

Troesh Recycling

Nipomo Mine Vested Rights

July 2020

Submitted to:

County of San Luis Obispo
Department of Planning and Building
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A. Introduction

1.0 Purpose and Scope

Troesh Recycling submits this document concerning vested mining rights at Troesh Recycling's sand and gravel mine located at 2280 Hutton Road, Nipomo (CA Mine ID No. 91-40-0004) ("Nipomo Mine" or "Mine"). The Department of Planning and Building ("Department") previously reviewed and certified vested mining rights at the Nipomo Mine in 1980 (the "1980 Certification"), and Troesh Recycling requests that the Department acknowledge that vested mining rights at the Nipomo Mine remain as confirmed in the 1980 Certification, and as consistent with subsequent California law on vested mining rights. Specifically, Troesh Recycling requests Department acknowledgement of the following:

- The Nipomo Mine's vested mining rights encompass approximately 300 acres on Assessor's Parcel Numbers ("APN") 090-341-033, 090-301-068, 090-301-035, 090-341-023, and 090-341-002 (collectively, the "Mine Site"), consistent with the 1980 Certification and California law.
- The Nipomo Mine's vested mining rights include the right to produce material in volumes necessary to meet market demand, consistent with California law.
- The Nipomo Mine's vested mining rights include the right to utilize all such mobile equipment and processing equipment and methods as reasonable and necessary to crush (if appropriate), wash, sort, stockpile, load, market, transport and otherwise manage commercial sand and gravel products from the Mine, consistent with the 1980 Certification and California law.

Although the Department previously reviewed and formally certified the Mine's vested rights in 1980, for the purpose of a complete record this document restates documentation and evidence supporting the County's 1980 Certification.

2.0 Vested Rights Determinations - Requirements

Vested mining rights establish the fundamental land use right to conduct surface mining operations, in much the same way as would a conditional use permit. "A vested rights determination acts as the fulcrum in SMARA policy because it (or its analogue, a permit to surface mine) governs the coverage of the reclamation plan and, in turn, the financial assurances to implement the plan." (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 626 [*Calvert*].)

The *Calvert* court held that a SMARA lead agency's determination of the existence of vested mining rights implicates procedural due process protections for neighboring landowners, such that a determination of vested rights must be made in a public hearing following reasonable notice. (*Calvert, supra*, 145 Cal.App.4th at p. 623.) *Calvert*, however, was decided in 2006, long after SMARA's enactment in 1976 and long after many local jurisdictions, like San Luis Obispo, implemented an administrative process to evaluate and confirm vested mining rights for mines in operation prior to 1976. The *Calvert* court, for this reason, chose "a middle course of limited retroactivity" such that its decision applied only to vested rights for which no final adjudication or administrative determination had occurred as of the date of the decision. (*Id.* at p. 630.) *Calvert* does not require a new hearing for vested rights confirmed prior to 2006, even if the confirmation occurred following "a less formal vested rights determination" process. (*Id.* at p. 631.)

The Department, as noted, certified the Mine's vested rights in 1980 following a formal administrative process that was applied uniformly across the County. Troesh Recycling does not request a new determination, but rather requests that the Department acknowledge the Mine's vested rights as originally certified in 1980 and consistent with subsequent California law pertaining to vested mining rights. The Department may do so administratively without notice and a public hearing.

3.0 Troesh Recycling Information

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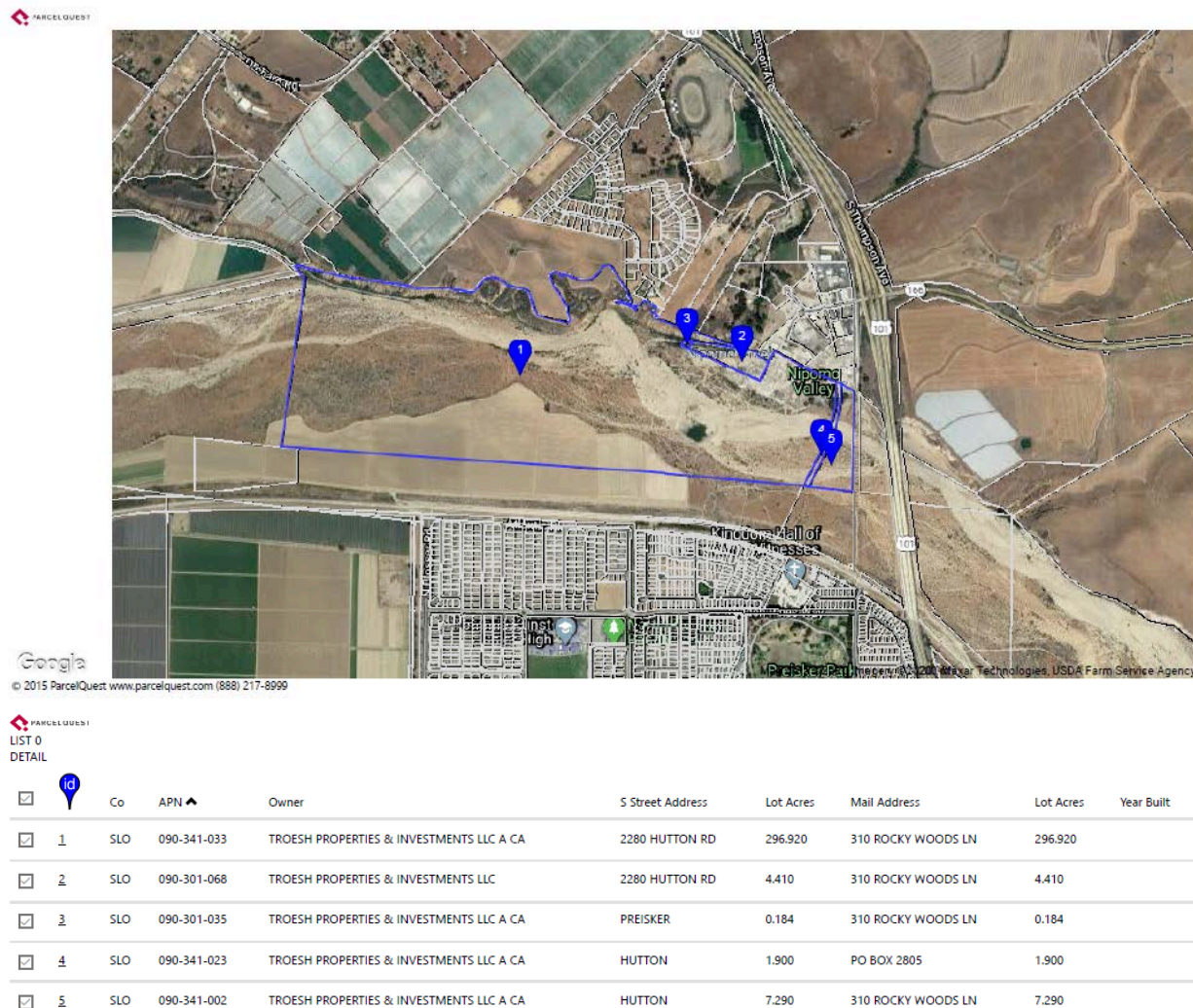
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4.0 Property Location

The Nipomo Mine is located entirely within unincorporated San Luis Obispo County, California, situated southeast of Nipomo at 2280 Hutton Road, Nipomo, California 93444. The Mine Site includes APNs 090-341-033, 090-301-068, 090-301-035, 090-341-023, and 090-341-002. The Mine's location and APNs are depicted on **Figure 1** below.¹

Figure 1.

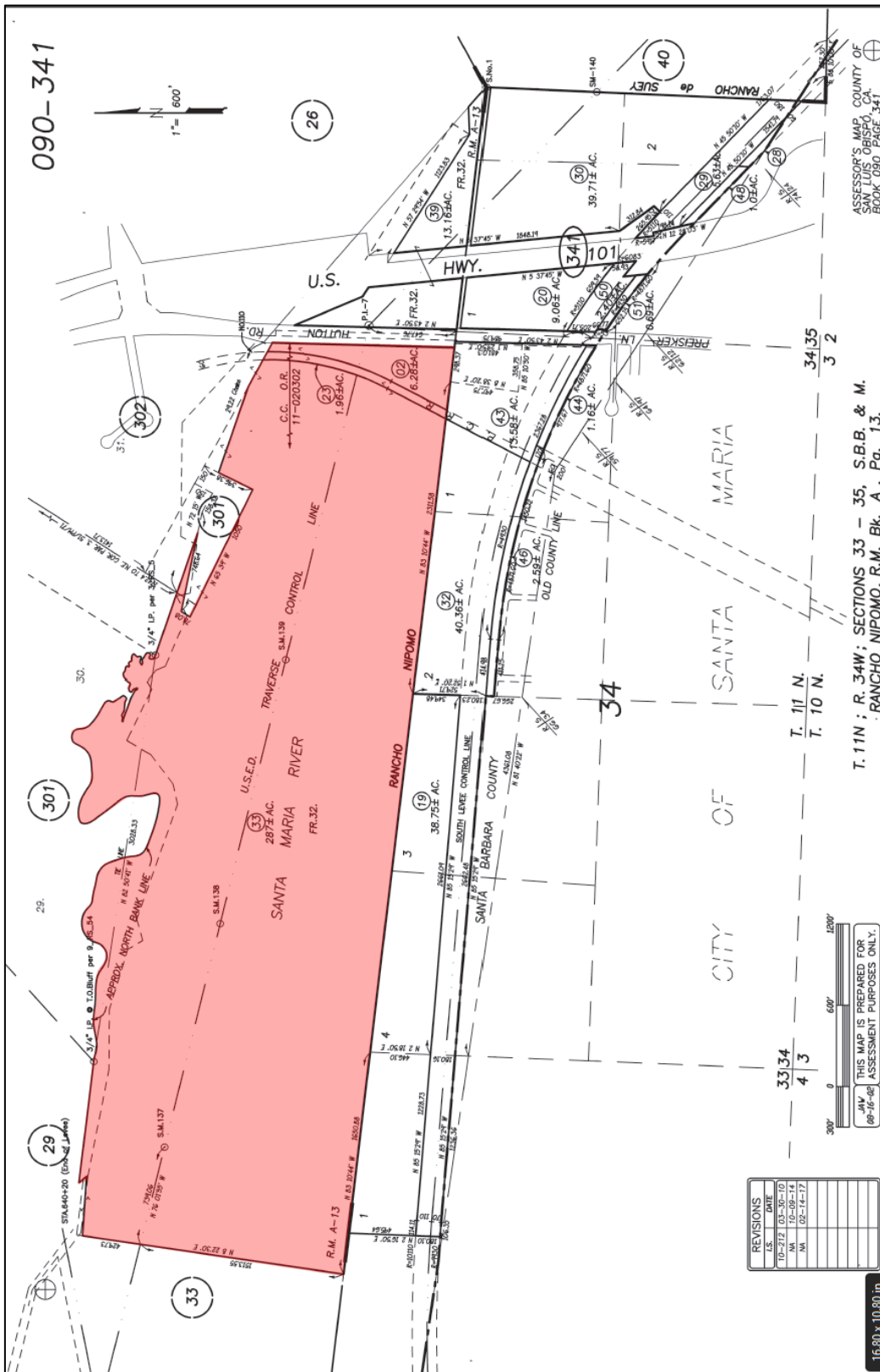


The Mine Site occupies approximately 300 acres. The property is identified on the San Luis Obispo County Assessor's Map Book 090 at Page 341, as shown in **Figure 2** below.

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¹ In Figure 1, point 4 is a railroad easement and point 5 is a CalTrans easement, these sections are not mined but are left in the exhibit to clarify property lines and ownership

Figure 2.



B. Vested Mining Rights

1.0 Legal Background

The Surface Mining and Reclamation Act requires all surface mining operations to have the following:

1. A use permit or *vested mining rights* to conduct surface mining operations;
2. A reclamation plan describing how the land will be reclaimed for subsequent use; and
3. Financial assurances in an amount sufficient to implement the approved reclamation plan.

(SMARA, Pub. Resources Code § 2770(a); 2776.) A vested mining right is a constitutionally-protected property right to continue mining operations in a certain location and in a certain way without being required to conform to all current land use restrictions. Vested property rights have been formally recognized in American law since the origination of zoning ordinances in the first half of the last century. (See, e.g., *Village of Terrace Park v. Errett* (1926) 12 F.2d 239; *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 307; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558-559; *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686; *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651 [*Edmonds*]; *Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121.)

Because vested mining rights are constitutionally-protected property rights, “[z]oning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. ‘The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.’” (*Hansen Bros. Enterprises v. Nevada County* (1996) 12 Cal.4th 533, 552 [*Hansen*], citing *Edmonds, supra*, 40 Cal.2d at 651.) When SMARA was enacted in 1975, the Legislature accordingly exempted vested mining operations from SMARA’s use permit requirement in order to avoid running afoul of constitutional takings law:

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 therefore. 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.

(Pub. Resources Code, § 2776; 59 Ops.Cal.Atty.Gen. 641, 644 (1977) [“Because it was not the intent of the Legislature in enacting the 1975 Act “to take private property for public use without payment of just compensation” (§ 2773), the Legislature included section 2776 in the Act, exempting from the requirement to secure a permit under section 2770 those who had obtained a vested right to conduct surface mining operations prior to January 1, 1976 . . .”].)

Prior to and for many years after SMARA’s enactment, however, neither statute nor case law defined the scope and meaning of vested mining rights. In other words, the geographic, operational, and volumetric scope of a vested mining right were not well understood by mine operators, property owners, or government agencies until clarified by the California Supreme Court in 1996.

In 1996, the California Supreme Court decided the landmark case *Hansen*. *Hansen* was the first case in California to clearly define vested mining rights in terms of geographic scope, volumetric scope, and operational scope, and remains a leading case in California and nationally on vested mining rights today. At its essence, *Hansen* established that vested mining rights are constitutionally-protected property that include the right to expand across a mining property and to increase production to serve market demand.

The facts of the case are as follows: Hansen Brothers mined a 67-acre tract of land in Nevada County. The operator primarily removed sand and gravel from the Bear River, but occasionally removed rock from the adjacent hillside. Over a 34-year period, Hansen Brothers removed approximately 1,300 cubic yards of rock from the hillside annually on average. (*Hansen, supra*, 12 Cal.4th at pp. 545-546.) Following SMARA’s enactment, Hansen Brothers prepared and submitted a reclamation plan application to Nevada County. The County’s reclamation plan form asked the operator to estimate future annual production within a range of 5,000 to 50,000 cubic yards annually or 50,000 to 250,000 cubic yards annually. Hansen Brothers estimated its production in the latter range, up to 250,000 cubic yards annually. (*Id.* at p. 548.) The County objected to this on a number of grounds, but in particular on the basis that Hansen Brothers’ vested right did not include mining of the hillside, did not include use of processing equipment, and did not include production up to the level specified in the reclamation plan application. (*Id.* at p. 549.)

The California Supreme Court, following an exhaustive study of vested rights law across the country, ultimately rejected each of the County’s claims. The resulting legal principles outlined in the case are as follows:

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Geographic Scope: The *Hansen* Court held that a vested mining operation is entitled to expand across a legal parcel, even if the entire parcel was not actively part of the mining operation on the vesting date,² so long as the mine operator can demonstrate “objective manifestations” (or “objective evidence”) of intent to mine the parcel. (*Hansen, supra*, 12 Cal.4th at pp. 555-556.) “An entire tract is generally regarded as within the exception of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning law. (*McCaslin v. City of Monterey Park* (1958) 163 Cal.App2d 339, 349; *Hansen*, at p. 556 [“The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed.”]) This is the essence of the “diminishing asset” doctrine. The diminishing asset doctrine entails the right to mine “where the resources are found”, both horizontally and vertically. (*Hansen*, at pp. 553-556.)

Operational Scope: The *Hansen* Court held that a vested mining right includes the right to “engage in uses normally incidental and auxiliary to the nonconforming use”. (*Hansen, supra*, 12 Cal.4th at p. 565.) Under this principle, the Court held that the mine operator at issue was entitled to shift its activities from in-stream sand and gravel mining to hillside hardrock mining, including the use of a rock crushing plant. (*Id.* at 566.) Like the geographic scope of a vested mining right, the type of mining (and associated processing equipment) included in a vested mining right is determined by objective manifestation of intent at the time the site became nonconforming.

Volumetric Scope: The *Hansen* Court held that increases in production to serve market demand were in fact part of the vested right itself and not an expansion of use as a matter of law: [T]he general rule appears to be that an increase in business volume alone is not an expansion of a non-conforming use. . . . (*Hansen, supra*, 12 Cal.4th at p. 573.) Not only does *Hansen* recognize that vested mining rights include the right to increase production in response to market demand, but leading legal treatises consistently recognize this principle as well. (See, e.g., 8A McQuillin Municipal Corporations, § 25.207 Enlargement or extension of use – Increase in volume of business or use. (3rd Ed.); 101A C.J.S. Zoning & Land Planning (2009), V.E.2.b.(1), § 186 Increase in amount or intensity of use (citations omitted); *Id.* at § 193, pp. 955-956 (citing *Union Quarries, Inc. v. Board of County Comm’rs* (1970) 206 Kan. 268, 276 [cited in *Hansen* at p. 573]).)

Two concepts discussed by the *Hansen* Court bear further discussion. First, the Court tied the scope of a vested mining right to the actual use, or intended use as demonstrated by objective evidence, at the time a zoning law is adopted that would otherwise require a use permit (in other words, at the time the mine operation becomes nonconforming, or the “vesting date”). (*Hansen, supra*, 12 Cal.4th at pp. 555-556.) Thus, one key question relevant to the geographic and operational scope of a vested mining right is at what date did the mine become a nonconforming use.

² / The “vesting date” is the date that the mining operation became “nonconforming”. “A legal nonconforming use is one that existed lawfully before a zoning restriction became effective and that is not in conformity with the ordinance when it continues thereafter. The use of the land, not its ownership, at the time the use becomes nonconforming determines the right to continue the use.” (*Hansen, supra*, 12 Cal.4th at Fn. 1.)

Second, the Court made clear that a vested right is not limited to the geographic and operational scope existing at the time the mine became nonconforming, but also includes those areas and types of operations for which objective evidence of intent existed at the vesting date. The *Hansen* Court defined “objective manifestations” of intent by way of example. First, and most clearly, the Court held that mining on a portion of a parcel by itself demonstrates objective intent to mine the entire parcel and is alone sufficient to establish a vested right to do so. (*Hansen, supra*, 12 Cal.4th at p. 556.) Second, the Court held that, for parcels not subject to active mining, material stockpiling, maintenance of mine roads, and contracts for material removal were sufficient to demonstrate intent to mine and to support a vested right. (*Ibid.*)

It is worth noting that a vested mining right does not exempt a mining operation from all regulation. A vested mining operation must still comply with SMARA’s reclamation plan and financial assurances requirements, with federal and state endangered species, clean air and clean water acts, with the California Environmental Quality Act for discretionary approvals, and is still subject to traditional nuisance doctrine. (See *Hansen, supra*, 12 Cal.4th at p. 575.)

2.0 Analytical Approach

Where vested mining rights have not been previously confirmed, the above legal principles require a SMARA lead agency to consider the following questions:

1. When did County mining use permit requirements first apply to the Mine Site (the vesting date)?
2. On which property or properties were surface mining activities at the Mine being conducted as of the vesting date?
3. What type of surface mining activities were being conducted on the Mine Site as of the vesting date?
4. Does objective evidence exist indicating the Mine operator’s intent to mine across the Mine Site as of the vesting date?
5. Have the Mine vested rights been abandoned at any time since their establishment?

Here, however, the Department has already certified the Mine’s vested rights following a formal administrative process. No further formal process is required to recognize the Mine’s vested status. Notwithstanding, this document provides the relevant factual background and applies the facts to the analytical framework above to illustrate the correct interpretation of the Department’s 1980 Certification.

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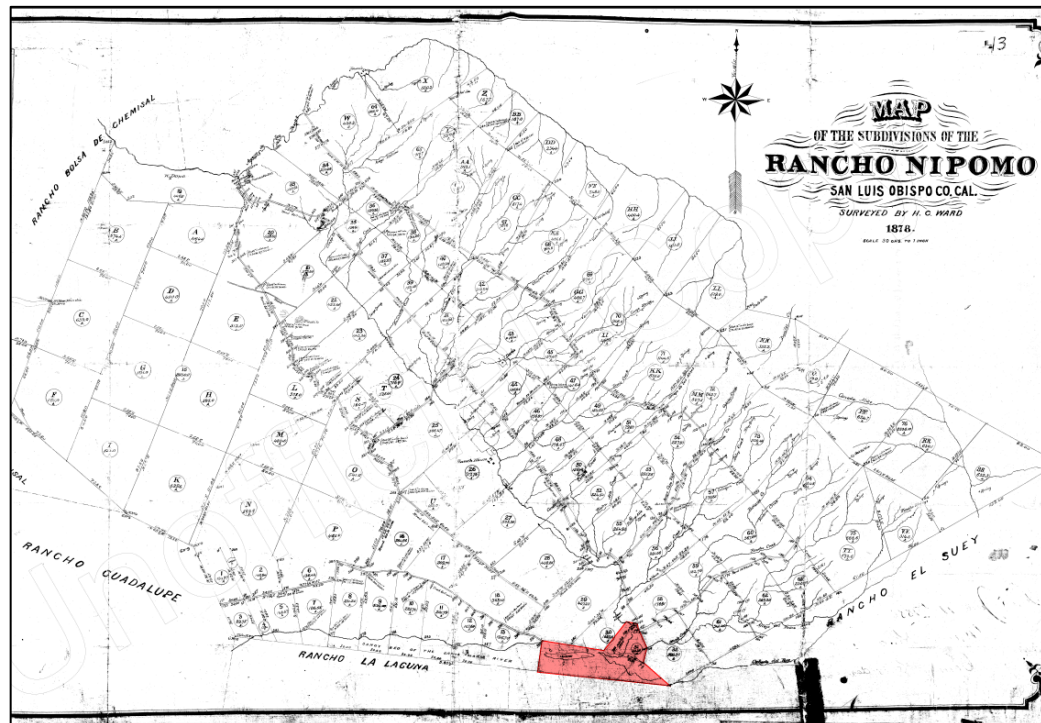
C. Factual Background

The relevant facts are set out below:

1800s - Rock and sand commenced at the site in the late 1800s. At one point a railroad spur served the Mine Site. Rock and sand from the Mine was used for the construction of railroads, the 101 Freeway, and in County projects. (**Exhibit 1**, San Luis Obispo County Certification of Vested Right Application Form, Santa Maria Mine Co., December 26, 1979, at p. 5.)

