

WHO'S MINDING THE SAN RAFAEL ROCK QUARRY?

SUMMARY

In response to growing public concern, the Grand Jury investigated the handling of the long-standing controversy regarding the operations of the San Rafael Rock Quarry (SRRQ) by various departments of Marin County government. The investigation included examinations of the activities of: the Planning, Environmental Health Services and Code Enforcement divisions of the Community Development Agency; the Land Development Division of the Department of Public Works; the County Assessor; the County Counsel; and the Board of Supervisors.

Generally, the Grand Jury found a pattern of much talk, but little action, in response to a long history of complaints from the public about dust, noise, blasting and truck traffic created by quarry operations as well as various violations at SRRQ.

Specifically, the Grand Jury discovered that:

- SRRQ became a legal non-conforming use on December 9, 1982, when the Board of Supervisors rezoned the property upon which it is located. When the Dutra Group (Dutra) purchased the SRRQ property in 1986 it knew (or at least should have known) that the quarry operation was a non-conforming use, which meant that operations could not be expanded, extended or intensified. Yet, in a March 22, 1988, letter to the county, a Dutra manager confessed "shock" at having recently learned of the property's zoning. Although apparently aware then that the current zoning meant it could not expand its operations, Dutra proceeded to do so anyway without requesting a rezoning of the property or obtaining any of the required county permits. The Grand Jury believes those activities constitute an illegal expansion of the non-conforming quarry use.
- Applications to legalize existing, but illegally constructed office buildings on the quarry property, or to amend the Reclamation Plan (i.e. to extend the life of the quarry or to increase the depth of excavation) cannot be approved by the county to the extent that the applications involve an expansion of the non-conforming quarry use beyond that indicated in the 1982 Reclamation Plan. In order to do so, SRRQ would have to apply for, and the Board of Supervisors would have to approve, a rezoning of the quarry property. This would require environmental review and extensive public hearings, something that both SRRQ and the county apparently want to avoid.

- The Community Development Agency and Department of Public Works have allowed SRRQ to continue quarry operations pretty much “as usual” for over 14 months in spite of a March 27, 2000, decision by the County Planning Commission that SRRQ has been operating in violation of the quarry’s 1982 Reclamation Plan. The Commission directed staff to “notify SRRQ that quarrying activities do not comply with the Reclamation Plan and to issue an order requiring compliance with the Reclamation Plan.” The Planning Commission found that the areas of non-compliance included “exceeding the approved depth of excavation, insufficient financial assurances [for property restoration], and increases in the level of truck traffic.” The Commission also found that “changes in the quarry operations have exceeded the scope of work that was contemplated, identified, and approved in the Reclamation Plan to the extent that the approved Reclamation Plan is no longer adequate to address reclamation of the property.” Meanwhile, the county has not restricted the quarry activity while awaiting a “complete” application from SRRQ to expand the use – an option the Grand Jury does not believe exists given the quarry’s current non-conforming use status. Since the Commission hearing in March 2000, an estimated additional 1.5 million tons of rock have been mined, processed and exported from the quarry.
- The Planning, Building Inspection and Code Enforcement divisions of the Community Development Agency have allowed six illegally constructed quarry office buildings, with over 15,000 square feet of space, to be occupied for nearly 6 years without any building, plumbing, or electrical permits, and without a grading permit for the extensive grading and vegetation removal work that was done in association with the construction of the office complex and associated parking areas on a hillside adjacent to the bay shoreline.
- The Environmental Health Services division of the Community Development Agency has allowed those office buildings to be occupied for nearly six years without any septic permit or any investigation or inspections as to how the bayside septic system, which was originally approved and constructed for two residential mobile homes and into which the office complex was illegally connected, has been functioning.
- The Land Development division of the Department of Public Works allowed SRRQ to initiate in late November 2000, and to then continue throughout the winter, significant new grading operations as part of an “Over Burden Transfer/Stripping” project without approved grading and erosion control plans. County staff finally approved a plan on April 13, 2001 (about the time the rainy season had ended).

- The County Assessor failed to diligently pursue information received regarding a probable change of ownership of the SRRQ property associated with a change of corporate ownership. The Grand Jury discovered that a 100 percent transfer of ownership of the Dutra Group occurred on May 22, 1998. The change of ownership should have triggered a reassessment of this major commercial property, which could produce significantly increased property tax revenues for local public agencies.
- The County Assessor has taken no action to recover escaped property taxes on (1) six office buildings, with a total of over 15,000 square feet of space, which were illegally constructed on the SRRQ property nearly 6 years ago and have been occupied continuously since that time, but have not been taxed; and, (2) extensive remodeling and new construction, which occurred, without any permits, within a substantial residential compound located on SRRQ property. These buildings, which have been occupied for years, have also never been taxed. Because of a four-year statute of limitations, some of the escaped tax revenue may be beyond recovery.
- The county's history of mild response to a long history of complaints about, and violations at, the quarry is at least partly the result of what may be an incorrect or overly conservative position taken by the County Counsel and Board of Supervisors regarding the effects of the California Supreme Court decision in the "Hansen Bros." case on the county's authority and discretion to regulate the now non-conforming quarry use (Hansen Brothers Enterprises, Inc. vs. Board of Supervisors of Nevada County, et al. (1996) 12 Cal. 4th 533 sets forth the guiding principles applicable to the operation of a quarry as a legal non-conforming use).
- While the Board of Supervisors in January 2001 voted to direct the County Counsel to file a "public nuisance" abatement lawsuit against SRRQ, state law allows only a District Attorney, the State Attorney General, or the jurisdictionally appropriate City Attorney to pursue such legal action. At this Grand Jury's request, the District Attorney provided assistance during its investigation of the activities of various county departments (including the County Counsel's office and other county departments to whom the County Counsel provides legal advice) regarding SRRQ. Due to the consultation and advice provided to this Grand Jury, the District Attorney determined that a conflict of interest exists which has made it inappropriate for the District Attorney to deputize a member of the County Counsel's office to act as a Deputy District Attorney in any legal action relating to SRRQ. As a result of this conflict of interest, either the California Attorney General or the District Attorney must now handle pursuit of any "public nuisance" abatement lawsuit.

BACKGROUND

The SRRQ property consists of almost 750 acres (over 1 square mile) of land and underwater areas located at the end of Pt. San Pedro and adjacent to the Peacock Gap neighborhood of San Rafael. For the past 15 years, the Dutra Group has owned SRRQ. The Dutra Group is a California corporation, which has been involved in dredging, engineering and marine construction activities throughout the U. S. and has rock quarry-related facilities in various Bay Area locations. Information on the Dutra Group and a photo of quarry property can be found on its web site at [http://www.dutragroup.com./](http://www.dutragroup.com/)

Other than seeing a large number of double-trailer rock trucks traveling along Pt. San Pedro Road, Second Street and Third Street in San Rafael and then merging into the Highway 101 traffic, most Marin residents have little, if any, knowledge of the existence of this large-scale industrial operation located along the eastern edge of the county. The quarry mines, processes and exports between 1 and 1.5 million tons of rock and aggregate a year. As indicated in the following photographs, today a huge quarry pit, extending to a depth of over 250 feet below the level of the adjacent bay, replaces what was once a large hill at the end of the peninsula separating San Francisco Bay from San Pablo Bay.

