the site is in relationship to the general area. The second section explains the current condition of the site, particularly concerning the impacts of past and current extraction activities. The terms *site* and *project* refer to the area within the reclamation plan boundaries.

Mining operations have been conducted under the same ownership at the site since 1901. Originally, mining was conducted to retrieve ore from deep inside the mountain. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was cast aside near the tunnel entrance. California - Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964 by numerous private and public entities. Based upon records provided by the owner it appears that approximately 50% of the original pile has been removed by past operators. Due to this long history of continued use, the site has been declared a vested aggregate operation by the County of Plumas. The location of the property is shown in Figure 1. A legal description of the lands affected by the mining is in Appendix B of the Plan.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

ENVIRONMENTAL SETTING:

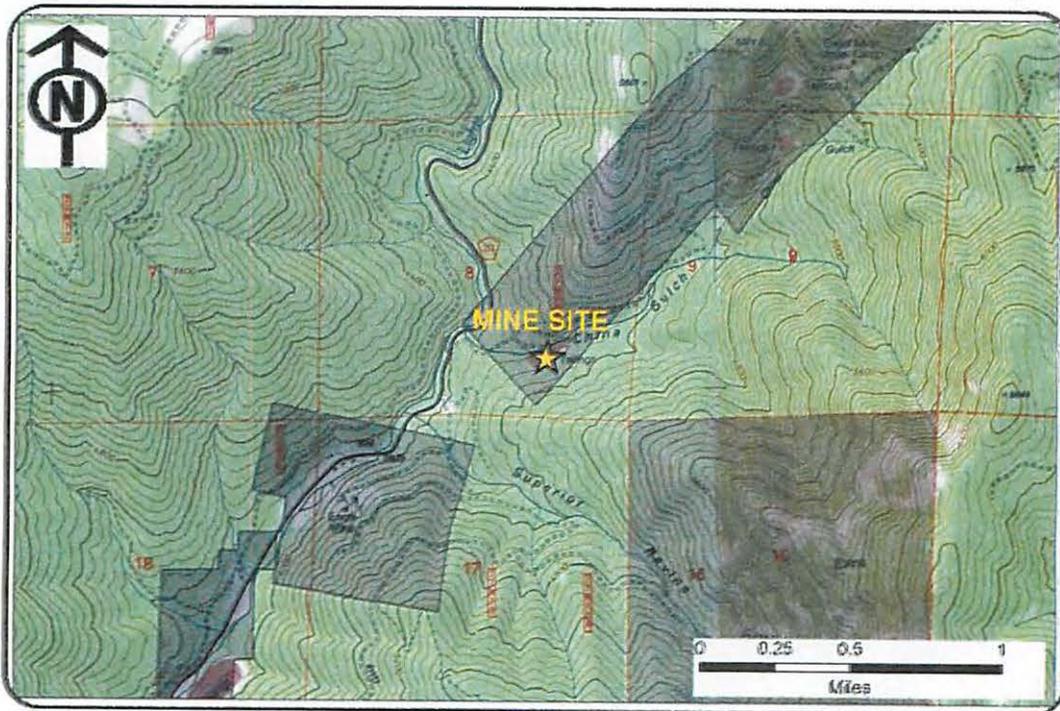
Site Access and Topography

The mine is located approximately 11 miles northeast of the town of Greenville, California. Access to the site is north from Greenville on North Valley Road to Diamond Mountain Road. The unmarked turnoff to the mine site is 0.44 miles beyond the first bridge on Diamond Mountain road encountered after the historical marker for the Superior Mine. Access to the site is restricted by a locked gate. The area within the reclamation boundary consists of an unvegetated rock pile that partly fills a 2.88 acre portion of China Gulch below the former Number 10-Level Mine entrance (now collapsed).

Site elevations range from 4,176 feet on the northeast end of the reclamation area to 4,123 feet on the southwest. The hills surrounding the site rise over 1000 feet above the mine. This rugged topography prevents the site from being viewed from the nearest public vantage points and helps restricts access. The footprint of the vested mine occupies a very small portion of the parcel on which it sits. The remoteness of the site, difficult terrain, and gated access ensure that there is no public safety concern associated with the project.

See Figure 2 for details.

Figure 2: Site Access and Topography



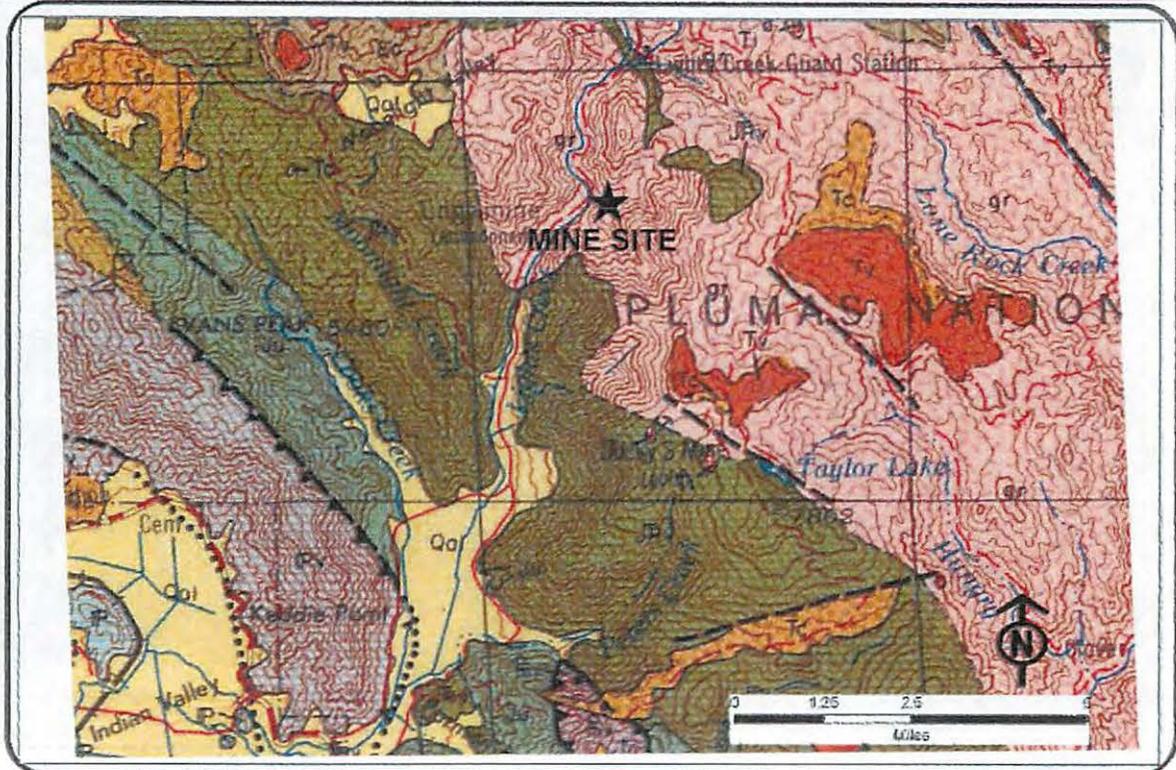
NUMBER 10-LEVEL MINE RECLAMATION PLAN

Geology

The material being processed is a component of the Mesozoic aged (245-65 mya+-) plutonic rocks that dominate the area (indicated by the symbol "gr" in Figure 3). The overburden is a mix of quartz monzonite / quartz diorite and is free from mineralization.

Since the project only involves the removal of a previously placed pile of overburden to reveal the original ground surface, the structural properties of the underlying geology are not included in this plan. All final slopes will match the gentle underlying contours of the exposed slope above the site (approx. 3:1). The surrounding forest slopes show no signs of mass wasting or failure and the final reclaimed surfaces will be free from risk of significant erosion provided post-mining erosion control measures are in place.

Figure 3: Geology Map

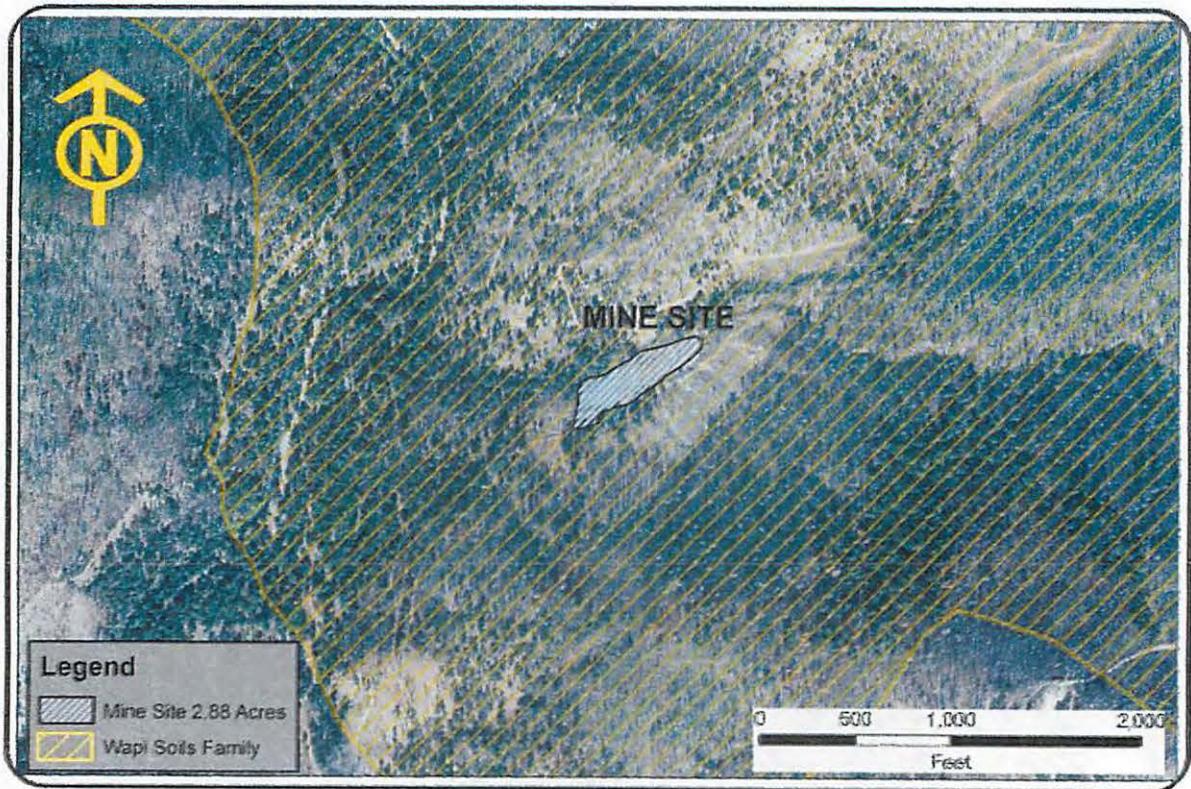


NUMBER 10-LEVEL MINE RECLAMATION PLAN

Soils

The entire site is within the Wapi Family-Rock Outcrop Complex group of soils (see figure 4 for details). Production value of this complex is very low and is rated with a land capability classification of 7e. The soil cover ranges from 18-22 inches in depth. The full NRCS soil descriptions are included as Appendix A. The overburden pile being mined was put in place nearly 100 years ago on top of the existing soils, for this reason no soil salvage or storage is needed. Mining will be conducted with the goal of uncovering the original soil surface already in place. As soon as a section of the soil is exposed, a 30ft x 30ft fenced test plot will be set up to determine the viability of the proposed seed mix.

Figure 4: Soils Map



Climate & Hydrology

The site is located at the northern end of the Sierra Nevada geomorphic province at an elevation of 4,160 feet msl. The climate is Mediterranean, characterized by cool, wet winters and warm, dry summers. The yearly average temperature in the area is approximately 51 degrees F with an average low of 24 degrees F in January and average high of 91 degrees F in July. Annual rainfall, as measured at the Greenville Ranger Station to the south, averages 39.73 inches per year. There are no detailed records of rainfall at the site but it can be assumed that it closely follows this

NUMBER 10-LEVEL MINE RECLAMATION PLAN

pattern. The majority of the rainfall occurs between November and April with the wettest month being February.

