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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NEVADA**

RISE GRASS VALLEY, INC., a Nevada
corporation,

Petitioner,

v.

BOARD OF SUPERVISORS OF THE
COUNTY OF NEVADA, and the COUNTY
OF NEVADA; and DOES 1-50, Inclusive,

Respondents.

Case No. CU0001386

[Honorable Robert Tice-Raskin, Dept. 6]

**PETITIONER RISE GRASS VALLEY INC.'S
OPENING BRIEF IN SUPPORT OF
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

Date: January 2, 2026

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INTRODUCTION

Legal protections for vested property rights are critically important because they allow local governments to adopt zoning codes and plan the uses of land in their communities without exposing them to liability for payment of just compensation.

When a government first adopts a zoning ordinance, the ordinance is likely to prohibit or restrict uses of particular property that were previously legal and unrestricted. Both the United States and California Constitutions protect property owners so affected by requiring that government pay just compensation for property that it takes for public uses. U.S. CONST., amend. V; CAL. CONST. art. I, § 19. Therefore, new zoning ordinances often result in a regulatory taking and the requirement that government pay just compensation to the affected landowners.

To avoid that outcome, “[t]he 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.” *Hansen Bros. Enter., Inc. v. Nevada Cnty. Bd. of Supervisors*, 12 Cal.4th 533, 552 (1996) (quoting *Edmonds v. County of Los Angeles*, 40 Cal.2d 642, 651 (1953)). Existing land uses that do not conform to new zoning restrictions are recognized as vested rights and are allowed to persist because destroying “an existing nonconforming use would be a dangerous innovation of doubtful constitutionality,” and such a “retroactive” application of a zoning provision “might jeopardize the entire ordinance.” *Jones v. City of Los Angeles*, 211 Cal. 304, 310–11 (1930); *see also Calvert v. County. of Yuba*, 145 Cal. App. 4th 613, 623 (Cal. Ct. App. 2006).

A vested right arises by operation of the constitutional protection against government takings; therefore, it is a fundamental right that receives special protection. The seminal case in California addressing a vested right to conduct mining activities is *Hansen Brothers Enterprises, Inc. v. Nevada County Board of Supervisors*, 12 Cal.4th 533 (1996). There, the same respondent as in this case, Nevada County, refused to recognize a mine owner’s vested right to conduct mining activities, and the California Supreme Court concluded that Nevada County had erred. *Hansen Brothers* holds that a vested right to conduct mining activities is created when the activities are taking place at the time a zoning restriction takes effect and the activities are “not in conformity with that ordinance when it continues thereafter.” *Id.* at 540 n.1.

Petitioner Rise Grass Valley, Inc. (“Rise”) has filed this action for writ of administrative mandate to compel Respondents Nevada County and the Board of Supervisors of Nevada County (hereafter, the “County”) to correct the legal and factual errors of its December 14, 2023 ruling and thereby recognize its vested right to conduct mining activities at the Idaho-Maryland Mine, historically one of the most productive gold mines in the United States. “In an administrative mandamus case,” like this one, “where a fundamental vested right is at stake, the trial court must exercise independent judgment and determine whether a preponderance of the evidence supports the administrative findings of fact.” *Handyman Connection of Sacramento, Inc. v. Sands*, 123 Cal. App. 4th 867, 880 (Cal. Ct. App.2004) (emphasis omitted).

Here, Rise has established by overwhelming evidence that it has a vested right to conduct mining activities at the Idaho-Maryland Mine. Indeed, the County itself has previously confirmed—in writing—that Rise does, in fact, have a vested right. The zoning ordinance at issue first took effect in October 1954, at which time the Idaho-Maryland Mine was engaged in underground mining and related mining activities, including mineral processing activities on the surface estate. Although the County’s zoning ordinance required a use permit for mining activities as of October 10, 1954, mining continued at the Idaho-Maryland Mine without any use permit. This is de facto evidence that the owner of the mine possessed a vested right to conduct mining activities. The County has refused to recognize that Rise’s vested right originated on October 10, 1954, but has provided no legitimate factual basis for doing so.

The County has also concluded erroneously that, if a vested right ever existed, it was abandoned at some point after 1954. But *Hansen Brothers* establishes stringent requirements for the abandonment of a vested right, and those standards are not met here. Under *Hansen Brothers*, “[c]essation of use alone does not constitute abandonment,” 12 Cal.4th at 569; rather, abandonment requires both “[a]n intention to abandon” and “an overt act, or failure to act” indicating that the owner no longer retains the vested right. *Id.* (internal quotation marks omitted). The court so ruled because constitutional rights do not simply expire over time; they must be knowingly and affirmatively abandoned. Because Rise established that it has a vested right to conduct mining activities, and because both the United States and California constitutions protect that right, the County bears the burden to

1 demonstrate abandonment and to do so by clear and convincing evidence. *City of Ukiah v. Fones*, 64
2 Cal.2d 104, 107-08 (1966); *Copp v. Paxton*, 45 Cal. App. 4th 829, 846 (Cal. Ct. App. 1996). The
3 County has not done so because no evidence of abandonment exists, much less clear and convincing
4 evidence.

5 The primary alleged evidence of abandonment the County points to is the cessation of mining
6 in 1956 due to the low price of gold fixed by the federal government following World War II. But
7 *Hansen Brothers* squarely held that mere cessation of use cannot demonstrate abandonment. *Id.* The
8 other evidence the County attempts to muster actually undermines the County’s argument because it
9 demonstrates an intention to *retain* the vested right to conduct mining activities, not abandon it. In the
10 late 1950s, the mine’s owners sold mining equipment and non-essential surface parcels to repay debt
11 while explicitly retaining the subsurface mineral estate beneath the sold parcels in order to keep the
12 company solvent and *protect* the mineral estate and core surface properties that would be required for
13 future mining.

14 Further undercutting the County’s vague and unsubstantiated “abandonment” assertion is the
15 fact that, in 1980, the County itself recognized, in writing, that mining activities were an existing,
16 nonconforming use of the property—an acknowledgement of the vested right that the County now
17 seeks to disclaim. And from the 1980s through the present ownership of Rise, the mine’s owners
18 engaged in active exploration and discovery of minerals, entered leases with the intention to resume
19 commercial scale mining, and sought environmental approvals that would be necessary to mine. The
20 County has attempted to spin these actions into indications of abandonment, rather than *preservation*
21 of Rise’s vested right to conduct mining activities.

22 In short, Rise possesses a vested right to mine at the Idaho-Maryland Mine. The right
23 encompasses the property described *infra* at pages 6–7 (Background, Sec. A), with the scope described
24 *infra* at pages 36–37 (Conclusion). Rise respectfully urges the Court to exercise its independent legal
25 judgment and grant the writ of administrative mandate, compelling the County to (1) set aside its
26 December 14, 2023 decision with respect to the vested right to conduct mining activities at the Idaho-
27 Maryland Mine, and (2) bring its conduct into compliance with all applicable law and regulations by
28 recognizing Rise’s vested right to conduct mining activities at the Idaho- Maryland Mine without the

1 need for a conditional use permit.

2 LEGAL STANDARD

3 *Administrative mandate.* “In an administrative mandamus case where a fundamental vested
4 right is at stake, the trial court must exercise independent judgment and determine whether a
5 preponderance of the evidence supports the administrative findings of fact.” *Handyman*, 123 Cal. App.
6 4th at 880 (emphasis omitted); see *Bixby v. Pierno*, 4 Cal.3d 130, 143 (1971) (“[T]he trial court not
7 only examines the administrative record for errors of law but also exercises its independent judgement
8 upon the evidence disclosed in a limited trial de novo.”). The preponderance-of-the-evidence standard
9 requires the party to show that its version of events is “more likely than not” to be true, meaning that
10 a likelihood that is greater than 50% will suffice. *Beck Dev’t Co. v. S. Pac. Transp. Co.*, 44 Cal. App.
11 4th 1160, 1205 (Cal. Ct. App. 1996).

12 *Vested right.* A vested right to mine as a legal, nonconforming use comes into being when a
13 local zoning ordinance for the first time requires a permit to conduct mining activity: “A legal
14 nonconforming use is one that existed lawfully before a zoning restriction becomes effective and that
15 is not in conformity with the ordinance when it continues thereafter.” *Hansen Bros.*, 12 Cal.4th at 540,
16 n.1. A vested right runs with “[t]he use of the land, not its ownership,” *id.*, and its scope includes the
17 “right to engage in uses normally incidental and auxiliary to the nonconforming use.” *Id.* at 565
18 (cleaned up). In the context of a mining operation, a court considers “the overall business operation,”
19 *id.*, so that the legal, nonconforming use extends wherever “there is objective evidence of the owner’s
20 intent to expand a mining operation” at the time the zoning ordinance is adopted, *id.* at 553. This is
21 known as the diminishing asset doctrine: “[I]n cases of a diminishing asset the enterprise is ‘using’ all
22 that land which contains the particular asset and which constitutes an integral part of the operation.”
23 *Id.* at 555.

