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SUPERIOR COURT OF CALIFORNIA

COUNTY OF NEVADA

RISE GRASS VALLEY, INC., a Nevada corporation, Petitioner and Real Party in Interest, v. BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, and the COUNTY OF NEVADA; and DOES 1-50, Inclusive, Respondents.	CASE NO.: CU0001386 **PETITIONER RISE GRASS VALLEY INC.'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS** [*Filed concurrently with Petitioner Rise Grass Valley Inc.'s Request for Judicial Notice*] Date: January 9, 2026 Time: 10:00am Dept: 6 Petition Filed: May 10, 2024

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INTRODUCTION

The County's opposition brief is most notable for what it does not say. The County has abandoned its claim that no vested right to conduct mining activities existed at the Idaho-Maryland Mine in 1954. The County's vested rights resolution said: "Petitioner has failed to present sufficient evidence to support the finding of a vested right," AR000006 at ¶ 10(a). This was clearly wrong. Rise has shown that the Idaho-Maryland Mine was engaged in underground mining and related activities at the time Nevada County adopted its 1954 zoning code, and it continued to mine without a use permit after the adoption of that code. That is all that is needed to prove the existence of the vested right in 1954.

Instead of contesting the existence of the vested right, the County instead contests its scope, but the *Hansen Brothers* decision defines the scope of a vested right to mine, and Rise's evidence establishes the scope of its vested right within *Hansen Brothers*' parameters. A "nonconforming use[] include[s] all aspects of the operation that were integral parts of the business at that time," and it extends to "those other areas of the property owned in 1954 into which the owners had then objectively manifested an intent to mine in the future." *Hansen Bros. Enters.*, *Inc. v. Nevada Cnty. Bd. of Supervisors*, 12 Cal.4th 533, 542 (1996). And here, Rise has put forward more than enough evidence to justify the specific contours of the vested right it seeks.

The County's remaining arguments hinge on its claim that Rise's vested right to conduct mining activities was abandoned, and they fail. The County bears the burden to show abandonment, and its abandonment arguments all amount to mere cessation of use—exactly what *Hansen Brothers* says cannot alone evidence abandonment. Indeed, the County's decision here departs from the practice of other California counties considering vested rights for mining operations: in just the last six years, California counties have applied *Hansen Brothers* at least four times in public hearings to recognize a vested right to mine at a property where mining had ceased for periods ranging from 53 to 75 years. Vested rights have also been recognized in California without public hearings after similar periods of time. These counties properly understood and applied *Hansen Brothers*, unlike Nevada County here.

Respectfully, Rise requests that the Court hold that Rise has proven the existence and scope

of its vested right to mine underground, that the County has failed to show that the vested right was abandoned, and remand with instructions to the County to recognize Rise's vested right.

LEGAL STANDARD

A. This Court Must Exercise "Independent Judgment" in Reviewing the County's Denial of Rise's Vested Right.

The County insists that its denial of Rise's vested right should be reviewed under the deferential "substantial evidence" standard, but that is manifestly incorrect. "In an administrative mandamus case *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 added and omitted). Here, the existence of Rise's fundamental vested right to conduct mining activities is *exactly* what is at stake, and so the independent-judgment standard certainly applies. *Hansen Bros.*, 12 Cal.4th at 578 (Mosk, J., dissenting) ("The superior court was required to make an independent judgment on the administrative record here."); *Halaco Engineering Co. v. S. Cent. Coast Regional Comm'n*, 42 Cal.3d 52, 57 (1986) ("We shall conclude that application by the trial court of the independent judgment standard of review is proper when a developer seeks review of a Commission decision denying a vested rights claim.").

Even the County's proffered authority supports the application of the independent-judgment standard. In *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519 (Cal. Ct. App. 1992), the defendant argued that the plaintiff "had no fundamental vested right in Goat Hill Tavern," but because the plaintiff asserted a vested right, the independent-judgment standard applied to that claim in the trial court. *Id*. at 1525. Were it otherwise, as the County claims, then decisions to deny a vested right *entirely* would be entitled to more deferential review than decisions to deny a permit that merely has some effect on a vested right. Tellingly, the County does not provide a single case in which the existence of a vested right was at issue and a reviewing court applied deferential, substantial-evidence review.

Thus, this Court must determine in its independent judgment whether it is "more likely than

not" that Rise has a vested right to conduct mining activities at the Idaho-Maryland Mine—in other words, a likelihood that is greater than fifty percent. *Beck Dev. Co. v. S. Pac. Transp. Co.*, 44 Cal. App. 4th 1160, 1205 (Cal. Ct. App. 1996) (defining the "preponderance of the evidence" standard (quotation marks omitted)).

