



# **VESTED RIGHT DETERMINATION IDAHO-MARYLAND MINE PETITION**

**BOARD OF SUPERVISORS  
DECEMBER 13, 2023**

# VESTED RIGHT DETERMINATION

- Introduction
- Inquiries:
  1. Was the Mine in operation before, on and after “vesting date” (first date a permit was required)?
  2. Was there subsequent abandonment?

# SUBJECT PROPERTY BACKGROUND

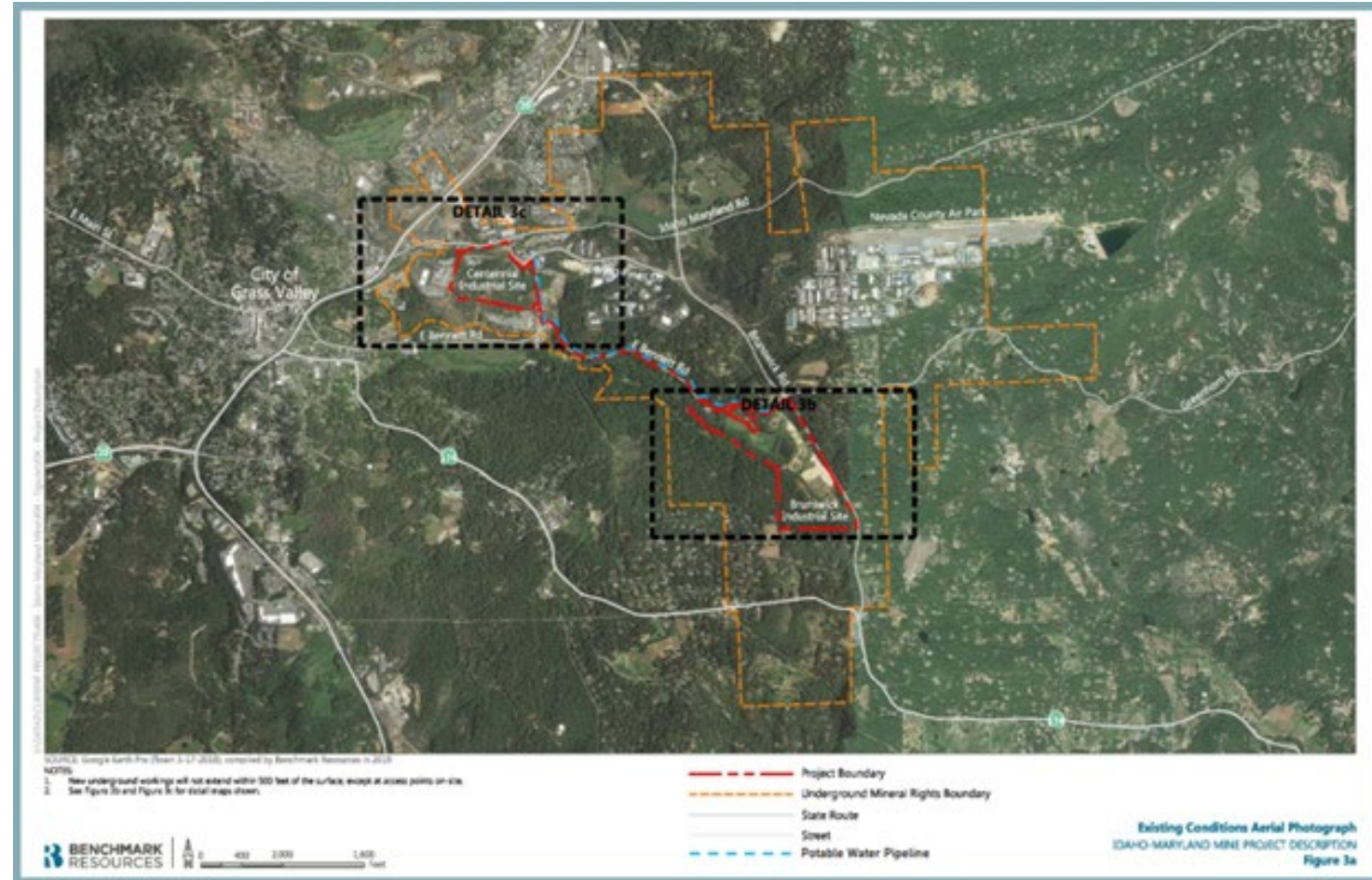
- Location and Description
- Abandoned Mining Operations
- Zoning and Permit History

