



# LAND USE SERVICES DEPARTMENT

## PLANNING COMMISSION STAFF REPORT

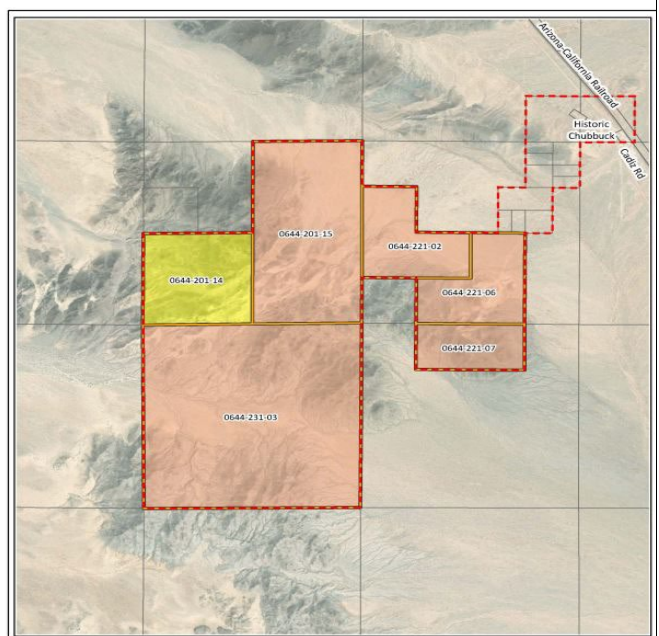
**HEARING DATE: February 23, 2023**

**AGENDA ITEM #3**

Project Description

Vicinity Map

APN: 0644-201-14  
APPLICANT: Braavos, LLC  
COMMUNITY: 1<sup>st</sup> District / Chubbuck  
LOCATION: 32 miles southeast of the town of Amboy and 21 miles south of Route 66 on Cadiz Road  
PROJECT NO: PDCI-2022-00004  
CO STAFF: Reuben J. Arceo  
APP REP(S): Adam K. Guernsey, Harrison, Temblador Hungerford & Guernsey LLP  
PROPOSAL: Determination of Vested Mining Rights Based on Past and Anticipated Future Land Use on a 160-Acres portion of the Chubbuck Mine.



7 Hearing Notices Sent On: February 2, 2023

Report Prepared By: Reuben J. Arceo, Contract Planner

### SITE INFORMATION

Project Size: 160 Acres  
Terrain: Disturbed and undisturbed lands of low to moderate relief.  
Vegetation: Grasses and scrub found within natural low desert plant communities.

**TABLE 1 - SURROUNDING LAND DESCRIPTION:**

AREA	EXISTING LAND USE	LAND USE CATEGORY	LAND USE ZONING DISTRICTS
SITE	Open Space/Chubbuck Mine Quarry	Open Space (OS)	Resource Conservation (RC)
North	Open Space	Open Space (OS)	Resource Conservation (RC)
South	Open Space	Open Space (OS)	Resource Conservation (RC)
East	Open Space	Open Space (OS)	Resource Conservation (RC)
West	Open Space	Open Space (OS)	Resource Conservation (RC)

**STAFF RECOMMENDATION:** That the Planning Commission **FIND** that the recognition of Vested Mining Rights is not a project subject to CEQA; **ADOPT** findings as contained in the staff report; **APPROVE** the recognition and confirmation of Vested Mining Rights; and **DIRECT** staff to file a notice of exemption.

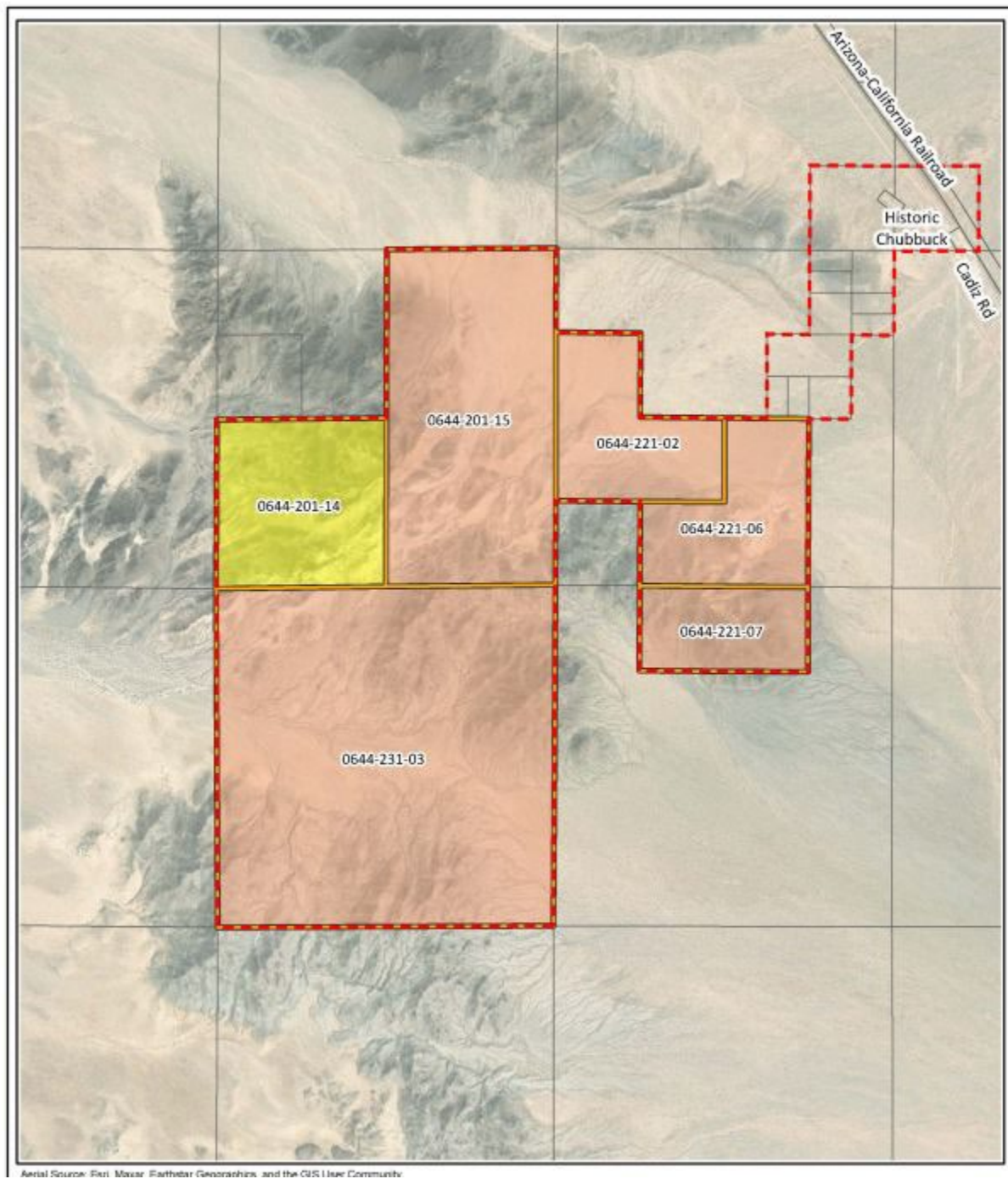
**FIGURE 1 – REGIONAL LOCATION MAP**  
Chubbuck Mine





FIGURE 2 – SITE LOCATION MAP

Chubbuck Mine  
Seeking Vested Rights Determination (Parcel in Yellow)  
Previously Determined Vested by Planning Commission on October 8, 2020 (Parcels in Red)



**FIGURE 3 - CHUBBUCK MINE**  
160 Acre Perimeter





FIGURE 4 - CHUBBUCK MINE DISTURBANCE PHOTOS







## **INTRODUCTION AND OVERVIEW:**

The County of San Bernardino (“County”) serves as the Lead Agency in land use jurisdiction and is responsible for implementing the requirements of the San Bernardino County Development Code (“Development Code”) and the Surface Mining and Reclamation Act of 1975 (“SMARA”, Public Resources Code Section 2710 et seq. and California Code of Regulations Section 3500 et. seq.).

### **Background**

On October 8, 2020, the County of San Bernardino Planning Commission determined that vested mining rights exist for 1,280 acres of the historical 1,600-acre Chubbuck Mine, as shown in Figure 2 and recognized that mining development is a legal nonconforming land use on the subject parcels owned and maintained by Owner. The Planning Commission’s October 8, 2020 Staff Report and Findings are attached to this Staff Report as Exhibit A, and are incorporated herein by reference.

Since the Planning Commission’s determination on October 8, 2020, Braavos, LLC (“Owner”), acquired an additional 160-acre parcel that was a part of the historical and vested 1,600-acre Chubbuck Mine.

### **Proposal**

On November 2, 2022, Land Use Services received a request from the property owner to make a determination of Vested Mining Rights on the additional 160 acres. The property owner claims that the 160-acre parcel, as shown in (Figure 2 and 3) constitutes a key piece of the vested Quarry property the Planning Commission approved on October 8, 2020, identified as Assessor’s Parcel Number 0644-201-14 (the “Property”).

The facts relating to the history and operation of the Quarry, including the 160-acre Property, are extensive and the Findings previously made by the Planning Commission as part of its October 8, 2020, decision support a determination that the 160-acre Property was an essential part of the Quarry operation (Exhibit A). The additional supporting documentation provided by the Owner in Exhibit B demonstrates that the 160-acre Property was an integral part of the Quarry operation, with significant mining activities occurring on the Property prior to the vesting date of August 8, 1951.

Staff has reviewed and analyzed the request and all available pertinent evidence and confirms that that the applicant has made a sufficient presentation for a vested mining right to be legally recognized on the 160 acres.

## **VESTED MINING RIGHTS DEFINED:**

Formerly, Title 14 of the California Code of Regulations (CCR), Section 3951<sup>1</sup>, defined a vested right as follows:

*A vested right is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter. A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction.*

*A person shall be deemed to have a vested right or rights to conduct surface mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of "diminishing assets" as set forth in Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533.*

The Development Code and SMARA outline requirements for conducting surface mining operations and provide a comprehensive policy for regulation of surface mining operations to assure that adverse environmental impacts are prevented or minimized and mined lands are reclaimed to a usable condition. These requirements include the need to obtain a Mining Conditional Use Permit (CUP), and approval of a Reclamation Plan and financial assurances. An exception to obtaining a CUP may exist if a mining operation was legally established and in existence prior to permitting restrictions; thus a "vested mining right" if formally recognized by the County in a public hearing.

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<sup>1</sup> This section was repealed on December 12, 2017, as the State Mining and Geology Board's authority to make vested rights determinations was rescinded by the Legislature, Public Resources Code § 2774.4. Nevertheless, this regulation retains utility as a means to evaluate vested rights in the mining context.

## **VESTED RIGHTS ANALYSIS:**

The Applicant's property history, ownership and development Braavos LLC's ("Braavos") subject parcels of land are located within the Resource Conservation Zoning District (RC). Mineral resource development (mining) is an allowed land use in RC with an approved Mining CUP. Braavos, LLC's vested mining rights claim, application and supporting mining-related historic documents indicate the property owners' desire to continue use of the Property without the requirement of a Mining CUP. Given the County's prior findings and determination, Braavos seeks formal confirmation of vested rights that encompass the 160-acre Property.

Much like the overall Chubbuck Mine, the 160-acre Property was subject to a variety of mining disturbances prior to the vesting date as evident by photographs (Figure 4) showing mining disturbances. As cited in the Findings (Exhibit B) these disturbances involved surface mining operations occurring within the Property and the overall Chubbuck Mine, and the operator intention to devote the entirety of the Property to the mining operation.

In summary, given the County's prior determination and the additional documentation presented, we respectfully request that the County, after reviewing the evidence submitted at a public hearing, confirm the following:

1. The Property was an integrated part of the Chubbuck Mine and, as of the vesting date, surface mining operations were occurring within the Property, and the operator objectively intended to devote the entirety of the Property to the mining operation; and
2. The Property is part of the Chubbuck Mine's vested mining use and subject to the Planning Commission's October 8, 2020 determination and findings.

