Tine Mathiasen

From: Barbara Vrankovich [redacted]
Sent: Tuesday, February 13, 2024 8:28 AM
To: BOS Public Comment
Subject: February 15, 2024 - Agenda Item - Idaho-Maryland Mine

You don't often get email from [redacted] Learn why this is important

In 1955 the Anaconda Company opened the Berkeley Pit in Butte, Montana, a huge open pit copper mine that ultimately closed in 1982. As a child in Butte at the time, I recall the mine swallowing up Meaderville and McQueen, two neighborhoods, among others, that had been home to many Butte residents. In 1973, the mine was already encroaching on the magnificent Columbia Gardens, an amusement park that had opened in 1899 which was famous for its roller coaster and magnificent carousel, with FREE admission for everyone. I remember many trips to the Gardens with my cousins before its closure in 1973.

Steep declines in the price of copper resulted in the pit being abandoned and eventually shut down in 1982. Because the underground pumps were turned off when the Pit was shut down, groundwater seeped into the Pit, bringing with it dangerous chemicals and residue that leached from the rock into the Pit. As a result, the Pit is now filled with water so toxic that it is unsafe and unusable.

Because of my personal experience with the long-term, unanticipated consequences of the Berkeley Pit mining operation, I encourage the Board to deny the request to re-open the Idaho-Maryland Mine.

Thank you.

Dist. 2

Tine Mathiasen

From: [redacted]
Sent: Tuesday, February 13, 2024 11:39 AM
To: BOS Public Comment
Subject: Time to Terminate the RG Team's Bullying

You don't often get email from [redacted] Learn why this is important

Dear Supervisors Hall, Scofield, Swarthout, Hoek and Bullock,

We would like to thank you for the tremendous effort and time you have expended on Rise Gold's proposal to re-open the long-abandoned Idaho Maryland Mine. You have been thoughtful and fair in the face of the Rise Gold team's increasingly aggressive attempts to force their corporation's agenda upon our community.

We know you have heard all the objections to Rise Gold's flawed, inadequate EIR. Yet despite our own Nevada Irrigation District's concerns regarding the mine's potential impact on county wells, despite our Planning Commission's objections to signing off on the RG team's poorly researched plan for aggregate disposal and the Commission's refusal to agree to move a fault line on the IMM map, despite the earthquake that rocked the building during the Planning Commission's vote, Rise Gold continues to pressure the Board of Supervisors for project approval.

Over the past several years, our community has witnessed Rise Gold's lobbying efforts transform from friendly persuasion (tours for county officials, promises of economic benefits, assurances that IMM will be the "cleanest" mining operation in history) to petty nastiness (Rise Gold board member Larry Lepard's angry attack on our Planning Commissioners in The Union) to unmasked hostility (lawsuit threatened after you found against RG's claim to have vested rights to mine beneath our town). This bullying behavior demonstrates clearly that Rise Gold prioritizes the corporation's desire for profit above the best interests of our community.

In our schools, students learn to stand up to bullying. We applaud you for standing up for Nevada County and encourage you to keep standing up and to deny both the EIR and Rise Gold's proposed use permit for re-opening the Idaho Maryland Mine.

Again, we appreciate your time and service.

Carol and William Brady
[redacted]
Grass Valley, CA 95949

2.8.24

Dear B.O.S.

NO MINE!

you know why – thanks

Denise Martin

Failure Notice

From: mailer-daemon@yahoo.com

To: [redacted]

Date: Tuesday, February 13, 2024 at 10:57 AM PST

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Please review and share my letter for the hearing and information collected for the re-opening of The Idaho Maryland Mine by Rise Gold of Nevada County.

Thank you
Bob Walker
Rough & Ready California 95975
[redacted]

BOB WALKER BOARD OF SUPERVISOR LETTER 2-12-24.docx
16.3kB

RECEIVED
FEB 13 2024
NEVADA COUNTY
BOARD OF SUPERVISORS
Dist. 4

Bob Walker

Rough & Ready, CA

February 12, 2024

Dear Nevada County Board of Supervisors, Nevada County Planning Commission, All concerned citizens of Nevada County

I am writing in support of opening our local mines, including the Idaho Maryland Mine and here is why.

I have lived and worked in the Nevada County area since the 1950's when most of the mines and sawmills were producing the products from our Heritage industries. A young person could get a job and learn how to work a decent day's work and provide for their family very well. I would like to put some bite into this issue of mining with some of the facts of the industry. As an Industrial Electrician I have worked the mines of our area and have experience with this industry. You need to speak to those that have knowledge of this industry and not go with the speculation of unexperienced individuals.

Each city, county and state in our great United States has their own individual rules and regulations, but mining is held to a higher accountability by the federal government through the MSHA (Mining- Safety- Health- Administration), the other agencies can only regulate locally, but MSHA has the final safety say.

The Right to Mine Act of 1970 reads **"Mining and Mineral Policy of 1970 This law declares that it is the continuing policy of the federal government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources. This act includes all minerals, including sand and gravel, geothermal, coal, and oil and gas.** In California alone there are over 5,000 mining claims. If your well is below your mineral rights, does that not mean that you are into someone else's property? Are you trespassing?

There is no 'waste' from a mine. If we were to remove everything that our local mines produced for the use in Nevada and other counties, I think you would be amazed how

much you do NOT have, driveways, foundations, water features, countertops, sinks, retaining walls I think that you would have very little. You only call it waste to throw out there a dirty word that creates fear to those who are really uneducated on the subject.

Here are some true facts about our area:

- Mining is one of the safest industry's as it is not city, county or state regulated, but federally regulated by MSHA.
- Nevada Union High School's football team are 'The Miners'
- Your local paper publishes a section called 'The Prospector'
- We are known as 'The Gold Country' throughout the world
- The Pelton Wheel was invented in North San Juan and used throughout the world even today and it was invented for the mining industry.
- The Sierra Nevada is the richest area in the world for gold.
- Julia Morgan designed The Northstar House because of the mining industry
- The Foote Family has deep roots here and ARE Newmont Mining.
- Nevada County never knew there was the Great Depression because of our mining
- Our freeway known as 'the freeway to nowhere' named after the Golden Center Mine in downtown Grass Valley
- Nevada County "Gold Country' is as well-known as the Rockefellers are to Standard Oil, Carnegie is to steel or JP Morgan is to the railroad. Heritage Industries. Silicon Valley is a global center for high technology and innovation, not Nevada County
- Everyone in a civilized world uses some part of all of these companies and industries.

- The footprint of our Idaho Maryland mine, which is already established and in place is far less than the development of 1000 new homes or apartments, let alone an Industrial Zoned area. This is NOT an open pit mine.
- Our mines are held to the strictest criteria today not only for the safety of the miners, but also the public.
- There is a reason we have an area that our hospital, Sierra Nevada sits on known as 'Spring Hill' Have you ever gone up E. Main Street by W Berryhill Drive and the freeway and notice water that comes up in the road. It is not called Spring Hill because of the lack of water in our area.
- Mines are safer to work in than driving on Nevada County roads.
- If you own the mineral rights on your property, you have a right to extract them.
- Almost every electronic device known to man today uses gold as it is the best conductor of electricity and non-corrosive mineral known to man. Each device uses at least 0.2 grams of gold.

Just because you own property, it does not mean that you do own the mineral below your soil. In the United States, which is one of the few countries that an individual can take ownership of the minerals and profit from them. Someone who owns the mineral rights under our soil has the legal right to extract those minerals, even for profit. The market price of Gold on February 12, 2024 was $2019.14 per troy ounce.

I have lived and worked with those respected individuals from our area including Jack Clark, Ed Brunning and Ed Brunning Jr.

We can not afford to ignore the fact that it would be a big mistake to not allow our mines to re-open, encourage private industry to work in an area that it is already established as a mine and encourage young families to work in the area they live.

The increased benefit from the funds generated by a mine are economically beneficial. Schools, roads, hospitals, community enhancements, it is endless.

In conclusion I support opening our heritage industry, Gold Mining.

Lauriana Cecchi

From: Kate Gazzo [redacted]
Sent: Monday, February 12, 2024 4:10 PM
To: Clerk of Board
Subject: Written Comment to BOS for IMM Public Hearing
Attachments: Comments for Public Hearing on IMM 2-15-24.pdf

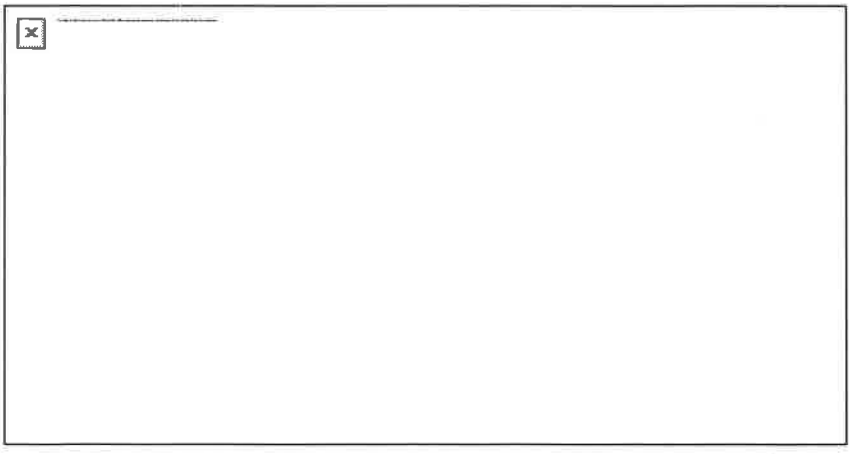
Some people who received this message don't often get email from [redacted] Learn why this is important

Please see attached comment letter.

--

Kate Gazzo, M.S.
Conservation Program Manager
Bear Yuba Land Trust

P.O. Box 1004
Grass Valley, CA 95945
O: 530.272.5994 x 201



February 12, 2024

To: Nevada County Board of Supervisors
Eric Rood Administrative Center 950 Maidu Avenue Nevada City, CA 95959
clerkofboard@nevadacountyca.gov

Public Hearing Comment on the Idaho-Maryland Mine Project

Dear Board of Supervisors,

On behalf of the Board of Directors and staff of Bear Yuba Land Trust (BYLT), I am submitting the following comments for the February 15, 2024 Board of Supervisor's meeting during which it is expected that the Board will act on the proposed Idaho-Maryland Mine Project. BYLT strongly supports the Nevada County Planning Commission's recommendation to not certify the Final Environmental Impact Report and to deny the rezoning and variance requests. BYLT submitted comment letters on the Notice of Preparation (NOP), and both the Draft and FEIR for the project. We continue to be disappointed that many of our comments were not substantively addressed in the FEIR (SCH# 2020070378). We find the responses to be inadequate and non-responsive.

As we stated in our comments on the Draft and FEIR, the mission of BYLT is to protect and defend the working and natural lands of the Bear and Yuba River Watersheds. The lands under our care include the 7.64-acre Bennett Street Grasslands Conservation Easement (Easement) located along East Bennett Street just below the Brunswick site and south of the Centennial site. As we stated in our letters, this valuable natural asset, which is owned by California State Parks and protected by BYLT, is bisected by South Wolf Creek, into which the project will be releasing at least 5.6 cubic feet per second (cfs) of potentially polluted residual mine water.

Our letters included an exhaustive discussion related to how BYLT is legally bound to protect, preserve, and maintain the natural, ecological, and aesthetic values of the Easement property from outside impacts to whatever extent possible, in perpetuity. As we stated, the FEIR does not adequately assess impacts or include any substantive mitigation measures for the potential impacts related to the quantity and quality of new mine water that will enter Wolf Creek.

