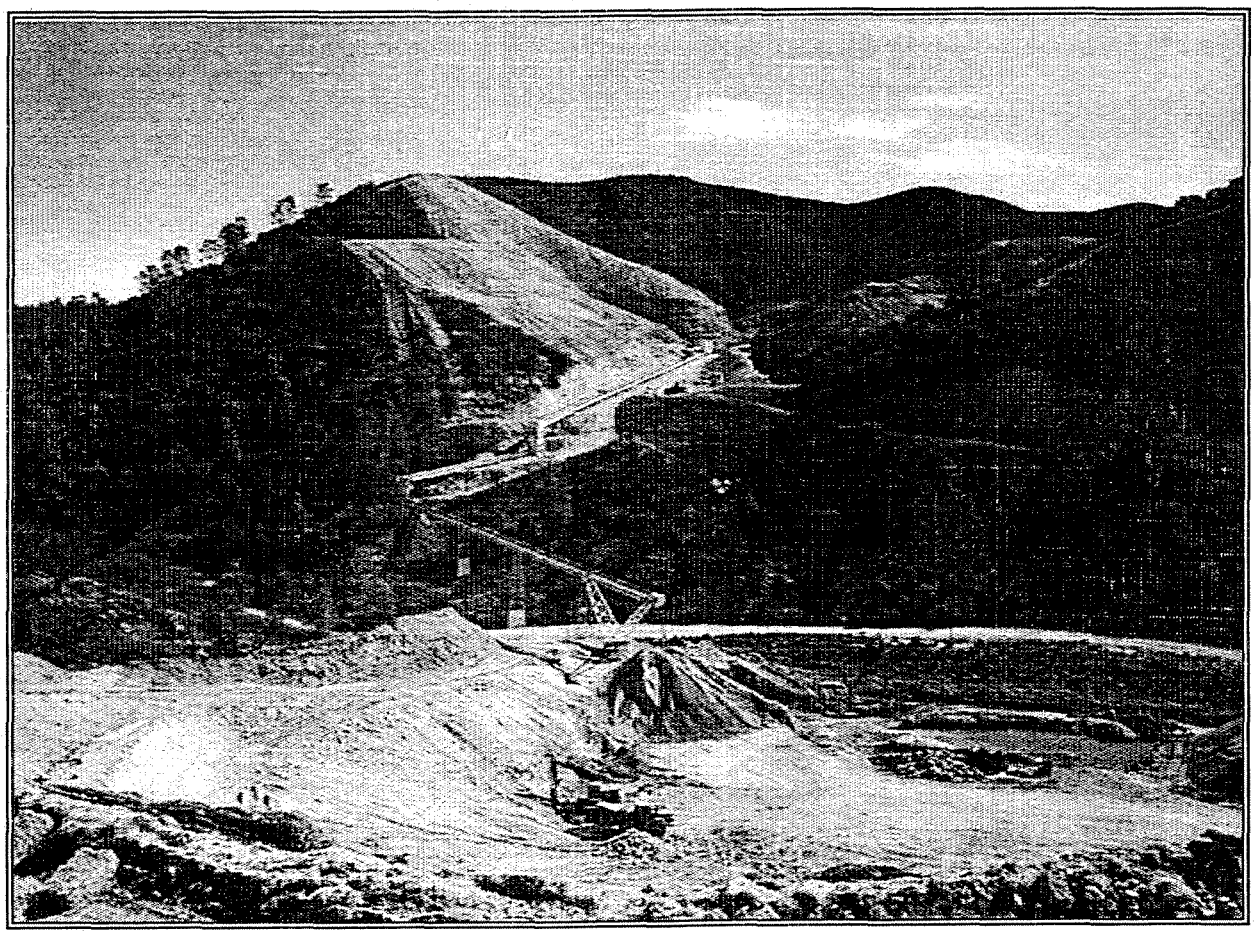
SPECIFIC PLAN

ROCKY CANYON QUARRY

COUNTY OF SAN LUIS OBISPO



May 2, 2002

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

County of San Luis Obispo

ROCKY CANYON QUARRY SPECIFIC PLAN

ADOPTED BY
THE SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS
APRIL 16, 1996 - RESOLUTION 96-166
ORDINANCE 2760

COUNTY OF SAN LUIS OBISPO

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COUNTY OF SAN LUIS OBISPO

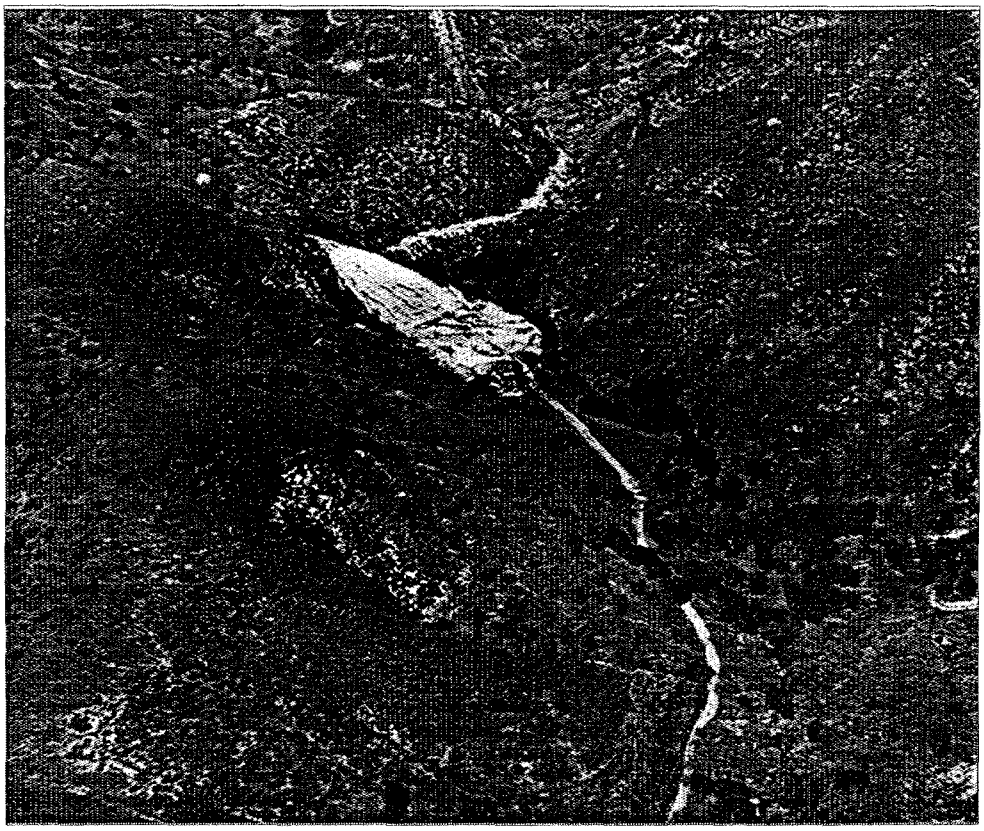
ROCKY CANYON SPECIFIC PLAN
Adopted April 16, 1996, Ordinance 2760

Amended

April 28, 1998	Ord. 2830
April 2, 2002	Ord. 2968

Chapter 1: INTRODUCTION

A. PLAN OVERVIEW



Rocky Canyon Quarry 1979

This specific plan is intended to serve as the primary land use and regulatory guide for mining and reclamation of the Rocky Canyon Quarry located in San Luis Obispo County southeast of the City of Atascadero. The overall goal of the plan is to provide for the production and conservation of the mineral resource in Rocky Canyon, as provided by the Surface Mining And Reclamation Act (SMARA), while minimizing adverse environmental impacts and providing for the long term use of the area. This plan sets forth goals, objectives, and policies for resource utilization and protection, and environmental protection, as well as establishing operation, reclamation, and monitoring criteria. The plan also develops standards for the continuing operation of the quarry that are consistent with the county's planning area policies. These policies will eventually be incorporated into the El Pomar/Estrella Planning Area Plan of the Land Use Element through reference to the specific plan.

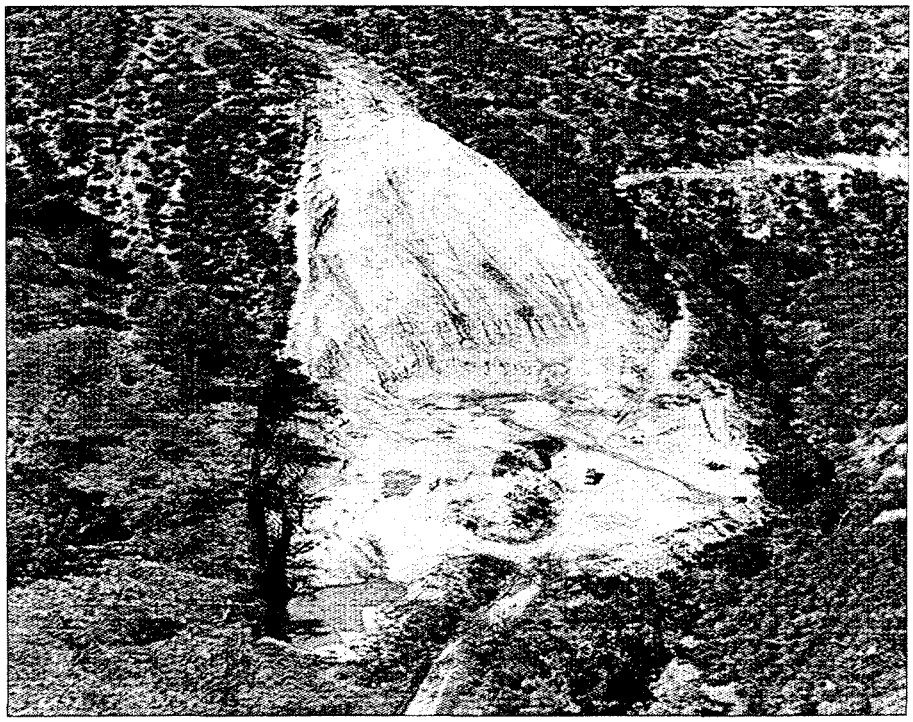
B. BACKGROUND

Rocky Canyon Quarry is a hardrock hillside quarry located in a narrow, isolated canyon east of Atascadero. The site has been supplying a variety of construction aggregates for about 50 years, starting in the 1940's when a modest operation furnished base material for county road crews and state road projects. The quarry has operated under an approved county permit since 1982 when

it was called Rocky Canyon Sand and Gravel. The current company took over as lessee at the end of 1984, initially in the name of Ramada Rock and Sand Company. Present approval was granted to Union Asphalt in 1988 for a period of 10 years.

Acquisition in 1992 from the federal government of a contiguous 80-acre parcel in addition to the purchase of 135 additional acres enlarged the operation to the south and east to utilize a large deposit of high-grade rock suitable for a range of construction needs. The annual production will not increase beyond the approved permitted level.

The purpose of this specific plan is to provide a long range plan to allow expansion for the area of permitted excavation. This will provide access to additional reserves so that the quarry can continue to operate. The plan also seeks to minimize environmental impacts and provides enhancements to portions of the natural environment.



Rocky Canyon Quarry February 1979

Union Asphalt, Inc. is the owner of the quarry assets. These assets include the plant, the mobile equipment, a long-term lease for excavation and 135 acres of land adjacent to the existing quarry that is proposed to be acquired. Union Asphalt, Inc. operates the Rocky Canyon Quarry under lease from Willco-Hermreck.

The State of California has long recognized the importance of the aggregate resource in the Rocky Canyon area. The California Division of Mines and Geology has placed the plan area within an MRZ-2 zone which classifies the area as containing or being highly likely to contain significant deposits of Portland cement concrete aggregate materials .

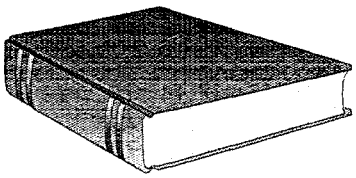
The aggregate deposit within the plan area will provide a long-term supply of necessary construction material to the region. As these materials are heavy and costly to transport, it is important that the region have an adequate local supply. This deposit will be increasingly more important as other sources are depleted in the near future. Because the area is still largely rural and sparsely populated, the specific plan can serve as a guide for land use regulation to avoid

conflicting land use and to provide for maximum utilization of the resource. Significant public benefits which can derive from planned extraction include avoidance of increased cost and environmental impacts incurred by handling from distant sources, and continuance of revenues to local government and business. The quarry operator's goal is to provide for mining into the long-term future.

The plan covers all aspects of land use within the planning area with an emphasis on preserving availability of the mineral resource as required by state law while minimizing environmental impacts.

The process of developing this specific plan began with an extensive analysis of existing site conditions, environmental constraints and opportunities, and relevant general plan policies. This analysis identified the relevant planning issues and served as the basis for formulating the plan goals and objectives. Specific policies and standards were then developed to implement the specific plan.

C. STATUTORY AUTHORITY



A specific plan is a land use planning tool used by local jurisdictions to guide the development of large acreage parcels under multiple ownership. It is intended to create a bridge between the general plan and zoning requirements. A general plan provides overall guidance for physical development, whereas a specific plan provides more detailed policy guidance that responds to the unique characteristics of a particular site. This specific plan further serves as the framework for a mining and reclamation plan within the planning area.

Specific plans are prepared under the authority of Sections 65450-65457 of the Government Code of the State of California. The complete text of these sections is included in Appendix A. Section 65451 mandates that a specific plan include a text and diagrams that address at least the following:

1. *The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.*

   These items are shown in Figure 2-4. It is possible to change the locations of some uses in the future with permit approval.

2. *The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the*

plan.

These facilities are discussed in the Circulation Chapter, Mining and Reclamation (Drainage), Planning Area (emergency services and water). Centralized sewage treatment facilities are not necessary. An on-site septic system is capable of disposing of the waste water generated by the development. Energy is provided by P.G. and E. to run the equipment on the site and for the office. Other than a long conveyor system to move material down the hill to the existing processing area, no major change is anticipated because the volume of material to be processed each year is not anticipated to change.

3. *Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.*

   The standards are contained at the end of each chapter where needed.

4. *A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out the plan.*

   Regulations used to implement the plan include the existing Land Use Ordinance in combination with requirements of the Surface Mining and Reclamation Act (SMARA) and the standards contained in Implementation of Mining and Reclamation. Financial measures are addressed in Implementation.

D. SPECIFIC PLAN PROCESS

The following are the procedural steps required to adopt and implement the specific plan.

- **Draft Specific Plan** - An Administrative Draft of the Rocky Canyon Specific Plan will be submitted to San Luis Obispo County for preliminary review. The Administrative Draft Rocky Canyon Specific Plan will then be revised as necessary prior to undergoing environmental review.

- **EIR Preparation** - The EIR will address the environmental impacts of the draft specific plan and proposed mining and reclamation plans. The EIR may suggest changes to the plan to avoid or mitigate potential adverse impacts.

- **Circulation of the Draft Specific Plan and Draft EIR** - The draft specific plan and EIR will be circulated for public review for a period of 45 days.

- **Response to Comments and Final EIR** - Following the close of the 45-day comment period, San Luis Obispo County staff will prepare and circulate a written response to each comment received on the Draft EIR.

- **Revisions to the Specific Plan** - The draft specific plan may be modified, if necessary, in conformance with the Final EIR.

- **Certification of EIR** - At a public hearing the decision-makers must certify that the Final EIR has been completed in compliance with CEQA and the State CEQA Guidelines, and that the information in the EIR has been considered before approving the project.

- **Adoption of Specific Plan** - Based upon information obtained through the environmental review and public hearing processes, and recommendations by the Planning Commission, the Board of Supervisors will consider adoption of the specific plan. The plan is intended to be adopted by ordinance. Findings for approval must be made per County and SMARA requirements.

- **Land Use Permits** - Concurrent with adoption of the specific plan, an operator will need to obtain Development Plan approval for the mining project. The policies, standards, and guidelines contained in this specific plan provide the basis for considering a permit application.

- **Reclamation Plan** - A reclamation plan must also be submitted and must comply with the requirements found in this plan. The reclamation plan is required by the Surface Mining and Reclamation Act (SMARA) and must be consistent with the provisions of that act and California Code of Regulation (CCR) Sections 3500 through 3806. Each permit application must contain a statement outlining how the proposed plan is consistent with this Specific Plan.

E. SPECIFIC PLAN GOALS

The purpose of the specific plan is to allow for mining of aggregates in the Rocky Canyon Quarry in a manner that can best achieve the following goals. These goals were established to serve as the foundation for the specific plan and are based on guidelines from the County General Plan, site constraints and opportunities, professional expertise, operator input, and County staff input.

1. Maximize recovery of the aggregate resource to provide a continuing supply of essential high-quality construction material to the region.

2. Minimize environmental impacts, and restore and enhance biological resources and wildlife habitat.

3. Achieve an ultimate condition for the site which will be geologically stable and visually compatible with the surrounding landscape.

4. Preserve and enhance regional economic benefits.

5. Minimize conflicts with surrounding land uses.

6. Implement the County General Plan.

F. USE OF THE SPECIFIC PLAN

This specific plan and its companion EIR present the framework for consideration of and action upon an application for mining and reclamation within the plan area. This document will aid the County in reviewing a permit application. The County must determine that the proposed mining operation is consistent with the goals, objective and policies contained in this plan. The plan also provides the operator applying for a permit with the policy framework and criteria that will be used to evaluate the proposal.

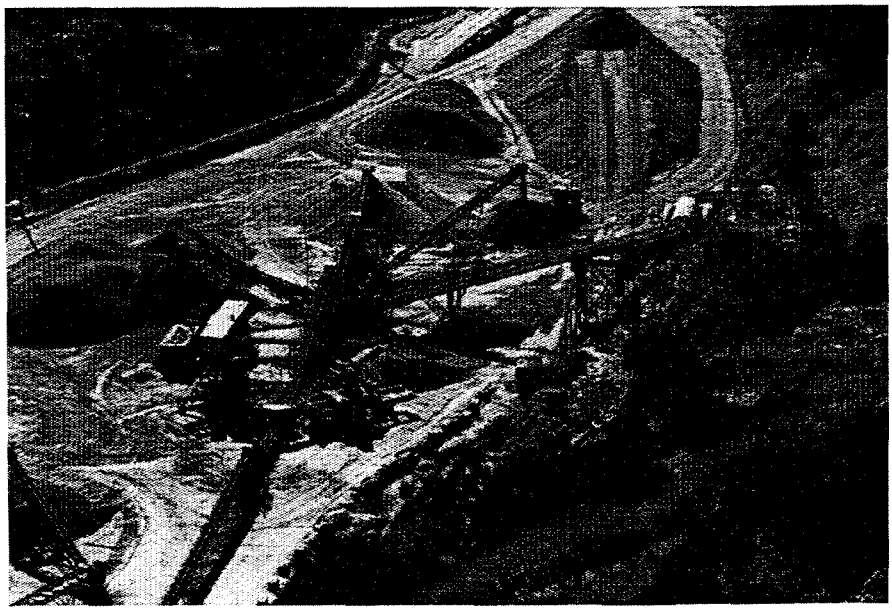
Chapter 2: PLANNING AREA

A. LOCATION

The Rocky Canyon Quarry Specific Plan area is located in unincorporated San Luis Obispo County, east of the City of Atascadero, approximately 2 miles east of Highway 101 in a narrow, isolated canyon. Figure 2-1 depicts the regional setting of the plan area. As shown on the Vicinity Map (Figure 2-2) the 475 acre plan area is situated on Granite Ridge . The plan area is located at the north end of a large EX-1 zone as shown in Figure 2-5. Access to the plan area is by way of Halcon Road, which crosses the Salinas River to join Rocky Canyon Road. This roadway leads directly to and passes through the plan area.

B. SITE DESCRIPTION

The plan area is comprised of a narrow canyon surrounded by moderate to steeply-sloped hills. The plan area boundary is generally defined by the ridge lines forming Rocky Canyon.



Wash plant 1995

Elevations within the plan area range from about 1,000 feet above sea level at Rocky Canyon Creek to 1650 feet near the easterly most point of proposed excavation. Rocky Canyon Creek, a tributary of the Salinas River, flows into the site at approximately the middle of the northern plan boundary and exits at the southwest corner. Rocky Canyon Road, the main access route to the quarry, traverses the plan area, generally paralleling Rocky Canyon Creek. The Plan area is surrounded by hilly terrain on all four sides.

The 475 -acre plan area consists of two major components - the mining area and the transition area. The boundaries of these areas are delineated on Figure 2-3. The mining area encompasses those lands where actual quarrying may take place. This area includes the existing quarry and processing plant (Figure 2-4). The mining area boundary is defined by ridge lines to the east,

west, and south and Rocky Canyon Creek to the north.

The proposed transition area surrounds the mining area to protect the mine from encroachment by incompatible land uses on adjacent properties. The outer boundary of the transition area is the plan area boundary. The transition area generally extends to the ridge lines to the north, and south of the mining area. Along the eastern and western boundaries of the mining area the transition area extends 100 feet beyond the ridge line. The transition area is described further in Chapter 4.

The plan boundary may be expanded in the future to encompass adjacent land that is partially or entirely in the EX-1 zone if future mining or major development is proposed. Any such change to the boundary would require an amendment to the specific plan and would require new studies to be prepared for the effected areas.

C. PLAN AREA FEATURES

The plan area contains the following man-made features:

Processing Plant

Loading the rock crusher

Rock is crushed, washed, sorted, stockpiled and distributed at the plant site. The plant equipment, related facilities, circulation area, and stockpiles occupy a level shelf west of the creek and road. The office and scale are at the southern end of this area, near the entrance to the quarry. Major features of the processing plant are identified on Figure 2-4.

Cable

A 20-foot easement through the leased property was granted to AT&T and a coaxial cable was installed about twenty years ago. It ran along the top edge of the existing

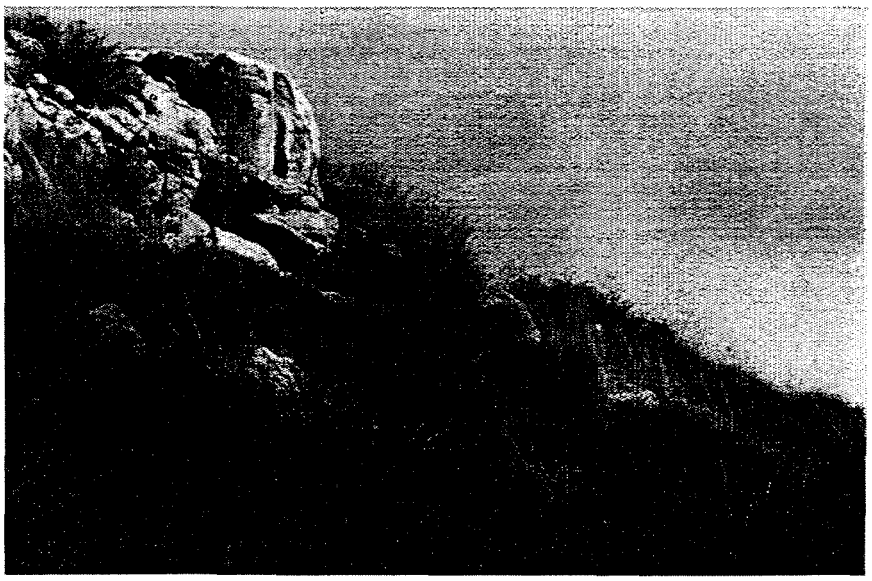
northwesterly excavation, setting a definite barrier to further mining in that area. During 1993, the cable was relocated to a place outside of proposed excavation areas where it is not likely to be impacted by existing or future mining operations. The previous and current locations of the buried cable are shown on Figure 2-4.

Rocky Canyon Road

Rocky Canyon Road, the main access to the quarry, is a narrow, unpaved road which generally follows the creek through the site. The roadway recently was paved and is within a 60' County right-of-way. Beyond the quarry the road has been closed to vehicular traffic due to its lack of maintenance and inadequate construction. The road will continue to be used for horseback, pedestrian and bicycle travel.

D. ENVIRONMENTAL SETTING

1. Existing Vegetation



Existing Vegetation

The existing vegetation in the ultimate 247 acre mining area consists of a mix of 4 plant communities. These communities are: (1) oak woodland, (2) chaparral, (3) coastal scrub, and (4) riparian. These communities resulted from a complex of environmental factors that include: past disturbance, recent fires, local topography, slope, water availability and soils. The plant communities do not occur in distinct belts, but instead form a mosaic pattern.

About 5% of the proposed mining area has already been cleared as part of the existing quarry operation. The remainder of the site is covered by natural plant communities, some of which have been disturbed by fires and are in various stages of succession.

The following description of these plant communities is excerpted from the "Botanical

Report and Revegetation Plan, Rocky Canyon Quarry, San Luis Obispo County, Ca." prepared by V. L. Holland, Ph.D. Refer to that report or the EIR for more detailed descriptions and maps of the various vegetative communities.

a. Foothill woodland (Oak woodland)

Foothill woodland is the most characteristic vegetation cover in the central California coastal foothills. It is dominated by trees (mostly oaks) 15 to 70 feet tall that vary from open to closed canopy woodlands with an understory of shrubs and herbs. Foothill woodland covers approximately 30% (79 acres) of the area within the limits of the mining area. It is primarily found on the gentle slopes and canyons of the property.

The understory vegetation varies from site to site but mostly consists of a grassland ground cover with a few scattered shrubs. In some exposed, drier sites, shrubs are not common. In other areas, such as sites where oaks mix with chaparral, shrubs are dense under and around the oaks. Many herbs and shrubs that are common in the adjacent grassland, coastal scrub and chaparral are found in the understory of the foothill woodland.

b. Chaparral

Chaparral is the characteristic community on steep slopes where soils are too rocky, dry and infertile to support foothill woodland. Within the study site, chaparral is the dominant community on the steep, exposed slopes with shallow soils, but it does overlap and grade into foothill woodland on more favorable sites. Chaparral covers roughly 54% (140 acres) of the mining area.

While the species composition and structure in the chaparral vary from site to site, in general the most common shrub in the chaparral within the mining area is *Adenostoma fasciculatum* (chamise).

c. Coastal Scrub

Coastal scrub is one of the first communities to colonize the steep chaparral covered slopes following disturbance, including fire. The only coastal scrub found within the mining area boundaries are in areas successional to the chaparral community. In most of these sites, small chaparral shrubs, especially chamise, are mixed with the coastal scrub. These areas cover roughly 4% (10 acres) of the area within the limits of the mining area, mostly just up slope from the existing disturbed quarry sites. Coastal scrub is a community typically dominated by small to medium sized (3-6 feet tall) shrubs with a herbaceous understory.

d. Riparian

The riparian plant community is the characteristic vegetation immediately bordering Rocky Canyon Creek which runs along the site in areas where adjacent vegetation has not been disturbed by the quarry operation. There is also a small tributary to Rocky Canyon Creek known as Adobe Creek. Adobe Creek parallels the northeastern boundary of Area 1 and is bordered by riparian vegetation. Dominant trees in the riparian area vary from place to place along Rocky Canyon Creek but the most common trees are coast live oak, willows, black cottonwood, and sycamore.

Along Rocky Canyon Creek is a bermed pond, with vegetation, that contributes to a suitable habitat for the southwestern pond turtle.

2. Geology & Soils

East face of quarry 1995

The plan area is at the northern most end of a granitic rock formation that is suitable for construction aggregates. The formation is approximately ten miles long and six miles wide and extends from Rocky Canyon and the West Branch of Huerhuero Creek on the northwest to approximately Las Pilitas Road on the southeast. The area is delineated by the EX-1 designation in Figure 2-5. The vast majority of this rock is not available for mining due to limited access.

Golder Associates, engineering geologists, prepared a report entitled Preliminary Slope Stability Analysis for the Alternate 3 Expansion Area - Rocky Canyon Quarry. The report was augmented by another investigation by Golder Associates (1996), and they determined the conditions as to the stability of the interim and finished slopes would be the same as in the area first investigated. That report was submitted under separate cover and is on file at the Department of Planning and Building.

In their report, they indicate that the quarry area is "underlain entirely by weathered to

fresh, pervasively jointed Mesozoic intrusive granitic rock. Colluvium thinly mantles the bedrock along the lower slopes and in the drainages that dissect the slopes (and) the granitic rock generally varies from "Highly to completely weathered, jointed to massive and veined, brown to grayish brown, medium-to coarse-grained, weak to very weak, granite near the surface to 'Slightly weathered, jointed, greenish gray to brownish gray, medium-to coarse-grained, strong granite lower in the outcrops: based on field observations and available data, that the depth of weathering in the granite ... may be about 80 feet beneath ridges and about 30 feet beneath side slopes." Proposed mining will be to much greater depths -- and most of the excavated material will be of the higher quality, slightly weathered and unweathered rock.

The existing soil composition and distribution is an important consideration if the soil is proposed to be used in the revegetation process for areas disturbed by quarrying. Three general soil types have been identified within the plan area: Vista, Andregg and Cienaba. The characteristics of these soil types are briefly described below, with major hazards and limitations noted. This information was excerpted from "Soil Profiles and Site Descriptions for Rocky Canyon Quarry Site" by Brent G. Hallock, Ph.D. A copy of this report was submitted under separate cover.

The Vista, Andregg and Cienaba soils are coarse sandy loams derived from granitic parent material, and have the following general characteristics:

Slopes:	moderate to very steep (9-75%)
Topsoil depth:	7-14 cm
Soil depth:	27-80 cm
Surface runoff:	very rapid
Erosion hazard:	high to very high
Permeability:	very high
Elevation:	1000- 1650 ft.
Water holding capacity:	very low

The Andregg soils are primarily located on the oak woodland areas. These areas appear to have adequate topsoil for potential use in stockpiling and revegetation. Utilizing part of the Andregg subsoil would be a viable option for supplementing topsoil for the overall project.

The dominant soils in the chaparral areas are Vista and Cienaba. The topsoil in these areas is marginal at best.

According to the U. S. Department of Agriculture, Soil Conservation Service, the natural soil fertility for all of the soils is low to very low and if the soils are to be stockpiled and used for revegetation, the addition of soil amendments could be necessary but are not being proposed during the first phase.

3. Drainage

Drainage through the site is well defined. The Adobe and Rocky Canyon Creek confluence is at the north end of the mine. From the confluence, Rocky Canyon Creek passes through the quarry and eventually into the Salinas River. Flooding from upstream is not a significant issue on the site.

To the east mining extends almost to an unnamed natural drainage that is a tributary to Rocky Canyon Creek, upstream from the mining area. The mined area however, will not drain into this drainage as it has in the past. The mining will remove material from the west side thus causing drainage to be directed toward the west. As with the east side of the quarry, the south area of mining is defined by a drainage that leads into Rocky Canyon Creek downstream from the mine area, but the run off will be redirected into the mined area as mining progresses from the north.

Drainage on the quarry site is retained on site by detention basins and eventually the water percolates into the ground. The exception to this was during the 1995 severe storms where some waters overtopped the basin and flowed into the creek. The existing drainage facilities are accomplishing their objective of controlling erosion and sedimentation. A spring also drains into the processing area. The water from the spring must be diverted from the processing area or deposited in a desilting basin to prevent added siltation to Rocky Canyon Creek.

E. EXISTING LAND USE

The existing Rocky Canyon Quarry occupies about 40 acres of the 475 acre area. This includes the relatively flat plant site which covers approximately 12 acres, and the areas disturbed by previous mining activities which account for about 21 acres. The remainder of the plan area is undeveloped, rugged hillside terrain.

The properties surrounding the plan area generally consist of moderate to steeply sloping hillsides with mixed oak woodland and chaparral vegetative cover. Surrounding properties are currently in the following uses:

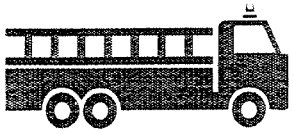
North:	Hog farm and undeveloped
East:	Undeveloped
South:	Undeveloped
West:	Grazing and Undeveloped

Due to the rugged terrain and limited access in these areas, it is unlikely that land uses will intensify to any significant extent.

F. EMERGENCY SERVICES

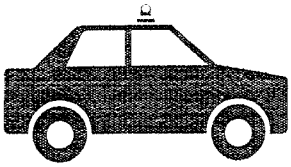
Due to the somewhat remote location of the mining area, it is important for the health and safety of the workers and to protect property that the area be adequately served by emergency services such as police, fire, and medical.

Fire



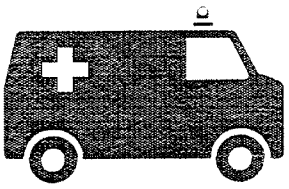
The plan area receives fire protection services from two agencies under a mutual aid agreement: The California Department of Forestry (CDF) in Santa Margarita and the City of Atascadero - Station #2. The response times from the CDF and City of Atascadero are 15 minutes and 5 minutes, respectively. This Station #2 response time is well within the 10 minute rural area response time set forth in the County General Plan.

Police



The San Luis Obispo County Sheriff's Department has jurisdiction over the specific plan area. The nearest Sheriff's station is located in Templeton, about 5 miles north of Atascadero. The Sheriff's Department estimates the response time at 10 minutes.

Medical/Hospital



Emergency medical services are available from San Luis Ambulance in Atascadero. They estimate a response time of 5 minutes to the plan area. If an injury sustained on the site were to require hospitalization, the nearest hospital is Twin Cities Hospital in Templeton. The response time for this facility is 15 minutes.

G. WATER

Water is used in the existing processing operations to wash the concrete aggregate before it is loaded and transported off-site. Water for the wash process is pumped from an on-site well to two 30,000 gallon storage tanks located on a hill north of the processing plant. The water is fed from the tanks by gravity to the wash shaker screen and wash screw, and the surplus is conveyed to settling ponds west of the plant. All captured process water is recycled through the wash plant. The

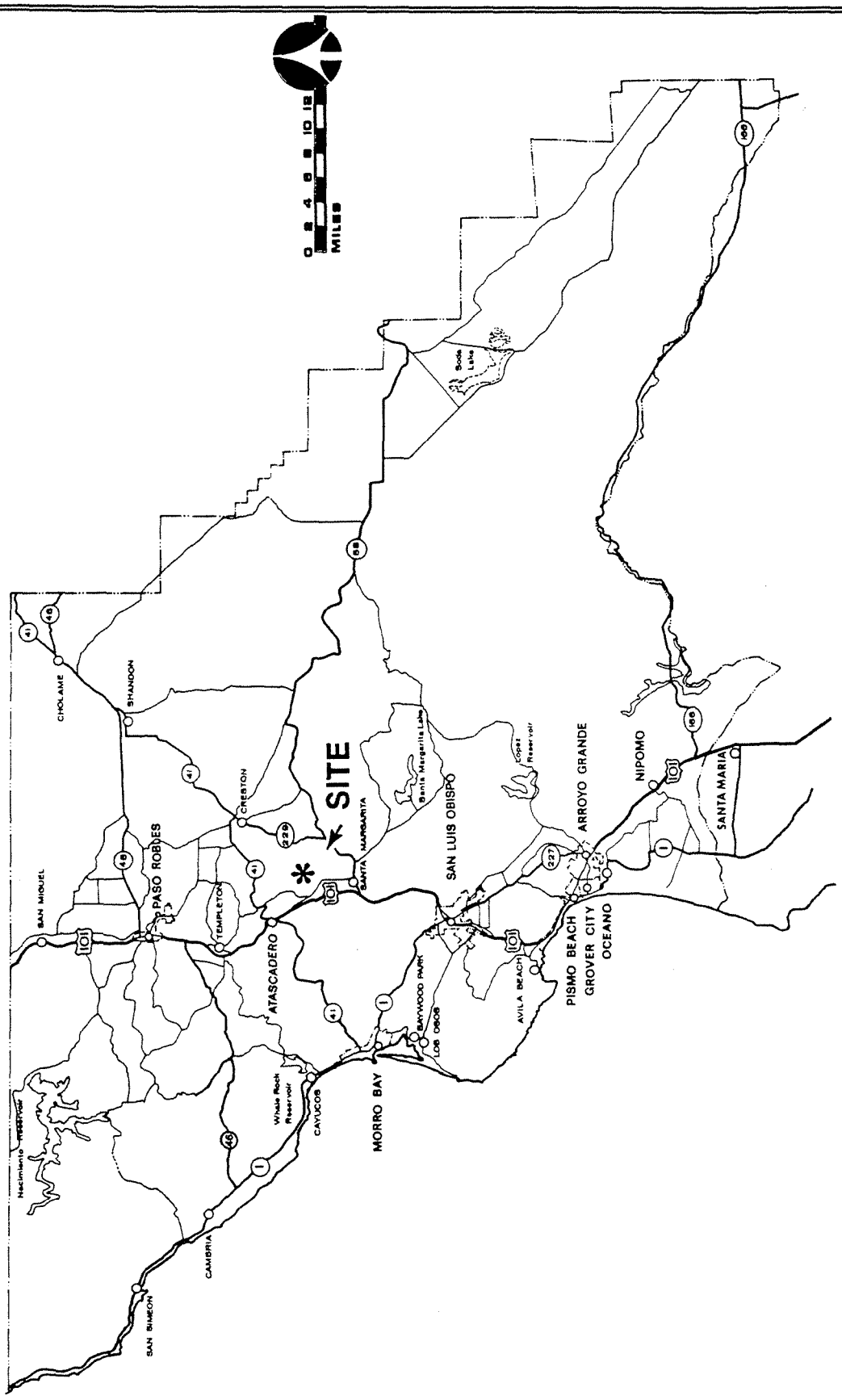
locations of the wells, tanks, wash plant, and settling ponds are shown on Figure 2-4.

Aggregate for concrete is currently limited in volume and is washed only during one week each month at a use rate of 2,800 gallons per day. Approximately 75% of this water is recycled for future use.

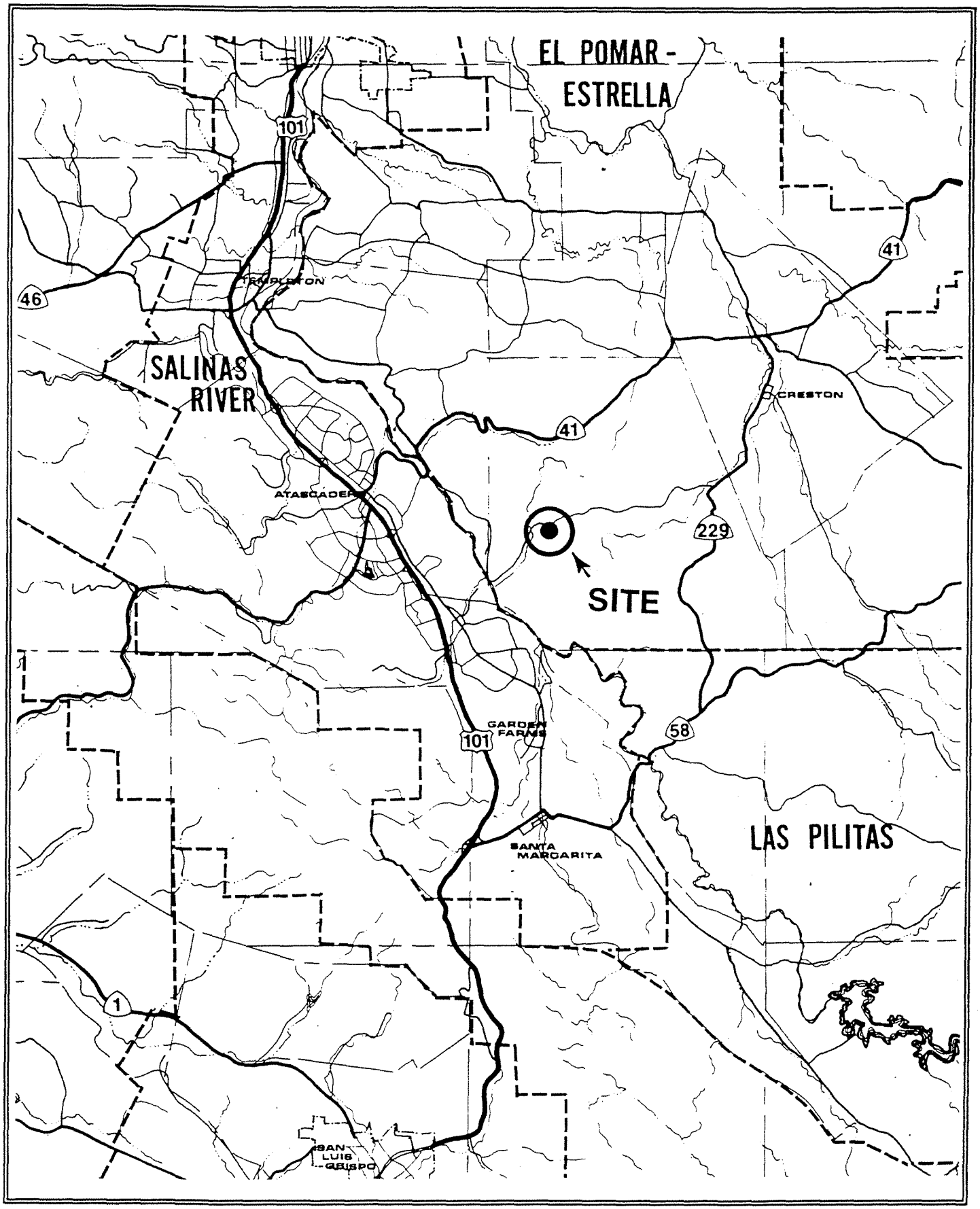
Water is also used on-site for dust control. This includes use of water sprays at critical points in the handling and processing of material, water trucks on the roads, and use of a spray bar for trucks leaving the quarry.

H. PARCELIZATION AND OWNERSHIP

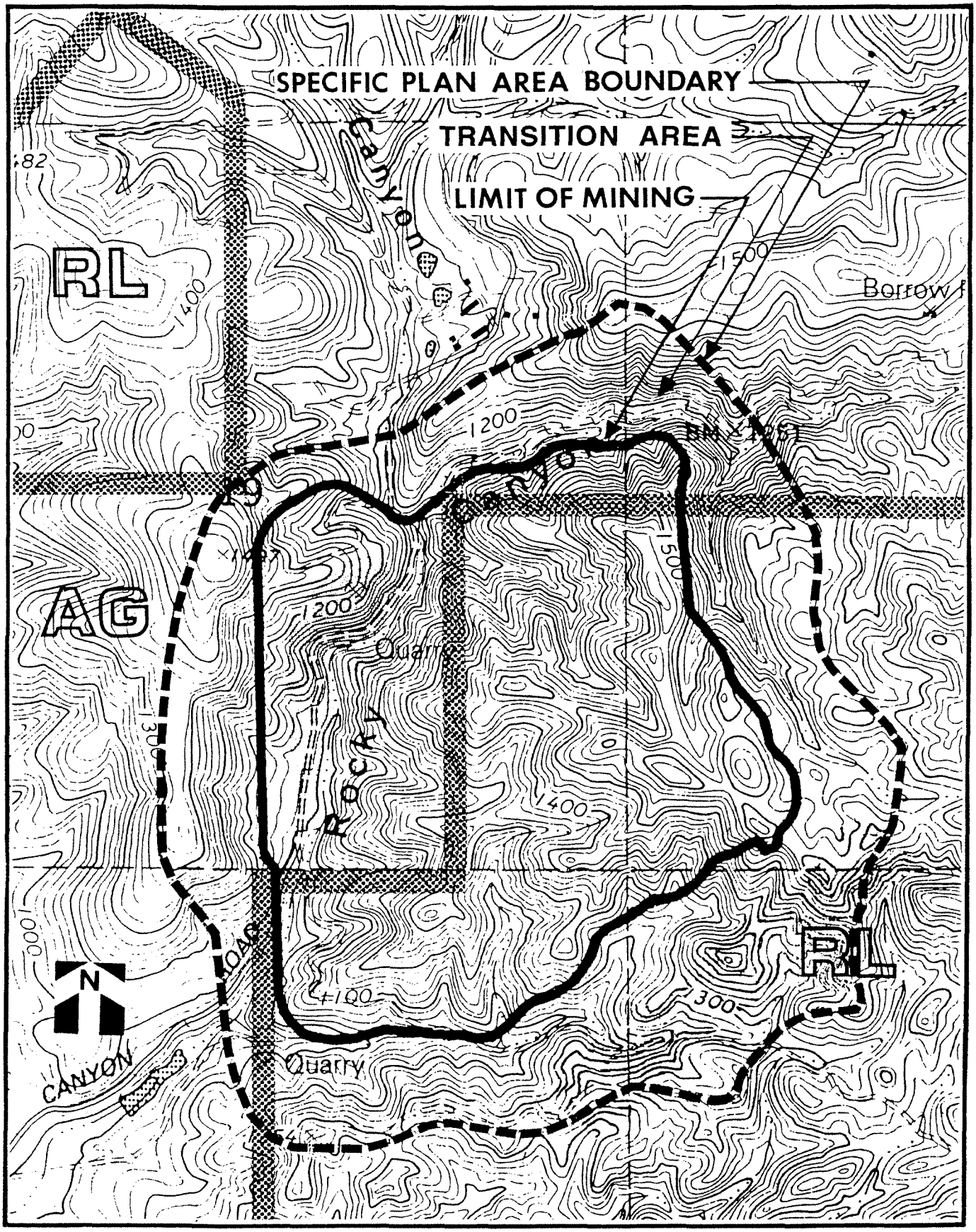
The plan area includes all or part of 9 parcels controlled by 6 landowners. Union Asphalt Inc. owns the bulk of the land within the proposed mining area. Robert Dallaire owns 2 parcels which contain the existing quarry operation. Willco-Hermreck recently purchased the 80-acre parcel adjacent to the Dallaire Property from the Bureau of Land Management through the Nature Conservancy and acquired 135 additional acres from the Rocky Canyon Ranch and Blue Sky Ranch. Appendix B identifies the owner's name, address and Assessor's parcel number for each parcel within the plan area and for properties surrounding the site. A map showing the various parcels is included in Appendix B.