# Subject Property Location & Description

## Approx. 175-acre Subject Property

- ~ 119-acre Brunswick Industrial Site
- ~ 56-acre Centennial Industrial Site

## Allegations of 2,585-acre Subsurface Mineral Rights Area



# SUBJECT PROPERTY HISTORY

- 1954 – County Adopted Ordinance 196 (Subject Properties zoned A1)
- 1958 – Use Permit for Sawmill on Brunswick Site
- 1970 – County Adopted Ordinance 500 (Subject Properties zoned M1 in 1973)
- SMARA And Ordinance 835
- 1980 – Use Permit and Reclamation Plan for Surface Mining on Centennial Site
- Sawmill Closure and Subject Property Rezones
- Brunswick Dewatering
- Waste Rock Operation Closure and Reclamation
- Grass Valley Use Permit – Emperor Gold
- Nevada County Use Permit – Rise Grass Valley

# NEVADA COUNTY ORDINANCE

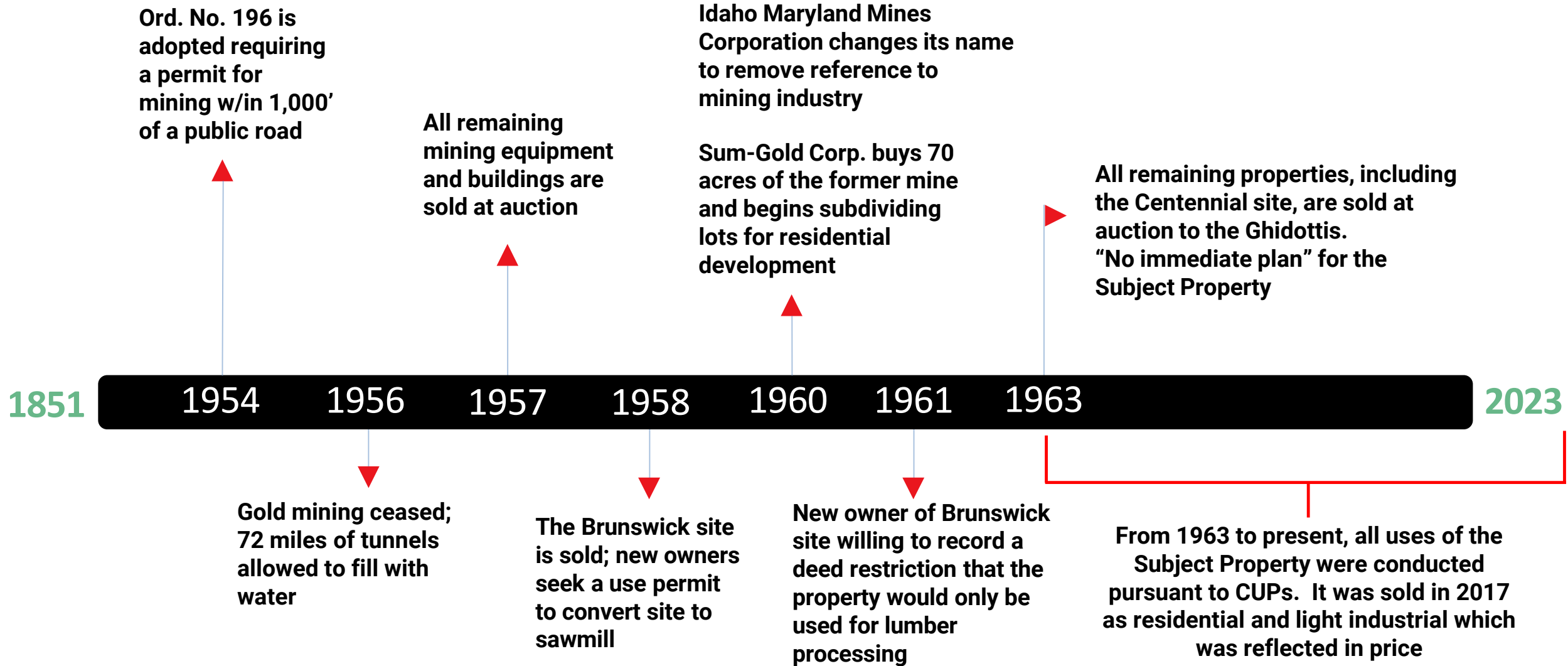
- **ORDINANCE 196 (1954)**
- **SURFACE MINING AND RECLAMATION ACT (“SMARA”)**
- **STATE MINING AND GEOLOGY BOARD (“SMGB”) AUTHORITY**
  - **COUNTY AUTHORITY TO DETERMINE VESTED RIGHTS**