1942: Raymond W. Nelson acquired a fifty percent interest in the parcel (then identified as “Lot 32”) that comprises the Mine. (**Exhibit 5**, p .1.) Raymond Nelson is a relevant figure in the Mine’s history because Mr. Nelson eventually leased the property to Troesh Recycling’s predecessor in interest. The properties acquired by Mr. Nelson include Lots 30, 31 and 32, as depicted below on **Figure 3**.

Figure 3.



1945: Raymond W. Nelson acquired the remaining fifty-percent interest in Lots 30, 31, and 32, which include the Mine Site. (**Exhibit 5**, p. 1

1954: Historic aerial photography indicates that areas near APN 090-301-068 show evidence of mining-related operations. APN 090-341-033 shows roads in various parts of the riverbed originating from APN 090-301-068. (**Exhibit 5**, pp. 2; 25.)

1957: Historic aerial photographs show a large rectangular pit on the south-central side of APN 090-301-068. APN 090-341-033 shows roads in various parts of the riverbed originating from APN 090-301-068. (**Exhibit 5**, pp. 2; 26.)

1959: A United States Geologic Survey topography map shows a gravel pit in the northern portion of the Mine Site. (**Exhibit 5**, pp. 4; 58.)

1960: Historic aerial photographs show that mining activities commenced on the northern side of APN 090-341-033 within the riverbed and on the banks. This mining activity includes portions of APN 090-301-068. There is a road between APN 090-341-033 and the larger mine pit on the south-central side of APN 090-341-033. (**Exhibit 5**, pp. 2; 27.)

1964: Historic aerial photographs show a large mine pit on the south-central side of APN 090-341-033, and mining activity on the northern side of APN 090-341-033. (**Exhibit 5**, pp. 2; 28.)

1966: Historic aerial photographs depict mine pits on the Mine Site filled with water. (**Exhibit 1**, pp. 2; 29.)

1967: The Santa Maria Sand Co. began continuously operating the Mine Site in 1967. (**Exhibit 1**, pp. 3; 5.)

A 1967 photorevision of the 1959 USGS map depicts the gravel pit as well as two actual pit areas. (**Exhibit 5**, pp. 4; 59.)

1973: The Santa Maria Sand Co. entered into a lease agreement with the owner of the Mine Site for the removal of rock, sand and gravel from the Santa Maria riverbed ("1973 Lease"). The 1973 Lease also included three acres on the riverbed for screening plant and other associated activities.

1975: The County adopted Zoning Ordinance 1500 on May 14, 1975, which for the first time required either Departmental Review or a use permit for mining operations in all zoning districts in unincorporated areas of the County. This is the approximate “vesting date” for the Mine, although the County Vested Rights Application form appears to have treated January 1, 1976 as the vesting date (see **Exhibit 1**, p. 4.).

1976: SMARA becomes effective on January 1. (Pub. Resources Code § 2770 *et seq.*)

1979: G.Q. Strong of the Santa Maria Mine Co. completes and returns the County’s “Inventory of Mines” form (“1979 Inventory of Mines”). (**Exhibit 2.**)

The 1979 Inventory of Mines contains the following relevant information:

- For the questions “Total Acreage of Mine Parcel” and “Total Acreage of Mine Site”, Strong responded to both with “Approx. 300 acres.”
- For the question “Current Production Per Year” Strong responded “Approx. 40,000 to 50,000 yards”.
- For the question “Approximate acreage utilized by Mining/Processing Operations Since January 1, 1976” Strong responded 5 acres for mining, and 5 acres for processing.

(**Exhibit 2**, pp.1-2.)

Strong also submitted the County Vested Rights Application form in December 1979 (“1979 Vested Rights Application”). (**Exhibit 1.**) The 1979 Vested Rights Application mirrors the responses Strong reported on the 1979 Inventory of Mines form.

1980: The Department confirmed the Mine’s vested status: “This Vested Right recognizes the existing right to continue surface mining on the subject property in accordance with county ordinances governing surface mining activity” (“1980 Certification”). (**Exhibit 3.**)

1982: Santa Maria Sand Co. submitted a reclamation plan for the Mine in 1982 (M800707:12, “1982 Reclamation Plan”). (**Exhibit 4.**) The 1982 Reclamation Plan states that 40 acres of the Mine Site were anticipated to be mined at a time, but that approximately 260 additional acres were available to be mined. (**Exhibit 4**, p. 20.) The Department approved the 1982 Reclamation Plan by letter dated June 7, 1982.

1991: As required by SMARA, G.Q. Strong submitted the first annual report for the Mine on June 24, 1991. The report identifies the Mine Site as vested.

2007: The Department asserted by letter that the Mine's vested right was limited to 10 acres ("2007 Letter"). (**Exhibit 7.**) The Department based this assertion on two grounds: photographs from 1979 purporting to indicate the mining area encompassed approximately 10 acres; and (2) a selective reading of the 1979 Vested Rights Application suggesting that all mining activity would take place within a ten-acre area. We do not have records indicating why the Department issued the 2007 Letter, nor records indicating events following the 2007 Letter. The Department contradicted its conclusions in the 2007 Letter in a second letter in 2014 (discussed below).

2014: The Department asserted by letter that the Mine's vested right is limited to 40 acres, and 50,000 cubic yards per year ("2014 Letter"). (**Exhibit 8.**) Additionally, the 2014 Letter stated that, of the Mine's vested 40 acres, only 10 may be mined at any given time. The County based the 2014 Letter on areas known to have been historically mined, as well as "various files on record with the Department of Planning and Building". These files are not identified in the 2014 Letter. As stated above, the 2014 Letter expands on the 2007 Letter, but still purports to limit the Mine's vested rights to something less than what was confirmed by the County in 1980.

* * *

D. Analysis

As explained above, where vested mining rights have not been previously confirmed, the legal principles outlined in Part B of this document require a SMARA lead agency to consider the following questions:

1. When did County mining use permit requirements first apply to the Mine Site (the vesting date)?
2. On which property or properties were surface mining activities at the Mine being conducted as of the vesting date?
3. What type of surface mining activities were being conducted on the Mine Site as of the vesting date?
4. Does objective evidence exist indicating the Mine operator's intent to mine across the Mine Site as of the vesting date?
5. Have the Mine vested rights been abandoned at any time since their establishment?

Even though the Department has already certified the Mine's vested rights following a formal administrative process, we discuss each of these questions below, consistent with the facts and legal principles outlined in the preceding pages.

1.0 Vesting Date

The facts show that County use permit requirements to conduct mining operations first applied to the Mine Site in May 1975, following the County's adoption of Ordinance 1500. This date roughly correlates with the Legislature's adoption of SMARA, which then became effective on January 1, 1976. Notwithstanding Ordinance 1500's enactment in mid-1975, the Department appears to have treated SMARA's effective date, January 1, 1976, as the applicable vesting date. (See **Exhibit 1**, p. 4.)

2.0 Geographic Scope of Vested Rights

The geographic scope of vested mining rights at the Nipomo Mine spans across the approximately 300 acres included in APNs 090-341-033, 090-301-068, 090-301-035, 090-341-023, and 090-341-002.

The *Hansen* Court held that a vested mining operation is entitled to expand across a legal parcel, even if the entire parcel was not actively part of the mining operation on the vesting date, so long as the mine operator can demonstrate "objective manifestations" (or "objective evidence")

of intent to mine the parcel as of the vesting date. (*Hansen, supra*, 12 Cal.4th at pp. 555-556.) This is the essence of the “diminishing asset” doctrine. The diminishing asset doctrine entails the right to mine “where the resources are found”, both horizontally and vertically. (*Hansen*, at pp. 553-556.) In this regard, the existence of actual mining operations is the best possible objective evidence of intent to mine a given parcel. (*Hansen*, at p. 556.)

Here, as of the vesting date (January 1, 1976), the Mine Site consisted of the area in red shading on page 9 of **Exhibit 5**.

With regard to objective evidence of intent to mine the Mine Site, evidence shows that actual mining operations on the Mine commenced well before the 1976 vesting date. For example, the 1979 Vested Rights Application states that “Rock and Sand has been mined at this location since the 1800’s” (**Exhibit 1**, p. 5), and that Santa Maria Sand Co. began operating the Mine Site continuously in 1967 (**Exhibit 1**, p. 4). Aerial photos dating back to 1954 show mining disturbance on the Mine Site, and as early as 1958 the Mine was recorded on a United States Geologic Survey topography map. (**Exhibit 5**, pp. 2, 4, 25, 58.)

Evidence further shows that surface mining operations shifted and expanded over time. This is typical of an in-stream sand and gravel mining operation, in which sand and gravel in any given year are extracted from areas of high gravel recruitment during the preceding rainy season. Again, aerial photographs from as early as 1954 show shifting and growing extraction on the Mine Site. Page 5 of **Exhibit 5** presents a composite image of extraction areas on the Mine Site over time based on historical aerial photographs.

The 1979 Inventory of Mines form records the “Mine Site” as entailing approximately 300 acres, with the plant and/or processing area encompassing approximately 10 acres. (**Exhibit 2**, p. 1.) This information is carried over in the 1979 Vested Rights Application form, which identifies the legal parcel of the Mine Site as being “Parcel #32 [i.e. Lot 32], Rancho Nipomo”, which encompassed the entire current Mine Site, as discussed above. (See **Exhibit 1**, p. 2.)

That both the 1979 Inventory of Mines form and 1979 Vested Rights Application form reported that the acreage affected by mining was between five and 10 acres is immaterial. As noted above, in-stream sand and gravel operations extract material from areas of high recruitment; such operations never impact an entire riverbed at once. Moreover, both the 1979 Inventory of Mines and 1979 Vested Rights Application forms identify the “Mine Site” as encompassing 300 acres.

3.0 Operational Scope of Vested Rights

The Mine’s vested mining rights include the right to utilize all such mobile equipment and processing equipment and methods as reasonable and necessary to crush, wash, sort, stockpile, load, market, transport and otherwise manage commercial rock products from the Mine.

Vested mining rights include all uses that were part of the “overall business operation” as of the vesting date, as well as all “uses normally incidental and auxiliary to the nonconforming use.” (*Hansen, supra*, 12 Cal.4th at pp. 565, 566.)

The 1979 Vested Rights Application form includes a simple material flow drawing showing that sand and gravel is extracted from the riverbed, stockpiled, placed into material hoppers, and then screened to size. These mining and processing methods are necessitated by the nature of the sand and gravel, and remain essentially the same currently. These facts are sufficient, under *Hansen*, to support the inclusion of all such activities and all incidental and auxiliary activities in the Mine’s vested rights.

4.0 Volumetric Scope of Vested Rights

The Mine’s vested mining rights include the right to produce material in volumes necessary to meet market demand, subject to the “impermissible intensification” exception as outlined in *Hansen*.

A vested mining operation has the right to increase production in response to market demand. (*Hansen, supra*, 12 Cal.4th at p. 573.) Hansen Brothers, which had mined only 1,300 cubic yards of material (approximately 2,100 tons) from its hillside quarry per year over 34 years, submitted a reclamation plan stating that it planned to increase production from its quarry up to 250,000 cubic yards (more than 400,000 tons) per year. (*Id.* at pp. 546, 548.) Nevada County asserted that this increase amounted to an impermissible intensification of the quarry use.

The *Hansen* Court disagreed with Nevada County, and held that even an increase in production from 1,300 to 250,000 cubic yards may not constitute an impermissible intensification. (*Hansen, supra*, 12 Cal.4th at p. 573.) The Court specifically held that “gradual and natural” increases in production to serve market demand were in fact part of the vested right itself and not an expansion of use as a matter of law:

. . . [T]he general rule appears to be that an increase in business volume alone is not an expansion of a non-conforming use. . . .

(*Id.* at p. 573.) To illustrate its point, the Court observed that:

[B]y way of example, we assume that a grocery store operating as a lawful, nonconforming use in an area of increasing population would not be restricted to the same number of customers and volume of business conducted when the zoning ordinance was enacted. Neither an increase in the number of patrons or in the volume of goods sold would be considered an enlargement or intensification of the use. And where increased population creates an increased demand for the aggregate used in road construction, an increase in production to meet that demand would not be construed as an enlargement or intensification of the use.

(Id. at p. 573.) Thus, increases in production due to increased business volume alone, even substantial increases, are part and parcel of the vested right itself, and, therefore, do not constitute an expansion or change of the use.

Production levels reported on the 1979 Inventory of Mines and 1979 Vested Rights Application forms evidence annual production of approximately 40,000 to 50,000 cubic yards (**Exhibit 2**, p. 2). This equates to 72,000 to 90,000 tons per year utilizing a 1.5 ton/cubic yard conversion factor.

Production levels at the Mine are a function of market demand, but also of the volume of sand and gravel recruitment that occurs during the preceding rainy season. Some years bring sufficient new gravels to support mining, and other years not. It is anticipated that production levels from the Mine will gradually increase over time, so long as sufficient sand and gravel recruitment occurs during each rainy season, although given the size of the Mine, demand for material dictates supply more than sand and gravel recruitment.

With respect to “impermissible intensification” of a vested use, the *Hansen* court cited to decisions from other jurisdictions holding that expansion of a vested use is permissible “so long as that expansion is reasonable and not detrimental to the welfare of the community,” and where the expansion does not “change the character or purpose of the nonconforming use.” (*Hansen, supra*, 12 Cal.4th at pp. 572-573, citing *Frank Casilio & Sons v. Zoning Hearing Bd., etc.* (1976) 26 Pa. Commw. 608; *Town of Wolfeboro (Planning Bd.) v. Smith* (1989) 131 N.H. 449.) Finally, the Hansen Court stated that “[i]mpermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs.” (*Id.* at p. 575.

* * *

E. Requested County Action

As noted above, the Department issued two interpretations of the Mine's vested rights (the 2007 Letter and the 2014 Letter) that are inconsistent with the Department's 1980 Certification and with California law on vested mining rights. The Department's two interpretations are also inconsistent with each other. For this reason, we request that the County withdraw the 2007 Letter and 2014 Letter, and acknowledge that the Mine's vested rights are as certified by the County in 1980 and consistent with applicable legal principles, and as articulated below:

1. Surface mining operations commenced at the Nipomo Mine as early as the 1800s, with continuous commercial operations serving market demand since approximately 1967.
2. The County first adopted a use permit requirement applicable to mining operations on the Mine Site in 1975 (Ordinance 1500), but appears to recognize January 1, 1976 as the "vesting date" for purposes of evaluating the existence and scope of vested mining rights at the Mine.
3. As of the vesting date, mining operations occurred on the property now identified as APNs 090-341-033, 090-301-068, 090-301-035, 090-341-023, and 090-341-002, comprising approximately 300 acres. Evidence shows that mining operations expanded geographically over time, and as necessary to produce material in response to market demand and as dictated by sand and gravel recruitment in the riverbed. The preceding mine operator identified the Mine Site encompassing approximately 300 acres on the County's 1979 Inventory of Mines form and the 1979 Vested Rights Application, and the County subsequently certified the entire "subject property" as being vested.
4. Mining operations as of the vesting date entailed material extraction sorting, stockpiling, and distribution utilizing mobile equipment and processing equipment. These as well as all "uses normally incidental and auxiliary to the nonconforming use" (*Hansen, supra*, 12 Cal.4th at pp. 565, 566) are permissible under the Mine's vested rights.
5. Mining operations as of the vesting date included annual production of 40,000 to 50,000 cubic yards annually, and production may increase as necessary to produce material in response to market demand, subject only to the impermissible increase rule established in the *Hanson* decision.

* * *

EXHIBIT 1

Certification of Vested Rights Application Form

H-8-A

CERTIFICATION OF VESTED MINING RIGHT
(Application Form)

I. APPLICANT NAME AND ADDRESS:

Galen C. Stong
P.O. Box 994
Santa Maria, CA 93456
Phone: 922-2717

II. MINE PROPERTY OWNERSHIP

A. Surface Owner

Name: Raymond Nelson
Address: P.O. Box 525
Santa Maria, CA 93456
Phone: 925-3797

B. Mineral Owner
(If Mineral Rights
Severed from Surface
Rights)

Name: Same as Above
Address:
Phone:

C. Mine Lease Owner

Name: Galen C. Stong
Address: P.O. Box 994
Santa Maria, CA 93456
Phone: 922-2717

D. Mine Operator

Name: Galen C. Stong
Address: P.O. Box 994
Santa Maria, CA 93456
Phone: 922-2717

E. Operator Contact Person

Name: Galen C. Stong
Address: P.O. Box 994
Santa Maria, CA 93456
Phone: 922-2717

III. DESCRIPTION OF MINING PROPERTY

A. This mine is known as the Santa Maria Sand Co.
Mine.

B. Provide below a brief description of the general location
of the mine. (Example: Three miles northeast of San Luis
Obispo on Stage Coach Road; 1/4 mile north of intersection
with Hwy 101; west side of road.)

Santa Maria River Bed approximately 2/10 mile from Free-
way 101, and Cuyama Lane turnoff.

CERTIFICATION OF VESTED MINING RIGHT
Application Form - Page 2

- C. Provide below a legal description of the parcel(s) on which the mine is located; including Assessor's Parcel Number(s). Use additional pages, if necessary.

Parcel #32, Rancho Nipomo

IV. DESCRIPTION OF MINE

NOTE: Information in this section should be as of the date of application.

- A. Mineral commodity(ies) mined and produced:

Rock & Sand

- B. Acreage of area affected by the mine site: 10 acres.

- C. Acreage of area affected by the plant and stockpiles:
10 acres.

- D. Approximate depth of the deepest portion of the mine from natural grade: 15 feet.

- E. Approximate volume or tonnage of ore and overburden removed during the entire lifetime of the mine:
200,000 tons/yards. Before 1967--no records.

V. HISTORY OF MINE ACTIVITY AND OWNERSHIP

NOTE: Before completing this section refer to Attachment I, "History of Mining," for the desired format. Also, terms relating to "Mine Status" shall have the following definitions:

Active Operation - A surface mine that is 1) operated continuously so that not more than 12 months separates operating periods, and is 2) maintained diligently during periods of inactivity.

CERTIFICATION OF VESTED MINING RIGHT
Application Form - Page 3

Intermittent Operation - A surface mine that is 1) operated only periodically with one or more years between operating periods, either because needs for the minerals produced at such time are supplied from stockpiles, or because market conditions require only an intermittent supply of these minerals, and is 2) maintained diligently during periods of inactivity.

Abandoned Operation - A surface mine that is deactivated and not maintained diligently in the expectation of reopening it.

Diligent Maintenance - Maintenance of the mine proper, roads, processing plant (if such exists), buildings and other appurtenances in the expectation of reactivation when conditions justify.

- A. The mine was first opened in the year 1967. By me.
Before that time various contractors and Raymond Nelson.
B. History from date of opening to the present:

<u>Period</u>	<u>Status</u>	<u>Production</u> <u>During Period Tons/Yards</u>	<u>Mine Owner and</u> <u>Mine Operator,</u> <u>If Different</u>
1967	Continuous Operation	Approximately 200,000	

*Freeway
const*

— Madonna

— Ray Nelson

— Valley Paving

— Narrow Gauge
Railroad

— Johnson
Union Body #

Use additional pages, if necessary.

CERTIFICATION OF VESTED MINING RIGHT
Application Form - Page 4

C. What was the status of the mine on January 1, 1976?

Active

(Active, Intermittently Active, Abandoned)

D. Was the mine actually producing a mineral commodity on January 1, 1976? Yes X No

E. If the mine was "active" or "intermittently active" on January 1, 1976 but not in actual production (producing a mineral commodity), provide with this application evidence that the mine was and has been maintained diligently on and since that date.

VI. DECLARATION OF LEGAL ESTABLISHMENT AND LEGAL MAINTENANCE OF MINING OPERATION

A. Provide with this application verification that the mine was legally established and opened on the date entered in Section V-A or was legally reestablished and reopened after the last period of "abandonment." Verification should include County-issued permits, copies of receipts, bills of lading or other documentation.

B. Provide with this application verification that the mine has been in compliance with all County regulations relating to mining after it was opened initially or reopened after the last period of "abandonment." See Attachment II for a "Chronology of San Luis Obispo County Code Requirements for Surface Mining Permits."

VII. IDENTIFICATION OF THE EXTENT OF MINE SITE DISTURBANCE SUBJECT TO RECLAMATION

A. Provide with this application the following information:

1. Maps, photos or other documentation to show the extent (including depth) of the mining, processing, and otherwise disturbed area (associated with the mining activity) as of January 1, 1976.
2. Maps, photos or other documentation to show all portions (including new areas) of the mining, processing, and disturbed area which have been utilized in connection with mining/processing activities since January 1, 1976.

lmh/032679

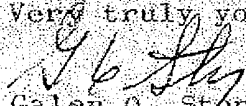
Rock and Sand has been mined at this location since the 1800's. At one time there was a railroad spur to the location for the purpose of getting Rock and Sand. Materials have been obtained from this location for the railroads, ICI Freeway, as well as materials for the county, etc. Since that time, the mine was intermittently operated until 1967, thereafter the pit has been operated continuously by Santa Maria Sand Co. (G. O. Stong).

Nature has taken care of any materials excavated by the refilling of the pit each year. As a matter of fact, it has been good for the purpose of flood control, leaving a channel in the riverbed so the water can flow away from the levee itself.

Although the operation only covers approximately 10 acres, the Rock and Sand area in the river is approximately 300 acres.

If more information is needed, please feel free to call me, Whitey Stong, Santa Maria, phone number 922-2717.

Very truly yours,


Galen O. Stong

GOS:eje

RECEIVED

DEC 26 1979

S.L.O. COUNTY
PLANNING DEPT.

