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**FILED**  
JUN 10 2016  
NEVADA COUNTY  
SUPERIOR COURTS

5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 IN AND FOR THE COUNTY OF NEVADA

7 CITIZENS ADVOCATING RESPONSIBLE )  
DEVELOPMENT, an unincorporated )  
8 association, )  
9 Petitioner )  
10 vs. )  
11 CITY OF GRASS VALLEY )  
12 Respondent )  
13 \_\_\_\_\_ )  
14 IDAHO-MARYLAND MINING )  
CORPORATION, a Nevada Corporation; )  
15 PENSICO TRUST COMPANY a subsidiary of )  
OPUS BANK, a California Corporation; )  
16 DAVID HUNTER, an individual, and DOES 1 )  
through 10 )  
17 Real Parties in Interest )  
18 \_\_\_\_\_ )

Case No. **CU16-081794**  
**VERIFIED PETITION FOR WRIT  
OF MANDATE**  
[Action Contains Claims under the  
California Environmental Quality Act,  
Pub. Res. Code § 21001 *et seq.*]

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## I. INTRODUCTION

1  
2 1. Petitioner Citizens Advocating Responsible Development (“Petitioner”) challenges  
3 Respondent City of Grass Valley’s approval of the Text Amendments of the Whispering Pines  
4 Specific Plan SP - 1A Corporate Business Park designation (“Project”). The City’s action in  
5 approving the Project is contrary to the California Environmental Quality Act (“CEQA”), Pub.  
6 Res. Code § 21000 *et seq.*, and the Whispering Pines Specific Plan.

7 2. The City violated CEQA by failing to conduct the required environmental review for the  
8 potential environmental impacts of the Project, which allows through a Specific Plan amendment  
9 a number of industrial uses to occur in the large 125 acre SP-1A office park – 80% of the overall  
10 business park area – where previously such uses were not permitted. These uses, which include  
11 Food Processing, Drugs and Cosmetics, Chemical Laboratories, Dry Cleaning, Incubator units and  
12 Metal Fabrication, have the potential for significant impacts due to noise, odors, air pollution,  
13 traffic, hazardous waste, water use, waste water discharge etc. The impacts of these uses over  
14 such a large area and in proximity to offices and adjacent residential areas were never addressed  
15 by the prior Environmental Impact Report prepared for the Whispering Pines Specific Plan, which  
16 assumed that such uses would occur only in the smaller 16 acre Specific Plan area SP-1B,  
17 reserved for industrial uses. Petitioner’s members and other public citizens commented that the  
18 Project had the potential for such significant impacts, which must be addressed under CEQA.

19 3. The City’s Negative Declaration prepared for the Project under CEQA fails due to the  
20 substantial evidence in the record demonstrating a fair argument of significant impacts that may  
21 occur due to the zoning amendment. In addition, the Negative Declaration fails to describe the  
22 environmental and regulatory setting for the project, fails to incorporate enforceable mitigation  
23 measures based on objective performance standards into the Project approval, and fails to consider  
24 the impacts of potential new uses in the business park, among other deficiencies. The City further  
25 erred in not recirculating its revised Negative Declaration issued due to the substantial revisions  
26 made with respect to previously unidentified environmental impacts including but not limited to  
27 noise and air pollution. *See* 14 Cal. Code Regs. § 15073.5(b).

28 4. The City’s approval of the Project also violates the Whispering Pines Specific Plan, which

1 requires the City to find that any amendment to the Plan will not adversely affect adjacent  
2 properties, There is no evidence in the record to support the City's finding on this issue.

3 4. Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure § 1085 directing  
4 the City to set aside its approval until the City has complied with CEQA and the Specific Plan.

## 5 **II. PARTIES**

6 5. Petitioner Citizens Advocating Responsible Development was formed following the City's  
7 approval of the Project by concerned local citizens living in and around the City of Grass Valley.  
8 Petitioner's members include citizens who provided oral and written comments to the City on the  
9 Project. Petitioner is composed of volunteers promoting well-planned growth and development in  
10 a manner that protects the environment of Grass Valley and the health and safety of its citizens.

11 6. Respondent City of Grass Valley is and was at all times relevant to this action the  
12 governmental entity responsible for reviewing and approving the Project challenged in this action.

13 7. Real Parties in Interest and applicants are Idaho-Maryland Mining Corporation, a Nevada  
14 Corporation with a mailing address of PO Box 1836, Grass Valley, California, 95678; Pensco Trust  
15 Company a Subsidiary of Opus Bank, a California Corporation with a mailing address of 19900  
16 MacArthur Blvd, 12th Floor, Irvine, CA 92612; and David Hunter an individual with an address of  
17 14626 Sugar Loaf Road, Grass Valley, CA, 95949.

