



**Robert White**  
***Blue Lead Mine***

**Vested Right  
Determination**

**APNs 38-390-12, -20, -21**  
**18272 Red Dog Rd, Nevada City**

**Staff:**

Jessica Hankins  
Leanne Mayberry  
Blair Will

**Planning Commission Hearing:**  
April 22, 2010

# Vested Right Determination Findings

Was there a surface mining operation at the time of enactment of the ordinance which made the mining use nonconforming? If so,

- What is the geographic scope?
- What is the operational scope (i.e., production level)?

# Evidence

1. Miner has burden of proof
2. Fact-based inquiry
3. Commission must review the evidence and make its findings

# Scope of the Vested Right: **Geographic Scope**

- For most land uses, nonconforming use cannot be expanded or intensified.
- However, California law recognizes exception, known as the “Doctrine of Diminishing Assets” when the land use is mining.

# Geographic Scope

## Diminishing Assets Doctrine

- Unlike other land uses, when use is surface mining the land is not merely incidental to activities conducted upon it
- Mining contemplates excavation and sale of the land itself
- Excavated land is “diminishing asset”; mining requires expansion to continue

# Geographic Scope

## Objective Manifestation of Intent

- Under Diminishing Asset Doctrine, a vested right may include the right to mine the entire property, even if the historic geographic scope of the vested right was smaller, IF: The miner's evidence demonstrates that the expanded area was clearly intended to be mined at the time of vesting, as measured by objective manifestations of intent and not by subjective intent (Hansen).

# Geographic Scope

## Objective Manifestation of Intent (cont.)

- “The mere intention or hope on the part of the landowner to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the past operations”. (*Hansen*)

# Geographic Scope

## Determining Factor: Nature of Initial Nonconforming Use

- “The determining factor is whether the nature of the initial nonconforming use, in light of the character and adaptability to such use of the entire parcel manifestly implies that the entire parcel was appropriated to such use...” (*Hansen*)

# Geographic Scope

## **“Entire Parcel” Defined**

- “Entire parcel” means boundaries of parcel on which the use was initiated when land use law went into effect.

# Geographic Scope

- Approving vested right based on submitted evidence that all 3 patents were being mined might lead to approval of mining over entire site.

# Scope of the Vested Right: Operational Scope

## Operational Scope Limitations

- If vested right found, the operational scope limited to what was in effect at the time of vesting plus a “gradual and natural increase” (*Hansen*).
- However, vested right determination does not compel finding that vested right extends to production volume set forth in miner’s proposed reclamation plan

# Operational Scope

	<b>Vesting Date</b>	<b>Proposed (Rec Plan)</b>
<b>Equipment</b>	Sluicibox & water pump	Dozer, loader, crusher, conveyor belt, grizzly, jig, shaker table, generator, water pump
<b>Disturbance</b>	Not stated by Applicant. County mining engineer estimates 180-450 cu yds/yr.	150,000 – 350,000 cu yds/yr
<b>Operations</b>	Pond, 1-2 people, no information on extent of processing	3 ponds @ 46,000 sf, 10,000-500,000 gpd of water (most recycled), up to 5 employees, other service providers, mine office, processing, potential blasting

# Summary

Staff recommends:

- Reopen hearing to take comments on scope of mining activities in 1954, allow public comments on new information, and provide public opportunity for additional comments.
- The vested right, if granted, be limited in geographic and operational scope consistent with historic scale of mining on the property, as supported by the evidence provided by miner, plus a “natural and gradual increase.”