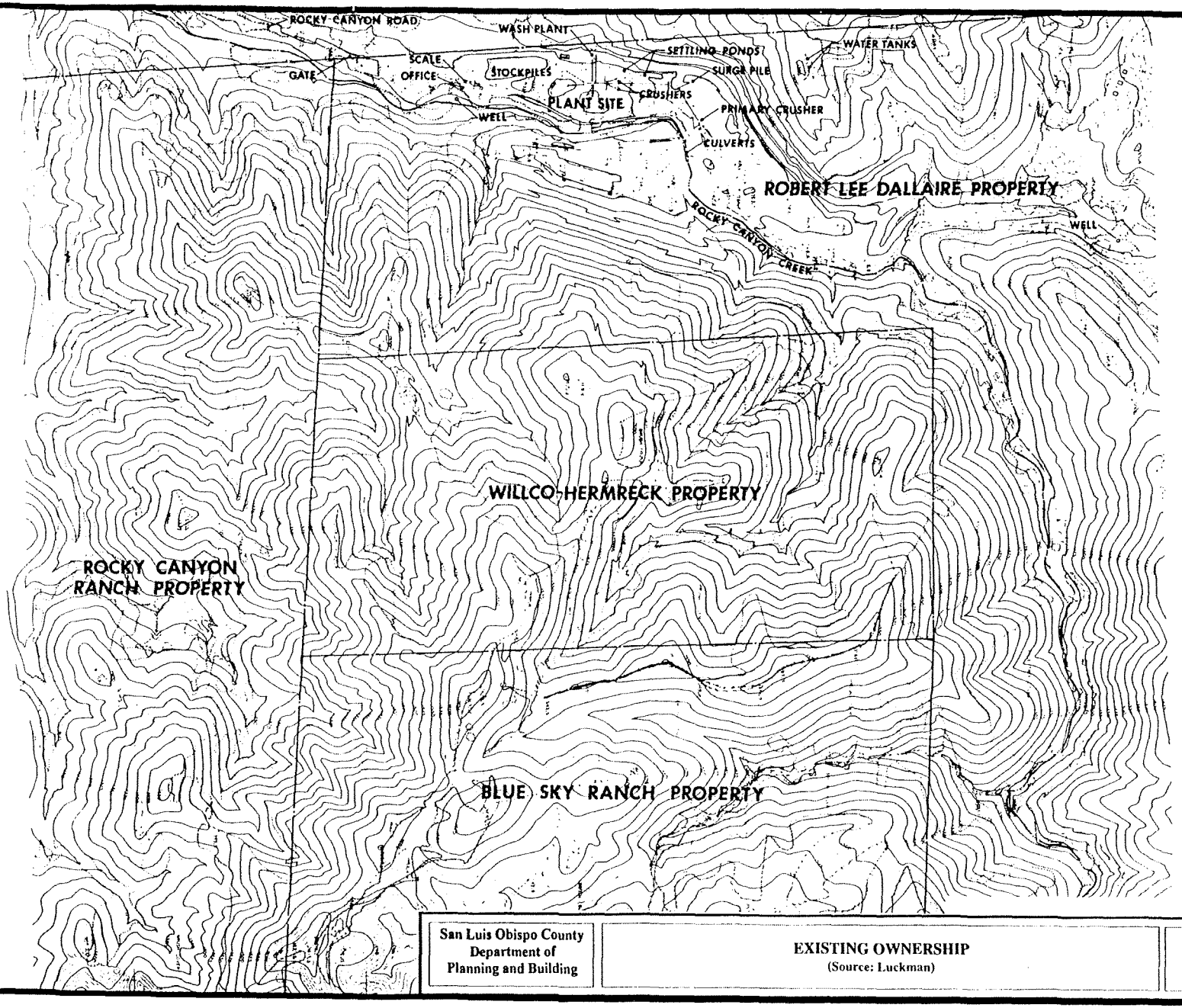
SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN REGIONAL LOCATION	FIGURE 2-1



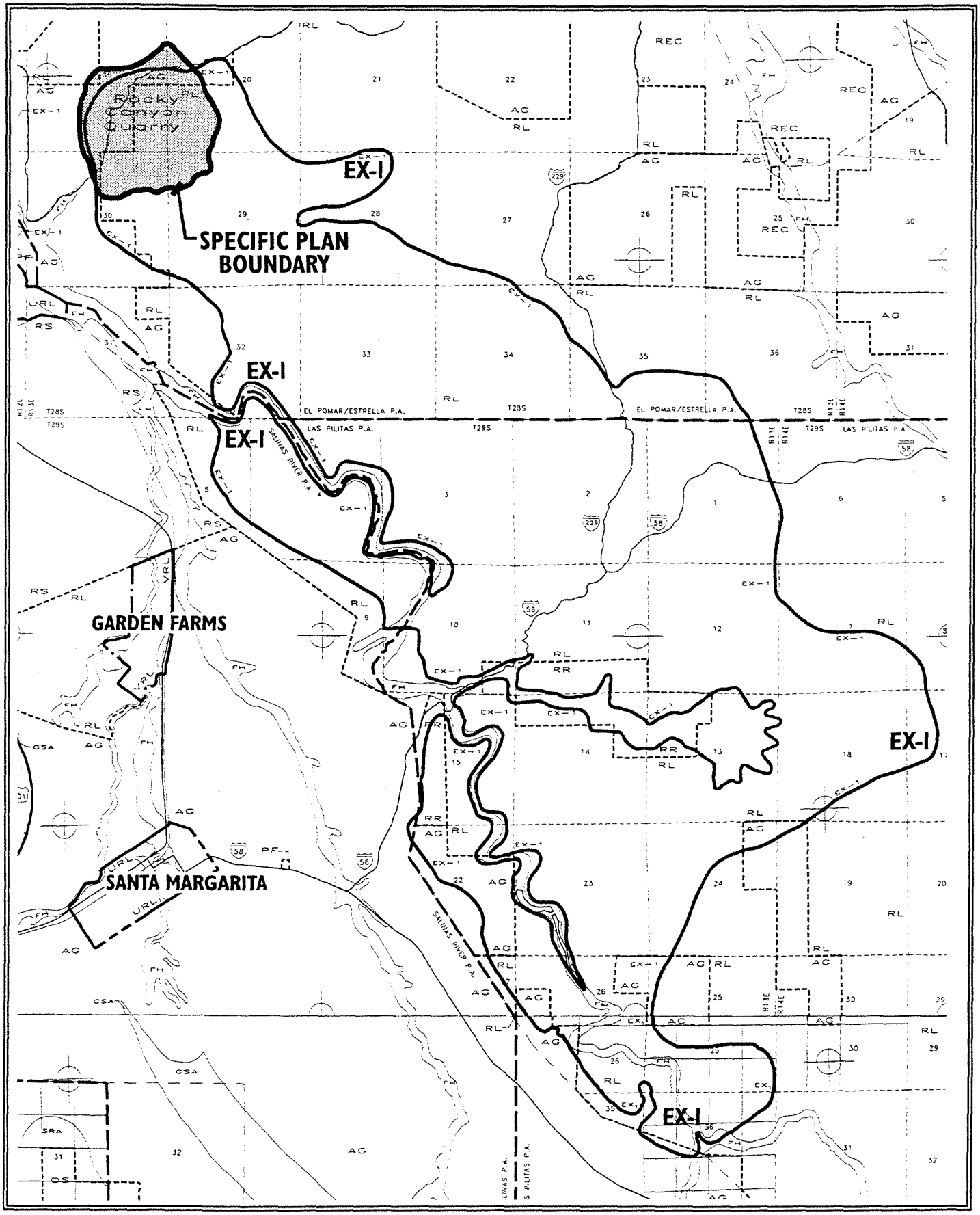
SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN VICINITY MAP	FIGURE 2-2



San Luis Obispo County Department of Planning and Building	SPECIFIC PLAN AREA BOUNDARY & LAND USE MAP (Source: Luckman, 1997)	FIGURE 2-3



San Luis Obispo County Department of Planning and Building	**EXISTING OWNERSHIP** (Source: Luckman)	**Figure 2-4**



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN EX-1 EXTRACTION AREA	FIGURE 2-5

Chapter 3: RELATIONSHIP TO PLANS AND LAWS

A. RELATIONSHIP OF THE SPECIFIC PLAN TO THE GENERAL PLAN

The plan area is located in San Luis Obispo County and is therefore subject to the policies set forth in the general plan. In accordance with State law (Government Code Section 65454), this specific plan has been prepared so as to be consistent with the San Luis Obispo County General Plan. The plan must also include a statement of its relationship to the general plan (Government Code Section 65451(b)). The following presents an evaluation of the general plan policies and standards that are applicable to the proposed mining and reclamation. Each element of the general plan has been reviewed in an effort to identify policies that may be related to this specific plan. Relevant policies are listed below by element. Following each policy is a statement regarding the consistency of the specific plan with that policy.

B. LAND USE ELEMENT

The San Luis Obispo County General Plan Land Use Maps for the El Pomar/Estrella Planning Area show two land use designations within the plan area. The two categories are Agriculture and Rural Lands. The limits of these land use designations are shown in Figure 2-3. Both land use designations allow mining as a permitted use subject to the applicable regulations in the Land Use Ordinance. The general plan recognizes that Rural Lands have "some mineral and rock quarry potential."

The general plan also shows the plan area within a land use combining designation of EX-1 (Extraction Area). The boundaries of the EX-1 designation are shown in Figure 2-5. This designation reflects the fact that the plan area is contained within a geologic formation known as the La Panza Granitics which is classified by the State Division of Mines and Geology as containing a significant deposit of Portland cement concrete (PCC-grade) aggregate material. The general plan recognizes the importance of the mineral resource in the plan area.

The Land Use Element Framework for Planning states that one of the objectives of the EX-1 combining designation is to "recognize the importance of continuing availability of mineral resources by avoiding land use designations which may inhibit the continuing viability of . . . extraction operations and result in the unnecessary or premature termination of the use of such resources." Another objective of the combining designation is to ensure that a high level of environmental quality is preserved and protected through the discretionary approval process. This specific plan implements these objectives.

Relevant General Plan, Land Use Element policies include the following:

Policy: **Extraction operation shall provide and be provided with adequate**

buffering and screening from adjacent land uses.

Discussion: The Rocky Canyon Specific Plan is consistent with this policy in that it proposes policies and standards for visual screening and proposes a transition area around the plan area to isolate the mining operation from incompatible land uses. Also the existing topography of the site helps buffer and screen the site from adjacent land uses.

Policy: **Uses which require a discretionary land use permit shall not adversely affect the continuing operation or expansion of an extraction use.**

Discussion: The Rocky Canyon Specific Plan contains policies that restrict allowable land uses in the mining area so as to maintain mining as the favored use. The plan also proposes a transition area around the mining area in order to regulate land uses on adjacent properties. The existing topography helps provide buffering of adjacent uses.

Policy: **Applications for proposed operations shall include plans for preserving the long-term productivity of the site, as well as ensuring restoration of affected lands. In addition, riparian corridors and other sensitive habitats shall be identified prior to the development and shall be restored and enhanced as a condition of the required land use permit.**

Discussion: The Rocky Canyon Specific Plan proposes regulations to control land use on the quarry site and surrounding properties in order to ensure the long-term productivity of the site. The plan also sets forth policies and standards for reclamation of the mined lands including revegetation and ultimate land form. Standards have been developed to require protection of the creek and habitat.

Policy: **Extraction site access routes shall not create nuisances, hazards, or road maintenance problems for adjacent properties.**

Discussion: The plan contains policies relating to both on-site and off-site roadways that address these concerns.

Policy: **Extraction operations shall employ the best available pollution control technologies to avoid or reduce adverse environmental impacts to affected lands.**

Discussion: The Storm Water Pollution Prevention Plan administered by the Regional Water Quality Control Board requires that best management practices be used to minimize the potential for discharge of pollutants.

Policy: **The "Guidelines for Land Use Category Amendments" in Framework for Planning - Inland Portion, Part I of the Land Use Element gives priority to maintaining land use categories which allow resource extraction and which result in development that is compatible with resource extraction.**

Discussion: The plan will maintain the Agriculture and Rural Lands land use categories. In both of these mining is an allowed use.

C. NOISE ELEMENT

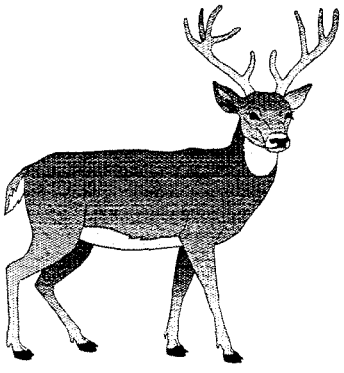
Many of the policies of the Noise Element do not apply to this operation since the applicant is not proposing new noise sensitive land uses or noise sources.

Policy: **New development of noise-sensitive land uses shall not be permitted where the noise level standards of Table 3-2 (of the Noise Element) are exceeded unless effective noise mitigation measures have been incorporated into the design of the development to reduce noise exposure to or below the levels specified in Table 3-2 (of the Noise Element).**

Discussion: The mining area is not located near any noise-sensitive land uses nor are any proposed in the vicinity. This plan proposes a transition area around the mining area within which noise-sensitive land uses would be required to mitigate impacts from the mining operation. Due to the remote location of the quarry, it is unlikely that any noise sensitive uses would locate nearby because the agriculture and rural lands land use categories allow only very low density uses and most of the area is steep and inaccessible.

D. CONSERVATION ELEMENT

The Conservation Element contains many sections. Below are the policies that are applicable to this plan.



1. Soil Conservation

Policy: **Removal of ground cover in advance of development should be controlled, and emergency measures to prevent soil erosion should be utilized during and immediately after construction.**

Discussion: Objectives to provide for adequate on site

drainage both during and after mining operations, and to reduce surface erosion and slipping of applied soils are contained in drainage portion of the Infrastructure Chapter of the plan. Also objectives to minimize adverse environmental impacts, including stockpiling of topsoil shall be minimized, and where stockpiling may be necessary, the topsoil shall be protected from erosion and maintained to protect its viability to support vegetation.

Policy: **The alteration of natural drainage patterns should be minimized and plans should include necessary construction to stabilize runoff and silt deposition.**

Discussion: The alteration of existing drainage patterns within the areas to be mined is unavoidable. However, this plan in the Mining and Reclamation Element sets forth policies and standards for slope stabilization, drainage, soil erosion control, and settling ponds to retain silt. Also the phasing of excavation into areas of limited size consistent with reasonable operating requirements limits exposure to stabilization and siltation problems.

Policy: **Measures to prevent soil erosion should be utilized during and after construction.**

Discussion: The Rocky Canyon Specific Plan contains policies and standards that specifically address potential soil erosion impacts. This plan proposes revegetation measures, drainage system standards, restrictions on slope gradient, soil placement techniques and grading standards to control soil erosion.

Policy: **A program of revegetation should be instituted**

Discussion: The Mining and Reclamation chapter of this plan proposes policies and standards for a revegetation plan that will return the site to a similar condition to what currently exists.

2. Plant Conservation

Policy: **Specific plans prepared by the County should include strict standards for protection of vegetation. Development plans submitted to the County should include detailed mapping of existing trees and plant cover, with sizes and types of trees generally indicated. Any areas of trees proposed for removal should be clearly shown on the development plan, with reasons given for unavoidability of this action.**

Discussion: While several botanical reports have been prepared for the quarry, the two that address this issue most directly are: Botanical Survey of Rocky Canyon

Quarry Site, San Luis Obispo County, CA, October 1992 to June 1993, Experimental Plots for Development of a Revegetation Plan for Rocky Canyon Quarry, San Luis Obispo County, CA and Botanical Report and Revegetation Plan December 1996 all prepared by V. L. Holland, PhD. These two reports along with the others prepared by the same author implement this policy statement.

Policy: **Conditional use permit (Development Plans) should include conditions for preservation of natural vegetation on the site wherever possible. Bonding requirements should be attached to subdivision and property permit approvals to assure compliance with clearing and tree preservation standards.**

Discussion: The botanical reports described for the policy above address a portion of this policy, while the second portion is administered by the annual updates to the financial assurance mechanisms required by the Surface Mining and Reclamation Act.

3. Wildlife Conservation

Policy: **Proposed roads and other facilities in rural areas of the County should be carefully evaluated for their potential effect on wildlife. New roads and facilities should be planned to avoid animal movement patterns and key habitat wherever possible.**

Discussion: The plan does not propose new roads in the locality other than those within the mining area for access by mining equipment. The plan does attempt to minimize impacts to wildlife and their corridors by providing revegetation on the finished slopes and reclamation measures to a near natural condition and by protecting the creek corridor through the property. The operator is not proposing to open the road. Any decision by the county to open or realign the road would likely be a separate decision from mining at this site.

Policy: **Classification and location of wildlife habitat should be established.**

Discussion: A wildlife survey of the proposed mining area was conducted prior to preparation of this plan. That study suggested standards for habitat restoration, (i.e. plant materials for revegetation, plant massing) which have been incorporated into this plan and conditions of approval for the first and subsequent land use permits.

4. Mineral and Energy Resource Conservation

Policy: **Population densities should be kept to a minimum in the area of adverse**

impact around established mining, quarrying, and drilling sites.

Discussion: The existing land use designations of Rural Lands and Agriculture are to be retained by the plan. These designations have the lowest density of any land use categories.

Policy: **Access roads to mining, quarrying and drilling sites should meet standards for conservation, dust control, and grading to minimize environmental disruption on public as well as private roads.**

Discussion: There are no new roads proposed other than those within the mined area for access by mining equipment. All roads on the site and the unpaved portion of Rocky Canyon Road and Halcon road are now watered and will continue to be watered as required by the proposed standards.

Policy: **Any mining procedures which would release toxic and offensive materials into the air and water should be prohibited. High standards should be strictly applied to mining-related industries contributing to air or water pollution.**

Discussion: There are no known toxic materials on the site but offensive material such as dust or silts are regulated by the Air Pollution Control District and the Regional Water Quality Control Board. Standards are proposed in the plan to control drainage and dust emissions that are not usually regulated by these agencies.

Policy: **Restoration programs should be insured for each new quarry or mining permit.**

Discussion: The Surface Mining and Reclamation Act (SMARA) requires that reclamation plans be prepared for each new or expanded mine. SMARA also requires that a financial assurance be posted with the county to assure reclamation in accordance with the approved reclamation plan.

Policy: **Property owners should be encouraged to restore abandoned mines and quarries, with particular attention to tailings. Owner incentives and restoration methods such as landfill should be considered.**

Discussion: SMARA requires that a financial assurance to guarantee reclamation in accordance with an approved reclamation plan be secured with the county. Tailings are not produced in this type of mining operation. All materials are sorted and used except for the topsoil that is to be stockpiled and redistributed at the time of restoration.

5. Archaeological Resources

Policy: **Site surveys are urgently needed so that development can be planned to avoid archeological sites and so that a research program can be formulated.**

Discussion: A surface survey and records search have been conducted on the project site and for the alternative access routes and no historic or prehistoric sites were identified.

Policy: **Government and private construction agencies dealing with major grading should advise and consult with designated archaeological resources personnel prior to construction.**

Discussion: This is answered in the above discussion.

6. Visual Pollution

Policy: **Abundant landscaping should be required in large developments, particularly parking lots, with the use of sufficient trees, ground cover, and screening materials.**

Discussion: Visual mitigation measures and the Revegetation Plan for the proposed action include visual screening of the quarry. The Visual Element of the Rocky Canyon Specific Plan contains objectives to minimize visual impacts from off-site locations during the life of the quarry operation, and emphasizes the need to achieve an ultimate condition which visually approximates and blends with the surrounding landscape as seen from off site locations.

The following elements were reviewed but contained no policies or standards related to mineral extraction or other aspects of the specific plan.

- Safety Element - San Luis Obispo County General Plan, June 1976
- Seismic Safety Element - San Luis Obispo County General Plan, March 1975
- Recreation Plan - San Luis Obispo County, January 1968
- Housing Element - San Luis Obispo County General Plan, May 1986

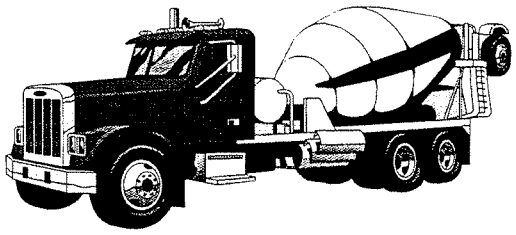
E. RELATIONSHIPS OF THE SPECIFIC PLAN TO SMARA

In 1975, the State enacted the California Surface Mining and Reclamation Act (SMARA)(Public

Resources Code Section 2761 (c)) which required the the State Geologist to identify and evaluate the mineral resources of the State, with particular emphasis on construction aggregates. The loss of regionally significant mineral deposits through poor planning and inadequate land use regulation was one of the issues that SMARA was intended to address.

Based on State Mining and Geology Board guidelines, the State Geologist in conjunction with the Office of Planning and Research delineated specific urbanizing regions, each defined by aggregate production and aggregate consumption being nearly equal within that region. As mandated by SMARA, a classification study for each region in which land was mapped and classified for the presence of significant sand, gravel or stone deposits, with emphasis on sites suitable as sources of Portland cement concrete (PCC-grade) aggregate, the most indispensable category of construction aggregate.

In 1989, land within San Luis Obispo County was classified and mapped on the basis of the presence of available aggregate deposits. Mineral Resource Zone 2 (MRZ-2) is the designation used for land containing or highly likely to contain PCC-grade aggregate. All of the Rocky Canyon Specific Plan area is within an MRZ-2 zone.



SMARA requires that local governments implement measures to ensure protection of significant resources. This includes management of land uses that may affect areas of statewide significance and measures emphasizing the conservation and development of identified mineral deposits. In 1991 the Board of Supervisors incorporated into Framework for Planning (Ord. 2498) provisions to address mineral extraction requirements and added language in the El Pomar-Estrella Planning Area report for the EX-1 designation to implement the SMARA Mineral Land Classification. The Department of Conservation had subsequently approved the county's amendments as meeting the requirements of SMARA. Another means of accomplishing this objective is through preparation of this specific plan.

SMARA (Section 2764(a)) requires local governments to amend the general plan or prepare a specific plan to "plan for future land uses in the vicinity of, and access routes serving" an existing or proposed surface mining operation when so requested by the mine operator or other interested persons. The intent is to avoid incompatible land uses near the surface mining operation, and to ensure that the trucks transporting aggregate do not significantly impact local traffic.

The Rocky Canyon Specific Plan is in conformance with and will further the regulations and procedures set forth in SMARA. SMARA and its related regulations are presented in Appendix C. Through the Rocky Canyon Specific Plan, and ultimately the Development Plan and Reclamation Plan, the County may apply more stringent requirements to the quarry operation than those outlined in SMARA.

In adopting the Rocky Canyon Specific Plan, SMARA (Section 2764(b)) requires that the County

make written legislative findings that future land uses and access routes will be compatible with the continuation of surface mining operations. The specific plan sets forth land use and circulation policies that will result in protection of the resource. Proposed land uses in the vicinity of the plan area are already severely limited. A transition area is also proposed to protect the quarry from inappropriate land uses being proposed on neighboring properties.

As required by SMARA the state Geology Board adopted regulations for the reclamation of mined lands. These regulations specify reclamation and performance standards for wildlife habitat, backfilling, regrading, slope stability and recontouring, revegetation, drainage, diversion structures, waterways and erosion control, prime agricultural land reclamation, other agricultural land, building structure and equipment removal, stream protection, including surface and groundwater, topsoil salvage, maintenance and redistribution and tailing and mine waste management. Some of those standards do not apply to this particular project due to the type of operation and its location. Applicable standards are addressed at different levels of specificity, as appropriate, either in the standards of the specific plan or as conditions of approval of the land use permit and in the applicant's Development/Reclamation Plan application.

If SMARA is amended, the specific plan should be reviewed to ensure that it is consistent with the amendment. If any specific plan objectives, policies, or standards conflict with a SMARA amendment, the specific plan must be amended to be consistent. SMARA requirements and regulations take precedence over the specific plan. Specific plan amendment procedures are outlined in Section VII.

F. RELATIONSHIP OF SPECIFIC PLAN TO THE COUNTY TRAILS AND NATURAL AREAS PLANS

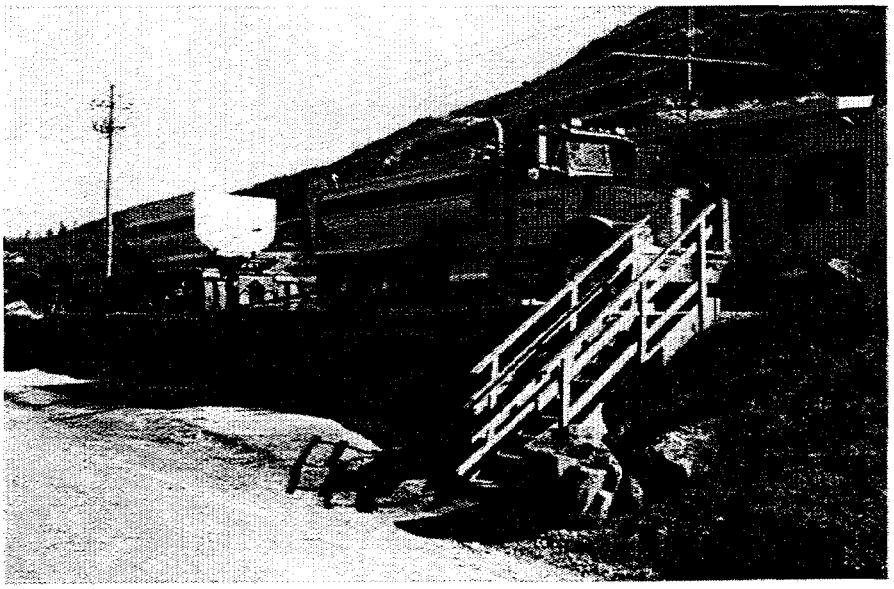
The County Trails Plan states that the proposed Granite Ridge Park and Trail system would have access from Rocky Canyon Road. As well, it identifies the northern portion of the area to include a trail route along Rocky Canyon Road to Creston.

The Natural Areas Plan identifies the management restrictions to limit access of off-highway vehicles and to restrict access during periods of extreme fire hazard within the proposed Granite Ridge Natural Park.

The issues in these two plans are addressed in the Circulation chapter through the standards contained in that chapter.

Chapter 4: LAND USE

A. PERMITTED LAND USE DURING QUARRY OPERATION



Truck on scale

During the life of the quarry operation, mining is to be the primary use permitted in the plan area. Only those uses that are compatible with mining or are incidental to mining should be permitted. As the lands are mined and reclaimed, vegetation and habitat will be restored to a similar condition to that which exists. Portions of the plan area not proposed for excavation will remain in their natural state. No change in use shall be considered until mining and reclamation are complete. At the conclusion of mining all land uses allowed in the Rural Lands and Agriculture land use categories may be permitted if it can be determined that mining the site is no longer practical.

The plan area is within an existing County EX-1 land use combining designation. The intent of this designation is to protect existing resource extraction areas and operations from encroachment by incompatible land uses that could hinder resource extraction, or land uses that could be adversely affected by extraction. The EX-1 designation was adopted pursuant to and as required by the Surface Mining and Reclamation Act of 1975 (SMARA).

The Land Use Ordinance sets forth the processing requirements, application content, permit requirements, plan review requirements and procedures, and reclamation plan requirements for use approval for the EX-1 designation. These requirements are outlined in Sections 22.07.040 through 22.07.052 and sections 22.08.180 through 22.08.192 of the Land Use Ordinance and are included in Appendix D of this document.

The Transition Area between the specific plan boundary and the mining area provides for greater review of some more sensitive land uses. This area is not likely to be developed due to inaccessibility and steep slopes but by raising the level of permit review to a discretionary permit there is an opportunity to avoid or reduce conflicts between the mining and other land uses.

B. LAND USE IMPLEMENTATION

I. OBJECTIVE

Restrict land use on proposed mining land so as not to preclude extraction.

POLICIES

1. Mining Area Land Uses

Allow only those land uses on the site that are consistent with mining.

STANDARDS

1.1 Limitations on Use - Mining Area

For properties where mining is approved, uses identified in Table O, Part I of the Land Use Element as "A" or "S" uses that may be allowed include: Mining, caretaker residence, concrete products, paving materials, pipeline and transmission lines.

II. OBJECTIVE

Prevent conflicts with land uses adjacent to a mining operation.

POLICIES

2. Transition Area

A transition area is proposed to protect mining operations from future incompatible land uses on adjacent lands. The transition area is located between the mining area boundary and the plan area boundary shown on Figure 2-3. Within the transition area, the county shall provide notice to property owners of the mine when requests for development are submitted.

STANDARDS

2.1 Limitations on Use - Transition Area

Within the transition zone all land uses allowable by Table "O" are permitted but those uses that are identified in the Noise Element as sensitive receptors are required to comply with Policy 3.3.4 of that element.

2.2 Permit Requirement

Minor Use Permit is required for all residential uses, and bed and breakfast facilities.

2.3 Finding

Within the Transition zone, discretionary approvals shall require a finding for approval that the proposed use is compatible with current or future mineral extraction operations within the adjacent mining area. The proposed use will not adversely affect the continuing mining operation or expansion of the mining operation.

2.4 Conditions

During the consideration of any discretionary approval of uses that are potentially incompatible with an adjoining mineral extraction operation, conditions may be placed which include, but are not limited to, the following:

- Relocation and/or reorientation of a proposed use on the site.
- Special construction techniques such as acoustical insulation, limitation of window area.
- Fencing, screening, berming, and landscaping.

The use restrictions may be removed once mining and reclamation operations are complete.

POLICY

3. EX-1 Combining Designation

Protect availability of the resource through the ordinance and general plan provisions of the EX-1 Combining Designation.

PROGRAM

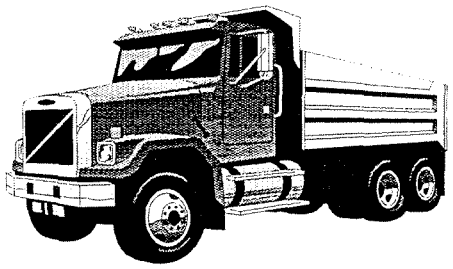
3.1 EX-1 Combining Designation

The County shall maintain this designation on the plan area throughout the life of the quarry operation.

Chapter 5: CIRCULATION

A. EXISTING OFF-SITE CONDITIONS

The Rocky Canyon Quarry is an existing mine and the operator is proposing to operate the mine in accordance with the California Department of Mines and Geology (CDMG). Therefore, traffic increases may result as mining operations increase. Hours of operation are proposed to increase from 8:00 a.m. to 5:00 p.m. Monday through Saturday to 6:00 a.m. to 8:00 p.m. Monday through Saturday. Trucking hours are to remain from 7:00 a.m. to 5:00 p.m. Monday through Friday.



The project currently creates traffic impacts on the nearby street system that are outside of the specific plan boundary. The extent and level of impacts is not expected to change with the proposed expansion of the project. This is because the volume of process material is not proposed to be changed.

The amount of quarried material will vary from year to year, depending on demand. With each truck carrying approximately 20 yards and each cubic yard weighing about 2.2 tons, a total of 36,580 truck loads are hauled per year. This is an average of about 142 truck loads per day which is 284 one-way truck trips.

Looking west at Santa Barbara Road & El Camino Real intersection

Currently, trucks to and from the south on Highway 101 use the Highway 101/Santa Barbara Road interchange. Trucks to and from the north on Highway 101 use the Highway 101/Santa Rosa Road interchange even when the Santa Barbara Road interchange is a more direct route. This is because of deficiencies along the route to the Santa Barbara Road interchange, primarily at the Santa Barbara Road/Viejo Camino intersection as well as along

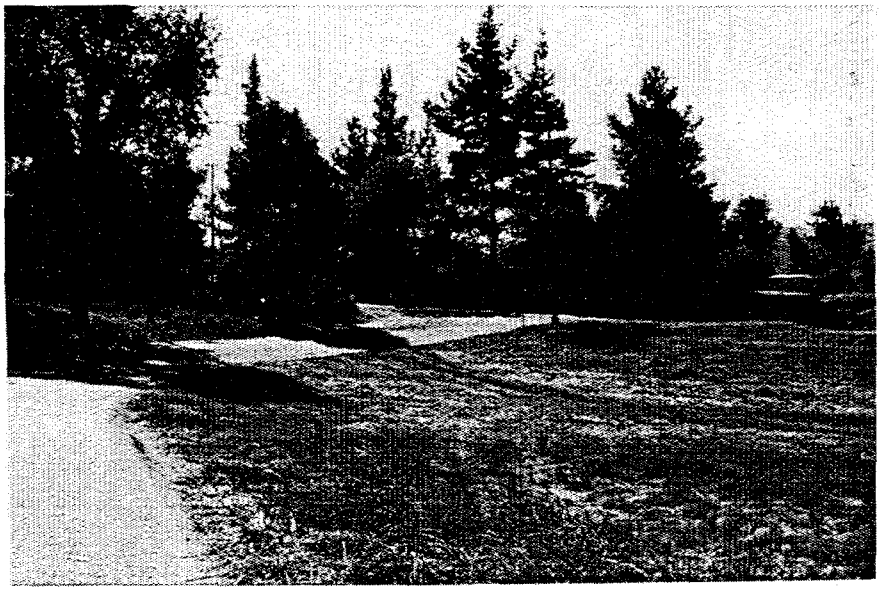
Santa Barbara Road and Viejo Camino. Routes are shown on Figure 5-1.

Because the project will not result in a change in traffic generation from what is currently experienced, the traffic analysis prepared for the EIR identified current levels of impacts that are expected to continue with the project. The intersection of Halcon Road and Viejo Camino has been improved by the operator as a part of the last permit approval. The property owners have agreed to participate in a future assessment district. The district would provide a mechanism for each development in the area to contribute its pro-rata share of necessary road improvements. One of those improvements may be the future construction of an extension of Halcon Road between Viejo Camino and El Camino Real as well as channelization improvements at the El Camino Real/Santa Barbara Road intersection.

Off-Site Highways, Streets and Roads

Streets and highways included in the traffic analysis for the Environmental Impact Report are as follows.

Curbaril Avenue is a two lane collector street that extends from west of Highway 101 through a residential neighborhood east of El Camino Real. Most of the roadway has rural characteristics. The 1980 County General Plan designated Curbaril Avenue as an arterial. The recent Circulation Element Update reclassifies this road as a collector street. Curbaril Avenue provides access to Highway 101 at a diamond interchange immediately west of El Camino Real. It has a 24 foot to 26 foot pavement width between El Camino Real and Sycamore Road.

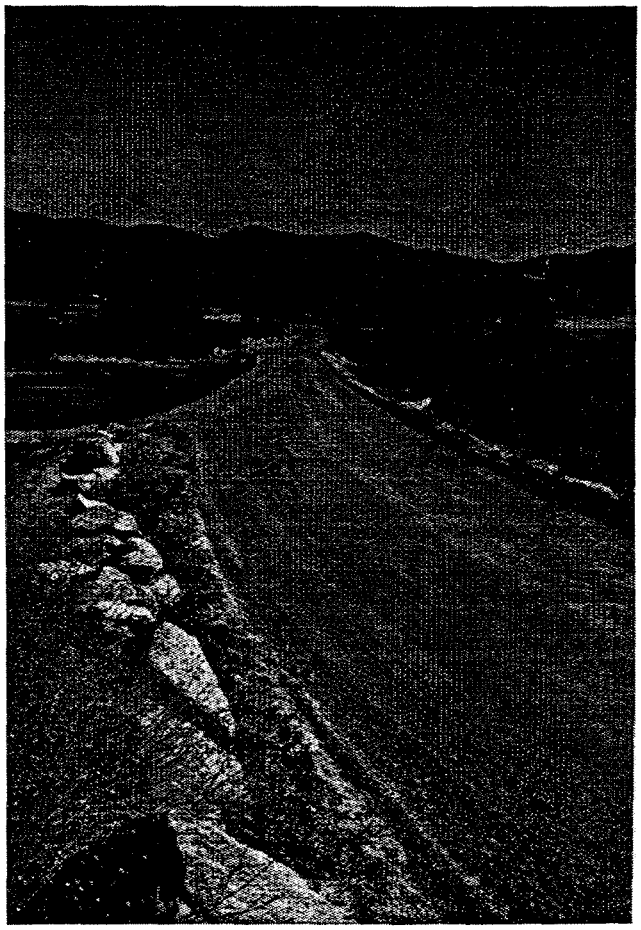


Halcon Road/Viejo Camino intersection prior to the realignment in 1997 by the operator of the Rocky Canyon Quarry .

El Camino Real is a four lane arterial with left turn channelization from north of downtown Atascadero to just north of Viejo Camino. It then narrows to a two lane rural highway and extends south of Atascadero to provide access to Santa Margarita. The speed limit varies

from 35 miles per hour along the four lane section to 55 miles per hour south of Atascadero.

Halcon Road is a two lane collector road with a 20 foot pavement width that extends east from Viejo Camino. It crosses the Salinas River over a series of pipe culverts. This allows the Halcon Road to remain open during low-flows in the Salinas River. However, when flow rates in the river are high, Halcon Road is flooded and is impassable. During the majority of the year when the crossing is passable this road provides the primary access for the Rocky Canyon Quarry. No development currently exists along Halcon Road.

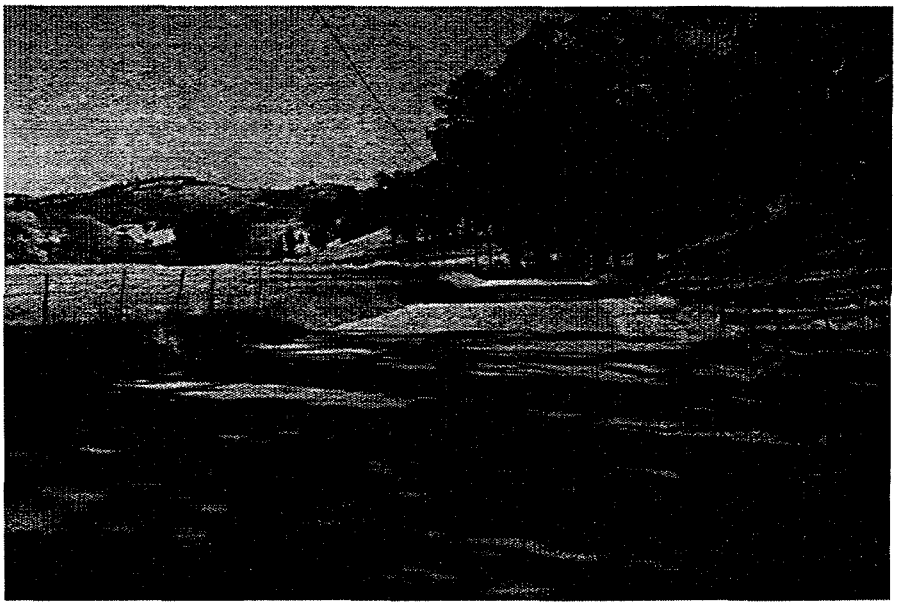


Halcon Road, Salinas River Crossing, 1995

Morro Road is a two lane arterial with left turn channelization west of Highway 101. It has an interchange with Highway 101. It is also designated as a portion of State Route 41 and provides access between the Cities of Atascadero and Morro Bay.

Rocky Canyon Road is a two lane rural road that runs from Templeton Road to the rock quarry. It has a 20 foot pavement width with no shoulders. Several residences and small businesses are located along Rocky Canyon Road from Templeton Road to Halcon Road. For discussion of Rocky Canyon Road through the quarry, please refer to On-site Roadways.

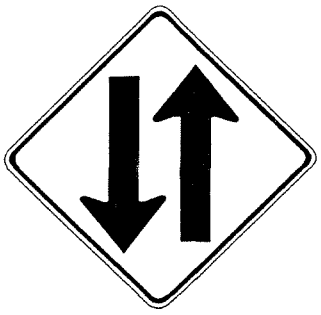
Santa Barbara Road is a two lane rural road that extends from west of Highway 101 across El Camino Real to east of Viejo Camino. It provides the primary access to and from Highway 101 for the unincorporated areas south of the City of Atascadero. Its pavement width between Highway 101 and Viejo Camino is about 24 feet with no shoulders.



Halcon Road west of Salinas River, 1995

Santa Rosa Road is a two lane collector street that extends from El Camino Real west across Highway 101 into a residential area. A diamond interchange is provided at its junction with Highway 101. It is a primary access to Highway 101 for Rocky Canyon Road traffic to and from the north.

Sycamore Road is a two lane collector street that extends from Capistrano Avenue to Templeton Road. It is designated as a portion of State Route 41. Its bridge over the Salinas River was damaged during the 1995 winter storms and was replaced with a temporary bridge. This is one of the main reasons for CalTrans implementing the Highway 41 Realignment project through Atascadero. A new river crossing will be provided just south of Capistrano Avenue. Highway 41 will be constructed as an extension of Morro Road from El Camino Real to Templeton Road. The Highway 41 Realignment will be constructed as a four lane arterial with median two-way left turn lane between El Camino Real and Santa Isabel Avenue. A two lane arterial with left turn channelization at most intersections will be provided between Santa Isabel Avenue and Templeton Road.



From El Camino Real to Templeton Road the Highway 41 realignment will be constructed as a four lane arterial with median two-way left turn lane between El Camino Real and Santa Isabel Avenue. A two lane arterial with left turn channelization at most intersections will be

provided between Santa Isabel Avenue and Templeton Road.

Templeton Road is a two lane rural road, a portion of which is also designated State Route 41. It extends from Templeton to Rocky Canyon Road.

Viejo Camino is a two lane collector street that extends from El Camino Real across Santa Barbara Road and back to El Camino Real. It has a 22 foot pavement width between El Camino Real and Santa Barbara Road.

Highway 41 is a two lane State Highway. It begins at U.S. 101 and extends easterly from the City of Atascadero and connects to State route 46 near Shandon.

B. OFF-SITE HAUL ROUTES

Figure 5-1 shows the primary haul routes approved for trucks traveling from the plan area to northbound and southbound Highway 101. Trucks destined for northbound Highway 101, which account for 85% of truck traffic in 1995, enter the highway at Santa Rosa Road; the southbound trucks enter at Santa Barbara Road. Trucks traveling to and from the quarry for northerly hauls on Highway 101 are prohibited from using the Santa Barbara Road route from Halcon Road to the highway because of unsatisfactory intersection and turning conditions which could cause delays to other vehicles as well as safety problems.

