

EL CAPITAN PRECIOUS METALS, INC.

8390 VIA DE VENTURA, SUITE F-110, SCOTTSDALE, AZ



September 2, 2014

Attn: Chris Eustice  
Sr. Environmental Engineer  
MMD, Mining Act Reclamation Bureau  
1220 South St. Francis Drive  
Santa Fe, NM 87505



Re: Technical Responses on Proposed Modification LI005ME

Dear Mr. Eustice,

Responses to Item #5, 6, 7, 8, 10, 11, 12..... ECPN shall utilize a combination of area stripping as well as contour stripping. This will involve removing the overburden, trees and shrubs. The overburden shall be screened and run through the magnetic separation process in order to retain all the topsoil. The Iron Ore deposit will then be removed.

The overburden will be placed in the excavation produced by the previous strip. The overburden shall be placed so it is sloped and tiered in order to restore the natural landscape. The trees and shrubs shall be mulched and stockpiled along the excavated areas where we are remediating. Once proper covering and shaping at a 3:1 slope has been completed existing topsoil and weathered sandstone shall be applied to complete the restoration. The seed shall be broadcasted and covered with the mulch in order to minimize erosion.

Entrance to the Mine site is gated and locked at the main road off of Highway 246. Approximately ¾ of a mile is another (2) gates that are always locked and must be opened by security. The Perimeter of the permit area is fenced by a 6' chain link gate which is locked to prevent access from the public and or wildlife.

ECPN uses approximately 20' of the interior area of the fence perimeter as its roads. The surface has good topsoil already existing. The company shall use a ripper once the mining has been completed reseed by broadcasting and cover with mulch.

## EL CAPITAN PRECIOUS METALS, INC.

8390 VIA DE VENTURA, SUITE F-110, SCOTTSDALE, AZ

---



The following species of seed will be broadcast over the 5-acre MPPA:

- Side oats Gramma 3 lbs. per acre
- Blue Gramma 4 Lbs. per acre
- Goleta Grass 3lbs. per acre
- Bottlebrush Squirrel Tail 3 Lbs. per acre
- Rabbit Brush 2 lbs. per acre
- Mountain Mahogany 2 lbs. per acre
- Winter Fat 2 lbs per acre

Response to Item # 3: The company will not be making any improvements on its primary right of way under Patent # 381096/access to the site which was signed by President Woodrow Wilson. Routine maintenance will however continue. Attorney Blair Dunn is working with USFS in this regard.

Response to Item #4: ECPN has Patented Property within the USFS managed property. Patent# 381096 Grants Rights and easements in the development of the mines. Currently Attorney Blair Dunn who represents ECPN has notified USFS our intent to use the roads. ECPN is additionally in litigation with the USFS/USDA in regards to these roads and rights of way. The company has no intention of making any improvements only routine maintenance.

Response to Item # 13

Douglas H. Rappuhn from the Hydrology Bureau/New Mexico Office of the State Engineer suggested we take adequate care in the prevention of ponding of surface water. As stated above, The overburden will be placed in the excavation areas as we continue with our strip mining in order to prevent ponding.

The company has applied for an Air Quality permit with the New Mexico Environment Department. The company foresees minimal impact and disturbance however, we feel it is in the company's best interest to secure all necessary permits.

The New Mexico Department of Cultural Affairs stated there are no historic sites in the permit area. They state there are Archeological sites near the permit area and maybe

EL CAPITAN PRECIOUS METALS, INC.

8390 VIA DE VENTURA, SUITE F-110, SCOTTSDALE, AZ

---

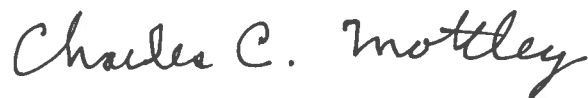
some new sites could exist. It is not our intention to disturb any sites. The company would consider relocating, roads and work areas, rights of way, easements where the sites exist.

The company has included a new and updated Topographical maps pursuant to the request.

Phase 1, 2 and 3 have been resubmitted on a scaled format.

