



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

For Meeting Date: September 13, 2007

### **Agenda Item No. 2: Continued Review of the Adequacy of Santa Clara County's Response to the Board's 45-day Notice to Correct Deficiencies Issued April 19, 2006.**

**INTRODUCTION:** At its April 13, 2006, regular business meeting, the State Mining and Geology Board (SMGB) determined to issue to the County of Santa Clara (County) a 45-day Notice to Correct Deficiencies (Notice). This determination was made pursuant to the provisions contained in Public Resources Code (PRC) Section 2774.4(c) of the Surface Mining and Reclamation Act (SMARA). This action by the SMGB commenced in March 2005 with the receipt of complaints by neighbors and interested parties concerned over the County's inability to fulfill its obligations and responsibilities as a lead agency under SMARA as it pertained to the Lexington Quarry. Subsequent review by the Office of Mine Reclamation (OMR) and SMGB staff of the County's actions and performance as a lead agency showed that the County was not fulfilling its obligations and responsibilities in several key areas as required pursuant to SMARA. Since issuance of the Notice in April 2006, the County has had over a year and a half to demonstrate that it could correct the violations and deficiencies outlined in the Notice. At the SMGB's September 2006 regular business meeting, the SMGB moved to give the County one year to make this demonstration. Since such time, the County has acquired a team of specialist to perform mine inspections, and took steps to obtain revised and adequate financial assurances and amended reclamation plans, as deemed appropriate.

The SMGB will consider whether the County has corrected all violations and deficiencies as outlined in the April 2006 Notice to the satisfaction of the SMGB, or whether the SMGB determines that the County has not corrected the violations and deficiencies to its satisfaction and wishes to hold a Public Hearing to determine to what extent the Board will assume the County's lead agency authority under SMARA.

The Executive Officer's report presented herein contains 1) background information which includes discussion of assumption considerations, summary of deficiencies, County's initial response to issues raised, and the SMGB's initial consideration, 2) the Executive Officer's analysis of the County's performance since issuance of the Notice including a summary of the 10 deficiencies and 22 findings set forth in the July 2006 Executive Officer's report, general comments regarding the County's overall performance, and analysis of each deficiency and finding based on review of documents and information provided by the County and OMR, and 3) considerations before the SMGB.

Exhibits containing information and documents from the County, OMR, and interested parties are attached to this report. A summary of Exhibits are provided below:

- |           |   |
|-----------|---|
| Exhibit A | County's Submittals and Correspondence  |
| Exhibit B | Public Comment and Documents Regarding Lexington Quarry<br>(Los Gatos Hillside Preservation League) |



*Executive Officer's Report*

|           |  |
|-----------|--|
| Exhibit C | Public Comment and Documents Regarding Permanente Quarry and Stevens Creek Quarry (City of Cupertino and West Valley Citizens Air Watch) |
| Exhibit D | Correspondence from County's Team Member   |
| Exhibit E | Inspection Reports Provided by the County  |
| Exhibit F | Summary of Financial Assurances Revisions  |
| Exhibit G | Summary of Enforcement Documentation   |

**BACKGROUND:**

On March 22, 2005, the State Mining and Geology Board (SMGB) received correspondence and documentation from the Los Gatos Hillside Preservation League (LGHPL), a group of Los Gatos citizens and residents, expressing concern about environmental threats to their surrounding area as a result of surface mining operations being performed at the Lexington Quarry, Santa Clara County, California. Issues raised by the LGHPL pertained to the surface mining operation being out of compliance with its approved reclamation plan, and that the lead agency, Santa Clara County, was not administering and fulfilling its obligations and responsibilities as a lead agency under SMARA.

Following receipt of the LGHPL's consultant's report in March 2005, which raised a number of compliance-related issues and also questioned the County's ability to administer SMARA in an appropriate manner, the Department of Conservation Office of Mine Reclamation (OMR) at the request of the SMGB performed two site visits of the Lexington Quarry, and summarized their results in a draft report dated July 12, 2005. Three violations were readily apparent, along with several corrective measures being noted. The issues noted in the report prepared by OMR raised other issues pertaining to the County's performance as a lead agency. Between July 2005 and June 2006, OMR evaluated the overall performance of the County as a lead agency, and on June 8, 2006, OMR presented their final conclusions of their review and monitoring of the County's mine inspection activities.

Assumption Consideration: Based on issues raised by the LGHPL, receipt of information and numerous documents over a sixteen-month period from residents of the County and the County's administrative staff, and OMR's report, the SMGB at its April 13, 2006, regular business meeting moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County. This determination was made pursuant to the provisions contained in Public Resources Code (PRC) Section 2774.4(c) of SMARA.

On April 19, 2006, the 45-Day Notice to Correct Deficiencies was issued to the County. In that Notice, the County was informed that the SMGB had identified deficiencies with all nine



of the surface mines under the County's lead agency jurisdiction. On June 9, 2006, the County responded to the SMGB's Notice. It was the County's position that:

1. The County did not undertake annual inspections for all the mines within their jurisdiction in 2000 and 2001;
2. The County had taken certain steps to remedy their previous shortcomings via contracting with a third party in 2003 to assist in conducting inspections and financial assurance estimates, stating that "*As a result of these changes, the quality of the inspections have improved significantly.*", and "*the amount of funding posted through increased financial assurance mechanisms on file by the mine operators was significantly increased.*"; and
3. The County's continued process was to include partnering with OMR, and improve fully trained County staff including the use of technical consultants.

At its July 13, 2006, regular business meeting, the SMGB heard a summary of the ten deficiencies and twenty-two findings as set forth in the Executive Officer's report, and from representatives of the County and other interested parties. The Executive Officer in summarizing what progress the County had made, noted that the County had corrected some deficiencies by simply conducting mine inspections, requiring submittal of annual written calculations of financial assurance amounts, and reviewing the financial assurances, for all surface mining sites within their jurisdiction. However, of the sites cited as having deficiencies, at least five were considered to be significantly out-of-compliance with SMARA, with their noted deficiencies as cited in the Notice having not been adequately addressed by the County.

It was also concluded that in review of the administrative record, the County did not demonstrate a working knowledge of the requirements of SMARA. This lack of understanding did not allow the County to be in a position to understand or review its consultant's work product. In essence, the County did not recognize what was an adequate work product or what was not. Simply performing an inspection is not equivalent to the inspection being performed in an adequate and comprehensive manner. If the State was to rely on the adequacy of the County's inspection process to determine whether a surface mining operation is in compliance with SMARA, then the County must ensure that the inspection reports are accurate and represent a true description and condition of the surface mining operation activities. Without some knowledge of what is required under SMARA, and some means of recognizing and measuring the adequacy of their consultant's work product, it made it very difficult for the State to rely on the adequacy of the County's inspection process. To gain an accurate and adequate picture of actual site specific conditions for each site within the County's jurisdiction with an appreciable degree of confidence, personnel knowledgeable in the requirements of SMARA must perform the inspections.

Poorly performed and inadequate inspections led to adverse ramifications, that being the existing and recently adjusted financial assurances for all nine sites being unreliable. The financial assurance amounts did not reflect existing site conditions in respect to performance standards, criteria set forth in the site-specific approved reclamation plan and conditions of approval, nor corrective measures required in light of the violations, among other issues.



Furthermore, there was little evidence in the administrative record demonstrating that the County had the understanding, or will, to enforce SMARA. This was clearly documented by the County's unwillingness to issue Notices of Violation, Orders to Comply, or subsequent Administrative Penalties, when appropriate, for any of the sites in all the years leading up to 2005. Furthermore, the County did not adequately demonstrate that it understood the administrative process in getting surface mine operations into compliance. Administrative procedures and proceedings are time consuming and require diligence and continued monitoring. The County provided no documentation, nor demonstrated by its actions, that it had the will to administer SMARA enforcement actions.