C. OFF-SITE ROUTE IMPLEMENTATION

III. OBJECTIVE

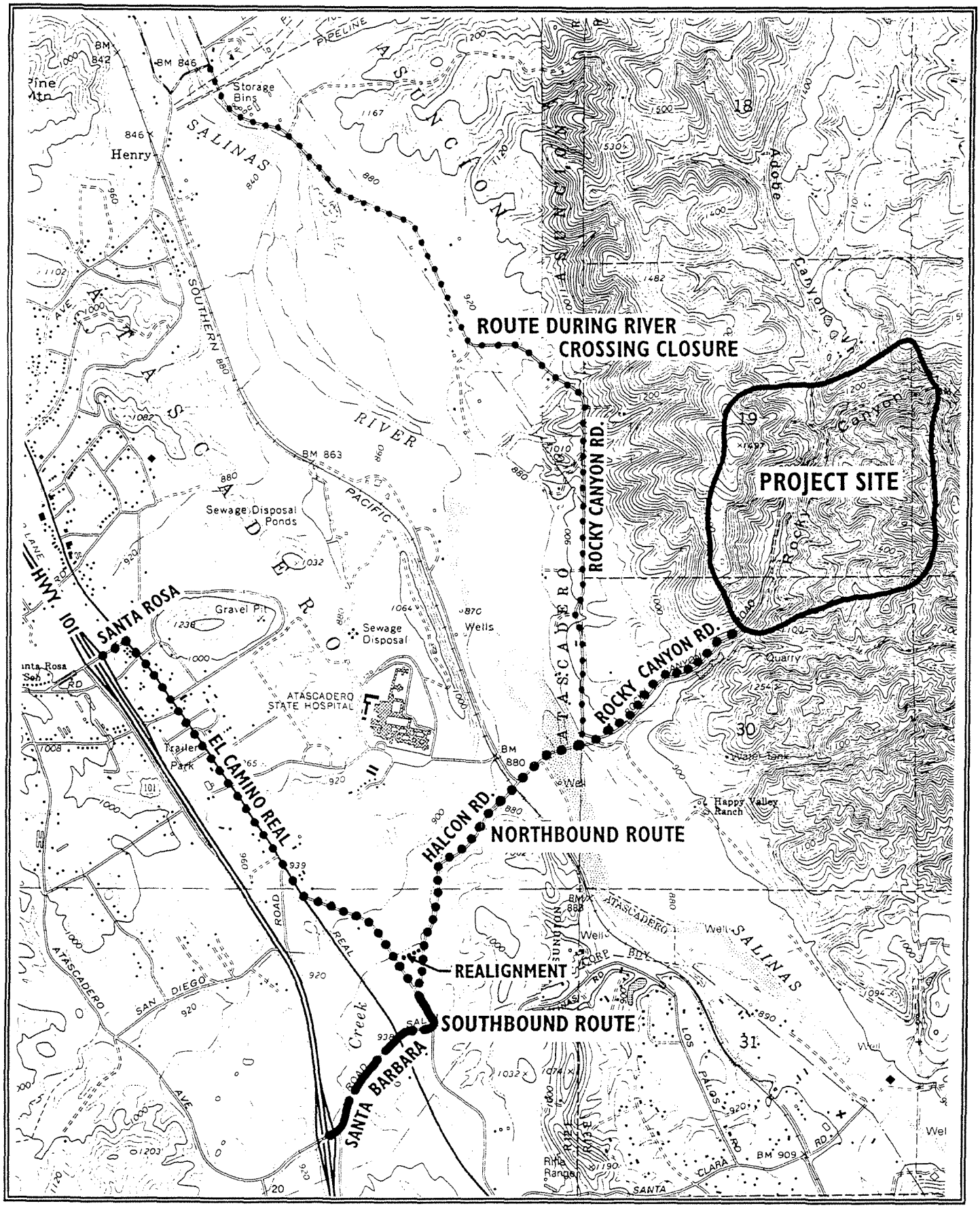
Minimize conflicts with local traffic and enhance off-site haul routes.

POLICIES

4. Off-site Route Criteria

An acceptable off-site haul route should be utilized which can meet the following criteria:

- Provide for adequate sight-distances
- Minimize road gradients
- Minimize intersection safety hazards
- Minimize turning movements for trucks
- When any new improvements are proposed for haul road, the road must be adequately designed and constructed to minimize maintenance costs.

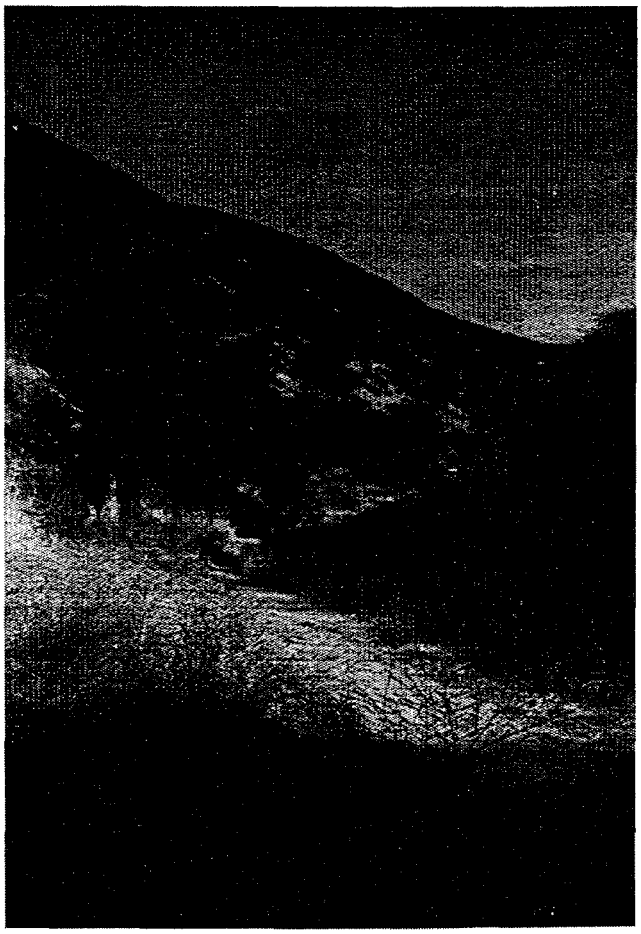


SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN OFF-SITE HAUL ROUTES	FIGURE 5-1

D. ON-SITE ROADWAYS

Rocky Canyon Road that traverses the site is both an on and off-site road. In the quarry the road is a dirt road and the road continues through the quarry to Highway 229 south of Creston. However, as it leaves the quarry to the east, the road is impassable by automobile and is currently being used as a pedestrian, bicycle and equestrian trail.

Rocky Canyon Road was accepted as a public road and brought into the County Maintained Road System in 1921 between the Salinas River and what is now State Route 229. In 1969, the Board of Supervisors directed closure of 2.2 miles of the road. The road was taken out of the Maintained Road System and closed due to the unsafe conditions and the County's financial inability to reconstruct the road at that time. In 1970, the Board amended that closure to open the road to the north line of section 30 (that point being at the southwest corner of the quarry). Therefore Rocky Canyon Road is still a public road. At the request of the public equestrian groups and the Sportsman Association, the Board left Rocky Canyon Road open to equestrian, pedestrian and bicycle travel north of the quarry.



Rocky Canyon Road east of the quarry, 1995

The status of Rocky Canyon Road could change during the life of this plan. If the county obtains funding for road improvements in the future, the road could be improved to allow vehicular travel. The use of this road could greatly reduce travel time between Creston and south Atascadero. For this reason current standards that apply to the road presently would not be appropriate if the road is improved.

In the mining area, there are roadways that provide access to the mining area that will change over time as the mining progresses from one area to the next. While there is no history of off-road vehicular use on the mine roads, there is a need to be certain that uncontrolled use of mine roads does not occur. Two concerns with use of mine roads, by other than authorized personnel, are safety and the need to regulate access to the more sensitive natural lands to the south containing both private lands and the Granite Ridge Natural Area. There is also a need to review where and how roads are placed on the property for the mine. Roads that extend beyond the mine area can cause

additional unanticipated impacts on this and adjacent property.

At present the county road is located directly adjacent to the processing area. For safety reasons it may be best to provide an alternative trail to allow pedestrian, equestrian and bicycle traffic an alternative route. Given the narrow confines of the canyon and the different locations of mining over time, it may be necessary to change the location of any alternative routing over time.

In addition the mine roads could be used for non-vehicular access into adjacent lands in the future. The County Trails Plan and Natural Areas Plan states that the proposed Granite Ridge Park and Trail system would have access from Rocky Canyon Road. Whether assess through the quarry properties is the best opportunity will have to be assessed at a later date, if access through the adjacent land to public lands is possible. While it may not be advisable during the mine operation or even after, it is possible that the quarry could be the best or only access potential in the future, thus this option should be preserved.

The use of any access from Rocky Canyon Road could only be obtained with the property owner's consent and would have to be reviewed for type, dates and hours of entry, maintenance, safety and feasibility of routes.

E. ON-SITE IMPLEMENTATION

IV. OBJECTIVE

Provide for adequate on-site circulation during the life of the quarry.

POLICY

5. On-site Roads

Access to working areas, mining equipment, finished benches and the processing plant will be provided by a combination of existing and proposed unpaved roads. The provision of access roads shall be governed by the following standards:

STANDARDS

5.1 Access roads shall be placed within areas that are being mined or proposed to be mined in the future to allow equipment to reach working areas.

5.2 On-site roads shall provide equipment access to the finished slope benches for maintenance purposes.

5.3 Prior to establishing new access roads or extending existing roads the quarry operator shall provide plans indicating the location and size of any roads outside of any area to be mined

to the SMARA inspector for approval. Such plans may require a separate grading permit.

V. OBJECTIVE

Retain the recreational use of Rocky Canyon Road through the quarry.

POLICY

6. Public Access Through Quarry

Provide appropriate, continuing and safe public access through the quarry.

STANDARD

6.1 Equestrians, pedestrians and bicycle access by the public is to continue to be allowed through the quarry on Rocky Canyon Road except as provided in standard 7.2.

6.2 To avoid safety issues the quarry operator and property owner may offer to dedicate, to the county, an alternative trail easement rather than continuing to allow passage through the processing area. The trail would allow equestrian, pedestrian and bicycle access through the quarry property.

The alternate route must be agreed upon by the quarry operator, land owner(s) and the Parks and Open Space Division of the Department of General Services. The quarry operator is responsible for construction and maintenance of the alternate trail route during the operation of the mine.

VI. OBJECTIVE

Prevent unauthorized vehicular access to sensitive lands to the south of the project site but provide for the possibility of establishing a safe pedestrian, equestrian and bicycle access to these lands.

Access control

POLICY

7. Mine Access

Provide for access to the mining area by authorized vehicles and equipment but prevent access by other vehicles to the mining areas and lands lying outside of the project site that could be accessed by those roads.

8. Access to Adjacent Lands

Provide for the possibility of future pedestrian, equestrian and bicycle access to the lands beyond the quarry when and where it is appropriate.

Any access must be agreed upon by the quarry operator, land owner(s) and the Department of General Services.

Chapter 6: VISUAL AND NOISE

A. VISUAL SETTING

Rocky Canyon Quarry is located in a narrow, isolated canyon which, to a great extent, is hidden from off-site public view. Views of the Plan area from off-site locations are generally confined to the upper elevations by the ridges on either side of the entrance to Rocky Canyon. There are numerous existing road, fire break, and excavation cuts along the hills to the north and south outside the Plan area that are visible, and the contrast between light colored soil or rock and the darker vegetation is quite noticeable. The upper elevations are primarily visible from a short stretch of Highway 101 in the vicinity of San Diego Road. The site is largely hidden from view from other locations by foreground hills, structures, and trees. The operator is taking advantage of the existing topography of the area for the expansion of the quarry so that less of the quarry face is presented to off-site views.

B. VISUAL PROTECTION DURING MINING OPERATIONS

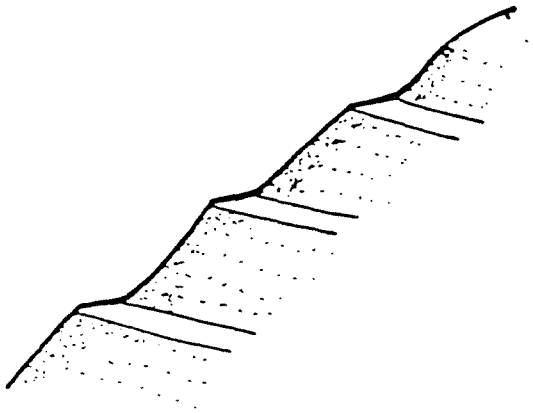
The visual analysis conducted on the quarry as a part of the environmental review concluded that the visual character of the site is moderately sensitive due to its visibility primarily from Highway 101 but also, to a more limited extent from some other roads in the area. The amount of time that the quarry is visible and its location outside of the primary view corridor of the highway user limits the visual impact of the quarry.

The visual analysis suggested measures that should be incorporated to further reduce the visual impact of the quarry. These measures are contained in the policies below.

One measure to reduce visual impacts includes planting or "rounded off" edges , shown in Figure 6-1. Darker plants such as some larger shrubs, digger pines or oak trees help obscure the skyline, continue the color of the vegetation found on adjacent native slopes and soften the landforms into a more natural configuration. This approach helps to reduce unnatural contours thus making the final profile blend in better with surrounding landforms.

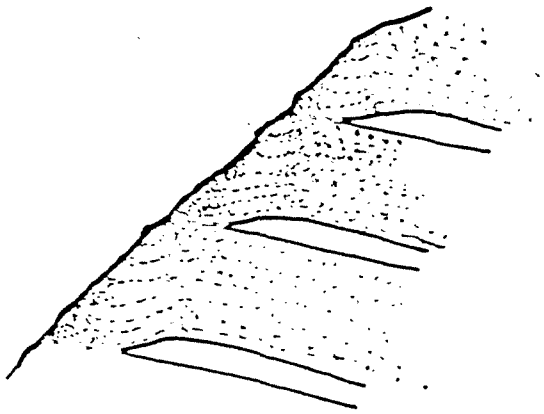
Another possible method of reducing visual impact for areas where revegetation has not proven effective, is the chemical weathering of rocks so that it appears as a natural rock out-cropping that is in context with its surroundings. The area for which this method is used should to be limited so as not to be overly apparent.

UNACCEPTABLE

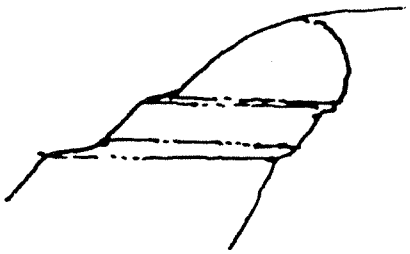


SKETCH A
Ridge Profile with Terraces
(unnatural, man-made forms)

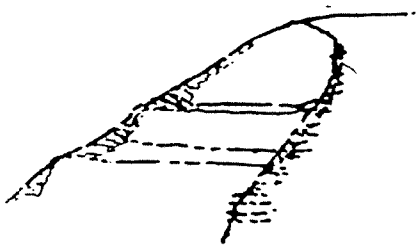
ACCEPTABLE



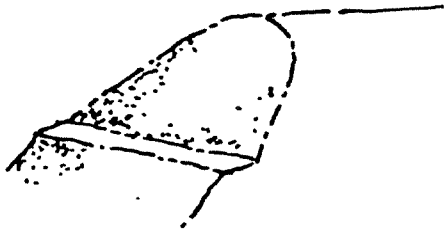
SKETCH B
Ridge Profile with Natural Edge
(avoids terraced look at visible edges)



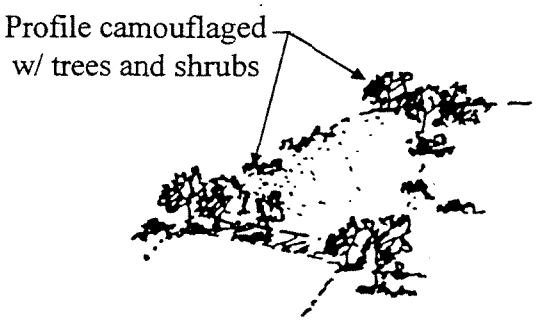
SKETCH C
Cut Slopes with Hard Edges



SKETCH D
Rolled cut edges when needed

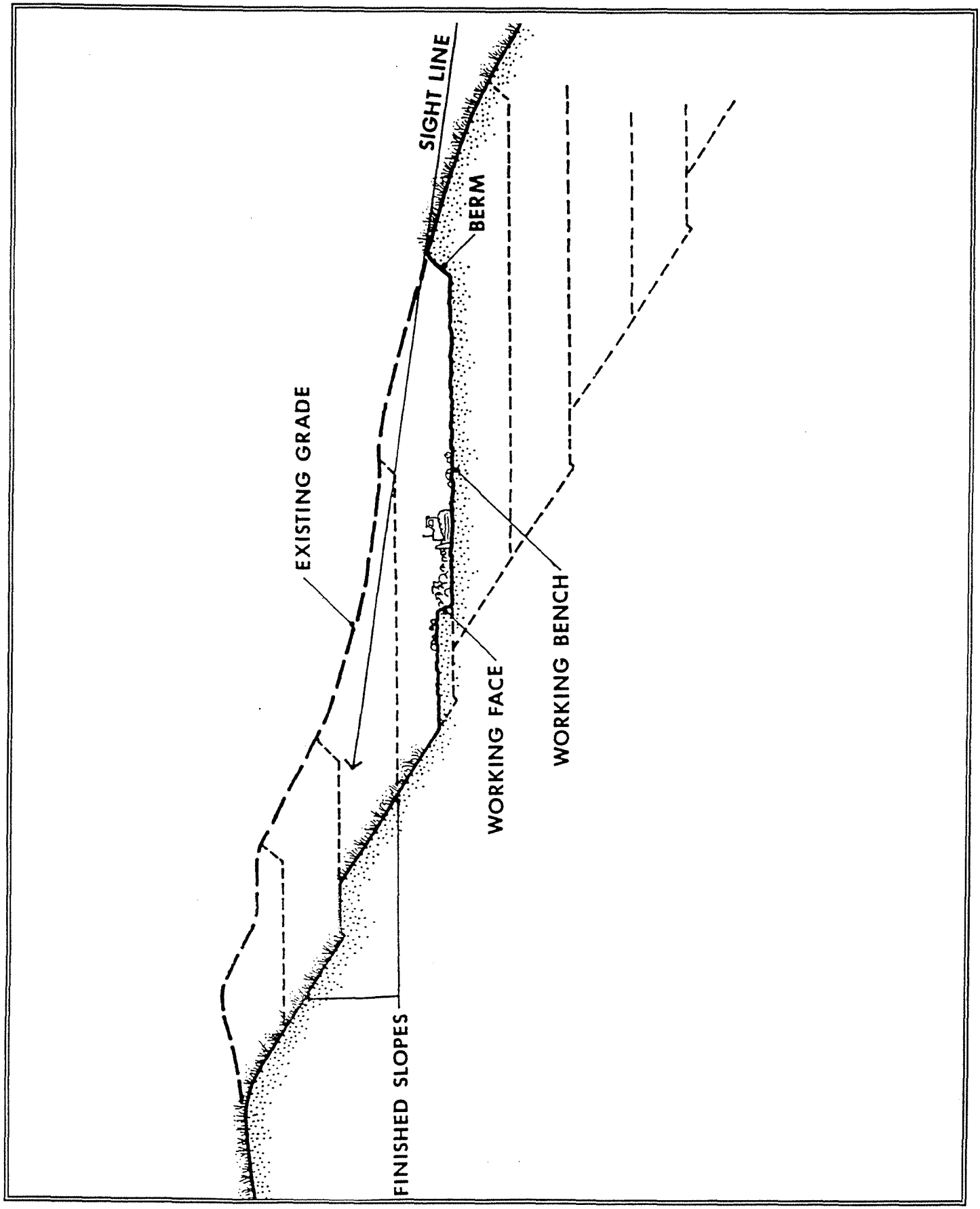


SKETCH E
Grass revegetation



SKETCH F
Grass with large shrubs and trees

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN VISUAL MITIGATION (Source: MORRO GROUP)	FIGURE 6-1



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN VISUAL MITIGATION STRATEGY 2 (Source: MORRO GROUP)	FIGURE 6-2

C. VISUAL IMPLEMENTATION

VII. OBJECTIVE

Minimize landscape disturbance visible from off-site locations during the life of the quarry operation.

POLICIES

9. Berm as Visual Barrier

Where excavation faces the view corridor, a berm shall be retained along the foreground edge of the working shelf as necessary to conceal the operating equipment and working face from off-site view. The use of berms as visual screens is illustrated in Figure 6-2.

10. Ridges as Visual Barrier

Ridges shall be used whenever possible to conceal off-site views of excavation activities. Ridges shall be left in place while mining proceeds in the areas behind them for as long as practicable.

VIII. OBJECTIVE

Achieve an ultimate condition which visually approximates and blends in with the surrounding landscape as seen from off-site locations.

POLICIES

11. Curvilinear Shaping

Curvilinear shapes shall be incorporated into the final land form in order to avoid a mechanical/straight edged appearance or other methods employed to reduce the visibility of the mine off site. Figure 6-1, is a guide for interpretation of curvilinear shapes that shall be incorporated into the final landform.

12. Visual Screening

Prior to commencement of Phase 2 mining activities of the Specific Plan, the applicant shall demonstrate that the revegetation measures have been successful in screening mining activities from view of the five key viewing areas indicated in Figure V-25 in the EIR. Phase 2 may not commence until the Department of Planning and Building has determined that the screening will be adequate, either by vegetation or other means. The reclamation of exposed slopes shall be measured by meeting the requirements of the State Mining and Geology Board Reclamation Regulations, Article 9, Section 3705,

Performance Standards for Revegetation and the standards contained in the approved revegetation plan.

STANDARDS

11.1 Where the original ridge meets the new ridgeline rounding of the original ridge tops shall be required to avoid sharp "man-made" angles or "flat tops" that will silhouette against the sky.

11.2 To avoid linear rows of vegetation along each bench which accent the unnatural land form of the quarry terraces, vegetation shall be planted in a manner which represents the undisturbed vegetation of the surrounding hillsides.

D. NOISE

Noise generated by the project consists primarily of transportation noise generated by trucks making hauls from the site; from equipment operating at the site including a loader, rock crusher and wash plant; and by occasional blasting to loosen rock to be mined.

The operator will be maintaining the same extraction quantity as permitted in the past. This will maintain the number of truck trips at current levels; consequently there will not be an increase in noise from new truck trips. The policies in the Noise Element address only new transportation noise sources thus the project as proposed is consistent with the Noise Element (Policy 3.3.2).

Noise from equipment operating at the quarry could affect the adjacent vacant properties as far as 2,000 feet from the source. Noise from the quarry is mostly blocked by the surrounding ridges. When equipment is located at the higher elevations on the easterly part of the mining area (generally above the 1,500 foot elevation) and in the northerly portion of Phase I at the northwest corner of the site, the noise can travel toward areas on adjacent properties.

In areas between the mining and 100 feet beyond the tops of the ridges (that constitutes the specific plan boundary), standards require that a discretionary permit be obtained for noise sensitive uses as defined by the Noise Element. This review provides an opportunity to address noise issues prior to a sensitive receptor being constructed. Additional noise mitigation measures can be required of the use so that it meets the Noise Element requirements. However, it is unlikely that these areas will be developed due to difficult access and steep terrain.

The remaining area outside of the Specific Plan boundary, but up to 2,000 feet from the noise source, is not likely to be developed during the first phase of mining. This is due to the difficult topography and the inaccessibility of preferable building sites on the large adjacent parcels.

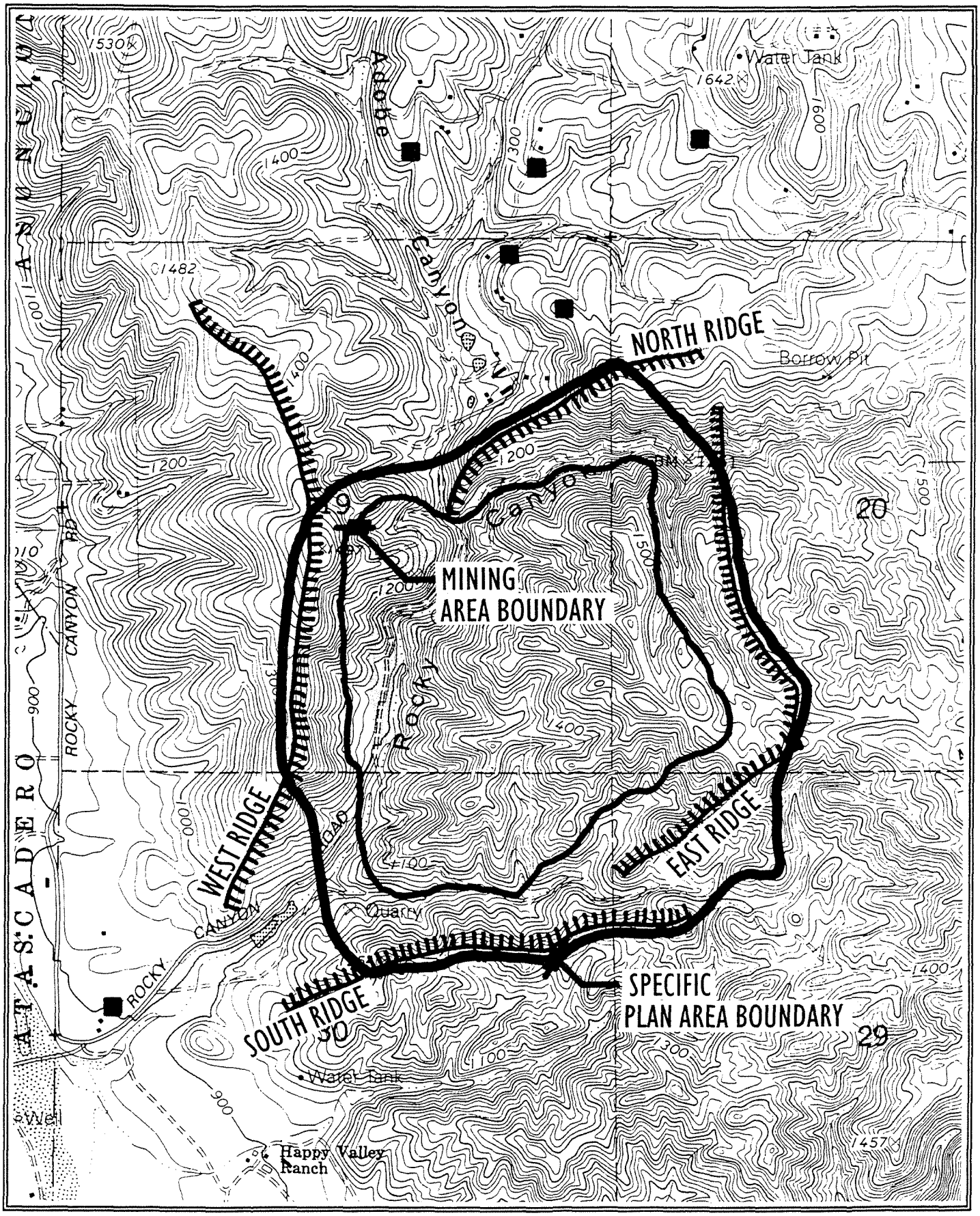
Phase I of the project is in compliance with the Noise Element provided that policy 3.3.5 c) is waived as provided within that policy:

"Noise levels shall be reduced to or below the noise level standards in Table 3-2 where the stationary noise source will expose vacant land in the Agriculture, Rural Lands, . . . land use categories to noise levels which exceed the standards in Table 3-2.

This policy may be waived when the Director of Planning and Building determines that such vacant land is not likely to be developed with a noise-sensitive land use."

In subsequent phases, the noise issue should be reexamined for conflict between the existing quarry and future development. At that time, many factors may have changed such as alterations to landforms, new and perhaps quieter equipment, new noise reduction technologies, and perhaps different mining techniques. Also, strategically placed partial earth berms, located near the noise sources can block sound toward noise sensitive development.

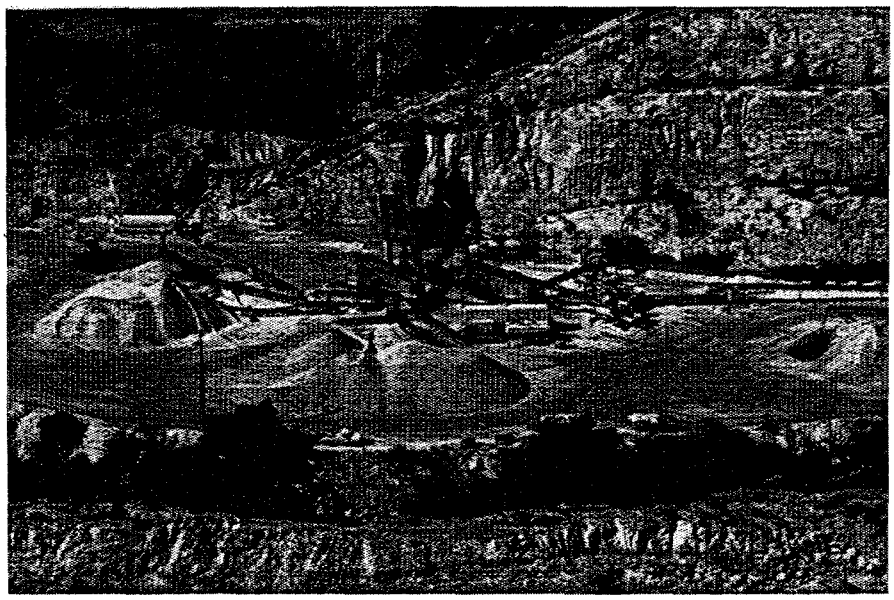
The greatest potential for noise to affect development off-site is during the first phase of mining. This potential is due to the distances from property lines and the location of mobile equipment high in the mine reducing the ability of the ridges to block the noise. The provisions of the land use ordinance relating to mining and SMARA require that the resource be protected from uses that may conflict with the mining of this resource. The Noise Element requires that noise sensitive uses provide for noise reduction when such development occurs.



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING	ROCKY CANYON SPECIFIC PLAN LOCATION OF SIGNIFICANT ■ RECEPTORS & RIDGES	FIGURE 6-3

Chapter 7: MINING AND RECLAMATION

The following objectives, policies and standards provide the basic framework for mining and reclamation in the Plan area. They are intended to implement the goals of the Specific Plan and mitigate potential adverse impacts generated by mineral extraction. The operator applying for approval of a use permit must submit a mining and reclamation plan that adheres to and is in conformance with these standards.



Wash plant

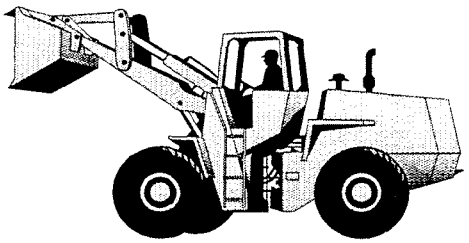
It is not the purpose of this Plan to establish all of the conditions for mining and reclamation. The mining and reclamation plan should specify more detailed and exact conditions, consistent with the policies and standards presented herein. Additional requirements for inspections, permitting, financial assurance, and monitoring are presented in Section IX of this Plan.

A. PROPOSED MINING

Rocky Canyon Quarry is at the northwestern limit of a very large granitic formation that is suitable for construction aggregates. The vast majority of these aggregates are not available for mining at this time. The proposed project is to substantially expand the permitted areas of excavation at the quarry so as to more fully utilize this important resource.

Changes proposed are primarily to provide for access to future reserves of raw material beyond the limited amount presently permitted at the site. The applicant is not proposing any change in the capacity or method of operation of the processing plant. The only equipment modification will be to locate a portable primary crusher to reduce oversize boulders at the unit being excavated and a conveyor to transport the raw material from that remote working site to the plant.

As shown on Figure 7-1, excavation is proposed to occur in two locations separated by the creek. Area 1 on the west side of the creek contains 12 acres and Area 2 on the east side contains 235 acres, for a total of 247 acres to be mined. The outer edges of those areas of excavation are the limits of the project for which approval is requested.



There are currently approximately 35 acres disturbed on the site, not including roads and fire trails. The relatively level plant site covers 12 acres and although it is included as part of the project area, it will not be further disturbed except for final cleanup. However, it will ultimately be revegetated, bringing the total area to be reclaimed by revegetation up to 259 acres. With the exception of access roads, all other areas disturbed by previous mining activities -- approximately 18 acres -- are within the proposed areas of excavation and will be recontoured as part of the mining plan.

The techniques currently used for excavating and for localized handling of raw material will not change in any major way unless significant improvements in equipment become available.

As in the past, stripping of vegetation and overburden will be the first steps in opening up a new area for excavation, but with special emphasis in the future on storage of these materials for reuse. Ripping by bulldozer will continue where the rock is sufficiently fractured, and controlled blasting will be used where the less-weathered rock has to be loosened.

As each new area is opened up, mining will begin at the top. A working bench will be formed that is large enough for equipment to maneuver on and will gradually increase in size as it is lowered. A berm will be retained along the edge of the working shelf where necessary to conceal the operating equipment and working face from view.

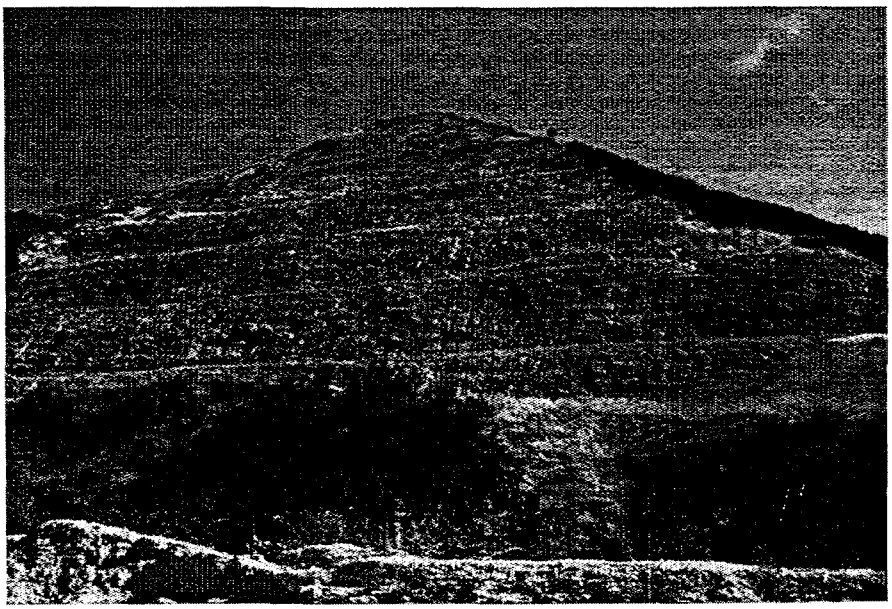
To gain access to the unexcavated rock, a bulldozer is used to strip vegetation and overburden wherever feasible. The vegetation is broken up and pushed to an inactive area where it eventually decomposes or is used as mulch during revegetation. Overburden is stockpiled at each mining level to be redistributed onto finished slopes prior to revegetation.

Where the granite is weathered and sufficiently fractured, a bulldozer can break up the rock by ripping. When the rock is too hard to be ripped, it is first loosened by blasting. A track-mounted drilling machine is used to set charge holes that are loaded with explosives that are remotely detonated. This is a common practice when mining this type of material.

Loosened rock is then pushed from the working area and shoved over the edge of the working bench by a bulldozer to cascade down to the lower crusher level. A front-end loader scoops up the loose material and moves it to the primary crusher, the first place where the raw material is reduced in size to begin its journey through the processing plant.

At the processing plant rock is crushed, washed, sorted, stockpiled and distributed at the plant site. The plant equipment, related facilities, circulation area, and stockpiles occupy a level shelf west of the creek and road. The office and scale are at the southern end of this area, near the entrance to the quarry. Major features of the processing plant are identified on Figure 7-2.

1. Interim vs. Final Excavation



Existing 1:1 slopes, 1995

For a variety of reasons, working areas will be limited in size as excavation progresses through the site. One of the principal reasons is to retain the ridges as visual barriers for as long as possible utilizing stable, interim slopes which will be removed during a later phase of mining (see Phasing plans). These interim slopes, which generally are oriented away from or are concealed from view, will have temporary 1:1 cut slopes, with 15-foot-wide benches at 50-foot vertical spacing.

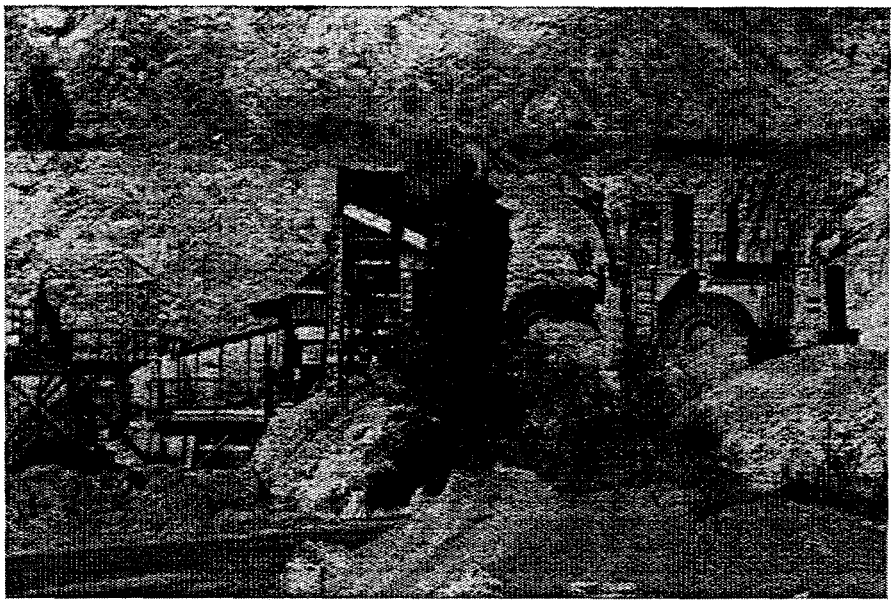
All excavated areas will ultimately be left with final 2:1 cut slopes, with 25-foot-wide benches at 50-foot vertical intervals. Benches of this width will be wide enough to have a drainage ditch at the toe of the slope and still have sufficient space for track-propelled maintenance equipment to turn around without damaging the ditch.

The large flat areas that ultimately will be created at the quarry floor will be separated from the benched slopes by channels and wide catchment basins (Figures 7-3 and 7-4). These basins will collect water from the slopes as well as runoff from the flat areas, and will transport the water to settling ponds for clarification before discharge into the creek. The basins will also act as a safety buffer from debris or rocks which might come off the slopes.

Cross Sections A-D in Figures 7-3 and 7-4 illustrate the existing grades as well as the ultimate configuration of the quarry. The lines through which the four sections were cut

are shown on Figure 7-1.

2. Conveyor and Crusher



Loading the primary crusher

Under the expanded mining plan, excavation will mainly occur at locations that are far from the processing plant as well as much higher in elevation. This will make it impractical to continue to bring raw material from the working area to the plant by front-end loader. Instead, a belt conveyor system will be used to transport the material over those long distances. Since the excavated rock initially contains boulders too large for the conveyor to handle, a portable primary crusher will be installed to reduce the rock to manageable size.

The primary crusher will be set on a cut and/or fill bench at the lowest elevation to which a unit of rock is to be excavated, and loosened material will be pushed off the higher working bench to flow down to the crusher. When an excavation unit is depleted, the primary crusher will be moved to a new location. In general, because of the overall height of certain zones to be excavated, it will be necessary to move the crusher several times to a progressively lower site within those zones and to adjust the conveyor accordingly.

3. On-Site Access

Access to working areas, the primary crusher, the conveyor and the finished benches will be provided by a combination of existing and proposed unpaved roads.

Access Roads shown in Figure 7-1 will enable equipment to reach working areas during the operation and the benches a wide enough to provide equipment flexibility and backup for worker safety. These roads will be at a steep gradient, but not exceeding 2.5:1, or

40% . They will also provide equipment access to the finished benches for maintenance purposes.

In most cases, access to the primary crusher locations will be by way of existing roads. Conveyor installations will generally be alongside such roads or will have a road graded next to them so as to enable access for maintenance by pickup truck.

B. MINING IMPLEMENTATION

IX. OBJECTIVE

Maximize utilization of the resource and provide for a long term source of PCC-grade aggregate.

POLICIES

13. Material Standards

Working areas should be large enough to provide the variety of material and flexibility required to meet specification standards.

14. Location of Excavation

Excavation may continue simultaneously at several different locations within each phase area throughout the life of the project.

X. OBJECTIVE

Minimize adverse environmental impacts and protect archaeological resources.

POLICIES

15. Mining to Occur Behind Visual Barriers

Mining activities and working areas that have not yet been revegetated should be hidden from view to the maximum extent feasible -- preferably behind ridges or berms. (See Section VI. - VISUAL).

16. Size of Working Areas

Working areas shall be limited to the minimum size necessary as excavation progresses through the site, considering reasonable operating requirements.

17. Hours of Operation

Hours of mining shall be limited to reduce noise impacts. Extended operating hours to meet public works project demand for other than emergency reasons can only be considered when the impacts from truck traffic noise and safety concerns are adequately resolved.

18. Reclamation Plan to Control

The area of excavation, ultimate configuration, and maximum rate of production shall be specified in the mining and reclamation plan.

19. Risk

The method of operation shall reduce risk to an acceptable level of all hazards to public health and safety, including: unstable slopes, dangerous equipment, toxic substances, and disease vectors.

20. Archaeological

If potential archaeological finds are discovered during excavation, work in the area shall halt and the find evaluated by a qualified Archaeologist. Procedures for managing historic and pre-historic archaeological resources, as described in CEQA guidelines Appendix K, should be followed. These procedures are shown in Appendix E of this document.

21. Topsoil Stockpiling

Stockpiling of topsoil shall be minimized and, where stockpiling is necessary, the topsoil shall be protected from erosion and stockpiled in such a manner as to protect its viability to support vegetation.

22. Drainage

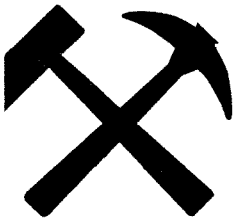
Suitable drainage and storm water detention facilities shall be maintained during the mining operation. (See Section VII - INFRASTRUCTURE)

23. Other Agency Permits

The quarry operator shall obtain appropriate permits and comply with applicable requirements of the Regional Water Quality Control Board (RWQCB), California Department of Fish & Game (CDF&G), and Air Pollution Control District (APCD).

C. PHASING OF EXCAVATION

1. Introduction



Rocky Canyon Quarry contains a deposit of granitic material estimated to be sufficient to last approximately 200 years at the present rate of production. The Specific Plan envisions extraction of the deposit in a carefully planned sequence of phases which will assure efficiency of operation and will minimize adverse environmental impacts. Phases should be approved with a land use permit and reclamation plan for each or in groups of phases. Determination as to how many phases to be approved can be done at the time of permit approval.

2. Rate of Production

The actual rate of production determines the rate of excavation and is directly dependent upon market demand which is the result of many variables which influence construction activity. This rate of production also reflects how successful the operating company is in competitive bidding for supplying construction aggregates to others and the activity of its own construction division.

Demand for aggregates from Rocky Canyon Quarry has been relatively stable, with the exception of recent fluctuations resulting from economic slowdown and reductions in public works projects. For the purpose of estimating the time required to excavate each phase of mining, it was assumed that future production and sales will not exceed the permitted level. The California Division of Mines & Geology projects a gradual increase in demand for construction aggregates in the region. However, any of the influences on demand could be significantly different from current projections so that estimates of future production rates can only be approximate at best. A natural disaster or other major emergency could abruptly increase demand and require accelerated production and, as has been demonstrated, depressed economic activity could cause a drop in production. In any event, a change in the rate of production which determines the rate of excavation would only affect the timing of excavation; it would not change the manner or sequence in which mining is planned to occur.

The sequence of excavation shown on Figure 7-5 represents the best projection possible for an operation subject to many unpredictable influences. The ten stages represent a logical grouping of mining units. The stages overlap due to partial excavation of latter stages in a previous stage. Production rates could change due to fluctuations in market demand, which would directly affect the timing of the proposed mining. For this reason, there will be a need for flexibility in implementing the Excavation Plan.

3. Excavation Guidelines

There are a number of constraints listed by the applicant which determine the manner in which excavation is to occur. These include the following:

a. For reasons of safety and to take maximum advantage of gravity, mining should start at the top of each area to be excavated.

b. The primary crusher should be located at an accessible site where raw material can most conveniently be pushed to it.

c. Working areas should be large enough to provide the variety of material and flexibility required to meet specification standards.

