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January 20, 2009

Mr. Tom Last, Planning Director
City of Grass Valley
Department of Community Development
125 E. Main Street
Grass Valley, CA 95945-6505

SUBJECT: REVIEW COMMENTS DRAFT ENVIRONMENTAL IMPACT REPORT
IDAHO MARYLAND MINE

Dear Mr. Last:

The comments included below consist of my review of portions of the Draft EIR for the proposed re-opening of the Idaho Maryland Mine. The subject document is flawed in its analysis of impacts. The consultant has consistently omitted relevant comments provided in agency Notice of Preparation letters, and public comments in “scoping sessions.”

The Agenda for Planning Commission meetings, mis-state that the proposed project contains five components: (1) General Plan Amendment, 2) Rezoning, 3) Annexation, 4) Development Review, and 5) Mineral Extraction.

By law a sixth portion of the project not included by the consultant that prepared this DEIR, a Reclamation Plan, is a legal component of the project, the above ground impacts of this project are subject to the Surface Mining and Reclamation Act of 1972, as amended. The Reclamation Plan must be reviewed as part of the project pursuant to Sections 21000 of the Public Resources Code, the California Environmental Quality Act. And pursuant to CEQA, the environmental review must look at the whole of the proposed project, not segmented the project into parts.

Chapter 17.42 of the city Zoning Regulation addresses mining and reclamation. Section 17.42.020 Applicability is inconsistent with State Surface Mining Regulations (SMARA) in that it does not address Section 2735 that clearly states:

§ 2735. “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. (underlining by reviewer)

The City's Mining Ordinance is out of compliance with the State Surface Mining and Reclamation Act, and perhaps should not be processing this application to re-open this mine. Certainly, the city and the EIR consultant have missed the mark on the scope of the project.

It is clear that the consultants exhibit no prior experience in preparing a Mining and Reclamation Plan for a proposed mining project, and the City should consider obtaining services from an alternate consultant in the preparation of a Revised Draft EIR. This reviewer has spent many hours reviewing the information in the Draft EIR and finds that the consultant relies on future studies and other jurisdictional agencies to mitigate for potential environmental impacts instead of providing the information for public review. This is not consistent with the requirements of the California Environmental Quality Act.

This reviewer asks why the consultant seems to proffer 'jobs' as mitigation for environmental impacts while ignoring the potential negative fiscal impacts to the community resulting from what could be a gravel quarry operating 24-hours a day with 8 truck per hour disturbing residents sleep patterns and making our highways dangerous mining haul routes and impacting our health with the exhaust of diesel trucks.

And why, as requested by Nevada County LAFCo NOP letter, was the ceramics plant portion of the project not separated out from the mining portion of the project?

Why are alternatives not consistent with what the proponent wants, ignored?

CIRCULATION, AIR QUALITY AND RECREATIONAL RESOURCES

Review Comment: The DEIR fails to include the mining haul route impacts analysis. Potential health and safety impacts resulting from the proposed haul route on Idaho Maryland Road, the impacts of the mining trucks on downtown Grass Valley as the trucks pass by the Travelodge, Hennessy School, and within ½ block of the Downtown Historic District. Economic impacts are also likely as tourists will be forced to negotiate Hwy 49 and Hwy 20 behind eight mining trucks per hour 24 hours a day.

The DEIR neglects to discuss the loss of the Wolf Creek Parkway and the Nevada County Transportation Commission's Nevada County California Bikeways Plan (Fig 5-5 Grass Valley Existing and Proposed Bikeways Plan, June 2007) as a recreational resource. The use of a bicycle/recreational trail as a mining haul road will preclude use of the Parkway. In addition, as a parkway, it should be included in the analysis of sensitive receptor sites and included in a Revised Draft EIR. Section 4.12.4 Cumulative states that payment of mitigation fees would mitigate any impacts to recreation. This is incorrect and full analysis to Wolf Creek Parkway and the Nevada County Transportation Commission's "Nevada County California Bikeways Plan that shows Idaho Maryland Road, and the Frontage Road, as bikeways. These roadways are proposed for haul truck use. A Health Risk

Assessment should be prepared for the haul route and reviewed by OEHHA prior to inclusion in the Revised Draft EIR.