18 8. The true names and capacities of Real Party Does 1-10 are not presently known to Petitioner.  
19 Petitioner may amend this Petition to add said Does at such time as they are discovered.

## 20 **III. JURISDICTION AND EXHAUSTION OF REMEDIES**

21 9. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure § 1085 & Public  
22 Resources Code § 21168.5.

23 10. Petitioner Citizens Advocating Responsible Development was formed by concerned local  
24 citizens following the City's approval of the Project. Petitioner has performed all conditions  
25 precedent to filing this instant action and has exhausted any and all available administrative remedies  
26 to the extent required by law. Petitioner's members provided written and oral comments to the City  
27 during the administrative phase of this Project related to each the claims raised in this Petition.

28 11. On June 9, 2016 , Petitioner's attorney faxed a Notice of Commencement of Action letter

1 pursuant to Public Resources Code § 21167.5 to the City Attorney's office informing the County of  
2 its intent to file a legal action in this case challenging the County's approval of the Project. (*See*  
3 Exhibit 1, attached hereto.)

4 12. On June 10, 2016, Petitioner's attorney served a copy of its Verified Petition on the Attorney  
5 General's office to give notice of Petitioner's intent to bring this proceeding as a private attorney  
6 general under Code of Civil Procedure section 1021.5. (*See* Exhibit 2, attached hereto.)

7 13. Petitioner has no other adequate remedy in the course of law unless this Court grants the  
8 requested writ of mandate. In the absence of such remedy, the City's Project approval will remain  
9 in effect in violation of law.

#### 10 IV. FACTUAL BACKGROUND

##### 11 A. General Plan and Adoption of Specific Plan in 1984

12 14. The project site situated at the intersections of Brunswick and Idaho-Maryland Roads consists  
13 of 154 acres. In September, 1982 the City adopted an updated General Plan, which designated 84  
14 percent of the site as a suitable location for a planned employment center and the remainder as a  
15 manufacturing-industrial district. The General Plan recommended that a specific plan be prepared  
16 for planned employment centers prior to City approval of development plans.

17 15. In February 1984, the City adopted a Specific Plan / Master Environmental Impact Report for  
18 the site, which was intended to create "a planned corporate community consisting of compatible  
19 groupings of industrial, office, service commercial and residential uses." *See* Specific Plan, Figure  
20 3-1 (Comprehensive Plan Map.) Accordingly, the Specific Plan divided up the area into three  
21 subareas: 1. Corporate District (SP-1A); 2. Industrial/Services District (SP-1B); and 3. Housing  
22 District (SP-1C). The Specific Plan states: "As a result of differing land use characteristics, each  
23 subarea has unique development conditions and needs. Thus, each subarea accommodates a different  
24 set of land use types.." Accordingly, as discussed below, each land use designation allows a different  
25 set of permitted and conditional land uses.

26 16. The Corporate District (SP-1A) of the Specific Plan consists of one hundred and twenty-five  
27 (125) acres set aside for large, intermediate and small firms, particularly "hi-tech", seeking to build  
28 facilities on improved sites within the highest quality environment. The SP-1A district corresponds

1 to the General Plan's designation of this area as Planned Employment Area, as follows:

2 The intent and purpose of this mixed land use category is to promote business and research  
3 parks, large individual corporate establishments, professional and administrative office  
4 complexes, and selected commercial activities as the predominant land use.... Such uses are  
5 developed under the guidance of a master plan and a review process to find that the use is  
6 compatible with neighboring uses and the general area and is consistent with the master plan.  
7 Higher density employment-generating uses are encouraged to locate in planned employment  
8 centers. Conditions and restrictions are needed on development in planned employment  
9 centers to specify limitations on site coverage, delineate landscaping requirements and outline  
10 performance standards and similar devices intended to promote attractive and high quality  
11 design and to preserve the natural environment.

12 17. The SP-1A District is described in the Specific Plan as a Corporate District with a "campus"  
13 type character, which would "provide opportunities for corporate administrative offices and small and  
14 medium size research and development firms to locate in Grass Valley within a high quality  
15 development. Land uses within the subarea should be compatible with adjacent residential uses and  
16 buffered from them." The Specific Plan lists light industrial uses that could be compatible with this  
17 zone, including semiconductor manufacturer, products assembly, printing and publishing, finished  
18 paper products, photographic processing and machine assembly. The Specific Plan states that  
19 restrictions on these uses may be necessary for noise, appearance, odor and dust. Current approved  
20 uses in the SP-1A District include Peaceful Farm & Garden Supply, Miners Family Health, Alta  
21 California Regional Center, Earth Circle Organics, Nevada County Association of Realtors, Nevada  
22 County Public Health, Landmark Circuits, Measurement Specialists, Nevada County Contractor's  
23 Association and Bank Service and Network Insurance Agents.