24 *Abandonment.* A vested right to continue a legal, nonconforming use can be abandoned, but
25 “[c]essation of use alone does not constitute abandonment.” *Hanson Bros.*, 12 Cal.4th at 569. Rather,
26 “abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An
27 intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner
28 does not claim or retain any interest in the right to the nonconforming use.” *Id.* (citation omitted). A

1 vested right is a constitutionally protected property right, and “waivers of constitutional rights not only
2 must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant
3 circumstances and likely consequences.” *Brady v. United States*, 397 U.S. 742, 748 (1970). Thus,
4 “[t]he pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the
5 known legal right.” *Habitat Tr. for Wildlife, Inc. v. City of Rancho Cucamonga*, 175 Cal. App. 4th
6 1306, 1320 (Cal. Ct. App. 2009). The party alleging abandonment or waiver of a constitutional right—
7 not the holder of such a right—bears the burden of proving that such a right has in fact been abandoned.
8 *Group Prop., Inc. v. Bruce*, 113 Cal. App. 2d 549, 559 (Cal. Dist. Ct. App. 1952). The party alleging
9 abandonment must prove by clear and convincing evidence the property owner’s actual intent to
10 abandon the vested mining right *and* an overt act, or failure to act, demonstrating such an intention.
11 *Hansen Bros.*, 12 Cal. 4th at 564, 569; *Pickens v. Johnson*, 107 Cal. App. 2d 778, 787 (Cal. Dist. Ct.
12 App. 1951); *City of Ukiah*, 64 Cal.2d at 107-08 (“The burden ... is on the party claiming a waiver of
13 a right to prove it by clear and convincing evidence that does not leave the matter to speculation”
14 (citation omitted)); *Copp*, 45 Cal. App. 4th at 846 (“The burden of proof by clear and convincing
15 evidence ‘requires a finding of high probability. The evidence must be so clear as to leave no
16 substantial doubt. It must be sufficiently strong to command the unhesitating assent of every
17 reasonable mind’ ” (citation omitted)); *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (“clear
18 and convincing evidence” is a higher standard of proof than “preponderance of the evidence”).
19 “[D]oubtful cases will be decided against a waiver.” *Habitat Tr. for Wildlife*, 175 Cal. App. 4th at
20 1320 (citations omitted).

21 BACKGROUND

22 A. The Idaho-Maryland Mine Property.

23 Petitioner Rise Grass Valley, Inc. (“Rise” or “Petitioner”) seeks recognition of the vested right
24 to conduct mining activities at the Idaho-Maryland Mine, which consists of 175 acres of surface land
25 and a 2,560-acre subsurface mineral estate. The description of this property is as follows:

- 26 • The 119-acre Brunswick Industrial site includes existing mine components at the surface (a
27 concrete silo, mine shaft, settling pond and sawmill site). It is comprised of Assessor’s Parcel
28 Numbers (APNs): 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, and

009-630-039.

- The 56.41-acre Centennial Industrial site, including the historic tailings deposit, comprised of APNs: 009-550-032, 009-550-037, 009-550-038, 009-550-039, 009-550-040, and 009-560-036.

- The approximately 2,560-acre reserved subsurface mineral estate, as depicted at AR000661. AR000489, 659, 661.¹ Rise owns the property described above, with one caveat. As detailed in Rise’s brief on standing issues, Pet’rs Br. in Opp. to Respondents’ Opening Br. re: Standing (July 22, 2025), Rise sold the three sawmill parcels (APNs 006-441-003, -004, and -005) during the pendency of this litigation but continues to own a buy-back option for them. The option provides that Rise has “the exclusive and irrevocable option to purchase” those parcels in the event that Rise “acquires final government approvals to perform mining operations” at the Idaho-Maryland Mine. *Id.* at 7–8; Ex. A of Decl. of Joseph Mullin iso Pet’rs Br. in Opp to Respondents’ Opening Br. re: Standing (July 22, 2025). Rise continues to seek recognition of a vested right to conduct mining activities as to these parcels, but if no vested right exists at to these specific parcels, they are severable from the rest of the Idaho-Maryland Mine property because they are not necessary for mining.

A full timeline of the history of the mine is detailed in Rise’s vested right petition to Nevada County, AR000481–560, and its more than four hundred accompanying exhibits, AR000658–2761. Rise’s response to the County’s Staff Report expands upon this history, AR0003575–3593, and Rise supplied a counter-response to the County’s objections to the factual assertions in Rise’s vested rights petition, AR002762–3212.

Important details in the mine’s history taken from these extensive submissions are set forth below and excerpted as attachments to the Declaration of Martin P. Stratte that accompanies this brief as Exhibit A. Rise refers to and incorporates the entirety of its vested rights submissions as evidence for the Court’s consideration but excerpts the portions of the administrative record attached to the Stratte Declaration for the Court’s aid and convenience.

For a visual depiction of the historical events described throughout this petition, see Exhibit 4

¹ Citations beginning in “AR00” refer to the pagination of the Administrative Record, which is lodged with the Court. For the Court’s convenience, the portions of the Administrative Record directly cited in this brief are attached to Exhibit A, the Declaration of Martin P. Stratte, filed simultaneously with this brief.

of the Stratte Declaration (AR000394), a timeline Rise prepared and exhibited at the vested right hearing, detailing mining activities at the Idaho-Maryland Mine from 1934 to 2024.

B. General Mine History Before 1954.

The Idaho-Maryland Mine was first established in 1851 and from then until 1942 underwent periods of exploration, major production, expansion, latency (including a period of care and maintenance for twenty-five years beginning in 1901), and consolidation. AR000486, -498, -597. The mine was extremely productive. In 1938, the Idaho-Maryland Mine was reported to be the largest gold producer in California, producing 115,001 ounces of gold annually from the mining and processing of 331,406 tons of gold ore, for a net profit of \$1,193,446. AR000486, -512; Exhibit 135 to the Idaho-Maryland Mine Vested Right Pet. (Sept. 1, 2023) (“Pet.Ex.”) (AR001250). The mine reached its peak production in 1939, with 410,411 tons of ore produced from the Idaho and Brunswick shafts combined. AR000513, -612; Pet.Ex.135 (AR001281). But in 1942, the War Production Board ordered the cessation of mining at all major gold mines in the United States, including the Idaho-Maryland Mine. AR000486, -620–621.

The mine resumed operations in 1944, but the post-war Bretton Woods agreement fixed the price of gold at an artificially low level, inflation increased costs of production, and there were labor shortages, which combined to force the mine to operate at reduced capacity. AR000486–87, -515, -621–622. The mine owner, the Idaho Maryland Mines Corporation, implemented technological and cost-saving measures during this time, including constructing two sawmills to supply timber needed for the mine. AR000487, -515, -621–622. By 1945, the mine was producing again and continued to produce gold each year thereafter until 1956. AR000515–520, -622.²

C. Mine Operations at the Date of Vesting, 1954.

Nevada County’s first comprehensive zoning ordinance became effective on October 10, 1954. AR000518–19; Pet.Ex.185 (AR001479–1487). The zoning ordinance imposed a use permit requirement for mining and quarrying activities in the County for the first time. *Id.* Notwithstanding

² Cessations in production and mining activities in general are commonplace at mines and mining properties. *See, e.g., Seaman v. Vawdrey* 16 Ves Jr. 390, 33 (High Ct. Chancery 1810) (“It is well known that mines remain unwrought for generations; that they are frequently purchased or reserved, not only without any view to immediate working, but for the express purpose of keeping them unwrought until other mines shall be exhausted, which may not be for a long period of time.”).

1 the new zoning ordinance, mining at the Idaho-Maryland Mine continued without a use permit. During
2 1954, the mine produced and milled 88,632 tons of ore, and active mining occurred in at least 14 areas
3 throughout the mine. AR000518, -630; Pet.Ex.178 (AR001455); Pet.Ex.179 (AR001457–1461).

4 **D. Continued Mining After the Date of Vesting.**

5 In 1955, 28,905 tons of ore were mined. AR000519; Pet.Ex.195 (AR001523, -1532). But the
6 gold mining was operating at a considerable loss due to the low fixed price of gold, and as a result, the
7 Idaho Maryland Mines Corporation chose to cease gold mining at the end of that year. AR000519, -
8 632. The company turned instead to the exploration and production of tungsten in 1956 under a
9 Department of Defense procurement program, which continued in at least six work sites at the mine.
10 AR000519–20; Pet.Ex.195 (AR001523); Pet.Ex.196 (AR001532); Pet.Ex.197 (AR001539);
11 Pet.Ex.198 (AR001541).

12 The price of tungsten began to plunge in 1956, Congress discontinued the defense minerals
13 program, and financial hardship forced the Idaho Maryland Mines Corporation to abandon tungsten
14 production and to allow the mine to flood in 1956. AR000520, -633. A 1957 Los Angeles Times article
15 described the situation for California gold producers at that time:

16 Prior to World War II, there were 1600 gold mines in California. By 1953, 98% of the
17 State’s output was coming from 10 mines, and today these mines are closing one by one.

18 The miners, faced with rising costs, can no longer economically afford to extract gold
19 from the earth at the rate of \$35 an ounce established by the government in 1934.

20 Pet.Ex.416 (AR002715). The superintendent of the Idaho-Maryland Mine stated that it would be
21 “impossible to resume operations under existing conditions,” and that allowing the mine to flood was
22 a required cost-saving measure while it was economically infeasible to mine: “You’ve got to be taking
23 gold out of the ground to afford to keep your pumps going.” Pet.Ex.416 (AR0002715–16).

24 **E. Preserving and Retaining the Surface and Mineral Estates Necessary to Mine.**

25 Despite its financial hardships, the Idaho-Maryland Mine Corporation *preserved and retained*
26 the property holdings necessary to resume mining in the future, including both the necessary surface
27 estate and the subsurface mineral estate. As the company sold property to satisfy its debts, including
28 the Brunswick sawmill site, AR000520; Pet.Ex. 206 (AR001593–94), it reserved the subsurface

1 mineral rights and 70 acres of surface property around the three mine shafts—the New Brunswick
2 shaft, the Old Brunswick shaft, and the Union Hill shaft, as well as the surface property around the
3 Brunswick mill site, AR000522. And the company actively pursued ways to make gold production
4 economically feasible again. In 1961, a member of the Board of Directors at the company wrote a
5 letter to Congressman Ed Edmondson outlining a plan to “subsidize or establish incentive funding
6 arrangements for the costs of development work” of gold as an alternative to increasing the price of
7 gold set by the federal government in 1934. AR000522, Pet.Ex.222 (AR001648–49). In 1962, the
8 company was forced to declare bankruptcy. AR000523.

9 **F. Ghidotti Ownership.**

10 In 1963, the Idaho-Maryland Mine Corporation (then known as Idaho Maryland Industries,
11 Inc.) auctioned the mine property *as a mine* to mine owner and gold investor William Ghidotti and his
12 wife Marian Ghidotti. AR000523; Pet.Ex.224 (AR001653); Pet.Ex.225 (AR001655–1676). The
13 property consisted of 2,630 acres of mineral rights and 78.531 acres of surface rights (later known as
14 “BET Acres”). *Id.* AR000523; Pet.Ex.224 (AR001653).

15 The Ghidottis began processing rock located on the property for residual gold. Between 1964
16 and 1965, they operated a rock crusher on the property for four months. AR000523; Pet.Ex.231
17 (AR001698). They also sold 200,000 tons of crushed rock that was left on the property from previous
18 mining in 1965, leading to the discovery of “several pieces of quartz shot full of gold,” which William
19 Ghidotti kept “to show to prospective buyers, if and when he decided to sell the mineral rights.”
20 AR000655–56. From 1967 through 1979, the Ghidottis operated a rock crusher and “both mine rock
21 wastes and mill sand [was] continuously [] removed in small amounts” from the property. AR000523
22 (citation omitted).

23 Upon William Ghidotti’s death in 1969, his wife Marian owned the property solely.
24 AR000524; Pet.Ex.235 (AR001707). In 1971, the United States terminated the Bretton Woods system.
25 In or around 1976, Marian Ghidotti purchased additional surface lands from Newmont Mining that
26 were contiguous to the Centennial Industrial Site, for the purpose of facilitating future mining
27 operations on the mine property. AR000524–25. In 1977, Marian Ghidotti insured the mine property
28 as a mining asset because she believed it contained a large amount of unextracted gold and would

1 someday generate significant revenue when mining resumed. AR000525; Pet.Ex.227 (AR001679–
2 83).

3 **G. County Recognition of Existing Nonconforming Use on the Mine Property.**

4 In 1979, Marian Ghidotti entered a licensing agreement with North Star Rock Products
5 Corporation for a proposed “rock crushing and gravel retail sales operation” at the Centennial
6 Industrial Site. AR000525; Pet.Ex.252 (AR001831–32). The County authorized the work, and in doing
7 so, specifically recognized that these mining activities were part of an existing, non-conforming use.
8 The County Staff Report stated: “It is noted that the provisions of the ‘M1’ Light Industrial District in
9 which the subject property is located do not allow gravel harvest and processing as permitted or
10 conditionally permitted uses. However, the property owner has indicated that mine rock has been sold
11 and taken from the property continuously since the mine closed, and so this use permit application is
12 for an expansion of *an existing, non-conforming use* by the addition of a crusher and screening plant.”
13 AR003481; Pet.Ex.252 (AR001831–32) (emphasis added).

14 In addition, the County acknowledged that Ghidotti was considering “re-opening the mine
15 because of the price of gold.” AR000525; Pet.Ex.254 (AR001863–67). This is consistent with other
16 abundant evidence that during William and Marian Ghidotti’s ownership of the mine, they collected
17 historic documents and maps related to the mine, believed the mine would operate again, and did not
18 use or intend to use the property for any other purpose. AR000525–526; Pet.Ex.227 (AR001679–87).

19 **H. BET Group Ownership and Mining Plans.**

20 Marian Ghidotti died in 1980, leaving the mine property to three individuals: Mary Bouma,
21 Erica Erickson, and William Toms, collectively known as the “BET Group.” AR000526; Pet.Ex.248
22 (AR001748). Her estate was settled in 1983. AR000526; Pet.Ex. 227 (AR001679–87); Pet.Ex.248
23 (AR001743–49). The BET Group then engaged in a variety of activities to preserve the right to
24 conduct mining activities at the property and to attempt a restart of commercial-scale mining activities.

25 The BET Group continued to partner with North Star Rock Products Inc. for aggregate
26 excavation and processing, throughout the 1980s, AR000526–27, and also sold gold-bearing mine
27 tailings from the property, AR000527; Pet.Ex.268 (AR001964–65); Pet.Ex.66 (AR000793–805). In
28 the late1980s, the BET Group subdivided and sold some of the surface lands associated with the mine

1 but reserved subsurface mineral rights and sufficient surface lands to allow the mine to reopen in the
2 future. AR000527–528; Pet.Ex.263 (AR001946–50); Pet.Ex.265 (AR001951–55); Pet.Ex.266
3 (AR001958–60); Pet.Ex.270–273 (AR001968–78) (deeds reserved to the BET Group the mineral
4 estate “with the right to extract and remove said mineral ... without disturbing the surface thereof”).
5 In 1989, the BET Group filed an “Notice of Intent to Preserve Interest” in all of the mineral estate they
6 owned in Nevada County. AR00528; Pet.Ex.275 (AR001982).

7 The BET Group negotiated and contracted with several mining companies with the intent of
8 resuming mining operations. In 1988, the BET Group optioned the mine property to Mother Lode
9 Gold Mines, which announced that it expected the mine to be in production within 5 years. AR000527;
10 Pet.Ex.267 (AR001961–63). Mother Lode also reported that it believed the mine still contained
11 approximately 1 million ounces of gold. AR000528; Pet.Ex.269 (AR001966–67). When Mother Lode
12 relinquished the option on the mine property in 1991, the BET Group leased it to Consolidated Del
13 Norte Ventures, which also planned to resume commercial-scale mining activities, believing that it
14 contained 2.5 million ounces of gold. AR000528; Pet.Ex.276 (AR001984–86). Consolidated Del
15 Norte relinquished its lease in 1993, at which point the BET Group executed a mining lease and option
16 to purchase with Emperor Gold Corporation (“Emgold”). AR000529; Pet.Ex.279 (AR001984–86).
17 Emgold announced potential gold production of up to 3 million ounces. AR000529; Pet.Ex.283
18 (AR002089–90).

19 From the period from 2002 to 2013, Emgold made a significant effort to resume commercial-
20 scale mining activities. Though only an optionor and not an owner of the mine, Emgold applied for
21 and received permits from the County for surface drilling and dewatering the mine, important early-
22 stage activities to prepare for resumed underground mining. AR000530–531; Pet.Ex.287 (AR002119–
23 20); Pet.Ex.294 (AR002180–82); Pet.Ex.291 (AR002127–54). Emgold prepared evaluations and
24 engineering studies for the purpose of bringing the mine into a 30-year production phase with a 1,500
25 ton per day operation. AR000530; Pet.Ex.288 (AR002121–22). Emgold eventually sought a use
26 permit from the County to reopen the mine with an associated ceramic plant. AR003497. The County
27 released a Draft Environmental Impact Report for Emgold’s proposal to resume mining at the site, and
28 the draft report was favorable. AR000531; Pet.Ex.304 (AR002214–17). But Emgold subsequently

1 withdrew its application due to lack of funds. AR000531.

2 **I. Rise Purchased the Mine Property from the BET Group.**

3 In 2013, lack of financing forced Emgold to allow the option to purchase the mine to expire,
4 and for the next few years, the property was advertised for sale as a “historic California gold mine.”
5 AR000531 (citation omitted); Pet.Ex.307 (AR002261–63). In 2017, Rise purchased the property from
6 the BET Group for the purpose of resuming gold production. AR000531–532; Pet.Ex.308
7 (AR002264–69). Later that year, Rise commenced exploration drilling on the property, which
8 continued into 2018. AR000531–532; Pet.Exs.309–310 (AR002270-75). Also in 2018, Rise purchased
9 the sawmill property from Sierra Pacific Industries to facilitate “the exploration and future
10 development of the Idaho-Maryland Gold Project.” AR000532; Pet.Ex.312 (AR002286–88).³

11 **J. Rise’s Vested Rights Petition.**

12 In 2019, Rise applied to Nevada County for a use permit to reopen the Idaho-Maryland Mine.
13 AR000532; Pet.Ex.314 (AR002301–05). In December 2022, the County published a Final
14 Environmental Impact Report and Independent Economic Report, which concluded that Rise’s
15 proposed project would have no significant impact to air quality, biological resources, water quality,
16 groundwater, vibration, or noise from operations and that it would deliver substantial economic
17 benefits, including hundreds of high-paying jobs, millions of dollars per year in new property taxes,
18 and a stronger and more diversified local economy. AR030856, *et seq.* Yet, the County refused to
19 grant the use permit on the grounds that “the intensity of the mining and industrial use is inconsistent
20 with the rural character of the area.” AR004579–80. The County did so despite the fact that its General
21 Plan calls on the County to “encourage the mining of previously mined land, if such land still contains
22 economically mineable minerals,” and states that for surface and subsurface mines: “Incompatible
23 designations are generally in the more urban areas of the County, whereas compatible designations are
24 generally in the more rural areas.” *Chapter 17: Mineral Management Element* at 17-2, 17-5, NEV.
25 CNTY. GEN. PLAN, <https://perma.cc/MDQ4-VY8Z>.

26 Because of the County’s purposeful obstruction of Rise’s permitting process, Rise also
27

28 ³ From 1956 (when the Idaho-Maryland Mine Corporation sold the sawmill property) until 2018 (when Rise bought the sawmill property and reconsolidated ownership of the sawmill parcels with the essential surface properties for mining), the sawmill property was used as a sawmill by various owners. AR000521, -524, -529, -530, -532.

1 petitioned the County to recognize its vested right to conduct mining activities at the Idaho-Maryland
2 Mine. On September 1, 2023, Rise submitted its vested rights petition to the County, containing 77
3 pages of analysis and more than four hundred exhibits totaling thousands of pages—historical records,
4 maps, articles, books, and other materials about the property and its history. Rise’s vested rights
5 petition explained correctly that a vested right to continue a nonconforming use is a property interest
6 protected by the U.S. and California constitutions; that Rise bears the burden to show by a
7 preponderance of the evidence that the vested right came into being and the scope of that right; that
8 the County would bear the burden to show by clear and convincing evidence that the right had been
9 abandoned, if the County believed that it had been; and that the County Board of Supervisors would
10 be required to sit as a judicial body to weigh the evidence and to determine the existence and scope of
11 the vested right. AR000532–38.

