CAJALCO ROAD PROPERTY
(Hubbs/Harlow Quarry Area)

Request for Determination of Vested Rights

December 16, 2021

Submitted by:

Robertson's Ready Mix
200 South Main Street, Suite 200
Corona, CA 92882

Submitted to:

Riverside County Transportation and Land Management Agency
4080 Lemon Street, 12th Floor
Riverside, CA 92502-1409

Prepared by:

Jeffer Mangels Butler & Mitchell LLP
Kerry Shapiro, Esq.
Daniel Quinley, Esq.
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111
(415) 398-8080

TABLE OF CONTENTS

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF CONTENTS
(CONTINUED)

Page

FIGURES

TABLES

APPENDICES

DEFINED TERMS AND ABBREVIATIONS

DEFINED TERMS AND ABBREVIATIONS	
NAME OR ABBREVIATION	***TERM OR DEFINITION***
"1948 ROS"	Record of Survey of the HH VRA and neighboring mineral properties, commissioned by Harlow in 1947 and filed with the County in 1948.
"1984 Study"	Harlow Hills Development: Quarry Rock and Talc Resource Study Phase I Report (October 29, 1984).
"3M"	Minnesota Mining and Manufacturing, operator of a quarry north of the HH VRA
"APN"	Assessor's Parcel Number
"ATSF"	Atchison, Topeka and Santa Fe Railroad
"BKS"	Related corporate entities Brion Corporation, S.T. & Koo International Corp.; and Sun-On Enterprises
"*Calvert*"	*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613
"County"	Riverside County
"CU-1146"	Condition Use Permit 1146, authorizing construction and operation of an asphalt plant, approved by the County in 1970.
"Exh."	Exhibit attached to RFD in Appendices A-D.
"First Amended Judgment"	First Amendment to Stipulated (2004) Settlement Agreement and Judgment Thereon, approved by the Superior Court for Riverside County on August 28, 2013.
"Gladding"	Gladding McBean and Company, a clay-mining and ceramics manufacturing company.
"HH VRA"	The Hubbs Harlow Vested Rights Area, a 792.22-acre property located in Sections 10 and 15, T.4.S, R.6.W, Riverside County, California and subject to this RFD.
"Hubbs Construction"	Paul J. Hubbs Construction Co.
"Hubbs"	Paul J. Hubbs and Lucile Hubbs, the individuals.
"Kincheloe Property"	Mineral property near to the HH VRA that Harlow sought, but failed, to purchase
"Liston"	Liston Brick Company, a ceramics manufacturer with a plant located near the HH VRA and who mined portions of the HH VRA.

"Livingston"	Livingston Rock and Gravel Co.
"M-404"	Permit M-3, No. 404, approved by the County in 1959.
"MWD"	Metropolitan Water District
"Pacific Clay"	Pacific Clay Products, a ceramics manufacturer who mined clay from the HH VRA.
"*Paramount*"	*Paramount Rock Company, Inc. v. County of San Diego* (1960) 180 Cal.App.2d 217.
"Porphyry"	Temescal dacite porphyry, an igneous rock formation, correlated with significant quarrying activities based on the rock's strength and suitability for use in water infrastructure projects.
"RFD"	Request for Determination of Vested Rights
"RP 118"	Reclamation Plan RP-118, approved by the County in 1982.
"RRM"	Robertson's Ready Mix, Ltd., operator of the HH VRA, with Corona Cajalco Road Development ("CCRD") and Cajaclo Road Quarry ("CRQ"), property owners of the HH VRA
"S-1"	Reclamation Plan RCL-118S1, approved by the County in 2013.
"S-2"	Reclamation Plan RCL-118S2, approved by the County in 2016
"S-4 VRA"	132-acre portion subject to prior vesting confirmations by the County, as defined by the boundaries of Reclamation Plan RCL-118S4.
"S-4"	Reclamation Plan RCL-118S4, approved by the County in 2020.
"Schultz Parcel"	APN 281-220-001, a piece of property wholly surrounded by the S-4 VRA, but which is not a part of RRM's RFD.
"Second Amended Judgment"	Second Amendment to Stipulated (2004) Settlement Agreement and Judgment Thereon, approved by the Superior Court for Riverside County on July 26, 2016.
"SERA"	State Emergency Relief Administration
"SMARA"	Surface Mining and Reclamation Act of 1975, California Public Resources Code sections 2710-2796
"Sobrante"	The Rancho El Sobrante de San Jacinto, a Mexican Land Grant patented by the United States in 1867.
"Stringfellow"	Stringfellow Quarry Company

"Tourmaline"	Tin-bearing igneous rock primarily located within Corona quartz monzonite bedrock, correlated with occurrences of tin and tin oxides and subject of extensive surface mining beginning in 1857.
"USGS"	United States Geological Survey
"WPA"	Works Progress Administration

INTRODUCTION

Pursuant to Riverside County Ordinance 555.20, Sections 5.46.010 *et seq*. of the Riverside County Code, and Section 2776 of the California Surface Mining and Reclamation Act ("**SMARA**") (collectively "Vested Rights Regulations"), Robertson's Ready Mix ("**RRM**") hereby submits its Request for Determination of Vested Rights ("**RFD**"), seeking a determination by Riverside County ("**County**") that RRM's previously confirmed vested right (to mine aggregate and conduct related surface mining operations, across approximately 132 acres of RRM's property) be confirmed to include the remaining area of RRM's contiguous mining property, which encompasses approximately 792.22 total acres of land, colloquially known as the Hubbs Harlow Quarry ("**HH VRA**"), inclusive of the previously confirmed 132 acre vested right area. The geographic range of vested rights sought to be confirmed within the HH VRA is depicted in **Figure B-1.2** ("2021 HH VRA").[1]

The HH VRA is located approximately one mile east of Interstate 15, adjacent to Cajalco Road within the County and encompasses approximately 792.22 acres, identified by the Assessor's Parcel Numbers ("**APN**") in **Table A-1.1**, and depicted in **Figure B-2.7** ("2021 Ownership"). Through this RFD, RRM requests that the County determine the following:

1. RRM's previously established vested mining rights, previously confirmed by the County on multiple occasions with respect to the 132 acres within the RCL118S-4 area ("**S-4 VRA**"), apply to and encompass the entire 792.22 acres of land within the HH VRA, as depicted in **Figure B-1.2**.

2. RRM's previously established vested mining rights within the S-4 VRA to utilize equipment as reasonable and necessary to blast, excavate, crush, wash, sort, stockpile, load, transport and otherwise manage commercial rock products operations be confirmed for the entire HH VRA.

3. RRM may continue surface mining operations, currently ongoing within the S-4 VRA, within the HH VRA on the basis of RRM's confirmed vested rights and a valid, approved, reclamation plan.

[1] As described in Appendix A, RRM leases the HH VRA from two entities: Corona Cajalco Road Development LP and Corona Quarries LLC. This RFD refers to all three entities, collectively, as "RRM."

This application is based on the following:

- The County's prior official determinations and findings regarding the existence of RRM's vested rights encompassing the S-4 VRA, (hereinafter referred to as the S-4 VRA" and depicted in **Figures B-1.2)**;

- Findings made by the Superior Court for the County of Riverside corroborating and confirming the County's vested rights findings in various legal proceedings;

- Numerous deeds and other evidence of title, records of survey, and related documents recorded in the Official Records of Riverside County ("**Official Records**") affecting the HH VRA and surrounding property;

- Records, maps, photos, archival personal oral histories, articles, and other documents from the State of California's mining journals, geologic surveys, and special reports;

- Numerous archival newspaper articles , beginning as early as the 1880s and extending across many decades, covering a large array of mining activity within the HH VRA, along with surrounding properties which together formed the "Temescal Mining District,"[2] a large area of mineral resources generally under a common ownership, and one of the most significant regional mining areas in southern California during the first half of the 20th Century; and

- Extensive on-site field reconnaissance of surface disturbances from mining activities and corroborating Light Detection and Ranging ("**LiDAR**") mapping which together evince extensive past mining activities on the HH VRA consistent with the descriptions of mining activities in the historical mining journal and newspaper articles.

[2]The area is referred to as either the "**Temescal Tin District**" or "**Temescal Mining District**." Tin was what brought interest to the region in the mid-1800s. However, this RFD uses the "**Temescal Mining District**" based on the number of mineral resources actually developed in the region beginning in the late-1800s and the evolution in nomenclature away from tin.

I. EXECUTIVE OVERVIEW

RRM is requesting a County determination through this RFD that that its entire 792-acre HH VRA is subject to vested rights.

The Legal Basis for RRM's Vested Right

1. In California, surface mining activities that occur before enactment of a law requiring a permit to mine, become grandfathered or "vested" as legal nonconforming uses, and are allowed to continue operating without a permit after the vesting date.

2. Because mining is considered a "consumptive" use, a legal rule called the "Diminishing Asset Doctrine" allows areas of the property that were not mined or disturbed before the vesting date to also vest, if it is shown that, at the time of vesting, there was an intent to eventually mine the entire property, or that the entire property was considered "appropriated" as a mining site.

3. Here, the County enacted Ordinance No. 348 requiring mining permits for the first time in 1949, so RRM must show evidence of surface mining activities, including activities evidencing an intent to mine the entire HH VRA as of 1949.

The County's Process to Determine RRM's Vested Right

1. Per County Ordinance 555.20, Section 17, the process to confirm a vested right requires: (1) the applicant to submit historical evidence proving the existence and scope of the vested right, and (2) a public hearing by the lead agency to consider and take testimony on the historical evidence, and render a decision.

2. A vested right hearing and determination focuses only on sufficiency of evidence supporting the vested right, not the merits or impacts of the current operation. It is not a discretionary CEQA process.

3. Through this RFD, RRM has submitted historical evidence supporting the existence and scope of a vested right across the entire HH VRA. The next steps will be for the County to determine the RFD application is complete, review the evidence, and schedule and hold a public hearing. The RFD's Table of Contents is attached.

RRM's Existing Vested Right and What RRM Must Still Prove

1. The first half of RRM's burden of proof – to prove a vested right was established on the HH VRA in 1949, and continues to exist today – has already been settled. Multiple County actions over many decades have already determined a vested right was established and exists today on at least 132 of the 792 acres in the HH VRA. These prior County actions include:

    a. Issuance in 1970 (post-vesting date) of permit CU 1146 for processing facilities, that identified large areas that could continue to be mined without needing a permit;

    b. Approval in 1982 of a Reclamation Plan (RP 118), with no related mining permit, that directly recognized vested rights within the portion of the HH VRA covered by RP 118; and

    c. Approval of three recent amendments to RP 118, in 2013, 2017 and 2020, which confirmed vested rights on 132 of the 792 acres of the HH VRA, and also confirmed the scope of operations and equipment currently at the site.

2. Given these prior determinations, the issue now before the County in this RFD is limited to determining the geographic scope of existing vested rights within the HH VRA.

The RFD Provides Evidence that Vested Rights Apply to the Entire HH VRA

RRM has met it burden to prove vested rights across the entire HH VRA through extensive historic evidence of: (i) pre-vesting mining operations across a majority of the HH VRA, (ii) extensive mining activities that supported operations on adjacent mine sites held, pre-vesting, under common ownership with the HH VRA; (iii) pre-vesting exploration and surveying activities demonstrating intent to mine or to otherwise appropriate the entire HH VRA as a mine site; and (iv) post-vesting date mining throughout the HH VRA absent any permits that otherwise would have been required without a vested right. The evidence in the RFD will demonstrate the following:

1. RRM is but the latest in a succession of HH VRA owners dating back over 100 years to the late 1880s, all of whom supported development of the mineral resources across the entire HH VRA, and maintained the HH VRA as an active mine site;

2. From the 1880s to 1924, the HH VRA was part of a large commonly-owned, mineral rich regional land holding, that not only supported multiple mine operations within its boundaries, but it also functioned as a component of, and provided

ancillary support for, mining activities such as the Cajalco Tin Mine, all within the renowned Temescal Mining District,

3. From 1925 through vesting in 1949, after ownership of the HH VRA separated from the larger regional land holding in 1925 into roughly its current shape, the HH VRA owners put great effort into expanded mining operations, and exploring and inventorying the overall mineral resource, with the idea to exploit its full mineral resource potential, including:

    a. Establishment of the Blarney Stone Quarry, and multiple smaller quarries and borrow pits, to furnish raw materials for many large infrastructure projects, including Cajalco Road, Cajalco Dam, and Prado Dam;

    b. Development of clay mining to supply the region's widely-recognized ceramics industry;

    c. Efforts to reopen the Cajalco Tin Mine, including to support the U.S. World War II effort;

    d. In the 1930s, the HH VRA owner authorized mineral resource studies to verify rock products at the HH VRA were suitable for dam, canal, and breakwater construction, including projects such as the Prado Dam, and determined there were approximately **200 million tons** of such mineral reserves on the HH VRA;

    e. In 1948, just before vesting, the HH VRA owner prepared an ambitious Record of Survey of the entire HH VRA site and adjoining mining property, to define and fully exploit the mineral resources at the site, spurred by failed efforts to acquire nearby mineral lands, and rapidly expanding mining operations.

4. All told, prior to vesting in 1949, there were 24 documented distinct mining sites, and numerous mine haul roads throughout the HH VRA. Post-vesting, an additional 23 mine sites were documented within the HH VRA, none of which had permits otherwise required after 1949. Overall, almost two-thirds of the entire HH VRA has already been disturbed or impacted by mine operations or support activities (haul roads, etc.).

In sum, the evidence supports extending the geographic scope of vested rights across the entire HH VRA, based on the extent of actual mining, and intent to fully appropriate the site for mining.

II. SUMMARY OF PRIOR VESTING DETERMINATIONS, LEGAL PRINCIPLES, AND HISTORICAL RECORD SUPPORTING THIS RFD

A. The County's Multiple Vesting Determinations at the HH VRA

The HH VRA has been subject to at least five (5) formal County actions that have confirmed vested rights in connection with the various surface mining operations that have been undertaken in the 132-acre S-4 VRA, located in the southwest corner of the overall HH VRA. The S-4 VRA has been colloquially known as either the "Hubbs Quarry" or sometimes the "Harlow Quarry" and the County has already issued multiple determinations confirming that this portion of the HH VRA has vested mining rights. The most recent County action occurred in 2020, in connection with the County's approval of the "S-4" reclamation plan amendment encompassing the S-4 VRA, as discussed below in **Section IV.J**. The County's previous actions that confirmed vested rights include the following:

- Conditional Use Permit No. CU-1146 ("**CUP 1146**") (1970);[3]
- Reclamation Plan No. RCL-118 ("**RP 118**" or" **1982 Rec Plan**") (1982);[4]
- Reclamation Plan Amendment No. RCL-118-S1 ("**S-1**") (2013);[5]
- Reclamation Plan Amendment No. RCL-118-S2 ("**S-2**") (2016);[6] and
- Reclamation Plan Amendment No. RCL-118-S4 ("**S-4**") (2020).[7]

In addition to these previous County actions confirming vested rights, RRM's vested rights have been further corroborated by two Riverside County Superior Court orders entering judgments regarding reclamation obligations within the S-4 VRA.[8]

B. Key Legal Principles for Vested Rights Determinations

The historical evidence presented herein identifies a rich and varied history of surface mining activities throughout the HH VRA across many decades leading up to the time

[3] Exhibit ("Exh.") C-1.2 (CU-1146)

[4] Exh. C-1.3 (RP 118)

[5] Exh. C-1.4 (S1)

[6] Exh. C-1.5 (S2)

[7] Exh. C-1.6 (S4)

[8] *See* Exh. C-1.7- C-1.9 (2004 Judgment, First Amended Judgment, Second Amended Judgment).

of vesting. In weighing this evidence, the County should be guided by a number of well-established legal principles for determining the existence and scope of vested rights, including the following: [9]

1. The County's Authority to Determine Vested Rights

Section 2776 of SMARA provides that " No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter." Section 2776 further defines the criteria for a vested right as follows: "A personal shall be deemed to have such vested rights if, prior to January 1, 1976, [they have] in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor." These provisions are mirrored in County Ordinance 555.20, Section 17.

Based on this, a SMARA-based vested right can be established by means of surface mining operations conducted as a legal "non-conforming" use on or prior to the date of the enactment of the ordinance.

2. The Establishment Date for Vested Rights

The date that a regulation is enacted that renders a prior lawful use unlawful, thereby creating a non-conforming use or vested right is referred to as the "Establishment Date." SMARA was enacted in 1976, thereby creating an Establishment Date of 1976 for many vested rights across the state. However, some local agencies enacted ordinances prior to SMARA that required mining permits at an earlier time, thereby creating earlier Establishment Dates. Riverside County adopted Ordinance No. 348 in 1948, effective January 1, 1949 requiring mining permits, thereby created an Establishment Date of 1949. The County has previously confirmed, on multiple occasions, that the Establishment Date is 1949, based on the Ordinance No. 348 (see discussion of S-1, S-2, and S-4, at **Section III**, *infra)*. Thus the County will need to evaluate historical evidence of mining prior and up to January 1, 1949 to evaluate the scope of the vested right on the HH VRA.

[9] These Legal Standards are discussed in greater detail below, in **Section II** of this RFD.

3. The Diminishing Asset Doctrine

The general rule in California is that a legal, non-conforming use may continue in its current footprint, but may not be expanded. The "Diminishing Asset" Doctrine is an exception to that rule, recognizing that mining is a consumptive use, and that mining operators cannot mine the entire site at once, and thus have the right to expand operations to mine additional areas after the operation becomes vested.

4. Objective Manifestations of Intent and Appropriated Mining Site

In order to determine how much of the site that was unmined prior to the Establishment Date can be mined pursuant to the "Diminishing Asset Doctrine" subsequent to the Establishment Date, a mine operator must demonstrate through "objective manifestations of intent" the full extent of the previously un-mined area that was intended to be mined at the time that the operation became vested. Moreover, if it can be shown that the entire tract or parcel was used for mining and mining related purposes, regardless of whether some areas remain unused or open space, the vested right will extend to the entirety of the property which is deemed "appropriated for mining."

5. Objective Manifestations of Intent Consider the Whole Operation Including Ancillary Uses Such as Prospecting, Stockpiling, and Haul Roads

In evaluating the existence of objective manifestations of intent, a vested right to mine and conduct related activities may be applied to all lands previously used in incidental or ancillary ways connected with mining operations, and specifically where the land previously was used for prospecting, stockpiling, and haul roads in support of other mining activities. Similarly, a vested right in the surface mining context includes all activities that were part of the historical overall business operation at the site prior to it becoming a non-conforming use.

6. Relevance of Activities Prior to the Establishment Date (Look Back)

In evaluating the nature and scope of surface mining activities on a parcel prior to the Establishment Date, California courts have held that such evaluation is not limited only to the activities occurring at, or immediately before, the Establishment Date. Rather, the evaluation is required to encompass (or "look back" at) the full scope of relevant mining activities that occurred at the site prior to the Establishment Date.

7. The County's Prior Actions Confirming Vested Rights Limit the Scope of Issues to Consider in the Current RFD.

The above principles provide essential guidance for determining the existence and scope of a vested right. Other principles and doctrines also must be evaluated in most instances, including assessment of whether the current vested operation constitutes a substantial change to the use vested at the Establishment Date, or whether the vested right has been abandoned over time. However, because of the unique circumstances related to the HH VRA, namely that a significant portion of the area (the S-4 VRA) has been determined to be vested on no less than five occasions, as recently as 2020, and for the same use that is being considered for the HH VRA, those principles warrant little if any consideration in this RFD.

C. The Scope of the Requested Determination

This RFD requests the County confirm that already-established vested mining rights on a portion of the HH VRA (*i.e.*, the S-4 VRA) apply to the remainder of the 792.22-acre HH VRA. To confirm the full scope of the existing vested rights, the historical evidence presented herein will demonstrate the following occurred prior to the 1949 **Establishment Date** for vested rights within the County:

1. Extensive surface mining activities involving multiple operations beginning after the HH VRA was created in 1925, and continuing through 1948.

2. Surface mining activities across the HH VRA supporting various mining operations within the Temescal Mining District (discussed below in **Section II.G**, *infra*) located directly adjacent to, surrounding, and connected through the 792.22-acre HH VRA, undertaken when the HH VRA and such adjacent lands were within common ownership by RRM's predecessors up until 1925, demonstrating a regional-scale network of operations, including mining tin, silica, clay, aggregate, as well as copper prospecting and mineral exploration. These combined surface mining activities demonstrate not only extensive surface mining throughout the HH VRA, but also a clear intent that the entire HH VRA, which functioned as part of a larger mining district rich in mineral resources that were of strategic importance and high economic value throughout the region, was fully appropriated for mining uses as of 1949.

3. Multiple efforts prior to 1949 to explore, survey, and inventory the entire HH VRA for potential mining opportunities documented on multiple occasions, establishing objective manifestations of intent by RRM's predecessors to eventually mine the entire HH VRA.

D. Evidence Supporting the Requested Determination

1. Pre-Establishment Date Mining Activities and Exploration/Surveying Within the HH VRA Between 1925 and 1948 Confirm the Entire HH VRA Was Exclusively Dedicated to Mining

In its early history (approximately 1853-1925) the HH VRA fit within a mosaic of commonly-owned mining properties located south of Corona, in an area historically known as the Temescal Mining District (discussed in detail in **Section V.A**, *infra*), which was a hub for tin, clay, rock, sand, and gravel operations . Beginning in the 1920s, through the lead-up to World War II, both the State of California and the United States government, considered the area to be of strategic mineral importance and a potential domestic source of glass, tin, and aluminum, and a key source of stone for southern California's multiple water improvement and flood protection projects.[10]

This increasing notoriety (see **Sections V.A and B,** *infra*) made the Temescal Mining District an attractive prospect for land developers, which led E.E. Peacock, a Corona-based land developer, in 1925 to acquire land that essentially became the present-day, HH VRA, as depicted in **Figure B-2.3** ("1925 Ownership").[11] Peacock's ownership consisted of the majority of Section 15 and the south half of Section 10.[12] Before his death in the early 1930s, Peacock would give away essentially value-less pieces of the HH VRA, subject to mineral reservations, with sales of an encyclopedia.[13] Peacock's

---

[10] See Exh. C-2.13 at pp. 86, 505-520 (describing the economic and strategic minerals of the Temescal Mining District); *see also* Exh. C-2.13 at p. 281

[11] Vested rights are property rights that "run with the land" across multiple ownership transfers. *See* HH VRA title summary attached to this RFD as Appendix A.

[12] Note that neighboring portions of the property, including a small portion the SW ¼ of Sec. 15 directly adjacent to the S-4 VRA, are not a part of this RFD. These parcels were acquired by third parties in the early 1900s and owned by Corona Silica Company from February 1925, and used for silica sand mining and processing. The parcels were acquired by RRM's predecessor Leilamae Harlow in 1971, and sold upon disposition of her estate in 1979 to Gerhart L. Schultz et al. in 1979. This property now exists as APN 281-220-001 ("Schultz Parcel"), identified as "Not a Part," in the graphics supporting this RFD. Consequently, references herein to the HH VRA as encompassing all of Section 15 do not include the Schultz Parcel

[13] These parcels were of limited value and essentially undevelopable because (1) their size, of approximately 50 feet by 30 feet meant nothing could be built on them; (2) the parcels were landlocked and sprinkled sporadically throughout the HH VRA; and (3) most importantly, Peacock consistently and universally reserved all minerals and related mining rights essential for surface mining activities, from every single parcel he conveyed as part of an encyclopedia

mineral reservations maintained the mining character of the HH VRA and allowed RRM's predecessors to consistently dedicate the HH VRA to mining purposes.

Following Peacock's death in the early 1930s, F.M. Kuhry, an individual to whom Peacock was indebted, acquired the HH VRA, and then entered into a joint tenancy with Leilamae Harlow, with whom he would devote and develop the HH VRA for surface mining over the next twenty years, as described in **Sections II.D** and **V**, *infra.*[14]

Peacock's purchase of the HH VRA transformed the activities on the property from primarily supporting operations on adjoining (but commonly owned) lands (through haul roads, smaller excavations, etc.) to rapidly expanded mining operations on the HH VRA as a now distinct mining property.

a. <u>Surface Mining Activities: 1925-1948</u>

Surface mining activities from 1925 until the time of vesting on January 1, 1949 included the following:

i. Around 1927, a rock quarry was established along the west side of the HH VRA,[15] as depicted in **Figures B-3.2** (depicting the quarry within the overall HH VRA) and **B-4.2** (depicting the quarry in a close-up aerial photograph), which provided building and paving stone to southern California markets and railroad ballast to the Atchison, Topeka , & Santa Fe ("**ATSF**") Railroad. In 1927 alone, the quarry produced enough material to supply approximately 5,000 yards of railroad track.[16]

ii. In 1931, Pacific Clay Products established the Cajalco Clay Pit within the HH VRA, partially in and outside of the S-4 Area, as depicted in **Figures B-3.2** (depicting the pit within the overall HH

---

sale, declaring his intent to reserve "the oil and mineral rights." *See*, Exh. A-11. This mineral reservation is universal across all deeds conveyed by Peacock between 1925 and 1923.

[14] *See* Appendix A, *see also* Exhibit A-12, A-13, A-14, A-15, and A-16.

[15] This rock quarry produced primarily Temescal porphyry, a rock type known for strength and in high demand for infrastructure projects through southern California. *See* Exh. C-2.12 (Paul H. Dudley, "Geology of the Perris Block," REPORT OF THE STATE MINERALOGIST, Vol. 31 (1935)) at p. 497

[16] *See* Exh. C-3.42 ("Santa Fe Finishes Rip-Rap Quarrying", CORONA DAILY INDEPENDENT, May 11, 1927); *see also* Exh. C-2.4 at p. 1028 (describing early quarrying of rock within HH VRA for ATSF railroad, "probably for track ballast.").

VRA) and **B-4.9** (depicting the pit in a close-up aerial photograph); one of several regional clay pits that supplied ceramic factories in Corona and the Elsinore-Alberhill area.[17]

iii. During the 1930s, clay beds within the HH VRA were prospected and sampled to determine the viability of developing a domestic aluminum resource based on high-levels of bauxite and aluminum in the region's clay beds, as depicted in **Figures B-3.2** (depicting clay activity within the overall HH VRA) and **B-4.10** (depicting activity related to the clay and other strategic minerals in a close-up aerial photograph).[18]

iv. Beginning in approximately 1932, the HH VRA contributed material (*e.g.*, porphyry, gravel, etc.) to multiple Depression-era public works projects, including the construction of Cajalco Road and Cajalco Dam, through multiple small-scale aggregate pits providing local rock, sand, and gravel. These borrow pits, depicted in **Figures B-3.2** (depicting these borrow pits within the overall HH VRA) and **B-4.14** (depicting these borrow pits in a close-up aerial photograph), were located within the HH VRA, but, importantly, outside of the S-4 Area, and were established by the work relief programs responsible for the infrastructure projects (*e.g.*, Works Progress Administration).[19]

---

[17] Exh. C-2.3 (C.H. Gray, "Geology of the Corona South Triangle," Bulletin No. 178, California Division of Mines (1961)) at p. 110; Exh. C-2.4 (C.H. Gray et al., "Mines and Mineral Resources of Riverside County, California," California Division of Mines and Geology, preliminary manuscript (1961)) at p. 78; *see also* Exh. C-2.1 (Waldemar Feen Dietrich, "The Clay Resources and Ceramic Industry of California," Bulletin No. 99, California State Mining Bureau (1928)), pp. 162, 183.

[18] *See* Exh. C-2.22 ("Californian Clays Require Special Treatment to Meet Metallurgical Demands") (describing occurrence of bauxite within the confines of the Sobrante, in Section 26, south of the HH VRA); *see also* Exh. C-2.12; C-2.13 (evaluating strategic minerals, including high-aluminum content clay).

[19] *See* Exh. C-2.4 (describing rock, sand and gravel borrow pits); *see also* Exh. C-3.60 ("Success in Bond Election Means Much to Corona," CORONA DAILY INDEPENDENT (September 30, 1931) at pp. 1, 4 (describing material needs for construction of Cajalco Dam).

v. In 1938, Kuhry and Harlow leased a portion of the HH VRA to Henry F. Charles,[20] who subleased the property to Blarney Stone Inc., a company partially-owned by the Pantages theatre-magnate family, who significantly expanded the existing porphyry quarry previously used to supply railroad track ballast into the **Blarney Stone Quarry** (later known as the Hubbs Harlow Quarry),[21] as depicted in **Figures B-3.2** (depicting Blarney Stone within the overall HH VRA) and **B-4.11** (depicting Blarney Stone in a close-up aerial photograph).

vi. Between 1938 and 1941, the Blarney Stone Quarry and other areas outside the S-4 VRA were mined to provide Temescal porphyry and alluvial gravel for construction of the Prado Dam, as depicted in **Figures B-3.2** (depicting these operations within the HH VRA), **B-4.13,** and **B-4.14** (both depicting the operations in close-up aerial photographs).[22]

b. <u>Activities Demonstrating Intent to Mine the Entire HH VRA: 1925-1948</u>

Beyond just the mine operations, the HH VRA owners also engaged in activities such as exploration and surveying that manifested their intent to mine or otherwise appropriate the entire HH VRA for mining purposes, including the following:

---

[20] Leilamae Harlow, one of the most important figures regarding development of the HH VRA, first acquired the property in 1932, with F.M. Kuhry. Harlow would own the property for 40 years and was instrumental in developing it as a mining property, as described in detail in **Sections IV.C, and IV.F**, *infra*.

[21] The Blarney Stone Quarry is alternatively known as the Hubbs Harlow Quarry. *See* Exh. C-2.5.