Wolf Creek is a natural and protected channel on the Bennett Street site, yet this is not reflected in the FEIR. Sufficient pre-construction surveys and post-construction

mitigation monitoring for the sensitive plant and animal communities present were not conducted or described as mitigation. In addition, the ecological values of the seasonal and perennial wetlands on the Easement were not evaluated for impacts. This includes the effects on benthic macroinvertebrates and amphibians within South Wolf Creek and the federally and state-listed foothill yellow legged frog which may be most impacted by increased flows as tadpole eggs and invertebrates may get washed downstream and are unable to complete their life cycles. As benthic macroinvertebrates numbers decrease in the channel, fish, such as brown trout present in the creek, can only expect to decline in numbers as their food source declines. To say that the proposed project would not result in temporary or permanent impacts because encroachment would not occur within 100 feet of the waterway does not account for water quality and quantity impacts to these important wildlife species.

Increased flows in South Fork Wolf Creek may also lead to changes in the plant community composition and distribution along areas adjacent to the creek. The riparian corridor on both sides of South Fork Wolf Creek may shift in response to increased flows. Conditions may be too wet for some plant species to grow and they may be displaced from the site all together. This situation would not only affect plant species, but also the inter-related habitats for aquatic and nesting and foraging bird species that utilize the Easement. We can find no discussion of these CEQA impacts in the FEIR.

Further, the distribution of seasonal and perennial wetlands located within the Bennett Street Grasslands Easement would change over time in response to the changes in hydrology of the creek. Our questions related to how this impact will be monitored in the long-term, what will be the threshold for such impacts, and what will be done to rectify the damage remain unanswered. We also contend that when the mine begins operations and begins pumping water into the creek, the change in water chemistry will be unknown because there is no background data to compare to the project conditions. There is no mention of background monitoring of water quality or future quarterly testing that must be completed especially considering concerns related to changes to pH, temperature, DO, and turbidity, in violation of CEQA.

To simply state that Regional Water Board requirements will be implemented is not mitigation under CEQA. To not include actual regulatory requirements of what measures are required to meet Regional Board requirements pertaining to the discharge of hazardous wastewater, which we know will occur, does not give the public or decision makers a realistic understanding of the impacts of the proposed project. What mitigation measures will the Regional Board require? Why are they not included in the project description? To relegate the identification of mitigation measures to a future time is the definition of deferring mitigation, which is not allowed under CEQA.

CEQA requires that the project description supply the amount of information needed for evaluation and review of the environmental impacts (Section 15124 of the CEQA Guidelines). In addition, all mitigation must be identified and feasible. The FEIR does not evaluate the impacts to habitats and water resources because of possible water system failures. We can surmise that the impacts would be significant and perhaps

irreversible. Special-status plant and wildlife species could be exterminated and it would take decades to restore the existing habitat to its natural condition. This cannot be so easily dismissed. In addition, we are very concerned about turbidity and water quality impacts during construction of the water treatment facility and other grading at the Brunswick Industrial Site directly upstream from the South Fork Wolf Creek.

We are also very concerned that the discussion in the FEIR related to wildlife migration corridors is limited to deer on the Brunswick and Centennial Industrial Sites. This discussion is inadequate. The corridor of the South Fork Wolf Creek as well as the entire Easement site are vital wildlife migration corridors that could be affected by changes to water quantity and quality in the creek. Evidence of bear, mountain lion, red-tailed hawk is easily seen on the Easement property. The inter-related nature of ecological communities is not acknowledged in the FEIR. When one species is adversely affected either by poor water quality and a change in food sources, other species are affected as well. This impact, which is a specific question in Appendix G of the CEQA guidelines, continues to be unanswered. This is a violation of CEQA.

We have identified many inadequacies of the FEIR in our letters that were largely ignored. The CEQA process for this project must give the decision makers and the public every opportunity to understand the potential impacts of the project as well as to identify feasible, comprehensive, and specific mitigation measures. Otherwise, the public can have no certainty that far-reaching adverse impacts will not occur.

For over 30 years, BYLT has safeguarded critical habitats and provided assurances to our community that we will protect the conservation values of the lands we are entrusted with. We are legally bound to protect the Conservation Easement values of the Bennett Street Grassland Conservation Easement and the project puts our ability to accomplish our mission to protect and preserve. For all the above reasons, we find the FEIR to be legally insufficient to support the Idaho-Maryland Mine Project and as such, we cannot support the project.

Respectfully Submitted,

Erin Tarr
Executive Director
Bear Yuba Land Trust
erin@bylt.org

Tine Mathiasen

From: John Kelly [redacted]
Sent: Monday, February 12, 2024 6:40 PM
To: BOS Public Comment
Subject: Rise Gold Proposal

You don't often get email from [redacted] Learn why this is important

Dear Supervisors;

I would like to register my comments about the Rise Gold Application to re-open the Idaho-Maryland Mine. This can be viewed in many different ways, and as it turns out **all of them are bad**. Here are a few.

1. A few people seem to think that because this used to be a mining community that this would be a good thing. It really wouldn't because the world has moved on.
2. The community is totally different today; and hosts many tourists and visitors who bring in a considerable amount of income to the area. That would become dramatically changed (eliminated) if the mine was re-opened.
3. Some are saying that it would provide employment opportunities but in reality it would be very few.
4. The traffic change would undoubtedly create a significant problem; especially the increase in heavy trucks in the area which would be intolerable to almost everyone.
5. Water access and usage; are potentially huge issues.
6. Water disposal from the mine is clearly a public disaster waiting to happen.
7. Debris from the mine would be dumped; spreading the contamination far and wide.
8. It is more than likely that people will be killed or suffer significant illness as a result of activation of the mine.
9. Ground water all the way to the Sacramento valley will become highly contaminated.
10. Even if Rise Gold had a reasonable track record this should not even be considered as a reasonably activity for this county and for California; **but they don't** and there is absolutely no reason to believe that they could handle such a project safely for our population.

I and so many others have seen the potential for disaster here if the mine is re-opened. I have thought many times about what would happen in the county over the the years if the mine is re-opened, and the thought is utterly horrendous for a very large percentage of the population. I suspect and hope that the supervisors have reached the same conclusion. PLEASE vote NO on the mine.

yours truly

John Kelly

Tine Mathiasen

From: Don [redacted]
Sent: Tuesday, February 13, 2024 8:06 AM
To: BOS Public Comment
Subject: Opposition to Idaho Maryland Mine

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Dear Board of Supervisors,

Thank you for your service to our community. And thank you for voting against the vested right effort Rise tried to pull on us. I am writing you to request that the BoS do not certify the Idaho Maryland Mine EIR and that you deny Rise Gold Corp's application for a permit. Furthermore, please consider passing an ordinance to put to rest any future effort to re-open the mine.

Our reasons for denial parallel staff and the Planning commission conclusions:
- incompatibility with our community: the proposed mine is located amongst residential neighborhoods, height requirements are out of line with community standards, traffic would increase, noise and vibration.
- well water impact is unknown.
- significant greenhouse gas impacts: we'd be going backwards
- can't adequately dispose of mine waste
- the economics do not make sense and put our county at risk

Furthermore, Rise Gold has not demonstrated that they would be good partners. Most recently their move to ask the BoS to consider vested rights and their threat to sue our community reinforced my belief that this company does not care about us.

As I mentioned at the beginning, it is highly desirable that our county put to rest any further effort to reopen that mine. It's not fair for us to go through this every few years. I know it is a separate topic but hopefully the BoS will consider an ordinance or rezone so that a more compatible use for the community can be considered for that property.

Thank you for listening to your staff, the planning commission and the community. Please vote "no" on the mine.

Sincerely,
Don Haislet
Cedar Ridge, Ca

Tine Mathiasen

From: James Bair [redacted]
Sent: Friday, February 9, 2024 4:59 PM
To: bdofsupervisors@co.nevada.ca; Kyle Smith; BOS Public Comment
Cc: Kit Elliott
Subject: Comment: BOS Hearing Feb 15: Questions about the ECONOMIC IMPACT OF THE PROPOSED IDAHO-MARYLAND MINE PROJECT
Attachments: Overriding Considerations Economic Impact of the IMM Mine 2.0.docx

Attached please find my comments for the BOS Packet for the Feb, 15 Hearing.
Thank you.
Jim Bair
[redacted]

--

Jim Bair Photography: JimBairPhotography.com

February 9, 2024

TO: Nevada County Board of Supervisors bdofsupervisors@co.nevada.ca
Nevada County Planning Dept.
BOS.PublicComment@nevadacountyca.gov

Subject: Overriding Considerations: Questions about the ECONOMIC IMPACT OF THE PROPOSED IDAHO-MARYLAND MINE PROJECT

From: Jim Bair [redacted] (Grass Valley, CA 95945)

CC: Kit Elliott, County Council Kit.Elliott@nevadacountyca.gov

The potential economic value of reopening Idaho-Maryland Mine could possibly counter negative impacts enumerated in the FIER. To understand potential economic impacts, Nevada County awarded $80K early in 2022 to a consultancy in Santa Barbara, CA, Robert D. Niehaus Inc., [RDN] for an "objective" analysis the economic impact of reopening the Idaho-Maryland Mine by Rise Gold Mine, Inc [RGV]. We have reviewed the study[i] in detail and have found considerable evidence that objectivity was not achieved.

Our team includes scientists and well-informed persons who have been investigating the Mine for 2.5 years. Although the study meets many academic standards, we have found the study to be more of a marketing publication, not a useful analysis of the Mine's economic impacts. Our findings are presented here as questions in different categories, but the County's request for questions has been expanded to include comments. We will make every effort to deliver our findings to the County decision makers.

Jobs, Employees and "indirect/induced" Employment

The most important question of RDN is the economic value to Nevada County of the projected 312 employees and 163 indirect/induced jobs. That employment value is "estimated" to be $45.4 million per year by the fourth year of mine operation. p.13. Is there sufficient accuracy in that projection to justify the $45.4 Million claim of employment value to Nevada County? Doesn't accuracy depend upon factors beyond RGV's control? Specifically:

1. Is there any contractual or other obligation by Rise to hire the 312 direct employees as proposed in four years? *We cannot find any.*
2. There is no way to require those workers to live in Nevada County, so wouldn't a more tenable economic analysis by RDN

describe residency assumptions and provide alternate scenarios? E.g., if half of the workers reside in the County, those 156 workers would result in $23.7 million in labor income for the County, not $45.4 Million?
Later in the report, RDN proffers a number of non-residents to justify a reduced cost for Public Services/ government expenditures (see below). (Our team's former corporate managers, were required to hire the best for the least no matter where they lived.) *This appears in contradiction of the increase in residents touted elsewhere.*
Rise did say they would advertise and promote the jobs within the County first, but the skills and demands of mining jobs could make the jobs unappealing[ii]. E.g., the 268 Mining Operations jobs are day and night shifts, 12 hrs. a day, 7 days a week, on a weekly rotation [DEIR Table 4.12-6].) [iii]

3. RDN uses a more plausible number, 163, for "indirect and induced jobs" than the DEIR's claimed 300 jobs. The same assumption of residency in the County applies to this estimate, but what is the factual basis for jobs over which RISE has no control? Does this estimate come from a widely used computer modeling program, IMPLAN? *We believe it does.*
4. Is IMPLAN the same program used by RISE (Rise Grass Valley) in their *Economic Impact Study* (March 2021)? And, isn't this program used widely by US companies for the purpose of selling their projects to authorities for approval? Does IMPLAN take into account our local labor shortages (e.g., B&C Hardware per Greg Fowler, Owner)? *We believe it does not.*
5. Further, did IMPLAN or RDN analysts take into account that a **significant proportion of current jobs in Nevada County are filled by commuters** from the Marysville/Yuba City area and Placer County? (The four business organizations that RDN interviewed would likely have that data, e.g., Chambers of Commerce.)
6. Did RDN take into account the published expert reviews of IMPLAN that describe the inherent bias toward project developers? See footnote. [iv] *We believe they did not.*

Questions re: Sources of Data

We are grateful to the County Board of Supervisors for commissioning an independent Economic Impact Report at County expense rather than relying on the private Economic Impact report produced by Rise Gold (RGV). We have a number or concerns about the validity of data acquisition and analysis.