The mine site is adjacent to China Gulch, a tributary of Lights Creek that drains China Gulch to the northeast. The mine is in the lower reaches of the small watershed, which has its headwaters approximately 2 miles to the northeast. Historic mining during the early 20th century resulted in the original drainage bed at this location being filled in with overburden. In order to direct runoff away from the overburden pile, the stream was channeled along the hillside to the west in a ditch. Removal of the pile will not alter the existing flow pattern and no extraction will occur within 10 feet of the stream.

Vegetation

Surveys conducted in support of nearby timber harvest activities have identified the vegetation regime as “Lower Montane Coniferous Forest” and corresponds to the description for this association provided by the California Native Plant Society. The entire area was heavily logged in the 19th and 20th centuries and all mature vegetation in the area is secondary growth. The site is within the boundaries of the massive Moonlight Fire that burned through the area in 2008. The vegetation surrounding the mine was heavily damaged and the predominant vegetation types are now large areas of brush and grass interspersed with unburned mixed stands of Ponderosa Pine, White Fir, Incense Cedar, Sugar Pine, Douglas Fir and Black Oak. The mine area itself consists of one contiguous pile of unvegetated overburden rock. In its current state the mine area is not suitable habitat for vegetation and no existing mature vegetation will be removed during mining or reclamation. Upon removal of the pile the underlying soil should support the vegetation commonly found in the area.

Wildlife

The wildlife habitat is characterized as Sierran Mixed Conifer. The presence of year-round water in the surrounding area and relative seclusion of the site makes it suitable for many types of large and small animals including deer, coyote, rabbits, and numerous small rodents, reptiles and amphibians. The mining area itself is devoid of vegetation and surface water and does not currently provide valuable habitat. The site is not within a designated sensitive habitat area. The nearest important wildlife habitat area is deer winter range located approximately 4,000 feet to the southwest of the site. Upon successful reclamation, the site should revert back to the pre-mining habitat regime as the surrounding area recovers from the 2008 fire.

Land Use

Properties within the area of the project, including the mine site are designated in the Plumas County zoning code as General Forest (GF). Post mining use of the reclaimed land will be compatible with the GF designation.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

PROPOSED OPERATION:

This section details how the site will be mined, the storage of topsoil and overburden, processing of materials and future mining of the site.

Mining Areas and Sequence of Mining

The project will be mined in one, 2.88-acre section without phasing. Mining will remove the overburden material from the top down until it reaches the original ground surface where the original soil layer still exists.

Available Reserves

Based upon the known dimensions of the overburden pile, the amount of material remaining onsite is calculated to be 55,000 cubic yards. Removal of the existing pile will result in the exhaustion of all available material at this location.

Processing Plant Site

All processing of material occurs in the central portion of the site. Sheet 1 of the Reclamation Plan maps shows the location of the portable aggregate crushing/screening plant when it is present. The processing plant will cease operation and be removed from the site when available reserves of aggregate overburden have been exhausted.

Description of Process

Equipment and techniques used to process excavated material will vary. The following description is typical of this type of operation:

Since the material being mined has already been broken down during the process of tunneling, no blasting is required prior to moving material to the processing site.

The overburden aggregate will be harvested with an excavator or loader. Material will be moved to the plant site where it will be deposited into the feeder / grizzly unit or surge pile. Following the crushing / screening process the material will be stored in stockpiles within the mine area until needed.

Some material may be too fine or soft for incorporation into marketable products. This material will be saved for eventual use during reclamation as a means of enhancing rooting depth and water holding capacity of the soil. Since the overburden is not uniform in size, the final amount of fines is unknown.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

Topsoil Storage

The overburden pile was created during the 1920's from sterile tunnel debris and is devoid of vegetation. Previous harvesting has revealed that the original soil surface is still in place beneath the pile. As mining progresses the soil will be exposed allowing for revegetation. No soil stockpiling or storage is required for this project.

Future Mining of Site

The area excavated under this reclamation plan is limited to the pile of tunnel overburden and no material will be left after mining concludes. Other existing piles of tunnel overburden at nearby areas, not associated with this plan may be mined under separate approvals and plans in the future.

SITE RECLAMATION:

Reclamation Objective

The objective of the reclamation program is to clean up the pre-SMARA mine overburden, restore the original surfaces to a stable condition, prevent erosion, and ensure public safety

Existing Conditions

Site disturbance from pre-SMARA mining activity includes 2.88 acres of un-reclaimed land in which there are marketable reserves of aggregate. The site is accessed by an existing road used for ongoing forest management operations on the same parcel. Six small shacks that store cores produced during mineral exploration in the surrounding area are located adjacent to the northeast end of the reclamation area. A small stream, previously re-channeled during pre-SMARA mining, is located immediately west of the site.

Plant Site Reclamation

The reclamation prescription for the crushing plant is as follows:

1. Remove all equipment and other facilities from the site. This includes all machinery, vehicles, and equipment associated with the processing activities.
2. Clean up all trash and other debris.
3. All aggregate stockpiles will be either transported off site, or used on the property for erosion control measures (i.e. weatherization of adjacent forest roads)

NUMBER 10-LEVEL MINE RECLAMATION PLAN

4. Final floor contours will be the same as those existing prior to the placement of the overburden.

Establishment of Test Plots

A test plot will be established if the progression of mining produces a suitable site prior to the exhaustion of the aggregate resource. The 2.88 acre site is likely too small to allow for test plots since the soil might not be exposed until the end of the mining process. The ongoing forest management activities on lands adjacent to the site have produced substantial evidence for the productivity of these soils. If a suitable area presents itself a fenced, 30ft x 30ft, test plot will be established.

Planting Prescription

The seed mixture listed below will be used to stabilize the topsoil unless it fails to meet the requirements for cover in test plot results. Details of the seed mixture are included below:

ITEM	Lbs / Acre
Zorro fescue	3
Blando Brome	10
Rose Clover	10
Burr Clover	5
Lana Vetch	15

There is no grazing in the area and so fencing will not be necessary. Details of the revegetation goals are listed in the summary of vegetation chart at the end of this segment:

If, after 2 years the reclaimed area fails to meet the proposed standard then the operator / owner will submit to the County a modified plan for achieving the reclamation goal.

REVEGETATION SUCCESS CRITERIA		
PLANT RICHNESS	PLANT DENSITY	PERCENT COVER
3 species present	N/A	80%

Note: Natural regeneration of native grasses and trees counts towards meeting success criteria.

Post Reclamation Monitoring

Vegetative success will be monitored for two consecutive years, or until success standards are met, without human intervention following the completion of reclamation. Should the success of revegetation not seem attainable after two years of monitoring, the operator has the option of submitting an alternative vegetative planting program to the Plumas County Planning Department. The alternative vegetative planting program will give the results of vegetation monitoring, identify where the success criteria has and has not been achieved, and present an alternative vegetation

NUMBER 10-LEVEL MINE RECLAMATION PLAN

planting prescription and performance standard. The performance standard will address species richness, density, and cover as applicable to each revegetation area.

ADDITIONAL RECLAMATION POLICIES:

The previous section described reclamation and revegetation policies for the site. This section lists additional standards that will be implemented to achieve reclamation.

Weed Management Policies

SMARA §3705 (k) requires that weeds be controlled if they interfere with achieving revegetation standards. Plowing, replanting, hoeing, and spraying can control weeds. Noxious weeds shall be managed: (1) When they threaten the success of the proposed revegetation; (2) To prevent the weeds spreading to nearby areas; and (3) to eliminate fire hazard. The specific criteria for determining when weed abatement measured will be implemented are as follows:

1. No more than 5% of the reclamation area shall be covered in weed species.
2. Areas of weeds of more than 55 square feet in area, where weed cover is more than 50% will be treated.

In order to achieve these goals the following policies will be practiced during mine operations and final reclamation:

1. Organic erosion control materials shall be certified weed free, whenever possible.
2. Seed used for reclamation and revegetation work shall be at least 98.5% weed free.
3. Piles of salvaged topsoil or overburden will be reseeded as soon as possible after pile creation to help prevent establishment of weed species.

Topsoil and Fines Policies

1. Salvageable fines, which are otherwise unusable, will be employed during soil rehabilitation.
2. During final reclamation, compacted surfaces including former stockpile areas will be ripped, then fines will be laid down to enhance the topsoil profile, if needed.
3. The finished grade on the reclaimed land will vary based on the depth of top soil and overburden / fines replaced. In no instance will the resoiling create a slope steeper than 2:1.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

Specific Policies

1. Reclamation will occur after cessation of mining. The stockpiles and plant site will be reclaimed when they are no longer needed.
2. Overall finished slopes in the reclamation area will not exceed 2:1.
3. All equipment and structures will be removed from the site after cessation of mining. This includes scrapers, loaders, scales, and crushing/screening plants. All refuse such as papers, used wood, etc. also will be removed. Since this site operates on a seasonal, as-needed basis there is no equipment onsite the majority of the time. Facilities and equipment associated with the ongoing timber and underground minerals exploration will remain.

Erosion and Pollution Control Policies

During operations, the following erosion and pollution control plan shall be applied to the site, unless future changes in stormwater regulations compel the operator to institute stricter measures.

This plan has two major objectives:

1. To identify and evaluate sources of pollutants associated with reclamation activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and;
2. To identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with reclamation activities in storm water discharges and authorized non-storm water discharges.

During reclamation activities, a copy of this plan will be kept by the foreman at the quarry site. The preparer of this plan is a Certified Professional in Erosion and Sediment Control (CPESC) and a qualified QSD / QSP.¹ The Operator will oversee the plan's implementation. BMPs will be implemented during reclamation activities. If unforeseen circumstances require new and/or revised BMPs, they will be employed immediately. Specific measures used during reclamation may be changed if more economical BMPs with comparable or improved results are identified.

Description of Potential Sources of Pollution

Some activities and materials onsite could potentially be sources of pollution. This section will address those locations and activities that are potential sources of pollution.

¹ The preparer of this plan is a Qualified SWPPP Developer (QSD) and Qualified SWPPP Practitioner (QSP) for the Construction General Stormwater Permit. Proposed changes to the General Industrial Permit may institute separate qualifications.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

The following potential sources of pollutants exist:

Removal of equipment for Crushing/Screening Operation

Dust is generated during the dismantling and removal of processing equipment. Sediment remaining from the process of material is possible. There could be spillage of petroleum products on the ground during removal of diesel tanks and generators.

Physical reclamation of Quarry

Major activities at the site consist of the following:

1. Finish grading, including elimination of stockpiles.
2. Placement of overburden and topsoil.
3. Seeding.

Dust can be generated from the establishment of final contours, flattening of stockpiles and replacement of overburden and stockpiles. There could be leakage from the equipment. Heavy vehicles associated with reclamation operations generally include one water truck, front-end loader and a dozer as well as small support vehicles. All heavy vehicles and certain stationary equipment use diesel fuel No. 2 as well as assorted petroleum based lubricants.

During periods of activity, fueling of vehicles occurs at this location as well as the storage of lubricants for machinery and equipment. These are stored onboard a service truck. Petroleum products could be a source of pollution from spillage during fueling of vehicles and equipment or the filling of tanks or transport of drums and buckets. There could also be leakage from vehicles and equipment. Dust from traffic is a potential pollutant.

Sewage generated from the employees is handled by a portable toilet, which will be regularly maintained.

Table 1 lists the possible locations of pollution sources and the BMPs that are proposed to reduce or eliminate their entering storm water.

