



**MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

**MEMORANDUM**

**TO:** Members of the Planning Commission

**FROM:** Tom Lai, Principal Planner

**RE:** **Item 10: Planning Commission Agenda for September 27, 2004  
San Rafael Rock Quarry Rezoning, Master Plan, Design Review, Use Permit or  
Determination of the Extent of Legal Non-conformity  
1000 Point San Pedro Road, San Rafael  
Assessor's Parcels 184-010-09, -15, -16, -52**

**DATE:** September 20, 2004

On August 23, 2004, the Planning Commission conducted a public hearing to consider a proposal from the San Rafael Rock Quarry to legalize six existing office buildings totaling 14,651 square feet through a Master Plan, Design Review, and Use Permit application and a partial Rezoning of the property. Prior to the hearing, the applicant modified the application by proposing to remove four of the six office buildings and retain the two remaining office structures totaling 5,705 square feet. In conjunction with the reduction in the number of office buildings, which would be phased out over a period of 18 months, the number of administrative employees at the Quarry would be reduced from 40 to 15 employees.

Following consideration of the revised proposal and public testimony, the Planning Commission continued the hearing in order for the applicant to provide additional information that would support a potential determination that the modified office use is consistent with the legal non-conforming quarrying use of the property. The additional information requested by the Commission included an updated declaration from the previous quarry manager, job descriptions for the 15 remaining administrative employees, information on the number of office buildings and employees in 1982, and expert analysis of historical aerial photographs. The Commission also requested that the applicant consider shortening the time frame for removal of the four office buildings and that staff clarify the range of office sizes that could be supported as a legal non-conforming use.

Additional Information

On September 14, 2004, staff received the following additional information from Mr. Gary Giacomini, legal counsel representing the applicant: (1) an updated declaration from a prior quarry manager, Marvin Larson, who indicated that in 1982, there were a total of four buildings with an estimated total floor area of 5,050 square feet that were used for administrative offices; (2) a declaration from a photogrammetrist, Peter Ashley, who indicated that three of the four office buildings that were depicted in the 1982 aerial photograph of the property had an estimated floor area of 3,170 square feet; (3) copies of aerial photographs of the property that were taken in May 1982 by Pacific Aerial Surveys; and (4) job descriptions for the 15 administrative positions that would remain as part of the quarrying operation.

(Please refer to Attachment 2.) Mr. Giacomini indicates that application of the diminishing asset doctrine for the overall quarry use would support a finding that the two office buildings proposed to remain on the site represent a reasonable expansion of an administrative office use that is incidental and auxiliary to the primary legal non-conforming quarry use. While Mr. Giacomini had previously requested that the Rezoning application be withdrawn, he has not made a request to withdraw the accompanying Master Plan, Design Review, and Use Permit applications.

Discussion

**Zoning Analysis**

Pursuant to the requirements of Marin County Code Section 22.112.020.A, a legal non-conforming use could not be enlarged, increased, or intensified, or extended to occupy a greater area than it did at the time the use became legal nonconforming. The nonconforming use may also not be relocated to another location on the property. A review of County records yielded very little information on the extent of the office use in November 1982, when the rezoning of the property occurred. Historic topographic maps submitted by the quarry and on file in the County do not cover the period from January 1982 to March 1983. Aerial photographs on file with the County were taken in January 1976 and March 1985, but do not include 1982. Previously, staff estimated that there may have been as much as 1,100 square feet of building space that may have been used as offices, based on a topographic map of existing conditions, dated January 1982, that was included in the 1982 Reclamation Plan. This map noted the location of three small structures in the vicinity of the area that is currently occupied by offices. However, this position may be superceded by the new information and declarations that have since been submitted by the applicant, which now does not confirm the office use of these three structures, but instead, identifies two other structures as having been used in 1982 as offices, as discussed further below.

Table 1 below includes a summary of the two estimates of the office space that existed in 1982 based on the declarations from the previous quarry manager and a photogrammetrist. The information includes reference to two other structures located within the processing area of the quarry and known as the “barge” and the “quality control” offices, which are not currently used for office purposes. The revised estimates of the office spaces range from 3,170 to 5,050 square feet, which is still lower than the 5,750 square feet that is currently proposed.

**Table 1: Comparison of Building Sizes (in square feet)**

	Larson Declaration	Ashley Declaration	Current Proposed Offices
Main Office	1,000	0	3,738
Larson Residence/Office	2,000	1,780	1,967
Quality Control Office	1,600	992	0
Barge Office	450	398	0
<b>TOTAL</b>	<b>5,050</b>	<b>3,170</b>	<b>5,750</b>

Based on the prior quarry manager’s photographs and declarations, staff finds that there is sufficient evidence to support the presence of the 1,000 square foot main office. Utilizing the prior manager’s declaration about the presence of the quality control and barge offices, in combination with the more precise floor area estimate from the photogrammetrist, yields an additional 1,390 square feet of floor area, bringing the total office space to 2,390 square feet. However, full credit cannot be given to the Larson structure for office use since its primary use was that of the residence for the prior quarry manager. No records of Building Permits exist for any of the four structures that are identified in the declarations that were submitted by the applicant. Overall, since the proposed 5,750 square feet of office space still

exceeds the estimated 2,390 square feet of office space, the proposal would not meet the strict requirements for a legal non-conforming use, without consideration of additional factors, as discussed below.

