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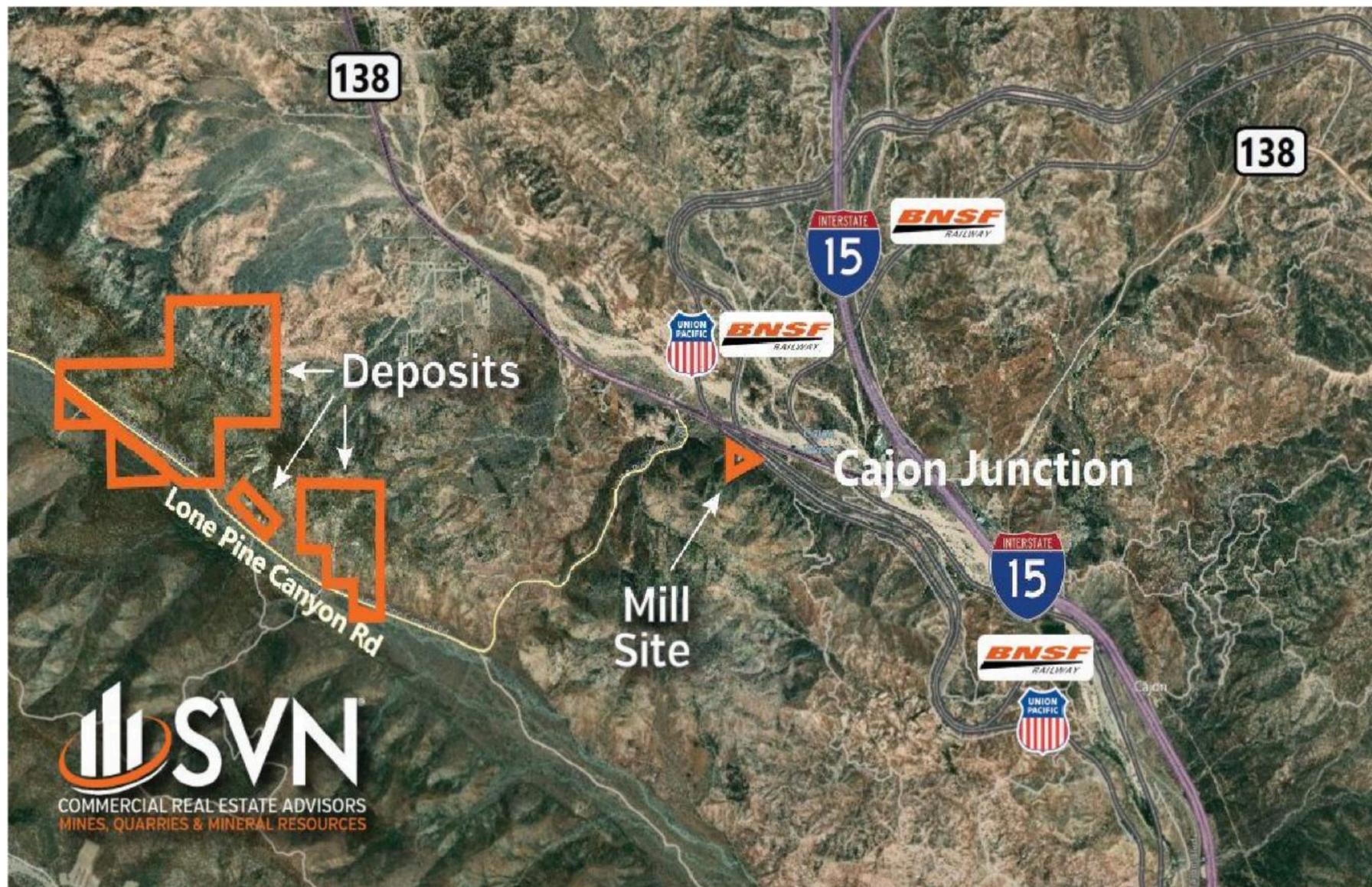
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Vested Mining Rights Determination Paves Way for Sale of High-Grade Limestone Property

By Juve Pinedo



In California, gaining the entitlement for conducting any type of mining operation has become highly risky and expensive. Although industry wages are among the highest, and the products are one of the most commonly consumed economic commodities, public activism and high stakes entitlement processes have nearly ended the opportunity to replace depleted resource production facilities.

Perhaps mine owners, operators and investors are approaching this from the wrong perspective. Could there be opportunities that one can take advantage of where the permitting process can be avoided?

Establishing a record of land use and ownership's intent to someday continue mining, and then gaining acceptance of these facts by the local lead agency, may be all that is necessary to avoid a lengthy, expensive and risky permitting process.

BACKGROUND

About five years ago, EnviroMINE Inc., www.enviromineinc.com, was approached by the owner of a site that had been acquired by his family in 1923 as a Patented Mining Claim. The geological resources on the property are high purity limestone with schist on the fringes.

The property was mined between 1923 and 1966. The county's first zoning ordinance that required a permit for mining was adopted in 1951. Because operations were ongoing when zoning restrictions were established, the operations became non-conforming, or vested. Mining operations ended in 1966 when the railroad demolished the processing plant and a subsequent lawsuit ended the encroachment but resulted in the cancelation of a deal to lease the property to an operating company.

In the years following, the property owners completed

a number of mineral resource evaluations. The resource evaluations identified that as much as 268,000,000 tons of high-quality limestone and dolomite were available on the property.

In the past, several potential operating companies looked at the site, but despite the abundance and quality of the minerals, permitting requirements were found to be a serious impediment to operating a mine on the property.

Because the property was mined continuously for more than 40 years, and the owners never showed any intent to abandon mining on the property, EnviroMine questioned whether the property may have a vested mining right.

You're Crazy

This question was raised with San Bernardino County Land Use staff and the immediate response was, "You're Crazy." County staff couldn't support the suggestion but said that the county might consider it if they were to include this request as part of a request to mine the property. Such a request would need to be accompanied by mine plan and reclamation plan with mitigation for a variety of impacts included within the plan.

EnviroMine's response was, "You're crazy." Over the next few months, EnviroMine revisited this subject a number of times; however, the county did not have a procedure in place for considering the determination of vested mining rights outside of a normal permitting process. This was discussed at length with county staff and finally, their persistence resulted in direction to file an application for a General Plan Development Code Interpretation.

Questions relating to code interpretations are typically directed to the planning director for a determination, but pursuant to Calvert vs. Yuba County, the determination must be made by a legislative body at a noticed public hearing. Because the planning director was prohibited from fulfilling these requirements, the determination was directed to the planning commission for consideration.

A detailed application outlining the history of ownership was prepared identifying the nature and duration of the mining operations, subsequent efforts to continue mining and a statement that the intention to continue mining had never been abandoned.

This information was submitted to the county in late October 2018. County staff evaluated the application and prepared a staff report recommending denial of the request. The staff report did not argue the facts relating to the history of use and based its recommendation for denial on an argument that the use had been abandoned by more than 50 years of "dormancy."

With less than a week to respond to the staff report, a response was prepared to carefully explain the legal basis

for vested mining rights and reasons why EnviroMine believed the staff recommendation was in error. After 3 1/2 hours, the planning commission voted to support the vested rights determination.

Since this successful determination was adopted, the owners have retained my office, SVN Commercial Real Estate Advisors, www.SVNMQMR.com, and my team, to market and sell the fee-simple property. Immediate access to rail, Highway 138 and Interstate 15 should get some attention.

Selling the Property

We hope to report the sale of the property in the near future. While it will still be necessary to gain approval of a reclamation plan, the process is much simpler than establishing a land use entitlement. CEQA analysis is required, but the impact evaluation is limited to the activities involved in site reclamation – after mining has been completed.

The take-home here is that if you are looking for a site to conduct mining operations, it may be beneficial to evaluate sites that have been mined in the past, but for one reason or another are no longer active.

The basic questions related to this evaluation are: was the site being mined when zoning restriction was established and did the operator (owner) intentionally abandon the mining use?

Also, there have been a number of sites where the operations were ongoing when zoning restrictions were adopted, and the lead agency required the issuance of a permit to respect these new requirements. While a claim for vested mining rights should have been defended, many operator's and land use agencies alike had little knowledge of principles relating to the subject and the simplest way to meet current zoning requirements was to get a permit.

However, in most cases, the entitlements were restricted to set time periods. This puts the operator in the position of having to request permit extension at a later date. In these cases, it may not be too late. EnviroMine has received vested mining rights determinations for a number of sites that had been issued conditional use permits to allow mining.

If you think your site may qualify for Vested Mining Rights, reach out to EnviroMine Inc. at 619-284-8515 or warren@enviromineinc.com. If you would like to receive more information on this or are looking to purchase or sell your mine, quarry or mineral resource, reach out to Juve Pinedo, SVP, SVN-Mines, Quarries and Mineral Resources at 714-348-6099 or juve@svn.com.