## **DETERMINATION OF VESTED RIGHTS FOR MINING FOR THE BRAAVOS, LLC'S PROPERTIES:**

Preponderance of the Evidence: Braavos LLC, has the burden of proof in demonstrating a claim for vested mining rights. The Planning Commission shall determine whether Braavos LLC, by a preponderance of the evidence, has demonstrated through oral testimony, exhibits and public comments, enough evidence to support the claim that the 160 acres is entitled for vested mining rights and is part of the quarry's vested mining use. The amount of evidence required is a case-by-case basis.

## **PUBLIC COMMENTS:**

No public comments have been received.

## **RECOMMENDATION** That the Planning Commission:

1. **FIND** that the recognition of Vested Mining Rights is not a project subject to the California Environmental Quality Act (CEQA) and, even if considered a project, exempt from CEQA pursuant to 14 California Code of Regulations sections 15061(b)(3), 15261(b) and 15301;
2. **ADOPT** findings in support of the recognition and confirmation of Vested Mining Rights (Exhibit C);
3. **APPROVE** the recognition and confirmation of the 160-acre Property as part of the Chubbuck Mine's vested mining use and subject to the Planning Commission's October 8, 2020 determination and findings; and
4. **DIRECT** staff to File a notice of Exemption.

## **ATTACHMENTS:**

Exhibit A: Planning Commission October 8, 2020 Staff Report and Findings

Exhibit B: Braavos, LLC's Request for confirmation of Vested Rights Determination for 160 Acres for the Chubbuck Limestone and Dolomite Quarry

Exhibit C: Findings



# **EXHIBIT A**

## **Planning Commission October 8, 2020, Staff Report and Findings**



# LAND USE SERVICES DEPARTMENT

## PLANNING COMMISSION STAFF REPORT

**HEARING DATE: October 8, 2020**

**AGENDA ITEM # 2**

### Project Description

### Vicinity Map

APN: 0644-221-02, 0644-231-03, 0644-221-06, 0644-221-07 and 0644-201-15

APPLICANT: Braavos, LLC

COMMUNITY: 1<sup>st</sup> District / Chubbuck

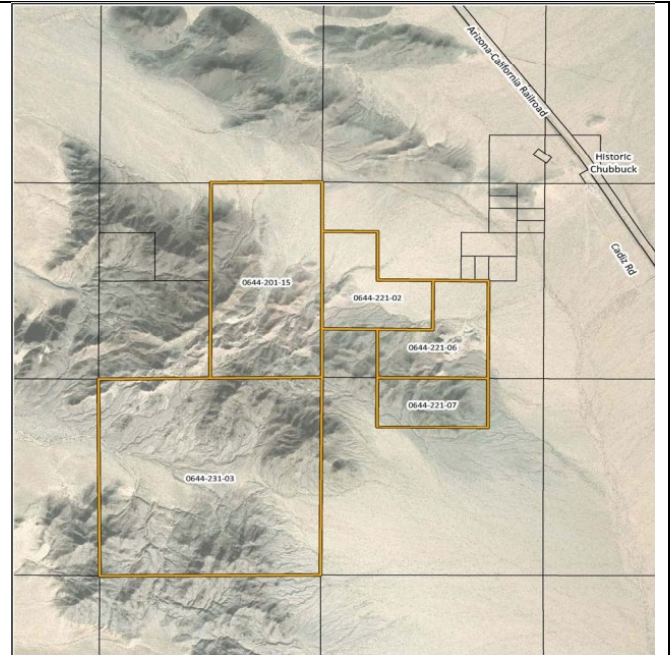
LOCATION: The Mine site is located 32 miles southeast of the town of Amboy and 21 miles south of Route 66 on Cadiz Road.

PROJECT NO: PDCI-2020-0002

CO STAFF: Steven Valdez

APP REP('S): Adam K. Guernsey, Harrison Temblador  
Hungerford & Johnson

PROPOSAL: Determination of Vested Mining Rights Based on Past and Anticipated Future Land Use on 1,280 Acres referred to as the Chubbuck Mine.



3 Hearing Notices Sent On: September 24, 2020

Report Prepared By: Steven Valdez

### **SITE INFORMATION**

Project Size: 1,280 Acres

Terrain: Disturbed and undisturbed lands of low to moderate relief.

Vegetation: Grasses and scrub found within natural low desert plant communities.

### **TABLE 1 - SURROUNDING LAND DESCRIPTION:**

AREA	EXISTING LAND USE	LAND USE ZONING DISTRICT
Site	Chubbuck Mine	Resource Conservation (RC)
North	Vacant	Resource Conservation (RC)
South	Vacant	Resource Conservation (RC)
East	Vacant	Resource Conservation (RC)
West	Vacant	Resource Conservation (RC)

	<u>Agency</u>	<u>Comment</u>
City Sphere of Influence	None	No Comments
Water Service	None	EHS Approved

**STAFF RECOMMENDATION:** That the Planning Commission **FIND** the recognition of Vested Mining Rights is not a project subject to CEQA; **APPROVE** the recognition and confirmation of Vested Mining Rights and require the submission of a reclamation plan and financial assurances prior to the continuation of any mining activity on the Braavos, LLC's properties; **ADOPT** findings in support of the recognition and confirmation of Vested Mining Rights; and **DIRECT** staff to file a notice of exemption.

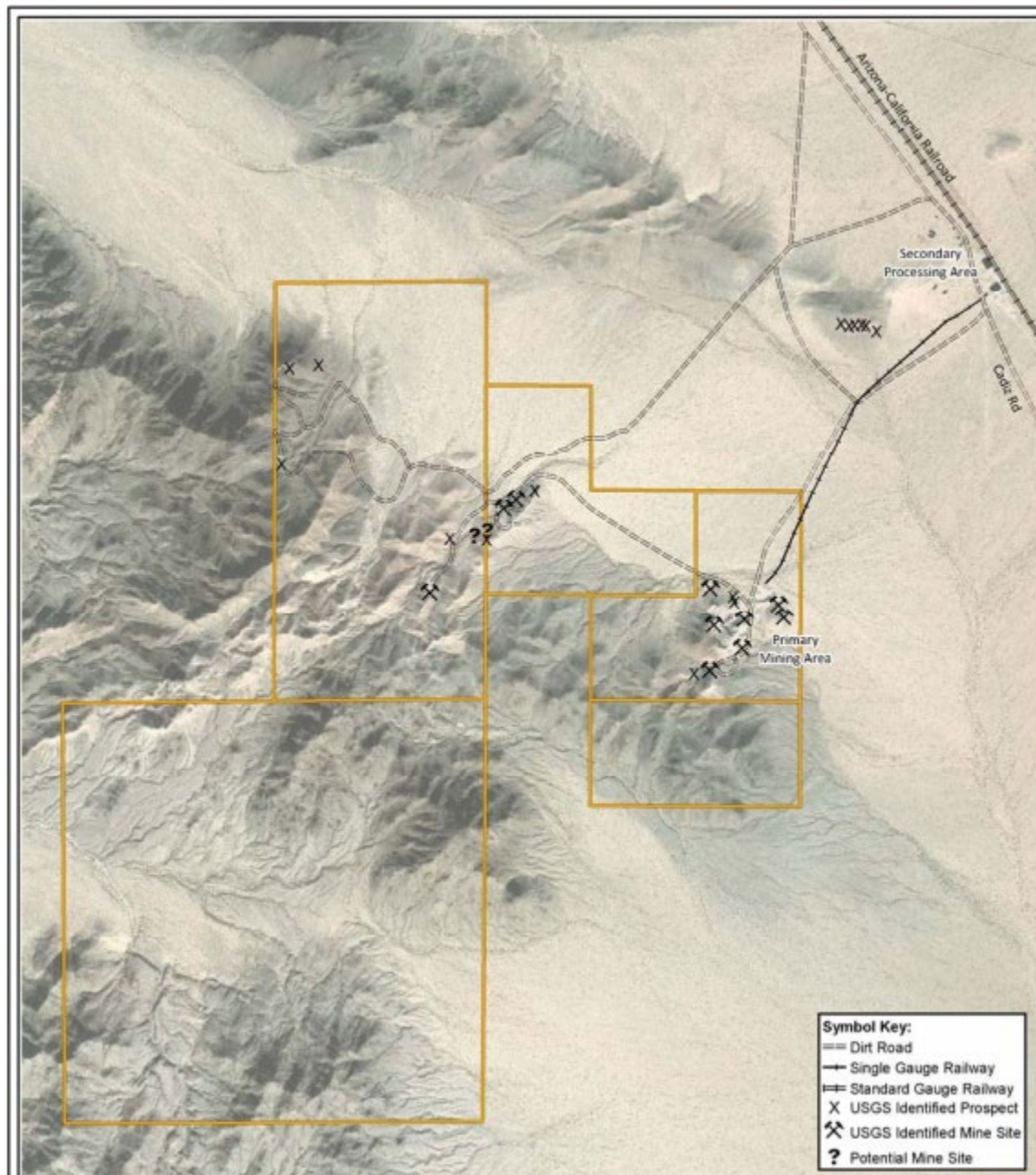
**FIGURE 1 – REGIONAL LOCATION MAP**

Chubbuck Mine



**FIGURE 2 – SITE LOCATION MAP**

Chubbuck Mine





**EXISTING SITE PHOTOS**

Chubbuck Mine







## **INTRODUCTION AND OVERVIEW:**

The County of San Bernardino (“County”) serves as the Lead Agency in land use jurisdiction and is responsible for implementing the requirements of the San Bernardino County Development Code (“Development Code”) and the Surface Mining and Reclamation Act of 1975 (“SMARA”, Public Resources Code Section 2710 et seq. and California Code of Regulations Section 3500 et. seq.). On July 21, 2020, Land Use Services received a request from Braavos, LLC. (“Owner”) to make a determination of Vested Mining Rights for 1,280 Acres of land located 32 miles southeast of the town of Amboy and 21 miles south of Route 66 on Cadiz Road (Exhibit A).

On August 9, 2020, Staff responded to the request with the understanding that the County typically considers recognition of Vested Mining Rights when reviewing applications for a Mining/Reclamation Plan. Staff then suggested that if a Mining/Reclamation Plan is not being prepared, the applicant should submit a General Plan and Development Code Interpretation application to accomplish the goal of recognizing Vested Mining Rights with a noticed public hearing before Planning Commission, as if it were an appeal of the Planning Director’s decision. This application is consistent with that procedural suggestion.

Staff has reviewed and analyzed the request and all available pertinent evidence and believes that the applicant has made a sufficient showing for a Vested Mining Right to be legally recognized. This conclusion is guided by SMARA, various Court decisions as discussed below and provided within the proposed findings (Exhibit B).

## **VESTED MINING RIGHTS DEFINED:**

Formerly, Title 14 of the California Code of Regulations (CCR), Section 3951<sup>1</sup>, defined a vested right as follows:

*A vested right is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter. A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction.*

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<sup>1</sup> This section was repealed on December 12, 2017, as the State Mining and Geology Board’s authority to make vested rights determinations was rescinded by the Legislature, Public Resources Code § 2774.4. Nevertheless, this regulation retains utility as a means to evaluate vested rights in the mining context.

*A person shall be deemed to have a vested right or rights to conduct surface mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of “diminishing assets” as set forth in Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533.*

As a general rule, the law of nonconforming uses when handling “grandfathered” or “pre-existing uses” identifies three elements that must be in place for a property to have a vested right in a nonconforming use:

- 1) *The use must be in existence prior to the enactment of the restricting ordinance;*
- 2) *The use must have been lawful when begun; and*
- 3) *The use must be of substantial nature so as to warrant constitutional protection of a property right.*

The retroactive application of a zoning law ordinance that extinguishes a pre-existing nonconforming use, without due process, violates well-established constitutional principles. Therefore, the following presents information for the Planning Commission to consider for a quasi-judicial decision.

## **REGULATORY AND STATUTORY AUTHORITY AND CONSIDERATIONS:**

The Development Code and SMARA requires that all individuals and operators contemplating surface mining must acquire (1) a permit from the County, and obtain (2) an approved plan and (3) financial assurances for reclamation prior to commencement. SMARA further requires that all existing or “vested” surface mining operations have an approved reclamation plan and financial assurances to insure implementation of the plan. Otherwise, after March 31, 1988, continuance of mining without an approved reclamation plan and financial assurances is impermissible, even for public agencies and vested mining operations.



