

September 28, 2010

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, CA 94903

RE: San Rafael Rock Quarry Amended Surface Mining and Quarrying Permit (Q-72-03, CA Mine #91-21-0008), Amended Reclamation Plan, and Related CEQA Actions; Supplemental Staff Report

Dear Board Members:

RECOMMENDATIONS:

Adopt the attached Resolution that:

- 1) Approves the San Rafael Rock Quarry Surface Mining and Quarrying Permit #Q-72-03 Amendment #1 Conditions of Approval,
- 2) Approves a conditionally modified amended reclamation plan, and
- 3) Makes related California Environmental Quality Act (CEQA) findings and Statement of Overriding Consideration, and adopts a Mitigation, Monitoring and Reporting Program.

SUMMARY:

Before your Board is the decision on approving an amended Surface Mining and Quarrying Permit and amended reclamation plan for the San Rafael Rock Quarry (SRRQ or Quarry), as well as related CEQA actions that will complete the CEQA environmental review process for two 'projects'. On September 14, 2010 your Board conducted a hearing on staff's recommendations and the proposed actions.

This staff report supplements the September 1, 2010 staff report in order to:

- Address certain major concerns raised since the original staff report was issued and by public comments at the September 14, 2010 hearing,
- Propose certain modifications to staff's previous recommendations and proposal, and
- Propose edits and clarifications to the Exhibit 1 and Exhibit 2 the CEQA Findings and Surface Mining and Quarrying Permit Amendment respectively.

PENDING ACTION REVIEW:

Before your Board is the consideration to amend the Surface Mining and Quarrying Permit No. 72-03 and to approve the 2004 Amended Reclamation Plan (ARP04) submittal by the San Rafael Rock Quarry. Both of these reviews and actions are subject to the California Environmental Quality Act (CEQA). On October 27, 2009 your Board certified the Combined Final Environmental Impact Report (EIR).

In order to approve a project after the EIR certification, CEQA requires that the County prepare written findings of fact for each significant environmental impact and, for impacts that are not reduced to below significance, must make a Statement of Overriding Considerations (see Exhibit 1). In addition, CEQA requires the lead agency to adopt a project or a project alternative and adopt a program for reporting and monitoring mitigation measures (see Exhibit 3). These actions are included in staff's proposed resolution.

Mitigation measures for both the quarry operations and the reclamation plan will be imposed through the Surface Mining and Quarrying Permit Amendment (Permit) (see Exhibit 2). There is no separate reclamation plan or amended reclamation plan 'permit'. In addition, the Permit has conditions that address the merits of the projects and further reduce the potential environmental impacts already mitigated through the EIR mitigation measures. Note that an agency does not have unlimited authority to impose mitigation measures that would reduce environmental impacts. The law limits an agency's authority to impose conditions on those where there is a clear nexus between the impact and the mitigation measure. In addition, there must be a 'rough proportionality' between the environmental problem caused by the project and the mitigation measure imposed by the project.

Please refer to the original staff report dated September 14, 2010 in order to review the complete record.

SEPTEMBER 14, 2010 BOARD HEARING & PUBLIC COMMENTS:

Over 45 speakers provided comment to the Board of Supervisors at the September 14, 2010 hearing. The Point San Pedro Road Coalition, a local community organization, and the San Rafael Rock Quarry each provided approximately 20 minutes of testimony. Staff was aware of most of the issues and concerns raised at the hearing and have, in the course of preparing a recommendation for the Board's consideration, worked to further reduce impacts to the community as well as recognizing quarry operational constraints. The following provides a very brief summary and categorization of many of the major comments made at the hearing along with staff's response to those comments.

Restricting Quarry Operations Could Impact Rock Demand for Regionally Significant Levee Repairs

Comments were made on the importance of the San Rafael Rock Quarry having direct water access that is uniquely suitable to respond to the physical constraints to repair levees or responding to flooding and other emergencies due to levee breaks.

Staff's Response: Staff recognizes the uniqueness of the San Rafael Rock Quarry being on the water and has reviewed other government permits and contracts to understand how the proposed permit conditions could impact the quarry's ability to ship rock products by barge. The recommended amended Surface Mining and Quarrying Permit Condition of Approval (COA) #33 suspends the days and hours of operations condition

when there is a declared public emergency, as would likely be the case in a significant levee break. The Permit otherwise allows the quarry to produce and barge materials while reducing the impacts to the adjacent community from currently approved levels.

Incompatible Land Use

Comments were made regarding the quarry as an incompatible land use next to a residential area.

Staff's response: The Environmental Impact Report analyzed the potential environmental impacts associated with two projects, the amended quarry permit and amended reclamation plan, and found that the simultaneous phased reclamation and quarry operations would result in continuing incompatibility with the neighboring residential and recreational land uses, even while implementing mitigation measures to reduce impacts. While at the same time, the tentative ruling by the judge in the civil case found that the quarry had vested certain limited rights to continue mining. Staff is recommending a Statement of Overriding Consideration (Exhibit 1) be made, as required by CEQA, recognizing the benefits of the quarry and weighting those benefits against the unmitigated environmental impacts, including the incompatible land use impact. As part of the findings and decision before your Board, staff notes that Permit conditions are proposed that would further reduce the environmental impacts from those already mitigated through EIR mitigation measures.

Pond Fines are 'Illegal'

Comments were made that pond fines (very fine quarry rock resulting from on-site washing of rock aggregate with water) are illegal and were illegally deposited in the Northeast Quadrant.

Staff's response: The current Surface Mining and Quarrying Permit Q-72-03 does not have conditions that prevent the creation of pond fines or deposition of pond fines in the Northeast Quadrant. The recommended Permit Condition of Approval (COA) #4 prohibits future deposition of pond fines in the Northeast or Northwest Quadrants. Under the State Surface Mining and Reclamation Act (SMARA) the pond fine areas are required to be reclaimed.

Northeast Quadrant is a 'Mixing Bowl' and General Material Movement

Comments were made that the amount of grading and soil movement proposed in the Northeast Quadrant is excessive.

Staff's Response: Except for undisturbed areas slated for 'preservation', SMARA requires that the Northeast Quadrant be reclaimed. The amount of material movement in the Northeast Quadrant is largely directed by the geotechnical requirements needed to stabilize and reclaim the deposited pond fines. Staff proposes to require further geotechnical review on the pond fine to soil mixing ratio and analysis on minimizing soil import to the Northeast Quadrant. Below is the revised Permit COA #21c:

"The Permittee shall provide a geotechnical evaluation and report on the pond fine to soil mixing ratio needed to comply with the California Surface Mining and Reclamation Act (SMARA) reclamation performance standards. Further, the geotechnical evaluation shall also examine the most efficient method and location to reclaim the pond fines which further reduces potential impacts to the environmental and minimizes the amount of material imported into the NE Quadrant. The evaluation is subject to the Public Works Director's review and

approval. The Permittee shall also fund an independent geotechnical review and site assessment (peer review) by the County on the submitted report.”

Conduct reclamation such that most impacts are at end of mining or post mining

Comments were made, either directly or indirectly, suggesting that the northeast quadrant reclamation should be conducted towards the end or after cessation of quarrying.

Staff's response: SMARA requires that reclamation be initiated at the earliest possible time on those portions of mined lands that will not be subject to further disturbance by surface mining operations. In addition, history has shown that deferring surface mining reclamation increases the risk that the quarry operator will not be able or willing to conduct reclamation, which can result in un-reclaimed lands with a potential environmental impact and burden to the public. Furthermore, even with SMARA required financial assurances, there is a risk that local or State government would choose not to assume the liability from an abandoned mine site.

Surcharge Berm is Inappropriate

Comments were made that the quarry proposed surcharge berm associated with reclamation in the Northwest Quadrant (currently where McNear's Brickyard operates) is inappropriate because it is for development purposes and requires 'triple' handling.