While the quarry property is still in unincorporated territory (and is therefore under Marin County jurisdiction), much of the surrounding residential development (including the Marin Bay Park Subdivision and the Peacock Gap neighborhood) is within San Rafael city limits. As a result, a large use located within one jurisdiction (the county) primarily affects infrastructure in, and residents of, another jurisdiction (the City of San Rafael).

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SRRQ Chronology of Events

In order to understand how the quarry use has evolved over the years and the frustration expressed at public meetings, in written correspondence and directly to the Grand Jury by neighbors regarding the county's handling of the SRRQ matter, it is necessary to review some of the quarry's history. The following information was obtained from various public records. Certain confidential information obtained by the Grand Jury during its investigation of the matter (which was used primarily to confirm or clarify facts or explain actions) has been omitted from this summary.

- On April 10, 1972, the County Planning Commission approved a Use Permit for Basalt Rock Company, Inc., "to allow the existing quarry to continue as a legal use" on what is now known as the SRRQ property. While quarry activity had occurred on the property for almost 100 years, this was the first formal approval by the county of a quarry operation. The Planning Commission only made the finding that "the area of use, as of September 10, 1971, is reasonable," and no conditions were attached to the approval.
- Also on April 10, 1972, the County Department of Public Works approved a Surface Mining & Quarrying Permit (Q-72-03) for Basalt Rock Company, Inc., which "allows quarrying within the area shown on the [October 28, 1971 photo] only."¹
- The California Surface Mining & Reclamation Act (SMARA), went into effect on January 1, 1976; it required that all surface mining operations must obtain a permit from, and have a reclamation plan submitted to, and approved by, the county.
- A March 3, 1976, letter from the County Counsel to the attorney for Peacock Gap homeowners stated: "...I have concluded that the transfer of the batch plant from the Hutchinson (Larkspur Landing) Quarry to the Basalt Plant ... is not a significant amplification of the presently allowed use. Therefore, a Use Permit is not required for this purpose, provided the plant is used solely to process indigenous rock."

¹ Condition #14 of this permit was: "Changes - The Department of Public Works reserves the right to amend, change, or remove said conditions of permit as issued during the life of said permit due to unforeseen or overlooked conditions, said amended conditions to have the same force and effect as the original conditions." While various county officials indicated to the Grand Jury that the county's ability to restrict operations at SRRQ in order to reflect current circumstances is severely limited because of the now almost 30-year-old Quarry Permit. This condition would appear to create some authority to do so, *if* the county really wanted to exercise it.

- Information dated June 29, 1976, regarding only Basalt and compiled by Basalt, the County Supervisor then representing the First District, the San Rafael Police Chief, County Department of Public Works and Planning staff and residents indicated that: "During 1973 and 1974, the number of round trips by trucks to and from the Basalt plant averaged 190 per day (95 trips in each direction). During 1975, the average dropped to 120 trips per day (60 in each direction). Thus far in 1976, the average has been lower yet, 90 trips per day (45 in each direction). This latter figure includes the activities transferred from the Hutchison Quarry."
- On December 2, 1976, Basalt Rock Company submitted the 1976 Reclamation Plan to the County Department of Public Works, as required by SMARA. This plan indicated a proposed maximum pit depth of 100 ft. In part, the text of the plan stated: "Quarry studies indicate that in excess of 7,200,000 gross cubic yards of rock products ... which indicates a conservative quarry life of 15 to 20 years (i.e. through 1991 to 1996) based upon present day estimates of likely market demand." This equates to an average of 360,000-480,000 cubic yards of rock per year. Surprisingly, the county took no action on this plan until 1981 when the quarry inquired about amending what it thought was an approved plan.
- In December 1980, the City of San Rafael adopted the Peacock Gap Neighborhood Plan that was based on the then existent Reclamation Plan and assumed that the quarry would cease operation in the early 1990's and the site would be developed with mixed residential and commercial uses and a marina.
- In August 1981, the County Board of Supervisors adopted the Peacock Gap Neighborhood Plan, which then became the county's land use plan for the unincorporated properties within the area.
- An Amended Reclamation Plan was submitted by Basalt on May 12, 1982. While proposing to increase the pit depth to 200 feet below sea level, the plan stated: "While minor fluctuations (in truck traffic) will occur depending on local construction activity, the average level of truck traffic flowing from the McNear property along San Pedro Road is expected to remain the same as it is now. No increase in truck traffic is expected."
- Consistent with both the Reclamation Plan and the previously adopted Peacock Gap Neighborhood Plan (which became the county land use plan for the SRRQ area), the Board of Supervisors on November 9, 1982, and after a duly noticed public hearing, adopted Ordinance No. 2743, rezoning the quarry property from M-2 (Heavy Industrial) to BFC-RMPC (Bayfront Conservation-Residential Multiple Planned Commercial). As a result of this rezoning, which became effective December 9, 1982, the quarry operation became a non-conforming use unable to be expanded in either use or intensity since Marin County Code section 22.78.010 provides that "no non-conforming use shall be enlarged or increased."

- On December 6, 1982, (three days before the new zoning went into effect) the County Planning Commission adopted a mitigated Negative Declaration of Environmental Impact and approved an Amended Reclamation Plan for the then Basalt quarry. This plan allowed a maximum pit depth of 200 ft. below sea level and also included mitigation measures specifying that there would be no increase in truck traffic and that the additional rock resulting from the amendment would be exported by barge.
- On June 6, 1983, the County Zoning Administrator approved a Use Permit that allowed two mobile homes to be used for temporary housing for quarry staff. In 1987, the Use Permit approval was extended through 1992. Because SRRQ did not renew the Use Permit, it expired at that time. There was no follow-up by the County Planning Department staff until September 1995. At some time prior to that date, one of those mobile homes was illegally converted into an office structure and is currently used as the information technology center for the quarry office complex.
- On June 27, 1983, a permit for a septic system was issued by the County Environmental Health Services Division to serve "a total of 3 homes with a total of 9 bedrooms – the existing home plus 3 additional bedrooms in the new 'Stephenson' mobile home and 3 additional bedrooms in the new 'Lucas' mobile home." This system was installed, and in the mid-1990's a large office complex apparently was illegally connected into it.
- On February 28, 1986, Dutra Construction Co., Inc., of Rio Vista, California bought the SRRQ property from Dillingham Corp., which then owned Basalt Rock Company.
- During the late 1980's, SRRQ representatives made a number of inquiries to county staff about possible expansion of the quarry (such as removing most of South Hill and extending the pit depth from 200 to 300 ft. below sea level) and expressed a desire to extend the life of the quarry for 30 years. SRRQ was told that the proposals would require public hearings on an amendment to the approved plan, which would be controversial. When the Dutra Group purchased SRRQ in 1986, it knew--or should have known--that the quarry was a non-conforming use. However, in a March 22, 1988, letter from Dutra to the County Planning Department, a Dutra manager confessed of Dutra's "shock" at having recently learned of the property's RMCP zoning and indicated Dutra's desire to "immediately take the necessary actions to request a zoning change to a mining use". At least aware then that the RMCP zoning meant it could not expand its operations, Dutra nonetheless failed to initiate any action to rezone the property back to M-2 (Heavy Industrial).