TABLE 1

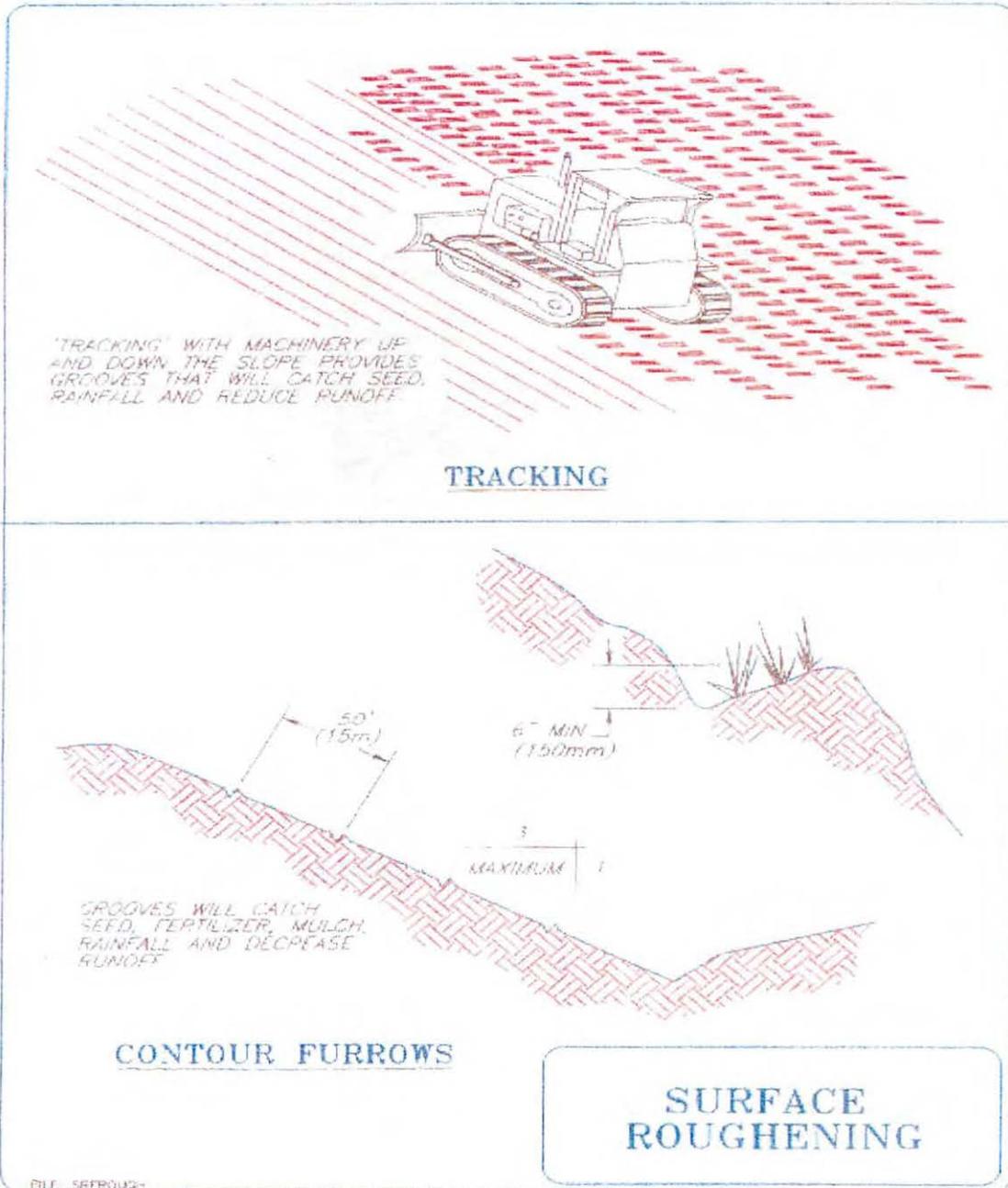
Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Aggregate Stockpiles	Removal or leveling of all remaining aggregate piles.	Fine particles on aggregates Equipment leaks	Sediment Dust Petroleum based lubricants	<ul style="list-style-type: none">• Pre-watering of piles prone to wind erosion before leveling• Watering travel areas during reclamation

NUMBER 10-LEVEL MINE RECLAMATION PLAN

Crushing Plant	Removing crusher & screens	Spills and leaks at tanks Equipment and machinery leakage, Vehicular and equipment traffic	Diesel fuel Petroleum based lubricants. Dust Sediment	<ul style="list-style-type: none"> • Housekeeping measures • Watering travel surfaces. • Train employees on proper fueling, cleanup and spill response techniques • Implement adequate protective maintenance program to prevent tank and line leaks. • Inspect area daily to detect problems before they happen
Parking and storage	Storage of material, Parking of vehicles and equipment	Leaks from vehicles and equipment. Stored metal and wood products Vehicular and equipment traffic	Petroleum lubricants Minor dust, sediment & metals	<ul style="list-style-type: none"> • Inspect vehicles and use area regularly to detect any sources of leaks. • Keep most stored products off the ground (pallets)
Extraction area including roads and accessory areas	Finish grading of quarry slopes, moving aggregate and spreading overburden & topsoil.	Loose and falling rocks Denuded surfaces Leaks from vehicles and equipment. Small vehicle and heavy equipment traffic	Sediment Dust Petroleum based lubricants	<ul style="list-style-type: none"> • Watering quarry face. • Watering use areas. • Mulching & seeding • Straw bale barriers
Vehicle fueling and petroleum storage.	Fueling	Spills and leaks during delivery Spills caused by topping off Leaking storage tanks	Diesel Gasoline	<ul style="list-style-type: none"> • Secondary containment for all petroleum products • Minimize run-on into fueling area • Implement adequate protective maintenance program to prevent tank and line leaks • Inspect fueling area daily to detect problems before they happen • Train employees on proper fueling, cleanup, and spill response techniques