Development Code Section 88.03.050 relating to Vested Rights states:

- a) ***Pre-SMARA and post-SMARA right to conduct surface mining operations.*** A Conditional Use Permit shall not be required for any person who has obtained a vested right to conduct surface mining operations before January 1, 1976, as long as the vested right continues and as long as no substantial changes have been made in the operation except in compliance with SMARA, State regulations, and this Chapter. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, the person shall obtain County approval of a Reclamation Plan covering the mined lands disturbed by the subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre-SMARA and post-SMARA mining, the Reclamation Plan shall require reclamation proportional to that disturbance caused by the mining after January 1, 1976 (i.e., the effective date of SMARA).
- b) ***Other requirements applicable to vested mining operations.*** All other requirements of State law and this Chapter shall apply to vested mining operations.

#### **CASE LAW INTERPRETING VESTED RIGHTS UNDER SMARA:**

A number of Court decisions provide guidance for making findings for Vested Mining Rights.

**Hansen Brothers.** The definitive decision on Vested Mining Rights in California is the California Supreme Court case *Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal. 4<sup>th</sup> 540 (“*Hansen Brothers*”). *Hansen Brothers* recognized that expansion of existing surface mining operations after January 1, 1976, may be recognized as a vested non-conforming use under the doctrine of “diminishing assets”. The doctrine of diminishing assets recognizes that some nonconforming uses, especially mining, must be expanded in order for the nonconforming use to continue. The Court observed that the very nature of the excavating business contemplates the use of land as a whole, not a use limited to a portion of the land already excavated. *Hansen* articulates four key principles relevant to this application.

First, under the “diminishing asset” doctrine, a vested mining operation may expand into portions of a tract of land that was not yet disturbed on the vesting date if the record shows an objective manifestation of the operator’s intent to devote the entire area to the operation.

Second, a vested mining right includes the right “to engage in uses normally incidental and auxiliary to the nonconforming use.”

Third, increases in production to serve market demand are part of the vested right, and do not represent a change or expansion of use.

Fourth, Vested Mining Rights can be abandoned only upon the occurrence of two factors. First, the owner/operator must intend to abandon the right. Second, there must be an overt act, or failure to act, that implies the owner/operator no longer claims a vested mining right. The party claiming abandonment of a vested right has the burden of showing, by clear and convincing evidence, that a landowner knowingly and intentionally waived its vested rights.

**Calvert.** The decision in the California Court of Appeals case *Calvert v. County of Yuba* (3<sup>rd</sup> Dist. 2006) 145 Cal. App. 4<sup>th</sup> 613 (“Calvert”) recognized that the determination of a surface mining vested right requires a public hearing with reasonable notice and opportunity to be heard.

**Hardesty.** *Hardesty v. State Mining and Geology Board* (3<sup>rd</sup> Dist. 2017) 219 Cal. Rptr. 3d 28, previously published at 11 Cal. App. 5<sup>th</sup> 2017<sup>2</sup> (“*Hardesty*”). *Hardesty* is the only California case that has found an abandonment of Vested Mining Rights. The court held that a landowner abandoned his vested mining right by certifying to the government in an official document “that all mining had ceased, with no intent to resume, which was uniquely persuasive evidence of abandonment.” (*Hardesty* at p. 814.) This explicit certification documented and signed by the landowner evidenced an intent to abandon and discontinue mining operations. No such statement or certification exists in this case.

## COUNTY’S LAND USE REGULATION OF MINING:

The County Code, portions of which regulated land uses within the County, was first enacted in 1951. For some land uses, the County Code identified certain zoning areas where such uses were permitted as a matter of right and did not require issuance of a use permit. In 1981, the County adopted a new Title 8 to the County’s Code, commonly called the Development Code. In 1989, the Development Code was updated to include, among other things, the requirement for a Mining Conditional Use Permit (CUP). Surface mining operations that legally existed at the time of enactment of Mining CUP requirements were allowed to continue and operate to the full extent and intended use of

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<sup>2</sup> Review of this case by the California Supreme Court was denied on August 9, 2017, and the case ordered not to be officially published, meaning citation in court is prohibited, Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115, 8.1120 and 8.1125. Nevertheless, the Planning Commission is not bound by this restriction and, in any event, this court’s analysis and rationale for this decision is instructive.

the land (including the use of incidental or accessory facilities) at the time of the zoning change with an approved reclamation plan and related financial assurances.

Pursuant to SMARA, PRC Section 2774(a), every lead agency was required to adopt ordinances in accordance with the state policy, which established procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations. A mining ordinance required the establishment of procedures, one of which required at least one public hearing. The local ordinance is periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinance continues to be in accordance with state policy.

The County adopted its original SMARA ordinance (Ord. No. 2062) on March 29, 1976, to enact SMARA regulations as part of Title 6 of the County Code. On May 18, 1981, Ordinance No. 2540 was adopted to shift SMARA from Title 6 to Title 8 of the County Code. The County's SMARA ordinance was subsequently certified by the State Mining and Geology Board ("SMGB") on November 19, 1981. The Board of Supervisors later revised the County's SMARA ordinance (No. 3759) on April 12, 1999, which is currently listed on the State's directory of certified mining ordinances.

The Development Code and SMARA outline requirements for conducting surface mining operations and provide a comprehensive policy for regulation of surface mining operations to assure that adverse environmental impacts are prevented or minimized and mined lands are reclaimed to a usable condition. These requirements include the need to obtain a Mining Conditional Use Permit (CUP), and approval of a Reclamation Plan and financial assurances. An exception to obtaining a CUP may exist if a mining operation was legally established and in existence prior to permitting restrictions; thus a "vested mining right" if formally recognized by the County in a public hearing.

## **THE APPLICANT'S PROPERTY HISTORY, OWNERSHIP AND DEVELOPMENT:**

The parcels of land that are the subject of this application are located within the Resource Conservation (RC) Land Use Zoning District. Mineral resource development (mining) is an allowed land use in RC with an approved Mining CUP.

These additional facts are excerpted from the application, Exhibit "A":

### **Prior to 1920:**

Marcus Pluth and Tom Schofield located 1,600 acres of mining claims along the Parker branch of the Santa Fe Railroad, then-known as the Desert Butte Mine. The claims included the area encompassing what is now known as the Chubbuck Mine and the parcels subject to this Application. (Joe de Kehoe, *The Silence and the Sun* (2nd ed. 2012), at pp. 130 [Exhibit 1]; see also Vredenburg, *The Mojave Desert Mining Community*

of Chubbuck (1981) [Exhibit 2]; Thomas Schofield, Finder of Fabled Dutch Oven Mine, Dies, San Bernardino Sun, September 4, 1954, p. 12 [Exhibit 3].)

### **1922:**

C.I. Chubbuck purchased the mining claims from Marcus Pluth and Tom Schofield. (de Kehoe, supra, at pp. 131 (Exhibit 1); Vredenburg, supra (Exhibit 2).) The mine became known as the Chubbuck Mine. At this time, C.I. Chubbuck owned limestone processing plants in San Francisco and Los Angeles, which was used in the manufacture of cement and other limestone products. (de Kehoe, supra, at pp.130) (Exhibit 1).)

### **1922-1925:**

C.I. Chubbuck hired workers and built infrastructure. The mining operation consisted of three main components: an extraction area, a processing area, and mineral resources held in reserve. The extraction area, where mineral extraction took place, included the limestone outcrops and immediate surrounding area. Initially, mining was conducted underground through a network of tunnels blasted and bored into the base of the limestone outcrops. The Mine ultimately evolved into an open surface mining operation. In addition to mining the base of the limestone outcrops, the cliff sides also were blasted with explosives. Raw limestone was initially processed by a primary rock crusher, which broke limestone into smaller, more manageable sizes that were then sent one-mile northeast to the processing area.

The processing area was adjacent to the rail line and adjacent to the town of Chubbuck. C.I. Chubbuck installed a dirt road and a narrow-gauge track to connect the extraction and processing areas. The processing area initially included a secondary crusher, ball mill and two vertical draw kilns. (de Kehoe, supra, pp.131-133).

When crushed limestone arrived at the processing area, it was fed through the secondary crusher and ball mill to break the limestone into gravel-sized pieces. Material was then placed into the kilns and cooked for 12 hours. Once cooked, burnt lime was stored in 25-gallon cans or bagged for shipment to market. Processed limestone from the lime plant was shipped to market by both train and truck. (de Kehoe, supra, at pp.131-135 [Exhibit 1].)

The Mine included, as is typical of major mining operations, areas held in reserve for future mineral extraction or ancillary activities. In addition, the community of “Chubbuck” soon developed near the Mine. It consisted of approximately 200 people and 26 families, including a school, post office, and store. (de Kehoe, supra, at pp. 143 [Exhibit 1].) The normal work schedule at Chubbuck was 12 hours per day, six or seven days per week. (de Kehoe, supra, at pp. 135 [Exhibit 1].)



### **May 16, 1924:**

The United States government patented the “Lime Quarry 1” and “Lime Quarry 2” placer mining claims, consisting of 320 acres, to C.I. Chubbuck, today current APNs 0644-221-02, -06, and -07, as shown on Figure 5, below. (Mineral Patent, Patent Number 945433 (1924) (Section G, Appendix, at A-11). Chubbuck Lime Company filed articles of incorporation with the Colorado Secretary of State. The stated purpose for the incorporation of the Chubbuck Lime Company was for “mining, quarrying and preparing for moving, limestone and other stone, and such minerals as may be incidentally developed and to manufacture the same into the manufactured form...”

### **September, 1929**

C.I. Chubbuck partnered with National Portland Cement Co. of El Paso to develop a cement plant adjacent to the processing area. The cement plant had a design capacity of 750 barrels of cement per day and could employ up to 200 men. Cement plant workers were housed barracks-style in three bunkhouses built a short distance from the plant. (de Kehoe, *supra*, at pp. 136-37..)

### **1929-1932**

The cement plant, supplied with crushed limestone from the Mine, operated for approximately 18 months until 1932. Shortly after the closure of the cement plant, C.I. Chubbuck relocated the limestone processing plant to the former cement plant site. (de Kehoe, *supra*, at p. 138 [Exhibit 1].)

### **1937-1938**

The Chubbuck Lime Company manufactured, among other products, white-reflecting lime coating for the Colorado River Aqueduct and residential roofing that approximately 90 percent of the houses built in Palm Springs used. (de Kehoe, *supra*, at p.136 [Exhibit 1]; Vredenburg [Exhibit 2].)

### **May 29, 1943**

The Chubbuck Lime Co., Inc. acquired an additional 640 acres in fee from the Southern Pacific Land Company, current APN 0644-231-03. (Section H, Appendix, at A-16.)

### **March 1947**

The State of California patented 480 acres within Section 16, Township 3 North, Range 16 East to C.I. Chubbuck, This land acquisition completed the assemblage of the tracts

comprising the Mine that are subject to the Application. (California Journal of Mines and Geology, Vol. 43 (January 1, 1947) p. 283. [Exhibit 10].)

### **1949-1952**

The Chubbuck Lime Company opened a new extraction area approximately one-half mile from Chubbuck, providing crushed limestone. In this year, the Mine also reportedly suspended sales due to increasing transportation costs and the development of competing products. C.I. Chubbuck sold the Mine to the White Mountain Lime Company. The White Mountain Lime Company operated the Mine from 1949 to 1952, and planned to continue sales into the foreseeable future. Total production of limestone by this time was approximately 500,000 tons. (California Division of Mines, California Journal of Mines and Geology Vol 49, Nos. 1 and 2 (1953) at p.173 [Exhibit 12].)

### **August 8, 1951**

On August 8, 1951, San Bernardino County adopted Ordinance 678 which enacted new land use regulations. (San Bernardino County Ordinance 678 (1951).

### **1952-1953**

Harms Brothers Construction Company (“Harms Bros.”) acquired the Chubbuck Mine. Harms Bros. planned to open new deposits at Cadiz and to expand its production of industrial lime to other lime products based on increasing demand for white limestone and dolomite.

### **1954**

Harms Brothers stopped materials sales. Shumway, Gary L. et al, Desert Fever: An Overview of Mining in the California Desert Conservation Area, Prepared for Desert Planning Staff, Bureau of Land Management (February 1980) at pg. 84 [Exhibit 15]; Vredenburg, *supra* [Exhibit 2].)