- During the early 1990's, complaints from neighborhood residents about SRRQ activities intensified.
- Between August 1991 and January 1992, the quarry neighbors, Dutra, the County Supervisor representing the First District and county staff were involved in negotiations to reduce noise, dust and truck traffic impacts from the quarry. After the former owner of the quarry refused to sign the final agreement, the negotiations ended.
- In response to inquiries regarding planned changes at the quarry, the County Planning Department staff sent a letter to SRRQ on August 27, 1991, requesting a description of the existing and proposed uses.
- On September 5, 1991, the San Rafael Planning Director sent a letter to the County Planning Director that read in part: "Over the past ten weeks extraction activities seem to have increased and truck deliveries from the quarry have gone up substantially. This activity has had a major impact on nearby residential neighborhoods and has raised traffic safety issues with the beginning of the school year. The City has received many complaints about the quarry since the activity picked up. The San Rafael Planning Commission has asked me to forward a request that the county "call up" the quarry's Use Permit and add conditions on the operation to make it compatible with today's neighborhood and traffic conditions as well as environmental protection standards."
- An October 16, 1991, draft letter prepared by county staff regarding permitted quarry uses was sent to SRRQ for its review and revision.
- On February 20, 1992, following the breakdown of negotiations, a letter incorporating revisions requested by the quarry was sent from the County Planning Director to SRRQ, which administratively refined and expanded the uses permitted under the 1972 Use Permit. The letter stated: "It is our determination that your proposal to rebuild, upgrade, and relocate two crushing/segregation plants is within the provisions of the 1972 Quarry Permit, and therefore, requires no further review by our Department. Also within the provisions of the 1972 Permit is the processing of recycled concrete and asphaltic concrete." Whether intentionally or inadvertently, the list contained in that letter appears to have combined the original, existing and some planned uses, without regard to the non-conforming use status.
- The July 25, 1992, Annual Inspection Report prepared for the California Department of Conservation reported that the amount of rock quarried during the previous year was 1,003,250 tons of stone (aggregates & rip rap). This

represented a 41 percent increase from the 710,000 tons reported for the previous year.

- During October 1993, neighborhood residents sent numerous letters to the County Supervisor then representing the First District, complaining about quarry hours, noise and dust.
- On June 7, 1994, a candidate who had pledged during the campaign to do something about SRRQ impacts defeated the long-time incumbent in the election for First District County Supervisor. Prior to the election, quarry-related individuals contributed at least \$1,445 to the incumbent and, shortly after the election, \$500 was contributed to the Supervisor-elect by the president of SRRQ.
- Seven new office buildings, totaling over 15,000 square feet, and extensive new site improvements were first discovered by County Community Development Agency staff in September 1995 while checking the property in response to an application seeking to reestablish the Use Permit for the two residential mobile homes first approved in 1983. There are no records of any building permits, grading permits, septic permits or planning approvals for these improvements.
- A July 11, 1996, "violation letter" from Bay Area Air Quality Management District referred to a multi-million dollar quarry plant expansion, which was done without required permits. This expansion reportedly increased significantly the quarry operating capacity.
- A hearing before the County Planning Commission was scheduled for December 9, 1996, on an application submitted by SRRQ in late 1995 seeking after-the-fact Use Permit and Design Review Exemption approval to: "(1) allow the continued overnight use of an approximately 1,000 square foot mobile home residence by the maintenance supervisor for SRRQ; (2) permit seven existing modular office structures, totaling 15,782 square feet, and located approximately 100 to 500 feet from the southerly shoreline of the property, adjacent to San Rafael Bay; and (3) permit 72 existing on-site parking spaces and landscaping associated with the office facilities," all of which had been constructed without any of the required county permits.² Staff recommended approval of the office buildings, but then

² The Staff Report for the December 9, 1996, County Planning Commission meeting indicated that "one of the mobile homes approved in 1983 was converted to office use and six additional office structures were established on the property as part of the quarrying company's relocation of administrative and operational support facilities from Rio Vista. The offices provide administrative space for the quarrying company's headquarters and operational support space for accounting, engineering, data processing, audit, and rock transportation and placement support services that are associated with the quarry operation. Use of the offices was proposed for up to 45 employees during the hours of 8 a.m. to 5 p.m., Monday through Friday." Sewage disposal for the offices and mobile home residence was reportedly

canceled the County Planning Commission hearing on the Use Permit and Design Review Exemption applications after complaints were received, including one from an attorney representing neighborhood residents. Meanwhile, the office buildings have been occupied since that time.

- On January 23, 1997, the Dutra Group (owner of SRRQ) filed Chapter 11 Bankruptcy in Oakland, claiming \$91,794,473 in total assets and \$102,093,000 in total liabilities (Federal Bankruptcy Court Case No. 97-40625).
- A large blast at SRRQ on January 31, 1997, resulted in \$121,500 in damage claims from homeowners in the adjacent Marin Bay Park Subdivision. Dutra's insurance company paid the claims. Settlements ranged from \$400 to \$12,200 per home and averaged \$7,147.
- On May 8, 1997, the mayor of San Rafael wrote a letter to SRRQ in which he declared: "The members of the City Council and I are very concerned about the impacts of the quarry's operation on the surrounding neighborhoods. The issues of traffic, hours of operation, dust control and noise have been the source of complaints to the City of San Rafael for years, but have intensified in recent months. I am fully aware that the quarry has a right to operate under a use permit issued by the County of Marin. I am also aware that the Use Permit requires that people residing or working in the area not be adversely affected with regard to health, safety and well-being."
- The May 16, 1997, the Annual Inspection Report prepared by the County Department of Public Works for the California Department of Conservation stated: "This office is looking into the possibility that work limits may have extended below what was approved in the 1982 Reclamation Plan."
- On May 22, 1997, a former long-time Marin County Supervisor wrote a letter to the County Planning Director indicating that he had been retained to represent SRRQ.³

provided by the septic system, which was originally designed and approved to serve the two residential mobile homes included in the 1983 Use Permit.

