



***STATE MINING AND  
GEOLOGY BOARD***

***EXECUTIVE OFFICER'S REPORT***

For Meeting Date: July 13, 2006

**Agenda Item No. 2**

**In the Matter of:**

**Review of the 45-day Notice to Correct Deficiencies  
Sent to Santa Clara County, Issued April 19, 2006**

**Executive Officer's Report  
With Exhibits**

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**Exhibits**

- Exhibit No. 1: Board's Notice to Correct Deficiencies within 45 Days, Compliance with the Surface Mining and Reclamation Act of 1975, dated April 19, 2006.
- Exhibit No. 2: County of Santa Clara Response to Notice to Correct Deficiencies within 45 Days in Compliance with the Surface Mining and Reclamation Act of 1975, and Action Plan to Address Deficiencies in Conformance with SMARA
- Exhibit No. 3: Testa Environmental Corporation's Assessment of Environmental Compliance of Mining Operations at Lexington Quarry, Santa Clara County, dated March 18, 2005.
- Exhibit No. 4: Office of Mine Reclamation power point presentation titled "SMARA Lead Agency Administrative Review, Preliminary Findings, April 2006" presented at the Board's regular business meeting held on April 13, 2006.



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- Exhibit No. 5: Office of Mine Reclamation power point presentation titled "*SMARA Lead Agency Administrative Review, Performance of Annual Inspections, June 2006*" presented at the Board's regular business meeting held on June 8, 2006.
- Exhibit No. 6: Office of Mine Reclamation Correspondence pertaining to Financial Assurance Cost Estimates, dated May 27 through June 9, 2006.
- Exhibit No. 7: 2005 SMARA Surface Mine Inspection Reports as prepared by the County's Consultant, Resource Design Technology, dated November 30, 2005, through January 4, 2006.
- Exhibit No. 8: Documents Provided to the SMGB Pertaining to Lexington Quarry (CA ID #91-43-0006)
- Exhibit No. 9: Documents Provided to the SMGB Pertaining to Stevens Creek Quarry (CA ID #91-43-0007)



**EXECUTIVE SUMMARY:** 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 with the receipt of complaints by neighbors and interested parties pertaining to the Lexington Quarry, and receipt of information and numerous documents over a sixteen-month period from the Department of Conservation Office of Mine Reclamation (OMR), residents of the County, and the County's administrative staff.

On April 19, 2006, the 45-Day Notice to Correct Deficiencies was issued to the County [Exhibit 1]. In that Notice, the County was informed that the SMGB had identified deficiencies with nine of the surface mines under the County's lead agency jurisdiction. These deficiencies included the County's failure to enforce the provisions of SMARA.

The nine surface mines with deficiencies cited in the Notice were:

Curtner Products (CA Mine ID # 91-43-0001)  
Serpa Pit (CA Mine ID #91-43-0002)  
Azevedo Quarry (CA Mine ID #91-43-0003)  
Permanente Quarry (CA Mine ID #91-43-0004)  
Polak Pit Quarry (CA Mine ID # 91-43-0005)  
Lexington Quarry (CA Mine ID #91-43-0006)  
Calaveras Quarry (CA Mine ID #91-43-0007)  
Freeman Quarry (CA Mine ID #91-43-0008)  
Stevens Creek (CA Mine ID #91-43-0010)

On June 9, 2006, the County responded to the SMGB's Notice [Exhibit 2]. The County concluded that:

1. The County did not undertake annual inspections for all the mines within their jurisdiction in 2000 and 2001;
2. The County has 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 will include partnering with Office of Mine Reclamation (OMR) staff, improved fully trained County staff, and use of technical consultants.

In review of the administrative record, mine files, and documents provided by the County, information and files maintained by OMR, and information and documents provided by interested parties and mine operators, among other sources, several conclusions are reached. The County has corrected some deficiencies by simply conducting a mine inspection, requiring submittal of annual written calculations of financial assurance amounts, and reviewing the financial assurances for all mine sites



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within their jurisdiction. However, of the original 9 surface mines cited as having deficiencies, a minimum of five are 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.

In review of the administrative record, the County has not shown 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 does not recognize what is an adequate work product or what is not. Simply performing an inspection is not equivalent to the inspection being performed in an adequate and comprehensive manner. If the State is 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 of the mine site's SMARA 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 makes it impossible for the State to rely on the adequacy of the County's inspection process. To gain an accurate and adequate picture as to what the site specific conditions actually are at each site within Santa Clara County with an appreciable degree of confidence, someone knowledgeable in the requirements of SMARA must perform the inspections.

