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Planning Commission
County of Amador
810 Court Street
Jackson, CA 95642-2132

Re: Objection To Newman Ridge Quarry And Edwin Center Project And
Environmental Impact Report (SCH# 2011072039)

Honorable Commissioners:

On behalf of Ione Valley Land, Air, and Water Defense Alliance (Ione Valley LAWDA), we objected in our July 18, 2012 letter to the approval and further consideration of the Newman Ridge Quarry and Edwin Center project (the Project) on the basis of the Draft Environmental Impact Report (Draft EIR or DEIR) that had been circulated.

Various state and local agencies that had reviewed the DEIR found it lacked key information, for example regarding water quality impacts, or contained affirmative misinformation, for example regarding traffic and circulation. The Final EIR fixes some of the omissions and errors that public agencies and other commenters identified but not all of them. Furthermore, in its changes to the information as reported in the DEIR, the Final EIR (FEIR) identifies new, significant impacts that were previously reported in the DEIR as insignificant. The FEIR must be augmented to provide all the information CEQA requires, including information identified as missing by state and local agencies, and it must be recirculated for further public and public agency comment and review.

The Project is too large and too damaging to the Ione Valley to be approved as proposed, especially on the basis of the inadequate and oftentimes misleading analysis in the EIR. It would have significant, unavoidable impacts to air quality, aesthetics, greenhouse gases, and traffic. Additionally, although it would also likely have significant adverse impacts to biological and cultural resources, the EIR fails to identify these.

There are other, feasible alternatives, such as expanding the Jackson Quarry in Amador County, that would meet most of the project objectives and thus completely avoid the damaging consequences of the proposed project. Therefore, the Planning Commission should reject approval of this quarry for the good of the community. Based upon the current documentation, *if the County approved the Project as proposed, it would be breaking the law.*

A. Significant New Impacts Including Traffic and Circulation Are Identified in the Final EIR That Were Denied or Not Disclosed in the Draft EIR.

The FEIR asserts changes to the Draft EIR text “did not include significant new information or result in an increase in the severity of any impacts identified in the Draft EIR.” (FEIR, p. 3-127.)

The Final EIR proves that the Draft EIR’s traffic analysis was gravely misleading and misinformative. This misinformation occurred throughout the DEIR and is most apparent with regard to traffic. The DEIR claimed that traffic at all seven studied intersections was uncongested. (DEIR, p. 4.12-8 [showing existing conditions as Level of Service “A”- the best level of service- in all seven intersections]; p. 4.12-18 [existing plus project traffic projected to be Level of Service “A” at all seven intersections].)

Then, in a dramatic change of disclosed information, likely in response to probing questions from the California Department of Transportation (Caltrans) (Comment Letter 3), the FEIR revised the publicly-disclosed analysis so that the Level of Service at no less than six of the seven studied intersections was restated to be “B”, “C”, or “E”. (FEIR, p. 2-21.) These changes revealed significantly lower levels of service than LOS “A” as disclosed in the DEIR. In other words, *the DEIR misinformed the public about the severity of impacts with regard to six out of seven intersections, or 86% of them.* The Draft EIR’s misinformation was so egregious that the DEIR must be recirculated now that the correct information has been provided. The baseline peak hour LOS was *inaccurately stated for every one of the studied intersections* and changed to show more congested conditions. (FEIR, p. 2-26.)

With new, more accurate information showing more severe impacts, the FEIR identified a significant impact that would occur at the Preston Avenue and East Plymouth Hwy. intersection. (FEIR, p. 2-23, 2-27 [answering the question signal warrant met with a “Yes”].) The FEIR provided more detail than the DEIR with regard to Cumulative Peak Hour Intersection Analysis, as it shows that three intersections, Preston Avenue at East Plymouth Hwy, at E. Main Street, and at S. Church Street each would meet traffic signal warrant analysis. (FEIR, p. 2-30 and 2-31.) They would all be operating at level of service “F” which is the worst level of service.

The Draft EIR had concluded “with the addition of project traffic, all of the study intersections are forecast to continue to operate at LOS C or better under Existing Plus Project Conditions.” (DEIR, p. 4.12-35.) The FEIR changes this conclusion to identify more severe impacts, including the Preston Avenue at East Plymouth Highway

intersection operating at LOS E in the PM Peak Hour. (FEIR, p. 2-23.) Therefore, the FEIR identifies significant impacts that were not disclosed, and were affirmatively denied, in the DEIR.

The FEIR acknowledged in response to Caltrans' comment that the Draft EIR had provided erroneous information to the public. The FEIR states "The segment volumes were developed based on traffic data collected for the TIS and *it is acknowledged that some are less than what is reported in the annual report provided by Caltrans Traffic Data Branch.*" (FEIR, p. 3-32, emphasis added.) The FEIR seeks to downplay the significance of this misinformation by asserting "it is important to note that even if the volumes were increased substantially and the project exceeded the LOS standards, the conclusions about the project's impacts still would not change." (FEIR, p. 3-32.) Providing erroneous information to the public is prejudicial. Whether or not the FEIR preparers believe it would change the FEIR's conclusions, the public and public agencies reviewing the EIR must be given accurate information to be able to provide meaningful comments.

The FEIR acknowledges that "Chapter 4.12, Transportation and Circulation, of the Draft EIR was inadvertently not updated to match the final Traffic Impact Study (TIS)." (FEIR, p. 3-32.) Therefore, again, information provided to the public in the DEIR was wrong and the public was misinformed, even if inadvertently. The changes the FEIR makes to match the TIS, are extensive, since they show six of the seven study intersections would be in much worse shape than the DEIR reported, and one of them would require a traffic signal as a result of the proposed Project because the warrant for it was met. (FEIR, p. 3-33.) This new information requires recirculation of the EIR.

B. The Range of Alternatives Is Unreasonably Narrow.

The range of alternatives is unreasonably narrow. (DEIR, p. 6-2.) The DEIR analyzes a no-project alternative, a reduced production alternative, and the Edwin Center North Alternative. It rejects analysis of off-site locations for aggregate production. However, other locations are capable of producing the amount of aggregate identified as a project objective, as it is possible to expand operations at another quarry.

The George Reed Inc. Clements Plant in San Joaquin County, along with the two asphalt plants in Sacramento, are operating at under 30% capacity for asphalt. George Reed Inc. Clements Plant has asphalt production and is located only 19.2 miles away. There are also two asphalt plants in Sacramento: the Granite Construction plant which is 28.3 miles away (<http://graniteconstruction.com>) and Teichert Aggregates, which is 26.6 miles away in Rancho Cordova. Furthermore, Jackson Quarry in Amador County is

applying to expand operations and its application is under consideration by the Amador County Planning Commission. Jackson quarry has been operating for 75 years and, so far as we are aware, is not bothering anyone.

(<http://www.co.amador.ca.us/index.aspx?page=832>;

<http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentid=9050> [EIR]) If the objectives of this project are to “Establish a hard rock quarry to produce high quality construction aggregate materials to meet local and regional market demand,” to “Establish an appropriately designated and zoned regional industrial center for processing aggregates and construction materials and other value-added industrial uses,” to “Minimize impacts to sensitive natural resources and minimize aesthetic impacts through site design and concurrent reclamation,” and to “Create new jobs in Amador County directly related to project operations and indirectly from support employment,” (DEIR, p. 6-2), those objectives can best be met by expanding Jackson Quarry or one of the other quarry sites rather than trying to create a new one. The only entities that would gain from approval of the Project are Edwin Lands LLC and Newman Mineral LLC. Their gain would come at great cost to the quality of life and health of the people of Amador County. Instead, an alternative that allows job creation and asphalt production without such a cost should be pursued.

C. The Project May Not Be Approved With a Statement of Overriding Considerations Since Feasible, Less-Damaging Alternatives Exist.

Since expansion of Jackson Quarry, or expansion of other quarries, would be a feasible, less damaging alternative to approval of the proposed Newman Ridge Project that would meet most or all project objectives, it would be illegal to approve the Newman Ridge Project on the basis of a statement of overriding considerations. As we stated in our letter to you dated July 18, 2012, CEQA states that “public agencies should not approve project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code § 21002.) A public agency may not adopt a statement of overriding considerations when there is a feasible way to lessen or avoid a significant effect. (CEQA Guidelines § 15043; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597.)

This substantive mandate of CEQA has been explained by the Court of Appeal as follows:

Further, the Legislature has also declared it to be the policy of the state “that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially

lessen the significant environmental effects of such projects....” (§ 21002.) “Our Supreme Court has described the alternatives and mitigation sections as ‘the core’ of an EIR.” (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029, 68 Cal.Rptr.2d 367.) In furtherance of this policy, section 21081, subdivision (a), “contains a ‘substantive mandate’ requiring public agencies to refrain from approving projects with significant environmental effects if ‘there are feasible alternatives or mitigation measures’ that can substantially lessen or avoid those effects.”

(*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597.)

The FEIR claims that the fact that the project applicant does not own a comparable property means that “an environmentally feasible off-site location that would meet the requirement of CEQA and the basic objectives of the project, other than the Edwin Center North Alternative, does not exist.” (FEIR, p. 3-129.) However, the project objectives do not require that quarry operations be conducted by the project applicant. Quarry operations could be conducted elsewhere by other parties and still meet most of the project objectives.

CEQA requires that EIRs consider alternative locations to the identified Project site. (CEQA Guidelines § 15126.6(f)(2).) It is immaterial whether or not other potential project sites are owned or controlled by the applicant since they must still be considered in CEQA analysis. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1460.) Thus, the final EIR’s failure to discuss other potential locations for quarrying operations renders it inadequate to meet CEQA’s requirements.

D. The Analysis of Potentially Significant Wastewater Impacts is Incomplete.

According to the FEIR, “The project will not discharge wastewater.” (FEIR, p. 3-44.) Instead, it anticipates that “approximately 70 percent of the total water for aggregate production use at the Edwin Center . . . would be recycled via a water clarifier settling tank . . . from the wash plant portion of the aggregate plant.” (FEIR p. 3-43.) The assertion that “The project will not discharge wastewater” is unproven. Enormous amounts of water are used during the blasting and processing of rocks.