24 18. The Specific Plan also allocates nineteen (19) acres for an Industrial/Services District (SP-1B),  
25 which is to consist of light and medium industries. The SP-1B District corresponds to the General  
26 Plan's 'manufacturing-industrial district' which is described in the Specific Plan as:

27 This land use category provides for a wider possible range of light and medium industrial type  
28 activity, including manufacturing, assembling, fabrication, wholesaling and office support  
29 uses. In this area the applicable development and design standards are less demanding than  
30 those of a planned employment center, but safeguards are provided to ensure a  
31 well-functioning environment and compatibility with the surrounding area.

32 Manufacturing and processing uses allowed in the SP-1B District include food products, drugs and  
33 cosmetics, chemical laboratories, dry cleaning and metal fabrication.

34 19. The Specific Plan allocates ten (10) acres for its Housing District (SP-1C), which envisions  
35 a townhouse complex in an open space setting for workers and managers employed in the area.

1 20. The Specific Plan establishes general standards for uses occurring within the business park.

2 For noise, the Plan states:

3 a. Noise environments within the Specific Plan boundaries shall be maintained at the  
4 following levels: 70dB CNEL for industrial areas (outdoor) 65 dB CNEL for residential areas  
(outdoor) and 45 dB CNEL for residential areas (indoor).

5 b. Activities which may emit continuous noise levels in excess of standards outlined in a. shall  
6 be required to mitigate noise levels to acceptable standards.

7 c. Activities located adjacent to existing residences shall demonstrate that noise levels will  
8 not adversely affect the adjacent neighborhood.

9 For air pollution, the Plan includes a requirement that “[a]ny odors which interfere with the comfort  
10 of adjacent residents or workers shall be prohibited.” For water pollution, the Plan requires that “[n]o  
11 uses will be permitted that require discharge of high quantities of toxic liquids into public sewers”  
12 and that “[d]ischarge of any materials of such nature or temperature that can contaminate any water  
13 supply, interfere with bacterial process in sewage treatment, or otherwise cause emission of dangerous  
or offensive elements shall be prohibited.”

14 21. The Specific Plan also addresses the possibility of future major amendments to the Plan,  
15 which include “[m]ajor changes to the layout of land use ...which may significantly affect a planning  
16 concept spelled out in this report” or “[a]ny change to the plan which could significantly increase  
17 environmental impacts.” For such major amendments, the Plan requires the City to make findings,  
18 including that “[t]he change will not adversely affect adjacent properties and can be properly  
19 serviced.”

20 22. The Specific Plan EIR reviewed the environmental impacts of the project and determined that  
21 most impacts could be mitigated to a less than significant degree based on the general development  
22 standards contained in the Specific Plan as well as the separation of the three different use areas, SP-  
23 1A, 1B & 1C, from one another.

24 23. In November 1999, the City adopted its 2020 General Plan, which designated the area covered  
25 by the Specific Plan as Business Park (BP), thereby replacing the Planned Employment Center  
26 designation introduced in the 1982 General Plan. The Business Park designation includes Office  
27 Professional Zoning (OP), as well as Corporate Business Park (CBP) and Industrial/Services (1/5).

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1 **B. Evaluation and Approval of Ordinance Amending the Whispering Pines Specific Plan.**

2 24. In 2015, applications were presented to the City to amend the Specific Plan to allow for two  
3 new use categories, Manufacturing/Processing and Manufacturing-Small Shop Uses, to be added to  
4 the SP-1A District, including the following new uses: Food Processing, Drugs and Cosmetics,  
5 Chemical Laboratories, Dry Cleaning, Incubator units from 1,000 - 1,800 square feet and Metal  
6 Fabrication.

7 25. On February 25, 2016, the City issued a Negative Declaration for the Project that was made  
8 available for public comment. The February Negative Declaration contains little discussion of  
9 possible environmental effects of the Text Amendment or mitigation measure and instead concludes  
10 that the Project would have no significant environmental impacts.

11 26. On March 15, 2016, the Planning Commission held a noticed public hearing to make a  
12 recommendation to the City Council regarding the proposed Whispering Pines text amendments.  
13 After discussion at the Planning Commission public hearing regarding: 1) Proposed Uses and Types  
14 of Uses Permitted in the SF - 1A; 2) Noise; and 3) Whispering Pines Performance Standards, the  
15 Planning Commission unanimously recommended that the City Council approve the text amendments  
16 as presented.