It was the conclusion of the Executive Officer that the County's SMARA program was deficient and had not been corrected such that it met the intent of the Legislature, as expressed in Article 1 of the SMARA. The Executive Officer thus recommended that the SMGB find that the County has not satisfactorily met the statutory conditions of PRC 2774.4, in that it has not corrected in a timely manner the deficiencies cited in the 45-Day Notice.

The County expressed its sincere desire to fully address the deficiencies and findings, and the SMGB moved to defer consideration of the SMGB Executive Officer's findings regarding this matter until its September 14, 2006, regular business meeting; whereas, it would hear again from the County as to what steps were being taken to address all noted deficiencies and findings.

County's Response to Issues: The SMGB received the County's "Response to Issues" dated September 1, 2006, to address issues raised by OMR and the SMGB's Executive Officer, on September 5, 2006. The County acknowledged "*the need to upgrade its quarry inspection and monitoring program to achieve the goals of the Surface Mining and Reclamation Act of 1975 (SMARA).*" To accomplish this goal, the County proposed to:

- Reorganize via in-house training of staff and obtaining external technical assistance;
- Identify specific inspection responsibilities; and
- Review mine descriptions, deficiencies and violations, and developing remedial actions.

The County developed a team approach in regards to in-house training and technical assistance. The County team members included Planning Director Dr. Alexeeff, County Senior Planner Mr. Rudholm, County Senior Civil Engineer Mr. Freitas, Mr. Homan (County Health Specialist) and Mr. Baker (County Geologist). Other team members include Mr. Zitney (Consultant and Biologist), Mr. Miller (landscape architect and planner, and Partner with 2M Associates) and Mr. Wallace (Associate Engineering Geologist) and Mr. Shires (President and Principal Geotechnical Engineer) with Cotton, Shires and Associates, Inc. The County did not identify at the time which individual actually would be performing the inspections and be responsible for preparation of the inspection report or their demonstrated knowledge of SMARA, but rather indicated that inspections will be a group effort, and the firm of Cotton Shires and Associates will serve as the "SMARA geology specialist."



The County prepared an outline of tasks to be performed during conduct of the SMARA mine inspections by the group; however, which individual in the inspection group would be responsible for certain task was not defined. The County allowed one week to prepare (pre-inspection), one week for conduct all mine inspections and one week for completion of all inspection reports. The amount of time being provided by the County, was deemed insufficient and restrictive, and did not take into effect sufficient time likely needed for the relatively larger surface mining operations. In addition, it was stated on page 13, item 2b *“Are geologists and/or engineers be needed to evaluate slope stability of reclaimed slopes.”* This statement implied that the inspection group would not have slope stability expertise, which would be problematic since some of the sites to be inspected were already known to have significant slope stability issues.

The County claimed that *“For six of the nine quarries there is little dispute over issues and any current deficiency has been corrected or a timetable has been established for correction this year.”* This statement in itself suggested that the County refused to question the quality of past inspection reports, notably, those performed by their consultant in 2005.

Lastly, in correspondence prepared by the County, there did not appear to be any due dates for certain products and deliverables being requested, such as a timeline for operators to provide revised financial assurance information.

In September 2006, the SMGB moved to defer action on whether the SMGB would assume Lead Agency authority for one year, with a progress report to be provided by the County in six months. Since the six-month period would have extended to February 14, 2007, six days after the SMGB’s scheduled February 8, 2007, regular business meeting, the County requested that their progress report be presented to the SMGB at the scheduled March 8, 2007, regular business meeting, indicating that the extra time would allow submittal of pertinent documentation and information to the SMGB, and adequate time for the SMGB to review the results of the County’s inspections and administrative actions taken, prior to the SMGB’s March meeting. The County provided an interim progress report at the SMGB’s May 8, 2007, regular business meeting. Inspection reports were not available for review and comment as of the March 2007 meeting, although the County did provide a general status report dated February 27, 2007.

**ANALYSIS:**

At its July 13, 2006, regular business meeting the Executive Officer recommended that the SMGB find that the County had not satisfactorily met the statutory conditions of PRC Section 2774.2 in that it had not corrected in a timely manner the deficiencies cited in the 45-Day Notice. Deficiencies concerning the adequacy of reclamation plans, financial assurances and mine inspections, and the ability of the County to enforce SMARA, as contained in the 45-Day Notice, have existed for several years. The County however had not taken sufficient and timely actions to correct these deficiencies. Since 2000 and through 2005, the County failed, and as of September 2006 continued to fail, in demonstrating an overall working knowledge of SMARA, and an ability to implement SMARA in a responsible manner.

As of August 2007, the County has taken certain steps to demonstrate its ability to fulfill its responsibilities and obligations in serving as a lead agency under SMARA. These steps are



summarized in the County's correspondence dated August 13, 2007, which provides a review of their surface mine oversight throughout their jurisdiction. Overall, it is the County's position for all 10 findings (i.e., the County is actually referring to deficiencies; there were twenty-two (22) specific findings as documented in the Executive Officer's report dated July 13, 2006) that "**The Board finds that the County has corrected this deficiency to the Board's satisfaction...**"

A summary of the Executive Officers analysis based on review and analysis of the information made available by the County and OMR, it is the Executive Officer's conclusion that in regards to the adequacy of inspections, financial assurances and the County's effort to demonstrate their ability to effectively administer SMARA compliance and enforce SMARA, is presented in Table 1. In summary, all nine sites remain out of compliance. Furthermore, in regard to the deficiencies and findings set forth, only four out of 10 deficiencies were adequately addressed, primarily by being historic and nature. Furthermore, only eight out of 22 findings were deemed satisfactorily corrected and addressed.

General and specific findings, albeit not inclusive, as reported by the Executive Officer in July 13, 2006, and current status, are summarized below:

### **General Comments**

#### Conduct and Adequacy of Mine Inspections:

Following issuance of the SMGB's 45-day Notice to Correct Deficiencies on April 19, 2006, the County performed on-site mine inspections for all nine sites within their jurisdiction between the period of October 31 and December 20, 2006. A status report was provided to the SMGB in correspondence provided by the County dated February 26, 2007. Several versions of inspections reports have been provided. CCR Section 3504.5(f) of the SMGB's regulations state

*"Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9."*

CCR Section 3504.5(g) also states "*The inspection report to the lead agency shall consist of the inspection form MRRC-1...and any other reports or documents prepared by the inspector or inspection team...The lead agency shall provide a copy of the completed inspection report along with the lead agency's statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection...*"

One set of inspection reports was provided immediately prior to the SMGB's March 8, 2007, regular business meeting. These reports were incomplete and excluded financial assurance calculations as