B. The County Has the Burden of Proving Abandonment by Clear and Convincing Evidence.

"The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected." *Hansen Bros.*, 12 Cal.4th at 552 (quoting *Edmonds v. County of Los Angeles*, 40 Cal.2d 642, 651 (1953)). This protection is rooted in the constitutional right to be free from a governmental taking of property without just compensation. *Id.* at 579 (Mosk, J., dissenting) (describing that nonconforming uses are protected "to avoid constitutional problems"). A substantial and well-established body of law holds that where constitutionally protected rights are at stake, "[t]he burden … is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation." *City of Ukiah v. Fones*, 64 Cal.2d 104, 107–08 (1966) (citation omitted); *see* Pet'r Rise Grass Valley Inc.'s Opening Br. at 3–4 (Sept. 15, 2025) ("Petr.Br.") (collecting cases). The County resists this body of caselaw but provides no reason why it should not apply to constitutionally protected property rights just like all other constitutionally protected rights. Other California counties have acknowledged that abandonment of a vested right must be proven by clear and convincing evidence. *Submittal to the Board of Supervisors: Transportation and Land Management Agency Planning* at 4, CNTY. OF RIVERSIDE, CAL. (July 1, 2025), https://perma.cc/97HG-KPG6 ("[R]ecgonizing the burden of proof of clear and convincing evidence would be on the person or entity seeking to prove abandonment of Vested Rights."); *Statement of Proceedings of the Board of Supervisors*, CNTY. OF RIVERSIDE, CAL. (July 1, 2025), https://perma.cc/D2PF-Z4KK (showing that recommendation was adopted as recommended). *See Request for Judicial Notice*, Exhibits G and H.

The County bears the burden to show abandonment of the vested right by clear and convincing evidence. A lesser showing will not suffice.

ARGUMENT

I. The County Disputes the *Scope* of the Vested Right to Conduct Mining Activities But No Longer Disputes That It Existed in 1954.

In its Opposition Brief, the County no longer defends the conclusions in its Vested Right Resolution that "[t]he evidence provided by the Petitioner does not confirm whether the activities regulated by Ordinance No. 196 were actually occurring at the time the ordinance was passed" in 1954, or that such activities did not occur "within one thousand (1000) feet of a public road," or that "Petitioner has not met its burden to establish a vested right." AR000002–3 at ¶¶ 2–3; Respondents' Opposition to Petr.Br. at 13–17 (Nov. 18, 2025) ("Opp.Br."). Rightfully so. As the County finally acknowledges, Rise has put forward uncontradicted evidence that both before and after the County passed its 1954 zoning ordinance, the Idaho-Maryland Mine was engaged in underground mining without a use permit, which the 1954 zoning ordinance required *unless a vested right to mine existed*. Opp.Br. at 16–17. Specifically, annual reports from then-mine-owner Idaho Maryland Mines Corporation show gold mining and production in both 1954 and 1955, all of which was extracted through the New Brunswick Shaft and milled in the New Brunswick Ore Mill. Petr.Br. at 21–22. The County acknowledges and does not rebut these facts. Opp.Br. at 16–17. The County no longer disputes that these activities occurred within 1,000 feet of a public roadway and would have been prohibited by the 1954 zoning ordinance. Accordingly, a vested right to conduct mining activities at the Idaho-Maryland Mine came into existence in 1954.

II. Rise Has Proven the Scope of Its 1954 Vested Right to Mine.

Instead, the County's *only* arguments about the vested right to mine in 1954 go to the *scope* of that right—not whether it exists in the first place—and those arguments are meritless. Opp.Br. at 13–17 (arguing only that "[t]he Administrative Record here does not establish the *particular vested right* that is sought by Petitioner" (emphasis added), *id.* at 13, and criticizing evidence about certain activities Rise includes in the vested right, *id.* at 15–17).

To begin, the County acknowledges that *Hansen Bros.* provides the legal standard for determining the scope of a vested right. A "nonconforming use[] include[s] all aspects of the operation that were integral parts of the business at that time." *Hansen Bros.*, 12 Cal.4th at 542;

Opp.Br. at 13–14. And by operation of the diminishing asset doctrine, which *Hansen Bros.* adopted in the mining and mineral extraction context, a vested right to a nonconforming use extends "to those other areas of the property owned in 1954 into which the owners had then objectively manifested an intent to mine in the future." *Hansen Bros.*, 12 Cal.4th at 542; Opp.Br. at 13–14 (quoting a similar *Hansen Bros.* statement). The County's disputes about scope do not challenge this established legal test.

The County's disputes about scope actually apply only to the particular evidence Rise has put forward for each of the activities and areas that its vested right encompasses, and those critiques are meritless. *See* Opp.Br. at 14–17. The fundamental flaw with the County's scope arguments is that they ignore the evidence in the record about the extensive mining activities that were occurring at the Idaho-Maryland Mine when the ordinance was passed in 1954. For example, Rise submitted the annual reports of the Idaho-Maryland Mines Corporation for 1954 and 1955. *See* AR001519–37. These reports detail all of the activities at the Idaho-Maryland Mine in those critical years. Even more to the point are the "Mine Development Report(s)" for both September and October 1954. AR001457–61. These reports show 14 locations with active mining in September and 17 locations in October. This information describes in detail mining at the Idaho-Maryland Mine during the very month that Nevada County adopted its zoning ordinance. It is the most complete, contemporaneous information *that could possibly exist* to show the location and extent of the mining activity at the time of vesting, and yet the County has thrown up its hands, feigning that it is unable to decipher the scope of Rise's vested right.