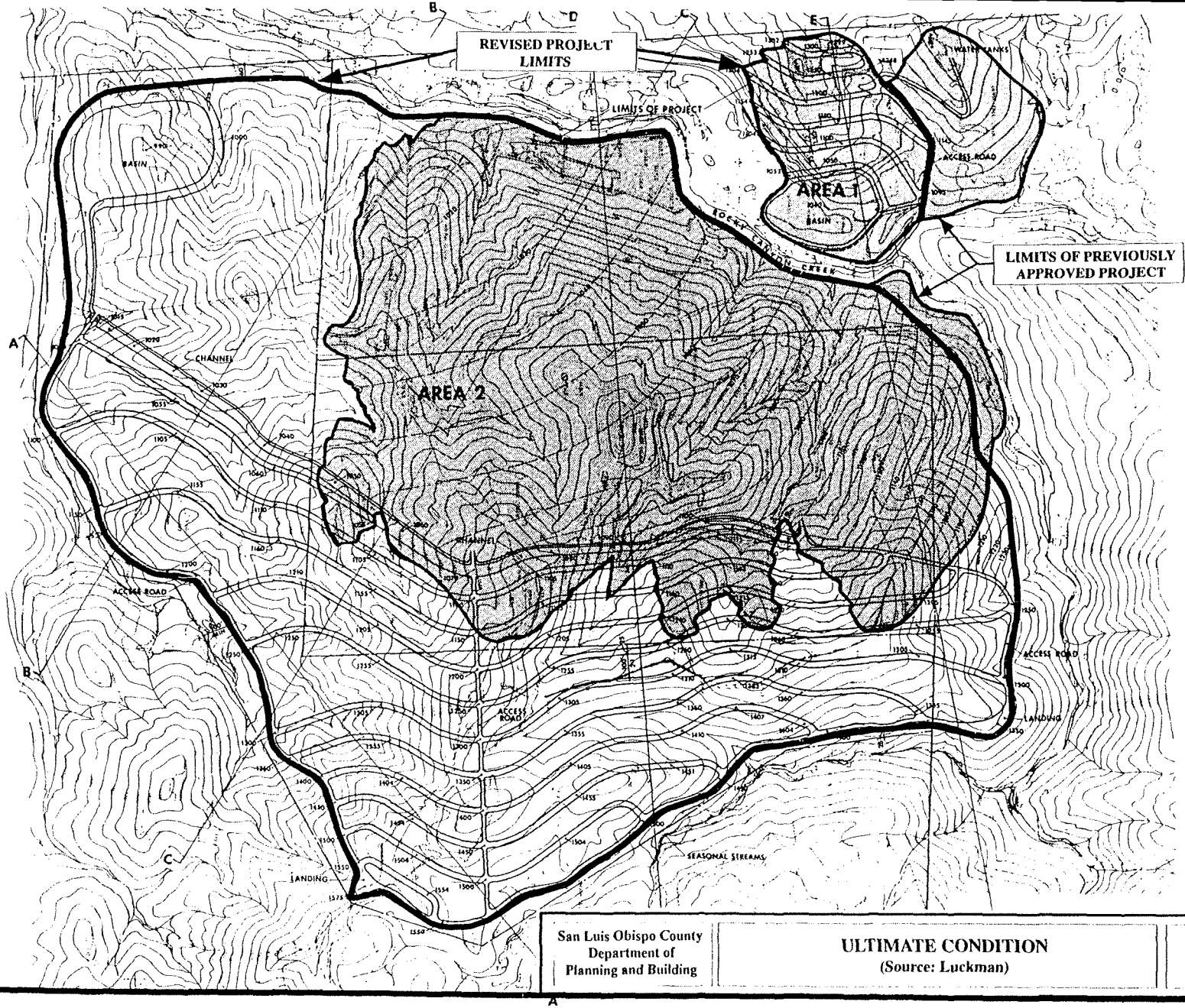
d. Mining activities and working areas that have not yet been revegetated should be hidden from view to the maximum extent feasible -- preferably behind ridges.

e. Interim slopes and benches should all be eliminated by final excavation.

4. Excavation Areas

Mining is proposed in two areas within the limits of the project that are identified as Area 1 and Area 2 on Figure 7-1. They are separated by Rocky Canyon Creek and the road which runs through the bottom of the canyon.

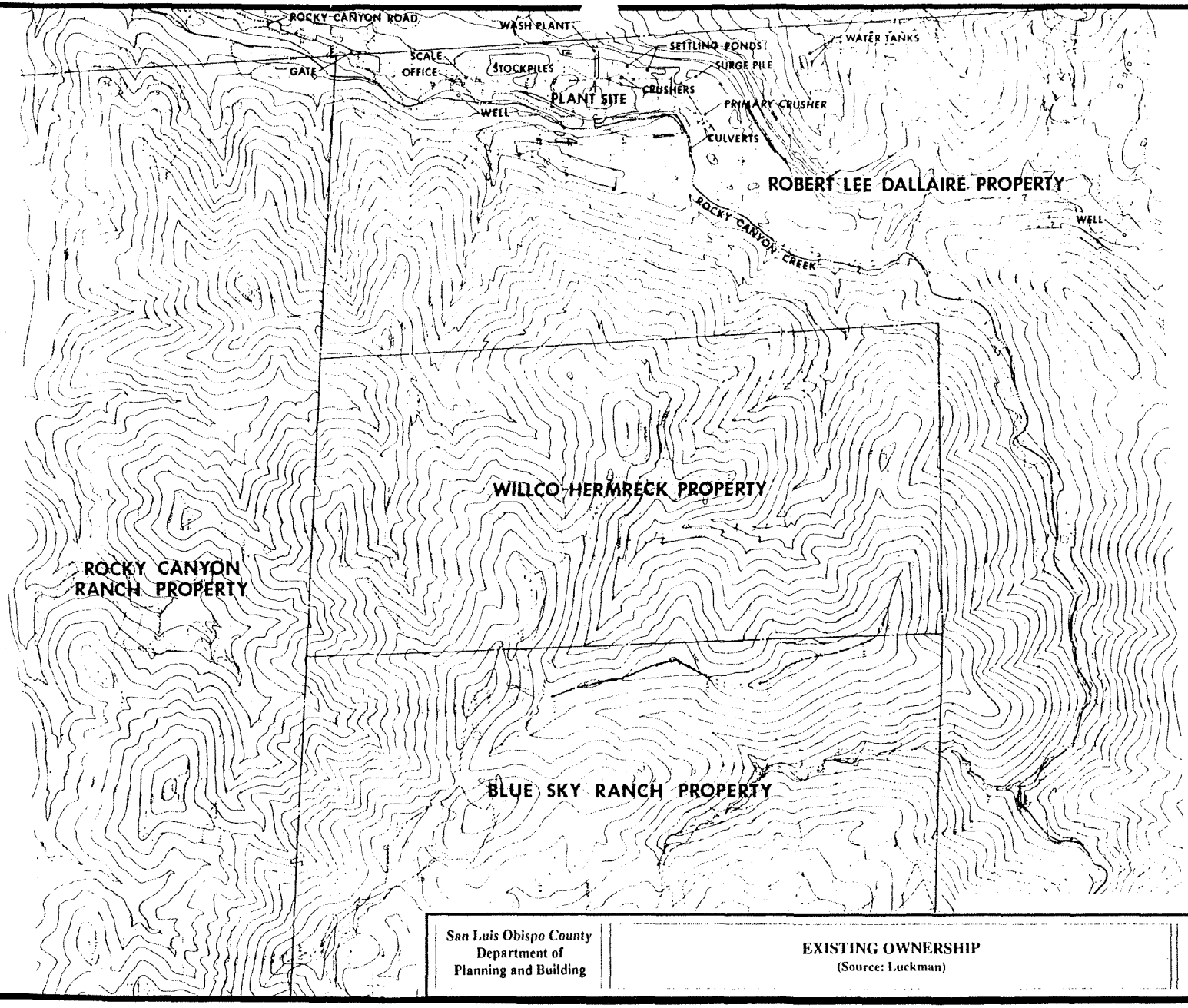
Area 1 -- which contains 12 acres west of the creek -- consists of a knob of land. Area 2 -- 235 acres in size east of the creek -- contains bowl-shaped draws sloping towards the creek that are generally outlined by hogback ridges. The landforms in the two areas constitute fairly defined zones in which excavation can follow a logical sequence.



San Luis Obispo County Department of Planning and Building

ULTIMATE CONDITION
(Source: Luckman)

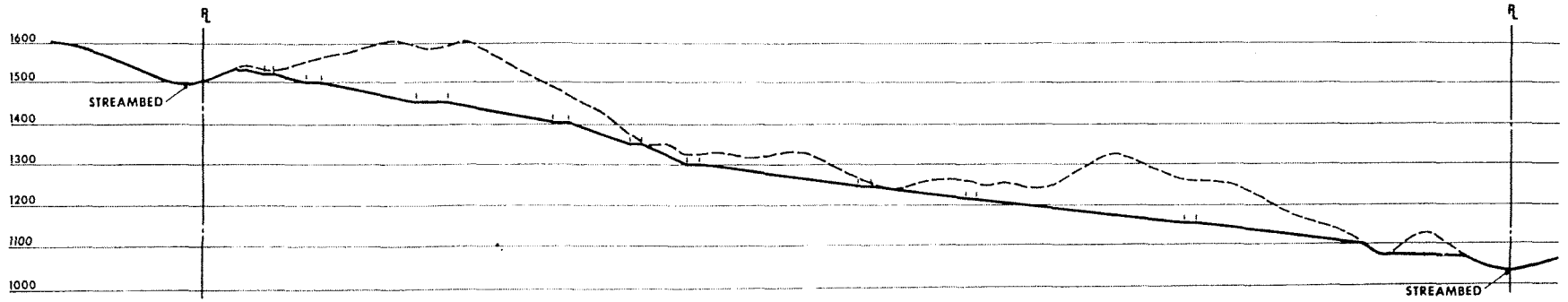
Figure 7-1



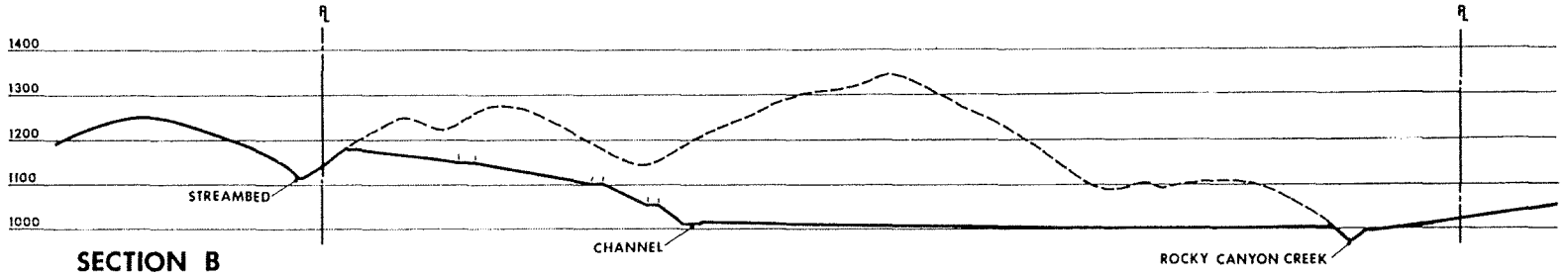
San Luis Obispo County
Department of
Planning and Building

EXISTING OWNERSHIP
(Source: Luckman)

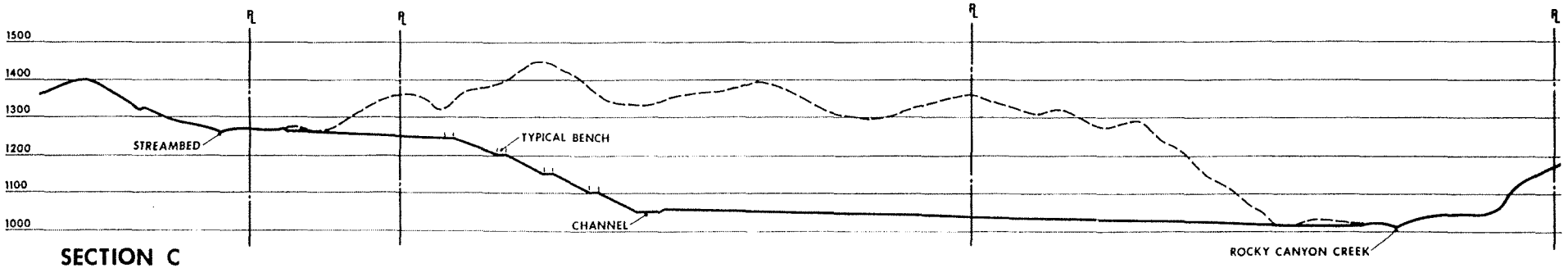
Figure 7-2



SECTION A



SECTION B



SECTION C

0 100' 200' 300' 400' 500'

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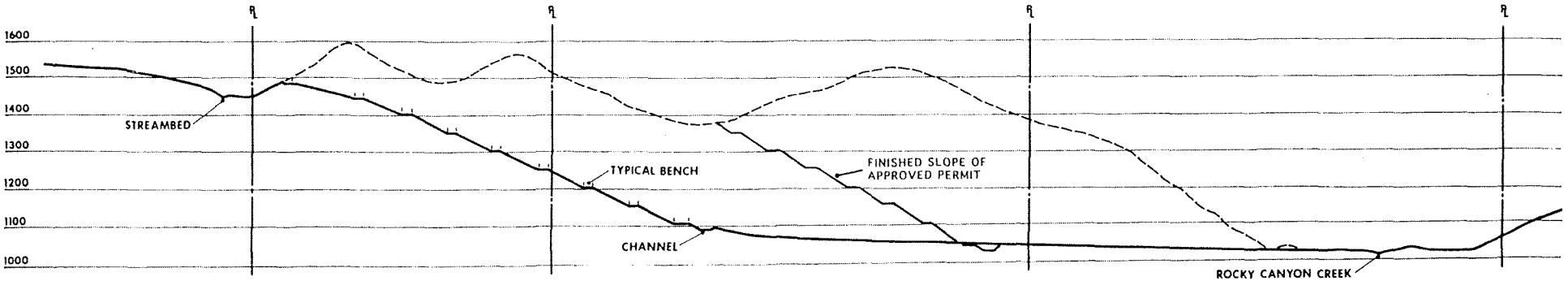
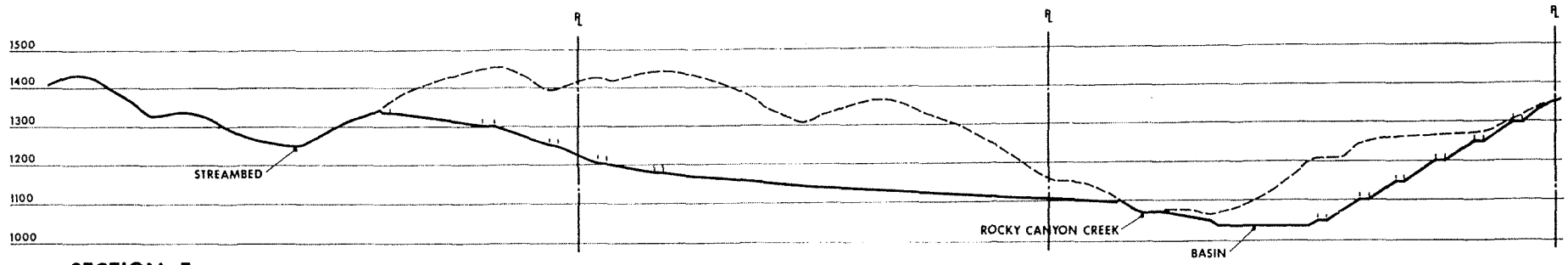
CROSS SECTIONS A-C
(Source: Luckman)

Figure 7-3



SECTION D



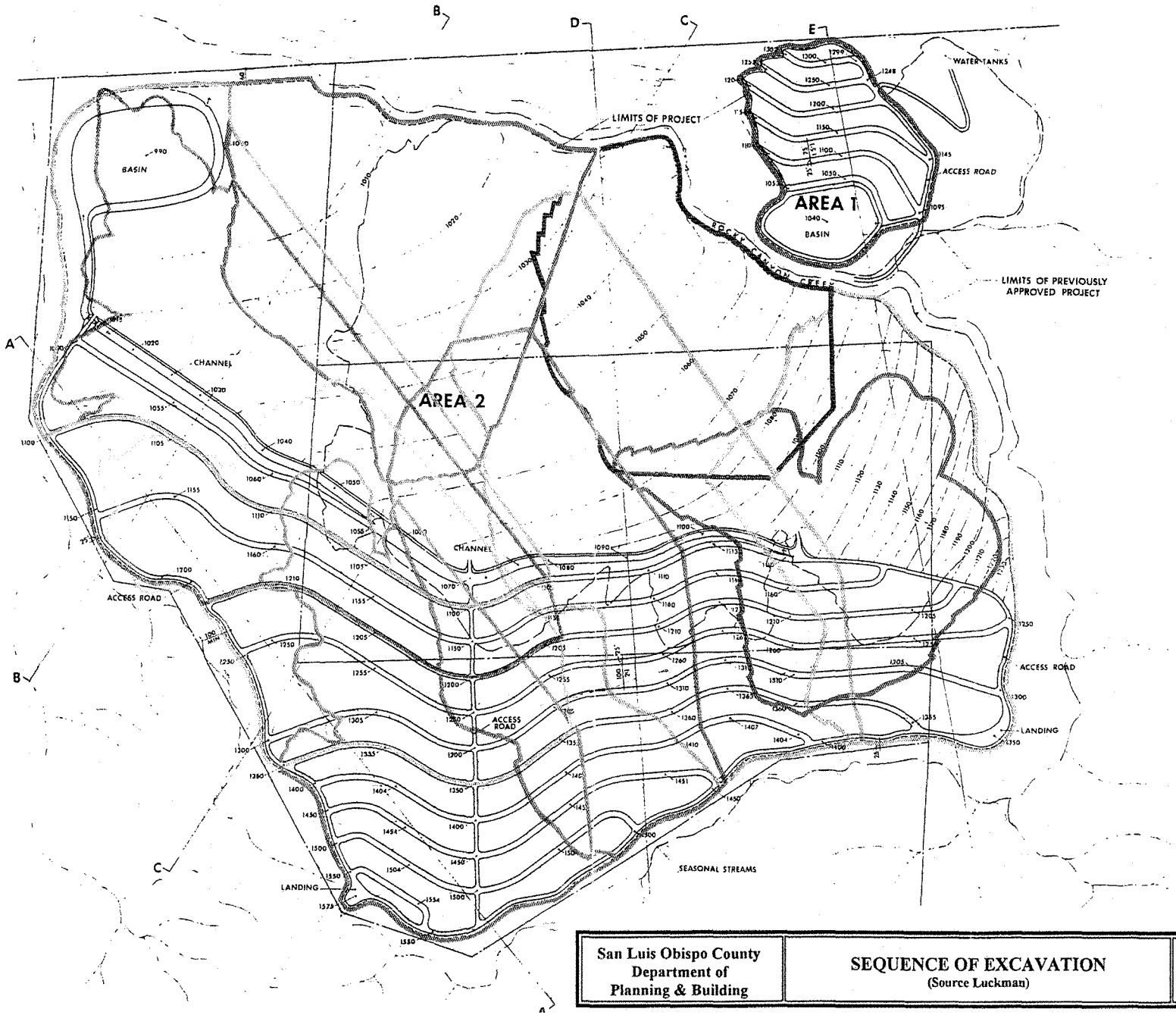
SECTION E

0 100' 500'

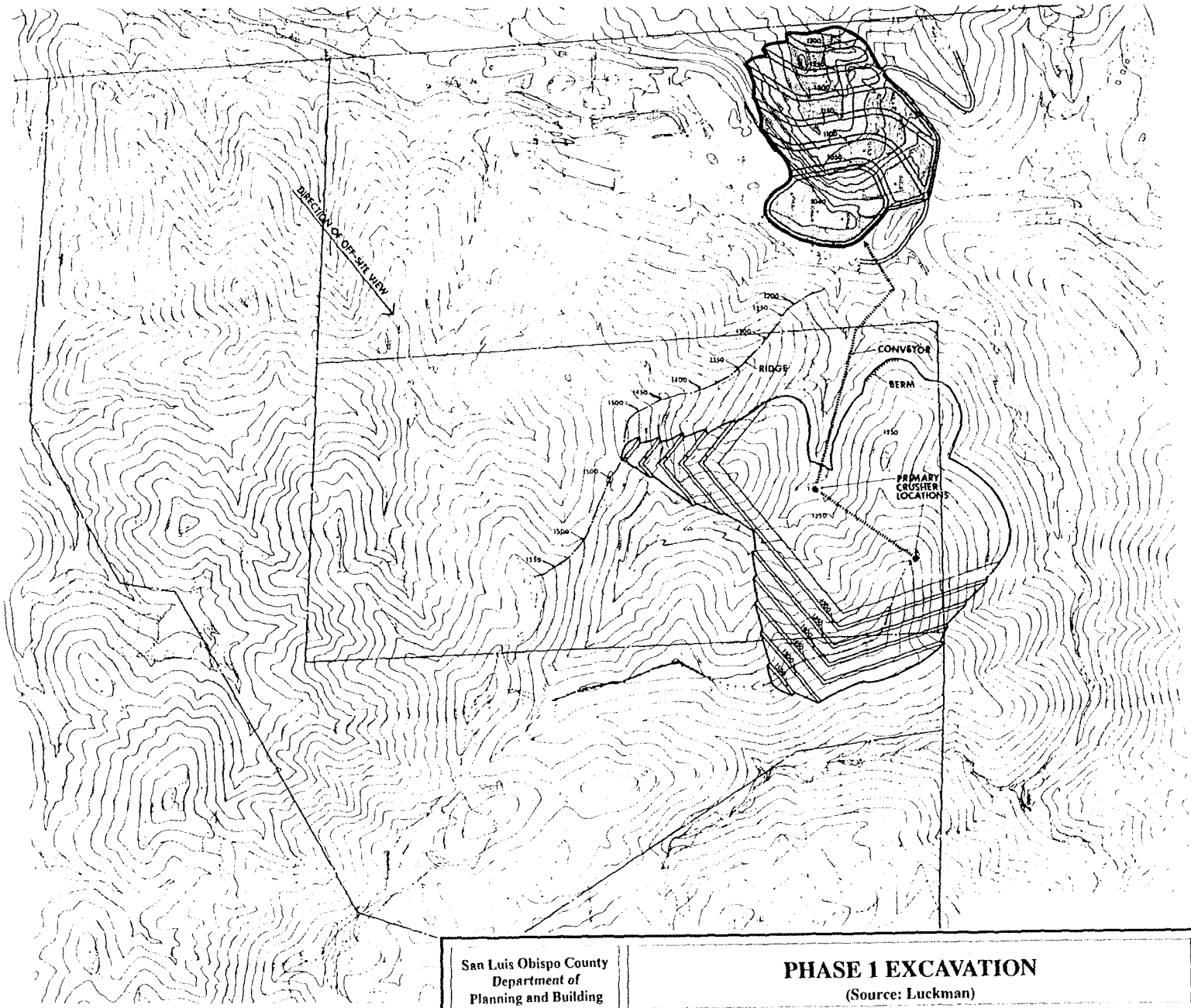
San Luis Obispo County
Department of
Planning and Building

CROSS SECTIONS D AND E
(Source: Luckman)

Figure 7-4



San Luis Obispo County Department of Planning & Building	SEQUENCE OF EXCAVATION (Source Luckman)	Figure 7-5

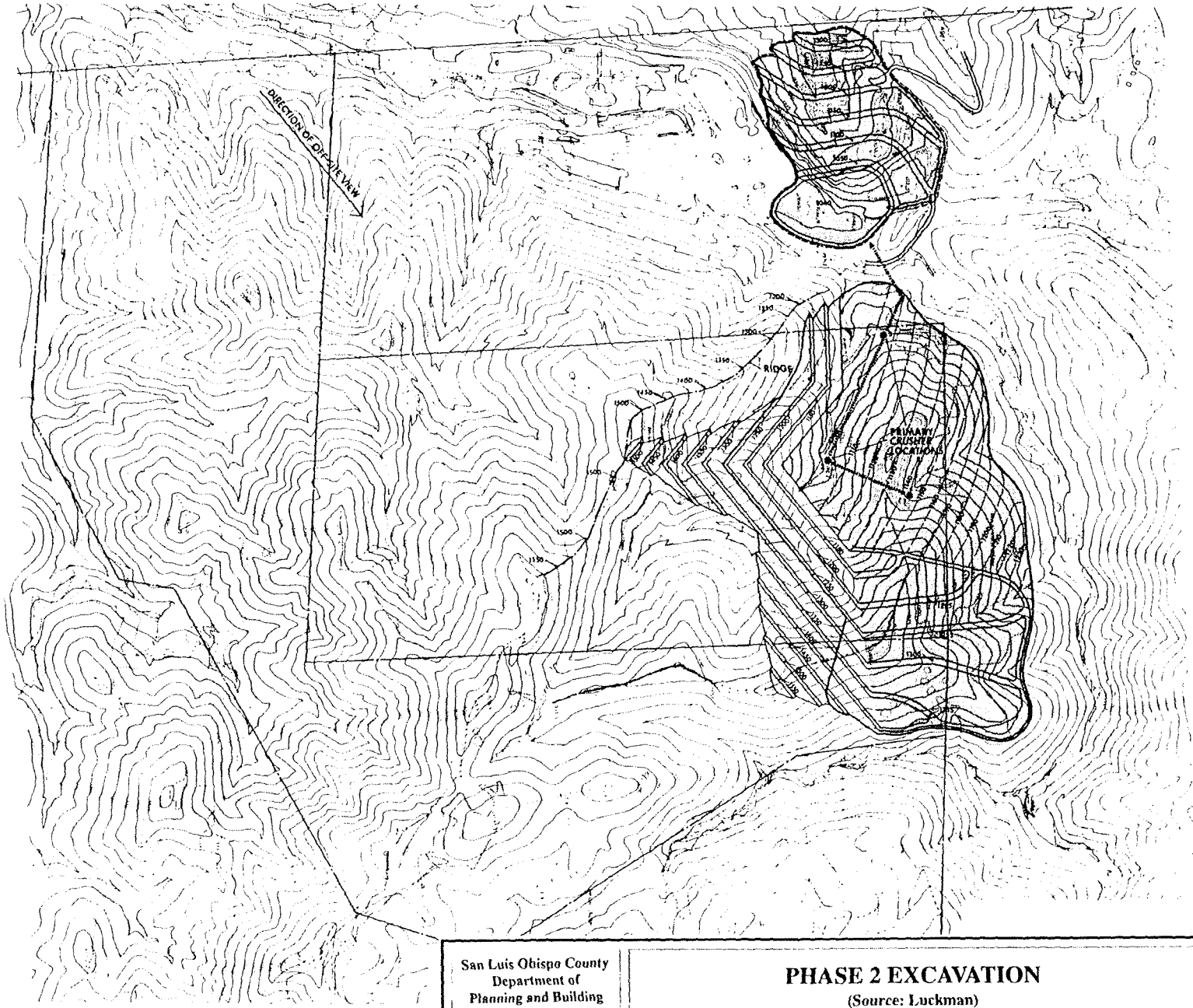


San Luis Obispo County Department of Planning and Building

PHASE 1 EXCAVATION

(Source: Luckman)

Figure 7-6

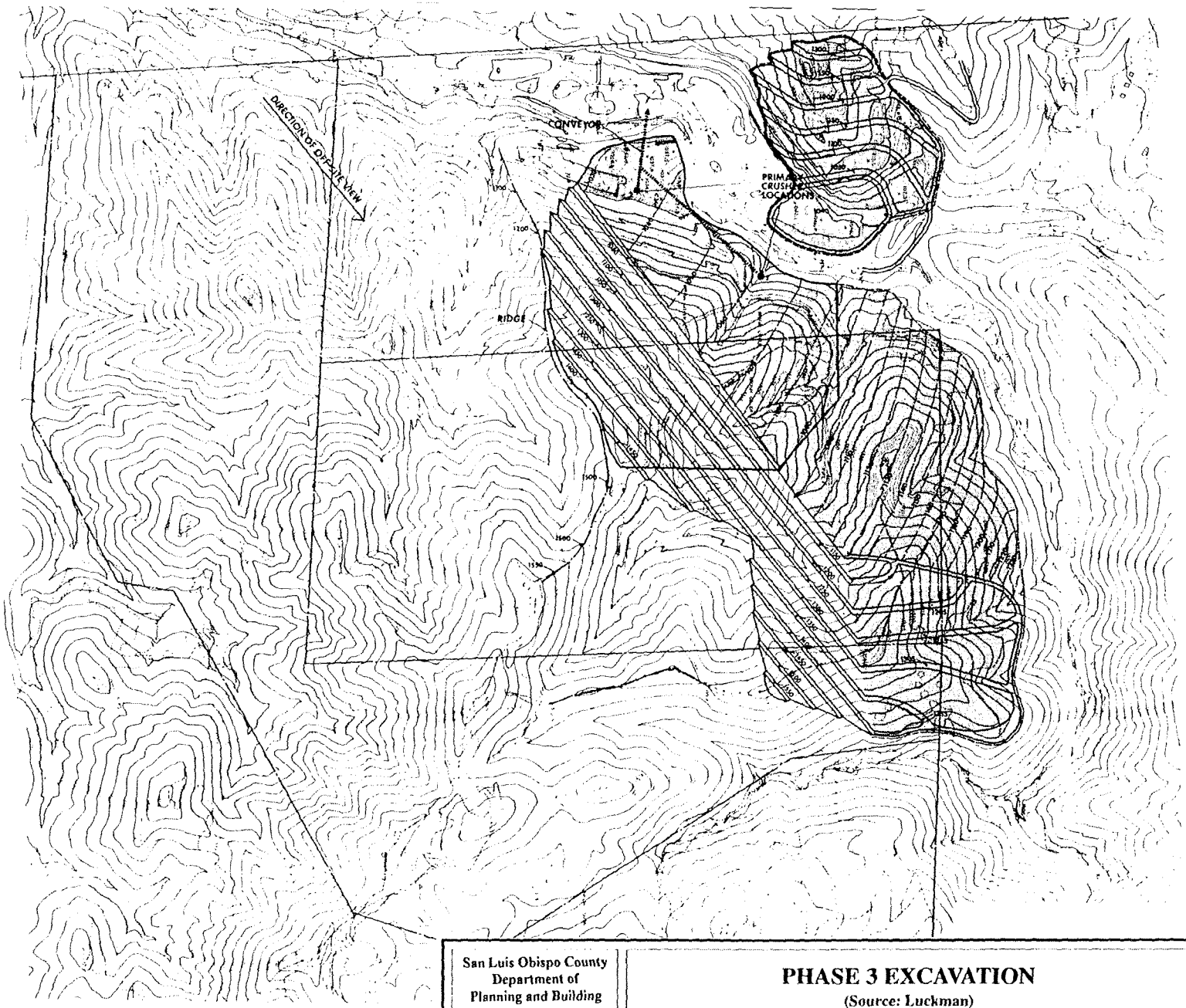


San Luis Obispo County Department of Planning and Building

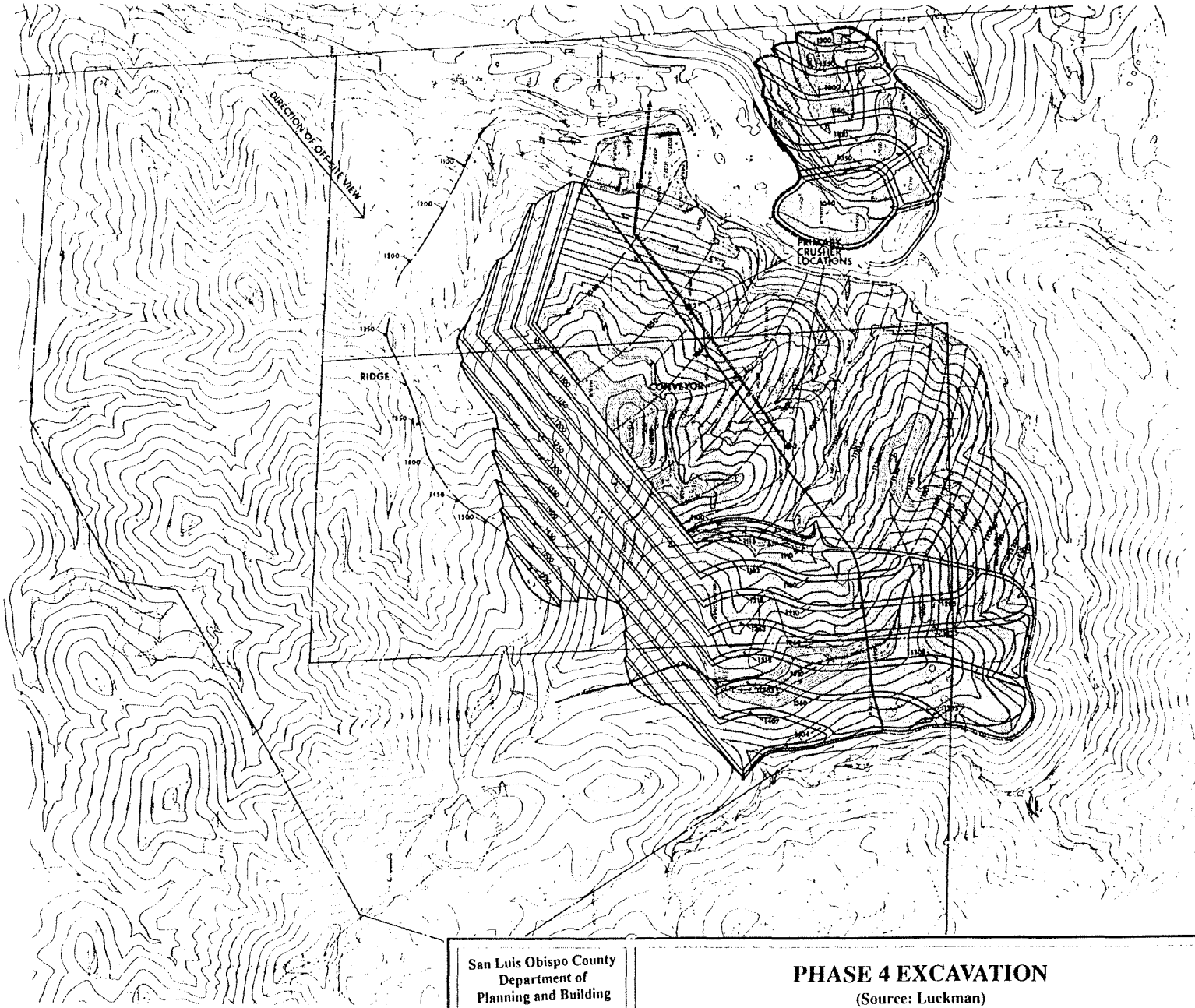
PHASE 2 EXCAVATION

(Source: Luckman)

Figure 7-7



San Luis Obispo County Department of Planning and Building	**PHASE 3 EXCAVATION** (Source: Luckman)	Figure 7-8

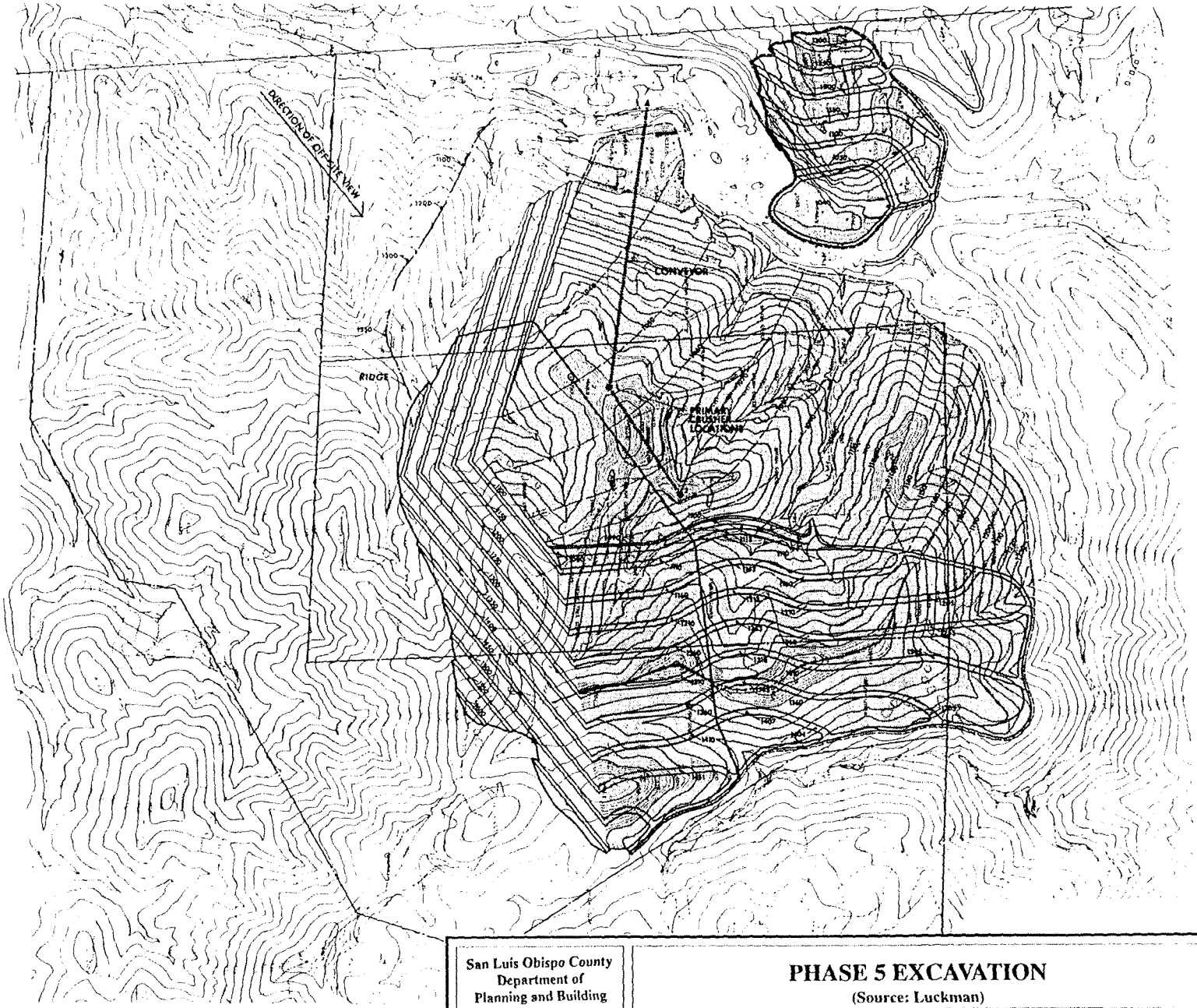


San Luis Obispo County Department of Planning and Building

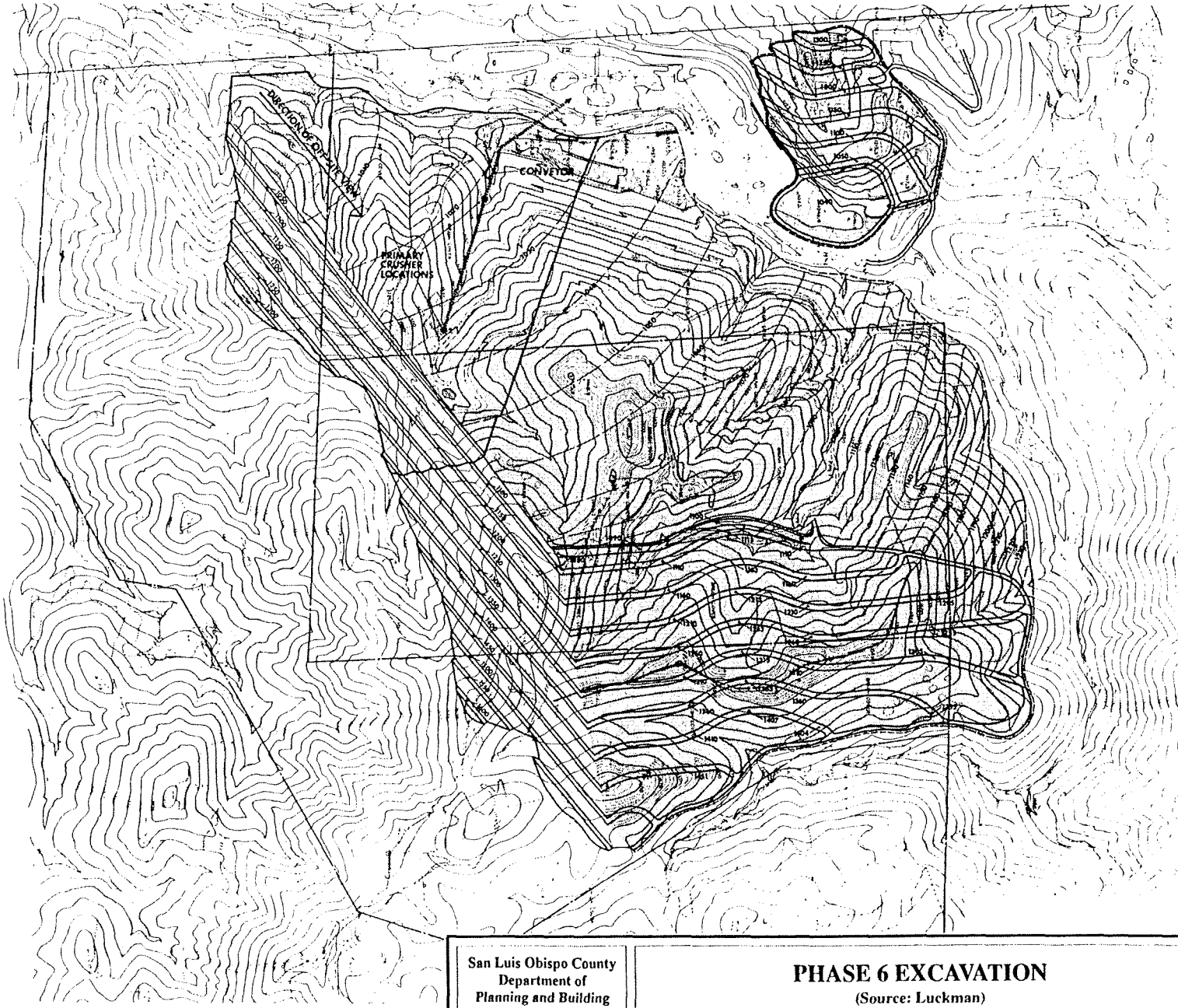
PHASE 4 EXCAVATION

(Source: Luckman)