**TABLE 1  
SUMMARY OF SANTA CLARA COUNTY'S PERFORMANCE  
AS A LEAD AGENCY UNDER SMARA**

| Surface Mine Site<br>(State ID Number)   | Acres | Adequacy of<br>Inspection   | Issues Identified<br>(Violation to be<br>Issued)  | Outstanding Issues<br>(No Violation Noted)   | Adequacy of<br>Financial<br>Assurance  | Adequacy of<br>Administrative<br>Process   | Summary  |
|--|-------|---|---|--|--|--|--|
| Curtner Products<br>(CA ID #91-43-0001)  | 129   | Inadequate;<br>No quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements; no FA calculations attached. | Over steepened slopes;<br>Unstable fill and cut slopes;<br>Inadequate revegetation efforts;<br>inadequate topsoil management practices; and<br>potential adverse impact to adjacent watershed           | Three violations were issued. No violation was issued for potential adverse impact to adjacent watershed;<br>inadequate topsoil management practices, and need for amended RP uncertain due to impact of unstable slope mitigation.<br>In addition, COA and permit conditions not fully addressed. | Inadequate:<br>Revised FA of \$785,862 remains inadequate as noted by inspector.   | Inadequate:<br>Interim FA should be implemented while RP is being amended; NOV issued in Sept. 2006; OTC issued on August 8, 2007 for submittal of amended RP. | No adequate amended RP or FA in place. No effective enforcement to date. |
| Serpa Quarry<br>(CA ID #91-43-0002)      | 51.8  | Inadequate;<br>Inadequate quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements.                      | Precipitous over-steepened cut slopes; Unstable slopes; fill slopes unstable;<br>revegetation incomplete; potential adverse impact to adjacent property;<br>recycled glass used as soil media on slope. | Four violations should have been noted but none were. In addition, COA and permit conditions not fully addressed.  | Inadequate:<br>Revised FA of \$288,821 remains inadequate as noted by inspector.   | Inadequate:<br>No NOV's issued.  | No adequate amended RP or FA in place. No effective enforcement to date. |
| Azevedo Quarry<br>(CA ID #91-43-0003)    | 255   | Inadequate;<br>No quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements.                              | Over steepened slopes; potentially unstable slopes;<br>unstable berm – soil erosion control inadequate.   | Two violations should have been noted but none were, although an amendment to the RP was noted. In addition, COA and permit conditions not fully addressed.  | Inadequate:<br>Revised FA of \$249,980 remains inadequate as noted by inspector.   | Inadequate:<br>No NOV's issued.  | No adequate amended RP or FA in place. No effective enforcement to date. |
| Permanente Quarry<br>(CA ID #91-43-0004) | 532.4 | Inadequate;<br>Inadequate quantification of observations provided;<br>inadequate information provided regarding land reclaimed to   | Encroachment; over steepened slopes;<br>unstable slopes;<br>unengineered fill;<br>inadequate topsoil  | Only two violations were noted. No violation for stream protection or impact to adjacent watershed issued. In  | Inadequate:<br>Revised FA of \$1,200,000 remains inadequate as noted by inspector. | Inadequate:<br>Inappropriate and ineffective combined NOV/OTC  | No adequate amended<br>No effective NOV.<br>No adequate                  |



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|  |      | date; no reference to performance criteria, COA or permit requirements; no FA calculations attached.   | management; inadequate soil erosion and drainage measures – adjacent watershed impacted.  | addition, COA and permit conditions not fully addressed.  | Revised FA of \$7,570,047 under review.   | issued in October 2006 - inconsistent with SMARA.  | amended RP or FA in place. No effective enforcement to date.             |
| Polak Quarry<br>(CA ID #91-43-0005)        | 64.9 | Inadequate; Inadequate quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements; no FA calculations attached. | Unstable stockpiles which present potential safety hazard; potential safety issues adjacent to seasonal wetlands; over steepened slopes.                                    | No violations were noted although a violation for both over steepened slopes and safety concerns should have been noted. Impact on site once slopes are mitigated was not addressed. In addition, COA and permit conditions not fully addressed.              | Inadequate: Revised FA of \$100,397 remains inadequate as noted by inspector.   | Inadequate; no NOV's issued.   | No adequate amended RP or FA in place. No effective enforcement to date. |
| Lexington Quarry<br>(CA ID #91-43-0006)    | 47.6 | Inadequate; No quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements.                                      | Over steepened slopes; unstable slopes; encroachment; inadequate revegetation efforts; inadequate drainage and soil erosion efforts; inadequate topsoil management efforts. | Three violations were noted. No violations were noted for encroachment, revegetation, and potential adverse impact to groundwater. In addition, COA and permit conditions not fully addressed. Groundwater issue being adequately addressed is uncertain.     | Inadequate: Revised FA of \$793,470 remains inadequate as noted by inspector. County claims no need to increase FA since area is already disturbed. | Inadequate: Inappropriate and ineffective combined NOV/OTC issued in October 2006 - inconsistent with SMARA. | No adequate amended RP or FA in place. No effective enforcement to date. |
| Stevens Creek Quarry<br>(A ID #91-43-0007) | 123  | Inadequate; No quantification of observations provided; no information provided regarding land reclaimed to date; No reference to performance criteria, COA or permit requirements.                                      | Over steepened slopes; unstable slopes; encroachment; inadequate drainage and soil erosion measures; inadequate revegetation efforts.                                       | Two violations were noted. No violations were issued for encroachment and inadequate drainage and soil erosion control measures, and impact of unstable slope mitigation on perimeter boundaries. In addition, COA and permit conditions not fully addressed. | Inadequate: Revised FA of \$829,435 remains inadequate as noted by inspector.   | Inadequate: Inappropriate and ineffective combined NOV/OTC issued in October 2006 - inconsistent with SMARA. | No adequate amended RP or FA in place. No effective enforcement to date. |



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| Calaveras Quarry<br>(CA ID #91-43-0008) | 46 | Inadequate;<br>Inadequate quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements; no FA calculations attached. | Precipitous cut slopes, unstable slopes, personnel safety with long-term stability issues, inadequate revegetation efforts, stream protection, soil erosion and drainage measures, and expired IMP.         | Three violations were issued. No violations were issued for steepened and unstable slopes, and personnel safety. COA and permit conditions not fully addressed.  | Inadequate:<br>Revised FA of \$70,380 remains inadequate as noted by inspector.  | Inadequate.<br>NOV issued in November 2006. No OTC issued. | No adequate amended RP or FA in place. No effective enforcement to date. |
| Freeman Quarry<br>(CA ID #91-43-0010)   | 55 | Inadequate;<br>No quantification of observations provided; no information provided regarding land reclaimed to date; no reference to performance criteria, COA or permit requirements.                                      | Operation outside RP boundary; Slope instability and encroachment concerns; unstable sedimentation pond berm; inadequate topsoil management practices; personnel safety issue associated with steep slopes. | One violation was noted for encroachment; no violation was issued for inadequate topsoil management and to address unstable slopes and potential encroachment as a result of mitigation; an amendment to the RP was noted. In addition, COA and permit conditions not fully addressed. | Inadequate:<br>Revised FA of \$577,890 remains inadequate as noted by inspector; operator's September 2006 estimate was for \$913,325. | Inadequate:<br>NOV issued in June 2007; no OTC issued.     | No adequate amended RP or FA in place. No effective enforcement to date. |

Notes:

COA = Conditions of approval  
 FA = Financial assurance  
 IMP = Interim management plan  
 RP = Reclamation plan

required. In addition, the reports 1) included disturbed acreage as reported by the operator on the Mining Operation Annual Report, in lieu of disturbed acreage as observed during inspection, 2) excluded reference to all site-specific Conditions of Approval set forth by the County, among other items. Following discussions with and assistance from OMR, a revised version of inspection reports were submitted to replace the earlier submittal. However, this later submittal dated March 28, 2007 was provided to the SMGB's office, albeit the actual inspection reports remained dated March 6, 2007, and was also incomplete. This submittal 1) excluded financial assurance calculations, 2) supportive text and site photographs, 3) signatures and professional seals, 4) reference to Conditions of Approval, among other items. It was indicated by the County in correspondence dated April 2, 2007, that a third version was to be submitted later in the year, and prior to July 2007. A third and final version dated June 27, 2007, was forwarded to OMR, and received by the SMGB from OMR on August 27, 2007. Correspondence received from one of the former inspection team participants, Mr. Greg Zitney, dated August 28, 2007, is provided in Exhibit D. All three sets of inspection reports are provided in Exhibit E.

