



**CLERK – RECORDER – REGISTRAR  
COUNTY OF MONO**

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**P.O. BOX 237, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5530 • FAX (760) 932-5531**

Shannon Kendall  
Clerk-Recorder-Registrar  
760-932-5533  
[skendall@mono.ca.gov](mailto:skendall@mono.ca.gov)

Helen Nunn  
Asst. Clerk-Recorder-Registrar  
760-932-5534  
[hnunn@mono.ca.gov](mailto:hnunn@mono.ca.gov)

**MEMORANDUM**

To: Mining Claimant Recording Customers  
From: Shannon Kendall, Mono County Clerk-Recorder  
RE: Applicability of SB2 Fee to Mining Claim Recordings  
Date: October 17, 2018

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**Building Homes and Jobs Act.** In September 2017, the California State Legislature enacted Senate Bill 2 (“SB2”), also known as the Building Homes and Jobs Act, which requires all county recorders to collect a \$75 fee for the recording of “every real estate instrument, paper, or notice...per each single transaction per parcel of real property.” (Gov. Code, § 27388.1(a)(1).) Fee amounts will vary depending on the number of instruments, papers, and notices requested for recording for each parcel of real property involved each real property transaction. In certain limited situations, a “cap” may apply to limit the total amount of the fee. The fee requirement became effective January 1, 2018 and is in addition to all other applicable recording fees. (Gov. Code, § 27388.1(a)(1).)

**Mining Claims.** In order to perfect a mining claim, a Notice of Location must be filed for each claim in the county recorder’s office of the county where the claim is located. Additionally, in order to maintain a mining claim, a Notice of Intent to Hold and an Affidavit/Proof of Labor must be recorded annually for each mining claim. Several claimants have inquired whether SB2 applies to mining claims, and thus whether the SB2 fee requirement applies to Notices of Location, Notices of Intent to Hold, and Affidavits/Proofs of Labor. And if so, how the \$75 fee will be applied to the recording of such mining instruments, papers, and notices.

**The Act and Fee Apply to Mining Claims.** The SB2 fee requirement applies to the recording of Notices of Location, Notices of Intent to Hold, and Affidavits/Proofs of Labor. As explained above, the Act applies to “every real estate instrument, paper, or notice required or permitted by law to be recorded” subject to certain exceptions not relevant here. (Gov. Code, § § 27388.1(a)((1).) The term “real estate instrument, paper, or notice” is defined to mean “a document relating to real property, including, but not limited to, the following: deed, grant deed, trustee’s deed, deed of trust, reconveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, UCC financing statement, mechanic’s lien, maps, and covenants, conditions, and restrictions.” (Gov. Code, § 27388.1(a)((1).) The

definition's list of examples is not exhaustive; therefore, the Act may apply to other instruments, papers, and notices related to real property not expressly listed in Government Code section 27388.1(a)(1).

Notices of Location, Notices of Intent to Hold, and Affidavits/Proofs of Labor are documents relating to real property to which SB2 applies. Mining claims – both patented or unpatented – are interests in real property. A patented mining claim is one for which the federal government has passed its title to the claimant, giving the claimant exclusive title to the surface of the claim area and its locatable minerals. (*United States v. Locke* (1985) 471 U.S. 84, 86.) An unpatented mining claim affords a claimant an “exclusive possessory right[]” to the property and its mineral deposits. (*Best v. Humboldt Placer Min. Co.* (1963) 371 U.S. 334, 336, 337.) Both types of claims grant claimants an interest in the real property, specifically, a patented claim grants an ownership interest while an unpatented claim grants a possessory interest most like a lease. Therefore, SB2 applies to the recording of Notices of Location, Notices of Intent to Hold, and Affidavits/Proofs of Labor because they are documents required to be recorded in relation to real property, i.e., mining claims. (See Gov. Code, §27388.1(a)((1).)

The County recognizes that claimants may have multiple mining claims and that payment of the new fee according to certain interpretations of SB2 could result in a significant financial burden, especially given that Notices of Intent to Hold and Affidavits/Proofs of Labor must be filed on an annual basis. Accordingly, the County will require payment of the SB2 fee according to the following schedule:

- \$75 for the recording of each Notice of Location (because federal law requires each Notice of Location to be file separately).
- \$75 for the recording of each Notice of Intent to Hold. However, multiple mining claims may be presented for recording in a single Notice of Intent to Hold. In this case, the SB2 cap may be applied to limit the total fee to be paid for each Notice of Intent to Hold requested for recording to \$225.
- \$75 for the recording of each Affidavit/Proof of Labor. However, multiple mining claims may be presented for recording in a single Affidavit/Proof of Labor. In this case, the SB2 cap may be applied to limit the total fee to be paid for each Affidavit/Proof of Labor requested for recording to \$225.

In sum, the County Recorder's Office will require payment of the SB2 for the recording of each Notice of Location, Notice of Intent to Hold, and Affidavit/Proof of Labor; however, the County Recorder will allow multiple mining claims to be included in a single Notice of Intent to Hold and a single Affidavit/Proof of Labor so that the SB2 cap may apply to limit the annual recording of these mining claim documents to \$225. (Note that the County will not allow the SB2 cap to be applied to a single request for recording consisting of multiple Notices of Intent to Hold or multiple Affidavits/Proofs of Labor appended together.)

For more information regarding the Clerk-Recorder's implementation of SB2, the new fee requirement, and application to mining claims, please contact the Mono County Clerk-Recorder-Registrar's Office at 74 School Street, Annex 1, P.O. Box 237, Bridgeport, CA 93517 or (760) 932-5530.