

**PUBLIC COMMENTS AND RESPONSES  
JUNE, 2009 FINAL EIRS**

**CUP 4171 (Best Rock)  
CUP 4874 (Grimes Rock)  
CUP 4571 (Wayne J)**

Through February 3, 2010

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**ERRC MEMBER COMMENTS AND STAFF RESPONSES,  
HEARING OF JULY 15, 2009**

At the ERRC hearing of July 15, 2009 regarding FEIRs for CUP 4571 (Wayne J), CUP 4171 (Best Rock), and CUP 4874 (Grimes Rock) the ERRC members had questions which required research and response by County staff. The following summarize the questions and present the staff responses.

Larry Williams, Fire Department: Mr. Williams was concerned about the use of the term "Grimes Way" in the Grimes Rock FEIR since the road name has not been officially recognized by the Fire Department.

Response: All reference to "Grimes Way" have been removed from Volume I of the Grime Rock FEIR. The term remains in Volume III Appendix B as it includes a letter from the project applicant which uses the term.

Alicia Stratton, APCD: Ms. Stratton noted that the three FEIRs refer to NOx reductions of diesel exhaust from on-site vehicles. She asked for clarification whether the numbers incorporate the upcoming California Air Resources Board ("CARB") regulations for diesel exhaust reductions.

Response: The June 2009 FEIRs do not reflect the most recent ARB diesel engine regulations, adopted in late 2008, and it is not yet possible to model them even in August 2009. However, the FEIR project emission estimates reflect EMFAC2007, ARB's most current on-road motor vehicle emissions model. EMFAC2007 incorporates ARB's on-road diesel emission regulations in effect when EMFAC2007 was released in late 2006. The FEIRs use the current methodology and the currently adopted emissions factors for both current and projected project emissions.

FEIR Chapter 4.2 (Air Quality) for each project was revised by the APCD in November 2009 to reflect current methodologies and emissions factors. These revised chapters are included as attachments to the "Proposed Changes to the Revised Final EIR" for each project.

Bruce Smith, Planning Division: If the Public Works Agency allows the number of daily trips to all occur within the peak hour and allow that number of trips to occur in each and every hour of the peak periods (5 hours/day), how could that not have an impact?

Response: In assessing traffic congestion impacts, traffic engineers are concerned about one hour intervals (a "peak hour") which occur during peak congestion periods. While peak congestion periods can include two or more peak hours, traffic engineers do not consider the total amount of traffic a project can generate during a peak congestion period -- the criteria for a congestion impact is the amount of traffic generated during any peak hour, not the total

traffic generated during a multiple hour peak period. Under standard methodologies used in traffic analyses, projects that increase total traffic during a peak period do not have a congestion impact as long as their traffic volume in any one hour does not increase over currently permitted levels.

Some projects such as Wayne J and Grimes Rock have 24-hour traffic volume limits but no peak hour limits. Wayne J has an 72 ADT limit, Grimes Rock has a limit of a maximum of 300 one-way trips in any 24-hour period (Best Rock has no permitted trips as their permits expired in 2000). For Wayne J and Grimes Rock, County Counsel has determined that from a regulatory perspective the CUPs allow the projects to generate all of their permitted 24-hour traffic volumes within a single hour. In reality, a project may not physically be able to generate their permitted 24-hour traffic volume within a one hour period, however, from a regulatory perspective, their permit would not prevent such a situation.

For Grimes Canyon projects, the "existing environment" is that Wayne J can generate 72 one-way trips and Grimes Rock can generate 300 one-way trips in any given hour, including peak hours. For Best Rock, they are limited to the peak hour traffic they were generating when the EIR NOP was released in 2004. At that time Best Rock is considered to have generated 78 one-way peak hour trips (Best Rock FEIR Table 4.1-14).

The issue is not whether an impact occurs with regard traffic level of service (congestion), but whether a significant impact occurs. An impact which exceeds the physical capacity of a road or intersection is a significant impact. Historically traffic volume patterns have tended to mass or accumulate around the peak period (aka peak hours), such that the capacity of the roadway or intersection is most severely taxed during the peak periods. Spreading out the volumes that might occur from the peak periods to off-peak periods has historically been one method to reduce congestion and level the impacts from peak hour traffic generators. Such mitigation measures as staggered work hours, alternate work schedules and the like are examples.

Certainly carried to extremes, one could envision a time when the peak periods are extended such that volumes of traffic in any one hour during the day approach peak periods, the peak hour may be extended to the peak two or even three hours and might eventually merge into one continuous eight hour (or longer) peak period. While this is a theoretical possibility, this phenomenon has not been observed in practice, nor does the traffic analysis prepared for this project indicate this might be the case.

As noted above, in assessing congestion impacts only peak hours are considered, not peak periods. As long as the traffic volume during a peak hour does not increase, traffic engineers conclude that no increase in congestion occurs even if that traffic volume were to be repeated during other peak hours. Repeating a project's total traffic volume each hour for multiple hours does not

change the congestion level, as long as no single hour exceeds the currently permitted traffic volumes.

Bruce Smith, Planning Division: Mr. Smith noted that on one hand the EIR establishes the volume of traffic that is approved for use in the permit conditions (see above). Yet, Walnut Canyon Road, which is not allowed to be used by Best Rock and Grimes Rock per their permits, is used in the FEIRs for purposes of noise calculations. Use of Walnut Canyon Road by these projects is in violation of the permit conditions. How can Walnut Canyon Road be used as the "existing environment", and then conclude that there is no impact from the projects violating their permits? Mr. Smith recommends that both aspects be looked at in the FEIR for presentation to the decision-making body.

Response: Mr. Smith is requesting that the EIRs model the permitted situation of Wayne J and Cemex traffic being able to use Walnut Canyon Road, and Best Rock and Grimes Rock traffic being prohibited from using the road. The FEIRs do not model that exact scenario, but do contain two scenarios which straddle the requested scenario. FEIR Table 4.3-6 provides detailed information for six road segments along Walnut Canyon Road/Moorpark Avenue. For each segment it considers existing and projected noise levels whereby: (1) no mining traffic uses those road segments (called the "no mines" scenario); and, (2) all south-oriented traffic from all four mines use those segments (called the "current permits" scenario).

Table 4.3-6 shows that noise levels increase by approximately 2-5 dBA if the "current permits" traffic is compared to an existing or future scenario containing "no mining traffic" on that road segment. In general terms, comparing the noise levels from the proposed projects' (called "expanded permits" in Table 4.3-6) traffic to the "current permits" noise scenario does not result in a noise impact (i.e. increases of 3 dBA or greater). However, comparing noise levels between the "expanded permits" and the "no mining" traffic scenarios results in increases in noise levels which exceed 3 dBA. Changing the "existing setting" from "current permits" to "no mining" changes the FEIR findings, however, both scenarios are presented in the FEIRs.

End ERRC Comments and Responses

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**From:** "Barrie Mitchell" <barrie@mitchellwebmail.com>  
**To:** <scott.ellison@ventura.org>  
**Date:** 07/10/2009 1:55 AM  
**Subject:** Resubmission of Grimes Mining EIR Comments  
**Attachments:** Grimes Mining EIR Comments.pdf

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Mr. Ellison,

I appreciated your time to speak with me earlier today regarding the upcoming public hearing on the Grimes Canyon Mines FEIRs.

During the first week of August, 2006, you received a letter from my wife and me containing comments about the proposed expansion of operations by three aggregate mines in the Moorpark/Fillmore area; our comments have been tagged "17-1" by your office. However, as we discussed earlier, I had also included in the same packet a separate letter containing detailed criticisms of the analysis and conclusions presented by the then-current EIRs. It's not clear if this document was ever processed by your office.

I have attached a copy of that letter as a PDF file. Although I have not yet had time to study the FEIR documents on your web site, I wanted to transmit my original letter to you as soon as possible for your review and consideration. After I read the FEIRs, if I have any additional comments I will send them to you early next week.

Thank you again for your attention to the attached document. I would appreciate a brief reply just so I know that you have received this E-mail.

Kind regards,

Barrie Mitchell  
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6759 Trevino Drive  
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July 31, 2006

Mr. Scott Ellison  
Ventura County Planning Division  
Administration Building  
800 S. Victoria Avenue  
Ventura, CA 93009

Dear Mr. Ellison,

We appreciate the opportunity to comment on the Environmental Impact Report that analyzes problems and mitigation measures associated with the expansion of operations by three aggregate mining companies in the Moorpark/Fillmore area.

We have carefully reviewed the EIR, and found several deficiencies and omissions that could potentially affect the conclusions presented by the EIR. Our findings are presented in this letter. Because the County's decision to approve or deny the mining operation expansion is based largely on the analysis presented by the EIR, we ask that you consider our comments below when making this decision.

#### Deficiencies in the EIR Noise Study

The EIR bases much of its noise impact analysis, as well mitigation measures and expenses, on a noise measurement study conducted at several "sensitive receiver" areas. Not only was this study flawed, but conclusions based on the study ignore some important data generated by the measurements:

##### **Sampling Period:**

The study consisted of a single 48-hour sampling period beginning on September 22 (Wednesday), 2004. This provides only one data "point", which is totally inadequate for predicting noise level profiles over the course of several decades to come:

- One cannot assume that noise measurements conducted in September are representative of noise generation during other times of the year, or even during other weeks of September. Traffic patterns fluctuate as people adjust to school year, summer vacation, and holiday season activities.

**F1-1**

- The study was conducted during a mid-week time period, but does not address the fact that traffic patterns and noise generation are considerably different during weekends.

F1-2

**Consideration of Baseline Factors:**

The study does not attempt to determine if the amount (ADT) of traffic being measured was "typical" for the time period involved. Were any roadway construction projects in progress that might have affected the flow of traffic? Could any nearby special events have created more or less traffic than normal? Could adverse weather conditions (such as the strong winds which are common to that area in September) have reduced truck traffic?

F1-3

**Ambient Atmospheric Conditions:**

The study does not mention, and apparently does not take into consideration, atmospheric conditions during the sampling period. Cold, moist air is relatively dense, and is a good conductor of noise energy. Hot, dry air is thinner, and is less conducive to noise transmission.

F1-4

**Interpretation of Results:**

Measurements from the sampling period were used to compile tables of average or representative noise levels at the receiver areas. These calculated values provide part of the picture, but ignore one factor that is perhaps the most important to area residents: maximum noise readings. Even if average noise levels are low enough to be ignored, sudden noise spikes are the most disruptive. It is the noise blasts that interfere with conversations, break thought concentration, and wake babies. According to the study all receptor stations had maximum noise readings of about 90 to 100 dB -- noise levels approximating that of a nearby freight train.

F1-5

**Data Timeliness:**

The EIR noise study was conducted almost two years ago. In the ensuing period both Moorpark and Fillmore have grown significantly in both population and commercial endeavors. Resulting traffic, and its associated noise, have increased accordingly. Were the same study to be repeated today the measured noise level results would be higher -- without even factoring in the proposed increase in gravel truck traffic.

F1-6

**Truck Noise on Grimes Canyon South**

Although the EIR discusses noise generation and mitigation associated with increased mining truck traffic on Grimes Canyon South, **current noise levels have never been measured**. Rather, the EIR refers to "predicted existing traffic noise" when attempting to extrapolate the effect of increased truck traffic on Grimes Canyon South. The EIR does not disclose its method for predicting existing noise levels; presumably some type of mathematical model was used based on a spherically radiating point source.

**F1-7**

As homeowners living on the ridge overlooking Grimes Canyon South, just south of Championship Drive, we can attest that **the true traffic noise level is much greater than that predicted by a model**. This discrepancy is caused by local topology:

- On a flat surface a point source will radiate sound energy spherically, in all directions and at all angles of elevation. A receptor will receive only the sound energy that is transmitted horizontally in his direction. Sound magnitude (strength) drops inversely as the square of the distance between the source and the receptor.
- Grimes Canyon South is anything but a flat surface. Adjacent to Grimes is a natural wash area that is bordered by a hilly ridge. A few dozen houses sit atop this ridge, overlooking the wash. When a motor vehicle travels down Grimes its sound energy travels across the wash and is deflected up the ridge. As a result, sound energy transmitted at all angles of elevation from horizontal to direct line-of-sight is funneled and focused into the houses. To make matters worse, the opposite side of Grimes consists of a dirt bank that reflects noise traveling away from the wash and redirects it back towards the wash and up the ridge -- resulting in the reception of even more sound energy by the houses.

**F1-8**

The EIR proposes the use of Grimes Canyon South as a primary route for gravel trucks. This proposal should NOT be considered without first conducting a true study of noise levels and distribution patterns along Grimes. Such a decision must not be based on "predicted" traffic noise.

**F1-9**

**Cost of Truck Route Enforcement**

The EIR discusses the possible elimination of truck traffic on Walnut Canyon Road, which would therefore require all trucks to travel along Grimes Canyon South instead. As indicated by the EIR, enforcement of this routing would be necessary. Suggested methods of enforcement include site and access road monitoring by county staff and/or city police, and the installation and monitoring of closed-circuit television cameras at the mining sites and at various intersections. The installation of CCTV cameras is a considerable one-time expense, and the monitoring of these cameras and access roads is a huge ongoing expense. The EIR does not provide any analysis as to the ultimate start-up cost and continuing manpower requirements associated with these enforcement provisions, nor does it indicate who would be responsible for funding these programs.

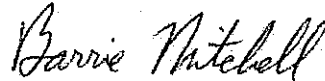
**F1-10**

The County's decision to approve or deny requests for expanded mining operations will affect thousands of people. Impact analysis and recommendations presented by the EIR will factor strongly into this decision. The County must understand the deficiencies of the EIR in order to properly and fairly evaluate the conclusions presented by that document. We have written this letter to highlight some of those serious deficiencies, and to express our concern that County decisions based on flawed EIR analysis will adversely and unfairly affect the quality of life in our community.

F1-11

Thank you for your time to read and evaluate our comments. Please keep us informed as to the schedule of all future County hearings related to this matter.

Sincerely,



Barrie and Joan Mitchell

(805) 552-9922

**Response to Commentor No. F1: Second letter of July 31, 2006 from Barrie and Joan Mitchell**

F1-1 Contrary to this comment, as noted in EIR Section 4.3.1, noise measurements occurred during two periods rather than one period -- September 23-24 and September 27-29, 2004. This comment is correct that noise impact analysis is very complex and involves a large number of variables. Noise levels at any given location can change based on the time of day, day of the week, season of the year, year to year, temporary events such as construction activity, the existence of barriers to sound such as hills and walls, and sound waves bouncing off surfaces and cancelling each other out or reinforcing each other to change actual noise levels compared to a theoretical calculation.

As such, it is not practical to collect enough road noise data from a large area such as the SR-23 corridor or Grimes Canyon Road South to measure all the possible variables which impact the many potential noise receptors. The FEIR methodology of using actual measurements combined with theoretical calculations is consistent with industry standards for this type of analysis. The provided data and calculations are considered adequate to draw the conclusions contained in the document.

One accepted method to address the uncertainty inherent in any noise analysis is to overestimate the noise levels. As noted starting on FEIR page 4.3-3, the FEIR analysis does this by calculating noise levels closer to the road than any house, and by not adjusting the theoretical calculations to consider the actual existence of walls, hills and other noise barriers. Moreover, given the complexity and number of variables involved in noise analysis, it is doubtful that any practical increase in the data base or a refinement of the assumptions would change the data and projections enough to significantly change the FEIR conclusions.

In addition, as noted in the FEIR, after mitigation, each of the three mining projects under consideration results in a significant unavoidable noise impact in the unincorporated area as well as both cities for both project specific and cumulative impacts. A more detailed noise analysis might refine the numbers, but is not likely to change the conclusions. Any change to the conclusions could only be in the direction of identification of lesser impacts, as the FEIRs are already drawing the "worst case" conclusions. Given that the data and methodology complies with industry practice, and that the FEIR already draws "worst case" conclusions, no change to the FEIR noise analysis is considered necessary.

F1-2 See Response F 1-1 above. SR-23 is primarily a commuter road which means that traffic is higher during the weekdays than during the weekend.

In addition, the mines routinely only operate during the week; to the extent they even operate during the weekend (i.e. Saturday only, since they are closed Sunday), they typically generate much less traffic than they do during a weekday. The noise measurements were taken on all five of the high traffic volume weekdays but avoided the lower traffic volume weekends when the mines either did not operate, or operate at low levels. As a result, the noise study modeled the highest traffic volume periods of the week which in turn generates higher noise levels than occur if the weekend noise levels are averaged in. This was the correct approach and can create reasonable "worst case" high noise levels to compensate for the practical inability to collect a complete data base.

- F1-3 See Responses F1-1 and F1-2. Development along Championship Club Drive was under construction at that time, which is likely to have resulted in more heavy trucks (possibility including trucks from the mines) travelling on SR-23 than would occur once the development was built out. Thus the measured traffic noise levels may have been higher than might have occurred without the development in process. However, even if such development was not occurring, there is always development somewhere within the approximately 90 minute one-way service area of the mines, so it might not be possible to identify what a "typical" measurement period would be as suggested by this comment.
- F1-4 See the above responses. As with traffic patterns, there is not likely to be a "typical" meteorological period. If a "typical" winter meteorological period had been identified and measurements taken during that time, the methodology still could be criticized for not also considering "typical" spring, summer and/or autumn meteorological conditions. To address such uncertainties, the measurements were taken over 8 calendar days to get a range of meteorological conditions, and the methodology was designed to try create a reasonable "worst case" high noise model.
- F1-5 The noise measurements are based on the significance thresholds used by the County and both cities (see Section 4.3.2). All three jurisdictions use a 24-hour averaging threshold for traffic noise and the County uses a one-averaging threshold for on-site noise at the mining sites. The noise measurements were taken as averages so that they could be compared to these adopted thresholds.

The comment is correct that instantaneous or short duration noise spikes are a potential impact, even though they have little if any effect on one-hour or 24-hour noise averages. This type of noise is considered part of the community character impacts discussed in Section 4.4.3 for SR-23 and other State highways, and in the discussion of Alternative 5 (Use of Alternative Routes) in Chapter 5 (Alternatives). For both SR-23 and Grimes Canyon Road South, the FEIR finds that short term noise spikes

contribute to significant unavoidable project specific and cumulative noise impacts to the communities along those roads. Since the affected jurisdictions have no adopted standards specially for short term noise impacts, the analysis and conclusions in the FEIR of evaluating such impacts under community character is appropriate.

- F1-6 This comment may be correct. If the noise study was repeated today, the existing or baseline noise levels maybe higher as a result of increased regional population growth. However, noise levels may also be lower as the slow economy or increased fuel prices may result in less traffic and trucks on the roads than occurred in 2004 when economic levels were higher. Noise levels will fluctuate from year to year, tending to go up over time as population increases, but can drop at least temporarily as the economy slows or fuel prices increase. As such, there is no "typical" period of traffic activity on which to base noise studies.

If this comment is correct that existing noise levels are now higher, the projected noise levels would not change as they are based on long term general plans, population growth and traffic patterns which are not affected by short term demographic or other changes. As a result, "existing" noise levels may or may not be higher than occurred in 2004, and the projected noise levels in 2025 do not change. Given that the FEIRs already draw the "worst case" conclusion that the mines result in significant unavoidable impacts based on the 2004 noise levels, there is no benefit to updating the existing noise levels to reflect today's conditions.

- F1-7 This comment is correct that noise measurements were not taken for Grimes Canyon Road South. Noise measurements were not considered necessary. Given the low existing and projected traffic volumes (2,800 and 5,000 ADT respectively) and assuming no barriers or noise-reflective surfaces, it is a well established, straightforward methodology to calculate existing and projected noise levels. By assuming no or few trucks, and no trucks operating at night, this methodology may have underestimated existing average noise levels if existing truck traffic is higher than assumed or some trucks currently operate at night.

As indicated in Responses F1-1, 2 and 3, it is not practical to collect detailed data for all, or even many, of the variables that can affect actual noise levels at many receptors. As such, some type of analysis to develop average impacts is appropriate. In the case of a rural low volume road such as Grimes Canyon Road South, using theoretical models to project existing and projected future noise levels is appropriate.

Noise impacts on Grimes Canyon Road South is discussed in Alternative 5 (Southbound Truck Route Alternatives) in Chapter 5 (Alternatives). The

noise analysis used existing (i.e. 2004) and projected (i.e. 2025) traffic volumes, assumed no existing mining trucks use the road, then superimposed 100% of the south-oriented truck traffic from four mines onto the road. This is done even though all four mines can currently use the road, but are assumed to use it only at a low level.

This analysis is reflected in the FEIR conclusion that diverting mining trucks onto Grimes Canyon Road South results in significant unavoidable project specific and cumulative impacts in the areas of both noise and community character.

Given the established methodologies used to calculate the noise levels, the reasonable assumptions used, and findings that the mining trucks using the road result in significant unavoidable impacts, the FEIR approach to these impacts appears reasonable.

F1-8 This comment is correct the noise modeling and projections are very complex. See above Comments F1-1, 2 and 3.

F1-9 See Comment F1-7.

F1-10 An enhanced monitoring program is discussed in more detail starting on page 119 of FEIR Appendix B (Traffic Study). As noted in Appendix B, minimum costs are assumed to be at least \$160,000 a year and would be paid entirely by the mines. This issue is not considered an EIR issue but rather will be evaluated through the Conditional Use Permit process for each mine.

F1-11 The County agrees that the decisions regarding these mines will have major impacts on a large number of residents and throughout the region. Your letter will be forwarded to County decision-makers when they consider these projects.

**Scott Ellison - Best Rock, Grimes Rock, and Wayne J Final EIR Comments**

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**From:** "David Bobardt" <[dbobardt@ci.moorpark.ca.us](mailto:dbobardt@ci.moorpark.ca.us)>  
**To:** "Scott Ellison" <[Scott.Ellison@ventura.org](mailto:Scott.Ellison@ventura.org)>  
**Date:** 07/09/2009 6:54 PM  
**Subject:** Best Rock, Grimes Rock, and Wayne J Final EIR Comments  
**CC:** "Barry Hogan" <[bhogan@ci.moorpark.ca.us](mailto:bhogan@ci.moorpark.ca.us)>

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Scott,

Staff from our office will not be able to attend the July 15th ERRC meeting, and we request a continuance of at least a month for us to provide comment to the committee. The 3-week time frame to review the Final EIR was not sufficient for us, given the size of the documents, the complexity of the comments, responses, and amendments, and the time that has passed since we submitted our comments on the Draft EIR - 3 years. If this request can not be accommodated, we will provide any comments we have on the EIR's to the Planning Commission. A response would be appreciated. Thank you for your consideration of this request.

F2-1

*David A. Bobardt*

Planning Director  
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**Response to Commentor No. F2 David Bobardt, City of Moopark, e-mail of July 9, 2009**

F2-1 At their July 15, 2009 ERRC continued the hearings on all three FEIRs to August 19, 2009.

**meyers | nave riback silver & wilson**  
professional law corporation

**Amrit S. Kulkarni**  
Attorney at Law  
510.808.2000

July 14, 2009

Mr. Scott Ellison  
Ventura County Planning Division  
800 South Victoria Avenue  
Ventura, CA 93009

**Re: Comments to the Ventura County Environmental Report Review Committee on Best Rock Products Corporation CUP Modification 4171-3 Final Environmental Impact Report**

Dear Mr. Ellison:

This law firm represents the applicant, Best Rock Products Corporation ("Best Rock" or "applicant") in its application for Modification No. 3 to Conditional Use Permit 4171 (alternatively, "CUP 4171-3" or the "Project"), currently pending before the County of Ventura ("County"). This letter serves to present Best Rock's comments to the Ventura County Environmental Report Review Committee (ERRC) regarding the technical and legal adequacy of the Final Environmental Impact Report (FEIR) for the Project and discusses whether the FEIR meets the requirements of the California Environmental Quality Act, Pub. Res. Code section 21000, et seq. (CEQA).

Best Rock understands that ERRC is only an advisory committee and that the Planning Commission is the EIR decision-making body. Therefore, comments herein will not be overly-detailed and further, legal and technical comments, as well as comments on factual inaccuracies contained in the FEIR, are likely to be forthcoming from Best Rock prior to and/or at the Planning Commission hearing for the project.

Instead, this letter seeks to make ERRC aware that a substantial number of mitigation measures recommended by the FEIR fail to meet the fundamental CEQA requirement that an EIR of assess the feasibility of a mitigation measures and demonstrate the proportionality of a mitigation measure to the impacts caused by the project. A list of some of the mitigation measures that fail these fundamental CEQA requirements is provided in the discussion below. Furthermore, CEQA does not permit the imposition of mitigation measures for impacts that are not deemed significant. Best Rock requests that mitigation measures that are not for significant impacts be removed.

Best Rock also requests that ERRC also read Best Rock's detailed comments to the DEIR (dated August 23, 2006) as many of those comments regarding the technical and legal adequacy of the DEIR are relevant to the FEIR where the language in the DEIR and FEIR is the same.

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Mr. Scott Ellison  
July 14, 2009  
Page 2

**CEQA Requirements of Feasibility and Proportionality of Mitigation Measures and the Best Rock FEIR**

CEQA requires an EIR to propose and discuss mitigation measures to minimize the significant environmental impacts identified in the EIR. (Pub. Res. Code §§ 21002.1(a), 21100(b)(3); Guidelines § 15162.4. EIRs are not required to discuss mitigation measures for insignificant impacts. (See *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1517.)

CEQA requires that a mitigation measure be "feasible" (Guidelines § 15126.4(a)(1)) and that it be "legally enforceable" (Guidelines § 15126.4(a)(2)). "Feasible" is defined by CEQA as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." CEQA requires an EIR to assess the feasibility of mitigation measures to avoid or mitigate a project's significant impacts, and authorizes an agency to adopt only those measures determined to be feasible on the basis of the EIR. (See Pub. Res. Code §§ 21002, 21002.1(b); see also *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 292 (holding that "... CEQA requires the District to mitigate the environmental effects of its project only when feasible ..."); *Napa Citizens for Honest Government v. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342, 365.)

The FEIR repeatedly fails to assess the feasibility of mitigation measures. For nearly all extremely costly mitigation measures the FEIR does not disclose or discuss the costs of such an undertaking. Indeed, no attempt was made by the County to discuss the economic cost of the mitigation measures with Best Rock. Without the disclosure of these tremendous costs in the EIR and to decisionmakers, the FEIR does not comply with the legal requirements of CEQA nor is there substantial evidence to support the FEIR's unsupported conclusion that the mitigation measure is economically feasible. These mitigation measures include AQ 1-1(a), AQ 1-3, WR 1-1(4-6), BR 1-1, BR 1-2, and BR 1-5. Where it can provide it, the FEIR should provide cost estimations or cost limitations for these mitigation measures.

F3-1

Many mitigation measures are technically or operationally infeasible, contain elements that are operationally infeasible, or are contrary to other environmental impact considerations. These include: AQ 1-1(a), AQ 1-3, WR 1-3, WR 3-2, BR 1-1, BR 1-2, BR 1-5, and VR 1-1. Like many other agencies, the County should try to work with the applicant in order to come up with acceptable mitigation measures that are operationally, technically, and environmentally feasible.

F3-2

Furthermore, in order to properly assess whether a mitigation measure is feasible, a feasible standard should be articulated and assessed by the FEIR rather than providing that a county agency or planning director will, sometime in the future, approve or deny certain activities in its sole discretion. An articulated cost limit or standard will help assess the feasibility of the proposed mitigation measure. Mitigation measures that need this type of feasibility standard include: WR 1-1 (4-6); WR 5-1 and WR 5-2.

F3-3

Mitigation measures that go beyond the powers conferred by law on the public agencies imposing them are legally infeasible. (*Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291.) In the FEIR, these mitigation measures include: AQ 1-3 and BR 12-1. While Alternative 5 is expressed in the FEIR as a project alternative, the FEIR states it is an alternative to address land use compatibility impacts

F3-4

Mr. Scott Ellison  
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on the City of Moorpark and is thus a mitigation measure. Alternative 5 is beyond the legal authority of the County in that it illegally bans one mine or one class of persons from using state roads, without banning all such vehicles from using the road. (For a full discussion of the illegality of Alternative 5, please refer to Best Rocks August 23, 2006 DEIR comments, section entitled "Alternative 5.")

F3-5

Like any government exaction or condition of approval, a mitigation measure cannot violate state or federal constitutional standards. (See Guidelines §§ 15041(a), 15126.4(a)(4).) The primary constitutional limit on an agency's mitigation authority is that a "reasonable relationship" or "nexus" exist between the project's impacts and the mitigation measure. (*Dolan v. City of Tigard* (1994) 512 U.S. 374; *Nollan v. Cal. Coastal Comm.* (1987) 483 U.S. 825.) The extent of a mitigation measure must also bear a reasonable relationship to the burden created by the impact. (See *Nollan v. Cal. Coastal Comm.*, *supra*, 483 U.S. 825, 835 n. 4.) A public agency must demonstrate, based on an individualized determination relating to the project, that the nature of an exaction is related to, and that the extent of an exaction is "roughly proportional" to, the impact of the proposed project. (See *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 (holding exactions subject to tests established with regard to dedications in *Dolan v. City of Tigard*, *supra*, and *Nollan v. Cal. Coastal Comm.*, *supra*.) In addition, the California state Mitigation Fee Act (Government Code § 66000 et seq.) requires that public agencies demonstrate that a reasonable relationship exists between a development fee and a project's impacts. (See Government Code § 66001(a) – (b), (d) – (e).) Under that statute, a public agency is required to show both that a reasonable relationship exists between both the *type* of development on which a fee is imposed and the public facility it will fund, and also the *amount* of the fee imposed and the cost of the public facility attributable to the development impact. (See *Garrick Dev. Co. v. Hayward Unified Sch. Dist.* (1992) 3 Cal.App.4th 320; *Shapell Indus., Inc. v. Governing Bd.* (1991) 1 Cal.App.4th 218.) Mitigation measures that fail to demonstrate nexus and/or proportionality include but are not limited to WR 5-4(1), BR 1-1, BR 1-2, BR 12-1 and, as a totality, the biology mitigation measures which together constitute an excessively duplicative and therefore disproportional mitigation for the same biological impact.

F3-6

Thus, the FEIR repeatedly fails to discuss whether the mitigation measures it proposes can feasibly be imposed upon the Project, from an economic, environmental, legal, social and technological standpoint. Further, the FEIR repeatedly fails to demonstrate that the mitigation measures it discusses have a reasonable relationship to the nature of the Project's impacts, and that they are "roughly proportional" in extent to those impacts.

F3-7

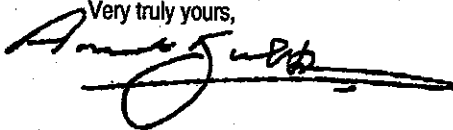
Finally, as discussed above, CEQA requires an EIR to propose and discuss mitigation measures to minimize the significant environmental impacts identified in the EIR. (Pub. Res. Code §§ 21002.1(a), 21100(b)(3); Guidelines § 15162.4. EIRs are not required to discuss mitigation measures for insignificant impacts. (See *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1517.) Best Rock asks that mitigation measures that are not for significant impacts be removed. These include: WR 1-1.

F3-8

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For these reasons, the ERRC should recommend that these flaws in the EIR be corrected in order for it to determine that the FEIR is legally and technically adequate.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amrit S. Kulkarni", with a long horizontal flourish extending to the right.

Amrit S. Kulkarni

ASK:cs  
1264797.1

**Response to Commenter No. F3 Amrit Kulkurni, Meyers Nave Riback and Wilson, July 14, 2009**

F3-1 The costs of most mitigation measures cannot be accurately determined, but most are either standard requirements which have been feasibility implemented by other projects, or are considered relatively inexpensive given the scale of the project. This project as defined by CEQA is requesting permission to removal of up to an additional 27,500,000 tons of material. If all mitigation measures cost a total of \$.40 a ton, a total of some \$11,000,000 over 15 years would be available for mitigation. On an annual basis, approximately \$733,000 would be available. If this money were used to obtain a 15 year loan, a loan of \$5,700,000 could be obtained (at 10% interest).

Assuming a current retail cost of \$9.00 a ton (washed sand), a mitigation cost of \$.40 would represent 4.4% of the total cost delivered at the gate, and significantly less than that if hauling costs are added (delivery trucks operate at approximately \$90 an hour). While the assumptions can be argued (i.e. project does not operate at full capacity at all times, more than \$.40 a ton may be feasible etc.), the scale of the project results in large impacts but also appears to result in adequate product/income to pay for significant mitigation costs.

This comment lists six specific mitigation measures:

Mitigation Measure AQ 1-1(a): Based on discussions with Southwest Sealcoating Inc, a distributor of "Dust Off" (an environmentally safe chemical dust suppressant), a large scale application of "Dust Off" would cost approximately \$.030 to \$.035 per sq ft. In the first year, an initial application, followed by a maintenance application, would be required. In later years, just one full application would probably be required annually. As a worst case scenario, assuming that 1/2 of the 55 acres allowed to be disturbed at any one time is subject to this mitigation measure, it would cost \$78,000 for the first year and \$39,000 a year thereafter to implement this measure. The project is requesting permission to remove an additional 1,500,000 tons per year, so as an approximation this measure would cost between \$.026 to \$.052 cents a ton. Note that this is a requirement previously imposed on projects such as landfills which experience a similar situation of having exposed disturbed soils that do not experience active use for long periods of time. It is considered a reasonable approach to dust control in a County which does not meet adopted standards for airborne dust.

Mitigation Measure AQ 1-3: The costs of tarps for the trucks is trivial compared to the scale of the project. Tri-Counties Transportation advises

that automatic tarp covers for an aggregate truck and trailer run approximately \$2,500 per truck/trailer combination. The "time-cost" for the drivers to apply the tarps (assuming the truck does not have an automatic tarp cover) is assumed to be 5 minutes a load, or 12 seconds per ton for a 25 ton load.

Mitigation Measure WR 1-1(4-6): This measure requires that: (1) the project be designed to percolate the same or more water into the aquifers under post-mining conditions than occurred under pre-mining conditions even if the unmaintained slopes of the project eventually fail; and, (2) water entering the recharge areas be naturally desilted so as to prevent clogging of the spaces between the soil particles in the recharge area. This measure involves the cost of engineering and calculations and/or percolation testing to determine percolation volumes of different designs under different slope failure scenarios. The cost of such studies should not be significant given the scale of the project.

If the studies require a redesign the project, such a redesign could reduce the volume of material which could be mined from the site. However, over the course of the project the applicant has submitted four project designs, three of which are evaluated in the FEIR. The FEIR proposed project is the largest design, and the one which generates the most product for sale. The redesigns (see FEIR Alternatives 2A and 2B) reduce annual project production by approximately 40%. Since these redesigns were proposed by the applicant, they are apparently considered feasible by the applicant.

The County believes that Mitigation Measure WR 1-1 (4-6) can easily be implemented by something less than the 40% reduction in production which is considered feasible by the applicant; in fact, it has not been demonstrated that any production would necessarily be lost. As such, this measure is considered feasible without attempting a detailed cost determination.

Mitigation Measure BR 1-1: Paul Edelman is the Deputy Director for Natural Resources and Planning for the Mountains Recreation and Conservation Authority (MCRA). The MRCA routinely purchases open space land with funds from developers in order to mitigate the loss of biological habitats. Mr. Edelman reviewed the mitigation requirements for this project and estimated that as a rule of thumb suitable open space land as specified in Mitigation Measure BR 1-1 could be purchased for approximately \$10,000 an acre. Therefore the estimated costs of off-site mitigation for the acreage listed under Mitigation Measure BR 1-1 is approximately \$1,700,000 to \$2,100,000 depending on the distance from the project.

Mitigation Measure BR 1-2: This measure is in lieu of Mitigation Measure BR 1-1. Therefore its cost would be equivalent to that of BR 1-1.

Mitigation Measure BR 1-5: This measure specifies that no more than 55 acres would be disturbed at any one time. There should be no operational or economic costs associated with this measure. At the time of the EIR NOP this project had never disturbed anything close to 55 acres at any one time in its 19-year operational history as reported on its annual Surface Mining and Reclamation Act (SMARA) reports submitted to the County. The project has therefore been operating well under this limit for its entire history.

While such a Mitigation Measure has a benefit of reducing biological impacts; it is not clear how it should impact operations such that "unfeasibly" high costs would be generated. Given the history of this project as reported by the applicant under SMARA this measure appears to be both operationally and economically feasible.

- F3-2 This comment provides a general statement that Mitigation Measures are technically or operationally infeasible and cites eight examples. The FEIR Mitigation Measures were carefully developed to be feasible as defined by CEQA and were reviewed by appropriate experts in the relevant fields, including Public Works grading and geology experts as necessary. This comment does not explain why the eight examples are not feasible. As such, it is not possible to respond in detail to this comment.
- F3-3 Pursuant to Public Resources Code section 21002, public agencies are not to approve proposed projects "if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . . ." CEQA Guidelines section 15126.4, subdivision (a) further specifies how CEQA lead agencies are to consider and discuss mitigation measures proposed to minimize or avoid identified significant environmental effects of the project in question.