1. The RDN Report relies on RGV's (Rise Grass Valley) reports, plans and studies for estimates of payroll, operational expenditures, and output which are not accepted even at the pre-approval level of a Final EIR?
2. There were over 2800 public comments on the DEIR, were these considered when RDN used the DEIR as a major source of data? [v]
3. Does the business interview response rate of about 33% provide a valid sample when a significant number of interviewees indicated that the RGV project was too controversial to comment on? p. 17. (While a sample size of 24 is small for generalization, self-selection by respondents is also a known source of low validity – especially since over 250 businesses have publicly opposed the RGV project. (B. Bradbury is the interviewer, an extremely important role affecting validity – we know nothing about this person).
4. Reviewing every source of data was likely beyond the RDN budget, but a high value source is the homeowners' associations many of whom have conducted surveys on the Mine (e.g., *Friends of Banner Mountain* (FBM) a 501(c)(3), jeff@bannermountain.org) -- were homeowner's associations contacted?
5. Can RDN make available interview protocols [questions] used for businesses and government (we don't see them in the Appendices)? p. 49.
6. RDN does acknowledge that public perception of negative environmental impacts can negatively influence tourism and other businesses, but does this quote from the RDN report, "Even if the proposed project does not have substantial negative environmental impacts..." indicate an interpretation of the DEIR as not describing significant negative impacts?
    a. There are 10 areas of significant environmental impacts in the DEIR, 8 of which require mitigation and 2 that are significant and unavoidable, i.e., **cannot be mitigated** (DEIR Table 6-1). Note that many of the mitigation measures have been challenged as insufficient (see DEIR Comments, public press, and public Forums (e.g., UUCM Task Force and MineWatch)).

7. Is it true that there will not be any need for housing growth and related economic impact because Nevada County has 53,745 total housing units with a 22.5 percent vacancy rate (12,098 vacant housing units)? The unincorporated area of Nevada County has a total of 32,182 housing units with 4,645 vacant housing units (14.4 percent vacancy rate). [DEIR p.4.9-25]
8. There are confusing estimates on the jobs data, where total population growth is projected by the DEIR (DEIR Table 4.9-4) to be 240 new residents p. 46, while the new direct and indirect jobs are 475. Shouldn't all the new jobs result in new residents to achieve the claimed benefit? A questionable decision has been made that only 100 of the new job holders out of 475 will live in the County, so how can there still be $45.4 million in county employment revenue?
    a. If only 100 jobs are in the County, doesn't that change the $45.4 million labor income for Nevada County? Shouldn't the County income and costs be based on 240 new residents which is 100 job holders multiplied by 2.4 persons per household?
    b. Shouldn't the 240 new residents determine population increase which would be the basis of public services costs? p. 46.
    c. The 2020 US Census projected population increase for Nevada County to be **240** -- while RDN cites that number, no time period is offered—is the time period 10 years?
    d. RDN states 99 workers out of 475 would move to Nevada County, each creating a household of 2.4 residents equaling **240** new residents—i**s it therefore projected that RGV is responsible for ALL the County population growth for the next 10 yrs.?** (This is most likely a mistake but the numbers are being used to forecast Pubic services costs. It is questionable that **"**Most County and city departments expect little to no impact to their employment or annual operating expenses as a result of the proposed project**"** when 99 new households are expected.)

9. While direct job revenue in the County is based on 312 jobs, RDN states 213 will be local and 99 non-local. Again, these numbers raise the serious question, does labor income to the County ($45.4 million) include income from non-resident employees? It certainly seems that non-residents would not be as likely to spend in Nevada County – although there will be visits to the pubs by the miners after 12 hours underground….

It appears that 99 jobs are local for revenue but then are non-local for costs. Regardless, there will approximaltey188 vehicle trips per day plus an estimated 236 heavy truck round trips per day between the Brunswick and Centennial sites adding about 424 vehicle trips per day on local roads.[vi] In addition, there will be an unspecified number of delivery trucks per day. Local roads are assumed to be maintained by the City of Grass Valley. RDN reports costs of $170K/yr. for two additional city jobs but is there any enumeration of additional road maintenance costs? p. 50. (To quote RDN, "Representatives at the City cited concerns about increased traffic congestion necessitating intersection and roadway improvements and heavy truck traffic heightening pavement maintenance needs. ")

Should Proposed Alternatives in the DEIR be Included?

The DEIR (Draft Environmental Impact Report) describes four alternatives to the proposal as required by CEQA law. Those alternatives could potentially have less negative environmental impact. Why weren't those alternatives compared to the Proposal, at least to estimate the change in the economics?

Tax and Operating Expenditure Questions

The Mine's economic value to the County is significantly dependent upon the Mine's spending in the County. In fact, these numbers have been widely touted to justify the Mine. Our three questionable areas (non-wage) are tax income, gold reserves quantification, and operating expenditures.

1. The current property taxes are in line with our estimates of $43,000/yr. (Complied via discussions with the County Tax Assessor's office), p. 52.
2. It is commendable for RDN to use high-end and low-end scenarios for estimated gold reserves revenue because the amount of economically viable gold reserves is not predictable, yet it is a major source of claimed revenue-- $179.8 million a year.
   It should be noted that the RGV mineral rights area sampling was statistically invalid (19 bore holes yielding 43 samples of over 2,580 acres of mineral rights is far below statistically significant sampling). Emgold Mines had a similar problem, and other mines have vastly different geological characteristics. There is simply little basis upon which to forecast the underground gold in a mine. Is it valid and reasonable to publish conjectures about gold qualities, when this is patently one of the highest possible risk ventures (see the RYES SEC filings)?

3. The Rise DEIR expenditures for gold mineral processing are explicitly not in Nevada County or CA. Why is this not considered by RDN since it would have to affect revenue to the County? Isn't processing gold out of the County a way to not pay taxes on gold produced?
The RGV Economic Study states that mineral processing is projected at $0 County and CA, but **$6,570,000 out of state, and** Drilling & Explosives, Mine Development is $0 County but $803,000 in CA for a total of **$7,336,000 not spent in Nevada County.** This table is worth including here, even though other County expenditures such as Power… are misleading (e.g., PG&E does not "accrue" revenue in the County).

FIGURE 4
ANNUAL LOCAL NON-WAGE OPERATING EXPENDITURES

		Annual Expenditures		
Expenditure Type	Percent Local	Nevada County	Other California	National
Office, Admin & Misc.	35%	$1,232,000	$750,000	$1,584,000
Engineering, Environmental, Prof Svcs	50%	$360,000	$360,000	$0
Facility & Road Maintenance	100%	$457,000	$0	$0
Power & Utilities, Fuel	100%	$7,918,000	$0	$0
Equipment Maintenance and Repair	48%	$210,000	$130,000	$100,000
Operating Supplies	80%	$1,327,000	$180,000	$156,000
Transportation & Deliveries	88%	$368,000	$0	$50,000
Lodging and Local Transportation	100%	$639,000	$0	$0
Mineral Processing	**0%**	**$0**	**$0**	**$6,570,000**
Drilling & Explosives, Mine Development	**0%**	**$0**	**$803,000**	**$7,336,000**
Total	**41%**	**$12,511,000**	**$2,223,000**	**$15,796,000**

Source: Rise Grass Valley.

From: *Economic Impacts of the Idaho-Maryland Mine on Nevada County*, Applied Economics LLC, Phoenix AZ Mar. 2021.

Real Estate Impact

The impact on real estate value is of major importance to RDN based on the amount of effort they spent to analyze a market with an extraordinary number of variables. It was also done in addition to a preceding assessment by local real estate agents and anecdotal property values. Licensed agents published

(c.f. *The Union*) a collective estimate that property values would drop roughly 20% in general because of the far-reaching effects of air pollution and traffic on important roadways.

Fundamental Irregularities in Research Methodologies – Property Values

The evaluation of the impact industrial development on the market value of real estate tends to be subjective and driven largely by comparable and the price history of each property. RDN's approach using interviews and questionnaires appeared sensible given the questionable validity of any quantification of such complex and subjective markets. However, RDN raised serious questions, and we conjecture that the research goal was to show little impact on residential real estate value.

Interviewee Selection: The first irregularity was the selection of one environmental preservation organization and four pro-development originations for interviews. Without identifying the three organizations that agreed to be interviewed, all responses were a qualified "[the Mine is] good for new business". p. 17. Interpreting results requires reviewing the interview questionnaire and protocol – is this included in the study?

With this first step by RDN, it was clear that interviews and questionnaires were the appropriate methods to evaluate impacts on property values. A significant sample of real-estate professionals and local businesses is the best methodology when attempting to quantify the behavior of market valuations. After all, it is a social system, the purview of the established field of social science. Note that hypotheses would need to be tested, e.g., market *values of local real estate will decrease when a mining operation like RGV's is approved"* or "increase" if scoping analysis of the population justifies that alternative hypothesis.

Case Studies: However, RDN first tried a case study approach, appropriate only when the cases are representative of the same population and time period– a case study of Lodi, CA, is hardly useful to generalize about a Foothills community spanning significantly different altitudes, road accessibility, rivers and streams, historic road designs, and generally a unique topology.

Note that social science research is vulnerable to the "fallacy of misplaced concreteness", where statistics and experimental method produce numbers that are not representative.

Case #1, the Haile Gold Mine, documents a significant price increase after reopening in 2016. How can RDN know that home price increasing was not due to a nationwide trend in real estate and inflation? They would have to compare the housing prices to a similar area without a mine (a control group). While RDN states, "this does not mean there is a causal relationship between increases in sales prices and the mine opening, which could be attributed to confounding factors.", their claim looks legitimate and prominent to the casual reader. p. 22. In science, there is a famous caveat, "*there's correlation but no causality*".

Cases 2 & 3 have the same validity issue, and the Lincoln Mine price impact appears to be questionable: did the market awareness start in 2012 or 2020 or much earlier? While news coverage occurred in 2013, did that create market awareness ("stigma") or was it the purchase by a viable company in 2020? Obvious factors are the initiation the CEQA environmental impact process and the conclusions of a Final Environmental Impact Report (FEIR). If the Lincoln Mine was approved earlier then shouldn't the date of FEIR acceptance be the onset of market impact?

The Lincoln Mine area residential home value increased 15.4 % from 2013 to 2022 according to RDN, which is too easily construed to be a positive impact of the Mine. But what was the overall market increase during that period of US prosperity? **Housing prices in CA more than doubled** during that period according to the Fed (*All-Transactions House Price Index for California* (CASTHPI))[vii]

Questionable use of Hedonic Pricing: The use of case study methodology appears to have provided unsatisfying concussions, so RDN used complex statistical muti-variate regression analysis. While academically interesting, the use of distance from a mine as an independent variable, housing value as the dependent variable, and hedonic statistics to control all the other variables (exogenous), could appear to be distracting. In conclusion, isn't the result of 1% increase per mile of distance from a mine as stated by RDN insignificant? p. 33.