12 On November 28, 2023, the County released its staff report on Rise’s vested rights petition,
13 which concluded that, if any vested right to mine had existed, it had been abandoned at some point.
14 AR003600–47. The report contained legal and factual errors, which Rise detailed in a responsive letter
15 on December 10, 2023. AR003575–93. The staff report refused to acknowledge that a vested right
16 existed in 1954 at the time Nevada County adopted its first comprehensive zoning ordinance, despite
17 the fact that (i) the County previously recognized in 1980 that mining activities were an existing,
18 nonconforming use of the property, and (ii) Rise submitted evidence of extensive mining that took
19 place before the ordinance’s enactment and that continued afterward *without* any use permit, even
20 though the ordinance would have required one absent a vested right to conduct mining activities.
21 *Compare* AR003632, -3614 (staff report) with AR000485, -517–20 (vested rights petition). The staff
22 report then concluded that even if a vested right had existed, it had been abandoned at some unspecified
23 point in time by “ceasing operations” and selling mining equipment. AR003614. In reaching the
24 abandonment conclusion, the staff report both ignored the applicable legal standards (that cessation of
25 use cannot constitute abandonment and that abandonment requires clear and convincing evidence both
26 of intent and of an overt act) and the evidence that Rise had submitted (that every mine owner since
27 1954 had conscientiously preserved the property necessary to mine, had intended to mine, and had
28 taken affirmative steps to mine—all incompatible with an intention to abandon the vested right to

1 conduct mining activities). AR003578–93. Rise’s response fully detailed these errors. *Id.*; *see also*
2 AR002762–3212 (County spreadsheet responding to petition evidence, with Rise counter responses).

3 **K. The Vested Right Hearing.**

4 Before the vested right hearing before the County Board of Supervisors, Rise submitted a letter
5 on December 1, 2023, to the County requesting that Supervisor Heidi Hall recuse herself based on
6 bias she had exhibited in her public statements related to vested rights and proposed mining at the
7 Idaho-Maryland Mine. AR003570–73. The letter detailed specific statements from Supervisor Hall in
8 her past anti-mining advocacy that demonstrated her animus toward mining in general and toward
9 Rise’s project in particular, as well as her belief in the illegitimacy of vested rights as a legal principle.
10 *Id.*

11 Nevertheless, Supervisor Hall refused to recuse herself and joined the other members of the
12 County Board of Supervisors to preside over the vested rights hearing on December 13–14, 2023. At
13 the hearing, Rise delivered a live presentation of the evidence contained in its petition, and County
14 staff delivered an opposing presentation. Before the hearing, only one draft resolution had been
15 prepared for the Board’s consideration—a draft resolution to *deny* Rise’s vested rights petition.
16 AR004168–74. Following the presentations on the first day of the hearing, the County *twice* revised
17 that draft resolution to correct substantive errors, yet these changes did not result in additional
18 deliberation. AR004533–39; AR004547–53. When voting on whether to adopt the resolution, the
19 members of the Board of Supervisors delivered public comments about the reason for their decisions.
20 Several members remarked that they lacked the expertise needed for the quasi-judicial determination
21 and appealed to the higher authority of this Court:

- 22
- 23 • Supervisor Hoek: “I feel like this is above my paygrade to be totally honest. ... I’m
24 understanding the constitutional right part of it, but I think that has to be somebody
25 that’s beyond my experience and my ability to make that big decision.” AR000321–
26 22.
 - 27 • Supervisor Scofield: “[S]ince all of the points will apparently be argued to a higher
28 authority, I am comfortable following the recommendations of the Nevada County
Staff.” AR000332.

- Supervisor Hall: “[I]’t is very unfortunate and difficult for us because we’re not lawyers, this isn’t a courtroom, and we’re not judges, that we are depending... on the *Hansen [Bros.]* case. ... And to my mind, that is something that we’re going to need potentially the courts to help us with. It’s not something I feel equipped to do to make some decisions about that.” AR000328–29.

Other comments invoked reasoning completely foreign to the vested right legal test:

- Supervisor Swarthout: “So, I feel like if there had been a vested right here, somebody would have come in and done the work and reopened the mine previous to the application that we have in front of us today.” AR000253–54.
- Also Supervisor Swarthout: “[B]ut I just want to say I worked extensively with Emgold ... when they were trying to process their applications through the city of Grass Valley. And not once was there ever a discussion about a lawsuit or if we, the city, didn’t create the outcome that they wanted that they were going to sue us. So it’s a little hard for me to sit up here and have kind of your first, the first opportunity that I’ve had to look at this project publicly coming from such a adversarial position.” AR000320–21.

Other comments explicitly relied on policy preferences, which are *not* appropriate considerations when applying the legal vested right standard in a quasi-judicial proceeding.

- Supervisor Hoek: “I work for people in my community. I’m trying to look [at] what’s going to be the best thing in Nevada County.” AR000322.
- Supervisor Bullock: “The current zoning and regulatory process applies [to the mine], in my opinion. Our community has grown and changed in how we view the environment in which we live, what we hope to provide future generations, and how our ordinances and laws support that vision. So this Board represents and protects the values of the community today, right now. And right now, I do not believe you have a vested right.” AR000327–28.
- Supervisor Scofield: “Times have changed dramatically since 1954. That’s one of the reasons for a use permit. And these mines have been struggling. ... A mine is not a simple retail or even industrial process. It’s a big deal. It’s a big deal. Times have

1 changed.” AR000298.

2 The final resolution as adopted unanimously by the Board, Resolution No. 23-619 (“VR
3 Resolution”) AR000001–7, concluded that “Petitioner has not met its burden to establish a vested
4 right” in 1954, when the County enacted its first zoning code, AR000003. Some Supervisors, however,
5 had explicitly contradicted this conclusion in their remarks while voting, when they agreed that mining
6 *had* been taking place in 1954—which is all that is required to determine that a vested right exists.
7 AR000283 (Supervisor Hoek: “[T]his is the Brunswick site where you have the annual report that says
8 so many ... ounces were taken out in 1954, I think it was or ’55. So to me, that’s like the starting point.
9 Okay, there was some mining happening on one place in that year. After that, to me, it becomes very
10 confusing ...”); AR000329 (Supervisor Hall: “I do agree there was mining there, clearly, but that leap
11 from mining to vested rights is a big difficult one.”).

12 The resolution further concluded that “even if Petitioner were able to establish a vested right,
13 the evidence, viewed under any applicable legal standard, demonstrates that any right to mine the
14 Subject Property was subsequently abandoned.” *Id.* The resolution stated that “over the period of 1956
15 through 1963,” the vested right was abandoned by the cessation of mining and sale of mining
16 equipment, AR000004, and then described why the County believed other activities undertaken at or
17 related to the property were not indicative of an intention to mine, which improperly shifted the burden
18 to *Rise* to show a continuous intent to mine, contrary to the *Hansen Brothers* decision. AR000004–6.
19 All of these conclusions were contrary to the evidence in the record and were wrong, particularly in
20 light of the County’s 1980 written confirmation that mining activities were an existing, nonconforming
21 use of the property. The analysis in the resolution also suggested a *cumulative* approach to
22 abandonment, as if a constitutionally-protected property right could be lost by the passage of time,
23 which is also contrary to *Hansen Brothers* and basic constitutional principles.

24 Moreover, the County’s resolution contained the language: “the Board of Supervisors finds
25 that the individual findings and determinations contained herein are severable and independent, and
26 that should any individual finding or determination be held or made invalid by a court decision, statute
27 or rule, or should otherwise be rendered invalid, the remainder of the findings and determinations set
28 forth herein shall continue in full force and effect.” AR000002. When intentionally used in this

1 context, this language suggests that the County had reached a predetermined conclusion, which it
2 intended to maintain regardless of whether some or many of its supporting facts or legal arguments
3 might be later deemed invalid.

4 On May 10, 2024, Rise filed the present action to challenge the County’s erroneous refusal to
5 recognize the vested right to conduct mining activities at the Idaho-Maryland Mine. Rise’s petition for
6 a writ of administrative mandate also challenged the County’s denial of the variance and use permit
7 that Rise sought, but the Court has indicated that the parties will brief that issue if necessary after the
8 adjudication of the vested right issue.

9 ARGUMENT

10 A vested mining right is a type of legal nonconforming use and a fundamental property right
11 protected by the takings clauses of the United States and California Constitutions. *Calvert*, 145 Cal.
12 App. 4th at 623. Accordingly, in reviewing the County’s determination that Rise does not possess a
13 vested right to mine, this Court must “not only examine[] the administrative record for errors of law
14 but also exercise[] its independent judgement upon the evidence disclosed in a limited trial de novo.”
15 *Bixby*, 4 Cal.3d at 143; *see also Handyman*, 123 Cal. App. 4th at 880 (“In an administrative mandamus
16 case where a fundamental vested right is at stake, the trial court must exercise independent judgment
17 and determine whether a preponderance of the evidence supports the administrative findings of fact”
18 (emphasis omitted)). No deference may be given to the County Board of Supervisors’ determination,
19 especially here, where the members of that Board disclaimed the necessary expertise to decide the
20 vested right question, openly relied on irrelevant factors, and folded improper policy-based judgments
21 into the rationale for their votes. *Supra*, at 15–18 (Background, Sec. K).

22 I. Rise Has Established That A Vested Right To Mine Originated In 1954.

23 Rise has established that a vested right to conduct mining activities at the Idaho-Maryland
24 Mine came into existence in 1954, when Nevada County adopted its first comprehensive zoning
25 ordinance and imposed a use permit requirement for mining in the zone where the mine is located.
26 The County has recognized this fact in writing. Pet.Ex.252 (AR001832–1832).