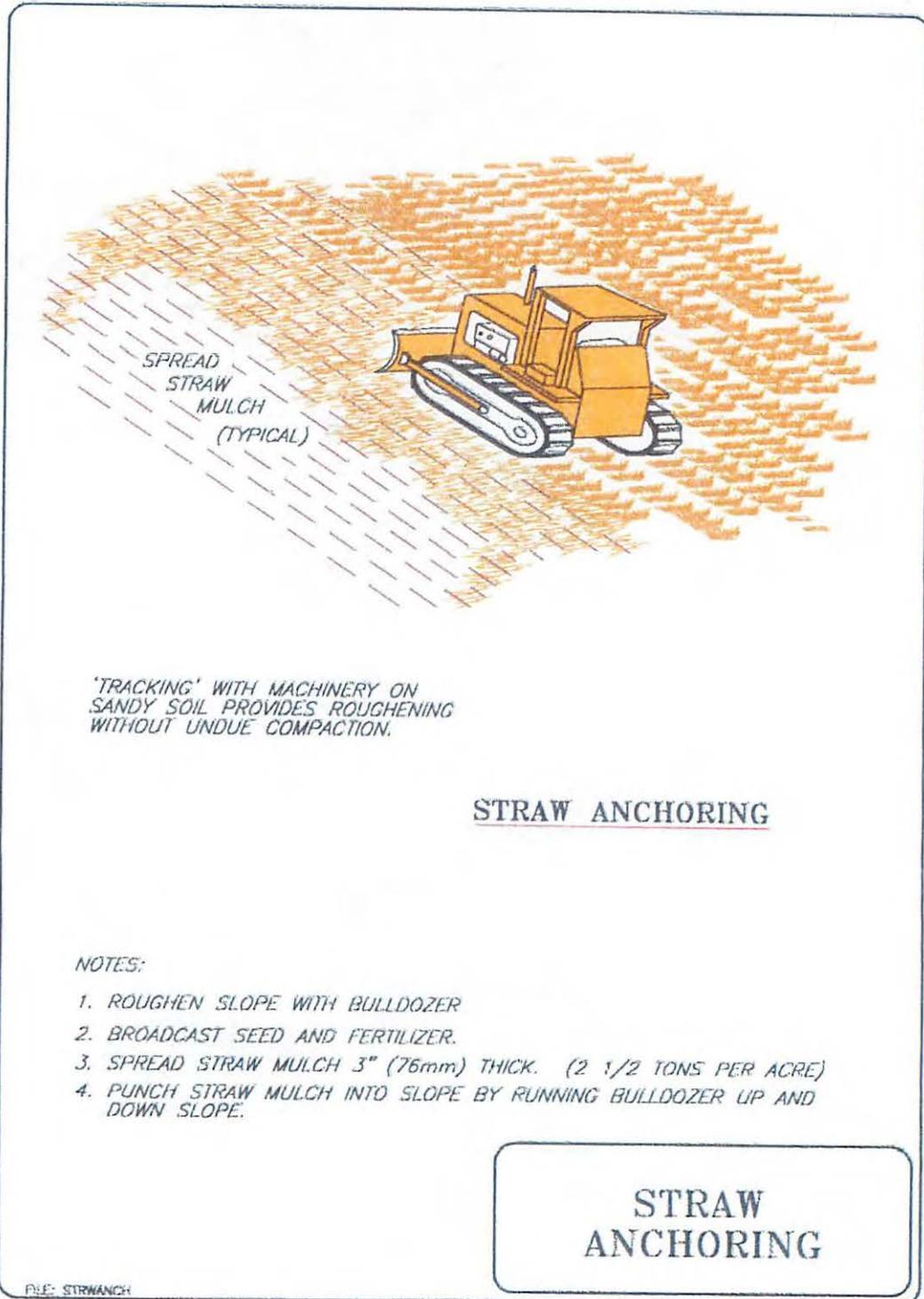
NUMBER 10-LEVEL MINE RECLAMATION PLAN

1. Track-walking



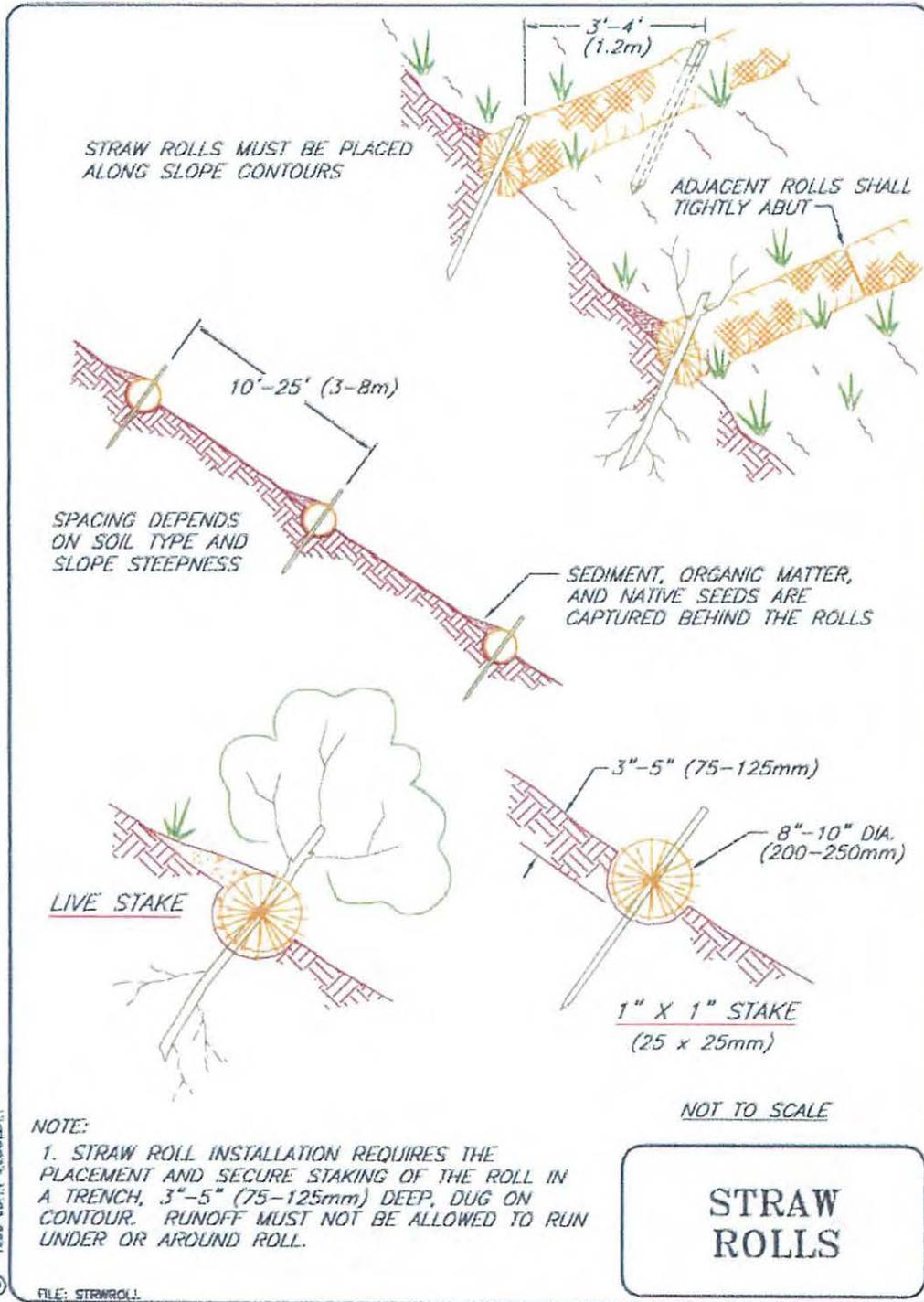
NUMBER 10-LEVEL MINE RECLAMATION PLAN

2. Straw anchoring



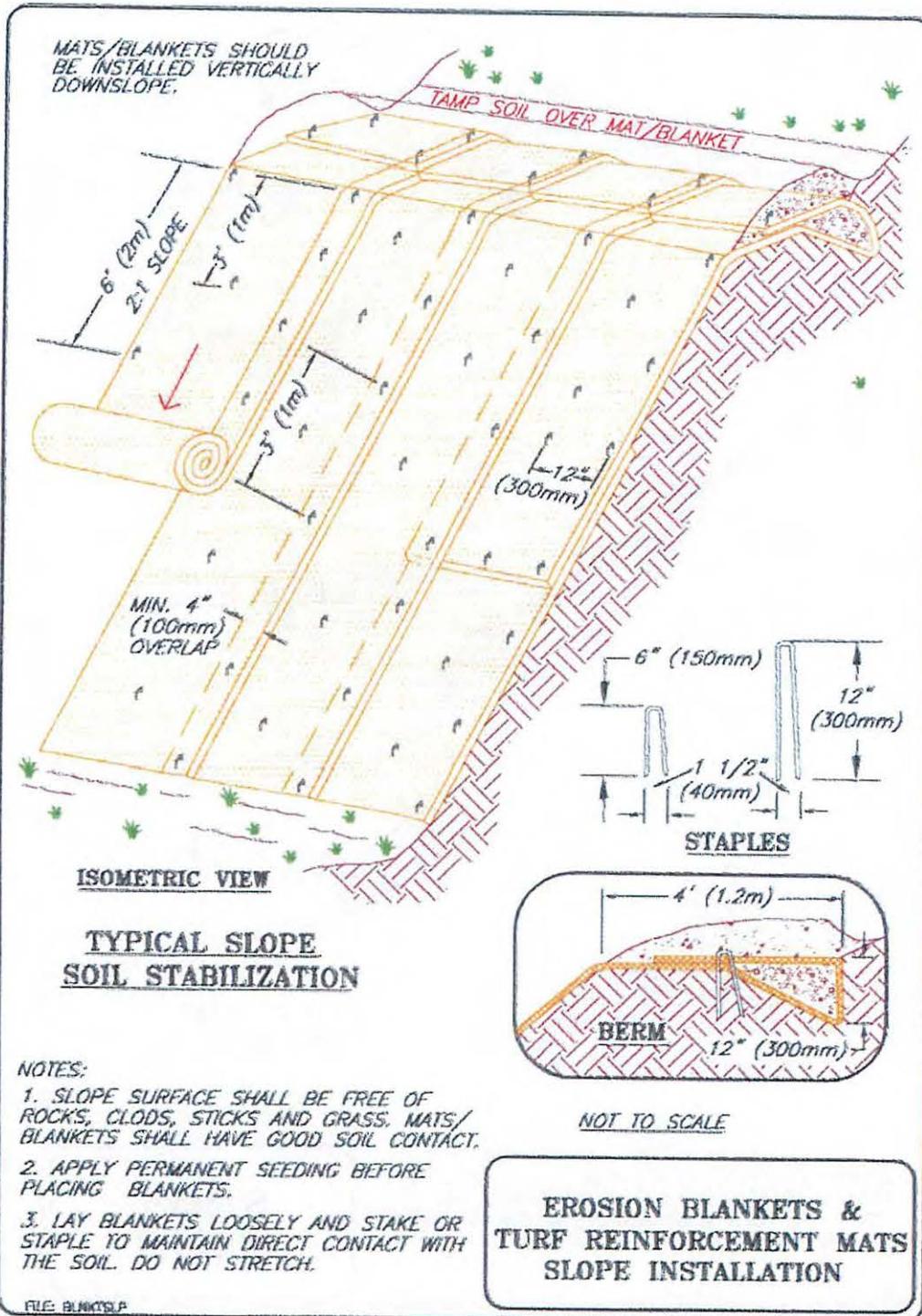
NUMBER 10-LEVEL MINE RECLAMATION PLAN

3. Straw wattles



NUMBER 10-LEVEL MINE RECLAMATION PLAN

4. Erosion control blankets



NUMBER 10-LEVEL MINE RECLAMATION PLAN

Timing of BMP installation

It is the responsibility of the Operator to assure the BMPs are implemented in a timely manner. New BMPs and/or other changes to the Plan will be considered by the Operator during the course of reclamation and implemented as necessary. The site will be weatherized prior to the beginning of the monitoring period.

During the first winter following the completion of grading, planting and seeding, the Operator or their designated agent will periodically inspect the site to judge the effectiveness of the BMPs and to identify where additional BMPs need to be employed unless the site is inaccessible due to unforeseen conditions.

MONITORING:

The responsibility of determining if the site is being reclaimed rests with the lead agency. Section 2774(b) of the *Surface Mining and Reclamation Act* requires the lead agency to inspect the mine operation at least once a year. The yearly inspection will determine if the applicant is complying with the policies listed in the approved plan in addition to any Use Permit conditions Plumas County has imposed. Furthermore, the annual monitoring will take place at approximately the same time of year and at the end of the growing season until success standards are met.

FINANCIAL ASSURANCES POLICIES:

Financial assurances held for reclamation work will be released when the performance standards (as described within the above policies) of the reclamation plan are satisfied. This includes successful establishment of vegetation with no human interference (including but not limited to fertilization, irrigation, weeding, etc.) and the removal of all equipment, supplies, etc. The financial assurance will be in the form of a performance bond or other mechanism as approved by Plumas County.

The financial assurance will be submitted after approval of the reclamation plan.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

ACCEPTANCE OF RECLAMATION:

I, Brian Turner, hereby accept full responsibility by Turner Excavating Inc. for reclaiming all mined lands described and submitted herein with any modifications required by Plumas County as conditions of approval.

Brian Turner
Turner Excavating Inc.

Note: In the event that the site operator changes during the life of this plan, the responsibility to reclaim the site transfers to the new operator upon submittal of a new financial assurance and assurance mechanism.

NUMBER 10-LEVEL MINE RECLAMATION PLAN

APPENDIX A NRCS CLASSIFICATION OF SOILS AT PROJECT SITE

NUMBER 10-LEVEL MINE RECLAMATION PLAN

302—Wapi family-Rock outcrop complex, 50 to 85 percent slopes.

Map Unit Setting

- Elevation: 2,100 to 5,800 feet
- Mean annual precipitation: 15 to 30 inches

Map Unit Composition

- Wapi family and similar soils: 55 percent
- Rock outcrop: 30 percent
- Minor components: 15 percent

Description of Wapi Family Setting

- Landform: Mountains
- Landform position (two-dimensional): Backslope
- Landform position (three-dimensional): Mountain flank
- Down-slope shape: Concave
- Across-slope shape: Convex

Properties and qualities

- Slope: 50 to 85 percent
- Depth to restrictive feature: 18 to 22 inches to lithic bedrock
- Drainage class: Somewhat excessively drained
- Capacity of the most limiting layer to transmit water (Ksat): High to very high (5.95 to 19.98 in/hr)
- Depth to water table: More than 80 inches
- Frequency of flooding: None
- Frequency of ponding: None
- Available water capacity: Very low (about 1.4 inches)

Interpretive groups

- Land capability (non-irrigated): 7e

Typical profile

- 0 to 3 inches: Gravelly loamy sand
- 3 to 18 inches: Gravelly coarse sand, gravelly loamy coarse sand
- 18 to 22 inches: Unweathered bedrock

Description of Rock Outcrop Setting

- Landform: Mountains
- Landform position (two-dimensional): Backslope
- Landform position (three-dimensional): Mountain flank
- Down-slope shape: Convex
- Across-slope shape: Convex
- Properties and qualities
- Slope: 50 to 85 percent
- Depth to restrictive feature: 0 to 4 inches to lithic bedrock

NUMBER 10-LEVEL MINE RECLAMATION PLAN

- Drainage class: Excessively drained

Interpretive groups

- Land capability (non-irrigated): 8e

Typical profile

- 0 to 4 inches: Unweathered bedrock
- Minor Components
- Chaix family
- Percent of map unit: 10 percent
- Rubbleland
- Percent of map unit: 5 percent

Data Source Information

Soil Survey Area: Plumas National Forest Area, California

Survey Area Data: Version 6, Jan 31, 2008

NUMBER 10-LEVEL MINE RECLAMATION PLAN

APPENDIX B LEGAL DESCRIPTION OF LANDS AFFECTED BY MINING

JAN 30 1928

Sacramento 017273.

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, in pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the Plat and Field Notes of Survey and the Certificate of the Register of the Land Office at Sacramento, California, accompanied by other evidence whereby it appears that the Engels Copper Mining Company

has entered and paid for the Carbonate No. 4, Engels No. 6, Engels No. 7, Engels No. 8, Sulphide No. 5, Sulphide No. 6, Sulphide No. 7, Sulphide No. 8, Sulphide No. 9, and Sulphide No. 10 lode mining claims,

designated by the Surveyor General as Survey No. 5780, embracing a portion of Sections eight and nine in Township twenty-seven north of Range eleven east of the Mount Diablo Meridian, in Plumas County, California,

and bounded, described, and platted as follows: Beginning for the description of the Carbonate No. 4 lode claim, at corner No. 1, a post four inches square, four feet long, marked C. 4-1, 5780, E. No. 4-2, E. No. 5-1, C. No. 3-4, 5256, with mound of stone; identical with corners Nos. 2, 1, and 4 of the Engels No. 4, Engels No. 5, and Carbonate No. 3 lode claims, respectively, Survey No. 5256, from which the quarter corner to Sections four and nine in Township twenty-seven north of Range eleven east of the Mount Diablo Meridian, bears north fifty degrees twenty-eight minutes east nine hundred fifty-nine and thirteen hundredths feet distant;

Thence, first course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 2, a spruce post four inches square, four feet long, marked C. 4 - 2, E. 6 - 2 - 5780, and E.

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No. 5 - 2 - 5256, with mound of stone; identical with corner No. 2 of said Engels No. 5 lode claim;

Thence, second course, south forty degrees fifty-six minutes east six hundred feet to corner No. 3, a cedar post six inches square, four feet long, marked C. 4 - 3 - 5780, with mound of stone;

Thence, third course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 4, a fir post four inches square, four feet long, marked C. 4 - 4 - 5780 and C. No. 3 - 3, 5256, with mound of stone; identical with corner No. 3 of said Carbonate No. 3 lode claim;

Thence, fourth course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery bears south thirty-eight degrees forty minutes west twenty feet distant; six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Carbonate No. 4 vein or lode;

Beginning, for the description of the Engels No. 6 lode claim at corner No. 1, a pine post four inches square, four feet long, marked E. 6 - 1, E. 7 - 1, 5780, with mound of stone, from which the quarter corner to Sections eight and nine, said Township and Range, bears north thirty degrees twenty-one minutes west three hundred five and ninety-one-hundredths feet distant;

Thence, first course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 2, identical with corner No. 2 of said Carbonate No. 4 lode claim;

Thence, second course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery bears south thirty-eight degrees forty minutes west thirty feet distant; six hundred

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feet to corner No. 3, a spruce post four inches square, four feet long, marked E. 6 - 3, S. 5 - 2 - 5780 and S.No. 4-4, E.No.5-3, 5256, with mound of stone; identical with corner No. 4 of the Sulphide No. 4 lode claim Survey No. 5256 and corner No. 3 of said Engels No. 5 lode claim;

Thence, third course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 4, a pine post four inches square, four feet long, marked E.6-4, E.7-2-S. 5-1, S.6-1, 5780 with mound of stone;

Thence, fourth course, south forty degrees fifty-six minutes east six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Engels No. 6 vein or lode;

Beginning, for the description of the Engels No. 7 lode claim, at corner No. 1, identical with corner No. 1 of said Engels No. 6 lode claim;

Thence, first course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery cut bears south thirty-eight degrees forty minutes west sixty feet distant; six hundred feet to corner No. 2, identical with corner No. 4 of said Engels No. 6 lode claim;

Thence, second course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 3, a pine post four inches square, four feet long, marked E. 7-3, E.8-4, S.6-4, S7-2, 5780;

Thence, third course, south forty degrees fifty-six minutes east six hundred feet to corner No. 4, a pine post four inches square, four feet long, marked E. 7-4, E.8-3, 5780, with mound of stone;

Thence, fourth course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Engels No. 7 vein or lode;

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Thence, second course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery bears south thirty-eight degrees forty minutes west fifty feet distant; six hundred feet to corner No. 3, a pine post four inches square, four feet long, marked S. No. 4 - 1, S. No. 11 - 4 - 5256, S. 5-3-S. 10-4, 5780, with mound of stone; identical with corner No. 1 of said Sulphide No. 4 lode claim and corner No. 4 of the Sulphide No. 11 lode claim Survey No. 5256;

Thence, third course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 4, a pine post four inches square, four feet long, marked S. 5-4, S. 6-2, S. 9-1, S. 10-3-5780, with mound of stone;

Thence, fourth course, south forty degrees fifty-six minutes east six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 5 vein or lode;

Beginning, for the description of the Sulphide No. 6 lode claim, at corner No. 1, identical with corner No. 1 of said Sulphide No. 5 lode claim;

Thence, first course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery out bears south thirty-eight degrees forty minutes west four hundred forty feet distant; six hundred feet to corner No. 2, identical with corner No. 4 of said Sulphide No. 5 lode claim;

Thence, second course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 3, a pine post four inches square, four feet long, marked S. 6 - 3, S. 7-3, S. 8-2, S. 9 - 4 - 5780, with mound of stone;

Thence, third course, south forty degrees fifty-six minutes east six hundred feet to corner No. 4, identical with corner No. 3 of said Engels No. 7 lode claim;

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Beginning, for the description of the Engels No. 8 lode claim, at corner No. 1, a pine post four inches square, four feet long, marked E. 8-1, S. 7-1-5780, with mound of stone, from which the quarter corner to Sections eight and seventeen, said Township and Range, bears south fifty-seven degrees twenty-one minutes west one thousand one hundred sixteen and seven-tenths feet distant;

Thence, first course, south forty degrees fifty-six minutes east three hundred feet to a point from which discovery bears north thirty-eight degrees forty minutes east forty-five feet distant; six hundred feet to corner No. 2, a pine post four inches square, four feet long, marked E. 8-2-5780;

Thence, second course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 3, identical with corner No. 4 of said Engels No. 7 lode claim;

Thence, third course, north forty degrees fifty-six minutes west six hundred feet to corner No. 4, identical with corner No. 3 of said Engels No. 7 lode claim;

Thence, fourth course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Engels No. 8 vein or lode;

Beginning, for the description of the Sulphide No. 5 lode claim, at corner No. 1, identical with corner No. 4 of said Engels No. 6 lode claim, from which the quarter corner to said Sections eight and nine, bears south fifty-one degrees thirty-four minutes east three hundred four and fifty-six-hundredths feet distant;

Thence, first course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 2, identical with corner No. 3 of said Engels No. 6 lode claim;

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Thence, fourth course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 6 vein or lode;

Beginning, for the description of the Sulphide No. 7 lode claim, at corner No. 1, identical with corner No. 1 of said Engels No. 8 lode claim;

Thence, first course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 2, identical with corner No. 4 of said Engels No. 8 lode claim;

Thence, second course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery cut bears south thirty-eight degrees forty minutes west fifty feet distant; six hundred feet to corner No. 3, identical with corner No. 3 of said Sulphide No. 6 lode claim;

Thence, third course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 4, a pine post 6 x 4 inches, four feet long, marked S. 7 - 4, S. 8 - 1 - 5780, with mound of stone;

Thence, fourth course, south forty degrees fifty-six minutes east six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 7 vein or lode;

Beginning, for the description of the Sulphide No. 8 lode claim, at corner No. 1, identical with corner No. 4 of said Sulphide No. 7 lode claim, from which the quarter corner to said Sections eight and seventeen bears south twenty-seven degrees twenty-four minutes west one thousand one hundred eighty-nine and one-tenth feet distant;

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Thence, first course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 2, identical with corner No. 3 of said Sulphide No. 7 lode claim;

Thence, second course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery bears south thirty-eight degrees forty minutes west fifty feet distant; six hundred feet to corner No. 3, a pine post four inches square, four feet long, marked S. 8 - 3, S. 9 - 3, 5780, with mound of stone;

Thence, third course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 4, on face of rock and not established;

Thence, fourth course, south forty degrees fifty-six minutes east six feet to witness corner to said corner No. 4, a pine post four inches square, four feet long, marked S. 8 - 4 5780 W. C., with mound of stone; six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 8 vein or lode;

Beginning, for the description of the Sulphide No. 9 lode claim, at corner No. 1, identical with corner No. 4 of said Sulphide No. 5 lode claim, from which the quarter corner to said Sections eight and nine, bears south forty-four degrees thirty-one minutes east nine hundred one and one-tenth feet distant;

Thence, first course, north forty degrees fifty-six minutes west six hundred feet to corner No. 2, a spruce post four inches square, four feet long, marked S. 9 - 2, S. 10 - 2, 5780, with mound of stone;

Thence, second course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 3, identical with corner No. 3 of said Sulphide No. 8 lode claim;

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Thence, third course, south forty degrees fifty-six minutes east three hundred feet to a point from which discovery bears north thirty-eight degrees forty minutes east fifty feet distant; six hundred feet to corner No. 4, identical with corner No. 2 of said Sulphide No. 8 lode claim;

Thence, fourth course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 9 vein or lode;

Beginning, for the description of the Sulphide No. 10 lode claim at corner No. 1, a pine post four inches square, four feet long, marked S. 10 - 1 - 5780, S. No. 11 - 1 - 5256 with mound of stone; identical with corner No. 1 of said Sulphide No. 11 lode claim, from which the northeast corner to said Section eight bears north twenty degrees twenty-seven minutes east four hundred sixteen and fifty-seven-hundredths feet distant;

Thence, first course, south thirty-eight degrees forty minutes west one thousand five hundred feet to corner No. 2, identical with corner No. 2 of said Sulphide No. 9 lode claim;

Thence, second course, south forty degrees fifty-six minutes east six hundred feet to corner No. 3, identical with corner No. 1 of said Sulphide No. 9 lode claim;

Thence, third course, north thirty-eight degrees forty minutes east one thousand five hundred feet to corner No. 4, identical with corner No. 3 of said Sulphide No. 5 lode claim;

Thence, fourth course, north forty degrees fifty-six minutes west three hundred feet to a point from which discovery bears south thirty-eight degrees forty minutes west fifty feet distant; six hundred feet to

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corner No. 1, the place of beginning; the survey of the lode claim, as above described, extending one thousand five hundred feet in length along said Sulphide No. 10 vein or lode; the premises herein granted, containing two hundred three acres and twenty-one hundredths of an acre.

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NOW KNOW YE, That there is therefore, pursuant to the laws aforesaid, hereby granted by the United States unto the said Engels Copper Mining Company

the said mining premises hereinbefore described, and not expressly excepted... and of all other veins, lodes, and ledges throughout their entire... boundary lines of said granted premises. In said survey extended downward vertically, although such veins, lodes, or ledges in... downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises: Provided, That the right of possession to such outside parts of said veins, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey so continued in their own direction that such planes will intersect such veins, lodes, or ledges: And provided further, That nothing herein contained shall authorize the grantee hereinafter named to dig or work upon the surface of a claim owned or possessed by another.

TO HAVE AND TO HOLD said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantee above named and to its successors and assigns forever; subject, nevertheless, to the above-mentioned and to the following conditions and stipulations:

FIRST. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

SECOND. That in the absence of necessary legislation by Congress, the Legislature of California may provide rules for working the claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

IN TESTIMONY WHEREOF, I, Calvin Coolidge,

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the TWENTY-FIFTH day of JANUARY In the year of our Lord one thousand nine hundred and TWENTY-EIGHT and of the Independence of the United States the one hundred and FIFTY-SECOND

By the President: Calvin Coolidge
By: Diana B. Pugh, Secretary,
M. P. LeRoy
Recorder of the General Land Office

RECORDED: Patent Number 1011058

0-2123

OFFICE OF THE GENERAL LAND OFFICE

George E. (L.) ...
176 ...
1927
S. ... 9 A.M.

9 327

Patrol

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Recorded in Vol. 9,
Page 327 on February
14, 1928.

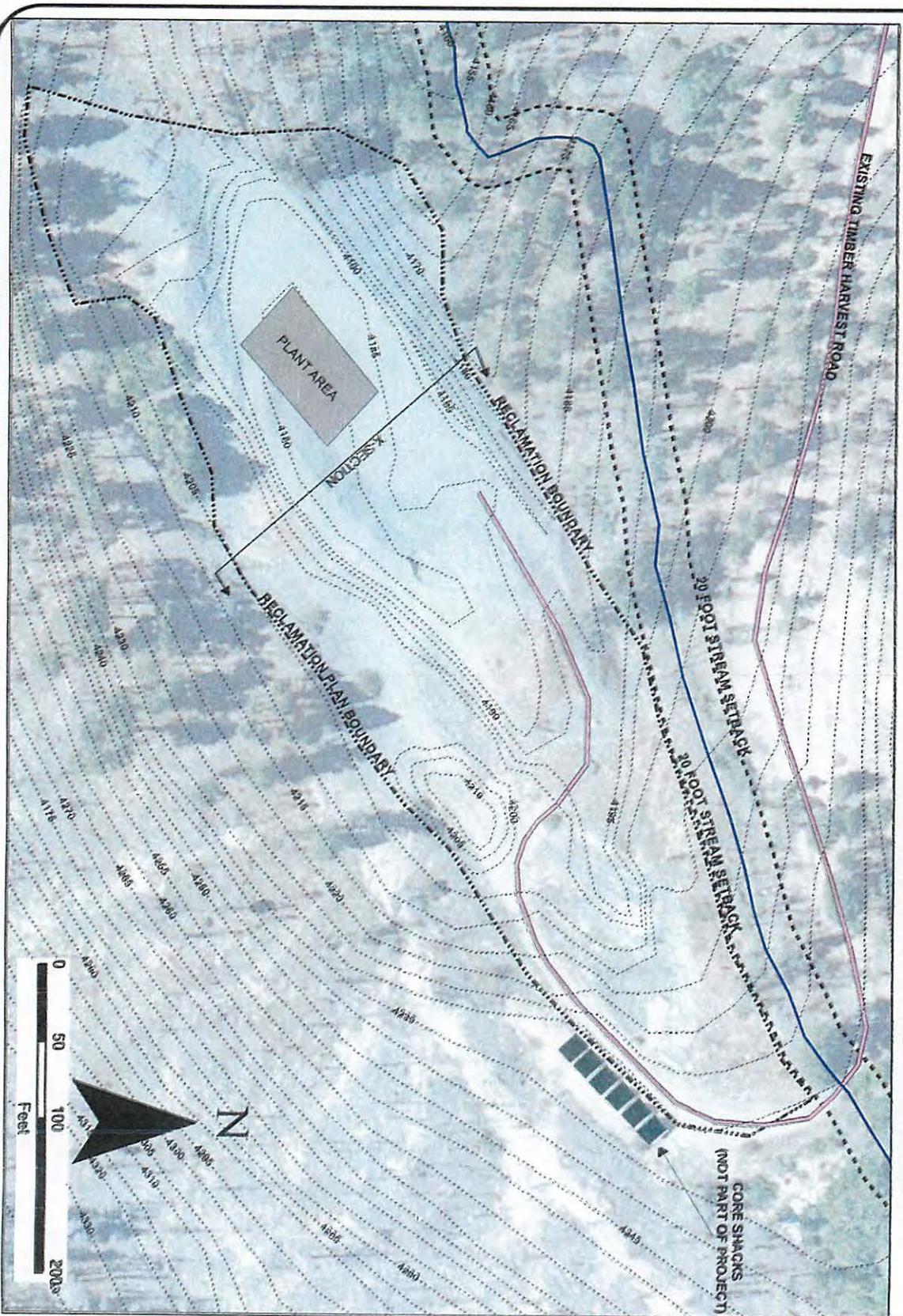
Handwritten text, possibly a signature or date, including the number 9 327.