Hedonic pricing has significant drawbacks, including its ability to only capture consumers' willingness to pay for what they perceive are environmental factors and their resulting consequences as stated in the literature.[viii]

Interviews: RDN is to be commended on the use of interviews. However, interviews are extremely sensitive to the interview process and the

interpretation of the interviewer. The RDN report of the interviews of real estate industry professionals is too imprecise for valid results. First, the sample size is too small (11 interviewees) to generalize to the several hundred realtors, brokers, general contractors and rental property managers.

Interview results are presented in a questionable manner, although they could be quite valuable. Here are summary statements from the 11 respondents (self-selected sample & not identified) in order of appearance in the RDN report:

1. Several interviewees said they do not expect that the mine would have any significant impact on property values.
2. One respondent expects a moderate increase in sales prices and total sales due to the anticipated increase in population and jobs.
3. Most interviewees, however, expect that the proposed project would negatively impact local property values. [after "several" this means 3 interviewees?]

What is the difference between several and most in a sample size of 11? Anecdotal results that follow are indicative of individual opinions, but generalizes to several hundred professionals is not valid.

Surveys/questionnaires

The survey methodology was targeted at 362 licensed realtors, uses a reliable tool (Survey Monkey), and RDN includes the questionnaire that was emailed. pp. C1-7 [Appendix C]. A response rate of 21% is reasonable for email surveys of a large sample.

However, the use of short quote in the questionnaire from the unapproved 1070-page DEIR as the basis of rating of impacts not only introduces extraordinary bias, but also presents a highly controversial conclusion that has been extensively challenged by public Comments on the DEIR. Question #5 about the impacts being greater or less than those in the DEIR is inappropriate at best and deceptive at worst (the question is included below).[ix]

Despite validity questions on #5, the relatively representative response rate of 21% is generalizable. Question #5 put the DEIR in perspective: 77% answered that the environmental impacts would be significantly higher than surmised in the DEIR. [Editorial comment: The County government should take this low confidence into perspective when processing the DEIR.]

Survey Conclusion: "If the proposed project moves forward, most respondents believe that home prices in nearby areas would decline. The

estimated magnitude of the decline varies by area. The median expected change in property value ranged from -15 percent for properties between one and five miles away from the mine up to -40 percent for properties located within RGV's mineral rights' boundary [over 2500 acres]." P.42

SUMMARY

Despite the best intentions of the County Leaders, analysis of the RDN Economic study reveals a significant number of questionable methods that render most of the report scientifically invalid. While we have painstakingly dealt with the details, our overall observation is that the study was designed to prove rather than test a hypothesis: *The Rise Gold Mine as proposed will have significant economic value to Nevada County.* Our scientific test of that hypothesis, if we used the viable methods such as surveys, interviews, and the details in the relevant reports (I.e. the DEIR, the DEIR Comments, the RGV Economic Study, would be **it is false**.

The most questionable aspect of the study is the difference between the conclusions in the Summary (p.59), and those in the study. Here is a poignant example:

In the study, this is the conclusion of realtor survey section:

"The median expected change in property value ranged from **-15** percent for properties between one and five miles away from the mine up to **-40** percent for properties located within RGV's mineral rights' boundary [over 2500 acres]."

BUT the SUMMARY states:

"RDN performed extensive research and analysis and found no conclusive evidence to assert that the proposed project would have a significant impact on local property values." p.ii

In general, how can an industry that increases employment by less than 1% have *significant economic impacts* on the County? The proportional impact on County GDP is also small especially considering the risk (well documented in the press, public comment to the County, and Comments on the DEIR).

[i] https://www.nevadacountyca.gov/DocumentCenter/View/46101/Economic-Impact-Report_Final

[ii] Salaries are inflated by the Mine by including salaries of high level management in the average, and also increasing the number of paid hours above the standard 2000 hrs. per year -- see https://www.risegoldcorp.com/uploads/content/IdahoMarylandMineProject-EmploymentDetails.pdf

[iii] Note that Rise's own "Feb 2023 Employment Details" document says they will hire 99 experienced mining people from out the area first. One could assume that no other hires would occur until when/if the experienced people can prove enough ore exists.

[iv] https://www.carolinajournal.com/opinion/iron-man-no-the-real-hero-is-the-super-multiplier/

https://www.johnlocke.org/research/economic-impact-studies-the-missing-ingredient-is-economics/

P3. The DEIR option for this study is the same used in the Mine's (Rise Gold Inc.) Economic Study and their marketing, i.e., the use of the Centennial site as a dump with 236 truck trips per day.

[v] [**https://www.nevadacountyca.gov/3195/Idaho-Maryland-Mine---Rise-Grass-Valley**]

CHECK: P6. 174 employee trips per day is much lower than reported by the Mine ...

[vi] If Rise opts for Alternative II (no Centennial site) approx. 200 of the trips are "local" to Brunswick. Which adds 50+ feet to the tailings pile, more noise, and pollution at the Brunswick site.

[vii] https://alfred.stlouisfed.org/series?seid=CASTHPI&utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=alfred

[viii] Hedonic pricing: The most common example of the hedonic pricing method is in the real estate market, wherein the price of a building or piece of land is determined by the characteristics of both the property itself (i.e. internal factors like its size, appearance, features like solar panels or state-of-the-art faucet fixtures, and condition), as well as characteristics of its surrounding environment (i.e. external factors such as if the neighborhood has a high crime rate and/or is accessible to schools and a downtown area, the level of water and air pollution, or the value of other homes close by). For example, if potential buyers are not aware of a contaminated water supply or impending early morning construction next door, the price of the property in question will not change accordingly. Hedonic pricing also does not always incorporate external factors or regulations, such as taxes and interest rates, which could also have a significant impact on prices. (see Hedonic Pricing: Definition, How the Model Is Used, and Example (investopedia.com) https://www.investopedia.com/terms/h/hedonicpricing.asp#:~:text=Hedonic%20pricing%20identifies%20the%20internal%20and%20external%20factors,the%20neighborhood%20or%20environment%20within%20which%20it%20exists.)

[ix] RDN Survey question # 5:

Projected Impacts of the Idaho-Maryland Mine on Local Property Values

Draft EIR Findings

5. Summary of Draft EIR Findings (from Nevada County Planning Department): "The EIR identifies significant impacts for the following California Environmental Quality Act (CEQA) environmental topic areas: Aesthetics; Air Quality and Greenhouse Gas Emissions; Biological Resources; Cultural and Tribal Cultural Resources; Geology and Soils; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Vibration; Transportation; and Wildfire.

However, the EIR includes mitigation measures that would reduce project impacts related to Air Quality and Greenhouse Gas Emissions; Biological Resources; Cultural and Tribal Cultural Resources; Geology and Soils; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Vibration (off-site haul truck traffic noise; operational noise and vibration); Transportation (hazards related to construction traffic); and Wildfire to less-than-significant levels.

The EIR determined that the project would have certain impacts to Aesthetics; Noise (temporary construction noise along East Bennett Road); and Transportation (e.g., intersections) that would remain significant and unavoidable even after implementation of the feasible mitigation measures set forth in the EIR."

Do you believe the environmental impacts would be greater than or less than those stated in the Draft EIR?

- ◯ Significantly greater
- ◯ Slightly greater
- ◯ About the same
- ◯ Slightly less
- ◯ Significantly less

Tine Mathiasen

From: Patricia Larkin [redacted]
Sent: Friday, February 9, 2024 12:40 PM
To: bdofsupervisors
Cc: Clerk of Board; County Counsel; Matt Kelley; [redacted] Ellison Folk; Ryan Gallagher
Subject: Board's Consideration of the Idaho-Maryland Mine Project
Attachments: 2024-02-09 CEA Foundation Letter re Rise Matter.pdf

On behalf of the Community Environmental Advocates Foundation please find attached a letter regarding the County's ongoing consideration of Rise Grass Valley, Inc.'s proposed Idaho-Maryland Mine Project.

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February 9, 2024

Via Electronic Mail Only

Board of Supervisors
Nevada County
950 Maidu Avenue
Nevada City, California 95959
bdofsupervisors@nevadacountyca.gov

Re: Board's Consideration of the Idaho-Maryland Mine Project

Dear Board Members:

On behalf of the Community Environmental Advocates ("CEA") Foundation, we write regarding the County's ongoing consideration of Rise Grass Valley, Inc.'s ("Rise's") proposed Idaho-Maryland Mine Project ("Project"). On December 14, 2023, the Board unanimously voted to deny Rise's Idaho-Maryland Mine Vested Rights Petition ("Petition"), concluding that Rise does not hold a vested right to mine on the Project site. Previously, the County's Planning Commission had unanimously recommended (1) to deny Rise's applications for a rezone and a variance, each of which is necessary to develop the Project; and (2) to decline to certify the Final Environmental Impact Report ("EIR") prepared for the Project. The Board will consider those recommendations at a public hearing on February 15, 2024.

We commend the County for reaching the correct decisions to date regarding the Petition and the Project entitlements. On behalf of CEA Foundation, we urge the Board to adopt the Planning Commission's recommendations, which are well-reasoned and were delivered only after a thorough process that afforded Rise and the public ample opportunity to be heard. We also write in response to threats that Rise will challenge these decisions in court.[1]

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[1] *See* Rise Gold Corp., *Rise Gold Reports Result of Vested Rights Hearing* 2 (Dec. 14, 2023), https://www.risegoldcorp.com/uploads/news_item/article/ARTICLE_126.pdf (quoting Rise Gold CEO Joe Mullin, who stated after the Board's decision to deny the

As set forth in this letter, any claims that Rise could bring against the County in connection with the Project are unlikely to succeed. In particular, it is doubtful that a court would second guess the Board's fact-bound, thorough, and impartial decision to deny the Petition. Additionally, Rise would have no viable claim that the County has taken its property without just compensation in violation of the state or federal constitutions. In short, the County should not be swayed by Rise's empty threats of litigation. The Board should adopt the recommendations of the Planning Commission and County staff[2] to deny certain Project entitlements, decline to certify the EIR, and put an end to Rise's misguided Project once and for all.

I. The County's decision to deny the Petition was sound and a court is unlikely to overturn it.

At the outset, it is important to emphasize that if Rise wishes to challenge the County's vested rights decision, it must pursue that claim in state court. Longstanding precedent from the U.S. Court of Appeals for the Ninth Circuit is unequivocal on this point. In *Eilrich v. Remas* (9th Cir. 1988) 839 F.2d 630, 632-33, the plaintiff attempted to bring a claim against his former city employer in federal court under 42 U.S.C. § 1983, arguing that his discharge violated his First Amendment rights. The Ninth Circuit held that the claim could not move forward, as a city administrative body had already rejected that exact argument in an adjudicatory proceeding and the plaintiff did not challenge the city's decision in state court. *Id.*; *see also Miller v. County of Santa Cruz* (9th Cir. 1994) 39 F.3d 1030, 1037-38 (reaffirming *Eilrich*). Thus, Rise could only contest the County's denial of its Petition by seeking a writ of administrative mandamus in state court. *See* Cal. Code Civ. Proc. §§ 1094.5, 1094.6; *Eilrich*, 839 F.2d at 633; *Miller*, 39 F.3d at 1038.

Any court reviewing Rise's claims must afford the County's findings a "strong presumption of correctness." *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817. The burden would fall on Rise, as the challenger, to overcome that presumption and

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Petition that he "look[ed] forward to having our rights vindicated by the courts"); *id.* at 1-2 (implying the Board's denial of the Petition was procedurally and substantively improper and suggesting that it would amount to an unconstitutional taking were the County to deny both the Petition and all necessary Project approvals).