### **1958**

An article in the San Bernardino Sun-Telegram described reports of a major new cement plant at the Mine, comparable to Henry Kaiser’s Cushenbury plant (now owned by Mitsubishi Cement Corporation). The article notes: “[m]ajor limestone deposits in the Chubbuck area are said to be tied up by the cement people and tales of the projected development have even reached nationwide press wires under the name of ‘Cadiz Cement.’” (L. Burr Belden, *Former Through Highway Lapses, Nearly Forgotten*, San Bernardino Sun, April 27, 1958, at 55.)

## **1985**

The Del Gagnon Company purchased 320 acres of Mine through grant deed, APN 0644-201-15. The Del Gagnon Company, founded by Robert Del Gagnon, acquired, held, and sold properties, with significant focus in the Southern California desert. Due to Robert Del Gagnon's personal interests, a portion of the company's portfolio was focused on mining and mineral resource properties including gold, salt, and aggregates mines, and hydrocarbon resources. (Section H, Appendix, at A-26; Declaration of Robert Del Gagnon, ¶ 15 [Exhibit 18].)

## **1988**

In two separate transactions, the Del Gagnon Company purchased an additional 320 acres comprised of APNs 0644-221-02, 06 and 07, and 640 acres comprised of APN 0644-231-03. After acquisition, the Del Gagnon Company operated the Mine as any owner of a significant mineral deposit operates a property of this nature. The Del Gagnon Company paid taxes and held the limestone reserve in inventory while the company monitored limestone markets, conferred with experts in the limestone market, conducted mineral reserve testing, and conferred with transportation companies regarding resumption of sales and bringing the reserves to market. (Section H, Appendix, at A-10; Declaration of Robert Del Gagnon, ¶ 15 [Exhibit 16]).

## **2014**

The Del Gagnon Company transferred their interest in the Mine parcels to the Applicant, Braavos LLC. (Appendix A at A-10; A-20; A-27.) The members of Braavos LLC are the owners of the Del Gagnon Company. (Appendix A at A-10; A-20; A-27.) The applicant purchased available parcels between Chubbuck Mine properties and the railroad along the historical access route. (Declaration of Robert Del Gagnon [Exhibit 18].)

This is only a brief history of the mine. A complete history is provided in the application (Exhibit A).

## **ANALYSIS:**

As detailed above, and more fully described in the application, the Chubbuck Mine has a long and well-documented history that supports the conclusion that surface mining operations began before the County first required a use permit for mining. Further, there is no evidence in the record supporting a conclusion that any vested mining right has been abandoned.

Mining operations began in the early 1920s and continued without interruption through 1954. The record demonstrates that mining operations expanded over time through both

development and progressive land acquisitions. By 1947, the Chubbuck Mine comprised of an approximately 1,600-acre integrated surface mining operation, 1,280 acres of which are the subject of the current application. As of August 8, 1951, the Chubbuck Mine was a major surface mining and mineral processing operation that had legally commenced operations many years prior. The evidence demonstrates that the Chubbuck Mine and activities thereof continued to progressively expand across the property. These facts support a finding of Vested Mining Rights across the 1,280 acres that are subject of the application.

There is also no evidence that the vested mining right has been abandoned. As stated by the Court in *Hansen* “[A]bandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) an intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use [citation]. Mere cessation of use does not of itself amount to abandonment although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned [citation]’ ” (*Hansen Brothers*, supra, 12 Cal.4th at 569.).

As stated by the *Hansen* court, “mere cessation of use does not of itself amount to abandonment.” Indeed, historical cases, as well as common mining practice, confirm that holding a mineral reserve as inventory does not result in abandonment:

There are many cases where from *non-use*[] of a right the inference of abandonment may fairly be made; but that does not apply to such a case as this. It is not so generally true that the owner of mines does work every mine, which he has a right to work; and therefore the relinquishment of the right can not be presumed from the non-exercise of it. **It is well known that mines remain unwrought for generations; that they are frequently purchases or reserved, not only without any view to immediate working, but for the express purpose of keeping them unwrought until other mines shall be exhausted, which may not be for a long period of time.** It is impossible therefore to infer that this right is extinguished, though there is no evidence of the exercise of it....”

(*Seaman v. Vawdrey*, 16 Vesey, Jr. 390. High Court of Chancery, 1810 [emphasis added].<sup>3</sup>)

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<sup>3</sup> As explained above, the *Seaman* cases in non-binding precedent in a California court but the analysis and rationale for this decision may be considered instructive for purposes of a quasi-judicial determination.



The *Hardesty* case is the only California case to have found an abandonment of a vested mining right. Critical in the *Hardesty* court's finding was that the operator Hardesty's signed and certified on an official government document that the mine was closed and the operator had no intent to resume operations. Here, there is no evidence in the record that supports a conclusion Vested Mining Rights have been abandoned. Rather, the evidence shows efforts to mine the reserves through holding the Chubbuck Mine's reserves as inventory and preparing for the continuation of mineral sales.

The decision by Planning Commission shall be based on evidence in the record to support findings that the physical use of the land exhibited some level of activity relating to mining, such as material was being extracted, maintaining access, stockpiles and equipment or any other related use of the land that is objectively manifest and recognized as a nonconforming use. The facts show the Chubbuck Mine was in operation when the County enacted Ordinance 678, which took effect on August 8, 1951. According to Ordinance 678, the Mine was originally zoned M-1 (Limited Manufacturing). The M-1 zoning district did not allow mining but allowed existing activities to continue as nonconforming uses. (Ordinance No. 678, §§ 12, 15.5 [Exhibit 13].) Therefore, August 8, 1951 represents the "vesting date" against which Vested Mining Rights must be tested.

To elaborate on the vesting determination, the evidence establishes that C.I. Chubbuck constructed a primary and secondary rock crusher, connecting roads to a rail terminal, a single-gauge railroad to transport crushed limestone from the quarry to the terminal, a lime plant, two vertical kilns, and underground bunkers for oil storage. The Mine shipped crushed limestone and finished lime products by rail to Los Angeles and San Francisco to supply plants that produced cement additives. Due to the Mine's distance from population centers, a town quickly developed for employees and their families. Known as the town of Chubbuck, it eventually grew to 30-40 buildings which housed approximately 24 workers and their families. It included a school and its own post office.

The record also shows that mining operations expanded over time. In 1925, C.I. Chubbuck acquired partners and used the capital influx to expand operations and build an onsite cement plant and a rotary kiln. By 1930, the cement plant was fully-operational and manufactured Portland cement from limestone quarried from the Mine. In the meantime, C.I. Chubbuck continually upgraded his lime plant, crushers, and other machinery to keep pace with market demand. The Mine's products were widely used in the region. As examples, Chubbuck limestone was used in the construction of the Colorado River Aqueduct in 1937-1938, and at one time, 90 percent of the homes in Palm Springs had Chubbuck products in their roof coatings.

C.I. Chubbuck matched the Mine's operational expansion with a series of progressive land acquisitions. In 1924, Mr. Chubbuck obtained patents from the United States government for 320 acres which included the extraction area. In 1943, he acquired 640 additional acres to the southwest in fee from the Southern Pacific Land Company. And in

1947, he secured a patent from the State of California for the remaining 320 acres of the overall 1,280 acres that are subject to this Application. Thus, by 1947, the vested Mine had fully assembled into a large contiguous tract, with contemporaneous estimates of approximately 100 million tons of limestone reserves.

In summary, as of August 8, 1951, the vesting date, the Mine's owners had acquired the entire 1,280 acres subject to this application, the Mine was a major surface mining and mineral processing operation that had legally commenced operating many years prior, and its owners were focused on future growth and expansion. Upon preparation of this staff report, no evidence to-date has been identified which would substantiate an intent to abandon the mine properties and its mineral resources. Therefore, the facts presented herein support a finding of Vested Mining Rights across the 1,280 acres covered by this application.

#### **PUBLIC COMMENTS:**

No public comments have been received.

#### **DETERMINATION OF VESTED RIGHTS FOR MINING FOR THE BRAAVOS, LLC'S PROPERTIES:**

1. Preponderance of the Evidence: Braavos LLC, has the burden of proof in demonstrating a claim for Vested Mining Rights. The Planning Commission shall determine whether Braavos LLC, by a preponderance of the evidence, has demonstrated through oral testimony, exhibits and public comments, enough evidence to support the claim for Vested Mining Rights. The amount of evidence required is a case-by-case basis.
2. Objective manifestation: A prior CCR Section 3963<sup>4</sup> provided the following guidance to the SMGB when adjudicating comparable claims:

*“Relevant evidence in a proceeding for determination of a claim of vested rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested right[s]. Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1,*

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<sup>4</sup> Previously, the SMGB could, under certain circumstances, make a vested rights determination. This authority was abrogated by the Legislature and the resulting regulations, specifically, 14 CCR §3950, “the [SMGB] shall not conduct vested rights determinations.”

*1976.” “Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of SMARA, or laws, affecting Claimant’s right to continue surface mining operations without a permit. In other words, there must be identifiable evidence or conditions that have a physical basis.”*

**RECOMMENDATION** That the Planning Commission:

1. **FIND** that the recognition of Vested Mining Rights is not a project subject to the California Environmental Quality Act (CEQA) and, even if considered a project, exempt from CEQA pursuant to 14 California Code of Regulations sections 15061(b)(3), 15261(b) and 15301;
2. **APPROVE** the recognition and confirmation of Vested Mining Rights and require the submission of a reclamation plan and financial assurances prior to the continuation of any mining activity on the Braavos, LLC’s properties;
3. **ADOPT** findings in support of the recognition and confirmation of Vested Mining Rights (Exhibit B); and
4. **DIRECT** staff to file a Notice of Exemption.

**ATTACHMENTS:**

- Exhibit A: Braavos, LLC’s Request for Vested Rights Determination for 1,280 Acres  
Exhibit B: Findings  
Exhibit C: Court Decisions
  - Hansen Brothers
  - Calvert
  - HardestyExhibit D: California Vested Rights Law, Mark D. Harrison, Esq., February 5, 1998

### **Proposed Findings**

The Planning Commission FINDS, the following factual and legal determinations with respect to recognizing the existence of vested mining rights for APNs: 0644-221-02, 0644-231-03, 0644-221-06, 0644-221-07 and 0644-201-15 ("Properties"):

1. Prior to the 1920's, 1,600 acres of mining claims along the Parker branch of the Santa Fe Railroad, then known as the Desert Butte mine were claimed by Marcus Pluth and Tom Schofield. The claim is now known as the Chubbuck Mine. (Braavos, LLC Chubbuck Mine Vested Rights Submittal (July 2020) ("VR Submittal"), at p. 7 and Exhibits 1-3.)
2. In 1922, Charles Inglis Chubbuck purchased the mining claims from Pluth and Schofield. (VR Submittal, p. 7 and Exhibits 1-2.)
3. From 1922-1925, C.I. Chubbuck hired workers and built infrastructure for the mining operation. The mining operation consisted of three main components: an extraction area, a processing area, and mineral resources held in reserve. The extraction area, where mineral extraction took place, included the limestone outcrops and immediate surrounding area. Initially, mining was conducted underground through a network of tunnels blasted and bored into the base of the limestone outcrops. The Mine ultimately evolved into an open surface mining operation. In addition to mining the base of the limestone outcrops, the cliff sides also were blasted with explosives. Raw limestone was initially processed by a primary rock crusher which broke limestone into smaller, more manageable sizes that were then sent one-mile northeast to the processing area. (VR Submittal, pp. 7-9 and Exhibit 1.)
4. The processing area was adjacent to the rail line and adjacent to the town of Chubbuck. C.I. Chubbuck installed a dirt road and a narrow-gauge track to connect the extraction and processing areas. (VR Submittal, p. 7 and Exhibit 1.)
5. In 1924, the United States Government patented the "Lime Quarry 1" and "Lime Quarry 2" placer mining claims, consisting of 320 acres, to C.I. Chubbuck, consisting of APNs 0644-221-02, 0644-221-06, and 0644-221-07. (VR Submittal, pp. 9 and Appendix, at A-11.)
6. In 1929, C.I. Chubbuck partnered with the National Portland Cement Co. to develop a cement plant adjacent to the processing area. The cement plant had a capacity of 750 barrels of cement per day and was intended to employ up to 200 workers. (VR Submittal, p. 11 and Exhibits 5-6.)