### ***Diminishing Asset Doctrine***

In order to grant approval of additional office area than that which is allowed under the legal non-conforming provisions of the Development Code, consideration would have to be given to the doctrine of diminishing assets. 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. The progression of quarrying activities into other areas of the property does not constitute an expansion or change of location with respect to the nonconforming quarry use. In the Hansen case (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal. 4<sup>th</sup> 533), the State Supreme Court found that the nonconforming mining use includes all aspects of the operation that were integral parts of the business at the time the use became nonconforming, including those uses that are normally incidental and ancillary to the primary nonconforming use. County Counsel has reviewed the matter and issued the opinion that any increase in incidental and auxiliary uses, including offices, would be allowed under the Hansen case to the extent the owner can prove that they are integrally related to the objectively manifested increased quarrying use. (Please refer to Attachment 3.)

Staff finds that a reasonable, limited expansion to the administrative office space would likely be supported given consideration to the legal determinations that were issued in connection with the Hansen case. On balance, taking into account the lack of accurate County records (including Building Permits) for the office structures that are cited in the personal declarations, and the previous residential use of the Larson structure, staff supports the proposed use of the 3,738 square foot structure for office use. This would represent an increase of 1,348 square feet over the 2,390 square feet of office space that could be credited for office use based on the factors discussed previously. Staff recommends that the other proposed office structure, which occupies 1,967 square feet of floor area, be converted back to its original residential use, which was that of a primary residence for the prior quarry manager.

Alternatively, if your Commission finds that the applicant has clearly demonstrated that the 15 administrative staff are integrally related to the objectively manifested increase in quarry use, you may support retaining both office buildings. In order to do so, you must find that the applicant has proven that the increased quarrying operation could not function without the additional office staff and buildings. The job descriptions for the 15 administrative positions that will remain have been submitted by the applicant and are included in Attachment 2. In either case, staff would recommend that the applicant be required to obtain Building Permits for the two structures and upgrade the existing sewage disposal system to an up-to-code system. Finally, while the applicant has indicated a willingness to consider a shorter time frame than the proposed 18 months to remove the other four office buildings, he has not provided a specific proposal to do so. In recognition of the constraints involved in relocating staff and office structures, staff recommends that your Commission require that the removal of the four office structures be accomplished within six months.

### **Conclusion**

Based on the foregoing analysis and discussion, staff recommends that your Commission apply the findings from the Hansen case and grant approval for the retention of the 3,738 square foot office structure as an incidental and ancillary use to the primary quarry use, and that you require the 1,967 square foot structure to be converted back to its original use as a residence. Based on the 15 proposed employees, the 3,738 square foot office building would provide an average of approximately 250 square feet of space per employee. Alternatively, you may support retention of both structures totaling 5,705

square feet for office use should you find that the applicant has met the burden of proof to demonstrate that the amount of office space and employees is integral to the ongoing conduct of the quarrying operation. In either instance, staff recommends that you require the removal of the four other office buildings to be undertaken within six months, and that building permits and an up-to-code sewage disposal system be required for both structures. Table 2 below provides a summary of these actions.

Table 2: Summary of Potential Actions

	<b>Applicant's Proposal</b>	<b>Staff's Recommended Action</b>	<b>Alternative Recommendation</b>
Office (3,738 sq. ft.)	Retain as office	Retain as office	Retain as office
Office (1,967 sq. ft.)	Retain as office	Convert to residence	Retain as office
Obtain Building Permit	Not specified	Yes	Yes
Upgrade Septic System	Not specified	Yes	Yes
Timeframe for Removal of Offices	18 months	6 months	6 months

Should the Planning Commission find merit in either of the actions identified, you would need to accept the withdrawal of the proposed Rezoning, Master Plan, Design Review and Use Permit applications, with the applicant's consent. Should you find that none of the potential actions that are presented before you are appropriate and that there are no other alternatives available to support retention of the office structures, you would need to adopt the resolution that was previously prepared recommending denial of the Master Plan, Design Review, and Use Permit applications. In that instance, the matter will be referred back to the Code Enforcement Division for abatement proceedings.

**RECOMMENDATION:**

Staff recommends that the Planning Commission review the administrative record including the additional information set forth in this memorandum, conduct a public hearing, and move to adopt the proposed resolution approving the continued use of one office building for the San Rafael Rock Quarry.