Traditionally, mining operations do not own the truck companies they use for haul trucks. This means, once they are out of the gate at the mine, the truck drivers will pretty much be very difficult to regulate because they are not part of the Mining Permit. Having the mine regulate is almost impossible when the numbers are as many as 10-trucks per hour. Timing the release of trucks from the mine will not regulate the return trip trucks that will inevitably bunch up in platoons, making visitors think twice about returning to Grass Valley or Nevada City. Impacts from the trucks returning to the mining site should also be included in the Revised Draft EIR.

Today the city of Chico is having a restricted burn day. I'm thinking: how long before we in Grass Valley can no longer light our wood burning stoves because the air quality in our town can't meet State standards due to the diesel belched out from the 10-TRUCKS PER HOUR haul-truck impacts. Why is it up to our community to mitigate for the impacts of this proposed mine?

The mining industry wants to talk about "our mining history" and jobs, but what about maintaining a livable and viable historic downtown, what about our bikeways, what about the children at Hennessy School and everyone who visits downtown to shop, eat, attends a street fair or Farmer's Market. What about everyone that lives along Hwy 49 all the way down to Auburn?

Whose child will be the first one killed in a mining truck accident along Hwy 49?

Potential negative impacts to health and safety resulting from the population of Grass Valley exposure to diesel exhaust and truck traffic, should be fully discussed in the Air Quality, Circulation, and Recreation section in a Revised Draft EIR.

HAZARDOUS MATERIALS

The DEIR contains the following discussion:

4.6.3 Impacts and Mitigation Measures

Significance Criteria

Section 4.6.3 Impacts and Mitigation Measures, Significance Criteria states: According to CEQA Guidelines Appendix G, the proposed project would result in a significant hazards or hazardous materials impact if it would:

- Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;*
- Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;*
- Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school;*

- *Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment;*
- *For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard for people residing or working in the project area;*
- *For a project within the vicinity of a private airstrip, result in a safety hazard for people residing or working in the project area;*
- *Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; or*
- *Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.*

The Initial Study found that the proposed project would not be located within one-quarter mile of an existing or proposed school site. It found that the proposed project would not result in a hazard associated with its proximity to the nearby Nevada County Airstrip located approximately

1.5 miles from the project area because the airport is a relatively small airport with infrequent general aviation activity; no impacts would result from proximity to an airstrip because there are no private airstrips in the vicinity. Finally, the Initial Study found that the proposed project would not interfere with implementation of an existing emergency response or evacuation plan because of its relatively remote location. Since the Initial Study analysis was conducted, the proposed project description has not been changed such that it would affect these conclusions. Therefore, there would be no impacts related to the project's proximity to a school, an airport, or a private airstrip. As such, these impacts will not be addressed further in the EIR.

Reviewer's Comment: The Initial Study failed to include the mining haul route as part of the entire project. This haul route will pass by Hennessy School on S. Auburn and Creative Kids at 12108 E. Bennett Rd. The haul route includes transport of hazardous materials, specifically cyanide.

PRC SECTION 21151.7 requires that if cyanide is used for on-site processing, the preparation of an Environmental Impact Report is required. Why doesn't this DEIR discuss the impacts of using cyanide and the potential dangers of transporting the material within ½ block from a school? Cyanide is covered in DEIR Section "other Chemicals on page 2-36 without full potential impacts to the community should accidents occur. The community needs to see evacuation routes and emergency personnel availability discussed in a Revised Draft EIR.

The project is not located in a "remote area." The mine has no basis for its proposed "rural" designation for Hazardous Materials. This would reduce requirement the emergency response team. It is located within the boundaries of a small city: Grass Valley, and within 1.5 miles of, and within criteria distance noted as a significant impact for, the airport, and adjacent to residentially zoned

areas. There is a reason for Heavy Industrial areas to be located away from residentially zoned parcels. Heavy Industrial uses create hazards for residents living in the area.

The issues relating to the transport and storage of hazardous materials should be discussed fully, with all potential health and safety hazards related to those materials discussed in full for the people of Grass Valley in a Revised Draft EIR. They should be investigated independently by an independent consultant not working for the project proponent, and included in a revised Draft EIR. Air quality analysis should also include “a discussion of how the prevailing winds may affect air pollution concentrations at those receptor locations, emphasizing TACs” as requested by the NSAQMD in their Notice of Preparation response letter.

Page 4.7-48 contains the following statement:

Prior to approval of the WDR permit application, the applicant would be required to develop a detailed plan for the management of mining wastes, including estimated volumes of material generated from each solid waste stream, development of a plan for characterization and disposal of each waste category, as well as a detailed contingency plan that would identify alternative disposal options in the event that a particular waste is not suitable for use as backfill into the underground mine workings. Specifically, mine waste that is classified as Group A and Group B mining waste (as defined in the Regulatory Setting, above) would be unsuitable for backfill into the underground mine workings. The detailed contingency plan would require “will serve” letters from landfills that would accept Group A and Group B mining waste in the event that other options for waste disposal are found to be a threat to waters of the State. In developing a detailed contingency plan and acquiring “will serve” letters from landfills for the disposal of mining waste, the applicant would effectively be providing proof of feasible waste management options for the proposed project. Without an approved contingency plan, the RWQCB would not approve the WDR permit and the applicant would be unable to operate the proposed project because it could not legally manage the waste generated during the mining and milling processes.

Reviewer’s Comment: The proposed detailed plan as discussed in the DEIR: “*for the management of mining wastes, including estimated volumes of material generated from each solid waste stream, development of a plan for characterization and disposal of each waste category, as well as a detailed contingency plan the would identify alternative disposal options in the event that a particular waste is not suitable for use as backfill into the underground mine workings,*” should be included in a Revised Draft EIR and available to the public. Will serve letters should be provided for public review in the revised Draft EIR. (italics by reviewer)

Basing mitigation measures on future studies was determined in the CEQA decision *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296: a mitigation measure that does not mitigate the impact can not be the basis for a

finding that impacts were mitigated.

NOISE SECTION

Reviewer Comment: The Draft EIR is incomplete in its analysis of noise impacts to sensitive receptors along the haul routes and residents. The Revised Draft EIR should include noise impacts to Hwy's 20 and 49 along the entire haul route.

Mitigation Measure 4.9a tells us that the “applicant shall ensure that noise associated with operation of the Idaho-Maryland Mine facilities will not exceed the City of Grass Valley Noise Standards” by the implementation of two implementation measures relating to ventilation systems of the gold processing facility and ceramics plant. Stationary equipment “... shall have sound insulated enclosures such that the noise level would be limited to 80 dBA at a distance of 50 feet from the equipment.” The reviewer asks: “What will the City of Grass Valley do?” Shutting down of equipment at a mining operation would be under another jurisdiction.

This Mitigation Measure is infeasible and does not reduce the impacts to less than significant. Full noise impact analysis of a 24-hour/7 day per week mining and truck hauling operation should be included in a Revised Draft EIR for the areas around each proposed mining site, and for the entire haul route within Grass Valley, and on Hwy 20 and Hwy 49. Due to the steep gradient on parts of these roadways, the haul trucks will need to slow their rigs using engine compression commonly referred to as “Jake Breaks.” Full noise impact analysis of the noise along the haul route should be included in a Revised Draft EIR.

Fiscal analysis of the loss of property values along these roadways due to truck noise should also be included in the fiscal analysis section in a Revised Draft EIR.

Mitigation Measure 4.9-2b states that “if complaints are received in regards to backup beeper noise, the City shall require the applicant to implement measures to lower the noise level from the beepers at the location of the complaints.”

This is also an infeasible Mitigation Measure. Mine Safety and Health Administration (MSHA) governs the jurisdiction for backup beepers, not the City of Grass Valley. The mining industry will agree to the Mitigation Measure, knowing that the lead agency can't implement the Mitigation Measure. Therefore, full analysis of noise beepers on surrounding properties should be included in a Revised Draft EIR and available to the public for review.

Feasible Mitigation Measures that might lower the noise impact discussed in full. If the noise cannot be mitigated, then a Significant Impact identified.

CEQA requires measures must be feasible to undertake and complete. Mitigation measures that are based upon future activities of uncertain outcome are inconsistent

with CEQA. The court in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 requires that mitigation measures not be based on future studies. A measure that does not mitigate the impact could not be the basis for a finding that impacts were mitigated.

These questions were included in the public scoping sessions. Why was analysis not included in this Draft EIR?

AIR QUALITY SECTION

NSAQMD' NOP letter dated October 3, 2007. To: Tom Last care of Environmental Science Associates, San Francisco, excerpts provided below:

The District's primary concerns include the following:

1) Asbestos-containing dust from surface activities in areas with ultramafic rock being transported into populated areas by wind. This includes, unpaved roadways and parking lots, exposed areas, stockpiles of excavated material, clearing and grading for site development, the operation of machinery, landscape maintenance/vegetation management activities such as mowing, chipping, leaf-blowing and pavement sweeping, and miscellaneous construction activities and surface disturbances.

2) Asbestos-containing dust from underground operations (digging, drilling, blasting, transporting materials, operating mobile equipment, etcetera) in ultramafic rock, spreading to the community via air vents.

All potential criteria and toxic pollutant emissions associated with the underground operations, which are proposed to be vented out the two vent shafts should also be thoroughly discussed. These should include blasting emissions and emissions from stationary, mobile and portable equipment. Air flow rates and directions should be included, along with an estimate of how long it would take for a full air change to be completed in the mine. The EIR should also discuss control technologies that are available for the vent shafts (regardless of cost) and their effectiveness for controlling the various pollutants. In addition, the District recommends that the EIR include the consideration of an electric rail system to haul material to the surface as an alternative to using trucks underground, since it is expected that calculated diesel emissions from the vent shafts will be relatively substantial. This technique is in place in some underground mines in the nation.

A quick District review of available information on gold ore processing technologies indicates that in some cases the cyanide process is unable to extract much of the gold in gold ore, especially if it is bound with pyrite. In such cases, an ore roaster or a gold recovery process using mercury is typically employed. The EIR should discuss the potential for this to be the case, based on the chemical and physical characteristics of the ore.

Reviewer Comment: According to *CEQA Statutes Section 21083* (Significance

Guidelines) and *CEQA Guidelines Section 15065* if any of the following impacts would result from a proposed project, the project is considered to have a significant effect on the environment:

- The project has possible environmental effects which are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects and the effects of reasonably foreseeable probable future projects (as defined in *CEQA Guidelines Section 15130*)
- The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

The Significant Impacts and air quality, noise, potential of diesel fumes to potentially accumulate within the Historic Downtown district of Grass Valley based on weather base-line station monitoring to determine what is the current local air quality, and a full discussion of what the potential impacts to air quality might be, and the potential of these impacts to significantly impact the residents of Grass Valley, including the cumulative impacts, should be included in a revised Draft EIR.

Clarification as to the omission of Cyanide emissions from the Health Risk Assessment prepared for the project site only, and not for the mining haul road, including all of Idaho Maryland Road and haul route through Grass Valley itself and sensitive receptors within a reasonable distance of the haul route as determined by air monitoring surveys. The EIR consultant should include the NSAQMD’s requests from the NOP.

Additionally, in *Coalition For Reasonable Regulation Of Naturally Occurring Substances v. California Air Resources Board, 122 Cal.App.4th 1249 (2004)*, the court upheld an Air Resources Board regulation barring the sale and supply of asbestos containing rock for surfacing of unpaved roads. Industry groups challenged the regulation under the Tanner Act, which regulates toxic air contaminants, as well as CEQA. The court upheld the regulation and the required supporting statement of reasons both under the Tanner Act as well as CEQA.

Should the gravel proposed for sale from the mine be barred from sale, what will the mine do with the mining waste? This information should be included in an expanded Air Quality and Transportation/Circulation Section clarifying the location and amounts and traffic impacts of the proposed off-site hauls.

Diesel exhaust is produced when an engine burns diesel fuel. It is a complex mixture of thousands of gases and fine particles (commonly known as soot) that contains more than 40 toxic air contaminants. These include many known or suspected cancer-causing substances, such as benzene, arsenic and formaldehyde.

It also contains other harmful pollutants, including nitrogen oxides (a component of urban smog).

As we breathe, the toxic gases and small particles of diesel exhaust are drawn into the lungs. The microscopic particles in diesel exhaust are less than one-fifth the thickness of a human hair and are small enough to penetrate deep into the lungs, where they contribute to a range of health problems. Diesel exhaust and many individual substances contained in it (including arsenic, benzene, formaldehyde and nickel) have the potential to contribute to mutations in cells that can lead to cancer. In fact, long-term exposure to diesel exhaust particles poses the highest cancer risk of any toxic air contaminant evaluated by OEHHA. ARB estimates that about 70 percent of the cancer risk that the average Californian faces from breathing toxic air pollutants stems from diesel exhaust particles.

In its comprehensive assessment of diesel exhaust, OEHHA analyzed more than 30 studies of people who worked around diesel equipment, including truck drivers, railroad workers and equipment operators. The studies showed these workers were more likely to develop lung cancer than workers who were not exposed to diesel emissions. These studies provide strong evidence that long-term occupational exposure to diesel exhaust increases the risk of lung cancer. Using information from OEHHA's assessment, ARB estimates that diesel-particle levels measured in California's air in 2000 could cause 540 "excess" cancers (beyond what would occur if there were no diesel particles in the air) in a population of 1 million people over a 70-year lifetime. Other researchers and scientific organizations, including the National Institute for Occupational Safety and Health, have calculated cancer risks from diesel exhaust that are similar to those developed by OEHHA and ARB. Exposure to diesel exhaust can have immediate health effects. Diesel exhaust can irritate the eyes, nose, throat and lungs, and it can cause coughs, headaches, light-headedness and nausea. In studies with human volunteers, diesel exhaust particles made people with allergies more susceptible to the materials to which they are allergic, such as dust and pollen. Exposure to diesel exhaust also causes inflammation in the lungs, which may aggravate chronic respiratory symptoms and increase the frequency or intensity of asthma attacks.

Diesel engines are a major source of fine-particle pollution. The elderly and people with emphysema, asthma, and chronic heart and lung disease are especially sensitive to fine-particle pollution. Numerous studies have linked elevated particle levels in the air to increased hospital admissions, emergency room visits, asthma attacks and premature deaths among those suffering from respiratory problems. Because children's lungs and respiratory systems are still developing, they are also more susceptible than healthy adults to fine particles. Exposure to fine particles is associated with increased frequency of childhood illnesses and can also reduce lung function in children. (Source: Health Effects of Diesel Exhaust. A Fact sheet by Cal/EPA's Office of Environmental Health Hazard Assessment and the American Lung Association of California).

Loss of these recreational resources and potential negative impacts to health resulting from the population of Grass Valley exposure to diesel exhaust, should fully discussed in the Air Quality, Traffic, and Recreation section in the Revised Draft EIR.

RECLAMATION PLAN

Reviewer Comment: No on-site biological assessment of the project lands has been made although requests for detailed vegetation surveys was provided in the October 10, 2007 NOP letter from the CA Office of Mine Reclamation (excerpt provided below):

7. SMARA requires that sensitive species be conserved or the impacts to the be mitigated (CCR 3703(a)). It appears that biological surveys adequate to assess potential impacts to sensitive species have not been done. Both biological surveys (2004 and 2006) were conducted during the month of February, with many of the sensitive plant and animal species listed in the Master Environmental Assessment (Table 4.4.1) would be dormant or otherwise not detectable. Surveys should be done at the appropriate times to determine the potential impacts to these species.

Reviewer Comment: No Biological Assessment was prepared for the application or for the Initial Study: the initial study references the MATEC Study which specifically states it is not an on-site inspection and that a Biological Assessment is recommended (excerpt provided below).

No Biological Assessment was prepared for the MEA: The MEA references the Nevada County Natural Resources Report which specifically states that it may not be used as the only biological information for Biotic Assessments and not used as the sole resource.

The application includes the Biotic Section from the 1995 EIR prepared for a previous project that doesn't include the same boundaries as the current proposal. The following reports are referenced but not available to the public, not contained in the disc or on-line version of the DEIR:

ESA. 2006a. *Idaho-Maryland Mine Special-Status Wildlife Habitat Evaluation Report.*

ESA. 2006b. *Idaho-Maryland Mine Special-Status Plant Survey Report.*

So the bottom line is that the preparers of the Draft EIR ignored recommendations for vegetation surveys being completed during appropriate periods for plant identification submitted in the Office of Mine Reclamation NOP letter. This reviewer includes the Office of Reclamation NOP letter (October 10, 2007 and DEIR comment letter (December 12, 2008) by reference.

A revised Draft EIR should be prepared which include the omitted reports and a full biotic survey and Reclamation/Revegetation Plan (pursuant to the Surface Mining

and Reclamation Act, which also states that a Reclamation Plan is subject to PRC Sections 21000 (CEQA) of all three proposed sites. The question remains as to why these reports were not included in the DEIR. And why confusing/misleading information was included by the prepares of the DEIR to make it appear that these reports were done.

Source:

Appendix K Biological Evaluation

Revised Application for exploration and Mining Use Permit May 29, 2007, May 12, 2004 letter: MATEC to Scott Galati. Excerpt provided below. This letter clearly states that *“These were reconnaissance-level, habitat-based surveys and did not constitute CDFG and/or United States Fish and Wild Wildlife (USFWS) biological screening evaluation and should not be used for the purposes of a Biological Assessment, or used in lieu of focused field surveys.”* And yet, the consultant refers to the work as being a fulfillment of CEQA reviews.