Instead of engaging with the record, the County tries to dismiss it by asserting that evidence from before 1954 is irrelevant to determining the scope of the vested right. Opp.Br. at 16 ("[N]one of that evidence is what was actually happening on October 10, 1954." (emphasis omitted)). Far from irrelevant, that unrebutted evidence establishes directly the activities that were integral to underground mining at the Idaho-Maryland Mine at the time of vesting and the scope of the objectively manifested intent to mine there. By telling the history of the Idaho-Maryland Mine from its origins through 1954, Rise has established the known mineral deposits located throughout the mine and the myriad activities that underground mining encompassed.

First, much of this evidence *describes the state of the mine in 1954*, even if the evidence itself predates that time. For example, Rise has put forward evidence that in 1942, "the New Brunswick shaft ha[d] reached a depth of 3,400 feet." AR000515. The shaft was, therefore, *at least* that deep in 1954—after all, the shaft was not shrinking in the intervening years.

Second, pre-1954 evidence establishes the mine owners' knowledge about available mineral deposits, which is relevant to establishing what they intended to mine as of 1954. For example, the mine's owner discovered new gold veins in 1945 and intended to mine these "when conditions become favorable." AR000515. Pre-1954 evidence also establishes the location of veins discovered in 1948 (AR000516) and 1953 (AR000517–18), and veins being explored in 1951 (AR000517). No one *forgot* about these minerals by 1954; to the contrary, the mine owners objectively manifested their intent to mine these known minerals. The mine owner had equipped the mine for retrieving material from a depth of 5,000 feet by 1942, AR000515, which objectively manifested the intention to deepen the shaft from 3,400 feet to at least that depth. Rise has also put forward unrebutted evidence showing that the mine's owners in the 1950s had a policy to mine higher-value ore and leave lower-grade ore *so that* the company could return and mine the lower-grade ore in the future, when gold prices would make it economic to do so. AR000517. All of this establishes the scope of the mining right that vested in 1954.

Third, unrebutted pre-1954 evidence establishes the activities encompassed by underground mining. For example, Rise has put forward evidence that in 1936, 400 tons of ore per day were processed at the Brunswick mill. AR000511. By 1937, the mine featured a headframe, engineering room, main office and other offices, dry building, stamp mill, carpenter shop, processing plant, pole storage, crushing plant, truck garages, and at least one skip, plus pipelines for transporting tailings from the mill and processing plant to the tailings pond. AR000512. These mining-associated activities were taking place as part of underground mining at the Idaho-Maryland Mine when it was operating. This evidence permits the inference that, when the 1954 and 1955 annual reports of the Idaho-Maryland Mines Corp. describe active mining at the Idaho-Maryland Mine, that includes the activities typically associated with mining—not only activities underground, but also hoisting rock to the surface, processing it, transporting it, disposing of waste, and so on. Pre-1954 evidence

demonstrates what these activities included, and a nonconforming use includes the "right to engage in uses normally incidental and auxiliary to the nonconforming use." *Hansen Bros.*, 12 Cal.4th at 565 (cleaned up).

Fourth, pre-1954 evidence establishes the fluctuations in production that are inherent in the underground-mining industry. Rise has shown that mine owners expanded and contracted production throughout the Idaho-Maryland Mine's long history based on the economic realities of mining. For example, in 1926, the Brunswick site of the Idaho-Maryland Mine closed and did not reopen until 1933. AR000508, -510. And in 1943, the mine produced no gold pursuant to a government order, then reopened only once the order was lifted *and* economic conditions improved such that the mine could be staffed and minerals profitably sold. AR000515. Production fluctuations are inherent in underground mining because mining is expensive and market prices do not justify obtaining all available minerals immediately. This is relevant to understanding the mine's economically-induced contraction in 1956, which does *not* evidence any intent to abandon the vested right to conduct mining activities (addressed in more detail *infra*). In fact, the 1954 annual report of the Idaho Maryland Mine Corporation (published in June of 1955) lamented the economic reality that, "Nothing has occurred to alleviate the predicament in which the gold miner is placed by trying to meet 1955 costs with a 1934 price for his product," yet stated: "Throughout its tenure your management has diligently worked toward one major goal, that of judiciously employing operating funds to such a degree that continuation of operations at Grass Valley might be assured." AR001522.

Fifth, the County asserts that all of Rise's evidence only demonstrates "ever-diminishing underground gold mining and surface milling as of October 10, 1954," as if this confines the scope of the vested right Opp.Br. at 17. This is irrelevant because a fundamental premise of the diminishing asset doctrine is the reality that the scope of mining *expands* as ore is mined and thus cannot be confined to the particular mining that was occurring on the vesting date. Indeed, that is the very purpose of the doctrine. The vested right to mine includes "expansion … to those other areas of the property owned in 1954 into which the owners had then objectively manifested an intent to mine in the future." *Hansen Bros.*, 12 Cal. 4th at 542, 553. That is because, "[u]nlike other

nonconforming uses of property which operate within an existing structure or boundary, mining uses anticipate extension of mining into areas of the property that were not being exploited at the time a zoning change caused the use to be nonconforming." *Id*. at 553. Rise has amply shown that its surface holdings were held by the mine owner in 1954 and used and intended for the purpose of facilitating underground mining of its entire mineral estate. Rise has also shown that the mine owner had objectively manifested the intention to mine at least 410,411 tons of ore per year and more if economic conditions permit. This evidence meets the standard of *Hansen Brothers*.