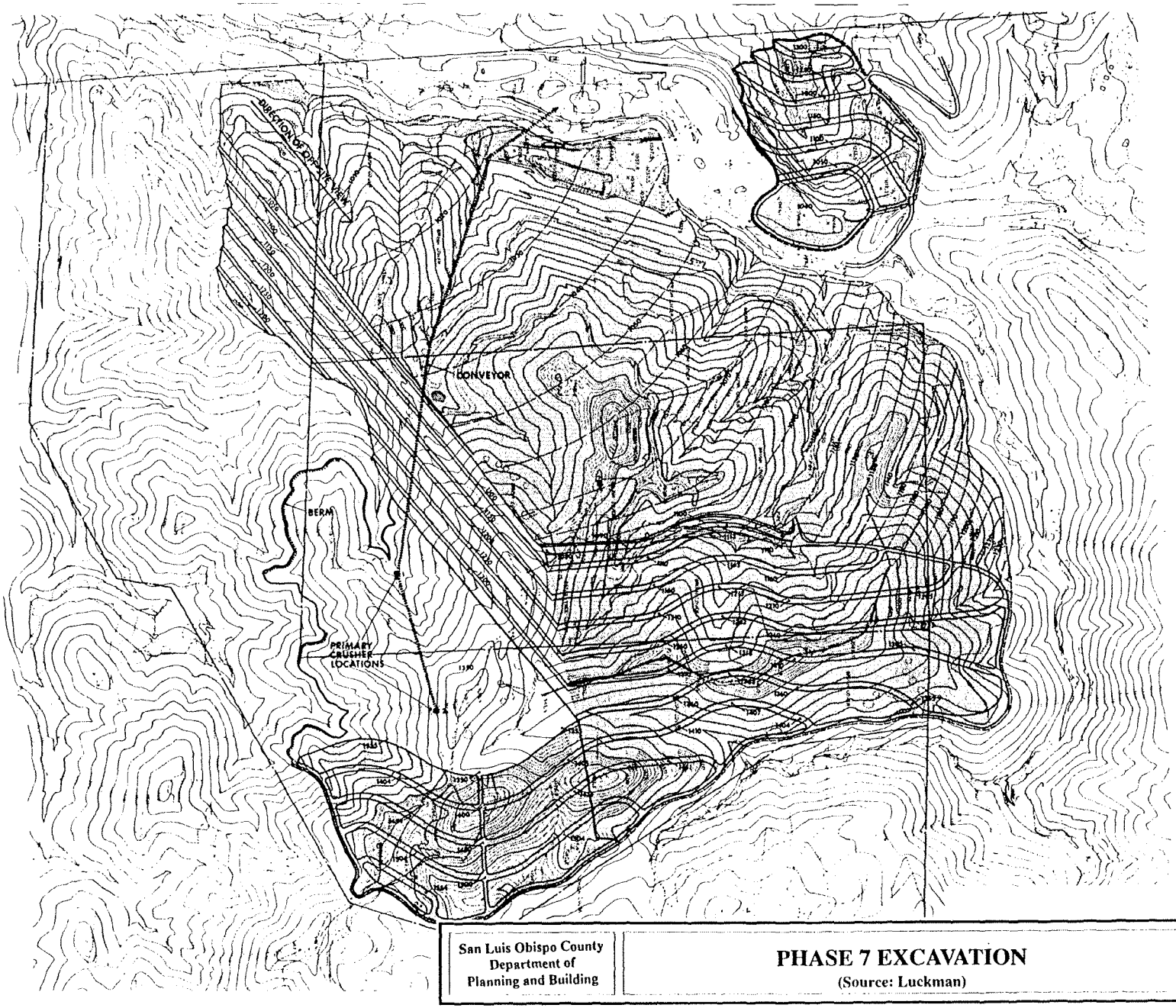
Figure 7-9



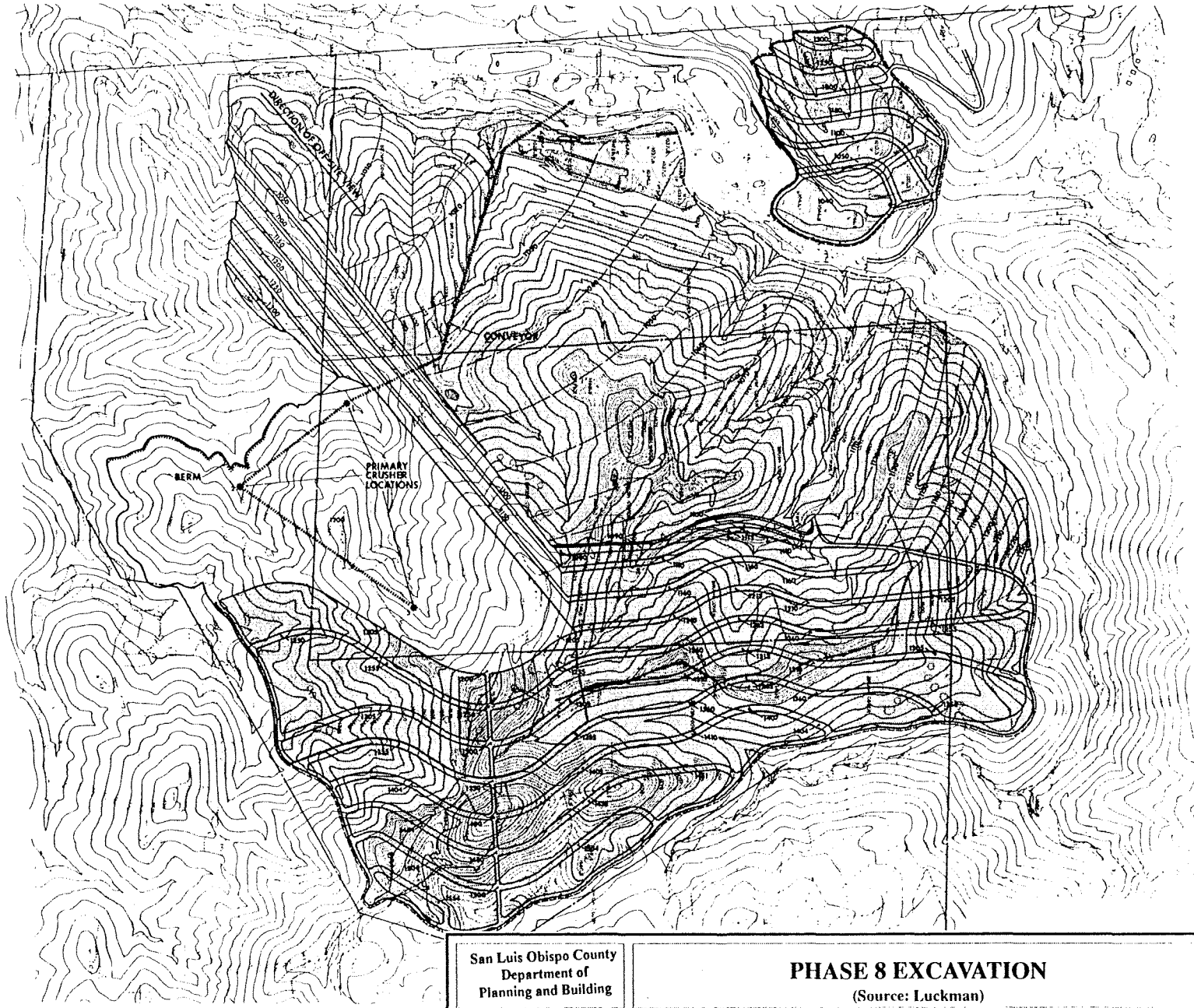
San Luis Obispo County Department of Planning and Building	**PHASE 5 EXCAVATION** (Source: Luckman)	**Figure 7-10**



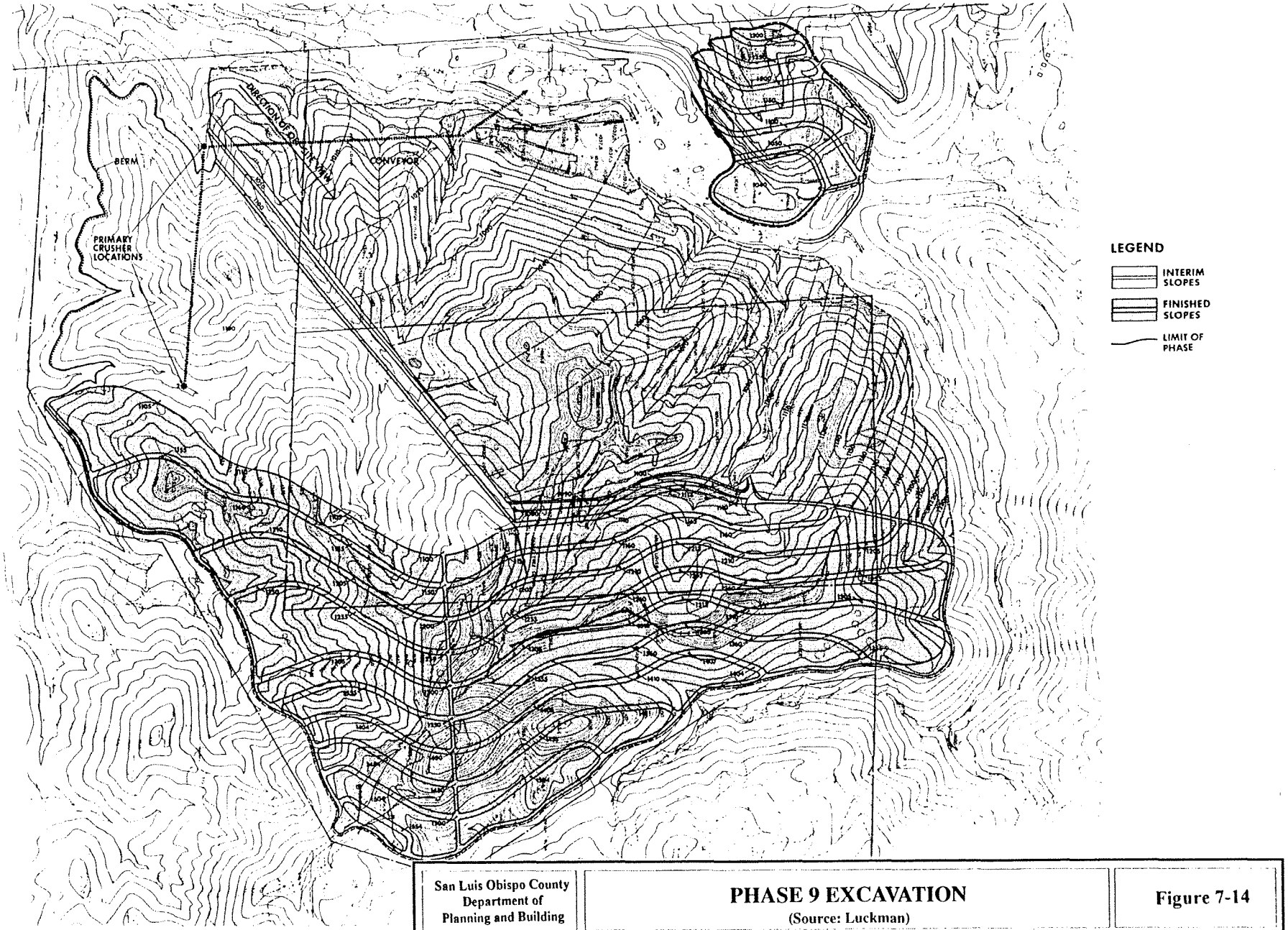
San Luis Obispo County Department of Planning and Building	**PHASE 6 EXCAVATION** (Source: Luckman)	Figure 7-11



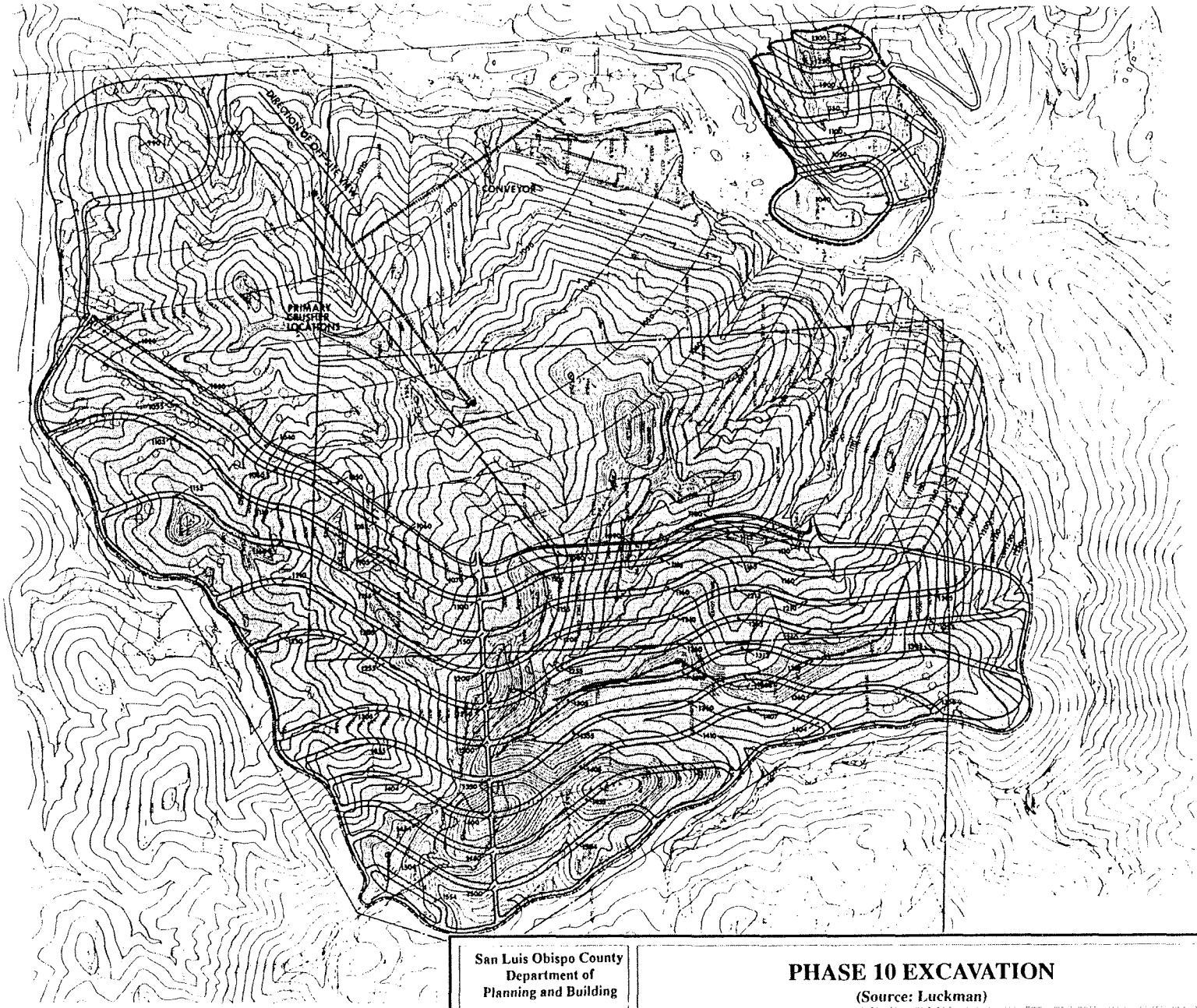
San Luis Obispo County Department of Planning and Building	**PHASE 7 EXCAVATION** (Source: Luckman)	Figure 7-12



San Luis Obispo County Department of Planning and Building	**PHASE 8 EXCAVATION** (Source: Luckman)	**Figure 7-13**



San Luis Obispo County Department of Planning and Building	**PHASE 9 EXCAVATION** (Source: Luckman)	**Figure 7-14**



San Luis Obispo County Department of Planning and Building	**PHASE 10 EXCAVATION** (Source: Luckman)	**Figure 7-15**

Within each zone, mining will occur in units of sufficient volume to feed the primary crusher for a number of years before the unit is depleted and the crusher has to be moved. The crusher will be lowered about 100 feet each time it is moved within a zone, setting up a new unit of that thickness for excavation. This will limit the vertical distance that raw material will fall when pushed off the working bench to the crusher. The conveyor to feed material from the crusher to the plant will be installed on an alignment passing through the successive crusher sites so that when the crusher is lowered the conveyor will only need to be shortened. The cycle will be repeated when the crusher is moved to its highest site in the next zone to be mined.

5. Phases - Volume vs. Time

The project has been broken down into ten phases representing a logical grouping of mining units and carefully planned sequencing of excavation. They are shown as Phases 1 to 10 on Figures 7-6 through 7-15.

The conceptual phasing plans show the areas to be mined in each phase, the interim and finished slopes and benches at the end of each phase, the way in which slopes and benches are integrated into overlapping phases, the various locations for the portable primary crusher and conveyor, the elevations of benches and shelves, and the location of interim and ultimate access roads. The plans also identify ridge tops and note the elevations along the ridges for comparison with the grades within each area of excavation.

The following table lists the volume and time estimated for each phase. Because of the previously discussed potential variations in market demand, a range of time is indicated during which the projected volumes are likely to be produced.

Table 7-1
MINING SCHEDULE
ROCKY CANYON QUARRY
VOLUME VS. TIME

Phase	Volume (in 1000's cu yards)	Cumulative Volume (in 1000's cu yards)	Duration (years)	Cumulative Time (years)
1	4,490	4,490	12 to 14	12 to 14
2	4,625	9,115	12 to 14	24 to 28
3	5,500	14,615	14 to 17	38 to 45
4	13,913	28,528	38 to 42	76 to 87
5	11,430	39,958	31 to 35	107 to 122
6	6,990	46,948	18 to 21	125 to 143

Phase	Volume (in 1000's cu yards)	Cumulative Volume (in 1000's cu yards)	Duration (years)	Cumulative Time (years)
8	6,320	59,388	16 to 19	156 to 180
9	7,670	67,058	20 to 23	176 to 203
10	5,660	72,718	14 to 17	190 to 220

Phase 1: This initial phase consists of two areas to be excavated Area 1 west of the creek and fairly steep slopes near the top of a side canyon within Area 2. Both of these zones are included to afford flexibility in the type of material which will be available. This is particularly important in this initial phase when both zones are being opened up and much of the early material is weathered rock. Also, it is intended that Area 1 be mined as soon as possible to develop stable final slopes.

West face of quarry, 1995

Phase 2: During this phase (shown on Figure 7-7), the excavation at the upper elevations carried out in Phase 1 will be continued on down to the ultimate floor of the quarry. Finished slopes and benches will be developed at the northeast corner of the project.

The interim slopes and benches will be further enlarged to the south. Areas of interim slopes which are not in contact with finished slopes will daylight at existing grade.

Phase 3: This phase will remove an existing east west ridge and obliterate most of the existing cut face on the east side of Rocky Canyon Creek as shown in Figure 7-8. The interim slopes will extend further southwesterly, as will the finished quarry floor.

Phase 4: Excavation in this phase shown on Figure 7-9 will work a portion of the highest elevations of the site, beginning at approximate elevations 1530 and 1590, and will result in

additional finished quarry floor area, as well as more finished slopes and benches. Because of the large volume of material generated in this area, the applicant recommends excavation as two sub-phases with the first ending at elevation 1250 and the second reaching the quarry floor.

Phase 5: As shown on Figure 7-10, excavation will move in a southeasterly direction with the highest cut at approximate elevation 1630. This phase also contains a large volume of material, and it could also be excavated as two sub-phases with the first ending at elevation 1250. This phase will also result in larger areas of finished slopes, benches and quarry floor.

Phase 6: In this area another ridge will be removed, increasing the finished quarry floor in a southwesterly direction (Figure 7-11).

Phase 7: In this phase, excavation will move to the easterly limits of the project site, involving the removal of material from high points at approximate elevation 1645 and 1630 down to elevation 1350 (Figure 7-12). Finished slopes and benches will extend along the eastern edge of the site.

Phase 8: The working area in this phase will phase towards the southwest creating additional finished slopes and benches as shown in Figure 7-13.

Phase 9: As shown in Figure 7-14 , this phase of excavation will lower the southerly portion of the site to within approximately 100 feet of the finished quarry floor, adding to the finished slopes and benches.

Phase 10: When this last phase is completed (Figure 7-15) the ultimate slopes throughout the quarry will have been finished.

D. PHASING IMPLEMENTATION

XI. OBJECTIVE

Mine in a sequence which best satisfies the policies and standards of this plan.

POLICIES

24. Mining Plan

To implement the policies and standards of this plan prepare a detailed mining plan for each phase that provides for:

a. Mine in a sequence that minimizes exposure of the working area to public view from off-site.

b. Provide access to a variety of aggregate grades at all times within each phase area.

c. Mine in a sequence that maximizes utilization of gravity in moving material.

d. Limit on-site haul distances as much as possible thus reducing air pollution.

e. Establish permanent habitat areas as soon as possible by revegetating as soon as practical.

f. Allow for flexibility in the sequence of excavation to respond to fluctuations in market demand and other unanticipated factors.

STANDARDS

A detailed mining plan that establishes a sequence of excavation shall be prepared as part of each phase of mining as a part of each phase's reclamation plan and should address the following issues:

24.1 The areas to be mined in each phase.
24.2 The interim and finished slopes and benches at the end of each phase.
24.3 The manner in which slopes and benches are integrated into overlapping phases.
24.4 The various locations for a portable primary crusher and conveyor.
24.5 The elevations of benches and shelves.
24.6 The locations of interim and ultimate access roads.
24.7 The ridge tops and the elevations along the ridges for comparison with the grades within each area of excavation.

Test plot at bottom of quarry with 1.5:1 slope

E. PROPOSED RECLAMATION

Reclamation of the Rocky Canyon Quarry Plan area is intended to minimize the impacts of mining both during and after the operation. Basically, reclamation consists of slope

stabilization and shaping, revegetation, installation of suitable drainage, and preparation of the site for future beneficial use. Reclamation shall be a continuous activity which will be an integral part of the extraction process. A reclamation plan will be required of all proposed mineral extraction operations as required by SMARA and the County.

1. Slopes

The configuration of the ultimate slopes and benches shown in the plan (Figure 7-5) and in the cross sections (Figures 7-3 and 7-4) is dictated by both engineering and aesthetics.

Although the geology report suggests that most 1:1 (100%) slopes would be stable, the Master Plan utilizes 2:1 (45%) slopes. Originally the prior permit allowed finished slopes of 1.5:1 (67%) due to the limited area in which mining could occur and the depth to the quality material. The new gentler 2 : 1 slopes will provide greater stability .

Revegetation of the finished slopes will necessitate replacement of topsoil, and it is important that the soil should not be washed off by rain before a binding plant root system can become established. The applicant states that their trial plots indicate that 1.5:1 slopes would be satisfactory for holding soil. The final slopes of 2:1 are gentler and are even more likely to retain the soil. Past winter rains indicate a strong probability that revegetation will be successful for the long-term. Another reason for choosing the flatter slopes is that the gentler slopes will blend better with the surrounding land forms. This blending of the finished quarry cuts can also be seen on Figure 7-1 which shows that curvilinear shapes which are more difficult to accomplish have been incorporated into the plan in order to avoid a mechanical ultimate appearance.

2. Stability of Emplaced Soils

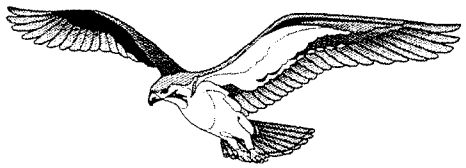
The stability of the soils to be placed on the finished slopes should be considered as consisting of two basic mechanisms of failure: 1) surficial erosion due to runoff traveling across the surface of the soils; and 2) slump failures that should be expected if the soils become supersaturated due to a prolonged period of intense rainfall. The revegetation test plots experienced only a moderate test of their resistance to surficial erosion and massive slumping during the 1993-94 wet season, but the rains of January and March, 1995 provided a significant test of the potential for both erosion and slumping.

The soils proposed to be placed on the finished 2:1 (45%) slopes cannot be considered "stable" in the engineering sense because the geometry of their placement is inconsistent with requirements of the Uniform Building Code. It appears from the response of the slopes during the January and March, 1995 rains that the proposed mechanism may be feasible provided the quarry operator makes repairs as erosion and/or slumping occurs and until a good cover of larger shrubs with deep root systems develops that will hold the soil to the underlying rock. The currently proposed slopes of 2:1 will provide a more stable surface soil than the 1.5:1 slopes that were approved in 1996.

From a geologic standpoint, failure of portions of the soil on the finished slopes during periods of intense rainfall would be adverse but not geologically significant.

It is not uncommon in surface mining to leave a final quarry face with 1:1 slopes and benches at 50 foot intervals provided that the face is geologically stable. The potential for successfully revegetating a 1:1 slope is not very likely. Revegetating a 2:1 slope has much greater potential. The final slopes at 2:1 would provide an opportunity to return the hillsides to their natural, existing condition and avoid a steep, barren rock face.

3. Proposed Vegetation And Wildlife Habitat



A key element of reclamation is revegetation of the disturbed slopes, in order to restore native vegetation and wildlife habitat. The existing slopes are covered with a diverse intermixed variety of plant communities including oak woodland, riparian woodland, grassland, and chaparral. The mining operations will necessitate removal of existing vegetation on the entire 247-acre area to be mined. Revegetation is envisioned as an ongoing, integral part of the operation. Each year, before potential winter rains, all slopes which have been excavated to their final, full vertical height and shaped to their finished condition will be reclaimed in accordance with the revegetation plan approved in the reclamation plan.

This will begin with placing previously stored topsoil onto the slopes, to be followed by seeding and/or planting as recommended in the Revegetation Plan. While interim slopes that are subject to further excavation will not be revegetated, ultimately the entire site except for benches and access roads will be returned to a grass, shrub and/or tree covered state in accordance with a County-approved revegetation plan (Refer to the latest approved Reclamation/Development Plan).

During revegetation efforts, application of topsoil will only occur after slope is cut to its final, full vertical grade. Application of soil amendments and final placement of the soil should be consistent with the approved revegetation plan.

Rocky Canyon Creek flows through the Plan area generally in a northeast to southwest direction. The creek corridor contains significant riparian woodland vegetation and habitat which deserve protection.

Although no mining activities will take place within a 100-foot-wide corridor along Rocky Canyon Creek, rehabilitation of the banks and enhancement of the riparian corridor is proposed. Appropriate native plants and trees will be added and removal of all noxious weeds and exotic plants will occur as well as general clean-up and rehabilitation of the

creek to a natural condition. The proposed revegetation of the riparian areas in the corridor along Rocky Canyon Creek is described in detail in the proposed revegetation plan prepared for the project.

The proposed action included in the Specific Plan and Reclamation Plan includes significant revegetation and restoration of wildlife habitat as part of the project. This practice has not occurred as part of any previous mining programs. Most reclamation plans reclaim only the mine floor for other uses in contrast to reclaiming the cut slopes and restoration of the entire mining area to natural open space uses.

Reclamation of the slopes, including establishing final slopes and revegetation as soon as the excavation moves down slope minimizes the long-term storage of topsoil and facilitates its reapplication. It also significantly minimizes the surface area of quarry slopes subject to erosion.

While this approach will definitely be used during Phase I it is likely during the life of the plan that new and better approaches to revegetation may be developed for future phases of the plan.

4. Drainage

A key element in reclamation is the provision of a drainage system to handle surface runoff. The purposes of the drainage system are to:

a. Reduce the amount of water collected in rock fractures, which, by adding weight, could stimulate failure of finished slopes.
b. Reduce surface erosion.
c. Control discharge of surface water from the site.

The design of the drainage system will include a drainage ditch on each bench at the toe of the finished slope, excavated basins maintained downstream from work areas to intercept storm water, excavated basins at the bottom of the ultimate quarry faces of sufficient size to handle runoff from the final tributary areas, benches on interim slopes pitched outward to allow water to sheet flow down the slopes and storm water basins adjusted as needed to accommodate changes in the drainage areas or to handle increased runoff from steeper slopes or altered surfaces.

Drainage is a major component of any development plan/reclamation plan. Detailed plans and review are required for any mining proposal. Detailed drainage plans will be required with an application for a new land use permit and reclamation plan for each phase of mining.

There is more discussion of drainage in the Infrastructure chapter.

5. Ultimate Use

The project site is intended ultimately be in a condition which is stable, visually restored, and biologically renewed. The processing plant and all equipment will be removed. .

Eventually, there will be about 120 acres of flat, usable surface developed at the lowest level of the site, not including the riparian corridor along the creek or the basins at the toe of the slopes. This flatland which is to be planted with grasses and oak woodland will be surrounded by stable, revegetated slopes and would be well suited for a variety of recreation, agricultural or community uses.

F. RECLAMATION IMPLEMENTATION

XII. OBJECTIVE

Provide for the reclamation of mineral extraction sites to a condition that is both consistent and compatible with the surrounding natural environment and geologically stable under both static and dynamic seismic conditions.

POLICIES

25. Timing of Reclamation

Reclamation shall be performed as soon as practical in each phase.

26. Requirements

All reclamation plans and activities shall comply with reclamation standards adopted by the State Mining and Geology Board and any applicable County requirements.

27. On-going Reclamation

Mining activities shall be planned so that reclamation is an on-going activity thus shortening the duration of habitat loss.

28. Final Slope Stability

Final cut slopes shall be designed to be stable under both static and dynamic (seismic) conditions.

STANDARDS

26.1 The processing plant and all equipment shall be removed at the termination of mining on the site.

27.1 Reclamation shall be performed as soon as excavation and final, full height slopes in a mined area are completed.

27.2 Interim slopes and benches shall all be eliminated by final excavation.

28.1 Any changes to the slopes proposed in Figures 7-3 and 7-4 and 7-6 through 7-15, in the first or subsequent phases require that an engineering geologist, acceptable to the Department of Planning and Building, shall prepare revised maps and a report verifying that the change is geologically stable. The maps and report shall be submitted to the Department of Planning and Building for county approval. If such changes occur during mining then all work is to cease in the affected area until approval is given.

XIII. OBJECTIVE

Reclaim the quarried lands to a condition adaptable to alternative uses.

The Plan are shall ultimately be reclaimed to a condition which is geologically stable, visually compatible, and biologically renewed. The processing plant and all equipment shall be removed. The resulting land form of the site shall be adaptable for a variety of alternative land uses. The following policies will ensure that the site will be adaptable for future uses:

POLICIES

29. Drainage

Permanent drainage and storm water detention improvements shall be provided upon completion.

30. Benches and Mine Roads

Stable cut slopes and benches shall be provided after mining is complete. All slopes, and access roads not needed for contiguous mining or maintenance of slopes shall be revegetated as soon as excavation moves down slope.

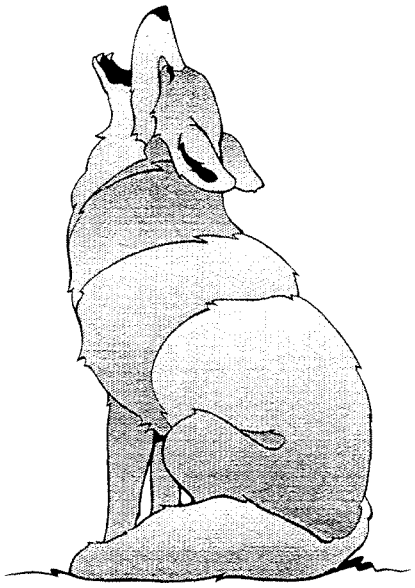
31. Level Areas

Level areas shall be created but sloped sufficiently to allow drainage.

G. VEGETATION AND HABITAT IMPLEMENTATION

XIV. OBJECTIVE

Minimize short-term wildlife habitat impacts resulting from mining.



POLICIES

32. Wildlife Habitat

Wildlife habitat shall be restored to a condition that is suitable for most current wildlife species residing in the Plan area as soon as mining has been terminated for each phase.

STANDARDS

32.1 Disturbed areas shall be revegetated as soon as mining in those areas is complete, except for access roads and benches. Revegetation should be an ongoing, integral part of the reclamation operation.

32.2 All disturbed lands, except benches and access roads, shall be revegetated as wildlife habitat, of equivalent value to that which currently exists. Benches and access road will be allowed to revegetate naturally where possible.

XV. OBJECTIVE

Reestablish a natural ecosystem that will be similar to pre-disturbance conditions, will blend in with the surrounding undisturbed ecosystem, and will be self-sustaining.

POLICY

33. Revegetation Plan

The plan for reestablishing the natural ecosystem that was prepared shall be amended for each phase of mining to allow for incorporating new and better techniques of revegetation.

STANDARDS

33.1 Along with the mining and reclamation plan, a revegetation plan shall be prepared that addresses the following issues:

a. Site preparation / placement of topsoil
b. Soil amendment (if required)
c. Proposed plant materials
d. Use of native, indigenous plants
e. Hydroseed mix
f. Planting procedures
g. Irrigation (if required)
h. Maintenance, monitoring and management of revegetation.
i. Performance standards for revegetation as indicated in California Code of Regulation 3705.

33.2 The revegetation plan for each phase shall also assess the effectiveness of the mitigation measures to date.

POLICY

34. Riparian Vegetation

Protect and enhance the riparian vegetation and habitat along Rocky Canyon Creek, Adobe Creek and the bermed pond and spring.

STANDARD

34.1 A 50 foot buffer zone, measured from the center of the creek shall be established and maintained along each side of Rocky Canyon Creek to protect the riparian area. The existing bermed pond and the spring shall be included within the buffer zone to retain the habitat for the southwestern pond turtle. No mining operations shall be permitted within this 100' buffer zone.

POLICY

35. Maintenance of Revegetation & Riparian Areas

Provide for continuing maintenance and improvement of the revegetated and riparian areas.

STANDARD

35.1 A preactivity survey shall be conducted prior to each phase of mining to assess potential impacts to sensitive biological resources or any other sensitive resources discovered subsequent to those identified in the PEIR. The assessment shall include an evaluation of mitigation measure effectiveness. If impacts to biological resources are identified which are not discussed in the PEIR, the Environmental Coordinator shall be notified and subsequent environmental review shall be required at the quarry operator's expense.

35.2 Prior to mining in each phase, the applicant shall conduct preactivity surveys. A survey shall be conducted between June 15 and July 15 for the straight-awned spineflower, a species of special concern. If any species of special concern are encountered, the applicant shall submit a mitigation plan for approval by the Environmental Coordinator. If avoidance of these species is not feasible, a replacement plan shall be prepared for the Environmental Coordinator.

Chapter 8: INFRASTRUCTURE

A. DRAINAGE

Due to the type of land use proposed on the site, there are not many infrastructure improvements required. The one facility that is extensive, other than circulation, is the proposed drainage system. It is a key element of the reclamation program.

An analysis of flooding at the site from the 2,282-acre area draining to the site was conducted in 1988, and the culverts at the crossing of Rocky Canyon Creek adjacent to the processing area were sized accordingly. Flooding from upstream is not a significant issue in the consideration of the proposed project.

The primary drainage concern is the control of runoff from the mined area as it may affect erosion and sedimentation, particularly in Rocky Canyon Creek. Existing drainage control facilities and conditions in Rocky Canyon Creek were inspected by the consulting geologist and biologist in May 1994, and no conditions were observed that would indicate that the facilities are not functioning as intended or that significant sediment from the mined area is being deposited in the creek.

A drainage system for surface runoff will be part of the reclamation program. It will serve the primary purpose of reducing the amount of water collected in rock fractures which, by adding weight, could stimulate failure of finished slopes.

All finished benches will be graded longitudinally to slope at 1% from a high point mid-way between access roads. Benches will also be pitched back toward the finished face where there will be a collection ditch. This ditch will carry runoff from the adjacent slope, along the bench, to open channels incorporated into the access roads. Drainage along the roads will convey the water from the quarry face. As a precaution against runoff from the benches eroding the soil placed on the finished slopes, a continuous 12-inch-high berm will be retained along the outer edge of all benches. Interim slopes will not require the same protection as finished slopes and interim benches can pitch outward to sheet water down those slopes.

As shown on Figure 7-1 (Ultimate Condition), upon completion there will be an excavated basin at the bottom of Area 1 and an excavated channel along the bottom of Area 2. The channel will drain to a large basin at the southwesterly corner of the site. Both basins will be large enough to handle runoff from the final tributary areas and to detain and clarify the captured water before discharge into the stream. The final configuration of the basins could be adjusted according to the ultimate use of the lower flat areas.

There will be no direct surface water runoff into Rocky Canyon Creek or into the southerly and easterly seasonal streams. Rocky Canyon Creek will continue to be protected by berms along both sides of the creek corridor. The access roads around Area 2 shall be bermed along their outer edge to prevent drainage into the seasonal streams. Surface water will be handled with the Storm Water Pollution Prevention Plan (SWPPP) and mandates of the Regional Water Quality Control Board.

Control of surface water from the site during the life of the operation is another function of drainage systems. Excavated basins will be maintained on working benches downstream from work areas to intercept storm water that has flowed over disturbed surfaces and has picked up loose fines and sediment. Retaining this water will allow the silt to drop out before the water is discharged. During the operation, the size of drainage areas will constantly change. Storm water basins will be adjusted to accommodate these changes, and to handle increased runoff from steeper slopes and altered surfaces. Fines collected in the storm water basins will be cleaned out at regular intervals to be blended with decomposed granite and sold for fill and sub-base. Plans for these interim drainage facilities must be submitted and approved by the County Engineering Department during each phase of the project.

The Department of Mines and Geology recommends that a 20 year storm be used when designing drainage facilities. County engineering standards for an area the size of the mine requires that the facility be designed for an average recurrence interval of 10 years, with freeboard, and shall have sufficient capacity for a 25-year design discharge by either alternate surface routes or contained within the channel without freeboard. During the Engineering Department's review of the drainage plans these issues will be taken into account. For the first phase of development and perhaps in future phases at least a 20 year storm design will be required. Future phases may require a different review as standards and drainage requirements change over time when new knowledge and techniques are introduced.

As each phase of the mine is approved new drainage plans should be required. This on going review is necessary to take into account any changes to acceptable engineering practices as well as providing some flexibility to deal with any essential changes to the drainage system due to unanticipated conditions on the site.

The stability of soils to be placed on the finished slopes to facilitate revegetation may not be sufficient to avoid slumps or "mud flows". While these failures may cause local impacts on the slopes, it is most likely that the sedimentation basins proposed would function as intended and the impact of these failures would probably not extend to Rocky Canyon Creek. If these failures do occur the operator should replace the soil in eroded areas, restart the vegetation and clean out and repair the drainage system.

B. DRAINAGE IMPLEMENTATION

XVI OBJECTIVE

Provide for adequate on-site drainage both during and after mining operations.

POLICIES

36. Drainage Improvements

Install drainage improvements that reduce sedimentation and erosion.

a. Reduce the amount of water collected in rock fractures, which, by adding weight, could stimulate failure of finished slopes.

b. Reduce surface erosion and slippage of applied soil.

c. Control discharge of surface water from the site.

37. Maintenance

Provide for current and long-term maintenance of the drainage system.

STANDARDS

36.1 Erosion control methods shall be designed to handle runoff from not less than the 20 year/1 hour intensity storm event.

36.2 All drainage, diversion structures, waterways and erosion control shall be inconsistent with the requirements in California Code of Regulation Section 3706.

37.1 During quarry operations, maintenance of the drainage system shall be the responsibility of the operator.

37.2 After quarry operations are completed, maintenance of the final drainage system will be the responsibility of the land owner. Prior to commencement of Phase 1, the applicant shall supply a written agreement or other legal conveyance acceptable to county counsel which includes "successors in interest" such that this condition goes with the sale of the property.

Chapter 9: IMPLEMENTATION

A. ANNUAL REVIEW

All permitted mineral resource extraction operations shall be inspected annually by the County for compliance with the permit and reclamation plan conditions. A compliance report shall be submitted as required by the County and SMARA.

B. PERIODIC REVIEW OF MINING OPERATIONS/MONITORING PROGRAM

In view of the nature and scope of the mining operation, including its extended period of time, it is necessary to ensure that significant environmental impacts will continue to be effectively mitigated as operations proceed throughout the life of the mining operation. The County shall be provided with the opportunity to periodically review the adequacy of the mitigation measures created for the mining operation to assess their effectiveness.

Periodic Review / Monitoring Program

The County Planning and Building Department shall review the operation of the quarry every year during the annual review required under the Surface Mining and Reclamation Act (SMARA). The results of the review are reported to the Department of Conservation, Office of Mine Reclamation. To assist the SMARA inspector it may be necessary to approve permit conditions requiring a specialist in a particular discipline to assist monitoring some aspects of the project.

It is anticipated that the Planning Commission will approve land use permits and reclamation plans that coincide with one or more of the phases contained in this plan. During each land use permit and reclamation plan the Planning Commission can determine if the previous conditions were adequate and reasonable. The commission can add or delete conditions and may approve additional conditions that will accommodate new proven technological advances.

C. HOURS OF OPERATION

The operator is requesting that the hours of operation remain as required at present. The present condition for hours of operation states: *From March 16 to November 14, operation of the project is limited to the hours between 6:00 a.m. and 8:00 p.m., Monday through Saturday. From November 15 to March 15, hours are limited to 7:00 a.m. to 8:00 p.m. Hauling shall be prohibited on Saturday and Sunday, except under emergency conditions, as determined by the*

state or local governments.

Contracts for public works projects such as roads, bridges, drainage and utilities are increasingly requiring the work to be performed during off-hours to minimize impacts upon traffic. This can mean night work and work on weekends. Additionally, public agencies often award contracts with very tight deadlines and penalties, suggesting around-the-clock performance by the contractor.

The demand for material from Rocky Canyon Quarry is often linked to the construction schedules of major public projects. The finished rock products can not always be stored at the construction site and many times may need to be available on demand. Emergencies can impose unanticipated and intensive demands on quarry production. Flexibility in meeting construction and emergency demands may be needed in the future for the quarry operator and for the entities depending upon this source of material.

As part of the original application, the operator did request modification to the present hours of operation to permit up to 24 hours a day for plant processing and truck traffic from the quarry site, not to exceed 80 days during a year.

The operator withdrew their request for the extended hours due to objections from persons potentially impacted with noise and safety concerns from truck traffic. For Phase I of the project, extended hours beyond those in the prior approval of the quarry are not being considered.

In the future, if methods can be found to control the noise and eliminate safety issues then extended hours could be considered for later phases. Solutions may include alternative routes established or other methods adequate to address truck traffic noise and safety.

D. FINANCIAL ASSURANCES

All persons or operators responsible for the reclamation of mined lands are required by the Surface Mining and Reclamation Act (SMARA) to submit effective financial assurances to the County to ensure the completion of approved reclamation activities including required revegetation. The content and form of the assurances shall meet SMARA and County requirements. The amount of the assurances shall be determined annually as required by SMARA and must be sufficient to cover costs associated with reclamation of all previously disturbed unreclaimed areas and of areas projected to be disturbed in the following year. Standards for the implementation of financial assurances are not developed for this plan since state law and the county ordinance dictate the standards for compliance.

E. SPECIFIC PLAN AMENDMENT PROCESS

After adoption, this Plan may be amended in accordance with state law. Any Specific Plan area property owner, mining operator, or the County may propose an amendment to the Specific Plan. The application for amendment shall be in a form specified by the Planning Director and shall explain the proposal and the reason for the change and should be accompanied by any necessary supporting documentation and plans.

State law requires that the Specific Plan must be amended in the same manner as the general plan. During the amendment of the plan there must be an opportunity for the involvement of citizens, public agencies, public utility companies and civic education and other community groups through public hearings and any other means the county deems appropriate. The County Planning Commission must hold at least one public hearing after providing notice as required by state law. The Planning Commission shall make a written recommendation on the amendment of the plan to the Board of Supervisors.

The Board of Supervisors shall conduct a public hearing after first providing the required public notice and shall amend the plan by resolution or ordinance. The Board of Supervisors may approve, modify or disapprove the recommendation of the Planning Commission, however any substantial modification proposed by the Board not previously considered by the Planning Commission during its hearings, shall first be referred to the Commission for its recommendation.

Any amendment proposed to this Plan must be consistent with the General Plan. If a proposed amendment includes a change in land use designation, a General Plan amendment may also be required depending on the magnitude of the proposed change. General Plan Amendments can be considered only four times a year. Specific Plan Amendments have no yearly numerical limitation.

F. SUBSEQUENT REQUIRED PERMITS FROM COUNTY

An application for a Land Use Permit shall be approved prior to mining or reclamation on any portion of the Plan Area. The policies and regulations contained in this Specific Plan shall provide the primary basis for considering all applications for a Land Use Permit. The approvals for Development Plans and Reclamation Plans will likely coincide with one or more of the phases proposed as determined by the County Planning Commission. The County's permit requirements are covered under the following:

San Luis Obispo County Entitlement

A Development Plan and Reclamation Plan pursuant to Land Use Ordinance Section

22.0.182 and 22.08.183.

Where this plan does not include a standard or provision covering a particular issue, the other provisions of the County Land Use Element, Noise Element of the General Plan, Land Use Ordinance and Real Property Division Ordinance requirements apply.

G. INTERPRETATIONS

If there is any question as to the interpretation of any portion of this plan, the Planning Director is responsible for such interpretation. Any such determination by the Planning Director may be appealed in accordance with Section 22.01.42 (Appeal) of the Land Use Ordinance.

In any case where uncertainty exists regarding the location of any Land Use category or other symbols or designation on the maps, or any uncertainty concerns the definition of a proposed use of land, refer to the Land Use Ordinance, Section 22.01.041, Rules of Interpretation.

H. ENVIRONMENTAL DOCUMENTATION & CEQA

Adoption or amendment of a Specific Plan is a project subject to the California Environmental Quality Act (CEQA). EIRs are usually prepared for Specific Plans due to the magnitude of potential environmental effects associated with such plans. Processing of environmental documents in the County is governed by the County of San Luis Obispo Environmental Quality Act Guidelines and State CEQA guidelines. A copy of the County guidelines is included in Appendix F. The EIR for the Specific Plan must follow these guidelines. Any proposed amendments to the Specific Plan must be reviewed by the Environmental Coordinator to determine whether or not additional environmental review is necessary.

Chapter 10: SUMMARY OF POLICIES & STANDARDS

For the convenience of those using this plan, the policies and standards contained throughout the plan are summarized here for easy reference.