27 “A legal nonconforming use,” like a vested right to mine, “is one that existed lawfully before
28 a zoning restriction becomes effective and that is not in conformity with the ordinance when it

continues thereafter.” *Hansen Bros.*, 12 Cal.4th at 540 n.1. A vested right to mine, however, is unique among nonconforming uses. Typically, a nonconforming use operates without interruption within an existing structure or boundary, but this is not true of mining. Mining activity is episodic by nature (due to, for example, market fluctuations or exploration challenges) and necessarily extends to new areas of a property over time (as mineral is removed and new mineral is accessed). Accordingly, special rules govern vested rights to mine. The California Supreme Court’s landmark 1996 decision in *Hansen Brothers Enterprises, Inc. v. Nevada County Board of Supervisors*, 12 Cal. 4th 533 (1996), defined these special rules and remains the leading case in California and nationally on vested mining rights. That decision acknowledged that, when “determining the existence of a nonconforming use,” a decisionmaker “must yield to the realities of the business in question and the nature of its operations.” *Id.* at 555 (quoting *County of Du Page v. Elmhurst-Chicago Stone Co.* 18 Ill.2d 479, 484 (1960)).

Vesting date. According to *Hansen Brothers*, a vested right to mine is established on the date on which local zoning laws first required a use permit to conduct mining activities that were already ongoing. 12 Cal.4th at 540 n.1. This is the vesting date. *See* AR003611 (County Staff Report agrees on definition of vesting date).

Scope of vested right. The scope of the vested right includes its geographic scope, operational scope, and volumetric scope. The geographic scope of the vested right is the property (both the surface property and the mineral estate) to which it applies. “When there is objective evidence of the owner’s intent to expand a mining operation, and that intent existed at the time of the zoning change,” then the geographic scope of the vested right allows that “the use may expand into the contemplated area.” *Hansen Bros.*, 12 Cal.4th 553.

The operational scope refers to the activities encompassed by the vested right. *Hansen Brothers* makes clear that a vested right to mine includes the right to “engage in uses normally incidental and auxiliary to the nonconforming use.” *Id.* at 565 (cleaned up). A vested right thus includes all aspects of a mining operation that were “integral parts” of the operation at the time the use became nonconforming, which includes mining, crushing, processing, trucking, transporting, selling mined materials, and all other “uses normally incidental and auxiliary to the nonconforming use.” *Id.* In addition, equipment associated with vested land uses may be updated and modernized, provided that

1 the fundamental use remains the same. *See, e.g., Endara v. Culver City* 140 Cal. App. 2d 33, 38 (Cal.
2 Dist. Ct. App. 1956); *City of Ukiah v. County of Mendocino* 196 Cal. App. 3d 47 (Cal. Ct. App. 1988);
3 *McCaslin v. City of Monterey Park* 163 Cal. App. 2d 339 (Cal. Dist. Ct. App. 1958).

4 Finally, the volumetric scope of the vested right refers to the production volume encompassed
5 by the vested right. The volumetric scope includes the volume mined on the vesting date but,
6 importantly, is not limited to that amount. Rather, an increase in production to meet market demand is
7 encompassed within a vested right and is not an expansion of it. *Hansen Bros.*, 12 Cal.4th at 573. Just
8 as “a grocery store operating as a lawful, nonconforming use in an area of increasing population would
9 not be restricted to the same number of customers and volume of business conducted when the zoning
10 ordinance was enacted,” so too is a mine allowed “an increase in production to meet demand.” *Id.* It
11 is in the very nature of mining and mineral sales that market demand is seasonal and fluctuating. *Id.*
12 at 570 n.28.

13 Accordingly, *Hansen Brothers* instructs a decisionmaker to determine first whether a vested
14 right exists and, if it does, to then determine the scope of the vested right. The County, however,
15 improperly conflated the two steps, concluding that because it erroneously believed Rise “failed to
16 present sufficient evidence to support an affirmative conclusion regarding the scope of Petitioner’s
17 alleged vested right,” Rise had therefore “not met its burden to establish a vested right.” AR000003.
18 This was a legal error that the County compounded with factual errors, including the refusal to
19 recognize that the Idaho-Maryland Mine’s continued operation after October 10, 1954 is *de facto*
20 evidence of a vested right and the refusal to credit the County’s own written statement in 1980 that a
21 vested right to conduct mining activities existed at the Idaho-Maryland Mine. Accordingly, the County
22 erred as both a legal and factual matter in refusing to recognize Rise’s vested right to conduct mining
23 activities at the Idaho-Maryland Mine.

24 **A. Rise Has Demonstrated Expansive Mining Activities at the Vesting Date.**

25 Rise has put forward extensive evidence about mining activities at the Idaho-Maryland Mine
26 as of the vesting date, October 10, 1954. On that day, Ordinance No. 196 required a use permit for any
27 “[c]ommercial excavation of natural materials within a distance of 1,000 feet from any public street,
28 road, or highway.” Pet.Ex.185 (AR001482). The administrative record contains abundant evidence of

1 expansive commercial excavation of natural materials throughout 1954, including active operations
2 within 1,000 feet of a public road.

3 Specifically, the evidence demonstrates that mining activities, including underground mining,
4 were occurring on the vesting date, and that all the ore produced underground in 1954 was hoisted to
5 the surface through the New Brunswick Shaft and milled in the New Brunswick Ore Mill. AR000518,
6 -630, -3576. The location of the New Brunswick Shaft is annotated on an official USGS topographical
7 map from 1951. AR003576-77; Pet.Ex.319 (AR002332). The New Brunswick Ore Mill was located
8 immediately adjacent to the New Brunswick Shaft. AR003577; Pet.Ex.373 (AR002513). The USGS
9 topographical map demonstrates that the New Brunswick Shaft and the New Brunswick Ore Mill were
10 located approximately 330 feet from Union Hill Road and 660 feet from Brunswick Road, Pet.Ex.319
11 (AR002332), which county maps and contemporaneous news articles confirm to be public roads,
12 AR003577; Pet.Ex.318 (AR002329-30); Pet.Ex.42 (AR000745-46); Pet.Ex.51 (AR000763-64);
13 Pet.Ex.119 (AR001186-87). This is indisputable evidence of commercial excavation of minerals
14 occurring at the Idaho-Maryland Mine within 1,000 feet of a public road on the vesting date.

15 **B. Rise Has Demonstrated That Mining Continued After the Vesting Date Without a**
16 **Use Permit.**

17 Rise has further demonstrated that mining continued at the Idaho-Maryland Mine following
18 the 1954 vesting date, but without the use permit that the County's zoning ordinance would have
19 required. The Idaho Maryland Mines Corporation's annual reports demonstrate production of gold at
20 the mine in both 1954 and 1955, and demonstrate that mining and milling of gold continued until at
21 least December 27, 1955. AR00519; Pet.Ex.196 (AR001530-1537); AR003577. This post-vesting-
22 date mining would not have been possible *unless a vested right to mine existed*.

23 **C. Rise Has Demonstrated the Scope of the Vested Right to Conduct Mining Activities.**

24 Regarding the geographic scope of the vested right, Rise has supplied extensive evidence that
25 the vested right includes the right to conduct underground mining of the subsurface mineral estate and
26 to use the entire surface estate in support of that mining. AR000540-49 (and associated exhibits), -
27 3577.
28

1 The geographic scope of a vested right consists of the area that the operator intended to be
2 devoted to mining. *Hansen Bros.*, 12 Cal. 4th at 555–556. That includes the *entire* area of the mine if
3 the record shows an “objective manifestation” of the operator’s intent to devote the entire area to the
4 mining operation. *Id.* Objective manifestation of intent is demonstrated by: (1) the “substantial nature
5 of the initial use,” *id.* at 557; (2) material stockpiling, haul roads, and supporting mining infrastructure;
6 and (3) site preparation, known as mineral reserves, exploratory drilling, and mineral surveys.
7 AR000540 (collecting cases).

8 In its vested right petition to the County, Rise supplied the well-documented history of the
9 Idaho-Maryland Mine, which established by a preponderance of the evidence that the operators of the
10 Idaho-Maryland Mine had objectively manifested their intent to mine the entire subsurface mineral
11 estate and to use the surface estate of the mine for activities in support of mining. By the 1930s, the
12 property owners evidenced their intent to mine the entire mineral estate by conducting aggressive and
13 extensive exploration into the unexplored areas of Mitchell Ranch and Loma Rica. AR000542 (and
14 associated exhibits). This included development of the Mitchell Crosscut from 1933 to 1935, which
15 was driven from the Brunswick Mine north into the Mitchell Ranch mineral rights area. *Id.* The 1100-
16 8 Crosscut was another significant development and was driven from the Brunswick Mine northeast
17 into the Loma Rica mineral rights area from 1938 to 1941. *Id.* This intent was further manifested by
18 surface exploration core drilling, which was conducted in areas remote from the central mining
19 operations. For example, surface exploration was conducted and reopening commenced of two tunnels
20 on the eastern part of the Mine Property: the Hooper and the Yellow Rose tunnels, both of which had
21 been closed “for some time.” *Id.*

22 Other evidence includes: underground tunnels and workings, buildings, processing
23 infrastructure, roads, power lines, offices, and material stockpiles, as well as exploration work and
24 drilling. AR000540–49 (and associated exhibits). These activities are reflected in the annual reports
25 and other record-keeping of the Idaho Maryland Mines Company, and in maps, aerial photography,
26 books, contemporary news articles, and other sources. *Id.* The mining activity occurred at both the
27 New Brunswick and Centennial Industrial sites and was intended to extend throughout the entire
28 mineral estate. *Id.* Given that this is a subsurface mine that is intended to expand outward and

1 downward during continued development of veins and other underground mineralization, the scope of
2 the subsurface vested right also encompasses the entirety of the mineral estate owned by Rise, and any
3 mineral reservations that were also owned by Rise’s predecessors at the 1954 vesting date, as it was
4 anticipated that these areas would be mined in the future.