All of this pre-1954 evidence is relevant to establishing the scope of the vested right created in 1954: it describes the mine owner's objective manifestation of intent to expand continuously mining and exploration and attendant processing at the Idaho-Maryland Mine. The diminishing asset doctrine adopted in *Hansen Brothers* endorses this kind of expansion in the context of a vested right to mine. Just as "a grocery store operating as a lawful, nonconforming use in an area of increasing population would not be restricted to the same number of customers and volume of business conducted when the zoning ordinance was enacted," so too is the right to conduct mining activities at the Idaho-Maryland Mine not restricted to precisely the contours of the 1954 mining. *Hansen Bros.*, 12 Cal.4th at 573. Were it otherwise, there could never be a vested right to mine because by definition, mining must expand into minerals not already mined.

Finally, it is not enough for the County to claim that Rise has not proven the scope of its vested right without naming any particular aspect of Rise's vested right that it thinks Rise has not proven. In its vested right resolution, the County stated that Rise "failed to present sufficient evidence to support an affirmative conclusion regarding the scope of Petitioner's alleged vested right," but the County did not state what part of the claimed vested right was inadequately proven. AR000003 at ¶ 3. That is not a reasoned, defensible position. Rise submitted thousands of pages of evidence to support not only the existence of its vested right, but also its geographic, operational, and volumetric scope. AR000490–520, 535–537. The County's only response is to say that this evidence is not enough, without explaining where it purportedly falls short. That is not sufficient, particularly here, where the County's Board of Supervisors was sitting as a quasi-judicial body.

The County argues that *Hansen Brothers* is its friend, repeatedly invoking that case's

conclusion that the "court cannot determine on this record that Hansen Brothers is entitled to the relief it seeks." 12 Cal.4th at 543. But the County ignores the disposition that followed from that conclusion: "Hansen Brothers is entitled to have the order denying approval of the plan set aside and to have its application reconsidered." *Id*. Here, a remand is neither necessary nor appropriate, for the record affirmatively demonstrates the existence and scope of Rise's vested right to mine its entire mineral estate, and it is equally clear that the County has failed to carry its burden of proving that the vested right to mine Rise's mineral estate was abandoned.

This Court, accordingly, should hold not only that a vested right to conduct mining activities came into existence in 1954, but also that the scope of that vested right extends to all the activities integral to underground mining at the site and to all of Rise's surface and subsurface properties that made up the Idaho-Maryland Mine in 1954.

III. Selling Non-Essential Surface Parcels with a Buyback Option Does Not Affect the Vested Right.

The County renews its arguments about the sale of the non-essential sawmill parcels, which the Court previously rejected when framed by the County as a standing problem. Civil Tentative Rulings at 5 (Aug. 8, 2025). These arguments fare no better when framed as a merits issue.

During the pendency of this litigation, Rise sold three ancillary surface parcels (the "Sawmill Parcels"), with a buyback option granting Rise the "exclusive and irrevocable option to purchase" the parcels if Rise "acquires final government approvals to perform mining operations adjacent to" them. Pet'rs. Br. in Opposition to Respondents Standing Br. at 7–8 (July 22, 2025). This does not affect Rise's vested right at the Brunswick site.

The County's argument fundamentally misreads Rise's vested rights petition. Rise has always believed and asserted that it possesses a vested right to conduct mining activities at the Brunswick Site, the Centennial Site, and throughout its mineral estate. Rise set about proving the scope of its vested right in its original petition to the County. To succeed with regard to any specific parcel asserted to have vested mining rights, Rise needed to show that in 1954, when the County passed its zoning ordinance, either the parcel was being used for mining or the owner had objectively manifested that intent, such that the right to mine vested for that specific parcel. Rise

succeeded in showing that the Sawmill Parcels were used historically for *mining purposes* and therefore acquired a vested right to mine in 1954. That is not the same, however, as the strawman "unified theory of vested rights" that the County posits in its brief. Rise has never set out to prove (nor has it needed to prove) that *all* of its properties are integral to or necessary for mining. Rise has never argued that the Sawmill Parcels were *necessary* for mining, such that giving up those parcels would abandon or otherwise destroy the vested right to conduct mining activities on Rise's *other* holdings.