- Attachments: (1) Proposed Resolution Approving the Continued Use of One Office Building for the San Rafael Rock Quarry  
 (2) Gary Giacomini Letter and attachments, (9/14/04)  
 (3) David Zaltsman, Deputy County Counsel memorandum, (9/20/04)  
 (4) George Hagan Letter, (received 9/16/04)

**MARIN COUNTY PLANNING COMMISSION**

**RESOLUTION \_\_\_\_\_**

**A RESOLUTION APPROVING THE CONTINUED USE OF  
ONE OFFICE BUILDING FOR THE SAN RAFAEL ROCK QUARRY**

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

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**SECTION I: FINDINGS**

- I. WHEREAS the San Rafael Rock Quarry has submitted a request to retain two office buildings, totaling 5,705 square feet, that would be used in support of the ongoing quarry operations at its facility located at **1000 Point San Pedro Road, San Rafael**, on property that is further identified as **Assessor's Parcels 184-010-09, -15, -16, -52**. The primary quarry use of the property became a legal non-conforming use when the zoning of the property was amended on November 9, 1982 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). In conjunction with the request, the applicant submitted the following documentation: (1) a declaration from a prior quarry manager, Marvin Larson, who indicated that in 1982, there were a total of four buildings (including the main office, Larson residence/office, quality control office, and barge office) with an estimated total floor area of 5,050 square feet that were used for administrative offices; (2) a declaration from a photogrammetrist, Peter Ashley, who indicated that three of the four office buildings that were depicted in the 1982 aerial photograph of the property (including the Larson residence/office, quality control office, and barge office) had an estimated floor area of 3,170 square feet; (3) copies of aerial photographs of the property that were taken in May 1982 by Pacific Aerial Surveys; and (4) job descriptions for the 15 administrative positions that would remain as part of the quarrying operation. The applicant indicates that application of the diminishing asset doctrine for the overall quarry use would support a finding that the two office buildings proposed to remain on the site represent a reasonable expansion of an administrative office use that is incidental and auxiliary to the primary legal non-conforming quarry use.
  
- II. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on September 27, 2004, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the request.
  
- III. WHEREAS the Marin County Planning Commission finds that that there is sufficient evidence to support the presence of the 1,000 square foot main office. Utilizing the prior manager's declaration about the presence of the quality control and barge offices, in combination with the more precise floor area estimate from the photogrammetrist, yields an additional 1,390 square feet of floor area, bringing the total office space to 2,390 square feet. However, full credit cannot be given to the Larson structure for office use since its primary use was that as the residence for the prior quarry manager. No records of Building Permits exist for any of the four structures that are identified in the declarations that were submitted by the applicant.

- IV. WHEREAS the Marin County Planning Commission finds that the diminishing asset doctrine is applicable in determining the extent of offices that could be supported in conjunction with a legal non-conforming quarry use. 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. The progression of quarrying activities into other areas of the property does not constitute an expansion or change of location with respect to the nonconforming quarry use. In the Hansen case (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal. 4<sup>th</sup> 533*), the State Supreme Court found that the nonconforming mining use includes all aspects of the operation that were integral parts of the business at the time the use became nonconforming, including those uses that are normally incidental and ancillary to the primary nonconforming use. Based on this, any increase in incidental and auxiliary uses, including offices, would be allowed under the Hansen case to the extent the owner can prove that they are integrally related to the objectively manifested increased quarrying use.
- V. WHEREAS the Marin County Planning Commission finds that there is sufficient basis to support a reasonable, limited expansion to the administrative office space given consideration to the legal determinations that were issued in connection with the Hansen case. On balance, taking into account the lack of accurate County records (including Building Permits) for the office structures that are cited in the personal declarations, and the previous residential use of the Larson structure, the Commission supports the proposed use of the 3,738 square foot structure for office use. This would represent an increase of 1,348 square feet over the 2,390 square feet of office space that could be credited for office use based on the factors discussed previously. Additionally, the 1,967 square foot structure shall be converted back to its original residential use, which was that of a primary residence for the prior quarry manager.

## **SECTION II: ACTION**

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission approves the continued use of the 3,738 square foot office building by up to 15 administrative employees in conjunction with the quarry operations that are undertaken by the San Rafael Rock Quarry in its facility that is located at 1000 Point San Pedro Road, San Rafael on Assessor's Parcels 184-01—09, -15, -16, and -52.

NOW, THEREFORE BE IT FURTHER RESOLVED that this determination is based on the applicant's compliance with the following requirements.

1. The applicant shall submit a Building Permit application and obtain final inspections from the Building and Safety Division for the 3,738 square foot office building within 90 days from the date of this decision.
2. The applicant shall submit a Building Permit application and obtain final inspections from the Building and Safety Division for conversion of the 1,976 square foot structure into a residence within 90 days from the date of this decision.
3. The applicant shall submit an application for an up-to-code sewage disposal system to the Environmental Health Services Division to serve both the 3,738 square foot office building and the 1,976 square foot residence. The new system shall be installed and inspected prior to Final Inspections for the Building Permits.

4. The applicant shall remove the four other office buildings totaling 8,946 square feet within six months from the date of this decision and obtain an inspection from the Community Development Agency staff verifying compliance with this requirement.

**SECTION III: APPEAL**

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on October 7, 2004.**

**IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 27th day of September, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

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ALLAN BERLAND, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary