



# AGENDA ITEM

## Public Utilities Commission

*City and County of San Francisco*



DEPARTMENT Real Estate Services Division AGENDA NO. 16  
 MEETING DATE June 23, 2015

**Real Estate Lease:** Regular Calendar  
**Real Estate Director:** Rosanna Russell

**Approve a 25 -Year Lease to Mission Valley Rock, Co..**

<b>Summary of Proposed Commission Action:</b>	<b>Approve</b> the terms and conditions and <b>authorize</b> the General Manager to negotiate and execute, on behalf of the City acting through SFPUC, as landlord, a 25-year lease (2015 Lease) to Mission Valley Rock Co., as tenant (MVR or Tenant), of approximately 199 acres of SFPUC Parcels No. 62 and 65 in Sunol, California for water use and management, aggregate conveyance, overburden and fines placement, and reclamation, for a rental rate of \$60,000 per year, plus four percent annual rent increases. The proposed action is the Approval Action as defined in the San Francisco Administrative Code, Chapter 31.
<b>Background:</b>	<p><u>Lease History</u></p> <p>Since 1978, MVR has conducted sand and gravel quarrying and mining-related activities on lands owned by the City and County of San Francisco (City) under the jurisdiction of its Public Utilities Commission (SFPUC) in Sunol, Alameda County pursuant to three lease agreements with SFPUC. MVR uses the premises under the three SFPUC leases to facilitate its quarry processing operations on adjacent premises that MVR owns in fee. Mining operations on SFPUC lands in Alameda County are subject to the State Surface Mining and Reclamation Act and the Alameda County Surface Mining Ordinance through the issuance of Surface Mining Permits (“SMPs”).</p> <p>MVR’s quarry operations require a large water supply to process the aggregate (i.e. sand and gravel) that it mines. Water storage, water recycling, water removal and the placement of materials (called “overburden” and “fines”) that are the unused byproduct generated by its quarry constitute an important component of the MVR operations. MVR currently uses raw water captured in its quarry excavations from rainfall and seepage for all of its mining operations and does not use water supplied by the Regional <u>Water System</u>.</p>

**APPROVAL:** \_\_\_\_\_

COMMISSION SECRETARY Donna Hood

The first lease, dated January 10, 1978 (“First MVR Lease”), as amended, allows MVR’s quarry use of approximately 30 acres of SFPUC Parcel 62 and approximately 18.33 acres of SFPUC Parcel 65 (together the “First MVR Lease Premises”). Mining of sand and gravel was completed on the First MVR Lease Premises prior to lease expiration on January 9, 1998.

The first MVR Lease is in holdover status. During the First MVR Lease term and the holdover period, MVR has continued to use the First MVR Lease Premises for water use and recycling related to aggregate processing at its nearby plant, and for placement of overburden and fines, consistent with SMP 24.

The second lease, dated June 20, 1985 (“Second MVR Lease”), allows MVR’s quarry use of approximately 135 acres of SFPUC Parcel 65 (“Second MVR Lease Premises”). Extraction of sand and gravel from the Second MVR Lease Premises was completed in July, 2006. The Second MVR Lease expired on October 31, 2012, and is in holdover status.

Mining of the First MVR Lease Premises and the Second MVR Lease Premises are subject to the terms and conditions of the existing SMP 24, issued to MVR by the Alameda County Community Development Agency.

The third lease, dated September 26, 2000 (“Third MVR Lease”), allows MVR to extract sand and gravel from approximately 242 acres of SFPUC Parcel 65 (“Third MVR Lease Premises”) adjacent to the Second MVR Lease Premises and the Sunol Water Temple. Pursuant to the Third MVR Lease, MVR extracts sand and gravel under the terms of SMP 32. The Third MVR Lease expires on October 31, 2040.

During the Second MVR Lease term and holdover period, MVR has continued to manage three ponds (respectively, Pond F2, Pond F3 West, and Pond F3 East) located on the Second MVR Lease Premises. MVR uses Pond F2 and Pond F3 West on the Second MVR Lease Premises to facilitate its Third MVR Lease Premises quarry operations for dust control, irrigation, and process water needs in dry years. MVR manages the water elevation in Pond F3 East for the SFPUC’s benefit, under a Water Management Agreement dated August 23, 2013 between the SFPUC and MVR that is related to the operation of the SFPUC’s San Antonio Backup Pipeline.

MVR has continued to operate its conveyor system on another portion of SFPUC land (the “Conveyor Site”) under a license conveyed to MVR in the Third MVR Lease. The conveyor system moves mined material from the Third MVR Lease Premises to MVR’s processing plant located on property that MVR owns in fee. MVR operates the processing plant under the auspices of SMP 24.

#### 2015 Lease

The SFPUC receives a base rent of \$100,000 per year, plus 10.5 percent royalty fee for minerals extracted per year from the Third MVR lease Premises. The Third MVR Lease yields approximately \$1.1 million per year to the SFPUC and is one of the highest revenue-generating SFPUC tenants. Quarry lease revenue is considered non-operating revenue under the

	<p>wholesale Water Supply Agreement and may be used solely for the benefit of the SFPUC's retail customers.</p> <p>MVR desires to continue to use Pond F2 and Pond F3 West as a water source, both for consumptive use and storage, on the Second MRV Lease Premises to facilitate its Third MVR Lease Premises quarry operations. The proposed new lease does not allow the placement of fines or spoils in Pits F2 or F3 East or West, consistent with SMP 24 and the terms of the Sunol Valley Resource Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in 2000. If the SFPUC does not enter into the 2015 Lease, it risks losing approximately \$1.1 million in annual revenue if MVR cannot access the water supplies on the Second MVR Lease Premises for purposes of continued material processing, dust control and irrigation of plantings on the Third MVR Lease Premises.</p> <p>MVR's management of water in Pond F3 East in addition facilitates the operation of the SFPUC's San Antonio Backup Pipeline, providing additional benefits to the SFPUC. The City, through the SFPUC, desires to enter into the 2015 Lease to allow MVR to continue using the First MVR Lease Premises and the Second MVR Lease Premises for water management, for continued overburden and fines placement in accordance with SMP 24 on the 18.33 and 30 acre parcels west of Alameda Creek, for final site reclamation, and to maintain the Conveyor Site to operate MVR's conveyor system, all for an annual rental rate of \$60,000, plus four percent annual rent increases.</p>
<p><b>Environmental Review:</b></p>	<p>In 2002, MVR applied for an amendment to SMP-24 to increase potential depth of quarrying from 140 to 250 feet to allow additional gravel extraction, which also would increase future water storage capacity available to the SFPUC, consistent with the Sunol Valley Resource Management Element of the 2000 Alameda Watershed Management Plan. Alameda County approved a CEQA Mitigated Negative Declaration (MND) ("2002 MND") for the proposed expansion (SCH. #2002072013), and approved the project on August 19, 2002 under Alameda County Planning Commission Resolution 02-19, updating conditions of approval to incorporate mitigation measures identified in the MND. Resolution 02-19 ("2002 Resolution") also incorporated by reference prior approvals of periodic reviews in 1986 and 1991. The County again reviewed SMP-24 in 2009 and concluded that circumstances had not changed and that the prior permit approval is still valid.</p> <p>The granting of a lease is a discretionary action by the SFPUC and thus is subject to compliance with CEQA. An indirect effect of SFPUC's issuance of the requested lease is that MVR will continue its existing surface mining operations. The Bureau of Environmental Management prepared the attached CEQA Findings which address SFPUC's action in issuing the new ground lease and these Findings are incorporated in the Resolution.</p>
<p><b>Result of Inaction:</b></p>	<p>A delay in adopting the attached resolution could potentially interrupt the management of the ponds located on the Premises, the management of which</p>

	is crucial to SFPUC operations in the area, disrupt the tenant's existing water supply operations for processing of materials from the Third MVR Lease, dust control, and irrigation of plantings, and delay the receipt of substantial annual rental income associated with the Premises.	
<b>Budget &amp; Costs:</b>	MVR will pay all costs associated with its use of the Premises, including property and possessory interest taxes.	
<b>Description of Agreement:</b>	<b>Parties to Lease Agreement:</b>	City and County of San Francisco, acting through the SFPUC, and Mission Valley Rock, Co., a California corporation
	<b>Annual Rent:</b>	\$60,000 with four percent annual rent increases.
	<b>Purpose:</b>	Water use and management, overburden and fines placement, and reclamation.
	<b>Location:</b>	Portions of SFPUC Parcels 62 and 65 located in Sunol, California.
	<b>Insurance and Indemnity</b>	MVR shall insure and indemnify the SFPUC against risks associated with its use of the Premises.
	<b>Commencement Date:</b>	The date on which the Lease is approved and fully executed.
<b>Recommendation:</b>	SFPUC staff recommends that the Commission adopt the attached resolution.	
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. SFPUC Resolution</li> <li>2. Lease Agreement</li> <li>3. Responsible Agency Findings Memorandum</li> </ol>	

# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. \_\_\_\_\_

WHEREAS, The City and County of San Francisco (“City”) owns certain real property under the jurisdiction of its Public Utilities Commission (“SFPUC”) commonly known as SFPUC Parcels 62 and 65 located in Sunol, California; and

WHEREAS, City and Mission Valley Rock Co, a California corporation (“Tenant”) entered into that certain lease agreement dated January 10, 1978 (the “First MVR Lease”), as amended, for Tenant’s use of approximately 30 acres of SFPUC Parcel 62 and approximately 18.33 acres of SFPUC Parcel 65 (together, the “First MVR Lease Premises”) as a quarry; and

WHEREAS, Extraction of sand and gravel in the First MVR Lease Premises ceased prior to the expiration of the First MVR Lease on January 9, 1998. The First MVR Lease is in holdover status. While in holdover status, Tenant has continued to use the First MVR Lease Premises to use and recycle water for aggregate processing at its nearby plant, and for placement of overburden and fines generated by its nearby quarry operations; and

WHEREAS, City and Tenant are parties to that certain lease agreement dated June 20, 1985 (the “Second MVR Lease”) for Tenant’s use of approximately 135 acres of SFPUC Parcel 65 for its mining operations (the “Second MVR Lease Premises”). Extraction of sand and gravel on the Second MVR Lease Premises was completed in July of 2006; and

WHEREAS, The Second MVR Lease expired on October 31, 2012 and is in holdover status. Tenant has continued to manage three ponds (respectively, Pond F2, Pond F3 West, and Pond F3 East) located on the Second MVR Lease Premises. Tenant uses Pond F2 and Pond F3 West for purposes of providing water supplies for process water in dry years, irrigation and dust control in connection with its quarry operations under Alameda County Surface Mining Permit No. 32 (“SMP 32”); and

WHEREAS, City and Tenant entered into that certain Water Management Agreement dated August 23, 2013, pursuant to which Tenant manages the water elevation in Pond F3 East on the Second MVR Lease Premises for the benefit of the SFPUC in relation to the operation of the San Antonio Backup Pipeline; and

WHEREAS, Mining and related operation on the First and Second MVR Lease Premises are subject to the terms and conditions of the existing Surface Mining Permit 24 (“SMP 24”), issued to Tenant by the Alameda County Community Development Agency pursuant to the Alameda County Surface Mining Ordinance; and

WHEREAS, Tenant and City are also parties to a lease dated September 26, 2000 (the “Third MVR Lease”) for Tenant’s use of approximately 242 acres of land adjacent to the Second MVR Lease Premises, pursuant to which Tenant extracts sand and gravel under the terms of SMP 32; and

WHEREAS, Tenant has continued to operate its conveyor system on another portion of SFPUC Parcel 65 (the “Conveyor Site”) under a license provided in the Third MVR Lease, to move aggregate material from its Third MVR Lease Premises to Tenant’s processing plant located on property owned by MVR. The Third MVR Lease will expire on October 31, 2040; and

WHEREAS, MVR requires continued access to water in Pond F2 and Pond F3 West, especially in dry years, on the Second MRV Lease Premises to facilitate its Third MVR Lease Premises quarry operations, and if the proposed new lease is not approved, the SFPUC risks losing approximately \$1.1 million in annual revenue if MVR ceases operations on the Third MVR Lease Premises; and

WHEREAS, City desires to enter into a new lease with Tenant in substantially the form on file with the Commission Secretary (the “2015 Lease”) to allow Tenant to continue its use of the First MVR Lease Premises and the Second MVR Lease Premises for water use and recycling, water management, overburden and fines placement on the First MVR Lease Premises only, final site reclamation, and the Conveyor Site for moving aggregate material to Tenant’s property, for an annual rental rate of \$60,000, with four percent annual rent increases; now, therefore, be it

RESOLVED, As a Responsible Agency, SFPUC finds that 1) SFPUC has reviewed the actions to be carried out under the lease and has determined that the indirect effects of SFPUC’s issuance of the lease are within the scope of the County’s 2002 MND approval and subsequent periodic reviews. The issuance of the lease would not alter the previously-approved operations, nor would it extend the life of the quarry operation beyond the term of SMP-24. SFPUC finds that the County’s 2002 MND and Resolution are adequate for SFPUC’s use in approving the lease. The 2002 MND and the County’s approval resolution and other materials that are part of the record of this approval are available for public review at the SFPUC offices, Real Estate Services Division, 525 Golden Gate Avenue, 8th Floor, San Francisco, CA, which is the custodian of records for the Lease approval; 2) Since the County certified the 2002 MND and approved the SMP 24 amendment, there have been no substantial changes in operations under SMP 24 or changes in circumstances that would result in new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the MND and subsequent reviews conducted by County of Alameda; 3) The County’s 2002 MND identified significant impacts from the amended SMP 24 operation and adopted mitigation measures, the implementation of which, in each case, reduces the impact to a less-than-significant level. These measures were adopted as conditions of approval for the SMP 24 amendment in the County’s Resolution 02-19 and have been monitored through the County’s periodic reviews; and be it

FURTHER RESOLVED, That SFPUC has no direct authority or responsibility with respect to the implementation of these measures or conditions of approval, which are wholly within the responsibility and jurisdiction of the County of Alameda, other than the SFPUC authorization, at the Project Sponsor’s request, to approve the ground lease to enable the Project Sponsor to conduct mining operations on the leased land as permitted under the terms of Alameda County’s Surface Mining Permit Number 24; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with the 2015 Lease; and, be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of the 2015 Lease; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC General Manager to negotiate and execute the 2015 Lease; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to the 2015 Lease, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the 2015 Lease or this resolution; and are in compliance with all applicable laws, including the City Charter.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 23, 2015.*

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*Secretary, Public Utilities Commission*

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

**EDWIN M. LEE, MAYOR**

**GROUND LEASE**

**between**

**CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord**

**and**

**MISSION VALLEY ROCK CO., a California Corporation,  
as Tenant**

**For the lease of  
Approximately 199 acres in Sunol, Alameda County, California**

**\_\_\_\_\_ , 2015**

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

**Ann Moller Caen - President  
Francesca Vietor - Vice President  
Anson B. Moran - Commissioner  
Vince Courtney - Commissioner  
Ike Kwon - Commissioner**

**Harlan L. Kelly, Jr.  
General Manager of San Francisco Public Utilities Commission**



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LIST OF EXHIBITS

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EXHIBIT B	SFPUC Drawing of Premises
EXHIBIT C	Requirements for Daily Pumping Records
EXHIBIT D	Form of Estoppel Certificate
EXHIBIT E	Water Management Agreement

## SAN FRANCISCO PUBLIC UTILITIES COMMISSION

### GROUND LEASE No. 4289

THIS GROUND LEASE (this "Lease") dated for reference purposes only as of \_\_\_\_\_, 2015, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through its Public Utilities Commission ("SFPUC"), and MISSION VALLEY ROCK CO., a California corporation ("**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

#### RECITALS

**A.** City and Tenant entered into that certain lease agreement dated January 10, 1978 ("Lease No. 3292") for Tenant's use of approximately 30 acres of land in Sunol, California for use as a gravel quarry.

**B.** City and Tenant entered into that certain Supplemental Agreement in Modification of Lease dated December 26, 1980 pursuant to which Lease No. 3292 was amended to add an additional 18.33 acres to the leased premises, for a total of 48.33 acres ("**Lease No. 3292 Premises**"), and incorporate a reclamation plan to be implemented at the completion of mining activities.

**C.** City and G. Armanino & Son, Inc. ("**Armanino**") entered into that certain master lease agreement dated June 20, 1985 ("**Master Lease**" or "**Lease No. 3555A**") for Armanino's use of approximately 204 acres of land in Sunol, California ("**Master Lease Premises**").

**D.** Armanino and Tenant entered into that certain Sublease Agreement dated June 20, 1985 ("**Sublease**") for Tenant's use of approximately 135 acres of the Master Lease Premises in Sunol, California ("**Existing Lease No. 3555A Premises**").

**E.** City approved the assignment of Armanino's interest in the Master Lease to Tenant, effective December 23, 1986.

**F.** Tenant extracted material from the Lease No. 3292 Premises under the terms of Alameda County Surface Mining Permit No. 5 ("**SMP 5**"). On January 23, 1986 Alameda County approved Tenant's application to expand its mining operations to also include the Existing Lease No. 3555A Premises under a new Surface Mining Permit and Reclamation Plan SMP 24 ("**SMP 24**"). SMP 24 superseded SMP 5.

**G.** Lease No. 3292 expired on January 9, 1998, and is in holdover status. During the Lease No. 3292 term and the holdover period, Tenant has continued to use the 18.33 acre parcel and the 30 acre parcel (together, the "**Existing Lease No. 3292 Premises**") to recycle water used in its nearby quarry operations.

**H.** Tenant and City are also parties to a lease dated September 26, 2000 ("**Lease No. 3931**") for Tenant's use of approximately 242 acres of land adjacent to the Existing Lease No. 3555A Premises, pursuant to which Tenant extracts material under the terms of Alameda County Surface Mining Permit No. 32 ("**SMP 32**"). Lease No. 3931 superseded and incorporated the

69-acre portion of Lease No. 3555A designated as Parcel A of the Master Lease Premises. Lease No. 3931 will expire on October 31, 2040.

**I.** Extraction from the Lease No. 3555A Premises was completed in July, 2006. Lease No. 3555A expired on October 31, 2012 and is in holdover status. While Lease No. 3555A is in holdover status, Tenant has continued to operate its conveyor system across a portion of City land approximately eight (8) acres in area (as shown on attached **Exhibit B**) (the "**Conveyor Site**") under Lease No. 3931 and the nonexclusive license conveyed in such lease, to move aggregate mined from its SMP 32 premises to Tenant's processing plant located outside of the Lease No. 3555A Premises. Tenant also has continued to manage three ponds (respectively, Pond F2, Pond F3 West, and Pond F3 East) located on the Existing Lease No. 3555A Premises. Tenant uses Pond F2 as a supplemental water source for its SMP 32 quarry operations and Pond F3 West for dewatering its SMP 32 quarry pit and depositing slurry water from its conveyor system. Tenant owns and maintains two (2) pumps ("**Tenant Pumps**") to move water from Pond F2 located in the Existing Lease No. 3555A Premises to Tenant's ready mix pond located adjacent to Tenant's processing plant.

**J.** SFPUC has engaged in constructing the San Antonio Backup Pipeline Project (the "**Project**") in the vicinity of the Master Lease Premises. Pursuant to Section 17 of the Master Lease, the provisions of which were incorporated by reference into Section 7 of the Sublease, SFPUC authorized its contractor for the Project, Ranger Pipelines, Inc. ("**Ranger**"), to install two (2) new pumps ("**City Pumps**"), at City's cost, to manage the water level in Pond F3 East for Project purposes. City and Tenant entered into that certain Water Management Agreement dated August 23, 2013, a copy of which is attached as **Exhibit E**, which sets forth the parties' respective rights and obligations with respect to (i) the installation and use of the City Pumps on the Existing Lease No. 3555A Premises, and (ii) the use of Tenant's existing equipment, utilities and discharge permit, to manage the water elevation in Pond F3 East, as required for Project construction and operation. Concurrently with the execution of this Lease, City and Tenant are amending the Water Management Agreement.

**K.** City and Tenant now wish to enter into this new lease agreement for the Existing Lease No. 3555A Premises, Existing Lease No. 3292 Premises, and the Conveyor Site, on the terms and conditions set forth herein. A map of those lands covered by this lease agreement is attached as **Exhibit B**.

## AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, City and Tenant hereby agree as follows;

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: \_\_\_\_\_, 20\_\_

Landlord: CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission

Tenant: MISSION VALLEY ROCK CO.

Premises (**Section 3.1**): That real property located in the town of Sunol, Alameda County, California, as more particularly described in **Exhibit A** and shown in **Exhibit B**, together with any appurtenances.

Term (**Section 4.1**): Commencement Date (same as the Effective Date, as defined in **Section 4.4**): \_\_\_\_\_ *[insert date following approvals]*  
Expiration Date: October 31, 2040, subject to the option of each party to terminate early as provided in **Section 4.5**.

Base Rent (**Section 5.1**): \$5,000.00 per Month

Adjustment Dates (**Section 5.2**): First (1st) anniversary of the Commencement Date and every twelve (12) months thereafter.

Use (**Section 7.1**): Water use and management, overburden and fine placement, and reclamation, all as further described in **Section 7.1**.

Security (**Section 25**): Eighty-five Thousand Dollars (\$85,000.00) for this Lease, plus a Two Million Dollar (\$2,000,000) lease bond covering both this Lease and Lease No. L3191, as further described in **Section 25**

Pro Rata Share of Property Taxes: APN 096-0375-015-00 15.8%  
APN 096-0080-012-00 16.4%  
APN 096-0375-011-05 37.8%

Notice Address of City (**Section 26.1**): Real Estate Services  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director  
Re: SMP 24 Premises

with a copy to: Office of the City Attorney  
City and County of San Francisco  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate & Finance Team  
Re: SMP 24 Premises

Key Contact for City: SFPUC Real Estate Director

Telephone No.: (415) 487-5210



Notice Address of Tenant  
(Section 26.1):

Lehigh Hanson West Region  
12667 Alcosta Blvd., Suite 400  
San Ramon, CA 94583

Key Contact for Tenant:

Marcelo Barajas, General Manager

Telephone No.:

(925) 244-6409

Email Address:

marcelo.barajas@lehighhanson.com

Brokers (Section 26.8):

N/A

## 2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Additional Charges**" means any and all real and personal property taxes, possessory interest taxes and other costs, impositions and expenses described in **Section 6** or otherwise payable by Tenant under this Lease.

"**Adjustment Date**" means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and **Section 5.2**.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises.

"**Assignment**" has the meaning given in **Section 17.1**.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Section 1**.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1**.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.2**.

"**Conveyor Site**" has the meaning given in **Recital I**.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

**"Effective Date"** means the date on which this Agreement becomes effective pursuant to **Section 4.4**.

**"Encumber"** means create any Encumbrance; **"Encumbrance"** means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

**"Encumbrancer"** means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

**"Environmental Laws"** means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

**"Expiration Date"** means the date on which the Lease Term will expire, as specified in the Basic Lease Information, unless terminated sooner in accordance with this Lease, applicable law or agreement of the parties.

**"Event of Default"** means any one of the events of default described in **Section 18.1**.

**"General Manager"** means the General Manager of the Public Utilities Commission.

**"Hazardous Material"** means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

**"Hazardous Material Claims"** means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the SFPUC, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Material, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

**"Improvements"** means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent

facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

**"Indemnify"** means indemnify, protect, defend and hold harmless.

**"Indemnified Parties"** means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, its SFPUC, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

**"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

**"Invitees"** when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

**"Land"** means the real property described in **Exhibit A** attached hereto.

**"Landlord"** means the City and County of San Francisco.

**"Law"** means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

**"Lease"** means this Lease as it may be amended in accordance with its terms.

**"Lease Year"** has the meaning given in **Section 5.2**.

**"Losses"** means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

**"Official Records"** means the official records of the county(ies) in which the Premises are located.

**"Party"** means City or Tenant; **"Parties"** means both City and Tenant.

**"Premises"** has the meaning given in **Section 3.1**. The Premises shall include any existing and permitted future Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Except as expressly provided for in this Lease, the Premises do not include the right to use SFPUC Facilities or any water. Notwithstanding anything to the contrary in this Lease, the Premises do not include any water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

**"Release"** when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or SFPUC Facilities or any portion thereof.

**"Remediation"** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or SFPUC Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

**"Rent"** means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2**, together with any and all Additional Charges.

**"SFPUC"** means the Public Utilities Commission of the City and County of San Francisco.

**"SFPUC Facilities"** means any and all power lines, poles and other electrical and communications infrastructure, and all water pipelines, drainage pipelines, hatch covers, wells and other surface and subsurface facilities, owned by the SFPUC and now or later located in, under, over, on or about the Premises for the storage, transmission or distribution of electricity, telecommunications, or water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

**"Sublease"** has the meaning given in **Section 17.1**.

**"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

**"Tenant"** means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

**"Tenant's Personal Property"** means the personal property of Tenant described in **Section 8.3**.

**"Term"** means the term of this Lease as determined under **Section 4.1**.

**"Transfer"** means any Assignment or Sublease.

**"Transferee"** means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Section 17**.

**"Unmatured Event of Default"** means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

### 3. PREMISES

#### 3.1 Leased Premises

Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property described in the attached **Exhibit A**, together with any and all improvements existing thereon and owned by City as of the date of this Lease (the "**Premises**"), excluding therefrom and reserving during the Term unto City, its successors and assigns, the rights described in **Section 3.2**. The Premises shall include the Existing Lease No. 3555A Premises, the Existing Lease No. 3292 Premises, and the Conveyor Site. The Premises are shown generally on the attached **Exhibit B**. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use or operate the SFPUC Facilities, or any portion thereof.

#### 3.2 Rights Reserved to City

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water rights (subject to Tenant's rights to use water as expressly stated in this Lease), including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export surface water and percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the SFPUC Facilities so long as City uses its reasonable efforts to avoid interfering with Tenant's use of the Premises;

(e) The right to grant future easements and rights-of-way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right-of-way, and there is no unreasonable interference with Tenant's use of the Premises;

(f) Without limiting the generality of **Section 3.2(e)**, the right to grant future easements, rights-of-way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell

site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not unreasonably interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right-of-way; and

(g) All rights of access provided for in **Section 21**.

### **3.3 Subject to Municipal Uses**

Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's Alameda Watershed lands used by the SFPUC water or power enterprises, which City holds for the purposes of transporting and distributing water and/or power for other municipal uses. Tenant's rights under this Lease shall be subject to City's use of the Premises for such purposes and for other City uses. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. The use of the term "right-of-way" or similar terms in this document shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any of its property. City shall in no way be liable for any damage or destruction to Tenant's property and/or improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. Tenant shall, at City's request, immediately remove any property or improvements on the Premises to allow City access to the SFPUC Facilities. In the event City deems it necessary, in City's sole discretion, City shall have the right to remove any such property or improvements and City shall not be responsible for restoring or returning same to its prior condition.

### **3.4 As Is Condition of Premises**

#### **(a) Inspection of Premises**

Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

#### **(b) As Is; Disclaimer of Representations**

Tenant acknowledges and agrees that the Premises are being leased and accepted strictly in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, SFPUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, including but not limited to available water supplies, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their

use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

#### **4. TERM**

##### **4.1 Term of Lease Date**

The Premises are leased for a term (the "**Term**") commencing on the date specified in the Basic Lease Information as the commencement date, subject to this Lease becoming effective pursuant to **Section 4.4**. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease or applicable law. If this Lease is terminated early, in whole or in part, City acknowledges that certain reclamation activities may extend beyond the termination date specified by City or dictated by the terms of this Lease (the "**Early Termination Date**"), and agrees that Tenant shall have an additional period to complete these reclamation activities on the Premises or the portion thereof that was the subject of the termination (the "**Terminated Premises**") provided that Tenant promptly delivers to City a written description of the nature of the activities and the timeline for completion, and provided, further, that Tenant shall conduct such activities with reasonable diligence and in any event shall complete such reclamation and fully vacate the Terminated Premises by the earlier of (i) the one-year anniversary of the Early Termination Date, or (ii) the Lease Expiration Date. During such period, Tenant shall have a nonexclusive, nonassignable and nonpossessory license (the "**License**") to enter and use the Terminated Premises only as necessary for such reclamation activities, and applicable provisions of the Lease shall continue to apply with respect to Tenant's use of the Terminated Premises, including without limitation **Sections 3.3, 7.2, 8, 9, 10, 11, 12, 16, 19, 20, 22, 23.1, 24, 25, and 26**. City shall have the right to enter and use the Terminated Premises for City's own purposes provided City does not unreasonably interfere with the reclamation.

##### **4.2 Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**."

##### **4.3 Possession; Termination of Holdover Tenancies**

City and Tenant acknowledge that Tenant is already in possession of the Premises prior to the Effective Date, as a month-to-month holdover tenant under Lease No. 3555A and Lease No. 3292. Effective upon commencement of the Term, Tenant's holdover tenancies under Lease No. 3292 and Lease No. 3555A shall terminate.

##### **4.4 Effective Date**

This Lease shall become effective on the last to occur of the following (the "**Effective Date**"): (i) the SFPUC adopts a resolution approving this Lease, and (ii) the Parties hereto have duly executed and delivered this Lease.

##### **4.5 Option to Terminate**

Tenant and City shall each have the option, on notice to the other party ("**Termination Notice**") to terminate this Lease with respect to a portion of the Existing Lease No. 3555A Premises. The portion of the Premises that is subject to the Termination Notice shall be referred to as the "**Terminated Premises**". As an alternative to such a partial termination by City, either Party may propose that the would-be Terminated Premises remain part of the Premises but subject to concurrent use and operation by both Parties ("**Shared Occupancy**"). If either Party proposes a Shared Occupancy of a portion of the Premises, the Parties shall promptly meet and

confer to determine if the Shared Occupancy can be effected on terms and conditions acceptable to each Party, which may include a reduction of rent if and to the extent that such Shared Occupancy would impair Tenant's use of the shared Premises. If both Parties elect in their respective sole discretion to implement a Shared Occupancy, the Parties shall memorialize the terms of such Shared Occupancy in an amendment to this Lease or a separate operating agreement. However, if termination is determined to be appropriate, the termination shall be effective as of the termination date specified in the Termination Notice ("**Termination Date**"), which must be a date (a) no sooner than the fourth (4th) anniversary of the Commencement Date and (b) at least 180 days after the date the Termination Notice is delivered. Tenant shall surrender possession of the Terminated Premises to City in accordance with **Section 23**, on or before the Termination Date. If Tenant or City exercises the option to terminate the Lease with respect to the Terminated Premises, the Base Rent shall be reduced in proportion to the reduction of the square footage of the Premises. However, if Tenant fails to timely surrender the Terminated Premises, **Section 26.13** shall apply with respect to the Terminated Premises. However, Tenant's engaging in necessary reclamation activities in accordance with **Section 4.1** shall not be deemed a failure to timely surrender the Terminated Premises for purposes of **Section 26.13**. A party's termination of the Lease with respect to a portion of the Premises in accordance with this **Section 4.5** shall not prevent either party from subsequently terminating the Lease with respect to the remaining Premises under this Section.

## 5. RENT

### 5.1 Base Rent

Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the Monthly Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the San Francisco Public Utilities Commission, Customer Service Bureau, Attention: Real Estate Billing, 525 Golden Gate Avenue, 3<sup>rd</sup> Floor, San Francisco, California 94102 (reference SFPUC lease number), or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

Landlord and Tenant acknowledge that in addition to the Base Rent, Tenant's management of water levels in Pond F3 East in the manner prescribed by the Water Management Agreement and Tenant's maintenance of daily pumping records for Pond F2 in accordance with **Section 9**, constitute consideration to City under this Lease.

### 5.2 Adjustments in Base Rent

Each consecutive twelve (12) month period during the Term is a "Lease Year". The twelve (12) month period commencing on the Commencement Date shall be the first Lease Year. Effective on the first day of the second Lease Year, and on the first day of each Lease Year thereafter (each, an "**Adjustment Date**"), the monthly Base Rent shall be increased to an amount equal to one hundred four percent (104%) of the Base Rent due and payable each month during the immediately preceding Lease Year (disregarding any period in which Base Rent was abated under the terms of this Lease).

### 5.3 Late Charge

If Tenant fails to pay any Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City



and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

#### **5.4 Default Interest**

If any Rent is not paid within five (5) days following the due date, at City's election such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

#### **5.5 Net Lease**

This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

#### **5.6 Processing Fee**

Upon execution of this Lease, Tenant shall pay SFPUC the sum of three thousand dollars (\$3,000.00) as a fee for processing this Lease.

### **6. TAXES, ASSESSMENTS AND OTHER EXPENSES**

#### **6.1 Taxes and Assessments, Licenses, Permit Fees and Liens**

##### **(a) Payment Responsibility**

Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any

Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

#### **(b) Taxability of Possessory Interest**

Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

#### **(c) No Liens**

Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

#### **(d) Reporting Requirement**

Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

### **6.2 Other Expenses**

Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

### **6.3 Evidence of Payment**

Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

## **7. USE; COVENANTS TO PROTECT PREMISES AND SFPUC FACILITIES**

### **7.1 Tenant's Permitted Uses**

Tenant may use the Premises and any Improvements allowed hereunder only for the uses specified in the Basic Lease Information, as further described in this **Section 7**, and for no other use or purpose. Tenant may continue to operate Tenant's conveyor system on the Conveyor Site, to move aggregate mined from its SMP 32 premises to Tenant's processing plant located outside of the Premises, as called for in SMP 24 and SMP 32, and as allowed prior to the Commencement Date under a non-exclusive license described in Lease No. 3931. Effective as of

the Commencement Date, such license is revoked and the Conveyor Site is part of the Premises under this Lease. Tenant shall manage water elevations in Pond F3 East in accordance with the Water Management Agreement. Subject to the Water Management Agreement, Tenant may use Ponds F2 and F3 West as a supplemental source of wash water at Tenant's offsite processing plant and as a supplemental source of water for dust suppression related to Tenant's conveyor system and irrigation of quarry plantings on the Lease No. 3931 Premises. Subject to the Water Management Agreement, Tenant may also use Pond F3 East as a supplemental source of water for the same purposes, provided that Tenant obtains City's advance consent to such use and the water elevation in the center of Pond F3 East exceeds 195 feet, North American Vertical Datum of 1988. Tenant may continue to use the northeastern 18.33-acre parcel of the Existing Lease No. 3292 Premises to collect surface water and excess water pumped from Tenant's off-site plant in transit to Tenant's off-site ready-mix pond. Tenant may also use the northeastern 18.33 acre parcel to dewater Lease No. 3931 premises and store slurry water associated with Tenant's conveyor system. However, in no event may Tenant deposit any quarry fines or spoils from the SMP 32 mining pit or any of Tenant's other mining operations into Pond F2 or Ponds F3 East or West. Tenant may, however, deposit on the 30-acre parcel of Existing Lease No. 3292 overburden and fines from its operations on its fee-owned property covered by SMP 24 and from its operations on the premises covered by SMP 32. Further, in no event may Tenant import water into Pond F2 or Ponds F3 East or West except as follows: (i) Tenant may continue to import water, including slurry water, into Pond F3 West; and (ii) Tenant may import water from Pond F3 East into Pond F2, but only with SFPUC's written permission which shall not be unreasonably withheld provided SFPUC is satisfied that the imported water is of equal or better quality to the Pond F2 water. Any reclamation shall be conducted prior to the Expiration Date (except as otherwise provided in **Sections 4.1 and 17.3**), and in accordance with the reclamation plan previously approved by Alameda County. Reclamation may include slope grading, finish grading, re-vegetation and subsequent monitoring and maintenance, subject, however, to the above restrictions and prohibitions regarding depositing fines and spoils and importing slurry water.

## **7.2 Covenants Regarding Use**

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

### **(a) No Unlawful Uses or Nuisances**

Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

### **(b) Covenant Against Waste**

Tenant shall not cause or permit any waste, damage or injury to the Premises.

### **(c) Covenant to Protect SFPUC Facilities**

At all times during the Term of this Lease, Tenant shall protect the SFPUC Facilities from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Tenant's sole expense. Tenant shall

promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal utility purposes. Alternatively, subject to the SFPUC General Manager's approval in his or her sole discretion, Tenant may pay City for the costs determined by the SFPUC General Manager that City will incur as a result of such interference.

City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and related SFPUC Facilities. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

**(d) Covenant to Protect Water Courses**

Subject to Tenant's permitted uses and reclamation obligations, Tenant shall not cause any ponding on the Premises. Tenant shall not cause any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water (except Ponds F2 and F3 East and West) on, in, under or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

**(e) Covenant Against Dumping**

Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

**(f) Covenant to Protect Trees or Other Native Vegetation**

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the SFPUC.

**(g) No Tree Planting**

Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided herein, or as required by the approved reclamation plan approved as part of SMP 24.

**(h) Covenant Against Hunting or Fishing**

Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the SFPUC provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

**(i) Pesticides Prohibition**

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of

certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the SFPUC an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

**(j) Weed Control**

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Section 7.2(i)**.

**(k) Maintenance of Roads**

Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads.

**(l) Covenant Against Burning**

Tenant shall not burn any weeds, debris or other substances on or about the Premises.

**(m) No Off-Road Vehicles**

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

**(n) Restrictions on Heavy Equipment and Vehicles**

To prevent damage to City's underground pipelines, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of City's pipelines:

**(i)** The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than stated above, Tenant shall submit to SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely affected.