Indeed, the Sawmill Parcels *are not* necessary for mining. The administrative record amply demonstrates as much. The map at AR009501 depicts the Brunswick Site with the APNs of all of its constituent parcels. AR009501. The Sawmill Parcels (APNs 006-441-003, -004, and -005) are in the upper-right portion of the map. *Id*. Another map at AR000659 depicts the entirety of the mineral estate in grey, with red lines outlining the parcels that comprise both the Brunswick and Centennial Sites. The number "8" indicates the location of the "[s]awmill debris dam and pond," adjacent to parcel APN 006-441-003, and "9" indicates the location of "[n]ew clearing in 1952," where parcel APN -005 is located. AR000659. An arrow also clearly identifies the Brunswick Sawmill on parcel APN -003. *Id.* And this map depicts the core mine functions taking place on parcels *other than the Sawmill Parcels* (for example, arrows point to the New Brunswick Mine Shaft and Union Hill Mine Shaft, which are located on other property at the Brunswick Site, outside of the Sawmill Parcels). *Id.* Finally, aerial maps at AR003446–3449 outline the entire Brunswick Site in red, clearly showing that the mine workings are located entirely *outside of* the Sawmill Parcels on the site's northernmost Core Surface Parcels. AR003448–49.

Thus, the Sawmill Parcels are now and have always been ancillary to the mining operations at the Idaho-Maryland Mine—mining could easily take place without them. At the same time, these parcels were historically performing a mining function because the sawmill located on them was used to produce timbers to reinforce the mine's tunnels. Thus, while Rise sought to prove that its vested right extended to these parcels, it never advanced a "unified theory" that depended on the inclusion of these parcels. Rise has not "argue[d] a legal theory in the administrative proceeding below" only to "rely on a new theory" here, as the County erroneously claims. Opp.Br. at 18.

Determining the scope of a vested right is not an all-or-nothing exercise, and the County provides no authority to show that it is. Indeed, *Hansen Brothers* itself says that it applies to "the 2 parcels over which Hansen Brothers has established vested rights," without "preclud[ing] submission of a revised plan or new hearing … at which evidence may be presented on whether the previous owners of the 2 remaining parcels had vested mining rights on those parcels." 12 Cal.4th at 564 n.23. This shows that vested rights can be proven for some parcels but not others, and the non-existence of vested rights on some parcels does not negate the existence of vested rights on others.

At most, Rise can no longer assert a vested right *as to the surface of the Sawmill Parcels*. That is dubious, given that Rise retains the exclusive right to purchase those surface parcels through the Buyback Option if it receives government approval to mine. But even if the surface Sawmill Parcels can no longer be included in the vested right unless and until Rise owns them again outright, that result affects only the surface Sawmill Parcels and not the rest of Rise's holdings.

The Court can and should recognize Rise's vested right, including the entire scope of the right that Rise has articulated, along with the surface Sawmill Parcels.

IV. The County Cannot Meet Its Burden To Show Abandonment of the Vested Right to Conduct Mining Activities.

Throughout the remainder of its brief, the County attempts to prove that the vested right to conduct mining activities has been abandoned at the Idaho-Maryland Mine, but its attempts fail.

The County makes much of the requirement in the zoning code that a nonconforming use that "is discontinued for a period of one year or more" must thereafter comply with the zoning code, but that argument is a red herring. Opp.Br. at 5, 12. Exactly the same provision was at issue in *Hansen Brothers*, and the California Supreme Court interpreted "discontinued" to be synonymous with "abandoned" in the mining and mineral extraction context, 12 Cal.4th at 569–70, and Nevada County has never resisted this interpretation. In the vested rights resolution here, the County did not mention the one-year discontinuance provision and simply engaged in an abandonment analysis. AR00001–7.

With regard to abandonment, the County does not dispute that *it* bears the burden to prove abandonment of a vested right. And *Hansen Brothers* makes the standard for abandonment clear:

"Abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use." 12 Cal. 4th at 569 (citation omitted). Also, "*[c]essation of use alone does not constitute abandonment*." *Id*. (emphasis added). Thus, the fact that mining "may have been discontinued" "is irrelevant" to abandonment. *Id*. at 571. Additionally, as already described, *supra* at 4, it is the County's burden to prove abandonment by clear and convincing evidence—a heightened standard that applies when one party seeks to prove that another has relinquished a *constitutionally protected right*.

All of this follows from an important principle: rights do not simply expire over time. If a citizen failed to exercise the lawful right to vote for twenty years, that citizen would not lose the right to vote. Yet accepting the County's abandonment arguments here would mean exactly that: that the vested right to mine one's mineral estate could simply expire due to the passage of time. That is not so, and no case endorses such a view.

Indeed, other California counties have faithfully applied *Hansen Brothers* to recognize vested rights to mine in circumstances like those here, including where mining has ceased for up to 75 years. Specifically:

- The County of Merced recognized a vested right for the Kelsey Ranch Mine after a 58-year cessation of commercial-scale mining. Merced County, *Kelsey Ranch Petition of Vested Rights Staff Report* (May 22, 2019), https://perma.cc/2QJN-JVJK; Merced County, *Kelsey Ranch Resolution to Adopt Findings of Vested Rights Staff Report* (June 12, 2019), https://perma.cc/6NWV-QWHJ.
- The County of San Bernardino recognized a vested right for the Chubbuck Mine after a 66-year cessation of commercial-scale mining. San Bernardino County, *Land Use Services Department Planning Commission Staff Report* (Feb. 23, 2023), https://perma.cc/F5RZ-BAD9; San Bernardino County, *Planning Commission Agenda Actions* (Feb. 23, 2023), https://perma.cc/9B3T-VW3Q.
- The County of San Bernardino recognized a vested right for the Lone Pine Canyon Mine after a 53-year cessation of commercial-scale mining. San Bernardino Conty, *El Cajon*

Associates, LLC, Determination of Vested Mining Rights (Mar. 7, 2019), https://perma.cc/N9YZ-HSGJ; San Bernardino County, *Planning Commission Agenda Actions* (Mar. 7, 2019), https://perma.cc/V5B7-WTH4.

- The County of Riverside recognized a vested right for the Mead Valley Mine with no evidence of commercial-scale mining for 75 years. *Submittal to the Board of Supervisors: Transportation and Land Management Agency Planning*, CNTY. OF RIVERSIDE, CAL. (July 1, 2025), https://perma.cc/97HG-KPG6; *Statement of Proceedings of the Board of Supervisors*, CNTY. OF RIVERSIDE, CAL. (July 1, 2025), https://perma.cc/D2PF-Z4KK.

See AR003580–82.[1] For each of these vested rights, the respective counties concluded that mining was occurring at the time a zoning change was adopted; mining continued after the zoning change; and despite decades-long periods of subsequent cessation of mining, all four counties correctly concluded that there had been no abandonment of the vested right to mine. This is what *Hansen Brothers* requires, and these counties adhered to that directive.

To support its extraordinary contrary position, the County makes much of the idea that nonconforming uses should be "reduce[d]… to conformity," Opp.Br. at 19 (quoting *Hansen Bros.*, 12 Cal.4th at 568), but the County ignores important context. In *Hansen Brothers*, the California Supreme Court said that nonconforming uses should be "reduce[d] … to conformity as speedily *as is consistent with proper safeguards for the interests of those affected*." 12 Cal.4th at 568 (quotation marks omitted). And while "courts should follow a strict policy against extension or expansion"[2] of nonconforming uses, and that policy "applies to attempts to continue nonconforming uses which have ceased operation," *id*., *Hansen Brothers* also states in the very next paragraph that "[c]essation of use alone does not constitute abandonment," *id*. at 569. The only legitimate reading of *Hansen Brothers* is one that takes into account *all* of these statements, to eliminate nonconforming uses only where doing so is consistent with proper safeguards for rightsholders, including the protection

[1] The County of Riverside example does not appear in the administrative record because it occurred this year, and is therefore too recent to have been cited in the proceedings below. The remainder of these examples are cited in the record. AR003581–82. The Court can take judicial notice of these documents. *See Request for Judicial Notice*.

[2] *This* is a statement of the *Hansen Brothers* majority, unlike the statement the County quotes on page 12 of its brief (that the Nevada County zoning code "strictly limits the scope of nonconforming uses," Opp.Br. at 12), which comes from the *Hansen Brothers* dissent. The zoning code does *not* limit the "scope" of nonconforming uses.

that cessation of use alone is not proof of abandonment.

Applying the standards set out in *Hansen Brothers*, it is clear the County has not met its burden to show abandonment of the vested right to conduct mining activities at the Idaho-Maryland Mine.

1. The Vested Right Was Not Abandoned in 1957 or 1963.

In any event, the vested right to conduct mining activities at the Idaho-Maryland Mine was not abandoned in 1957 or 1963 or during the range of those years (which is itself an incoherent theory of abandonment).

As Rise's opening brief describes in detail, the County has invoked only activities in this period that amount to the cessation of mining—exactly what *Hansen Brothers* holds *cannot* constitute abandonment. Petr.Br. at 28–32. Ceasing mining by early 1957 and selling mine equipment between then and 1963 does not satisfy *Hansen Brothers'* requirement of an overt act or failure to act that *implies* abandonment, for the evidence affirmatively shows that the mine's owners sold the mining equipment to *preserve* the ability to mine in the future, not abandon it. Indeed, they did so under economic duress caused by the government's artificial depression of the price of gold. As the Idaho Maryland Mines Corporation told its shareholders at the close of 1954, while "under present conditions your management can offer no assurance that operations can be continued," the gold miner "will be indirectly benefited when the inevitable revaluation of the dollar becomes necessary and the gold standard is restored." AR001522. At that time, mining could be resumed.

The County argues that selling the mine properties in 1963 somehow "unequivocally demonstrated that it did not have any intention to engage in underground mining," Opp.Br. at 25, but the vested right runs with the land, not an owner. "The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use," and "[t]ransfer of title does not affect the right to continue a lawful nonconforming use …." *Hansen Bros.*, 12 Cal. 4th at 540 n.1. The County acknowledges this language yet tries to resolve its contradiction by arguing that "any past *intention* of the seller to resume underground mining does not inure to the benefit of the buyer, and is not imputed to the buyer." Opp.Br. at 25. If this were true, it would be

impossible for a vested right to run with the land. The County's argument cannot be reconciled with binding precedent in *Hansen Brothers.*