[22] Exh. C-3.70 ("Paving Stone Company Opens Plant Near City," CORONA DAILY INDEPENDENT (Nov. 28, 1938); Exh. C-3.75 ("Blarneystone Rock Goes to Prado Dam," CORONA DAILY INDEPENDENT (December 14, 1939)); Exh. C-3.77 ("Stones Picked Up On Prado Dam" CORONA DAILY INDEPENDENT (May 15, 1940)); Exh. C-3.85 ("Story of the Carl Bliss Batch Plant," CORONA DAILY INDEPENDENT (December 20, 1939); *see also* Exh. C-2.20 ("Historic American Engineering Record No. 178, Prado Dam," pp. 58-67 (describing materials used in construction of Prado Dam); *see also* Exh. D-1.1 (describing an "elongate area extend[ing] along hillsides flanking an east-west orientated drainage" with "disturbances associated with … gravel and aggregate mining.") and Exh. D 1.1; *see also* **Figure B-6.5**.

i. Concurrent with the development of the Blarney Stone Quarry (beginning in about 1938), operators of the HH VRA sought to determine the scope and suitability of resources for use in dam and canal construction, to ensure that the quarry could sell materials to the U.S. Army Corps of Engineers and resulted in a determination that there were approximately **200 million tons** of such reserves suitable for use in water infrastructure (*e,g,.*, dam, canals, and breakwaters, etc.).[23] This effort demonstrates that both Harlow and operators of the HH VRA understood the extent of rock, sand and gravel reserves available within the HH VRA.

ii. In 1948, right before the Establishment Date, a record of survey was prepared that confirms the owners of the HH VRA had fully appropriated the property for mining. As context, in 1946, HH VRA owners Kuhry and Harlow entered into a purchase agreement with James and Jakie Kincheloe, for land west of the HH VRA, as depicted in **Figures B-5.10** ("Kincheloe Property").[24] The Kincheloe Property was known to contain both clay and silica sand deposits, similar to the minerals already being commercially mined along the western edge of the HH VRA (primarily by the Owens-Illinois Glass Co., located between the HH VRA and Kincheloe Property).[25] Kuhry and Harlow never acquired the property, were sued in 1946 for their failure to do so, and settled the case in 1947 in a manner that left them without mineral property to develop other than the HH VRA. In response, Harlow commissioned the record of survey in 1947, completed and recorded in 1948 ("1948 ROS"), which identified the clear boundaries of the HH VRA, and its neighboring mineral development properties (including, the Owens-Illinois Glass Co. silica sand operation, with which Kuhry and Harlow would have sought to compete had they acquired the Kincheloe Property). The 1948 ROS effectively provided Kuhry and Harlow clarity to

---

[23] Exh. C-3.69 ("Dodge Party Views Rock Quarries," Los Angeles Daily News (September 28, 1938); *see also* Exh. C-2.4 (describing analysis of HH VRA materials conducted by U.S. Army Corps of Engineers Los Angeles District Laboratory in 1939).

[24] Exh. C 4.3; *see also* Exh. C-2.3 at p. 101 (describing Coronita Ranch Sand Deposit associated with Kincheloe Property); p. 103 (describing Jones (Hoag Ranch) Sand Deposit associated with Kincheloe Property); Exh. C-2.4, at p. 118 (describing Jones (Hoag Ranch) Clay Deposit).

[25] Exh. C. 4.3.

understand their mineral assets and thus is important in understanding their intent to fully appropriate the HH VRA by defining the boundaries within which surface mining operations and ancillary surface mining activities could be conducted.[26]

As presented above, prior to 1949, there were at least 39 distinct surface mining activities across the 792 acre HH VRA, including 24 documented distinct mining sites, as well as extensive exploration, mineral inventorying, and surveying that occurred across the HH VRA.[27] Collectively, this evidence supports the determination of an intent to appropriate the entire HH VRA as a mine site. This evidence is discussed in greater detail in the main body of this RFD, at **Section V.C,** *infra*, and as depicted on **Figures B-3.1** (depicting surface mining activities within the HH VRA before 1925), **B-3.2** (depicting surface mining activities within the HH VRA 1925-1949), and **B-3.3** (depicting a composite of all surface mining activities until 1949).

Although this evidence alone is sufficient to establish a vested right to the entire HH VRA, additional pre-1949 evidence presented below at **Section V.D**, further supports this determination, by demonstrating how surface mining activities on the HH VRA supported and were interconnected with an even larger scope of surface mining operations occurring on adjacent properties within the Temescal Mining District.

2. <u>Post-Establishment Date, Pre-SMARA (1949-1976) Surface Mining Activities Within the HH VRA Without Permits Corroborate the Vested Right</u>

Surface mining activities continued apace post Establishment Date, absent the now-required use permits, demonstrating Harlow's continued exercise of the vested rights at the HH VRA, and include:

a. Beginning in the 1950s, Harlow allowed several local mining operators, ceramics manufacturers, and independent trucking companies to access and conduct mine operations within the HH VRA, all without use permits.[28]

b. Two such operators – Stringfellow Quarry Company ("**Stringfellow**") and Livingston Rock and Gravel Co. ("**Livingston**") – merged to form Corona Quarries Inc., which

[26] **Figure B-5.10, B-5.11**

[27] Exh. D-1.1; *see also* "Declaration of Sage Thurmond) ¶ 7.

[28] *See* Exh. C-3.117 ("Rock Truck Complaints," CORONA DAILY INDEPENDENT (August 7, 1958)).

would operate surface mining operations within the HH VRA for nearly a decade, again without use permits, including continued development of the Hubbs Harlow Quarry, as depicted in **Figures B-3.8** (depicting operations within the overall HH VRA), **B-4.15**, **B-4.17**, and **B-4.18** (all depicting the operations in close-up aerial photos).[29]

c. During the 1950s and 1960s, multiple additional clay pits and exploratory cuts were developed and operated without County mining permits within the HH VRA, primarily in areas north of the stone quarry, as depicted in **Figures B-3.8** (depicting clay mining activities within the overall HH VRA), **B-4.15**, **B-4.16**, **B-4.17**, **B-4.18**, and **B-4.29** (all depicting clay mining activities in close-up aerial photos). These clay operations were developed and mined without County-issued permits, primarily by ceramics producers whose factories were located on the west side of Temescal Wash, including the Liston Brick Co., and Gladding, as depicted in **Figures B-7.3.1** and **7.3.2** (depicting the multiple mining operations in the area as of 1959). The clay pits were located within the HH VRA, and primarily outside the S-4 Area.[30] These surface mining operations were occurring post-Establishment Date, absent use permits, and outside the S-4 VRA are compelling evidence that the scope of the vested right extended beyond the S-4 VRA and into the remainder of the HH VRA.

d. In the mid-1960s, Paul Hubbs, then a junior partner in Corona Quarries, Inc., took full control of that company and eventually transformed it into Paul Hubbs Construction Co. ("**Hubbs Construction**"), which operated surface mining operations within the HH VRA from 1968, while the property was owned by Harlow.[31] In 1970s, Hubbs submitted the application for CUP 1146, which as referenced above, authorized construction and operation

[29] Exh. C-3.120 ("Trucker Sues Corona Firm," Corona Daily Independent (April 15, 1965)).

[30] Exch. C-2.3 at pp. ; *see also* Figure B-6.

[31] Exh. C-3.130 ("Certificate of Discontinuance of Use and/or Abandonment of Fictitious Name," CORONA DAILY INDEPENDENT (September 19, 1968)).

of an asphalt plant within the HH VRA, while defining a much larger, unpermitted mining area subject to a vested right.

Following Harlow's death in December 1972, and the protracted resolution of her estate, described in Appendix A, Paul J. Hubbs and Lucille Hubbs ("**Hubbs**") purchased the HH VRA on December 28, 1979 and continued ongoing surface mining operations throughout the HH VRA.[32]

3. Post-SMARA to Present (1976-2021) Surface Mining Activities Within the HH VRA Demonstrate Ongoing Operations and Continuing Intent to Appropriate the Site for Mining

Following California's enactment of SMARA in 1976, surface mining activities continued within the HH VRA under the vested rights established in 1949. Soon thereafter, Riverside County recognized the existence of these vested rights with the approval of Reclamation Plan 118, in 1982.[33] The County went on to make several other vested rights determinations in relation to the S-4 VRA. From 1976 to the present, the following surface mining activities and vested rights confirmations occurred:

a. Hubbs Construction, first as lessee, and later as owner continued quarry and clay pit operations within the HH VRA, as depicted in **Figures B-7.4.1** and **B-7.4.2** (photographs of heavily disturbed clay and quarry areas). Following Harlow's death in 1972, Hubbs, proprietor of Harlow's lessee Hubbs Construction, acquired the HH VRA in 1979.[34] Hubbs would operate the property until the early 2000s,[35] at which point he sold it to Temescal Cliffs, LLC. Temescal Cliffs promptly went bankrupt and during bankruptcy, current owner (and RRM's lessor) Cajalco Road Quarry ("**CRQ**") acquired it in 2011. The surface mining activities described below

[32] *See* Appendix A.

[33] Under SMARA, vested surface mining operations do not require a use permit, but do require a reclamation plan.

[34] While Harlow died in 1972, disposition of her estate took several years. There were thus several successive owners of the HH VRA upon her death; however, Hubbs continuously operated the longstanding mining activities (*i.e.*, quarry) within the HH VRA during this period, until he acquired full ownership in 1979. A full discussion regarding the ownership succession can be found in **Appendix A**.

[35] in 1983, Hubbs conveyed a portion of the HH VRA, which was reacquired by an RRM-affiliate in 2007. The full details of this title history are provided in **Appendix A**.

continued after the Hubbs' acquisition of the property, and were continuous through successive owners, including RRM.

b. In 1982, the County approved RP 118 for operations within the S-4 VRA portion of the HH VRA. The approved language in the 1982 Rec Plan states: "Based on existing rules and regulations, the operations have a vested right of operations since 1976."[36]

c. In 2003, the County sued Hubbs alleging violations of RP 118 resulting in a 2004 settlement to remediate certain site conditions while also reflecting intent to continue surface mining at the site.[37] This settlement also caused the sale of the HH VRA described above.

d. Following RRM acquisition of the Hubbs quarry site in 2011, RRM and the County discussed remediation of the mining areas within the S-4 VRA to resolve dangerous site conditions unresolved from the 2004 settlement, resulting in an amended settlement in 2013, later adopted and ratified by the Superior Court in a judgment and order thereon, which confirmed vested rights within the S-4 VRA, based on the prior County actions confirming vested rights, including approvals of CUP 1146 and RP 118. The terms of the court order were further memorialized by the County when it approved S-1, which included express findings of vested rights within the S-1 reclamation boundary, consistent with the Court's judgment and order.[38]

e. A second amended settlement was adopted by the Superior Court through another judgment and order issued in 2016, and further reflected in the County's S-2 amendment of RP 118 approved in 2017, which again included additional vested right findings related to the geographic and operational scope of vested rights with the S-4 VRA.[39]

---

[36] Exh. C-1.3

[37] Exh. C-1.7

[38] Exh. C-1.8

[39] Exh. C-1.9

f. In 2020, the County approved S-4 as a third amendment to RP 118, again adopting additional vested rights findings in connection with the S-4 VRA, and clarifying the need for a public review process at such time as RRM sought to further confirm the scope of the HH VRA outside the boundaries of the S-4 VRA. [40]

4. Pre-1949 Mineral Activities on the HH VRA that Supported Adjacent Operations Within the Larger Temescal Mining District Further Confirm the HH VRA Was Fully Appropriated for Mining

As noted above, prior to the 1949 Establishment Date, the HH VRA not only accommodated multiple surface mining operations directly within its boundaries, but it also functioned as a component of, and provided ancillary support for, mining activities within the much larger Temescal Mining District, much of which was under common ownership. This section discusses how these regional mining activities reinforce the vested right within the HH VRA.

a. Prior to Peacock's Purchase of the HH VRA in 1925, it was Part of a Single, Large Property Holding Within the Temescal Mining District

The HH VRA was originally part of the enormous Mexican land grant, known as the Rancho El Sobrante de San Jacinto ("**Sobrante**"), which encompassed a significant portion of the mineral rich Temescal Valley and its surrounding hills, in the range of about 64,000 acres.[41] From 1867 until the 1920s, the entire Sobrante was owned as a single piece of property by RRM's predecessors. Large areas within the Sobrante were dedicated to various uses, including land development, agriculture, and mining.[42] Not surprisingly, the HH VRA is located within the area dedicated to mineral resource

---

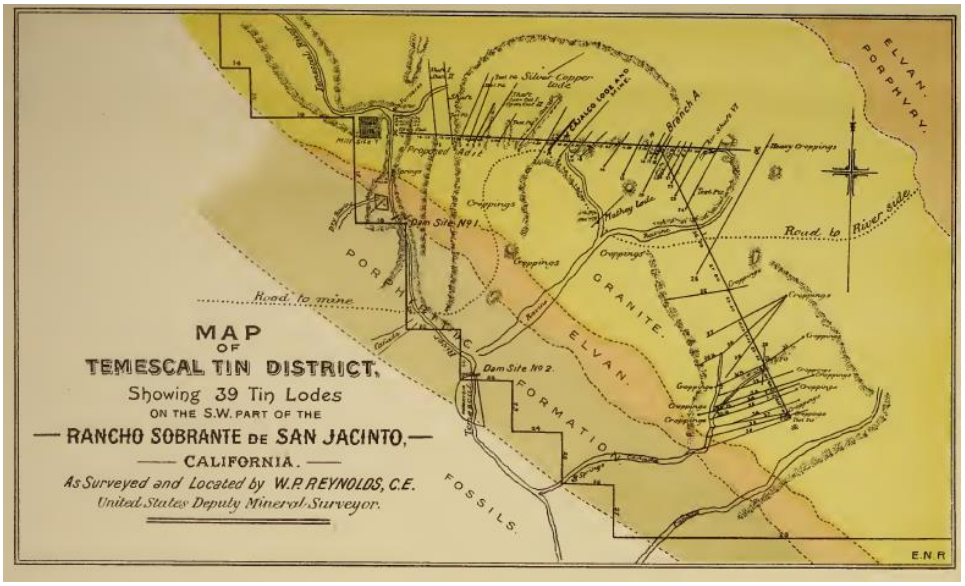
[40] Exh. C-1.6

[41] The United States Patent was issued for "11 leagues," an area of approximately 64,000 acres. *See* Exh. A-1; *see also* Exh. 4.1.

[42] *See, e.g.*, Exh. C-3.6 ("Corona, The Crown of the Valley," CORONA DAILY INDEPENDENT (July 5, 1907) (detailing the "mineral resources" of the Temescal Mining District as "practically untouched" and describing known cement rock, silica sand, and porphyry resources); Exh. C-3.8 (*Sunset: The Magazine of the Pacific and of All The Far West*, Vol. 26 (Jan.-June 1911) ("The [Sobrante] includes … immense mineral resources, quarries, and mines"); Exh. C-3.9 ("Sale of 43,000 Acres in Riverside County," CORONA DAILY INDEPENDENT (Jan. 26, 1911) ("The mountainous portion of the [Sobrante] is rich in mineral resources and also includes stone quarries of great value and immense gravel deposits").

development.[43] An early map, reproduced below, produced by the Sobrante owners identifies the HH VRA as within the Temescal Mining District, and overlaying known mineral resources of porphyry and granite (note: see **Figure B.5.5.1** for the location of the HH VRA relative to this map and **Figure 5.5.2** for an understanding of the regional mineral operations within the Temescal Mining District**)**.[44]

Figure 1 – Map of Temescal Mining (Tin) District: 1890



Common ownership of such a regional-scale mineral resources area facilitated development of mineral resource operations across broader areas that are today separated into multiple, distinct legal parcels or tracts owned by different entities, but historically operated as a single "site," owned by a single entity. The HH VRA thus functioned, at that time, in a manner that often supported mining activities occurring on what are now neighboring mining sties.[45] These support activities included establishing mining haul roads (which constitute surface mining activities) as a transportation conduit between areas on either side of the HH VRA.

---

[43] As described in detail below, the specific mineral resources RRM's predecessors developed included (i) porphyry rock; (ii) multiple varieties of fire clay (including high-aluminum content clay); (iii) granite; (iv) tourmaline and associated tin oxides; (v) copper prospects; and (Vi) other high quality rock varieties. *See* Exh. C 3.6; *see also* Exh. 2.21 (describing geology of Temescal Tin District); Exh. 2.8 (describing geology and mineral resources of Temescal Mining District).

[44] Exh. 2.21.2.

Viewed in that context, it is not surprising that the 132-acre S-4 VRA is only one of many vested mining properties or operations surrounding and within the HH VRA, originally within the historic Temescal Mining District, as depicted in **Figure B-5.7**.[46] Thus, confirming RRM's vested rights across the HH VRA can be viewed more like filling in a gap between present-day vested areas, all of which were part of the historic Temescal Mining District, and all of which the County has previously confirmed as vested mining sites. A summary of the pre-Establishment Date activities occurring across the larger Temescal Mining District are described below.

b. 1880s – 1925: Regional Mining Operations Within the Temescal Mining District That Occurred Directly On the Future HH VRA

Surface mining operations that occurred directly within the HH VRA that supported larger operations within the Temescal Mining District included:

i. Tin Mining and Prospecting: As discussed n **Section V.B.1,** *infra***,** beginning in the 1880s, extensive tin mining operations occurred just to the northeast of the HH VRA. However, some exploration, prospecting, and hand mining also occurred in the northeast corner of the HH VRA, as depicted in **Figure B-3.4** (depicting the HH VRA's interaction with regional mining operations), and **Figures B-3.1, 3.3, and 4.6.1, 4.6.2, and 4.6.1** (depicting the disturbances within the HH VRA) and **Figures B-6.1 and 6.2** (depicting LiDAR images and aerial photographs of the disturbances). These efforts resulted in surface mining disturbances for tin (found in the tin-bearing tourmaline surface veins and outcroppings). These surface disturbances were in conjunction with exploration and developed across approximately fifty veins within the Temescal Mining District.[47]

ii. Borrow Pits: Between 1917 and 1923, multiple borrow pits, located within the HH VRA, but outside the S-4 Area, were established to provide material necessary to maintain and improve the interior haul road connecting the adjacent Cajalco Tin Mine to destinations across and on the other

[46] *See* discussion in **Section V.D.1,** *infra*.

[47] Exh. C-2.6, at p. 506.

side of the HH VRA, as depicted in **Figures B-3.1** and **B-4.5**.[48]

iii. Clay Pit Mining: In the early 1900s, clay pit mining to the west and south of the HH VRA, including within the southwestern corner of the Sobrante, as depicted in **Figure B-3.4**, provided a source of fire clays to the region's multiple ceramics manufacturers.[49] These pits used a mine haul road through the HH VRA to reach the ATSF Railroad tracks, until that Railroad completed a spur line in the late 1920s.[50] Like the tin mine haul road, this clay mine haul road used the HH VRA as an access point to move mined materials to market.

iv. Porphyry Rock Quarry: Beginning around 1911, a porphyry rock quarry was established within the HH VRA, along the east side of Temescal Wash (on the western edge of the HH VRA), as depicted in **Figure** B-3.1. This quarry would be expanded by 50% in the late 1920s under Peacock's ownership to provide railroad track ballast, described in **Section D.1.a**, *supra*.

c. 1880s – 1925: Regional Mining Operations Within the Temescal Mining District Proximate to, But Supported by, Activities in the Future HH VRA

Surface mining activities on the HH VRA that supported regional mining operations on adjacent or surrounding lands, all under common ownership of the Sobrante owners, and all within the Temescal Mining District, included:

i. Adjacent Tin Mining Supported by HH VRA Haul Road: The Temescal Mining District accommodated the only tin mine with any significant production in the United States, known as the Cajalco Tin Mine, which was primarily located immediately adjacent to, and northeast of, the HH

[48] Exhs. C-3.18, 3.23, 3.27 (describing restoration work of tin mine haul road).

[49] Exh. C-3.15 ("Santa Fe Considering Temecula Canyon Road")

[50] Exh. C-3.36 ("Corona Santa Fe Asks to Lease Proposed Railway," Corona Courier (May 14, 1926) (describing proposed construction of 14.6 mile railroad along Temescal Wash connecting Alberhill with ATSF's then end-of-the-line **at** Porphyry/Cajalco Canyon)

VRA (although, as discussed above, a portion of the mined area extended onto the northeast corner of the HH VRA). Surface excavations, exploration, smelting, and production occurred during periods of high tin demand, including 1891-1892 and 1917-1923. In 1927, work around the Cajalco Tin Mine was restarted, with significant restoration work of the existing infrastructure. Work was halted in 1929 because of the Great Depression.[51] From approximately 1940 through 1946, work at the Cajalco Tine Mine restarted yet again to assist the United States war effort, with an area of six square miles centered around Cajalco Hill surveyed, examined, and excavated to determine the viability of developing domestic tin production, as depicted in **Figures B-3.4**, **B-3.5, B-5.7, and B-5.8**.[52]

A critical mining haul road was constructed across the HH VRA to transport refined ore and produced tin bars (which were displayed in exhibitions as far afield as San Francisco and Paris) to the ATSF siding located at the mouth of Cajalco Canyon, near the northwest corner of the HH VRA (*i.e.*, on the other side of the HH VRA from the tin mine).[53]

ii. Regional Mining Agreement: In the 1910s, to further exploit their land and mineral resources, the Sobrante owners entered into an agreement with a group of investors, including preeminent banker and former Corona mayor, E.J. Genereaux ('**SJL Agreement**"), further demonstrating early intent to dedicate its land within the Temescal Mining District, including the HH VRA, to mining activity

---

[51] Exh. C-2.16 (briefly describing the periods of tin mine production and restoration); Exh. C-2.14 (stating that, as of 1941, work at the tin mine was halted in 1929); *see also* Exh. C-3.45 ("Community Chatter," CORONA DAILY INDEPENDENT (Feb. 7, 1928) (stating that "day and night shifts are being operated at the tin mine," just prior to onset of Great Depression).

[52] Exh. C-2.16 (describing work done at tin mine to assist war effort); *see also* Exh. C-2.13, pp. 290-291 (describing Cajalco Tin Mine's strategic value).

[53] *See Hansen*, 12 Cal.4th at 554-558 (finding that haul roads constitute "surface mining activities," and relying on cases finding that haul roads and access roads must be considered in determining whether a property has been appropriated for mining)

(including advertising that same land for mineral development).[54]

iii. Adjacent Silica Operations: Adjacent to the western edge of the HH VRA lay the P.J. Weisel (later, the Owens-Illinois) silica sand surface mining operation, which beginning in the early 1920s, established silica sand mining along Temescal Wash, bordering the HH VRA. As production (and pits) expanded, the P.J. Weisel Facility became the single largest producer of glass-grade silica sand in California. In 1945, P.J. Weisel sold the operation to the Owens-Illinois Glass Co., which continued to expand production and facilities on the site, including construction of linkages between the sand silica operation and the HH VRA, as depicted in **Figures B-3.6** and **B-4.8, 4.14, and B-4.20**, which show the interaction between the silica sand plant and the HH VRA.

Figure B-3.6 depicts the overall regional mining encompassing the silica sand facilities, connected via the Tin Mine Haul Road through the HH VRA to the tin mine, which provided the sand silica operation with materials (primarily decomposed rock and tin oxides) from the tin mine for use in manufacturing silica glass products (particularly during World War II), ***and*** allowed the Weisel operation access to haul roads accessing the ATSF Railroad, thereby increasing the output of silica sand to market.[55]

d. A Network of Mining Haul Roads Through the HH VRA Connected the Temescal Mining District as a Regional Mining Resources

i. The network of private mining haul roads in the Temescal Mining District, including multiple haul roads across the HH VRA, identified in **Figures B-3.7** and **3.8,** provided access to the Corona-Elsinore Highway, as well as the ATSF Railroad, thus allowing the mining operations to supply

[54] Exh. C-3.18 (describing the agreement, and multiple mining operations anticipated throughout the property and stating Genereux "had spent half a day in the [Temescal] mineral district and stated … he was able to trace the tin ore outcroppings" for five miles).

[55] The development of these facilities is discussed in detail in **Section V.D.2**, *infra*.

both (1) local manufacturing operations along the Temescal Wash (on the western edge of the HH VRA]), such as the P.J. Weisel, Liston Brick Co., and Gladding, McBean and Company ("**Gladding**") ceramics plants, and (2) export throughout southern California. These haul roads helped establish the HH VRA and the adjacent operations as a central mining area, one that Peacock, and later Harlow, would utilize to develop the HH VRA into a singular mining property.

E. The Historical Evidence Supports Findings of Vested Rights Across the Entire 792-Acre HH VRA

Based on the cumulated evidence above, and applying the legal standards discussed in Section II, *infra*, there is a preponderance of evidence to support the following conclusions and findings:

1. Prior to vesting in 1949, there were 24 documented distinct mining sites, and numerous mine haul roads throughout the HH VRA, for a total of at least 39 distinct surface mining activities that occurred within the HH VRA, as depicted in **Figure B-3.3.**[56] The activities included surface mining activities associated with tin mining, clay mining, and rock, sand, and gravel mining.

2. There were also dozens of pre-1925 regional surface mining operations that originated from the Sobrante owners' broader, regional mining development, as depicted in **Figure B-3.6.**

3. Following vesting and up to enactment of SMARA in 1976, an additional 23 mine sites were documented within the HH VRA, none of which had permits otherwise required after 1949, including surface mining activities associated with rock, sand, and gravel, as well as clay, mining, as depicted in **Figure B-3.8**.[57]

4. Overall, almost two-thirds of the entire HH VRA has already been disturbed or impacted by mine operations or support activities (haul roads, etc.) Approximately 486 acres (61.3%) of the 792.22 acre HH VRA

[56] Declaration of Sage Thurmond ¶ 7.

[57] *Id.*

has been disturbed by surface mining operations and ancillary surface mining activities.[58]

5. The extensive geographic scope of the surface mining activities, both before and after vesting in 1949, demonstrate an objective manifestation of intent to mine the entire 792.22 acres.

6. Beyond the actual surface mining activities across the majority of the HH VRA at one time or another, there is extensive evidence of an intent that the entire HH VRA was fully appropriated for mining activities, based on (i) its location within the Temescal Mining District overlying known mineral reserves (particularly of porphyry rock), (ii) Peacock's reservation of all minerals starting in 1925; (iii) the evaluation of mineral reserves through the property as early as 1938, and (iv) efforts of RRM's predecessors to accurately map the full extent of mineral property across the entire HH VRA, including Harlow's 1948 ROS.

Thus, under all applicable legal standards, there are vested rights to mine the entire 792.22 acres of the HH VRA.

III. LEGAL REQUIREMENTS TO ESTABLISH VESTED RIGHTS

This Section details the legal principles that underlay RRM's Request for Determination. The County's evaluation of the facts and substantive issues underlying RRM's Request is governed by constitutional principles, as implemented and interpreted by SMARA (including Section 2776), and several key cases. The County's Ordinance 555.20 incorporates the principles of SMARA Section 2776, and also sets forth the process to consider RRM's RFD.

A. Constitutional Principles Protect Vested Rights

The vested rights doctrine is based in constitutional principles, namely, the recognition of a constitutionally-protected real property right as applied to existing or established uses of land.[59] This protection typically requires a zoning ordinance or other land-use regulation to operate ***prospectively***. In contrast, a zoning ordinance or other land-use regulation that operates ***retrospectively*** may impinge on constitutional rights by

[58] Exh. D-2.

[59] *See* U.S. Constitution, 5th Amend.

> "effect[ing] 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 . . . may be invalid as applied to that property unless compensation is paid."[60]

This principle causes virtually all state and local zoning ordinances to be drafted and operate ***only*** in a prospective manner, and utilize "grandfathering" provisions that exempt lawful, pre-existing uses from late-enacted restrictive zoning ordinances, in order to avoid the potential to effectuate a "taking." Furthermore, where there is any ambiguity as to whether a zoning ordinance exempts pre-existing uses, courts will adopt any reasonable interpretation of such ordinance in favor a of such an exemption to avoid a "taking."[61]

B. A Constitutionally-Protected Vested Right Is Established When An Ordinance is Enacted Restricting a Lawful, Pre-existing Use

As a matter of law, a vested right is the right to continue an established, nonconforming use upon the enactment of a statute or regulation that would otherwise render that use impermissible:

> "[a] nonconforming use is a lawful use existing on the effective date of a new zoning restriction and continuing since that time in nonconformance to the new restriction . . . As such, it constitutes an automatic exemption from the terms of a comprehensive zoning ordinances and does not have to be applied for."[62]

This is true even where an ordinance requires a permit, rather than an outright ban on the use. Moreover California courts have repeatedly held that principles of estoppel protect vested rights.[63] Estoppel is an equitable or "fairness" principle that bars a party from making an allegation or a denial that contradicts what it previously stated as the truth, where another party has relied on that prior statement. In the context of land use regulation, estoppel may be asserted against a governmental agency where a party has relied on a representation or promise from the agency to its detriment. Thus, "[t]he

---

[60] *Hansen Bros. Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533 ("*Hansen*"), *citing Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 559.

[61] *See, e.g., Edmunds v. County Los Angeles* (1953) 40 Cal.2d 642, 651.

[62] Longtin, California Land Use, 2d Ed., § 3.80[4].

[63] *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339.

foundation of a vested rights doctrine is estoppel which protects a party that detrimentally relies on the promises of government."[64]

Though RRM does not formally assert estoppel herein as a basis for the County to confirm its vested right, principles of estoppel – essentially equitable or fairness principles – are relevant in the context of the County's repeated historical determinations and representations relating to RRM's vested rights. These representations are discussed in **Section** III, *infra*. It is important for the County to keep these principles in mind when reviewing the historical record of operations within and adjacent to the HH VRA, as well as the County's actions relating to RRM's existing vested rights.

C. California Law, including SMARA Section 2776, Recognizes Vested Rights

In 1975, California enacted the Surface Mining and Reclamation Act of 1975 ("**SMARA**"),[65] which took effect on January 1, 1976. SMARA generally requires that a mine operator obtain a permit to conduct surface mining operations, and defines a "permit" as "any authorization from, or approval by, a leady agency, the absence of which would preclude surface mining operations." Surface mining operations is defined as "any part of the process involved in the mining of minerals on mined lands . . .".[66]

The Legislature specifically recognized the principle of protecting preexisting mining uses when it noted that "[i]t is not the intent of the Legislature by the enactment of [SMARA] to take private property for public use without the payment of just compensation in violation of the Constitutions of the United States and California."[67] Accordingly, under Section 2776 of SMARA, mining operations with a vested right are not required to obtain a permit:

> 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

---

[64] *Monterey Sand Co. v. California Coastal Comm'n* (1987) 191 Cal.App.3d 169, 177.

[65] Public Resources Code § 2710 *et seq.*

[66] Public Resources Code § 2732.5.

[67] Public Resources Code § 2713.

> as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter.[68]

SMARA defines the criteria for a vested right as follow:

> A personal shall be deemed to have such vested rights if, prior to January 1, 1976, [they have] in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor.[69]

Based on this, a SMARA-based vested right can be established in one of two ways:

1. By means of surface mining operations conducted as a "conforming" use under local regulation, (*i.e.* a legal use that operated under a valid permit) when SMARA became effective on January 1, 1976; or

2. By means of surface mining operations conducted as a legal "non-conforming" use on or prior to January 1, 1976 (*i.e.*, a legal use that became exempt from the requirement of a permit under a local ordinance enacted prior to SMARA).

As will be discussed throughout this Request for Determination, RRM asserts a vested right primarily under the second category, *i.e.*, based upon a legal, non-conforming use established prior to January 1, 1976.

D. Enactment of a Local Land Use Regulation Requiring a Use Permit May Create an Establishment Date Before January 1, 1976.

The date by which a non-conforming use can be established as a vested right (known as the "**Establishment Date**") can be prior to 1976 (although never later than 1976), where there is some form of local land use regulation (*i.e.*, a zoning ordinance) requiring a permit to conduct mining operations. Where there is such an ordinance, the Establishment Date for the vested right is the date where the restrictive ordinance is enacted.[70]

California law is clear that even where an ordinance does not specifically identify the criteria necessary to establish vested rights, "[t]he rights of users of property as those

---

[68] Public Resources Code § 2776.

