

## Site Visit Protocol

### ***Legacy Vulcan, LLC v. United Mexican States (ICSID Case No. ARB/19/1)***

- 1 Pursuant to Article 43 of the ICSID Convention and Rules 34(2) and 37 of the 2006 ICSID Arbitration Rules, as well as the Tribunal’s communications dated 23 February 2023 and 10 March 2023 in which it authorized a site visit requested by Respondent and unopposed by Claimant, the Parties propose this protocol to govern the site visit by the Tribunal of CALICA lots in Quintana Roo, Mexico (“Site Visit”).
- 2 Scope and Purpose
  - 2.1 The purpose of the Site Visit is to aid in the Tribunal’s understanding of the Parties’ dispute through a mechanism that is fair and impartial to the Parties, as the Respondent proposed at the Counter Memorial on Ancillary Claim.<sup>1</sup>
  - 2.2 The visit shall be conducted in the lots owned by Claimant, that is, El Corchalito, La Rosita, La Adelita (to the extent access is possible), and Punta Venado, as well as certain locations adjacent to these lots, in accordance with the Itinerary included in the annexes to this Protocol and defined in Section 3.2 below.
- 3 Duration and Itinerary
  - 3.1 The Site Visit will take place within 18-20 July, as determined by the Tribunal on 13 April 2023, in accordance with the itinerary described in Paragraph 3.2.
  - 3.2 In the annexes to this Protocol, the Parties propose an itinerary, detailing: (i) the date(s) and timing of each day of the Site Visit; (ii) the route the convoy will follow within CALICA’s lots and selected adjacent locations to these lots and the flight path for the helicopter ride; (iii) the number, location, and approximate duration of each of the stops and (iv) the approximate timing and location of food and beverage breaks (the “Itinerary”).
  - 3.3 During the flight, the Tribunal shall be accompanied by two representatives of each Party, provided that there is space and equality between the Parties.
- 4 Logistics and Locations to Be Visited
  - 4.1 The Site Visit shall take place in CALICA’s lots in Quintana Roo as well as certain adjacent areas in accordance with the provisions of Section 2.2 and 3.2.
  - 4.2 Mobility to places within CALICA’s lots shall take place via motor vehicles provided by CALICA, since mobility from one point to another by foot would take too long and not be practical given the distances and high temperature. Other than the driver provided by CALICA, and one counsel for each Claimant and Respondent, no other person shall ride in the vehicle in which the Tribunal, the Tribunal Secretary and the Tribunal Assistant are mobilized, except that the Parties may bring one additional person each,

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<sup>1</sup> See Counter Memorial on Ancillary Claim, ¶ 206.

or two persons each, if there is sufficient capacity in the vehicle.<sup>2</sup> The Respondent will make available back-up motor vehicles in case they are needed due to unexpected circumstances.

- 4.3 As reflected in the Itinerary, provided in Annex A of this Protocol, the Tribunal along with Party attendees, the Secretary and the Assistant (as provided in Section 5 below) will first convene at CALICA's offices in Punta Venado, where participants will be identified, participants will go over details of the route to be followed and areas to be visited, safety protocols will be addressed, and any other preliminary Site Visit issue will be raised by the Parties before the Tribunal (the "Preliminary Meeting").<sup>3</sup>
- 4.4 The number of locations in La Rosita, El Corchalito, La Adelita, and Punta Venado and adjacent areas that the Tribunal and the participants shall visit are detailed in the Itinerary. These locations are specified in a map in Annex B to this Protocol. At each location, the Tribunal will conduct a visual inspection and may ask questions to the Parties. Unless requested by the Tribunal and notwithstanding the answers to the Tribunal's questions and the explanation provided in paragraph 6.2, no formal presentations shall be made by the Parties to the Tribunal at any of these locations or while transferring from location-to-location.
- 4.5 After visiting the locations as specified in Paragraph 4.4 above, the Tribunal and other participants (as specified in Section 5 below) will return to CALICA's offices or other suitable location in Punta Venado, where any additional matter relating to the visit may be addressed. On the last day of the visit, after all participants have gathered, the Site Visit will formally be deemed closed.
- 4.6 The Tribunal Secretary shall prepare short minutes of each day of the visit, indicating the start and end times of the Site Visit, and the matters mentioned in the preceding paragraphs and Section 7 below. The minutes shall identify Site Visit participants, and include any other matter the Tribunal deems appropriate. Each Party thereafter may offer comments (if any) to a draft of these minutes within a period to be set by the Tribunal. The final minutes (with the Parties' comments) shall be incorporated into the record using bates-stamp number T-1.

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<sup>2</sup> The rest of delegation of the Parties will travel in other vehicles and will be present at the stops. In accordance with Section 5.3 below, only counsel for each Party may address the Tribunal. They may not make any statements, except for answers to questions asked expressly by the Tribunal.

<sup>3</sup> As discussed at the Case Management Conference on 18 May 2023, Respondent contends that, before entry into La Rosita, El Corchalito, or La Adelita during the Site Visit, PROFEPA has to take the formal step of temporary lifting the closures (*clausuras*) it imposed in relation to those lots. Claimant disputes that this is necessary under Mexican law or the very terms of those closure orders (*clausuras*). Without prejudice to each Party's position on this issue, PROFEPA will lift the closures on 18 July 2023, prior to the start of the ground-based portion of the Site Visit. This temporary lifting of the closures will be conducted with the presence of CALICA personnel, done outside the view of the Tribunal, and shall not be reflected in or otherwise affect the Itinerary. Each day, at the end of the tours, the temporary lifting will be completed and seals will be affixed. Each of PROFEPA's actions will be set in the corresponding proceeding records, which must be signed by a representative and two witnesses appointed by Calica (Calizas Industriales del Carmen SA de CV). No personnel conducting the lifting of the closure or otherwise on present inspection duties will be authorized to enter CALICA's premises.

4.7 During the Site Visit, Claimant shall arrange for and provide the transportation to and from the hotel(s) and CALICA's lots, onsite safety precautions, and meals, rest areas, all of this without prejudice to the Tribunal's allocation of costs relating to this arbitration proceeding after its conclusion.<sup>4</sup>

## 5 Site Visit Participants

5.1 The Site Visit to the various points indicated in the Itinerary shall be attended by all members of the Arbitral Tribunal, the Tribunal Secretary, the Tribunal Assistant, and a delegation from each Party not to exceed eight persons per side.<sup>5</sup>

5.2 Each Party shall provide notice to the other and the Tribunal regarding the composition of their respective delegations, no later than 14 (fourteen) days before the commencement of the Site Visit. Each participant shall be identified by name, affiliation, and position.

5.3 In light of the purpose of the Site Visit (as specified in Section 2 above), Party representatives other than counsel and State representatives shall not participate in the Site Visit and be part of a Party's delegation, except for non-legal technical experts. Each Party's delegation may include that Party's respective non-legal technical expert and a public official with expertise who have been within the lots.<sup>6</sup> No other expert or fact witnesses may participate in the Site Visit and be part of a Party's delegation. Only legal representatives of the Parties may address the Tribunal.

