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MARK E. PETERSON  
ANTHONY J. CORTEZ  
BRADLEY B. JOHNSON

R. JAMES DIEPENBROCK  
(1929 - 2002)

February 2, 2011

Mr. David Cortese, President of the Board and  
Members of the Board of Supervisors for Santa Clara County  
Supervisors Chambers  
70 West Hedding Street  
San Jose, CA 95110

Re: February 8, 2011 Vested Rights Hearing  
Summary of Issues and Evidence

Dear President Cortese and Members of the Board:

The purpose of this letter is to summarize key issues and evidence for the Board concerning the February 8, 2011 vested rights hearing for the Permanente Quarry;

### 1. What is at issue in this proceeding?

The Board is asked to decide whether the existing mining operation is a vested, "nonconforming" use. The staff report focuses on two narrower questions within this larger issue:

- (1) Do vested rights include the East Materials Storage Area?
- (2) Was there a "public street" running through the quarry site in 1937?

### 2. What legal rules govern vested mining uses?

Vested mining rights are controlled by a unique set of rules. The California Supreme Court, in *Hansen Bros. Enterprises v. County of Nevada* (1996) 12 Cal. 4th 533, set five main rules for the existence and scope of vested mining rights:

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## **DIEPENBROCK HARRISON**

Mr. David Cortese, President of the Board

Members of the Board of Supervisors for Santa Clara County

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- (1) The use must begin on some part of the property prior to a use permit requirement (the “vesting date”);
- (2) If the use began prior to the vesting dated, vested rights cover all property over which the owner showed the intent to operate;
- (3) Vested rights extend to all aspects of a mining operation, and cannot be limited to individual components alone;
- (4) Vested rights “run with the land” and are not extinguished by changes in ownership; and
- (5) Under state law and County regulations, mining is not just extraction of rock but includes roads, workings, material storage, structures, facilities and equipment, that are used in connection with the mining operation.

**Staff Position:** These legal principles are not subject to dispute. (See **Attachment A** for a full discussion of these rules.)

### **3. When was a use permit first required for the site?**

A use permit was first required for the site in either 1948 or 1960.

**Staff Position:** County staff suggests that changes to the zoning code in 1948, by implication, required a use permit for mining. Lehigh’s position is that the County zoning code did not expressly require a use permit for mining until 1960. (See Staff Report, pp. 8-11; see Lehigh 01/04/2011 Letter, pp. 24-26.) Regardless, the site is equally vested using staff’s 1948 vesting date or Lehigh’s 1960 vesting date.

### **4. When did mining at the site begin?**

Mining began in 1903, according to state records. Kaiser purchased the original 1,300-acre mining tract in 1939, added an additional six (6) parcels to the site by 1943, and has expanded mining operations since.

**Staff Position:** Staff does not dispute this. The staff report maps show the mining property was subject to significant mining disturbance by the vesting date of 1948. (See **Attachment B**, containing: (1) staff maps showing 1948 site disturbance, (2) Lehigh map showing pre-1948 ownership, and (3) a packet showing the mining tract in 1930.)

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### **5. Is the site vested?**

Yes, the pre-1948 site is vested because the property acquired before 1948 was openly devoted to mining uses in connection with the cement plant operations. By 1942, the site was the world's largest cement production facility, equaling in output modern levels of activity.

**Staff Position:** With the exception of the East Materials Storage Area, staff does not appear to dispute the site's vested rights. (See **Attachment C**, Aerial Photographs 1939-Present).

### **6. Is the East Materials Storage Area vested?**

Yes, the EMSA is vested. It was part of the original 1939 mining tract purchased by Kaiser. By 1942, the area was heavily disturbed. Photographic evidence shows that Kaiser used this area for combined and integrated site operations. This includes material storage which began by 1948 and has grown progressively to today. Mining uses also included roadways to the upper quarry, operational roads, and material storage. Metals manufacturing took place as part of the integrated use of the area, but occurred only on a portion of the site.

**Staff Position:** Staff maps acknowledges that, by 1948, the EMSA was subject to intense operations, including "cut and fill" activity. (See Staff Report map, **Attachment B**.) Staff, however, concludes that additional evidence is needed to support vested rights over the EMSA, for two reasons: (1) staff is concerned that activities in the EMSA prior to 1948 were related to metal manufacturing uses occurring on site, and were not mining-related; and (2) staff believes that Kaiser's transfer of legal title to the EMSA from one Kaiser venture to another in the early 1940s negatively affected any vested rights on the site. We address each point below.

(1) The State and County define "mined lands" to include areas "in which surface mining operations will be, are being, or have been conducted, **including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.**" (Public Resources Code, §§ 2729, 2735; Santa Clara County Surface Mining and Reclamation Standards, § 3-L.) Staff appears to equate "mining use" with "extraction of rock" only. This is contrary to state and local definitions above. Staff also improperly compartmentalizes the land use, violating the rule of mine vesting that the entire operation must be considered:

**In determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be considered. One entitled to a nonconforming**

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**use has a right to...engage in uses normally incidental and auxiliary to the nonconforming use...Furthermore, open areas in connection with an improvement existing at the time of the adoption of the 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.**

\* \* \*

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

(*Hansen*, at pp. 565-566 [emphasis added, internal quotations and citations omitted].) The photographs included as **Attachment D** (EMSA Photographs 1941-Present) show that the EMSA was used for mine-related materials storage, mine-related roads, and administrative and laboratory facilities for the overall operation, and is consequently vested along with the remainder of the site.

(2) As to the transfer of title, vested rights “run with the land”. They are not affected by changes in ownership. All portions of the quarry have changed hands many times over the years. Staff’s position that vested rights were lost when Kaiser transferred the EMSA to another Kaiser entity is simply contrary to legal authority on this issue. The photographic evidence shows that the EMSA’s use for mining activities, including material storage, was never “abandoned.”

### **7. Was there a “public street” running through the site in 1937?**

No, there was no public street running through the quarry site in 1937.

**Staff Position:** Staff is concerned that some portion of the site may have required a use permit as early as 1937 if Permanente Road, which runs through the quarry site, was a “public street” at that time. The County’s 1937 zoning ordinance required a use permit for “**commercial**

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**excavating of natural material** within a distance of 1,000 (one thousand) feet from any public street...” (Emphasis added.) The staff report identifies an historical 1893 road deed for Permanente Road, but staff cannot locate a formal abandonment of this road in County files.

Staff also suggests that even if no public street existed on the property, that the public street did end at the property’s entrance, and that a portion of the EMSA is within 1,000 feet of the road’s terminus.

County staff, however, also acknowledges and does not dispute the following facts, which show that Permanente Road was not a “public street” in 1937:

- (1) The operation began before the 1937 ordinance was adopted.
- (2) “Street” under the 1937 zoning code was defined as a “thoroughfare that provided principal means of access to abutting property.” By the mid-1930s, the road served the quarry and was not a “thoroughfare” which provided the “principal means of access to abutting property”;
- (3) In 1935, at a County Board of Supervisors meeting, the County surveyor reported to the Board that Permanente Road was not a public road;
- (4) In 1939, the County processed Kaiser’s cement plant use permit on the assumption that there “are no streets upon the property or in the vicinity of the proposed plant.” A map attached to the application shows the road terminating at the site entrance;
- (5) In 1944, a recorded survey of the site, which was approved by the County surveyor, identified Permanente Road as “abandoned.”
- (6) The operator does not propose to excavate for commercial purposes on the EMSA. It is a storage area. Even if the 1937 ordinance was still in effect, it would not apply.
- (7) Current zoning regulations do not contain any 1,000-foot requirement.

(See **Attachment E**, containing the record evidence on this question; see also Staff Report, pp. 21-22; see Lehigh 01/04/2011 Letter, pp. 29-31.)

### **8. Has the County confirmed vested rights for the operation in the past?**

Yes, the County has on many occasions and in many different ways found the site to be vested. (See **Attachment F**.)

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**Staff Position:** Staff acknowledges that the County has previously found the site to be vested. Staff contends, however, that these past acknowledgements have limited binding effect and could be disregarded should the Board now so desire.

Staff's takes a radical position, in suggesting that the County is free under the law to overturn 70 years of vested treatment of the site. Facts in the record show that the County's vesting determinations over the years are correct. The quarry site has always operated in an open and obvious way, and been regularly inspected by the County and other regulatory agencies. Lehigh has invested hundreds of millions of dollars and developed long-term plans for the site on the basis of the County's prior determinations that the site is vested.

We hope this information is helpful to the Board in making its decision on this matter.

Very truly yours,

DIEPENBROCK HARRISON  
A Professional Corporation

By 

Mark D. Harrison

SKH:gjc

Enclosures

cc: Jody Hall-Esser, Planning Department  
Lizanne Reynolds, Esq., County Counsel

# EXHIBIT A

## **Principles Allowing the Continuation of Nonconforming Uses For Surface Mining Operations**

Vested rights “run with the land” and are not affected by changes in the ownership of property. (*Hansen*, at p. 540, fn. 1; *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah.2d 329, 336 [“Lawful existing nonconforming uses are not eradicated by a mere change in ownership.”]; *The City of University Place v. McGuire*, 144 Wn.2d 640, 651 (2001) [vested rights ran with land even after land was sold by mining company to non-mining developer] [*McGuire*].)

The nonconforming use must be similar to the use in place when restrictive changes in the zoning ordinance became effective. (See *Hansen*, at p. 553; *Rehfeld v. City and County of San Francisco* (1933) 218 Cal. 83; *City of Yuba City v. Cherniavsky* (1931) 117 Cal.App. 568; see also *Endara v. City of Culver City* (1956) 140 Cal.App.2d 33.) The County’s nonconforming use ordinance directly follows these general legal precedents. (See County Zoning Code, § 4.50.020.B [“A nonconforming use may be modified to a use deemed similar in nature, but lesser in intensity and impacts...”].)

Mining uses are specifically defined under state law and County regulations. Both contain the same definitions:

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

“Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to: (a) Inplace distillation or retorting or leaching. (b) The production and disposal of mining waste. (c) Prospecting and exploratory activities.

(Public Resources Code, §§ 2729, 2735; Santa Clara County Surface Mining and Reclamation Standards, §§ 3-1, 3-cc.)

With respect to mining uses, the California Supreme Court in *Hansen* adopted special rules for determining the scope of vested rights. These rules recognize that mining operations move across a site and use land differently from normal “static” land



uses. (*Hansen*, at p. 553 [“Unlike other nonconforming uses of property which operate within an existing structure or boundary, mining uses anticipate extension of mining into areas of the property that were not being exploited at the time a zoning change caused the use to be nonconforming.”])

This rule, known as the “diminishing asset” doctrine, allow nonconforming mining operations to expand into unused lands even though mining activities may not have commenced there yet. (*Hansen*, at pp. 553-559.) To gain the benefit of these rules, the owner must have expressed the intent, shown by objective evidence, to include such land in the mining enterprise before the effective date of a permit requirement:

When there is objective evidence of the owner's intent to expand a mining operation, and that intent existed at the time of the zoning change, the use may expand into the contemplated area. “The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose. ‘Quarry property is generally a one-use property. The rock must be quarried at the site where it exists, or not at all. An absolute prohibition, therefore, practically amounts to a taking of the property since it denies the owner the right to engage in the only business for which the land is fitted.’”

(*Id.* at p. 553, quoting *McCaslin v. City of Monterey Park* (1958) 163 Cal.App.2d 339, 349.) The principle is followed by the “overwhelming number of jurisdictions” to consider non-conforming mining operations. (*McGuire*, at p. 651.)

The Court in *Hansen* further explained that, in determining the “use” as to which the owner is entitled to continue, the full business enterprise must be considered, not merely individual elements:

In determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be considered. One entitled to a nonconforming use has a right to...engage in uses normally incidental and auxiliary to the nonconforming use...Furthermore, open areas in connection with an improvement existing at the time of the adoption of the 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.

(*Hansen*, at pp. 565-566 [internal quotations and citations omitted].)

Numerous courts have considered the type of evidence needed to establish that property has been added to a mining enterprise. They hold that there is no formula for how “objective manifestations of intent” may be proven. Certain factors, however, have been found to be important, including: the magnitude and nature of the mining operation itself, the extent of mining disturbance, progressive movement and expansion of mining operations, exploration and geologic studies, material stockpiling, and the construction or use of haul roads.