Poorly performed and inadequate inspections lead to adverse ramifications, that being the existing and recently adjusted financial assurances for all nine sites being unreliable. The financial assurance amounts do 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 is little evidence in the administrative record demonstrating that the County has the understanding, or will, to enforce SMARA. This is clearly documented by the the County serving as a lead agency unwillingness to issue Notices of Violation, Orders to Comply, or Administrative Penalties, when appropriate, for any of the sites in all the years leading up to 2005. Furthermore, the County has not demonstrated that it understands 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 has provided no documentation, nor demonstrated by its actions, that it has developed an administrative process to administer and monitor SMARA enforcement actions.

It is the conclusion of the Executive Officer that the County's SMARA program is deficient and has not been corrected so that it meets the intent of the Legislature, as expressed in Article 1 of the Act. The Executive Officer thus recommends 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 SMGB will determine if the County has, to the SMGB's satisfaction, corrected within the 45 days provided in statute the deficiencies cited in the *45-Day Notice to Correct Deficiencies*, or satisfied the SMGB that no deficiency existed at the time the Notice was issued.

**BACKGROUND:** On March 22, 2005, the office of the State Mining and Geology Board (SMGB) received correspondence and documentation from the Los Gatos Hillside Preservation League, 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 by Western Aggregates at



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the Lexington Quarry, Santa Clara County, California [Exhibit 3]. Issues were raised pertaining to the surface mining operation being out of compliance with its approved reclamation plan, and whether the lead agency, Santa Clara County, was administering SMARA in an appropriate manner.

Following receipt of the report prepared by Testa Environmental Corporation dated March 18, 2005 [Exhibit 3], from the Los Gatos Preservation League, the office of the SMGB on March 22, 2005, inquired from the Office of Mine Reclamation (OMR) whether there were any outstanding compliance issues with the Lexington Quarry, and that it would welcome any comments on the matter. The report prepared by Testa Environmental Corporation raised a number of compliance-related issues, and also questioned the lead agency's ability to administer SMARA in an appropriate manner.

OMR subsequently 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 violations included: 1) the operator was conducting operations outside of the approved reclamation plan, with over-steepened slopes, 2) the operator intercepted groundwater and there were no provisions for encountering groundwater in the approved reclamation plan, and 3) the operator failed to adjust the financial assurances for new lands disturbed and changes in site conditions. The issues noted in the report prepared by OMR raised other issues pertaining to the County's performance as a lead agency. As a result, OMR provided a preliminary assessment of the County's overall performance at the SMGB regular business meeting held on September 22, 2005. At the regular business meeting of the SMGB held on November 10, 2005, the SMGB requested that OMR compile information regarding the County's overall performance as a lead agency, and to update the SMGB at its January 2006 regular business meeting. In addition, OMR indicated that it would finalize the Lexington Quarry inspection report, with consideration of additional information provided by the Los Gatos Preservation League. At the SMGB's regular business meeting held on April 13, 2006, OMR staff summarized the results of their review of files and other pertinent documentation [Exhibit 4]. OMR presented their final conclusions of their review and monitoring of the lead agency's mine inspection activities, and analysis of overall lead agency performance in accordance with SMARA at the SMGB's regular business meeting held on June 8, 2006 [Exhibit 5].

**REGULATORY AUTHORITY:** Article 1, General Provisions, of the Surface Mining and Reclamation Act provides in Section 2712 the following:

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

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

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



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

Article 5 of SMARA, Reclamation of Mined Lands and the Conduct of Surface Mining Operations, provides in part, in Section 2774.1(f) that:

*The lead agency has primary responsibility for enforcing this chapter and Section 2207.*

PRC Section 2774.4 (SMARA) provides that if a lead agency fails to perform specific responsibilities to enforce the Act, or performs those responsibilities deceptively, then the responsibility for enforcing the Act shall be assumed by the SMGB. Prior to any assumption of a lead agency's SMARA authority by the SMGB, the Board must first notify the lead agency of any identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the Board.

Pursuant to Public Resources Code (PRC) Section 2774.4(a):

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

**IDENTIFIED DEFICIENCIES IN SMARA COMPLIANCE:** There are six categories of violations listed in PRC Section 2772.2(a) under which the SMGB may find a lead agency needs to take corrective actions. These six categories are as follows:

**Category [ 1 ]**

**Category [ 2 ]** A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

**Category [ 3 ]** A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

**Category [ 4 ]** A lead agency has failed to take appropriate enforcement actions as required by SMARA;

**Category [ 5 ]** A lead agency has intentionally misrepresented the results of inspections required under SMARA;



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**Category [ 6 ]** A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

The SMGB is to determine if the County has corrected, to the Board's satisfaction, within the 45-days provided in statute the deficiencies cited in the 45-Day Notice to Correct Deficiencies, or satisfied the SMGB that no deficiency existed at the time the Notice was issued.