According to the EIR, water demand will be 182 acre feet per year. (DEIR, p. 4.8-17, Appx. L, p. 10.) This amount appears to be underestimated. The DEIR states 5 million tons aggregate per year will be produced by the Project. (DEIR, p. 6-2, <http://amadorgov.org/Modules/ShowDocument.aspx?documentid=11812> .) An aggregate plant that is about the same size, 5 million tons per year, was recently estimated to need

369-398 acre per feet of water per year, more than twice the estimate in the EIR. (<http://www.ironorebeneficiationequipment.com/optional-equipment/construction-quarry/>.) Granite Construction Company, for which this information was posted, is one of the largest quarrying companies in the country so its estimate of water usage is likely more accurate than that contained in the EIR.

Even if only 182 acre feet of water are used per year, there is no showing that this amount of water can be stored in the tanks that are planned onsite. Therefore, waste water is likely to be discharged into Sutter Creek and Dry Creek. Alternatively, a lake of wastewater might form on site, as predicted in EPA's Sourcebook for Industry on Hardrock Mining. (<http://www.infomine.com/publications/docs/USEPA2003.pdf>, p. 48.)

As water is recycled in mining operations, the concentration of contaminants increases, then the water is eventually released to local fresh water bodies or creeks. (<http://www.nrcan.gc.ca/sustainable-development/freshwater/2347>.) A Canadian government website explains:

Through land use associated with mining, impacts on water can arise from a multitude of sources.

To gain access to minerals, metal and non-metal mines are dewatered using pumping wells, diversion techniques and near-horizontal drainage passages. In mining operations water is mainly used to extract and process ore at the mine site. [Footnote] This water is often recirculated, and as a result many mines are able to minimize water discharge during operation; however the *concentration of contaminants increases. Waters are then primarily (78 percent) discharged to freshwater bodies and undergo little beyond primary treatment.* [Footnote].

(<http://www.nrcan.gc.ca/sustainable-development/freshwater/2347>, emphasis added.) Therefore, at the end of mining operations, large amounts of wastewater with concentrated contaminants are likely to be discharged to local creeks and freshwater bodies. The EIR did not analyze the potential impact of this discharge.

Even during operations, pumped discharge or high volumes of run-off from a site during periods of heavy rainfall can increase the potential for downstream flooding. (http://www.bgs.ac.uk/planning4minerals/WaterResource_1.htm.) The discharge of water containing high levels of suspended solids can cause changes to the bed of the receiving water such as Sutter Creek and Dry Creek through deposition of additional sediments. The disturbance, removal, or diversion of surface waters such as ponds, streams and rivers to improve access to aggregates and prevent flooding of the site may

become necessary. This would affect both surface water flow and volume and could damage any wildlife habitats associated with these waters. These effects should also be anticipated, analyzed, and mitigated in the EIR.

FEIR Response 4-4 states that “If the project will discharge waste water, a Report of Waste Discharge would be submitted to apply for the waste discharge requirements for activities subject to waste discharge requirements.” (FEIR, p. 3-44.) The activities requiring waste discharge requirements (WDRs) must be identified now, disclosed, and mitigation measures provided to reduce the adverse effects of issuing the WDRs. Deferral of analysis and development of mitigation measures violates CEQA. (CEQA Guidelines §15126.4(a)(1)(B); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 668.)

In 2002, in reviewing an application for Waste Discharge Requirements (WDRs) for Hogan Quarry in Calaveras County, the Central Valley Region Regional Water Quality Control Board stated “The water balance provided in the RWD indicates that the settling/recycling pond does not have sufficient storage and disposal capacity to meet average annual precipitation conditions, and still maintain the two foot of freeboard required by this Order.” (Encl. 2, Hogan Quarry WDR, p. 2.) Sufficient storage and disposal capacity is not shown for the proposed Project. Therefore, the potential for discharge of wastewater should be analyzed in the EIR.

E. Objections Regarding Air Quality Impacts Were Dismissed Without Meaningful Response.

If the Project is approved, its air quality impacts would be significant and unavoidable. The best way to avoid these impacts is to reject the Project, or at the very least substantially reduce its size and term of operation.

The Project is proposed in an air basin that is already in nonattainment for ozone. That means that there are significant restrictions on the area’s ability to receive federal funding for projects such as transportation improvements until attainment is achieved. This Project would make achieving attainment much more difficult.

The consequences of a nonattainment status are extensive:

“A non-attainment designation under the Clean Air Act carries serious repercussions including the loss of federal highway funding and the loss of economic development opportunities.

- *Loss of Federal Highway and Transit Funding*
One year from the date of a non-attainment designation, federally funded highway and transit projects will not be allowed to proceed unless the state demonstrates there will be no increase in emissions associated with the projects. . . .
- *Enhanced Regulatory Oversight*
Once an area is designated as being in non-attainment, EPA has the authority to intervene and revise permitting decisions throughout the state.
- *Restrictive Permitting Requirements*
New and upgraded facilities in, or near, non-attainment areas are required to install the most effective emissions reduction controls without consideration of cost. Operators of existing facilities may also be required to install more restrictive control technologies than are otherwise required for similar units in areas that are in attainment.
- *Mandatory Emissions Offsetting*
Prior to permitting the construction of new facilities, a state must offset any emissions increases by achieving reductions at existing facilities.
- *Loss of Economic Development Opportunities*
The added regulatory and paperwork burdens, as well as expenses associated with constructing new facilities, or expanding existing ones, limit the amount of economic investment in non-attainment communities.

(<http://www.uschamber.com/issues/environment/consequences-non-attainment>). There is no evidence that the emissions created by the proposed Project would be offset by reductions at existing facilities as they must be. Therefore, the proposed Project cannot be approved.

Furthermore, “The California Clean Air Act requires local air pollution control districts to prepare air quality attainment plans. These plans must provide for district-wide emission reductions of five percent per year averaged over consecutive three-year periods or, provide for adoption of ‘all feasible measures on an expeditious schedule.’” (DEIR, p. 4.2-4.) Approving this Project would interfere with attaining the five percent reduction required throughout the Amador Air District.

The DEIR states the Project proponent in the future will be required to use the Best Available Control Technology. (DEIR, pp. 4.2-14, 4.2-16.) However, BACT review must be conducted now so that enforceable mitigation measures can be developed before the Project can be approved. Deferral of the development of mitigation measures for significant air quality impacts violates CEQA.

As stated by a commenter, the EIR “does little to mitigate any real problem” with

regard to air quality impacts. (FEIR, p. 3-76 [comments of J. Scully].) In response to concerns about dust, noise, and contaminants from the Project site (Comment 9-6), instead of providing analysis showing the human health impacts of such pollution, the FEIR states the Project would comply with Amador Air District (AAD) Rule 218 and 281 regarding fugitive dust emissions.¹ However, even with compliance with these rules, pollution from the Project is significant. The EIR should have disclosed the potential human health impacts of pollution that will occur, even despite compliance with air district rules. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.)

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, “health and safety problems caused by the physical changes” that the proposed project will precipitate. The EIR concluded that the Projects would have significant and unavoidable adverse impacts on air quality with regard to nitrous oxides (NOx) and particulate matter (PM10). (DEIR, p. 4.2-15.) It is well known that air pollution adversely affects human respiratory health. (See, e.g., Bustillo, *Smog Harms Children's Lungs for Life, Study Finds*, L.A. Times (Sept. 9, 2004).) However, the EIR does not acknowledge the health consequences that necessarily result from the identified adverse air quality impacts. There is no acknowledgement or analysis in the FEIR of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. As stated by the Court of Appeal in requiring a legally adequate air quality analysis, “After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's.” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.)

Regarding NOx emissions, the EPA reports the following:

NOx and volatile organic compounds react in the atmosphere in the presence of sunlight to form ground-level ozone. Ground-level ozone is a major component of smog in our cities and in many rural areas as well. Though naturally occurring ozone in the stratosphere provides a protective layer high above the earth, the

¹ On review we found no evidence in the EIR or elsewhere that the County provided the Amador Air District (AAD) with a copy of the notices related to this Project. The County is required by CEQA to consult with AAD, and must do so before it may legally approve the Project. At a minimum, the County must send the Notices of Preparation and Notice of Availability of the EIR to the AAD and give the AAD sufficient time to respond.

ozone that we breathe at ground level has been linked to respiratory illness and other health problems, including:

- Decreases in lung function, resulting in difficulty breathing, shortness of breath, and other symptoms;
- Respiratory symptoms, including bronchitis, aggravated coughing, and chest pain;
- Increased incidence/severity of respiratory problems (e.g. aggravation of asthma, susceptibility to respiratory infection) resulting in more hospital admissions and emergency room visits;
- Chronic inflammation and irreversible structural changes in the lungs, that, with repeated exposure, can lead to premature aging of the lungs and other respiratory illness.

(<http://www.epa.gov/captrade/documents/power.pdf>, emphasis added.) Given the significant, adverse NOx emissions and ozone production impacts of the proposed Project, what human health impacts to the people in Ione Valley would the County expect would occur during the 50 year life of the Project? The EIR should have disclosed this information.

In Appendix D on an unnumbered page of the health risk assessment is the following statement: “Assuming the quarry would operate for 50 years, the maximum incremental cancer risk to sensitive receptors in the project area would be approximately 18.0 in one million for the proposed project. This incremental level is above the CEQA Significance Threshold of 10 in one million.” (DEIR Appendix D, p. 58 of 64.) This is an acknowledgement that the proposed Project will increase the cancer risk of people living nearby at *nearly double the threshold of significant risk*. Also, the risk was calculated for average adults; however, calculations should also be made for particularly vulnerable populations including the young and the elderly. The EIR must also disclose the acute health impacts, not just the chronic health impacts, of pollutant exposure including diesel particulate matter, dust, NOx and other contaminants.

There are sensitive receptor populations in relatively close proximity to the proposed Project. Various ranches are less than a mile from the Project site.² (DEIR, p.

² The DEIR provides incorrect information in showing only seven of the residences that exist nearby.

(<http://www.amadorgov.org/Modules/ShowDocument.aspx?documentid=10256>, p. 5.) In fact, numerous residences (approximately 18) are nearby (Enclosure 3), and the Mule Creek State Prison should be considered a residential facility.

4.2-6.) Although a small minority percentage of neighbors have signed a waiver of objections to the Project in an agreement between them and Edwin Lands and Newman Minerals (enclosure 1), most neighbors who would be severely affected by the proposed Project have not waived their objections. Other sensitive receptors are not mentioned in the DEIR but should have been because they are downwind and within the potential range of wind-driven pollutants from the proposed Project. The City of Ione is only four miles away. The Mule Creek State Prison, with an inmate population of 3,065 and a staff of over 1,200 is only three miles away at 4001 Highway 104.³ (http://en.wikipedia.org/wiki/Mule_Creek_State_Prison.)

Additionally, the following schools are between 3 and 4 miles from the proposed Project: James A Weiden High School; Ione Elementary; Foothill Indian Education; and HeadStart State Preschool. It is our understanding that plume analysis for the Rancho Seco nuclear power plant, although 14 miles away, determined pollutants would blow directly over and into the City of Ione. Therefore, the City of Ione, the four schools, and the State Prison must be considered sensitive receptors that should have been acknowledged, and impacts on them analyzed and mitigated, in the EIR.

The Amador General Plan requires buffers between incompatible uses of land to protect public safety. "Buffer – Land uses which provide sufficient distance and/or barriers between mining and incompatible land uses, to mitigate noise, dust vibration, and visual impacts of mining, and to protect public safety." (Amador General Plan p. 31, <http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentid=380>.) The proposed Project fails to provide sufficient buffers, as the project is immediately adjacent to residences. The quarry portion of the Project would be within 25 - 50 feet of the West family's property line. Since the proposed Project increases cancer risks in the area even if buffers were included, denial of the project is required.

The DEIR analysis of compliance with Amador Air District rules is incomplete. The section addressing applicable regulations fails to disclose Rule 207.1 entitled "Asphalt Concrete Plants" which states "Any asphalt concrete plant constructed or modified after the date of adoption of these Rules shall not emit particulate matter in excess of 0.04 gr./dscf (grains per cubic foot of dry exhaust gas at standard conditions)." (<http://www.arb.ca.gov/DRDB/AMA/CURHTML/R207-1.HTM>). There is no analysis

³ The inmate and staff population of the State Prison were completely left out of the EIR's analysis as it stated the total population of the City of Ione as being only 3,300 people. We have learned that Mule Creek Prison Administration was not informed about the Project – and they are the largest employer of Amador County, with a total population larger than the City of Ione.

in the EIR of particulate matter emissions measured in grains per cubic foot. However, the FEIR acknowledges that PM10 impacts would be significant and unavoidable since emissions of 1,744.18 pounds per day of PM10 would far exceed the significance threshold - and in fact *would be more than five times the significance threshold* of 384 pounds per day. (DEIR, p. 4.2-15.) Therefore, it is likely Rule 207.1 would be violated. No asphalt concrete plant may be approved.

The DEIR also fails to mention Amador Air District Rule 421 - entitled "Contribution To Violation Of National Ambient Air Quality Standard [NAAQS]" which states "The Air Pollution Control Officer shall deny an Authority to Construct for a new facility or modification for which an analysis was required and performed in accordance with the provisions of Rule 419 and which would contribute to concentrations which exceed a national ambient air quality standard as of the new or modified facility's startup date unless the following conditions are met. . . ." (<http://www.arb.ca.gov/DRDB/AMA/CURHTML/R421.HTM>.) Since the proposed Project would exceed the standards for NOx, for which NAAQS have been established, authority to construct the Project would have to be denied by AAD.⁴ The FEIR must disclose this.

F. The County General Plan Must Be Updated Before the Project is Approved.

In response to our objection that the outdated County General Plan could not legally support approval of the Project, the FEIR responded "This comment relates to the County General Plan and not to the adequacy of the EIR." (Response to Comment 15-10.) Contrary to this statement, an EIR must consider compliance with generally applicable plans, including the General Plan. (CEQA Guidelines § 15125 (d).) Therefore, the comment goes directly to the adequacy of the EIR, which has failed to consider the land use impacts of approving a project before the General Plan is updated.

G. Cultural Resource Impacts Are Insufficiently Addressed.

Gary Reinoehl, a retired archaeologist who is now president of the Amador County Historical Society provided the following with regard to cultural resources, which we adopt as our own comments.

⁴ The EIR presumptuously states the AAD "would" approve an application to the AAD for authority to construct the Project. (DEIR, p. 3-40.) In view of the violations of AAD Rules, it could not do so legally.

Historical Setting: This section is very short given the history of this area and is insufficient to provide a context for understanding the effects of the project on cultural resources. In fact, the IS for the Newman Ridge Project states: “The proposed project site, however, is part of a large historic mining district, and is located near numerous former and active mine sites.” Reading this section does not give the impression that this is part of a “large historic mining district.”

This area around Ione has some of the best clays in California. Many companies based in San Francisco owned and operated clay pits near Ione in the early part of the 20th Century (Aubury, p 206-210; Dietrich p 49-67). The railroad was built into this area because of the coal deposits and then began to ship clay and clay products from this area.

Plate VI in *The Clay Resources and The Ceramic Industry of California* delineates clay pits and clay operations in the project vicinity. There is limited discussion of such operations in the Cultural Resource Section. The Historic Setting section of this document needs to discuss the Newman clay operation and the Stockton Fire Brick Company clay operation. These two operations either border the project area or are within the project area (Amador Ledger 29 June 1906, 1904 Official Map of Amador County, Dietrich p 53-54, 63).

The following is a small bit of information about these two operations. More complete information exists:

NEWMAN CLAY OPERATION

The Newman clay pit was operated from about 1906 (Amador Ledger 29 June 1906) until an unknown date (Dietrich, p. 63). The Newman property is shown in the State Mineralogists reports and the 1904 Official Map Amador County that hangs in the Amador County Administration Center.

STOCKTON FIRE BRICK COMPANY OPERATION

The Jones Butte Deposit was operated by the Stockton Fire Brick Company on the western slope of Jones Butte, also known as Deutschke Hill, in 1925. This was one of the few clay operations in this area to be worked using underground methods (Dietrich, p 53-54). The Edwin clay from this location was one of the three important clays used by Stockton Brick Company in its production of high quality fire brick (Dietrich, p 209).

Method of Analysis: This section states that archival research was done at the North Central Information Center of the California Historic Resources Information System and the library and files of Tom Origer & Associates. Local sources for archival information were not used to find information that would be relevant to local history:

Amador County Archives, Amador County Library, or the Amador County Historical Society. Without considering local history through local sources, the information used to consider National Register eligibility may not be sufficient.

The Origer report, Appendix H, is a report on the identification of cultural resources within the project area. The report does not indicate methodology for the survey and as such leaves some question as to the adequacy of the effort. This report does not address the eligibility or uniqueness of any of the resources.

Project-Specific Impacts and Mitigation Measures. The following comments are general for this entire section. In this section, the DEIR states that resources do not meet the criteria for listing on the CRHC. However, there are no facts provided or analysis of why any particular resource does not meet the criteria, merely the statement. The DEIR goes on to say that resources are “not a unique archeological resource” without any clearly stated reason for such a conclusion. The DEIR concludes for many of the resources, “As such, additional historical information cannot be obtained from this resource; thus impacts to the resource due to implementation of the proposed project would not be considered significant.” This conclusion is unsubstantiated by the information provided. Some of the cultural resources within the project area were previously evaluated for eligibility and found not to meet the threshold because they were not over 50 years of age. Some of these resources are now over 50 years of age. In light of this evidence, these resources need to be evaluated again. Other resources previously evaluated for eligibility to the CRHR, may need to be evaluated again because of changes in the environment. These resources may now meet the eligibility requirements for the CRHR or may now meet the uniqueness criteria.

For most professionals in the Cultural Resources field, there is nearly always some additional historical information that can be gained from resources past the initial recording to the resource as has been done with this project. Whether a resource has additional information is not one of the criteria for eligibility of a resource, but a consideration of the need for mitigation after a conclusion of the impacts of the project.

The purpose of this section of the Cultural Resources report is to provide “careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data” (CEQA Guidelines §15064(b)). In this case there is no justification given for the conclusions regarding the eligibility determinations of the resources and for the analysis of whether a resource may meet the unique threshold. No justifications of the determinations were provided, merely statements without any justification.

CEQA Guidelines (§15064(f)(5)) states that:

Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inadequate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

The current DEIR does not meet this threshold for the evaluation of cultural resources. The conclusions provided regarding the eligibility of the resources to the CRHR are unsubstantiated opinions, lacking evidence for the stated conclusions. Without clear evidence for the eligibility of the resources, the conclusion that the project does not have a significant effect on the environment is not substantiated and mitigation measures are not justified.

As an example, the DEIR states that the Southern Pacific Railroad Ione Branch has been previously recorded and consequently, additional historical information cannot be obtained from this resource. "Furthermore, the proposed project is not anticipated to completely destroy the resource, but would make the appropriate improvements in order to utilize the rail line for materials transport." Just because a resource is recorded does not determine whether it is significant or not. Again, sufficient information has not been provided to determine whether the resource is significant or not. The eligibility is a statement without factual basis. Information values are only one of the significance criteria. The other criteria for eligibility do not appear to be considered. If the resource is significant, "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." (CEQA Guidelines §15064.5(b)(1)). Whether the project allows continued use of the resource is not a consideration of the eligibility or uniqueness or is it a justification of the consideration of the impacts. Alteration is sufficient for a consideration of significant effect.

Section 4.4 of the DEIR is inadequate in the consideration of the eligibility and uniqueness of cultural resources in accordance with CEQA. Also, the finding of lack of significant effects is not substantiated in accordance with the requirements of CEQA.

H. The EIR's Biological Resource Impact Analysis is Incomplete.

The DEIR's analysis of the Project's potential biological impacts is incomplete, as the study did not address many species that populate the Loch Lane Reservoir and surrounding area.

The reservoir sits adjacent to the Project site, and hosts many bird species protected by the Migratory Bird Treaty Act (MBTA). As acknowledged in the EIR, the MBTA prohibits take or avian mortality of migrating birds. While the EIR discloses the potential for impacts to nesting migratory birds, it neither discloses what these impacts would be nor which bird species would be impacted. The Project area hosts tens of thousands of Canadian geese and several species of herons, and any Project impacts to these MBTA-protected species must be disclosed. The EIR further fails to acknowledge that bald eagles that have been spotted in the Loch Lane vicinity by area residents. (http://www.calaverasenterprise.com/news/article_bbea706c-4388-11e1-8f06-0019bb2963f4.html [documenting bald eagles at Mokelumne River reservoirs].) Bald eagles are protected under the Bald and Golden Eagle Act, the MBTA, and the California Endangered Species Act.

