


**MEMORANDUM TO SUPPORT CLAIM OF VESTED RIGHT OF NORTHERN  
AGGREGATES, INC. TO MINE THE HARRIS QUARRY**

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TO: Steve Dunnicliff  
Director of Planning  
County of Mendocino

COPY TO: Andy Gustavson, County Planner  
Terry Gross, Deputy County Counsel

FROM: CLEMENT, FITZPATRICK & KENWORTHY

By:   
Stephen K. Butler and Tina Wallis

DATE: March 21, 2013

RE: Northern Aggregates, Inc.'s Vested Right to Mine the Harris Quarry

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This memorandum and accompanying Timeline are submitted concurrently to the County in support of Northern Aggregates, Inc. (“NAI”) and its claim of vested rights to continue to mine the Harris Quarry. This memo adds more detail to the statutes and cases supporting NAI’s claim of vested rights in light of the evidence originally submitted to the County by the Downey/Brand law firm on February 2, 2006, and the supplemental evidence included in the Timeline and its attachments.

The Downey/Brand law firm submitted a request on behalf of NAI on February 2, 2006, for a determination of NAI’s vested rights to continue to mine the Harris Quarry. No formal response was ever received from John Ball, the then Chief Executive Officer of the County. While that letter was in the mail, Ignacio “Nash” Gonzalez sent a letter to Thomas Henry at the Downey/Brand law firm expressing Mr. Gonzalez’s opinion that the quarry did not have vested rights. Presumably, in light of the fact that those communications passed in the mail, the County Administrator at the time felt no need to analyze the evidence submitted by Downey/Brand or to issue a formal determination regarding NAI’s vested rights.

At the outset, even though Mr. Gonzalez had no opportunity and did not review the evidence and authority submitted by Downey/Brand in support of NAI’s claim of vested rights, Mr. Gonzalez did not have the legal authority to make any determination on behalf of the County regarding the existence or non-existence of vested rights to mine the Harris Quarry. When Mr. Gonzalez wrote his letter, he was not an employee of the County, but rather an independent contractor, who served as a project planner. Thus, he had no authority to make a vested rights determination. For reasons later set forth in this Memorandum, Mr. Gonzalez’s conclusion was also in error.

We ask you to consider the following, together with our Timeline and exhibits, and the material and authorities originally submitted by the Downey/Brand law firm and respectfully request that you make a formal determination of the existence of vested rights to mine the Harris Quarry:

1. The State Surface Mining and Reclamation Act of 1975

The State legislature adopted the Surface Mining and Reclamation Act as California Public Resources Code §§2170 through 2797 (“SMARA”). SMARA became effective as law on January 1, 1976.

SMARA was adopted in recognition of the fact that the extraction of materials was essential to the continued economic wellbeing of the State and to the needs of society.<sup>1</sup> In adopting SMARA, the legislature made it clear that SMARA was intended to be a “comprehensive surface mining and reclamation policy.”<sup>2</sup> In order to achieve SMARA’s express purpose of not taking private property rights for public use without the payment of just

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<sup>1</sup> Public Resources Code §2711.

<sup>2</sup> Public Resources Code §2712.

compensation, which would violate the California and United States Constitutions,<sup>3</sup> the State adopted Public Resources Code §2776, providing for the preservation of constitutionally vested mining rights.

Section 2776 made it clear that no person with vested rights as of January 1, 1976, would be required to secure any kind of permit from a local agency regulating surface mining. Section 2770 of SMARA required the filing of a reclamation plan by 1998 by holders of existing vested rights. Harris Quarry filed a reclamation plan in 1983, which met this requirement.

Section 2274 of SMARA also directed that all local governmental agencies adopt ordinances to implement the articulated State requirements and the legislative purpose of encouraging locally based aggregate extraction and use. The County of Mendocino was required to implement its own SMARA ordinance, carrying out the State's avowed legislative purposes, including special rules for vested mining rights.

## 2. Mendocino's Implementing SMARA Regulations

On June 11, 1979, Mendocino adopted Ordinance No. 3263, implementing the State directives of SMARA. Ordinance No. 3263 created a distinct and separate chapter in the Mendocino County Code, recognizing the County's obligations to carry forth SMARA's directives. Section 22.16.060 of Ordinance No. 3263 almost parroted the language of Public Resources Code §2776 with respect to the preservation of vested rights. The County's original SMARA ordinance did not contain any provisions regarding the express loss of vested rights through abandonment.

The County's SMARA regulations were amended over time by Ordinance 3283 in 1979 and Ordinance 3890 in 1994. However, it was not until the adoption of Ordinance 4031 in 1999 that Section 22.16.150 was amended to provide for the loss of vested rights upon a mining operation becoming idle for a period of more than one year. It is indisputable that the Harris Quarry has been continuously mined since 1999 and before.

The County has, since the adoption of its 1979 Ordinance No. 3263 and continuing through today, recognized that the regulation of vested rights is administered through Chapter 22 of the County Code and not Chapter 20, the zoning ordinance. Since provisions were not included in Chapter 22 for the abandonment of vested rights until the 1999 amendments, no loss of vested rights could have occurred prior to that date.

## 3. Nash Gonzalez's Conclusions with Respect to Harris Quarry Vested Rights

On February 2, 2006, Mr. Gonzalez wrote to NAI's attorneys, in part, as follows:

"Please note that this operation **does not** have a vested right and was authorized under Use Permit U19-83, subject to the conditions of approval of the entitlement. By virtue of the use permit, the operation does not

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<sup>3</sup> Public Resources Code §2713.

have a vested right. (*our emphasis*) Therefore, your statement alluding to a vested right is incorrect.”

In making this statement, Mr. Gonzalez may have relied on an inapplicable section of the zoning ordinance.<sup>4</sup> Section 20.204.035(A) provides as follows:

“Whenever a non-conforming use has been abandoned, discontinued for any reason, or changed to a conforming use, for a continuous period of one (1) year, the non-conforming use shall not be reestablished, and the use of the structures or site thereafter shall be in conformity with the regulations for the zone on which it is located.” [*our emphasis*]

While the conclusion reached by Mr. Gonzalez would be correct in connection with a non-conforming use other than a mining operation, it was incorrect with respect to the administration of vested rights to mine. Moreover, the section of the zoning ordinance upon which Mr. Gonzalez relied was adopted four years after the issuance of Use Permit UP19-83. Retroactive application of an ordinance to extinguish a constitutionally protected vested right, without due process, violates well established constitutional principles.

The rights to and continuation of vested rights for mining are regulated by Chapter 22, the County’s mining ordinance. As previously stated, Chapter 22 has an express provision which provides for a loss of a mining vested right only where a mine has become idle for a period in excess of one year without the filing of an interim management plan. Chapter 22, implementing the preemptive State authority, controls in this instance. For reasons explained below, Section 20.204.035 of Chapter 20, the zoning ordinance, cannot be used to trump the contrary provisions of Chapter 22.

#### 4. Chapter 22 Controls Vested Mining Rights

It is clear from the legislative structure of the County’s ordinances that Chapter 22 must be utilized in determining the existence and continuation of vested mining rights. The provision in Chapter 20, providing for abandonment of a non-conforming use upon the issuance of use permit, expressly conflicts with the contrary provisions in Section 22.16.150 of Chapter 22. In interpreting the Mendocino County Code and the timing of adopting Chapter 22 to implement SMARA, the logical conclusion is that, with respect to vested rights, the provisions of Chapter 22 control. The rules for statutory interpretation also mandate this conclusion.

A more specific statute will control over a general statute, in this case a regulation specifically applicable to vested mining rights will control instead of general non-conforming use regulations in the zoning ordinance.<sup>5</sup> It is also required that regulations susceptible to interpretation must, if possible, be construed as constitutional.<sup>6</sup> The application of Section

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<sup>4</sup> Mendocino County Zoning Ordinance §20.204.035.

<sup>5</sup> *Ross v. State of California* (1942) 19 Cal.2d 723, 724; *Shoemaker v. Myers* (1992) 2 Cal.App.4<sup>th</sup> 1407, 1423-1424.

<sup>6</sup> *Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4<sup>th</sup> 607; *In re: Marriage of Shupe* (1983) 139 Cal.App. 1026, 1035.



20.204.035 would impugn State law in the event that its provisions are contrary to the express directives of the State legislature relating to the retention of vested mining rights.<sup>7</sup>

Last, as exhaustively discussed in the February 2, 2006, letter from the Downey/Brand law firm, the California Supreme Court decision in *Hansen Bros. Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533 makes it clear that normal rules relating to non-conforming zoning uses do not govern vested rights for surface mining activities. When the totality of the circumstances in law is considered, there is no question that Mr. Gonzalez's reliance on Section 20.204.035(A) was, perhaps understandable, but misplaced. Chapter 22 should be used to determine whether vested rights have been abandoned.

## 5. Conclusion

The evidence supporting the fact that there was never an intention to abandon the mining of the Harris Quarry is irrefutable as evidenced both by the submission of the Downey/Brand law firm material and the supplemental evidence and law provided with this Memorandum and Timeline. As indicated in the *Hansen Bros.*<sup>8</sup> decision at page 569, "abandonment . . . 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 that the owner does not claim or retain any interest in the right to the non-conforming use.

Both intent to abandon and affirmative action to abandon are required to show the abandonment of a vested mining right. The evidence will support neither conclusion. Mining has proceeded continuously on the property from before 1929 and continues to the present date. It is unquestionable that the mine has been continuously operating since 1999 when the County first adopted a regulation providing for abandonment of vested rights when a mine is idle for a period of more than one year without an interim management plan.

For all the reasons set forth above, we respectfully request that the County make its formal determination that NAI has vested rights to continue the mining of the Harris Quarry.

Thank you for your consideration of this material.

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<sup>7</sup> Cal.Cons., Art. XI, §7.

<sup>8</sup> *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533.

PHYSICAL AND LEGAL TIMELINE FOR  
RIDGEWOOD SUMMIT QUARRY  
NOW KNOWN AS THE HARRIS QUARRY

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<i><b>TIME FRAME</b></i>	<i><b>REFERENCE NO.</b></i>
<i><b>Map of Subject Property</b></i> – A map of the subject property for which vested rights are sought is appended. The area of the vested rights is represented by the cross-hatched portion of the property on the map.	<i><b>VR 13-16</b></i>
<i><b>June 28, 1929</b></i> – The rock crusher seven miles south of Willits is first referenced in the Willits News.	<i><b>VR 17</b></i>
<i><b>November 22, 1929</b></i> – Both the rebuilding of the Redwood Highway near Calpella and the existence of the rock crusher about 7 miles south of Willits were referenced in the Willits News.	<i><b>VR 18</b></i>
<i><b>November 13, 1936</b></i> – The Willits News again references the rock crusher six miles south of Willits.	<i><b>VR 19</b></i>
<i><b>1936</b></i> – Bud Garman’s father told Bud that in 1936 he worked for a company that built the road from Harris Quarry to the Ridgewood Ranch and that he was working at Harris Quarry, which was operating as a quarry around 1936.	<i><b>VR 20</b></i>
<i><b>May 29, 1947</b></i> – Documents provided by the California Dept. of Public Works, Division of Highways, Materials and Research Dept., reflect the use and analysis of rock from the Ridgewood Summit Quarry for a State roadway project.	<i><b>VR 21-30</b></i>
<i><b>Early 1950’s</b></i> - Bud Garman says the old Howard Forest CDF station was constructed and the picturesque rock walls in the old station were constructed with rock from the Harris Quarry. At that time, the old Highway 101 was located next to the old Howard Forest CDF station.	<i><b>VR 20</b></i>
<i><b>1952-1962</b></i> - When Welch & Welch owned the quarry property, Bud Garman remembers that Welch & Welch constructed a spur to the rail line using rock from the quarry. Welch & Welch moved lumber up from the mill on the church property and shipped the lumber by hauling it to the underground tunnel under the old Highway 101. Rock for the underground tunnel came from Laughlin Peak Road. At that time, Laughlin Peak Road was approximately ¼ mile past the quarry. Welch & Welch owned the entire 29,000 acre property that included the quarry.	<i><b>VR 20</b></i>

<b>1953</b> – State Highway “as-built” drawing reflects the existence of the quarry.	<b>VR 31</b>
<b>May 15, 1956</b> – The County of Mendocino adopts its first zoning ordinance, Ordinance No. 359. The 1956 ordinance mandated that all <b>new</b> commercial mining activities in the unincorporated area obtain a use permit for “the establishment of [commercial] excavation of natural materials.” (Ordinance No. 359, Section 3.32(d)). Since only new, and not existing, quarries were required to obtain a use permit, the Harris Quarry did not become a legal, non-conforming use for purposes of State law and the County’s zoning ordinance. This fact was later judicially verified by the California First District Court of Appeal in its decision in <i>City of Ukiah v. County of Mendocino and Ford Gravel Company, Inc.</i> (1987) 196 CA 3d 47, at pages 56-57. Prior to the adoption of the County’s first zoning ordinance, previously vested rights to mine material from the Harris Quarry could not have been lost because the County had no regulations providing for the expiration of legal, non-conforming uses through abandonment or amortization of use. Subsequent to the adoption of Ordinance No. 359, vested rights to continue operation of the Harris Quarry were not lost because the Harris Quarry did not become a legal, non-conforming use as a result of Ordinance No. 359.	<b>VR 32-62</b>
<b>August 4, 1959</b> – A picture of the Ridgewood Summit Quarry appears in a photograph obtained from California Department of Transportation files.	<b>VR 63</b>
<b>1962</b> – In 1962, the Church of the Golden Rule acquired the quarry property. During the time that the Church owned the property, Bud Garman remembers that if someone needed rock from the quarry, they contacted the Church and asked for rock. There were no written contracts and everything was on the “honor system,” however, Bud Garman remembers paying royalties to the Church for removing rock from the quarry. “Red” colored rock, the type mined at the quarry, may also be found at the Ridgewood Ranch Subdivision. Bud Garman states that there was heavy equipment and saw mills on the site during the time the Church owned the quarry. The Church owned the property from 1962 to 1983.	<b>VR 20</b>
<b>August 5, 1963</b> – A series of aerial photos show the quarry, highway access, haul road, structure, equipment, and a zoom photo showing an enhanced picture of the quarry excavation.	<b>VR 64-68</b>
<b>1968</b> – Frank Dutra, in a declaration dated December 10, 2005, states that aggregate was extracted and sold from the quarry in the year 1968 and for “many years earlier.”	<b>VR 69</b>

<b>1970's</b> – Bud Garman operated the quarry from the early 1970's until Frank Dutra took over the quarry operation in 1983. Bud Garman remembers paying royalties for removing rock from the quarry.	<b>VR 20</b>
<b>June 14, 1972</b> – Aerial photos from June of 1972 show the quarry and related improvements and haul road.	<b>VR 70-71</b>
<b>June 20, 1972</b> – The County, through Ordinance No. 963, amends the zoning regulations in the A-1 zoning district, the district then applicable to the quarry site. The purpose of Ordinance No. 963 was to utilize the A-1 zoning district as a holding zone for those areas of the County where specific zoning based upon a study had not yet been established. Ordinance No. 963 stated that no “uses shall be permitted” unless a use permit is first obtained, excepting certain enumerated uses. Quarries were not included within the Section 20-7(A) list of uses not subject to obtaining a use permit to establish a use. However, the ordinance did not specifically require existing uses to obtain a use permit and, under the rationale of the <i>City of Ukiah</i> decision rendered by the Court of Appeal in 1987, existing quarries did not become legal non-conforming uses under the County's zoning ordinance. Ordinance No. 963 only required use permits for future uses as evidenced by Section 20-7(A) which speaks to those uses which “shall be permitted.”	<b>VR 72-74</b>
<b>1974</b> – Aerial photos from January of 1974 depict the quarry, highway access, haul road, and an apparent stock pile or equipment. Comparing the 1974 photos with the 1963 photos in Attachment 18, shows the depression of the quarry site as much more distinct. This demonstrates that the quarry expanded from 1963 to 1974. This is further evidence of the active use of the quarry from the time of the 1963 photographs to January, 1974.	<b>VR 75-76</b>
<b>1975</b> – <i>Roadside Geology of Northern California</i> is published by David Alt and Donald Hyndman. A map on page 65 of that book identifies “pillows of black basalt” in the old quarry south of Willits in the location of the Harris Quarry.	<b>VR 77-79</b>
<b>1975</b> – The State of California adopts the Surface Mining and Reclamation Act as California Public Resources Code Sections 2170-2797 (SMARA).	<b>VR 80-209</b>
<b>January 1, 1976</b> – SMARA becomes effective. The newly adopted SMARA contained a number of provisions which were and remain pertinent to NAI's vested right. They are:  Public Resources Code Section 2776 states, in pertinent part, that: “no person who has obtained a vested right to conduct surface mining operations prior to January 1,	<b>VR 80-209</b>

<p>1976, shall be required to secure a permit pursuant to the provisions of this chapter (SMARA) as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter.”</p> <p>Section 2776 goes on to define a vested right: “a person shall be deemed to have such vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore.”</p> <p>These sections would have pre-empted any permit requirements or limitations on vested rights for mineral extraction otherwise set forth in a local zoning ordinance.</p> <p>Section 2770 of SMARA also directed all existing mines to file a reclamation plan prior to 1988.</p> <p>Section 2774 of SMARA also directed all local governmental agencies to adopt ordinances to implement SMARA and its avowed legislative purpose of encouraging locally based aggregate extraction and use.</p>	
<p><b>1976–1978</b> – Wayne Waters of Waters’ Construction, former Maintenance Superintendent for Mendocino County, purchased rock from the quarry which was used by the State for road projects during his tenure as Maintenance Superintendent.</p>	<p><b>VR 210</b></p>
<p><b>June 11, 1979</b> – Mendocino County adopts Ordinance No. 3263, its ordinance implementing the administration of SMARA. Ordinance No. 3263 created a distinct and separate chapter in the Mendocino County Code, evidencing the County’s intent to administer surface mining and reclamation activities independently of the County zoning ordinance. While Section 22.16.050 of Ordinance No. 3263 specifically cross-referenced the utilization of procedures in Chapter 20 of the Mendocino County Code for the review, approval and administration of a reclamation plan and/or the issuance and administration of a permit, no such incorporation was contained with respect to the treatment of vested rights associated with previously established uses. Rather, Section 22.16.060, dealing with vested rights, specifically stated as follows:</p> <p>“A surface mine does not have to have been in operation on the effective date of the act to have vested rights. Surface mines that are operated seasonally, intermittently, or are temporarily deactivated, may have vested rights</p>	<p><b>VR 211</b></p>

<p>established prior to the act. In this regard, the historical pattern of the conduct of the operation shall be considered, as well as the continuity of the operator's activities in the area and his diligent maintenance of the property in question.</p> <p>The expression 'no substantial changes . . . made' must be interpreted with due consideration of the above factors. That is, changes in the rate of production may or may not be considered as substantial change, depending on the status of the surface mine under review. Similarly, the physical moving or shifting of the surface mining operation may or may not be a substantial change, depending on operational, environmental, and other circumstances."</p> <p>As opposed to a rigid application of a non-conforming use abandonment or amortization clause otherwise set forth in the zoning ordinance, Chapter 22 provides an entirely different measure for assessing whether vested rights for any particular mining operation have been lost over time. The more specific provisions of Chapter 22 relating to surface mining and reclamation should prevail over any contrary or potentially conflicting provisions in the County zoning ordinance.</p>	
<b>December 1979</b> – The County's SMARA regulations are amended by Ordinance No. 3283. No language providing for the loss of vested rights was included.	<b>VR 212 - 229</b>
<b>1972-1980</b> – There is no evidence that the County took any zoning abatement or enforcement proceedings against the owner of the Harris Quarry alleging a loss of vested rights.	
<b>May 11, 1981</b> – A public notice, published in The Ukiah Daily Journal, notes the filing of a use permit request for a rock quarry located +/- five miles south of Willits, by Robert L. Schwan, on behalf of Ridge Wheel Properties, Inc.	<b>VR 230-231</b>
<b>June 25, 1981</b> - Aerial photos from June of 1981 showing the quarry, related improvements and haul road.	<b>VR 233-235</b>
<b>August 1981</b> – An aerial photo dated August 1981, clearly identifies the quarry and the accompanying haul road, structure and highway access. Due to the clarity of this photo, it can be seen that excavation continued beyond that in the 1963 and 1974 photos.	<b>VR 232</b>
<b>May 4, 1983</b> – A letter from the State Board of Mining and Geology to Mendocino County notes that Robert Peters filed a Reclamation Plan in connection with his 1983 application for a conditional use permit for the Harris Quarry. A 1983 use permit was subsequently issued by the County.	<b>VR 236-237</b>

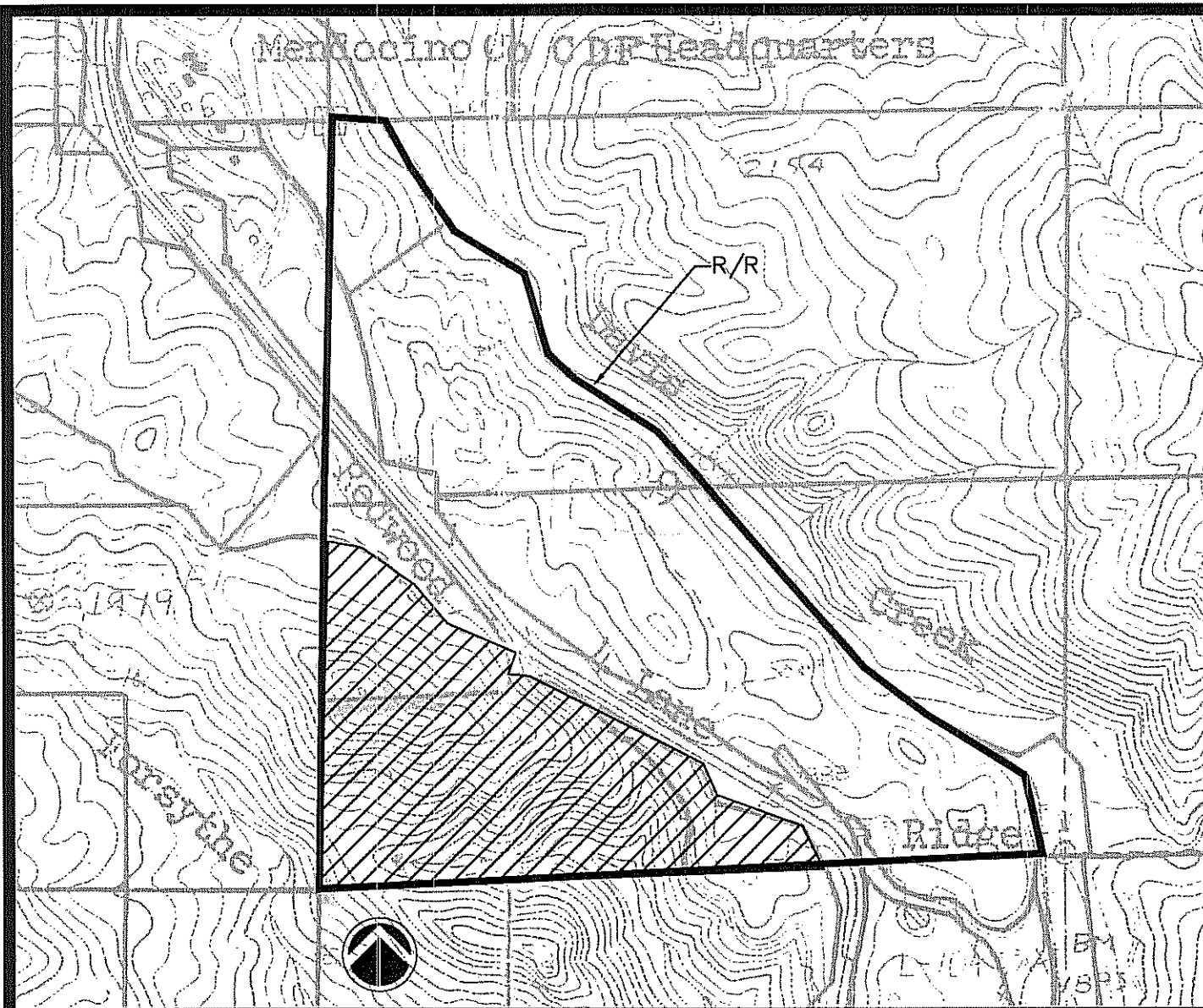
<b>June 2, 1983</b> - County approved Major Use Permit # U 19-83 (for Peters Parcel) for side hill quarry pit, 10,000 cubic yards for five years. Owners were Hugh and Virginia Cullen, applicant was Bob Peters. Mendocino County Planning Commission Minutes for June 2, 1983. There is a one-page Negative Declaration dated June 20, 1983. Bob Peters submitted a reclamation plan in 1983 stating that the site was not presently used, but material had been extracted “for many years prior to 1975.” He also said that Hugh and Virginia Cullen were the property owners and held the mineral rights. The fact that a use permit request had been made and a reclamation plan had been submitted in 1983 does not extinguish previously vested constitutional rights and is further evidence that there was an intention to continue to mine the quarry in the future. As previously noted, the County’s SMARA ordinance specifically anticipated intermittent quarrying activities.	<b>VR 238-247</b>
<b>1983</b> - Beginning in 1983 and continuing until the time that Frank Dutra took over complete operation of the quarry, Bud Garman operated the quarry.	<b>VR 20</b>
<b>December 23, 1986</b> – Correspondence from William B. Grover, Bankruptcy Trustee, referencing sales from the quarry in 1984.	<b>VR 248-250</b>
<b>1987</b> – The County of Mendocino adopts Ordinance No. 3639, which amended its zoning ordinances to provide for a loss of non-conforming zoning rights upon an abandonment for a period of one year. (Section 20.204.045) The County regulations in Chapter 22 contained no provisions for the loss of vested mining rights in 1987.	<b>VR 251-261</b>
<b>November 10, 1987</b> – The California Court of Appeal decides the case of <i>City of Ukiah v. County of Mendocino and Ford Gravel Company, Inc.</i> In that case, the court concluded that the City’s 1956 zoning ordinance did not render existing quarries legal non-conforming uses.	<b>VR 262-269</b>
<b>1993</b> – Frank Dutra took over partial operation of the quarry and eventually took over complete operation. Frank Dutra has, since 1993, been operating the quarry as an on-going business enterprise to the present date.	<b>VR 270</b>
<b>August 1994</b> – The County again amends its SMARA regulations through the adoption of Ordinance No. 3890. Again, nothing was put in Chapter 22 providing for the loss of vested rights.	<b>VR 271</b>
<b>January 8, 1996</b> – The California Supreme Court decides the case of <i>Hansen Bros. Enterprises, Inc. v. Board of Supervisors of Nevada County.</i> The court concludes that the owner of a vested right under SMARA has the right to continue mining under the “diminishing assets” doctrine, notwithstanding regulations limiting non-conforming uses.	<b>VR 272-305</b>



<b>1999</b> – The County adopts Ordinance No. 4031 overhauling Chapter 22. For the first time, Section 22.16.150 is added to provide for the loss of vested rights for a mine becoming idle for a period of more than one year unless an interim management plan is filed with the County.	<b>VR 306-327</b>
<b>1999-present</b> – It is indisputable that the Harris Quarry operated continuously from 1999 through the present time.	
<b>January, 2003</b> – The County prepares a background report in connection with its consideration of a new General Plan. Harris Quarry is specifically listed as an on-going quarry on page 8-F-3 of that background report with an annual extraction volume 25,000 cubic yards.	<b>VR 328-332</b>
<b>October 11, 2005</b> – Mendocino Planning Department acknowledges by letter that the 1983 Use Permit (CUP U 19-83) is valid.	<b>VR 333</b>
<b>February 2, 2006</b> – NAI makes its original request to the County Administrator for a vested rights determination. No response was sent.	<b>VR 334-395</b>
<b>February 2, 2006</b> – Ignacio “Nash” Gonzalez sends a letter to NAI’s counsel expressing his opinion that no vested rights exist by virtue of the County’s issuance of a use permit for the quarry. Mr. Gonzalez had no authority to make any determination on the existence or non-existence of vested rights because Mr. Gonzalez was a contract project planner. He was not the Planning Director and wasn’t even a County employee. Moreover, since the letters from NAI and Mr. Gonzalez crossed in the mail on the same day, it was obvious he did not consider the substantive merits of the vested rights application. Last, the rationale stated by Mr. Gonzalez in his letter indicated he erroneously relied on the non-conforming use language in Chapter 20, the zoning regulations, as opposed to the contrary provisions in Chapter 22.	<b>VR 396-397</b>
<b>January 30, 2013</b> – Planning Director, Mr. Steve Dunncliff, issues a vested rights determination in connection with the Rowland Gravel Bar.	<b>VR 398-403</b>
<b>March 21, 2013</b> – NAI submits supplemental evidence to Mr. Dunncliff at the County to more fully demonstrate the claim of vested rights made in February of 2006. NAI also submits additional legal argument to support its vested rights claim and reiterates its request for a formal County determination on the existence of NAI’s vested rights.	<b>VR 1-12</b>

This evidence demonstrates that there has been no abandonment nor intention to abandon vested rights to mine the Harris Quarry from the time predating Mendocino County’s first zoning ordinance (1956) to the present date. Legal analysis supporting NAI’s claim to vested rights is set forth in a separate memo and in the previous legal memo by the Downey Brand law firm.






DESCRIPTION OF PARCEL  
AS NOTED ON BOOK  
291, PAGE 308 OF THE  
DEED IN MENDOCINO  
COUNTY RECORDS FROM  
HOWARD TRUST DATED  
MAY 31, 1951:

PORTION SHOWN IN  
TOWNSHIP 17 NORTH,  
RANGE 13 WEST, M.D.M.  
DESCRIBED AS FOLLOWS:

SECTION 9

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HOWARD DEED AS  
NOTED ABOVE.

**RAU** AND ASSOCIATES INC.  
CIVIL ENGINEERS · LAND SURVEYORS  
100 NORTH PINE STREET · (707) 482-6536 · UKIAH, CA 95482

DRAWING: DEED BOUNDARY, MAY 31, 1951

PROJECT: HARRIS QUARRY  
VESTED RIGHTS EXHIBIT

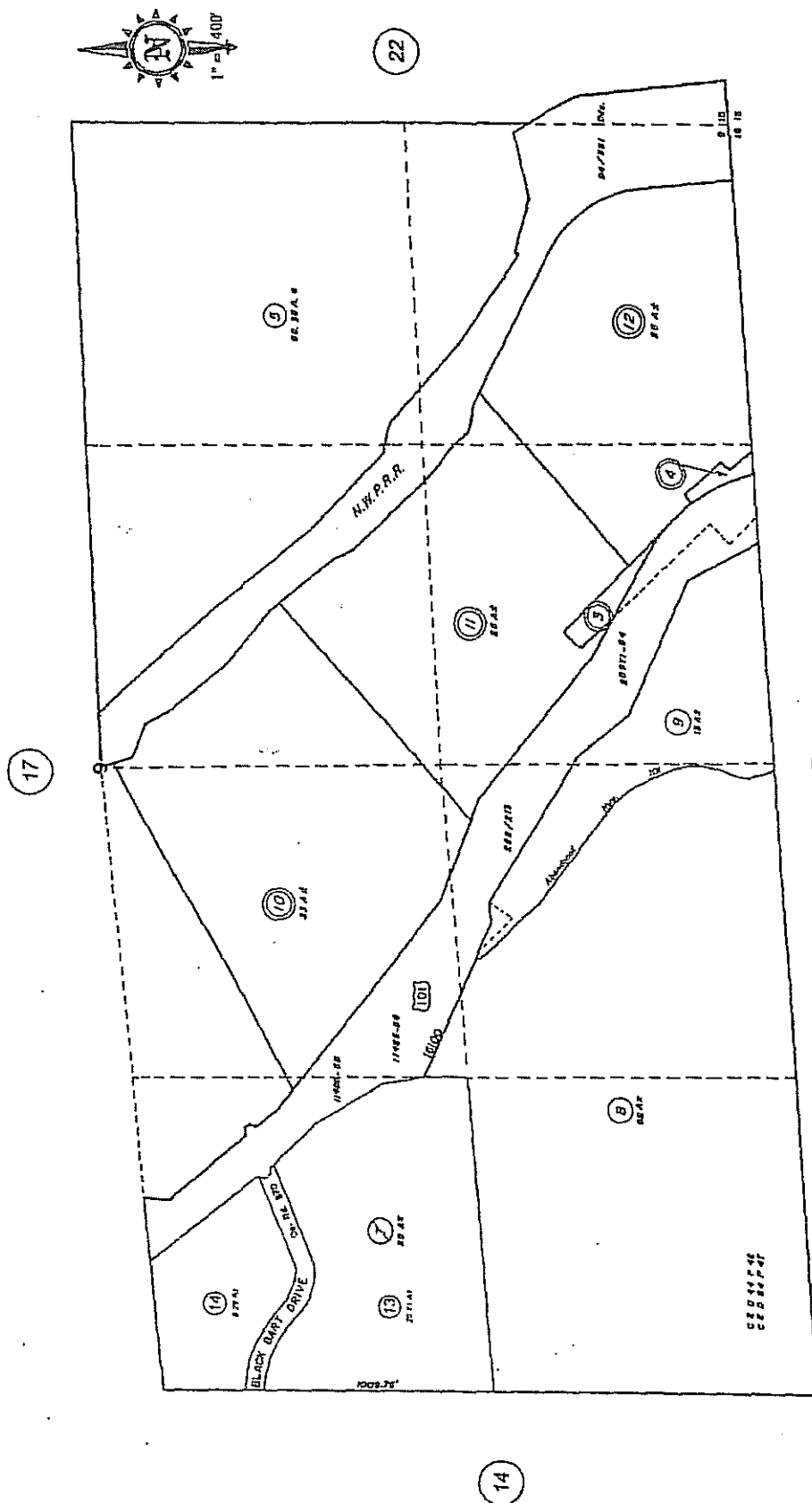
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MAY 30 2007

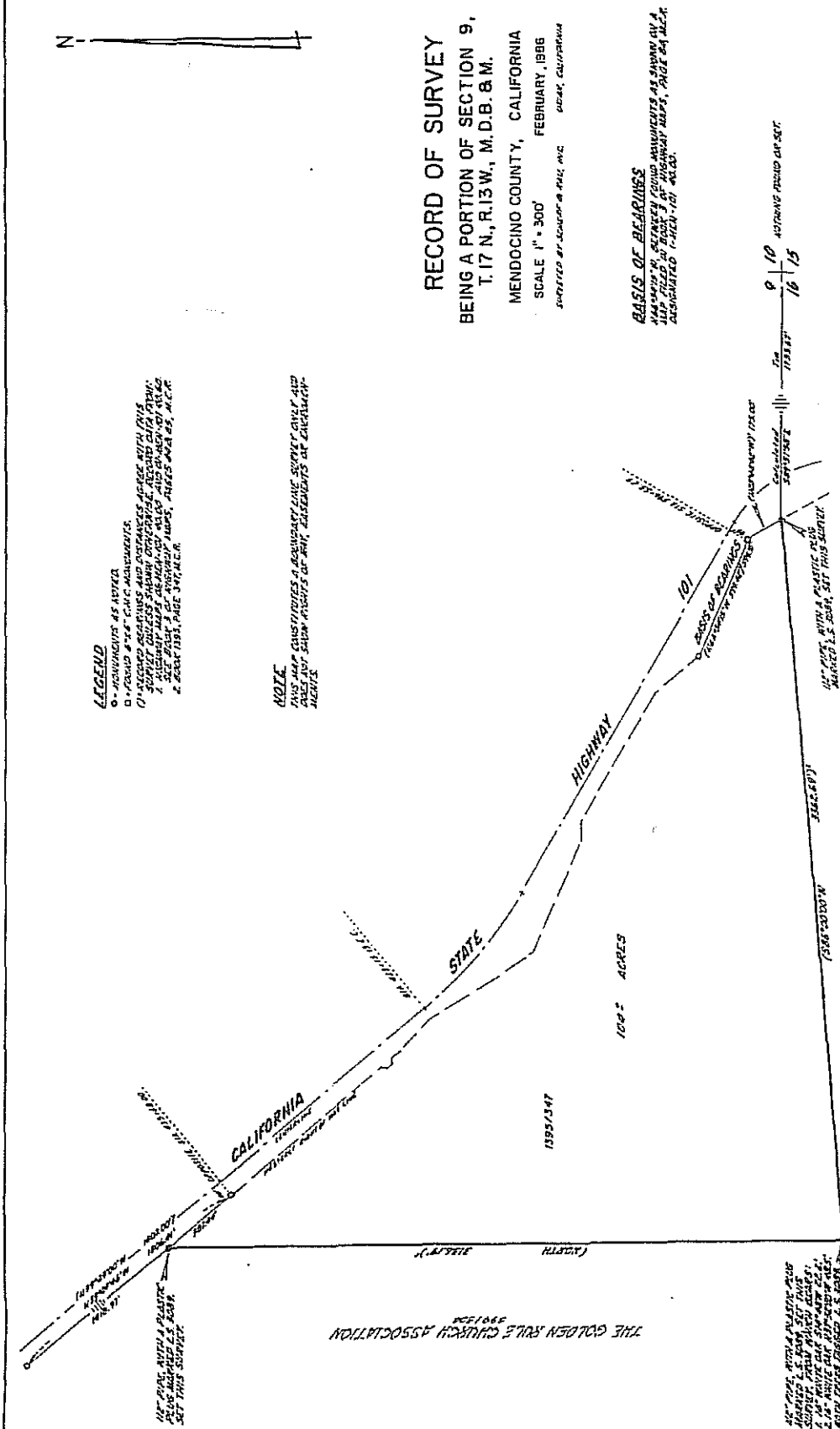
Assessor's Map  
County of Mendocino, Calif.  
Updated February 2, 2007

Bk  
106  
17

Bk  
106  
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NOTE: This map was prepared for  
assessment purposes only. No liability  
is assumed for the data delineated  
hereon.

11-11-66



RECORD OF SURVEY  
BEING A PORTION OF SECTION 9,  
T. 17 N., R. 13 W., M. D. B. & M.

581508 10 51508

THE GOLDEN RULE CHURCH ASSOCIATION  
509 E 7th St  
MONTGOMERY, ALABAMA 36102

# READY FOR BIG S

## Willits Is Prepared to Entertain Its Large

### Big League Horses At Ukiah Rodeo

"Big League" bucking horses—a string of them that is claimed to be second to none in the United States—will be featured during the eighth annual Ukiah Rodeo, July 4, 5, 6, and 7. Preparations for this year's rodeo are now fully completed and indications are that it will draw the largest attendance in its history.

For several years the Ukiah Rodeo Association has been engaged in picking its string of outlaw bronchos. These horses are ridden but once a year at the annual rodeo and for the balance of the year are allowed to run wild on the 40,000 acres of the Eden Valley Ranch.

The efficiency of the Ukiah system has been proven beyond a doubt and it is a known fact that the Ukiah buckers toss off champion riders from other shows with no apparent difficulty.

With the opening of the big western event drawing near, it was announced by the directors of the Rodeo Association this week that the Henshaw Investment Company of San Francisco, owners of the Eden Valley Ranch, have put up a \$300 trophy to the winner of the bucking horse contest.

The terms under which this trophy is given, require that it must be won three times before it becomes the permanent possession of the winner. Each time it is won the rider's name will be engraved on it and a rider winning it twice in succession will be given an additional prize of a \$100 purse in gold.

Ukiah has made elaborate plans this year for entertaining rodeo visitors and ample accommodations are promised to those desiring to remain for more than one day in the hotels and private homes. The Redwood Empire Association is cooperating for the success of this year's rodeo and a large representation from the nine empire counties is expected.

### Willits Weather Is Best In The State

The hot wave that spread over the entire state over the last week-end served to emphasize the delightful weather enjoyed as a regular thing by the folks who are fortunate enough

### Grape Growers Picnic Sunday Near Calpella

John Flinn's grove, one mile north of Calpella, will be the scene of a grower picnic Sunday afternoon, when grape growers and their families will assemble from all parts of Mendocino county. The gathering is in celebration of the passage of the Farm Relief Bill, which means much to the vineyardists throughout the state. Luncheon will be served at 12.00 o'clock. During the afternoon prominent speakers will give the growers details of the Stabilization Corporation now being set up in conformity with the Farm Bill.

This body will work out the problems of the grape grower and with the backing of the Federal Government, secure control of the fresh Muscat crop, which has blocked the sale of juice grapes in eastern market centers during the last several seasons.

A giant merger of leading grape by-products manufacturers has been effected in connection with the federal stabilization plan. These plants, controlling 85 per cent of the grape by-products of the state, have organized to exploit these commodities, and it is anticipated that at least 800,000 tons of grapes will be sold during the coming season.

According to P. E. McKinnay, prominent Mendocino county grape grower, the curtailment of the Muscat shipments will give the northern juice man his first opportunity to dispose of his product at a profit. "When the growers understand what the administration is doing for them, they will realize that they have cause for rejoicing," McKinnay asserts.

Complete preparations have been made and growers and their families are looking forward to a most enjoyable afternoon.

### Three Women Hurt As Auto Overturns

Three women were brought to the Howard Memorial Hospital last Thursday afternoon for treatment after the wreck of their car near the rock crusher, seven miles south of Willits.

They were Mrs. C. D. Freeman and her daughter, Velma, age 16, and Edna Hays all of Humboldt county. They were enroute to Petaluma and lost control of their car, which turned over with them after running up a steep bank. None were seriously injured.

### Art Exhibit To Attract Willits

### NO NOISE MAKERS

To The Citizens of Willits:

Willits has a city ordinance against the shooting of fire crackers and other fireworks and noise makers of any kind. At the request of the Willits Frontier Days Celebration committee and the American Legion, this ordinance will be strictly enforced during the Frontier Days parade on July 2, 3, and 4 and also at the Frontier Days grounds during the celebration.

The committee asks that all parents inform their children of this rule. The reason for this is that many animals will be used during the parade and celebration that are not used to noise makers and fire crackers, and should same be allowed during the parade or celebration, it might cause some of the animals to run away and do considerable damage and injure many people. Please cooperate with the committee in charge of the celebration.

By order of the Board of City Trustees of the Town of Willits.

J. THOM, Marshal

### Special Train From Fort Bragg On July Fourth

Word has been received this week from our sister city, Fort Bragg, to the effect that a special train will leave there early in the morning of July 4, arriving in Willits in time to see the parade and return to Fort Bragg late in the evening. The round trip rate will be \$2.00. It is estimated that between 200 and 300 will make the trip to Willits.

The railroad company has been cooperating with the Willits Frontier Days committee and the local citizens and newspapers have been more than favorable to Willits this year and in the past. With the opening of a good road between Willits and Fort Bragg, closer friendship will result between the two cities.

### Santa Cruz Man Killed In Fall While Fishing

Wheeler K. Jensen, salesman, whose home was in Santa Cruz, was killed in a fall from a 300-foot cliff near Pleta last Saturday. Mr. Jensen was

### Daily Features At Frontier D

The following is a list of daily at the Frontier Days show: bucking horses, bucking bull, steer bull riding, shetland pony and horse chariot races, slow horse wild cow milking contest, para 10 a. m. cowboy and cowgirl fancy roping and trick riding, horse riding and many other he added features. Frontier Days a rodeo, but a real wild west featuring the sports of early form.

### Dog Races To Be Featured On

Dog races will be featured in Frontier Days celebration on July 4. Any child under the age of 10 either boy or girl, who owns a dog may enter this race. Three prizes will be awarded the winner. Bring your dog on a six foot leash on the 4th, and take part in the event. Also on the last day of celebration, 20 goats will be away free to the children who the same. This is one of the attractions to be seen at any All profits from Frontier Days are used for community betterment. This is your show and should have the support of every citizen living in this section.

### Frontier Days Parade At 10 A

The Frontier Days parade will be held each day during the celebration on July 2, 3 and 4. It is held each morning at 10 o'clock. The committee in charge has spent months trying to decide this important matter, and after giving consideration to all sides, has week officially decided to hold the parade in the mornings. This gives our many visitors time to see between the parade and opening celebration and also gives the committee at the grounds more time for better arrangement in putting on the show without delays of any kind.

### No Modern Float



# THE WILLITS NEWS

PUBLISHED ON THE REDWOOD HIGHWAY

WILLITS, MENDOCINO COUNTY, CALIFORNIA, FRIDAY, NOVEMBER 22, 1929

Established

## DRY AND COLD WEATHER HARD ON LIVESTOCK

The cold dry weather of the present month has broken all records in this part of the state. Not in the memory of the oldest inhabitant have we gone so long in the fall without rain. In addition, a number of thermometers have registered lower this year than ever before in Willits.

Reports of temperatures as low as 10 and 12 above zero have been received. The hills are absolutely bare of feed at the present time and stockmen are feeding their cattle and even sheep in some instances. Those who have no feed are in a bad way and it looks as if there was little hope for much of the stock in the hills.

The lack of rain has not seriously affected the Willits water supply as yet. At present the water level is about seven feet below the top of the dam. While this is lower than at any time last year, these are still plenty of water to supply the consumers here for many months to come. A comparatively light rainfall will fill the dam again to capacity. The figures on water consumption for Willits are interesting. The capacity of the dam is 872 acre feet of water. In 1928 the total consumption was about 113 acre feet, of which 84 acre feet was used from storage, the balance being used during the rainy season from the overflow. Figures for this year are not available, but will undoubtedly show a substantial increase in consumption over 1928, owing to more water being used for irrigation this past summer. For the past six weeks, the water level in the dam has remained about stationary, as the consumption is light at this time of the year and the inflow from the watershed just about equals what is taken out each day.

At this time a year ago we had received about four and one-half inches of rain, as compared to none this year worth mentioning.

## Insurance Case Will Be Tried In This County

The case of Leslie L. Burr vs. the Western States Life Insurance Company seems destined to be tried in the Mendocino county supreme court, according to Mr. Burr. He stated this week that when the case first came up the insurance company asked for a change of venue to San Francisco county, claiming that was the proper place for trial. This motion was denied by Judge Preston, and the company appealed from the ruling.

Later the defendants made application before the appellate court for an order prohibiting further proceedings in Mendocino county, pending the decision on the appeal. On Friday of

## Redwood Highway Will Be Rebuilt Near Calpella

SAN FRANCISCO, Nov. 15—Important highway improvements in southern Mendocino, northern Sonoma and Lake counties were announced today by the Redwood Empire Association. The work will be started within a comparatively few days and will be carried on during the winter months by the California Highway Commission. The expenditure of a large sum of state funds for this work is due to the concerted campaign of the Redwood Empire Association for the betterment of the system of highways in the district it serves.

Details of the highway improvements scheduled include scarifying, reshaping and adding road material to a five-mile section of the Redwood Highway from the forks of the Ukiah Tahoe road three miles north of Ukiah to Forsythe Creek.

This work includes the tearing up of high crown and narrow paved section of the highway, its widening to 20 feet, and the banking of curves.

It is planned to place an oiled surface on this section of highway early during the coming spring.

Similar work is to be started on a five-mile section of the road to Upper Lake commencing at a point approximately nine miles east of the junction with the Redwood Highway.

On the Redwood Highway between Hopland and Cloverdale 12 miles of roadway is to be reshaped and reinforced. This work will start from a point a mile south of Hopland and will be spotted between this point and Cloverdale.

It is anticipated that these latter highway improvements will improve traffic conditions over the Cloverdale grade pending the relocation of that section of highway along the east bank of the Russian River, which has been agreed upon by the State Department of Public Works and California Highway Commission as the result of a campaign inaugurated and carried to a successful conclusion by the Redwood Empire Association through its Nine Counties Highway Committee.

Other road improvements will be made on a two and a half mile section of highway between Santa Rosa and Sonoma. The major portion of this work will be in the vicinity of Belton with a few short sections to be treated south of Sonoma towards Shellville.

## R. Z. Andrews Has Ankle Broken Fighting Fire

## ARTICHOKE CROP TO BE HARVESTED HERE THIS WEEK

E. H. Matze received word yesterday afternoon from Oswald Wilson, agricultural agent for the Northwestern Pacific railroad, that an artichoke digging machine was on the way to Willits and would be here today, Friday. The machine will be delivered to John Rupe, who will dig his first carload of chokes as soon as possible.

This first carload is to be shipped to Stockton where they will be sold for seed purposes. Later on Mr. Rupe will dig the balance of the crop and expects to have about four more cars. Phillip Coll has dug and will ship at once to Santa Rosa, his crop of tubers. They have been sold to the Pabel Company at a price of \$15.00 per ton, f. o. b. Willits. If there are any other growers in the valley who wish to ship to Santa Rosa at this price they are requested to communicate with Mr. Matze at the Willits Mercantile Company at once.

The Willits Rotary Club had the pleasure of eating Jerusalem artichokes at the weekly luncheon at the Carson Inn this week. Mrs. Marsh, manager of the Inn, had substituted artichokes for potatoes on the menu and all of the members declared them to be delicious. With all the publicity now being given to this vegetable, it will not be surprising if the demand exceeds the supply for a few years.

## Royal Neighbors Bazaar Sat. Night

The big bazaar and entertainment planned by the Royal Neighbors of America will be held Saturday night of this week at the High School Auditorium.

The entertainment part of the program has been carefully arranged and will be well worth seeing. Mrs. McKenzie has been in charge of this committee and has a nice program ready. After the program dancing will be in order with good music.

The ladies have arranged a number of booths where it will be possible to buy some wonderful articles suitable for Christmas gifts.

A wedding is promised as part of the entertainment, but just who is to be married is not stated. There will be plenty to eat if you are hungry at any time during the evening.

## Lions Club Will Gather Old Clothes

The Willits Lions Club are holding their second annual old clothing and bedding drive. Any one having any old clothing, bedding, shoes and other

## Senator Nelson Enters Race For Lieut. Governor

Last Tuesday Senator H. C. of Eureka officially announced candidacy for lieutenant governor of the State of California, in a statement published in the Humboldt Times.

Senator Nelson has been a member of the legislature for twelve years and is probably known all over the state as in this section.

He is a graduate of Stanford University and since 1912 has taken an active part in the public affairs of Humboldt county and the state, having served as district attorney for Humboldt county for seven years, now serving his third term in the upper house of the legislature.

## M. W. A. Lecture Here Last Night

H. V. Reese, National Lecturer of the Modern Woodmen of America, attended the regular monthly of Redwood Highway Camp on Thursday evening. A class adjourned and a splendid banquet followed, which Mr. Reese gave on the growth and future of the order. Plans were completed at this meeting for the annual Modern Woodmen of America dance to be held in Willits on December 14th at the high school auditorium.

## Cooking School Uses Artichokes

Last Sunday and Wednesday, F. "Bill" Whitney and John Rupe of the Oakland Tribune this week during the Slope Dairy Show. During the show, artichokes in all forms were handed out to the man with receipt books telling how to serve and cook the tubers.

Many newspaper articles appeared this week with mention of artichokes being served at the school and Willits has a credit for furnishing the tubers.

## Will Decide Whether Pays For Deer Board And

Next Monday a meeting in Ukiah, sponsored by the Coast Conservation Commission, California State C. of C. will decide whether to pay for the problem of taking wild deer in this section.

According to the announcement, some folks think that the deer are becoming a burden to the farmers and stockmen, and that some legislation must be passed to get rid of the deer.



# The Willits News

PUBLISHED ON THE REDWOOD HIGHWAY

VOLUME XXXII

WILLITS, MENDOCINO COUNTY, CALIFORNIA, FRIDAY, NOVEMBER 13, 1936

## Another Slicker Puts Out Bad Checks

Jimmy Murphy, who gave his address as Covelo, pulled a good one on several of the local business houses the first of this week. After the bank closed last Saturday he issued two checks amounting to about \$25.00 but they were dated November 7, 1937. The checks were cashed and when they reached the bank at Covelo it was discovered that Murphy had no account in that bank.

It was then discovered that nothing could be done about the matter as the checks are not due for a year to come and in the meantime Murphy has plenty of time to open an account in that bank and make them good. However, no one expects this to happen.

Murphy told local people he was en route to Sacramento, and he may be there or some place else for all anyone here knows.

## Ukiah Man Goes to Sleep, Wrecks Car

Russell McMullen of Ukiah is in a hospital in that city as the result of an automobile accident last Saturday night near the old rock crusher, six miles south of Willits.

McMullen was returning to Ukiah from Willits and went to sleep at the wheel of his car, which ran off the grade and dropped about 40 feet, hitting a tree. McMullen, although badly cut and bruised, was able to climb back up to the highway, where he was picked up and taken to Ukiah.

## Praises Railroad

Editor Willits News:

It has been my experience that when I wanted to go some place, I would buy a ticket from one person, then hand it to another who would punch holes in it and say, car ahead, or train to your left.

I was called to San Francisco last week to bring my sick wife back to Willits. It was late in the afternoon when the doctors at the U. C. Hospital told me it would be all right, but said "she must lay flat on the trip." I went to the N. W. P. office at the Ferry Building. There a lady asked, "What can I do for you?" I started to tell her but had only told a part of what I thought necessary when she said: "I think it can be arranged." She took up the phone and in a very short time came and

## COUNTY HAD 243 FOREST FIRES THIS YEAR

The Mendocino County branch of the State Division of Forestry has compiled a report for the fire season of 1936. During the season there were a total of 243 fires reported in the protected area to which men were sent, either from Camp Northwestern or some of the sub camps, and a rough estimate places the number of fires in the unprotected area at 125. This was by far the largest number of fires in this county during recent years.

Of the total number of fires in the protected area, 176 were classified as of incendiary origin, and in the unprotected area most of the fires were believed to be incendiary. The forestry officials estimate that 89.7 per cent of all our fires this year were caused, some of which were due to carelessness in leaving camp fires burning, throwing cigarette stubs in dry grass along the roadsides and other similar forms of thoughtlessness.

The total fire loss in Mendocino county this year has been placed at \$59,832.50. In the protected area 15,004 acres of virgin timber, 8,919 acres of second growth timber, 41,669 acres of brush and 17,588 acres of grass were burned. The fire loss is estimated at \$5,492.40 to these lands and the loss of the improvements at \$8,096.07.

In the partial protected area the estimates are 30,000 acres of brush, and 10,000 acres of grass burned. This loss is placed at \$2500 and the improvements at \$5,000. These figures are very conservative and most people would about double them for the big fires east of Willits and in the Long Valley section are included in that group.

## Chance for Boys to Go to Annapolis or West Point

Congressman Clarence F. Lea announces a competitive examination to be held December 12, 1936, for the purpose of selecting candidates

## Armistice Day Observed Here By Legionnaires

Armistice Day was observed as a holiday by most of our business establishments, but there were no ceremonies this year at the cemeteries.

Willits Post, American Legion, sponsored a banquet, which was held at the W. I. Club hall that evening, to which the Auxiliary, the Spanish War veterans and some of our citizens were invited guests. There were more than 100 guests at the banquet.

Lee Roberts acted as toastmaster and Gus Wallach of Ukiah, Dr. R. A. Babcock, "Kay Dee" Reynolds and Roy Good all made timely remarks. During the banquet the high school orchestra, under the direction of Fred Sowash, played a number of patriotic numbers. A very nice tableaux was then acted by Lee Roberts as soldier and Betty Roberts as nurse, during which Miss Ileta Shimmis sang an appropriate selection.

The party then adjourned to the Willits Theater where a special picture was shown, following the regular show. The picture was entitled "Flashes of Action" and was taken by the U. S. Signal Corps during the World War in France.

## First Basketball Game of Season Here November 21

The Willits basketball team, which is sponsored by and wears the colors of the local Lions Club, will open the season in this district Saturday night, November 21, one week from tomorrow. The opening will consist of two games at the high school gymnasium. The first game will start about 7:30 p. m. and the second contest about 8:45.

The first game will be with the "Blues" team and the second game with the "Green" team from Camp Northwestern. Willits will be fortunate in having two such splendid games as openers, for both teams at the camp are playing fast ball and have a large group of fine players to draw material from.

Admission will be 35c for adults; 25c for students and 10c for children. All men from the camp will be given a special rate of 25c. This admission, of course, is for both games. Go get 'em, Willits.

## SAN FRANCISCO AUTO SHOW TO OPEN SAT.

Twenty-two automobile exhibits; fifteen trailer and twelve accessory exhibits!

That is the line-up for the twenty-first Pacific Annual Automobile Show which opens Saturday in the San Francisco Civic Auditorium, as presented by George A. Wahlgreen, manager of the show.

There will be more than 200 models on the floor, many of which will be seen for the first time by auto show goers, Wahlgreen pointed out.

Almost every passenger car model the industry has to offer will be on display in this year's show and the majority of the exhibitors have ready eight or more models in sedan, roadster and coupe types.

San Francisco's Auto Show this year is unusual in that most all new makes of cars have been introduced within the last few weeks and most of the other models will make their debut at the show. Among these are the Ford V-8, in which profound style changes have been made, and the new Willys 77.

In summarizing engineering and style trends for 1937, Wahlgreen said that precision in motor building and more advanced streamlining are the two predominating factors in the new models for 1937. Engineers have attained a perfection of engine performance this year which would have been impossible only a few years ago.

## Frank Clarke Again Wins First Place With Fine Fleeces

A dispatch from Dallas, Texas, a few days ago, announced that Frank C. Clarke, of Laytonville, had won the championship ribbon for first place in the International Sheep, Goat, Wool and Mohair Show. Mr. Clarke's entry was in the fine strictly combing class. He has won numerous other championships in wool shows all over the country during the past few years and is now generally recognized as the champion wool grower

## STATEMENT FROM BUD GARMAN

1. My name is Bud Garman and this statement is based on my memories.
2. I am familiar with Harris Quarry, which used to be called the Ridgewood Quarry.
3. My first knowledge of Harris Quarry is from my father, who told me that he worked for a company that built the road from Harris Quarry to the Ridgewood Ranch and that he worked at Harris Quarry, which was operating as a quarry since around 1936.
4. When I was young, the old Howard Forest CDF station was constructed. The picturesque rock walls in the old station were constructed with rock from Harris Quarry. At that time, the old Highway 101 was next to the old Howard Forest CDF station.
5. To the best of my memory, the new Highway 101 was constructed around 1955.
6. When Welch & Welch owned the quarry property, I remember that Welch & Welch constructed a spur to the rail line using rock from the quarry. Welch & Welch moved lumber up from the mill on the church property and shipped the lumber by hauling it to the underground tunnel. I believe that the rock for the underground tunnel came from Laughlin Peak Road. At that time, Laughlin Peak Road was approximately one-quarter of a mile past the quarry.
7. During the time that the church owned the quarry, I remember that if someone needed rock from the quarry, they contacted the church and asked for rock. There were no written contracts and everything was on the "honor system." I remember paying royalties to the church for removing rock from the quarry.
8. The same "red" colored rock that was taken out of the quarry during the time that the church owned the quarry, is also at the Ridgewood Ranch. I remember that the church had heavy equipment and saw mills on-site.
9. I operated the quarry from the early 1970's until Frank Dutra took over the quarry operation. During this time, I remember loading rip rap and base rock into Mendocino County trucks at the quarry site.
10. Sometime during the early 1980's the County required us to apply for a use permit to continue operating the quarry.

Date

3/19/13

  
BUD GARMAN



STATE OF CALIFORNIA--BUSINESS, TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, Governor

## DEPARTMENT OF TRANSPORTATION

DISTRICT 1, P.O. BOX 3700

EUREKA, CA 95502-3700

PHONE 707/443-6463

7) 445-6373



June 30, 1993

Rita Santos  
Northern Aggregates  
P.O. Box 166  
Willits, 95490

Dear Rita,

Attached are six pages of Materials and Research Department  
Test Reports for May and June of 1947.

We understand that you need to verify 1947's usage of the  
Ridgewood Summit Quarry (M-Q-9) and we trust that these documents  
will be helpful.

Sincerely,

DREW W. IRWIN  
District Materials Engineer

Attachments (6)

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT

Test No. **52527 B** Test No. **67-2417** Date Reported **May 28** 194 **7**  
 Lot No. \_\_\_\_\_ Field No. \_\_\_\_\_ Tested For \_\_\_\_\_  
 District **1** County **San Diego** Route **1** P. O. **02**  
 Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_  
 Limits \_\_\_\_\_  
 Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_  
 Sample of \_\_\_\_\_ Trade Name \_\_\_\_\_  
 Source of Supply \_\_\_\_\_ Sample From \_\_\_\_\_  
 Owner or Manufacturer \_\_\_\_\_ Quantity Represented \_\_\_\_\_  
 Date Sampled \_\_\_\_\_ 194 \_\_\_\_\_ Date Received \_\_\_\_\_ 194 \_\_\_\_\_  
 Sampled by \_\_\_\_\_ Title \_\_\_\_\_  
 For use in \_\_\_\_\_

GRADING ANALYSIS				TEST SPECIMENS								
Sieve	Spec. Limits Sought	As Received	Ret. Crushed	As Used By Wt. By Vol.	Spec. No.	A	B	C	D	E	F	Spec
1 1/4"					Temperature							
1 1/4"					Moisture							
1 1/4"					Stomach							
1 1/4"					Curve No.							
1 1/4"					Bit. Index							
1 1/4"					Bit. Ratio							
1 1/4"					Sp. Gr. Req.							
1 1/4"					STABILOMETER RESULTS							
1 1/4"					COHESIOMETER RESULTS							
1 1/4"					PERMEABILITY TO WATER							
1 1/4"					Swell (24 hrs)							
1 1/4"					Permeability							
1 1/4"					Settling							
1 1/4"					Swell ( )							
1 1/4"					Film Stripping (on coarse aggregate) _____ Mils							
1 1/4"					Optimum Bitumen Content or Recommended K value to _____ Egge. Cal. Per Sq. Yd. for 1" Compacted Surface =							
1 1/4"					Grading as used was obtained by combining samples as follows:							
1 1/4"					% By Wt.	% By Vol.	Test No.	Field No.				

1. Dist. Eng. or Bridge Div.
2. Materials & Research Dept.
3. Highway Const. Dept. - Mater. Dept.
4. High. Eng. - Mater. Dept.
5. Public Roads Administration
6. Dist. Mat'l. Eng.
7. Survey and Plans Dept.
8. Dept. File

T. E. STANTON  
Materials and Research Engineer

By \_\_\_\_\_  
Staff Materials and Research Engineer

DIST. MAT'L ENG.

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT

Date Reported May 27 1947  
Test No. 52527A Test No. 47-2417 Tested For \_\_\_\_\_  
Lot No. \_\_\_\_\_ Field No. \_\_\_\_\_ P. O. \_\_\_\_\_  
District 1 County Kear Route 1 Section DE  
Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_  
Limits \_\_\_\_\_  
Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_  
Sample of \_\_\_\_\_ Trade Name \_\_\_\_\_  
Source of Supply \_\_\_\_\_ Sample From \_\_\_\_\_  
Quantity Represented \_\_\_\_\_  
Date Sampled \_\_\_\_\_ 1947 Date Received \_\_\_\_\_ 1947  
Sampled by \_\_\_\_\_ Title \_\_\_\_\_  
For use in \_\_\_\_\_

## TEST RESULTS

GRADING ANALYSIS					TEST SPECIMENS							
Sieve	Spec. Limits Sought	As Received	As Crushed	As Used	Spec. No.	A	B	C	D	E	F	Spec.
				By Wt. By Vol.	Temperature							
1					Moisture							
1 1/2					Stripping							
1 3/4					Curves No.							
2					Bit. Index							
3					Bit Ratio							
3 3/4					Sp. Cr. Brn.							
4	100	94		100								
5	85-95	88		90								
6	60-80	75		67								
7	15-35	36		28								
8	5-20	32		17								
10	0-10	19		10								
20		13		6								
30		8		4								
40		4		2								
60		1		1								
100		1		1								
200	0-4	1		1								
Wash		1		1								
Bit.												

## STABILOMETER RESULTS

## COHESIONMETER RESULTS

## SUSCEPTIBILITY TO WATER

Surface Area 10.9 Sq. Ft. per D. \_\_\_\_\_  
Sp. Cr. Area 2.99 Curves 2.99  
Centrifuge Rotations Equivalent Values: \_\_\_\_\_  
K<sub>10</sub> 2.2 K<sub>20</sub> 2.2 K<sub>30</sub> 2.2  
Optimum Bitumen Content 4.7 or Oil Index Curves No. \_\_\_\_\_ to \_\_\_\_\_  
Grading as used was obtained by combining samples as follows:

% By Wt. % By Vol. Test No. Field No.  
\_\_\_\_\_

1. Dist. Eng. or Bridge Dept.
2. Materials & Research Dept.
3. Hdqrs. Const. Dept. - Maint. Dist.
4. Res. Engineer - Maint. Supl.
5. Public Works Administration
6. Dist. Maint. Eng.
7. Survey and Plans Dept.
8. Dept. File

DIST. MATL. ENG.

T. E. STANTON  
Materials and Research Engineer

By \_\_\_\_\_  
Senior Testing Engineer

Test No. 50527 Test No. 47-2417 Tested For \_\_\_\_\_ Date Reported May 29 1947  
 Lot No. \_\_\_\_\_ Field No. 210 & 877 P. O. \_\_\_\_\_  
 District 1 County San Route 1 Section 28  
 Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_  
 Limits 14 mi. E. Reynolds Cr. to Alameda Summit  
 Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_

Sample of	Rock	Trade Name	None of quarry
Source of Supply	250' Ls of 30s 471	Sample From	
	1-40m-1-E		
Owner or Manufacturer.		Quantity Represented	
Date Sampled	MAY 14 194 7	Date Received	MAY 12 194 7
Sampled by	J	Title	JEE
For use in	Con. br. base, base, core, and filler material		

GRADING ANALYSIS						TEST SPECIMENS							
Sieve	Specs. Limita Sought	As Received	Ret. Crushed	As Used		Spec. No.	A	B	C	D	E	F	Specs
				By Wt.	By Vol	Temperature							
1 1/2						Moisture							
1 1/4						Bitumen	100-150 pen paving asphalt						
1	100	100				Cores No.							
3/4	75-100	75		100		Sic. Index							
1/2				75		Bit. Ratio	4.1	4.7	5.1		6.7		
3/8	75-85	75		75		Sp. Cr. Briq.	2.50	2.50	2.50	check			
3						STABILOMETER RESULTS							
							30	30	37	10000			
						COHESIONMETER RESULTS							
16	12-14	12		12			151	151	151				
10	12-14	12		14		SUSCEPTIBILITY TO WATER							
50				9		Swell (74 hrs)					200	200	
100				5		Permeability					200	200	
200	1-4	4		4		Swelling							
Wash		3		3		Shrink (1/2)							
Flt.													
Surface Area						Sq. Ft. per Cu. Yd.							
Sp. Gr. Aggr. Fine						Coarse							
Contributed Materials Estimated Values						Final Grading for center experiment							
1.4						1.4							
1.4						1.4							
1.4						1.4							

[illegible][illegible]

REC'D JUL 2 1947

1. Dist. Eng. or Bridge Dept.
2. Materials & Research Dept.
3. Heavy Const. Dept. - Maint.
4. Res. Engineer - Maint. Supt.
5. Public Roads Administration
6. Dist. Mat'l Eng.
7. Surveys and Plans Dept.
8. Dist. File

T. E. STANTON

### Managers and Economic Expansion

**1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.**

### Staff Materials and Reports Required

DIST. MAT'L ENG.

**DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT**

TEST NO. **10**

**REPORT OF TESTS OF**

Field  
Sample No. **10**

C.T.B. Test No. **10**

Date Reported **9-2-05**

19

S.I.C. No. **10**

Oil Mix Test No. **10**

Comp. Mixed with Glass Aggregate Test No. **10**

District **10**

County **10**

Route **10**

Section **10**

Contract or M.O. No. **10**

Project No. **10**

Federal Aid Project No. **10**

Location **10**

Resident Engineer **10**

Contractor **10**

Material **10**

Location of Source **10**

Quantity for Manufacture **10**

Material for use in **10**

Sampled **10**

Submitted by **10**

Quantity Inspected **10**

Received **10**

Title **10**

GRAVIMETRIC ANALYSIS			SEALING RATIO TEST		
Size	Total % Passing	Specifications	PENETRATION Method	PERCENTAGE OF STANDARD	Specifications
3 inch				Compacted	Compacted and Sealed
2 1/2 "			0.1		
2 "			0.2		
1 1/2 "			0.3		
1 "			0.4		
3/4 "			0.5		
3/8 "			Moisture - Air	%	%
1/2 "			Moisture - Top 1"	%	%
No. 4			Dry Wt. Per Cu. Ft. Compacted	lbs.	lbs.
" 8			Expansion Drying Sealing	%	%
" 16			OTHER TESTS		
" 30			Comminuting Value		PSI
" 50			Liquid Limit		
" 100			Plasticity Index		
" 200			Soil Classification		
Wash 270			Specific Gravity - Pore #4	Est. #4	
5 Micron			Absorption		
1 Micron			Weight Per Cu. Ft.		
SOUNDNESS TEST			BATTLE TESTS		
Sodium Sulfate % Loss			Cracked		
CLASSIFICATION			Los Angeles 100 Rev.		
State % Chart			Los Angeles 500 Rev.		
			Wet Seal		

**SEVENTH**

**T. E. STANTON**



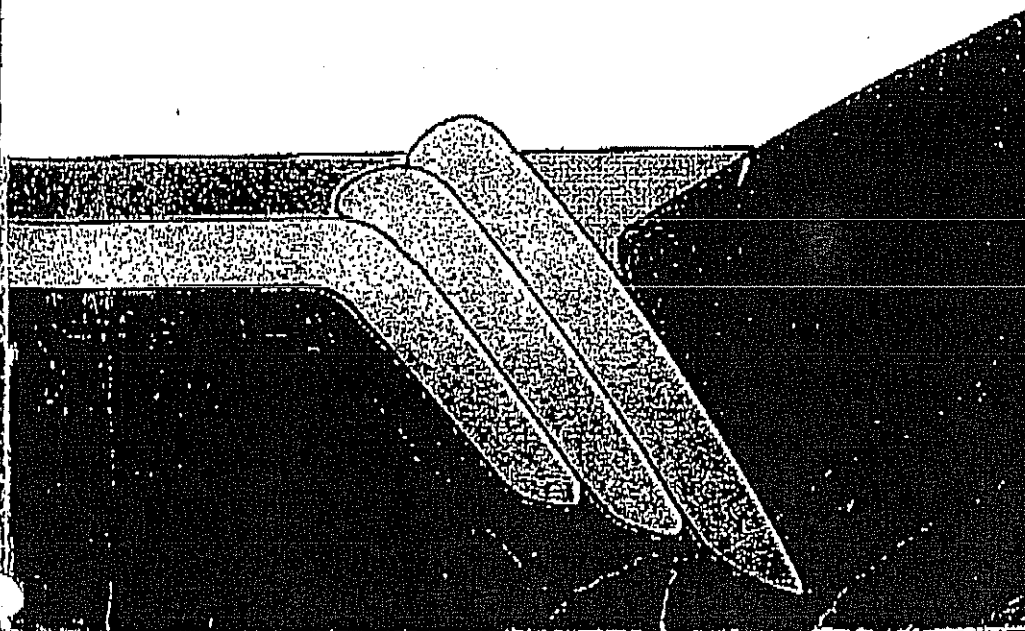


5.95

# ROADSIDE GEOLOGY

OF  
NORTHERN CALIFORNIA

David D. Alt  
Donald W. Hyndman





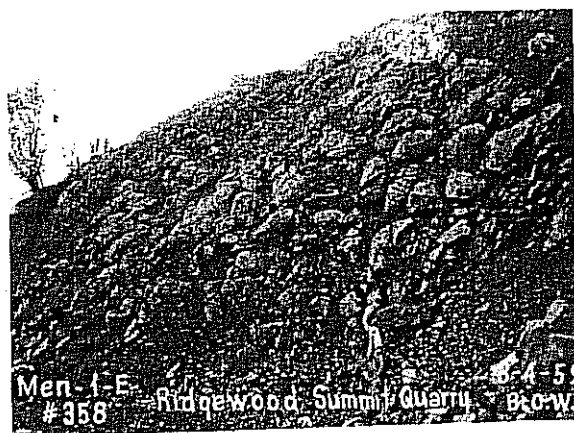
AGGREGATE BASE

AGGREGATE SUBBASE

ROCK SLOPE PROTECTION

PERMEABLE MATERIAL

11/50





1953



AN ORDINANCE PROVIDING FOR THE ESTABLISHING OF PROTECTIVE REGULATIONS OF USES OF LAND, THE LOCATIONS AND USES OF BUILDINGS, THE HEIGHT AND BULK OF BUILDINGS, THE OPEN SPACES ABOUT BUILDINGS AND THE DIMENSIONS AND AREAS OF BUILDING SITES WITHIN CERTAIN DISTRICTS; ESTABLISHING BUILDING SETBACK LINES; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF SUCH REGULATIONS, AND PRESCRIBING PENALTIES FOR VIOLATIONS THEREOF.

The Board of Supervisors of the County of Mendocino, do ordain as follows: (Page 1)

## SECTION 1. ADOPTION OF ZONING ENABLING PLAN

1.1 There is hereby adopted a zoning enabling plan for the County of Mendocino, State of California.

## SECTION 2. PURPOSE OF ADOPTION OF ZONING ENABLING PLAN

2.1 Said Zoning Enabling Plan is adopted to provide for the promotion and protection of the public health, safety, peace, morals, comfort, convenience, and general welfare, and for the accomplishment thereof is adopted, among other purposes for the following more particularly specified purposes, to wit:

(a) To assist in providing a definite plan of development for the County, and to guide, control and regulate the future growth of the County, in accordance with said Plan.

(b) To protect the character and the social and economic stability of agricultural, residential, commercial, industrial, recreational, and other areas within the County, and to assure the orderly and beneficial development of such areas.

(c) To obviate the menace to the public safety resulting from the location of buildings, and the uses thereof and of land, adjacent to highways which are a part of the Streets and Highways Plan of the Master Plan of the County, or which are important thoroughfares, in such manner as to cause interference with existing or prospective traffic movements on said highways.

(d) The Board of Supervisors finds that agriculture is a major industry of the County and that for the protection of agriculture and in order to prevent further encroachment upon it by incompatible uses of property and for the general welfare of the County as a whole, there are hereby created some classifications within which agriculture shall be encouraged to the exclusion of such other uses of land as may be in conflict therewith. Therefore, the provisions of this section shall be liberally interpreted insofar as they apply to agricultural pursuits and services and shall not be deemed or construed to permit interference with any normal accessory use conducted in conjunction therewith. It is the intention of this section to provide maximum protection to existing and future agricultural enterprises, and to encourage the highest and best use of the lands so classified for agricultural purposes, including the necessary residential, recreational, educational, public utilities and other similar uses necessary and incidental thereto.

## SECTION 3. EFFECT AND PURPOSE OF ZONING ENABLING PLAN

### 3.1 Effect of Zoning Enabling Plan.

The provisions of Part I of this Ordinance shall become effective when this Ordinance becomes effective. The zoning regulations of Part II may be applied in the future when requested or required in any portion of the County, as provided in Section 36.

### 3.2. The purpose of this Ordinance is:

First, to classify all of the unincorporated area of the County as an "A-1" District. No portions of such area may be included, under the provisions of this Ordinance, in any other District except by amendment hereof by ordinance of the Board of Supervisors. The amendment procedure is set forth in Section 36.

Second, to provide the means whereby any of the communities in the unincorporated area of the County may, upon the request of property owners affected, secure more detailed districting protection as provided in Part II, details of which may be developed in public discussion and advertised public hearings, with the assistance of the Planning Commission, and made eff-

active by ordinance adopted by the Board of Supervisors following additional advertised public hearings.

### 3.3. REGULATIONS FOR "A-1" DISTRICTS

3.31 The following regulations shall apply in all "A-1" Districts:

#### 3.32 Uses Permitted:

(a) All uses not otherwise prohibited by law are permitted, except that the establishment of any of the following shall not be permitted unless and until a use permit shall first have been secured in each case.

1. Airports, except those operated exclusive for Forest Service operations.
2. Commercial excavation of natural materials.
3. Cemetery, crematory, mausoleum, or other place for the burial or other disposal of the human dead.
4. Commercial distillation of bones, stock yard or slaughter houses, fat rendering.
5. Community or commercial use of areas for the dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse.
6. Drilling for and/or removal of oil, gas or other hydrocarbon substances.
7. Commercial feed lots, auction yards, and hog farms feeding hogs with garbage or refuse other than that produced on the premises.
8. Junk yards.
9. Manufacture of acid, cement, explosives, fertilizer, gas, glue, gypsum, lime or plaster of paris.
10. Surface mining, involving power equipment.
11. Smelting of copper, iron, tin, zinc or other ores.
12. Storage of inflammable fluid or fuel stored under pressure in a quantity greater than 500 gallons in any container less than 2 1/2 feet below the surface of the ground.
13. Outdoor theatre, auto race track, amusement parks, trailer court.
14. Sawmills.
15. Forest products manufacturing and processing plants..

### SECTION 4. DESIGNATION OF DISTRICTS

4.1 The several classes of General Districts hereby provided, and into which the County may be divided, are designated as follows:

Map Symbol	District Designation
U-F	Upland - Forestry
U-R	Upland - Recreation
U-A	Upland - Agriculture
A-2	Agricultural (Exclusive)
RE	Residential Estates
R-1	Residential - One Family
R-2	Residential - Two Family
R-3	Residential - Neighborhood Apartment
R-4	Residential - General Apt.
C-1	Commercial - Neighborhood
C-2	Commercial - Community
C-3	Commercial - General
CL	Commercial - Limited
M-1	Industrial - Light
M-2	Industrial - Heavy
ML	Industrial - Limited
PD	Planned Development
AV	Airport

4.2 In addition to the foregoing classes of districts, certain Combining Districts may be established and are designated as follows:

Map Symbol	District Designation
:A	Agriculture
:B	Building Site, Special
:S	Highway Frontage, Special
:H	Height, Special
:P	Parking, Special
:FP	Flood Plain

## SECTION 5. ESTABLISHMENT OF DISTRICTS

5.1 The aforesaid classes of districts and certain combinations thereof may be established by ordinance insofar as the designations, locations and boundaries thereof are set forth and indicated by written description, or on various sectional district maps which may hereafter be filed and adopted, and which show the designations, locations and boundaries of certain said districts. Said maps and all notations, references, data and other information shown thereon shall become a part of this Ordinance and subject thereto, and all such written descriptions and maps shall be designated as sub-sections of this Section (Section 5).

5.2 All of the unincorporated territory of Mendocino County constitutes "A-1" Districts, with the exception of the following described territory:

### ZONING MAPS:

5.3 Where uncertainty exists as to the boundaries of any of the aforesaid districts as described as aforesaid or as shown on said sectional district maps, the following rules shall apply:

- (a) Where such boundaries are indicated as approximately following street and alley lines, such street and alley lines shall be construed to be such boundaries.
- (b) Where such boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.
- (c) In unsubdivided property and where a district boundary divides a lot, the location of any such boundary, unless the same is indicated by dimensions shown upon said sectional district maps, shall be determined by the use of the scale appearing on such sectional district maps. The location of a district boundary may be adjusted within a single lot by application of the variance procedure (Section 24).
- (d) In case further uncertainty exists, the Planning Commission upon written application or upon its own motion, shall determine the location of such boundaries.

## SECTION 6. DEFINITIONS.

For the purpose of this Ordinance certain terms used herein are defined as follows:

6.01 All words used in the present tense shall include the future tense; all words in the plural number shall include the singular number, and all words in the singular number shall include the plural number, unless the natural construction of the wording indicates otherwise. The word "lot" includes the word "plot"; the word "building" includes the word "structure"; and the word "shall" is mandatory and not directory. The word "county" as used herein shall mean the County of Mendocino, State of California; the words "Board of Supervisors" shall mean the Board of Supervisors of the County of Mendocino, State of California; the words "planning commission" shall mean the County Planning Commission of the County of Mendocino, State of California; and the words "County Boundary" shall mean the boundary of the County of Mendocino State of California, and/or the boundary of any incorporated municipality within said County.

6.02 "Accessory Building": A detached subordinate building, the use of which is incidental to that of the main building on the same lot, or to the use of the land.

6.03 "Accessory Use": A use of building incidental or subordinate to the principal use or building located upon the same lot.

6.04 "Agency": An office or commercial establishment in which goods, material, or equipment is received for servicing, treatment or processing elsewhere.

6.05 "Light Agriculture":

- (a) Farms devoted to the hatching, raising, butchering or marketing on a small scale of chickens, turkeys, or other fowl or poultry and eggs, rabbits, fish, frogs, mink, chinchilla or other small animal farms of a similar nature, provided that not more than one hundred (100) turkeys per acre, in addition to brooding stock, shall be kept, fed, or maintained on a parcel of less than five (5) acres.

(b) Nurseries, greenhouses, orchards, aviaries, apiaries, or the raising of field crops, trees and tree crops, berry or bush crops, or vegetable, flower or herb gardening on a commercial scale.

(c) The grazing of cattle, horses, sheep, goats, hogs or other farm stock or animals on a commercial scale, including the supplementary feeding thereof. On parcels of less than three (3) acres, not more than two (2) such animals per acre shall be kept or maintained. On parcels of more than five (5) but less than ten (10) acres, not more than two (2) animals per acre shall be kept or maintained. For the grazing of sheep or goats the permissible number of animals per acre may be multiplied by three (3). In no event shall there be any limit to the permissible number of sheep which may be grazed per acre where such grazing operation is conducted on fields for the purpose of cleaning up unharvested crops and further where such grazing operation is not conducted for more than four (4) weeks in any six (6) month period. The provisions of this paragraph do not apply where any such animals are kept or maintained solely for the domestic use of the owner or occupant of a parcel of land and further, such provisions shall apply only to mature breeding stock, maintenance stock and similar farm stock, but shall apply to the offspring thereof where such offspring are being kept, fed and maintained solely for sale, marketing or slaughtering, at the earliest practical age or time, nor shall it apply to 4-H, Future Farmers or similar projects.

In all cases the permissible number of animals per acre shall be computed upon the basis of the nearest equivalent ratio.

(d) Farms or establishments for the selective or experimental breeding of cattle, horses, sheep, goats, hogs and other farm stock or animals and the raising and/or training of such animals and stock under the same conditions and provisions as set forth in paragraph (c) of this section.

(e) Community auction and sales yards.

(f) A temporary or permanent stand for the display and sale of the products of any permitted use, produced upon the premises upon which such stand is located, or upon lands owned or leased by the owner or occupant of such premises.

#### 6.06 "Semi-Heavy Agriculture":

(a) Any use defined under Light Agriculture without limitation as to number of animals.

(b) Grazing, feed yards, sales yards, commercial and riding academies.

(c) Hog ranches.

(d) Menageries, sheep and goat raising, animal hospitals, commercial dog kennels and dog breeding establishments and dairies.

(e) Fruit and vegetable packing and processing plants and similar uses.

(f) Any accessory agricultural purpose.

#### 6.07 "Heavy Agriculture":

(a) Garbage-fed hogs in commercial quantities.

(b) Commercial slaughter-houses.

6.08 "Alley": A public or permanent private way or lane less than forty (40) feet in width which affords a secondary means of access to abutting property.

6.09 "Apartment House": Any building or portion thereof which is designed and built for occupancy by three or more families.

6.10 "Basement": A space partly or wholly underground and having more than one-half its height, measured from its floor to its finished ceiling below the average adjoining grade.

If the finished floor level directly above a basement is more than six feet (6') above grade at any point, such basement shall be considered a story.

- 6.11 "Boarding House": A building, or portion thereof, other than a hotel, where regular meals for five (5) or more persons are provided for compensation or profit.
- 6.12 "Building Coverage": The land area covered by all buildings on a lot, including all projections except eaves.
- 6.13 "Building Height": The vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building to the highest point of the roof, ridge or parapet wall.
- 6.14 "Building Line": See Set-back Lines.
- 6.15 "Building Site": The land area occupied by or capable of being covered by all structures permissible under this Ordinance.
- 6.20 "Dwelling Group": Two or more detached, one or two family dwellings, other than a commercial tourist or motor court, located upon a building site, together with all open spaces as required by this Ordinance.
- 6.21 "Dwelling, One-Family": A building containing but one kitchen designed and/or used to house not more than one family, but including all necessary employees of such family.
- 6.22 "Dwelling, Two-Family": A building containing not more than two kitchens, designed and/or used to house not more than two families, living independently of each other, including all necessary employees of each such family.
- 6.23 "Dwelling, Multiple-Family": A building designed and/or used to house three or more families, living independently of each other, including all necessary employees of each such family.
- 6.24 "Family": One person living alone, or two or more persons related by blood, marriage, or legal adoption; or a group not exceeding five persons living together as a single house-keeping unit.
- 6.25 "Garage, Private": An accessory building or portion of a building, designed and/or used only for the shelter or storage of vehicles by the occupants of the dwelling, including covered parking space or car port.
- 6.26 "Garage, Commercial": A building, other than a private garage, used for the parking, repair, or servicing of motor vehicles.
- 6.27 "Garage, Parking": A public garage designed and/or used on a commercial basis for the storage only of vehicles.
- 6.28 "Guest Cottage": An accessory, detached dwelling without any kitchen facilities designed for and used to house transient visitors and nonpaying guests of the occupants of the main dwelling.
- 6.29 "Helicopter Port": Land improved and intended to be used for the landing and taking off of helicopters or vertical flying aircrafts.
- 6.30 "Home Occupation": Any use customarily carried on within a dwelling by the inhabitants thereof which use is incidental to the residential use of the dwelling, and which use:
- a. Is confined within the dwelling, and occupies not more than 25% of the floor space thereof.
  - b. Involves no sales of merchandise other than that produced on the premises, or merchandise directly related to, and incidental to the services offered.
  - c. Is carried on by the members of the family occupying the dwelling, with no other person employed.
  - d. Produces no evidence of its existence beyond the premises (except signs of not more than 1 sq. ft.), such as noise, smoke, odors, vibration, etc.
- 6.31 "Hotel": Any building or portions thereof containing six or more guest rooms used or intended or designed to be used, let or hired out to be occupied or which are occupied by six or more guests, whether the compensation for hire be paid directly or indirectly in money, goods, wares, merchandise, labor or otherwise and shall include hotels, lodging and rooming houses, dormitories, turkish baths, bachelor hotels, studio hotels, public and private clubs and any such building of any nature whatsoever so occupied, designed or intended to be so



occupied, except jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed or detained under legal restraint.

6.32 "Lodging House": A building, or portion thereof, other than a hotel, providing rooms or sleeping accommodations for five (5) or more persons for compensation, including rooming house.

6.33 "Lot": A parcel of land of record in the County under one ownership used or capable of being used under the regulations of this Ordinance, and including both the building site and all required yards and other open spaces as defined herein, and having a frontage or not less than 40 feet on a street as defined herein.

6.34 "Lot, Corner": A lot located at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of such streets. The shortest such street frontage shall constitute the front of the lot.

6.35 "Lot Width": The distance between side lot lines measured at the front yard building line.

6.36 "Non-Conforming Building": A building or structure or portion thereof which was designed, erected or structurally altered for a use which does not conform to the use regulations of the district in which it is located, and which lawfully existed prior to the effective date of such use regulations.

6.37 "Non-Conforming Use": A use which lawfully occupied a building or structure or was conducted upon open land prior to the effective date of the use regulations in the district in which it is located and with which regulations it does not comply.

6.38 "Outdoor Advertising Sign": Any card, cloth, paper, metal, painted, glass, wooden, plaster, stone or other sign of any kind or character whatsoever placed for outdoor advertising purposes on the ground or on any tree, wall, bush, rock, post, fence, building, structure or thing whatsoever. The term "placed" is used in the definitions of "outdoor advertising sign" and "outdoor advertising structure" shall include erecting, constructing, posting, painting, printing, tacking, mailing, gluing, sticking, carving, or otherwise fastening, affixing, or making visible in any manner whatsoever.

6.39 "Outdoor Advertising Structure": Any structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed, including also outdoor advertising statuary.

6.40 "Parking Lot": An area of land, a yard or other open space on a lot used for or designated for use by standing motor vehicles.

6.41 "Parking Space": Land or space privately-owned, covered or uncovered, laid out for, surfaced, and used or designated to be used by a standing motor vehicle, which space shall not be located in any front yard or side yard adjacent to a street.

6.42 "Service Station": A retail business establishment supplying gasoline and oil, and minor accessories and services for automobiles.

6.43 "Set-Back Line": A line established by this or other Ordinances to govern the placement of buildings with respect to streets and alleys.

6.44 "Servants' Quarters": A secondary dwelling or apartment without any kitchen facilities designed for and used only by persons or the families of persons regularly employed on the property.

6.45 "Stable, Commercial": A stable for horses to be let, hired, or used on a commercial basis.

6.46 "Stable, Private": A stable for horses to be used by the owners.

6.47 "Story": That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling

or roof above, if the finished floor level directly above a basement is more than six feet (6') above grade at any point, such basements shall be considered a story.

6.48 "Street": A public or permanent private way forty (40) feet or more in width which affords a primary means of access to property.

6.49 "Structural Alterations": Any change in the supporting members of a building such as bearing walls, columns, beams or girders and floor joists, ceiling joists or roof rafters.

6.50 "Tourist Court": A group of buildings designed for use by tourists or transients with living or sleeping rooms, garages, parking spaces and related facilities advertised or offered on a commercial basis, including an auto court, motor court and motor lodge.

6.51 "Trailer": A vehicle designed, equipped and/or used as a dwelling or for living or sleeping purposes.

6.52 "Trailer Court": A lot or parcel of land used or designed or intended to be used for the temporary accommodations of 2 or more trailers.

6.53 "Yards": Land unoccupied or unobstructed, except for such encroachments as may be permitted by this Ordinance, surrounding a building site.

6.54 "Yard, Front": A yard extending across the full width of the lot, measured between the street line (or the lot line connected to a street by legal access) and the nearest line of the main building or enclosed or covered porch. The front yard of a corner lot is the yard adjacent to the shorter street frontage.

6.55 "Yard, Rear": A yard extending between the side yards of the lot and measured between the rear line of the lot and the rear line of the main building or enclosed or covered porch nearest the rear line of the lot.

6.56 "Yard, Side": A yard on each side of the building extending from the front yard to the rear lot line, the width of each yard being measured between the side line of the lot and the nearest part of the main building or enclosed or covered porch.

#### SECTION 7. "U-F" UPLAND FORESTRY DISTRICTS.

Sec. 7.01 This district classification is intended to be applied in the mountainous and hilly upland areas of the county in which forestry and timber production is the desirable predominant use, in which agriculture and recreation are secondary uses, and in which protection of the watershed lands from fire, pollution, erosion and other detrimental effects is essential to the general welfare.

The following specific regulations and the general regulations set forth in Article 31 shall apply in all U-F Districts.

##### Sec. 7.02 Uses Permitted:

(a) Logging and sawmill operations, and accessory buildings and uses, when constructed and operated in compliance with existing laws and regulations.

(b) One-family dwellings, private farm buildings and farm labor housing, accessory buildings and uses and home occupations.

(c) Crop and tree farming, grazing, animal husbandry, dairies, nurseries and greenhouses for the propagation of plants.

(d) Publicly owned parks and playgrounds and public schools and buildings when located in conformance with the Master Plan.

(e) Temporary stands for retail sales of products produced on the premises.

##### Sec. 7.03 Uses Requiring Use Permits:

(a) Publicly owned parks and playgrounds and public schools and buildings except as noted in Sec. 7.02 (d).

(b) Private institutions, hospitals, churches, schools, nursery schools and day care centers.

(c) Utility substations, and major transmission lines and facilities designed for more than local service.

(d) Golf courses and country clubs, privately operated parks, riding clubs, gun clubs, resorts and recreation facilities.

(e) Commercial cattle and hog feed lots, fruit and vegetable packing and processing plants, wineries, veterinary hospital and kennels, airports, commercial excavation of natural materials, cemeteries, commercial or public garbage or waste material dumps.

Sec. 7.04 Minimum Lot Area: 40,000 square feet.

Sec. 7.05: Minimum Lot Width: 100 feet.

Sec. 7.06: Maximum Main Building Coverage: 25% of lot.

Sec. 7.07 Minimum Front Yards: 20 feet.

Sec. 7.08 Minimum Side Yards: 10 feet.

Sec. 7.09 Minimum Rear Yards: 20 feet.

Sec. 7.10 Minimum Vehicle Parking: One space for each dwelling unit and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 7.11 Maximum Building Height:  $2\frac{1}{2}$  stories but not to exceed 35 feet.

#### SECTION 8. "U-R" UPLAND RECREATION DISTRICTS.

Sec 8.01 This district classification is intended to be applied in the mountainous and hilly upland areas of the county in which recreation may become the desirable predominant use, in which light agriculture and forestry will be the secondary uses, and in which protection of the watershed lands and sources of water supply from fire, pollution, erosion and other detrimental effects is essential to the general welfare.

The following specific regulations and the general regulations set forth in Article 31 shall apply in all U-R Districts.

#### Sec. 8.02 Uses Permitted.

(a) One-family dwellings, private farm buildings and farm labor housing, accessory buildings and uses and home occupations.

(b) Crop and tree farming, grazing, animal husbandry, dairies, nurseries and greenhouses for the propagation of plants.

(c) Publicly owned parks and playgrounds and public schools and buildings when located in conformance with the Master Plan.

(e) Golf courses and country clubs, privately operated parks, riding clubs, gun clubs, resorts and recreation facilities.

(f) Boating, swimming, riding, fishing, and hunting structures and facilities.

#### Sec. 8.03 Uses Requiring Use Permits.

(a) Motels, trailer courts.

(b) Restaurants, food, drug and sporting goods stores, gasoline service stations and other similar retail and service establishments necessary to serve the public in recreation area.

(c) Sawmills.

(d) Publicly owned parks and playgrounds and public schools and buildings, except as noted in Sec. 9.02 (c).

(e) Private institutions, hospitals, churches, schools, nursery schools and day care centers.

(f) Utility substations, and major transmission lines and facilities designed for more than local service.

(g) Commercial cattle and hog feed lots, fruit and vegetable packing and processing plants, wineries, veterinary hospitals and kennels, airports, commercial excavation of natural materials, cemeteries, commercial or public garbage or waste material dumps.

#### Sec. 8.04 Minimum Lot Area: 40,000 square feet.

#### Sec. 8.05 Minimum Lot Width:

(a) 100 feet.

#### Sec. 8.06 Maximum Main Building Coverage:

(a) 25 percent.

#### Sec. 8.07 Minimum Front Yards: 20 feet, or as specified in Use Permit.

#### Sec. 8.08 Minimum Side Yards: 10 feet, or as specified in Use Permit.

#### Sec. 8.09 Minimum Rear Yard: 20 feet, or as specified in Use Permit.

Sec. 8.10 (a).

Sec. 8.10 Minimum Vehicle Parking: One space for each dwelling unit, or as specified in Use Permit.

Sec. 8.11 Maximum Building Height: 2-1/2 stories, but not to exceed 35 feet.

#### SECTION 9. "U-A" UPLAND AGRICULTURAL DISTRICTS.

Sec. 9.01 This district classification is intended to be applied in the mountainous and hilly upland areas of the county in which light agriculture and grazing are desirable predominant uses, in which non-intensive recreation and forestry are the secondary uses, and in which protection of the watershed lands from fire, pollution, erosion and other detrimental effects is essential to the general welfare.

The following specific regulations and the general regulations set forth in Article 31 shall apply in all U-A Districts.

Sec. 9.02 Uses Permitted:

(a) One-family dwellings, private farm buildings and farm labor housing, accessory buildings and uses and home occupations.

(b) Crop and tree farming, grazing, animal husbandry, dairies, nurseries and greenhouses for the propagation of plants.

(c) Publicly owned parks and playgrounds and public schools and buildings when located in conformance with the Master Plan.

(d) Temporary stands for retail sales of products produced on the premises.



(a) Publicly owned parks and playgrounds and public schools and buildings, except as noted in Set. 9.02 (c).

(b) Private institutions, hospitals, churches, schools, nursery schools and day care centers.

(c) Utility substations, and major transmission lines and facilities designed for more than local service.

(d) Golf courses and country clubs, privately operated parks, riding clubs, gun clubs, resorts and recreation facilities.

(e) Commercial cattle and hog feed lots, fruit and vegetable packing and processing plants, wineries, veterinary hospitals and kennels, airports, commercial excavation of natural materials, cemeteries, commercial or public garbage or waste material dumps.

(f) Sawmills.

Sec. 9.04 Minimum Lot Area: 40,000 square feet.

Sec. 9.05 Minimum Lot Width: 100 feet.

Sec. 9.06 Maximum Main Building Coverage: 25% of lot.

Sec. 9.07 Minimum Front Yards: 20 feet.

Sec. 9.08 Minimum Side Yards: 10 feet.

Sec. 9.09 Minimum Rear Yards: 20 feet.

Sec. 9.10 Minimum Vehicle Parking: One space for each dwelling unit, and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other permitted uses.

Sec. 9.11 Maximum Building Height: 2-1/2 stories but not to exceed 35 feet.

#### SECTION 10. "A-2" AGRICULTURAL DISTRICTS (EXCLUSIVE).

Sec. 10.01 This district classification is intended to be applied in the fertile valley and foothill areas of the county in which intensive agriculture is and should continue to be the predominant land use, and in which the protection of this use is essential to the general welfare.

The following specific regulations and the general regulations set forth in Article 31 shall apply in all A-2 Districts.

##### Sec. 10.02 Uses Permitted:

- (a) Semi-heavy agriculture, and all accessory uses including housing for employees and farm labor, but in no case shall new residential subdivisions be permitted.

##### Sec. 10.03 Uses Requiring Use Permits.

- (a) Heavy agriculture.
- (b) Churches, schools and public utility structures for public and quasi-public uses.
- (c) Residential uses in connection with a church, school or public utility.
- (d) County clubs and golf courses.
- (e) Signs appurtenant to any permitted use, as specified in use permit.

Sec. 10.04 Minimum Lot Area: 80,000 square feet.

Sec. 10.06 Maximum Main Building Coverage: 5% of lot.

Sec. 10.07 Minimum Front Yard: 25 feet.

Sec. 10.08 Minimum Side Yards: 10 feet.

Sec. 10.09 Minimum Rear Yards: 25 feet.

Sec. 10.10 Minimum Vehicle Parking: One space for each dwelling unit, and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 10.11 Maximum Building Height: 2-1/2 stories, but not to exceed 35 feet for residential buildings.

#### SECTION 11. RE, RESIDENTIAL ESTATE DISTRICT REGULATIONS

Sec. 11.01 This district classification is intended to be applied in areas of the county which are particularly suited to large lot developments for single-family homes. The following specific regulations and the general rules set forth in Article 31 shall apply in all RE Districts.

##### Sec. 11.02 Uses Permitted:

- (a) One-family dwellings, including servants quarters, private garages, guest cottages, accessory buildings and uses, and home occupations.
- (b) Crop and tree farming, grazing, nurseries and green houses for the propagation of plants, but not including the raising of rabbits, dogs, fowl, or other animals for commercial purposes, or the sale of any products at retail on the premises.
- (c) Private stables provided such stable shall not be closer than twenty-five (25) feet to any street or property line.
- (d) Publicly owned parks and playgrounds and public schools and buildings when placed in conformance with the Master Plan.

##### Sec. 11.03 Uses Requiring Use Permits:

- (a) Publicly owned parks and playgrounds and public schools and buildings, except as noted in Sec. 11.02 (d).

- (b) Sanitariums, rest homes, hospitals, churches, private schools, nursery schools, day care centers.
- (c) Golf courses and country clubs.
- (d) Utility substations and major transmission lines and facilities for other than local service.
- (e) Airports, helicopter ports, cemeteries.

Sec. 11.04 Minimum Height, Bulk and Space Requirements.

Sec. 11.05 Lot Area: 40,000 square feet.

Sec. 11.06 Lot Width: 100 feet.

Sec. 11.07 Maximum Building Coverage: 10 percent of lot area.

Sec. 11.08 Front Yard: 30 feet.

Sec. 11.09 Side Yard: 15 feet.

Sec. 11.10 Rear Yard: 30 feet.

Sec. 11.11 Automobile Parking: 1 space for each dwelling unit in residential buildings, and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 11.12 Building Height Limit: 2-1/2 stories, but not to exceed thirty-five feet (35').

#### SECTION 12. R-1, ONE FAMILY RESIDENCE DISTRICTS.

Sec. 12.01 This district classification is intended to be applied in areas where topography, access, utilities and public services make the land suitable and desirable for single family home development, and where the regulations of this classification will supply the necessary protection for such development.

The following specific regulations and the general rules set forth in Article 31 shall apply in all R-1 Districts.

Sec. 12.02 Uses Permitted:

- (a) One-Family dwellings, including private garages, accessory buildings and uses, and home occupations.
- (b) Crop and tree farming; but not including commercial nurseries, or the raising of any animals other than ordinary household pets and not more than twelve hens or rabbits per lot.
- (c) Publicly owned parks and playgrounds, and public schools and buildings when placed in conformance with the Master Plan.

Sec. 12.03 Uses Requiring Use Permits:

- (a) Publicly owned parks and playgrounds, and public schools and buildings, except as noted in Sec. 12.02 (c).
- (b) Sanitariums, rest homes, hospitals, churches, private schools, nursery schools and day care centers.
- (c) Golf courses and country clubs, airports, cemeteries, utility substations, and major transmission lines designed for more than local service.
- (d) Temporary real estate offices, and temporary stands for retail sales of agricultural products produced on the premises.

Sec. 12.04 Minimum Lot Area: as specified by the County Subdivision Ordinance, but in no case less than 6,000 square feet.

Sec. 12.05 Minimum Lot Width: 60 feet.

Sec. 12.06 Maximum Main Building Coverage: 35% of lot area.

Sec. 12.07 Minimum Front Yard: 20 feet.

Sec. 12.08 Minimum Side Yards: Side yards shall total not less than twenty (20) percent of the lot width, and no side yard may be less than six (6) feet.



Three (3) feet shall be added to each required side yard for each story above the first story of any building. The side yard on the street side of each corner lot shall not be less than ten (10) feet.

Sec. 12.09 Minimum Rear Yard: 20 feet.

Sec. 12.10 Minimum Automobile Parking: 1 space for each dwelling unit in a residential building, and space s for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 12.11 Building Height Limit: 2-1/2 stories, but not to exceed thirty-five (35) feet.

#### SECTION 13. R-2, TWO FAMILY RESIDENCE DISTRICTS,

Sec. 13.01 This district classification is intended to be applied in areas close to urban centers where all utilities are available and where housing demand justifies a density of two families per lot. The following specific regulations and the general rules set forth in Article 31 shall apply in all R-2 Districts.

Sec. 13.02 Uses Permitted:

- (a) Uses as permitted in R-1 Districts
- (b) Two-Family dwellings.

Sec. 13.03 Uses Requiring Use Permits:

- (a) Uses as permitted in R-1 Districts. (sec. 12.03):

Sec. 13.04 Minimum Height, Bulk and Space Requirements:

Sec. 13.05 Lot Area: 6,000 square feet.

Sec. 13.06 Lot Width: 60 feet.

Sec. 13.07 Maximum Main Building Coverage: 45% of lot area.

Sec. 13.08 Front Yard: 20 feet,

Sec. 13.09 Side Yards: Side yards shall total not less than twenty percent (20%) of the lot, width, and no side yard may be less than six (6) feet. Three (3) feet shall be added to each required side yard for each story above the first story of any building. The side on the street side of each corner lot shall be not less than ten (10) feet.

Sec. 13.10 Rear Yard: 20 feet.

Sec. 13.11 Automobile Parking: 1 space for each dwelling unit in residential buildings, and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 13.12 Building Height Limit: 2-1/2 stories, but not to exceed 35 feet.

#### SECTION 14. R-3, NEIGHBORHOOD APARTMENT DISTRICTS:

Sec. 14.01 This district classification is intended to be applied where it is reasonable to permit and protect garden type low density apartment developments. The following specific regulations and the general rules set forth in Article 31 shall apply in all R--3 Districts.

Sec. 14.02 Uses Permitted:

- (a) Uses permitted in the R-1 and R-2 Districts.
- (b) Parks, playgrounds, public and private schools, churches, and religious institutions, libraries, day care centers and public buildings.
- (c) Group dwellings, multiple-family dwellings, apartments.
- (d) Boarding and lodging houses.
- (e) Private garages, or parking lots uncovered and screened by suitable walls or planting, when operated by or in conjunction with a permitted use.

Sec. 14.03 Minimum Height, Bulk and Space Requirements.

Sec. 14.04 Lot Area. 6,000 square feet for each permitted use, not less than 1,500 square feet of lot area for each unit in multiple or apartment dwellings, and not less than 2,000 square feet for each unit in group dwellings.

Sec. 14.05 Lot Width: 60 feet.

Sec. 14.06 Maximum Building Coverage: 50 percent of lot area.

Sec. 14.07 Front Yard: 20 feet.

Sec. 14.08 Side Yards: Side yards shall total not less than twenty percent (20%) of the lot width, and no side yard may be less than six (6) feet. Three (3) feet shall be added to each required side yard for each story above the first story of any building. The side yard on the street side of each corner lot shall be not less than ten (10) feet.

Sec. 14.09 Rear Yards: 20 feet.

Sec. 14.10 Distances between Main Buildings on Same Lot: 12 feet.

(a) Group dwelling in a single row "side-to-side" series facing a side-lot line; side yards to the rear of buildings, eight (8) feet; side yards in front of buildings, fourteen (14) feet; distance between buildings, ten (10) feet.

(b) Group dwellings in a double row "side-to-side" series facing a central court; side yards to the rear of buildings, eight (8) feet; width of central court, twenty-four (24) feet; distance between buildings, ten (10) feet.

(c) The rear yard on a lot on which a dwelling group is constructed may be reduced to not less than twelve (12) feet. No building in a group dwelling development shall have the rear thereof abutting upon a street.

Sec. 14.11 Automobile Parking: One space for each dwelling unit in residential buildings, one (1) space for each two (2) guest rooms in each boarding or lodging house, and spaces for all vehicle parking, loading and unloading on the lot and clear of public streets and roads for other uses.

Sec. 14.12 Building Height Limit: 2-1/2 stories, but not to exceed 35 feet.

#### SECTION 15. R-4, GENERAL APARTMENT DISTRICTS.

Sec. 15.01 This district classification is intended to be applied in areas suitable for higher density residential uses, and for professional offices and institutional uses, with adequate provision for off-street parking. The following specific regulations and the general rules set forth in Article 31 shall apply in all R-4 Districts.

Sec. 15.02 Uses Permitted:

(a) Uses permitted in R-1, R-2, and R-3 Districts.

(b) Hotels, hospitals, sanitariums, rest homes, churches, private schools, nursery schools, day care centers, mortuaries, motels, trailer courts.

(c) Professional offices for doctors, dentists, architects, engineers, accountants, artists, authors, and attorneys; real estate and insurance offices, medical and dental clinics, and other uses which in the opinion of the Planning Commission, are similar to the foregoing.

(d) Clubs, lodges and fraternities, except those operated as a business or for profit.

(e) Incidental and accessory buildings and uses on the same lot with, and necessary for the operation of any permitted use.

(f) Advertising signs pertaining directly to a non-residential use on the property, and not to exceed one (1) sign of a maximum area of six (6) square feet for any such use.

Sec. 15.03 Minimum Height, Bulk and Space Requirements.

Sec. 15.04 Lot Area: 6,000 square feet for each permitted use.

Sec. 15.05 Lot Width: 60 feet.

Sec. 15.06 Maximum Building Coverage: 60 percent of lot area.

Sec. 15.07 Front Yard: 15 feet.

Sec. 15.08 Side Yard: Side yards shall total not less than twenty percent (20%) of the lot width, and no side yard may be less than six (6) feet. Three (3) feet shall be added to each required side yard for each story above the first story of any building. The side yard on the street side of each corner lot shall not be less than ten (10) feet.

Sec. 15.09 Rear Yard: 20 feet.

Sec. 15.10 Distances Between Main Buildings on Same Lot: Same as specified for R-3 Districts, (Sec. 14.1

Sec. 15.11. Automobile Parking:

- (a) For uses permitted in R-3 Districts: Same as required in R-3 Districts. (Sec. 14.11).
- (b) For additional non-residential uses permitted in R-4 Districts: One (1) Square foot of parking area for each square foot of floor area in main buildings.

Sec. 15.12 Loading Area: One loading area space for each non-residential use.

Sec. 15.13 Building Height Limit: Six (6) stories or sixty-five (65) feet, provided that all buildings must be included within inclined planes sloping inward at a ratio of one foot horizontally to two feet vertically, such planes beginning at the minimum yard lines at an elevation of twenty-five (25) feet above the average grade of the building site.

SECTION 16. C-1, NEIGHBORHOOD COMMERCIAL DISTRICTS.

Sec. 16.01 This district classification is intended to be applied to provide for small neighborhood shopping centers with low structures, off-street parking and attractive appearance to insure their providing a convenience without being detrimental to adjoining residential properties.

The following specific regulations and the general rules set forth in Article 31 shall apply in all C-1 Districts.

Sec. 16.02 Uses Permitted:

- (a) All uses permitted in "R" Districts, except that dwellings as defined herein may be permitted only upon the securing of a use permit.
- (b) The following retail business uses:
  - (1) Food stores, dairy products and bakery goods stores.
  - (2) Book stores and rental libraries.
  - (3) Drug stores, including soda fountains and food service.
  - (4) Other retail business uses which, in the opinion of the Planning Commission, are similar to the foregoing, and are necessary for neighborhood convenience shopping.
- (c) The following agencies and services:
  - (1) Laundry and cleaning agencies, pressing shops.
  - (2) Barber shops and beauty parlors.
  - (3) Repair shops for shoes, radios, TV and domestic appliances.
  - (4) Professional offices, studios and clinics.
  - (5) Gasoline service stations (exclusive of auto repairs), provided that all operations except that service with gasoline, oil, air and water be conducted within an enclosed building.
  - (6) Self-operated laundries.
  - (7) Other services and agencies which in the opinion of the Planning Commission are similar to the above, and are necessary neighborhood service facilities.
- (d) Public buildings, public utility substations.
- (e) Commercial parking lots and parking garages.
- (f) Incidental and accessory buildings and uses on the same lot with and necessary for the operation of any permitted use.
- (g) Exterior signs parallel to building walls to which attached, and pertaining to the business use conducted on the premises, provided that no such sign shall project more than two (2) feet from any wall, and that the aggregate area of all such signs for any such business use shall not exceed fifty (50) square feet, and that no such sign shall project above the roof ridge line.

Sec. 16.03 Minimum Height, Bulk and Space Requirements.

Sec. 16.04 Lot Area, Lot Width, Building Coverage: None.

Sec. 16.05 Front Yard: 15 feet.

Sec. 16.06 Side Yards: None except as required by Building Code or other regulations.

Sec. 16.07 Rear Yards: 15 feet.

Sec. 16.08 Automobile Parking: For uses permitted in R-4 Districts: Same as required in R-4 Districts (Sec. 15.18), and for all other uses: Private off-street parking space equal to the building coverage and adjacent to the building, except where an equivalent space is provided as a part of a public or community parking area designed to serve a block or district and which is approved as a suitable alternate by the Planning Commission.

Sec. 16.09 Loading Area: Twenty (20) foot alleys for loading and delivery purposes shall be provided adjacent to all lots to be used for commercial purposes. Ten (10) feet of the required rear yard may be included in such alleys.

Sec. 16.10 Building Height Limit: Two (2) stories, but not to exceed thirty-five (35) feet.

#### SECTION 17. C-2, COMMUNITY COMMERCIAL DISTRICTS.

Sec. 17.01 This district classification is intended to be applied where complete retail sales facilities are necessary for community service and convenience. The following specific regulations and the general rules set forth in Article 31 shall apply in all C-2 Districts.

Sec. 17.02 Uses Permitted:

(a) Uses permitted in "R" Districts, except that dwellings, as defined herein, may be permitted only on the securing of a use permit.

(b) Uses permitted in C-1 Districts, except that gasoline service stations shall be permitted only upon the securing of a use permit in each particular case.

(c) Retail stores and business or service enterprises of a character similar to the following:

(1) Banks, business offices, bowling alleys; food, drug and clothing stores.

(2) Business colleges, music and dancing studios.

(3) Blueprinting shops, photographic stores.

(4) Catering shops, cafes and restaurants.

(5) Art and antique shops, pawnshops.

(6) Hotels, theatres, auditoriums, lodge halls and social clubs.

(7) Newspapers and commercial printing shops.

(8) Mortuaries.

(9) Bakeries employing not more than 5 persons, full or part time, excluding sales personnel.

(d) Professional offices, studios and clinics.

(e) Public Utility offices and stations.

(f) Incidental storage and accessory uses, including repair operations and services, provided such uses shall be clearly incidental to the sale of produce at retail on the premises, shall not employ more than five (5) persons excluding sales personnel, and shall be so placed and constructed as not to be offensive or objectionable because of odor, dust, smoke, noise or vibration.

Sec. 17.03 Minimum Height, Bulk and Space Requirements.

Sec. 17.04 Lot Area, Width, Coverage, Front and Side Yard: None.

Sec. 17.05 Rear Yard: Twelve (12) feet where accessible from street, alley or parking lot for loading purposes. Building may project over rear yard area providing fourteen (14) feet clear vertical distance from ground level is maintained. Building Code and other regulations shall apply.

Sec. 17.06 Automobile Parking and Loading Areas: None.

Sec. 17.07 Building Height Limit: Six (6) stories, but not to exceed sixty-five (65) feet, and provided that buildings shall be confined within inclined planes sloping inward at ratio of one (1) foot horizontally to two (2) feet vertically, such planes beginning directly above property lines at an elevation of forty (40) feet above average ground grade of the lot.

SECTION 18. C-3, GENERAL COMMERCIAL DISTRICTS.

Sec. 18.01 This district classification is intended to be applied where general commercial facilities are necessary for public service and convenience.

The following specific regulations and the general rules set forth in Article 31 shall apply in all C-3 Districts.

Sec. 18.02 Uses Permitted:

(a) Uses permitted in "R" and C-2 Districts, except that dwelling as defined herein, may be permitted only upon the securing of a use permit.

(b) The following and other uses of a similar character:

(1) Gasoline service stations, provided that all operations except the servicing with gasoline, oil, air and water are carried on within a building.

(2) Commercial repair garages, in incidental service uses.

(3) Automobile sales and service.

(4) Used car lots.

(c) All other commercial uses except those which are specified in Article 21 and 22 as being permitted only in M-1 and M-2 Districts.

(d) Incidental storage and accessory uses, including repair operations and services, provided such uses shall be clearly incidental to the sale of products at retail on the premises, shall not employ more than five (5) persons excluding sales personnel, and shall be so placed and constructed as not to be offensive or objectionable because of odor, dust, smoke, noise or vibration.

Sec. 18.03 Minimum Height, Bulk and Space Requirements.

Sec. 18.04 Lot Area, Width, Coverage and Front Yard: None.

Sec. 18.05 Side Yards: None, except as required by Building Code or other regulations.

Sec. 18.06 Rear Yard: Same as specified for C-2 Districts.

Sec. 18.07 Building Height Limit: Same as specified for C-2 Districts.

SECTION 19. "CL", LIMITED COMMERCIAL DISTRICTS.

Sec. 19.01 This district classification is intended to be applied along main road and highway frontages at proper intervals and locations to provide necessary services for the traveling public in developments designed for safety, convenience and fitting appearance. The following specific regulations and the general rules set forth in Article 30 shall apply in all CL Districts.

Sec. 19.02 Uses Permitted:

(a) Uses permitted in R-3 Districts, according to R-3 District regulations.

Sec. 19.03 Uses Requiring Use Permits:

(a) Highway service types of commercial uses which, in the opinion of the Planning Commission, are of a character similar to the following: gasoline service stations, restaurants, motels, trailer courts, retail nursery sales, agricultural products sales.

(b) Outdoor advertising signs and structures which:

(1) Are located on or immediately adjacent to permitted commercial uses, and which pertain directly to the commercial use of the property.

(2) Do not exceed forty (40) square feet of total sign area for all such signs on or at any such property.

SECTION 20. M-1, LIGHT INDUSTRIAL DISTRICTS.

Sec. 20.01 The following specific regulations and the general rules set forth in Article 31 shall apply in all M-1 Districts.

Sec. 20.02 Uses Permitted:

(a) Uses permitted in C-3 Districts, except that dwellings, as defined herein, and hotels may be permitted only upon the securing of a use permit.

(c) The following uses of land and buildings, which shall be permitted only in M-1 and M-2 Districts.

- (1) Assembly and storage of goods, materials, liquids, and flammable or explosive matter or materials which create dust, odors, or fumes, including the following and similar uses:
  - a. Wholesale and storage warehouses.
  - b. Feed and fuel yards.
- (2) Manufacturing, processing, fabricating, refining, repairing, packaging or treatment of goods, material or produce by electric power, oil or gas (except operations involving fish fats and oils, bones and meat products, or similar substances commonly recognized as creating offensive conditions in the handling thereof), including the following and similar uses:
  - a. Dyeing and dry-cleaning plants.
  - b. Rug cleaning plants.
  - c. Laundries.
  - d. Veterinary hospitals.
  - e. Construction and material yards (except gravel, rock, and cement material yards).
- (3) The following when conducted within a building or enclosed within a solid wall or fence of a type approved by the Planning Commission, and not less than six (6) feet in height:
  - a. Body and fender repair shops, auto painting shops.
  - b. Cooperage and bottling works.
  - c. Sheet metal shops, welding shops.
  - d. Truck terminals.
  - e. Retail lumber yards, auto wrecking yard.

Sec. 20.03 Minimum Height, Bulk and Space Requirements.

Sec. 20.04 Lot Area, Width, Coverage and Front Yard: None.

Sec. 20.05 Side Yards: None, except as required by Building Code or other regulations.

Sec. 20.06 Rear Yard: Same as specified for C-2 Districts.

Sec. 20.07 Loading Area: Private off-street space for the handling of all materials and equipment.

Sec. 20.08 Building Height Limit: Same as specified for C-2 Districts.

#### SECTION 21. M-2, GENERAL INDUSTRIAL DISTRICT REGULATIONS

Sec 21.01 The following specific regulations and the general rules set forth in Article 31 shall apply in all M-2 Districts.

Sec. 21.02 Uses Permitted.

(a) Uses permitted in M-1 Districts, except that dwellings, as defined herein, and hotels may be permitted only upon the securing of a use permit.

(b) The following specific uses which shall be permitted only in M-2 Districts.

- (1) Wholesale lumber yards, lumber mills.
- (2) Pottery kilns and ceramic works of heavy industrial types.
- (3) Concrete batching plants.
- (4) Blacksmith shops, casting foundries.
- (5) The following when enclosed within a solid wall or fence not less than six (6) feet in height, and of a type approved by the Planning Commission:
  - a. Building material storage yard, contractors storage yard,
  - b. Junk yard.

Sec. 21.03 Uses Requiring Use Permits:

- (a) Lawful uses not otherwise provided for in this Ordinance.

- Sec. 21.04 Minimum Height, Bulk and Space Requirements.
- Sec. 21.05 Lot Area, Width, Coverage and Front Yard: None.
- Sec. 21.06 Side Yard: None except as required by Building Code or other regulations.
- Sec. 21.07 Rear Yard: None.
- Sec. 21.08 Loading Area: Private off-street space for the handling of all materials and equipment.
- Sec. 21.09 Building Height Limit: Same as specified for U-2 Districts.

SECTION 22. ML. LIMITED MANUFACTURING DISTRICTS.

Sec. 22.01 This district is designed to accommodate a limited group of business, professional, research and technical manufacturing uses which may have unusual requirements for space, light and air, and the operations of which are clean and quiet.

The following specific regulations and general rules set forth in Article 31 shall apply in all ML Districts.

Sec. 22.02 Uses Permitted:

- (a) Commercial and professional offices.
- (b) The following and similar uses from which noise, smoke and dust, odors and other such offensive features are confined to the premises of each such use.
  - (1) Research institutes and laboratories.
  - (2) Small electronic products manufacturing.
  - (3) Electrical products and instrument manufacturing.
  - (4) Bookbinding, printing and lithography.
  - (5) Cartography.
  - (6) Editorial and designing.
  - (7) Garment manufacturing, paper products manufacturing.
  - (8) Warehousing, fruit & vegetable freezing, processing, packing.

Sec. 22.03 Minimum Height, Bulk and Space Requirements.

Sec. 22.04 Lot Area: 10,000 square feet.

Sec. 22.05 Front Yard: 20 feet.

Sec. 22.06 Side Yards: 20 feet.

Sec. 22.07 Rear Yard: 20 feet.

Sec. 22.08 Automobile Parking: One (1) space for each three (3) persons regularly employed on the site.

Sec. 22.09 Loading Area: One (1) space, plus additional spaces as required to handle all trucking operations on the premises.

Sec. 22.10 Building Height Limit: Two (2) stories, but not to exceed forty (40) feet.

SECTION 23. PD. PLANNED DEVELOPMENT DISTRICTS.

Sec. 23.01 This district classification is intended to be applied on parcels of land, which, in the opinion of the Planning Commission, are suitable for, and of sufficient acreage to contain a planned community or development for which development plans have been submitted and approved.

Interim "PD" Districts may be established pending receipt and approval of development plans. No uses other than those permitted in R-1 Districts may be permitted in such districts.

The following specific regulations and the general rules set forth in Article 31 shall apply in all PD Districts, except that where conflict occurs the regulations specified in this Article shall apply.

Sec. 23.02 Application for the establishment of a "PD" District shall include an application for a use permit for all developments within the district, which use permit must be approved prior to establishment of the district. Such application for a use permit shall include the following:

(a) A map or maps showing:

1. Topography of the land, contour intervals as required by the Planning Commission.
2. Proposed street system and lot design.
3. Areas proposed to be dedicated or reserved for parks, parkways, playgrounds, school sites, public or quasi-public buildings and other such uses.
4. Areas proposed for commercial uses, off-street parking, multiple and single family dwellings, and all other uses proposed to be established within the district.
5. Proposed locations of buildings on the land.

(b) General elevations or perspective drawings of all proposed buildings and structures other than single-family residences.

(c) Other data and information which may be deemed necessary by the Planning Commission for proper consideration of the application.

Sec. 23.03 Uses Permitted:

(a) All uses permitted in "R", "C" and "M" Districts, subject to the securing of a use permit as specified in Section 23.02.

(b) Limited outdoor advertising as specified in each individual use permit.

Sec. 23.04 Building Height Limit: As specified in Use Permit.

Sec. 23.05 Lot Area Required. As specified in Use Permit.

Sec. 23.06 Front, Side and Rear Yards and Percentage of Site Coverage. As specified in Use Permit.

Sec. 23.07 Off-Street Parking Required.

(a) One (1) automobile parking space for each dwelling unit in residential buildings.

(b) A minimum of one (1) square foot of off-street parking space for each square foot of area to be occupied by commercial buildings, except that greater parking requirements may be required by the Planning Commission where such are deemed necessary, and specified in Use Permit.

Sec. 23.08 The regulations specified in this Article may be varied when such variance will result in improved design of the development and will permit desirable arrangement of structures in relation to parking areas, parks and parkways, pedestrian walks, and other such features.

SECTION 24. "AV" AIRPORT DISTRICTS.

Sec. 24.01 This district classification is intended to be applied on properties used, or planned to be used, as airports, and where special regulations are necessary for the protection of life and property.

The following specific regulations and the general rules set forth in Article 31 shall apply in all "AV" Districts.

Sec. 24.02 Uses Permitted:

- (a) Paved runways, taxiways, landing strips and aprons.
- (b) Aircraft storage, service and repair hangars.
- (c) Aircraft fueling facilities.
- (d) Passenger and freight terminal facilities.
- (e) Lighting radio and radar facilities.
- (f) Accessory structures and facilities including aircraft and aviation accessory sales.

Sec. 24.03 Uses Requiring Use Permits.

- (a) Industrial plants, operations and uses.
- (b) Commercial and service structures and uses.

Sec. 24.04 Maximum Height Limit: 35 feet.

SECTION 25. "A," AGRICULTURAL COMBINING DISTRICT REGULATIONS.

Sec. 25.01 The following regulations shall apply in all "R" Districts with which are combined "A" Districts in addition to the regulations hereinbefore specified, and shall be subject to



the provisions of Article 31, provided however, that if any of the regulations specified in this Article differ from any corresponding regulations specified in this Ordinance, for any District with which an "A" District is combined, then in such case the provision of this Article shall apply, and provided further, that parcels of land in any "R-1:A" Districts which contain five (5) or more acres and which are exempt from the Building Code regulations shall be subject to the "A-2" District regulations.

Sec. 25.02 Uses Permitted:

- (a) All uses permitted in the respective district with which the "A" District is combined.
- (b) Where water is available from a private well the land may not be subdivided into less than one (1) acre or if water is available from a mutual or utility company the land may be subdivided into parcels of 20,000 square feet (20,000') or greater as determined by the Mendocino County Health Department. Or if sanitation and public water is available the land may be subdivided into parcels not less than 6,000 square feet (6,000').
  - (1) Animal husbandry and livestock farming, provided that not more than one horse, one mule, one cow, or one steer shall be kept for each one (1) acre of area.
  - (2) Poultry and rabbit farming.
  - (3) Sale of agricultural products produced on the premises, provided that no commercial structure for such purpose, other than a temporary stand, shall be permitted.

Sec. 25.03 Uses Requiring Use Permits:

- (a) The following uses shall be permitted on lots of not less than 20,000 square feet.
  - (1) Veterinarian, dog and cat kennels, riding rings, retail nursery sales, wineries.
  - (2) Veterinary Hospital
  - (3) Retail sales of nursery products.

Sec. 25.04 Special Yards and Distances Between Buildings:

Barns, stables, chicken houses, and similar accessory buildings shall be not less than fifty (50) feet from the front property line; not less than ten (10) feet from any side property line; nor less than forty (40) feet from any dwelling.

SECTION 26. "B," SPECIAL BUILDING SITE COMBINING DISTRICTS

Sec. 26.01 In any district with which is combined any "B" District, the following regulations as specified for the respective "B" District shall apply in lieu of the respective regulations as to building site areas, depths of front yards, and widths of side yards which are hereinbefore specified for such districts with which is combined such "B" District; provided, however, that such application shall not be made in any case in which any of the following regulations are less than the corresponding regulations hereinbefore specified for such district with which is combined such "B" District.

Sec. 26.02 Special Regulations:

- (a) Building Site Area Required: Shall be indicated by a number following the "B" in the district designation, which number represents the required area in thousands of square feet.

In cases where the district designation contains an additional number enclosed in brackets, such number shall indicate the area in thousands of square feet to which the lot area may be reduced upon the recording of an approved final subdivision map or record of survey map.

- (b) Side Yards Required: Ten (10) percent of lot width on each side to a maximum requirement of sixteen (16) feet, but in no case less than eight (8) feet for interior side yards or ten (10) feet for side yards adjacent to streets on corner lots.

SECTION 27. "S" SPECIAL HIGHWAY FRONTAGE COMBINING DISTRICT.

Sec. 27.01 In any district with which is combined any "S" District, the regulations of this Article shall apply in addition to those hereinbefore specified for such district, provided

that if conflict in regulations occurs the regulation of this Article shall govern.

Sec. 27.02 Special Regulations:

- (a) A front yard of not less than twenty (20) feet shall be required for all uses, unless a greater front yard distance is required in the district with which the "S" District is combined.
- (b) Screen planting or fencing of permitted commercial uses of open land shall be required as a condition to the granting of a use permit in each particular case.
- (c) No outdoor advertising signs or structures shall be permitted except such signs or structures which pertain directly to permitted commercial uses; which are located on or immediately adjacent to such uses; and which do not exceed forty (40) square feet in area for all such signs or structures for any one such use.
- (d) Directional and informational signs of not more than six (6) square feet may be permitted upon the securing of a use permit in each particular case.
- (e) Outdoor advertising signs and structures may be permitted upon the securing of use permits in M-1 and M-2 districts with which are combined the "S" Districts.

SECTION 28. "H", SPECIAL HEIGHT COMBINING DISTRICT REGULATIONS.

Sec. 28.01 In any district with which is combined a "H" District, the following special height regulations shall apply in lieu of the height regulations specified for such other district, provided that wherever conflict in regulations occurs the more restrictive of such regulations shall govern.

Sec. 28.02 Special Height Regulations:

- (a) The special maximum height regulations shall be indicated by the symbol "H" followed by a numerical figure which figure shall represent the maximum permitted height in feet measured from the average elevation of the ground area to be occupied by a particular building or structure.

SECTION 29. "P", SPECIAL PARKING COMBINING DISTRICT REGULATIONS.

Sec. 29.01 In any District with which is combined a "P" District, the regulations of this Article shall apply in addition to those hereinbefore specified for such district, provided that if conflict in regulations occurs the regulations of this Article shall govern.

Sec. 29.02 Minimum Parking and Loading Area Requirements.

There shall be provided at the time of the erection of any main building or structure, or at the time of any main building or structure, is enlarged or increased in capacity, minimum off-street parking space with adequate provisions for ingress and egress by standard size automobiles as follows:

- (a) Private Space or Garages for Dwellings: There shall be at least one (1) permanently maintained parking space or a private garage space on the same lot with the main building or the enlargement of a main building, for each dwelling unit in the case of a new building or for each dwelling unit added to an existing building. Such parking space shall not be less than ten (10) feet wide, twenty (20) feet long, and seven (7) feet high. A private garage shall not have a capacity for more than two (2) passenger automobiles for each dwelling unit unless the lot whereon such garage is located has an area of two thousand (2,000) square feet for each parking space in such garage.
- (b) For Buildings Other than Dwellings: For a new building or structure or for the enlargement or increase in seating capacity, floor area or guest rooms of any existing main building or structure, there shall be at least one (1) permanently maintained parking space of not less than one hundred forty-four (144) square feet net area as follows:
  - (1) For churches, high school, college and university auditoriums, and for theaters, general auditoriums, stadiums and other similar places of assembly, at least one (1) parking space for every ten (10) seats in said public building or structure.

(2) For hospitals and welfare institutions, at least one (1) square foot of parking space for every one (1) square foot of ground area covered by said building.

(3) For hotels, apartment hotels and clubs, at least one (1) parking space for each of the first twenty (20) individual guest rooms or suites; one (1) additional parking space for every four (4) guest rooms or suites in excess of twenty (20) but not exceeding forty (40); and one (1) additional parking space for every six (6) guest rooms or suites in excess of forty (40) guest rooms or suites, provided in said building.

(4) For tourist courts, at least one (1) parking space for each individual sleeping or living unit.

(5) For business or commercial buildings or structures having a floor area of 1500 square feet or more, at least one (1) square foot of parking space for each square foot of floor area on the ground floor, and one (1) square foot of parking space for every two (2) square feet of floor space on the upper floors.

(6) For industrial buildings or structures having a floor area of two thousand (2000) square feet or more, at least one (1) parking space for each five (5) employees.

Sec. 29.03 Parking space as required above shall be on the same lot with main building or structure or located not more than three hundred (300) feet therefrom. To insure the perpetration of the parking space requirement herein, the owner and/or owners of the same lot or lots with the main building, buildings, or structure or structures, and the owner and/or owners of the parking space shall execute a declaration of restrictions and covenants covering said lot or lots and parking space on forms prescribed by the Board of Supervisors setting aside the required space for parking only, which restrictions and covenants may be waived only by the consent of the owner or owners of more than one-half (1/2) of the said lot or lots and parking space and the consent of the Board of Supervisors.

Sec. 29.04 Every hospital, institution, hotel, commercial or industrial building hereafter erected or established on a lot which abuts upon an alley or is surrounded on all sides by streets, shall have one (1) permanently maintained loading space of not less than ten (10) feet in width, twenty (20) feet in length, and fourteen (14) feet in height, for each four thousand (4000) square feet of lot area upon which said building is located; provided however, that not more than two (2) such spaces shall be required on any lot.

(a) Such area shall be paved with bituminous or concrete surfacing and shall have appropriate bumper guards where needed. Required front and side yards shall be landscaped with evergreen ground cover and properly maintained. The foregoing yard requirement may be waived in particular cases by action of the Board of Supervisors.

#### SECTION 30. "FP", SPECIAL FLOOD PLAIN COMBINING DISTRICT REGULATIONS.

Sec. 30.01 In any district with which is combined a "FP" District, the regulations of this Article shall apply in addition to those hereinbefore specified for such district, provided that if conflict in regulations occurs the regulations of this Article shall govern.

#### Sec. 30.02 Special Provisions.

(a) No residential buildings shall be permitted on ground lower than the elevation specified on the zoning map of the particular district, except upon the securing of a use permit in each particular case.

(b) Recreational commercial and industrial buildings and structures related directly to agriculture or the harvesting or storage of natural products within the district, and heights for such buildings and structures in excess of the maximum specified for the district, may be permitted upon the securing of a use permit in each particular case.

#### SECTION 31. GENERAL PROVISIONS AND EXCEPTIONS.

Sec. 31.01 The regulations specified in this Ordinance shall be subject to the following general provisions and exceptions:

Sec. 31.02. Rules Governing Use of Zoning Map and Symbols.

Where uncertainty exists as to the boundaries of any district shown on the Zoning Maps, the following rules shall apply:

- (a) Where such boundaries are indicated as approximately following property, street, or alley lines, such lines shall be construed to be such boundaries.
- (b) In unsubdivided property and where a district boundary divides a lot, the location of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scales appearing on the Zoning Maps.
- (c) A symbol indicating the classification of property on the Zoning Maps shall in each instance apply to the whole of the area within the district boundaries.
- (d) Where a public street, alley or parcel of land is officially vacated or abandoned, the regulations applicable to abutting properties shall apply equally to such vacated or abandoned street or alley.
- (e) Where one land ownership is divided by a district boundary, such boundary may be adjusted within such ownership to not more than double the area in either district by approval of a variance application.

Sec. 31.03 Regulations are Minimum:

In interpreting and applying the provisions of this Ordinance, unless otherwise stated, they shall be held to be the minimum requirements for the promotion and protection of the public safety, health, and the general welfare.

Sec. 31.04 Relationship to Other Regulations and to Private Restrictions:

- (a) Where conflict occurs between the regulations of this Ordinance and any Building Code or other regulations within the County the more restrictive of any such regulations shall apply.
- (b) It is not intended that this Ordinance shall interfere with or abrogate or annul any easements, covenants or other agreements now in effect, provided however, that where this Ordinance imposes a greater restriction than are imposed or required by other ordinances, rules or regulations, or by easements, covenants or agreements, the provisions of this Ordinance shall apply.

Sec. 31.05 Additional Uses Permitted:

The following accessory uses, in addition to those hereinbefore mentioned shall be permitted.

- (a) The renting of rooms and/or the providing of table board for not more than four (4) paying guests in a dwelling.
- (b) The operation of necessary service facilities and equipment in connection with schools, colleges, and other institutions when located on the side of the principal use.
- (c) Recreation, refreshment and service buildings in public parks, playgrounds and golf courses.
- (d) Airports and the commercial excavation of natural materials may be permitted in any district upon the securing of use permits in each case.

Sec. 31.06 Building Site, Areas and Easements.

- (a) Any lot or parcel of land in one ownership having an area sufficient for more than one dwelling may be used and a building permit may be issued for each use, provided the owner thereof who changes or intends to change any existing lot line or lines or to establish new lot lines files with the County Planning Commission a record of survey map showing the proposed lot lines and the lots and building site to be established in conformity with the regulations of the County. Any parcel of land existing prior to the date of adoption of this ordinance shall be considered a building site.
- (b) A detached garage or accessory building not exceeding one (1) story in height and without living quarters may occupy not more than fifty (50) percent of the area of a

required rear yard. In exception to the provision of this Section, a garage or other similar out building not exceeding fifteen (15) feet in height at the ridge may be built against the side and rear line, provided that said garage or similar out building is not less than seventy (70) feet from any street, and otherwise, shall observe a five (5) foot clear distance for side line and rear line. A garage or accessory building that is not attached to and made a part of the main building shall not be closer than eight (8) feet clear distance to the main building.

(c) In the case of a corner lot abutting upon two streets, no detached accessory building shall be erected, altered or moved so as to occupy any part of the front half of such lot.

Sec. 11.07 Yards:

(a) No yard or other open space provided about any building for the purpose of complying with the regulation of this Ordinance shall be considered as providing a yard or open space for any other building or structure.

(b) In any case where a Set-Back Line, Building Line, or Official Plan Line has been established, the required yards on the street frontages of lots shall be measured in accordance with such Lines and in no case shall the provisions of this Ordinance be construed as permitting any structure to extend beyond such Lines.

(c) Garages, car ports and other accessory buildings may be attached and have a common wall with the main building, or, when located as required by this Ordinance, may be connected thereto by a breezeway.

(d) In cases where side yards are to be computed on the basis of twenty (20) percent of the width of the lot under the terms of this Ordinance such side yard need exceed sixteen (16) feet in width unless required by other regulations.

(e) Cornices, eaves, canopies, fire places and other similar architectural features, but not including any flat wall or window surface, may extend into any required yard a distance not exceeding two (2) feet.

(f) Uncovered porches or stairways, fire escapes or landing places may extend into any required front or rear yard a distance not exceeding six (6) feet and into any required side yard a distance not exceeding one-half (1/2) the width of the side yard required for the lot.

(g) In any "R" District where fifty (50) percent or more of the building sites in any one block, or portion thereof in the same district, have been improved, with buildings, the required front yard shall be a depth equal to the average of the front yards of the improved building sites, to a maximum requirement of that specified for the district but in no case less than sixteen (16) feet.

(h) In case a dwelling is to be located so that the front or rear thereof faces any side lot line such dwelling shall be located not less than ten (10) feet from such lot line. The shorter street frontage of a corner lot shall be considered the front of the lot.

(i) In the case of a corner lot adjacent to a key lot in any "R" District, the set-back on the street side of the corner lot within twenty (20) feet of the side line of the key lot shall be equal to the front yard required on the key lot, and a clear five (5) foot rear yard shall be maintained on the corner lot.

(j) In "R" Districts fences in side and rear yards may not exceed six (6) feet in height, and fences and hedges may not exceed three feet, six inches (3'6") in front yards.

(k) In any full block of lots the front yards may be varied so that: the required yard depth is not reduced more than five (5) feet, the average of all lots equals the required yards depth, and corner lot yards are not reduced.

(1) Nothing contained in the general provisions shall be deemed to reduce special yard requirements as set forth in the regulations for any "R" or "B" District.

Sec. 31.08 Height Exceptions:

(a) Towers, spires, chimneys, machinery, penthouses, scenery lifts, cupolas, water tanks, radio aeriels, television antennas and similar architectural and utility structures and necessary mechanical appurtenances may be built and used to a height not more than fifteen (15) feet above the height limit established for the District in which the structures are located, provided, however, that no such architectural or utility structure in excess of the allowable building height shall be used for sleeping or eating quarters or for any commercial or advertising purposes.

SECTION 32. USE PERMITS.

Sec. 32.01 Use permits, which may be revocable, conditional or valid for a term period, may be issued by the Planning Commission for any of the uses or purposes for which such permits are required or permitted by the terms of this Ordinance. Guarantees to insure a compliance with the terms and conditions may be required by the Commission.

Sec. 32.02 Application and Fee

(a) Application for a use permit shall be made to the Planning Commission in writing on a form prescribed by the Commission and shall be accompanied by plans and elevations necessary to show details of the proposed use or building. Such application shall be accompanied by a fee of five dollars plus the cost of any legal advertising required, no part of which shall be returnable to the applicant.

Sec. 32.03 Public Hearing.

(a) The Planning Commission may hold such hearings thereon as it may deem to be necessary.

Sec. 32.04 Action by Planning Commission.

(a) The findings of the Planning Commission shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, <sup>or</sup> be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

Sec. 32.05 Revocation.

(a) In any case where the conditions to the granting of a use permit have not been, or are not, complied with, the Planning Commission shall give notice to the permittee of intention to revoke such permit at least ten (10) days prior to a hearing thereon. Following such hearing the Planning Commission may revoke such permit.

(b) In any case where a use permit has not been used within one (1) year after the date of granting thereof, then, without further action by the Planning Commission, the use permit granted shall be null and void.

Sec. 32.06 Appeal.

(a) Appeal from any finding of the Planning Commission may be made, in writing, to the Board of Supervisors within thirty (30) days from the date of the Commission's action.

SECTION 33. VARIANCES.

Sec. 33.01 Where practical difficulties, unnecessary hardships or results inconsistent with the purpose and intent of this Ordinance may result from the strict application of certain area, height, yard and space requirements there<sup>of</sup>, variances in such requirements may be granted as provided in this Section.

Sec. 33.02 Application and Fee.

(a) Application for a variance shall be made in writing on a form prescribed by the Planning Commission and shall be accompanied by a fee of ten dollars plus the cost of any legal advertising required, no part of which shall be returnable to the applicant, and by statement, plans, and other evidence showing:

- (1) That there are exceptional or extraordinary circumstances, or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings, and/or uses in the same District.
- (2) That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner.
- (3) That the granting of such application will not, under the circumstances of the particular case, materially effect, adversely, the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

Sec. 33.03 Public Hearings.

(a) A public hearing shall be held within sixty (60) days after filing of application, notice of which shall be given by one publication in a newspaper of general circulation in the County and/or by posting notice on the property involved or adjacent thereto at least ten (10) days prior to such a hearing.

Sec. 33.04 Action by Planning Commission.

(a) Following the public hearing the Planning Commission shall make a written finding of facts showing whether the qualifications under Sec. 33.02 (a) apply to the land, building or use for which variance is sought and whether such variance shall be in harmony with the general purpose of this Ordinance. Such written finding facts shall be submitted to the Board of Supervisors.

Sec. 33.05 Action by the Board of Supervisors.

(a) The Board of Supervisors shall consider the variance application within sixty (60) days after receipt of the Planning Commission's report and if the Board finds that the qualifications under Sec. 33.02 (a) apply to the land, building or use for which variance is sought and that such variance is in harmony with the general purposes of this Ordinance, said Board shall by resolution grant such variance. The Board of Supervisors may designate conditions and guarantees in connection with the variance to secure the purposes of this Ordinance.

Sec. 33.06 Revocation.

- (a) In any case where the conditions of granting of a variance have not, or are not, complied with, the Board of Supervisors shall give notice to the permittee of intention to revoke such variance at least ten (10) days prior to hearing thereon. After conclusion of the hearing the Board of Supervisors may revoke such variance.
- (b) In any case where a variance has not been used within one (1) year after the date of granting thereof, without further action by the Board of Supervisors, the variance granted shall be null and void.

SECTION 34. NON-CONFORMING USES.

Sec. 34.01 The lawful use of land existing at the time of the passage of this Ordinance, although such use does not conform to the provisions hereof, may be continued, provided however, that non-conforming business and industrial uses being operated on open land may be continued for a period not longer than five (5) years after this Ordinance becomes effective. If any non-conforming use is abandoned, or is discontinued for a period of six (6) months or more,



subsequent use of said land shall be in conformity with the provisions of this Ordinance.

Sec. 34.02 If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification.

Sec. 34.03 No existing building designed, arranged or intended for or devoted to a use not permitted under the regulations of this Ordinance for the District in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered, unless such use is changed to a use permitted under the regulations specified by this Ordinance for such District in which said building is located; provided however, that authorized maintenance shall be permitted not exceeding a total amount, during a period of five (5) years, of fifty (50) per cent of the assessed value of the building according to the assessment thereof by the Assessor of the County of Mendocino.

Sec. 34.04 If at any time any building in existence or maintained at the time of the adoption of this Ordinance which does not conform to the regulations for the District in which it is located shall be destroyed by fire, explosion, Act of God, or act of the public enemy to the extent of more than one-half the value thereof, then and without further action of the Board of Supervisors the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations of the District in which such land and/or buildings are located. For the purposes of this Ordinance, the value of any building shall be the estimated cost of the replacement of the building in kind, as determined by the County Engineer.

Sec. 34.05 The foregoing provisions shall also apply to non-conforming uses in Districts hereafter changed or established and any time limit for the suspension of a non-conforming use of land shall date from the date of the enactment of this Ordinance or any amendment of District boundaries.

Sec. 34.06 The owners or occupant of any land or building classified as a non-conforming use under the provisions of this Ordinance shall, upon notification by the Planning Commission, make application for a use and occupancy permit, and shall annually thereafter apply for renewal of said permit.

#### SECTION 35. AMENDMENTS, ALTERATIONS, CHANGES IN DISTRICTS.

Sec. 35.01 This Ordinance may be amended by changing the boundaries of Districts or by changing any other provisions thereof whenever the public necessity and convenience and the general welfare require such amendment by procedure set forth in this Article.

#### Sec. 35.02 Initiation.

An amendment may be initiated by:

- (a) the petition of one or more property owners affected by the proposed amendment, which petition shall be filed with the Planning Commission and shall be accompanied by a fee of twenty-five (25) dollars, plus the cost of any legal advertising required, no part of which shall be returnable to the petitioner, or by
- (b) Action by the Board of Supervisors.

#### Sec. 35.03 Public Hearings.

- (a) The Planning Commission shall hold public hearings as required by law on any proposed amendments, and shall give notice thereof by at least one publication in a newspaper of general circulation within the County at least ten (10) days prior to such hearings.
- (b) In case the proposed amendment consists of a change of the boundaries of any District so as to reclassify property from any District to any other District, the Planning Commission may give additional notice of the time and place of such hearings and of the purpose thereof by:

Posting public notices thereof not less than ten (10) days prior to the date of such hearings along the streets and roads upon which the property proposed to be



Sec. 35.04 Action by Planning Commission.

Following the aforesaid hearings, the Planning Commission shall submit a report of its findings and a summary of hearings, together with its recommendations with respect to the proposed amendment to the Board of Supervisors.

Sec. 35.05 Action by Board of Supervisors.

Upon receipt of such report from the Planning Commission, the Board of Supervisors shall set the matter for public hearing and shall give notice thereof by one publication in a newspaper of general circulation within the County at least ten (10) days prior to such hearing. Within ninety (90) days from the date of receipt of the Planning Commission's report, the Board of Supervisors may adopt the proposed amendment or any part thereof.

Upon the consent of the Planning Commission, any petition for an amendment may be withdrawn upon written application of a majority of all the persons who signed such petition. The Board of Supervisors may by resolution abandon any proceedings for an amendment initiated by its own action, provided that such abandonment may be made only when such proceedings are before such body provided that any hearing of which public notice has been given shall be held.

SECTION 36. ENFORCEMENT, LEGAL PROCEDURE, PENALTIES.

Sec. 36.01 All departments, officials and public employees of the County which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance and shall issue no such permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of the Ordinance.

The Building Inspector is hereby authorized to issue Stop Orders to prohibit further construction on buildings or structures involving violations of this ordinance, and such Stop Orders shall remain in effect until such violations are eliminated.

Sec. 36.02 It shall be the duty of the Building Inspector and of the officers of the County herein and/or otherwise charged by law with the enforcement of this Ordinance to enforce this Ordinance and all the provisions of the same.

Sec. 36.03 Any person, firm or corporation whether as principal, agent, employee or otherwise, violating any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Three Hundred (300) Dollars or by imprisonment in the County Jail for a term not exceeding three (3) months, or by both such fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every week during any portion of which any violation of this Ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

Sec. 36.04. Any building set up, erected, built, moved or maintained and/or any use of property contrary to the provisions of this Ordinance shall be and the same is hereby declared to be unlawful and a public nuisance, and the County Attorney shall immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building or use and restrain and enjoin any persons, firm or corporation from setting up, erecting, building moving or maintaining any such building or using any property contrary to the provisions of this Ordinance.

Sec. 36.05 All remedies provided for herein shall be cumulative and not exclusive.

SECTION 37. REPEALING.

Sec. 37.01 All ordinances and parts of ordinances of the County in conflict with this ordinance to the extent of such conflict and no further, are hereby repealed; provided, however, that

nothing herein contained shall be deemed to repeal or amend any ordinance of said County requiring a permit or license or both, to cover any business, trade or occupation.

SECTION 38. VALIDITY.

Sec. 38.01. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, sub-sections, sentences, clauses or phrases be declared invalid.

SECTION 39. REFERENCE.

Sec. 39.01 This Ordinance shall be known and cited as the "MENDOCINO COUNTY ZONING ORDINANCE."

SECTION 40. ENACTMENT.

Sec. 40.01 This Ordinance shall take effect and be in force thirty (30) days after date of its passage and approval.

Passed and adopted by the Board of Supervisors of the County of MENDOCINO on the 15th day of May, 1956, by the following vote:

AYES: Supervisors Hartley, Sawyers, Bainbridge, Poulos

NOES: Supervisor Scaramella ABSENT: Supervisors None

Attest: W.J. Broadbuss, County Clerk

By Earl B. Beck Deputy Clerk

Paul W. Poulos  
Chairman of the Board of Supervisors of  
the County of Mendocino, California

-----000-----

ORDINANCE NO. 360  
AN ORDINANCE AMENDING ORDINANCE NO. 245, ORDINANCES  
OF THE COUNTY OF MENDOCINO, PROVIDING ISSUANCE OF  
BUSINESS LICENSES FOR RESTAURANTS ONLY UPON APPROVAL  
OF THE COUNTY HEALTH DEPARTMENT

The Board of Supervisors of the County of Mendocino does ordain as follows:

SECTION ONE

A new sub-section is hereby added to Section 8 of Ordinance No. 245, an ordinance imposing county licenses and prescribing the method for making applications for the same, and is to be numbered 8A, and to read as follows:

"8A. It shall be the duty of the license collector to issue a license upon tender of the fees provided for in this Ordinance. Provided, however, that no license shall be issued to a restaurant business, without there first having been filed with said license collector a certificate of the health department of Mendocino County approving the issuance of such license. Only one certificate of approval per calendar year shall be required for each restaurant establishment, excepting where there is a transfer of a business within the calendar year for which a license was approved and issued."

SECTION TWO

This Ordinance shall take effect on the 21st day of Jun, 1956, and prior to the expiration of fifteen days from the passage hereof, shall be published once in the Ukiah Daily Journal, a newspaper printed and published in the County of Mendocino, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Paul W. Poulos  
CHAIRMAN of the Board of Supervisors of  
Mendocino County, California

ATTEST:

W.J. BROADBASS, County Clerk and ex-officio  
Clerk of the Board of Supervisors of Mendocino  
County, California

By Earl B. Beck Deputy Clerk

AGGREGATE BASE

AGGREGATE SUBBASE

ROCK SLOPE PROTECTION

PERMEABLE WALLING

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HARRIS QUARRY  
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Date: AUGUST 5, 1963

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Reviewed: GCR

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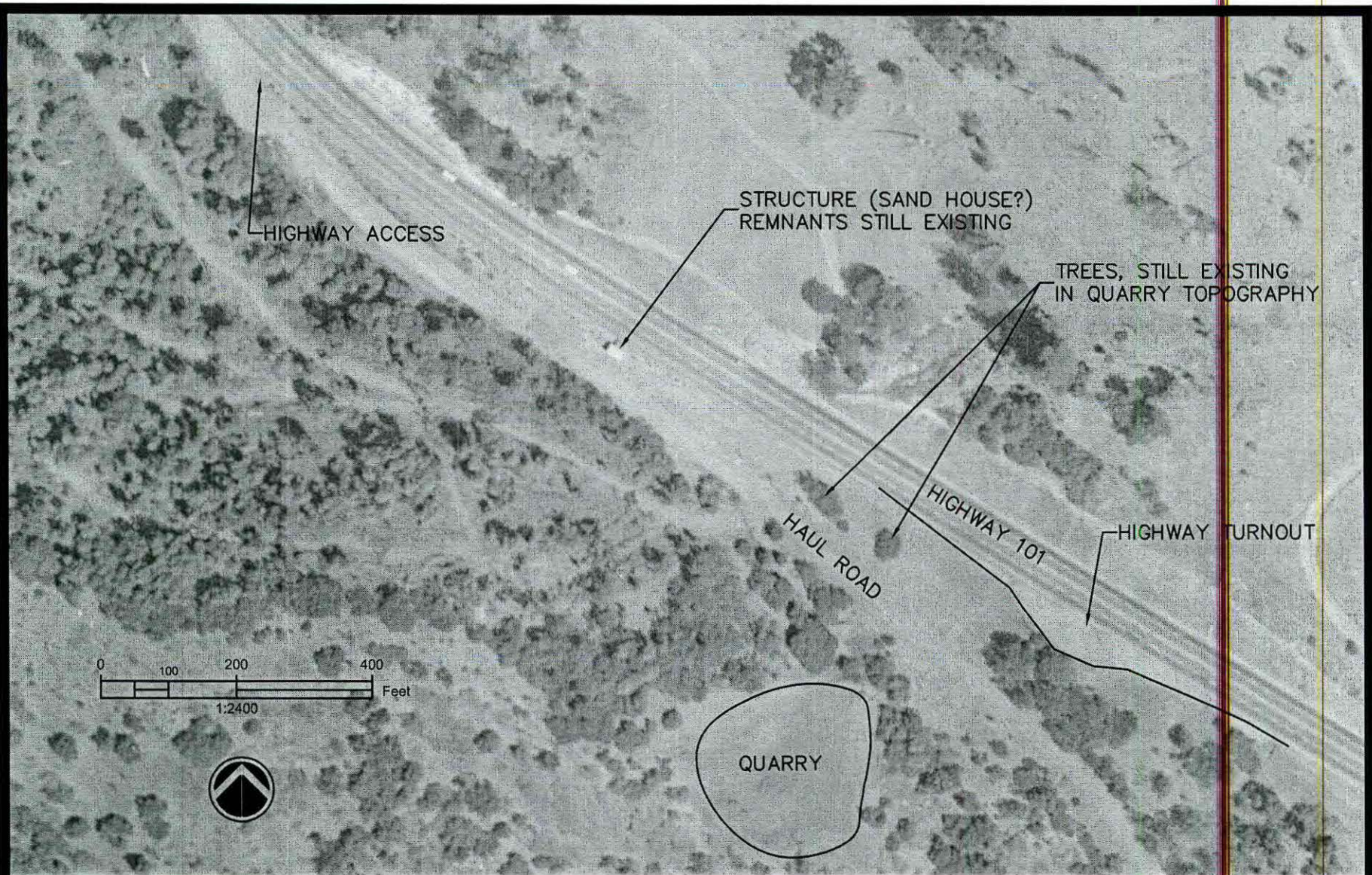
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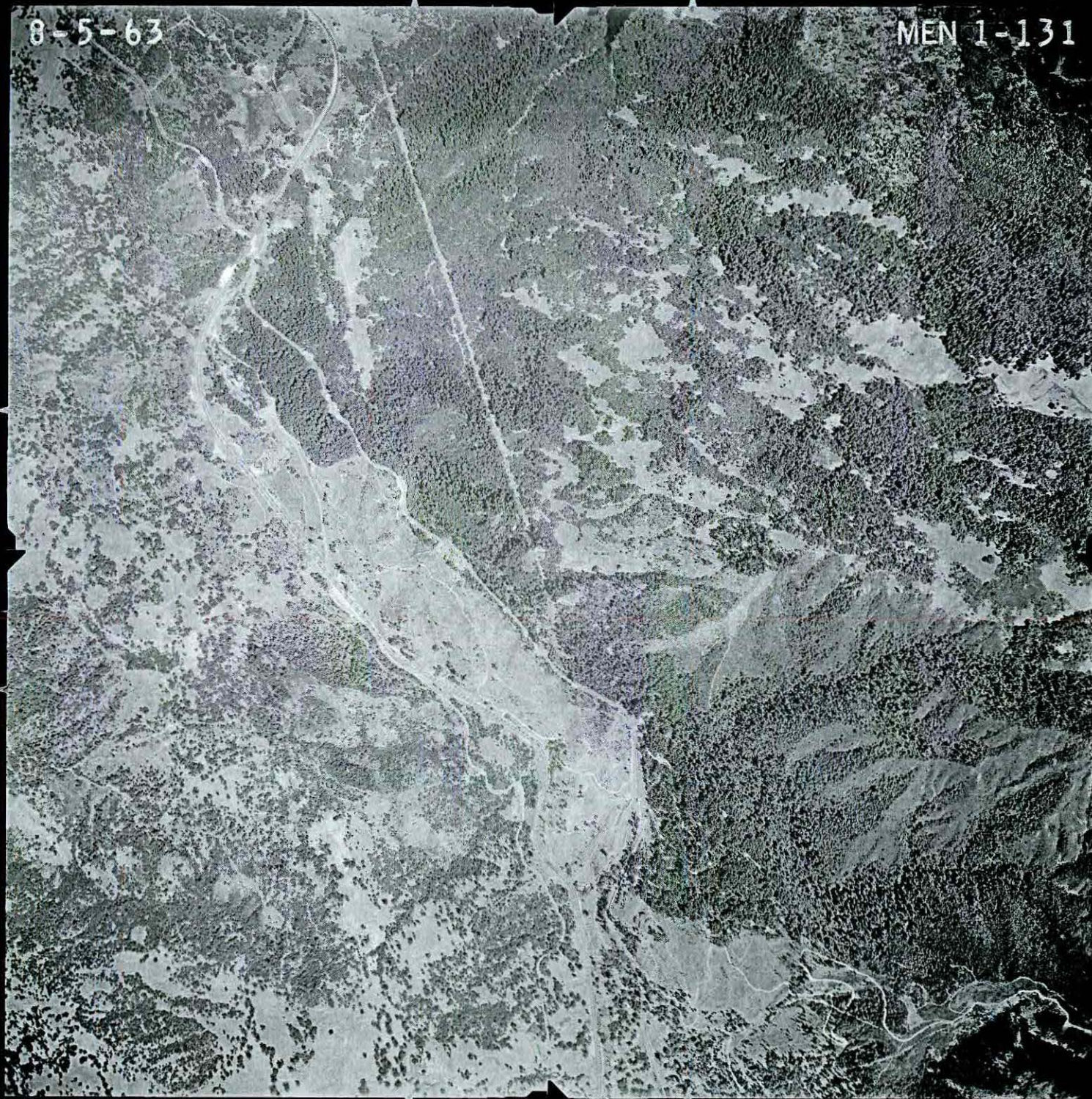
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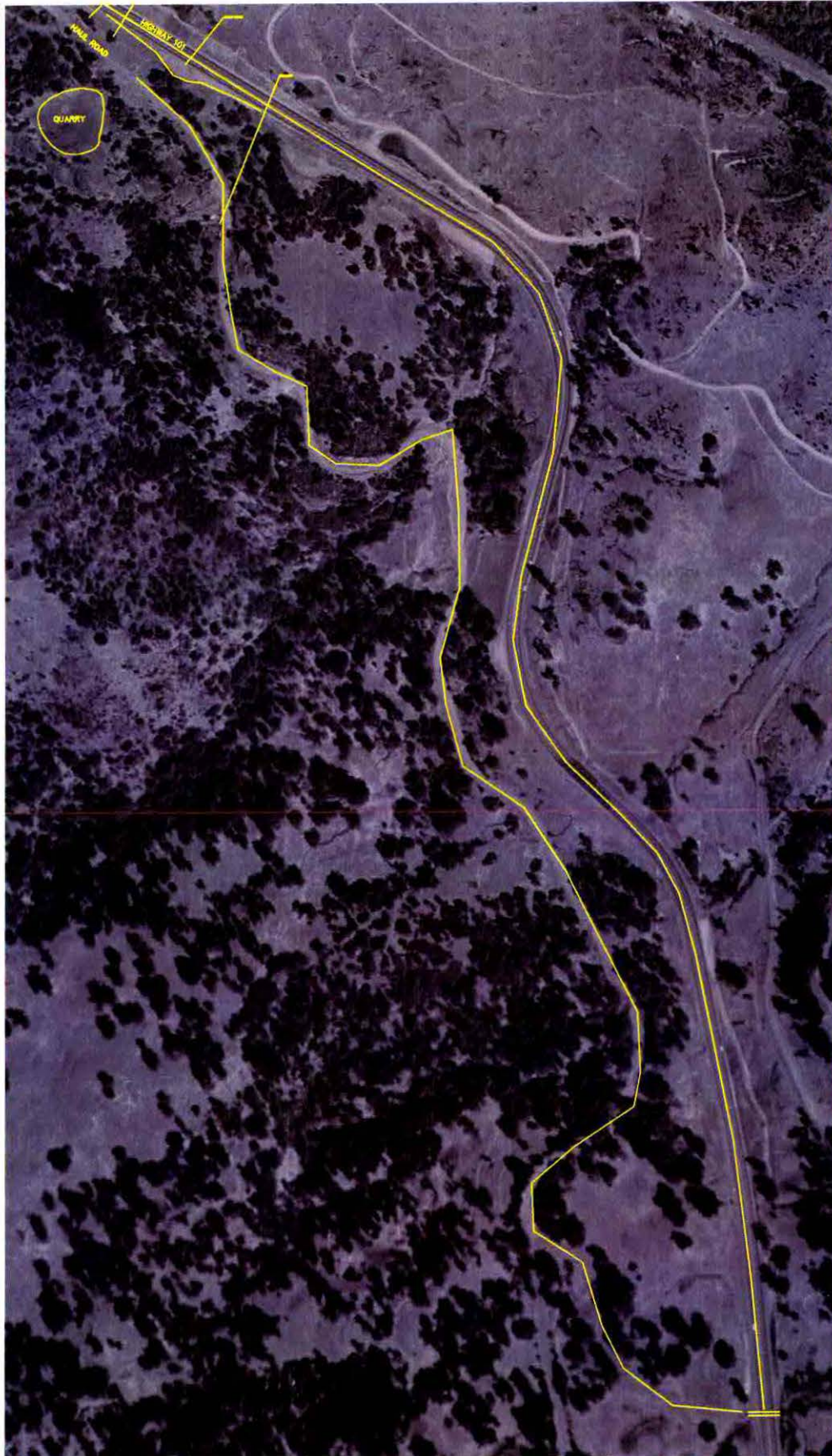
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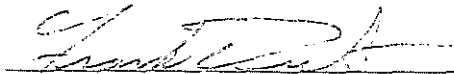


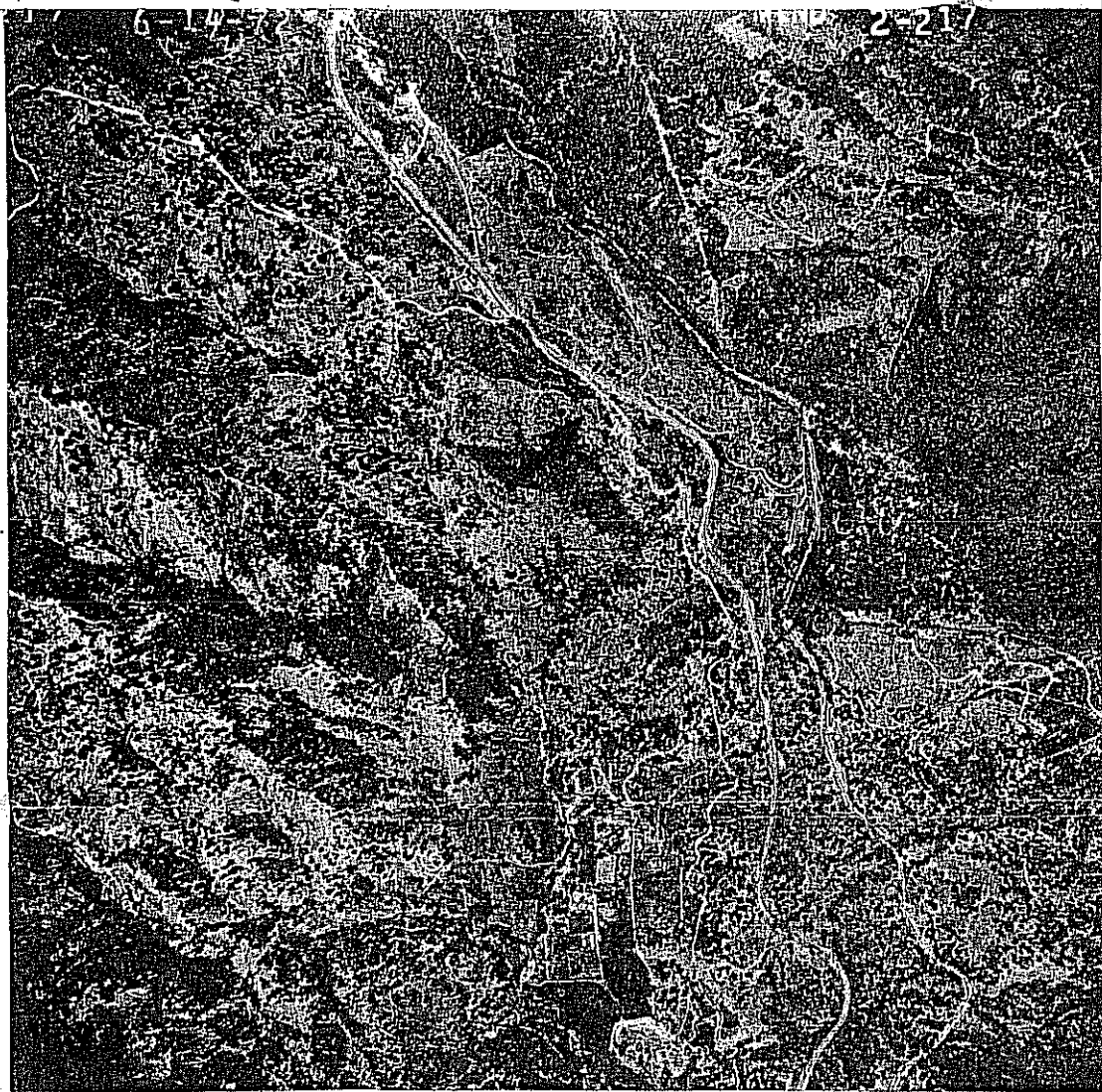


I, Frank Dutra, declare as follows:

1. I am a retired repair technician, previously working for Berglund Tractor Company in Willits, California, and as such I have personal knowledge of the facts set forth below. If called as a witness, could competently testify to them.
2. In 1968 I was sent by my employer to the Ridgewood Summit Quarry, now known as the Harris Quarry, located 7 miles south of Willits, California to repair a turbo charger on a D6 Caterpillar.
3. The vehicle was being used by the California Department of Forestry at the time for moving and loading materials mined from the site.
4. Mining at the site had begun many years earlier and the mining operations at the time appeared current and ongoing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on December 12, 2005, at WILLITS, California.

  
\_\_\_\_\_  
Frank Dutra



1972



## ORDINANCE NO. 962

## ORDINANCE AUTHORIZING INCREASE IN PROCESSING FEES FOR AGRICULTURAL PRESERVES

The Board of Supervisors of the County of Mendocino ordains as follows:

Section 20-101(a)11 of the Mendocino County Code is hereby amended to read as follows:

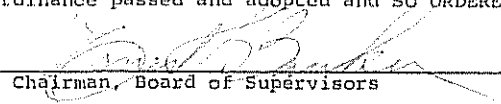
"The fees for the processing of agricultural preserves shall be as set forth in the schedule adopted by resolution of the Board of Supervisors."


PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 13th day of June, 1972, by the following vote on roll call:

AYES: Supervisors Barbero, Sawyers, Avila, Galletti, Banker  
NOES: None  
ABSENT: None

WHEREUPON, the Chairman declared this ordinance passed and adopted and SO ORDERED.

ATTEST: VIOLA N. RICHARDSON  
Clerk of said Board

  
Chairman, Board of Supervisors

By:   
Deputy Clerk

## ORDINANCE NO. 963

## ORDINANCE AMENDING REGULATIONS IN A-1 ZONE DISTRICT CLASSIFICATION

The Board of Supervisors of the County of Mendocino ordains as follows:

Article II of Chapter 20 of the Mendocino County Code is hereby amended to read as follows:

"ARTICLE II. 'A-1', UNCLASSIFIED DISTRICTS.

"SEC. 20-6. Declaration: 'A-1' Unclassified districts.

"This article, including Sections 20-2 through 20-7, contains protective provisions for A-1 Districts which will apply within all of the unincorporated areas of the County.

"SEC. 20-7. Regulations for 'A-1' Unclassified Districts.

"This district is intended to be a holding zone for those areas of the County where specific zoning based upon study has not yet been established. The following specific regulations shall apply in all 'A-1' districts.

"(A) USES PERMITTED NOT REQUIRING A USE PERMIT.

"In the absence of a use permit, only the following uses shall be permitted:

- "(1) One (1), two (2), and multiple family dwellings, including private garages, farm buildings, accessory buildings and uses, and home occupations.
- "(2) Semi-heavy agriculture as defined by Section 20-5 of this chapter.
- "(3) Temporary stands for the sale of food products produced on and off the premises, provided that the sale of such products is incidental and secondary to a major agricultural use of the property.
- "(4) Publicly owned parks and playgrounds, and public schools and buildings, when located in conformity with the Mendocino County General Plan and its elements.
- "(5) A mobile home used as a residence when occupied by the owner of the area or tract of land with all permitted accessory buildings and uses, provided, however, that no other mobile home or dwelling is located thereon.

- "(6) Underground utility installations and above-ground utility installations for local services; provided, however, that substations, generating plants, and gas holders must first be approved by the Planning Commission prior to construction, and the route of any proposed transmission line must be reviewed in detail with the Planning Commission prior to acquisition.
  - "(7) Management of lands and forests in the manner designed to provide protection from fire, insects, disease, or other catastrophe and the production or harvest of trees including tree farming.
  - "(8) Production of fish life or fish products for commercial purposes (hatcheries, ponds, etc.); provided, however, that commercial fishing ponds shall not be permitted except pursuant to a use permit.
  - "(9) Recreational uses, meaning the use of land for any of the following uses, and such additional uses as are determined by the Planning Commission to be essentially similar: walking, hiking, picnicking, camping (except as may be defined as a recreational vehicle park, travel trailer park, temporary trailer park, or organized camp as provided by law), swimming, boating, fishing, hunting, or other outdoor uses for which no structures or buildings are erected or required; provided, however, that such uses shall not include race courses for vehicles or motorcycles.
  - "(10) Minor divisions, parcel divisions, and subdivisions as comply with Chapter 17 of the County Code.
  - "(B) USES PERMITTED ONLY UPON THE SECURING OF A USE PERMIT.
- "All uses not specifically set forth in Section 20-7(A), supra, shall be permitted only upon the securing of a use permit in each case pursuant to the provisions and standards set forth in Sections 20-74 through 20-79.9 (Article XXXVI) of this chapter.
- "(C) The following regulations shall apply to all one (1) family dwellings, two (2) family dwellings, multiple family dwellings, and dwelling groups in A-1 districts:
- "(1) Minimum Lot Area: As specified by the County Land Division Chapter, but in no case less than six thousand (6,000) square feet.
  - "(2) Minimum Lot Width: Sixty feet (60').
  - "(3) Minimum Yards: Whenever the Board of Supervisors has adopted or otherwise established the right-of-way lines for freeways or other streets or roads, required setbacks or yards shall be measured from such lines. Wherever front yard setbacks or street-side yard setbacks of two (2) or more existing buildings in the same block and within two hundred feet (200') of a site of a proposed building are less than those herein specified, the average of such existing yard setbacks shall apply to the proposed building except as hereinbefore provided in this subsection.
    - "(a) Minimum Front Yard: Twenty feet (20') from the street lot line in recorded land divisions, and in all other cases the greater of the following setbacks shall apply: A setback of fifty feet (50') from center line of the street on which the building site faces, or a twenty-foot (20') setback from the street right-of-way line.
    - "(b) Minimum Side Yards: Side yards shall total not less than twenty per cent (20%) of the lot width, and no side yard may be less than six feet (6'); no side yard need exceed ten feet (10'). The side yard on the street side of a corner lot shall be not less than twenty feet (20').
    - "(c) Minimum Rear Yard: Twenty feet (20').
  - "(4) Off-Street Parking: In compliance with the standards set forth in Section 20-70, or in accordance with the terms of a use permit granted by the Planning Commission.
  - "(5) Building Height Limit: Two and one-half (2½) stories but not to exceed thirty-five feet (35'), or as permitted by a use permit granted by the Planning Commission.
- "(D) The following regulations shall apply to all commercial, industrial, and other nonresidential buildings in 'A-1' districts.
- "(1) Minimum Front Yard and Street Side Yards: None, except as may be required by the terms of a use permit granted by the Planning Commission and further excepting as follows:

"(a) No building shall be located closer than thirty feet (30') from the center line of any street on which the building site has frontage.

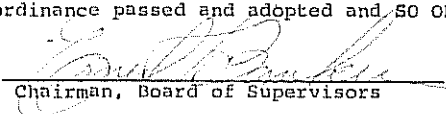
"(b) Wherever front yard setbacks or street side yard setbacks of two (2) or more existing buildings in the same block and within two hundred feet (200') of a site of a proposed building are less than those above specified, the average of such existing yard setbacks shall apply to the proposed building.

"(c) Wherever the Board of Supervisors has adopted or otherwise established the right-of-way lines for freeways, or other streets or roads, no buildings shall be constructed within such lines."

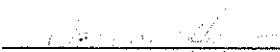
PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 20th day of June, 1972, by the following vote on roll call:

AYES: Supervisors Barbero, Sawyers, Avila, Galletti, Banker  
NOES: None  
ABSENT: None

WHEREUPON, the Chairman declared this ordinance passed and adopted and SO ORDERED.

  
Chairman, Board of Supervisors

ATTEST: VIOLA N. RICHARDSON  
Clerk of said Board

BY:   
Deputy Clerk

ORDINANCE NO. 964

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE I OF THE COUNTY OF MENDOCINO

The Board of Supervisors of the County of Mendocino does hereby ordain as follows:

SECTION 14-12 Additional Compensation, Subsection (d), is amended to read:

"(d) UNIFORM ALLOWANCE. Each member of the Sheriff's Department occupying a permanent full time position who is regularly required to wear a designated uniform in the performance of his duties shall be paid an allowance of twelve and 50/100 dollars (\$12.50) for each month of service, or major portion thereof, payable semi-annually. The provisions of this subsection shall not apply to the following positions or classifications: Sheriff, Cook, and all clerical personnel of the Civil Division."

SECTION 14-15 Vacation Leave with Pay, Subsection (e) is amended to read:

"(e) An employee who has worked three (3) years, or less, may accrue up to thirty (30) days of vacation; an employee who has worked eight (8) years, or less, may accrue up to forty (40) days of vacation; an employee who has worked fifteen (15) years, or less, may accrue up to forty (40) days of vacation; and thereafter an employee may accrue up to a total of fifty (50) days.

Every effort shall be made to arrange vacation schedules so that each employee will take as much vacation in each year as accrues to him in that year. In exceptional circumstances, such as cases of extreme emergency, compensation in lieu of unused vacation leave may be paid to an employee upon the approval of the Board of Supervisors, provided that the employee consents and the department head submits a request to said Board prior to the date that the employee's accrued vacation leave reaches the maximum allowed in this subsection. The amount of compensation paid to an employee shall be calculated at his current salary rate."

SECTION 14-18 Holidays, Subsection (b), is amended to read:

"When a holiday listed herein falls on a Sunday, the Monday following shall be designated as a paid holiday in lieu thereof. When a holiday listed herein falls on a Saturday, the preceding Friday shall be designated as a paid holiday in lieu thereof."

SECTION 14-19 Overtime, Subsection (b), is amended to read:

"(b) It is the policy of Mendocino County to avoid the necessity for overtime work whenever possible. When overtime work beyond the 40-hour week or 8-hour or normal work day is necessary to provide County service, such overtime, calculated to the nearest one-half (1/2) hour of time worked, shall be compensated for under one of the following provisions:

1. Paid Overtime: Paid overtime shall be compensated at the rate of one and one-half times the hourly equivalent of the employees regular monthly salary, or:

2. Compensatory Time Off: Compensatory time off, computed at the rate of one and one-half times the time worked, in lieu of paid overtime, may be granted by the concurrence of the employee and the department head concerned, provided, however, that the maximum accrual shall be forty (40) hours and provided further that any department may, on three (3) days' notice, require an employee to use any or all of the accrued compensatory time off.





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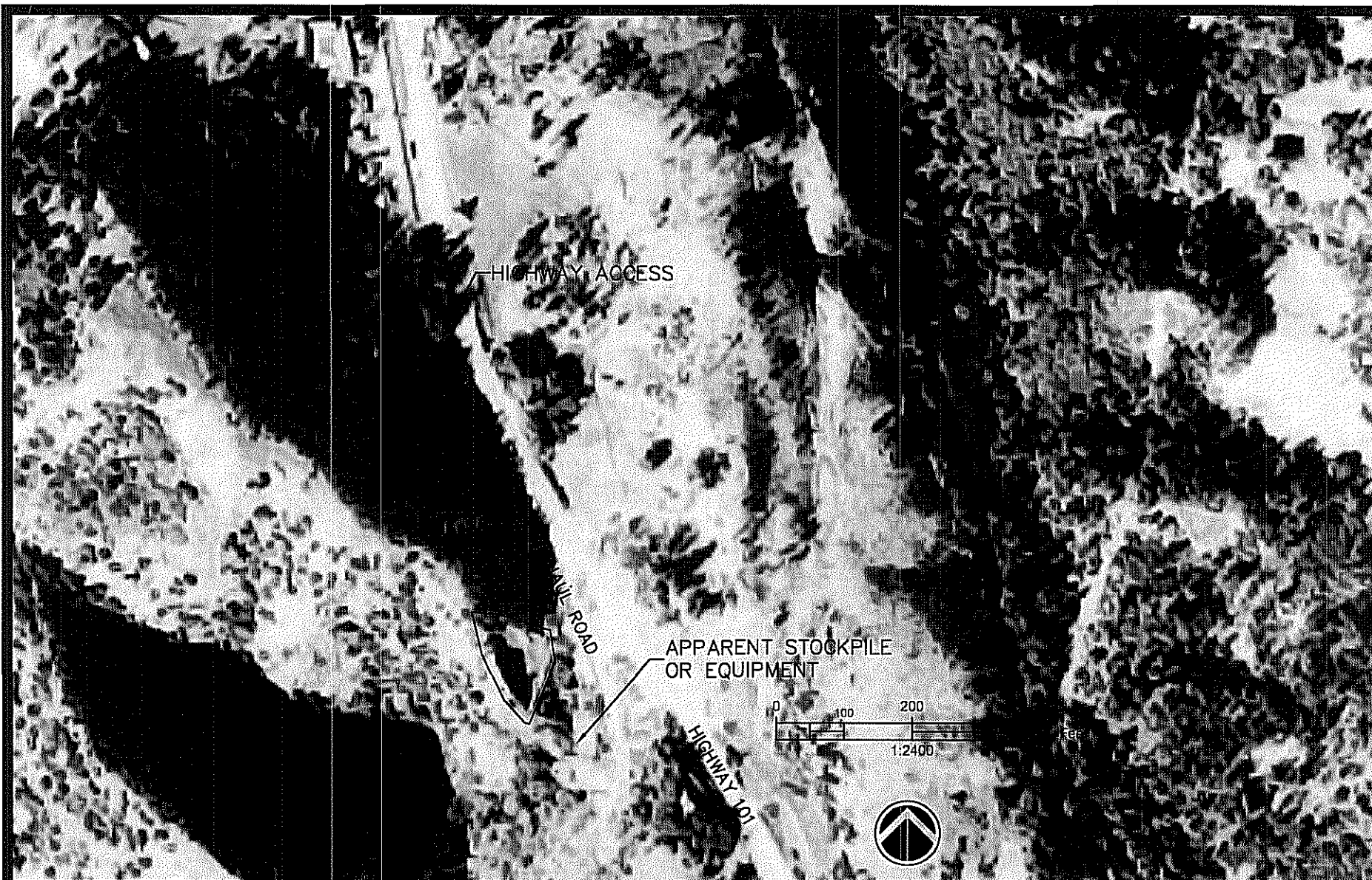
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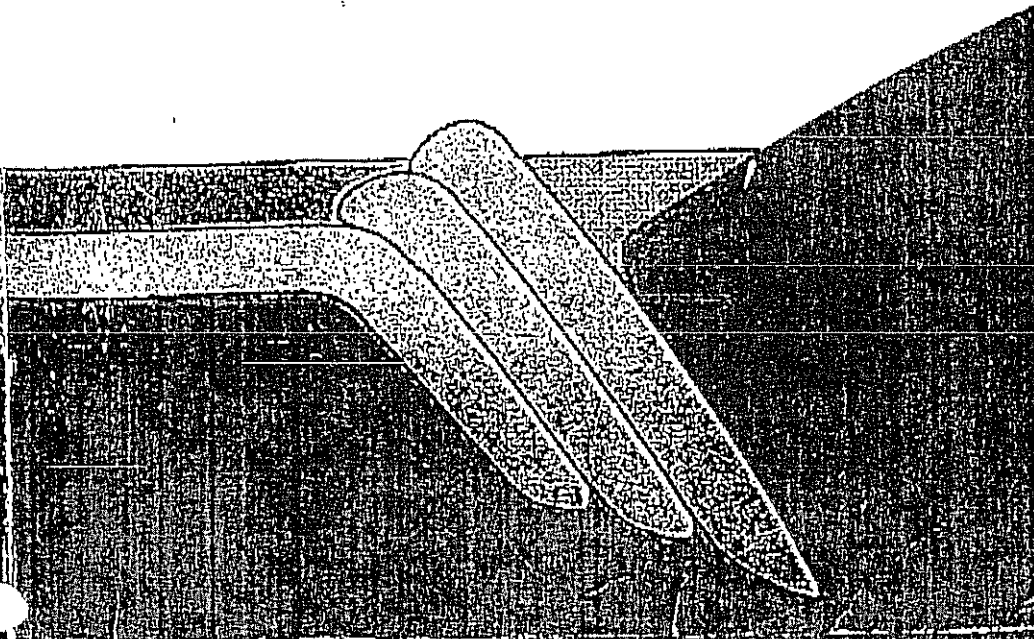


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# ROADSIDE GEOLOGY

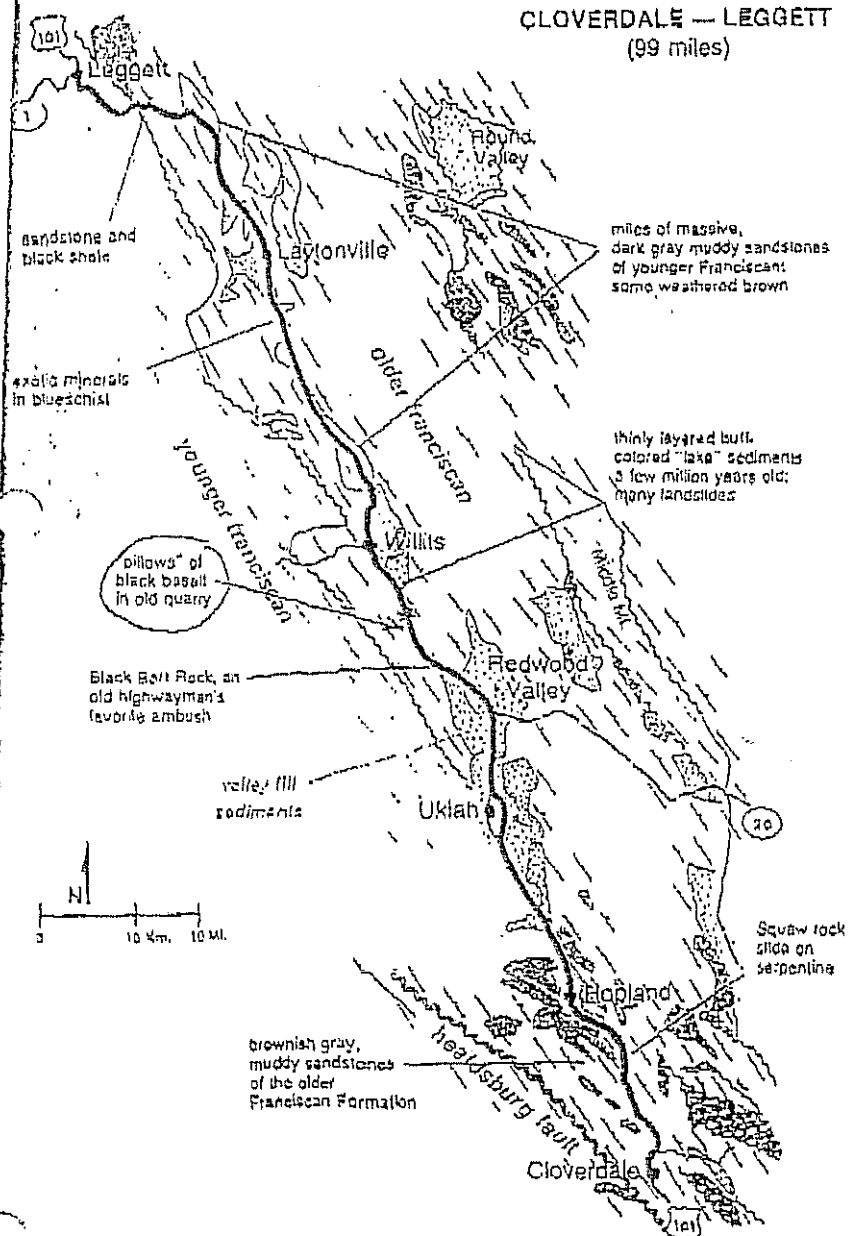
OF  
NORTHERN CALIFORNIA

David D. Alt  
Donald W. Hyndman



101

# CLOVERDALE — LEGGETT (99 miles)



## Roadside Geology of Northern California

by David D. Alt and Donald W. Hyndman

For the last 200 million years the old western margin of North America has ground over the Pacific floor moving slowly eastward beneath it. Sand and mud bulldozed from the ocean bottom and into the continental margin have become California, one of the newest parts of the continent. Northern California contains about as many geological complications as nature could fit into such a small area. This book is intended to explain and simplify the geology of this area. Illustrated with two-color maps and B&W photographs and diagrams.

Mountain Press Publishing, Missoula MT, copyright 1975, 5th printing 1981, 244 pages, 6" x 9", paperback, illustrated.

Condition: VG-, edge wear, three corners creased, a 3" diagonal crease on rear cover, spine creased, several creases, two page numbers written in yellow highlighter on title page, a spot and part of a map on a page highlighted in yellow.

Buyer pays \$3.30 s/h. International Shipping will be higher. Insurance, when available, is optional. Insurance is not available on shipments outside the United States. The buyer assumes all risk for damage or loss in the event of uninsured items. Note.--Payment is due within 10 days of the close of the auction. I reserve the right to the disposition of the item if the winning bidder does not make payment or arrange for an extension during that period.

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### Details

Series: Roadside Geology Series

Size  
Height: 9.0 in.  
Width: 6.0 in.  
Thickness: 0.8 in.  
Weight: 15.2 oz.

Publisher's Note

SMARA

California Public Resources  
Code §§2170-2797

Lexis Advance™

**Cal Pub Resources Code § 2710** (Copy citation)

This document is current with urgency legislation through Chapter 876 of the 2012 Session and Proposition 28, approved by the electorate at the June 5, 2012, Presidential Primary Election and the 2012 Governor's Reorganization Plan No. 2.

**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.**

**§ 2710. Citation of chapter**

This chapter shall be known and may be cited as the Surface Mining and Reclamation Act of 1975.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Case Notes**

- ↓ **1. Generally**
- ↓ **2. Construction**
- ↓ **3. Standing**

**↑ 1. Generally**

Environmental groups that challenged a conditional use permit for surface mining were "successful" for purposes of attorney fee award, even though the appellate decision in their favor was based on the lack of an adequate record rather than the merits. The petition alleged that the county's approval violated the Surface Mining and Reclamation Act of 1975 (SMARA), Pub Res C § 2710 et seq. *Protect Our Water v. County of Merced* (2005, Cal App 5th Dist) 130 Cal App 4th 488, 30 Cal Rptr 3d 202, 2005 Cal App LEXIS 987.

State Mining and Geology Board acted within the scope of its regulatory authority in requiring a lead agency to obtain the concurrence of the Director of the Department of Conservation before notifying a mine operator that the operator had satisfied the conditions of a reclamation plan and was no longer required to post financial security. *Mineral Associations Coalition v. State Mining & Geology Bd.* (2006, Cal App 3d Dist) 138 Cal App 4th 574, 41 Cal Rptr 3d 544, 2006 Cal App LEXIS 518.

**↑ 2. Construction**

There is no inherent conflict between 14 Cal Code Regs § 3805.5(d) and the provisions of the Surface Mining and Reclamation Act of 1975. *Mineral Associations Coalition v. State Mining & Geology Bd.* (2006, Cal App 3d Dist) 138 Cal App 4th 574, 41 Cal Rptr 3d 544, 2006 Cal App LEXIS 518.

**↑ 3. Standing**

Director of the California Department of Conservation had standing to pursue a writ of mandate, by reason of his beneficial interest under CCP § 1086, challenging reclamation plans and financial assurances for surface mining operations approved by a county under the Surface Mining and Reclamation Act of 1975, Pub Res C § 2710 et seq., as well as a vested use determination under Pub Res C § 2776 and the adequacy of information provided under the California Environmental Quality

Act, Pub Res C § 21000 et seq., because of the Director's significant authority under Pub Res C §§ 2774, 2774.1 to review plans and ensure compliance. People ex rel. Dept. of Conservation v. El Dorado County (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

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## Opinion Notes

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### Attorney General's Opinions:

The removal of soil, rocks, and debris from flood control channels and debris basins by a flood control district in order to maintain original construction contours is not a "surface mining operation" requiring a permit and the preparation of a reclamation plan. 78 Ops. Cal. Atty. Gen. 343.

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## Research References & Practice Aids

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### Collateral References:

8 Witkin Summary (10th ed) Constitutional Law § 1043.

12 Witkin Summary (10th ed) Real Property §§ 845, 888.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

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**Cal Pub Resources Code § 2711** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2711. Legislative findings and declarations**

- (a) The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (b) The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (c) The Legislature further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefor may vary accordingly.
- (d) The Legislature further finds that the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state's infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state.
- (e) The Legislature further finds and recognizes the need of the state to provide local governments, metropolitan planning organizations, and other relevant planning agencies with the information necessary to identify and protect mineral resources within general plans.
- (f) The Legislature further finds that the state's mineral resources are vital, finite, and important natural resources and the responsible protection and development of these mineral resources is vital to a sustainable California.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 2011 ch 218 § 1 (AB 566), effective January 1, 2012.

**Annotations****- Hide****Notes****Amendments:****2011 Amendment:**

Added subds (d)-(f).

## Research References & Practice Aids

### Hierarchy Notes:

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Div. 2, Ch. 9 Note

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**Cal Pub Resources Code § 2712** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2712. Legislative intent**

It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

- (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
- (b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
- (c) Residual hazards to the public health and safety are eliminated.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Case Notes****1. Generally**

In a case in which the adequacy of the environmental analysis performed by a county concerning a mining company's proposed surface mining operation was challenged, the county's role as lead agency under the California Environmental Quality Act (CEQA), Pub Res C §§ 21000 et seq. in conjunction with its responsibilities under the California Surface Mining and Reclamation Act of 1975 (SMARA), Pub Res C §§ 2710 et seq. required it to evaluate the environmental effects of the whole surface mining project, even though that project was on federally owned land, because CEQA and the National Environmental Policy Act of 1969 (NEPA), 42 USCS §§ 4321 et seq., both applied to the project, and when the Bureau of Land Management completed its environmental review under NEPA and made its findings, the county was still required to comply with CEQA and SMARA with respect to the entire project. Thus, it was improper for the county to sever the mining operations from the scope of its review under SMARA because the proposed mining operations and reclamation plan together constituted a single project, as both aspects were integrally related and constituted the whole of the action or the entire activity for which approvals were being sought, and the error was clearly prejudicial because the county decision-makers and the public were deprived of the essential information and environmental analysis that CEQA mandated. *Nelson v. County of Kern* (2010, 5th Dist) 190 Cal App 4th 252, 118 Cal Rptr 3d 736, 2010 Cal App LEXIS 1974.