**EXECUTIVE OFFICER'S ANALYSIS OF RESPONSES FROM THE COUNTY:** The following deficiencies in the County's administration of SMARA are identified with respect to all nine surface mines within the County's jurisdiction:

**Nature of Notice Deficiency 1:** During the period from 2000 through 2005, the County failed to perform an annual review, adjustment or recalculation of the financial assurance amounts for eight mine sites in 2001, and all nine sites for the years 2002, 2003 and 2004 (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Sections 2773.1(a)(3) and 2774(b)):

*Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Freeman Quarry (Mine activity commenced in 2002)  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek*

**County's Response:** The County acknowledges that it did not conduct financial assurances estimate reviews as part of the annual SMARA inspections from 2000 through 2003. The County states that such lack of administrative action reflected work load and staff resource issues, notably, lack of expertise implementing inspections and administrating SMARA compliance among in-house staff. Since 2004, the County has taken steps to retain a consultant who conducted the SMARA inspections with staff, and prepared the annual report that was subsequently reviewed and approved by County staff.

The County claims that the use of a third party consultant was instrumental in the County increasing its technical ability to adequately advise the mine operators of their SMARA obligations.

**SMGB Staff Analysis:** The County increased the financial assurance mechanisms for six of nine mines during the 2005 calendar year. Financial assurance amounts for the remaining three mines were decreased (Curtner Quarry, Permanente Quarry and Polak Pit Quarry), and possibly reduced in the case of the Hanson Permanente Quarry. OMR correspondence dated May and June of 2006 [Exhibit 6], reviewed the adjusted FACEs, and requested that the financial assurances for eight sites be re-evaluated and adjusted appropriately. The County contends that any potential problems with the FACE could be addressed during the 2005 mine inspections and annual financial assurance review, and "that a separate response to the



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*OMR correspondence was not necessary.” The County continues to state “County staff has since learned that the obligation to provide such response regarding the FACEs cannot be deferred to the next inspection. As part of the improvements to our inspection program, all such correspondence will be addressed within the 45 day time frame mandated by SMARA.”*

The County may have expressed good intentions in utilizing third-party consultants in conjunction with County staff to review and adjust FACEs in a timely manner; however, adjustments to the FACE reflecting comments made by OMR in their May 27, June 1 and June 9, 2005, correspondences, has not been received by OMR at the time this Executive Report was prepared.

Curtner Products (CA ID #91-43-0001): The 2003 Mining Operation Annual Report, dated June 30, 2004, noted that the operator claimed 47 acres of disturbed land during 2003. This value was apparently used as a credible number by the County’s consultant in the 2005 Surface Mining Inspection Report. However, the inspection performed by the County’s consultant on December 17, 2004, and noted in the Surface Mine Inspection Report signed April 12, 2005, notes 80 acres of disturbed land. The latest County consultant noted in the inspection performed on December 6, 2005, and Surface Mining Inspection Report signed January 4, 2006, “47, *per Operator Annual Report.*” Based on the site visit performed by OMR staff, and further discussed under Deficiency No. 4, it is clear that 47 acres is a significant understatement as to the amount of disturbed land as a result of surface mining operations.

Permanente Quarry (CA ID #91-43-0004): In the case of the Permanente Quarry, the FACE was reduced from \$627,255 to \$382,040. This reduction as determined by the County’s consultant and supported by the County, ignored the significant slope stability issues along the mine pit rim, encroachment onto adjacent property, and mitigative efforts to comply with the existing approved reclamation plan (refer to Deficiency No. 4). The enforcement actions that should have been implemented for this site are discussed under Deficiency No. 4; however, if an adequate inspection had been performed, and corrective measures and violations noted, the financial assurance cost estimate for this site would have been significantly increased, not decreased.

Lexington Quarry (CA ID #91-43-0006): The financial assurance for the Lexington Quarry was recently adjusted from \$67,960, which was established on May 12, 1999, to \$532,381 in November 2005. No adjustments were made between the period of May 1999 and November 2005. This financial assurance amount is based on 26 acres of disturbed land “*per Operator Annual Report*” as stated in the 2005 Surface Mining Inspection Report. This amount of disturbed acreage is absurd, as noted in the report prepared by Testa Environmental Corporation dated March 18, 2005 [Exhibit 3], and does not accurately reflect the significant increase in disturbed land at this site. In addition, the adjusted financial assurance amount does not adequately reflect encroachment beyond the approved reclamation plan boundaries, over-steepened intervening cut walls, excessive heights of intervening cut walls, groundwater quantity issues, among other factors.



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Stevens Creek Quarry (CA ID #91-43-0007): The financial assurance amount for the Stevens Creek Quarry was established at \$829,435 on May 16, 2005, and was deemed adequate by OMR in their correspondence to the County dated June 9, 2005. However, this FACE did not take into account several violations as reported during a site visit performed by OMR in 2006. These violations included encroachment beyond the boundary of the approved reclamation plan, inadequate revegetation of final slopes, and disturbed areas not reported during inspection by the County's consultant. As in the case of the Permanente Quarry, the enforcement actions that should have been implemented for this site are discussed under Deficiency No. 4; however, if an adequate inspection had been performed, and corrective measures and violations noted, the financial assurance cost estimate for this site would have been significantly increased.

Remaining Surface Mine Sites: OMR noted numerous site-specific deficiencies upon review of the financial assurance cost estimates provided by the County for the remaining five mine sites. The quality of the inspections performed by the County's consultant, as exemplified in the examples above, raises significant doubt, and causes one to question the validity and adequacy of the financial assurance cost estimates for all the sites within the jurisdiction of the County.

**Nature of Notice Deficiency 2:** The County failed to take steps to make adjustments to the financial assurance mechanisms promptly following increases in the financial assurance amounts for two mine sites (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Sections 2773.1(a)(3) and 2774(b)):

*Calaveras Quarry  
Azevedo Quarry*

**County's Response:** In regards to the Calaveras Quarry and Azevedo Quarry, the County contends "*The consultant (the County's consultant) estimated that the existing bond posted by the operator was sufficient, and that a new or adjusted financial assurance is not required.*"

**SMGB Staff Analysis:** OMR's 45-day review as presented in their May 27, 2005, correspondence noted several issues, with only one requiring an immediate response. In regards to the Calaveras and Azevedo Quarries, OMR noted that production rates, machine time and labor costs provided in the FACE could not be verified without a known quantity of material to work with. Without such information, OMR assumed that all soils for topsoil or overburden must be imported, resulting in substantially higher reclamation costs. Furthermore, issues relating to absence of supporting documentation for certain reclamation activity, and general form and layout were also identified. OMR requested in their May 27, 2005, correspondence that their comments be incorporated in the FACE, and resubmitted to OMR for further review. The County has not responded to OMR to date.

**Nature of Notice Deficiency 3:** The County failed to require mine operators to submit amended reclamation plans as a result of observed SMARA violations for at least two mine sites (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)):



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*Lexington Quarry  
Permanente Quarry*

**County's Response:** In the case of the Lexington Quarry, the County was aware of several out-of-compliance actions. Notably, the County was aware that the operator had located their scale house and office outside of the Use Permit area, moved material and expanded a sediment pond outside the Use Permit area, and obtained materials for expansion of the sedimentation pond from an area outside its Use Permit and reclamation plan boundary. The County also acknowledges that its staff did not realize that SMARA mandated a process to cite the operator for a violation. Instead, the County incorrectly required the operator to simply modify its Use Permit and Reclamation Plan applications to include the area where the additional disturbances had occurred.

In the case of the Permanente Quarry, the County claims it has been working with the operator for approximately four years to address unstable slopes, and other issues. The County is waiting for modifications to the reclamation plan anticipated some time in 2006 to address the existing landslide issues.

**SMGB Staff Analysis:**

Lexington Quarry (CA ID #91-43-0006): The County, despite the acknowledgement noted above, has not issued any violations for the Lexington Quarry. The County has provided a timeline for completion of CEQA requirements, but has not adequately addressed the nature of the violations noted by OMR. Although numerous issues have been identified and presented to the County by Testa Environmental Corporation [Exhibit 3], and the Los Gatos Preservation League, these issues have not been adequately addressed, including their impact on the current version of the amended reclamation plan and the FACE. No violations have been issued to the operator, nor has the FACE been adequately adjusted to reflect these issues.

Permanente Quarry (CA ID #91-43-0004): The County did not request that the operator amend its reclamation plan for the Permanente Quarry since "*The County believed that the boundary encroachments that the State observed are actually landslides at the rim of the mine pit. These slides are not located in areas actively being mined.*" The County was wrong in this determination. The landslides along the rim of the mine pit were caused in part, if not in whole, by the mining operation, and thus, the County had a responsibility and obligation to request that the operator amend its reclamation plan.

The County did, however, recognize that the slopes required repair, and such mitigative activities would extend beyond the existing reclamation plan boundary. The County claims this process has taken longer than anticipated due to potential adverse impacts to a ridgeline easement and slope stability issues for a hillside adjacent to certain mined areas of the quarry. The County contends that the operator will file for modification of the reclamation plan in 2006 to address these issues; however, no violation has been issued to the operator, nor has the FACE been modified to address these issues.



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**Nature of Notice Deficiency 4:** The County failed to perform SMARA mine inspections for the following 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. However, the quality of the inspections is uncertain. Notably, the County failed to issue any violations from 2001 through 2005 (Categories 2 and 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)).

Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek

**County's Response:**

**SMGB Staff Analysis:** Pursuant to PRC Section 2774(b), *"The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The operator shall be solely responsible for the reasonable cost of the inspection."* The SMGB provides guidelines for the conduct of surface mine inspections, which were adopted by the SMGB on November 14, 2002.

In review of the 2005 Surface Mining Inspection Report for all nine sites, it is noted that the County's consultant issued no violations for any of these sites.

Between November 30, 2005, and January 4, 2006, the County's consultant performed the SMARA mine inspections for all nine sites within the jurisdiction of the County [Exhibit 7]. OMR accompanied the County's consultant in its performance of the inspections, and performed an assessment of the County's performance of SMARA inspections, notably, for Curtner Products, Permanente Quarry, Lexington Quarry and Stevens Creek, in the spring of 2006. These four sites are further discussed below.

Curtner Products (CA ID #91-43-0001): No violations were noted by the County's consultant, although a minimum of three violations should have been noted. A preliminary site reconnaissance of Curtner Products by OMR revealed three violations: status of reclamation in the Phase 1 area; control of noxious weeds; and maintenance of the sedimentation basins. The 2004 Mine Operation Inspection Report states *"Phase 1 [h]as been reclaimed."* The 2005 Mine Operation Inspection Report states *"Reclamation previously completed in Phase 1"*. However, current site observations clearly show the presence of equipment, stockpiles and structures. Abundant growth of noxious weeds such as black mustard, tree tobacco, purple



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loosestrife, poison hemlock and milk thistle was observed throughout the site, although the Mine Operation Inspection Report noted that revegetation was "OK," with no mention of the abundant growth of noxious weeds. The 1997 Reclamation Plan Modification also states "*All sedimentation basins and other drainage facilities, such as catch basins and slope drainage benches, shall be periodically maintained. Maintenance work shall include...removing sediment when it reaches the cleanout level in the riser and depositing the sediment in a suitable area.*" As of May 2006, the two sedimentation basins were observed not to be maintained; this condition was not mentioned, nor the need for maintenance in accordance with the requirements of the approved 1997 Reclamation Plan Modification.

Permanente Quarry (CA ID #91-43-0004): No violations were noted by the County's consultant, although a minimum of four violations should have been noted. A minimum of four violations were noted by OMR staff: disturbed areas beyond the boundary of the approved reclamation plan; total disturbed acreage reported; unstable slopes along the North Pit Main Wall; and situation of the cement plant and other surface mining related activities beyond the boundary of the approved reclamation plan.

The County's consultant's 2005 Surface Mining Inspection Report only indicated that the operator has "*exceeded reclamation boundary on south slope.*" It did not identify other disturbed areas that appear to be outside the reclamation plan boundary. And although the inspection report did indicate that the reclamation plan should be amended to adjust the reclamation plan boundary, update the financial assurance, and bring the operation up to current reclamation standards, no violation was issued.

The 1984 approved reclamation plan states "*For the next 25 years, the existing and planned excavation and storage areas will encompass approximately 330 acres.*" OMR staff estimated that the area within the approved reclamation plan boundary is approximately 337 acres. The 2005 Surface Mining Inspection Report indicates that the total disturbed acreage is approximately "*411 acres, (per Operator Annual Report).*" OMR staff estimates that the total disturbed acreage for the site is about 424 acres, which exceeds that of the approved reclamation plan by approximately 90 acres, or 28 percent.

The cement plant is situated beyond the approved reclamation plan boundary, although it does fall within the meaning of "mined lands" as defined pursuant to PRC Section 2729 which states "*includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining wastes, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.*" Should the cement plant be included in this estimate, then the total disturbed acreage amount increases to approximately 400 acres.[don't you mean the exceeded acreage amount?] or 120 percent. The 2005 Surface Mining Inspection Report does not mention the significant surface disturbance in excess of the 330 acres which encompasses the approved reclamation plan, nor the cement plant.



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Along the North Pit Main Wall, active slope failures and slides were observed. Failure of this area of the pit wall was reported in 1987 and additional failure was noted in 2002. The head scarp of these failures have exceeded beyond the reclamation plan boundary; whereas, the 2005 Surface Mining Inspection Report states only that "*Some historic instability near the top of pit,*" with no mention of such failures existing beyond the approved reclamation plan boundary.

Lexington Quarry (CA ID #91-43-0006): No violations were noted by the County's consultant, although a minimum of three violations should have been noted. Three violations were reported by OMR in their July 2005 inspection report for the site. The County's inspector referenced such violations in the July 2005 report prepared by OMR, but did not note nor provide quantification or description of the violations, and the County has not issued any violations to date. These violations reflect disturbance of land beyond the reclamation plan boundary, possible adverse impact on groundwater availability, which in turn would adversely impact adjacent homeowners who depend on well water, and no revised financial assurance has been provided. The County indicates that it was the mine operator and County staff that recognized that the scale house and office was situated outside of the Use Permit area, and the mine operator also disclosed that it had moved material and expanded a sediment pond outside of the Use Permit boundary using material also derived from outside of the Use Permit boundary. Regardless, the County continues to allow the operator to operate outside the approved Use Permit and reclamation plan boundary, while a new permit application is being processed.