2. The County Recognized the Vested Right to Mine in 1980, and There Was No Subsequent Abandonment.

The County contorts itself to avoid acknowledging that in 1980, it recognized that "harvesting, crushing, screening, and sale of waste rock left from the Idaho-Maryland Mine" and the adoption of a reclamation plan was an "alteration *of an existing non-conforming use*" on the property that Rise now owns. AR001841 (emphasis added). The Nevada County Planning Commission thus explicitly acknowledged that mining activities (harvesting, crushing, screening, and sale of waste rock) were already part of an *existing* non-conforming use at the Idaho-Maryland Mine property. That existing non-conforming use was, and could only be, underground mining at the Idaho-Maryland Mine before the zoning code adoption in 1954. This is devastating to the County's abandonment arguments, for if the vested right existed in 1954 (as the County no longer disputes), and it still existed in 1980, it obviously could not have been *abandoned* between 1954 and 1980.

The County argues that its 1980 vested right acknowledgement is not meaningful because it came in the context of granting a use permit. But the County's contemporaneous staff report about that use permit says that "the County's zoning regulations make provisions for expansion and alteration of a non-conforming use, even though that use may not be provided for in the zoning district in which the property is located." AR001832. In other words, the only reason it was possible for the Planning Commission to grant a use permit for these mining activities was *because* of the existing non-conforming use, without which no use permit would have been allowed. *Ricciardi v. Los Angeles County*, 115 Cal. App. 2d 569, 577 (Cal. Ct. App. 1953) (a permit may be "merely a recognition and projection" of a vested right).

The County also claims that its recognition of this vested right as to the harvesting, crushing, screening, and sale of rock cannot extend to other mining activities, like underground mining, but that is contrary to the holding of *Hansen Brothers*. There, the California Supreme Court held that "aggregate mining, production, and sales [] was the land use for which Hansen Brothers had a

vested right," and therefore, the cessation of an integral part of that business—quarrying the rock—did not terminate the vested right to the *entire* nonconforming use, including both the resumption of quarrying and all of the other aspects of the business also encompassed in the vested right. *Hansen Bros.*, 12 Cal.4th at 571. The same would be true here. The original vested right here necessarily encompasses underground mining and all of the incident and auxiliary activities associated with it. In 1980, some of those auxiliary activities were expressly recognized to be part of an *existing nonconforming use*, and that means the *entire* business of underground mining also continued to be an existing, nonconforming use because the discontinuance of one aspect of the vested right would not terminate all or any portion of the vested right. As the *Hansen Brothers* court stated, "[w]e have found no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for the operation of its business." *Id.* at 566.

The County also states that under the 1980 permit, "[u]nderground mining was expressly prohibited," Opp.Br. at 35, but the County provides no citation for that restriction, which appears nowhere in the permit at all. The permit simply states that "[e]arth excavation for a borrow pit" is not allowed. *Id.* at 30 (citation omitted).

The County's 1980 recognition that mining activities are an "existing non-conforming use" at the Idaho-Maryland Mine negates all of the County's abandonment arguments premised on earlier abandonment between 1957 and 1963 (arguments that fail independently for the reasons already given).

3. The County's Arguments About Activities After 1963 Do Not Allege Abandonment and Turn the Standard of *Hansen Brothers* on Its Head.

In its vested rights resolution, the County does not claim that any particular action after 1963 constituted an act of abandonment of the vested right to conduct mining activities, only that "all subsequent actions at the Subject Property" after 1963 "illustrate the lack of any intent to mine and the lack of a vested right." AR000004 at ¶ 5. In other words, the County concluded that post-1963 activities were consistent with prior abandonment, not acts of abandonment themselves. For the reasons explained in Rise's opening brief, the activities at the Idaho-Maryland Mine in these

intervening years are *not* consistent with abandonment, but actually evidence the intent to reopen the mine when economic conditions would permit. Petr.Br. at 32–35.

What is most important to understand, though, is that *none of this matters*, because it is the County's burden to establish abandonment, not Rise's burden to show a continuous intent to mine. The County limited its actual claims of abandonment to the 1957–1963 time period, so its discussion of subsequent activities is irrelevant to proving abandonment.

Even still, the County's proffered examples of "evidence consistent with abandonment" after 1963 are not evidence of abandonment at all. The County points to higher gold prices in the 1970s and faults the mine's then-owner Marion Ghidotti for not restarting mining at that time, but Marion Ghidotti did take steps during the 1970s to prepare to resume mining. AR000524–25, 1679–1683, 1770–72, 3588. Then, Marion Ghidotti passed away and the property spent years in probate proceedings. AR000526, 1681, 1744–49. The County also suggests that Marion Ghidotti used the mine property as a horse ranch, but its only evidence for that is a meeting minute which describes Mrs. Ghidotti intending *not* to use the property for a horse ranch but for the purpose of "re-opening the mine because of the price of gold." AR001867. The record is clear and the County cannot contradict it: every owner of the Idaho-Maryland Mine has taken positive steps to protect the integrity of the surface land surrounding the Brunswick shaft so that the minerals might be mined when economic and capital conditions allow. In the face of that record, the County cannot meet *its* burden to show that any mine owner intended to abandon the vested right to conduct mining activities at the Idaho-Maryland Mine, let alone took some overt act (or failure to act) implying that the owner retains no interest in mining.