# EVIDENCE ESTABLISHING ABANDONMENT

## I. INTRODUCTION AND OVERVIEW

- Was there a Vested Right to Mine?
- If there was a Vested Right, Has it been Abandoned?

# Idaho-Maryland Mine Abandonment Timeline





# EVIDENCE ESTABLISHING ABANDONMENT

## Case Law and Statutory Authority

- HANSEN AND OTHER CASE LAW
  - STATUTES
  - ORDINANCES

# EVIDENCE ESTABLISHING ABANDONMENT

## VESTED MINING RIGHTS DEFINED

*Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533

“The rights of users of property as those rights of the adoption existed at the time of a zoning ordinance are well recognized and have always been protected.”

# EVIDENCE ESTABLISHING ABANDONMENT

## REQUIREMENTS REGARDLESS OF ANY VESTED RIGHT

### SMARA

- Reclamation Plan and Financial Assurances
- Interim Management Plan

### COUNTY DEVELOPMENT CODE

- Reclamation Plan and Financial Assurances
- Interim Management Plans
- Annual Report Requirements
- Inspections

# EVIDENCE ESTABLISHING ABANDONMENT

## A. ESTABLISHING ABANDONMENT OF THE MINING USE

1. Length of Time the Nonconforming Use Has Been Suspended
2. Preparation for Resumption of Nonconforming Property Use
3. Intent to Resume Nonconforming Use Must Have Been Maintained

# ANALYSIS OF ABANDONMENT FINDINGS

- A. Whatever Mining Activities Were Occurring In 1954 Were Abandoned by 1956
- B. Mining Activities at the Subject Property Were Abandoned as of 1956
  - 1. Idaho Maryland Mines Corporation began selling off portions of the Subject Properties in 1954
  - 2. Mining Activities Stopped in 1956, Additional Properties are Sold
  - 3. All of The Mining Equipment Was Sold in 1957, Mine Buildings Were Removed
  - 4. The Subject Property Was Divided

# ANALYSIS OF ABANDONMENT FINDINGS

## C. No Mining Activity Occurred in the 1960s or 1970s, Thereby Evidencing an Abandonment

1. The Corporation Board Directs the Sale of any Mineral Rights and Eliminates the Word “Mines” From its Name
2. Ghidottis Did Not Undertake Any Efforts to Resume Mining
3. Any Removal of Waste Rock in the 1960s was Not a Resumption of Mining
4. Any Sawmill Activities Since 1956 Were Not Connected in Any Way With the Mining Activities at the Subject Property

# ANALYSIS OF ABANDONMENT FINDINGS

5. When Gold Prices Shot Up in the 1970s and Market Conditions Were Favorable to Resume Mining, the Owners of the Subject Property Made No Efforts to Resume Mining
6. Marian Ghidotti's Purported Insuring of "The Mine" Fails to Evidence Any Intent to Mine
7. The Long Cessation of Mining Activity on the Subject Properties Evidences Abandonment of Mining