³ This former Supervisor had finished a 24-year term on the Marin County Board of Supervisors in January 1997. A "Description of Services" filed by the former Supervisor with the Federal Bankruptcy Court on February 13, 1998, stated: "This office was engaged by Debtor to provide legal services on the limited matter of the Debtor's permit issues and negotiations involving the County of Marin, the City of San Rafael, and neighboring homeowners. Homeowners associations have lodged complaints with the County to close down the operation of the quarry alleging that the quarry operation constitutes a nuisance. The County was contemplating actions to revoke the quarry's permit. To date, we have been successful in convincing the County not to close down the quarry, but to instead consider granting revised

- Responding to a May 2, 1997, request from the County Community Development Agency for a schedule for the removal of the office buildings, SRRQ, on June 3, 1997, sent a letter to the agency director, which said: "Of the five units in question, the first unit will be off the premises by July 1, 1997. The second unit will be off the premises not later than August 1, 1997. Between now and September 1, 1997, we will endeavor to locate alternative office space, in the San Rafael area, within which to accommodate administrative personnel occupying the five units in question. Assuming our success in the discovery of suitable alternative space, the remaining three units can be removed on a phased basis, similar to the foregoing. By September 1 1997, we will have on your desk, either a move-out schedule for remaining units or a permit request to provide for their retention at the site."
- During the summer and fall of 1997, meetings were held between neighbors and Dutra regarding impacts from SRRQ.
- On August 4, 1997, San Rafael Rock Quarry, Inc (aka. Dutra Materials), filed Chapter 11 Bankruptcy in Oakland stating \$32,500,000 in total assets and \$89,500,000 in total liabilities (Federal Bankruptcy Court Case No. 97-47525).
- An October 15, 1997, letter from SRRQ to the County Community Development Agency Director requested "that we be allowed a further 60-day stay of enforcement proceedings while we take the steps leading to the amendment of our Use Permit application to clarify the proposed disposition of the (office) structures. The bankruptcy proceeding in which we are engaged have dictated that we centralize San Rafael Rock Quarry/Dutra Materials management and home office services at the San Rafael Rock Quarry site. It is, therefore, critical that we be allowed to retain sufficient square footage in our office buildings to accommodate vital services such as engineering, accounting, marketing, safety, human resources, maintenance and general management. To accomplish this, we propose to amend our Use Permit application to retain the three lower office buildings presently existing in the complex and the guest quarters located separately above the complex. In regard to the remaining four temporary office buildings, we have already removed one of these structures and intend to remove the other three."
- A Bankruptcy Reorganization Plan was filed for SRRQ, Inc., and the Dutra Group in Federal Bankruptcy Court on February 5, 1998.

permits. We have also been successful in blocking the homeowners associations from succeeding in closing down or limiting the operation of the quarry."

- On February 13, 1998, Federal Bankruptcy Court entered an order approving the Reorganization Plan.
- On May 22, 1998, the Bankruptcy Reorganization Plan went into effect. On the basis of information in the public file, key elements of this plan regarding SRRQ included the following: (1) a complete transfer of ownership and control of The Dutra Group (which in turn owns SRRQ and the Dutra Petaluma Quarry properties)⁴; (2) a recorded Memorandum of Lease between San Rafael Rock Quarry, Inc. a California Corporation ("Landlord") and the former owner of the quarry ("Tenant") for a certain real property containing "that certain residence and two appurtenant residential structures all located at the end of a private road called Pogy Point Road". This lease had an original term of 10 years with three 5-year options, and (3) a 5-year employment agreement between the Dutra Group ("Company") and the former owner of the quarry ("Employee").⁵
- The June 16, 1998, the Annual Inspection Report prepared by the County Department of Public Works for the California Department of Conservation stated: "This office continues to investigate the possibility that work has extended below the approved vertical extents according to the 1982 Reclamation Plan."
- During 1998, the county received more complaints from neighbors regarding impacts from SRRQ.
- On October 14, 1998, an application submitted by the former head of the Land Development Division of the County Public Works Department (who was subsequently retained to represent SRRQ) for a permit for a new septic system for the illegal office buildings was approved, in error, by the Environmental Health Services Division of the County Community Development Agency. The Permit was to expire on October 14, 1999.
- In May 1999, the County Planning Department staff began to take action on the illegal office buildings and set a hearing to abate the offices. The County

⁴ On May 22, 1998, ownership of SRRQ went from a corporation with 100 percent of the voting stock owned by Bill T. Dutra to a 1,000,000 share Trust corporation which holds 50 percent of the voting stock shares owned by Safeco Insurance Company of America, 25.42 percent of the voting stock shares owned by Farmers & Merchants Bank of Central California, 15.45 percent of the voting stock shares owned by Bank of Stockton and 9.13 percent of the voting stock shares owned by River City Bank.

⁵ This employment agreement may shed some light on why SRRQ has recently been so aggressive in it's operation of the quarry. The agreement provides for a base salary of \$300,000 per year and bonuses of \$75,000 for performance meeting earnings before taxes (EBT) projections, and 25 percent of any excess over projected EBT up to a maximum of an additional \$200,000 per year.

Supervisor representing the First District and the mayor of San Rafael invited Dutra and the neighbors to seek resolution of the longstanding complaints. The County Supervisor agreed to suspend the county hearings on the illegal office buildings.

- On May 19, 1999, an agreement letter was signed by the First District Supervisor, a representative of the Point San Pedro Road Coalition (homeowners), the San Rafael City Manager, the mayor of San Rafael and a representative of the Dutra Group, which committed to working on preparing a management plan for the quarry.⁶
- A Final Bankruptcy Decree was entered on June 23, 1999, closing Chapter 11 Bankruptcy action for both SRRQ, Inc. and the Dutra Group.
- In August 1999, using public funds, the county hired a facilitator for meetings between neighbors represented by the Point San Pedro Road Coalition and Dutra.
- After 11 meetings, the Point San Pedro Road Coalition terminated the negotiations with Dutra on January 17, 2000.
- Under "Public Open Time" at the January 25, 2000, Board of Supervisors' meeting, members of Point San Pedro Road Coalition requested that the First District Supervisor fulfill his promise in the May 1999 agreement to initiate proceedings to revoke the SRRQ Use Permit.
- On March 3, 2000, the Director of the County Parks, Open Space & Cultural Services Department sent a letter to the County Community Development Agency identifying various impacts SRRQ was having on McNears Beach County Park, including: (1) quarry excavation was undermining the wooded berm located along the common property line, (2) "dust continues to be a major impact on the Park. The entire facility is constantly covered with dust. The pool has been impacted to the point that a major filter expansion is contemplated to deal with the problem," and (3) "high noise, dust and visual intrusion to park visitors" (from the portable crusher and barge loading area located adjacent to the park).
- On March 27, 2000, the County Planning Commission held a 5_-hour-long public hearing and unanimously adopted Resolution No. PC 00-14 "directing staff to

⁶ Item #3 of this agreement states: "Should the process not result in a mutually acceptable quarry management plan at the end of the 120-day time period, the County will immediately initiate proceedings to revoke the 1972 Quarry Use Permit and to commence abatement proceedings to remove the illegal offices." This agreement (although not item #3) was amended on June 14 and June 16, 1999.

notify the San Rafael Rock Quarry that quarrying activities do not comply with the Reclamation Plan and to issue an order requiring compliance with the Reclamation Plan.”⁷ (As an example of the level of public concern, there were

⁷ As described in the Planning Commission resolution, “The areas of non-compliance include exceeding the approved depth of excavation, insufficient financial assurances, and increases in the level of truck traffic.

- A. The SRRQ has exceeded the depth of excavation that was established by the Reclamation Plan for the main quarry pit that is located next to North Hill. The Reclamation Plan specified a maximum depth of the main quarry pit of 200 feet below sea level. As recent as 1996, topographical information submitted by the operator to fulfill the quarry's annual reporting requirements indicates a water elevation of 235 feet below sea level (the figure 253 feet below sea level for the pit depth is also used). This shows that the excavation has extended at least 35 feet beyond what was contemplated and approved by the 1982 Reclamation Plan. Since increasing the depth of the quarry pit changes both the previously approved final contours to which the property will be quarried and increases the amount of minerals that will be mined beyond that which was identified in the existing Reclamation Plan, an amendment to the Reclamation Plan will be necessary to identify the current and planned final depth of the quarry pit. Any changes to the anticipated quantity of minerals that would be mined as well as the termination date of mining operations are also required to be reflected in the amended Reclamation Plan pursuant to the requirements of SMARA.
- B. Current quarrying operations, as modified by the exceedance in the depth of the quarrying activities, at the SRRQ do not comply with financial assurance requirements contained in SMARA and the County's Surface Mining and Quarry Ordinance. According to records on file in the State Office of Mine Reclamation, the SRRQ has a current financial assurance consisting of a bond for \$101,500. According to the Department of Public Works staff, this amount has not been updated since 1993 and may be insufficient to carry out the Quarry's obligations under the Reclamation Plan for the property.
- C. Current quarrying operations do not comply with the conditions of the Reclamation Plan, as established by the mitigations for a Negative Declaration of Environmental Impact, which require that a certain amount of extracted materials be delivered off site by water-borne means. In order to mitigate impacts associated with higher noise levels and increases in truck traffic that are anticipated as a result of future increases in rock extraction coupled with reclamation activities at the Quarry, the Negative Declaration for the Reclamation Plan required, as a condition of approval, that any increases in extracted materials be transported by barge. In the addendum to the Reclamation Plan, the previous quarry operator noted that the average level of truck traffic is expected to remain at current (1982) levels and that no increase in truck traffic is expected because the vast majority of the material quarried at the property is shipped out by deep water barge, thereby minimizing the kind of truck traffic which might normally be associated with an operation of this size.
- D. As noted in the discussion in item A above, the amount of quarried materials has increased. Because there is insufficient information on historic and current truck traffic levels associated with the Quarry, an approach was developed by the Quarry's traffic engineer to estimate the average number of truck trips per day based on available gate tonnage information. Utilizing an average truckload shipment of 20 tons and a total of 240 working days per year, the average daily number of truck trips that are generated by the Quarry between 1990 and 1998 was approximately 284 truck trips per day with a range from 221 to 358 trips. Since the gate and barge tonnage for 1981 and 1982 is available only in an aggregate form, and since the 1982 Reclamation Plan states that the majority of material is shipped by barge, it is reasonable to assume that at least half of the total tonnage for this period was trucked. Utilizing the methodology developed above yields an average number of truck trips per day

approximately 300 people--mostly angry neighborhood residents--at this public hearing).

- On March 31, 2000, a letter was sent to SRRQ from the Environmental Health Services Division of the Community Development Agency indicating that the septic permit for the illegal offices had expired (on October 14, 1999) and asking whether SRRQ wished to renew the permit. A note written on the bottom of the letter by the SRRQ contract administrator, dated April 3, 2000, requested an extension.
- A "notice of non-compliance" with the Reclamation Plan was sent by the County Department of Public Works to SRRQ on April 11, 2000, regarding: (1) duration of the quarrying activity--the termination date specified in the 1982 Reclamation Plan was (approximately) 1993, (2) depth--county records indicate a pit depth of at least 253 ft. below sea level--a 25 percent deviation from the 200 ft. depth identified in the 1982 Reclamation Plan, (3) inadequate financial guarantee for reclamation of the quarry property (the current \$101,500 is out of date and inadequate), and (4) truck traffic--the quarry is violating the condition in the 1982 Reclamation Plan that any increase in off-haul, beyond that which occurred in 1982, would be by barge and not by truck.
- On April 28, 2000, a letter was sent from the Environmental Health Services Division of the County Community Development Agency extending the permit for the new septic system for the illegal offices until October 14, 2000.
- On May 19, 2000, the former County Supervisor who was now working for SRRQ sent a letter to the County Community Development Agency requesting that the

in 1981 and 1982 of 272 and 307 trips, respectively. Utilizing this same methodology for the most recent annual total trucked tonnage of 1,038,000 tons in 1999, the average number of truck trips last year was 433 trips, or an increase of 41% above the 1982 levels. Therefore, based on this analysis, the current quarrying operations are not in compliance because the increase in the amount of extracted materials, as described above, has not been barged as required by the condition of approval, but rather, has been transported off site by trucks. This has increased the amount of total truck trips in excess of the limit effectively imposed by the barging condition."

In the March 2000 resolution, the Planning Commission also found "that the 1982 Reclamation Plan is inadequate with respect to the depth of excavation, the financial assurance level, and the level of truck activity. Changes to the quarry operations have exceeded the scope of work that was contemplated, identified, and approved in the Reclamation Plan for the property to the extent that the approved Reclamation Plan is no longer adequate to address reclamation of the property in compliance with SMARA and the reclamation requirements of Marin County Code Chapter 23.06."

hearing on the illegal offices be put off for 90 days while issues of non-compliance with 1982 Reclamation Plan were being discussed.