17 27. Following the Planning Commission hearing, City staff recommended that three of the new  
18 uses, Drugs and Cosmetics, Chemical Laboratories, Dry Cleaning, should be required to obtain  
19 conditional use permits in the SP-1A District, while the remaining uses, Food Processing, Incubator  
20 Units and Metal Fabrication, would be allowed without a use permit and instead just a business  
21 license and sign permit for existing buildings.

22 28. On April 12, 2016, the City Council was to consider the Whispering Pines Specific Plan Text  
23 Amendments' recommendation by the Planning Commission; however, staff recommended that the  
24 City Council continue the public hearing for thirty (30) days to allow staff additional time to respond  
25 to the comments received on the Project and to prepare a revised Negative Declaration.

26 29. On April 29, 2016, the City issued a revised Negative Declaration for the Project. The  
27 revised Negative Declaration provides additional information which addresses comments received  
28 including but not limited to noise, traffic, groundwater contamination, toxic contamination, odors,

1 sewer capacity, hazards, stormwater treatment, and public services. The revised Negative Declaration  
2 was not circulated for public review. As was true for the Negative Declaration prepared in the  
3 February 2016, the revised Negative Declaration finds that the proposed project could not have a  
4 significant effect on the environment. The revised Negative Declaration adds new discussion  
5 regarding potentially significant impacts involving noise, air pollution, traffic etc that were not  
6 discussed or identified in the February Negative Declaration.

7 30. On May 10, 2016, the City Council heard the matter and approved a first reading of an  
8 "Ordinance Approving a Rezone (Text Amendment) for the Whispering Pines Specific Plan SP-1A  
9 Zone to Allow SP-1B Manufacturing/processing and Manufacturing - Small Shop Uses."

10 31. On May 11, the City posted its Notice of Determination ("NOD") for the Project. The NOD  
11 states that the Grass Valley City Council has approved the Project on May 10, 2016; that the Project  
12 will not have a significant impact on the environment; that a negative Declaration was prepared  
13 pursuant to CEQA; that Mitigation Measures were not made a condition of approval; that a Mitigation  
14 Monitoring plan was not-adopted; that a Statement of Overriding Considerations was not adopted;  
15 and that findings were made pursuant to CEQA. The NOD does not list the Project applicants or  
16 provide any information about real parties in interest.

17 32. On May 24, 2016, the City Council approved the Project by passing and adopting the final  
18 Ordinance implementing the Text Amendment to the Whispering Pines Specific Plan.

19 33. On June 9, 2016, Petitioner's attorney faxed a Notice of Commencement of Action letter to  
20 the City Attorney's Office informing the City of Petitioner's intent to file a legal action in this case  
21 challenging the City's approval of the Project. (See Exhibit 1, attached hereto.)

22 34. On June 10, 2016, Petitioner's attorney served a copy of this Verified Petition on the Attorney  
23 General's office to give notice of Petitioner's intent to bring this proceeding as a private attorney  
24 general under Code of Civil Procedure section 1021.5. (See Exhibit 2, attached hereto.)

25 **V. FIRST CAUSE OF ACTION**  
26 (Violation of CEQA: Pub. Res. Code § 21168.5)

27 35. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

28 36. The City's approval of Project through the adoption of a negative declaration without  
mitigation measures violates CEQA in a number of respects. The Project amends the Specific Plan

1 to allow Manufacturing/Processing and Manufacturing-Small Shop designations to be added to the  
2 SP-1A District, including the following new uses: Food Processing, Drugs and Cosmetics, Chemical  
3 Laboratories, Dry Cleaning, Incubator units and Metal Fabrication. These industrial uses were not  
4 previously allowed in the 125 acre SP-1A office park area, but instead limited to the much smaller  
5 16 acre SP-1B area designated for industrial use. These new uses have the potential for significant  
6 impacts that were never addressed by the prior Environmental Impact Report prepared for the  
7 Whispering Pines Specific Plan, which assumed that such uses would occur only in area SP-1B.

8 37. The City's Negative Declaration prepared for the Project under CEQA fails due to the  
9 substantial evidence in the record demonstrating a fair argument of significant impacts that may occur  
10 to residences and businesses located in and outside the Specific Plan area due to noise, odors, air  
11 pollution, traffic, hazardous waste, waste water discharge etc from individual uses that may now cover  
12 seven times as large an area and no longer be confined to the 16 acre corner parcels as had been  
13 contemplated by the Specific Plan and accompanying EIR.