# ANALYSIS OF ABANDONMENT FINDINGS

- D. The County Never Recognized Any Vested Rights for the Subject Property
- E. Other Actions and Omissions by the Owners of the Subject Property in the 1970s and 1980s Demonstrate to Abandonment of the Mining Use
  - 1. Ghidotti did not Sell to the BET Group for Mining Purposes
  - 2. No Owner Filed a Notice of Intent to Preserve an Interest in the Subsurface Mineral Rights Until 1989, Long After the Marketing Title Act was Enacted



# ANALYSIS OF ABANDONMENT FINDINGS

- E. Other Actions and Omissions by the Owners of the Subject Property in the 1970s and 1980s Demonstrate Abandonment of the Mining Use (cont'd)
3. Successors to Ghidotti Sold a Portion of the Subject Property for Residential Purposes
  4. The Use Permits Sought in the 1980s and 1990s Do Not Evidence a Vested Right to Mine but Evidence Past Abandonment
  5. Sierra Pacific's Application to Rezone the Property in December 1993, Demonstrates an Intent Not to Engage in Mining
  6. The BET Group Did Not Sell the Subject Property to Petitioner as a Mine, and Even Rise Gold Recognized the Need to Obtain a Conditional Use Permit Due to Past Abandonment

# ANALYSIS OF ABANDONMENT FINDINGS

## F. Failure to Comply With State Law and the County Development Code Means the Mine is Considered Abandoned According to State Law

1. Reclamation Plan Requirements
2. Annual Reporting Requirements
3. Ghidotti Actions Permitting Actions and With SMARA Compliance
4. Petitioner Failed to Comply Idle Mine Obligations Under SMARA and County Code

# ANALYSIS OF ABANDONMENT FINDINGS

## CONCLUSION

# Staff Recommendation

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

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

# Staff Recommendation cont'd

- II. Adopt the Resolution finding that neither the Petitioner nor any other party has a vested right to mine at the Subject Property, as the mining use was abandoned and make the following findings, pursuant to Chapter 9 of the California Public Resources Code, Sections 2710, et seq., known as the "Surface Mining and Reclamation Act of 1975," and Nevada County Land Use and Development Code Section L-II 3.21:
- A. That the proposed action is consistent with SMARA statutes and regulations; and
  - B. That the County has regulatory authority and responsibility as the SMARA lead agency pursuant to Section L-II 3.22.D.1 of the Nevada County Land Use and Development Code and Public Resources Code Section 2728; and
  - C. That the proposed action is deemed necessary to protect the public health, safety, and general welfare.

# Questions and Comments

# RESERVED

# BACKUP: Staff Recommendation cont'd

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



# BACKUP: SUBJECT PROPERTY (BRUNSWICK)

## PERMIT HISTORY

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

# BACKUP: SUBJECT PROPERTY (CENTENNIAL)

## PERMIT HISTORY:

- 1956 Mining ceased, all mining and processing equipment sold. The Subject Property also sold in segments for non-mining activity through 1959. Last segment sold in 1963.
- 1980 PC approved short-term Use Permit and Surface Mining Reclamation Plan for a four-year surface operation harvesting, crushing, screening, and sale of waste rock.
- 1985 PC approved amendment to existing Use Permit to allow importation of materials from off-site development property for on-site rock processing.
- 1985 PC approved amendment to existing Use Permit to expand surface operation to allow borrow pit and relocate processing plant.
- 1992 PC approved Use Permit and Surface Mining Reclamation Plan to expand existing rock harvesting operations on Subject Property (Centennial) (File Number U92-037).
- 2003 All operations concluded. Buildings and equipment removed.
- 2004 Site reclamation complete. Remaining buildings removed.
- 2006 Reclamation completed and financial assurances released.