



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION

SAN RAFAEL ROCK QUARRY REZONING, MASTER PLAN, DESIGN REVIEW, USE PERMIT

Item No:	8	Application No:	RZ04-1/MP04-3/ DR04-21/UP04-13
Applicant:	Gil LaBrie, DCC Engineering	Property Owner:	San Rafael Rock Quarry, Inc.
Property Address:	1000 Point San Pedro Road, San Rafael	Assessor's Parcels:	184-010-09, -15, -16, -52
Hearing Date:	August 23, 2004	Planner:	Thomas Lai

RECOMMENDATION: Recommend denial of the project to the Board of Supervisors

LAST DATE FOR ACTION: Not applicable due to legislative nature of application

PROJECT DESCRIPTION:

This is an application from the San Rafael Rock Quarry proposing to legalize six office buildings totaling 14,651 square feet that are used in support of the San Rafael Rock Quarry operations. The application includes the proposed Rezoning of a 4.71-acre portion of the approximately 276-acre property from a RMPC (Residential Multiple Planned Commercial) zoning district to an IP (Planned Industrial) zoning district or an alternative planned zoning district. The one-story office buildings are located at the base of South Hill along the easterly perimeter of the property and adjacent to San Pablo Bay. Parking for the office uses is provided by 59 on-site parking spaces. The project includes a proposed Design Review application which is required for all physical improvements proposed on properties that are classified in a planned zoning district. Since an alternative planned zoning district may be considered as part of the Rezoning application, the project also includes a concurrent Use Permit application.

GENERAL INFORMATION:

General Plan Land Use Designation:	MR (Mineral Resources Conservation)
Zoning:	RMPC (Residential Multiple Planned Commercial District) and BFC-RMPC (Bayfront Conservation, Residential Multiple Planned Commercial District)
Lot size:	Approximately 276 acres
Adjacent Land Uses:	Residential and McNears Beach Park
Vegetation:	Dense clusters of Eucalyptus trees and introduced vegetation on South Hill and along Point San Pedro Road
Topography and Slope:	Varies from flat to steep hillside slopes to a quarry pit that extends below sea level

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that the requirements of the California Environmental Quality Act (CEQA) do not apply to projects that are denied, pursuant to Section 15270 of the CEQA Guidelines.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the property owner, describing the project and its location, and giving the scheduled date of the public hearing in accord with California Government Code requirements. This notice has been mailed to all property owners within 1,200 feet of the subject property, where a range of 600 feet is normally required by County and State law.

PLAN CONSISTENCY:

The proposed project is inconsistent with the goals and policies of the Marin Countywide Plan and the Peacock Gap Neighborhood Plan based on the following reasons: (1) the limited scope of the proposed Master Plan and Rezoning is inconsistent with overarching goals in the Countywide Plan that promote orderly and planned development of lands within the County; and (2) expansion of offices that are accessory to a primary mining use of the property would be inconsistent with the Neighborhood Plan because it would support the continuation of the mining use beyond the Plan's estimated remaining life of the quarry, which ranged from 10 to 12 years beyond 1980.

EXISTING LAND USES

Quarrying use of the approximately 276-acre property has existed since the mid-nineteenth century with the extraction of clays and shales for brick manufacture, and later, with the extraction of Franciscan sandstone and processing and production of various shale aggregates and concrete. As a subsidiary of The Dutra Group, the San Rafael Rock Quarry, Incorporated (Quarry) operates and manages the mining operation as the primary location and the hub of the parent company's aggregate and materials businesses which stretch from the Bay Area inland to Rio Vista and Stockton. The Quarry has the only major waterside distribution center in the Bay Area which allows materials to be distributed by barge and floating equipment. The primary products produced at the Quarry include asphaltic concrete, rock, concrete aggregate, sand, and rip rap products that are used for road, dike, and infrastructure construction. In addition to the 14,651 square feet of office buildings that are proposed for legalization, the Quarry has approximately 11,000 square feet of buildings that are used as part of the actual mining and processing facilities. The Quarry property has been designated by the California State Department of Conservation, Division of Mines and Geology as a deposit site for regionally significant mineral resources for the North Bay Area, and classified under a Mineral Resources Zone, Class 2 designation (MRZ-2A), the highest category for known mineral resource deposits.