**(ii)** The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

**(iii)** Tenant shall not use vibrating compaction equipment unless it first obtains City's written approval.

(iv) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by City all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided above.

#### (o) Watershed Management Plan

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises hereunder.

### 8. IMPROVEMENTS

#### 8.1 Construction of Improvements

Except as contemplated in **Section 7.1** and SMP 24 (including the reclamation plan), Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without SFPUC's prior written consent in each instance, which SFPUC may give or withhold in its sole and absolute discretion. Subject to SFPUC's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by SFPUC in writing, (ii) by duly licensed and bonded contractors or mechanics approved by SFPUC, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that SFPUC may reasonably impose, including, without limitation, provision of such completion security as is acceptable to SFPUC. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of the SFPUC Facilities, or any portion thereof, or SFPUC's access thereto. Before the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to SFPUC. No material change from the plans and specifications approved by SFPUC may be made without SFPUC's prior consent. SFPUC and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish SFPUC with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 20.2(c)**.

#### 8.2 Ownership of Improvements

Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of **Section 8.1** shall be and remain Tenant's property during the Term. Before the Expiration Date or immediately upon any earlier termination of this Lease, Tenant shall remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 23.1**, unless SFPUC, at its sole option and without limiting any of the provisions of **Section 8.1**, requires as a condition to approval of any such Improvements or Alterations that such Alterations or Improvements remain on the Premises at the expiration or termination of this Lease or unless SFPUC as a condition of such approval

reserves the right to elect by notice to Tenant not less than thirty (30) days before the end of the Term to have such Improvements or Alterations remain on the Premises.

### **8.3 Tenant's Personal Property**

All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 23.1**. At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

## **9. MAINTENANCE OF DAILY PUMPING RECORDS**

Tenant shall maintain daily pumping records of all flows pumped out of and into Pond F2. Such records shall be in the manner and form prescribed by City as more particularly described in attached **Exhibit C**. Tenant shall transmit the data to SFPUC monthly, via email, to [abardo@sfgwater.org](mailto:abardo@sfgwater.org). Tenant shall keep such records for four (4) years after the year to which such records relate. City may view such records at the Premises by providing 48 hour notice to Tenant.

## **10. REPAIRS AND MAINTENANCE**

### **10.1 Tenant Responsible for Maintenance and Repair**

Subject to the provisions of the Water Management Agreement, Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date; provided, however, that at City's expense, City shall be responsible for the management, repair and maintenance of conditions on the Premises to the extent such conditions are caused by City's management of water in and/or about the Premises. Subject to the foregoing, City shall not under any circumstances be responsible for the performance of any repairs, changes or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises including any permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction and so that the Premises, including the existing building, shall be at least equal in quality, value and utility to the Premises as it exist on the Commencement Date. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

### **10.2 Utility Service; Use of On-Site Nonpotable Water Supplies**

#### **(a) General**

City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial

service, and for all deposits, connection and installation charges, provided however, Tenant agrees that it shall a) purchase all potable water from SFPUC unless and to the extent SFPUC is unwilling or unable to provide such service and b) purchase from SFPUC all electricity necessary for operations in the Premises, at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC. Tenant shall be responsible for installation and maintenance of all facilities required in connection with utility services. The Parties agree that any and all utility improvements shall be subject to the provisions of **Section 8.1** and that such improvements shall be deemed Alterations. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities unless installed in order to provide service to Tenant) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

#### **(b) Recycled Water and Naturally Occurring Water Supply.**

Tenant shall use industry best practices to maximize the efficient use of water in its nearby quarry operations and land management, including without limitation, whenever possible and to the extent available, recycling water that it uses in its quarry operations or using such water for landscaping or other nonpotable uses on the Premises and Lease No. 3931 premises. Subject to **Sections 7.1** and **10.2(c)**, Tenant is permitted to use water from Ponds F2, F3 West and F3 East as a supplemental source of wash water at Tenant's offsite processing plant and as a supplemental source of water for dust suppression related to Tenant's conveyor system and irrigation of quarry plantings on the Lease No. 3931 premises. Tenant is permitted to use the naturally occurring water that enters the Premises only as a secondary source to supplement Tenant's water supply available from Tenant's own property and the Lease No. 3931 premises over the term of this Lease.

#### **(c) Insufficient Naturally Occurring Water Supply: SFPUC Water Supply.**

As of the date this Lease is executed, nonpotable water supplies exist on the Premises to supplement Tenant's own nonpotable water supplies used for aggregate processing operations, dust control, and landscape irrigation at its nearby plant. Tenant acknowledges that the amount of water on the Premises is dependent on hydrologic conditions and subsurface characteristics in the Sunol Valley, which limit the available water in dry years. Tenant acknowledges that SFPUC is in no way responsible for providing additional water to Tenant to supplement such naturally occurring water on the Premises or the water supply on Tenant's own property for use in Tenant's aggregate processing operations.

### **10.3 Maintenance of Fences**

Tenant shall maintain in good condition and repair and its expense the existing fence along or about the property line of the Premises.

### **10.4 No Right to Repair and Deduct**

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce



any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

## **11. LIENS**

Tenant shall keep the Premises and all of City's property free (including, without limitation, the SFPUC Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and material supplier's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

## **12. COMPLIANCE WITH LAWS**

### **12.1 Compliance with Laws**

Subject to the provisions of the Water Management Agreement, Tenant shall promptly, at no cost to City, maintain the Premises, including any Improvements and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however, that City at its expense shall be responsible for complying with Laws with respect to conditions within the Premises to the extent such conditions are caused by City's management of water in and/or about the Premises. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.5**, no occurrence or situation arising during the Term, nor any present or future Law,

whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## **12.2 Regulatory Approvals**

### **(a) Responsible Party**

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the SFPUC. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

### **(b) City Acting as Owner of Real Property**

Tenant further understands and agrees that City, acting by and through its SFPUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

## **12.3 Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

## **12.4 Reports**

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and all Laws.

### **13. FINANCING; ENCUMBRANCES; SUBORDINATION**

#### **13.1 Encumbrance of Landlord's Fee Interest**

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

##### **(a) Encumbrance by City**

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

##### **(b) Encumbrance By Tenant**

Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the SFPUC Facilities, City's estate in the Premises or any adjoining property, City's interest under this Lease, or any portion thereof.

#### **13.2 Leasehold Encumbrances**

Without limiting **Section 17**, Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

### **14. DAMAGE OR DESTRUCTION**

#### **14.1 Damage or Destruction to the Improvements**

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Tenant shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises to a condition reasonably acceptable to City and in compliance with applicable laws. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Tenant during the Term, Tenant may, at its option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in before such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1**. However, if Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements as provided above, Tenant shall promptly, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 23.1**.

#### **14.2 Abatement in Rent**

In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable hereunder, unless such damage or destruction is the result of City's gross negligence or arises from actions performed in accordance with the Water Management Agreement.

### **14.3 Waiver**

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions of this Lease.

## **15. INTENTIONALLY OMITTED**

## **16. EMINENT DOMAIN**

### **16.1 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

### **16.2 Total Taking; Automatic Termination**

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

### **16.3 Partial Taking; Election to Terminate**

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City shall have the right to terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this **Section 16** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

### **16.4 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to **Section 16.2**, or pursuant to an election under **Section 16.3**, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value

of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

### **16.5 Partial Taking; Continuation of Lease**

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 16.3**, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

### **16.6 Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **17. ASSIGNMENT AND SUBLETTING**

### **17.1 Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant or any entity controlling Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements or its leasehold estate hereunder (collectively, "**Assignment**"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "**Sublease**"), without the SFPUC's prior written consent in each instance, which the SFPUC may not unreasonably withhold. Any Assignment or Sublease, without the SFPUC's prior consent, shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to terminate immediately this Lease by sending written notice to Tenant.

Any transfer of a majority of Tenant's interest in the Lease or Lease No. 3931, including but not limited to any change in control of Tenant, in one or more transactions, shall be subject to a \$2,000,000.00 transfer fee (Transfer Fee). City may condition any consent to such an assignment or transfer on the receipt of the Transfer Fee. In no event shall Tenant be required to pay more than one Transfer Fee in connection with the assignment or transfer of an interest in the Lease or Lease No. 3931.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an

investment in property. Therefore, while Tenant may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant which is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

### **17.2 Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "Notice of Proposed Transfer") to the SFPUC of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease (or, in the case of a merger or other change in control, a detailed description of the proposed change), identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide the SFPUC with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the SFPUC may reasonably request.

### **17.3 SFPUC's Response**

Within twenty (20) business days after SFPUC's receipt of the Notice of Proposed Transfer and any such additional information requested by SFPUC (the "**Response Period**"), City may, by written notice to Tenant ("**Election Notice**"), elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer (the "**Subject Premises**") on the terms and conditions set forth in such notice, except as otherwise provided in **Section 17.4**, or (b) terminate this Lease as to the entirety of the Subject Premises, with a proportionate reduction in Base Rent effective upon surrender of the Subject Premises (a "**Recapture**"). If City makes either election, Tenant shall nonetheless have the right to complete reclamation of the Subject Premises in accordance with SMP 24, provided that Tenant promptly delivers to City a written description of the nature of the activities and the timeline for completion, and provided, further, that Tenant conducts such reclamation activities with reasonable diligence and in any event completes such measures by the earlier of (i) one year after the date of City's Election Notice, or (ii) the Lease Expiration Date. During such period, Tenant shall have a nonexclusive, nonassignable, and nonpossessory License, as described in **Section 4.1**, to enter and use the Subject Premises solely for the purpose of performing the necessary reclamation activities, and applicable provisions of the Lease shall continue to apply with respect to the Subject Premises, including without limitation **Sections 3.3, 7.2, 8, 9, 10, 11, 12, 16, 19, 20, 22, 23.1, 24, 25, and 26**.

If City declines to exercise either of the options provided in clauses (a) and (b) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of City's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to the SFPUC's prior written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. The parties recognize and agree that the purpose of this Lease is to allow for the permitted uses and not to create an investment in property, and therefore City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount thereof attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable hereunder, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide the SFPUC with such information regarding the proposed Transferee and the proposed Assignment or Sublease as the SFPUC may reasonably request.

Notwithstanding the foregoing, if following the City's declining to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give SFPUC a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after the SFPUC's receipt of such new Notice of Proposed Transfer.

In the event the City elects either of the options provided in clauses (a) or (b) above, the City shall be entitled, at its sole option, to enter into a lease, sublease or assignment agreement with respect to the Subject Premises with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies hereunder or at Law or in equity.

#### **17.4 Sublease or Recapture Premises**

If City elects to Sublease or Recapture from Tenant as provided in **Section 17.3**, the following shall apply:

##### **(a) Sublease**

In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Premises") for any legal purpose, subject to Tenant's License for reclamation measures, if any, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), reasonably adjusted as necessary to reflect the extent, if any, to which City's use of the Sublease Premises is impaired or limited by Tenant's reclamation measures, (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall not unreasonably interfere with reclamation measures, if any, undertaken in accordance with the License, and shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

##### **(b) Recapture**

In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "**Recapture Premises**") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all of their rights and obligations hereunder with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof and except for the License for reclamation activities described in **Section 17.3**, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such separation.

## **17.5 Effect of Transfer**

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Section shall, at the option of the City in its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

## **17.6 Assumption by Transferee**

Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

## **17.7 Indemnity for Relocation Benefits**

Without limiting **Section 17.6**, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

## **17.8 IPM Plan and Form CMD-12B-101**

As a condition to any Assignment or Sublease, the Transferee shall execute Form CMD-12B-101 (as such term is defined in Section 29.22 (Non Discrimination in City Contracts and Benefits Ordinance)) with supporting documentation and secure the San Francisco Human Rights Commission approval of such form. As a condition to any Assignment or Sublease, the Transferee shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of **Section 7.2(i)** (Covenant Against Use of Chemical Herbicides and Pesticides) or obtain an exemption, through SFPUC. Any transferee must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

## **18. DEFAULT; REMEDIES**

### **18.1 Events of Default**

Any of the following shall constitute an event of default ("**Event of Default**") by Tenant hereunder:

#### **(a) Rent**

Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within



which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

**(b) Covenants, Conditions and Representations**

Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

**(c) Vacation or Abandonment**

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

**(d) Bankruptcy**

The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

**18.2 Remedies**

Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

**(a) Terminate Lease and Recover Damages**

The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

### **(b) Continue Lease and Enforce Rights**

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 18.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

### **(c) Appointment of Receiver**

The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

## **18.3 City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

## **18.4 Special Administrative Charges.**

Without limiting Landlord's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant (i) constructs or installs any Alteration or Improvement without the written approval of Landlord as required by **Section 8** of this Lease, or (ii) fails to make a repair required by **Section 10** on a timely basis, or (iii) fails to provide evidence of the required insurance coverage described in **Section 20** below on a timely basis, then upon written notice from Landlord of such failure or unauthorized action, Tenant shall pay, as an additional charge, the respective amount specified in the table below in consideration of Landlord's administrative

cost and expense in providing notice or performing inspections. In the event Tenant fails to remove the unauthorized Alteration or Improvement and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and Landlord delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to Landlord, as an additional charge, the respective amount specified in the table below for each additional written notice Landlord delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Improvements or Alterations that are not approved by Landlord	8	\$700.00	\$800.00
Failure to make required repairs	9	\$600.00	\$700.00
Failure to obtain/maintain insurance	19	\$600.00	\$700.00

Such administrative fees shall be due and payable as Additional Rent. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Landlord will incur in connection with providing notices or performing inspections as set forth above and that Landlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

## **19. WAIVER OF CLAIMS; INDEMNIFICATION**

### **19.1 Waiver of Claims**

Subject to the provisions of the Water Management Agreement, Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from (i) liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, or (ii) liability to the extent caused by conditions created by City's management of water in and/or about the Premises, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of

this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) Tenant represents and agrees that the ponds on the Premises are not the primary source of water it uses for its mining operations, but rather serve as a supplemental water source of non-potable water used for aggregate processing operations, dust control, and landscape irrigation at its nearby plant. As of the date this Lease is executed, non-potable water supplies exist on the Premises to supplement Tenant's own non-potable water supplies. However, Tenant expressly acknowledges that factors beyond City's control affect the flow of water into and out of the ponds, and that non-potable water supplies may become unavailable due to drought or other factors affecting the local hydrology. Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to the diminution or loss of non-potable water supplies on the Premises.

(c) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

## **19.2 Tenant's Indemnity**

Subject to the provisions of the Water Management Agreement, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the SFPUC Facilities) howsoever or by whomsoever caused, occurring in, or on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the sole negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only (i) such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties, and (ii) Losses to the extent resulting from conditions created by City's management of water in and/or about the Premises. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and

City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

## **20. INSURANCE**

### **20.1 Tenant's Insurance**

Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof, insurance in the following amounts and coverages:

#### **(a) Property Insurance**

Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements. Such insurance shall include Tenant and City as named insureds as their respective interests may appear. With respect to the City's interest, such insurance shall, include business income (business interruption) and extra expense coverage with coverage amounts that will reimburse Tenant for all direct or indirect loss of income and charges and costs incurred arising out of all perils insured against by Tenant's property insurance coverage, including prevention of, or denial of use of or access to, all or part of the Premises, as a result of those perils. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. The business income and extra expense coverage shall be issued by the insurer that issues Tenant's all-risk property insurance, shall provide coverage for no less than twelve (12) months of the loss of income, charges, and costs contemplated under the Lease and shall be carried in amounts necessary to avoid any coinsurance penalty that could apply. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements; which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at inception and each renewal by Insurer selected and paid by Tenant and reasonably acceptable to City; provided, however, that City shall have the right to ascertain the full insurable value at its own expense, if an agreement cannot be made with Tenant, except that in the event such full insurance value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

#### **(b) Commercial General Liability Insurance**

Commercial General Liability Insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, broad-form property damage, independent contractors, liquor liability, personal injury, products and completed operations.

#### **(c) Worker's Compensation Insurance**

Worker's Compensation Insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident. The workers' compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by Tenant and its Agents on or about the Premises.

**(d) Business Automobile Liability**

Business Automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles as applicable, if Tenant uses or causes to be used any vehicles in connection with its use of the Premises.

**(e) Environmental Pollution Liability**

If Tenant intends to or is required to perform any Hazardous Material Remediation on or about the Premises, then Tenant shall first notify City of the proposed work and following City's approval, Tenant or its contractor shall maintain in force, throughout the performance and completion of the Remediation, environmental pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager based upon the scope of work.

**(f) Other Insurance**

City reserves the right to change amounts and types of insurance as permitted use of the property may change from time to time.

**20.2 General Requirements**

All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

**(a)** Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

**(b)** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

**(c)** All liability insurance policies shall be endorsed to provide the following:

**(i)** Name the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

**(ii)** That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

**(iii)** All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written or email notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information. Tenant shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to City within one

business day of Tenant's receipt and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by Section 20.1 (Tenant's Insurance) from a different insurer meeting the qualifications of this Section.

### **20.3 Proof of Insurance**

Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies. Tenant and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of tenant and contractor insurance coverage. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, after giving Tenant ten (10) days prior notice, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefore.

### **20.4 Review of Insurance Requirements**

Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

### **20.5 No Limitation on Indemnities**

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Sections 18.2 and 23.2**, or any of Tenant's other obligations or liabilities under this Lease.

### **20.6 Lapse of Insurance**

Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant, provided Tenant has been given written notice of such lapse by the City, and Tenant has failed within ten (10) business days thereafter to cause such insurance to be reinstated if such insurance is then commercially available.

### **20.7 Tenant's Personal Property**

Tenant may, at its expense, insure Tenant's Personal Property.

### **20.8 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, City and Tenant (each a "Waiving Party") each waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the

Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Property or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **21. ACCESS BY CITY**

### **21.1 Access to Premises by City**

#### **(a) General Access**

City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any reasonable purpose. However, prior to performing maintenance and repairs on the Premises, SFPUC will provide at least five (5) days advance written notice, except in an emergency.

#### **(b) Emergency Access**

In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

#### **(c) No Liability**

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

#### **(d) No Abatement**

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

#### **(e) Minimize Disruption**

City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

### **21.2 Pipeline and Utility Installations**

Without limiting **Section 21.1**, City shall have the right at all times, to enter upon the Premises upon forty-eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or



disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

### **21.3 Roadways**

City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the SFPUC Facilities.

## **22. ESTOPPEL CERTIFICATES**

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no known defaults under this Lease (or if so, specifying the same), and (d) the dates, if any, to which the Rent has been paid. Any such certificate shall be in the form attached as **Exhibit D**, and may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

## **23. SURRENDER**

### **23.1 Surrender of the Premises**

Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris, hazards, and Tenant's equipment and personal property, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant, and reclaimed in accordance with the Reclamation Plan for SMP 24 issued by Alameda County Planning Commission Resolution No. 86-62 on January 23, 1986, as amended, subject to Tenant's right to complete reclamation following an early termination as provided in **Sections 4.1 and 17.3**. Tenant's reclamation obligations with respect to the surrendered Premises shall survive the expiration or sooner termination of the Lease. On or before the Expiration Date or any earlier termination of this Lease, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises (except for the building and other improvements existing on the Commencement Date and any other Improvements or Alterations (including permitted reclamation improvements) that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations, as modified by permitted reclamation improvements. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all

Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in **Section 16** (Eminent Domain).

### **23.2 Automatic Reversion**

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefore by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**.

## **24. HAZARDOUS MATERIALS**

### **24.1 No Hazardous Materials**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, except for limited amounts of fuel and petroleum products used in connection with servicing and operating vehicle, machinery, and other equipment located on the Premises provided such products are used and stored only in such quantities as are necessary for such purpose, in a safe manner and in compliance with all applicable laws. However, in no event may Tenant maintain a fuel storage tank on the Premises. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Section 21**, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

### **24.2 Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in **Section 24.1**, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in **Section 19.2**, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property affected by the Release to its prior condition including, without limitation, fines and penalties imposed by

regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

## 25. SECURITY

As of the date of this Lease, City holds the sum of Thirty-five Thousand Dollars (\$35,000) in cash and a faithful performance lease bond in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance of all terms, covenants and conditions of this Lease. In addition, Landlord holds a lease bond in the amount of Two Million Dollars (\$2,000,000) as security for the faithful performance of SFPUC Lease No. 3931. Prior to the Commencement Date, Tenant shall amend the \$2,000,000 bond to cover this Lease as well as Lease No. 3931 and shall provide a copy of the amended bond to City. Tenant agrees that City may (but shall not be required to) apply such security (in the total amount of \$2,085,000) (collectively, the “**Security**”) in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents or Invitees (including without limitation any damage arising from Tenant's reclamation activities, whether occurring during the Term or after termination or expiration), to pay the Transfer Fee under **Section 17.1** or any fines assessed against Tenant under this Lease, or for any other failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City avail itself of any portion of the Security to cure any Event of Default by Tenant or pay any Transfer Fee under this Lease or Lease No. 3931 or any fine of Tenant, then Tenant shall immediately replenish the security to the total original amount of Two Million Eighty-five Thousand Dollars (\$2,085,000), and Tenant's failure to do so within five (5) business days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the Security shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

Prior to expiration of each of the \$2,000,000 bond and \$50,000 bond, Tenant shall renew or replace such bonds with valid surety bonds or an irrevocable letter of credit (each naming City as beneficiary, in a form and from an issuer approved by City), or increase the cash security deposit so as to maintain throughout the Term Security for Tenant's performance of this Lease in the total amount of \$2,085,000. Tenant shall keep such bonds and letters of credit, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination of this Lease, to insure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such bond or letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof. In the event of any nonextension of any such bond or letter of credit, Tenant shall replace such security with another form permitted hereunder at least ten (10) days before expiration, and if Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such bond or letter of credit and to hold the funds so obtained as part of the Security required hereunder. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the bond or letter of credit or deposit of cash security in the full amount required hereunder.

The foregoing provisions of this **Section 17** to the contrary notwithstanding, a portion of the Security, in the amount of Thirty-five Thousand Dollars (\$35,000) shall be maintained in cash at all times during the Term and during any period of reclamation following the termination of the Lease. If City applies the Security as permitted under this Lease, Tenant shall promptly replenish it in a form permitted hereunder, but such that at least \$35,000 remains in the form of cash.

## **26. GENERAL PROVISIONS**

### **26.1 Notices**

Except as otherwise expressly provided in this Lease, any notice, consent, request or approval given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to:

(a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or

(b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. A properly addressed notice, consent, request, or approval transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

### **26.2 No Implied Waiver**

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises before the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

### **26.3 Amendments**

Neither this Lease nor any term or provision of this Lease may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

## **26.4 Authority**

If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

## **26.5 Joint and Several Obligations**

The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

## **26.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion.

## **26.7 Successors and Assigns**

Subject to the provisions of **Section 17** relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer, provided that, in each such case, the transferee expressly assumes, for the benefit of the Tenant, all of the obligations of the Landlord hereunder accruing from and after the effective date of such sale, assignment or transfer.

## **26.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects

a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **26.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **26.10 Governing Law**

This Lease shall be construed and enforced in accordance with the Laws of the State of California.

### **26.11 Entire Agreement**

This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts and any changes from such drafts) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

### **26.12 Attorneys' Fees**

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **26.13 Holding Over**

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis with ongoing adjustments in Base Rent on each Adjustment Date as set forth in **Section 5.2** (Adjustments in Base Rent) or at such other Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent equal to 150% of the Base Rent in effect at the start of the holdover, and shall entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent.

### **26.14 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

### **26.15 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

### **26.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

### **26.17 Relationship of Parties**

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

### **26.18 Transfer by City**

If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

## **26.19 Recording**

Tenant agrees that it shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

## **26.20 Non-Liability of City Officials, Employees and Agents**

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

## **26.21 Wages and Working Conditions**

Tenant agrees that any person performing labor in connection with any Alteration at the Premises that is a “public work or improvement,” as defined under Section 6.22E of the San Francisco Administrative Code or a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds or the equivalent of public funds) shall be paid not less than the highest prevailing rate of wages (as determined under Section 6.22(E) of the San Francisco Administrative Code for work in San Francisco, and as determined in the local jurisdiction if in a different county), shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the county in which the Premises are located. Tenant shall include in any contract for such Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

## **26.22 Non-Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Tenant agrees not to discriminate against any employee of, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### **(b) Subleases and Other Subcontracts**

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant’s failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.



**(c) Non-Discrimination in Benefits**

Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) Condition to Lease**

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

**26.23 Requiring Health Benefits for Covered Employees**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

**(a)** For each Covered Employee Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

**(b)** Notwithstanding the above, if Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

**(c)** Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within thirty (30) days after receiving

City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty- (30-) day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

#### **26.24 Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have

a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the names of each person, entity or committee described above

#### **26.25 No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **26.26 MacBride Principles - Northern Ireland**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

#### **26.27 Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts, which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City.

#### **26.28 Charter Provisions**

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

#### **26.29 Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of any Improvements or Alterations, or otherwise in the performance of this Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith

with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

### **26.30 Prohibition of Tobacco Sales and Advertising**

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

### **26.31 Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

### **26.32 Consents, Approvals, Elections and Options**

Whenever this Lease requires or permits the giving or making by City or SFPUC of any consent, approval, election, or option, the General Manager of SFPUC, or his or her designee, shall be authorized to provide or make such consent, approval, election, or option, except as otherwise provided by applicable law, including City's Charter, or by SFPUC's Real Estate Guidelines. No consent, approval, election or option shall be effective unless given or made in writing.

### **26.33 Disclosure**

Tenant understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), apply to this Lease and any and all records, information, and materials submitted to the City in connection with this Lease. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Lease.

### **26.34 Bottled Drinking Water**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of this Lease as though fully set forth.

## **26.35 Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “Chapter 12 T”), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions. Tenant’s failure to comply with the obligations in this Subsection shall constitute a material breach of this Lease.

(c) Tenant and any Subtenants shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and any Subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Tenant and Subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and any Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and any Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement (“OLSE”), available on OLSE’s website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and any Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

### **26.36 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

### **26.37 Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE SFPUC HAS BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE SFPUC APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.**

*[SIGNATURES ON FOLLOWING PAGES]*

City and Tenant have executed this Lease in triplicate as of the date first written above.

**CITY:**

**TENANT:**

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation

**MISSION VALLEY ROCK CO**, a California corporation

By: \_\_\_\_\_  
HARLAN L. KELLY, JR.  
General Manager  
San Francisco Public Utilities  
Commission

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AUTHORIZED BY**

**SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION**

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

Attested: \_\_\_\_\_  
Secretary

Board of Supervisors Resolution No. \_\_\_\_\_  
Adopted \_\_\_\_\_

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
[Print Name]  
Deputy City Attorney

## **EXHIBIT A**

### Legal Description of Premises

All that certain real property located in unincorporated Sunol, Alameda County, California, described as follows:

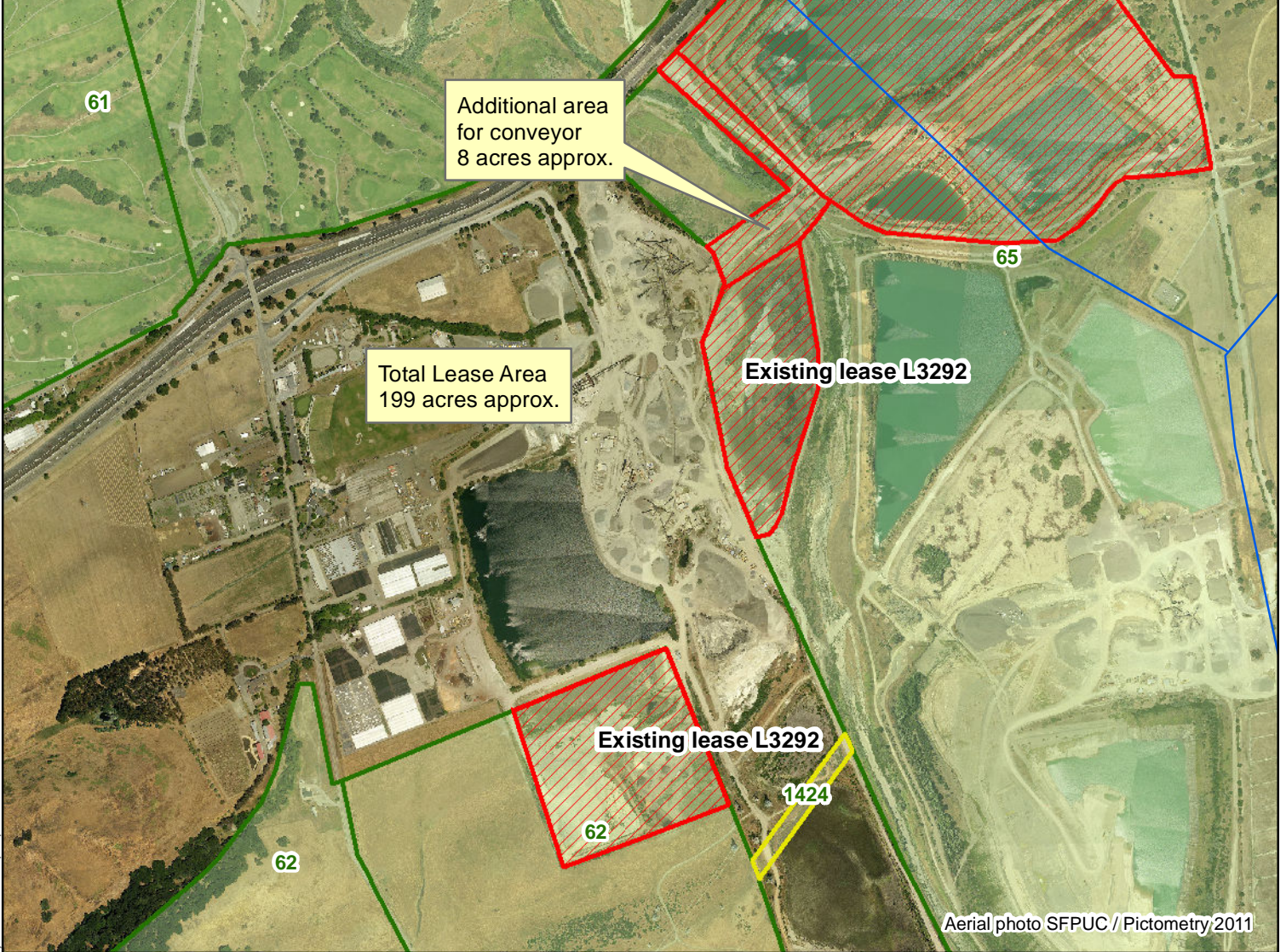
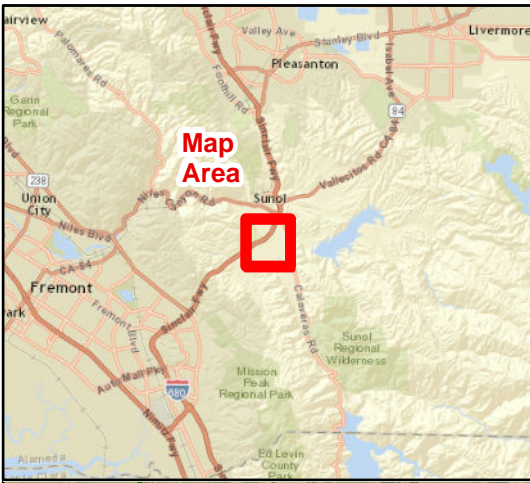
A portion, approximately 169 acres in area, of the real property identified in SFPUC's records as Parcel No. 65 and a portion, approximately 30 acres in area, of the real property identified in SFPUC's records as Parcel 62, as each is shown approximately on attached Exhibit B.



**EXHIBIT B**

SFPUC Drawing of Premises

[See attached]




Aerial photo SFPUC / Pictometry 2011

**Legend**

 Area of lease

 SFPUC Pipelines

 SFPUC Parcels (Fee Owned)

 SFPUC Parcels (Easement / Road)



**Lease L4289 to  
Mission Valley Rock Co.  
(SMP 24 Quarry Lease)  
Sunol Valley**



Scale 1:12,000  
0 Feet  
1,000

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. The City is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

Date: 5-20-15 Author: J.Lukins

## **EXHIBIT C**

### **Requirements for Daily Pumping Records**







**EXHIBIT D**

**Forms of Estoppel Certificates**

*[See attached]*

LANDLORD ESTOPPEL CERTIFICATE

[address]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), relating to certain property located in \_\_\_\_\_ County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached hereto is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is \_\_\_\_\_;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented or amended in any way;
4. The Lease represents the entire agreement between Tenant and Landlord with respect to the Premises;
5. To Landlord’s knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time or both, would constitute a default by Landlord or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Landlord.

The truth and accuracy of the certifications contained herein may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting through its Public  
Utilities Commission

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_



TENANT ESTOPPEL CERTIFICATE

[address]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), relating to certain property located in \_\_\_\_\_ County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Landlord that:

1. Attached hereto is a true and correct copy of the Lease;
2. Tenant has accepted possession of the Premises under the Lease;
3. The Expiration Date of the Lease is \_\_\_\_\_;
4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented or amended in any way;
5. The Lease represents the entire agreement between Tenant and Landlord with respect to the Premises;
6. To Tenant's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time or both, would constitute a default by Landlord or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
7. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained herein may be relied upon by Landlord and the addressee set forth above, and their successors and assigns.

Very truly yours

[signature block for Tenant]

**EXHIBIT E**  
**WATER MANAGEMENT AGREEMENT**

*[See attached]*

## WATER MANAGEMENT AGREEMENT

This WATER MANAGEMENT AGREEMENT (“Agreement”), dated as of August 23, 2013 (“**Effective Date**”), is entered into by and between the CITY AND COUNTY OF SAN FRANCISCO (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and MISSION VALLEY ROCK CO., a California corporation (“**MVR**”), and is made with reference to the facts and circumstances described in the Recitals set forth below.

### RECITALS

A. City and G. Armanino & Son, Inc. (“**Armanino**”) entered into that certain master lease agreement dated June 20, 1985 (“**Master Lease**” or “**Lease No. 3555A**”) for Armanino’s use of approximately 204 acres of land in Sunol, California (“**Master Lease Premises**”).

B. Armanino and MVR entered into that certain Sublease Agreement dated June 20, 1985 (“**Sublease**”) for MVR’s use of approximately 135 acres of the Master Lease Premises in Sunol, California (“**Existing SMP 24 Premises**”).

C. City approved the assignment of Armanino’s interest in the Master Lease to MVR, effective December 23, 1986.

D. MVR and City are also parties to a lease dated September 26, 2000 (“**Lease No. 3931**”) for MVR’s use of approximately 242 acres of land adjacent to the Existing SMP 24 Premises, pursuant to which MVR extracts material under the terms of Alameda County Surface Mining Permit No. 32 (“**SMP 32**”). Lease No. 3931 superseded and incorporated the 69-acre portion of Lease No. 3555A designated as Parcel A of the Master Lease Premises. Lease No. 3931 will expire on October 31, 2040.

E. Lease No. 3555A expired on October 31, 2012 and is in holdover status. While Lease No. 3555A is in holdover status, MVR continues to manage three ponds (respectively, Pond F2, Pond F3 West, and Pond F3 East) located on the Master Lease Premises. MVR uses Pond F2 as a supplemental water source for its SMP 32 quarry operations. MVR owns and maintains two (2) pumps (“**MVR Pumps**”) to manage the water elevation in Pond F3 East located in the Existing SMP 24 Premises.

F. SFPUC is currently engaged in constructing the San Antonio Backup Pipeline Project (the “**Project**”) in the vicinity of the Master Lease Premises. MVR and City have met on several occasions to discuss the City’s need to achieve and maintain a prescribed water elevation in Pond F3 East during construction of certain Project improvements to Pond F3 East.

G. Pursuant to Section 17 of the Master Lease, the provisions of which were incorporated by reference into Section 7 of the Sublease, the SFPUC intends to authorize its contractor for the Project, Ranger Pipelines, Inc. (“**Ranger**”), to install two (2) new pumps (“**City Pumps**”), as shown in the drawing attached as **Exhibit A**, at the City’s cost to manage the water level in Pond F3 East. City and MVR desire to enter into this Agreement to set forth the parties’ respective rights and obligations with respect to (i) the installation and use of the City Pumps on the Existing SMP 24 Premises, and (ii) the use of MVR’s existing equipment, to manage the water elevation in Pond F3 East.

H. An environmental impact report (“EIR”) was prepared for the Project, and the final EIR (“FEIR”) was certified by the City’s Planning Commission on September 20, 2012, by Motion No. M-18705. The FEIR considered the environmental impact of lowering the water level in Pond F3 East as required for Project construction.

I. On September 25, 2012, by Resolution No. 12-0174, SFPUC’s Commission approved the Project, adopted findings (“CEQA findings”) and a Mitigation, Monitoring and Reporting Program required by the California Environmental Quality Act (“CEQA”), and authorized SFPUC’s General Manager to exercise any of the SFPUC’s rights under existing leases through Project-related agreements with lessees in the vicinity of the Project to accommodate the Project schedule and construction activities. The Project CEQA findings are incorporated herein by this reference.

J. The executive officer signing this Agreement has reviewed and considered the FEIR and the record as a whole, finds that the FEIR is adequate for SFPUC’s use in executing this Agreement, and further finds that since the FEIR was finalized there have been no substantial project changes and no substantial changes in Project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR.

K. In the event of a conflict between this Agreement and Lease No. 3555A, the terms and conditions of this Agreement shall prevail.

## AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, the parties hereby agree as follows:

1. **Term.** This Agreement shall commence on the Effective Date and expire on the later of (a) June 30, 2015, or (b) the date of final completion of SFPUC’s Project (“Term”), unless the parties extend the Term of this Agreement in writing. Notwithstanding the foregoing, if MVR’s holdover tenancy of the Existing SMP 24 Premises terminates without the parties entering into a new lease of the premises, then either party, by giving not less than ninety (90) days notice to the other, may terminate this Agreement early, effective on the termination date specified in such notice which shall be no sooner than the termination date of the tenancy.

2. **Ranger Obligations.** City will cause Ranger to install the City Pumps in Pond F3 East as follows (“Pump Installation”). Ranger shall:

a. Remove the MVR Pumps and replace them with the City Pumps, which the SFPUC shall purchase at its sole cost and continue to own after installation in Pond F3 East;

b. Deliver the removed MVR Pumps to MVR’s premises at 7999 Athenour Way, Sunol, California 94586;

c. Install five hundred (500) feet of 10-inch HDPE piping to extend the reach of the existing HDPE lines in order to accommodate lowering the water level to elevation 152 feet, North American Vertical Datum of 1988 (“**NAVD 1988**”) in the center of Pond F3 East;

d. Install fusible pipe flange ends, gaskets, and hardware to bolt the new pipe sections to the in place sections maintained by MVR;

e. Install additional cable and floats to extend motor control cables to the City Pumps in order to accommodate lowering the water level to elevation 152 feet (NAVD 1988), in the middle of Pond F3 East;

f. Connect the City Pumps to MVR’s existing pump control panel, switchgear, electrical motor cables and other water management equipment at Pond F3 East;

g. Reimburse MVR for the cost of electrical meters (including installation) to measure MVR’s power consumption arising from use of the City Pumps; and

h. Relocate electrical wiring and hoses currently serving MVR’s pumps.

**3. MVR’s Obligations.**

a. MVR shall make diligent, good faith efforts to cooperate with the Pump Installation by Ranger on behalf of the SFPUC.

b. MVR shall have the sole responsibility to operate the MVR Pumps and the City Pumps in accordance with the terms of this Agreement.

c. Upon receipt of notice from SFPUC to commence pumping (which notice may be delivered by email to Tom Jackson, MVR’s plant manager at Tom.Jackson@hanson.biz) (the “**Start Notice**”), MVR shall commence dewatering Pond F3 East, first using the MVR Pumps if the Start Notice is delivered prior to the City Pump Installation, and then using the City Pumps after the City Pump Installation.

d. Except for any necessary down time in connection with the City Pump Installation, MVR shall conduct pumping as follows:

(i) Initially, prior to completion of construction of the slurry wall, MVR shall conduct pumping on a test basis (A) from 7 PM until 7AM, Monday through Friday, and (B) if City so directs by notice to MVR, 24 hours per day on weekends and City holidays. If City’s inspector determines that such pumping causes turbidity, City shall direct MVR to modify this pumping schedule or cease pumping altogether, as necessary, until after the slurry wall is constructed.

(ii) Once the slurry wall is completed, MVR shall continuously conduct the pumping, twenty-four (24) hours per day, seven (7) days per week, as necessary to achieve and maintain the target pond elevation described in Section 4. City may adjust this pumping schedule if necessary, at City’s sole discretion, by giving notice to MVR.

(iii) Any notice from City to MVR under this **Section 3.d** may be delivered by email to Tom Jackson, MVR's plant manager, at Tom.Jackson@hanson.biz.

e. If and to the extent there is a conflict between MVR's obligations to pump water under this Agreement and MVR's rights and obligations under the applicable discharge permit, the applicable provisions of the discharge permit shall control.

**4. Target Pond Elevation.** MVR shall use its best efforts to assist SFPUC and Ranger to achieve a Pond F3 East elevation of 152 feet (NAVD 1988) by October 15, 2013, or such later date as may be directed by the SFPUC Assistant Sunol Regional Project Manager, and maintain such elevation for the remainder of the duration of the Project construction or as directed by the SFPUC Assistant Sunol Regional Project Manager.

**5. Use and Discharge of Pumped Water.** MVR shall manage all water pumped from Pond F3 East at the manifold connection to MVR's existing system, in accordance with the provisions of Surface Mining Permit 24, order no. R2-2008-0011 of the Bay Area Regional Water Quality Control Board, National Pollutant Discharge Elimination System Permit No. CAG982001 and any other applicable permits.

**6. Repair and Maintenance of City Pumps.** Throughout the Term, City shall cause Ranger to maintain and repair the City Pumps at the SFPUC's cost. MVR shall immediately notify the SFPUC Assistant Sunol Regional Project Manager in the event the City Pumps require maintenance or repair pursuant to the Notice section below.

**7. Monitoring of Pond Elevation.** City shall be responsible for monitoring the water elevation in Pond F3 East during the Term, at City's cost.

**8. Reimbursement of Electricity Charges.** Throughout the Term, City shall cause Ranger to reimburse MVR for its electricity costs to pump water under this Agreement. Such electrical usage is separately metered, but the power company combines the cost of such power with the cost of other electrical usage on MVR's electrical bill. MVR shall read the meters on a monthly basis and keep a log of the electricity usage to power the pumps as reflected on the meters. MVR shall provide Ranger with the monthly invoices from the utility company, together with a monthly calculation of City's pro-rata share of total billed electricity cost based on the separately metered City-related electricity usage. City shall have the right to inspect the meter(s) and examine, copy and audit MVR's log, books of account and pertinent data with respect to such electricity usage and costs. MVR shall cooperate fully with City and City's Agents in such examination. If any such inspection or audit shows that MVR overcharged for such costs, then MVR shall immediately upon notice reimburse such overpayment to City, together with interest thereon at the legal interest rate. Apart from reimbursement of power costs, this Agreement does not authorize any other reimbursement of costs.

**10. Hold Harmless.**

a. **Waiver of Hold Harmless Provisions.** Section 7 of the Sublease expressly incorporated the terms and conditions of Paragraph 22 of the Master Lease, entitled, *City to Be Held Harmless* ("**Hold Harmless Provision**"). City hereby waives the effectiveness

of the Hold Harmless Provision solely as to MVR's obligations stated in Sections 3.b, 3.c, and 3.d of this Agreement. Except as expressly waived by the City in this Section 10, the Hold Harmless Provision shall continue to be in full force and effect.

b. **Hold Harmless.** City shall indemnify and save harmless MVR and its officers, agents and employees, from all liabilities, charges, claims, suits, damages, expenses (including counsel fees) and costs (collectively, "**Claims**") on account of or by reason of any death of or injury to any person or damage to property of any kind whatsoever, whether the person or property of City, its agents, employees, contractors or licensees or third persons, caused by or arising from (i) pumping the water from and/or lowering the level of Pond F3 East in accordance with this Agreement; (ii) delays in Project construction that may result if MVR's pumping of the water in accordance with this Agreement fails to achieve a Pond F3 East elevation 152 feet NAVD 1988 by the target date(s) set by SFPUC or if due to circumstances beyond MVR's control, MVR is unable to pump the water in accordance with this Agreement; or (iii) construction of the Project, except to the extent any such Claims are caused by or arise from the negligence or willful misconduct of MVR or its employees, contractors or agents or MVR's breach of this Agreement.

**11. Notice to the Parties.** Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the City and MVR required or permitted under this Agreement shall be in writing and shall be given (a) by personal delivery; (b) by United States registered or certified mail, first class postage prepaid, or (c) by reputable commercial courier, to the City or MVR at its respective addresses for notice designated below or such other addresses as either party may designate by written notice given in the manner provided in this Section. For convenience of the parties, copies of notices may also be given by telefacsimile or email to the facsimile number and/or email address set forth below, if any, or such other number or email address as may be provided from time to time by notice given in the manner required under this Agreement; however, neither party may give official or binding notice by telefacsimile or email. Any correctly addressed notice given by a means that affords the sender evidence of delivery, attempted delivery, or rejected delivery shall be deemed to have been given and received at the date and time of confirmed delivery, attempted delivery (provided delivery is attempted on a business day), or rejected delivery.

**MVR:** Mike F. Roth, VP and General Manager  
Lehigh Hanson West Region  
12667 Alcosta Blvd., Suite 400  
San Ramon, CA 94583

**City:** Assistant General Manager  
Water Enterprise  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102-3220

With a copy to: David Tsztoo, Assist. Sunol Regional Project Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Ave., 9th Floor  
San Francisco, CA 94102  
Phone 415-934-5792

and to: David Tsztoo  
Sunol Office Trailer:  
8653 Calaveras Road, Suite B  
Sunol, CA 94586  
Phone: 925-233-4354  
Cell: 510-207-7711  
Email: dtsztoo@sfwater.org

and to: Real Estate Director  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102-3220

**12. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**13. City's Standard Contract Provisions.**

a. **Nondiscrimination.** In the performance of this Agreement, MVR agrees not to discriminate against any employee, City employee or contractor working with MVR or any MVR contractor, applicant for employment with MVR or its contractors, or person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HN status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Submitting False Claims: Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to City for three times the amount of damages that City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or



statement to get a false Claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

c. **Conflict of Interest.** Through its execution of this Agreement, MVR acknowledges that it is familiar with the provision of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

d. **Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

e. **Limitations on Contributions.** Through execution of this Agreement, MVR acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. MVR acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. MVR further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of such party's board of directors; such party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such party. Additionally, MVR acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

f. **MacBride Principles – Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

g. **Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

#### 14. Miscellaneous

(a) This Agreement may be amended or modified only by a written agreement signed by City and MVR. (b) This Agreement (including the exhibit(s) or attachment(s) hereto) and the agreements referenced herein contain the entire agreement between the parties concerning the subject of this Agreement, and all prior written or oral negotiations, discussions, understandings and permits are merged herein. (c) This Agreement shall be governed by California law and the City's Charter. (d) If either party commences an action against the other or for breach of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, if City uses its own in-house attorneys, "reasonable attorneys' fees" of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its in-house attorneys. (e) This Agreement does not create a partnership or joint venture between City and MVR as to any activity conducted by City or its Agents on, in or related to the Property. (f) The exhibits referenced in and attached to this Agreement and the Recitals set forth above are incorporated herein and made a part hereof. (g) The word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation", are used. (h) If any provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, provided that the remainder of this Agreement can be interpreted to give effect to the intention of the parties. (i) This Agreement shall be subject to the budgetary and fiscal provisions of City's Charter. There shall be no obligation for the payment of money by City or City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. (j) This Agreement is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than the other party. (k) The omission by a party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of this Agreement by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect

the right of the party to enforce such provisions thereafter. (l) Time is of the essence for this Agreement.

*[Signatures on following page]*


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates set forth below.

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

**MVR:**

**MISSION VALLEY ROCK Co.,** a  
California corporation

By: 

HARLAN L. KELLY, JR.,

General Manager  
San Francisco Public Utilities Commission

Date: August 23, 2013

By: 

Name: M. F. Roth

Its: V.P. & G.M.

Date: August 23, 2013

**APPROVED AS TO FORM:**

DENNIS J. HERRERA,

City Attorney

By: 

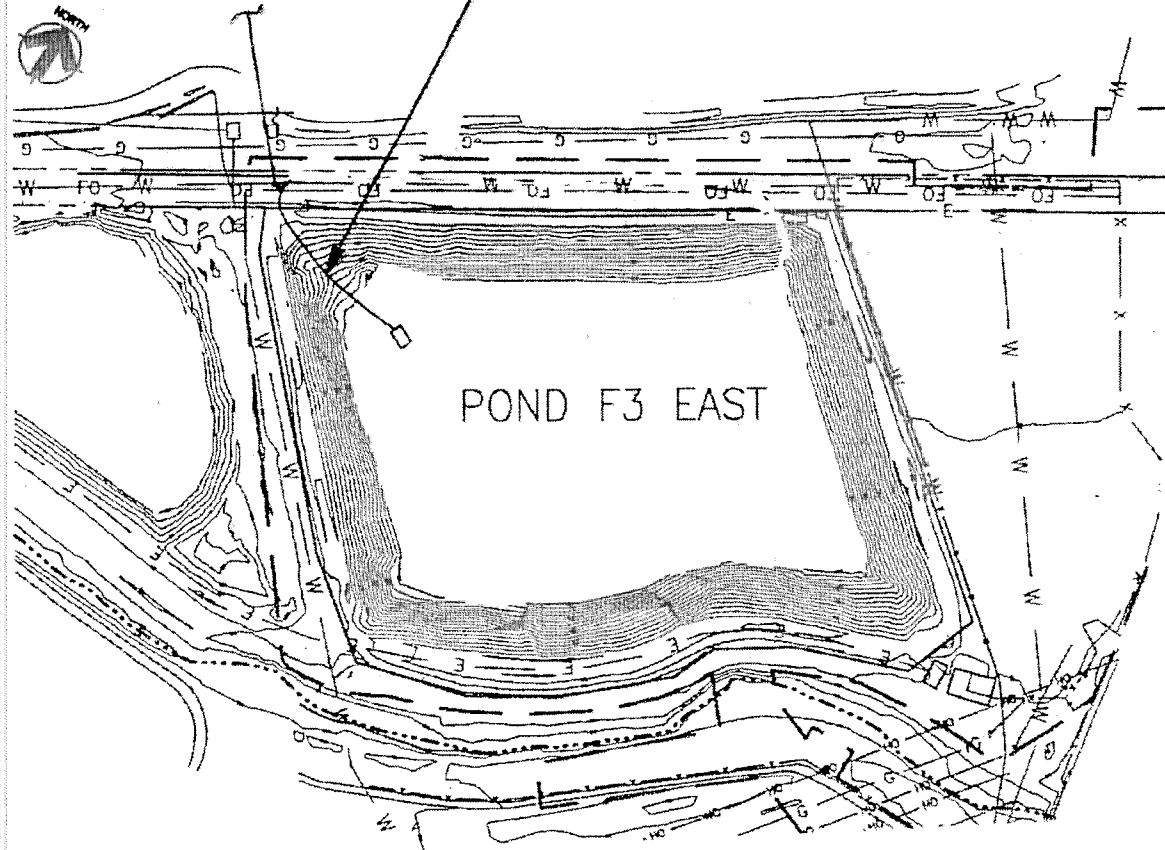
Carolyn Johnson Stein

Deputy City Attorney

**EXHIBIT A**

**Drawing of Location of City Pumps**

2 - 8"Ø HDPE - SURFACE PIPE  
VERIFY IN FIELD



HANSON SURFACE-MOUNTED PIPING

N.T.S.

2  
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**BUREAU OF ENVIRONMENTAL MANAGEMENT**  
525 Golden Gate Avenue, 6<sup>th</sup> Floor, San Francisco, CA 94102

**TO:** Rosanna Russell, Director, Real Estate Services Division

**FROM:** Irina P. Torrey, AICP, Bureau Manager, BEM *IR*

**DATE:** May 18, 2015

**SUBJECT:** Responsible Agency Findings for Ground Lease by City and County of San Francisco (landlord) to Mission Valley Rock Company for 191 acres in the Town of Sunol, Alameda County, CA for continued surface mining under County of Alameda Surface Mining Permit Number 24

**CC:** Anthony Bardo, Assistant Director, Real Estate Services Division  
Sally Morgan, Environmental Project Manager

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Since 1978, the Mission Valley Rock Company ("MVR"; "the Project Sponsor") has conducted quarrying and, subsequently, dewatering, water storage, water recycling and related activities on City and County of San Francisco (CCSF) lands in the Town of Sunol, Alameda County under a series of lease agreements with the SFPUC. SFPUC proposes issuance of a new ground lease ("the Project") of 191 acres of CCSF land to MVR, through October 2040, under which the Project Sponsor would continue its existing surface mining operations.

The quarry operations are conducted under Surface Mining Permit (SMP)-24, issued by Alameda County. Alameda County ("the County") periodically reviews SMP conditions and current operations to assess whether new or changed circumstances have affected the permitted project. In 2002, MVR applied for an amendment to SMP-24 to increase potential depth of quarrying from 140 to 250 feet to allow additional gravel extraction, which also would increase future water storage capacity available to the SFPUC. Alameda County prepared and approved a CEQA Mitigated Negative Declaration (MND) ("2002 MND") for the proposed expansion (SCH. #2002072013), and approved the project on August 19, 2002 under Alameda County Planning Commission Resolution 02-19, updating conditions of approval to incorporate mitigation measures identified in the MND. Resolution 02-19 ("2002 Resolution") also incorporated by reference prior approvals of periodic reviews in 1986 and 1991. The County again reviewed SMP-24 in 2009 and concluded that circumstances had not changed and that the prior permit approval is still valid. The most recent periodic review, as yet unpublished by the County, was conducted in 2015.

SFPUC is a CEQA Responsible Agency for the Project because granting of a lease is a discretionary action by the SFPUC and thus is subject to compliance with CEQA. An indirect effect of SFPUC's issuance of the requested lease is that MVR will continue its existing surface mining operations. These Findings address SFPUC's action in issuing the new ground lease.

As a Responsible Agency, SFPUC finds that:

- 1) SFPUC has reviewed the actions to be carried out under the lease and has determined that the indirect effects of SFPUC's issuance of the lease are within the scope of the County's 2002 MND approval and subsequent periodic reviews. The issuance of the lease would not alter the previously-approved operations, nor would it extend the life of

May 15, 2015

the quarry operation beyond the term of SMP-24. SFPUC finds that the County's 2002 MND and Resolution are adequate for SFPUC's use in approving the lease. The 2002 MND and the County's approval resolution and other materials that are part of the record of this approval are available for public review at the SFPUC offices, Real Estate Services Division, 525 Golden Gate Avenue, 8<sup>th</sup> Floor, San Francisco, CA, which is the custodian of records for the Lease approval;

- 2) Since the County certified the 2002 MND and approved the SMP 24 amendment, there have been no substantial changes in operations under SMP 24 or changes in circumstances that would result in new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the MND and subsequent reviews conducted by County of Alameda.
- 3) The County's 2002 MND identified significant impacts from the amended SMP 24 operation and adopted mitigation measures, the implementation of which, in each case, reduces the impact to a less-than-significant level. These measures were adopted as conditions of approval for the SMP 24 amendment in the County's Resolution 02-19 and have been monitored through the County's periodic reviews.
- 4) SFPUC has no direct authority or responsibility with respect to the implementation of these measures or conditions of approval, which are wholly within the responsibility and jurisdiction of the County of Alameda, other than the SFPUC authorization, at the Project Sponsor's request, to approve the ground lease to enable the Project Sponsor to conduct mining operations on the leased land as permitted under the terms of Alameda County's Surface Mining Permit Number 24.

Attachments: Mitigated Negative Declaration, Surface Mining Permit (SMP 24) Pit Deepening Expansion, Mission Valley Rock Company Quarry (Portion), Sunol, CA (SCH. #2002072013) (July 2, 2002).

The County Planning Commission of Alameda County, Resolution 02-19 (August 19, 2019).





ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

WID 11601 Vol. 1

Adolph Martinelli  
Agency Director

August 22, 2002

James E. Sorensen  
Planning Director

399  
Elmhurst Street  
Room 130

Hayward  
California  
94544-1307

phone  
510.670.5400  
fax  
510.785.8793

www  
ccalameda.org

Mission Valley Rock Company  
Mort Calvert  
7999 Athenour Way  
Sunol, CA 94586

SUBJECT: Surface Mining Permit, SMP-24 approval

Dear Mr. Calvert:

Your application for a Five Year Review and Expansion (continue gravel extraction and reclamation activities) for the quarry regulated under Alameda County Surface Mining Permit and Reclamation Plan SMP-24, located on a 202-acre site located in the Sunol Valley in unincorporated Alameda County, approximately one to two miles south of the interchange of Paloma Way/Calaveras Road and Interstate 680 near the town of Sunol in unincorporated Alameda County, bearing Assessor's Parcel Number 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15 was approved by the Alameda County Planning Commission, subject to the conditions shown in Resolution 02-19 dated Monday, August 19, 2002.

This action may be appealed within 10 days after the date of this letter by submitting a letter to the Planning Department, 399 Elmhurst Street, Hayward, CA 94544. The project applicant will be charged actual County costs for consideration of appeals. An appeal fee of \$100.00 must be submitted by anyone else appealing an action. The Surface Mining Permit number, the condition appealed, and the reason for the appeal should be clearly stated in the letter.

If you have any questions, please contact me at (510) 670-5400.

Very truly yours,

Bruce Jensen  
Senior Planner

cc: Public Works, Grading Department  
Public Works, Building Inspection Department  
Public Works, Land Development  
Account Clerk  
Ms. Pat Stillman, Save Our Sunol, 2934 Kilcare Rd., Sunol, CA 94586  
Mr. Conover Smith, Sunol CAC

MVR 00603

# ALAMEDA COUNTY PLANNING DEPARTMENT

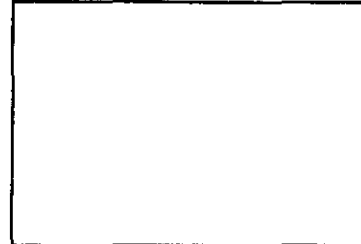
Development Planning • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (510) 670-5400 FAX (510) 785-8793

## Notice of Determination

[per Public Resources Code sec. 21081, 21152; California Code of Regulations sec. 15075, 15090-15094, 15112]

To: Alameda County Clerk - Recorder  
Miscellaneous Filings  
1106 Madison Street  
Oakland, CA 94612  
QIC CODE 20201



Project Title: Surface Mining Permit SMP-24, Quarry Expansion

State Clearinghouse Number: 2002072013

FILING #: \_\_\_\_\_

Project Location - Specific: located on a 202-acre site located in the Sunol Valley in unincorporated Alameda County, approximately one to two miles south of the interchange of Paloma Way/Calaveras Road and Interstate 680 near the town of Sunol in unincorporated Alameda County, bearing Assessor's Parcel Number 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15.

Project Location - City: Sunol, CA

Project Location - County: Alameda

Description of Nature, Purpose, and Beneficiaries of Project: Modify the original quarry and reclamation plan by expanding the amount of volume of material that could be removed. This expansion would involve a deepening of the existing pits from 140 feet to as much as 250 feet (depending on the availability of material at that depth). Pits on both sides of Alameda Creek would be deepened; increased depths would result in greater water storage capacity available to the San Francisco Water Department in future years.

Name of Person / Agency Carrying Out Project: Mission Valley Rock Company

This Notice is to advise that the Community Development Agency, as Lead Agency, has approved the above described Project on [date], and has made the following determination regarding the Project:

1. The Project as approved [ ] will / [X] will not have a significant effect on the environment.
2. [ ] An Environmental Impact Report was prepared and certified for the Project pursuant to CEQA.  
[X] A Negative Declaration was prepared for this Project pursuant to CEQA.
3. Mitigation measures [X] were / [ ] were not made a condition of approval pursuant to CEQA.
4. A Monitoring and Reporting Program [X] was / [ ] was not adopted for the project pursuant to CEQA.
5. Findings for each significant effect of the project [ ] were / [X] were not made pursuant to CEQA.
6. A Statement of Overriding Considerations [ ] was / [X] was not adopted pursuant to CEQA.

The Project's environmental documentation and the record of Project approval is available for review at the Alameda County Planning Department, 399 Elmhurst Street, Room 136, Hayward, CA 94544.

Lead Agency Contact Person: Bruce Jensen and/or Brett Lucas Telephone: (510) 670-5400

Signature: Bruce Jensen Date: 8/22/02 Title: Senior Planner

NOTE: The filing of this Notice of Determination must occur within 5 days after project approval by the Lead Agency. Filing and posting at the County Clerk (and the State Office of Planning and Research, as appropriate) starts a 30-day statute of limitations on legal challenges.

MVR 00604

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY  
HAYWARD, CALIFORNIA**

**RESOLUTION NO. 02-19 - AT MEETING HELD AUGUST 19, 2002**

Introduced by Commissioner Gault  
Seconded by Commissioner Edwards

(INCORPORATING AND REVISING RESOLUTION NO. 91-15,  
ADOPTED BY THE PLANNING COMMISSION MARCH 18, 1991)

**WHEREAS** Section 8-117.5 of the Alameda County Surface Mining Ordinance requires periodic review of Surface Mining Permits and Reclamation Plans to consider new or changed circumstances within the general area of mining operations; and

**WHEREAS** Surface Mining Permit and Reclamation Plan SMP-24, the application of Mission Valley Rock Company, was approved by the Board of Supervisors on January 23, 1986 by Resolution 86-62 following denial of an appeal, and that same permit was subsequently reviewed and approved by the Planning Commission with amendments on March 18, 1991; and

**WHEREAS** Condition of Surface Mining Permit and Reclamation Plan SMP-24 requires the Planning Commission to review compliance with conditions of the Surface Mining Permit and Reclamation Plan, considering any new or changed circumstances within the general area of mining operations that should be accommodated by the plan; and

**WHEREAS** there are a number of conditions of approval that require revision, primarily due to the passage of time and necessary updating; and

**WHEREAS** this Planning Commission did hold a public hearing to conduct a Five Year Review of Surface Mining Permit and Reclamation Plan SMP-24 at the hour of 4:00 p.m. on Monday, the 19th day of August, 2002, in the Auditorium of the Public Works Building, 399 Elmhurst Street, Hayward, California; and

**WHEREAS** this Five Year Review was duly noticed as required by law; and

**WHEREAS** the Permittee has also applied for deepening and consolidation of certain pits within the area covered by SMP-24, with said deepening of those certain pits from 150 feet below grade to a maximum of 240 feet below grade, and consolidation of those certain pits by virtue of removal and excavation of some levees currently separating those pits from each other; and

**WHEREAS** this proposal by Mission Valley Rock for pit deepening and consolidation has been publicly reviewed in accordance with provisions of the California Environmental Quality Act, and an Initial Study and Draft Mitigated Negative Declaration were circulated in a manner prescribed by law, and public comments thereto were addressed and, where appropriate, responded to by recommendation of additional mitigation measures to reduce environmental effects of the project to less-than-significant levels; and

**WHEREAS** the proposal to deepen and consolidate certain quarry pits would result in a benefit to the ability of the San Francisco Water Department to store water supplies in reservoirs created by mining in the Sunol Valley, by virtue of increasing the total storage volume of the reservoirs created by the quarry pits; and

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**WHEREAS** this Planning Commission does find that under Conditions of approval listed below, the Surface Mining Permit and Reclamation Plan SMP-24 as modified conforms to requirements of:

- (a) the Alameda County Surface Mining Ordinance;
- (b) the Alameda County General Plan;
- (c) the public health, safety, and welfare; and

**WHEREAS** this Planning Commission finds that changed circumstances and identified environmental effects warrant revising this Surface Mining Permit and Reclamation Plan to modify several conditions of approval, including modification of Conditions 1, 3, 10, 13, 14, 17, 18, 22, 28, 31, 33, 37, 39, 40, 41, 42, 44, 49, 50, and 52; and addition of new six (6) conditions, Conditions 12, 30, 32, 47, 48 and 51; and the removal of previous Condition No. 45 (as shown below).

**NOW, THEREFORE,**

**BE IT RESOLVED** that this Planning Commission accepts and approves the prepared Initial Study and Draft Mitigated Negative Declaration as the valid environmental review documentation for the proposal to deepen and consolidate quarry pits on the area covered under Surface Mining Permit SMP-24; and

**BE IT FURTHER RESOLVED** that this Planning Commission approves the revision of Surface Mining Permit and Reclamation Plan SMP-24 allowing the deepening and consolidation of quarry pits, and concurrent Five Year Review, subject to the following 52 amended conditions:

**CONDITIONS OF APPROVAL**

**SURFACE MINING RECLAMATION PLAN SMP-24  
MISSION VALLEY ROCK COMPANY**

1. Surface mining operations, reclamation, and grades shall be in substantial conformance with the various maps, information, and recommendations labeled: "Exhibit B," being the maps labeled "Plot Plan & Cross Section and Reclamation Plan for Surface Mining Permit, Mission Valley Rock Company, as approved by the Planning Commission on December 16, 1985"; ~~and "Exhibit C," being the Application dated October 23, 1985;~~ "Exhibit D," being the maps labeled, "Mining Plan for Surface Mining Permit 24, Sheets 1 and 2," dated August 2001; and Exhibit E, being the figure entitled "Recommended Slopes SMP-24," by Treadwell & Rollo Geotechnical Engineers, dated 11/14/01.
2. Mining and reclamation shall conform to the Alameda County Surface Mining Ordinance (ACSMO) except as hereinafter more specifically provided.
3. The operator shall furnish the Director of Public Works with a report describing compliance with these conditions by October 1 of each year, beginning October 1, ~~1986,~~ 2002. With each report, the Permittee shall provide a map at the same scale as the approved mining and reclamation plans showing current progress of mining and reclamation, drainage, erosion and sedimentation control

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facilities to be provided and those in place, and as-built landscaping including condition of all prior landscaping.

The Director of Public Works shall review the report and inspect the mining operations to determine and assure continuing compliance with the regulations of the ACSMO. The Permittee shall pay the County the actual cost of conducting the periodic inspection of operations and shall make available to the Director of Public Works such information as necessary for determination of compliance. The Director of Public Works shall state the findings of the inspection in a final report which shall be made available to the public. One copy of said report shall be sent to the Permittee within 45 days after the inspection. Two copies shall be furnished to the Planning Commission.

4. Grading and erosion control shall conform to design standards (Sections 7-115.0 through 7-115.19) and geotechnical requirements (Sections 7-114.2 through 7-114.10) of Alameda County Grading Ordinance No. 82-17. An annual erosion and sedimentation control plan shall be submitted to the Director of Public Works prior to September 1 of each year.
5. Work within or adjacent to a watercourse is subject to the conditions of Alameda County Ordinance No. 82-18 and shall require a permit from Alameda County Flood Control and Water Conservation District.
6. Changes in drainage and/or sedimentation control facilities shall be submitted in advance to the Director of Public Works for approval.
7. Runoff from the intercepted drainage area east of Calaveras Road shall be picked up and transported around the site or otherwise controlled to the satisfaction of the Director of Public Works.
8. Mining shall not occur within 100 feet of the banks of Alameda Creek.
9. Any new structure within the Federal Insurance Administration's A-2 flood zone will be subject to special building requirements.
10. Project site is within Alameda County Zone 7 Special Drainage Area 7-1 and is subject to conditions imposed at the time of issuance of building permits, and is subject to specific fees for drainage and mitigation of flow augmentation impacts if they are found to occur.
11. Any work within creek areas will require a Streambed Alteration Agreement with the California Department of Fish and Game.
12. Prior to removal of the sensitive 225-foot long band of willow and cottonwood trees in the large pit on the northeast side of Alameda Creek, Permittee shall notify the Planning Director of intent to remove this band of vegetation and shall develop and submit to the Planning Director for review a mitigation plan. The plan shall include a description of the vegetation to be removed at that time, the number, spacing, and location of the trees to be planted, maintenance requirements, monitoring protocols, and performance standards. If the replanting is to be accomplished on lands not owned

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by the Permittee, Permittee shall submit proof that the receiving landowner has agreed to this planting and that it will be made permanent through either an easement or contract. Monitoring shall include:

(a) review of the mitigation plan by the Planning Director to ascertain that it has been written and would properly mitigate the effects by substantial planting according to the recommendations of a qualified specialist; and

(b) regular semi-monthly inspection by County staff and certification that the required tree planting and revegetation have been accomplished satisfactorily, and that the planted trees are being properly maintained.

13. Permittee shall submit has submitted details and calculations for all drainage facilities sufficient to demonstrate their adequacy. Prior to commencement of mining of areas presently within levee areas, previously reclaimed areas or other locations proposed for new excavation as of August 2002, An an up-to-date hydrology map must shall be submitted to the Planning Director for approval and for review by the Grading Inspector showing all on-site drainage and all intercepted areas.
14. In conjunction with the maps provided under Condition No. 12, Permittee shall submit details and calculations for all erosion and sediment control facilities sufficient to demonstrate their adequacy. Included shall be surface area, storage for runoff, and capacity of ponds that will serve as sediment basins, detention ponds, or water storage. All ponds shall meet District criteria.
15. No surface runoff may flow over the existing bank. An on-site drainage system shall be necessary to discharge runoff to the creek with an approved energy dissipater.
16. All on-site runoff from disturbed areas must pass through a sediment basin prior to discharge to a creek or swale. Plans shall indicate that all disturbed areas on this site shall be graded to drain to the sediment basins at all times, at each stage of excavation.
17. Permittee has demonstrated shall demonstrate that Sheridan Creek can pass the 100 year storm event with typical cross-sections and calculations showing normal depth; no further submittals are necessary for this requirement.
18. A cross-section of Alameda Creek, showing where it will be is crossed by a conveyor belt, shall be has been submitted. The conveyor system shall is shown to be well above the 100 year storm event for Alameda Creek. No further submittal is necessary for this requirement.
19. Free movement of groundwater through the site in present quantities, as detectable in filter galleries of San Francisco Water Department, shall not be impeded by mining or reclamation activities.
20. No discharge of wash water or pollutants shall be permitted offsite from the active quarry area. Dikes, levees, or other barriers shall be maintained to prevent silting of creeks and drainage channels by any surface mining operation. Permittee shall abide by all standards and monitoring requirements of its State of California Regional Water Quality Control Board discharge permit.

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including weekly monitoring by a State of California certified sampling laboratory of all specified constituents and subsequent correction of any problems indicated by sampling results in excess of specified water quality standards; or any subsequent requirements of the Regional Water Quality Control Board that may be implemented to augment or supersede these requirements.

21. Should any problems develop regarding slope stability, erosion control, groundwater or related matters, Permittee shall immediately have an investigation prepared by an engineering geologist detailing the problem and possible solutions to be approved by the Director of Public Works.
22. Original ~~cut~~ cut or fill slopes shall conform with the recommendations in "Geotechnical Studies for the Mission Valley Rock Quarry" by Geomatrix Consultants, September 17, 1985. Those recommendations are incorporated in the plans and cross sections by Bissell & Karn, Inc. dated September 16, 1985. For new cut slopes developed subsequent to new approval for pit deepening and excavation dated August 19, 2002, the Permittee shall not excavate new permanent slopes exceeding the elevation-dependent values presented in Exhibit E entitled "Recommended Slopes SMP-24," by Treadwell & Rollo Geotechnical Engineers, dated 11/14/01. If no bench is proposed or constructed at the 100-foot depth as shown in this diagram, then no new or existing slope indicated as less than 1.5:1 on Exhibit E shall be cut at slopes steeper than 1.5:1. Monitoring of this requirement shall consist of verification of compliance through annual inspections as presently conducted by the Grading Inspector; in the event of noncompliance, Permittee shall within 15 days submit a plan for correction to the Grading Inspector for review and approval, and upon approval shall immediately commence corrective action as directed by the Grading Inspector.
23. No explosives shall be used.
24. Prior to issuance of Building Permits, Planning Director shall approve the precise location, access, design and traffic generation of on-site improvements including, but not limited to: construction of concrete batch plant, additions/alterations to the asphalt recycling plant (new conveyor, crusher, or other equipment), and expansion of the truck and equipment storage yard.
25. Adequate toilet facilities shall be provided for employees according to requirements of the Alameda County Health Care Services Agency.
26. A potable water supply shall be provided for employees according to requirements of the Alameda County Health Care Services Agency.
27. An annual fire plan shall be prepared and filed with the State Department of Forestry to mitigate fire hazards.
28. The perimeter of the mining expansion area shall remain be fenced in accordance with the Alameda County Surface Mining Permit. New and existing fences shall be repaired as necessary and maintained in good condition.
29. All surface mining and processing operations emitting smoke, vapors, dust and other airborne contaminants shall be provided with all necessary control measures and devices as required by the

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Alameda County Health Department and the Bay Area Air Quality Management District to prevent the occurrence of nuisance and undue pollution of the air.

30. To reduce possible effects of night lightning, Permittee shall take the following actions:

(a) Install only full cutoff-shielded lights for general illumination of plant site areas, and shall replace all existing non-shielded lighting, when necessary, with full-cutoff fixtures. The lowest wattage lamps reasonable for illumination of the area of concern shall be used.

(b) Night time operations and security lighting shall be installed no higher than necessary to illuminate the area of concern for security, safety or visual comfort, and lighting shall be directed toward the area of concern, and always below the horizontal.

(c) Permittee shall not position night lighting to illuminate areas beyond the site boundaries, nor shall the Permittee position general lighting to radiate above the horizontal, but shall place lights or install shielded lights to illuminate only the area of concern.

(d) For any lighting on areas nonessential for safety, security or active operations, Permittee shall place new lights on a motion detector circuit so illumination only occurs when required for occasional visibility.

(e) Permittee shall utilize sodium vapor lamps whenever possible, unless it can be demonstrated that other kinds of lights are required for specific purposes of color rendition, visual comfort or security.

Planning staff shall monitor the progress of this lighting program on an ongoing basis to ensure that new lights are properly installed and that existing lights, when replaced, conform to the condition presented.

31. If potential archaeological resources are discovered during the course of operations: ~~Operations shall cease in the vicinity of any suspected archaeological resource until an archaeologist is consulted and his or her recommendations followed, subject to approval by the Planning Director.~~

(a) Immediately halt or relocate excavations and contact a qualified archaeologist or paleontologist to inspect the site. If the scientist determines that potentially significant materials or human remains are encountered, the scientist shall record, recover, retrieve, and/or remove them;

(b) If human remains are found onsite, the applicant shall notify the Ohlone Most Likely Descendants, as designated by the California Native American Heritage Commission; the coroner shall be called and the archaeologist shall provide safe and secure storage of these remains while on the site, in the laboratory and otherwise, and shall consult with the Native American representatives regarding either onsite reburial of the remains or other arrangements for their disposition;

(c) Provide a copy of documentation of all recovered data and materials found onsite to the regional information center of the California Archaeological Inventory (CAI) for inclusion in the



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permanent archives, and another copy shall accompany any recorded archaeological materials and data.

(d) If any historic artifacts are exposed, the archaeologist shall record the data and prepare a report to be submitted to the local historical society.

Monitoring for these measures is performed by the applicant on a continual basis during construction, and include submittal of a summary of findings on an annual basis (at the time of the annual report) during activities to the Planning Director for review and completion of records.

32. If potential paleontological resources are discovered during the course of operations:

(a) Immediately halt or relocate excavations and contact a qualified expert to inspect the site. If the expert determines that potentially significant paleontological materials have been encountered, the expert should record, recover, retrieve, and/or remove them, and the Permittee should relinquish any claim to them;

(b) The qualified expert should preserve a copy of documentation of all recovered data and materials found onsite; the materials may, at the discretion of the expert, be carried to an institute approved by the Planning Director where they may be preserved and or studied.

This condition is deemed to be self-monitoring.

33. Mining and hauling operations shall not limit roadway capacity or impose maintenance burdens on county roads. The pavement condition of Athenour Way will be reviewed annually by the Director of Public Works to determine if roadway strengthening is warranted.

To guarantee future roadway maintenance, a Time Certificate of Deposit in the amount of \$3,000 and cash in the amount of \$2,000 ~~shall be~~ has been deposited into the Surveyor's Trust Fund to be used for cleanup and repair. Once the balance in the Trust Fund has decreased to \$500, Permittee shall deposit additional funds to bring the account to \$2,000. Should Permittee fail to do this in a timely manner following notification, the Director of Public Works will cash the Certificate of Deposit with no regard for premature withdrawal penalty, and may order cessation of all work until compliance is achieved.

34. Engines on dirt moving equipment used for surface mining operations shall be equipped with mufflers, and no muffler or exhaust system shall be equipped with a cutout, bypass, or similar device intended to thwart quieting.

35. The driver of a weighed vehicle, loaded beyond current State of California maximum legal weights, shall be notified and requested to reduce the load to the legal limit. If loaded materials are subject to dust generation, drivers shall be requested to moisten loads at facilities to be conveniently located and maintained on site. All loaded vehicles shall be required to pass over a material shakedown area with berm, bumper, or ditches provided. The Permittee shall request all vehicle operators to have noise attenuating mufflers as required by the State of California Vehicle

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Code. Signs notifying drivers of these requirements shall be posted at the scale location. Drivers not cooperating with this provision shall be prohibited from hauling materials from the site.

36. New cut slopes shall be watered as they are created to the extent necessary to minimize dust. Main access roads shall be paved with asphalt for a minimum width of 24' from County roads to within 100' of the loading point within the sand and gravel pit. All other haulage roads and loading areas within the site shall be paved, oiled, or watered to maintain a dust-free condition. The remainder of the operation shall be maintained in a dust-free condition, as may be determined by the Director of Public Works.
37. Permittee shall install and/or maintain stop signs at all exits to County roads.
38. An encroachment permit from the County will be required for all work within the road right of way. Improvement plans shall conform to the County's standards with regard to tie-ins, angle of approach, steepness, and sight distance for any driveway connection to a road.
39. The Permittee shall guarantee timely performance of reclamation requirements of the ACSMO and these conditions by creating an escrow account acceptable to the County of Alameda and depositing in said account by October 1 of each year an amount totaling \$4.91 per 100 tons excavated during the period, starting from the date the permit is approved, of which \$2.00 shall be retained in an interest bearing account until final reclamation is achieved in accordance with the reclamation plan. The amount shall be in accordance with the Construction Cost Index for San Francisco of Engineering News-Record to account for inflation at the time of the deposit. The Permittee shall receive credit for final reclamation completed as determined by the Director of Public Works. Said credit shall be deducted from the required deposit and/or refunded from the escrow account on an annual basis. After August 19, 2002, any additional financial assurance for guarantee of reclamation may take the form of a reclamation bond written in a manner approved by the State of California and made payable only to Alameda County and State of California Department of Conservation as prescribed by the California Surface Mining and Reclamation Act of 1975.

Upon expiration or revocation of the permit and completion of the reclamation plan, any funds remaining under guarantee shall be released to the Permittee upon the satisfactory determination by the Director of Public Works that the conditions of the permit have been met and that the site has been reclaimed in accordance with the approved reclamation plan, or said guarantee shall be used by the County to bring the quarry into conformance and to reclaim the site.

40. Detailed methods and specifications of revegetation and restoration of the site, prepared by a professional agronomist, have been ~~shall be~~ submitted to the Director of Public Works within six months of date of original approval of this permit.
41. Within 30 days of approval of pit deepening (August 19, 2002), the Permittee and all lessors shall provide a new written statement that they accept responsibility for reclaiming the site as indicated on the mining and reclamation plan, and shall guarantee all reclamation in accordance with said plan. Said responsibility shall run with the land under permit as a covenant thereupon until release of the covenant is recorded by Alameda County.

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42. Upon complete reclamation, end uses are assumed to be agriculture and water storage as shown on Exhibit B and Exhibit D. Any other use must be approved by the County of Alameda.
43. If problems develop regarding mining or reclamation as may be determined by the Planning Director, Permittee shall take corrective action with all due haste, in good faith. Permittee shall implement solutions as approved by the Planning Director.
44. Prior to March 15, 2007 ~~October 1, 1990~~, and at approximately 5 year intervals thereafter, the Planning Commission shall review compliance with the Surface Mining Permit and Reclamation Plan. New or changed circumstances within the general area of the mining operations which should be accommodated by the permit or plans will be considered. The review shall include a public hearing. Permittee shall pay actual cost of reviews. As a result of this process, the Planning Commission may modify the mining or reclamation plan or guarantees thereof to conform with the ACSMO, and such modified permit or plan shall be binding upon the operation.
45. Permittee shall pay to the County of Alameda full costs incurred by the County for review, approval, and administration of all conditions of approval, including required inspections.
46. Permittees shall hold harmless and indemnify the County against liability for personal injury or property damage caused by or resulting from intentional or negligent acts or omissions by Permittees, its officers, agents, or employees.
- ~~47. This Surface Mining Permit shall terminate January 1, 2045 or upon completion of reclamation, whichever occurs first, and final reclamation shall occur no later than two years after completion of surface mining. Permittees shall notify the Director of Public Works upon completion of mining. All stockpiles and equipment shall be removed from the site upon completion of reclamation. This permit shall be subject to revocation or suspension as specified in Section 8-121.2 of the ACSMO.~~
- ~~45. This Surface Mining Permit (SMP-24) and these conditions shall supersede requirements of SMP-5 upon exercising this permit. In the interim, all conditions and requirements of SMP-5 shall continue to be binding upon the operation.~~
48. Truck storage yard shall be used exclusively by trucks owned and operated by the Mission Valley Rock Company.
49. Prior to ~~June 18, 1991~~, December 1, 2002, Permittee shall submit to the Planning Director a new landscape plan prepared by a licensed landscape architect. The objective of this landscape plan shall be to screen and/or soften the visibility of active mining areas, the plant site, stockpiles, and other elements of the sand and gravel operation from sensitive viewpoints including but not limited to I-680 and Calaveras Road. The plan shall take into account the speed of growth of selected plants; drought tolerance of selected plants; ability of plants to provide an effective visual screen; and suitability of plants to the soil, climate, natural setting, and other physical characteristics of the site. The Planning Director will forward the plan to the Sunol Citizens' Advisory Committee for comments prior to approval of the plan. Once approved, the Permittee shall proceed, on an appropriate timeline recommended by the landscape architect, to install and develop landscaping

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according to the approved plan. Permittee shall guarantee installation of landscaping in accordance with the landscape plan in an amount to be approved by the Planning Director; the guarantee shall be returned to the Permittee upon completion of the landscape installation. On-going maintenance of the landscaping will be monitored by the Planning Department.

50. The Permittee shall pay an administrative fee of \$0.02 per ton of excavated material to the Planning Department to help cover the Department's costs in administering Alameda County's surface mining and reclamation program. This fee shall be paid into a Planning Department account on October 1 of each year, beginning October 1, 2002, and no specific initial balance shall be required. The tonnage on which the fee is based shall be the total tonnage of material documented in the annual report, except for the first year, in which the previous rate of \$0.01 per ton shall apply to the material excavated prior to August 19, 2002, and the new \$0.02 per ton rate shall apply to material excavated thereafter. The amount of the fee surcharge shall be considered at each Five Year Review for SMP-24, and in any event shall may be adjusted annually by the Planning Commission to reflect inflation. This fee shall be subject to change upon enactment by the Board of Supervisors of an amendment to the Alameda County Surface Mining Ordinance that specifies standard administrative fees for all surface mining operations in Alameda County; upon enactment of that ordinance revision, Permittee shall be subject to the fees specified therein. Permittee shall pay a ~~fe~~ per ton surcharge to the Planning Department to help cover the Department's costs in administering Alameda County's surface mining and reclamation program. This surcharge shall be paid to the Planning Department at the time that an annual report is filed in accordance with Condition 3, and the tonnage on which the surcharge is based shall be the same as that documented in the annual report. The amount of the surcharge shall be reconsidered at each Five Year Review, and adjusted by the Planning Commission to reflect inflation.
51. The Permittee shall pay an administrative fee of \$0.02 per ton of excavated material to the Public Works Agency to help cover the Agency costs in administering Alameda County's surface mining and reclamation program. This fee shall be paid into a Public Works Agency account on October 1 of each year, beginning October 1, 2002, and no specific initial balance shall be required. The tonnage on which the fee is based shall be the total tonnage of material documented in the annual report, except for the first year, in which the previous rate of \$0.01 per ton shall apply to the material excavated prior to August 19, 2002, and the new \$0.02 per ton rate shall apply to material excavated thereafter. The amount of the fee surcharge shall be considered at each Five Year Review for SMP-24, and in any event shall may be adjusted annually by the Planning Commission to reflect inflation. This fee shall be subject to change upon enactment by the Board of Supervisors of an amendment to the Alameda County Surface Mining Ordinance that specifies standard administrative fees for all surface mining operations in Alameda County; upon enactment of that ordinance revision, Permittee shall be subject to the fees specified therein.
52. The Permittee shall defend, indemnify and hold harmless Alameda County or its agents, officers or employees from any claim, action or proceeding against Alameda County, or its agents, officers or employees to attach, set aside, void, or annul this Surface Mining Permit, including any amendments thereto, or underlying environmental documents and actions taken pursuant to the California Environmental Quality Act, Alameda County Surface Mining Ordinance, the California Surface Mining and Reclamation Act, other County ordinance requirements and any combination thereof. Such indemnification shall include but not be limited to any such proceeding. If Permittee shall fail

**Alameda County Planning Commission**

**Resolution 02-19, Surface Mining Permit SMP-24, Pit Deepening and Periodic Review**

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~~to adequately defend the County of Alameda, the County may provide its own legal defense and Permittee shall be responsible for the County's reasonable attorneys' fees. Permittee shall defend, indemnify and hold harmless Alameda County or its agents, officers and employees from any claim, action, or proceeding against Alameda County or its agents, officers or employees to attack, set aside, void or annul this Surface Mining Permit and Reclamation Plan or accompanying environmental documents or actions taken pursuant to the California Environmental Quality Act, or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorneys fees to plaintiffs in such a proceeding as well as any staff time, costs and attorneys fees incurred by Alameda County in its defense.~~

**ADOPTED BY THE FOLLOWING VOTE:**

AYES: Commissioners Edwards, Gault, Hamlin, Kirby, Lepell, Tam

NOES: None

ABSENT: None

EXCUSED: Commissioner Ysitt

ABSTAINED: None

**MITIGATED NEGATIVE DECLARATION**

Alameda County Planning Department

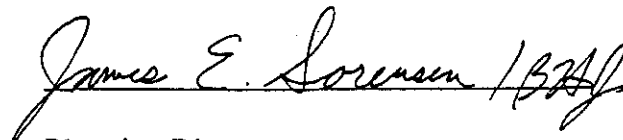
(Lead Agency)

399 Elmhurst Street, Room 136

Hayward, California 94544

(415) 670-5400

1. **Project Name:** SURFACE MINING PERMIT (SMP-24) PIT DEEPENING EXPANSION, MISSION VALLEY ROCK COMPANY QUARRY (PORTION), SUNOL, CALIFORNIA.
2. **Description, Location, and Assessor's Parcel Number(s):** Project is a volumetric expansion of operations under Surface Mining Permit SMP-24 held by Mission Valley Rock Company. The expansion would involve a deepening of the existing quarry pits on the 202-acre site from 140 feet to as deep as 250 feet. The added marketable material from this approval would be about 10 million tons of aggregate, bringing the remaining net available resources to approximately 24 million tons. The existing permit will expire in December 2045; this expansion would have the same expiration date. The project would continue in a fashion similar to the operation currently underway, including extractive operations and transport of raw product to the existing production plant (not under consideration as part of this permit), and subsequent reclamation of the site to water storage ponds administered by the San Francisco Water Department, and agriculture (grazing) by means of silt storage and topsoil replacement. The site ranges from one (1) to two (2) miles southeast of the town of Sunol, easterly of Interstate 680. Sunol Valley, unincorporated Alameda County, southeast of Interstate 680. 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15.
3. **Persons or Entity Undertaking Project:** Mission Valley Rock Company
4. **Responsible Agencies:** Bay Area Air Quality Management District; Regional Water Quality Control Board; Department of Conservation, Division of Mines and Geology
5. **Findings:** Based on the attached Initial Study, the Alameda County Planning Commission has found that the project will not have a significant effect on the environment if the recommended mitigation measures are implemented.
6. **Date of Public Notice of Negative Declaration:** July 3, 2002
7. **End of Review Period:** August 6, 2002

  
\_\_\_\_\_

Planning Director

August 19, 2002  
\_\_\_\_\_

Date

**MITIGATED NEGATIVE DECLARATION**

Alameda County Planning Department

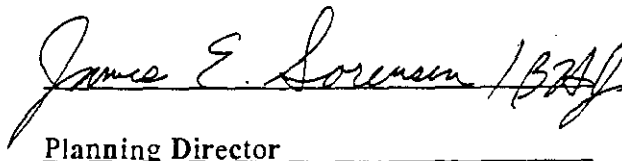
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(415) 670-5400

1. **Project Name:** SURFACE MINING PERMIT (SMP-24) PIT DEEPENING EXPANSION, MISSION VALLEY ROCK COMPANY QUARRY (PORTION), SUNOL, CALIFORNIA.
2. **Description, Location, and Assessor's Parcel Number(s):** Project is a volumetric expansion of operations under Surface Mining Permit SMP-24 held by Mission Valley Rock Company. The expansion would involve a deepening of the existing quarry pits on the 202-acre site from 140 feet to as deep as 250 feet. The added marketable material from this approval would be about 10 million tons of aggregate, bringing the remaining net available resources to approximately 24 million tons. The existing permit will expire in December 2045; this expansion would have the same expiration date. The project would continue in a fashion similar to the operation currently underway, including extractive operations and transport of raw product to the existing production plant (not under consideration as part of this permit), and subsequent reclamation of the site to water storage ponds administered by the San Francisco Water Department, and agriculture (grazing) by means of silt storage and topsoil replacement. The site ranges from one (1) to two (2) miles southeast of the town of Sunol, easterly of Interstate 680. Sunol Valley, unincorporated Alameda County, southeast of Interstate 680. 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15.
3. **Persons or Entity Undertaking Project:** Mission Valley Rock Company
4. **Responsible Agencies:** Bay Area Air Quality Management District; Regional Water Quality Control Board; Department of Conservation, Division of Mines and Geology
5. **Findings:** Based on the attached Initial Study, the Alameda County Planning Commission has found that the project will not have a significant effect on the environment if the recommended mitigation measures are implemented.
6. **Date of Public Notice of Negative Declaration:** July 3, 2002
7. **End of Review Period:** August 6, 2002

  
\_\_\_\_\_

Planning Director

August 19, 2002  
\_\_\_\_\_

Date

MVR 00617



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

July 2, 2002

Adolph Martinelli  
Agency Director

James E. Sorensen  
Planning Director

399  
Elmhurst Street  
Room 136

Hayward  
California  
94544-1307

phone  
510.670.5400  
fax  
510.785.8793

www.  
co.alameda.ca.us/cda

Interested Parties:

Attached for your review and comment is an Initial Study/Draft Mitigated Negative Declaration for deepening of existing quarry pits on the area regulated by Surface Mining Permit SMP-24 held by Mission Valley Rock Company for operations at its quarry in the Sunol Valley. The expansion would involve a deepening of the existing quarry pits from 140 feet to as deep as 250 feet, with removal of some interior levies. No lateral spatial expansion is proposed. The site is one (1) to two (2) miles southeast of the town of Sunol. The net gain of marketable materials would be approximately 10 million tons. The existing permit will expire in December 2045; this expansion would have the same expiration date. The project would continue in a fashion similar to the operation currently underway, including extractive operations and transport of raw product to the existing production plant (not under consideration as part of this permit), and subsequent reclamation of the site to water storage ponds for San Francisco Water Department, and to agriculture through silt storage and topsoil replacement. All site traffic would use Athenour Way.

Please note that a Periodic Review for SMP-24 is being processed simultaneously with the application for pit deepening, and will receive a public hearing at the same meeting of Planning Commission. Periodic reviews are required for all quarries in Alameda County. The Mission Valley Rock Company quarry covered by SMP-24 is located on approximately 202 acres (permitted area) of land in the Sunol Valley, unincorporated Alameda County, southeast of Interstate 680 and with quarry pits on either side of Alameda Creek. No mining within the streambed of Alameda Creek has occurred or is proposed. The Mission Valley Rock Company quarry is one of two quarries under four different surface mining permits currently operating in the Sunol Valley Significant Mineral Resource Area as designated by the State of California. The review by the Planning Commission involves consideration of new or changed circumstances within the general area of mining operation that should be accommodated by the permit, and may result in modifications to SMP-24.

The Alameda County Planning Commission will hold a public hearing on a draft Negative Declaration and the proposed project, tentatively scheduled for Monday, the 19th day of August, 2002, beginning at 1:30 p.m., in the Auditorium of the Alameda County Public Works Building, 399 Elmhurst Street, Hayward, California. A final decision may be made on this date.

A hearing before the Sunol Citizens' Advisory Committee will be scheduled for an evening in early August, prior to the hearing by the Planning Commission; this meeting will receive separate public notice. Interested Sunol citizens and others will be welcome to attend this meeting as well.

Anybody requiring additional copies of these materials should contact Mr. Richard Galvez at (510) 670-6504. From July 10 through July 29, 2002, questions on this matter or requests for Additional information should be directed to Mr. Brett Lucas at (510) 670-6521. Otherwise, if you have any questions, please call the undersigned at (510) 670-5400.

Very truly yours,

Bruce Jensen  
Policy Planning Division

MVR 00618



**DISTRIBUTION LIST FOR PROPOSED EXPANSION OF PERMITTED MINING OPERATION  
MISSION VALLEY ROCK COMPANY QUARRY SMP-33,  
INITIAL STUDY AND DRAFT MITIGATED NEGATIVE DECLARATION**

**Regional, State and Federal Agencies**

U.S.D.A. Soil Conservation Service  
U.S. Fish and Wildlife Service  
California State Clearinghouse  
California Department of Conservation, Division of Mines and Geology  
California Department of Fish & Game  
California Regional Water Quality Control Board, District 2  
Bay Area Air Quality Management District  
East Bay Regional Park District

**Local Agencies**

Alameda County Planning Commission  
Alameda County Public Works Agency, Traffic Engineering Section  
Alameda County Public Works, Grading  
Alameda County Engineering Geologist  
Alameda County Environmental Health Department  
San Francisco Water Department  
San Francisco Planning Department

**Other Organizations**

California Native Plant Society  
Save Our Sunol  
Alameda Creek Alliance  
RMC Pacific Materials  
Mission Valley Rock Company

**Press**

The Tri-Valley Herald

**Individuals**

Ms. Pat Stillman  
Ms. Virginia McCullough

**Local Committees**

Alameda County Sand and Gravel Committee  
Sunol Citizens' Advisory Committee

# ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Lead Poisoning Prevention • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (510) 670-5400 FAX (510) 785-8793

## NOTICE OF COMPLETION

(Public Resources Code)

State of California  
Office of Planning and Research  
PO Box 3044  
Sacramento, CA 95812

Date: July 2, 2002

SCH#: \_\_\_\_\_

### General Information

Project Title: PROPOSED DEEPENING OF SURFACE MINING PERMIT (SMP-24),  
MISSION VALLEY ROCK COMPANY QUARRY, SUNOL, CALIFORNIA

Lead Agency: Alameda County Community Development Agency

Address: 224 West Winton Avenue, Room 151, Hayward, CA 94612

Contact Person: Bruce Jensen, Senior Planner Telephone: 510-670-5400  
Brett Lucas, Planner III Telephone: 510-670-6521

### Project Location

County: Alameda City / Community: N/A

Assessor's Parcel Nos. 96-1-11-7, 11-8, and 10-4; 96-80-1-3, 1-5, 1-7, and -12; and 96-375-11-5, -15.

Section N/A Twp. N/A Range N/A

Cross Streets: Andrade Road & Athenour Way Nearest Community: Sunol, CA

State Hwy #: Near I-680 and SR 84 Airports: N/A

Railways: Union Pacific R.R. Waterways: Alameda Creek

### Present Land Use and Zoning

Present land use is quarry operations, including mining and processing. Land Use designation in the Alameda County General Plan is Water Management, Zoning is "A" - Agriculture, 100 acre M.B.S.A.

### Project Description / Development Type

[ ] Residential: Units \_\_\_\_\_ Acres \_\_\_\_\_  
[ ] Office: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_  
[ ] Shopping/Commercial: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_  
[ ] Industrial: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_  
[ ] Water/Wastewater: MGD \_\_\_\_\_  
[ ] Transportation: Type \_\_\_\_\_  
[X] Mining: Mineral Aggregate, 202 acres  
[ ] Power: Type \_\_\_\_\_ Watts \_\_\_\_\_

**NOTICE OF PUBLIC HEARING / INTENT TO ADOPT A  
NEGATIVE DECLARATION**

**PROPOSED PIT DEEPENING UNDER SURFACE MINING PERMIT (SMP-24)  
THE MISSION VALLEY ROCK COMPANY QUARRY (PORTION),  
SUNOL, CALIFORNIA**

Notice is hereby given that the Alameda County Planning Commission will hold a public hearing to consider adoption of a mitigated negative declaration for, and approval of, a volumetric expansion of operations under Surface Mining Permit SMP-24 held by Mission Valley Rock Company. The expansion would involve a deepening of the existing quarry pits on the 202-acre site from 140 feet to as deep as 250 feet. The added marketable material from this approval would be about 10 million tons of aggregate, bringing the remaining net available resources to approximately 24 million tons. The site ranges from one (1) to two (2) miles southeast of the town of Sunol, easterly of Interstate 680. The existing permit will expire in December 2045; this expansion would have the same expiration date. The project would continue in a fashion similar to the operation currently underway, including extractive operations and transport of raw product to the existing production plant (not under consideration as part of this permit), and subsequent reclamation of the site to water storage ponds administered by the San Francisco Water Department, and agriculture (grazing) by means of silt storage and topsoil replacement. All site traffic would use Athenour Road and Interstate 680 for access.

A Mitigated Negative Declaration, which is a written statement indicating that the proposed project will not have a significant effect upon the environment if appropriate mitigation measures are imposed, is proposed to be adopted pursuant to the California Environmental Quality Act and State and County CEQA Guidelines. Possible environmental impacts of this project include aesthetic (light and glare), biological habitat, cultural and paleontological, and cut slope stability effects. The review period for the Initial Study and Draft Mitigated Negative Declaration is from July 3, 2002 to August 6, 2002. If you challenge the proposed amendment to Surface Mining Permit SMP-24 in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

Notice is also hereby given that a Periodic Review for SMP-24 is being processed simultaneously with the application for pit deepening, and will receive a public hearing at the same meeting of Planning Commission. Periodic reviews are required for all quarries in Alameda County. The Mission Valley Rock Company quarry covered by SMP-24 is located on approximately 202 acres (permitted area) of land in the Sunol Valley, unincorporated Alameda County, southeast of Interstate 680 and with quarry pits on either side of Alameda Creek. No mining within the streambed of Alameda Creek has occurred or is proposed. The Mission Valley Rock Company quarry is one of two quarries under four different surface mining permits currently operating in the Sunol Valley Significant Mineral Resource Area as designated by the State of California. The review by the Planning Commission involves consideration of new or changed circumstances within the general area of mining operation that should be accommodated by the permit, and may result in modifications to SMP-24.

Said public hearing will be held on Monday, the 19th day of August, 2002, beginning at 1:30 p.m., in the Auditorium of the Alameda County Public Works Building, 399 Elmhurst Street, Hayward, California. All persons interested in the matter may appear and be heard at this meeting. A final decision may be made on that date.

**JAMES SORENSEN - PLANNING DIRECTOR & SECRETARY  
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**

TELEPHONE: (510) 670-5400

The Public Works Agency Building located at 399 Elmhurst Street, Hayward, is wheelchair accessible. If you need other accommodations, call Pat Brimer (voice) 670-5459 or TDD 834-0754; advance notice is requested.

MVR 00620

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**Local Action Type**

- |                          |                     |                                     |   |
|--------------------------|---------------------|-------------------------------------|---|
| <input type="checkbox"/> | General Plan Update | <input type="checkbox"/>            | Rezoning                                    |
| <input type="checkbox"/> | New G. P. Element   | <input type="checkbox"/>            | Land Division                               |
| <input type="checkbox"/> | General Plan Amend. | <input type="checkbox"/>            | Use Permit                                  |
| <input type="checkbox"/> | Master Plan         | <input type="checkbox"/>            | Variance                                    |
| <input type="checkbox"/> | Specific Plan       | <input type="checkbox"/>            | Annexation                                  |
| <input type="checkbox"/> | Area Plan           | <input type="checkbox"/>            | Cancel Ag. Preserve                         |
| <input type="checkbox"/> | Redevelopment Plan  | <input checked="" type="checkbox"/> | Other: Surface Mining Permit - modification |

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**Document Type**CEQA

- |                                     |                          |                                     |                         |
|-------------------------------------|--------------------------|-------------------------------------|-------------------------|
| <input checked="" type="checkbox"/> | Neg. Dec / Initial Study | <input type="checkbox"/>            | Notice of Exemption     |
| <input type="checkbox"/>            | Draft EIR                | <input type="checkbox"/>            | Notice of Preparation   |
| <input type="checkbox"/>            | Final EIR                | <input checked="" type="checkbox"/> | Notice of Completion    |
| <input type="checkbox"/>            | Supp. / Subs. EIR        | <input type="checkbox"/>            | Notice of Determination |

NEPA

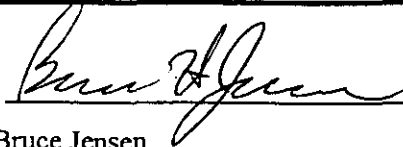
- |                          |           |                          |                |
|--------------------------|-----------|--------------------------|----------------|
| <input type="checkbox"/> | EA        | <input type="checkbox"/> | Joint Document |
| <input type="checkbox"/> | FONSI     | <input type="checkbox"/> | Final Document |
| <input type="checkbox"/> | Draft EIS | <input type="checkbox"/> | Other _____    |
| <input type="checkbox"/> | Final EIS |                          |                |

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**Project Issues Discussed in Document**

- |                                     |                        |                                     |                   |
|-------------------------------------|------------------------|-------------------------------------|-------------------|
| <input checked="" type="checkbox"/> | Land Use Compatibility | <input checked="" type="checkbox"/> | Biological Res.   |
| <input checked="" type="checkbox"/> | Agricultural Land      | <input type="checkbox"/>            | Wetlands          |
| <input checked="" type="checkbox"/> | Visual/Aesthetic       | <input checked="" type="checkbox"/> | Geology           |
| <input checked="" type="checkbox"/> | Historical             | <input checked="" type="checkbox"/> | Seismicity        |
| <input checked="" type="checkbox"/> | Archaeological         | <input checked="" type="checkbox"/> | Soils/Erosion     |
| <input checked="" type="checkbox"/> | Traffic/Circulation    | <input checked="" type="checkbox"/> | Surface Water     |
| <input checked="" type="checkbox"/> | Noise                  | <input checked="" type="checkbox"/> | Ground Water      |
| <input checked="" type="checkbox"/> | Air Quality            | <input checked="" type="checkbox"/> | Flooding          |
| <input checked="" type="checkbox"/> | Water Supply           | <input checked="" type="checkbox"/> | Socio-Economic    |
| <input checked="" type="checkbox"/> | Septic Systems         | <input type="checkbox"/>            | Fiscal Impacts    |
| <input type="checkbox"/>            | Sewer Capacity         | <input checked="" type="checkbox"/> | Jobs/Housing      |
| <input checked="" type="checkbox"/> | Fire/Police            | <input checked="" type="checkbox"/> | Toxic/Hazards     |
| <input checked="" type="checkbox"/> | Schools                | <input checked="" type="checkbox"/> | Mineral Resources |
| <input checked="" type="checkbox"/> | Parks/Rec.             | <input checked="" type="checkbox"/> | Cumulative        |
| <input checked="" type="checkbox"/> | Solid Waste            | <input checked="" type="checkbox"/> | Growth Inducement |
| <input type="checkbox"/>            | Other _____            |                                     |                   |

Signature



Date

7/2/2002

Printed Name Bruce Jensen

Title Senior Planner

NOTE: Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. from a Notice of Preparation or previous draft document) please fill it in.

MVR 00621

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**Reviewing Agencies**

X = Sent by Lead Agency

- |  |   |
|--|---|
| <input type="checkbox"/> Resources Agency                          | <input type="checkbox"/> Caltrans District _____          |
| <input type="checkbox"/> Boating / Waterways                       | <input type="checkbox"/> Dept. of Transportation Planning |
| <input checked="" type="checkbox"/> Conservation                   | <input type="checkbox"/> Aeronautics                      |
| <input checked="" type="checkbox"/> Fish and Game                  | <input type="checkbox"/> California Highway Patrol        |
| <input type="checkbox"/> Forestry                                  | <input type="checkbox"/> Housing and Community Dev't      |
| <input type="checkbox"/> Colorado River Board                      | <input type="checkbox"/> Statewide Health Planning        |
| <input type="checkbox"/> Dept. Water Resources                     | <input type="checkbox"/> Health                           |
| <input type="checkbox"/> Reclamation                               | <input type="checkbox"/> Food and Agriculture             |
| <input type="checkbox"/> Parks and Recreation                      | <input type="checkbox"/> Public Utilities Commission      |
| <input type="checkbox"/> Office of Historic Preservation           | <input type="checkbox"/> Public Works                     |
| <input type="checkbox"/> Native American Heritage Commission       | <input type="checkbox"/> Corrections                      |
| <input type="checkbox"/> S.F. Bay Cons. and Dev't. Commission      | <input type="checkbox"/> General Services                 |
| <input type="checkbox"/> Coastal Commission                        | <input type="checkbox"/> OLA                              |
| <input type="checkbox"/> Energy Commission                         | <input type="checkbox"/> Santa Monica Mountains           |
| <input type="checkbox"/> State Lands Commission                    | <input type="checkbox"/> TRPA                             |
| <input type="checkbox"/> Air Resources Board                       | <input type="checkbox"/> OPR — OLGA                       |
| <input type="checkbox"/> Solid Waste Management Board              | <input type="checkbox"/> OPR — Coastal                    |
| <input type="checkbox"/> SWRCB: Sacramento                         | <input type="checkbox"/> Bureau of Land Management        |
| <input checked="" type="checkbox"/> RWQCB: Region # <u>Dist. 2</u> | <input type="checkbox"/> Forest Service                   |
| <input type="checkbox"/> Water Rights                              | <input type="checkbox"/> Other _____                      |
| <input type="checkbox"/> Water Quality                             | <input type="checkbox"/> Other _____                      |

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**For SCH Use Only:**

Date Received at SCH \_\_\_\_\_ Catalog Number \_\_\_\_\_

Date Review Starts \_\_\_\_\_ Applicant \_\_\_\_\_

Date to Agencies \_\_\_\_\_ Consultant \_\_\_\_\_

Date to SCH \_\_\_\_\_ Contact \_\_\_\_\_ Phone \_\_\_\_\_

Clearance Date \_\_\_\_\_ Address \_\_\_\_\_

Notes: \_\_\_\_\_

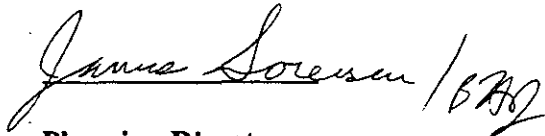
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**MITIGATED NEGATIVE DECLARATION (DRAFT)**

Alameda County Planning Department  
(Lead Agency)  
399 Elmhurst Street, Room 136  
Hayward, California 94544  
(415) 670-5400

1. **Project Name:** SURFACE MINING PERMIT (SMP-24) PIT DEEPENING EXPANSION, MISSION VALLEY ROCK COMPANY QUARRY (PORTION), SUNOL, CALIFORNIA.
2. **Description, Location, and Assessor's Parcel Number(s):** Project is a volumetric expansion of operations under Surface Mining Permit SMP-24 held by Mission Valley Rock Company. The expansion would involve a deepening of the existing quarry pits on the 202-acre site from 140 feet to as deep as 250 feet. The added marketable material from this approval would be about 10 million tons of aggregate, bringing the remaining net available resources to approximately 24 million tons. The existing permit will expire in December 2045; this expansion would have the same expiration date. The project would continue in a fashion similar to the operation currently underway, including extractive operations and transport of raw product to the existing production plant (not under consideration as part of this permit), and subsequent reclamation of the site to water storage ponds administered by the San Francisco Water Department, and agriculture (grazing) by means of silt storage and topsoil replacement. The site ranges from one (1) to two (2) miles southeast of the town of Sunol, easterly of Interstate 680. Sunol Valley, unincorporated Alameda County, southeast of Interstate 680. 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15.
3. **Persons or Entity Undertaking Project:** Mission Valley Rock Company
4. **Responsible Agencies:** Bay Area Air Quality Management District; Regional Water Quality Control Board; Department of Conservation, Division of Mines and Geology
5. **Findings:** Based on the attached Initial Study, the Alameda County Planning Commission has found that the project will not have a significant effect on the environment if the recommended mitigation measures are implemented.
6. **Date of Public Notice of Negative Declaration:** July 3, 2002
7. **End of Review Period:** August 6, 2002

Janice Lorenson

**Planning Director**

July 2, 2002  
Date

MVR 00623

**INITIAL STUDY/  
DRAFT MITIGATED NEGATIVE DECLARATION**  
**Environmental Checklist Form**  
pursuant to the California Environmental Quality Act, as amended.

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**A. PROJECT DESCRIPTION**

1. **Project Title:** Expansion of Surface Mining Permit and Reclamation Plan SMP-24, Mission Valley Rock Co.
  
2. **Lead Agency Name and Address:**  
  
Alameda County Community Development Agency  
224 West Winton Avenue, Room 151  
Hayward, California 94544
  
3. **Contact Person and Phone Number:**  
  
Bruce Jensen, Senior Planner, (510) 670-5400
  
4. **Project Sponsor's Name and Address:**  
  
Mission Valley Rock Company  
Mort Calvert  
7999 Athenour Way  
Sunol, CA 94586  
(510) 862-2257
  
5. **Description of Project:** Surface Mining Permit SMP-24 was approved by the Board of Supervisors on January 23, 1986. A periodic review was conducted in 1991, and another periodic review is being processed concurrently with this application. Permittee proposes to modify the original quarry and reclamation plan by expanding the amount of volume of material that could be removed. This expansion would involve a deepening of the existing pits from 140 feet to as much as 250 feet (depending on the availability of material at that depth). Pits on both sides of Alameda Creek would be deepened; increased depths would result in greater water storage capacity available to the San Francisco Water Department in future years (San Francisco Water Department, the lessor for lands proposed to be quarried under Surface Mining permit SMP-32 and some lands under SMP-24, has requested application for this deepening in its lease for SMP-32). The overall area of quarry pits and processing plant equipment covers about 202 acres; no quarry footprint expansion is sought, although some levies and levy material that separate existing quarry pits would be removed. The life of the quarry, currently ending by the year 2045, would not be extended. The proposed expansion would bring the total amount of material available for market to about 23,950,000 tons of

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*Surface Mining Permit SMP-24, Quarry Deepening  
Initial Study, July 3, 2002  
Page 1*

marketable mineral commodities. During and after the mining period, reclamation would occur. The footprint of the proposed excavation area and reclamation plan is shown in Exhibit 2, Figures 2A and 2B.

All other aspects of the quarry operations under this permit would remain unchanged. Quarried sand and gravel would be processed on site, and would continue to be transported to the existing processing plant on the project site via electrically-powered conveyor belt or scraper. New side slopes in the deepened pits would be mined to a maximum grade of 2:1 or in some instances 1.5:1. As before, the rate of extraction could vary from time to time depending on market demand for the product. Mining equipment would include scrapers, dozer, backhoe, grader, front end loader and water truck; a dragline could be used if conditions warrant. Any topsoil from the newly mined area would be stockpiled and used for landscaping features and future reclamation. Wastes (sediments, fines, overburden) would be retained on site but none east of Alameda Creek; as has always been the case, the reclamation of these pits involves filling and capping silt and overburden or conversion to water storage reservoirs. All materials would be processed through existing on-site equipment and exported on trucks using the Athenour Way access road and Interstate 680.

The quarry would continue to potentially operate up to 365 days a year (depending on the volume of business), from 6:00 AM to Midnight, with occasional all-night operations should the need arise. The permitted area itself would result in no additional daily trips on area roadways since all material would pass through the existing processing plant; this equipment can already operate at full capacity but no greater, and total trips per day would be limited to that number currently possible under full production. Truck trip generation from the plant on any day, and the life of the quarry, depends heavily on market conditions for the mined resource; this condition would continue to be true.

Groundwater flowing into the pit is pumped to silt/holding ponds on the SMP-24/SMP-33 property for recharge. Water required for mining operations is pumped from these ponds and used for haul road and equipment dust control. Some of this water flows back into the ponds/pits and is re-used; a small portion soaks into the ground or evaporates. During times of high groundwater, and at other times as necessary, water that has been allowed to settle may be discharged into the Alameda Creek streambed as permitted by the Regional Water Quality Control Board discharge permit. No significant amounts of chemicals are used on site, and the water remains clean except for natural suspended silts. Alameda Creek is protected from any quarry runoff by berms four to six feet in height separating the pit sites from the stream channel. Surface runoff from off the quarry site is directed around the active quarry area and into Alameda Creek by berms. All of these practices would remain the same.

After the pits are mined out, they would be reclaimed as a silt ponds for the operations permitted under existing permit SMP-32, or converted to water storage reservoirs. The silt pond process is key to the reclamation plan, described further below. This part of the proposal has been part of the project description for this pit since adoption of SMP-32 and, prior to that, SMP-29, and does not represent a new element of the project description.

Additional details of the operations and equipment can be found in the application for this permit, available for review at the Alameda County Planning Department.



6. **Reclamation of the Site:** Refer to Exhibit 3, Mining and Reclamation Phasing Plan. The site would be gradually reclaimed to the original use through filling and capping of some pits, that original use being extensive agriculture (probably grazing) and to water storage reservoirs.

As described in Exhibit 3, mining of various areas would continue approximately through the year 2035 or beyond, while filling and capping of some pits as silt ponds would continue through the final year 2045. Toward the end of this period, the area under the present Office and AC/Plant 2 would be mined, and converted to water storage. The Permittee proposes to use some of the pits as silt ponds for the remaining permitted area under SMP-24 and SMP-32. After filling to near the surrounding grade with settled silt, the pits would be capped with stockpiled topsoil and revegetated using typical grasses found in the surrounding area, both native and nonnative. The original plan for revegetation would remain as it is now, except for the modification of the actual areas to be replanted. Upon completion of mining, approximately 1/3rd of the site would become permanent water storage ponds, and the remainder would become grazing land.

As previously approved, all stockpiles, structures, equipment and refuse would be used up or removed at the termination of quarrying. Other details may be found in the permit application, available for review at the Alameda County Planning Department.

7. **Project Location:** The 202-acre site is located on Athenour Way, near Andrade Road and I-680, Sunol Area, Assessor's Parcel Numbers 96-1-11-7, 11-8, and 10-4; 96-80-1-3 (portion), 1-5, 1-7, and -12; and 96-375-11-5 and -15. Site extends from the southeast side of I-680, either side of the Alameda Creek drainage, approximately 1.5 miles southeastward along the southwest side of Alameda Creek to the boundary with lands of Surface Mining Permit SMP-33. Refer to Exhibit 1, Figure 1 for vicinity map.
8. **General Plan Policies and Zoning:** General Plan Designation is for Water Management, under which quarries are permitted uses. Alameda County Measure D permits continuation of existing quarries and expansions of existing quarries onto adjoining parcels, however, this proposal does not include lateral spatial expansion (more discussion below under D, Evaluation of Environmental Effects). The Zoning Designation is "A" - Agriculture, 100 acre Minimum Building Site Area, in which zone quarries are conditionally permitted uses under the Alameda County General Ordinance Code, Title 6 - Health and Safety, Chapter 6.8, Surface Mining and Reclamation.
9. **Setting and Surrounding Land Uses:** The existing 202-acre mining site consists of the preexisting SMP-24 quarry area and plant site. The area consists of level or gently sloping quarry land; the entire site is currently disturbed by prior quarry operations. There are presently 10 pits onsite, most of which are in various stages of active mining; the remainder are silt ponds which may be re-excavated again to recover sand and other unmined materials. Of the active pits, a cluster of four adjacent pits are proposed to be mined into one large pit extending to a depth of up to 250 feet, although this number may be less when mining is finished. Some partial reclamation has occurred on portions of the site, especially a capped silt pond that now is occupied by stockpiles. The rest is largely still under active mining operations. An access road extends from the end of Athenour Way through the site to the SMP-33 site to the south, and is used by all haul vehicles to gain access to I-680. There are no perennial streams or other significant natural

waterways, however, the property is near the Alameda Creek stream channel. Structures currently on the site include the company offices (portable), processing and asphalt/concrete plants, maintenance structures, conveyor belts, and a weigh station. The site is sparsely vegetated by nonnative grasses, forbs and shrubs except for a number of planted landscape trees at various locations. Adjacent to the site and across Alameda Creek to the east lie lands of the San Francisco Water Department, some of which on the east side of Alameda Creek are being quarried by RMC Pacific Materials. Steep, hilly ranchland is located immediately to the west and southwest. The site is accessible only via Athenour Way off Interstate 680. Other aspects of the setting are discussed in issue sections below as appropriate.

Surrounding land uses include grazing lands to the west and southwest, additional quarry operations to the east across Alameda Creek and south at SMP-33, and nurseries to the east and southeast along the creek.

**10. Other Public Agencies Whose Approval May be Required:**

Bay Area Air Quality Management District  
 Regional Water Quality Control Board  
 Department of Conservation, Division of Mines and Geology  
 City of San Francisco, Water Department

**B. ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors shown below are discussed in the following draft Initial Study. Those that are checked [X] require additional measures to mitigate potential environmental impacts. The absence of a check indicates that none of these factors in that topic category were identified as being the subject of an environmental impact.

<input checked="" type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture Resources	<input type="checkbox"/>	Air Quality
<input checked="" type="checkbox"/>	Biological Resources	<input checked="" type="checkbox"/>	Cultural Resources	<input checked="" type="checkbox"/>	Geology /Soils
<input type="checkbox"/>	Hazards / Hazardous Materials	<input type="checkbox"/>	Hydrology/Water Quality	<input type="checkbox"/>	Land Use/Planning
<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Noise	<input type="checkbox"/>	Population/Housing
<input type="checkbox"/>	Public Services	<input type="checkbox"/>	Recreation	<input type="checkbox"/>	Traffic
<input type="checkbox"/>	Utilities / Service Systems	<input type="checkbox"/>	Energy	<input type="checkbox"/>	Mandatory Findings of Significance

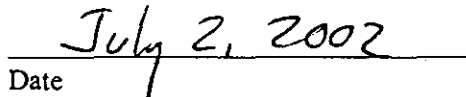
C. DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

  
Signature

James Sorensen  
Printed name

  
Date

Planning Director  
Title

**D. EVALUATION OF ENVIRONMENTAL EFFECTS**

	Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
<b>I. AESTHETICS.</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista?	[ ]	[ ]	[ X ]	[ ]
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic building within a state scenic highway?	[ ]	[ ]	[ X ]	[ ]
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	[ ]	[ ]	[ X ]	[ ]
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area	[ ]	[ X ]	[ ]	[ ]

Comments:

Character and Visual Quality - The preexisting quarry has defined the ongoing land use for the site; as a result, the basic character of the area would not change by continuation of the quarry activity. Although the increased degree of mining proposed, as well as the proposed minor changes in the precise layout and phasing of the mining and reclamation activities, would result in some degree of change within the area when compared to the existing condition, the changes would not substantially alter the character of the quarry area. The surrounding area to the west and south remains pastoral and quasi-natural, with ranchland and forest/scrub extending away and upward. The quarry pits themselves would be enlarged somewhat, but with only modest visibility from any public areas. The reclamation and landscape plan adopted for this permit indicates a variety of fast-growing, native species suitable for the site, to be planted in an approximately random manner and with uneven spacing. Given this existing condition and the fact that the new excavation will need to adhere to this plan, no new or increased visual impact is expected.

Significant Light and/or Glare - The existing operation includes a number of bright light fixtures for nighttime operations, both at the plant and in the quarry pits. These would not change under the present proposal, and no new impacts would occur. However, in the event that existing light fixtures are replaced due to failure or evolving operating requirements, the operator should install new fixtures that do not contribute to offsite glare, light trespass or light pollution, e.g., escape of light above the horizontal. The permit should require that the Permittee design and place new night time lighting and security lighting so that it is no higher than necessary to illuminate the work area, and that the lighting is directed toward

the area being worked; under no circumstances should direct lighting be visible beyond the site boundaries, nor should general lighting radiate in a direction above the horizontal. Lighting for operations in the pits should be placed as low into the pits as possible. A mitigation measure for reducing night lighting impacts from new fixtures is included below.

- (a) Permittee shall install only full cutoff-shielded lights for general illumination of plant site areas, and shall replace all existing non-shielded lighting, when necessary, with full-cutoff fixtures. The lowest wattage lamps reasonable for illumination of the area of concern shall be used.
- (b) Night time operations and security lighting shall be installed no higher than necessary to illuminate the area of concern for security, safety or visual comfort, and lighting shall be directed toward the area of concern, and always below the horizontal.
- (c) Permittee shall not position night lighting to illuminate areas beyond the site boundaries, nor shall the Permittee position general lighting to radiate above the horizontal, but shall place lights or install shielded lights to illuminate only the area of concern.
- (d) For any lighting on areas nonessential for safety, security or active operations, Permittee shall place new lights on a motion detector circuit so illumination only occurs when required for occasional visibility.
- (e) Permittee shall utilize sodium vapor lamps whenever possible, unless it can be demonstrated that other kinds of lights are required for specific purposes of color rendition, visual comfort or security.

No scenic roadways would be affected. No other significant impacts in this category are expected. No other mitigation would be required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**II. AGRICULTURE RESOURCES.** Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

[ ]	[ ]	[ X ]	[ ]
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b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

[ ]	[ ]	[ X ]	[ ]
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c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?

[ ] [ ] [ X ] [ ]

Comments: The proposed project would not result in the conversion of agricultural/open space lands to non-agricultural uses. The proposal does not involve the conversion of existing farmland, nor does it involve any farmland listed as Prime, Unique, or of Statewide Importance. In the reclamation of the site, the area would be reclaimed for agriculture. No contracts for agriculture or open space would be affected. Impacts would be less than significant, and no mitigation is required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**III. AIR QUALITY. Would the project:**

a) Conflict with or obstruct implementation of the applicable air quality plan?

[ ] [ ] [ X ] [ ]

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

[ ] [ ] [ X ] [ ]

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

[ ] [ ] [ X ] [ ]

d) Expose sensitive receptors to substantial pollutant concentrations?

[ ] [ ] [ X ] [ ]

e) Create objectionable odors affecting a substantial number of people?

[ ] [ ] [ X ] [ ]

Comments: Air quality would not be affected significantly by this proposal. Quarry trip generation would remain at the current level, since maximum trip generation is determined only by processing plant capacity, which would not change. Some dust would continue be generated at the facility; typical sources of dust include excavation and grading operations, and vehicle traffic over unpaved roads. The existing processing plant on the SMP-24 lands would not contribute additional dust. Common remedies include watering of disturbed and traveled areas, use of dust palliative materials if necessary, and revegetation of disturbed areas that are not to used. These measures are also typical of those required by the Bay Area Air Quality Management District in each permit to operate for quarries. Currently, the Permittee utilizes general watering

of disturbed areas to suppress dust as required by the permit. County inspectors can order more extensive watering if conditions warrant, as well as the use of dust palliative materials for certain areas. Most of the actual excavation is done in wet materials (near or below the water table) and dust is not generally a major product of this activity.

Asbestos release has been raised as a potential problem for quarry activities in the Sunol Valley, due to the supposed excavation of native rock materials from certain serpentine-bearing formations in the area. Serpentine is a common mineral in the rocks of Alameda County, and is found in the Sunol area. The Permittee does not excavate this hard bedrock material, however, but rather excavates materials of the Livermore Formation, a deep layer of partially consolidated streambed and lakebed deposits washed in from other areas in the distant past. Some of these gravels probably contain boulders and rocks of serpentine. Although the presence of serpentine does not guarantee the presence of asbestos, there is potential for asbestos to be present, and it could be released during the processing of the aggregate, which does not occur on this site or under this permit.

An asbestos test was conducted on the Permittee's processed material by Asbestest, Inc. in September, 1992. A letter report from this firm indicated that, using polarized light microscopy, the material tested contained no asbestos at all. The official report results as per State of California regulations indicate that an asbestos level of 0.1% or more was not reached, and the technical result was "None Detected." This letter report is attached as Exhibit 4 (Mr. Robert Kumagai, Asbestest, Incorporated, Asbestos Identification by Polarized Light Microscopy for Mission Valley Rock, Job No. C-2445-92, September 22, 1992).

Subsequent to this, in 2001, the California Air Resources Board adopted a regulation requiring testing of some produced aggregate materials based on their sources in possible ultramafic (asbestos-bearing) rock, which may include serpentine and potential asbestos components (17 California Code of Regulations 93106 - attached as Exhibit 5). The regulation also places some prohibition on sales of material contained more than 0.25 percent asbestos content, and requires warnings to be posted on loads containing, or projects using these materials. Specifically, the restrictions under Section (b) of this regulation apply to the following materials:

- (1) Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit (as defined in subsection (i)(9)); or
- (2) Aggregate material extracted from property that is NOT located in a geographic ultramafic rock unit (as defined in subsection (i)(9)) if the material has been:
  - (A) Evaluated at the request of the Air Pollution Control Officer (APCO) and determined to be ultramafic rock or serpentine;
  - (B) Tested at the request of the APCO and determined to have an asbestos content of 0.25 percent or greater, as determined using an approved asbestos bulk test method; or
  - (C) Determined by the owner/operator of a facility to be ultramafic rock, or serpentine, or material that has an asbestos content of 0.25 percent or greater.
- (3) Any mixture of aggregate material that contains ten percent (10%) or more of any of the materials listed above in subsection (b)(1) or (b)(2).

None of these requirements apply to the quarry pit under consideration, or any quarry pit owned or operated by the Permittee. Further, Section (f) of the regulation exempts from the strictest standards (prohibition, notice/warning, and recordkeeping/reporting) a number of uses, including:

- 1) *Sand and Gravel Operations*: The requirements of subsections (c), (d), and (e) shall not apply to aggregate material extracted from a sand and gravel operation. A "sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.
- (2) *Roads Located at Quarries or Mines*: The requirements of subsection (c) shall not apply to roads at quarries or mines that are located in a geographic ultramafic rock unit, an ultramafic rock deposit, or a serpentine deposit, provided that the aggregate material was obtained on site from the quarry or mine property.

Apparently, from the information in this regulation, there is no specific requirement for the Permittee to perform any further testing or ongoing monitoring for asbestos unless specifically requested by the Air Resources Board or local Air Pollution Control Officer at the Bay Area Air Quality Management District.

Another regulation is being considered for adoption in the Summer of 2002, which would place mitigation requirements on aggregate producers and other handlers of material that may contain asbestos in proportions exceeding 0.25 percent. Although the draft of this regulation is not yet available, preliminary information from the Air Resources Board suggests that the mitigation would take the form of water application at possible dust generation points; this is the type of dust suppression mitigation already in use by the Permittee and already required by the existing Permit for SMP-24. The excavated material is already wet, and further wetting already occurs at many stages during processing. If, upon review of the new Summer 2002 regulation, it becomes necessary for County quarry operators to meet a higher standard of particulate suppression, then the operators will be required by State law to meet those standards. Otherwise, no new impacts due to the presence of asbestos are expected. No new mitigation measure or condition of approval is required to further suppress potential asbestos emissions from the new pit expansion or processing of material extracted from the pit.

No other impacts are expected compared to the existing setting, which involves the preexistence of a quarry. No new sources of pollutants or increases in the amount of pollutant emissions would occur, and existing sources are already subject to mitigation. No odors are anticipated. No new mitigation is required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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IV. **BIOLOGICAL RESOURCES.** Would the project:



a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

[ ] [ ] [X] [ ]

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Services?

[ ] [X] [ ] [ ]

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) Through direct removal, filling, hydrological interruption, or other means?

[ ] [ ] [X] [ ]

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

[ ] [ ] [X] [ ]

e) Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?

[ ] [ ] [X] [ ]

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

[ ] [ ] [X] [ ]

**Comments: 2002 Biological Study.** In June 2002, a biological study was conducted by Mr. Clint Kellner, Ph.D. of EDAW Associates for the area covered by SMP-24 (Biological Reconnaissance of SMP-24 and the Pits Proposed for Consolidating and Deepening, June 27, 2002); this study is included as Exhibit 6). The methodology is described in the attached study.

The reconnaissance survey took place over the entire SMP-24 area of the Mission Valley Rock Quarry in Sunol. The survey methodology involved walking down to the bottom of each of the pits that will be consolidated. The edges of the pits were sampled for aquatic species with a hand held dip net. The top of the partitions/levies were walked to survey for any special-status biological resources. Plant and animal species that were observed during field work were recorded in field notes.

Sedimentation basins, areas between the basins, and the working area of the Mission Valley Rock quarry were likewise surveyed. The site survey was conducted on June 4, 2002 with a follow-up survey on June 25, 2002. Also, information on file with the California Natural Diversity Database (CNDDDB 2002) was examined to determine the potential presence of rare, threatened, and endangered species in the project vicinity.

#### EXISTING CONDITIONS:

The project site consists of non-native grassland, ruderal vegetation, and patches of willow trees.

**Vegetation.** The general vegetation of the quarry pits consists of sparse patches of non-native grassland and ruderal vegetation with small patches of willows growing at the edge of the water in the pits. The non-native grassland is dominated by ripgut brome (*Bromus diandrus*) and red brome (*Bromus madritensis* ssp. *rubens*). Rabbit's foot grass (*Polypogon monspeliensis*) grows in moist areas of the quarry pit and at the water's edge. The ruderal vegetation is dominated by yellow sweetclover (*Melilotis* sp.), and short-pod mustard (*Hirschfeldia incana*). Other ruderal species present include Italian thistle (*Carduus pycnocephalus*) and sow thistle (*Sonchus* sp.). Individual plants of mulefat (*Baccharis salicifolia*), sandbar willow (*Salix exigua*), arroyo willow (*Salix lasiolepis*), and red willow (*Salix lasiandra*) occur at the edge of the ponds at the bottom of the quarry pits. The willows may also grow in small stands of 4 or 5 trees. The willow trees are often associated with small stands of cattails (*Typha* sp.) that grow at the edges of the ponds.

Vegetation of the quarry pit slopes consists of a sparse growth of ruderal plants including short-pod mustard, Italian thistle, horse weed (*Conyza canadensis*), and coyote brush (*Baccharis pilularis*). Some of the quarry pits support a row of willow trees and or a row of cattails on their slopes where water seeps into the pits. The band of cattails averages 5 feet wide and is often associated with watercress (*Rorippa nasturtium-aquaticum*).

The willow trees are usually less than 12 feet tall and 4 inches in diameter but in one instance the willow trees of a 450-foot row were approximately 8 inches in diameter and 35 to 40 feet tall. A few cottonwood trees (*Populus fremontii*) also grew with the willows. The foliage of some of these trees was sparse and some of the trees had died. Nevertheless, a 225-foot portion of this row in the large pit northeast of Alameda Creek consisted of trees with a full canopy of dense foliage. These trees grow at a maximum spacing of 10 feet apart.

The vegetation of the silt ponds was similar to that of the pits - small clumps of cattails and willows. The areas separating the silt ponds consisted of ruderal vegetation - similar to the vegetation between the quarry pits.

**Wildlife.** Wildlife values on the site are generally low because of the constant disturbance to the quarry pits from mining activity. Black-tailed deer (*Odocoileus hemionus*) were observed in Alameda Creek and within the quarry pits. Black-tailed hare (*Lepus californicus*) would also be expected to occur in the quarry pits. Birds that are observed in the quarry pits include Brewer's and redwing blackbirds (*Agelaius phoeniceus*) in the cattails and willow trees, song sparrows (*Melospiza melodia*) in the willow trees, and Savannah sparrows (*Passerculus sandwichensis*) in the ruderal vegetation.

Bullfrogs (*Rana catesbiana*) occur at the edge of some of the quarry ponds and sedimentation basins near cattail and willow trees. Fence lizards (*Sceloporus occidentalis*) occur on the slopes of the quarry and areas of relative bare ground with

sufficient cover of rocks. Snakes may occur incidentally in the quarry pits and sedimentation basins but the quarry would not be considered habitat. Likewise skunks (*Mephitis mephitis*) and raccoon (*Procyon lotor*) may also occasionally forage within the quarry but it would not be considered habitat.

**Special-Status Species.** The following discussion mentions the special-status species that occur in the Sunol area. These species are not likely to occur within the quarry pits because of the continual disturbance to their habitats and disruption to their activities.

Special-status plant species that occur in the Sunol area and surrounding USGS quadrangles include large-flowered fiddleneck (*Amsinckia grandiflora*), caper-fruited tropidocarpum (*Tropidocarpum capparideum*), Mt. Diablo buckwheat (*Eriogonum truncatum*), big-scale balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*), Congdon's spikeweed (*Centromadia parryi* ssp. *congdonii*), diamond petaled poppy (*Eschscholzia rhombipetala*), Diablo helianthella (*Helianthella castanea*), fragrant fritillary (*Fritillaria liliacea*), maple-leaved checkerbloom (*Sidalcea malachroides*), most beautiful jewel-flower (*Streptanthus albidus* ssp. *peramoenus*), alkali milk vetch (*Astragalus tener* var. *tener*), heartscale (*Atriplex cordulata*), brittlescale (*Atriplex depressa*), San Joaquin saltbush (*Atriplex joaquiniana*), hispid bird's beak (*Cordylanthus mollis* ssp. *hispidus*), palmate-bracted bird's beak (*Cordylanthus palmatus*), Livermore tarplant (*Deinandra bacigalupii*), round-leaved filaree (*Erodium macrophyllum*), robust monardella (*Monardella villosa* ssp. *robusta*), and hairless popcorn flower (*Plagiobothrys glaber*).

Special-status animal species that occur in the vicinity of Sunol include California tiger salamander (*Ambystoma californense*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), western pond turtle (*Clemmys marmorata*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), coast horned lizard (*Phrynosoma coronatum frontale*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), California horned lark (*Eremophila alpestris actia*), tricolored blackbird (*Agelaius tricolor*), Berkeley kangaroo rat (*Dipodomys heermanni berkeleyensis*), golden eagle (*Aquila chrysaetos*), Cooper's hawk (*Accipiter cooperi*), sharp-shinned hawk (*Accipiter striatus*), black-shouldered kite (*Elanus caeruleus*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus anatum*), and yellow warbler (*Dendroica petechia brewsteri*). Species that are not expected on the site because of the absence of vernal pools or natural ponds are the longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the curved-foot hygrotylus diving beetle (*Hygrotylus curvipes*). Townsend's big-eared bat (*Corynorhinus townsendii townsendii*) is not expected on the site because of the absence of roosting habitat.

In addition to these species, rookeries of various species of herons including great blue heron (*Ardea herodias*), black-crowned night heron (*Nycticorax nycticorax*) great egret (*Casmerodius albus*), and snowy egret (*Egretta thula*) are also sensitive resources.

**Survey Results.** Tricolored blackbirds were observed in two stands of cattails of one of the sedimentation basins just west of Alameda Creek. The tricolored blackbirds are a California Species of Special Concern. They are not federally- or state-listed. The sedimentation basin is not part of the current project to widen and deepen the quarry pits. The tricolored blackbirds were observed on June 4 and June 25, 2002. During both observations, I could not determine whether the area was used for breeding or whether the birds were roosting and had bred elsewhere. About 20 tricolored blackbirds were counted in the cattails and an estimate was made of 20 additional tricolored blackbirds in the cattails for a total of approximately 40 tricolored blackbirds. A sand extraction facility that is adjacent to the sedimentation pond, does not appear

to affect the tricolored blackbirds. These tricolored blackbirds were not observed within the pits proposed for widening and deepening.

No other special-status species were observed within the SMP-24 boundaries. The prior disturbance and continuing disturbance would preclude the occurrence of special-status plant species within SMP-24. The quarrying activity along with the previous and continuing disturbance would tend to prevent the occurrence of special-status wildlife from SMP-24. Within the pits east of Alameda Creek that are proposed for consolidation and deepening, no special-status plants or wildlife species were observed and none are expected to occur there because of the absence of habitat. In addition, the constant activity along with the prior and continuing disturbance to the pits that are proposed for consolidation and deepening, preclude the presence of special-status species.

## PLANNING CONSIDERATIONS

Special-status species are absent and are not likely to occur in the quarry pits. No special considerations are necessary for this area with respect to the proposed consolidation and pit deepening. The existing small stands of cattails and willows in the quarry pits are not valuable habitat for wildlife because of their small size, the continual disturbance from mining activity, and isolation from the riparian areas of Alameda Creek. No special planning considerations are needed for these habitats.

The stand of dense willows and cottonwoods that grow along a 225-foot length of slope in the large pit northeast of Alameda Creek is valuable habitat for wildlife. If quarrying activity removes this stand, it should be replaced at an appropriate location nearby with willows, cottonwoods, or sycamores (*Platanus racemosa*). The location could be along a suitable reach of Alameda Creek or at the edge of a fully reclaimed storage pond. At this time, the Permittee does not propose to remove any of this vegetation prior to final reclamation, at which future time the area would become flooded with water storage. In the event that removal of this plant life becomes necessary, the following measure is recommended:

- Prior to removal of the sensitive 225-foot long band of willow and cottonwood trees in the large pit on the northeast side of Alameda Creek, Permittee shall notify the Planning Director of intent to remove this band of vegetation and shall develop and submit to the Planning Director for review a mitigation plan. The plan shall include a description of the vegetation to be removed at that time, the number, spacing, and location of the trees to be planted, maintenance requirements, monitoring protocols, and performance standards. If the replanting is to be accomplished on lands not owned by the Permittee, Permittee shall submit proof that the receiving landowner has agreed to this planting and that it will be made permanent through either an easement or contract.

Apart from the effects described above, the nature and design of the project is such that impacts to anadromous fisheries unique or fragile biotic communities, or agricultural lands would not occur. There is an issue related to surface and groundwater movement within the Alameda Creek streambed, specifically drawdown of the stream by excavation in pits adjacent to the stream, that could relate to sustainability of fisheries; however, this drawdown is discussed further in Section VIII., HYDROLOGIC FACTORS below. The outcome of that discussion is that drawdown on the creek, which occurs in part naturally as a result of the substantial porosity of the streambed and underlying gravels, and in part artificially as a result of retention of water upstream at the Calaveras Reservoir and to a lesser extent as a result of the permitted and

ongoing pumping and occasional discharge of groundwater downstream from quarry operations, would be barely affected by proposed deepening of the pit excavation. These conditions, along with the fact that the stream is often dry by early summer until the winter rains commence, result in no significant effect to any existing stream-related habitat. No other mitigation is required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**V. CULTURAL RESOURCES.** Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5?	[ ]	[ ]	[ X ]	[ ]
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5?	[ ]	[ ]	[ X ]	[ ]
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	[ ]	[ X ]	[ ]	[ ]
d) Disturb any human remains, including those interred outside of formal cemeteries?	[ ]	[ X ]	[ ]	[ ]

Comments:

Archaeological Discoveries - There are no known cultural resources on the already disturbed site, and the removal of very deep material is fairly certain to not unearth any cultural remains; however, it is possible that archaeological materials could be discovered on some of the levies to be removed. The existing permit has no specific conditions to protect resources of this type; if approved, the quarry operation and deepening should be subject to the following requirements, similar to those adopted for other County Surface Mining Permits:

- If potential archaeological resources are discovered during the course of operations:
  - (a) Immediately halt or relocate excavations and contact a qualified archaeologist or paleontologist to inspect the site. If the scientist determines that potentially significant materials or human remains are encountered, the scientist shall record, recover, retrieve, and/or remove them;

- (b) If human remains are found onsite, the applicant shall notify the Ohlone Most Likely Descendants, as designated by the California Native American Heritage Commission; the coroner shall be called and the archaeologist shall provide safe and secure storage of these remains while on the site, in the laboratory and otherwise, and shall consult with the Native American representatives regarding either onsite reburial of the remains or other arrangements for their disposition;
- (c) Provide a copy of documentation of all recovered data and materials found onsite to the regional information center of the California Archaeological Inventory (CAI) for inclusion in the permanent archives, and another copy shall accompany any recorded archaeological materials and data.
- (d) If any historic artifacts are exposed, the archaeologist shall record the data and prepare a report to be submitted to the local historical society.

Monitoring for these measures is performed by the applicant on a continual basis during construction, and include submittal of a summary of findings on an annual basis (at the time of the annual report) during activities to the Planning Director for review and completion of records. With this condition in place, no new impacts to cultural resources would occur.

Paleontological Discoveries. Any time excavation is performed into the earth, especially into materials known to be former sediments, there is the possibility of discovery of the remains of ancient life. Such is the case here. Disturbance is not necessarily an impact, although deliberate or accidental loss of valuable materials could be a significant impact. The following measure, very much like that for cultural materials, would mitigate this potential effect.

- If potential paleontological resources are discovered during the course of operations:
  - (a) Immediately halt or relocate excavations and contact a qualified expert to inspect the site. If the expert determines that potentially significant paleontological materials have been encountered, the expert should record, recover, retrieve, and/or remove them, and the Permittee should relinquish any claim to them;
  - (b) The qualified expert should preserve a copy of documentation of all recovered data and materials found onsite; the materials may, at the discretion of the expert, be carried to an institute approved by the Planning Director where they may be preserved and or studied.

No other impacts are expected, and no other mitigation would be required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**VI. GEOLOGY AND SOILS.** Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42)

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ii) Strong seismic ground shaking?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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iii) Seismic-related ground failure, including liquefaction?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	-------------------------------------	--------------------------

iv) Landslides?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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b) Result in substantial soil erosion or the loss of topsoil?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Comments:

Slope Failure - Steepness and stability of the slopes in a quarry are frequently an issue, for the purposes of reclamation, erosion and worker safety. The existing quarry pits on the site have some slopes steeper than 2:1, but none greater than 1.1:1 at present. These slopes are neither oversteep, nor do they appear to be presently unstable or erosive under present mining conditions. The most recent mining by the Permittee has resulted in cut slopes of 2:1 as allowed by the existing permit. For this application the Permittee proposes that new internal pit slopes be established at 2:1 and less steep values (cut slopes only, no fill) as mining progresses farther downward and outward, with no significant external slopes. In some pits, the slopes would be temporary during mining only, after which they would be reclaimed as silt ponds, wherein silt would be compacted by natural settling against the slopes; furthermore, the proposed 2:1 slopes meet the requirements of the Alameda County Surface Mining Ordinance as to basic stability requirements.

A report of November 2001 by Treadwell & Rollo Geotechnical Engineers for the Mission Valley Rock quarry provided some slope recommendations for new cut slopes at various depths below grade. The recommendations for stable cut slopes are based on soil and material types, seismic probabilities and prior analyses by other investigators. The recommendations for maximum slopes include fairly steep slopes in the shallower layers down to 100 feet in depth (slopes as great as 1.1:1 would be stable for materials from 30 feet to 100 feet deep), and below 140 feet in depth, slopes should flatten to 2:1 and finally 3:1 at more than 200 feet deep. These recommendations have been presented in a diagram labeled Exhibit 7.

Some slopes proposed by the Permittee are not exactly consistent with the recommendations of this diagram; in some cases, existing and/or proposed slopes are steeper (typically 1.5:1 or 2:1), and in other cases, existing slopes are not as steep. As a mitigation for the potential impact of oversteepened and unstable slopes, this report recommends that:

- **The Permittee shall not excavate new permanent slopes exceeding the elevation-dependent values presented in Exhibit 7, Recommended Slopes SMP-24, by Treadwell & Rollo Geotechnical Engineers, dated 11/14/01. If no bench is proposed or constructed at the 100-foot depth as shown in this diagram, then no new or existing slope indicated as less than 1.5:1 on Exhibit 7 shall be cut at slopes steeper than 1.5:1.**

With this measure, no significant impact is anticipated from slope failure.

Other Issues - Beyond that described for slope stability above, seismic and soil hazards are not expected to be a problem on site, nor are the quarry uses expected to result in these classes of problems off site. The only possible issue, soil erosion and subsequent siltation of waterways, is mitigated by the berm and sediment removal system, which would contain on-site flows, prevent flows originating upgradient from flowing across the disturbed area, and the use of sedimentation basins. Maintenance, structure and vegetation of these berms and basins are, and would continue to be, a condition of approval for the quarry. Soils are not an issue; handling of soil for reclamation is already specified for this project under the existing permit, and would be managed the same way for this expansion proposal. Off-site landslide, lateral spreading, subsidence, liquefaction or collapse is not anticipated as a result of this project.

The operation would have a less-than-significant impact on the availability of mineral resources in Alameda County.



Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**VII. HAZARDS AND HAZARDOUS MATERIALS.** Would the project:

- |  |     |     |       |     |
|--|-----|-----|-------|-----|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?  | [ ] | [ ] | [ X ] | [ ] |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?  | [ ] | [ ] | [ X ] | [ ] |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?  | [ ] | [ ] | [ X ] | [ ] |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?                                   | [ ] | [ ] | [ X ] | [ ] |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? | [ ] | [ ] | [ X ] | [ ] |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?  | [ ] | [ ] | [ X ] | [ ] |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?  | [ ] | [ ] | [ X ] | [ ] |

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wild lands are adjacent to urbanized areas or where residences are intermixed with wild lands?

[ ] [ ] [X] [ ]

Comments: The quarry operations, both existing and proposed, do not utilize or produce hazardous materials, nor do they create hazardous conditions that affect the public at large. No hazardous materials are transported to or from this site. No conditions exist that could release hazardous materials to the environment (for a discussion of asbestos issues, please refer to Section III, AIR QUALITY, above). No activities on the site are within 0.25 mile of a school. The site is not a hazardous materials site. The project would have no effect on any public or private aircraft facilities. The project would have no effect on any emergency response plan or emergency evacuation plan. No mitigation measure is required for any impact under this category.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**VIII. HYDROLOGY AND WATER QUALITY.**

Would the project:

a) Violate any water quality standards or waste discharge requirements?

[ ] [ ] [X] [ ]

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

[ ] [ ] [X] [ ]

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

[ ] [ ] [X] [ ]

- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
- e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?
- f) Otherwise substantially degrade water quality?
- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?
- h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- j) Inundation by seiche, tsunami, or mudflow?

Comments:

Increased Sedimentation - Increased sedimentation is a potential problem for all quarries in which water flows from the quarry toward adjacent lands or into water courses. The erosion of exposed surfaces results in carriage of sediment loads into waterways. The existing quarry has already been established to avoid sedimentation problems by having on site waters drain into the pits, and routing overland flows from upgradient around the disturbed area. The existing configuration has been found to be effective during many rainy seasons, and maintenance of the system, including berms and on-site grades, should continue to be an adequate method for control of erosion and sediment. The presence of this system is already a requirement of the permit, and no revision is necessary.

Surface Water Flows - The rate and direction of flow of surface waters at the site would be altered somewhat by the reconfiguration of the pit areas; however, these changes would all be internal to the quarry area. In the short term (during mining and reclamation), maintenance of berms to prevent erosion and flow-dissipating grading would suffice to maintain clear nondamaging flows from near the site to the stream channel. To maintain sheet flows and prevent erosion after occupation of the site ends, the reclamation plan already requires that, once reclamation is nearly completed (filling and

capping of some pits and satisfactory revegetation), the berms be removed and the site edges be regraded and revegetated to allow natural sheet flows to proceed across the site; it is assumed that most onsite flows would end up in the ponds and some would drain into Alameda Creek. The new reclamation plan would not alter this requirement. This existing condition mitigates the impact of water flow alteration and the possible secondary effects associated with it.

Surface Water Quality - For the disturbed area of the quarry expansion, surface waters typically drain directly into the excavated pits and would not naturally leave the site; excess water from the pits is removed when necessary by pumping, and is placed into either another pit or, if the silt has settled enough for the water to be clear, into Alameda Creek as allowed by the Permittee's discharge permit from the Regional Water Quality Control Board (RWQCB). The RWQCB permit allows water discharge from these pits as long as specific criteria for various contaminants are met. Among these are Total Dissolved Solids (TDS), various metals and salts, turbidity and acidity/alkalinity (pH). The discharges, when being conducted, are monitored weekly by an independent sampling and testing firm, and the results are submitted to the RWQCB for review and recordkeeping. If sampling indicates that excess levels of contaminants are being discharged, the RWQCB investigates to determine the cause of the exceedance, and if it is determined that a violation has occurred, the Permittee is cited and must take steps to eliminate the excess contaminant levels.

The discharge sampling results for the years 1999 through 2001 showed a number of values that exceeded the criteria for pH, TDS and turbidity; however, a letter from Ms. Jenny Chen at the RWQCB to Mr. Gary Dowd at the San Francisco Public Utilities Commission, dated February 19, 2002 (Exhibit 8A), certifies that no actual exceedances of these values occurred during 2001, and that the values obtained were the result of "either monitoring deficiencies or inappropriate sampling location. Mission Valley Rock has since corrected these deficiencies." In a response to an e-mail letter to Ms. Chen submitted by Planning staff, Ms. Chen also indicates that no violations occurred during the earlier Year 2000 sampling period, and that if the RWQCB were to carefully assess the possibility of a violation, they would need to take into account the background contaminant values of raw surface and groundwater. The latter discourse is included as Exhibit 8B.

To summarize, there is some discharge of settled groundwaters to natural surface waters (i.e. Alameda Creek) from the SMP-24 quarry pits. Water from these pits is pumped into nearby settling pits where it mingles with other groundwater and sediments settle out. This groundwater may be discharged according to the terms of the RWQCB permit. If a violation is found, the Permittee must take steps to ensure that it does not recur. This process would appear to mitigate the potential for excess contaminant levels as determined by the RWQCB permit. The quarry, with the added allowance for deepening of the pits, would be subject to the same process and requirements as the existing pits under SMP-24. No new impact is foreseen, and no new mitigation would be required. A condition of approval may be adopted to require the Permittee to follow this program, or its successor, as deemed appropriate by the RWQCB, but it would not be a mitigation measure.

Effects of Pit Presence on Stream Flow - Stream flow in Alameda Creek through the Sunol Valley is highly affected by many factors, including seasonal rainfall, the presence of large dams on Calaveras and San Antonio Creeks (major tributaries), the diversion of waters from these dams through pipes around the Valley, saturation of the aggregate deposits that underlie the Valley, slurry walls surrounding many of the quarry pits in the Sunol Valley that exclude water from those pits, and the degree of pumping of water and downstream discharge from the quarry pits.

Surface water from Alameda Creek is typically the source for replenishment of groundwater in the Sunol Valley. This groundwater is largely contained in the upper 40 to 50 feet of aggregates in the Sunol Valley; below that, the deeper Livermore Formation aggregates contain enough fine materials so that the deposits do not support much water content. The rate of water absorption into the subsurface aggregate deposits is related to the depth to groundwater; if the groundwater is near the surface, the aggregate would be saturated and little streamwater would infiltrate, resulting in greater sustained flow of Alameda Creek. If depth to groundwater is great and surface aggregate materials are dry, then the stream waters would be absorbed quickly and may even cease to flow as all of the water infiltrates to groundwater. If viable fisheries are present, the loss of flow could result in impacts upon those aquatic populations.

The presence of a quarry pit, as opposed to the unmined aggregate materials that would otherwise remain in the ground, results in additional storage volume for water that could otherwise be infiltrated among the aggregate. If material is removed from the aggregate deposits, the size of the underground storage volume increases by the volume of materials removed. Once this happens, the subsurface water level may tend to remain low, and more water would be absorbed from the stream. The Sunol Valley is presently full of many pits of varying size. All of these pits have contributed historically to lower groundwater levels, although the precise difference in that level as a result of those pits being in place is unknown, and probably has varied with time and location. Presently, the average depth to groundwater is around 25 to 30 feet, and basinwide varies seasonally due to alternating wet and dry periods. As a result, as Alameda Creek flows into the basin, the water is quickly absorbed into underground flow, often a significant distance upstream of any of the quarry pits; this was the case historically as well, even prior to the commencement of mining in the Sunol Valley (Mr. Joe Naras, San Francisco Water Department [SFWD], personal telephone communication, March 26, 2002). Flow along the reach of Alameda Creek adjacent to the quarries is low and often dry in spring, summer and autumn, except during the winter rainy season and even then sometimes only during water discharges from the upstream Calaveras Reservoir Dam. Downstream, at the lower hydrologic end of the basin, stream flow re-emerges and Alameda Creek through Niles Canyon has flowing water; this flow is sometimes augmented by discharges of relatively clean groundwater from the pits into the stream.

Virtually all of the quarry pits of SMP-24 are substantially isolated from the surrounding groundwater by the presence of slurry walls, which are artificial subterranean dams of dense material designed to stop water from entering the pits. Except for an approximately 100-foot-wide "window" in these underground walls where the South Bay Aqueduct needs to cross the slurry wall at a maximum depth of perhaps 30 feet (and therefore near the top of the groundwater horizon), the slurry wall is a substantial barrier to groundwater flow into the pits. Therefore, the groundwater is largely contained in the Alameda Creek channel and associated shallow groundwater aquifer, below which is more dense and only slightly hydrologically transmissive material. In fact, it may be that the presence of the slurry walls around some pits confine water to the streambed that might otherwise recharge the groundwater, resulting in more surface streamflow than would otherwise occur (Mr. Joe Naras, SFWD, personal telephone communication, March 26, 2002). Deepening of any one, or any number, of the SMP-24 pits is unlikely to significantly alter the flow of water across the slurry wall/Livermore formation boundary, and is unlikely to significantly affect streamflow.

For the modest amount of water that does cross these boundaries, to some extent, the water in the basin is conserved because some of the water discharged from working pits is pumped into other pits in the basin, and net loss of basin water for this practice is essentially zero save for evaporation. Otherwise, when there is no onsite location to discharge excess

water from the pits, after the sediment is allowed to settle, the groundwater is discharged to Alameda Creek below the quarry operations, resulting in increases in streamflow, including at times when the flow might otherwise be interrupted by natural dry conditions.

The Permittee has indicated verbally that the operations at this pit would continue similarly to those at present; seepage water would continue to be discharged to settling ponds on the site; once settled, this water would be discharged to Alameda Creek as necessary, as allowed by permit. This represents no change to the existing condition, and no significant effects to surface streamflow or aquatic resources would occur.

Other Issues - The quarry pit deepening is not expected to have any other significant effects on water flow or supply. Pond water would be used for fire and dust control. Potable water is supplied separately for workers on site. Portable toilets are used in place of a septic system. No artificial contaminants are expected to be present on site that could flow from the site during rains. Other than that described above, the hydrologic patterns of the site would only be altered within the pits and operating areas, and no significant streams would be affected. Groundwater recharge aspects of the entire site would be altered by the establishment of some less permeable structures (settled silt zones in some of the reclaimed pits), but the presence of permeable soils surrounding the pit would readily allow waters to flow around the site. No watercourse degradation would occur. Flooding, seiche, tsunami and saltwater intrusion impacts are not applicable. No housing would be placed in any floodplain.

	Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
<b>IX. LAND USE AND PLANNING.</b> Would the project.				
a) Conflict with the general plan designation or zoning?	[ ]	[ ]	[ X ]	[ ]
b) Conflict with applicable plans or policies adopted by agencies with jurisdiction over the project?	[ ]	[ ]	[ X ]	[ ]
c) Be incompatible with existing land use in the vicinity?	[ ]	[ ]	[ X ]	[ ]
d) Disrupt or divide the physical arrangement of an established community?	[ ]	[ ]	[ X ]	[ ]

**Comments:** The project and existing quarry pits are consistent with the Large Parcel Agriculture Designation of the East County Area Plan as modified by Alameda County Measure D (see below) (portion of the Alameda County General Plan), as well as with the Alameda County Surface Mining Ordinance. The land use is appropriate for the intended location, contained within an existing active mine and no closer to any sensitive uses than the existing mine. The project would not induce growth.

Alameda County Measure D, passed by the voters of the County in November 2000, places strict limits on where new mine excavations may be conducted. The text of Measure D Policy 144, so far as it applies generally to quarries, reads as follows, "Except to the extent required by State law, no new quarry or other open-pit mine may be approved by the County outside the Urban Growth Boundary, unless approved by the voters of Alameda County. Excavation not adjacent to an existing quarry site and on the same or an adjoining parcel shall be regarded as a new quarry." This proposed downward expansion is clearly adjacent to the existing quarry site, and is on the same group of adjoining parcels; therefore, Measure D neither prohibits, nor requires voter approval for, this project.

No impact related to land use or planning would occur. No mitigation is required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**X. MINERAL RESOURCES.** Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

[ ]	[ ]	[ X ]	[ ]
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b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

[ ]	[ ]	[ X ]	[ ]
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**Comments:** The quarry is located in a State-designated Regionally Significant Mineral Resource Area; in this regard, the resource is considered significant, however, the mineral can only be considered valuable in the context of its potential construction use. The quarry would make available additional sand and gravel, resulting in long-term depletion of the resource. Since the use would presumably be for appropriate construction projects (those requiring the use of high-quality aggregate), the resource would be conserved to the extent possible, and this effect would not be significant. No mitigation is required.

	Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XI. NOISE.** Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

[ ] [ ] [ X ] [ ]

b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?

[ ] [ ] [ X ] [ ]

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

[ ] [ ] [ X ] [ ]

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

[ ] [ ] [ X ] [ ]

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

[ ] [ ] [ X ] [ ]

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

[ ] [ ] [ X ] [ ]

Comments: The pit deepening that is proposed would be essentially of the same character as the existing operation. Activities and equipment use would remain the same. No airfields of any kind are nearby. No new noise effects would result, and no noise mitigation is warranted.



Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XII. POPULATION AND HOUSING.** Would the project:

- |   |     |     |       |     |
|---|-----|-----|-------|-----|
| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? | [ ] | [ ] | [ X ] | [ ] |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?   | [ ] | [ ] | [ X ] | [ ] |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?   | [ ] | [ ] | [ X ] | [ ] |

Comments: The project would have no population or housing effects. Growth would not be induced. Housing demands would not change, and housing would not be reduced. No new housing would be required. No impacts would occur, and no mitigation would be necessary.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XIII. PUBLIC SERVICES.** Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

- |                             |     |     |       |     |
|-----------------------------|-----|-----|-------|-----|
| a) Fire protection?         | [ ] | [ ] | [ X ] | [ ] |
| b) Police protection?       | [ ] | [ ] | [ X ] | [ ] |
| c) Schools?                 | [ ] | [ ] | [ X ] | [ ] |
| d) Parks?                   | [ ] | [ ] | [ X ] | [ ] |
| e) Other public facilities? | [ ] | [ ] | [ X ] | [ ] |

Comments: No additional impacts to public services would be expected. Emergency or evacuation plans are necessary in case of fire and are required by law; since hazardous materials would not be used or accepted, no management plans would be necessary. Facilities would require no alterations. No new schools would be required, and public transportation would be unaffected. No significant impacts would occur, and no mitigation would be necessary.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XIV. RECREATION: Would the project:**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

[ ]	[ ]	[ X ]	[ ]
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b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

[ ]	[ ]	[ X ]	[ ]
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Comments: The project neither places new demand on existing recreational facilities, nor proposes to create any new recreational facilities, although some of the remaining ponds at the time of final reclamation could be developed for recreation. No significant impact would occur, and no mitigation would be required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XV. TRANSPORTATION AND TRAFFIC.**

Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

- |  |                          |                          |                                     |                          |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?      | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?               | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Result in inadequate emergency access?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Result in inadequate parking capacity?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments: Traffic congestion has not been a problem associated with past or current operation of the quarry. Because the plant is not proposed for expansion, no change in traffic levels associated with the plant is expected. On average, 400 two-way truck trips (800 total) are made to and from the plant daily. A maximum day in October 1989 resulted in 1,200 two-way trips; a minimum day in December 1987 resulted in 52 two-way trips. Trips are assumed to be distributed equally between the north and south, but for market reasons may be directed more in one direction than another on any given day.

When distributed throughout the region, the average number of truck trips from the Permittee's processing plant represents about 0.2 percent of the total daily trips. Trips through congested areas by trucks necessarily increases congestion due to the slower acceleration and hill climbing, and reduced maneuvering capability of the trucks. However, the small proportion of the total and the projected constant production and trip levels from the quarry indicate that no significant impact can be attributed to the operations of the project site, and in particular to the proposed pit deepening. Traffic generated by the quarry would remain virtually unchanged.

In all other respects, no changes would occur to traffic patterns or roadways. Emergency access would not be altered. No impacts would result, and no mitigation is required.

	Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
--	--------------------------------	------------------------------------	------------------------------------	-----------------------------

**XVI. UTILITIES AND SERVICE SYSTEMS.**

Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	[ ]	[ ]	[ X ]	[ ]
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	[ ]	[ ]	[ X ]	[ ]
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	[ ]	[ ]	[ X ]	[ ]
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	[ ]	[ ]	[ X ]	[ ]
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	[ ]	[ ]	[ X ]	[ ]
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	[ ]	[ ]	[ X ]	[ ]
g) Comply with federal, state, and local statutes and regulations related to solid waste?	[ ]	[ ]	[ X ]	[ ]

Comments: Public facilities in the area include access roads, the Alameda Creek streambed, and various utility lines for water transport and electric service. Some of these cross the quarry site, and should be protected. While the 2:1 proposed slopes in the pits should have no effect on ground stability near the critical utilities, the Permittee should work with the agencies having jurisdiction over the respective utilities to ensure that mining plans will not encroach upon the right-of-way

for these utilities. In any case, effects may be minimized by simple avoidance of the features. A mitigation measure is included below for this potential effect.

No significant public utility impacts would occur as a result of the proposed expansion. Portable toilets and self-contained water are provided on site. Fire protection water is always available from the quarry pit, which is expected to be generally inundated to some level. Electrical and communication demands would remain as they currently are. Solid waste disposal would remain minimal. No new plant facilities would be required. Storm water drainage, inspected and found to be adequate in the past except as described above, is expected to remain adequate for the proposed project. No impacts would result, and no mitigation would be required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XVII. ENERGY.** Would the project result in:

a) Substantial increase in demand, especially during peak periods, upon existing sources of energy?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

b) Requirement for the development or extension of new sources of energy?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

Comments: Some fuel energy would be used, but not in a wasteful manner. Demand for energy would not increase, and no new sources of energy would need to be developed. No new impacts are anticipated, and no new mitigation measures would be required.

Potentially Significant impact	Less Than Significant w/Mitigation	Less Than Significant or No Impact	Impact Cannot be Determined
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**XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.**

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

c) Does the project have impacts that are individually limited, but cumulatively considerable? (Accumulatively considerable means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

[ ]	[ ]	[ X ]	[ ]
-----	-----	-------	-----

Comments: If the mitigation measures specified above in the applicable issue sections are enacted, then none of the mandatory findings specified would indicate significant impacts. No long-term environmental goals would be compromised by the proposed project. No cumulative effects would result, and no substantial adverse effects on humans would result.

**E. MITIGATION MEASURES INCLUDED IN THE PROJECT & AGREED TO BY PROJECT SPONSOR**

**IMPACT 1.** The overall quarry operation could create a new source of substantial light which would adversely affect nighttime views in the area if new fixtures are installed to replace existing fixtures.

**Mitigation Measure 1: For new lighting installation:**

(a) Permittee shall install only full cutoff-shielded lights for general illumination of plant site areas, and shall replace all existing non-shielded lighting, when necessary, with full-cutoff fixtures. The lowest wattage lamps reasonable for illumination of the area of concern shall be used.

(b) Night time operations and security lighting shall be installed no higher than necessary to illuminate the area of concern for security, safety or visual comfort, and lighting shall be directed toward the area of concern, and always below the horizontal.

(c) Permittee shall not position night lighting to illuminate areas beyond the site boundaries, nor shall the Permittee position general lighting to radiate above the horizontal, but shall place lights or install shielded lights to illuminate only the area of concern.

(d) For any lighting on areas nonessential for safety, security or active operations, Permittee shall place new lights on a motion detector circuit so illumination only occurs when required for occasional visibility.

(e) Permittee shall utilize sodium vapor lamps whenever possible, unless it can be demonstrated that other kinds of lights are required for specific purposes of color rendition, visual comfort or security.

**Monitoring:** This measure is partly self-monitoring; however, in the concurrent Periodic Review being conducted for this quarry permit, additional requirements for the Permittee to develop and submit a lighting plan that covers these requirements and specifies good lighting equipment are being developed.

**IMPACT 2.** The project could result in limited general effects upon biological habitat, specifically a 225-foot band of willow and cottonwood vegetation in a specific pit.

**Mitigation Measure 2:** Prior to removal of the sensitive 225-foot long band of willow and cottonwood trees in the large pit on the northeast side of Alameda Creek, Permittee shall notify the Planning Director of intent to remove this band of vegetation and shall develop and submit to the Planning Director for review a mitigation plan, to be written by a qualified specialist. The plan shall include a description of the vegetation to be removed at that time, the number, spacing, and location of the trees to be planted, maintenance requirements, monitoring protocols, and performance standards. If the replanting is to be accomplished on lands not owned by the Permittee, Permittee shall submit proof that the receiving landowner has agreed to this planting and that it will be made permanent through either an easement or contract.

**Monitoring includes:**

- review of the mitigation plan by the Planning Director to ascertain that it has been written and would properly mitigate the effects by substantial planting according to the recommendations of a qualified specialist; and
- regular semi-monthly inspection by County staff and certification that the required tree planting and revegetation have been accomplished satisfactorily, and that the planted trees are being properly maintained.

**IMPACT 3.** Archaeological resources could be lost during the course of deepening and pit consolidation.

**Mitigation Measure 3: If potential archaeological resources are discovered during the course of operations:**

- (a) Immediately halt or relocate excavations and contact a qualified archaeologist or paleontologist to inspect the site. If the scientist determines that potentially significant materials or human remains are encountered, the scientist shall record, recover, retrieve, and/or remove them;
- (b) If human remains are found onsite, the applicant shall notify the Ohlone Most Likely Descendants, as designated by the California Native American Heritage Commission; the coroner shall be called and the archaeologist shall provide safe and secure storage of these remains while on the site, in the laboratory and otherwise, and shall consult with the Native American representatives regarding either onsite reburial of the remains or other arrangements for their disposition;
- (c) Provide a copy of documentation of all recovered data and materials found onsite to the regional information center of the California Archaeological Inventory (CAI) for inclusion in the permanent archives, and another copy shall accompany any recorded archaeological materials and data.
- (d) If any historic artifacts are exposed, the archaeologist shall record the data and prepare a report to be submitted to the local historical society.

**IMPACT 4.** Paleontological resources could be lost during the course of deepening and pit consolidation.

**Mitigation Measure 4: If potential paleontological resources are discovered during the course of operations:**

- (a) Immediately halt or relocate excavations and contact a qualified expert to inspect the site. If the expert determines that potentially significant paleontological materials have been encountered, the expert should record, recover, retrieve, and/or remove them, and the Permittee should relinquish any claim to them;
- (b) The qualified expert should preserve a copy of documentation of all recovered data and materials found onsite; the materials may, at the discretion of the expert, be carried to an institute approved by the Planning Director where they may be preserved and or studied.



**Monitoring:** These two mitigation measures are, to a large extent, a self-monitoring program. It is not practical or cost effective to have a County or third-party observer on the site at all times to monitor for rare significant discoveries of this type of material. It is recommended that the Permittee submit a brief statement at the time of the annual report that certifies that no archaeological or paleontological materials have been found in the past year on this site, unless some resources have been found, in which case the mitigation outlined above should be followed.

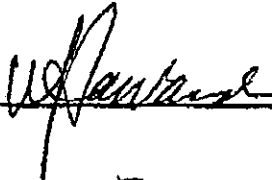
**IMPACT 5:** Oversteepened and unstable slopes could result if slopes are cut at angles greater than values that would be considered safe for the material in place.

**Mitigation Measure 5:** The Permittee shall not excavate new permanent slopes exceeding the elevation-dependent values presented in Exhibit 7, Recommended Slopes SMP-24, by Treadwell & Rollo Geotechnical Engineers, dated 11/14/01. If no bench is proposed or constructed at the 100-foot depth as shown in this diagram, then no new or existing slope indicated as less than 1.5:1 on Exhibit 7 shall be cut at slopes steeper than 1.5:1.

Monitoring of this measure shall consist of standard annual inspections by the Grading Inspector and verification that no new slopes are being cut steeper than those shown on either Exhibit 7 or the approved mining and reclamation plan, whichever is the more restrictive. In the event that a new permanent slope is cut more steeply than permitted, Permittee shall be directed to take immediate specific steps to engineer the slope, either through fill-and-buttress techniques or recontouring on already permitted quarry lands, to such a standard that the slope may be determined to be stable by a qualified professional.

**F. AGREEMENT BY PROJECT PERMITTEE FOR MITIGATION MEASURES SET FORTH IN THE INITIAL STUDY FOR SURFACE MINING PERMIT SMP-24, AMENDMENT FOR EXPANSION OF THE EXISTING QUARRY PITS THROUGH DEEPENING.**

The undersigned, as a qualified representative of the Mission Valley Rock Company (Permittee), does hereby agree on behalf of Permittee to accept and abide by the mitigation measures set forth in the Initial Study (July 3, 2002) for the Amendment to Alameda County Surface Mining Permit and Reclamation Plan SMP-24, to allow expansion of the existing onsite pits by deepening, and revision of the applicable reclamation plan for SMP-24 to reflect this amendment.

  
Signature

William Howard  
Print Name

VP  
Title

6-28-02  
Date

**F. AGREEMENT BY PROJECT PERMITTEE FOR MITIGATION MEASURES SET FORTH IN THE INITIAL STUDY FOR SURFACE MINING PERMIT SMP-24, AMENDMENT FOR EXPANSION OF THE EXISTING QUARRY PITS THROUGH DEEPENING.**

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\_\_\_\_\_  
Signature

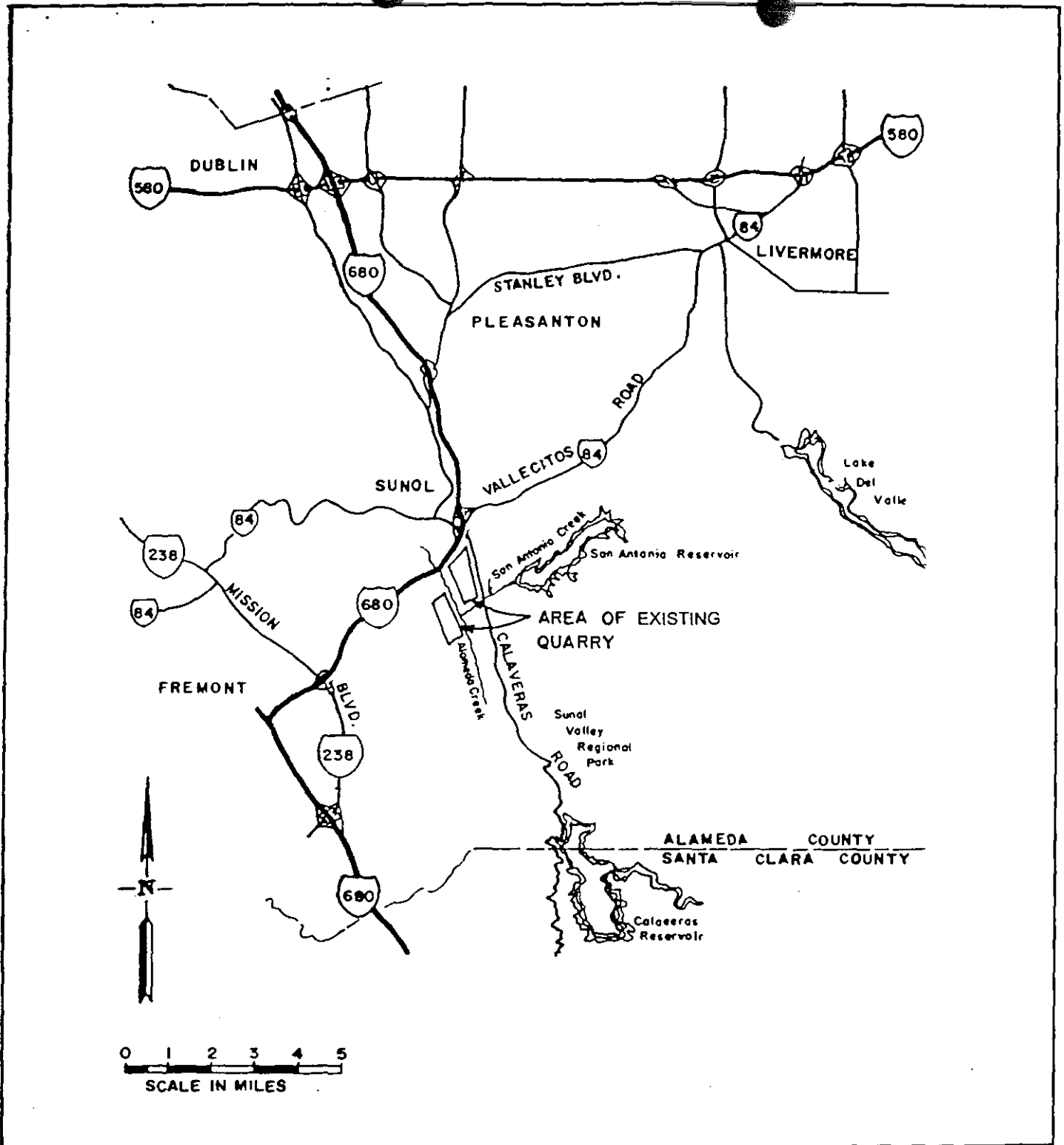
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Print Name

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Title

\_\_\_\_\_  
Date

EXHIBIT 1: Figure 1 - Vicinity Map for SMP-24

MVR 00661



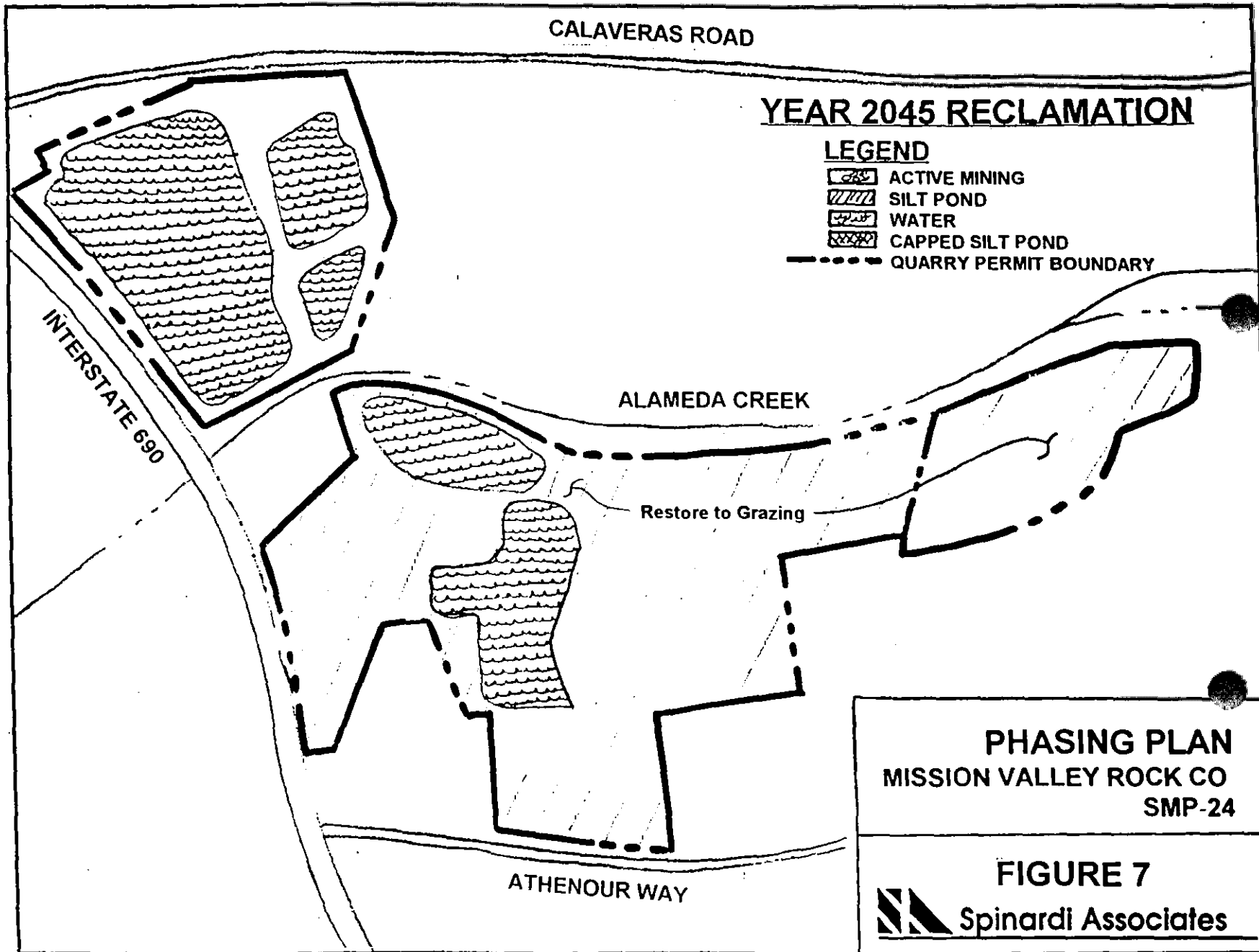
# VICINITY MAP-SMP 24

## AREA OF EXISTING QUARRY

Alameda County Community Development Agency-Planning Department

FIGURE 1

MVR 00662



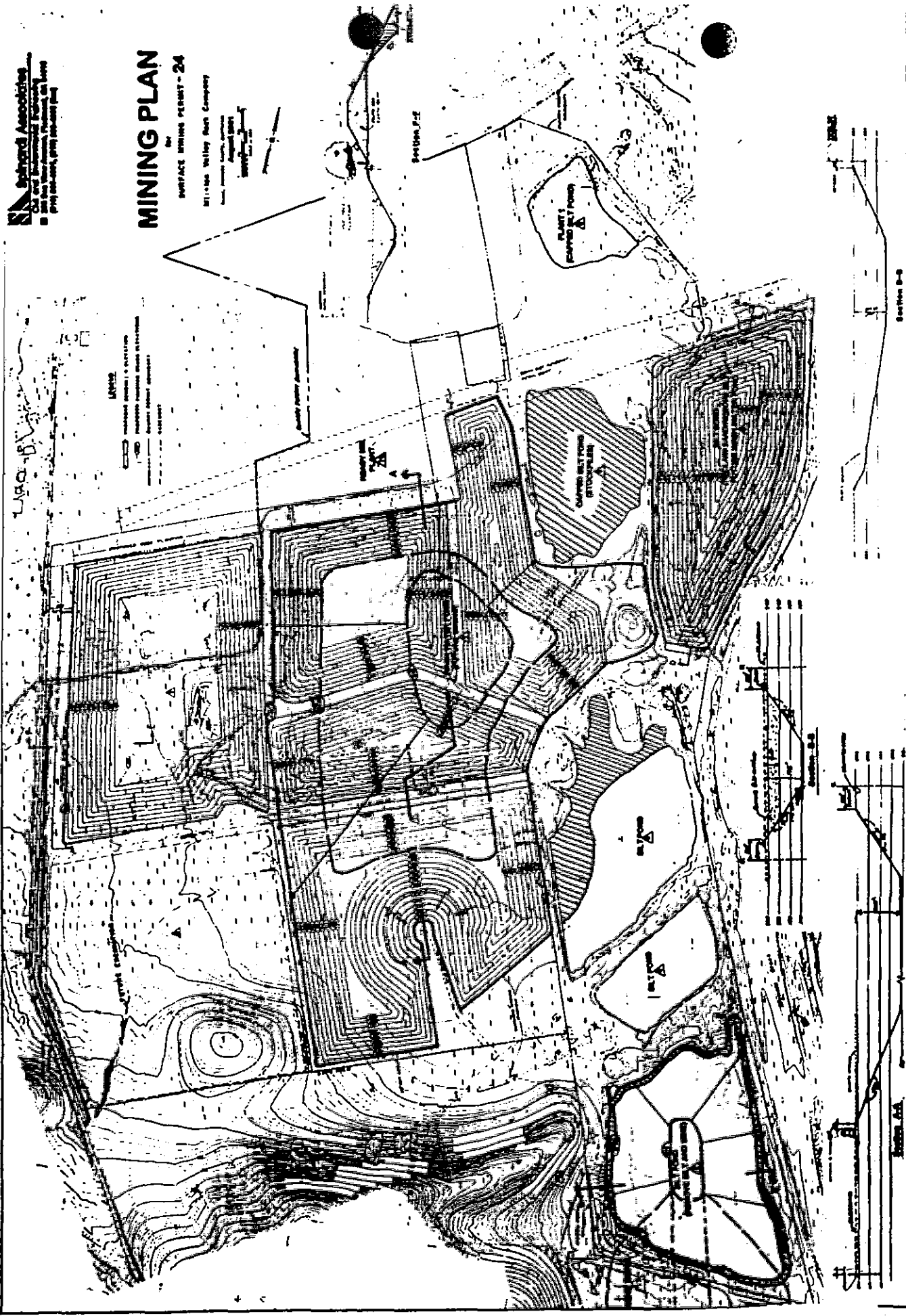
MVR 00663

EXHIBIT 2A & B: Mining Plans for all Quarry Pits, with Deepening Proposal,  
SMP-24, Mission Valley Rock

# MINING PLAN

for  
**SURFACE MINING PERMIT - 24**  
 by  
**Wicks Valley Sand Company**

**LEGEND**  
 --- Proposed Mining Operation  
 --- Proposed Access Road  
 --- Proposed Access Road Extension  
 --- Proposed Access Road  
 --- Proposed Access Road

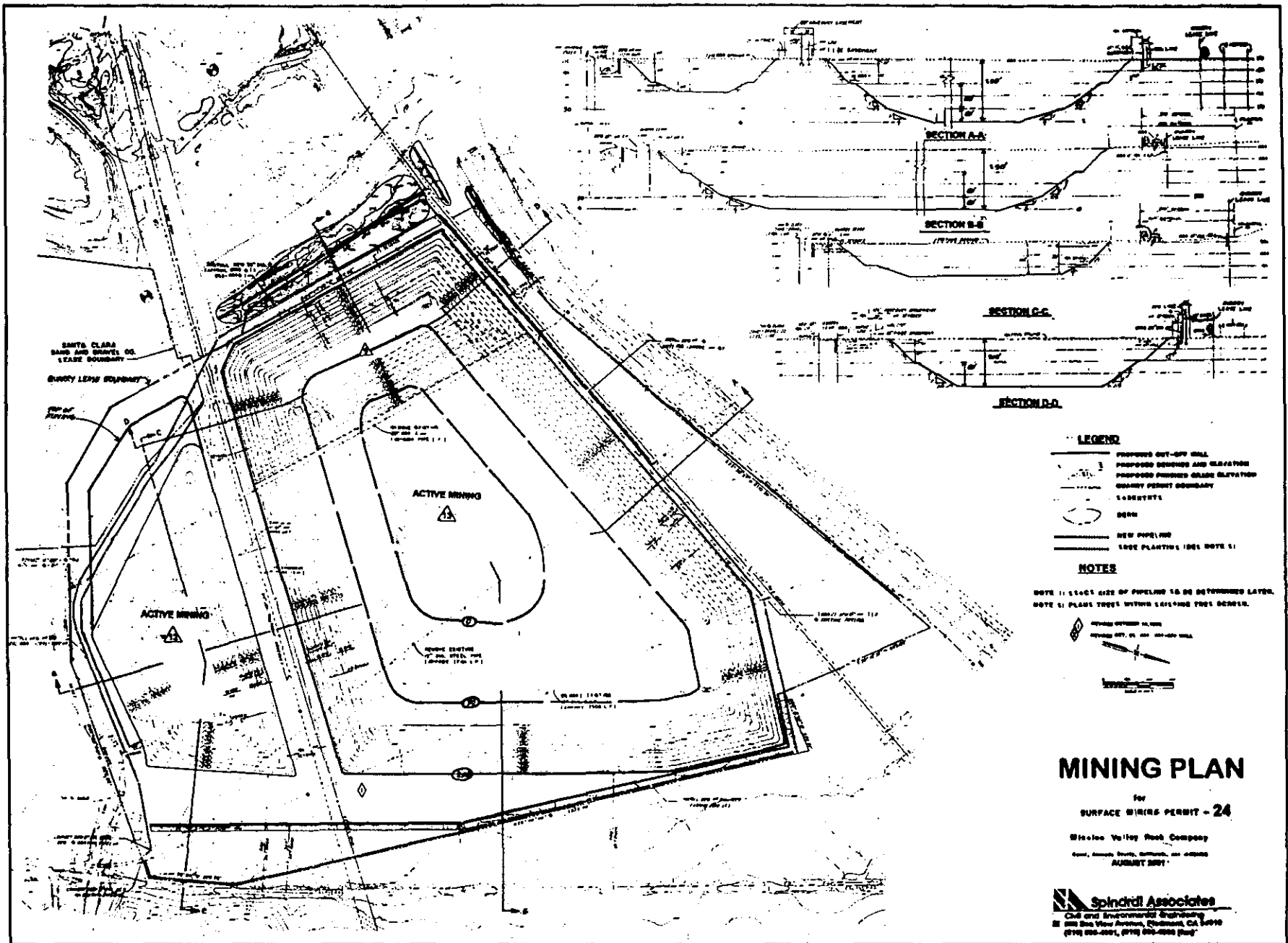


## MINING PLAN-SMP 24

### QUARRY PITS WEST OF ALAMEDA CREEK

Alameda County Community Development Agency-Planning Department





MVR 00666

# MINING PLAN-SMP 24

## QUARRY PITS EAST OF ALAMEDA CREEK

Alameda County Community Development Agency-Planning Department

FIGURE 2B

**EXHIBIT 3: Mining and Reclamation Phasing Plan, SMP-24, Mission Valley Rock**

# PHASING PLAN

MISSION VALLEY ROCK COMPANY  
SMP-24

AUGUST 2001

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This Phasing Plan is an update of the original Phasing Plan submitted with the project application for SMP-24 in 1985.

**FIGURE 1: YEAR 2001 (CURRENT):** Existing conditions.

**FIGURE 2: YEAR 2006** - Mining completed at E/W pits and returned to water storage. Continue mining at E/W Nursery Pits. Mine Silt Pond 1 for pond sand. Construct berms at pond 3 and at SMP-33; continue mining center and convert north side to a silt pond.

**FIGURE 3: YEAR 2010** - Complete mining at E/W Nursery pits and return to water storage. Continue to mine Pond 1 for pond sand. Remove silt at Pond 3 and mine. SMP-33 pits used for silt ponds.

**FIGURE 4: YEAR 2015** - Complete mining Pond 1 for sand and return to water storage. Pond 3 and SMP-33 pits used for silt ponds. Begin mining south side of main Wash Water Pond.

**FIGURE 5: YEAR 2020-2030** - South side of main Wash Water Pond used for silt pond.

**FIGURE 6: YEAR 2035** - Mine Wash Water Pond and area under Office, Ready Mix Plant and AC/Plant 2. Cap Pond 3 and SMP-33 silt ponds.






**FIGURE 7: YEAR 2045 (RECLAMATION)** - Restore land to original condition for grazing.

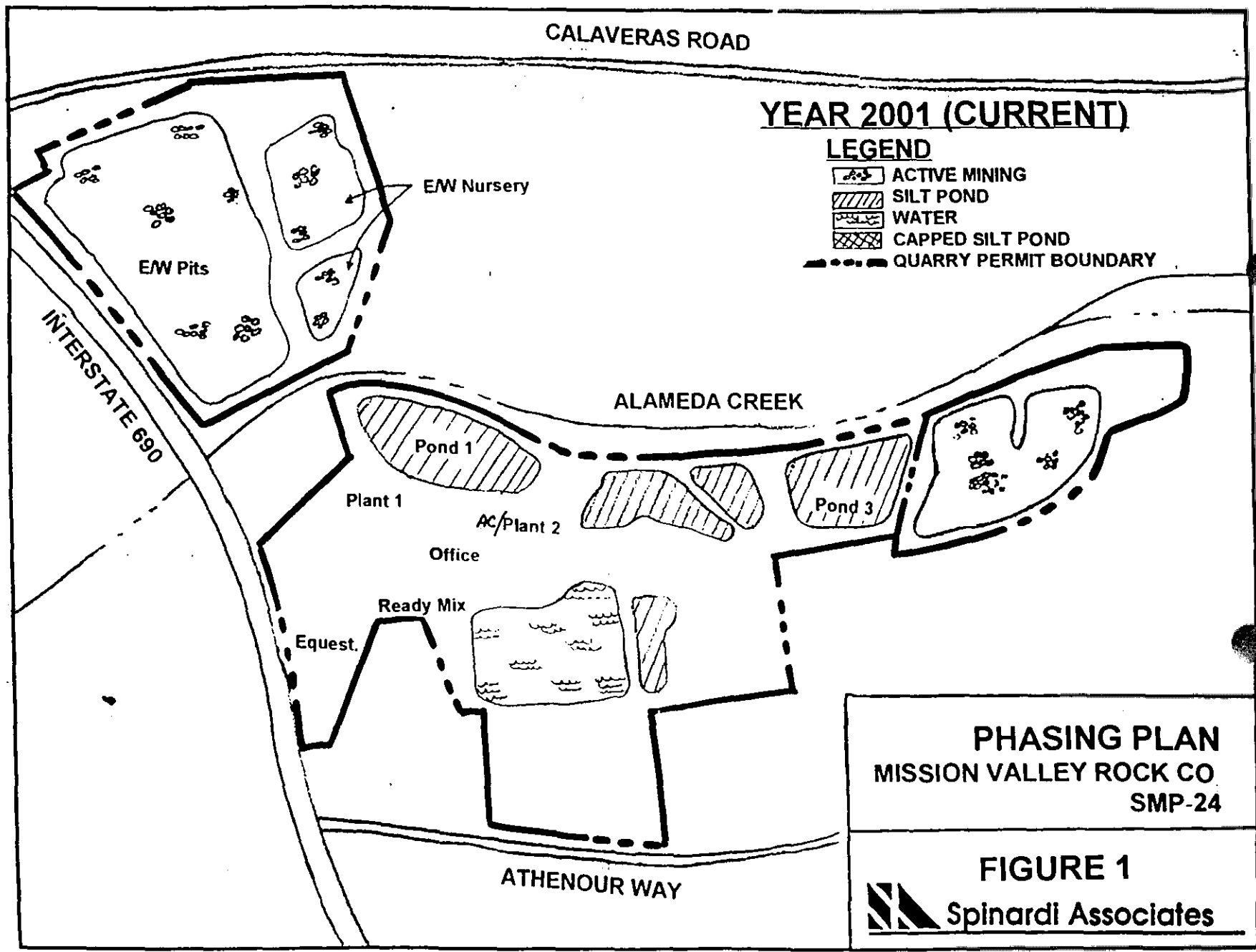
 **Spinardi Associates**  
CMI and Environmental Engineering

CALAVERAS ROAD

**YEAR 2001 (CURRENT)**

**LEGEND**

-  ACTIVE MINING
-  SILT POND
-  WATER
-  CAPPED SILT POND
-  QUARRY PERMIT BOUNDARY

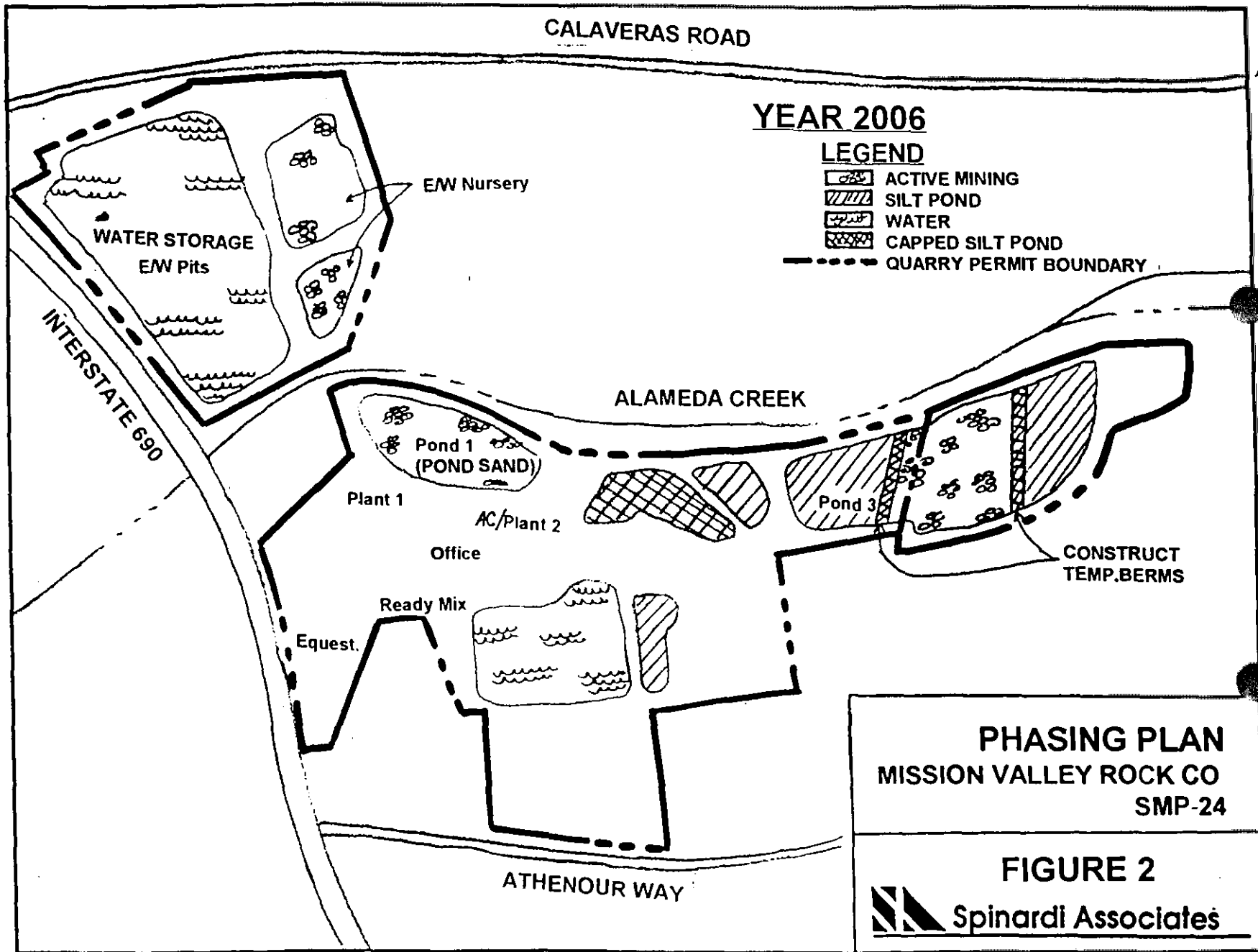


**PHASING PLAN**  
 MISSION VALLEY ROCK CO  
 SMP-24

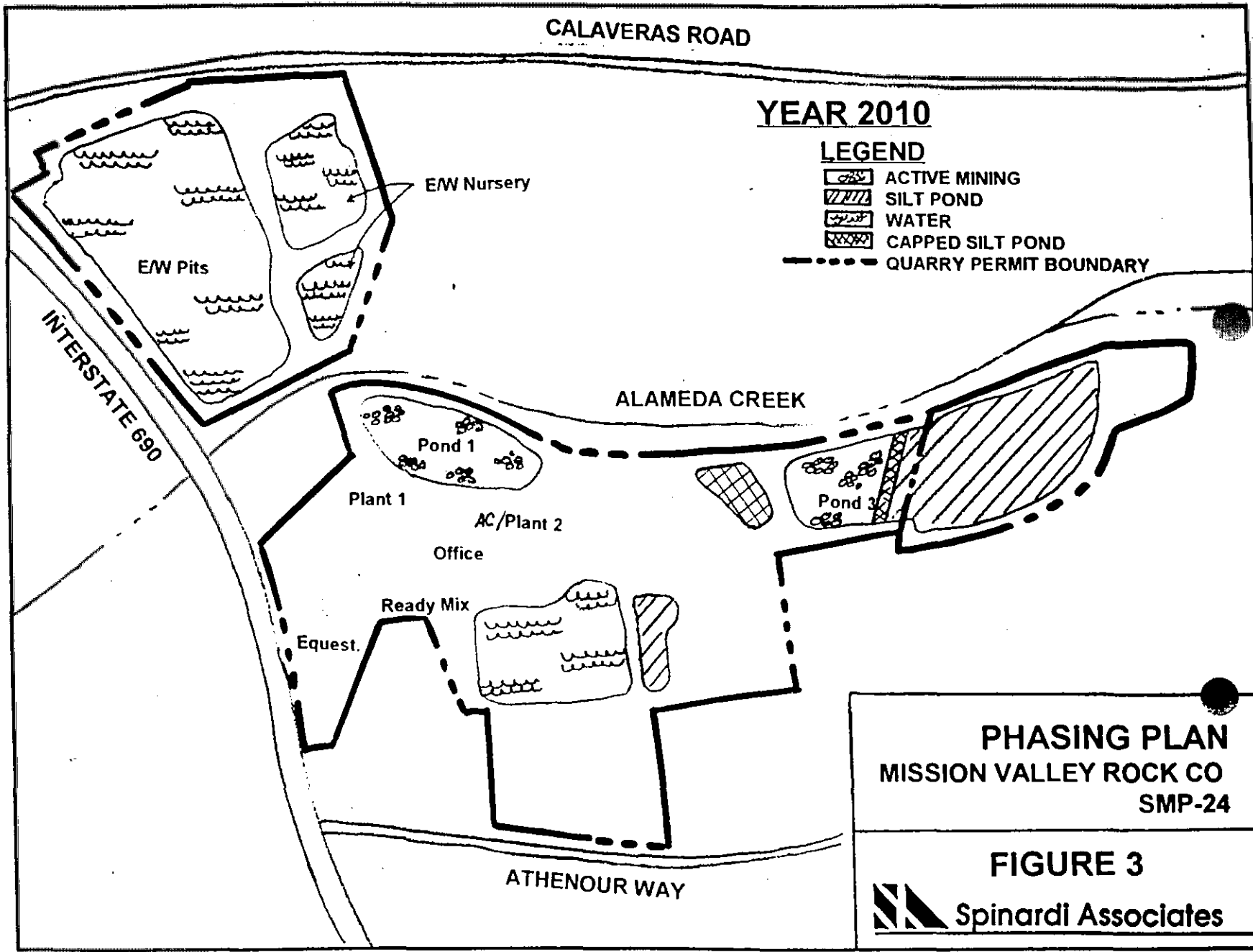
**FIGURE 1**

 Spinardi Associates

MVR 00669



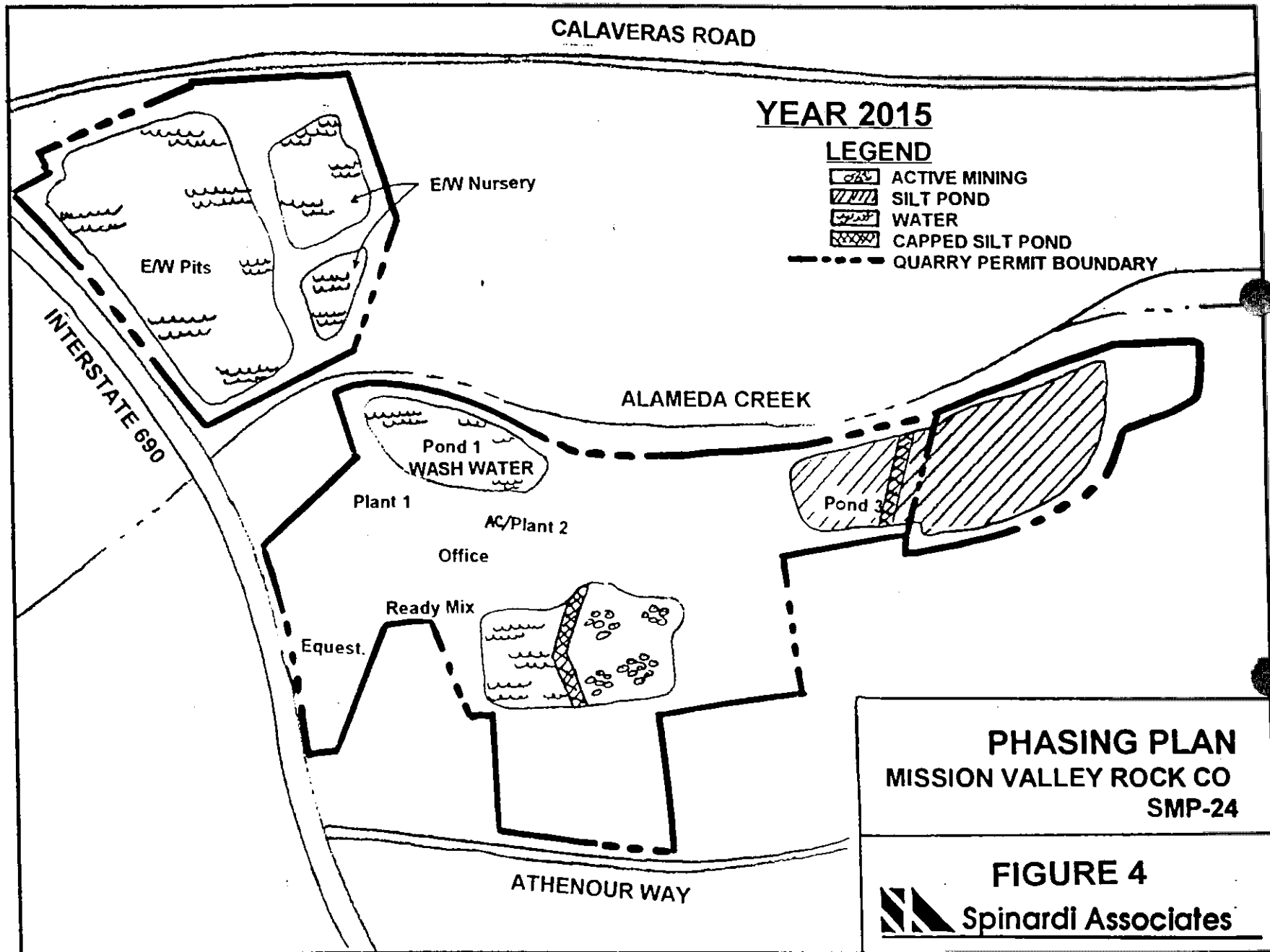
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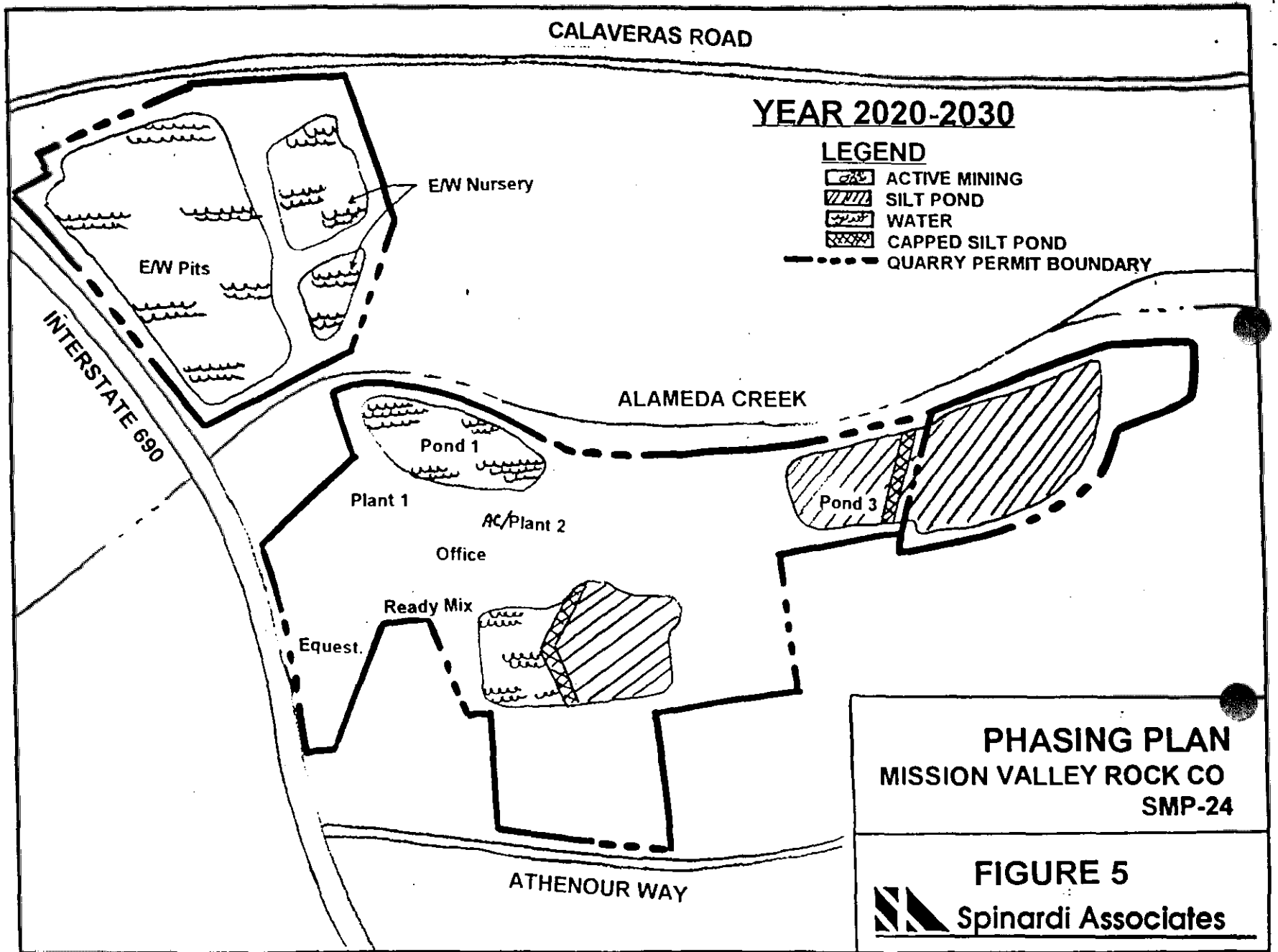
**PHASING PLAN**  
**MISSION VALLEY ROCK CO**  
**SMP-24**

**FIGURE 3**  
**Spinardi Associates**

MVR 00671

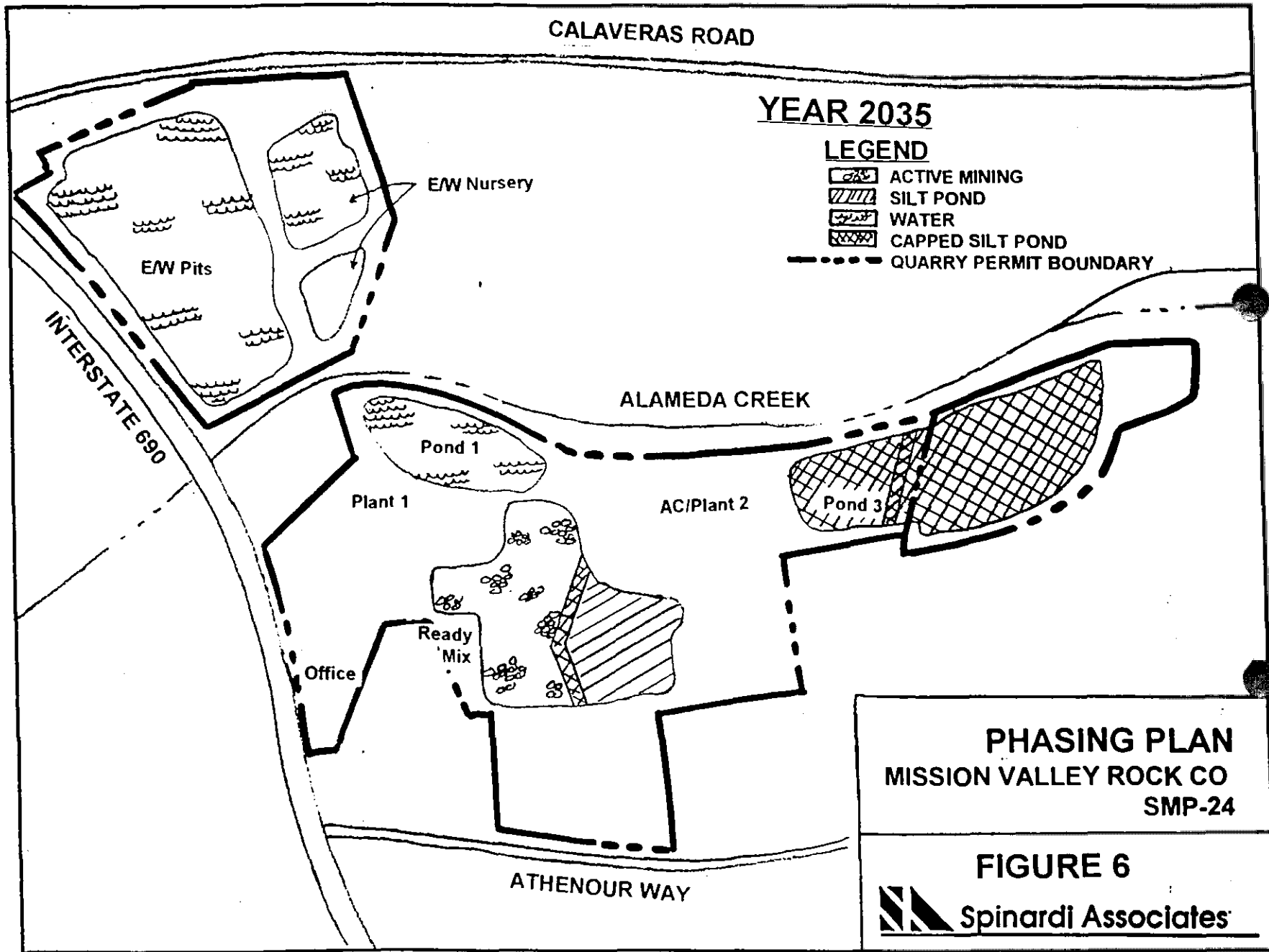


MVR 00672



MVR 00673





MVR 00674

**EXHIBIT 4: Asbestos Identification by Polarized Light Microscopy for Mission Valley Rock, Job No. C-2445-92 (Letter Report), Robert M. Kumagai, Asbestest Incorporated,, September 22, 1992.**

# ASBESTEST, INCORPORATED

1550 Dell Avenue, Suite E • Campbell, California 95008 • Tel. (408) 374-3362 • Fax (408) 374-7269

MICRO-CHEM LABORATORIES  
1550 DELL AVE., E  
CAMPBELL, CA 95008

Date SEPT. 22, 1992

Job No. A-10147-92

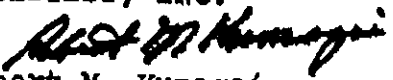
PROJECT: MISSION VALLEY ROCK  
JOB NO. C-2445-92

### ASBESTOS IDENTIFICATION BY POLARIZED LIGHT MICROSCOPY

<u>Sample Identification</u>	<u>Fibrous Asbestos Minerals, %</u>	<u>Other Fibrous Materials, %</u>	<u>Non-Fibrous Materials or Minerals, %</u>
CRUSHED BASE ROCK	NONE DETECTED	NONE	MISCELLANEOUS PARTICLES, 100%

The materials were examined by polarized light microscopy according to Environmental Protection Agency methods. In California, positive test results indicate the sample contained 0.1% or more asbestos, as per California Code of Regulations, "Title 8, Section 341.6 et seq." Reported asbestos percentages were estimated based on comparison to reference samples provided by the EPA.

Respectfully Submitted,  
ASBESTEST, INC.



Robert M. Kumagai  
Microscopist

## **EXHIBIT 5: Title 17 CCR Section 93106, Asbestos Airborne Toxic Control Measure for Surfacing Applications.**

- (a) **Effective Date.** No later than November 13, 2001, each air pollution control and air quality management district must: (1) Implement and enforce the requirements of this section, or
- (2) Propose their own asbestos airborne toxic control measure as provided in Health and Safety Code section 39666(d).

**(b) Applicability.**

This section shall apply to any person who produces, sells, supplies, offers for sale or supply, uses, applies, or transports any of the following materials:

- (1) Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit (as defined in subsection (i)(9)); or
- (2) Aggregate material extracted from property that is NOT located in a geographic ultramafic rock unit (as defined in subsection (i)(9)) if the material has been:
- (A) Evaluated at the request of the Air Pollution Control Officer (APCO) and determined to be ultramafic rock or serpentine;
- (B) Tested at the request of the APCO and determined to have an asbestos content of 0.25 percent or greater, as determined using an approved asbestos bulk test method; or
- (C) Determined by the owner/operator of a facility to be ultramafic rock, or serpentine, or material that has an asbestos content of 0.25 percent or greater.
- (3) Any mixture of aggregate material that contains ten percent (10%) or more of any of the materials listed above in subsection (b)(1) or (b)(2).

**(c) Prohibition On the Use, Sale, and Supply of Restricted Aggregate Material.**

Unless one of the exemptions in subsection (f) applies, no person shall use, apply, sell, supply, or offer for sale or supply any restricted material (as defined in subdivision (i)(20)) for surfacing, unless it has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent.

**(d) Requirements to Provide Notice with Restricted Material.**

- (1) **Requirements for Producers of Restricted Material for Surfacing Applications:** Any producer who sells, supplies, or offers for sale or supply restricted material for surfacing that has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent must provide to the recipient of the restricted material a written receipt that contains the following information:
- (A) The amount of restricted material that was sold or supplied;
- (B) The date that the restricted material was sold or supplied;
- (C) The dates that the restricted material was sampled and tested, or verification that the material is exempt under subsection (f)(7); and
- (D) A statement that the asbestos content of the restricted material is less than 0.25 percent.
- (2) **Requirements for Persons – Other than Producers – Who Sell or Supply Restricted Material for Surfacing Applications:** Any person, other than a producer, who sells, supplies, or offers for sale or supply restricted material for surfacing must provide to the recipient of the material a written receipt which specifies the following information:
- (A) The amount of restricted material that was sold or supplied;
- (B) The date that the restricted material was sold or supplied; and
- (C) A statement that the asbestos content of the restricted material is less than 0.25 percent.

**(3) Requirements for the Sale or Supply of Restricted Materials for Non-Surfacing Applications:** Any person who sells, supplies, or offers for sale or supply restricted material for non-surfacing applications must provide with each sale or supply a written receipt containing the following statement:

**“WARNING!**

**This material may contain asbestos.**

It is unlawful to use this material for surfacing or any application in which it would remain exposed and subject to possible disturbances. Extreme care should be taken when handling this material to minimize the generation of dust.”

**(e.) Recordkeeping and Reporting Requirements.**

- (1) **Recordkeeping Requirements for Persons Who Use Restricted Material for Surfacing:** Any person who uses or applies restricted material for surfacing must retain any written receipt or other record verifying that the material has an asbestos content of less than 0.25 percent for a minimum period of seven years from the date of use or application.
- (2) **Recordkeeping Requirements for Persons Who Transport Restricted Material:** Any person who transports restricted material must maintain a copy of all receipts or records required by subsection (d) with the material at all times during transit and application.
- (3) **Recordkeeping Requirements for Persons Who Sell or Supply Restricted Material:** Any person who sells, supplies, or offers restricted material for sale or supply must retain copies of all receipts or records required by subsection (d) for a minimum period of seven years from the date of sale or supply.
- (4) **Reporting Requirements for Persons Who Use, Sell, or Supply Restricted Material:** Any person who uses restricted material for surfacing, sells, supplies, or offers restricted material for sale or supply must provide receipts and test results to the APCO for review upon request.

**(f) Exemptions.**

- (1) **Sand and Gravel Operations:** The requirements of subsections (c), (d), and (e) shall not apply to aggregate material extracted from a sand and gravel operation. A "sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.
- (2) **Roads Located at Quarries or Mines:** The requirements of subsection (c) shall not apply to roads at quarries or mines that are located in a geographic ultramafic rock unit, an ultramafic rock deposit, or a serpentinite deposit, provided that the aggregate material was obtained on site from the quarry or mine property.
- (3) **Maintenance Operations on Existing Roads:** The requirements of subsections (c), (d), and (e) shall not apply to maintenance operations on any existing road surface if no additional restricted material is applied to the road surface.
- (4) **Emergency Road Repairs:** The APCO may issue a temporary exemption from the requirements of subsections (c), (d), and (e) to an applicant who demonstrates that a road repair is necessary due to a landslide, flood, or other emergency, and that the use of aggregate material other than restricted material is not feasible for this repair. The APCO shall specify the time during which such exemption shall be effective; however, no exemption shall remain in effect longer than 90 days.
- (5) **Asphalt and Concrete Materials:** The requirements of subsections (c), (d), and (e) shall not apply to restricted material that is an integral part of the production of asphalt concrete, portland cement concrete or other similarly cemented materials; or construction of an asphalt or a portland cement concrete surface as long as all of the restricted material is incorporated into or completely covered by the asphalt or portland cement concrete.
- (6) **Landfill Operations:** The use and application requirements of subsection (c) shall not apply to landfill operations, except for the surfacing of public-access roads used by vehicular traffic.

(7) **Geologic Evaluation:** The APCO may provide an exemption from subsections (c), (d), and (e) for aggregate material extracted from within a geographic ultramafic rock unit if a registered geologist has conducted a geologic evaluation of the property from which the aggregate material is obtained and determined that serpentine or ultramafic rock is not likely to be found on the property. Before an exemption can be granted, the owner/operator must provide a copy of a report detailing the geologic evaluation to the APCO for his or her consideration.

(A) At a minimum, the geologic evaluation must include:

1. A general description of the property and the proposed use;
2. A detailed site characterization, which may include:
  - i. A physical site inspection;
  - ii. Offsite geologic evaluation of adjacent property;
  - iii. Evaluation of existing geological maps and studies of the site and surrounding area;
  - iv. Development of geologic maps of the site and vicinity;
  - v. Identification and description of geologic units, rock and soil types, and features that could be related to the presence of ultramafic rocks, serpentine, or asbestos mineralization;
  - vi. A subsurface investigation to evaluate the nature and extent of geologic materials in the subsurface where extensive vertical excavation is planned; methods of subsurface investigation may include, but are not limited to borings, test pits, trenching, and geophysical surveys;
3. A classification of rock types found must conform to the nomenclature based on the International Union of Geological Science system;
4. A description of the sampling procedures used;
5. A description of the analytical procedures used, which may include mineralogical analyses, petrographic analyses, chemical analyses, or analyses for asbestos content;
6. An archive of collected rock samples for third party examination; and
7. A geologic evaluation report documenting observations, methods, data, and findings; the format and content of the report should follow the Guidelines for Engineering Geologic Reports issued by the State Board of Registration for Geologists and Geophysicists.

(B) The APCO shall respond to a request for an exemption within 90 days of the receipt of the application.

(C) If the request for an exemption is denied, the APCO shall provide written reasons for the denial.

(D) *Expiration of the Geologic Exemption:* If the owner/operator discovers any ultramafic rock or serpentine on the property after the exemption is granted, then:

1. The owner/operator must comply with the requirements of subsections (c), (d), and (e) immediately following the discovery; and
2. The owner/operator must report the discovery of ultramafic rock or serpentine to the APCO within 24 hours; and
3. The exemption under subsection (f)(7) shall expire and cease to be effective.

(8) **Limited Access Surfaces:** The APCO may provide an exemption from the requirements of subsection (c) for the use of restricted material on limited access surfaces, if the owner/operator can demonstrate that:

(A) No alternative aggregate materials are reasonably available; and

(B) The surface is not located in an area zoned or identified in a land use plan for residential, recreational, or commercial use.

(C) The APCO shall respond to a request for an exemption within 90 days of the receipt of the application.

(D) If the request for an exemption is denied, the APCO shall provide written reasons for the denial. "Limited access surface" means any surface not subject to vehicular travel or pedestrian access that has an incline of twenty (20) percent or greater.

(9) **Surfacing Applications in Remote Locations:**

(A) The APCO may provide an exemption from the requirements of subsection (c) if the owner/operator can demonstrate that:

1. The surface is located in a remote location (as defined in subsection (i)(19)); and
2. No alternative aggregate materials are reasonably available; and
3. All aggregate material used for surfacing has been tested according to an approved asbestos bulk test method and determined to have an asbestos content of one (1.0) percent or less; except that the APCO may allow the use of restricted material with an asbestos content

up to five (5.0) percent if the owner/operator can demonstrate that restricted material with an asbestos content of one (1.0) percent or less is not reasonably available.

(B) Before providing this exemption, the APCO shall:

1. Consider the following information: county land use plans, the current use of the surrounding land, and the current and anticipated zoning designations;
2. Provide public notice and solicit comments for a 30-day period;
3. Require that any surface exempted pursuant to this subsection be posted with a permanent sign alerting the public to potential asbestos exposures; and
4. Require that any exemption shall be valid for no longer than three years; but if the owner/operator cannot demonstrate that all the criteria listed in subdivision (f)(9)(A) are met at the time of reapplication, the exemption shall not be renewed.

(C) The APCO may grant an exemption when the distance from the road or other surface to the nearest receptor is less than one mile if ALL of the following criteria are met:

1. The criteria listed above in subsections (f)(9)(A)2. and 3., and subsection (f)(9)(B) must be met:
2. Any receptor located within one mile from the road or other surface must NOT be any of the following:
  - i. A permanent resident (i.e., a person that resides at the receptor point for six months or more in a year), or
  - ii. A permanent business (i.e., business that operates at the receptor point for six months or more in a year), or
  - iii. A school or daycare center;
3. The road or other surface must be located on private property;
4. The entrance points to the road or other surface from any public thoroughfare must be gated and posted with a sign as required in subsection (f)(9)(B)3.;
5. The applicant for the exemption must provide to the APCO an estimate of the average traffic volume on the road or other surface and the methodology used to make the estimate; and
6. Whenever the traffic volume exceeds or is anticipated to exceed 20 vehicle passes per day, the owner/operator must:
  - i. Treat the road or other surface with a dust control method that is at least 70 percent effective; and
  - ii. Maintain records of the application and type of the dust control method for a minimum period of seven years; and
  - iii. Provide the records of the applications of the dust control method to the APCO upon request.

(D) The APCO shall respond to any application for an exemption within 90 days of the receipt of the application.

(E) If the request for an exemption is denied, the APCO shall provide written reasons for the denial.