[2] *See* Brian Foss, *Board Agenda Memorandum* 2-3 (Feb. 2, 2024), https://www.nevadacountyca.gov/DocumentCenter/View/52237/Board-of-Supervisor-Staff-Report-.

"convince the [trial] court" that the County's "decision is contrary to the weight of the evidence." *Id.*

Rise cannot possibly carry that burden. As the County explained at length at the hearing and in its written materials, there is ample evidence that any vested right to mine that may have once existed has long been abandoned. By comparison, and as the County also pointed out, there is virtually no evidence indicating that previous owners of the Project sites continuously intended to resume mining operations during the seven decades when the mine sat unused. The quality and the volume of the evidence that the County relied upon exceeds that in cases where courts have affirmed findings of abandonment. *See, e.g.*, *Hardesty v. State Mining & Geology Bd.* (2017) 219 Cal.Rptr.3d 28 (unpublished); *Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348. Indeed, had the County found that any vested right was *not* abandoned in spite of the clear historical record, a court likely would have overturned that decision. *See Keep the Code, Inc. v. County of Mendocino* (2018) A147544, 2018 WL 6259477 (unpublished)[3] (overturning county's determination that company had vested right to mine aggregate; included as **Attachment A**).

Taking a different tack, Rise has also vaguely alleged that the Board was biased when it unanimously voted to deny the Petition, and thus Rise was deprived of procedural due process.[4] Rise has tried this exact strategy before.[5] Its allegations of bias are no more compelling now than they were the last time Rise raised them. The County's staff reports and related materials explained in scrupulous detail the legal principles and factual context necessary to resolve Rise's Petition.[6] This included a point-by-point

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[3] Although the *Hardesty* and *Keep the Code* decisions are not published, they provide helpful guidance regarding how a court is likely to approach similar issues and facts.

[4] *See id.* at 1-2 (alleging the Board relied on a "biased" staff report and implying the Board was not an "impartial tribunal" when it considered the Petition).

[5] *See* Letter from Ben Mossman, President, Rise Grass Valley Inc., to Nevada County Board of Supervisors (June 1, 2023) (claiming Planning Commission was biased when it issued its unanimous recommendations regarding the Project entitlements and FEIR); *see also* Letter from Ellison Folk, Shute, Mihaly & Weinberger LLP, to Nevada County Board of Supervisors (June 27, 2023) (addressing Rise's previous allegations of bias).

[6] Katharine L. Elliott & Diane G. Kindermann, *Nevada County Board of Supervisors Board Agenda Memorandum* (Nov. 28, 2023), https://www.nevadacountyca.gov/DocumentCenter/View/51714/2-Staff-Report; Katharine L. Elliott et al., *Nevada County Board of Supervisors Board Agenda Memo*

analysis, supported with numerous factual exhibits, addressing the many misleading or simply incorrect statements in the Petition.[7] That these materials happened to reach different legal and factual conclusions than Rise and its counsel does not mean County staff were biased; it means they did their jobs.

As for the Board itself, it is blackletter law that a decisionmaker is not biased simply because they have some attenuated connection with a group that takes a stance on the project at issue. *See Petrovich Dev. Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 971, 974 (holding a councilmember's active membership in a neighborhood association opposed to a project on which the councilmember voted "did not establish bias" in and of itself); *see also Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 559 ("[A] councilperson has a right to state views or concerns on matters of community policy without having his voted impeached."). Rise's complaints of bias were meritless when they were levied against the Planning Commission eight months ago, and those same repurposed allegations remain meritless today.

The overall process that the County afforded Rise in connection with the Petition more than satisfied the requirements of state and federal law. Rise was able to present hundreds of pages of legal analysis and factual evidence to the Board. County staff considered those materials and disclosed their own thorough conclusions well in advance of a duly noticed public hearing. Then, over the course of that multi-day hearing, Rise and its counsel were able to present their case, rebut the conclusions of County staff, and address the Board's questions. And the specific basis on which the Board denied the Petition—abandonment—was addressed extensively in the written materials and at the hearing itself. Rise was entitled to nothing more. *See Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 627 (indicating procedural due process requirements are satisfied in the vested rights context where interested entities receive "reasonable notice and an opportunity to be heard in an evidentiary public adjudicatory hearing before the vested rights claim is determined"); *see also Eilrich*, 839 F.2d at 633-35 (indicating that where a

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(Dec. 13, 2023), https://www.nevadacountyca.gov/DocumentCenter/View/51825/Rise-Grass-Valley-Vested-Rights-Petition-Supplemental-Staff-Report-.

[7] Katharine L. Elliott & Diane G. Kindermann, *County's Responses to Petitioner's Facts and Evidence in the Vested Rights Petition (Including County's Exhibits 1001-1027)* (Nov. 28, 2023), https://www.nevadacountyca.gov/DocumentCenter/View/51712/4-Nevada-County-Responses-to-Facts-and-Evidence-in-the-Vested-Rights-Petition-w--County-exhibits.

state administrative proceeding has these basic characteristics, a federal court must give its decisions preclusive effect).

In sum, Rise received all the process that it was due. That process resulted in the Board reaching a decision that was not just well-reasoned, but was the only legally defensible conclusion available. A court would not second guess the County's sound determination regarding the Petition.

II. Rise would not have a viable takings claim against the County.

Rise has repeatedly asserted that if the County denies the Project, the County will have committed an uncompensated "taking" of Rise's property in violation of the state and federal constitutions.[8] This is flatly incorrect. State and federal law are unambiguous that the County's denial of the Project would not amount to a taking.[9]

Here, Rise has only two options for demonstrating that the County committed an unconstitutional taking. First, Rise could attempt to prove that the County's denial of the Project deprived it of *all* economically viable use of its property. *See Lucas v. South Carolina Coastal Council* (1992) 506 U.S. 1003, 1019. This is not a test that Rise could ever hope to pass. The parcels making up the Project site have multiple other permissible uses that are fully consistent with their existing zoning designations. Indeed, the EIR for the Project expressly acknowledges this. *See* Draft EIR pp. 6-11 through 6-13 (explaining how the Brunswick Industrial Site as currently zoned could be developed with *over half a million square feet* of new office, business, and/or industrial uses). This is more than sufficient to defeat a *Lucas* claim. *See Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1267 ("[I]f permissible uses exist, a development restriction does not deny a property holder [all] economically viable use of his property.").

Rise's only alternative would be to argue that the denial of the Project amounts to a taking under the multi-factor test set forth in *Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104. *See* 438 U.S. at 124 (listing the relevant factors as (1) the economic impact of the government's action, (2) the extent to which the

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[8] *See, e.g.*, Rise Gold Corp., *supra* note 1, at 2; Letter from G. Braiden Chadwick, Mitchell Chadwick LLP to Nevada County Planning Commission, at 4 (May 5, 2023).

[9] As relevant here, state courts have interpreted the takings clause in the California constitution "congruently" with the federal takings clause. *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 456 n.10.

action interfered with "investment-backed expectations," and (3) the character of the action). But for much the same reason that Rise cannot bring a successful *Lucas* claim, it will not prevail under the *Penn Central* test, either.

Courts applying the *Penn Central* framework have repeatedly emphasized that a government action must deprive a property of virtually all economic value to amount to a taking. *Colony Cove Properties, LLC v. City of Carson* (9th Cir. 2018) 888 F.3d 445, 451 (emphasizing that even "diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking"). Again, that simply would not be the effect of the County's denial of the Project, given the many other permissible uses of the property. Additionally, Rise would have no "reasonable investment-backed expectation" in any additional economic value it hopes to attains from operating the reopened mine. *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1279 (holding a "claim of loss of anticipated profits or gain is not compensable, as it demonstrate[s] no more than a possible restriction upon more economic uses of its property." (citation omitted)). In short, no matter what sort of takings claim Rise tries to assert, it will be dead on arrival in court.

III. The Board should follow the recommendations of the Planning Commission.

Any legal challenge that Rise could bring against the County is highly unlikely to succeed. However, the County would violate CEQA and State Planning and Zoning law if the Board were to reverse the recommendations of the Planning Commission and County staff by certifying the EIR and granting the Project all necessary approvals. The recommendations to deny the re-zone and the variance are clearly correct on the merits, for the reasons that the Commission, staff, and general public have explained.

Just as importantly, though, the EIR prepared for the Project is grossly inadequate. As we have discussed at length in previous letters to the County,[10] the EIR suffers from numerous fatal defects, ranging from an improper project description and environmental baseline, to a flawed analysis of Project alternatives, to inadequate analysis and mitigation of impacts to groundwater, air quality, energy, and climate change. The County cannot approve the Project unless it corrects the flaws in the EIR.

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[10] *See* Letter from Ellison Folk, Shute, Mihaly & Weinberger LLP to Matt Kelley, Senior Planner, Nevada County (Mar. 20, 2023); Letter from Ellison Folk, Shute, Mihaly & Weinberger LLP to Matt Kelley, Senior Planner, Nevada County (Mar. 30, 2022); Letter from CEA Foundation to Matt Kelley, Senior Planner, Nevada County (Mar. 30, 2022).

Again, we applaud the County for its careful consideration of the Project. The Board, Planning Commission, and County staff have repeatedly reached the correct decisions by faithfully applying the law and the facts and by resisting misleading and irrelevant claims. The Board should continue that practice by voting to deny the Project and decline to certify its EIR.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Ellison Folk

Ryan Gallagher

Attachments:

A. *Keep the Code, Inc. v. County of Mendocino* (2018) A147544, 2018 WL 6259477

cc: Julie Patterson Hunter, Clerk of the Board, clerkofboard@nevadacountyca.gov
Katharine Elliott, County Counsel, county.counsel@nevadacountyca.gov
Matt Kelley, Senior Planner, matt.kelley@co.nevada.ca.us
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1740001.4

ATTACHMENT A

2018 WL 6259477
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 3, California.

KEEP THE CODE, INC., Plaintiff and Respondent,
v.
COUNTY OF MENDOCINO et al., Defendants and Appellants;
Frank J. Dutra et al., Real Parties in Interest and Appellants.

A147544
|
Filed 11/30/2018

(Mendocino County Super. Ct. No. SCUKCVPT1464207)

Attorneys and Law Firms

Ellison Folk, Laura Derise Beaton, Shute Mihaly & Weinberger LLP, 396 Hayes St., San Francisco, CA, 94102, for Plaintiff and Respondent.

Matthew Kiedrowski, Katharine Elliott, Office of the Medocino County Council, 501 Low Gap Road, Room 1010, Ukiah, CA 95482, for Defendants and Appellants.

Opinion

Jenkins, J.

***1** In 1972, the County of Mendocino amended its zoning ordinance to require landowners to secure a use permit to operate a commercial quarry and aggregate business on their property. Thereafter, in 2013, Northern Aggregates, Inc. (NAI) sought an exemption from the use permit requirement for its commercial quarry and aggregate business known as the Harris Quarry (quarry). The county granted NAI's request, finding that NAI had a vested right to operate its commercial quarry and aggregate business as a nonconforming use under the amended ordinance. Keep The Code, Inc. (KTC), a nonprofit organization, petitioned the trial court for a writ of mandate directing the county to set aside its vested right determination. After reviewing the administrative record and exercising its independent judgment, the court found NAI had no vested right to operate its business as a nonconforming use and set aside the county's contrary determination. We affirm.

PROCEDURAL BACKGROUND

On March 21, 2013, NAI filed an application with the county seeking a determination that it had a "vested right to conduct aggregate operations, including mining, conveying, screening, crushing, sorting, blasting, stockpiling, storing, transporting and selling aggregate on [its] 91-acre site" as a nonconforming use under the county's zoning ordinance. Following an investigation by county staff and a public hearing, the county's board of supervisors issued Resolution No. 14-068, on May 20, 2014, in which it was determined that NAI had a vested right to operate its commercial quarry and aggregate business as a nonconforming use.