Staff's response: SMARA requires reclamation of an entire mining site, even areas that were used for processing such as McNear's Brickyard, i.e. Northwest Quadrant. When reclamation is performed for 'urban uses' the reclamation must be done so it is suitable for subsequent use, which in this case is proposed for structures and development. The Countywide Plan (General Plan) and current zoning recognizes the future development of the quarry property. However, as indicated by COA # 31(a), neither approval of the Permit nor approval of the amended reclamation plan constitutes approval of post reclamation land uses, i.e., there are no entitlements to future land uses from the proposed actions before your Board. As proposed, near the end of reclamation activities, the surcharge berm material is leveled in the immediate vicinity of the current brickyard, raising the area by a couple of feet to provide final cover, sloped to drained and revegetated. The surcharge material is not proposed to be moved to another property location. Permit Conditions of Approvals maintain a 100 foot buffer between the Bay shoreline and the marsh wetlands, and the surcharge berm.

'Truck Trips' Needed for Reclamation is Unmitigated

Comments were made that the 'truck trips' needed for the proposed phased reclamation activities are unmitigated.

Staff's response: The term 'truck trips' at the Quarry has usually been associated with truck travel on public roads to and from the quarry site along Point San Pedro Road. As proposed, there is no importation of earthen material to the Quarry property for the reclamation grading. On-site overburden will be used to mix with the pond fines and to create the final reclamation plan contours. Therefore other than minor trucking possibly needed for soil fertilizers, seeds, woody plants and other revegetation materials, reclamation activity is not expected to generate many truck trips on Point San Pedro Road. The EIR did analyze reclamation activity for impacts to the environmental, including impacts from the mining trucks moving material on the Quarry property. In particular, extensive analysis was conducted on air emission and many mitigation measures have been included in the Permit to address reclamation activities, including;

greenhouse gas emission reduction, criteria pollutant emission caps, dust control, Biofuel use, and limited reclamation operating hours.

Water Quality Impacts Make Flooding the Main Quarry Bowl Infeasible

Comments were made that flooding the quarry bowl to create a harbor creates water quality impacts that cannot be mitigated.

Staff's Response: The EIR analyzed this issue in depth and concluded that there are feasible mitigation measures to maintain water quality standards at the bottom of the proposed harbor. The purpose of Permit COA # 130 that requires engineering and economic report (and which may cause some confusion on this issue) is to produce the details and cost estimate to augment the reclamation financial assurances. The report also provides the County another opportunity to review the construction details soon after Permit approval in case concerns are raised which requires more work by the Quarry. Please refer to the attached Environmental Science Associates (ESA), the consultant that wrote the EIR, letter dated September 22, 2010 for additional details on this subject.

Crystalline Silica and Other Health Effect Concerns

Comments were made regarding the health effects of crystalline silica and the EIR findings on cumulative long health risk from past, present and future diesel exhaust particulate matter.

Staff's response: These issues and concerns have been extensively discussed during the EIR process and extensive responses to comments were provide in the EIR record. The Permit air quality section provides numerous conditions of approval that reduce and mitigate potential air quality impacts. A brief review is provided in the attached ESA letter of September 22, 2010.

Sea Level Rise

Some concerns were expressed regarding sea level rise and post reclamation impacts.

Staff's response: Sea level rise due to climate change is an evolving issue. With the passage of time more information will be obtained and better estimates of sea level rise will probably be made. Currently, the proposed lowest post reclamation elevation where proposed development would occur is between 10 and 12 feet above Mean Sea Level (MSL), with most of the site above this elevation. This is generally consistent with the current sea level rise information being considered by the Bay Conservation and Development Commission (BCDC) and the Association of Bay Area Governments (ABAG) of 16 inch sea level rise by mid century and 55 inch sea level rise by 2100. Theses elevations would generally be higher than most of the bay filled development around the County of Marin.

Biodiesel 80 Permit Requirement Voids Engine Warranties, is Unfeasible, and is in Conflict with CARB Regulations

Comments were made on the potential impact of requiring Biodiesel 80 (80% vegetable or animal fat to 20% petroleum product) use for on-site diesel engine rolling stock (see COA #50).

Staff's Response: The condition of approval was developed in order to mitigate the potential that diesel exhaust from rolling stock could exceed the BAAQMD significant threshold for criteria pollutants, in particular from PM-10 emission from diesel engines.

The proposed Permit condition (COA #50) is not an absolute requirement to use Biodiesel 80 and allows “other equipment and/or fuels that achieve the same reduction in particulate (PM-10) emissions.”

Reclamation Plan Mitigated Alternative Intent

Comments were made regarding the intent of Amended Reclamation Plan Mitigated Alternative analysis in the EIR and the level of material movement restrictions and pond fine reclamation being proposed.

Staff's Response: Please see the EIR consultant's response in the attached letter from ESA dated September 22, 2010.

Applicability of Fairview Court Case and other CEQA Issues Raised

A comment was made that Fairview Neighbors v. County of Ventura is no longer applicable in light of the State Supreme Court's opinion in CBE v South Coast Air Quality Management District (commonly referred to as “Conoco Philips”). Other commenters questioned whether the Greenhouse Gas (GHG) emission reduction plan defers mitigation.

Staff's Response: County staff has consultant with outside counsel and both concur that Fairview held that in some circumstances an environmental document prepared pursuant to CEQA may use levels of activity allowed by prior approvals as the baseline. The baseline in the EIR done for the AQP and ARP used levels of activity which actually occurred during past quarry operations when it operated as a legal non-conforming use. Also the AQP and ARP involve changes to an existing project and not a new project. This approach is consistent with the Fairview case. Contrary to the assertion made in the comment, Conoco-Philips did not overturn or overrule Fairview or other similar cases. The State Supreme Court's ruling involved a situation where there was an application for a different project, not as here an amendment to an existing project. In this regard, the high court distinguished Fairview as involving modifications to the same project and in no way suggested that Fairview is not still the law. The certified EIR requires no alteration in light of Conoco Philips. Please refer the attached ESA letter of September 22, 2010 regarding the GHG emission reduction plan.

Blasting at Night

A comment was made that blasting could occur at night.

Staff's Response: Permit COA # 80 restricts blasting to Monday through Friday, excluding State holidays, between the hours of 11:30 a.m. and 1:30 p.m.

How Will the Permit be Enforced

Comments were made regarding the quarry operational impacts to the community and the County's past lax enforcement.

Staff's response: The County recognizes that there has been significant past impacts to the community from the quarry operations. This was considered at the time that the County filed civil complaints against the Quarry, which resulted in a civil trial in 2003. Current actions have furthered the County's commitment to creating specific enforceable conditions mitigating and controlling the Quarry's operations and reclamation plan to reduce impacts to the community. The proposed permit contains over 170 conditions (in comparison to the current two page permit) and specifically creates a method to administratively enforce the permit conditions. Pursuant to the Permit COA #162, the

Public Works Director will be able to issue an order requiring compliance, and should the quarry fail to comply, can impose administrative penalties of up to \$5,000 per day per violation.

**AMENDED RECLAMATION PLAN MITIGATED ALTERNATIVE SELECTION:
Northeast Quadrant Phase 1 Berm (Northeast 1)**

The Board has at its discretion some options when it comes to selecting a project alternative. Essentially, the Board may disapprove the projects, approve the projects as mitigated, or approve project alternatives in whole or in part. For the Amended Reclamation Plan 2004 (ARP04), three alternatives were analyzed, with the Mitigated Alternative deemed as the Environmentally Superior Alternative.

Staff's previous recommendation to the Board included conditionally approving and modifying the ARP04 Mitigated Alternative with a Permit condition of approval to remove from the plans the proposed berm constructed in the first phase of reclamation in the Northeast Quadrant. Staff is now proposing approval of the Mitigated Alternative with the subject berm, as stated in the EIR, and to create an option for the Public Works Director to remove the berm from the reclamation plans after considering and reviewing additional geotechnical data.

The berm was proposed by the Quarry as a means to create a noise and visual shield between the nearby residences and future reclamation work and quarry operations, as well as a way to mix pond fines for reclamation. It is recognized in the EIR that there are trade offs between potential temporary impacts from constructing and then removing the berm, and not building the berm as a shield from other reclamation work and quarry operations. After considering the additional noise mitigation measures contained in the proposed Permit, staff had previously recommended a Permit condition to not build the berm. An unintended consequence to this is that it would be unlikely that the berm could easily be reconsidered in the future. By approving an option to build the berm at this time it leaves an option available to the Public Works Director should there be a greater community benefit to building the berm in the future.

In order to provide more information for the Public Works Director to base the decision on whether or not to construct the berm, Permit Condition of Approval (COA) 21c is expanded to include an evaluation on the most efficient means to move material in the Northeast Quadrant that further reduces potential impacts to the environmental and minimizes the amount of material imported into the NE Quadrant. The ultimate decision would probably be made prior to approving the first phase reclamation Excavation and Grading permit.

Additionally, in order to provide a measure of shielding from noise, should the option to *not* have the Northeast Quadrant berm be built, the top of the northern hillside/berm along the top edge of the quarry bowl would be maintained at approximately the same height until near the end of mining operations. There are proposed Permit condition language changes (COA # 9) that also allow flexibility for the Public Works Director in determining how best to shield or reduce impacts to the nearby community.

Two consequences from the berm building option recommendation are that: 1) the Conforming Reclamation Plan would include two sets of plans, one with the berm and one without the berm, and 2) as required under CEQA and identified in the EIR, the Statement of Overriding Consideration must include a statement on the temporary short term unmitigated impact of constructing the berm.

The 7.0 acre 'Grassy Knoll' along the westerly edge of the NE Quadrant and the 3.3 northern perimeter eucalyptus tree grove would be left as they are today (natural condition).

Staff has incorporated the alternative recommendations to implement the recommendations into the CEQA Findings and Statement of Overriding Considerations (Exhibit 1) and the Surface Mining and Quarrying Permit Amendment #1 Conditions of Approval (Exhibit 2).

DAYS AND HOURS OF OPERATIONS:

Following the Board hearing of September 14, 2010, additional discussions were held with the SRRQ and the Point San Pedro Road Coalition leadership to review the quarry noise sources and the hours and days when noises were most noticeable by the neighborhood, as well as operating conditions and limitations experienced by the quarry.

Staff recommends that Permit COA # 32 on days and hours of operation and reclamation be changed to scale back the maximum operating hours for the plant and mining operation from 10 p.m. to 8 p.m. In addition, the operating hours are proposed to be simplified with a straight Monday through Friday 7a.m. to 8 p.m., no exceptions. No change is proposed to barge loading or other hours.

EDITS AND CLARIFICATIONS:

Based on discussions between the SRRQ and Point San Pedro Road Coalition leadership, and public comment at the Board hearing of September 14, 2010, staff has prepared the following edits and clarification. All pages with proposed changes to the Surface Mining and Quarrying Permit Amendment, Exhibit 2, provided at the September 14, 2010 Board hearing submittal are included as a separate attachment with the proposed changes shown in strikeout/underline form. A 'clean' copy, without text change shown but incorporating all proposed changes, of the proposed Surface Mining and Quarrying Permit Amendment is attached for use with the Resolution. The following proposed edits and clarifications Conditions of Approval (COA) have been incorporated in Exhibit 2 and are summarized below:

COA 9d: Revised amended reclamation plan conditional approval to allow option to not construct the Northeast Quadrant berm. Please see the previous page in this staff report for further discussion.

COA 9f: Clarifies condition purpose and generalizes condition so changes to plans can be made in all phases.

COA 9g: Reflects COA9d option to not construct Northeast Quadrant berm.

COA 10: Allows use of overburden in a declared public emergency with an additional possible public benefit of reducing material movement on site.

COA 21: Expands scope of geotechnical review at time of Grading & Excavation Permit application to include evaluation of overall reduction in total material movement needed while still maintaining engineering standards.

COA 27: This section previously use the same setbacks as wetlands, however, SMARA required reclamation work will be needed closer than 100 feet from the property line at certain limited locations. The change allows the reclamation work to occur. More

specific setbacks will be implemented in the reclamation Excavation and Grading permits.

COA 29: Allows response to declared public emergency in any given year without counting emergency production towards annual production cap, while maintaining 5 year rolling average production cap.

COA 32: Changes to plant and mining operating hours; reduces latest hour of operation from 10 p.m. to 8 p.m. and removes 50 days of 'exceptions'.

COA 70: Clarifies intend to have air quality monitoring when reclamation grading activity occurs in Northeast Quadrant.

COA 75e: The scope of the noise reduction program and acoustical study includes barge loading noise reduction.

COA 76: Clarifies that condition applies to flat deck barges (not hulled scows with bottom dumps). Adds condition that upon Permit approval, only concrete surfaced flat deck barges are used later than 8 p.m. and provides exception to allow use of third party barges non concrete deck barges in a declared public emergency.

COA 89: Quarry must comply with blasting safety rules once charges are placed in blasting hole and requires advance notice so they can avoid placing charges in blasting hole if there is a Spare the Air Day. Note that Bay Area Air Quality Management District (BAAQMD) currently provides five day forecast on anticipated Spare the Air Days.

No new significant information or substantial changes were made to the Combined FEIR, nor were any new or more severe impacts identified as a result of these clarifications or edits. Where specific text changes to mitigation measures were made, any minor amendments are documented in the Exhibit 1 (CEQA Findings) and an explanation is provided in the individual impact findings. Evidence is provided in the CEQA Findings that recirculation or a subsequent/supplemental EIR are not required. There were no changes to the Mitigation Monitoring and Reporting Program (Exhibit 3)

CONCLUSIONS:

The San Rafael Rock Quarry Amended Reclamation Plan and Amended Surface Mining and Quarrying Permit Final EIR underwent a rigorous preparation and processing in full compliance with CEQA State EIR Guidelines, and County Environmental Review Procedures. Substantial opportunity for public participation in the EIR process and review and comment on the EIR documents was provided which meets and exceeds the requirements of CEQA and County Environmental Review Procedures. Your Board certified the San Rafael Rock Quarry Amended Reclamation Plan and Amended Surface Mining and Quarrying Permit Combined FEIR. The Combined FEIR provides adequate information and analysis to make an informed decision on the environmental effects and take action on both projects, project alternatives or combination of alternatives addressed in the Combined FEIR.

Staff recommends that the Board move to adopt the attached Resolution that approves the San Rafael Rock Quarry Surface Mining and Quarrying Permit Amendment #1 Conditions of Approval approves a conditionally modified amended reclamation plan and takes related CEQA actions including required CEQA findings and Statement of Overriding Consideration, and adoption of a Mitigation Monitoring and Reporting

Program. The recommended actions will result in the Board taking final action for approval of the San Rafael Rock Quarry Amended Surface Mining Quarry Permit and amended reclamation plan.

Respectfully submitted,

Eric Steger
Principal Civil Engineer

Attachments:

1. Proposed Resolution Approving the San Rafael Rock Quarry Surface Mining and Quarrying Permit#Q-72-03, Amendment #1 and Amended Reclamation Plan (CA Mine #91-21-0008)
2. Exhibit 1 (Revised), Findings Pursuant to the California Environmental Quality Act, San Rafael Rock Quarry Amended Reclamation Plan and Amended Surface Mining and Quarrying Permit
3. Exhibit 2 (Revised), Marin County Surface mining and Quarrying Permit, Permit # Q-72-03, Amendment #1, Conditions of Approval, including Amended Reclamation Plan (CA Mine #91-21-0008)
4. Exhibit 3, San Rafael Rock quarry ARP and AQP Mitigation Monitoring and Reporting Program
5. Summary of Changes to Exhibit 1 between September 14, 2010 BOS recommendation and current BOS recommendation
6. Summary of Changes to Exhibit 2 between September 14, 2010 BOS recommendation and current BOS recommendation
7. Board of Supervisors letter and staff report (w/out attach. dated September 14, 2010
8. Environmental Science Associates (ESA) letter responding to EIR issues dated September 22, 2010

(The above documents have been provided only in packets for the Board of Supervisors. Copies of the documents are available for review at the Department of Public Works Room 304, Civic Center, San Rafael, from 8:00 a.m. to 4:00 p.m. daily.)