



# RESOLUTION No. \_\_\_\_\_

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**RESOLUTION FINDING THAT MINING OPERATIONS WERE ABANDONED AS EARLY AS 1956 AND NEITHER THE PETITIONER NOR ANY OTHER PARTY HAS A VESTED RIGHT TO MINE AT THE 175.64-ACRE SUBJECT PROPERTY COMPRISED OF THE BRUNSWICK INDUSTRIAL SITE ASSESSOR'S PARCEL NUMBERS: 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, 009-630-039; AND THE CENTENNIAL INDUSTRIAL SITE ASSESSOR'S PARCEL NUMBERS: 009-550-032, 009-550-037, 009-550-038, 009-550-039, AND 009-560-036, AND FINDING THE ACTION STATUTORILY EXEMPT FROM CEQA**

WHEREAS, the Subject Property is located within unincorporated western Nevada County on approximately 175.64 acres, consisting of the Brunswick Industrial Site ("**Brunswick**") and Centennial Industrial Site ("**Centennial**") on Assessor's Parcel Numbers 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, 009-630-039, 009-550-032, 009-550-037, 009-550-038, 009-550-039, and 009-560-036; and

WHEREAS, Assessor's Parcel Numbers 006-441-003, 006-441-004, 006-441-005, 006-441-034, 009-630-037, 009-630-039, 009-550-032, 009-550-037, 009-550-038, 009-550-039, and 009-560-036 are owned by Rise Grass Valley, Incorporated; and

WHEREAS, on May 11, 2023, the application by Rise Grass Valley for a conditional use permit was heard by the Planning Commission who unanimously voted to recommend a denial of the use permit and to not certify the Environmental Impact Report to the Board of Supervisors; and

WHEREAS, on September 1, 2023, the applicant for Rise Grass Valley, Incorporated, ("**Petitioner**") submitted a formal petition for a vested rights determination pursuant to California Public Resources Code Section 2776 ("**Petition**"); and

WHEREAS, in 1954, Nevada County adopted Ordinance No. 196, which required a use permit for excavation or smelting within one thousand (1000) feet of a public road; and

WHEREAS, the Petitioner has the burden of proof to establish a vested right to mine, including the scope of that vested right; and

WHEREAS, the Petition lacks sufficient evidence to support an affirmative conclusion regarding the scope of any alleged vested right accrued upon the adoption of Ordinance No. 196; and

WHEREAS, the former Idaho Maryland Mine is abandoned pursuant to state and local law because Petitioner and its predecessors in interest in the Subject Property failed to comply with both state law and the County's Land use and Development Code mandates for mines; and

WHEREAS, the County Board of Supervisors is the only entity that can make a final determination after a duly noticed public hearing regarding a vested right to conduct nonconforming uses on the Subject Property; and

WHEREAS, under *Hanson Brothers* and the legal doctrine of vested rights, mere ownership of property or mineral rights, or subjective contemplation to put them to a nonconforming use, is not sufficient to preserve a vested right to a nonconforming use of said property. Accordingly, a reservation of mineral right alone does not constitute an objective manifestation of an intent to mine; and

WHEREAS, the Board of Supervisors of the County of Nevada has considered all the evidence submitted by the applicant for the Subject Property; and

WHEREAS, a duly noticed public hearing was held on December 13, 2023, and December 14, 2023; and

WHEREAS, the Board of Supervisors of the County of Nevada has considered public comments and a staff report from the Planning Department, as well as responses thereto from the Petitioner; and

WHEREAS, the Petitioner and County staff disagree as to the applicable legal standard the Board of Supervisors must apply to the abandonment of a vested right; and

WHEREAS, a reviewing court and not the Board of Supervisors will determine the appropriate standard of review governing a finding of abandonment; and

WHEREAS, pursuant to Section 15378 of the California Environmental Quality Act, ("CEQA") the County's action to adopt the Resolution does not constitute a project that is subject to CEQA and the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors for Nevada County finds and determines, based upon its review of the evidentiary materials including all written documents and oral testimony received, and all statements made during the public hearing, that the Petitioner has failed to demonstrate there is a vested right to mine the Subject Property; or, in the alternative, the mining use was abandoned, and therefore, neither the Petitioner nor any other party has a vested right to mine the Subject Property; and