It is particularly farcical for the County to argue that Rise's position is that "the mere ownership of mineral rights" is evidence of non-abandonment[3] or that a mere "hope, wish or desire to resume mining" will grant someone a vested right to mine. This case is about *far more* than merely owning mineral rights or hoping to mine someday. The Idaho-Maryland Mine is the most profitable gold mine historically in North America. It was operating as an underground mine in

[3] Once again, this turns the standard on its head, as it is the County's burden to prove abandonment, not Rise's burden to prove non-abandonment.

1954 when the County adopted its zoning code, and it continued to operate afterwards without a use permit. *That* is the source of the vested right. And every owner of the mine before and after 1954 *knew what they had*: a tremendously valuable resource in the ground that could be accessed only through certain surface parcels—most importantly, the parcel containing the Brunswick Shaft. These owners acted diligently to keep these critical surface parcels together and under the same ownership as the valuable mineral estate. They engaged in auxiliary mining activities when the market would support it, and they engaged in mineral exploration. They monitored the price of gold and made efforts to resume mining when market prices could justify it. It is patently false for the County to argue that "under Petitioner's argument, virtually the entire County of Nevada would possess a vested underground mining right." Opp.Br. at 24. No. Nowhere in Nevada County is there a property like this one: an underground mine with a vested right to mine that has been preserved and never abandoned since 1954. This property has a vested right to conduct mining activities, and recognizing that right will not require recognizing a vested right to mine anywhere else in Nevada County.

4. The Court Should Reject the County's Attempt to Expand *Hansen Brothers* Beyond Its Holding.

Finally, the County tries to extend *Hansen Brothers* to hold that "long cessation of the actual mining operation could indeed result in 'termination' of the nonconforming use," *id.* at 21, but the Court should not adopt that erroneous view. To begin, the County's view is irreconcilable with the *Hansen Brothers* statement that "[c]essation of use alone does not constitute abandonment." 12 Cal.4th at 569. And when the *Hansen Brothers* court reserved the question of whether "future inactivity at the mine may not result in termination of that vested right," *id*. at 571, it did so while explicitly acknowledging "that the business of aggregate mining and sale in Nevada County is necessarily seasonal and dependent on fluctuating market demand," *id*. at 571 n.30. That actually *supports* Rise's vested rights claim because the nature of underground mining is also dependent on market demand, particularly given that the extremely high capital costs of developing an underground mining operation require not merely a high price of gold but a view that the gold price will stay high for an extended period while costs are low and adequate capital is available at

reasonable terms. The Idaho-Maryland Mine has always gone through cycles of mining, flooding, and dewatering based on the economic conditions and mineral prices. These are the kinds of economic fluctuations that lead to cessation of mining that *does not* imply abandonment. Rather, the mine's owners have diligently preserved the mineral estate and the surface estate necessary for underground mining precisely because they intended to operate the mine again, when economic conditions permit it.

Moreover, the County's primary support for the idea that "long cessation" alone can somehow constitute abandonment is a book on surface mining written by a municipal law attorney who is *not* an expert on mining, let alone underground mining. Opp.Br. at 21 (citing DEREK P. COLE, CALIFORNIA SURFACE MINING LAW 151–52 (2007)). The book's preface specifically disclaims that it covers underground mining.[4] And in any event, the text excerpted by the County omits that the cited portion of the book relies on out-of-state authorities, which certainly cannot override the binding authority of *Hansen Brothers*: again, "[c]essation of use alone does not constitute abandonment." 12 Cal.4th at 569. Rise pointed out all of these problems at the vested right hearing, and yet the County continues to invoke this irrelevant publication.

The County's appeal to federal law is irrelevant to this case. Opp.Br. at 24 n.4. Federal mining claims on federal land impose annual work and payment requirements that must be satisfied in order to retain the claims. The federal statute that the County cites is one such statute. *Id*. (quoting 30 U.S.C. § 27 ("Where a tunnel is run for the development of a vein or lode, … [the] failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.")). But this case has nothing to do with a federal mining claim, and no such requirement applies here.

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[4] "One final note—from the title, readers will understand that this book only covers regulation of surface mining. Underground gold mines were once commonplace in California, but few active underground operations are left today. Because such mines do not involve surface mining—the removal of materials from openings in the earth's surface—and are not regulated by SMARA, they are not discussed in this book." *Derek P. Cole, California Surface Mining Law*, SOLANO PRESS BOOKS, https://perma.cc/63GN-HVZT; *see* AR003579.

V. Conclusion

For the foregoing reasons, Rise respectfully submits that the Court should hold that Rise has a vested right to conduct mining activities at the Idaho-Maryland Mine, as requested in its petition, and the Court should remand to the County with instructions to recognize this vested right.

DATED: December 5, 2025

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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 December 5, 2025, I served the foregoing document(s) described **PETITIONER RISE GRASS VALLEY INC.'S REPLY 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 December 5, 2025, at Los Angeles, California.

Anuradha Das