7. The cement plant, supplied with crushed limestone from the mine, operated for approximately 18 months until closing in 1932. C.I. Chubbuck then relocated his limestone processing plant to the former cement plant site. (VR Submittal, p. 11 and Exhibits 1, 17.1.)
8. In 1943, the Chubbuck Lime Co., Inc. acquired an additional 640 acres in fee from the South Pacific Land Company, consisting of APN 0644-231-03. (VR Submittal, p. 12 and Appendix, at A-16.)
9. In 1947, the State of California patented 480 acres to C.I. Chubbuck, including current APN 0644-201-15. (VR Submittal, p. 14 and Exhibit 10.)
10. By 1947, the Chubbuck Mine was an integrated approximately 1,600-acre mining operation, of which 1,280 acres are currently owned by the applicant. (VR Submittal, pp. 7-14.)
11. In 1949, the White Mountain Lime Company acquired the Chubbuck Mine. The White Mountain Lime Company operated the mine from 1949 through 1952 and planned to continue operations into the future. (VR Submittal, p. 15 and Exhibit 12.)
12. On August 8, 1951, the County of San Bernardino adopted Ordinance 687 establishing land use regulations. Among these regulations was the requirement that surface mining required a County permit. By convention, existing mining uses were generally allowed to continue. (VR Submittal, p. 15 and Exhibit 13.)
13. In 1952, Harms Brothers Construction Company acquired the Chubbuck Mine, with an intention of opening new deposits at Cadiz and expand production of industrial lime and other lime products to meet increasing demand. (VR Submittal, pp. 15-16 and Exhibit 14.)
14. Active mineral extraction and sales paused in 1954, due to increasing transportation costs and the development of competing products. In the years following 1954, the mining holding were never explicitly abandoned, nor were any rights to the mine. Rather, the Properties were held as inventory as subsequent owners sought to continue operations and restore sales. In addition to holding as inventory, the Properties' owners conducted active mining operations such as market analyses, mineral testing as to both quality and quantity, and strategic planning for the changing market. (VR Submittal, p. 16 and Exhibits 2, 15.)
15. The preponderance of the evidence contained in the record is sufficient to establish that an intent by the owners to resume mining existed on the effective date of the Surface Mining and Reclamation Act (SMARA) and the County's local mining regulations.

16. The preponderance of the evidence fails to show an intent by the owners of the Properties to abandon their right to exploit the mineral interests on the Properties.
17. A vested mining right exists, allowing, without further County land use permitting, surface mining operations on the Properties in order to develop the limestone resources. This vested mining right includes the following:
  - a. The right to exhaust the Properties' mineral reserves in volumes necessary to meet market demand, consistent with production principles established in California law;
  - b. The right to drill, blast and utilize all customary equipment as reasonable and necessary to extract, transport, process, crush, wash, sort, stockpile, load and otherwise manage commercial quantities of minerals from the Properties.
  - c. The right to continue surface mining operations at the Properties, subject to a County- approved and valid Reclamation Plan and adequate Financial Assurances pursuant to the Surface Mining and Reclamation Act of 1975.

## **EXHIBIT B**

Braavos, LLC's Request for confirmation of  
Vested Rights Determination for 160 Acres for  
the Chubbuck Limestone and Dolomite Quarry

November 2, 2022

***Submitted via EZOP***

Heidi Duron  
Planning Director, San Bernardino County  
385 N. Arrowhead Ave.  
San Bernardino, California 92415

***Re: Braavos LLC; Confirmation of Vested Rights for the Chubbuck Limestone and Dolomite Quarry***

Dear Ms. Duron,

On behalf of Braavos, LLC (“Braavos”), we submit the following request for a formal determination by the County of San Bernardino (“County”) concerning the existence of vested mining rights on a portion of the Chubbuck Limestone and Dolomite Quarry (“Quarry”).

On October 8, 2020, the County Planning Commission confirmed the existence of vested mining rights on approximately 1,280 acres of the historical 1,600-acre Quarry. A copy of the Planning Commission’s determination is attached as **Exhibit 1**.<sup>1</sup> Braavos only sought confirmation of vested rights on 1,280 acres of the Quarry because that was the extent of the family’s ownership at the time.

Braavos has since acquired an additional 160-acre parcel that constituted a key piece of the vested Quarry property, identified as Assessor’s Parcel Number 0644-201-14 (the “Property”). (See **Exhibit 2**.) Accordingly, Braavos now seeks the County’s confirmation that the Property is part of the vested mining use.

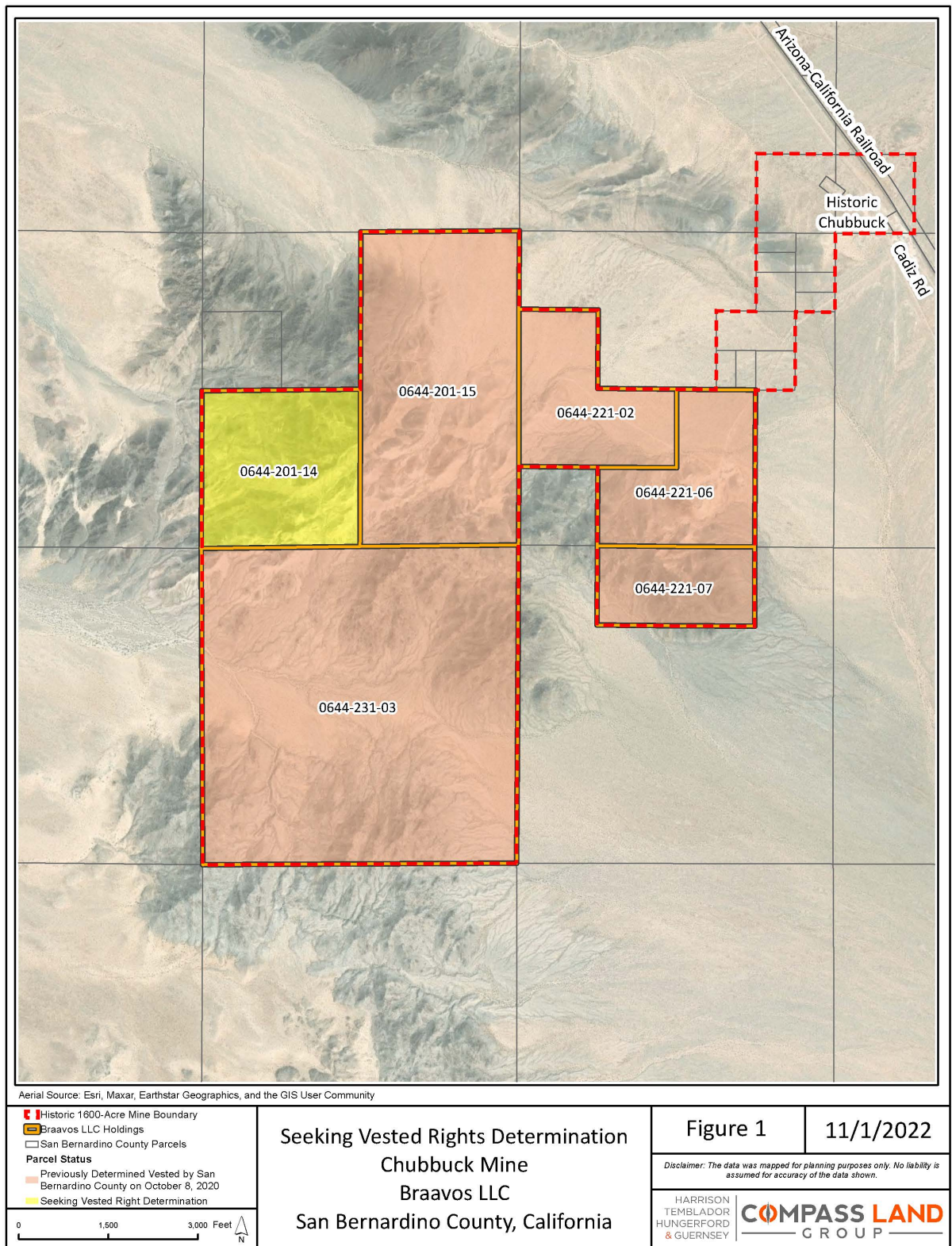
The facts relating to the history and operation of the Quarry, including the Property, are extensive and undisputed, and have been previously considered and adopted by the Planning Commission. (See Exhibit 1.) These demonstrate that the Property was an integral part of the Quarry operation, with significant mining activities occurring on the Property prior to the vesting date of August 8, 1951.

Given the County’s prior findings and determination, Braavos seeks formal confirmation of vested rights on the Property. A map showing the historical Quarry boundary, the Quarry parcels previously confirmed as vested, and the Property subject to this request, is provided as **Figure 1** below.

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<sup>1</sup> Staff’s October 8, 2022 report to the Planning Commission and Braavos’ application with all backup documentation are incorporated by reference and can be accessed at the following link: <https://hthjlaw.egnyte.com/fl/ArvK54yILE>





Heidi Duron

*Confirmation of Vested Nonconforming Status for Chubbuck Limestone and Dolomite Quarry*

November 2, 2022

Much like the overall Quarry, the 160-acre Property was subject to a variety of mining disturbances prior to the vesting date. As shown on **Exhibit 3** and **Exhibit 4**, these disturbances include at least four mine shafts, access roads, numerous spoils piles, and observed deposits of copper ore and limestone.

In summary, given the County's prior determination and the additional documentation presented with this letter, we respectfully request that the County, after reviewing the evidence submitted at a public hearing, confirm the following:

1. The Property was an integrated part of the Chubbuck Limestone and Dolomite Quarry and, as of the vesting date, surface mining operations were occurring within the Property and the Quarry, and the operator objectively intended to devote the entirety of the Property to the mining operation; and
2. The Property is part of the Quarry's vested mining use and subject to the Planning Commission's October 8, 2020 determination and findings.

We thank you and County staff for your time and consideration. If additional information or clarification is needed, please let us know and we would be pleased to provide it.

Should you have any questions concerning this submittal, please do not hesitate to contact me by telephone at (916) 228-4221, or by e-mail at [aguernsey@hthglaw.com](mailto:aguernsey@hthglaw.com).

Very truly yours,  
HARRISON, TEMBLADOR,  
HUNGERFORD & GUERNSEY LLP

By



Adam Guernsey

# EXHIBIT 1



## Land Use Services Department Planning

Terri Rahhal  
Director

October 19, 2020

BRAAVOS, LLC.  
73-612 Highway 111  
Palm Desert, CA 92260

SENT REGULAR MAIL AND EMAIL  
[aguernsey@hthjlaw.com](mailto:aguernsey@hthjlaw.com)  
Adam Guernsey  
2801 T Street  
Sacramento, CA 95816

**SUBJECT: DETERMINATION OF VESTED MINING RIGHTS BASED ON PAST AND ANTICIPATED FUTURE LAND USE ON 1,280 ACRES REFERRED TO AS THE CHUBBUCK MINE; PROJECT NO.: PDCI-2020-00002; APNS: 0644-221-06 (MULTIPLE PARCELS)**

Dear Mr. Guernsey:

On October 8, 2020, the County of San Bernardino Planning Commission determined that vested mining rights exist and recognized that mining development is a legal nonconforming land use on the subject parcels owned and maintained by Braavos LLC. With confirmation by the County at a Noticed public hearing, the mining right may be transferred to a successor owner because the lawful use runs with the land.

Note that the Planning Commission adopted the following findings as contained in staff's memorandum dated October 8, 2020:

1. Prior to the 1920's, 1,600 acres of mining claims along the Parker branch of the Santa Fe Railroad, then known as the Desert Butte mine were claimed by Marcus Pluth and Tom Schofield. The claim is now known as the Chubbuck Mine. (Braavos, LLC Chubbuck Mine Vested Rights Submittal (July 2020) ("VR Submittal"), at p. 7 and Exhibits 1-3.)
2. In 1922, Charles Inglis Chubbuck purchased the mining claims from Pluth and Schofield. (VR Submittal, p. 7 and Exhibits 1-2.)
3. From 1922-1925, C.I. Chubbuck hired workers and built infrastructure for the mining operation. The mining operation consisted of three main components: an extraction area, a processing area, and mineral resources held in reserve. The extraction area, where mineral extraction took place, included the limestone outcrops and immediate surrounding area. Initially, mining was conducted underground through a network of tunnels blasted and bored into the base of the limestone outcrops. The Mine ultimately evolved into an open surface mining operation. In addition to mining the base of the limestone outcrops, the cliff sides also were blasted with explosives. Raw limestone was initially processed by a primary rock crusher which broke limestone into smaller, more manageable sizes that were then sent one-mile northeast to the processing area. (VR Submittal, pp. 7-9 and Exhibit 1.)