REV 3/12/88



CATES REAL ESTATE

DON DE BRUYA

BROKER

PHONE
BUS WA 5-8888
RES WA 5-3713

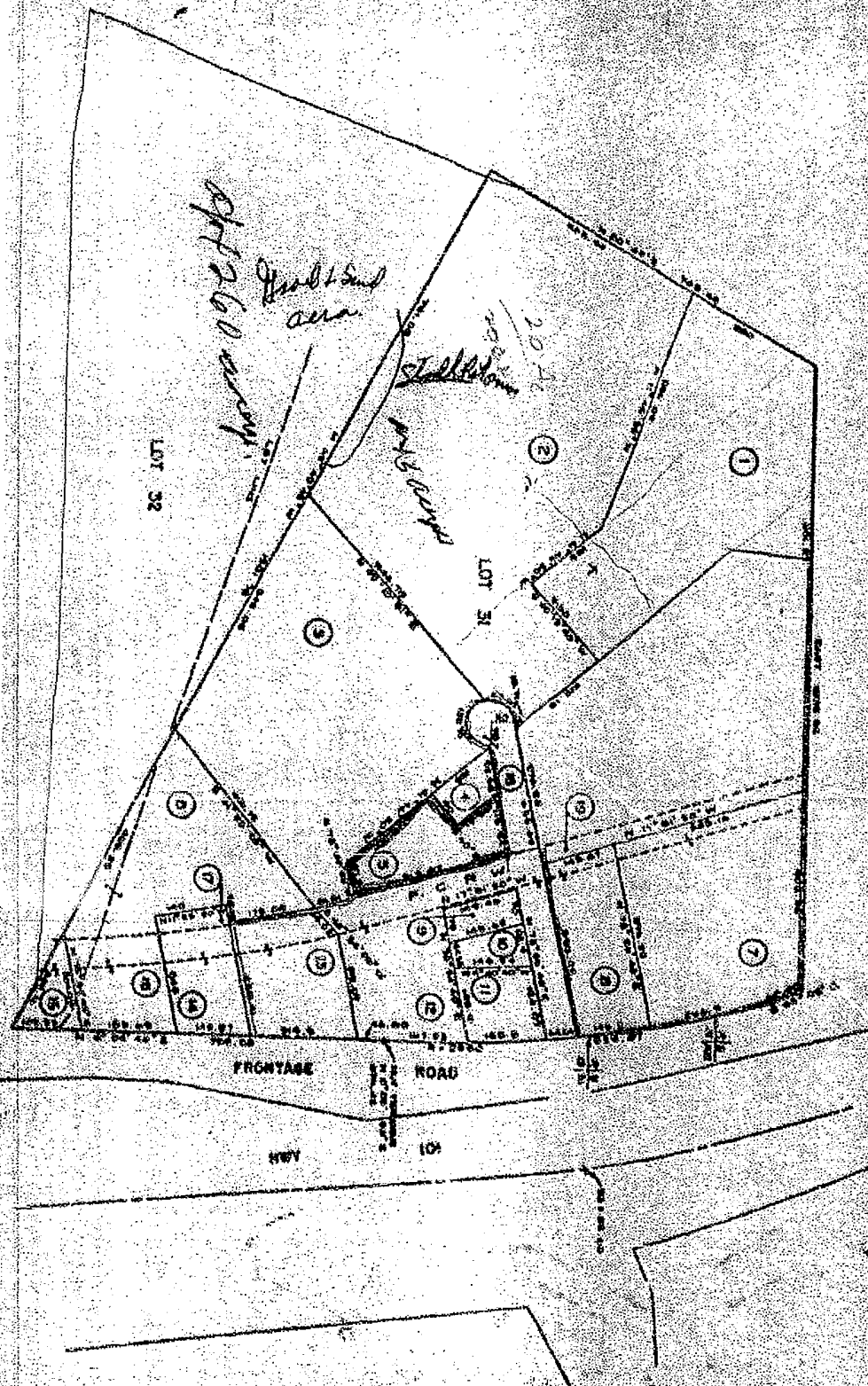
1880 SO. BROADWAY
SANTA MARIA, CALIF.

AGENT

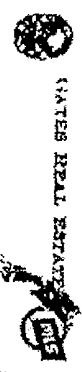
OWNER

This is page #2 of listing agreement referred to as description of property on first pages and approved by owner and listing agent.

MY AZA COOR NO. 90-302



Copied from
M800707:12 file



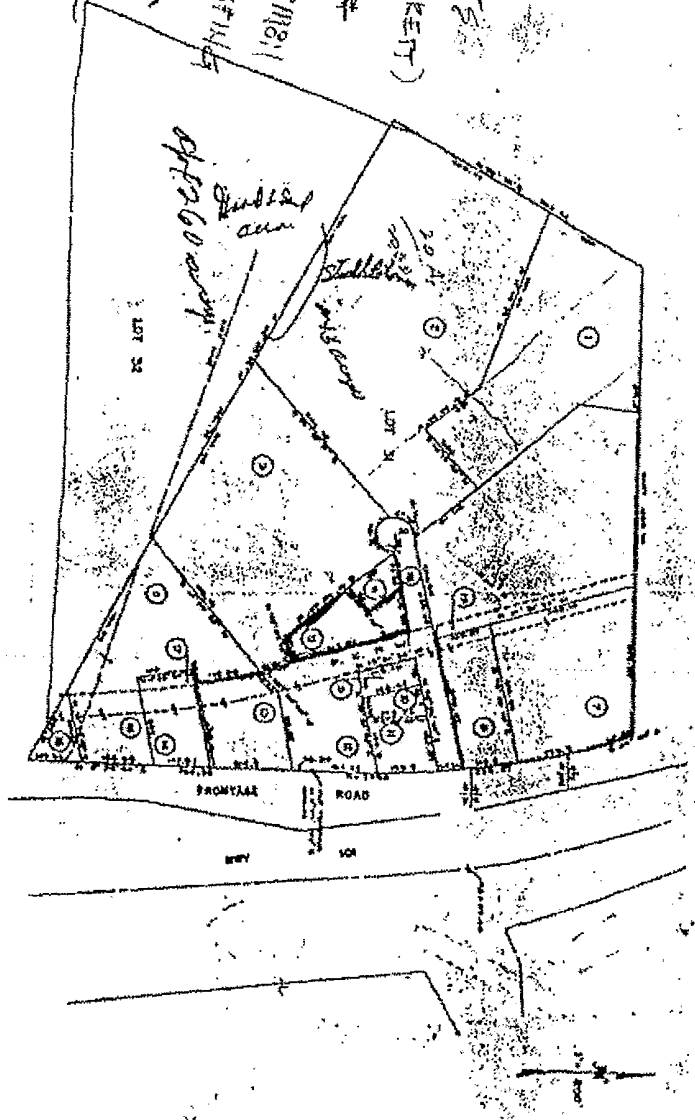
DON DE BRUYN
BROKER

This is page #2 of listing agreement referred to as description of property on first page and approved by owner and listing agent.

1050 SO. DOWNSWAY
MOUNTAIN VIEW, CALIF. 92653
PHONE (714) 241-8000
RES. WA 5-3712

AGENT
OWNER
1050 SO. DOWNSWAY
MOUNTAIN VIEW, CALIF. 92653
PHONE (714) 241-8000
RES. WA 5-3712

THIS MAP OMITTS
90-301-36 (EVERETT)
IT IS ALSO BE
LEGIBLE. PM 831181
SHOWED THE EXISTING
STOCKPILE OF SAND
IN DIFFERENT
LOCATION.



Duplicate
But with different
text

EXCAVATE
SAND

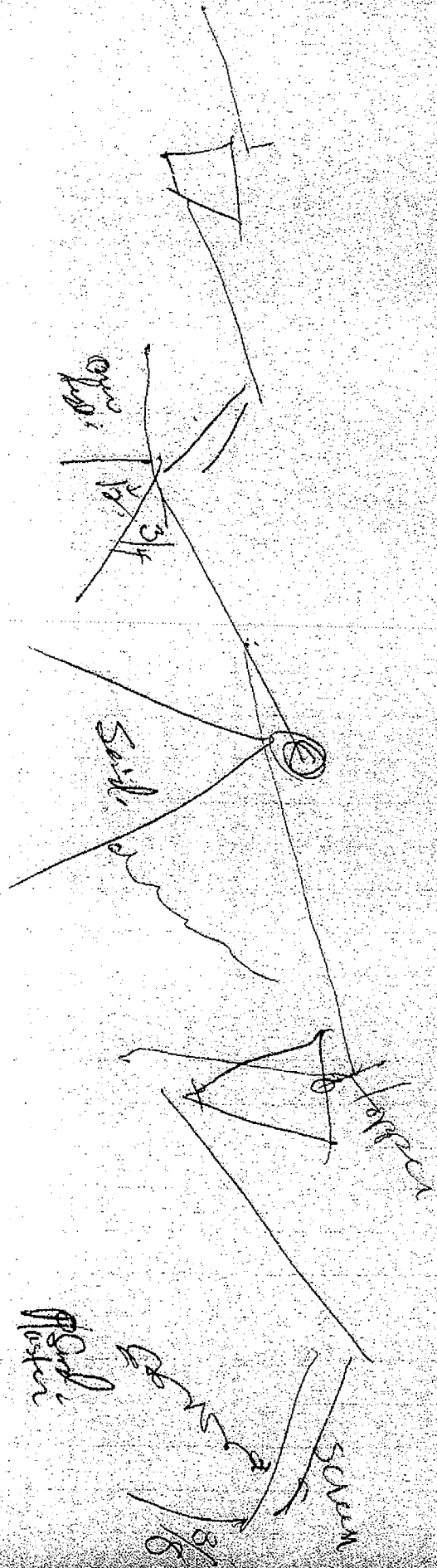


EXHIBIT 2

Inventory of Mines Form

For County Use Only

Site No. D-12-B
USGS Quad _____
Mineral SAND & ROCK
Status ACTIVE

INVENTORY OF MINES
(Preliminary Owner/Operator Questionnaire)

MINE NAME Santa Maria Sand Co.

MINE PROPERTY OWNERSHIP

- Surface Owner
Name: Raymond Neason
Address: P.O. Box 525
Santa Maria, CA 93456
Phone: 925-3797
- Mineral Owner
(If Mineral Rights severed
from Surface Rights)
Name: _____
Address: _____
Phone: _____
- Mineral Lease Owner
Name: Galen O. Stong
P.O. Box 994, Santa Maria
Phone: 922-2717
- Mine Operator
Name: Same as Above
Address: _____
Phone: _____
- Operator Contact Person
Name: Same as Above
Address: _____
Phone: _____

MINE PROPERTY DESCRIPTION/STATUS

- Total Acreage Mine Parcel Approx. 300 acres
- Approximate Acreage of Mine Site 300 acres
- On-Site Processing Plant Yes x No _____
- Approximate Acreage, Plant
and/or Processing Area 10 acres
- Type of Mining Operation
(Open pit bank, Quarry,
Underground, Dredging, Other) Open Pit
- Mine Status
(Active, Intermittently Active,
Abandoned) Active
- If Intermittently Active or
Abandoned, date of last Mining
and/or Processing Activity _____

MINERAL PRODUCTION

- Mineral Commodities Produced Rock and Sand
- Current Production Per Year (tons or yds.) Approx. 40,000 to 50,000 yards

MINING ACTIVITY AFTER JANUARY 1, 1976

- Has the Mine and/or the Processing Plant been active since January 1, 1976? Yes X No
- Approximate total production since January 1, 1976 (tons or yds.) 100,000 yards
- Approximate acreage utilized by Mining/Processing Operations since January 1, 1976
Mining 5
Processing 5

FUTURE MINING PLANS

Briefly describe of plans for future Mining and/or Mineral Processing activities:

Same as in the past, Rock and Sand, but may
require more pit and processing area.

REMARKS AND ADDITIONAL INFORMATION

QUESTIONNAIRE COMPLETED BY J. G. Stry
(Print Name Under Signature)

DATE 5/7/79

PHONE 22717

EXHIBIT 3

Certification of Vested Rights



Telephone (805) 549-5600

PLANNING DEPARTMENT

Courthouse Annex

SAN LUIS OBISPO, CALIFORNIA - 94025

March 31, 1980

Santa Maria Sand
G.Q. Strong
P.O. Box 994
Santa Maria, CA. 93454

RE: CERTIFICATION OF VESTED RIGHTS

Dear Mr. Strong:

Your application for Certification of Vested Mining Rights has been authorized as complete and satisfactory by our office. This Vested Right recognizes the existing right to continue surface mining on the subject property in accordance with all county ordinances governing surface mine activity. Failure to comply with applicable county laws may result in a revocation of this certification.

Sincerely,

A handwritten signature in cursive script, reading "Steve Devencenzi".

STEVE DEVENCENZI
Reclamation Plan Review

SD/mc

5Y

EXHIBIT 4

Reclamation Plan

COUNTY OF SAN LUIS OBISPO
PLANNING DEPARTMENT

RECLAMATION PLAN
APPLICATION

Return to Courthouse Annex, Room 102, San Luis Obispo CA 93401

(805) 549-5600

APPLICANT AND GENERAL INFORMATION

(1) Applicant: SANTA MARIA RIVER	(2) Mailing Address: SANTA MARIA RIVER	Telephone: (805) 549-5600
(3) Type of Ownership: Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other <input type="checkbox"/>	(4) Status of Application: Original Application <input type="checkbox"/> Amendment <input type="checkbox"/>	(5) Mine Name: SANTA MARIA RIVER
(7) Estimated Life of Operation: 10 years	(8) Conditional Use Permit Number: 100-382-02	(6) Date Mine (is to be) Opened: 10/1/77
(9) Assessor's Parcel Number(s): 100-382-02	(10) USGS Quadrangle: 100-382-02	

MINE INFORMATION

(11) Raw Materials Mined: SAND/GRAVEL	(12) Yield (In Tons or Cu.Yds./Year): 100,000 Tons/Year
(13) Type of Mine: Borrow Pit <input type="checkbox"/> Gravel Bar Skimming <input type="checkbox"/> Stream Bed Skimming <input type="checkbox"/> Underground <input type="checkbox"/>	(14) Sand/Gravel Pit <input type="checkbox"/> Quarry <input type="checkbox"/> Clay Pit <input type="checkbox"/> Other (Specify) <input type="checkbox"/>
(15) Geologic Group, Formation and Member: SANTA MARIA RIVER	(16) Has Exploratory or Development Drilling been Utilized for the Operation? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(17) On-Site Processing? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(18) Total Acreage Affected by Mining after January 1, 1976: Mining <input type="checkbox"/> Waste Disposal <input type="checkbox"/> Processing <input type="checkbox"/> Settling Ponds <input type="checkbox"/>
(19) The Operation is (or will be): Continuously Active <input type="checkbox"/> Temporarily Reactivated <input type="checkbox"/> Undeveloped <input type="checkbox"/>	(20) Intermittently Active <input type="checkbox"/> Abandoned <input type="checkbox"/> Other (Specify) <input type="checkbox"/>
(21) Total Acreage Affected by Mining prior to January 1, 1976 and not Reaffected after that Date: SANTA MARIA RIVER	(22) Tributary to: PACIFIC OCEAN
(23) Grainage: SANTA MARIA RIVER	(24) Will Mining Progress in Separate Phases? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(25) Will Groundwater be Encountered During Mining (Including any Perched, Regional, or Artesian Flow)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	(26) Is Ongoing, Phased Reclamation Proposed? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(27) Is Soil Salvage and Replacement Proposed? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	(28) Will Water be Utilized for Mining or Processing? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(29) Will Settling Basins be Utilized? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	(30) Will Water be Discharged from the Affected Area? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(31) Will the Operation Involve Relocation, Blockage or Alteration of any Water Course or Stream? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	(32) Highest and Best Use of Affected Land Prior to Mining: SANTA MARIA RIVER
(33) Proposed Use Following Reclamation: SANTA MARIA RIVER	

OFFICE USE ONLY

MAP NUMBER: _____
DATE RECEIVED: 7-7-77
RECEIPT NO: 72147

GENERAL PLAN: _____
FILE NUMBER: M 806707-12
BY: [Signature]

COSTS AND GUARANTEES OF RECLAMATION

- (32) Total Acreage Included in Proposed Reclamation Plan: 210
- (33) Check: Supplemental "B" Included ☐ Previously Filled ☐
- (34) Estimated Costs of Total Reclamation or, if Phased Reclamation, Costs for each Phase (Attach Schedule). Express Costs in Today's Dollars: 10,000.00
- (35) Proposed Type(s) of Guarantee of Reclamation:
 Performance Bond ☐ Cash Deposit ☐
 Certificate of Deposit ☐ Lien ☐
- (36) Acres of Affected Area Previously Covered by Guarantee of Reclamation: 0
- (37) Type of Guarantee: None

SUPPORTING DOCUMENTS

- (38) Check:
- | | |
|---|---|
| <input type="checkbox"/> * Notarized Statements/ Possessory Interest in Lands | <input type="checkbox"/> * Reclamation Plan Map/Cross Sections |
| <input type="checkbox"/> * 7 1/2 Min. USGS Quadrangle | <input type="checkbox"/> * Typical Soil Profile |
| <input type="checkbox"/> * Site Geologic Map/Cross Sections | <input type="checkbox"/> * Diagram of Mineral Processing System |
| <input type="checkbox"/> * Development and Mining Plan/ Cross Sections | <input type="checkbox"/> * Reclamation Narrative |
| | <input type="checkbox"/> * Other Documents-List |
- * These Supporting Documents are Required

VERIFICATION

- (39) Documents Prepared By: 1. 1. 1. (40) Telephone: 627-2717
- (41) Name and Address of Responsible Person to be Contacted: 1. 1. 1. (42) Telephone: 627-2717
- (43) Print or Type Name to be Signed: SHARLO (44) Date: JUNE 30, 1980
- I, SHARLO state under penalty of perjury that I (am the applicant) (am an officer or official of the applicant). That the documents, and statements submitted as part of this application are true and correct to the best of my knowledge and belief, and that I hereby accept the responsibility for reclaiming the mined lands described herein in the manner described herein and attached, forming the Reclamation Plan for the 1. 1. 1. (Mine, Millsite or Project)

Affidavit:
 State of California } ss.
 County Of: }

Signature SHARLO

I, SHARLO
 a Notary Public in and For the
 State of California, do hereby
 certify that on the 30 day of
JUNE, 1980 before me,
 personally appeared
SHARLO
 and subscribed and swore this
 instrument. Witness my hand and
 seal this 30 day of JUNE,
 1980.

Title SHARLO

Signed in the County of: SHARLO

NOTE: Instructions for completing this form are contained in the County Planning Department publication, Reclamation Plan Guidelines. Assistance in completing the form will be provided upon request by the Planning Department staff.

COUNTY OF SAN LUIS OBISPO
PLANNING DEPARTMENT



RECLAMATION PLAN
APPLICATION SUPPLEMENTALS

Return to Courthouse Annex, Room 102, San Luis Obispo CA 93401 (805) 549-3600

A: OWNER, OPERATOR, & AGENT

A-1. APPLICANT

NAME _____
ADDRESS _____
TELEPHONE _____

A-2. APPLICANT CONTACT PERSON

NAME _____
ADDRESS _____
TELEPHONE _____

A-3. APPLICANT LIST NAMES, TITLES AND ADDRESSES OF ALL PARTNERS IN THE CASE
OF A PARTNERSHIP OR ALL OFFICERS IN THE CASE OF A CORPORATION.

A-4. LIST ALL NAMES UNDER WHICH THE APPLICANT HAS PREVIOUSLY OPERATED MINES
IN THE COUNTY OF SAN LUIS OBISPO.

A-5. NAME(S) AND ADDRESS(ES) OF (ALL) OWNER(S) OF SURFACE RIGHTS.

A-6. NAME(S) AND ADDRESS(ES) OF (ALL) OWNER(S) OF MINERAL RIGHTS.

OFFICE USE ONLY

MAP NUMBER: _____ GENERAL PLAN: _____
DATE RECEIVED: _____ FILE NUMBER: _____
RECEIPT NO: _____ BY: _____

A: CONTINUED

A-7. NAME AND ADDRESS OF LESSEE

A-8. OPERATOR

NAME _____
ADDRESS _____
TELEPHONE _____

A-9. AGENT OF PROCESS (PERSON DESIGNATED BY OPERATOR AS HIS AGENT FOR THE SERVICE OF PROCESS).

NAME _____
ADDRESS _____
TELEPHONE _____

A-10. PROVIDE EVIDENCE THAT ALL OWNERS OF A POSSESSORY INTEREST IN THE LAND HAVE BEEN NOTIFIED OF THE PROPOSED MINING USE(S) OR POTENTIAL USE(S). (ATTACH COPY(IES) OF NOTARIZED STATEMENT(S) OF ACKNOWLEDGEMENT.)

B: CONSENT OF LANDOWNER

We the undersigned, the owners of land located _____

Assessor's Parcel Number(s) 70-282-26

upon which E. G. Stone

(Name of Operator)

is to conduct an open pit mining operation, and for which application for approval of a Reclamation Plan is being made, and of which application this consent is a part, do hereby irrevocably grant to the operator, the State of California, County of San Luis Obispo or any of its authorized agents, the right to enter upon the land affected by the operator within a period of five (5) years after the operation is completed or abandoned only for the purpose of backfilling, planting and reclamation, or for inspection and evaluation as to the satisfactory completion of such measures in accordance with the provisions of the Surface Mining and Reclamation Act of 1975 and San Luis Obispo County Code, Chapter 22-81, as amended.

In witness whereof we have hereunto set our hands this 30th

day of JUNE, 1980.

Barbara May Nelson
(Signature of Landowner)

(Signature of landowner)

Affidavit:
State Of California) ss.
County Of:)

I, The undersigned, a Notary Public in and for the State of California, do hereby certify that on the 30th day of June, 1980 before me personally appeared Barbara May Nelson and subscribed and swore this instrument.

Witness my hand and seal this 30 day of June, 1980

(SEAL)

Edward D. Washbaugh

INSTRUCTIONS:

1. If the land is owned by one or more persons, all owners must sign.
2. File one (1) copy for each landowner.
3. If owned by an estate, authority for signing must be established.

C: LOCATION OF MINING SITE

C-1. ASSESSOR'S PARCEL NUMBER(S) AND LEGAL DESCRIPTION OF THE PARCEL(S) ON WHICH THE MINING SITE IS (IS TO BE) LOCATED. INCLUDE TOTAL ACREAGE OF EACH PARCEL.