If you have any questions or comments regarding this document or its contents, please contact me at by phone 480 414-7721 or by email; [c.mottley@elcapitanpmi.com](mailto:c.mottley@elcapitanpmi.com)

Sincerely,



Charles C. Mottley  
Chief Executive Officer



32'30"

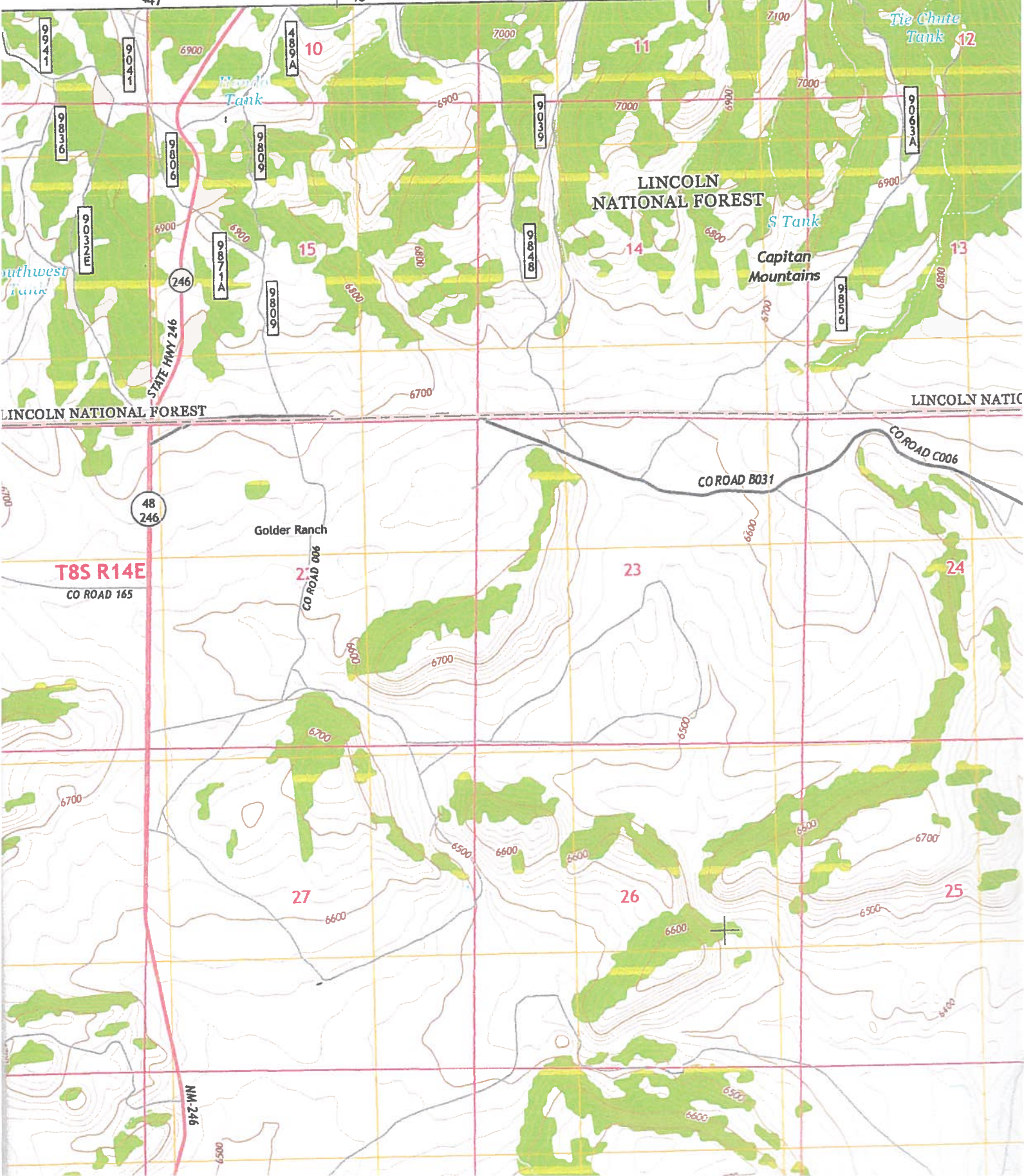
450

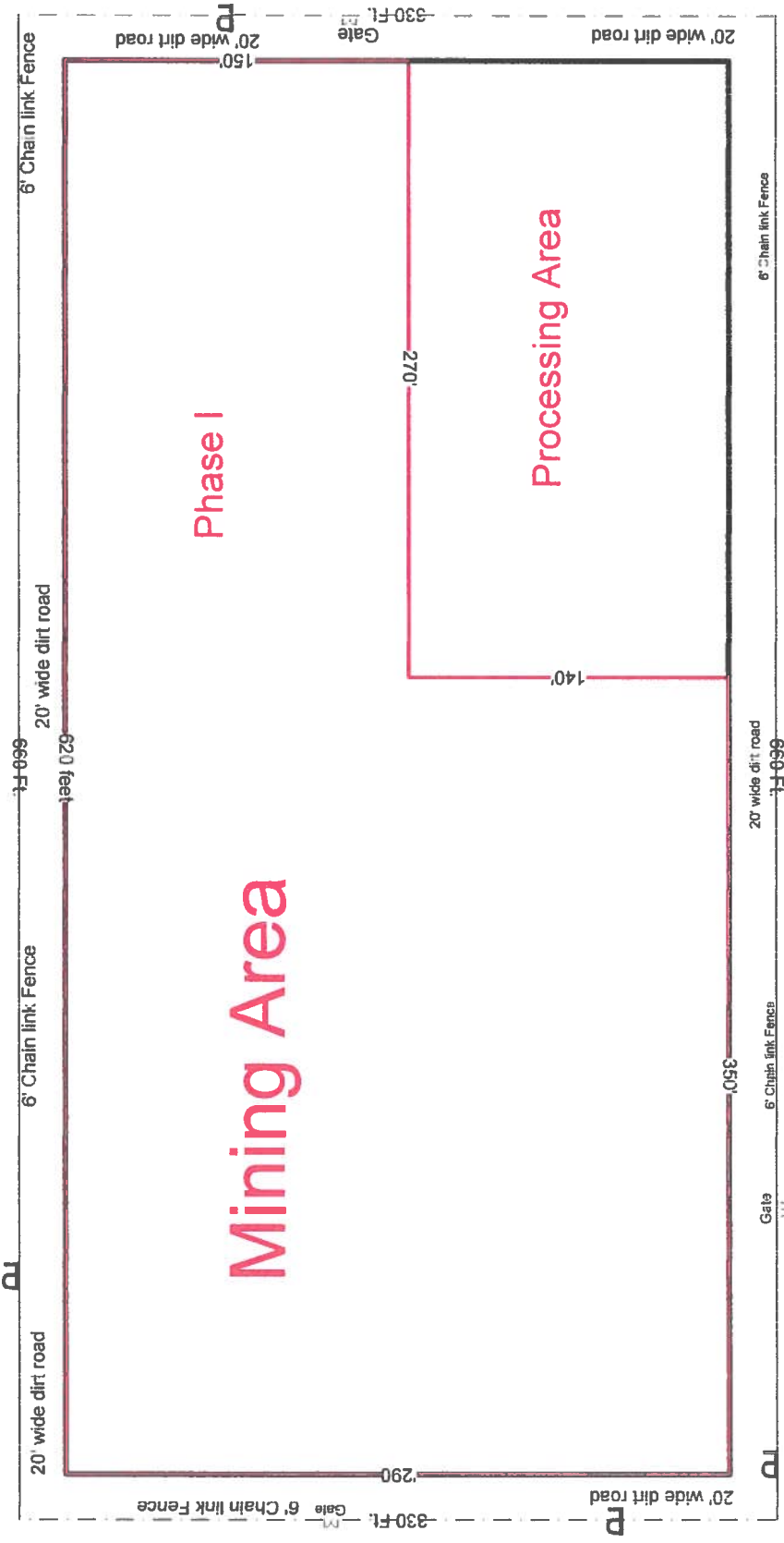
1860000 FT

447

448

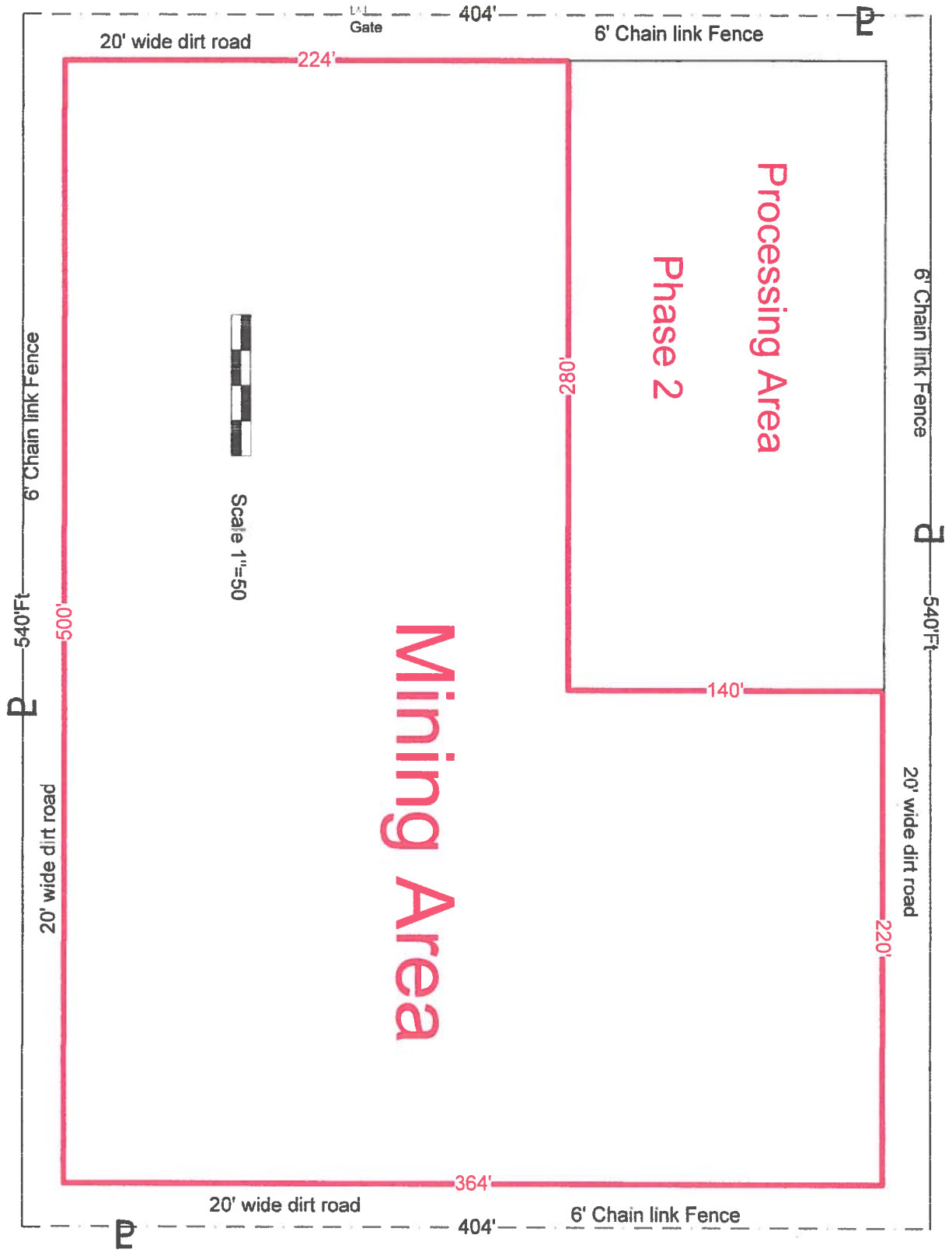
449

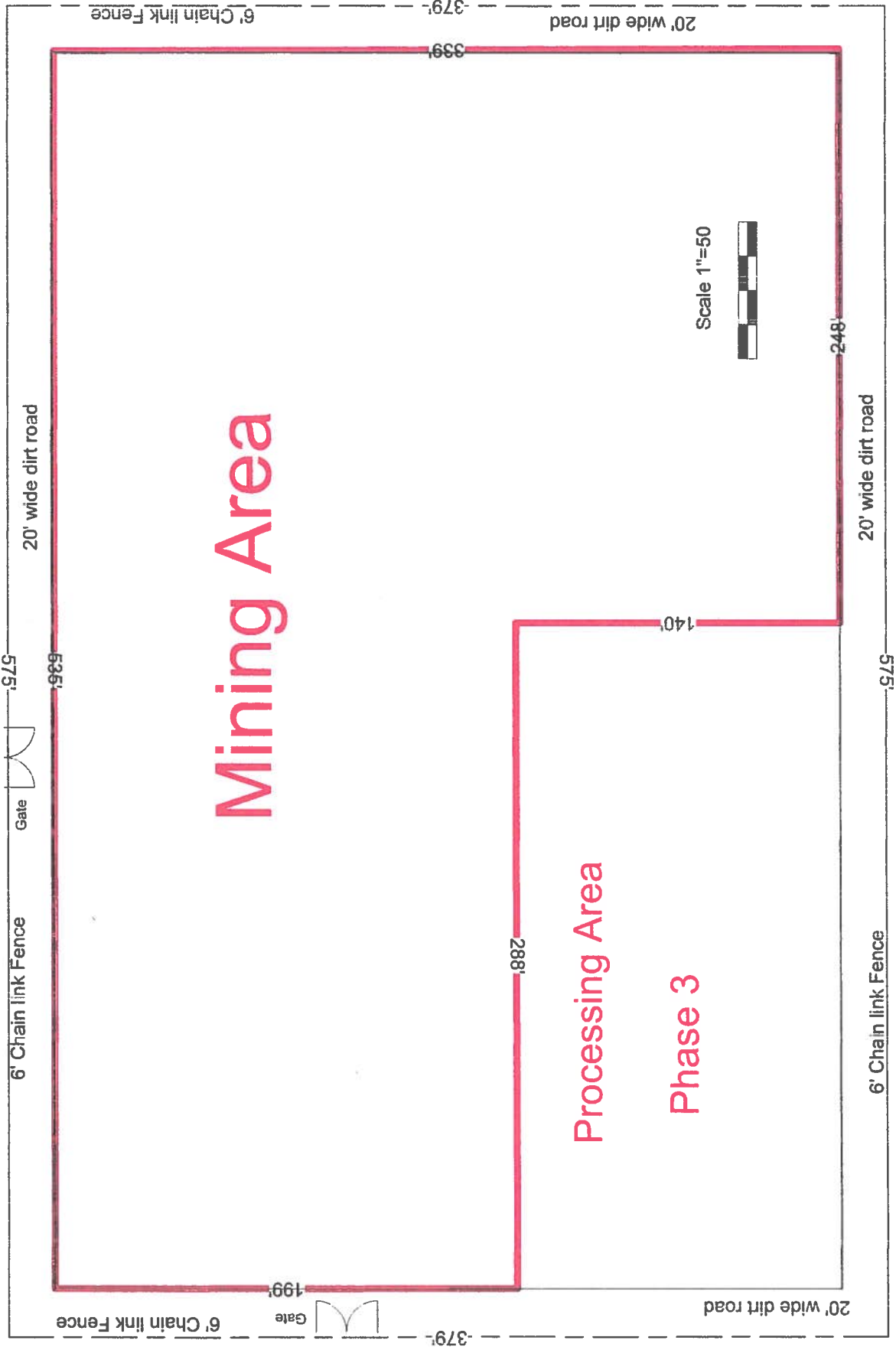




EL CAPITAN PRECIOUS METALS, INC.