Biological Screening Evaluation for the Idaho-Maryland Mine Project

Dear Mr. Galati,

MACTEC Engineering & Consulting, Inc. (MACTEC) has been contracted by Emgold (US) Mining Corporation to prepare a biological screening evaluation of the Round Hole, New Brunswick and WestBET subject areas. The subject areas are located east of the City of Grass Valley, California (Plate 1), between the North Fork Wolf Creek and South Fork Wolf Creek at elevations between 2500 feet (760 meters) and 3000 feet (915 meters). The subject areas are located within the Grass Valley 7.5-minute USGS quadrangle.

MACTEC conducted the biological screening on February 12, 2004, to examine habitat characteristics of accessible portions of the subject areas and to compare these characteristics against those required by the species queried from the CNDDB. During the biological screening, surveys of the sites were conducted on foot on properties that comprised the project areas in February 2004. Access was restricted at the New Brunswick property by the presence of locked gates. These were reconnaissance-level, habitat-based surveys, and did not constitute CDFG and/or United States Fish and Wildlife Service (USFWS)

biological screening evaluation and should not be used for the purposes of a Biological Assessment, or used in lieu of focused field surveys. Habitat characterization of the subject areas follows the classification system developed by Sawyer and Keeler-Wolf (1995).

Signed:

Michael Clary, Staff Environmental Scientist, with permission by Patricia L. Nelson, R.E.A. Principal Environmental Scientist

RECLAMATION PLAN

Reviewer Comment: The following sections of the Surface Mining and Reclamation Act (SMARA) provided for your information and comment. Please address the reasoning that precluded the required response to the Office of Mine Reclamation and the omission of the Reclamation Plan from the DEIR. Preparation of a Reclamation Plan should be prepared consistent with SMARA and included in a Revised Draft EIR

§ 2733. “Reclamation” means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

§ 2735. “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.*

5.4 NO PROJECT ALTERNATIVE VS. THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Reviewer Comment: Page 5-25 of the DEIR discusses the CEQA mandated Environmentally Superior Alternative, and identifies the Environmentally Superior Alternative and it’s impacts as the Electrification of Mine Operations and Reduced Ceramics Plan Production Alternative does not meet the “straight face” test, meaning it’s inconsistent with any logic. This section attempts to convince the reader that the mine is an Environmentally Superior Alternative. Please identify how the EIR consultant came to this conclusion. The reviewer finds the discussion in the DEIR incomplete.

Throughout this DEIR, the consultant has shown bias on the part of the proposed mine instead of objective analysis. Please provide information on the number of Mining EIR’s this consultant has prepared, and what their relationship with the project proponent is.

SUMMARY COMMENT

In it’s attempt to sway the reader that the proposed mining operation will have little or no impacts on the community of Grass Valley brings to mind the legal definition of fraud (source: <http://legal-dictionary.thefreedictionary.com/fraud>): *A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.*

Fraud must be proved by showing that the defendant's actions involved five separate elements: (1) a false statement of a material fact, (2) knowledge on the part of the defendant that the statement is untrue, (3) intent on the part of the defendant to deceive the alleged victim, (4) justifiable reliance by the alleged victim on the statement, and (5) injury to the alleged victim as a result.

This Draft EIR and the mining project it promotes seem to meet the above criteria. Mitigation Measures are vague and often not feasible or realistic, or are ignored stating that the permit requirements of another agency will mitigate, or the mitigation is a future study.

The consultant is incorrect in the jurisdiction and authority of the State Mining and Geology Board: the City is the lead agency for review and approval and CEQA review of the Reclamation Plan. The City then submits to the Office of Mine Reclamation. Additionally, the consultant ignores requests for studies by local jurisdictional agencies as well as public comments from “scoping sessions,” and all significant impacts besides Air Quality are “reduced to not significant” without sufficient discussion or Mitigation Measures. A Revised Draft EIR and perhaps a revised Initial Study is necessary for staff to develop the required Findings necessary for certification of an EIR.

The world has changed and we must change with it. Don't sacrifice our community to the greed of multinational corporations. How can this community on the one hand be suing Newmont Mining Corp for the negative environmental impacts of a mine, even consider permitting another? The application for Development Permit itself seems intentionally vague and misleading. When this Draft EIR states there will be no significant environmental impacts resulting from mining, how can it be believed? This Draft EIR is not consistent with the letter or the intent of CEQA.

Sincerely,

Suzanne Smith, AICP
Grass Valley, CA