5 Similarly, there was in 1954 the objective manifestation of the intent to use the entire surface
6 property of the Idaho-Maryland Mine for activities supporting subsurface mining operations at both
7 the Brunswick and Centennial Industrial Sites. At the Brunswick Industrial Site, the past operators had
8 used the surface property for entrances to underground tunnels and workings, buildings, workers
9 corridors, power lines, heavy equipment, offices, and processing infrastructure, all directly supporting
10 underground operations. AR000543–544 (and associated exhibits). These efforts are depicted in aerial
11 photographs and topographical maps as early as 1938. *Id.* The Centennial Industrial Site was used for
12 material stockpiling to support underground mining operations. AR000544. The mine operators stored
13 mine tailings and waste from the Brunswick Industrial Site at the Centennial Industrial Site. *Id.*
14 Without this tailings storage and waste area, mining operations could not have taken place. *Id.*

15 The evidence also supports an operational scope of the vested right that includes a wide range
16 of mining-related activities: quarrying, mining, material sales, milling and processing, crushing,
17 hoisting and pumping, constructing headframes, tailings impoundment dams, machining and
18 blacksmith shops, sawmill operations, treatment plants, employee garages, offices, underground
19 workings, road construction, and power lines. AR000545–48 (and associated exhibits).

20 The evidence supports a volumetric scope of 410,411 tons of ore production annually, and
21 more if supported by market demand. AR000548–49 (and associated exhibits).

22 **D. The County Recognized the Vested Right in 1980.**

23 If there were any doubt about whether a vested right to mine came into existence in 1954 (there
24 is not), it is dispelled by the County’s own recognition in 1980 that the mine property at that time
25 hosted an “existing, non-conforming use” for mining activities. Pet.Ex.252 (AR001831–32, -1841).
26 The County recognized in writing that mining activities are “an existing, non-conforming use” at the
27 property. *Id.* at AR001832; *see also* AR001841.
28

E. The County Has Provided No Evidentiary Basis to Refute the Establishment of the Vested Right in 1954.

In the face of the extensive evidence just described, the County’s Staff Report provided *no* countervailing evidence whatsoever rebutting the plain fact that mining was occurring on the vesting date and after the vesting date without a use permit notwithstanding the newly-enacted zoning ordinance. AR003614. Nonetheless, the Staff Report asserted without support that “the Petition lacks sufficient evidence to support an affirmative conclusion regarding the existence or scope of Petitioner’s alleged vested right.” *Id.* And the County’s VR Resolution merely echoed the same, unsupported assertion. AR000002–3 (finding that “[t]he evidence provided by Petitioner does not confirm whether the activities regulated by Ordinance No. 196 were actually occurring at the time the ordinance was passed, or if they occurred within one thousand (1000) feet of a public road” and “[t]he Petitioner failed to present sufficient evidence to support an affirmative conclusion regarding the scope of Petitioner’s alleged vested right”). This inexplicable denial of the evidence placed before it suggests either confusion about the applicable legal standards or a failure to engage in an objective assessment of the evidence. Either way, the Staff Report and the VR Resolution provide no substantive, evidence-based reason to refuse to recognize that a vested right was established in 1954.

In the proceedings before the County, Rise put forward all of the evidence required to (1) determine that it possessed a vested right as of October 10, 1954; and (2) to define the scope of the vested right as the entirety of the Idaho-Maryland Mine because in 1954, the operators had objectively manifested the intention to mine the entire subsurface mineral estate in and to use the surface properties for activities in support of mining. The County did not seriously challenge the accuracy of Rise’s evidence related to the vesting date and scope, but only the legal conclusions to be drawn from it. *Hansen Bros.*, 12 Cal. 4th at 560 (“As to the issues on which the evidence in the administrative record is undisputed, however, the ultimate conclusion to be drawn from the evidence is a question of law.”). And the County’s legal conclusions were clearly wrong. The record requires the legal conclusion that Rise both possesses a vested right and that the scope of that right includes the right to mine the entire subsurface mineral estate and to use the surface properties for supportive mining activities.

1 **II. The County Cannot Meet Its Burden To Show Abandonment of the Vested**
2 **Right To Mine.**

3 The vested right to mine at the Idaho-Maryland Mine is constitutionally protected by the
4 takings clause guarantees of the United States and California Constitutions. *Calvert*, 145 Cal. App. 4th
5 at 628. Once this constitutionally-protected right is established, waiver of the right is disfavored and
6 therefore requires a knowing and intentional relinquishment on the part of the right-holder. *Id.*; *see*
7 *also Habitat Trust for Wildlife*, 175 Cal. App. 4th at 1320. Rise has *no burden* to prove that mining
8 operations have continued at all after the vesting date in order to maintain its vested right. AR000533.
9 Instead, the presumption is that a vested right remains unless *the party claiming abandonment* (here,
10 the County) can demonstrate clear and convincing evidence to satisfy the two-part test of
11 abandonment. In its Staff Report in response to Rise’s vested right petition, the County did not dispute
12 that it bears the burden of proving abandonment. AR003625–26.

13 The County also recognized, as it must, that the California Supreme Court established in
14 *Hansen Brothers* established a two-part test for abandonment. AR003621. “Abandonment of a
15 nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon;
16 and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain
17 any interest in the right to the nonconforming use.” *Hansen Bros.*, 12 Cal.4th at 569 (citation omitted).
18 And *Hansen Brothers* makes clear that: “*Cessation of use alone does not constitute abandonment.*”
19 *Id.* In that case, the California Supreme Court concluded that “the fact that rock quarrying may have
20 been discontinued” at an aggregate mine “is irrelevant” to abandonment—again, because mere
21 cessation of use cannot constitute abandonment of a vested right. *Id.* at 569, 571.

22 Yet, despite accurately stating the legal standard for abandonment in *some parts* of the Staff
23 Report, the report nonetheless misapplied the legal standard by requiring that “in order to avoid a
24 finding of abandonment, the property owner must be able to identify evidence of their objective
25 manifestation of intent to resume the nonconforming use throughout the period the nonconforming
26 use was discontinued.” AR003623; *see also* AR003626 (faulting Rise for not showing “continuous
27 overt acts demonstrating th[e] intent to mine for over sixty-five (65) years”). This effectively turns the
28 abandonment standard on its head, requiring not that the party asserting abandonment affirmatively

1 prove abandonment, including both the intent to abandon and overt acts disclaiming the vested right,
2 but that the party *holding the vested right* prove a negative: that the vested right has *never been*
3 *abandoned*. Neither *Hansen Brothers* nor any other California case recognizes such a rule. There is
4 not a single reported case in California in which a vested mining right has been abandoned solely due
5 to lack of onsite activity.

6 The Staff Report heavily emphasizes an abandonment case that is entirely distinguishable from
7 the context of a vested right to mine and is inconsistent with *Hansen Brothers* in any event. That case,
8 *Stokes v. Board of Permit Appeals*, 52 Cal. App. 4th 1348, 1353–54 (Cal. Ct. App. 1997), concerned
9 a property that had previously been operated as a bathhouse and had closed around the time of a 1984
10 public health campaign. *Id.* at 1351. The property then went unused for seven years before a
11 subsequent owner asserted a vested right to resume the bathhouse operation. By that point, the previous
12 owners “had completely vacated the building for seven years and the building had not been used for
13 *any purpose*” during that time. *Id.* at 1356. Moreover, a previous owner had applied to convert the
14 bathhouse to a senior center and shelter, which the city determined showed an intent to abandon the
15 bathhouse use—a determination that was not challenged on appeal. *Id.* A California appeals court
16 reasonably concluded that these facts, which united a long period of total nonuse with an overt act of
17 abandonment, constituted abandonment of the vested right to operate a bathhouse.

18 Obviously, a bathhouse use is materially distinguishable from a mining use. Mining is
19 necessarily an episodic business, influenced by the fluctuation of market demands and by the high
20 costs required to discover, mine, and process minerals. *Hansen Bros.*, 12 Cal. 4th at 554 (“Depending
21 on consumer needs,” and “as a matter of practicality as well as economic necessity, a quarry operator
22 ... will leave areas in reserve, virtually untouched until they are actually needed.”); *see also Seaman*
23 *v. Vawdrey* 16 Ves Jr. 390, 33 (High Ct. Chancery 1810) (explaining that mines are frequently kept
24 “unwrought until other mines shall be exhausted, which may not be for a long period of time”). During
25 the Idaho-Maryland Mine’s history of operations, which dates back to 1851, mining regularly ceased
26 for periods of time lasting many years and was resumed when economically feasible. AR000349
27 (depicting timeline of mine closures and reopenings from 1851 to 1956); AR000486 (describing that
28 the Idaho-Maryland Mine closed in 1901 and was allowed to fill with water, and that over the next 25

1 years, only exploration and minor production occurred at the mine and related properties); *see also*
2 AR000498, -500, -502, -504–05 (describing periods of flooding and idleness throughout the mine,
3 some as long as 37 years). A bathhouse does not face similar economics. Furthermore, the *Stokes* court
4 held that because the bathhouse use “had been discontinued as an unlawful health hazard for several
5 years” before a new owner sought a vested right, there could be no “*lawful*, nonconforming use” of
6 the property as a bathhouse, which was, in fact, an unlawful nuisance. *Stokes*, 52 Cal. App. 4th at 1357
7 (emphasis in original); *see also id.* at 1356 (“That the City may abate a particular use as a menace to
8 the public health or as a public nuisance is beyond dispute.”). And even if the abandonment finding of
9 *Stokes* were premised on cessation of use alone, it would be contrary to the California Supreme Court’s
10 holding in *Hansen Brothers* and should not be followed.

11 During the vested right hearing, Rise prepared a slide depicting the timeline of mining activities
12 at the Idaho-Maryland Mine from 1934 to 2024. AR000394. This slide, found at Exhibit 4 of the
13 Stratte Declaration, illustrates *why* the County is unable to show clear and convincing evidence of
14 abandonment. Far from abandoning the vested right to mine, each successive owner of the Idaho-
15 Maryland Mine has diligently acted to preserve it.