## 6 Party Communications with the Tribunal

6.1 A Party may not address the Tribunal during the visit without the presence of the other Party (*i.e.*, *ex parte* communications), including discussions related to CALICA or its Project. All communications by Party participants with the Tribunal shall be made in the presence of at least one counsel participant of the other Party. The members of the Tribunal may ask questions of Party counsel at any time during the Site Visit. To the extent possible, Party communications with the Tribunal will be limited to concise statements on matters directly related to the Site Visit and answers to Tribunal questions about the locations visited, without argument. Each Party may rely on its non-legal technical expert or on the public official with expertise who have been within the lots to answer the questions or requests of the members of the Tribunal at the Site Visit. There shall be no opening or closing statements or presentations other than the factual descriptions mentioned in paragraph 6.2. Each Party shall be given an opportunity to

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<sup>4</sup> The Respondent will make available back-up motor vehicles in case they are needed due to unexpected circumstances.

<sup>5</sup> This number does not include the personnel who will provide transportation to Site Visit participants during the Site Visit.

<sup>6</sup> For Claimant, this expert would be Dr. Gino Bianchi Mosquera. For Respondent, these experts would be Mtro. Carlos Rábago Estela and a public official with expertise, *i.e.*, a PROFEPA official with knowledge and experience of the lots, provided that this official is not one of the officials involved in the procedures for the lifting of the closure of the lots and that nothing observed in the Site Visit will be used outside this arbitration, in accordance with Clause 8.2 of this Protocol.

address the responses given by the other Party to the questions posed by the Tribunal during the Site Visit.

- 6.2 The Itinerary shall allow sufficient time for the Parties to provide a short factual description of the locations to be visited during the Site Visit at the beginning of each of the scheduled days.<sup>7</sup> Thereafter, at each location, the Parties shall be limited to addressing questions raised by the Tribunal, in accordance with Section 4.4 above, and a Party may otherwise address the Tribunal only with the Tribunal's leave or the other Party's consent.
- 6.3 The Site Visit shall be conducted in English and Spanish. Respondent will be allowed to bring a professional interpreter at its own expense.
- 6.4 No documentary evidence shall be provided to or reviewed by the Tribunal during the Site Visit except as previously agreed to in writing by the Parties and otherwise ordered by the Tribunal.
- 6.5 For the avoidance of doubt, the Site Visit and communications by the Parties during the Site Visit shall not be considered an "oral hearing" or "oral procedure" within the meaning of Procedural Orders Nos. 1 and 7.
- 6.6 Any objection regarding the conduct of the Site Visit shall be raised immediately whenever possible and at the latest by the end of the day when the matter objected to occurred.

## 7 Record of the Site Visit

- 7.1 The Parties will hire a videographer to record different portions of the Site Visit, including the helicopter ride. After the Site Visit, the Secretary shall assign a T-\_\_ exhibit number or numbers to the video recording.
- 7.2 Unless otherwise agreed to by the Parties or ordered by the Tribunal, the record of the Site Visit shall be limited to the minutes identified in Section 4.6 above and the video recording identified in Section 7.1 above.

## 8 Confidentiality

- 8.1 To avoid possible disruptions and ensure the safety of Site Visit participants, the dates or any other detail about the Site Visit, including its occurrence, shall be kept strictly confidential. No Party shall publicize or otherwise disclose to parties unrelated to this arbitration that the Site Visit will take place nor facts relating thereto before the Site Visit.<sup>8</sup>
- 8.2 No Party shall use information obtained or anything observed during the Site Visit in any pending or future judicial, administrative or non-administrative proceeding in

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<sup>7</sup> If necessary, the Tribunal may limit each Party's description. The Claimant will give a brief description of the sites to be visited and the Respondent may reply or issue its respective comments.

<sup>8</sup> This does not preclude Respondent from consulting and making the necessary arrangements with other government agencies regarding the arrangements for the site visit.

Mexico against the other Party, or if it would fail to ensure the integrity of the arbitration proceeding.

9 Immunity

9.1 The United Mexican States declares that Site Visit participants or those assisting them shall be free from harassment or persecution of any kind in connection with the Site Visit, and shall enjoy the benefits provided by Articles 21 and 22 of the ICSID Convention throughout the Site Visit. This should not be understood as a waiver by the Mexican State to make use of its powers to prosecute pending actions in accordance with the law.

10 Further Arrangements

10.1 The Parties shall confer in good faith regarding other Site Visit details, including hotel accommodations. These details shall be captured in the Site Visit Itinerary to be included as Annex A to this Protocol.



10.2 The Tribunal shall be requested to rule on those aspects on which there is no agreement between the Parties. The Site Visit Protocol eventually established shall be recorded as a Procedural Order issued by the Tribunal.

**Annex A****Itinerary**

<b>DAY 1 (July 18)</b>			
<b>No.</b>	<b>Activity</b>	<b>Location</b>	<b>Time<sup>9</sup></b>
-	Transfers from the airport to hotel in Playa del Carmen area	Cancun airport to Grand Hyatt Hotel Playa del Carmen	TBD
-	Prehearing conference	Conference room at the Grand Hyatt Hotel Playa del Carmen	14:00 – 15:00
-	Transfer from Grand Hyatt Hotel to Punta Venado	15:30	Grand Hyatt Hotel Playa del Carmen
1	Punta Venado marine terminal and visit to archaeological zone.	16:00 – 16:40	Entrance to CALICA's Punta Venado lot and archaeological zone.
2	Transfer from archaeological zone to visualize deposits of extracted materials collected in preparation for shipping, toward marine terminal.	16:40 – 17:00	Punta Venado road from archaeological zone to the marine terminal.
3	Private marine terminal at Punta Venado, visualizing area where vessels have docked for loading of material.	17:00 – 17:20	Punta Venado private marine terminal.
4	Mayan House, visualizing another archaeological site within Punta Venado.	17:20 – 17:40	Road from marine terminal to Mayan House, and Mayan House.

<sup>9</sup> Times are approximate and may be adjusted in consultation with the Tribunal based on the situation and circumstances during the visit.