C-2. THE MINING SITE IS LOCATED ON THE SANJOA MARZAL USGS 7.5 MINUTE QUADRANGLE. ATTACH COPY OF APPROPRIATE QUADRANGLE WITH THE MINING SITE AND THE PARCEL(S) ON WHICH THE SITE IS LOCATED ACCURATELY PLOTTED.

C-3. DESCRIBE THE ACCESS ROUTE TO THE MINING SITE.

C-4. LIST NAMES AND ADDRESSES OF ALL ADJACENT PROPERTY OWNERS, WITHIN 300 FEET OF EXTERNAL BOUNDARIES OF THE PARCEL ON WHICH THE MINING SITE IS LOCATED.

D: GEOLOGY, SOILS, HYDROLOGY & ENVIRONMENT

D-1. MINERAL (TO BE) MINED. _____ Mineral Name: _____

D-2. BRIEF DESCRIPTION OF THE REGIONAL GEOLOGIC SETTING.

_____ recently deposited album

☒ CONTINUED

D-3. DETAILED GEOLOGIC DESCRIPTION OF MINERAL DEPOSIT (TO BE) MINED.

D-4. HAS EXPLORATORY OR DEVELOPMENT DRILLING BEEN UTILIZED ON THE MINING SITE? YES _____ NO X

IF YES COMPLETE SUPPLEMENTAL "E" - "LOGS OF REPRESENTATIVE TEST BORINGS."

D-5. USING THE MINE SITE MAP OR AERIAL PHOTOGRAPH AS A BASE, PREPARE A DETAILED SITE GEOLOGIC MAP WITH TWO INTERSECTING GEOLOGIC CROSS SECTIONS (ONE PERPENDICULAR TO THE AVERAGE STRIKE), TO SHOW THE FOLLOWING INFORMATION WITHIN THE CURRENT AND DESIGNATED FUTURE MINING AND OVERBURDEN DISPOSAL AREAS.

- a. The known surface and sub-surface extent and thickness of the mineral to be mined. Approx. 600'
- b. The extent and thickness of overburden (or waste rock). None
- c. Detailed description of all basic soil types to be encountered on the mining site. Gravel Sand - Gravel Sand & Gravel
- d. ☒ Geologic formation contacts. N/A
- e. ☒ Detailed description of all basic rock types to be encountered on the mine site. Sand & Gravel
- f. ☒ Location and description (with strike and dip measurements) of rock outcrops within 200 feet of mining or proposed mining area(s). Sand & Gravel
- g. ☒ Faults and type. None
- h. ☒ Additional field measurements sufficient to determine the basic rock structure. Sand & Gravel
- i. ☒ Strike and dip of the principle rock joints and fracture patterns. N/A
- j. ☒ Delineation of any major rock units which have poor resistance to natural weathering. None
- k. Delineation on the cross sections of the location of the average and seasonal high ground water table(s). Approx. 10' below surface by water table
- l. Any other geologic information necessary to describe the mineral deposit AND PROVIDE THE ENGINEERING GEOLOGIC BASIS FOR THE PROPOSED MINING AND RECLAMATION PLANS.

For rock operations only

D-6. ATTACH A DESCRIPTION OF THE TYPICAL SOIL PROFILE(S) (FROM GROUND SURFACE TO A MINIMUM DEPTH OF TEN FEET) ENCOUNTERED ON THE SITE. IF MORE THAN ONE PROFILE, SHOW AREAL EXTENT OF EACH ON GEOLOGIC MAP. Sand & Gravel

D: CONTINUED

D-7. WHAT IS THE DIRECTION OF GROUNDWATER MOVEMENT IN THE AREA AFFECTED BY THE MINING OR PROCESSING OPERATIONS?

D-8. DESCRIBE THE ENVIRONMENTAL SETTING OF THE MINING SITE. INCLUDE TOPOGRAPHY, VEGETATION, SURFACE WATER MOVEMENT AND STREAMS, FLOODING, EXISTING ADJACENT LAND USES, AVERAGE ANNUAL RAINFALL, AQUATIC AND TERRESTRIAL WILDLIFE AND OTHER FACTORS PERTAINING TO POTENTIAL OR ACTUAL ENVIRONMENTAL IMPACTS AND THEIR MITIGATION.

Vegetation: Buckle tree, water, grasses
 Topography: flood plains of Santa
 Maria River, level
 terraces and stream channel

Vegetation:

Surface water movement: stream flow
 from upstream there is no water at all

Existing adjacent land uses: row crops, dry farm
 fields

(If additional space is necessary,
 Attach additional sheets)

LOGS OF REPRESENTATIVE TEST BORINGS

THIS SUPPLEMENTAL MUST BE COMPLETED IF EXPLORATORY OR DEVELOPMENT DRILLING HAS BEEN UTILIZED ON THE MINE SITE.

- E-1. SHOW THE LOCATION, BY NUMBER, OF ALL TEST HOLES ON THE "SITE GEOLOGIC MAP" ATTACHED TO THE APPLICATION.
- E-2. FOR EACH TEST HOLE, SHOW IN FEET AND DECIMALS THEREOF THE THICKNESS AND ROCK TYPE OF EACH STRATUM OVERLYING THE MINERAL VEIN(S). IF THE VEIN IS SPLIT, ALSO DESCRIBE THE INTERVENING STRATA.

(If additional space is needed, attach additional sheets.)

[illegible]

SANTA MARIA SAND MINERAL PROCESSING SYSTEM



F: MINERAL PROCESSING & WASTE DISPOSAL

F-1. ATTACH A DIAGRAMMATIC SKETCH OF THE ENTIRE MINERAL PROCESSING SYSTEM.

SEE ATTACHED F-1

F-2. WILL ANY WASTE MATERIAL RESULT FROM THE PROCESSING OPERATIONS?

YES _____ NO ☒ IF YES, HOW WILL THIS MATERIAL BE DISPOSED OF?

F-3. FOR WET PROCESSING OPERATIONS: Not Applicable

A. Estimate quantity (gallons per day) and quality of water required by ~~the~~ (proposed) processing operation, specifying (proposed) sources of this water, methods of its conveyance to the property, and the quantity and method of disposal of used and/or surplus water.

B. Submit a diagrammatic flow chart of the process water handling system and attach a narrative explanation of the system.

C. Type of collection basins used:

() Concrete () Wood () Steel () Earthen

D. For Earthen basins only, explain how the bottom and sides will be made impervious and the slopes stabilized to prevent erosion.

E. Will sludge be removed from the settling basins? Yes _____ No ☒ If yes, describe the method and frequency of sludge removal and disposal.

F. If there is (to be) any discharge from the process water system, submit specifications on the basin capacities, minimum retention times, flow rates, analysis of sludge material including settling curves on suspended and total solids in ppm and turbidity in JTU and any other data pertinent to evaluation of the system.

(If additional space is necessary,
attach additional sheets.)

G: DEVELOPMENT OF THE MINE

G-1. USING THE MINE SITE MAP OR PHOTOGRAPH AS A BASE, PROVIDE A DETAILED MINE DEVELOPMENT PLAN MAP AND CROSS SECTIONS CLEARLY DETAILING THE FOLLOWING:

See attached photos.

- a. The accurate perimeter and total acreage of the area covered by this Reclamation Plan Approval Application. Approx. 250
- b. The perimeter and acreage(s) of areas designated as current or future (specify) for mining, processing, stockpiling, overburden disposal or storage, waste disposal, settling ponds, water storage, and/or any other use relevant to the operation. Approx 40
- c. The directions in which mining will progress, the anticipated heights of any rock or soil faces or cuts and the anticipated depths of mine excavation and development. 20'
- d. Depiction of separate mining phases, if applicable. These phases should be integrated with concurrent or phased reclamation as described in Supplemental "K".
- e. Any other information relevant to an understanding of Applicant's mining plans.

G-2. DESCRIBE THE DEVELOPMENT OF THE MINING OPERATION, INCLUDING TIMETABLE FOR PHASING AND CONCURRENT RECLAMATION AS DETAILED IN SUPPLEMENTAL "K".

Each winter the sand is replenished by the flow of the river. Mining is done the year around. However, during the winter months, sometimes this is impossible because of the flow of the river stream. At this time, the pit or pits are refilled with sand. No phasing is done in this process.

(If additional space is necessary, attach additional sheets.)

G-3. DESCRIBE THE METHOD OF MINING

Loading with skip loader in truck hauled to screening plant.

After screening, various sizes of gravel and sand are stockpiled, then reloaded and delivered to various jobs. See ATTACHMENT F-4

G: CONTINUED

G-4. DESCRIBE METHOD OF SOIL SALVAGE AND STORAGE FOR FUTURE MINE RECLAMATION.

None

G-5. DESCRIBE METHOD OF REMOVING, HANDLING AND STORING OVERBURDEN.

None

G-6. WHAT WILL BE DONE WITH NON-USABLE MINERAL (IMPURE, OVERSIZE, ETC.) ENCOUNTERED DURING MINING?

Sold as landscaping, backfill, or other uses.

(If additional space is necessary,
attach additional sheets.)

H: STREAMS

H-1. WILL THIS OPERATION INVOLVE THE RELOCATION, BLOCKAGE, AND/OR ALTERATION OF ANY WATERCOURSE OR STREAM?

YES ☒ NO ☐

IF YES, WHAT IS THE AREA OF THE WATERSHED ABOVE THE OPERATION?

SANTA MARIA RIVER WATERSHED ABOVE HIGHWAY 101
CROSSING

JGL

H: CONTINUED

H-2. IF YES TO (H-1), HAVE YOU OBTAINED A PERMIT FROM THE CALIFORNIA DEPARTMENT OF FISH AND GAME TO DO THIS?

YES _____ NO X

IF YES, PERMIT # _____

H-3. WILL ANY MINING AND/OR THE PLACING OF SPOIL BE WITHIN 100' OF ANY WATER-COURSE OR STREAM?

YES X NO _____

IF YES, WHAT MEASURES WILL BE TAKEN TO PREVENT THIS MATERIAL FROM ENTERING THE STREAM OR WATERCOURSE BY EROSION, SILTATION, OR SLIDING.

None - MATERIAL USED TO BUILD
UP THE DIKE ALONG THE PROCESSING AREA.

Jed

H-4. HAVE PROVISIONS BEEN MADE TO PREVENT THE POSSIBLE BREAKTHROUGH OF ANY STREAM INTO THE OPERATION? YES X NO _____

IF YES WHAT ARE THEY?

During summer months when water is released from
Twitchell Dam, sand dikes are dozed up to keep water
from entering pit. Dikes are approximately 2' high.

I: WATER, EROSION & SEDIMENTATION CONTROL

I-1. SURFACE WATER

A. How will surface water be handled in order to prevent its entrance into the actual mining operation site?

Water is allowed to wash through pit site during
normal river flows.

I: CONTINUED

- B. How will storm water and runoff be handled within and from the affected area to control erosion and sedimentation of adjacent areas?

None

- C. Will the method outlined in (b) result in a discharge from the operation? Yes ☒ No ☐ If yes, will the water be passed through collection basins for settling and neutralization (if necessary) prior to discharging? Yes ☐ No ☒ If no, describe in detail proposed methods for handling and monitoring the effluent to ensure the discharge standards of the receiving stream at this point are met.

Not Applicable

- D. If the discharge(s) in (c) requires treatment, how will this be accomplished?

Not Applicable

- E. If your operation is upstream from a public or private water supply or if the stream is subject to recreational use, what other steps will be taken to protect these uses?

Not Applicable

(If additional space is necessary, attach additional sheets.)

I: CONTINUED

1-2. GROUND WATER

- A. What is the highest groundwater elevation in this area? 80'
- B. What is the direction of groundwater movement in the affected area?
Towards ocean--northwest.
- C. In consolidated material, what are the orientations of the major fractures or joints sets? Not applicable
- D. Will groundwater be encountered during the course of mining (including any perched, regional or artesian flow)?
Yes No X If yes, how will this water be handled?
- E. Will the method explained in (D) result in discharge from the operation? Yes No X. If yes, will the water be passed through collection basins for settling and neutralization (if necessary) prior to discharging? Yes No . If no, describe in detail methods for handling and monitoring the effluent to ensure the discharge standards of the receiving stream at this point are met.
Not Applicable
- F. If the discharge in (F) requires treatment, how will this be accomplished?
Not Applicable
- G. If quarry or pit dewatering is proposed, assess the impact it will have on the ground water levels and quality in surrounding areas.
Not Applicable

(If additional space is necessary,
attach additional sheets.)

1: CONTINUED

1-3. DATA TO BE SUBMITTED FOR SETTLING BASINS: Not Applicable

A. Surface Water Erosion Control

1. Maximum surface area to be drained by the basin(s)
_____ acres.
2. Maximum disturbed area to be drained by the basin(s)
_____ acres.
3. Minimum retention time _____ hours.

B. Quarry Dewatering

1. The maximum anticipated discharge is _____ GPM;
_____ MGD.
2. Minimum retention time in the pit sump or settling basin(s)
_____ hours.

C. Will sludge be removed from the settling basins?
Yes _____ No _____. If yes, describe the method and frequency of
sludge removal and disposal. (Locate disposal site(s) on The Mine
Development Plan):

D. If sludge is not to be removed, describe method to be used to cover
settling basins after reaching their design capacity.

E. Existing Discharges _____

Discharge characteristics _____

pH	Alkalinity	Acidity	Iron	Total Solids	Suspended Solids
_____	_____	_____	_____	_____	_____

F. Attach both cross-sectional and plan views of the proposed settling
basin(s) (or pit sump) and specify the length, width, depth, slope
ratios and sludge storage capacity.

J PUBLIC & PRIVATE WATER SUPPLY INFORMATION

J-1. LIST ALL PUBLIC WATER SUPPLIES WITHIN THREE (3) MILES OF THE CLOSEST DISCHARGE POINT OF THE PROPOSED MINING OPERATION. KEY AND LOCATE EACH PUBLIC SOURCE ON THE USES QUADRANGLE.

KEY	NAME	ADDRESS	TYPE OF SUPPLY
-----	------	---------	----------------

Not Applicable

J-2. LIST ALL PRIVATE SOURCES OF WATER SUPPLY ON AND WITHIN 1,000 FEET OF THE AREA OF MINING. KEY AND LOCATE EACH SOURCE ON THE USGS QUADRANGLE OR MINE DEVELOPMENT PLAN MAP.

KEY	NAME	ADDRESS	TYPE OF SUPPLY
1
2
3
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7
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13
14
15
16
17
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19
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99
100

Not Applicable

KINE RECLAMATION PROPOSAL

RECLAMATION PLAN MAP INSTRUCTIONS:

K-1. USING THE MINE SITE MAP OR PHOTOGRAPH AS A BASE, PROVIDE A DETAILED RECLAMATION PLAN MAP AND CROSS SECTIONS TO SHOW THE FOLLOWING:

- a. The areas covered by the plan. Plant and Yard Site and areas of excavation
- b. Reclamation steps and phasing. Grading and Seeding if needed. Removal of plant, footings and miscellaneous structures etc
- c. Location of all drainage ditches, ponds, berms, dikes and reclamation treatments. ~~same~~ DRAINAGE DITCH FOR PROCESS WASTE
- d. Indicate the finished grade and profiles after reclamation. Same as SAME AS EXISTING GROUND LEVEL
- e. Areas to be revegetated. Yard Site
- f. All other pertinent reclamation information that is discussed in K-2 and can be shown graphically.

K: CONTINUED

RECLAMATION NARRATIVE INSTRUCTIONS:

K-2. ATTACH A "RECLAMATION NARRATIVE" DESCRIBING THE PROPOSED METHODS OF RECLAMATION, THEIR PHASING AND TIMING, TO BE USED IN BRINGING THE RECLAMATION OF THE AFFECTED AREA TO ITS END STATE. ALSO, DESCRIBE HOW RECLAMATION WILL BE INTEGRATED WITH THE MINING PLAN (SUPPLEMENTAL "G"). INCLUDE IN THE DISCUSSION THOSE OF THE FOLLOWING TOPICS WHICH ARE APPLICABLE TO THE PARTICULAR MINE BEING RECLAIMED:

- a. Backfilling, grading, and face treatments. None needed.
- b. Stabilization of slopes. None needed.
- c. Stabilization of permanent waste dumps, tailings, settling ponds, etc. None needed.
- d. Rehabilitation of pre-mining drainage. None needed.
- e. Removal, disposal, or utilization of residual equipment, structures, refuse, etc. See attached notes.
- f. Control of contaminants, (if applicable) especially with regard to surface runoff and groundwater. None needed.
- g. Treatment of streambeds and streambanks to control erosion and sedimentation. None needed.
- h. Removal or minimization of residual hazards. Don't think any needed. If so, will comply.
- i. Resoiling, revegetation with evidence that proposed (and specified) plants can survive given the site topography, soil and climate, and given the time of year for revegetation. None needed.
- j. All other aspects of the proposed reclamation plan. *Revegetation of plant processing and operations area*

K-3. IF THIS PLAN DOES NOT PROVIDE FOR REVEGETATION ON ALL OR PART OF THE AREA, DESCRIBE IN DETAIL ALTERNATE PROCEDURES PROPOSED TO PREVENT SOIL EROSION AND/OR SILTATION.

All mining is in riverbed, which will be refilled by river stream.

K-4. PREPARE A DETAILED COST ESTIMATE, IN TODAY'S DOLLARS, FOR EACH PHASE OF THE PROPOSED RECLAMATION PLAN. COSTS SHOULD BE EXPRESSED AS TOTALS AND AS DOLLARS PER ACRE.

Approximately \$1,000.00 for processing site. Grading and seeding if need be.

D - E - 8 HRS.	\$75 HR	\$600
GRADED - 2 HRS	\$50 HR	100
WATER - 8 HRS	\$10 HR	80
SEED	25 HR	\$25
		805

J. B. L.

K: CONTINUED

K-5. DESCRIBE THE ULTIMATE PHYSICAL CONDITIONS OF THE SITE AND SPECIFY PROPOSED USE(S) AND POTENTIAL USE(S) OF THE MINED LANDS AS RECLAIMED.

Any materials taken from river bed will be replaced
by river stream from time to time.

Other use besides sand--none.

Reclaiming area could be cultivated

JKP

K-6. DESCRIBE HOW RECLAMATION OF THIS SITE, IN THIS MANNER, MAY AFFECT FUTURE MINING AT THIS SITE AND IN THE SURROUNDING AREA.

None

(If additional space is necessary
attach additional sheets.)

NOTE: Instructions for completing this form are contained in the County Planning Department publication, Reclamation Plan Guidelines. Assistance in completing the form will be provided upon request by the Planning Department staff.

Under COSTS AND GUARANTEES OF RECLAMATION.

Item #32

There are approximately 268 acres at my disposal. However, at this time, I anticipate only approximately 40 acres will be used by Santa Maria Sand Co.

Under K-2

Item g.

All equipment and processing equipment will be removed.

All stockpiles will be removed. All land will be graded and seeded as needed.

G. L. Stuy

EXHIBIT 5

SESPE Consulting, Inc., *Vested History* (May 19, 2020)

May 19, 2020

Brad B. Johnson, Esq.
Harrison, Temblador, Hungerford & Johnson
980 9th Street, Suite 1400
Sacramento, CA 95814

Subject: Vested History
RoXsand Mine (Mine ID No. 91-40-0004)
Nipomo, California

The following summary documents the history of the RoXsand Mine (Mine ID No. 91-40-0004) located at 2280 Hutton Road, Nipomo, California in San Luis Obispo County. The parcel number is 090-341-033 and it measures 296.92 acres in size and is owned by Troesh Properties & Investments, LLC as are the adjacent parcels, 090-301-036 and 090-301-068 and 090-341-023 and 090-341-002. Note: These parcels were formerly described as being a portion of Lots 31 and 32 in SLO County mine-related records (see Attachment 1).

The mine operations are located within the Santa Maria River (APN 090-341-033). Mining history on this property has been documented from a review of historic aerial photos and historic topographic maps. The attached Figure 1 shows the property location, parcel boundaries, and former mining areas with approximate dates of activity. We also reached out to the San Luis Obispo County Assessor regarding the history of APN 090-34-033. The following summarizes the results of this research:

SAN LUIS OBISPO COUNTY ASSESSOR

APN 090-341-033 is made up of portions of underlying Lots 31 and 32, of the Subdivision of the Rancho Nipomo (SLO County Record Maps Bk A, Pg 13). The only recorded subdivision of the land within APN 090-341-033 is that subdivision, which recorded in 1878.

It was originally a portion of a larger area of land previously owned by Raymond W. Nelson. Nelson acquired interest to the land, comprised of portions of Lots 30, 31, and 32 of the Subdivision of the Rancho Nipomo, through two transactions, gaining 50% interest in 1942 and the remaining 50% interest in 1945.

Over time, Nelson conveyed different portions of the larger area to various people or entities. The conveyance of different portions of the original land area, essentially splitting off smaller sections of the land, is what led to the configuration of current day parcel -033.

Attachment 1 contains various historical assessor's maps which are numbered chronologically, with 1 being the current assessor's map and 6 being the oldest map. The oldest assessor's map included in the attachment shows APN 090-341-001, which eventually becomes APN 090-341-016, which then becomes current day APN 090-341-033. The shape changes of APN -033 between map 3 to map 1 are due to corrections or clarifying information regarding the configuration of the parcel and changes to the boundary. It appears that the current APN was assigned in the early 1970's.

AERIAL PHOTOS

We obtained and reviewed historical aerials from 1954 to 2003 and topographic maps from 1959 and 1967. Areas of disturbance from mining activity were noted and displayed on Figure 1 which is attached. The source documents appear in Attachment 2 and notes on activity in the subject parcel appear following:

1954¹

- Area near APN 090-301-068 appears disturbed, possibly mining-related operations. In main APN 090-341-033, there are roads noted in various areas of the riverbed that come from APN 090-301-068. Some shallow mining operations may occur elsewhere but aren't so apparent.

1957¹

- Large rectangular pit now evident on the south-central side of the property APN 090-301-068 and vicinity appears mining related. In main APN 090-341-033, there are roads noted in various areas of the riverbed that lead to APN 090-301-068. Some shallow mining operations may occur elsewhere

1960²

4-14-60, HA-HQ-76

- Mining evident near northern side of APN 090-341-033 parcel within river bottom area/fringe, including part of APN 090-301-068.
- Road leading to the southwest leads to larger mine pit on the south-central side of APN 090-341-033.

1961²

6-16-61, BTM-1BB-3

- Similar to 1960.
- Note: Highway 101 bridge under construction to east.

1964²

HA-YJ-45

- Large mine pit noted on south-central side of APN 090-341-033.
- Other mine activity near northern side of APN 090-341-033.

1966²

12-9-66¹

BH-JK-57

- Winter and recent rain events as river appears to be flowing.
- Mining areas noted previously on northern side of APN 090-341-033 are evident and pits are filled with water.
- Large mine pit noted previously on the south-central side of APN 090-341-033 is now filled with water.

1967²

5-13-67

BTM-3HH-70

- Mine activity noted near northern side of parcel.
- River appears to be flowing.
- Large mine pit noted previously on the south-central side of APN 090-341-033 is partially filled with water.

1969²

5-8-69

HB-PE-15

- Large mine pit noted previously on the south-central side of APN 090-341-033.

1999³

- Mine activity noted in the central portion of the parcel. Additional pit like areas to the east/southeast of this that may reflect prior year.

2003³

- Mine activity noted in the central portion of the parcel.

¹=Source: Envirosearch

²=Source: UCSB

³=Source: Online photos at SLO County.

https://gis.slocounty.ca.gov/Html5Viewer/Index.html?configBase=/Geocortex/Essentials/REST/sites/PL_LandUseView/viewers/PL_LandUseView/virtualdirectory/Resources/Config/Default

TOPOGRAPHIC MAPS

See Attachment 2

1959 USGS Santa Maria Topo

- A gravel pit is shown on the northern portion of the Site parcel
- There is also a large reservoir near the south-central area of APN 090-341-033 is assumed to reflect a former mine area.

1959 (1967 photorevised) USGS Santa Maria Topo

- Same gravel pit as cited on 1959 topo is shown with the addition of two actual pit areas noted.
- Reservoir cited on 1959 topo is gone.

Please call me or John Hecht at (805) 275-1515 if you have any questions or if you need additional information.

Respectfully submitted,



Mike Biedebach, Project Manager
Sespe Consulting, Inc.

Enclosures:

Figure 1

Attachment 1 – County Assessor Records

Attachment 2 – Aerials and Topographic Maps



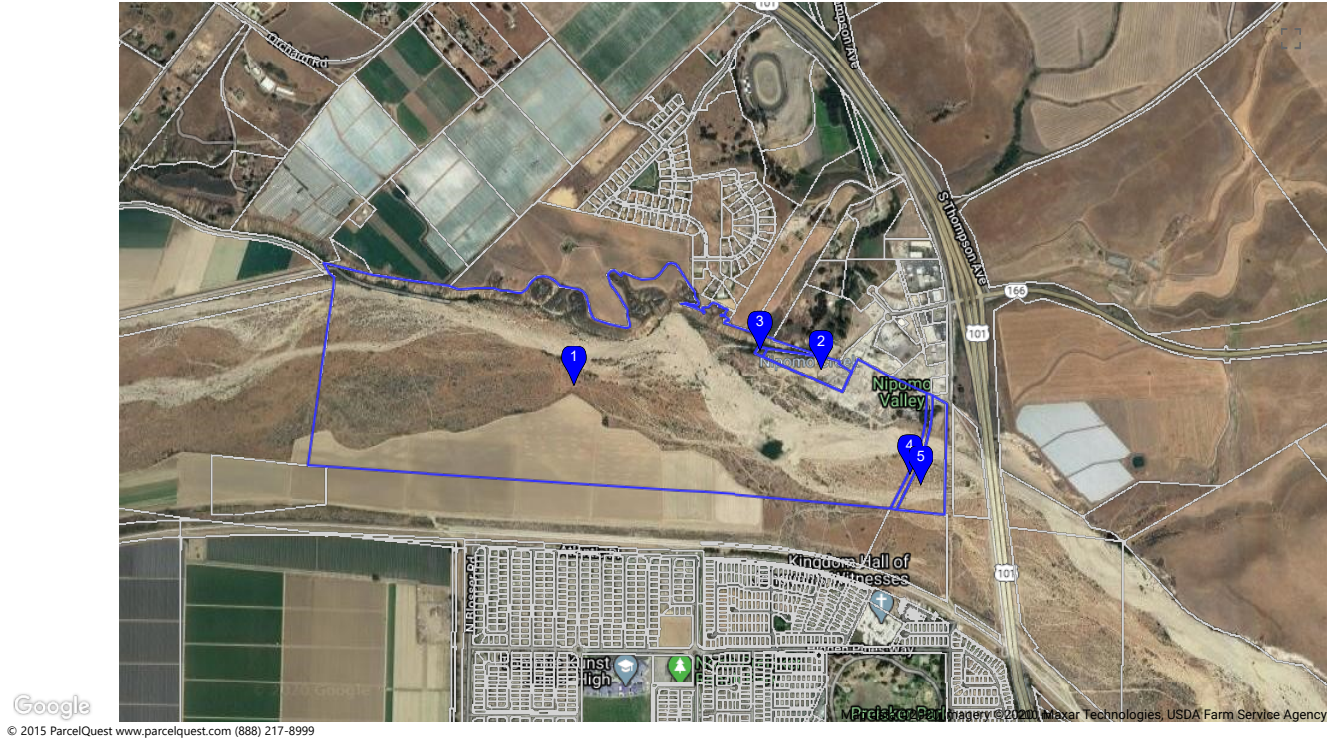
600 0 600 1200
SCALE IN FEET



DATUM: HORZ= NAD83, CALIFORNIA ZONE 5, US FOOT
 VERT=NAVD88

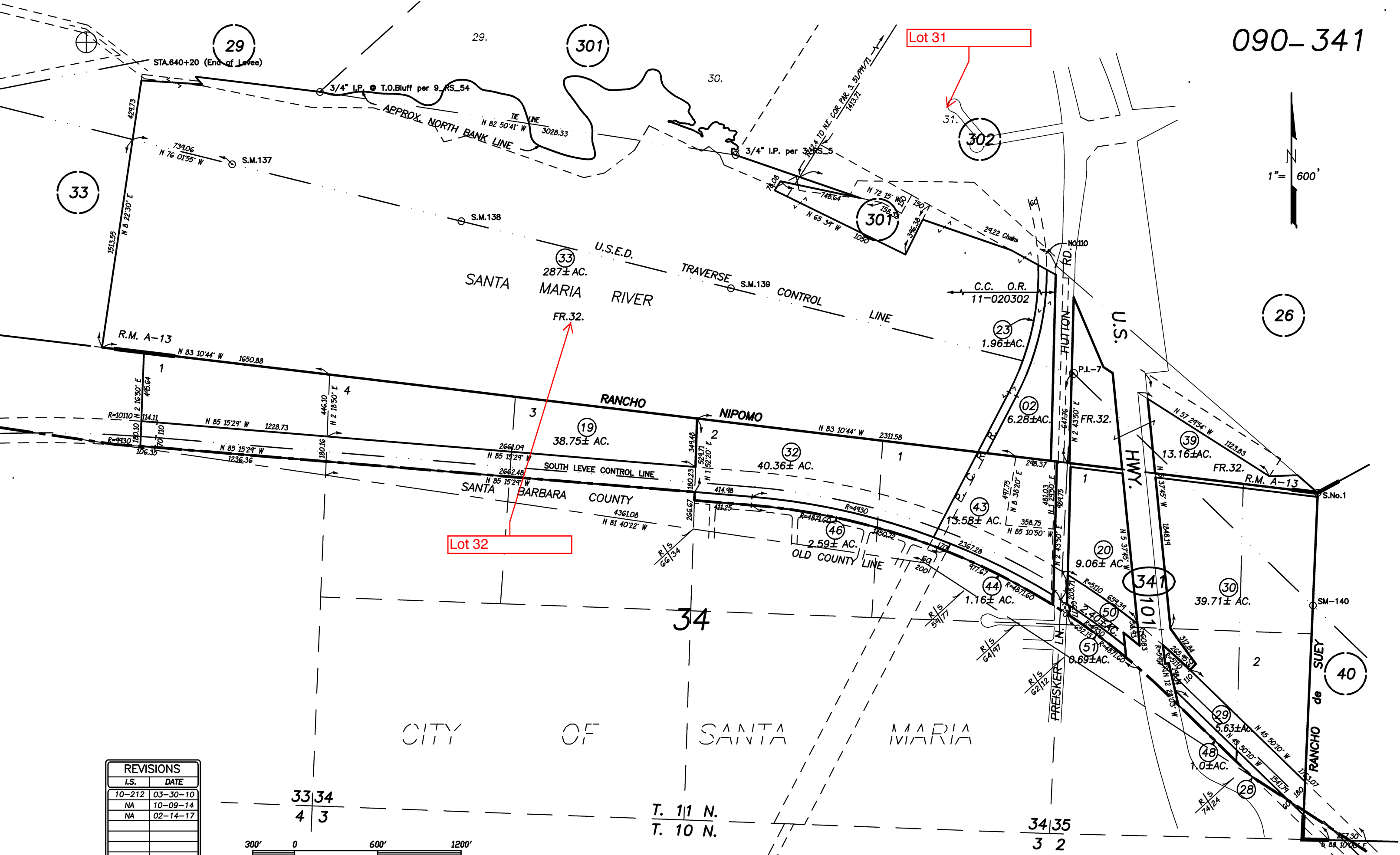
LEGEND:	
	1957 TO EARLY 1970's MINING AREA
	1963 MINING AREA IN PARTS
	1980 TO 1981 MINING AREA
	1981 MINING AREA
	1986 MINING AREA
	1999 MINING AREA
	2010 MINING AREA
	2014 MINING AREA
	2018 MINING AREA
	2014 COUNTY VESTED MINE AREA

SESPE CONSULTING, INC. 374 Poli Street, Suite 200 • Ventura, CA 93001 (805) 275-1515 • www.sespe.com	TROESH NIPOMO FACILITY 2018 IMAGERY	
	SCALE: HORZ: AS SHOWN VERT: AS SHOWN	FIGURE NUMBER 1
	DRAWN BY: G.CAMUS	DATE: MAY 2020
	CHECKED BY: MB	

Attachment 1 – County Assessor



<input checked="" type="checkbox"/>		Co	APN 	Owner	S Street Address	Lot Acres	Mail Address	Lot Acres	Year Built
<input checked="" type="checkbox"/>	1	SLO	090-341-033	TROESH PROPERTIES & INVESTMENTS LLC A CA	2280 HUTTON RD	296.920	310 ROCKY WOODS LN	296.920	
<input checked="" type="checkbox"/>	2	SLO	090-301-068	TROESH PROPERTIES & INVESTMENTS LLC	2280 HUTTON RD	4.410	310 ROCKY WOODS LN	4.410	
<input checked="" type="checkbox"/>	3	SLO	090-301-035	TROESH PROPERTIES & INVESTMENTS LLC A CA	PREISKER	0.184	310 ROCKY WOODS LN	0.184	
<input checked="" type="checkbox"/>	4	SLO	090-341-023	TROESH PROPERTIES & INVESTMENTS LLC A CA	HUTTON	1.900	PO BOX 2805	1.900	
<input checked="" type="checkbox"/>	5	SLO	090-341-002	TROESH PROPERTIES & INVESTMENTS LLC A CA	HUTTON	7.290	310 ROCKY WOODS LN	7.290	



REVISIONS	
I.S.	DATE
10-212	03-30-10
NA	10-09-14
NA	02-14-17

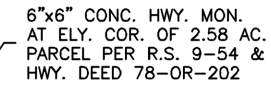
300' 0 600' 1200'

JAW 08-16-02 THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

T. 11N. R. 34W; SECTIONS 33 - 35, S.B.B. & M.
RANCHO NIPOMO, R.M. Bk. A, Pg. 13.

ASSESSOR'S MAP, COUNTY OF SAN LUIS OBISPO, CA. BOOK 090 PAGE 341

MOST NLY. COR. OF PARCEL
SHOWN ON R.S. 9-54 ON
THE WEST LINE OF CALIF.
STATE HWY. V-SLO-2-F.



NOTE: SLY. LINE OF LOT 30 PER R.M. A-13
APPEARS TO FOLLOW A CROOKED LINE,
ASSUMED TO REPRESENT THE TOP OF
BLUFF AT NORTHERLY BANK OF RIVER.

JAW
03-03-00 THIS MAP IS PREPARED FOR
ASSESSMENT PURPOSES ONLY.

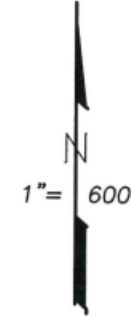
29.

$$1'' = 600$$

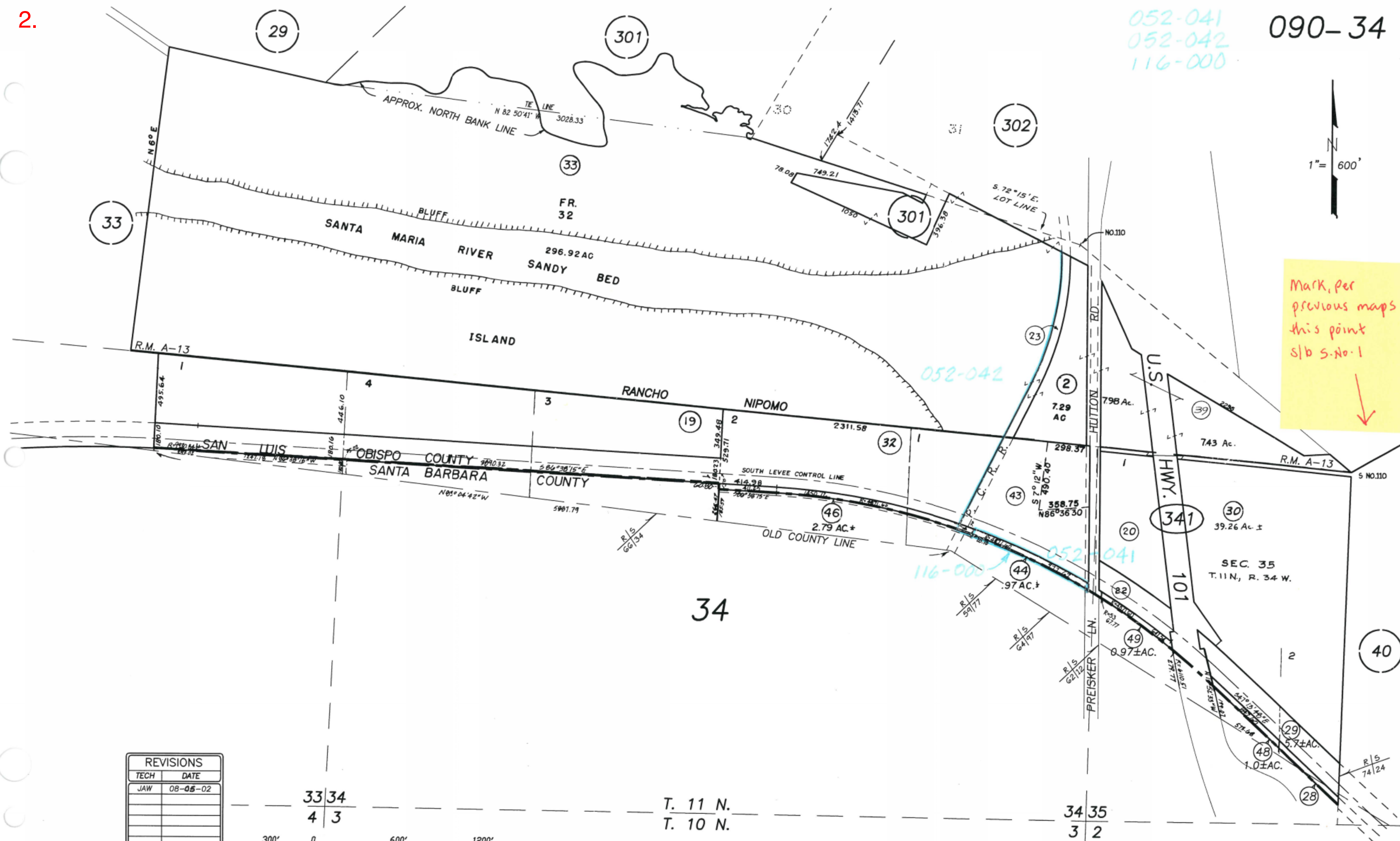

2.

052-041
052-042
116-000

090-34



Mark, per
previous maps
this point
s/b S.No.1



REVISIONS	
TECH	DATE
JAW	08-05-02

33 34
4 3

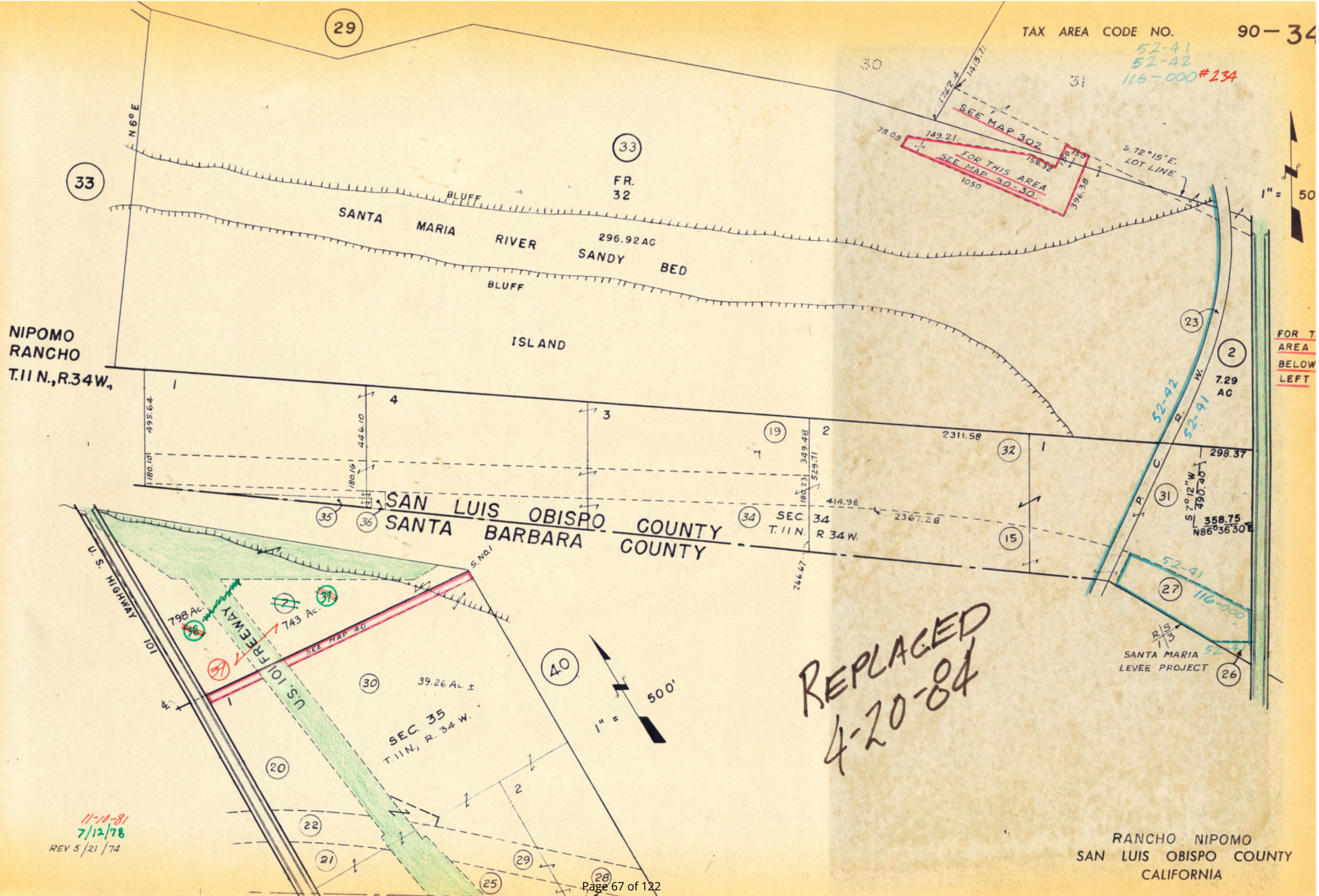
300' 0 600' 1200'

JAW 08-16-02 THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

T. 11 N. ; R. 34 W. ; SECTIONS 33 - 35, S.B.B. & M.
RANCHO NIPOMO, R.M. Bk. A , Pg. 13.

ASSESSOR'S MAP, COUNTY OF
SAN LUIS OBISPO, CA.
BOOK 090 PAGE 341

3.



4.

29

TAX AREA CODE NO.
52-42
52-41

90-34

33

FR. 32

SANTA MARIA RIVER
SANDY BED

NIPOMO RANCHO
T.11N., R.34W.,

ISLAND

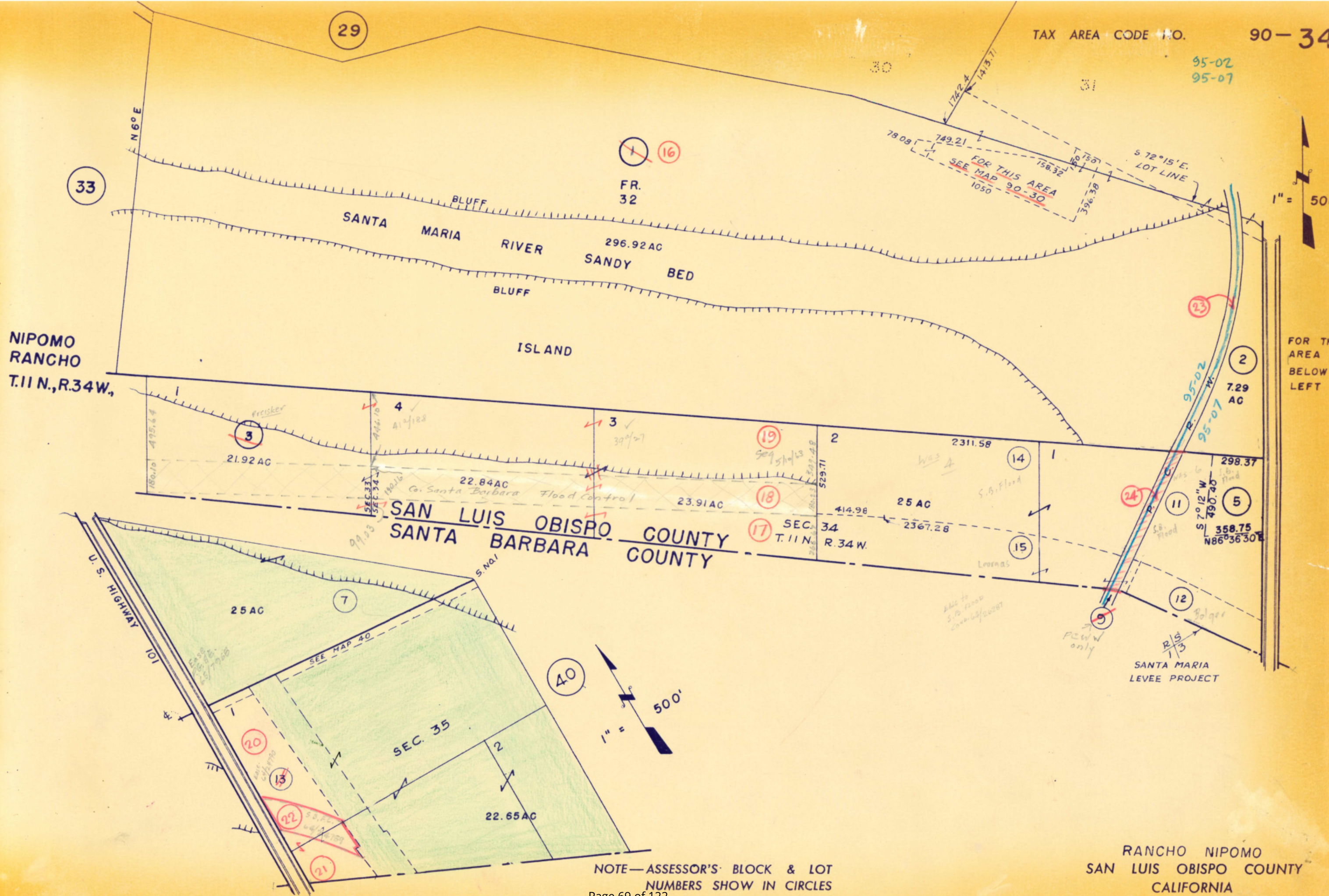
SAN LUIS OBISPO COUNTY
SANTA BARBARA COUNTY

SEC 34
T.11N. R.34W.

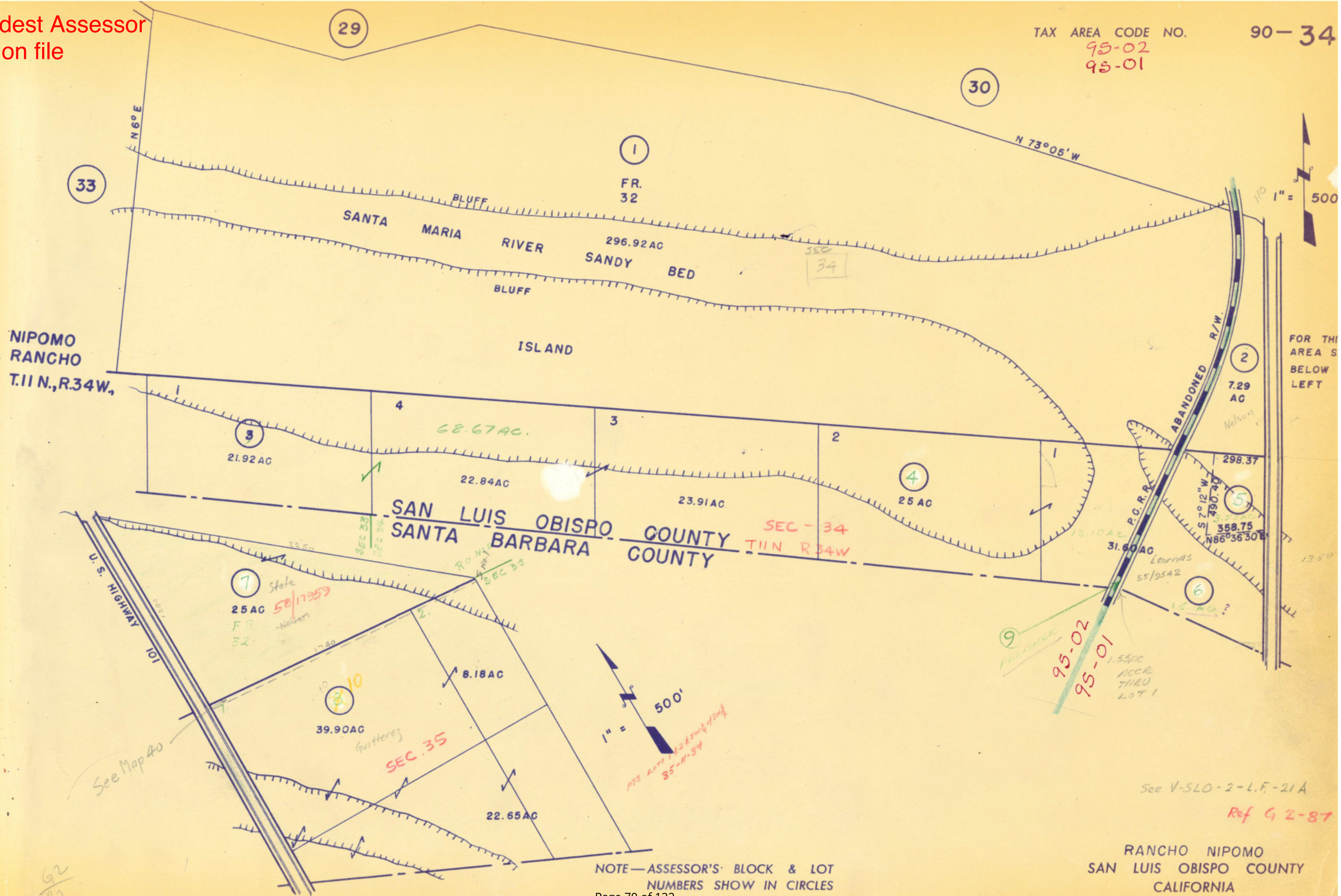
SEC 35
T.11N. R.34W.

SANTA MARIA
LEVEE PROJECT

RANCHO NIPOMO
SAN LUIS OBISPO COUNTY
CALIFORNIA

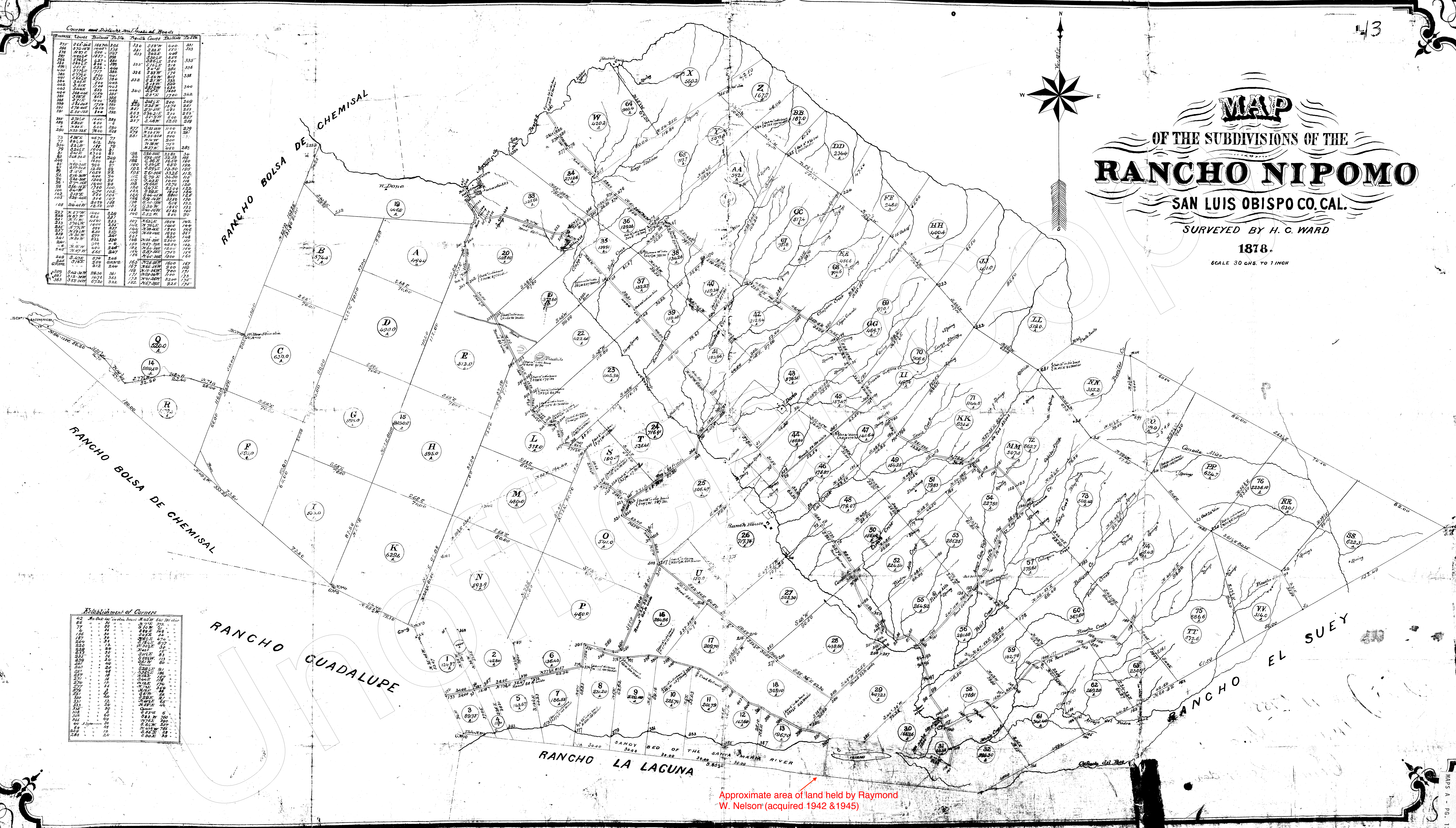


6. Oldest Assessor
Map on file



Cottons		Sewing Machine		Sewing Machine		Sewing Machine	
Cottons		Sew. Mach.		Sew. Mach.		Sew. Mach.	
Cottons		Sew. Mach.		Sew. Mach.		Sew. Mach.	
376	165.26	166.70	336	3.58	6.00	381	
377	165.26	166.70	336	3.58	6.00	381	
378	165.26	166.70	336	3.58	6.00	381	
379	165.26	166.70	336	3.58	6.00	381	
380	165.26	166.70	336	3.58	6.00	381	
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385	165.26	166.70	336	3.58	6.00	381	
386	165.26	166.70	336	3.58	6.00	381	
387	165.26	166.70	336	3.58	6.00	381	
388	165.26	166.70	336	3.58	6.00	381	
389	165.26	166.70	336	3.58	6.00	381	
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395	165.26	166.70	336	3.58	6.00	381	
396	165.26	166.70	336	3.58	6.00	381	
397	165.26	166.70	336	3.58	6.00	381	
398	165.26	166.70	336	3.58	6.00	381	
399	165.26	166.70	336	3.58	6.00	381	
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402	165.26	166.70	336	3.58	6.00	381	
403	165.26	166.70	336	3.58	6.00	381	
404	165.26	166.70	336	3.58	6.00	381	
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407	165.26	166.70	336	3.58	6.00	381	
408	165.26	166.70	336	3.58	6.00	381	
409	165.26	166.70	336	3.58	6.00	381	
410	165.26	166.70	336	3.58	6.00	381	
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412	165.26	166.70	336	3.58	6.00	381	
413	165.26	166.70	336	3.58	6.00	381	
414	165.26	166.70	336	3.58	6.00	381	
415	165.26	166.70	336	3.58	6.00	381	
416	165.26	166.70	336	3.58	6.00	381	
417	165.26	166.70	336	3.58	6.00	381	
418	165.26	166.70	336	3.58	6.00	381	
419	165.26	166.70	336	3.58	6.00	381	
420	165.26	166.70	336	3.58	6.00	381	
421	165.26	166.70	336	3.58	6.00	381	
422	165.26	166.70	336	3.58	6.00	381	
42							

Establishment of Corners		
42	On Oak to in chain, 862.6 W	607 1/2 feet the corner
80	75	57 1/2
100	80	62 1/2
136	85	68 1/2
160	90	74 1/2
204	95	80 1/2
220	100	86 1/2
228	105	92 1/2
230	110	98 1/2
239	115	104 1/2
249	120	110 1/2
260	125	116 1/2
267	130	122 1/2
277	135	128 1/2
284	140	134 1/2
292	145	140 1/2
300	150	146 1/2
311	155	152 1/2
323	160	158 1/2
338	165	164 1/2
356	170	170 1/2
369	175	176 1/2
380	180	182 1/2
392	185	188 1/2
404	190	194 1/2
417	195	200 1/2
431	200	206 1/2
445	205	212 1/2
460	210	218 1/2
475	215	224 1/2
490	220	230 1/2
505	225	236 1/2
520	230	242 1/2
535	235	248 1/2
550	240	254 1/2
565	245	260 1/2
580	250	266 1/2
595	255	272 1/2
610	260	278 1/2
625	265	284 1/2
640	270	290 1/2
655	275	296 1/2
670	280	302 1/2
685	285	308 1/2
700	290	314 1/2
715	295	320 1/2
730	300	326 1/2
745	305	332 1/2
760	310	338 1/2
775	315	344 1/2
790	320	350 1/2
805	325	356 1/2
820	330	362 1/2
835	335	368 1/2
850	340	374 1/2
865	345	380 1/2
880	350	386 1/2
895	355	392 1/2
910	360	398 1/2
925	365	404 1/2
940	370	410 1/2
955	375	416 1/2
970	380	422 1/2
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1000	390	434 1/2
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1180	450	506 1/2
1195	455	512 1/2
1210	460	518 1/2
1225	465	524 1/2
1240	470	530 1/2
1255	475	536 1/2
1270	480	542 1/2
1285	485	548 1/2
1300	490	554 1/2
1315	495	560 1/2
1330	500	566 1/2
1345	505	572 1/2
1360	510	578 1/2
1375	515	584 1/2
1390	520	590 1/2
1405	525	596 1/2
1420	530	602 1/2
1435	535	608 1/2
1450	540	614 1/2
1465	545	620 1/2
1480	550	626 1/2
1495	555	632 1/2
1510	560	638 1/2
1525	565	644 1/2
1540	570	650 1/2
1555	575	656 1/2
1570	580	662 1/2
1585	585	668 1/2
1600	590	674 1/2
1615	595	680 1/



Attachment 2 – Aerials and Topographic Maps



Historical Aerial Photo Report | 2020

Order Number: 41406

Report Generated: 05/16/2020

Project Name:

Project Number:

2280 Hutton Rd
2280 Hutton Rd
Nipomo, CA, 93444

2 Corporate Dr
Suite 450
Shelton, CT 06484
Toll Free: 866-211-2028
www.envirositecorp.com

Envirosite's Historical Aerial Photo Report is designed to assist in evaluating a subject property resulting from past activities. EnviroSite's Historical Aerial Photo Report includes a search of available historical aerial photographs, dating back to the 1930s, or earliest available photographs.

ENVIROSITE SEARCHED SOURCES

SUBJECT PROPERTY:

2280 Hutton Rd
2280 Hutton Rd
Nipomo, CA, 93444

<u>YEAR:</u>	<u>SCALE:</u>	<u>SOURCE:</u>
1938	1" = 1,000'	U.S.D.A
1939	1" = 1,000'	U.S.D.A
1943	1" = 1,000'	U.S.D.A
1949	1" = 1,000'	U.S.D.A
1954	1" = 1,000'	U.S.D.A
1957	1" = 1,000'	U.S.D.A
1960	1" = 1,000'	U.S.D.A
1961	1" = 1,000'	U.S.D.A
1967	1" = 1,000'	U.S.D.A
1969	1" = 1,000'	U.S.D.A
1971	1" = 1,000'	U.S.G.S
1972	1" = 1,000'	U.S.G.S
1975	1" = 1,000'	U.S.G.S
1976	1" = 1,000'	U.S.G.S
1978	1" = 1,000'	U.S.D.A
1980	1" = 1,000'	U.S.D.A
1981	1" = 1,000'	NHAP
1986	1" = 1,000'	U.S.D.A
1989	1" = 1,000'	U.S.D.A
1994	1" = 1,000'	DOQ
1997	1" = 1,000'	U.S.D.A
2002	1" = 1,000'	U.S.D.A
2005	1" = 1,000'	NAIP
2009	1" = 1,000'	NAIP
2010	1" = 1,000'	NAIP
2012	1" = 1,000'	NAIP
2014	1" = 1,000'	NAIP
2016	1" = 1,000'	NAIP
2018	1" = 1,000'	NAIP

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FLIGHT YEAR:
1938

Subject Cannot Be Centered



Scale: 1" = 1,000'



FLIGHT YEAR:
1939

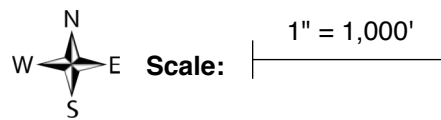
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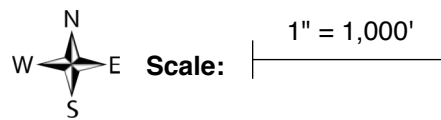
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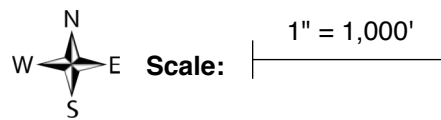
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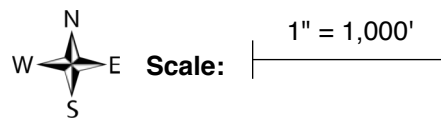
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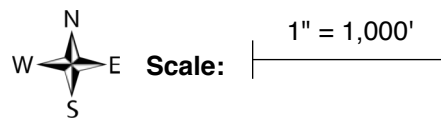
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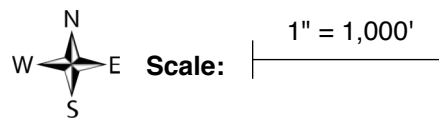
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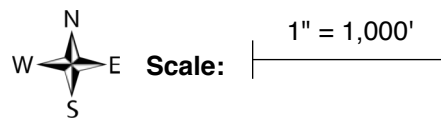
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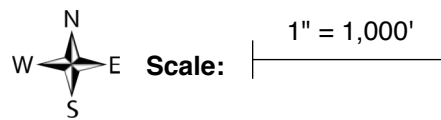
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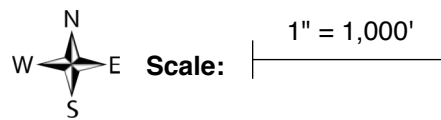
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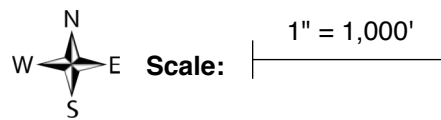
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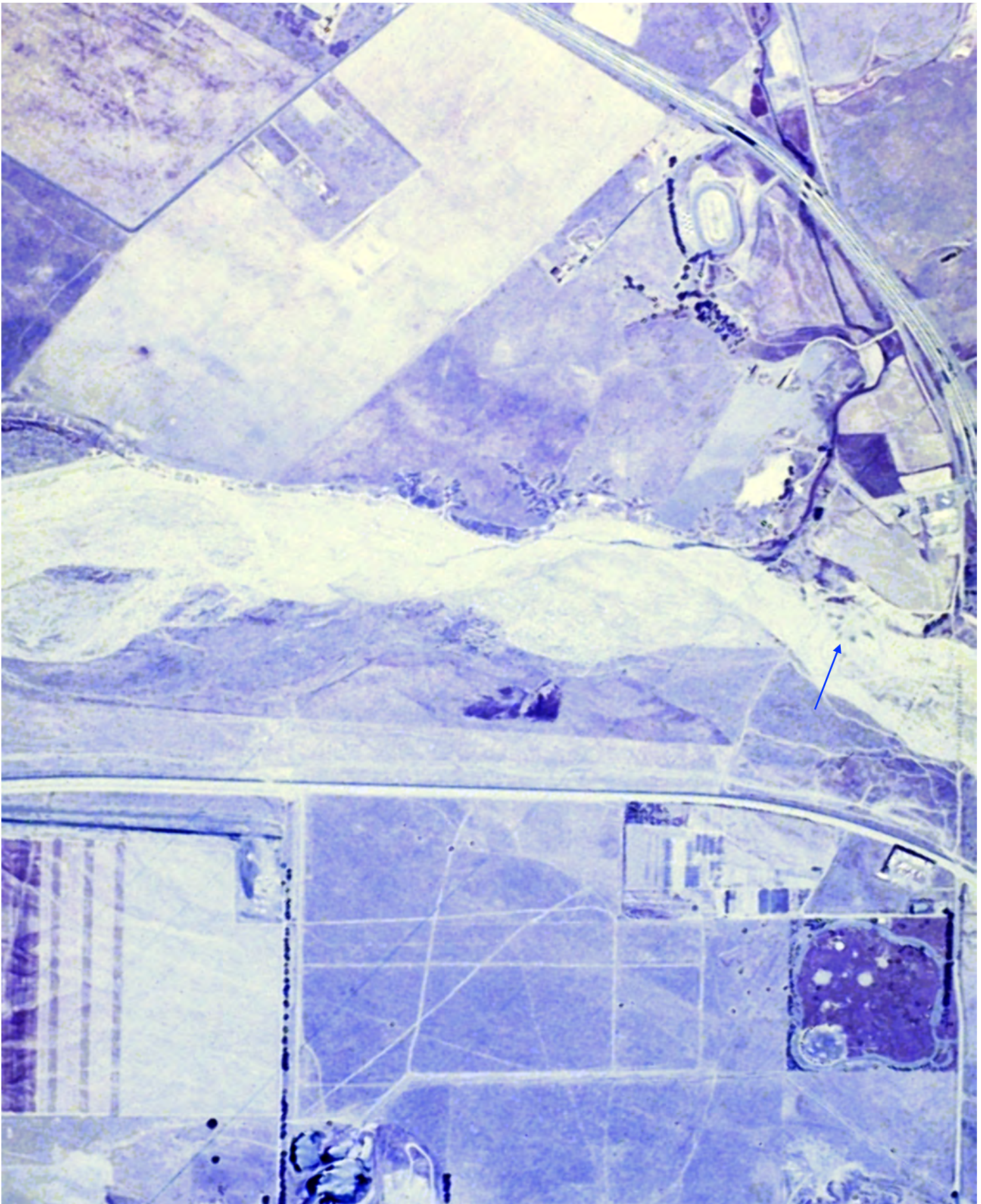
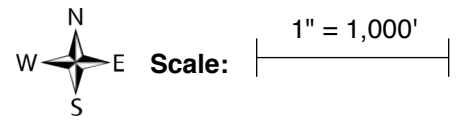
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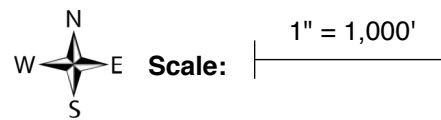
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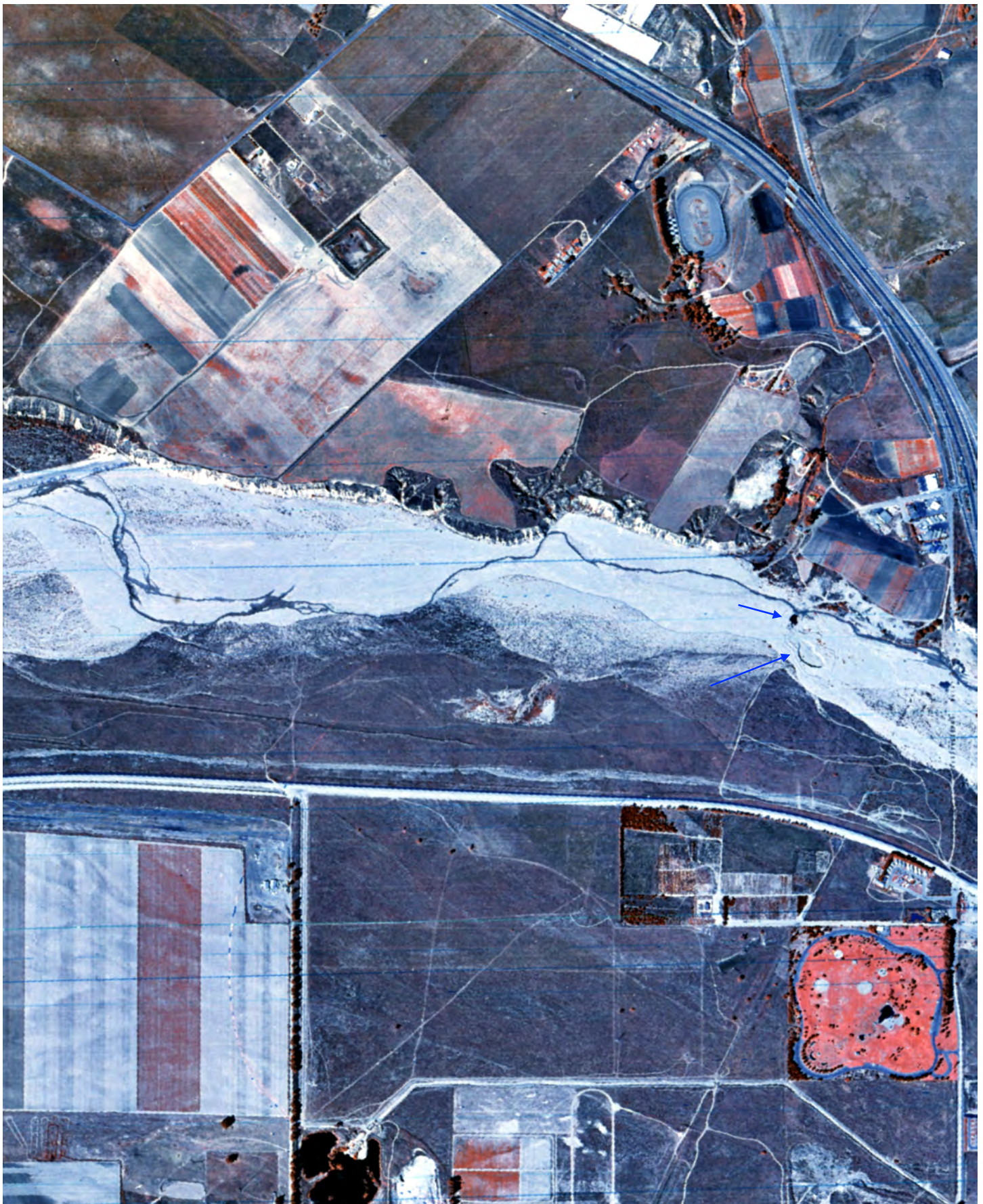
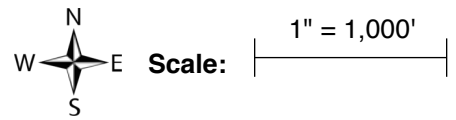
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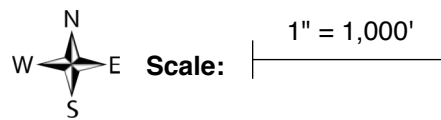
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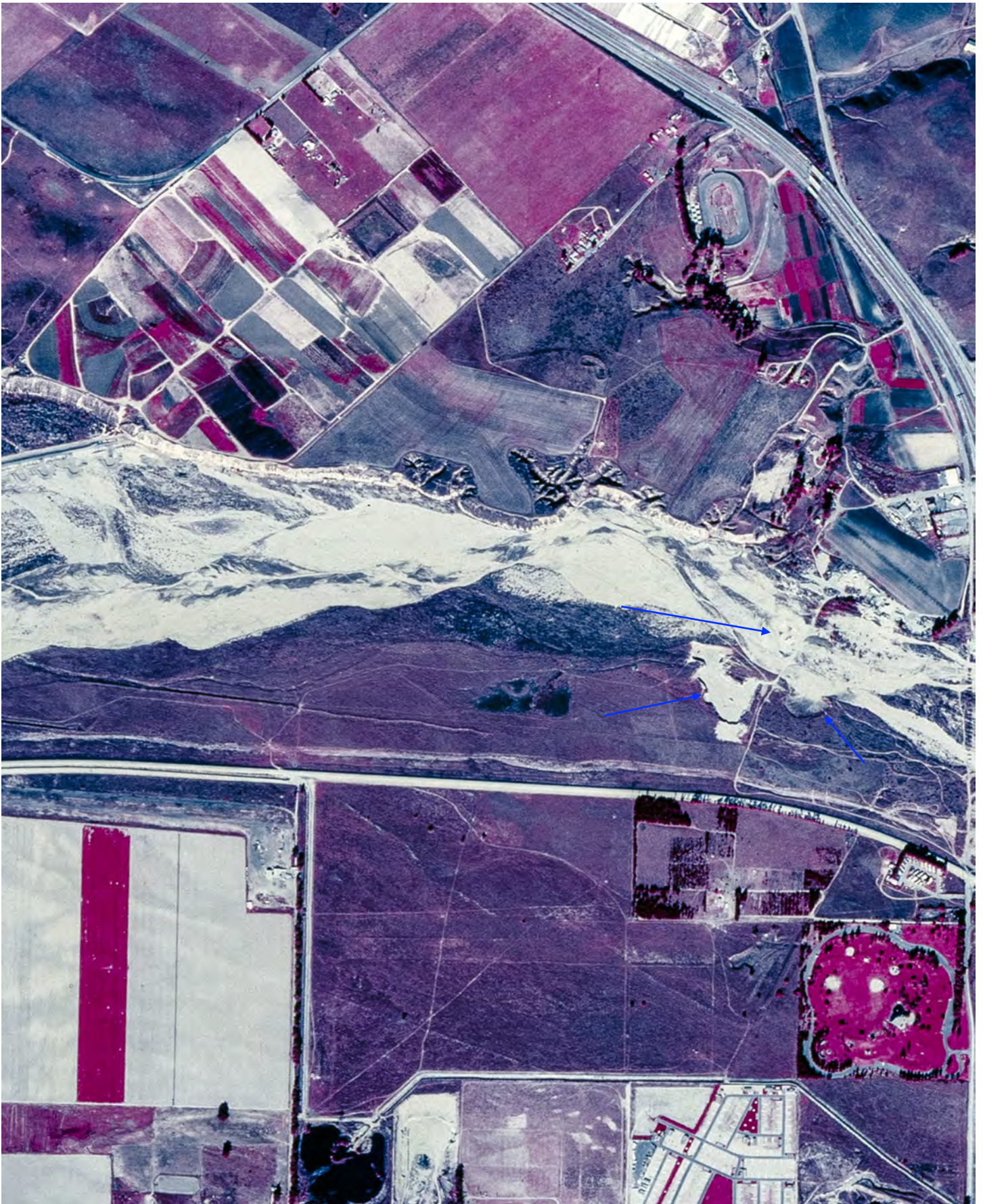
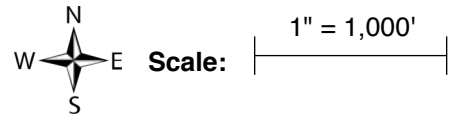
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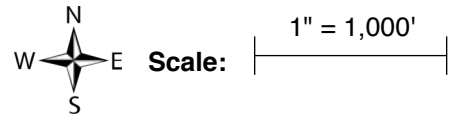
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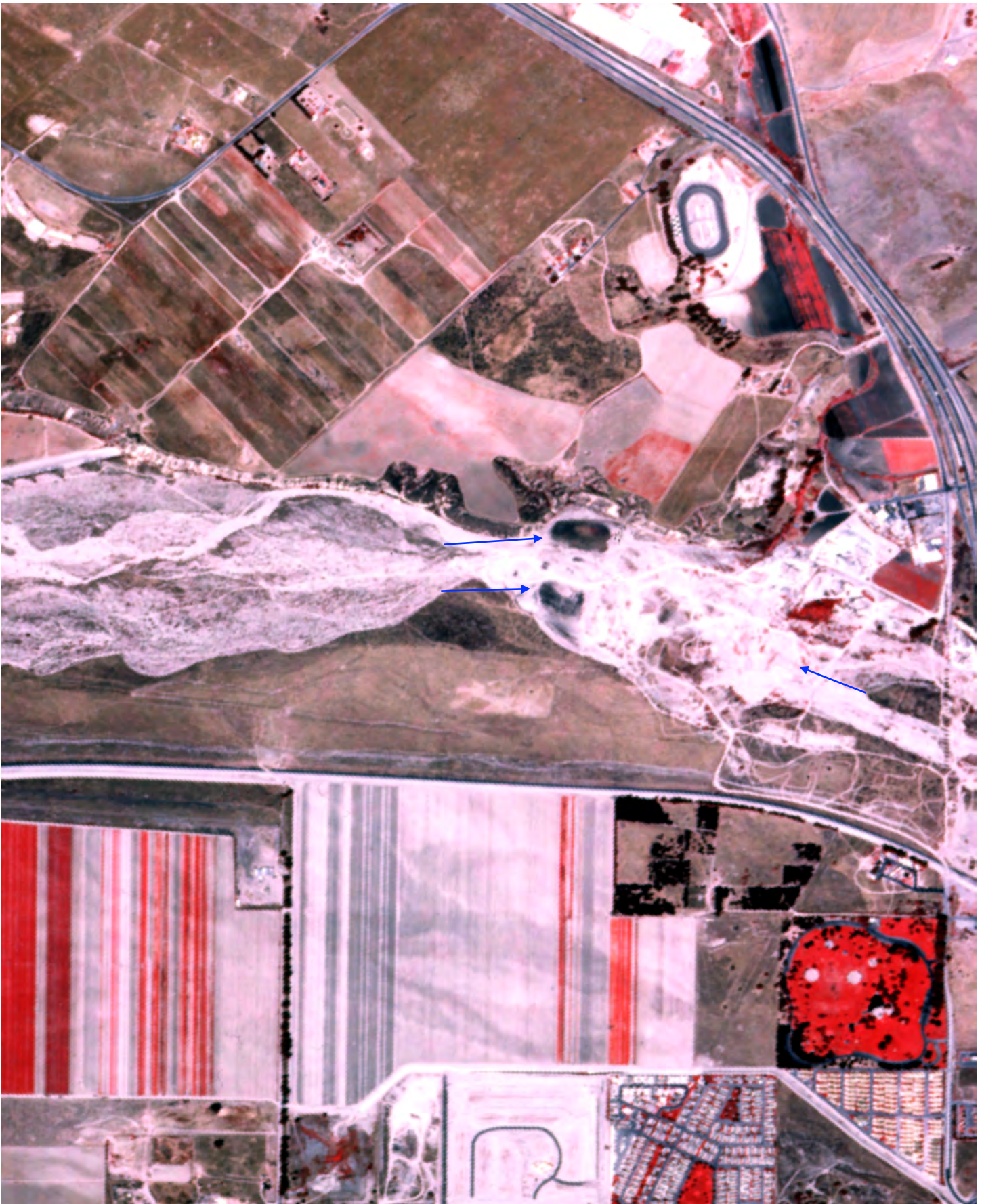
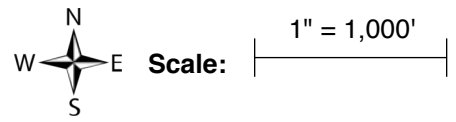
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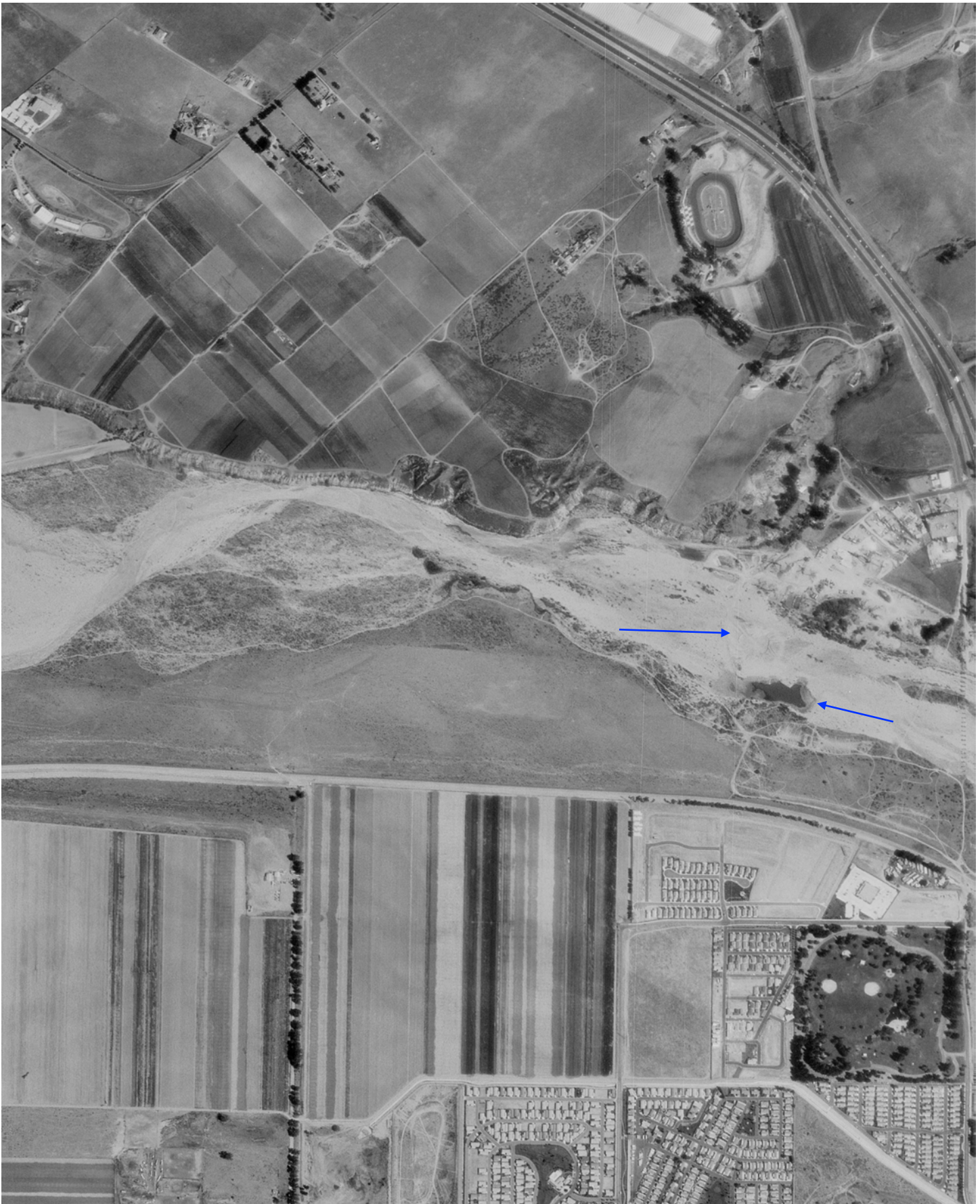
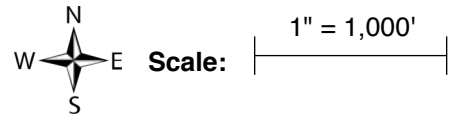
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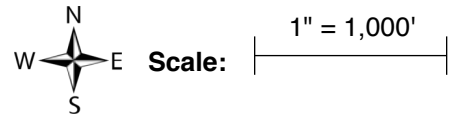


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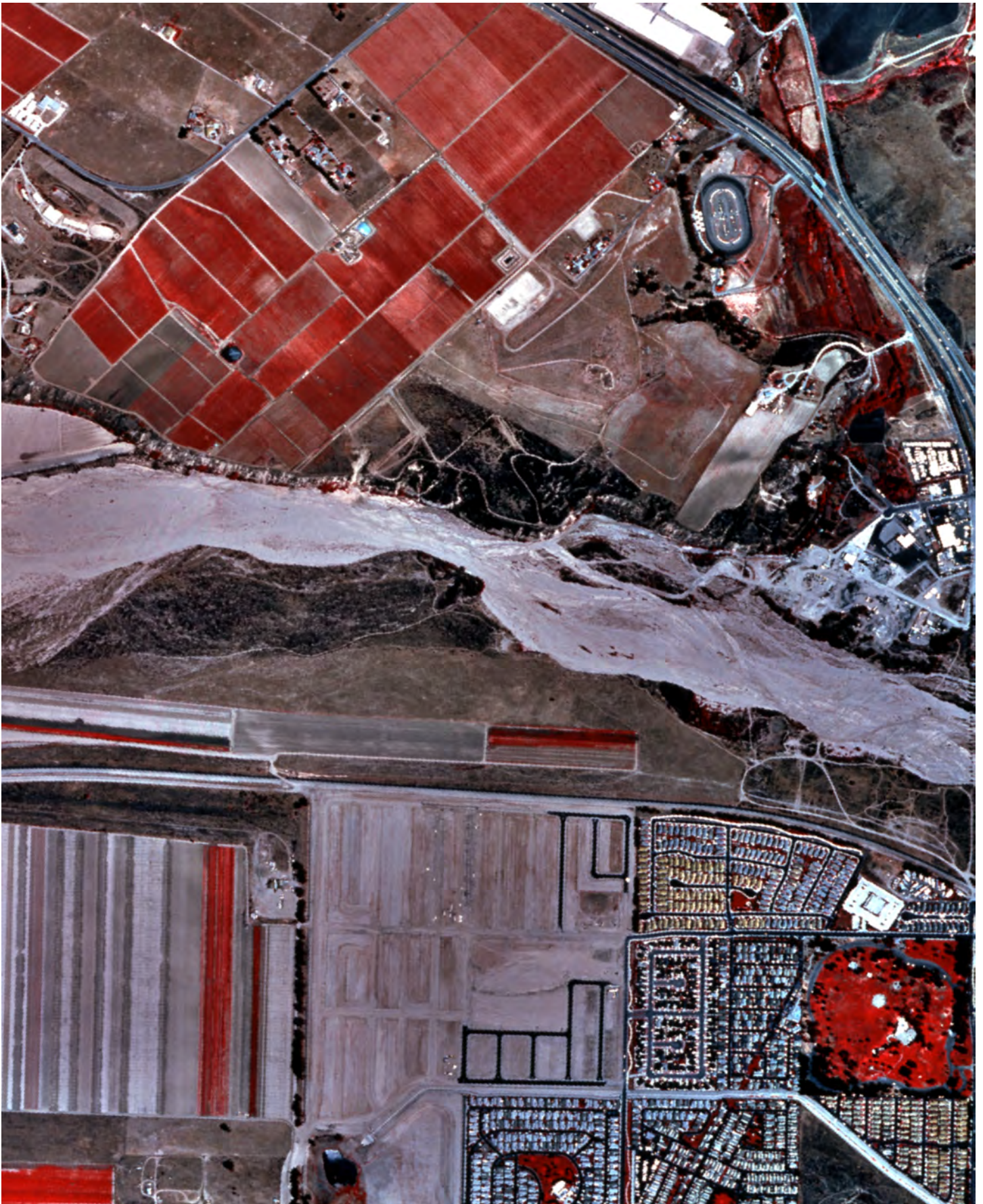
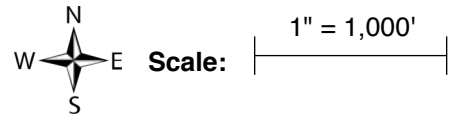


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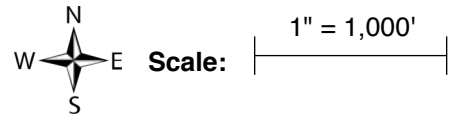
Subject Cannot Be Centered



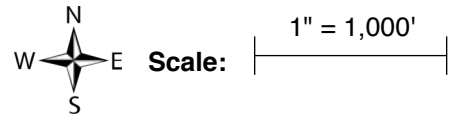
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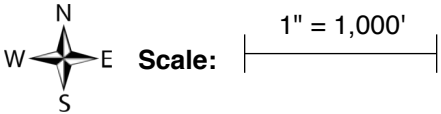
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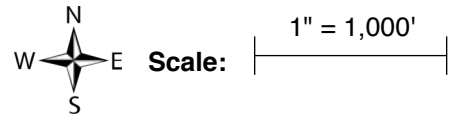
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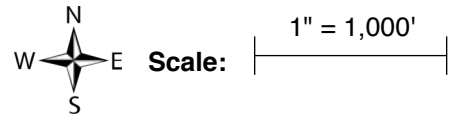
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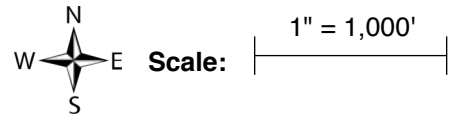
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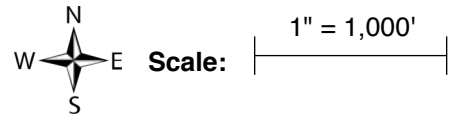
FLIGHT YEAR:
2014



FLIGHT YEAR:
2016



FLIGHT YEAR:
2018





2-21-54

BTM- 2K-117



KA-HQ-76

09-71



8-20-64

HA-YJ-45







Layers

I want to...