8390 VIA DE VENTURA, SUITE F-110, SCOTTSDALE, AZ 85258 PHONE 480.440.1449





EL CAPITAN PRECIOUS METALS, INC.

8390 VIA DE VENTURA, SUITE F-110, SCOTTSDALE, AZ



*A. Blair Dunn, Esquire,*

*6605 Uptown Blvd, Ste 280, Albuquerque, NM 87110*

*505-881-5155*

*abdunn@ablairdunn-esq.com*

*Licensed in New Mexico and South Dakota*

*via E-mail*

Charles C. Mottley  
El Capitan Precious Metal, Inc.  
7811 E. Vaquero Dr.  
Scottsdale, AZ 85258

April 16, 2014

Re: Vested Right of Way Easement; Road 489A; Attorney Opinion

Dear Mr. Mottley,

Pursuant to your request I have evaluated the title and status of the road that connects your patented fee simple mining property to State Highway 246. In short, you currently have access over that road through two avenues. First, your company has cooperated with the United States Forest Service in the issuance of Road Use Permit, but second and more importantly your company holds a private property right easement for the use of the right way.

This letter is to inform you of my analysis and legal opinion concerning the status of your access to your mine over the vested easement you possess.

In a very common sense manner, it is probably best to address how this Right of Way came to be a vested easement held by El Capitan in a chronological fashion. As you will see your vested Right of Way easement is based upon the statutory provision of the Act of 1866 or as it came to be later known, RS 2477.

*Sec. 8. "And be it further enacted, that the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." Mining Act of July 26, 1866, § 8, 14 Stat. 253, formerly § 2477 of the Revised Statutes and later 43 U.S.C. § 932*

Following that came the Mining Act of 1872, R.S. § 2328 derived from act May 10, 1872, ch. 152, § 9, 17 Stat. 94. which among other things vested in the owners of patented mining claims<sup>1</sup> the right to establish a right of way for ingress and egress among other things pursuant RS 2477.

*Sec. 9. That sections one, two, three, four, and six of an act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July twenty-sixth, eighteen hundred and sixty-six, are hereby repealed, but such repeal shall not affect existing rights.*

---

<sup>1</sup> **United States Revised Statutes Chp. 6, Title 32, 30 U.S. Code § 33, - Existing rights-** All patents for mining claims upon veins or lodes issued prior to May 10, 1872, shall convey all the rights and privileges conferred by sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 where no adverse rights existed on the 10th day of May, 1872.



*Applications for patents for mining-claims now pending may be prosecuted to a final decision in the general land office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act; and all patents for mining-claims heretofore issued under the act of July twenty-sixth, eighteen hundred and sixty-six, shall convey all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.*

The next major law implicated is the Organic Act of 1897 which among other things sets out how the reservation of National Forest Lands such as the Lincoln National Forest<sup>22</sup> is and was to occur including the provision that with regard to mineral lands located within the forests that such claims and entry for mining were to occur pursuant to the existing mining laws of the United States such as the General Mining Act of 1872.

*And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.*

***LOCATION AND ENTRY OF MINERAL LANDS.***

*19. The law provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry", notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.*

*7. It is further provided, that*

*Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: Provided. That such persons comply with the rules and regulations covering such forest reservations.*

Based upon the foregoing statutory provision which are implicated and referenced on the patents you supplied to me, which are the patents to which El Capitan is now the successor in title, it can readily be concluded that the patents were originally granted in 1914 pursuant to United States Revised Statutes Chp. 6, Title 32 conferring upon patent holder the rights associated with Sec 8 of the RS 2477.

Under these relevant laws discussed above the vested rights that El Capitan has for its Right of Way easement for its lawful business to access its private property are legally sound and have not been abrogated in any manner. It is my legal opinion that El Capitan currently has all the necessary access rights to conduct its business upon the patented mining claims it holds

I look forward to discussing this with you if you have any questions.

<sup>22</sup> Lincoln National Forest was established July 26, 1902, Proc 32 Stat 2018.

<sup>3</sup> **RULES AND REGULATIONS GOVERNING FOREST RESERVES** Established Under Section 24 OF THE ACT OF MARCH 3, 1891. (26 STATS., 1095.)

Best regards,

A. Blair Dunn, Esq.



*A. Blair Dunn, Esquire,*

*6605 Uptown Blvd, Ste 280, Albuquerque, NM 87110*

*505-881-5155*

*abdunn@ablairdunn-esq.com*

*Licensed in New Mexico and South Dakota*

*via E-mail*

Chris Eustice  
Sr. Environmental Engineer  
1220 South St. Francis Dr.  
Santa Fe, NM 87505

August 27, 2014

Re: Vested Right of Way Easement; Road 489A; Response to USFS Technical Comments on Modification 14-1 to LI005EM

Dear Mr. Eustice,

Pursuant to my conversation with your counsel Mark Smith, this letter is reaffirm the position and opinion of El Capitan with regard to questions again raised by the United States Forest Service with regard to what is referred to as Forest Road 489A. As you are aware I have previously supplied a letter to the mine regarding the status of the road as privately held easement that grants ECPMI access to its fee simple property that is the subject of permitting by your agency. A copy of my previous letter is attached hereto.

Contrary to the assertions of the USFS in their letter received by you on July 3, 2014, ECPMI does have access to the mine and will grant access to your department across the easement held by ECPMI. I will not belabor the discussion ECPMI's position as it is already discussed in my previous letter. Instead I will only assure you that ECPMI has taken measures by filing in Court to prevent the USFS from interfering with their private property vested easement and is absolutely willing to continue to work with the USFS to reach a resolution that ensures continued access by ECPMI and your department. ECPMI will continue access the mine across its vested easement and respect the USFS's authority as to areas where ECPMI does not hold a vested right of way.

Best regards,

/s/ A. Blair Dunn

A. Blair Dunn, Esq.

Cc:ECPMI