In addition to the primary quarrying use of the property, there are a number of residences on the property. These include: (1) a 1,200 square foot residence and a detached 864 square foot garage/workshop for a quarry staff/caretaker; (2) a 3,626 square foot primary residence for the owner of the quarry; (3) a 1,369 square foot guest residence for the owner; and (4) a 441 square foot second unit (Signal House). A separate application is currently under review by the Community Development Agency for legalization of various improvements to these residential structures.

There are two businesses that lease portions of the site from the San Rafael Rock Quarry. McNear Brick and Block, which manufactures a variety of brick products, occupies approximately 200,000 square feet of space in the southwesterly portion of the site. The facility includes various open sheds, kilns, manufacturing facilities, storage buildings, office space, and caretaker residences. Marin Exposed Aggregates occupies approximately 16,800 square feet of building space in the northerly portion of the site for fabrication of various aggregate products.

ZONING AND ENTITLEMENT HISTORY:

1. On July 21, 1941, the Marin County Board of Supervisors adopted Ordinance 290 which added a new section (9.31) to the County's Zoning Ordinance (Ordinance 264) and established a "Districts Map." The District's Map established a Heavy Industrial (M-2) and a Limited Agricultural (A-2:B-2) zoning district over the Quarry's property. Although the M-2 zoning required Use Permit approval for new quarry operations, the pre-existing quarry operation was deemed to be a conforming use pursuant to Section 15 of Ordinance 264 because it was established prior to the adoption of the M-2 zoning.
2. On August 10, 1971, the Marin County Board of Supervisors adopted Ordinance 1844 which added a new chapter to the Marin County Code entitled, "Regulation and Control of Surface Mining and Quarry Operations." Section 23.06.100 stated, in part, that "a lawful surface mining or quarrying operation existing at the time of the adoption of this chapter is not subject to the provisions of this chapter; provided, however, that the owner and operator shall submit a map to the Planning Commission showing the area of land affected as of the effective date of the ordinance. No such operation may enlarge the area of land affected beyond that identified on the map or maps as approved by the Commission."
3. On April 10, 1972, the Marin County Planning Commission approved a "Quarry Use Permit" to allow the existing Quarry to continue as a legal use under Section 23.06.100 of the County's Surface Mining and Quarry Ordinance. In this action, the Commission found that a map submitted by the property owner at the time, Basalt Rock Company, reasonably demonstrated the "area of land affected" and approved the map as required by Section 23.06.100 without conditions. The Planning Commission also approved a Tidelands Permit to allow "redredging the barge-loading channel in San Pablo Bay." A Surface Mining and Quarrying Permit (#Q-72-03) was concurrently issued by the Department of Public Works on the same date. (Please refer to Attachments 16a, 16b, and 16c.)
4. On January 1, 1976, the State's Surface Mining and Reclamation Act of 1975 (SMARA) went into effect. Pursuant to SMARA, a Reclamation Plan for quarrying operations was required to be filed with, and approved by, the County for all existing quarrying operations. The Basalt Rock Company filed a Reclamation Plan on December 2, 1976 but, for reasons not clear in the record, the plan was not forwarded to the Planning Commission for approval. In 1981, the Basalt Rock Company indicated that they would like to withdraw the submitted Reclamation Plan so that it could be amended to incorporate new geologic information and long-term plans that had emerged over the five-year period since the Plan had been originally to the Department of Public Works. This new information necessitated modifications to the final contours, including lowering the final depth of the pit, that were contemplated in the original 1976 Reclamation Plan.
5. On November 9, 1982, the Marin County Board of Supervisors passed and adopted Ordinance 2743 which rezoned the subject property from a M-2 (Heavy Industrial District) and A-2:B-2 (Limited Agricultural District) to a BFC-RMPC (Bayfront Conservation, Residential Multiple Planned Commercial District) and a RMPC (Residential Multiple Planned Commercial District). (Please refer to Attachment 16d.) The "submerged" portions of the property (including the marsh along the northwesterly frontage of the property) were designated under the BFC-RMPC zoning district, while the dry land portions were designated RMPC. This Rezoning was primarily enacted so that the zoning for the property would be consistent with the submitted Reclamation Plan's intent to convert the property to residential and commercial uses upon the cessation of quarrying operations and reclamation of the site. Since mineral resource extraction is not allowed under the RMPC zoning, and the quarry operations became legal non-conforming as a result of the Rezoning action.
6. On December 6, 1982, the Marin County Planning Commission reviewed and conditionally approved the "Amended Reclamation Plan for McNears Quarry" in compliance with SMARA for reclamation of the site after mining operations are completed. Conditions of approval for the approved Reclamation Plan required the applicant to submit annual topographic map and reports for conformance with the approved