In *Hansen*, quarrying began in 1946, eight years before Nevada County adopted a zoning ordinance that prohibited mining without a permit. The operator held over 60 acres and multiple parcels. Mining centered on aggregate removal from a riverbed, with a smaller volume of rock quarried from a nearby hillside. While in-stream mining was continuous, the hillside was left untouched for periods as long as three years. The County asserted that hillside quarrying was an improper expansion of a nonconforming use and that any vested rights to hillside mining were lost through nonuse. The California Supreme Court disagreed, holding that vested rights apply to “all aspects” of a mining enterprise. Thus, once a parcel or tract is incorporated into the enterprise, the area becomes vested even though operations may not occur for long periods. As to the hillside tract, the court held that because mining occurred prior to the first restrictive ordinance, there was sufficient intent to integrate the area within the ongoing mining operation. (*Id.* at p. 571.)

Where land has not been mined, vested rights also may be established by evidence of a pattern of progressive expansion. In *Syracuse Aggregate Corp. v. Weise* (1980) 51 N.Y.2d 278, a New York court explained that “not every inch” of the parcel needed to be devoted to mining, according to the *Syracuse* court. Rather, what was important was that the owner had engaged in “substantial quarrying activities on a distinct parcel of land over a long period of time [which] clearly manifest the intent to appropriate the entire parcel to the particular business of quarrying.” (*Id.* at pp. 285-286; see also *Town of Wolfeboro v. Smith* (1989) 131 N.H. 449, 457 [expansion to 35 acres allowed by the court, where only eight acres were mined before a restrictive ordinance was adopted]; *Sturgis v. Winnebago County Board of Adjustment* (1987) 141 Wis.2d 149, 154 [“when a single owner has contiguous parcels on which an excavation operation is in existence, all land which constitutes an integral part of the operation is deemed ‘in use,’ notwithstanding the fact that a particular portion may not yet be under actual excavation”].)

Material stockpiling and the presence of haul roads demonstrated the existence of vested rights in *Gibbons & Reed Co. v. North Salt Lake City* (1967) 19 Utah.2d 329, 336. There, the operator used a leased parcel to stockpile sand and gravel excavated from owned parcels. The operator also used haul roads on the leased parcel connecting to other

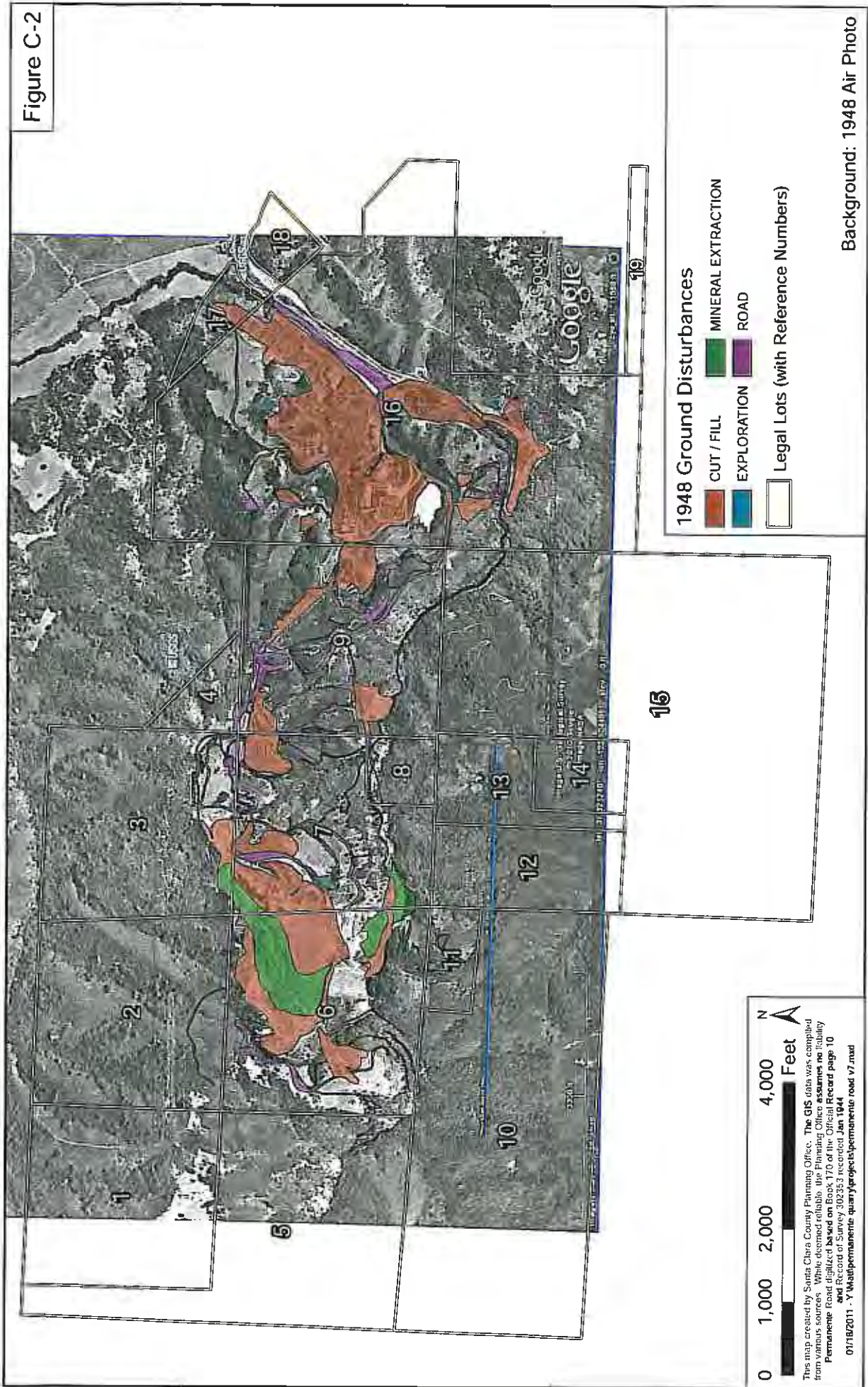
parcels, and contracted to supply fill from the leased parcel. These activities took place prior to the restrictive ordinance. Accordingly, the court held that the leased parcel was an integral part of the mining operation when the first restrictive ordinance was adopted, and that no “expansion” occurred through its subsequent use. (*Id.* at p. 336; see also *Torok v. Green Township Board of Trustees*, 1979 Ohio App. LEXIS 9875; *Town of West Greenwich v. A. Cardi Realty Associates*, 786 A.2d 354 (R.I. 2001) [material stockpiling and tree clearing were factors supporting a finding of vested rights].)

Other activities, including test drillings, surveys of reserves and tree clearing provided evidence of vested rights in *Moore v. Bridgewater Township* (1961) 69 N.J.Super. 1, 173 A.2d 430. There, mining operations began by 1930 on a 20-acre tract and slowly progressed. To prepare for later expansion, the owner cleared trees, test-drilled and directed surveys to better identify on-site reserves. The town adopted its first restrictive ordinance in 1937. In 1952, residents sought to restrain mining operations, which by then covered only two acres, arguing that a continuation of mining was an expansion of a non-conforming use. The court disagreed, finding sufficient “outward manifestation of intent” to establish the nonconforming use across the entire tract. (*Id.* at 15-16; see also *County of Du Page v. Elmhurst-Chicago Stone Co.* (1960) 18 Ill.2d 479, 485 [construction of a rail spur and stockpiling supported positive vested rights determination]; *Bainter v. Village of Algonquin*, 285 Ill.App.3d 745 (1996) [mineral exploration and testing, construction of a tunnel under a road to connect different properties, and the installation of conveyor equipment were factors used to demonstrate vested rights].)

Collectively, these decisions show that vested rights can be established by a wide range of activities which do not necessarily include actual mining. A broad range of facts may be relied on to demonstrate that a parcel has been devoted to the overall mining enterprise when the first restrictive ordinance is adopted, even where property has not been actively mined.