Filter

General Plan Amendment

Grading

Home Occupations

Misc Dev Plans

Parcel Maps

Pre Application

Residential

Res Adds/Alts

Septic Systems

Subdivision

Tract Maps

Use

Zoning Clearance

EnerGov All Permits

USGS Secs Twnshp Range

Census

Addressing

INFOUSA County Business Data

Layers

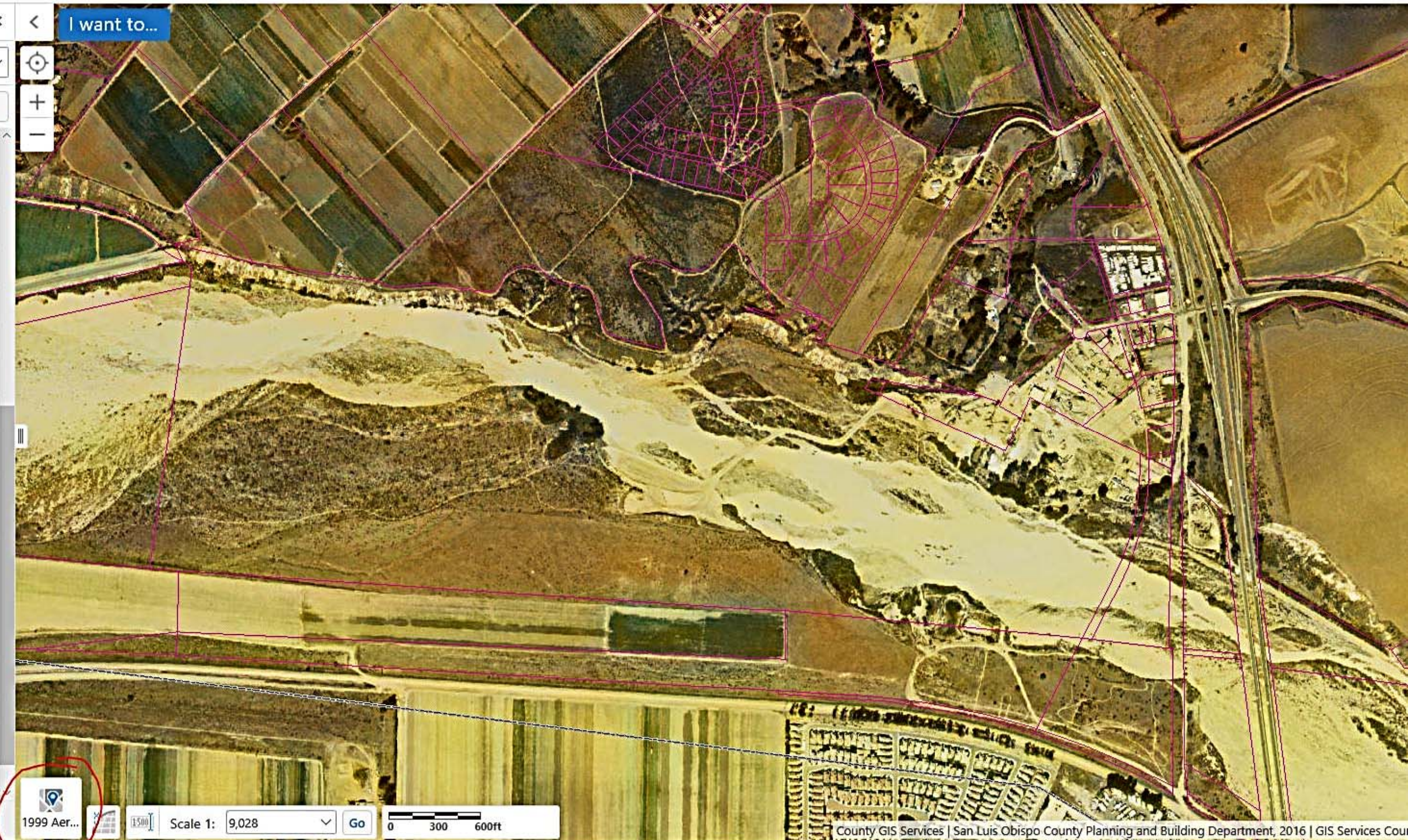
1999 Aer...

Scale 1: 9,028

Go

0 300 600ft

County GIS Services | San Luis Obispo County Planning and Building Department, 2016 | GIS Services Cou



Home

Welcome to Land Use View!

- Please see the data disclaimer below -

The San Luis Obispo County Planning and Building Department is pleased to present this publicly-available, interactive mapping application. We are committed to providing transparent and easy access to property and land use geospatial information.

Roll the mouse wheel to zoom in or out of an area on the map and click on a property. You can also search for an address or parcel number in the search box. There are some helpful links below including [basic instructions](#). Click the Layers tab below or the "I Want To" button to see the layer list.

The Planning and Building Department maintains many of the GIS layers shown here however, the parcel data and [Open Streetmap](#) basemap data are maintained and provided by third parties. Look [here](#) for how to obtain County GIS data.

Helpful Links

[Land Use View basic instructions](#)

[Create Mailing List Instructions](#)

[Citizen Self Service - Permit Research](#)

[Schedule an Inspection](#)

[San Luis Obispo County GIS Data](#)

[Planning and Building Homepage](#)

[Assessor Property Information Search](#)

[County Surveyor Documents](#)

[Clerk Recorder Document Search](#)

[Record Map Index \(Public Works\)](#)

[GIS of Survey Maps \(Public Works\)](#)

For further assistance:

Planning Department Front Desk: [805-781-5600](tel:805-781-5600)

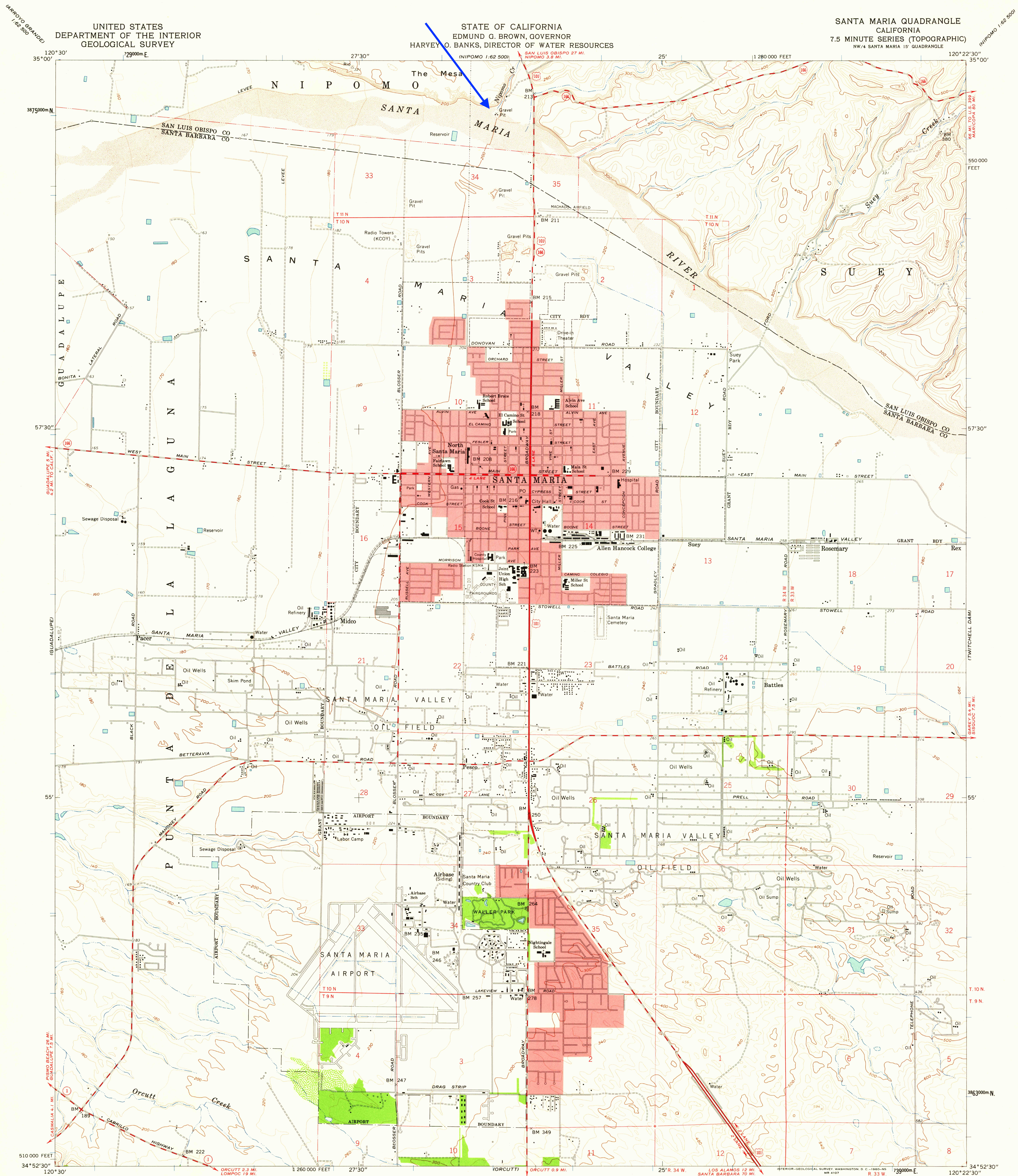
[Department of Planning and Building](#)

- DISCLAIMER -

Data For Reference Purposes Only:

The County of San Luis Obispo does not assume





UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

STATE OF CALIFORNIA
EDMUND G. BROWN, GOVERNOR
HARVEY O. BANKS, DIRECTOR OF WATER RESOURCES

SANTA MARIA QUADRANGLE
CALIFORNIA
7.5 MINUTE SERIES (TOPOGRAPHIC)
NW/4 SANTA MARIA 15' QUADRANGLE

Mapped, edited, and published by the Geological Survey
Control by USGS and USC&GS
Topography from aerial photographs by photogrammetric methods
and by planetable surveys 1959. Aerial photographs taken 1956
Polyconic projection. 1927 North American datum
10,000-foot grid based on California coordinate system, zone 5
1000-meter Universal Transverse Mercator grid ticks,
zone 10, shown in blue
Red tint indicates areas in which only landmark buildings are shown
Unchecked elevations are shown in brown

TRUE NORTH
MAGNETIC NORTH
APPROXIMATE MEAN
DECLINATION, 1959

SCALE 1:24,000
1 1000 2000 3000 4000 5000 6000 7000 FEET
1 KILOMETER
CONTOUR INTERVAL 20 FEET
DOTTED LINES REPRESENT 10-FOOT CONTOURS
DATUM IS MEAN SEA LEVEL
THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER 25, COLORADO OR WASHINGTON 25, D. C.
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

USGS
Historical Files
Topographic Division
ROAD CLASSIFICATION
Heavy-duty ——— Light-duty ———
Medium-duty ——— Unimproved dirt ———
U. S. Route —○— State Route —○—
QUADRANGLE LOCATION
U.S.G.S.
FILE COPY
TOPOGRAPHIC DIVISION
SANTA MARIA, CALIF.
NW/4 SANTA MARIA 15' QUADRANGLE
N3452.5-W12022.5/7.5
1959

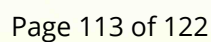


EXHIBIT 6

County Letter, 2007



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

June 20, 2007

Cherisse Troesh
Troesh Materials, Inc.
P.O. Box 2805
Pismo Beach, CA 93448-2805

RE: Troesh/Santa Maria Sand Pit; #91-40-0004

Ms. Troesh,

We have received a copy of your submittal to CDFG, as well as your annual inspection request and updated Financial Assurance Cost Estimate. In speaking with CDFG (Julie Means), they have issued a stream alteration agreement to allow for continued mining within the Santa Maria River, as conditioned in their permit. Their permit includes a provision that you will not begin extraction until the end of the nesting season, which has been identified as July 1. Therefore, once you provide evidence to the county that the reclamation bond is in place for this year, you are authorized to commence your mining activities as early as July 2.

In an effort to better define the approved size and location of where mining is allowed under this permit, I have attached: 1) a photo taken in 1979 that shows the area mined that year; and 2) the original application for Certification of Vesting Mine Report, which specifies all mining would be within a 10 acre area. Based on these pieces of information, and more recent aerials, I've drawn an approximate 660 foot by 660 foot square (10 acres) that includes this previous pit, as well as include most of the area more recently used for excavation. For reference, you can see the freeway and old railroad bridge piers at the top left and the levy in the right corner. It appears this pit is approximately 2,000 west of the Highway 101 Bridge. Based on the permit's maximum depth of 15 feet, and applying it to the technique used in the photo, an annual average "circle of excavation" could have as large of a diameter as 350-feet. If you concur, this will be the area we will expect all future mining efforts to occur. It would be very helpful to permanently establish at least two of these corners on the north side of the river as highly visible reference point boundaries for future extractions. Let me know if you would like to discuss this issue further.

Another important purpose of this letter is to update you on a significant change to the County's SMARA program. Starting this year inspections will be scheduled *after* we have received a copy of the MRRC-2 that you send to the State. As a result of this change, County mine inspections in upcoming years will be occurring between July 1 and December 31, of each year. This period conforms to State law that requires lead agencies to conduct an inspection of each surface mining operation within six months of receiving its annual report, and in no event less than once in any calendar year. :

In previous years, County inspections have been scheduled for the Spring, and you were directed to attach a copy of the County inspection report to the MRRC-2 that you submit to the State. While this procedure had been followed for many years, it does not meet the requirements of SMARA and it

G:\Environmental\Other Department Projects\Surface Mining\2007\904- Truck-Santa Maria Sand\NewProcessLetter.doc

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

placed undo burdens on the mine operators, who were required to wait until they received the MRRC-1 report from the County before they could complete their MRRC-2 for the State. The new procedure should rectify this situation.

In the new process operators will need to submit the previous year's County inspection report (MRRC-1) along with the MRRC-2 you send to the State. This year will be challenging because of the transition. To assist you in the transition, we have provided the recommended procedures for this year and the following years below:

2007 Procedure

1. State mails out 2006 MRRC-2 to be filled out by operator by July 1, 2007;
2. Operator completes 2006 MRRC-2 and attaches the *previous years* MRRC-1 - in this case, operators would use the 2005 MRRC-1 *dated in Spring or Summer of 2006 (see attached)*. Do not wait for this year's inspection report from County. We recognize that this is the same report you may have mailed out to the State last year. We have notified the State that this would be occurring, and you should not be penalized in any way.
3. Operator sends a copy of completed 2006 MRRC-2 to the County around July 1;
4. County inspectors set up inspections within next 6 months, preferably by the end of this summer; (In some cases inspections have occurred already this year.)
5. County inspectors provide copy of 2007 MRRC-1 to the operators;

2008 Procedure and thereafter

1. State mails out 2007 MRRC-2 to be filled out by operator by July 1, 2008;
2. Operator completes 2007 MRRC-2 and attaches the 2007 MRRC- 1 – *this will be dated by the inspector between July 1 and December 31, 2007.*
3. Operator sends copy of completed 2007 MRRC-2 to the State and one to the County around July 1, 2008 along with inspection request form, fees, and Financial Assurance Cost Estimate;
4. County inspectors set up inspections within next 6 months, preferably by the end of summer, 2008;
5. County inspectors provide copy of 2008 MRRC-1 to the operators by December 31, 2008 for use in completing 2007 MRRC-2 in 2009.

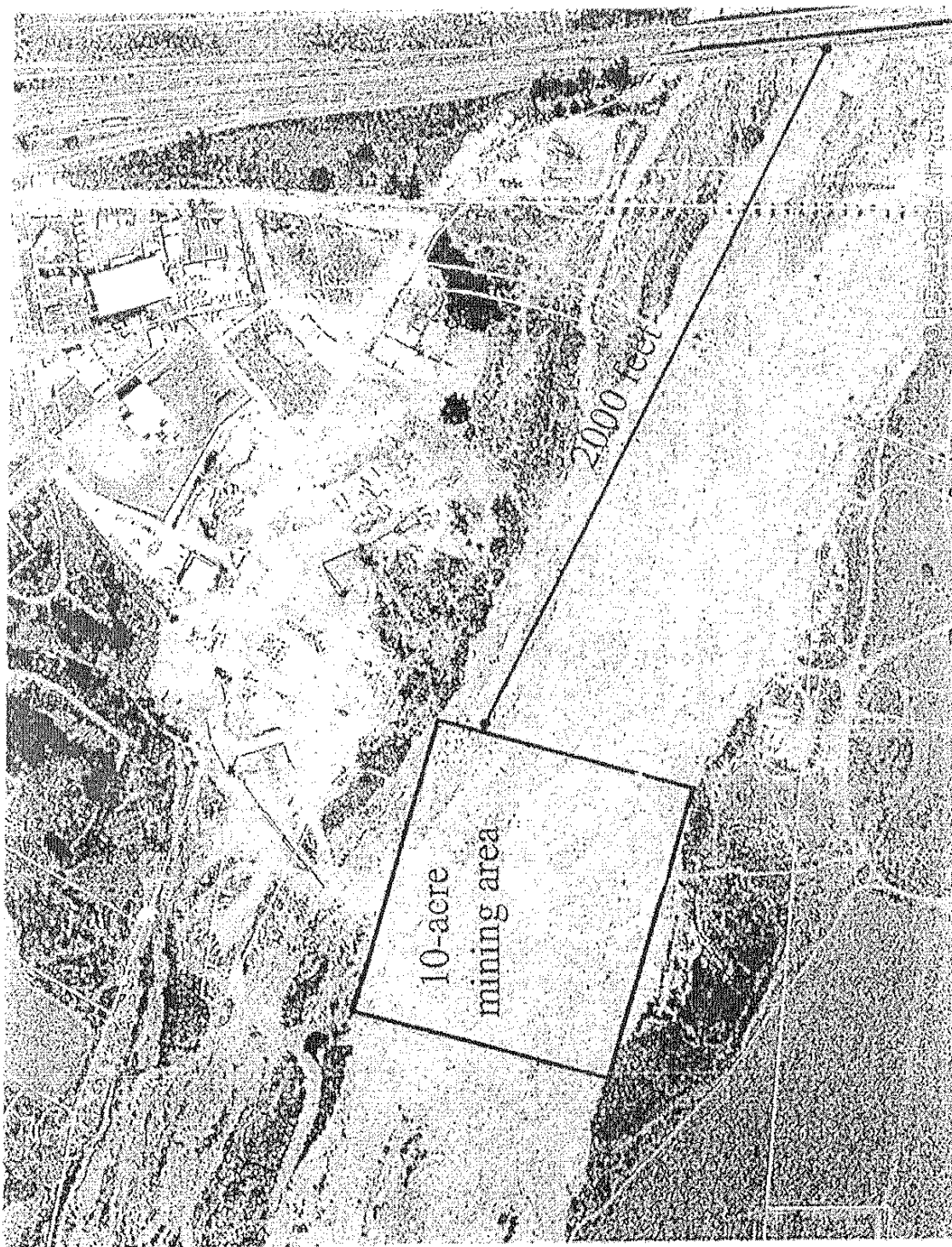
I'll be in touch with you in the next month or two to schedule the annual inspection. Should you have any questions, please do not hesitate to call me at 805/781-5452.

Sincerely,

John McKenzie
SMARA Planner

c - Irina Starodubcew, Accounting Division

- Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, CA 95814-3529





2/ HG-A-2



2/79 58-2-1

EXHIBIT 7

County Letter, 2014



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the Wise Use of Land – Helping to Build Great Communities

June 10, 2014

Troesh Recycling, Inc.
2280 Hutton Road
Nipomo, CA 93444

RE: Administrative Determination of Historical Mining associated with Santa Maria Sand (Mine ID No. 91-40-0004)

Dear Mrs. Coleman,

This letter has been written in response to your request for information related to the areas of historical mining activities associated with Santa Maria Sand (Mine ID No. 91-40-0004). It is understood that this information will be used so you can amend / submit an application for a Streambed Alteration Permit that is consistent with the historical mining activities. It should be understood that this is not a determination of vested rights and it does not supersede or replace any previous or future determination of vested rights. If you wish to receive an official determination of vested rights, our office must prepare a staff report and hold a noticed public hearing at the County of San Luis Obispo Board of Supervisors.

The area that the Department of Planning and Building has determined can continue to be mined at Santa Maria Sand Co. / Troesh Recycling (Mine ID No. 91-40-0004) without additional land use permits or a vested right determination hearing is shown in the attached Exhibit A. The area depicted in Exhibit A is approximately 40 acres. Additionally, our department can confirm historical mining to a depth of approximately 15 feet and up to 50,000 cubic yards / year of production associated with historical mining activities for Santa Maria Sand Co. / Troesh Recycling. While approximately 40 acres of the site can be mined, it has been determined that only 10 acres can be mined at any time within the approximately 40 acre area. This administrative determination of historical mining is based on historical areas of mining that are known to have occurred under "Santa Maria Sand Co" as well as the historical mining activities depicted in the information contained in various files on record with the Department of Planning and Building.

If you have any questions, please feel free to contact me at (805) 788-2352.

Sincerely,

Murry Wilson
Environmental Resource Specialist / SMARA Inspector

Attachments:

- Exhibit A

Exhibit A



Approximate location of 40 acre historical mining area