Reclamation Plan and to initiate cleanup and revegetation measures on the site at least three years prior to the completion of the quarrying operations.

7. On June 6, 1983, the County approved a Use Permit for two modular residences to be used for temporary housing for the Quarry's staff. That approval was extended once, to 1987, and expired in 1992. (Please refer to Attachment 16e.)
8. Ownership of the Quarry was transferred from Basalt Rock Company, to the Dutra Construction Company in February of 1986. Ownership of the quarry is currently held by the San Rafael Rock Quarry, Inc., which is a division of Dutra.
9. The area that is occupied by the office complex was first developed as early as 1983 with a structure that originally housed a residence/office for a previous general manager for the Quarry, and which has since been converted into an office structure that is identified as "Permanent Office Building No. 1." According to the site topographic maps that are filed annually by the Quarry operator with the Department of Public Works, the first of the remaining new office structures, which is comprised of a 3,738 square foot office building identified as "Permanent Office Building No. 2," was constructed between February 1992 and March 1993. Between July 1994 and August 1996, an additional five modular office structures were installed in a complex of buildings at the base of South Hill, along the easterly bayside perimeter of the property. This resulted in a total of seven unpermitted office buildings. Since then, one of the offices, which was comprised of a 1,131 square foot modular structure, was removed from the property resulting in a total of six offices totaling 14,651 square feet that still remain on the property and are included in the current application.
10. On August 22, 1995, the Quarry operator submitted a Use Permit renewal application (UP 96-234) to allow for the continued use of the two modular residences on the property. At the site inspection, staff discovered the presence of the unpermitted office buildings. At the request of County staff, the Quarry operator modified the Use Permit application to include legalization of the office structures, which totaled 15,782 square feet at the time and housed administrative staff providing both operational support services for the Quarry as well as the parent company (Dutra). Through the course of the County's review of this application, concerns were raised by residents concerning the overall intensity of the mining activity and potential environmental and community impacts. Between 1995 and 2000, the Use Permit application was modified by the Quarry operator a number of times in order to address concerns about the adequacy of sewage disposal facilities and the broader issues surrounding the mining operation. Following unsuccessful attempts at mediation and negotiations toward a voluntary operating agreement with the County, City of San Rafael, and community, the Quarry operator requested that the Use Permit application be withdrawn. On November 2, 2000, the Community Development Agency withdrew the application and referred the case to the Enforcement Division. The County also considered alternative means of resolving the land use dispute through the judiciary system.
11. On March 15, 2001, the Quarry operator submitted Master Plan Waiver, Use Permit (UP 01-22), Design Review (DR 01-79), and Tidelands Permit (TP 01-7) applications seeking to modify the scope of the project by retaining three of the six office buildings totaling 7,865 square feet and removing three additional office buildings totaling 6,786 square feet. At the same time, and in response to a separate enforcement investigation, the application was expanded to include legalization of additions totaling 1,222 square feet to the Quarry owner's primary residence, 55 square feet to the owner's guest residence, conversion of a third structure into a second unit, reconstruction of a recreational pier, and construction of a 864 square foot detached garage/workshop adjacent to the caretaker's residence. On July 27, 2001, the Community Development Agency denied the Master Plan Waiver and required a Master Plan and Rezoning application for the project. On November 7, 2001, the Community Development Agency withdrew the application at the request of the Quarry operator because the issues raised by the application, including the appropriateness of a Master Plan and the expansion of a legal non-conforming use, overlap

with similar issues in the litigation that was recently initiated by the County and set for resolution before the Marin County Superior Court.