5	Tree nursery in Punta Venado, visualizing flora specimens and the area where the nursery is located.	17:40 – 18:00	Tree nursery.
-	Return to the departure point and transfer to the federal highway toward the hotel.	18:10	CALICA's Punta Venado lot to the Grand Hyatt Hotel

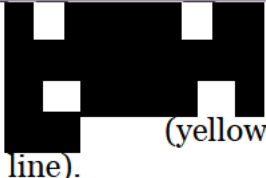

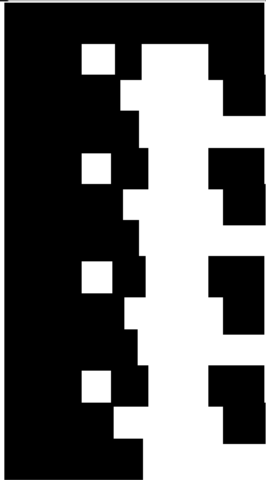
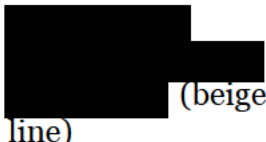
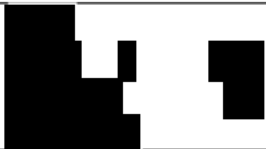
DAY 2 (July 19) (8:30 – 11:00) <sup>10</sup> Flight Itinerary			
No. <sup>11</sup>	Activity	Location	Coordinates <sup>12</sup> / time /distance
-	Transfer from Grand Hyatt Hotel to point of departure for the flight	Grand Hyatt Hotel Playa del Carmen	8:00 transportation leaves the hotel
-	Point of departure	Airstrip located in Playa del Carmen, Solidaridad, Quintana Roo.	Airstrip: X= 491786, Y= 2280332  8:30 – 9:00 talk to explain security measures  9:00 helicopter takes off
o	Flight from airstrip toward CALICA’s lots, visualizing the location of populated areas within or near Playa del Carmen, the path of the Mayan Train, and cleared areas near it, including an adjacent non-CALICA quarry.	Flight path northwest of the airstrip toward the Mayan Train rail line at point oa. Then fly southwest toward the north limit of CALICA’s lots, following the path of the Mayan Train to point ob. Continue flight along Mayan Train path toward Cantera TM (point oc). Then fly toward Point 1 (below).	Point oa (X= 491786, Y= 2280332)  Point ob (X= 481420, Y= 2279156) Hover for one minute over Point ob to observe affected area north of the Mayan Train rail line.   Hover for one minute over Point oc to observe Cantera TM.  

<sup>10</sup> Discretion for Tribunal Members to request adjustments to the route or request to visit a specific point.

<sup>11</sup> The numbers identified in this column reflect the locations described in Annex B.

<sup>12</sup> **NOTE:** Coordinates appear in UTM format (Datum WGS84, zone 16 Q).










DAY 2 (July 19) (8:30 – 11:00) <sup>10</sup> Flight Itinerary			
No. <sup>11</sup>	Activity	Location	Coordinates <sup>12</sup> / time / distance
			 (yellow line).
1	Beginning of the tour of CALICA’s lots, entering the northern corner, visualizing their dimension and that of adjacent areas, as well as an overview of the entire quarried area.	The starting point will be the route of the nearby “Tren Maya” (Mayan Train), beginning at the north corner of El Corchalito.	
2	Perimeter tour of CALICA’s lots over an approximate high altitude of: 70- 100 mts, <sup>13</sup> in a northwest to southeast direction, visualizing their dimension, quarried and conserved areas in El Corchalito and La Rosita, and non-quarried areas in La Adelita. <sup>14</sup>	Departure toward Punta Venado port area, flying past the Carretera Federal Cancun Tulum, to finish the perimeter tour at the south corner of La Rosita.	  (beige line)
3	Tour (overflight, low) (at least > 0 = a 60	Fly southeast from “Start Point 3” to Point 3a. South and central zone of “La Rosita” property, North and central	


<sup>13</sup> m.a.s.l. = meters above sea level.

<sup>14</sup> The pilot will determine the flight altitude and make the necessary arrangements to not compromise the safety of the crew.



DAY 2 (July 19) (8:30 – 11:00) <sup>10</sup> Flight Itinerary			
No. <sup>11</sup>	Activity	Location	Coordinates <sup>12</sup> / time /distance
	and Punta Venado port area, including accumulated quarried material, shipment zone, and archeological zone.  <b>Hover for 3-5 minutes</b>		
4	Fly-over of the southeastern area of La Rosita to observe the water bodies, the conservation zone at ground level and the depth of slopes resulting from above-water quarrying (<60 mts). <sup>16</sup>	Circling flight over the crushing and stockpile area, as well as the “scrap” and special handling temporary waste accumulation area.	   as instructed by the Tribunal (blue line).
5	Departure from CALICA’s lots to the Carretera Federal Cancun Tulum, returning to the airstrip in Playa del Carmen after visiting non-CALICA quarries to the northeast of Playa del Carmen.	Return to Playa del Carmen Airstrip for landing of the aircraft after circling ABC1 quarry north of Playa del Carmen.	   

<sup>16</sup> Provided that safety is not compromised and that the pilot determines any adjustments necessary for safety reasons during the flight.

DAY 2 (July 19) (8:30 – 11:00) <sup>10</sup> Flight Itinerary			
No. <sup>11</sup>	Activity	Location	Coordinates <sup>12</sup> / time /distance
			Point Airstrip (X=491786, Y=2280332)  Return to airstrip by approximately at 11:00.

<b>DAY 2 (July 19) (15:00 – 18:20)</b>			
No.	Activity	Time	Location
-	Transfer from Grand Hyatt Hotel to CALICA's Offices	14:30	Grand Hyatt Hotel Playa del Carmen
-	Meeting Point and Security Briefing	15:00 – 15:30	CALICA's Offices (Punta Venado)
6	A. Visit to the Workshops and Maintenance Area. B. Visit to the intervened area adjacent to the mechanical workshop.	15:30 – 15:50	Northeast area of La Rosita, [REDACTED] followed by the workshops and the intervened area to the northeast of that lot.
7	A. Visit to the water plant. B. Visit to the plant lookout. C. Visualization of water bodies (Lagoon #10), crushing plant and large accumulated stone material. D. Visit to the solid temporary waste and machinery storage area (scrap metal, tires, metals).	15:50 – 16:30	Northeast area of La Rosita, [REDACTED]
8	Perimeter route along La Adelita, visualizing the large body of water (Lagoon #9) resulting from underwater quarrying to the northeast of La Adelita (a) and the slope resulting from above-water quarrying to the northwest (b), as well as the non-quarried areas in La Adelita (two stops).	16:30 – 17:10	Periphery of La Adelita [REDACTED]
9	La Rosita conservation zone, visualizing vegetated conservation area and cenote conservation ("Cenote W").	17:10 – 18:00	Conservation zone in La Rosita, traversing internal road within the zone and stopping for cenote visit.