KTC [1] filed a petition for a writ of mandate (Code Civ. Proc., § 1094.5) seeking to set aside Resolution No. 14-068. NAI and the county opposed the petition. Following argument by counsel, the trial court granted the petition and entered judgment in favor of KTC. A peremptory writ issued directing the county to set aside Resolution No. 14-068. NAI and the county filed timely notices of appeal.

DISCUSSION

A. Applicable Law

1. Common Law Concerning Vested Rights for Nonconforming Uses

As both the county and the trial court recognized, in *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533 (*Hansen*), our Supreme Court set forth the well-settled law in California governing nonconforming uses.

"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. [Citations.] However, if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid. [Citations.] 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.' [Citation.]

***2** "Accordingly, a provision which exempts existing nonconforming uses 'is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.' [Citations.] 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. [Citations.]" (*Hansen, supra*, 12 Cal.4th at pp. 551-552.)

Nonetheless, "pre-existing nonconforming uses" are not meant to be "perpetual." (*City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 459.) The policy of the law is for the elimination of any nonconforming use because its presence "endangers the benefits to be derived from a comprehensive zoning plan." (*Ibid.*) Accordingly, and consistent with this policy, it has been held that " 'land which has not been used ... would not create a nonconforming use' " (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 285-286 (*Hill*)), and attempts to continue nonconforming uses are barred when nonconforming uses have ceased operation (*Hansen, supra*, 12 Cal.4th at p. 568).

The *Hansen* court acknowledged that the principles applicable to nonconforming uses "[do] not apply neatly to surface mining operations." (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 623, citing *Hansen, supra*, 12 Cal.4th at pp. 553-556.) "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 .... [T]he 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." (*Hansen, supra*, at p. 553.) The qualification to the application of the diminishing asset doctrine is that "[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 the property for that purpose when the zoning law becomes effective .... 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." (*Id.* at pp. 555-556, fn. omitted.)

2. Relevant Statutory Law Concerning Vested Rights for Surface Mining Operations in Mendocino County

Before mid-July 1972, no use permit was required for the operation of a commercial quarry and aggregate business on property in the county. Effective on July 20, 1972, the county's board of supervisors amended the county code to require a use permit to operate a commercial quarry and aggregate business on property in the county, including the Harris Quarry. (Mendocino County Ordinance No. 963, amending former ch. 20, art. II of Mendocino County Code.) Thereafter, in 1975, the state adopted the Surface Mining and Reclamation Act of 1975 (see Pub. Resources Code, § 2710 et seq., added by Stats. 1975, ch. 1131, § 11, pp. 2793-2803) (hereinafter SMARA).[2] Effective January 1, 1976, SMARA required a person to secure a use permit to conduct certain surface mining operations, which included a commercial quarry and aggregate business on property in the county. (Former § 2770, added by Stats. 1975, ch. 1131, § 11, p. 2799; see §§ 2729 [mined lands defined], 2735 [surface mining operations defined].) Of significance here, SMARA excepted from the use permit requirement surface mining operations for which a person had a "vested right" to conduct such operations before January 1, 1976. (Former § 2776, added by Stats. 1975, ch. 1131, § 11, p. 2801.) SMARA also designated the county to act as the "lead agency" to enact local legislation establishing procedures for the approval of use permits to conduct surface mining operations in the county in accord with state policy. (Former §§ 2728, 2774, added by Stats. 1975, ch. 1131, § 11, pp. 2795, 2800; see § 2734 [" '[s]tate policy' means the regulations adopted by the [State Mining and Geology Board] pursuant to Section 2755"].) Thereafter, in 1979, the county's board of supervisors amended the county code to implement regulations relative to surface mining operations in the county. (Mendocino County Code, former §

22.16.060.) Consistent with the state law, Mendocino County Code former section 22.16.060 excepted from the use permit requirement surface mining operations in the county for which a person had a "vested right" before January 1, 1976. [3]

B. Trial Court's Decision

***3** The court found that when the county amended its code on July 20, 1972, making a commercial quarry and aggregate business a nonconforming use, the property on which the quarry was situated was owned by Christ's Church of the Golden Rule (Church). The Church had acquired the property in 1963, and continued to own it until 1983. The court further found that for the entirety of the Church's ownership of the property (spanning the 1972 and 1979 amendments to the county code and the 1976 enactment of SMARA), the record was "absolutely devoid" of any credible or reliable evidence demonstrating that the Church *operated* the quarry as a commercial venture, had expended "any money in connection with quarrying activities and/or rock crushing or screening," or had incurred "any liabilities 'for work and materials necessary' " for surface mining operations. In so ruling, the court relied, in pertinent part, on written statements submitted by Tracy Livingston and Richard Tyrrell, who were members of the Church during its ownership of the property. The court found the Church members had "declared credibly and with sufficient personal knowledge" that the Church did not operate the quarry on a commercial basis and did not intend to expand quarry operations during its ownership. The court further found that the statements of Livingston and Tyrrell were more reliable than other declarations and statements of Frank Dutra, Bud Garman, and Wayne Waters, who described some rock removal activities that occurred on the site at various times preceding and shortly following July 20, 1972.

Additionally, the court found that assuming a vested right to operate a commercial quarry and aggregate business as a nonconforming use existed on July 20, 1972, there was no evidence that would allow for the substantial expansion of the quarry "without a use permit ... as a 'diminishing asset' operation" under *Hansen, supra*, 12 Cal.3d 540. In so finding, the court was mindful "that the quarry and aggregate business is seasonal and cyclical and that the court should assess the continuity of the operation in the light of the historical pattern. ([Mendocino County Code, former §] 22.16.060)." But, the court again relied on the statements of Livingston and Tyrrell, which demonstrated that during its ownership the Church had not operated the quarry on a commercial basis and did not intend to expand quarry operations. The court further found that even if it accepted the evidence offered by Dutra, Waters, and Garman, there were still substantial periods of approximately three years and four years of inactivity at the quarry site, which could not be attributed to the seasonal nature of the business, use of stockpiled material, or the use of other onsite resources. The court also rejected appellants' contention that a comparison of aerial photographs taken before and after July 1972 indicated a substantial increase in quarry activity from which the court could arguably determine the Church's intent to expand quarry operations. The court stated that, "[a]part from the fallacy of that argument, a comparison [of] the outline of the quarry boundaries as *actually delineated* on the photographs [record citations to "1965" aerial photograph and "1974 or 1981" aerial photograph] does not support that argument. Measuring each outlined area in cross-sectional directions at the widest points indicates that the outlined site on the 1974/81 aerial is no larger tha[n] the outlined site on the 1965 photo." [4]

C. Appellants' Contentions

1. Trial Court's Legal Determinations

Appellants make various arguments challenging the trial court's legal determinations, none of which requires reversal.

Appellants, throughout their briefs, complain about isolated statements made by the trial court relative to the law governing nonconforming uses. However, appellants' overarching claim of error is that NAI's right to operate its business as a legal nonconforming use was governed solely by the court's evaluation of how the property was used at the time it first became nonconforming on July 20, 1972, during the Church's ownership. According to appellants, the county's interpretation of its code allowed NAI to operate its business as a nonconforming use based on the use of the property for that purpose by *any* predecessor owner who incurred substantial liabilities *at any time*. As we now explain, we see no merit to appellants' arguments.

***4** First, as noted above, "[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." (*Hansen, supra*, 12 Cal.4th at p. 540, fn. 1.) Thus, whether a landowner can claim a right to a nonconforming use is to be determined by the use of the land

at the time the use became nonconforming under the zoning ordinance restricting such use. (*Ibid.*) Accordingly, the trial court's finding, with which we concur, that July 20, 1972, was the appropriate date to determine the existence of a right to a nonconforming use, is consistent with the law. (*Id.* at p. 560.) In addition, the law of nonconforming uses provides that once a landowner acquires a right to use the property as a nonconforming use, the established (vested) right to continue the nonconforming use is a property right that can be transferred to a successor owner. (59 Ops.Cal.Atty.Gen. 641, 656-658 (1976).) Conversely, if at the time a zoning ordinance creates a nonconforming use the landowner is not using the land for that purpose, no vested right is created that can be transferred to a successor owner. (See *Hansen, supra*, at p. 568; *Hill, supra*, 6 Cal.3d at pp. 285-286 [" 'land which has not been used ... would not create a nonconforming use' "].) Because the trial court here found that the Church was not using the property as a commercial quarry and aggregate business on July 20, 1972, a nonconforming use did not exist that could be transferred to NAI as a successor owner.

We also conclude that appellants' arguments are "clearly at variance with" the pertinent language in the county code, as well as SMARA. Both the state law and the county code provisions under review provide, in pertinent part, "*A person* shall be deemed to have vested rights [in a nonconforming use] if ... *the person has*" (§ 2776, subd. (a), italics added) or "*he has*" (Mendocino County Code, § 22.16.150, subd. (A), italics added; see *id.*, former § 22.16.060) "diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations" before the effective dates of the law. (§ 2776, subd. (a); Mendocino County Code, § 22.16.150, subd. (A); see *id.*, former § 22.16.060.) As a codification of the common law of nonconforming uses, the pertinent statutory language "suggests that the [law] extends [a vested right] only to those persons whose reliance upon existing permits or authorization induced them to initiate substantial performance of their projects and to incur substantial liabilities in connection therewith" *at the time the use became nonconforming because of the change in the law.* (*Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 586 [interpreting statutory language in former § 27404, a vested rights exemption provision essentially like § 2776].) Here, as we have noted, the Church had not diligently commenced and incurred substantial liabilities for work and material necessary for the operation of a commercial quarrying and aggregate business at the time the use became nonconforming. Consequently, the Church had not acquired a vested right that could be transferred to NAI as a successor owner. Moreover, appellants' expansive view of the statutory language is in contravention of the basic tenets of statutory construction. As our Supreme Court has cautioned, we do not presume that legislatures intend, when enacting statutes, " 'to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied.' [Citations.]" (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1325.) Instead, " ' "[a] statute will be construed in light of common law decisions, unless its language ' "clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter ...." ' " ' " (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.) Appellants here have failed to cite to any statutory language or other relevant authority that the state or county intended, when enacting SMARA and the county code provisions, to depart from the common law governing nonconforming uses. To accept appellants' broad construction of the statutory language would require us to abrogate those common law rules governing nonconforming uses, which we decline to do.

2. Trial Court's Burden of Proof and Factual Findings

***5** Appellants also make various arguments challenging the burden of proof imposed on the parties and the trial court's factual findings.

We first address appellants' assertion that the court misapplied the burden of proof in determining whether appellants acquired vested rights in the operation of the quarry. Appellants' legal argument, asserting that the court shifted the burden of proof to them, is based on a single sentence plucked from the court's decision which states: "Even allowing for the 1976-78 purchases [of aggregate] reported ..., there is no evidence of the operation of a *commercial* quarry and aggregate business during the periods of 1963-75 and 1979-82." Appellants argue this language supports their contention that the court required appellants, rather than KTC, to present "evidence" establishing the operation of a commercial quarry during the years referred to by the court.

However, our review of the record establishes that the trial court did not err in its application of the required burden of proof. In resolving the parties' dispute, the court stated that NAI, as the party asserting a right to a nonconforming use, had

the burden of proving before the county board of supervisors that, on July 20, 1972, when quarry operations first became a nonconforming use, "(1) [the] quarry operations had been diligently commenced ...; and (2) ... the owner/operator had incurred substantial liabilities in reliance on the non-conforming use status." The court also indicated that KTC, as the petitioner in the trial court, had the burden of proving that the county's finding in favor of NAI was not supported by the weight of the evidence, in order to establish an abuse of discretion justifying the issuance of the requested writ. (Code Civ. Proc., § 1094.5, subd. (c).) The court then turned to evaluate whether KTC had met its burden. In doing so, the court accorded the county's findings "a strong preference of correctness" but found that KTC had overcome any "presumption of correctness," which enabled the court to "substitute its own judgment to reject the findings" of the county board of supervisors once the court had "examined those findings under the appropriate standards." Given this record, we soundly reject appellants' argument that the court improperly shifted the burden of proof to them.

We further conclude that appellants' challenge to the trial court's factual findings fares no better than their legal challenge, discussed above. The law governing our review of the court's factual findings is well established. "In exercising its independent judgment," as in this case, "a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817 (*Fukuda*).) Nonetheless, "the presumption provides the trial court with a starting point for review—but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." (*Id.* at p. 818.) "[I]in exercising its independent judgment 'the trial court has the power and responsibility to weigh the evidence at the administrative hearing *and to make its own determination of the credibility of witnesses.*' [Citation.]" (*Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658.) On appeal, when an administrative adjudication is subject to the independent judgment test of review, " 'California fixes responsibility for factual determination[s] at the trial court rather than the administrative agency tier of the pyramid as a matter of public policy.' " (*Id.* at p. 659.) Consequently, "our review of the record is limited to a determination whether substantial evidence supports the trial court's conclusions and, in making that determination, *we must resolve all conflicts and indulge all reasonable inferences in favor of the party who prevailed in the trial court.* [Citations.]" (*Id.* at pp. 659-660, italics added; see *Fukuda, supra*, 20 Cal.4th at p. 824.)

***6** Appellants first contend there was "ample evidence" in the record to support the county's findings that "a person [had] 'diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations' " at the time the use became nonconforming in 1972, during the Church's ownership. Appellants fail, however, to acknowledge the standard of review we employ in reviewing the court's factual findings. Under the governing standard, we review the record to determine whether there is substantial evidence that supports the court's findings, not those of the county. Applying the correct standard, we have no trouble concluding that evidence exists to support the court's findings. Specifically, the court reasonably relied on the statements of church members Livingston and Tyrrell, who credibly asserted that the Church had not used the property as a commercial quarry and aggregate business at any time during the entirety of its ownership, which included when the use became nonconforming in 1972. While there was other evidence in the record that might have supported a contrary finding, as the court acknowledged, it was free to conclude such evidence was not sufficient to substantiate NAI's claim of a vested right to operate a commercial quarry and aggregate business as a nonconforming use.

Additionally, we see no merit to appellants' argument that the trial court erred by relying on the statements submitted by Livingston and Tyrrell, while discounting the declarations of Dutra and Waters, the statement of Bud Garman, and statements made by members of the county board of supervisors. "It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility. [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) Moreover, appellants' reliance on *San Diego Unified School Dist. v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1146, does not assist them here. Unlike the trial court in *San Diego Unified School Dist.*, the trial court here explained its reasons for accepting the statements of the Church members and the basis for its rejection of the declarations and statements of other witnesses. Nor does the fact that the court did not mention certain evidence, as appellants assert, require reversal. It was the court's role to review the administrative record,

and "we presume the court performed its duty." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324; Evid. Code, § 664.) Implicit in its ruling, the court found the evidence cited by appellants did not demonstrate that the Church was using or intended to use the property as a commercial quarry and aggregate business at the time the use became nonconforming. Appellants insist that "[a] composite aerial photo, comparing 1974 activity with prior quarry boundaries, shows the significant expansion of the quarry floor during the Church's ownership." However, whether there was a "significant" expansion of the quarry floor, from which a reasonable inference could be drawn that the property was being used as a commercial quarry and aggregate business during the Church's ownership, was a question of fact for the court as the trier of fact. The individual aerial photographs of the quarry site are fuzzy and do not delineate to the naked eye either structures, equipment, or stockpiles on the property, or, more significantly, that the property was being used as a commercial quarry and aggregate business. The photographs are annotated with circled areas, purportedly showing "the quarry;" arrows pointed at certain areas, purportedly showing, "structure;" and "apparent stockpile or equipment." The court was not required to accept appellants' descriptions of what was visible in the aerial photographs or what was visible in the consultants' composite photograph, which was created by overlaying the consultants' interpretation of individual aerial photographs.[5] " '[A]s a general rule, "[p]rovided the trier of fact does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted. [Citations.]" [Citation.] This rule is applied equally to expert witnesses.' [Citation.] The *exceptional* principle requiring a fact finder to accept uncontradicted expert testimony as conclusive applies *only* in professional negligence cases where the standard of care must be established by expert testimony." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 632.) Nor are we persuaded by appellants' argument that the court made two prejudicial errors in its analysis of the evidence relative to various dates and differing scales on the individual aerial photographs. If appellants believed the court's decision was improperly influenced by the various dates or differing scales on the photographs, they could have brought the purported error to the court's attention by an appropriate objection under Code of Civil Procedure section 657 (motion for a new trial) or section 663 (motion to vacate judgment). (See *Thompson, supra*, 6 Cal.App.5th at pp. 981-982.) Their failure to do so indicates they did not deem the purported errors to be prejudicial, and we too find no prejudice.

*7 We conclude our discussion by noting that appellants' "elaborate factual presentation" in their briefs, simply put, is an attempt to reargue on appeal factual issues that were decided adversely to them at the trial, which is "contrary to established precepts of appellate review," and "[a]s such, it is doomed to fail." (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.) Having determined the trial court did not err in making its factual findings or in applying the parties' respective burdens of proof, we see no merit to appellants' claims of error on these grounds.[6]

DISPOSITION

The judgment is affirmed. Respondent Keep The Code, Inc. is awarded costs on appeal.

We concur:

Pollak, Acting P. J. *

Ross, J. †

All Citations

Not Reported in Cal.Rptr., 2018 WL 6259477

Footnotes

1 In its petition, KTC describes itself as "a California non-profit corporation whose members include persons and entities who object to the unlimited expansion of and lack of sufficient environmental protection for mining activities at the Harris Quarry. Keep The Code's mission is to preserve and protect for the general public the natural environment, agriculture, and rural character of Mendocino County."

2 All further unspecified statutory references are to the Public Resources Code. While SMARA has been amended since this litigation, the amendments are not relevant to our resolution of this appeal.

3 Section 2776, subdivision (a) currently reads: "(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." (Amended by Stats. 2006, ch. 538, § 560, pp. 4429-4430.)

Similarly, and using almost identical language to that used in SMARA, and as originally enacted in 1979, the vested rights ordinance in Mendocino County Code former section 22.16.060 provided, in pertinent part, as follows: "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."

Mendocino County Code section 22.16.150, subdivision (A), adopted in 1999, currently provides: "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 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."

4 The trial court found that, "[b]ased on the scales provided on each phot[o], the area outlined in the 1965 photo is approximately 335' x 240[']. That outlined in the 1974/81 photo is approximately 225' x 125'."

5 To the extent appellants assert that the trial court engaged in an "unauthorized private investigation" regarding the photographs and composite drawings of the quarry, we reject the assertion. The court was at liberty both to review the evidence and to determine the weight to assign to it. Thus, we conclude the court's review of the photographic evidence and its determination of the weight to assign the disparities in the composite overlaying the photographs was well within the ambit of the court's function as the trier of fact.

6 Considering our determination, the parties' remaining contentions do not need to be addressed.

* On Monday, November 26, 2018, the Commission on Judicial Appointments confirmed the Governor's appointment of Justice Pollak as the Presiding Justice of Division Four of this court.

† Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tine Mathiasen Dist. 1

Subject: FW: Rise Gold Application

From: Michael Taylor [redacted]
Sent: Friday, February 9, 2024 8:20:12 AM
To: Hardy Bullock <Hardy.Bullock@nevadacountyca.gov>
Cc: Lisa Swarthout <Lisa.Swarthout@nevadacountyca.gov>; Ed Scofield <Ed.Scofield@nevadacountyca.gov>; Sue Hoek <Sue.Hoek@nevadacountyca.gov>; Heidi Hall <Heidi.Hall@nevadacountyca.gov>; Kit Elliott <Kit.Elliott@nevadacountyca.gov>; Brian Foss <Brian.Foss@nevadacountyca.gov>; Kyle Smith <Kyle.Smith@nevadacountyca.gov>; Matt Kelley <Matt.Kelley@nevadacountyca.gov>; Alison Lehman <Alison.Lehman@nevadacountyca.gov>; Caleb Dardick <Caleb.Dardick@nevadacountyca.gov>; Jeffrey Thorsby <Jeffrey.Thorsby@nevadacountyca.gov>
Subject: Rise Gold Application

Dear Chair Hardy Bullock,

The Rise Gold application is basically dead on arrival to BOS because the current Staff Report is basically saying or agreeing to the Planning Commission's recommendation not adopting the EIR or approving the application in simple terms.

I would like to offer the County/Board a suggestion for moving forward avoiding or postponing the possibility of litigation in regards to approving or not approving Rise Gold application.

It appears now everybody (public, Planning Commission and County Staff) is in agreement the EIR is flawed. My recommendation is tabling this decision to approve or not sending back the application to Planning asking County Staff to update the EIR addressing the many recommendations and large number of public concerns community has provided.

In other words improve the EIR to a point that County Staff can again make the recommendation to adopt the EIR.

As part of this recommendation the process would then go back to the Planning Commission after Staff updated the EIR giving the applicant the opportunity to again address the many concerns and suggestions provided by the public.

I feel the County's Staff Reports and presentations to the Planning Commission and BOS should nearly mirror one another. As you're aware, the staff report to the Planning Commission had an A and B option nearly polar opposites both recommending adopting the EIR. County Staffs recommendations should have more consistency in its directions to the Planning Commission and then to BOS.

County Staff have appeared to do 180° about-face with its direction to the Planning Commission and now to the BOS. One would think after spending several years working with the applicants, county consultants, and outside

counsel this direction would have consistency at this point.

The fact that these inconsistencies exist further puts the county in legal jeopardy. I believe it's in the Boards ability and best interests of the County to table this application and request these inconsistencies are cleaned up before the Board can make a decision one way or another.

In other words addressing, removing, and correcting the many parts of this application process that will undoubtedly lead to litigation.

It's got to go back to the Planning Department to get cleaned up so the messaging to the Planning Commission and BOS is consistent.

Respectfully,

Sent from my iPhone

Tine Mathiasen

From: Ralph [redacted]
Sent: Friday, February 9, 2024 9:56 PM
To: Hardy Bullock; Ed Scofield; Sue Hoek; Lisa Swarthout; Heidi Hall; Clerk of Board
Subject: Index of key documents
Attachments: Index-Key-CEA-Comments_2-9-2024.xlsx

Dear Supervisors,

As an aid, in the event that you wish to review any of our prior submissions, the attached file is a brief listing of page numbers for some key documents previously submitted by CEA Foundation.