MINING AREA LAND USE

POLICIES

1. Mining Area Land Uses

Allow only those land uses on the site that are consistent with mining.

STANDARD

1.1 Limitations on Use - Mining Area

For properties within the Specific Plan area where mining is approved, uses identified in Table O, Part I of the Land Use Element as "A" or "S" uses that may be allowed include: Mining, caretaker residence, concrete products, paving materials, pipeline and transmission lines.

TRANSITION AREA

POLICY

2. Transition Area

A transition area is proposed to protect mining operations from future incompatible land uses on adjacent lands. The transition area is located between the mining area boundary and the plan area boundary shown on Figure 2-3. Within the transition area, the county shall provide notice to property owners of the mine when requests for development are submitted.

STANDARDS

2.1 Limitations on Use - Transition Area

Within the transition zone all land uses allowable by Table "O" are permitted but those uses that are identified in the Noise Element as sensitive receptors are required to comply with Policy 3.3.4 of that element.

2.2 Permit Requirement.

Minor Use Permit is required for all residential uses, and bed and breakfast facilities.

2.3 Finding

Within the Transition zone, discretionary approvals shall require a finding for approval that the proposed use is compatible with current or future mineral extraction operations within the adjacent mining area. The proposed use will not adversely affect the continuing mining operation or expansion of the mining operation.

2.4 Conditions

During the consideration of any discretionary approval of uses that are potentially incompatible with an adjoining mineral extraction operation, conditions may be placed which include, but are not limited to, the following:

- Relocation and/or reorientation of a proposed use on the site.
- Special construction techniques such as acoustical insulation, limitation of window area.
- Fencing, screening, berming, and landscaping.

The use restrictions may be removed once mining and reclamation operations are complete.

POLICIES

4. Off-site Route Criteria

An acceptable off-site haul route should be utilized which can meet the following criteria:

- Provide for adequate sight-distances
- Minimize road gradients
- Minimize intersection safety hazards
- Minimize turning movements for trucks
- When any new improvements are proposed for a haul road, the road must

be adequately designed and constructed to minimize maintenance costs.

ON-SITE ROADS

POLICY

5. On-site Roads

Access to working areas, mining equipment, finished benches and the processing plant will be provided by a combination of existing and proposed unpaved roads. The provision of access roads shall be governed by the following standards:

STANDARDS

5.1 Access roads shall be placed within areas that are being mined or proposed to be mined in the future to allow equipment to reach working areas.

5.2 On-site roads shall provide equipment access to the finished slope benches for maintenance purposes.

5.3 Prior to establishing new access roads or extending existing roads the quarry operator shall provide plans indicating the location and size of any roads outside of any area to be mined to the SMARA inspector for approval. Such plans may require a separate grading permit.

PUBLIC ACCESS

POLICY

6. Public Access Through Quarry

Provide appropriate, continuing and safe public access through the quarry.

STANDARDS

6.1 Equestrians, pedestrians and bicycle access by the public is to continue to be allowed through the quarry on Rocky Canyon Road except as provided in standard 6.2.

6.2 To avoid safety issues the quarry operator and property owner may offer to dedicate, to the county, a trail easement that borders the property rather than continuing to allow passage through the processing area. The trail would allow equestrian, pedestrian and bicycle access through the quarry property.

The alternate route must be agreed upon by the quarry operator, land owner(s) and the Department of General Services. The quarry operator would be responsible for construction and maintenance of the alternate trail route during the operation of the mine.

POLICY

7. Mine Access

Provide for access to the mining area by authorized vehicles and equipment but prevent access by other vehicles to the mining areas and lands lying outside of the project site that could be accessed by those roads.

8. Access to Adjacent Lands

Provide for the possibility of future pedestrian, equestrian and bicycle access to the lands beyond the quarry when and where it is appropriate.

Any access must be agreed upon by the quarry operator, land owner(s) and the Department of General Services.

VISUAL

POLICIES

9. Berm as Visual Barrier

Where excavation faces the view corridor, a berm shall be retained along the foreground edge of the working shelf as necessary to conceal the operating equipment and working face from off-site view. The use of berms as visual screens is illustrated in Figure 6-2.

10. Ridges as Visual Barrier

Ridges shall be used whenever possible to conceal off-site views of excavation activities. Ridges shall be left in place while mining proceeds in the areas behind them for as long as practicable.

11. Curvelinear Shaping

Curvelinear shapes shall be incorporated into the final land form in order to avoid a mechanical/straight edged appearance or other methods employed to reduce the visibility of the mine off site. Figure 6-1, is a guide for interpretation of curvelinear shapes that shall be incorporated into the final landform.

STANDARDS

11.1 Where the original ridge meets the new ridgeline rounding of the original ridge tops shall be required to avoid sharp "man-made" angles or "flat tops" that will silhouette against the sky.

11.2 To avoid linear rows of vegetation along each bench which accent the unnatural land form of the quarry terraces, vegetation shall be planted in a manner which represents the undisturbed vegetation of the surrounding hillsides.

POLICY

12. Visual Screening

Prior to commencement of Phase 2 mining activities of the Specific Plan, the applicant shall demonstrate that the revegetation measures have been successful in screening mining activities from view of the five key viewing areas indicated in Figure V-25 in the EIR. Phase 2 may not commence until the Department of Planning and Building has determined that the screening will be adequate, either by vegetation or other means. The reclamation of exposed slopes shall be measured by meeting the requirements of the State Mining and Geology Board Reclamation Regulations, Article 9, Section 3705, Performance Standards for Revegetation and the standards contained in the approved revegetation plan.

MINING IMPLEMENTATION

POLICIES

13. Material Standards

Working areas should be large enough to provide the variety of material and flexibility required to meet specification standards.

14. Location of Excavation

Excavation may continue simultaneously at several different locations within each phase area throughout the life of the project.

15. Mining to Occur Behind Visual Barriers

Mining activities and working areas that have not yet been revegetated should be hidden from view to the maximum extent feasible -- preferably behind ridges or berms. (See Section VI. - VISUAL).

16. Size of Working Areas

Working areas shall be limited to the minimum size necessary as excavation progresses through the site, considering reasonable operating requirements.

17. Hours of Operation

Hours of trucking shall be limited to reduce noise impacts. Extended operating hours to meet public works project demand for other than emergency reasons can only be considered when the impacts from truck traffic noise and safety concerns are adequately resolved.

18. Reclamation Plan to Control

The area of excavation, ultimate configuration, and maximum rate of production shall be specified in the mining and reclamation plan.

19. Risk

The method of operation shall reduce risk to an acceptable level of all hazards to public health and safety, including: unstable slopes, dangerous equipment, toxic substances, and disease vectors.

20. Archaeological

If potential archaeological finds are discovered during excavation, work in the area shall halt and the find evaluated by a qualified Archaeologist. Procedures for managing historic and pre-historic archaeological resources, as described in CEQA guidelines Appendix K, should be followed. These procedures are shown in Appendix E of this document.

21. Topsoil Stockpiling

Stockpiling of topsoil shall be minimized and, where stockpiling is necessary, the topsoil shall be protected from erosion and stockpiled in such a manner as to protect its viability to support vegetation.

22. Drainage

Suitable drainage and storm water detention facilities shall be maintained during the mining operation. (See Section VII - INFRASTRUCTURE)

23. Other Agency Permits

The quarry operator shall obtain appropriate permits and comply with applicable requirements of the Regional Water Quality Control Board (RWQCB), California Department of Fish & Game (CDF&G), and Air Pollution Control District (APCD).

MINING PLAN

POLICY

24. Mining Plan

To implement the policies and standards of this plan prepare a detailed mining plan for each phase that provides for:

a. Mine in a sequence that minimizes exposure of the working area to public view from off-site.

b. Provide access to a variety of aggregate grades at all times within each phase area.

c. Mine in a sequence that maximizes utilization of gravity in moving material.

d. Limit on-site haul distances as much as possible thus deducting air pollution.

e. Establish permanent habitat areas as soon as possible by revegetating as soon as practical.

f. Allow for flexibility in the sequence of excavation to respond to fluctuations in market demand and other unanticipated factors.

STANDARDS

A detailed maining plan that establishes a sequence of excavation shall be prepared as part of each phase of mining as a part of each phase's reclamation plan and should address the following issues:

24.1 The areas to be mined in each phase.
24.2 The interim and finished slopes and benches at the end of each phase.
24.3 The manner in which slopes and benches are integrated into overlapping phases.
24.4 The various locations for a portable primary crusher and conveyor.
24.5 The elevations of benches and shelves.
24.6 The locations of interim and ultimate access roads.
24.7 The ridge tops and the elevations along the ridges for comparison with the grades within each area of excavation.

RECLAMATION PLAN

POLICIES

25. Timing of Reclamation

Reclamation shall be performed as soon as practical in each phase.

26. Requirements

All reclamation plans and activities shall comply with reclamation standards adopted by the State Mining and Geology Board and any applicable County requirements.

27. On-going Reclamation

Mining activities shall be planned so that reclamation is an on-going activity thus shortening the duration of habitat loss.

28. Final Slope Stability

Final cut slopes shall be designed to be stable under both static and dynamic

(seismic) conditions.

RECLAMATION

STANDARDS

26.1 The processing plant and all equipment shall be removed at the termination of mining on the site.

27.1 Reclamation shall be performed as soon as excavation and final, full height slopes in a mined area are completed.

27.2 Interim slopes and benches shall all be eliminated by final excavation.

28.1 Any changes to the slopes proposed in Figures 7-3 and 7-4 and 7-6 through 7-15, in the first or subsequent phases require that an engineering geologist, acceptable to the Department of Planning and Building, shall prepare revised maps and a report verifying that the change is geologically stable. The maps and report shall be submitted to the Department of Planning and Building for county approval. If such changes occur during mining then all work is to cease in the affected area until approval is given.

POLICIES

29. Drainage

Permanent drainage and storm water detention improvements shall be provided upon completion.

30. Benches and Mine Roads

Stable cut slopes and benches shall be provided after mining is complete. All slopes, and access roads not needed for contiguous mining or maintenance of slopes shall be revegetated as soon as excavation moves down slope.

31. Level Areas

Level areas shall be created but sloped sufficiently to allow drainage.

WILDLIFE HABITAT

POLICY

32. Wildlife Habitat

Wildlife habitat shall be restored to a condition that is suitable for most current wildlife species residing in the Plan area as soon as mining has been terminated for each phase.

STANDARDS

32.1 Disturbed areas shall be revegetated as soon as mining in those areas is complete, except for access roads and benches. Revegetation should be an ongoing, integral part of the reclamation operation.

32.2 All disturbed lands, except benches and access roads, shall be revegetated as wildlife habitat, of equivalent value to that which currently exists. Benches and access road will be allowed to revegetate naturally where possible.

REVEGETATION

POLICY

33. Revegetation Plan

The plan for reestablishing the natural ecosystem that was prepared shall be amended for each phase of mining to allow for incorporating new and better techniques of revegetation.

STANDARDS

33.1 Along with the mining and reclamation plan, a revegetation plan shall be prepared that addresses the following issues:

a. Site preparation / placement of topsoil
b. Soil amendment (if required)
c. Proposed plant materials
d. Use of native, indigenous plants
e. Hydroseed mix

f. Planting procedures
g. Irrigation (if required)
h. Maintenance, monitoring and management of revegetation.
i. Performance standards for revegetation as indicated in California Code of Regulation 3705.

33.2 The revegetation plan for each phase shall also assess the effectiveness of the mitigation measures to date.

RIPARIAN VEGETATION

POLICY

34. Riparian Vegetation

Protect and enhance the riparian vegetation and habitat along Rocky Canyon Creek, Adobe Creek and the bermed pond and spring.

STANDARD

34.1 A 50 foot buffer zone, measured from the center of the creek shall be established and maintained along each side of Rocky Canyon Creek to protect the riparian area. The existing bermed pond and the spring shall be included within the buffer zone to retain the habitat for the southwestern pond turtle. No mining operations shall be permitted within this 100' buffer zone.

MAINTENANCE OF REVEGETATION & RIPARIAN AREAS

POLICY

35. Provide for continuing maintenance and improvement of the revegetated and riparian areas.

STANDARD

35.1 A preactivity survey shall be conducted prior to each phase of mining to assess potential impacts to sensitive biological resources or any other sensitive rsources discovered subsequent to those identified in the PEIR. The assessment shall include an evaluation of mitigation measure effectiveness. If impacts to

biological resources are identified which are not discussed in the PEIR, the Environmental Coordinator shall be notified and subsequent environmental review shall be required at the quarry operator's expense.

35.2 Prior to mining in each phase, the applicant shall conduct preactivity surveys. A survey shall be conducted between June 15 and July 15 for the straight-awned spineflower, a species of special concern. If any species of special concern are encountered, the applicant shall submit a mitigation plan for approval by the Environmental Coordinator. If avoidance of these species is not feasible, a replacement plan shall be prepared for the Environmental Coordinator.

DRAINAGE IMPROVEMENTS & MAINTENANCE

POLICIES

36. Drainage Improvements

Install drainage improvements that reduce sedimentation and erosion.

a. Reduce the amount of water collected in rock fractures, which, by adding weight, could stimulate failure of finished slopes.

b. Reduce surface erosion and slippage of applied soil.

c. Control discharge of surface water from the site.

37. Maintenance

Provide for current and long-term maintenance of the drainage system.

STANDARDS

36.1 Erosion control methods shall be designed to handle runoff from not less than the 20 year/1 hour intensity storm event.

36.2 All drainage, diversion structures, waterways and erosion control shall be inconsistent with the requirements in California Code of Regulation Section 3706.

37.1 During quarry operations, maintenance of the drainage system shall be the

responsibility of the operator.

37.2 After quarry operations are completed, maintenance of the final drainage system will be the responsibility of the land owner. Prior to commencement of Phase 1, the applicant shall supply a written agreement or other legal conveyance acceptable to county counsel which includes "successors in interest" such that this condition goes with the sale of the property.

Appendix A

Article 8. Specific Plans

65450. Preparation of specific plan

After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.

(Repealed and added by Stats. 1984, Ch. 1009.)

(Section 65450.1 repealed by Stats. 1984, Ch. 1009.)

65451. Content of specific plan

(a) A specific plan shall include a text and a diagram or diagrams which specify all of the following in detail:

(1) The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.

(2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be

located within the area covered by the plan and needed to support the land uses described in the plan.

(3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.

(4) A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out paragraphs (1), (2), and (3).

(b) The specific plan shall include a statement of the relationship of the specific plan to the general plan.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199.)

65452. Optional subjects

The specific plan may address any other subjects which in the judgment of the planning agency are necessary or desirable for implementation of the general plan.

(Repealed and added by Stats. 1984, Ch. 1009.)

65453. Adoption/amendment procedure

(a) A specific plan shall be prepared, adopted, and amended in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the legislative body.

(b) A specific plan may be repealed in the same manner as it is required to be amended.

(Repealed and added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 1199.)

65454. Consistency with general plan

No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan.

(Added by Stats. 1984, Ch. 1009.)

65455. Zoning, tentative, map, parcel map, and public works project consistency with specific plan

No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan.

(Added by Stats. 1984, Ch. 1009.)

65456. Fees and charges

(a) The legislative body, after adopting a specific plan, may impose a specific plan fee upon persons seeking governmental approvals which are required to be consistent with the specific plan. The fees shall be established so that, in the aggregate, they defray but as estimated do not exceed, the cost of preparation, adoption, and administration of the specific plan, including costs incurred pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. As nearly as can be estimated, the fee charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan. It is the intent of the Legislature in providing for such fees to charge persons who benefit from specific plans for the costs of developing those specific plans which result in savings to them by reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan.

(b) Notwithstanding Section 60016, a city or county may require a person who requests adoption, amendment, or repeal of a specific plan to deposit with the planning agency an amount equal to the estimated cost of preparing the plan, amendment, or repeal prior to its preparation by the planning agency.

(c) Copies of the documents adopting or amending the specific plan, including the diagrams and text, shall be made available to local agencies and shall be made available to the general public

as follows:

(1) Within one working day following the date of adoption, the clerk of the legislative body shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(2) Within two working days after receipt of a request for a copy of the documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the clerk shall furnish the requested copy to the person making the request.

(d) A city or county may charge a fee for a copy of a specific plan or amendments to a specific plan in an amount that is reasonably related to the cost of providing that document.

(Added by Stats. 1984, Ch. 1009; Amended by Stats. 1985, Ch. 338 and Ch. 1199; Amended by Stats. 1990, Ch. 1572.)

65457. CEQA exemption

(a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

(b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

(c) This section does not supersede but provides an alternative procedure to Section 21080.7 of the Public Resources Code.

(Added by Stats. 1984, Ch. 1009.)

Appendix B

PARCELIZATION AND OWNERSHIP

Plan Area Parcels

AP 34-431-04,05, AND 06	Robert L. Dallaire and Jacqueline Dallaire P. O. Box 1800 Atascadero, CA 93423-1800
AP 34-431-043, 044	Union Asphalt, Inc. P. O. Box 1280 Santa Maria, CA 93456
AP 34-431-03	Gary A. Davis et al 10005 River Road Atascadero, CA 93422-4701
AP 34-431-045, 046	Rocky Canyon Ranch c/o M. Willer 2552 Via Anita Palos Verdes Estates, CA 90274
AP 34-431-047	Blue Sky Ranch Gen. PTP 6242 Paramount Blvd. Long Beach, CA 90805

Surrounding Parcels	**Owner**
AP 34-501-15	Robert Nelson 7495 Old Adobe Way Templeton, CA 93465
AP 34-501-16	Albert & Betsy Robin 7491 Old Adobe Way Templeton, CA 93465
AP 34-441-025	Robert C. & Victoria A. Mannon P.O. Box 2359 Atascadero, CA 93423

Appendix C

SURFACE MINING AND RECLAMATION ACT OF 1975

As amended by:

Senate Bill 1300, Nejedly - 1980 Statutes
Assembly Bill 110, Areias - 1984 Statutes
Senate Bill 593, Royce - 1985 Statutes
Senate Bill 1261, Seymour - 1986 Statutes
Assembly Bill 747, Sher - 1987 Statutes
Assembly Bill 3551, Sher - 1990 Statutes
Assembly Bill 3903, Sher - 1990 Statutes
Assembly Bill 1506, Sher - 1991 Statutes
Senate Bill 1569, Rogers - 1992 Statutes
Assembly Bill 3098, Sher - 1992 Statutes
Assembly Bill 723, Sher - 1993 Statutes
Assembly Bill 904, Sher - 1993 Statutes
Assembly Bill 867, Sher - 1994 Statutes
Senate Bill 273, Leslie - 1995 Statutes
Senate Bill 614, Craven et al - 1995 Statutes
Assembly Bill 1373, Olberg - 1996 Statutes
Senate Bill 1549, Monteith - 1996 Statutes
Senate Bill 1664, Sher - 1997 Statutes, and
Assembly Bill 297, Thomson - 1999 Statutes

Article 1. General Provisions

§ 2710. This chapter shall be known and may be cited as the Surface Mining and Reclamation Act of 1975.

§ 2711. (a) The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

(b) The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

(c) The Legislature further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

§ 2712. It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.

§ 2713. It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

§ 2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the board, as defined by section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the Department of Conservation by the date specified by the Department of Conservation on these mining activities.

(2) Nothing in this subdivision shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and

necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

§ 2715. No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

§ 2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2003, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) ''Site specific plan,'' for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Title 14 of the California Code of Regulations and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall remain in effect only until December 31, 2003, and as of that date is repealed,

unless a later enacted statute, that is enacted before December 31, 2003, deletes or extends that date.

NOTE: Sections 2715.5 and 2773.2 shall not become operative until such time that the State Mining and Geology Board approves the County of Yolo implementing ordinance governing in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resource Management Plan and notifies the Secretary of State in writing of that approval.

§ 2716. Any person may commence an action on his or her own behalf against the board, the State Geologist, or the director for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board, the State Geologist, or the director to carry out any duty imposed upon them pursuant to this chapter.

§ 2717. (a) The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, which are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Section 10295.5 of the Public Contract Code, on and after July 1, 1993, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state agency, a list identifying all of the following:

(1) Surface mining operations for which a report has been submitted pursuant to Section 2207 which indicates that the reclamation plan and the financial assurances have been approved.

(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.

§ 2718. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 2719. Notwithstanding any other provision of law, neither the state nor any county, city, district, or other political subdivision shall be exempt from any fee imposed upon a mining operation pursuant to subdivision (d) of Section 2207.

Article 2. Definitions

§ 2725. Unless the context otherwise requires, the definitions set forth in this article shall govern the construction of this chapter.

§ 2726. "Area of regional significance" means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

§ 2727. "Area of statewide significance" means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

§ 2727.1 "Idle" means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

§ 2728. "Lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter.

§ 2729. "Mined lands" includes the surface,

subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

§ 2730. "Mining waste" includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

§ 2731. "Operator" means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

§ 2732. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

§ 2732.5. "Permit" means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

§ 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.

§ 2734. "State policy" means the regulations adopted by the board pursuant to Section 2755.

§ 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.

Article 3. District Committees

§ 2740. In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board. In establishing districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committees shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economics, or the reclamation of mined lands.

§ 2741. The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.

Article 4. State Policy for the Reclamation of Mined Lands

§ 2755. The board shall adopt regulations which establish state policy for the reclamation of mined lands in accordance with the general provisions set forth in Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 2756. State policy shall apply to the conduct of surface mining operations and shall include, but shall not be limited to, measures to be employed by lead agencies in specifying grading, backfilling, resoiling, revegetation, soil compaction, and other reclamation requirements, and for soil erosion control, water quality and watershed control, waste disposal, and flood control.

§ 2757. The state policy adopted by the board shall be

based upon a study of the factors that significantly affect the present and future condition of mined lands, and shall be used as standards by lead agencies in preparing specific and general plans, including the conservation and land use elements of the general plan and zoning ordinances. The state policy shall not include aspects of regulating surface mining operations which are solely of local concern, and not of statewide or regional concern, as determined by the board, such as, but not limited to, hours of operation, noise, dust, fencing, and purely aesthetic considerations.

§ 2758. Such policy shall include objectives and criteria for all of the following:

(a) Determining the lead agency pursuant to the provisions of Section 2771.

(b) The orderly evaluation of reclamation plans.

(c) Determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

§ 2759. The state policy shall be continuously reviewed and may be revised. During the formulation or revision of the policy, the board shall consult with, and carefully evaluate the recommendations of, the director, any district technical advisory committees, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

§ 2760. The board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

§ 2761. (a) On or before January 1, 1977, and, as a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state which are urbanized or are subject to urban expansion or other irreversible land uses which would preclude mineral extraction:

(1) Standard metropolitan statistical areas and such other areas for which information is readily available.

(2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition which has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

(1) Areas containing little or no mineral deposits.

(2) Areas containing significant mineral deposits.

(3) Areas containing mineral deposits, the significance of which requires further evaluation.

The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(c) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

§ 2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall

prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

§ 2763. (a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

§ 2764. (a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the

case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

Article 5. Reclamation of Mined Lands and the Conduct of Surface Mining Operations

§ 2770. (a) Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project for purposes of Division 13 (commencing with Section 21000). Any person with an existing surface mining operation which does not have financial assurances that received lead agency approval prior to January 1, 1991, shall submit financial assurances for reclamation for review in accordance with subdivision (d).

(d) The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) Any person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve reclamation plans or financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the board.

(f) The board may decline to hear an appeal if it

determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(g) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances determined to meet these requirements shall be approved. A reclamation plan or financial assurances determined not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the board, to correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

(h)(1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

§ 2770.5. Whenever surface mining operations are proposed in the 100-year flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the lead agency receiving the application for the

issuance or renewal of a permit to conduct the surface mining operations shall notify the Department of Transportation that the application has been received. The Department of Transportation shall have a period of not more than 45 days to review and comment on the proposed surface mining operations with respect to any potential damage to the state highway bridge from the proposed surface mining operations. The lead agency shall not issue or renew the permit until the Department of Transportation has submitted its comments or until 45 days from the date the application for the permit was submitted, whichever occurs first.

§ 2771. Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.

§ 2772. (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations on the lands.

(b) All documentation for the reclamation plan shall be submitted by the lead agency to the department at one time.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) The size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(6) A description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.

(8) A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including both of the following:

(A) A description of the manner in which contaminants will be controlled, and mining waste will be disposed.

(B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation will occur.

(9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) Any other information which the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining

operation, or as part of an environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000), may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirements of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with Division 13 (commencing with Section 21000).

§ 2773. (a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control.

(b) By January 1, 1992, the board shall adopt regulations specifying minimum, verifiable statewide reclamation standards. Subjects for which standards shall be set include, but shall not be limited to, the following:

(1) Wildlife habitat.

(2) Backfilling, regrading, slope stability, and recontouring.

(3) Revegetation.

(4) Drainage, diversion structures, waterways, and erosion control.

(5) Prime and other agricultural land reclamation.

(6) Building, structure, and equipment removal.

(7) Stream protection.

(8) Topsoil salvage, maintenance, and redistribution.

(9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

§ 2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the department. Financial assurances that were approved by the lead agency prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, to the public agency, to the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the board, following a public hearing, determines that the operator is

financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the director shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the director and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Section 2770.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the board is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the director.

(2) The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has occurred:

(A) The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests, or surety bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

(f) On or before March 1, 1993, the board shall adopt guidelines to implement this section. The guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1of Division 3 of Title 2 of the Government Code, and are not subject to review by the Office of Administrative Law.

§ 2773.15. Notwithstanding Section 2773.1, a surety bond that was executed by any personal surety that was approved by the lead agency prior to February 13, 1998, to ensure that reclamation is performed in accordance with a reclamation plan approved by a lead agency prior to that date, may be utilized to satisfy the requirements

of this chapter, if the amount of the financial assurance required to perform the approved reclamation plan, as amended or updated from time to time, does not change from the amount approved prior to February 13,1998.

§ 2773.2. (a) The Secretary of the Resources Agency shall convene a multiagency task force that shall evaluate the effectiveness of the Cache Creek Resource Management Plan in achieving the plan's objectives concerning the rehabilitation and restoration of Cache Creek and identify those aspects of the plan that should be modified or eliminated to more effectively achieve the goals of this chapter.

(b) The task force shall consist of nine members as follows:

(1) A representative of the department.

(2) A representative of the Department of Fish and Game.

(3) A representative of the State Water Resources Control Board.

(4) Six members appointed by the Secretary of the Resources Agency. Of these six members, two shall be elected officials of a city or county with active mining operations within its jurisdiction, one of whom shall represent northern California interests, and one of whom shall represent southern California interests; one shall be a person currently engaged in in-stream mining activities as an employee or owner of a mining operation; one shall be a member of the State Mining and Geology Board; and two shall be members of the scientific community who are affiliated with a California institution of higher education. The representative of the department shall serve as the chairperson of the task force.

(c) The task force, not later than January 1, 2001, shall recommend to the Secretary of the Resources Agency any revisions to this chapter or any other provisions of law, including regulations of the State Mining and Geology Board, that are necessary to incorporate regional resource management plans in the state's regulation of in-stream mine reclamation. The task force recommendations shall, at a minimum, address all of the following issues:

(1) Flood control.

(2) Stream bank and channel erosion control.

(3) Slope stability.

(4) Vegetation and revegetation.

(5) The interrelationships of private and public land ownership along and within streambed areas, including ownership rights that are or may be ''vested'' as the term is used in Section 2776.

(6) The provision of adequate financial assurances for reclaiming mined areas.

(7) The monitoring of compliance with qualitative and quantitative measures to regulate mine reclamation on large segments of streams and rivers.

(8) Cumulative and site specific issues related to resource management for in-stream mine reclamation.

(d) The department shall only convene the multiagency task force required pursuant to subdivision (a) if the costs associated with the operation of the task force will not diminish the department's ability to provide reclamation plan review, financial assurance review, and field inspections, undertake other enforcement actions and provide local assistance to cities or counties under this chapter.

NOTE: Sections 2715.5 and 2773.2 shall not become operative until such time that the State Mining and Geology Board approves the County of Yolo implementing ordinance governing in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resource Management Plan and notifies the Secretary of State in writing of that approval.

§ 2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause such an inspection to be

conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the surface mining operation in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised. In particular, if the lead agency's position is at variance with any of the recommendations made, or objections raised, in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of such an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

§ 2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of

the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars ($5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.

(e) Upon a complaint by the director, the department, or the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring such an action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(f) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:

(1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.

(2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.

The director shall comply with this section in initiating enforcement actions.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

§ 2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the director, for review of the order. If the operator does not

petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the director, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the director setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the director within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. Any operator aggrieved by an order of a lead agency or the director setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

§ 2774.3. The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant to this chapter.

§ 2774.4. (a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allows the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's

jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present

oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

(1) The action to be taken by the board.

(2) Why the board decided to take the action.

(3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

§ 2774.5. (a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

(d) Reclamation plans approved by the board pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the board. Reclamation plans approved by the board shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the board, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead agency's approval. Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations.

§ 2775. (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance, may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action.

§ 2776. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

The reclamation plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

§ 2777. Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with, and approved by, the lead agency.

§ 2778. (a) Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the lead agency that the release of that information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The lead agency shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the director and to persons authorized in writing by the operator and by the owner.

(b) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the director by lead agencies on request.

§ 2779. Whenever one operator succeeds to the interest of another in any incompleted surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.

Article 6. Areas of Statewide or Regional Significance

§ 2790. After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the board may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.

§ 2791. The board shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.

§ 2792. Neither the designation of an area of regional or statewide significance nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any

development that has been authorized pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code, pursuant to the Subdivision Map Act (Division 2 [commencing with Section 66410] of Title 7 of the Government Code), or by a building permit or other authorization to commence development, upon which such person relies and has changed his position to his substantial detriment, and, which permit or authorization was issued prior to the designation of such area pursuant to Section 2790. If a developer has by his actions taken in reliance upon prior regulations obtained vested or other legal rights that in law would have prevented a local public agency from changing such regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

§ 2793. The board may, by regulation adopted after a public hearing, terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

Article 7. Fiscal Provisions

§ 2795. (a) Notwithstanding any other provision of law, the first two million dollars ($2,000,000) of moneys from mining activities on federal lands disbursed by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. Sec. 191), shall be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is hereby created, and may be expended, upon appropriation by the Legislature, for the purposes of this chapter. However, if in any fiscal year, the amount of money disbursed to the state pursuant to Section 35 of the Mineral Lands Leasing Act is less than twenty million dollars ($20,000,000), then only the first one million one hundred thousand dollars ($1,100,000) of that money shall be deposited in the Surface Mining and Reclamation Account for the next fiscal year.

(b) Proposed expenditures from the account shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the account shall be subject to all of the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

§ 2796. (a) The Legislature hereby establishes a state abandoned minerals and mineral materials mine reclamation program for the purpose of administering funds received by the state under the Surface Mining Control and Reclamation Act of 1977, or through amendments to the federal general mining laws (30 U.S.C. Secs. 1, 12A, 16, 161, and 162, and 602, et seq.).

(b) There is hereby created in the State Treasury, the Abandoned Mine Reclamation and Minerals Fund. The money in the fund may be expended, upon appropriation by the Legislature, as required by federal legislation amending the federal general mining laws, and for the following purposes:

(1) Development of an inventory of mined lands, water, and facilities eligible for reclamation.

(2) Establishment by the director of the abandoned minerals and mineral materials mine reclamation program pursuant to the pending federal legislation amending the federal general mining laws, if enacted, that provides for all of the following:

(A) (i) Reclamation and restoration of abandoned surface mined areas.

(ii) For purposes of this subparagraph, "abandoned surface mined area" means mined lands that meet all of the following requirements:

(I) Mining operations have ceased for a period of one year or more.

(II) There is no interim management plan in effect that meets the requirements of Section 2770.

(III) There are no approved financial assurances that are adequate to perform reclamation in accordance with this chapter.

(IV) The mined lands are adversely affected by past mineral mining, other than mining for coal, oil, and gas, and mineral material mining.

(B) Reclamation and restoration of abandoned milling and processing areas.

(C) Sealing, filling, and grading abandoned deep mine entries.

(D) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

(E) Prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage.

(F) Control of surface subsidence due to abandoned deep mines.

(G) The expenses necessary to accomplish the

purposes of this section.

(3) To the extent those expenditures are allowed by the applicable statutes:

(A) Grants to lead agencies for the purposes of carrying out this chapter.

(B) Implementation of this chapter and Section 2207 by the department, which may include an offsetting reduction in the amount of reporting fees collected from each active and idle mining operation and deposited in the Mine Reclamation Account pursuant to subdivision (d) of the Section 2207, as determined by the director.

(c) The Abandoned Mine Reclamation and Minerals Fund shall be the depository for all moneys from mining activities on federal lands, as follows:

(1) (A) Disbursements made by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act (30 U.S.C. Sec. 191), with respect to royalties levied on the production of locatable minerals or mineral concentrates from any mining claim located on federal lands in the state pursuant to the pending federal legislation amending the federal general mining laws, but excluding oil, gas, and geothermal revenues.

(B) The federal funds specified in this paragraph do not include the funds deposited in the Surface Mining and Reclamation Account pursuant to Section 2795, the funds deposited in the Geothermal Resources Development Account pursuant to Section 3820, or the funds deposited in the State School Fund pursuant to Section 12320 of the Education Code.

(2) Grants made by the Secretary of the Interior to this state from the Abandoned Minerals Mine Reclamation Fund pursuant to the pending federal legislation amending the federal general mining laws, for the implementation of an abandoned minerals and mining materials mine reclamation program.

(d) The expenditure of money from the Abandoned Mine Reclamation and Minerals Fund shall reflect the following priorities and other

priorities as specified in federal statute in the following ranking:

(1) The protection of public health and safety and the environment from the adverse effects of past minerals and mineral materials mining practices.

(2) The protection of property that is in extreme danger as a result of past minerals and mineral materials mining practices.

(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

(e) Proposed expenditures from the Abandoned Mine Reclamation and Minerals Fund shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the fund shall be subject to all the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

NOTE: Section 2796 shall become operative upon the effective date of any federal legislation which is enacted requiring the payment of a royalty on the production of locatable minerals, produced from any mining claim located or converted on federal lands in this state, excluding royalties paid on oil, gas, and geothermal lease activities, and not already subject to disposition under any of the following:

(1) The Mineral Lands Leasing Act (30 U.S.C. Sec. 191).

(2) The Geothermal Steam Act of 1970 (30 U.S.C. Sec. 100).

(3) The Materials Act of 1947 (30 U.S.C. Sec. 601).

(4) The Mineral Leasing Act for Acquired Lands (30 U.S.C. Sec. 351).

ANNUAL REPORTING REQUIREMENTS AND REPORTING FEE

Public Resources Code Section 2207
(Repealed and added by AB 3551, Chapter 1097, Statutes of 1990, Sher,
Amended by AB 3903, Chapter 1101, Statutes of 1990, Sher, AB 1506, Chapter 845,
Statutes of 1991, Sher, AB 3098, Chapter 1077, Statutes of 1992, Sher, SB 741, Chapter 1287, Statutes of 1993, Rogers, and AB 297, Chapter 869, Statutes of 1999, Thomson)

§ 2207. (a) The owner, lessor, lessee, agent, manager, or other person in charge of any mining operation of whatever kind or character within the state shall forward to the director annually not later than a date established by the director, upon forms furnished by the board, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Bureau of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 1 /2 -minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in paragraphs (1) to (14), inclusive, of subdivision (a).

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (b), (c), (d), or (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the director and the lead agency. Any person who fails to comply with this

section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation shall not exceed two thousand dollars ($2,000) annually and shall not be less than fifty dollars ($50) annually.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees shall not exceed, and may be less than, the amount of one million dollars ($1,000,000), as adjusted for the cost ofliving as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 1991-92 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, solely to carry out this section and Chapter 9 (commencing with Section 2710).

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars ($100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 1 1 /2 percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, ''mining operation'' has the same meaning as ''surface mining operation'' as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, ''mining operation'' may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation shall not be disclosed to any member of the public, as defined in subdivision (f) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to

disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same such figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

SITE INSPECTIONS CONDUCTED BY THE DEPARTMENT OF CONSERVATION

Public Resources Code Section 2208
(Amended by AB 2943 [Allen, Chapter 999, Statutes of 1992])

§ 2208. The director or a qualified assistant may at any time enter or examine any and all mines, quarries, wells, mills, reduction works, refining works, and other mineral properties or working plants in this state in order to gather data to comply with the provisions of this chapter.

PURCHASE AND USE OF MINED MATERIALS BY STATE AGENCIES

Public Contract Code Section 10295.5
(Amended by AB 3098 [Sher, Chapter 1077, Statutes of 1992]
and AB 723 [Sher, Chapter 278, Statutes of 1993])

10295.5 (a) Notwithstanding any other provision of law, no state agency shall purchase or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) The Department of General Services shall revise its procedures and procurement specifications for state purchases of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.

(c) For purposes of the section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

(e)(1) This section does not apply to construction or maintenance contracts if the contractor has entered into a written subcontract, executed prior to July 1, 1993, for the purchase of materials from a mine operator that would not otherwise qualify under the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

(2) This subdivision shall become inoperative on July 1, 1996.

(f) This section shall become operative on July 1, 1993.

LIABILITY LIMITATIONS FOR REMEDIATION/RECLAMATION OF ABANDONED MINES

See Water Code Section 13397 et seq.
(Added by SB 1108 [Leslie, Chapter 878, Statutes of 1995])

NOTE: While this section amends the California Water Code, liabilities under the federal Clean Water Act may remain until similar federal amendments are adopted.

STATE MINING AND GEOLOGY BOARD
RECLAMATION REGULATIONS

Article 1. Surface Mining and Reclamation Practice

§ 3500. Purpose. It is the purpose of this subchapter to establish state policy for the reclamation of mined lands and the conduct of surface mining operations in accord with the general provisions set forth in Public Resources Code, Division 2, Chapter 9, Section 2710 et seq. (Surface Mining and Reclamation Act of 1975, as amended by Statutes of 1980).
Note: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2710-2795, Public Resources Code.

§ 3501. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

Agricultural Activity. The cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.

Angle of Repose. The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material.

Backfill. Earth, overburden, mine waste or imported material used to replace material removed during mining.

Borrow Pits. Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

Critical Gradient. The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

Excavations for On-Site Construction. Earth material moving activities that are required to prepare a site for construction of structures, landscaping, or other land improvements (such as excavation, grading, compaction, and the creation of fills and embankments), or that in and of themselves constitute engineered works (such as dams, road cuts, fills, and catchment basins).

Grading. To bring an existing surface to a designed form by cutting, filling, and/or smoothing operations.

Minerals. Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

Person. Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

Reclamation Plan. The applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after January 1, 1976, as called for in Section 2772 of the Act.

Resoiling. The process of artificially building or reconstructing a soil profile.

Stream Bed Skimming. Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

Surface Mining Operations. In addition to the provisions of Section 2735 of the Act, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations.

Temporarily Deactivated Operation. A surface mine that has been closed down and that the operator has maintained in the expectation of reopening it when the conditions justify.

Topsoil. The upper part of the soil profile that is relatively rich in humus, which is technically known as the A-horizon of the soil profile.
NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2735, Public Resources Code.

§ 3502. The Reclamation Plan.

(a) Objectives. Reclamation plans shall be developed to attain the objectives of Public Resources Code Section 2712(a)-(c).

(b) Reclamation Plan Elements. In addition to the information required by Public Resources Code Section

2772, the following elements shall be included in the reclamation plan:

(1) The environmental setting of the site of operations and the effect that possible alternate reclaimed site conditions may have upon the existing and future uses of surrounding lands.

(2) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site.

(3) The designed steepness and proposed treatment of the mined lands' final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other factors. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. Whenever final slopes approach the critical gradient for the type of material involved, regulatory agencies shall require an engineering analysis of the slope stability. Special emphasis on slope stability and design shall be necessary when public safety or adjacent property may be affected.

(4) Areas mined to produce additional materials for backfilling and grading, as well as settlement of filled areas, shall be considered in the reclamation plan. Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice.

(5) Disposition of old equipment.

(6) Temporary stream or watershed diversions.

(c) Adequacy. In judging the adequacy of a particular reclamation plan in meeting the requirements described herein and within the Act, the lead agency shall consider the physical and land-use characteristics of the mined lands and their surrounding area pursuant to Public Resources Code Section 2773.

NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2712(a)-(c), 2756-2757, 2770 and 2772-2773, Public Resources Code.

§ 3503. Surface Mining and Reclamation Practice.

The following are minimum acceptable practices to be followed in surface mining operations:

(a) Soil Erosion Control.

(1) The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.

(2) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.

(3) Erosion control facilities such as retarding basins, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(b) Water Quality and Watershed Control.

(1) Settling ponds or basins shall be constructed to prevent potential sedimentation of streams at operations where they will provide a significant benefit to water quality.

(2) Operations shall be conducted to substantially prevent siltation of ground-water recharge areas.

(c) Protection of Fish and Wildlife Habitat. All reasonable measures shall be taken to protect the habitat of fish and wildlife.

(d) Disposal of Mine Waste Rock and Overburden. Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.

(e) Erosion and Drainage. Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent erosion of spillways when these basins have outlet to lower ground.

(f) Resoiling. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

(g) Revegetation. When the reclamation plan calls for revegetation the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the mined areas shall be used.

NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2756 and 2757, Public Resources Code.

§ 3504. Administration by Lead Agency.

(a) Record Keeping. The lead agency shall establish and maintain inhouse measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. The lead agency shall forward a copy of each permit and approved reclamation plan to the California Division of Mines and Geology (Sacramento).

(b) Performance Assurances. The lead agency shall ensure that the objectives of the reclamation plan will be attained. This may include provisions for liens, surety bonds or other security, to guarantee the reclamation in accordance with the approved reclamation plan.

NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2757, 2758(b), 2774(a) and 2778, Public Resources Code.

§ 3505. Special Provisions.

(a) Exemptions.

(1) In addition to the provisions of Public Resources Code Section 2714(a), (c) and (d), any surface mining operation that does not involve either the removal of a total of more than 1000 cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location, shall be exempt from the provisions of the Act.

(2) The purpose of this subdivision is to define the criteria of a "flood control facility," the clean out of which is exempt from the requirements of the Surface Mining and Reclamation Act of 1975 under PRC 2714(a) and (b). It is intended that cleaning out of a previously engineered, constructed facility for which approved design plans exist is an activity to restore the usefulness of that flood control facility to its original design purpose. It is not the intent of this subsection to exempt the removal of materials from natural channels.

The removal of post construction accumulated materials from a responsible public agency approved, managed, engineered, constructed facility intended for the purpose of water retention or detention, debris retention, or from a flood water conveyance, where the post extraction condition, capacity or grade of the facility or conveyance does not exceed the as-built approved design specification contained in the approved documents for the facility or conveyance, shall be exempt from the provisions of the Act.

(3) The excavation, grading, or transportation of mineral materials, including overburden, exclusive of commercial surface mining activities as defined in Public Resources Code Section 2714(d), that is wholly integral and necessary to the conduct of agricultural activities either onsite or on non-contiguous parcels, shall meet the requirements of Public Resources Code Section 2714(a) for farming excavations or grading. This exemption does not apply to the exportation of mineral materials, including overburden, from the property that is in excess of 1,000 cubic yards for commercial purposes.

(b) Vested Rights. The permit and reclamation plan requirements for persons with vested rights are stated in Public Resources Code Section 2776.

Where a person with vested rights continues surface mining in the same area subsequent to January 1, 1976, he shall obtain an approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act.

NOTE: Authority cited: Sections 2714(d) and 2755, Public Resources Code. Reference: Sections 2714, 2758(c) and 2776, Public Resources Code.

Article 4. Designation Appeal Procedures

§ 3625. Purpose of Regulations.

The regulations contained in this article govern procedures affecting appeals to the Board on the approval or denial of a permit to conduct surface mining operations by a city or county, hereinafter referred to as the "lead agency," in an area designated as containing mineral deposits of statewide or regional significance pursuant to the provisions of Section 2775, Public Resources Code (PRC 2775).

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3627. Determination of Jurisdiction.