NUMBER 10-LEVEL MINE RECLAMATION PLAN

APPENDIX C RECLAMATION PLAN MAPS

NUMBER 10-LEVEL MINE: EXISTING CONDITIONS



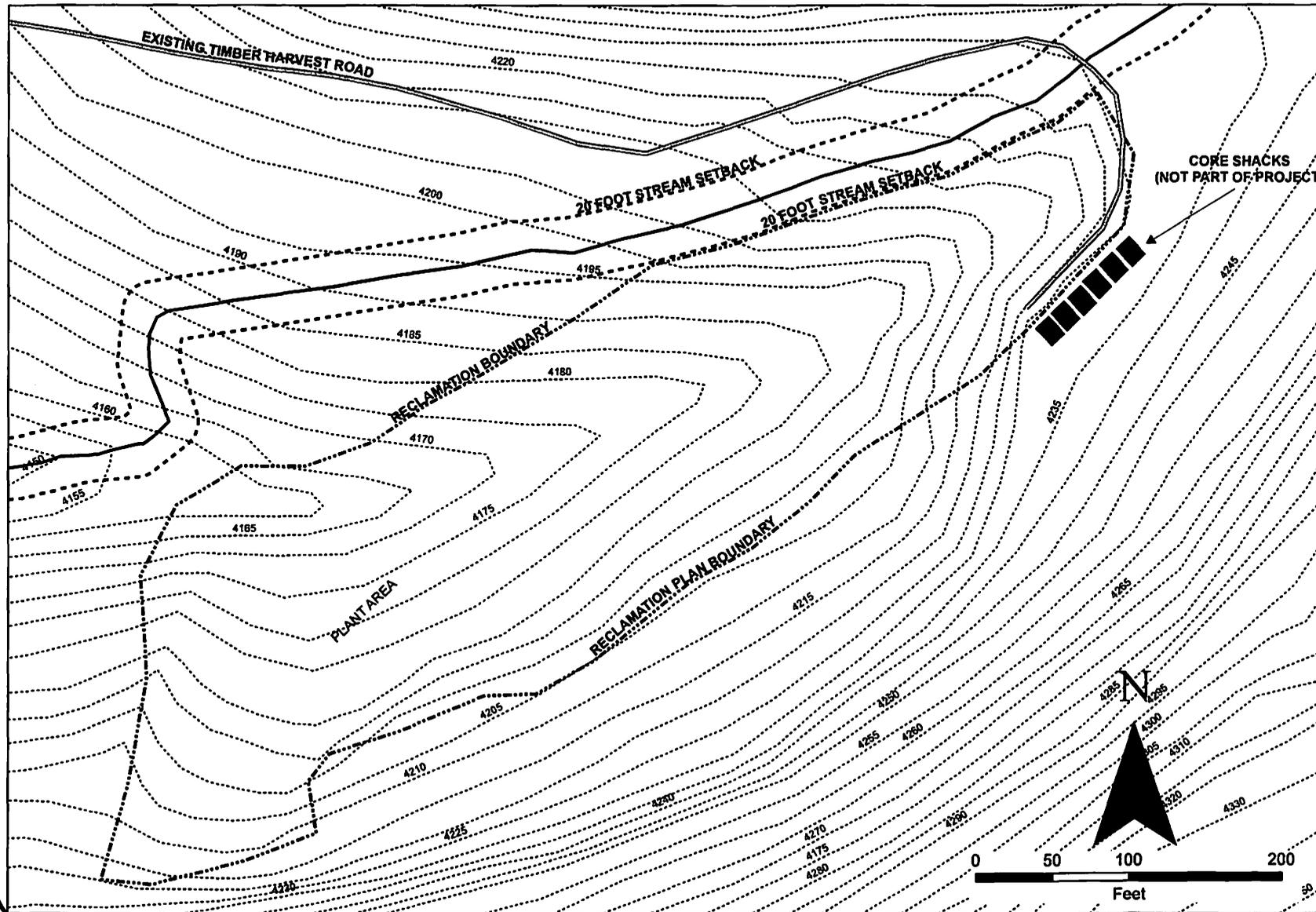
NOTES:

1. THE SITE CONSISTS OF PREVIOUSLY PLACED MATERIAL IN AN UNRECLAIMED OVERLOOK ON STOCKPILE. PAST MINING HAS PARTIALLY RECLAIMED THE TIE. THE SITE IS NOW DISTURBED.
2. SINCE THERE IS NO MANIPULATION DEPTH OF MINING PROCESSED, THE PLACEMENT OF A VERIFIABLE BENCHMARK IS NOT NECESSARY.
3. ACCESS TO THE SITE IS VIA A GATED, PRE-EXISTING TIMBER MANAGEMENT ROAD. THE ROAD WILL REMAIN AFTER MINING HAS CEASED.
4. THERE WILL BE NO POST-MINING BENCHMARKS AT THE SITE. FINAL STOPS WILL MATCH THE ORIGINAL, PRE-MINING SURFACES.

- BASELINE CONTOURS DERIVED FROM USGS
- SATELLITE PHOTO SUPPLIED BY ESRI



NUMBER 10-LEVEL MINE: POST-MINING CONTOURS

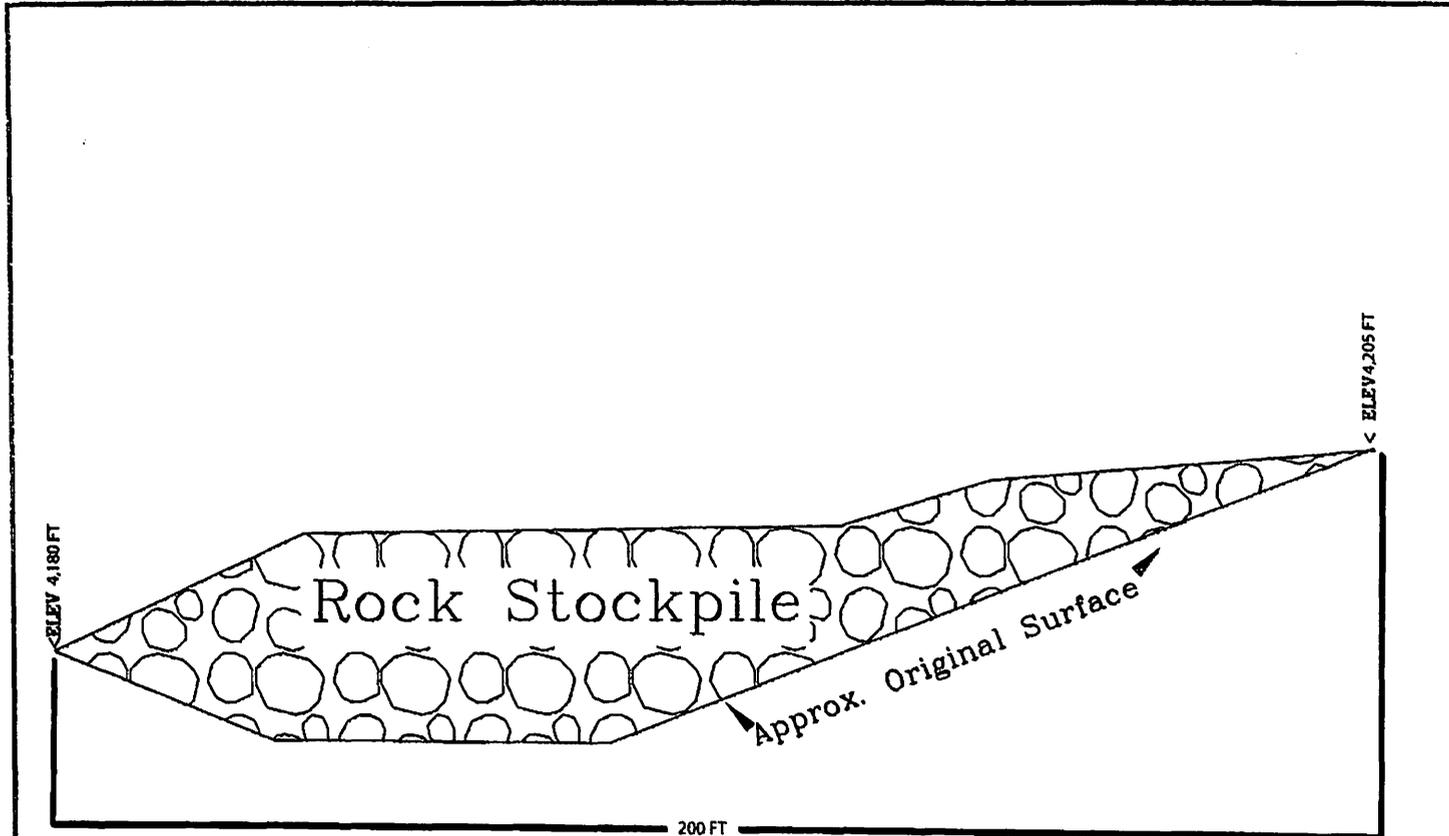


NOTES:

1. AT THE CONCLUSION OF MINING, ALL EQUIPMENT AND STOCKPILES WILL BE REMOVED FROM THE SITE.
2. POST MINING MAP CONTOURS ARE APPROXIMATE. THE ACTUAL FINISHED SURFACE WILL CORRESPOND TO THE ORIGINAL, PRE-OVERBURDEN STOCKPILE CONTOURS.
3. THE ADJACENT STREAM WAS RE-CHANNELED DURING THE EARLY 20TH CENTURY TO AVOID THE PILE. THIS PROJECT DOES NOT INVOLVE RE-ESTABLISHMENT OF THE ORIGINAL STREAM COURSE.
4. THE ORIGINAL SOIL SURFACE IS BURIED BENEATH THE EXISTING PILE OF OVERBURDEN SO SOIL SALVAGE DURING MINING IS NOT REQUIRED. IF NECESSARY TO ENHANCE THE SUITABILITY OF THE UNDERLYING SOIL OVERBURDEN WHICH HAS INFILTRATED THE SOIL PROFILE WILL BE SCREENED OUT. MATERIAL PRODUCED IN THIS MANNER WILL BE REMOVED ALONG WITH REMAINING STOCKPILES.
5. THE MATERIALS BEING PRODUCED AT THIS SITE DO NOT TYPICALLY GENERATE UNUSABLE BY-PRODUCTS. ANY UNUSED FINES SUITABLE FOR RESOLING WILL BE USED DURING RECLAMATION TO ENHANCE ROOTING DEPTH.
6. COMPLETION OF MINING UNDER THIS RECLAMATION PLAN WILL EXHAUST THE AGGREGATE RESOURCES AT THIS SITE.



NUMBER 10-LEVEL MINE -TYPICAL X-SECTION



Deem / Shiningtree
P.O. Box 1875 Murphys, California
95247 (209) 728-2619

Number 10 Level Mine Rock Stockpile
Typical Cross Section Looking NE

DATE: 12/11/11 SCALE: 1"=20' Drawn by: DED DRAWING #: Sheet 3

DIAMOND MOUNTAIN

Plumas County Framework Data



PLUMAS COUNTY PLANNING & BUILDING SERVICES

555 Main Street
Quincy, CA 95971-9366
(530) 283-7011

www.plumascounty.us



October 21, 2011

Travis Deem
740 Melton Court
Red Bluff, CA 96080

Dear Mr. Deem,

This letter is in response to your letter of October 20, 2011 regarding the vesting of an aggregate source located on APN 007-080-004, which is located in the County of Plumas, California. I have read this letter with your arguments that this aggregate source be vested for mining. I agree with your arguments that this aggregate site is vested. You also indicate in your letter that vesting does not give relief from the requirement for a Reclamation Plan in accordance with the Surface Mining and Reclamation Act (SMARA). Accordingly, an approved Reclamation Plan including all requirements for a Financial Assurance Cost Estimate (FACE) and Financial Assurance Mechanism (FAM) must be in place before additional material is removed from the site.

If you have any questions feel free to contact me at 530-283-6214.