12. In response to the ongoing enforcement investigation, the Quarry operator submitted a new Master Plan Waiver, Design Review, Use Permit, and Tidelands Permit application on October 3, 2003. The scope of the project included all of the office and residential structures that were part of the prior application that was made in 2001. On April 8, 2004, the Community Development Agency denied the Master Plan Waiver application and required a Master Plan and Rezoning application. (Please refer to Attachment 9.) At the same time, the Design Review and Tidelands Permit applications for the residential improvements were withdrawn and referred back to the Enforcement Division due to the lack of a complete application submittal. On April 19, 2004, the applicant submitted the current Master Plan and Rezoning application and modified the scope of work to retain all six remaining office buildings.
13. On April 12, 2004, the Marin County Superior Court found that the Quarry has exceeded the scope of its nonconforming use and substantially deviated from the 1982 Reclamation Plan. In the Court order, the Court imposed interim limits on the mining operations until an amended Reclamation Plan is filed and approved by the County. The Court also encouraged the County to pursue other aspects of the case through the administrative process. In response to the Superior Court, the Enforcement Division continued to pursue resolution of the residential component of the project. These efforts resulted in the Quarry operator's submittal of a Design Review and Tidelands Permit application on July 19, 2004. This application is incomplete pending submittal of information necessary to comply with the requirements for designing an up-to-code sewage disposal system for the Quarry owner's primary residence. On July 15, 2004, the Court issued an amended order that reflected an agreement that was reached between the Department of Public Works and the Quarry operator whereby the operator agreed to submit an Amended Surface Mining and Quarry Permit application, to abide by expanded interim operating conditions, and to pay costs associated with interim monitoring of the operations until completion of the County's review of the amended mining permit is completed. (Please refer to Attachments 16h and 16i.)

PROJECT ANALYSIS:

While the proposed office uses may be considered related to the ongoing mining operation on the property, mineral resource extraction is not a permitted land use under the governing Residential Multiple Planned Commercial (RMPC) zoning district. Staff finds that the proposed application cannot be supported as the request consists of “spot” zoning for the purpose of expanding a legal nonconforming use.

1. Zoning

The proposed Rezoning and Master Plan will result in zoning designations that are internally inconsistent and incompatible with surrounding land uses. As a legal non-conforming use, the primary quarrying use of the property cannot be enlarged, increased, or intensified under the requirements of Marin County Code Section 22.12.020.A. The proposed Rezoning would create a 4.71-acre “island” which consists of a planned industrial zoning district with its own Master Plan covering the six office buildings within the 276-acre property. (Please refer to Attachment 4.) By separating the office structures out as a stand alone use, the proposal contains a fallacy in its reasoning by ignoring the interconnectivity between the primary legal non-conforming mining use and the accessory administrative office uses. In effect, it seeks to resolve the problem by attempting to fix and isolate the office use while disregarding the broader problem that the office uses contribute to. Not only will the proposed planned industrial zoning district over the island of office development represent “spot” zoning, the accompanying Master Plan would govern only the accessory use with no effect on the primary quarrying use. The proposed Master Plan does not meet the criteria for a Master Plan as set forth in Marin County Code Section 22.44.030.A.1 because it does not include all contiguous properties under common ownership. Consequently, neither the concurrent Design Review nor Use Permit applications could be approved without resolution to the broader zoning and Master Plan issues.

The second zoning conflict relates to the appropriateness of the proposed Planned Industrial (IP) zoning district. As a result of the adoption of the new Development Code in June 2003, the Light Industrial (M-1) and Heavy Industrial (M-2) zoning districts from the previous Zoning Code were eliminated and replaced with the Planned Industrial (IP) zoning district. Whereas the M-1 and M-2 zoning districts allowed a wide range of industrial uses, including mineral resource extraction, mining is not permitted in the Planned Industrial district. Therefore, the Rezoning would place the property under another zoning district where quarrying is not permitted. Currently, the only zoning districts in the County where mineral resource extraction is a permitted use, subject to a Use Permit, include the Agricultural Residential Planned (ARP) and the Agriculture and Conservation (A3 to A60) zoning districts. For the same reasons set forth in the preceding discussion, an Agricultural zoning district designation over a limited portion of the entire property would also be inappropriate.