The inspection reports provided by the County in June 2007 were mostly complete (although some were missing financial assurance calculations) but substantively deficient upon review. Based on the Executive Officer's experience in conducting over 200 mine inspections, the majority performed on behalf of the SMGB, the inspection reports provided by the County have been reviewed, and the following general observations are offered:

- No reference or in some cases inadequate reference to reclamation or performance requirements as set forth in the approved reclamation plan, Conditions of Approval, or permit requirements, are referenced in the inspection reports. The inspection reports would have benefited if specific performance standards and conditions noted in the approved reclamation plan and Conditions of Approval were specifically referenced (i.e., all slopes should not be steeper than 2H:1V). Without such references, the reports failed to assure that the mine inspections met the requirements of the approved reclamation plan, and the tens of Conditions of Approval, and permit requirements. It should be noted that some sites have over 50 Conditions of Approval, many of which are directly relevant to reclamation such as steepness of slopes, setbacks, safety requirements, etc.
- The SMGB's regulations, CCR Section 3504.5(f) states "*Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.*" None to minimal and inadequate quantitative field information, with exception to the amount of disturbed acreage, was provided in the inspection reports. The reports failed to quantify the current configuration of cut and reclaimed slopes, including certain geologic parameters such as existing height of slopes and steepness or gradient, quantification of erosion features, amount of off-site encroachment, volume of waste piles, etc.

Furthermore, some of the slopes range up to the order of 700 feet +/-, and were characterized as over steepened and unstable showing evidence of active landslides, potential safety hazards, and situated upon adjacent property outside the boundaries of the approved reclamation plan.



- Should a substantial deviation from the existing approved reclamation plan or any Conditions of Approval be determined at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary), a violation should have been noted at time of inspection. The inspector(s)/County choose to not issue a violation but rather address some of these issues and violations with future modification of the reclamation plan. Although these substantial deviations would necessitate the need for preparation of an amended reclamation plan, a violation(s) should have been noted by the inspector(s). To avoid issuance of a violation because violations would be addressed within a future amendment to a reclamation plan is inconsistent with SMARA. The reports thus failed to assure that violations and corrective measures would be enforced and addressed in a timely manner.
- The three versions of inspection reports submitted over time reflected sequential improvement with each version based on informal comments provided by OMR. Despite this assistance, the County's final version demarcated as "Revised June 21, 2007", remained inadequate for several reasons including none to inadequate quantification of crucial information as previously discussed, the unwillingness it issue appropriate violations for what were clearly substantial deviations (i.e., encroachment onto adjacent property, even though cut slopes which encroached onto adjacent land were described as over steepened and unstable).
- Essentially no specific reference to the numerous Conditions of Approval and permit requirements associated with many of the approved reclamation plans was noted.
- The inspection reports would have benefited if photographs were annotated showing specific areas of concern.

#### Enforcement of SMARA:

A summary of enforcement activities executed by the County has been compiled by OMR and is provided in Exhibit E. SMARA provides guidance and direction for lead agencies in enforcing compliance of surface mining operations. PRC Section 2774.1(a) states *"...if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise conformed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after that date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities."*

PRC Section 2774.1 et seq. also provides the administrative procedure for the issuance of NOVs, OTC, and administrative penalties, if appropriate, and following issuance of a NOV. PRC Section 2774.1(b) states *"An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency, or board for orders issued by the lead agency, or board for orders issued by the director, concerning alleged violations. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are*



*inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.”* The County elected to issue a combined Order to Comply (OTC) and Notice of Violation (NOV) for the Permanente Quarry, Lexington Quarry and Stevens Creek Quarry, to “*allow for speedier resolution of the issues.*”

- Identification of violations based on site inspections, and the issuance of violations, OTC and administrative penalties, when appropriate, is an important element of the SMARA process available to the lead agency to enforce compliance. The County issued combined OTC and NOV to three operators: Permanente Quarry, Lexington Quarry and Stevens Creek Quarry. The County modified the administrative procedures in the issuance of NOVs and OTCs, “*to allow for a speedy resolution of the issues*”. By taking such action, the County stepped outside of the legal framework provided by SMARA, and compromised any future action the County may wish to consider or take, without starting the entire process over again. If the County had proceeded in a manner consistent with SMARA, its actions would not be subject to any legal challenge and the County would have been on solid legal grounds. However, the action taken by the County in these three instances compromised their position, and being outside of the administrative process provided under SMARA resulted in no clear rules or guidelines, and the ability of the County to enforce is questionable. The County did fail, and continues to fail, in recommending and enforcing violations and corrective measures in a timely manner.
- Since April 2006, ten NOVs were issued by the County to six operators: Curtner Products, Permanente Quarry (enforceability questionable), Lexington Quarry (enforceability questionable), Stevens Creek Quarry (enforceability questionable), Calaveras Quarry and Freeman Quarry. However, NOVs and subsequent OTC should have been issued to address such issues as significant offsite encroachment, and endangerment to public safety and adjacent lands, as depicted in the 2006 inspection reports. The County thus failed to enforce violations and corrective measures in a timely manner.
- No NOVs were issued to Azevedo Quarry, Polak Quarry or Stevens Creek Quarry. However, site conditions depicted in the inspection reports include 1) over-steepened slopes and public safety issues for the Azevedo Quarry, 2) over-steepened slopes and public safety issues for the Polak Quarry, 3) slope instability, encroachment, adverse impact to adjacent watersheds for Stevens Creek Quarry, and 4) over-steepened and unstable slopes, and significant safety issues for the Freeman Quarry. The County thus failed to enforce violations and corrective measures in a timely manner.
- In regards to the Calaveras Quarry which is deemed abandoned, four NOVS were issued between the period of April 2006 and August 2007, and no reclamation has commenced. Furthermore, current statute requires either the site be reclaimed, and if the operator chooses not to reclaim, procedures for forfeiture of the financial



assurance needs to commence, or the operator needs to start the entire permitting process again should an intent to resume mining is desired.

- During the past 16-months period the County issued only one Order to Comply, that being to Curtner Products on August 8, 2007, for the operator to submit a complete amended reclamation plan. The County continues to fail to enforce violations in a timely manner.

When imminent and substantial endangerment exist as evidenced by inspection reports for five of the nine surface mining operations, PRC Section 2774(d) states “*If the lead agency or the director determines that a surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.*” Furthermore, PRC Section 2772(f) states “*The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:*

- (1) *The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate actions.*
- (2) *The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health of safety, or to the environment...*”

- Although an endangerment to public safety and/or adverse impact to adjacent watersheds were recognized during conduct of the 2006 site inspections at the Curtner Products site, Calaveras Quarry, Azevedo Quarry, Polak Quarry, and Freeman Quarry, no violations were issued for such endangerment at any of these adversely impacted sites.

#### Adequacy of Amended Reclamation Plans:

The SMGB received from the County a draft schedule for completing reclamation plan amendments dated April 3, 2007 (Exhibit F, Section 2). Amended reclamation plans for eight out of nine sites were estimated to be completed between May and August, 2007, with no amended reclamation plan anticipated for the Polak Quarry. At the time this Executive Officer’s report was prepared, only one amended reclamation plan, has been submitted by the County to OMR. The amended reclamation plan for Permanente Quarry was received by the County on April 3, 2007.

#### Adequacy of Annual Review of Financial Assurances:

A summary of financial assurance amounts prepared by OMR, and reflecting 2005 financial assurance amounts, current financial assurance mechanism on file with OMR, and date of most recent proposed amount and percent increase, is provided in Exhibit G. In summary, the County has revised four of the financial assurance amounts, decreased two of them, made no changes to one of them, and determined one of the nine sites to be not applicable. Site specific comments are provided below.