Thank you,
Ralph

--
Ralph Silberstein, President
CEA Foundation
ralph@cea-nc.org
[redacted]

Title / Subject	File or Presentation Date	Location in Staff Report
Mine Waste and Asbestos Impacts	3/13/2023	Project Comments : 2. Comments Provided to Planning Commission.pdf, p3259-3267
Off-site Sales of Mine Waste as Aggregates	3/20/2023	Project Comments : 2. Comments Provided to Planning Commission.pdf, p3269-3275
MineWatch Coalition Comments on Final EIR	4/5/2023	Project Comments : 2. Comments Provided to Planning Commission.pdf, p3137-3150
CEA Foundation Comments on Final EIR	4/17/2023	Project Comments : 2. Comments Provided to Planning Commission.pdf, p3218-3238
Shute, Mihaly & Weinberger Legal Based Comments on Final EIR	3/20/2023	Project Comments : 2. Comments Provided to Planning Commission.pdf, p1737-1774, Exhibits p1775-2034
Errors in Predicting Mine Waste Classification in the EIR	1/23/2024	Project_Comments, "3.Comments Received After Planning Commission.pdf", p889
Flawed Analysis of Mine Water Levels and Resultant EIR Defects	6/13/2023	Binder6.pdf, p35-37

Tine Mathiasen

From: Ed Scofield
Sent: Monday, February 12, 2024 7:05 AM
To: Jeffrey Thorsby; Tine Mathiasen
Subject: Fwd: Our County and the Idaho Maryland Mine

Sent from my iPhone

Begin forwarded message:

From: Kevin Scanlan [redacted]
Date: February 12, 2024 at 2:01:46 AM PST
To: Ed Scofield <Ed.Scofield@nevadacountyca.gov>
Subject: Our County and the Idaho Maryland Mine

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Dear Supervisor Scofield,

I'm Kevin Scanlan, a third-generation Nevada County resident and freshman at Harvard College studying economics and government.

Last year, I took an interest in the discussion surrounding the Idaho Maryland Mine project, one which lies at the intersection of my studies. I have closely followed the hearings and requested a meeting with Rise CEO Joseph Mullin while I was home over the holidays. I was reassured by the conclusions of the various environmental reports and was glad to learn of Rise's charitable efforts, including the operation of the Senior Firewood Program which I saw when I toured the site.

More importantly, I was encouraged to hear of the job prospects that Rise will provide to our county. I have watched my peers struggle to get their future started in Nevada County's economy, causing several to leave the area. I myself am hesitant to return to Grass Valley and put down my own roots. The economic stimulation from reopening the Idaho Maryland Mine would create bright futures for Nevada County's next generation.

As the final hearing approaches, I ask on behalf of my peers that you and your colleagues consider this perspective. I am proud to be from Nevada County and want to see my community thrive.

Best regards,
Kevin Scanlan

Tine Mathiasen

From: Kathy Hinman [redacted]
Sent: Friday, February 9, 2024 5:32 PM
To: bdofsupervisors
Subject: Submission of Letter to the Board of Supervisors RE: Idaho Maryland Mine EIR Approval
Attachments: Letter to Supervisors re Idaho Maryland Mine Project 2_9_2024.pdf

Please see the attached letter for the record and for distribution to the Board of Supervisors. If you have any question, please feel free to contact our offices.

Sincerely,

Kathy Hinman

NEVADA COUNTY ASSOCIATION OF REALTORS®
Kathleen Hinman, RCE, ePRO, AHWD
336 Crown Point Circle, GV CA 95945
Office: (530) 272-2627
Cell: (530) 559-0262

NCAR
NEVADA COUNTY ASSOCIATION OF REALTORS

February 9, 2024

Nevada County Board of Supervisors
Nevada County Offices
950 Maidu Avenue, Suite 170
Nevada City, CA 95959-8617
bdofsupervisors@nevadacountyca.gov

RE: Idaho-Maryland Mine Project Environmental and Economic Impact Report Approval

The Honorable Supervisors:

On behalf of the Nevada County Association of REALTORS® (NCAR), we respectfully submit our comments relating to the Final Economic Impact Report for the Idaho-Maryland Mine Project. Upon reviewing the final report, we see multiple deficiencies and unmitigated impacts on the surrounding residential properties, overall community, and market values of properties in Nevada County.

While we recognize deficiencies in the Environmental Impact Report, as experts in our field, we wish to specifically address the results of the Economic Impact Report:

Real Estate Industry Survey – A survey previously completed by Rise Gold's Consultant RDN had a total of 65 completed surveys of which 79% believed that property values would be negatively impacted. However, the finding of the Economic Impact report dismisses the RDN Real Estate Industry Survey completely, stating results were not robust enough to be considered. The Nevada County Association of REALTORS® (NCAR) re-sent the same survey questions to our association membership and are now presenting the results of that survey. 162 of our active membership participated and completed the survey, representing 27% of the total membership. The results are overwhelming. 87% of the survey participants believe that property values will be negatively impacted.

"...RDN planned to evaluate the total impact to property values and associated property taxes based on the anticipated average change in property values associated with the proposed project. ***Of the three types of research RDN performed for this analysis–the literature review, real estate industry survey, and case study analysis–the case study analysis strikes the balance of being the most robust and readily applicable for evaluating the proposed project. "***

This quote clearly states that a case study analysis was selected for the findings of this report and dismisses the findings of the real estate industry survey. We believe as REALTORS® that our expert opinion matters and should not be dismissed.

Rise Gold's consultant summarizes their Economic Impact Report findings stating, "*we do not estimate any anticipated average change in property values associated with the proposed project*".

As experts in our field, and based on our survey results, NCAR does not agree with the findings of the Final Economic Impact Report. Survey results clearly reflect that our REALTOR® members firmly agree that property values will be negatively impacted.

Considering recent court actions reflecting owner's mismanagement of environmental clean-up on other mine projects, we have additional concern over the environmental impact of certifying the current reports providing a clear path for the current owner or any prospective owner to move forward with the proposed re-opening of the Idaho Maryland Mine under the current report provisions.

After thorough analysis of the impact reports (drafts & finals), our association believes the Economic Impact Report results are incorrect and the report should **NOT** be certified.

Sincerely,

Signature: Holli Navo
Holli Navo (Feb 9, 2024 14:22 PST)

Email: holli@hollinavo.com

Holli Navo, 2024 President
Nevada County Association of REALTORS®
336 Crown Point Circle
Grass Valley, CA 95945
(530) 272-2627

Tine Mathiasen

From: Julia Carroll-Shea [redacted]
Sent: Saturday, February 10, 2024 12:57 PM
To: BOS Public Comment
Subject: NO MINE

You don't often get email from [redacted] Learn why this is important

I can't improve on this article by Ray Bryars, but I do have a few comments to add:

About "...locations that might be suitable for future expansion..." For example, the subject property on Brunswick Road, which already is zoned for **light industry**.

About if the mine is denied -
"There would not be 1,000 tons of tailings..." There won't be an ugly, **140 ft. tall pile of useless rock**.
"...[no] 9,000 tons of greenhouse gas per year" or **constant, peace-shattering noise!**
"...conflict with...climate goals." "Conflict is putting it mildly. **The mine would negate if not reverse what our goals hope to achieve.**
"Neighboring property values will go up not down." **We will sell - at a loss - if the mine is approved. But we won't stay here!**

About Rise Gold being "a speculative mining company." When they threaten to sue because they (or their heirs) won't realize a 400 million dollar (?!) profit, ask them if that's what they are promising their would-be investors. Remind them that "speculation involves the risk of loss." **Tell Rise Gold to get lost!**

Please do the right thing and say NO Mine.

Thank you, Julia Carroll, Cedar Ridge resident

https://www.theunion.com/news/community/ideas-opinions-ray-bryars-we-don-t-need-no-stinking-mine-jobs/article_08eb2318-c78c-11ee-9975-bbbe1b13d1d4.html

THE UNION

Ideas & Opinions — Ray Bryars: We don't need no stinking mine jobs!

Compliments to Erika Kosina for her excellent Yubanet Article "Tech Industry in Nevada County is growing, evolving and staying relevant".

www.theunion.com

Tine Mathiasen

From: Susan Reynolds [redacted]
Sent: Saturday, February 10, 2024 8:29 PM
To: BOS Public Comment
Subject: Vote "No" re: Idaho Maryland Mine in Grass Valley/Nevada County

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To the Board of Supervisors, Nevada County:

I am writing to let you know that I am completely opposed to the re-opening of the Idaho Maryland Mine. It would be an environmental disaster for our town in this day and age. My opinion is based on a number of studies which have been shared with Nevada County residents.

In addition, the company who proposes this disaster has a terrible track record involving their last project in Canada, where the community was left in the lurch and had to sue this same company for the mess they left, and even then were stuck with the irresponsible consequences this company left when they left town.

Sincerely yours,
Susan Reynolds
Nevada County Resident

Tine Mathiasen

From: Eileen Stutz [redacted]
Sent: Saturday, February 10, 2024 6:00 AM
To: bdofsupervisors
Subject: Rise project

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from my iPhoe
I am in Southern California helping my daughter with a newborn, otherwise I would be at the Rise meeting on bended knees. Please don't allow rise to open the mine. Let us learn from history that this is a bad choice for our beautiful community. Oh it all sounds good until the accidents start to happen. The accidents always happen and then all the lies come. Didn't think that would happen, but yes you did cause it ALWAYS does. Please I beg you these people have a far from stellar past, do what is right say no to this project. As for good jobs for a few, people who work an active mine never live in the area. They know better.

Tine Mathiasen Dist. 1

From: Susan Sanders [redacted]
Sent: Sunday, February 11, 2024 8:28 AM
To: bdofsupervisors
Cc: 'Ed Sylvester'
Subject: Idaho Maryland Mine - comments from Friends of Banner Mountain
Attachments: Friends of Banner Mt Comment Letter - 2024-02-11.pdf

Some people who received this message don't often get email from [redacted] Learn why this is important

Dear Board of Supervisors

Please see the attached comment letter from Friends of Banner Mountain regarding the Idaho Maryland Mine Project which I am submitting on behalf of Edward Sylvester, President of FBM.

We believe that construction and operation of the mine will adversely affect the quality of life for residents of Banner Mountain for generations. We strongly urge the Nevada County Board of Supervisors to not certify the Final EIR and to reject the proposed Idaho Maryland Mine Project.

Thank you for this opportunity to share our concerns and comments about this project.

Sincerely,

Susan Sanders
Vice President
Friends of Banner Mountain

Friends of Banner Mountain (FBM) Est. 1984

FIREWISE USA
Residents reducing wildfire risks

February 10, 2024

Nevada County Board of Supervisors
950 Maidu Avenue, Suite 170
Nevada City, CA 95959-7902

FBM
PO Box 833
Nevada City, CA 95959

FBM is a non-profit 501(c)(3) organization with an all-volunteer Board.

Re: Idaho-Maryland Mine Project

Dear Members of the Board:

The Friends of Banner Mountain (FBM) is a 501(c)(3) organization whose mission is to protect Banner Mountain and its natural and cultural resources for the benefit of residents, visitors, and future generations.

FBM conducted a poll among Banner Mountain residents to assess support for or opposition to the proposed Idaho-Maryland Mine Project. Of those who responded to the survey, 96.4% opposed it and 3.6% supported it. Many of those respondents brought up the issues that we described in the comment letter on the Idaho-Maryland Mine Project Draft Environmental Impact Report that FBM submitted in April 2022. The issues of greatest concern to Banner Mountain residents are potential project-related impacts to water supply and wells, traffic, noise and vibration, hazardous materials, and loss of property value.

We believe that construction and operation of the mine will adversely affect the quality of life for residents of Banner Mountain for generations. We strongly urge the Nevada County Board of Supervisors to not certify the Final EIR and to reject the proposed Idaho Maryland Mine Project.

Thank you for this opportunity to share our concerns and comments about this project.

Sincerely,

Edward Sylvester, President
Friends of Banner Mountain