- On May 26, 2000, a letter was sent from SRRQ to the County Community Development Agency regarding the April 11, 2000, "notice of non-compliance." The letter included; (1) a new estimate of 25 to 30 years until termination of surface mining operations, (2) a statement that current and future limits of the pit (presumably the perimeter) would not deviate from the 1982 Reclamation Plan, (3) a commitment to replace the existing \$101,500 financial assurance with \$1,070,220, and (4) a commitment to reduce truck trips from the 1999-per day average of 433 daily (each way) to an average for the year 2000 of 307-per day.
- On June 5, 2000, the San Rafael City Manager advised Dutra that SRRQ needed a "modern day" Use Permit and asked him to agree to open up his Use Permit for review. The County Supervisor from the First District supported this position and gave SRRQ 14 days to respond.
- On June 16, 2000, a letter was sent from Dutra to the County Supervisor representing the First District that indicated that SRRQ was refusing to open up the Use Permit.
- In spite of the April 11, 2000, "notice of non-compliance" letter from the County Department of Public Works, the June 22, 2000, Annual Inspection Report, prepared by the Department of Public Works for California Department of Conservation, concluded, "no violations were noted".
- On July 26, 2000, another "incompleteness" letter was sent by the Department of Public Works to SRRQ regarding the May 26, 2000 information, which gave SRRQ until September 11, 2000, to submit information for an amended Reclamation Plan.
- On July 31, 2000, a letter was sent to the County Planning Department from SRRQ proposing: (1) a cessation of over-the-road shipments from the quarry within 15 years, (2) a 25-30 year quarry life, (3) an unlimited quarry depth authorization, (4) unlimited barge capacity, (5) a county-furnished water access transfer site, (6) Coalition buy-in to an operating agreement, and (7) an enforceable Development Agreement in place within 7 years.
- On September 11, 2000, SRRQ submitted some additional information in response to the July 26 "incompleteness" letter and asked for additional time to submit the rest of the information for an amended Reclamation Plan.

- On September 25, 2000, the principal County Community Development Agency staff member working on the SRRQ matter sent a letter to the quarry wherein he noted that he “personally witnessed and felt the impacts from your blasting event on September 19, 2000, and observed the release of extensive dust from SRRQ shortly thereafter. While Quarry representatives have conceded that the results of the blast were an aberration attributable to fine-tuning of new blasting equipment, (he was) disappointed at the results. Not only did the blast endanger the health and safety of people and properties in the surrounding neighborhood, it could result in the Quarry's loss of credibility with the various parties and stakeholders that the county is attempting to bring together to produce a quarry management plan.”
- On October 10, 2000, a letter was sent by the County Environmental Health Services Division to SRRQ stating that the septic permit for the illegal offices “will expire on October 14, 2000, and cannot be renewed. In order to complete the project proposed you will need to apply and obtain approval from County of Marin Community Development Agency Planning Division before applying to this office for a new permit”, (as should have been the case with the initial permit).
- On October 12, 2000, the County Planning Department staff sent a letter to SRRQ advising that the County Planning Commission would hold a public hearing on November 13 to consider the Use Permit application submitted in late 1995 for the illegal office buildings. This hearing was not put on the Planning Commission agenda, and was not held because SRRQ withdrew the application on November 1, 2000.
- On October 27, 2000, the Point San Pedro Road Coalition submitted a formal complaint letter to the Code Enforcement Division of the County Community Development Agency regarding “possible illegal buildings” on a residential portion of the SRRQ property.
- On November 22, 2000, the County Department of Public Works advised SRRQ that the information they had submitted on October 11 to “update” the 1982 Reclamation Plan was still “incomplete” and requested an erosion control plan to control potential siltation into the adjoining marsh before proceeding further with the overburden transfer and stripping program, which the quarry had begun in late November 2000. The quarry continued the work without submitting the requested erosion control plan.
- The Code Enforcement Division of the Community Development Agency notified SRRQ on November 29, 2000, that because of the agency's November 1 decision to withdraw the after-the-fact application submitted in the fall of 1995,

the quarry had to remove the illegal offices and residential unit (one of the mobile homes) by January 2, 2001.

- On December 29, 2000, the California Regional Water Control Board--San Francisco Bay Region sent SRRQ a "Notice of Violation—Non-Compliance with California General Industrial Storm Water Permit 97-03" in which it was pointed out that measures proposed on a March 3, 2000, plan, submitted by the quarry, had not been implemented.
- On January 10, 2001, the Code Enforcement Division of The Community Development Agency sent a letter to SRRQ describing the results of a December 20, 2000, inspection of the property.⁸ The county took no enforcement action as a result of Dutra's failure to meet the January 2, 2001, deadline. Instead, the new letter gave SRRQ "30 (more) days to correct the violations" by "applying for and receiving the various permit approvals" or by "removing the administrative offices and caretakers unit."
- On January 11, 2001, the Department of Public Works conducted a site inspection at SRRQ. During the inspection, staff noted "all emergency erosion control measures that were installed without an erosion control plan had failed. These included a series of hay bale silt fences and graded ditches, which had been undercut or bypassed by storm runoff following a recent storm event. Additionally, the overburden transfer operation occurred during mid-winter, further aggravating site conditions in an approximately 20-acre area of exposed and disturbed soil without adequate erosion control measures."
- On January 17, 2001, in response to a citizen complaint, the County Department of Public Works issued a Notice of Violation (Stop Work Order) to SRRQ for

⁸ The results of the inspection were described as follows: "(1) "Main House"--Assessor records note original house (built in 1940) approximately 2,000 square feet. Illegal additions estimated to be approximately 2,950 square feet, (2) "Cottage"--Assessor records note original house (built in 1940) approximately 900 square feet. Illegal additions estimated to be approximately 100 square feet, (3) "Radio House"--Historically this building was the original radio transmission house for the property during the 1940's. Subsequently this building has been illegally converted to a residence, (4) "Dock"--Assessor records note that a dock has existed on the property since 1940. (The) Assistant Chief Building Inspector estimates that the dock has been completely rebuilt within the past 10 years, (5) "Administrative Offices and Caretakers Unit"--Use Permit 96-234 and Design Review 96-308 was withdrawn on November 1, 2000. You were notified on November 29, 2000, that all seven structures were to be removed by January 2, 2001. To date the structures have not been removed." The letter went on to advise "that the existence of additions, alterations and conversions to the main house, cottage and radio house, the reconstruction of the dock, and the establishment and use of the administrative offices and a caretaker's unit in a RMPC (Residential Multiple Planned Commercial) zoning district is in violation of Marin County Code, Sections 22.45.040, 22.47.082, 22.77.030 and 19.04.010. These code sections require Master Plan, Tidelands Permit, Design Review and Building Permit approval."

working in an area without (1) an approved Grading Plan, (2) an approved Erosion Control Plan, and (3) an approved Reclamation Plan.