- None of the revised financial assurances are considered to be adequate and reflect site conditions depicted in the 2006 inspection reports. The inspection reports did make note that the financial assurance amounts at time of inspection required adjustment and some basis for such adjustment.
- In the County's April 3, 2007, correspondence which provided a draft compliance schedule, new financial assurances cost estimates were to be submitted to OMR by April or May 2007. The adequacy of the proposed financial assurances remains uncertain at this time since only drafts of recently proposed amounts for two sites, Curtner Quarry and Polak Quarry, have been provided to OMR to date. It is the Executive Officers understanding that these amounts have not been reviewed by OMR at the time this Executive Officer's report was prepared. Thus, the County failed to assure that adequate financial assurances for all nine sites were submitted to OMR.
- An inappropriate and modified administrative process did not allow the County to effectively encourage compliance in a timely manner.
- The inspector(s) did make note of whether the financial assurance amount required adjusting. Based on information provided by OMR (Exhibit F), in certain cases as with the Curtner Quarry, Azevedo Quarry and Polak Quarry, the inspector requested that the financial assurance be increased, but the revised proposed financial assurance were decreased relative to the mechanism currently on file with OMR, and in the case of Stevens Quarry, no change has been proposed.

#### Specific Comments per Findings

##### With respect to Deficiency No. 1:

**Finding No. 1(a):** *The County did fail to review and adequately adjust the financial assurance amounts from 2000 through 2005 pursuant to PRC Section 2773.1, 2774(b) and 2774.4, and CCR Section 3804. [Category 1 – failed to review and adjust financial assurance amounts in a manner consistent with SMARA].*

**The County did fail to review and adequately adjust the financial assurance amounts from 2000 through 2005, and this deficiency is largely historic in nature at this time.** A summary of financial assurance amounts prepared by OMR, and reflecting 2005 financial assurance amounts, current financial assurance mechanisms on file with OMR, and date of the most recent proposed amount and percent increase, is provided as Exhibit A. The adequacy of the proposed financial assurances remains uncertain at this time since only drafts of recently proposed amounts for two sites, Curtner Quarry and Polak Quarry, have been provided to OMR to date.



**Finding No. 1(b):** *The County did fail to adequately adjust and increase the FACE in the case of Curtner Products. The inadequate financial assurance amount failed to reflect any costs associated with the un-reclaimed Phase I area, control of noxious weeds, maintenance of sedimentation basins and an increased amount of land disturbance. [Category 1 – approved financial assurance amount in a manner not consistent with SMARA].*

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Curtner Products site.** The County inspected the site on November 28, 2006. It was indicated in the County's March 6, 2007, status report that weed abatement and sedimentation pond maintenance had been completed. The inspection report notes a financial assurance amount of \$785,862. The inspector states that this amount should be sufficient for certain activities, but needs to be re-evaluated, stating "a revised FAE [financial assurance estimate] is also expected that encompasses the modified plan and tasks pertinent to reclamation, including removal of screening berms, removal of structures and equipment, and final revegetation of finished slopes." Furthermore, several concerns were noted by the inspector(s) pertaining to 1) slope stability, which should the slope fail "could result in a significant increase the sediment transport to nearby watersheds, and could undermine reclaimed areas", 2) inadequate topsoil management practices and 3) inappropriate disposition of waste rock. These concerns could significantly impact the financial assurance amount which was deemed insufficient at time of inspection; however, the County as of August 6, 2007, proposes that the financial assurance amount be reduced to \$558,181.

**Finding No. 1(c):** *The County did fail to adequately adjust and increase the FACE in the case of Permanente Quarry. In regards to the Permanente Quarry, the financial assurance amount was, in fact, reduced from \$627,255 to \$382,040, and did not reflect any costs to address significant slope stability issues along the mine pit rim, encroachment onto adjacent property, and mitigative efforts required to comply with the existing approved reclamation plan. [Category 1 – approved financial assurance amount in a manner not consistent with SMARA].*

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Permanente Quarry site.** The County inspected the site on December 14, 2006. The inspection report dated March 26, 2007, notes a financial assurance amount of \$1,200,000, albeit no new calculation was made to form the basis for this dollar amount, and the inspector(s) directed the operator to provide a new FACE to be submitted in the Spring of 2007. Furthermore, the existing FACE was deemed by the inspector(s) as inadequate and a substantial increase "is probably warranted" considering mitigation of landslides, over steepened cut slopes and non-engineered fills, drainage improvements, demolition and final re-vegetation (lack of sufficient growth media/topsoil). On May 18, 2007, OMR received a revised FACE of \$7,570,047; this amount is currently under review and its adequacy remains uncertain.



**Finding No. 1(d):** *The County did fail to adequately adjust and increase the FACE in the case of Lexington Quarry. The inadequate financial assurance did not reflect any costs to address significant slope configuration issues, encroachment onto adjacent property, identified water availability issues and potential slope mitigative efforts. [Category 1 – approved financial assurance amount in a manner not consistent with SMARA].*

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Lexington Quarry site.** The County inspected the site on December 20, 2006. On July 2, 2007, OMR received a revised FACE of \$793,469 (reflecting an increase of 82.2 percent). The inspection report dated March 6, 2007, noted a financial assurance amount of \$793,470.00 (increased by the County in 2005 from \$532,381), and the inspector(s) recommended that a new FACE be calculated and submitted based on the “*extensive scope of work needed to reclaim this site.*” Furthermore, the inspector(s) noted that both the west and east facing quarry slopes appear to be unstable, with anticipated significant slope failures in the future.

**Finding No. 1(e):** *The County did fail to adequately adjust and increase the FACE in the case of the Stevens Creek Quarry. The inadequate financial assurance amount did not reflect any costs to address significant slope stability issues along the mine pit rim, encroachment onto adjacent property, and mitigative efforts required to comply with the existing approved reclamation plan. [Category 1 – approved financial assurance amount in a manner not consistent with SMARA].*

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Stevens Creek Quarry.** The County inspected the site on December 19, 2006. A financial assurance amount of \$829,435 was received by OMR on June 26, 2006. The inspection report dated March 6, 2007, noted a financial assurance amount of \$829,435, and that this amount was insufficient, and recommended submittal of a revised FACE, in addition to a modification to the reclamation plan (although no violations were noted). The adjustment to the financial assurance amount reflected encroachment onto adjacent property, unstable slopes with active landslides, inadequate run-off control onto adjacent property and watershed, and erosion of “*completed*” quarry slope.

**With respect to Deficiency No. 2:**

**Finding No. 2:** *The County did fail to make adjustments to the financial assurance mechanisms promptly following increases in the financial assurance amounts for the Calaveras Quarry and Azevedo Quarry pursuant to PRC Sections 2773.2(a) and 1774.4. [Category 1 – approved financial assurance amounts in a manner not consistent with SMARA].*

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Calaveras Quarry.** The County inspected the Calaveras Quarry on



October 31, 2006, and indicated in its February 26, 2007, status report that a Reclamation Plan Modification was submitted by the operator, and that financial assurances were expected to be revised. However, the inspection report dated March 6, 2007, noted a financial assurance amount of \$249,980, which required re-evaluation. A large increase in the FACE was warranted to address unstable slopes presenting a potential threat to safety and site stability, fill failures, precipitous cut slopes, and inadequate soil erosion control measures. A NOV was issued by the County on August 6, 2007, requesting submittal of a revised FACE within 30 days; however, the proposed financial assurance amount based on information provided by OMR is \$241,200, an amount less than the current mechanism amount on file with OMR.

The County continues to fail in its ability to adequately adjust and increase the FACE for the Azevedo Quarry. The Azevedo Quarry was inspected on December 6, 2006. No violations were noted; however, near vertical over steepened and unstable slopes by the scale house, over steepened slopes within the power line alignment were deemed potentially unstable and presented a significant rock fall hazards and safety hazard to personnel and equipment, over steepened slopes within the active mining and stockpile areas were deemed potentially unstable and hazardous, and linear ground cracks were observed at the top of the sedimentation pond berm indicative of potential slope instability, were observed, albeit no violations were issued by the County.