# EXHIBIT B

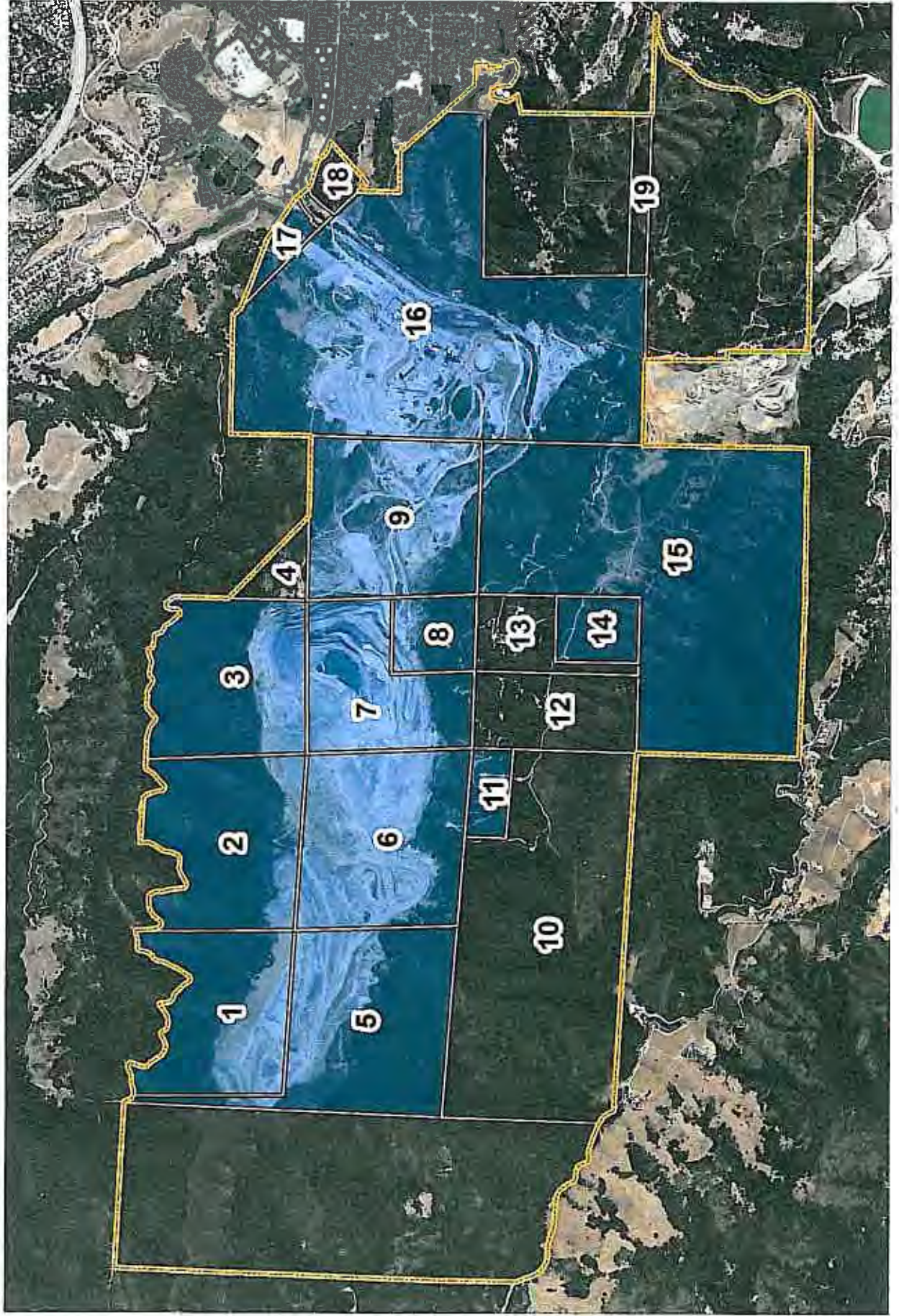
Figure C-2

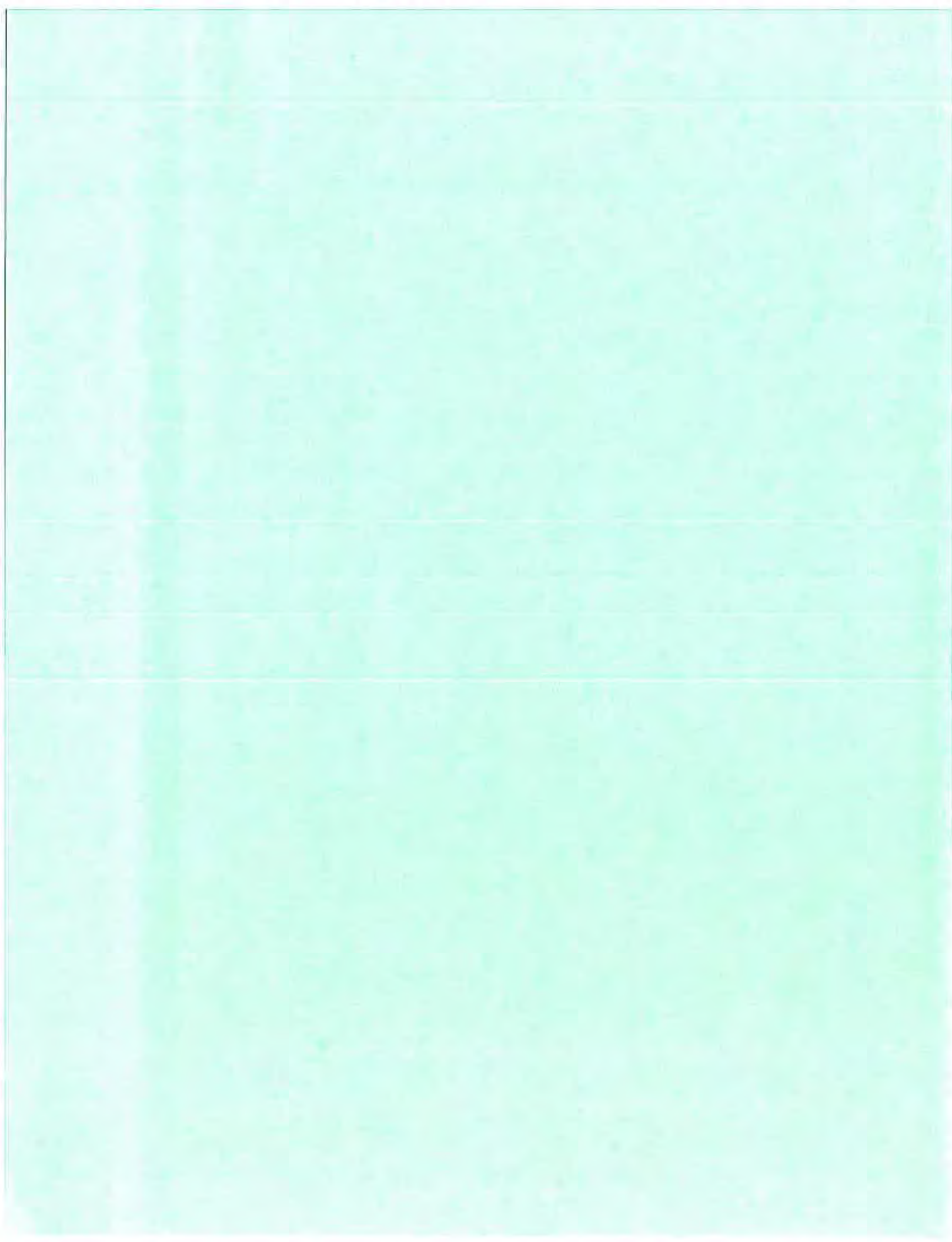


Background: 1948 Air Photo

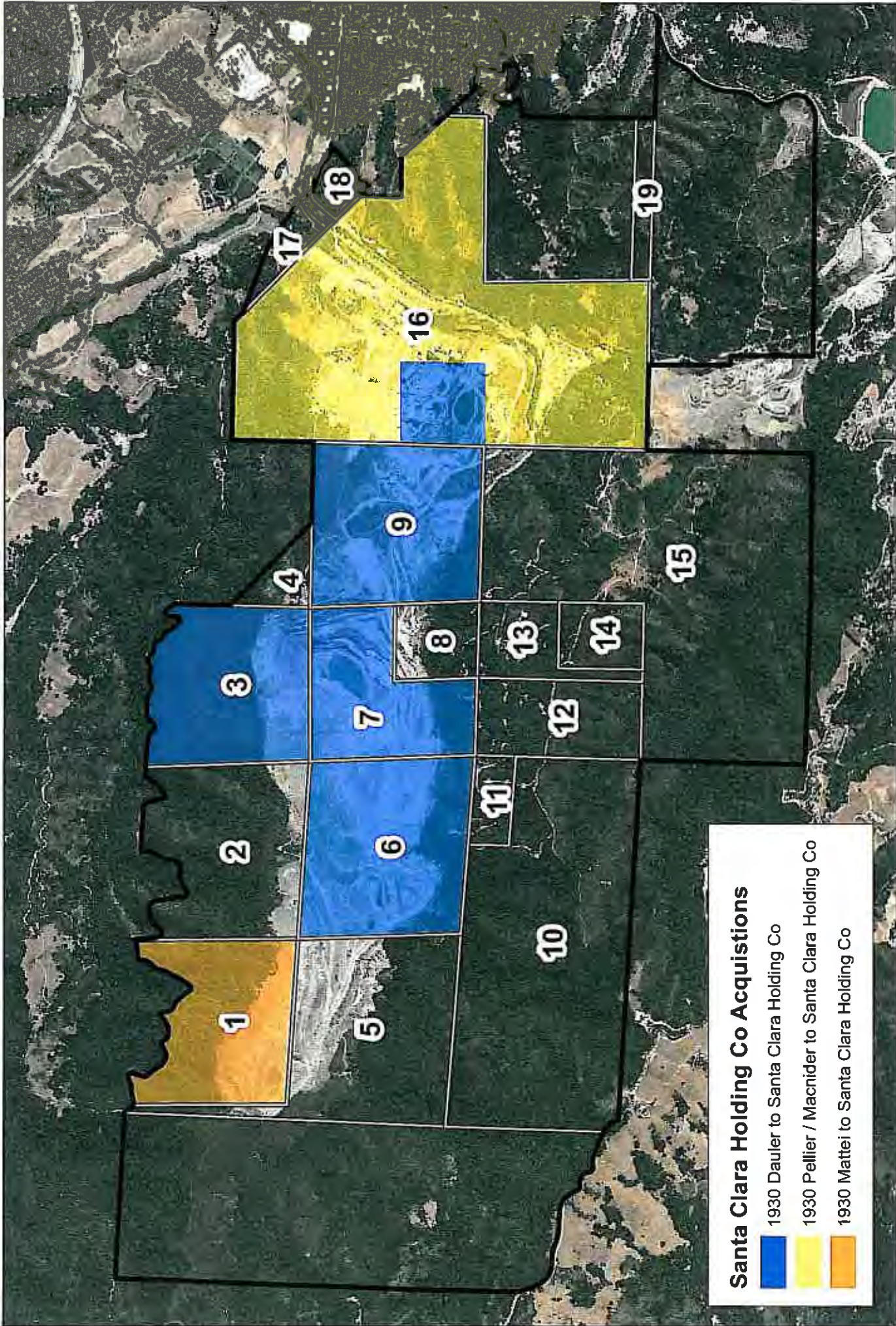


# Pre-1948 Ownership









**Santa Clara Holding Co Acquisitions**

- 1930 Dauler to Santa Clara Holding Co
- 1930 Pellier / Macnider to Santa Clara Holding Co
- 1930 Mattei to Santa Clara Holding Co



Date: January 2011  
 Property Boundary: Surveyed by  
 Dunbar and Craig Land Surveys  
 Aerial: 2009, USDA NAIP

**MINING TRACT ASSEMBLED BY 1930  
 (transferred to Kaiser in 1939)**



official survey of said township.

Together with the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said second party, and to its successors and assigns forever.

IN WITNESS WHEREOF, first parties have hereunto set their hands and seals the day and year first hereinabove written.

A. C. Mattei (A. C. Mattei)  
Ferne O. Mattei (Ferne O. Mattei)

STATE OF CALIFORNIA, CITY )  
AND COUNTY OF SAN FRANCISCO )SS

On this 6th day of May 1930 before me, the undersigned a Notary Public in and for said City and County and State, residing therein and duly commissioned and sworn personally appeared A. C. Mattei and Ferne O. Mattei, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Katherine Hallahan, Notary Public in and for the City and County of San Francisco, State of California

My commission expires January 28 1934

FILING NO. I-10297

Filed for record at the request of Grantee May 19 1930 at 7 min past 9 o'clock A. M.

MAY E. FLANNERY RECORDER  
Syl C. Tully Deputy Recorder  
Compared Book

Fee 1.00 5f  
Compared Doc

\*\*\*\*\*  
GEORGE F. DAULER TO SANTA CLARA HOLDING CO. LTD.  
\*\*\*\*\*

GRANT DEED

THIS INDENTURE made this 9th day of May 1930 by and between George F. Dauler (a single man) of the City and County of San Francisco, State of California, first party and Santa Clara Holding Company, Ltd a corporation, second party

WITNESSETH: First party, for and in consideration of the sum of ten dollars (\$10.00) lawful money of the United States, to him in hand paid by second party, the receipt whereof is hereby acknowledged does by these presents grant, bargain, sell and convey unto second party and to its successors and assigns forever, all of those certain lots, pieces or parcels of land situate in the County of Santa Clara, State of California, and more particularly bounded and described as follows to wit:

Parcel No. 1: The southeast 1/4 of Section 18, T. 7 S. R. 2 W. M. D. B. & M. and containing 160 acres of land according to United States Government Survey. *Pa-?* Beginning at a 3" x 4" post marked P.R.R. and A.S.1 standing at the point of intersection of the northeasterly line of the land and right of way of the Peninsular Railroad Company with the southerly line of the Homestead Road and from which stake a white oak 16" in diameter marked B.T.A.B.1 bears N. 52° W. 13.61 feet and an iron pipe driven in the center line of said Road bears N. 18° 3' E. 31.45 feet and running thence along the southerly line of the Homestead Road S. 89° 57' E. 364.61 feet to a 3" x 4" post marked A.S.2 and B. from which the quarter section corner between Sections 10 and 11 T. 7 S. R. 2 W. M. D.M. bears

5-19-1930  
522-34

N. 89° 8' E. 1888.81 feet and an iron pipe driven in the center line of said road bears N. 0° 46' E. 30 feet, thence leaving said southerly line of said Road and running S. 0° 46' W. 346.81 feet to a 3" x 4" post marked P.R.R. and A. S. S. standing in the northeasterly line of land and right of way of the Peninsular Railroad Company thence along the northeasterly line of said Company's land and parallel to the northeasterly line of the San Antonio Rancho and distant therefrom thirty (30) feet southerly N. 46° 5' W. 500 feet to the place of beginning and containing 1.461 acres and being a part of Lot 5, Sec. 10 T. 7 S. R. 2 W. M. D. S. & M and a part of the San Antonio Rancho Courses true Var 17° 25' E. as surveyed May 18, 1908 by Chas. Herrmann of Herrmann Bros. Surveyor and C. E. San Jose Cal. Subject, however to that certain mortgage dated the 1st day of October 1928, from first party as mortgagor to Alameda Sugar Company as mortgagee, recorded October 3, 1928, in Volume 424 of Official Records, Santa Clara County, page 899 which said mortgage second party assumes and agrees to perform.

Parcel No. 2: Southeast quarter (SE $\frac{1}{4}$ ) of Section seventeen (17) in Township Seven (7) South of Range two (2) West Mount Diablo Base and Meridian.

Parcel No. 3: The southwest quarter of the southwest quarter (SW $\frac{1}{4}$  of the SW $\frac{1}{4}$ ) of Section Sixteen (16) Township Seven (7), South, Range Two (2) west of Mount Diablo Base and Meridian, containing according to United States Government Survey forty (40) acres of land.

Parcel No. 4: Lots 1, 2, 3 and 4, comprising the fractional northwest quarter (NW $\frac{1}{4}$ ) of Section 17, Township 7 South, Range 2 West Mount Diablo Base and Meridian; containing, according to the official surveys of the United States Government 865.82 acres more or less.

Parcel No. 5: Lots five (5) six (6) seven (7) and eight (8) being the southwest quarter of Section seventeen (17) Township Seven (7) South, Range Two (2) West Mount Diablo Base and Meridian, and all of said southwest quarter of said Section and containing one hundred fifty four and 50/100 (154.50) acres more or less but excluding and excepting therefrom that certain parcel of land more particularly described as follows to wit.

Beginning at an iron pipe set for the quarter section corner between Sections seventeen (17) and twenty (20) Township seven (7) South, Range two (2) West Mount Diablo Base and Meridian, from which is set an iron pipe on ridge, south eighty nine (89°) degrees fifty one (51) minutes east two hundred one and 5/10 (201.5) feet; thence north eighty nine (89°) degrees fifty one (51) minutes west eighteen and 18/100 (18.18) chains to a stake from which bears a live oak tree marked with a blaze and a round tin south eighty nine (89°) Degrees fifteen (15) minutes east twenty six and 8/10 (26.8) feet, thence north one (1°) degree twenty eight (28) minutes west twenty two (22) chains, to a stake; thence south eighty nine (89°) degrees fifty one (51) minutes east eighteen and 18/100 (18.18) chains to a stake; thence south one (1°) degree twenty eight (28) minutes east twenty two (22) chains to the place of beginning, containing forty (40) acres and being a part of the southwest quarter of said Section seventeen (17) Township seven (7) South, Range two (2) West, Mount Diablo Base and Meridian.

Together with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD said premises together with the appurtenances, unto second party, and to its successors and assigns forever.

IN WITNESS WHEREOF, first party has hereunto set his hand seal the day and year first hereinafove written.

George F. Dauler (SEAL)  
(George F. Dauler)

STATE OF CALIFORNIA, CITY )  
AND COUNTY OF SAN FRANCISCO )SS

On this 13th day of May 1930, before me, the undersigned a Notary Public in and for said City and County and State, residing therein duly commissioned and sworn personally appeared George F. Dauler known to me to be the person whose name is subscribed to the foregoing instrument and he duly acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Katherine Hallahan, Notary Public in and for the City and County of San Francisco, State of California

My commission expires January 28, 1934

FILING NO. I-10298

5-19-1930

522-34

A. C. MATTEI ET UX TO SANTA CLARA HOLDING CO. LTD.

GRANT DEED

THIS INDENTURE made and entered into this 6th day of May 1930 by and between A. C. Mattei and Ferne O. Mattei, his wife, of the City and County of San Francisco, State of California, First Parties and Santa Clara Holding Company Ltd a corporation, second party.

WITNESSETH: First parties in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States to them in hand paid by second party the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, and convey unto second party, and to its successors and assigns forever, all of that certain lot, piece or parcel of land situate in the County of Santa Clara, State of California and more particularly described as follows:

Lots 3, 4, 7 and 8 of Section 18, Township 7 South, Range 2 West Mount Diablo Base and Meridian, containing 162.5 acres more or less according to the official survey of said township.

Together with the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said second party, and to its successors and assigns forever.

IN WITNESS WHEREOF, first parties have hereunto set their hands and seals the day and year first hereinabove written.

A. C. Mattei (A. C. Mattei)
Ferne O. Mattei (Ferne O. Mattei)

STATE OF CALIFORNIA, CITY )
AND COUNTY OF SAN FRANCISCO )SS

On this 6th day of May 1930 before me, the undersigned a Notary Public in and for said City and County and State, residing therein and duly commissioned and sworn personally appeared A. C. Mattei and Ferne O. Mattei, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Katherine Hallahan, Notary Public in and for the City and County of San Francisco, State of California

My commission expires January 28 1934

FILING NO. I-10297

Filed for record at the request of Grantee May 19 1930 at 7 min past 9 o'clock A. M.

MAY E. FLANNERY RECORDER
Syl C. Tully Deputy Recorder
Compared Book

Fee 1.00 5c

Compared Doc

GEORGE F. DAULER

TO

SANTA CLARA HOLDING CO. LTD.

GRANT DEED

THIS INDENTURE made this 9th day of May 1930 by and between George F. Dauler (a single man) of the City and County of San Francisco, State of California, first party and Santa Clara Holding Company, Ltd a corporation, second party

WITNESSETH: First party, for and in consideration of the sum of ten dollars (\$10.00) lawful money of the United States, to him in hand paid by second party, the receipt whereof is hereby acknowledged does by these presents grant,

All the provisions of this instrument shall apply to and bind the legal representatives, successors and assigns of each party hereto, respectively.

IN WITNESS WHEREOF, the trustor has executed these presents.

W. H. Parkin  
Emily Gaynor Parkin

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )SS

On this 20th day of February 1930 before me,  
Egerton D. Lakin a Notary Public in and for

said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared W. H. Parkin and Emily Gaynor Parkin, his wife, known to me to be the persons described in and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.  
(NOTARIAL SEAL)

Egerton D. Lakin Notary Public in and for said  
County of Santa Clara, State of California.

My commission expires March 19, 1930

FILING NO I-3753

Filed for record at the request of San Jose Abstract and Title Insurance Co. Feb 20 1930 at 47 min past 10 o'clock A. M.

MAY E. FLANNERY RECORDER  
J. H. Thomas Deputy Recorder

*2-20-1930*  
*500-522*

Fee 2.75 192

Compared doc

compared book

\*\*\*\*\*  
WILLIAM MACNIDER ET UX TO SANTA CLARA HOLDING CO. LTD.  
\*\*\*\*\*

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: William Macnider and Harriett Macnider his wife, of the City and County of San Francisco, State of California, first party, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration to him in hand paid by Santa Clara Holding Company, Ltd. Second party, receipt whereof is hereby acknowledged, does by these presents demise, release and quitclaim unto second party, all of first party's right, title and interest in and to the following described land situate in the County of Santa Clara, State of California, and more particularly described as follows, to wit:

The southwest quarter of the northwest quarter and the north half of the southwest quarter and Ebs 3, 4, 5 and 7, and the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of Section 16, Township 7 South, Range 2 West, Mount Diablo Base and Meridian; the northwest quarter of Section 21, Township 7 South, Range 2 West, Mount Diablo Base and Meridian, containing 489.04 acres more or less.

TO HAVE AND TO HOLD the above described land unto second party, and to its successors and assigns forever.

WITNESS the hand and seal of first party, this 13th day of February 1930.

William Macnider (SEAL)  
(William Macnider)  
Harriett Macnider (SEAL)  
(Harriett Macnider)

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO )

SS On this 14th day of February 1930 before me,  
the undersigned, a Notary Public in and for  
the City and County and State aforesaid, residing therein, duly commissioned and  
sworn, personally appeared William Macnider and Harriett Macnider, his wife, known to me to  
be the persons whose names are subscribed to the foregoing instrument and they  
duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal at my office in said City and County of San Francisco, the day and  
year in this certificate first above written.

(NOTARIAL SEAL) Katherine Hallahan Notary Public in and for the  
City and County of San Francisco, State of California.  
My commission expires January 28, 1934.

FILING NO I-3762

Filed for record at the request of San Jose Abstract and Title  
Insurance Co. Feb 20 1930 at 37 min past 12 o'clock M.

MAY E. FLANNERY RECORDER  
Phil A. Cox Deputy Recorder

Fee 1.00 4f

Compared doc *2 Pages*

compared book *77. Kelly's*

\*\*\*\*\*

SEVERO B. RANIA

TO

CHARLES CEIRO ET UX

\*\*\*\*\*

SURRENDER OF LEASE

THIS AGREEMENT made the first day of February 1930, between Severo  
B. Rania, first party, and Charles Ceiro and Mary Ceiro, his wife, second parties.

WITNESSETH: Whereas said second parties did, on or about April  
10th, 1929, lease to first party certain real property situated about one-fourth  
mile South of the City Limits of the City of Gilroy on the east side of the Monterey  
Road, in Santa Clara County, State of California, for a term of two years,

And whereas said parties have had certain mutual disagreements  
concerning said lease agreement,

NOW THEREFORE, said parties do mutually agree that said lease is  
wholly terminated and abandoned, and of no further force and effect, and said  
parties do mutually waive any and all claims or demands which they may have  
against each other caused by or arising from said lease, and first party does  
further surrender and yield up unto second parties the land and the premises  
therein demised, to the intent that the term thereby created shall merge and be  
extinguished in the freehold of the said premises.

IN WITNESS WHEREOF, said parties have hereunto set their hands the  
day and year first above written.

Severo B. Rania  
First Party

C. Ceiro  
Mary Ceira  
Second parties

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

SS On this first day of February in the year one  
thousand nine hundred and thirty before me,  
Chester E. Ross, a Notary Public in and for the County of Santa Clara, personally  
appeared Severo B. Rania, Charles Ceiro and Mary Ceiro, known to me to be the  
persons whose names are subscribed to the within instrument and acknowledged to me  
that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my

2-20-1930

502-389

compared doc. *[Signature]* compared book *[Signature]*  
LOUIS A. PELLIER ET UX TO SANTA CLARA HOLDING COMPANY LTD

DEED

THIS INDENTURE, Made this 20th day of February, A.D., 1930, between Louis A. Pellier and E.J.L. Pellier, both of the County of Santa Clara, State of California, the parties of the first part, and Santa Clara Holding Company, Ltd., a corporation organized and existing under the laws of the State of Nevada, and having its principal place of business within the State of California at the City and County of San Francisco, State of California, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States, and other valuable consideration, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces or parcels of land situate, lying and being in the County of Santa Clara, State of California, and bounded and particularly described as follows, to-wit:

Lots three (3), four (4), five (5) and seven (7), and the Southwest quarter of the Northwest quarter, and the North one-half of the Southwest quarter, and the Southeast quarter of the Southwest quarter, and the Southwest quarter of the Southeast quarter, all of Section Sixteen (16), and the Northwest quarter of Section twenty-one (21), all in Township Seven (7) South, Range Two (2) West, Mount Diablo Base and Meridian; Containing 499.04 acres of land, more or less.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remnants, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors, heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Louis A. Pellier (Seal)  
E.J.L. Pellier (Seal)

STATE OF CALIFORNIA ) SS. On this 20th day of February, A.D. 1930, before  
COUNTY OF SANTA CLARA ) me, Wm. F. James, a Notary Public in and for the  
County of Santa Clara, State of California, residing  
therein duly commissioned and sworn, personally appeared Louis A. Pellier and E.J.L. Pellier known to me to be the persons described in, whose names are subscribed to, and who executed the foregoing instrument, and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County, the day and year in this Certificate first above written.

(NOTARIAL SEAL)

Wm. F. James Notary Public in and for the  
County of Santa Clara, State of California.

FILING NO I-8763

Filed for record at the request of San Jose Abstract and Title Insurance Co. Feb 20 1930 at 38 min. past 12 o'clock M.