14 38. The Negative Declaration fails to describe the environmental and regulatory setting for the  
15 project, fails to incorporate enforceable mitigation measures based on objective performance  
16 standards into the Project approval, and fails to consider or analyze the potentially significant impacts  
17 of the new uses now allowed in the office park area SP-1A.

18 39. The City erred in not recirculating its revised Negative Declaration issued due to the  
19 substantial revisions made with respect to previously unidentified environmental impacts including  
20 but not limited to noise and air pollution. *See* 14 Cal. Code Regs. § 15073.5(b).

21 **VI. SECOND CAUSE OF ACTION**  
22 (Failure to Support Required Findings with Substantial Evidence)

23 40. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

24 41. The Whispering Pines Specific Plan requires the City, in making any amendment to the  
25 Specific Plan, to find that "[t]he change will not adversely affect adjacent properties and can be  
26 properly serviced." Although the City did make this finding in support of its approval of the Project,  
27 there is no evidence in the record to support a conclusion that the change will not adversely affect  
28 adjacent properties due to the lack of meaningful analysis of these issues.

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**VII. PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays for judgment as follows:

1. For a Writ of Mandate ordering the City to (a) set aside its decision approving the Project; (b) comply with CEQA and the Whispering Pine Specific Plan with respect to assessing the impacts of the proposed Text Amendment; (c) take whatever additional action is necessary in conformance with the Court's decision; and (d) file a return with the Court showing compliance with the writ of mandate.

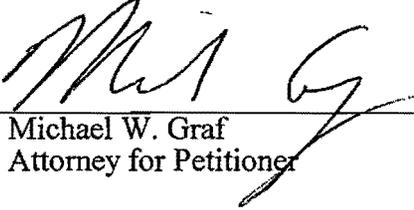
2. For injunctive relief precluding development of the Project.

3. For reasonable attorney's fees under Code of Civil Procedure § 1021.5 .

4. For costs of suit.

5. For such other and further relief as the Court deems proper.

DATED: June 9, 2016

By: 

Michael W. Graf  
Attorney for Petitioner

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**VERIFICATION**

*Citizens Advocating Responsible Development v. City of Grass Valley et al.*  
Nevada County Superior Court, Case No. \_\_\_\_\_.

I, Michael W. Graf, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I have my professional office at 227 Behrens Street, El Cerrito California, 94530.
2. I am the attorney of record for Petitioner Citizens Advocating Responsible Development, which has its principal place of business in Grass Valley, in Nevada County. Petitioner is absent from Contra Costa County in which I have my office. For that reason, I make this verification on its behalf.
4. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 9<sup>th</sup> day of June 2016 at El Cerrito, California.

  
\_\_\_\_\_

# **EXHIBIT 1**

**Michael W. Graf  
Law Offices**

227 Behrens St.,  
El Cerrito CA 94530

Tel/Fax: 510-525-1208  
mwgraf@aol.com

June 9, 2016

**Via Facsimile**

City of Grass Valley  
125 East Main St.  
Grass Valley, CA 95945  
Attn: City Attorney Michael G. Colantuono  
Facsimile: (530) 432-7356

**RE: Notice of Commencement of Action Challenging City of Grass Valley's  
Approval of Two Text Amendments of the Whispering Pines Specific Plan  
SP - 1A Corporate Business Park designation.**

To Whom it May Concern:

Pursuant to California Public Resources Code § 21167.5, please take notice that Citizens Advocating Responsible Development, a local citizens group concerned about issues relating to planning in the City of Grass Valley, intend to file a Petition for Writ of Mandate challenging the City's actions on May 10, 2016 and May 24, 2016 approving Text Amendments of the Whispering Pines Specific Plan SP - 1A Corporate Business Park designation. Petitioner's actions will include claims under the California Environmental Quality Act ("CEQA.")

Sincerely,



Michael W. Graf

Attorney for Citizens Advocating Responsible Development

# **EXHIBIT 2**

**Michael W. Graf**  
**Law Offices**

227 Behrens St.,  
El Cerrito CA 94530

Tel/Fax: 510-525-1208  
email: mwgraf@aol.com

June 9, 2016

**Via Regular Mail**

California Attorney General's Office  
1300 I Street  
Sacramento, CA 95814-2919

Re: Petition for Writ of Mandate Challenge to City of Grass Valley's Approval of  
Two Text Amendments of the Whispering Pines Specific Plan SP - 1A Corporate  
Business Park designation on May 24, 2016.

To Whom it May Concern:

Pursuant to Public Resources Code § 21167.7 and Code of Civil Procedure 388, enclosed  
please find a copy of Petitioner's Verified Petition for Writ of Mandate in the above referenced  
matter.

Please let me know if you have any questions.

Very truly yours,



Michael W. Graf