

# DEPARTMENT OF PUBLIC WORKS

COUNTY OF MARIN  
www.co.marin.ca.us/pw

ADMINISTRATION  
499-6528

ACCOUNTING  
499-7877 • FAX 507-2899

AIRPORT  
451-A AIRPORT ROAD  
NOVATO, CA 94945  
897-1754 • FAX 897-1264

BUILDING MAINTENANCE  
499-6576 • FAX 499-3250

CAPITAL PROJECTS  
499-7877 • FAX 499-3724

COMMUNICATION  
MAINTENANCE  
499-7313 • FAX 499-3738

DISABILITY ACCESS  
499-6528  
CALIFORNIA RELAY SERVICE 711

ENGINEERING & SURVEY  
499-7877 • FAX 499-3724

FLOOD CONTROL DISTRICT  
499-6528

COUNTY GARAGE  
499-7380 • FAX 499-7190

LAND DEVELOPMENT  
499-6549

PRINTING  
499-6377 • FAX 499-6617

PURCHASING  
499-6371

REAL ESTATE  
499-6578 • FAX 446-7373

ROAD MAINTENANCE  
499-7388 • FAX 499-3656

STORMWATER PROGRAM  
499-6528

TRANSPORTATION  
PLANNING & TRAFFIC  
OPERATIONS  
499-6528

WASTE MANAGEMENT  
499-6647 • FAX 446-7373

ALL AREA CODES ARE 415

P. O. Box 4186, San Rafael, CA 94913-4186 • 415/499-6528 • FAX 415/499-3799 • TTY 415/473-3232

Farhad Mansourian, RCE  
Director

September 14, 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

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'. There is a long history leading to up to the proposed actions before your Board, and much work remains to implement the SRRQ inspecting and monitoring program.

Prior to today's hearing there was litigation by the County against the San Rafael Rock Quarry, resulting in a trial in 2003 and Superior Court Order that included a Order by the judge for further administrative proceedings by the County. A subsequent Court Order provided for environmental review of both the amended Surface Mining and Quarry Permit and the amended reclamation plan, and established interim operating conditions that will expire upon approval of the amended surface mining and quarrying permit.

Specifically, 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 August 25, 2009, your Board held the San Rafael Rock Quarry Combined Final EIR certification hearing on the Amended Quarry Permit (AQP) project. The public testimony on the AQP project was concluded at the August 25th hearing (no action for Combined Final EIR certification was taken) and the hearing on the ARP04 project and consideration for certification of the Combined Final EIR was continued to October 27, 2009. At that meeting, your Board conducted a public hearing on the ARP04 project, and at the conclusion of public testimony, the hearing was closed and the Board acted to certify the Combined Final 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 (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 (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) (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. 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.

## **PROJECT OVERVIEW:**

### **Background/History**

San Rafael Rock Quarry property and project site are wholly within unincorporated County of Marin and are located on a promontory point in San Francisco Bay known as Point San Pedro. The site is comprised of marshlands, an existing and separate brick manufacturing facility, a hill approximately 250 feet high known as South Hill, a quarry bowl that has been excavated to approximately 250 feet below sea level, a rock crushing and segregation processing facility, an asphalt production plant, docks, and various office and residential buildings. The site is bounded to the north by Point San Pedro Road and the Peacock Gap Neighborhood, Marin Bay Park Neighborhood and McNear's Beach County Park to the northeast, and residences to the west located in the City of San Rafael. San Francisco Bay and Point San Pedro Road encircle approximately 290 acres of the property. 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, -51, -52.

Various quarry operators have quarried and conducted other related activities continuously on the site since the 1870s, when the McNear family first began operating a brickyard. In 1939, the Basalt Rock Company began hard rock quarrying at the site. San Rafael Rock Quarry, Inc. acquired the property and has operated the San Rafael Rock Quarry since 1986. The San Rafael Rock Quarry (SRRQ) is a subsidiary of the

Dutra group; the acronym 'SRRQ' or 'Quarry' in this staff report refers to both the owner of the property and to the physical Quarry site.

The property was originally zoned M-2: B-2 Heavy Industrial, Limited Agricultural, in 1941 (quarrying was an allowed use in the zone). The County adopted a surface mining ordinance in 1971 and issued a Quarry Permit (Q-72-03) for the operation in 1972. The State enacted the Surface Mining and Reclamation Act (SMARA) in 1975, requiring mining operations to have a permit to quarry and a reclamation plan. Basalt Rock Company submitted a reclamation plan to the County in 1976 (the 1976 Reclamation Plan was never approved by the County). The Quarry property was designated by the California Division of Mines and Geology as a regionally significant mineral zone pursuant to SMARA.

The County amended the Countywide Plan in 1981, which incorporated the Peacock Gap Neighborhood Plan, and subsequently rezoned the quarry property to Residential Multiple Planned Commercial (RMPC) in 1982, resulting in the existing quarry becoming a legal non-conforming use (the new zoning does not permit mining operations, but existing activities are 'grandfathered' in). An Amended Reclamation Plan (ARP82) was approved by the County in 1982. Under ARP82, quarry activities were scheduled to cease on the property and reclamation of the site commenced in 1998.

In 2000, the County issued a Notice of Non-Compliance to SRRQ due to substantial deviation from ARP82. In 2001, the State, the County, the Point San Pedro Road Coalition and individuals sued SRRQ for nuisance and violations of County zoning and building regulations. A civil trial was held in 2003. In 2004, the Superior Court provided a tentative ruling, based on a bifurcation of issues, that the quarry had a vested right to mine the quarry pit without limit on depth or duration and had a right to mine a portion of "South Hill", but had exceeded the scope of Basalt's use of the property in 1982 and had substantially deviated from ARP82. The Court issued an order prohibiting SRRQ from certain actions and limiting quarry operations while the County completed an administrative process to consider an amended reclamation plan and how the quarry should be operated.

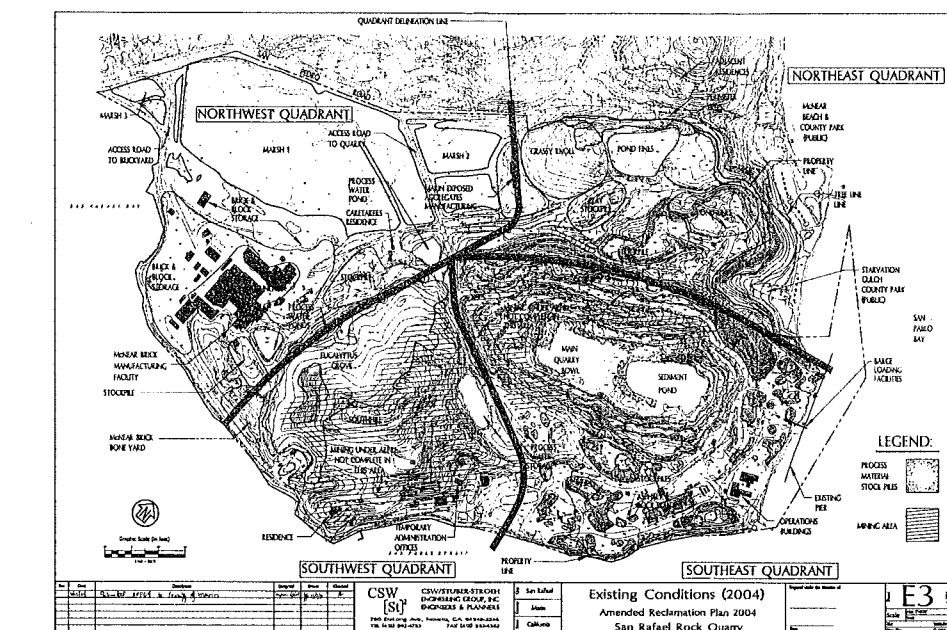


Figure 1

For planning purposes, the quarry site is divided into four quadrants (see Figure 1 above). Hard rock quarrying is confined to the Southeast (SE) Quadrant and the Southwest (SW) Quadrant. The Southeast (SE) Quadrant also has a processing plant and asphalt batching plant, maintenance buildings, as well as a dock to allow shipping of quarry products by barge. SRRQ's offices and a residence on South Hill are located in the SW Quadrant. McNear Brickyard is in the Northwest (NW) Quadrant. A substantial portion of the NW Quadrant is occupied by marshes. The Northeast (NE) Quadrant contains the "brick resource area" where shale and clay deposits were formerly mined for use in the brick making operation. The NE Quadrant also includes stockpiles of overburden and pond fines from the quarrying operation, and areas left in a relatively natural state.

### **Amended Quarry Permit**

The primary products currently produced at the Quarry include, crushed rock, concrete aggregate, sand, asphaltic concrete and rip rap products that are used for road, levee, and other infrastructure construction. The Quarry proposes to amend the quarry permit to facilitate continued quarrying operations within certain areas of the site, including blasting, excavating from the Main Quarry Bowl to a depth of -400' Mean Sea Level (MSL) and from the South Hill, and transporting rock and earth by truck and barge. Pursuant to the AQP submittal, the applicants propose to continue: crushing, sorting, and stockpiling earth and rock quarried from the site; dock and load barges with earth, sand and rock quarried from the site; operate an asphalt batch plant; and, load and weigh commercial trucks that transport material via Point San Pedro Road. The AQP application proposes several changes in conditions and limitations of SRRQ's mining operations that differ from the conditions contained in the current permit. These include; incorporation of a new Mining Plan, which sets standards for slope angles, benches, and critical elevations of the mined areas; limitations on permissible hours for various operations; limits on the number of truck trips accessing the facility, truck routes, and the times at which trucks may arrive and leave the facility; details regarding weather restrictions and emergency operations; limits on blasting, noise, and dust; and, protection of visual resources through use of visual screens and shielding of lights.

Not a part of this project is the manufacture of brick products still occurring on a portion of the property, currently leased by SRRQ to the McNear Brick Company (however, the cumulative effect of the Quarry and Brick Company are evaluated in the Combined EIR). The applicant's proposed hours of operations are very similar to the interim operating conditions established by the Court while the County's current administrative process is ongoing.

### **Amended Reclamation Plan (ARP04)**

Pursuant to State law and County ordinance, surface quarrying and mining operations are required to have a reclamation plan. In accordance with the Surface Mining and Reclamation Act of 1975 (SMARA) reclamation plans are required to prevent or minimize adverse environmental effects on mined lands, and reclaim the land to a usable condition which is readily adaptable for alternative land uses.

SRRQ proposed the Amended Reclamation Plan 2004 (ARP04) to amend the previously approved 1982 Amended Reclamation Plan (ARP82). The proposed ARP04, although providing a very similar post reclamation condition as the ARP82, does propose new, refined and more detailed elements than the previous reclamation plan. ARP04 proposes to carry out reclamation in four phases, with most reclamation occurring during

quarrying rather than after quarry activity has ended. ARP04 incorporates interim and final grading plans, interim soil stockpiling and berm construction, drainage system, revegetation, as well as general site reclamation specifications to accommodate subsequent, marina, residential, commercial and related post-reclamation development.

SRRQ has proposed to continue mining operations for 15-17 more years after approval of the submitted ARP04. After completion of the mining operation, all structures, equipment and storage facilities would be removed (except potentially eligible historic structures), and the site reclaimed and revegetated in accordance with the reclamation plan. The major project components of ARP04 include: cutting a channel to the bay and flooding the Quarry bowl; creating three stockpile areas, stockpiling overburden up to 75 feet high and mixing pond fines into the soil in the NE Quadrant; creating a surcharge berm in the NW Quadrant; creating the South Hill soil cover; and general revegetation. Land use entitlements for a future marina, and commercial and residential development will require submittal of separate development applications, and will be reviewed and analyzed by the County at that time.

**Conclusions Regarding Final EIR Certification:**

On August 25, 2009, the Board held the San Rafael Rock Quarry (SRRQ) Combined Final EIR certification hearing on the Amended Quarry Permit (AQP) project. The public testimony on the AQP project was concluded at the August 25 hearing (no action for Combined Final EIR certification was taken) and the hearing on the Amended Reclamation Plan 2004 (ARP04) project and consideration for certification of the Combined Final EIR was continued to October 27, 2009. On October 27, 2009, your Board conducted a public hearing on the ARP04 project and at the conclusion of public testimony the hearing was closed and the Board certified the Combined Final EIR.

The San Rafael Rock Quarry Amended Reclamation Plan and Amended Surface Mining and Quarrying Permit Combined Final EIR reflects the County's independent judgment and analysis, and underwent 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. The Combined Final EIR provided 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 Final EIR.

**CURRENT CEQA REQUIRED ACTIONS:**

Pursuant to CEQA Guidelines §15092, after considering the Combined Final EIR and in conjunction with making the necessary findings for both projects, the Board may decide whether or how to approve or carry out the projects. CEQA also requires that the Board make findings that significant effects on the environment due to the approval of the project, as may be modified by the Board, will be eliminated or substantially lessened where feasible through the incorporation and implementation of mitigation measures. The CEQA requirement consists of identifying the impact, finding whether the impact is mitigated to less than significant, and providing the evidence to support the finding (Exhibit 1). When the Board makes findings of potentially significant impacts on a project, the Board must also adopt a program for reporting or monitoring the mitigation measures and must ensure compliance with the mitigation measure during project implementation. This program is known as the Mitigation Monitoring and Reporting Program (MMRP) (Exhibit 3). Any remaining significant effects of the project, as

approved, on the environment found to be unavoidable can be acceptable due to factors and findings described in the Statement of Overriding Considerations.

#### **ALTERNATIVE SELECTION:**

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. For the Amended Quarry Permit (AQP), the Reduced Alternative is considered the Environmentally Superior Alternative to the AQP submittal.

Staff's recommendations are:

- Approve the ARP04 Mitigated Alternative (includes all of the mitigation measures identified in the Combined FEIR) with additional measures to further reduce environmental impacts as described in the section below.
- For the AQP, approve a combined Mitigated Alternative and Reduced Alternative, which would include all mitigation measures identified in the EIR, some of the components of the Reduced Alternative, plus additional measures to further reduce environmental impacts as described in the section below.

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

#### **Amended Reclamation Plan Alternative Recommendation**

Discussed below is staff's recommendation to modify key provisions in the ARP04 Mitigated Alternative to generally further reduce potential impacts to the adjacent community, including further reduction in noise and vibration, and improved air quality beyond those mitigation measures identified in the Combined FEIR. As this recommendation modifies the submitted reclamation plan by the SRRQ (ARP04), the conditionally revised amended reclamation plan is referred to as the Conforming Reclamation Plan, as further described below.

The Combined FEIR analyzed three alternatives to the SRRQ proposed ARP04 project, including: the No Project/Status Quo Alternative, that assumes no action would be taken for approval of the ARP04 as currently proposed, thus requiring SRRQ to revert to the provisions of ARP82; the Mitigated Alternative, that would include the project as proposed, plus all Final Combined FEIR mitigation measures and other beneficial project components not contained in the applicant's proposal; and the Alternative Reclamation with Alternative Beneficial End Use, that considers significantly different reclamation resulting in substantially different beneficial end uses of the site. The Combined FEIR Section 6.1 & 6.2 provides a detail description and comparison of the alternatives. The Combined FEIR Table 6-1 (comparing impacts of each alternative with impacts of the proposed ARP project) and Combined FEIR Table 6-2 (comparing the ability of each alternative to meet ARP project objectives) summarizes the alternatives information. The CEQA Findings Exhibit 1, Section VIII.B., provides CEQA findings for accepting or rejecting alternatives, or significantly modifying an alternative.

Staff recommends that the amended reclamation plan Mitigated Alternative be approved, which would include all mitigation measures identified in the Combined FEIR, and the

additional following beneficial project components not contained in the Mitigated Alternative or in the applicants proposal.

***Northeast Quadrant Phase 1 Berm (Northeast 1)***

Staff recommends that the amended reclamation plan submittal be revised to remove construction of the NE Quadrant Phase 1 Berm, and allow the lands below the berm footprint that have pond fines be reclaimed prior to mining cessation. Eliminating this reclamation component would reduce total reclamation earth movement by an estimated 120,000 cubic yards and reduce the cumulative and significant impact of incompatibility with neighboring residential and recreational land uses (Impact C4.6-7).

The NE Quadrant Phase 1 berm is the berm that the SRRQ proposes to install to stockpile overburden material, and at the same time to create a sound and visual barrier to screen future phases of reclamation. As proposed, the berm would have been approximately 70 feet high and begin approximately 70 feet from the property line, and would be built over the course of a couple of years during an 8 to 10 week period in the summer.

Although the berm could create a noise and visual buffer for residents on Marin Bay Park Court for subsequent reclamation activities in the NE Quadrant, the temporary impacts occurring during construction of the berm would be significant. It is unlikely that noise levels from construction equipment would attenuate to below acceptable residential levels, whereas noise from mining activities is expected to be below county noise thresholds.

The NE Quadrant contains pond fines stockpiles (extremely fine inert rock material) whose conditions make it difficult to establish vegetation and is not geotechnically stable. As proposed by the SRRQ, reclamation activities associated with pond fine reclamation, including but not limited to, reconstructing the material to be stable by mixing it with overburden and constructing engineered fill, scarifying surfaces, adding soil amendments (fertilizer), revegetation and erosion control could continue to occur. Reclaiming the pond fines in this manner and not delaying the work until the end of reclamation or after cessation of mining is consistent with the Surface Mining and Reclamation Act's (SMARA) intent to reclaim lands to a usable condition which is readily adaptable for alternative land uses (the alternative land use being zoned for Residential Multiple Planned Commercial (RMPC)), and with SMARA performance standards.

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). As proposed, the existing berm along the top edge of the quarry bowl would be left in place until near the end of mining operations.

***Northeast Quadrant Transition Period***

In order to create a transition period from current quarrying operation activity levels and proposed activities that encompass both reclamation and operations at the same time, staff proposes that reclamation grading activities in the NE Quadrant, other than erosion and sediment control, shall not begin until 18 months after the amended reclamation plan is approved. This phasing also allows the conforming reclamation plan to be submitted, the monitoring and inspection programs to be established, and for the marsh (below NW Quadrant) restoration plan to be developed.

***Control South Hill Reclamation to Allow Option of Quarry Bowl for Final Overburden Disposal***

Staff recommends that the South Hill overburden removal be curtailed in the near term in order to reduce reclamation material movement within the quarry property. Reclamation plan phasing can be modified whereby overburden material generated from South Hill can be reduced in the near term and possibly moved to locations other than the NE Quadrant, or stockpiled on South Hill. As described in the Mitigated Alternative, final overburden disposal of excess material and on site balancing of material could be accomplished by material movement into the Quarry Bowl prior to flooding. A transition period is currently needed to allow the Quarry Bowl access to be reopened as the main source of rock, as well as to allow construction of the new Quarry Bowl access road (ramp), particularly when the new access road intersects the existing access road.

Staff proposes to accomplish this by requiring a revised amended reclamation plan, that incorporates reduced South Hill mining, and hence reduced overburden production in the near term, and increases mining in the Quarry Bowl over a transition period, until mining is primarily in the Quarry Bowl. As final contours proposed in the amended reclamation plan are achieved in the Quarry Bowl, unrestricted mining of South Hill could resume.

***Temporary Northwest Quadrant Surcharge Berm***

Staff recommends that the top of the Surcharge Berm in the NW Quadrant be no higher than elevation 25 feet and that the edge of the Surcharge Berm be established no closer than 100 feet from the marsh or 100 feet from the edge of the San Francisco Bay. Because a possibility exists that McNear's Brickyard could use the top of the Surcharge Berm for storage, an added condition is proposed to prevent such use above elevation 15 feet (about ½ half the ultimate maximum height). Because of the sensitive habitat along San Francisco Bay and along the marsh, providing 100 foot setbacks ensure that the buffer is consistent with the Countywide Plan policies. In addition, the historic structures identified in the Combined FEIR and mitigation measures designed to protect the structures would also further reduce the area available for the proposed Surcharge Berm.

***Protect 'Natural State Area' Identified in 1982 Amended Reclamation Plan***

The SRRQ proposes to remove protected status of a swath of hillside land immediately adjacent and southwest of the brick kilns (not to be confused with the South Hill preserve) and possibly conduct some soil movement from within this area. This is the only 'Preserve in Natural State' area identified in the 1982 Amended Reclamation plan that the SRRQ currently proposes to modify. As final detail post-reclamation development is somewhat speculative at this time, staff sees no reason to change the status of this relatively small area as part of the amended reclamation plan. Staff recommends that the same lands shown as 'Preserve in Natural State' in the 1982 Amended Reclamation Plan be retained in the revised amended reclamation plan.

***Other Revisions***

The revised amended reclamation plan shall relocate the top soil stockpile fill area "F" under Phase 1 of the proposed project, to avoid potentially adverse effects to the Caretaker's Residence, a potential eligible historic resource. The revised amended reclamation plan shall program marsh restoration for the first phase of reclamation work, but only after the marsh restoration plan has been completed, approved and necessary permits obtained from resource agencies.



### **Amended Quarry Permit (AQP) Preferred Alternative Recommendation**

The Combined FEIR considered eight alternatives to the proposed AQP project, four of which were selected for further analysis because of their feasibility, their ability to meet most of the basic objectives of the proposed AQP project, and because they provide a reasonable range of alternatives to the proposed project. The four alternatives selected for analysis are analyzed in Chapter 6 of the Combined FEIR, including: the No Project/Status Quo Alternative that assumes no action would be taken to amend the existing Surface Mining and Quarrying Permit as currently proposed; the Mitigated Alternative that would include the project as proposed, plus all Combined Final EIR mitigation measures and other beneficial project components not contained in the applicant's proposal; the Reduced Alternative that reduces the intensity of operations and reduces the incompatibility of quarry operations with other land uses in the area; and the Barge Only Alternative wherein all products from the quarry would be shipped by barge, and none by truck, except during times of declared emergency. Please refer to the Combined FEIR Sections 6.3, 6.4, & 6.5 for details; see also, Combined FEIR Table 6-3 (comparing impacts of each alternative with impacts of the proposed AQP project) and Combined FEIR Table 6-4 (comparing the ability of each alternative to meet AQP project objectives).

The No Project/Status Quo Alternative would be expected to have more severe environmental impacts than the project as proposed. The Mitigated Alternative would reduce most project impacts, but several would remain significant and unavoidable. The Barge Only Alternative would eliminate impacts related to transport of quarry products by truck in the immediate vicinity of the Quarry, but may displace these impacts to another location, since the Quarry could be expected to barge more materials to another location, from which they may be transported by truck to their point of use. The Reduced Project Alternative, would likely reduce, but not eliminate the cumulative health risk and land use incompatibility impact of the projects.

In considering the entire record and, as further elaborated in Exhibit 1, CEQA Findings, and discussed below, staff recommends that the Board of Supervisors approve a combined Mitigated Alternative and Reduced Alternative, which would include all mitigation measures identified in the EIR, some of the components of the Reduced Alternative, plus additional measures to further reduce environmental impacts that are not found in either alternatives, as described further below.

#### ***1982 Production Levels***

Because the SRRQ proposed no production limitations on operations, the SRRQ could potentially operate at an intensity well beyond that of 1982; the year when the zoning for the property changed and the quarry became a legal, non-conforming use. At the same time, however, Courts have found that the level of quarrying and mining operations will vary and that it is appropriate to analyze impacts under the maximum amount of material that is allowed to be extracted. The Combined FEIR used the production around 1982, when the land use zoning was change and the quarry operation became legal non-conforming operation, as the project's baseline for analysis.

As proposed in the Combined FEIR mitigation measures, the Permit includes a condition that maximum annual production shall be limited to the fluctuating 1982 baseline level of production, i.e., a 5-year rolling average of no more than 1,414,667 tons per calendar year, and a maximum level of production of 1,697,600 tons in any one calendar year.

### ***Limiting Hours and Days of Operations***

The 1982 Amended Reclamation Plan described that noise generating operations in both the quarry and the plant are generally limited to daylight hours on weekdays except in times of emergency. The EIR analysis considered this as quarry operating hours, as almost all significant quarry operations and future reclamation grading generates noise. Certain difficulties arise in interpreting this as the quarry operating hours when establishing clear and defined operating hours. Daylight hours change everyday, and daylight savings times occur twice a year, whose timing has also changed since 1982. The level of noise generation is also not defined. The ARP82 discussed quarry and plant, but not barge loading operations, which appear to be somewhat dependant on tides. Discussions held in the first part of 2010 with the SRRQ and Point San Pedro Road Coalition leadership reviewed 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.

In the neighborhoods around the quarry, noise was most noticeable in the weekday evenings, all day on weekends and, of course, at night. Noise from barge loading operations impacted certain neighborhood areas more than others because of the physical location of barge loading. Summer time and warm weather days are more of a noise problem because nearby residents tend to have their windows open rather than closed. Certain equipment in the plant is a greater source of noise than others. Reclamation activity noise in the future in the NE Quadrant could be at levels previously experienced when pond fines and berm building occurred in the same area about 10 years ago.

The Quarry experiences business and operating cycles where most construction work occurs in the spring and summer, during warm, dry weather, and demand is the greatest to work the longest hours and most days. Barging demand is mostly controlled by waterfront, shore and levee work. Many environmental and species specific regulations apply to projects in wetlands, riverine or tidal areas, and hence, control the time of year when barging demand is the greatest. Typically, environmental protections create the highest barging demands from the beginning of August thru mid November. Associated contracts and project specifications, usually with federal, state or local public agencies, along with project locations whose access are tidally influence create a situation where the flexibility and ability for 24/7 barging is desired by the Quarry.

Staff has reviewed the Combined FEIR and record, considered information obtained and discussed at the aforementioned meetings, and recommends adoption of the Quarry operating day and hour restrictions found in the proposed Permit. The recommended restrictions do not create new or more severe impacts. Whereas the existing Surface Mining and Quarrying Permit did not include specified hours of operation, the proposed Permit identifies types of activity, days of the week, times of the year and hourly limitations. In addition, these operating limitations when combined with new conditions to enclose certain plant equipment (discussed below), will further reduce noise and dust from the Quarry's current operations.

The recommended operating hour restriction in the proposed Permit generally limits quarry and plant operations from 7 a.m. to 7 p.m., Monday through Friday. In order to allow demand flexibility, the Quarry can operate up to 10 p.m. for up to 50 days per year, but not on Fridays, and operate up to 10 p.m. no more that 10 days per month, except in during one month when operations can occur until 10 p.m. for up to 15 days. This generally provides the community respite from quarrying, crushing and plant operations from 7 p.m. Friday through 7 a.m. Monday, and limits activity beyond 7 p.m. in any one

month. The 1972 Permit had no explicit operating hours and the current limitation in the Court order interim operating conditions allow crushing operations 7 a.m. to 10 p.m. Monday through Friday from May through November and barge loading 7 a.m. to 10 p.m. seven days a week.

Because some maintenance needs require equipment down time or may occur unexpectedly due to breakdowns, up to 10 Saturdays per year can be used for noise producing maintenance work on Saturdays. Because of the nature of barging demand, proposed operating hours for barge loading are 7 a.m. to 10 p.m. Monday through Thursday. In addition, barge loading may occur on up to 26 Fridays and Saturdays per year each from 7 a.m. to 10 p.m. It should be noted that barge loading operations occur on the waterfront in a certain area of the quarry using limited equipment and not the crusher.

As is currently the case under the Court Order interim operating conditions, and as was noted in the 1982 Amended Reclamation Plan, the Quarry days and hourly operating times are suspended during public emergencies. The public emergency definition and declaration and the noticing steps are more fully described in the proposed Permit conditions. The proposed Permit conditions require noticing the Public Works Director, and provides the Public Works Director with full authority to terminate the suspension if the Director determines at any time, based on facts, that the suspension invoked is not a result of a declared local, state or federal emergency.

#### ***Equipment Enclosures, New Condition***

The Reduced Alternative includes a proposed action, to be completed within 1 year of Permit approval, to conduct a noise and dust study using Bay Area Air Quality Management District (BAAQMD) Best Available Control Technologies (BACT) standards. Feasible measures that meet BACT threshold and that would presumably further reduce noise and fugitive dust emissions would then be subsequently implemented by the Quarry. In the course of investigating best management practices and applicable surface mining and quarrying permit conditions, staff contacted 49 California jurisdictions regarding quarrying operations, permits, and associated environmental documents. Staff received 26 responses and reviewed approximately 42 quarry permits or recent quarry related environmental documents. Based on the information obtained, site inspections and discussions with the Quarry, staff recommends that instead of implementing the above study to further reduce noise and fugitive dust, that the proposed Permit be approved with the following conditions:

- Permittee shall enclose the conveyor systems at the Quarry crushing and processing plant including barge loading, primary, and secondary conveyors. Note that this would not be a building, but an enclosure around the conveyor structure, moving belt and rollers.
- Permittee shall construct sound curtains with sound deadening materials installed between the screens and secondary crushers equipment and residences. This also would not be a building but a wall like structure with sound deadening materials to block sound transmission in the direction of residences.
- Permittee shall enclosed transfer points along the conveyor system where material transfers from one belt to another belt by means of a hopper. The enclosures shall incorporate sound deadening materials.

- Permittee shall line all unenclosed hoppers and chutes on the conveyor at which aggregate materials fall onto a metal surface with a sound deadening material such as heavy neoprene, rubber or High Density Polyethylene (HDPE).
- Permittee shall implement the noise reduction program as a phased program over 3 years from Permit approval. Proposed plans and phasing shall be prepared by a qualified acoustical engineer and then provided to the Public Works Director within 6 months of Permit issuance for review and approval. The phasing goal is to have the noisiest equipment, relative to nearby residences, retrofitted within the first 12 months following plan approval. The applicant shall have a qualified acoustical engineer inspect the site and equipment and submit a verification of compliance with these conditions after each phase.

### ***Barge Noise Reduction***

To reduce the potential impact from rocks hitting a metal surface during barge loading operations, the barge fleet used at the Quarry facilities shall be retrofitted with concrete decks. Within three years only concrete barges shall be used at the quarry site.

### ***Truck Trips***

Staff recommends that the Mitigated Alternative maximum of 250 truck trips per day (125 rock/aggregate/AC trucks into the quarry and 125 trucks leaving the quarry) restriction be included in the proposed Permit conditions. The existing Surface Mining and Quarrying permit has no truck trip restrictions. The Court Order interim operating conditions restricted truck trips to 250. The Combined FEIR found that 250 truck trips was not a significant environmental impact.

Staff considered the truck trip alternative in the Reduced Alternative, which is meant to further reduce any trucking impacts, but recognized that a project applicant's existing entitlements to use its property are considered part of the "environmental setting," as verified by a California Court of Appeal decision. In *Fairview Neighbors v. County of Ventura*, the Court held that an EIR properly considered a quarry operator's existing mining entitlement as part of the "environmental setting," specifically including an entitlement to generate the number of truck trips per day necessary to haul the maximum amount of material that the quarry was entitled to extract. The Court held that "the traffic generated when the mine operates at full capacity pursuant to the entitlement previously permitted" was an appropriate baseline, and rejected the petitioners' argument that the baseline should consist of the number of truck trips actually running at the time the quarry submitted its new permit application. In other words, the maximum number of truck trips allowed under the existing permit, and not the actual number then operating, was properly considered the baseline. Note that other conditions described below further reduce potential trucking related impacts to the community.

### ***New Vacuum Sweeper***

The Reduced Alternative proposes using a 'state of the art' vacuum sweeper as a requirement to sweep Point San Pedro Road at least two times per day. Concerns have previously been raised by residents that vacuum sweepers were extremely loud and/or louder than the existing broom sweeper used by the Quarry. Staff was able to have a demonstration provided by a regenerating vacuum sweeper manufacture (Schwartz model certified by South Coast Air Quality Management District). The vacuum sweeper was tested on North San Pedro Road and Point San Pedro Road for the ability to visually pick up dirt and dust. Sound measurements were conducted with a hand held sound meter, and the maximum dBA was 88 while passing within 10 feet of the meter

and about the same as passing traffic sound levels when 50 feet away (75 dBA). The existing broom sweeper used by the Quarry created about the same sound levels.

Because of the improved visual dust removal ability, which would further reduce dust levels and improve air quality on Point San Pedro Road, staff recommends the Reduced Alternative condition of using a 'state of the art' vacuum sweeper be included in the proposed Permit. However, because of past concerns by residents, the Permit condition requires that within 4 months of Permit approval, Permittee shall provide a public forum to consult with residents along Point San Pedro Road on purchase of a vacuum sweeper truck. Then, within an additional 5 months (9 months total), the Permittee shall implement use of a vacuum truck street sweeper on Point San Pedro Road.

#### ***Truck Tarping or Covers***

The Community has raised concerns regarding the dust emissions and aggregate material falling from trucks departing from the quarry and using Point San Pedro Road. Wash racks and rumble strips are already in place at the quarry site to minimize these emissions, and these facilities and use have been made part of the Permit conditions. To further reduce potential impacts, staff has included a Permit condition to require within 12 months all loaded trucks hauling aggregate or asphalt material from the quarry to be covered. The delay in implementation allows the quarry to notice third party truckers and customers and allow contract changes.

#### ***Accelerated Reduction of Diesel PM Emissions in Advance of Federal Requirements***

The SRRQ has already upgraded its entire fleet of off road diesel equipment with USEPA Tier 3 standard engines and has recently upgraded its tug boat to Tier 2 standards. The Quarry currently uses B-20 biodiesel, while an EIR mitigation is to further reduce diesel emissions by using B-80 biodiesel.

#### ***Conversion of Trucks Used in Inter-facility Product Transfers to Higher Emission Standards or Alternative Fuels***

The California Air Resources Board (ARB) is dedicated to achieving emission reductions from diesel sources. Specific statewide regulations designed to further reduce diesel particulate matter (PM) emissions is on going and extensive. Over the past two years, ARB has developed six new regulations to reduce PM emissions and other pollutants from diesel engines. Another six to eight regulations are planned for adoption over the next two years, including replacing or retro fitting existing engines or retiring the whole vehicle. Besides the fact that the State is already aggressively regulating diesel PM emissions, the County would not have jurisdiction in regulating mobile sources.

In addition, the Quarry does not own trucks used to haul product between the SRRQ and other Dutra facilities, such as Richmond or Petaluma plants. Because the contracts can be executed between any parties and are subject to economic climate, it would be a weighty economic burden to require independent truckers to convert to newer and higher emission standard engines or pollution control devices not knowing the amount of expected business. Statewide emission requirements would, in any case, reduce emissions with rules and standards applicable to all truckers.

#### ***Mitigated Alternative Components Not Fully Defined/Selected***

The alternative to develop renewable energy generation projects on the property is not fully defined and could potentially create environmental impacts not analyzed in the Combined FEIR. As currently proposed the additional energy generation project is

vague and is not suitable for a condition of approval and staff does not recommend adoption.

Because the Quarry has obtained an Air Pollution Control Permit to Operate from the regulating agency (BAAQMD) for the asphalt batch plant and, based on limited review of the record, the Quarry may have already vested the asphalt batch plant equipment's use and operating levels, staff does not recommend pursuing further restrictions on the asphalt batch plant production. It should be noted that the truck trip limitation creates an operations trade off between aggregate shipments by truck and asphalt concrete (AC) shipments, and total daily AC production would be limited to approximately 3,125 tons.

***Haystack Landing Petaluma Shipments by Barge Only***

The Reduced Alternative includes a component to require aggregate and rock received at the proposed Dutra Haystack Landing project in Petaluma from the SRRQ to be received by barge only, if the project is approved by Sonoma County with a barge unloading facility. This alternative component could reduce the total number of trucks, and truck traffic level of impact along Point San Pedro Road. Staff recommends including this restriction in the proposed Permit.

***Spare the Air Days***

The Reduced Alternative includes a suggestion to not blast when 'Spare the Air Days' declared by BAAQMD are in effect. Staff recommends including this restriction in the proposed Permit.

**Amendments to Combined FEIR**

In the course of preparing enforceable Surface Mining and Quarrying Permit conditions of approval using the Combined FEIR mitigation measures, certain portions of the mitigation measures were combined, clarified or had minor modifications. 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 minor modifications. 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.

**STATEMENT OF OVERRIDING CONSIDERATION:**

CEQA requires that the Board respond to each significant effect identified in the Combined FEIR by making findings under §15091 of the *CEQA Guidelines* and, if necessary, making a Statement of Overriding Considerations under §15093. A Statement of Overriding Considerations must set forth in writing the reasons for approving the project despite the environmental impacts that may result from the project. This CEQA process requires the Board to balance the benefits of the proposed project against their potential significant environmental impacts in determining whether to approve the project. CEQA also requires that the lead agency must conclude that the unavoidable environmental damage for the project are acceptable when balanced against the projects' benefits and adopt a Statement of Overriding Considerations to that effect (*CEQA Guidelines* §15002(h)(6)-(7)).

With regards to the Amended Reclamation Plan 2004 (ARP04), the Combined FEIR evaluated a total of 67 project-based adverse environmental impacts. Of these, 33 are identified as significant impacts. Feasible mitigation measures are available to reduce all but 1 of ARP04's significant project-based effects to a less-than significant level. Construction of a berm in the NE Quadrant to serve as a visual screen and noise buffer

from reclamation grading activities for residents to the north would ultimately reduce the adverse effects of reclamation grading in this part of the project site, but the construction of the berm would result in a significant, unavoidable (albeit short-term) noise impact. With the selection and incorporation of the revised, amended reclamation plan recommended by staff, which removes the subject NE Quadrant berm, this would in effect mitigate the potential impact and, therefore, findings for this impact (Impact R4.7-1) and a statement of overriding consideration is not needed for this potential impact.

With regards to the Amended Quarry Permit (AQP), the Combined FEIR evaluated a total of 16 project-based adverse environmental impacts. Of these, 11 are identified as significant impacts. Feasible mitigation measures are available to reduce all of the AQP's significant project-based effects to a less-than significant level.

The Combined FEIR evaluated cumulative impacts of both the AQP and ARP04 projects combined, and also in combination with other related past, present, and foreseeable future projects. The Combined FEIR identifies 15 cumulative impacts, 4 of which are significant, and 2 which would remain significant even with incorporation of feasible mitigation measures. The two remaining significant impacts are air quality impacts from toxic air contaminants from past, present, and future quarry operations, and continuing physical incomparability impacts with neighboring residential and recreational land uses. Both of these are discussed further below.

The Combined FEIR conducted a health risk assessment to evaluate air quality health risks for the AQP and ARP04 projects and in combination with each other and past, present and foreseeable future projects. The health risk assessment found less-than-significant impacts for acute (i.e., short-term) and chronic (i.e., long-term, non-cancer) impacts, including health risk of exposure to crystalline silica dust. The health risk assessment also found that incremental cancer risk associated with exposure to air emissions from proposed future operations would be less-than-significant. However, past quarry operations caused an increase in the incremental risk of cancer for long-term exposure for individuals in the vicinity of the quarry and haul route. Most, if not all of these impacts are related to past adverse, long-term exposure conditions resulting from past operations, but future operations would continue to contribute to it incrementally. Although the direct present and future impacts of the projects themselves are mitigated to less-than-significant, because the past impacts cannot be mitigated, the combined effects of past adverse conditions and continued operations are still cumulatively considerable pursuant to CEQA, and cannot be mitigated to less-than-significant levels (Impact C4.2-12).

As described in the Combined FEIR, continuing operation of the SRRQ under the proposed AQP simultaneous with phased reclamation grading under the amended reclamation plan would result in continuing incompatibility with neighboring and recreational land uses (Impact C4.6-7). The impact can be mitigated, but not to a less-than-significant level.

### **Projects Benefits and Statement of Overriding Considerations**

The various benefits of the projects were not the focus of consideration for purposes of the Combined FEIR, except to the extent they could reduce identified impacts; however, benefits of these projects are fully relevant and appropriate for merits consideration at the project approval stage. Based on the Amended Quarry Permit and Amended Reclamation Plan objectives, the Combined FEIR, extensive public participation and the record as a whole, staff recommends that the your Board determined that the proposed permit amendment and the modified reclamation plan amendment should be approved,

and that any remaining unmitigated environmental impacts attributable to the projects are outweighed by the following specific economic, legal, social, technological and other overriding considerations, each one being a separate and independent basis upon which to make approvals. Substantial evidence in the record demonstrates the following benefits that the County would derive from the Projects.

### **Project Benefits Amended Reclamation Plan**

#### ***Economic Considerations***

- Approval of the Amended Reclamation Plan would extend the useful life of an existing surface mining quarry that produces aggregate materials essential to the construction industry, thereby saving County residents and businesses the greater economic costs of developing new local sources of mineral resources or importing materials from greater distances.
- Approval of the Amended Reclamation Plan would enable SRRQ to continue to employ residents of Marin County and nearby areas in stable, well-paid jobs.

#### ***Social Considerations***

- Approval of the Amended Reclamation Plan would enable SRRQ to continue to mine a local high-value resource, and thereby provide essential construction materials in emergency response situations such as Sacramento-San Joaquin River Delta levee revetment.
- Approval of the Amended Reclamation Plan would avoid or substantially reduce adverse environmental consequences associated with aggregate quarrying in more distant areas, which would be unseen by the people who would benefit from the use of the material in roads, buildings, and levees.
- Approval of the Amended Reclamation Plan would result in the rehabilitation or restoration of highly disturbed areas and otherwise smooth the transition to future uses that will be more compatible with surrounding areas.

#### ***Legal Considerations***

- On April 19, 2004, the Marin County Superior Court issued an order finding that the Quarry has a vested right to continue to mine without regard to depth or duration in the Quarry Bowl and on South Hill to the extent described in the 1982 Amended Reclamation Plan. Adoption of the Amended Reclamation Plan will bring the Quarry into substantial compliance with SMARA and the County Surface Mining Ordinance (County Code Ch. 23.06).

#### ***Other Considerations***

- Approval of the Amended Reclamation Plan would extend the availability of a local source of aggregate materials, thereby directly reducing the adverse consequences associated with transporting these materials from more distant sources, such as increased air emissions, including greenhouse gases, and greater risk of upset or accidental spills.
- Although the cumulative air quality health risk is found to be significant and unavoidable, the present and future health risk impact of the Amended Reclamation Plan itself is mitigated to a less-than-significant level.



## **Project Benefits Amended Quarry Permit**

### ***Economic Considerations***

- The AQP Preferred Alternative would extend the useful life of an existing surface mining quarry that produces aggregate materials essential to the construction industry, thereby saving County residents and businesses the greater economic costs of developing new local sources of mineral resources or importing materials from greater distances.
- There are few active hard rock quarries in the Bay Area, and fewer that have ready access to a deep water dock. Approval of the AQP Preferred Alternative would allow the Quarry to continue to provide an economical source of materials for revetment of levees in the Delta, and for levees to protect existing developed areas around the Bay from sea level rise due to global warming.
- Approval of the AQP Preferred Alternative would enable SRRQ to continue to employ residents of Marin County and nearby areas in stable, well-paid jobs.

### ***Social Considerations***

- The State of California has set policy that the extraction of minerals is essential to the continued economic well being of the State and to the needs of society. SMARA finds that lead agencies (County), when making land use decisions, shall balance minerals values and consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction. Further, the State has designated the quarry site as a "Regionally Significant Construction Aggregate Resource Area".
- The California Department of Transportation (Caltrans) has expressed to the County the need to increase the supply of aggregate resource materials in the State. Caltrans estimates that the amount of permitted aggregate reserves does not meet the expected infrastructure needs over the next 50 years. There is also an economic impact that shipping costs for aggregates can outweigh production costs if the material is trucked more than 20 miles.
- Approval of the AQP Preferred Alternative would enable the Quarry to continue to provide a local high-value resource for use as essential construction materials in emergency response situations. Because SRRQ has a deep water barge dock, it is able to supply rip-rap material for revetment of levees in the Sacramento-San Joaquin River Delta. SRRQ has had contracts in recent years to supply rock for this purpose under a State of Emergency declared by the Governor and, with approval of the AQP Preferred Alternative, could continue to provide necessary materials in emergencies.
- Approval of the AQP Preferred Alternative would enable SRRQ to continue to supply aggregate materials locally, thereby avoiding or substantially reducing adverse environmental consequences of acquiring aggregate materials from distant sources, including increased emissions of diesel particulate matter and greenhouse gases from ocean-going ships and long-haul trucks.
- Approval of the AQP Preferred Alternative would avoid or substantially reduce adverse social consequences associated with the exportation of environmental

effects to remote locations, where they would be unseen by the people who would benefit from the use of the material in roads, buildings, and levees.

### ***Legal Considerations***

- On April 19, 2004, the Marin County Superior Court issued an order finding that the Quarry has a vested right to continue to mine without regard to depth or duration in the Quarry Bowl and to the extent on South Hill as proposed in the 1982 Amended Reclamation Plan. Adoption of the AQP Preferred Alternative will bring the Quarry into substantial compliance with SMARA and the County Surface Mining Ordinance (County Code Ch. 23.06).

### ***Other Considerations***

- Impacts of Quarry operations on nearby residential and recreational uses would be further reduced through adoption of additional merit conditions of approval, including conditions that would further reduce noise and dust.
- Although the cumulative air quality health risk is found to be significant and unavoidable, the present and future health risk impact of the AQP Preferred Alternative itself is mitigated to a less-than-significant level.
- The proposed permit conditions, as well as the Mitigation, Monitoring and Reporting Program, would implement robust reporting, inspection, and monitoring conditions that will aid in identifying and responding to potential impacts of ongoing Quarry operations.

Based on the objective of the projects, the Combined FEIR, extensive public participation, the economic, legal social and other benefits, and the record as a whole, staff recommends that the Board adopt the Statement of Overriding Consideration found in Exhibit 1.

### **CONFORMING RECLAMATION PLAN RECOMMENDATION:**

The combination of subsequent amendments and revisions from the original complete application and amended reclamation plans submittal dated October 2004 (ARP04) and the proposed changes to the plans contained in the amended reclamation plan approval would make it difficult for a reviewer, particularly one several years into the future, to identify, inspect and enforce the project as a whole. The State Office of Mine Reclamation (OMR) found this to be an issue as well in its review of the amended reclamation plan dated December 14, 2009 and in their recommendations that the plans be revised to clearly show the final reclamation conditions.

To address this issue of revisions and other changes to the submitted amended reclamation plan, staff proposes that the Permittee file a 'conforming amended reclamation plan' with the Director of Public Works within 60 days of approval. The Public Works Director and staff, and OMR would then have an opportunity to review the *conforming* amended reclamation plans to ensure that all permit conditions of approval, mitigation measures and clarifying revisions were incorporated into a comprehensive sets of plans and accompanying specifications. Staff proposes that the Public Works Director would also have authority to return the revised plans to the SRRQ for another round of revisions if the plans and supporting documents did not meet the requirements.

## **RECLAMATION PLAN TERMINATION OF SURFACE MINING ACTIVITY RECOMMENDATION:**

Pursuant to the Surface Mining and Reclamation Act (SMARA), Public Resources Code (PRC) Section 2772 (c)(5), a reclamation plan shall propose dates for the initiation and termination of surface mining activity. The SRRQ did not propose a specific date for termination of surface mining activity. This omission was noted in the Department of Conservation's Office of Mine Reclamation review and comment letter of December 14, 2009. The SRRQ proposed that 3 years prior to cessation of mining a development plan for subsequent post reclamation uses would be submitted, and that the submitted amended reclamation plan would extend quarrying operations for 14 to 17 years after approval of the amended reclamation plan. The Combined FEIR analyzed 17 years of operations that began during the course of the EIR analysis, and corresponds to a termination of mining date of December 31, 2024. The CEQA analysis limits the reclamation plan approval duration and hence mining operations as well.

Note that PRC Section 2777 provides that amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan (as amended). Substantial deviations, such as extending the termination date of mining operations, from the approved reclamation plan shall not be undertaken until such amendment has been filed and approved by the County. Furthermore, as the SRRQ anticipates submitting a development plan three years prior to actual cessation of operation it would be expected that on or before December 31, 2021 either a development plan or an amendment to the reclamation plan would be submitted for review.

Staff therefore proposes that the term of the reclamation plan approval, as a proposed Permit condition, shall be December 31, 2024. In order for quarry operations to continue beyond 2024 (including but not limited to, crushing, trucking product, asphalt plant operation, and barging), an application to amend the reclamation plan, at a minimum specifically addressing PRC Section 2772(c)(3), termination of surface mining date, shall be filed at least 3 years before the termination date of the amended reclamation plan (no later than December 31, 2021). Alternatively, the SRRQ could choose to file a development plan or take both actions on or before December 31, 2021.

## **COUNTYWIDE PLAN CONSISTENCY:**

The Combined FEIR finds that the proposed ARP04 and AQP projects, with the incorporation of mitigation measures specified in this EIR, and as revised in the Combined FEIR Amendment, are consistent with all relevant policies of the Countywide Plan 2007 and County Development Code requirements. The consistency with all relevant policies also appears to be achievable through adoption of the Preferred Alternatives for both the ARP04 and AQP. However, adoption of the Preferred Alternatives would still result in residual significant unavoidable air quality and land use incompatibility impacts as noted above.

## **MITIGATION MONITORING AND REPORTING PROGRAM (MMRP):**

The Combined FEIR Mitigation Monitoring and Reporting Program (MMRP) would ensure that all required mitigation measures are completed in the course of operating the quarry or conducting reclamation. The program is designed in a table format for ease of use. The table identifies the individual impacts, corresponding mitigation measures, individual/agency responsible for implementation, time frame for implementation, and assigns a party responsible to implement, monitor, and confirm the implementation of the mitigation measure.

Generally the Marin County Department of Public Works (DPW) will be responsible for oversight, implementation and administration of the MMRP. A DPW Division designated by the DPW Director will manage the MMRP. Current DPW staff resources and expertise will require that an independent contractor be hired by the County to assist in implementing the inspection and monitoring program. The independent contractor would serve under the direction of DPW. All inspection and monitoring costs are to be borne by the Quarry. Duties of the staff member responsible for the program coordination, whether a County staff member or independent contractor, would include the following:

- Conduct routine inspections, plan checking and reporting activities.
- Serve as liaison between the County and SRRQ regarding mitigation monitoring issues.
- Coordinate consultant activities when such expertise and qualifications are necessary to implement and monitor mitigation measures or submittals.
- Coordinate with agencies having mitigation monitoring responsibilities or plan approvals.
- Assure follow-up response to citizen complaints.
- Review forms, checklists, reports and other documentation provided to the County for reporting. Maintain reports and other records and documents generated by the monitoring program.
- Coordinate and assure corrective actions or enforcement measures are taken, if necessary.

Detail mitigation measures and conditions of approval inspections and monitoring will be implemented on a routine basis during day to day operation of the quarry or during reclamation activities. The activities will be monitored through periodic field inspections by County staff or independent consultants retained by the County, and through review of records and reporting requirements.

A preliminary estimate of DPW staff time in the first two years following permit approval, while still using consultants for certain implementation or review activities needing specialized expertise, is 1.5 FTE, divided between at least two staff positions with different skills and which includes supervision.

#### **ENFORCEMENT:**

The mitigation measures and the MMRP will be incorporated as conditions of project approval. Therefore all mitigation measures and monitoring requirements must be complied with in order to fulfill the requirements of the Permit approval. Permit conditions will also be approved that relate to the merits of the project, or selection of a project alternative. Some Permit conditions of approvals will be implemented through subsequent permit approvals or reports, e.g. the phased reclamation will need grading permits and well as biological related reports. These conditions will be checked through plan review, peer review of reports, and in the field during construction. If the SRRQ failed to perform or conducted activities in violation of mitigation measures or conditions of approval, the Permit provides for administrative actions by the Public Works Director.

Should Permit violations be observed or confirmed by credible evidence by the County, the Permit provides a process to first notify the Quarry and correct the violation. If the violation is not corrected, the Public Works Director can issue a compliance order, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. If the Permittee violates or fails to comply with the order, the Public Works Director may impose an administrative penalty of not more than \$5,000 per day per violation while taking into consideration the nature and extent, history and other

factors associated with the violation. Any administrative penalty is subject to appeal by the SRRQ to the Board of Supervisors. Ultimately, Marin County Code provides the Public Works Director authority to revoke the surface mining and quarrying permit.

**POST – RECLAMATION COMMENTS:**

Information provided for post-reclamation development of the project site, as envisioned in the ARP04 has changed little since from the ARP82. However, ARP04 envisions removal of most or all of the structures at McNear's Brickyard. The Combined FEIR finds that several of these structures may be eligible for listing as historic resources in the National and California Registers (Section 4.12, Cultural Resources). Mitigation measures contained in the Combined FEIR would require standards to be included in the revised amended reclamation plan to guide the future development design to ensure that eligible structures are preserved or adapted for re-use consistent with guidelines meant to retain the integrity of their historic significance. The actual plans for permanent preservation and/or adaptive re-use will be reviewed as part of the submitted development plan, which will be submitted three years prior to the cessation of mining

The 2007 Countywide Plan Update and San Rafael General Plan 2020 call for a traffic study prior to post reclamation development to determine road capacity and level of traffic generated by proposed development density that can be accommodated in post-reclamation development design. Subsequent public agency review of the development plan submittal, which is to be submitted three years prior to the cessation of mining, will need to address the issues of the intensity and type of development that may be allowed on the site.

**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  
Senior Civil Engineer

Attachments:

1. 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, 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 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. Marin County Board of Supervisors Resolution No. 2009-126, A Resolution Certifying the San Rafael Rock Quarry Amended Reclamation Plan and Amended Surface Mining and Quarrying Permit Combined Final Environmental Impact Report
6. Department of Conservation, Office of Mine Reclamation letter dated December 14, 2009
7. Marin County Department of Public Works letter dated February 25, 2010
8. Department of Conservation, Office of Mine Reclamation letter dated March 26, 2010