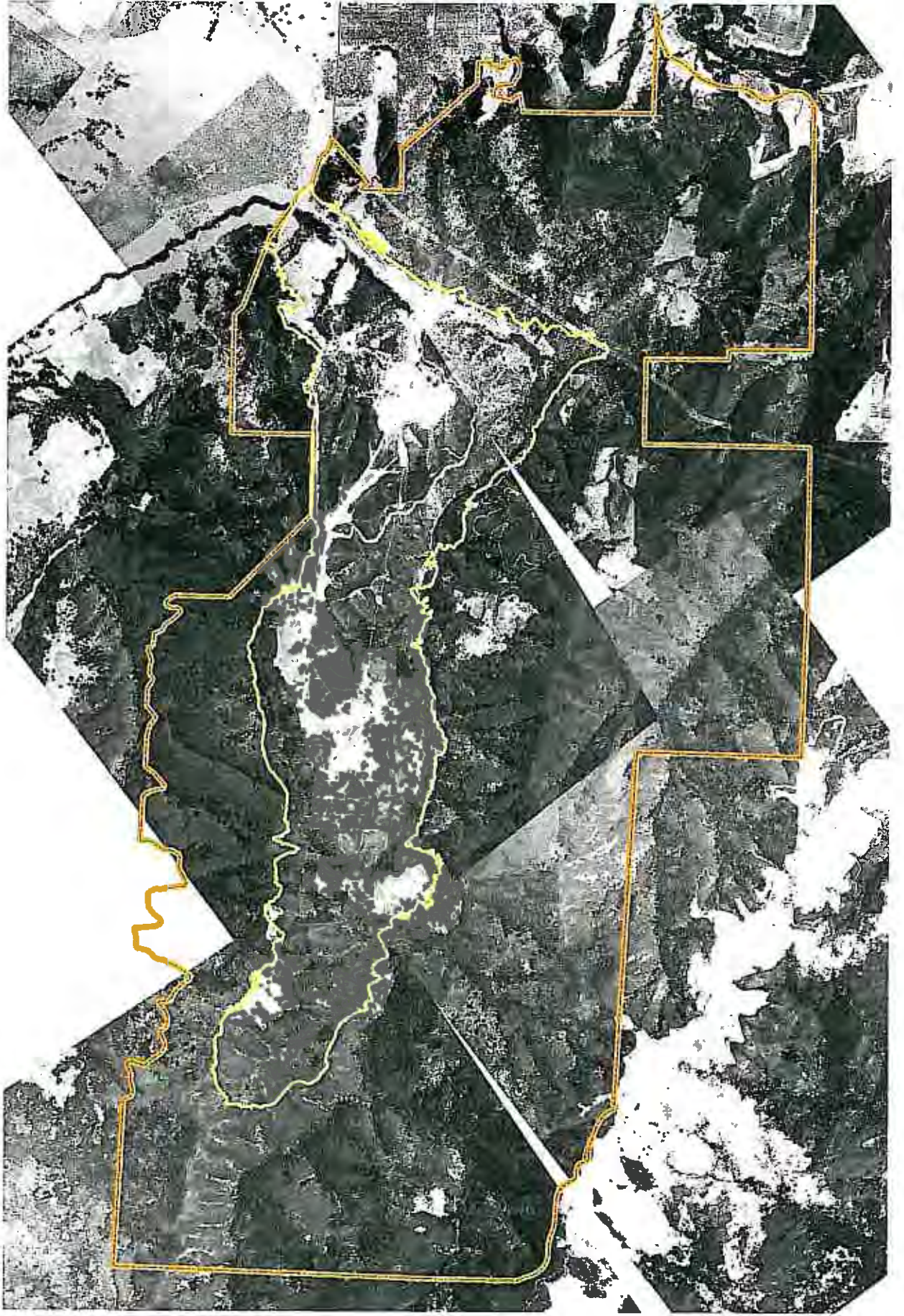
MAY E. FLAHERTY                      RECORDER  
Phil A. Cox                                Deputy Recorder

Fee 1.25                      68  
compared doc. *[Signature]* compared book *[Signature]*

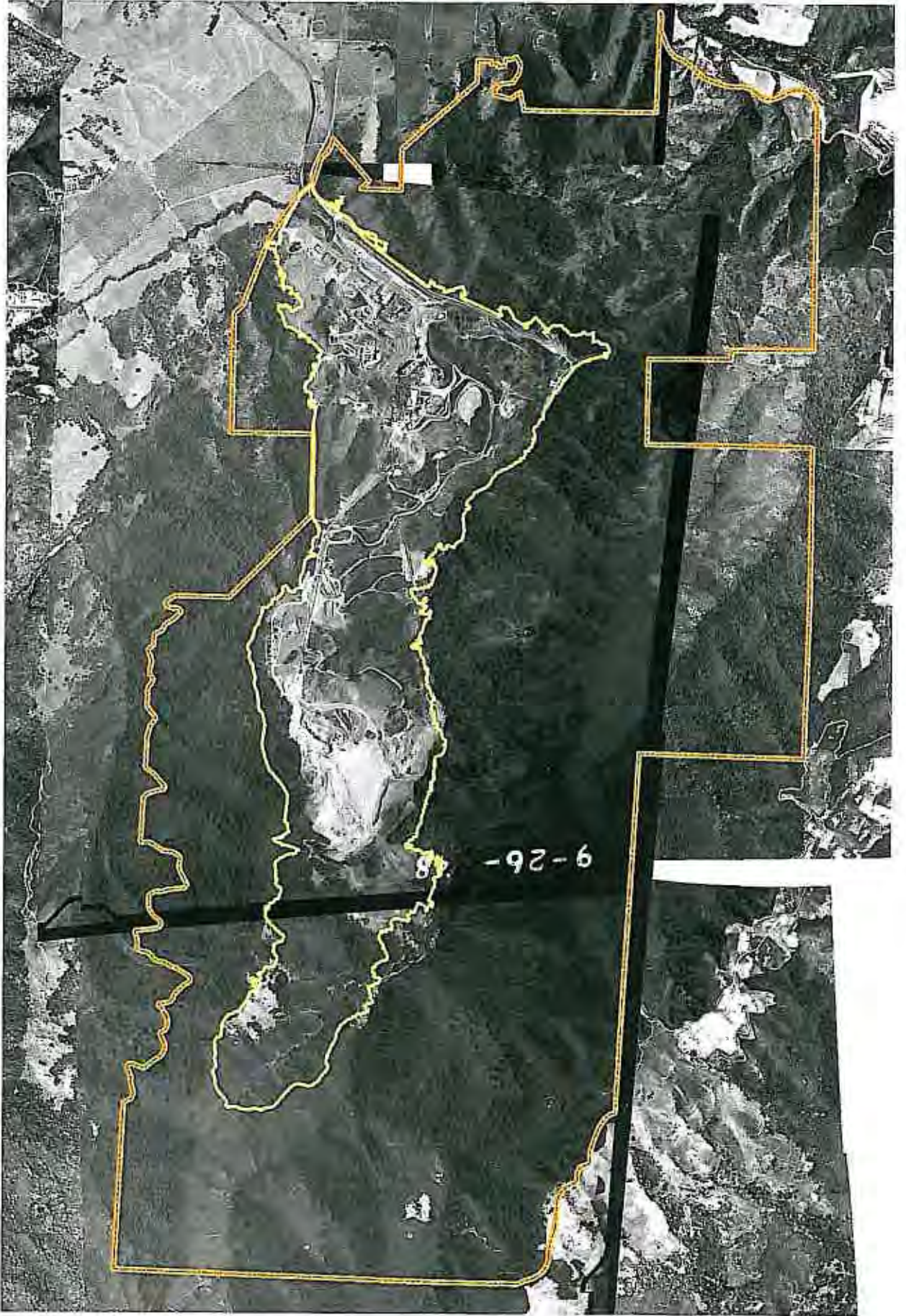
# EXHIBIT C



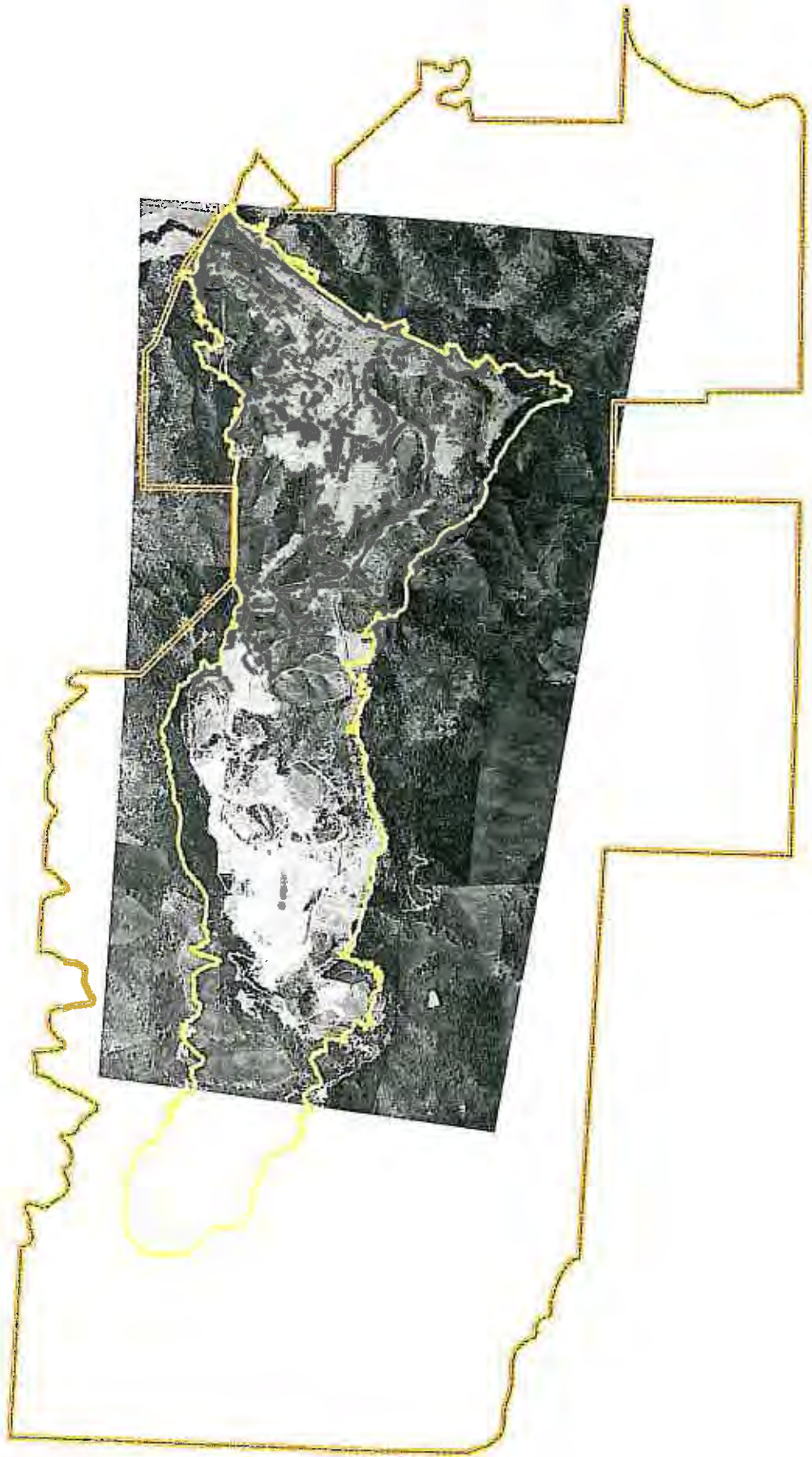
1939



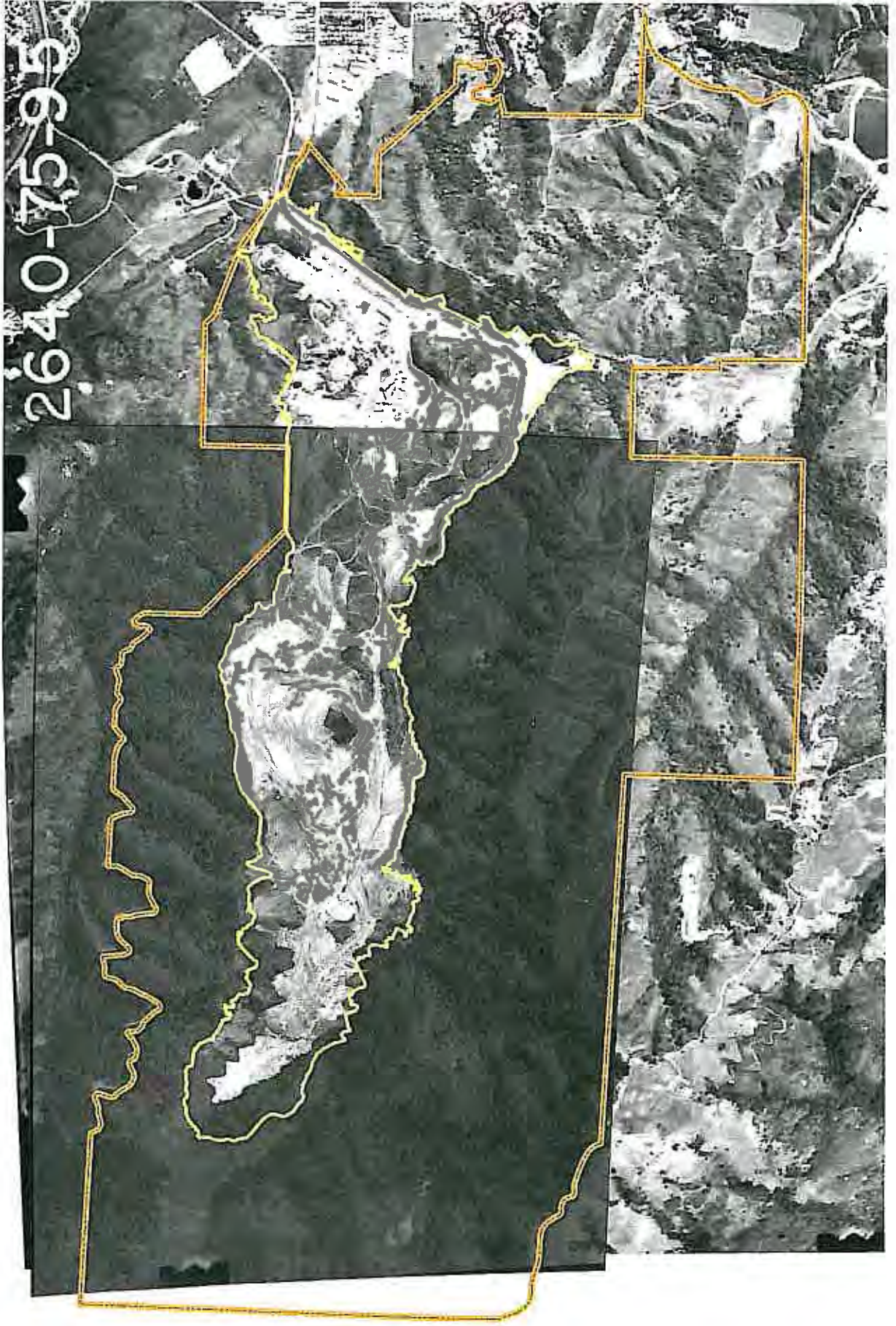
1948



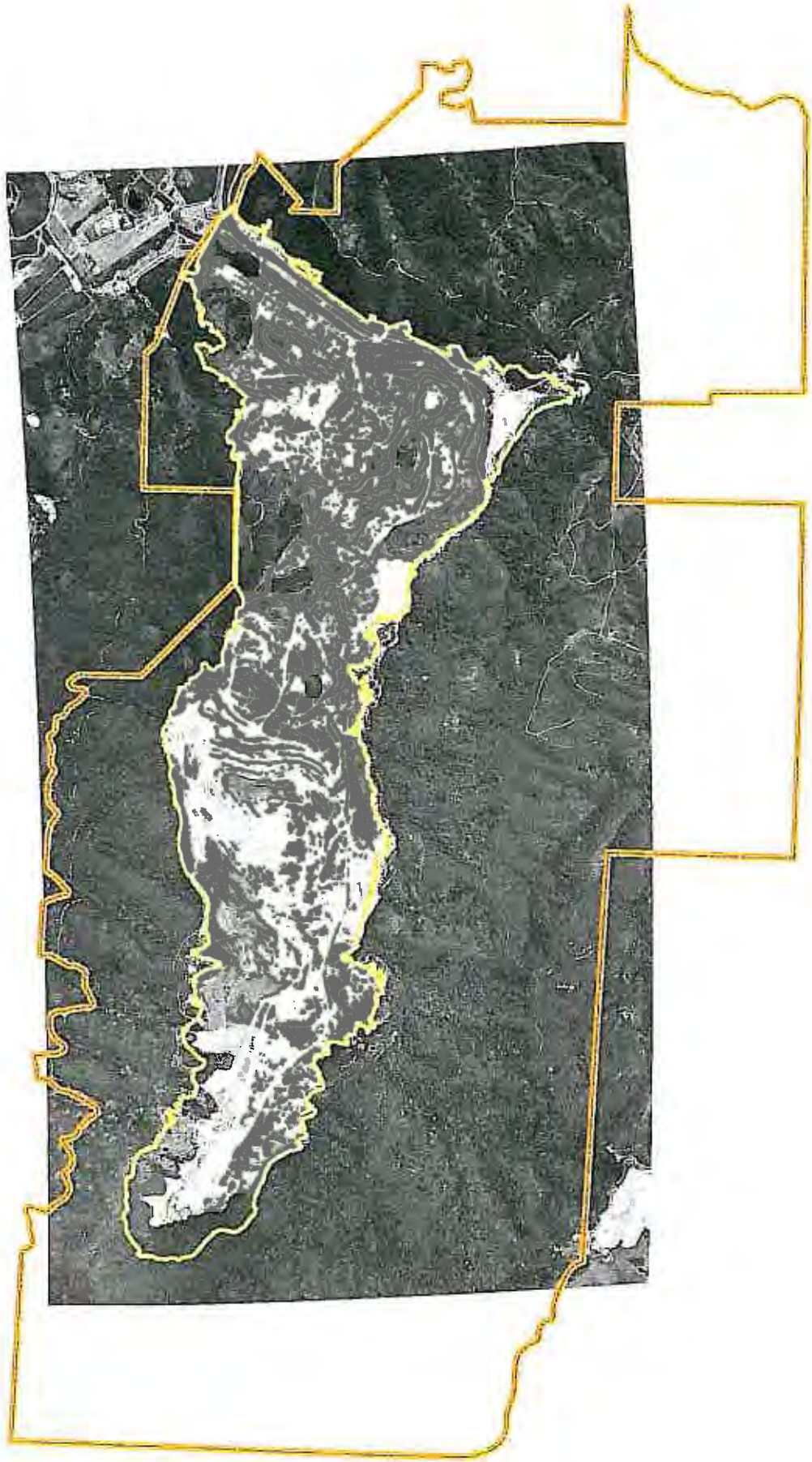
1950



1975



1985



2009



# EXHIBIT D

March 1941





Late 1941



1942



1942



1948



1948



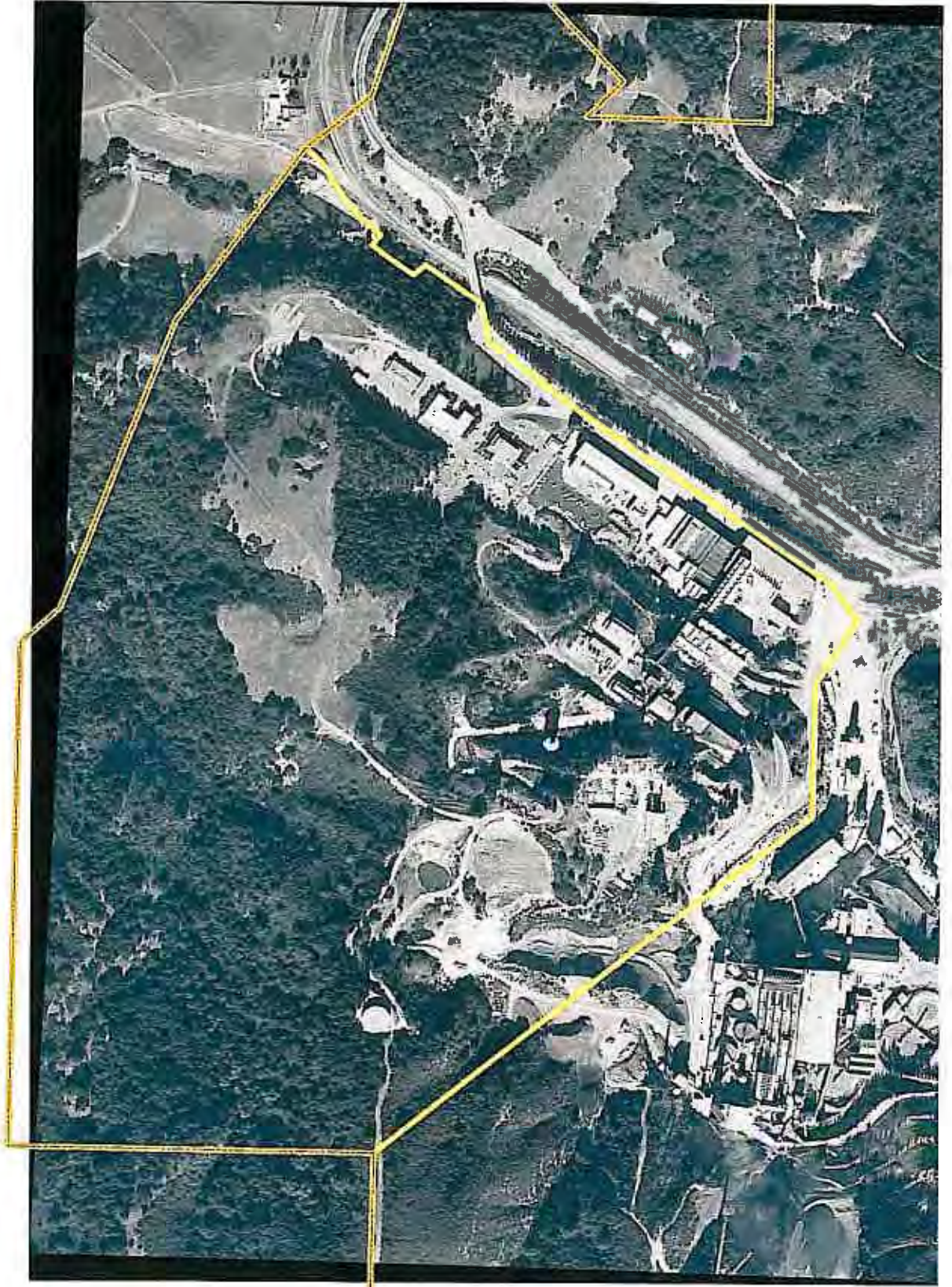
1950



1955



1974





1974



1980



1984

AV-2485-02-15



1991



2005

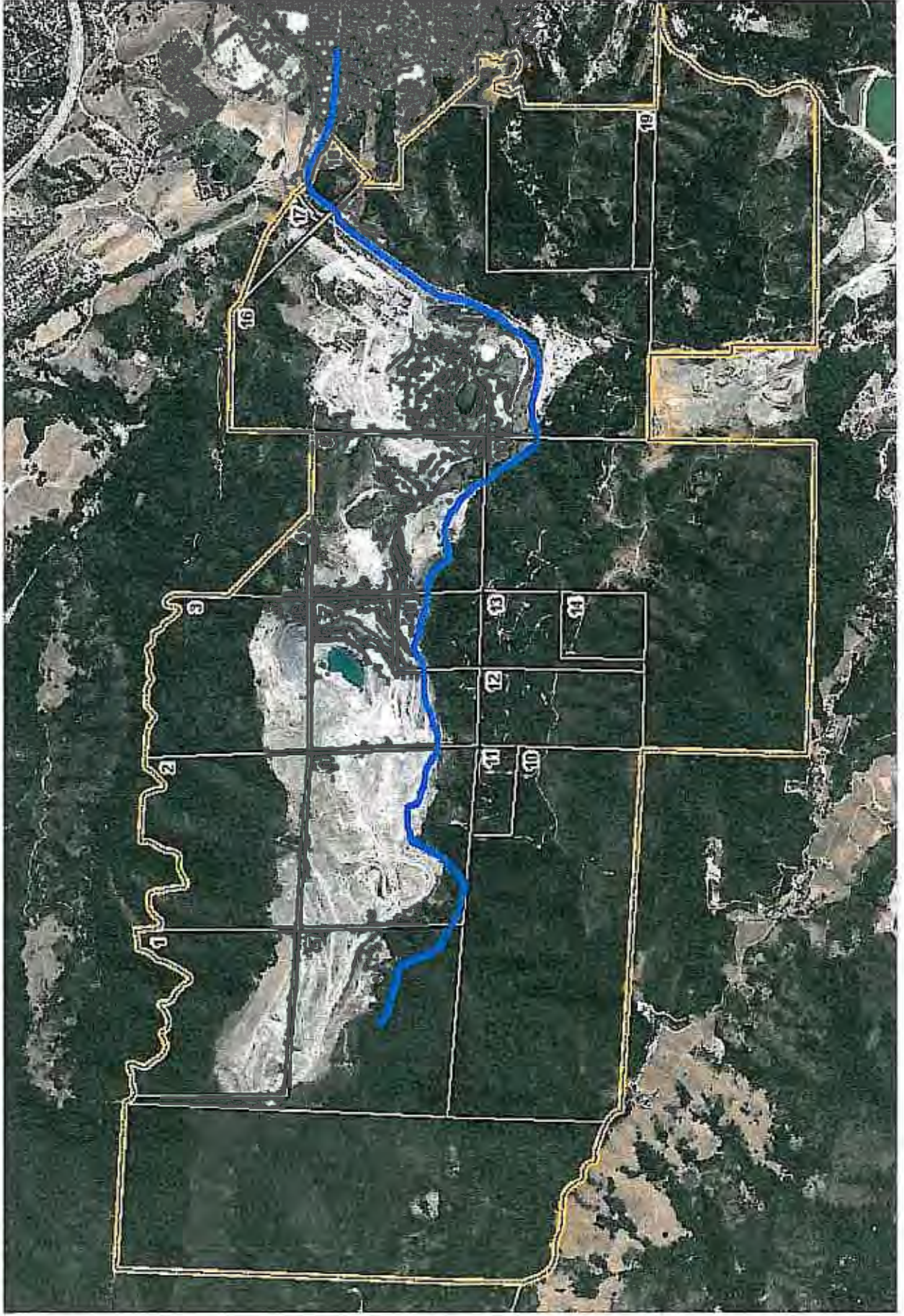


2009



# EXHIBIT E

# Permanente Road – Historical Alignment







**1937 ZONING ORDINANCE  
1935 BOARD HEARINGS ON ROAD CLOSURE**

**1937 Zoning Ordinance – Definition of Public Street**

**Street:** A public or private thoroughfare which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley as defined herein.