<p>10</p>	<p>Leaving conservation zone through internal road toward intersection of bodies of water (Lagoons #3 and #4),<sup>17</sup> visualizing the way from the conservation to the quarried areas, revegetation areas, accumulations of quarried material, and quarried areas above and below the water table to the north of the La Rosita conservation zone, including the body of water (Lagoon #8) shared by the El Corchalito and La Rosita properties, which also corresponds to the municipalities of Solidaridad and Cozumel (eastern water body).</p>	<p>18:00 - 18:20</p>	<p>Central conservation and quarried areas of La Rosita.</p>
<p>-</p>	<p>Return to the departure point and transfer to the federal highway toward the hotel.</p>	<p>18:20</p>	<p>CALICA’s Punta Venado lot to the Grand Hyatt Hotel</p>

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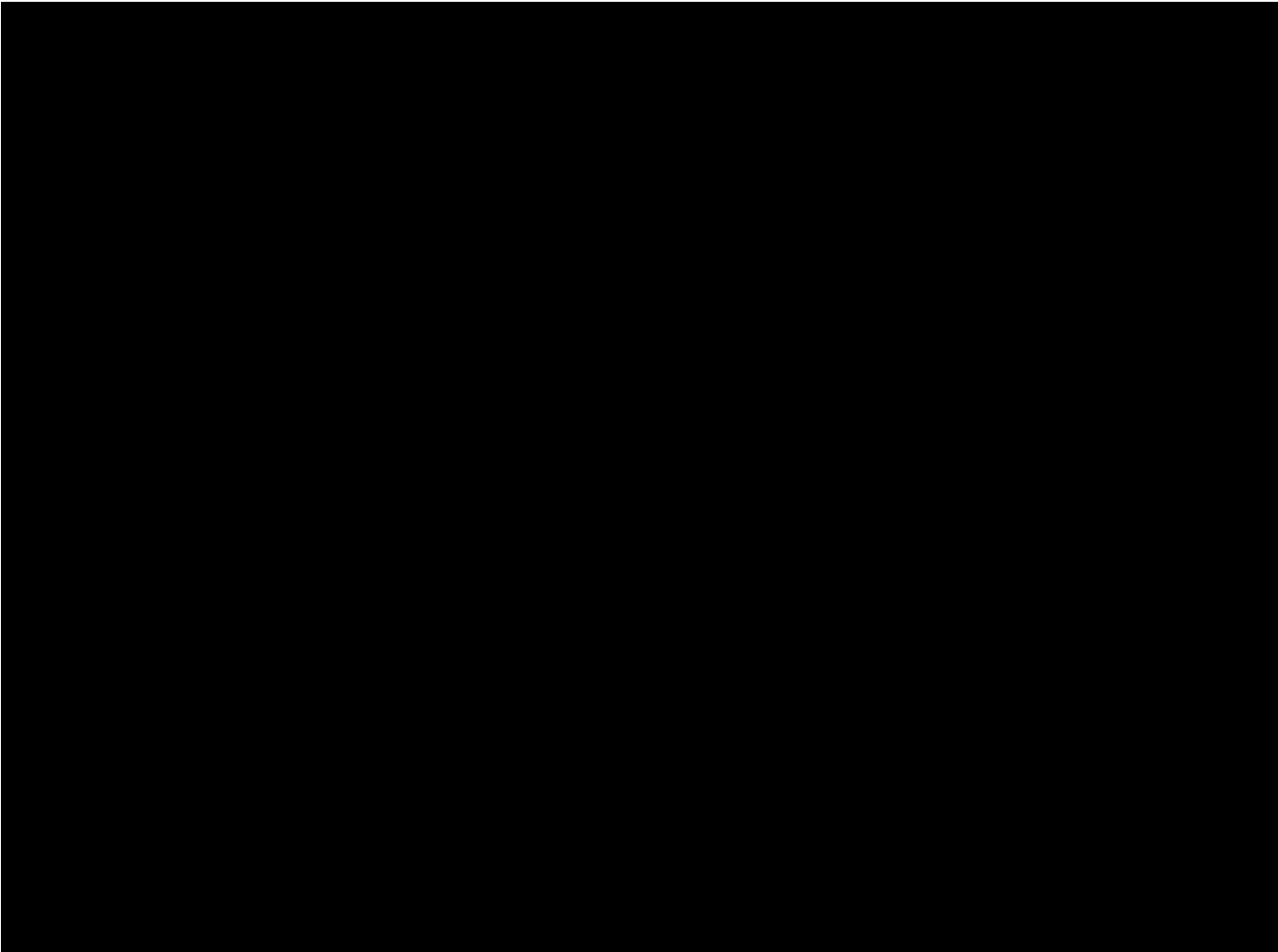
<sup>17</sup> Ground tours to points where lagoons within CALICA’s lots are to be visualized shall, to the extent feasible, be done adjacent/close to the bodies of water instead of using roads with non-visibility due to vegetation.

<b>DAY 3 (July 20) (8:00 – 12:15)</b>			
No.	Activity	Time	Location
-	Transfer from Grand Hyatt Hotel to CALICA's lots	8:00	Grand Hyatt Hotel Playa del Carmen
11	El Corchalito's shore. Tour of the road adjacent to the body of water, visualizing that body of water (Lagoon #7), the slopes in El Corchalito, and revegetation areas.	8:30 - 9:00	Northeast area of El Corchalito, taking the road closest to the lake.
12	El Corchalito's west shore. Tour of the road adjacent to the body of water (Lagoon #8), visualizing that body of water, the slopes in El Corchalito, conserved areas, and revegetation areas.	9:00 – 9:30	Western area of El Corchalito.
13	Tour to observe the water body boundary and location where the body of water (Lagoon #8) crosses the northwest boundary of El Corchalito and La Rosita. The unmarked border between the municipalities of Cozumel and Solidaridad will be indicated.	9:30 – 9:45	West zone of El Corchalito.
14	Tour to observe the southern part of the (Lagoon #8) traversing El Corchalito and La Rosita, as well as the northern side of the lake in La Rosita (Lagoon #6).	9:45 – 10:15	Bodies of water (Lagoons #8 and #6) in El Corchalito and La Rosita.
15	Explosives warehouse, visualizing storage facilities for explosives.	10:15 - 10:30	Central Zone La Rosita.

16	Visit to cenote/bodies of water outside of CALICA lots (“Cenote Venado,” deforested area ( <i>sascabera</i> ), and “Camino East” body of water as well as nearby garbage dump).	10:30 – 11:30	“Zona punta venado” Take the road towards Chetumal, travel approximately 4 km from CALICA property, see map.
17	Visit to Cenote Coati, to visualize a cenote to the northwest of CALICA’s quarrying lots and its relative elevation.	11:30 – 12:15	Cenote Coati
-	Return to the departure point and transfer from the properties to the federal highway.	12:15	Return to Grand Hyatt Hotel



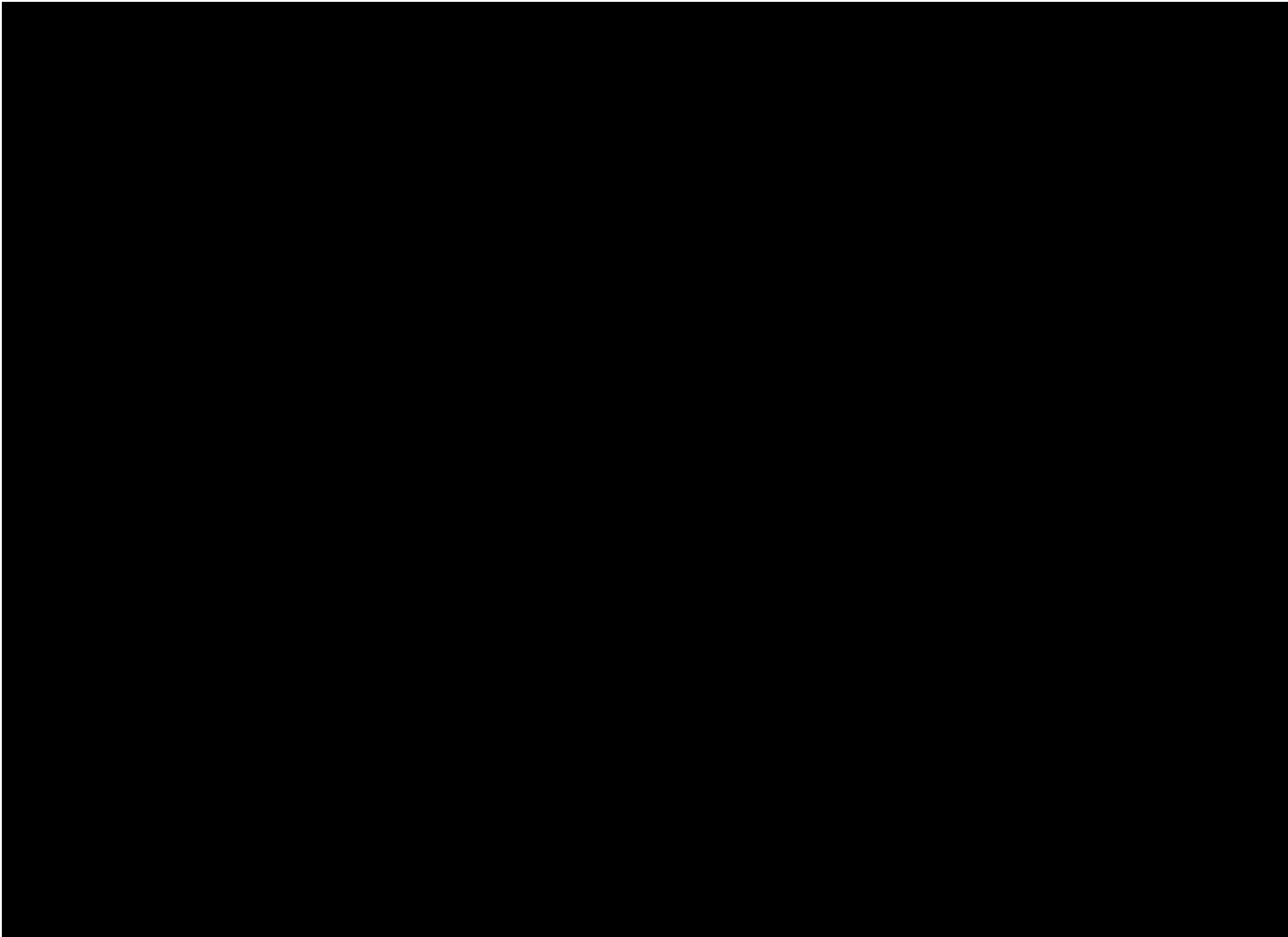
**Annex B**  
**Site Visit Maps**



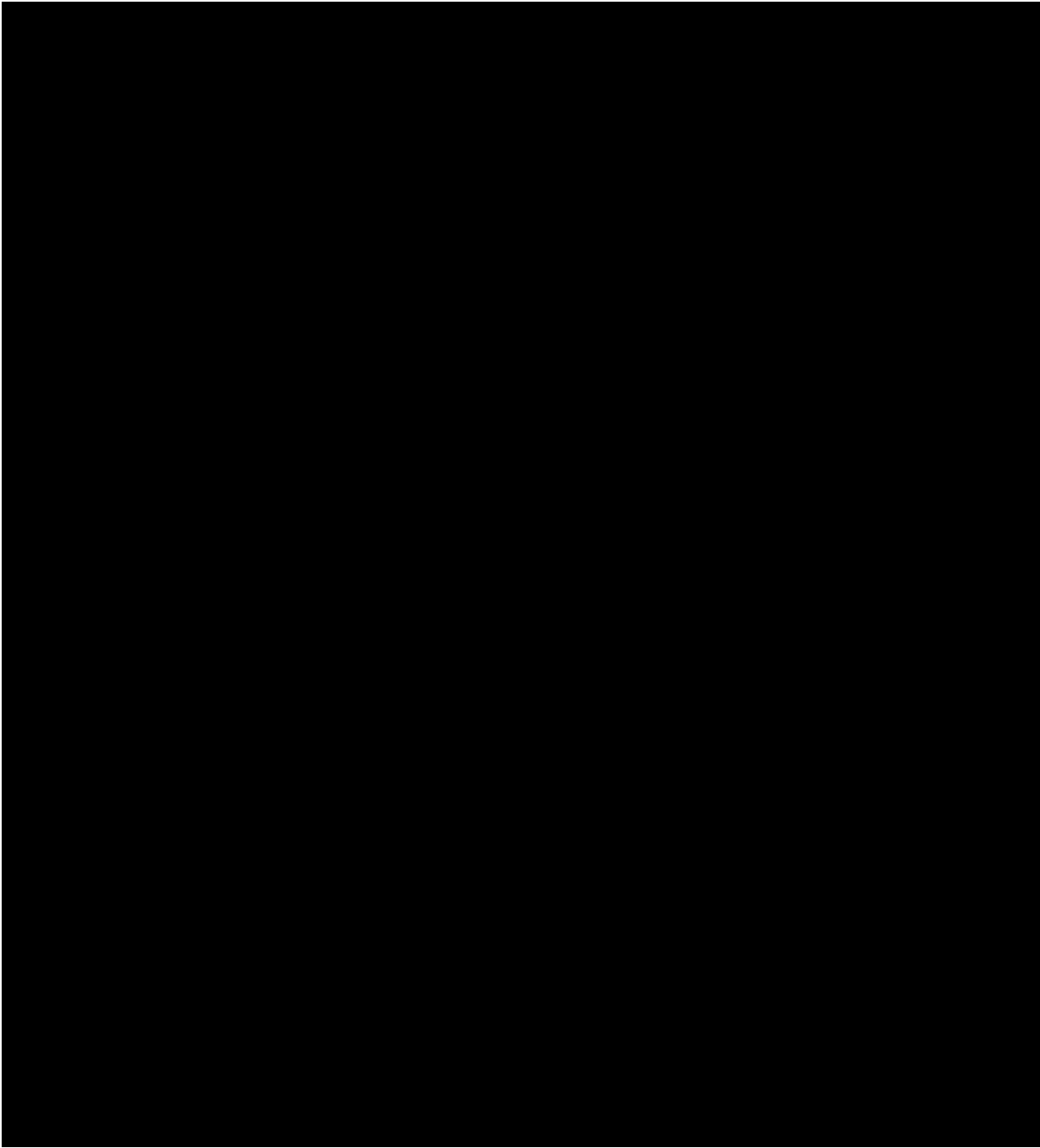
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***B.2: Route Map for the helicopter flight (Southern Portion)***