Nothing in this CEQA Guidelines section requires the lead agency to publish, articulate or set "a standard to determine the feasibility" of a mitigation measure. Rather, it is clear from the Public Resources Code and the CEQA Guidelines that the main qualification for a mitigation measure is that it is "feasible." A feasible mitigation measure is something that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guidelines section 15364. Again, this key definition does not require the publication or articulation of a standard of feasibility, but only asks that the lead agency consider or take into account the economic costs, among other factors, when imposing or applying a mitigation measure.

When determining a mitigation measure's feasibility, economic costs are not any greater than environmental, social, legal or technological issues associated with the proposed mitigation measure. Therefore, the proposed water resource mitigation measures for this project, which are imposed in part by the requirements of the California SMARA and the County's Watershed Protection District (WPD), are proper and do not fail for the alleged absence of a feasibility standard.

In summary, development a formal standard of feasibility in the EIR is not required under CEQA. As noted under FEIR Responses to Comments (RTC) F3-1, the project appears to be of a large enough scale to generate funds adequate to feasibly fund the mitigation measures recommended by the FEIR.

This comment cites three examples of Mitigation Measures requiring a standard of feasibility:

Mitigation Measure WR 1-1 (4-6): See RTC F3-1.

Mitigation Measure WR 5-1: is a standard Mitigation Measure requiring project-related flood control facilities to be approved by WPD. The discharge facilities of projects which drain into facilities owned or operated by the WPD are required to be approved by the WPD per WPD regulations. The project discharges into the adjacent Grimes Canyon creek which is operated by the WPD.

This is a standard requirement that has been placed on many projects in Ventura County through out the years, and applicants have successfully complied with it. As such, based on the experience of many projects in Ventura County, this measure is considered feasible. The applicant does not explain why it is infeasible for this project when it was feasible for numerous projects, including all other mining projects, throughout Ventura County.

Mitigation Measure WR 5-2: is a standard condition that requires that at reclamation, the County can request temporary irrigation of vegetation on slopes and disturbed areas to prevent erosion. Such a measure helps to implement anti-erosion/debris generation requirements of SMARA, the Public Works Development Services Department, and the National Pollution Discharge Elimination System (NPDES). Costs associated with temporary irrigation include installation and temporary use of pipes and associated equipment (pumps, valves etc.) for a few weeks to months to allow vegetation to become established. Since much more complex permanent irrigation systems are routinely installed for all types of projects, it is assumed that it is feasible for the project of this scale to

install and operate temporary, simple irrigation systems for short periods of time.

- F3-4** Both Mitigation Measures AQ 1-3 (use of tarps on product trucks and trailers) and BR 12-1 (biological resource mitigation regarding reclamation of the surface mining site) and Alternative 5 (alternative routes for south-oriented traffic) are properly constituted and imposed mitigation measures and project alternatives designed to lessen or avoid identified significant environmental effects of this project. Project Alternative 5 (use of Grimes Canyon Road south of Broadway and not use Walnut Canyon Road to access LA Avenue/SR 118) is a properly constituted project alternative designed to lessen or avoid identified significant environmental effects of this project. The mitigation measures do not run afoul of or exceed the foundational legal authority vested in the County as the primary land use regulatory body and also do not contravene the County's authority to mitigate a project's significant impacts as provided in CEQA Guidelines sections 15040 and 15041.

Biological resource mitigation stems in part from the County's delegated responsibility to carry out the provisions of SMARA. Alternative 5 involving use of Grimes Canyon Road south of Broadway from the project to SR-118 to the south is appropriate as it relates to Best Rock and other mining projects as there would be no significant gravel hauling truck traffic on these roads but for the existence and operation of the local mines.

The existence and operation of a surface mine is a prototypical land use regulatory matter that is squarely within a local government agency's land use police powers. Moreover, this project alternative meets the requirement in CEQA Guideline section 15126.6(a) that attains "most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project."

- F3-5** This comment concludes that Alternative 5 exceeds the legal authority of Ventura County. For a response see RTC F3-4 and 52-71.
- F3-6** Mitigation Measure WR 5-4(1) is a slope stability mitigation measure written by the Development Services Department of the Public Works Agency to prevent the 400 foot vertical slopes proposed by this project from eroding and head cutting onto adjacent properties after reclamation. Since the project applicant does not propose to maintain these slopes or their drainage facilities after reclamation is complete, this mitigation measure is designed to make the slopes inherently stable even with no ongoing maintenance. The nexus between the impact and the mitigation measure is the public interest in protecting adjacent properties from head cutting caused by the very large slopes proposed by this project.

There should not be any significant increased costs to creating the slopes to meet the requirements of this mitigation measure compared to creating the slopes as described in the proposed project. It is possible that some potential loss of product from any given acre of finished slope could occur if larger setbacks or shallower slope angles are required than were originally proposed by the applicant. However, over the course of the project the applicant has submitted four project designs; the FEIR proposed project is the largest design, and the one which generates the most product for sale. Two redesigns (see FEIR Alternatives 2A and 2B) reduce annual project production by approximately 40%. Since these redesigns were proposed by the applicant, they are apparently considered feasible by the applicant.

The County believes that Mitigation Measure WR 5-4(1) can easily be implemented by something less than the 40% reduction in production which is considered feasible by the applicant; in fact, it has not been demonstrated that any production would necessarily be lost. As such, this measure is considered feasible without attempting a detailed cost determination.

Mitigation Measures BR 1-1, BR 1-2 and BR 12-1 address the issue of mitigation for loss of biological resource habitat due to project activities or the inability of the proposed reclamation plan to fully mitigate the significant biological impacts of surface mining project activities. This same issue of the mitigation measures' nexus and proportionality to the identified impact was raised by Best Rock as part of DEIR Comments 52-51, 54, 55 and 56. These DEIR comments are responded to in RTCs to those comments.

- F3-7 This is a general comment stating that the FEIR repeatedly fails to demonstrate the feasibility of mitigation measures, although this comment does not provide specific information regarding these failings. The FEIR, including the RTCs and the responses to the comments received as part of the FEIR review process, provide the approximate operational and/or financial costs of the most expensive mitigation measures to the extent they can be determined. As discussed in RTC F3-1 the scale of the project appears large enough to generate funds adequate to feasibility fund the mitigation measures recommended by the FEIR. Ultimately it becomes the responsibility of the Lead Agency decision-makers to determine which FEIR mitigation measures are feasible. See also RTC F3-3.
- F3-8 CEQA does not require mitigation for less than significant impacts, and this comment requests that mitigation measures for such impacts be removed. The FEIR does not propose such measures. The only mitigation measure cited by this comment is Mitigation Measure WR 1-1.

Mitigation Measure WR 1-1 mitigates potential impacts due to loss of groundwater recharge to the Fox Canyon aquifers as discussed starting on FEIR page 4.5-18 (Impact WR-1). Contrary to this comment, the FEIR finds that such an impact is potentially significant. The summary conclusion of the impact discussion for Impact WR-1 is as follows:

"This reduction in the areal extent of the aquifer outcrop area on the project floor and the potential for reduced water retention in the upland areas represents a potentially significant reduction in recharge."

Given such a finding, CEQA requires that, if available, feasible mitigation measures be adopted to reduce this impact to a less than significant level. Mitigation Measure WR 1-1 is designed specifically to implement that requirement.

## GIBSON, DUNN &amp; CRUTCHER LLP

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Client No.

G 35551-00001

Attention: Mr. Scott Ellison  
County of Ventura  
Planning and Development  
800 South Victoria Avenue  
Ventura, California 93101

Re: Grimes Rock Response to Final FEIR prepared for CUP Modification 4874-2

Dear Mr. Ellison:

On behalf of our client, Grimes Rock, Inc., we've reviewed the Final Environmental Impact Report for the Grimes Rock, Inc. CUP Modification 4874-2 (the "FEIR") and are submitting this comment letter to you to clarify certain issues and identify mitigation measures that we think should be revised before the FEIR is certified in order to ensure that it serves its function as a decision-making tool on this expansion proposal. The three issues of greatest importance to our client are addressed first, then a list of additional comments follows these three issues, arranged in order of the applicable FEIR sections. We note that our review of the FEIR is continuing and we may be submitting further comments or concerns as the CUP proceeds through the review process.

**The Biological Impacts Continue to be Overstated and  
the FEIR Imposes Duplicative and Burdensome Mitigation Measures**

As a general matter, we reiterate our position that the FEIR continues to overstate the project's biological impacts and provides no new facts that show how the circumstances have changed since the previous environmental review was completed for the existing CUP. As a result, the FEIR imposes mitigation measures on the applicant which go well beyond the requirements of CEQA. We appreciate that the FEIR reflects the deletion of the requirement contained in the DEIR that the applicant must donate the entire permit area to an open space organization within one year of completion of reclamation. However, in response to our comments that the DEIR imposed draconian measures (including the donation of 89 acres of

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habitat) based on a plant survey that was not a part of the DEIR and without any map or other documentation as to where new plant species are located and/or how many of such plants were found, the FEIR simply states that "the EIR is based on updated biological studies" (Page 9-99) and provides no further guidance on how it determined any special status plants or habitat exists on the site. We believe there is inadequate factual support to require donation of 1.5 acre replacement habitat.

Furthermore, the FEIR states that impacts are significant to "locally important plant communities" because of "the long-term loss of 68.7 acres of vegetation, permanent alteration of habitat structure, and the importance of the resource, given that these plant communities contribute to the County's biodiversity and support multiple sensitive wildlife species (Impact BR-10)" (Page 4.6-38), but the FEIR does not include any evidence that the plant habitat has changed or that the thresholds of significance have changed since 1998 when *no significant impacts were found on the same habitat by the same activities*. Furthermore, it does not account for the applicant's detailed reclamation plan, the goal of which is to restore the site to its pre-project vegetated state.

F4-2

Finally, on Page 4.6-52, the FEIR states that re-vegetation of the mined areas during reclamation (required elsewhere as mitigation) is insufficient to protect to sensitive plant communities because cattle grazing is the proposed end use, which further lowers the habitat value of the revegetated area. Yet the FEIR recommends an outright prohibition on cattle grazing (Page 1-59; WR 3-2) and therefore the re-vegetated area *does in fact* have habitat value that is not considered in the FEIR. Not only did the FEIR not take the mandated revegetation, or the cattle prohibition into account, the FEIR arbitrarily *increased* the amount of habitat that must be donated to 103.3 acres. The impacts cited by the FEIR as justification for this draconian mitigation measure fail to appreciate that the reclamation plan, combined with a prohibition on cattle grazing, will lead to these impacts being far less significant than discussed in the FEIR, and therefore this mitigation measure should not be imposed on the applicant.

F4-3

**The Traffic Evaluation Requires Clarification to Ensure  
Appropriate Mitigation Measures are Imposed**

Further revision to the FEIR is necessary in order to more precisely formulate mitigation measures for transportation impacts. As we describe below in more detail, if the mitigation measure that limits peak hour trips to those permitted under the existing CUP (as described in a portion of Mitigation Measure T 1-1 on Page 4.1-70) and if the mitigation measure that requires use of the internal Grimes Way road for all southbound truck traffic (as described in Mitigation Measure T 1-1A) are imposed, there is no need for any restriction on the arrival and departure times for southbound truck trips, or any restriction on the number of southbound PHTs (as indicated in a second portion of Mitigation Measure T 1-1 on Page 4.1-70), since there will no longer be project-related congestion impacts from truck traffic through Grimes Grade. The net result will be fewer impacts and easier enforcement.

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The FEIR correctly reflects this conclusion but recommends the adoption of *a portion* of Mitigation Measure T 1-1 together with Mitigation Measure T 1-1A. Rather than only partially adopt a mitigation measure, we think it is preferable for the FEIR to provide a clear method for the decision-makers to break up the measures and only adopt what is necessary. We recommend below breaking Mitigation Measure T 1-1 into two parts reflecting the two separate proposed mitigation measures (and creating a new Mitigation Measure T 1-1C) so that the appropriate findings can be made as to each separate proposed measure.

**The Length of Applicant's Permit Extension is Insufficient  
In Light of the Delay in Processing the EIR**

The applicant initially applied for this permit expansion in 2003, anticipating the applicant would have 22 more years of mining at the site (until the year 2025). Now, almost 6 years later and at a cost of hundreds of thousands of dollars to the applicant, we are nearing a point where the County is in a position to review and possibly approve the extension. In recognition that it takes the County close to 6 years to process such an application, we have repeatedly requested from the County that the permit modification reflect an extension for a period of 20 years *from the date of permit expiration*, which would be an extension to 2033 rather than 2025 as described in the FEIR. If such a modification is not granted, in effect the applicant and the County have spent 6 years processing a modification for what ultimately amounts to only 12 additional years of mining. This is not what the applicant bargained for in connection with processing this expansion, and we respectfully request that consideration be given to our request to grant the extension through 2033 so that the applicant has the benefit of an additional 20 years of mining at the site in exchange for the time and money incurred in connection with the permit processing.

F4-5

**A. General Issues**

**Glossary of Defined Terms**

Throughout the FEIR, there are a number of highly technical discussions which rely on acronyms and other terms of art that are not easily understood by the average layperson and will be difficult to enforce. For example, in the Transportation discussion, terms such as "maximum daily trip" and "peak hour trip" (which are not otherwise defined) are frequently used to describe the project's impacts, as well as the mitigation measures. Additionally, without a logical place to look for a definition, it is difficult to parse through different usages of such terminology as "average daily trips" which sometimes is indicated as "ADT" and sometimes is indicated as "average daily trips (one-way)" – a glossary could define a term once for global and consistent usage throughout the FEIR. It is important to understand whether various limits in the mitigation measures are intended to be round trips or one way trips. The effectiveness of the FEIR would benefit tremendously from a glossary of terms in order to assist the reader with identifying the meaning of all such terms.

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Grimes Way Road Letter

Volume III of the FEIR states that the "April 30, 2009 letter regarding Grimes Way" is attached to Appendix B. However, we do not see such letter attached to the Appendix. This letter is intended to describe Grimes Way, as well as show a depiction on a map, and is a necessary component to the evaluation and adoption of Mitigation Measure T-1-1A. Please revise the FEIR to include this attachment.

F4-7

**B. Executive Summary/Project Description**

Page 1-4 – Extension of the CUP

In connection with the request above to increase the date of extension of the permit expansion, certain dates from the FEIR need to be revised in order to reflect that the CUP will be extended 20 years. The dates in the FEIR appear to be linked to the date of DEIR circulation *rather than an extension of the permit*. For example, in Section 1.5.3, it states the CUP will be extended to 2025, which may have been 20 years from when the applicant first filed its application, but this is in fact only a 12 year extension from the current CUP. The FEIR should be revised to reflect the permit will be extended to 2033. The same comment applies to Section 2.3 on Page 2-4.

F4-8

Page 1-4 – Proposed Modifications to Existing Permit

In the 6th bullet point of Section 1.5.3, a change was made in the FEIR reflecting that the applicant will "[e]stablish average daily and maximum peak daily truck volumes of 460 and 600 one-way trips, respectively". However, the applicant has only proposed to establish 460 average daily and 600 *maximum daily* one-way truck trips, respectively (as opposed to 600 *maximum peak daily* one-way truck trips, as it currently states). The FEIR's change grossly misstates the number of trips the applicant has requested to occur during the peak hours. On the contrary, the applicant has agreed to maintain the current limits on daily peak hour trips contained in the existing CUP, regardless of the increase in maximum daily trips (in accordance with revised Mitigation Measure T-1-1). The same comment applies to Section 2.3 on Page 2-4.

F4-9

The following comments are suggestions for minor revisions to the text of the FEIR's Project Description:

Page 2-11 – Proposed Mining Plan

In Section 2.4, a change was made in the third paragraph that states "mining would be completed within the permit's 16 year mining phase; reclamation may occur after that time period" - we do not agree with the recharacterization of the length of applicant's CUP (see comments above relating to length of extension requested), and to avoid doubt about the

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permitted period of time for mining, this sentence should be revised to state "mining would be completed within the permit's term; reclamation may occur after that time period".

Page 2-14 – Reclamation of Existing Highwalls

The last paragraph of Section 2.5 states that Best Rock is "located immediately east of the subject project". The FEIR should instead reflect that Best Rock is located immediately west of the project site.

F4-11

**C. Transportation**

Thresholds of Significance (Page 4.1-29)

We understand that the County adopted new Initial Study Assessment Guidelines in 2008, and has therefore determined the FEIR should analyze the project under the 2008 IS Guidelines (Page 4.1-31) rather than the 2006 IS Guidelines used in the DEIR. While we support this decision, we believe that the project had no significant unavoidable impacts under the 2006 IS Guidelines that could not be effectively mitigated to less than significant levels, and therefore either set of IS Guidelines would be appropriate for use in the EIR. However, we agree with the County's decision to utilize the updated IS Guidelines, which align the thresholds of significance with the current County General Plan goals, policies and programs regarding transportation and circulation, as well as current traffic planning methodology used by the Traffic Engineering Profession in assessing traffic impacts of projects on the environment.

F4-12

Pages 1-12 – 1-15 (and corresponding language on Pages 4.1-70 – 74) – Mitigation Measure T 1-1 and T 1-1A (Traffic Congestion Impact T-1)

The applicant has agreed to limit the number of peak hour trips to those that are currently permitted by the existing CUP (described in a portion of Mitigation Measure T 1-1), and the applicant has also agreed to use Grimes Way as an alternate route for southbound truck traffic (Mitigation Measure T 1-1A), thereby eliminating the need for any additional mitigation on southbound trips since there will no longer be project-related congestion impacts from southbound traffic through Grimes Grade. . On Page 4.1-74, the FEIR states that even with adoption and implementation of Mitigation Measure T 1-1A, the FEIR recommends adopting certain portions of Mitigation Measure T 1-1, specifically the limitation on the proposed project to its existing permitted PHTs. Because Mitigation Measure T 1-1 combines the concept of peak hour trip limitations with other limitations (i.e., southbound trip limits), there is a risk that both Mitigation Measures T 1-1 and T 1-1A will be adopted as a whole, with the result being an overly burdensome and unnecessary mitigation of impacts that are no longer significant with the implementation of only one of such measures. Since it is not clear exactly how the restriction on southbound trips will be deleted if Mitigation Measure T 1-1 is approved, we request that the FEIR be revised to reflect (1) a Mitigation Measure T 1-1, which contains *only the first sentence*

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of the Mitigation Measure T 1-1 in the current FEIR, which states "The proposed project shall not generate more than 300 PHTs during any single hour during morning peak traffic periods (6:00 to 8:00 AM) and afternoon peak traffic periods (3:00 and 6:00 PM) through the SR-126/SR-23 intersection and SR-23 segments between Fillmore and Moorpark", and (2) an additional Mitigation Measure T 1-1C which contains the balance of the restrictions in the existing Mitigation Measure T 1-1 (e.g., maintaining the limitation on existing arrival and departure time restrictions for south-oriented trips under CUP 4874 Condition 87). Then the FEIR should explicitly state that it recommends adoption of the revised Mitigation Measure T 1-1 *together with* Mitigation Measure T 1-1A (or in the alternative, T 1-1C) in order to clarify that it is unnecessary to adopt all three such measures.

Page 1-21 – Traffic Safety at the Project Site Entrance along SR-23

The first paragraph is incorrect. The exit of the Grimes Rock mine already has an existing acceleration lane for southbound traffic leaving the mine. Furthermore, a requirement for a southbound improvement is wholly unnecessary because trucks will not be exiting the mine with the implementation of Mitigation Measure T-1-1A, which will require southbound outbound trucks to use the internal Grimes Way road. Similarly, no left turn pocket will be needed for inbound northbound trucks because under Mitigation Measure T 1-1-A, they will be entering the quarry from Grimes Canyon Road at Grimes Way (700 feet north of Shekel1 Road). Therefore, we do not think there is a significant impact at the mine entrance (T-2), nor is the Mitigation Measure T 2-1 necessary. The same comment applies to the corresponding language relating to Mitigation Measure T 2-1 on Page 4.1-80.

F4-14

Page 1-22 - Traffic Safety at the Project Site Entrance along SR-23 (Mitigation Measure T 2-1)

In connection with the mitigation measure requiring a right-turn acceleration and deceleration lane at the entrance, the FEIR states that certain widths are necessary for these type of improvements and that it "is generally assumed that these improvements could be made within existing right of way or within additional right of way controlled by the operators." The second and third full paragraphs on this page imply that the applicant owns or controls additional lands adjacent to the existing Grimes Rock mine entrance, and that therefore improvements in the existing rights of way will not be problematic. However, this is not true, since the applicant does not own the property on which the entrance to the mine is located and is already utilizing to its full extent the easement is negotiated with the third party property owner. In the County's response to a comment we previously made on this point (see Page 9-103, Comment 51-25), the County acknowledges that the area required for improvements may not fully be located upon the applicant's or Caltrans' property, and yet the Mitigation Measure was not revised to reflect this reality. The same comment applies to Mitigation Measure T 2-1 on Page 4.1-80.

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Pages 1-23 – 1-26 – Cumulative Traffic Congestion and Safety Impacts (Impact T-3)

The FEIR states that Mitigation Measures T 3-1 and T 3-2 rely on a future funding or implementing mechanism, and therefore are not recommended by the FEIR. The FEIR then states that the inability to adopt such Mitigation Measures result in a significant unavoidable cumulative impact (Class I). However, on Page 1-26, the FEIR states that “[w]ith the implementation of Mitigation Measure T 1-1, T 1-2 and T 3-3 the project contribution to cumulative impacts on traffic congestion at the above locations (Impact T-3) is reduced to less than significant levels (Class II)”. Our read of these statements collectively is that Impact T-3 is effectively mitigated to a less than significant level (Class II) by the implementation of Mitigation Measures T 1-1, T 1-2 and T 3-3, and therefore it is incorrect to include statements that the inability to adopt Mitigation Measures T 3-1 and T 3-2 results in a significant unavoidable impact. The FEIR should be revised to clarify these statements.

F4-16

Furthermore, we believe the reference to the implementation Measure T 1-2 is in error; Mitigation Measure T 1-2 is another mitigation measure that the County does not recommend due to its reliance on a future funding or implementing mechanism. If this was indeed an error, the FEIR needs to be revised to reflect the accurate Mitigation Measures which reduce Impact T-3 to a less than significant level. It is likely that the Mitigation Measure intended to be referenced was Mitigation Measure T 2-1 (installation of acceleration and deceleration lanes). If this is correct, we reiterate our position that we do not think this mitigation is necessary to lessen Impact T-3 in the event Mitigation Measure T 1-1A is adopted, and therefore Impact T-3 is mitigated by the adoption of Mitigation Measures T 1-1 (but see our discussion above that only a portion of this measure need be adopted), T 1-1A and T 3-3.

F4-17

The foregoing comments apply to the corresponding language found on Pages 4.1 – 82-83.

Page 1-28 – Cumulative Safety Issues on SR-23 Road Segments (Impact T-5)

The FEIR states that Mitigation Measures T 3-1 and T 3-2 rely on a future funding or implementing mechanism, and therefore are not recommended by the FEIR. The FEIR then states that the inability to adopt such Mitigation Measures result in a significant unavoidable cumulative impact (Class I). Even in the event that Mitigation Measure T 5-1 is infeasible, the use by the applicant of the private Grimes Way road as described in Mitigation Measure T 1-1A for truck traffic entering and exiting the project will reduce project traffic through the Grimes Grade. Less traffic will decrease the incidence of collisions and mitigate safety concerns on the relevant segments of SR-23. We believe Mitigation Measure T 1-1A, by itself, reduces project-related safety and congestion impacts on portions of Grimes Canyon South to less than significant levels, and the FEIR should be revised to reflect this.

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Page 4.1-11 – Use of Walnut Canyon Road/Moorpark Avenue

The 3rd full paragraph of this page has a new statement that “[m]ost of the use of [Walnut Canyon Road through the central business district of Moorpark] by Grimes Rock and Best Rock is in violation of existing mining permit conditions”. This is a false and misleading statement about the applicant’s compliance with its existing CUP, with no backup evidence that the applicant has been formally found in violation of the CUP, and should be deleted from the FEIR. An EIR is not the appropriate forum for determining the nature and consequences of prior conduct of a project applicant. See *Fat. v. County of Sacramento* (2002) 97 Cal. App 4th 1270. To the extent such assumption was utilized in forming any conclusions about significant impacts of the project, such conclusions should be revised.

F4-20

Furthermore, as a factual matter Walnut Canyon Road must be utilized when Grimes Canyon Road is closed or being worked on, as has frequently occurred. It is not clear whether the observation that applicant’s truck traffic is using Walnut Canyon Road was used in determining the environmental baseline for the project. The FEIR should treat observed existing activity levels as constituting the environmental baseline, and evaluate the project only to the degree it would exceed existing levels. To the extent such assumption was not utilized in determining the project’s environmental baseline, which would impact the evaluation of impacts of the project (including with respect to traffic, noise, air quality and community character in Moorpark), such conclusions should be revised.

F4-21

In the event the FEIR must rely on statements about the applicant’s use of Walnut Canyon Road, there must be an acknowledgement that the mine operators (as well as the County) cannot control the third party truck drivers after they leave the project site. The applicant has repeatedly implemented measures to control the direction of the truck traffic from the mine in order to comply with the current restrictions of the CUP. However, the physical reality is that Grimes Canyon Road has been closed from time to time for construction and due to occasional flooding, the design of the road is difficult for truckers to use and as a result Walnut Canyon Road is the reasonable alternative for a driver heading to SR-118.

**D. Air Quality**

Page 4.2-31 – Ozone Precursor Emissions (Impact AQ-2)

The adoption and imposition of Mitigation Measure AQ 2-1 is beyond the power conferred by law on the County or any public agency, and therefore is legally infeasible. The County cannot impose a mitigation fee (or collect it) which has no specific project associated with it and which does not have a demonstrated linkage to the impact which it is intended to mitigate. Rather, a *nexus* must exist between the project’s impacts and the mitigation measure. Instead, the FEIR simply gives examples of other projects that have used an Off-Site Transportation Demand Management Fund (TDM Fund). These examples are not a substitute

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for a description of an actual project that has a reasonable relationship to the project, and therefore this Mitigation Measure is deficient because it is infeasible as written.

Furthermore, the FEIR should state in the Air Quality discussion that the existence of the project reduces the need for local customers to seek aggregate from long-distance or out-of County sources, and therefore there is an overall net benefit to Air Quality without the project. The required mitigation of the project in respect of Air Quality impacts should take into account the net benefit of the project's beneficial impact of reducing GHG emissions in the local area by reducing the need for long import trips into the County, as well increasing the likelihood that Los Angeles County customers will use Grimes Rock aggregate and thereby decrease their use of mining operations further away with longer haul routes (which increase GHG emissions).

F4-23

**E. Noise**

The FEIR's analysis of feasible mitigation measures for noise impacts does not appear to include the potential beneficial mitigation on noise impacts afforded by implementation of Mitigation Measures T 1-1A and T 1-1B (as described on Pages 1-14-17 and 4.1-73-76). The FEIR should reflect the fact that implementation of Mitigation Measures T 1-1A and T 1-1B will reduce impacts on noise because they divert truck traffic away from sensitive noise receptors.

F4-24

**F. General Plan/Land Use Compatibility**

Pages 1-49-51 - Compatibility with Community Character in Cities of Fillmore and Moorpark (Impacts LU-5 and LU-6)

On Page 1-49, the FEIR states that community character impacts result from the project and cumulative traffic noise, increased traffic volumes, and traffic exhaust fumes. However, there are no specific standards or thresholds of significance enumerated by which to measure these impacts. For example, there is no measurable standard which demonstrates objectively that more truck traffic changes community character in a significant way. On the contrary, the FEIR makes conclusory statements that "the need to keep windows closed during the hot Fillmore summer contributes to a significant impact" (Page 1-50), and "crossing many lanes of traffic, particularly as a child, can easily be more intimidating than crossing a narrower road" (Page 1-50). Furthermore, there is not a fulsome discussion of mitigation measures; instead the FEIR states only "See traffic and noise mitigation measures discussed above" (Pages 1-51, 52). It is difficult to ascertain how the impacts are objectively measured, and also to determine which "traffic and noise mitigation measures" are applicable to this discussion. The FEIR should reflect in particular that the adoption of a portion of Mitigation Measure T 1-1 together with Measure T 1-1A would reduce the significance of any impact, since there will never be more trucks on the road near sensitive receptors during peak hours than there is under the current permit, all additional truck traffic will be dispersed throughout the rest of the workday, and as a

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result, there will not be additional impacts on the cities' community character during the peak hours of traffic.

Page 4.4-16 – General Plan Environmental Goals and Policies

We reiterate our position that the FEIR fails to discuss one of the most relevant policies of the County's General Plan, the importance of extraction areas being close to areas of use and demand (Section 1.4 of County of Ventura General Plan, Goals, Policies and Programs). The County's response to our DEIR comments that we referenced only the "introduction" to General Plan Section 1.4, and therefore such statement can be wholly disregarded, is unpersuasive (Page 9-105). We referenced that "[s]afeguarding future access to the resource and facilitating a long-term supply of mineral resources within the County are among the stated goals in the General Plan for the management of mineral resources" (See Comment 51-46), which accurately reflects Goal 1.4.1-2. Furthermore, Goal 1.4.1-3 is relevant to the project: "Promote the utilization of mineral resources located close to urbanized areas before their extraction is precluded by urbanization."

F4-26

The FEIR then states that even if such "Goal" relates to the project, the County need not evaluate the project's consistency with the Goal, since there are three actual Mineral Resources Policies discussed. This is an absurd result. While we can parse words about what is a Goal and what is a Policy, there is a clear presumption in the General Plan that the County should encourage and support use of local mineral resources. We understand that the County needs to balance its priorities in reviewing all Goals and Policies in the General Plan for consistency with the project, but it seems a reasonable and natural approach that in connection with a review of a mining permit, the County would highlight both Goals and Policies in the Mineral Resources section. The extent that a project is consistent with an expressed Goal or Policy of the County's General Plan, the County should absolutely include a statement that the project accomplishes such Goal or Policy in the FEIR.

F4-27

**G. Hydrology and Water Resources**

Page 1 -57 – Interference with Groundwater Recharge (WR-3)

In the first paragraph on this page, there is new a statement that the applicant proposes "to retain...a sprinkler system to irrigate pasture on the leveled areas, and both fines area if the material is not sold as product." The applicant has not proposed any such sprinkler system. Furthermore, in the numbered paragraph 3 at the bottom of the page, the FEIR states "Any long term irrigation of cattle grazing areas or irrigation for biological mitigation could result in significant vegetative growth...which reduces water volumes percolating into the aquifers." Because of this and other reasons, the FEIR states the project results in a potentially significant impact on groundwater recharge. To the extent the inaccurate statement about the applicant's

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plans to irrigate and/or utilize a sprinkler system contributed to this conclusion, the evaluation of significance must be reconsidered.

Page 1 -59 Mitigation Regarding Potential End Use of Cattle Grazing (WR 3-2)

The new Mitigation Measure WR 3-2 prohibits the use of "all animals used for food fiber or recreation" in perpetuity on the disturbed or reclaimed surface outcrop of the Fox Canyon aquifers, plus 200 feet around such areas. This mitigation is a result of the FEIR's conclusory statement on page 4.5-20 that "[l]arge numbers of cattle...could potentially be located over the large flat areas of the aquifer outcrop created by the project...[which] could result in reductions in groundwater recharge due to mechanical compaction of the soil from the weight of the animals or by entrapment of feces." We reiterate our prior objection to the outright prohibition of cattle grazing, based on a hypothetical possibility of an impact. This mitigation measure is too restrictive on the applicant, and a more reasonable solution would be to require the applicant to develop a plan to remedy any actual anticipated impacts in consultation with the District Groundwater Section at the time the applicant develops its Reclamation Plan with the County and OMR, in accordance with SMARA.

F4-29

Page 1-62 – 1-64 Alteration of Drainage Patterns Resulting in Substantial Erosion or Flooding (Impact WR-5)

The FEIR makes a new assumption that the applicant has no intention of maintaining the proposed large cut slopes, and that therefore "the structures will fall into disrepair, and they will stop performing their functions", which could lead to erosion, head-cutting onto adjacent properties, and large scale slope failure. This conclusion is a surprise to the applicant, which has maintained all cut slopes in accordance with the terms of its existing CUP. The new mitigation measure imposed as a result of these inaccurate assumptions are overly complicated and drastically change the existing practices of slope maintenance. For example, the current approved reclamation plan does not require top soil, fertilization or irrigation once the slopes are planted. On the contrary, the new Mitigation Measures WR 5-3 and WR 5-4 would require access by water trucks or other irrigation methods to assist with revegetation, which requires the applicant to limit the height of the slopes in order to permit water trucks to access them. Furthermore, it is the applicant's understanding that a requirement of irrigation (including watering trucks) is contrary to the Fox Canyon Groundwater Management Agency's long-standing policies regarding irrigation (e.g., a prohibition on new irrigation in this location in order to protect groundwater resources). This is the reasoning behind the applicant's proposed Reclamation Plan, which does not require irrigation to germinate and establish plants, since "the selected species [will be] adapted to the climate and rainfall conditions at the proposed project site." (See Page 2-13). We believe the FEIR has overstated the significance of an impact and imposed unnecessary mitigation, since the applicant proposes (and currently implements) reasonable maintenance obligations on the cut slopes. In order to avoid duplicative or unnecessary mitigation, the applicant requests that the Mitigation Measures relating to such

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hydrology impacts be subject to (and adopted in accordance with) the requirements of the applicable Water Resources Agency and any other agency with jurisdiction over the Reclamation Plan.

## H. Biology

### Page 1-66 – Plant Communities and Plants

In the last paragraph of this page, the FEIR asserts “the applicant is proposing to mine various areas at the same time over the entire proposed mining area, leaving the opened areas accessible for recurrent mining opportunities, ... [so] phased reclamation would not be performed.” On the contrary, the Project Description states the proposed mining plan is to mine the Site in phases (see Page 1-6), and reclamation will be ongoing as mined areas are completed (see Page 1-7), consequently, the reclamation will be completed in phases. To the extent this inaccurate statement contributed to the evaluation of the biological impacts of the project, the evaluation of significance must be reconsidered. This comment also applies to Page 4.6-38.

F4-30A

### Page 4.6-38 – Vegetation Impacts (Plant Communities and Plants) (Impact BR-1)

With respect to Special Status Plant Species described on Table 4.6-3, *only 3* plants (of 32) were actually observed on the project site (slender (club-haired) mariposa lily, Southern California black walnut, and wedge-leaf horkelia): With respect to Sensitive Plant Communities listed in Table 4.6-4, *only 3* (out of 10 plants) are listed as being present on the project site (coastal sage scrub, alluvial scrub and southern riparian scrub). We reiterate our objection that there is no plant survey contained in the EIR, and therefore it is impossible for a reader to understand where the species were located and/or how many actual plants were found. With respect to Special Status Wildlife, in Table 4.6-5 on Page 4.6-22, only 9 of the 40 species were observed near the project site, and of those species *only 3 were actually observed on the site* (Coast horned lizard, Coastal western whiptail and Southern California rufous-crowned sparrow). The FEIR does not quantify how many plants or animal species were actually observed on the site, where they were found, or what the threshold is for determining the project’s impact on such species.

F4-31

Nonetheless, the FEIR has gone even further than the DEIR by revising its conclusions on impacts from “[t]he removal of... a variety of plant communities and plants is classified as a significant impact” in the DEIR to “[d]irect operational impacts to *locally important plant communities* are considered significant because of the extent of the impact, which includes long-term loss of 68.7 acres of vegetation, permanent alteration of habitat structure, and the *importance of the resource*, given that these plant communities contribute to the County’s biodiversity and *support multiple sensitive wildlife species* (Impact BR-1)” (emphasis added), and by stating “[p]roject operation would... adversely affect several to many generations of wildlife, depending on the life cycle of the species. Given that the project site provides suitable

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habitat for many species which are already at risk for population decline, the removal of suitable habitat for these species...is considered to be a significant impact (BR-10)" (Page 4.6-48).

Yet the FEIR provides no factual basis for these conclusions, nor does it show how the habitat has changed since the 1998 CUP was approved *with no such significant impacts*, even though the habitat and proposed operations are exactly the same, and consequently the FEIR has overstated the impacts. Simply because the site is "suitable habitat" does not mean that the project actually supports any sensitive species; in fact, the FEIR appears to be at a loss to demonstrate such species exist on the project site (which makes sense, since the site has been operated as a mine since the 1950s). Additional factual information about the presence of sensitive species must be included in the FEIR, together with accurate thresholds that demonstrate how impacts are evaluated. On the contrary, the FEIR's description of the existence of sensitive plant and animal species, and the subsequent significant impact of the project appear to be pulled out of thin air. As described above, the FEIR then requires both reclamation (and consequently, re-vegetation) of the entire mined area *in addition to* donation of habitat or payment of an in-lieu mitigation fee. The FEIR must demonstrate that the mitigation measures it recommends have a reasonable relationship to the nature of the project's impacts, and that they are roughly proportional in extent to those impacts. *There is no support showing that an impact occurs because of the project which would require the duplicative and onerous mitigation measures such as paying in-lieu fees and re-vegetating the habitat included in the FEIR.* These same comments apply to the significance evaluation of wildlife impacts on Page 4.6-44 (BR-7).

Page 1-67 – Mitigation Measure BR 1-1

As described in detail at the beginning of this letter, without any supporting information in the DEIR for its determination that sensitive habit is permanently eliminated from the project site, the FEIR has now compounded the error by increasing the compensatory mitigation ratio imposed by the DEIR from 1.2:1 to 1.5:1, and the applicant would be required to donate 103.3 acres of habitat instead of the previously required 89.2 acres (or pay an in-lieu fee) *in addition to* reclamation/re-vegetation. It is difficult for the reader to determine on what basis the compensatory ratio has increased, especially in light of our comments that there is not a significant impact to the plant communities because of the applicant's ongoing reclamation and re-vegetation of the site. We reiterate our objection that these requirements are duplicative of each other, are not proportional to the alleged impacts, and over-mitigate the biological impacts of the project.

F4-32

Pages 1-81 – 1-84 – Direct Reclamation Impacts (Mitigation Measure BR 12-1)

The FEIR proposes new additional standards for revegetation and reclamation of the site which are unworkable for the applicant.

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For example, the 1st bullet point in the second section on Page 1-82 requires that the top six inches of material supporting plants shall be salvaged, stockpiled and used for re-vegetation. This is not a realistic or necessary mitigation. Most of this material will be coming off of steep existing slopes and it cannot be viably collected. Furthermore, the removal of six inches will not include top soil or even subsoil, so the value of collecting such material for stockpiling and re-vegetation is negligible.

In the 3rd bullet point of the same section on Page 1-82, the FEIR provides that soil amendments should be added where necessary for improving micro- or macronutrients. However, soil amendments can not be added to cut slopes without destroying their stability (all finished slopes are proposed to be cut slopes). Furthermore, adding such amendments to the soil would be in direct conflict with the mandate of the groundwater management agency, which is concerned about maximizing water percolation and preventing any leeching of soil into the aquifer that underlies the property.

The first full bullet point on Page 1-84 requires that the applicant plant test plots prior to the start of reclamation. We reiterate our position that the applicant previously prepared a test plot and therefore this is unnecessary mitigation. The County's response to our DEIR comments includes an implication (without supporting facts) that the applicant's prior successes with a test plot for the CUP are insufficient evidence that re-vegetation will be accomplished because that test plot was not on an area that was previously mined (Page 9-101). However, the test plot was graded to produce a 1.5:1 cut bank and a flat area, *just as if it had been mined*. The recommended plant materials were planted, and the test plot was inspected by the SMARA biologist who ultimately concluded that the seed mix used (and the resulting re-vegetation) was acceptable. In spite of recent dry years, the test plot continues to do as well as the surrounding original vegetation. Notwithstanding this evidence, the FEIR imposes repetitive mitigation which has already been imposed (and complied with) relating to the same habitat and operations.

## I. Visual Resources

### Page 1-91 – Alterations in Visual Character and Quality of Views from SR-23 (Impact VR-1)

Mitigation Measure VR 1-4 requires the establishment of mature, healthy trees providing a visual barrier between the mining area and Grimes Canyon Road. However, the lack of top soil or subsoil on the site and lack of irrigation for such vegetation make this mitigation infeasible for the applicant. Furthermore, trees in the project vicinity pose a dangerous condition because of frequent fires in the area, and the applicant is concerned about the feasibility of maintaining mature trees in the event of destruction by such natural causes.

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**J. Climate Change**

Page 4.9-8 – Thresholds of Significance

The FEIR's new discussion on Climate Change and Thresholds of Significance mentions SB 97 (Public Resources Code §21083.05) which requires the Office of Planning and Research (OPR) to adopt CEQA Guidelines for the mitigation of GHG emissions, which adoption must occur prior to January 1, 2010. However, the FEIR does not include a reference to the recommended Guidelines amendments released by the OPR on April 13, 2009 for review and public comment. Instead, the FEIR makes a global reference that such "effort" is unlikely to result in the promulgation of quantitative objective thresholds of significant for GHG emissions. However, the OPR has released a Technical Advisory (June 19, 2008) which clearly states that "Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects *must be disclosed and mitigated* to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact." The FEIR then quantifies and discloses the project's GHG emissions (using only CO<sub>2</sub> emissions), but does not then do additional analysis with respect to project-specific impacts. Rather, the FEIR on Page 4.9-11 summarily concludes the project has a cumulative impact on global climate change, without any thresholds or standards, County-imposed or otherwise. The FEIR needs revision to include a discussion of the project-specific impacts on Climate Change. Furthermore, the FEIR should evaluate the possibility that the project does not have a cumulative impact on Climate Change because the project reduces the need for local customers to seek aggregate from long-distance or out-of County sources, and therefore there is an overall net benefit to the project o Climate Change.

F4-35

**K. Alternatives**

Page 5-7-8 – Mine Expansion vs. Population Growth/Aggregate Demand

The FEIR states in the first sentence on Page 5-8 that "[a]ny increase in truck trips originating from the Grimes Canyon mines which exceeded the local population growth of 16% can be *assumed to be exported*, since local demand by 2025 should increase only by approximately that amount" (emphasis added). The FEIR then concludes that, if the expansion requests of each of Grimes Rock, Best Rock and Wayne J mines are approved, "virtually all of this material will be exported out of Ventura County rather than consumed locally." This conclusion does rely on the factual differences between the mining operations. Grimes Rock produces more aggregate than sand, and therefore produces more local product, which will continue to serve a demand locally rather than regionally despite the fact that other mines may have surplus sand to export regionally. Therefore, many of the sweeping conclusions found in Chapter 5 that imply Grimes Rock is generating more sand than is needed locally and is exporting this surplus, while failing to serve the local demand of rock are inapplicable to the

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project, and the FEIR should be revised to reflect these inaccuracies (See Page 5-41). As we stated before, Grimes Rock has numerous customers in Ventura County that are denied a local source of supply material and are forced to purchase materials from mining operations outside the County, thereby increasing long-distance truck trips from out-of-county mining operations.

Page 5-31 – Alternative 5: Southbound Truck Route Alternatives

Adoption of Alternative 1-2 would require improved enforcement measures to ensure that the applicant's trucks do not use Walnut Canyon Road. In the event such Alternative is adopted, we request that it be made clear that the applicant may continue to use Walnut Canyon Road for local deliveries in the City of Moorpark. In connection with any such restrictions, we also request that the County recognize the physical reality that Grimes Canyon Road is closed from time to time for construction and due to occasional flooding, the design of the road is difficult for truckers to use and as a result Walnut Canyon Road is the preferred alternative for a driver heading to SR-118 from the project site.

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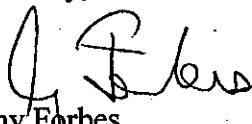
Page 5-39 – Selection of Environmentally Superior Alternative

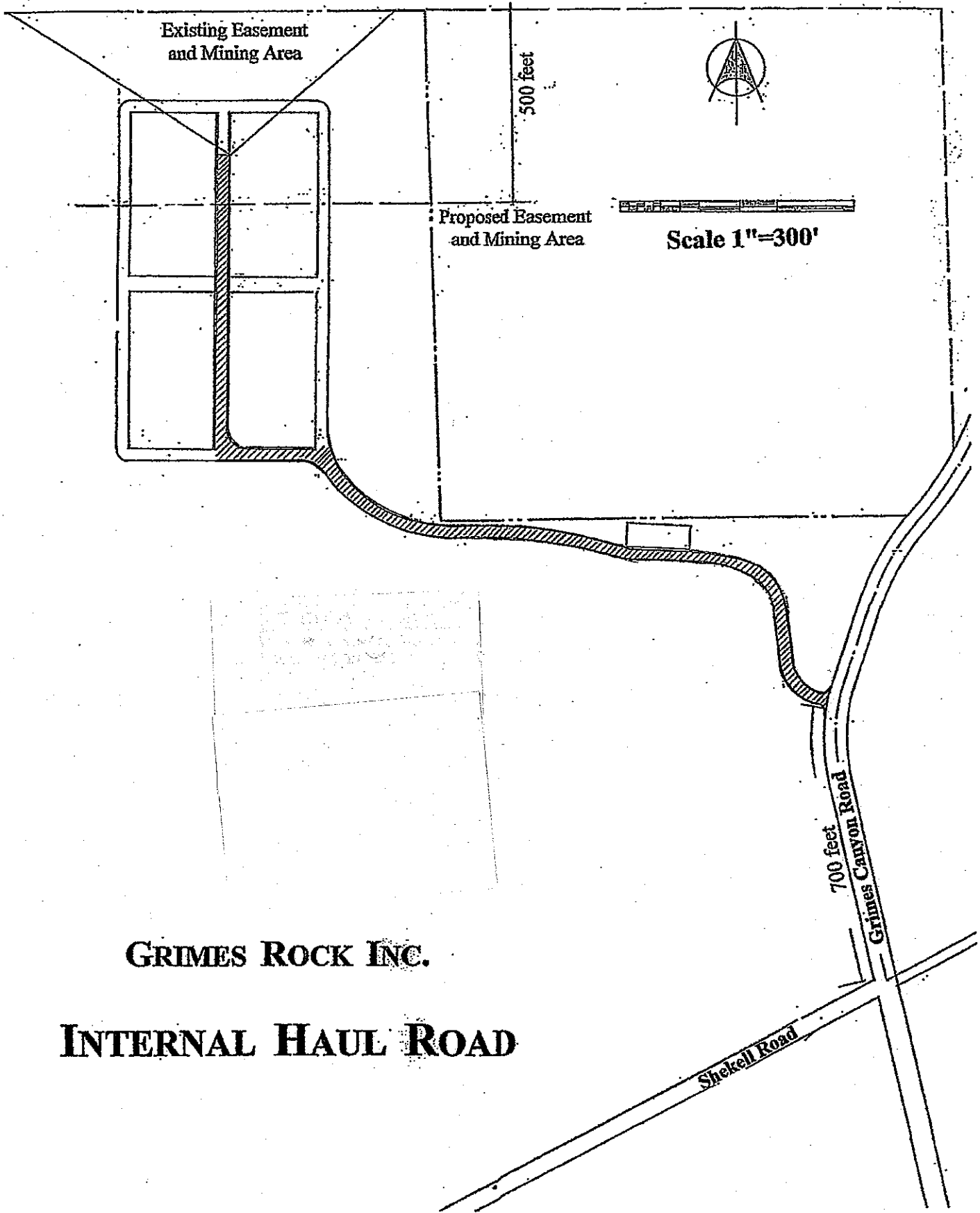
The applicant supports the County's conclusion on Page 5-39 that the proposed project is the Environmentally Superior choice if both the County and regional environmental impacts are considered, since the regional environmental impacts are minimized by maximizing aggregate production in Grimes Canyon and appreciates the recognition that the project ultimately reduces environmental impacts while meeting its Project Objectives as well as a County General Plan Goal to safeguard mineral resources and promote the use of mineral resources close to urbanized areas (See Goals 1.4.1-2, 3).

F4-38

In conclusion, we feel that the foregoing further revisions are necessary to reflect reasonable and adequate mitigation of accurate environmental impacts in order to make the FEIR an effective tool for the Board of Supervisors and other decision-makers. Please let me know if you have any questions.