**With respect to Deficiency No. 3:**

**Finding No. 3(a):** The County did fail to enforce correction of substantial deviations that should have been identified during the 2005 SMARA mine inspection performed by the County's consultant, and previous inspections performed under the authority of the County, for the Permanente Quarry pursuant to PRC Sections 2774.4, 2774.1(a) and 2774(b). [Category 1 – approved reclamation plans which are not consistent with SMARA].

**The County continues to fail to enforce corrections of substantial deviations as identified during the 2005 SMARA mine inspection.** The County inspected the site on December 14, 2006. Two violations were noted: 1) topsoil salvage, maintenance and redistribution, and 2) backfilling, regarding, slope stability and recontouring (reflecting several landslides, steepened slopes, un-engineered fill resulting in unstable fill slopes, etc.). Attachment A of the inspection report however confirmed the substantial deviations previously observed by OMR during their site visits conducted in 2006, but failed to consider all noted substantial deviations as violations. The following additional violations should have been noted:

- Encroachment outside the reclamation plan boundaries (including the existence of unstable slopes and active landslides outside the site boundaries onto adjacent property) was documented but no violation was issued.



- Inadequate soil erosion control measures exist which has adversely impact adjacent watersheds was noted but no violation was issued.

**Finding No. 3(b):** The County did fail to adjust the financial assurance amount to reflect noted violations and their impact on the current version of the amended reclamation plan and existing FACE, for the Permanente Quarry pursuant to PRC Sections 2773.1(a)(3), 2774.4, 2774.1(a) and 2774(b). [Category 1 – approved financial assurances that are not consistent with SMARA].

**The County continues to fail in its ability to adequately adjust and increase the FACE for the Permanente Quarry site.** No documentation from the County or from OMR has been provided to demonstrate that the revised financial assurance cost estimate is adequate. Refer to Finding No. 1(c).

**Finding No. 3(c):** The County did fail to enforce correction of substantial deviations that should have been identified during the 2005 SMARA mine inspection performed by the County's consultant, and previous inspections performed under the authority of the County, and identified during the inspection performed by OMR and by the Los Gatos Preservation League, for the Lexington Quarry pursuant to PRC Sections 2774.4, 2774.1(a) and 2774(b). [Category 1 – approved reclamation plans which are not consistent with SMARA].

**The County failed in its ability to enforce correction of substantial deviations as identified in 2005.** The County issued an Order to Comply/Notice of Violation on October 10, 2006, with no timeline for submittal of an amended reclamation plan. The Lexington Quarry was inspected on December 20, 2006. Three violations were noted at time of inspection: 1) topsoil salvage, maintenance, and redistribution, 2) backfilling, regrading, slope stability, and recontouring, and 3) drainage, diversion structures, waterways, and erosion. Prior inspection in 2005 by OMR identified several issues including:

- Disturbed areas beyond the reclamation plan boundary.
- Potential adverse impact on local water supply.
- Instability of slopes within reclaimed and active mining areas.
- Inadequate revegetation efforts.

The inspection report confirmed the substantial deviations previously observed by OMR during their site visits conducted in 2006, but failed to consider all noted substantial deviations as violations including:

- Inadequate drainage and soil erosion control measures were considered inadequate, and could adversely impact the adjacent watershed.
- Encroachment outside the reclamation plan boundaries (including the existence of unstable slopes and active landslides outside the site boundaries onto adjacent property) was documented but no violation was issued.



**Finding No. 3(d):** The County did fail to adjust the financial assurance amount to reflect noted violations and their impact on the current version of the amended reclamation plan and existing FACE for the Lexington Quarry pursuant to PRC Sections 2773.1(a)(3), 2774.4, 2774.1(a) and 2774(b). [Category 1 – approved financial assurances that are not consistent with SMARA].

**The County failed in its ability to adequately adjust and increase the FACE for the Lexington Quarry site.** Refer to Finding No. 1(d).

**With respect to Deficiency No. 4:**

**Finding No. 4(a):** The County did fail to perform SMARA mine inspections for eight of the nine mine sites in 2001, although the County performed annual SMARA inspections for all nine mine sites from the years 2002 through 2005 pursuant to PRC Section 2774(b). Notably, the County failed to issue any violations from 2001 through 2005 pursuant to PRC Section 2774.1(a). [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**This issue is historic in nature, and no current outstanding issues remain.** The County did fail to perform SMARA mine inspections for eight of the nine mine sites in 2001, although the County performed annual SMARA inspections for all nine mine sites from the years 2002 through 2005.

**Finding No. 4(b):** Inspections conducted under the authority of the County did fail to accurately report on conditions at Curtner Products, Permanente Quarry, Lexington Quarry, Calaveras Quarry and Stevens Creek Quarry. [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**This issue is historic in nature, and no current outstanding issues remain.** The County did fail to perform SMARA mine inspections for eight of the nine mine sites in 2001, although the County performed annual SMARA inspections for all nine mine sites from the years 2002 through 2005.

**Finding No. 4(c):** The County did fail to determine whether observations made during conduct of the mine inspections met the requirements of the approved reclamation plan, Conditions of Approval, or permit requirements (i.e., Curtner Products, Permanente Quarry, Lexington Quarry and Stevens Creek Quarry). [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].



**The County failed to determine whether observations made during conduct of mine inspections met the requirements and performance standards set forth by the numerous Conditions of Approval per site set forth by the County, or permit conditions.** Tens of Conditions of Approvals in addition to permit limitations exist for most of the sites within the County. However, as previously noted, little is mentioned in the inspection reports, with no specific reference being offered, making it impossible to determine which Conditions of Approvals are in compliance and which are not.

**Finding No. 4(d):** The County did fail to assess the progress of reclamation efforts at specific mine sites (i.e., Curtner Products and Stevens Creek Quarry). [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**The County failed to determine whether observations made during conduct of mine inspections meet the requirements of the approved reclamation plan, numerous Conditions of Approval set forth by the County per site, and permit conditions.** The inspection reports failed to address phased reclamation requirements per site. In addition, no comments were provided reflecting the amount of land that has been reclaimed and the conditions of approval for such reclaimed lands.

**Finding No. 4(e):** The County did fail to accurately reflect findings in the inspection report and recognize potential SMARA compliance issues (i.e., Curtner Products, Permanente Quarry, Lexington Quarry and Stevens Quarry). [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**Curtner Products:** The Curtner Products site was inspected on November 28, 2006. Three violations were noted: 1) revegetation, 2) backfilling, regrading, slope stability, and recontouring, and 3) drainage, diversion structures, waterways, and erosion. In summary:

- Continued disturbed areas within the Phase I area requiring a modification to the existing reclamation plan was noted (Condition of Approval No. 3).
- Continued inadequate revegetation efforts and measures to control noxious weeds was noted (Condition of Approval Nos. 6, 7 and 8). A violation was noted.
- Continued inadequate drainage control measures, and maintenance of the sedimentation basins was noted (Condition of Approval No. 5(i)).

In addition, the following potential compliance issues were not noted:

- Condition of Approval No. 5(a) states “*permanent slopes in the Briones Formation shall be inclined no steeper than 1.5:1 (incremental), with 10 foot*



- wide benches at 50 foot intervals.*” The inspection report failed to address whether this Condition of Approval has been met.
- Condition of Approval No. 5(b) states “*Northeast-facing slopes in the Briones Formation shall be inclined no steeper than 2:1, with 10-foot wide benches at 50 foot intervals.*” The inspection report failed to address whether this Condition of Approval has been met.
  - Condition of Approval No. 5(c) states “*Permanent slopes in the Orinda Formation shall be inclined no steeper than 2.5:1, with 10 foot wide benches at 50 foot intervals.*” The inspection report failed to address whether this Condition of Approval has been met.
  - Condition of Approval No. 5(f) states “*Site visits shall be made by the project geologist to map the geologic conditions exposed in the reclamation slopes.*” The inspection report failed to address whether this Condition of Approval has been met.
  - Potential slope instability concerns were identified for the fill stockpile in the Phase I area, and stability of temporary fill slopes, but no violation was issued.
  - Condition of Approval No. 4 states “*To the extent possible, the topsoil removed from a newly excavated area shall be retained and used in a corresponding reclamation area being reclaimed that year.*” Inadequate topsoil management was reported, but no violation was issued.