With regard to amphibians and reptiles, the EIR failed to survey the Edwin Center North Alternative site for the presence of the western spadefoot toad. (DEIR p. 4.3-46.) This analysis is required if the applicant is considering this alternative, as the purpose of CEQA is to ensure that a project's potential impacts are analyzed *prior* to its approval and implementation. The DEIR also states that 22 wetlands were not included in protocol-level surveys for the California tiger salamander, but were surveyed in 2009. (DEIR p. 4.3-51.) However, the DEIR admits that 2009 was a low rain year, so tiger salamanders would be more difficult to locate. These 22 wetlands should be resurveyed during a normal rain year, and the results disclosed and analyzed prior to Project approval. With regard to the northwestern pond turtle, the EIR fails to include an option for mitigation through preservation on-site, or even reconfiguration of the project to avoid sites populated by sensitive turtles. Mitigation Measure 4.3-6, which provides only for relocation, is insufficient.

The Project site is suitable habitat for species of special concern, including several state-listed shrimp found in vernal pools. The applicant has committed to pursuing the Edwin Center North Alternative, which contains 14 vernal pools. Even so, the EIR's analysis surveyed only two of these pools for listed shrimp, and "Two species of large branchiopod were documented including California fairy shrimp (*Lindleriella occidentalis*) and California clam shrimp (*Cyzicus californicus*)." (DEIR, p. 4.3-45.) The EIR agreed that "an additional season of surveys is required in order to conclude absence of listed large branchiopods from the sites." (DEIR p. 4.3-45.) This survey should occur prior to certification of the EIR, so that the analysis and disclosure of impacts and the identification of mitigation measure are available to the decisionmakers *before* project approval. This process would allow the Project to be redesigned to avoid areas of listed shrimp, if necessary. Waiting until after Project approval to conduct

analysis of the remaining 12 vernal pools defeats the purpose of CEQA. Accordingly, mitigation measure 4.3-4 amounts to deferred analysis and mitigation.

The EIR also wholly fails to discuss mammal species present in the Project area, including bobcats, kit foxes, and mountain lions. Potential impacts to these species must be added to the EIR in order to avoid precluding informed decisionmaking. The San Joaquin kit fox is listed under both the ESA and CESA. Residents of the area have reported seeing kit foxes on the Project site. Wildlife or wildlife corridors must be analyzed under CEQA, as must anything that impedes “the use of native wildlife nursery sites.” (CEQA Guidelines Appendix G, section IV (d).) Therefore, even though the mountain lion and bobcat may not be sensitive species, the EIR must still address their presence in the area and the potential for interference with use of their nursery sites.

Additionally, vernal pools are protected as wetlands under the Clean Water Act. Even so, the Project contains no enforceable mitigation measures for the loss of these unique systems, which are rapidly declining in California due to development in the Ione Valley. Instead of mitigating the loss of these rich habitats, the EIR states only that a jurisdictional delineation will occur in the future. While a delineation may be used as a precursor to the development of mitigation measures, it is not in itself a mitigation measure. Further, as a study that will be used to develop mitigation measures, the delineation must be incorporated in the analysis prior to project approval. Waiting until after the Project has been approved to address the delineation amounts to deferred analysis and mitigation, both of which violate CEQA.

The DEIR’s many deficiencies are not corrected by the FEIR, which fails to adequately respond to comments submitted by the California Department of Fish and Game (CDFG) concerning the Project’s potential impacts on wildlife and natural watercourses.

In Comment 13-2, CDFG asks for information about the Project’s potential impacts to the 459 linear feet and 1.5 acres of Dry Creek that pass through the Project site. Dry Creek drains into the lower Mokelumne River, and eventually into the San Joaquin River (DEIR, p. 4.8-3), both of which are listed as impaired water bodies under the Clean Water Act, in part due to pollution from resource extraction activities. (http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/epa/state_06_303d_reqtmcls.pdf.) In response to CDFG’s query, the FEIR claims that impacts to Dry Creek will not occur because mining will not occur in the creek. This response ignores the potential for accidental releases of sediment by the Project. Moreover, according to the FEIR, Dry Creek is only relevant to the Project with regard to the bridge that must be constructed across it to provide vehicular quarry access. (FEIR p. 3-111.)

While the Project does not contemplate *mining* in Dry Creek, the construction of the bridge across the creek has the potential to cause environmental impacts, including fill that results in increased flood risk and sedimentation. Even so, the EIR provides no information about the proposed bridge, its size, materials, or construction, aside from noting that it will use only a single pier. (DEIR p. 4.8-27.) The EIR fails to describe whether or not bridge construction will require channelization, culverts, or other potentially impactful features. Even less information is provided about the concrete ford crossing that would be used prior to bridge completion. As a result, the EIR is devoid of analysis of the bridge's potential impacts on Dry Creek, flooding, and biological resources, and it remains unclear whether or not construction of the bridge would actually alter the drainage pattern of the area in a way that would result in erosion, siltation, or flooding – the EIR's threshold of significance for hydrological impacts. Since the site drains into the Delta, significant impacts on water quality leaving the Project site could also have significant impacts on drinking and agriculture water supplies. Lacking in analysis, the EIR further fails to provide any mitigation for these potentially significant environmental impacts. The EIR's failure to disclose sufficient information about the bridge precludes informed decisionmaking and violates CEQA.

The EIR's failure to disclose sufficient detail about the bridge and its possible impacts is relevant to the FEIR's response to CDFG comment 13-3. Comment 13-3 notes the EIR's failure to describe and analyze the Project's potential impacts to wetlands, and asks for the imposition of enforceable mitigation measures beyond merely requiring that the Project seek required permits from government agencies. Response to Comment 13-3 asserts that the EIR properly identified the Project's impacts to Dry Creek and proposed enforceable mitigation beyond requiring permits. This is inaccurate. The page cited by the comment assumes that all on-site wetlands will be impacted – but does not state how – and proposes to mitigate these undisclosed impacts by conducting a jurisdictional delineation for wetlands, thereafter avoiding wetlands that can feasibly be avoided. (DEIR p. 4.3-38.) As noted by CDFG, CEQA requires the disclosure of a Project's impacts before they can be mitigated. This requires a description of the existing conditions of the wetlands, the species present, and the roles of these wetlands for those species. If any impacts to the creek or other onsite wetlands may or will occur, they must be disclosed. Additionally, the reliance upon a jurisdictional delineation is insufficient to disclose and analyze the Project's potential impacts on existing mining ponds, which the EIR admits would not be considered jurisdictional wetlands, even though they provide wildlife habitat. (DEIR p. 4.3-38.) Finally, mitigation that proposes only to avoid those wetlands that can be *feasibly* avoided is effectively unenforceable if the applicant will be making feasibility determinations.

In comment 13-6, CDFG recommended the inclusion of a suite of conservation and mitigation measures for the 204 acres of oak woodlands that would be removed for the Project. In response, the FEIR dismisses these mitigation measures and strategies, stating that because removal would be phased over 50 years and because the Project calls for revegetation, that Project impacts would not be significant. The EIR fails to provide substantial evidence that reclamation will actually result in 204 acres of oak forest. Despite good intentions and detailed reclamation plans, the majority of mines are never actually reclaimed to the diversity and quality of habitat that were removed for the mine. Further, the revegetation plan seems to require gathering of fresh acorns from surrounding areas, a process that may be complicated by dangers to valley oak woodlands, including climate change and rapid development. If surrounding oak woodlands are not present in 50 years, this mitigation will fail, and the Project's impacts will be significant. This must be disclosed in the EIR. Further, even if an oak woodland is successfully reestablished in the future, which seems unlikely, the Project would have significant temporary impacts, which must be disclosed in the EIR. Thus, the response to comment is insufficient, and the Project must incorporate the suggestions presented by the responsible agency.

As noted by CDFG in comment 13-7, the EIR does not provide substantial evidence that one-way drift fencing will prevent take of the California tiger salamander, another state species of special concern. The California tiger salamander is also a listed species under the Federal Endangered Species Act. Even if the fencing prevents direct project-caused mortality of tiger salamanders, "take" under the California and federal Endangered Species Act is broadly defined to include loss of habitat and other types of harm. The loss of habitat for the tiger salamander will remain "a substantial adverse effect...through habitat modifications" on a species of special concern, a significant impact on biological resources that must be mitigated. (DEIR p. 4.3-33.)

In comment 13-9, CDFG notes that since the DEIR admits that impacts to CESA-listed species will occur, that CEQA analysis, proposed mitigation measures, and mitigation monitoring plans should be fully developed at this time. The FEIR is nonresponsive to this comment, declaring that CDFG's comments, merely "pertain[] to DFG permitting processes and does not address the adequacy of the Draft EIR." (FEIR, p. 3-112.) Rather, Comment 13-9 directly addresses the adequacy of the draft EIR, and explicitly calls out the inadequacy of the analysis of impacts to CESA-listed species, and the corresponding inadequacy of mitigation and mitigation monitoring programs proposed for these species.

Comments 13-11 and 13-12 pertain to the EIR's poor analysis of sensitive bat species. In comment 13-11, CDFG asks how the EIR has determined that there are no

sensitive bat species in the area, since reliable acoustical surveys were not used. The nonresponsive RTC 13-11 states only that the County's consultant did not observe special-status bat species on site. (FEIR, p. 3-113.) Local residents report that bats are commonly seen every night in the area- including in local barns- and bat manure is plainly visible on local properties. Comment 13-13, explicitly requesting the use of acoustical surveys for bats, was inappropriately dismissed. The FEIR stated, "The biologist will utilize survey techniques appropriate for the particular environmental setting." (RTC 13-13.) An acoustical survey should be done, and its results disclosed in a supplement to the EIR, prior to the hearing on Project approval. Furthermore, acoustical surveys should be explicitly incorporated into Project mitigation measures pertaining to bats.

Finally, comments 13-14 and 13-15 noted the EIR's failure to discuss the California red-legged frog, a state and federal-listed species with designated critical habitat on the Project site. While the County claims to have performed a supplemental study on the California red-legged frog in response to these CDFG comments, no field studies occurred. Not surprisingly, the FEIR states that no frogs were reported during its "Informal wildlife surveys." From the one-page memo prepared by the County's consultant, it appears that the consultant is merely acknowledging that California red-legged frogs were not encountered during protocol surveys for other listed species. Accordingly, a full protocol survey for the California red-legged frog during the wet season must be undertaken, according to CDFG and USFWS protocol, and the results disclosed in a supplemental EIR prior to Project approval.

I. Aesthetic Impacts Were Not Adequately Assessed and Mitigated.

1. The DEIR Fails to Evaluate the Impacts to Views From Surrounding Locations During Operation of the Project.

The DEIR states that since the project site lies within the foothills of the Sierra Nevada Mountain Range, the site could be considered a scenic vista. (DEIR, p. 4.1-14.) The DEIR also recognizes that "[c]urrent residents located to the north of the Newman Ridge Quarry site and to the east of the Edwin Center site would be considered sensitive to the visual and aesthetic alteration of the project area." (DEIR, p. 4.1-2.) For this reason, photo simulations were prepared to capture views from surrounding locations, including from nearby residences, and to provide illustrations of the potential views from those locations after implementation of the proposed project. (*Id.*) However, photo simulations of views of the Quarry from neighboring locations are of the site only after final reclamation, which would be in 50 years. (See DEIR Figures 4.1-16 – 4.1-19.) There are no photo simulations of views of the Quarry from neighboring locations during

the operational period of the Project. This fails to adequately assess impacts on views.

2. The DEIR Erroneously Concludes that the Project Would Have A “Less-Than-Significant” Impact on Scenic Vistas.

The DEIR recognizes that site could be considered a scenic vista because of its location within the foothills of the Sierra Nevada Mountain Range. (DEIR, p. 4.1-15.) The DEIR also admits, “Because the project would modify the site, the potential to impact scenic views of the Sierra Nevada foothills exists.” (*Ibid.*) However, the DEIR concludes that “[t]he overall character of the region would not be permanently affected by construction or operation of the proposed project or Edwin Center North Alternative and a less-than-significant impact would result.” (*Ibid.*) This statement is merely conclusory and is not supported by any evidence. The impacts would occur during the 50 year duration of the Project, even if not permanently. Even temporary significant impacts must be disclosed and mitigated.

3. The DEIR Fails to Provide Adequate Analysis of the Project’s Light Impacts.

An impact to the aesthetic values of the project area would be considered significant if implementation of the proposed project would potentially create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. (DEIR, p. 4.1-13.) The DEIR admits that residences located near the project site could potentially be affected by the new sources of light and glare (DEIR, p. 4.1-34), but the DEIR fails to provide any evaluation or analysis of current and future light and glare impacts. Furthermore, light from the Edwin Center could adversely affect traffic on Highway 104 and Ione-Michigan Bar road. Many accidents already occur there due to the railroad crossings. Light and glare from the proposed Project could cause or contribute to additional accidents.

The DEIR states that a lighting plan will be prepared after project approval. “Prior to the initiation of operations at the Newman Ridge Quarry, the permittee/operator shall prepare and submit a detailed lighting plan for review and approval by the County Building and Planning Departments.” (DEIR, p. 4.1-35.) However, the DEIR does not provide any explanation for why a lighting plan could not be prepared before approval. To adequately evaluate lighting impacts, a lighting plan illustrating the location, height, and strength of lighting sources must be prepared during the environmental review process.

A lumen study/dark sky analysis should also be performed to quantify the

proposed project's light impacts and determine any potential glare impacts to nearby residential areas and areas within the City of Ione. Additionally, as requested in the comment letter submitted by Mr. Scully, the EIR should provide nighttime view simulations from various points surrounding the Project site depicting the nighttime light impacts of the project.

4. The DEIR Defers Mitigation of Light Impacts in Violation of CEQA.

The analysis of mitigation measures with respect to light impacts is also inadequate since it improperly defers formulation of mitigation measures in violation of CEQA. (CEQA Guidelines §15126.4(a)(1)(B); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 668.) After first concluding that impacts from light and glare would be "potentially significant," the DEIR provides the following mitigation measure, which would allegedly reduce the impacts to "less-than-significant: "The lighting plan shall show that all on-site lighting is shielded so that light is directed within the project site and does not illuminate adjacent properties. Locations and design of the shielded light fixtures shall be included in the plan." (DEIR, p. 4.1-35.)

CEQA Guidelines §15126.4(a)(1)(B) specifies, "Formulation of mitigation measures should not be deferred until some future time." Because this provision allows for *future* formulation of light management measures, the EIR impermissibly defers the development of important mitigation measures until after project approval.

5. Open-Cut Mining Within Sight Distance of Highway 104 is Inconsistent with the Amador County General Plan.

According to the DEIR, the Amador County General Plan provides, "The system of parkways and scenic roads and highways shown on the General Plan maps will receive special protection against future incompatible development and no ... open-cut mining ... within sight distance of such roads will receive county approval." (DEIR, p. 4.1-13.) However, the DEIR recognizes that the "project would be visible to ... motorists traveling along SR [State Route] 104." (DEIR, p. 4.1-14; *see* DEIR, p. 4.1-5, Figure 4.1-3 [showing that the Quarry is visible from Highway 104]). This conflicts with the Amador County General Plan.

J. Water Supply is Inadequately Analyzed.

1. The Project Site is Located in the Ione Basin, But the DEIR Uses Groundwater Data From the Consumnes Subbasin.

The Project Site is located in the Ione Basin. (DEIR, p. 4.8-3.) Groundwater yield estimates for the Ione Basin portion are not separated from the larger Consumnes Subbasin (*Ibid*), and therefore the Environmental Health Department expressed concern that the published specific yield estimates for the subbasin may not be representative of groundwater supplies to the Project site:

Generalized groundwater trends for the Consumnes Subbasin as presented DWR Bulletin 118 may not representative of groundwater trends or expected aquifer behavior in the Ione Basin, which is a small basin semi-isolated from the Consumnes Subbasin. The possibility that trends in the Consumnes Subbasin may vary from the Ione Basin is suggested by the absence of observed groundwater recovery along the eastern Consumnes Subbasin margin between 1993 and 2000 in contrast to the significant groundwater recovery in the main Consumnes Subbasin.

(FEIR, Appendix B, p. 13 of 68.) Because the FEIR does not show responses to the Environmental Health Department's comments, we incorporate by reference the entire letter of the Environmental Health Department of August 4, 2011 and request a response to each of the issues it raises. The County must respond to these comments.

2. The DEIR Fails to Provide Evidence for Its Assumption that Water Extraction Has Decreased.

The DEIR also determines, "A tabulation of inflow and outflow estimates result in a net loss of 4,294 AF. However, it should be considered that agricultural extraction has likely decreased since 1995, resulting in less net loss within the basin than implied by the above estimates." The DEIR recognizes that groundwater levels have dropped significantly, yet assumes without supporting evidence that water extraction has decreased.

3. The DEIR Fails to Analyze Additional Water Production Wells on the Applicant's Property.

"Because the immediate surrounding area of the Edwin Center site is owned by

the project applicant, water production wells could potentially be placed on the land and used for the proposed project. As such, an estimate of approximately an additional 100 acres was used in the calculations for the WSA performed for the proposed project.” (DEIR, p. 4.11-10.)

The Environmental Health Department expressed concern, “The location of the additional 100 acres proposed for groundwater development is not identified nor is the presence of the silty sand aquifer demonstrated.” Therefore, the DEIR’s analysis of water production wells is incomplete.

4. The DEIR Fails to Provide Evidence that the Project’s Wells Will Not Adversely Affect Surrounding Wells.

The DEIR’s Water Supply Assessment states that neighboring wells will not be impacted. (DEIR Appendix L, p. 15.) The DEIR claims, “The aquifer from which groundwater would be extracted for project use (i.e., Ione Formation) is not tapped by neighboring water users, who instead rely on aquifers in the Mehrten Formation.” (DEIR, p. 4.18-17.)

However, the DEIR fails to provide evidence that the Project’s use of groundwater would not impact neighboring water users. The Environmental Health Department explains:

The method of projecting the influence of groundwater extraction and determining that the pumping impacts would not extend beyond the development boundaries is not presented. The combination of long term extraction from a limited confined aquifer with little or no recharge could be expected, at a minimum, to reduce the hydrostatic pressure of the confining aquifer and, possibly over time, dewater the aquifer.

(DEIR Appendix B, August 4, 2011 Memo.)

Additionally, approval of the project has the effect of limiting the groundwater resources available for other users. (*Id.*) Future developments will be limited by reduced groundwater availability. (*Ibid.*) These impacts must be disclosed and mitigated before the EIR may be considered legal sufficient.

Conclusion.

We urge you to deny approval of the proposed Project. There are other locations

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for quarrying operations that could feasibly attain most, if not all, of the Project objectives and do so without causing the substantial adverse impacts that would be created by the Project. If the Project is to be further considered for approval, it must be on the basis of a legally adequate and complete EIR that provides the public and public agencies full and accurate information. That has not occurred to this point. Therefore, the EIR must be supplemented, corrected, and recirculated to provide a sufficiently informative basis for further review.

This huge proposed quarry project has a life span of over 50 years. It will change the way of life in the Ione Valley in profoundly negative ways. It should be denied outright.

Ione Valley LAWDA reserves all of its rights. We strongly urge you to ensure that the County complies with all legal requirements. If this Project is approved as proposed on the basis of the documents that have been prepared to this point, the County would be breaking the law.

Thank you for your consideration.

Sincerely,



Douglas P. Carstens

Enclosures:

1. Agreement Between Edwin Lands, Newman Minerals, and 12 Individuals
2. Waste Discharge Requirements for Ford Construction Company, Inc.
3. Map of Project vicinity annotated with nearby residential development

ENCLOSURE 1

AGREEMENT

This agreement is entered into by and between EDWIN LANDS, LLC ("Edwin Lands") and NEWMAN MINERALS, LLC ("Newman Minerals") and DAN PORT, SUSAN PORT, ELIA BASSIN, CARINA BASSIN, JOHN MUSCHETTO, KATHY MUSCHETTO, GIANNI MUSCHETTO, DAWN MUSCHETTO, JIM DUBOIS, LINDA HEATH, LYNN WINTER and JOAN WINTER (collectively "Neighbors") effective as of the date of its full execution.

RECITALS

- A. Newman Minerals has applied to Amador County for a new hard rock quarry ("Newman Quarry") and construction materials processing center ("Edwin Center") on the real property commonly known as Rancho Arroyo Seco (the "Newman Ridge Project" or "Project"). In April 2012, Amador County, through its consultant Raney Planning and Management, completed a draft environmental impact report analyzing the Project, which has the State Clearing House number of 2011072039 (the "EIR").
- B. The Neighbors are individuals who are residents of the Ione Valley and are among the closest to the Project. At the Neighbors' request, and with Newman Minerals' endorsement, the EIR analyzed an alternative location for Edwin Center, which is described in the EIR as "Edwin Center North."
- C. The parties now wish to enter into an agreement whereby Newman Minerals will request that the Amador County Planning Commission and Board of Supervisors select and approve the Project using the Edwin Center North alternative, and take other related actions as described in this agreement, in exchange for the Neighbors' agreement not to oppose the Project as so modified.

NOW, THEREFORE, Newman Minerals and the Neighbors agree as follows:

TERMS

- 1. This agreement shall not become effective or binding on any party unless and until it has been signed by *all* parties hereto. Thereafter, the obligations contained in paragraphs 4 and 5 are contingent upon final Project approval.
- 2. The Neighbors agree that they will not oppose, in writing, by oral comment or otherwise, the certification of the EIR by Amador County and the approval of a Project consisting of the Newman Ridge Quarry and the Edwin Center North alternative, as applied for and analyzed respectively, and that they will not seek or encourage any further modification, restriction, or condition upon the Project as so modified other than those

identified in this agreement. For the purposes of this agreement, public comment in support of a mitigation measure contained in the EIR shall not be considered a comment in opposition or seeking modification of the Project. The Neighbors are under no obligation to express public support for the project, but may do so as a gesture of good faith. Any party may disclose this agreement.

3. Newman Minerals agrees to publicly support and affirmatively request in writing that the Amador County Planning Commission and Board of Supervisors approve a Project consisting of the Newman Ridge Quarry and Edwin Center North alternative, as applied for and analyzed respectively. If, notwithstanding Newman Minerals' and the Neighbors' requests, the County insists upon approving the original Edwin Center location, Newman Minerals will not implement that entitlement but will instead reapply or otherwise seek a new approval for Edwin Center North. Neighbors shall retain their right to comment on any revised application submitted by Newman Minerals to the extent that it does not include the Edwin Center North alternative, is materially different than that alternative as described in the EIR, or does not meet the criteria specified elsewhere in this agreement.
4. Newman Minerals also agrees to undertake commercially reasonable efforts to obtain the necessary approvals and to construct a noise-attenuation berm of approximately 20 feet in height along the southerly edge of the existing haul road, which passes just south of the SGI granule plant. Such berm would not be constructed in areas that would require the filling of jurisdictional wetlands. It is expected that such berm would be constructed of granule waste products from SGI's operation and would be covered with topsoil adequate for growing local grasses. The parties recognize that materials for such construction would come from SGI and are not currently owned by Newman Minerals, LLC. To whatever extent the construction of the noise-attenuation berm encroaches onto property owned or controlled by Newman Minerals or Edwin Lands, those entities will allow it.
5. Newman Minerals also agrees that, as to those portions of Edwin Center not also included in Edwin Center North, that it will not construct or seek to construct on that property any permanent, vertical structure larger than 750 square feet (e.g., a guard shack) except for residential structures, and structures ancillary thereto, on a density not greater than one residence per ten acres of land. It will also not seek to change the general plan designation of the property to Industrial. Furthermore, no development will occur within 120 feet of the centerline of Dutschke Road with the exception of: (1) a maximum of four encroachments (two on each side of the Union Pacific right of way); (2) fences, gates, utility installation and other similar improvements; and (3) non-habitable

structures less than 100 square feet (e.g., a well pump house). This 100-foot strip shall not be landscaped or irrigated and no oak trees may be removed with the exception of those that pose a hazard to people or improvements or those necessary to build an allowable encroachment but only if avoidance is infeasible. Edwin Lands, as property owner, and Newman Minerals, as project applicant, consent to these restrictions and to the recordation of an instrument effective to make them run with the land, an obligation that may be enforced by the remedy of specific performance. They also agree to name the Sacramento Valley Conservancy as an intended third-party beneficiary of the restrictions described in this paragraph. Newman Minerals, LLC, Edwin Lands, LLC, and/or each entity's successors and assigns, agree to draft and record any and all necessary easements, covenants, and/or restrictions to run with the land on the properties described in this paragraph in order to prevent any future subdivision of said properties to less than ten-acres per parcel. Newman Minerals, LLC, Edwin Lands, LLC, and/or each entity's successors and assigns agree to take these actions within six months of final Project approval.

6. On the condition that Newman Minerals agrees to proceed only with the Edwin Center North alternative, as described above, and fulfills all of the terms and conditions of this agreement, the Neighbors agree not to make any further public comments, written or oral, regarding the EIR, except as provided in paragraph 2, nor will they challenge the adequacy of the EIR, through legal proceedings or otherwise. Furthermore, Neighbors will not encourage, aid, support, or solicit, in any manner, any third-party individual or group in the opposition to the certification of the EIR, including comments thereon, or the approval of the Project. Neighbors represent that they have not encouraged, aided, supported, or solicited any third-party individual or group in the opposition to the certification of the EIR or the approval of the Project at this time, other than those actions previously taken and comments previously submitted by Neighbors of which Newman is already aware. If approached by a third party to discuss any aspect of the Project, that Neighbor will express his or her non-opposition to the project conditioned upon the selection of the Edwin Center North Alternative.
7. The Parties hereto each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. Each Party has conducted its own factual and legal investigation and is not relying on the other Party.
8. This Agreement shall be interpreted under the laws of the State of California. The Parties hereto agree that money damages would be an inadequate remedy for any breach of this Agreement, and agree that this

Agreement may be enforced by a preliminary or permanent, mandatory, or prohibitory injunction, by a decree of specific performance, or other such order or decree of a court of competent jurisdiction.

- 9. None of the terms hereof shall be amended, waived, or otherwise modified except pursuant to a written instrument duly executed by the Parties. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.**
- 10. In the event of any finding of invalidity, the invalid portion of this Agreement shall be renegotiated so as to give effect to the original intent of the parties to the maximum extent permissible under law. Other portions of this Agreement shall remain unaffected, except to the extent that modification is necessary for consistency with renegotiated terms.**
- 11. Where a specific time or date is specified for performance, time is of the essence in this Agreement.**
- 12. This Agreement contains the entire Agreement between the Parties and supersedes any prior agreements, whether written or oral.**
- 13. Each person signing this Agreement warrants that he or she has authority to execute this Agreement and to hereby bind the Party or Parties on whose behalf he or she is signing to the terms of this Agreement.**
- 14. This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on all Parties.**

*** * ***

[Signatures on Following Page]

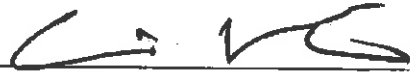
IN WITNESS WHEREOF, the parties have entered into this agreement as of the date of Newman Minerals' execution below.



DAN PORT



SUSAN PORT



ELIA BASSIN



CARINA BASSIN



JOHN MUSCHETTO



KATHY MUSCHETTO



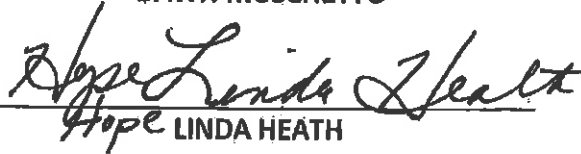
GIANNI MUSCHETTO



DAWN MUSCHETTO



JIM DUBOIS



HOPE LINDA HEATH



LYNN WINTER



JOAN WINTER

NEWMAN MINERALS, LLC and EDWIN LANDS, LLC

By: 

DATE: 6/12/12

WILLIAM B. BUNCE
Managing Member

ENCLOSURE 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL REGIONAL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2002-0226

WASTE DISCHARGE REQUIREMENTS
FOR
FORD CONSTRUCTION COMPANY, INC.
FOOTHILL MATERIALS, INC.
HOGAN QUARRY
CALAVERAS COUNTY

The California Regional Water Quality Control Regional Board, Central Valley Region (hereafter Regional Board), finds that:

1. Ford Construction, Inc. and Foothill Materials, Inc. (hereafter Discharger) submitted a Report of Waste Discharge (RWD) dated 1 August 2002 to apply for Waste Discharge Requirements (WDRs) for land disposal of industrial wastewater generated at its Hogan Quarry aggregate processing facility. Supplemental information was submitted on 25 September 2002.
2. The Discharger's Hogan Quarry is at 3650 Hogan Dam Road, near the town of Valley Springs in Section 1, T3NS, R10E, MDB&M as shown on Attachment A, which is attached hereto and made part of the Order by reference. The facility is on Assessor's Parcel Number 50-003-1.
3. The land and facility is owned by Ford Construction Company, Inc., and the aggregate processing facility is operated by Foothills Materials Inc.
4. The Hogan Quarry has been in operation since 1965; however, the facility has not previously been regulated by WDRs.

Existing Facility and Discharge

5. The Hogan Quarry is an existing aggregate mining and processing facility on approximately 75 acres of land. The processing facility discharges a monthly average of 38,000 gallons of wastewater from the aggregate washing operations to a wash water settling/recycling pond.
6. Hard rock is mined from a quarry pit southwest of the aggregate process and washing areas. The Discharger anticipates mining this pit for the next 30 to 50 years. The quarry pit, aggregate processing areas, and settling/recycling pond are shown on Attachment B, which is attached hereto and made part of the Order by reference.
7. Hogan Quarry produces rip rap, gabion rock, railroad ballast, drain rock, concrete aggregate, road base, and crusher fines. Hard rock is first excavated with heavy equipment from the quarry pit. The material is then placed into a Jaw Crusher where the rock is broken down. The rock is then sorted over a screen where the 6-inch and larger rock is stockpiled for rip rap. The 6-inch and smaller rock is sent to secondary cone crusher that breaks the rock down further. After the secondary cone crusher, the rock is sorted over

another screen and sent to stockpile. Concrete aggregate is selectively sorted off the second screen, and is sent to another screen deck where it is rinsed with recirculated (recycled) water.

8. Water is pumped from the Calaveras River for use in dust control and makeup water for washing the rock. Washwater is recirculated by pumping from the settling/recycled pond to the processing plant where it is sprayed over the concrete aggregate then collected by a piping system that returns the water back to the settling/recycling pond.
9. A monthly average of 38,000 gallons of recirculated wastewater is used at the Hogan Quarry. Peak flows are approximately 1,200 gallons per day. Peak flows are based on 200 gallons per hour, with the average operation time of six hours per day. There is no variation in discharge rates from the dry season to the wet season.
10. The water balance provided in the RWD indicates that the settling/recycling pond does not have sufficient storage and disposal capacity to meet average annual precipitation conditions, and still maintain the two foot of freeboard required by this Order. Although requested, the Discharger did not prepare an adequate water balance for 100 year annual precipitation conditions. The water balance was not prepared by a California Registered Engineer. This Order requires the Discharger to submit a revised water balance, prepared by a California Register Engineer, that evaluates the storage and disposal capacity of the wash water settling/recycling pond for a 100 year annual precipitation event.
11. Sediment is removed from the settling/recycling pond approximately every three weeks, and is blended with the process aggregate and sold as a viable product.
12. No flocculants, additives, or other chemicals are added to the process or recirculated water at the Hogan Quarry. Based on analytical data provided in the RWD, the chemical character of the wastewater is summarized below.