Sincerely


Randy Wilson
Planning Director
Plumas County, California

Thursday, October 20, 2011

Randy Wilson, Planning Director
Plumas County Planning & Building Services
555 Main Street
Quincy, CA 95971

RE: Vesting of aggregate source located on APN 007-080-004

Dear Mr. Wilson,

We have prepared this letter to supply you with relevant data regarding the request for a determination of vesting for the aggregate source located near the Number 10-Level of the Engels mine (see 2 attached maps for general location and site data). Based upon our investigation of the site and existing historical documents, it is our belief that these sources meet the standards for vesting that have been established in California and would appreciate your thoughtful consideration of this request.

Generally, in order for a site to be considered vested it needs to satisfy the following criteria:

1. The use must predate the year that the County passed zoning regulations that would either prohibit such use of the land or require the issuance of a use permit for the mining activities or prior to January 1st, 1976 (effective date of the Surface Mining and Reclamation act - SMARA), whichever is earliest (SMARA §2776).
 - a. Mining operations have been conducted at the site for nearly 100 years. Originally, mining was conducted to retrieve precious metals from veins deep inside the mountain. Tunneling conducted to reach the mineralized areas cut through thick sections of non-mineralized overburden rock, which was cast aside near the tunnel entrance. California, Engels Mining Company has maintained records showing that these overburden piles have been exploited for aggregate material since at least as early as 1964.
 - b. This use of the overburden piles as aggregate sources predates SMARA by at least 12 years and presumably the adoption of applicable zoning regulations in Plumas County.
2. There must be evidence that the site has been active.
 - a. The following timeline was provided by the California-Engels Mining Co. showing a continuous history of use at the site by numerous entities, including Plumas County.



Number 10 Level Overburden History:

1. 1964 - 1975 American Exploration & Mining Company lease and use of overburden for roads.
 2. 1965 - No. 10 Level overburden donated to the Plumas County Road Department.
 3. June 12, 1970 – 106 cubic yards of overburden from the No. 10 Level sold to McMullen Sand & Gravel.
 4. March 29, 1976 – 3,489 cubic yards of overburden from the No. 10 Level sold to Columbia Helicopters, Inc.
 5. May 15, 1976 – May 16, 1985 J.W. Fisher Logging Co. No. 10 Level overburden leases – 9,204 cubic yards of overburden.
 6. 1986 – 12,120 cubic yards of overburden from the No. 10 Level donated to the Plumas County Department of Public Works for use on Diamond Mountain Road only.
 7. 1988 – 564 cubic yards of overburden from the No. 10 Level donated to the Plumas County Department of Public Works for use on Diamond Mountain Road only.
 8. 1989 – 3,248 cubic yards of overburden from the No. 10 Level donated to the Plumas County Department of Public Works for use on Diamond Mountain Road only.
 9. 1989 – 690 cubic yards of overburden from the No. 10 Level sold to the Plumas County Department of Public Works.
 10. 1993 – 2002 – 11,660 cubic yards of overburden from the No. 10 Level sold to McMullen Sand & Gravel.
 11. 1995 – 984 cubic yards of overburden from the No. 10 Level sold to the Plumas County Department of Public Works.
 12. 1997 – 630 cubic yards of overburden from the No. 10 Level donated to the Plumas County Department of Public Works for rebuilding the Lights Creek Bridge resulting from the 1997 flash flood.
 13. 2010 - Present - Turner Excavating Inc. No. 10 Level overburden lease.
- b. The following pages include a photographic history of the site dating to 1921 which establishes the origin of the material and history of use as an aggregate source.

Photo 1: Picture of the site taken in 1921 looking to the north showing the location of the Number 10-Level tunnel and overburden disposal area.



Photo 2: Photo from 1979 looking southwest from near entrance road showing the results of past harvesting of overburden.



Photo 3: Looking to the northwest at operations conducted in 1989 by the Plumas County Dept. of Public Works



Photo 4: Looking to the northeast at operations conducted in 1995 by the Plumas County Dept. of Public Works.



Photo 5: Looking southwest at McMullen Sand & Gravel operations in 1996.



Photo 6: Looking southwest at Turner Excavating operations 2011.



3. There must be no indication that the use has been abandoned.

- a. In the case of *Hansen Bros. Enterprises, Inc. v. Board of Supervisors*, the court noted that abandonment of a vested right generally requires (1) A subjective intention to abandon by the owner; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right of the non-conforming use. This location is typical of rock sources located in remote sections of the State whose use is characterized by periods of activity interspersed by inactive times that last for several years. The repeated use of this site as a source for rock indicates that the property owners continued to value the mineral resource at the site. There is no evidence to conclude that at any time the owners lost interest in the established use.
- b. It should be noted, that vested rights deal with the right to the land use and do not eliminate the need to obtain a reclamation plan under SMARA. There is also an important distinction between abandonment in terms of vested use and abandonment as defined by SMARA. The abandonment clause in SMARA (§2770(h) (6)) does not pertain to the underlying vested right to the use of the land. SMARA regulates the timing and implementation of reclamation at sites covered by an approved reclamation plan. SMARA can compel reclamation to commence if the site meets the criteria set out in that law but it does not affect the right to the use.

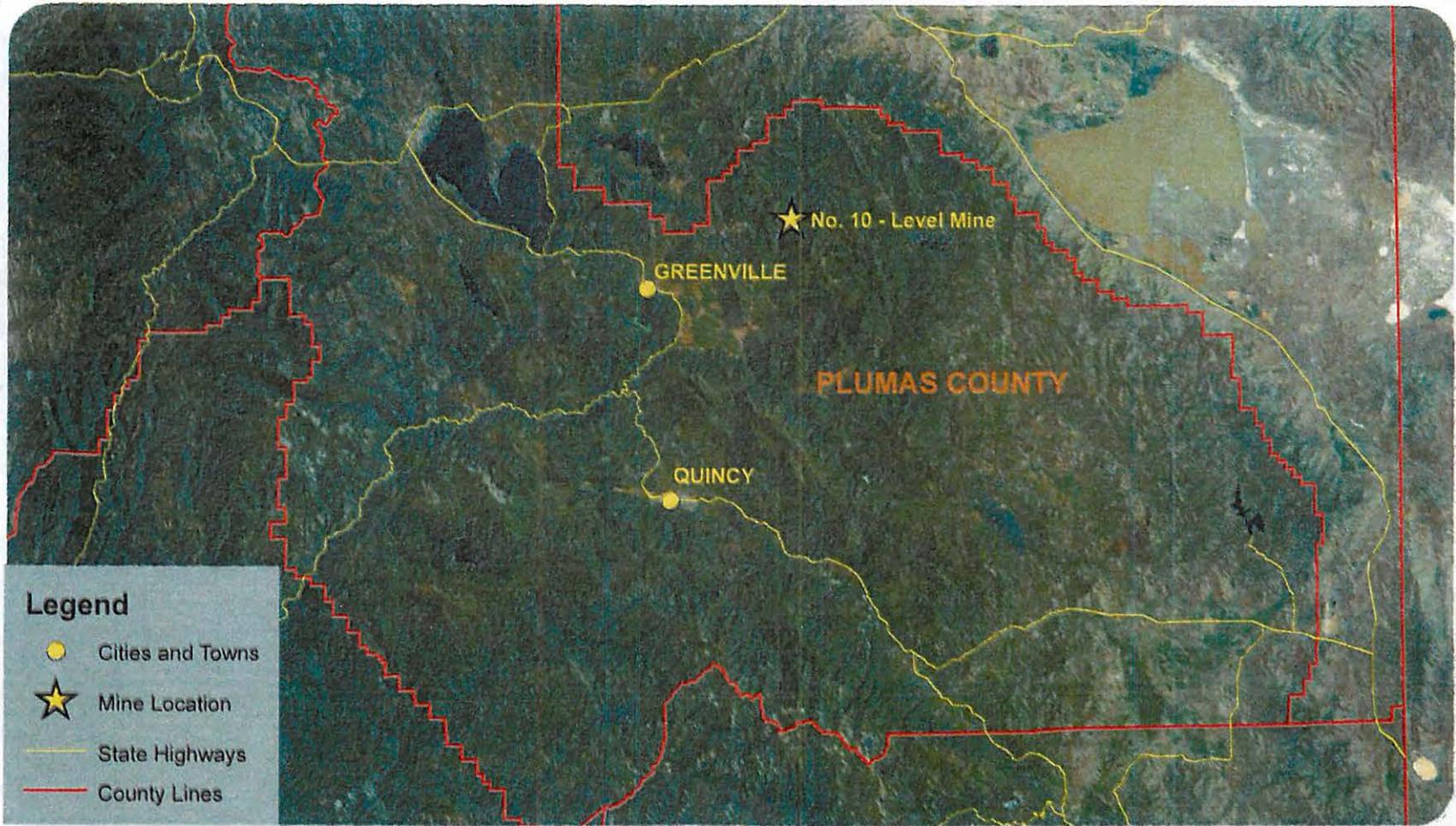
Based on the evidence we believe that this site does contain a vested mine and that the owner should be able to continue operations once they obtain a reclamation plan. We request that the county make a determination of vesting for this site at which time the Operator will proceed with the preparation of a reclamation document. Please do not hesitate to contact us if you have any questions. We can be reached at 530-736-2448.

Respectfully,



Travis Deem
CPESC #3948

FIGURE 1: REGIONAL MAP



Legend

- Cities and Towns
- ★ Mine Location
- State Highways
- County Lines

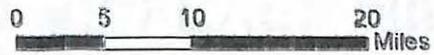
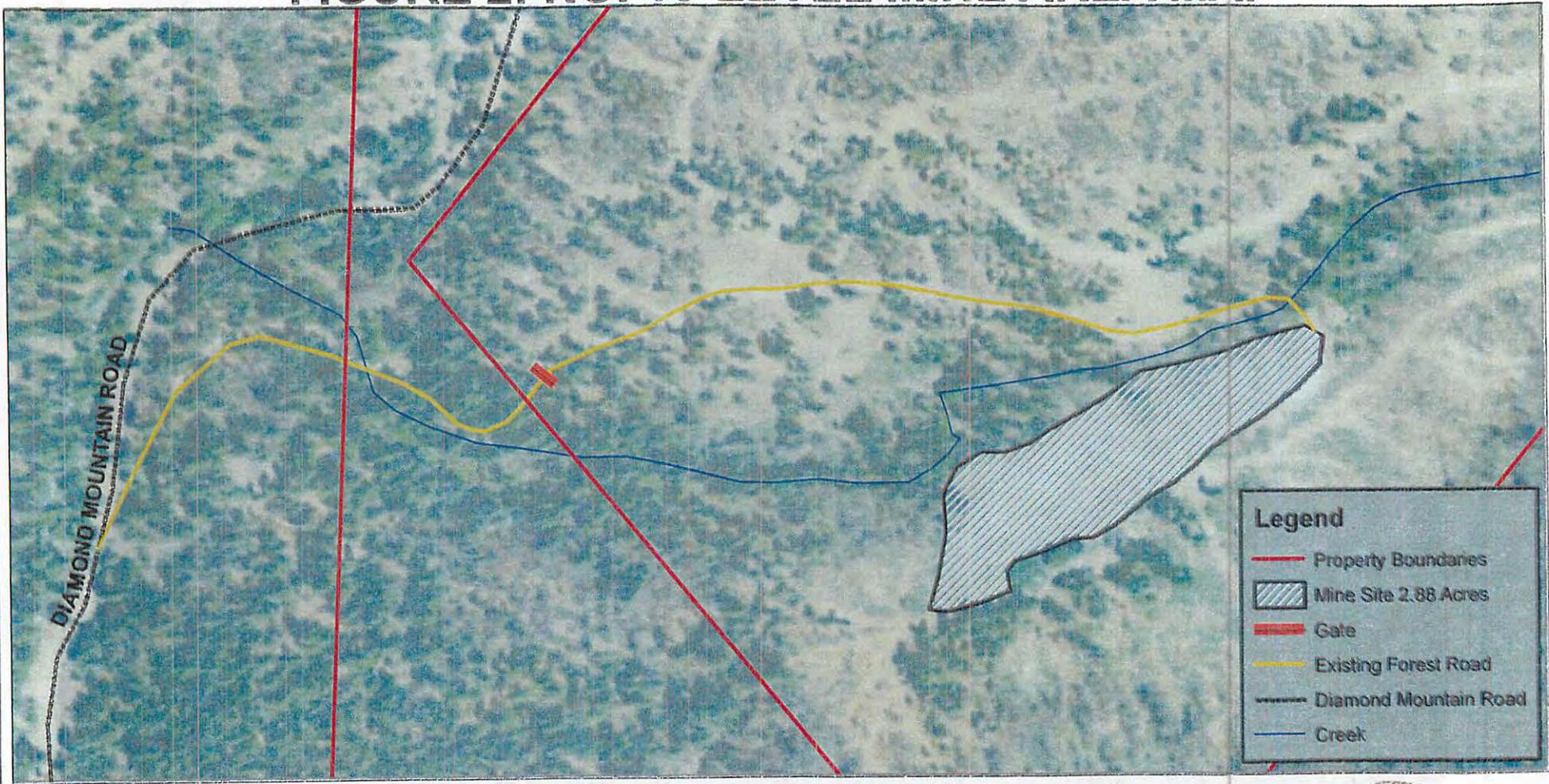


FIGURE 2: NO. 10-LEVEL MINE AREA MAP



Legend

- Property Boundaries
- ▨ Mine Site 2.88 Acres
- Gate
- Existing Forest Road
- - - Diamond Mountain Road
- Creek



NOTE: THE MINE SITE CONSISTS OF A PREVIOUSLY EXISTING PILE OF CLEAN, HARDROCK OVERBURDEN WHICH SITS ATOP THE ORIGINAL TOPSOIL. ACTIVITIES AT THE SITE CONSIST OF CLEANING UP THE PILE AND RESTORING THE ORIGINAL GROUND SURFACE.





DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Lassen – Modoc – Plumas Unit
 697-345 Highway 36
 Susanville, CA 96130
 (530) 257-4171



March 19, 2012

Plumas Co. Planning & Building Services
 Attention: Rebecca Herrin
 555 Main Street
 Quincy, CA 95971

RECEIVED
 MAR 20 2012
 PC Planning + Building

Re: Turner Excavating application for a Permit to Mine/Reclamation Plan

Dear Rebecca,

With respect to Turner Excavation's application for a Permit to Mine/Reclamation Plan the California Department of Forestry & Fire Protection (CAL FIRE), Lassen-Modoc-Plumas Unit, submits the following comments:

The California Forest Practice Act was adopted in 1973, resulting in a comprehensive process where CAL FIRE oversees enforcement of California's forest practice regulations. The purpose of the Forest Practice Rules is to implement the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 in a manner consistent with other laws, including but not limited to, the Timberland Productivity Act of 1982, the California Environmental Quality Act (CEQA) of 1970, the Porter Cologne Water Quality Act, and the California Endangered Species Act.

CEQA Guidelines (14 CCR 15382) defines "Significant effect on the environment" as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The removal of trees to transform timberland to a non-timber growing use has an effect on the physical environment and must be addressed by Plumas County Planning & Building Services (lead agency) pursuant to CEQA.

I talked to Brian Turner about the project and he informed me that the project is proposed on a 2.88 acre non-timberland area where no tree removal is proposed. In addition, CAL FIRE Fire Captain, Shane Vargas has no concerns. Therefore, CAL FIRE has no further comment concerning the project. Thank you for the opportunity to comment on this project. Please contact CAL FIRE Plumas Area Forester, Al Klem at (530) 283-1792, if you have any question regarding timber harvesting. For fire protection matters please contact CAL FIRE Fire Captain, Shane Vargas at (530) 283-9322.

signature

Al Klem (Forester I, RPF #2546)
 For Brad Lutts (Unit Chief)
 California Department of Forestry and Fire Protection
 Lassen – Modoc – Plumas Unit
 P.O. Box F, Quincy, CA 95971

cc: Turner Excavating, Norman Lamb, Jim Chapin, Prevention File, Chrono File

CONSERVATION IS WISE-KEEP CALIFORNIA GREEN AND GOLDEN

PLEASE REMEMBER TO CONSERVE ENERGY. FOR TIPS AND INFORMATION, VISIT "FLEX YOUR POWER" AT WWW.CA.GOV.

Herrin, Becky

From: Sam Longmire [sam@myairdistrict.com]
Sent: Tuesday, March 27, 2012 2:11 PM
To: Herrin, Becky
Subject: Number 10-Level Mine, Diamond Mountain Road

Dear Ms. Herrin:

The Northern Sierra Air Quality Management District has reviewed the Preliminary Review and Consultation for a seasonal rock crushing/screening plant on Diamond Mountain Road in Greenville (APN 007-080-004).

The project as proposed is not likely to result in significant impacts to air resources. However, an Authority to Construct/Permit to operate will probably be required from the NSAQMD. Application materials and information are available on the district's website at www.myairdistrict.com. The applicant should contact the NSAQMD main office in Grass Valley (530-274-9360) to discuss the possible need for permitting. Equipment typically subject to permitting includes generator engines and rock crushing/screening machinery.

For surface disturbance exceeding one acre, a Dust Control Plan is required pursuant to NSAQMD Rule 226: Dust Control. This could be a stand-alone document or could be included in the plan of operations or operating permit. The next level of environmental documentation should indicate where dust control conditions will be accessed by workers and how following the conditions will be assured. It may be necessary to install a gravel apron to minimize track-out onto paved public roadways if conditions exist that indicate this could happen. If track-out does occur, dirt should be removed from any paved roadway at least daily.

The project site is not mapped as having ultramafic rock or naturally occurring asbestos. However, if ultramafic rock is encountered then the Asbestos ATCM for Construction, Grading, Quarrying and Surface Mining Operations (CCR Title 17, Section 93105) will apply.

Sincerely,
Samuel F. Longmire, APCS
Northern Sierra Air Quality Management District

Samuel F. Longmire, MSES
Air Pollution Control Specialist III
Northern Sierra Air Quality Management District
PO Box 2509, Grass Valley, CA 95945
Phone: (530) 274-9360 x106
Fax: (530) 274-7546

4/10/2012

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH# **2012052016** 91-32-0039

Project Title: Permit to Mine/Reclamation Plan for Turner Excavating, Inc.
Lead Agency: Plumas County **Contact Person:** Rebecca Herrin
Mailing Address: 555 Main Street **Phone:** (530) 283-6213
City: Quincy **Zip:** 95971 **County:** Plumas

Project Location: County: Plumas City/Nearest Community: Greenville
Cross Streets: Diamond Mountain Road **Zip Code:** _____
Longitude/Latitude (degrees, minutes and seconds): 40° 13' 13.19" N / 120° 45' 1.17" W **Total Acres:** 2.88
Assessor's Parcel No.: 007-080-004 **Section:** 8 **Twp.:** 27N **Range:** 11E **Base:** MDM
Within 2 Miles: State Hwy #: none **Waterways:** China Gulch, Lights Creek
Airports: none **Railways:** none **Schools:** none

Document Type:
CEQA: NOP Draft EIR Supplement/Subsequent EIR (Prior SCH No.) Other: _____
 Early Cons Mit Neg Dec
 Neg Dec
NEPA: NOI Other: _____
 Draft EIS Final Document
 FONSI Other: _____
 MAY - 4 2012

Local Action Type:
 General Plan Update Specific Plan Rezone Annexation
 General Plan Amendment Master Plan Prezone Redevelopment
 General Plan Element Planned Unit Development Use Permit Coastal Permit
 Community Plan Site Plan Land Division (Subdivision, etc.) Other: Mining permit

Development Type:
 Residential: Units _____ Acres _____
 Office: Sq.ft. _____ Acres _____ Employees _____
 Commercial: Sq.ft. _____ Acres _____ Employees _____
 Industrial: Sq.ft. _____ Acres _____ Employees _____
 Educational: _____
 Recreational: _____
 Water Facilities: Type _____ MGD _____
 Transportation: Type _____
 Mining: Mineral Construction aggregate
 Power: Type _____ MW
 Waste Treatment: Type _____ MGD
 Hazardous Waste: Type _____
 Other: _____

Project Issues Discussed in Document:
 Aesthetic/Visual Fiscal Recreation/Parks Vegetation
 Agricultural Land Flood Plain/Flooding Schools/Universities Water Quality
 Air Quality Forest Land/Fire Hazard Septic Systems Water Supply/Groundwater
 Archeological/Historical Geologic/Seismic Sewer Capacity Wetland/Riparian
 Biological Resources Minerals Soil Erosion/Compaction/Grading Growth Inducement
 Coastal Zone Noise Solid Waste Land Use
 Drainage/Absorption Population/Housing Balance Toxic/Hazardous Cumulative Effects
 Economic/Jobs Public Services/Facilities Traffic/Circulation Other: _____

Present Land Use/Zoning/General Plan Designation:
 Important Timber/General Forest

Project Description: (please use a separate page if necessary)
 Proposal to mine up to 100,000 cubic yards of construction aggregate from an existing previously disturbed overburden pile. The project will be mined in one section without phasing. In addition to mining, the project includes a seasonal rock crushing/screening plant, but no permanent structures or buildings. The processing plant will cease operation and be removed from the site when available reserves of aggregate overburden have been exhausted.

RECEIVED

MAY 03 2012

BY: DOUGER

40,209717
 120,76218

State Clearinghouse Contact: (916) 445-0613

State Review Began: 5.4 - 2012

SCH COMPLIANCE 4.4 - 2012

Please note State Clearinghouse Number (SCH#) on all Comments

2012052016

SCH#: _____
 Please forward late comments directly to the Lead Agency

AQMD/APCD 21

(Resources: 5/5)

Project Sent to the following State Agencies

- | | |
|---|---|
| <input checked="" type="checkbox"/> Resources | <input type="checkbox"/> State/Consumer Svcs |
| <input type="checkbox"/> Boating & Waterways | <input type="checkbox"/> General Services |
| <input type="checkbox"/> Coastal Comm | <input type="checkbox"/> Cal EPA |
| <input type="checkbox"/> Colorado Rvr Bd | <input type="checkbox"/> ARB: Airport/Energy Projects |
| <input checked="" type="checkbox"/> Conservation | <input type="checkbox"/> ARB: Transportation Projects |
| <input checked="" type="checkbox"/> Fish & Game # 2 | <input type="checkbox"/> ARB: Major Industrial Projects |
| <input type="checkbox"/> Delta Protection Comm | <input type="checkbox"/> SWRCB: Div. Financial Assist. |
| <input type="checkbox"/> Cal Fire | <input type="checkbox"/> SWRCB: Wtr Quality |
| <input checked="" type="checkbox"/> Historic Preservation | <input type="checkbox"/> SWRCB: Wtr Rights |
| <input checked="" type="checkbox"/> Parks & Rec | <input checked="" type="checkbox"/> Reg. WQCB # SR |
| <input type="checkbox"/> Central Valley Flood Prot. | <input type="checkbox"/> Toxic Sub Ctrl-CTC |
| <input type="checkbox"/> Bay Cons & Dev Comm. | <input type="checkbox"/> Yth/Adlt Corrections |
| <input checked="" type="checkbox"/> DWR | <input type="checkbox"/> Corrections |
| <input type="checkbox"/> Cal EMA | |
| <input checked="" type="checkbox"/> Resources, Recycling and Recovery | |
| Bus Transp Hous | Independent Comm |
| <input type="checkbox"/> Aeronautics | <input type="checkbox"/> Energy Commission |
| <input checked="" type="checkbox"/> CHP | <input checked="" type="checkbox"/> NAHC |
| <input checked="" type="checkbox"/> Caltrans # 2 | <input type="checkbox"/> Public Utilities Comm |
| <input type="checkbox"/> Trans Planning | <input checked="" type="checkbox"/> State Lands Comm |
| <input type="checkbox"/> Housing & Com Dev | <input checked="" type="checkbox"/> Tahoe Rgl Plan Agency |
| <input type="checkbox"/> Food & Agriculture | |
| <input type="checkbox"/> Public Health | |
| | <input type="checkbox"/> Conservancy |
| | <input type="checkbox"/> Other: _____ |

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 OFFICE OF
 WILDLIFE RECLAMATION
 2012 MAY 16 PM 1:58
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