The processing area was adjacent to the rail line and adjacent to the town of Chubbuck. C.I. Chubbuck installed a dirt road and a narrow-gauge track to connect the extraction and processing areas. (VR Submittal, p. 7 and Exhibit 1.)

### BOARD OF SUPERVISORS

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Chief Executive Officer



4. In 1924, the United States Government patented the “Lime Quarry 1” and “Lime Quarry 2” placer mining claims, consisting of 320 acres, to C.I. Chubbuck, consisting of APNs 0644-221-02, 0644-221-06, and 0644-221-07. (VR Submittal, pp. 9 and Appendix, at A-11.)
5. In 1929, C.I. Chubbuck partnered with the National Portland Cement Co. to develop a cement plant adjacent to the processing area. The cement plant had a capacity of 750 barrels of cement per day and was intended to employ up to 200 workers. (VR Submittal, p. 11 and Exhibits 5-6.)
6. From 1929-1932, The cement plant, supplied with crushed limestone from the mine, operated for approximately 18 months until closing in 1932. C.I. Chubbuck then relocated his limestone processing plant to the former cement plant site. (VR Submittal, p. 11 and Exhibits 1, 17.1.)
7. From 1937-1938, The Chubbuck Lime Company manufactured, among other products, white-reflecting lime coating for the Colorado River Aqueduct and residential roofing that approximately 90 percent of the houses built in Palm Springs used.
8. In 1943, the Chubbuck Lime Co., Inc. acquired an additional 640 acres in fee from the South Pacific Land Company, consisting of APN 0644-231-03. (VR Submittal, p. 12 and Appendix, at A-16.)
9. In 1947, the State of California patented 480 acres to C.I. Chubbuck, including current APN 0644-201-15. (VR Submittal, p. 14 and Exhibit 10.)
10. By 1947, the Chubbuck Mine was an integrated approximately 1,600-acre mining operation, of which 1,280 acres are currently owned by the applicant. (VR Submittal, pp. 7-14.)
11. In 1949, the White Mountain Lime Company acquired the Chubbuck Mine. The White Mountain Lime Company operated the mine from 1949 through 1952 and planned to continue operations into the future. (VR Submittal, p. 15 and Exhibit 12.)
12. On August 8, 1951, the County of San Bernardino adopted Ordinance 687 establishing land use regulations. Among these regulations was the requirement that surface mining required a County permit. By convention, existing mining uses were generally allowed to continue. (VR Submittal, p. 15 and Exhibit 13.)
13. In 1952, Harms Brothers Construction Company acquired the Chubbuck Mine, with an intention of opening new deposits at Cadiz and expand production of industrial lime and other lime products to meet increasing demand. (VR Submittal, pp. 15-16 and Exhibit 14.)
14. Active mineral extraction and sales paused in 1954, due to increasing transportation costs and the development of competing products. In the years following 1954, the mining holding were never explicitly abandoned, nor were any rights to the mine. Rather, the Properties were held as inventory as subsequent owners sought to continue operations and restore sales. In addition to holding as inventory, the Properties’ owners paid taxes, conducted market analyses, mineral testing as to both quality and quantity, and continued strategic planning for changing market conditions. (VR Submittal, p. 16 and Exhibits 2, 15.)

15. The preponderance of the evidence contained in the record is sufficient to establish that an intent by the owners to resume mining existed on the effective date of the Surface Mining and Reclamation Act (SMARA) and the County's local mining regulations.
16. The preponderance of the evidence failed to show an intent by the owners of the Properties to abandon their right to exploit the mineral interests on the Properties.
17. A vested mining right exists, allowing surface mining operations on the Properties in order to develop the limestone resources. This vested mining right includes the following:
  - a. The right to exhaust the Properties' mineral reserves in volumes necessary to meet market demand, consistent with production principles established in California law;
  - b. The right to drill, blast and utilize all customary equipment as reasonable and necessary to extract, transport, process, crush, wash, sort, stockpile, load and otherwise manage commercial quantities of minerals from the Properties.
  - c. The right to continue surface mining operations at the Properties, subject to a County-approved and valid Reclamation Plan and adequate Financial Assurances pursuant to the Surface Mining and Reclamation Act of 1975.

CONGRATULATIONS on the recognition and confirmation of vested mining rights. If you have any questions, you may contact me direct at (909) 601-4743, or via email at [Steven.Valdez@lus.sbcounty.gov](mailto:Steven.Valdez@lus.sbcounty.gov).

Sincerely,



Steven Valdez, Senior Planner

SV/gk/cgw/lb

cc: Heidi Duron, MPA, Planning Director

# EXHIBIT 2

*Beard Land Services  
P. O. Box 118  
Keene, CA 93531  
Phone: 661-750-9360*

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## **TITLE REPORT**

APN: 0644-201-14

### **DESCRIPTION:**

**The Southwest Quarter (SW/4) of Section 16, Township 3 North, Range 16 East, San Bernardino Base and Meridian, situated in the County of San Bernardino, State of California,**

**containing 160 acres, more or less.**

<b>FEE SIMPLE ABSOLUTE OWNER (Surface)</b>		<b>INTEREST</b>	<b>GROSS ACRES</b>	<b>NET ACRES</b>
	John Jason Chun	100%	160	160

John Jason Chun acquired title by Grant Deed dated April 14, 2010, recorded May 5, 2010 as Document number 2010-175182 of the Official Records of San Bernardino County, California.

<b>MINERAL RIGHTS OWNERS</b>		<b>INTEREST</b>	<b>GROSS ACRES</b>	<b>NET ACRES</b>
1)	John Jason Chun	93.75%	160	150
2)	State of California	6.25%	160	10
	TOTALS	100.00%	160	160

- 1) John Jason Chun acquired title by Grant Deed dated April 14, 2010 and recorded May 5, 2010 as Document number 2010-175182 of the Official Records of San Bernardino County, California.
- 2) State of California acquired title by Patent from the USA dated Jamnuary 10, 1857. (1/16 of all coal, oil, gas and other minerals was reserved in Patent from the State of California to C. I. Chubbuck dated March 8, 1947 and recorded March 12, 1947 as Document number 234 in Book 2044, Page 174 of the Official Records of San Bernardino County, California.)

## TITLE REMARKS

Information about the Patent from the United States of America the State of California was obtained online from the United States Bureau of Land Management, where recording information is not available.

This Title Report was prepared by Bridget Beard, CPL, for Mr. Adam Gagnon. This title report is intended solely for the purpose of identifying the ownership of mineral rights, fee (surface) and (if applicable) leasehold ownership, and is not intended to substitute for a title opinion from a qualified attorney well versed in the practice of real property and mineral law. The subject property was searched from Patent to June 27, 2018 at 5:00 PM. To the best of my knowledge, this report represents recorded documents affecting the subject property during that time period, with the exception of UCC's, Mortgages, Deeds of Trust, other non-essential documents and the following liens beyond their statutory limits, which have not been made a part of this report:

- A. Involuntary liens over 10 years old (pursuant to Civil Code of Procedure Sec. 683.010-683.050);
- B. Voluntary liens over 60 years old (pursuant to Civil Code Sec. 882.020-882.040);

In the preparation of this report, indexes and documents were obtained from TitlePoint. That information was supplemented, when necessary, by various online resources provided by the County of San Bernardino and/or the United States Bureau of Land Management.

This work is deemed reliable, however, it is not a Legal Title Opinion nor an Official Records Guarantee of Title. This report is provided without warranty, express or implied.

*Bridget Beard*

revised July 6, 2018

Bridget Beard  
Certified Professional Landman

Beard Land Services  
P. O. Box 118  
Keene, CA 93531  
Phone: (661) 750-9360

# ASSESSOR'S MAP

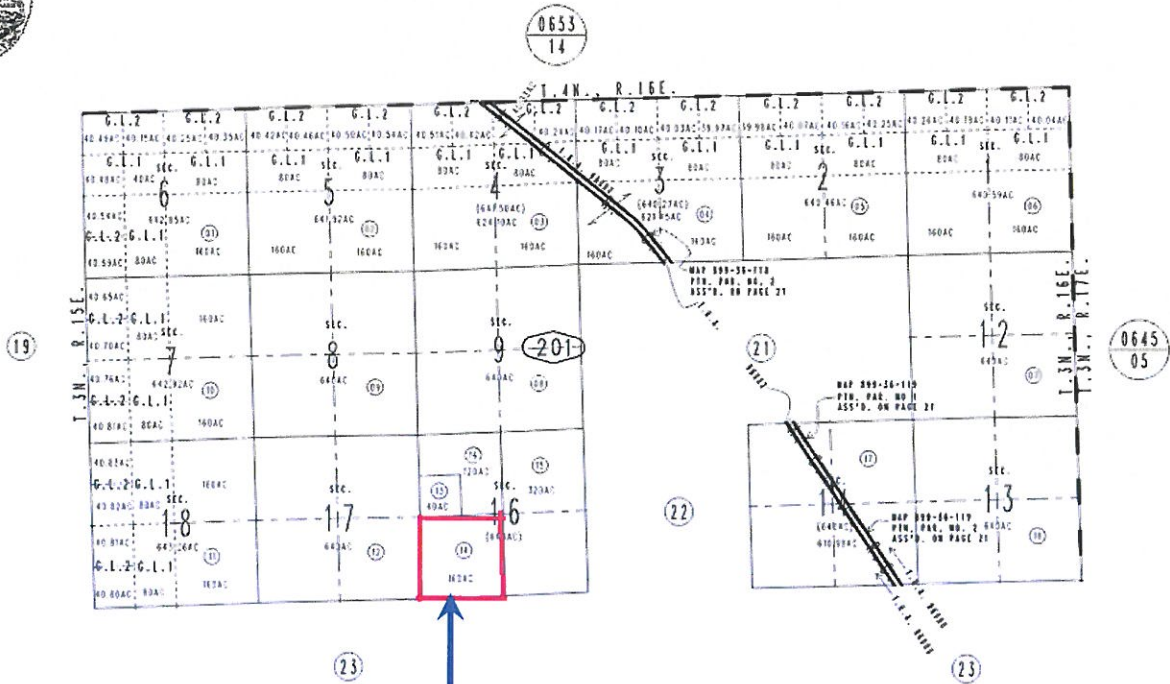
THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY



Ptn. N.1/2 T.3N., R.16E., S.B.B.M.

Needles Unified  
Tax Rate Area  
96000

0644-20



JULY 2004

Assessor's Map  
Book 0644 Page 20  
San Bernardino County

REVISED  
2/12/2013 RW:MC  
10/15/12 EK:MC

SW/4 Sec. 16, T3N, R16E, SBB&M  
San Bernardino County, California  
APNs: 0644-201-14



## Brief Chain of Title

*(Except as specifically noted otherwise, all documents noted below  
were recorded in the Official Records of San Bernardino County, CA.)*

Grantor	Grantee	Doc. Type	Instr. No. Bk & Pg	Doc. Date Rec. Date	Legal Description & Remarks
USA	State of California	Patent		01/10/1857	Sec. 16, T3N, R16E, SBB&M
State of California	C. I. Chubbuck	Patent	Doc. # 234 Bk 2044, Pg 174	<u>03/08/1947</u> 03/12/1947	SW/4 Sec. 16, T3N, R16E, SBB&M,  Reserving unto to the State of California...  1/16 of all coal, oil, gas and other mineral deposits.
Charles I. Chubbuck, aka C. I. Chubbuck, & Anita S. Chubbuck, husband & wife	Chubbuck Lime Company	Grant Deed	Doc. # 241 Bk 1985 Pg 392	<u>03/01/1947</u> 03/12/1947	E/2 & SW/4 Sec. 16, T3N, R16E, SBB&M
Chubbuck Lime Company, a Colorado coporation	Beneficiary: Reconstruction Finance Corporation, a corporation	Deed of Trust	Doc. # 242 Bk 2031, Pg 231	Recorded 03/12/1947	S/2 & NE/4 Sec. 16, T3N, R16E, SBB&M, with other property  <i>(All obligations under this Deed of Trust were satisfied by Quitclaim Deed recorded 12/4/1950 in Bk 2681, Pg 193.)</i>
Chubbuck Lime Company, a Colorado coporation	Reconstruction Finance Corporation, a corporation	Quitclaim Deed	Doc. # 39 Bk 2681, Pg 193	<u>09/21/1950</u> 12/04/1950	E/2 & SW/4 Sec. 16, T3N, R16E, SBB&M, with other property,  This Quitclaim Deed constitutes full satisfaction of all obligations secured by Deed of Trust recorded in Bk 2031, Pg 231.
Reconstruction Finance Corporation, a corporate agency of the USA	John Sandburg, Louis D. Carlson, Helge C. Harms & Jens P. Harms	Quitclaim Deed	Doc. # 104 Bk 3828, Pg 560	<u>12/13/1955</u> 01/11/1956	E/2 & SW/4 Sec. 16, T3N, R16E, SBB&M