<u>Constituent/Parameter</u>	<u>Units</u>	<u>Analytical Result</u>
Total Dissolved Solids	mg/L	353
Specific Conductance	umhos/cm	318-470
pH	--	7.8-8.4
Total Organic Carbon	mg/l	3.2
Total Alkalinity	mg/L	86
Total Hardness	mg/L	187
Sodium	mg/L	15.6
Potassium	mg/L	3.2
Chloride	mg/L	5.0
Sulfate	mg/L	113
Total Nitrogen	mg/l	6.6

13. Fuels, and hydraulic and engine oils, are used and stored at the facility. Diesel fuel is stored near the process plant in a 10,000-gallon aboveground storage tank that has secondary containment. Hydraulic and engine oils are stored in 55-gallon drums within the equipment yard.
14. Surface water drainage within the facility boundary flows away from the mining activity areas. Storm water runoff around the mining areas is channelized into a stormwater pond in the northeastern portion of the site. The stormwater pond is divided into two cells in an effort to settle out solids and aid in cleaning of the pond. Storm water runoff does not flow into the washwater settling/recycling pond.

Site Specific Conditions

15. The topography of the area, exclusive of the excavation areas, is rolling foothills with elevation ranging from approximately 570 to 820 feet above mean sea level.
16. The geology within the site consists of Massive Jura-Trias Metavolcanic and Meta-Igneous Rock.
17. Supplemental water supply for aggregate washing is supplied via pumping of water from the Calaveras River.
18. One groundwater supply well is located within the facility boundary. The well, which was drilled in June of 1999, is in the northwestern portion of the site. At the time the well was drilled, groundwater was encountered at approximately 260 feet below ground surface and the well produced 12 gallons per minute (gpm). After six months of the use, the production rate of the well dropped to approximately 2 gpm. The Discharger stopped using the well in June 2001.
19. A portion of the facility is within the 100 year flood zone of the Calaveras River.
20. The average annual precipitation is approximately 33.0 inches, while the average annual evaporation is 59.0 inches
21. Surrounding land uses are primarily grazing lands and government property, which is part of the New Hogan Dam right-of-way.

Basin Plan, Beneficial Uses, and Regulatory Considerations

22. The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board (State Board). Pursuant to Section 13263(a) of the California Water Code, waste discharge requirements must implement the Basin Plan.

23. Surface water drainage is to the Calaveras River. The beneficial uses of Calaveras River are municipal and domestic supply; agricultural supply for irrigation and stock watering; industrial process and service supply; contact and non-contact recreation; warm and cold freshwater habitat; warm and cold water migration; warm and cold water spawning; and wildlife habitat.
24. The beneficial uses of underlying groundwater are municipal, industrial, and agricultural supply.
25. State Board Resolution No. 68-16 prohibits degradation of groundwater quality unless it has been shown that:
 - a. The degradation is consistent with the maximum benefit to the people of the State
 - b. The degradation will not unreasonably affect present and anticipated future beneficial uses;
 - c. The degradation does not cause exceedance of one or more water quality objectives; and
 - d. The discharger employs best practicable treatment and control to minimize degradation.

The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16, and finds that the Discharger has not provided the required demonstration to be allowed to cause groundwater degradation, and therefore none is authorized.

26. Because no chemicals are used in processing the aggregate, the land disposal of wastewater as proposed should not degrade groundwater quality. Therefore, it is appropriate not to require groundwater monitoring at this time. If staff determines that the discharge has caused, or has the potential to cause, groundwater degradation, then the Discharger will be required to monitor groundwater quality, cease the discharge, change the method of disposal, and/or take other actions as necessary to comply with Resolution No. 68-16.
27. Section 13267(b) of California Water Code states that: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of the waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports the requiring that person to provide the reports."

The monitoring and reporting program required by this Order is necessary to assure compliance with these waste discharge requirements. The Discharger operates the facility that discharges the waste subject to this Order.

28. The action to adopt waste discharge requirements for the facility is exempt from the provisions of the California Environmental Quality Act (CEQA), in accordance with Title 14, California Code of Regulations (CCR), Section 15301.
29. The Discharger has filed a Notice of Intent to comply with the State Board Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS 000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities.
30. This discharge is exempt from the requirements of *Consolidated Regulations for Treatment, Storage, Processing, or Disposal of Solid Waste*, as set forth in Title 27, CCR, Division 2, Subdivision 1, Section 20005, et seq., (hereafter Title 27). The exemption pursuant to Section 20090(b), is based on the following:
 - a. The Regional Board is issuing waste discharge requirements,
 - b. The discharge complies with the Basin Plan, and
 - c. The wastewater does not need to be managed according to Title 22 CCR, Division 4.5, and Chapter 11, as a hazardous waste.

Public Notice

31. All the above and the supplemental information and details in the attached Information Sheet, which is incorporated by reference herein, have been considered in establishing the following conditions of discharge.
32. The Discharger and interested agencies and persons have been notified of the Regional Board's intent to prescribe waste discharge requirements for this discharge, and they have been provided an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
33. All comments pertaining to the discharge have been heard and considered in a public meeting.

IT IS HEREBY ORDERED that, pursuant to Sections 13263 and 13267 of the California Water Code, Ford Construction, Inc. and Foothills Materials, Inc., its agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

[Note: Other prohibitions, conditions, definitions, and some methods of determining compliance are contained in the attached "Standard Provisions and Reporting Requirements for Waste Discharge Requirements" dated 1 March 1991.]

A. Discharge Prohibitions:

1. Discharge of wastes to surface waters or surface water drainage courses is prohibited.
2. Discharge of waste classified as hazardous, as defined in Sections 2521(a) of Title 23, CCR, Section 2510, et seq., (hereafter Chapter 15), or 'designated', as defined in Section 13173 of the California Water Code, is prohibited.
3. The discharge or deposition of waste from sources other than the aggregate processing and recycling operations described herein is prohibited.
4. The addition of chemicals to the aggregate processing operation is prohibited.

B. Discharge Specifications:

1. The average monthly discharge flow to the settling/recycling pond shall not exceed 38,000 gallons.
2. The discharge shall remain within the designated settling/recycling pond at all times. Wastewater shall not be discharged to areas not specifically defined as such in this Order.
3. The settling/recycling pond shall not have a pH of less than 6.5 or greater than 8.5.
4. No waste constituent shall be released or discharged, or placed where it will be released or discharged, in a concentration or a mass that causes violation of the Groundwater Limitations.
5. The Discharger shall operate all systems and equipment to maximize treatment of the wastewater and optimize the quality of the discharge.
6. All ponds shall be managed to prevent breeding of mosquitoes. In particular,
 - a. An erosion control program should assure that small coves and irregularities are not created around the perimeter of the water surface.
 - b. Weeds shall be minimized through control of water depth, harvesting, or herbicides.
 - c. Dead algae, vegetation, and debris shall not accumulate on the water surface.
7. The Discharger's wastewater system shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency.
8. All stockpiled products and wastes shall be managed to prevent erosion of sediment to surface water drainage courses.
9. The freeboard in the settling/recycling pond shall never be less than two feet as measured vertically from the water surface to the lowest point of overflow.

10. The settling/recycling pond shall have sufficient capacity to accommodate allowable wastewater flow and design seasonal precipitation. Design seasonal precipitation shall be based on total annual precipitation using a return period of 100 years, distributed monthly in accordance with the historical rainfall patterns.
11. On or about **1 November** of each year, available pond storage capacity shall at least equal the volume necessary to comply with Discharge Specifications B.9 and B.10.
12. Newly constructed or rehabilitated levees or berms designed to hold back water shall be designed and constructed under the direct supervision of a California Registered Civil Engineer.
13. Neither the treatment nor the discharge shall cause a nuisance or condition of pollution as defined by the California Water Code, Section 13050.
14. The discharge shall not cause the degradation of any water supply.
15. The Discharger shall comply with all applicable sections of the Aboveground Petroleum Storage Tank Regulations (Section 25270, Health and Safety Code).

C. Solids Disposal Requirements:

1. Collected screenings, sludge, and other solids removed from liquid wastes shall be disposed of in a manner approved by the Executive Officer, and consistent with *Consolidated Regulations for Treatment, Storage, Processing, or Disposal of Solid Waste*, as set forth in Title 27, CCR, Division 2, Subdivision 1, Section 20005, et seq.
2. Any proposed change in sludge use or disposal practice from a previously approved practice shall be reported to the Executive Officer in the next monthly monitoring report.

D. Groundwater Limitations:

The discharge, in combination with other site-derived sources, shall not cause underlying groundwater to contain waste constituents in concentration statistically greater than background water quality.

E. Provisions:

1. All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. To demonstrate compliance with sections 415 and 3065 of Title 16, CCR, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical

- reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
2. The following reports shall be submitted pursuant to Section 13267 of the California Water Code, and shall be prepared as described in Provision E.1:
 - a. By **1 February 2003**, the Discharger shall submit certification that a flow meter has been installed to measure flows from the processing plant to the settling/recycling pond. The report shall state the type and location of the flow meter. If a Parshall Flume is installed to meter flows, the report shall describe the operation and maintenance procedures to ensure that accurate flow measurements are being taken.
 - b. By **1 March 2003**, the Discharger shall submit a revised water balance, prepared and signed by a California Registered Engineer. The water balance shall evaluate the ponds' ability to provide sufficient capacity on a monthly basis, and shall consider evaporation, direct precipitation, storm water runoff contribution, percolation, and estimated rate of sedimentation. Rainfall amounts shall be based on the total annual precipitation based on a return period of 100 years, distributed monthly in accordance with historical rainfall patterns. If it is determined that the settling/recycling pond does not have sufficient storage and disposal capacity to meet the two foot freeboard requirements based on the 100 year precipitation conditions, then by **1 May 2003**, the Discharger shall submit a report describing what upgrades and/or improvements will be made to the wastewater system to comply with Discharge Specifications B.9 and B.10. The report shall also include anticipated timelines for completing the upgrades/improvements.
 - c. By **1 May 2003**, the Discharger shall submit a workplan describing how it will modify its settling/recycling pond such that it is designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency. Alternatively, the Discharger may submit documentation from FEMA or other recognized sources showing that the wastewater pond is outside the 100-year flood plain.
 - d. By **1 September 2003**, the Discharger shall submit a report describing how it has modified its settling/recycling pond such that it is designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency. This report is not necessary if appropriate floodplain documentation was submitted per Provision E.2.c.
 3. The Discharger shall comply with Monitoring and Reporting Program No. R5-2002-0226, which is a part of this Order, and any revisions thereto as ordered by the Executive Officer.
 4. The Discharger shall comply with the "Standard Provisions and Reporting Requirements for Waste Discharge Requirements", dated 1 March 1991, which are attached hereto and by reference a part of this Order. This attachment and its individual paragraphs are commonly referenced as "Standard Provision(s)."

5. The Discharger shall submit to the Regional Board on or before each compliance report due date the specified document, or if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is reported, then the Discharger shall state the reasons for noncompliance and shall provide a schedule to come into compliance.
6. The Discharger shall report promptly to the Regional Board any material change or proposed change in the character, location, or volume of the discharge.
7. In the event of any change in control or ownership of land or waste discharge facilities presently owned or controlled by the Discharger, then the Discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to this office.
8. The Discharger shall comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer. Violations may result in enforcement action, including Regional Board or court orders requiring corrective action or imposing civil monetary liability, or in revision or rescission of this Order.
9. A copy of this Order shall be kept at the discharge facility for reference by operating personnel. Key operating personnel shall be familiar with its contents.
10. The Regional Board will review this Order periodically and will revise requirements when necessary.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Regional Board, Central Valley Region, on 6 December 2002.

THOMAS R. PINKOS, Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

MONITORING AND REPORTING PROGRAM NO. R5-2002-0226

FOR
FORD CONSTRUCTION COMPANY, INC.
FOOTHILL MATERIALS, INC
HOGAN QUARRY
CALAVERAS COUNTY

This Monitoring and Reporting Program (MRP) describes requirements for monitoring industrial wastewater at the Hogan Quarry. This MRP is issued pursuant to Water Code Section 13267. The Discharger shall not implement any changes to this MRP unless and until a revised MRP is issued by the Executive Officer.

All samples shall be representative of the volume and nature of the discharge or matrix of material sampled. The time, date, and location of each grab sample shall be recorded on the sample chain of custody form. Field test instruments (such as those used to measure pH) may be used provided that:

1. The operator is trained in proper use and maintenance of the instruments;
2. The instruments are calibrated prior to each monitoring event;
3. The instruments are serviced and/or calibrated by the manufacturer at the recommended frequency; and
4. Field calibration reports are submitted as described in the "Reporting" section of the MRP.

SETTLING/RECYCLING POND MONITORING

The settling/recycling pond shall be inspected weekly and monitored as follows:

<u>Parameter</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>	<u>Reporting Frequency</u>
Freeboard	0.1 Feet	Measurement	Weekly	Monthly

EFFLUENT MONITORING

Wastewater effluent samples shall be collected at the inlet to the settling/recycling pond. Grab samples are considered adequately composited to represent the effluent. At a minimum, the Discharger shall monitor the effluent wastewater as follows:

<u>Constituent/Parameter</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Sampling Frequency</u>	<u>Reporting Frequency</u>
Flow	gpd	Meter	Daily	Monthly

REPORTING

In reporting monitoring data, the Discharger shall arrange the data in tabular form so that the date, sample type (e.g., effluent, pond, etc.), and reported analytical result for each sample are readily discernible. The data shall be summarized in such a manner to clearly illustrate compliance with waste discharge requirements and spatial or temporal trends, as applicable. The results of any monitoring done more frequently than required at the locations specified in the Monitoring and Reporting Program shall be reported in the next scheduled monitoring report.

A. Monthly Monitoring Reports

Monthly reports shall be submitted to the Regional Board on the **1st day of the second month following sampling** (i.e. the January Report is due by 1 March). At a minimum, the reports shall include:

1. Results of pond and effluent monitoring.
2. Information pertaining to the removal of sediments from the settling/recycling pond. Information at a minimum shall include, dates in which sediments were removed, the amount of sediment removed each time, and the total depth of the pond after sediment has been removed.
3. A comparison of monitoring data to the discharge specifications and an explanation of any violation of those requirements. Data shall be presented in tabular format.
4. If requested by staff, copies of laboratory analytical report(s).
5. A calibration log verifying calibration of all monitoring instruments and devices used to comply with the prescribed monitoring program.

B. Annual Monitoring Reports

An Annual Report shall be prepared as the December monthly monitoring report. The Annual Report shall include all monitoring data required in the monthly schedule. The Annual Report shall be submitted to the Regional Board by **1 February** each year. In addition to the data normally presented, the Annual Report shall include the following:

1. If requested by staff, tabular and graphical summaries of all data collected during the year;

2. An evaluation of the performance of the wastewater treatment system, as well as a forecast of the flows anticipated in the next year;
3. A discussion of compliance and the corrective actions taken, as well as any planned or proposed actions needed to bring the discharge into full compliance with the waste discharge requirements;
4. A discussion of any data gaps and potential deficiencies/redundancies in the monitoring system or reporting program; and
5. A Water Balance and Capacity Calculation Report that demonstrates adequate storage and disposal capacity to ensure full compliance with the WDRs. The water balance shall evaluate the ponds' ability to provide sufficient capacity on a monthly basis, and shall consider evaporation, direct precipitation, storm water runoff contribution, percolation, and estimated rate of sedimentation. Rainfall amounts shall be based on the total annual precipitation based on a return period of 100 years, distributed monthly in accordance with historical rainfall patterns. Note that the established maximum daily percolation rate cannot exceed ten percent of the minimum saturated hydraulic conductivity and the evaporation rate cannot exceed 80 percent of the established pan evaporation rate for the area. For the purpose of this analysis, "full compliance" means maintaining two feet of freeboard in all ponds.

A transmittal letter shall accompany each self-monitoring report. The letter shall discuss any violations during the reporting period and all actions taken or planned for correcting violations, such as operation or facility modifications. If the Discharger has previously submitted a report describing corrective actions and/or a time schedule for implementing the corrective actions, reference to the previous correspondence will be satisfactory. The transmittal letter shall contain a statement by the Discharger or the Discharger's authorized agent, under penalty of perjury, that to the best of the signer's knowledge the report is true, accurate, and complete.

The Discharger shall implement the above monitoring program as of the date of this Order.

THOMAS R. PINKOS, Executive Officer

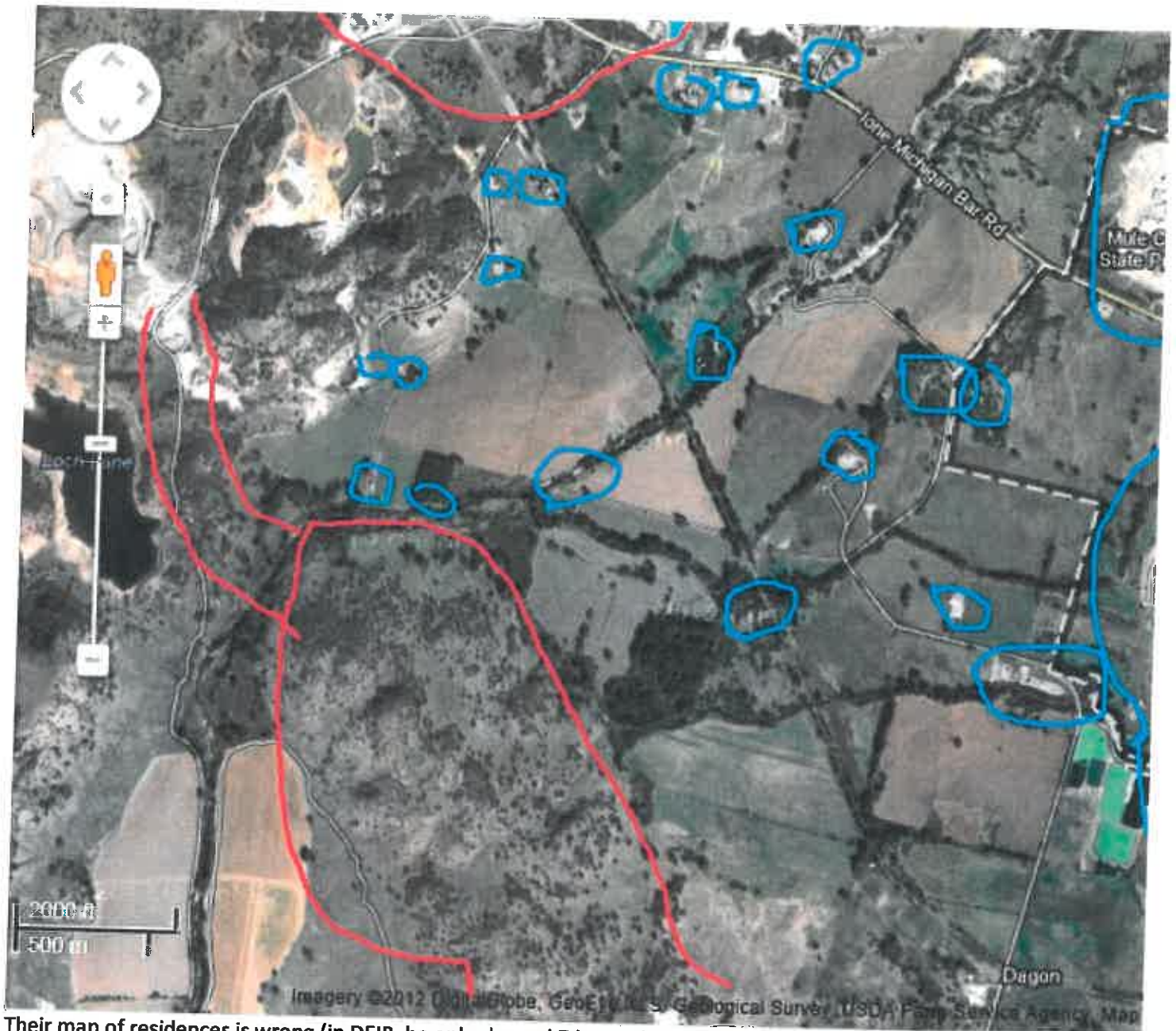
6 December 2002

(Date)

ENCLOSURE 3

Red is quarry and plant

Blue are residences, populations and town. Proponent talked to tiny fraction of the population affected, and not all those he talked to agreed. Please note, the Quarry is bigger than the town, could not fit it all on this map.



Their map of residences is wrong (in DEIR, he only showed 7 houses) page 5:
<http://www.amadorgov.org/Modules/ShowDocument.aspx?documentid=10256>