Permanente Quarry:

The Permanente Quarry was inspected on December 14, 2006. Two violations were noted at time of inspection: 1) topsoil salvage, maintenance, and redistribution, and 2) backfilling, regrading, slope stability, and recontouring. OMR in 2006 identified several violations and issues including:

- Disturbed areas and encroachment beyond the reclamation plan boundary on the order of 120%.
- Slope instability and landslides which extended onto adjacent land beyond the reclamation plan boundary.

The inspection report noted significant encroachment onto adjacent land, and inadequate topsoil management efforts, but no violation was issued.

Lexington Quarry:

The Lexington Quarry was inspected on December 20, 2006. Three violations were noted at time of inspection: 1) topsoil salvage, maintenance, and redistribution, 2) backfilling, regrading, slope stability, and recontouring, and 3) drainage, diversion structures, waterways, and erosion. Prior inspection in 2005 by OMR identified several issues including:

- Disturbed areas beyond the reclamation plan boundary.



- Potential adverse impact on local water supply.
- Instability of slopes within reclaimed and active mining areas.
- Inadequate revegetation efforts.

In addition, the following potential compliance issues were not noted:

- Encroachment onto adjacent land beyond the reclamation plan boundary is a substantial deviation but a violation was not noted. The County failed to issue a violation for encroachment beyond the reclamation plan boundary.
- Inadequate topsoil management efforts were noted. The County failed to issue a violation.

Stevens Quarry:

The Stevens Quarry was inspected on December 19, 2006. No violations were noted at time of inspection; whereas, following review by OMR two violations were subsequently noted: 1) inadequate revegetation efforts, and 2) backfilling, regrading, slope stability, and recontouring. The inspector(s) failed to indicate on the inspection form a third previously unresolved violation (i.e., encroachment). Prior inspection in 2005 by OMR identified several issues including:

- Conduct of surface mining operations outside the reclamation plan boundaries.
- Encroachment of quarry slopes onto adjacent property to the east.
- Inadequate revegetation efforts.

In addition, the reclamation plan included about 53 Conditions of Approval (COA). In review of these conditions, the following potential compliance issues were not noted:

- The overburden shall be retained and used in the reclamation vegetation process (COA No. 4).
- Final cut slopes include 1.5:1, with 12 foot wide benches every 30 feet of rise adjacent and in vicinity of Stevens Canyon Road, 1.25:1 slope with 12 foot wide benches every 30 feet of rise for Area No. 2 quarry, and rounded top of slopes (COA No. 7). Slopes were over steepened, and significant failures are anticipated as mining continues.
- Inadequate soil erosion and drainage control measures were identified, adversely impacted areas outside the reclamation plan boundaries, but no violation was noted (COA No. 23).
- Inadequate soil erosion control measures were noted on “reclaimed” slopes, but no violation was issued.
- Status of existing berms and landscaping screening along Stevens Canyon Road is to be maintained, but no site observations as to current site conditions are offered (COA No. 29).
- The excavated cut slope shall be no closer than 25 feet from the property line...(COA No. 30). Encroachment of surface mining activities beyond the



reclamation plan boundaries was noted, with potential failure of over steepened slopes potentially causing additional encroachment, but no violation was issued.

In regards to other mining operations within the County's jurisdiction that were not specifically commented on by OMR as part of their select 2005 site visits, and June 2006 presentation to the SMGB, the following is offered:

Serpa Quarry (CA ID #91-43-0002)

The Serpa Quarry was inspected on November 9, 2006. No violations were noted; however, precipitous over steepened cut slopes were deemed unstable, personnel safety issues as a result of over-steepened slopes, active landslides and rock falls were observed along haul roads, potentially unstable side cast fills used to construct roads, drainage was noted as appearing to flowing onto adjacent property and watershed, stockpiled recycled glass fragments ( some of which was used for slope cover), and incomplete revegetation efforts.

In addition, no reference to the thirteen Conditions of Approval (COA) as set forth by the County in 1984 was noted. The following potential compliance issues include for example:

- Final cut slopes shall be no closer than 25 feet distance from any property line...Tops and toe of slopes to be rounded as shown on plans (COA No. 2).
- Topsoil portion of overburden shall be retained and stockpiled for revegetation use (COA NO. 4).
- Provide drainage facilities for each Phase of reclamation as noted (COA No. B10(a)).
- Siltation basins shall be cleaned out, when necessary, to provide adequate desilting areas for drainage waters (COA No. B10(b)).

Azevedo Quarry (CA ID #91-43-0003)

The Azevedo Quarry was inspected on December 6, 2006. No violations were noted; however, near vertical over steepened and unstable slopes by the scale house, over steepened slopes within the power line alignment were deemed potentially unstable and presented a significant rock fall hazards and safety hazard to personnel and equipment, over steepened slopes within the active mining and stockpile areas were deemed potentially unstable and hazardous, and linear ground cracks were observed at the top of the sedimentation pond berm indicative of potential slope instability, was observed.

In addition, no reference to the fifty-two Conditions of Approval (COA) as set forth by the County in 1994 was noted. The following potential compliance issues include for example:



- An annual report shall be submitted for the life of the quarry plus three years which describes and evaluates the effectiveness of the establishment of grassland areas of the former quarry... (COA No. A.3).
- An annual report which evaluates the stability of the slopes shall be prepared by an engineering geologist with additional recommendations and submitted to the operator and County Current Planning Office (COA No. A.4).
- Overburden and stockpiles shall be so located and maintained as to prevent erosion that would result in the deposition of silt off of the property (COA No. B.15).
- Final cut slopes will not be steeper than 1.5 to 1.0 (horizontal to vertical). Where cut slopes are steeper than 2:1 benching 10 feet in width at 50 feet vertical elevation on existing cut slopes and 25 feet vertical elevations on new slopes shall be provided. An annual report prepared by an engineering geologist shall provide additional recommendations (COA No. D.5).
- Maintenance and monitoring of success rate of revegetation shall be carried out in accordance with the approved reclamation plan and the recommendations contained in the ensuing annual monitoring reports submitted to the operator and County Planning Office. Reports to be prepared by a qualified plant biologist (COA No. D.6).

**Finding No. 4(f):** The County did fail, and continues to fail, in recommending and enforcing violations and corrective measures in a timely manner (i.e., Curtner Products, Permanente Quarry, Lexington Quarry and Stevens Creek Quarry). The County has issued no violations as a result of findings or recommendations presented in the 2005 inspection reports, albeit, the County has issued one violation in regards to the Calaveras Quarry since completion of the inspections, and at the recommendation of OMR staff. [Category 2 – failed to inspect or cause inspection of surface mining operations as required by SMARA; Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**The County continues to fail in recommending and enforcing violations and corrective measures in a timely and effective manner.** The County inappropriately modified the administrative procedures by concurrently issuing NOV's and OTC's, in a manner inconsistent with SMARA, for the purpose "to allow for a speedy resolution of the issues", as previously discussed above under "General Comments".

**With respect to Deficiency No. 5:**

**Finding No. 5:** The County did fail to enforce and seek forfeiture of the financial assurances of the Calaveras Quarry upon its abandonment by the operator pursuant to PRC Sections 2773.1(b) and 2774.4. [Category 4 – failed to take appropriate enforcement actions as required by SMARA].