## Research References & Practice Aids

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**Cal Pub Resources Code § 2713** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2713. Prohibited taking of private property without just compensation**

It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Opinion Notes****Attorney General's Opinions:**

State of California can regulate all mining within the Death Valley National Monument, regardless of land ownership status, pursuant to the Surface Mining and Reclamation Act of 1975 (Pub Res C §§ 2710-2793) and subject to preemption in particular instances of conflict with federal law. 60 Ops. Cal. Atty. Gen. 162.

**Research References & Practice Aids****Cross References:**

Eminent domain generally: Cal Const Art I § 19; CCP §§ 1230.010 et seq.

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**Cal Pub Resources Code § 2714** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2714. Inapplicability of chapter's provisions to certain activities**

This chapter does not apply to any of the following activities:

- (a)** Excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.
- (b)** Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements associated with those structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:
  - (1)** All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).
  - (2)** The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).
  - (3)** The approved construction project is consistent with the general plan or zoning of the site.
  - (4)** Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
- (c)** Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:
  - (1)** The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.
  - (2)** The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.
  - (3)** None of the minerals being processed are being extracted onsite.
  - (4)** All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.
- (d)** Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product totals less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.
- (e)** Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.
- (f)** Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.

**(g)** The solar evaporation of sea water or bay water for the production of salt and related minerals.

**(h)** Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

**(i)**

**(1)** Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the Department of Conservation by the date specified by the Department of Conservation on these mining activities.

**(2)** Nothing in this subdivision shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with this chapter.

**(j)**

**(1)** Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

**(2)** This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

**(k)** Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

**(1)** The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

**(2)** The operations are consistent with any general plan or zoning applicable to the site.

**(3)** The earthmoving activities are within oil or gas field properties under a common owner or operator.

**(4)** No excavated materials are sold for commercial purposes.

## History

Added Stats 1975 ch 1131 § 11. Amended Stats 1991 ch 845 § 2 (AB 1506); Stats 1992 ch 1077 § 2.5 (AB 3098); Stats 1993 ch 1094 § 1 (AB 904); Stats 1994 ch 939 § 18 (SB 1393), effective September 27, 1994, operative January 1, 1995; Stats 1995 ch 680 § 1 (SB 273); Stats 1996 ch 616 § 1 (SB

1549); Stats 2006 ch 869 § 16 (SB 668), effective January 1, 2007.

## Annotations

- Hide

## Notes

### Amendments:

#### 1991 Amendment:

(1) Substituted "This chapter does" for "The provisions of this chapter shall" in the introductory clause; (2) substituted "those" for "such" after "claim, if" in subd (c); (3) amended subd (d) by substituting (a) "Any" for "Such" at the beginning; and (b) "that" for "which" after "operations"; and (4) added subd (e).

#### 1992 Amendment:

Added subds (f) and (g).

#### 1993 Amendment:

(1) Added subds (b) and (c); and (2) redesignated former subds (b)-(g)(1) to be subds (d)-(i)(1).

#### 1994 Amendment:

Added ", as defined by Section 2001," in subd (f).

#### 1995 Amendment:

Added subd (j).

#### 1996 Amendment:

(1) Substituted "that" for "which" after "earthmoving activities" in subd (b); (2) amended subd (j)(2) by deleting (a) Subchapter 1 of Chapter 8 of Division 2 of" after "Section 3706 of"; and (b) the comma after "and postclosure uses"; and (3) added subd (k).

#### 2006 Amendment:

(1) Substituted subd (a) for former subd (a) which read: "(a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster."; (2) amended subd (b) by (a) adding "and" after "construction project"; (b) deleting the comma after "improvements"; and (c) adding "associated with those structures," before "including the related"; and (3) substituted subd (d) for former subd (d) which read: "(d) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less."

## Note

Stats 1994 ch 939 provides:

SECTION 1. This act shall be known and may be cited as the Local Government Omnibus Act of 1994. The Legislature finds and declares that Californians desire their governments to be run efficiently and economically and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to reduce its own operating costs by reducing the number of separate bills affecting related topics.

Therefore, in enacting this act, it is the intent of the Legislature to combine several minor, noncontroversial statutory changes relating to public agencies into a single measure.

## Research References & Practice Aids

### Hierarchy Notes:

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**Cal Pub Res Code 2715****Cal Pub Resources Code § 2715** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2715. Powers not limited by chapter**

No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

- (a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.
- (b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.
- (c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.
- (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.
- (e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.
- (f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 1, effective July 28, 1980.

**Annotations****- Hide****Notes****Amendments:****1980 Amendment:**

Substituted (1) "lead agency" for "city or county" in subd (e); and (2) "residences" for "residents" in subd (f).



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**Research References & Practice Aids**

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**Cal Pub Resources Code § 2715.5** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2715.5. (Repealed December 31, 2017) Cache Creek Resource Management Plan and site specific plan as functional equivalent of reclamation plan; Report; Enforcement action; Financial assurances**

- (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2017, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.
- (b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.
- (c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.
- (d) "Site specific plan," for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.
- (e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.
- (f) This section shall remain in effect only until December 31, 2017, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2017, deletes or extends that date.

**History**

Added Stats 2004 ch 173 § 1 (AB 1984), operative date contingent. Amended Stats 2007 ch 604 § 1 (AB 646), effective January 1, 2008, repealed December 31, 2012; Stats 2011 ch 145 § 1 (SB 133), effective January 1, 2012, repealed December 31, 2017.

**Former Sections:**

Former § 2715.5, relating to Cache Creek Resource Management Plan and site specific plan, was added Stats 1999 ch 869 § 2, amended Stats 2000 ch 135 § 145, and repealed, operative December 31, 2003, by its own terms.

**Annotations****- Hide****Notes****Amendments:****2007 Amendment:**

(1) Substituted "December 31, 2012" for "December 31, 2008" in subd (a) and both times it appears in subd (g).

**2011 Amendment:**

(1) Substituted "December 31, 2017" for "December 31, 2012" wherever it appears in the first sentence of subd (a) and in subd (f); (2) deleted former subd (f) which read: "(f) This section shall not become operative until the date the State Mining and Geology Board notifies the Secretary of State in writing that the board has approved an ordinance adopted by the Board of Supervisors for the County of Yolo that governs in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resources Management Plan."; and (3) redesignated former subd (g) to be subd (f).

**Note**

Stats 2011 ch 145 provides:

SEC. 2 (a) Until December 31, 2017, the annual report on the Cache Creek Area Plan that is prepared by the County of Yolo staff and submitted to the board of supervisors of the county in which the Cache Creek Resource Management Plan is implemented, as described in Section 2715.5 of the Public Resources Code, shall also be submitted to the Assembly Natural Resources Committee and the Senate Natural Resources and Water Committee.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

**Research References & Practice Aids****Hierarchy Notes:**

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Div. 2, Ch. 9 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2716. Action to compel performance of duties**

(a) Any interested person may commence an action on his or her own behalf against the board, the lead agency, the State Geologist, or the director for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board, the State Geologist, or the director to carry out any duty imposed upon them pursuant to this chapter.

(b) For purposes of this section, "person" means an individual, firm, association, corporation, organization, or partnership, or a city, county, district, or the state or any department or agency of the state.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1992 ch 1077 § 3 (AB 3098); Stats 2006 ch 869 § 17 (SB 668), effective January 1, 2007.

**Annotations** **Hide****Notes****Amendments:****1992 Amendment:**

In addition to making technical changes, substituted ", the State Geologist, or the director" for "or the State Geologist" wherever it appears.

**2006 Amendment:**

(1) Amended subd (a) by (a) adding subd designation (a); (b) adding "interested" after "Any"; and (c) adding "the lead agency," after "against the board,"; and (2) added subd (b).

**Research References & Practice Aids****Cross References:**

State Geologist generally: Pub Res C § 677.

**Hierarchy Notes:**

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**Cal Pub Resources Code § 2717** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.**

**§ 2717. Annual report; Contents; Quarterly publication of list**

- (a) The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.
- (b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state or local agency, a list identifying all of the following:
- (1) Surface mining operations for which a report is required and has been submitted pursuant to Section 2207 that indicates all of the following:
    - (A) The reclamation plan and financial assurances have been approved pursuant to this chapter.
    - (B) Compliance with state reclamation standards developed pursuant to Section 2773.
    - (C) Compliance with the financial assurance guidelines developed pursuant to Section 2773.1.
    - (D) The annual reporting fee has been submitted to the Department of Conservation.
  - (2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.
  - (3) Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1992 ch 1077 § 4 (AB 3098); Stats 1993 ch 278 § 5 (AB 723), effective August 2, 1993; Stats 2003 ch 794 § 3 (SB 649); Stats 2004 ch 142 § 1 (SB 218).

**Annotations****- Hide****Notes****Amendments:****1992 Amendment:**



(1) Added subdivision designation (a); (2) substituted "The" for "Such" in the last sentence of subd (a); and (3) added subd (b).

**1993 Amendment:**

Added (1) ", at a minimum," after "the department shall"; and (2) ", provided that the appeal shall not have been pending before the board for more than 180 days" at the end.

**2003 Amendment:**

(1) Substituted "recommendations, that" for "recommendations, which" in subd (a); (2) deleted "on and after July 1, 1993," after "Public Contract Code," in subd (b); (3) substituted present subds (b) (1) and (b)(A) for former subd (b)(1) which read: "Surface mining operations for which a report has been submitted pursuant to Section 2207 which indicates that the reclamation plan and the financial assurances have been approved."; (4) added subds (b)(1)(B)-(b)(1)(D); and (5) added subd (b)(3).

**2004 Amendment:**

Amended the introductory clause of subd (b) by (1) substituting "Sections 10295.5 and 20676" for "Section 10295.5"; and (2) adding "or local" after "any other state".

**Note**

Stats 2003 ch 794 provides:

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity may not affect other provisions or applications that can be given effect without the invalid provision or application.

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**Research References & Practice Aids****Hierarchy Notes:**

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**Cal Pub Resources Code § 2727.1** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.**

**§ 2727.1. "Idle"**

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

**History**

Added Stats 1990 ch 1097 § 3 (AB 3551). Amended Stats 2011 ch 491 § 1 (SB 208), effective January 1, 2012.

**Annotations****- Hide****Notes****Amendments:****2011 Amendment:**

Substituted the section for the former section which read: "'Idle' means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date."

**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.****§ 2718. Severability of provisions**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[- Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 1.**

**§ 2719. Nonexemption of political subdivisions from fees**

Notwithstanding any other provision of law, neither the state nor any county, city, district, or other political subdivision shall be exempt from any fee imposed upon a mining operation pursuant to subdivision (d) of Section 2207.

**History**

Added Stats 1992 ch 1066 § 1 (SB 1569).

**Annotations**[+ Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**§ 2725. Governing definitions**

Unless the context otherwise requires, the definitions set forth in this article shall govern the construction of this chapter.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.**

**§ 2726. "Area of regional significance"**

"Area of regional significance" means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[- Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**§ 2727. "Area of statewide significance"**

"Area of statewide significance" means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.**

**§ 2728. "Lead agency"**

"Lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a reclamation plan pursuant to this chapter.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 2, effective July 28, 1980; Stats 1987 ch 975 § 1; Stats 2006 ch 869 § 18 (SB 668), effective January 1, 2007.

**Annotations**[- Hide](#)**Notes****Amendments:****1980 Amendment:**

Added "or a public agency assigned responsibility for approving a surface mining operation pursuant to Section 2771".

**1987 Amendment:**

Substituted the section for the former section which read: " 'Lead agency' means the city or county which has the principal responsibility for approving a surface mining operation pursuant to this chapter or a public agency assigned responsibility for approving a surface mining operation pursuant to Section 2771."

**2006 Amendment:**

Deleted "surface mining operation or" after "approving a" in this section.

**Case Notes****1. Generally**

Where the State of California sought to recover surface mine inspection costs under the Surface Mining and Reclamation Act of 1975 (SMARA), Pub. Resources Code, § 2710 et seq., a demurrer to a cross-complaint asserting federal civil rights claims was properly sustained on the ground of state immunity under 42 USCS § 1983 and the Eleventh Amendment, U.S. Const., 11th Amend., because when the California State Mining and Geology Board took back, pursuant to Pub. Resources Code, §§ 2774, 2774.4, the regulatory powers previously delegated to a local lead agency under Pub.

Resources Code, § 2728, the board retained its status as a state agency and functioned as one in enforcing SMARA under Pub. Resources Code, 2774.1, subd. (f). *Brunius v. Parrish* (2005, Cal App 3d Dist) 132 Cal App 4th 838, 34 Cal Rptr 3d 55, 2005 Cal App LEXIS 1434.

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## Research References & Practice Aids

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### Cross References:

San Francisco Bay Conservation and Development Commission generally: Gov C §§ 66600 et seq.

### Hierarchy Notes:

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.**

**§ 2729. "Mined lands"**

"Mined lands" includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[- Hide](#)**Opinion Notes****Attorney General's Opinions:**

Claim of "vested right" under Pub Res C § 2776, and application of Pub Res C §§ 2729 and 2735 thereto, where boundaries have not been legally defined. 59 Ops. Cal. Atty. Gen. 641.

**Research References & Practice Aids****Cross References:**

State Policy for the Reclamation of Mined Lands: Pub Res C §§ 2755 et seq.

**Hierarchy Notes:**

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**§ 2730. "Mining waste"**

"Mining waste" includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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**§ 2731. "Operator"**

"Operator" means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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**§ 2732. "Overburden"**

"Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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**§ 2732.5. "Permit"**

"Permit" means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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**§ 2733. "Reclamation"**

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

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[Hide](#)**Research References & Practice Aids****Cross References:**

State Policy for the Reclamation of Mined Lands: Pub Res C §§ 2755 et seq.

**Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.**

**§ 2734. "State policy"**

"State policy" means the regulations adopted by the board pursuant to Section 2755.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 2.2, effective July 28, 1980.

**Annotations****- Hide****Notes****Amendments:****1980 Amendment:**

Substituted the section for the former section which read: " 'State policy' means the state policy for the reclamation of mined lands adopted pursuant to Section 2755."

**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 2.****§ 2735. "Surface mining operations"**

"Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.
- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Opinion Notes****Attorney General's Opinions:**

Claim of "vested right" under Pub Res C § 2776, and application of Pub Res C §§ 2729 and 2735 thereto, where boundaries have not been legally defined. 59 Ops. Cal. Atty. Gen. 641.

Gravel constitutes a "mineral" for purposes of the State Surface Mining and Reclamation Act of 1975; hence, the Act applies to gravel extraction operations. 66 Ops. Cal. Atty. Gen. 79.

**Research References & Practice Aids****Annotations:**

Grant, reservation, or lease of minerals and mining rights as including, without expressly so providing, the right to remove the minerals by surface mining. 70 ALR3d 383.

**Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 3.**

**§ 2740. Establishment of districts, and appointment of technical advisory committees; Factors to be considered; Qualifications of members of committees**

In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board. In establishing districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committees shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economics, or the reclamation of mined lands.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 3.**

**§ 2741. Compensation of members of committees; Reimbursement for expenses**

The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**Div. 2, Ch. 9, Art. 4 Note****Annotations**[- Hide](#)**Research References & Practice Aids****Cross References:**

Vote necessary to adopt, amend, or repeal state policy pursuant to this article: Pub Res C § 668.

"Mined lands": Pub Res C § 2729.

"Reclamation": Pub Res C § 2733.

"State policy": Pub Res C § 2734.

**Hierarchy Notes:**

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 4.**

**§ 2755. Adoption; Purposes**

The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340 ) of Part 1 of Division 3 of Title 2 of the Government Code.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 2.4, effective July 28, 1980; Stats 2004 ch 183 § 285 (AB 3082).

**Annotations**[- Hide](#)**Notes****Amendments:****1980 Amendment:**

(1) Deleted "On or before January 1, 1977," at the beginning of the section; and (2) added "regulations which establish".

**2004 Amendment:**

(1) Substituted "that" for "which" after "shall adopt regulations"; (2) deleted "the general provisions set forth in" before "Article 1"; and (3) substituted "Chapter 3.5 (commencing with Section 11340)" for "Chapter 4.5 (commencing with Section 11371)".

**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2756. Applicability; Scope**

State policy shall apply to the conduct of surface mining operations and shall include, but shall not be limited to, measures to be employed by lead agencies in specifying grading, backfilling, resoiling, revegetation, soil compaction, and other reclamation requirements, and for soil erosion control, water quality and watershed control, waste disposal, and flood control.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 3, effective July 28, 1980.

**Annotations**[- Hide](#)**Notes****Amendments:****1980 Amendment:**

Substituted "lead agencies" for "local governments" after "employed by".

**Research References & Practice Aids****Cross References:**

"Surface mining operations": Pub Res C § 2735.

**Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2757. Basis; Use of standards; Limitation**

The state policy adopted by the board shall be based upon a study of the factors that significantly affect the present and future condition of mined lands, and shall be used as standards by lead agencies in preparing specific and general plans, including the conservation and land use elements of the general plan and zoning ordinances. The state policy shall not include aspects of regulating surface mining operations which are solely of local concern, and not of statewide or regional concern, as determined by the board, such as, but not limited to, hours of operation, noise, dust, fencing, and purely aesthetic considerations.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 4, effective July 28, 1980.

**Annotations**[- Hide](#)**Notes****Amendments:****1980 Amendment:**

Amended the first sentence by (1) substituting "lead agencies" for "local governments"; and (2) deleting the comma after "general plan".

**Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

"Surface mining operations": Pub Res C § 2735.

**Hierarchy Notes:**

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Div. 2, Ch. 9, Art. 4 Note



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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2758. Objectives and criteria of policy**

Such policy shall include objectives and criteria for all of the following:

- (a) Determining the lead agency pursuant to the provisions of Section 2771.
- (b) The orderly evaluation of reclamation plans.
- (c) Determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

"Surface mining operations": Pub Res C § 2735.

**Hierarchy Notes:**

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note

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**Cal Pub Resources Code § 2759** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2759. Review and revision; Consultation and evaluation of recommendations**

The state policy shall be continuously reviewed and may be revised. During the formulation or revision of the policy, the board shall consult with, and carefully evaluate the recommendations of, the director, any district technical advisory committees, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1992 ch 1077 § 5 (AB 3098).

**Annotations** **Hide****Notes****Amendments:****1992 Amendment:**

Amended the second sentence by substituting (1) "the" for "such" after "revision of"; and (2) "director" for "State Geologist" after "of, the".

**Research References & Practice Aids****Hierarchy Notes:**

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Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note

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**Cal Pub Resources Code § 2760** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2760. Public hearing prior to adoption or revision; Notice**

The board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1981 ch 714 § 344.

**Annotations**[- Hide](#)**Notes****Amendments:****1981 Amendment:**

(1) Amended the first sentence by (a) adding the comma after "the state policy"; and (b) substituting "its" for "their" after "held respecting"; and (2) substituted "the" for "such" after "days prior to" in the second sentence.

**Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note

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**Cal Pub Resources Code § 2761** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2761. Identification of portions of specified areas which are urbanized, or subject to urban expansion or other irreversible land uses; Classification**

(a) On or before January 1, 1977, and, at a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state that are urbanized or are subject to urban expansion or other irreversible land uses that would preclude mineral extraction:

- (1) Standard metropolitan statistical areas and other areas for which information is readily available.
- (2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition that has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

- (1) An area that contains mineral deposits and is not of regional or statewide significance.
- (2) An area that contains mineral deposits and is of regional or statewide significance.
- (3) An area that contains mineral deposits, the significance of which requires further evaluation.

(c) The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(d) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

(e) The board shall transmit mineral resource information on areas classified by the State Geologist pursuant to paragraph (2) of subdivision (b), or on applicable areas designated by the board pursuant to Section 2790, or both, to a lead agency or a metropolitan planning organization within 30 days of receiving a request for the mineral resource information identified within the jurisdiction of the lead agency or the metropolitan planning organization.

## History

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 5, effective July 28, 1980; Stats 1990 ch 1097 § 4 (AB 3551); Stats 2006 ch 869 § 19 (SB 668), effective January 1, 2007; Stats 2011 ch 218 § 2 (AB 566), effective January 1, 2012.

## Annotations

- Hide

## Notes

### Amendments:

#### 1980 Amendment:

(1) Amended the introductory clause of subd (a) by (a) deleting "urban and urbanizing" after "shall identify"; (b) adding "which are urbanized or are"; and (c) adding "which would preclude mineral extraction"; (2) deleted "from time to time" after "requested" in subd (a)(2); and (3) substituted "any area for which classification has been requested by a petition which has been accepted by the board, or any" for "and such" in the introductory clause of subd (b).

#### 1990 Amendment:

(1) Added the second paragraph of subd (b); and (2) deleted "As it is completed by county," at the beginning of subd (c).

#### 2006 Amendment:

(1) Substituted "that" for "which" wherever it appears in subd (a); (2) deleted "such" after "statistical areas and" in subd (a)(1); (3) substituted subd (b)(1) for former subd (b)(1) which read: "(1) Areas containing little or no mineral deposits."; (4) substituted subd (b)(2) for former subd (b)(2) which read: "(2) Areas containing significant mineral deposits."; (5) added subd (c); and (6) redesignated former subd (c) to be subd (d).

#### 2011 Amendment:

(1) Substituted "at a minimum" for "as a minimum" in the introductory clause of subd (a); (2) substituted "that has" for "which has" in the introductory clause of subd (b); (3) substituted "An area that contains" for "Areas containing" in subd (b)(3); and (4) added subd (e).

## Research References & Practice Aids

### Cross References:

State Geologist generally: Pub Res C § 677.

"Lead agency": Pub Res C § 2728.

### Hierarchy Notes:

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Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note

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**Cal Pub Resources Code § 2762** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.****§ 2762. General plan of lead agencies**

(a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, a lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan that will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use that affects access to areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) A lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) A subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d)

(1) If an area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761 and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use that would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing, if required, an environmental document required by Division 13 (commencing with Section 21000), or if, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

(2) If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(A) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(B) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

(3) The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, if the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use that would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the

significance of the mineral deposit located in the area. The results of the evaluation shall be transmitted to the State Geologist and the board.

## History

Added Stats 1975 ch 1131 § 11. Amended Stats 1990 ch 1097 § 5 (AB 3551); Stats 2011 ch 345 § 1 (SB 792), effective January 1, 2012.

## Annotations

- Hide

## Notes

### Amendments:

#### 1990 Amendment:

(1) Added subd (d); and (2) redesignated former subd (d) to be subd (e).

#### 2011 Amendment:

(1) Amended the introductory clause of subd (a) by substituting (a) "a lead" for "every lead"; and (b) "that" for "which" after "general plan"; (2) substituted "that affects access to" for "which affect" in subd (a)(2); (3) substituted "A" for "Every" at the beginning of subd (b); (4) substituted "A" for "Any" at the beginning of subd (c); (5) substituted "that" for "which" following "permitting a use" in subd (d)(1) and the first sentence of subd (e); (6) amended subd (d)(1) by (a) deleting the comma after "Section 2761"; (b) adding "or otherwise has not yet acted pursuant to subdivision (a),"; and (c) substituting "if, a statement" for "In any event if no such document is required, a statement"; (7) added subdivision designations (d)(2) and (d)(3); (8) redesignated former subds (d)(2) and (d)(3) to be subds (d)(2)(A) and (d)(2)(B); (9) substituted "if the lead" for "when the lead" in the last sentence of subd (d)(3); (10) substituted "In the area" for "therein" in the first sentence of subd (e); and (11) substituted "the evaluation" for "such evaluation" in the second sentence of subd (e).

## Research References & Practice Aids

### Cross References:

State Geologist generally: Pub Res C § 677.

"Area of regional significance": Pub Res C § 2726.

"Area of statewide significance": Pub Res C § 2727.

"Lead agency": Pub Res C § 2728.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note



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**Cal Pub Resources Code § 2763** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2763. Statement specifying reasons for permitting proposed use; Lead agency land use decisions**

(a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

**History**

Added Stats 1980 ch 800 § 6, effective July 28, 1980. Amended Stats 1990 ch 1097 § 6 (AB 3551).

**Annotations** **Hide****Notes****Amendments:****1990 Amendment:**

Added the first sentence in subds (a) and (b).

**Research References & Practice Aids****Cross References:**

"Area of regional significance": Pub Res C § 2726.

"Area of statewide significance": Pub Res C § 2727.

"Lead agency": Pub Res C § 2728.

**Hierarchy Notes:**

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**Cal Pub Resources Code § 2764** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 4.**

**§ 2764. Future land uses in vicinity of mining operation; Amendment or adoption of plan by lead agency**

(a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

## History

Added Stats 1986 ch 82 § 1.

## Annotations

 Hide

## Research References & Practice Aids

### Cross References:

State Geologist generally: Pub Res C § 677.

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

"Surface mining operations": Pub Res C § 2735.

### Hierarchy Notes:

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 4 Note

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**Cal Pub Resources Code Div. 2, Ch. 9, Art. 5 Note** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**Div. 2, Ch. 9, Art. 5 Note****Annotations**[- Hide](#)**Research References & Practice Aids****Cross References:**

"Reclamation": Pub Res C § 2733.

"Surface mining operations": Pub Res C § 2735.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

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**Cal Pub Resources Code § 2770 (Copy citation)**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2770. Surface mining operations permit; Submission of reclamation plan; Review; Appeal; Interim management plan**

(a) Except as provided in this section, a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, a reclamation plan may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project for purposes of Division 13 (commencing with Section 21000). A person with an existing surface mining operation that does not have financial assurances that received lead agency approval prior to January 1, 1991, shall submit financial assurances for reclamation for review in accordance with subdivision (d).

(d) The lead agency's review of a reclamation plan submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) A person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve

reclamation plans or financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the board.

**(f)** The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

**(g)** Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or a longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances determined to meet these requirements shall be approved. A reclamation plan or financial assurances determined not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the board, to correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

**(h)**

**(1)** Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

**(2)** The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

**(A)** Renew the interim management plan for an additional period not to exceed five years, which may be renewed for additional five-year periods at the expiration of each five-year period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

**(B)** Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

**(3)** The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

**(4)** Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

**(5)** The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or a longer period mutually agreed upon by the operator and the governing body.

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

**(i)** An enforcement action that may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan shall be



held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h), or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

## History

Added Stats 1990 ch 1097 § 8 (AB 3551). Amended Stats 1991 ch 845 § 3 (AB 1506); Stats 1993 ch 278 § 6 (AB 723), effective July 30, 1993; Stats 2011 ch 491 § 2 (SB 108), effective January 1, 2012.

## Former Sections:

Former § 2770, similar to the present section, was added Stats 1975 ch 1131 § 11, amended Stats 1980 ch 800 § 7, effective July 28, 1980, Stats 1987 ch 975 § 2, and repealed Stats 1990 ch 1097 § 7.

## Annotations

[- Hide](#)

## Notes

## Amendments:

### 1991 Amendment:

(1) Added the third sentence in subd (c); (2) deleted "existing" before "financial assurances" wherever it appears in subd (d); (3) substituted "reclamation plans or" for "existing" after "review and approve" in subd (e); and (4) substituted "surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h)" for "person with an existing surface mining operation who has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, or a person who has filed an appeal with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h), shall be held in abeyance pending review of existing financial assurances pursuant to subdivision (c)," in subd (i).

### 1993 Amendment:

(1) Substituted "for purposes" for "within the meaning" before "of Division 13" in subds (c) and (h) (1); (2) substituted "determined" for "judges" after "financial assurances" wherever it appears in subds (d) and (g); (3) amended subd (d) by substituting (a) "determined not to substantially meet" for "judged as not substantially meeting" after "or financial assurances"; and (b) "unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the board" for "if the reclamation plan remains unapproved by July 1, 1990, or if the financial assurances remain unapproved by January 1, 1992"; (4) added subdivision designations (h)(1) through (h)(6); (5) redesignated former subds (h)(1) and (h)(2) to be subds (h)(2)(A) and (h)(2)(B); (6) substituted "for purposes" for "within the meaning" after "considered a project" in subd (h)(1); (7) substituted "The" for "In any event," at the beginning of subd (h)(3); and (8) added "of this subdivision" after "satisfies the requirements" in subd (h)(4).

### 2011 Amendment:

(1) Substituted "a person shall not" for "no person shall" in subd (a); (2) substituted "A person" for "Any person" in the first sentence of subd (b), in the last sentence of subd (c), and in subd (e); (3) substituted "a reclamation plan" for "reclamation plans" in the last sentence of subd (b) and in the first sentence of subd (d); (4) substituted "that does not" for "which does not" in the last sentence of subd (c); (5) amended subd (g) by (a) substituting "a longer period" for "any longer period" in the first sentence; and (b) adding "and" after "Sections 2772, 2773," in the second sentence; (6)

amended subd (h)(2)(A) by (a) substituting "an additional" for "another"; and (b) adding "which may be renewed for additional five-year periods at the expiration of each five-year period,"; (7) substituted "a" for "any" after "of the appeal, or" in subd (h)(5); (8) substituted "that remains" for "which remains" in subd (h)(6); and (9) amended subd (i) by (a) substituting "An enforcement action that" for "Any enforcement action which"; (b) deleting the comma after "interim management plan"; and (c) adding the comma before "or the resolution".

## Case Notes

- ✚ 1. Generally
- ✚ 2. Evidence
- ✚ 3. Standing
- ✚ 4. Requirements

### ✚ 1. Generally

In reviewing a county's decision to deny a mining reclamation plan submitted by the owner and operator of an aggregate production business, the trial court erred in concluding that the quarrying aspect of the business was a separate operation that had been discontinued. The nonconforming use that the business owner had a right to continue following enactment of a zoning ordinance that restricted mining was the aggregate production and sale business, and rock quarrying was an integral part of that business. Thus, since the aggregate business itself had not been discontinued, the business owner had not lost the right to future quarrying on its property as necessary to its production of aggregate. The county ordinance that provided for conformity of a nonconforming use if it was discontinued for a period in excess of 180 days applied to the nonconforming use itself, not to the various components of the business. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal 4th 533, 48 Cal Rptr 2d 778, 907 P2d 1324, 1996 Cal LEXIS 1, rehearing denied *Hansen Bros. Enters. v. Board of Directors* (1996, Cal) 1996 Cal LEXIS 1360.

Local initiative that required approval of new quarries by voters, while exempting previously approved quarries, was prospective and did not apply to a quarry under development that had received a surface mining permit under Pub Res C § 2770(a). *Save Our Sunol, Inc. v. Mission Valley Rock Co.* (2004, Cal App 1st Dist) 124 Cal App 4th 276, 21 Cal Rptr 3d 171, 2004 Cal App LEXIS 1943, review denied *Save Our Sunol, Inc. v. Mission Valley Rock Co.* (2005, Cal) 2005 Cal LEXIS 2066.

### ✚ 2. Evidence

The evidence presented by the owner and operator of an aggregate production business to the county board of supervisors in support of their mining reclamation plan, submitted in compliance with the Surface Mining and Reclamation Act of 1975 (SMARA) (Pub. Resources Code, § 2710 et seq.), was insufficient to support a finding that the owner was entitled to a writ of mandate to compel the board to approve its SMARA reclamation plan as presented. The record established only that the owner's vested rights to mine and quarry its property existed on a 28.898-acre placer mining claim patented to the owner's predecessors and conveyed to the owner in 1982, and on a 3-acre parcel that the county admitted was operated as part of the mine in 1954 when a county zoning ordinance was enacted that restricted mining. Insofar as its SMARA reclamation plan asserted a vested right to quarry a 60-plus acre parcel of land, the owner failed to carry its burden of proof to establish the lawful and continuing existence of a nonconforming use on the entire parcel at the time of enactment of the ordinance. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal 4th 533, 48 Cal Rptr 2d 778, 907 P2d 1324, 1996 Cal LEXIS 1, rehearing denied *Hansen Bros. Enters. v. Board of Directors* (1996, Cal) 1996 Cal LEXIS 1360.

In reviewing the decision of a county board of supervisors to deny a mining reclamation plan submitted by the owner of an aggregate production business, in which it claimed a vested right to mine its entire 67-acre parcel of riverside land, the evidence did not support the finding of the superior court that the riverbed gravel mining and hillside rock quarrying operations were separate components of the aggregate production business. An aggregate business does not differ from other

land uses simply because mining for some or all of the materials that compose aggregate is a component of the business. The record established that rock was being taken from the hillsides at that time as an integral part of the aggregate business. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal 4th 533, 48 Cal Rptr 2d 778, 907 P2d 1324, 1996 Cal LEXIS 1, rehearing denied *Hansen Bros. Enters. v. Board of Directors* (1996, Cal) 1996 Cal LEXIS 1360.

Substantial evidence did not support a trial court's finding that a proposal for future quarrying submitted to the county by the owner and operator of an aggregate production business constituted an impermissible intensification of the business's legal nonconforming use. However, the business owner's vested right to continue quarrying hard rock for use in its business did not necessarily extend to quarrying the amount of rock proposed; given the objective of zoning, which is to eliminate nonconforming uses, courts generally follow a strict policy against their extension or enlargement. Although the zoning ordinance did not prohibit a gradual and natural increase in a lawful, nonconforming use of quarry property, the application form used by the business owner for its proposal was not an adequate basis upon which to decide the question of impermissible intensification. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal 4th 533, 48 Cal Rptr 2d 778, 907 P2d 1324, 1996 Cal LEXIS 1, rehearing denied *Hansen Bros. Enters. v. Board of Directors* (1996, Cal) 1996 Cal LEXIS 1360.

### 3. Standing

Director of the Department of Conservation did not have standing to challenge, by way of a petition for writ of administrative mandamus, the actions of a county as lead agency in approving reclamation plans and financial assurances for surface mining operations; the Director did not have a beneficial interest sufficient to give him standing to petition for a writ of administrative mandamus. *People ex rel. Department of Conservation v. El Dorado County* (2003, Cal App 3d Dist) 108 Cal App 4th 672, 133 Cal Rptr 2d 780, 2003 Cal App LEXIS 699, rehearing denied *People ex rel. Department of Conservation v. El Dorado County* (2003, Cal App 3d Dist) 2003 Cal App LEXIS 841, rev'd *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

Limited role of the Director of the Department of Conservation under the Surface Mining and Reclamation Act (SMARA), especially when compared to the Mining and Geology Board's role in overseeing lead agencies, establishes that SMARA does not give the Director standing to petition for a writ for judicial review of a lead agency's actions in approving reclamation plans and financial assurances that do not comply with SMARA. *People ex rel. Department of Conservation v. El Dorado County* (2003, Cal App 3d Dist) 108 Cal App 4th 672, 133 Cal Rptr 2d 780, 2003 Cal App LEXIS 699, rehearing denied *People ex rel. Department of Conservation v. El Dorado County* (2003, Cal App 3d Dist) 2003 Cal App LEXIS 841, rev'd *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

### 4. Requirements

In a case in which the adequacy of the environmental analysis performed by a county concerning a mining company's proposed surface mining operation was challenged, the county's role as lead agency under the California Environmental Quality Act (CEQA), Pub Res C §§ 21000 et seq., in conjunction with its responsibilities under the California Surface Mining and Reclamation Act of 1975 (SMARA), Pub Res C §§ 2710 et seq., required it to evaluate the environmental effects of the whole surface mining project, even though that project was on federally owned land, because CEQA and the National Environmental Policy Act of 1969 (NEPA), 42 USCS §§ 4321 et seq., both applied to the project, and when the Bureau of Land Management completed its environmental review under NEPA and made its findings, the county was still required to comply with CEQA and SMARA with respect to the entire project. Thus, it was improper for the county to sever the mining operations from the scope of its review under SMARA because the proposed mining operations and reclamation plan together constituted a single project, as both aspects were integrally related and constituted the whole of the action or the entire activity for which approvals were being sought, and the error was clearly prejudicial because the county decision-makers and the public were deprived of the essential information and environmental analysis that CEQA mandated. *Nelson v. County of Kern* (2010, 5th Dist) 190 Cal App 4th 252, 118 Cal Rptr 3d 736, 2010 Cal App LEXIS 1974.

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**Research References & Practice Aids**

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**Cross References:**

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

"Permit": Pub Res C § 2732.5.

**Hierarchy Notes:**

Pub Resources Code Note

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Div. 2, Ch. 9 Note

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**Cal Pub Resources Code § 2770.5** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2770.5. Permit application for surface mining on 100-year flood plain; Review and comment by Department of Transportation**

Whenever surface mining operations are proposed in the 100-year flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the lead agency receiving the application for the issuance or renewal of a permit to conduct the surface mining operations shall notify the Department of Transportation that the application has been received. The Department of Transportation shall have a period of not more than 45 days to review and comment on the proposed surface mining operations with respect to any potential damage to the state highway bridge from the proposed surface mining operations. The lead agency shall not issue or renew the permit until the Department of Transportation has submitted its comments or until 45 days from the date the application for the permit was submitted, whichever occurs first.

**History**

Added Stats 1984 ch 254 § 1.

**Annotations**[- Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2770.6** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2770.6. Review of application for surface mining operations within San Gabriel Basin Water Quality Authority or for approval of reclamation plan**

(a) Whenever surface mining operations are proposed within the boundaries of the San Gabriel Basin Water Quality Authority that may penetrate the groundwater, and whenever proposed reclamation activities may impact groundwater quality, the lead agency reviewing an application to conduct surface mining operations, or reviewing an application for the approval of a reclamation plan, shall notify and provide copies of the subject application to the appropriate California regional water quality control board, and any watermaster for the groundwater recharge basin. Notwithstanding any other provision of law, the appropriate California regional water quality control board may impose an administrative fee on the applicant to cover its costs associated with the review of, and preparation of, comments on the subject application, as required pursuant to this section.

(b) Each agency shall have 60 days to review and comment on the proposed surface mining operation described in subdivision (a) and the adoption of any reclamation plan therefor. Each agency shall comment on the existing groundwater quality and the potential impacts to water quality that may result from the mining operations and the proposed reclamation plan, and shall recommend methods and procedures to protect groundwater quality and prevent groundwater degradation. Each agency shall also comment on the proposed mining activities, including the conduct of excavation and back filling operations in contact with groundwater, and the impact of any proposed alternative land uses on groundwater quality. When the proposed surface mining operations or reclamation plan will impact the groundwater, the lead agency shall not approve the reclamation plan without requiring actions to ensure the reasonable protection of the beneficial uses of groundwater and the prevention of nuisance. Each agency shall have 60 days to review and comment or until 60 days from the date of application, whichever occurs first.

(c) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

**History**

Added Stats 2000 ch 515 § 1 (SB 244).

**Annotations****Hide****Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2771. Evaluation of proposed operation by lead agency; Designation of lead agency in event of dispute**

Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.

**History**

Added Stats 1990 ch 1097 § 10 (AB 3551).

**Former Sections:**

Former § 2771, similar to the present section, was added Stats 1975 ch 1131 § 11, amended Stats 1980 ch 800 § 8, effective July 28, 1980 and repealed Stats 1990 ch 1097 § 9.

**Annotations**[- Hide](#)**Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

**Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2772. Filing of plan; Contents**

- (a)** The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations on the lands.
- (b)** All documentation for the reclamation plan shall be submitted by the lead agency to the department at one time.
- (c)** The reclamation plan shall include all of the following information and documents:
  - (1)** The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.
  - (2)** The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.
  - (3)** The proposed dates for the initiation and termination of surface mining operation.
  - (4)** The maximum anticipated depth of the surface mining operation.
  - (5)** The size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, and the names and addresses of the owners of all surface interests and mineral interests in the lands.
  - (6)** A description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.
  - (7)** A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.
  - (8)** A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including both of the following:
    - (A)** A description of the manner in which contaminants will be controlled, and mining waste will be disposed.
    - (B)** A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation will occur.
  - (9)** An assessment of the effect of implementation of the reclamation plan on future mining in the area.
  - (10)** A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.
  - (11)** Any other information which the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining operation, or as part of an environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000), may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirements of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with Division 13 (commencing with Section 21000).

## History

Added Stats 1975 ch 1131 § 11. Amended Stats 1994 ch 1208 § 1 (AB 867); Stats 1995 ch 529 § 18 (SB 614), effective October 4, 1995.

## Annotations

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## Notes

## Amendments:

### 1994 Amendment:

In addition to making technical changes, (1) added subdivision designation (a); (2) amended subd (a) by (a) substituting "on the lands" for "thereon" at the end; and (b) deleting the former last sentence which read: "The reclamation plan shall include the following information and documents:"; (3) added subds (b) and (c); (4) redesignated former subds (a)-(k) to be subds (c)(1)-(c)(11); (5) substituted "the operator as an agent" for "him as his agents" in subd (c)(1); (6) added "surface mining" in subds (c)(1), (c)(3), and (c)(5); (7) substituted "interests and mineral interests in the" for "and mineral interests of such" after "of all surface" in subd (c)(5); (8) substituted "mined lands" for "land" in subd (c)(7); (9) added "both of the following" at the end of subd (c)(8); (10) amended subd (c)(8)(B) by (a) deleting "rehabilitation of" after "manner in which"; and (b) adding "will be rehabilitated"; (11) added "reclamation" in subd (c)(10); and (12) added subds (d) and (e).

### 1995 Amendment:

Added "to the department" in subd (b).

## Research References & Practice Aids

### Cross References:

"Lead agency": Pub Res C § 2728.

"Mined lands": Pub Res C § 2729.

"Mined waste": Pub Res C § 2730.

"Operator": Pub Res C § 2731.

### Hierarchy Notes:

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2772.5. Information required for reclamation plan and surface mining operations within boundaries of San Gabriel Basin Water Quality Authority**

(a) A reclamation plan by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands within the boundaries of the San Gabriel Basin Water Quality Authority, and who plans to conduct surface mining operations on those lands, in addition to the information required pursuant to subdivision (c) of Section 2772, shall include a description of any programs necessary to monitor the effects of mining and reclamation operations on air, water, and soil quality, on the surrounding area, backfill characteristics, geologic conditions, and slope stability, similar to the California Environmental Quality Act document for the reclamation project.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

**History**

Added Stats 2000 ch 515 § 2 (SB 244).

**Annotations** **Hide****Research References & Practice Aids****Cross References:**

California Environmental Quality Act: Pub Res C §§ 21000 et seq.

**Hierarchy Notes:**

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**§ 2772.6. Amount of financial assurances for surface mining with boundaries of San Gabriel Water Quality Authority**

(a) In addition to meeting the requirements of Section 2773.1, the amount of financial assurances required of a surface mining operation within the boundaries of the San Gabriel/Basin Water Quality Authority for any one year shall be in an amount not less than that required to ensure reclamation of the disturbed areas is completed in accordance with the approved reclamation plan.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

**History**

Added Stats 2000 ch 515 § 3 (SB 244).

**Annotations**[- Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2772.7. Notice of Reclamation Plan Approval to be recorded with county recorder**

(a) A lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the county recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the \_\_\_\_\_ (lead agency), a copy of which is on file with the \_\_\_\_\_."

(b) In addition to the information required by subdivision (a), the notice shall also include the name of the owner of record of the mine operation, the name of the lead agency, and the acknowledged signature of the lead agency representative.

**History**

Added Stats 2006 ch 869 § 20 (SB 668), effective January 1, 2007. Amended Stats 2009 ch 208 § 3 (SB 833), effective January 1, 2010.

**Annotations****- Hide****Notes****Amendments:****2009 Amendment:**

Added (1) subdivision designation (a); (2) "(lead agency)" in the second sentence of subd (a); and (3) subd (b).

**Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2773. Reclamation plan and standards**

(a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control.

(b) By January 1, 1992, the board shall adopt regulations specifying minimum, verifiable statewide reclamation standards. Subjects for which standards shall be set include, but shall not be limited to, the following:

- (1) Wildlife habitat.
- (2) Backfilling, regrading, slope stability, and recontouring.
- (3) Revegetation.
- (4) Drainage, diversion structures, waterways, and erosion control.
- (5) Prime and other agricultural land reclamation.
- (6) Building, structure, and equipment removal.
- (7) Stream protection.
- (8) Topsoil salvage, maintenance, and redistribution.
- (9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1990 ch 1097 § 11 (AB 3551).

**Annotations** **Hide****Notes****Amendments:****1990 Amendment:**

(1) Added subdivision designation (a); (2) added ", and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control" at the end of subd (a); and (3) added subd (b).

## Research References & Practice Aids

### Cross References:

"Overburden": Pub Res C § 2732.

### Hierarchy Notes:

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2773.1. Requirement of financial assurances**

(a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the department. Financial assurances that were approved by the lead agency prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the board, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the director shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the director and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

**(4)** Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

**(c)** Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Section 2770.

**(d)** The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the board is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

**(1)** The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the director.

**(2)** The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has occurred:

**(A)** The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

**(B)** The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

**(C)** The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

**(e)** The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests, or surety bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

**(f)** On or before March 1, 1993, the board shall adopt guidelines to implement this section. The guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and are not subject to review by the Office of Administrative Law.

## History

Added Stats 1990 ch 1097 § 12 (AB 3551). Amended Stats 1991 ch 845 § 4 (AB 1506); Stats 1992 ch 1077 § 6 (AB 3098); Stats 1998 ch 643 § 1 (SB 1664).

## Annotations

 **Hide**

## Notes

### Amendments:

#### 1991 Amendment:

Added the second sentence in subd (c).

#### 1992 Amendment:

In addition to substituting "director" for "State Geologist" wherever it appears, (1) amended subd (a) (4) by (a) substituting "department" for "State Geologist" in the first and third sentences; and (b) adding the second sentence; (2) added the last sentence of subd (e); and (3) added subd (f).

#### 1998 Amendment:

(1) Added "executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure" in subd (a)(1); (2) substituted "that" for "said" in subd (d)(2)(B); (3) added ", or surety bonds executed by one or more personal sureties" at the end of the first sentence of subd (e).

### Note

Stats 1998 ch 643 provides:

SEC. 3. The Legislature finds and declares that the amendment of Section 2773.1 of the Public Resources Code made by Section 1 of this act does not constitute a change in, but is declaratory of, existing law.

## Research References & Practice Aids

### Cross References:

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2773.15** (Copy citation)

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 5.**

**§ 2773.15. Surety bond of personal surety to satisfy requirements**

Notwithstanding Section 2773.1, a surety bond that was executed by any personal surety that was approved by the lead agency prior to February 13, 1998, to ensure that reclamation is performed in accordance with a reclamation plan approved by a lead agency prior to that date, may be utilized to satisfy the requirements of this chapter, if the amount of the financial assurance required to perform the approved reclamation plan, as amended or updated from time to time, does not change from the amount approved prior to February 13, 1998.

**History**

Added Stats 1998 ch 643 § 2 (SB 1664).

**Annotations**[- Hide](#)**Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2773.2. Access to mining operation property by governmental agency or agent of company providing financial assurances**

The mineral owner and owner of the surface estate, if legally entitled to do so, shall allow access to the property on which the mining operation is located to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan and expending those financial assurances for reclamation, in order that reclamation may be carried out by the governmental agency or company, in accordance with the reclamation plan.

**History**

Added Stats 2006 ch 869 § 22 (SB 668), effective January 1, 2007.

**Former Sections:**

Former § 2773.2, relating to task force to evaluate Cache Creek Resource Management Plan, was added Stats 1999 ch 869 § 3, amended Stats 2000 ch 87 § 6.5, and repealed Stats 2006 ch 869 § 21.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

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Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2773.3** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2773.3. Prohibition from approval of surface mining operations on or within one mile of Native American sacred site; Exceptions**

(a) In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

(1) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:

(A) Achieve the approximate original contours of the mined lands prior to mining.

(B) Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.

(2) The financial assurances are sufficient in amount to provide for the backfilling and grading required by paragraph (1).

(b) For purposes of this section, the following terms have the following meaning:

(1) "Native American sacred site" means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.

(2) "Area of special concern" means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.

**History**

Added Stats 2002 ch 1154 § 1 (SB 483), operative April 7, 2003.

**Annotations**[- Hide](#)**Notes****Editor's Notes**



Stats 2002 ch 1154 § 8 had provided that the act would only become operative if Senate Bill 1828 of the 2001-02 Regular Session was enacted and became operative on or before January 1, 2003. Senate Bill 1828 of the 2001-02 Regular Session was vetoed; therefore, this section, as enacted by Stats 2002 ch 1154 § 1 and contingent upon enactment of SB 1828, did not become operative until Stats 2003 ch 3 (SB 22) repealed the contingency in Stats 2002 ch 1154 § 8.

Stats 2003 ch 3 (SB 22) became effective on April 7, 2003.

#### **Note**

Stats 2002 ch 1154 provides:

SEC. 6. This act is not intended to interfere with the ability of the federal government to designate particular land uses applicable to federal government owned lands or to conflict with the ability of the federal government to permit or allow particular land use activities to occur on federal lands. This act is intended to be a state regulatory framework consistent with California Coastal Comm'n v. Granite Rock (1987) 480 U.S. 572.

Stats 2003 ch 3 provides:

SEC. 2. Section 8 of Chapter 1154 of the Statutes of 2002 is repealed.

SEC. 3. Chapter 1154 of the Statutes of 2002 is operative upon the effective date of this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To prevent the imminent destruction of important Native American sacred sites threatened by proposed strip mining and to ensure these mining activities are adequately mitigated through implementation of new state reclamation requirements at the earliest opportunity, it is necessary that this act take effect immediately.

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#### **Research References & Practice Aids**

##### **Hierarchy Notes:**

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2773.5. Exemptions to prohibition in § 2773.3**

Section 2773.3 does not apply to either of the following:

- (a) Any surface mining operation in existence on January 1, 2003, for which the lead agency has issued final approval of a reclamation plan and the financial assurances prior to September 1, 2002.
- (b) Any amended reclamation plan or financial assurances that are necessary for the continued operation or expansion of a surface mining operation in existence on January 1, 2003, that otherwise satisfies the requirements of subdivision (a).

**History**

Added Stats 2002 ch 1154 § 2 (SB 483), operative April 7, 2003.

**Annotations**[Hide](#)**Notes****Editor's Notes**

Stats 2002 ch 1154 § 8 had provided that the act would only become operative if Senate Bill 1828 of the 2001-02 Regular Session was enacted and became operative on or before January 1, 2003. Senate Bill 1828 of the 2001-02 Regular Session was vetoed; therefore, this section, as enacted by Stats 2002 ch 1154 § 2 and contingent upon enactment of SB 1828, did not become operative until Stats 2003 ch 3 (SB 22) repealed the contingency in Stats 2002 ch 1154 § 8.

Stats 2003 ch 3 (SB 22) became effective on April 7, 2003.

**Note**

Stats 2002 ch 1154 provides:

SEC. 6. This act is not intended to interfere with the ability of the federal government to designate particular land uses applicable to federal government owned lands or to conflict with the ability of the federal government to permit or allow particular land use activities to occur on federal lands. This act is intended to be a state regulatory framework consistent with California Coastal Comm'n v. Granite Rock (1987) 480 U.S. 572.

Stats 2003 ch 3 provides:

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SEC. 3. Chapter 1154 of the Statutes of 2002 is operative upon the effective date of this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To prevent the imminent destruction of important Native American sacred sites threatened by proposed strip mining and to ensure these mining activities are adequately mitigated through implementation of new state reclamation requirements at the earliest opportunity, it is necessary that this act take effect immediately.

## Research References & Practice Aids

### Hierarchy Notes:

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**Cal Pub Resources Code § 2774** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.**

**§ 2774. Adoption of ordinances; Inspection of surface mining operation; Review of plan; Comments by director; Permits**

(a) Every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause an inspection to be conducted by a state licensed geologist, state licensed civil engineer, state licensed landscape architect, or state licensed forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board that shall include the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester, who conducted the inspection.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of this chapter and Article 9 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations and the lead agency's mining ordinance in effect at the time that the reclamation plan is submitted to the director for review.

(d)

(1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the

director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of the hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no hearing is required by this chapter, or by the local ordinance, or other state law, then the lead agency shall provide 30 days' notice to the director that it intends to approve the reclamation plan, plan amendment, or financial assurance. The lead agency shall send to the director its final response to the director's comments within 30 days following its approval of the reclamation plan, plan amendment, or financial assurance during which period the department retains all powers, duties, and authorities of this chapter.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

## History

Added Stats 1975 ch 1131 § 11. Amended Stats 1980 ch 800 § 9, effective July 28, 1980; Stats 1990 ch 1097 § 13 (AB 3551), ch 1101 § 2 (AB 3903); Stats 1991 ch 845 § 5 (AB 1506); Stats 1992 ch 1077 § 7 (AB 3098); Stats 1994 ch 1208 § 2 (AB 867); Stats 2003 ch 794 § 4 (SB 649); Stats 2006 ch 869 § 23 (SB 668), effective January 1, 2007.

## Annotations

 Hide

## Notes

## Amendments:

### 1980 Amendment:

(1) Designated the first paragraph to be subd (a); (2) amended the first sentence of subd (a) by (a) substituting "in accordance with state policy which establish" for "establishing"; and (b) adding the exception; (3) substituted "reclamation and permit ordinances shall establish procedures requiring" for "procedures shall require" in the second sentence of subd (a); (4) amended the third sentence of subd (a) by substituting (a) "periodically reviewed by the lead agency" for "continuously reviewed";

and (b) "the ordinances continue to be" for "such ordinances are"; (5) designated the former fourth sentence of subd (a) to be subd (b); and (6) designated the former second paragraph to be subd (c).

**1990 Amendment:**

Amended subd (b) by adding (1) the fourth sentence; and (2) ", shall include a copy of the completed inspection form," after "with this chapter" in the seventh sentence. (As amended Stats 1990 ch 1101, compared to the section as it read prior to 1990. This section was also amended by an earlier chapter, ch 1097. See Gov C § 9605.)

**1991 Amendment:**

Amended subd (b) by (1) substituting "a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under" for "an appeal pending in the case of a surface mining operator with vested rights under subdivision (b) of Section 2770, a review of existing financial assurances pending pursuant to subdivision (c) of Section 2770, or an appeal pending pursuant to" in the seventh sentence; and (2) adding ", a copy of the completed inspection form," in the eighth sentence.

**1992 Amendment:**

Changed all references to State Geologist to refer to director.

**1994 Amendment:**

In addition to making technical changes, (1) deleted "in order" after "revised, as necessary," in the last sentence of subd (a); (2) amended subd (b) by (a) adding "surface" in the second sentence; (b) adding "the date of" in the fifth sentence; (c) substituting "mining operation's" for "mine's" in the sixth sentence; and (d) substituting "but not limited to" for "without limitation" in the last sentence; (3) amended subd (c) by (a) adding the second and third sentences; and (b) substituted "is in compliance" for "complies" in the last sentence; (4) substituted subd (d)(1) for former subd (d) which read: "(d) The director shall have 45 days to prepare written comments, if the director so chooses. The lead agency shall evaluate written comments received from the director during the 45-day comment period. The lead agency shall prepare a written response describing the disposition of the major issues raised. In particular, when the lead agency's position is at variance with the recommendations and objections raised in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator."; and (5) added subds (d)(2) and (d)(3).

**2003 Amendment:**

(1) Amended the third sentence of subd (b) by (a) deleting "such" after "may cause"; (b) substituting "a surface" for "the surface"; and (c) adding "within the jurisdiction of the lead agency in any capacity during the previous 12 months"; (2) added the fourth and fifth sentences of subd (b); and (3) deleted "such" after "30 days of" in the first sentence of subd (e).

**2006 Amendment:**

(1) Substituted "that" for "which" after "ordinances in accordance with state policy" in subd (a); (2) amended subd (b) by (a) substituting "state licensed" for "state-registered" wherever it appears; (b) adding "that shall include the professional licensing and disciplinary information of the person who conducted the inspection" after "approved by the board"; and (c) adding ", who conducted the inspection" at the end; (3) amended subd (c) by (a) substituting "this chapter and Article 9" for "Article 1" after "applicable requirements of"; and (b) adding "and the lead agency's mining ordinance" after "California Code of Regulations"; and (4) substituted subd (d)(2) for former subd (d) (2) which read: "(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised. In particular, if the lead agency's position is at variance with any of the recommendations made or objections raised, in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted."

Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator."

## Case Notes

- ± 1. Generally
- ± 2. Standing
- ± 3. Requirements

### ± 1. Generally

Where the State of California sought to recover surface mine inspection costs under the Surface Mining and Reclamation Act of 1975 (SMARA), Pub. Resources Code, § 2710 et seq., a demurrer to a cross-complaint asserting federal civil rights claims was properly sustained on the ground of state immunity under 42 USCS § 1983 and the Eleventh Amendment, U.S. Const., 11th Amend., because when the California State Mining and Geology Board took back, pursuant to Pub. Resources Code, §§ 2774, 2774.4, the regulatory powers previously delegated to a local lead agency under Pub. Resources Code, § 2728, the board retained its status as a state agency and functioned as one in enforcing SMARA under Pub. Resources Code, 2774.1, subd. (f). *Brunius v. Parrish* (2005, Cal App 3d Dist) 132 Cal App 4th 838, 34 Cal Rptr 3d 55, 2005 Cal App LEXIS 1434.

### ± 2. Standing

Director of the California Department of Conservation had standing to pursue a writ of mandate, by reason of his beneficial interest under CCP § 1086, challenging reclamation plans and financial assurances for surface mining operations approved by a county under the Surface Mining and Reclamation Act of 1975, Pub Res C § 2710 et seq., as well as a vested use determination under Pub Res C § 2776 and the adequacy of information provided under the California Environmental Quality Act, Pub Res C § 21000 et seq., because of the Director's significant authority under Pub Res C §§ 2774, 2774.1 to review plans and ensure compliance. *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

### ± 3. Requirements

In a case in which the adequacy of the environmental analysis performed by a county concerning a mining company's proposed surface mining operation was challenged, the county's role as lead agency under the California Environmental Quality Act (CEQA), Pub Res C §§ 21000 et seq., in conjunction with its responsibilities under the California Surface Mining and Reclamation Act of 1975 (SMARA), Pub Res C §§ 2710 et seq., required it to evaluate the environmental effects of the whole surface mining project, even though that project was on federally owned land, because CEQA and the National Environmental Policy Act of 1969 (NEPA), 42 USCS §§ 4321 et seq., both applied to the project, and when the Bureau of Land Management completed its environmental review under NEPA and made its findings, the county was still required to comply with CEQA and SMARA with respect to the entire project. Thus, it was improper for the county to sever the mining operations from the scope of its review under SMARA because the proposed mining operations and reclamation plan together constituted a single project, as both aspects were integrally related and constituted the whole of the action or the entire activity for which approvals were being sought, and the error was clearly prejudicial because the county decision-makers and the public were deprived of the essential information and environmental analysis that CEQA mandated. *Nelson v. County of Kern* (2010, 5th Dist) 190 Cal App 4th 252, 118 Cal Rptr 3d 736, 2010 Cal App LEXIS 1974.

## Research References & Practice Aids

### Cross References:

"Lead agency": Pub Res C § 2728.

"Permit": Pub Res C § 2732.5.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2774.1. Notification of violation; Order of compliance; Injunction; Administrative penalties; Enforcement**

(a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.

(e) Upon a complaint by the director, the department, or the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring such an action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(f) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:

- (1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.
- (2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.

The director shall comply with this section in initiating enforcement actions.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

## History

Added Stats 1990 ch 1097 § 14 (AB 3551). Amended Stats 1992 ch 1077 § 8 (AB 3098).

## Annotations

 Hide

## Notes

### Amendments:

#### 1992 Amendment:

In addition to changing all references to State Geologist to refer to director, (1) added "or financial assurances," near the end of the last sentence of subd (a); (2) substituted "adopted" for "issued" after "any regulation" in the first sentence of subd (e); and (3) substituted "has" for "shall have" in the first sentence of subd (f).

## Case Notes

### ± 1. Generally

### ± 2. Standing

### ± 1. Generally

Where the State of California sought to recover surface mine inspection costs under the Surface Mining and Reclamation Act of 1975 (SMARA), Pub. Resources Code, § 2710 et seq., a demurrer to a cross-complaint asserting federal civil rights claims was properly sustained on the ground of state immunity under 42 USCS § 1983 and the Eleventh Amendment, U.S. Const., 11th Amend., because when the California State Mining and Geology Board took back, pursuant to Pub. Resources Code, §§ 2774, 2774.4, the regulatory powers previously delegated to a local lead agency under Pub. Resources Code, § 2728, the board retained its status as a state agency and functioned as one in enforcing SMARA under Pub. Resources Code, 2774.1, subd. (f). *Brunius v. Parrish* (2005, Cal App 3d Dist) 132 Cal App 4th 838, 34 Cal Rptr 3d 55, 2005 Cal App LEXIS 1434.

### ± 2. Standing

Director of the California Department of Conservation had standing to pursue a writ of mandate, by reason of his beneficial interest under CCP § 1086, challenging reclamation plans and financial assurances for surface mining operations approved by a county under the Surface Mining and

Reclamation Act of 1975, Pub Res C § 2710 et seq., as well as a vested use determination under Pub Res C § 2776 and the adequacy of information provided under the California Environmental Quality Act, Pub Res C § 21000 et seq., because of the Director's significant authority under Pub Res C §§ 2774, 2774.1 to review plans and ensure compliance. *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

## Research References & Practice Aids

### Cross References:

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

Injunctions generally: Civ C §§ 3420 et seq.; CCP §§ 525 et seq.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

Deering's California Codes Annotated

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**Cal Pub Resources Code § 2774.2 (Copy citation)**

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 5.**

**§ 2774.2. Review of order setting administrative penalties**

(a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the director, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the director, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the director setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the director within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. Any operator aggrieved by an order of a lead agency or the director setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

**History**

Added Stats 1990 ch 1097 § 15 (AB 3551). Amended Stats 1990 ch 1101 § 3 (AB 3903); Stats 1992 ch 1077 § 9 (AB 3098).

**Annotations****- Hide**

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**Notes**

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**Amendments:****1990 Amendment:**

Substituted subd (d) for former subd (d) which read: "(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, and payment of an administrative penalty, if any, shall be made to the lead agency or the State Geologist within 30 days, unless the operator petitions the superior court for review as provided in subdivision (e). Any other shall be served by personal service or by certified mail upon the operator."

**1992 Amendment:**

Substituted "director" for "State Geologist" wherever it appears.

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**Research References & Practice Aids**

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**Cross References:**

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2774.3 (Copy citation)**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2774.3. Review and certification of lead agency ordinances**

The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant to this chapter.

**History**

Added Stats 1980 ch 800 § 10, effective July 28, 1980. Amended Stats 1987 ch 975 § 3.

**Annotations**[Hide](#)**Notes****Amendments:****1987 Amendment:**

Deleted (1) former subdivision designation (a); (2) ", in accordance with a time schedule," after "board shall"; (3) "such" after "whether each"; (4) the former second sentence which read: "The board shall complete on or before January 1, 1982, a review of all such ordinances adopted prior to November 1, 1981."; and (5) former subd (b) which read: "(b) Lead agencies shall submit ordinances adopted on or after November 1, 1981, which establish permit and reclamation procedures to the board for such determination and certification, and no such ordinance shall take effect until the board has certified that the ordinance is in accordance with state policy. Such review for certification shall be completed by the board within 60 days of the date of submittal to the board."

**Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

"State policy": Pub Res C § 2734.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2774.4** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2774.4. Assumption of lead agency powers by board; Notice; Hearing; Review**

(a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

- (1) The action to be taken by the board.
- (2) Why the board decided to take the action.
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition



for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

## History

Added Stats 1990 ch 1097 § 16 (AB 3551). Amended Stats 1990 ch 1101 § 4 (AB 3903); Stats 1991 ch 845 § 6 (AB 1506); Stats 1992 ch 1077 § 10 (AB 3098).

## Annotations

 Hide

## Notes

### Amendments:

#### 1990 Amendment:

Added "or (6) failed to submit information to the department as required by this chapter," after "under this chapter" in subd (a).

#### 1991 Amendment:

(1) Added ", after a public hearing," after "the board finds" in subd (b); (2) amended subd (c) by substituting (a) "subdivision (a)" for "subdivision (a) or (b)" in the first sentence; and (b) "the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207" for "the lead agency, the affected surface mining operators, and the public" in the second sentence; (3) substituted "affected surface mining operators" for "interested persons" both times it appears in subd (d); (4) substituted "subdivision (a)" for "subdivision (a) or (b)" in the introductory clause of subd (e), and in subd (e)(3); (5) substituted "affected surface mining operators" for "interested persons" in the first sentence of the last paragraph of subd (e); (6) amended the first sentence of subd (f) by substituting (a) "affected surface mining operator who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d)" for "any interested person"; and (b) "subdivision (a)" for "subdivision (a) and (b)"; and (7) substituted the second and third sentences of subd (f) for the former second and third sentences of subd (f) which read: "The evidence before the court, in reviewing the board's action, shall consist of the record before the board, and any other relevant evidence which, in the judgment of the court, is required to be considered to effectuate and implement the policies of this chapter. In every case, the court shall exercise its independent judgement on the evidence."

#### 1992 Amendment:

(1) Amended subd (d) by (a) substituting "and interested persons" for "shall" the first time it appears; and (b) adding "and interested persons" the second time it appears; (2) substituted ", interested persons, or the lead agency" for "or the board" in the first sentence of the last paragraph of subd (e); and (3) amended the first sentence of subd (f) by (a) substituting ", any" for "or"; and (b) adding ", or any interested person".

## Case Notes

### 1. Generally

Where the State of California sought to recover surface mine inspection costs under the Surface Mining and Reclamation Act of 1975 (SMARA), Pub. Resources Code, § 2710 et seq., a demurrer to a

cross-complaint asserting federal civil rights claims was properly sustained on the ground of state immunity under 42 USCS § 1983 and the Eleventh Amendment, U.S. Const., 11th Amend., because when the California State Mining and Geology Board took back, pursuant to Pub. Resources Code, §§ 2774, 2774.4, the regulatory powers previously delegated to a local lead agency under Pub. Resources Code, § 2728, the board retained its status as a state agency and functioned as one in enforcing SMARA under Pub. Resources Code, 2774.1, subd. (f). *Brunius v. Parrish* (2005, Cal App 3d Dist) 132 Cal App 4th 838, 34 Cal Rptr 3d 55, 2005 Cal App LEXIS 1434.

## Research References & Practice Aids

### Cross References:

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note


Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2774.5** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2774.5. Ordinance deficiencies; Revised ordinance; Reclamation plan**

(a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

(d) Reclamation plans approved by the board pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the board. Reclamation plans approved by the board shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the board, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead agency's approval. Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations.

**History**

Added Stats 1980 ch 800 § 11, effective July 28, 1980. Amended Stats 1987 ch 975 § 4.

**Annotations** **Hide****Notes****Amendments:****1987 Amendment:**

(1) Amended subd (a) by substituting (a) "the" for "such a" after "receipt of" in the second sentence; and (b) "the time" for "such time as" after "agency until" in the fourth sentence; (2) substituted "the time" for "such time as" after "agency until" in the third sentence of subd (b); (3) amended subd (c) by deleting (a) "On and after November 1, 1981," at the beginning of the first sentence; (b) "provisions of a" after "under the" in the second sentence; and (c) "provisions of an" before "ordinance certified" in the second sentence; and (4) added the second and third sentences of subd (d).

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## Research References & Practice Aids

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### Cross References:

"Lead agency": Pub Res C § 2728.

"State policy": Pub Res C § 2734.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note


Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2774.6** (Copy citation)

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 5.**

**§ 2774.6. [Section repealed 1999.]****History**

Added Stats 1990 ch 1097 § 17 (AB 3551). Amended Stats 1990 ch 1101 § 5 (AB 3903); Stats 1994 ch 1208 § 3 (AB 867). Repealed Stats 1999 ch 869 § 4 (AB 297). The repealed section related to Governor and Legislature on reclamation plans and the conduct of surface mining.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2775** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2775. Right of appeal to board**

(a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance, may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Cross References:**

"Area of regional significance": Pub Res C § 2726.

"Area of statewide significance": Pub Res C § 2727.

"Lead agency": Pub Res C § 2728.

"Permit": Pub Res C § 2732.5.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2776** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2776. Exemption for persons having vested right to conduct surface mining operations**

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

(b) The reclamation plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

(c) Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1987 ch 975 § 5; Stats 2006 ch 538 § 560 (SB 1852), effective January 1, 2007.

**Annotations****- Hide****Notes****Amendments:****1987 Amendment:**

In addition to making technical changes, (1) redesignated the former second paragraph to be the third sentence of the first paragraph; and (2) substituted the second paragraph for the former third paragraph.

**2006 Amendment:**

(1) Added subd designations; (2) amended subd (a) by substituting (a) "the person" for "he or she" after "January 1, 1976,"; and (b) "for the surface mining operations" for "therefor" after "and materials necessary"; and (3) substituted "reclamation" for "reclamation" after "The" near the beginning in subd (b).



## Case Notes

- 1. Standing
- 2. Particular Determinations

### 1. Standing

Director of the California Department of Conservation had standing to pursue a writ of mandate, by reason of his beneficial interest under CCP § 1086, challenging reclamation plans and financial assurances for surface mining operations approved by a county under the Surface Mining and Reclamation Act of 1975, Pub Res C § 2710 et seq., as well as a vested use determination under Pub Res C § 2776 and the adequacy of information provided under the California Environmental Quality Act, Pub Res C § 21000 et seq., because of the Director's significant authority under Pub Res C §§ 2774, 2774.1 to review plans and ensure compliance. *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal 4th 971, 32 Cal Rptr 3d 109, 116 P3d 567, 2005 Cal LEXIS 8591.

### 2. Particular Determinations

In a case in which the adequacy of the environmental analysis performed by a county concerning a mining company's proposed surface mining operation was challenged, the county's role as lead agency under the California Environmental Quality Act (CEQA), Pub Res C §§ 21000 et seq., in conjunction with its responsibilities under the California Surface Mining and Reclamation Act of 1975 (SMARA), Pub Res C §§ 2710 et seq., required it to evaluate the environmental effects of the whole surface mining project, even though that project was on federally owned land, because CEQA and the National Environmental Policy Act of 1969 (NEPA), 42 USCS §§ 4321 et seq., both applied to the project, and when the Bureau of Land Management completed its environmental review under NEPA and made its findings, the county was still required to comply with CEQA and SMARA with respect to the entire project. Thus, it was improper for the county to sever the mining operations from the scope of its review under SMARA because the proposed mining operations and reclamation plan together constituted a single project, as both aspects were integrally related and constituted the whole of the action or the entire activity for which approvals were being sought, and the error was clearly prejudicial because the county decision-makers and the public were deprived of the essential information and environmental analysis that CEQA mandated. *Nelson v. County of Kern* (2010, 5th Dist) 190 Cal App 4th 252, 118 Cal Rptr 3d 736, 2010 Cal App LEXIS 1974.

Even if a company had a vested right to conduct mining operations as contemplated by Pub Res C § 2776(a), such right was not violated by an air quality management district's issuance of an abatement order requiring the company to obtain a permit for its central plant equipment. *Hardesty v. Sacramento Metropolitan Air Quality Management District* (2011, 3d Dist) 2011 Cal App LEXIS 1638.

## Opinion Notes

### Attorney General's Opinions:

Claim of "vested right" under Pub Res C § 2776, and application of Pub Res C §§ 2729 and 2735 thereto, where boundaries have not been legally defined. 59 Ops. Cal. Atty. Gen. 641.

## Research References & Practice Aids

### Cross References:

"Permit": Pub Res C § 2732.5.

### Hierarchy Notes:

Pub Resources Code Note

Div. 2 Note


Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2777** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2777. Amendment of plan**

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with, and approved by, the lead agency.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations**[- Hide](#)**Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Cal Pub Resources Code § 2777.5** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2777.5 Failure to report mine's mineral production or mine status; Submission of corrected annual reports; Failure to prepare interim management plan; Costs of inspection**

(a) A mine operator who has failed to properly report a mine's mineral production or mine status in any previous year, pursuant to the annual reporting requirement in Section 2207, prior to January 1, 2012, may attach corrected annual reports to the 2012 annual report so long as the corrected annual reports are submitted on or before July 1, 2013, and if the lead agency confirms in writing to the department all of the following:

(1) The operator has provided written notification to the lead agency and the director of their intention to continue surface mining operations.

(2) The operator has an existing, valid permit or a vested right to conduct surface mining operations pursuant to Section 2776.

(3)

(A) The operator's reclamation plan has been approved and is in compliance with this chapter, the mining operation is in compliance with the approved reclamation plan or applicable compliance order issued pursuant to this chapter, the mining operation has an approved financial assurance in place that the lead agency determines is adequate for reclamation pursuant to the approved reclamation plan, and the mining operation has been inspected by the lead agency as provided by Section 2774.

(B) The Office of Mine Reclamation may enter any mine site for which a mine operator has requested a correction of mine status or a return to idle status pursuant to this section in order to conduct an inspection.

(4) The operator has demonstrated that there are commercially useful mineral reserves remaining at the surface mining operation.

(5) Unpaid fees for years during which the operation's status was not properly reported have been paid to the department.

(6) The operator provides evidence to support any modified production reported on corrected annual reports.

(b) A mining operation that became idle, as defined in Section 2727.1, that failed to prepare and have approved an interim management plan and was thus considered abandoned pursuant to paragraph (6) of subdivision (h) of Section 2770 prior to January 1, 2013, may, without prejudice, be returned to idle status at the request of the operator if an interim management plan is approved by July 1, 2013, and upon lead agency verification of compliance with subdivision (a).

(c) The mine operator shall be responsible for the reasonable costs of an inspection conducted by the Office of Mine Reclamation pursuant to subparagraph (B) of paragraph (3) of subdivision (a).

**History**

Added Stats 2011 ch 491§ 3 (SB 108), effective January 1, 2012.

**Annotations** **Hide**

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**Research References & Practice Aids**

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**Hierarchy Notes:**

Pub Resources Code Note

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 5.****§ 2778. Public records; Exception; Identification and availability of proprietary information**

(a) Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the lead agency that the release of that information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The lead agency shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the director and to persons authorized in writing by the operator and by the owner.

(b) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the director by lead agencies on request.

**History**

Added Stats 1975 ch 1131 § 11. Amended Stats 1992 ch 1077 § 11 (AB 3098).

**Annotations****- Hide****Notes****Amendments:****1992 Amendment:**

(1) Added subdivision designation (a); (2) amended subd (a) by substituting (a) "that" for "such" after "release of" in the first sentence; and (b) "director" for "State Geologist" in the last sentence; and (3) added subd (b).

**Research References & Practice Aids****Cross References:**

"Lead agency": Pub Res C § 2728.

"Operator": Pub Res C § 2731.

**Hierarchy Notes:**

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 5 Note

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 5.**

**§ 2779. Successor in interest in incompleting surface mining operation bound by provisions of approved plan**

Whenever one operator succeeds to the interest of another in any incompleting surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Cross References:**

"Operator": Pub Res C § 2731.

**Hierarchy Notes:**

Pub Resources Code Note

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**Cal Pub Resources Code Div. 2, Ch. 9, Art. 6 Note** (Copy citation)

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 6.**

**Div. 2, Ch. 9, Art. 6 Note**

**Annotations** **Hide****Research References & Practice Aids****Cross References:**

"Area of regional significance": Pub Res C § 2726.

"Area of statewide significance": Pub Res C § 2727.

**Collateral References:**

Areas designated to be of regional significance: 14 Cal Code Reg §§ 3550.

**Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 6.**

**§ 2790. Designation of specific geographic areas of state; Designation included in state policy; Reasons for designation**

After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the board may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Cross References:**

"State Geologist": Pub Res C § 677.

"State policy": Pub Res C § 2734.

**Hierarchy Notes:**

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 6 Note

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**Cal Pub Resources Code § 2791** (Copy citation)

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 6.****§ 2791. Recommendations of concerned agencies, organizations and individuals in identifying areas of significance**

The board shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations****- Hide****Research References & Practice Aids****Hierarchy Notes:**

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Div. 2, Ch. 9, Art. 6 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 6.****§ 2792. Designation or regulation as not limiting or modifying rights of person to complete development authorized by law; Prohibited abridgment of vested or other legal rights**

Neither the designation of an area of regional or statewide significance nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or by a building permit or other authorization to commence development, upon which such person relies and has changed his position to his substantial detriment, and, which permit or authorization was issued prior to the designation of such area pursuant to Section 2790. If a developer has by his actions taken in reliance upon prior regulations obtained vested or other legal rights that in law would have prevented a local public agency from changing such regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

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Div. 2, Ch. 9, Art. 6 Note

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 6.**

**§ 2793. Termination of designation; Finding**

The board may, by regulation adopted after a public hearing, terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

**History**

Added Stats 1975 ch 1131 § 11.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 6 Note

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**Cal Pub Resources Code Div. 2, Ch. 9, Art. 7 Note** (Copy citation)

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 7.**

**Div. 2, Ch. 9, Art. 7 Note****History**

[Added Stats 1980 ch 800 § 12, effective July 28, 1980.]

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note


Div. 2 Note

Div. 2, Ch. 9 Note

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 7.****§ 2795. Deposits into Surface Mining and Reclamation Account**

(a) Notwithstanding any other provision of law, the first two million dollars (\$2,000,000) of moneys from mining activities on federal lands disbursed by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. Sec. 191), shall be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is hereby created, and may be expended, upon appropriation by the Legislature, for purposes of this chapter.

(b) Proposed expenditures from the account shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the account shall be subject to all of the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

**History**

Added Stats 1980 ch 800 § 12, effective July 28, 1980; Amended Stats 1985 ch 393 § 1, effective July 30, 1985, operative July 1, 1986; Stats 2005 ch 81 § 4 (SB 71), effective July 19, 2005.

**Annotations** **Hide****Notes****Amendments:****1985 Amendment:**

(1) Amended subd (a) by (a) substituting "two million dollars (\$2,000,000)" for "one million one hundred thousand dollars (\$1,100,000)"; and (b) adding the second sentence; and (2) deleted the former last sentence of subd (b) which read "On June 30 of each year any portion of the one million one hundred thousand dollars (\$1,100,000) specified in subdivision (a) for that fiscal year which is not appropriated by the Legislature shall be transferred to unappropriated surplus of the General Fund."

**2005 Amendment:**

Deleted the former last sentence of subd (a) which read: "However, if in any fiscal year, the amount of money disbursed to the state pursuant to Section 35 of the Mineral Lands Leasing Act is less than twenty million dollars (\$20,000,000), then only the first one million one hundred thousand dollars (\$1,100,000) of that money shall be deposited in the Surface Mining and Reclamation Account for the next fiscal year."

## Research References & Practice Aids

### Hierarchy Notes:

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Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 7 Note

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**Deering's California Code Annotated   PUBLIC RESOURCES CODE   Division 2.   Chapter 9.   Article 7.**

**§ 2796. [Section repealed 2003.]****History**

Added Stats 1993 ch 1094 § 2 (AB 904). Amended Stats 2000 ch 713 § 1 (SB 666). Repealed, operative January 1, 2003, by its own terms. The repealed section related to state abandoned minerals and mineral materials mine reclamation program and related funding.

**Annotations** **Hide****Research References & Practice Aids****Hierarchy Notes:**

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**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 7.****§ 2796.5. Conditions for director to remediate or complete reclamation of abandoned mined lands**

(a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d)

(1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The director may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the director may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

**(4)** The director shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, the director may enter the property without consent or the issuance of a warrant.

**(e)** For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the director to the extent of the director's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

**(f)**

**(1)** The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

**(2)** Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the director, for a money judgment. Money recovered by a judgment in favor of the director shall be used for the purposes of this chapter.

**(g)** If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of preventing the director from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.

**(h)** "Remediate," for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

**(i)** "Threaten," for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

**(j)** This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

**(k)** The director may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

**(l)** Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

## History

Added Stats 2000 ch 713 § 2 (SB 666). Amended Stats 2002 ch 1154 § 3 (SB 483), operative April 7, 2003; Stats 2006 ch 869 § 24 (SB 668), effective January 1, 2007.

**Annotations** **Hide****Notes****Editor's Notes**

Stats 2002 ch 1154 § 8 had provided that the act would only become operative if Senate Bill 1828 of the 2001-02 Regular Session was enacted and became operative on or before January 1, 2003. Senate Bill 1828 of the 2001-02 Regular Session was vetoed; therefore, this section, as enacted by Stats 2002 ch 1154 § 3 and contingent upon enactment of SB 1828, did not become operative until Stats 2003 ch 3 (SB 22) repealed the contingency in Stats 2002 ch 1154 § 8.

Stats 2003 ch 3 (SB 22) became effective on April 7, 2003.

**Amendments:****2002 Amendment:**

Substituted (1) "Public Contract Code" for "Government Code" at the end of subd (d)(3); and (2) "January 1, 2007" for "January 1, 2003" wherever it appears in subd (m).

**2006 Amendment:**

Deleted former subd (m) which read: "(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date."

**Note**

Stats 2002 ch 1154 provides:

SEC. 6. This act is not intended to interfere with the ability of the federal government to designate particular land uses applicable to federal government owned lands or to conflict with the ability of the federal government to permit or allow particular land use activities to occur on federal lands. This act is intended to be a state regulatory framework consistent with California Coastal Comm'n v. Granite Rock (1987) 480 U.S. 572.

Stats 2003 ch 3 provides:

SEC. 2. Section 8 of Chapter 1154 of the Statutes of 2002 is repealed.

SEC. 3. Chapter 1154 of the Statutes of 2002 is operative upon the effective date of this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To prevent the imminent destruction of important Native American sacred sites threatened by proposed strip mining and to ensure these mining activities are adequately mitigated through implementation of new state reclamation requirements at the earliest opportunity, it is necessary that this act take effect immediately.

**Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 7 Note

Deering's California Codes Annotated

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**Cal Pub Resources Code § 2797** (Copy citation)

This document is current with urgency legislation through Chapter 876 of the 2012 Session and Proposition 28, approved by the electorate at the June 5, 2012, Presidential Primary Election and the 2012 Governor's Reorganization Plan No. 2.

**Deering's California Code Annotated PUBLIC RESOURCES CODE Division 2. Chapter 9. Article 7.**

**§ 2797. [Section repealed 2005.]****History**

Added Stats 2002 ch 1154 § 4 (SB 483), operative April 7, 2003. Repealed Stats 2005 ch 383 § 15 (SB 1110). The repealed section related to the report to the legislature on abandoned mine remediation projects proposed for the following fiscal year.

**Annotations**[- Hide](#)**Notes****Note**

Stats 2005 ch 383 provides:

SEC. 35. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provisions or applications.

**Research References & Practice Aids****Hierarchy Notes:**

Pub Resources Code Note

Div. 2 Note

Div. 2, Ch. 9 Note

Div. 2, Ch. 9, Art. 7 Note

Deering's California Codes Annotated

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## DECLARATION OF WAYNE WATERS

I, Wayne Waters, declare and state as follows:

1. I worked as the road foreman at the County of Mendocino's Willits yard from 1976 through 1978. I remember purchasing Harris Quarry aggregate on a regular basis for the County during the period from 1976 through 1978.

2. I also did work for Bud Garman, but never worked at the quarry during the time that Bud was operating the quarry.

3. The foregoing is true and correct and if called as a witness, I could and would testify to the above.

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

DATED: 3/19/15

  
\_\_\_\_\_  
WAYNE WATERS

ORDINANCE OF THE COUNTY OF MENDOCINO  
AMENDING SECTION 22.16.021(b) OF THE  
MENDOCINO COUNTY CODE.

The Board of Supervisors of the County of Mendocino do  
ordain as follows:

Mendocino County Code § 22.16.021(b) is amended to read  
as follows:

"(b) Surface mining operations, including  
prospecting and exploration, so long as the  
mined lands do not exceed one acre in extent  
and the total amount of material, including  
overburden, displaced does not exceed 1000  
cubic yards."

PASSED AND ADOPTED by the Board of Supervisors of the  
County of Mendocino, State of California, on this 11th  
day of December, 1979, by the following roll call vote:

AYES: Supervisors Banker, Eddie, Cimolino, de Vall, Barbero

NOES: None

ABSENT: None

WHEREUPON, the Chairman declared said ordinance passed  
and adopted and SO ORDERED.

Al Barbero  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

ALBERT P. BELTRAMI  
Clerk of Said Board

By James A. Beard  
Deputy Clerk



ORDINANCE NO. 3263

ORDINANCE OF THE COUNTY OF MENDOCINO ADDING SECTIONS 22.16.010 THROUGH 22.16.090, CHAPTER 22.16, SURFACE MINING & RECLAMATION TO THE MENDOCINO COUNTY CODE

The Board of Supervisors of the County of Mendocino,  
State of California, does ordain as follows:

Chapter 22.16 entitled "Surface Mining and Reclamation"  
is added to the Mendocino County Code as follows:

CHAPTER 22.16

SURFACE MINING & RECLAMATION

Section 22.16.010	Purpose & Intent
.020	Scope
.021	Excepted Activities
.030	Definitions
.040	Permit & Reclamation Plan Req'd
.041	Permit: Operational Standards
.042	Reclamation Plan Form & Content
.043	Reclamation Standards
.044	Application of Plan to Specific Site
.050	Permit & Plan Review
.060	Vested Rights
.070	Amendments
.080	Public Records
.090	Succession of Interest

Section 22.16.010 Purpose & Intent

This chapter is adopted pursuant to the provisions of the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.). Nothing contained herein is intended to abridge the provisions of that act as adopted or subsequently amended.

It is the intent of the Board of Supervisors of the County of Mendocino to create and maintain through periodic review and appropriate revision, an effective and comprehensive surface mining and reclamation policy for the regulation of surface mining operations, which policy, in conjunction with the County's environmental review process and the regulations of other agencies having jurisdiction, will assure that:

- (a) Adverse environmental effects of surface mining operations are minimized, or, if possible, prevented, and that mined lands are reclaimed to a useable condition which is readily

adaptable for appropriate alternative land uses.

- (b) The production and conservation of minerals is encouraged, while giving consideration to values relating to recreation, watershed, wildlife, fisheries, range and forage, and aesthetic enjoyment.
- (c) Residual hazards to the public health and safety are eliminated.

Section 22.16.020 Scope.

The provisions of this chapter shall apply to surface mining operations and reclamation of mined lands within the unincorporated areas of Mendocino County. The provisions of this chapter have been designed to encompass streambed gravel extraction, borrow pits, quarry operations and other relatively small scale surface mining operations conducted in Mendocino County. The Board of Supervisors finds that additional provisions need be adopted in order to adequately provide for the operation of, and reclamation required for large scale surface mining operations. Therefore, on an interim basis, to ensure the protection of the general welfare of the county until such time as adequate provisions encompassing large scale surface mining operations are adopted, no surface mining operation which would displace 500,000 cubic yards or more of ore and overburden combined, shall be conducted in Mendocino County.

Section 22.16.021 Excepted Activities.

No permit or reclamation plan shall be required by this chapter for the following:

- (a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster. Gravel extraction operations from streambeds exceeding

the limits specified in Section 22.16.021 (b) shall not be an excepted activity.

- (b) Surface mining operations, including prospecting and exploration, so long as the mined lands do not exceed one acre in extent and the total amount of material, including overburden, displaced does not exceed 1000 cubic yards in any one year.
- (c) Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.
- (d) Such other surface mining operations which the State Mining & Geology Board determines to be of an infrequent nature, and which involve only minor surface disturbances.

Section 22.16.030 Definitions.

Unless the context otherwise requires, the definitions set forth in this section shall govern the administration of this chapter.

- (a) 'Area of regional significance' means an area designated by the State Mining & Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.
- (b) 'Area of statewide significance' means an area designated by the State Mining & Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime

importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

- (c) 'Director' means the director of the Mendocino County Planning Department or his designee.
- (d) 'Farming' means the management and/or cultivation of land for the production of crops, livestock or timber.
- (e) 'Gravel extraction operations' means all or any part of the process involved in the removal by any method of sand, gravel, rock or other earthen material from streambeds or stream channel bars normally subject to inundation during winter flows. Gravel extraction operations shall include but are not limited to:
  - 1) Onsite processing of extracted material, including screening washing, crushing, stockpiling or batching.
  - 2) The production and disposal of mining waste.
  - 3) Prospecting and exploratory activities.
- (f) 'Mined lands' includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.
- (g) 'Mining waste' includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other

materials or property directly resulting from, or displaced by, surface mining operations.

- (h) 'On-site Construction' means the construction of buildings, roads or other improvements including landscaping occurring within and occupying the area disturbed by a surface mining operation in such a manner that the mined lands are beneficially modified as a direct result of the completion of the construction project. Excavation and grading required to prepare a site for construction of structures, landscaping or other land improvements, and which is beneficially modified by such construction, is not deemed to be a surface mining operation.
- (i) 'Operator' means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.
- (j) 'Overburden' means soil, rock or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.
- (k) 'Person' means any individual, firm, association, corporation, organization, or partnership, or any city, county, district or state or any department or agency thereof.
- (l) 'Permit' means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

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

(n) 'Surface mining operations' means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- 1) Inplace distillation or retorting or leaching.
- 2) The production and disposal of mining waste.
- 3) Prospecting and exploratory activities.
- 4) Gravel extraction operations.

Section 22.16.040 Permit & Reclamation Plan Required.

Except as specified in Section 22.16.021 and Section 22.16.060, no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the Planning Commission for such operation pursuant to this article.

Section 22.16.041 Permit Operational Standards.

In addition to meeting the minimum acceptable surface mining and reclamation practices in the Act and policy guidelines, each surface mining operation requiring a permit shall be conducted and designed to meet the following operational standards. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a permit shall be conducted only by the operator named in the permit, or by his authorized agent.

- (a) Access Roads - All private access approaches leading off any paved public street onto a mining site shall be adequately surfaced to prevent aggregate or other materials being drawn onto the public right-of-way.
- (b) Dust Suppression - All haul roads and driveways shall be maintained as necessary to minimize the emission of dust. Maintenance shall be conducted as necessary to prevent a nuisance to adjacent properties. Special maintenance procedures (watering, oiling, etc.) may be placed on the permit.
- (c) Driveway Encroachment Permit - If required, a driveway encroachment permit issued by the Mendocino County Department of Public Works shall be a condition of the mining permit.
- (d) Any waters discharged from the site to adjacent lands, streams, or bodies of water or to any groundwater body shall meet all applicable water quality standards of the Regional Water Quality Control Board and any other agency with authority over such discharges. Records of any water quality monitoring conducted in conjunction with the requirements of such agency or agencies shall be made available to the Director on request. Discharges of water to designated on-site settling ponds or desilting basins shall not be deemed

to be in violation of this part solely on the basis of sediment content.

- (e) During the period mining operations are being conducted, and prior to final reclamation of mined lands, measures shall be taken to prevent erosion of adjacent lands from waters discharged from the site of mining operations and the off-site discharge of sediment. Such measures may include the construction of properly designed retarding basins, settling ponds and other water treatment facilities, ditches, diking and revegetation of slopes. Settling ponds and other water treatment facilities shall be located and managed so that accumulated sediment will not enter any stream.
- (f) Grades in areas being mined shall be maintained so as to avoid accumulations of water that could serve as breeding areas for mosquitoes or as sites of fish entrapment.
- (g) Excavations which may penetrate near or into usable water bearing stratas shall not substantially reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such groundwater basin or subbasin to pollution or contamination.
- (h) Permits issued for surface mining operations proposed to be conducted between the banks of a stream shall include as conditions any measures or conditions imposed by other agencies of jurisdiction, including the Department of Fish & Game, the North Coast Regional Water Quality Control Board, and the Corps of Engineers. Copies of conditions imposed by such agencies shall be on file with the Planning Department before any permit issued by Mendocino County shall be deemed to be in effect.



(i) All operators of mining operations requiring mining permits and/or reclamation plan approvals shall annually supply to the Director within sixty (60) days of the permit/plan anniversary date an annual accounting of quantities and types of materials extracted and/or processed from each location.

(j) ~~Noise Levels: Section 22.16.041(k) was eliminated and the following language was substituted:~~

~~"(k) Noise levels created by the operation as measured at the nearest residence other than that of the mine owner or operator shall not exceed the following:~~

- ~~1) 65 dB(A) for a cumulative period more than 30 minutes in any hour;~~
- ~~2) 70 dB(A) for a cumulative period more than 12 minutes in any hour;~~
- ~~3) 75 dB(A) for a cumulative period more than 3 minutes in any hour;~~
- ~~4) 80 dB(A) for a cumulative period more than 1 minute in any hour;~~
- ~~5) 85 dB(A) at any moment.~~
- ~~6) More stringent noise standards may be required as permit conditions when particular local circumstances warrant additional protection of potentially affected residences.~~

Any noise control measures prescribed by the Board as a condition of a permit shall in no manner be interpreted as to preclude the application to the surface mining site of future noise control measures adopted by the County subsequent to the grant of the permit."

Section 22.16.042 Reclamation Plan Form & Content.

The reclamation plan shall be filed with the Planning Department on a form provided by the County, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any mined lands, and who plans to conduct surface mining operations thereon. The reclamation plan shall include the following information and documents:

- (a) The name and address of the operator and the names and addresses of any persons designated by him as his agents for the service of process.
- (b) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.
- (c) The proposed dates for the initiation and termination of such operation.
- (d) The maximum anticipated depth of the surface mining operation.
- (e) The size and legal description of the lands that will be affected by such operation, a map that includes the boundaries and topographic details of such lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands, the location of all proposed access roads to be constructed in conducting such operation, and the names and addresses of the owners of all surface and mineral interests of such lands.
- (f) A description of and plan for the types of surface mining methods to be employed and a time schedule that will provide

for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

- (g) A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.
- (h) A description of the manner in which reclamation, adequate for the proposed use or potential uses, will be accomplished, including: (1) a description of the manner in which contaminants will be controlled, and mining waste will be disposed; and (2) a description of the manner in which affected streambed channels and streambanks will be protected and/or rehabilitated to a condition minimizing erosion and sedimentation.
- (i) An assessment of the effect of implementation of the reclamation plan on future mining in the area.
- (j) A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.
- (k) An assessment of the impact of the project on the public health and safety, including discussion of the degree and type of present and probable future exposure of the public to the project site.

Section 22.16.043 Reclamation Standards.

Properties used for surface mining operations shall be reclaimed after the operation, or an approved phase of the operation, has been

completed in accordance with the following standards:

- (a) Reclamation shall in all cases be completed within the time schedule set forth in the approved reclamation plan. In all cases reclamation shall commence not later than twelve months following termination of the excavation operation or approved phase. However, the operator is required to proceed as soon as practicable and may be required to progressively rehabilitate the site as the excavation operation or approved phase is completed.
- (b) Final reclaimed slopes, abandoned spoil piles and the entire mining site shall be graded and smoothed as necessary so as to control erosion, prevent the creation of potentially dangerous areas and present a natural appearance. The grades of final reclaimed slopes shall be no steeper than 1-1/2 horizontal to 1 vertical unless a steeper angle of repose is recommended as safe and self-supporting by a registered Civil Engineer qualified in the field of soils engineering and soil mechanics. Fill slopes flatter than 1-1/2:1 will generally be acceptable. In pits, slopes below the minimum water level shall be no steeper than the natural angle of repose.
- (c) Resoiling when required, shall be accomplished in the following manner: coarse, hard material shall be graded and covered with a layer of finer material or weathered waste and a soil layer then placed on this prepared surface where practical. Where quantities of available soils are inadequate to provide cover, native materials should be upgraded to the extent feasible for this purpose.
- (d) All permanently exposed lands that have been denuded by mining operations shall be revegetated unless any such revegetation is determined by the Planning Commission to be technically

infeasible or not beneficial with respect to the intent of this Section. Revegetation methods and plant materials utilized shall be appropriate for the topographical, soil and climatic conditions present at the site. Native species shall be used wherever practical.