- On January 29, 2001, attorneys for SRRQ delivered to the county a copy of a draft lawsuit and indicated that unless the Stop Work Order was lifted by the end of the next business day, they intended to file a lawsuit against the county seeking \$5 million from the county, \$1 million from the Planning Commission, \$1 million from the County Supervisor representing the First District, \$500,000 from the County Department of Public Works staff member who issued the Stop Work Order, and “an amount exceeding \$150 million” (with interest) for inverse condemnation.
- On January 30, 2001, county staff rescinded the January 17 Notice of Violation and replaced it with a Notice of Non-Compliance which allowed the grading to continue until SRRQ had a hearing before the Planning Commission. On that date, the County Board of Supervisors voted four to one to file a “public nuisance abatement” lawsuit against SRRQ. Ninety days later, the suit has still not been filed.
- On March 15, 2001, SRRQ submitted a new Use Permit, Design Review and Tidelands Permit application, which proposed, “to correct the Marin County Code violations alleged in (the county’s) January 10, 2001, letter.” The new applications proposed to reduce the six illegal office buildings, which have been occupied since the fall of 1995, to 3 structures totaling 8,119 square feet, to allow continued use of a 1,000 square foot modular caretaker’s residence and to legalize the residential construction and the dock. This proposal appears to be similar to the one made by SRRQ almost 4 years ago, in an October 15, 1997, letter to the county.
- On March 26, 2001, following another lengthy public hearing, the County Planning Commission passed a resolution “...affirming the Public Works Director’s determination that the San Rafael Rock Quarry’s overburden transfer and stripping operations do not comply with the requirements for erosion control pursuant to Surface Mining and Quarry Permit Q-27-3 and the County Surface Mining and Quarry Ordinance.”
- On March 29, 2001, the County Community Development Agency released the results of an ambient air monitoring report. This report indicated that applicable standards for “total suspended particulate” were exceeded on 16 days at Marin Bay Park Subdivision and on 10 days at McNear Beach County Park (out of approximately 22 working days) during a 30-day testing period.

- On April 13, 2001, clearly at the end of the rainy season, the County Department of Public Works approved an erosion control plan for the quarry. On that date, the Community Development Agency again found the new application to amend or "update" the Reclamation Plan to be "incomplete" and gave SRRQ an additional 30 days to provide the requested information.
- On April 23, 2001, the County Planning Commission adopted a resolution that stated in part "... acknowledging the Department of Public Works' determination that the San Rafael Rock Quarry complies with the requirements for erosion control pursuant to the County's Surface Mining and Quarrying Ordinance and SRRQ's Surface Mining and Quarrying Permit Q-72-03," which was first approved on April 10, 1972. This decision was appealed to the Board of Supervisors.
- On May 22, 2001, before a roomful of San Pedro Road residents, angry about dust, noise, and traffic generated by the quarry, the Board of Supervisors voted unanimously to uphold the Planning Commission approval of the quarry erosion control plan.

METHODOLOGY

The Grand Jury first reviewed the voluminous files on the SRRQ property in various county departments including the Planning, Building Inspection, and Environmental Health Services Divisions of the Community Development Agency, Land Development Division of the Public Works Department, County Assessor and Board of Supervisors. The Grand Jury interviewed individuals involved with the SRRQ issue, including employees in Planning, Environmental Health, Code Enforcement, Land Development, County Assessor, County Treasurer and County Counsel offices. Also interviewed were the San Rafael City Manager, the County Administrator (who, until several years ago, was the Director of the County Community Development Agency) and the member of the County Board of Supervisors representing the First District. Grand Jury members also contacted staff from the Bay Area Air Quality Management District and the California Regional Water Quality Control Board--San Francisco Bay Region.

Voluminous Northern District of California Federal Bankruptcy Court files on SRRQ in Oakland were reviewed. Lengthy interviews were conducted with two officials of the Dutra Group and the trustee for the current corporate owners of the property was also interviewed. The Grand Jury interviewed various members of the Point San Pedro Road Coalition and reviewed information they and their attorney have submitted to the county as well as information submitted by SRRQ and its attorneys. Members of the Grand Jury also spent several hours touring the quarry property with four representatives of SRRQ, including its chief executive officer, a member of the Board of

Directors, a public relations consultant (who until recently was an administrative aide to one of the current County Supervisors) and the quarry manager. Members of the Grand Jury also visited several homes in the surrounding neighborhood during a blast at SRRQ, and attended various public hearings and meetings where SRRQ issues were discussed.

Because the Grand Jury (through interviews and document review) was getting very different opinions as to: (1) how much authority the county actually has to regulate the quarry (even though it has been a non-conforming use for the past 18_ years - since the property was rezoned by the Board of Supervisors in 1982) and (2) how much discretion the county actually has to consider the various applications from SRRQ (some after-the-fact) to expand the quarry operation, in light of a relatively recent California Supreme Court decision (Hansen Brothers Enterprises, Inc. vs. Board of Supervisors of Nevada County, et al. (1996) 12 Cal. 4th 533), the Grand Jury consulted with retired Marin County land use attorney Leland H. Jordan, who was a former Marin County Counsel and served as City Attorney for several towns in Marin. Mr. Jordan offered to review the matter and assist the Grand Jury, as a *pro-bono* consultant, in understanding the legal situation.

DISCUSSION

Issues regarding the county's handling of SRRQ that were investigated by the Grand Jury included:

1. Failure by county staff to take action on substantial improvements made on the quarry property without the required permits;
2. Failure by the County Assessor to adequately investigate a reported change of ownership of the quarry property and assessment of illegally constructed improvements;
3. A general lack of action by county staff in response to numerous condition and code violations at SRRQ;
4. The legal advice received from the County Counsel's office regarding the county's authority over, and discretion to regulate, the quarry;
5. Whether the county has been giving the quarry preferential treatment and, if so, why?

1. Failure by county staff to take action on substantial improvements made on the quarry property without the required permits

It was initially reported to the Grand Jury that an office complex had been constructed on the SRRQ property several years ago without any of the normally required county permits and the county was allowing it to continue to be occupied as the headquarters for the SRRQ operations. It was subsequently reported to the Grand Jury that neighborhood residents believed that the owner of SRRQ had also constructed and resided in a new residence somewhere on the SRRQ property and various county departments seemed to have no records of these improvements. It was subsequently reported to the Grand Jury that the (former) owner of SRRQ had indicated to a county official that he lived in a home he built within a seven acre fenced portion of the quarry property, on a bluff overlooking the bay.

The Grand Jury checked the files in the Building Inspection, Planning, Environmental Health Divisions of the County Community Development Agency and the County Assessor's office for information on these buildings.

Seven new office buildings (totaling 15,782 square feet) and extensive new site improvements were first discovered by County Community Development Agency staff in September 1995 while it was checking the property in response to an application seeking to reestablish the Use Permit for the two residential mobile homes first approved in 1983. The Grand Jury found (and county staff verified) that there are no building permits, grading permits, septic or planning approvals for these improvements and they have never been assessed property taxes.