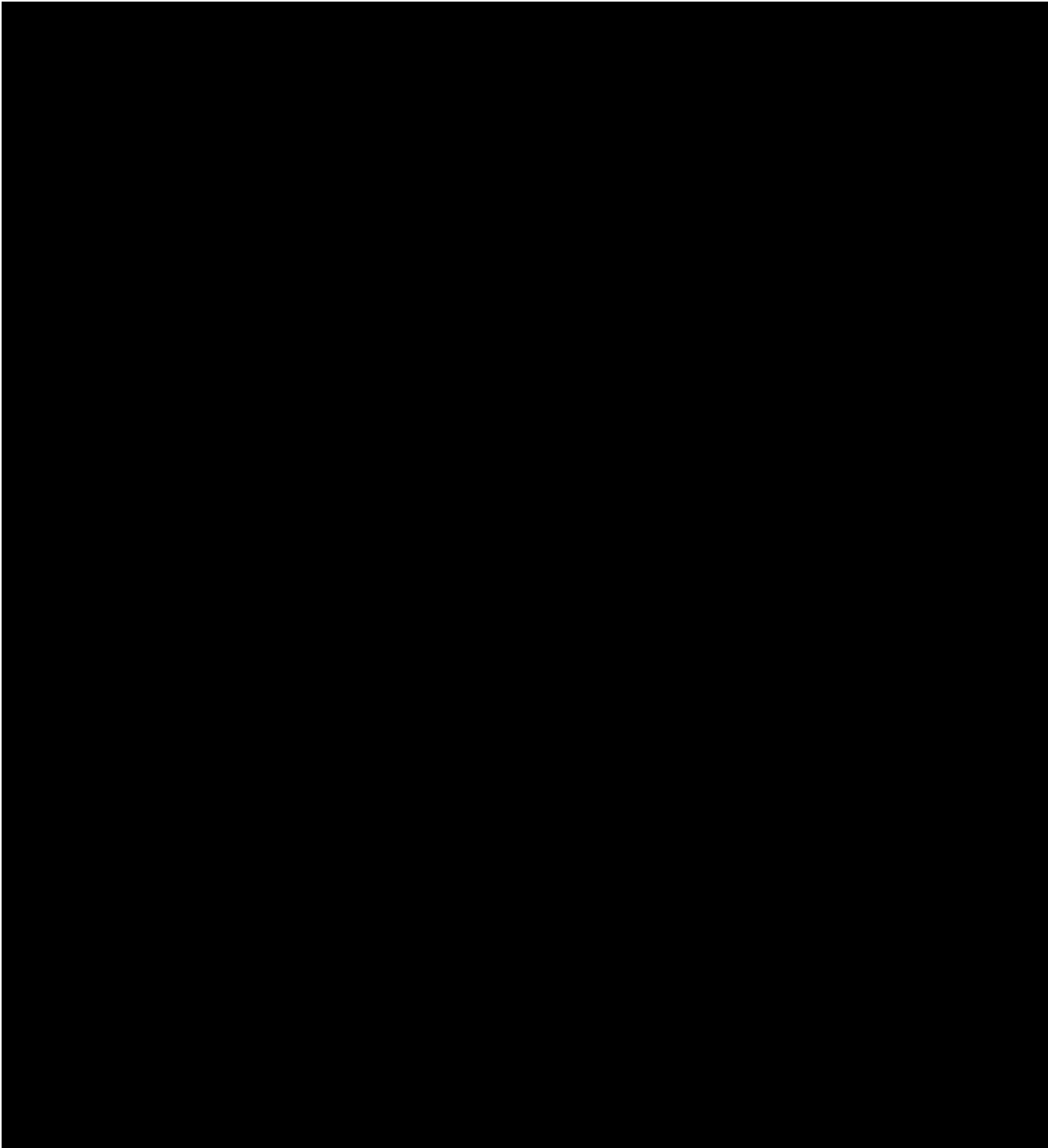
The flight tour will be conducted by helicopter, with the following flight path:



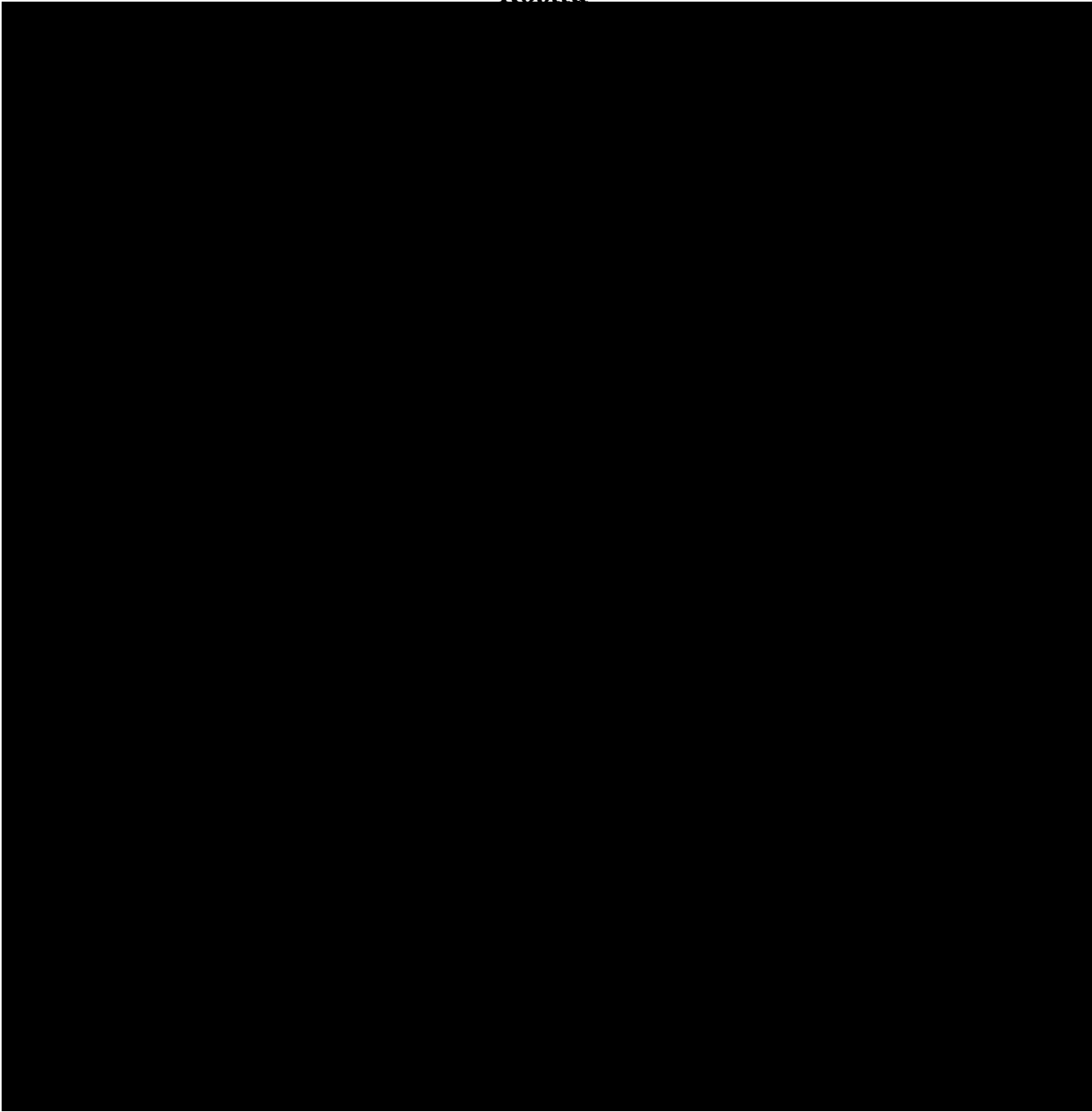
***B.2.a: Route Map for the helicopter flight (Northern Portion)***