(10) *Roads Located at Construction Sites*: The requirements of subsections (c), (d), and (e) shall not apply to restricted material used for the construction of temporary road surfaces located at on-going construction sites where vehicle traffic is limited to construction personnel and equipment. This exemption does not apply to the use of restricted material for temporary roads for public use.

(11) *Riprap*: The requirements of subsection (c) (d), and (e) shall not apply to restricted material used for riprap. "Riprap" means the material used to construct a loose assemblage of stones along a water course or shoreline to prevent erosion or provide stability.

**(g) Requirements to Perform a Geologic Evaluation or Asbestos Testing.**

Pursuant to the requirements of Health and Safety Code section 41511, the APCO or the Executive Officer of the ARB may require an owner/operator to perform:

- (1) A geologic evaluation for the presence of ultramafic rock or serpentine on any property from which aggregate material is extracted; or
- (2) Testing for the asbestos content of any aggregate material sold, supplied, offered for sale or supply, or used for surfacing.

**(h) Applicable Test Methods.**

(1) **Ultramafic Rock:** The ultramafic rock composition of any material shall be determined using a standard analysis technique including, but not limited to, color index assessment, microscopic examination, petrographic analysis or rock thin sections, or chemical analysis techniques, such as X-ray fluorescence spectrometry or inductively coupled plasma analysis.

(2) **Asbestos Testing:** ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board shall be used to determine compliance with this section. For the purposes of determining compliance with this section, references in ARB Test Method 435 to "serpentine aggregate" shall mean "aggregate material."

(3) **Averaging of Test Results:** If ARB Test Method 435 or an alternative approved asbestos bulk test method has been used to perform two or more tests on any one volume of aggregate material, whether by the same or a different person, the arithmetic average of these test results shall be used to determine the asbestos content of the aggregate material.

(4) **Sampling Frequency:** For the purposes of this section, the sampling frequency required for determining the asbestos content of any aggregate material shall be no less than one composite sample per 1000 tons of aggregate material processed, as specified in ARB Test Method 435, unless the APCO approves an alternative sampling frequency as follows: (A) The APCO may approve an alternative sampling frequency after reviewing and verifying the authenticity of the following information, which shall be provided by the owner/operator of the quarry:

1. An established history of analytical test results demonstrating that no aggregate material sampled and tested in accordance with an approved asbestos bulk test method had an asbestos content that was 0.25 percent or greater;

2. The established history of analytical test results must include:

i. Test results from ten percent of the expected total yield over the life of the quarry, as stated in any permit issued pursuant to the California Surface Mining and Reclamation Act, Public Resources Code, Division 2, Chapter 9, Section 2710 et seq.; or

ii. Test results that cover at least two years of production of surfacing material; this production amount must be verified with sales receipts and testing results as required in subsection (e)(3);

3. A geologic evaluation of the quarry that has been conducted in accordance with the provisions in subsection (f)(7);

4. Any permits issued pursuant to the California Surface Mining and Reclamation Act, Public Resources Code, Division 2, Chapter 9, Section 2710 et seq.;

5. Sales receipts retained by the quarry pursuant to subsections (d) and (e)(3).

(B) The APCO shall not approve any alternate sampling frequency that requires less than one test per 100,000 tons of aggregate material processed for surfacing.

(C) If any of the aggregate material tested is determined to have an asbestos content of 0.25 percent or greater using an alternative sampling frequency approved by the APCO, the owner/operator must:

1. Resume the sampling frequency specified in ARB Test Method 435 immediately after receiving the test results; and

2. Report the detection of asbestos and provide a copy of the analytical test results to the APCO within 48 hours after receiving the test results.

(i) **Definitions.** For the purposes of this section, the following definitions shall apply:

(1) "Aggregate" means a mixture of mineral fragments, sand, gravel, cobbles, rocks, stones, or similar minerals that may or may not be crushed or screened. "Aggregate" does not include elemental metals, gemstones, petroleum products, organic materials, or mineral ore to be processed offsite of the property from which it was extracted.

(2) "Alluvial deposit" means any deposit of sediments laid down by running water including, but not limited to, streams and rivers.

(3) "APCO" means the executive officer, air pollution control officer, or the designee of the executive officer or air pollution control officer of any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code;

(4) "Approved asbestos bulk test method" means ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board.

(5) "ARB" means the California Air Resources Board.

(6) "ARB Test Method 435" means the test method specified in title 17, California Code of Regulations, section 94147.



- (7) "Asbestos" means asbestiforms of the following minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite--grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.
- (8) "Decoration/landscaping" means the application or use of aggregate materials for aesthetic purposes.
- (9) "Geographic ultramafic rock unit" means a geographic area that is designated as an ultramafic rock unit or ultrabasic rock unit, including the unit boundary line, on any of the maps referenced in Appendix A.
- (10) "Geologic evaluation" means an evaluation of a property, as specified in subsection (f)(7), to determine the presence of various rock types, including ultramafic rock, serpentinite, or other metamorphic derivatives of ultramafic rock.
- (11) "Limited access surface" means any surface not subject to vehicular travel or pedestrian access that has an incline greater than twenty (20) percent.
- (12) "Non-surfacing applications" means any application of aggregate material that will not remain a part of the uppermost layer, such as fill, base rock, or drain rock.
- (13) "Owner/operator" or "person" includes, but is not limited to:
- (A) An individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including, but not limited to, a government corporation;
- (B) Any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law; or
- (C) A project proponent and any of its contractors or subcontractors.
- (14) "Producer" means any person that extracts and processes aggregate material from the ground.
- (15) "Property" means any real property including, but not limited to, any contiguous parcel or parcels of land and anything attached to, or erected on it.
- (16) "Quarry" means a facility or operation that obtains stone from the earth by means of cutting, digging, excavating, or blasting.
- (17) "Receipt" means any written acknowledgement that a specified amount of restricted material was received, delivered, or purchased. Receipts include, but are not limited to, bills of sale, bills of lading, and notices of transfer.
- (18) "Registered geologist" means an individual that is currently licensed as a geologist with the State of California, Department of Consumer Affairs, Board of Geology and Geophysicists.
- (19) "Remote location" means any location that is at least one (1.0) mile from the location of a receptor. "Receptor" includes, but is not limited to, any hospital, school, day care center, work site, business, residence, and permanent campground. The distance to the nearest receptor is to be measured from the outermost limit of the area to be disturbed or road surface, whichever is closer.
- (20) "Restricted material" means any of the following:
- (A) Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit (as defined in subsection (i)(9)); and
- (B) Aggregate material extracted from property that is NOT located in a geographic ultramafic rock unit (as defined in subsection (i)(9)) if the material has been:
1. Evaluated at the request of the Air Pollution Control Officer (APCO) and determined to be ultramafic rock or serpentine;
  2. Tested at the request of the APCO and determined to have an asbestos content of 0.25 percent or greater; or
  3. Determined by the owner/operator of a facility to be ultramafic rock, serpentine, or aggregate material that has an asbestos content of 0.25 percent or greater.
- (C) Any mixture of aggregate material that contains ten percent (10%) or more of any of the materials listed above in subsections (i)(20)(A) or (i)(20)(B), or any combination thereof, shall also be considered "restricted material."
- (21) "Riprap" means material used to construct a loose assemblage of stones along a water course or shoreline to prevent erosion or provide stability.
- (22) "Road surface" means the traveled way of a road and any shoulder which extends up to ten (10) feet from the edge of the traveled way.
- (23) "Sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.

- (24) "Serpentine" means any form of the following hydrous magnesium silicate minerals: antigorite, lizardite, and chrysotile.
- (25) "Serpentinite" means a rock consisting almost entirely of serpentine, although small amounts of other minerals such as magnetite, chromite, talc, brucite, and tremolite-actinolite may also be present. "Serpentinite" is a metamorphic derivative of the ultramafic rocks, peridotite, pyroxenite, or dunite.
- (26) "Surfacing" means the act of providing or creating a temporary or permanent covering for a surface used for pedestrians, motor vehicles, non-motor vehicles, decoration, landscaping, soil stabilization, or erosion control. Examples of surfaces include, but are not limited to, roads, road shoulders, streets, access roads, alleys, lanes, driveways, parking lots, playgrounds, trails, squares, plazas, and fairgrounds. For the purposes of this section, "surfacing" does not include creating a covering composed of asphalt concrete or portland cement concrete.
- (27) "Ultrabasic rock" means ultramafic rock.
- (28) "Ultramafic rock" means an igneous rock composed of 90 percent or greater of one or a combination of the following iron/magnesium-rich, dark-colored silicate minerals: olivine, pyroxene, or more rarely amphibole. For the purposes of this section, "ultramafic rock" includes the following rock types: dunite, pyroxenite, and peridotite; and their metamorphic derivatives.
- NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, and 41511, Health and Safety Code.

## APPENDIX A

California Department of Conservation  
Division of Mines and Geology

### AVAILABLE GEOLOGIC MAPS FOR CALIFORNIA

#### GEOLOGIC ATLASES OF CALIFORNIA Scale 1:250,000

##### GEOLOGIC ATLAS OF CALIFORNIA: ALTURAS

Compiled by Gay, T.E. and others, 1958

##### GEOLOGIC ATLAS OF CALIFORNIA: BAKERSFIELD

Compiled by Smith, A.R., 1964 (reprinted 1992)

##### GEOLOGIC ATLAS OF CALIFORNIA: DEATH VALLEY

Compiled by Streitz, R.L. and Stinson, M.C., 1974 (reprinted 1991)

##### GEOLOGIC ATLAS OF CALIFORNIA: FRESNO

Compiled by Matthews, R.A. and Burnett, J.L., 1965 (reprinted 1991)

##### GEOLOGIC ATLAS OF CALIFORNIA: LONG BEACH

Compiled by Jennings, C.W., 1962 (reprinted 1992)

##### GEOLOGIC ATLAS OF CALIFORNIA: LOS ANGELES

Compiled by Jennings, C.W. and Strand, R.G., 1969 (reprinted 1991)

##### GEOLOGIC ATLAS OF CALIFORNIA: MARIPOSA

Compiled by Strand, R.G., 1967 (reprinted 1991)

##### GEOLOGIC ATLAS OF CALIFORNIA: NEEDLES

Compiled by Bishop, C.C., 1963 (reprinted 1992)

##### GEOLOGIC ATLAS OF CALIFORNIA: REDDING

Compiled by Strand, R.G., 1962

##### GEOLOGIC ATLAS OF CALIFORNIA: SALTON SEA

Compiled by Jennings, C.W., 1967 (reprinted 1992)

##### GEOLOGIC ATLAS OF CALIFORNIA: SAN LUIS OBISPO

Compiled by Jennings, C.W., 1958 (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: SAN DIEGO - EL CENTRO**

Compiled by Strand, R.G., 1962 (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: SANTA ANA**

Compiled by Rogers, T.H., (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: SANTA CRUZ**

Compiled by Jennings, C.W. and Strand, R.G., 1958 (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: SANTA MARIA**

Compiled by Jennings, C.W., 1959 (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: UKIAH**

Compiled by Jennings, C.W. and Strand, R.G., 1960 (reprinted 1992)

**GEOLOGIC ATLAS OF CALIFORNIA: WALKER LAKE**

Compiled by Koenig, J.B., 1963 (reprinted 1992)

**REGIONAL GEOLOGIC MAP SERIES Scale 1:250,000**

**GEOLOGIC MAP OF THE SACRAMENTO QUADRANGLE**

(set of four sheets)

Compiled by Wagner, D.L. and others, 1981

**GEOLOGIC MAP OF THE SANTA ROSA QUADRANGLE**

(set of five sheets)

Compiled by Wagner and D.L., Bortugno, E.J. (reprinted 1999)

**GEOLOGIC MAP OF THE SAN BERNARDINO QUADRANGLE**

(set of five sheets)

Compiled by Bortugno, E.J., and Spittler, T.E. (reprinted 1998)

**GEOLOGIC MAP OF THE WEED QUADRANGLE**

(set of four sheets)

By Wagner, D.L. and Saucedo, G.J., 1987

**GEOLOGIC MAP OF THE SAN FRANCISCO-SAN JOSE QUADRANGLE**

(set of five sheets)

By Wagner, D.L., Bortugno, E.J. and McJunkin, R.D., 1990

Color-coded faults

**LOCAL GEOLOGIC MAPS**

**AREAS MORE LIKELY TO CONTAIN NATURALLY-OCCURRING ASBESTOS  
IN WESTERN EL DORADO COUNTY, CALIFORNIA**

By Ron Churchill, March 2000

Scale 1:100,000

**SERPENTINITE SURVEY OF LAKE COUNTY, CALIFORNIA - MAP A,  
ULTRAMAFIC, ULTRABASIC, AND SERPENTINE ROCK AND SOILS OF LAKE  
COUNTY,**

Adopted: March 2, 1992

Scale: 1:100,000

MVR 00684

EXHIBIT 6: Biological Reconnaissance of SMP-24 and the Pits Proposed for Consolidating and Deepening, Mr. Clinton Kellner, Ph.D., EDAW Associates, June 27, 2002

June 27, 2002

Bruce Jensen  
Planning Department  
399 Elmhurst Street  
Hayward, CA, 94544

**Subject: Biological Reconnaissance of SMP-24 and the Pits Proposed for Consolidating and Deepening**

Dear Bruce:

This letter reports on the reconnaissance survey of the SMP-24 area within the Mission Valley Rock quarry in Sunol, Alameda County. This survey focused on the pits east of Alameda Creek that will be consolidated and deepened

## **INTRODUCTION**

### Site Location and Project Description

The reconnaissance survey took place over the entire SMP 24 area of the Mission Valley Rock Quarry in Sunol. Particular attention was directed to those pits that are east of Alameda Creek because of the proposal to enlarge the pits by consolidating them and deepening them. This proposed work would entail removing the partitions or walls that are located between the quarry pits and deepening the resulting new pit.

### Study Methods

We examined information on file with the California Natural Diversity Database (CNDDDB 2002) to determine the potential presence of rare, threatened, and endangered species in the project vicinity. This information is available for each USGS quadrangle. The methods entailed reviewing information on the La Costa Valley quadrangle, on which the project site occurs, and the following adjacent quadrangles of Altamont, Dublin, Livermore, Hayward, Niles, Mendenhall Springs, Calaveras Reservoir, and Mt. Day.

The survey methodology involved walking down to the bottom of each of the pits that will be consolidated. The edges of the pits were sampled for aquatic species with a hand held dip net. The top of the partitions were walked to survey for any special-status biological resources. Plant and animal species that were observed during field work were recorded in field notes. Sedimentation basins, areas between the basins, and the working area of the Mission Valley Rock quarry were likewise surveyed. The site survey was conducted on June 4, 2002 with a follow-up survey on June 25, 2002.

MVR 00686

## EXISTING CONDITIONS

The project site consists of non-native grassland, ruderal vegetation, and patches of willow trees.

### Vegetation

The general vegetation of the quarry pits consists of sparse patches of non-native grassland and ruderal vegetation with small patches of willows growing at the edge of the water in the pits. The non-native grassland is dominated by ripgut brome (*Bromus diandrus*) and red brome (*Bromus madritensis* ssp. *rubens*). Rabbit's foot grass (*Polypogon monspeliensis*) grows in moist areas of the quarry pit and at the water's edge. The ruderal vegetation is dominated by yellow sweetclover (*Melilotis* sp.), and short-pod mustard (*Hirschfeldia incana*). Other ruderal species present include Italian thistle (*Carduus pycnocephalus*) and sow thistle (*Sonchus* sp.). Individual plants of mulefat (*Baccharis salicifolia*), sandbar willow (*Salix exigua*), arroyo willow (*Salix lasiolepis*), and red willow (*Salix lasiandra*) occur at the edge of the ponds at the bottom of the quarry pits. The willows may also grow in small stands of 4 or 5 trees. The willow trees are often associated with small stands of cattails (*Typha* sp.) that grow at the edges of the ponds.

The vegetation of the slopes of the quarry pits consists of a sparse growth of ruderal plants including short-pod mustard, Italian thistle, horse weed (*Conyza canadensis*), and coyote brush (*Baccharis pilularis*). Some of the quarry pits support a row of willow trees and or a row of cattails on their slopes where water seeps into the pits. The band of cattails averages 5 feet wide and is often associated with watercress (*Rorippa nasturtium-aquaticum*).

The willow trees are usually less than 12 feet tall and 4 inches in diameter but in one instance the willow trees of a 450-foot row were approximately 8 inches in diameter and 35 to 40 feet tall. A few cottonwood trees (*Populus fremontii*) also grew with the willows. The foliage of some of these trees was sparse and some of the trees had died. Nevertheless, a 225-foot portion of this row consisted of trees with a full canopy of dense foliage. These trees grow at a maximum spacing of 10 feet apart.

The vegetation of the silt ponds was similar to that of the pits - small clumps of cattails and willows. The areas separating the silt ponds consisted of ruderal vegetation - similar to the vegetation between the quarry pits.

### Wildlife

Wildlife values on the site are generally low because of the constant disturbance to the quarry pits from mining activity. Black-tailed deer (*Odocoileus hemionus*) were observed in Alameda Creek and within the quarry pits. Black-tailed hare (*Lepus californicus*) would also be expected to occur in the quarry pits. Birds that are observed in the quarry pits include Brewer's and redwing blackbirds (*Agelaius phoeniceus*) in the cattails and willow trees, song sparrows (*Melospiza melodia*) in the willow trees, and Savannah sparrows (*Passerculus sandwichensis*) in the ruderal vegetation.

Bullfrogs (*Rana catesbiana*) occur at the edge of some of the quarry ponds and sedimentation basins near cattail and willow trees. Fence lizards (*Sceloporus occidentalis*) occur on the slopes of the quarry

and areas of relative bare ground with sufficient cover of rocks. Snakes may occur incidentally in the quarry pits and sedimentation basins but the quarry would not be considered habitat. Likewise skunks (*Mephitis mephitis*) and raccoon (*Procyon lotor*) may also occasionally forage within the quarry but it would not be considered habitat.

### Special-Status Species

#### *Status*

The following account discusses the different categories of status that are attributed to particular species.

An endangered species is considered in danger of extinction throughout all or a significant portion of its range. A threatened species is likely to become endangered within the foreseeable future. In addition to threatened and endangered species that are legally protected under the state and federal Endangered Species Acts, there are a number of informal lists of special-status species. Species on informal lists do not have legal protection under the state or federal Endangered Species Acts, but may be of concern to resource agencies and the interested public. Informal lists serve as an early warning watch for species which may, in the course of events, become threatened or endangered.

Prior to formal listing as threatened or endangered by U.S. Fish and Wildlife Service (USFWS), species of concern are placed on an informal "candidate" list. Once USFWS has determined that a species should be elevated from the candidate status to formal listing, it becomes a "proposed" species through an announcement in the Federal Register prior to final elevation to formal status.

Informal lists maintained by the USFWS include a candidate species list. Informal lists maintained by the California Department of Fish and Game (CDFG) include the Bird Species of Special Concern in California (Remsen 1978), Mammalian Species of Special Concern in California (Williams 1986), and Amphibian and Reptile Species of Special Concern in California (Jennings and Hays 1994). The DFG identifies Species of Special Concern as those whose populations are declining and are being monitored to determine if they warrant future listing.

The California Native Plant Society (CNPS) has developed lists of rare and endangered plants in California (CNPS 2001). Their List 1A represents species considered to be extinct. List 1B represents plants considered threatened or endangered in California and elsewhere. List 2 represents plants that are threatened or endangered in California but more common elsewhere. List 3 represents plants potentially endangered, but additional information on rarity, endangerment, and taxonomy is needed. List 4 represents species with a limited distribution, but not presently endangered.

#### *Species*

The following discussion mentions the special-status species that occur in the Sunol area. These species are not likely to occur within the quarry pits because of the continual disturbance to their habitats and disruption to their activities.

Special-status plant species that occur in the Sunol area and surrounding USGS quadrangles include large-flowered fiddleneck (*Amsinckia grandiflora*), caper-fruited tropidocarpum (*Tropidocarpum*

*capparideum*), Mt. Diablo buckwheat (*Eriogonum truncatum*), big-scale balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*), Congdon's spikeweed (*Centromadia parryi* ssp. *congdonii*), diamond petaled poppy (*Eschscholzia rhombipetala*), Diablo helianthella (*Helianthella castanea*), fragrant fritillary (*Fritillaria liliacea*), maple-leaved checkerbloom (*Sidalcea malachroides*), most beautiful jewel-flower (*Streptanthus albidus* ssp. *peramoemus*), alkali milk vetch (*Astragalus tener* var. *tener*), beartscale (*Atriplex cordulata*), brittle-scale (*Atriplex depressa*), San Joaquin saltbush (*Atriplex joaquiniana*), hispid bird's beak (*Cordylanthus mollis* ssp. *hispidus*), palmate-bracted bird's beak (*Cordylanthus palmatus*), Livermore tarplant (*Deinandra bacigalupii*), round-leaved filaree (*Erodium macrophyllum*), robust monardella (*Monardella villosa* ssp. *robusta*), and hairless popcorn flower (*Plagiobothrys glaber*).

Special-status animal species that occur in the vicinity of Sunol include California tiger salamander (*Ambystoma californense*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), western pond turtle (*Clemmys marmorata*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), coast horned lizard (*Phrynosoma coronatum frontale*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), California horned lark (*Eremophila alpestris actia*), tricolored blackbird (*Agelaius tricolor*), Berkeley kangaroo rat (*Dipodomys heermanni berkeleyensis*), golden eagle (*Aguila chrysaetos*), Cooper's hawk (*Accipiter cooperi*), sharp-shinned hawk (*Accipiter striatus*), black-shouldered kite (*Elanus caeruleus*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus anatum*), and yellow warbler (*Dendroica polioptila brewsteri*). Species that are not expected on the site because of the absence of vernal pools or natural ponds are the longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the curved-foot hygrotus diving beetle (*Hygrotus curvipes*). Townsend's big-eared bat (*Corynorhinus townsendii townsendii*) is not expected on the site because of the absence of roosting habitat.

In addition to these species, rookeries of various species of herons including great blue heron (*Ardea herodias*), black-crowned night heron (*Nycticorax nycticorax*), great egret (*Casmerodius albus*), and snowy egret (*Egretta thula*) are also sensitive resources.

#### Survey Results

Tricolored blackbirds were observed in two stands of cattails of one of the sedimentation basins just west of Alameda Creek. The tricolored blackbirds are a California Species of Special Concern. They are not federally- or state-listed. The sedimentation basin is not part of the current project to widen and deepen the quarry pits. The tricolored blackbirds were observed on June 4 and June 25, 2002. During both observations, I could not determine whether the area was used for breeding or whether the birds were roosting and had bred elsewhere. About 20 tricolored blackbirds were counted in the cattails and an estimate was made of 20 additional tricolored blackbirds in the cattails for a total of approximately 40 tricolored blackbirds. A sand extraction facility that is adjacent to the sedimentation pond, does not appear to affect the tricolored blackbirds. These tricolored blackbirds were not observed within the pits proposed for widening and deepening.

No other special-status species were observed within the SMP-24 boundaries. The prior disturbance and continuing disturbance would preclude the occurrence of special-status plant species within SMP-



24. The quarrying activity along with the previous and continuing disturbance would tend to prevent the occurrence of special-status wildlife from SMP-24.

Within the pits east of Alameda Creek that are proposed for consolidation and deepening, no special-status plants or wildlife species were observed and none are expected to occur there because of the absence of habitat. In addition, the constant activity along with the prior and continuing disturbance to the pits that are proposed for consolidation and deepening, preclude the presence of special-status species.

### **PLANNING CONSIDERATIONS**

These recommendations pertain to the proposed consolidation and deepening of the quarry pits east of Alameda Creek. Because special-status species are absent and are not likely to occur there with the continuing disturbance, no special considerations are necessary.

The existing small stands of cattails and willows in the quarry pits are not valuable habitat for wildlife because of their small size, the continual disturbance from mining activity, and isolation from the riparian areas of Alameda Creek. No special planning considerations are needed for these habitats.

The stand of dense willows and cottonwoods that grow along a 225-foot length of slope is valuable habitat for wildlife. If quarrying activity removes this stand, it should be replaced with willows, cottonwoods, or sycamores (*Platanus racemosa*) along a suitable reach of Alameda Creek.

If you have any questions, please contact me.

Sincerely,

Clinton Kellner Ph.D.

Enclosure: References

## REFERENCES

California Natural Diversity Data Base (CNDDDB) 2002. Special Status Species occurrences report for the following U.S.G.S. quads: La Costa Valley, Altamont, Dublin, Livermore, Hayward, Niles, Mendenhall Springs, Calaveras Reservoir, and Mt. Day. California Department of Fish and Game, Natural Resources Division, Sacramento, CA.

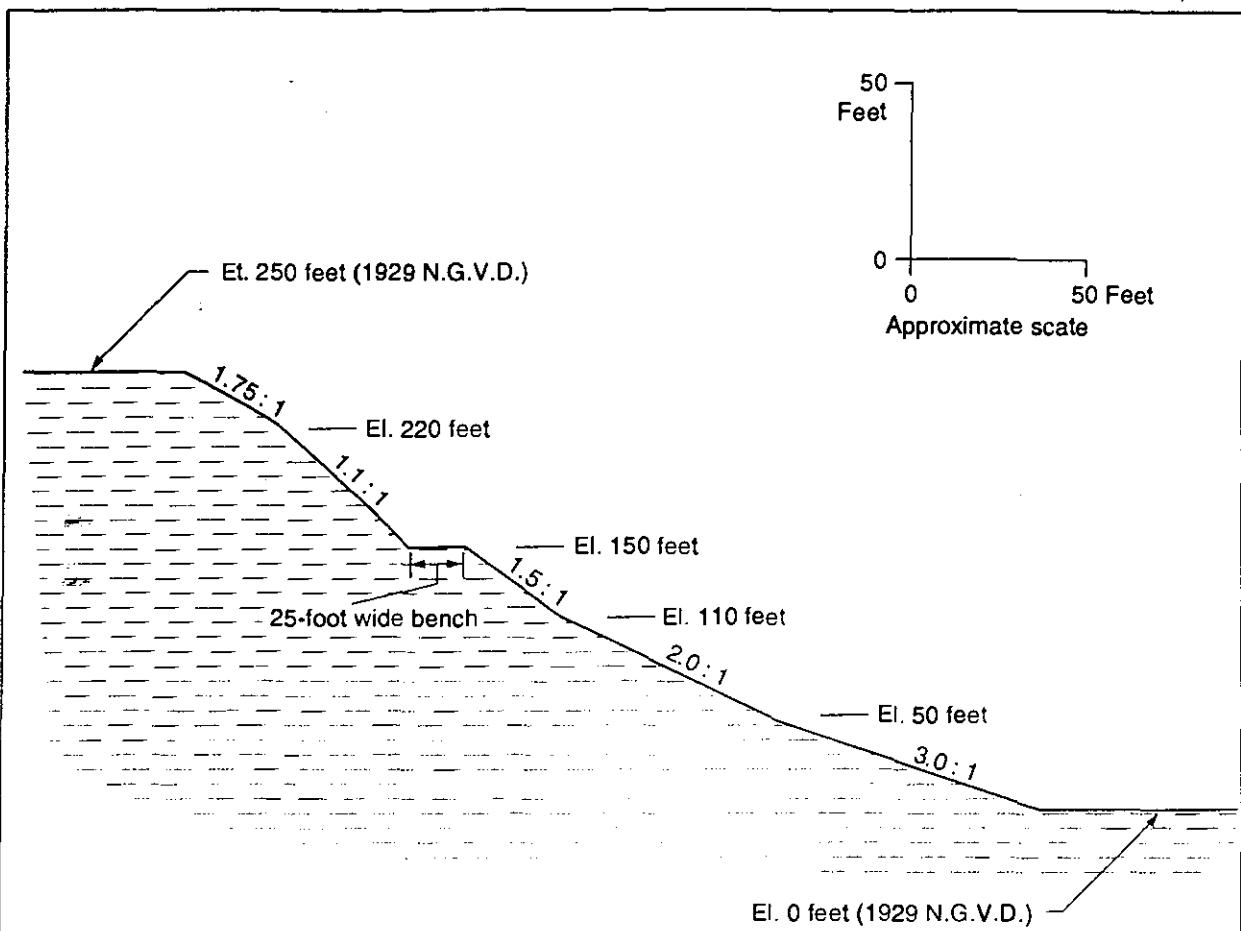
California Native Plant Society (CNPS). 2001. Inventory of Rare and Endangered Plants of California. Rare Plant Scientific Advisory Committee, David P. Timor, Convening Editor. California Native Plant Society Special Publication No. 1 (6th Edition), Sacramento, CA.

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Remsen, J. V. 1978. Bird Species of Special Concern in California. The Resources Agency, California Department of Fish and Game, Sacramento. 54 pp.

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**EXHIBIT 7: Recommended Slopes, SMP-24, Treadwell & Rollo, November 14, 2001**



**TYPICAL PROPOSED SECTION VIEW**

RECOMMENDED SLOPES	
DEPTH (feet)	SLOPE (H:V)
0' to 30'	1.75 : 1
30' to 100'	1.1 : 1
25 - foot wide bench at a depth of 100 feet	
100' to 140'	1.5 : 1
140' to 200'	2.0 : 1
200' to 250'	3.0 : 1

- Notes: 1. The above slope inclinations produce a static factor of safety = 1.43 and a psuedo static factor of safety (with a seismic coefficient of 0.125) = 1.05.  
 2. Slope inclinations from Elevation 250 feet to Elevation 110 feet from report by Harding Lawson Associates dated 11 August 1987 and as stipulated in the original permit.

<b>MISSION VALLEY ROCK COMPANY</b> Sunol, California	<b>RECOMMENDED SLOPES</b> <b>SMP-24</b>		
<b>Treadwell &amp; Rolo</b>	Date 11/14/01	Project No. 1030.12	Figure 1

EXHIBIT 8A &B:

Letter to Mr. Gary Dowd regarding exceedances of permit limitations on NPDES Permit No. 0030066, by Ms. Jenny Chen, California Regional Water Quality Control Board, February 19, 2002;

and

Letter to Bruce Jensen regarding exceedances of permit limitations on NPDES Permit No. 0030066, by Ms. Jenny Chen, California Regional Water Quality Control Board, February 26, 2002.

# California Regional Water Quality Control Board San Francisco Bay Region

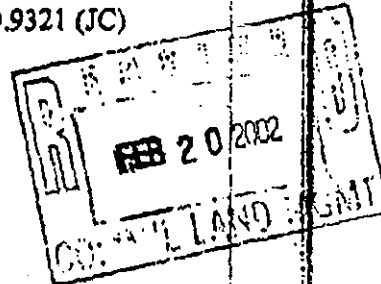
**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov>  
1515 Clay Street, Suite 1400, Oakland, California 94612  
Phone (510) 622-2300 • FAX (510) 622-2450



**Gray Davis**  
Governor

Date: FEB 19 2002  
File No. 2199.9321 (JC)



Mr. Gary Dowd  
Director  
San Francisco Utility Commission  
Land Bureau  
1155 Market Street  
San Francisco, CA 94103

Dear Mr. Dowd

Subject: Mission Valley Rock Company  
Sunol, CA 94586  
NPDES No. CA 0030066  
Order No. 97-037

After reviewing the Self-Monitoring Reports from Mission Valley Rock Company, I have found no violations of their permit limitations. There were several exceedances of pH, total suspended solids and total dissolved solids limitations of their permit during the year 2001. However, according to our investigation, these exceedances were caused by either monitoring deficiencies or inappropriate sampling location. Mission Valley Rock has since corrected these deficiencies.

Should you have any questions regarding this matter, please contact Ms. Jenny Chen at (510) 622-2405 or by e-mail at [jc@rb2.swrcb.ca.gov](mailto:jc@rb2.swrcb.ca.gov).

Sincerely,

Jenny Chen  
Water Resources Control Engineer

## Exhibit 8B:

From: Jenny Chen [Jc@rb2.swrcb.ca.gov]

Sent: Tuesday, February 26, 2002 12:36 PM

To: bjensen3@co.alameda.ca.us

Cc: Lila Tang

Subject: Re: Mission Valley Rock Company Self-Monitoring Reports

1. To answer the first half of your question 1, I have found no violations till January 2002. To answer the second half of your question 1, the purpose of self-monitoring of discharger's effluent and receiving water is (1) to document compliance with the permit requirements, (2) to facilitate self-policing by the discharger in the prevention and abatement of pollution arising from the waste discharge, (3) to help us to develop the permit limits in the future permit.

When the monitoring result exceeds the permit limit, we need to investigate to determine the cause of the exceedance, then determine if it's a violation. If we determine that it is a violation, we'll determine the type of enforcement action that is appropriate to this violation.

For the case of Mission Valley Rock, we determined that those exceedance in 2001 were not violations. But, it does not mean they will not violate the permit condition in the future.

2. To answer your question 2, what I said in my 2/19/02 letter is that I didn't find any violations till the date of the letter. Mission Valley may be doing, or have done something that is not in compliance permit requirements, or they may be doing better than what permit asks for, but it's just I don't know yet.

3. To answer your question 3, if those exceedances were not due to monitoring deficiencies or inappropriate sampling location, it may consider as violation, but I believe more investigation is needed (e.g. total dissolved solids exceedance, it may due to high TDS concentration in the ground water that seeps into their quarry pit, and this high TDS water will eventually recharge back into the ground), at least in this case, before making the determination.

4. To answer your question 4, For background levels affecting the discharge, we need to separate into two issues: background of receiving water, and background of soil and rock in the mining area.

For background of receiving water, the permit says pH shall not vary more than 0.5 pH unit from the normal ambient condition. Similar limits are set for turbidity in the permit for receiving water limitations. The permit requires the discharger to take a sample 50 feet upstream and 50 downstream of its discharge point at the same time they take their effluent samples. The monitoring results from upstream and down stream stations count as background condition.

For background of soil and rock in the mining area (e.g. the high pH in the soil causes Mission Valley's effluent high in pH), Mission Valley is responsible for this high pH because if Mission Valley didn't conduct the excavation, the alkalinity in the soil would still stay in the ground without discharging to the stream.

5. To answer your question 5, I've checked back to January 2000, Mission Valley has been submitting monitoring reports as required with occasional delay of a few days. I started my job here at the Regional Board in February last year, I only checked one year beyond my starting date. When they say they had no discharge, or there is no flow in the Alameda Creek at the time of the sampling, I had to take their words for it because I cannot prove that there was a discharge on that particular date.

Please call me if you have further questions, it takes less time to talk than write.

Jenny Chen  
Water Resources Control Engineer  
San Francisco Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Phone: (510) 622-2405  
Fax: (510) 622-2460

>>> "Jensen, Bruce, CDA" <bjensen3@co.alameda.ca.us> 02/22/02 02:49PM >>>

Hello, Jenny - I am the Planner for Alameda County that generally looks after the surface mines in the County. Recently, I saw several numbers that appeared to come from some of these self-monitoring efforts, and I was wondering about a few things that, perhaps, you could help to clear up for me.

Although Alameda County is not directly involved jurisdictionally on these matters, we are interested in whether the mining companies are in compliance with the requirements of other agencies; this compliance is often a condition of approval for the surface mining permits.

The numbers I saw were from the past four years or so. I saw about 18 different values purported to have exceeded various water quality \*standards\* including pH, TDS and turbidity. I also have seen a recent letter from you dated February 19, 2002, that suggests that these numbers are not properly called violations but "exceedances." The letter also explains that the exceedances were not caused by actual water quality problems, but with deficiencies in monitoring (equipment/techniques?) and sampling locations. I have also seen evidence of one episode of an actual violation, which I understand was the predecessor to the self-monitoring program that Mission Valley Rock presently uses.

MVR 00698



(1) Am I correct in surmising that these are not violations per se, but simply the results of monitoring that enable the Permittee and the RWQCB to keep track of, and correct problems with, storm runoff or other discharge?

(2) Is it reasonable to say that, based on the 2/19/2002 letter and records of Mission Valley Rock and the RWQCB, that Mission Valley Rock is in compliance with applicable water quality standards or other benchmarks?

(3) If an actual "exceedance" were recorded properly, would one or more events of this type constitute a "violation" of some kind?

(4) Is it possible that the background levels of the measured characteristics, before being affected by the quarry operation itself and in the natural environment, might themselves exceed the value ranges considered acceptable by the RWQCB? With pH, for example, we know that the soils and rocks in the Sunol region tend to be of relatively high alkalinity, and a higher than average pH might be expected to occur naturally. Similarly, in winter Alameda Creek often flows with very high turbidity, the water color a rich chocolate brown, due to upstream erosion; if the natural background is so high, is it reasonable to expect the water flowing off the quarry site (or, pumped from natural groundwater), to be much less turbid? In this case, wouldn't any less turbid water discharged placed into the creek water be, in fact, a benefit to the creek at that time, regardless of the level of turbidity of the discharged water?

(5) Is there any reason to believe that Mission Valley Rock has not been conducting the monitoring and subsequent deficiency correction in a timely and appropriate manner?

I'm not trying to put you or the quarry on the spot with these questions; we simply have a potentially controversial situation with one of MVRs smaller pits that requires us to provide our Planning Commission with accurate characterizations of water quality issues. I would appreciate any assistance you can provide on this matter. Thanks very much for your help.

Very truly yours,

Bruce H. Jensen  
Senior Planner,  
Alameda County Community Development Agency  
(510) 670-6527

MVR 00699