The Chairman of the Mining and Geology Board, or the Chairman's designee, shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues with respect to the action taken to approve or deny the permit to conduct surface mining operations by the lead agency. If the Chairman finds, based upon the criteria stated in

(a) plus (b) below, that the appeal raises no substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations in a designated area, he or she shall refuse to grant a hearing on an appeal. In making this determination, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of the Public Resources Code and the rules of the Board; and

(b) Whether the appeal specifically relates to the approval or denial of a permit to conduct surface mining operations in an area designated by the Board as being of statewide or regional significance. The Chairman of the Board shall make such determination within 15 days of receipt of the information required by Section 3626 of this article, and shall notify the appellant and the lead agency of the determination by certified mail.

§ 3628. Administrative Record.

(a) Once a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit three certified copies for the complete administrative record, which shall include, but not be limited to, all of the following information.

(1) Project application and complete, detailed description of the proposed project, including conditions added for mitigation of environmental impacts;

(2) Location and site description maps submitted to the lead agency as part of the application process;

(3) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the project; and

(4) Written transcripts of all public hearings related to the decision of the lead agency.

(b) In cases where the appellant is faced with substantial delay in gathering the administrative record due to internal procedures of the lead agency, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(c) Failure to produce the administrative record upon request of the Board within 30 days shall be deemed grounds to remand the appeal to the lead agency for reconsideration.

NOTE: Authority cited: Section 2772, 2773, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3629. Hearing Procedures-Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 30 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. In no case shall the hearing be scheduled beyond 180 days of the receipt of the complete administrative record without the concurrence of the Board, the appellant, and the project proponent (when not the same person as the appellant). The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3630. Hearing Procedures-Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3634 of these regulations.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3631. Hearing Procedures-Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency, the appellant, and the project proponent (when not the same person as the appellant);

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily posted in the city or county jurisdiction within which the proposed surface mining operations are to take place.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Identification of the proposed surface mining operation, a brief description of the location of the operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to approve or deny the project and has requested the Board hear the appeal;

(4) A statement inviting the appellant, the lead agency, the project proponent (when not the same person as the appellant), and the public to make statements at the hearing regarding the decision of the lead agency; and

(5) The time, date, and location of the public hearing.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3632. Hearing Procedures-Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3626 and 3628 of this article.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3633. Hearing Procedures-Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the project proponent (when not the same person as the appellant);

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the appellant; and

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded either electronically or by other convenient means.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§ 3634. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, upon the record before it, the lead agency decision was made based on substantial evidence in light of the whole record. Notification of the Board's determination shall be made by certified mail to the appellant, the lead agency, and the project proponent (when not the same person as the appellant) within 15 days following the regular business meeting of the Board at which the decision is made.

NOTE: Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

Article 5. Reclamation Plan Appeals

§ 3650. Filing of Intent to Appeal.

Any surface mining operator filing an appeal to the Board pursuant to PRC 2770 shall, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information:

(a) A map indicating the exact location of the surface mining operation, including township and range.

(b) A copy of all documents which together were proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770.

(c) Written statements with supporting documentation indicating the basis for the appellant's challenge of:

(1) the lead agency's action to deny approval of the reclamation plan submitted pursuant to PRC 2770; or

(2) the lead agency's failure to act according to due process; or

(3) the lead agency's failure to act within a reasonable period of time of submittal of a completed application.

(d) Copy of notice to the lead agency that the appellant intends to file an appeal to the Board.

NOTE: Authority cited: Section 2770, Public Resources

Code. Reference: Section 2770(c)-(e), Public Resources Code.

§ 3651. Determination of Jurisdiction.

The Chairman of the Mining and Geology Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues related to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770. If the Chairman finds, based upon the criteria stated in (a) plus (b) below, that the appeal raises no substantial issues with respect to the lead agency's review of reclamation plans submitted for vested surface mining operations pursuant to the provisions of PRC 2770, he or she shall refuse to grant a hearing on the appeal. In making these determinations, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which can legally be addressed by the Board within the limits of PRC 2770(e) and the rules of the Board; and

(b) Whether the appeal specifically relates to the lead agency's review of reclamation plans submitted for vested surface mining operations pursuant to the provisions of PRC 2770.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.

§ 3652. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit three certified copies of the complete administrative record, which shall include, but not be limited to, all of the following information:

(1) All documents which together are proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770;

(2) Location and site description maps submitted to the lead agency as part of the reclamation plan application;

(3) Environmental documentation prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., including conditions added for mitigation of environmental impacts, if any;

(4) A copy of the lead agency surface mining and reclamation ordinance under which the reclamation plan may have been judged pursuant to PRC 2770;

(5) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the proposed reclamation plan; and

(6) Written transcripts of all public hearings related to the lead agency review for approval of the reclamation plan pursuant to PRC Section 2770.

(b) Should the lead agency choose not to complete an environmental review of the project pursuant to the provisions of CEQA, or should the Board deem such review inadequate under the provisions of CEQA, the record will not be considered complete until an adequate CEQA review is completed.

(1) In those instances in which the Board is the CEQA lead agency, the Board shall be responsible for the preparation of new or supplemental environmental documents.

(2) Pursuant to PRC Section 15045, appellants shall bear any costs relating to preparation and completion of any required environmental documents.

(c) If the appellant is unable to obtain the administrative record from the lead agency within 10 working days, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be deemed grounds for Board action based on information provided solely by the appellant.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 21000 et seq., Public Resources Code; and Section 15000 et seq., California Code of Regulations.

§ 3653. Technical Review for Adequacy of Reclamation Plan.

(a) The Board may consult with the technical staff of the Department of Conservation's Mine Reclamation Program, for determination of the adequacy of reclamation plans prepared for surface mining operations that are appealed to the Board. Preliminary determination of technical adequacy shall be based on, but shall not be limited to, the following:

(1) Substantial compliance with the requirements of PRC Sections 2772 and 2773;

(2) Substantial compliance with the requirements of Board rules and regulations (14 CCR 3500 et seq);

(3) Substantial compliance with the reclamation provisions of the lead agency surface mining and reclamation ordinance as certified by the Board pursuant to the provisions of PRC 2774; and

(4) Whether the proposed reclamation plan is technically feasible given the scope of the mining operations.

(b) The determination of whether substantial compliance with PRC Sections 2772 and 2773, 14 CCR Sections 3500 et seq, and the Board-certified lead agency surface mining and reclamation ordinance have been met shall be based on whether all elements of these provisions that are necessary to ensure viable, planned reclamation of a particular site are included and are technically feasible so as to satisfy the objectives of the Surface Mining and Reclamation Act. For example, a description of revegetation efforts might not be necessary for a pit to be used as a landfill, just as a description of final slope angles may not be necessary for a gravel bar skimming operation. In other sites, however, such information may be critical. In all cases, a site visit by the technical staff of the Department of Conservation's Mine Reclamation Program shall be made before substantial compliance is determined.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.

§ 3654. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in the jurisdiction from which the appeal originated, but may otherwise schedule such appeals to be heard in Sacramento.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

§ 3655. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members of the Board to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3659 of these regulations.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

§ 3656. Hearing Procedures - Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency and to the appellant;

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Identification of the proposed reclamation plan, a brief description of the location of the surface mining operation for which the reclamation plan was prepared by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to deny approval of the reclamation plan, or that the lead agency is being challenged based on failure to act according to due process, or that the lead agency is being challenged based on failure to act within a reasonable period of time;

(4) A statement explaining that the Board may approve or deny approval of the reclamation plan, and that if the reclamation plan is denied approval, it shall be returned to the operator who then must revise it and resubmit the revised plan to the lead agency within 30

days of receipt from the Board;

(5) A statement inviting the appellant, the lead agency, and the public to make statements at the hearing regarding the action (or inaction) of the lead agency; and

(6) The time, date, and location of the public hearing.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

§ 3657. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3650 and 3652 of this article, together with any findings from the technical review pursuant to Section 3653 of this article, and any CEQA documents prepared pursuant to Section 3652 of this article.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.

§ 3658. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the appellant; and

(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

§ 3659. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed reclamation plan substantially meets the requirements of PRC 2772 and 2773 and the lead agency surface mining and reclamation ordinance, and the provisions of Section 3654 of this article. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision is made. In cases where the reclamation plan is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision, and the operator shall be put on notice that deficiencies must be corrected and a revised reclamation plan filed with the lead agency within 30 days.

NOTE: Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), 2772, 2773 and 2774, Public Resources Code.

Article 6. Mineral Resource Management Policies

§ 3675. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

Compatible Land Use. Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

Incompatible Land Use. Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2761-2762, Public Resources Code.

§ 3676. Mineral Resource Management Policies.

Lead agency mineral resource management policies

adopted pursuant to the provisions of PRC Section 2762 shall include but not be limited to, the following:

(a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of the identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the Board.

(b) Statements of policy in accordance with the provisions of PRC Section 2762(a).

(c) Implementation measures that shall include:

(1) Reference in the general plan of the location of identified mineral deposits, and a discussion of those areas targeted for conservation and possible future extraction by the lead agency.

(2) Use of overlay maps or inclusion of information on any appropriate planning maps to clearly delineate identified mineral deposits and those areas targeted by the lead agency for conservation and possible future extraction.

(3) At least one of the following:

(A) Use of special purpose overlay zones, mineral resource/open space zoning, or any other appropriate zoning that identifies the presence of identified mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.

(B) Record, on property titles in the affected mineral resource areas, a notice identifying the presence of identified mineral deposits.

(C) Impose conditions upon incompatible land uses in and surrounding areas containing identified mineral deposits for the purpose of mitigating the significant land use conflicts prior to approving a use that would otherwise be incompatible with mineral extraction.

NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2757 and 2761-63, Public Resources Code.

Article 7. Financial Assurances Appeal Procedures

§ 3680. Purpose of Regulations.

The regulations contained in this article govern procedures for appeals to the State Mining and Geology Board ("the Board") concerning financial assurances for reclamation of existing surface mining operations under section 2770 of the Public Resources Code.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3681. Filing of Intent to Appeal.

Any person filing an appeal to the Board pursuant to section 2770 of the Public Resources Code concerning financial assurances for reclamation shall, within 15 days of exhausting his or her right to appeal in accordance with the procedures of the lead agency, file a notice of intent to appeal by submitting the following information:

(1) A map indicating the exact location of the surface mining operation, including township and range.

(2) A copy of all documents which together comprise the financial assurances for reclamation which are the subject of the appeal.

(3) Written statements, with supporting documentation, indicating the basis for the appellant's challenge of the action or inaction by the lead agency concerning financial assurances for reclamation.

(4) Copy of the notice to the lead agency that the appellant intends to file an appeal with the Board.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3682. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises any substantial issues related to the review by the lead agency of financial assurances for reclamation for existing surface mining operations pursuant to Public Resources Code section 2770. If the Chairman finds, based on the criteria stated in (a) through (c) below, that the appeal raises no substantial issues with respect to the review by the lead agency of financial assurances for existing surface mining operations under Public Resources Code section 2770, he or she shall refuse to grant a hearing on the appeal. In making this determination, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of Public Resources Code section 2770 and the rules of the Board;

(b) Whether the appeal specifically relates to the lead agency's review of financial assurances submitted for existing surface mining operations pursuant to the provisions of Public Resources Code section 2770; and

(c) Whether the appellant exhausted his or her appeal remedies before the lead agency.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3683. Limit on Number of Filings of Appeal.

Upon a finding by the Chairman, or the Chairman's designee (Board Member), that the appeal is not within the jurisdiction of the Board, the appellant may refile the notice of intent to appeal, once only, with the identified information needed to complete the appeal, within 21 days of receipt of the letter of denial of the original notice of intent to appeal.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3684. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit three certified copies of the complete administrative record, which shall include, but shall not be limited to, all of the following information:

(1) A copy of the approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurances for reclamation are proposed;

(2) A copy of the documents comprising the financial assurances or the proposed financial assurances for reclamation which were submitted to the lead agency for review and approval pursuant to Public Resources Code section 2770;

(3) Location and site description maps submitted to the lead agency as part of the reclamation plan;

(4) A detailed estimate of the cost of the reclamation, in accordance with the approved reclamation plan, of the lands remaining disturbed and/or to be disturbed by the surface mining operation in the applicable twelve (12) month period, together with a map clearly delineating the boundaries of those lands;

(5) All reports, findings, communications, correspondence and statements in the file of the lead agency relating to the financial assurances in question;

(6) Written transcripts of all public hearings related to the lead agency's review of the financial assurances.

(b) Failure of the appellant to request the administrative record from the lead agency within 21 days of receiving the notice stating the Board's acceptance of the appeal, may be deemed grounds for dismissal of the appeal.

(c) If the appellant is unable to obtain the administrative record from the lead agency within 10 working days after submission of the request for the record, the appellant shall so notify the Board in writing. The Board may then require the lead agency to immediately submit three certified copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days may be deemed grounds for Board action based on information provided solely by the appellant.

(e) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 21 days may be deemed grounds for dismissal of the appeal.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3685. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3686. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a

committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3690 of these regulations.
NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3687. Hearing Procedures - Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency and to the appellant;

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Description of the financial assurances for reclamation, identification of the surface mining operation for which the financial assurances for reclamation were provided, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement of the grounds for the appeal;

(4) A statement that the Board may approve or deny approval of the financial assurances for reclamation;

(5) A statement that if the Board denies approval of the financial assurances, they shall be returned to the mine operator who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances to the lead agency for review and approval;

(6) A statement inviting the appellant, the lead agency, and the public to provide testimony and evidence at the hearing regarding the action or inaction of the lead agency; and

(7) The time, date, and location of the public hearing.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3688. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to sections 3681 and 3684 of this article.
NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

§ 3689. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the appellant; and

(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least ten days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3690. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed or existing financial assurances for reclamation substantially meet the applicable requirements of Public Resources Code sections 2770, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. Financial assurances determined to meet these

requirements shall be approved. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision was made. In cases where the financial assurances for reclamation are not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision. The appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances for reclamation to the lead agency for review and approval.

NOTE: Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

Article 8. Fee Schedule

§ 3695. Definitions.

The following definitions shall govern the interpretation of these regulations:

"Produced Minerals" means minerals extracted at the site of the mining operation, and either:

(a) sold, given or otherwise moved off the site of the operation, as defined in the approved reclamation plan, or;

(b) used onsite for production of completed products (e.g. cement, bricks, asphaltic concrete, etc.).

Stockpiles of mineral products that remain on the site, as defined in the lead agency approved reclamation plan, are not produced minerals for purposes of these regulations.

"Primary Mineral Commodity Produced" means the produced mineral that provides the highest dollar values sales for the operation.

"Board" means State Mining and Geology Board.

As used in Section 3697 and 3699 "Mining Company" means any entity, corporation, partnership, parent or holding company. Any subsidiaries of the above are deemed to be part of the mining company.

As used in Section 3699, "Gross Income" means all income from whatever source derived as defined by, and determined in accordance with, Section 61 of the Internal Revenue Code, Title 26, U.S.C.S.

"Aggregate Products" means decomposed granite, sand and gravel, slag, or stone.

"Industrial Minerals" means borates, cinders, clay, diatomite, dolomite, gypsum, iron ore, lime, limestone, perlite, pumice, rare earth elements, saline compounds, salt, shale, silica, specialty sand, abrasives, asbestos, barite, bituminous rock, decorative rock, dimension stone, feldspar, fluorite, gemstones, graphite, kyanite, lignite, lithium, magnesite, mica, olivine, peat, phosphate, potash, pyrophyllite, quartz crystal, sea shells, sercite, talc, vermiculite, wollastonite, zeolites, and zircon.

"Gold, Silver, and Precious Metals" means gold (lode), gold (placer), platinum group metals, and silver.

"Base Metals and Other Metals" means antimony, arsenic, chromite, copper, lead, mangtanese, mercury, molybdenum, nickel, pyrite, tin, titanium, tungsten, uranium, vanadium, and zinc.

NOTE: Authority cited: Sections 2207(d)(1)-(2), Public Resources Code. Reference: Sections 2207 (d)(1)-(2) and 2207(f), Public Resources Code.

§ 3696. Operations Subject to Fees.

(a) Each surface mining operation, as defined in Public Resources Code Sections 2719, 2727.1, 2735, and California Code of Regulations, Title 14, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed an annual reporting fee according to the schedule established pursuant to in Section 3698 each May 1 following the reporting calendar year.

(b) In addition to the annual reporting fee, each surface mining operation that is newly permitted shall be assessed an initial reporting fee according to the schedule in Section 3698 of this article.

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

§ 3697. Fees Due and Delinquent.

(a) The annual reporting fee and Mining Operation Annual Report (MRRC-2) are due and payable to the Department of Conservation not later than July 1 for the prior reporting year, by the owner or operator of record on the preceding December 31. The initial reporting fee for a new surface mining operation, together with an initial report, are due and payable to the Department of Conservation not later than thirty (30) days after permit approval. An owner or operator of a surface mining operation submitting an annual reporting fee or annual report after July 1, or more than thirty (30) days after permit approval, shall be assessed a penalty fee and interest as provided in Public Resources Code Section

2207 (c) and (d)(5).

(b) Except as otherwise provided in (c), for the purposes of this article, surface mining operations are deemed to be discrete operations per each reclamation plan required.

(c) Multiple site surface mining operations are deemed to be those active surface mining operations which meet all of the following criteria:

(1) One or more surface mining operations are operated on one or more sites by a single operator or mining company;

(2) The total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity product is not precious metals;

(3) All of the sites included are active;

(4) All of the operator or company's entire active surface mining operations located in the State of California are tied to, or located on, the listed sites; and

(d) In addition to the criteria provided in (c), multiple site mining operator's submittal of the annual report form (Mining Operation Annual Report, Form MRRC-2) shall be accompanied by a multiple site form (Multiple Site Single Fee Request, Form MRRC-4M) supplied by the Department of Conservation.

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

§ 3698. Fees Calculation.

(a) The annual reporting fee for a multiple site surface mining operation shall be two thousand dollars ($2000).

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be $50; or

(2) Which completed reclamation during the reporting calendar year shall be $50. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments shall be calculated according to the following formula:

$$[((ATRY) - (ATPY))/(ATPY)] = Factor$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fixed fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of $2,000;
Where: ATRY is the Adjusted Total for the current "Reporting Year"
Where: ATPY is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than $50 or more than $2,000, and may be rounded to the nearest $5 (five dollars):
Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive;
Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than $50)
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	2,000

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than $50)
>1 - 10	Formula 1 or 2
>10 – 50	Formula 1 or 2
>50 - 150	Formula 1 or 2
>150 - 300	Formula 1 or 2
>300	2,000

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than $50)
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	2,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars ($500).

(e) The annual reporting fee for newly permitted surface mining operations which have not yet begun operations shall be fifty dollars ($50).

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

§ 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan or plans, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than $100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of two hundred dollars ($200).

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member), shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

Article 9. Reclamation Standards

§ 3700. Applicability. Reclamation of mined lands shall be implemented in conformance with the standards in this Article.

(a) The standards shall apply to each surface mining operation to the extent that:

(1) they are consistent with required mitigation identified in conformance with the California

Environmental Quality Act, provided that such mitigation is at least as stringent as the standards; and

(2) they are consistent with the planned or actual subsequent use or uses of the mining site.

(b) Where an applicant demonstrates to the satisfaction of the lead agency that an exception to the standards specified in this article is necessary based upon the approved end use, the lead agency may approve a different standard for inclusion in the approved reclamation plan. Where the lead agency allows such an exception, the approved reclamation plan shall specify verifiable, site-specific standards for reclamation. The lead agency may set standards which are more stringent than the standards set forth in this Article; however, in no case may the lead agency approve a reclamation plan which sets any standard which is less stringent than the comparable standard specified in this Article.

(c) When substantial amendments are proposed to reclamation plans which were approved prior to January 15, 1993, the standards set forth in this Article shall be applied by the lead agency in approving or denying approval of the amended reclamation plan.

(d) The standards in this Article shall not apply to mining operations:

(1) which completed reclamation prior to January 15, 1993, in conformance with an approved reclamation plan; or

(2) for which a reclamation plan has been approved prior to January 15, 1993.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3701. Definitions. The following definitions shall govern the interpretation of these regulations:

"Arid" means landscapes with an average annual precipitation of five inches or less.

"Contamination" means an impairment of the quality of the waters of the state to a degree which creates a hazard to the public health through poisoning or through the spread of disease.

"Highwall" means the unexcavated face of exposed overburden and ore in a surface mine.

"Indigenous Plants" means plants occurring naturally in an area, not introduced.

"Native Species" means plant species indigenous to California, using pre-European as the historic time reference.

"Noxious Weeds" means any species of plant that is or is likely to become destructive or difficult to control or eradicate, and is termed to be so by the Director of the Department of Food and Agriculture in section 4500, Title 3 of the California Code of Regulations, pursuant to the Food and Agriculture Code section 5004 et seq.

"Vegetative Cover" means the vertical projection of the crown or shoot area of a species to the ground surface expressed as a percentage of the reference area (percentage can be greater than 100 percent).

"Vegetative Density" means the number of individuals or stems of each species rooted within the given reference area.

"Vegetative Species-richness" means the number of different plant species within the given reference area.

"Wetlands" for the purposes of these regulations, the definition of wetlands shall be the same as defined in the California Fish and Game Code, section 2785, subdivision (g).

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3702. Financial Assurances. Lead agencies shall require financial assurances for reclamation in accordance with Public Resources Code section 2773.1 to ensure that reclamation is performed in accordance with the approved reclamation plan and with this article.

NOTE: Authority cited: Sections 2755, 2773 and 2773.1, Public Resources Code. Reference: Sections 2773 and 2773.1, Public Resources Code.

§ 3703. Performance Standards for Wildlife Habitat.

Wildlife and wildlife habitat shall be protected in accordance with the following standards:

(a) Rare, threatened or endangered species as listed by the California Department of Fish and Game, (California Code of Regulations, Title 14, sections 670.2 - 670.5) or the U. S. Fish and Wildlife Service, (50 CFR 17.11 and 17.12) or species of special concern as listed by the California Department of Fish and Game in the Special Animals List, Natural Diversity Data Base, and their respective habitat, shall be conserved as prescribed by the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et. seq., and the California Endangered Species Act, Fish and Game Code section 2050 et seq. If avoidance cannot be achieved through the available alternatives, mitigation shall be proposed in accordance with the provisions of the California Endangered Species

Act, Fish and Game Code section 2050 et seq., and the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq.

(b) Wildlife habitat shall be established on disturbed land in a condition at least as good as that which existed before the lands were disturbed by surface mining operations, unless the proposed end use precludes its use as wildlife habitat or the approved reclamation plan establishes a different habitat type than that which existed prior to mining.

(c) Wetland habitat shall be avoided. Any wetland habitat impacted as a consequence of surface mining operations shall be mitigated at a minimum of one to one ratio for wetland habitat acreage and wetland habitat value.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3704. Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring.

Backfilling, regrading, slope stabilization, and recontouring shall conform with the following standards:

(a) Where backfilling is proposed for urban uses (e.g., roads, building sites, or other improvements sensitive to settlement), the fill material shall be compacted in accordance with section 7010, Chapter 70 of the Uniform Building Code, published by the International Conference of Building Officials (1991), the local grading ordinance, or other methods approved by the lead agency as appropriate for the approved end use.

(b) Where backfilling is required for resource conservation purposes (e.g., agriculture, fish and wildlife habitat, and wildland conservation), fill material shall be backfilled to the standards required for the resource conservation use involved.

(c) Piles or dumps of mining waste shall be stockpiled in such a manner as to facilitate phased reclamation. They shall be segregated from topsoil and topsoil substitutes or growth media salvaged for use in reclamation.

(d) Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed 2:1 (horizontal:vertical), except when site-specific geologic and engineering analysis demonstrate that the proposed final slope will have a minimum slope stability factor of safety that is suitable for the proposed end use, and when the proposed final slope can be successfully revegetated.

(e) At closure, all fill slopes, including permanent piles or dumps of mine waste and overburden, shall conform with the surrounding topography and/or approved end use.

(f) Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use and conform with the surrounding topography and/or approved end use.

(g) Permanent placement of piles or dumps of mining waste and overburden shall not occur within wetlands unless mitigation acceptable to the lead agency has been proposed to offset wetland impacts and/or losses.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3705. Performance Standards for Revegetation.

Revegetation shall be part of the approved plan, unless it is not consistent with the approved end use.

(a) A vegetative cover suitable for the proposed end use and capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer shall be established on disturbed land unless an artificially maintained landscape is consistent with the approved reclamation plan. Vegetative cover or density, and species-richness shall be, where appropriate, sufficient to stabilize the surface against effects of long-term erosion and shall be similar to naturally occurring habitats in the surrounding area. The vegetative density, cover and species richness of naturally occurring habitats shall be documented in baseline studies carried out prior to the initiation of mining activities. However, for areas that will not be reclaimed to prior conditions, the use of data from reference areas in lieu of baseline site data is permissible.

(b) Test plots conducted simultaneously with mining shall be required to determine the most appropriate planting procedures to be followed to ensure successful implementation of the proposed revegetation plan. The lead agency may waive the requirement to conduct test plots when the success of the proposed revegetation plan can be documented from experience with similar species and conditions or by relying on competent professional advice based on experience with the species to be planted.

(c) Where surface mining activities result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to eliminate compaction and to establish a suitable root zone in

preparation for planting.

(d) Prior to closure, all access roads, haul roads, and other traffic routes to be reclaimed shall be stripped of any remaining roadbase materials, prepared in accordance with subsection 3705(g), covered with suitable growth media or topsoil, and revegetated. When it is not necessary to remove roadbase materials for revegetative purposes, lead agencies may set a different standard as specified in section 3700(b) of this Article.

(e) Soil analysis shall be required to determine the presence or absence of elements essential for plant growth and to determine those soluble elements that may be toxic to plants, if the soil has been chemically altered or if the growth media consists of other than the native topsoil. If soil analysis suggests that fertility levels or soil constituents are inadequate to successfully implement the revegetative program, fertilizer or other soil amendments may be incorporated into the soil. When native plant materials are used, preference shall be given to slow-release fertilizers, including mineral and organic materials that mimic natural sources, and shall be added in amounts similar to those found in reference soils under natural vegetation of the type being reclaimed.

(f) Temporary access for exploration or other short-term uses on arid lands shall not disrupt the soil surface except where necessary to gain safe access. Barriers shall be installed when necessary to gain safe access. Barriers shall be installed when necessary to prevent unauthorized vehicular traffic from interfering with the reclamation of temporary access routes.

(g) Native plant species shall be used for revegetation, except when introduced species are necessary to meet the end uses specified in the approved reclamation plan. Areas to be developed for industrial, commercial, or residential use shall be revegetated for the interim period, as necessary, to control erosion. In this circumstance, non-native plant species may be used if they are not noxious weeds and if they are species known not to displace native species in the area.

(h) Planting shall be conducted during the most favorable period of the year for plant establishment.

(i) Soil stabilizing practices shall be used where necessary to control erosion and for successful plant establishment. Irrigation may be used when necessary to establish vegetation.

(j) If irrigation is used, the operator must demonstrate that the vegetation has been self-sustaining without irrigation for a minimum of two years prior to release of the financial assurances by the lead agency, unless an artificially maintained landscape is consistent with the approved end use.

(k) Noxious weeds shall be managed: (1) when they threaten the success of the proposed revegetation; (2) to prevent spreading to nearby areas; and (3) to eliminate fire hazard.

(l) Protection measures, such as fencing of revegetated areas and/or the placement of cages over individual plants, shall be used in areas where grazing, trampling, herbivory, or other causes threaten the success of the proposed revegetation. Fencing shall be maintained until revegetation efforts are successfully completed and the lead agency authorizes removal.

(m) Success of revegetation shall be judged based upon the effectiveness of the vegetation for the approved end use, and by comparing the quantified measures of vegetative cover, density, and species-richness of the reclaimed mined-lands to similar parameters of naturally occurring vegetation in the area. Either baseline data or data from nearby reference areas may be used as the standard for comparison. Quantitative standards for success and the location(s) of the reference area(s) shall be set forth in the approved reclamation plan. Comparisons shall be made until performance standards are met provided that, during the last two years, there has been no human intervention, including, for example, irrigation, fertilization, or weeding. Standards for success shall be based on expected local recovery rates. Valid sampling techniques for measuring success shall be specified in the approved reclamation plan. Sample sizes must be sufficient to produce at least an 80 percent confidence level. There are standard statistical methods in commonly available literature for determining an 80 percent confidence level on a site-by-site basis. Examples of such literature include, but are not limited to, D. Mueller-Dombois and H. Ellenberg, 1974, "Aims and Methods of Vegetation Ecology", John Wiley and Sons, Inc., or C. D. Bonham, 1988, "Measurements for Terrestrial Vegetation", John Wiley and Sons, Inc., and are available at many university libraries. The texts are also available at some local libraries through the Inter-Library Loan Program.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public

Resources Code.

§ 3706. Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control.

(a) Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

(b) The quality of water, recharge potential, and storage capacity of ground water aquifers which are the source of water for domestic, agricultural, or other uses dependent on the water, shall not be diminished, except as allowed in the approved reclamation plan.

(c) Erosion and sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.

(d) Surface runoff and drainage from surface mining activities shall be controlled by berms, silt fences, sediment ponds, revegetation, hay bales, or other erosion control measures, to ensure that surrounding land and water resources are protected from erosion, gullying, sedimentation and contamination. Erosion control methods shall be designed to handle runoff from not less than the 20 year/1 hour intensity storm event.

(e) Where natural drainages are covered, restricted, rerouted, or otherwise impacted by surface mining activities, mitigating alternatives shall be proposed and specifically approved in the reclamation plan to assure that runoff shall not cause increased erosion or sedimentation.

(f) When stream diversions are required, they shall be constructed in accordance with:

(1) the stream and lake alteration agreement between the operator and the Department of Fish and Game; and

(2) the requirements of the Federal Clean Water Act, Sections 301 (33 U.S.C. 1311) and Section 404 (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(g) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land reclaimed.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3707. Performance Standards for Prime Agricultural Land Reclamation. In addition to the standards for topsoil salvage, maintenance, and redistribution, the following standards shall apply to mining operations on prime agricultural lands where the approved end use is agriculture:

(a) Mining operations which will operate on prime agricultural lands, as defined by the U.S. Soil Conservation Service, shall return all disturbed areas to a fertility level as specified in the approved reclamation plan.

(b) When distinct soil horizons are present, topsoil shall be salvaged and segregated by defined A, B, and C soil horizons. Upon reconstruction of the soil, the sequence of horizons shall have the A atop the B, the B atop the C, and the C atop graded overburden.

(c) Reclamation shall be deemed complete when productive capability of the affected land is equivalent to or exceeds, for two consecutive crop years, that of the premining condition or similar crop production in the area. Productivity rates, based on reference areas described in the approved reclamation plan, shall be specified in the approved reclamation plan.

(d) Use of fertilizers or other soil amendments shall not cause contamination of surface or ground water.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3708. Performance Standards for Other Agricultural Land. The following standards shall apply to agricultural lands, other than prime agricultural lands, when the approved end use is agriculture.

In addition to the standards for topsoil salvage, maintenance, and redistribution, non-prime agricultural lands shall be reclaimed so as to be capable of sustaining economically viable production of crops commonly grown in the surrounding areas.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3709. Performance Standards for Building, Structure, and Equipment Removal.

(a) All equipment, supplies and other materials shall be stored in designated areas (as shown in the approved reclamation plan). All waste shall be disposed of in accordance with state and local health and safety ordinances.

(b) All buildings, structures, and equipment shall be dismantled and removed prior to final mine closure except those buildings, structures, and equipment approved in the reclamation plan as necessary for the end use.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3710. Performance Standards for Stream Protection, Including Surface and Groundwater.

(a) Surface and groundwater shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter-Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.

(b) In-stream surface mining operations shall be conducted in compliance with Section 1600 et seq. of the California Fish and Game Code, section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(c) Extraction of sand and gravel from river channels shall be regulated to control channel degradation in order to prevent undermining of bridge supports, exposure of pipelines or other structures buried within the channel, loss of spawning habitat, lowering of ground water levels, destruction of riparian vegetation, and increased stream bank erosion (exceptions may be specified in the approved reclamation plan). Changes in channel elevations and bank erosion shall be evaluated annually using records of annual extraction quantities and benchmarked annual cross sections and/or sequential aerial photographs to determine appropriate extraction locations and rates.

(d) In accordance with requirements of the California Fish and Game Code section 1600 et seq., in-stream mining activities shall not cause fish to become entrapped in pools or in off-channel pits, nor shall they restrict spawning or migratory activities.

NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3711. Performance Standards for Topsoil Salvage, Maintenance, and Redistribution. When the approved reclamation plan calls for revegetation or cultivation of disturbed lands, the following performance standards shall apply to topsoil salvage, maintenance, and redistribution activities:

(a) All salvageable topsoil suitable for revegetation shall be removed as a separate layer from areas to be disturbed by mining operations. Topsoil and vegetation removal shall not precede surface mining activities by more than one year, unless a longer time period is approved by the lead agency.

(b) Topsoil resources shall be mapped prior to stripping and the location of topsoil stockpiles shall be shown on a map in the reclamation plan. If the amount of topsoil needed to cover all surfaces to be revegetated is not available on site, other suitable material capable of sustaining vegetation (such as subsoil) shall be removed as a separate layer for use as a suitable growth media. Topsoil and suitable growth media shall be maintained in separate stockpiles. Test plots may be required to determine the suitability of growth media for revegetation purposes.

(c) Soil salvage operations and phases of reclamation shall be carried out in accordance with a schedule that: (1) is set forth in the approved reclamation plan; (2) minimizes the area disturbed; and (3) is designed to achieve maximum revegetation success allowable under the mining plan.

(d) Topsoil and suitable growth media shall be used to phase reclamation as soon as can be accommodated by the mining schedule presented in the approved reclamation plan following the mining of an area. Topsoil and suitable growth media that cannot be utilized immediately for reclamation shall be stockpiled in an area where it will not be disturbed until needed for reclamation. Topsoil and suitable growth media stockpiles shall be clearly identified to distinguish them from mine waste dumps. Topsoil and suitable growth media stockpiles shall be planted with a vegetative cover or shall be protected by other equally effective measures to prevent water and wind erosion and to discourage weeds. Relocation of topsoil or suitable growth media stockpiles for purposes other than reclamation shall require prior written approval from the lead agency.

(e) Topsoil and suitable growth media shall be redistributed in a manner that results in a stable, uniform

thickness consistent with the approved end use, site configuration, and drainage patterns.
NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3712. Performance Standards for Tailing and Mine Waste Management.

State Water Resources Control Board mine waste disposal regulations in Article 7 of Chapter 15 of Title 23, California Code of Regulations, shall govern mine waste and tailings, and mine waste disposal units shall be reclaimed in conformance with this article.
NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

§ 3713. Performance Standards for Closure of Surface Openings.

(a) Except those used solely for blasting or those that will be mined through within one year, all drill holes, water wells, and monitoring wells shall be completed or abandoned in accordance with each of the following:

(1) Water Code sections 13700, et seq. and 13800, et seq.;

(2) the applicable local ordinance adopted pursuant to Water Code section 13803;

(3) the applicable Department of Water Resources report issued pursuant to Water Code section 13800; and

(4) Subdivisions (1) and (2) of section 2511(g) of Chapter 15 of Title 23 regarding discharge of waste to land.

(b) Prior to closure, all portals, shafts, tunnels, or other surface openings to underground workings shall be gated or otherwise protected from public entry in order to eliminate any threat to public safety and to preserve access for wildlife habitat.
NOTE: Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

Article 11. Financial Assurance Mechanisms

§ 3800. Purpose. It is the purpose of this article to specify additional financial assurance mechanisms to assure reclamation pursuant to Public Resources Code Section 2710 et seq. (Surface Mining and Reclamation Act, as amended).
NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3801. Authority. Review, approval, adjustment, enforcement, notification, forfeiture and all other responsibilities of the lead agency, operator and Department of Conservation with respect to financial assurances shall be conducted as prescribed in Public Resources Code Section 2710 et seq. unless expressly outlined in this article.
NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3802. Definitions. The following definitions shall govern the interpretation of this article:

(a) "Budget Set Aside" means a financial assurance mechanism, meeting the requirements of Section 3806.2 of this article, by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

(b) "Financial Assurance Amount" means that amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with section 3804, and shall constitute an obligation to pay by the operator.

(c) "Financial Assurance" means an instrument, fund or other form of Financial Assurance as provided in Section 2773.1(a) and (e) of the Public Resources Code and this Article.

(d) "Pledge of Revenue" means a financial assurance mechanism meeting the requirements of Section 3806.1, of this Article, by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.
NOTE: Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2734, Public Resources Code.

§ 3803. Financial Assurance Mechanisms. As outlined by this article, financial assurances may take the

form of any one or a combination of the following, which the lead agency, upon review by the Department of Conservation, reasonably determines are adequate to perform reclamation in accordance with the approved reclamation plan.

(a) For non-governmental entity operators:

(1) Surety bonds;

(2) Irrevocable letters of credit; and

(3) Trust funds;

(b) For governmental entity operators:

(1) Surety bonds;

(2) Irrevocable letters of credit;

(3) Trust funds;

(4) Pledges of Revenue; or

(5) Budget Set Aside.

NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3804. Calculation of Financial Assurance Amount.

(a) The Financial Assurance Amount shall be calculated as prescribed in Public

Resources Code Section 2773.1 and based on:

(1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;

(2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;

(3) the number of units of each of these activities, if applicable;

(4) a contingency amount not to exceed 10% of the reclamation costs.

(b) The calculated amount should not include the cost of completing mining of the site.

(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).

NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3805. Review by the Department of Conservation.

Pursuant to Section 2774(c), Public Resources Code, the lead agency shall submit a copy of the proposed Financial Assurance and the Calculation of Financial Assurance Amount submitted by the operator pursuant to Section 3804 to the Director of the Department of Conservation for review. With this submittal the lead agency shall include the information and documentation relied upon in calculating the amount of the proposed Financial Assurance and indicate to the Director that the Financial Assurance Amount is adequate for the lead agency or the Department of Conservation to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan. The Director shall have 45 days, upon receipt, to prepare written comments regarding the proposed Financial Assurance, if he/she so chooses.

NOTE: Authority cited: Section 2774, Public Resources Code. Reference: Section 2774(c), (d), Public Resources Code.

§ 3806. Surface mining operations owned and operated by state or local governmental entities.

In addition to the mechanisms provided in Public Resources Section 2773.1 and this article, a financial assurance mechanism for reclamation for a surface mining operation owned and operated by the state, county, city, district, or other political subdivision may be in the form of a:

(a) Pledge of Revenue; or

(b) Budget Set Aside.

These financial assurance mechanisms may only be used by the state, county, city, district, or other political subdivision.

NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3806.1. Pledge of Revenue.

(a) A pledge of revenue shall consist of a resolution or other appropriate document from the governing body of the state, county, city, district, or other political subdivision responsible for reclamation of the mined lands pursuant to the approved reclamation plans. The resolution or document shall remain effective continuously throughout the period in which the pledge of revenue is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The pledge of revenue shall contain the following

items:

(1) The resolution or document establishing the pledge of revenue;

(2) The types and sources of pledged revenue;

(3) The period of time that each source of revenue is pledged to be available;

(4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the proceeds of the pledge to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the pledge pursuant to Section 2773.1(b).

(c) The state, county, city, district, or other political subdivision may pledge any following types of revenue that it controls and that will be available in a timely manner to conduct and complete reclamation:

(1) Fees, rents, or other charges;

(2) Tax revenues within statutory limitations; and/or

(3) Other guaranteed revenues that are acceptable to the lead agency and the Board.

(d) If the governmental entity ceases at any time to retain control of its ability to allocate any pledged revenue to conduct and complete reclamation, the entity shall notify the lead agency and the Department of Conservation and shall obtain alternative coverage within 60 days after control lapses.

NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

§ 3806.2. Budget Set Aside.

(a) A Budget Set Aside shall consist of a specific fund or line item set aside by the state, county, city, district or other political subdivision responsible for reclamation of the mined lands. The Budget Set Aside shall remain effective continuously throughout the period in which the Budget Set Aside is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The set aside shall contain the following items:

(1) A resolution or other appropriate document establishing the set aside or line item including proof of approval by the governing body or appropriate official of the state, county, city, district or other political subdivision;

(2) The types and sources of specific funds;

(3) The period of time that each funding source is to be available;

(4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the funds to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the set aside pursuant to Section 2773.1(b).

NOTE: Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

Article 12. Administrative Penalty Petition Procedures

The regulations contained in this article govern procedures for petitions to the State Mining and Geology Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an Administrative Penalty by the Director of the Department of Conservation.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3901. Filing of Petition / Notice of Defense.

Any person filing a petition to the Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an administrative penalty by the Director of the Department of Conservation shall, within 30 days of the date of issuance of the order setting an administrative penalty, file a petition / notice of defense with the Board requesting a hearing. The petition / notice of defense shall be on the form set forth in Section 3911 of this article, or shall supply the following information to the Board:

(1) Written statements, with supporting documentation, indicating specifically the basis for the petitioner's challenge of the Director's order of administrative penalty;

(2) A written statement advising the Board of the name, address and telephone number of the petitioner's representative, if any.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public

Resources Code.

§ 3902. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee who is a Board member, shall determine within 15 days of receipt of the information required by Section 3901 of this article, whether the petition is within the jurisdiction of the Board for the purpose of hearing the petition, and determine whether the petition's challenge raises substantial issues related to the validity of the allegations supporting the Director's order. If the Chairman finds, based upon the criteria stated in (a), (b), and (c) below, that the petition raises no substantial issues with respect to the Director's allegations contained in the order of administrative penalty, or has not been filed within statutory time limits, then the Chairman shall refuse to grant a hearing on the petition. In making these determinations, the Chairman shall consider the following:

(a) Whether the filing of the petition / notice of defense with the Board is within the time limits stipulated in Public Resources Code Section 2774.2;

(b) Whether the petition specifically relates to the allegations contained in the Director's notice and order of administrative penalty;

(c) Whether prima facie documentation supporting the petition's position is reasonably sufficient to substantiate the petition's challenge.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3903. Administrative Record.

The Administrative Record shall consist of the record before the Director, evidence submitted on behalf of the petitioner, any other relevant evidence which, in the judgment of the Board, should be considered applicable, and evidence presented during the hearing on the petition.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3904. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on a petition no later than 60 days from the Chairman's acceptance of the petition, or at such time as may be mutually agreed upon by the Board and the petitioner. The hearing may be conducted as part of a regular business meeting of the Board, or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in or near the jurisdiction from which the petition originated, but may otherwise schedule such petitions to be heard in Sacramento.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3905. Hearing Procedures -- Authority for Delegation.

The Board may delegate conduct of the hearing to a committee composed of three members of the Board, who shall consist of either the Chairman or Vice Chairman of the Board, and two other members of the Board selected by the Chairman. The Chairman or Vice Chairman shall conduct the hearing. The record of the hearing and the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3910 of this article.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3906. Hearing Procedures – Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing or delivering by personal service the notice to the petitioner and to the petitioner's lead agency;

(2) Mailing or delivering by personal service the notice to the Director of the Department of Conservation.

(3) Mailing the notice to any person who requests notice of the petition or hearing; and,

(4) Mailing the notice to the Board's regular mailing list.

(b) The notice of hearing shall include the following:

(1) The name of the petitioner;

(2) A statement describing the basis for the action;

(3) The amount of the administrative penalty petitioned;

(4) The time, date, and location of the public hearing.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3907. Hearing Procedures – Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3901, 3902, and 3903 of this article.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

§ 3908. Hearing Procedures -- Recording and Transcription.

Hearings conducted under the procedures of this article shall be electronically recorded by the Board. Cost of transcription or reproduction of the electronic recording, if requested, shall be borne by the party making such request.

Note: Authority: Section 2755, Public Resources Code; Reference: Section 2755, Public Resources Code.

§ 3909. Hearing Procedures -- Use of Informal Hearing Procedure and Sequence.

(a) The Board may conduct the petition hearing under this article pursuant to the informal hearing adjudicative proceedings described in the California Administrative Procedure Act. The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(b) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the petitioner;

(3) Statements on behalf of the Director;

(4) Statements on behalf of the lead agency;

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the petitioner;

(7) Rebuttal on behalf of the Director;

(8) Motion to close the public hearing.

(c) Not withstanding the above, the Chairman or the Chairman's designee (Board member) for the purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(d) The Chairman or the Chairman's designee (Board member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Four copies of any written statements shall be submitted to the Board at least ten days prior to the hearing.

(e) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Article 10, Administrative Procedure Act; Reference: Section 2774.2, Public Resources Code; Article 10, Administrative Procedure Act.