Based on the foregoing analysis, the proposed Rezoning and Master Plan would result in development that is inconsistent and incompatible with the relevant requirements in the Development Code.

2. Legal Precedence

The Quarry operator asserts that a Rezoning of the entire property, including those areas that are currently used for the primary mining activity, is not necessary since the mining use is a legally protected nonconforming use under the doctrine of diminishing assets that was relied upon by the California Supreme Court in the landmark case, Hansen Brothers Enterprises, Inc. v. Board of Supervisors (12 Cal. 4th 533, 1996). (Please refer to Attachments 7, 8, and 16g.) Since the office improvements are considered integral parts to the existing, legal nonconforming quarry use, the legal counsel for the Quarry’s operator has asserted that the offices could be expanded upon in connection with the modernization of quarrying facilities. Due to changes in technology, additional office space is claimed to be necessary to house the modern computer and information systems as well as the employees that are needed to operate these systems. Staff disagrees with this assessment.

The diminishing asset doctrine states that the very nature of certain uses, such as a mining operation, is the continuing use of the land for purposes of depleting the resource. In the Hansen case, the state's Supreme Court applied the diminishing asset doctrine in finding that a mining operation represents an exception to the general rule that a nonconforming use may neither be expanded nor moved to another location on the property. County Counsel has noted that the diminishing asset doctrine's can only be narrowly construed and interpreted to apply to the primary mining use. The State Supreme Court identified those integral parts of a mining business to include: (1) mining replenishable materials; (2) crushing, combining and storing mined materials; and (3) selling or trucking the mined materials. The Court further held that an increase in production of material to meet demand would not be construed as an enlargement or intensification of the mining use. Nowhere in the case law does the Court find that an expansion of administrative office uses to be considered part of the mining activity that depletes a diminishing resource. Unlike those improvements that are required to be located on-site in connection with a quarrying activity, such as those facilities that are used to extract and store the rock materials, administrative office space housing such functions as payroll, accounting, and data maintenance could be undertaken from off-site locations and are not needed in close proximity to the primary mining operation. Consequently, the doctrine of diminishing assets would not exempt any expansion in administrative office use that is accessory to the primary mining operation from compliance with current zoning laws. Furthermore, application of modern records management techniques, such as document imaging and the use of compact discs and other "paperless" storage medium, can reduce the need for office storage and require less office space.

3. Alternative

Should resolution of the code enforcement violations associated with the six office buildings not be reached through the proposed applications, the Quarry operator would be required to abate the office use and to remove the structures. Based on the provisions for legal non-conforming uses contained in Marin County Code Section 22.12.020.A, the Quarry operator would be limited to the number and size of office structures, as well as employees, that would have existed in November 1982, when quarrying became a legal non-conforming use as a result of the County's Rezoning action. Review of historic information on file with the County, including the 1982 Reclamation Plan, aerial maps, and site topographic maps, indicates the presence of three office structures totaling approximately 1,100 square feet, in an area north of the current location of the offices. (Please refer to Attachment 16f.) The number and size of the office structures would be limited to a maximum of three structures and 1,100 square feet. The number of employees would also be required to be reduced to the 1982 levels in order to resolve the code enforcement violations.

CONCLUSION:

Based on the foregoing analysis, staff finds that there is insufficient basis to support the proposed applications. A partial Rezoning of the property would result in incongruous zoning districts and land uses that are incompatible with surrounding land uses. The lack of a comprehensive Master Plan that governs the entire property would lead to a non-orderly and haphazard development pattern which is inconsistent with the intent and objectives of the Countywide Plan and the Peacock Gap Neighborhood Plan.

RECOMMENDATION:

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution recommending that the Board of Supervisors deny the proposed Rezoning, Master Plan, Design Review, and Use Permit applications.

- Attachments:
1. Proposed Resolution denying the San Rafael Rock Quarry Rezoning, Master Plan, Design Review, and Use Permit Applications
 2. Vicinity Map
 3. Assessor's Parcel Map
 4. Proposed Rezoning Exhibit
 5. Building Elevations and Floor Plans (reduced)
 6. Building Photographs
 7. Master Plan/Rezoning Application Letter from John Taylor, (4/19/04)
 8. Master Plan Waiver Application Letter from John Taylor, (10/1/03)
 9. Community Development Agency Notice of Administrative Action Letter, (4/8/04)
 10. Department of Public Works Memorandum, (4/8/04)
 11. Department of Public Works – Traffic Division Memorandum, (11/7/03)
 12. Environmental Health Services Memorandum, (4/1/04)
 13. City of San Rafael Letter, (10/29/03)
 14. John Edgcomb Letters, (4/6/04, 11/12/03)
 15. The Point San Pedro Road Coalition Letter, (11/5/03)
 16. Relevant Historical Documents
 - a. Basalt Rock Company Quarry Use Permit, (4/10/72)
 - b. Basalt Rock Company Tidelands Permit, (4/10/72)
 - c. Surface Mining and Quarrying Permit, (4/10/72)
 - d. Board of Supervisors Ordinance 2743, (11/9/82)
 - e. Use Permit 83-14 and Extension, (6/6/83, 12/2/87)
 - f. Reclamation Plan Figure 1 – Starting Condition, (1/82)
 - g. California Supreme Court (Hansen Brothers Enterprises, Inc. v. Board of Supervisors (12 Cal. 4th 533, 1996)
 - h. County of Marin Superior Court Order (4/12/04)
 - i. County of Marin Superior Court Order – Amended (7/15/04)

MARIN COUNTY PLANNING COMMISSION

RESOLUTION _____

**A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS DENY THE
SAN RAFAEL ROCK QUARRY'S REZONING, MASTER PLAN,
DESIGN REVIEW, AND USE PERMIT APPLICATIONS**

**1000 POINT SAN PEDRO ROAD, SAN RAFAEL
ASSESSOR'S PARCELS 184-010-09, -15, -16, -52**

SECTION I: FINDINGS

- I. WHEREAS the San Rafael Rock Quarry has submitted an application to legalize six office buildings totaling 14,651 square feet which are used in support of the San Rafael Rock Quarry operations. The application includes the proposed Rezoning of a 4.71-acre portion of the approximately 276-acre property from a RMPC (Residential Multiple Planned Commercial) zoning district to an IP (Planned Industrial) zoning district or an alternative planned zoning district. The one-story office buildings are located at the base of South Hill along the easterly perimeter of the property and adjacent to San Pablo Bay. Parking for the office uses is provided by 59 on-site parking spaces. The subject property is located at **1000 Point San Pedro Road, San Rafael** and is further identified as **Assessor's Parcels 184-010-09, -15, -16, -52**.
- II. WHEREAS the Marin County Planning Commission held a duly-noticed special public hearing on August 23, 2004, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Planning Commission finds that the requirements of the California Environmental Quality Act (CEQA) do not apply to projects that are disapproved, pursuant to Section 15270 of the CEQA Guidelines.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the goals and policies of the Marin Countywide Plan and the Peacock Gap Neighborhood Plan due to the following factors: (1) the limited scope of the proposed Master Plan and Rezoning is inconsistent with overarching goals in the Countywide Plan that promote orderly and planned development of lands within the County; and (2) expansion of offices that are accessory to the primary mining use of the property would be inconsistent with the neighborhood plan because it would support the continuation of the mining use beyond the neighborhood plan's estimated remaining life of the quarry, which was ranged from 10 to 12 years beyond 1980.
- V. WHEREAS the Marin County Planning Commission finds that the proposed Rezoning and Master Plan will result in zoning designations that are internally inconsistent and incompatible with surrounding land uses. As a legal non-conforming use, the primary quarrying use of the property cannot be enlarged, increased, or intensified under the requirements of Marin County Code Section 22.12.020.A. The proposed Rezoning would create a 4.71-acre "island" which consists of a planned industrial zoning district with its own Master Plan covering the six office buildings within the 276-acre property. By separating the office structures out as a stand alone use, the proposal contains a fallacy in its reasoning by ignoring the interconnectivity between the primary legal non-conforming mining use and the accessory administrative office uses. In effect, it seeks to resolve the problem by attempting to fix and isolate the office use while disregarding the broader problem that the office uses contribute to. Not only will the proposed planned industrial zoning district over the island

of office development represent “spot” zoning, the accompanying Master Plan would govern only the accessory use with no effect on the primary quarrying use. In addition, the proposed Master Plan does not meet the criteria for a Master Plan as set forth in Marin County Code Section 22.44.030.A.1 because it does not include all contiguous properties under common ownership. Consequently, neither the concurrent Design Review nor Use Permit applications could be approved without resolution to the broader zoning and Master Plan issues.

- VI. WHEREAS the Marin County Planning Commission finds that the project would result in a conflict with respect to the appropriateness of the proposed Planned Industrial (IP) zoning district. As a result of the adoption of the new Development Code in June 2003, the Light Industrial (M-1) and Heavy Industrial (M-2) zoning districts from the previous Zoning Code were eliminated and replaced with the Planned Industrial (IP) zoning district. Whereas the M-1 and M-2 zoning districts allowed a wide range of industrial uses, including mineral resource extraction, mining is not permitted in the Planned Industrial district. Therefore, the Rezoning would place the property under another zoning district where quarrying is not permitted. Currently, the only zoning districts in the County where mineral resource extraction is a permitted use, subject to a Use Permit, include the Agricultural Residential Planned (ARP) and the Agriculture and Conservation (A3 to A60) zoning districts. For the same reasons set forth in the preceding discussion, an Agricultural zoning district designation over a limited portion of the entire property would also be inappropriate.
- VII. WHEREAS the Marin County Planning Commission finds that the diminishing asset doctrine does not exempt administrative office use that is accessory to the primary mining operation from compliance with current zoning laws. The diminishing asset doctrine states that the very nature of certain uses, such as a mining operation, is the continuing use of the land for purposes of depleting the resource. In the California State Supreme Court’s case (Hansen Brothers Enterprises, Inc. v. Board of Supervisors (12 Cal. 4th 533, 1996), the Court applied the diminishing asset doctrine in finding that a mining operation represents an exception to the general rule that a nonconforming use may neither be expanded nor moved to another location on the property. The diminishing asset doctrine’s can only be narrowly construed and interpreted to apply to the primary mining use. The State Supreme Court identified those integral parts of a mining business to include: (1) mining replenishable materials; (2) crushing, combining and storing mined materials; and (3) selling or trucking the mined materials. The Court further held that an increase in production of material to meet demand would not be construed as an enlargement or intensification of the mining use. Nowhere in the case law does the Court find that an expansion of administrative office uses to be considered part of the mining activity that depletes a diminishing resource. Unlike those improvements that are required to be located on-site in connection with a quarrying activity, such as those facilities that are used to extract and store the rock materials, administrative office space housing such functions as payroll, accounting, and data maintenance could be undertaken from off-site locations and are not needed in close proximity to the primary mining operation. Furthermore, application of modern records management techniques, such as document imaging and the use of compact discs and other “paperless” storage medium, can reduce the need for office storage and require less office space.
- VIII. WHEREAS the Marin County Planning Commission finds that there is insufficient basis to support the proposed applications. A partial Rezoning of the property would result in incongruous zoning districts and land uses that are incompatible with surrounding land uses. The lack of a comprehensive Master Plan that governs the entire property would lead to a non-orderly and haphazard development pattern which is inconsistent with the intent and objectives of the Countywide Plan and the Peacock Gap Neighborhood Plan.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission recommends that the Marin County Board of Supervisors deny the proposed Rezoning, Master Plan, Design Review, and Use Permit applications.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 23rd day of August, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALLAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Recording Secretary