16 **A. The County’s Primary Argument for Abandonment, the Mere Cessation of Mining**
17 **Operations, Is Foreclosed by *Hansen Brothers*.**

18 In attempting to show abandonment of the vested right to mine, the County essentially relies
19 on mere cessation of use—exactly what *Hansen Brothers* held is insufficient to demonstrate
20 abandonment.

21 Specifically, the County argues that the Idaho Maryland Mines Corporation abandoned the
22 vested right to mine in 1956, when it stopped mining. AR000006, ¶ 10(b) (“Mining operations were
23 abandoned at the Subject Property commencing as early as 1956.”). This argument clearly violates
24 *Hansen Brothers* because it depends *entirely* on mere cessation of mining. *See Hansen Bros.*, 12 Cal.
25 4th at 569 (holding that “[c]essation of use alone does not constitute abandonment”). It is also entirely
26 contrary to the factual record, which includes a news article from June 1957 describing how “the last
27 cage of men was hoisted from the Brunswick Mine of the Idaho Maryland Mines Corporation” on
28 March 15, 1957. AR003212. The article says “[t]he company *plans to retain* its mineral rights and

1 strategic surface holdings and, if possible, to diversify the company’s activities.” *Id.* (emphasis added).
2 That clearly evidences the company’s intention to *retain* its vested right and mine again in the future.
3 There is no factual or legal justification for the County to find that any vested right was abandoned in
4 1956 when the available evidence indicates that the mine owner explicitly intended to *retain* the ability
5 to mine in the future.

6 The County then expands its theory of abandonment to encompass a range of dates—“the
7 period of 1956 through 1963,” AR000004, ¶ 4(i)—but again, it cites activities that amount to mere
8 cessations of mining. The County asserts that during this seven-year period, “the Subject Properties
9 were taken entirely out of mining use, all mining equipment and buildings were liquidated and
10 removed from the property, and the Subject Properties were sectioned off and sold for non-mining
11 purposes.” *Id.* The last assertion of that list is factually erroneous because, as described *infra* in
12 sections B and C below, the property sold was surplus surface land and unused equipment to raise
13 money to pay debts and protect the property for future mining; the mine owner specifically *retained*
14 the core surface parcels necessary for mining and the associated mineral estate. And again, the end of
15 mining use and sale of equipment, is only “[m]ere cessation,” and never sufficient to show
16 abandonment. The County also misunderstands the significance of taking equipment out of service.
17 The value of a mining enterprise is predominantly contained in its land holdings, and particularly its
18 subsurface mineral estate. For a historically productive mine like the Idaho-Maryland Mine, the cost
19 of repurchasing equipment is small compared to the value of the mineral holdings itself, and it is a
20 rational decision to sell equipment in order to preserve the economic viability of the mine. It is not
21 indicative of abandonment but the very opposite.

22 Moreover, the County’s argument is in conflict with the evidentiary record. Although the
23 County asserts that a vested right was abandoned at some point between “the period of 1956 through
24 1963,” AR000004, it ignores the fact that it confirmed in 1980 the existence of a vested right to conduct
25 mining activities. Pet.Ex.252 (AR001831–32).
26
27
28

B. Mine Owners Sold Property to *Preserve* Mining Rights, Not Abandon Them.

The County’s Staff Report erroneously relied on the sales of certain surface properties between 1954 and 1960 as evidence of an intention to abandon mining, but this assertion is factually inaccurate. AR003626–27. Nonetheless, the County incorporated this erroneous finding into its VR Resolution.

The Staff Report claimed (1) that “half of the properties sold off in 1954 that are discussed by Petitioner did *not* include a reservation of mineral rights,” AR003626, (2) that “the deeds to nearly all of the properties sold in 1955 did *not* include any reservation of mineral rights, AR003627, and (3) that “the fee title to *all* of the properties cited by Petitioner” as sold in 1956 “[we]re sold off in their entirety, with *no* reservation of mineral rights,” *id.* These unsupported assertions are manifestly incorrect and contrary to the unrebutted evidence Rise submitted with its petition. Rise told the County as much in its follow-up submissions before the vested right hearing. AR003582–3583, -2768–2774.⁴ Rise explained that the County had misread the deeds in question by looking for a “reservation of mineral rights” rather than considering the substance of the deed’s conveyance. The deeds in question conveyed only “the surface rights to a depth of 75 feet.” AR003582–3583 (citing exhibits 183, 184, 190–192, 200–203, 206, 208, and 212–214 of the vested right petition—deeds in which this or similar language appears), -2768–2775. The deeds thus left the mine owner *still in possession of the mineral estate of these properties*, since the minerals exist well below 75 feet from the surface (indeed, thousands of feet below the surface). As Rise explained to the County, only *one* of the sold properties actually conveyed the mineral estate, and that property “is not included in the area where [a] vested [right] is sought.” AR002768. The remaining deeds reserved the mineral estate by not conveying it at all. AR002768–69.

Yet the County continued to rely on its misreading of the deeds in the VR Resolution that the Board of Supervisors adopted. AR000003 ¶ (4)(a). That is manifest error. The sale of these properties cannot evidence abandonment. Quite the opposite—the mine owner sold certain surface parcels to raise the revenue necessary to pay urgent debts and *keep the essential surface parcels and mineral*

⁴ The document at AR002762 through AR003212 is a PDF of a chart. The County originally produced this chart with two columns, one citing evidence Rise submitted with its vested rights petition and one with a response and allegedly countervailing evidence offered by the County. Rise then responded to this document by adding a third column with its substantive counter-response. Rise’s counter-response rebuffs the County’s factual assertions and their legal significance.

rights intact for future mining. AR003518–520, -553, -583. Specifically, the Idaho Maryland Mines Corporation initially sold off various surface properties to obtain cash and stay in business, always with an express reservation of mineral rights, and in 1959 sold the remaining *ancillary* surface property, retaining the surface properties containing the New Brunswick shaft, the Old Brunswick shaft, the Union Hill shaft, and the Brunswick mill site, illustrating an intent to preserve the aboveground facilities and surface parcels necessary to facilitate mining in the future. AR000553 (and associated exhibits); Pet.Ex.195 (AR0001521) (“Because of a shortage of cash, State and County real property taxes were not paid in December or April for the current fiscal year 1954–55,” and “[s]ome of the real property owned by the Corporation *which is not necessary for mining purposes has been sold*” (emphasis added)). When the corporation ultimately declared bankruptcy in 1962, it conveyed the mine at auction *as a mine* to mine owner and gold investor William Ghidotti. AR000553–54. This series of events clearly evidences the intent to preserve the surface estate and mineral rights necessary for the purpose of mining, *not* the intent to abandon it. The County’s wholly unsupported and contrary conclusion is against the undisputed evidence placed before it. It *cannot* meet the County’s burden to show abandonment by *any* evidence, let alone clear and convincing evidence.

C. Mine Owners Auctioned Mining Equipment to *Preserve* Mining Rights, Not Abandon Them.

The County Staff Report also asserted that the sale of mine equipment, a processing plant, and related buildings and machinery at auction in 1957 as evidence of abandonment of the right to mine, AR003628–29, and the VR Resolution then relied on this assertion as well. AR000003 (“In 1957, the Idaho Maryland Mines Corporation completely liquidated all remaining mining equipment in a two-day auction.”). This is incorrect.

At the time of the equipment sales in 1957, the Idaho Maryland Mines Corporation was in a dire financial condition. Due to the depressed gold price, the corporation was losing more than \$200,000 annually by continuing to mine, and property taxes had become delinquent in 1954 such that mining property would be forfeited within a 5-year period. AR003584 (and associated exhibits). Essentially, the mine owner faced a choice: raise money quickly or risk losing ownership of the mineral deposits that comprised the Idaho-Maryland Mine. The mine owner chose to *preserve* the

mine. It used the funds raised by auctioning equipment to satisfy the outstanding debt, which was necessary to retain the mineral estate and surface parcels necessary to mine. This was precisely *so that* the mine could resume commercial-scale mining activities in the future. *Id.* The Idaho Maryland Mines Corporation was aware that it would be years before the government would increase gold prices but also viewed such a price increase as inevitable. Given these circumstances, the corporation chose to maintain its mineral holdings knowing that it would be possible to reacquire mining equipment as needed in the future. AR003584–85 (and associated exhibits).

So here again, the purpose of these sales was not to abandon the right to mine but to *preserve* it. The most valued and fundamental asset of a mining company is its mineral deposit and the ownership of those minerals. The Idaho-Maryland Mine had consistently been one of the largest gold producers in California and the United States, having produced 2.4 million ounces of gold. Because of that fact, the mine owner went to painstaking lengths to ensure that it maintained ownership over the mineral deposits connected to the mine and the surface estate necessary to mine those deposits. AR003583–84.

In light of this important context, the County cannot rely on the sale of mining equipment as clear and convincing evidence of an *intention to abandon the vested right to mine*. The mine owner’s intention was to preserve the right to mine in the future, and the sale of this equipment accomplished that objective.

D. A Corporate Name Change Cannot Abandon a Vested Right.

Perhaps most inexplicably, the County Staff Report invoked a corporate name change as evidence of abandonment of a vested right, referring to the 1960 change from the name Idaho Maryland Mines Corporation to Idaho Maryland Industries Inc. AR003630. The County claimed this was “further evidence that the Corporation had abandoned its mining operations at the Idaho-Maryland Mine,” *id.*, and included this assertion in the VR Resolution, AR000003 ¶ 4(f) (“By 1960, the Idaho Maryland Mines Corporation had so completely divested itself from the mining industry ... that it ... changed its name to remove any reference to the word ‘mine.’”). This is not a serious claim. The Staff Report cited no authority for the suggestion that a simple corporate name change could evidence a clear intent to abandon a constitutional right or be an act in furtherance of that intent. Even if that were

possible, *this* name change would not evidence such an intention—after all, mining is an industry, so the new name encompasses mining just as easily as the old name. The company diversified into other businesses at this time, which is consistent with the name change and does *not* indicate an intent to abandon a vested mining right. It is perfectly reasonable for the company to pursue other lines of business while the depressed price of gold rendered gold mining economically infeasible. AR003585–86 (and associated exhibits).