[69] Public Resources Code § 2776

[70] Longtin, California Land Use, 2d Ed., § 3.80[4].

rights [exist] at the time of the adoption of a zoning ordinance are well recognized and have always been protected."[71] Thus, the Establishment Date of vested rights can occur before 1976 in those jurisdictions where a permit to mine was required by local regulation. As discussed below, the seminal California Supreme Court case on vested rights in the mining context, *Hansen Bros.*, involved an Establishment Date over 20 years prior to the enactment of SMARA.

E. Key Substantive Factors Affecting the Establishment and Scope of Vested Rights as Articulated by *Hansen Bros. Enterprises, Inc. v. Board of Supervisors of Nevada County* and Other Authorities

In *Hansen Bros.*, the California Supreme Court interpreted both the necessary elements of a vested mining right, as well as the provisions of SMARA Section 2776. The 1996 *Hansen Bros.* decision is the leading California case on the substantive elements of vested surface mining operations and provides the underlying basis for many of the factors for determining both the "establishment" and "scope" of a vested right. A discussion of key principles established in this case is thus instructive in analyzing the factual record in RRM's RFD.

1. Background

Hansen Brothers owned the Bear's Elbow Mine, an aggregate business on a 67-acre tract of land. Historically, most of the aggregate were mined from replenishing supplies from a riverbed (because this was the most economical source), but a smaller portion was quarried from a hillside a few hundred feet away. The Hansen Brothers' production of aggregate had been continuous since 1954, from both the riverbed and the quarry.[72] During the 50 preceding years, including 8 years before the Hansen Brothers acquired the operation, approximately 209,000 cubic yards had been mined from the quarry out of a total reserve of approximately 5 million cubic yard, an extraction of about 4%.[73]

In an attempt to comply with SMARA, the Hansen Brothers submitted a reclamation plan for the mine, claiming a vested right to mine and quarry based on the 50 year history of surface mining operations prior to the enactment of SMARA. Nevada County determined that the Hansen Brothers' vested rights had terminated because of infrequent and sporadic quarrying from the hillside, which it found to be distinct from the mining of aggregate in the riverbed. The County also found that "expanding"

---

[71] *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651.

[72] *Hansen*, 12 Cal.4th at 543-546.

[73] *Id.* at 546.

mining to the hillside quarry would be an impermissible expansion of whatever vested rights remained.[74] Although the Superior Court and Court of Appeal did not recognize the Hansen Brothers' vested rights to mine, the Supreme Court disagreed and reversed, holding that vested rights did exist.

2. Key Substantive Issues that Must be Addressed in Assessing a Vested Right

Hansen Bros. covers the following key legal principles:

a. The "Diminishing Asset" Doctrine Determines the Geographic Scope of a Vested Right

The general rule in California is that, a legal, non-conforming use may continue in its current footprint, but may not expand that footprint, following the adoption of a statute or regulation without the need to obtain a permit.[75]

Hansen Bros., however, clarified the application in California of the "diminishing asset" doctrine, as an exception to this general rule with respect to vested rights for mining operations, because mining operations are a consumptive (i.e., diminishing) use, and the expansion of a mining operation to previously unmined lands is necessary in order to continue the business. The "diminishing asset doctrine" acknowledges that an owner cannot mine an entire property at once (whereas a property owner with a building could, in fact, build it all at once), and thus has the right to expand its operation to mine additional areas after the operation becomes non-conforming.[76]

Hansen Bros. also recognized that the diminishing asset doctrine's "applicable rule" was previously articulated in *McCaslin v. City of Monterey Park:*[77]

> The **very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed.** A mineral extractive operation is susceptible of use and has value only in the

---

[74] *Hansen*, 12 Cal.4th at 547-551.

[75] *See Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651.

[76] *Hansen*, 12 Cal.4th at 553.

[77] (1958) 162 Cal.App.2d 339.

> place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose.[78]

The *Hansen* Court noted that under McCaslin "'[a]n ***entire tract*** [of land] is generally regarded as within the exemption of an existing nonconforming use, **although the entire tract is not so used at the time of the passage or effective date of the zoning law.**'"[79] The *McCaslin* Court properly noted that the entirety of a property (*i.e.*, "tract") is devoted to mining and thus generally within the scope of a vested right, regardless of whether it was actively mined at the time the operation became a non-conforming use. Indeed, citing a line of prior cases, the *McCaslin* Court noted that "'**Quarry property is generally a one use property.** The rock must be quarried at the site where it exists or not at all.'"[80] This language suggests that in considering a vested right in the mining context, the appropriate scale is to consider the entirety of land, *i.e.*, the "quarry property," to assess the scope of the vested right.

The *Hansen* Court clarified 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 . . . 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."[81]

b. Where "Objective Manifestations of Intent" to Mine Previously Un-Mined Areas of a Parcel or Tract Are Demonstrated, the Entire Parcel or Tract is "Appropriated for Mining"

The *Hansen* Court clarified that application of the "diminishing asset doctrine" thus requires the operator to demonstrate "objective manifestation of intent" to mine a previously un-mined area at the time that the operation became vested:

> When a mining or quarrying operation is a lawful nonconforming use, progression of mining or quarrying activity into other areas of the property is not necessarily a prohibited expansion or change of location of the non-conforming use. **When there is objective evidence of the owner's intent to expand a mining operation,**

---

[78] *Id.* at 349 (emphasis added).

[79] *Hansen*, 12 Cal.4th at 554, *citing McCaslin*, 163 Cal.App.2d at 349 (emphasis added).

[80] *McCaslin*, 163 Cal.App.2d at 349.

[81] *Hansen*, 12 Cal.4th at 555-56.

> **and that intent existed at the time of the zoning change, the use may expand into the contemplated area.**[82]

However, the *Hansen* Court also relied on an Illinois case holding that the entirety of the land need not be excavated for the vested right to apply to its entirety"

> The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective. Thus, in *County of Du Page v. Elmurst-Chicago Stone Co.*, *supra*, 165 N.E.2d 310, while the court applied the 'diminishing asset' doctrine to a parcel of land from which aggregate was mined, **it described the rule as permitting use of all the land** "which contains the particular asset and which constitutes an integral part of the operation," (*id.* at p. 313) and held that the owner was using all of its 40-acre tract which contained gravel and aggregate, notwithstanding the fact that the entire tract was not yet under excavation. (*Ibid.*)[83]

Indeed, under *Hansen* and the cases discussed therein, an objective manifestation of intent to mine previously un-mined lands may also be shown by demonstrating that those lands had been "**appropriated**" to mining or were part of the overall mining operation, *i.e.*, serving ancillary uses, etc.[84] The *Hansen* Court noted that the "determining factor" in addressing the scope of a vested right under the diminishing asset doctrine 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 [mine] property was **appropriated** to [mining and quarrying] use prior to the adoption of the restrictive zoning ordinance.[85]

---

[82] *Id.* at 553 (emphasis added).

[83] *Id.* at 557 (emphasis added).

[84] *Id.* at 556-558.

[85] *Id.* at 557, *cited Stephan & Sons v. Municipality of Anchorage* (Alaska 1984) 685 P.2d 98, citing 6 R. Powel, the Law of Real Property ¶ 871[3][iii] at 79C-178-179 (Rohan rev. ed. 1979 (emphasis added).

Thus, the "use" of the property at the time the use became non-conforming is the key inquiry. If the entire property is used for mining and mining related purposes, regardless of whether some areas remain "open space," the vested right will extend to the entirety of the property, as clarified by the *Hansen* Court:

> [i]n determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be considered. '[O]ne entitled to a nonconforming use has a right to . . . engage in uses normally incidental and auxiliary to the nonconforming use . . . . Furthermore, open areas in connection with an improvement existing at the time of adoption of zoning regulations are exempt from such regulations as a nonconforming use if such open areas were in use or partially used in connection with the use existing when the regulations were adopted.[86]

An Illinois Supreme Court case discussed by *Hansen* perhaps best summarizes the logic of this approach:

> We think that in cases of a diminishing asset the enterprise is 'using' all that land which contains the particular asset and which constitutes an integral part of the operation, notwithstanding the fact that a particular portion may not yet be under actual excavation. It is in the very nature of such business that reserve areas be maintained which are left vacant or devoted to incidental uses until they are needed. Obviously, it cannot operate over an entire tract at once.[87]

c. "Objective Manifestations of Intent" to Mine Previously Un-Mined Areas Can Include Incidental or Auxiliary Uses Such as Haul Roads or Other Elements of the Whole Operation

As examples of when non-mined lands were included within the scope of vested rights under the diminishing asset doctrine, the *Hansen* Court surveyed various cases from other jurisdictions regarding what might constitute an "objective manifestation" of

---

[86] *Hansen*, 12 Cal.4th 566.

[87] *Id.* at 555, *citing County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 165, N.E.2d 310, 313.

intent to mine a previously unmined area. The Court's survey identified several criteria or factors they considered, including whether the un-mined lands were used incidentally or in an auxiliary fashion for surface mining operations.[88]

In *Hansen Bros.*, the court found that mining and related activities may be conducted on all lands previously used in connection with mining operations,[89] and the court specifically noted that use of the land for **haul roads** is a mining use that gives rise to a vested right. There is considerable law holding that the existence of haul roads demonstrate that a property was appropriated for mining activities.[90]

Thus, the "diminishing asset" doctrine requires that an operator demonstrate an objective manifestation of intent at the time the operation becomes vested to mine areas that previously were un-mined. An "objective manifestation" may be demonstrated by specific evidence, or where a tract of land has been "appropriated" to mining uses. As detailed in **Section IV**, the HH VRA was entirely "appropriated" to mining uses.

d. A Vested Rights Determination can "Look Back" at the Entire History of Mining at the Site Prior to the Establishment Date to Determine the Scope of Vested Rights

In evaluating the nature and scope of surface mining activities on a tract prior to the Establishment Date, California courts have held that such evaluation is not limited only to the activities occurring at, or immediately before, the Establishment Date. Rather, the evaluation can encompass (or "**look back**" at) the full scope of relevant mining activities that occurred at the site prior to the Establishment Date. In *Hansen Bros.* the court held that the entire, historic operation must be considered in determining the scope of a vested right.[91] Indeed, the *Hansen Bros.* Court made clear that in the surface mining context, the overall pre-SMARA history of surface mining

---

[88] *Hansen*, 12 Cal.4th 565-566

[89] *Id.* at 554-558.

[90] *County of DuPage v. Elmhurst-Chicago Stone Co.*, *supra*, 18 Ill.2d 470, 164 N.E.2d at 313 (plot of land found to be devoted to excavation based on numerous switch tracks, even though material had not yet been removed from entirety of land); *Syracuse Aggregate Corp. v. Weise* (App. Div. 1961) 51 N.Y.2d 278, 434 N.Y.S2d 150, 414 N.E.2d 651, 655 (service roads throughout the property, coupled with other features, "manifest[ed] an intent to appropriate the entire parcel to the particular business of quarrying"); *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah 2d 329, 431 P.2d 559 (land was integral part of gravel operation based, in part, on existence of multiple haul roads connecting it with other mining property).

[91] *Hansen*, 12 Cal.4th at 573.

operations (which in other administrative proceedings before the SMGB included activities that occurred more than 70 years prior to SMARA) must be considered in evaluating the vested right, not just a "snapshot" of time at or just prior to 1976. The rule is grounded in the principle that vested rights "run with the land" meaning that successive owners succeed not only to a purchased business, but to the rights and privileges that apply to that business under the vested rights doctrine. Thus the buyer of a property is entitled not just to the seller's vested right, but also to the benefit of the mining history prior to the date the mining use became nonconforming.

The factual history in the *Hansen Bros.* case is instructive. In that case, the Hansen Bros. purchased their mine in 1954 from predecessors who operated it starting in 1946. The Court held that the Hanson Bros. were correct in asserting the relevance to the vested right of the Bear's Elbow Mine, established by their predecessors a decade before they acquired the operations.[92]

This rule also takes into account that mining economics are cyclical, and from time to time economics can either encourage or discourage mining activities. Thus in other vested rights determination proceedings before the SMGB, it has been held that even if there were no mining or processing activities on or near the Establishment Date, all surface mining activities conducted prior to that time are relevant to assessing the scope of what was vested in 1948. Accordingly, in RRM's case, all of the activities at the HH VRA from the 1880s through December 31, 1948 would be relevant to assessing the scope of vested rights established in 1948.

Another case, *Paramount Rock Company, Inc. v. County of San Diego* (1960) 180 Cal.App.2d 217 ("*Paramount*") addressed the required "look back," based on the types of historic operations encompassed by a vested right.[93] In the context of *Hansen Bros.*, a vested right includes evaluating all uses and activities that had occurred on site before the Establishment Date.[94]

e. The Overall Business Operation Must be Considered When Assessing the Scope of Mining Activities Encompassed by a Vested Right

In determining that the Hansen Brothers' vested right included the right to conduct both riverbed mining for sand and gravel, and hillside rock quarrying, the *Hansen* Court stated directly that the overall business itself must be considered, and that all

---

[92] Hansen, 12 Cal.4th at 561.

[93] *Paramount Rock,* 180 Cal.App.2d at 217.

[94] *Id.*

"ancillary" and "auxiliary" uses falling within that overall business are included within the scope of the vested right:

> In determining the use to which the land was being put at the time the use became non-conforming, the overall business operation must be considered. '[O]ne entitled to a nonconforming use has a right to . . . engage in uses normally incidental and auxiliary to the nonconforming use but, **one who engages in a nonconforming use has the right to engage in uses normally incidental and auxiliary to the nonconforming use.'**[95]

Based on the principle, the *Hansen Brothers*' Court ruled that it was error by the Planning Commission to treat one form of mining activity (*i.e.*, a stream bed surface mining operation) as ***separate*** from another form of mining activity (*i.e.*, surface mining operations in a hard rock quarry), even though, as the Court plainly noted, "[t]he mining and quarrying methods also differ."[96] Instead, the Supreme Court stated that the "nonconforming use of the property has always been the operation of an aggregate production business, of which mining for the components is an aspect."[97] The Supreme Court went on to conclude that the "mining uses of the Hansen Brothers' property are incidental aspects of the aggregate production business."[98]

Extending this logic, the Court clarified that a vested right includes the right to all the uses to which the land was being put at the time the use became nonconforming.[99] The Court stated:

> We have found no authority for refusing to recognize a vested right to continue a component of a business that itself has a vested right to continue using the land on which it is located for operation of the business. An aggregate business does not differ from other land uses simply because mining for some or all of the materials that comprise aggregate is a component of the business. Unless an independent aspect of the business has been discontinued, the use may not be broken down into component

---

[95] *Hansen*, 12 Cal.4th at 565 (emphasis added).

[96] *Id.* at 567.

[97] *Id.* at 565.

[98] *Id.* at 566.

[99] *Id.* at 565-566.

> parts and vested rights for less than the entire business operation.[100]

The Court thus clearly established that a vested right in the surface mining context includes all activities that were part of the business operation prior to it becoming a non-conforming use. The Court held that:

> We also conclude that the nonconforming use which Hansen Brothers may claim a right to continue is the **aggregate production business** that was being operated on the property its predecessors owned in 1954 when the Nevada County zoning ordinance was adopted. That business, and the nonconforming use, include all aspects of the operation that were integral parts of the business at that time, including mining replenishable materials from the riverbed and banks and quarrying rock from the hillside; crushing, combining, and storing the mined materials which compose aggregate; and selling or trucking the aggregate from the property.[101]

The *Hansen Bros.* Court clarified that a vested aggregate operation will include, as a matter of right, all ancillary aspects of the business conducted as of the time it become a nonconforming use, including (1) mining, (2) processing, (3) stockpiling/storing, (4) trucking, and (5) selling. As discussed in **Section III.C.** below, the prior County determinations of vested rights relating to the S-4 VRA, in the S-1, S-2, and S-4 approvals, confirm the scope of vested mining operations, which RRM requests be extend to the entire HH VRA.

f. A Vested Mining Operation Must Not Undergo a "Substantial Change"

Section 2776 of SMARA allows a vested mining operation to continue without a permit "as long as no substantial changes are made in the operation." "Substantial change" is not defined or addressed in the statute or the implementing regulations. However, *Hansen* does provide guidance on the issue.

In assessing the vested right of the Hansen Brothers, the Court addressed whether the "proposal for future quarrying would be an impermissible intensification of its

---

[100] *Hansen*, 12 Cal.4th at 566.

[101] *Id.* at 543 (emphasis added).

nonconforming use."[102] It is clear from the Court's discussion that determining whether a mining operation has undergone "impermissible intensification" is really an assessment of whether the operation has undergone a "substantial change," in a manner that would exceed the scope of its vested right. The *Hansen* Court, after reviewing a variety of cases, set forth two factors that may be assessed:

1. Does the operation involve a substantially new use, which exceeds the scope of the original vested right?

2. Has the operation intensified, *i.e.*, increased its volume of production such that the "character or purpose" of the vested right has been changed?

As discussed in **Section VI**, this RFD seeks only to confirm the application of the existing vested right for the S-4 VRA, recognized and confirmed no less than five previous times by the County, to the entire 792.22 acres of the HH VRA. This RFD does not request the County to (1) make a new determination regarding the scope of use; (2); to change the previously made determinations relating to the current scope of use of the existing vested rights; or (3) authorize a change the intensity of the existing vested right.

g. A Vested Right Is Only Abandoned if there is Both an Intent to Abandon and an Overt Act of Abandonment

In *Hansen*, the Supreme Court overruled the Planning Commission's finding that any use of the property had been discontinued. Discontinuance – in the sense of abandonment – requires both an intent to abandon, ***as well as*** an overt act or failure to act which demonstrates that the owner no longer wishes to continue the nonconforming use. This principle manifests in two primary ways regarding mining operations: (i) all (or portions) of a mining operation may cease for a period of time; and (ii) acts, such as obtaining a permit, do not waive or abandon a vested right unless there is an overt act and intent.

i. The Entirety (or Portions) of a Mining Operation May Cease Without Abandoning or Waiving Existing Vested Rights

With respect to mining operations, it is recognized that there may be periods of inactivity within an mining operation. Such inactivity may affect either the entirety of an operation, or portions of an operation, based on factors such as market conditions, or the existence of adequate existing stockpiles to meet needs until such stockpiles are

[102] *Id.* at 571.

depleted. Thus, it is clear that land subject to a vested right for surface mining may undergo periods of inactivity, even long periods, without impacting thevalidity of the vested rights. .[103]

For example, in *Hansen*, the Court determined that because the riverbed gravel mining operation and the hillside rock quarrying operation were merely different aspects of an integrated "single use," the cessation of use in one aspect did not cause an abandonment of either aspect of the business. The California Supreme Court agreed that the quarry operations had been discontinued, but stated that the overall business operation must be considered as a whole. The Court noted that prior to the enactment of the ordinance which made the use nonconforming, rock was taken from the hillside to produce aggregate, along with sand and gravel from the riverbed. Thus, the Court viewed the operations as interdependent. "Unless an independent aspect of the business has been discontinued, the use may not be broken down into component parts and vested rights recognized for less than the entire business operation."[104] The *Hansen* Court viewed the non-conforming use as the production of sale and aggregate.[105] Importantly, the Court held that because aggregate mining and sale is seasonal and depends on a fluctuating market, sales from existing stockpiles can be sufficient to sustain a vested right in the absence of active mining.[106]

The ruling in *Hansen* demonstrates both that whole of an operation must be considered when evaluating vested rights, and the dormancy of a portion of the operation <u>does not</u> waive or demonstrate an intent to abandon vested rights, as well as the reality that market conditions may cause a mine to cease operations for a period of time but that such a cessation does not waive or demonstrate an intent to abandon vested rights.

ii. <u>Obtaining a Use Permit Does Not Affect a Vested Right</u>

Additionally, the law holds that a vested right is not waived by a subsequently-acquired permit.[107] In fact, the law indicates that when a party with a vested right obtains a CUP after establishing a vested right, that CUP becomes "inextricably intertwined" with the vested right and the party's vested right may be expanded to include the CUP within its scope. In fact, waiver or abandonment of a vested right can only occur if the vested right is <u>known</u>. Simply put, it is impossible to abandon or

---

[103] *Hansen*, 12 Cal.4th at 568-71.

[104] *Id.* at 566.

[105] *Id.* at 569.

[106] *Id.* at 571, n. 30.

[107] (1987) 196 Cal.App.3d at 47, 49-50.

waive a vested right if there is no awareness of a vested right, even if a party has sought or obtained a use permit.[108]

Here, the County has already determined that two use permits (M-404 in 1959 and CU-1146 in 1971), did not impact RRM's vested rights, as discussed below. Because this RFD seeks only to confirm that RRM's existing vested rights encompass the entire 792.22-acre HH VRA, there is no issue relating to the previously issued permits.

h. Vested Rights Are Property Rights that "Run With the Land"

In *Hansen*, the California Supreme Court affirmed unequivocally that a vested right to mine is a property right this is attached to and "runs" with the land, and thus is transferred to another party that acquires interests in that land. "Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land."[109] As a clear matter of law, a vested right is freely transferrable without affecting the underlying right. This principle aligns with the Constitutional protections afforded to vested rights as fundamental property interests, as discussed above.

Moreover, as a policy matter, promoting the transferability of vested rights is particularly appropriate because SMARA has a strong policy to encourage "the production and conservation of minerals …".[110] If vested rights somehow, could not be freely transferred, established mining operations would be bound to the original owner, lest they lose their vested rights upon sale or transfer.

i. The Establishment and Scope of Vested Rights May be Based on the Activities of Contractors and Lessees

The law is clear that a vested right may be established, and its scope defined, based on the activities of a lessee or contractor. In *McCaslin v. City of Monterey Park*, the appellate court determined that a vested right for the mining of decomposed granite had been established based in part on the mining activities of lessees prior to the enactment of the restrictive ordinance.[111] In *Hansen*, moreover, the Court focused on the overall business operation prior to vesting to assess what activities fell within the scope of the vested right. The Court stated, "[i]n determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be

---

[108] *Bickel v. City of Piedmont* (1997) 16 Cal. 4th 1040, 1053.

[109] *Id.* at 593, n. 1, citing *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442.

[110] Public Resources Code § 2712.

[111] 163 Cal.App.2d at 342.

considered."[112] Thus, where a mining business utilizes contractors and lessees as part of its operation prior to vesting, the activities of those contractors and lessees properly form part of the basis of the vested right.

F. Procedural Due Process Requirements to Establish a Vested Right

In October 2000, William Calvert and the Yuba Goldfields Access Coalition filed a lawsuit in Sacramento Superior Court, *Calvert v. County of Yuba*, Sacramento Superior Court Case No. 00-CS-01434, challenging Yuba County's vested rights determinations for six mining operators, which had been confirmed by Yuba County in May 2000. In that lawsuit, the Superior Court found that due process required the County to hold a public hearing when determining due process.

In 2006, the Third District Court of Appeal concluded that the determination of vested rights to conduct surface mining operations in a "diminishing asset" context presented an adjudicative determination that implicates the potential for significant or substantial deprivations of property, thus triggering procedural due process protections: "We conclude that the government determination of … vested rights claim[s] implicates property deprivations significant or substantial enough to trigger procedural due process protections for landowners . . . adjacent to [the] proposed vested rights mining operation."[113] In reaching this conclusion, the *Calvert* court echoed the core precepts set forth in *Hansen*, including that the diminishing asset doctrine allows a mining operation to expand across a property where an objective manifestation of intent to do so is demonstrated.[114]

This legal requirement that a public hearing must be conducted for vested rights determinations in a diminishing asset context, has informed the procedures established by the County's vested rights regulations under Ordinance 555-20.

G. Vested Rights Under the Riverside County Code

In 2019, the County passed Ordinance 555.20 ("**Vested Rights Regulations**"), which establishes a framework to obtain a vested rights determination. Under the Vested Rights Regulations, a claimant must provide a written application with sufficient "information pertinent to establishing the existence and scope of the Vested Right."[115]

---

[112] *Hansen*, 12 Cal.4th at 565.

[113] . *Calvert*, 145 Cal.App.4th at 629.

[114] *Calvert*, 145 Cal.App.4th at 623-24.

[115] Ordinance 555-20, § 17

This regulation echoes the case law discussed above and requires a claimant to submit relevant information sufficient to establish the geographic scope of a vested right.

H. Factors RRM Must Establish in Support of Its Vested Right

Based on the forgoing, RRM must demonstrate the following in support of this Request

(1) That RRM's established vested right to conduct various surface mining operations, as previously confirmed and recognized by the County when it approved CUP 1146, and S-1, S-2, and S-4 encompasses *not just* the 132-acre S-4 VRA, but the entire 792.22-acre HH VRA.

(2) That the scope of vested rights on the 792.22-acre HH VRA is based on:

a. Evidence of "diligently commenced" surface mining operations within and utilizing the HH VRA, begun prior to the Establishment Date (January 1, 1949);

b. **E**vidence of an "**objective manifestation of intent"** to mine areas of the HH VRA that were not previously mined, when the operation became a legal, non-conforming uses**;**

c. Evidence that the un-mined lands were **"appropriated"** to mining, and thus the entire portion of the HH VRA where vested rights are claimed could be mined, *i.e.*, a showing that the nature of the initial nonconforming mining use, in light of the character and adaptability of that use to the entire property, implies that the entire property was appropriate to mining; and

d. Evidence that the "**overall nature of the mining operations**" within the HH VRA demonstrates that the entire geographic scope of the HH VRA was part of a vested mining operation. Note, that in assessing the entire mining operation, it may not be broken down into component or distinct parts.

IV. THE HISTORY OF COUNTY DECISIONS CONFIRMING THE EXISTENCE OF RRM'S VESTED RIGHTS

Prior to the 1949 Establishment Date for vested mining rights in the County (*i.e.*, the date before which surface mining could be conducted in the County absent the need for a use permit and after which a use permit was required for surface mining), the HH VRA was the site for numerous surface mining activities. The scope of these activities,

summarized in **Sections I.D and I.G**, *supra*, and **Section III.A**, *infra*, and described in detail in **Sections IV.B** and **IV.C**, i*nfra*, formed the basis for the County's multiple prior recognitions of RRM's vested rights and will ultimately factor into the determination of the full scope of the vested right that was established in 1949.

Following the Establishment Date, the County recognized the existence of RRM's vested rights when it undertook various actions and approvals related to the HH VRA, as described in **Sections III.C et seq.**, *infra.*

A. Context: Multiple Mining Operations Occurred on the HH VRA Prior to the 1949 Establishment Date .

Prior to the 1949 Establishment, RRM's predecessors-in-interest mined (or allowed to be mined) the HH VRA. Distinct surface mining activities and operations included: (i) quarrying operations to supply track ballast and other material to the ATSF railroad, (ii) quarrying operations by the Pantages Construction Co. to supply high-quality blarney stone to multiple public works projects; (iii) borrow pits for rock, sand, and gravel to aid construction of the public Cajalco Road; and (iv) exploration for exploitable strategic metals (primarily tin and aluminum). A full list of surface mining activities within the boundaries of the HH VRA are summarized in **Table 6**, located in **Section VI**, *infra.*

In addition the above, the HH VRA was also integral to broader, regional mining development. Mining began with sporadic and opportunistic hand-mining operations as early as 1853 – with the discovery of tin around Cajalco Hill, immediately northeast of the HH VRA and identified in **Figure B-3.4**. Concentrated mineral development in the region began in earnest after 1888, as Sobrante owners began developing mining operations within the mineral-rich Temescal Mining District, including (1) the first commercial tin production in the United States; (2) multiple stone and aggregate quarry operations that provided the raw materials to pave the streets of Los Angeles and constructed multiple dams to supply water to the region; (3) southern California's primary silica and sand producers; and (4) multiple ceramics and brick manufacturers. These extensive developments (also summarized in **Table 6**, *infra*) took place for over 60 years throughout and utilizing the HH VRA, prior to the 1949 Establishment Date when the County enacted Ordinance No. 348 (as discussed in **subsection B**, immediately below).[116] The above enumerated "pre-vesting" surface mining activities

[116] Prior to May 9, 1893, the HH VRA was located in San Bernardino County. On May 9, 1893, Riverside County was created assumed jurisdiction of the HH VRA.

thus constitute the baseline scope of activities to appropriately factor into the evaluation of the geographic scope of vested rights within the HH VRA.

B. 1949 Enactment of Ordinance No. 348, the First County Ordinance Requiring Land Use Permits for Mining Operations, and Modifications Thereto through the Present.

In 1949, County enacted the first comprehensive land use regulation requiring County-approvals to conduct mining operations. Ordinance No. 348 was enacted at the first "official land use plan for … the County of Riverside" and rezoned the county. Specifically, Ordinance No. 348 zoned "[a]ll unincorporated territory of the County which is not included under the terms of th[e] ordinance … as M-3 Zone," including the HH VRA. as depicted in **Figure B-5.2.** As a M-3 Zone, Ordinance No. 348 required a "permit" for mining activities, including (1) commercial borrow pits; rock crushers or quarries; and rock, sand, or gravel pits. Thus, from 1949 onwards, the surface mining operations within the HH VRA existed as a legal, non-conforming use.

Ordinance No. 348 clearly and expressly applied to "new" mining operations, *i.e.*, occurring after the effective date of the ordinance, existing operations were exempt from its requirements. This reading is consistent with the basic legal proposition that ordinances generally will not have retroactive effect, or will otherwise risk a "taking." The law is well established that "[i]n the absence of clear and unequivocal language manifesting an intention that an ordinance shall have retroactive operation, such operation will not be presumed."[117] In the case of Ordinance 348, there is no "clear and unequivocal language" that directs or even suggests that it should apply to preexisting uses, but rather strong language indicating the opposite.[118]

Although Ordinance 348 did not identify criteria necessary to establish a vested right under it, the law does not require express recognition of vested rights in an ordinance.[119] In this regard, "'[t]he rights of users of property as those rights [exist] at the time of the adoption of a zoning ordinance are well recognized and have always been protected.''[120] In fact, in this context, the prevailing law in California is that a legal, nonconforming use may be continued without obtaining a conditional use permit, even if the new ordinance directs that the non-conforming use is required to

---

[117] *Biscay v. City of Burlingame* (1932) 127 Cal.App. 213, 220.

[118] Ord. No. 348, § 18.6.

[119] *See Avco Community Developers v. South Coast Regional Comm.*, 17 Cal.3d 785, 791-93 (1976).

[120] *Hansen*, 12 Cal.

obtain a conditional use permit.[121] Indeed, it is long been settled that "when a sand and gravel pit has been in operation prior to the passage of a zoning ordinance and continuously thereafter, a nonconforming use existed and operation of the pit cannot be enjoined."[122]

The County has periodically amended Ordinance No. 348, thereby modifying the zoning of the HH VRA. For example, in 1976, the majority of the site was zoned as W-2, "Controlled Development Area," which also required either a vested right or a conditional use permit to conduct surface mining activities, as depicted in **Figure B-5.3.** Currently, the HH-VRA is zoned as a combination of (i) mineral resources (M-R); (ii) mineral resources and related manufacturing (M-R-A-); (iii) natural asset (N-A), as depicted in **Figure B-5.4**. Like prior zoning designations, the present day zoning requires either a vested right or a conditional use permit to conduct surface mining activities.

Thus, at the time Ordinance 348 was enacted, Leilamae Harlow established a vested right to continue mining operations within the entire 792.22 acres of the HH VRA, a property that was fully appropriated for mining purposes for decades prior to the vesting date. Once established, these vested mining rights perpetuated and allowed surface mining activities to continue within the HH VRA.

C. M-404 (1959)

In 1959, Livingston Rock and Gravel Co. ("**Livingston**"), one of the entities conducting surface mining activities within the HH VRA while the property was under Harlow's ownership, applied for and obtained permit M-3, No. 404 ("**M-404**"), authorizing the operation and maintenance of a rock crusher on the property.[123] Notwithstanding the issuance of the M-404 permit (which further demonstrated the intent to continue surface mining activities within the HH VRA), significant surface mining continued outside the M-404 permit boundaries at that time.[124]

While the M-404 Permit, unlike later County Approvals, is not an explicit confirmation of the scope vested rights within the HH VRA, the continued activities of operators within the HH VRA, outside of the M-404 permit boundaries, demonstrates that the

---

[121] Longtin, California Land Use § 3.80[4] (2d ed. 1994), *citing McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339, *see also Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281.

[122] *McCaslin*, 163 Cal.App.2d at 357.

[123] Exh. C-1.1.

[124] *Id.*; *see also* **Figure B-3.8**.

HH VRA owners were exercising a vested right contemporaneous with the M-404 permit.

D. CU-1146 (1970)

In 1970, Hubbs Construction, a former junior partner in the previous site operators Corona Quarries, Inc. applied for and obtained a conditional use permit to operate a rock crushing and asphalt plant ("**CU-1146**").[125] As the County has previously determined in confirming the vested right for the S-4 area, CU-1146 does not contain any language indicating that the permit was intended to authorize surface mining or other excavation activities – it was solely related to the construction and operation of the crushing and asphalt plan.[126] Furthermore, neither the permit application nor the permit approval contains any language or other information that indicates the permit would affect the existing vested rights (*e.g.*, no statements or conditions limiting mining operations and no expiration date providing for the termination of operations).[127]

Importantly, although CU-1146 was not a mining permit (i.e., it did not authorize surface mining activities) CU-1146 included a site plan, that identified a large area of current or active mining, , much larger in fact than the active mining area identified in the M-404 site plan. The expanded scope in active mining area between 1959 and 1970, *without* any permit authorizing surface mining by the County, is consistent with the exercise of a vested right to continue surface mining operations.

E. RP-118 (1982)

In 1976, the California Legislature enacted SMARA, which required all surface mining operations have both (i) an entitlement to conduct mining activities (permit or vested right) and (ii) a reclamation plan with associated financial assurances.[128] Hubbs and Hubbs Construction had a vested right to mine the site, satisfying the first SMARA requirement, and obtained a reclamation plan in 1982 ("**RP 118**") to satisfy the second. RP 118 expressly recognizes portions of the HH VRA vested right within the context of the overall mining development in the Temescal Mining District, stating

> "The Mining operations being evaluated in this report have been in operation since at least the mid 1950's. The whole region along Temescal

[125] Exh. C-1.2 (CU-1146, May 13, 1970)

[126] *Id.*

[127] *Id.*

[128] Public Resources Code § 27770(a)

> Creek has been mined for nonmetallic mineral commodities since the turn of the century. These Commodities include sand and gravel, clay and rock . . .” (emphasis added).[129]

Although the authors of RP 118 did not identify 1949 as the Establishment Date (but instead relied on 1976, the year SMARA was enacted), RP 118 nevertheless specifically references the existence of a vested right:

> “Based on existing rules and regulations, the operators have a vested right of operations since 1976.”[130]

RP 118 goes on to state that, as currently configured, the active mining area had a “projected operational lifetime” of approximately 20 years, but that “the rock resource adjacent to the quarry could extend the operational lifetime of the quarry. . .”.[131] RP 118 requires reclamation of the entire mined area because “areas mined prior to 1976 are integrally tied to current operations.”[132]

RP 118 and the language therein (i) provides confirmation regarding the existence of a vested right in a County approved-and-issued document and (ii) contains no reference to the scope of land vested beyond the boundaries of the reclamation plan, consistent with the custom and practice to limit the boundaries of the reclamation plan to the areas currently mined, or contemplated for mining within the near future.[133] RP 118, like M-404 and CU-1146, explicitly recognizes the vested rights existing on the S-4 VRA portion of the HH VRA and implicitly acknowledges that the property subject to a vested rights goes beyond the boundaries of both the existing quarry *and* the reclamation plan, by acknowledging that mining expansion outside of the quarry boundaries would require only that “the mining plan [part of RP 118] … be amended” and ***not*** requiring that any expansion be subject to additional permitting.

---

[129] Exh. C-1.3 at p. 1.

[130] Exh. C-1.3 at p. 4.

[131] Exh. C-1.3 at pp 1, 4.

[132] *Id.*

[133] See, *e.g.*, Ordinance 555.20, Section 17.C: ""This Reclamation Plan may cover some or all of the areas to which that Vested Right applies, but, at a minimum, it must cover: all of the area to which a Vested Right has been found to apply on which active mining operations have been conducted after January 1, 1976, as well as the entirety of any area to which a Vested Right has been found to apply that is planned or reasonably anticipated to contain surface mining operations in the near future."

This acknowledgement, particularly in the context of potential future quarry expansion, indicates that the County understood that the HH VRA site, beyond the quarry boundaries, would be able to operate under a vested right.

F. The HH VRA Continued to be Developed as a Mining Property by Hubbs and Related Corporate Entities (1983-2012)

On or around December 20, 1983, Hubbs conveyed the portion of the HH VRA property located east and north of the Hubbs Harlow Quarry to Brion Corporation.[134] From 1983 until 2004, Brion Corporation, and a series of related entities (collectively, "BKS") owned the property.[135] In 2004, BKS conveyed the Brion Parcel to Cajalco Associates; who in turn conveyed the property in 2007 to Corona Twin Creeks, LLC.[136] Corona Twin Creeks, an affiliate of RRM, spent considerable time and effort to develop a phased mining plan for the property.[137] Those development plans were put on hold following the 2008 financial crash, and Corona Twin Creeks, LLC merged with the Corona Cajalco Road Development LP ("**CCRD**"), the current owners, on or around September 17, 2009.[138] CCRD, in conjunction with its affiliate Cajalco Road Quarry ("**CRQ**") lease the HH VRA to RRM. [139]

During this same period, Hubbs retained the then-active Hubbs Harlow Quarry (the "Hubbs Parcel"), operating pursuant to a County-confirmed vested right and the County-approved RP 118.[140] Hubbs owned the parcel until 2006, as which point he conveyed (likely for reasons described in section IV.G, *infra*,) the Hubbs Parcel to Temescal Cliffs, LLC.[141] Temescal Cliffs, LLC sought to develop the site; however, the company promptly failed and entered bankruptcy, during which time CRQ purchased the Hubbs Parcel in 2011.[142] Following CRQ's purchase of the Hubbs Parcel, it lease, in

---

[134] *See* Exh. A-23. The full ownership succession is discussed in **Appendix A**.

[135] Exh. A-24, A-25, A-26.

[136] Exh. A-27, A-28.

[137] Exh. A-34, Declaration of Christine Goeyvaerts, ¶¶ 3-7.

[138] Exh. A-32.

[139] Exh. A-33

[140] Note that some of the area then being an active mining area as a result fell under ownership and control of Brion instead of Hubbs which may be due to an error in plotting the separation boundaries, possibly because of the exceptionally complicated legal description.

[141] Exh. A-31.

[142] Exh. A-32; *see also* Exh. A-34, Declaration of Christine Goeyvaerts ¶ 3-7,

conjunction with its affiliate CCRD, the entire HH VRA to RRM.[143] Thus, from 2011, CCRD and CRQ worked dligently to continue developing of the HH VRA's reserves, as a single, dedicated mining property owned and controlled by RRM.

G. The Hubbs Lawsuit and Settlement (2003-2004)

In 2003, the County filed a lawsuit against Hubbs alleging violations of RP 118, SMARA, and County land use regulation. The parties reached a settlement in 2004 and stipulated to resolve the County's allegations.[144] The 2004 Settlement required certain actions to remediate the site, but also expressly reflected Hubbs' intent to continue surface mining operations at the site. Thereafter, the court entered an order accepting the settlement terms as the order of the court, to resolve the allegations in the Hubbs lawsuit and address then-current hazardous conditions at the site resulting from surface mining operations of that prior operator.

Prior to compliance with that settlement, Hubbs sold the Cajalco Property to Temescal Cliffs LLC. Shortly after the sale, Temescal Cliffs LLC entered into bankruptcy.[145] The property was thereafter acquired by RRM in October 2011.[146]

H. First Amended Judgment and Rec Plan Amendment RCL118-S1 (2013)

Following RRM acquisition of the Cajalco Property in 2011, RRM and the County began discussions regarding appropriate remediation of the mining areas within the S-4 VRA to eliminate significant threats to public health and safety, including unstable slopes and unstable sheer vertical faces.[147] These discussions yielded an amendment to the 2004 settlement, later adopted by the Superior Court as the Amendment to Stipulated Settlement Agreement and Judgment Thereon ("**First Amended Judgment"**), which required RRM to submit a revised reclamation plan known as RCL 118S1 ("**S1**"), revised financial assurances, and conduct surface mining activities within the scope of the approved reclamation plan.[148]

The First Amended Judgment specifically determined that "no use permit or other apprval is required to conduct such activities within the RCL118S1 boundary …

---

[143] Exh. A-33.

[144] Exh. C-1.7

[145] Exh. A-34, Declaration of Christine Goeyvaerts, ¶¶ 3-7.

[146] Exh. A-32.

[147] Exh. C-1.9 at ¶¶ D-J.

[148] Exh. C-1.9 at ¶ L.

because they are substantially within the scope of historic vested mining operaitons on the Real Property."[149]

The need for and purpose of S1 was to address the then-immediate and significant threats to health and safety, including unstable slopes and sheer vertical faces over 300 feet in height. In approving S1 in 2013, the County adopted findings regarding the scope of vested rights to conduct surface mining activities at the site, including that "surface mining activities within the Amendment RCL00181S1 are consistent with the existing vested right confirmed in multiple, historical documents."[150]

I. Second Amended Judgment and Rec Plan Amendment RCL 118-S2 (2017)

On July 14, 2016, the County and RRM entered into the Second Amendment to Stipulated Settlement Agreement and Judgment Thereon ("**Second Amended Judgment**") to further the intent and goals of the 2013 settlement and the First Amended Judgment.[151] The Second Amended Judgment was entered as an order of the court on July 26, 2016. To implement the intent and goals of the Second Amended Judgment, RRM submitted, and on February 9, 2017, the County approved RCL118S2 ("**S2**"), which included an adjustment of reclamation plan boundaries.[152]

The purposes of the Second Amended Judgment and S2 were to ensure compliance with S1 and provided for a re-aligned and upgraded access road and changes to mine operation for safety reasons (*e.g.*, reducing trespass, relocating explosive magazine bunkers, and providing appropriate site grading).[153]

The Second Amended Judgment and S2 again included detailed findings confirming the existence of vested rights within the S-4 VRA, established in 1949.[154]

Furthermore, the terms of the Second Amended Judgment stated that none of the upgraded or modernized equipment or facilities used by RRM changed the original

[149] Exh. C-1.8 at 4:26-28.

[150] Exh. C-1.4.

[151] Exh. C-1.9.

[152] Exh. C-1.9.

[153] Exh. C-1.9 at ¶¶ R, 1-14.

[154] Exh. C-1.9.

vested mining use, and that many of the modernizations and upgrades increased efficiency and environmental conservation of the surface mining operation.[155]

With respect to the scope of operations confirmed under the vested right, S-2 included the following Finding 13:

> "In approving RCL No. 118S1, the County specifically referenced or identified various surface mining activities to be undertaken during mining and reclamation, including crushing, screening, trucking, mining, and related activities historically ongoing at the site which further the existing quarry operations, including a processing plant, screens and conveyors. As determined in the 2013 findings supporting RCL No. 118S1, and as concluded by the Superior Court in the 2016 Second Amendment to Stipulated Settlement Agreement and Judgment thereon, and confirmed herein, such surface mining activities are within the scope of the previously-determined vested right. Furthermore, an owner of vested surface mining operations is allowed to "modernize his operations; change, add to, or increase the size of his equipment (though determined to be structures), even though this increases his input and intensifies the use; provided that by such action, he does not change the original protected nonconforming use." [Citations] . . . Accordingly, none of the recently upgraded or modernized equipment or facilities change the original vested mining use, and in fact many of the modernizations and upgrades increase efficiency and environmental conservation of the applicant's surface mining operation."[156]

J. Rec Plan Amendment RCL118-S4 (2020)

On November 16, 2020, the County approved RCL 118, Substantial Conformance No. 4 (RLC00118S4) ("**S4**"), based on the application submitted by RRM in 2019, for a third amendment to RP 118.[157] The purposes of S4 included (1) adjusting final reclamation contours and apply existing reclamation standards to the full scope of the previously-confirmed vested mining areas, within the existing, already approved 132-acre S2 reclamation boundary; (2) incorporating beneficial reclamation of disturbed areas of

[155] Exh. C-1.9.

[156] Exh. C-1.5

[157] Exh. C-1.6

the site not presently required to be reclaimed; (3) achieving full compliance with two prior settlement agreements and Sirst and Second Amended Judgments.[158]

As stated by the County in its findings approving S-4:

> 5. With the approval of RCL No. 118S2 in February 2017, the County approved a fourth mining-related entitlement that confirmed the areas previously recognized as subject to the vested right include at a minimum the areas located within the CUP No. 1146 and RP No. 118 boundaries. . . . Moreover, equipment upgrades or facility changes do not constitute such an expansion or extension, because an owner of vested surface mining operations is allowed to "modernize his operations," as discussed in the RCL No. 118S2 findings.
>
> 6. Because surface mining activities within the RCL00118S4 area are consistent with the existing vested right confirmed in multiple, historical documents, the County need not make any further determination of the scope of such vested right prior to approval of Amended RCL00118S4.
>
> 7. The applicant has stated that is reserves the right to seek future confirmation of its vested right to mine outside the boundaries of RCL No. 118S4. Should the applicant, in the future, seek to mine outside the boundaries of RCL No. 118S4, it would need to demonstrate the scope of its vested right pursuant to the vested right determination process required by and consistent with the appropriate lead agency surface mining ordinance, such as the County's surface mining ordinance (Ordinance No. 555) . . ."[159]

The instant RFD essentially begins where Finding #7 of the County's S-4 approval leaves off. In the parlance of that finding, the "applicant" (RRM) is now "seeking to mine outside the boundaries of RCL No. 111S4" and therefore has compiled the historical information in this RFD in order to "demonstrate the scope of its vested right" pursuant to the County's vested right determination process.

---

[158] Exh. C-1.6

[159] Exh. C-1.5.

V. THE HISTORY OF MINING OPERATIONS ON AND AROUND THE HH VRA

As discussed in **Section II (Executive Summary)**, *supra***,** properly determining the full scope of vested rights within the HH VRA requires an understanding of (1) the geological and historical context of the mineral region in which the HH VRA is located; (2) how the HH VRA fit within the larger regional mining area and operations that developed between the 1880s up through the time of vesting in 1949; and (3) the scope of surface mining activities occurring directly on the HH VRA from its creation as a distinct 800+-acre parcel in 1925.

A. Historical Context: The HH VRA is Located Within An Area Historically Known for Abundant Mineral Resources Since the Late 1800s

The HH VRA is located in an area known historically as the "**Temescal Tin District**" or "**Temescal Mining District**,"[160] (an area of long-standing historical mining activity in Riverside County. The Temescal Mining District was located south and southeast of Corona and primarily occupying the Temescal Valley and its eastern hills. Within the Temescal Mining District, the HH VRA was located within the western portion of the historic Sobrante land grant, an enormous land grant covering nearly 11 square miles, including and essentially surrounding the HH VRA to the north, east, and south.[161] The regional location of the Temescal Mining District and the HH VRA is shown in **Figure B-5.1**, while details of the Temescal Mining District, Sobrante, and more particularly, the HH VRA, are shown in **Figures B-2.1—2.7, 3.1-3.10, and 5.10.** As discussed in **Section III.A**, it is important to understand how the interrelated nature of the Temescal Mining District with the HH VRA established the scope of the property's vested rights. As discussed in detail in **Sections IV.B and IV.D**, *infra,* the HH VRA comprised a small portion of the Temescal Mining District, one of the more significant, mineral-rich areas in southern California. The District encompasses a variety of valuable minerals including: precious metals, industrial minerals, clays, stone, gravel, sand, and aggregates, and has, for many decades, served as a regional hub that provided the raw materials that helped fuel southern California's growth during the twentieth century. The District continues to supply these building materials and remains a critical, regional hub for mineral supplies.

---

[160] As described in footnote 1 on page 2 of this RFD, the area is referred to as either the "**Temescal Tin District**" or "**Temescal Mining District**." Tin was what brought interest to the region in the mid-1800s. However, this RFD uses the "**Temescal Mining District**" based on the number of mineral resources actually developed in the region beginning in the late-1800s.

[161] Exh. C 2.21.

The HH VRA, as well as other portions of the historic Temescal Mining District, provide no better example of the comprehensive, multi-mineral mining development that defined this area of Riverside County, south and southeast of Corona, through the Establishment Date. The scope of these regional mining operations is displayed in **Figure B-5.7.**

1. The Temescal Valley Contains a Unique Concentration of Mineral Resources That Gave Rise to the Temescal Mining District, Including the HH VRA

The Temescal Valley,[162] stretches approximately fifteen miles southeast of Corona and rests along the convergence of several major geologic features, including the Perris Block to the east and the Elsinore clays and Bedford formation to the south and west.[163] This geologic meeting point results in a concentrated area of mineral diversity, that consequently gave rise to the trove of mineral productivity known as the Temescal Mining District.[164]

The Temescal Mining District has four primary mineral bodies that historically supported – and continue to support – surface mining operations:

(i) a ridge of unique igneous rock known as the Temescal dacite-porphyry (**"porphyry**"),[165] which gave rise to no less than 4 distinct quarrying operations;[166]

(ii) the Temescal quartz monzonite formation, which hosts the tin-bearing, tourmaline veins ("**tourmaline**"),[167] and gave rise to the tin mining operations adjacent to and partially overlapping onto the HH VRA;

---

[162] Sometimes referred to as "Temeseal" (*see* Exh. C-2.4)

[163] Exh. C-2.3; *see also* Exh. 2.3.1; C.2.6, C-2.11, and C-2.12

[164] Exh. C-2.3; *see also* Exh. 2.21 (compiling mining engineer reports discussing geology and mineral wealth of the Temescal Mining District).

[165] Porphyry is an igneous rock useful as a stone for building water infrastructure; *see also* Defined Terms

[166] This rock body has been identified by several different names, including porphyry, Temescal porphyry, and colloquially as "blarney stone," which lent its name the large quarry within the HH VRA.

[167] Tourmaline is Tin-bearing igneous rock primarily located within Corona quartz monzonite bedrock, correlated with occurrences of tin and tin oxides; *see also* Defined Terms.

(iii) an overlay of up to 600 feet of clay deposits, including red fire clay and pink mottled clays, which gave rise to the numerous clay mining operations, many of which occurred throughout the HH VRA; and

(iv) more (geologically) recent alluvial deposits of gravel, silica, and sand , which gave rise to the aggregate operations within the S-4 VRA, and many others in the area, as well as the silica sand and glass manufacturing operations located immediately west of the HH VRA.[168]

This layered geology has resulted in the proliferation, since the nineteenth century, of multiple mining operations within the Temescal Mining District, including granite, hard rock, aggregate, sand, glass silica, and clay, as well as tin mines.[169]

2. Following Resolution in 1888 of a Boundary (and Mineral Rights) Dispute Involving the U.S. Government, Development of the Temescal Mining District's Mineral Resources Began in Earnest

Dating back to the mid-nineteenth century, the geology of the Temescal Mining District (and its attendant mineral abundance) was well known. In a journal from 1860, William H. Brewer, a member of the field party evaluating California's mineral resources commissioned by California's first state geologist Joshia Whitney, described the Temescal Mining District as:

> The Temescal hills are range some two thousand feet high, lying east of the Santa Ana Mountains, and are celebrated now as being the locality of fabulous mines and quantities of tin. People are "crazy" about tin ore, every man has from one to fifty claims, while poor devils with ragged clothes and short pipes talk as they smoke of being wealthy owners of one hundred or two hundred claims, each in time to rival Cornwall or Banca. It was to these mines and the formation around that we came here.[170]

---

[168] Exh. C 2.1, at p. 162. (The clay deposits were laid down when Temescal Valley "was an arm of the sea opening northward into the valley of western San Bernardino County and extending southerly to Temecula.")

[169] Exh. C 2.1 at p. 5.

[170] William Henry Brewer, UP AND DOWN CALIFORNIA: THE JOURNAL OF WILLIAM H. BREWER 1860-1864 (4th Edition, 2003), p. 34

Brewer's allusion to "mining claims," indicates that the Temescal Mining District contained at least some public land owned by the United States. However; a significant portion of future mineral development would occur on the privately-held Sobrante estate. Indeed, the nature of the Sobrante (and how to dispose of its mineral resources) was a source of significant friction between the United States and the Sobrante owners, until a dispute over the borders of the Sobrante was resolved.

a. The History of the Sobrante Mineral Dispute

The Sobrante was bequeathed to Ms. Maria del Rosario Estudillo de Aguirre by the Mexican government and confirmed by a patent issued by the United States Land Office on October 26, 1867.[171] Even before the United States issued that patent, the mineral nature of the Sobrante – and efforts to develop the mineral resources – was known, based on the purchase by a mineral speculator, Major Hancock, of the mineral rights of the Sobrante from Ms. Aguirre.[172] Hancock then sought out Edward Conway an employee of the Surveyor General's office, to run the proposed mineral business.[173] In 1864, several years after Hancock approached Conway about developing the Sobrante mineral interests, but before the United States would issue the patent, Conway purchased the entire Sobrante estate (mineral and surface) from Ms. Aguirre.[174]

Conway's involvement with development in the Sobrante prior to the issuance of the patent caused significant controversy – leading to two lawsuits before the Supreme Court of the United States.[175] The second lawsuit – *United States v. San Jacinto Tin Co.* – saw the United States attempt to overturn the patent and obtain ownership for itself of the mineral reserves within the Sobrante (and subsequently develop the same). To accomplish this, the United States alleged that the Sobrante patent had been procured by fraud.[176] The crux of the United States' argument relied Conway's – the Sobrante's owner – previous relationship with the Surveyor General during the original survey of the Sobrante. The United States argued that Conway had an impermissible conflict-of-

---

[171] Exh 4.1, *United States v. San Jacinto Tin Co.* (1888) 125 U.S. 273, 274-275; 287; *see also* Exh. A-1.

[172] *Id.* at 290.

[173] *Id.*

[174] *Id.* at 290-291.

[175] The first piece of litigation, *United States v. D'Aguirre*, dealt with the scope of the land grant, resulting in a determination that the Sobrante was the remainder of another land grant. *See U.S. v. D'Aguirre*, 68 U.S. 311 (1863).

[176] Exh. C -4.1 at 290.

interest and unduly enriched himself, because he was able to ensure the Sobrante patent included known mineral rich areas.[177] In 1888, the Supreme Court rejected this argument ruled against the United States, thus awarding the owners of the Sobrante full ownership of the land and mineral rights.[178]

b. Resolution of the Sobrante Dispute Spurred Development in the Temescal Mining District

With the dispute over the Sobrante's mineral development rights –including the HH VRA– resolved, mineral development began in earnest. As early as 1887, just before resolution of the Supreme Court lawsuit, local newspapers touted the "substantial resources" of the Temescal Mining District, including the Sobrante. An article in the South Riverside Bee described South Riverside – later renamed Corona – as a town "which has sprung up as if by magic," which already had a "a splendid granite quarry," "an immense lime deposit," and "superior quality of clays and minerals found" in the surrounding hills, and predicted that many new mineral production and processing companies would soon develop in the area.[179] These mineral developments area – within the HH VRA and the Temescal Mining District generally – are discussed below.

B. Pre-1924: Surface Mining Activities On or Utilizing the HH VRA

Between 1866 and 1924, multiple surface mining operations developed within the boundaries of the Temescal Mining District, including the portion of the Sobrante that included the future HH VRA. These surface mining activities included the Cajalco Tin Mine, multiple stone quarries, and silica-sand exploration activities.

1. Development of the Cajalco Tin Mine and Use of the HH VRA to Support Tin Mining Activities (1853-1923)

The Temescal Mining District was the site of a "tin rush" in the middle of the 19th century. The discovery of tin bearing ore in the Temescal Mining District was the genesis of many mining operations – tin was what brought people to the region.

---

[177] *Id.*

[178] *Id.*

[179] Exh. C-3.1 ("South Riverside: A Town Which Has Sprung Up as If By Magic," SOUTH RIVERSIDE BEE (September 24, 1887))

a. Initial Tin Mining Activities Until 1892

Between 1853 and when the United States issued the Sobrante patent in October 1867, hundreds of claims were staked and exploration and hand-prospecting occurred throughout the Temescal Mining District.[180] Beginning in 1867, the owners of the Sobrante began to develop a commercial operation at the Cajalco Tin Mine, centered around Cajalco Hill, adjacent to and just to the northeast of HH VRA, as depicted in **Figures B-3.4 and B-4.1**. These initial surface mining activities included surface mining exploration and the excavation of tourmaline (tin-bearing ore) veins located on the surface (as opposed to underground tourmaline veins), construction of test smelting operations, and the dissemination and exposition of tin ore samples, including display at the Mechanics' Institute Fair in San Francisco in 1868 and the Paris Exposition in 1878.[181] Despite these initial surface mining activities, the dispute between the Sobrante owners and the U.S. government idled mineral development between 1883 and 1888, during the pendency of the litigation.

Once the lawsuit was resolved, the Sobrante owners resumed mineral development efforts and the Cajalco Tin Mine produced marketable tin for two years, in 1891 and 1892. This tin was excavated primarily from surface-level tourmaline veins, as well as two working shafts that had been sunk 180 feet on an underground vein lode approximately 300 feet long.[182] In addition to ore excavation, ore milling operations were also on-site, as well as additional tin prospecting activities by tunnels and open cuts.[183]

During this period of tin mining, and relevant to the HH VRA, the produced tin was hauled from the mine site (located adjacent and to the northeast of the HH VRA) to Corona via a haul road that ran southwest, through HH VRA, to the Temescal Wash and the Elsinore-Corona Road (located adjacent and to the west of the HH VRA).[184]

Work at the Cajalco Tin Mine was idled in 1892 based on the decrease in the price of tin and the overall cost of mining, milling, and transporting ore, entirely by road, from the Cajalco Tin Mine to market.[185] As discussed below, however, tin mining in this area

---

[180] *The Cajalco Digs: Exploring an Early California Mining Camp*, www.archaeologicalassociates.com/aa3.html (last accessed August 28, 2021)).

[181] *Id.*

[182] Exh. C-2.7 at p. 112.

[183] *Id.*

[184] Exh. C-2.15 at pp. 533-534; *see also* **Figures B-3.4** and **B-6.1**.

[185] Exh. C-2.11 at pp. 151-152.

was restarted several times, to support the U.S. war efforts during both World War I and World War II, including a period in the 1940s, just prior to the Establishment Date. The details of this additional tin mining as discussed at **Sections IV.B.1.b** and **IV.C.2.d** *infra.*

b. The First Resurrection of the Cajalco Tin Mine: 1917-1923

During the early twentieth century, the price of tin did not justify resuming operations at the Cajalco Tin Mine. However, the fortunes of the mine were revived during World War I, which created an increased demand – and price – for tin. The owners of the Sobrante entered into an agreement with Corona Mayor E.J. Genereux, in an effort to reinvigorate the tin mine.[186]

Contemporaneous accounts of the agreement are clear that the deal allowed Genereux to not only restart development of the Cajalco Tin Mine, but also develop and other mineral properties within the Temescal Mining District:

> "It [the agreement] means the re-opening of the old mine, which has already begun, and in the development of large deposits of copper, silver and tin ore … [and] Captain John Haswell, a prominent mining engineer . . . reported favorably upon the properties . . . that its potential possibilities are the greatest of any new mining properties in the state of California.".[187]

During this period, Genereux's team undertook significant improvements around the tin mine. The existing mine shaft was pumped dry, and deepened to 500 feet, surface prospecting and exploration was completed for tin and copper veins across an approximate 5-mile portion of the Sobrante, and a smelter was erected to allow for on-site processing.[188] Shortly thereafter, during the summer of 1918, Genereux attempted to obtain a contract with the United States government to produce tin for the war effort; however, the war ended before any war production actually occurred.[189] The lack of a government contract did not deter Genereux's efforts to continue developing the mine operation, and by 1923, exploration and development of the tin mine remained ongoing, including a ten-week survey of the mine and approximately 5

---

[186] Exh. C-3.19 ("Temescal Tin Mine May Be Reopened," Los Angeles Times (May 9, 1917)); *see also* Exh. A-6.

[187] Exh. C-3.20 ("Deal for Temescal Tin Mine and Other Property Closed," CORONA DAILY INDEPENDENT (August 25, 1917)).

[188] Exh. C-2.13 at pp. 509-511.

[189] Exh. C-3.24 ("United States Interested in Tin," CORONA DAILY INDEPENDENT (July 12, 1918)).

square miles of surrounding Temescal Mining District property (including the HH VRA) by a Denver-based mining engineer. [190] By 1923, the economic jolt provided by World War I had faded, and market conditions no longer justified continued work at the Cajalco Tin Mine.[191]

Like the initial work related to the Cajalco Tin Mine, the activities related to the resurrection of the Cajalco Tin Mine relied on the HH VRA for (1) access to and from the site (*i.e.* using the interior haul road); (2) supplies of rock, sand, and gravel from borrow pits within the HH VRA to repair and maintain that interior haul road; and continued; (3) areas to explore and prospect tin-bearing tourmaline veins, including those veins within the northeast corner of the HH VRA.

c. Timeline of Activities at Cajalco Tin Mine (1853-1923)

Table 1, below, provides a timeline of surface mining activities that occurred at the Cajalco Tin Mine and activities within the HH VRA associated with that mine during the time period both it, and the HH VRA, were part of the single, Sobrante Property.

Table 1: Timeline of Surface Mining Activities At and Associated With the Cajalco Tin Mine from 1853 Until 1923

Note: Appendix B, Table B-1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map I.D.	*Year*	*Surface Mining Activities*	*Relevance*
M-1	**1853**	Tin-bearing tourmaline veins discovered in Temescal Mining District, leading to a "tin rush," including exploration, prospecting, and mining of surface-level trourmaline outcrops and veins.	Discovery of tin spurred interest in Temescal Mining District

[190] Exh. C-3.32 ("L.A. Mine Officials Confer with Corona Business Men," CORONA COURIER (October 5, 1923)).

[191] *Id.*

Map I.D.	*Year*	*Surface Mining Activities*	*Relevance*
R-2, M-4, M-5	**pre 1890, 1891-1892**	Construction and use of "Tin Mine Haul Road," nunning northeast to southwest through HH VRA, used to access to the tin mine and move produced tin to market via the Corona-Elsinore Highway and ATSF Railroad. Tourmaline surface excavation and proudction of tin. Tourmaline surface excavation; construction of ancillary facilities in support of tin mining operations; and production of tin.	Sobrante owners construct haul road which, haul road ran through the HH VRA to move produced tin east of the HH VRA to market west of the HH VRA. The HH VRA provided access points to ATSF railroad and Corona-Elsinore Highway. Surface mining disturbances
M-11, R-12, M-13, M-14, M-15	**1917-1923**	Establishment of borrow pits to restore and maintain tin mine haul road; use of tin mine haul road. Refurbishment of the Cajalco Tin Mine, including surface facilities. Tourmaline vein excavation and exploration.	The Sobrante owners established borrow pits within he HH VRA to aid construction and maintenance of the interior haul road. The Sobrante owners refurbished the Cajalco Tin Mine and restarted surface mining exploration and excavation.

2. The Corona Rock Boom and Other Mineral Development in the Temescal Mining District Prior to 1925

As discussed above in **Section IV.B.1.a**, *supra*, if the discovery of tin-bearing tourmaline in the mid-19th century was the genesis of the Temescal Mining District, by the turn of the 20th-century, it was overtaken in importance by the stone and clay resources of the Temescal Mining District.

a. Temescal Mining District Rock Quarries Within or Associated with the HH VRA

Beginning in 1888, the area of the Temescal Mining District southeast of Corona, primarily along the eastern side of the Temescal Wash and along the Temescal Hills,

saw the establishment of multiple quarry operations.[192]This period of quarry establishment was contemporaneously dubbed the "Corona Rock Boom," and saw significant stone and aggregate production that supported the rapid growth of southern California in the late 19th and early 20th centuries.[193] By 1904, the Temescal Mining District was supplying more than 100 railcars per week/month of paving blocks and other stone products to Los Angeles for use in building and street construction.[194] The Corona Independent published an article extolling the District's resources in 1907, writing with glowing with optimism that,

> "The mineral resources of the section are practically untouched as yet – merely prospected. There is no doubt in the minds of those best fitted to judge that they will ultimately prove a[s] sources of great wealth… ."[195]

The article goes on to further describe a survey by the United States Geological Survey ("**USGS**") that catalogued other resources, including nearly 330 acres of cement rock; tin-bearing tourmaline; gold and other metals; glass sand; and porphyry.[196]

During this period rock quarrying operations were so important to Corona's economy that civic leaders within the chamber of commerce urged the city to buy one of the few remaining rock quarries up for sale lest "taxpayers . . . pay fancy prices for crushed rock for road building purposes."[197]

The Corona Rock Boom saw numerous quarries established within the Temescal Mining District, including at least one within the HH VRA, to extract porphyry. As discussed in **Section IV.A.1**, *supra*, porphyry from the Temescal Mining District was renowned as being "the best of its kind in California," and useful as a strong and

---

[192] Exh. C-2.3; Exh. C-2.4; *see also* Exh. C-3.10 ("Corona's Progress," CORONA COURIER (Aug. 3, 1911)); Exh. C-3.11 ("Our Crushed Rock Industry," CORONA DAILY INDEPENDENT (March 30, 1911)); C-3.13 ("The Fourth Big Rock Plant to Operate Soon," CORONA DAILY INDEPENDENT (Oct. 19, 1911)).

[193] *Id.*

[194] Exh. C-3.3 ("Local Notes," CORONA COURIER (April 16, 1904)).

[195] Exh. C-3.5 ("Corona Product in Great Demand," CORONA INDEPENDENT (July 5, 1907)' Exh. C-3.6 ("Corona, The Crown of the Valley," CORONA DAILY INDEPENDENT (July 5, 1907)).

[196] *Id.*

[197] Exh. C-3.7 ("Much Interest Manifested in Organization: Corona Comes Up To Standard by Replacing Old Board of Trade Name Buy Chamber of Commerece – New Interest is Awakened," CORONA INDEPENDENT (December 15, 1910))..

versatile building material for building construction, surfacing streets, and constructing flood control and water delivery infrastructure projects.[198] The main ore body of porphyry occurs just to the west of the tin-bearing tourmaline formation associated with the Cajalco Tin Mine at the western edge of the Temescal Mining District where the Temescal Hills meet the Temescal Wash.[199] The Sobrante owners, understanding the value of the ore body underlying their property, established multiple quarries within the Temescal Mining District, including the Temescal Rock Quarry, located north of the HH VRA, as well an unnamed quarry located within the HH VRA, as depicted in **Figures B-3.1 and B-3.4**. The unnamed quarry within the HH VRA would later be expanded as the Blarney Stone, and later Hubbs Harlow Quarry. Thus, the Corona Rock Boom, and associated quarrying activity, was the first time that the quarrying operations occurred within the HH VRA, as part of a broader mineral development push by the Sobrante owners (and RRM's predecessors-in-interest).

b. Temescal Mining District Mineral Development and Clay Operations Within or Associated with the HH VRA

By 1911, with the streets of Los Angeles paved, the Corona Rock Boom subsided slightly, but mineral development in the Temescal Mining District continued. In January 1911, the Sobrante owners entered into an agreement to develop approximately 43,000 acres of land, including significant holdings within the Temescal Mining District.[200] A contemporaneous newspaper article, describe the venture as including "11,000 acres of rougher land, hill lands, and mountains . . . rich in mineral resources and includ[ing] stone quarries of great value and immense gravel deposits."[201] The Sobrante owners promoted further mineral development in multiple publications, including an advertisement in *Sunset Magazine* that extolled the opportunity to invest in the Temescal Mining District's "immense mineral resources, quarries and mines."[202] Additional advertisements regarding mineral property development included one in a 1925 edition of the Santa Fe railroad's magazine, which described the Temescal Mining District as ripe for investment:

---

[198] Exh. C-3.5 ("Corona Product in Great Demand," CORONA DAILY INDEPENDENT (July 5, 1907))..

[199] *See* Exh. 2.21, Exh. 2.21.2.

[200] *See* Exh. A-4; Exh. C-3.9 ("Sale of 43,000 Acres in Riverside County," Corona Daily Independent (Jan. 27, 1911)).

[201] *Id.*

[202] Exh. C-3.8 ("El Sobrante Land Company," SUNSET MAGAZINE (1911)).

> "With the Corona and Santa Fe Railroad soon to be a reality, opening up a vast new country to development, and the richest tin mine in the world. . . vast deposits of silica are developed rapidly. Various companies are shipping large quantities of superior clays. The finest rock quarry in California is shipping between 1,500 and 2,000 cars of crushed rock every month."[203]

Beyond advertising, additional mineral development in the Temescal Mining District was further aided by the completion of a spur line between Elsinore/Alberhill (a renowned clay mining area) and Corona, which significantly reduced the time and freight costs to move mineral materials from the Temescal Mining District to Los Angeles.[204] The completion of this spur line increased connectivity to several clay operations located south of the HH VRA, including the El Sobrante Pit, as depicted in **Figure 3.6**. The 160-acres EL Sobrante Pit was located in Section 26, north of the Harrington Pit, in a section of the Temescal Mining District that borders the Alberhill/Elsinore area and supported at least 5 additional operations.[205] The El Sobrante Pit served as a source of mottled pink clay, used primarily to manufacture facing brick and roof tiles, beginning in the early 1920s through the 1960s.[206] The products from this area, prior to the completion of the rail spur line described above, had been transported on roads, including an interior haul road through the HH VRA, as depicted in **Figures B-3.4 and B-4.2**, to reach Corona and markets further afield.

Finally, the Temescal Mining District was known to contain reserves of high-quality silica sand as early as 1902.[207] Extraction of this commodity began in earnest during the early 1920s. Between 1920 and 1923, the area along the western edge of the HH VRA (and areas adjacent to it), were explored and evaluated for the potential to support a commercial silica sand mining operation.[208] By 1924, a small processing plant had been constructed adjacent to the HH VRA.[209] Initially, silica and sand processing were

---

[203] Exh. C-3.114 ("Corona," The Santa Fe Magazine (December 1925)).

[204] Exh. C 2.1, at p. 163.

[205] Exh. C-2.1 at pp. 162 , 181, 329; *see also* Exh. 2.3.

[206] Exh. C-2.1 at pp. 163.

[207] Exh. C-3.31 ("Silica Industry Will Be Started in Corona," Corona Courier (Dec. 19, 1924)).

[208] *Id.*

[209] Exh. C-2.9; Exh. C-2.10.

inefficient, and did not expand until the property was purchased by P.J. Weisel in the late 1920s, as described in **Section IV.D.2**, below.

The above-described mineral development of, the larger Sobrante property was integral to the establishment of the HH VRA as a distinct property. The area that would become the HH VRA was an integral link between multiple mining operations within the Sobrante and access to the ATSF railroad (allowing mined materials to be transported to market).

c. Timeline of Additional Surface Mining Activities Within the Temescal Mining District Within or Associated with the HH VRA Prior to 1925

Table 2, below, provides a timeline of surface mining activities discussed above and other mineral development activities that occurred within the Temescal Mining District either within or associated with the HH VRA during the time period the area, including the HH VRA, was part of the single, Sobrante Property.

Table 2: Timeline of Surface Mining Activities Within the Temescal Mining District Within or Associated with the HH VRA Prior to 1925

Note: Appendix B, Table B-1.1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map I.D.	*Year*	*Surface Mining Activities*	*Relevance*
M-3	1888	Porphyry quarrying begins at Temescal Rock Quarry	Quarry north of the HH VRA established by Sobrante owners, along same porphyry occurrence as the HH VRA, demonstrates intent to develop all resources in Temescal Mining District.
M-6	1911	Small porphyry quarries (rip-rap and aggregate) established along eastern bank of Temescal Wash by Sobrante owners, including one within HH VRA	Multiple quarries, including one on the HH VRA, were established to meet demand of Los Angeles cinstryctuin needs,demonstrating intent of Sobrante owners to utilize HH VRA in conjunction with neighboring quarry operations to produce mineral materials as needed.

Map I.D.	*Year*	*Surface Mining Activities*	*Relevance*
M-7	1911	Clay prospecting and quarrying throughout the Temescal Mining District, including within the northern portion of the HH VRA	Clay mineral resources evaluated for development throughout the Temescal Mining District, including within the HH VRA, demonstrating intent of Sobrante owners to fully develop all mineral resources with Temescal Mining District.
R-8	1911	Road construction in Temescal (Hoag's) Canyon connecting Temescal Mining Distirct with broader regional markets and other regional surface mining operations	Road allowed multiple mineral developments to access the Corona market, thus facilitating development throughout the Temescal Mining District. The location of the road next to the HH VRA also established the property as a central locationfor hauling mineral materials.
R-9	1911	Railroad construction, connecting the Temescal Mining District with primary rail lines and broader regional market.	Railraod construction, termining at the mouth of Cajalco Canyon, at the northwest corner of the HH VRA, became primary method of loading and export for multiple minerals (tin and porphyry) produced in the Temescal Mining District. The location of the railroad siding to the northwest of the HH VRA also established the property as a central location for hauling mineral materials.
R-10	1911-1926	Construction and use of clay haul road running south to northwest through the HH VRA	Sobrante owners construct and use clay haul road, running from clay pits on the border of the Temescal Mining District and Alberhill Clay District (including Harrington Clay Pit), to the ATSF railroad and Corona-Elsinore Highway, through the HH VRA.
M-11	1917	Increased quarrying activities and improvements within Temescal Mining District	Sobrante owners' continued investment in regional mining operations demonstrates intent to fully develop the Temescal Mining District as a regional mining hub.

Map I.D.	*Year*	*Surface Mining Activities*	*Relevance*
E-16	1920-1923	Surveying and exploration for developable silica sand deposits.	Exploration, sampling, and testing of silica sand resources within the Temescal mining district, generally located within and just to the wester of the HH VRA (and specifically areas along east and west banks of Temescal Wash) to determine viability of establishing silica sand mining and processing operation, demonstrating intent to fully develop all mineral resources in the Temescal Mining District.
M-17	**1923**	Activities to modernize equipment at Temescal ("Blue Diamond") Quarry and expanded surface mining activities	Sobrante owners' continued investment in regional mining operations demonstrates intent to fully develop the Temescal Mining District as a regional mining hub.
M-18	1923	Corona Sand and Silica Co. constructs a production plant and begins pit excavations along the east and west sides Temescal Wash	Exploration area include areas both on, and directly west, of HH VRA, demonstrating intent to fully develop all mineral resources in the Temescal Mining District.

C. <u>In 1925 the HH VRA Divested from the Larger Sobrante Landholding, Triggering Increased Development of Mineral Resources Directly on the Site</u>

As described above, prior to the creation of the HH VRA as a distinct mining property in 1925, there were significant surface mining activities within the Temescal Mining District, including within the HH VRA and adjacent land within the Sobrante property.

However, during the 1920s San Jacinto Ltd. divested itself of significant portions of the Sobrante, which led to the creation of the 800+ acre HH VRA tract that approximates the HH VRA as it appears today, as depicted in **Figures B-2.2** and **B-2.3**. Yet, the fracturing of what had been a large cohesive property holding (and mineral development area) into smaller, more distinct property configurations, including the HH VRA, did not slow mineral development in the region. As discussed below, mineral development would accelerate during the 1930s to provide raw materials for multiple large-scale infrastructure projects in the region.

1. Ownership of the HH VRA as a Distinct Tract Began in 1925

As discussed in **Section** I.I, *supra*, and **Appendix A**, attached understanding the ownership of the HH VRA is necessary to understand the trajectory of mineral development on the property.

As discussed above, the HH VRA, in roughly its current form, was first owned by local real estate speculator E.E. Peacock. Peacock's ownership is depicted in **Figure B-2.3**, and consisted of the majority of Section 15 and the south half of Section 10.[210] Before his death in the early 1930s, Peacock would give away essentially value-less pieces of the HH VRA with sales of an encyclopedia. These parcels were of limited value and essentially undevelopable because (1) their size, of approximately 50 feet by 30 feet meant nothing could be built on them; (2) the landlocked nature of the parcels, sprinkled sporadically throughout the HH VRA; and (3) most importantly, Peacock's consistent, universal reservation of all minerals and related mining rights from every single parcel conveyed as part of an encyclopedia sale.[211] These reservations maintained the mining character of the HH VRA and allowed RRM's predecessors-in-interest to consistently dedicate the HH VRA to mining purposes.

Following Peacock's death in the early 1930s, F.M. Kuhry, an individual to whom Peacock was indebted, acquired the HH VRA. Shortly after his acquisition, Kuhry entered into a joint tenancy with Leilamae Harlow, with whom he would devote and develop the HH VRA for surface mining over the next twenty years, as described in **Section I.G**, *supra*, and **Section IV.C**, *infra.* By 1954, Harlow obtained sole ownership of the HH VRA from Kuhry, and continued mining operations throughout the HH VRA, as described in **Sections IV.F and IV.G,** *infra*.

Following Harlow's death Hubbs, proprietor of Harlow's lessee Hubbs Construction, acquired the HH VRA in 1979.[212] Hubbs would retain possession of the primary quarry

---

[210] Note that neighboring portions of the property, including a small portion the SW ¼ of Sec. 15, while not a part of this RFD, were acquired by third parties in 1909, before being acquired by Corona Silica Company in February 1925, and later acquired after 1971 by Leila Mae Harlow, whose estate sold it to Gerhart L. Schultz et al. in 1979 and which portion now exists as APN 281-220-001 ("Schultz Parcel"). Therefore references herein to the HH VRA do not include the Schultz Parcel.

[211] *See* Exh. A-11.

[212] While Harlow died in 1972, disposition of her estate took several years. There were thus several successive owners of the HH VRA upon her death; however, Hubbs continuously operated the longstanding mining activities (*i.e.*, quarry) within the HH VRA during this period, until he acquired full ownership in 1979.

until the early 2000s, at which point RRM purchased it. Surface mining activities continued after the Hubbs' acquisition of the property, and were continuous through successive owners, including RRM.[213]

A map of these interests is depicted in **Figures B-2.1 – B-2.7**.

2. Increasing Development of Mineral Resources and Surface Mining Activities Within the HH VRA From 1925 Until 1948

After Peacock took possession of the HH VRA, surface mining activity within the HH VRA increased, driven, primarily, by a series of infrastructure projects, including road, rail, dam, and water pipeline construction, as described in detail in **Sections IV.C.2.a – IV.C.2.e**, *infra.*

As described in **Section IV.**B, *supra*, previous surface mining activity in the HH VRA was related to smaller scale excavations of tin-bearing tourmaline veins, as well as the stone quarry operations, clay, and the development and use of interior haul roads connecting the nearby mineral developments (*e.g.* tin mine, clay pits) in the interior of the Sobrante to the Corona-Elsinore Highway and ATSF railroad. From the 1920s onwards, surface mining activity would shift to include large-scale use of the HH VRA to produce multiple materials, including aggregate and road base, stone and riprap, and clay.

a. Materials for Railroad Construction and Maintenance

During the late 1920s, the ATSF railroad extended its spur line from Corona, which previously ended in Temescal Canyon just northwest of the HH VRA, located at the mouth of Cajalco Canyon, all the way to the Alberhill-Elsinore region.[214] This construction required significant amounts of ballast rock, of which ballast necessary to complete approximately 5000 yards of track were produced from the small quarry located along the western edge of the HH VRA, south of Cajalco Canyon and east of Temescal Wash, as depicted in **Figure B-4.2**, which show the early porphyry quarrying activities along the ATSF railroad within the HH VRA.[215]

The construction of the spur line, in addition to requiring material quarried from the HH VRA, established a direct rail link between the Alberhill-Elsinore clay pits to

---

[213] Exh. A-34, Declaration of Christine Goeyvaerts, ¶¶ 3-7.

[214] Exh. 3.36 ("Santa Fe Asks to Lease Proposed Railway," CORONA COURIER (May 14, 1926)).

[215] Exh. 3.42 ("Santa Fe Finishes Rip-Rap Quarrying," CORONA DAILY INDEPENDENT (April 29, 1927)).

ceramic production facilities located in El Cerrito (on the west side of Temescal Wash), Corona, and Los Angeles. This new rail link eliminated the need to use the previous haulage trail, which ran from the clay pits south of the property, through the HH VRA, to the ATSF spur line station, thus freeing up a significant portion of the HH VRA for extensive quarrying and mineral production .

The stone used in construction of the ATSF spur line was the first documented, large-scale production of stone from the HH VRA.

b. Materials for Water Supply and Road Infrastructure

i. Mineral Development Supported Construction of Cajalco Road, Cajalco Dam, and Prado Dam, Among Other Public Works Projects

As described in **Section IV.C.1**, *supra*, Kuhry and Harlow acquired the HH VRA from Peacock in 1932. During their tenure as owners, the HH VRA was a prominent operation in providing material for several significant infrastructure projects, including construction of the Cajalco Road, construction of the Cajalco Dam, and construction of the Prado Dam.

In October 1931, voters in southern California approved a $220,000,000 bond issue "to finance construction of a huge water supply tube from the Colorado river to . . . Los Angeles."[216] The bond financed the construction of the Cajalco Dam and Reservoir (modern-day Lake Matthews), to be located "almost south and a trifle east" of the Cajalco Tin Mine, as well as two distribution lines, including the Metropolitan Water District ("**MWD**") "Lower Feeder Line," that runs along the northern edge of the HH VRA.[217] Before the final vote for the bond had been tallied, local Corona papers were

[216] Exh. C-3.54 (""Corona Prosperity Assured By Bond Election Affirmative Vote Tuesday, " CORONA COURIER (Oct. 2, 1931)); *see also* Exh. C-3.53 ("Success in Bond Election Means Much to Corona" and "Reservoir's Dam Near to Corona to Cost Nine Million," CORONA DAILY INDEPENDENT (Sept. 30, 1931)).

[217] *Id.* ("The largest dam of this great reservoir will be south and east of the old tin mine. … From near this dam, one line of the aqueduct will run west and south to Orange county [sic]…").

already describing the benefits of construction for the region– including the supply of necessary construction materials from the area's mining operations.[218]

The approval of the Cajalco Dam project also spurred another construction project – construction of Cajalco Road – which would eventually bisect the HH VRA. Following news regarding success of the bond issue, then chairman of the Riverside County Board of Supervisors T.C. Jameson, began work with the County's surveyors to establish a route from the site of the dam through Cajalco Canyon to Temescal Canyon and the ATSF tracks.[219] That route was acknowledged to be a superior route, allowing "[t]ons of building materials for the huge concrete dam . . . [to be] hauled through the hilly section for several miles" and give an outlet "directly to the Santa Fe tracks."[220]

By 1933, Riverside County employed "relief labor"[221] "to widen and improve the road leading to the dam site from Temescal canyon . . . to get the Cajalco highway . . . in condition for the heavy traffic it will have to bear when actual construction is started on the giant reservoir."[222]

Construction of Cajalco Road was complete by 1935, after three years of construction done entirely by hand labor, and using materials and desert-mix surfacing provided from local mining operations, including the HH VRA.[223]

ii. Demand From The Public Works Projects Increased Mineral Production Significantly in the HH VRA

These two large-scale construction projects, occurring both within and adjacent to the HH VRA, necessitated an increase in surface mining activities across the HH VRA Between 1931 and 1938, several borrow pits for construct materials were opened,

---

[218] *Id.* ("They point out that Corona will be one of the busiest cities on the entire route and that much business will be given to this community, both as headquarters for the workmen and the purchase of much of the material.").

[219] Exh. 3.54.

[220] *Id.*

[221] Labor provided by relief organizations such the Works Progress Administration ("**WPA**") and the State Emergency Relief Administration ("**SERA**") *see* Exh. C-3.56 ("Arlington Road to Cajalco Dam Being Surface, Temescal Canyon Link is Being Widened by Relief Crew," CORONA COURIER (Oct. 13, 1933)); Exh. C-.57 ("County Roads get Fed. Maintenance," Corona Courier (March 9, 1934)).

[222] *Id.*

[223] Exh. C-3.62 ("Cajalco Highway Open to Travel" CORONA DAILY INDEPENDENT (Sept. 9, 1935)).

identified as disturbances in **Figures B-3.2**, **B-3.5**,**B-4.5**, and **B.6.4**. located outside the boundaries of the S-4 VRA. These borrow pits were similar in nature to the pits opened and mined along the west side of the property during construction of the ATSF spur line. These disturbances are consistent with surface mining disturbances to provide gravel and other mined material associated with road construction.

iii. The Blarney Stone Quarry

In addition to the borrow pits located around the HH VRA, this period also saw the opening and mining of the Blarney Stone Quarry, located in the southwestern portion of the HH VRA. This quarry expanded upon earlier, unnamed quarries within the HH VRA to provide a ready and reliable supply of , opened and operated by the Pantages Construction Company, used the HH VRA to produce railroad ballast, stone, rip rap, and gravel beginning in about 1938.[224]

One contemporary newspaper article, written by an automotive editor who toured several quarries, described the stone produced from the HH VRA as,

> This particular blarney stone is known as a fine linseed grain granite, similar to the texture of the original blarney stone which has been used in Europe for thousands of years in the building of moats and old castles, and has proved especially sound for rock structures under water.
>
> We were told that as far as the engineers have been able to discover this is the only deposit of blarney stone on the North American continent. It will be of great help in the big construction problems facing the engineers. This blarney stone quarry contains **200,000,000 tons of rock**. It is on the Santa Fe railroad, as is also Prado dam, so that the rock will be delivered to the center of the dam by specially constructed cars.[225]

---

[224] *See* Exh. C-2.18 (note, this report mentions operations on the HH VRA dating back to 1935. These operations indeed existed, but were not operated by the Pantages Construction Company, which began operations in 1938, but do correspond to known porphyry quarries); *see also* Exh. C-2.5; *see also* Exh. C-3.70 ("Paving Stone Company Opens Plant Near City," CORONA DAILY INDEPENDENT (Nov. 28, 1938)).

[225] Exh. C-3.69 ("Dodge Party Views Rock Quarries," LOS ANGELES DAILY NEWS (Sept. 28, 1938)).

The study the newspaper relied upon was commissioned by Harlow and undertaken by the U.S. Army Corps of Engineers, Los Angeles Field District Laboratory, who had sample porphyry from various locations within the HH VRA, evaluated the reserves present throughout the entire property, and evaluated the porphyry for suitability in water infrastructure (*e.g.*, dams, spillways, levees, breakwaters, etc.) projects undertaken by the Corps.[226] Ultimately, the Corps determined that there was a massive (**200 million tons**) quantity of highly suitable, dense porphyry within the HH VRA.

Other contemporary accounts touted the unique nature of rock within the HH VRA. For example, an account described the stone as "in demand … as railroad ballast, as it possesses that "cushion" quality so much desired by track maintenance men" and as the closest and best source of railroad "cushion" rock west of Albuquerque, New Mexico."[227]

Much like the article in the Los Angeles Daily News, the Corona Daily Independent noted the anticipated scope and longevity of production within the HH VRA, stating "The very latest stone quarry machinery is being installed at the new Corona quarry, and indicate that founders of the enterprise not only have their eyes on the immediate future, but are considering steady production for years to come."[228]

In addition to the large "blarney stone" produced from the quarry, the Prado Dam also utilized other materials from the HH VRA, specifically gravel and aggregate necessary to produce concrete. Carl Bliss – an associate of the Pantages Construction Company – operated a batch plant necessary to produce concrete for the Prado Dam. In August 1938, prior to Pantages Construction opening the Blarney Stone quarry, Carl Bliss was unable to find gravel suitable to produce the 200,000 cubic yards of concrete necessary to construct the Prado Dam.[229] As describe by the Corona Daily Independent,

> On a blistering August day in 1938, two men sat astride their horse on a mountainside over-looking Prado dam site. They had searched for two weeks, looking for enough gravel or small aggregate to build the bulk of some 200,000 cubic yards

---

[226] *See* Exh. C-2.4; *see also* Exh. 3.70.

[227] Exh. C-3.70; *see also* Exh. C-3.75 ("Blarneystone Rock Goes to Prado Dam," CORONA DAILY INDEPENDENT (Dec. 14, 1939) (describing the delivery of rock from the Blarney Stone Quarry to the Prado dam using surface streets, beginning at the Corona-Elsinore Highway).

[228] *Id.*

[229] Exh. C-3.76 ("Story of the Carl Bliss Batch Plant, " CORONA DAILY INDEPENDENT (Dec. 20, 1939)).

> of concrete for Prado Dam. But they might as well have looked for gold, for their search was equally fruitless.

The next day, instead of searching for gravel by horse, Bliss looked for gravel by plane, and found "an ancient wash looming up underneath the plane. The wash looked gravelly."[230] After landing, Bliss and a team of mean dug approximately 21 test pits in the wash and found a bed of gravel 80 feet deep, 300 feet wide, and about one mile long – the gravel feature identified in **Figures B-3.2** and **B-4.**, northeast of the Blarney Stone Quarry and south of Cajalco Road.

iv. A Dispute Over Production from the Blarney Stone Quarry

The HH VRA produced a significant amount of stone and aggregate materials; however, this productivity resulted in a dispute between Kuhry and Harlow, as the owner-lessors, and the Pantages Construction Co. as lessee-operators.

In 1938, Kuhry and Harlow entered in a lease with Henry F. Charles, which was later amended to allow a lease assignment to Blarney Stone, Inc., so long as Charles held the majority of that company's shares.[231] In January 1939, Kuhry and Harlow attempted to terminate the lease, on the belief that Charles did not actually own the majority of shares in Blarney Stone, Inc., as required by the lease amendment.[232] By August 1940, Harlow and Kuhry issued a demand for Blarney Stone, Inc. to vacate the leased premises.[233] Following Blarney Stone, Inc.'s failure to do so, Kuhry and Harlow filed a lawsuit in Riverside County Superior Court.[234] In that lawsuit, Kuhry and Harlow alleged that Blarney Stone Inc.'s failure to surrender their leased premised result in significant financial hardship, based on multiple offers of other operators to mine property within the HH VRA.[235] The litigation was resolved, and Harlow and Kuhry

---

[230] *Id.*

[231] Exh. C-4.2.

[232] *Id.*

[233] *Id.*

[234] *Id.*

[235] *Id.*; *see also* Exh. C-3.70 (describing competition for the production of the HH VRA as being "in demand … as it possess that 'cushion quality' desired by railroad maintenance men and the attractive nature of the Blarney Stone Quarry to ATSF that "would give the company a desireable product located on their own line and accessible to their needs in the greater southwest" at a time when the next "closest source of 'cushion' rock" was in Albuquerque, New Mexico).

continued to fully develop the HH VRA and devote the entire property to mining development.

c. Mining Clay for Ceramics Products

The Temescal Valley – comprising both the Alberhill District and the Temescal Mining District – was historically one of the three most important clay-producing areas in California.[236] By 1930, the entire Valley, from Elsinore in the south to Corona in the north, was producing upwards of 100,000 tons of clay, of over thirty (30) distinct varieties, used primarily in the manufacture of ceramic products, including sanitary tile, roofing tiles, and consumer goods.[237] Production was centered on five primary producers, as well as "numberless pits, scattered throughout the valley, attest[ing to] the activity of the property owners, and the potential resource of the Canyon for the future."[238] While clay production in Temescal Valley is traditionally associated with the Alberhill area, approximately 5 miles northwest of Lake Elsinore, clay beds actually stretch the entirety of the Valley's 15-mile length.[239] Of note, two Pacific Clay Products ("**Pacific Clay**")[240] operated two clay pits within the bounds of the Sobrante. One, the El Sobrante Pit discussed in **Section IV.B.2.b**, *supra*, is at the end of the haulage road that runs directly through the HH VRA, as depicted in **Figure** B-5.5.1. The second pit, the "Cajalco Pit" is within the boundaries of the HH VRA, and partially outside the S-4 VRA.[241]

Pacific Clay The Cajalco Pit is located "east of Temescal Wash …south of Cajalco Road, along the east side of the railroad."[242] Some accounts state that the Cajalco Pit is located in northeast quarter of Section 16, on property owned by the P.J. Weisel family (discussed in greater detail below). However, this location attribution is incorrect, for several reasons. First, there is only a single small property located "east of Temescal

---

[236] Exh. 2.1, at p. 162.

[237] *Id.*

[238] "The Clays of Orange and Riverside Counties Southern California: A Geologic Thesis," J. Clark Sutherland (California Institute of Technology 1930) at p. 34.

[239] *See* Exh. C-2.16; *see also* Exh. 2.1, at p. 162.

[240] Pacific Clay Properties operated numerous other pits in addition to the two mentioned here; however, those pits were not operated on land within the control of RRM' predecessors-in-interest and therefore have no bearing on RRM's vested rights.

[241] Exh. C-2.8 at p. 568.

[242] Exh. C-2.3 at p. 110; *see also* Exh. C-2.4.

Wash …south of Cajalco Road, along the east side of the railroad," as displayed in **Figure 3.1**, which did not support clay mining operations.

That small parcel does not contain any surface disturbances or clay workings. Rather, a review of historic aerial imagery from 1931 through 1938 demonstrates that the Cajalco Pit is located within the Harlow Hubbs VRA, as displayed in **Figures 3.1 and 4.9**.

The Cajalco Pit consists of "residual red mottled clay," "bright brick-red clays about 30 [feet] thick," and "mottled grayish green clays and gray clays …[o]verlain by coarse, weak, sandstone of Paleocene Silverado formation, 0 to 5 [feet] thick which is capped by 10 to 20 [feet] of angular cobble and boulder conglomerate."[243] Pacific Clay worked the Cajalco Pit into an "irregular quarry, about 100 [feet] long, [and] 10 to 30 [feet] high."[244] This area would be extensively worked in beginning in 1948, and eventually expand across the HH VRA and the borders the Hubbs Harlow Quarry, as described in **Sections IV.C.3** and **IV.F.3.b**, below.

In addition to the Cajalco Pit, there is also evidence of small clay prospecting operations on in the northwestern part of the HH VRA. These operations were related to a series of exploration activities during the 1930s to determine the existence and viability of any high-aluminum-content clay resources (including bauxite) in the Temescal Mining District and Alberhill-Elsinore Clay District. [245] These exploration operations were part of the overall strategic mineral evaluation of the region, in an effort to bolster and understand strategic mineral supplies for the United States leading up to World War II.

d. Tin Mining Activities Adjacent to and Directly on the HH VRA Continued After the HH VRA Became a Distinct Mining Property in 1925, Including in Support of the U.S. War Effort

As described in Section IV.B.2, *supra*, activities related to and supporting the Cajalco Tin Mine occurred within and adjacent to the HH VRA dating back to the 19th century. Following the creation of the HH VRA in 1925, activities related to the Cajalco Tin Mine continued within the HH VRA.

In 1927, mining work at the tin mine commenced for the third time. During this production period, surface outcroppings were mined and stripped and the existing mine shafts were extended to 540 feet, and an additional 4 levels were added to fully

---

[243] *Id.*

[244] *Id.*

[245] *See* Exh. C-2.11; Exh. C-2.13; Exh. 2-.22,

exploit the vein; prospecting and mining occurred in numerous other veins with shafts sunk on the No. 2, No. 4, No. 5, and No. 9 mines of depths of 75-100 feet.[246] A testing plant with a 10-ton capacity was also on-site.[247] Exploration and small scale excavation of tourmaline veins continued throughout the property, including areas in the northeast of HH VRA. As described in a summary of this work produced in 1945:

> The veins near the Cajalco mine were prospected . . . and many drifts were driven in search of new ore shoots. Many veins in the district were stripped and thousands of samples were taken; wherever high assays were obtained, shafts or adits were dug. …Investigations of the deposits in the last decade have consisted primarily of surface sampling.[248]

Despite these improvements and sampling efforts, the third attempt was cut short by the Great Depression. Yet, the development of a tin resource was not a lost cause. Much like the earlier tin revival during World War I, the later tin revival caused by World War II spurred a fourth round of development at the mine.

Starting in approximately 1942, the United States Geological Survey conducted extensive work across the 3,500 acres of land within the Temescal Mining District, including portions of the HH VRA, to survey and prospect for tin.[249] The results of that survey were published in 1945, and demonstrated the extent of possible veins, stripped veins, and exploration work.[250] Beginning in 1940, the USGS team investigated the Temescal Tin District. This investigation included: (i) mapping approximately six square miles within the vicinity of the Cajalco mine on a scale of 400 feet to the inch, in conjunction with existing topographic maps prepared by the USGS and MWD; (ii) unexcavated veins were mapped in detail on the surface and accessible underground locations; (iii) excavated trenches and veins were mapped and sampled; and (iv) previous mine works were repaired and examined.[251] Based on the mapping, sampling and assay results, approximately 1,400 tons of tin-bearing rock were mined and milled

---

[246] Exh. C-2.10 at p. 498

[247] *Id.*

[248] Exh. C-2.16; *see also* Exh. D-1, Exh. D-2; and **Figures B-6.1**, **6.2**, and **6.3**.

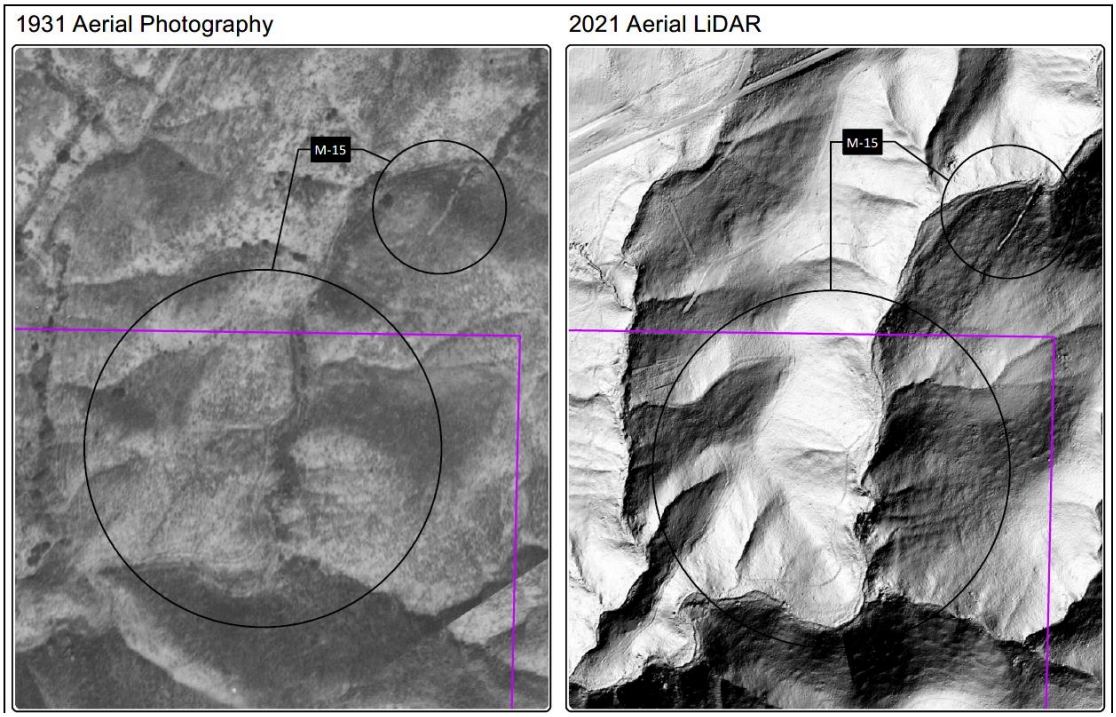
[249] *Id.*

[250] Exh. C-3.38 ("Rush Test Mill at Tin Mine To Be Ready in Six Weeks," CORONA DAILY INDEPENDENT (March 1, 1943)).

[251] *Id.*

to determine the economic potential of wartime tin production.[252] By 1943, the Phelps Dodge Corporation,[253] acting on behalf of the United States government, set up a test mill at the Cajalco Mine, with the aim of milling approximately 100 tons of ore every day.[254]

In particular, the USGS surveyors examined several tourmaline veins located in Section 10, including several prospected and stripped veins.[255] These veins are located in a formation of tin bearing ores that reach onto the northeastern corner of the HH VRA, as depicted in **Figure B-3.6** and in **Figures B-4.6.2**, **4.6.3 (reproduced below)**, **B-6.1**, **6.2**, **and 6.3.** The assays taken from these veins contained some of the highest percentage tin area (up to nearly 2%, against an average of 0.5%).[256]



By 1945, wartime work at the Cajalco Tin Mine idled again.

---

[252] Exh. C-2.16; *see also* Exh. D-2 and **Figures B-6.1**, **6.2**, and **6.3**.

[253] Phelps Dodge had long been interested in the tin mine, having purchased the dubious claims staked in region prior to 1888, when the Supreme Court ruled that the area was properly private land owned by the Sobrante owners. (RRM's predecessor-in-interest) rather than federal land open to mining claims.

[254] Exh. C-3.38.

[255] *Id.* at p. 22

[256] *Id.*

3. Timeline of Surface Mining Activities Within HH VRA (1924-1948)

Table 3, below, provides a timeline of surface mining activities within the HH VRA discussed above from the time of the HH VRA's creation in 1925 until the establishment date in 1949.

Table 3: Timeline of Surface Mining Activities Within the HH VRA From 1925 Until the 1948

Note: Appendix B, Table B-1.1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map Key	*Year*	*Surface Mining Activities*	*Relevance*
M-19	1926-1927	Expansion of porphyry quarrying within the HH VRA to provide material for railroad expansion	After Peacock took ownership of the HH VRA, surface mining increased (including a 50% expansion of the existing porphyry quarry). This demonstrates the intent of the HH VRA owners to continue utilizing the property for surface mining.
M-20	1927-1929	Third wave of surface improvements, excavation, and exploration at Cajalco Tin Mine and associated surface tourmaline veins and tourmaline blowouts	Surface mining activities within and associated with the HH VRA, located in the northeastern corner of the property. The tin mine rejuvenation continued to utilize the tin mine haul road through the HH VRA.
E-23	1930	Exploration related to economic and strategic mineral development describes occurrences of dumortierite	Exploration and surveying of the HH VRA, inclduing areas outside of the S-4 VRA, to determine if commercial or strategic minerals were present demonstrates intent to develop all possible mineral resources within the HH VRA

Map Key	*Year*	*Surface Mining Activities*	*Relevance*
M-25	1931-1938	Excavation begins at the Cajalco Clay Pit, located south of Cajalco Road along with the western edge of the HH VRA.	Surface mining of clay resources within the HH VRA and partially outside the S-4 VRA.
E-24	1931	Exploration and sampling for high aluminum clays and bauxite, primarily north of Cajalco Road as part of strategic mineral evaluation.	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating continued intent to fully develop all possible mineral resources within the HH VRA.
M-27	1931	Mining disturbances consistent with clay prospecting and sampling.	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating a continued intent to mine the entirety of the property.
R-26	1931	Rock, sand, and gravel borrow pits opened to supply materials to improvements to tin mine haul road and Cajalco Canyon trails	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to utilize all mineral resources within the HH VRA.
M-28	1931	Aerial photographs show extent of tin mine exploration and excavation	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to mine the entirety of the property.
E-30	1930-1935	Multiple geologic survey and studies and economic analyses completed and published	Exploration work of the geologic and mineral characteristics of the HH VRA to determine mining feasibility.
R-32	1933-1935	Multiple borrow puts opened up to construct and surface Cajalco Road	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to mine the entirety of the property.

Map Key	*Year*	*Surface Mining Activities*	*Relevance*
M-33	1938	Red clay resource quarried for approximately 100 feet east of Temescal Wash and ATSF railroad	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to mine the entirety of the property.
E-34	1938	Clay prospecting and sampling in Section 10 to determine presence of bauxite and or other high-aluminum clays	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to mine the entirety of the property.
M-36	1938-1940	Increased production of porphyry from HH VRA and the Blarney Stone Quarry, primarily associated with contract to supply 450,000 tons of materials to Prado Dam construction	Surface mining of rock resources within the HH VRA to meet regional demand.
M-37	1943	P.J. Weisel Sand and Silica excavation includes excavation of sandstone cliffs along east side of Temescal Wash	Surface mining activities within the HH VRA, in conjunction with regional mining operations, and outside the S-4 VRA demonstrate an intent to mine the HH VRA to meet demand for multiple mineral materials. .
E-38	1940-1945	Survey of six square miles around Cajalco Hill (site of Cajalco Tin Mine, located northeast of HH VRA), to map, sample, and evaluate suitability of tin resources to supply U.S. war effort	Evaluation of mineral materials useful to the U.S. war effort, including evaluation of mineral resources in the northeast corner of HH VRA, outside the S-4 VRA
M-40	1948	Liston Brick Co. begins small side-cut clay exploration and mining operations north of the Blarney Stone quarry	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrate an intent to mine the entirety of the property based on mineral demand.

Map Key	*Year*	*Surface Mining Activities*	*Relevance*
M-41	**1938-1948**	Surface mining alluvial gravel resource south of Cajalco Road to supply aggregate for Prado Dam, including for use in concrete 1948 aerial photograph shows extent of access and excavation of these alluvial gravel resources, south of Cajalco Road	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrate an intent to mine the entirety of the property based on mineral demand.

D. From 1925 to 1948, Surface Mining Activities on the HH VRA Continued to Support and Interrelate with Adjacent Operations

The increasing development of surface mining activities within the HH VRA between 1924 and 1948 did not occur in isolation from – and at times was interrelated with – surface mining operations on nearby and adjacent mine sites within the Temescal Mining District, which, by 1927, was labelled a "significant" mineral development area.[257] In a newspaper article dated October 24, 1927, J.L. Davis, the secretary of the Corona Chamber of Commerce, declared that the region was "Rich in Mineral Wealth" and that there was an "[e]ven greater return from the mines than products of citrus orchards," amounting to approximately $7 million in 1926.[258] That same article described the multitude of operations, including: mining and processing upwards of fifty (50) different clay varieties and the continued quarrying of porphyry in the Temescal Mining District.[259] Some of these proximate mining operations intersected with mining operations within the HH VRA and are described below.

1. Porphyry and Other Rock Quarries

While, as described in **Section V.B**, *supra*, the HH VRA may have been the "only source of blarney stone [high-quality porphyry]" on the North American continent, it was not the only quarry extracting porphyry from the Temescal Mining District.[260] The

[257] Exh. C-3.44 ("County Rich in Mineral Wealth Says J.L. Davis," CORONA DAILY INDEPENDENT (October 24, 1927)).

[258] Exh. C-3.44 ("County Rich in Mineral Wealth Says J.L. Davis," CORONA DAILY INDEPENDENT (October 24, 1927)).

[259] Exh. C-3.44.

[260] *See* Exh. C-2.9; Exh. C-210.

surface mining operations that other quarries along the know porphyry resource, also thrived during the infrastructure boom of the 1930s and 1940s. Quarries that had fueled the paving of southern California in the early 20th century now satisfied the growing demand for materials necessary to construct water infrastructure and housing.

The Temescal Rock Quarry, which had started operations in 1888 as part of the Sobrante property, as described in **Section V.B**, *supra*, was idle in the mid-1920s after a fire destroyed on-site facilities.[261] The idling of this site cause a shift in large-scale stone quarrying operations to the Blarney Stone Quarry, located within the HH VRA.[262]

It was not until after the Blarney Stone Quarry produced significant, high-quality porphyry for use in the Prado Dam between 1938 and 1940 that interest in the resuming porphyry production from other Temescal Mining District properties. In fact, in 1941, the Minnesota Mining & Manufacturing Company ("**3M**") purchased approximately 1,200 acres associated with the historical Temescal Rock Quarry and located directly north of the HH VRA.[263] 3M restarted operations at the quarry and built a roofing granule manufacturing plant; operations at the vested site have continued through to the present day, as depicted in **Figure** B-**5.7**.

Similarly situated to the Temescal Rock Quarry, was the Philips Quarry, located northwest of the HH VRA, and established in the early 1900. By the middle of the 1930s, the Philips Quarry was being operated by the Sidebottom Construction Co and furnished "rubble, riprap and track ballast" to the ATSF railroad, especially to repair tracks after the Colorado River flooding of 1938 and protect new state highways from future flooding.[264] The Sidebottom site was composed of two small quarries, and produced suitable, if not expensive, rock for riprap and levees.[265]

Like the Blarney Stone Quarry located in the HH VRA, both the Temescal Rock Quarry and the Sidebottom Quarry demonstrate a pattern and practice of Sobrante owners to initiate mineral development before selling off distinct operations. More importantly for understanding the development of the HH VRA immediately prior to the

---

[261] Exh. C-2.10.

[262] *See* Exh. C-3.58 ("Nearby Rock Plants in Steady Operation," CORONA DAILY INDEPENDENT (June 25, 1934)).

[263] Exh. C-3.80 ("Purchase Option Filed on Quarry," CORONA DAILY INDEPENDENT (March 31, 1940)).

[264] Exh. C-2.4.

[265] Exh. C-2.4.

Establishment Date; however, was the impact on porphyry supply caused by the idling of the Temescal Rock Quarry, as well as the lower production quality from the Sidebottom Quarry. Absent sufficient production from these two operations, the HH VRA – including the Blarney Stone Quarry – became a significant production site for porphyry.

2. Silica Sand Production

Immediately neighboring the HH VRA to the west is a silica-sand operation, that operated from the 1920s until approximately the 1980s. As described in **Section V-A**, *supra*, the existence of high-quality silica sand reserves was known as early in the 20th century.[266] However, it was not until the early 1920s that mining operations began in earnest.[267] By 1924, the Corona Sand and Silica Company had constructed a small processing plant. Initially, silica and sand processing were inefficient, and was not successful. However, by 1926, a partner in the Corona Sand and Silica Company – one P.J. Weisel – successfully sued to acquire property straddling the western edge of the Sobrante and the HH VRA.[268] Between 1926 and 1945, Weisel expanded the silica sand operation into the "oldest [and principal] continuously operated source of silica sand in southern California," significantly, including (i) construction of multiple factories, (ii) mining along both the east and west sides of Temescal wash; and (iii) construction of a dedicated railroad siding to supplement existing railroad sidings located within the HH VRA.[269] In 1945, P.J. Weisel leased his holdings to the Owens-Illinois Glass Company, which expanded operations, including the opening of a pit on the west side of Highway 71 and construction of a larger factory.[270]

---

[266] C-3.11 ("Our Crushed Rock Industry," CORONA DAILY INDEPENDENT (March 30, 1911)).

[267] C-3.31 ("Silica Industry Will Be Started in Corona," CORONA COURIER (Dec. 19, 1924)).

[268] *See* C-3.37 ("Sheriff's Sale on Execution Notice," CORONA COURIER (Oct. 15, 1926)).

[269] Exh. C-2.4 at p. 97; *see also* Exh. C-3.41 ("Improvements at Silica Plant to Increase Output," CORONA COURIER (April 29, 1927)); Exh. C-3.61 ("Heavy Sands Shipments," CORONA DAILY INDEPENDENT (Aug. 20, 1935)); Exh. C-3.67 ("As I See It," CORONA COURIER (Jan. 7, 1938)); Exh. C-3.68 ("Ainsworth Describes Workings of P.J. Weisel Silica Plant," CORONA DAILY INDEPENDENT (May 30, 1938); Exh. C-3.87 ("P.J. Weisel Industrial Sands Division," CORONA DAILY INDEPENDENT (Dec. 24, 1943); Exh. C-3.88 ("Silica Sand Output At New Calif. High," CORONA DAILY INDEPENDENT (April 30, 1945)).

[270] *Id.*

In addition to these operations immediately adjacent to the HH VRA, the silica sand mining operation was connected to the HH VRA, particularly along the western edge of the HH VRA, and utilized HH VRA resources (particularly sandstone) in the

3. Timeline of Surface Mining Activities Adjacent to and Interrelated with the HH VRA (1924-1948)

Table 4, below, provides a timeline of surface mining activities adjacent to and interrelated with mining operations located within the HH VRA, as discussed above from the time of the HH VRA's creation in 1925 until the establishment date in 1949.

Table 4: Timeline of Surface Mining Activities Adjacent to and Interrelated With the HH VRA From 1924 Through 1948

Note: Appendix B, Table B-1.1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map I.D	*Year*	*Surface Mining Activities*	*Relevance*
M-21	1927-1928	Expansion of P.J. Weisel silica sand excavation and production facilities	Silica sand mining occurred along the western edge of the HH VRA and the Weisel operation utilized access roads in the HH VRA to transport produced materials to the ATSF railroad
M-28	**1931**	Aerial photographs show extent of tin mine exploration and excavation	As of 1931, the area of influence of the Cajalco Tin Mine included the northeastern corner of the HH VRA, and utilized the Tin Mine Haul Road through the HH VRA
M-29	**1931**	Aerial photographs show extent of silica sand plant excavations	Silica sand mining occurred along the western edge of the HH VRA and the Weisel operation utilized access roads in the HH VRA to transport produced materials to the ATSF railroad
R-31	**1935**	Rail siding expansions constructed both along P.J.	Silica sand mining occurred along the western edge of the HH VRA

		Weisel spur line and Temescal Wash Siding to accommodate increased production	and the Weisel operation utilized access roads in the HH VRA to transport produced materials to the ATSF railroad
M-35	**1938-1945**	P.J. Weisel uses ATSF rail siding on Temescal Wash and on Weisel spur line to export materials	Silica sand mining occurred along the western edge of the HH VRA and the Weisel operation utilized access roads in the HH VRA to transport produced materials to the ATSF railroad
M-39	**1947**	Owens-Illinois Glass Co. leases the P.J. Weisel silica sand operation, expands silica tailings, and constructs a new production plant	Silica sand mining occurred along the western edge of the HH VRA and the silica sand operation tion utilized access roads in the HH VRA to transport produced materials to the ATSF railroad. Additionally, the operation mined certain portions of the HH VRA. Finally, Harlow sought to compete with the silica sand and attempt to purchase neighboring silica sand resources, demonstrating intent to fully exploit known mineral resources.
M-42	**1948-1949**	Aerial photograph shows extent of 3M ("Temescal Rock") Quarry	Continued expansion of quarry along porphyry ore body indicates continued intent to fully exploit known mineral resources within Temescal Mining District, including mining of same ore body found within HH VRA

E. Exploration and Surveying Activities Before 1949

During the pre-1949 period, multiple studies were also conducted to evaluate both the geologic and economic potential of Temescal Mining District. In 1924, a brief reconnaissance of the region determined that "the rock types were sufficiently complex" that additional study and mapping would be of both scientific interest and

"prove very practical to aid mining interests."[271] These studies continued in 1927 and 1928 with significant field and laboratory work, before being presented at the Geological Society of America in 1931, and published by the State of California in 1935 in order to provide "[a] broad knowledge of the general geological features, a division of the rock types and a knowledge of their sequence," as a matter "of great importance to successful mineral exploration and mining development" to assist "those interested in mining."[272] These geological studies were part of a concentrated effort by California and the United States government to effectively map and exploit the mineral rich Temescal Mining District.[273]

1. A 1938 Study Identified 200 Million Tons of HH VRA Reserves Suitable for Water Infrastructure

These initial surveys and studies provided a baseline for understanding the mineral potential of the Temescal Mining District and the HH VRA. In 1938, Harlow would allow a study the Los Angeles District of the U.S. Army Corps of Engineers, to fully evaluate the quality and quantity of mineral materials available within the HH VRA. The study was commissioned before the HH VRA could supply any 450,000 tons of material to the Prado Dam it would be able to under the Carl Bliss contract.[274] The results of the study were two-fold, finding that (1) the rock was of sufficient quality for nearly all water infrastructure projects and, most importantly (2), the HH VRA had over **200 million tons** of reserves.[275] The sheer amount of reserves identified as this time provide a clear indication that Harlow saw the entire HH VRA as fully appropriate for mining until the reserves would be exhausted.

---

[271] Exh. C-2.12, at p. 488.

[272] Exh. C-2.12 pp. 488-489.

[273] *See* Exh. C-2.12 (evaluating strategic minerals); Exh. C-2.13 at pp. 86, 505-520 (describing the economic and strategic minerals of the Temescal Mining District); *see also* Exh. C-2.13 at p. 281 ("The possibility of war interfering with the importation of much needed raw materials which are not now produced domestically in sufficient quantity has brought up again the subject of strategic minerals. At the request of the Geologic Branch, Mr. Charles White Merrill, engineer of the U.S. Bureau of Mines as well as of the U.S. Army reserve, has prepared and generously contributed for our publication the following timely paper – "Strategic Minerals in California" – explaining what conditions the country would be facing and how California can help in the case of another international disturbance");pp. 290-291 (discussing strategic minerals in Temescal Canyon).

[274] Exh. C-3.75 ("Blarneystone Rock Goes to Prado Dam," CORONA DAILY INDEPENDENT (Dec. 14, 1939)).

[275] Exh. C-2.5; *see also* Exh. C-3.69.

2. In 1947, Harlow Commissioned an Comprehensive Record of Survey, which was Recorded in 1948, to Clarify Her Access to Mineral Resources Across the Entire HH VRA

Additionally, prior to January 1, 1949, the Kuhry and Harlow, as owners of the HH VRA (and RRM's predecessors-in-interest) undertook actions clearly demonstrating their intent to appropriate and develop the HH VRA as a single, distinct mining property. First, Kuhry and Harlow leased a portion of the HH VRA specifically for quarry development (the Blarney Stone Quarry, described in **Section V.C**, *supra*). In addition to this lease, Kuhry and Harlow *also* sought out other, neighboring mineral properties, including a property (the "**Kincheloe Property**") known to contain both clay and silica sand deposits (similar to the minerals along the western edge of the HH VRA and those actively being mined by the Owens-Illinois Glass Co., which lay in-between the HH VRA and the Kincheloe Property, as depicted in **Figure B-5.10**).[276]

In 1946, Kuhry and Harlow entered into a purchase agreement for Kincheloe Property, located west of the HH VRA. Despite this agreement, the Kuhry and Harlow never acquired the property (and, in 1946, were sued for their failure to do so). That lawsuit was settled in 1947 in a manner that left Kuhry and Harlow without new mineral property to develop.

As a result of the failure to purchase the Kincheloe Property and its mineral assets, Harlow commissioned a record of survey in 1947, which was completed and recorded in 1948 ("**1948 ROS**"). The 1948 ROS was designed to specifically identify the clear boundaries of the HH VRA, as well as the clear boundaries of neighboring mineral development properties (including, the Owens-Illinois Glass Co. silica sand operation, which Kurhy and Harlow had sought to compete against with their purchase of the Kincheloe Property). The 1948 ROS provided Kuhry and Harlow the clarity necessary to understand the property (and minerals) that they could mine following their failure to acquire additional mineral development property within the Temescal Mining District. Thus, the 1948 ROS is critical in understanding that Kuhry and Harlow, just two years before the Establishment Date, sought to fully reconnoiter the HH VRA and understand the boundaries within which they could conduct (or allow to be conducted) surface mining operations.

[276] *See* Exh. C-4.3 (agreement and lawsuit relating to Kincheloe Property); *see also* Exh. C-2.4 (describing local mineral deposits, including Coronita Silica Sand Deposit, located on Kincheloe Property).

F. Composite Table of All Surface Mining Activities Directly on the HH VRA Prior to 1949

The following is a composite of all surface mining activities within the HH VRA until 1949.

Table 5: All Surface Mining Activities Conducted within the Boundaries of the HH VRA Prior to the County's Adoption of Ordinance No. 348 in 1949

Note: Appendix B, Table B-1.1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map I.D.	*Year*	*Surface Mining Activity*	*Relevance*
Surface Mining Activities Prior to Creation of HH VRA Tract (Pre-1925)			
R-2	1868-1890	Construction and use of "Tin Mine Haul Road," running northeast to southwest through the HH VRA	Sobrante owners construct interior haul road, running from Cajalco Tin Mine to ATSF Raiload/Corona-Elsinore Highway, through the HH VRA. The haul road is used to transport tin ore and produced tin from active mine to market.
R-10	Pre-1911	Construction and use of clay haul road running south to northwest through the HH VRA	Sobrante owners construct and use clay haul road, running from clay pits on the border of the Temescal Mining District and Alberhill Clay District, to the ATSF railroads and Corona-Elsinore Highway, through the HH VRA.
M-6	1911	Small porphyry quarries (rip-rap and aggregate) established along eastern bank of Temescal Wash by Sobrante owners, including one within HH VRA	Multiple quarries, including one on the HH VRA, were established to meet demand of Los Angeles cinstryctuin needs,demonstrating intent of Sobrante owners to utilize HH VRA in conjunction with neighboring quarry operations to produce mineral materials as needed.

Map I.D.	*Year*	*Surface Mining Activity*	*Relevance*
R-12	1917-1918	Establishment of borrow pits to restore and maintain tin mine haul road; use of tin mine haul road.	The Sobrante owners established borrow pits within he HH VRA to aid construction and maintenance of the interior haul road. The Sobrante owners refurbished the Cajalco Tin Mine and restarted surface mining exploration and excavation.
M-13 **M-14** **M-15**	1918-1923	Refurbishment of the Cajalco Tin Mine, including surface facilities. Tourmaline vein excavation and exploration.	The Sobrante owners established borrow pits within he HH VRA to aid construction and maintenance of the interior haul road. The Sobrante owners refurbished the Cajalco Tin Mine and restarted surface mining exploration and excavation.
E-16	1920-1923	Surveying and exploration for developable silica sand deposits.	Exploration, sampling, and testing of silica sand resources within the Temescal mining district, generally located within and just to the wester of the HH VRA (and specifically areas along east and west banks of Temescal Wash) to determine viability of establishing silica sand mining and processing operation, demonstrating intent to fully develop all mineral resources in the Temescal Mining District.
<u>Surface Mining Activities After the Creation of HH VRA as Distinct Mining Property (1925-1948)</u>			
M-19	1926-1927	Expansion of porphyry quarrying within the HH VRA to provide material for railroad expansion	After Peacock took ownership of the HH VRA, surface mining increased (including a 50% expansion of the existing porphyry quarry). This demonstrates the intent of the HH VRA owners to continue utilizing the property for surface mining.

Map I.D.	*Year*	*Surface Mining Activity*	*Relevance*
M-20	1927-1929	• Third wave of surface improvements, excavation, and exploration at Cajalco Tin Mine and associated surface tourmaline veins and tourmaline blowouts	Surface mining activities within and associated with the HH VRA, located in the northeastern corner of the property. The tin mine rejuvenation continued to utilize the tin mine haul road through the HH VRA.
E-23	1930	Exploration related to economic and strategic mineral development describes occurrences of dumortierite	Exploration and surveying of the HH VRA, inclduing areas outside of the S-4 VRA, to determine if commercial or strategic minerals were present demonstrates intent to develop all possible mineral resources within the HH VRA
E-24	1931-1938	Exploration and sampling for high aluminum clays and bauxite, primarily north of Cajalco Road as part of strategic mineral evaluation.	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating continued intent to fully develop all possible mineral resources within the HH VRA.
M-25	1931-1938	Excavation begins at the Cajalco Clay Pit, located south of Cajalco Road along with the western edge of the HH VRA.	Surface mining of clay resources within the HH VRA and partially outside the S-4 VRA.
R-26	1931	Rock, sand, and gravel borrow pits opened to supply materials to improvements to tin mine haul road and Cajalco Canyon trails	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to utilize all mineral resources within the HH VRA.
E-30; ***see also*** **Figure B-5.6**	1935	Multiple geologic survey and studies and economic analyses completed and published	Exploration work of the geologic and mineral characteristics of the HH VRA to determine mining feasibility.

Map I.D.	*Year*	*Surface Mining Activity*	*Relevance*
M-33	1938	Red clay resource quarried for approximately 100 feet east of Temescal Wash and ATSF railroad	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrating an intent to mine the entirety of the property.
M-36	1938-1941	Increased production of porphyry from HH VRA and the Blarney Stone Quarry, primarily associated with contract to supply 450,000 tons of materials to Prado Dam construction	Surface mining of rock resources within the HH VRA to meet regional demand.
E-38	1940-1945	Survey of six square miles around Cajalco Hill (site of Cajalco Tin Mine, located northeast of HH VRA), to map, sample, and evaluate suitability of tin resources to supply U.S. war effort	Evaluation of mineral materials useful to the U.S. war effort, including evaluation of mineral resources in the northeast corner of HH VRA, outside the S-4 VRA
Figures B-5.8 and B-5.9	1946-1947	Owners of the HH VRA commissioned record of survey to assist in determining scope of mineral assets of HH VRA and surrounding properties	Survey of HH VRA property boundaries in conjunction with potential mineral land acquisition demonstrates owners of HH VRA intended to devote entire property to mining purposes
M-40	1948	Liston Brick Co. begins small side-cut clay exploration and mining operations north of the Blarney Stone quarry	Surface mining activities within the HH VRA and outside the S-4 VRA demonstrate an intent to mine the entirety of the property based on mineral demand.

G. Mining Activities Continued Within the Entire HH VRA Between 1949 and 1976 Absent Mining Permits

As discussed in **Section IV.B**, *supra*, Riverside County passed Ordinance No. 348, effective January 1, 1949, which thereafter required a use permit for any non-

conforming land use, including mining operations, thereby creating the Establishment Date of 1949. But permits were not required for operations that existed prior to the Ordinance's enactment. Yet, despite this new requirement, only two use permits (M-404 and CU-1146, discussed in **Sections III.C** and **III.D,** *supra*) were issued for the myriad mining operations that occurred within and adjacent to the HH VRA.

Instead, surface mining activities continued almost uninterrupted, except in very specific instances where the owners understood that the proposed use would require a permit from the County. For example, Hubbs obtained CU-1146 in order to operate an asphalt plant; but did not obtain any permits to mine materials to supply that asphalt plant.[277] As described in detail below, between 1949 and the enactment of SMARA in 1976, the HH VRA hosted multiple surface mining activities across the entirety of the property, without any permits, thereby indicating the valid exercise of a vested right across the entire 792.22-acre HH VRA.

1. Owners and Operators Clearly Understood the (Lack of) Need for Use Permits for Surface Mining Activities

The lack of any such use permits is indicative that all surface mining activities were conducted under vested mining rights. Based on the historical record, it is apparent that both Harlow and the mining operators who operated on her property and elsewhere in the County took the need for a use permit seriously. For example, Livingston obtained a use permit for at least one quarry, located in the Norco area, in 1954;[278] but *did not* obtain a similar use permit to continue ongoing operations at the Harlow Quarry. In fact, in 1959, when Livingston obtained Permit No. 404, which related *only* to the operation of a rock crushing plant and compliance with air quality standards.[279] And by 1959, there were significant, additional mining activities occurring elsewhere through the HH VRA, as described in detail in **Section V.F.3**, *infra*.

Perhaps more telling, Leilamae Harlow sought to obtain two use permits after 1949, but neither related to surface mining activities: one (which was issued) to undertake repairs and painting work on her ranch house, located along the south edge of Cajalco

---

[277] Exh. C-1.2.

[278] Exh. C-3.95 ("County Approves Quarry at Norco," CORONA DAILY INDEPENDENT (April 14, 1954)).

[279] Exh. C-1.1.

Road within the HH VRA; and a second to attempt to utilize areas of the HH VRA that had been excavated as a cut-and-cover dump.[280]

This second permit application, requested in 1955, is telling as to *how* Harlow viewed the allowable uses of her property under Ordinance No. 348. Harlow's permit request did not ask permission to remove mined or excavated material – it only sought permission to *place* refuse in excavated spaces.[281] Put simply – Harlow understood the HH VRA had a valid existing right for mining – but not for garbage dumping.

The opposition to Harlow's permit request is equally telling. Opponents to the project included neighboring property users – including P.J. Weisel, owner of the sand mine immediately adjacent to the HH VRA. The opponents' concerns were not about the excavation of the property, but about the impact that *foreign material* and garbage would potentially have on water quality.[282] Opponents to Harlow's project, understood that there was no valid challenge to her vested mining rights to excavate and mine the property.

Both the City of Corona and Riverside County denied Harlow's application for a permit to use the HH VRA as a cut-and-cover dump for Los Angeles.[283] Despite this denial, mining operations on the site continued unaffected, again demonstrating that the mining operations were conducted pursuant to vested mining rights.

2. Harlow Consolidates Her Ownership

Between 1949 and 1964, Leilamae Harlow took steps to consolidate her interests and ownership of the HH VRA. In 1952, four years after vesting, Leilamae Harlow took sole ownership of the Cajalco Property.[284] As discussed in **Section V.C.2.e**, *supra*, Harlow commissioned the 1948 ROS, which she undertook for the purpose of clearly delineating the boundaries of her property *vis-à-vis* neighboring mining operations, particularly the Weisel/Owens-Illinois Glass Company. This effort to establish defined property boundaries demonstrates both Harlow's intent to understand the boundaries

---

[280] Exh. C-3,93; *see also* Exh. C-3.99.

[281] Exh. C-3.99 ("Planners Deny permit for Garbage Dump Near Corona," CORONA DAILY INDEPENDENT (Aug. 10, 1944)).

[282] Exh. C-3.98 ("Mail Bag," CORONA DAILY INDEPENDENT (July 8, 1955)).

[283] Exh. C-3.97 ("No Dump Ground in Temescal, Says Counsel," CORONA DAILY INDEPENDENT (July 6, 1955);Exh. C-3.101 ("Thumbs Down on Proposed Garbage Dump," CORONA DAILY INDEPENDENT (Oct. 18, 1955)).

[284] *See* Appendix A; *see also* Exh. A-16.

of her property that could be mined, as well as the interrelationship between the HH VRA and neighboring properties, especially because those neighboring mining operations would utilize portions of the HH VRA during the 1950s and 1960s.

3. Post-Vesting Mining Operations Expand Across the HH VRA

Under Harlow's ownership, multiple mining operators used the HH VRA, including Livingstone, Stringfellow, Corona Rock Quarries Inc., Paul J. Hubbs Construction Co., Owens-Illinois Glass Co., Gladding, and the Liston Brick Co.

a. Rock Quarrying Operations Within the HH VRA After January 1, 1949

During the 1950s, quarrying operations continued apace at the Hubbs Harlow (formerly Blarney Stone) Quarry. For example, in 1958 (a year before Permit 404 was issued), independent trucking contractors hauled porphyry from the Harlow Quarry to "a causeway project in the beach area" for at least six months.[285]

More importantly, during this period, the HH VRA provided significant amounts of porphyry to multiple flood control projects, including the Orange County Santa Ana River Levee (250,000 tons in 1958) and Long Beach Flood Control (at least 500,000 tons in 1958). Production during this period was approximately 6,000 tons a day (or just over 2 million tons a year).[286]

On January 8, 1959, Livingston filed an Application for M-3 Permit, to allow the use of a "rock crusher" in conjunction with ongoing quarry operations.[287] Permit No. 404 was approved the Board of Supervisors in February 1959. Nothing in the permit application or the permit itself expressed any intent or belief that the existing vested rights of the HH VRA would be affected by the permit.[288] This understanding is consistent with law that such a use permit would not affect existing vested rights, but was "merely a recognition and protection of [the]…original right."[289]

In 1961, Livingston and Stringfellow incorporated Corona Quarries, Inc. to operate mining operations on the HH VRA, primarily (although not exclusively) within the S-4 VRA. Corona Quarries, Inc. produced significant quantities of stone during the early

---

[285] Exh. C-3.105 ("Rock Truck Complaints," CORONA DAILY INDEPENDENT (August 7, 1958)).

[286] Exh. C-2.4 at 1031.

[287] Exh. C-1.1.

[288] Exh. C-1.1.

[289] *See Ricciardi v. County of Los Angeles* (1953) 115 Cal.App.2d 569, 576.

1960s; however, the cooperative venture would not last. In April 1965, Stringfellow sued Corona Quarries over unpaid fees for trucking services rendered between May 1, 1962 and December 31, 1963.[290] During this period, Stringfellow provided dump trucks to haul produced rock for $1.80 a ton and hauled approximately 308,932.28 tons of rock, worth approximately $555,899 under the contract terms. Stringfellow alleged that the firm was due $123,572.91 in unpaid fees.[291]

Shortly after the lawsuit, Paul J. Hubbs Construction took over day-to-day operations at the Cajalco Property. In 1968, Hubbs discontinued use of the Corona Quarries, Inc. name and operated the Cajalco Property under the "Paul Hubbs Construction" moniker.[292] The Corona Quarries, Inc. corporate entity was dissolved in 1986.[293]

Under management of the Hubbs Construction Co., production on the Cajalco Property continued to supply stone for multiple projects. A report on the Los Angeles Harbor Deepening Project notes that the Cajalco Property provided stone to ocean projects in 1965 and 1970, and was one of the few properties in Temescal Canyon still producing stone.

As part of continued operations at the Cajalco Property, in 1970 Hubbs obtained CU-1146, which authorized the construction and operation of a rock crushing and screening plant, as well as an asphalt manufacturing plant. As discussed in **Section III.D**, *supra*, the County's findings regarding CU-1146 *explicitly* confirmed the existing of vested rights with the HH VRA.

Other small-scale rock quarrying operations occurred across the HH VRA, including the continued use and enlargement of borrow pits just north of Cajalco Road, the continued mining of the gravel pits along the south side of Cajalco Road; and the expansion of borrow pits and test pits along tin mine road, identified in **Table 6**, *infra*, and depicted in **Figures B-3.8**. and **B-4.15, 4.16, and 4.18**.

---

[290] Exh. C-3.109 ("Trucker Sues Corona firm," Corona Daily Independent (April 16, 1965)).

[291] Exh. C-3.109.

[292] Exh. C-3.113. ("Certificate of Discontinuance of Use and/or Abandonment of Fictitious Name #15788," CORONA DAILY INDEPENDENT (September 19, 1968)).

[293] *See* California Secretary of State, C0414498 (indicating Corona Quarries, Inc. Dissolved as of May 29, 1986)

b. Clay Mining Operations Within the HH VRA After January 1, 1949

In addition to rock quarrying operations discussed in the immediately preceding section, the HH VRA also hosted significant clay mining operations, located primarily north and northeast of the S-4 VRA, as well as some smaller operations north of the tin mine haul road. These post-vesting clay mining operations constituted an apparent continuation of the Cajalco Pit developed by Pacific Clay Products in the 1930s, as well as new clay mining in two areas of the HH VRA, as depicted in **Figure B-3.8 and B-4.15, 4.16, 4.18, and 4.19**.

In 1948, the Liston Brick Company ("**Liston**") constructed a ceramics manufacturing plant on the west side of Temescal Wash, immediately to the west, and adjacent to the HH VRA, as depicted in **Figures Figure B-3.8 and B-4.15, 4.16, 4.18, and 4.19**. In their manufacturing process, Liston utilized multiple sources of raw clay, including several areas within the HH VRA. Beginning in 1954, Liston utilized a portion of the HH VRA for clay mining, as depicted in **Figure B-3.8 and B-4.15, 4.16, 4.18, and 4.19**. This mining area – the Harlow Clay Pit (as opposed to the Hubbs Harlow Quarry)– clay and residual claystone from the Silverado Formation.[294] As of 1963, the quarry was a side-hill cut approximately 150 feet long and 100 feet wide.[295] As demonstrated in aerial photography, clay mining exploration operations extended both east from the Cajalco Pit and north from the Harlow Pit, with multiple side-hill cuts.[296] Liston also used other areas on the site for soil and gravel amendments to the ceramics manufacturing process, particularly the gravel feature south of Cajalco Road within the eastern portion of the HH VRA and the borrow pit north of Cajalco Road, within the central portion of the HH VRA, and depicted in **Figure B-3.8 and B-4.15, 4.16, 4.18, and 4.19**.

In addition to Liston, Gladding also undertook clay mining operations on the HH VRA. During the early 1950s, Gladding was "engaged in an intensive exploration program" to develop clay resources to supply the ceramics plant located on the west side of Temescal Wash.[297] This exploration program included core drilling in clay formations in the north eastern quarter of Section 16 and the northwestern quarter of Section 15 and southwestern quarter of Section 10. This pit produced a large deposit of

---

[294] Exh. C-2.4.

[295] Exh. C-2.4

[296] *See* **Figures B-6.6** and **B-6.7.**

[297] Exh. C-2.4 at p. 72.

red-burning clay from the Silverado formation, as well as residual and sedimentary clays.[298]

Evidence of these multiple clay mining operations is evident to this day, with multiple well-defined trench excavations, consistent with bulldozer excavations and clay mining, evident in aerial photography and LiDAR imaging, and confirmed by site visits and analysis and displayed below.[299]

Figure 2: Disturbed Clay Resource (*see also* **Figure B-7.4.2)**

23

Photo 7 Panorama of clay resource area. The zone of highly-weathered metamorphic rock is probably at least 3 m thick over much of the disrupted area shown in this photograph. Total volume would therefore be about 130,000 m^3 (176,000 yd^3). Volume verification would require test borings or pits and additional surface measurements.

[298] Exh. C-2.3 at p. 110

[299] *See* Exh. D-1.1 (describing multiple surface scrapes and clay trenches); *see also* **Figure B-6.6 and B-67** (depicting LiDAR and aerial photograph comparisons of clay mining disturbances); **Figure B-7.4.2** (displaying known, heavily disturbed clay bed).

Figure 3: Aerial Photograph/LiDAR Comparison – Clay Disturbances East (*see also* **Figure B-6.6)**

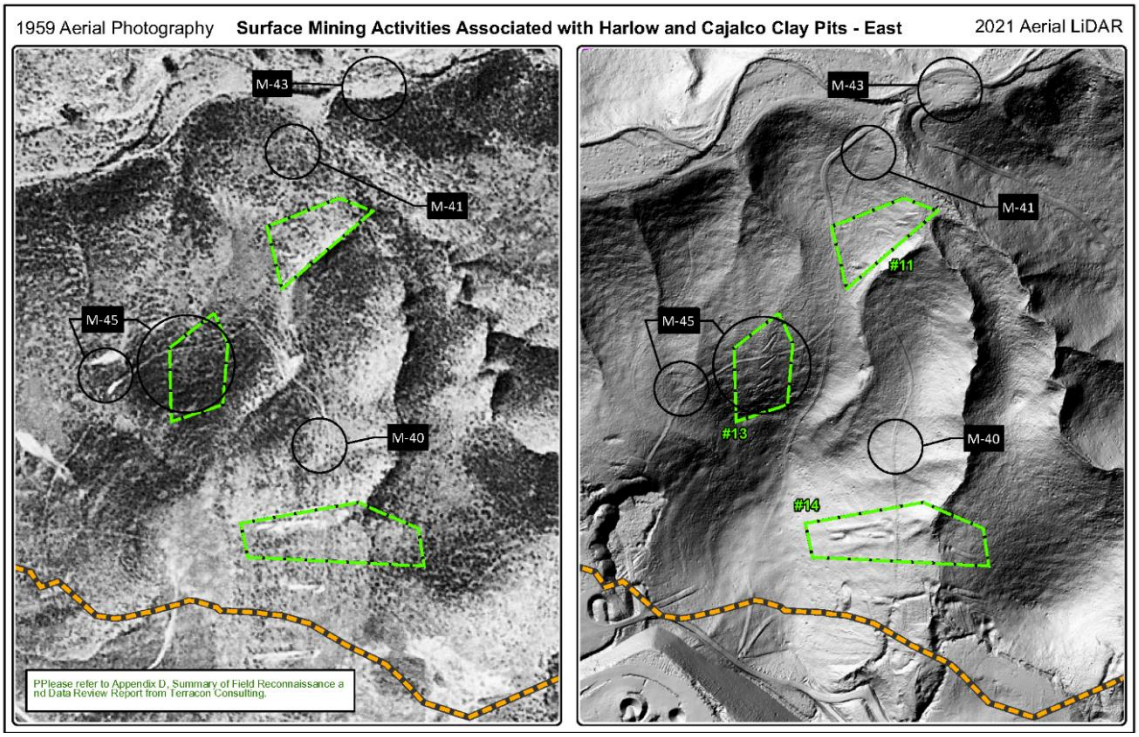
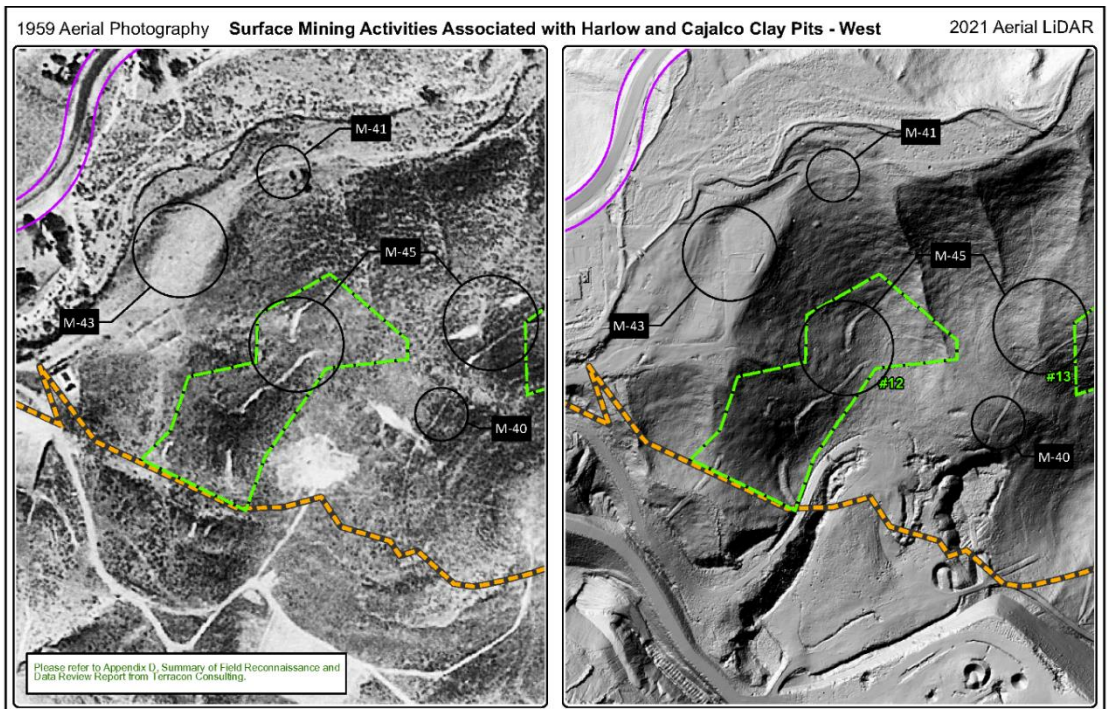


Figure 4: Aerial Photograph/LiDAR Comparison – Clay Disturbances West **(***see also* **Figure B-6.7)**



4. Timeline of Surface Mining Activities Within The HH VRA 1949-1976

Table 6, below, provides a timeline of surface mining activities that occurred within the HH VRA ***after*** the Establishment Date, which demonstrate the exercise of vested mining rights across the entire HH VRA.

Table 6: Timeline of Surface Mining Activities Conducted Absent Any Surface Mining Permits Within the HH VRA From 1949 Until 1976

Note: Appendix B, Table B-1.1. provides a list of all surface mining activities referenced in the Tables and text throughout the RFD. Table B-1.1 identifies the surface mining activities by "Map I.D." and provides cross-references to Appendix B (Maps and Graphics).

Map I.D.	*Date*	*Surface Mining Activities*	*Relevance*
M-43	**1948-1960s**	Liston Brick Co. mines multiple locations, including the Harlow Clay Pit and other unnamed pits, within HH VRA for (i) miocene diatomaceous shale; (ii) quaternary alluvium; (iii) local soil and sand sandstone; and (iv) metasedimentary rocks	Continued mining of clay resources, begun before 1949 and significantly expanded in the 1950s, all within HH VRA but without permits is consistent with the exercise of a vested right.
M-44	**1954**	Gladding McBean discovers significant red clay resource adjacent to and on HH VRA and begins excavations and production	Surface mining activities for clay resources within the HH VRA without permits is consistent with the exercise of a vested right.

Map I.D.	*Date*	*Surface Mining Activities*	*Relevance*
M-45	**1953-1959**	Rock from the HH VRA is provided for multiple flood control projects	Mining within the HH VRA was conducted without permits is consistent with exercise of vested rights. Production is provided on a per-project basis, with 250,000 tons produced in 1958 for the Santa Ana River Levee, and 500,000 tons produced in 1958 for other flood control channels. Quarrying capacity is given at 6,000 tons per day (over 2 million tons per year).
M-46	**1959**	Aerial photograph shows extent of surface mining activities of Hubbs Harlow Quarry	Continued mining within the HH VRA without permits is consistent with the exercise of vested rights.
M-47	**1963**	Aerial photograph shows continued expansion of Hubbs Harlow Quarry	Continued mining within the HH VRA without permits is consistent with the exercise of vested rights.
M-48	**1967**	Riverside County Board of Supervisors approve construction of "Eagle Valley Road" as a county road to replace the formerly private tin mine road	County action removes Tin Mine Haul Road from private ownership nearly two decades after vesting.
M-49	**1972**	Aerial photograph shows the extent of Owens-Illinois Glass Co. silica plant operations, including connectivity via conveyer and roads with HH VRA	Continued mining within the HH VRA (and adjacent properties) without permits is consistent with the exercise of vested rights

Map I.D.	*Date*	*Surface Mining Activities*	*Relevance*
M-50	**pre-1976; 1985**	Survey and analysis of known historic mining sites within the HH VRA	1984 investigation and analysis of known, historic mining features within the HH VRA, including multiple heavily disturbed clay pits, all outside the S-4 VRA boundary. Existence of heavy surface mining disturbances indicate existence of vested right.
M-51	**1962**	Surface disturbance consistent with clay scraping and exploration	Surface disturbance was visible in aerial imagery dated 1962, in area of property associated with clay mining during tenancy of Corona Quarries, Inc. and construction of MWD lower-feeder line. Site investigation and LiDAR analysis determined disturbance may be associated with either clay exploration or construction of MWD lower-feeder line. Surface mining activities in this portion of the HH VRA without a permit demonstrates exercise of vested right.
M-52	**1962-1967**	Surface disturbance consistent with clay scraping and exploration	Surface disturbance was visible in aerial imagery dated 1967 in area of property associated with clay mining during tenancy of Corona Quarries, Inc. Site investigation and LiDAR analsysis determined ground disturbance and several roads consistent with clay mining/exploration, including a trench-like feature. Surface mining activities in this portion of the HH VRA without a permit demonstrates exercise of vested right.
M-53	**1970s-1980s**	Road cut or dozer scrap, consistent with efforts to expose shallow bedrock	Surface disturbance consistent with mining exploration work; clearly visible in LiDAR analysis.
M-54	**2019**	Aerial photograph shows extent of modern mining activity, as of 2019.	Surface mining activity is consistent with exercise of vested right, post-SMARA, within approved Reclamation Plan Boundaries

H. Post-1976 Developments at the HH VRA

Leilamae Harlow died in 1972, but her estate was not settled until 1976. Her death did not interrupt surface mining operations at the HH VRA, which were undertaken by Hubbs. Nor did the short ownership of the HH VRA by Occidental College from 1976 until 1979 (who had acquired the property in a trustee's foreclosure sale to collect on a debt secured by a deed of trust Harlow entered into in 1966) interrupt those operations. Rather, as described in **Appendix A**, by 1979, Hubbs had consolidated his leasehold interest in the HH VRA with title to the full HH VRA.[300]

1. Rec Plan RP118 (Hubbs) – 1982

In 1982, following the enactment of SMARA in 1976 and in compliance therewith, Hubbs submitted and obtained approval of Reclamation Plan 118 ("**RP 118**"), ensuring that quarrying operations at the Harlow Quarry were in compliance with the requirements of SMARA.[301]

RCL-118 recognized that historic mining operations occurred on the Cajalco property "since at least the mid-1950s" and also expressly recognized that "[t]he whole region along Temescal Creek has been mined for nonmetallic mineral commodities since the turn of the century . . . include[ing] sand and gravel, clay, and rock."[302]

As discussed in **Section III.E**, *supra*, RCL-118 acknowledged two ongoing mining operations: (1) the Harlow Quarry (formerly the Blarney Stone Quarry), an "open pit rock quarry" encompassing approximately 20 acres of benches and quarry walls and (2) an "open pit clay mining operation that was "operated intermittently in the past" with "current plans … for similar operations in the future.[303] RCL-118 also recognized that the anticipated operational life of the project could be extended if the operator decided to expand the footprint of the operation.[304]

2. Continued Mineral Development of the HH VRA from 1983 to the Present

In 2003, the County filed a lawsuit against Hubbs alleging violations of RP 118, SMARA, and County land use regulation. The parties reached a settlement in 2004 and

---

[300] *See* Appendix A; *see also* Exh. A-21.

[301] Exh. C-1.3

[302] Exh. C-1.3

[303] Exh. C-1.3.

[304] Exh. C-1.3.

stipulated to resolve the County's allegations. The 2004 Settlement required certain actions to remediate the site, but also expressly reflected Hubbs' intent to continue surface mining operations at the site. Thereafter, the court entered an order accepting the settlement terms as the order of the court, to resolve the allegations in the Hubbs lawsuit and address then-current hazardous conditions at the site resulting from surface mining operations of that prior operator.

Prior to compliance with that settlement, Hubbs sold the Hubbs Harlow Quarry portion of the HH VRA to Temescal Cliffs LLC. Shortly after the sale, Temescal Cliffs LLC entered into bankruptcy.[305] The property was thereafter acquired by RRM in October 2011.[306] Following RRM acquisition of the Cajalco Property in 2011, RRM and the County began discussions regarding appropriate remediation of the mining areas within the S-4 VRA to eliminate significant threats to public health and safety, including unstable slopes and unstable sheer vertical faces.[307] This discussions yielded an amendment to the 2004 settlement, later adopted by the court as the Amendment to Stipulated Settlement Agreement and Judgment Thereon ("**First Amended Judgment"**), which required RRM to submit a revised reclamation plan known as RCL 118S1 ("**S1**"), revised financial assurances, and conduct surface mining activities within the scope of the approved reclamation plan.[308]

The need for and purpose of S1 was to address the then-immediate and significant threats to health and safety, including unstable slopes and sheer vertical faces over 300 feet in height. In approving S1 in 2013, the County adopted findings regarding the scope of vested rights to conduct surface mining activities at the site, including that "surface mining activities within the Amendment RCL00181S1 are consistent with the existing vested right confirmed in multiple, historical documents."[309]

On July 14, 2016, the County and RRM entered into the Second Amendment to Stipulated Settlement Agreement and Judgment Thereon ("**Second Amended Judgment**") to further the intent and goals of the 2013 settlement and the First Amended Judgment.[310] The Second Amended Judgment was entered as an order of the court on July 26, 2016. To implement the intent and goals of the SEcond Amended

---

[305] Exh. A-34, Declaration of Christine Goeyvaerts, ¶¶ 3-7.

[306] Exh. A-32.

[307] Exh. C-.1.9.at ¶¶ D-J.

[308] Exh. C-1.9 at ¶ L.

[309] Exh. C-1.4.

[310] Exh. C-1.9

Judgment, RRM submitted, and on February 9, 2017, the County approved RCL118S3 ("**S2**"), which included an adjustment of reclamation plan boundaries.[311]

The purposes of the Second Amended Judgment and S2 were to ensure compliance with S1 and provided for a re-aligned and upgraded access road and changes to mine operation for safety reasons (*e.g.*, reducing trespass, relocating explosive magazine bunkers, and providing appropriate site grading).[312]

The Second Amended Judgment and S2 again included detailed findings confirming the existence of vested rights within the S-4 VRA, established in 1949.[313]

Furthermore, the terms of the Second Amended Judgment stated that none of the upgraded or modernized equipment or facilities used by RRM changed the original vested mining use, and that many of the modernizations and upgrades increased efficiency and environmental conservation of the surface mining operation.[314] Importantly, the Second Amended Judgment further stated that all other non-mining activities would either be on areas within the footprint of historic vested operations, or were necessary to satisfy various public agency requirements or facility upgrades.[315]

On November 16, 2020, the County approved RCL 118, Substantial Conformance No. 4 (RLC00118S4) ("**S-4**"), based on the application submitted by RRM in 2019, for a third amendment to RP 118.[316] The purposes of S4 included (1) adjusting final reclamation contours and apply existing reclamation standards to the full scope of the previously-confirmed vested mining areas, within the existing, already approved 132-acre S2 reclamation boundary; (2) incorporating beneficial reclamation of disturbed areas of the site not presently required to be reclaimed; (3) achieving full compliance with two prior settlement agreements and First and Second Amended Judgments.[317]

VI. SUMMARIZING THE HISTORICAL DEVELOPMENT OF RRM'S VESTED RIGHT

Taken as a whole, the historical development of the mineral resources on and near the HH VRA in the many decades leading up to 1949 supports the establishment of a

---

[311] Exh. C-1.9.

[312] Exh. C-1.9 at ¶¶ R, 1-14.

[313] Exh. C-1.9.

[314] Exh. C-1.9.

[315] Exh. C-1.9.

[316] Exh. C-1.6.

[317] Exh. C-1.6.

vested right across the entire HH VRA. The owners and operators of the HH VRA understood this and, after the Establishment Date, continued mining operations on the HH VRA absent land use permits. Following the enactment of SMARA, which now required reclamation plans, including for vested sites, the County adopted a series of reclamation plan approvals for the site, each of which recognized vested rights on the HH VRA based on this development history. **Sections IV and V**, *supra*, describe this history in detail, which is summarized below to provide a concise basis to support the vested rights determination requested in **Section VI**, *infra*.

A. For Nearly A Century (1859-1948), Mineral Development Occurred On and Across the HH VRA Prior to the the Establishment Date

From the late 1880s through the Establishment Date of January 1, 1949 (effective date of Ordinance No. 348), the HH VRA was subject to numerous surface mining activities, as well as operations of varying scope and scale. Yet always the HH VRA was under one common ownership, with a singular purpose to realize the mineral development potential of the HH VRA. Starting with the Sobrante owners, then Peacock, Kuhry, Harlow, and Hubbs Construction; they all consistently dedicated the HH VRA to the development of the extensive mineral resources throughout the site. The activities of numerous lessees and operators, who continuously operated on the HH VRA, reflected that mining purpose.

1. Surface Mining Activities Operated in the Larger Context of the Temescal Mining District Prior to Divestment of the HH VRA by the Sobrante Owners in 1925

From the 1880s to 1925, the HH VRA was part of the large Sobrante, under the control of the Sobrante owners, and generally supported regional mining operations within the Temescal Mining District. Surface mining activities during this period, under the oversight of the Sobrante owners, included:

- Prospecting and excavation of tin-bearing tourmaline veins;
- Intermittent working of the Cajalco Tin Mine, beginning in about 1890, based on fluctuations in the demand and price for tin (*i.e.*, production would occur only when either price or demand for tin were high);
- Development and maintenance of an internal haul road leading through the HH VRA and connecting the Cajalco Tin Mine to areas west of the HH VRA and providing the surface mining operations at the Cajalco Tin Mine access to the Corona-Elsinore High and ATSF railroad, utilizing the HH VRA, as discussed in

detail in **Sections V.B** and **V.F,** *supra*, and portrayed in **Figures B-3.6 and 3.7; B-4.1, 4.4, and 4.13,** and **Exhibit C-2.21.2;**

- Establishment of a clay pit south of the HH VRA, also connected to the Corona-Elsinore Highway by an internal haul road running south to north through the HH VRA, as discussed in detail in **Section V.B**, and portrayed in **Figures B-3.6** and **3.7** and **B-4.2.**

- Establishment of multiple rock quarries along the western edge of the Sobrante, including at least one quarry within the HH VRA, as portrayed in **Figures B-3.3** and **B-4.2**, as well as other quarries north of the HH VRA, as portrayed in **Figure B-3.6**.

- The legacy of the many surface mining operations in the Temescal Mining District continues to this day, with at least 6, ongoing vested mining operations, as depicted in **Figure B-5.6**. The operations in **Figure B-5.6** are only those that are still ongoing' other surface mining operations continued as vested sites, but have since ceased operation (such as Liston, Gladding McBean, and Owens-Illinois). Those

2. <u>Surface Mining Activity Directly on the HH VRA Increased Following Peacock's Acquisition of the HH VRA in 1925</u>

During the 1920s, the Sobrante owners began divesting themselves of their land holdings, and by 1925, the HH VRA in roughly its current form was acquired by Peacock. Although Peacock conveyed away a number of small, heavily-encumbered portions of the HH VRA surface estate, colloquially referred to as "encyclopedia lots," he reserved and maintained the mineral rights in all of these small lots (now owned by RRM), effectively ensuring that mining activities could continue across the whole of the HH VRA and dedicating the property entirely to mining. Under Peacock's ownership, surface mining activities increased within the HH VRA, primarily through the following:

- Increased development of the quarry along the western edge of the HH VRA to provide railroad ballast during construction of ATSF's spur line from Corona to Alberhill-Elsinore, as discussed in detail in **Section V.C,** and portrayed in **Figures B-3.2 and B-4.2 and 4.3.**

3. Kuhry and Harlow Acquired the HH VRA in 1931 and Started to Realize and Develop the HH VRA's Full Mineral Resource Potential

As ownership progressed in 1932 from Peacock to Kuhry and Harlow (and from 1952, to just Harlow) significant effort was put not just into current developing and mining, but also into exploring/inventorying the overall mineral resource, with the idea to exploit its full mineral resource potential. Kuhry and Harlow oversaw significant surface mining activities within the HH VRA, and undertook actions that demonstrated an objective intent to appropriate and fully mine the entire HH VRA. These actions included:

- Leasing portions of the HH VRA to Pantages;
- Trying to expand their holdings by obtaining neighboring mineral properties (which ultimately failed and led to litigation);
- Undertaking the 1948 ROS of the entire HH VRA to understand where the HH VRA could be mined;
- Allowing establishment of multiple, small-scale quarries and borrow pits (often operated by Pantages in conjunction with mining at the Blarney Stone Quarry) to furnish the raw materials multiple large infrastructure projects, including construction of Cajalco Road, Cajalco Dam, and Prado Dam, as discussed in detail in **Section V.C.2**, *supra*, and depicted in **Figures B-3.2 and B-4.5, 4.12, 4.14, and 4.15**;
- Authorizing clay mining that was used to supply the region's renowned ceramics industry, as discussed in detail in **Section V.C.2**, *supra*, and depicted in **Figures B-3.2** and **B-4.10, 4.11 and 4.14**;
- Coordinating with experts to analyze the property for quality and quantity, which ultimately determined the reserves of high quality "blarney stone" (porphyry) within the HH VRA to be at least **200 million tons** and suitable for large-scale, water infrastructure projects;[318]
- Concurrent with these efforts to maximize development of the building and industrial materials on the HH VRA, during the outbreak of World War II in the 1940s, there was renewed interest in operating the tin mine, resulting in large-scale exploration operations, encompassing approximately six square miles, centered in the area immediate around Cajalco Hill and the Cajalco Tin Mine,

[318] Exh. C-2.4; *see also* Exh. C-3.69.

including areas in the northeast of the HH VRA, as discussed in detail in **Section V.C**, *supra*, and portrayed in **Figures B-3.2** and **3.3**, as well as **B-4.6.1, 4.6.2. 4.6.3, and 4.13, and B-5.8**.

In short, during the years leading up to the 1949 Establishment Date, not only was there significant surface mining activity on the HH VRA, but there also substantial undertakings to maximize the entire site as a mineral resource, including exploration, and surveying activities, as portrayed in **Figures B-5.6**, **5.10**, and **5.11**. These operations included multiple aggregate and gravel borrow pits, several clay pits and prospects, multiple prospecting and exploration activities, and the Blarney Stone Quarry, as detailed in **Table 3**, *infra*, and depicted in **Figure B-3.2**.

B. In 1949, When Riverside County Enacted Ordinance 348 Requiring a Permit to Mine, Vested Rights to Mine Were Established Across the Entire HH VRA

As discussed in **Section IV**, *supra*, the County has previously recognized the Establishment Date of 1949, and that vested rights were established within the S-4 VRA portion of the HH VRA. RRM asserts that vested rights were in fact established in 1949 for the entire HH VRA, not just the S-4 portion of it, based upon:

- Evidence or pervasive mining activity throughout the entire HH VRA, as described above; and

- Evidence that Harlow (and other predecessors) considered the entire HH VRA to be fully appropriate for mining uses and intended to mine the entirety of the HH VRA, consistent with the principles of the Diminishing Asset Doctrine, as discussed in the Legal Discusion in **Section III.E.2,** *supra*.

C. After January 1, 1949, Until Enactment of SMARA in 1976, RRM's Predecessors Continued Mineral Development Across the Entire HH VRA Without a Permit

Following the 1949 Establishment Date, RRM's predecessors continued mining operations within the already confirmed S-4 VRA, and also across the broader HH VRA. The continued, post-1949 surface mining activities within the HH VRA without a use permit (as discussed in **Section V.F** *supra*, and depicted in **Figure B-3.8**) would not have been legally possible absent the valid exercise of vested rights, which confirms the intent that the HH VRA was to be fully appropriated as a mining site, and that vested rights had been established across the entire 792.22 acres of the HH VRA.

- Harlow clearly understood that the HH VRA was vested and did not require mining permits, as she sought to obtain two use permits after 1949, but neither related to surface mining activities.[319] One of the requested permits, sought in 1955, was for permission to place refuse in excavated spaces. Harlow's permit request did not ask permission to remove mined or excavated material. Put simply – Harlow understood the HH VRA had a valid existing right for mining, but not for garbage dumping. Both the City of Corona and Riverside County denied Harlow's application for a permit to use the HH VRA as a cut-and-cover dump for Los Angeles. Despite this denial, mining operations on the HH VRA continued unaffected.

D. Riverside County has Recognized RRM's Vested Rights Within the S-4 Area Multiple Times When Approving Reclamation Plan Amendments

As discussed above in **Section IV**, *supra*, the County has confirmed that vested rights were established in 1949 within the S-4 VRA portion of the HH VRA. There have been multiple County actions confirming these vested rights, including:

- CU 1146 issued by the County in 1970 approving a permit for processing plants, but also including, without permitting, a site plan identifying a much larger mine site area within a larger portion of the S-4 VRA;[320]

- RP 118, approved by the County in 1982, approving a reclamation plan for a portion of the S-4 VRA, which expressly recognized vested rights within portions of the S-4 VRA;[321]

- S-1, approved by the County in 2013, which amended RP 118 and adopted findings confirming vested rights within the S-1 area;[322]

- S-2, approved by the County in 2017, which revised the reclamation plan area, and in the process further confirmed the scope of vested rights for what is now identified as the S-4 VRA;[323] and

---

[319] *See* Exh. C-3.93 (describing Harlow obtaining a plastering permit); Exh. C-3.96 (describing Harlow seeking a permit to operate a dump ***but not*** seeking a permit to continue surface mining operations).

[320] Exh. C-1.2.

[321] Exh. C-1.3.

[322] Exh. C-1.4.

[323] Exh. C-1.5.

- S-4, approved by the County in 2020, which again re-confirmed the S-4 vested right area as part of a further amendment to RP 118.[324]

The bases for each of these approvals and processes for approving them, are described above, in Section IV.

The County's findings for S-4, adopted in 2020, expressly set forth the bases for why and how the County was able to confirm the vested rights within the S-4 Area of the HH VRA, and also why the current process, including a public hearing, is required to confirm the full scope of the remaining vested areas within the HH VRA:

> "6. Because surface mining activities within the RCL00118S4 area are consistent with the existing vested right confirmed in multiple, historical documents, the County need not make any further determination of the scope of such vested right prior to approval of Amended RCL00118S4.
>
> 7. The applicant has stated that is reserves the right to seek future confirmation of its vested right to mine outside the boundaries of RCL No. 118S4. Should the applicant, in the future, seek to mine outside the boundaries of RCL No. 118S4, it would need to demonstrate the scope of its vested right pursuant to the vested right determination process required by and consistent with the appropriate lead agency surface mining ordinance, such as the County's surface mining ordinance (Ordinance No. 555) , SMARA, and related cases (e.g., *Hansen Brothers v. Bd. of Supervisors* (1996) 12 Cal.4th 533, and *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613 ("*Calvert*"), or obtain a permit."[325]

Based on S-4 Finding #7, because RRM now seeks to confirm vested rights in areas outside of the S-4 VRA (*i.e.*, the full HH VRA), not subject to prior County determinations, the current RFD process is now required, consisted with the ruling in *Calvert*.

VII. REQUESTED COUNTY VESTED RIGHT DETERMINATIONS

Section V, *supra*, presented detailed historical evidence of how RRM's predecessors-in-interest conducted an overall mining business within the HH VRA and fully

[324] Exh. C-1.6.

[325] Exh. C-1.6.

appropriated the HH VRA for mining prior to the Establishment Date. The evidence was summarized in **Section VI**. This business took the form of either direct mining operations, or leasing and/or contracting others to conduct mining operations in response to changing market conditions. **Section VII** herein applies the facts and evidence presented in **Sections V** and **VI** to the relevant legal standards, discussed in **Section III**, *supra*, and describes how RRM's already-confirmed vested right encompasses the entire HH VRA.

A. The County Has Previously Confirmed That RRM Has Established Vested Rights

RRM's vested rights under Section 2776 (and County Ordinance 555.20) are based on a non-conforming use established at the time that the first legal requirement was enacted (Ordinance 348) that required a permit to conduct surface mining activities. This "non-conformity" was first established in 1949, while the HH VRA was under the ownership and control of Leilamae Harlow. As discussed above in **Section IV**, the County has already recognized several times that a portion of the HH VRA is vested. Under the well-established principle that vested rights are property rights that attach to and run with the land,[326] RRM, as the successor-in-interest to Leilamae Harlow, has succeeded to the vested rights derived from the surface mining operations established under Harlow's ownership, or at times prior to her ownership.[327] Given the County's multiple confirmations of vested rights in the S-4 Area portion of the HH VRA, the County's interpretation of Ordinance 348 is well-established, and its application of Ordinance No. 348 to the S-4 Area now settled.

1. Requested Determination on Establishment of Vested Rights

RRM requests that the County determine that the establishment of vested rights in connection with the HH VRA, subject to a determination of geographic scope (see discussion in **Section VI.B**, *infra*) is now settled based upon the prior County vesting determinations in CU-1146, RP 188, S-1, S-2, and S-4, as well as the First Amended Judgment, and the Second Amended Judgment.

B. The Geographic Scope of RRM's Vested Rights

Section VI.A, *supra*, discussed how the County's prior five formal actions between 1970 through 2020 have settled the issue that vested rights have been established on

[326] *Hansen*, 12 Cal.4th at 573.

[327] Transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land. *Hansen Bros.*, 12 Cal. 4th at 540, n.1.

the S-4 VRA portion of the HH VRA. Having previously recognized the existence of the HH VRA vested rights, the primary issue to be resolved through this RFD is RRM's request that the County recognize that existing vested rights apply to the entire 792.22 acres of the HH VRA. RRM believes it has more than satisfied its evidentiary burden to demonstrate this scope, and that the entire HH VRA is subject to the existing vested rights, based upon the following:

1. The Evidence Demonstrates Pervasive Surface Mining Activities Across the Entire HH VRA Prior to the Establishment Date

a. Virtually all reaches of the HH VRA had been subject to surface mining operations prior to the Establishment Date:

RRM's vested rights attach to all land within the HH VRA that hosted surface mining operations prior to January 1949, based on the fact that most areas within the HH VRA were mined for a variety of minerals, including rock, sand, gravel, and clay and that such mining activity actually occurred across the HH VRA, as discussed in **Section V**, *supra*, and portrayed in **Figure B-3.3** (depicting all surface mining activities within the HH VRA prior to 1949).

The areas actually disturbed by surface mining directly confirm such areas should be vested.[328] In addition, the pervasive scope of the activities, reaching virtually all areas of the HH VRA demonstrate the intent to appropriate the entire HH VRA for mineral use.[329]

b. Numerous portions of the HH VRA were also subject to ancillary mining activities prior to the Establishment Date:

In addition to mining *operations* on the HH VRA, RRM's vested rights include all lands that were subject to surface mining *activities* on the HH VRA that were ancillary to, or otherwise supported surface mining operations on sites adjacent to or near the HH VRA, including lands traversed by haul roads connecting operations on either side of the HH VRA, lands explored for mineral exploitation, and lands used for stockpiling, processing, and other ancillary mining activities prior to January 1949.[330]

---

[328] *See, e.g., Paramount*, 180 Cal.App.2d at 217.

[329] *See, e.g., Hansen*, 12 Cal.4th at 554-558.

[330] *See Hansen*, 12 Cal.4th at 565-566; *see also* Exh. D-1 (describing 61% of HH VRA subject to *either* surface mining disturbances *or* ancillary surface mining activities).

c. Numerous surface mining activities occurred within the HH VRA, but Outside of the S-4 VRA, absent any land use permits subsequent to the Establishment Date

The operations activities that occurred throughout the HH VRA prior to the Establishment Date, discussed in **subsections (a)** and **(b)**, *supra*, set the baseline of evidence for a determination of the scope of vested rights across the HH VRA. In addition, extensive surface mining activities within the HH VRA that continued after the Establishment Date but *without land use permits*, corroborates that both RRM's predecessors and the County were fully aware that mining activities within the HH VRA were not subject to the permitting requirements of the then-newly enacted Ordinance No. 348. Despite the extensive surface mining activities ongoing in the post-1949 years (see **Figure B-3.8**), there is no evidence in the County records of any notices of violation or other notifications by the County against or to Leilamae Harlow as owner, or other mining operator working within the HH VRA that mining activities ongoing at that time were subject to permit requirements or were otherwise unauthorized.[331]

In contrast, the historical record further demonstrates that Harlow was acutely aware of the County permitting requirements post-1949 for certain activities other than mining on her property within the HH VRA. As discussed in **Section V.F.1,** there were two instances – while mining operations were ongoing – that Harlow sought County approvals. One, issued in 1951 was for the renovation – including plastering and painting – of her residence. The other, sought in 1955, was for the development of a cut-and-cover landfill, which would have allowed Harlow to use mined areas as a landfill for trash from throughout southern California.[332] In applying for the permit, Harlow sought conditional approval only for placement of trash, ***not*** for the authorization to mine or excavate the HH VRA.[333] Despite seeking these two use authorizations, Harlow never sought authorization for the multiple mining operations conducted within the HH VRA during this period, demonstrating Harlow's own understanding that the HH VRA had vested rights.

Taken as a whole, this evidence demonstrates Harlow and the County understood the HH VRA, including areas outside of the S-4 VRA, was vested.

---

[331] Exh. B-8; *see also* Declaration of Sage Thurmond, ¶ 4.

[332] Exh. C-3.96 (describing proposed project).

[333] *See* Exh. C-3.96, C-3.97, C-3.98, C-3.99, C-3.100, C-3.101 (all describing permitting process specific to placement of trash, and not excavation or mining prior to such placement).

2. The Evidence Demonstrates Intent to "Appropriate" the Entire HH VRA As a Mine Site or for Mining Purposes Prior to the Establishment Date

Beyond the physical mine operations, the HH VRA owners also undertook exploration and surveying activities that manifested their intent to mine or otherwise "appropriate" the entire HH VRA for mining purposes.[334]

For example, concurrent with the development of the Blarney Stone Quarry (starting in about 1938), Kuhry and Harlow authorized efforts to determine the extent of mineral resources suitable for dam and canal construction, (concurrent with analysis required to verify stone produced from the VRA met U.S. Army Corps of Engineers' requirements for use in the Prado Dam and was suitable for sale to that project), and determined there were approximately **200 million tons** of such reserves for use in water infrastructure (*e.g.*, dams, canals, breakwaters, and shore protection rip rap, etc.).[335]

In 1947 (just prior to the Establishment Date), following a failed attempt to acquire mineral properties near to (and hopefully to compete with) the Owens-Illinois Silica Plant, just west of the HH VRA, Harlow then commissioned her ambitious, extensive, and expensive 1948 ROS to identify the complete boundaries of the HH VRA and surrounding mineral properties (primarily those under control of the Owens-Illinois Silica Plan) in order to clarify the extent of Harlow's mineral assets.

These and other efforts to explore and inventory the full extent of mineral resources within the entire HH VRA, in combination with decades of mining activities through the HH VRA, leave little doubt the entire property was fully appropriated as a mining site.

3. Requested County Determinations on Geographic Scope of the Vested Rights of the HH VRA

Based upon the evidence presented above and herein, RRM request the County to make several determinations regarding the geographic scope of the vested rights applicable to the HH VRA.

---

[334] *See* discussion in **Section III.E.2**, *supra*, regarding appropriation of a property for mining.

[335] Exh. C-2.5; *see also* Exh. C-3.69.

a. Requested Determination: RRM's Vested Right Includes All Lands Mined or Hosting Ancillary Surface Mining Activities in the HH VRA As of January 1949.

The record supports a determination that all lands within the HH VRA that had been subject to mining up through the Establishment Date fall within the scope of the vested right. As discussed in **Section III**, *Hansen* directs that the totality of a mining operation should be considered when assessing the scope of a vested right.[336] This would include all 792.22 acres within the HH VRA. The record evidence supports the determination approximately 486 acres of the HH VRA was subject to mining operations or ancillary surface mining activities as of the establishment date.[337]

b. Requested Determination: RRM's Vested Right Includes the Entire 792-Acre HH VRA Because Those Areas Where No Mining Had Occurred as of January 1, 1949, Were Fully Appropriated for Surface Mining at That Time by RRM'S Predecessors

In addition to all areas of the HH VRA that were subject to actual surface mining operations or ancillary surface mining activities, the record supports a determination that vested mining rights also apply to all other remaining areas of the HH VRA, based on principles in California law related to the Diminishing Asset Doctrine, including evidence of (i) objective manifestations of intent to mine the entire HH VRA, and/or (2) intent that the entire HH VRA was appropriated for mining purposes.[338]

As detailed in **Section III**, *supra*, all lands for which an operator can show a clear intent to mine, based on objective manifestations, are properly included within that operator's vested right. Under the Diminishing Asset Doctrine, RRM's vested rights extend to those areas not mined as of January 1, 1949, but which had been "clearly intended" to be mined.[339]

A vested right includes the right to expand into previously un-mined areas under the Diminishing Asset Doctrine where (1) "there is objective evidence of the owner's intent to expand" and (2) "that intent existed at the time of the zoning change."[340] Under this

---

[336] *Hansen*, 12 Cal.4th at 565-566.

[337] Exh. D-1, ¶ 8.

[338] *See* discussion in **Section III.E.2**, *supra*.

[339] *Hansen*, 12 Cal.4th at 556, *citing Town of Wolfeboro (Planning Bd.) v. Smith* (1989) 131 N.H. 449.

[340] *Hansen*, 12 Cal. 4th at 553.

test, clear evidence of an intent to expand – for example, documentation pre-dating or from the time the vested right is established – is sufficient to establish the right to mine such areas under the *Hansen* criteria.

As discussed above in **subsection (a)**, the pervasive surface mining operations and ancillary activities throughout the HH VRA are such that there are little, if any, distinct areas of the HH VRA lacking any historic evidence of mining activities, or ancillary support activities such as haul roads, etc.[341] As such, the evidence of "clear intent" to mine the remainder of the HH VRA is self-evident. Regardless, the history of the HH VRA clearly demonstrates that the entire property was intended to be appropriated for mining purposes. Several key facts support this:[342]

(1) The presence of multiple, valuable mineral commodities within the bounds of the HH VRA was understood by a succession of HH VRA owners, from the Sobrante owners to Harlow, all of whom and preserved the right to access and mine such mineral commodities;[343]

(2) Haul roads, referenced above, beyond just the acreage they occupied, evidence intent that the land was part of an integrated, regional mining operation and had clearly been "appropriated" for mining;[344]

---

[341] *See* Exh. D-1, at ¶ 8.

[342] These facts are consistent with California law, holding that a vested right is established when,

"'[T]he 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 [mine] property was **appropriated** to [mining and quarrying] use prior to the adoption of the restrictive zoning ordinance." *See Hansen*, 12 Cal. 4th at 557, *citing Stephan & Sons v. Municipality of Anchorage* (Alaska 1984) 685 P.2d 98, citing 6 R. Powell, The Law of Real Property, ¶ 871[3][iii], at 79C-178 to – 179 (Rohan rev. ed. 1979) (emphasis added).

[343] *See* Exh. A-1 (deeds reserving mineral rights); *see also* **Figures B-5.8** and **B-5.9**.

[344] *Hansen*, 12 Cal.4th 565-566; *see also County of DuPage v. Elmhurst-Chicago Stone Co.*, *supra*, 18 Ill.2d 470, 164 N.E.2d at 313 (plot of land found to be devoted to excavation based on numerous switch tracks, even though material had not yet been removed from entirety of land); *Syracuse Aggregate Corp. v. Weise* (App. Div. 1961) 51 N.Y.2d 278, 434 N.Y.S2d 150, 414 N.E.2d 651, 655 (service roads throughout the property, coupled with other features, "manifest[ed] an intent to appropriate the entire parcel to the particular business of quarrying"); *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah 2d 329, 431 P.2d 559 (land was integral part of gravel operation based, in part, on existence of multiple haul roads connecting it with other mining property).

(3) A significant portion of pre-1949 mining involved mining for materials in response to the demand at the time (*e.g.*, clay to produce ceramics or porphyry to provide rock for water infrastructure, etc.) and thus fully exploit the multiple valuable mineral materials within the HH VRA. The record is extensive in the scope of these operations, and the use of multiple clay, gravel, and other aggregate pits on an "as-demanded" basis by multiple, local mining operators; and

(5) Between 1938 and 1949, Harlow (1) leased the property to mining operators and allowing mining both within and outside of the S-4 Area; (2) coordinated studies that determined there were approximately **200 million tons** of reserves on the HH VRA for use in water infrastructure (*e.g.*, dam, canals, breakwaters, and shore protection, etc; and (3) engaged in litigation with mine operator lessees based on the belief that the operators were interfering with Harlow's interest in fully mining the HH VRA; and (4) undertook a costly and detailed survey of her property boundaries, in relation to potentially acquiring neighboring mineral properties.[345]

The HH VRA, including those areas that were not mined as of January 1, 1949, were thus appropriated for mining, because the areas either supported ancillary or auxiliary mining uses (*i.e.*, the haul roads) or were open space that had yet to be mined simply because it is impossible for a mining operation to excavate all of its land at the same time.[346]

c. Requested Determination: RRM's Vested Right Includes the Entire 792.22 Acres of the HH VRA Based on the Scope of Actual Surface Mining Disturbances in Combination With the Intent to Fully Appropriate the Site for Surface Mining

The Requested Determinations "a." and "b" above, in combination, support a determination that the entire HH VRA is vested, because the entire HH VRA, including areas actually subject to surface mining disturbances, and areas explored, sampled and otherwise subject to various ancillary activities, is fully appropriated for mining.

---

[345] See discussion in **Section VI.B.2**, *supra*; *see also* Exh. C-2.4 at pp. 1029, 1031 (describing report and production rates); Exh. C-3.69 (reporting 200 million ton estimate)

[346] *See Hansen*, 12 Cal. 4th at 555, 565 (*citing* in part *County of Du Page v. Elmhurst-Chicago Stone Co.*(1960) 18 Ill.2d 379, 165 N.E. 2d 310, 313.

C. Requested County Determinations on the Scope and Type of Vested Mining Activities and Operations

Based upon the prior vested right determinations made by the County with respect to the scope of operations currently undertaken in the S-4 VRA, and in particular the findings previously adopted by the County in connection with S-1, S-2, and S-4, RRM requests the County to determine that RRM should be allowed to continue its surface mining operations in a manner and scale consistent with its current vested operations within the S-4 Area.

In particular, RRM requests the County re-confirm the applicability of S-2, Finding 13, as being applicable with respect to the operations within the scope of the current vesting determination:

> "Finding 13. In approving RCL No. 118S1, the County specifically referenced or identified various surface mining activities to be undertaken during mining and reclamation, including crushing, screening, trucking, mining, and related activities historically ongoing at the site which further the existing quarry operations, including a processing plant, screens and conveyors. As determined in the 2013 findings supporting RCL No. 118S1, and as concluded by the Superior Court in the 2016 Second Amendment to Stipulated Settlement Agreement and Judgment thereon, and confirmed herein, such surface mining activities are within the scope of the previously-determined vested right. Furthermore, an owner of vested surface mining operations is allowed to "modernize his operations; change, add to, or increase the size of his equipment (though determined to be structures), even though this increases his input and intensifies the use; provided that by such action, he does not change the original protected nonconforming use." [Citations] . . . Accordingly, none of the recently upgraded or modernized equipment or facilities change the original vested mining use, and in fact many of the modernizations and upgrades increase efficiency and environmental conservation of the applicant's surface mining operation."[347]

[347] Exh. C-1.5; *see also* C-1.6.

1. The County Already Has Determined that the Scope of RRM's Current Operations Do Not Constitute a Substantial Change in Surface Mining Operations Relative to Pre-Establishment Date Operations.

As discussed in **Section III**, SMARA provides that a vested operation will not be required to obtain a permit unless "substantial changes" in the operation are made. The assessment of whether a vested operation has undergone a "substantial change" must be made on a case-by-case basis, given that each mining operation is unique. The *Hansen Bros.* Court stated, "in determining whether the nonconforming use [*i.e.*, vested right] was the same before and after the passage of a zoning ordinance, each case must stand on its own facts."[348]

Based on ruling in *Hansen*, as discussed in **Section II**, there are two principle questions that are relevant to assessing whether RRM's operation constitutes a substantial change from the existing, recognized vested right established in 1949:

- Does RRM's mining operation involve a "substantially different" use relative to the pre-1949 mining operations?
- Has RRM's mining operation "impermissibly intensified" relative to the pre-1949 mining operations?

The County already undertook such an evaluation in connection with the findings made in support of the S-1, S-2, and S-4 approvals, and in partciular Finding 13 in support of S-2, referenced above.[349] This RFD seeks only to have the County reconfirm its prior determination that the current operation is not a substantial change relative to operations prior to the Establishment Date.

D. Requested County Determinations on Non-Abandonment of the Vested Mining Rights Attached to the HH VRA

A vested right can be determined to be abandoned or waived based on discontinuance, non-use, or other similar concepts.[350] However, once established, a vested right becomes a property right subject to Constitutional protections.[351] As such, the standard to abandon such a right is high, and requires both an intent to abandon, as well as an overt act or failure to act which demonstrates that the owner no longer wish to

---

[348] *Hansen*, 12 Cal. 4th at 552, *citing Edmonds v. County of Los Angeles*, *supra*, 40 Cal.2d at 651.

[349] Exh. C-1.5.

[350] *Hansen*, 12 Cal.4th at 568-71

[351] *See* U.S. Constitution, 5th Amend.

continue the nonconforming use.[352] Moreover, although an applicant has the initial burden of proof to establish a vested right, once that burden is met, the burden then shifts to the party asserting abandonment to prove, by clear and convincing evidence (an extraordinarily high standard), that such an abandonment took place.[353]

Here, with respect to the HH VRA, the County has already determined as recently as 2020 that RRM's vested rights continue, and thus by implication, that no abandonment of the vested right has occurred. As such, RRM requests that the County reconfirm its prior determination that the vested rights continue and that there has been no abandonment of the vested right.

VIII. CONCLUSION

There is an exhaustive factual record that demonstrates a vested right was established in the Sobrante Area by RRM's predecessors-in-interest by 1949, because there were large-scale, interconnected mining operations conducted prior to that date that continued following the 1949 Ordinance, as well as up to and after the effective date of SMARA in 1976. These vested rights were never abandoned, and RRM acquired these vested rights when it took over the site in 2013. RRM has maintained the vested right for mining and is entitled to have it confirmed here before this Board.

[352] *See Hansen*, 12 Cal.4th at 568-71

[353] *See Waller v. Truck Ins. Exchange, Inc.* (1990) 11 Cal.4th 1, 31; *Old Republic Ins. Co. v. Fsr Brokerage* (2000) 80 Cal.App.4th 666, 678.

AFFIDAVIT OF AUTHENTICITY

I, Kerry Shapiro, hereby declare as follows:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California. I am a partner with the law firm of Jeffer, Mangels, Butler & Mitchell LLP, counsel of record for Robertson's Ready Mix in connection with preparation of the Request for Determination submitted herewith.

2. I hereby attest that to the best of my knowledge all of the information submitted in this Request for Determination is true and accurate, except as to those stated on information and belief and, as to those, I am informed and believe them to be true.

Executed this 15th day of December, 2021, at San Francisco, California

Kerry Shapiro