OMR staff showed through the use of an aerial photograph with an overlay of the reclamation plan boundary, that the operator had disturbed land outside of the approved Use Permit and reclamation plan boundary. The County has also allowed the operator to continue certain activities and works with the applicant (operator) in order to achieve compliance. The County thus has allowed the operator to continue certain activities, notably, continued excavation of the cut wall with appreciable groundwater seepage without satisfactorily confirming whether significant adverse impact exists to groundwater availability to the adjacent residences. The County did have the operator post a revised financial assurance; however, no mention is made in the inspection reports of over-steepened walls, height of intervening cut walls, and other factors that may significantly impact the FACE; although, the County has been provided periodic correspondence by concerned parties noting such issues and requesting assistance from the County in assuring that these concerns are adequately addressed.

Stevens Creek (CA ID #91-43-0007): No violations were noted by the County's consultant, although a minimum of three violations should have been noted. A preliminary site reconnaissance of Stevens Creek by OMR revealed three violations: encroachment of disturbed land beyond the boundary of the approved reclamation plan, encroachment of quarry slopes beyond the boundary of the approved reclamation plan, and inadequate revegetation measures implemented on final slopes. Significant encroachment of disturbed land beyond the boundary of the approved reclamation plan exists, yet there is no mention of such encroachment in the 2005 inspection report. According to the approved reclamation plan, the toe of the proposed final slope should be about 375 feet due west of the transmission tower; however, the toe is about 260 feet due west of the tower. OMR staff



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observed excavations and quarrying activities parallel to or extending beyond the northern boundary; however, no mention of such encroachment is mentioned in the 2005 Surface Mining Inspection Report.

The approved reclamation plan (Revegetation Notes, Sheet 5) states "*In areas to be revegetated, planting and hydroseeding shall commence as soon as possible upon completion of quarry operations in the immediate area and as seasonal constraints allow.*" Condition of Approval (COA) No. 9(a), December 1996, states "*The revegetation process shall be commenced as soon as that particular phase of excavation is completed and shall be carried out in accordance with plans approved.*" OMR staff observed that some natural revegetation was occurring on these final slopes, however, planting per the revegetation plan was not completed on portions of the property where quarrying operations have concluded. In review of the County's 2005 Surface Mine Inspection Report, no mention is made as to the status of these final slopes, nor indication of timing requirements for their revegetation.

Adequacy of the Lead Agency to conduct surface mining inspections under SMARA: The SMARA mine inspection is crucial to the determination as to whether a surface mining operation is in compliance with SMARA and the operation's approved reclamation plan. During the conduct of inspections, the inspector must:

- Know what is required by SMARA;
- Review and know what is required by the approved reclamation plan, conditions of approval, applicable environmental documents, permits, etc.;
- Determine and record all actions and conditions deemed out of compliance;
- Assess the progress of all required reclamation efforts;
- Determine whether the existing financial assurance requires re-evaluation and revision;
- Accurately reflect findings in the inspection report;
- Recommend appropriate corrective measures to mitigate and resolve any compliance issues; and
- Note all violations for administrative action, when appropriate.

The lead agency is responsible for assuring that the inspector is performing inspections in an appropriate manner. The lead agency is also responsible for:

- Issuance of notices of violations, orders to comply, and administrative penalties, if warranted; and
- Review and adjust the financial assurance amount to reflect current labor and equipment rates, and overall costs to reclaim the site in a manner consistent with the approved reclamation plan, among other responsibilities.

It would appear that the County has been sincere in its efforts to administer SMARA in an appropriate manner; however, it is clear from review of the 2005 Surface Mining Inspection Reports and the County's enforcement history that there is an overall lack of understanding of SMARA.



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It is clear from review of the 2005 Surface Mining Inspection Reports that there is an overall lack of understanding as to the purpose and objective of a SMARA surface mine inspection. As a result, implementation of the inspection failed to identify significant corrective measures and violations on a site-specific basis. In fact, inspection reports for all nine surface mining sites recognize only one violation (Permanente Quarry; in which case the financial assurance amount was recommended to be decreased), in addition to the three violations cited only by reference for the Lexington Quarry; the inspection report simply stated that the operator should “*complete corrective measures cited in the DOC report.*” No Notices of Violations were recommended.