**1937 Zoning Ordinance – A-1 Uses**

(a) Uses Permitted:

All uses not otherwise prohibited by law; provided, however, that none of the following uses shall be established in any "A-1" district unless and until, in any such case, a use permit, as provided in Section 35 of this Ordinance, shall first have been secured for such use:

\* \* \*

3. Commercial excavating of natural materials within a distance of one thousand (1000) feet from any public street.

**September 23, 1935 Supervisors Minutes**

The petition of Uru Espinosa, et. al., is presented and read requesting the re-opening of the Permanente Road, in Supervisor's District No. 5, and the removal of a gate. The chairman orders that said petition be referred to Supervisor Cooley.

**September 30, 1935 Supervisors Minutes**

Antono Flores addressed the board protesting against a gate across the Permanente road, in Supervisor's District No. 5. The surveyor advised the board on said matter and stated that said gate was not across a county road.



As provided in Sections 12 and 13 of the Zoning Ordinance (No. 120) of Santa Clara.

TO THE SANTA CLARA COUNTY PLANNING COMMISSION  
COURT HOUSE, SAN JOSE, CALIFORNIA

Date Filed April 26, 1939

The undersigned hereby applies for a REZONING PERMIT to erect and operate a cement mill on that certain property situated on Permanente Creek, about one (1) mile and east of the City of San Jose, County of Santa Clara, State of California, which property is more particularly described in that certain Lease and option to purchase date March 9, 1938 between Santa Clara Holding Company, Ltd., a corporation and HENRY J. KAISER COMPANY, a corporation, which said lease and option to purchase was recorded October 17, 1938 in Vol. 901 of Official Records, page 8, Records of Santa Clara County, California. Said property is locally described as:

Sections 16, 17, 18 and a part of 21, T. 7 S. R. 2 W. S.B.B. & M.S.

said property is situated in Zoning District officially designated as A-1 Zoning District; total acreage of the property covered by the aforementioned lease and option to purchase is a proximately thirteen hundred (1300) acres. The dimensions of buildings are as shown on the accompanying plant lay-out, which contains, as well, numerous details of design, which may prove of value to your Honorable Body. There are no streets upon the property, or in the vicinity of the proposed plant.

The property is owned by the Santa Clara Holding Company, Ltd., a corporation, subject to the lease and option to purchase, which said lease and option to purchase was recorded as stated herein.

The undersigned further states that, under the circumstances of this particular case:

1. The establishment, maintenance and conducting of the use for which this permit is sought will not be detrimental to health, safety, morals, comfort, convenience or welfare of persons residing or working in the neighborhood of such use for the following reasons:

Said proposed plant is to be most modern design and fully equipped with Cottrell Dust Precipitating equipment, of the latest design, which said equipment is warranted by the manufacturers thereof to remove a minimum of 99% of all dust resulting from operation of the plant, leaving less dust than is contained in ordinary air. The plant is likewise of wet process design, which, in itself, reduces the dust hazard to a minimum. In addition to the above, the proposed plant is to be situated in an isolated position on the property in a canyon not in close proximity to any community or dwelling.

2. The proposed use will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood of such use for the following reasons (see description of plant contained under Number 1).

THE FERGANETTE CORPORATION,

W. T. Humber  
Its Vice President

APPLICANT'S AFFIDAVIT

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

I, A. E. HUMPHRIES, being duly sworn, deposes and says:

That I am the Vice-President of The Permanente Corporation, a corporation, which said corporation makes the foregoing application for use of said property of the property approved the application, and that the foregoing statement and all data, information and evidence therewith submitted are in all respects, to the best of my knowledge and belief, true and correct.

*A. E. Humphries*  
Vice-President The Permanente Corporation.

Subscribed and sworn to before me this 25th day of April, A.D., 1939.

*J. J. Embert*  
Notary Public in and for the County of Santa Clara, State of California.

Tract No. Sutter 8940

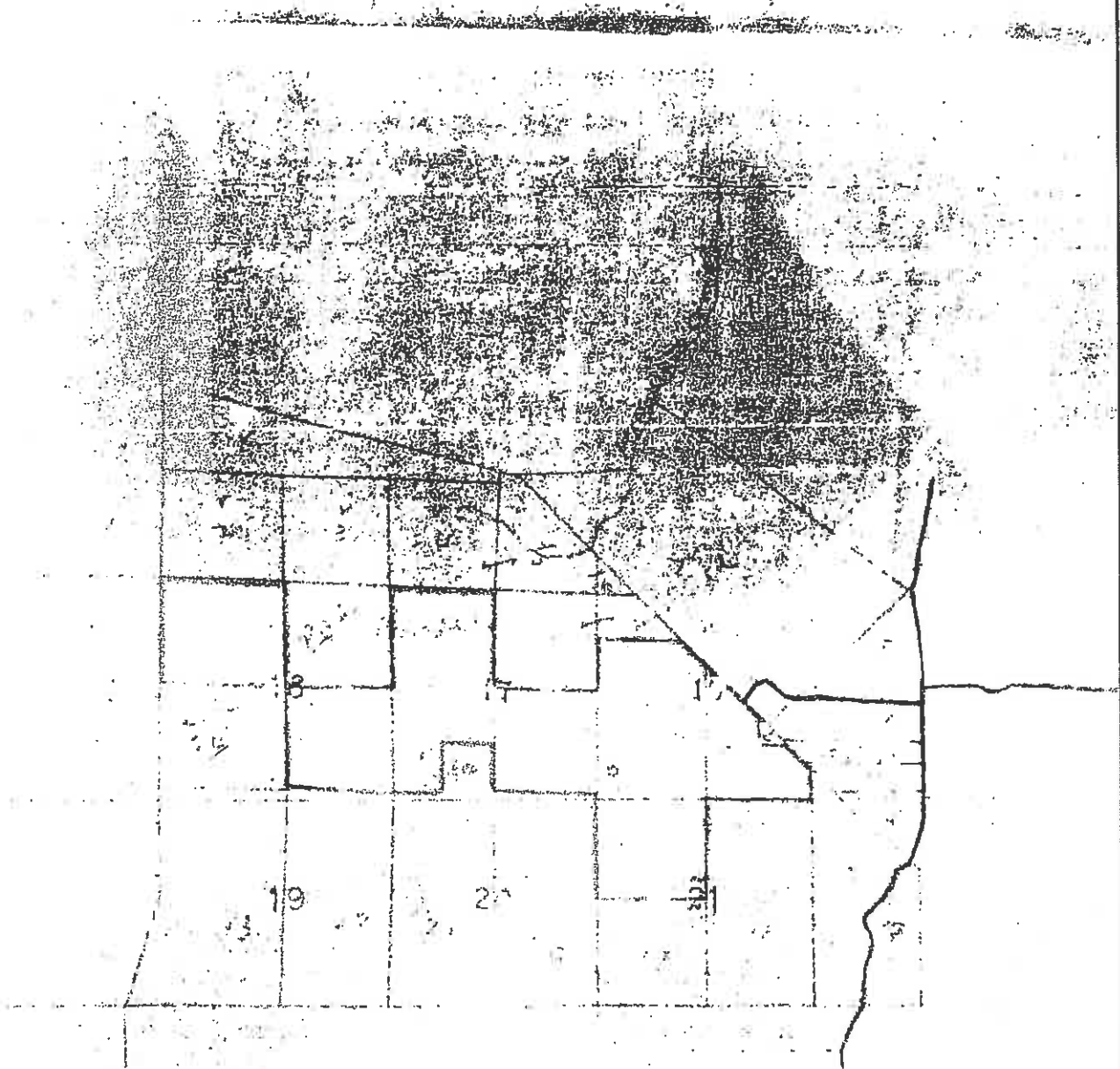
Address: Pacific Coast Aggregates,  
65 So. 2nd Street,  
San Francisco, California.

This is to certify that the foregoing application has been inspected by me and was filed in the office of the Santa Clara County Planning Commission in accordance with the provisions of Section \_\_\_\_\_ of zoning Procedure Ordinance No. 120.

SANTA CLARA COUNTY PLANNING COMMISSION

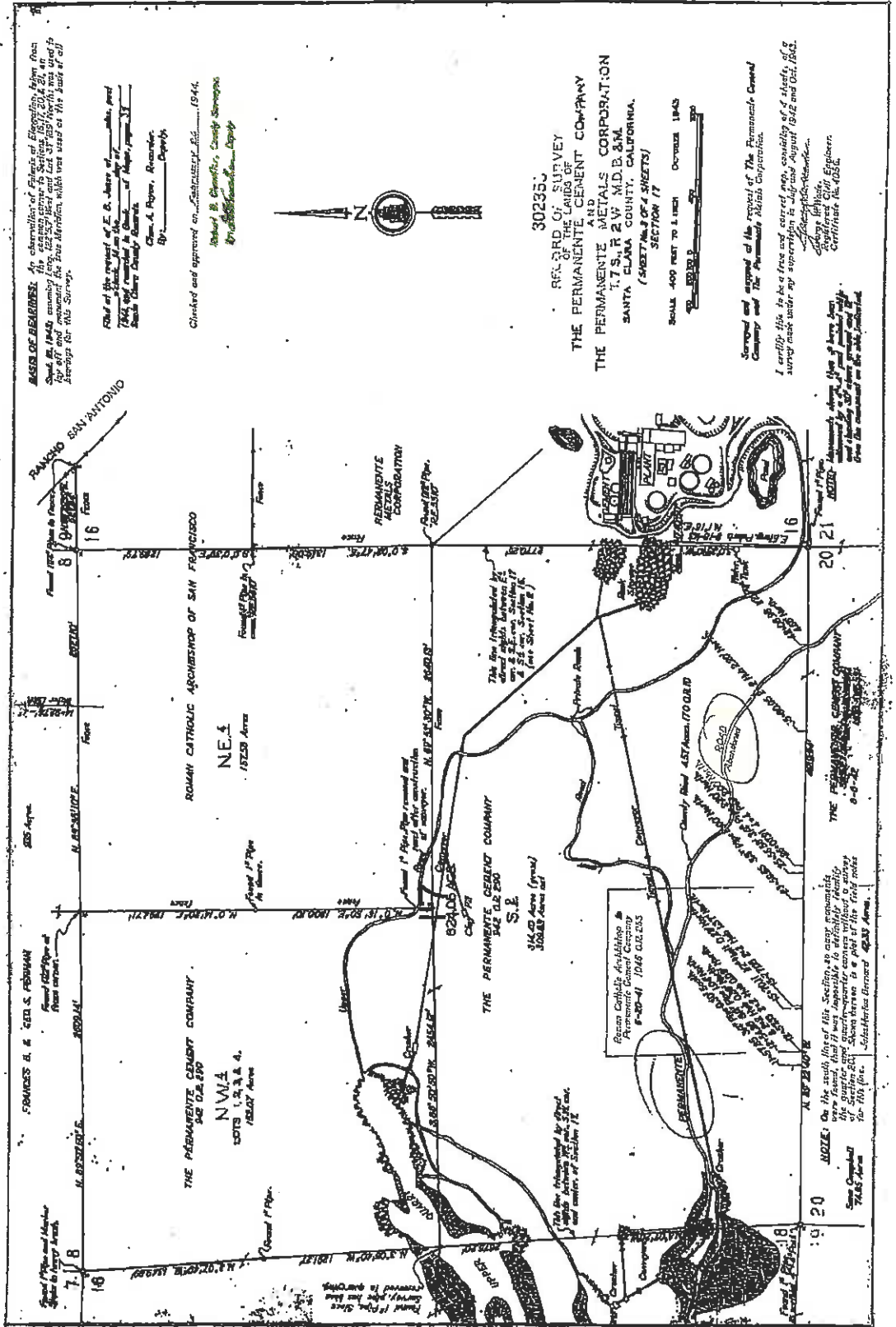
By *James M. Campbell*  
Date April 26, 1939

Use Permit Application # 123







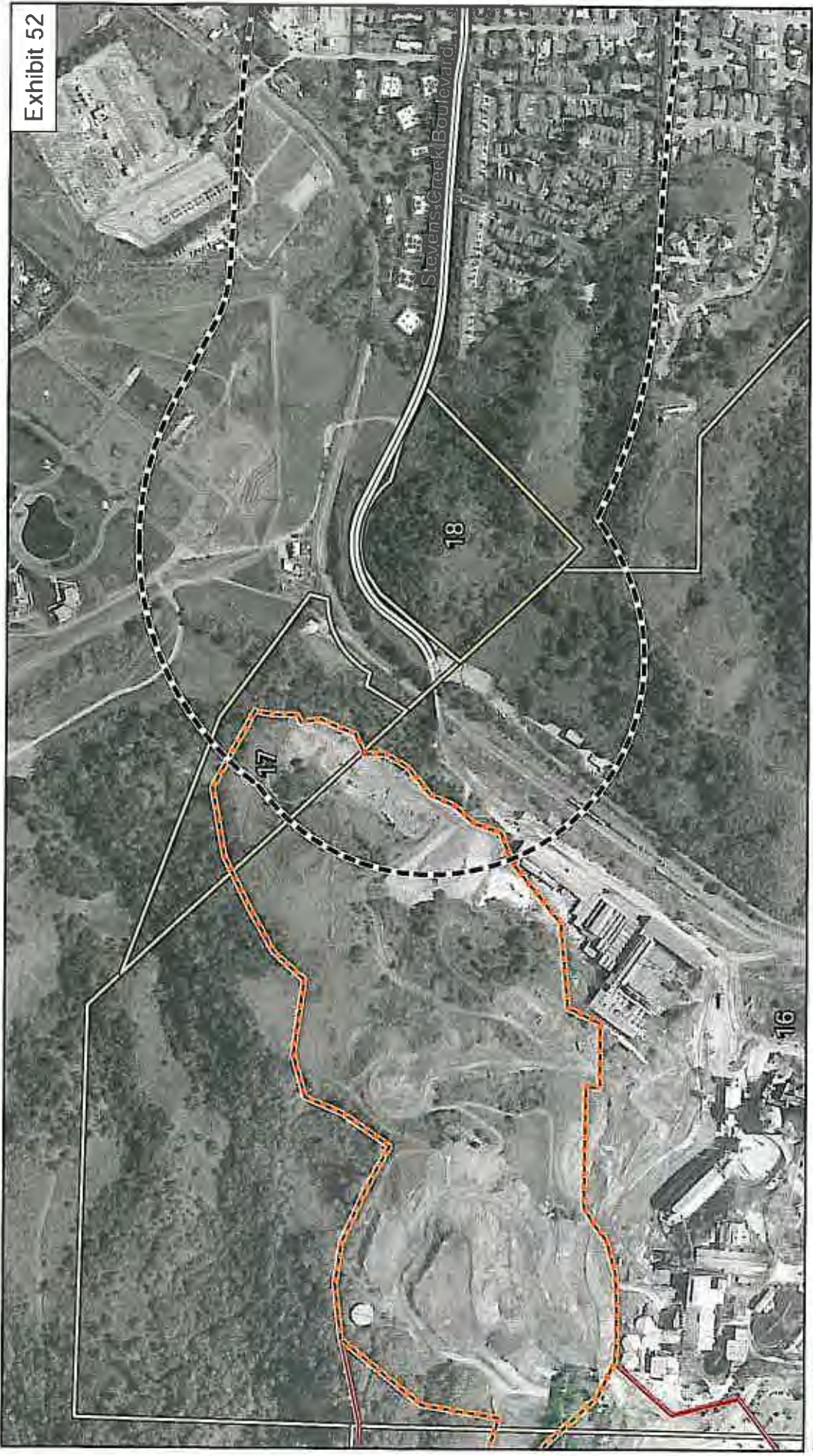


**BASES OF BEARING:** The bearings of all lines in this survey were taken from the meridian of the Survey, which was used as the basis of all bearings for this Survey.






Checked and approved on [Date] 1944.  
[Signature]  
Richard B. Chandler, County Surveyor  
By [Signature]  
[Signature], Deputy

**JUDICIAL NOTICE:** On the south line of this Section, as each paragraph of the deed conveying the same to the owner thereof, the quarter and quarter-acre corners are shown to be in a line with the quarter-acre corners of Section 17, Township 7 S., Range 2 W., Meridian 8 & M., Santa Clara County, California, and the center of Section 17.

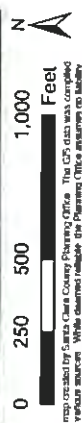




Permanente Road - 1000-ft Radius from Publicly Maintained Terminus

-  Proposed EMSA RPA
-  Proposed Comprehensive RPA
-  Publicly Maintained Road
-  1948 Legal Lots (with Reference Numbers)
-  1000-Ft Radius

Background: 2009 Aerial



The map is a courtesy of the Kern County Planning Office. The GIS data was compiled from the Permanent Road segment based on Block 120 of the Original Plat (page 1) and Parcel of Survey 20253 recorded Jan 1944.

01/16/2011 - 4-Multiparameter quality parameter rules v1.mxd

# EXHIBIT F

## **Santa Clara County's Prior Acknowledgements of Vested Rights For the Permanente Quarry**

The Quarry has always operated in an open and obvious way. The County has been fully apprised of these operations, and confirmed the Quarry's vested rights through numerous affirmations.

On at least six (6) occasions (February 1971, April 1971, May 1972, December 1980, March 1985, January 1994), County Counsel's office or the Planning Department advised members of the Board of Supervisors or Planning Commission that the Quarry was vested.

On at least fifteen (15) other occasions, the Planning Department told the California Department of Conservation that the Quarry was vested. This includes a November 27, 2006 letter to the Department's former director, as well as every inspection report of the Quarry since 1993.

On at least twelve (12) different occasions, the County's acknowledgement of vested rights is directly implied from particular actions. In March 1985, for instance, the County approved the reclamation plan, which would not have been legal without a use permit if the County did not also consider the Quarry to be vested.

These affirmations are listed below, and detailed in Lehigh's Appendix G, and also in the exhibits to the staff report.

- On May 8, 1939, the Board of Supervisors granted Kaiser a use permit to operate the cement plant. The Board did not require a use permit for the continued operation of the quarry, which by then had been operating for nearly 40 years, and which would supply material for the cement plant. This is strong evidence that the Board of Supervisors believed the quarry was an existing, legal operation at that time.
- In 1950 and 1955, the County granted amendments to the use permit. Again, nothing in the record of these proceedings suggests the quarry was not fully accepted as a legal, nonconforming operation.
- On August 23, 1956, the Planning Commission confirmed that Kaiser possessed the right to operate the rock plant as part of its existing use of the Facility, in response to an earlier inquiry from the company.
- On February 22, 1971, a County staff memorandum to a Supervisor described the quarry as "a lawful nonconforming use" which "may continue to operate" in accordance with its nonconforming status.
- On April 12, 1971, County Counsel wrote to Supervisor Victor Calvo, explaining that the "quarry, being a nonconforming use" was legally allowed to expand to the entire parcel owned on the effective date of the zoning ordinance.

- On May 9, 1972, County Counsel made a presentation to the Board of Supervisors. County's Counsel's handwritten notes from that meeting indicate that he described the quarry as a legal, nonconforming use.
- On August 18, 1972, the Kaiser Companies granted a Ridgeline Protection Easement to the County. The County sought the easement in recognition of Kaiser's vested rights. As recorded by a newspaper article, County counsel stated in a public meeting that "quarrying standards...do not apply to Kaiser since the Kaiser operation is a nonconforming use dating from 1939."
- On September 22, 1977, an internal County memorandum stated that the issue of vested rights had been researched and that "the rock quarrying operation was established on this site prior to any requirement of a use permit."
- In August 1977, Kaiser applied to the County to modernize the cement plant. The County approved the project, without raising any issue regarding the legal right of the quarry to operate.
- On December 15, 1980, a memorandum by Fifth District Supervisor to the Board acknowledged limits on the County's authority over quarrying operations.
- On March 27, 1984, the Planning Department wrote to Kaiser to advise the quarry of new County regulations that required the quarry to prepare a reclamation plan. The letter was clear that a use permit would not be required: "the Kaiser quarry has been continuously operated since 1932 and the property is exempt from the requirements for a use permit..."
- On March 7, 1985, the County approved the reclamation plan without requiring Kaiser to obtain a use permit. The absence of a permit would not have been legal under SMARA if vested mining rights did not exist. The staff report provided by the Planning Department further stated: "The quarry has no use permit, being a legal non-conforming use."
- On March 29, 1988, the Zoning Administrator confirmed vested rights in connection with a new line of aggregate products (known as mineral aggregates) which the company planned to process and sell. The Administrator stated that a permit was unnecessary: "Because of [the Facility's] status as a legal nonconforming use and the fact that this overburden already exists, puts this rock processing facility as a use which has been historically allowed at this site." The mineral aggregate plant was built next to the EMSA.
- On July 25, 1991, in connection with proposed rock plant upgrades, the Zoning Administrator stated "no discretionary permits are necessary from the County for the proposed modifications and additions. The proposal is consistent with Kaiser's historical quarrying uses."

- Since 1991, the County has reported the Facility as “vested” in annual inspection reports to the California Department of Conservation. The annual reports also reflect a good compliance history; at no time until 2006 did the County note any violations.
- In a January 4, 1994 memorandum to the Fifth District Supervisor, the County’s attorney described the Facility as a vested site.
- On June 7, 2006, the County provided the State Mining and Geology Board with background information regarding the Facility and certain legal deficiencies alleged by the Department of Conservation. The letter did not raise vested rights as an issue.
- On October 10, 2006, the County issued a notice of alleged SMARA violations at the Facility. The notice listed the known violations, but did not raise any issue of vested rights.
- On November 27, 2006, the Planning Department provided a report to the state Department of Conservation which specifically acknowledged the Facility’s vested rights (emphasis added):

Your letter also indicates you are interested in the zoning information regarding the Hanson Permanente Quarry and Cement Plant. Our records indicate that the quarry operation is located...[in areas] currently designated “Hillsides” by the County General Plan and Zoned “HS” under the Zoning Ordinance.

It should be noted that quarry operations are allowed in Hillside areas under Section 2.20.020 of the zoning ordinance, subject to obtaining a Use Permit... **In the case of the Hanson Permanente Quarry, the operation was established before the zoning ordinance regulations were adopted and therefore has been recognized by the County for many years as a legal non-conforming use.**

- On May 5, 2007, the Planning Department issued a public notice regarding the CEQA process for the Facility, which stated: “the mine is a vested mine, which means there is a right to mine on the project site.”
- On May 21, 2008, the County wrote to Lehigh to discuss the Facility’s compliance status, and to update the compliance schedule for the Facility. The letter did not raise any issue of vested rights.

- On June 20, 2008, the County issued a notice of alleged SMARA violations at the Facility with respect to the EMSA. The notice did not raise any issue of vested rights.
- On April 14, 2009, the County entered into an agreement with Lehigh which authorized Lehigh's continued use of the EMSA without a use permit, subject to applications for a reclamation plan amendment. At no time did the County raise or suggest that the Facility was not vested in its underlying uses. The County's actions are wholly consistent with over 70 years of the Facility's operation.