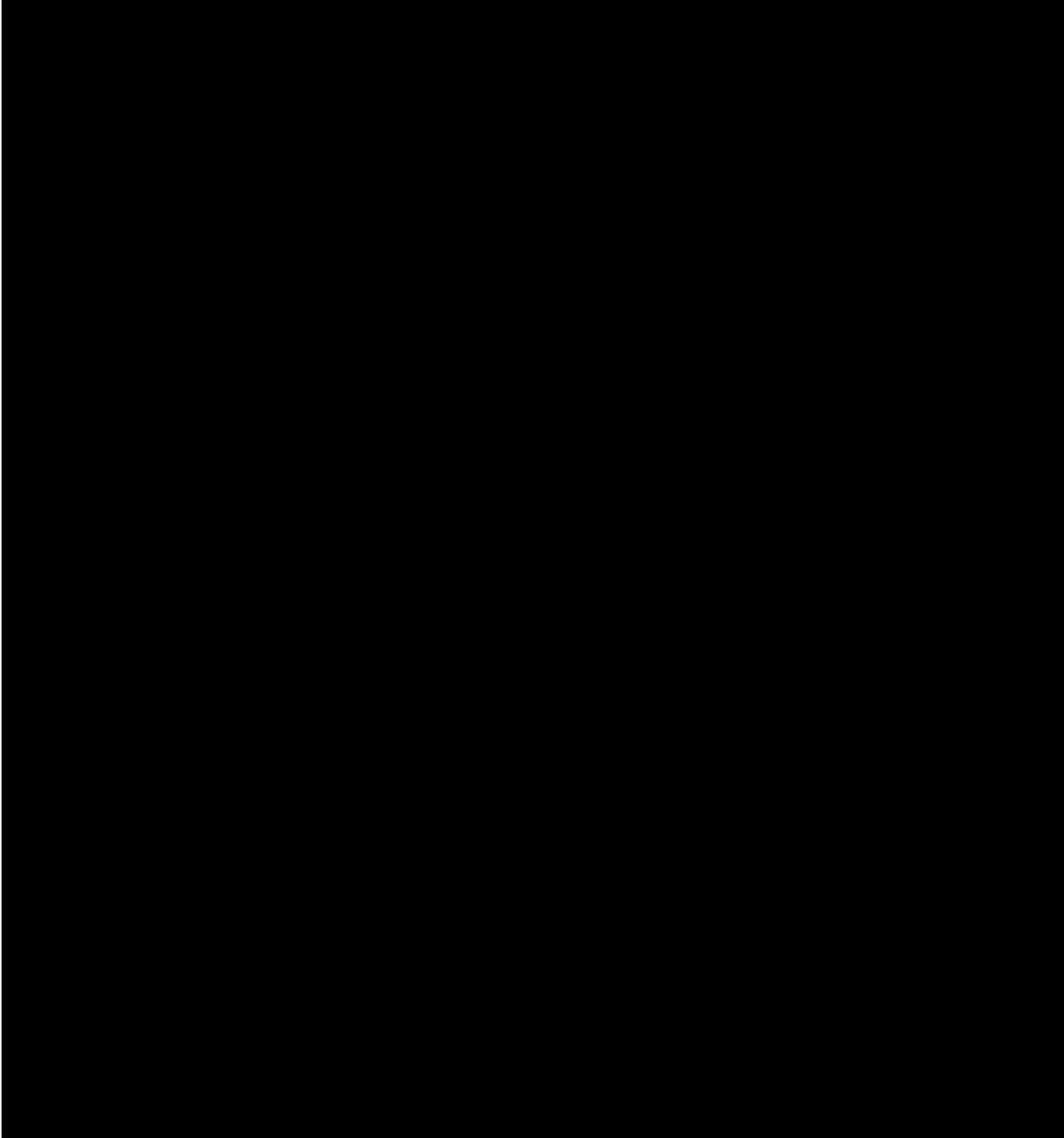
***B.3: Route Map for the ground itinerary (second day)***



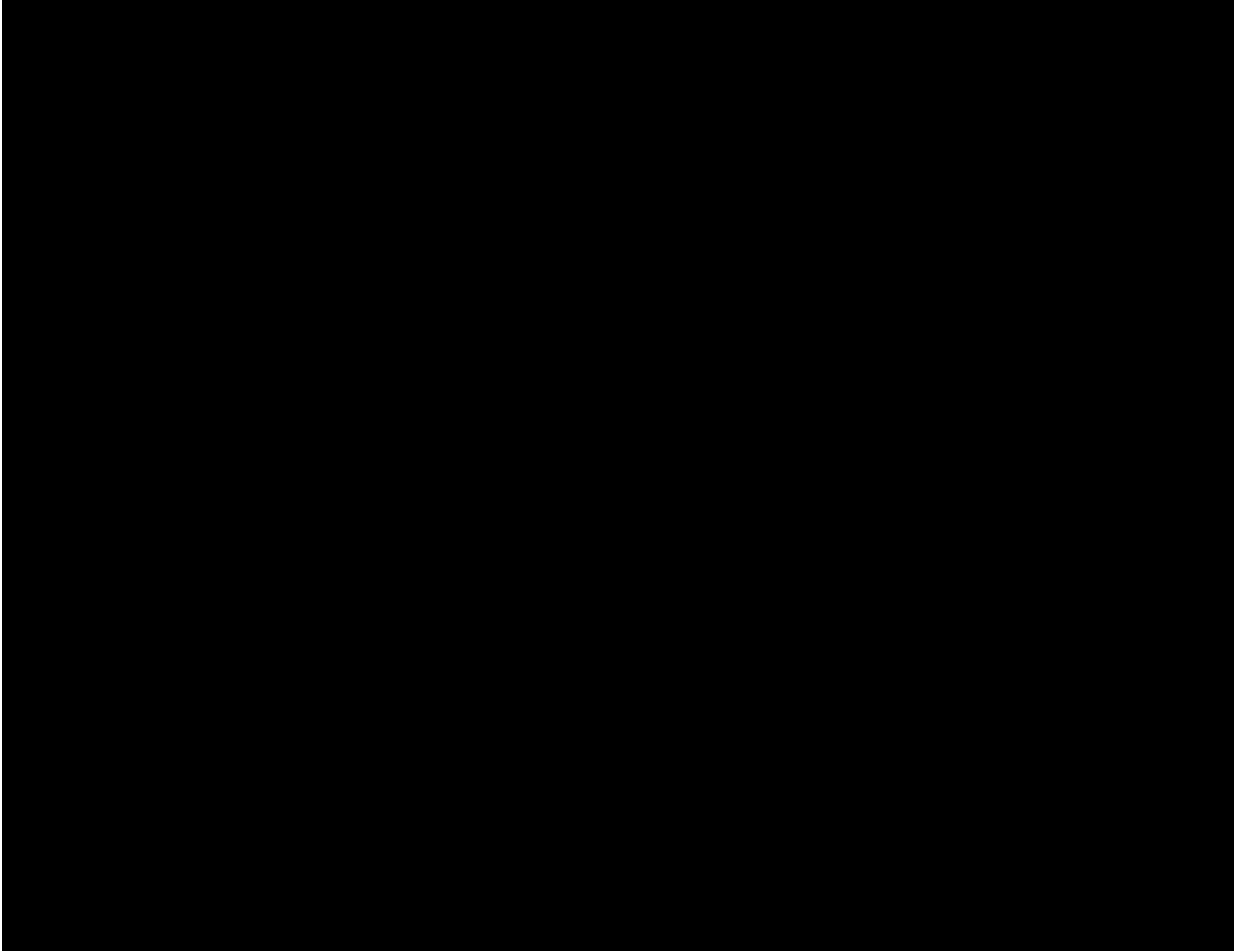
***B.4: Close-up of Crushing Plant and Workshop and Warehouse Area at La Rosita***



***B.5.1: Route Map for the ground itinerary (Third Day, Part 1)***



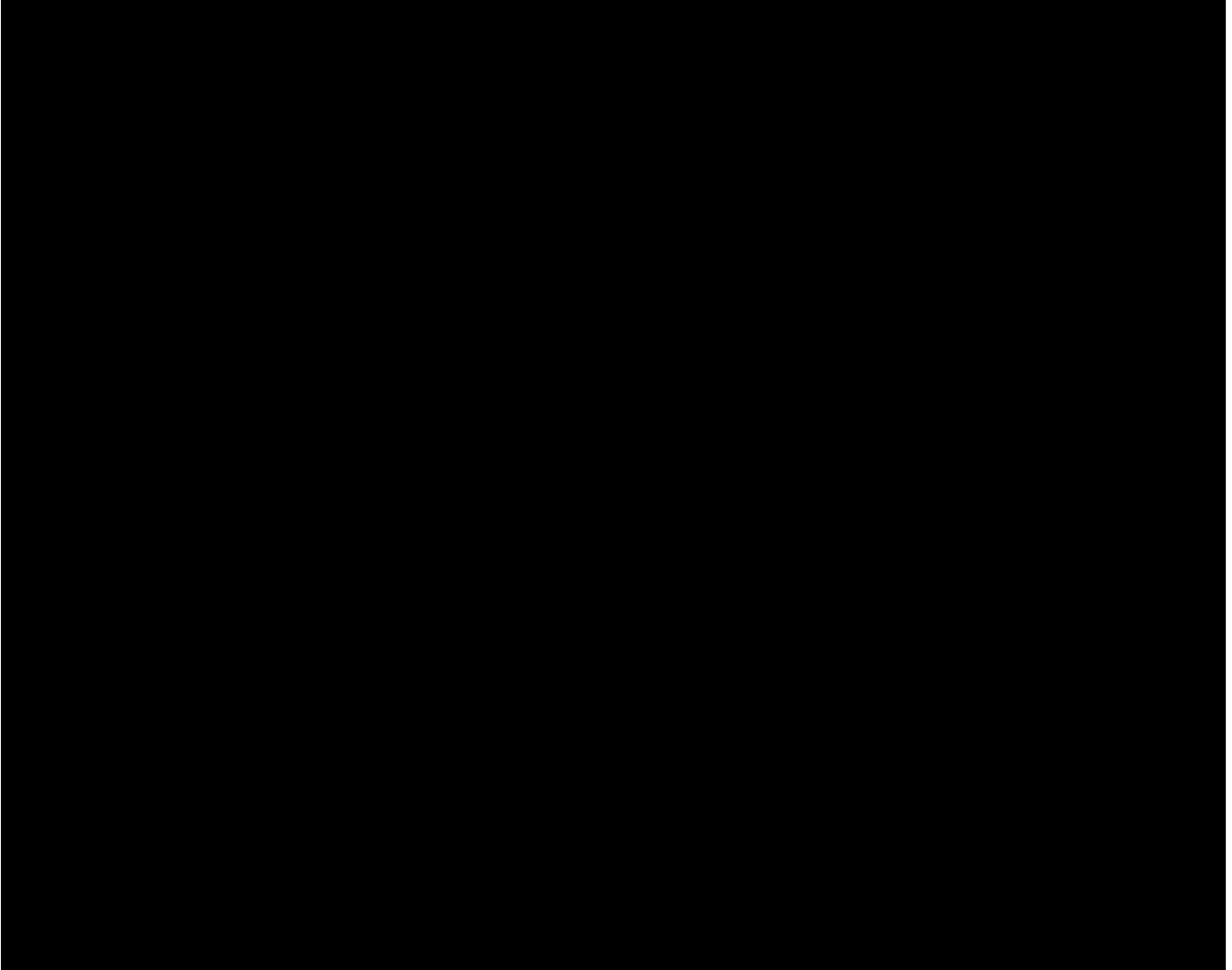
***B.5.2: Route Map for the ground itinerary (Third Day, Part 2)***



**Third day – Part 2**

16. Cenote/bodies of water outside of CALICA lots (“Cenote Venado” and “Camino East” body of water), deforested area used to obtain limestone rock (*sascabera*), as well as nearby garbage dump).

***B.5.3: Route Map for the ground itinerary (Third Day, Part 3)***



**Third day – Part 3**

17. Cenote Coati