Grantor	Grantee	Doc. Type	Instr. No. Bk & Pg	Doc. Date Rec. Date	Legal Description & Remarks
Helge C. Harms & Anna Harms, husband & wife;  Jens Harms & Billie K. Harms, husband & wife;  John Sandburg & Minnie E. Sandburg, husband & wife;  Louis D. Carlson & Ada H. Carlson, husband & wife, as Joint Tenants	Charles K. Beamer & Ailene P. Beamer, husband & wife , as Joint Tenants	Grant Deed	Doc. # 105 Bk 3828, Pg 561	<u>12/02/1955</u> 01/11/1956	NE/4, SE/4 & SW/4 Sec. 16, T3N, R16E, SBB&M
Charles K. Beamer & Ailene P. Beamer, husband & wife	Tungsten Fields Inc., a California corporation	Grant Deed	Doc. # 412 Bk 4282, Pg 504	<u>04/11/1957</u> 07/18/1957	NE/4, SE/4 & SW/4 Sec. 16, T3N, R16E, SBB&M
William A. Hawkinson & James E. Slosson, last Directors & Officers, having been the Secretary- Treasurer & President, respectively of Tungsten Fields Inc., a dissolved corporation	Mrs. Nadine Draper	Deed	Doc. # 602 Bk 8709, Pg 903	<u>05/15/1975</u> 06/27/1975	SW/4 Sec. 16, T3N, R16E, SBB&M
San Bernardino County Treasurer-Tax Collector	Assessed Owner: Nadine Draper	Notice of Power to Sell Tax Defaulted Property	Doc. # 91-409266	<u>08/05/1991</u> 10/25/1991	SW/4 Sec. 16, T3N, R16E, SBB&M  APN: 0644-201-14
Jack D. Draper	Nadine Draper, deceased	Affidavit- Death	Doc. # 92-111001	<u>03/13/1992</u> 03/16/1992	SW/4 Sec. 16, T3N, R16E, SBB&M References Grant Deed dated 5/15/1975 and recorded 6/27/1975 in Bk 8709, Pg 903

Grantor	Grantee	Doc. Type	Instr. No. Bk & Pg	Doc. Date Rec. Date	Legal Description & Remarks
Jack D. Draper & Jeanne H. Draper, Executor & Executrix of the Last Will & Testament of Nadine Draper, deceased	Richard P. Steinke & Carolyn K. Steinke, husband & wife, as Joint Tenants	Individual Grant Deed	Doc. # 92-111002	<u>03/13/1992</u> 03/16/1992	SW/4 Sec. 16, T3N, R16E, SBB&M
San Bernardino County Tax Collector		Notice of Recision of Power to Sell Tax-Defaulted Property	Doc. # 92-118546	<u>03/16/1992</u> 03/19/1992	Rescinds Notice of Power to Sell Tax-Defaulted Property recorded 10/25/1991 as Instrument # 91-409266 APN: 0644201140000
Richard P. Steinke & Carolyn K. Steinke, husband & wife, as Joint Tenants	C & D Land & Trust, a Revocable Estate Trust, Richard Paul Steinke & Carolyn Kaye Steinke, Settlers & Trustees	Grant Deed	Doc. # 93-236027	<u>05/28/1993</u> 06/02/1993	SW/4 Sec. 16, T3N, R16E, SBB&M, with other properties
Carolyn K. Steinke & Richard Paul Steinke, Trustees of the C & D Land & Trust, a Revocable Estate Trust	John Jason Chun, a single man	Grant Deed	Doc. # 2010-175182	<u>04/14/2010</u> 05/05/2010	SW/4 Sec. 16, T3N, R16E, SBB&M
<i>End of Chain of Title for the SW/4 Sec. 16, T3N, R16E, SBB&amp;M.</i>					



Electronically  
Recorded in Official Records  
County of San Bernardino

Bob Dutton  
Assessor-Recorder-County Clerk

**DOC# 2021-0142438**

**RECORDING REQUESTED BY:**  
Chicago Title Company

**When Recorded Mail Document  
and Tax Statement To:**  
Joseph Richard Burns  
1068 Dysart Drive  
Banning, CA 92220

03/29/2021  
04:58 PM  
SAN

14311

Titles: 1    Pages: 2

Fees	\$27.00
Taxes	\$56.65
CA SB2 Fee	\$0.00
<b>Total</b>	<b>\$83.65</b>

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Escrow Order No.:** 7102104487

**APN/Parcel ID(s):** 0644-201-14-0-000

## GRANT DEED

**The undersigned grantor(s) declare(s)**

- ☐ This transfer is exempt from the documentary transfer tax.  
☒ **The documentary transfer tax is \$56.65** and is computed on:  
    ☒ the full value of the interest or property conveyed.  
    ☐ the full value less the liens or encumbrances remaining thereon at the time of sale.  
The property is located in ☒ an Unincorporated area.

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,** John Jason Chun, a single man  
**hereby GRANT(S) to** Joseph Richard Burns, a married man as his sole and separate property  
**the following described real property in the** Unincorporated Area of the County of San Bernardino, State of California:

**For APN/Parcel ID(s):** 0644-201-14-0-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO,  
STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 3 NORTH, RANGE 16 EAST, SAN BERNARDINO  
BASE AND MERIDIAN.

**PROPERTY COMMONLY KNOWN AS:** Vacant Land-Killbeck Hills Road, Cadiz, CA 92304

## MAIL TAX STATEMENTS AS DIRECTED ABOVE


# GRANT DEED

(continued)

APN/Parcel ID(s): 0644-201-14-0-000

Dated: March 12, 2021

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

  
 John Jason Chun

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

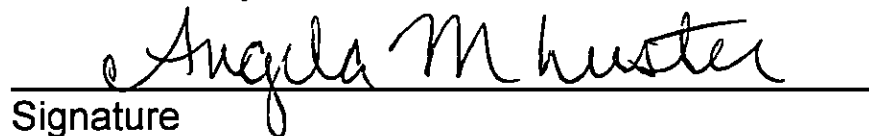
State of NevadaCounty of Clark

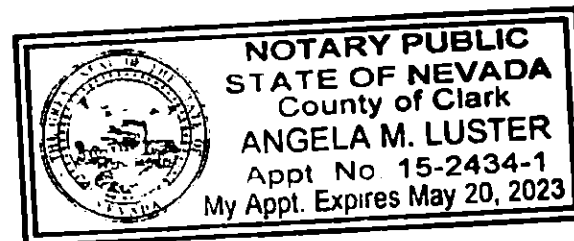
On March 15, 2021 before me, Angela M Luster, Notary Public,  
 (here insert name and title of the officer)

personally appeared John Jason Chun,  
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada ~~California~~ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
 Signature





Electronically  
Recorded in Official Records  
County of San Bernardino  
Bob Dutton  
Assessor-Recorder-County Clerk

**DOC# 2021-0142437**

**RECORDING REQUESTED BY:**  
Chicago Title Company

**When Recorded Mail Document  
and Tax Statement To:**  
Joseph Richard Burns  
1068 Dysart Drive  
Banning, CA 92220

03/29/2021  
04:58 PM  
SAN

14311

Titles: 1 Pages: 2

Fees	\$27.00
Taxes	\$0.00
CA SB2 Fee	\$0.00
<b>Total</b>	<b>\$27.00</b>

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Escrow Order No.:** 7102104487

**APN/Parcel ID(s):** 0644-201-14-0-000

Exempt from fee per GC 27388.1 (a) (2); recorded in connection with a transfer subject to the imposition of documentary transfer tax.

### **INTERSPOUSAL TRANSFER DEED**

**(Excluded from reappraisal under California Constitution Article 13 A Section 1 et seq.)**

**The undersigned grantor(s) declare(s)**

- ☒ This transfer is exempt from the documentary transfer tax.  
**This conveyance establishes sole and separate property of a spouse, R & T 11911.**
- ☐ The documentary transfer tax is \$ 0 and is computed on:
- ☐ the full value of the interest or property conveyed.
  - ☐ the full value less the liens or encumbrances remaining thereon at the time of sale.

The property is located in ☒ an Unincorporated area.

This is an Interspousal Transfer and not a change in ownership under Section 63 of the Revenue and Taxation Code and Grantor(s) has (have) checked the applicable exclusion from reappraisal:

- A creation, transfer, or termination, solely between spouses, of any co-owner's interest.

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,** Shannon Burns, spouse of grantee herein

**hereby GRANT(S)** to Joseph Richard Burns, a married man as his sole and separate property

**the real property in the** Unincorporated Area of the County of San Bernardino, State of California:

**For APN/Parcel ID(s): 0644-201-14-0-000**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 3 NORTH, RANGE 16 EAST, SAN BERNARDINO BASE AND MERIDIAN.

The grantor is executing this instrument for the purpose of relinquishing all of grantor's rights, title and interest, including, but not limited to, any community property interest in and to the land described herein and placing title in the name of the grantee as his/her separate property.

### **MAIL TAX STATEMENTS AS DIRECTED ABOVE**




INTERSPOUSAL TRANSFER DEED  
(continued)

APN/Parcel ID(s): 0644-201-14-0-000

Dated: March 12, 2021

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

  
Shannon Burns

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Riverside

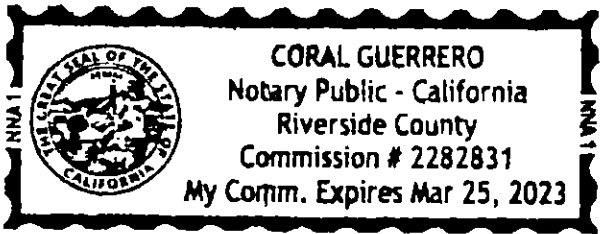
On March 25, 2021 before me, Coral Guerrero, Notary Public,  
(here insert name and title of the officer)

personally appeared Shannon Burns,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature



MAIL TAX STATEMENTS AS DIRECTED ABOVE



Electronically  
Recorded in Official Records  
County of San Bernardino  
Bob Dutton  
Assessor-Recorder-County Clerk

**RECORDING REQUESTED BY:**

Orange Coast Title

**210-2238423-10**  
**AND WHEN RECORDED MAIL TO:**

Braavos, LLC  
73612 hwy 111  
Palm Desert, CA 92260

**DOC# 2021-0203269**

04/30/2021  
04:10 PM  
SAN

Titles: 1 Pages: 2

Fees	\$27.00
Taxes	\$56.65
CA SB2 Fee	\$0.00
<b>Total</b>	<b>\$83.65</b>

**MAIL TAX STATEMENTS TO:  
SAME AS ABOVE**

**THIS SPACE FOR RECORDER'S USE ONLY:**

**Escrow No.: 36969-KC**

**AP#: 0644-201-14-0-000**

**GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

**DOCUMENTARY TRANSFER TAX is \$56.65**

[X] computed on full value of property conveyed, or

[ ] computed on full value less value of liens or encumbrances remaining at time of sale.

[X] Unincorporated area [ ] City of **AND**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Joseph Richard Burns**, a married man as his sole and separate property

hereby GRANT(s) to: **Braavos, LLC, a California Limited Liability Company**

the real property in the County of San Bernardino, State of California, described as:

The Southwest 1/4 of Section 16, Township 3 North, Range 16 East, San Bernardino Base and Meridian

*see attached exhibit A*

**Also Known as:** Vacant land Assessor # 0644-201-14-0-000, Cadiz, CA 92304

Dated April 12, 2021

Joseph Richard Burns

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF **Riverside**

On **April 27, 2021** before me, **Angela M. Becerra**  
appeared **Joseph Richard Burns**

A Notary Public personally  
who proved to me on the

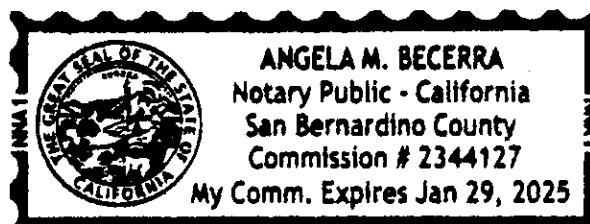
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS SHOWN ABOVE:

**MAIL TAX STATEMENTS TO:  
SAME AS ABOVE**

Order No. 210-2238423-10

**Exhibit “A”**

The Southwest 1/4 Section 16, Township 3 North, Range 16 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.

# EXHIBIT 3



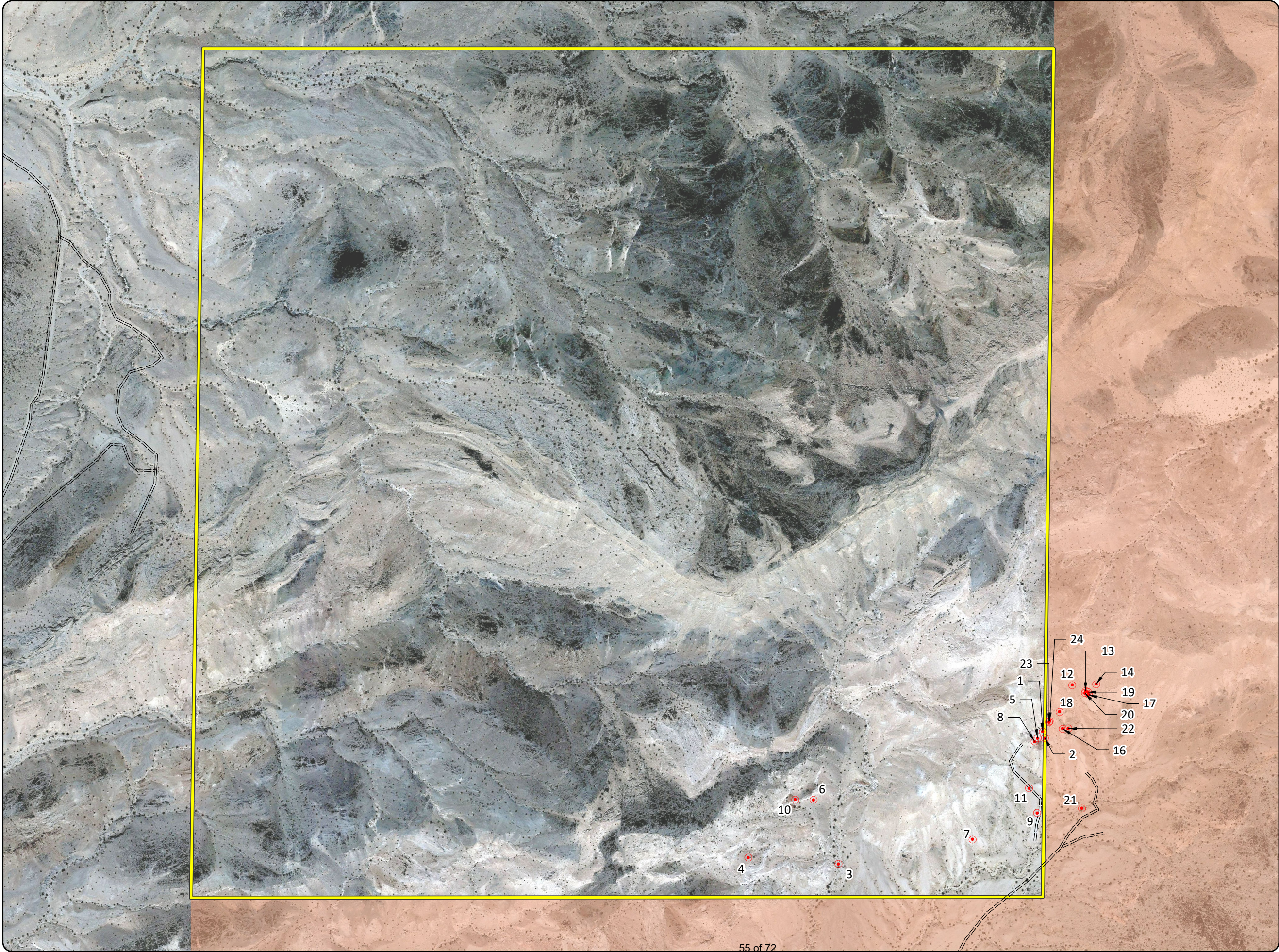


Exhibit 3

# Mining Activities

Chubbuck Mine Vested Rights  
Braavos LLC  
San Bernardino County, California

- Legend:
- Seeking Vested Rights Determination
  - Previously Determined Vested by San Bernardino County on October 8, 2020
  - Dirt Road
  - SESPE Identified Mining Disturbance (Photo ID#)

Photograph Index	
ID#	Name
1	Mine Shaft
2	Mine Shaft
3	Mine Shaft
4	Mine Shaft From Distance
5	Copper
6	Ore
7	Spoils
8	Road
9	Road
10	Spoils
11	Spoils
12	Mine Shaft
13	Mine Shaft
14	Mine Shaft
15	Mine Shaft Tool Marks
16	Mine Shaft Vent
17	Road
18	Spoils
19	Spoils
20	Spoils
21	Human Disturbance
22	Mine Claim
23	Mine Shaft
24	Mine Shaft

Note:  
Please see Exhibit 6 - Site Photographs, for the collection of photographs captured by SESPE during their site visit on 10/5.



Disclaimer: The data was mapped for planning purposes only. No liability is assumed for accuracy of the data shown.

Prepared by: Sage Thurmond, Compass Land Group  
3140 Peacekeeper Way #102, McClellan Park, CA 95652





# **EXHIBIT 4**





1. Mine Shaft



2. Mine Shaft





3. Mine Shaft



4. Mine Shaft From Distance





5. Copper



6. Ore





7. Spoils



8. Road





9. Road



10. Spoils





11. Spoils



12. Mine Shaft





13. Mine Shaft



14. Mine Shaft





15. Mine Shaft Interior Tool Marks



16. Mine Shaft Vent





17. Road



18. Spoils





19. Spoils



20. Spoils





21. Evidence of Human Disturbance



22. Mine Claim





23. Mine Shaft



24. Mine Shaft



# EXHIBIT C

## Findings

### **Proposed Findings**

The Planning Commission FINDS, the following factual and legal determinations with respect to recognizing the existence of vested mining rights on APN: 0644-201-14 ("160-acre Property"):

1. Prior to the 1920's, 1,600 acres of mining claims along the Parker branch of the Santa Fe Railroad, then known as the Desert Butte mine, were claimed by Marcus Pluth and Tom Schofield. The claim is now known as the Chubbuck Mine. (Braavos, LLC Chubbuck Mine Vested Rights Submittal (July 2020) ("VR Submittal"), at p. 7 and Exhibits 1-3.)
2. In 1922, Charles Inglis Chubbuck purchased the mining claims from Pluth and Schofield. (VR Submittal, p. 7 and Exhibits 1-2.)
3. From 1922-1925, C.I. Chubbuck hired workers and built infrastructure for the mining operation. The mining operation consisted of three main components: an extraction area, a processing area, and mineral resources held in reserve. The extraction area, where mineral extraction took place, included the limestone outcrops and immediate surrounding area. Initially, mining was conducted underground through a network of tunnels blasted and bored into the base of the limestone outcrops. The Mine ultimately evolved into an open surface mining operation. In addition to mining the base of the limestone outcrops, the cliff sides also were blasted with explosives. Raw limestone was initially processed by a primary rock crusher which broke limestone into smaller, more manageable sizes that were then sent one-mile northeast to the processing area. (VR Submittal, pp. 7-9 and Exhibit 1.)
4. The processing area was adjacent to the rail line and adjacent to the town of Chubbuck. C.I. Chubbuck installed a dirt road and a narrow-gauge track to connect the extraction and processing areas. (VR Submittal, p. 7 and Exhibit 1.)
5. In 1924, the United States Government patented the "Lime Quarry 1" and "Lime Quarry 2" placer mining claims, consisting of 320 acres, to C.I. Chubbuck, consisting of APNs 0644-221-02, 0644-221-06, and 0644-221-07. (VR Submittal, pp. 9 and Appendix, at A-11.)
6. In 1929, C.I. Chubbuck partnered with the National Portland Cement Co. to develop a cement plant adjacent to the processing area. The cement plant had a capacity of 750 barrels of cement per day and was intended to employ up to 200 workers. (VR Submittal, p. 11 and Exhibits 5-6.)

7. The cement plant, supplied with crushed limestone from the mine, operated for approximately 18 months until closing in 1932. C.I. Chubbuck then relocated his limestone processing plant to the former cement plant site. (VR Submittal, p. 11 and Exhibits 1, 17.1.)
8. In 1943, the Chubbuck Lime Co., Inc. acquired an additional 640 acres in fee from the South Pacific Land Company, consisting of APN 0644-231-03. (VR Submittal, p. 12 and Appendix, at A-16.)
9. In 1947, the State of California patented 480 acres to C.I. Chubbuck, including current APN 0644-201-15. (VR Submittal, p. 14 and Exhibit 10.)
10. By 1947, the Chubbuck Mine was an integrated approximately 1,600-acre mining operation, of which 1,280 acres are currently owned by the applicant. (VR Submittal, pp. 7-14.)
11. In 1949, the White Mountain Lime Company acquired the Chubbuck Mine. The White Mountain Lime Company operated the mine from 1949 through 1952 and planned to continue operations into the future. (VR Submittal, p. 15 and Exhibit 12.)
12. On August 8, 1951, San Bernardino County adopted Ordinance 687 establishing land use regulations. Among these regulations was the requirement that surface mining required a County permit. By convention, existing mining uses were generally allowed to continue. (VR Submittal, p. 15 and Exhibit 13.)
13. In 1952, Harms Brothers Construction Company acquired the Chubbuck Mine, with an intention of opening new deposits at Cadiz and expand production of industrial lime and other lime products to meet increasing demand. (VR Submittal, pp. 15-16 and Exhibit 14.)
14. Active mineral extraction and sales paused in 1954, due to increasing transportation costs and the development of competing products. In the years following 1954, the mining holding were never explicitly abandoned, nor were any rights to the mine. Rather, the properties were held as inventory as subsequent owners sought to continue operations and restore sales. In addition to holding as inventory, the properties' owners conducted active mining operations such as market analyses, mineral testing as to both quality and quantity, and strategic planning for the changing market. (VR Submittal, p. 16 and Exhibits 2, 15.)
15. The preponderance of the evidence contained in the record is sufficient to establish that an intent by the owners to resume mining existed on the effective date of the Surface Mining and Reclamation Act (SMARA) and the County's local mining regulations.

16. The preponderance of the evidence fails to show an intent by the owners of the properties to abandon their right to exploit the mineral interests on the properties.
17. A vested mining right exists, allowing, without further County land use permitting, surface mining operations on the properties in order to develop the limestone resources. This vested mining right includes the following:
  - a. The right to exhaust the properties' mineral reserves in volumes necessary to meet market demand, consistent with production principles established in California law;
  - b. The right to drill, blast and utilize all customary equipment as reasonable and necessary to extract, transport, process, crush, wash, sort, stockpile, load and otherwise manage commercial quantities of minerals from the properties; and
  - c. The right to continue surface mining operations at the properties, subject to a County- approved and valid Reclamation Plan and adequate Financial Assurances pursuant to the Surface Mining and Reclamation Act of 1975.
18. The preponderance of the evidence contained in the record is sufficient to establish that an intent by the owners to resume mining existed as to the 160-acre Property on the effective date of the Surface Mining and Reclamation Act (SMARA) and the County's local mining regulations.
19. The preponderance of evidence fails to show an intent by the owners of the Properties to abandon their right to exploit the mineral interests on the Properties, including the 160-acre Property.
20. The 160-acre Property was an integrated part of the Chubbuck Mine and, as of the vesting date, surface mining operations were occurring within the 160-acre Property, and the operator objectively intended to devote the entirety of the Property (including the 160-acre Property) to the mining operation;
21. The 160-acre Property is part of the Chubbuck Mine's vested mining use and subject to the Planning Commission's determination and findings, including the requirement for the submission of a reclamation plan and financial assurances prior to the continuation of any mining activity on the Property.