E. A Notice of Intent to Preserve Interest in the Mineral Estate Cannot Evidence Abandonment.

The County Staff Report even relied on an express statement *preserving* the right to mine as evidence of *abandonment*. In 1989, the BET Group recorded a “Notice of Intent to Preserve Interest” with the Nevada County Recorder. AR001982. The notice asserted the BET Group’s continued interest in “[a]ll mineral rights and interests in minerals” that they owned in Nevada County. *Id.* This was a procedural mechanism made available by a law that was new at the time. Under the new law, surface owners with severed mineral estates could file a quiet title action against the severed mineral estate owner in certain circumstances, CAL. CIV. CODE §§ 883.210–883.270, but that action could be completely preempted if the mineral estate owner recorded a notice of intent to preserve those mineral rights within any 20-year period, *id.* § 883.220.

Against all logic, the Staff Report concluded that this recorded notice “actually supports the conclusion[] that any vested mining rights that existed in 1954 for the Idaho Maryland Mine were abandoned.” AR003638. The sole justification offered for this absurd interpretation is that the BET Group filed their notice “over six (6) years after the enactment” of the new law, which the County apparently believed to be too slow. *Id.* The most logical explanation, of course, is that the BET Group learned about the new law and then chose to invoke the extra (but optional) protection for their severed mineral rights. The County’s interpretation is a remarkable inversion of the facts.

F. Abandonment Cannot Be Implied When Mine Owners Took Express Actions to Preserve the Right to Mine.

From the 1960 name change forward, the County Staff Report mischaracterizes the activities of the mine owners to infer abandonment of the right to mine when there is no evidence, let alone clear

1 and convincing evidence, to support that any owner of the mine had such an intention or took any
2 overt act of abandonment. These same erroneous conclusions are included in the VR Resolution.
3 AR000004–5.

4 The County has claimed that waste rock crushing and removal “does not demonstrate an intent
5 to resume mining activities,” AR000004, *see also* AR003631–32. But this activity *is itself mining*
6 *activity*. The excavation and sale of waste rock from stockpiles on the surface property was part of the
7 vested mining business, occurred during and after the operation of the underground gold mine, and
8 predated the 1954 enactment of Ordinance No. 196. The sale of waste rock from mining operations
9 was an “integral part” of the mining operation and is included within the scope of the vested right to
10 mine under *Hansen Brothers*. Resuming that activity during the 1960s and 1970s is an exercise of the
11 very vested rights at issue in this matter. AR003587 (and associated exhibits). *Hansen Brothers*
12 considered the typical market fluctuations and mining responses particular to the type of mining there
13 at issue: aggregate mining. 12 Cal. 4th at 569–70. The California Supreme Court held that cessation
14 of aggregate quarrying alone was not evidence of abandonment and noted that other parts of the
15 aggregate business continued on the property, as was appropriate to the aggregate business. *Id.* at 570–
16 71. Yet the same is true of the Idaho-Maryland Mine, a fact that the County inexplicably discounted.
17 Rock crushing and removal is part of the underground mining carried out at the Idaho-Maryland Mine,
18 and it continued throughout the 1960s and 70s, yet the County declared that this activity did not
19 “demonstrate an intent to resume mining activities.” AR000004 ¶ 5(b). In fact, these activities *are*
20 mining activities, specifically mining activities that occurred both before and after 1954 but would not
21 have been allowed after 1954 without a use permit. *See* AR000439–440 (displaying evidence of pre-
22 1954 aggregate sales). And Rise is under no obligation to show any evidence at all of any intent to
23 resume mining activities: it is the County that must show by clear and convincing evidence an intent
24 to abandon the vested right to mine and overt acts that accomplished that abandonment.

25 The County also faulted the mine’s owners for not immediately resuming mining activities
26 when the price of gold increased, AR000004, but this ignores other important facts that affect when
27 mining is economically feasible. When the price of gold increased in the 1970s, then-owner Marion
28 Ghidotti took numerous steps to prepare for the resumption of mining operations, including insuring

1 the mine as a gold mine and entering a licensing agreement for rock crushing on the mine property.
2 AR000524–25 (and associated exhibits). Expecting mining to resume *immediately* when gold prices
3 increased is unreasonable, and, in any case, the failure to resume mining immediately is not an
4 indication of a knowing and purposeful intent to abandon. *Id.*

5 The County faults the BET Group for dividing and selling portions of the property for
6 residential development, AR00004–5, -3633, but this did not indicate an intent to abandon the vested
7 right to mine on the *remaining* property for which Rise seeks confirmation of its vested right. The
8 BET Group reserved the mineral rights to all properties, therefore preserving the ability to mine
9 underground after the sale. The County Planning Commission noted as much, stating that the
10 subdivision was occurring in “a recognized mining area” and was “allowing residential development
11 in an area where the mineral rights are being retained.” AR003588 (citation omitted). And the BET
12 Group did not sell the surface properties that were necessary to mine in the future, specifically the lots
13 that contained the infrastructure needed to access the underground mine and mineral deposits
14 underneath all of the lots. *Id.* (and associated exhibits). Moreover, the deeds for the sold lots included
15 a mineral reservation that informed the purchaser that the BET Group reserved the minerals and the
16 right to mine beneath the surface of the property. AR000527–529 (and associated exhibits). Again,
17 the BET Group’s activities are evidence of an intention to preserve the ability to mine, not to abandon
18 it.

19 The County relies on applications for use permits as evidence of abandonment, but that is also
20 incorrect. AR000005, -3634–3635. California precedent indicates that applying for or receiving use
21 permits does not indicate the relinquishment of a vested right. *McCaslin*, 163 Cal. App. 2d at 348–349
22 (“plaintiff’s nonconforming use was unaffected by denial of a permit to continue operating under that
23 ordinance”). In *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519 (Cal. Ct. App. 1992), a
24 city argued that the expiration of a use permit to conduct additional activities where a business was
25 already operating an existing, nonconforming use required the business owner to discontinue the entire
26 business, but the court rejected that argument. The business owner maintained a vested right to
27 continue the legal, nonconforming use after the expiration of the use permit. *Id.* at 1529 (city argues
28 that “with the expiration of the permit, the city urges [the property owner] has lost all right to continue

Recent determinations of vested rights in other California counties confirm that a use permit for mining activities does not preclude a finding of vested rights. In 2022, the Inyo County Board of Supervisors recognized a vested right for the Panamint Valley Limestone Quarry based on a vesting date of May 20, 1970, even though the applicant had applied for and received a use permit for a portion of the quarry in 1991. AR003590 (and associated exhibits). Similarly, in 2020, the Yuba County Planning Commission recognized a vested right for the Spring Valley Quarry based on a vesting date of April 13, 1971, even though the applicant had applied for and received multiple use permits for a portion of the quarry after 1971. *Id.*

In sum, the County has failed to meet its burden to show by clear and convincing evidence that any mine owner abandoned the vested right to mine at the Idaho-Maryland Mine.

For these reasons, Rise respectfully requests that the Court, after reviewing the evidence submitted in the administrative record, including Rise’s vested right petition and attached exhibits, declarations, and appendices, confirm that the law and facts establish the following:

1. That mining operations commenced at the Mine Property as early as 1851.
2. That pursuant to *Hansen Brothers*, the range of mining operations included tunneling, underground mining, exploration core drilling, blasting, crushing, sorting, stockpiling, waste rock placement, screening, distribution, transportation, sales of gold for commercial uses, building 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 1939, in response to market demand.
4. That the County first enacted a zoning ordinance requiring a permit to conduct mining operations within 1,000 feet of a public road on October 10, 1954 (Ordinance No. 196) which represents the “vesting date.”
5. That as of the vesting date, the Idaho Maryland Mines Corporation was conducting mining operations, including underground mining, and that all the ore produced underground in 1954 was hoisted to the surface through the New Brunswick Shaft and milled in the New Brunswick Ore Mill, both of which are within 1,000 feet of a public road.
6. 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 (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 vested mine property were held under single ownership; and that the owner at the time of vesting, a mining company, objectively intended to devote the entirety of the surface property and 2,560-acres of mineral right to support subsurface mining operations.
7. That the vested right has not been abandoned.
8. That the Petitioner has a vested right to produce at least 410,411 tons of ore per year and a greater amount if justified by market conditions without a use permit from the County.

Rise respectfully requests that the Court grant a writ of administrative mandate and direct the County to set aside its December 14, 2023 decision regarding Rise’s vested right and bring its conduct into compliance with all applicable law and regulations by recognizing Rise’s vested right to conduct mining activities at the Idaho-Maryland Mine without the need for a conditional use permit.

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DATED: September 15, 2025

HUNTON ANDREWS KURTH LLP

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Thomas R. Waskom
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DATED: September 15, 2025

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RISE GRASS VALLEY, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is 550 S. Hope Street, Los Angeles, CA 90071.

On September 15, 2025, I served the foregoing document(s) described **PETITIONER RISE GRASS VALLEY INC.'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS** on the interested parties in this action:

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- ☒ **By MAIL:** by placing true and correct copy(ies) thereof in an envelope addressed to the attorney(s) of record, addressed as stated above.
- ☐ **By PERSONAL SERVICE:** I delivered the envelope by hand on the addressee, addressed as stated above.
- ☐ **By OVERNIGHT MAIL:** by overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.
- ☒ **By ELECTRONIC MAIL:** by causing a true and correct copy thereof to be transmitted electronically to the attorney(s) of record at the e-mail address(es) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2025, at Los Angeles, California.



Anuradha Das