**The County continues to fail to enforce and seek forfeiture of the financial assurances of the Calaveras Quarry upon its abandonment by the operator.** Following the site inspection



performed by the County's inspector(s) on October 31, 2006, observations indicated that the site could not be reclaimed in a manner consistent with the approved reclamation plan, thus, a modification was recommended and subsequently provided to the County. The existing financial assurance amount will require a significant increase (refer to Finding No. 2). A NOV was issued by the County on August 6, 2007, requiring submittal of a revised FACE within 30 days. The current status at the time this Executive Officer's report was prepared is uncertain. Furthermore, current statute and regulations require that this site be deemed abandoned, and

**With respect to Deficiency No. 6:**

**Finding No. 6:** The County did fail to enforce and request from the operator of the Calaveras Quarry commencement of reclamation activities upon expiration of the Interim Management Plan (IMP) in August 2003 pursuant to PRC Sections 2770(h)(6) and 2774.4. [Category 3 – failed to seek forfeiture of financial assurances and carry out reclamation; Category 4 - failed to require and take appropriate enforcement action as required by SMARA].

**The County continues to fail to enforce and request from the operator of the Calaveras Quarry commencement of reclamation activities upon expiration of the Interim Management Plan (IMP) in August 2003.** Following a site inspection performed on October 31, 2006, observations indicated that the site could not be reclaimed in a manner consistent with the approved reclamation plan, thus, a modification was recommended and subsequently provided to the County. No reclamation has been initiated at this site, and the existing financial assurance is inadequate.

**With respect to Deficiency No. 7:**

**Finding No. 7:** The County did fail to enforce and require surface mining operators to submit annual written calculations of the financial assurance amount for eight mine sites in 2001, and all nine mine sites for years 2002, 2003 and 2004 pursuant to PRC Section 2774.4 and CCR Section 3805. [Category 4 - failed to require and take appropriate enforcement action as required by SMARA].

**This matter is historic in nature, and no outstanding issues remain.** No inspections were performed in 2001, thus, the County did fail, to enforce and require surface mining operators to submit annual written calculations of the financial assurance amount for all eight mines in 2001, and all nine surface mine sites for years 2002, 2003 and 2004. The County has since required such submittal of annual written calculations for all the sites. No financial assurance calculations accompanied the inspection reports for the Curtner Products, Permanente Quarry, Polak Quarry, and Calaveras Quarry. In addition, the enforcement action taken by the County in three cases (Permanente Quarry, Lexington Quarry and Stevens Creek Quarry), was meaningless and has no legal standing since the administrative procedure provided under SMARA was not followed (as previously discussed above under General Comments). Revised financial assurances and calculations have been submitted for subsequent years, albeit, most require re-evaluation and revision based on the results of the 2006 inspection reports.



**With respect to Deficiency No. 8:**

**Finding No. 8:** The County did fail to submit copies of proposed financial assurances and calculations of financial assurance amounts for eight mine sites in 2001, and all nine sites for the years 2002, 2003 and 2004 pursuant to PRC Section 2774.4 and CCR Section 3805. [Category 6 - failed to submit information to the Department of Conservation as required by SMARA].

**This finding is historic in nature, and no outstanding issues remain.** Since no inspections were performed in 2001, the County did fail to submit copies of proposed financial assurances and calculations for eight mine sites for this year, and all mine sites for the years 2002, 2003 and 2004. Revised financial assurances and calculations have been submitted for subsequent years, albeit, most require re-evaluation and revision based on the results of the 2006 inspection reports.

**With respect to Deficiency No. 9:**

**Finding No. 9:** The County did fail to submit copies of inspection reports for eight mine sites in 2001 pursuant to 2774.2 and CCR Section 3504.3. [Category 6 - failed to submit information to the Department of Conservation as required by SMARA].

**This finding is historic in nature, and no outstanding issues remain.** Since no inspections were performed in 2001, the County did fail to submit copies of inspection reports for eight mine sites for this year. The County has since submitted inspection reports for all subsequent years.

**With respect to Deficiency No. 10:**

**Finding No. 10:** The County did fail to respond in a timely manner to OMR's request for the resubmission of financial assurance cost estimates for eight out of nine mine sites pursuant to PRC Section 2774.4(d) and CCR Section 3805. [Category 6 – failed to submit information to the Department of Conservation as required by SMARA].

**This finding is historic in nature and no current outstanding issues remain.** However, the County did fail to respond in a timely manner to OMR's request.

**CONSIDERATIONS BEFORE THE SMGB:** In summary, the County **has not** provided adequate inspection reports, determined the adequacy of financial assurances, demonstrated an ability to enforce SMARA, nor an ability to respond in a timely manner. It should be kept in mind that the reason why the SMGB has this matter before it, is not to determine whether or not the County made an effort to comply with the SMARA, or whether the County improved their performance as a SMARA lead agency. Instead the SMGB is determining whether or not the County satisfactorily corrected the 10 deficiencies and 22 findings the SMGB heard on July 12, 2006. If the County achieved this goal, then the County is in compliance with SMARA and has demonstrated it is capable of fulfilling their



SMARA obligations and responsibilities. If the County did not, it is up to the SMGB to assume those responsibilities.

The SMGB may consider the following determinations:

1. The SMGB may determine that the County has, to the SMGB's satisfaction, corrected the deficiencies cited in the 45-Day Notice within the statutorily permitted 45-day period, or that no deficiencies existed at the time the Notice was issued. If the SMGB makes this determination, then the issue of the County's SMARA compliance for the purposes of this Notice shall be removed from further SMGB consideration.

[or]

2. The SMGB may determine that the County has not corrected, to the SMGB's satisfaction, the deficiencies cited in the SMGB's 45-Day Notice within the statutorily permitted 45-day period. If the SMGB makes this determination, then statute provides that the SMGB shall hold a public hearing within the County's jurisdiction to receive oral and written evidence from interested parties as to which of the County's SMARA authorities (except for permitting) the SMGB should assume as authorized under PRC Section 2774.4(a).

[or]

3. The SMGB may determine that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and has made favorable progress in addressing those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on April 19, 2006. The SMGB thus could consider continued monitoring of the County's progress by terminating this process, and directing its Executive Officer to issue a revised 45-Day Notice of Deficiencies which would reflect current outstanding violations and deficiencies to be corrected.

**SUGGESTED MOTION LANGUAGE:** The SMGB may consider the following motion language:

[Should the SMGB determine that, to its satisfaction, no deficiencies or violations remain uncorrected]

**Motion No. 1:** *Mr. Chairman, I move that the Board, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, find that those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on April 19, 2006, have been corrected to the satisfaction of this Board, and that no further action is required by this Board in regards to the April 19, 2006, Notice.*



[or]

[Should the SMGB determine that it is not satisfied, and that deficiencies and violations remain uncorrected, then the following two motions are required]

**Motion No. 2a:** *Mr. Chairman, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, I move that the Board adopt the findings and analyses contained in the Executive Officer's Report, and that the Board find that those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on April 19, 2006, have not been corrected to the satisfaction of this Board.*

[and]

**Motion No. 2b:** *Mr. Chairman, in light of the Board's adoption of the previous motion, and pursuant to Public Resources Code Section 2774.4, I move that the Board hold a Public Hearing to determine to what extent (i.e., **inspections, financial assurance review, enforcement actions, all authority excluding permitting, etc.**) the Board will assume Santa Clara County's lead agency authority at the Board's September 14, 2006, meeting.*

[or]

[Should the SMGB determine that the County has made significant progress, but certain deficiencies and violations remain uncorrected, the following motion can be considered]

**Motion No. 3:** *Mr. Chairman, I move that the Board, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and has made favorable progress in addressing those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on April 19, 2006, and that the Board continue to monitor the County's progress, direct its Executive Officer to issue a revised 45-Day Notice of Deficiencies which reflects current outstanding issues to be corrected.*



Respectfully submitted:

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Stephen M. Testa  
Executive Officer