Sincerely,

  
Amy Forbes



**GRIMES ROCK INC.**

**INTERNAL HAUL ROAD**

**Response to Commenter No. F4: Amy Forbes, Gibson, Dunn and Crutcher  
LLP July 15, 2009**

F4-1 There are a number of reasons why the project environmental analysis and specifically the biological analysis/impacts could change between 1998 and the current EIR:

1. The two studies considered different areas. The 1998 EIR only evaluated the impacts of the project area as proposed at that time and explicitly excluded from the impact analysis the area outside the proposed disturbance area. The 2006 EIR did the reverse -- it excluded the 1998 proposed disturbed area and focused solely on undisturbed areas which were not evaluated in 1998. Although the areas are adjacent to each other, they are different and can easily contain different habitats, habitat values, species and/or impacts.
2. The longer 72 page 2006 EIR analysis used the shorter 22 page 1998 EIR analysis as a starting point and builds on it. The 2006 EIR is in fact much more detailed regarding the existing setting and impacts than is the 1998 analysis. The 1998 EIR shows generalized habitat types (Figure 15), but does not show individual trees or shrubs. The equivalent 2006 EIR figure (Figure 4.6-1) is more specific in that it shows much smaller areas of different habitat types and plots individual specimens of four different types of trees or very small areas of trees. This level of detail is missing from the 1998 study. The biologists consider the level of detail adequate to describe and evaluate project impacts without additional notes being provided.
3. The 1998 EIR surveyed the (then) proposed disturbance area for "Sensitive" plant and animal species. No "Sensitive" plants were found, a few "Sensitive" animals were considered to potentially exist onsite, but the likelihood of these occurring was considered "very low" (p. 4-38 and 39). In the case of a several raptors, the potential existed that they might visit the site, but only on an occasional basis (p. 4-39).

The 2006 EIR did updated surveys. In areas not surveyed in 1998 the EIR found three "Special Status" plant species actually onsite, and concluded that an additional seven such species have a "High" probability of occurring (Table 4.6-3). The 2006 EIR found nine "Special Status" animal species actually onsite, and concluded that that an additional three such species have a "High" probability of occurring (Table 4.6-5). Therefore the 2006 EIR actually found 12 "Special Status" species with a "High" probability that an additional 10 "Special Status" species occur but were not observed. As noted above, the 1998 EIR did not find a single "Sensitive" species onsite.

The above reasons are adequate to account for different findings and mitigation measures between the 1998 EIR and the 2006 EIR. These documents evaluated different projects located in different (if adjacent) locations at different times. The above reasons also demonstrate that the 2006 EIR is more detailed and contains more information regarding the existing setting and projected impacts than does the 1998 EIR. To the extent there are differences in any overlapping data between the EIRs, the 2006 document is considered the more recent and accurate. The two documents are largely looking at different areas which result in different data and conclusions; consequently there is in fact little if any conflict between the two documents as they contain little if any overlap of analysis areas or conclusions.

In regard to further documentation, the 2006 EIR contains better documentation than does the 1998 EIR which was considered adequate by the County at the time, and apparently continues to be considered adequate by the applicant. The County believes that the FEIR as written provides adequate detail to allow decision-makers to make informed decisions.

F4-2 See Response to Comment (RTC) F4-1. The biological benefits and impacts of the applicant's detailed Reclamation Plan are evaluated in FEIR Section 4.6.3.3. Based on past experience from other projects and the advise of the California Department of Fish and Game, it is not possible to artificially restore the complexity of native, undisturbed habitat (including the undisturbed soil structure and ecologies). As such, the applicant proposed Reclamation Plan partially, but does not fully mitigate the project impacts. That is why the additional requirement of off-site mitigation is required to fill the deficiency resulting from the Reclamation Plan.

F4-3 Page 4.6-52 evaluates the impacts of the project proposed by the applicant absent imposition of any mitigation measures. It is inappropriate to evaluate the impacts of Mitigation Measure WR 3-2 or any mitigation measure in this section unless the applicant is agreeing to make the mitigation measure(s) part of the proposed project. To date the applicant has not agreed to such a change, therefore it is not appropriate to assume the impact of any mitigation measure in Section 4.6.3.3. However, to address this issue in the mitigation section, Mitigation Measure BR 1-1 has been revised to address the issue of implementation of Mitigation Measure WR 3-2.

In regard to the issue of why the mitigation ratio was changed from 1.2 in the DEIR to 1.5 in the FEIR, this was done as a result of comments from Grimes Rock and Best Rock. Both operators were very concerned about

the loss of cattle grazing rights on the sites after reclamation and wished to keep the potential for grazing as an end use.

In reviewing this issue, the biologists concluded that cattle reduce the carrying capacity of the land by approximately 30%. Therefore, if .3 of an acre is preserved off-site and does not allow cattle grazing, such a measure would mitigate cattle grazing on 1.0 acre on the project site. Therefore the overall mitigation ratio was increased from 1.2 to 1.5 to allow cattle grazing on the project site and still mitigate the project specific biological impacts of the mining and reclamation phases of the project. As noted above, Mitigation Measure BR 1-1 has been revised to consider the option of either allowing cattle or not allowing cattle on the project site at reclamation.

- F4-4 Mitigation Measures T 1-1 and T 1-1A and the accompanying text have been revised to indicate that one or the other of the (revised) Mitigation Measures could be approved as a stand alone measure along the lines outlined in this comment.
- F4-5 Page one of the Grimes Rock project application of August 27, 2001 lists the "term of permit" of the "present permit" as 15 years. Given the approval date of 1998, a 15 year "term of permit" expires in 2013 which is when CUP 4874 in fact expires. The application then goes on to request a "term of permit" of the "requested modification" of 20 years. Adding 20 years to the 1998 original approval date, or from the 2001 date the application was filed, produces a permit time horizon between 2018 and 2021. Nowhere in the applicant's application is there a reference to start the 20 years from expiration of the CUP in 2013.

There were slight differences in the requested expiration dates of the three permits at the time of the submittal of modifications to the Best Rock, Grimes Rock and Wayne J permits, but the three applicants agreed to a unified, 2025 time horizon. That date was used in the Envicom Scope of Work, the project NOP, and the project EIR project description, all of which were reviewed approved by the applicant. The applicant's comments on the DEIR project description (page 14 of the 8/25/06 letter from Gibson, Dunn, lists three requested changes to the project description, all relatively minor, and none of which indicate that the EIR time horizon is wrong.

The time horizon for the DEIR is 2025. All long- range environmental impacts are based on that date, and that time horizon was in fact approved by Grimes Rock applicant (Mr. Rusty Cochran). The request to extend the project to 2033 was reviewed by County Counsel and Planning Division management including the Chairman of the Environmental Report Review Committee which advises the Planning Commission and Board of

Supervisors on the technical adequacy of the EIR. Their conclusion is that it is possible to change the date to 2033 as requested; this would be considered a substantial change to the project description which would require revision and recirculation of the EIR as a Revised Draft EIR. This conclusion is affirmed by Mr. Butch Britt, Manager of the Transportation Department of the Public Works Agency, who concludes the traffic modeling and analysis in the Grimes Rock EIR is not adequate to extend the environmental conclusions from 2025 to 2033. If the applicant wishes to pursue this request the Planning Division is willing to consider it under the above terms.

- F4-6 This comment requests development of a glossary, citing non-defined terms or inconsistently used terms such as "maximum daily trip", "peak hour trip", "average daily trips", "average daily trips (one way)". Most of these terms are not used often in the FEIR, and a glossary of technical terms from all the impact chapters would be a major undertaking. The following are how the terms referenced in this comment are defined:

"Maximum daily trips" The maximum number of one-way trips which can occur within any given 24-hour period.

"Peak hour trip" A one-way trip occurring during any part of peak congestion periods on SR-23 between Fillmore and Moorpark (i.e. 6 to 8 a.m. and 3 to 6 p.m.) and during peak periods for the SR-118/SR-134 intersection (i.e. 6:30 to 9:00 a.m. and 3:30 to 6:30 p.m.).

"Average Daily Trips" The total number of one-way trips (a trip from one point (a departure point) to another point (a destination point)) which occur over a period of time, divided by the number of days within that period of time. For example, if a project generates 3,750 one-way trips in a thirty day period, it would generate  $3,750/30 = 125$  ADTs. A round trip (i.e. a truck delivering a load of aggregate and returning to the mine) requires two one-way trips (i.e. 2 ADTs).

"average daily trips (one way)" This is the same as an ADT.

- F4-7 The Grimes Canyon letter of April 30, 2009 regarding Grimes Way has been included in Appendix B of the revised FEIR.
- F4-8 See RTC F4-5.
- F4-9 The FEIR has been revised to remove the term "peak" to clarify the project description on pages 1-4 and 2-4.

- F4-10 See RTC F4-5. The FEIR text is a correct characterization of the proposed project.
- F4-11 So noted. The change has been made to the revised FEIR.
- F4-12 This comment is incorrect. The proposed project, even holding PHTs at existing permitted levels, would have a significant unmitigated traffic congestion impact under Traffic Threshold 6 contained in the 2006 DEIR. This Threshold uses ADTs to determine impacts rather than PHTs, and the requested increase of 160 ADT could not be mitigated by any identified mitigation measures, including Mitigation Measures T 1-1 or T 1-1A. If the 2006 thresholds were continued to be used, the project would have a significant unavoidable project-specific congestion impact on a road (SR-23) which does not operate at an acceptable Level Of Service (LOS) and for which no improvements are scheduled to improve the LOS. As such, this project could not be approved under General Plan Policy 4.2.2-5. The proposed project could not have been approved if the project had been acted on prior to the October 15, 2008 when the Public Works Agency revised the Initial Study Thresholds for traffic by, among other things, eliminating the 2006 Threshold 6.
- F4-13 Mitigation Measures T 1-1 and T 1-1A have been rewritten in the revised FEIR to be stand alone mitigation measures. The revised text makes it clear that one or the other Mitigation Measure should be adopted, and each revised measure lists all the PHT and/or other restrictions necessary to reduce project-specific congestion impacts to less than significant levels.
- F4-14 The existing widening of SR-23 east of the Grimes Rock entrance is not adequate for safe acceleration lanes, therefore an appropriate acceleration lane does not currently exist. As such, a mitigation measure requiring appropriately designed and sized acceleration lanes is appropriate. Approval of Mitigation Measure T 1-1A is not assured, therefore it is not appropriate for Mitigation Measure T 2-1 to make such an assumption. For instance, if Mitigation Measure T 1-1A is assumed to occur, then Mitigation Measure T 2-1 should also be revised to reflect the need for a second access road/SR-23 intersection at the top of the grade. This intersection would require appropriate acceleration/ deceleration lanes and reflect the fact that it is on a hill. Even with no left turns out the mine entrances, both intersections would require adequate intersection geometries to safely accommodate the projected increase in project traffic. Mitigation Measure T 2-1 has been revised to acknowledge that adoption of Mitigation Measure T 1-1A would require specific designs of the geometry of the intersections.

F4-15 As noted in RTC 51-25, even if the applicant does not control the land along SR-23, the Public Works Agency concludes that such minor acquisitions of property (if required at all) are routinely done, and such an issue is not expected to be a problem in this case. This is particularly true since Caltrans apparently already owns more right-of-way at that location than is needed for the improvements.

F4-16 The references to Class I impacts due to the inability to implement Mitigation Measures T 3-1 and 3-2 have been revised to discuss the potential implementation of Mitigation Measures T 1-1 and T 3-3 reduce cumulative impacts to less than significant levels (Class II).

F4-17 This comment is correct that Mitigation Measure T 1-2 (project specific improvements at SR-126/SR-23) is not needed to reduce Impact T-3 (general cumulative impacts) to a less than significant level. Impact T-3 is adequately mitigated by Mitigation Measures 1-1 and 3-1. Only those Mitigation Measures are needed to reduce impact T-3. Pages 1-26 and 4.1-83 have been revised to remove reference to Mitigation Measure T 1-2 in regard to Impact T-3.

F4-18 Mitigation Measure T 1-1A only reduces safety impacts between the two access road intersections; this segment includes Grimes Grade itself. The issue of cumulative safety impacts on SR-23 is addressed on FEIR page 4.1-69 with an expanded discussion in Appendix B starting on page 124. While many of the safety issues occur through Grimes Grade itself, the Grade is not the only location with road geometries of concern. Various locations north and south of the Grade (e.g. Walnut Canyon Road /Broadway, Bellevue Avenue/Chambersberg Street) also do not meet the stated standard. Mitigation Measure T 1-1A does nothing to reduce safety hazards north of the northern access road intersection or south of the southern access road intersection. While Mitigation Measure T 1-1A reduces Impact T-5, the project contribution to this cumulative impact remains significant and unavoidable.

The impact analysis and mitigation measure discussion for T-5 is considered appropriate.

F4-19 See RTC F4-18. Mitigation Measure T 1-1A has no impact on Grimes Canyon South, which does not start until approximately 7,900 feet south of the southern access road intersection; therefore Mitigation Measure T 1-1A cannot provide any reduction in safety impacts to Grimes Canyon South.

The impact analysis and mitigation measure discussion for T-5 is considered appropriate.