- (e) Where mining will occur between the banks of a watercourse, streambed channels and streambanks affected by the operation shall be rehabilitated annually prior to seasonal high water so as to minimize erosion and sedimentation and so as to minimize undermining or damage to off-site public or private property, improvements or structures.
- (f) Reclamation plans shall make provisions to ensure that the mining site is left in a final condition after operations are complete, that is:
  - 1) Safe with stable waste piles, cut slopes, fill slopes and with the elimination of steep-sided pits and holes.
  - 2) Free of derelict machinery, waste materials, mining waste and scrap.
  - 3) Revegetated where necessary for soil stabilization.
  - 4) Free of drainage problems.
  - 5) Free of toxic substances in fill material.
  - 6) Coordinated with present and potential future land use, topography and the general environment of surrounding property.
- (g) Unless a water-filled excavation is recognized in the reclamation plan as an integral part of future development or use of the property, all excavations made to a level below the highest seasonal ground water table shall be filled with inert materials to a level above the highest seasonal ground water table and with slopes less than the critical gradient

- (h) Regrading and revegetation shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage, and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes, sites of fish entrapment, or threats to public safety.
- (i) Silt basins which will store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlets to lower ground.
- (j) Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations.
- (k) Upon reclamation, no condition shall remain which will or could lead to the degradation of water quality below applicable standards of the Regional Water Quality Control Board or any other agency with authority over water quality.

Section 22.16.044 Application of Plan to Specific Site.

The reclamation plan shall be applicable to a specific piece of property or properties, and shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities.

Section 22.16.050 Permit & Plan Review.

The procedures established in the Mendocino County Code for the issuance, modification, enforcement of conditions, and revocation of a use permit shall be followed for the review, approval and administration of a reclamation plan and/or the issuance and administration of a permit. Fees as established by the Board of Supervisors shall be paid at the time of filing.

The County shall notify the State Geologist of the filing of an application for a permit to conduct surface mining operations, and shall submit to the State Geologist a copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter.

Inspections of surface mining operations by Planning Department staff shall be made as deemed necessary by the Planning Director to determine compliance with the use permit conditions and reclamation plans. Inspections shall be conducted jointly with a representative of the operator.

Section 22.16.060 Vested Rights.

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

A person having such vested rights to conduct surface mining operations shall submit to the Planning Department within one year following the effective date of this ordinance a reclamation plan for operations conducted after January 1, 1976, and prior to the effective date of this chapter.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were completed prior to January 1, 1976.

As a guide in determining the status of the vested rights of the person(s) owning or operating a given surface mine, the factors discussed below shall be taken into consideration.

A surface mine does not have to have been in operation on the effective date of the Act to have vested rights. Surface mines that are operated seasonally, intermittently, or are temporarily deactivated may have vested rights established prior to the Act. In this regard, the historical pattern of the conduct of the operation shall be considered, as well as the continuity of the operator's activities in the area and his diligent maintenance of the property in question.

The expression 'no substantial changes . . . made' must be interpreted with due consideration of the above factors. That is, changes in the rate of production may or may not be considered a substantial change, depending upon the status of the surface mine under review. Similarly, the physical moving or shifting of a surface mining operation may or may not be a substantial change, depending upon operational, environmental, and other circumstances.

Upon adoption of this ordinance, the Planning Department shall undertake to provide reasonable notice to all mining operators of the requirements of this chapter, provided however that failure to do so shall not exempt any operator from the requirements of this chapter.

Upon submission of a reclamation plan for surface mining operations proposed to be conducted on a site believed by the applicant to have vested rights, the applicant shall submit in lieu of a permit



application, a "Statement of Vested Right" form provided by the County. The Planning Director shall determine whether or not the information submitted establishes the existence of a vested right. Should the Director determine that a vested right has not been established, the applicant shall be so notified and shall be required to obtain a permit in accordance with the provisions of this chapter prior to conducting surface mining operations on the site. The decision of the Director may be appealed to the Planning Commission. Such appeal shall be made in writing within fifteen days from the date of the Director's decision. If no appeal is made within this time, the decision of the Director shall be final.

Section 22.16.070 Amendments.

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan, as determined by the Planning Director, shall not be undertaken until such amendment has been filed with, and approved by the Planning Commission.

Section 22.16.080 Public Records.

Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the Planning Director that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The Planning Department shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the State Geologist and to persons authorized in writing by the operator and by the owner.

Section 22.16.090 Succession of Interest.

Whenever one operator succeeds to the interest of another in any

incompleted surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 11th day of June 1979, by the following vote on roll call:

AYES: Supervisors Banker, Eddie, Cimolino, Barbero

NOES: Supervisor de Vall

ABSENT: None

WHEREUPON, the Chairman declared this ordinance passed and adopted and SO ORDERED.

*Ed Banker*  
Chairman, Board of Supervisors

ATTEST:

ALBERT P. BELTRAMI  
Clerk of said Board

By *Ellen Young*  
Deputy Clerk

PUBLIC NOTICE

10. Case #: /U52-01

Owner: RIDGEWHEEL  
PROPERTIES, INC.

Applicant: Robert L.  
Schwan

Request: Use permit for  
rock quarry

Location: 5+- mi S of  
Willits, at the W'y end of  
Ridgewheel Park Sub-  
division, extending S  
from Blackhawk Dr. ex-  
tension, 750+- N of its in-  
tersection with  
Blackhawk Dr. (Pvt.)

11. Case #: /U53-01

Owner: RIDGEWHEEL  
PROPERTIES, INC.

Applicant: Robert L.  
Schwan

Request: Use permit for  
rock quarry

Location: 5+- mi S of  
Willits, at the S'y end of  
Ridgewheel Park Sub-  
division, extending E  
from the intersection of  
Bluebird Ct. (Pvt.) with  
Ridgeview Rd.

The Planning Depart-  
ment has recommended  
adoption of a Negative  
Declaration (no adverse  
environmental impacts  
have been found which  
cannot be ~~avoided~~  
the above projects unless  
otherwise noted. Your  
comments regarding the  
projects and or its en-  
vironmental effects are  
invited. The last day to  
file an appeal on an  
adopted Negative

Declaration is the tenth  
day after the public hear-  
ing. The last day to file  
any appeal on the project  
decision is the 20th day  
after the hearing unless  
otherwise noted. All in-  
terested persons are in-  
vited to appear and pre-  
sent testimony in this  
matter.

# Classified Index

1. NOTICES  
2. PERSONALS  
3. LOST & FOUND  
4. CARDS OF THANKS  
5. IN MEMORIAM  
6. MEETINGS & EVENTS  
7. TRAVEL OPPORTUNITIES

8. SERVICES OFFERED  
9. BUSINESS OPPORTUNITIES  
10. MONEY TO LOAN  
11. INVESTMENTS  
12. BUSINESS RENTALS  
13. APTS. UNFURNISHED  
14. APTS. FURNISHED  
15. DUPLEXES  
16. HOMES UNFURNISHED  
17. HOMES FURNISHED  
18. ROOMS FOR RENT  
19. REST HOMES

20. WANTED TO RENT  
21. WANT TO SHARE RENT  
22. MOBILE SPACES  
23. NEW & USED EQUIPMENT  
24. MUSICAL INSTRUMENTS  
25. BOATS  
26. BUILDING SUPPLIES  
27. FURNITURE  
28. WANTED TO BUY  
29. TRADE  
30. DISCOUNT CLOTHING  
31. MISCELLANEOUS FOR SALE  
32. GARAGE SALES

33. CARS/TRUCKS WANTED  
34. AUTO EXCHANGE  
35. TRUCKS FOR SALE  
36. CARS FOR SALE  
37. LIVESTOCK  
38. FARM EQUIPMENT  
39. FEED/PASTURE/SUPPLIES  
40. EQUIPMENT RENTALS  
41. REAL ESTATE EXCHANGE  
42. REAL ESTATE WANTED  
43. MOBILE HOMES FOR SALE  
44. INCOME PROPERTY  
45. RANCHES  
46. LOT/ACREAGE  
47. REAL ESTATE

OUR HELPFUL, COURTEOUS ADVISERS ARE AT YOUR SERVICE 8:00 AM - 5:00 PM MON-FRI. **468-1444**  
Classified Department

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**ERRORS** When placing your ad, always ask for the ad to be repeated back to you. Check your ad for any errors the FIRST DAY. The Daily Journal will be responsible for any ONE incorrect insertion and no greater extent than the cost of the ad as placed immediately by calling 468-1444.

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# JOURNAL 468-1444 classified

- PUBLIC NOTICE**

**NOTICE OF DEATH OF KENNETH LEWIS**

**PETITION TO ADMINISTER ESTATE**

ICMS

To all heirs, beneficiaries, creditors, contingent creditors, and persons who may be otherwise interested in the will or estate of KENNETH LEWIS:

A petition has been filed by FAYE L. LEWIS in the Superior Court of Mendocino County requesting that be appointed as personal representative to administer the estate of the decedent.

A hearing on the petition will be held on May 27, 1981 at 9:30 A.M. in Dept. One located at the Courthouse, State and Standley Streets, Ukiah, California.

IF YOU OBJECT to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased you must file your claim with the court or present it to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in section 700 of the California Probate Code. The time for filing claims will not expire prior to four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are a person interested in the estate, you may file a request with the court to receive special notice of the filing of the inventory of estate assets and of the petition, accounts and reports described in section 1200 of the California Probate Code.

Attorney for petitioner: LEO M. COOK  
P.O. Box 418  
Ukiah, California 95422  
a/LEO M. COOK  
LEO M. COOK  
This notice was mailed on May 5, 1981 at Ukiah, California.

5-8, 11, 15, 1981

**PUBLIC NOTICE**

Navarro Bluff Rd. (CR#117A)

2. Case #: JUR 50-78 (81)

Owner: PARNUM PAVING, Inc.

Applicant: Mendocino Aggregates

Request: Use permit renewal for gravel extraction, plus operation of crusher/screener.

Location: 11+- mi NW of Ukiah, 1/4+- mi S of the intersection of Hwy. 101 (Longgate-Covello Rd.) with Hwy. 101 at Longvale, at the confluence of Long Valley Creek with Outlet Creek.

3. Case #: JUR 111-79 (81)

Owner: MARGARET CONNER & JUANA CRUMHINE

Request: Use permit renewal for gravel extraction.

Location: 8+- mi SW of Covelo town center, lying N of HUD Rd. (CR#127B) approx. 2+- mi E of its intersection with Double Ln. (CR#229)

4. Case #: JUM 96-00 (81)

Owner: MAX SCHLIEGER, Netch loc.

Request: Modify use permit to expand existing shop and assembly bldgs.

Location: 7 1/4+- mi S of central Ukiah, extending NE of the intersection of Hwy. 101 with Henry Station Rd. (CR#107C)

5. Case #: JUM 114-79 (81)

Owner: EUGENE LOCATELLI

Applicant: Howard Bashford

Request: Modify use permit that granted approval for 20-space mobile home park. Now requesting 77 space mobile home park.

Location: In Redwood Valley, on the W side of East Rd. (CR# 230) 1/4+- mi N of the intersection of School Way (CR# 234) located between CR# 234 and the NWPH tracks.

6. Case #: JU 17-81

Owner: PAUL DANSE

Applicant: Robert J. Garibaldi

Request: Use permit for auto dismantling yard.

Location: 1.5+- mi NE of Fort Bragg, extending N of Airport Rd. (CR# 44), 721+- yds E of its intersection with State Hwy. 1.

7. Case #: JU 48-81

Owner: C.W. SANDERS

Applicant: Lyell C. Cash

Request: Use permit to convert existing single family residence and building to single family residence and antique sales

Location: In Hopland, 200+- ft. N of the intersection of Hwy. 16 and Hwy. 101, lying on the W side of Hwy. 101.

CATEGORICALLY EXEMPT

8. Case #: JU 50-81

Owner: PETER AND ELIZABETH KOCH

Request: Use permit for dwelling group (2nd dwelling)

Location: 1.5+- mi W of Ukiah, extending 1.2+- mi along and 1.7+- mi S of State Hwy. 20.

9. Case #: JU 51-81

Owner: HAROLD BARNES

Request: Use permit for placement of mobile home on site as a second residence.

Location: 1+- mi S of Ukiah, 1/4+- mi S of intersection of Della Ave. (CR# 213), and Locust St. (CR# 215A), lying on the N side of Locust St. and on the S side of CR# 215.

CATEGORICALLY EXEMPT

**PUBLIC NOTICE**

10. Case #: JU 52-81

Owner: RIDGEWHEEL PROPERTIES, INC.

Applicant: Robert L. Schwan

Request: Use permit for rock quarry

Location: 3+- mi S of Ukiah, at the W end of Ridgewheel Park Sub-division, extending E from the intersection of Bluebird Ct. (Pvt.) with Ridgewheel Rd.

The Planning Department has recommended adoption of a Negative Declaration (no adverse environmental impacts have been found which cannot be overcome) on the above projects unless otherwise noted. Your comments regarding the projects and/or its environmental effects are invited. The last day to file an appeal on an adopted Negative Declaration is the tenth day after the public hearing. The last day to file any appeal on the project decision is the 20th day after the hearing unless otherwise noted. All interested persons are invited to appear and present testimony in this matter.

11. Case #: JU 53-81 & EIR

Owner: "TECHNICAL MANAGEMENT AND INVESTMENT CORPORATION"

Applicant: Clayton Ward Thompson Architectural Group

Project Name: Vintner's Village

Request: Use permit to construct 200 unit model/convention center. Also, to certify environmental impact report (EIR).

Location: 1+- mi N of Ukiah, extending W of Lake Mendocino Rd. exit southbound Hwy. 101.

Comments: An EIR has been prepared and is available at the Planning Department for review, 800 N. Bush St., Ukiah. All interested persons are invited to present testimony in writing prior to the hearing date or in person at the day of the hearing.

DAN GARVIN, Planning Director

5-11, 1981

- PUBLIC NOTICE**

**NOTICE OF DEATH OF PAUL F. SCAMMON**

**PETITION TO ADMINISTER ESTATE**

NO. 18234

To all heirs, beneficiaries, creditors, contingent creditors, and persons who may be otherwise interested in the will or estate of PAUL F. SCAMMON:

A petition has been filed by LUCILLE V. NELSON and PAUL WELLINGTON in the Superior Court of Mendocino County requesting that LUCILLE V. NELSON be appointed as personal representative to administer the estate of the decedent.

A hearing on the petition will be held on 5/22/1981 at 9:30 a.m. in Dept. One located at State and Standley Streets, Ukiah, CA 95422.

IF YOU OBJECT to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court or present it to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in section 700 of the California Probate Code. The time for filing claims will not expire prior to four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are a person interested in the estate, you may file a request with the court to receive special notice of the filing of the inventory of estate assets and of the petition, accounts and reports described in section 1200 of the California Probate Code.

Attorney for Petitioner: LEO M. COOK  
P.O. Box 418  
Ukiah, CA 95422  
LEO M. COOK

5-7, 11, 14, 1981

**PUBLIC NOTICE**

the will or estate of PAUL F. SCAMMON

A petition has been filed by LUCILLE V. NELSON and PAUL WELLINGTON in the Superior Court of Mendocino County requesting that LUCILLE V. NELSON be appointed as personal representative to administer the estate of the decedent.

A hearing on the petition will be held on 5/22/1981 at 9:30 a.m. in Dept. One located at State and Standley Streets, Ukiah, CA 95422.

IF YOU OBJECT to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court or present it to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in section 700 of the California Probate Code. The time for filing claims will not expire prior to four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are a person interested in the estate, you may file a request with the court to receive special notice of the filing of the inventory of estate assets and of the petition, accounts and reports described in section 1200 of the California Probate Code.

Attorney for Petitioner: LEO M. COOK  
P.O. Box 418  
Ukiah, CA 95422  
LEO M. COOK

5-7, 11, 14, 1981

**PUBLIC NOTICE**

the court to receive special notice of the filing of the inventory of estate assets and of the petition, accounts and reports described in section 1200 of the California Probate Code.

Attorney for Petitioner: LEO M. COOK  
P.O. Box 418  
Ukiah, CA 95422  
LEO M. COOK

5-7, 11, 14, 1981

## 01. NOTICES

**ALCOHOLICS ANONYMOUS**  
462-7123

## 02. PERSONALS

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AND ASSOCIATES INC.

CIVIL ENGINEERS · LAND SURVEYORS

100 NORTH PINE STREET · (707) 462-6536 · UKIAH, CA 95482

DRAWING:

AUGUST 1981 — AERIAL PHOTO

PROJECT:

HARRIS QUARRY  
VESTED RIGHTS EXHIBIT

Date: JUNE 25, 1981

Scale: 1"=200'

Drawn: CAM

Checked: GCR

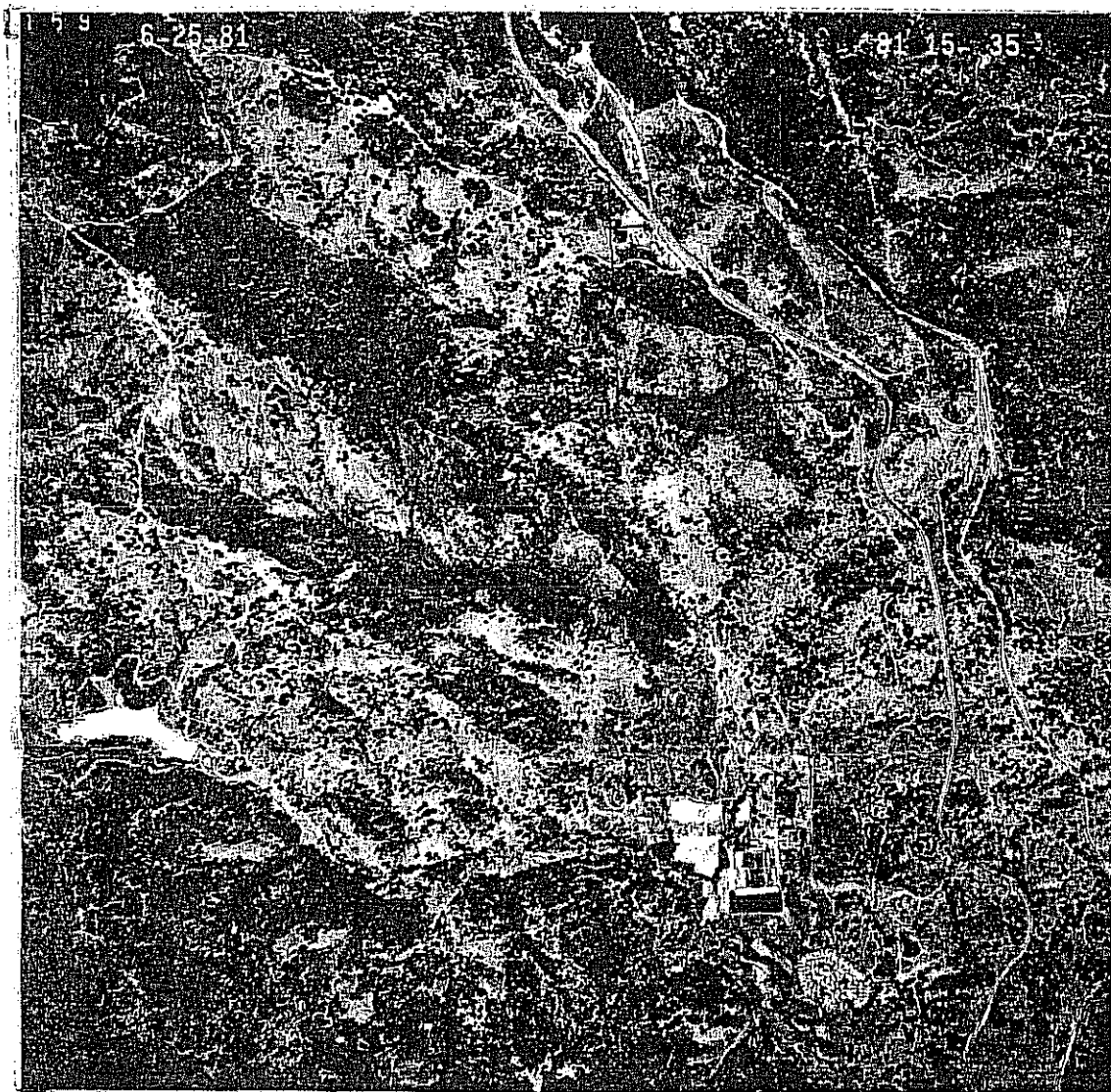
Reviewed: GCR

JOB NO. R04056.0

SHEET

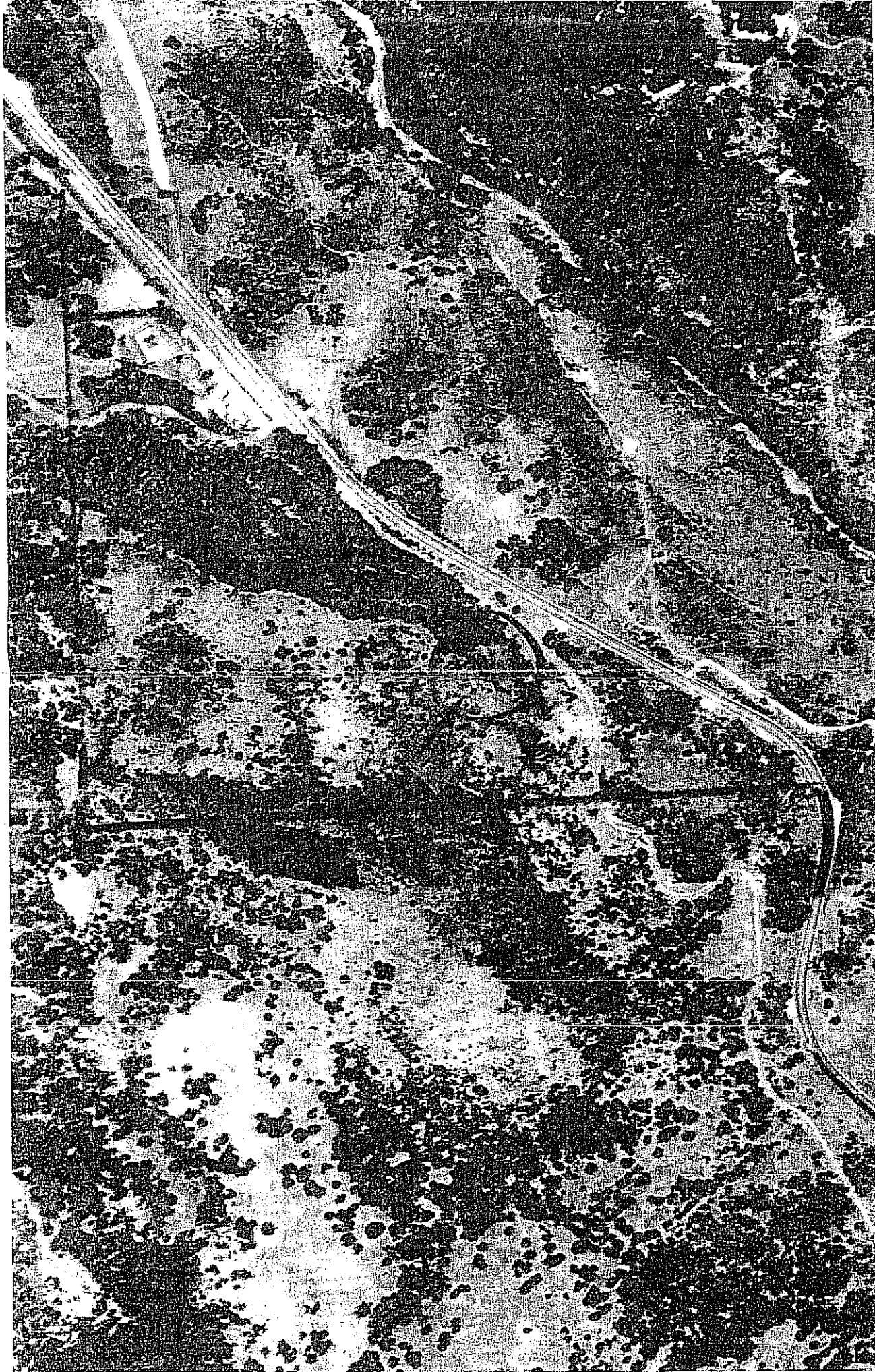
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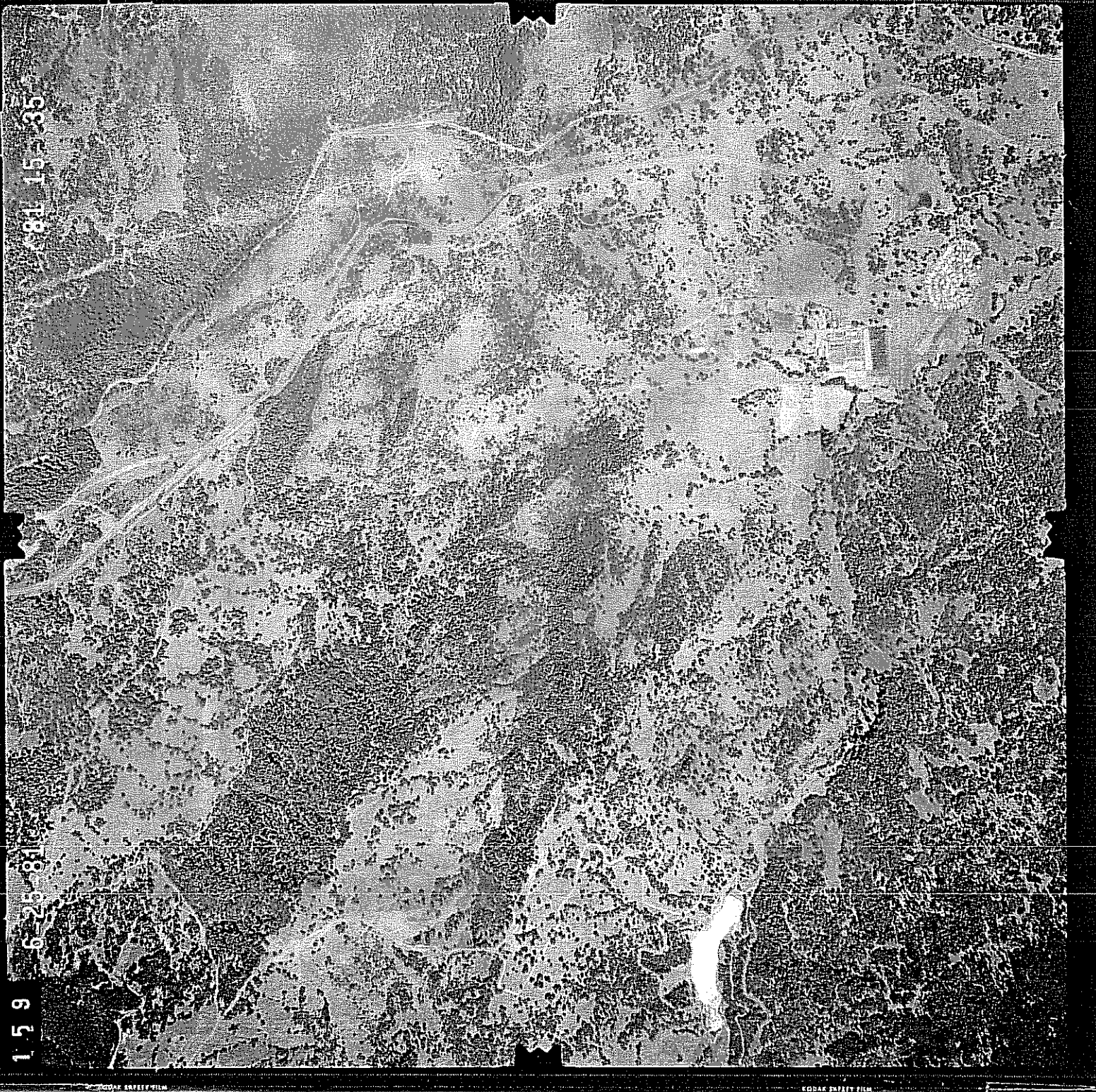
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1981







159 6-25-81 15-35

159 6-25-81

159



## DIVISION OF MINES AND GEOLOGY

SACRAMENTO OFFICE

610 BERCUT DRIVE

SACRAMENTO, CA 95814

(Phone 916—323-8554)

George Deukmejian

~~EDMOND G. BROWN JR.~~, Governor→ WAYNE  
#5/11/83  
RECEIVED  
MAY 9 1983BY  
PLANNING DIVISION  
Ukiah, CA 95482

May 4, 1983

Mr. Victor Holanda, Director  
County of Mendocino  
Department of Planning and  
Building Services  
Courthouse  
Ukiah, CA 95482

Dear Mr. Holanda:

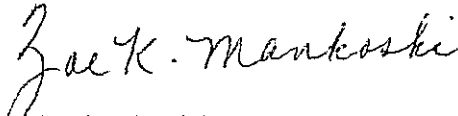
The California Division of Mines and Geology's Reclamation Program staff has reviewed the reclamation plan for Case #U19-83 (Robert Peters), Ridgewood Park Quarry. A site visit was not conducted. The following comments are offered for consideration by the County and the applicant:

- 1) The topographic map with the site plotted, as required in item 18 of your reclamation plan, would be very useful in understanding the proposed mining and reclamation.
- 2) At least one cross section should be included to show how the cut face and quarry floor will look after reclamation. The information given in response to item 19 of the reclamation plan is inadequate to understand what is proposed.
- 3) It is important for slope stability and safety that the "terracing" be engineered properly and take into consideration the height of the cut, the steepness of the cut, and the strength of the rock in the cut face.
- 4) In light of the information on soil, which states that there is little or none, and in view of the fact that no soil is to be replaced on the site, we feel that the applicant would be wasting money by reseeding. Proper grading would be a more effective method of controlling erosion and runoff.

Mr. Victor Holanda  
May 4, 1983  
Page Two

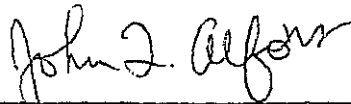
We appreciate receiving these reclamation plans from the County of Mendocino. If we can be of further help or if you have any questions on these comments, please call me at (916) 323-8565.


Sincerely,



Zoe K. Mankoski  
Senior Environmental Planner  
Program Manager  
Mined-Land Reclamation Program

APPROVED:



 James F. Davis  
State Geologist

cc: Robert Peters

VICTOR HOLANDA  
DIRECTOR



TELEPHONE  
707-468-4281

**COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

MAILING ADDRESS: COURTHOUSE  
UKIAH, CALIFORNIA 95482

**LAND USE PERMIT**

Major Use Permit #U 19-83

OWNER: HUGH & VIRGINIA CULLEN  
~~P.O. Box 1330~~ 16500 A Highway 101 North  
~~Ukiah, CA 95482~~ Willits, CA 95492

APPLICANT: Robert Peters  
266 Shell Lane  
Willits, CA 95490

REQUEST: Use permit for side hill quarry pit, 10,000 cu.yds. for 5 years

LOCATION: 7± mi S of Willits on Hwy. 101, lying on the W side of Hwy. 101,  
1/8± mi S of the Ridgewood Summit Commercial Development; AP#  
147-170-03, 147-180-06

Action: Planning Commission: approved Date: 6-2-83

Conditions: See attached list of conditions

Owner's Statement: I am the owner of the property subject to this permit (or his authorized agent) and I hereby certify that I have reviewed the attached conditions and will establish and continue the use in compliance with the specified conditions and applicable sections of Mendocino County Code. I further grant permission for County Staff to enter upon the premises for which the permit is issued to verify compliance with the required conditions.

Signed

Date

Planning Department Statement: I hereby certify that conditions of Section A of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

Signed

Date

Planning Department Statement: I hereby certify that conditions of Section B of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

Signed

Date

## RECOMMENDED CONDITIONS:

## A. Conditions which must be met prior to use and/or occupancy:

1. That the term of this permit not exceed twenty (20) years unless renewed. This permit shall be effective on or after June 12, 1983, and shall expire on June 12, 2003. Failure of the permittee to make use of this permit within two (2) years shall result in its expiration on June 12, 1985.
2. That this permit shall not be valid until such time as a Land Use Permit form is signed by the owner (or authorized agent) and the Zoning Administrator.
3. That the application along with the supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Planning Commission.
4. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

## B. Conditions which must be complied with for the duration of this permit.

1. All quarry operations shall be conducted separately and independently from the public road right-of-way.
2. No material shall be placed into or where it may pass into any stream or watercourse in quantities which would be deleterious to fish, wildlife or other beneficial uses.
3. Noise levels generated by the operation shall not exceed 55 dbA as measured at the nearest neighboring residence.
4. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
5. All disturbed areas of the site other than rock or road areas shall be shaped for proper drainage and reseeded each year prior to the winter rains. Upon completion of the project, the site shall be restored to as near its natural conditions as possible and all area other than rock or roads shall be reseeded.
6. Hours of operation shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m.

Project Coordinator: Wayne Bashore

## Negative Declaration

Appeal Fee: \$35.00

Appeal Period: 10 days

## Use Permit

Appeal Fee: \$35.00

Appeal Period: 10 days

LAND USE PERMIT

Major Use Permit #U 19-83

OWNER: HUGH & VIRGINIA CULLEN  
16500 A Highway 101 North  
Willits, CA 95490

APPLICANT: Robert Peters  
266 Shell Lane  
Willits, CA 95490

REQUEST: Use permit for side hill quarry pit, 10,000 cu.yds. for 5 years

LOCATION: 7± mi S of Willits on Hwy. 101, lying on the W side of Hwy. 101,  
1/8± mi S of the Ridgewood Summit Commercial Development; AP#  
147-170-03, 147-180-06

PLANNING COMMISSION ACTION: Approved 6-2-83

CONDITIONS OF APPROVAL:

A. Conditions which must be met prior to use and/or occupancy:

1. That the term of this permit not exceed twenty (20) years unless renewed. This permit shall be effective on or after June 12, 1983, and shall expire on June 12, 2003. Failure of the permittee to make use of this permit within two (2) years shall result in its expiration on June 12, 1985.
2. That this permit shall not be valid until such time as a Land Use Permit form is signed by the owner (or authorized agent) and the Zoning Administrator.
3. That the application along with the supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Planning Commission.
4. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

B. Conditions which must be complied with for the duration of this permit.

1. All quarry operations shall be conducted separately and independently from the public road right-of-way.
2. No material shall be placed into or where it may pass into any stream or watercourse in quantities which would be deleterious to fish, wildlife or other beneficial uses.
3. Noise levels generated by the operation shall not exceed 55 dbA as measured at the nearest neighboring residence.
4. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
5. All disturbed areas of the site other than rock or road areas shall be shaped for proper drainage and reseeded each year prior to the winter rains. Upon completion of the project, the site shall be restored to as near its natural conditions as possible and all area other than rock or roads shall be reseeded.
6. Hours of operation shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m.

Owner's Statement: I am the owner of the property subject to this permit (or his authorized agent) and I hereby certify that I have reviewed the conditions of approval and will establish and continue the use in compliance with the specified conditions and applicable sections of Mendocino County Code. I further grant permission for County Staff to enter upon the premises for which the permit is issued to verify compliance with the required conditions.

---

Signed

---

Date

Planning Department Statement: I hereby certify that conditions of Section A of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

---

Signed

---

Date

Planning Department Statement: I hereby certify that conditions of Section B of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

---

Signed

---

Date

30  
#019-83

April 8, 1983

Peters and Garman  
266 Shell Lane  
Willits, CA 95490

ATTN: Robert Peters

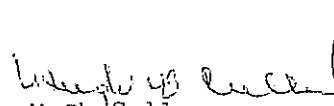
Dear Mr. Peters:

This letter is to confirm our agreement for you to acquire a Use Permit for your removal of rock material from the rock quarry located on my property located in Mendocino County, about one mile South of the Howard Forest California Department of Forestry Station, about one-half mile south of the Ridge Restaurant and office complex, adjacent to the old U.S. Highway 101 roadway, on the West side of said roadway.

You are to take full responsibility for acquiring any and all permits and licenses, for operating the quarry in a professional and workmanlike manner, and for complying with any and all regulations of government agencies.

I am looking forward to a long and mutually beneficial relationship with you and your company.

Sincerely,

  
Hugh Cullen  
P.O. Box 1330  
Ukiah, CA 95482

P.S. This property is described in Book 291, Page 301, Official Records of the County of Mendocino, recorded June 5, 1951; AP #147-170-03 and 147-180-06; also known as the Ridge and formerly known as Ridgewood Park.

## RECLAMATION PLAN

For Compliance with Section 2772, State of California  
Surface Mining and Reclamation Act of 1975.

1. Name (if any) of Mineral Property (e.g. "Woodruff Bar")
2. Owners of Mineral rights. Check here ☒ if owner of property is owner of Mineral rights. (Name, address & telephone)  
Hugh and Virginia Cullen  
P.O. Box 1330  
Ukiah, CA 95482
3. Lessee. (Name, address & telephone) Check here ☒ if applicant is Lessee.  
Robert Peters  
266 Shell Lane, Willits, CA 95490
4. Operator. (Name, address & telephone) Check here ☐ if applicant is Operator.  
Same
5. Agent of Process. (Name, address & telephone) Check here ☐ if applicant is Agent of Process. (Person designated by operator as his agent for the service of process).
6. Location:  
Total acreage of ownership(s) \_\_\_\_\_ 102 \_\_\_\_\_  
Acreage (to be) affected by this operation \_\_\_\_\_ 2 \_\_\_\_\_  
Section(s) 9 Township 17N, Range 13W, Mt. Diablo B&M
7. Describe the access route to the operation site from the public road. (Please note any landmarks that would aid in the location of the site in the field).  
Access Road off of U.S. 101, existing encroachment, haul road approximately 1/4 mile long.
- Address of project: 16400 Highway 101 North Willits, CA 95490
8. Attach Location and Vicinity Map. It is suggested that this be shown on a USGS 7-1/2 minute topographic quadrangle sheet (Scale: 1" = 2000'). If these are not available, or if the operation is extensive, 15 minute sheets (Scale 1" = 1 mile) may be used. Roads, adjacent towns, etc., should be shown, as well as the site of operation.
9. What is the present use of this site? Has material been extracted from this site before? If so, when?  
Not presently used. Material extracted for many years prior to 1975.



10. Mineral commodity (to be) mined:

- ☐ Streamside gravel  
☒ Quarry rock  
☐ Other (please describe)

11. a) Brief description of environmental setting of the site and the surrounding areas. Describe existing area land use, vegetation, and surface water flows on and around the site. Note the number of dwellings within  $\frac{1}{4}$ ,  $\frac{1}{2}$ , and 1 mile of site.

Existing rock quarry. No vegetation in quarry. No surface water flow within two miles of quarry. No dwellings within 1 mile (Ridgewood Park complex within 1 mile).

- b) Briefly describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach any photographs of the site that you feel would be helpful.

Surrounding area is steep timberland. No cultural, historical or scenic aspects. No structures on site. No plants life on site. Normal animal life in surrounding area.

12. Proposed starting date of operation 4-1-83

Proposed completion date of operation 4-1-88

Estimated life of operation 5 years

13. Will project be phased? If yes, list duration of phases and activities associated with each phase.

14. Operation will be: Continuous ☐ , Seasonal ☐ , Intermittent ☒ .

15. Maximum proposed production per year:

Mineral commodities to be removed - (cu. yds./yr.) 10,000

Waste retained on the site - (cu. yds./yr.) None

Waste disposed off site - (cu. yds./yr.) NA

Maximum anticipated depth NA ft.

16. Mining Method: (Check all applicable)

Quarry:	Gravel/Sand Pit <input type="checkbox"/>	Other <input type="checkbox"/>
Hill Top <input type="checkbox"/>	Drill and Blast <input type="checkbox"/>	
Side Hill <input checked="" type="checkbox"/>	Gravel Bar Skimming <input type="checkbox"/>	

17. If processing of extracted materials is planned to be conducted at or adjacent to the site, briefly describe the nature of the processing and explain disposal method of the tailings or waste from processing.

Screen ☐  
Wash ☐

Crusher ☐  
Concrete Batch Plant ☐

Asphalt batch plant ☐  
Other ☐

Estimate quantity (gallons per day) and quality of water required by the proposed operation, specifying proposed sources of this water, of method of its conveyance to this property and the quantity and quality and method of disposal of used and/or surplus water.

NA

18. Attach a map of the mined lands and/or suitable aerial photograph showing:

- (a) Boundaries and topographic details of the site;
- (b) Location of all streams, roads, railroads, water wells, and utility facilities within 500 feet of the site;
- (c) Location of all currently proposed access roads to be constructed in conducting the surface mining operation(s);
- (d) Location of areas (to be) mined, and of waste dumps and sediment ponds.
- (e) The source of map base, orientation (North arrow), and scale (e.g. 1" = 500') of the map.
- (f) Indicate on an overlay of map or by color or by symbol on map those areas to be covered by reclamation plan.
- (g) Acreage 2.

19. Describe the ultimate physical condition of the site and specify proposed uses(s), or potential uses, of the mined lands as reclaimed. ultimate physical condition will be improved by better excavation procedures. (ie: terracing & grading). Future use will undoubtedly be rock excavation. Reclaimed lands will be seeded and planted.

20. Provide evidence that all owners of a possessory interest in the land have been notified of the proposed uses(s). (Signatures on the application are sufficient).

21. Describe soil conditions and proposed soil salvage plan.

Little if any top soil. Extremely rocky terrain.

22. Describe the methods, their sequence and timing, to be used in bringing the reclamation of land to its end state. Indicate on map (Item No.18) or on diagrams as necessary. Include discussion of the pertinent items listed below:

- (a) Backfilling and grading. NA
- (b) Stabilization of slopes. Terracing.

- (c) Stabilization of permanent waste dumps, tailings, etc. NA
- (d) Rehabilitation of pre-mining drainage. NA
- (e) Removal, disposal, or utilization of residual equipment, structures, refuse, etc. NA
- (f) Control of contaminants, especially with regard to surface runoff and ground water. N
- (g) Treatment of streambeds and streambanks to control erosion and sedimentation. N
- (h) Removal or minimization of residual hazards. N
- (i) Resoiling, revegetation with evidence that selected plants can survive given the site's topography, soil and climate.

Reseeding with Critical Erosion Control Mix (20% Blando Brome; 20% Palestine Orchard; 20% Wimmera Rye Grass; 10% Intermediate Wheat; 10% Alta Tall Fescue; 10% Lana Vetch (TEL coated); 10% Crimson Clover (TEL coated). Replanting with Coyote Brush (Baccharis Pilularis).

23. If applicant has selected a short term phasing of his reclamation plan, describe in detail the specific reclamation to be accomplished during the first phase.

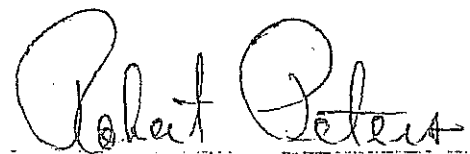
24. Describe how reclamation of this site in this manner may affect future mining at this site and in the surrounding area.

Reclamation will have no effect on future mining.

25. List and describe any other related permits and other public approvals required for this project, including those required by County, City, regional, state and federal agencies:

- ☐ Dept. Fish & Game
- ☐ Army Corps of Engineers
- ☐ Regional Water Quality Control Board
- ☐ Other

The undersigned accepts all responsibility for reclaiming the mined lands in accordance with this Reclamation Plan.

  
Signature

TEST NO.

Grade	S. E.	L.A.R.T. 500
Sample Prep	Cleaness	% Crushed
Durability	Sp. Gr.	

LABORATORY RECORD OF TEST ON

IMPORTED BORROW

Date Rec'd: 7-20-84

Calc. By: S. SMITH

Completed:

Reported:

PRELIMINARY

INITIAL

CONTROL

PROGRESS

TL-101 (REV. 8-76)

SAMPLE IDENTIFICATION CARD NO.

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

C 93190

☒ PRELIMINARY TESTS

SAMPLE SENT TO

☐ PROCESS TESTS☐ HDQTRS. LAB

FIELD NO.

☐ ACCEPTANCE TESTS☐ BRANCH LAB

DIST.

LAB NO.

INDEPENDENT ASSURANCE TESTS

☒ DIST. LAB

LOT NO.

☐ DIST. LAB

SHIPMENT NO.

P. O. OR

REQ. NO.

☐ TRANS. LAB☐ SPECIAL TESTS

AUTHORIZATION NO.

SAMPLE OF IMPORTED BORROW  
FOR USE IN EMBANKMENT

SAMPLE FROM PLANT STOCKPILE

DEPTH N/A

LOCATION OF SOURCE ALLEGEDLY OLD  
PIT ON SOUTH OF RIDGEWOOD

THIS SAMPLE IS SHIPPED IN 1 (NO. CONTAINERS)

AND IS ONE OF 1 A GROUP OF

SAMPLES REPRESENTING ~75 Lbs (TONS, GALS., BBLs., STA., ETC.)

OWNER OR MANUFACTURER PETERS + GARMEN, WILLITS

TOTAL QUANTITY AVAILABLE AMPLE TEST RESULTS DESIRED ☒ NORMAL PRIORITY DATE NEEDEDREMARKS TEST 229 (COARSE DURABILITY)  
REPORT RESULTS TO ROBERT PETERS @ PETERS + GARMEN

COVER ADDITIONAL INFORMATION WITH LETTER

DATE SAMPLED 7-19-84

BY R.H. FALLIS TITLE TET

DIST., CO., RTE., P.M.

LIMITS FOR POSSIBLE

CONT. NO. 01-910011/200211

FED. NO.

RES. ENGR. OR SUPT.

ADDRESS M-Q-9

CONTRACTOR

MAIL TO SAME DESTINATION AS SAMPLE

## GRADING ANALYSIS

Sieve Size	A	B	C	D	E
3"	Specs.	Specs.	Specs.	Specs.	Specs.
2 1/2					
2					
1 1/2					
1					
3/4					
1/2					
3/8					
3					
4					
8					
16					
30					
50					
100					
200					
S. E.					
Sp. Gr. - C					
Sp. Gr. - F					
% Abs.					
Dur. - C 42					
Dur. - F					
LART-1					
LART-5					
% Crsh'd					
Color.					
Clean.					

Comments:

Talked with Bob Peters on 7-23-84  
He would like an R-Value run &  
would like to know if Dur meets  
spec? Not enough material  
for R-Value test

Combined Grading Represents

% by Wt. % by Vol. Test No. Description

A

B

C

D

E Combined

☐ Dist. Engr. ☐ Constr. Dept.☐ Dist. Mts. Engr. ☐ Accounting☐ Res Engr. or Maint. Supt.☐ H.Q. Const. Bridge or Maint.☐ H.Q. Lab. ☐

SOURCE

CHARGE

EXPENDITURE  
AUTHORIZATIONSPECIAL DESIGNATION  
(USE WHEN APPLICABLE)

OBJECT

AMOUNT

VR 247

**WILLIAM B. GROVER**

1604 FOURTH STREET  
SANTA ROSA, CA 95404  
PHONE 707/546-8232

December 23, 1986

**RECEIVED**  
DEC 26 1986

County of Mendocino  
Department of Planning & Building Services  
Courthouse  
Ukiah, CA 95482  
ATTN: Brian Millar, Planner II

BY \_\_\_\_\_  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

RE: HUGH CULLEN dba THE RIDGE - CASE NO. 1-84-00630

Dear Mr. Millar:

The above named filed a Chapter 11 Bankruptcy Petition May 31, 1984, and I was appointed Chapter 11 Trustee as of January 17, 1985.

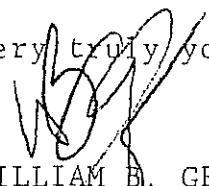
I have just become aware of your letter of September 10th to Don Bagley in care of Peters and Garman Construction wherein the last paragraph on the first page relates to my bankrupt, Mr. Cullen.

This property is for sale thru this office and has been listed with Les Ryan Realty in Ukiah. I asked Mr. Ryan to look into this matter and he has provided me with a copy of a Land Use Permit that apparently received planning commission approval on June 2, 1983, for this quarry.

Mr. Cullen sold gravel out of this quarry until about December 1984. Mr. Cullen told me about this quarry and gave me the names of some people I might be able to sell some gravel to, but I was unable to interest them. Recently I was approached by a contractor who wishes to purchase up to 3,000 yards of gravel and I make inquiry of you at this time as to what needs to be done so that I can legally sell gravel off the property.

As Trustee in Bankruptcy I have, by operation of law, succeeded to all of the rights of Hugh and Virginia Cullen in and to the 120 acres of property known as "The Ridge" upon which property resides the gravel quarry. For all practical intent and purposes I am at this time the owner of said property. Please advise.

Very truly yours,

  
WILLIAM B. GROVER, Trustee  
U. S. Bankruptcy Court

WBG/mz

Enclosure: Copy of September 10, 1986 Letter  
Copy of Land Use Permit

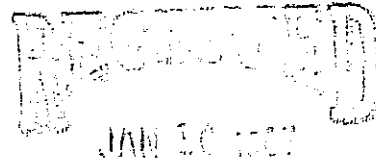
VR 248

**WILLIAM B. GROVER**

1604 FOURTH STREET  
SANTA ROSA, CA 95404  
PHONE 707/546-8232

January 15, 1987

County of Mendocino  
Dept. of Planning & Bldg. Svcs.  
Courthouse  
Ukiah, CA 95482  
ATTN: Brian Millar, Planner II



RE: HUGH CULLEN dba THE RIDGE - CASE NO. 84-00630  
LAND USE PERMIT  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dear Mr. Millar:

This responds to your letter of January 7th relative to the above named bankrupt and the gravel pit.

Mr. Cullen filed a Chapter 11 Bankruptcy Petition May 31, 1984, and operated as debtor in possession until I was appointed Chapter 11 Trustee January 17, 1985. At that time Mr. and Mrs. Cullen moved to southern California and have since moved again and I have lost track of them.

At the time I came into the picture in January 1985 Mr. Cullen briefed me on the entire operation and advised me that he had been selling gravel from the gravel pit, but the quantity was not very great and that it had seemed to tail off. My recollection is that he told me the last gravel sales were in November and December 1984 and that I couldn't expect to sell any gravel during the winter, but probably would get inquiries for gravel purchases in the spring of 1985. I didn't. Since I have been in control of this case I have sold no gravel.

You ask in your letter that I provide you a detailed record of the use and development of the quarry from June 2, 1983, to date. As stated above I have lost track of Mr. Cullen and he turned over no records to me of any kind relative to gravel sales, but only told me that sales were minimal and since I came into control January 17, 1985, I have sold no gravel. I therefore am unable to provide you with any type of record as you request.

I presently have an inquiry from a contractor for the purchase of up to 3,000 yards of gravel for a road project somewhere in the Willits area. This sale, if it can be made, would commence about February 15, 1987, and I am advised would be over a 60-90 day period.

As is quite evident this entire project is in financial trouble and Mr. Cullen was forced into bankruptcy, I certainly request that the Land Use Permit be considered valid because this is an established quarry on premises and every possible bit of income is needed to mitigate the losses and to keep the other businesses open. VR 249

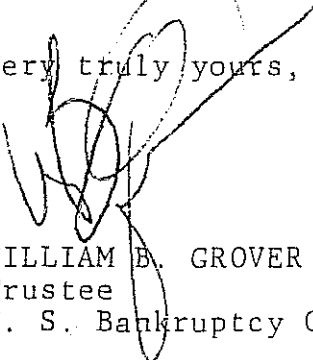
WILLIAM B. GROVER  
January 15, 1987

Additionally, a valid gravel pit enhances the value of the property and the Bankruptcy Court thru this office has been actively attempting to sell the property for the past year-and-a-half.

Mr. Cullen never at any time told me anything about a Land Use Permit relative to the gravel pit and I never thought to inquire. Mr. Cullen's attorney likewise never apprised me of the fact that a Land Use Permit existed relative to the gravel pit.

I therefore respectfully request that the Land Use Permit be determined valid at this time and I return herewith the executed Land Use Permit that you sent me.

Very truly yours,



WILLIAM B. GROVER  
Trustee  
U. S. Bankruptcy Court

WBG/mz

Enclosure: Executed Land Use Permit

## **CHAPTER 20.204**

### **NONCONFORMING USES AND STRUCTURES**

Sec. 20.204.005 Declaration

Sec. 20.204.010 Continuation and Maintenance

Sec. 20.204.015 Restoration of Damaged Structures

Sec. 20.204.020 Alterations and Additions to Nonconforming Uses and Structures

Sec. 20.204.025 Expansion of Nonconforming Uses and Structures

Sec. 20.204.030 Previous Use Permits in Effect

Sec. 20.204.035 Abandonment or Conversion of Nonconforming Uses

Sec. 20.204.040 Nuisances

#### **Sec. 20.204.005 Declaration.**

(A) A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this Division but which does not conform with the use regulations for the zone in which it is located.

(B) A nonconforming structure is a structure which was lawfully erected prior to the effective date of the application of these regulations but which, under this Division, does not conform with the standards of yard spaces, height of structures, distance between structures, parking, etc., prescribed in the regulations for the zone in which the structure is located.

(C) Chapter 20.124 ("IS" Combining District) may be utilized to identify uses and establish regulations thereto. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.010 Continuation and Maintenance.**

(A) A use lawfully occupying a structure or a site prior to the effective date of the application of these regulations which does not conform with the use regulations for the district in which the use is located shall be deemed to be a nonconforming use and may be continued as provided in this Chapter.

(B) A structure lawfully occupying a site prior to the effective date of the application of these regulations which does not conform with the standards of front yards, side yards, rear yards, height of structures, distances between structures, parking, etc., prescribed in the regulations for the zone in which the structure is located shall be deemed to be a nonconforming structure and may be used and maintained as provided in this Chapter.

(C) Routine maintenance and repairs may be performed on a structure or site, the use of which is nonconforming, and on a nonconforming structure. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.015 Restoration of Damaged Structures.**

(A) Whenever a structure, the use of which does not conform with the regulations for the zone in which it is located or a structure which does not comply with the standards of yard spaces, height of structures, distances between structures, parking, etc., prescribed in the regulations for the



zone in which the structure is located shall be destroyed by fire or other calamity or by act of God or by the public enemy, the structure may be restored and the nonconforming use may be resumed provided restoration is started within one (1) year and diligently pursued to completion.

(B) Whenever a structure, the use of which does not conform with the regulations for the zone in which it is located, or a structure which does not comply with the standards of yard spaces, height of structures, distance between structures, parking, etc., prescribed in the regulations for the zone in which it is located shall be voluntarily razed, the structure shall not be restored except in full conformity with the regulations of the zone in which it is located, and the nonconforming use shall not be resumed. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.020 Alterations and Additions to Nonconforming Uses and Structures.**

(A) A nonconforming use may increase its volume of operation provided the structure is not altered or enlarged to accommodate its increase without obtaining a use permit.

(B) No nonconforming structure shall be moved, altered, enlarged, or reconstructed in a manner that does not conform to the minimum standards of yard areas, height of structures, distances between structures, parking, and other applicable requirements prescribed in the regulations for the district in which the structure is located; provided, however, a nonconforming structure may be altered and/or enlarged provided it does not increase the existing level of nonconformity. Such constructions shall be reviewed and approved by the Zoning Administrator. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.025 Expansion of Nonconforming Uses and Structures.**

(A) A nonconforming use or structure may be expanded provided a Minor Use Permit is obtained. Prior to the issuance of any use permit to expand a nonconforming use or structure, the Zoning Administrator shall make a finding that the expansion conforms to the standards established in Section 20.196.020 (Use Permits - Standards) for the granting of a use permit and that the following conditions are applicable:

- (1) That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation;
- (2) That the use is and will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated;
- (3) That the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in that location.

(B) A legal nonconforming mobile home may be replaced by a new mobile home without a use permit if no use permit was required for the original installation. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.030 Previous Use Permits in Effect.**

Any use in existence, by virtue of a use permit issued pursuant to zoning regulations previously in effect, at the time of application of the regulations for any district in this Division, which use under such new regulations is not permissible by use permit may continue in existence but only as regulated by the provisions and terms of the existing use permit. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.035 Abandonment or Conversion of Nonconforming Uses.**

(A) Whenever a nonconforming use has been abandoned, discontinued for any reason, or changed to a conforming use, for a continuous period of one (1) year, the nonconforming use shall not be reestablished, and the use of the structures or site thereafter shall be in conformity with the regulations for the zone in which it is located.

(B) A nonconforming use of a structure or site may be changed to another nonconforming use at the same or more restricted level of intensity as determined by the Planning and Building Services Director provided the following findings are made:

- (1) That it is not reasonably, economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation;
- (2) That the use is and will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated;
- (3) That the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in that location. (*Ord. No. 3639 (part), adopted 1987*)

#### **Sec. 20.204.040 Nuisances.**

(A) None of the provisions of this Chapter restrict any authority to require modification or termination of any nonconformity which has been declared a nuisance by the Board of Supervisors. (*Ord. No. 3639 (part), adopted 1987*)

## CHAPTER 22.16

### SURFACE MINING & RECLAMATION

#### Sec. 22.16.010 Purpose and Intent.

This chapter is adopted pursuant to the provisions of the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.). Nothing contained herein is intended to abridge the provisions of that act as adopted or subsequently amended. (Ord. No. 3263, adopted 1979.)

It is the intent of the Board of Supervisors of the County of Mendocino to create and maintain through periodic review and appropriate revision, an effective and comprehensive surface mining and reclamation policy for the regulation of surface mining operations, which policy, in conjunction with the County's environmental review process and the regulations of other agencies having jurisdiction, will assure that:

(A) Adverse environmental effects of surface mining operations are minimized, or, if possible, prevented, and that mined lands are reclaimed to a usable condition which is readily adaptable for appropriate alternative land uses. (Ord. No. 3263, adopted 1979.)

(B) The production and conservation of minerals is encouraged, while giving consideration to values relating to recreation, watershed, wildlife, fisheries, range and forage, and aesthetic enjoyment. (Ord. No. 3263, adopted 1979.)

(C) Residual hazards to the public health and safety are eliminated. (Ord. No. 3263, adopted 1979.)

#### Sec. 22.16.020 Scope.

The provisions of this chapter shall apply to surface mining operations and reclamation of mined lands within the unincorporated areas of Mendocino County. The provisions of this chapter have been designed to encompass streambed gravel extraction, borrow pits, quarry operations and other relatively small scale surface mining operations conducted in Mendocino County.

The Board of Supervisors finds that additional provisions need be adopted in order to adequately provide for the operation of, and reclamation required for large scale surface mining operations. Therefore, on an interim basis, to ensure the protection of the general welfare of the county until such time as adequate provisions encompassing large scale surface mining operations are adopted, no surface mining operation which would displace 500,000 cubic yards or more of ore and overburden combined, shall be conducted in Mendocino County. (Ord. No. 3263, adopted 1979.)

#### Sec. 22.16.021 Excepted Activities.

No permit or reclamation plan shall be required by this chapter for the following:

(A) Excavation or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster. Gravel extraction operations from streambeds exceeding the limits specified in Section 22.16.021 (B) shall not be an excepted activity. (Ord. No. 3263, adopted 1979.)

(B) Surface mining operations, including prospecting and exploration, so long as the mined lands do not exceed one acre in extent and the total amount of material, including overburden, displaced does not exceed 1000 cubic yards. (Ord. No. 3283, adopted 1979.)

(C) Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose. (Ord. No. 3263, adopted 1979.)

(D) Such other surface mining operations which the State Mining and Geology Board determines to be of an infrequent nature, and which involve only minor surface disturbances. (Ord. No. 3263, adopted 1979.)

#### Sec. 22.16.030 Definitions.

Unless the context otherwise requires, the definitions set forth in this section shall govern the

administration of this chapter. (Ord. No. 3263, adopted 1979.)

(A) 'Area of regional significance' means an area designated by the State Mining and Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance. (Ord. No. 3263, adopted 1979.)

(B) 'Area of statewide significance' means an area designated by the State Mining and Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the State and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance. (Ord. No. 3263, adopted 1979.)

(C) 'Director' means the director of the Mendocino County Planning Department or his designee. (Ord. No. 3263, adopted 1979.)

(D) 'Farming' means the management and/or cultivation of land for the production of crops, livestock or timber. (Ord. No. 3263, adopted 1979.)

(E) 'Gravel extraction operations' means all or any part of the process involved in the removal by any method of sand, gravel, rock or other earthen material from streambeds or stream channel bars normally subject to inundation during winter flows. Gravel extraction operations shall include but are not limited to:

(1) Onsite processing of extracted material, including screening, washing, crushing, stockpiling or batching.

(2) The production and disposal of mining waste.

(3) Prospecting and exploratory activities. (Ord. No. 3263, adopted 1979.)

(F) 'Mined lands' includes the surface, sub-surface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located. (Ord. No. 3263, adopted 1979.)

(G) 'Mining waste' includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations. (Ord. No. 3263, adopted 1979.)

(H) 'Onsite Construction' means the construction of buildings, roads or other improvements including landscaping occurring within and occupying the area disturbed by a surface mining operation in such a manner that the mined lands are beneficially modified as a direct result of the completion of the construction project. Excavation and grading required to prepare a site for construction of structures, landscaping or other land improvements, and which is beneficially modified by such construction, is not deemed to be a surface mining operation. (Ord. No. 3263, adopted 1979.)

(I) 'Operator' means any person who is engaged in surface mining operations himself or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation. (Ord. No. 3263, adopted 1979.)

(J) 'Overburden' means soil, rock or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations. (Ord. No. 3263, adopted 1979.)

(K) 'Person' means any individual, firm, association, corporation, organization, or partnership, or any city, county, district or state or any department or agency thereof. (Ord. No. 3263, adopted 1979.)

(L) 'Permit' means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations. (Ord. No. 3263, adopted 1979.)

(M) 'Reclamation' means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures. (Ord. No. 3263, adopted 1979.)

(N) 'Surface mining operations' means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

(1) In place distillation or retorting or leaching.

(2) The production and disposal of mining waste.

(3) Prospecting and exploratory activities.

(4) Gravel extraction operations.

(Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.040 Permit and Reclamation Plan Required.**

Except as specified in Section 22.16.021 and

Section 22.16.060, no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the Planning Commission for such operation pursuant to this article. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.041 Permit Operational Standards.**

In addition to meeting the minimum acceptable surface mining and reclamation practices in the Act and policy guidelines, each surface mining operation requiring a permit shall be conducted and designed to meet the following operational standards. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a permit shall be conducted only by the operator named in the permit, or by his authorized agent. (Ord. No. 3263, adopted 1979.)

(A) Access Roads - All private access approaches leading off any paved public street onto a mining site shall be adequately surfaced to prevent aggregate or other materials being drawn onto the public right-of-way. (Ord. No. 3263, adopted 1979.)

(B) Dust Suppression - All haul roads and driveways shall be maintained as necessary to minimize the emission of dust. Maintenance shall be conducted as necessary to prevent a nuisance to adjacent properties. Special maintenance procedures (watering, oiling, etc.) may be placed on the permit. (Ord. No. 3263, adopted 1979.)

(C) Driveway Encroachment Permit - If required, a driveway encroachment permit issued by the Mendocino County Department of Public Works shall be a condition of the mining permit. (Ord. No. 3263, adopted 1979.)

(D) Any waters discharged from the site to adjacent lands, streams, or bodies of water or to any groundwater body shall meet all applicable water quality standards of the Regional Water Quality Control Board and any other agency

with authority over such discharges. Records of any water quality monitoring conducted in conjunction with the requirements of such agency or agencies shall be made available to the Director on request. Discharges of water to designated onsite settling ponds or desilting basins shall not be deemed to be in violation of this part solely on the basis of sediment content. (Ord. No. 3263, adopted 1979.)

(E) During the period mining operations are being conducted, and prior to final reclamation of mined lands, measures shall be taken to prevent erosion of adjacent lands from waters discharged from the site of mining operations and the off-site discharge of sediment. Such measures may include the construction of properly designed retarding basins, settling ponds and other water treatment facilities, ditches, diking and revegetation of slopes. Settling ponds and other water treatment facilities shall be located and managed so that accumulated sediment will not enter any stream. (Ord. No. 3263, adopted 1979.)

(F) Grades in areas being mined shall be maintained so as to avoid accumulations of water that could serve as breeding areas for mosquitoes or as sites of fish entrapment. (Ord. No. 3263, adopted 1979.)

(G) Excavations which may penetrate near or into usable water bearing stratas shall not substantially reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such groundwater basin or subbasin to pollution or contamination. (Ord. No. 3263, adopted 1979.)

(H) Permits issued for surface mining operations proposed to be conducted between the banks of a stream shall include as conditions any measures or conditions imposed by other agencies of jurisdiction, including the Department of Fish and Game, the North Coast Regional Water Quality Control Board, and the Corps of Engineers. Copies of conditions imposed by such agencies shall be on file with the Planning

Department before any permit issued by Mendocino County shall be deemed to be in effect. (Ord. No. 3263, adopted 1979.)

(I) All operators of mining operations requiring mining permits and/or reclamation plan approvals shall annually supply to the Director within sixty (60) days of the permit/plan anniversary date an annual accounting of quantities and types of materials extracted and/or processed from each location. (Ord. No. 3263, adopted 1979.)

(J) Noise levels created by the operation as measured at the nearest residence other than that of the mine owner or operator shall not exceed the following:

(1) 65 dB(A) for a cumulative period more than 30 minutes in any hour;

(2) 70 dB(A) for a cumulative period more than 12 minutes in any hour;

(3) 75 dB(A) for a cumulative period more than 3 minutes in any hour;

(4) 80 dB(A) for a cumulative period more than 1 minute in any hour;

(5) 85 dB(A) at any moment;

(6) More stringent noise standards may be required as permit conditions when particular local circumstances warrant additional protection of potentially affected residences.

Any noise control measures prescribed by the Board as a condition of a permit shall in no manner be interpreted as to preclude the application to the surface mining site of future noise control measures adopted by the County subsequent to the grant of the permit. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.042 Reclamation Plan Form and Content.**

The reclamation plan shall be filed with the Planning Department on a form provided by the County, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any mined lands, and who plans to conduct

surface mining operations thereon. The reclamation plan shall include the following information and documents:

(A) The name and address of the operator and the names and addresses of any persons designated by him as his agents for the service of process. (Ord. No. 3263, adopted 1979.)

(B) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted. (Ord. No. 3263, adopted 1979.)

(C) The proposed dates for the initiation and termination of such operation. (Ord. No. 3263, adopted 1979.)

(D) The maximum anticipated depth of the surface mining operation. (Ord. No. 3263, adopted 1979.)

(E) The size and legal description of the lands that will be affected by such operation, a map that includes the boundaries and topographic details of such lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands, the location of all proposed access roads to be constructed in conducting such operation, and the names and addresses of the owners of all surface and mineral interests of such lands. (Ord. No. 3263, adopted 1979.)

(F) A description of and plan for the types of surface mining methods to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation. (Ord. No. 3263, adopted 1979.)

(G) A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses. (Ord. No. 3263, adopted 1979.)

(H) A description of the manner in which

reclamation, adequate for the proposed use or potential uses, will be accomplished, including:

(1) a description of the manner in which contaminants will be controlled and mining waste will be disposed; and

(2) a description of the manner in which affected streambed channels and streambanks will be protected and/or rehabilitated to a condition minimizing erosion and sedimentation. (Ord. No. 3263, adopted 1979.)

(I) An assessment of the effect of implementation of the reclamation plan on future mining in the area. (Ord. No. 3263, adopted 1979.)

(J) A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan. (Ord. No. 3263, adopted 1979.)

(K) An assessment of the impact of the project on the public health and safety, including discussion of the degree and type of present and probable future exposure of the public to the project site. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.043 Reclamation Standards.**

Properties used for surface mining operations shall be reclaimed after the operation, or an approved phase of the operation, has been completed in accordance with the following standards:

(A) Reclamation shall in all cases be completed within the time schedule set forth in the approved reclamation plan. In all cases reclamation shall commence not later than twelve months following termination of the excavation operation or approved phase. However, the operator is required to proceed as soon as practicable and may be required to progressively rehabilitate the site as the excavation operation or approved phase is completed. (Ord. No. 3263, adopted 1979.)

(B) Final reclaimed slopes, abandoned spoil piles and the entire mining site shall be graded and smoothed as necessary so as to control erosion, prevent the creation of potentially dangerous areas and present a natural appearance.

The grades of final reclaimed slopes shall be no steeper than 1 1/2 horizontal to 1 vertical unless a steeper angle of repose is recommended as safe and self-supporting by a registered Civil Engineer qualified in the field of soils engineering and soil mechanics. Fill slopes flatter than 1 1/2:1 will generally be acceptable. In pits, slopes below the minimum water level shall be no steeper than the natural angle of repose. (Ord. No. 3263, adopted 1979.)

(C) Resoiling, when required, shall be accomplished in the following manner: coarse, hard material shall be graded and covered with a layer of finer material or weathered waste and a soil layer then placed on this prepared surface where practical. Where quantities of available soils are inadequate to provide cover, native materials should be upgraded to the extent feasible for this purpose. (Ord. No. 3263, adopted 1979.)

(D) All permanently exposed lands that have been denuded by mining operations shall be revegetated unless any such revegetation is determined by the Planning Commission to be technically infeasible or not beneficial with respect to the intent of this Section. Revegetation methods and plant materials utilized shall be appropriate for the topographical, soil and climatic conditions present at the site. Native species shall be used wherever practical. (Ord. No. 3263, adopted 1979.)

(E) Where mining will occur between the banks of a watercourse, streambed channels and streambanks affected by the operation shall be rehabilitated annually prior to seasonal high water so as to minimize erosion and sedimentation and so as to minimize undermining or damage to off-site public or private property, improvements or structures. (Ord. No. 3263, adopted 1979.)

(F) Reclamation plans shall make provisions to ensure that the mining site is left in a final condition after operations are complete, that is:

(1) Safe with stable waste piles, cut slopes, fill slopes and with the elimination of steep-sided pits and holes.

(2) Free of derelict machinery, waste materials, mining waste and scrap.

(3) Revegetated where necessary for soil stabilization.

(4) Free of drainage problems.

(5) Free of toxic substances in fill material.

(6) Coordinated with present and potential future land use, topography and the general environment of surrounding property.

(Ord. No. 3263, adopted 1979.)

(G) Unless a water-filled excavation is recognized in the reclamation plan as an integral part of future development or use of the property, all excavations made to a level below the highest seasonal ground water table shall be filled with inert materials to a level above the highest seasonal ground water table and with slopes less than the critical gradient. (Ord. No. 3263, adopted 1979.)

(H) Regrading and revegetation shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage, and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes, sites of fish entrapment, or threats to public safety. (Ord. No. 3263, adopted 1979.)

(I) Silt basins which will store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlets to lower ground. (Ord. No. 3263, adopted 1979.)

(J) Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations. (Ord. No. 3263, adopted 1979.)

(K) Upon reclamation, no condition shall remain which will or could lead to the degradation of water quality below applicable standards of the Regional Water Quality Control Board or any other agency with authority over water quality. (Ord. No. 3263, adopted 1979.)



**Sec. 22.16.044 Application of Plan to Specific Site.**

The reclamation plan shall be applicable to a specific piece of property or properties, and shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities. (Ord. No. 3263, adopted 1979.)

**Sec. 22.16.050 Permit and Plan Review.**

The procedures established in the Mendocino County Code for the issuance, modification, enforcement of conditions, and revocation of a use permit shall be followed for the review, approval and administration of a reclamation plan and/or the issuance and administration of a permit. Fees as established by the Board of Supervisors shall be paid at the time of filing. (Ord. No. 3263, adopted 1979.)

The County shall notify the State Geologist of the filing of an application for a permit to conduct surface mining operations, and shall submit to the State Geologist a copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter. (Ord. No. 3263, adopted 1979.)

Inspections of surface mining operations by Planning Department staff shall be made as deemed necessary by the Planning Director to determine compliance with the use permit conditions and reclamation plans. Inspections shall be conducted jointly with a representative of the operator. (Ord. No. 3263, adopted 1979.)

**Sec. 22.16.060 Vested Rights.**

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues; provided, however, that no substantial changes may be made in any such operation except in accordance with the provisions of this chapter. A person shall be

deemed to have such vested rights if, prior to January 1, 1976, he has, in good faith, and in reliance upon a permit or other authorization if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. (Ord. No. 3263, adopted 1979.)

A person having such vested rights to conduct surface mining operations shall submit to the Planning Department within one year following the effective date of this ordinance a reclamation plan for operations conducted after January 1, 1976, and prior to the effective date of this chapter. (Ord. No. 3263, adopted 1979.)

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were completed prior to January 1, 1976. (Ord. No. 3263, adopted 1979.)

As a guide in determining the status of the vested rights of the person(s) owning or operating a given surface mine, the factors discussed below shall be taken into consideration. (Ord. No. 3263, adopted 1979.)

A surface mine does not have to have been in operation on the effective date of the Act to have vested rights. Surface mines that are operated seasonally, intermittently, or are temporarily deactivated may have vested rights established prior to the Act. In this regard, the historical pattern of the conduct of the operation shall be considered, as well as the continuity of the operator's activities in the area and his diligent maintenance of the property in question. (Ord. No. 3263, adopted 1979.)

The expression 'no substantial changes ... made' must be interpreted with due consideration of the above factors. That is, changes in the rate of production may or may not be considered a substantial change, depending upon the status

of the surface mine under review. Similarly, the physical moving or shifting of a surface mining operation may or may not be a substantial change, depending upon operational, environmental, and other circumstances. (Ord. No. 3263, adopted 1979.)

Upon adoption of this ordinance, the Planning Department shall undertake to provide reasonable notice to all mining operators of the requirements of this chapter, provided however that failure to do so shall not exempt any operator from the requirements of this chapter. (Ord. No. 3263, adopted 1979)

Upon submission of a reclamation plan for surface mining operations proposed to be conducted on a site believed by the applicant to have vested rights, the applicant shall submit in lieu of a permit application, a "Statement of Vested Right" form provided by the County. The Planning Director shall determine whether or not the information submitted establishes the existence of a vested right. Should the Director determine that a vested right has not been established, the applicant shall be so notified and shall be required to obtain a permit in accordance with the provisions of this chapter prior to conducting surface mining operations on the site. The decision of the Director may be appealed to the Planning Commission. Such appeal shall be made in writing within fifteen days from the date of the Director's decision. If no appeal is made within this time, the decision of the Director shall be final. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.070 Amendments.**

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan, as determined by the Planning Director, shall not be undertaken until such amendment has been filed with, and approved by the Planning Commission. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.080 Public Records.**

Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the Planning Director that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The Planning Department shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the State Geologist and to persons authorized in writing by the operator and by the owner. (Ord. No. 3263, adopted 1979.)

#### **Sec. 22.16.090 Succession of Interest.**

Whenever one operator succeeds to the interest of another in any incompleting surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter. (Ord. No. 3263, adopted 1979.)

196 Cal. App. 3d 47, \*, 241 Cal. Rptr. 585, \*\*;  
1987 Cal. App. LEXIS 2309, \*\*\*

LEXSEE

**CITY OF UKIAH, Plaintiff and Appellant, v. COUNTY OF MENDOCINO, et al.,  
Defendants and Appellants; FORD GRAVEL COMPANY, INC., Real Party in  
Interest and Respondent**

No. A031917

Court of Appeal of California, First Appellate District, Division One

*196 Cal. App. 3d 47; 241 Cal. Rptr. 585; 1987 Cal. App. LEXIS 2309*

November 10, 1987

**SUBSEQUENT HISTORY:** [\*\*\*1]

The petition of plaintiff and appellant for review by the Supreme Court was denied February 25, 1988. Mosk, J., was of the opinion that the petition should be granted.

**PRIOR HISTORY:** Superior Court of Mendocino County, No. 48457, Thomas Kongsgaard, Judge. \*

\* Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.

**DISPOSITION:**

The judgment is affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff city challenged a decision of the Superior Court of Mendocino (California), which denied plaintiff's mandamus action seeking to compel the defendant county to set aside its approval of defendant gravel company's reclamation plan, and to mandate submission of an environmental impact report.

**OVERVIEW:** Plaintiff city, concerned regarding degradation of a local river, filed a mandamus action against defendant county and defendant gravel company, seeking to compel defendant county to set aside its approval of defendant gravel company's river reclamation plan, and to mandate the submission of an environmental impact report (EIR). The trial court denied plaintiff's request for relief, and plaintiff appealed. The court affirmed the trial court's decision. The court ruled that that defendant gravel company's reclamation plan

consisting of data collection and submission of information to the planning commission, was adequate, and that due to a lack of any significant environmental impact, an EIR was not required under the provisions of the California Environmental Quality Act, Cal. Pub. Res. Code § 21151 (CEQA). The court also ruled that defendant gravel company's mining operation, which predated the local zoning ordinance, was permitted as a matter of right, and accordingly, defendant gravel company was not required to obtain a use permit.

**OUTCOME:** The court affirmed the trial court's order, which had denied plaintiff city's request for mandamus relief to compel defendant county to set aside its approval of defendant gravel company's reclamation plan, and to mandate the submission of an environmental impact plan. The court determined that defendant gravel company's reclamation plan did not cause significant environmental effects, and thus no environmental impact report was necessary.

**LexisNexis(R) Headnotes**

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining  
Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances*

[HN1] Cal. Pub. Res. Code § 2770 of the Surface Mining and Reclamation Act, Cal. Pub. Res. Code, § 2710 et seq., provides that no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the lead agency for such operation.

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining  
Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances*

196 Cal. App. 3d 47, \*; 241 Cal. Rptr. 585, \*\*;  
1987 Cal. App. LEXIS 2309, \*\*\*

[HN2] The permit requirement set forth in *Cal. Pub. Res. Code* § 2770 does not apply, however, to an operator who has obtained a vested right to conduct surface mining operations prior to January 1, 1976. As to such operator, all that is necessary is a reclamation plan. *Cal. Pub. Res. Code* § 2776.

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining*  
*Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances*

[HN3] Mendocino County Code § 22.16.010 et seq., requires a reclamation plan and either a permit or a vested right to conduct surface mining operations.

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining*

[HN4] The California Environmental Quality Act mandates that public agencies obtain an environmental impact report (EIR) before approval of a project. *Cal. Pub. Res. Code* §§ 21002.1, 21151. However, none is required where the agency finds the project will not have a significant effect on the environment. *Cal. Pub. Res. Code* § 21151. In such case, the agency merely adopts a negative declaration to that effect. *Cal. Pub. Res. Code* § 21080, (c). A negative declaration is inappropriate, however, and an EIR is required whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining*  
*Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances*

[HN5] Under the provisions of the California Environmental Quality Act, *Cal. Pub. Res. Code* §§ 21002.1, 21151, and 21080 (c), the determination which must be made by a public agency in deciding whether to require an environmental impact report or to adopt a negative declaration is whether the project being approved may have a significant effect on the environment. *Cal. Pub. Res. Code* § 21151. A "project" is defined to mean private activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. *Cal. Pub. Res. Code* § 21065.

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining*

[HN6] Projects may be exempt from the provisions of the California Environmental Quality Act, *Cal. Pub. Res. Code* § 22151 requiring an environmental impact report due to lack of a significant environmental effect. *Cal. Pub. Res. Code* § 21084. Examples of such projects

include basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. *Cal. Code Regs. tit. 14, § 15306*.

*Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances*

[HN7] A property owner has a vested right to continue lawful uses of property and is not required to obtain a special use permit in order to continue lawful preexisting uses.

*Environmental Law > Zoning & Land Use > Nonconforming Uses*

*Environmental Law > Natural Resources & Public Lands > Mineral Resources & Mining*

[HN8] A nonconforming use is one which lawfully existed prior to the effective date of the zoning restriction and which continued thereafter in nonconformity with the ordinance.

*Energy & Utilities Law > Mining Industry > Surface Mining Control & Reclamation*

[HN9] The Surface Mining and Reclamation Act, *Cal. Pub. Res. Code*, § 2710 et seq., regulating surface mining operations sets forth the required contents of a reclamation plan, including, a description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including - (2) a description of the manner in which rehabilitation of affected streambed channels and stream banks to a condition minimizing erosion and sedimentation will occur. *Cal. Pub. Res. Code* § 2772, (h).

**COUNSEL:**

David J. Rapport, City Attorney, and Rapport & Martson for Plaintiff and Appellant.

H. Peter Klein, County Counsel, Ronald R. Ball, Chief Deputy County Counsel, and Richard M. Flores, Deputy County Counsel, for Defendant and Appellant.

Derek J. Simmons and Simmons & Wilhelm for Real Party in Interest and Respondent.

**JUDGES:**

Opinion by Racanelli, P. J., with Elkington and Holmdahl, JJ., concurring.

**OPINION BY:**

RACANELLI

**OPINION:**

196 Cal. App. 3d 47, \*, 241 Cal. Rptr. 585, \*\*;  
1987 Cal. App. LEXIS 2309, \*\*\*

[\*49] [\*\*587] The question presented in this appeal is whether an environmental impact report (EIR) under the provisions of the California Environmental Quality Act (CEQA) was required before county approval of a reclamation plan submitted by a gravel extracting company. We affirm the judgment for the reasons discussed hereafter. n1

n1 Following rehearing, we essentially adopt our earlier opinion with some modifications.

[\*\*\*2]

#### Facts

Since 1946, real party Ford Gravel Company, Inc., (Ford) has been commercially extracting gravel from the Russian River. In 1956, the Mendocino County Board of Supervisors adopted the county's first zoning ordinance. The zoning ordinance classified the unincorporated area where Ford's gravel operations are conducted to require a use permit for "the [\*50] establishment of . . . [para.] [commercial] excavation of natural materials." (Ord. No. 359, § 3.32.)

In 1964, Ford, which had not previously obtained a use permit for its gravel activities, sought and obtained a use permit for a gravel processing plant. And in 1966, Ford obtained a use permit for a "Redi-mix" batch plant. The permits were issued without conditions or expiration dates.

In 1975, the Legislature enacted [HN1] the Surface Mining and Reclamation Act (SMARA) regulating surface mining operations. ( *Pub. Resources Code*, § 2710 et seq.) n2 [\*\*588] Section 2770 provides that "no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the lead agency for such operation . . . ."

n2 Unless otherwise indicated, all further statutory references are to the Public Resources Code.

[\*\*\*3] [HN2]

The permit requirement does not apply, however, to an operator "who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 . . . ." As to such operator, all that is necessary is a reclamation plan. (§ 2776.)

[HN3] In 1979, in compliance with the SMARA

requirement that local agencies adopt ordinances regulating surface mining (§ 2774), Mendocino County enacted its own ordinance requiring a reclamation plan and either a permit or a vested right to conduct surface mining operations. (Mendocino County Code [M CC], § 22.16.010 et seq.) n3

n3 We reject Ford's argument that SMARA does not apply to its activities because gravel is perpetually replenished and thus there is no need for reclamation. Although gravel extraction is a unique mining operation, we think Ford's argument should be addressed to the Legislature. As presently drafted, SMARA does encompass gravel extraction as "mining by . . . dredging . . . ." (§ 2735.) And the Mendocino County ordinance expressly includes gravel extraction within its definition of surface mining operations. (M CC, § 22.16.030(N).)

[\*\*\*4]

In 1983, in response to a citizen's complaint, the Mendocino County Planning Commission asked Ford Gravel Company to submit a reclamation plan. Ford did so, along with a statement of vested right.

For some unknown reason, the county planning department staff treated Ford's reclamation plan as an application for a use permit authorizing gravel extraction. Accordingly, the planning department undertook an initial study of the environmental effects of the gravel extraction activities and recommended that 21 conditions be imposed upon Ford's "use permit" in order to mitigate environmental effects. The staff also recommended that a "mitigated" negative declaration be adopted. After modification of two of [\*51] the conditions, the planning commission approved the reclamation plan with the conditions imposed and adopted a negative declaration.

Various water suppliers, including appellant City of Ukiah (City), appealed the planning commission's decision to the county board of supervisors. At this point, however, the planning department staff recommended that an EIR "or equivalent hydrologic study" be prepared.

At the board hearing, the question arose whether CEQA applied since [\*\*\*5] the only matter presented for approval was a reclamation plan, not a use permit. The hearing was eventually continued (two weeks) to allow the planning department to reexamine the status of the issue before the board.

At the continued hearing, the planning director announced that Ford had a vested right to extract the gravel and thus no use permit was necessary. Accordingly, the only issue before the board was whether the reclamation plan should be approved.

Ultimately, the board concluded that in light of the limited issue before it, the board would adopt a negative declaration. The board thereafter approved the reclamation plan subject to certain conditions and biennial review, i.e., November 1985.

City of Ukiah thereupon instituted the underlying mandamus action seeking, inter alia, to compel the county to set aside its approval of Ford's reclamation plan and to mandate submission of an EIR. After extensive argument, the trial court eventually denied the requested relief. The City now appeals from the judgment. The county has also appealed challenging one aspect of the trial court's decision.

#### Discussion

##### I.

##### Background

For years considerable controversy has existed in [\*\*\*6] Mendocino County concerning the extraction of gravel from the Russian River -- not only by Ford but by other gravel companies as well. The longstanding controversy was fully ventilated during the board hearings.

[\*\*589] Local citizens and a City representative expressed their collective concerns that the Russian River was being "degraded." ("Degradation" is generally understood by the parties to mean simply that the river bottom is lowering.)

[\*52] It appears that degradation of the river affects local water supplies in the following manner: As the river has dropped, so has the water table which recharges the wells from which water is taken. Moreover, the City obtains some of its water supplies from a "Raney collector," a river well located on the Russian River near Ford's excavation site. The gravel riverbed serves as a natural filter for the water; as the gravel cover is reduced, increased amounts of sediment permeate the water supplies.

The gravel company representatives argued that there is no evidence that gravel extraction is the cause of the falling river. They pointed to other likely causes, including releases of water from the Coyote Valley Dam, increased consumptive [\*\*\*7] uses of river water and the natural forces of the river itself. Indeed, even those opposing Ford's reclamation plan conceded that the

principal cause of the river degradation is unknown. In fact, streambed degradation is occurring throughout the river system, including areas with little or no gravel extraction operations.

It was repeatedly suggested to the board that a broad-based study of the entire watershed area was necessary in order to determine the true causes of the river dynamics. It was also emphasized that it would be unfair to require Ford alone to finance the study (EIR) in view of the fact that the scope of the problem transcends Ford's gravel skimming.

The board was informed that *if* evidence was produced that Ford's activities were harming the river, then the board could take appropriate action including revocation of Ford's use permits and initiation of suit for injunctive relief or damages for maintaining a public nuisance. It was also noted that other relevant agencies, such as the Department of Fish and Game, Regional Water Resources Control Board, Army Corps of Engineers and County Air Pollution Control District, could likewise revoke permits issued to [\*\*\*8] Ford.

##### II.

##### The Negative Declaration

[HN4] Although the CEQA mandates that public agencies obtain an EIR before approval of a project (§ § 21002.1, 21151), none is required where the agency finds the project will not have a significant effect on the environment (§ 21151). In such case, the agency merely adopts a negative declaration to that effect. (§ 21080, subd. (c).) (1) A negative declaration is inappropriate, however, and an EIR is required whenever "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75 [118 Cal.Rptr. 34, 529 P.2d 66].)

[\*53] (2) City vigorously challenges the board's decision to adopt a negative declaration contending that a fair argument was presented to the board that Ford's activities are degrading the river.

The record reflects that the board heard considerable evidence concerning degradation of Russian River. The principal witness, Ted Goforth, the City deputy director of public works, conceded he did not know the cause of the degradation. In response to a question by a board member whether the increased flow of water [\*\*\*9] released from Coyote Valley Dam was the operative cause, Mr. Goforth candidly replied: "I think at this point anything's a possibility. I cannot tell you. I don't know. I don't know that anyone in this room can tell you for a fact what's causing it. Probably a combination of factors, yes."

Moreover, Ford's written reclamation plan and other testimony revealed that Ford extracts gravel on a "sustained yield basis": it removes only the amount which has been redeposited by the winter runoff. And the county planning department staff noted that: "As long as the amount of gravel being removed did not exceed the [\*\*590] amount of gravel recruited each year, no significant impacts upon the resource base would occur."

Several witnesses theorized that the degradation was due to other forces. The most frequently mentioned cause was the timing and quantity of water released from the Coyote Valley Dam. But natural forces (such as winter storms) and increased consumption were also viewed as probable causes.

In rejecting City's argument, the trial court concluded that there was no credible evidence of "any nexus between the drop in the river and the reclamation plan of Ford." City argues, [\*\*\*10] however, that both the board and the trial court failed to consider the cumulative impact of Ford's gravel extraction activities in combination with other gravel mining operations on the river.

In view of CEQA's requirement of an analysis of the cumulative effects of a project (Cal. Admin. Code, tit. 14 [hereafter Guidelines], § 15065, subd. (c)), the argument would be persuasive if the "project" under review by the board had been Ford's gravel operations. But the argument is flawed since Ford's gravel operations were *not* before the board in the now challenged proceedings. Rather, the only item subject to approval was Ford's reclamation plan.

[HN5] The determination which must be made by a public agency in deciding whether to require an EIR or to adopt a negative declaration is whether *the project being approved* may have a significant effect on the environment. (§ 21151.) A "project" is defined to mean private activities "involving the [\*54] issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (§ 21065; see also Guidelines, § § 15377, 15378, subds. (a)(3), (c).)

Considerable confusion reigned at [\*\*\*11] the board hearing as to the nature of the project then under review. Initially, the board -- undoubtedly influenced by the planning department's original treatment of the reclamation plan as a permit application -- assumed that the project was Ford's long-existing gravel extraction activities. Eventually, the board realized that the only project before it was Ford's reclamation plan. We think the board's ultimate conclusion was correct.

Ford's underlying activity was, of course, its extraction of gravel from the Russian River. But that activity did not require a license, permit or other authorization in view of the board's acceptance of its planning director's determination that Ford already possessed a vested right or authority to extract gravel. (See discussion in Part III, *infra*.) Thus, the only matter presented for board approval was Ford's reclamation plan. Consequently, any environmental inquiry was limited to whether *that* project would have a significant environmental impact. n4

n4 We reject Ford's argument that CEQA is entirely inapplicable. We agree with the City that a reclamation plan is an "entitlement for use" inasmuch as the SMARA prohibits surface mining operations unless a reclamation plan has been submitted and approved. (§ 2770.) Thus, a reclamation plan is a "project" under CEQA. What the City overlooks, however, is that the "project" was the reclamation plan, not the gravel extraction operations.

[\*\*\*12]

Ford's plan did not call for any external activities for purposes of reclamation of the streambeds. Instead, Ford relied upon the replenishment of the gravel beds by natural gravel movement during the winter high flows. In approving Ford's reclamation plan, the board imposed 11 conditions requiring Ford to provide detailed information relating to the process of natural reclamation. Additionally, Ford was required to provide photographs and "cross-sections" of the gravel bar before commencing its operations each year and again following its operations but before the winter rains. And Ford was also required to submit reports of the actual quantities of gravel removed. In essence, the current activities called for by Ford's reclamation plan consisted of collection of data and its submission to the planning department. Under these circumstances, we think the board could reasonably find that such information-gathering [\*\*591] activities could have no significant environmental effects. n5

n5 We express no opinion whether under different circumstances a reclamation plan which did call for reclamation activities might have a significant environmental impact.

[\*\*\*13]

Indeed, [HN6] projects deemed categorically exempt from CEQA due to lack of a significant environmental effect (§ 21084) include "basic data collection, [\*55] research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource." (Guidelines, § 15306.) Ford's reclamation plan appears to fall within that specified exemption. Though cognizant of the exemption status, the board elected to forego a categorical declaration which would have required it to issue a notice of exemption (see Guidelines, § 15065) and, instead, decided to simply find that the project had no significant environmental effects. That factual determination is adequately supported by the record before us. There is no evidence of any significant environmental impact resulting from Ford's *reclamation plan*.

It bears repetition that the crucial consideration herein was the limited nature of the proceeding: whether Ford's reclamation plan should be approved. However, the board also recognized that if evidence were later developed that gravel extraction activities were contributing to the river degradation, the county could undertake [\*\*\*14] appropriate administrative or other remedial actions. As a result of the virtually unanimous view of the participants that the degradation problem was one of much broader scope, the board ultimately decided to reconvene a gravel committee to study gravel erosion problems on the Russian River.

There is no reason to believe that the board or other pertinent agencies will fail to take such action as is reasonably necessary to protect the Russian River and to preserve its delicate ecosystem. Should the board or other relevant public agency fail to faithfully discharge its official responsibilities in that regard, then, of course, the City or other interested party could seek appropriate judicial relief. n6 The present proceeding was simply an improper forum to address the larger issues dealing with the problem of degradation of the Russian River in general.

n6 It is noteworthy that the City voluntarily dismissed two of its causes of action seeking to compel the county to undertake a broad assessment of the river and to monitor the effects of all the gravel extractions.

[\*\*\*15]

III.

The Use Permit

(3a) City challenges the board's premise that Ford had a vested right to engage in gravel mining on the river. City argues that Ford was required to obtain a use permit for its *gravel mining activities*, and that it was those activities which constituted the "project" subject to approval.

City relies on sections 34.01 and 34.06 of the 1956 zoning ordinance pertaining to nonconforming uses. n7 City argues that Ford's gravel operations [\*56] come within the five-year phase-out period for nonconforming "business and industrial" uses under section 34.01 and thus, pursuant to section 34.06, Ford was required to obtain a use permit after 1961. We remain unconvinced.

n7 Section 34.01 provides: "The lawful use of land existing at the time of the passage of this Ordinance, although such use does not conform to the provisions hereof, may be continued, provided however that non-conforming business and industrial uses being operated on open land may be continued for a period not longer than five (5) years after this Ordinance becomes effective . . . ."

Section 34.06 provides: "The owners or occupant of any land or building classified as a non-conforming use under the provisions of this Ordinance shall, upon notification by the Planning Commission, make application for a use and occupancy permit, and shall annually thereafter apply for renewal of said permit."

[\*\*\*16]

First, we do not think Ford can be compelled to obtain a use permit to continue its preexisting gravel mining operations. (4) [HN7] A property owner has a vested right to continue *lawful* uses of property and is not required to obtain a special use permit in order to continue lawful preexisting uses. [\*\*592] (*McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339, 348-349 [329 P.2d 522]; see 66 Cal.Jur.3d, Zoning and Other Land Controls, § 110, pp. 422-424; 2 Ogden's Revised Cal. Real Property Law (Cont.Ed.Bar 1975) § 24.14, p. 1188.) n8

n8 Of course, if the use is shown to be a danger to the public health, safety or general welfare, the county may by zoning ordinance prohibit continuation of the offending activities. (*Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal.2d 515 [20 Cal.Rptr 638,



196 Cal. App. 3d 47, \*; 241 Cal. Rptr. 585, \*\*;  
1987 Cal. App. LEXIS 2309, \*\*\*

370 P.2d 342], app. dism. (1962) 371 U.S. 36 [9 L.Ed.2d 112, 83 S.Ct. 145].)

(3b) Nor do we believe that Ford's existing gravel operations were nonconforming uses. (5) [HN8] A nonconforming [\*\*\*17] use is one which lawfully existed prior to the effective date of the zoning restriction and which continued thereafter in nonconformity with the ordinance. n9 (See *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 453 [274 P.2d 34]; see also 66 Cal.Jur.3d, *supra*, Zoning and Other Land Controls, § 1, p. 142.) (3c) Here, Ford's existing gravel operations did not violate the zoning ordinance. Under section 3.32 of the zoning ordinance, all lawful uses were permitted within A-1 districts as a matter of right. Only new activities -- "the establishment of . . . Commercial excavation of natural materials" -- required a use permit. n10 When Ford established a new gravel processing plant in 1964 and a new Redi-mix plant in 1966, it applied for and obtained the necessary use permits. (Cf. *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal.App.2d 217, 225-230 [4 Cal.Rptr. 317] [property owner authorized to [\*57] continue extracting sand and preparing ready-mix cement but not to operate new rock crushing plant].) But of paramount significance, Ford's in-stream gravel mining operations, which predated the 1956 zoning ordinance, were permitted [\*\*\*18] as a matter of right and did not require a use permit. n11 Thus, throughout the proceedings below, Ford possessed a vested right to continue its existing gravel operations and was not subject to a use permit requirement for that purpose. n12

n9 Section 6.37 of the 1956 zoning ordinance defines "non-conforming use" as follows: "A use which lawfully occupied a building or structure [sic] or was conducted upon open land prior to the effective date of the use regulations in the district in which it is located and with which regulations it does not comply."

n10 Section 3.32 of the zoning ordinance (governing "A-1" districts) provides as follows: "(a) All uses not otherwise prohibited by law are permitted, except that the establishment of any of the following shall not be permitted unless and until a use permit shall first have been secured in each case. [para. ] 2. Commercial excavation of natural materials . . . ."

n11 City's purported reliance on section 31.05 of the 1956 zoning ordinance is also misplaced. The section provides in part: "The

following accessory uses, in addition to those hereinbefore mentioned shall be permitted . . . . [para. ] (d) Airports and the commercial excavation of natural materials may be permitted in any district upon the securing of use permits in each case."

But this provision applies to accessory uses only and has no relevance to Ford's activities. An "accessory use" is defined by section 6.03 of the ordinance as "A use or building incidental or subordinate to the principal use or building located upon the same lot."

[\*\*\*19]

n12 Parenthetically, we reject the interpretation of section 34.06 by both Ford and the county that a use permit is required only "upon notification by the Planning Commission." Such construction arguably would grant unfettered discretion to the planning commission to determine whether a use permit was necessary, a result in open conflict with settled principles that a landowner has a vested right to continue an otherwise lawful preexisting use without the necessity of a use permit.

#### IV.

##### The Reclamation Plan

(6) Finally, City argues that Ford's reclamation plan is incomplete and inadequate and should have been rejected by the board. The argument is equally unconvincing.

[HN9] The SMARA sets forth the required contents of a reclamation plan, including, "[a] description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including: . . . (2) a description of the manner in which rehabilitation of affected streambed channels and streambanks to a condition minimizing erosion and sedimentation will occur." (§ 2772, subd. (h).) The county ordinance [\*\*\*20] [\*\*593] is framed in similar language. (M CC, § 22.16.042(H).)

Ford's plan, as submitted, is sketchy at best. Presumably, Ford's intention to continue indefinitely its gravel extraction activities motivated its brief reply to the form inquiry to "[describe] the methods, their sequence and timing, to be used in bringing the reclamation of land to its end state." Although the preprinted form specifically asked for a discussion of nine items,

196 Cal. App. 3d 47, \*, 241 Cal. Rptr. 585, \*\*;  
1987 Cal. App. LEXIS 2309, \*\*\*

including "Treatment of streambeds and stream banks to control erosion and sedimentation," Ford tersely responded: "All of the above are carefully controlled to insure continued Long term operation. [para. ] This operation will continue thru the foreseeable future as a major supplier of materials for construction in the Ukiah area." (Spelling from the original.)

[\*58] City argues that Ford's plan fails to provide any substantive description of the manner or method whereby the natural streambeds would be restored. We disagree.

Ford's reclamation plan clearly relies upon the natural movement of gravel during the high water winter flows to replenish the riverbed. The county planning staff recognized that Ford's reclamation activities [\*\*\*21] were "limited to smoothing and sloping the bar as required by the Department of Fish and Game with the rest of the reclamation left to the natural stream processes of gravel movement during winter high flows." And it

must also be recognized that in approving the plan, the board imposed 11 conditions requiring Ford to submit detailed data factually demonstrating that the gravel source is sufficiently replenished each year. When those conditions are read into the plan, Ford's plan seems adequate to ensure that the county will be able to effectively monitor and review any adverse effects brought about by Ford's gravel removal operations. n13

n13 We note that one of the conditions imposed upon Ford's reclamation plan requires the Department of Fish and Game to notify the county should the department find the gravel replenishment "inadequate." In such event, the county (acting through its planning and building services departments) must "limit" or "halt" Ford's extraction for the season.


The judgment is affirmed. [\*\*\*22]

## DECLARATION OF FRANK DUTRA

I, Frank Dutra, declare as follows:

1. I am a retired repair technician, previously working for Berglund Tractor Company in Willits, California, and as such I have personal knowledge of the facts set forth below. If called as a witness, I could competently testify to them.
2. In 1968 I was sent by my employer to the Ridgewood Summit Quarry, now known as the Harris Quarry, located 7 miles south of Willits, California to repair a turbo charger on a D6 Caterpillar.
3. The vehicle was being used by the California Department of Forestry at the time for moving and loading materials mined from the site.
4. Mining at the site had begun many years earlier and the mining operations at the time appeared current and ongoing.
5. In 1993, I became an operator of the Harris Quarry with Bud Garman. Later, I took over as sole operator of Harris Quarry. During the time of my joint and sole operation of the Harris Quarry, the quarry has been actively and continuously mined and has, consistent with my intent, expanded and increased extraction to respond to market demands.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 3-19-13, at Willits, California.

  
FRANK DUTRA

AN ORDINANCE AMENDING SECTION 22.16.020 OF CHAPTER 22.16  
OF THE MENDOCINO COUNTY CODE - SURFACE MINING AND RECLAMATION

The Board of Supervisors of the County of Mendocino, State of  
California, ordains as follows:

Section 22.16.020 of Chapter 22.16 of the Mendocino County Code is  
hereby amended to read as follows:

**Sec. 22.16.020 Scope.**

The provisions of this chapter shall apply to surface mining  
operations and reclamation of mined lands within the unincorporated areas  
of Mendocino County. The provisions of this chapter have been designed  
to encompass streambed gravel extraction, borrow pits, quarry operations  
and other surface mining operations conducted in Mendocino County.

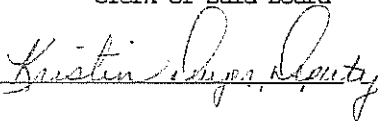
Passed and adopted by the Board of Supervisors of the County of  
Mendocino, State of California, on this 22nd day of August,  
1994, by the following vote:

AYES: Supervisors Sugawara, Eddie, Henry, de Vall, McMichael  
NOES: None  
ABSENT: None

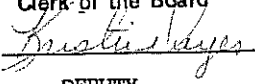
WHEREUPON, the Chairman declared said Ordinance passed and adopted  
and SO ORDERED.

  
Chairman of said Board of Supervisors

ATTEST: JOYCE A. BEARD  
Clerk of said Board

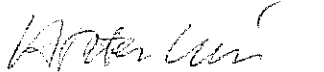
By 

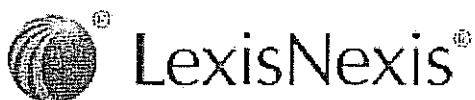
I hereby certify that according to the  
provisions of Government Code  
Section 25103, delivery of this  
document has been made.

JOYCE A. BEARD  
Clerk of the Board  
By:   
DEPUTY

APPROVED AS TO FORM:

H. PETER KLEIN, COUNTY COUNSEL

By 



**HANSEN BROTHERS ENTERPRISES, INC., Plaintiff and Appellant, v. BOARD  
OF SUPERVISORS OF NEVADA COUNTY et al., Defendants and Respondents.**

No. S044011.

**SUPREME COURT OF CALIFORNIA**

*12 Cal. 4th 533; 907 P.2d 1324; 48 Cal. Rptr. 2d 778; 1996 Cal. LEXIS 1; 96 Cal. Daily  
Op. Service 186; 96 Daily Journal DAR 300*

January 8, 1996, Decided

**PRIOR HISTORY:** Superior Court of Nevada County, No. 41465, Reginald Littrell, Judge.

\* Judge of the Sierra Superior Court sitting under assignment by the Chairperson of the Judicial Council.

**DISPOSITION:** The judgment of the Court of Appeal is reversed with directions to order the superior court to vacate its order denying Hansen Brothers' petition for writ of mandate and to conduct further proceedings consistent with this opinion to determine if Hansen Brother's SMARA plan should be approved.

**SUMMARY:**

**CALIFORNIA OFFICIAL REPORTS SUMMARY**

The owner and operator of an aggregate production business submitted a reclamation plan to the county board of supervisors, seeking to comply with the Surface Mining and Reclamation Act of 1975 (*Pub. Resources Code, § 2710 et seq.*), and claiming a vested right to mine the entire 67-acre parcel of riverside land covered by the reclamation plan. A county zoning prohibition of mining went into effect in 1954, and since that time plaintiff had maintained a mining operation as a legal nonconforming use that incorporated the extraction of sand, gravel, and rocks from a riverbed and river banks, and the quarrying of rock from a hillside. The county board of supervisors concluded that, while plaintiff had a vested right to mine a portion of the property, any right it might have had to quarry the hillside area of its property for rock had been lost, under the terms of the zoning ordinance, by discontinuance of the quarrying operation for

periods in excess of 180 days, and that plaintiff's proposal for future mining constituted an impermissible intensification of the nonconforming use. The trial court denied plaintiff's petition for a peremptory writ of mandate to set aside the county board's decision denying approval of plaintiff's mining plan. (Superior Court of Nevada County, No. 41465, Reginald Littrell, Judge. \*) The Court of Appeal, Third Dist., No. C017070, affirmed.

\* Judge of the Sierra Superior Court sitting under assignment by the Chairperson of the Judicial Council.

The Supreme Court reversed the judgment of the Court of Appeal with directions to order the superior court to vacate its order denying plaintiff's petition for a writ of mandate and to conduct further proceedings to determine if plaintiff's mining plan should be approved. The court held first that the "diminishing asset" doctrine, providing that progression of mining or quarrying activities into other areas of the owner's property is not necessarily a prohibited expansion or change of location of a nonconforming use, is recognized in California. The court further held that the evidence did not support the trial court's findings that the riverbed gravel mining and hillside rock quarrying operations of the aggregate business were separate, and that the quarry operation had been discontinued. The court held that, consistent with the diminishing asset doctrine applicable to extractive operations, plaintiff's right of normal expansion of a nonconforming use included extending the rock quarry aspect of the business into those other areas of the property owned in 1954 which plaintiff had then objectively manifested an intent to mine in the future. However, since the record did not confirm that all of the parcels in the 67-acre area in which plaintiff claimed vested rights

were part of the mine in 1954 when the zoning limitation was imposed, or that the extent of the area over which an intent to quarry for rock was objectively manifested in 1954, remand was warranted to determine those issues. The court finally held that the trial court erred in concluding that the proposal for future rock quarrying contained in the reclamation plan was an impermissible intensification of a nonconforming use; that there was not sufficient information in the plan to make that determination; and that, at the county's option, the issue could be determined on remand or by separate litigation when the increased production actually occurred. (Opinion by Baxter, J., with Lucas, C. J., and Arabian, J., concurring. Concurring opinion by Werdegar, J., with Lucas, C. J., concurring. Dissenting opinions by Mosk, J., and by Kennard, J., with George, J., concurring.)

## HEADNOTES

### CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

**(1a) (1b) Zoning and Planning § 18--Nonconforming Uses--Exemptions.** --Adoption of a zoning ordinance that is not arbitrary and does not unduly restrict the use of private property is a permissible exercise of the police power and does not violate the taking clause of *U.S. Const., 5th Amend.*, and comparable provisions of the California Constitution, even when the law restricts an existing use of the affected property. A zoning ordinance or land-use regulation that operates prospectively and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not bring about a compensable taking unless all beneficial use of the property is denied. Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. The rights of users of property, as those rights existed at the time of the adoption of a zoning ordinance, are well recognized and have always been protected. The ordinance may either exempt an existing use altogether or allow a limited period of continued operation adequate for amortization of the owner's investment in the particular use.

**(2a) (2b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses.** --When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective. Intensifying or expanding the existing nonconforming use, or

moving the operation to another location on the property, is not permitted. In determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. Nonuse is not a nonconforming use, however, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned.

**(3a) (3b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses--Mining Use--Diminishing Assets Doctrine.** --In exercising its valid police power through the enactment of zoning regulations, the state has the same power to prohibit the extraction or removal of natural products from the land as it does to prohibit other uses. Unlike other nonconforming uses of property which operate within an existing structure or boundary, however, 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. According to the "diminishing asset" doctrine, an exception to the rule banning expansion of a nonconforming use that is specific to mining enterprises, progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited expansion or change of location of the nonconforming use. 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, the use may expand into the contemplated area.

**(4a) (4b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses--Exemption--Quarrying.** --The very nature and use of an extractive mining business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time a restrictive zoning ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose. Quarry property is generally a one-use property. The rock must be quarried at the site where it exists, or not at all. An absolute prohibition, therefore, practically amounts to a taking of the property since it denies the owner the right to engage in the only business for which the land is fitted. A vested right to quarry or excavate the entire area of a parcel, however, requires not only use of a part of the property for that purpose when the zoning law becomes effective, but also evidence that the owner or operator at the time the use became nonconforming had exhibited an intent to extend the use to the entire property owned at that time.

**(5a) (5b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses--Excavation Operations--Showing Required for Continuation and Expansion.** --A party who desires to continue and expand excavation operations on property following a restrictive change in zoning of the property must meet a three-pronged test: first, the party must prove that the excavation activities were actively being pursued when the law became effective; second, the party must prove that the area that he or she desires to excavate was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent; and third, the party must prove that the continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood. The mere intention or hope on the part of the landowner to extend the use over the entire tract is insufficient; the intent must have been objectively manifested by the operations in effect at the time of enactment of the ordinance. Thus, the right to expand mining or quarrying operations on the property is limited by the extent that the particular material was being excavated when the zoning law became effective.

**(6a) (6b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses--Extension to Adjacent Property.** --A lawful nonconforming use may not be extended to adjacent property acquired after a zoning change has gone into effect except to the extent that the transferors of the property themselves had a vested right to engage in that nonconforming use on the transferred property. Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at that time is allowed only if the parcels were part of the mining operation. Were the rule otherwise, zoning laws could be easily avoided by acquiring property abutting a tract on which the nonconforming use operated and expanding that use into the new property, even though the original owners of the newly acquired property had no vested right to such use of the property.

**(7a) (7b) Zoning and Planning § 20--Nonconforming Use--Restrictions on Maintenance or Change of Nonconforming Uses--Regulation of Mining--Legislative Intent.** --The "diminishing asset" doctrine provides an exception to the rule banning expansion of a nonconforming use that is specific to mining enterprises. Recognition of this doctrine is consistent with the legislative intent underlying the Surface Mining and Reclamation Act of 1975 (*Pub. Resources Code, § 2710 et seq.*), which seeks to minimize ecological degradation from mining enterprises. Were the diminishing asset doctrine inapplicable, a mining enterprise would be re-

quired to immediately initiate mining on all areas of its property lest, under a subsequent zoning change, its right to further mining be extinguished.

**(8a) (8b) Administrative Law § 133--Judicial Review and Relief--Scope and Extent of Review--Evidence--Independent Judgment Rule.** --Where an administrative decision effectively precludes continuance of a company's business, a superior court properly exercises its independent judgment in making factual determinations based on the administrative record when reviewing that decision. The court's factual findings must be upheld on appeal from the judgment if they are supported by substantial evidence. 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.

**(9a) (9b) (9c) Zoning and Planning § 23--Nonconforming Uses--Judicial Review--Sufficiency of Evidence--Lawful Nonconforming Use on Entire Parcel of Land.** --The evidence presented by the owner and operator of an aggregate production business to the county board of supervisors in support of their mining reclamation plan, submitted in compliance with the Surface Mining and Reclamation Act of 1975 (SMARA) (*Pub. Resources Code, § 2710 et seq.*), was insufficient to support a finding that the owner was entitled to a writ of mandate to compel the board to approve its SMARA reclamation plan as presented. The record established only that the owner's vested rights to mine and quarry its property existed on a 28.898-acre placer mining claim patented to the owner's predecessors and conveyed to the owner in 1982, and on a 3-acre parcel that the county admitted was operated as part of the mine in 1954 when a county zoning ordinance was enacted that restricted mining. Insofar as its SMARA reclamation plan asserted a vested right to quarry a 60-plus acre parcel of land, the owner failed to carry its burden of proof to establish the lawful and continuing existence of a nonconforming use on the entire parcel at the time of enactment of the ordinance.

**(10a) (10b) Zoning and Planning § 1--County Waiver.** --A county lacks the power to waive or consent to a violation of the zoning law.

**(11a) (11b) (11c) Zoning and Planning § 23--Nonconforming Uses--Judicial Review--Sufficiency of Evidence--Finding That Quarrying Operation Was Separate Use.** --In reviewing the decision of a county board of supervisors to deny a mining reclamation plan submitted by the owner of an aggregate production business, in which it claimed a vested right to mine its entire 67-acre parcel of riverside land,

the evidence did not support the finding of the superior court that the riverbed gravel mining and hillside rock quarrying operations were separate components of the aggregate production business. An aggregate business does not differ from other land uses simply because mining for some or all of the materials that compose aggregate is a component of the business. The record established that rock was being taken from the hillsides at that time as an integral part of the aggregate business.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 854.]

**(12a) (12b) Zoning and Planning § 18--Nonconforming Uses--Determination--Overall Business Operation.** --In determining the use to which a parcel of land was being put at the time the use became nonconforming, the overall business operation must be considered. One entitled to a nonconforming use has a right to engage in uses normally incidental and auxiliary to the nonconforming use. Furthermore, open areas in connection with an improvement existing at the time of the adoption of zoning regulations are exempt from such regulations as a nonconforming use if such open areas were in use or partial use in connection with the use existing when the regulations were adopted.

**(13a) (13b) Zoning and Planning § 21--Nonconforming Uses--Elimination of Nonconforming Uses--When Uses Discontinued.** --County ordinances that provide for zoning conformity when a nonconforming use is discontinued for a certain period are consistent with the purpose of zoning laws, which is to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. In construing such an ordinance, the court should follow a strict policy against extension or expansion; however, the court should also assume the county did not intend an arbitrary or irrational application of its provisions. The term "discontinued" in a zoning regulation dealing with a nonconforming use is sometimes deemed to be synonymous with "abandoned." Cessation of use alone does not constitute abandonment. Abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: an intention to abandon; and 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. Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.

**(14a) (14b) Zoning and Planning § 21--Nonconforming Uses--Elimination of Nonconforming Uses--When Uses Discontinued--Separate**

**Components of Business.** --In reviewing a county's decision to deny a mining reclamation plan submitted by the owner and operator of an aggregate production business, the trial court erred in concluding that the quarrying aspect of the business was a separate operation that had been discontinued. The nonconforming use that the business owner had a right to continue following enactment of a zoning ordinance that restricted mining was the aggregate production and sale business, and rock quarrying was an integral part of that business. Thus, since the aggregate business itself had not been discontinued, the business owner had not lost the right to future quarrying on its property as necessary to its production of aggregate. The county ordinance that provided for conformity of a nonconforming use if it was discontinued for a period in excess of 180 days applied to the nonconforming use itself, not to the various components of the business.

**(15a) (15b) Zoning and Planning § 20--Nonconforming Uses--Restrictions on Maintenance or Change of Nonconforming Uses--Quarry Mining Component of Aggregate Production.** --Substantial evidence did not support a trial court's finding that a proposal for future quarrying submitted to the county by the owner and operator of an aggregate production business constituted an impermissible intensification of the business's legal nonconforming use. However, the business owner's vested right to continue quarrying hard rock for use in its business did not necessarily extend to quarrying the amount of rock proposed; given the objective of zoning, which is to eliminate nonconforming uses, courts generally follow a strict policy against their extension or enlargement. Although the zoning ordinance did not prohibit a gradual and natural increase in a lawful, nonconforming use of quarry property, the application form used by the business owner for its proposal was not an adequate basis upon which to decide the question of impermissible intensification.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 855.]

**COUNSEL:** Diepenbrock, Wulff, Plant & Hannegan, The Diepenbrock Law Firm, John V. Diepenbrock and Mark D. Harrison for Plaintiff and Appellant.

James S. Burling and Daniel T. Fitzpatrick as Amici Curiae on behalf of Plaintiff and Appellant.

James A. Curtis, County Counsel, and Harold E. DeGraw, Chief Deputy County Counsel, for Defendants and Respondents.

H. Peter Klein, County Counsel Mendocino, Frank Zotter, Jr., Deputy County Counsel, Dwight L. Herr,



County Counsel Santa Cruz, Jonathan Wittwer, Chief Deputy County Counsel, Shute, Mihaly & Weinberger and Fran M. Layton as Amici Curiae on behalf of Defendants and Respondents.

**JUDGES:** Opinion by Baxter, J., with Lucas, C. J., and Arabian, J., concurring. Concurring opinion by Werdeggar, J., with Lucas, C. J., concurring. Dissenting opinions by Mosk, J., and by Kennard, J., with George, J., concurring.

**OPINION BY: BAXTER, J.**

## OPINION

[\*540] [\*\*1327] [\*\*\*781] **BAXTER, J.**

The principal issue in this case is whether the "diminishing asset" doctrine is applicable [\*\*1328] [\*\*\*782] to a mining operation which is carried on as a legal nonconforming use<sup>1</sup> under a zoning ordinance that presently excludes mining from the permissible uses of the property. The 1954 Nevada County land use and development ordinance which governs the property that is the subject of this dispute also forbids continuation of nonconforming uses which have ceased operation for periods in excess of 180 days. Therefore, because the "mining operation" at issue is part of an aggregate production business, we must also decide whether the aggregate business itself, including all aspects of that business, is the nonconforming use, or if the individual mining operations which recover the aggregate components--sand, gravel, and rock taken from a riverbed and its banks and rock quarried from a hillside--are the nonconforming use which the owner has a vested right to continue.

<sup>1</sup> A legal nonconforming use is one that existed lawfully before a zoning restriction became effective and that is not in conformity with the ordinance when it continues thereafter. ( *Hill v. City of Manhattan Beach* (1971) 6 Cal. 3d 279, 285 [98 Cal. Rptr. 785, 491 P.2d 369]; *City of Ukiah v. County of Mendocino* (1987) 196 Cal. App. 3d 47, 56 [241 Cal. Rptr. 585].) The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use. Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land. (See 8A McQuillin, *Municipal Corporations* (3d ed. 1994) § 25.185, p. 33 (McQuillin); 1 Anderson, *American Law of Zoning* (3d ed. 1986) § 6.40. See, e.g., *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442 [274 P.2d 34]; *County of Orange v. Goldring* (1953) 121 Cal. App. 2d 442 [263 P.2d 321].)

[\*541] The question of whether the diminishing asset doctrine is recognized in California arises because, under both the express terms of the Nevada County zoning ordinance<sup>2</sup> and generally applicable rules governing the continuation of a nonconforming use, that use may not expand onto areas of the property that were not being used at the time the zoning ordinance became effective. Resolution of the question is complicated in this case because the mining operations at the Bear's Elbow Mine owned and operated by plaintiff Hansen Brothers Enterprises, Inc. (Hansen Brothers), are for materials that are not distributed uniformly throughout the property and none is mined continuously. One, the removal of gravel and rock from the riverbed and its adjacent bank area is for a type of rock and gravel that was once a replenishing resource. The other mining operation has been to quarry the "hillside" about 600 feet from the river for rock.<sup>3</sup> That area has contributed relatively small amounts of rock to the aggregate produced on the property in the past. Under plaintiff's proposal for future development, rock quarrying farther into the hillside of the property away from the river will constitute the principal source of the crushed rock component of the aggregate produced from materials on the property.

<sup>2</sup> The ordinance provides: "Any use lawfully in existence at the time this Chapter or amendments thereto takes effect, although such use does not conform to the provisions of this Chapter, may continue as follows:

"A. No such use shall be enlarged or intensified. Nor shall any such use be extended to occupy a greater area of land than that occupied at the time of the adoption of this Ordinance. Nor shall any such use be moved in whole or in part to any other portion of the lot or parcel of land occupied at the time of the adoption of this Chapter or amendment thereto.

"B. If the nonconforming use is discontinued for a period of one hundred eighty (180) days or more, any following use shall be in conformity with all applicable requirements of this Chapter." (Nevada County Land Use and Development Code, art. 29, § L-II 29.2.)

<sup>3</sup> The parties and administrative agencies refer to both the area to be quarried in the future and this area as hillside. One witness, Alan Hess, referred to the quarried area 600 feet from the river as "stream bank" to distinguish it from the higher hillside. Our references to "hillside" include both areas. We use the term "bank" to refer to the area abutting the riverbed.

The principles that govern this area of law, while arcane, are important to both surface mining enterprises<sup>4</sup>

and the industries that [\*\*1329] [\*\*\*783] are dependent on their output. They are also of great concern to local governmental officials [\*542] charged with responsibility of eliminating nonconforming uses of properties under their jurisdiction. <sup>5</sup>

4 " 'Surface mining operations' " are defined for all purposes relevant here as: "[A]ll, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

"(a) Inplace distillation or retorting or leaching.

"(b) The production and disposal of mining waste.

"(c) Prospecting and exploratory activities." (*Pub. Resources Code*, § 2735.)

All statutory references are to the Public Resources Code unless otherwise noted.

5 An amicus curiae brief in support of Nevada County has been filed on behalf of 21 other counties. Sixty-two cities and towns have joined in that brief. They argue both that Hansen Brothers has no right to expand its mining operations to the entire area shown on its proposal and that recognition of the diminishing asset doctrine in California would be contrary to the intent of the Legislature, presumably the intent underlying statutes governing zoning and mining. (See, e.g., *Pub. Resources Code*, § 2710; *Gov. Code*, § 65000 *et seq.*)

The Court of Appeal held that Hansen Brothers' proposal for future mining constituted an impermissible intensification of the nonconforming use. It therefore affirmed the judgment of the superior court, which had denied a petition for a peremptory writ of mandate to set aside a decision of the Nevada County Board of Supervisors (the Board) denying approval of the mining plan. The Board had concluded that, while Hansen Brothers had a vested right to mine a portion of its property, any right it might have had to quarry the hillside area of its property for rock had been lost by discontinuance for periods in excess of 180 days, and that Hansen Brothers' proposal for future mining constituted an impermissible intensification of the nonconforming use. Because the Court of Appeal agreed with the last conclusion, it did not address the questions related to the nature of plaintiff's nonconforming use, whether the right to continue

the nonconforming use had been lost under the cessation provision of the ordinance, or whether the scope of a vested right to mine extends over the entire parcel.

We conclude that the diminishing asset doctrine is recognized in California. We also conclude that the nonconforming use which Hansen Brothers may claim a right to continue is the aggregate production business that was being operated on the property its predecessors owned in 1954 when the Nevada County zoning ordinance was adopted. That business, and the nonconforming use, include all aspects of the operation that were integral parts of the business at that time, including mining replenishable materials from the riverbed and banks and quarrying rock from the hillside; crushing, combining, and storing the mined materials which compose aggregate; and selling or trucking the aggregate from the property. Consistent with the diminishing asset doctrine applicable to extractive operations, the right of normal expansion of a nonconforming use in this case includes extending the rock quarry aspect of the business 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. <sup>6</sup>

6 Whether the diminishing asset doctrine has any application to a renewable or replenishing resource such as the riverbed rock and gravel is not an issue in this case. Our holding that the diminishing asset doctrine is recognized in California should not be read as expressing any opinion on that question.

We reach these conclusions on the basis of undisputed evidence in the record that Hansen Brothers' predecessors in interest were operating the [\*543] aggregate business, including extraction of sand and gravel from the riverbed and quarrying the hillside area of the property for rock in 1954. Nonetheless, the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming use which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property it identifies as the Bear's Elbow Mine and over which it claims a vested right to continue operations, or (2) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954.

We also conclude that the evidence does not support the rulings of the Court of Appeal and the superior court that Hansen Brothers' proposal for future rock quarrying would be an impermissible intensification of the nonconforming use of its property. Finally, we conclude that the evidence supports [\*\*1330] [\*\*\*784] the finding of the superior court that Hansen Brothers' overall aggregate production business has not been discontinued. Therefore Hansen Brothers has not lost the right to con-

tinue and expand its quarrying activity as an integral part of that nonconforming use, but the right is limited to the area over which the owners objectively manifested an intent to expand the quarry in 1954.

Nonetheless, as we explain below, because a court cannot determine on this record that Hansen Brothers is entitled to the relief it seeks, the petition for writ of mandate to compel the Board to approve a Surface Mining and Reclamation Act of 1975 (§ 2710 *et seq.*) reclamation plan for the Hansen Brothers' property was properly denied by the superior court. However Hansen Brothers is entitled to have the order denying approval of the plan set aside and to have its application reconsidered. We shall therefore reverse the judgment of the Court of Appeal affirming the superior court judgment denying Hansen Brothers' petition for writ of mandate, but we shall do so with directions that on setting aside its judgment the superior court conduct further proceedings. (See *Code Civ. Proc.*, § 1094.5, *subd. (e).*)

# I.

## *Background*

Hansen Brothers owns and operates the Bear's Elbow Mine, an aggregate business in which the materials combined and sold as aggregate are obtained by surface mining and quarrying on part of a 67-plus-acre tract of land [\*544] comprised of several parcels. Most of the property on which the business operates lies in Nevada County. Seven acres are in Placer County. The property straddles the Bear River, which at that location forms the boundary between the two counties, and includes property at the confluence of Willow Creek and the Bear River. The property is in a remote, mountainous area northwest of Colfax and south of Grass Valley. It is made up of riverbed, adjacent hillsides, and a flat yard area which is used for processing and storage. Recently a few homesites have been developed near the mine.

The aggregate produced at the Bear's Elbow Mine is sold for road building, concrete, filters and water purification systems, and other uses. Prior to construction of the Rollins Reservoir Dam on the river upstream from Bear's Elbow Mine, most of the rock, sand, and gravel used for the aggregate was taken from the riverbed and banks where the flow of the river replenished the supply and the cost of extraction was lower than on the hillsides, which have been held in reserve and are, therefore, largely unexcavated. Some quarrying for rock took place on both the Placer County and Nevada County hillsides within a few hundred feet of the Bear River, however. The rock is mixed with the riverbed aggregate materials as needed to meet buyers' specifications. Some sales are of blended materials from the riverbed, the banks of the river, and the hillside. In others the materials are sold

separately. Since construction of the upstream dam, the reservoir behind the dam has retained the migrating gravels and the river no longer deposits sufficient quantities of gravel to meet market demand. Therefore the drainage channel of the river is not to be mined again unless a significant amount of material is washed into the area. Future extraction will be principally rock quarried from the hillside of the Nevada County property.

Production of aggregate from sand, gravel, and rock mined and quarried<sup>7</sup> on the [\*\*1331] [\*\*\*785] Bear's Elbow Mine property commenced almost 50 years ago. Arlie [\*545] Hansen and a brother began working at the Bear's Elbow Mine in 1946 as employees of the original owners, George Rondini and Gustave Vollmer, who had established the business after claiming the property under a placer mining claim. The Hansen brothers purchased the mine in 1954. Hansen Brothers, a corporation formed by the brothers, now owns and operates the business. Arlie Hansen testified before the planning commission that the Bear's Elbow mining operation has been continuous since 1954, and that the operation included "taking the available material from the river and combining it with material from the banks, the hillsides and producing a usable material . . . ." In his testimony before the Board, he stated that as long as he has been associated with the operation of the Bear's Elbow mine, material has been taken from both the hillside and the riverbed to form the aggregate that is produced and sold. Quarried material has been stored on the site both before and after processing. A combination of river gravel and hillside rock is used to produce aggregate at the Bear's Elbow Mine, as the individual gravels are used for different purposes but can be combined for use where neither would be suitable by itself.<sup>8</sup>

7 A "quarry" "is similar to a mine, in the sense that the material removed, be it mere rock or stone or valuable marble, is removed because of its value for some other purposes [than development of the site]. It is distinguished from a mine in the fact that it is usually open at the top and front . . . and, in the ordinary acceptance of the term, in the character of the material extracted . . ." (*In re Kelso* (1905) 147 Cal. 609, 610-611 [82 P. 241].)

While mining is the all-encompassing term, extracting hard rock is commonly referred to in the industry as "quarrying." Taking sand and gravel from a riverbed is "alluvial mining," while taking those materials from floodplain terraces adjacent to a river is termed "terrace mining." (See, e.g., *Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1313-1314 [8 Cal. Rptr. 2d 473].) References herein to Hansen

Brothers' past and proposed extraction of rock from the hillside will use the term "quarrying" to distinguish this aspect of its operations from the mining for sand and gravel in the riverbed and bank.

A "'mine'" is defined as "all mineral bearing properties of whatever kind or character, whether underground, or in a quarry or pit, or any other source from which any mineral substance is or may be obtained." (§ 2200.) "'Minerals'" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum." (§ 2005.)

8 Aggregate from the Bear's Elbow Mine is sold to state, county, city, and forestry units. The combined product is more stable and durable, and meets the general specifications of the state.

At present, aggregate is occasionally picked up by a customer on the mine property or it is trucked to a customer, but most is trucked to and sold at another yard owned by Hansen Brothers. Hansen Brothers presented evidence that the equipment at the mine is maintained in working order and that the company continues to remove aggregate from the site for use at the other Hansen Brothers yard in Grass Valley. Orson Hansen, the president of Hansen Brothers, testified that material had been sold directly from the mine within the year preceding his testimony, but the firm has no records that might establish the amount of material that has been taken from the mine each year, because the materials are weighed as sold at the other yard. There was contrary evidence in the form of testimony by persons who live close enough to the mine to observe its operation that one of those witnesses had been unable to purchase gravel at the mine recently and others had seen no quarrying activity and had seen only an occasional truckload of material being removed.<sup>9</sup>

9 One witness testified that in the past two years he had seen only three or four trucks go by on the road, and had not heard any operation at the mine other than the trucks. Another witness testified that she is able to hear the gravel operation running when it is working, that it had not been running, and there had not been trucks going up and down the road. "It has basically closed down." She testified that the last time the mine was operating on a full-time basis, that is, for more than one hour or having more than one

truck on the road, was in 1986. There had been one truck on the road in 1989.

A resident of the Willow Creek Acres tract adjoining the quarry site testified that until 1986 residents were able to purchase gravel at the quarry site, but since then it has not been available. Since the winter of 1986-1987 he had not met trucks on the roads adjacent to the mine and "[t]he quarry is closed."

The volume of material that has been mined and quarried in past years has been driven by market forces and has varied from year to year. Demand for [\*546] the aggregate is seasonal and fluctuates with the needs of the building industry. At times aggregate production has been as much as 133,330 cubic yards (200,000 tons) of material a year, but only 209,000 cubic yards of rock have been quarried from the Placer County and Nevada County hillside areas of the property during the 50 years the business has been in operation. Of that, 44,700 cubic yards of rock have come from the hillside area in Nevada [\*\*1332] [\*\*\*786] County.<sup>10</sup> The plant manager testified at the November 1989 hearing before the county planning commission that during the 15 to 20 years that he had been associated with the operation, approximately 3,000,000 tons of aggregate had been produced at Bear's Elbow Mine. One-third of that consisted of base rock. One-fifth of the total was rock taken from the hillside quarry.<sup>11</sup> The last hillside quarrying took place in December 1988, but there had been periods of 180 days, and up to 3 years, prior to that during which no quarrying occurred because stockpiles of rock were adequate to meet need. The overall aggregate production and sales operation had been continuous, however, and at the time of the hearing about 6,000 tons of material from previous mining were stored on the site for use as needed. The total annual average yield of rock over 34 years of operation is 6,200 cubic yards, of which only 1,300 cubic yards is from the Nevada County side of the mine.

10 This figure is an estimate by Alan Hess, a photogrammetric engineer, made on the basis of aerial photographs taken at intervals between 1955 and 1988. The estimate of Nevada County quarrying covers only the area near the river which the witness termed "stream bank." Hess could not estimate the amount of rock quarried from a site, now overgrown with trees, located farther from the river on the higher area which he termed "hillside." Hess was called by Hansen Brothers to estimate "hillside" rock production. The "stream bank" area from which he testified this material came is part of the area which the parties refer to as "hillside."

11 The Court of Appeal, considering only hillside production, erroneously stated that the mine produced "209,000 cubic yards of aggregate" between 1955 and 1989.

Unlike the recovery of aggregate materials from the riverbed and the banks of the river where the sand, rock, and gravel are exposed or readily accessible, Hansen Brothers' proposed quarrying of rock on the hillside will require removal of approximately 1,000,000 cubic yards of topsoil overburden. The topsoil will be stored on the property and used in the reclamation process when it will be spread over the quarry area. The rock below the overburden is metamorphic bedrock and fractured bedrock.

[\*547] II.

### *The Mining Plan*

This action arose out of Hansen Brothers' efforts to comply with the Surface Mining and Reclamation Act of 1975 (§ 2710 *et seq.*) (hereafter SMARA). In that act, the Legislature found both that mining is "essential to the continued economic well-being of the state and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety." (§ 2711, subd. (a).) The Legislature declared an intent to ensure that adverse environmental impacts are prevented or minimized and to encourage the production and conservation of minerals while giving consideration to recreational and other values. (§ 2712, subd. (b).)

To achieve those goals, SMARA requires that persons conducting surface mining operations obtain a permit and obtain approval of a reclamation plan from a designated lead agency for areas subjected to post-January 1, 1976, mining. (§ 2770, 2776.)<sup>12</sup> The Board has enacted a mining ordinance with procedures for review of reclamation plans as required by SMARA, and it is the lead agency in this matter. Because Hansen Brothers operated the Bear's Elbow Mine prior to the enactment of SMARA, the permit requirement does not apply to those [\*\*1333] [\*\*\*787] operations for which it may claim a vested right (§ 2776).<sup>13</sup> Hansen Brothers does not contest the applicability of the reclamation plan requirement to its operations which are in conformity with all other environmental requirements.

12 Gravel extraction from a riverbed is surface mining within the meaning of section 2735. (*City of Ukiah v. County of Mendocino, supra*, 196 Cal. App. 3d 47, 50, fn. 3.)

The county conceded in its answer to the petition for writ of mandate that mining operations have been conducted on the property since 1946

and that the operation has "at various times" included extraction of aggregate from the hillsides and quarrying of rock, as well as the processing, storage and sale of the mined materials on the site. While it contested Hansen Brothers' right to continue quarrying rock from the hillside it did not contest its right to continue mining in the streambed or conducting the other activities that are part of the aggregate business. The Board had concluded that the hillside quarrying was a "different operation from the river operation due to the difference in materials, extraction procedures, and environmental impacts, as well as location." It did not consider whether it was part of an ongoing aggregate production business.

13 Section 2776: "No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. . . ."

Contrary to the assertion of amici curiae counties and cities, Hansen Brothers does not claim a vested right to conduct unregulated mining without a permit. It asserts only that section 2776 exempts it from obtaining a conditional use permit to continue the mining operation that it was conducting prior to January 1, 1976, and which was a legal nonconforming use at that time.

A reclamation plan must include, inter alia, information regarding the "anticipated quantity and type of minerals for which the surface mining [\*548] operation is to be conducted" and "[a] description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation." (§ 2772, subds. (c)(2), (6).)

In an effort to comply with SMARA, and claiming a vested right to mine the entire 60-plus-acre area covered by its reclamation plan, Hansen Brothers submitted a plan for mining and quarrying all of the hillside area on the Nevada County portion of the 67 acres it now owns

and designates as the Bear's Elbow Mine. The reclamation plan projected mining over the next 100 years or more. In conformity with a "check the box" preprinted form supplied by the county, the plan estimated future mining in the broad production ranges specified on the form, indicating that it anticipated removing 5,000 to 50,000 cubic yards or 50,000 to 250,00 cubic yards of material annually. Hansen Brothers estimated the total reserves remaining in the hillsides of its tract at 5,000,000 cubic yards. The plan proposed the eventual removal over 100 years of the entire 5,000,000 cubic yards of rock at a rate ranging from 5,000 to 250,000 cubic yards per year, with 500,000 cubic yards of waste. The plan proposed excavation of the hillside area to a maximum anticipated depth of 350 feet in the course of exposing and quarrying what would be a vertical wall of rock.

When the county planning commission reviewed the plan, it concluded that Hansen Brothers had lost any vested, nonconforming use status it might have as to the Nevada County hillside area of the Bear's Elbow Mine through discontinuance of quarrying in that area. The commission also concluded that, if Hansen Brothers had a vested right to quarry the hillside, the proposed excavation would be a prohibited intensification of the nonconforming use. It determined for those reasons that a permit would be required for the proposed hillside operation, and consequently took no action on the reclamation plan.

Hansen Brothers appealed to the Board, arguing that it conducted an integrated business which included both mining and "on-site conveyance, [\*549] crushing, sorting, washing, storage, and transportation of the mined product," an overall operation that had been conducted uninterrupted since 1946. It claimed that, as part of that business, quarrying on the hillside had been conducted every two or three years, with the material stored for ongoing use. Whenever the supply of rock was near depletion, new quarrying was undertaken.

The Board rejected the "unitary operation" argument and found that "[a]t various times in the past, operations at the Bear's Elbow Mine have included both in-the-riverbed extraction of aggregate and hillside quarrying of rock outside the riverbed, together with processing, storage and sale of mined materials on site." The Board also found, however, that Hansen Brothers had [\*\*1334] [\*\*\*788] discontinued the hillside quarrying operation for 180 days or more and therefore, <sup>14</sup> pursuant to the county land-use and development ordinance, had lost its vested nonconforming use status as to that aspect of the mining operations. The Board found: "The hillside operation is a different operation from the river operation due to the difference in materials, extraction procedures and environmental impacts, as well as location and has lost its legal non-conforming use status.

Storage of quarried materials in and of itself is insufficient to constitute continuance of the hillside operation." Finally, the Board ruled that the reclamation plan contemplated enlarged or intensified operations and changes in operation that were so substantial as to be outside the rights that were vested under both *section 2776* and the land use and development ordinance. The Board denied the appeal from the commission recommendation. It rejected the reclamation plan and denied Hansen Brothers' claim to a vested right to quarry the hillside area without a conditional use permit. <sup>15</sup>

14 The finding was based on admissions made on behalf of Hansen Brothers that hillside extraction had lapsed for one or more periods of three years or more; testimony of the plant manager that there had been no hillside quarrying in the area close to the river since 1988; photographs and field inspection showing "very limited" hillside extraction and no apparent recent hillside disturbance on the area of the hillside farther away from the river that had been quarried at an unspecified time, but then had trees up to 15 feet high growing on it; and public testimony that very little hillside quarrying had been conducted and no sales or quarrying had occurred in recent years.

15 The Board did not, and does not, contest Hansen Brothers' vested right to continue mining the riverbed and bank.

Hansen Brothers appealed the former ruling to the State Board of Mining and Geology pursuant to SMA-RA, and sought review of the Board's ruling that a conditional use permit was required for future quarrying by the petition for writ of "administrative mandate" (*Code Civ. Proc.*, § 1094.5) which underlies this appeal. It claimed in the petition, as relevant here, that there was no evidence that its hillside operation on the Bear's Elbow Mine [\*550] was an operation different from its riverbed operation, and that the Board's action had taken property without just compensation. Hansen Brothers argued that the Board erroneously bifurcated an integrated aggregate mining operation into two mines--one on the hillside and the other in the riverbed.

The trial court denied the petition for writ of mandate. After reviewing the evidence in the administrative record and exercising its independent judgment based on that evidence (see *Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal. 3d 52, 64-65 [227 Cal. Rptr. 667, 720 P.2d 15]; *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal. 3d 28, 34 [112 Cal. Rptr. 805, 520 P.2d 29]), the court found that the aggregate business had not been discontinued for a period of six months, but hillside

quarrying had been discontinued for periods of that length. Reasoning that the riverbed mining and hillside quarrying were separate operations, the court ruled that Hansen Brothers did not have a vested right to quarry on the hillside, and that if it ever had such a right, it had been lost by discontinuance of quarrying for a period in excess of six months. It based that ruling on Hansen Brothers' inability to produce evidence to show the extent of recent operations, the testimony by nearby residents that the operation had been largely inactive since 1986 except for storage of aggregate and one or two trips per year by trucks to or from the site, and evidence that one area previously used as a rock quarry was overgrown with trees fifteen feet tall, the court found that the hillside quarry operations were separate operations that had been discontinued for the statutory period.

The court also found that the quarrying operation proposed by Hansen Brothers was a substantial expansion and intensification of use, basing that decision on comparison of previous use and the maximum proposed use under the reclamation plan, including a projected increase to 120 ten-yard truck trips per year instead of the 1 or 2 per year since 1986. Therefore, the court held, the county may require that Hansen Brothers obtain a [\*\*1335] [\*\*\*789] conditional use permit for any renewed quarrying on the hillside.

The Court of Appeal majority affirmed the judgment denying Hansen Brothers' petition for writ of mandate. It did so on the ground that Hansen Brothers' proposed operation would constitute an enlargement or intensification of the permissible nonconforming use beyond its vested right to mine the property. The court rejected Hansen Brothers' argument that increased production to meet market demand was a permissible expansion of a nonconforming use. Because the Court of Appeal concluded that the Hansen Brothers' vested mining right did not encompass the proposed volume of mineral extraction, the court found it unnecessary to address Hansen Brothers' arguments that it had a right to quarry the entire Nevada County area of [\*\*551] its property under the "diminishing asset" doctrine recognized in *McCaslin v. City of Monterey Park* (1958) 163 Cal. App. 2d 339, 349 [329 P.2d 522] (hereafter *McCaslin*), and that the Board and the superior court erred in treating its hillside and riverbed mining activities as separate operations when ruling that it did not have a vested right to mine the entire Nevada County area of the tract.

Hansen Brothers repeats all of those arguments in this court. We first address the law applicable to nonconforming uses and mining in particular. We then consider how these rules apply to the Bear's Elbow Mine and Hansen Brothers' proposal for future operations at the mine.

### III.

#### *Scope of Vested Mining Rights*

##### *A. Zoning and related constitutional principles underlying Hansen Brothers' vested rights claim.*

The lower courts and the parties all recognize the constitutional principles under which Hansen Brothers claims a vested right to mine the hillside areas of its property. (1a) Adoption of a zoning ordinance which is not arbitrary and does not unduly restrict the use of private property is a permissible exercise of the police power and does not violate the taking clause of the *Fifth Amendment of the United States Constitution* and comparable provisions of the California Constitution, even when the law restricts an existing use of the affected property. ( *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 125 [57 L. Ed. 2d 631, 648-649, 98 S. Ct. 2646]; *Euclid v. Ambler Co.* (1926) 272 U.S. 365 [71 L. Ed. 303, 47 S. Ct. 114, 54 A.L.R. 1016]; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal. 2d 552, 558-559 [254 P.2d 865]; *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 307 [295 P. 14].)

A zoning ordinance or land-use regulation which operates prospectively, and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not bring about a compensable taking unless all beneficial use of the property is denied. ( *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003 [120 L. Ed. 2d 798, 112 S. Ct. 2886]; *Penn. Central Transp. Co. v. New York City*, *supra*, 438 U.S. 104, 130 [57 L. Ed. 2d 631, 652]; *Hensler v. City of Glendale* (1994) 8 Cal. 4th 1, 11-12 [32 Cal. Rptr. 2d 244, 876 P.2d 1043]; *Furey v. City of Sacramento* (1979) 24 Cal. 3d 862, 872 [157 Cal. Rptr. 684, 598 P.2d 844].) However, if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a [\*\*552] substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid. ( *Beverly Oil Co. v. City of Los Angeles*, *supra*, 40 Cal. 2d 552, 559; *Village of Terrace Park v. Errett* (2d Cir. 1926) 12 F.2d 239.) Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. "The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected." ( *Edmonds v. County of Los Angeles* (1953) 40 Cal. 2d 642, 651 [255 P.2d 772].)

Accordingly, a provision which exempts existing nonconforming uses "is ordinarily included in zoning ordinances because of the hardship and doubtful consti-

tutionality of compelling the immediate discontinuance of [\*\*1336] [\*\*\*790] nonconforming uses." (*County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 686 [234 P.2d 972]. See also *Jones v. City of Los Angeles*, *supra*, 211 Cal. 304, 310-311.) The exemption may either exempt an existing use altogether or allow a limited period of continued operation adequate for amortization of the owners' investment in the particular use. (See, e.g., *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal. 3d 848 [164 Cal. Rptr. 510, 610 P.2d 407], *revd.* 453 U.S. 490 [69 L. Ed. 2d 800, 101 S. Ct. 2882]; *National Advertising Co. v. County of Monterey* (1970) 1 Cal. 3d 875 [83 Cal. Rptr. 577, 464 P.2d 33]; *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal. 2d 121 [272 P.2d 4].)

(2a) When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective. (See *Rehfeld v. City and County of San Francisco* (1933) 218 Cal. 83 [21 P.2d 419]; *City of Yuba City v. Cherniavsky* (1931) 117 Cal. App. 568 [4 P.2d 299].) Intensification or expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, *supra*, 37 Cal. 2d 683, 687-688. See also 8A McQuillin, *supra*, § 25.206, p. 114.) "[I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts." (*Edmonds v. County of Los Angeles*, *supra*, 40 Cal. 2d at 651 [255 P.2d 772]. See also *Livingston Rock etc. Co. v. County of L.A.*, *supra*, 43 Cal. 2d 121, 127; *City of La Mesa v. Tweed & Gambrell Mill* (1956) 146 Cal. App. 2d 762, 768 [304 P.2d 803].)

Nonuse is not a nonconforming use, however, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned. (*Hill v. City of Manhattan Beach*, *supra*, 6 Cal. 3d 279, 286.) [\*553]

B. *Vested rights to mining, quarrying, and other extractive uses—the "diminishing asset" doctrine.*

(3a) In general, the state has the same power to prohibit the extraction or removal of natural products from the land as it does to prohibit other uses. (*Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal. 2d 515, 529 [20 Cal. Rptr. 638, 370 P.2d 342]; *Beverly Oil Co. v. City of Los Angeles*, *supra*, 40 Cal. 2d 552, 558.)<sup>16</sup>

16 *In re Kelso*, *supra*, 147 Cal. 609, which held that the police power did not extend to absolute prohibition of quarrying rock and stone from property in designated areas of the City and County of San Francisco, was decided before the

constitutional validity of zoning ordinances was established by *Euclid v. Ambler Co.*, *supra*, 272 U.S. 365. It and other cases decided before comprehensive zoning regulations was recognized as a constitutionally permissible exercise of the police power were effectively disapproved in *Consolidated Rock Products Co. v. City of Los Angeles*, *supra*, 57 Cal. 2d 515, 528-529.

Unlike other nonconforming uses of property which operate within an existing structure or boundary, mining uses anticipate extension of mining into areas of the property that were not being exploited at the time a zoning change caused the use to be nonconforming. The question thus arises whether this extension is a prohibited expansion of a nonconforming use into another area of the property. In those jurisdictions which have considered the question, the answer is a qualified "no" under the "diminishing asset" doctrine, an exception to the rule banning expansion of a nonconforming use that is specific to mining enterprises.

When a mining or quarrying operation is a lawful nonconforming use, progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited expansion or change of location of the nonconforming use. 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, the use may expand into the contemplated area. (4a) "The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are [\*\*1337] [\*\*\*791] found, and once the minerals are extracted it cannot again be used for that purpose. 'Quarry property is generally a one-use property. The rock must be quarried at the site where it exists, or not at all. An absolute prohibition, therefore, practically amounts to a taking of the property since it denies the owner the right to engage in the only business for which the land is fitted.' (*Morton v. Superior Court* [(1954)] 124 Cal. App. 2d 577, 582 [269 P.2d 81, 47 A.L.R.2d 478]; *Lockard v. City of Los Angeles* [(1949)] 33 Cal. 2d 453, 467 [202 P.2d \*554] 38, 7 A.L.R.2d 990; *Trans-Oceanic Oil Corp. v. Santa Barbara* [(1948)] 85 Cal. App. 2d 776, 789 [194 P.2d 148]; *Wheeler v. Gregg* [(1949)] 90 Cal. App. 2d 348 [203 P.2d 37]; *Borough of Cheswick v. Bechman* [(1945)] 352 Pa. 79 [42 A.2d 60]; *Lamb v. A.D. McKee, Inc.* [(1932)] 10 N.J. Misc. 649 [160 A. 563]; *Village of Terrace Park v. Errett* [(6th Cir. 1926)] 12 F.2d 240, 243.) An entire tract is generally regarded as within the exemption of an existing nonconforming use, although the entire tract is not so used at



the time of the passage or effective date of the zoning law." (*McCaslin v. City of Monterey Park*, *supra*, 163 Cal. App. 2d 339, 349 (*McCaslin*).)

This rule is generally applicable in those states in which the question has arisen.<sup>17</sup> The Court of Appeals of New York recognized and applied the rule to a nonconforming use involving extraction of sand, gravel, topsoil, and fill from a 25-acre parcel of land in *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278 [434 N.Y.S.2d 150, 414 N.E.2d 651]. Rejecting a claim that the operation could not be extended into areas not yet excavated when the zoning was changed, the court explained: "By its very nature, quarrying involves a unique use of land. As opposed to other nonconforming uses in which the land is merely incidental to the activities conducted upon it . . . quarrying contemplates the excavation and sale of the corpus of the land itself as a resource. Depending on customer needs, the land will be gradually excavated in order to supply the various grades of sand and gravel demanded. Thus as a matter of practicality as well as economic necessity, a quarry operator will not excavate his entire parcel of land at once, but will leave areas in reserve, virtually untouched until they are actually needed."

17 Exceptions are Massachusetts (*Town of Billerica v. Quinn* (1947) 320 Mass. 687 [71 N.E.2d 235]; *Town of Wayland v. Lee* (1950) 325 Mass. 637 [91 N.E.2d 835] [excavation permitted only from sand pit in use when ordinance adopted]) and Connecticut (*Teuscher v. Zoning Board of Appeals* (1967) 154 Conn. 650 [228 A.2d 518]).

"It is because of the unique realities of gravel mining that most courts which have addressed the particular issue involved herein have recognized that quarrying constitutes the use of land as a 'diminishing asset.'" (See, e.g., *County of Du Page v. Elmhurst-Chicago Stone Co.* [(1960)] 18 Ill.2d 479, 165 N.E.2d 310.) Consequently, these courts have been nearly unanimous in holding that quarrying, as a nonconforming use, cannot be limited to the land actually excavated at the time of enactment of the restrictive ordinance because to do so would, in effect, deprive the landowner of his use of the property as a quarry." (*Syracuse Aggregate Corp. v. Weise*, *supra*, 414 N.E.2d 651, 654-655.)

The Supreme Court of Illinois recognized the "diminishing asset" doctrine in *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479 [\*555] [165 N.E.2d 310]. "This is not the usual case of a business conducted within buildings, nor is the land held merely as a site or location whereon the enterprise can be conducted indefinitely with existing facilities. In a quarrying business the land itself is a material or re-

source. It constitutes a diminishing asset and is consumed in the very process of use. Under such facts the ordinary concept of use, as applied in determining the existence of a nonconforming use, must yield to the realities of the business in question and the nature of its operations. We think that in cases of a diminishing asset the enterprise is 'using' all that land which contains the particular asset and which constitutes an integral part of the operation, notwithstanding the fact that a particular portion may not yet be under actual excavation. It is in the very nature of such business that reserve areas be maintained which are left vacant or devoted to incidental uses until they are needed. Obviously it cannot operate over an entire tract at once." (*Id.* at p. 313.)

[\*\*1338] [\*\*\*792] The New Hampshire Supreme Court recognized that application of the normal restriction on expansion of a nonconforming use to a gravel pit would be a problem "because such use consumes the land and can only continue if allowed to expand" (*Flanagan v. Town of Hollis* (1972) 112 N.H. 222 [293 A.2d 328, 329]), but held that restriction of future expansion to a specified percentage of the area and to a depth no greater than that already excavated was reasonable. In *Hawkins v. Talbot* (1957) 248 Minn. 549 [80 N.W.2d 863, 865], the court recognized that a gravel pit was a "diminishing asset" and that if operation under a nonconforming use exception to a zoning ordinance prohibited expansion beyond the area already excavated, the ordinance would effectively prohibit any further use of the land. It held, as a matter of statutory construction, that such expansion was not precluded.

Other jurisdictions which recognize the "diminishing asset" exception to restricted expansion of nonconforming uses are Alaska (*Stephan & Sons v. Municipality of Anchorage* (Alaska 1984) 685 P.2d 98 [56 A.L.R.4th 761]), Utah (*Gibbons & Reed Company v. North Salt Lake City* (1967) 19 Utah.2d 329 [431 P.2d 559, 562-563]), New Jersey (*Moore v. Bridgewater Tp.* (1961) 69 N.J.Super. 1 [173 A.2d 430, 437]), and Wisconsin (*Smart v. Dane County Bd. of Adjustments* (1993) 177 Wis.2d 445 [501 N.W.2d 782, 785]).<sup>18</sup>

18 It is not clear whether Pennsylvania has adopted this approach. In *Borough of Cheswick v. Bechman* (1945) 352 Pa. 79 [42 A.2d 60], the court construed a local nonconforming use law as limiting new uses, but not expansion of existing uses. It then held that expansion of a sand and loam extraction business to the entire tract being used at the time a zoning ordinance became effective was permissible, stating that to deny the right of expansion would deprive the owners of the use of their property as effectively as a prohibition of all use would have done, and this could

not have been the intent of the ordinance. (42 A.2d at p. 62.) But see *R. K. Kibblehouse v. Marlborough* (1993) 157 Pa.Comm.w. 630 [630 A.2d 937].

A vested right to quarry or excavate the entire area of a parcel on which the nonconforming use is recognized requires more than the use of a part of [\*556] the property for that purpose when the zoning law becomes effective, however. In addition there must be evidence that the owner or operator at the time the use became nonconforming had exhibited an intent to extend the use to the entire property owned at that time. In *Syracuse Aggregate Corp. v. Weise*, *supra*, 414 N.E.2d 651, for example, the court concluded that the entire property could be used for quarrying because the "owner engage[d] in substantial quarrying activities on a distinct parcel of land over a long period of time and *these activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying . . .*" (*Id.* at p. 655, italics added.)

(5a) Similarly, in *Town of Wolfboro (Planning Bd.) v. Smith* (1989) 131 N.H. 449 [556 A.2d 755], the court recognized extension of quarrying into additional areas of a parcel as a continuation, not an expansion, of a nonconforming use. However, construing the statute that permitted continuance of excavation as a nonconforming use, the court held that the " 'land area which is used' " for that purpose had to have been "clearly designated as an area for future excavation by an objective manifestation of the *intent of the excavator to continue an operation onto that particular land area.*" (*Id.* at p. 757, italics added.) The court summarized the applicable rule as follows: "In conclusion, we hold that a party who desires to continue excavation operations . . . must meet a three-pronged test: First, he must prove that excavation activities were actively being pursued when the law became effective; second, *he must prove that the area that he desires to excavate was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent*; and third, he must prove that the continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood." (*Id.* at p. 759, italics added.) In *Gibbons & Reed Company v. North Salt Lake City*, *supra*, 431 P.2d 559, the property had been used for roads and for stockpiling sand and gravel removed from other parcels. The owner testified that shortly before the enactment of the zoning ordinance, contracts for the removal of fill on the parcel had been negotiated; that at that time he intended to continue his gravel operations onto the parcel; [\*\*1339] [\*\*\*793] and that 2,000,000 yards of gravel had been removed from the property. For those reasons the parcel was an integral part of the gravel operation before the zoning change was adopted and its use for that purpose

thereafter was not an expansion of the use. (*Id.* at p. 564.) The area into which nonconforming quarrying operations could be extended in *Moore v. Bridgewater Tp.*, *supra*, 173 A.2d 430, were only those into which the owner had manifested an objective intent to extend the operation. (*Id.* at p. 437.) And in *R. K. Kibblehouse v. Marlborough*, *supra*, 630 A.2d 937, 944, the court upheld denial of the right to quarry part of a tract because there was insufficient evidence that this area had been devoted to the nonconforming use. [\*557]

In the most recent case applying this limitation, *Stephan & Sons v. Municipality of Anchorage*, *supra*, 685 P.2d 98, the Alaska Supreme Court summarized the scope of a vested right recognized under the diminishing asset doctrine, noting that the owner of a nonconforming use as a gravel pit does not necessarily have the right to use the entire tract. Rather, the use must " 'manifestly impl[y] that the entire property was appropriated to such use prior to adoption of the . . . ordinance.' " (685 P.2d at p. 102.)

"The rationale for the 'diminishing asset' doctrine is that the very nature of an excavating business is the continuing use of the land, and that this use is what is endorsed by the nonconforming use concept. Thus, the doctrine holds that 'an owner of a nonconforming use may sometimes be found to have a vested right to use an entire tract even though only a portion of the tract was used when the restrictive ordinance was enacted.' 6 R. Powell, *The Law of Real Property* [P] 871[3][iii], at 79C-178 to -179 (Rohan rev. ed. 1979). The determining factor is 'whether the nature of the initial nonconforming use, in the light of the character and adaptability to such use of the entire parcel, manifestly implies that the entire property was appropriated to such use prior to adoption of the restrictive zoning ordinance.' [Citation.] The mere intention or hope on the part of the landowner to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the present operations." (Fns. omitted.) (685 P.2d at pp. 101-102.)

The Anchorage zoning board had limited the owners of gravel pit operations to 13 acres of a 53-acre parcel. The Alaska Supreme Court noted that the operation had been on a relatively small scale at the time the ordinance was enacted, and even four years later extended only to two to five acres. On that basis the court concluded that the evidence "in no way manifestly indicated an objective intent to appropriate the entire [parcel]" (685 P.2d at p. 102), and affirmed the superior court judgment which had upheld that ruling.

The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective. Thus, in *County of Du Page v.*

*Elmhurst-Chicago Stone Co.*, *supra*, 165 N.E.2d 310, while the court applied the "diminishing asset" doctrine to a parcel of land from which aggregate was mined, it described the rule as permitting use of all the land "which contains the particular asset and which constitutes an integral part of the operation," (*id.* at p. 313) and held that the owner was using all of its 40-acre tract which contained gravel and aggregate, notwithstanding the fact that the entire tract was not yet under excavation. (*Ibid.*)

(6a) Finally, a lawful nonconforming use may not be extended to adjacent property acquired after the zoning change went into effect except to the [\*558] extent that the transferors of the property themselves had a vested right to engage in that nonconforming use on the transferred property. The court recognized this in *McCaslin* where it stated: "Of course, plaintiff's nonconforming use of the property in question cannot be expanded or extended to a separate parcel . . ." (*McCaslin*, *supra*, 163 Cal. App. 2d at p. 350.) In that case the applicable zoning ordinance contained that restriction (*id.* at p. 344), but that is the rule of general application. (See 8A McQuillin, *supra*, § 25.208, p. 128, and cases cited.) In another quarrying case, a New Jersey court held that even though the quarry owner [\*\*\*794] had been permitted [\*\*1340] by the previous owner of an adjacent tract to carry equipment across the adjacent tract, quarrying was not being conducted on that tract. Therefore when the quarry owner acquired the tract after a zoning change went into effect, the nonconforming quarry operation could not be extended onto the new tract. "The use at the time the ordinance was adopted established the non-conforming use which defendant was entitled to continue." (*Struyk v. Samuel Braen's Sons* (1951) 17 N.J.Super. 1 [85 A.2d 279, 281].)

Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at that time is allowed only if the parcels had been part of the mining operation. (*Dolomite Products Company v. Kipers* (1965) 23 A.D.2d 339 [260 N.Y.S.2d 918] *affd.* 19 N.Y.2d 739 [279 N.Y.S.2d 192, 225 N.E.2d 894] [owner may not "tack" a nonconforming use on one parcel used for quarrying onto others owned and held for future use when the zoning law became effective]; *Smart v. Dane County Bd. of Adjustments*, *supra*, 501 N.W.2d 782 [mining may be expanded to contiguous parcel owned by same entity, if excavation operations were in existence on part of the land, and all of the land constituting an integral part of the operation was "in use" when the zoning change occurred]; *Stephan & Sons v. Municipality of Anchorage*, *supra*, 685 P.2d at p. 102, *fn.* 6 ["The diminishing asset doctrine normally will not countenance the extension of a use beyond the boundaries of

the tract on which the use was initiated when the applicable zoning law went into effect. See 4 A. Rathkopf, *The Law of Zoning and Planning* § 51.07[4][a] (4th ed. 1983); see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weise*, 51 N.Y.2d 278, 434 N.Y.S.2d 150, 414 N.E.2d 651, 655 (1980); *Davis v. Miller*, 163 Ohio St. 91, 126 N.E.2d 49, 51 (1955)."])

Were the rule otherwise, zoning laws could be easily avoided by acquiring property abutting a tract on which the nonconforming use operated and expanding into the new property, even though the original owners of the newly acquired property had no vested right to such use of the property.

[\*559] Amici curiae counties and cities argue, notwithstanding *McCaslin*, that the diminishing asset doctrine is not the law of California. Their only basis for this suggestion, however, is that the decision was distinguished by the Court of Appeal in *Paramount Rock Co. v. County of San Diego* (1960) 180 Cal. App. 2d 217, 228 [4 Cal. Rptr. 317]; but *Paramount Rock* did not question the applicability of the doctrine to extractive uses. Instead, the court distinguished the case before it on the ground that the owner sought to build a plant for, and commence a rock crushing operation on, land that theretofore had been used only for extraction of sand and premixing of materials for ready-mix concrete. That proposed operation was not one that is substantially the same as the use to which the property had been put before the zoning ordinance became applicable.

In the absence of any basis for concluding that a zoning ordinance, which permits the continuation of nonconforming uses, intended its ban on expansion to other areas of the property to apply to mining uses, *McCaslin* provides the applicable rule. The *McCaslin* court's application of the diminishing asset doctrine there is entirely consistent with this court's recognition, in *Lockard v. City of Los Angeles* (1949) 33 Cal. 2d 453, 467 [202 P.2d 38, 7 A.L.R.2d 990], that "[s]uch a business must operate, if at all, where the resources are found." If it may not expand, it cannot continue. (7a) Recognition of the diminishing asset doctrine is also consistent with the legislative intent underlying SMARA, which seeks to minimize ecological degradation from mining enterprises. Were the diminishing asset doctrine inapplicable, a mining enterprise would be required to immediately initiate mining on all areas of its property lest, under a subsequent zoning change, its right to further mining be extinguished.

#### IV.

##### *Application to the Bear's Elbow Mine*

(8a) Because the administrative decision denying approval of Hansen Brothers' reclamation plan effectively precludes continuance [\*\*1341] [\*\*\*795] of the company's aggregate production business unless it applies for and is granted a conditional use permit by the county, the superior court properly exercised its independent judgment in making factual determinations based on the administrative record. ( *Strumsky v. San Diego County Employees Retirement Assn.*, *supra*, 11 Cal. 3d 28, 34-35; see *Halaco Engineering Co. v. South Central Coast Regional Com.*, *supra*, 42 Cal. 3d 52, 63-66.) Those findings must be upheld on appeal from the superior court judgment if they are supported by substantial evidence. ( *Yakov v. Board of Medical Examiners* (1968) 68 Cal. 2d 67, 71 [64 Cal. Rptr. 785, 435 P.2d 553]; *Moran v. Board of [560] Medical Examiners* (1948) 32 Cal. 2d 301, 308 [196 P.2d 20]; *McMillen v. Civil Service Com.* (1992) 6 Cal. App. 4th 125, 129 [8 Cal. Rptr. 2d 548].)

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. ( *Halaco Engineering Co. v. South Coast Central Regional Com.*, *supra*, 42 Cal. 3d 52, 74.)

Hansen Brothers argues that under *McCaslin* it has a right to mine and quarry the entire 60 acres of its Nevada County property. <sup>19</sup> The Court of Appeal, it contends, failed to properly apply the law governing nonconforming uses and the diminishing asset doctrine to its operation of the Bear's Elbow Mine. Hansen Brothers claims that since 1946 the Bear's Elbow Mine has been an "integrated" mining operation. It asserts that this includes not only the riverbed mining and hillside quarrying on which the lower courts and the county agencies focused, but also the on-site conveyance, crushing, sorting, washing, storage, and transportation of the mined product. It claims, in essence, that the proper focus of the nonconforming use question is not on the discrete mining operations, but on the conduct of the aggregate production business. On that basis it argues that the Court of Appeal erred in concluding (1) that quarrying the hillside was a separate "use" of the property, (2) that this use of the property had been discontinued, and (3) that even if Hansen Brothers had a vested right to quarry the hillside, the operation proposed in the SMARA application was an impermissible intensification and enlargement of the lawful nonconforming mining operation which Hansen Brothers had a vested right to continue notwithstanding the 1954 zoning ordinance. We shall address each question in turn. First, however, we must consider whether those rights that Hansen Brothers may have extend to the entire 60 plus acres that are identified on its SMARA reclamation plan as the Bear's Elbow Mine.

19 Hansen Brothers asserts that this right exists as a matter of constitutional law. Whether there has been or may be a compensable taking of any part of its property is not an issue in this proceeding. Because the issues in the petition for writ of mandate would be dispositive of other counts in its complaint alleging inverse condemnation and seeking declaratory relief, trial of its claim that it is exempt from the permit requirement of the Nevada County Land Use and Development Code was bifurcated from the other counts. To expedite review of the superior court judgment denying the petition for writ of mandate, Hansen Brothers dismissed the remaining causes of action. As a result, there has been no adjudication of its inverse condemnation claim.

#### A. Extent of Bear's Elbow Mine in 1954.

(9a) As we have noted earlier, a vested right to continue a nonconforming use extends only to the property on which the use existed at the time zoning regulations changed and the use became a nonconforming use.

[\*561] Undisputed evidence in the record establishes, and the county concedes, that Hansen Brothers and its predecessors in interest operated the aggregate production business at the Bear's Elbow Mine in 1954 at the time the Nevada County zoning ordinance was enacted. Hansen Brothers argues that it is also undisputed that its Nevada County property is a 60-acre property.

Hansen Brothers is correct in its assertion that there is no dispute that it owns contiguous parcels of Nevada County property, including that on which the Bear's Elbow Mine was established in 1946, and that those parcels total 60 acres. Some of those parcels were conveyed to Hansen Brothers after 1954, however. The record does not confirm [\*\*1342] [\*\*\*796] that all of the parcels, over which Hansen Brothers claimed vested mining rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers. Examination of the record reveals that while the county has admitted that Hansen Brothers and its predecessors in interest have been conducting mining operations at the Bear's Elbow Mine since 1946, that admission encompassed only the parcel that was the original site of the Bear's Elbow Mine and one of the three parcels conveyed to Hansen Brothers after 1954.

The petition for writ of mandate in this matter alleged that "at all times herein mentioned, petitioner has conducted a mining operation, more particularly described as quarrying and mining aggregate. Hansen has conducted mining of rock, sand and gravel for aggregate

on the subject property since 1946 and has owned and operated the mine since 1954. That aggregate mining operation includes, but is not limited to the quarrying from the river and from the hillside on the subject property . . . ." The "subject property" was identified as that described in exhibit A to the petition.

Exhibit A to the petition consists of copies of three documents:

(1) A deed by A.A. Viscia and Edna Viscia conveying a parcel of Nevada County property to Hansen Brothers in 1968. The record contains no evidence that this parcel was part of the Bear's Elbow Mine in 1954 or that the grantees had vested mining rights on that parcel in 1954, and continued to have such rights in 1968 when the tract was conveyed to Hansen Brothers. However, this deed was part of exhibit A to Hansen Brothers' second amended petition for writ of mandate, which alleged that Hansen Brothers had conducted mining operations on the "subject property" described in exhibit A.

The county admitted in its response to the petition that Hansen Brothers "is, and since September 21, 1954, has been, the owner of the property [\*562] described in Exhibit A ('The subject property'); Petitioner has conducted a mining operation on the subject property since 1946 which, at various times, has included the in-the-riverbed extraction of aggregate and hillside quarrying of rock, together with processing, storage and sale of the mined materials on site, including activities related thereto." <sup>20</sup>

20 The county also conceded that Hansen Brothers' "surface mining operations on the subject property predating regulation thereof entitle it to a right to continue the same without substantial change as a nonconforming use . . . , but deny that the hillside quarry operation qualifies for such treatment, though the in-the-riverbed extraction operation may."

The county offers no explanation for its apparently inconsistent position on riverbed mining which has also been discontinued for periods in excess of 180 days.

Inasmuch as the county admitted that Hansen Brothers was using this property in its Bear's Elbow Mine business in 1954, it must be included in the area over which Hansen Brothers' aggregate mining rights vested. The property description indicates that this parcel is less than three acres in size.

(2) A deed dated July 22, 1982, from Arlie Hansen and Sibley Hansen quitclaiming to Hansen Brothers the "Patented mining claim known as the Bears Elbow Placer Mining Claim, located on a portion of Section 32,

Township 15 North, Range 9 East, Mount Diablo Meridian, Colfax Mining District, Nevada County and Placer County, more particularly described in that certain patent granted July 14, 1981, recorded in the official records of Nevada County on September 2, 1981 document number 81, 23586, and recorded in the official records of Placer County on October 16, 1981, recording number 40517."

(3) The July 14, 1981, United States Land Patent to Arlie Hansen and Karsten Hansen for the Bear's Elbow Placer Mining Claim described above, with accompanying field notes. The deed recited that the "premises herein granted contain 28.898 acres." <sup>21</sup>

21 For a brief description of the authority for and procedure to obtain a mining claim and land patent see *California Coastal Comm'n v. Granite Rock Co.* (1987) 480 U.S. 572, 575-576 [94 L. Ed. 2d 577, 588-589, 107 S. Ct. 1419].

[\*\*1343] [\*\*\*797] Other documents in the record confirm that the Bear's Elbow Placer Mining Claim was the claim located by Vollmer and Rondini in 1945 and operated by Hansen Brothers' predecessors in interest in 1954 when the zoning ordinance was enacted. These 2 properties cover only 32 acres, however, not the 60-plus acres identified in Hansen Brothers' SMARA application.

The SMARA application was accompanied by copies of deeds to Hansen Brothers for two additional parcels, but as those properties were not identified in the petition for writ of mandate, the county did not admit that they [\*563] had been part of the Bear's Elbow Mine in 1954 and the record does not otherwise demonstrate that either Hansen Brothers or its predecessors in interest had vested mining rights on those parcels at that time. <sup>22</sup>

22 Those parcels are: (1) A United States Land Patent (No. 04-85-00067) conveying 2.50 acres of land "embraced within the Bears Elbow Mill [sic] Site claim" to Hansen Brothers on December 26, 1984. This parcel appears to have been part of the original 1945 claim, but the record contains no evidence that it remained so in 1954 or 1984.

(2) A grant deed from Willow Creek Enterprises to Hansen Brothers Enterprises, Inc., dated May 21, 1970, describing the property as "Lot 1 of Willow Creek Acres as shown on the Official Map thereof filed in the Office of the County Recorder of the County of Nevada . . . ." Willow Creek Acres is north of the mining site and has parcels ranging from five to twenty acres in size. There is no evidence in the record that Willow

Creek Enterprises held vested mining rights in this parcel at the time of the transfer, or that either of these parcels was being used for mining purposes in 1954.

In response to the court's request for supplemental briefing on the extent of the property operated as a mine in 1954, the county confirmed that Nevada County records establish that the sixty-seven-acre parcel Hansen Brothers now describes as the Bear's Elbow Mine is in fact comprised of four separate parcels, three of which were conveyed to Hansen Brothers after 1954. The county argues on that basis and in light of the absence of evidence that lawful nonconforming mining use existed on the three after-acquired parcels in 1954, that, even if Hansen Brothers has a right to quarry rock from the hillside (which it disputes), that right cannot extend beyond the boundaries of the original twenty-eight-acre parcel.

Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead it argues that its SMARA reclamation plan describes the property as consisting of various parcels totaling 60 acres in Nevada County. It also seeks to rely on the Board's finding that it has been allowed to continue a legal nonconforming use on that property since adoption of the zoning ordinance, and on the Board's failure to contest earlier that it has a right to continue that nonconforming use. It argues in effect that the county is either estopped to argue before this court that the entire 67 acres was not owned and operated as part of the Bear's Elbow Mine in 1954, or that the county has waived that claim.

However, as Hansen Brothers has acknowledged, the facts related to the acreage owned and operated as a mine in 1954 are undisputed. Therefore, the Board's findings of fact are not determinative. The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. (*Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal. 4th 1028, 1043, fn. 11 [25 Cal. Rptr. 2d 539, 863 [\*564] P.2d 784].) (10a) Indeed, the county lacks the power to waive or consent to violation of the zoning law. (*City of Fontana v. Atkinson* (1963) 212 Cal. App. 2d 499, 507-508 [28 Cal. Rptr. 25]; *Western Surgical Supply Co. v. Affleck* (1952) 110 Cal. App. 2d 388 [242 P.2d 929].)

(9b) Even were there an equitable basis for claiming an estoppel to assert the applicability of a zoning ordinance to property in some circumstances (see *City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 493 [91 Cal. Rptr. 23, 476 P.2d 423]), no basis for doing so appears in this case as there is no evidence of detrimental reliance on the Board's failure to note the dates of acqui-

sition of the three parcels Hansen Brothers now claims are all part of the Bear's Elbow Mine. "[T]he owner [\*\*1344] [\*\*\*798] of property or one proposing to acquire it cannot justify his ignorance of the true state of the facts and the law affecting it by pointing to similar ignorance in government bodies. Negligence which may be less than culpable in a government body, charged with the administration and regulation of vast amounts of land under diverse ownership, cannot be so easily excused in one whose interest is focused on a particular piece of property." (*County of Los Angeles v. Berk* (1980) 26 Cal. 3d 201, 221 [161 Cal. Rptr. 742, 605 P.2d 381].) Moreover, estoppel will not be recognized "when to do so would nullify 'a strong rule of policy adopted for the benefit of the public . . .'" (*Id.* at p. 222; see also *City of Long Beach v. Mansell*, *supra*, 3 Cal. 3d 462, 496-497.)

The evidence therefore establishes only that whatever vested rights to mine and quarry its property Hansen Brothers has exist on the 28.898-acre placer mining claim patented to its predecessors and conveyed to it in 1982, and on the 3-acre Viscia parcel which the county admitted in its response to the petition was operated as part of the mine in 1954.

"The burden of proof is on the party asserting a right to a nonconforming use to establish the lawful and continuing existence of the use at the time of the enactment of the ordinance." (*Melton v. City of San Pablo* (1967) 252 Cal. App. 2d 794, 804 [61 Cal. Rptr. 29].) Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60-plus-acre parcel of Nevada County land. The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate to compel the Board to approve its SMARA reclamation plan as presented. <sup>23</sup> Before that question can be resolved, the extent of the property on which Hansen Brothers may assert the right to continue a nonconforming use must be determined by the superior court on remand.

23 Our conclusion that Hansen Brothers has not established a right to mine the entire 60 acres covered by its SMARA reclamation plan does not preclude submission of a revised plan or new hearing on the present plan at which evidence may be presented on whether the previous owners of the 2 remaining parcels had vested mining rights on those parcels at the time they were conveyed to Hansen Brothers.

Because the record does not support the existence of such rights on the entire 60 acres, however, our conclusions here with regard to Hansen Brothers' vested rights to operate the Bear's Elbow Mine refer only to the 2 parcels

over which Hansen Brothers has established vested rights.

[\*565] B. *Separate use.*

(11a) We next address the nature of the use to which the Hansen Brothers' property was being put in 1954 when that use became nonconforming. The Court of Appeal, superior court, and administrative bodies concluded that Hansen Brothers' riverbed gravel mining and hillside rock quarrying operations were separate and that quarrying had been discontinued for a period in excess of the 180-day limit for nonconforming uses established by the zoning ordinance. Hansen Brothers argues that its placer mining and rock quarrying operations are part of a "single use" of its property for the production of aggregate. We agree. In 1954, when the zoning ordinance was adopted, Hansen Brothers' predecessors were using the Bear's Elbow Mine property for an aggregate production and sale business. Mining for sand and gravel and quarrying for rock were integral parts of that business. Contrary to the conclusion of Justice Mosk and Justice Kennard, the nonconforming use of the property was not and is not simply mining in which riverbed mining and rock quarrying were separate uses of the property. The evidence, which neither Justice Kennard nor Justice Mosk mentions, is undisputed. The nonconforming use of the property has always been the operation of an aggregate production business, of which mining for the components is an aspect. We agree that the findings of the superior court and the Board that rock quarrying has been discontinued for periods in excess of 180 days, and when operating has produced smaller quantities of material than the riverbed mining, are supported by substantial evidence. Those findings are not dispositive, however, because both the Board and the superior court proceeded on the [\*1345] [\*\*\*799] erroneous premise that the unitary nonconforming use of the property for the production of aggregate could be compartmentalized into two mining uses and an aggregate production business.

(12a) In determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be considered. "[O]ne entitled to a nonconforming use has a right to . . . engage in uses normally incidental and auxiliary to the nonconforming use . . . . Furthermore, open areas in connection with an improvement existing at the time of the adoption of zoning regulations are exempt from such regulations as a nonconforming use if such open areas were in use or partially used in [\*566] connection with the use existing when the regulations were adopted." (8A McQuillin, *supra*, at § 25.200, p. 89, italics added.) The mining uses of the Hansen Brothers' property are incidental aspects of the aggregate production business.

(11b) In the context of a business like that operated by Hansen Brothers, this approach is illustrated in *Paramount Rock Co. v. County of San Diego*, *supra*, 180 Cal. App. 2d 217. There, at the time the land in issue was rezoned, the lessee was operating a ready-mix concrete business. Sand was removed on the premises, washed elsewhere, and returned to the site, where it was mixed with rock, gravel, and cement and loaded into trucks equipped to add water and mix the materials to form concrete. After the land was rezoned, the lessee constructed a rock-crushing plant on the site. The county successfully sought to enjoin operation of the rock crushing plant, which the lessee claimed was an integral part of its pre-mix concrete business.

The Court of Appeal affirmed the judgment granting relief to the County, rejecting the claim that the rock-crushing plant was an integral part of the business the plaintiff had been operating, and holding that the plant was not a part of the nonconforming use to which the property was being put at the time the zoning ordinance was adopted. (*Paramount Rock Co. v. County of San Diego*, *supra*, 180 Cal. App. 2d 217, 230.) The court noted, however, that under the ordinance the lessee was entitled to operate the pre-mix business, including the sand pit.

Construing a local ordinance in *State v. Bumgarner* (1959) 110 Ohio App. 173 [12 Ohio Ops.2d 434, 168 N.E.2d 901], the Ohio Court of Appeals reached a similar conclusion, holding that a nonconforming use in issue there was mining, quarrying, and processing limestone, including the use of all structures necessary or incidental thereto.

We 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 operation of the business. An aggregate business does not differ from other land uses simply because mining for some or all of the materials that comprise aggregate is a component of the business. Unless an independent aspect of the business has been discontinued, the use may not be broken down into component parts and vested rights recognized for less than the entire business operation.

We recognize that the placer mining operation recovers sand and gravel from a riverbed and its banks, while the quarrying operation will recover hard rock from a hillside that rises at a distance of several hundred yards from the river. These components differ and are not part of a single deposit [\*567] or lode. The mining and quarrying methods also differ. Nonetheless, the use of the land at the time the Nevada County zoning ordinance became effective was for aggregate production and sale. The aggregate was not being produced only from

sand and gravel taken from the riverbed. The evidence that rock was being taken from the hillside as needed to produce aggregate in 1954 is undisputed.<sup>24</sup>

24 Arlie Hansen, one of the original owners of the Bear's Elbow Mine, testified that he had worked at the mine since 1946 and had owned it since 1954. When asked at the hearing before the Board whether "as long as you have been associated with it, do you take material from both the hillside and river bed to form the aggregate that you produce and sell," HE RESPONDED UNEQUIVOCALLY: "Yes, we do."

[\*\*1346] [\*\*\*800] The land on which the mine operates was originally claimed as a placer mine.<sup>25</sup> Although the record does not include documents that establish that hard rock was to be recovered or extracted under the placer mining claim, the patent recites that the owners were granted a right to extract rock from the 29 acres covered by the patent.<sup>26</sup>

25 A "placer," as distinguished from a "lode" or "vein" for which a mining claim may be made, is " 'a gravelly place where gold is found, especially by the side of a river, or in the bed of a mountain torrent.' Whatever the origin of the subterranean channels containing gravel beds, they have long been known to exist in California, and they have been generally supposed to be, and generally spoken of, as the beds of ancient rivers in which the gravel was deposited by fluvial action, and which were either from their beginning subterranean, or upon which the superincumbent earth or rock has been hurled, by means of convulsion, caused by volcanic or other natural force." ( *Gregory v. Pershbaker* (1887) 73 Cal. 109, 114 [14 P. 401].) " '[C]laims usually called placers' are declared to include all forms of deposit, 'excepting veins of quartz or other rock in place.' " ( *Id.* at p. 115.) " 'A fissure in the earth's crust, an opening in its rocks and strata made by some force of nature, in which the mineral is deposited, would seem to be essential to a lode in the judgment of geologists. But to the practical miner the fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find the ore he seeks. A continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface, and under it, would equally constitute, in his eyes, a lode. We are of [the] opinion, therefore, that the term as used in the acts of congress is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neigh-

boring rock.' " ( *Pepperdine v. Keys* (1961) 198 Cal. App. 2d 25, 35-36 [17 Cal. Rptr. 709].)

" '[T]he two essential elements of a lode are (a) the mineral-bearing rock, which must be in place and have reasonable trend and continuity, and (b) the reasonably distinct boundaries on each side of the same.' " ([Citing *Titanium Actynite Industries v. McLennan* (10th Cir. 1959) 272 F.2d 667, 670.] See also Lindley on Mines, vol. 1 (3d ed.) § 289; *Gregory v. Pershbaker*, 73 Cal. 109, 111-114 [14 P. 401]; American Mining Law, California Natural Resources Department, vol. 1, pp. 140-141.)" ( *Pepperdine v. Keys*, *supra*, 198 Cal. App. 2d at p. 36.)

26 The claim may have been made pursuant to the Stone Land Placer Claim Act, an 1892 supplement to the federal law permitting exploration for valuable mineral deposits on public lands (30 U.S.C. § 22), which provided: "That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims. . . ." (Act of Aug. 4, 1892, ch. 375, § 1, 27 Stat. 348; 30 U.S.C. § 161.) That law was effectively repealed in part in 1955 when an additional statute was enacted, which provided that deposits of "common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws . . . 'Common varieties' as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value." (Act of July 23, 1955, ch. 375, § 3, Pub.L. No. 84-167, § 3, 69 Stat. 368; 30 U.S.C. § 611.)

To be valuable in an economic sense within the meaning of the federal law, the stone must have been marketable when the claim was made, i.e., the price it would bring exceeded the cost of extraction. ( *United States v. Coleman* (1968) 390 U.S. 599 [20 L. Ed. 2d 170, 88 S. Ct. 1327].)

[\*568] Therefore, the evidence does not support the finding of the superior court that Hansen Brothers did not have a vested right to quarry rock from the hillsides of the Bear's Elbow Mine as it existed in 1954. The record establishes, instead, that rock was being taken from the hillsides at that time as an integral part of the aggregate business. However, the parties offered no other evidence regarding, and neither the administrative bodies nor the superior court made findings on, whether " 'the



nature of the initial nonconforming use, in the light of the character and adaptability to such use of the entire parcel, manifestly implies that the entire [mine] property was appropriated to [mining and quarrying] use prior to adoption of the restrictive zoning ordinance.' " (*Stephan & Sons v. Municipality of Anchorage*, *supra*, 685 P.2d at p. 102.) This question too must be addressed on remand before a ruling is made on Hansen Brothers' SMARA plan since resolution of that question is crucial to a determination of the extent of Hansen Brothers' vested mining rights.

### C. Discontinuance of use.

(13a) Article 29, section L-II 29.2(B) (hereafter Development Code section 29.2(B)) of the Nevada County Land Use and [\*\*1347] [\*\*\*801] Development Code provides: "If the nonconforming use is discontinued for a period of one hundred eighty (180) days or more, any following use shall be in conformity with all applicable requirements of this Chapter." Provisions like this further the purpose of zoning laws which seek to eliminate nonconforming uses. "The ultimate purpose of zoning is . . . to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." (*Dienelt v. County of Monterey* (1952) 113 Cal. App. 2d 128, 131 [247 P.2d 925].) We have recognized that, given this purpose, courts should follow a strict policy against extension or expansion of those uses. (*County of San Diego v. McClurken*, *supra*, 37 Cal. 2d 683, 687.) That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation. In construing an ordinance which limits continuation of nonconforming uses, however, the court [\*569] must also assume that the county did not intend an arbitrary or irrational application of its provisions.

The term "discontinued" in a zoning regulation dealing with a nonconforming use is sometimes deemed to be synonymous with "abandoned." Cessation of use alone does not constitute abandonment. "[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use (8A McQuillin, [supra], § 25.192; 1 Anderson, American Law of Zoning, § 6.58). Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned (101 C.J.S. Zoning § 199)." (*Union Quarries, Inc. v. Board of County Com'rs* (1970) 206 Kan. 268 [478 P.2d 181, 186-187].) In *Southern Equipment Co. v. Winstead* (1986) 80 N.C.App. 526 [342 S.E.2d 524], the court held that under the applicable ordinance the failure to operate a concrete mixing facility

for six months during a business slowdown, while the operator filled orders from another plant, was not a cessation of operation. There, as in this case, the plant, equipment, inventory, and utilities were maintained throughout the period and the plant could be made operational within two hours.

This court has also equated discontinuance of a nonconforming use with voluntary abandonment (see *Hill v. City of Manhattan Beach*, *supra*, 6 Cal. 3d 279, 286), but we have never expressly held that the terms are synonymous. Although abandonment of a nonconforming use terminates it in all jurisdictions (8A McQuillin, *supra*, § 25.191, p. 68), ordinances or statutes which provide that discontinuance of a nonconforming use terminates it have not been uniformly construed. Some have been held to create a presumption of abandonment by nonuse for the statutory period, others considered to be evidence of abandonment. In still other jurisdictions the nonconforming use is terminated when the specified period of nonuse occurs, regardless of the intent of the landowner. (*Id.* at pp. 68-69.) As we have noted, the parties have not offered any evidence of the legislative understanding or intent underlying the use of the term "discontinued" in Development Code section 29.2(B). "

27 The county argues that its "zoning ordinance relies upon abandonment by non-use to phase out the non conforming [*sic*] use. . . ." We hesitate to read this as a concession that "discontinued" as used in Development Code section 29.2(B) means voluntary and intentional abandonment.

(14a) The superior court treated quarrying as a separate operation and decided the cessation question based only on actual inactivity at the quarry without regard to the continuing aggregate business and without considering [\*570] intent to abandon. The evidence supports the court's finding that quarrying was discontinued for periods in excess of 180 days. As we have noted earlier, however, the county admitted that Hansen Brothers "has conducted a mining operation on the subject property since 1946 which at various times, has included in-the-river-bed extraction of aggregate and hillside quarrying of rock, together with processing, storage and sale of the mine materials on site, including [\*\*1348] [\*\*\*802] activities related thereto. . . ." The county has thus conceded that the aggregate business has not been discontinued, and the evidence supports the superior court's finding on that point.

The county argues nonetheless that Hansen Brothers has lost any right it might have had to quarry rock from the hillside because that aspect of the business has been discontinued for periods in excess of the 180 days permitted under the zoning ordinance for nonconforming

uses. <sup>28</sup> We have concluded, however, that the nonconforming use which Hansen Brothers had a right to continue is the aggregate production and sale business and that rock quarrying is an integral part of that business. Therefore, since the aggregate business itself has not been discontinued, Hansen Brothers has not lost the right to future quarrying on its property as necessary to its production of aggregate. The 180-day provision applies to the nonconforming use itself, not to the various components of the business. <sup>29</sup>

28 Again the county's position seems inconsistent with its avowed purpose to minimize site degradation. Were the operations treated separately, we would encourage continuous and unnecessary hillside quarrying to retain the right to exploit that area even at times when riverbed gravel, a replenishing resource, was adequate to meet the needs of the aggregate business.

29 We would not conclude, for instance, that a dairy business operating as a nonconforming use with facilities for bottling milk and making and storing butter, had discontinued and thus lost the right to resume butter manufacturing for several months when the demand for butter was low, stored butter was adequate to meet the need, and the dairy used its cream for other purposes.

Even were the rock quarry a separate operation, however, it is not at all clear that the ordinance should be construed as terminating a nonconforming mining use when the mined material is stored and being used as needed, with mining renewed only as necessary to replenish the stockpile.

The parties have offered no evidence of how the county intended its 180-day limitation to apply to mining operations in these circumstances. Were we to construe the Nevada County ordinance as terminating a nonconforming mining use whenever mining ceased for 180 days even though the mined material was being stored and used as necessary, we would have to assume that the county contemplated that the property would lose its nonconforming use status unless mining operations were renewed every 6 months whether or not additional material was needed. The result in an operation like that of Hansen Brothers would be unnecessary blasting and degradation of the site in order to retain the right to continue a nonconforming use, instead of occasional extraction of rock as needed.

We hesitate to attribute that intent to the county, and the language of the ordinance does not compel that result.

[\*571] Since we have concluded that the aggregate mining, production, and sales business was the land use for which Hansen Brothers had a vested right in 1954, the fact that rock quarrying may have been discontinued for 180 days or more is irrelevant. Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine. This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production, and is currently in use only as a yard for storage and sales of stockpiled material. <sup>30</sup>

30 Because the county has conceded that Hansen Brothers continues to have a vested right to operate its business on the Bear's Elbow Mine site, we need not decide now whether Development Code section 29.2(B) is intended to automatically terminate all nonconforming uses whenever the use has ceased for 180 days, or if it does so only if the use has been voluntarily abandoned for that period. We observe, however, that the business of aggregate mining and sale in Nevada County is necessarily seasonal and dependent on fluctuating market demand. Faced with similar questions in applying laws terminating lawful nonconforming uses to quarrying operations, both the Kansas Supreme Court in *Union Quarries, Inc. v. Board of County Com'rs*, *supra*, 478 P.2d 181, and the Oregon Supreme Court in *F.O. Bither v. Baker Rock Crushing Co.* (1968) 249 Or. 640 [438 P.2d 988], held that when quarried rock was stockpiled and sales were being made from those stockpiles there was no abandonment or discontinuance of use of the property for quarrying even though there had been no quarrying or crushing of rock for the period of discontinuance specified in the applicable ordinance.

#### *D. Expansion or intensification of use.*

(15a) The final question is whether substantial evidence supports the finding that Hansen Brothers' proposal for future quarrying would be an impermissible intensification of its nonconforming use.

[\*\*1349] [\*\*\*803] As is customary in zoning ordinances, the Nevada County ordinance provides in article 29, section L-II 29.2(A) of the Land Use and Development Code (Development Code section 29.2(A)): "No such [nonconforming] use shall be enlarged or intensified."

Relying on Development Code section 29.2(A), the county argues that quarrying operations on the scale proposed in the SMARA application would be an im-

permissible intensification of the nonconforming use. Therefore Hansen Brothers may not undertake the mining proposed in the SMARA application without applying for and obtaining a conditional use permit.

Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate does not compel a conclusion that this right extends to quarrying the amount of rock proposed in its SMARA proposal. "Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict [\*572] policy against their extension or enlargement." (*County of San Diego v. McClurken*, *supra*, 37 Cal. 2d 683, 687, and cases cited at fn. 1; *Paramount Rock Co. v. County of San Diego*, *supra*, 180 Cal. App. 2d 217, 229; and see 8A McQuillin, *supra*, § 25.206, p. 114.)

The most recent decision of this court to address the question of intensified use, *Edmonds v. County of Los Angeles*, *supra*, 40 Cal. 2d 642, did so in the context of a trailer park which was maintained for 20 trailers at the time a zoning ordinance which excluded that use was adopted. The number of trailers increased thereafter to 48, at which point the owners sought a permit to legalize the increase, but also claimed a vested right to use the property for that many trailers. The court analogized the expansion to adding new buildings and concluded that the increase was "clearly a different use" of the property than that existing when the zoning ordinance was adopted, noting that it would require an increase in the size of a "utility house" for necessary "sanitary facilities." (*Id.* at p. 651.)

In *County of San Diego v. McClurken*, *supra*, 37 Cal. 2d 683, the owner had used the land for heavy industrial purposes, among which was storage of gasoline in movable tanks above ground. After a zoning ordinance restricted that type of land use, the owner placed four permanently installed gasoline storage tanks on the property. The county sought their removal. We upheld the county's right to do so, holding that the tanks were not only an expansion of the nonconforming use, but a new and different use since they had a different purpose, storage of gasoline for service stations as opposed to industrial use. (*Id.* at p. 688.)

In *Edmonds v. County of Los Angeles*, *supra*, 40 Cal. 2d 642, 651, the additional trailers to be placed on the property were equated to additional structures, a type of changed or intensified use which most jurisdictions refuse to permit as part of a nonconforming use. (See 8A McQuillin, *supra*, § 25.206, p. 114.) *County of San Diego v. McClurken*, *supra*, 37 Cal. 2d 683, involved both a new use and placing additional structures on the property. Because Hansen Brothers' mining is not a new use and under the diminishing asset doctrine may extend

over the whole property, the question here differs. It involves only an increased volume of production by the existing use.

Decisions in other jurisdictions hold that the natural and reasonable expansion of a quarry business to meet increased demand is not an impermissible enlargement or change in the use of the property. In *Frank Casilio & Sons v. Zoning Hearing Bd., etc.* (1976) 26 Pa. Commw. 608 [364 A.2d 969, 970], the court acknowledged the rule applicable in that state that a [\*573] nonconforming use includes "the right of natural expansion so long as that expansion is reasonable and not detrimental to the welfare of the community," but held that an increase from an occasional truckload of sand and gravel leaving the property each day to as many as 30 a day was not reasonable.

In *Town of Wolfboro (Planning Bd.) v. Smith*, *supra*, 556 A.2d at page 759, the court held that while an increase in intensity of a nonconforming use is not necessarily a [\*\*1350] [\*\*\*804] change or expansion, "an increase in intensity which serves to change the character or purpose of the nonconforming use will be considered to have changed the use."

In *Union Quarries, Inc. v. Board of County Com'rs*, *supra*, 478 P.2d 181, 187, a small quarrying operation which sold rock to neighboring farmers was sold to a company which carried on substantial quarrying and sold a large volume of rock. The trial court found that this was not an enlargement of the original, lawful nonconforming use. In affirming that judgment, the Kansas Supreme Court held that it came within the rule that a natural growth of the business or an increase in the business done is not an impermissible change in a nonconforming use.

Again, while we have no evidence of the understanding of the legislative body which enacted Development Code section 29.2(A) as to the meaning of the term "enlarged or intensified," the general rule appears to be that an increase in business volume alone is not an expansion of a nonconforming use. (8A McQuillin, *supra*, § 25.207, p. 125.) Consistent with that understanding and the presumption that the intent was to enact a reasonable ordinance that would not be applied arbitrarily or unreasonably, we conclude that section 29.2(A) does not prohibit a gradual and natural increase in a lawful, nonconforming use of a property, including quarry property. By way of example, we assume that 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. Neither an increase in the number of patrons or in the volume of goods sold would be considered an enlargement or inten-

sification of the use. And where increased population creates an increased demand for the aggregate used in road construction, an increase in production to meet that demand would not be construed as an enlargement or intensification of the use.

Based only on the SMARA reclamation plan, the superior court and Court of Appeal concluded that Hansen Brothers' removal of the quantity of rock estimated in that plan would constitute an impermissible intensification of [\*574] use of the land. They based that conclusion in part on the assumption that the volume of rock quarried could be considered separately from the overall volume of aggregate produced from the Bear's Elbow Mine, and in part on reasoning that it was appropriate to compare the proposed volume of future extraction only with past hillside production from the Nevada County portion of the mine, even though a greater quantity of rock had been produced from the Placer County area and overall production included material from the riverbed area of the mine.

We concluded above that the vested interest held by Hansen Brothers is use of its Bear's Elbow Mine property for production and sale of aggregate, and that right included the extraction of all aggregate components. It was error therefore to treat the components separately when considering the intensification of use question, and to exclude production from the Placer County area. It is undisputed that the mine, which straddles the county line, has been operated as a single entity since it was established in 1946.

More importantly, however, the SMARA application form is not designed for, and alone is not an adequate basis upon which to decide, the question of impermissible intensification. The application form does not establish the actual amount of material that is to be mined in any given year or time, and offers only estimates in broad ranges of the possible annual mining volume and of the total amount of material that may be removed over a 100-year period.

Hansen Brothers' SMARA reclamation plan indicated only that between 5,000 and 250,000 cubic yards of material were to be removed annually. The Court of Appeal assumed that the upper end of the range, 250,000 cubic yards, rather than the lowest end, 5,000 cubic yards, would be removed each year.<sup>31</sup> Because there is no evidence of [\*\*1351] [\*\*\*805] the actual amount of material to be extracted annually, the evidence does not support the conclusion of the superior court and the Court of Appeal that Hansen Brothers is not entitled to approval of its SMARA plan without a conditional use permit because the proposed volume of extraction would not be a permissible nonconforming use of the property.

31 That assumption ignored the fluctuating nature of Hansen Brothers' aggregate business and failed to consider that the plan called for removal of 5,000,000 cubic yards in 100 years, or an average of only 50,000 cubic yards per year, less than the amount of material removed from the site in prior years.

Nothing in sections 2774 and 2776 requires that all questions of intensified use be addressed in conjunction with approval of a SMARA reclamation plan, however. All that need be established is that the applicant had obtained a vested right to conduct surface mining operations prior to January 1, 1976, [\*575] and the proposed mining is not a substantial change in the operation. Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs. The issue is no different, and the county's remedies are the same, as would exist independent of the SMARA application were Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level, and seek an injunction if the owner does not obey. (*City of Fontana v. Atkinson*, *supra*, 212 Cal. App. 2d 499, 508-509; see, e.g., *Town of Los Altos Hills v. Adobe Creek Properties, Inc.* (1973) 32 Cal. App. 3d 488 [108 Cal. Rptr. 271]; see also the modified opinion in *F. O. Bither v. Baker Rock Crushing Co.*, *supra*, 438 P.2d 988, mod. 249 Or. 652 [440 P.2d 368].)

Therefore, when the area over which Hansen Brothers has vested rights is determined, and if that area is less than 60 acres, a new or amended SMARA reclamation plan will be necessary. Even if the plan is unchanged, however, the intensification of use question must be reconsidered on remand if the county continues to require determination of that question before approval of a SMARA reclamation plan. Unless Hansen Brothers proposes immediate removal of quantities of rock which substantially exceed the amount of aggregate materials extracted in past years, there is no impermissible intensification of use.<sup>32</sup>

32 The county has not asserted that the emphasis on rock quarrying is a substantial change in the nature of the operation within the meaning of section 2776. It asserts only that the intensified use is such a change. Therefore, we express no opinion on whether, if Hansen Brothers no longer produces aggregate at the Bear's Elbow Mine and the operation becomes simply a rock quarry, the permit exemption of section 2776 will continue to apply.

If the county elects to abandon the effort to address the intensification of use question in advance of actual

mining as part of the SMARA reclamation plan approval process, the county is not without remedies if mining activity at the Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers has a vested right.

V.

#### DISPOSITION

The judgment of the Court of Appeal is reversed with directions to order the superior court to vacate its order denying Hansen Brothers' petition for [\*576] writ of mandate and to conduct further proceedings consistent with this opinion to determine if Hansen Brother's SMARA plan should be approved.

Lucas, C. J., and Arabian, J., concurred.

CONCUR BY: WERDEGAR, J.

CONCUR

WERDEGAR, J.

(1b) (2b) (3b) (4b) (5b) (6b) (7b) (8b) (9c) (10b) (11c) (12b) (13b) (14b) (15b) I concur. I write separately to articulate my understanding of what the plurality opinion has determined about the vitality of the diminishing asset doctrine and its application to this case.

First and foremost, California recognizes the diminishing asset doctrine. Second, in applying the doctrine to this case and determining [\*\*1352] [\*\*\*806] the nature of the existing nonconforming use, we look to Hansen Brothers Enterprises, Inc.'s, Nevada County operation with all of its component parts as a whole. Thus, Hansen Brothers' entire operation of placer mining and rock quarrying to produce aggregate is the existing nonconforming use. Third, the diminishing asset doctrine permits Hansen Brothers to quarry, as part of the existing nonconforming use, any area of the property for which it can satisfy the doctrine's requirements. Specifically, Hansen Brothers must show "that the area [it] desires to excavate was clearly intended to be excavated [when the land-use ordinance became effective], as measured by objective manifestations and not by subjective intent . . . ." (Plur. opn., *ante*, p. 556, italics omitted.)

As the plurality opinion explains, the record is not presently adequate to permit us to decide whether the diminishing asset doctrine assists Hansen Brothers and, if it does, how far from the river the doctrine might permit Hansen Brothers to move its quarrying operations.

Past activities on the hillside may be relevant to this issue. The rock-quarrying aspect of the business, however, has taken place primarily, if not exclusively, near the river rather than farther up the hillside. While the record suggests that some activity occurred farther up the hillside, it does not establish what, exactly, that activity was or whether it occurred before or after the zoning ordinance took effect. If Hansen Brothers were to satisfy the requirements of the diminishing asset doctrine as to part or all of its property, then the quarrying of those areas would be exempt from the ordinance's permit requirement as part of the existing nonconforming use. What the trial court must decide on remand, as to this issue, is whether and, if so, to what geographical extent the requirements of the diminishing asset doctrine have been satisfied.

With this understanding, I concur in the plurality opinion.

Lucas, C. J., concurred. [\*577]

DISSENT BY: MOSK, J.; KENNARD, J.

DISSENT

MOSK, J.

I dissent. I would affirm the Court of Appeal's judgment.

On considering factual issues the plurality opinion imperiously concludes that:

The planning commission was wrong.

The board of supervisors was wrong.

The superior court was wrong.

The Court of Appeal was wrong.

To the contrary, it is the plurality opinion that is wrong.

The questions before us are (1) whether substantial evidence supports the superior court's findings that Hansen Brothers Enterprises, Inc., proposed to resurrect a long-abandoned mining operation on its land and greatly intensify the exploitation of that land, and (2) whether, if the findings are supported by substantial evidence, the law requires a conditional use permit before Hansen Brothers may begin the proposed expansion. The plurality opinion's conclusion that no permit is required rests on insufficient deference to the superior court's factual findings.

To meet the requirements of the Surface Mining and Reclamation Act of 1975 (*Pub. Resources Code*, § 2710 *et seq.*), Hansen Brothers needed to submit a reclamation plan to the board of supervisors for approval. (*Id.*, §

2728, 2770.) The board rejected the plan because it ran counter to a Nevada County ordinance that provides:

"Any use lawfully in existence at the time this Chapter [i.e., the county's zoning regulations] or amendments thereto takes effect, although such use does not conform to the provisions of this Chapter, may continue as follows:

"A. No such use shall be enlarged or intensified. Nor shall any such use be extended to occupy a greater area of land than that occupied at the time of the adoption of this Ordinance. Nor shall any such use be moved in whole or in part to any other portion of the lot or parcel of land occupied at the time of the adoption of this Chapter or amendment thereto.

"B. If the nonconforming use is discontinued for a period of one hundred eighty (180) days or more, any following use shall be in conformity with all applicable requirements [\*\*1353] of this Chapter." (Nevada County Land Use [\*\*\*807] and Development Code, art. 29, § L-II 29.2.)

The board of supervisors also informed Hansen Brothers that to pursue its plan it would need to obtain a conditional use permit. Hansen Brothers filed [\*578] a petition for writ of administrative mandate ( *Code Civ. Proc.*, § 1094.5) and a complaint for damages and for injunctive and declaratory relief.

The superior court denied Hansen Brothers any relief. It ruled that because of the abandonment and the proposed expansion of the nonconforming use, Hansen Brothers had no right to engage in the mining it proposed. Specifically, it found, with regard to abandonment, that "the [hillside] operation has been largely inactive since 1986 except for storage of aggregate and one or two trips per year by trucks to or from the site. The area previously used as a rock quarry is overgrown with trees 15 feet tall. All of these factors cause[] the Court to conclude the hillside quarry operations were separate operations that had been discontinued for the statutory period." With regard to enlargement, it found that "[m]ining with a total production of 5,000,000 cubic yards of material, as reflected in the proposed reclamation plan, is a substantial change and expansion and intensification[,] as illustrated by the fact such proposed use would involve 120 [10-cubic-yard] truck trips per day as contrasted to the one or two per year shown by the evidence since 1986."

"Where a superior court is required to make . . . an independent judgment upon the record of an administrative proceeding, the scope of review on appeal is limited. An appellate court must sustain the superior court's findings if substantial evidence supports them. [Citations.] In reviewing the evidence, an appellate court must resolve

all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court." (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence* (1977) 20 Cal. 3d 309, 314 [142 Cal. Rptr. 439, 572 P.2d 53].) The superior court was required to make an independent judgment on the administrative record here. (*Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal. 3d 52, 64, fn. 10 [227 Cal. Rptr. 667, 720 P.2d 15].)

Whether the standard set forth in *Pasadena Unified Sch. Dist. v. Commission on Professional Competence*, *supra*, 20 Cal. 3d 309, 314, applies in every instance we need not decide. It is clear that it applies in this case. A ruling that a nonconforming use was intensified or abandoned involves a question of fact that we review on a deferential standard. (See *McCaslin v. City of Monterey Park* (1958) 163 Cal. App. 2d 339, 348 [329 P.2d 522]; cf. *Texas Nat. Theatres v. City of Albuquerque* (1982) 97 N.M. 282, 288 [639 P.2d 569, 575] [applying New Mexico substantial evidence standard].)

Before turning to the question whether substantial evidence supports the superior court's findings of abandonment and intensification, we must review the law applicable to those matters.

[\*579] Because a nonconforming use "endangers the benefits to be derived from a comprehensive zoning plan" ( *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442, 459 [274 P.2d 34]), the law aims to eventually eliminate it ( *City of Los Angeles v. Wolfe* (1971) 6 Cal. 3d 326, 337 [99 Cal. Rptr. 21, 491 P.2d 813]). However, to avoid constitutional problems an existing nonconforming use will be tolerated as long as it does not expand to a significant extent. ( *Edmonds v. County of Los Angeles* (1953) 40 Cal. 2d 642, 651 [255 P.2d 772]; *Sabek, Inc. v. County of Sonoma* (1987) 190 Cal. App. 3d 163, 166-167 [235 Cal. Rptr. 350].) "The underlying spirit of a comprehensive zoning plan necessarily implies the restriction, rather than the extension, of a nonconforming use of land, and therefore . . . a condition that the lawful nonconforming use of land existing at the time of the adoption of the ordinance may continue must be held to contemplate only a continuation of substantially the same use which existed at the time of the adoption of the ordinance, and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous. . . ." (*County* [\*\*1354] [\*\*\*808] *of Orange v. Goldring* (1953) 121 Cal. App. 2d 442, 447 [263 P.2d 321], quoting *In re Botz* (1942) 236 Mo.App. 566 [159 S.W.2d 367, 372].) Moreover, the use must be continuous: if aban-

done, it may not be resumed. " ' "A nonconforming use is a lawful use existing on the effective date of the zoning restriction and continuing since that time in nonconformance to the ordinance." . . . ' [Citations.] Nonuse is not a nonconforming use. . . . This rule is consistent with the further rule that reuse may be prohibited when a nonconforming use is voluntarily abandoned." ( *Hill v. City of Manhattan Beach* (1971) 6 Cal. 3d 279, 285-286 [98 Cal. Rptr. 785, 491 P.2d 369].)

Substantial evidence supports the superior court's findings of abandonment and proposed intensification.

As regards abandonment: a neighbor of Hansen Brothers presented to the board of supervisors a series of photographs and testified that the hillside has "trees of 10 to 15 years growing over" them. The photographs evidently became the center of the board's attention as other neighbors discussed them. One said that the photographs showed that the hillside excavations were "just primarily top soil" and that the presence of tall trees made it "quite obvious that none of that quarrying operation has gone on for many years." The foregoing evidence caused one member of the board to state, "I was much impressed by the photographs that we had of the sites which had been once upon a time quarried. And upon those sites we have 25 and 30-foot trees indicating that certainly for a good number of years that site has been undisturbed . . . . [P] The documentation I have before me shows me that those areas haven't been mined in years and years and years."

[\*580] Yet another neighbor sent a handwritten letter to the board of supervisors, stating in part: "We have a home in the community where the Hansen Brothers are wanting to start a new mining operation alongside the Bear River. Our house is on a hill overlooking the river and the beautiful wooded hills around it. During the 31/2 years we have lived here, the Hansen's [sic] gravel operation has been inactive. . . . We have *never* seen any Hansen trucks on the road or any mining activity at the site. We have observed only a couple [of] piles of gravel which have stayed there untouched. . . ."

Indeed, there was testimony that more than 20 neighboring property owners signed a petition against Hansen Brothers' plan, declaring in part that, "we can personally attest to the lack of activity at the gravel quarry over the last few years."

As regards intensification: recall that there was evidence that previous excavations consisted of cuts in the topsoil. Under the reclamation plan, Hansen Brothers would begin a drill-and-blast operation that would carve out 500,000 cubic yards of overburden--approximately the volume of 200,000 standard-sized pickup truck beds--and would excavate and remove from the site an average of 50,000 cubic yards of material--a rough

equivalent to the volume of 20,000 pickup-truck beds--*every year for the next century*.

As one witness, a registered civil engineer and lawyer with 40 years' experience in mining, told the planning commission, "they're talking about making a cut there with vertical rock faces at about 20-foot intervals benched of [sic] about 300 feet high. . . . And it's about a half a mile long. And you don't get rock to stand at those angles without it being of a quality that it has to be drilled and blasted." The previously quoted handwritten letter stated: "The mining operation the Hansen[s] are proposing would be a *total* change from the operation we have observed over the past 31/2 years. They have never touched the hills or land rock. A commencement of such activity would be a great disruption of the tranquility and beauty of the stable community which has built up in this area--an area which is zoned for light farming . . . . It would be an activity completely incompatible with the single-family parcels and open spaces currently in this community."

In sum, the record contains substantial evidence to support the superior court's findings [\*\*\*809] of abandonment and proposed intensified [\*\*1355] use.

1 It is true that no evidence supports the superior court's conclusion that there would be 120 large-truck trips per day under the proposed plan. The court relied on testimony that overstated the number of trips by an order of magnitude. Nevertheless, 12 trips a day (a figure supported by substantial evidence) by large trucks over what testimony revealed to be narrow and winding roads is a great increase from virtually no truck movement at all.

Fairly examined, the record reveals that Hansen Brothers proposes to move its nonconforming mining operation from a riverbed and a riverbank to [\*581] nearly pristine hillsides, where its new mine will create a moonscape. It is, as the superior court found, a proposed "separate operation[] . . . ." And this destruction will occur without so much as the requirement of a permit. <sup>2</sup>

2 The plurality opinion leaves open the question whether intensification of Hansen Brothers' nonconforming use will eventually violate the zoning ordinance. The superior court's findings already establish, however, that it will. In any event, the practical problem with the plurality opinion's holding is that, by the time the evidence of intensification becomes apparent and a remedy is sought and obtained, serious damage may well already have been inflicted.

I cannot agree with this doleful outcome, which will occur in violation of settled legal principles. I therefore dissent.

KENNARD, J.,

Dissenting.--When a public entity enacts a zoning ordinance prohibiting owners of private property from using their land in a specified manner, it generally permits those property owners already using their land in the prohibited manner to continue doing so, as a "nonconforming use." This case concerns the degree to which public entities may regulate the scope of a nonconforming use; the nonconforming use here is mining.

Originally, plaintiff's mining operations consisted almost entirely of scraping up gravel that had washed down a river, but plaintiff also operated a small rock quarry on land adjacent to the river. After a county ordinance was passed prohibiting mining in the area involved, plaintiff was permitted to continue mining as a nonconforming use. Now, because an upstream dam has rendered plaintiff's riverbed operations virtually worthless, plaintiff seeks to greatly expand the intensity of its quarrying operations, and to remove rock at an annual rate of up to 250 times greater than past removal by plaintiff. The county planning commission, the county board of supervisors, the superior court, and the Court of Appeal all concluded that whatever right plaintiff enjoyed to scoop gravel from the riverbed could not be converted into a right to quarry rock out of the adjacent hillsides, and that plaintiff's planned expansion exceeded the scope of its right to mine the property as a nonconforming use. A majority of this court<sup>1</sup> comes to a contrary conclusion, holding that plaintiff's two mining operations--those in the riverbed and those on the adjacent land--must be viewed as a single [\*582] nonconforming use. The majority directs the Court of Appeal to remand the case to the trial court for reconsideration in light of this conclusion.

1 Justice Baxter's lead opinion has been signed by the Chief Justice and Justice Arabian. A fourth Justice, Justice Werdegarr, concurs in Justice Baxter's opinion, although she has not signed it. Because I see no significant differences between the views expressed in Justice Baxter's lead opinion and Justice Werdegarr's concurring opinion, I use the term "majority" to refer collectively to Justices Baxter, Arabian, Werdegarr, and the Chief Justice. When referring to Justice Baxter's opinion, I shall call it the "lead opinion."

I disagree with the majority. Substantial evidence supports the determinations by the board of supervisors and the trial court that plaintiff's mining of the riverbed and its mining of the adjacent land were separate uses.

Viewed in this light, plaintiff's proposed plan represents a substantial intensification of its previous mining operations, and is therefore beyond the scope of its nonconforming use.

I

Since 1946, mining has been conducted on land that plaintiff purchased in 1954. The land is located on the Bear River, which divides Nevada and Placer Counties; the site is a wooded, scenic area near the town of Colfax, in the Sierra foothills. The mining [\*\*\*810] involves roughly 60 acres, most of which is in Nevada County.<sup>2</sup>

2 As the lead opinion notes, plaintiff acquired some portions of the property at issue after 1954. Without a conditional use permit, plaintiffs may mine these portions of the property only if they were being mined in 1954, when the county prohibited mining. (Lead opn., *ante*, at pp. 560-564.) Because I have no quarrel with the lead opinion's treatment of this issue, I do not discuss the facts concerning the points in time at which plaintiff acquired its property.

[\*\*1356] In 1954, the Nevada County Board of Supervisors adopted a zoning ordinance prohibiting mining in an area that included plaintiff's property. Nevertheless, as authorized by another ordinance, Nevada County Land Use and Development Code, article 29, section L-II 29.2 (hereafter section 29.2), the county has permitted plaintiff to continue its mining operations. Under section 29.2, when the county adopts a zoning ordinance prohibiting certain activities or "uses," property owners who are already engaged in those uses may continue to do so, as a "nonconforming use."

Section 29.2 strictly limits the scope of nonconforming uses: they may not be "enlarged or intensified," "extended to occupy a greater area of land," or "moved in whole or in part to any other portion of the [property owner's] land." Also, any nonconforming use that is "discontinued for a period of one hundred eighty (180) days or more" loses its status as a nonconforming use.<sup>3</sup>

3 Section 29.2 provides in full:

"Any use lawfully in existence at the time this Chapter or amendments thereto takes effect, although such use does not conform to the provisions of this Chapter, may continue as follows:

"A. No such use shall be enlarged or intensified. Nor shall any such use be extended to occupy a greater area of land than that occupied at the time of the adoption of this Ordinance. Nor shall any such use be moved in whole or in part to any other portion of the lot or parcel of land



occupied at the time of the adoption of this Chapter or amendment thereto.

"B. If the nonconforming use is discontinued for a period of one hundred eighty (180) days or more, any following use shall be in conformity with all applicable requirements of this Chapter."

In 1989, plaintiff submitted a "reclamation plan" to Nevada County to comply with California's Surface Mining and Reclamation Act of 1975. [\*583] (*Pub. Resources Code*, § 2710 *et seq.*; hereafter SMARA.) This state law requires those engaged in surface mining to submit to a local agency, in this case the Nevada County Board of Supervisors, a reclamation plan describing the efforts to be made in minimizing adverse environmental effects resulting from the mining. No mining is permitted unless the agency approves the plan. <sup>4</sup>

4 Plaintiff also submitted a reclamation plan to the Placer County Board of Supervisors for the portion of plaintiff's property located in Placer County. That board approved plaintiff's plan.

Plaintiff's reclamation plan is set forth on a form furnished by Nevada County. According to the plan, the hillsides on plaintiff's property contain 5,000,000 cubic yards of rock. Plaintiff proposes to remove all of this rock over the course of the next 100 or more years. The form requires those submitting a reclamation plan to describe--by checking the appropriate boxes on the form--the amount of materials that will be mined. Plaintiff checked 2 boxes, indicating that, depending on demand of its customers, it intended to remove between 5,000 to 50,000, or between 50,000 and 250,000, cubic yards per year. Plaintiff expects to remove 1,000,000 cubic yards of "overburden" covering the rock. Most of that material will be used to build access roads needed in the excavation process; 150,000 cubic yards of overburden, described as "soil," will be stored on the property and used in the reclamation process. Implementation of the plan will necessitate drilling and blasting, and will require excavation of plaintiff's hillsides to a depth of 350 feet.

Both the Nevada County Planning Commission and the Nevada County Board of Supervisors conducted separate hearings to decide whether plaintiff's reclamation plan should be approved. At those hearings, the following evidence was presented regarding plaintiff's mining activities.

In 1954, and for many years thereafter, plaintiff's primary mining activity consisted of harvesting gravel that washed down the Bear River (hereafter also referred to as riverbed mining). These materials were [\*\*1357] [\*\*\*811] stored on site and sold. To accommodate customers who wanted riverbed gravel mixed with hard

rock, plaintiff also operated small quarries on either side of the river to [\*584] extract rock. <sup>5</sup> Depending on the needs of its customers, plaintiff sold gravel and rock, or a combination of the two. The record does not disclose how much of the gravel sold by plaintiff was mixed with rock, or how many of plaintiff's customers bought such a mixture.

5 For convenience, I refer to the substances harvested from the river as "gravel" and the hard rock quarried from the adjacent land as "rock," although these terms no doubt lack technical precision.

Nor does the record show how much gravel plaintiff and its predecessors removed annually from the Bear River. Bill Goss, plaintiff's plant manager, estimated that during the 18 years he had worked at the site, the total amount of materials harvested from the riverbed and mined from the quarries was roughly 3,000,000 tons. According to Goss, one-fifth of this total (or 600,000 tons) was rock extracted from the quarries and the rest gravel taken from the riverbed. Other evidence, however, showed that a far smaller portion was actually mined from the quarries. Alan Hess, a photogrammetric engineer, estimated, based on aerial photographs of the site, that in the 43 years during which the mining had been conducted (more than twice the length of time during which plant manager Goss had worked for plaintiff), only 266,000 tons of rock had been removed from the Placer County side of the river, and only 72,000 tons (or 45,000 cubic yards) had been quarried from the Nevada County side.

After construction of the Rollins Reservoir Dam, upstream from plaintiff's property, the amount of gravel washing down the river declined dramatically. <sup>6</sup> In early 1986, a flood washed a substantial quantity of sand and gravel over the dam; plaintiff harvested those materials in 1986 and 1987. Thereafter, plaintiff ceased its riverbed mining, but continued to store rock and gravel on the property. Although witnesses for plaintiff asserted that plaintiff continued to operate the quarry, <sup>7</sup> neighbors opposed to plaintiff's reclamation plan provided conflicting evidence. Randall Atkins, who lived near the mine, told the planning commission that he had purchased gravel from plaintiff in the past, but that in recent years he had been unable to do so because, in his words, "there is no operation there." Atkins's comments were confirmed by Bill Dickson, who also lived near the mine. According to other witnesses living near the mine, there had been no more than three trucks traveling along the road to the mine in the year and a half preceding the [\*585] hearing before the planning commission. And in a letter dated October 3, 1988, Nevada County Counsel James Curtis stated that he had visited the mine and con-

cluded that "the last time any mining occurred on land was more than three years ago."

6 Several witnesses mentioned that the dam was already in existence in 1986, but no evidence was introduced establishing the date on which the dam was completed. The dam was probably built in the early 1980's.

7 Notwithstanding the evidence that quarrying activity had occurred on both sides of the river, all witnesses mentioned only one quarry, apparently the one located on the north side of the river, in Nevada County.

The Nevada County Planning Commission, acting in its capacity as a local agency under SMARA, denied approval of plaintiff's reclamation plan. As relevant here, the commission also concluded that the mining operations described in the plan exceeded the scope of plaintiff's nonconforming use under section 29.2, the county ordinance governing nonconforming uses; the commission left open the possibility that plaintiff could continue its mining operations if it obtained a conditional use permit.

The planning commission determined that the mining described in plaintiff's reclamation plan was not within the scope of plaintiff's nonconforming use because (1) mining under the proposed plan would violate section 29.2's requirement that nonconforming uses may not be "enlarged or intensified," and (2) plaintiff had quarried no rock for a period of more than 180 days and therefore was deemed to have abandoned its right to [\*\*1358] [\*\*\*812] mine the land. \* Plaintiff appealed the commission's decision to the Nevada County Board of Supervisors, which upheld the planning commission.

8 Although the planning commission found that plaintiff had abandoned the right to mine the remainder of its land, it determined that plaintiff retained the right to extract gravel from the river.

Plaintiff then filed a petition for administrative mandate in the superior court, seeking a judicial determination that the mining described in its permit application was a permissible continuation of its preexisting nonconforming use, and that it could engage in such operations without obtaining a conditional use permit. <sup>9</sup> After an independent examination of the administrative record, the superior court ruled that plaintiff had received a fair hearing before the Nevada County Planning Commission and the Board of Supervisors. The court found that (1) the mining described in plaintiff's reclamation plan was a "substantial expansion and intensification of any previous use of the property," and that (2) plaintiff

had abandoned its right to mine the hillsides on its property. The Court of Appeal affirmed.

9 Plaintiff has also appealed Nevada County's rejection of plaintiff's reclamation plan. That appeal, however, was made to the State Mining and Geology Board (which has apparently postponed resolution of the appeal pending the outcome of this litigation), and was not the subject of plaintiff's petition in the superior court. Thus, the adequacy of plaintiff's reclamation plan is not at issue in this case.

## II

As a general rule, local governmental entities may use their zoning power to prohibit a property owner from using the property in a specified manner, [\*586] and such restrictions ordinarily will not constitute a "taking" that would entitle the property owner to "just compensation" under the *Fifth Amendment to the United States Constitution*. ( *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 125 [57 L. Ed. 2d 631, 648-649, 98 S. Ct. 2646].) But "because of the hardship and doubtful constitutionality" of forbidding a property owner from conducting a use that is already ongoing when an ordinance prohibiting that use is enacted, most zoning ordinances permit any such use to continue as a "nonconforming use." ( *County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 686 [234 P.2d 972].)

A property owner's right to continue a nonconforming use, however, is a right that is limited, narrowly construed, and subject to ultimate extinction. "[Z]oning legislation looks to the future in regulating district development and the eventual liquidation of nonconforming uses within a prescribed period commensurate with the investment involved. [Citation.] The mere fact that some hardship may thereby be experienced is not controlling, for 'every exercise of the police power is apt to affect adversely the property interest of somebody.'" ( *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal. 2d 121, 127 [272 P.2d 4].) As a result, "courts throughout the country generally follow a strict policy against [the] extension or enlargement" of nonconforming uses. ( *County of San Diego v. McClurken*, *supra*, 37 Cal. 2d at p. 687; see also *City of Los Angeles v. Wolfe* (1971) 6 Cal. 3d 326, 337 [99 Cal. Rptr. 21, 491 P.2d 813] ["The policy of the law is for elimination of nonconforming uses . . ."].)

With these principles in mind, I turn to section 29.2, the nonconforming use ordinance at issue, and apply it to the facts of this case.

## III

As I have noted previously, section 29.2 provides that a nonconforming use may not "be extended to occupy a greater area of land" and may not "be moved in whole or in part to any other portion" of the land in question. Thus, on its face, section 29.2 seemingly would bar plaintiff from extending its mining activities to any part of its property not being mined when the zoning ordinance prohibiting mining was enacted in 1954.

As applied to mining and similar activities, a prohibition against expanding the use to other portions of the land may be tantamount to prohibiting the use altogether. A leading [\*\*1359] [\*\*\*813] treatise explains: "Application of the rule that a nonconforming use may not be extended to land not so used prior to the enactment of a restrictive ordinance may work a singular hardship where the use in question involves the removal of natural products from the earth. [\*587] Quarries and sources of topsoil are particularly vulnerable because, by their very nature, they commence on one spot and spread to additional ground as the gravel, coal, or topsoil is exhausted." (1 Anderson, *American Law of Zoning* (3d ed. 1986) § 6.52, p. 604, fn. omitted.)

To address this problem, courts in other states have developed what is now known as the diminishing asset doctrine, under which a landowner may not be prohibited from extending an otherwise permissible nonconforming use onto adjacent portions of the owner's property if the use consists of extracting nonrenewable resources from the earth. (See 1 Anderson, *op. cit. supra*, § 6.52, pp. 604-605, and cases cited therein.) Before today's decision by this court, the status of the diminishing asset doctrine in California was somewhat uncertain because only one published decision by a California court, *McCaslin v. City of Monterey Park* (1958) 163 Cal. App. 2d 339 [329 P.2d 522], had addressed the diminishing asset issue.

In *McCaslin*, the plaintiff mined decomposed granite at a 70-acre site in Monterey Park. The city first enacted a zoning ordinance prohibiting mining, then enacted a second ordinance prohibiting any expansion of the plaintiff's mine onto adjoining property. The trial court enjoined enforcement of the second ordinance. In affirming that ruling, the Court of Appeal stated: "Defendants assert that . . . plaintiff was limited to excavating that portion of the property already excavated. We do not agree. The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed." (*McCaslin v. City of Monterey Park*, *supra*, 163 Cal. App. 2d at p. 349.) Although *McCaslin* did not use the term "diminishing asset doctrine," the passage I have just quoted indicates *McCaslin's* acceptance, in substance, of the principles underlying the doctrine.

The majority in this case embraces the diminishing asset doctrine. In essence, the majority creates a presumption that any local governmental entity enacting a zoning ordinance that permits a property owner to continue to engage in nonconforming uses but prohibits expansion of those uses to other portions of the owner's property has adopted the diminishing asset doctrine. (Lead opn., *ante*, at p. 559.) I have no quarrel with this conclusion insofar as it applies to mines that extract materials from the ground; it should [\*588] not, however, apply to a mine that, as here, extracts materials washing down a stream or river.<sup>10</sup>

10 The lead opinion declines to address whether the diminishing asset doctrine applies to such mines, asserting that it is not an issue in this case. (Lead opn., *ante*, at p. 542, fn. 6.) But as I shall explain in part IV, *post*, it is an issue, because it is relevant to the question whether plaintiff's riverbed mine and its quarry may be viewed separately to determine whether plaintiff proposes an intensification of its use of the property.

Although a number of decisions from other jurisdictions have adopted the diminishing asset doctrine, no court, so far as my research has disclosed, has applied the doctrine to a riverbed mine. (See *Hawkins v. Talbot* (1957) 248 Minn. 549 [80 N.W.2d 863, 864] [gravel pit]; *Stephan & Sons v. Municipality of Anchorage* (Alaska 1984) 685 P.2d 98, 99 [56 A.L.R.4th 761] [same]; *Gibbons & Reed Company v. North Salt Lake City* (1967) 19 Utah 2d 329 [431 P.2d 559, 563] [same]; *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479 [165 N.E.2d 310, 311] [open pit limestone quarry]; *Moore v. Bridgewater Tp.* (1961) 69 N.J. Super 1 [173 A.2d 430, 431] [stone quarry]; *Smart v. Dane County Bd. of Adjustments* (1993) 177 Wis.2d 445 [501 N.W.2d 782, 783] [mine described as "pit"; materials extracted not named]; *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278 [434 N.Y.S.2d 150, 414 N.E.2d 651, 652-653] [sand, gravel, and topsoil excavation].) Unlike other mines, the "assets" of a riverbed mine do not "diminish": the owner [\*\*1360] [\*\*\*814] can "mine" the same area again and again, removing new sand and gravel that washes downstream. By its very nature, such a mine is not designed to spread over the entire land; rather, the mine is confined to the bed of the body of water on which it is located. As I explained earlier, underlying the creation of the diminishing asset doctrine was the recognition that, in general, mining operations must move from one spot to another, to allow for extraction of materials from additional ground after exhaustion of a previous mining source. That cannot be said of a mining operation that extracts materials washing down a stream or a river, and therefore the diminishing asset doctrine should not apply to such mining.

Furthermore, although the diminishing asset doctrine permits mine operators to extend their mines to portions of their property not previously excavated, the doctrine does not restrict the power of a governmental entity to limit, as was done here, the *intensity* of the operator's mining activities. Thus, in this case the doctrine has no bearing on that portion of section 29.2 providing that a nonconforming use may not be "intensified."

#### IV

Here, the county planning commission, the county board of supervisors, the trial court, and the Court of Appeal all determined that the excavation [\*589] proposed in plaintiff's reclamation plan exceeded the scope of plaintiff's nonconforming use, because it violated section 29.2's requirement that nonconforming uses may not be "intensified." They therefore concluded that, without a conditional use permit, plaintiff could not engage in the mining operations described in its reclamation plan. " They reached this conclusion by a two-step process.

11 The planning commission, the board of supervisors, the trial court, and the Court of Appeal also determined, in the alternative, that plaintiff's plan required a conditional use permit because plaintiff had abandoned the right to mine the land on its property. Because I conclude that plaintiff's reclamation plan represented a substantial intensification of plaintiff's mining operation, and thus necessitated a conditional use permit, I do not address this alternative ground relied on by the planning commission, the board of supervisors, the trial court, and the Court of Appeal.

First, they found that plaintiff's riverbed mining and its rock quarrying were two separate "uses" of its property, rejecting plaintiff's assertion that all of its mining operations were an indivisible unit. Second, they compared plaintiff's rock quarrying operation to the quarrying proposed in plaintiff's reclamation plan, and concluded that the intensity of the quarrying in the reclamation plan greatly exceeded that of plaintiff's previous quarrying operations.

The lead opinion rejects the first step of that analysis. It asserts that the issue of whether plaintiff's reclamation plan proposes an intensification of its previous mining activity should be decided by comparing plaintiff's proposal to the amount mined in plaintiff's entire operation, including the amount extracted from the river. I disagree.

Although closely related, plaintiff's riverbed mine and the quarry from which it extracts rock are separate operations that remove different types of materials; neither operation depends on the other for its continued ex-

istence. Before construction of the Rollins Reservoir Dam, plaintiff's mining operation was devoted almost entirely to the removal of gravel from the river. On some occasions, at the request of customers, plaintiff mixed the gravel extracted from the river with rock quarried from the adjacent land. Other customers, however, purchased either gravel only, or rock only. Thus, although plaintiff sometimes combined the rock mined from the quarry with the gravel mined from the river, plaintiff offered no evidence that the continued operation of the quarry was an indispensable part of the riverbed mining operation, or vice versa. Because the riverbed mine and the quarry on the adjacent land produced, in essence, two separate "products" extracted from different parts of the property and sold to different customers, the county board of supervisors and the trial court could properly regard the [\*590] mining of the riverbed and the mining of the quarry as two separate "uses" rather than a single nonconforming use.

[\*\*1361] [\*\*\*815] The fundamental difference between riverbed mines and quarries, as I have set forth in part III, *ante*, provides an additional ground for treating them as two separate "uses" instead of a single nonconforming use in deciding whether a change in either operation amounts to an intensification. As I have pointed out, the diminished asset doctrine applies to quarries but not to riverbed mines because riverbed mines are continually replenished when new materials are washed downstream, and operators of such mines therefore need not expand to other portions of their property to continue in operation. Because a quarry needs to expand simply to continue to exist, determining whether such expansion amounts to an intensification or instead is simply a necessary extension of the existing mine presents an issue that is entirely different from deciding whether a riverbed mine's proposed expansion of operations is an intensification of its existing use. For this reason, it is appropriate for nonconforming use purposes to regard a riverbed mine and a land-based quarry as two separate "uses" rather than a single nonconforming "use."

To support its conclusion that plaintiff's riverbed gravel mine and its nearby rock quarry must be viewed as one nonconforming use, the lead opinion, quoting a respected treatise, states: "[O]ne entitled to a nonconforming use has a right to . . . engage in uses normally incidental and auxiliary to the nonconforming use . . . ." (Lead opn., *ante*, p. 565, quoting 8A McQuillin, Municipal Corporations (3d ed. 1994) § 25.200, p. 89.) The lead opinion appears to suggest that plaintiff's quarry is a use "normally incidental to and auxiliary to" plaintiff's riverbed mine, and that the two mines should therefore be treated as an indivisible unit. But here, as I have shown, substantial evidence supports the trial court's conclusion that plaintiff's quarry was not just an "auxil-

iary" to plaintiff's riverbed mine, but a separate, independent "use." <sup>12</sup>

12 On a petition for administrative mandate challenging an administrative order that substantially affects a fundamental vested right, as in this case, the trial court must "exercise its independent judgment on the evidence and find an abuse of discretion if the [administrative] findings are not supported by the weight of the evidence." (*Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal. 3d 52, 64, fn. 10 [227 Cal. Rptr. 667, 720 P.2d 15], quoting *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal. 3d 28, 32 [112 Cal. Rptr. 805, 520 P.2d 29].) A reviewing court must uphold the trial court's findings so long as they are supported by substantial evidence, resolving all factual inferences in favor of the party prevailing in the trial court. (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence* (1977) 20 Cal. 3d 309, 314 [142 Cal. Rptr. 439, 572 P.2d 53].)

The lead opinion also advances the theory that plaintiff's quarry is an "integral part" of plaintiff's mining business, which in the past consisted [\*591] primarily of mining the riverbed. (Lead opn., ante, at pp. 565, 568.) It states: "Unless an independent aspect of the business had been discontinued, the use may not be broken down into component parts and vested rights recognized for less than the entire business operation." (*Id.* at p. 566, italics added.) In this case, however, plaintiff's reclamation plan proposes to discontinue "an independent aspect of the business," namely, its riverbed mining operation. The plan specifically states that "no additional gravel removal is expected in the 100 year flood channel of the Bear River." <sup>13</sup> This means that the riverbed mine will cease to exist. Because plaintiff proposes to discontinue "an independent aspect of the business" (the riverbed mine), even under the lead opinion's analysis the county board of supervisors and the trial court could break down plaintiff's mining use into its "component parts." Accordingly, in determining whether plaintiff's reclamation plan represents an intensification of plaintiff's previous mining activities, the county board of supervisors and the trial court could properly ignore the discontinued "component part" (the riverbed mine) and base the intensification [\*1362] [\*\*\*816] determination only on the sole part remaining: the quarry.

13 Presumably, the reason plaintiff does not expect to continue extracting gravel from the river is that, as a result of the building of the Rollins Reservoir Dam, there is no more gravel to extract.

For the reasons set forth above, the Nevada County Planning Commission, the Nevada County Board of Supervisors, the trial court, and the Court of Appeal, correctly concluded that plaintiff's quarry and its riverbed mine are not an indivisible, integrated operation, but instead are two separate uses. Accordingly, in determining whether plaintiff's reclamation plan, which did not involve riverbed mining, represented a change in the intensity of plaintiff's nonconforming use, these entities properly compared the intensity of the mining activities plaintiff proposed in the plan to plaintiff's previous quarrying activities, without consideration of plaintiff's riverbed mining operations. Based on this comparison, these entities concluded that plaintiff's reclamation plan proposes a substantial intensification of plaintiff's previous quarrying activities. As I shall explain, substantial evidence supports this conclusion.

In the 43 years (1946-1989) during which mining has been conducted on plaintiff's land, a total of roughly 45,000 cubic yards, or roughly 1,000 cubic yards per year, has been removed from the quarry in Nevada County. <sup>14</sup> Plaintiff now proposes to quarry between 5,000 and 250,000 cubic yards of rock per year over the next century. Thus, plaintiff seeks authorization to remove rock from its hillsides at a rate that is as much as 250 times greater than plaintiff has taken out in the past.

14 Additional rock has been quarried from that portion of plaintiff's property located on the Placer County side of the river.

[\*592] To guide the trial court in its consideration of the intensification issue on remand, the lead opinion states that a "gradual and natural" increase in the volume of a mining operation is not an intensification of the operation, and therefore does not violate section 29.2's provision that nonconforming uses may not be "intensified." (Lead opn., ante, at p. 573.) This statement hardly seems consistent with this court's "strict policy against [the] extension or enlargement" of nonconforming uses (*County of San Diego v. McClurken*, supra, 37 Cal. 2d at p. 687), and the expectation in zoning legislation that nonconforming uses will eventually be extinguished "within a prescribed period commensurate with the investment involved." (*Livingston Rock etc. Co. v. County of L.A.*, supra, 43 Cal. 2d at p. 127.) But even if a "gradual and natural" increase would not violate section 29.2, the Nevada County Board of Supervisors and the trial court could reasonably conclude that the intensification proposed by plaintiff, which includes mining operations on a scale up to 250 times greater than those conducted by plaintiff in the past, is not "gradual and natural." <sup>15</sup>

15 The lead opinion asserts that "the SMARA application form is not designed for, and alone is not an adequate basis upon which to decide, the question of impermissible intensification." (Lead opn., *ante*, at p. 574.) The lead opinion suggests that Nevada County wait until it determines that plaintiff's mining activities have exceeded the scope of its nonconforming use, after which it can seek injunctive relief. (*Id.* at pp. 574-575.) But the Nevada County Board of Supervisors' conclusion that plaintiff's reclamation plan exceeded the scope of plaintiff's nonconforming use was based not only on the SMARA application form, but also on the hearings conducted initially by the planning commission and then by the board. The lead opinion's suggestion is not a good one, either from plaintiff's perspective or the county's. It would be much more efficient for plaintiff to determine the scope of its right to mine its property

before plaintiff begins the substantial investment in employees and equipment necessary to conduct the operations described in its reclamation plan, than to attempt to do so after such operations have begun. Similarly, the county's interests will be better served if it can halt illegal activities on plaintiff's land before those activities have begun.

#### Conclusion

For the reasons set forth above, I would affirm the judgment of the Court of Appeal.

George, J., concurred.

Respondents' petition for a rehearing was denied February 29, 1996. Mosk, J., Kennard, J., and George, J., were of the opinion that the petition should be granted.

## **CHAPTER 22.16 SURFACE MINING AND RECLAMATION\***

\* Prior ordinance history: Ord. No. 3263, adopted 1979; Ord. No. 3283, adopted 1979; and Ord. No. 3890, adopted 1994.

### **Sec. 22.16.010 Purpose and Intent.**

This Chapter is adopted pursuant to the provisions of the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.). Nothing contained herein is intended to abridge the provisions of that Act as adopted or subsequently amended.

It is the intent of the Board of Supervisors of the County of Mendocino to create and maintain through periodic review and appropriate revision, an effective and comprehensive surface mining and reclamation policy for the regulation of surface mining operations, which policy, in conjunction with the County's environmental review process and the regulations of other agencies having jurisdiction, will assure that:

(A) Adverse environmental effects of surface mining operations are minimized, or, if possible, prevented, and that mined lands are reclaimed to a usable condition which is readily adaptable for appropriate alternative land uses;

(B) The production and conservation of minerals is encouraged, while giving consideration to values relating to recreation, watershed, wildlife, fisheries, range and forage, and aesthetic enjoyment;

(C) Residual hazards to the public health and safety are eliminated.

(Ord. No. 4031 (part), adopted 1999.)

### **Sec. 22.16.020 Scope.**

The provisions of this Chapter shall apply to surface mining operations and reclamation of mined lands within the unincorporated areas of Mendocino County. The provisions of this Chapter have been designed to encompass streambed gravel extraction, borrow pits, quarry operations and other surface mining operations conducted in Mendocino County. (Ord. No. 4031 (part), adopted 1999.)

### **Sec. 22.16.030 Incorporation of SMARA and other State Regulations.**

The provisions of the California Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 et seq.), Public Resources Code Section 2207, and the California Code of Regulations implementing the Act (14 CCR Sections 3500 et seq., 14 CCR Sections 3675 and 3676, and 14 CCR Article 9, Chapter 8, Sections 3700 et seq.) and 11 CCR Article 53, Chapter 2, Division I, Sections 115.1--115.5 as those provisions may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

(Ord. No. 4031 (part), adopted 1999.)

## **Sec. 22.16.040 Exemptions.**

No permit or reclamation plan shall be required by this Chapter for the following:

(A) Surface mining operations, including prospecting and exploration, so long as the mined lands do not exceed one (1) acre in extent and the total amount of material, including overburden, displaced does not exceed a cumulative total of one thousand (1,000) cubic yards. For the purpose of determining the area subject to this exemption, large ownerships may have more than one (1) mined land where different mined lands may be entitled to separate exemptions if they have clearly separate and distinct locations and characteristics such as the type of the principal mineral commodities, overburden, topography, geology, climate, viewshed, airshed, watershed, stream characteristics and access routes.

(B) Excavation or grading conducted for farming, forest management or timber harvesting operations where the excavated material is not removed from the property (ownership). Activities may include grading, re-contouring, tilling, cultivating, and construction and maintenance of roads, ponds drainage improvements and similar features commonly associated with agricultural and timber uses. The exemption for forest management/timber harvesting activities shall only apply where such activities are conducted in connection with a State approved Timber Harvest Plan, State approved Timber Management Plan or other timber related activity where slope stability, erosion and site closure are controlled in consultation with the California Department of Forestry and Fire Protection, and shall not apply to any excavation or grading which occurs within one hundred (100) feet of a Class One watercourse, seventy-five (75) feet of a Class Two watercourse, or twenty-five (25) feet of a Class Three watercourse. Gravel extraction from stream channels where materials are removed from the floodway shall not exceed the limits specified in Section 22.16.040 (A) above.

(C) On-site excavation and on-site earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, grading, landscaping, or related land improvements must be obtained in accordance with applicable provisions of State law and County adopted plans and ordinances, including, but not limited to the California Environmental Quality Act (CEQA).

(2) The County's approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.

(3) The approved construction project is consistent with the General Plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(D) Operation of a plant site used for mineral processing, including associated on-site structures, equipment, machines, tools, or other materials, including the on-site



stockpiling and on-site recovery of mined materials, subject to all of the following conditions:

- (1) The plant site is located on lands designated for industrial uses in the General Plan.
  - (2) The plant site is located on lands zoned industrial.
  - (3) None of the minerals being processed are being extracted on-site.
  - (4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred on-site after January 1, 1976.
  - (E) Excavation or grading for the purpose of restoring land following a flood or natural disaster. Gravel extraction from stream channels shall not exceed the limits specified in Section 22.16.040(A).
  - (F) Surface mining operations and emergency excavations and grading conducted by the California Department of Water Resources or the Reclamation Board as specified in Public Resources Code Sections 2714(h) and (i).
  - (G) Surface mining operations that are required by Federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.
  - (H) Such other surface mining operations which the State Mining and Geology Board determines to be of an infrequent nature, and which involve only minor surface disturbances.
  - (I) An exemption under this Ordinance does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the County, including but not limited to the application of CEQA (Public Resources Code Sections 21000 et. seq.), the requirement of use permits, grading permits, or other permits, or the imposition of monitoring fees or exactions as may be permitted by law.
  - (J) Any person desiring a determination of exemption from this Chapter may request such a written determination by submitting a complete written description of the proposed project or activity and its location together with a filing fee to the Department of Planning and Building Services.
- (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.050 Definitions.**

Unless the context otherwise requires, the definitions set forth in this Section shall govern the administration of this Chapter.

- (1) "Abandon" or "abandonment" means to cease surface mining prior to completion of required reclamation, or to cease surface mining whether or not actual reclamation has commenced, or both. Unless review of an interim management plan is pending before the Department of Planning and Building Services, or an appeal is pending, a surface mining operation which remains idle for over one (1) year after becoming idle as defined in PRC Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned.
- (2) "Area of regional significance" means an area designated by the State Mining and Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land

uses, could result in the permanent loss of minerals that are of more than local significance.

(3) "Area of statewide significance" means an area designated by the State Mining and Geology Board pursuant to Public Resources Code 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the State and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

(4) "Aggradation" means the natural filling of the bed of a water course by deposition of detritus carried by flowing water. This is often accompanied by channel widening.

(5) "Bedload" or "sediment discharged as bedload" means both the sediment that moves along in continuous contact with the streambed and the material that bounces along the bed in short skips.

(6) "Berm" means an elongated earthen structure which acts as a barrier, to make it difficult for a vehicle to cross, or to redirect the flow of water.

(7) "Bench" means a relatively level step excavated into earth material on which fill is to be placed.

(8) "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et. seq.

(9) "Compatible land use" means land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

(10) "County" means the County of Mendocino, State of California.

(11) "Degradation" means the removal or under supply of streambed material through erosion and transportation by flowing water. This is often accompanied by narrowing and deepening of the channel.

(12) "Director" means the Director of the Mendocino County Department of Planning and Building Services or his designee.

(13) "Excavation" means the mechanical removal of earth material.

(14) "Farming" means the management and/or cultivation of land for the production of crops and livestock.

(15) "Financial assurance" means an assurance that a surface mining operation will be reclaimed in accordance with the approved reclamation plan. The financial assurance may take the form of surety bonds, trust funds, irrevocable letters of credit or other financial assurance mechanisms acceptable to both the County and the State Mining and Geology Board (SMGB).

(16) "Gravel extraction operations" means all or any part of the process involved in the removal by any method of sand, gravel, rock, or other earthen material from streambeds or stream channel bars normally subject to inundation during winter flows. Gravel extraction operations shall include but are not limited to:

(a) Onsite processing of extracted material, including screening, washing, crushing, stockpiling or batching;

(b) The production and disposal of mining waste;

- (c) Prospecting and exploratory activities.
- (17) "Highwall" means the unexcavated face of exposed overburden and ore in a surface mine.
- (18) "Indigenous plants" means plants occurring naturally in an area, not introduced.
- (19) "Incompatible land use" means land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial and commercial.
- (20) "Idle" means to curtail for a period of one (1) year or more surface mining operations by more than ninety percent (90%) of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.
- (21) "Lead agency" means the County of Mendocino which has the primary responsibility for enforcing SMARA.
- (22) "Mined lands" means the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.
- (23) "Mineral" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum. For the purpose of this Chapter, minerals shall also include, but not limited to sand, gravel, aggregate, decorative stone, shale and rip-rap.
- (24) "Mining waste" means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.
- (25) "Minor modification" means an amendment to a reclamation plan involving insignificant changes and does not require review under CEQA.
- (26) "Native plant species" means plant species indigenous to California, using pre-European as the historic time reference.
- (27) "OMR" means the Office of Mine Reclamation in the Department of Conservation, State of California.
- (28) "On-site construction" means the construction of buildings, roads or other improvements including landscaping, excavation and grading required to prepare a site for construction of structures, landscaping or other land improvements, and which is beneficially modified by such construction, is not deemed to be a surface mining operation. Additionally, all required permits for the construction, landscaping, or related land improvements must be obtained from the County in accordance with applicable provisions of State law and locally adopted plans and ordinances.
- (29) "Operator" means any person who is engaged in surface mining operations himself or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole

compensation. Operator also means any person who permits others to conduct surface mining operations on his or her property and who receives a financial benefit therefrom.

(30) "Overburden" means soil, rock or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

(31) "Person" means any individual, firm, association, corporation, organization, or partnership, or any city, county, district or state or any department or agency thereof.

(32) "Permit" means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

(33) "PRC" means the Public Resources Code.

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

(35) "Replenishment" means the volume of material brought into and deposited in the channel of a given reach of stream in a given time period through bedload movement, stream bank erosion, landslides, slumps, or sheet and gully erosion. This volume is in addition to the volume deposited in the previous time period.

(36) "Riparian vegetation" means vegetation situated on the bank of a stream, river, or other body of water.

(37) "SMARA" means the Surface Mining and Reclamation Act of 1975 and subsequent amendments, Public Resources Code Section 2710 et. seq.

(38) "Sediment" means material, both mineral and organic, that is transported by, suspended in, or deposited by water, air, ice, gravity, organisms, or combinations thereof.

(39) "State Board" means the State Mining and Geology Board in the Department of Conservation, State of California.

(40) "Streambed skimming" means the excavation of sand and gravel from streambed deposits above the mean summer water level or thalweg, whichever is higher. (Also often referred to as "gravel bar skimming.")

(41) "Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine.

Surface mining operations shall include, but are not limited to:

- (a) In place distillation or retorting or leaching;
- (b) The production and disposal of mining waste;
- (c) Prospecting and exploratory activities;
- (d) Gravel extraction operations;
- (e) Borrow pits;
- (f) Segregation and stockpiling of mined materials (and recovery of same).

(42) "Suspended sediment" means sediment that is moved in suspension in water and is maintained in suspension by the upward components of turbulent currents or by colloidal suspension.

(43) "Terrace" means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

(44) "Thalweg" means the imaginary line joining the deepest points of a stream channel (stream bottom).

(45) "Topsoil" means the upper part of the soil profile that is relatively rich in humus, which is typically known as the "A-horizon" of the soil profile.

(46) "Turbidity" means a condition where water is cloudy or muddy due to the presence of suspended matter such as clay, silt, finely divided organic and inorganic matter, plankton, and other microscopic organisms.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.060 Permit and Reclamation Plan Required.**

Except as specified in Section 22.16.040 and Section 22.16.150, no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the Planning Commission for such operation pursuant to this Article. Although a use permit is not required for vested operations, regardless of vesting status, all surface mines shall have an approved reclamation plan. A use permit shall be required for the expansion of a mining operation beyond the boundaries of the vested area. As part of the use permit and reclamation plan process, the Planning Commission shall hold a minimum of one (1) public hearing.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.070 Permit Operational Standards.**

In addition to meeting the minimum acceptable surface mining and reclamation practices in the Act and policy guidelines, each surface mining operation requiring a permit shall be conducted and designed to meet the following operational standards. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards.

(A) Access Roads. All private access approaches leading off any paved public street onto a mining site shall be adequately surfaced to prevent aggregate or other materials being drawn onto the public right-of-way.

(B) Dust Suppression. All haul roads and driveways shall be maintained as necessary to minimize the emission of dust. Maintenance shall be conducted as necessary to prevent a nuisance to adjacent properties. Special maintenance procedures (watering, or other acceptable dust palliative, etc.) may be placed on the permit.

(C) Driveway Encroachment Permit. If required, a Driveway Encroachment Permit issued by the Mendocino County Department of Transportation shall be a condition of the mining permit.

(D) Any waters discharged from the site to adjacent lands, streams, or bodies of water or to any groundwater body shall meet all applicable water quality standards of the Regional Water Quality Control Board and any other agency with authority over such discharges.

Records of any water quality monitoring conducted in conjunction with the requirements of such agency or agencies shall be made available to the Director on request. Discharges of water to designated on-site settling ponds or desilting basins shall not be deemed to be in violation of this part solely on the basis of sediment content.

(E) During the period mining operations are being conducted, and prior to final reclamation of mined lands, measures shall be taken to prevent erosion of adjacent lands from waters discharged from the site of mining operations and the off-site discharge of sediment. Such measures may include the construction of properly designed retarding basins, settling ponds and other water treatment facilities, ditches, diking and revegetation of slopes. Settling ponds and other water treatment facilities shall be located and managed so that accumulated sediment will not enter any stream.

(F) Grades in areas being mined shall be maintained so as to avoid accumulations of water that could serve as breeding areas for mosquitoes or as sites of fish entrapment.

(G) Excavations which may penetrate near or into usable water bearing stratas shall not substantially reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such groundwater basin or subbasin to pollution or contamination.

(H) Permits issued for surface mining operations proposed to be conducted between the banks of a stream may include as conditions any measures or conditions imposed by other agencies of jurisdiction, for example, but not limited to, the Department of Fish and Game, the National Marine Fisheries Service, the North Coast Regional Water Quality Control Board, and the Army Corps of Engineers. Copies of conditions imposed by such agencies shall be on file with the Department of Planning and Building Services before any permit issued by Mendocino County shall be deemed to be in effect.

(I) All operators of mining operations requiring mining permits and/or reclamation plan approvals shall annually supply to the Director no later than June 1st of each year an annual report which identifies the quantities and types of materials displaced, processed, stockpiled and hauled off-site.

(J) Noise levels created by the operation as measured at the nearest residence other than that of the mine owner or operator shall not exceed the following:

(1) Sixty-five (65) dB(A) for a cumulative period more than thirty (30) minutes in any hour;

(2) Seventy (70) dB(A) for a cumulative period more than twelve (12) minutes in any hour;

(3) Seventy-five (75) dB(A) for a cumulative period more than three (3) minutes in any hour;

(4) Eighty (80) dB(A) for a cumulative period more than one (1) minute in any hour;

(5) Eighty-five (85) dB(A) at any moment;

(6) More stringent noise standards may be required as permit conditions when particular local circumstances warrant additional protection of potentially affected residences.

Any noise control measures prescribed by the lead agency as a condition of a permit shall in no manner be interpreted as to preclude the application to the surface mining site of future noise control measures adopted by the County subsequent to the granting of the permit.

(K) Any permit which is not used within two (2) years from the effective date thereof shall be null and void. For the purpose of this Section, the requirement that the permit be

used shall be met either by the beginning of a substantial surface mining operation in accordance with the approved mining plan, or by demonstrating that the permittee has incurred substantial expense in an attempt to secure required permits at the State or Federal level, but that, despite due diligence, the permits have not yet been issued, and that it is probable that they will be issued within an additional eighteen (18) months from the expiration of the two (2) year period.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.080 Reclamation Plan Form and Content.**

The reclamation plan shall comply with the provisions of the Surface Mining and Reclamation Act and State Mining Board Reclamation Regulations.

The reclamation plan shall be filed with the Department of Planning and Building Services on a form provided by the County, by any person who owns, leases, or otherwise controls or operates on all, or any portion of, any mined lands, and who plans to conduct surface mining operations thereon. The reclamation plan shall be signed by the applicant and either the principal mining engineer or some other qualified person responsible for drawing up the plans who is acceptable to the Director. For projects exceeding a cumulative total extraction of five thousand (5,000) cubic yards of material, the reclamation plan shall be prepared by a qualified engineer or geotechnical consulting firm or other qualified person acceptable to the Director. The reclamation plan shall include the following information:

- (A) Name and address of the applicant;
- (B) Name and address of the property owner or owner of surface rights;
- (C) Name and address of owner of mineral rights;
- (D) Name and address of lessee;
- (E) Name and address of operator;
- (F) Name and address of person designated by operator as his agent for the service of process;
- (G) Assessor's parcel number(s);
- (H) Legal description of the subject property;
- (I) Site development plan drawn at a scale specified by the Director, which includes the following information:
  - (1) Property boundary lines and dimensions,
  - (2) Areas proposed for development,
  - (3) Location of proposed buildings and structures,
  - (4) Parking and vehicle maneuvering areas,
  - (5) Method of vehicular access,
  - (6) Location of any existing or proposed roads, streams, railroads, water lines, other pipelines, utility facilities, easements, and any existing buildings, structures, or major areas of use for the property being considered,
  - (7) Height, type, and location of fencing,
  - (8) Such additional information as may be deemed necessary to permit adequate consideration of the proposal,
  - (9) Aerial photograph of the project site;

- (J) A vicinity map showing all proposed access routes and a statement as to the method proposed for transporting mined materials from the site;
- (K) A sufficient number of cross-sections of the area to show existing grades and proposed finished grades after all surface mining has been completed shall be provided; such cross-sections shall be drawn to an engineer's scale that is practical and workable;
- (L) The anticipated quantity and type of minerals, including the amounts of over burden and waste for which the surface mining operation is to be conducted;
- (M) The proposed dates for the initiation and termination of such operation;
- (N) The maximum anticipated depth of the surface mining operation;
- (O) Proposed plans shall include a reclamation phasing schedule where appropriate, which is consistent with the phasing of the mining operation. Reclamation shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation measures may also be required for areas that have been disturbed and will be disturbed again in future operations. The phasing schedule shall include the following minimum components:
  - (1) The beginning and expected ending dates for each phase,
  - (2) A clear description of all reclamation activities,
  - (3) Criteria for measuring completion of each specific activity,
  - (4) Estimated costs for each phase of reclamation as described in Section 22.16.080(T);
- (P) A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses;
- (Q) A description of the manner in which reclamation, adequate for the proposed use or potential uses, will be accomplished, including:
  - (1) A description of the manner in which contaminants will be controlled and mining waste will be disposed, and
  - (2) A description of the manner in which affected streambed channels and streambanks will be protected and/or rehabilitated to a condition minimizing erosion and sedimentation,
  - (3) A description of existing wildlife habitat and a plan to ensure that habitat conditions which exist are maintained or improved in the course of reclamation, unless the proposed end use precludes its use as wildlife habitat,
  - (4) A description of the manner in which backfilling, regrading, slope stabilization, scarification, ripping, and recontouring will occur,
  - (5) A description of existing soil types and vegetation, and the manner in which topsoil will be salvaged and the manner in which the site will be revegetated,
  - (6) A description of any existing topographical features that will be significantly altered as a result of mining activity,
  - (7) A description of the manner in which existing site drainage patterns will be disturbed through mining activity and a description of drainage patterns that are expected after site reclamation,
  - (8) A description of the manner in which all buildings, structures and equipment will be removed, including any previously abandoned structures or equipment,
  - (9) A description of the necessity for and the manner in which post reclamation monitoring will occur,



- (10) An assessment of the effect of implementation of the reclamation plan on future mining in the area,
  - (11) An assessment of the impact of the project on the public health and safety, including discussion of the degree and type of present and probably future exposure of the public to the project site;
  - (R) A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan;
  - (S) The reclamation plan shall, to the extent feasible, provide for the protection and reclamation of the visual resources of the area affected by the mining operation. Measures may include, but not be limited to, resoiling, recontouring of the land to be compatible with the surrounding natural topography, and revegetation and the end use of uses specified by the landowner. Where the mining operation requires the leveling, cutting, removal, or other alteration of ridgelines on slopes of twenty percent (20%) or more, the reclamation plan shall ensure that such mined areas are found compatible with the surrounding natural topography and other resources of the site;
  - (T) A detailed line item cost breakdown estimating all reclamation costs, including, but not limited to:
    - (1) Costs of backfilling, regrading, slope stabilization, and recontouring,
    - (2) Costs of revegetation and wildlife habitat replacement,
    - (3) Costs of final engineering design,
    - (4) Costs of labor, including supervision,
    - (5) Costs of mobilization,
    - (6) Costs of equipment,
    - (7) Costs of removal of buildings, structures, and equipment,
    - (8) Costs associated with reduction of specific hazards, such as: heap leaching facilities, chemical processing ponds, soil decontaminations, in-water slopes, highwalls, landslides, subsidence, or other mass ground failure,
    - (9) Costs of drainage and erosion control measures,
    - (10) Costs of soil tests,
    - (11) Costs of haul road ripping and reseeding,
    - (12) Costs of fencing,
    - (13) Costs of liability insurance,
    - (14) Costs of long-term stabilization, control, containment of waste solids and liquids;
  - (U) A statement from a California registered professional engineer, geologist, engineering geologist, forester, or other professional acceptable to the Director, which states that the estimated costs of reclamation have been reviewed and found to be sufficient by that professional;
  - (V) Any other information determined by the Director or the State Mining and Geology Board to be necessary for consideration of the reclamation plan.
- (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.090 Reclamation Standards.**

Surface mining operations shall comply with the requirements of the California Surface Mining and Reclamation Act, the State Policy for Surface Mining and Reclamation Practice, and any standards or procedures adopted by the Board of Supervisors to

implement the Act, State policy, or this Chapter. Properties used for surface mining operations shall be reclaimed after the operation, or an approved phase of the operation, has been completed in accordance with the following minimum development standards:

(A) Reclamation shall in all cases be completed within the time schedule set forth in the approved reclamation plan. In all cases reclamation shall commence not later than twelve (12) months following termination of the excavation operation or approved phase.

However, the operator is required to proceed as soon as practicable and may be required to progressively rehabilitate the site as the excavation operation or approved phase is completed.

(B) Final reclaimed slopes, abandoned spoil piles and the entire mining site shall be graded and smoothed as necessary so as to control erosion, prevent the creation of potentially dangerous areas and present a natural appearance.

The grades of final reclaimed slopes shall be no steeper than two (2) horizontal to one (1) vertical unless a steeper angle of repose is recommended as safe and self-supporting by a registered Civil Engineer qualified in the field of soils engineering and soil mechanics.

Fill slopes flatter than 2:1 will generally be acceptable. Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed a slope greater than 2:1 (horizontal:vertical) without a geological engineering analysis of stability. In pits, slopes below the minimum water level shall be no steeper than the natural angle of repose.

(C) Resoiling, when required, shall be accomplished in the following manner: coarse, hard material shall be graded and covered with a layer of finer material or weathered waste and a soil layer then placed on this prepared surface where practical. Where quantities of available soils are inadequate to provide cover, native materials should be upgraded to the extent feasible for this purpose.

(D) All permanently exposed lands that have been denuded by mining operations shall be revegetated unless any such revegetation is determined by the lead agency to be technically infeasible or not beneficial with respect to the intent of this Section.

Revegetation methods and plant materials utilized shall be appropriate for the topographical, soil and climatic conditions present at the site and designed to meet the requirements of the ultimate land use as specified in the reclamation plan. Native species shall be used wherever practical.

(E) Where mining will occur between the banks of a watercourse, streambed channels and streambanks affected by the operation shall be rehabilitated annually prior to seasonal high water so as to minimize erosion and sedimentation and so as to minimize undermining or damage to off-site public or private property, improvements or structures.

(F) Reclamation plans shall make provisions to ensure that the mining site is left in a final condition after operations are complete, that is:

(1) Safe with stable waste piles, cut slopes, fill slopes and with the elimination of steep-sided pits and holes;

(2) Free of derelict machinery, waste materials, mining waste and scrap;

(3) Revegetated where necessary for soil stabilization;

(4) Free of drainage problems;

(5) Free of toxic substances in fill material;

(6) Coordinated with present and potential future land use, topography and the general environment of surrounding property.

- (G) Unless a water-filled excavation is recognized in the reclamation plan as an integral part of future development or use of the property, all excavations made to a level below the highest seasonal ground water table shall be filled with inert materials to a level above the highest seasonal ground water table and with slopes less than the critical gradient.
- (H) Regrading and revegetation shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage, and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes, sites of fish entrapment, or threats to public safety.
- (I) Silt basins which will store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlets to lower ground.
- (J) Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations.
- (K) Upon reclamation, no condition shall remain which will or could lead to the degradation of water quality below applicable standards of the Regional Water Quality Control Board or any other agency with authority over water quality.
- (L) Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plan shall provide for the compaction of fill materials in conformance with good engineering practice and with the standards contained in the Uniform Building Code (UBC).
- (M) The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.
- (N) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.
- (O) Operations shall be conducted to substantially prevent siltation of groundwater recharge areas.
- (P) All reasonable measures shall be taken to protect the habitat of fish and wildlife.
- (Q) Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.
- (R) Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage.
- (S) When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan or where such measures appear necessary as determined by the Director or the Natural Resources Conservation Service. It shall not be permissible to denude adjacent areas of their soil to achieve this purpose.
- (T) Revegetation methods and the selection of species shall be suitable for the topographical, resoiling characteristics, and climate of the mined areas and shall be reviewed and approved by the Director or the Natural Resources Conservation Service.
- (U) Surface mining operations shall be consistent with the goals and policies of the Mendocino County General Plan.
- (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.100 Application of Plan to Specific Site.**

The reclamation plan shall be applicable to a specific piece of property or properties, and shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.110 Idle Mines.**

(A) Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit to the Department of Planning and Building Services, for review and approval, an interim management plan which shall not be considered a project within the meaning of the California Environmental Quality Act (CEQA).

(B) The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this Chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this Chapter, including, but not limited to, all permit conditions.

(C) Prior to County approval, interim management plans shall be submitted for review to the Department of Conservation for a thirty (30) day review period.

(D) The Director may approve an interim management plan without a public notice or public hearing if the Director determines that the interim management plan does not require significant changes to the reclamation plan. The decision of the Director shall be appealable to the Planning Commission within ten (10) calendar days of the decision. The decision of the Planning Commission shall be appealable to the Board of Supervisors with ten (10) calendar days of the decision. Appeals must be in writing together with the appropriate appeal fee.

(E) The interim management plan may remain in effect for a period not to exceed five (5) years, at which time the Director shall do one (1) of the following:

(1) Renew the interim management plan for another period not to exceed five (5) years, if the Director finds that the surface mining operator has complied fully with the interim management plan;

(2) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

(F) In any event, financial assurances required shall remain in effect during the period the surface mining operation is idle. If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(G) Within sixty (60) days of the receipt of the interim management plan or a longer period mutually agreed upon by the County and the operator, the County shall review and approve the plan in accordance with this Chapter and so notify the operator in writing of any deficiencies in the plan. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the County, to submit a revised plan.

(H) The Director shall approve or deny approval of the revised interim management plan within sixty (60) days of receipt. If the Director denies approval of the revised interim management plan, the operator may appeal the action to the Planning Commission within ten (10) calendar days of the decision. The action of the Planning Commission may be appealed to the Board of Supervisors within ten (10) calendar days of said action. Appeals must be in writing together with the appropriate appeal fee.

(I) Unless review of an interim management plan is pending before the Director, or an appeal is pending before the Planning Commission, a surface mining operation which remains idle for over one (1) year after becoming idle as defined in this Chapter without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plans.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.120 Financial Assurances.**

(A) Financial assurances are required to secure performance of the reclamation plan approved for each surface mining operation to which this Chapter applies and shall be sufficient to perform reclamation of lands remaining disturbed. Financial assurances determined to substantially meet these requirements shall be approved by the County of Mendocino for purposes of this Chapter.

(B) The County of Mendocino shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State Mining and Geology Board pursuant to Public Resources Code Section 2773.1(e), which the County reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one (1) year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the County of Mendocino and the Department of Conservation. Financial assurances that were approved by the County prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the Department of Conservation for purposes of this Chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the County, the County shall deem those financial assurances adequate for purposes of this Section, or shall credit them toward fulfillment of the financial assurances required by this Section, if they are made payable to the public agency, the County of Mendocino, and the Department of Conservation and otherwise meet the requirements of this Section. In any event, if the County and one (1) or more public agencies exercise jurisdiction over a surface mining operation, the total amount of

financial assurances required by the County and the public agencies for any one (1) year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(5) Estimates for financial assurances shall include descriptions of the tasks to be performed, identification of equipment, labor and materials requirements, definition of units costs, total cost per task, total direct cost of reclamation, and administrative costs including costs of supervision, profit and overhead, contingencies and mobilization. Additional required information may include a site plan showing the present limits of the disturbed area to be reclaimed, and other information necessary to verify the estimate. In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, that the County or State may need to contract with a third-party commercial company for reclamation of the site.

(C) Financial assurances determined not to substantially meet the requirements of Public Resources Code Section 2773.1 shall be returned to the operator within sixty (60) days. The operator has sixty (60) days to revise the financial assurances to address identified deficiencies, at which time the revised financial assurances shall be returned to the County for review and approval.

(D) Prior to County approval, financial assurances shall be forwarded to the Department of Conservation pursuant to Section 22.16.130.

(E) The decision to approve financial assurance estimates and mechanisms shall be made by the Director. The financial assurance estimates shall be based on an approved reclamation plan. No public notice or public hearing is required. The decision to approve financial assurance estimates and mechanisms is not subject to CEQA. The Director shall notify the affected party (mine owner/operator) in writing within ten (10) days of his determination. The Director's decision is appealable to the Planning Commission within ten (10) calendar days of the decision. The decision of the Planning Commission is appealable to the Board of Supervisors within ten (10) calendar days of the decision. Appeals must be in writing together with the appropriate appeal fee.

(F) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the County, which shall be forwarded to the operator and the Director of the Department of Conservation, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances are secured from the new owner and have been approved by the County in accordance with Section 2770.

(G) If the County of Mendocino, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, the Director shall do all of the following:

(1) Notify the operator by certified mail that the County intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator sixty (60) days to commence or cause the commencement or reclamation in accordance with its approved reclamation plan and require that

reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the County and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with Section 20.16.120(G)(2), above.

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(Ord. No. 4031 (part), adopted 1999.)

**Sec. 22.16.130 Review of Reclamation Plans, Interim Management Plans, Financial Assurances and Amendments.**

- (A) The procedures established in the Mendocino County Code for the issuance, modification, enforcement of conditions, and revocation of a use permit, including the requirements for public hearings, shall be followed for the review, approval and administration of a reclamation plan and/or the issuance and administration of a permit. Fees as established by the Board of Supervisors shall be paid at the time of filing.
- (B) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the County, or any amendments, the County shall submit the plan, assurances, or amendments to the Director of the Department of Conservation for review.
- (C) The Director of the Department of Conservation shall have thirty (30) days to prepare written comments, if the Director of the Department of Conservation so chooses. The County shall evaluate written comments received from the Director of the Department of Conservation during the thirty (30) day comment period. The County shall prepare a written response describing the disposition of the major issues raised. In particular, when the County's position is at variance with the recommendations and objections raised in the Director of the Department of Conservation's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the County shall be forwarded to the operator.
- (D) The County shall notify the Director of the Department of Conservation of the filing of an application for a permit to conduct surface mining operations within thirty (30) days of such an application being filed (and determined complete) with the County. By July 1st of each year, the County shall submit to the Director of the Department of Conservation for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the Director of the Department of Conservation the information required under this Section shall be cause for action under PRC Section 2774.4.
- (E) Whenever surface mining operations are proposed in the one hundred year (100-year) flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA), and within one (1) mile,

upstream or downstream, of any State highway bridge, the County shall notify the California Department of Transportation (Caltrans) which shall have a period of not more than forty-five (45) days to review and comment on the proposed surface mining operations with respect to any potential damage to the State highway bridge from the proposed surface mining operations. The County shall not issue or renew the permit until Caltrans has submitted its comments or until forty-five (45) days from the date the application for the permit was submitted, whichever occurs first.  
(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.140 Annual Inspections and Reports.**

(A) As a condition of approval of the permit and reclamation plan, a schedule for annual inspections of the site shall be established to evaluate continuing compliance with the permit and reclamation plan.

(B) Surface mining operators shall forward an annual status report to the Director of the Department of Conservation and to the County on a date established by the Director of the Department of Conservation (no later than July 1st of each year) upon forms furnished by the State Mining and Geology Board.

(C) The Department of Planning and Building Services shall conduct an inspection of a surface mining operation within six (6) months of receipt by the Department of Planning and Building Services of the surface mining operation's report submitted pursuant to Subsection 22.16.140(B) above, solely to determine whether the surface mining operation is in compliance with this Chapter. In no event shall the Department of Planning and Building Services inspect a surface mining operation less than once in any calendar year.

(D) All inspections shall be conducted using a form developed by the Department of Conservation and approved by the State Mining and Geology Board. The operator shall be solely responsible for the reasonable cost of the inspection.

(E) The Department of Planning and Building Services shall notify the Department of Conservation within thirty (30) days of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mine's compliance with this Chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operation, if any, are inconsistent with this Chapter.

(F) If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending, or an appeal pending before the State Mining and Geology Board, the Mendocino County Planning Commission or the Mendocino County Board of Supervisors, the notice shall so indicate.

(G) The Department of Planning and Building Services shall forward to the operator a copy of the notice and any supporting documentation, including, without limitation, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(Ord. No. 4031 (part), adopted 1999.)



**Sec. 22.16.150 Vested Mines--Reclamation Plan, Financial Assurances, and Inspections Required.**

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

(B) Nothing in this Chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were completed prior to January 1, 1976.

(C) A person who has a vested right to conduct surface mining operations prior to January 1, 1976, shall as a condition of commencing or continuing his operation shall have had submitted on or before March 31, 1988, to the Department of Planning and Building Services for approval by the Planning and Building Services Director, and had an approved reclamation plan by July 1, 1990, or be on appeal to the State Mining and Geology Board. Those operations which did not receive a vesting status by July 1, 1990, shall have ceased operations on July 1, 1990. The reclamation plan shall contain the same provisions for financial assurances and inspections as those required for non-vested mines.

Any mine without an interim management plan for more than one (1) year after becoming idle is considered abandoned and a vesting status shall not be granted to such site/operation.

(Ord. No. 4031 (part), adopted 1999.)

**Sec. 22.16.160 Amendments.**

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan, as determined by the Director, shall not be undertaken until such amendment has been filed with, and approved by the Planning Commission.

(Ord. No. 4031 (part), adopted 1999.)

**Sec. 22.16.170 Minor Reclamation Plan Modifications.**

(A) The Director may review and approve minor plan modifications to approved reclamation plans without public notice or consultation with the Department of Conservation. A minor modification to a reclamation plan may be approved only if it meets the following standards:

- (1) To allow the minor recontouring of final topography affecting no more than ten percent (10%) of the site, provided that slope stability is maintained and documentation provided;
  - (2) To allow minor modifications to existing on-site roads and encroachments directly from the site to a public road, but not including new off-site roads;
  - (3) To allow a minor substitution in the reclamation plan such as a substitution in the type and/or number of plant species, minor change in topsoil treatment, etc., provided it does not substantially alter the intended end-use described in the approved reclamation plan;
  - (4) To allow minor technological or administrative changes in methods used to achieve reclamation;
  - (5) To allow measures to be taken which will ensure or maintain public safety (e.g., fences, gates, signs, or hazard removal), provided such measures do not substantially alter the intended end-use described in the approved reclamation plan;
  - (6) To allow minor modifications to a previously approved phasing plan;
  - (7) To allow compliance with the requirements of other public agencies, provided the requirements are not inconsistent with the approved conditional use permit;
  - (8) A minor modification shall not include changing the end use of the land.
- (B) Applications for a minor modification shall be made on a form provided by and filed with the Department of Planning and Building Services, together with the appropriate filing fee.
- (C) Prior to approval of a minor modification, the Director shall make the following written findings which shall include the reasons for the findings:
- (1) The minor modification is consistent with the approved conditional use permit and does not represent a significant change to the approved reclamation plan for the subject surface mining operations.
  - (2) The minor modification is not subject to CEQA.
- (D) The Director shall approve, conditionally approve, or disapprove an application for a minor modification within forty-five (45) days to accepting the application as complete, and give notice by mail of the decision, including any conditions of approval, to the applicant and any interested parties that have formally requested such notice in writing.
- (E) The decision of the Director regarding a minor modification of a Conditional Use Permit shall be appealable to the Planning Commission within ten (10) days of said decision. The decision of the Planning Commission regarding the appeal shall be appealable to the Board of Supervisors within ten (10) calendar days of said decision. Appeals must be in writing together with the appropriate appeal fee.
- (F) Within thirty (30) days of final action, the Director shall send a copy of an approved minor modification to the Department of Conservation.
- (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.180 Transferability.**

- (A) Whenever one (1) operator succeeds to the interest of another in any incompleting surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this Chapter. Operations authorized by a permit shall be conducted

only by the operator named in the permit or by his authorized agent unless a new operator is designated in writing by the land owner to the Department of Planning and Building Services.

(B) Financial assurances provided by the operator's successor to the County and the Department of Conservation shall have been approved, and the financial assurance mechanism shall be in place prior to the continuation of surface mining operations. (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.190 Public Records.**

Reclamation plans, reports, applications, and other documents submitted pursuant to this Chapter are public records, unless it can be demonstrated to the satisfaction of the Director that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The Director shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the Department of Conservation and to persons authorized in writing by the operator and by the owner. (Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.200 Enforcement.**

(A) If, after conducting the inspections required by Section 22.16.140, other inspections that may be undertaken, or upon the receipt of a verified complaint by any interested person, the Director finds that the mining operation is not in substantial compliance with this Chapter, the surface mining permit issued, the reclamation plan, or the provisions of SMARA, the operator and owner shall each be sent a Notice of Violation, and given a reasonable time to substantially comply, not to exceed thirty (30) days.

(B) If the violation continues beyond thirty (30) days after the date of issuance of the Notice of Violation, the Director may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities.

(C) The permittee may appeal the determination of the Director to the Planning Commission if the appeal is filed in accordance with Chapter 20.208 of the Mendocino County Code within ten (10) days of receipt of the initial notice of violation. If not appealed, the decision of the Director shall be final. The decision of the Planning Commission may be appealed within ten (10) days to the Board of Supervisors.

(D) Any operator who fails to comply with an order issued by the Director after the order's effective date, or who fails to submit a report to the Director of the Department of Conservation or the County as required by PRC Section 2207, shall be subject to an order by the Director imposing an administrative penalty of not more than Five Thousand Dollars (\$5,000) per day, assessed from the original date of the Director's Notice of Violation or non-compliance with PRC Section 2207. County and Department of Conservation penalties shall not exceed Five Thousand Dollars (\$5,000) per day by each agency.

(E) In determining the amount of the administrative penalty, the Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations,

any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator appeals to the Board of Supervisors for review of the order.

(F) If the operator appeals to the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by certified mail when the matter has been set for public hearing. The Board of Supervisors may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisors' order shall be made to the County within thirty (30) days of service of the order.

(Ord. No. 4031 (part), adopted 1999.)

#### **Sec. 22.16.210 Fees.**

The County shall establish such fees as it deems necessary to cover the reasonable direct costs incurred in implementing this Chapter and the applicable State laws, including, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator of the surface mining operation as required by the County at the time of filing of the reclamation plan application, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the mine operators.

(Ord. No. 4031 (part), adopted 1999.)

**F. MINERAL RESOURCES****8.1 OVERVIEW****LEGAL BASIS AND REQUIREMENTS**

Government Code Section 65302(d) mandates a conservation element for the conservation, development, and utilization of natural resources, including minerals. Section 65302(e) mandates an open space element providing "open-space for the managed production of resources including areas containing major mineral deposits, including those in short supply."

**8.2 PURPOSE AND METHODOLOGY**

Research for this portion of the Background Report was compiled by interviewing County staff and through a review of existing documents, including the existing General Plan and surface mining project files. As used herein, "permitted" means a quarry or instream gravel mining project that obtained County approval; "active" means a permitted mining project that is ongoing; and "expired" means a mining project whose permit expired and the site has not been reclaimed.

**8.3 EXISTING SETTING****MINERAL AND AGGREGATE RESOURCES**

Minerals play an important role in the economy of Mendocino County. Unlike some other natural resources, minerals are essentially non-renewable. A variety of minerals resources are known to exist in the County as shown in [Figure 8F-1](#).<sup>1</sup> However, the most predominant of the minerals found in Mendocino County are aggregate resource minerals, primarily sand and gravel, found along many rivers and streams. Aggregate hard rock quarry mines are also found throughout the County. There were 29 permitted commercial extraction operations located throughout the County as of 2002 ([Figure 8F-1](#)).

Three sources of aggregate materials are present in Mendocino County: quarries, instream gravel, and terrace gravel deposits. The viability of different sources for any use depends primarily on the properties of the rock itself and the processing required to prepare the rock. For most aggregate uses, rock from each of these sources requires varying amounts of processing. Depending on the site, the processing operations may include site preparation, removal of overburden, blasting, excavation, crushing, screening, classifying, washing, and product batching. Additional processing operations used less frequently are those necessary to develop specialty products and remove various deleterious substances.

The demand for aggregate is typically related to the size of the population, although production may fluctuate from year to year in response to major construction projects. During the post-World War II period a major portion of the aggregate mined in the County went to highway construction. After the completion of State Route 101 in the late 1960s, the bulk of aggregate production and use shifted primarily to residential and related construction. However, since 1990, use has begun to shift back toward highway construction, as portions of State Route 101 are widened to four lanes and by-passes constructed, primarily in the southern portion of the County. In Mendocino County, State highways and

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<sup>1</sup> Mendocino County General Plan, 1981 and Kleinfelder Associates, 2002.

60 to 70 percent of County roads are surfaced with asphalt concrete (AC). Portland Cement is generally used to construct curbs, sidewalks, driveways, bus parking areas, and drainage facilities.

#### COUNTY MINING ACTIVITY

The majority of the aggregate resources available in Mendocino County come from quarries. As of 2002, there were twenty-one permitted quarries in the County, with one of these located in the Coastal Zone (Table 8F-2). Nine in-stream harvesting operations were also permitted throughout the County, with six sites along the Eel River, two sites along the Russian River, and one small operation along Mill Creek in Covelo (Table 8F-1). Permits for several other mines expired; however, these mines are considered active (idle) until reclamation has occurred. Under State law, operations with a "vested right" (pre-dating permitting requirements) are required to file reclamation plans.

Tables 8F-1 and 8F-2 illustrate the location and permitted maximum annual extraction volume for each instream and quarry mine operation. Permitted extraction volumes may exceed actual volumes harvested, since low instream replenishment rates have not allowed for the maximum harvest volumes in recent years. Additionally, maximum volumes are more representative of peak material demands.<sup>2</sup>

TABLE 8F-1 INSTREAM GRAVEL MINES				
Mine Name	Case File Number	Location	Permitted Maximum Annual Extraction Volume (Cubic Yards)	Coastal Zone
Mill Creek Bar	UR 37-83/93	Covelo/Mill Creek	4,000	No
Nashmead/Crabtree	UR 29-86/97	Northwest of Dos Rios/Eel River	20,000	No
Redwood Valley Gravel	REC 1-91	Redwood Valley Russian River	Vested Right (no limit)	No
Rowland Bar	UR 71-77/98	Dos Rios/Eel River	50,000	No
Stewart's Point Bar	UR 38-88/94	Dos Rios/Eel River	30,000	No
Buckridge Site	UR 9-86/96	Pt. Arena/Garcia River	Expired (no extraction)	Yes
Cleland/Thomas Bar	UR 22-94/98	Dos Rios/Eel River	20,000	No
Cooks Valley Bars	UR12-88/00	Humboldt/Mendocino County Line/Eel River	20,000	No
Ford Gravel Bars	REC 1-83	Ukiah/Russian River	Vested Rights (no limit)	No
Mackenzie Bar	UR 12-92/97	Dos Rios/Eel River	30,000	No

Notes: Case File Number: UR- Use Permit Renewal, REC- Reclamation Plan  
Source: Mendocino County Planning and Building Services, 2002.

<sup>2</sup> Historical volumes mined were not available.

TABLE 8F-2 HARD ROCK QUARRY MINES				
Mine Name	Case File Number	Location	Permitted Annual Extraction Volume (Cubic Yards)	Coastal Zone
B & B Quarry	UR 6-87/97	Southwest of Hopland	500	No
Bald Hills Quarry	U 29-93	Manchester	100,000 (75,000 average)	No
Big River Rock Co.	CDU 9-93	East of Mendocino	10,000	Yes
Big River-7 Mile Quarry	U 17-93	West of Willits	10,000	No
Blue Ridge Rock	U 10-95	North of Cloverdale	75,000	No
Camp 5 Pit	U 27-91	Ft. Bragg Ten Mile River	10,000	No
Cleone Sand Pit	REC 1-98/ VR 1-97	Cleone (sand dunes/ west side of SR 1)	Vested Rights (no limit)	Yes
Diamond H Ranch/Coal Mine	U 18-96	West of Covelo	25,000	No
Harris Quarry	UR 19-83/95	Ridgewood Summit	75,000	No
Laughlin Ridge Quarry	U 6-96	Willits Watershed	75,000	No
Perry Ridge Quarry	U 19-99	Covelo	20,000	No
Pieta Quarry	UM 28-86/87	South of Hopland	50,000	No
Poonkinney Ag Rock	U 6-00	Dos Rios	12,500	No
Pressley & Smith Quarry	U 15-92	Laytonville	50,000	No
Red Rock Quarry	UR 19-84/93	Lake County Line	300,000	No
Shamrock Quarry	U 18-90	South of Laytonville	0 (permit expired/idle)	No
Sherwood Rd. Pit	U 9-92	East of Fort Bragg	40,000	No
Ten Mile 2 <sup>nd</sup> Crossing	CDU 8-92/ VR 1-94	North of Fort Bragg	50,000	Yes
Tunzi Quarry	U 46-91	Comptche	8,000	No
Warbonnet Quarry	UR2 1-81/96	Potter Valley	25,000	No
Wilsey Ranch Quarry	CDU 7-94/00	South of Westport	15,000	Yes

Notes: Case File Number: U- Use Permit, UR- Use Permit Renewal, VR- Vested Right, REC- Reclamation Plan, CDU Coastal Development Use Permit  
Source: Mendocino County Planning and Building Services, 2002.

Most of the County's existing permitted surface mines and quarry permits will expire by 2005 and 2017, respectively, unless renewed. Based on the maximum annual extraction volume of all permitted mines in the County (excluding vested mines), 1.25 million cubic yards of material could potentially be harvested each year. Over 13.47 million cubic yards of rock, sand, and gravel could be extracted over the permitted life of all mines in the County (excluding vested mines). Generally speaking, extraction would occur over an average 20-year period.

Deposition of gravel along a meander of a stream may take place every year, but this does not mean that the resource is infinitely renewable. The long-term effects of yearly harvesting of gravel resources are largely unknown, but have resulted in streambed location and depth changes. For example, within the past century the Russian River and its tributaries have experienced significant incision, up to 18 feet in some locations in the County.

Other impacts associated with instream sand and gravel mining include impacts to fishery resources, such as reduction in spawning gravel, protective cover and food sources, siltation, increased water temperatures, and a reduction in large pools or deep holes with an overall decrease in habitat for both fish and fish food organisms. Other negative effects associated with instream mining include sediment input into waterways as a result of road construction, impediments to fish migration as a result of the construction of summer road crossings, and impacts to bridge abutments due to streambed alterations.

#### **8.4 REGULATORY FRAMEWORK**

##### **STATE SURFACE MINING AND RECLAMATION ACT**

The Surface Mining and Reclamation Act (SMARA) was enacted in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. The Act applies to anyone, including government agencies, engaged in surface mining operations in California (including Federally managed lands) which disturb more than one acre or remove more than 1,000 cubic yards of material cumulatively from one site. This includes, but is not limited to, prospecting and exploratory activities, dredging and quarrying, streambed skimming, borrow pitting, and the stockpiling of mined materials. This law is implemented by the State Department of Conservation, Office of Mine Reclamation, the State Mining and Geology Board, and County regulations as described below.

SMARA also establishes a mineral lands inventory process overseen by the State Geologist and the Mining and Geology Board subject to local public review to ensure that mineral deposits of State or regional significance are identified and protected for future extraction. This inventory has not been conducted for Mendocino County.

##### **MENDOCINO COUNTY REGULATIONS**

The General Plan, Coastal Element, Coastal Zoning Code, and Ukiah Valley Area Plan<sup>3</sup> include policies or standards relevant to mining. The Surface Mining and Reclamation Ordinance (Mendocino County Code, Chapter 22.16) generally subjects operations that disturb or displace a cumulative total of 1,000 cubic yards of material, including overburden, to County and State SMARA requirements. A use permit must be obtained from the County prior to mining, including approval of a reclamation plan detailing site closure and financial assurances to guarantee that reclamation is carried out. The State Department of Conservation provides technical review.

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<sup>3</sup> Draft, January 2002.



### **8.5 RELATIONSHIP TO THE GENERAL PLAN**

- Studies on the management and effects of instream aggregate extraction in Mendocino County should be reviewed as the basis for future policy.
- The effectiveness of adopted reclamation plans should be reviewed as the basis for policy relating to the County's existing surface mining and reclamation program.
- The County should consider whether the 'sustainable harvest' standard applied to several instream extraction operations should be adopted.
- Allowance for aggregate extraction in relative proximity to development could be considered during the General Plan Update.
- The implications of scattered industrially classified sites remaining after the termination of resource uses such as extraction or milling should be addressed.

### **8.6 BIBLIOGRAPHY**

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RAYMOND HALL  
DIRECTOR



TELEPHONE  
707-463-4281

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS: COURTHOUSE  
UKIAH, CALIFORNIA 95482

February 23, 17

TAH  
RECEIVED

OCT 17 2005

William B. Grover  
1604 Fourth Street  
Santa Rosa, CA 95404

Dear Mr. Grover:

This is in response to your letter of January 15, 1987, regarding the status of #U 19-83, issued to Hugh and Virginia Cullen in 1983 for the operation of a rock quarry south of Willits.

After reviewing your letter, we have determined that #U 19-83 is valid and that the rock quarry may be operated in compliance with the conditions of approval appearing on the Land Use Permit. Extraction of up to 10,000 cubic yards of rock per year through June 12, 2003 is permitted.

If you should have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Brian Millar".

Brian Millar  
Planner II

BM:ldp  
cc: File #U 19-83

February 2, 2006

John Ball  
Chief Executive Officer  
Mendocino County  
501 Low Gap Road, Rm. 1010  
Ukiah, CA 95482

Re: Harris Quarry Vested Rights

Dear Mr. Ball:

We are writing on behalf of Northern Aggregates, Inc. ("Northern"), which owns the Harris Quarry (previously known as the Ridgewood Summit Quarry) located 7 miles south of Willits, California, in Mendocino County (the "County"). Northern has applied to the County for a new permit to mine the site in anticipation of the January 26, 2007 expiration of the existing use permit. However, we also want to notify the County that Northern may legally operate its mine pursuant to a vested right, as set out in the attached memorandum.

Please note that Northern wants the County to continue the processing of its permit application. Northern's permit application contains operations that we understand are not encompassed within Northern's vested right. However, we also want to make it clear that Northern may continue its mining operations pursuant to its vested right. Northern's vested right was established approximately 75 years ago as the mining operations at Harris Quarry began in at least 1929, predating even the earliest County zoning ordinance enacted in 1956. Pursuant to the 1956 ordinance and relevant case law, Northern's vested right includes conducting general aggregate operations. Accordingly, we are providing the attached memorandum to document Northern's right. We are also requesting that the County acknowledge Northern's vested right.

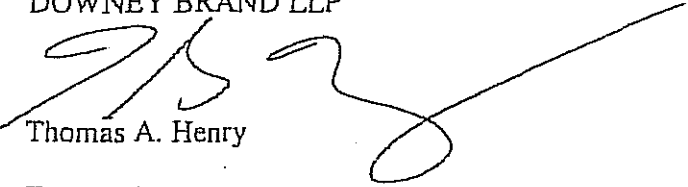
Please note that an acknowledgement of Northern's vested right is a nondiscretionary, ministerial decision whereby the County applies the legal standard to the evidence to determine the existence of a vested right. The acknowledgment of a vested right does not require a public hearing or review under the California Environmental Quality Act because the action does not involve the granting of an entitlement, but rather the confirmation of an existing right.

John Ball  
February 2, 2006  
Page 2

We look forward to meeting with you next week to discuss both Northern's vested right and its permit application. If you have any questions in advance of the meeting, please call me.

Very truly yours,

DOWNEY BRAND LLP



Thomas A. Henry

TAH:wgj

717763.1

Enclosure

**To:** John Ball  
Chief Executive Officer  
Mendocino County

**From:** Tom Henry

**Date:** February 2, 2006

**Re:** Northern Aggregates Vested Right to  
Mine the Harris Quarry

# TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. Northern Acquired a Vested Right Pursuant to SMARA, Mendocino County's 1956 Zoning Ordinance, and Applicable Caselaw.....	1
A. SMARA and Vested Rights.....	1
B. No Permit Was Necessary to Authorize Mining.....	2
1. Under the 1956 Ordinance, Mining the Quarry Constituted a Conforming Use For Which No Permit Was Required.....	3
2. Under the City of Ukiah Case, The Right To Mine The Harris Quarry Vested Prior To 1929, When Mining Was Diligently Commenced And Substantial Liabilities For Work And Materials Were Incurred .....	4
3. The Vested Right Includes All Areas on which the Aggregate Operations Have Occurred and All Aspects of Mining Operations .....	4
a. A Use May Be Expanded Under the "Diminishing Asset" Doctrine.....	6
b. A "Gradual and Natural" Increase in Mining is a Permissible Intensification of a Vested Right.....	6
4. The Use Was Never Abandoned.....	7
a. History Of The Harris Quarry After The Establishment Of Its Vested Right Does Not Indicate An Attempt To Abandon The Right, Willful Intent Is Necessary To Terminate A Vested Right.....	8
5. A Vested Right Is Transferable.....	11
III. Use Permits Do Not Affect the Existing Vested Right.....	11
IV. The County's Vested Rights Determination Is Exempt From CEQA .....	12
V. Conclusions.....	12
A. Northern has a Vested Right to Mine the Quarry .....	12
1. Amount of Aggregate Which Northern is Entitled to Mine Under Its Vested Right.....	13

## I. Introduction

Northern Aggregates, Inc. ("Northern") operates the Harris Quarry (previously known as the Ridgewood Summit Quarry, or "The Ridge"), located seven miles south of Willits, California in Mendocino County (the "County") on a 91-acre site. The Quarry has been an important supplier of aggregate products throughout the County for decades, typically contributing 75,000, and up to 125,000, cubic yards of aggregate per year.<sup>1</sup> Minerals play a significant role in the economy of the County, and the majority of the aggregate resources in the County come from local quarries.<sup>2</sup>

Mining operations at the Quarry have been ongoing since at least 1929; nearly three decades before the County passed its first zoning ordinance in 1956 (Ordinance No. 359 Sec. 45.03), and 47 years before the January 1, 1976 effective date of the Surface Mining and Reclamation Act ("SMARA"). The history of mining at the site is further set out below, including information regarding the establishment of the vested right (p. 3) and the continuing operation at the site since that time (pages 10-12.) Given the long history and circumstances surrounding mining operations at the site, Northern requests that the County affirm Northern's vested right to conduct aggregate operations, including mining, conveying, screening, crushing, sorting, blasting, stockpiling, storing, transporting and selling aggregate on the combined 91-acre site outlined on the attached map. (Attachment 1.)

## II. Northern Acquired a Vested Right Pursuant to SMARA, Mendocino County's 1956 Zoning Ordinance, and Applicable Caselaw

### A. SMARA and Vested Rights

SMARA generally requires that a mine operator obtain a permit from a lead agency.<sup>3</sup> "Permit" is defined under SMARA at Public Resources Code Section 2732.5 as "any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations." Surface mining operations are defined as "any part of the process involved in the mining of minerals on mined lands . . ." However, as noted by Raymond Hall, Director of the County Department of Planning and Building Services in his September 16, 2005 letter to Jason McConnell, under SMARA, mining operations with a vested right are not required to obtain a permit. Public Resources Code Section 2776 states that:

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. (emphasis added).

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<sup>1</sup> Mendocino County Background Report General Plan Update January 2003, Mendocino County General Plan, 1981 and Kleinfelder Associates, 2002.

<sup>2</sup> Id. at 8F-2.

<sup>3</sup> The Quarry is currently in possession of a conditional use permit (No. U19-83/95).

Section 2776 goes on to define a vested right:

A person shall be deemed to have such vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. (emphasis added).

Thus, under Public Resources Code Section 2776 a vested right may be created in one of three ways:

- (1) A vested right exists if a permit or other authorization was required and obtained, and mining was diligently commenced and substantial liabilities for work and materials incurred, prior to January 1, 1976.
- (2) A vested right exists if no permit was required to authorize mining, and mining was diligently commenced and substantial liabilities for work and materials incurred prior to January 1, 1976.
- (3) A vested right exists if no permit or other authorization was required because mining was conducted as an existing, legal, nonconforming use as of January 1, 1976.

As discussed below in more detail, a vested right exists to mine the Harris Quarry pursuant to (2) above, because no permit was required to authorize mining, and mining was diligently commenced and substantial liabilities for work and materials incurred well before January 1, 1976.

#### B. No Permit Was Necessary to Authorize Mining

No permit was required to authorize mining the Harris Quarry, which began operating prior to 1929.<sup>4</sup> The Quarry was further developed in 1947 to prepare for the construction of the Ridgewood Bypass.<sup>5</sup> Corresponding California Department of Transportation documents reveal mineral testing at the "Ridgewood Summit Quarry" dating back to May 29, 1947 (Attachment 4).<sup>6</sup> The County had no requirement for a use permit and did not place zoning restrictions on mining operations until May 1956 when the County adopted its first zoning ordinance.<sup>7</sup> Accordingly, an established use prior to the passage of the ordinance would have obtained a vested status. Thus, we believe that the quarry obtained vested rights as early as the 1920s and as late as the 1940s when mining at the site began to increase.

<sup>4</sup> A collection of news articles dated June 28, 1929; November 22, 1929, and November 13, 1936 all make reference to the quarry and "the old rock crusher seven miles south of Willits" when describing the scene of various car accidents; confirming the existence of the quarry and mining operations prior to 1929. (Attachment 2.)

<sup>5</sup> See "Ridgewood Project" by E.L. Blomquist, District Construction Engineer (Attachment 3.)

<sup>6</sup> Additionally, a 1976 excerpt from the book "Roadside Geology" identifies the current site of the Harris Quarry as an "old quarry" (Attachment 5), and the attached aerial photographs dated June 14, 1972 clearly show the existence of the Harris Quarry as a fully developed mining site, years before SMARA was enacted. (Attachment 6).

<sup>7</sup> Ordinance No. 359 Sec. 45.03.



1. Under the 1956 Ordinance, Mining the Quarry Constituted a Conforming Use For Which No Permit Was Required

Pursuant to caselaw interpreting the 1956 ordinance, mining at the Harris Quarry constituted a conforming use for which no permit was required to continue operating. The 1956 ordinance mandated that all *new* commercial mining activities in the unincorporated area where the Harris Quarry is located to obtain a use permit for "the establishment of ...[commercial] excavation of natural materials." (Ord. No. 359, §3.32.) The ordinance also contained a five-year phase-out period for "nonconforming" business and industrial uses under section 34.01.<sup>8</sup>

The question of whether the 1956 ordinance applies to previously existing gravel mining operations has already been addressed by the courts. In City of Ukiah v. County of Mendocino (1987) 196 Cal.App. 3d 47, the court of appeal summarily rejected the applicability of the 1956 ordinance to existing gravel operations. In that case, the City of Ukiah challenged the vested right of an aggregate operation that had begun in 1946, arguing that the owners of the mine were required to obtain a use permit for gravel mining activities pursuant to sections 34.01<sup>9</sup> and 34.06<sup>10</sup> of the 1956 ordinance. The City argued that the mining operations came within the five-year phase-out period for "nonconforming" business and industrial uses under section 34.01 and that, pursuant to section 34.06, the mine was required to obtain a use permit after 1961.

The court concluded that the existing gravel operations did not violate the 1956 zoning ordinance, finding instead that the mining operation was actually a *conforming* use.<sup>11</sup> *Id.* at 56. Specifically, the court held that the mining operation was a conforming use as it was permitted within A-1 districts "as a matter of right." *Id.*

The facts in the present case are identical to the facts in City of Ukiah. Much like the mine at issue in that case, the Harris Quarry was zoned "A-1" (unclassified district)<sup>12</sup> at the time of the 1956 ordinance's effective date. Just as at the site at issue in City of Ukiah, mining at the Harris

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<sup>8</sup> The Mendocino County Zoning Ordinances were updated in 1987 allowing nonconforming uses to continue indefinitely so long as the use has not been abandoned for longer than one (1) year. (See MCC §§20.204.005, 20.204.035.)

<sup>9</sup> Section 34.01 provides: "The lawful use of land existing at the time of the passage of this Ordinance, although such use does not conform to the provisions hereof, may be continued, provided however that non-conforming business and industrial uses being operated on open land may be continued for a period not longer than five (5) years after this Ordinance becomes effective...."

<sup>10</sup> Section 34.06 provides: "The owners or occupant of any land or building classified as a non-conforming use under the provisions of this Ordinance shall, upon notification by the Planning Commission, make application for a use and occupancy permit, and shall annually thereafter apply for renewal of said permit."

<sup>11</sup> Section 6.37 of the 1956 zoning ordinance defines "non-conforming use" as follows: "A use which lawfully occupied a building or structure [sic] or was conducted upon open land prior to the effective date of the use regulations in the district in which it is located and with which regulations it does not comply."

<sup>12</sup> Section 3.32 of the zoning ordinance (governing "A-1" districts) provides as follows: "(1) All uses not otherwise prohibited by law are permitted, except that the establishment of any of the following shall not be permitted unless and until a use permit shall first have been secured in each case. 2. Commercial excavation of natural materials...."

Quarry was and is in conformance with the County's zoning scheme.<sup>13</sup> Accordingly, under the City of Ukiah decision, the mining activities at the Harris Quarry are not subject to the 1956 ordinance's requirement that new mining activities obtain a permit, nor to the 1956 ordinance's requirement that "nonconforming" uses be phased out.

2. Under the City of Ukiah Case, The Right To Mine The Harris Quarry Vested Prior To 1929, When Mining Was Diligently Commenced And Substantial Liabilities For Work And Materials Were Incurred

Under the holding of City of Ukiah, the right to mine the Harris Quarry without a permit vested prior to 1929, when mining at the site was commenced with the attendant liabilities for work and materials. In City of Ukiah, the court concluded that the existing mine retained a vested right after the enactment of the County's zoning ordinance and stated that:

But of paramount significance, [the mine's] in-stream gravel mining operations, which predated the 1956 zoning ordinance, were permitted as a matter of right and did not require a use permit. Thus, throughout the proceedings below, [the mine] possessed a vested right to continue its existing gravel operations and was not subject to a use permit requirement for that purpose.

Id. at 57. (emphasis added.)

The court went on to state, "[a] property owner has a vested right to continue lawful uses of property and is not required to obtain a special use permit in order to continue lawful preexisting uses." Id. at 56.<sup>14</sup>

Therefore, as of 1929, the right to continue the aggregate operations at the site had become a property right of which "impairment or destruction must not transgress constitutional principles." Stanton v. San Diego Coast Reg. Com. (1980) 101 Cal.App.3d 38, 49. Accordingly, the right to conduct surface mining and aggregate operations over all such lands is subject to the same constitutional protections as are applied to any other property right.

3. The Vested Right Includes All Areas on which the Aggregate Operations Have Occurred and All Aspects of Mining Operations

The scope of the vested right to mine the Harris Quarry includes all areas on which the mining operations have occurred and all aspects of the current mining operations. In Hansen Bros. Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal. 4th 533, the California Supreme Court provided guidance regarding the extent of the mining area subject to a vested right, stating that the use to which the land was being put at the time the use became nonconforming (and thus

<sup>13</sup> After being zoned A-1 (unclassified district), the parcel was zoned C2 (commercial) and RL (rangeland) in 1983 and is currently zoned RL (rangeland) today. Permitted activities in RL and C2 zones are similar to permitted uses in A-1 zones in that they include mining and processing. Accordingly, the City of Ukiah analysis still applies. (MCC §§20.060.025(E) and 20.092.020(D))

<sup>14</sup> See McCaslin v. City of Monterey Park (1958) 163 Cal.App.2d 339, 348-349, 329 P.2d 522; see also 66 Cal.Jur.3d, Zoning and Other Land Controls, § 110, pp. 442-444; 2 Ogden's Revised California Real Property Law (Cont.Ed.Bar 1975) § 24.14, p. 1188.

vested)<sup>15</sup> includes all aspects of the overall business operation, even those incidental and auxiliary to the conforming use. Hansen Bros. at 565-566. Even open areas, or areas only partially used in connection with the operation, are part of the land to which the vested right applies. Id. The Court found that mining may be conducted on other parcels or tracts if they had previously been part of the mining operations. Id. at 554-558.

Under Hansen Bros., a vested right to mine includes tracts and parcels which contained any of the following activities, as of the time of establishment of the vested right:

- 1) past excavations;
- 2) current excavations;
- 3) roads;
- 4) stockpiles;
- 5) mining facilities;
- 6) those parcels which had been included in contracts to mine;
- 7) those parcels which contained structures incidental to the mining operations; and
- 8) open areas used, or partially used in connection with the mining use.

Hansen Bros. at 556, 565-567. Thus, for purposes of establishing the extent of a vested right, mining activity is broadly defined.

Moreover, in Hansen Bros. the California Supreme Court rejected an approach which "compartmentalizes" mining operations into different types of mining activities rather than recognizing a vested right for the mining operator's "overall business operations." Hansen Bros., supra, 12 Cal.4th at 565. Thus, in Hansen Bros. the Court rejected a county board of supervisor's attempt to segment a mining operation into placer mining and hard rock quarrying, and then recognize a vested right for only the placer operations. Instead, the court concluded that the mining operator had a right to continue the entire business, including the production and sale of aggregate. Id. at 570.

Under the holding of Hansen, the vested right to mine the Harris Quarry includes the right to conduct all aspects of a mining operation on the 91-acre site. Prior to the first boundary line adjustment on the property in 1976, the 91 acres currently at issue were part of a much larger 500-acre parcel that was divided over time, with the last boundary line adjustments occurring in the late 1980s. A normal and permitted expansion of the mining operations includes extending the rock quarry aspect of the business into other areas of the properties within the historical parcel. As the Hansen Bros. Court observed: "An entire tract is generally regarded as within the exemption of an existing...use, although the entire tract is not so used at the time of the passage or effective date of the zoning law." Id. at 554. The previous owners of Harris Quarry, directly or through their contract operators and lessees, have conducted aggregate operations throughout the larger Quarry site since 1929. The historic 500-acre parcel included the current 68-acre parcel and the proposed expansion into the neighboring 23-acre parcel in which future mining will occur. The 23-acre parcel is currently used for mining roads. Thus, Northern's vested right

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<sup>15</sup> While this quarry involves a vested right in a conforming use, the same analysis should apply.

extends to the total 91-acre area.<sup>16</sup> The historic operations included both mining and on-site conveyance, screening, crushing, blasting, mixing, stockpiling, storing, transporting and selling the material. As a result, the vested right includes the right to conduct all these activities on the 91 acres. As the court in Hansen stated; "We 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 operation of the business." Hansen Bros., supra 12 Cal.4<sup>th</sup> at 566.

a. A Use May Be Expanded Under the "Diminishing Asset" Doctrine

As discussed above, the vested right to mine the Harris Quarry includes the right to expand geographically. In Hansen Bros., the California Supreme Court found that, unlike other uses, a vested right to mine includes the right to expand. In adopting the "diminishing asset" doctrine for mining sites, the Court stated that when a mining or quarrying operation has a vested right, progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited expansion of the vested use. As the court explained, 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, the use may expand into the contemplated area:

The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed . . . An entire tract is generally regarded as within the exemption of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning law.

(Hansen Bros., supra, 12 Cal.4<sup>th</sup> at 553-554.)

b. A "Gradual and Natural" Increase in Mining is a Permissible Intensification of a Vested Right

In Hansen Bros., the Court also considered whether the company's proposal for future quarrying should be considered an impermissible intensification of its nonconforming use. Id. at 571. This issue, distinct from geographic expansion, involves increased volume of production. In Hansen Bros., the Nevada County ordinance prohibited intensification of use, as does SMARA, if the intensification constituted a "substantial change" in operations. The Court interpreted this provision as allowing a "gradual and natural increase" in mining. Hansen Bros., supra, 12 Cal.4<sup>th</sup> at 573. Where factors such as increased population create increased demand for aggregate in road or other construction, an increase in production "would not be construed as an enlargement or intensification of use." Id. In contrast, increases of 100x or 250x would likely be considered inappropriate. Id. at p. 573 and Hansen dissent at p. 591.

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<sup>16</sup> The attached photograph, obtained from the California Department of Transportation, shows the condition of a small portion of the Quarry as it existed on August 4, 1959 (Attachment 7). Photos from 1972 (prior Attachment 6), and 1981 (Attachment 8) make evident the Quarry's growth and progression in the ensuing years.

Mendocino County's demand for aggregate has increased dramatically over the years since mining was first conducted on the property. During the post-World War II period a major portion of the aggregate mined in the County went to highway construction, including the aforementioned Ridgewood Bypass.<sup>17</sup> After the completion of State Route 101 in the late 1950s, the bulk of aggregate production and use shifted primarily to residential and related construction.<sup>18</sup> However, since 1990, use has begun to shift back toward highway construction, as portions of State Route 101 are widened to four lanes and the construction of bypasses continue.<sup>19</sup> Additionally, 60 to 70 percent of Mendocino County roads and all State Highways are surfaced with asphalt concrete.<sup>20</sup> The increased highway construction, coupled with a rise in population and homebuilding have fueled a corresponding increased demand for locally produced aggregate products. Furthermore, the depletion and closure of several surrounding hard rock quarry sites and reduced river gravel extractions have increased demand for Harris Quarry's aggregate.

The population of Mendocino County, currently 88,551,<sup>21</sup> has also increased substantially from the population of 51,059 in 1960. The cities of Willits (population 5,073) and Ukiah (population 15,497)<sup>22</sup> are the primary areas where the material is used. Therefore, the increase from the previous levels of extraction to the current production level is a natural escalation of use. In addition, the type of activities conducted by Northern at the mine site are the same as those conducted by the previous owners, lessees and contractors. Northern's current operations therefore do not exceed the scope of the operations previously conducted by Northern's predecessors-in-interest and their lessees and contractors.

#### 4. The Use Was Never Abandoned

As demonstrated below, the vested right to mine the Harris Quarry has not been abandoned. Abandonment depends on two factors: an intention to abandon, and an overt act or failure to act which implies that the owner does not claim any interest in the vested use.

Abandonment...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.

Hansen Bros., *supra*, 12 Cal.4th at 569.

Therefore both intent and an affirmative action to abandon the vested right by the owner must be shown to prove abandonment. Neither can be shown here.

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<sup>17</sup> Mendocino County Background Report General Plan Update 8F-2 January 2003. See also Mendocino County General Plan, 1981 and Kleinfelder Associates, 2002.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 2004 U.S. Census estimate.

<sup>22</sup> US Census 2000.

Because of the cyclic nature of mining operations, special rules apply to determine if an aggregate operation has been discontinued to the extent necessary to constitute abandonment. Mineral products such as aggregate are commodities that are subject to changing prices, supplies and demands. Periods of inactivity dictated by market fluctuations are commonplace and do not necessarily constitute abandonment. Rock in the ground is a reserve, and leaving it there may be a rational reaction to temporary market fluctuations. In addition, mining cases have recognized that a product may be stockpiled for a period of time and no additional mining production is necessary to preserve a vested status while the stockpile lasts.

Furthermore, the overall operations must be considered in determining whether the use has been abandoned. The cessation of activity in one component of an integrated mining operation does not mean that the operation has been abandoned. In the Hansen Bros. case, it was determined that a riverbed gravel mining operation and a hillside rock quarrying operation were different aspects of an integrated "single use" of the parcel for aggregate production, and that the cessation of use in one component part of the business did not imply abandonment of either that component nor of the whole operation. The California Supreme Court agreed that the quarry operations had been discontinued, but the Court stated that the overall business operation must be considered, noting that prior to the enactment of the ordinance which made the use nonconforming, rock was taken from the hillside to produce aggregate, along with the sand and gravel from the riverbed. Thus, the court viewed the operations as interdependent. "Unless an independent aspect of the business has been discontinued, the use may not be broken down into component parts and vested rights recognized for less than the *entire* business operation." Hansen Bros., *supra*, at 566. The Court viewed the nonconforming use as the production and sale of aggregate. *Id.* at 569. The Court affirmed that aggregate mining and sales are seasonal and depends on a fluctuating market. Thus, marketing and sales from existing stockpiles, even without any mining activity, can be sufficient to sustain a vested right. *Id.* at 571, n.30.

Even if there were periods when mining operations were temporarily suspended, sales of aggregate stockpiles resulting from prior mining continued.<sup>23</sup> Given the nature of mineral products and the vagaries of supplies and demands, short periods of inactivity dictated by market fluctuations do not constitute an abandonment of the use-right.

a. History Of The Harris Quarry After The Establishment Of Its Vested Right Does Not Indicate An Attempt To Abandon The Right, Willful Intent Is Necessary To Terminate A Vested Right

The Harris Quarry traces its history in Mendocino County to 1929 and perhaps earlier.<sup>24</sup> The Quarry was named after Ernie Harris, one of the Quarry's previous owners, who purchased the mine in the mid-1980s. The mine has been operating in some form since the 1920s, and perhaps earlier, when the quarry's first owner, William Van Arsdale originally acquired the property in 1903.<sup>25</sup> It is thought that Van Arsdale arranged for the use of the quarry to provide the rock and

<sup>23</sup> See e.g. Letter from William Grover (Bankruptcy Trustee) to County of Mendocino attesting to on site sale of gravel through the early 1980s despite a pause in extraction activities due to bankruptcy. (Attachment 9).

<sup>24</sup> See attached newspaper articles attesting to existence of mine prior to 1929. (from Attachment 2)

<sup>25</sup> <http://www.seabiscuitheritage.com/RidgewoodRanch.html>

gravel needed to upgrade the original stagecoach road between Willits and Ukiah in 1914.<sup>26</sup> Despite the upgrade, Highway 1, now Highway 101, remained nothing more than a stagecoach road running down the east side of the quarry, several hundred feet south of Black Bart Rock near the Ridgewood Grade summit.<sup>27</sup>

In 1919 Charles Howard acquired both the quarry site and the 1,600 acres embracing it.<sup>28</sup> Shortly thereafter, in 1928 and continuing until 1932, Highway 1 was first paved, using the rock produced at the quarry site as the base grade, and gravel from the Forsythe Creek for the asphalt.<sup>29</sup> It is thought that this was when large scale extractions from the site first began, as articles found in local papers in the late 1920s refer to an "old" jaw crusher seven miles south of town.<sup>30</sup>

One of the region's first contractors to use the quarry for commercial work was Hemstreet and Bell, who used the aggregate from the quarry for several jobs in the area.<sup>31</sup> It is believed that the partnership used a steam shovel in the early 1930s to feed the jaw crusher<sup>32</sup> and then loaded the gravel for transport via conveyor directly onto the truck beds.

In the late 1940s through the early 1950s the highway connecting Willits and Ukiah was expanded to a four-lane thoroughfare and renamed Highway 101. The new highway was realigned to make travel easier, leaving portions of the old Highway to serve as the entrance route to the Harris Quarry site. Subsequent to the County's adoption of the 1956 ordinance, the mine continued to actively produce and sell aggregate.

The property has changed hands several times since then; passing to Jeff and Elwood Welch, (commonly referred to as the Welch Brothers) in 1951. Subsequently, several people have either owned or operated the quarry including Hugh Cullen, Ernie Harris, Bob Peters and Bud Garman, and, now, Northern Aggregates.<sup>33</sup>

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<sup>26</sup> Touring the Old Redwood Highway, Mendocino County by Diane Hawk, (2001) Pages 57 – 60; "California Highways & Public Works" Historical Monthly and Quarterly magazines, Courtesy of the Mendocino County Historical Society as researched by Jason McConnell in 2005.

<sup>27</sup> Touring the Old Redwood Highway, Mendocino County by Diane Hawk, Copyright 2001. Pages 57 - 60.

<sup>28</sup> <http://www.seabiscuitheritage.com/RidgewoodRanch.html>

<sup>29</sup> "California Highways & Public Works" Historical Monthly and Quarterly magazines, Courtesy of the Mendocino County Historical Society as researched by Jason McConnell in 2005.

<sup>30</sup> Newspaper articles from June 28, 1929, November 22, 1929, November 13, 1936, clearly reference the Quarry's "old rock crusher" as a landmark located seven miles south of Willits, CA. (Attachment 2.)

<sup>31</sup> Examples of projects involving materials from the Quarry include highway projects between outlet Creek and Reeves Creek, and between Eleven Oaks and Willits. Both projects were awarded to Hemstreet and Bell and involved grading, surfacing, and a gravel on gravel base. (See Attachment 10, announcing highway projects from 1936.)

<sup>32</sup> The original concrete foundation where the crusher was located remained in place until it was finally removed in 1993 by the current operators, Northern Aggregates, Inc., to make room for daily operations and stockpiling of materials. (Source: Jason McConnell.)

<sup>33</sup> See Declaration of Frank Dutra, attesting to on-going operations in 1968. (Attachment 11.)

On January 1, 1976, SMARA took effect, explicitly granting a vested right to all existing mining operations at that time. In 1979, in compliance with the SMARA requirement that local agencies adopt ordinances regulating surface mining (Pub. Res. Code § 2774), Mendocino County enacted its own ordinance requiring a reclamation plan and either a permit or a vested right to conduct surface mining operations.<sup>34</sup> Having a vested right to mine the site, operations at Harris Quarry continued without a permit until the early 1980s. It is unclear why the mine operator requested a permit at that time. The owners or County may have mistakenly believed one was required<sup>35</sup> after the adoption of a new general plan, which was apparently adopted as a result of 1978 lawsuit.<sup>36</sup>

Robert Peters, who leased the mining site from Hugh and Virginia Cullen, the owners at the time, filed an application for a use permit and a reclamation plan on April 28, 1983 with Mendocino County.<sup>37</sup> On June 2, 1983, the Planning Commission approved the use permit along with the reclamation plan authorizing the removal of 10,000 cubic yards of material per year for five years. (Attachment 13.)

On September 10, 1986, in response to an inquiry from Peters and Garman Construction as to the validity of several mining sites, the County Department of Planning and Building Services classified the status of the 1983 use permit as "questionable". (Attachment 14.) Despite the "questionable status" of the use permit, the mine continued operating. On May 31, 1984, a previous owner of the quarry, Hugh Cullen dba "The Ridge", filed for bankruptcy, operating as a debtor in possession until William B. Grover was appointed Chapter 11 Trustee on January 17, 1985, effectively taking over the business responsibilities. Mr. Grover took over the business by operation of law and, by his own admission, tried, in a fashion, to sell the proceeds of the mine, mentioning a potential sale to a contractor for the purchase 3,000 yards of aggregate for a road project in Willits.<sup>38</sup> From the years leading up to and including 1985, it is undisputed that gravel sales had always continued, but, according to Mr. Grover, had "seemed to tail off". (Attachment 15). This pause in sales was, to our information, the longest gap in the on-going business at the mining site, but did not render the activity "abandoned" as there was no intent to abandon. In fact, on February 23, 1987 the Planning Department issued a letter to Mr. Grover stating that: "[permit number] U 19-83 is valid and the rock quarry may be operated in compliance with the conditions of approval appearing on the Land Use Permit." (Attachment 16.)

An expanded use permit and request for approval of an amended Reclamation Plan was filed on

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<sup>34</sup> Mendocino County Code [MCC], § 22.16.010 et seq.

<sup>35</sup> Ordinance No. 359 Sec. 45.03 was amended by Ord. No. 536 in 1968.

<sup>36</sup> Telephone conversation with Frank Lynch, Chief Planner, Mendocino County Planning and Building Services Department, November 17, 2005.

<sup>37</sup> The receipt of the use application and the reclamation plan by the State and Mendocino County was confirmed on May 4, 1983 when a letter, addressed to Victor Holanda, Director of the Mendocino Department of Planning and Building Services, was sent from the state Department of Conservation commenting on the reclamation plan. (Attachment 12.)

<sup>38</sup> Letter from William Grover (Bankruptcy Trustee) to County of Mendocino attesting to on site sale of gravel through the early 1980s (Attachment 9).



February 27, 1990. On July 5, 1990, the County Planning Commission approved the modification of the use permit and revised reclamation plan, allowing an increase in extraction and production. Additionally, the temporary use of a portable crushing and screening plant at the quarry site was applied for and authorized by the County Air Pollution Control District on July 27, 1990. In 1993, Northern moved to the Quarry and continued the ongoing mining operations at the site, complying with all state and local requirements including posting an indemnity bond for the mine's reclamation on February 5, 1993. As of the date of this letter, Northern continues to operate the Harris Quarry in conformance with all applicable local, state and federal laws under the mine's vested rights and the existing use permit which is set to expire on January 26, 2007.

In sum, aggregate mining and related sales have never been completely discontinued on the property since approximately 1929. The fact that excavation had slowed or ceased on the property for a time is of no effect under the principles set out in Hansen Bros. where the court stated that an intention to abandon, and an overt act or failure to act implying that the owner does not claim any interest in the vested use is required. Records indicate that aggregate mining and sales have always been conducted on the property, even though the intensity of the activities has varied over time.

#### 5. A Vested Right Is Transferable

In Hansen Bros., the California Supreme Court also addressed the issue of whether a vested right may be transferred to another party. The Court stated unequivocally that the right is transferable. "Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land." Hansen Bros., at 593, n.1, citing City of Los Angeles v. Gage (1954) 127 Cal.App.2d 442. Furthermore, transferability of vested rights is particularly appropriate where, as with SMARA, strong policies exist which encourage "the production and conservation of minerals . . . ." Public Resources Code § 2712. Accordingly, the vested right to mine the Quarry runs with the land, and Northern, as successor to Charles Howard, Hugh Cullen dba The Ridge and Robert Peters, holds that right.

#### III. Use Permits Do Not Affect the Existing Vested Right

The fact that Northern as obtained use permits does not affect the validity of Northern's vested right. Generally, local ordinances may not extinguish a lawful preexisting use; however local ordinances may prohibit, or require a permit for, a new activity on the property. These new activities are distinct and apart from the activity for which the property owner has acquired a vested right. For example, in City of Ukiah supra 196 Cal.App.3d 47, the property owner conducted an aggregate mining operation under a vested right. The gravel mining activities had existed prior to 1956 when the same Mendocino County Ordinance discussed above was passed requiring a use permit for new activities. Id. In accordance with the ordinance, the property owner acquired a use permit for two new activities, a gravel processing plant and a ready-mix plant. However, the court viewed these activities as distinct operations, and the acquisition of the permits did not affect the mining operator's right to conduct "*gravel mining activities*" as a vested right. Id. at 55. (Italics in original). Similarly, in Paramount Rock Co. v. County of San Diego (1960) 180 Cal.App.2d 217 a mining operator was allowed to operate, as a nonconforming

use, its sand removal and pre-mix business, since these activities predated the local ordinance which prohibited them. Id. at 226.

In Consolidated Rock Products Co. v. City of Los Angeles (1962) 57 Cal.2d 515 a plaintiff who had been denied a variance brought an action which sought a declaration that no variance was required to mine its property. The Court noted that "plaintiff's concessions on their variance application cannot legally effect a waiver of any existing status rights of their property." Id. at 534; see also, Rubin v. Board of Directors (1940) 16 Cal.2d 119, 126 [city board of directors' denial of an application for a variance did not bar the applicants from asserting in a judicial proceeding that the zoning law was unconstitutional as applied to their property.]

Even when a property owner and a government entity come to an express agreement wherein the property owner agrees to terminate his or her nonconforming use in exchange for a permit to conduct other activities, the owner is not required to terminate the use if the permit was unnecessary to conduct those activities. Edmonds v. County of Los Angeles (1953) 40 Cal.2d 642, 650. See also, Gordon Paving Company v. Blaine County Board of County Commissioners (1977) 98 Idaho 730.

As a final example, Goat Hill Tavern v. City of Costa Mesa (1992) 6 Cal.App.4th 1519, involved a tavern that was operated as a nonconforming use. When the tavern owner wanted to expand, he obtained a permit from the city for the expansion only. When the permit expired, the city refused to renew the permit and took the position that the nonconforming use had now been extinguished because of the expiration of the permit. The court of appeal found that the owner still had a vested right to continue his operation of the tavern, and in fact ordered the renewal of the permit for the expanded activity under the premise that this activity had also obtained a vested right. Id. at 1522.

#### IV. The County's Vested Rights Determination Is Exempt From CEQA

A vested right is exempt from CEQA because it does not involve a discretionary action by the Planning Director. (Public Resources Code § 21065; see also CEQA Guidelines §§ 15369 and 15378.) It does not involve the issuance of a permit, variance, or other authorization for the operation since, in fact, the authorization already exists by law. It is a "ministerial" application of law to fact which does not involve any discretionary decisions. CEQA Guidelines Section 15369 defines exempt ministerial actions as those in which the "public official merely applies the law to the facts as presented . . ." The discussion is, therefore, exempt from CEQA under Public Resources Code Section 21080(a), (b)(1) and CEQA Guidelines Section 15268.

#### V. Conclusions

##### A. Northern has a Vested Right to Mine the Quarry

Under the 1956 ordinance, Northern, as the successor in interest to all previous owners of the property, acquired vested rights to conduct aggregate operations on the Harris Quarry. This right was established by Northern's predecessors' continuous operations at the site since 1929, which clearly predate the County's regulation of mining operations in the area. Thus, that use became a

preexisting and, at that time, legal and conforming use; vesting as early as 1929, or at the latest January 1, 1976, the effective date of SMARA. City of Ukiah, supra 196 Cal.App.3d at 55; see also, Hansen Bros., supra, 12 Cal.4th at 547, n.13; Stokes v. Board of Permit Appeals, (1997) 52 Cal. App. 4<sup>th</sup> 1348. Further, an interpretation of the County ordinances which does not provide for a vested right would render the ordinances unconstitutional as applied to the Harris Quarry.

Northern did not lose its vested right to operate due to the application of a use permit in 1983 and its subsequent renewal in 1990. A permit does not extinguish a conforming or nonconforming use unless the parties specifically agree to terminate the nonconforming use in exchange for the permit. There is no evidence that either the County or Northern's predecessors contemplated such an exchange. Accordingly, the expiration of the permit does not affect Northern's right to conduct and expand aggregate operations in those areas for which it has a vested right.

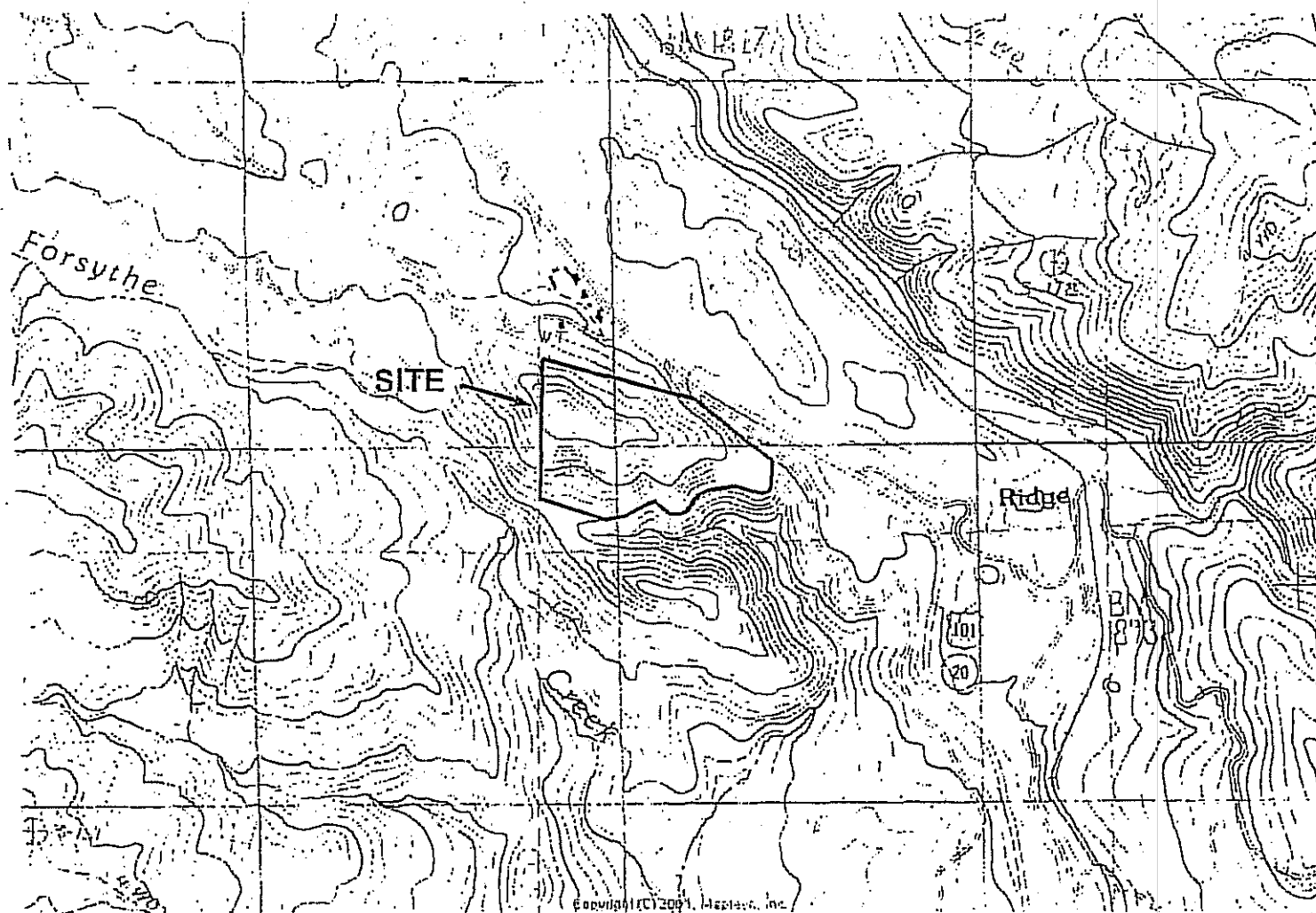
1. Amount of Aggregate Which Northern is Entitled to Mine Under Its Vested Right

The amount of aggregate which was extracted from the Quarry by Northern's predecessor's varied; however, it is thought that approximately 10,000 cubic yards per year was the historical maximum removal rate.<sup>39</sup> In its general plan the County estimates that the Harris Quarry currently extracts 75,000 cubic yards of aggregate per year. The Quarry's allowed extraction of 75,000 to 125,000 cubic yards per year represents a gradual and natural intensification of mining at the site under the mine's vested right. As noted in Hansen Bros., mining rates may be gradually and naturally increased to take into account increased demand due to such factors as growth of population and increased demand. This rate may be increased in the future as demand rises under the Hansen Bros. analysis.

As noted above, the populations in the County and its cities have increased significantly since the mine began operating in 1929. These areas continue to be the principal markets for aggregate produced by the Harris Quarry. Ever increasing population in the County has caused a corresponding increased demand for aggregate to build roads and other construction projects, making the estimated 75,000 to 125,000 cubic yard annual production, and perhaps more, a reasonable expansion of the Quarry's vested right.

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<sup>39</sup> The 10,000 cubic yards per year removal rate is further attested to by the 1983 conditional use permit, which likely reflected the extraction rate at the time of application. Additionally, according to the estimates from the various photographs included as exhibits to this memorandum by Jason McConnell, the likely maximum yearly extraction amount from the 1920s or 1930s when the old highway was being upgraded is likely 10,000 to 15,000 tons, as it is not probable that a steam shovel and jaw crusher would have been moved into the area for an amount much less than this.



Adapted from Maptech, Inc., 1997

**blackburn  
consulting**

3265 Fortune Court  
Auburn, CA 95602

(530) 887-1494  
(530) 887-1495 Fax

E-mail: bcstaff@  
blackburnconsulting.com

# Vicinity Map

## Harris Quarry

### Mendocino County, California

Job No: 626.1

Date: December 2004

Figure 1



100: TOPO-DEPT MAPS  
 100: MARIPOSA CITY, CA  
 100: MARIPOSA ASSESSORS OFFICE

# EXHIBIT A: VICINITY MAP N.T.S.



## DRY AND COLD WEATHER HARD ON LIVESTOCK

The cold dry weather of the present month has broken all records in this part of the state. Not in the memory of the oldest inhabitants have we gone so long in the fall without rain. In addition, a number of thermometers have registered lower this year than ever before in Willits.

Reports of temperatures as low as 10 and 12 above zero have been received. The hills are absolutely bare of feed at the present time and stockmen are feeding their cattle and even sheep in some instances. Those who have no feed are in a bad way and it looks as if there was little hope for much of the stock in the hills.

The lack of rain has not seriously affected the Willits water supply as yet. At present the water level is about seven feet below the top of the dam. While this is lower than at any time last year, there is still plenty of water to supply the consumers here for many months to come.

A comparatively light rainfall will fill the dam again to capacity. The figures on water consumption for Willits are interesting. The capacity of the dam is 872 acre feet of water. In 1928 the total consumption was about 112 acre feet, of which 84 acre feet was used from storage, the balance being used during the rainy season from the overflow. Figures for this year are not available, but will undoubtedly show a substantial increase in consumption over 1928, owing to more water being used for irrigation this past summer. For the past six weeks, the water level in the dam has remained about stationary, as the consumption is light at this time of the year and the inflow from the watershed just about equals what is taken out each day.

At this time a year ago we had received about four and one-half inches of rain, as compared to none this year worth mentioning.

## Insurance Case Will Be Tried In This County

The case of Leola L. Burr vs. the Western States Life Insurance Company seems destined to be tried in the Mendocino county supreme court, according to Mr. Burr. He stated this week that when the case first came up the insurance company asked for a change of venue to San Francisco county, claiming that was the proper place for trial. This motion was denied by Judge Preston, and the company appealed from the ruling.

Later the defendants made application before the appellate court for an order prohibiting further proceedings in Mendocino county, pending the de-

## Redwood Highway Will Be Rebuilt Near Calpella

SAN FRANCISCO, Nov. 16.—Important highway improvements in southern Mendocino, northern Sonoma and Lake counties were announced today by the Redwood Empire Association. The work will be started within a comparatively few days and will be carried on during the winter months by the California Highway Commission. The expenditure of a large sum of state funds for this work is due to the concerted campaign of the Redwood Empire Association for the betterment of the system of highways in the district it serves.

Details of the highway improvements scheduled include scarifying, reshaping and adding road material to a five-mile section of the Redwood Highway from the forks of the Ukiah Tahoe road three miles north of Ukiah to Forsyth Creek.

This work includes the tearing up of high crown and narrow paved section of the highway, its widening to 26 feet, and the banking of curves.

It is planned to place an oiled surface on this section of highway early during the coming spring.

Similar work is to be started on a five-mile section of the road to Upper Lake commencing at a point approximately nine miles east of the junction with the Redwood Highway.

On the Redwood Highway between Hopland and Cloverdale 12 miles of roadway is to be reshaped and reinforced. This work will start from a point a mile south of Hopland and will be spotted between this point and Cloverdale.

It is anticipated that these latter highway improvements will improve traffic conditions over the Cloverdale grade, pending the relocation of that section of highway along the east bank of the Russian River, which has been agreed upon by the State Department of Public Works and California Highway Commission as the result of a campaign inaugurated and carried to a successful conclusion by the Redwood Empire Association through its Nine Counties Highway Committee.

Other road improvements will be made on a two and a half mile section of highway between Santa Rosa and Sonoma. The major portion of this work will be in the vicinity of Bellano with a few short sections to be treated south of Sonoma towards Shellville.

## R. Z. Andrews Has Ankle Broken Fighting Fire

## ARTICHOKE CROP TO BE HARVESTED HERE THIS WEEK

E. H. Maize received word yesterday afternoon from Oswald Wilson, agricultural agent for the Northwestern Pacific railroad, that an artichoke digging machine was on the way to Willits and would be here today, Friday. The machine will be delivered to John Rupe, who will dig his first carload of chokes as soon as possible.

This first carload is to be shipped to Stockton where they will be sold for seed purposes. Later on Mr. Rupe will dig the balance of the crop and expects to have about four more cars. Philip Coll has dug and will ship at once to Santa Rosa, his crop of tubers. They have been sold to the Pabst Company at a price of \$15.00 per ton, f. o. b. Willits. If there are any other growers in the valley who wish to ship to Santa Rosa at this price they are requested to communicate with Mr. Maize at the Willits Mercantile Company at once.

The Willits Rotary Club had the pleasure of eating Jerusalem artichokes at the weekly luncheon at the Carson Inn this week. Mrs. Marsh, manager of the inn, had substituted artichokes for potatoes on the menu and all of the members declared them to be delicious. With all the publicity now being given to this vegetable, it will not be surprising if the demand exceeds the supply for a few years.

## Royal Neighbors Bazaar Sat. Night

The big bazaar and entertainment planned by the Royal Neighbors of America will be held Saturday night of this week at the High School Auditorium.

The entertainment part of the program has been carefully arranged and will be well worth seeing. Mrs. McKenzie has been in charge of this committee and has a nice program ready. After the program dancing will be in order with good music.

The ladies have arranged a number of booths where it will be possible to buy some wonderful articles suitable for Christmas gifts.

A wedding is promised as part of the entertainment, but just who is to be married is not stated. There will be plenty to eat if you are hungry at any time during the evening.

## Lions Club Will Gather Old Clothes

The Willits Lions Club are holding their second annual old clothing and bedding drive. Any one having any old clothing, bedding, shoes and other

## Senator Nelson Enters Race For Lieut. Gove

Last Tuesday Senator H. C. of Eureka officially announced candidacy for lieutenant governor of the State of California, in a statement published in the Humboldt Eureka.

Senator Nelson has been a member of the legislature for twelve years and is probably known all over the state as in this section.

He is a graduate of Stanford University and since 1912 has been active part in the public affairs of Humboldt county and has served as district attorney, held county for seven years now serving his third term in upper house of the legislature.

## M. W. A. Lecture Here Last

H. V. Reese, National Lecturer of the Modern Woodmen of America, attended the regular monthly of Redwood Highway Camp, Sunday evening. A dinner and a splendid banquet followed which Mr. Reese gave on the growth and future of the order. Plans were completed at this meeting for annual Modern Woodmen of America to be held in Willits November 14th at the high school.

## Cooking School Uses Artichokes

Last Sunday and Wednesday, W. E. "Bill" Whitney shipped pounds of Jerusalem artichokes by John Rupe to the Oskana cooking school being sponsored by the Tribune this week during the Slope Dairy Show. During the week artichokes in all forms have been handed out to the men with receipt books telling where to get and cook the tubers.

Many newspaper articles appeared this week with meat artichokes being served at the school and Willits has been credited for furnishing the tubers.

## Will Decide Whether Pays For Deer Board And

Next Monday a meeting in Ukiah, sponsored by the Coast Conservation Commission, California State C. of C., will discuss the problem of taking wild deer in this section.

According to the minutes of this meeting, some folks think that the deer are becoming scarce as to be a burden on the deer and stockmen, and that some legislation is needed to get rid of the deer.



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It is anticipated that these latter highway improvements will improve traffic conditions over the Cloverdale grade pending the relocation of that section of highway along the east bank of the Russian River, which has been agreed upon by the State Department of Public Works and California Highway Commission as the result of a campaign inaugurated and carried to a successful conclusion by the Redwood, Empire Association through its Nine Counties Highway Committee.

Other road improvements will be made on a two and a half mile section of highway between Santa Rosa and Sonoma. The major portion of this work will be in the vicinity of Bolinas with a few short sections to be treated south of Sonoma towards Shellville.

## R. Z. Andrews Has Ankle Broken Fighting Fire

R. Z. Andrews of Willits, "an employee of the State Highway Commission, was called to fight fire near Ryan Creek last Friday morning and while so engaged suffered a fractured ankle when a dry madrone tree fell on him. The injured man was rushed to the Frank H. Howard Memorial hospital where his ankle was set by Dr. Babcock and he is recovering nicely.

## Special Meetings At M. E. Church

Beginning next Friday, November 20th, Rev. Glenn W. Butcher, who is the district pastor-evangelist for the Redwood-Shasta district of the Methodist church, will lead a ten-day "Loyalty Crusade" in Willits. Rev. Butcher is a fine preacher and the local Methodists feel that they are fortunate to be able to have him here for these meetings. Next Friday evening this Loyalty Crusade will open with a get-together for all members and friends of the local church. It will be an evening of faith, friendship, fun and food. Social music, games and an address by Rev. Butcher will be the features of the evening. Light refreshments will be served and everyone is welcome. Complete details of the meetings will be given later.

**BLUE LAKE EDITOR DIES**  
Gustave Perigot, for many years editor of the Blue Lake Advocate, died at his home in the Humboldt county town last Monday. He was widely known in Northern California and his paper was considered one of the leading weeklies in the state.

Basilio Quadrio left Wednesday for San Francisco to spend a few days. Before returning he will attend the annual "big game" between Stanford and California at Palo Alto Saturday. As a U. C. man he will naturally be rooting for California to win.

Monday, December 2nd, is the date set for Mrs. Emma Lou Wade's thirtieth annual piano recital. It will be held in the Grammar School Auditorium and a fine program is promised for music lovers.

## Bazaar Sat. Night

The big bazaar and entertainment planned by the Royal Neighbors of America will be held Saturday night of this week at the High School Auditorium.

The entertainment part of the program has been carefully arranged and will be well worth seeing. Mrs. McKenzie has been in charge of this committee and has a nice program ready. After the program dancing will be in order with good music.

The ladies have arranged a number of booths where it will be possible to buy some wonderful articles suitable for Christmas gifts.

A wedding is promised as part of the entertainment, but just who is to be married is not stated. There will be plenty to eat if you are hungry at any time during the evening.

## Lions Club Will Gather Old Clothes

The Willits Lions Club are holding their second annual old clothing and bedding drive. Any one having any old clothing, bedding, shoes and other items that they no longer use, are requested to bring the same to the office of Judge W. F. "Bill" Whitney, who with Lions E. M. Matzen, James Dewar and Carl Edenfeldt will sort and place with the needy families of Willits and vicinity. Overcoats, both ladies' and men's are badly needed, also much old bedding. Both young-boys' and girls' clothing of all ages will be placed by the Lions to good advantage with local families badly in need. The Lions are doing a good work with the needy families in this section and should have the support of all local citizens.

## Eureka Man Goes Over Steep Bluff

Howard Day, of Eureka, drove off the road at a spot near the old rock crusher, about seven miles south of Willits, last Monday. He was out and brained but made his way back to the highway and caught a ride to Ukiah, where his wounds were dressed. Later he returned to his home in Eureka by train, leaving his car for a garage man to fix. A report was spread around Willits that the man had been killed and it was some time before the truth was known, as no trace of him could be found at the scene of the wreck.

**THANKSGIVING TEA A SUCCESS**  
The tea held last Tuesday by the ladies of the Methodist church was a real success. More than 30 ladies were present to partake of the hospitality of Mrs. G. H. Jones, Mrs. Blosser, Mrs. Drew Case and Mrs. Duncan.

The musical numbers given by Mrs. Drunawick and the reading by Mrs. G. H. Foster were especially entertaining.

The tables were decorated with red crepe paper, tall red candles and miniature turkeys. Delicious refreshments were served late in the afternoon and all departed vowing it the "end of a perfect day."

W. T. Smalley, Deputy Game Warden stationed at Willits, has applied to the Fish and Game Commission for a leave of absence for six months. Mr. Smalley has requested that a man be sent here to relieve him. What his plans are for the period are not known.

cooking school being sponsored by the Tribune this week during the Pacific Slope Dairy Show. During the show, cooked artichokes in all forms will be handed out to the many visitors, with receipt books telling how to serve and cook the tubers.

Many newspaper articles have appeared this week with mention of the artichokes being served at the cooking school and Willits has been given credit for furnishing the tubers.

## Will Decide Who Pays For Deer's Board And Room

Next Monday a meeting will be held in Ukiah, sponsored by the North Coast Conservation Committee of the California State C. of C., to discuss the problem of taking care of the wild deer in this section of the state.

According to the announcement of this meeting, some folks are claiming that the deer are becoming so numerous as to be a burden on the ranchers and stockmen, and it is possible that some legislation may be taken to get rid of the deer. The meeting will be open to the public and will be held at the Palace Hotel at 1 p. m. next Monday.

## Ukiah Man Killed On Boonville Road

William Towns, 55, a painter living in Ukiah, was found dead last Sunday near the Boonville road.

Towns had left Ukiah Friday evening to pass the weekend with friends at the Fish Ranch. A short distance east of his destination he drove off the road at a point where the bluff is some 200 feet high. He was evidently thrown from the car and suffered a broken neck, killing him instantly. His car was found about 100 feet lower down the bluff.

His car passed the spot about two days, as one saw the wrecked car or the body until Sunday when a Fort Bragg man noted the car in the canyon and stopped to investigate. The body was taken to Ukiah. Deceased was a member of the Moore lodge and in thought to have a brother in Chicago, but efforts to locate him had not been successful at last reports.

## BIRTHDAY PARTY

Little Francis Edenfeldt celebrated her sixth birthday last Tuesday with a very enjoyable party at her home. The guests included Phyllis McIntyre, Earline Johnson, Ruth Baker, Ruth Lightfoot, Betty Ann Harvey, Jane Gibson, Jane Farley, Pansy Mepp, Billy and Faria Whitney.

Games and refreshments occupied the time and all the children had one of the happiest days of their lives.

Mrs. G. M. Bigger of Covelo and Miss Katherine Drury of Oregon have been guests of Mr. and Mrs. R. W. King this week. Miss Drury left yesterday for San Francisco while Mrs. Bigger returned to her home in Round Valley Tuesday.

Arthur Gustander, Duane Dittlenbiller, W. A. S. Foster and Virn Lewis will be among the Willits football fans present at the California-Stanford game Saturday.

Mrs. Fred Robbitt spent a few days this week in San Francisco visiting friends and relatives.

flag instantly. He will a charge of first degree according to Klamath Falls. Darling was 47 years well known to Willits was a member of Willits A. M.

## Majestic Theater To Have

Mrs. W. C. Wheeler, of Majestic Theater, no week that she had ju played arrangements to tion of "talkies" in the

This will be good for patrons who wish to see developments in the brought to Willits. The chine to be used has definitely chosen, near Wheeler, but it will latest and best. The has extra good accous believed that talking shown here to compai the country.

While in San Francisco, Mrs. Wheeler booked the best talking pictures, among them "The Singing Fool" and a class that have been all over the country. The new equipment will and Mrs. Wheeler is will be ready not later

## Elks To Dan Willits De

Santa Rosa Lodge, O. Elks, in cooperation with the High School Association, will hold their annual dance on Friday evening, December 7. Nothing is done to make this the success of the year. hold their annual day evening which was

## Cornerston

The Cornerstone regular monthly meeting evening with a good members and advisors. Plans for the "Corr" be given about Dec discussed. The fall be in the cast: Lena mosen, Mildred Plar endorf, Betty At Schloegel, Hazel Th zone and Mildred S. The program com Reckendorf, Betty At Kenzie.

The refreshment c posed of Andy Peir and Anita Recagno, be doorman.

## THANKSGIVING

Thanksgiving ser next Wednesday at Baptist church in usual custom in gregations of both tial churches will un with Rev. John Br the sermon. Spr rendered during th bers and friends or urged to attend event.

Continued



# The Willits News

PUBLISHED ON THE REDWOOD HIGHWAY

VOLUME XXXII

WILLITS, MENDOCINO COUNTY, CALIFORNIA, FRIDAY, NOVEMBER 13, 1931

## Another Slicker Puts Out Bad Checks

Jimmy Murphy, who gave his address as Covelo, pulled a good one on several of the local business houses the first of this week. After the bank closed last Saturday he issued two checks amounting to about \$25.00 but they were dated November 7, 1937. The checks were cashed and when they reached the bank at Covelo it was discovered that Murphy had no account in that bank.

It was then discovered that nothing could be done about the matter as the checks are not due for a year to come and in the meantime Murphy has plenty of time to open an account in that bank and make them good. However, no one expects this to happen.

Murphy told local people he was en route to Sacramento, and he may be there or some place else for all anyone here knows.

## Ukiah Man Goes to Sleep, Wrecks Car

Russell McMullen of Ukiah is in a hospital in that city as the result of an automobile accident last Saturday night near the old rock crusher, six miles south of Willits.

McMullen was returning to Ukiah from Willits and went to sleep at the wheel of his car, which ran off the grade and dropped about 40 feet, hitting a tree. McMullen, although badly cut and bruised, was able to climb back up to the highway, where he was picked up and taken to Ukiah.

## Praises Railroad

Editor Willits News:

It has been my experience that when I wanted to go some place, I would buy a ticket from one person, then hand it to another who would punch holes in it and say, car ahead, or train to your left.

I was called to San Francisco last week to bring my sick wife back to Willits. It was late in the afternoon when the doctors at the U. C. Hospital told me it would be all right, but said "she must lay flat on the trip." I went to the N. W. P. office at the Ferry Building. There a lady asked, "What can I do for you?" I started to tell her but had only told a part of what I thought necessary when she said: "I think it can be arranged." She took up the phone

## COUNTY HAD 243 FOREST FIRES THIS YEAR

The Mendocino County branch of the State Division of Forestry has compiled a report for the fire season of 1931. During the season there were a total of 243 fires reported in the protected area to which men were sent, either from Camp Northwestern or some of the sub camps, and a rough estimate places the number of fires in the unprotected area at 325. This was by far the largest number of fires in this county during recent years.

Of the total number of fires in the protected area, 176 were classified as of incendiary origin, and in the unprotected area most of the fires were believed to be incendiary. The forestry officials estimate that 89.7 per cent of all forest fires this year were man caused, some of which were due to carelessness in leaving camp fires burning, throwing cigarette stubs in dry grass along the roadsides and other similar forms of thoughtlessness.

The total life loss in Mendocino county this year has been placed at \$59,882.50. In the protected area 15,004 acres of virgin timber, 8,919 acres of second growth timber, 41,669 acres of brush and 17,568 acres of grass were burned. The fire loss is estimated at \$5,482.40 to these lands and the loss of the improvements at \$8,099.07.

In the partial protected area the estimates are 30,000 acres of brush, and 10,000 acres of grass burned. This loss is placed at \$2500 and the improvements at \$5,000. These figures are very conservative and most people would about double them for the big fires east of Willits and in the Long Valley section are included in that group.

## Chance for Boys to Go to Annapolis or West Point

Congressman Clarence F. Lea announces a competitive examination to be held December 12, 1931 for

## Armistice Day Observed Here By Legionnaires

Armistice Day was observed as a holiday by most of our business establishments, but there were no ceremonies this year at the cemeteries.

Willits Post, American Legion, sponsored a banquet, which was held at the W. I. Club hall that evening, to which the Auxiliary, the Spanish War veterans and some of our citizens were invited guests. There were more than 100 guests at the banquet.

Lee Roberts acted as toastmaster and Gus Wallach of Ukiah, Dr. R. A. Babcock, "Kay Dee" Reynolds and Ray Good all made timely remarks. During the banquet the high school orchestra, under the direction of Fred Sowash, played a number of patriotic numbers. A very nice tableaux was then acted by Lee Roberts as soldier and Betty Roberts as nurse, during which Miss Meta Shimmin sang an appropriate selection.

The party then adjourned to the Willits Theater where a special picture was shown, following the regular show. The picture was entitled "Flasher of Action" and was taken by the U. S. Signal Corps during the World War in France.

## First Basketball Game of Season Here November 21

The Willits basketball team, which is sponsored by and wears the colors of the local Lions Club, will open the season in this district Saturday night, November 21, one week from tomorrow. The opening will consist of two games at the high school gymnasium. The first game will start about 7:30 p. m. and the second contest about 9:45.

The first game will be with the "Blues" team and the second game with the "Green" team from Camp Northwestern. Willits will be fortunate in having two such splendid games as openers, for both teams at the camp are playing fast ball and have a large group of fine players to draw material from.

Admission will be 35c for adults; 25c for students and 10c for children. All men from the camp will be given a special rate of 25c. This admission, of course, is for both games. Go get 'em, Willits.

## SAN FRANCISCO AUTO SHOW TO OPEN SAT.

Twenty-two automobile exhibits; fifteen trailer and twelve accessory exhibits!

That is the line-up for the twenty-first Pacific Annual Automobile Show which opens Saturday in the San Francisco Civic Auditorium, as presented by George A. Wahlgreen, manager of the show.

There will be more than 200 models on the floor, many of which will be seen for the first time by auto show goers, Wahlgreen pointed out.

Almost every passenger car model the industry has to offer will be on display in this year's show and the majority of the exhibitors have ready eight or more models in sedan, roadster and coupe types.

San Francisco's Auto Show this year is unusual in that most all new makes of cars have been introduced within the last few weeks and most of the other models will make their debut at the show. Among these are the Ford V-8, in which profound style changes have been made, and the new Willys 77.

In summarizing engineering and style trends for 1937, Wahlgreen said that precision in motor building and more advanced streamlining are the two predominating factors in the new models for 1937. Engineers have attained a perfection of engine performance this year which would have been impossible only a few years ago.

## Frank Clarke Again Wins First Place With Fine Fleeces

A dispatch from Dallas, Texas, a few days ago, announced that Frank C. Clarke, of Laytonville, had won the championship ribbon for first place in the International Sheep, Goat, Wool and Mohair Show. Mr. Clarke's entry was in the fine strictly combing class. He has won numerous other championships in wool shows all over the country during the past few years and is now generally rec-

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# READY FOR BIG S

## Willits Is Prepared to Entertain Its Large

### Big League Horses At Ukiah Rodeo

"Big League" bucking horses—a string of them that is claimed to be second to none in the United States—will be featured during the eighth annual Ukiah Rodeo, July 4, 5, 6, and 7.

Preparations for this year's rodeo are now fully completed and indications are that it will draw the largest attendance in its history.

For several years the Ukiah Rodeo Association has been engaged in picking its string of outlaw bronchos.

These horses are ridden but once a year at the annual rodeo and for the balance of the year are allowed to run wild on the 40,000 acres of the Eden Valley Ranch.

The efficiency of the Ukiah system has been proven beyond a doubt and it is a known fact that the Ukiah buckers toss off champion riders from other shows with no apparent difficulty.

With the opening of the big western event drawing near, it was announced by the directors of the Rodeo Association this week that the Henshaw Investment Company of San Francisco, owners of the Eden Valley Ranch, have put up a \$200 trophy to the winner of the bucking horse contest.

The terms under which this trophy is given, require that it must be won three times before it becomes the permanent possession of the winner. Each time it is won the rider's name will be engraved on it and a rider winning it twice in succession will be given an additional prize of a \$100 purse in gold.

Ukiah has made elaborate plans this year for entertaining rodeo visitors and ample accommodations are promised to those desiring to remain for more than one day in the hotels and private homes. The Redwood Empire Association is cooperating for the success of this year's rodeo and a large representation from the nine empire counties is expected.

### Willits Weather Is Best In The State

The hot wave that spread over the entire state over the last week-end served to emphasize the delightful weather enjoyed as a regular thing by the folks who are fortunate enough to live in Willits.

### Grape Growers Picnic Sunday Near Calpella

John Flinn's grove, one mile north of Calpella, will be the scene of a grower picnic Sunday afternoon, when grape growers and their families will assemble from all parts of Mendocino county. The gathering is in celebration of the passage of the Farm Relief bill, which means much to the vineyardists throughout the state. Lunch will be served at 12:00 o'clock. During the afternoon prominent speakers will give the growers details of the Stabilization Corporation now being set up in conformity with the Farm Bill.

This body will work out the problems of the grape grower and with the backing of the Federal Government, secure control of the fresh market crop, which has blocked the sale of juicy grapes in eastern markets during the last several seasons.

A giant merger of leading grape by-product manufacturers has been effected in connection with the federal stabilization plan. These plants, controlling 85 per cent of the grape by-products of the state, have organized to exploit these commodities, and it is anticipated that at least 800,000 tons of grapes will be sold during the coming season.

According to P. E. McKinnay, prominent Mendocino county grape grower, the curtailment of the Mexican shipments will give the northern juice man his first opportunity to dispose of his product at a profit. "When the growers understand what the administration is doing for them, they will realize that they have cause for rejoicing," McKinnay asserts.

Complete preparations have been made and growers and their families are looking forward to a most enjoyable afternoon.

### Three Women Hurt As Auto Overturns

Three women were brought to the Howard Memorial Hospital last Thursday afternoon for treatment after the wreck of their car near the rock crusher, seven miles south of Willits. They were Mrs. C. D. Freeman and her daughter, Velma, age 18, and Edna Hays all of Humboldt county. They were enroute to Petaluma and lost control of their car, which turned over with them after running up a steep bank. None were seriously injured.

### Art Exhibit To Attract Willits

### NO NOISE MAKERS

To The Citizens of Willits:

Willits has a city ordinance against the shooting of fire crackers and other fireworks and noise makers of any kind. At the request of the Willits Frontier Days Celebration committee and the American Legion, this ordinance will be strictly enforced during the Frontier Days parade on July 2, 3, and 4 and also at the Frontier Days grounds during the celebration.

The committee asks that all parents inform their children of this rule. The reason for this is that many animals will be used during the parade and celebration that are not used to noise makers and the crackers, and should same be allowed during the parade or celebration, it might cause some of the animals to run away and do considerable damage and injure many people. Please cooperate with the committee in charge of the celebration.

By order of the Board of City Trustees of the Town of Willits.

J. THOM, Marshal

### Special Train From Fort Bragg On July Fourth

Willits has received this week from our sister city, Fort Bragg, the effect that a special train will leave there early in the morning of July 4, arriving in Willits in time to see the parade and return to Fort Bragg late in the evening. The round trip rate will be \$2.00. It is estimated that between 200 and 300 will make the trip to Willits.

The railroad company has been co-operating with the Willits Frontier Days committee and the coast citizens and newspapers have been more than forthcoming to Willits this year and in the past. With the opening of a good road between Willits and Fort Bragg, the friendship will be strengthened between the two cities.

### Santa Cruz Man Killed In Fall While Fishing

Wheeler K. Jensen, salesman, whose home was in Santa Cruz, was killed in a fall from a 300-foot cliff near Plain last Saturday. Mr. Jensen was

### Daily Features At Frontier Days

The following is a list of daily at the Frontier Days show: bull riding, bucking bull, steer riding, shetland pony and horse chariot race, slow horse, wild cow milking contest, para 10 a. m. cowboy and cowgirl, fancy roping and trick riding, horse riding and many other included features. Frontier Days a rodeo, but a real wild west featuring the sports of early California.

### Dog Races To Be Featured On

Dog races will be featured at Frontier Days celebration on July 4. Any child under the age of 10, either boy or girl, who owns any enter this race. Three prizes will be awarded the winner. Bring your dog on a six foot leash on the 4th, and take part in event. Also on the last day of celebration, 20 goats will be away free to the children who the same. This is one of the attractions to be seen at any. All profits from Frontier Days used for community betterment. This is your show and should the support of every citizen live in this section.

### Frontier Days Parade At 10 A

The Frontier Days parade will be held each day during the celebration on July 2, 3 and 4. It is held each morning at 10 o'clock. The committee in charge has spent months trying to decide this important matter, and after great consideration to all sides, has week officially decided to have the parade in the morning. This gives our many visitors time to see between the parade and opening celebration and also gives it better at the grounds more in better arrangement in further show without delays of any kind.

# Ridgewood Project

Challenges Engineers of  
Division of Highways

By E. L. BLOMQUIST, District Construction Engineer

CONSTRUCTION is now under way to replace that section of the Redwood Highway known as Ridgewood Grade. The project is roughly situated midway between Ukiah and Willits and is 4.1 miles in length.

To those familiar with the present highway traversing the Ridgewood Grade, its reconstruction to modern standards was a challenge to design, soils, and construction engineers. This long awaited and eagerly anticipated event, now imperative because of traffic requirements, put to the crucial test their knowledge of highway engineering as well as their ingenuity in developing ways and means of obtaining a stable roadway.

## Unstable Terrain

It was appreciated that subsurface drainage, fill and cut stabilization would involve an expenditure of funds which would have financed the construction of several miles of a 1930

standard highway, while on the planned project it would be an unnoticed expenditure to the layman only justified by a reasonably stable highway through terrain probably as unstable as any similar conditions encountered by highway engineers.

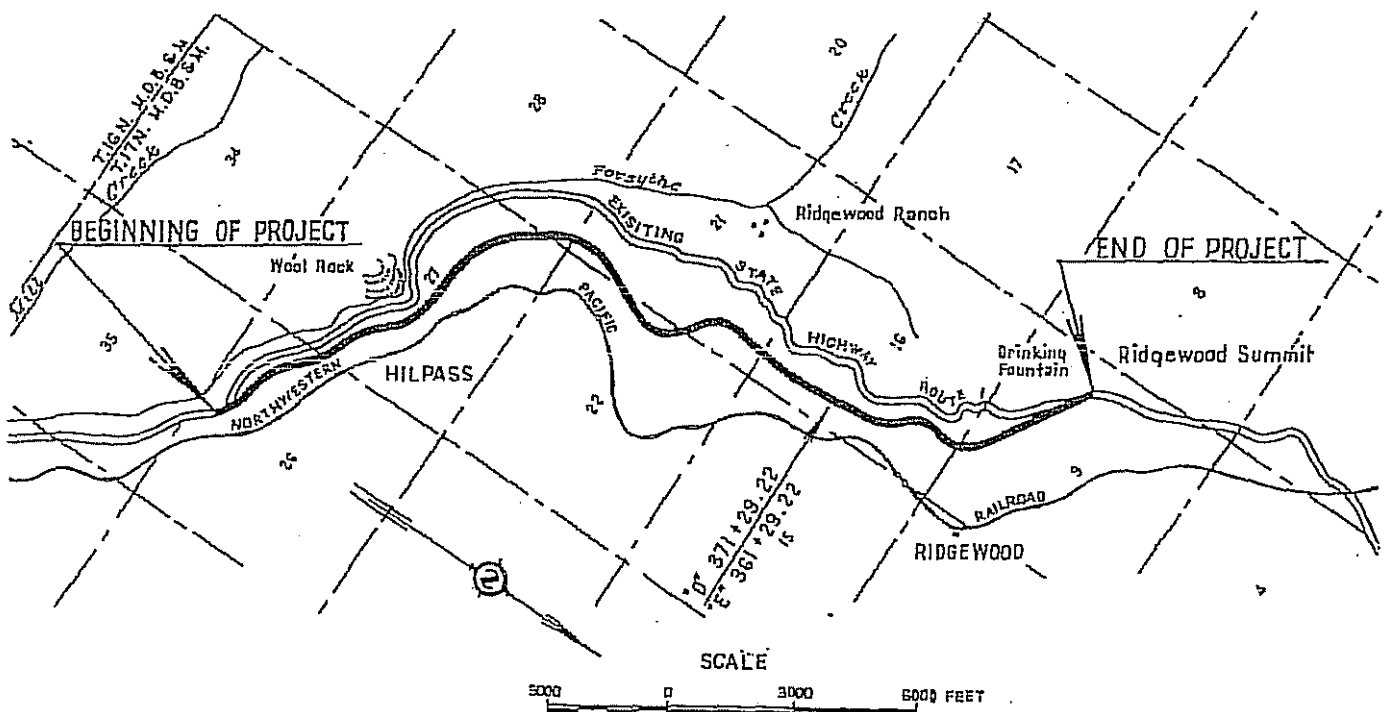
The section of highway to be reconstructed was graded in 1914-15 to horse-and-buggy standards and, except for surfacing, has been improved but little since that time. The present alignment is tortuous, contouring the westerly slope of broken mountainous terrain. Sight distance is very limited, allowing few opportunities for passing slow-moving trucks and house trailers which negotiate the uphill grade at speeds quite aggravating to passenger car traffic. This combination of factors results in the formation of long traffic queues with all traffic reduced to the speed of the leading vehicle. Needless to say, traveling this section of road during the summer

months when tourist traffic is heavy is very frustrating to the average motorist.

## To Be Four-lane Expressway

The need for reconstructing this section of highway was recognized 10 years ago with the adoption of the District Postwar Construction Program by the Highway Commission on November 18, 1943. Project No. 4 of this program covered 9.3 miles of proposed reconstruction between 1.5 miles south of Forsythe Creek and Ridgewood Summit. In 1948-49 the southerly 5.2 miles of this section were reconstructed to modern two-lane standards by Guy F. Atkinson Company.

The present project undertakes the grading of the northerly 4.1 miles of the original project and will be developed to a four-lane expressway. It is planned to place the surfacing under a separate contract during the summer of 1954. Recent traffic studies



and current design standards dictated a complete realignment on new location and a 58-foot, four-lane all-paved section for the project.

#### Geological Formations Varied

Geologically, the formations on the project are quite varied and involved. The area is characterized by landslides and old fault lines which have resulted in numerous springs and unstable areas. Plastic grey to brown clays mixed with a large percentage of sandstone and schist particles are encountered throughout the project. Test borings indicate plastic clay layers extending to depths up to 100 feet in several fill areas. The low permeability of this material permits high hydrostatic pressures to develop with resulting instability unless corrective measures are undertaken.

Because of the generally unstable nature of the terrain traversed throughout the project, the following design features were incorporated in the plans to provide corrective treatment of unstable areas:

1. Stabilization trenches
2. Channel stripping
3. Embankment foundation stripping

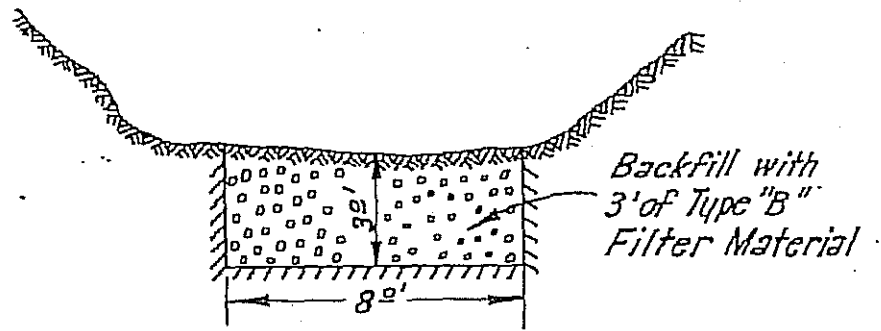
#### Stabilization Trenches

Stabilization trenches were designed where unstable fill foundations are well-defined and are usually located in swales or ravines. These trenches are 12 feet in bottom width, have 1:1 side slopes and are being excavated to

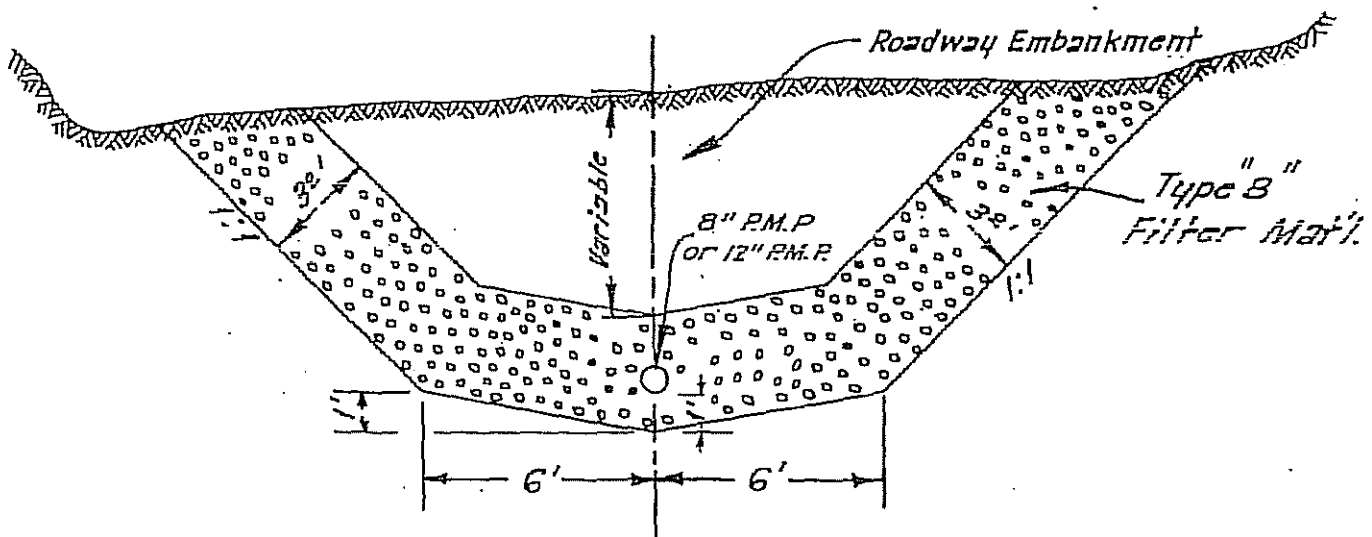
depths varying from 5 feet to 25 feet. Complete subsurface exploration was not made during the design stage as the soil is too rocky for hand borings and the cost would have been prohibitive if all trenches were investigated by power drilling equipment. For this reason the design of the trenches was based on a few power borings and a geological study made by the Materials and Research Department. Hand borings were made during construction after excavating the trenches to approximate planned grade. Final depths to which the trenches will be excavated are based upon these hand borings.

Some of these trenches are "floating"; that is, they are not excavated to a firm bottom, as to do so would be prohibitive in cost. The trenches are generally constructed more or less

normal to the highway but in some instances are constructed with wye branches. The bottom and side slopes of the trenches are blanketed with filter material three feet thick normal to the slopes, and the remaining part of the trenches backfilled with roadway embankment. Perforated metal pipe eight inches and/or 12 inches in diameter is placed in the filter material one foot above the bottom of the trench. These trenches are very effective in providing an outlet for seepage or subsurface waters and for dehydrating the surrounding ground and have proven very successful for fill stabilization on previous projects throughout the district. Seventy-seven stabilization trenches are being constructed on this project involving 63,000 cubic yards of trench excavation and 58,000 tons of filter material.



TYPICAL SECTION CHANNEL STRIPPING



TYPICAL SECTION - STABILIZATION TRENCH



*Heavy construction on section of Ridgewood grade project*

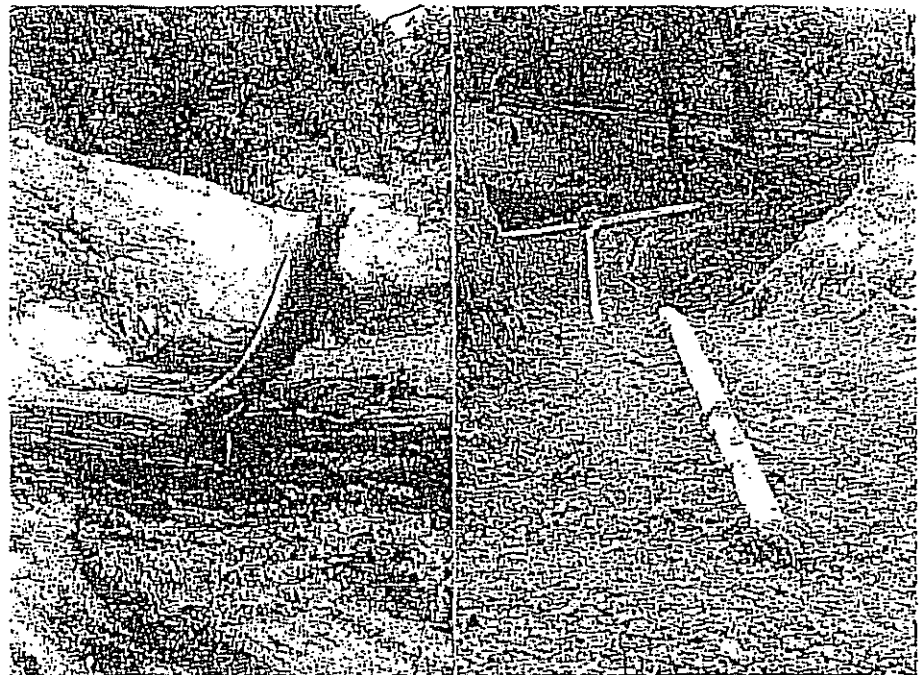
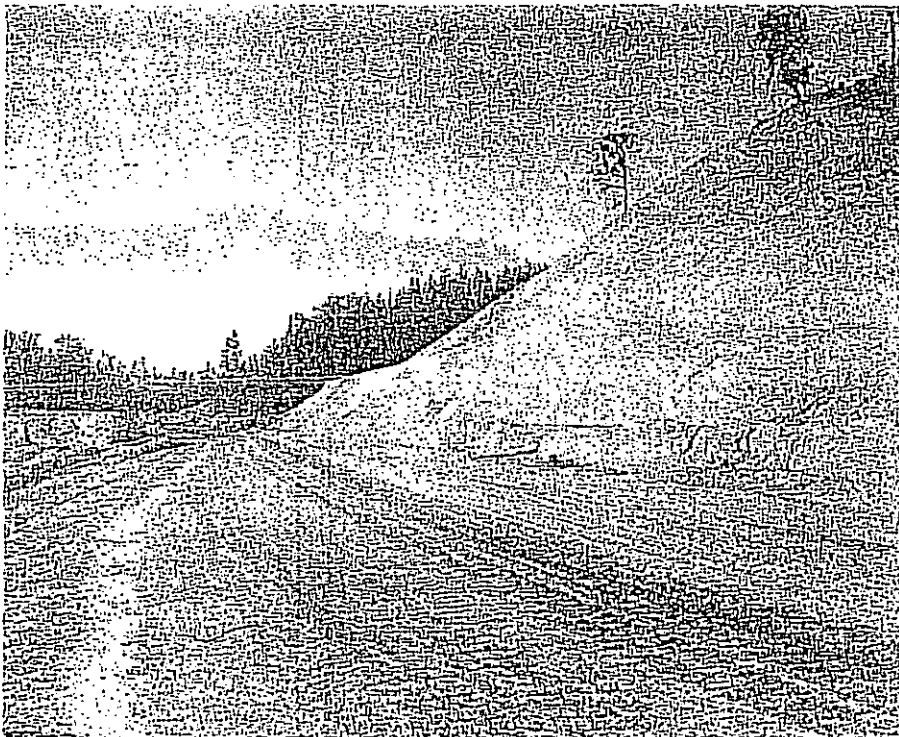
#### Channel Stripping

A modified form of stabilization trench was designed for locations where existing water channels fall under embankments. These channels are being stripped to a width of eight feet and a depth sufficient to place three feet of filter material. This treatment is not intended to provide foundations for culverts as their location does not usually follow the existing channel, but rather to provide an outlet for seepage or subsurface water which might otherwise be trapped under the new embankment. Thirty-one such channels are to be stripped involving 5,400 cubic yards of channel stripping and 9,000 tons of filter material.

#### Embankment Foundation Stripping

Ten large embankment areas are being stripped to a depth varying from three feet to 10 feet to remove wet and unstable surface soils to provide a stable foundation for embankment construction. These stripped areas are blanketed with three feet of filter material prior to constructing embankments thereover to provide an outlet for seepage water. This work involved 25,000 cubic yards of excavation and 37,000 tons of filter material.

Bench cut on Ridgewood grade project



Slab trench showing pipe in place

Including filter material to be utilized for underdrains, a total of 107,000 tons will be required for the project. Specifications for filter material conform to those listed for Type "C" filter material proposed for the forth-

coming new Standard Specifications. Gravel from Forsythe Creek about three miles south of the project is being utilized for filter material and the project. Gravel from this source meets specification requirements by simply scalping off the oversize.

#### Heavy Excavation

All of the above corrective treatments, although involving a large amount of work, may be considered as but preparatory to the grading proper, which involves some 785,000 cubic yards of roadway excavation. The short time limit of 155 working days made it mandatory for the contractor to plan a tight working schedule coordinating the preparatory work with the grading, which has been no easy task. Construction of the stabilization trenches, channel stripping, and embankment foundation stripping and backfilling with filter material before embankments can be constructed is further complicated by the necessity of utilizing material resulting from these excavations in the construction of embankments.

#### Vibratory Tampers

An innovation on this project is the required compaction of filter material by vibratory tampers. This re-



quirement was specified to minimize consolidation of the filter material subsequent to construction of the roadway, which has possibly been partly responsible for the settlement indicated at pavement grade on several previous projects.

It was considered that the vibratory method of compaction would be ideally suited to the granular type of material specified for filter material and that compaction by this method would prove to be both practicable and economical. A satisfactory field test procedure has yet to be developed to determine the relative compaction of a granular material such as filter material. Furthermore, actual compaction results that could be expected to be obtained with vibratory tampers was not known. For the foregoing reasons the cost of compacting the filter material by vibratory tampers was specified to be paid for as extra work in lieu of the customary procedure of specifying a minimum relative compaction requirement. The contract special provisions require that filter material placed in the bottom of stabilization trenches, channel stripping areas and for embankment foundation be placed in layers not exceeding 18 inches thick, and thoroughly compacted by the use of approved vibratory tampers, as directed by the engineer. Compaction of filter material placed on the side slopes of stabilization trenches is not specified as it is impracticable to compact this granular material and keep it in place on a 1:1 slope.

#### Equipment Used

The vibratory equipment furnished by the contractor for this work consists of three Jackson vibrating tamper units mounted on the front of a D-4 crawler tractor. Each vibrating tamping unit is 24 inches wide, so that the three units mounted side by side make a total tamper width of six feet. The tamper units are mounted similarly to a bulldozer blade and are easily lowered into position for compacting or raised for turning of the tractor just as a bulldozer blade is raised or lowered.

A Jackson power plant unit is mounted on the tractor and provides power for the three Jackson vibrating



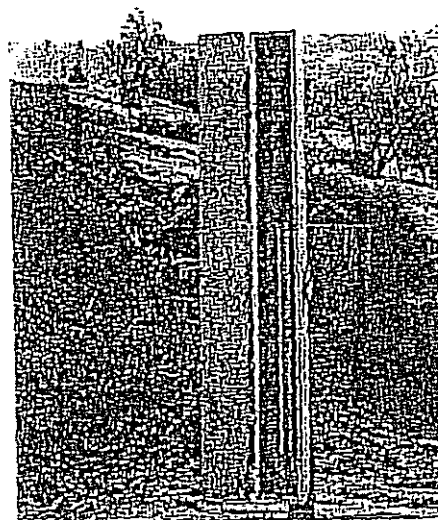
UPPER—Settlement platform set-up may be seen on left. LOWER—Close-up of settlement platform.

tamping units. The power plant consists of a small gasoline motor and electric generator. Each tamper unit is operated by its own electric motor. The tamper shoes are leveled in front and are operated only on the forward motion of the tractor. Generally three to six passes are made over an area to be compacted at a travel speed of about 24 feet per minute. This equipment operates satisfactorily on grades up to 25 percent. Compaction results being obtained with this equipment have not been fully evaluated and further analysis must be made before arriving at any conclusions relative to compaction of filter material by vibratory tampers.

#### Erosion Control

The seeding of fill slopes is planned throughout the project as an erosion control measure.

No special preparation of slopes for seeding is planned; however, as an additional erosion control measure the special provisions require that the surfaces of all embankment slopes shall be rolled with a tamping roller, a total of 12 times or six round trips of the roller.



Embankment settlement subsequent to surfacing of the finished roadway is, of course, undesirable and engineers strive to prevent this condition by adhering to well-accepted construction practices during construction. Unfortunately, some large roadway embankments do settle, even though foundations were stripped or recomacted and compaction requirements strictly enforced throughout construction of the embankment. Such settlement may be caused by consoli-

... Continued on page 36

County	Route	Description	Approximate mileage	Estimated cost
Sonoma	1 (US 101)	Wilfred Crossing to Santa Rosa and Russian River to Northwestern Pacific Railroad in Healdsburg and 0.1 mile south of south city limits to north city limits of Cloverdale; surface and shoulder improvement	5.6	\$215,000
Sonoma	56 (SR 1)	Kolmer Gulch, Miller Creek, and Deadman Gulch; replace culverts		80,000
Sonoma	Various	Rights of way on state highway routes		372,000
Stanislaus	4 (US 99)	0.5 mile south of Turlock to 0.8 mile north of Turlock (portions); grade and surface	0.5	50,000
Stanislaus	4 (US 99)	Keyes to 0.5 mile south of Ceres and 2.0 miles north of Modesto to San Joaquin county line (portions); grade and surface		75,000
Stanislaus	4 (US 99)	Hatch crossing to Modesto; grade, surface and widen bridge	1.8	700,000
Stanislaus	13 (SR 130)	Oakdale to Tuolumne county line (portions); grade and surface	6.5	125,000
Stanislaus	41 (SR 33)	Railroad grade crossings south of Westley and north of Patterson and Puerto Creek Bridge; grade, surface and widen bridge		50,000
Stanislaus	41 (SR 33)	Main Canal, Orastimba Creek, and Timba Cattlepens, bridges and approaches		145,000
Stanislaus	66 (SR 150)	San Joaquin county line to Oakdale (portions); grade and surface	3.6	300,000
Stanislaus	109	M.I.D. Canal Lateral No. 3, bridge; widen		50,000
Stanislaus	Various	Rights of way on state highway routes		415,000
Sutter	Various	Rights of way on state highway routes		10,000
Tehama	3 (US 99E)	Los Molinos to Mill Race Creek; grade and surface	12.2	830,000
Tehama	29 (SR 36)	Tedec Road to Button Canyon; grade and surface (State's share)	5.0	110,000
Tehama	Various	Rights of way on state highway routes		20,000
Trinity	30 (US 299)	Humboldt county line to Prairie Creek (portions); base and dust oil		65,000
Trinity	20 (US 299)	1.8 miles east of Weaverville to 2.3 miles west of Douglas City; grade, surface and bridge	2.5	393,000
Trinity	Various	Rights of way on state highway routes		5,000
Tulare-Kern	4 (US 99)	One mile south of Delano Underpass to 0.5 mile north of Tulare county line; grade, pave and structures	4.8	2,960,000
Tulare	4 (US 99)	0.5 mile north of Kern county line to 0.5 mile north of Earlimart; grade, pave and structures	7.2	2,500,000
Tulare	4, 10 (US 99, SR 196)	Visalia Airport Interchange; grade, pave and illumination	0.3	750,000
Tulare	4 (US 99)	0.5 mile south of Kings River to Clark Avenue; surface	1.3	65,000
Tulare	129 (SR 65)	1.5 miles north of Deer Creek to Linda Vista Avenue; grade, pave and structures	7.6	1,110,000
Tulare	Various	Rights of way on state highway routes		995,000
Tuolumne	40 (SR 49)	Stevens Bar Bridge to Moccasin Creek Road; grade, surface and bridge	2.7	500,000
Tuolumne-Mariposa	110 (SR 192)	Stanislaus county line to Coulterville (portions); grade and surface	5.0	*25,000
Tuolumne	Various	Rights of way on state highway routes		5,000
Ventura	2 (US 101)	0.4 mile west of Central Avenue to Santa Clara River; grade, pave and structures	5.1	1,943,000
Ventura	Various	Rights of way on state highway routes		1,440,000
Yolo	50 (SR 15)	Rumsey to three miles north; grade and surface	3.0	150,000
Yolo	90	2 1/4 miles north of Madison to 6.5 miles north of Madison; grade, surface and structures	3.7	464,000
Yolo	Various	Rights of way on state highway routes		25,000
Yuba	3 (US 99E)	Olivehurst to Marysville; structures	4.0	475,000
Yuba	Various	Rights of way on state highway routes		150,000

## Ridgewood Project

Continued from page 11 . . .

dation or subsidence of the underlying foundation, to consolidation of the materials placed in the embankment, or to some combination of these factors.

### Settlement Platforms

In an effort to determine whether such settlement occurs within the roadway embankment or in its foundation on this project, settlement platforms are being installed at various locations to provide a means of accurately checking settlement, if any, at various levels within the embankment and its underlying foundation. It is hoped that the information obtained from this data will be of value in design studies to minimize roadway embankment settlement.

The settlement platform devices being installed to record settlement consist essentially of an inverted siphon of copper tubing with one end installed in the embankment or underlying foundation at the point chosen to determine settlement and the other end positioned outside the limits of construction at about the same elevation where recordings may be taken. Recordings are taken by filling the inverted siphon with water and noting the elevation of the water. An overflow into pervious material is provided when installing the settlement platform in the embankment. Installation of these embankment settlement platforms is being supervised by W. S. Maxwell of the Materials and Research Department in Sacramento.

It is estimated that all work will be completed on the subject grading project early in 1954. Current esti-

mates are that the completed contract will involve the expenditure of approximately \$1,060,000.

McCammon-Wunderlich of Palo Alto is the contractor. The firm is represented on the job by Superintendent James Wilson. The work is being supervised for the State by District Engineer Alan S. Hart and Resident Engineer Harold M. Hansen.

### INTERSECTIONS ARE DANGEROUS

Intersections are places of danger for the motorist, points out the Public Safety Department of the National Automobile Club. All kinds of unexpected things can take place there and that is why the motorist should approach them with caution and drive through them with alert care.

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, CHIEF

DEPARTMENT OF TRANSPORTATION

DISTRICT 1, P.O. BOX 3700

REDA, CA 95002-3700

PHONE 707/445-4463

707/445-6373



June 30, 1993

Rita Santos  
Northern Aggregates  
P.O. Box 165  
Willits, 95490

Dear Rita,

Attached are six pages of Materials and Research Department  
Test Reports for May and June of 1947.

We understand that you need to verify 1947's usage of the  
Ridgewood Summit Quarry (M-Q-9) and we trust that these documents  
will be helpful.

Sincerely,

DREW W. IRWIN  
District Materials Engineer

Attachments (6)



DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT

Test No. **52527 B** Test No. **67-2417** Date Reported **May 25** 194 **7**

Lot No. \_\_\_\_\_ Field No. \_\_\_\_\_ P.O. **08**

District **1** County **Los Angeles** Route **1** Section \_\_\_\_\_

Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_

Limits \_\_\_\_\_

Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_

Sample of \_\_\_\_\_ Trade Name \_\_\_\_\_

Source of Supply \_\_\_\_\_ Sample From \_\_\_\_\_

Owner or Manufacturer \_\_\_\_\_ Quantity Represented \_\_\_\_\_

Date Sampled \_\_\_\_\_ 194 \_\_\_\_\_ Date Received \_\_\_\_\_ 194 \_\_\_\_\_

Sampled by \_\_\_\_\_ Title \_\_\_\_\_

For use in \_\_\_\_\_

GRADING ANALYSIS						TEST RESULTS							
Sieve	Spec. No.	As Received	Ret. Cracked	As Used		Spec. No.	A	B	C	D	E	F	Spec.
				By Wt.	By Vol.								
1 1/2" Balls						Temperature							
1 1/2" Balls						Moisture							
1 1/2" Balls						Bitumen							
1 1/2" Balls						Curve No.							
1 1/2" Balls						Slit. Index							
1 1/2" Balls						Dist. Ratio							
1 1/2" Balls						Sp. Gr. Rel.							
1 1/2" Balls						STABILOMETER RESULTS							
1 1/2" Balls						COHESIONMETER RESULTS							
1 1/2" Balls						SUSCEPTIBILITY TO WATER							
1 1/2" Balls						Swell (24 hrs)							
1 1/2" Balls						Permeability							
1 1/2" Balls						Softening							
1 1/2" Balls						Shrink (1)							
1 1/2" Balls						Mill Stripping (on coarse aggregate)							
1 1/2" Balls						Optimum Bitumen Content							
1 1/2" Balls						or Recommended K value							
1 1/2" Balls						to							
1 1/2" Balls						Eqn. Cal. Per Sq. Yd. for 1" Compacted Surface							
1 1/2" Balls						Grading as used was obtained by correlating samples as follows:							
1 1/2" Balls						% By Wt.							
1 1/2" Balls						% By Vol.							
1 1/2" Balls						Test No.							
1 1/2" Balls						Field No.							

1. Dist. Eng. or Bridge Dept.
2. Materials & Research Dept.
3. Highw. Const. Dept. - Maint. Dept.
4. Res. Engineers - Maint. Dept.
5. Public Works Administration
6. Dist. Mat'l. Eng.
7. Survey and Plans Dept.
8. Dist. File

DIST. MAT'L ENG.

T. E. STANTON  
Materials and Research Engineer

By \_\_\_\_\_  
Staff Materials and Research Engineer

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT

Test No. 52527A Test No. 47-2417 Date Reported May 29 194 7  
Lot No. \_\_\_\_\_ Field No. \_\_\_\_\_ P. O. \_\_\_\_\_  
District 1 County HAR Route 1 Section DE  
Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_  
Limits \_\_\_\_\_  
Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_  
Sample of \_\_\_\_\_ Trade Name \_\_\_\_\_  
Source of Supply \_\_\_\_\_ Sample From \_\_\_\_\_  
Quantity of \_\_\_\_\_ Quantity Represented \_\_\_\_\_  
Date Sampled \_\_\_\_\_ 194 \_\_\_\_\_ Date Received \_\_\_\_\_ 194 \_\_\_\_\_  
Sampled by \_\_\_\_\_ Title \_\_\_\_\_  
For use in \_\_\_\_\_

## TEST RESULTS

GRADING ANALYSIS				TEST SPECIMENS							
Spec. No.	As Received	As Graded	As Used	Spec. No.	A	B	C	D	E	F	Spec.
1				Temperature							
14				Mixture							
14				Comp. No.							
1				Dist. Index							
31	100	96	100	Bit Ratio		4.3					
13	85-95	88	90	Sp. Gr. Wt.							
33	60-80	75	87	STABILOMETER RESULTS							
4	15-35	24	28								
8	5-20	12	17	COMPRESSION RESULTS							
10	0-10	12	10								
50		12	6	SUSCEPTIBILITY TO WATER							
50		8	4								
100		4	2	Swell (24hrs)							
200	0-4	4	2	Permeability							
Wash		1	2	Saturation							
Bit.				Swell ( )							

Envelope Area 20.0 Sp. Gr. per Bt. \_\_\_\_\_  
Sp. Gr. App. Pts 2.55 Comp. 2.55  
Certificate Number Equivalent Value: \_\_\_\_\_  
Kov 1.0 Film Stripping (at certain agencies) \_\_\_\_\_  
Diphenyl Bismuth Contact 4.0 for Oil Index Curve No. \_\_\_\_\_  
Grading as used was obtained by combining samples as follows:

% By Wt. \_\_\_\_\_ % By Vol. \_\_\_\_\_ Test No. \_\_\_\_\_ Field No. \_\_\_\_\_

1. Dist. Eng. or Bridge Dept.
2. Materials & Research Dept.
3. Highw. Const. Dept. - Maint. Dept.
4. Res. Engineer, Maint. Dept.
5. Public Roads Administration
6. Dist. Maint. Eng.
7. District and Plans Dept.
8. Dept. FWA

DIST. MATL. ENG.

T. E. STANTON  
Materials and Research Engineer

By \_\_\_\_\_  
Senior Testing Engineer

# DIVISION OF HIGHWAYS MATERIALS AND RESEARCH DEPARTMENT

Test No. 9237 Test No. 47-2417 Date Reported May 27 194 7  
 Lot No. \_\_\_\_\_ Field No. 010 6 8775 P.O. \_\_\_\_\_  
 District 1 County San Diego Route 1 Section 02  
 Contract No. \_\_\_\_\_ Federal Aid Project No. \_\_\_\_\_  
 Limits 14 mi. E Rossmore Cr. to Highway 56  
 Resident Engineer \_\_\_\_\_ Contractor \_\_\_\_\_

Sample of Rock Trade Name Pete of Quality  
 Source of Supply 244 14 of 385 491 Sample From \_\_\_\_\_  
1-4-4-1-E

Owner or Manufacturer \_\_\_\_\_ Quantity Represented \_\_\_\_\_  
 Date Sampled May 14 194 7 Date Received May 22 194 7  
 Sampled by B Title JRE  
 For use in Base, Gr. Base, Filler, Grp. and Filler material

## TEST RESULTS

CRUSHING ANALYSIS					TEST SPECIMENS							
Spec.	As Received	Ret. Crushed	As Used	By Wt. by Vol	Spec. No.	A	B	C	D	E	F	Spec.
135					Temperature							
136					Moisture							
137					Bitumen							
138					Curve No.							
139					Bit. Index							
140					Bit. Ratio							
141					Sp. Gr. Brq.							
142					STABILOMETER RESULTS							
143												
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299												
300												

Grading as used was obtained by combining samples as follows:  
 % By Wt. % By Vol. Test No. Field No.  
 1. 100 100 100 100  
 2. 100 100 100 100  
 3. 100 100 100 100  
 4. 100 100 100 100  
 5. 100 100 100 100  
 6. 100 100 100 100  
 7. 100 100 100 100  
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 40. 100 100 100 100  
 41. 100 100 100 100  
 42. 100 100 100 10

# DIVISION OF HIGHWAYS MATERIALS AND RESEARCH DEPARTMENT

TEST NO.           

Field Sample No.            REPORT OF TESTS OF           

CTB Test No.            Date Reported            19           

Job No.            Of Mix Test No.            Comp. Mixed with Base Aggregate Test No.           

District            County            Section           

Contract or Job No.            Federal Aid Project No.           

Location           

Resident Engineer            Contractor           

Material            Place of origin           

Location of Source           

Course or Manufacture            Quality Indicated           

Material for use in           

Sampled            19            Received            19           

Transmitted by            Title           

GRAVIMETRIC ANALYSIS			BEARING RATIO TEST		
No.	Total % Passing	Specification	PENETRA- TION INDEX	PERCENTAGE OF STANDARD	
			Compacted	Compacted and soaked	Specification
3 inch					
2 1/2 "					
2 "			0.1		
1 1/2 "			0.2		
1 "			0.3		
3/4 "			0.4		
3/8 "			0.5		
No. 4	39		Moisture - Avg. %		
" 8			Moisture - Top 1"		
" 16			Dry Wt. Per Cu. Ft. Compacted		
" 30			Expansion Drying Swelling		
" 50			OTHER TESTS		
" 100			Compacting Value		
" 200			Liquid Limit		
Wash 200			Plasticity Index		
1 Micron			Soil Classification		
1 Micron			Specific Gravity - Pore #4		
			Absorption		
			Weight Per Cu. Ft.		
SOLUBILITY TEST			BATTLE TESTS		
Sulfate Solubility % Less			Los Angeles 100 Rev.		
			Los Angeles 500 Rev.		
			Wear Scar		
CLASSIFICATION					
Grade % Chert			% Other Detrimental Particles		

SEVENTH

T. E. STANTON

SEAL MATERIALS AND RESEARCH ENGINEER

1-340

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
MATERIALS AND RESEARCH DEPARTMENT

Date Reported Sept-17 194

Test No. 1734A Test No. 1734A Tested For PORTLAND CEMENT  
Lot No. 1734A P.O. DE  
District 1 County Downey Route 1 Section DE  
Contract No. 1734A Federal Aid Project No. 1734A  
Limits 1734A  
Resident Engineer 1734A Contractor 1734A  
Sample of 1734A Sample From 1734A  
Source of Supply 1734A  
Quantity Represented 1734A  
Date Sampled 194 Date Received 194  
Sampled by 1734A Title 1734A  
For use in 1734A

GRADING ANALYSIS				TEST PROVISIONS			
Soils	As	AS USED		Name and Type of Cement	Galvan Data Type I		
Limit	Rec'd	Without Cement	With Cement	Specimen Number	A	B	C
				Place, Street or Lab. (P. H. or L.)			
				Prove Mortar Percent of Sil.			
				Molature Used % by Wt.			
				Water Required Qtr. gms.			
				Cement % of App. Dry Wt.			
				7 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				14 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				28 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				42 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				56 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				70 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				84 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				98 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				112 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				126 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				140 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				154 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				168 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				182 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				196 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				210 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				224 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				238 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				252 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				266 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				280 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				294 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				308 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				322 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				336 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				350 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				364 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				378 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				392 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				406 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				420 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				434 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				448 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				462 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				476 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				490 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				504 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				518 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				532 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				546 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				560 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				574 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				588 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				602 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				616 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				630 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				644 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				658 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				672 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				686 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				700 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				714 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				728 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				742 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				756 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				770 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				784 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				798 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				812 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				826 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				840 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				854 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				868 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				882 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				896 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				910 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				924 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				938 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				952 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				966 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				980 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				994 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1008 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1022 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1036 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1050 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1064 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1078 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1092 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1106 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1120 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1134 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1148 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1162 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1176 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1190 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1204 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1218 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1232 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1246 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1260 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1274 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1288 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			
				1302 days Compressed Dry Wt. lbs./cu. ft.			
				Compressive Str. lbs./sq. in.			

Date Reported August 1957 154

Owner or Manufacturer		Quantity Represented	
Date Sampled	8-14-67	194	Date Received 8-14-67 194
Sampled by	Wayneport	Title	None
For use in:	CTU 142-114		

[illegible]

Materials and Research Engineer

By Staff Materials and Research Section

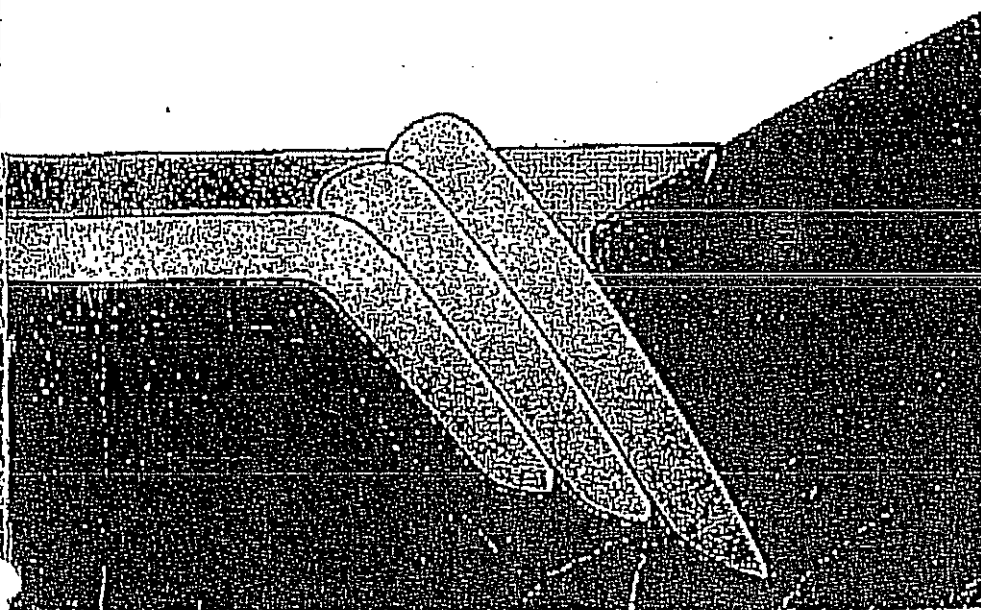
DIST. MAT'L ENG.

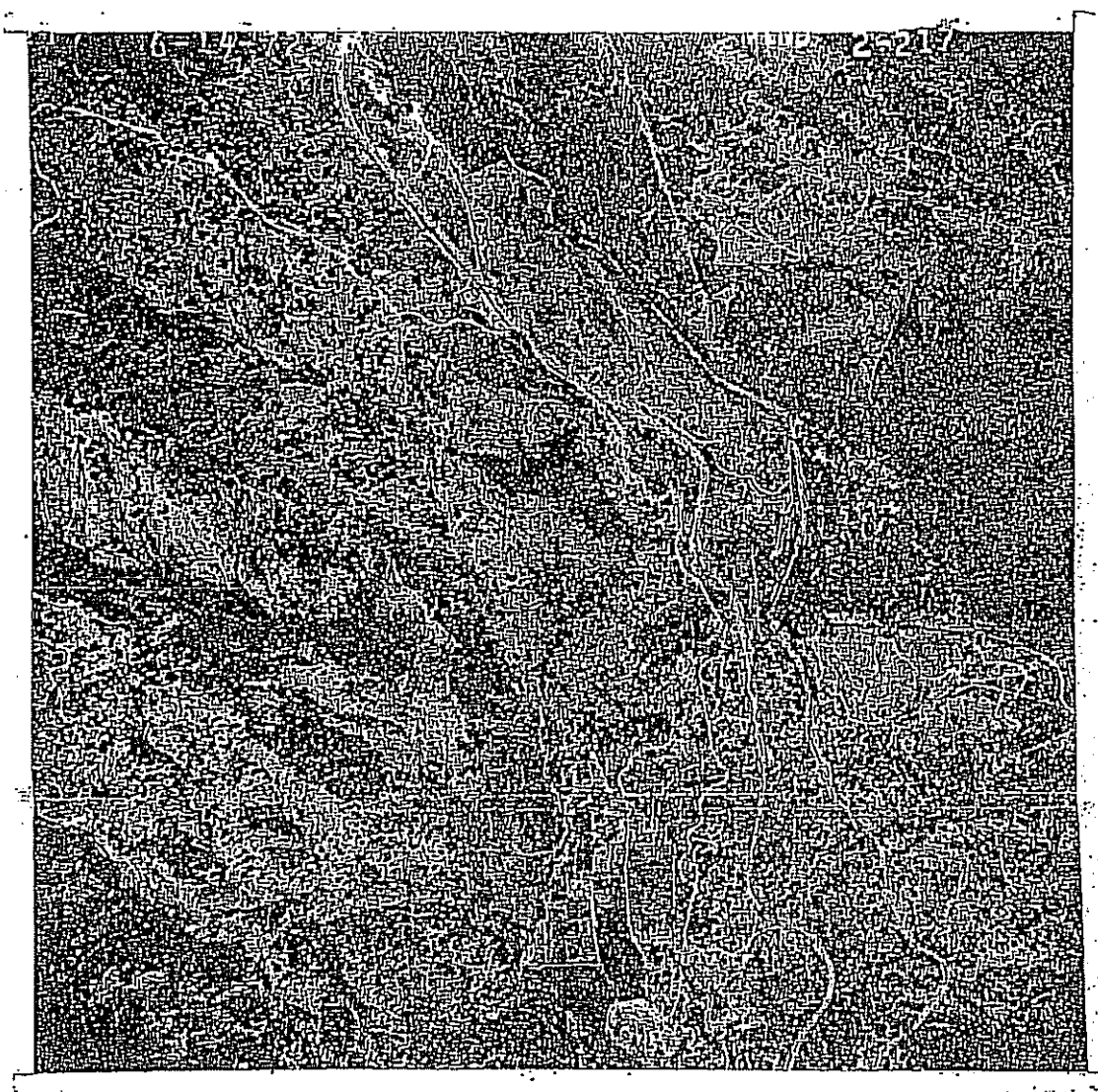
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# ROADSIDE GEOLOGY

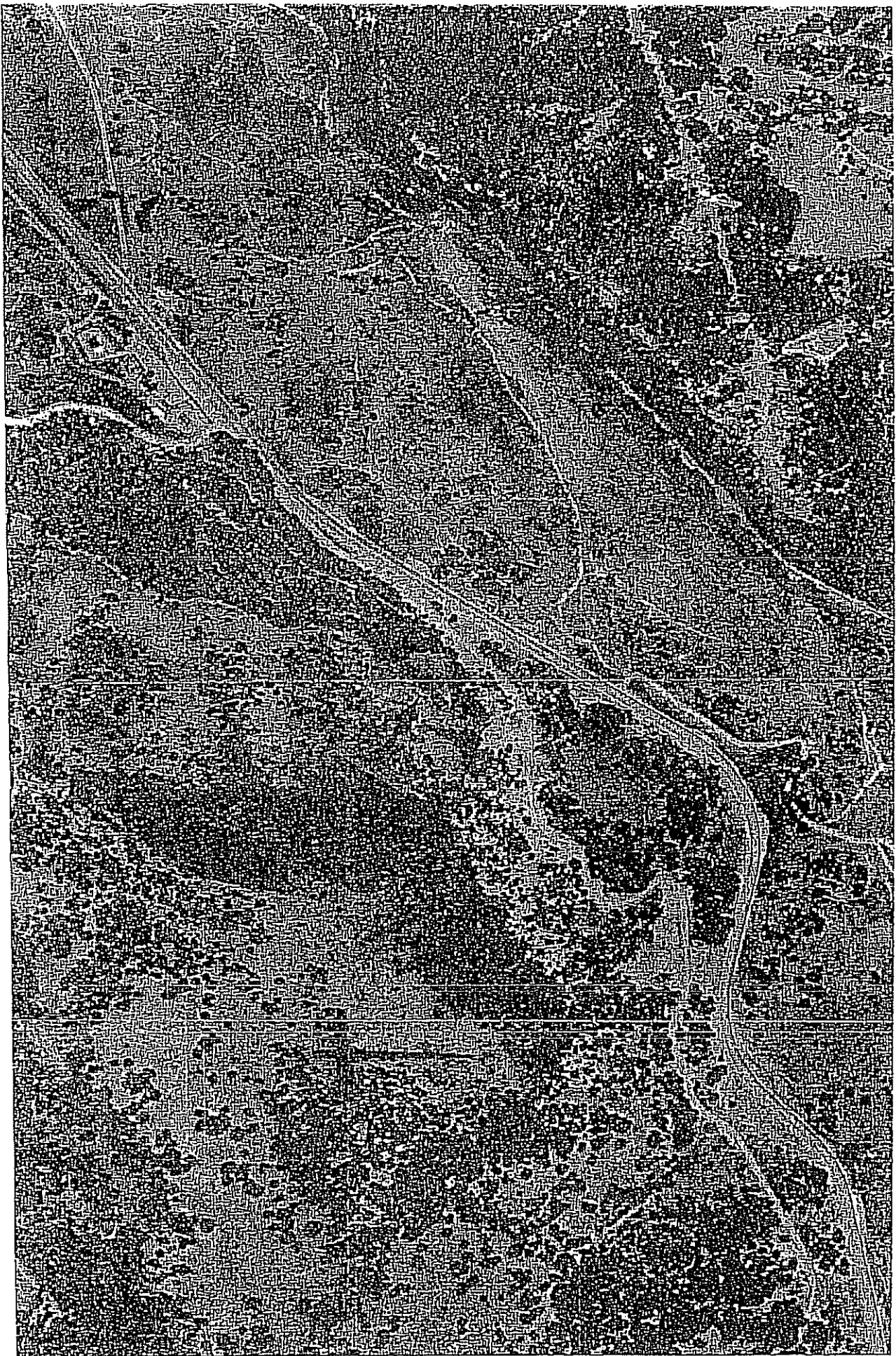
OF  
NORTHERN CALIFORNIA

David D. Alt  
Donald W. Hyndman









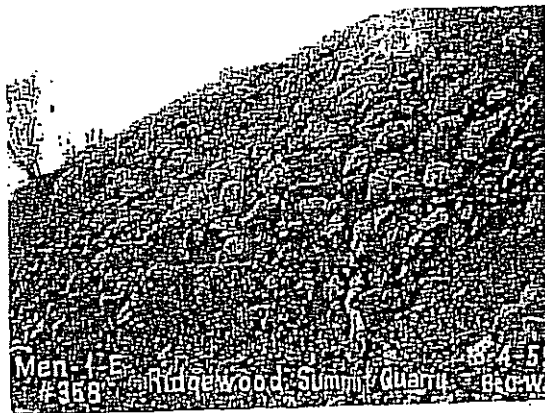
AGGREGATE BASE

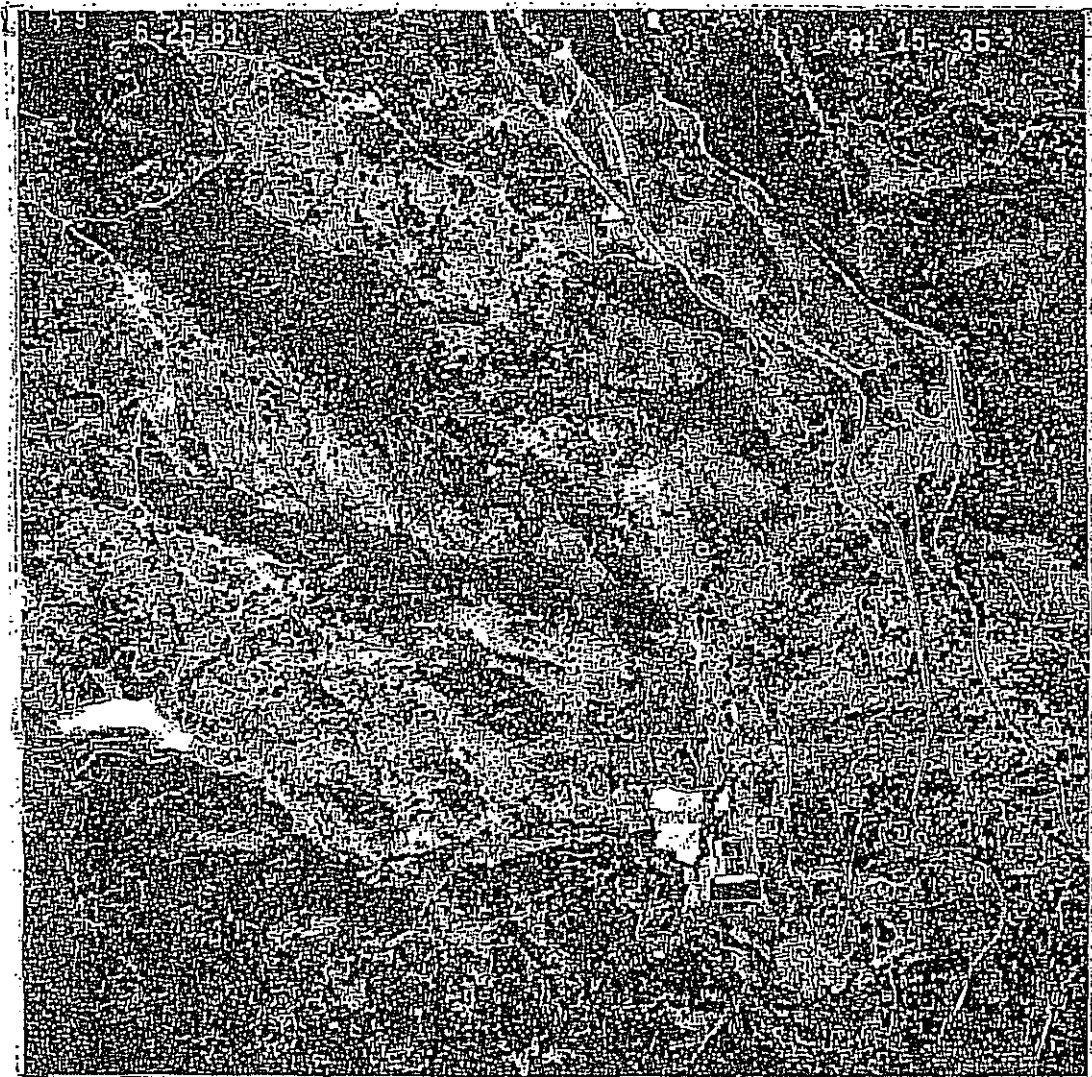
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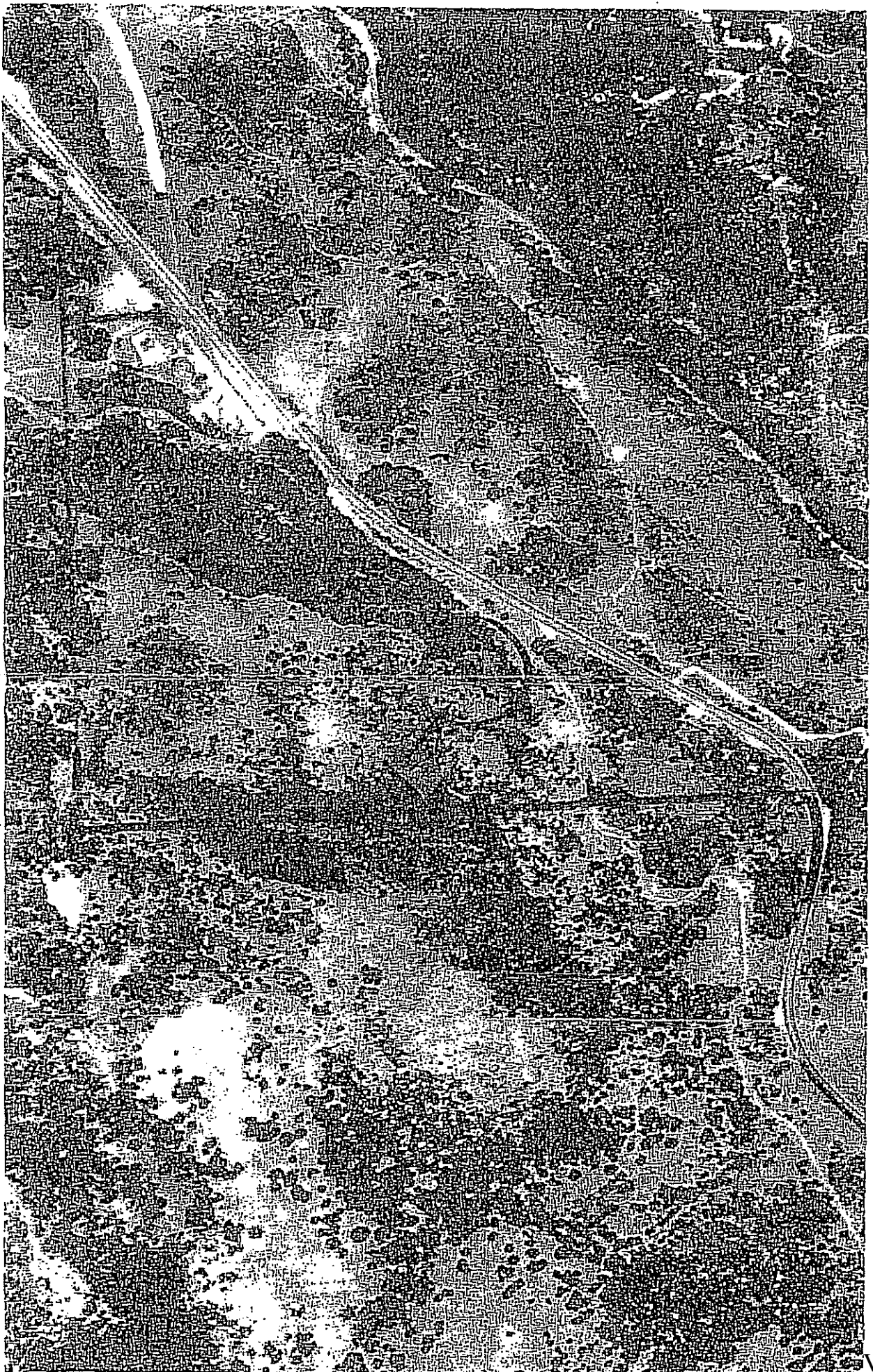
ROCK SLOPE PROTECTION

PERMEABLE MATERIAL

MISC.









WILLIAM B. GROVER  
1604 FOURTH STREET  
SANTA ROSA, CA 95404  
PHONE 707/546-8232

December 23, 1986

RECEIVED  
DEC 26 1986

County of Mendocino  
Department of Planning & Building Services  
Courthouse  
Ukiah, CA 95482  
ATTN: Brian Millar, Planner II

BY \_\_\_\_\_  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

RE: HUGH CULLEN dba THE RIDGE - CASE NO. 1-84-00630

Dear Mr. Millar:

The above named filed a Chapter 11 Bankruptcy Petition May 31, 1984, and I was appointed Chapter 11 Trustee as of January 17, 1985.


I have just become aware of your letter of September 10th to Don Bagley in care of Peters and Garman Construction wherein the last paragraph on the first page relates to my bankrupt, Mr. Cullen.

This property is for sale thru this office and has been listed with Les Ryan Realty in Ukiah. I asked Mr. Ryan to look into this matter and he has provided me with a copy of a Land Use Permit that apparently received planning commission approval on June 2, 1983, for this quarry.

Mr. Cullen sold gravel out of this quarry until about December 1984. Mr. Cullen told me about this quarry and gave me the names of some people I might be able to sell some gravel to, but I was unable to interest them. Recently I was approached by a contractor who wishes to purchase up to 3,000 yards of gravel and I make inquiry of you at this time as to what needs to be done so that I can legally sell gravel off the property.

As Trustee in Bankruptcy I have, by operation of law, succeeded to all of the rights of Hugh and Virginia Cullen in and to the 120 acres of property known as "The Ridge" upon which property resides the gravel quarry. For all practical intent and purposes I am at this time the owner of said property. Please advise.

Very truly yours,

  
WILLIAM B. GROVER, Trustee  
U. S. Bankruptcy Court

WBG/mz

Enclosure: Copy of September 10, 1986 Letter  
Copy of Land Use Permit

VR 376

# Highway Bids and Awards for August, 1936

**AMADOR COUNTY**—Construction of fence at lone Maintenance Station, District X, Route 87, Section A. Standard Fence Co., Oakland, \$1,341; Pacific Fence Co., Los Angeles, \$1,767; Kamlan Fence Co., San Francisco, \$1,824. Contract awarded to Anchor Post Fence Co., San Francisco, \$1,299.25.

**BUTTE COUNTY**—Between Sacramento River and Chico, about 3.1 miles to be surfaced with gravel and seal coat applied. District III, Route 47, Section A. A. Telchert & Son, Inc., Sacramento, \$22,457; Ruben R. Carlson, Stockton, \$42,766. Contract awarded to Claude C. Wood, Stockton, \$19,855.00.

**CONTRA COSTA COUNTY**—Between 2.5 miles west of Pittsburg and 5.5 miles north of Concord, about 3 miles to be surfaced with plant mix surfacing and shoulders to be constructed. District IV, Route 75, Section B, C. Pacific States Construction Co., San Francisco, \$23,799. Contract awarded to Jones & King, Hayward, \$23,702.60.

**CONTRA COSTA COUNTY**—Between Route 106 and Antioch, about 4.6 miles to be surf. with pl. mix. surf. District IV, Route 75, Section C. E. A. Forde, San Anselmo, \$40,293; Chas. L. Harney, San Francisco, \$49,583; Independent Const. Co., Ltd., Oakland, \$41,016. Contract awarded to Pacific States Const. Co., San Francisco, \$39,731.

**COLUSA COUNTY**—Between Williams and 2.7 miles east of Williams about 2.7 miles road bed to be widened and surfaced with gravel surface. District III, Route 15, Section A. Hanrahan Co., San Francisco, \$22,301; C. C. Wood, Stockton, \$24,560. Contract awarded to Clausen Embleton Co., Albany, \$21,701.50.

**DEL NORTE COUNTY**—Between Winon Corners and Oregon State line, about 1.7 miles to be gr. surf. with ser. grav. on grav. base and tim. brs. to be constructed. District I, Route 71, Section B. N. M. Ball Sons, Berkeley, \$135,570. Contract awarded to D. McDonald, Sacramento, \$131,431.00.

**GLENN COUNTY**—Bdry. About 2.8 miles to be graded surfaced with crusher on base and pl. mix. surf. and a reinf. conc. br. constr. Dist. III, Route 7, Section I. Union Paving Co., San Francisco, \$105,29; Hanrahan Co., San Francisco, \$114,00. Contract awarded to N. M. Ball Sons & Larsen Bros., Berkeley, \$103,870.50.

**HUMBOLDT COUNTY**—0.07 miles between E and G Streets in city of Eureka, 1 Fourth Street. Surf. with bit. treated gravel or stone. District I, Route 1, Section G. Fur. Contract awarded to Mercer Fraser Co., Eureka, \$3,637.60.

**HUMBOLDT COUNTY**—Clean and paint top and maintain buildings at Eureka, California, District I, Route 1, Section G, Eureka, \$302.25. Contract awarded to A. Camilli, Eureka, \$302.25.

**HUMBOLDT AND TRINITY COUNTIES**—Between 3.15 mile and 5.25 miles st. of Blue Lake and at Gray Creek, about 0.7 miles to be graded and exist. tim. s. rem. District I, Route 20, Sections C. A. T. Howe & Son, Santa Rosa, 2,644; A. Soda & Son, Oakland, \$26,971. Contract awarded to Helwin Const. Co., Sanstopol, \$22,150.

**HUMBOLDT-TRINITY COUNTIES**—Between 1.3 mile and 13.1 miles east of Idgerille and at Clear Creek about 0.0 le to be graded and 3 (timb. brs. const. strict I, Route 35. Section C. D. A.

Mercer, Fraser Co., Eureka, \$67,293; Obas. Harlowe, Jr., Oakland, \$65,776; Hankey-Moore Co., Oakland, \$80,400; A. Soda & Son, Oakland, \$87,850; B. A. Howkins & Co., San Francisco, \$55,232. Contract awarded to A. T. Howe & Son, Santa Rosa, \$51,339.25.

**IMPERIAL COUNTY**—Between Meyers Creek and Dixieland, liquor asphalt to be applied to 17.5 miles. District XI, Route 12, Section A, B. Paulsen & March, Los Angeles, \$2,701; Lamb's Trans. Co., Long Beach, \$2,813; Morgan Bros., \$2,615; Squire Oil Co., \$3,120. Contract awarded to Regal Oil Co., Long Beach, \$2,314.

**INYO COUNTY**—8 miles to 10 miles south of Keeler, liquid asphalt to be applied for a distance of 1.8 miles. Regal Oil Co., Long Beach, \$2,701; Paulsen & March, Los Angeles, \$3,095; Lamb's Transfac. Long Beach, \$3,145; Gilmore Oil Co., Los Angeles, \$3,287. Contract awarded to Squire Oil Co., Los Angeles, \$2,513.40.

**INYO AND MONO COUNTIES**—Furnish and apply liquid asphalt, SC-2, to approximately 20.8 miles of existing roadbed, District IX, Route 03, Section B. C. A. Lamb's Transfer Co., Long Beach, \$4,284; Oilfields Trucking Co., Bakersfield, \$4,749; Paulsen & March, Los Angeles, \$5,370; Squire Oil Co., Los Angeles, \$4,500. Contract awarded to Regal Oil Co., Long Beach, \$3,897.

**KERN COUNTY**—Kern River overflow channel and Calloway Canal, about 0.3 mile to be graded, road mix surf. treatment applied and two timber bridges with concrete decks to be constructed. District VI, Route 141, Section A. Contract awarded to Rexroth & Rexroth, Bakersfield, \$20,101.90.

**KERN COUNTY**—San Bernardino County line to Route 23, Applying Class "A" seal coat for approximately 35.2 miles. District IX, Route 145, Section A, B, C. Busch Bros., Torrance, \$14,604; Geo. Herz & Co., San Bernardino, \$15,537; A. S. Vinell Co., Los Angeles, \$13,334. Contract awarded to Squire Oil Co., Los Angeles, \$13,006.

**LAKE COUNTY**—Between Middle Creek and Rasmussen's Ranch, about 1.3 mile to be graded and surfaced with screen grav. on grav. base and const. 3 timber bridges. District I, Route 15, Section A-B. N. M. Ball Sons & Larsen Brothers, Berkeley, \$78,828; Charles Kupplinger, Lakeport, \$84,123; Hankey-Moore Co., Oakland, \$69,563; A. T. Howe & Son, Santa Rosa, \$72,993. Contract awarded to Harold Smith, St. Helena, \$60,545.

**LASSON COUNTY**—Between 2.5 miles south of Viewland and Secret Valley, about 13.8 miles to be graded and penetrate. Oil treat. appl. District II, Route 73, Section B. Hankey-Moore Co., Oakland, \$169,305; Isbell Const. Co., Reno, \$114,589; Frederickson & Westbrook, Lower Lake, \$110,108; A. Tiechert & Son, Inc., Sacramento, \$116,133. Contract awarded to Harms Bros., Doyle, \$94,370.50.

**LASSON COUNTY**—Between Westwood and Copperville, about 0.0 miles to be graded and surfaced with crusher run base and plant mix surfacing. District II, Route 29, Section A. Isbell Construction Co., Reno, Nevada, \$110,515; A. Tiechert & Son, Inc., Sacramento, \$114,327; Frederickson & Westbrook, Lower Lake, \$120,861; Geo. Pollock Co., Sacramento, \$127,166; Hankey-Moore Co., Oakland, \$133,557. Contract awarded to Union Paving Co., San Francisco, \$102,635.

**LOS ANGELES COUNTY**—Cerritos

Avenue between Firestone Boulevard and Telegraph Road, about 1.8 mile to be graded and paved with A. C. District VII, Route 168, Section B. United Conc. Pipe Corp., Los Angeles, \$91,500; So. Cal. Roads Co., Los Angeles, \$85,727; Griffith Co., Los Angeles, \$85,394; Oswald Bros., Los Angeles, \$83,101. Contract awarded to Geo. H. Curtis Paving Co., Los Angeles, \$74,407.00.

**LOS ANGELES**—Between Norwalk and Miraflores, about 12 miles to be graded and paved with A. C. P. C. C. and plant mix surf. District VII, Route 174, 178, Section B. A. and Ann. Geo. R. Curtis Paving Co., Los Angeles, \$233,770; Griffith Co., Los Angeles, \$233,416; Sander Pearson, Santa Monica, \$223,173; United Conc. Pipe Corp., Los Angeles, \$247,755; Gogo & Radon, Los Angeles, \$221,226; Oswald Bros., Los Angeles, \$221,207. Contract awarded to C. O. Sparks and Mundo Eng. Co., Los Angeles, \$200,322.

**LOS ANGELES COUNTY**—In Pasadena between Club Road and El Cirrito, about 0.4 mile to be graded and paved with P. C. C. and a reinf. conc. subway structure. District VII, Route 104, Section Pas. Contract awarded to J. B. Goodrich Ltd., Pasadena, \$80,449.60.

**MENDOCINO COUNTY**—Between Outlet Creek and Reeves Creek, about 4.5 miles to be graded and surf. with grav. base and scr. gravel. District I, Route 1, Section F. Peninsula Paving Co., San Francisco, \$218,032; George Pollock Company, Sacramento, \$244,055; Frederickson & Westbrook, Lower Lake, \$190,947; Isbell Construction Co., Reno, Nevada, \$223,278; Union Paving Co., San Francisco, \$200,325; N. M. Ball Sons & Larsen Bros., Berkeley, \$100,853; D. McDonald, Sacramento, \$231,402. Contract awarded to Remstreet & Bell, Marysville, \$130,640.20.

**MODOC COUNTY**—Between Thomas Creek and 2.5 miles west of Cedarville, 7.1 miles road-mix surfacing. District II, Route 28, Section G. Contract awarded to Frederickson & Westbrook, Lower Lake, \$14,300.

**MONO COUNTY**—Furnish and apply liquid asphalt, SC-2, to approx. 5.1 miles of existing roadbed. District IX, Route 40, Section A. Squire Oil Co., Los Angeles, \$2,090; Lamb's Transfer Co., Long Beach, \$2,820; Paulsen & March, Los Angeles, \$2,820. Contract awarded to Regal Oil Co., Long Beach, \$1,882.40.

**MONO COUNTY**—Between Conway summit and 1 mile north of Bodie Road, about 7.0 miles to be graded and surfaced with bit. tr. sel. mat. District IX, Route 23, Section H. I. Morrison, Knudsen Co., Inc., Los Angeles, \$248,073. Contract awarded to Isbell Constr. Co., Reno, Nevada, \$221,555.60.

**MONTEREY COUNTY**—Between Searside Road and Salinas River, about 7.3 miles of rd. mix surf. treatment and seal coat to be applied. District V, Route 36, Section I. L. A. Brisco, Arroyo Grande, Calif., \$30,371; Earl W. Heple, San Jose, \$31,200. Contract awarded to Granite Construction Co., Ltd., Watsonville, \$23,556.

**NEVADA COUNTY**—Between Donner Lake and Truckee, about 2.4 miles to be gr. and surf. with cr. run base and pl. mix. surf. District III, Route 37, Section D. A. Tiechert & Son, Inc., Sacramento, \$72,053. Contract awarded to Pacific States Const. Co., San Francisco, \$50,650.45.

**NEVADA COUNTY**—Between Grass Valley and Nevada City, about 2.9 miles to be

# Bids and Awards for October-December, 1936

**ALAMEDA COUNTY**—On Castro Hill about 0.4 miles, existing road to be graded and widened with plant-mix surfacing. District IV, Route 5, Section B. Independent Constr. Co., Ltd., Oakland, \$11,360; Frank Kaddleton, Albany, \$11,375; E. A. Forde, San Anselmo, \$10,365.50; Lee J. Lunnell, Albany, \$12,007.50; W. H. Larson, Oakland, \$10,454. Contract awarded to James E. Klug, Hayward, \$8,435.

**EL DORADO COUNTY**—At Webber Creek, about 1.5 miles south of Placerville, an existing steel bridge to be removed and a timber bridge to be constructed. District III, Route 65, Section C. M. A. Jenkins, Sacramento, \$6,127; F. H. Neilson, Orland, \$6,065. Contract awarded to Donald Edwin Morton, Placerville, \$5,389.55.

**HUMBOLDT COUNTY**—Between Route 66 and Eureka about 5.2 miles in length to be graded and surfaced with gravel base and screen gravel. Widen existing concrete bridge. District I, Route 1, Section G. Hemstreet & Bell, Marysville, \$185,742.50; Haulman Company, San Francisco, \$171,798.50. Contract awarded to N. M. Hall, Sonoma, Berkeley, \$152,342.50.

**IMPERIAL COUNTY**—Between Mulberry Avenue and California, 6.0 miles to be graded, surfaced with gravel and treated with liquid asphalt and a timber trestle to be constructed. District XI, Route 187, Section D. V. R. Dennis Const. Co., San Diego, \$74,000; R. G. Carroll, San Diego, \$69,028; Blummitt & Taylor, Los Angeles, \$75,770; J. E. Haddock, Ltd., Pasadena, \$81,012; R. E. Campbell, Los Angeles, \$94,730; Oswald Bros., Los Angeles, \$76,233. Contract awarded to R. E. Hazard & Sons, San Diego, \$58,450.

**INYO COUNTY**—Between 3.5 miles east of Saline Valley Road and Panamint Sink about 17.3 miles to be graded. District IX, Route 127, Sections E, F, D. W. Thurston, Los Angeles, \$197,354.75; Basich Bros., Torrance, \$228,740; Morrison-Knudsen Co., Inc., San Francisco, \$188,949; A. Teichert & Son, Inc., Sacramento, \$217,528.50; Isbell Construction Company, Reno, Nevada, \$219,005.50. Contract awarded to Peninsula Paving Co., San Francisco, \$108,125.50.

**KERN COUNTY**—Bridge over Calloway Canal, 2 miles west of Bakersfield. District VI, Route 52, Section I. Wm. C. Horn Co., Pomona, \$11,000; R. C. Moore, Fresno, \$10,043; Opperman & Co., Bakersfield, \$10,258; Griffith Co., Los Angeles, \$11,012; F. O. Bohmelt, Campbell, \$11,800; D. A. Loomis, Glendale, \$10,622; F. A. Greenough, Bakersfield, \$11,510. Contract awarded to Carl Lucalls, Inc., Bakersfield, \$7,927.

**LOS ANGELES COUNTY**—Marengo Street in Los Angeles, between Cornwell Street and Lord Street, 0.6 miles to be graded and paved with asphalt concrete. District VII, Route 4, Section L.A. Geo. R. Curtis Paving Co., Los Angeles, \$65,218; P. J. Akmalzich, Los Angeles, \$67,528; Southwest Paving Co., Rossmore, \$66,923; United Concrete Pipe Corp., Los Angeles, \$67,108; Griffith Co., Los Angeles, \$73,027; W. E. Hall Co., Alhambra, \$65,350. Contract awarded to Oswald Bros., Los Angeles, \$67,412.

**LOS ANGELES COUNTY**—Rosemead Blvd. between San Gabriel Blvd. and Ramona Blvd., 3.5 miles plant-mix surfacing to be applied to shoulders. District VII, Route 168, Sections B, C. Contract awarded to L. A. Decomposed Granite Co., Los Angeles, \$10,780.

**LOS ANGELES COUNTY**—At Rosemead Ave., 2 miles west of El Monte, a reinforced concrete girder bridge to be constructed across the Honda. District VII, Route 168, Section C. Donald Atkinson, San Francisco, \$72,185; Griffith Co., Los Angeles, \$82,180; Ryeris & Dunn, Los Angeles, \$75,565; J. B. Haddock, Ltd., Pasadena, \$87,537; Oscar Oberer, Los Angeles, \$72,442; T. A. Allen Construction Co., Los Angeles, \$67,300; John Strum, Pomona, \$66,555. Contract awarded to Carlo Bongiovanni, Hollywood, \$65,843.

**LOS ANGELES COUNTY**—On Atlantic Ave., between 68th Street in Long Beach and Olive Street, 0.7 miles to be graded and paved with P.C.C. District VII, Route 167, Section L. Rich and A. Basich Bros., Torrance, \$78,040; Griffith Co., Los Angeles, \$71,925.50; Matich Bros., Elsmore, \$75,002; C. H. Butterfield, San Pedro, \$84,314; J. F. Knapp, Oakland, \$10,120; J. E. Haddock, Ltd., Pasadena, \$75,217.50; Oswald Bros., Los Angeles, \$76,283.50. Contract awarded to United Concrete Pipe Corp., Los Angeles, \$71,284.20.

**LOS ANGELES COUNTY**—At the junction of Whittier and San Gabriel boulevards, about 0.3 mile to be graded and paved with Portland cement concrete. District VII, Route 168, Section B. Kavenvich & Price, Southgate, \$28,500. Contract awarded to J. E. Haddock, Ltd., Pasadena, \$25,110.75.

**LOS ANGELES COUNTY**—Between Wilmington Boulevard and Alameda Street in the city of Los Angeles, 1.0 mile to be graded and paved with asphalt concrete and plant-mix surfacing. District VII, Route 60, P. J. Akmalzich, Los Angeles, \$173,315; Sully-Miller Contracting Co., Long Beach, \$188,020; Geo. R. Curtis Paving Co., Los Angeles, \$170,041; Southern California Roads Co., Los Angeles, \$188,123; Griffith Co., Los Angeles, \$182,703; Oswald Bros., Los Angeles, \$170,447; R. E. Campbell, Long Beach, \$189,759. Contract awarded to United Concrete Pipe Corporation, Los Angeles, \$150,860.

**MENDOCINO COUNTY**—Between Red Bluff and Williams, 1.1 mile to be graded and surfaced with screen gravel on gravel base and reinforced concrete bridge to be constructed. District I, Route 1, Section E. Hemstreet & Bell, Marysville, \$81,813; P. W. Calvert & Co., San Rafael, \$86,700. Contract awarded to A. Soda & Son, Oakland, \$53,200.

**MONTREY COUNTY**—On Market St. in Salinas between Lincoln St. and the west city limits, 0.9 mile to be graded and surfaced with crusher run base and plant-mix surfacing. District V, Route 118, A. J. Hubsh, San Jose, \$20,575. Contract awarded to Granite Construction Co., Ltd., Watsonville, \$28,880.

**MONTREY COUNTY**—At the Molera Ranch, about 26 miles south of Monterey, a reinforced concrete water tank to be constructed. District V, Route 50, Section F. E. T. Loomis, Oakland, \$3,055; F. O. Bohmelt, Campbell, \$3,419. Contract awarded to M. J. Murphy, Inc., Corral, \$2,117.98.

**MONTREY COUNTY**—Construct a steel beam bridge with concrete deck across Castro Canyon, about 35 miles south of Monterey, consisting of one 510' span, two 50-ft. spans and two 42-ft. spans. District V, Route 50, Section E. Lindgren & Swinerton, Inc., Oakland, \$45,737; A. H. Vogt Co., Inc., San Francisco, \$43,582; Peter J. McHugh, San Francisco, \$43,081.75; F. O. Bohmelt Co., San Jose, \$44,512; R. R.

Bishop, Long Beach, \$46,521; Frank C. Amoroso & Sons, San Francisco, \$51,147. Contract awarded to E. T. Loomis, Oakland, \$42,517.75.

**NEVADA AND PLACER COUNTIES**—Between one-half mile west of Soda Springs and Donner Summit, 3.7 miles to be graded and paved with Portland Cement concrete and a parking area to be constructed near Donner Summit bridge. District III, Route 37, Sections B, C, D. A. Teichert & Son, Inc., Sacramento, \$231,228; Basich Brothers, Torrance, \$234,021; United Concrete Pipe Corporation, Los Angeles, \$231,320. Contract awarded to Frederickson & Westbrook, Lower Lake, \$235,280.50.

**NEVADA COUNTY**—Between Donner Grade and east end of Donner Lake, two and five-tenths (2.5) miles, to be graded and surfaced with plant-mix surfacing on crusher run base. District III, Route 37, Section C, D. A. Teichert & Son, Inc., Sacramento, \$120,034. Contract awarded to Pacific States Construction Co., San Francisco, \$118,588.

**ORANGE COUNTY**—Between Carolina Ave. and Yuba Linda, 2.6 miles to be graded and surfaced with plant-mix surfacing and timber trestle bridge to be constructed. District VII, Route 176, Sections A, C, H. Butterfield, San Pedro, \$112,205; United Concrete Pipe Corp., Los Angeles, \$112,502; Blummitt & Taylor, Los Angeles, \$106,736; Oswald Bros., Los Angeles, \$101,026; J. E. Haddock, Ltd., Pasadena, \$101,374; R. E. Campbell, Los Angeles, \$119,007; A. S. Vinell Co., Los Angeles, \$96,148. Contract awarded to C. O. Sparks & Munch, Engineering Co., Los Angeles, \$91,115.

**ORANGE COUNTY**—Between Bowling Avenue and Linda Vista Street, 1.2 miles to be graded and surfaced with plant-mix surfacing and a timber bridge to be constructed. District VII, Route 175, Section B. United Concrete Pipe Corp., Los Angeles, \$49,107; Geo. R. Curtis Paving Co., Los Angeles, \$44,008; C. H. Butterfield, San Pedro, \$44,457; R. E. Campbell, Los Angeles, \$70,413; Oswald Bros., Los Angeles, \$42,496. Contract awarded to A. S. Vinell Co., Los Angeles, \$47,526.50.

**RIVERSIDE COUNTY**—At Snow Creek, 1.0 mile to be graded, surfaced, and a reinforced concrete bridge to be constructed. District VIII, Route 187, Section D. Geo. Herz & Co., San Bernardino, \$157,067; R. G. Carroll, San Diego, \$140,524; R. E. Campbell, Los Angeles, \$135,072; Blummitt & Taylor, Los Angeles, \$130,804; United Concrete Pipe Corp., Los Angeles, \$137,199. Contract awarded to Oswald Bros., Los Angeles, \$121,000.

**SACRAMENTO COUNTY**—4 miles and 2.5 miles south of Brighton and 4.5 miles east of Perkins, concrete box culvert, 2-span timber bridge, and 3-span concrete bridge to be constructed. District III, Routes 51 and 98, Section A. F. O. Bohmelt Co., Campbell, \$14,206. Contract awarded to Lord & Bishop, Sacramento, \$13,153.

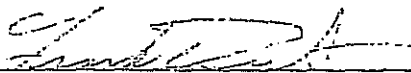
**SAN BERNARDINO COUNTY**—Water supply well to be drilled at the Camp Angeles. District VIII, Route 190, Section E. D. A. Beck & Sons, Inc., Alta Loma, \$870.

**SAN BERNARDINO COUNTY**—In Colton at Maple and 7th Streets, a steel and concrete pedestrian overhead crossing to be constructed. District VIII, Route 43, Section C, E, S, and N. S. Johnson, Pasadena, \$10,458.50; D. A. Loomis, Glendale, \$10,072.20. Contract awarded to Geo. Herz & Co., San Bernardino, \$9,302.50.

I, Frank Dutra, declare as follows:

1. I am a retired repair technician, previously working for Berglund Tractor Company in Willits, California, and as such I have personal knowledge of the facts set forth below. If called as a witness, could competently testify to them.
2. In 1968 I was sent by my employer to the Ridgewood Summit Quarry, now known as the Harris Quarry, located 7 miles south of Willits, California to repair a turbo charger on a D6 Caterpillar.
3. The vehicle was being used by the California Department of Forestry at the time for moving and loading materials mined from the site.
4. Mining at the site had begun many years earlier and the mining operations at the time appeared current and ongoing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on December 10, 2005, at WILLITS, California.

  
\_\_\_\_\_  
Frank Dutra



## DIVISION OF MINES AND GEOLOGY

SACRAMENTO OFFICE

410 BERCUT DRIVE

SACRAMENTO, CA 95814

(Phone 916—323-8554)

George Deukmejian

XEDMBHXX XXXBROXXX XBX, Governor

RECEIVED  
MAY 9 1983By \_\_\_\_\_  
PLANNING DIVISION  
Ukiah, CA 95482

May 4, 1983

Mr. Victor Holanda, Director  
County of Mendocino  
Department of Planning and  
Building Services  
Courthouse  
Ukiah, CA 95482

Dear Mr. Holanda:

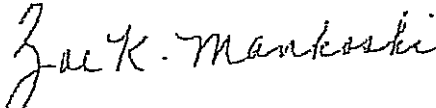
The California Division of Mines and Geology's Reclamation Program staff has reviewed the reclamation plan for Case #U19-B3 (Robert Peters), Ridgewood Park Quarry. A site visit was not conducted. The following comments are offered for consideration by the County and the applicant:

- 1) The topographic map with the site plotted, as required in item 18 of your reclamation plan, would be very useful in understanding the proposed mining and reclamation.
- 2) At least one cross section should be included to show how the cut face and quarry floor will look after reclamation. The information given in response to item 19 of the reclamation plan is inadequate to understand what is proposed.
- 3) It is important for slope stability and safety that the "terracing" be engineered properly and take into consideration the height of the cut, the steepness of the cut, and the strength of the rock in the cut face.
- 4) In light of the information on soil, which states that there is little or none, and in view of the fact that no soil is to be replaced on the site, we feel that the applicant would be wasting money by reseed-ing. Proper grading would be a more effective method of controlling erosion and runoff.

Mr. Victor Holanda  
May 4, 1983  
Page Two

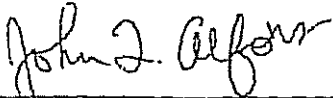
We appreciate receiving these reclamation plans from the County of Mendocino. If we can be of further help or if you have any questions on these comments, please call me at (916) 323-8565.

Sincerely,



Zoe K. Mankoski  
Senior Environmental Planner  
Program Manager  
Mined-Land Reclamation Program

APPROVED:



James R. Davis  
State Geologist

cc: Robert Peters

VICTOR HOLANDA  
DIRECTOR



TELEPHONE  
707-468-4281

**COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

MAILING ADDRESS: COURTHOUSE  
UKIAH, CALIFORNIA 95482

**LAND USE PERMIT**

Major Use Permit #U 19-83

OWNER: HUGH & VIRGINIA CULLEN  
P.O. Box 1330 16500 A Highway 101 North  
Ukiah, CA 95482 Willits, CA 95490

APPLICANT: Robert Peters  
266 Shell Lane  
Willits, CA 95490

REQUEST: Use permit for side hill quarry pit, 10,000 cu.yds. for 5 years

LOCATION: 7± mi S of Willits on Hwy. 101, lying on the W side of Hwy. 101,  
1/8± mi S of the Ridgewood Summit Commercial Development; AP#  
147-170-03, 147-180-06

Action: Planning Commission: approved Date: 6-2-83

Conditions: See attached list of conditions

Owner's Statement: I am the owner of the property subject to this permit (or his authorized agent) and I hereby certify that I have reviewed the attached conditions and will establish and continue the use in compliance with the specified conditions and applicable sections of Mendocino County Code. I further grant permission for County Staff to enter upon the premises for which the permit is issued to verify compliance with the required conditions.

Signed

Date

Planning Department Statement: I hereby certify that conditions of Section A of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

Signed

Date

Planning Department Statement: I hereby certify that conditions of Section B of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

Signed

Date

RECOMMENDED CONDITIONS:

A. Conditions which must be met prior to use and/or occupancy:

1. That the term of this permit not exceed twenty (20) years unless renewed. This permit shall be effective on or after June 12, 1983, and shall expire on June 12, 2003. Failure of the permittee to make use of this permit within two (2) years shall result in its expiration on June 12, 1985.
2. That this permit shall not be valid until such time as a Land Use Permit form is signed by the owner (or authorized agent) and the Zoning Administrator.
3. That the application along with the supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Planning Commission.
4. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

8. Conditions which must be complied with for the duration of this permit.

1. All quarry operations shall be conducted separately and independently from the public road right-of-way.
2. No material shall be placed into or where it may pass into any stream or watercourse in quantities which would be deleterious to fish, wildlife or other beneficial uses.
3. Noise levels generated by the operation shall not exceed 55 dbA as measured at the nearest neighboring residence.
4. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
5. All disturbed areas of the site other than rock or road areas shall be shaped for proper drainage and reseeded each year prior to the winter rains. Upon completion of the project, the site shall be restored to as near its natural conditions as possible and all area other than rock or roads shall be reseeded.
6. Hours of operation shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m.

Project Coordinator: Wayne Bashore

Negative Declaration

Appeal Fee: \$35.00

Appeal Period: 10 days

Use Permit

Appeal Fee: \$35.00

Appeal Period: 10 days

LAND USE PERMIT

Major Use Permit #U 19-83

OWNER: HUGH & VIRGINIA CULLEN  
16500 A Highway 101 North  
Willits, CA 95490

APPLICANT: Robert Peters  
266 Shell Lane  
Willits, CA 95490

REQUEST: Use permit for side hill quarry pit, 10,000 cu.yds. for 5 years

LOCATION: 7± mi S of Willits on Hwy. 101, lying on the W side of Hwy. 101,  
1/8± mi S of the Ridgewood Summit Commercial Development; AP#  
147-170-03, 147-180-06

PLANNING COMMISSION ACTION: Approved 6-2-83

CONDITIONS OF APPROVAL:

A. Conditions which must be met prior to use and/or occupancy:

1. That the term of this permit not exceed twenty (20) years unless renewed. This permit shall be effective on or after June 12, 1983, and shall expire on June 12, 2003. Failure of the permittee to make use of this permit within two (2) years shall result in its expiration on June 12, 1985.
2. That this permit shall not be valid until such time as a Land Use Permit form is signed by the owner (or authorized agent) and the Zoning Administrator.
3. That the application along with the supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Planning Commission.
4. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

B. Conditions which must be complied with for the duration of this permit.

1. All quarry operations shall be conducted separately and independently from the public road right-of-way.
2. No material shall be placed into or where it may pass into any stream or watercourse in quantities which would be deleterious to fish, wildlife or other beneficial uses.
3. Noise levels generated by the operation shall not exceed 55 dbA as measured at the nearest neighboring residence.
4. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
5. All disturbed areas of the site other than rock or road areas shall be shaped for proper drainage and reseeded each year prior to the winter rains. Upon completion of the project, the site shall be restored to as near its natural conditions as possible and all area other than rock or roads shall be reseeded.
6. Hours of operation shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m.

Owner's Statement: I am the owner of the property subject to this permit (or his authorized agent) and I hereby certify that I have reviewed the conditions of approval and will establish and continue the use in compliance with the specified conditions and applicable sections of Mendocino County Code. I further grant permission for County Staff to enter upon the premises for which the permit is issued to verify compliance with the required conditions.

\_\_\_\_\_  
Signed Date

Planning Department Statement: I hereby certify that conditions of Section A of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

\_\_\_\_\_  
Signed Date

Planning Department Statement: I hereby certify that conditions of Section B of this permit have been met and that this permit is deemed by the Planning Department to be a valid permit subject to all the conditions of approval attached.

\_\_\_\_\_  
Signed Date



COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS: COURTHOUSE  
UKIAH, CALIFORNIA 95482

September 10, 1986

Dan Bagley  
c/o Peters and Garman Construction  
266 Shell Lane  
Willits, CA 95490

Dear Mr. Bagley:

This is in response to your letter of August 6, 1986 (received on August 26, 1986) and our subsequent phone conversation regarding the status of Peters and Garman related surface mining use permits and reclamation plans. To my knowledge, eight applications are on file or have been received. Following is an update on each of these permit applications:

#U 29-86 (Crabtree): This application remains incomplete, although the correct processing fees are now on file. To complete the application, identify in feet the estimated depth of excavation of the gravel bar. The estimated extraction depth of "Low Water Flow" is inadequate. You also need to identify Assessor's Parcel Number 32-223-20 as part of the project site, per your plot plan. Your original application has been enclosed, allowing you to provide the above-needed information.

#U 13-86 (Phillips): This project, located 7 $\frac{1}{2}$  miles northeast of Longvale along both sides of Highway 162, was conditionally approved by the Planning Commission on September 4, 1986. A copy of the staff report with attached conditions is enclosed. Peters and Garman were removed as operators from the application by the owner.

#U 21-77/86 (B.J. Rowland): This application for a streamside gravel extraction and processing operation near Dos Rios, remains incomplete. A letter regarding this application was sent to your office on July 3, 1986. I am enclosing a copy of that letter, which explains the application deficiencies.

#U 19-83 (Cullen): This project, a hillside rock quarry located 7 $\pm$  miles south of Willits, was conditionally approved by the Planning Commission on June 2, 1983. As no Land Use Permit form was ever signed and returned by the owner or agent (Robert Peters), the operating status of this permit is questionable and revocation of #U 19-83 is possible. This permit is otherwise due to expire on June 2, 2003 unless renewed.

Dan Bagley  
Page Two  
September 9, 1986

#UM 121-82/86 (Peters): The correct processing fees for this application have been received and the application is now considered complete. The project site lies 7± miles N of Willits along the W side of Highway 101. Processing of the use permit modification request is now underway. Please note that the operating status of #U 121-82 is in question, as several conditions of approval have not been met. Enclosed is a copy of a March 16, 1984 letter from our office regarding this matter.

#U 115-76/82 (Finnegan): The renewal request for this use permit was approved by the Planning Commission on August 19, 1982. However, the validity of this project, located 2½ miles SE of Longvale near Highway 101, is in question. Enclosed are copies of letters from July 24, 1986 to Mr. Peters regarding non-compliance with conditions of approval of this project.

#U 71-82 (Bidenberg): This gravel extraction project, located 3± miles east of Longvale, received approval from the Planning Commission on August 19, 1982. However, as the enclosed letter of July 24, 1984 indicates, several conditions of approval have not been met and the status of this permit is questionable.

#U 70-82 (Andrew): Per the enclosed letter of February 29, 1984, the use permit for this project, located 1± mile south of Longvale, has been revoked and gravel extraction operations are not permitted.

If you should have any questions on these projects, please feel free to contact me.

Sincerely,

*Brian Millar*

Brian Millar  
Planner II

BM:ldp  
Enclosures

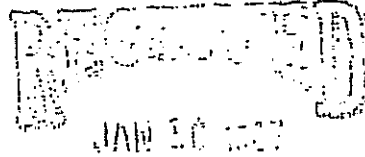


**WILLIAM B. GROVER**

1604 FOURTH STREET  
SANTA ROSA, CA 95404  
PHONE 707/546-8232

January 15, 1987

County of Mendocino  
Dept. of Planning & Bldg. Svcs.  
Courthouse  
Ukiah, CA 95482  
ATTN: Brian Millar; Planner: II



RE: HUGH CULLEN dba THE RIDGE - CASE NO. 84-00630  
LAND USE PERMIT  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dear Mr. Millar:

This responds to your letter of January 7th relative to the above named bankrupt and the gravel pit.

Mr. Cullen filed a Chapter 11 Bankruptcy Petition May 31, 1984, and operated as debtor in possession until I was appointed Chapter 11 Trustee January 17, 1985. At that time Mr. and Mrs. Cullen moved to southern California and have since moved again and I have lost track of them.

At the time I came into the picture in January 1985 Mr. Cullen briefed me on the entire operation and advised me that he had been selling gravel from the gravel pit, but the quantity was not very great and that it had seemed to tail off. My recollection is that he told me the last gravel sales were in November and December 1984 and that I couldn't expect to sell any gravel during the winter, but probably would get inquiries for gravel purchases in the spring of 1985. I didn't. Since I have been in control of this case I have sold no gravel.

You ask in your letter that I provide you a detailed record of the use and development of the quarry from June 2, 1983, to date. As stated above I have lost track of Mr. Cullen and he turned over no records to me of any kind relative to gravel sales, but only told me that sales were minimal and since I came into control January 17, 1985, I have sold no gravel. I therefore am unable to provide you with any type of record as you request.

I presently have an inquiry from a contractor for the purchase of up to 3,000 yards of gravel for a road project somewhere in the Willits area. This sale, if it can be made, would commence about February 15, 1987, and I am advised would be over a 60-90 day period.

As is quite evident this entire project is in financial trouble and Mr. Cullen was forced into bankruptcy, I certainly request that the Land Use Permit be considered valid because this is an established quarry on premises and every possible bit of income is needed to mitigate the losses and to keep the other businesses open.

- 2 -

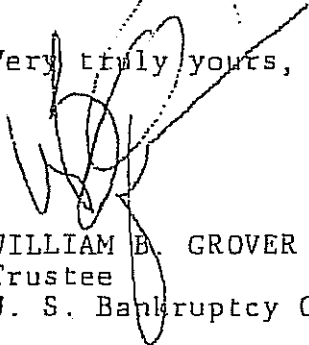
WILLIAM B. GROVER  
January 15, 1987

Additionally, a valid gravel pit enhances the value of the property and the Bankruptcy Court thru this office has been actively attempting to sell the property for the past year-and-a-half.

Mr. Cullen never at any time told me anything about a Land Use Permit relative to the gravel pit and I never thought to inquire. Mr. Cullen's attorney likewise never apprised me of the fact that a Land Use Permit existed relative to the gravel pit.

I therefore respectfully request that the Land Use Permit be determined valid at this time and I return herewith the executed Land Use Permit that you sent me.

Very truly yours,



WILLIAM B. GROVER  
Trustee  
U. S. Bankruptcy Court

WBG/mz

Enclosure: Executed Land Use Permit

RAYMOND HALL  
DIRECTOR



TELEPHONE  
707-463-4281

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS: COURTHOUSE  
UKIAH, CALIFORNIA 95402

February 23, 17

TAH  
RECEIVED

OCT 17 2015

William B. Grover  
1604 Fourth Street  
Santa Rosa, CA 95404

Dear Mr. Grover:

This is in response to your letter of January 15, 1987, regarding the status of #U 19-83, issued to Hugh and Virginia Cullen in 1983 for the operation of a rock quarry south of Willits.

After reviewing your letter, we have determined that #U 19-83 is valid and that the rock quarry may be operated in compliance with the conditions of approval appearing on the Land Use Permit. Extraction of up to 10,000 cubic yards of rock per year through June 12, 2003 is permitted.

If you should have any questions regarding this matter, please feel free to contact me.

Sincerely,

Brian Millar  
Planner II

BM:ldp  
cc: File #U 19-83

January 27, 2006

VIA FACSIMILE AND MAIL

Raymond Hall  
Planning Director  
Mendocino County  
501 Low Gap Road, Room 1440  
Ukiah, California 95482

Re: Northern Aggregates, Inc. - Mendocino Mine

Dear Mr. Hall:

This firm represents Northern Aggregates, Inc. ("Northern Aggregates"). As you know, Northern Aggregates has been attempting to obtain a new conditional use permit and reclamation plan approval for its existing Harris Quarry mining operation located off Highway 101 between the City of Ukiah and Willits. We are writing because of delays associated with the County Planning Department acting on the permit application. In particular, the County has yet to issue the request for proposals ("RFPs") necessary to commence its environmental review for the proposed project under the California Environmental Quality Act ("CEQA"). The RFPs have not been issued despite the fact that a permit application was submitted six months ago, on July 29, 2005. Neither has the County notified the applicant that its application was incomplete or deficient such that the County would be prevented from sending out the RFPs and otherwise initiating the CEQA process. Accordingly, we are asking the County Planning Department to issue these RFPs immediately, and otherwise act to expedite the County's review of Northern Aggregates' permit application and reclamation plan approval.

As noted above, Northern Aggregates' Harris Quarry is an existing mining operation. The mine commenced operations in the 1940s and has operated since that time under a variety of different ownerships.<sup>1</sup> Northern Aggregates' predecessor obtained a conditional use permit (CUP U-19-83) in 1983, which permit was subsequently amended in 1995. The County approved Northern Aggregates' reclamation plan in 1983. CUP U-19-83 will expire at the end of this year. While Northern Aggregates can conduct operations pursuant to its SMARA vested rights, its vested

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<sup>1</sup> Under the Surface Mining and Reclamation Act ("SMARA"), the mine has obtained a "vested right" status. Public Resources Code Section 2776; Hansen Bros. Enterprises v. Board of Supervisors (1996) 12 Cal. 4th 533. A separate letter, setting out the history of mining operations at the site along with a review of the law with regard to vested mining rights, will be submitted to the County in the near future.

rights would not encompass some of the activities it has requested the County to approve in its permit application, such as the operation of an asphalt plant and concrete batch plant.

Accordingly, Northern Aggregates submitted a new conditional use permit application and proposed reclamation plan to the County in January 2005. The permit application, in addition to providing for a gradual increase in mining rates at the site, would relocate Northern Aggregates' proposed asphalt plant from within the Ukiah Valley area to the present quarry location, and would also relocate its existing concrete batch plant from Willits to the mine location. The move, which was favorably commented on by members of the County staff, including Commissioners and Supervisors, would shift the proposed asphalt plant and existing concrete batch plant away from urban areas to the existing rural mine site, thus reducing existing and potential air, noise and traffic impacts to Willits and the City of Ukiah. In addition, the proposed reclamation plan would update Northern Aggregates' reclamation obligations under current SMARA requirements, both as to historic mining areas and as to future mining areas.

The County and applicant first determined to review the environmental effects of the proposed project pursuant to a mitigated negative declaration. However, the County and applicant later agreed to review the proposed project pursuant to an environmental impact report ("EIR"). Accordingly, Jason McConnell, on behalf of Northern Aggregates, submitted a revised application for the proposed project on July 29, 2005. Mr. McConnell did not receive a response from the County until September 5, 2005, over 30 days later. The County then asked for the completion of some additional environmental studies, including botanical, noise, air quality, geotechnical and traffic studies. Northern Aggregates agreed to submit the additional information, although this information was not necessary to commence the County's CEQA process. Mr. McConnell submitted the additional information to the County on November 17, 2005. The County did not respond to Mr. McConnell except to notify him on November 30, 2005 that the application had been turned over to another County Planning staff person, Nash Gonzalez. Since that time, Mr. Gonzalez has indicated that he has completed writing up the draft RFPs and given the draft RFPs back to you.<sup>2</sup> Several weeks have passed and the RFPs have still not been sent out to begin the EIR, nor has the County communicated with the applicant.

As you know, CEQA, the Permit Streamlining Act, and the County's own permitting guidance (see e.g. the County's "Permit Place"<sup>3</sup>) provide for the expeditious processing of permit applications and the associated CEQA review. CEQA, in particular, states that within 30 days after receiving an application for a project, the lead agency must determine whether the application is complete. 14 C.C.R. Section 15060. If the lead agency does not respond within this time, the application is deemed complete. 14 C.C.R. Section 15101.

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<sup>2</sup> Mr. Gonzalez requested copies of the RFPs in electronic format on December 13, 2005. Despite the fact that the RFPs had previously been accepted by the County in written format, Mr. McConnell subsequently provided electronic versions of the RFPs.

<sup>3</sup> <http://www.co.mendocino.ca.us/planning/PermitPlace/PermitPlace59.htm>

Accordingly, the application should have been characterized as "complete" by the County 30 days after Northern Aggregates July 29, 2005 submission and, if not, 30 days after the additional submission on November 17, 2005. The County has not notified Northern Aggregates at any time since the initial application that its submission was incomplete.<sup>4</sup>

CEQA imposes a maximum one year deadline for completing and certifying EIRs required for projects carried out pursuant to a conditional use permit. Public Resources Code Section 21100.2. Specifically, Section 21100.2 requires that lead agencies "establish, by resolution or order, time limits that do not exceed *one year* for completing and certifying [EIRs]." *Id.* at (a)(1)(A); *see also* 14 C.C.R. Section 15108 (stating the same). "... [A]ll limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency." *Id.* at (a)(1)(B)(2). Additional time may be added to this requirement, but only where "*compelling circumstances justify additional time and the project applicant consents thereto.*" *Id.* at (a)(1)(B)(4). This one year requirement is also set out in the County's own "Permit Place" website.<sup>5</sup>

Given these requirements, CEQA directs that the County treat the permit application as complete from September 2005, and complete the EIR for the project by September 2006. Given that the County has not issued the RFPs at this time, it is hard for us to believe that the County will be able to meet its obligations.

Accordingly, we are requesting that the County send out the RFPs immediately, if it has not done so already. We also request that in the future the County act in an expeditious manner to complete the review of the permit application.

Very truly yours,

DOWNEY BRAND LLP



Thomas A. Henry

TAH:wgj

728499.1

cc: John Ball  
Jeanine Nadel

---

<sup>4</sup> As set out in CEQA, merely requesting additional information for the environmental evaluation of the project is not sufficient to treat the application as incomplete. 14 C.C.R. Section 15060.

<sup>5</sup> While this requirement apparently does not extend to local agencies we also note that if an EIR is prepared under a contract to a state agency, the contract shall be executed within *45 days* from the date on which the agency sends a notice of preparation. *Id.* at (b); *see also* § 21151.5.

DOWNEY | BRAND  
ATTORNEYS LLP

FACSIMILE TRANSMISSION

Date: January 27, 2006

To:

Name	Fax	Phone
Ray Hall, Planning Director	707-463-4281	
John Ball, CEO	707-463-5649	
Jeanine Nadel, County Counsel	707-463-4592	

From: Thomas A. Henry

Re: Northern Aggregates - Mendocino Mine

File No.: 36717.00000

Number of Pages, Including Cover: 4

Message:

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**DOWNEY BRAND**  
ATTORNEYS AT LAW

FACSIMILE TRANSMISSION

Date: January 27, 2006

To:

Name	Fax	Phone
Ray Hall, Planning Director	707-463-4261	
John Bell, CEO	707-463-5619	
Jeanice Nadel, County Council	707-463-4392	

From: Thomas A. Henry

Re: Northern Aggregates - Mendocino Mill

File No.: 16717.00000 Number of Pages, including Cover: 4

Message:

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2	114	17074635649	4:46PM	2'00"	4/ 4	EC	EC	CP 14.4
3	114	17074634592	4:48PM	1'08"	4/ 4	EC	EC	CP 26.8

## Notes :

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PG: Polling a Remote  
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FM: Forward Mailbox Doc.

MB: Receive to Mailbox  
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WT: Waiting Transfer  
WS: Waiting Send





COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR

Telephone 707-463-4281

FAX 707-463-5709

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

February 2, 2006

Thomas A. Henry  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814

**RE: Northern Aggregates, Inc.  
Harris Quarry Expansion EIR**

Dear Mr. Henry:

This office is in receipt of your letter to Raymond Hall of January 27, 2006 regarding the Harris Quarry expansion application and EIR.

In your letter you note that the County has not yet released the Request for Proposals (RFPs) for the preparation of the Environmental Impact Report (EIR). Please note that as of today, February 2, 2006, the RFP has been mailed to seven (7) firms. These firms have been given until Friday, March 3, 2006 to submit a proposal. After March 3, 2006, this office will review the proposals and commence the selection process of the consultant. This will also involve the interviewing of the consultants as well as sending forth to the Board of Supervisors a recommendation on the preferred consultant. Once the consultant has been selected, staff will work with the selected firm in refining a schedule for preparation and delivery of the EIR.

Your letter also references the previously approved Use Permit U19-83. However, you also note that the use permit will expire at the end of this year and that "Northern Aggregates can conduct operations pursuant to its SMARA vested rights..."

Please note that this operation **does not** have a vested right and was authorized under Use Permit U19-83, subject to the conditions of approval of the entitlement. By virtue of the Use Permit, the operation does not have a vested right. Therefore, your statement alluding to a vested right is incorrect.

In further reviewing your letter (page 2), you make reference to the completeness of the submittal that Mr. McConnell has provided to the County. On September 7, 2005, Mr. McConnell was notified of a variety of deficiencies with the ordinance amendment, rezoning, use permit and variance application submittal.

Please note that the additional studies that Northern Aggregates had referenced as part of their application were not fully submitted until December 12, 2005, with the Air Quality Analysis being submitted on that date. Staff would acknowledge that prior studies had been submitted prior to that date, but the submittal was still incomplete. Also in early December I met with Mr. McConnell and discussed the need for a detailed visual analysis addressing the potential visual impacts associated with the proposal, but we agreed that this information could be addressed in the EIR, and therefore he/Northern Aggregates would not need to provide a visual simulation analysis to move forward with the EIR.

It was further discussed with Mr. McConnell that electronic copies of the various studies were to be submitted in order to be provided as part of the RFPs to the consultants. Mr. McConnell acknowledged that this would be addressed and agreed to submit the electronic files. Please note that these files (10 CDs ) were received by this office on January 6, 2006 and were subsequently reviewed for completeness.

Therefore the applications are considered complete as of January 6, 2006, since it was your client that chose to submit the additional studies and information.

Finally, I would note that since your client has chosen to additionally incorporate a request for an ordinance amendment and rezoning, which are legislative actions, the Permit Streamlining Act does not apply and therefore the one year statutory period for processing the application is not applicable.

In summary, (1) we disagree over the date the application is considered complete; and (2) the Department has sent out the RFP. If you should have any questions regarding this matter, please feel free to contact me at (707) 463-4281.

Sincerely.

A handwritten signature in black ink, appearing to read 'Ignacio Gonzalez', with a long horizontal flourish extending to the right.

Ignacio Gonzalez  
Project Planner

CC: Ray Hall, Planning and Building Services Director  
John Ball, CEO  
Jeanine Nadel, County Counsel  
File UR 19-83/2005  
File V5-2005



## COUNTY OF MENDOCINO

### DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482

120 WEST FIR STREET · FORT BRAGG · CALIFORNIA · 95437

STEVE DUNNICLIFF, DIRECTOR

Telephone 707-463-4281

FAX 707-463-5709

FB PHONE: 707-964-5379

FB FAX: 707-961-2427

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

January 30, 2013

## Director's Determination of Vested Rights for Mining Activities at the Rowland Bar

### Introduction

The Rowland Gravel Bar (CA Mine ID # 91-23-0027) is located in north-central Mendocino County, at the confluence of the Main Eel and Middle Fork Eel Rivers; in the area commonly known as Dos Rios. Primary gravel extraction has historically occurred on a large bar at the mouth of the Middle Fork Eel River.

The Rowland Bar was previously leased to Granite Construction, and is now leased to Grist Creek Aggregates, LLC. Grist Creek has requested that the County recognize the Rowland Bar as a vested mining operation, for which a use permit is not required.

### Background

In 1956, the County of Mendocino adopted its first zoning ordinance, Ordinance No. 359. This Ordinance established the "A-1" District, which encompassed the county. The Ordinance called out the "establishment" of "commercial excavation of natural resources" and "surface mining" as two of fifteen uses within the A-1 District that required a use permit following adoption of the zoning ordinance. (Sections 3.31-.32).

The Ordinance also contained a nonconforming use provision (Section 34.01) which states *"The lawful use of land existing at the time of the passage of this Ordinance, although such use does not conform to the provisions hereof, may be continued, provided however, that non-conforming business and industrial uses being operated on open land may be continued for a period not longer than five (5) years after this Ordinance becomes effective. If any non-conforming use is abandoned, or is discontinued for a period of six (6) months or more, subsequent use of said land shall be in conformance with the provisions of this Ordinance."*

On August 5, 1976, a letter was sent from the County's Planning Department to the Rowland Bar mining operator (Byron Rowland), requesting documentation of the existence of mining operations prior to the (1956) Ordinance. The letter referenced a claim made by Byron Rowland that mining operations on the Rowland Bar could be documented prior to adoption of the Ordinance. County staff requested documentation of this claim, and indicated the removal of gravel from the property was a non-conforming use that could not continue beyond the five-year phase out period of Section 34.01 without a use permit. Because the letter was the first formal notice regarding the nonconforming status of the operation, County staff explained that the phase out period would begin on September 1, 1976 and would expire on September 1, 1981.

On July 21, 1977, the Planning Commission granted Byron Rowland a use permit (U 71-77). Minutes of the meeting reference letters which had been presented to the Planning Division, substantiating use of the Rowland Bar prior to adoption of the Ordinance. The minutes do not reflect any concerns from the

Commissioners with regard to this claim. The use permit was appealed to the Board of Supervisors on the grounds that a non-conforming use had not been sufficiently established.

The minutes of the appeal hearing from August 22, 1977 reflect claims by the appellants that gravel was not extracted from the site between 1957–1964, nor in 1969. Statements from Byron Rowland's representative indicate that in front of the Planning Commission, there had been no major emphasis on the non-conforming use status of the property. He said no rights to the legal non-conforming use of the property were being waived by applying for a permit, and he felt the use permit application could stand on its own.

Chief Planner Phil Gorny's comments are reflected as stating the pre-1956 gravel extraction activities had been substantiated by two letters from H.W. Hamilton and John Vintor, addressed to Rick Henderson, Assistant District Attorney. These letters testified that gravel extraction has been in operation there since 1916. Supervisors Jim Eddie and Ernie Banker publicly bolstered that perspective by stating that as lifetime residents of the County, they had known that gravel has been extracted commercially at the subject site for years. The Board then concurred that furthermore, there are more controls on noise, dust, and erosion through the use permit process. The Board of Supervisors upheld the decision of the Planning Commission to grant U 71-77, with additional operational conditions.

Permit files for the site indicate the following. On July 21, 1977, the Planning Commission approved the original Use Permit (U 71-77) for the extraction and processing of 10,000 cubic yards of gravel from the Middle Fork Eel River. Subsequently, on August 22, 1977, the Board of Supervisors heard that permit on appeal and approved the permit for a period of one year with several amended conditions of extraction.

On August 3, 1978, the Planning Commission approved Use Permit Renewal UR 71-77/78 for the extraction of a total of 50,000 cubic yards of gravel over a two-year period.

On May 1, 1980, the Planning Commission approved Use Permit Renewal 71-77/80 for a period of three years for the extraction of 50,000 cubic yards of gravel per year, without the processing of materials as originally requested by the applicant. On August 11, 1980, the Board of Supervisors reviewed UR 71-77/80 on appeal and sustained the Planning Commission's action and approved UR 71-77/80 for three years.

On April 16, 1981, the Planning Commission approved Use Permit Modification UM 71-77/81 allowing the operator to use the same road as used in the past to remove aggregate from the site, subject to all conditions outlined in the staff report. The use permit modification was appealed to the Board of Supervisors and on June 8, 1981, the Board of Supervisors sustained the action of the Planning Commission.

On June 11, 1984, the Board of Supervisors approved Use Permit Renewal UR 71-77/83 for a period of five years for the extraction of 50,000 cubic yards of gravel per year. In addition, the operation was approved for processing, including crushing, screening, washing, and concrete batching equipment.

On August 3, 1989, the Planning Commission approved Use Permit Renewal UR 71-77/89 for a period of five years for the extraction of 50,000 cubic yards of gravel per year.

Use Permit and Reclamation Plan Renewal UR 71-77/94 was approved by the Board of Supervisors allowing for the removal of up to 50,000 cubic yards of gravel per year for three years. This permit expired on November 15, 1998 and the request for renewal was submitted prior to its expiration.

Use Permit and Reclamation Plan Renewal UR 71-77/98 was approved by the Planning Commission allowing for the removal of up to 50,000 cubic yards of gravel per year for a period of five years. The term of this permit expired on December 31, 2004.

In 2005, Granite Construction (the immediate prior lessee) received approval of a Use Permit and Reclamation Plan Renewal to allow for continued extraction and removal of up to 50,000 cubic yards of gravel per year.

In 2006, Granite Construction submitted an interim management plan which contemplated resuming extraction in mid 2007. The interim management plan states that the site was idle in 2006 due to local conditions and insufficient replenishment of the bar. The site continued as idle until 2010, at which time Granite completed its reclamation of the site and the County released the financial assurance mechanism.

The property owner claims that negotiations with Grist Creek began in 2010, during the time period that Granite Construction was reclaiming the gravel bar. Grist Creek's new lease was allegedly entered into around April 2011. The County also received a letter from the Rowlands evincing their owner's intent to continue mining and dispel any notion of intent to abandon or waive their vested right by Granite Construction's reclamation activities.

### **Key Questions**

In determining whether or not a vested right can be recognized for the extraction of gravel from the Rowland Gravel Bar, there are multiple questions that must be answered. These include:

1. Have active mining operations at the Rowland Bar, prior to the County's 1956 adoption of Ordinance 359, been adequately substantiated?
2. The record reflects allegations that the Rowland Bar may not have been used for gravel extraction in the period from 1957-1964. If the applicant adequately substantiates the claim of active mining operations prior to 1956, would the site's potential status as a non-conforming use be lost if there were in fact no extraction activities during this period?
3. Ordinance 359 stated that non-conforming uses were to be phased out in 5 years. If the site was, in fact, a non-conforming use, would that status have been lost on September 1, 1981 (as claimed in the August 5, 1976 letter from the County)?
4. Would the site's intermittent operation – in particular the last two years – and the reclamation of the site impact any vested rights that may exist?
5. If a vested right exists, can new surface mining operations be reviewed under the California Environmental Quality Act (CEQA)?

### **Discussion**

#### ***Have active mining operations at the Rowland Bar, prior to the County's 1956 adoption of Ordinance 359, been adequately substantiated?***

Minutes from the Board of Supervisor's August 22, 1977 meeting indicate County planning staff felt the prior use had been substantiated by two letters, from H.W. Hamilton and John Vintor, which were addressed to Rick Henderson, Assistant District Attorney, and testified that gravel extraction had been in operation there since 1916. The minutes of that meeting also indicate two County Supervisors (Banker and Eddie) stated that as lifelong residents of the county, they had known of commercial gravel extraction at the site for years. Former Supervisor Eddie re-affirms his personal knowledge of pre-1956 gravel extraction at the site in a letter addressed to Brian Hurt, dated June 19, 2012. In addition, Grist Creek has provided two property transactions from the 1940's reserving and granting sand, gravel, and rock extraction rights on the site. It is the determination of the County's Director of Planning & Building Services that active mining operations at the Rowland Bar, prior to 1956, have been adequately substantiated.

***The record reflects allegations that the Rowland Bar may not have been used for gravel extraction in the period from 1957-1964. If there were no extraction activities during this period, would the site's status as a non-conforming use have been lost?***

Section 34.01 of Ordinance 359 states, in part, that "If any non-conforming use is abandoned, or is discontinued for a period of six (6) months or more, subsequent use of said land shall be in conformity with the provisions of this Ordinance"

There is a decision of the California Appellate Court in the case of *City of Ukiah v. County of Mendocino* (1987) 196 Cal.App3d 47 which determined that a preexisting mining operation did not, in fact, become a non-conforming use upon the 1956 adoption of Ordinance No. 359. The logic of this decision was that the Ordinance specifically required use permits for certain operations (including mining) which were established after adoption of the Ordinance. Conversely, it was determined that (mining) operations established before adoption of the Ordinance were in conformance, and were not, in fact, non-conforming uses under Section 34.01 of Ordinance No. 359.

Recognizing this court decision makes it clear the Rowland Bar operation was not a non-conforming use, the language related to the abandonment or discontinuance of such use does not apply.

Absent the applicability of this section, it is still relevant to question whether or not any vested right might have been abandoned during the period from 1957-1964, when it was alleged that extraction activities did not occur. In the case of *Hansen Bros. Enterprises v County of Nevada* (1996) 12 Cal.4<sup>th</sup> 533, it was decided by the California Supreme Court that mere cessation of mining operations does not constitute abandonment, although duration of nonuse may be a factor in determining whether non-conforming use has been abandoned.

In 1977, documentation was submitted to the County substantiating that mining activities occurred on the Rowland Bar from 1916 until 1956. This documentation was not disputed by the Planning Commission, and the existence of pre 1956 mining activities at the site were publicly bolstered by two Supervisors who presented personal knowledge of that historical use. Although allegations were made that no extraction activities occurred on the site from 1957-1964, the record shows no dispute that mining activities regularly occurred on the Rowland Bar between 1965 until 2005. From 2005 until the Rowland Bar was reclaimed in 2010, an interim management plan was in place as required. It is the determination of the County's Director of Planning & Building Services that there is no evidence of intent to abandon mining operations based on any limited or discontinued use of the Rowland Bar which may have occurred from 1957-1964.

***Nonconforming uses, as defined in Section 34.01 of Ordinance 359, were to be phased out in 5 years. Was the site's status as a non-conforming use lost on September 1, 1981 (as claimed in the County's August 5, 1976 letter?***

Based on the California Appellate Court's decision in the case of *City of Ukiah v. County of Mendocino* (1987) 196 Cal.App3d 47 as referenced in the preceding section, the County's August 5, 1976 determination of the Rowland Bar as a non-conforming use, subject to Section 34.01 of Ordinance 359, was incorrect. Case law shows that the site was not a non-conforming use, and as such, the "phase out" of uses as referenced in Section 34.01 of Ordinance 359 did not apply.

***Would the site's intermittent operation – in particular the last two years – and the reclamation of the site impact any vested rights that may exist?***

In 2006, Granite Construction submitted an interim management plan which contemplated resuming extraction in mid 2007. The interim management plan states that the site was idle in 2006 due to local conditions and insufficient replenishment of the bar. The site continued as idle until 2010, at which time Granite completed its reclamation of the site and the County released the financial assurance

mechanism. County inspections and review indicate there have been no operations on site since the Rowland Bar was reclaimed.

The Mendocino County Code (MCC) contains Section 22.16.110, pertaining to "Idle Mines". Section 22.16.110 (A) states *"Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit to the Department of Planning & Building Services, for review and approval, an interim management plan."*

MCC Section 22.16.110 (B) states *"The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this Chapter. (Emphasis added). The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this Chapter, including, but not limited to, all permit conditions."*

MCC Section 22.16.110 (F) states *"In any event, financial assurances required shall remain in effect during the period the surface mining operation is idle. (Emphasis added). If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan."*

MCC Section 22.16.110 (I) states *"Unless review of an interim management plan is pending before the Director, or an appeal is pending before the Planning Commission, a surface mining operation which remains idle for over one (1) year after becoming idle as defined in this Chapter without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plans."*

MCC Section 22.16.050 (20) states *"Idle means to curtail for a period of one (1) year or more surface mining operations by more than ninety percent (90%) of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a later date."*

MCC Section 22.16.050 (1) states *"Abandon or "abandonment" means to cease surface mining prior to completion of required reclamation, or to cease surface mining whether or not reclamation has commenced, or both. Unless review of an interim management plan is pending before the Department of Planning and Building Services, or an appeal is pending, a surface mining operation which remains idle for over one (1) year after becoming idle as defined in PRC Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned."*

To reiterate, MCC Section 22.16.110 (B) indicates an interim management plan shall be considered an amendment to an approved reclamation plan. MCC Section 22.16.110 (F) requires financial assurances to remain in effect during the period the surface mining operation is idle.

The language from these sections indicates that the Rowland Bar has not been "Idle" as defined by the MCC. Granite finished reclamation activities at the Rowland Bar in 2010. Given that the site was fully reclaimed under the old reclamation plan, and no new reclamation plan has yet been applied for or approved, it is not possible to submit an interim management plan for the site as an amendment to a reclamation plan. Additionally, the County is required to hold financial assurances for all idle mines. The fact that the County released its financial assurances is further evidence that the Rowland Bar is not idle, and not subject to these sections of the MCC.

Recognizing the mine has not been "Idle" as defined by MCC, it is again worth briefly exploring whether or not there has been any attempt to abandon the Rowland Bar's vested right.

As previously noted, the property owner claims that negotiations with Grist Creek began in 2010, during the time period that Granite Construction was reclaiming the gravel bar. Grist Creek's new lease was allegedly entered into around April 2011. The County also received a letter from the Rowlands evincing their owner's intent to continue mining and dispel any notion of intent to abandon or waive their vested right by Granite Construction's reclamation activities. It is the determination of the Director of Planning &

Building Services that the Rowland Bar has not been idle as defined in MCC, and there is no evidence of the Rowland Bar property owner's intent to abandon a vested right for surface gravel mining at that site.

***If a Vested Right Exists at the Rowland Bar, can New Surface Mining Operations be Reviewed Under the California Environmental Quality Act (CEQA)?***

The Rowland Bar's status as a vested mining operation does not preclude Grist Creek or any other operator at the site from having to obtain approval of a new reclamation plan, which must then undergo environmental review under the California Environmental Quality Act (CEQA). The "project" under review for purposes of CEQA, however, must be limited to the reclamation plan only, and not renewed mining.

**Conclusion**

Surface gravel mining operations were regularly conducted at the Rowland Bar prior to the County of Mendocino's 1956 adoption of Ordinance 359. As such, these operations constitute a vested right. As of the date this determination is written, there is no evidence in the record that this vested right has ever been abandoned. Mining operations at this site are subject to an approved reclamation plan, and the reclamation plan is subject to review under the California Environmental Quality Act (CEQA). The "project" under review for purposes of CEQA, however, must be limited to the reclamation plan only, and not renewed mining.