Based on the findings summarized above, the County has not shown a working knowledge of the requirements of SMARA. Such lack of understanding hindered the County in review of its consultant’s work product. In essence, the County does not recognize what is an adequate work product or what is not, and thus, simply performing an inspection is not equivalent to the inspection being performed in an adequate and comprehensive manner. If the State is 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 of the mine site’s SMARA 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 is impossible for the State to rely on the adequacy of the County’s inspection process. To achieve an accurate and adequate picture as to the site-specific conditions at each site within Santa Clara County with an appreciable degree of confidence, someone knowledgeable in SMARA must perform the inspections.

Adequacy of financial assurances: In addition, there are adverse ramifications to poorly performed inspections. Existing and recently adjusted financial assurances remain unreliable since the financial assurance amounts do not reflect corrective measures required in light of the violations.

Adequacy of the Lead Agency to enforce SMARA: In addition, there is little evidence in the administrative record demonstrating that the County has the understanding, or will, to enforce SMARA. This is clearly documented by the issuance of no Notices of Violation, Orders to Comply or Administrative Penalties, when appropriate, in all the years the County has served as a lead agency. Furthermore, the County has not demonstrated that it understands the administrative process and is reluctant to enforce compliance of surface mining operations. Administrative procedures and proceedings are time consuming and require diligence and continued monitoring. The County has provided no documentation, nor has demonstrated by its actions, that it has developed an administrative process to administer and monitor SMARA enforcement actions.

**Nature of Notice Deficiency 5:** The County failed to enforce and seek forfeiture of the financial assurances of the Calaveras Quarry upon its abandonment by the operator (Category 4 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2773.1(b)).



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**County's Response:** The County states in its response to Notice that the operator of the Calaveras Quarry was notified during conduct of the 2004 and 2005 SMARA mine inspection that the operator had an obligation to commence reclamation, or pursue a Use Permit to re-commence operations. The operator indicated that there was no intent to resume mining and thus would seek a modification to the reclamation plan to reflect a change in reclamation strategy. The operator proved delinquent in developing final reclamation performance criteria, and was issued a Notice of Violation by the County on April 12, 2006. The operator has since complied with the Notice of Violation with the submittal of a modification to its reclamation plan on May 25, 2006, albeit, the adequacy of the response is uncertain.

**SMGB Staff Analysis:** The County believes that this deficiency has been corrected with the operator's submittal of a modification to its reclamation plan. Although the adequacy of the operator's response is uncertain, SMGB staff concurs with the County's belief that this deficiency has been remedied.

**Nature of Notice Deficiency 6:** The County failed to enforce and require from the operator of the Calaveras Quarry commencement of reclamation activities upon expiration of the Interim Management Plan (IMP) in August 2003 (Category 3 and 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6)).

**County's Response:** As addressed under Deficiency No. 5, the County believes that this deficiency has been corrected with the operator's submittal of a modification to its reclamation plan.

**SMGB Staff Analysis:** The County acknowledges that it failed to enforce and require surface mining operators to submit annual written calculations of the financial assurance amount for all eight mine sites in 2001, and all nine mine sites for years 2002, 2003 and 2004. The County believes that this deficiency has been corrected by retaining a consultant for technical assistance with fulfilling this requirement for 2004 and 2005. Although the adequacy of the operator's response is uncertain, SMGB staff concurs with the County's belief that this deficiency has been remedied.

**Nature of Notice Deficiency 7:** The County failed to enforce and require surface mining operators to submit annual written calculations of the financial assurance amount for all eight mine sites in 2001, and all nine mine sites for years 2002, 2003 and 2004 (Category 4 violation pursuant to PRC Section 2774.4; deficiency pursuant to CCR Section 3805).

*Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek*



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**County's Response:** The County acknowledges that it failed to enforce and require surface mining operators to submit annual written calculations of the financial assurance amount for all eight mine sites in 2001, and all nine mine sites for years 2002, 2003 and 2004. The County believes that this deficiency has been corrected by retaining a consultant for technical assistance with fulfilling this requirement for 2004 and 2005.

**SMGB Staff Analysis:** SMGB staff does not concur with the County's belief that this deficiency has been remedied, since the adequacy of the inspections performed even as recently as the fall of 2005 were deemed inadequate as discussed under Nature of Notice Deficiency Nos. 1, 3 and 4. Since financial assurance amount calculations are directly linked to and depend on the quality of the surface mine inspection, inadequate surface mine inspections lead to inadequate and questionable financial assurance amounts. SMGB staff thus concurs with the County's belief that this deficiency has been remedied in that written financial assurance calculations have been generated, but all calculations generated to date are deemed unreliable.

**Nature of Notice Deficiency 8:** The County failed 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 (Category 6 violation pursuant to PRC Section 2774.4; deficiency pursuant to CCR Section 3805).

*Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Freeman Quarry (Mine activity commenced in 2002)  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek*

**County's Response:** The County acknowledges that it failed to submit copies of proposed financial assurances and calculations of financial assurance amounts for eight mine sites in 2001, but that this deficiency has been corrected with retaining a consultant for technical assistance and a thorough review of the financial assurance estimates. The consultant presented the results of such review to the County, as provided in their Surface Mining Inspection Reports. The County notes in their response to Notice that five of the nine mine operations have been required to increase their financial assurance mechanisms, three mine operations are deemed to have adequate financial assurance mechanisms, and one mine (Permanente Quarry) was allowed to decrease its financial assurance.

**SMGB Staff Analysis:** The County's consultant only notes in one case the need for a financial assurance to be adjusted (in this case, decreased for the Permanente Quarry), and makes note that four have been increased per recommendations by the County in 2004 or 2005. Notwithstanding the recommended decrease in the financial assurance for the Permanente



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Quarry, the consultant, as a result of the inspection performed in 2005, recommended no independent adjustments.

SMGB staff concurs with the County's belief that this deficiency has been remedied. Refer to SMGB staff response to Deficiency Nos. 3, 7 and 10 as to the quality of the review of financial assurances performed by the County's consultant, but such financial assurances are unreliable.

**Nature of Notice Deficiency 9:** The County failed to submit copies of inspection reports for eight mine sites in 2001 (Category 6 violation pursuant to PRC Section 2774.4; deficiency pursuant to CCR Section 3504.3).

*Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek*

**County's Response:** The County acknowledges that it failed to submit copies of inspection reports for eight mine sites in 2001, but that this deficiency has been corrected with retaining a consultant for technical assistance as fulfilling this requirement.

**SMGB Staff Analysis:** SMGB staff concurs with the County's belief that this deficiency has been remedied, but that the inspection reports provided since 2001 are unreliable. Refer to SMGB staff response to Deficiency No. 3 as to the quality of the inspections performed by the County,

**Nature of Notice Deficiency 10:** The County failed 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 (Category 6 violation pursuant to PRC Section 2774.4; deficiency pursuant to CCR Section 3805.5, and PRC Section 2774(d)):

*Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Freeman Quarry  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit*

**County's Response:** As of 2005, all reporting mine operations had approved financial assurance instruments. By June 2005, OMR informed the County that financial assurances for eight of nine



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sites within the County's jurisdiction required re-evaluation. The County's consultant performed inspections of all sites, accompanied by OMR staff (OMR staff did not conduct the formal SMARA inspection) in November and December 2005. The County believes that any identified problems have been or would be rendered moot based on the revised financial assurances, and also that outstanding issues remain, and reliance on the subsequent round of financial assurance estimate review is not appropriate.

**SMGB Staff Analysis:** Pursuant to PRC Section 2773.1, "*Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan...The amount of financial assurance required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.*" Pursuant to CCR Section 3805.5, "*...the lead agency shall submit a copy of the proposed Financial Assurance and the Calculation of Financial Assurance Amount submitted by the operator...to the Director of the Department of Conservation for review...the lead agency shall...indicate to the Director that the Financial Assurance Amount is adequate...to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan.*"

The County has indicated in its response to the Notice that in the future it will promptly respond to any comments from OMR to ensure the County has addressed any concerns. Regardless, the County has not formally responded to OMR's request in their correspondences dated May 27 and June 1, 3 and 9, 2005, requesting that eight out of nine 2005 financial assurances be re-evaluated.

**FINDINGS OF THE EXECUTIVE OFFICER:** The Executive Officer recommends that the SMGB find that Santa Clara County has not satisfactorily met the statutory conditions of PRC Section 2774.2 in that it has 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 has not taken sufficient and timely actions to correct these deficiencies. Since 2000 and through 2005, the County failed, and continues to fail, in demonstrating an overall working knowledge of SMARA, and implementing SMARA. Specific findings are summarized below:



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**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].

**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].

**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].

**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].

**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].

**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].



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**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].

**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 which are not consistent with SMARA].

**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].

**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 which are not consistent with SMARA].

**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].

**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].



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**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].

**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].

**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].

**Finding No. 4(f):** The County did fail, and continues to fail, in recommending and enforcing corrective measures and violations 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].

**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].

**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



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out reclamation; Category 4 - failed to require and take appropriate enforcement action as required by SMARA].

**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 all 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].

**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].

**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].

**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].

**DETERMINATION OF THE BOARD:** The SMGB may make the following determinations:

(1)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)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



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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).

**SUGGESTED MOTION LANGUAGE:** The Board may use 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 as a result of 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. 1:** *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.*

**Motion No. 2:** *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 the Board will assume Santa Clara County's lead agency authority at the Board's September 14, 2006, meeting.*



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