§ 3910. Hearing Procedures – Determination.

(a) Following the public hearing, the Board shall determine: (1) whether the alleged violations cited in the Director's order are supported by substantial evidence in light of the whole record before it; and, (2) the action the Board should take to affirm, modify, or set aside, in whole or in part, the administrative penalty issued by the Director. The Board shall issue its own order upholding its determination.

(b) Notification of the Board's determination shall be made by certified mail or personal service to the petitioner, the lead agency, and the Director within 15 days following the regular business meeting of the Board at which the decision is made.

Note: Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code .

§ 3911. Petition / Notice of Defense Form.

Appendix D

LAND USE ORDINANCE - SECTIONS 22.08.180 - 192
SURFACE MINING & RECLAMATION

22.08.180 Surface Mining and Reclamation
22.08.181 Surface Mining Practices
22.08.182 Permit Requirements for Surface Mining
22.08.183 Reclamation Plan
22.08.184 Guarantee of Reclamation Required
22.08.185 Public Records
22.08.186 Periodic Review
22.08.187 Nuisance Abatement

22.08.190 Underground Mining
22.08.192 Use of County Roads by Extraction Operations

22.08.180 - Surface Mining and Reclamation: Surface mining operations include the processes of removing overburden and mining directly from 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. In addition, surface mining operations include, but are not limited to: Inplace distillation, retorting or leaching; the production and disposal of mining waste; prospecting and exploratory activities; borrow pitting, streambed skimming, segregation, recovery, and stockpiling of mined materials; and extractions of natural materials for building, construction.

a. Purpose and intent. These sections are adopted as required by the California Surface Mining and Reclamation Act of 1975 (SMARA) (Section 2207 and 2710 et seq. of the Public Resources Code and Chapter 8, Title 14, California Code of Regulations, Section 3500 et seq.). The purpose of these sections is the regulation of surface mining and related mineral extraction operations within the county. The intent is to provide for reclamation of mined lands, prevent or minimize adverse environmental effects and safety hazards, and provide for the protection and subsequent beneficial use of mined and reclaimed lands. Because surface mining occurs in areas diverse in environmental and social conditions, reclamation operations and specifications may vary accordingly.

b. Surface mining operations - permit and reclamation plan required. No person shall conduct surface mining operations unless a permit, financial assurances, and reclamation plan have first been approved by the county for such operations, except as otherwise provided here.

c. Exceptions: The provisions of Sections 22.08.181 through 22.08.192 are not applicable to:

(1) Excavations or grading conducted for farming or on-site construction, or to restore land following a flood or natural disaster when the excavation is conducted only on the land directly affected by disaster.

(2) Prospecting and exploration for minerals of commercial value where less than 1,000 cubic yards of overburden is removed in any one site of one acre or less, provided:

(i) A grading permit is required for such exploration pursuant to Section 22.05.020 (Grading); and

(ii) Each such site is restored to a natural appearing or otherwise usable condition to the approval of the Director of Planning and Building upon completion of exploration.

(3) Any surface mining operation that does not involve either the removal of a total of more than 1,000 cubic yards of minerals, ores, and overburden, or cover more than one acre in any one site. (This does not exempt the owner from obtaining a Grading Permit if required by Section 22.05.020 (Grading)).

(4) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(5) Other mining operations categorically identified by the State Board pursuant to Sections 2714(d) and 2758(c), California Surface Mining and Reclamation Act of 1975.

d. Conflicting provisions. Where any conflicts arise as to materials, methods, requirements, and interpretation of different sections between this chapter, and Section 22.05.020 (Grading), the most restrictive shall govern.

[Amended 1992, Ord. 2553; 1994, Ord. 2696]

22.08.181 - Surface Mining Practices: The state guidelines for surface mining and reclamation practices contained in the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2207 and 2710 et seq. of the Public Resources Code and Chapter 8, Title 14, California Code of Regulations, Section 3500 et seq. are incorporated into this chapter as though they were set fully forth here, excepting that when the provisions of this chapter are more restrictive than conflicting state sections, this chapter shall prevail, and are the minimum acceptable practices to be followed in surface mining operations.

[Amended 1994, Ord. 2696]

22.08.182 - Permit Requirements for Surface Mining:

a. New surface mining operations. Development Plan approval shall be obtained before starting any surface mining operations as defined in this chapter, except as provided in subsection b of this section. New mines shall be limited to a maximum of one operator per site, and such operator shall take full responsibility for reclamation per Section 22.08.184.

b. Existing surface mining operations. A person who has obtained a vested right to conduct a surface mining operation before January 1, 1976, need not secure a permit as required by subsection a, as long as the vested right continues and there are no substantial changes. All operations are required to have an approved Reclamation Plan and Financial Assurances per Sections 22.08.183 and 22.08.184. Provided, however, that Development Plan approval is also required if an existing mine is changed by increasing the on-site processing capabilities of the operation or by changing the method of mining (i.e. from mechanical to hydraulic technology), or the mine is expanded beyond the external boundaries of the original surface mining site.

c. New operations on a reclaimed site. The resumption of surface mining operations on a site where reclamation was previously completed shall only occur pursuant to the approval of a new Development Plan and Reclamation Plan.

d. Vested right defined. For the purposes of surface mining operations only, a person is deemed to have a vested right if, prior to January 1, 1976, he has in good faith and in reliance upon a permit or other authorization, if a permit or other authorization was required, diligently commenced surface mining operations and incurred substantial costs for work and materials necessary therefor. Expenses incurred in obtaining an amendment to the Land Use Element, or the issuance of a permit to establish or expand a mine, are not deemed costs for work or materials.

e. Surface mining permit review procedure. The Department of Planning and Building will review the permit application and the reclamation plan for accuracy and completeness, and coordinate review of the application and plan with the State Department of Conservation and other agencies. A public hearing will be scheduled after the filing of both the permit application and the reclamation plan. The hearing will be held pursuant to Section 22.01.060. The purpose of the hearing will be to consider the applicant's request and to approve, conditionally approve or disapprove the issuance of a permit and reclamation plan for the proposed surface mining operation. Approval or conditional approval may be granted only upon making the findings that the application and reclamation plan or amendments to reclamation plan and reports submitted:

(1) Adequately describe the proposed operation in sufficient detail and comply with

applicable state mandated requirements of SMARA;

(2) Incorporate adequate measures to mitigate the probable significant adverse environmental effects and operational visual effects of the proposed operation;

(3) Incorporate adequate measures to restore the site to a natural appearing or otherwise usable condition compatible with adjacent areas;

(4) Show proposed uses which are consistent with the county general plan; and

(5) Demonstrate that the uses proposed are not likely to cause public health or safety problems.

In addition, when any significant environmental impact has been identified, the findings mandated by the Public Resources Code shall be made.

[Amended 1992, Ord. 2553; 1992, Ord. 2583; 1994, Ord. 2696]

22.08.183 - Reclamation Plan:

a. When required.

(1) **Proposed surface mining operations.** Approval of a reclamation plan shall be obtained before starting any proposed surface mining operation for which a permit is required by Section 22.08.182.

(2) **Active surface mining operations.**

(i) No later than July 5, 1980, any person who is presently conducting surface mining operations under a vested right obtained before January 1, 1976, shall file with the Planning Department a reclamation plan for all operations conducted and planned after January 1, 1976. Provided, however, that a reclamation plan need not be filed if:

(a) A reclamation plan was approved by the county before January 1, 1976, and the person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan; or

(b) The owner/operator files a letter with the Planning Department stating that the mine is being temporarily deactivated, and agreeing to file a reclamation plan as set forth in subsection a(3) of this section before resuming operations; or

(c) Surface mining operations were completed before January 1, 1976.

(ii) In the case of surface mining operations physically conducted and operated by San Luis Obispo County agencies in support of county projects, the county agency shall file the required reclamation plan , which shall be reviewed as described below in 22.08.183 (b,c & d), subject to the other provisions of this chapter.

(3) Temporarily deactivated surface mining operations:

(i) Within 90 days of a surface mining operation becoming idle, the operator shall submit an interim management plan to the department. "Idle" is defined as curtailing for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date. The interim management plan shall be processed as an amendment to the Reclamation Plan, but shall not be considered a project for the purposes of environmental review. The plan shall provide measures which the operator will implement to maintain the site in compliance with this ordinance, SMARA, and all conditions of the Development Plan and/or Reclamation Plan.

(ii) Within 60 days of receipt of the interim management plan, or a longer period mutually agreed upon by the Department of Planning and Building and the operator, the plan shall be reviewed by the department. During this time period, the plan will either be approved by the Review Authority or the operator shall be notified in writing of any deficiencies in the plan or additional information needed to review the submittal. The operator shall have 30 days, or a longer period if mutually agreed upon, to submit the revised plan or additional information. The Review Authority shall approve or deny the revised interim management plan within 60 days of receipt of a plan that has been determined to be complete by the department. If the plan is denied by the Review Authority, it may be appealed as described in 22.01.042.

(iii) The interim management plan may remain in effect for a period not to exceed five years, at which time the operator may apply to renew the plan for one more period not to exceed five years. The renewal shall be processed as an amendment to the Reclamation Plan and, prior to approval, the Review Authority must find that the operator has complied with the previously approved plan. The Review Authority may then either approve the renewal or require the operator to commence reclamation in accordance with its approved Reclamation Plan. In any

event, the required financial assurances, sufficient to reclaim a mine in accordance with the Reclamation Plan, shall remain in effect during the period the surface mining operation is idle. If the surface mining operation is still idle after expiration of its interim management plan, reclamation shall commence in accordance with its approved Reclamation Plan.

(iv) The owner/operator of a surface mining operation for which a vested right was obtained before January 1, 1976, and which is temporarily deactivated on the effective date of this Title shall, prior to reactivation, receive approval of a Reclamation Plan for operations to be conducted after January 1, 1976. Failure to receive approval of a reclamation plan before reactivating a temporarily deactivated operation shall create a presumption of termination of the vested right and surface mining operations shall be prohibited unless a new Surface Mining Permit is approved.

b. Reclamation plan filing and content. The filing and content of all reclamation plans shall be in accordance with the provisions of this chapter and as further provided in Section 2770 et seq. of the Public Resources Code. All applications for a reclamation plan shall be made on forms provided by the county Department of Planning and Building, and as called for by the Public Resources Code. The plan shall be prepared by a registered civil engineer, licensed landscape architect, state-registered geologist or forester, or other qualified professional approved by the Director of Planning and Building.

(1) Reclamation Standards: The proposed plan shall include detailed and verifiable provisions adequate to determine compliance with the minimum SMARA performance standards for reclamation as described in Section 3500 et seq. of the California Code of Regulations. The plan shall include provisions for, but shall not be limited to, the following:

(i) wildlife habitat;

(ii) backfilling, regrading, slope stability, and recontouring;

(iii) revegetation;

(iv) drainage, diversion structures, waterways, and erosion control;

(v) agricultural land reclamation;

(vi) building, structure, and equipment removal;

(vii) stream protection, including surface and groundwater;

(viii) topsoil salvage, maintenance, and redistribution;

(ix) tailing and mine waste management.

(2) **Phasing of Reclamation:** Proposed plans shall include a reclamation phasing schedule where appropriate, which is consistent with the phasing of the mining operation. Reclamation shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation measures may also be required for areas that have been disturbed and will be disturbed again in future operations. The phasing schedule shall include the following minimum components:

(i) the beginning and expected ending dates for each phase;

(ii) a clear description of all reclamation activities;

(iii) criteria for measuring completion of each specific activity;

(iv) estimated costs for each phase of reclamation as described in Section 22.08.184.

(3) **Visual Resources.** The reclamation plan shall, to the extent feasible, provide for the protection and reclamation of the visual resources of the area affected by the mining operation. Measures may include, but not be limited to, resoiling, recontouring of the land to be compatible with the surrounding natural topography, and revegetation and the end use or uses specified by the landowner. Where the mining operation requires the leveling, cutting, removal, or other alteration of ridgelines on slopes of twenty percent or more, the reclamation plan shall ensure that such mined areas are found compatible with the surrounding natural topography and other resources of the site.

c. **Notification of Department of Conservation (state).** The state will be notified within 30 days of the filing of all permit applications and reclamation plans. The state shall have 45 days to prepare written comments prior to any final action taken by the Review Authority. Any comments provided will be evaluated and a written response describing the disposition of the major issues will be included in the staff report. When the Review Authority's position is different from the recommendations and/or objections raised in the state's comments, the staff report shall describe in detail why specific comments and suggestions were not accepted.

d. **Reclamation plan review procedure.** The Department of Planning and Building will review the reclamation plan for accuracy and completeness, and coordinate review

of the plan by other agencies. It will be processed following the procedure as described in Section 22.02.033 (Minor Use Permit), including the environmental review process and a subsequent public hearing. A reclamation plan will be accepted for review only when the Director of Planning and Building has determined that the surface mining operation was established in accordance with legal requirements applicable at the time of its establishment. Such determination shall be based upon information submitted by the applicant, relevant county records, or a Certification of Vested Right previously issued by the county. Approval or conditional approval of a reclamation plan may be granted only upon making the finding that the reclamation plan or amendments thereto:

(1) Adequately describes the proposed operation in sufficient detail and complies with applicable requirements of SMARA;

(2) Incorporates adequate measures to mitigate the probable significant adverse environmental effects of the proposed operation;

(3) Incorporates adequate measures to restore the site to a natural appearing or otherwise usable condition compatible with adjacent areas, and to a use consistent with the General Plan. Where a significant environmental impact has been identified, all findings mandated by the Public Resources Code shall be made.

e. Amendments: Amendments to an approved reclamation plan can be submitted to the county at any time, detailing proposed changes from the original plan. Such amendments are to be filed with, and approved by the county using the same procedure required for approval of a reclamation plan by subsection d of this section.

[Amended 1994, Ord. 2696]

22.08.184 - Financial Assurances for Guarantee of Reclamation:

Appropriate security or guarantees shall be provided by the applicant to ensure proper implementation of the reclamation plan as required by the Public Resources Code, as a condition of issuance of a permit and/or approval of a reclamation plan. The guarantee may be in the form of a surety bond, trust fund, irrevocable letter of credit, or other financial assurance mechanisms acceptable and payable to the county and the State Department of Conservation (beneficiaries must be stated as "County of San Luis Obispo **or** Department of Conservation") and consistent with the procedure described in Section 22.02.060 . The amount of financial assurances shall be determined and processed as follows:

(1) The applicant shall provide estimated total costs of reclamation and maintenance for each year or phase as approved in the Reclamation Plan. Cost estimates shall be prepared by a licensed civil engineer, licensed landscape architect, state-registered forester, mining operator, or other qualified professionals retained by the operator and approved by the Director of Planning and Building.

In estimating the costs, it shall be assumed without prejudice or insinuation that the operation could be abandoned by the operator and, consequently, the county or state may need to contract with a third party to complete reclamation of the site. Cost estimates shall include, but not be limited to, labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a third party.

(2) Two copies of the cost estimates, including documentation of the calculations, shall be submitted to the Director of Planning and Building for concurrent review by the county and the state. One copy will be transmitted to the State Department of Conservation for their review. The state shall have 45 days to prepare written comments regarding consistency with statutory requirements prior to any final action taken by the county. When the director's position is different from the recommendations and/or objections raised in the state's comments, the county will prepare a written response describing in detail why specific comments and suggestions were not accepted. Upon notification of approval of the financial assurances, the applicant will have 30 days to return a completed performance agreement and valid financial assurance mechanism to the Director of Planning and Building.

(3) The amount of the financial assurance will be reviewed as part of the annual review of the operation by the county to determine if any changes are necessary. Where reclamation is phased in annual increments, the amount shall be adjusted annually to cover the full estimated costs for reclamation of any land projected to be in a disturbed condition from mining operations by the end of the following year. The estimated costs shall be the amount required to complete the reclamation on all areas that will not be subject to further disturbance, and to provide interim reclamation, as necessary, for any partially excavated areas in accordance with the approved Reclamation Plan. Financial assurances for each year shall be reviewed upon successful completion of reclamation (including maintenance) of all areas that will not be subject to further disturbance and adjusted as necessary to provide adequate assurances for the following year. Prior to county approval, any amendments or changes to an existing financial assurance will be submitted to the state for its review.

(4) If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the lead agency. Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the state, that reclamation has been completed in accordance with the approved reclamation plan.

[Amended 1994, Ord. 2696]

22.08.185 - Public Records: Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records unless the applicant states in writing that such information, or part thereof, would reveal production, reserves, or rates of depletion which are entitled to protection as proprietary information. The county shall identify and file such proprietary information as a separate part of each application. A copy of all permits, reclamation plans, reports, applications, and other documents submitted, including proprietary information, shall be furnished to the District Geologist of the State Division of Mines. Proprietary information shall be made available to persons other than the State Geologist only when authorized by the mine operator and by the mine owner. (See Section 2778 of the Public Resources Code).

22.08.186 - Annual Review: An annual inspection shall be conducted by the county for all active surface mining operations within six months of receipt of the operator's annual report filed with the State Department of Conservation and upon payment of the inspection fee to the county. The purpose of the inspection is to evaluate continuing compliance with the permit and reclamation plan. A fee for such inspections is established by the county fee resolution. All inspections will be conducted using a form provided by the State Mining and Geology Board. An inspector shall not be used who has been employed by the mining operation in any capacity during the previous 12 months. The county will notify the operator and the state within 30 days of completion of the inspection and forward copies of the inspection form and any supporting documentation. Any surface mine subject to this inspection requirement for which the inspection fee remains unpaid 30 days or more from the time it becomes due constitutes grounds for revocation of such permit or plan. Surface mining operations which are determined to be in violation by the county or the state may be subject to administrative penalties not to exceed five thousand dollars ($5,000) per day, assessed from the original date of noncompliance, pursuant to Section 2774 of the Public Resources Code and as described in Section 22.10.022 of this title.
[Amended 1994, Ord. 2696]

22.08.187 - Nuisance Abatement: Any surface mining operation existing after January 1, 1976, which is not conducted in accordance with the provisions of the chapter, constitutes a nuisance and shall be abated pursuant to Chapter 22.10 (Enforcement). Any surface mining operation for which a vested right exists, but which is deactivated as of the effective date of this Ordinance constitutes a nuisance to be abated if surface mining operations are again started without compliance with the applicable provisions of this chapter.

22.08.190 - Underground Mining: The mining and extraction of subterranean mineral deposits by means of a shaft or tunnel is subject to the following standards:

a. Permit requirements. Development Plan approval is required:

(1) To authorize the commercial production of ore; or

(2) When the total volume of tailings produced exceeds 1,000 cubic yards; or

(3) When any on-site processing of ore is proposed.

No land use permit is required for prospecting and exploration activities where the volume of tailings produced is less than 1,000 cubic yards, except when a grading permit is required by Section 22.05.020 (Grading), or any authorizations are required by the State Division of Mines and Geology, the Federal Mine Safety Administration, and/or California Regional Water Quality Control Board.

b. Surface operations. All surface operations in conjunction with an underground mine are subject to the standards for surface mining operations (Section 22.08.180 through 22.08.187).

[Amended 1992, Ord. 2553]

22.08.192 - Use of County Roads by Extraction Operations: In any case where a proposed resource extraction operation (including extraction wells, surface and subsurface mining) will use county roads for the conveyance of extraction equipment or extracted products, and when in the opinion of the county Engineer, the resource extraction operation would impact the county road to a degree that would likely cause the expenditure of additional maintenance funds, the applicant is to enter into an agreement with the county as provided by this section prior to the commencement of any resource extraction operations. When an agreement is required, the applicant shall execute such an agreement with the county Engineering Department to deposit into the county road fund a sum to be determined by the county Engineer based upon the volume of resource being hauled over county roads as compensation for the increase in road use and road maintenance requirements generated by the project.

[Added 1981, Ord. 2063; Amended 1992, Ord. 2553]

Appendix E

§ 21083.2. Archaeological resources; determination of effect of project; EIR or negative declaration; mitigation measures

(a) [Determination of significant effect on archaeological resources; EIR and negative declarations] As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.
(b) [Preservation or nondisturbance requirements] If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:
(1) Planning construction to avoid archaeological sites.
(2) Deeding archaeological sites into permanent conservation easements.
(3) Capping or covering archaeological sites with a layer of soil before building on the sites.
(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.
(c) [Mitigation measures] To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.
(d) [Excavation as mitigation] Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.
(e) [Amount paid for mitigation measures] In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:
(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.
(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.
(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:
(A) Two hundred dollars ($200) per unit for any of the next 99 units.
(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.
(C) One hundred dollars ($100) per unit in excess of 500 units.
(f) [Field excavation phase of mitigation plan] Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.
(g) [Unique archaeological resource; definition] As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:
(1) Contains information needed to answer important scientific research questions and that there

is a demonstrable public interest in that information.
(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.
(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.
(h) [Nonunique archaeological resource; definition] As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.
(i) [Accidental discoveries of archaeological sites; provisions by lead agency] As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.
(j) [Application to specified projects] This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.
(k) [Additional costs to local agencies] Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.
(l) [Application of section] Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

15064.5. Determining the Significance of Impacts to Archeological and Historical Resources

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1 (k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources;or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating

Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a

location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

Discussion: This section establishes rules for the analysis of historical resources, including archaeological resources, in order to determine whether a project may have a substantial adverse effect on the significance of the resource. This incorporates provisions previously contained in Appendix K of the Guidelines. Subsection (a) relies upon the holding in League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896 to describe the relative significance of resources which are listed in the California Register of Historical Resources, listed in a local register or survey or eligible for listing, or that may be considered locally significant despite not being listed or eligible for listing. Subsection (b) describes those actions which have substantial adverse effects. Subsection (c) describes the relationship between historical resources and archaeological resources, as well as limits on the cost of mitigating impacts on unique archaeological resources. Subsections (d) and (e) discuss the protocol to be followed if Native American or other human remains are discovered.

Appendix F

COUNTY OF SAN LUIS OBISPO

ENVIRONMENTAL QUALITY ACT GUIDELINES

Adopted August 15, 1995

ARTICLE 1

PURPOSE and AUTHORITY

100.00

The purpose of these Guidelines is to provide definitions, procedures, criteria and objectives for the implementation of the California Environmental Quality Act (Public Resources Code Section 21000 et. seq., CEQA).

101.00

These Guidelines are intended to facilitate County compliance with CEQA and standardize procedures for the evaluation of projects and the preparation of environmental documents when the County of San Luis Obispo is the Lead, Responsible, or Reviewing agency under CEQA.

102.00

These Guidelines are adopted by the Board of Supervisors of the County of San Luis Obispo pursuant to Section 21082 of the Public Resources Code. These Guidelines supplement the State CEQA Guidelines (California Code of Regulations, Title 14. Natural Resources, Sections 15000 et seq.). The State CEQA Guidelines, as they may be amended from time to time, including definitions and appendices, are incorporated by

reference herein as though set forth in full. Where the State CEQA Guidelines are more restrictive, the State Guidelines shall supersede any inconsistent provisions of these County Guidelines.

103.00

The County shall comply with all mandatory provisions of the State CEQA Guidelines applicable to local government agencies. Copies of the State CEQA Guidelines and these County Environmental Quality Act Guidelines shall be made available for inspection in the Department of Planning and Building during regular business hours.

ARTICLE 2

PUBLIC PARTICIPATION

200.00

The Environmental Coordinator shall take prudent action necessary to ensure that the County environmental review process for all projects is open to public participation.

201.00

Upon request, the Environmental Coordinator or designee will meet and confer with any person to discuss the status and progress of the environmental review process for any project.

202.00

During the environmental review process any person may submit information, of an environmental nature which is germane to the project under review, for consideration by the Environmental Coordinator.

ARTICLE 3

INITIAL REVIEW

300.00

Any project undertaken or to be approved by the County which may be subject to CEQA shall first be reviewed by the Environmental Coordinator to determine whether:

(a) It is not a project;

(b) It is a project statutorily or categorically exempt from CEQA, or:

(c) It is a project where it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

Statutory exemptions are defined in Article 18 of the State CEQA Guidelines. Categorical exemptions are those listed in Article 19 of the State CEQA Guidelines. General Rule Exemptions are defined in section 15061(b)(3) of the State CEQA Guidelines. If it is determined that the activity is exempt, the Environmental Coordinator shall prepare and forward to the originating department a statement identifying the proposed activity as exempt. A notice of exemption may be filed by the originating department with the County Clerk.

301.00

Any applicant may waive the determination as to whether there is a potential significant effect on the environment and voluntarily agree to the preparation of an EIR. A written waiver shall accompany a request for preparation of an EIR without an environmental determination.

302.00

If it is determined that the activity is not exempt and the applicant has not waived the right to an environmental determination, the Environmental Coordinator shall request, and the applicant shall supply, data and information sufficient to conduct an Initial Study pursuant to the State CEQA Guidelines. A fee shall be charged for the preparation of the Initial Study, the amount of which will be set by ordinance of the Board of Supervisors. Failure of the applicant to supply sufficient information or fees required is a ground for disapproval of the project.

303.00

Based upon the Initial Study, the Environmental Coordinator shall take one of the following actions:

(a) If there is no substantial evidence that a project, not otherwise exempt, may have a significant effect on the environment, or if revisions in a project have been made by or agreed to by the applicant to a point where clearly no

significant effects on the environment would occur and there is no substantial evidence that the project as revised may have a significant effect on the environment, a proposed Negative Declaration shall be issued.

(b) As an alternative to the procedure in (a) above, the Environmental Coordinator may forward to the Board of Supervisors a recommendation for issuance of a proposed Negative Declaration for a highly controversial project. In such a case, the procedures specified in sections 601.00 and 602.00 shall be followed.

(c) If the Initial Study indicates that additional in-depth or more detailed information is necessary to clarify a project's potential environmental impacts, or if additional analysis would, in the opinion of the Environmental Coordinator, result in the development of feasible mitigation measures for potentially significant impacts posed by the project, an Expanded Initial Study shall be prepared.

(d) If the Initial Study reveals substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, an Environmental Impact Report shall be prepared.

304.00

When an applicant fails to provide the information required pursuant to the State CEQA Guidelines and these guidelines, the Environmental Coordinator may return the project to the originating department for processing without an environmental determination. Written notice of this action by the Environmental Coordinator shall be given to the applicant and any person who requested notice concerning the project.

ARTICLE 4

NEGATIVE DECLARATIONS

400.00

When a proposed Negative Declaration is to be prepared, the following procedures and those procedures which are mandatory in CEQA and Article 6 of the State CEQA Guidelines shall be followed.

401.00

A proposed Negative Declaration shall be prepared by the Environmental Coordinator, or by a consultant under contract to the County.

402.00

Where the identification of mitigation measures enables an applicant to modify a project during the Initial Study to mitigate all potentially significant impacts, a Negative Declaration incorporating those mitigation measures into the project description shall be prepared.

403.00

All mitigation measures forming the basis of a finding of no significant impact must be accepted by the applicant and incorporated into the project description before a proposed Negative Declaration is prepared and issued.

404.00

Upon completion of the proposed Negative Declaration, the document shall be forwarded to the originating department and the project shall be processed on the basis of the proposed Negative Declaration. No final action shall be taken on a project until expiration of the public review period.

405.00

Upon request, each member of the Board of Supervisors and any other person or agency shall be sent a copy of the proposed Negative Declaration. The Environmental Coordinator may charge a fee which is reasonably related to the costs of providing this service, the amount of which will be set by ordinance of the Board of Supervisors.

406.00

Any person may submit comments, either orally or in writing, in response to a proposed Negative Declaration. All comments on a project which raise environmental issues shall be forwarded to the Environmental Coordinator for review and response. The Environmental Coordinator shall respond to all written comments provided that:

(a) The comments raise environmental issues, and;

(b) Sufficient time to prepare adequate responses and include them in the project staff report(s) is available prior to the scheduled public hearing or date of approval of the permit or project.

When no public hearing is required for the project, the Environmental Coordinator's written responses shall be forwarded to the person submitting the comments, the applicant, and the project decision maker(s).

407.00

If the Environmental Coordinator determines that the facts or basis of written or oral comments raise important environmental issues which have not been appropriately addressed in the proposed Negative Declaration, the Environmental Coordinator shall do any or all of the following, as necessary:

(a) Identify feasible mitigation measures or project changes that would mitigate any new significant environmental impacts identified in the comments;

(b) Revise the proposed Negative Declaration to respond to the comments;

(c) Withdraw the proposed Negative Declaration;

(d) Recommend the preparation of an EIR.

408.00

Prior to making a recommendation to the Board of Supervisors on a project for which a Negative Declaration has been prepared, an advisory body, including the Planning Commission or Subdivision Review Board, shall consider the proposed Negative Declaration, together with any comments received during the public comment period.

409.00

Prior to making a decision to carry out or approve a project for which a proposed Negative

Declaration has been prepared, the decision maker(s) shall consider the proposed Negative Declaration together with any comments received during the public review process. The decision maker(s) shall approve the Negative Declaration if it is found, on the basis of the Initial Study and all comments received during the public comment period, that there is no substantial evidence that the project will have a significant effect on the environment.

ARTICLE 5

EXPANDED INITIAL STUDIES

500.00

Whenever the Environmental Coordinator determines that the preparation of an Expanded Initial Study is required, the Environmental Coordinator shall notify the project applicant and request that the applicant agree to processing of the Expanded Initial Study pursuant to these guidelines. If the applicant does not agree to process an Expanded Initial Study for the project, the Environmental Coordinator may recommend to the Board of Supervisors that an EIR be required. When an Expanded Initial Study is required, the procedures in this article shall be followed.

501.00

The Environmental Coordinator shall require, and the applicant shall provide, information sufficient to describe the project, the project's purpose and objectives, and the project location. Failure of the applicant to supply sufficient information to process the Expanded Initial Study may require the preparation of an Environmental Impact Report. In addition to information required from the applicant by the Environmental Coordinator, an applicant may submit additional information in any format to aid in the preparation of the Expanded Initial Study. The Environmental Coordinator shall determine how and to what extent the applicant's information should be used. The Environmental Coordinator shall not endorse any information prepared by or under contract to the applicant without first conducting sufficient analysis to determine that the information is complete, accurate, and can be presented to the public without question as to any actual or perceived conflict of interest

on the part of the preparer of the information.

502.00

At the Environmental Coordinator's discretion, an Expanded Initial Study shall be prepared by an outside consultant under contract to the County or directly by the County. The applicant shall be liable for all consultant costs related to the preparation of the Expanded Initial Study.

503.00

When the Expanded Initial Study is to be prepared by a consultant, an estimate for the cost of the preparation of the Expanded Initial Study will be secured by the Environmental Coordinator from consultants determined by the Environmental Coordinator to be qualified. Expanded Initial Study consultant contracts shall not be awarded to consultants that have any other involvement in the same project. The Environmental Coordinator shall be satisfied that any consultant preparing an Expanded Initial Study can provide an independent, objective and unbiased document.

504.00

Costs estimated for the Environmental Coordinator's processing of the Expanded Initial Study shall be included in the fees required of the applicant, the amount of which shall be set by an Ordinance of the Board of Supervisors. Additional fees shall be required if additional information is determined to be necessary by the Environmental Coordinator.

505.00

On all projects undertaken by the County for which an Expanded Initial Study is required, the Environmental Coordinator will determine who should prepare the Expanded Initial Study, after conferring with the head of the County Department carrying out the project.

506.00

The Environmental Coordinator shall negotiate any contracts or purchase requisitions for the preparation of an Expanded Initial Study. Unless otherwise authorized by purchase requisition, all such contracts shall be approved by the Board of Supervisors.

507.00

Based upon the results of the Expanded Initial Study, the Environmental Coordinator shall

take one of the following actions:

(a) Prepare and issue a proposed Negative Declaration, or;

(b) Recommend the preparation of an Environmental Impact Report.

ARTICLE 6

ENVIRONMENTAL IMPACT REPORTS

600.00

Whenever the Environmental Coordinator determines that there is substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the Environmental Coordinator shall notify the project applicant and request that the applicant agree to processing an EIR pursuant to these Guidelines. If the applicant does not agree to process an EIR for the project, the Environmental Coordinator shall recommend to the Board of Supervisors that an EIR be required.

601.00

To forward a recommendation for an EIR to the Board of Supervisors, the Environmental Coordinator shall place the matter on the next available Board of Supervisors' agenda. The Environmental Coordinator shall prepare and present to the Board of Supervisors a report that summarizes the Initial Study conducted for the project, identifies the scope of the recommended EIR, and presents the evidence supporting the proposed scope. The report shall also include any other information the Environmental Coordinator deems necessary to fully inform the Board about the project, the project's potential environmental impacts, and any specific or unique aspects of CEQA or other statutes or regulations which will be of importance to the Board's decision.

602.00

Notice of the date of the Board of Supervisors' consideration of the Environmental Coordinator's recommendation shall be given to the applicant and to any person requesting notice concerning the specific project. Notice shall also be given in the manner required by CEQA and the State CEQA Guidelines.

603.00

If the Board of Supervisors determines that the evidence in the record does not warrant the preparation of an EIR, the Board may:

(a) Refer the project back to the Environmental Coordinator for the preparation of an Expanded Initial Study pursuant to these Guidelines;

(b) Refer the project back to the Environmental Coordinator for the preparation of a Negative Declaration pursuant to these Guidelines; or

(c) Find that the activity in question is not a project as defined in CEQA, and is therefore not subject to CEQA.

(d) Determine that the project will have a minimal chance of approval and refer the project back to the originating department for processing without an environmental determination pursuant to the State CEQA Guidelines. Written notice of this decision by the Board of Supervisors shall be given to the applicant and the project shall be forwarded to the originating department for processing for denial.

604.00

When the Board determines that a project may be processed with a Negative Declaration, such determination shall be binding on the Environmental Coordinator only to the extent that the project description, environmental setting, and evidence in the record remain consistent with that presented to the Board at the previous public hearing. If such description, setting, or evidence changes, the Environmental Coordinator shall exercise the discretion required by CEQA, the State CEQA Guidelines, and these Guidelines to reevaluate the project.

605.00

In the event new information becomes available, a decision by the Board of Supervisors to direct that a project be processed on the basis of a proposed Negative Declaration shall not be binding on any subsequent decision maker(s). Such decision maker(s) shall exercise independent judgement as to the adequacy of any proposed Negative Declaration.

606.00

When an EIR is required, the procedures in this Article and those procedures which are mandatory in Article 7 of the State CEQA Guidelines shall be followed.

607.00

The Environmental Coordinator shall require, and the applicant shall provide, information sufficient to describe the project, the project's purpose and objectives, and the project location. In addition to information required from the applicant by the Environmental Coordinator, an applicant may submit additional information in any format to aid in the preparation of the draft EIR. The Environmental Coordinator shall determine how and to what extent the applicant's information should be used. The Environmental Coordinator shall not endorse any information prepared by or under contract to the applicant without first conducting sufficient analysis to determine that the information is complete, accurate, and can be presented to the public without question as to any actual or perceived conflict of interest on the part of the preparer of the information.

608.00

At the Environmental Coordinator's discretion, an EIR, EIR Addendum, Supplement or similar document shall be prepared by an outside consultant under contract to the County or directly by the County. The applicant shall be liable for all consultant costs related to the preparation of the EIR.

609.00

An estimate for the cost of the preparation of the EIR will be secured by the Environmental Coordinator from consultants determined by the Environmental Coordinator to be qualified. EIR consultant contracts shall not be awarded to consultants that have any other involvement in the same project. The Environmental Coordinator shall be satisfied that any consultant preparing an EIR can provide an independent, objective and unbiased document.

610.00

Costs estimated for the Environmental Coordinator's processing of the EIR shall be included in the fees required of the applicant, the amount of which shall be set by

ordinance of the Board of Supervisors. Additional fees shall be required if additional information is determined to be necessary by the Environmental Coordinator. Failure of the applicant to supply sufficient information to process the EIR or fees required are grounds for disapproval of the project.

611.00

On all projects undertaken by the County for which an EIR is required, the Environmental Coordinator will determine who should prepare the EIR, after conferring with the head of the County Department carrying out the project.

612.00

The Environmental Coordinator shall negotiate any contracts or purchase requisitions for the preparation of an EIR. Unless otherwise authorized by purchase requisition, all such contracts shall be approved by the Board of Supervisors.

613.00

The content of an EIR shall be governed by the requirements of the State CEQA Guidelines.

614.00

The final EIR shall be presented to the decision-maker(s) at a public hearing. Prior to final approval of the project, the decision-maker(s) shall certify that the final EIR has been completed in compliance with CEQA and the State CEQA Guidelines and that the decision-maker(s) have reviewed and considered the information contained in the final EIR prior to approval of the project.

615.00

The Environmental Coordinator shall provide the decision-maker(s) with recommended findings pursuant to CEQA and the State CEQA Guidelines. Prior to approval of the project, the decision maker(s) shall adopt findings required by CEQA and the State CEQA Guidelines.

ARTICLE 7

NOTICING

700.00

A weekly announcement, summarizing the official actions of the Environmental Coordinator, shall be posted in a conspicuous location in the Department of Planning and Building. A copy of the announcement shall also be placed as an informational item following the listings on the agenda of the Board of Supervisors. The announcement shall include a list of projects receiving proposed Negative Declarations, may disclose the receipt of appeals of proposed Negative Declarations, may announce the availability of draft and final EIRS, and may include any other information the Environmental Coordinator deems necessary and appropriate.

701.00

The Environmental Coordinator shall cause public notice of all proposed actions requiring such notice to be given as required by CEQA and the State CEQA Guidelines.

702.00

After a decision to adopt a Negative Declaration for a project has been made, the Environmental Coordinator may file a notice of determination on behalf of the lead agency pursuant to the State CEQA Guidelines.

703.00

After a decision to certify a final EIR has been made, the Environmental Coordinator may file a notice of determination with the County Clerk which shall contain the information required in State CEQA Guidelines.

ARTICLE 8

REQUEST FOR REVIEW

800.00

A Request for Review is a process which affords the public the opportunity to focus additional scrutiny on proposed Negative Declarations. This process supplements the opportunities of the public to comment on proposed Negative Declarations that is afforded by CEQA, the State CEQA Guidelines, and these Guidelines.

801.00

Any person may file a Request for Review of a proposed Negative Declaration. Such requests must be in writing, stating the basis for the filing, and must be received by the Environmental Coordinator within 14 days of the posting of the announcement, specified in Section 700.00 above, of a proposed Negative Declaration. The Environmental Coordinator may charge a fee for the review, the amount of which shall be set by ordinance of the Board of Supervisors.

802.00

The absence of a Request for Review shall not preclude the County from considering oral or written comments received on a proposed Negative Declaration. The failure of any person to file a timely Request for Review shall not diminish the weight or significance of any comments that any person may make on a proposed Negative Declaration.

803.00

A Request for Review of a proposed Negative Declaration shall be heard and considered at the time of the public hearing on the question of approval or denial of the project. The project staff report shall include a complete copy of the Environmental Coordinator's report responding to the issues raised in the Request for Review.

804.00

Where no public hearing to consider approval or denial of a project is normally scheduled, a Request for Review of a proposed Negative Declaration for such projects shall be forwarded to the Planning Director for consideration. The Planning Director shall schedule and hold a public hearing to consider the Request for Review, together with consideration of the approval or denial of the proposed project. The hearing process shall be consistent with the Minor Use Permit procedures as set forth in Section 22.02.033 of the San Luis Obispo County Land Use Ordinance.

805.00

If a Request for Review of a proposed Negative Declaration is made pursuant to these Guidelines, the Environmental Coordinator shall notify the originating department and forward a copy of the Request for Review to the project applicant.

806.00

In order to clarify a Request for Review, the Environmental Coordinator may seek additional information and supporting evidence from the person filing the Request.

807.00

If the Environmental Coordinator determines that the facts or basis of a Request for Review raise important environmental issues which have not been appropriately addressed in the proposed Negative Declaration, the Environmental Coordinator shall do any or all of the following, as necessary:

(a) Identify feasible mitigation measures or project changes that would mitigate any new significant environmental impacts identified in the Request for Review;

(b) Revise the proposed Negative Declaration to respond to the issues of the Request for Review;

(c) Withdraw the proposed Negative Declaration;

(d) Recommend the preparation of an EIR.

808.00

If the Environmental Coordinator determines that the facts or basis of a Request for Review do not raise new important environmental issues, the Environmental Coordinator shall prepare a report that responds to the issues raised in the Request and presents the evidence supporting the proposed Negative Declaration. The report shall also include any other information the Environmental Coordinator deems necessary to fully inform the decision-maker(s) about the project, the project's potential environmental impacts, and any specific or unique aspects of CEQA or other statutes or regulations which will be of importance to the decision-maker(s).

809.00

No final action on any project for which a Request for Review of the proposed Negative Declaration has been filed shall be taken until the Request for Review has been heard and concluded.

810.00

If a Request for Review of a proposed Negative Declaration is received after the 14 day

period has expired the Environmental Coordinator shall consider the Request for Review to be written comments, and shall respond as identified in these Guidelines.

ARTICLE 9

MITIGATION MONITORING

900.00

The Environmental Coordinator shall conduct mitigation monitoring and reporting pursuant to CEQA and the State CEQA Guidelines.

901.00

Costs incurred by Environmental Coordinator for mitigation monitoring shall be included in the fees required of the applicant, the amount of which shall be set by ordinance of the Board of Supervisors. Additional fees beyond the original amount shall be required if additional monitoring is determined to be necessary by the Environmental Coordinator.

ARTICLE 10

INTERAGENCY REVIEW

1000.00

From time to time, other agencies may send copies of proposed Negative Declarations or draft EIR's to the County for review and comment. Any agency or County Department subject to these Guidelines shall forward copies of such documents to the Environmental Coordinator immediately upon receipt. The Environmental Coordinator shall determine whether the County is a Responsible or Reviewing agency for the project in question, and shall coordinate the appropriate County response to the proposed Negative Declaration or draft EIR.

ARTICLE 11

DEFINITIONS

1100.00

The following words and phrases, where not defined in the State CEQA Guidelines, shall

have the meaning ascribed to them in these definitions. These definitions are intended to clarify the County process by supplementing definitions used in the State CEQA Guidelines:

"**Act**" or "**CEQA**" shall mean the California Environmental Quality Act, found in Public Resources Code Sections 21000 et seq..

"**Applicant**" shall mean the person, entity, public agency, or County department that proposes a project.

"**Decision-maker(s)**" shall mean any board, commission, hearing body, or individual responsible for taking action to approve, deny or modify a project.

The "**Environmental Coordinator**" is the person designated by the Board of Supervisors to make environmental determinations and recommendations, manage the environmental review process and review environmental documents submitted to the County by federal, state, or local agencies.

"**Environmental Division**" shall mean the branch of the San Luis Obispo County Department of Planning and Building directly responsible for the administration of the California Environmental Quality Act, under the direction of the Environmental Coordinator.

"**Environmental Impact Report**" or "**EIR**" shall mean an Environmental Impact Report as defined in Article 20 of the State CEQA Guidelines, and unless otherwise specified, shall also mean an Addendum to an EIR, Supplement to an EIR, a Program EIR, Subsequent EIR, or Master EIR.

"**Expanded Initial Study**" shall mean an in-depth analysis of specific environmental issues, conducted by qualified and recognized experts in the field(s) of study, for the purpose of determining whether a proposed project qualifies for a Negative Declaration or should be subject to the preparation of an Environmental Impact Report.

The "**next available Board of Supervisors meeting**" shall be the first Board of Supervisors meeting which has available space on the agenda and which allows for sufficient time for the Environmental Coordinator to analyze the issues, prepare the

appropriate reports and exhibits, and publish and give the notices required by these Guidelines.

"**Originating Department**" shall mean the agency or County department which proposes to carry out the project, the agency or County department with the authority to process or grant permits for the project, or the agency or County department with the greatest responsibility for supervising the project as a whole.

"**State CEQA Guidelines**" shall mean California Code of Regulations, Title 14. Natural Resources, Section 15000 et seq..

1101.00

The following acronyms are commonly used in the jargon of the industry, and shall be understood to have the listed meanings:

CE	**C**ategorical **E**xemption
CEQA	**C**alifornia **E**nvironmental **Q**uality **A**ct (Public Resources Code Section 21000 et seq.)
EIR	**E**nvironmental **I**mpact **R**eport
ExIS	**E**xpanded **I**nitial **S**tudy
GRE	**G**eneral **R**ule **E**xemption
IS	**I**nitial **S**tudy
ND	**N**egative **D**eclaration

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