BE IT FURTHER RESOLVED that the Board of Supervisors finds that the individual findings and determinations contained herein are severable and independent, and that should any individual finding or determination be held or made invalid by a court decision, statute or rule, or should otherwise be rendered invalid, the remainder of the findings and determinations set forth herein shall continue in full force and effect; and

BE IT FURTHER RESOLVED that the Board of Supervisors finds the action statutorily exempt pursuant to Section 15378 of the California Environmental Quality Act ("CEQA") Guidelines from the requirement to prepare an Environmental Impact Report ("EIR") or a Negative Declaration, for the approval of a Resolution finding that the Applicant does not have a vested right to mine due to abandonment of the mining uses at the Subject Property ("Resolution"). The County's action to adopt the Resolution does not constitute a project that is subject to CEQA and the CEQA Guidelines; and

BE IT FURTHER RESOLVED that the Board of Supervisors for the County of Nevada hereby finds and determines:

1. Mining of gold, tungsten, and other minerals occurred at the Subject Properties from approximately the mid-to-late 1800's until 1956. (Petition, pages 7-38; and Staff Report, pages 4-8.)
2. In 1954, Nevada County adopted Ordinance No. 196, which required a use permit for excavation or smelting within one thousand (1000) feet of a public road. The evidence 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, or if they occurred within one thousand (1000) feet of a public road. (Petition, Exhibit 1851; and Staff Report, pages 4-8.)

3. The Petitioner failed to present sufficient evidence to support an affirmative conclusion regarding the scope of Petitioner's alleged vested right accrued upon the adoption of Ordinance No. 196. Therefore, Petitioner has not met its burden to establish a vested right. However, even if Petitioner were able to establish a vested right, the evidence, viewed under any applicable legal standard, demonstrates that any right to mine the Subject Property was subsequently abandoned. (Staff Report, sections V-VIII.)
4. Pursuant to the *Hanson Brothers* decision and related controlling and persuasive legal authority, the Board finds that the objective manifestations of intent shown by the Petitioner's objective acts and failures to act, and those of its predecessors in interest, regarding the Subject Properties demonstrate that through the period of 1956-1963 there was: i) an intent to abandon mining; and ii) abundant overt acts and failures to act occurred which support the conclusion that Petitioners have not retained any interest in the right to the nonconforming mining use. In making this conclusion, the Board applies the more rigorous clear and convincing standard argued by the Petitioner, and adopts the analysis and reasoning in the Staff Report concerning the Petition, which the Board incorporates by reference herein. The key objective manifestations of intent, overt acts, and failures to act which demonstrate the intent to abandon during the period of 1956-1963 are summarized as follows:
  - a. Idaho Maryland Mines Corporation began selling off portions of the Subject Property in 1954 and only some transfers of property included reservations of the subsurface mineral rights. (Petition, page 35; Staff Report, section VII(B)(1); and Response to Facts No. 5.)
  - b. All mining activities at both the Brunswick and Centennial cites had ceased by 1956 and the Idaho Maryland Mines Corporation continued to sell off segments of the Subject Property for non-mining purposes. (Petition, page 36-37; and Staff Report, p. 6-8 and Section VII(B)(2).)
  - c. In 1957, the Idaho Maryland Mines Corporation completely liquidated all remaining mining equipment in a two-day auction. Even the mine buildings were sold and removed from the Subject Properties, with the exception of the concrete silo. (Staff Report, section VII(B)(3); Response To Facts, No. 12; and County Exhibit 1006.)
  - d. In 1958, the new owner of the Brunswick site applied for and received a use permit to convert the former mine property to be used as a sawmill and drying yard. (Petition, Exhibit 215; Staff Report, p. 6; Response to Facts No. 14; and Historians' Finding No. 36.)
  - e. In 1960, the secretary of the Sum-Gold Corp., confirmed that it acquired approximately seventy (70) acres of the Idaho-Maryland Mine property around the mill site and is in the process of subdividing lots for residential development. (Nevada County Planning Commission Meeting Minutes p. 58 of Book 2 (July 11, 1960) (County Exhibit 1009).)
  - f. By 1960, the Idaho Maryland Mines Corporation had so completely divested itself from the mining industry and the Subject Property that it could no longer resume mining activities on the Subject Property, and changed its name to remove any reference to the word "mine." The corporation, now going by the name Idaho Maryland Industries, Inc., no longer operated in the mining industry and re-invested its assets from the liquidation of the abandoned mine into aircraft parts manufacturing and other, non-mining businesses. (Petition, Exhibit 221; Staff Report, section VII(C)(1); and County Exhibit 1007.)
  - g. In 1961, Yuba River Lumber Co. applied to rezone the Subject Property to an industrial zoning designation (which Sum-Gold Corp. spoke in opposition to as it would affect their surrounding residential property). Company representatives stated that they were willing to record a deed restriction that limited land uses on the Subject Property to the production of wood or lumber products. (Planning

Commission Minutes pp. 19-23, Book 4 (March 23, 1961) (County Exhibit 1010); Nevada County Planning Commission Minutes pp. 24-31, Book 4 (April 10, 1961) (County Exhibit 1011); and Nevada County Planning Commission Minutes pp. 34-41, Book 4 (April 24, 1961) (County Exhibit 1012).)

- h. Idaho Maryland Industries, Inc. filed for bankruptcy in 1962 and their remaining ownership of 78.531 acres of surface rights and 2,630 acres of mineral rights of the Subject Property were sold at auction to William and Marian Ghidotti, who purchased the property as an investment with “no immediate plans” for its use. (Petition, Exhibit 226; Staff Report, section VII(C)(2); and Historians’ Finding No. 43.)
  - i. Accordingly, the Board finds that, over the period of 1956 through 1963, the Subject Properties were taken entirely out of mining use, all mining equipment and buildings were liquidated and removed from the property, and the Subject Properties were sectioned off and sold for non-mining purposes. Under the test for abandonment articulated in the *Hansen Brothers* case, these actions constitute objective manifestations of the intention to abandon mining and overt acts to abandon mining uses of the property. Contrary to the Plaintiff in *Hansen Brothers*, the owners no longer possessed the capability to resume mining activities as they had liquidated all equipment, and even buildings, sold off the properties, and entirely divested themselves of the mining industry. Accordingly, pursuant to *Hansen Brothers* and other legal authorities, the right to conduct mining activities on the Subject Property which became nonconforming in 1954, if it ever existed, was systematically abandoned through the period of 1956-1963. (Petition, pages 36-40; Staff Report, sections V and VII(A) through VII(C)(2); and Staff Report pages 6-8.)
5. Under *Hansen*, there must be an objective manifestation of an intent to mine, and such intent is absent here. All mining activities at the Subject Property were abandoned during the 1956-1963 period, and all subsequent actions at the Subject Property illustrate the lack of any intent to mine and the lack of a vested right. The subsequent owners understood that no vested right existed because they all requested permission via use permits for each of the uses. The subsequent uses were not mining activities. The key *objective* evidence from 1963 to present which demonstrates that mining activity was abandoned is summarized as follows:
- a. Although Petitioner presented evidence that the Ghidottis’ contemplated resuming nonconforming mining operations on the Subject Property in the 1960’s such interests were aspirational only and there were no efforts or actions taken to resume mining activities during this time. (Staff Report, section VII(C)(2).)
  - b. The removal of waste rock from the Centennial Industrial site does not demonstrate an intent to resume mining activities. The use permits for the waste rock crushing and removal project limited the removal of on-site material to only the waste rock from the former mining operations – they did not provide for any additional excavation. The Reclamation Plan for these projects required the property to be cleared and leveled for commercial development upon completion of the waste rock removal. Further, the use permits limited the lifespan of the project to four years. (Petition, Exhibit 251; and Staff Report, section VII(C)(3).) The acceptance of a condition of limitation to four (4) years is inconsistent with a claim of a vested right.
  - c. From as early as 1958 to the 1990’s, the Subject Property was used for new sawmill and timber processing operations, each of which was the subject of a request for a conditional use permit. The evidence demonstrates that these activities were not mining-related. Each owner sought use permits for these operations, which would not have been required if the uses were part of a vested right. (Petition, Exhibits 215, 281, and 366 at page 460; Staff Report, section VII(C)(4); and County Exhibits 1010-1012.)

- d. Petitioner's claims that the discontinuance of mining the Subject Property for nearly seventy (70) years is partially attributable to market conditions that dramatically decreased the price of gold, is inconsistent with the actions of the Petitioner's predecessors. Applying Petitioner's logic, mining would have resumed during a significant increase in the price of gold. To the contrary, the Petitioner's predecessors in interest failed to pursue objective efforts to resume gold mining when the price of gold substantially increased in the 1970's. (Staff Report, section VII(C)(5); Petition, p. 41 and 72; and Petition, Exhibits 58, 269, and 276.)
  - e. When gold prices substantially increased in the 1970's to a level that would have made mining operations economical, Ms. Ghidotti sold mining claims in lieu of resuming mining activities. This demonstrates the continued disinterest in resuming mining activity despite the elevated value of the gold. (Staff Report, section VII(C)(5); and Petition, p. 41 and Exhibits 236, 237, 238, 239, 240, 241, 242.)
  - f. While gold prices remained high into the 1980's, the BET Group, Ghidottis' successor in interest to the Subject Property, divided and sold portions of the Subject Property for residential development and not mining. (Petition, p. 44 and Exhibit 263; and Staff Report, section VII(E)(3).)
  - g. All legal uses of the Subject Property from approximately 1958 to the present were conducted pursuant to use permits requested by the landowners. The numerous applications for use permits over the nearly seventy (70) year period after cessation of mining further support the conclusion that mining rights had been abandoned. (Petition, Exhibits 215, 251, 253, 260, and 278; and Staff Report, p. 6-8 and section VII(D-E).)
  - h. In 2004, the waste rock removal and rock crushing project's site reclamation was completed, and notice given to the Department of Conservation's Office of Mine Reclamation, indicating termination of mining activity on the Subject Property. (Staff Report, page 8.)
  - i. When the Subject Property was purchased by the Petitioner in 2017, those parcels were not sold as a mine. This reality was confirmed by the listing price for light industrial and residential uses. The real estate broker also confirmed, "We are not selling a mine," and the listing price was not based on comparable sales of existing mining assets or properties, or potential gold reserves on the Subject Property, but on "comparable sales of similarly zoned light industrial and residential properties." (Declaration of Charles W. Brock, ¶ 7; and Staff Report, section VII(E)(6).)
  - j. In 2019, Petitioner "applie[d] to the County of Nevada for a *use permit to re-open the Idaho-Maryland Mine* and is fully financed to complete the *permitting* process," acknowledging the necessity of use permitting for mining activities on the Subject Property. This application is consistent with evidence establishing that prior rights had been abandoned. (Petition, p. 49 (emphasis added).) This is consistent with the understanding of Petitioner's predecessor, Emgold, who confirmed to its investors that a conditional use permit would be required and without one, their activities in Grass Valley, CA would cease: "There is no guarantee that the City of Grass Valley will approve the project or that other agencies will approve the permits necessary to operate[¶]...[¶]if the Company is unable to obtain required permits, and the reasons that the permits cannot be obtained are deemed financially insurmountable, the development of the [Idaho-Maryland Mine] Project would be curtailed, and the Company's operations in Grass Valley, would cease." (Staff Report, section VII(E)(6); Emgold Mining Corporation Quarterly Report Three and Nine Months Ended September 30, 2010 (Q3) (November 26, 2010) (County Exhibit 1023).)
  - k. The Board of Supervisors heard public comment from thirty (30) plus speakers and did not hear any evidence of mining activities after 1957.
6. The former Idaho-Maryland Mine is also considered abandoned pursuant to state and local law because Petitioner and its predecessors in interest in the Subject Property

failed to comply with both state law and County land use and development code mandates for mines as follows:

- a. The Petitioner and its predecessors in interest in the Subject Property failed to comply with the requirement to file an annual report pursuant to Section 2207 of the Public Resources Code. (Staff Report, section VII(F)(2).)
  - b. The Petitioner and its predecessors in interest in the Subject Properties failed to comply with the requirement to submit an interim management plan to avoid the mine being deemed abandoned pursuant to state and local law. (Pub. Resources Code, § 2770; Nevada County Development Code Section L-II 3.22(L); and Staff Report, section VII(F)(4).)
  - c. The Idaho Maryland Mine is registered as “abandoned” as of September 5, 1997, in the Mine Safety and Health Administration’s register. (Mine Safety and Health Administration Mine Data Retrieval System (Re Idaho-Maryland Mine (September 1997) (County Exhibit 1021).)
7. The staff member comment in a 1980 County Planning Commission staff report referenced by the Petitioner is not a finding by the Board of Supervisors as to the legal status of a land use<sup>1</sup>. Therefore, such staff comment provides neither a legal conclusion nor precedent as to any use or alleged vested rights. (Petitioner’s Exhibit 252.) The Reclamation Plan for the 1980 project required 40 acres of the Subject Property (Centennial) to be reclaimed and restored to a condition that was either (1) graded to the contours of the land before it was covered with waste rock from the historic gold mine operations, or (2) leveled with a culvert drainage pipe installed to prepare the land for an “easy transition” to alternate uses. The Reclamation Plan further provides reclamation of the site, “will end surface mining and storage of the waste rock.” (Petition, Exhibit 251, Reclamation Plan, ¶ 23(a) and 29.) This language demonstrates the County was not making a finding of vested rights, but instead was considering a short-term use permit and seeking the reclamation of previously mined lands to non-mining, development uses. The Petition is the first and only time a determination of a vested right to mine has been sought for the Subject Property. (Supplemental Staff Report, pp. 3-4)
8. Under *Hanson Brothers* and the legal doctrine of vested rights, mere ownership of a property is not sufficient to preserve a vested right. Accordingly, a reservation of mineral rights alone does not constitute an objective manifestation of an intent to mine. (Supplement to Staff Report, Attachment B.)
9. To the extent that any mineral rights were reserved in any transactions, said reservations alone, do not constitute the objective manifestation of an intent to continue a vested nonconforming mining use. It is merely reflective of a property owner’s aspirations to retain the rights. It also does not negate the objective manifestations of intent to abandon mining as set forth in the evidence that, during the period of 1956-1963, the Idaho Maryland Mine Corporation completely divested itself from the mine and abandoned any intention to continue nonconforming mining activities. (Staff Report, sections V-VIII; and Historians’ Finding No. 75 [“The history of mineral development in the United States is marked by speculative practices to reserve ‘rights’ that may in the future be sold, and which may or may not be bona fide. Not all historical actors who have reserved such ‘rights,’ moreover, have possessed a viable future plan for exploitation of those ‘rights.’”].)
10. In conclusion, the Board makes the following three ultimate findings in response to the Petitioners requests as to vested rights:

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<sup>1</sup> “The property owner has indicated that mine rock has been sold and taken from the property continuously since the mine closed, and so this use permit application is for expansion of an existing, non-conforming use by the addition of a crusher and screening plant.” (County of Nevada Planning Commission Staff Report - Use Permit Application (U79-41) (Feb. 20, 1980) at p. 2)

- a. That Petitioners have failed to present sufficient evidence to support the finding of a vested right or to determine the scope of a vested right.
- b. Mining operations were abandoned at the Subject Property commencing as early as 1956; (Staff Report, sections V-VIII.) Subsequent actions or failures to act are consistent with a finding of abandonment, as found above.
- c. Neither the Petitioner nor any other party has a vested right to mine the Subject Property. (Staff Report, sections V-VIII.)