The Grand Jury was able to locate only Assessor's office records on the portion of the property (on a bluff overlooking the bay on the back side of South Hill) where, through a process of elimination, the Grand Jury concluded that the residential buildings must be located. However the Grand Jury was surprised to learn that the total assessed value for all the improvements within the "residential" area of the quarry property for the 2000-2001 tax year was \$45,348. This means that virtually no property taxes are being charged on what was later found to be an imposing bayside estate with a main residence, two guesthouses and a private dock. No other county department had any records of any buildings on this portion of the property.

The most recent notes in the County Assessor's property files for the "residential" portion of the property are: "5 buildings--3 residences and two others. A search of records back to 1950 reveal only land values. Buildings not shown on any records. 1 building built by PT&T--2 residences by US Navy. 1 garage by US Navy and 1 residence by McNear. For escaped assessment Radio Building had no value in 1962 as it was abandoned in about 1953 or 1954." The notes for what is now identified as the "Cottage" are: "Building originally used for radio crew Navy quarters. Now rented as

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summer home." The notes on what is now identified as the "Main House" are: "Building formerly Navy quarters, extensive remodel interior. Wall between dining room and living room - concrete block. Building built about 1940 by Navy without permit. Garage used as storage, lav. Is not used, has no value." As is obvious from the following photographs, this building has been extensively reconstructed without any permits.

Photographs of the current improvements on the property, obtained for the Grand Jury, include ones taken from a boat on the bay, off shore from the residential area and others of both the office complex and "residential" area taken from a plane. Examples of these photographs follow.

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San Rafael Rock Quarry - Office Complex

Who's Minding The San Rafael Rock Quarry?
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San Rafael Rock Quarry Office Building



San Rafael Rock Quarry – Residential Area

Who's Minding The San Rafael Rock Quarry?
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San Rafael Rock Quarry – Residential Area

Because the information found in the county files didn't correspond to what the Grand Jury learned was actually on the property, other sources were examined to learn the history of the improvements. Information located and reviewed included:

- A January 29, 1989, Soviet Sputnik satellite photo available on the Internet which appears to show the larger Navy residential building where the "Main House" is currently located and the old "McNear" house (which was subsequently demolished) on the point, and none of the current office buildings.
- A May 11, 1995, US Geological Survey aerial photo also available on the Internet (<http://terraserver.microsoft.com/image.asp?S=10&T=1&X=2739&Y=21019&Z=10&W=1>) that indicates the two new "permanent" office buildings and what appears to be the site grading underway for five "temporary" office buildings on the SRRQ property. The outline of the current "Main House" is apparent, sans cupolas or turrets, landscaping appears to the west and the south and new grading to the east.
- A March 1997 aerial photo obtained from the County Community Development Agency that shows seven buildings in the office complex (one small building was removed later in 1997) and the residential compound as it generally appears today.

When, during interviews by the Grand Jury, members of the Community Development Agency staff, County Assessor's staff, County Counsel's staff and Board of Supervisors were shown photographs of the residential compound, they indicated that they knew nothing about the buildings and had not seen them before. They also stated that it is county policy to do no investigation until a written complaint is received. On October 27, 2000, the Point San Pedro Road Coalition, after going out in a boat to look at the residential area, submitted a formal complaint letter to the County Community Development Agency regarding "possible illegal residential buildings" on the bayside of the SRRQ property.

Almost two months later, on December 20, 2000, county staff conducted an inspection of the quarry property. The results of this inspection, as described in the January 10, 2001, letter, were as follows: "(1) 'Main House'--Assessor records note original house (built in 1940) approximately 2,000 square feet. Illegal additions estimated to be approximately 2,950 square feet, (2) 'Cottage'--Assessor records note original house (built in 1940) approximately 900 square feet. Illegal additions estimated to be approximately 100 square feet, (3) 'Radio House'--Historically this building was the original radio transmission house for the property during the 1940's. Subsequently this building has been illegally converted to a residence, (4) 'Dock'--Assessor records note that a dock has existed on the property since 1940. (The) Assistant Chief Building Inspector estimates that the dock has been completely rebuilt within the past 10 years,

(5) 'Administrative Offices and Caretakers Unit'--Use Permit 96-234 and Design Review 96-308 was withdrawn on November 1, 2000. You were notified on November 29, 2000, that all seven structures were to be removed by January 2, 2001. To date the structures have not been removed." The letter went on to advise that "...the existence of additions, alterations and conversions to the main house, cottage and radio house, the reconstruction of the dock, and the establishment and use of the administrative offices and a caretaker's unit in a RMPC (Residential Multiple Commercial Planned) zoning district is in violation of Marin County Code, Sections 22.45.040, 22.47.082, 22.77.030 and 19.04.010. These code sections require Master Plan, Tidelands Permit, Design Review and Building Permit approval."

Through its investigation, the Grand Jury determined that, as a result of the Bankruptcy Reorganization Plan, the Dutra Group owns the two "permanent" office buildings; the four remaining modular office buildings are owned by GE Capital Modular Spec. of Macon, Georgia, and are leased to the Dutra Group (as such they still should be taxed, but are not) and the improvements on the residential portion of the property are owned by the Dutra Group and are leased to the former owner of the quarry property.

With regard to the illegal office buildings, as indicated in the quarry history section of this report, SRRQ submitted and then later withdrew applications to legalize them. On March 15, 2001, SRRQ submitted a new Use Permit, Design Review and Tidelands Permit application that proposed "...to correct the Marin County Code violations alleged in (the county's) January 10, 2001, letter." The new applications proposed to reduce the 6 illegal office buildings (which have been occupied since the fall of 1995) to 3 structures, totaling 8,119 square ft., to allow continued use of a 1,000-square ft. modular caretaker's residence and to legalize the residential construction and the dock. This proposal appears to be similar to the one made by SRRQ almost four years ago, in an October 15, 1997, letter to the county.

Unfortunately, the fact that these illegally constructed office buildings have existed and have been allowed to continue to be occupied for nearly six years without any building, electrical, plumbing, or grading permits, any planning approvals or an approved septic system clearly raises questions regarding how seriously the county enforces its own zoning and health and safety laws.

2. Failure by the County Assessor to adequately investigate a reported change of ownership of the quarry property and assessment of illegally constructed improvements

The Grand Jury obtained a copy of a June 10, 2000, letter from the State Board of Equalization that informed the County Assessor that the Dutra Group had been advised that the state had "determined that a change in ownership of real property (including SRRQ) has occurred as a result of a change in control of the legal entity (the Dutra

Group).” An attached document signed by the Chief Financial Officer of the Dutra Group reported that on May 22, 1998, a 100 percent change of ownership of the Dutra Group (owner of SRRQ, Inc., which in turn owns the San Rafael quarry property, a Rio Vista property and the Dutra quarry property in Petaluma) had occurred. The form provided the name and address of the trustee for the new owner.

The significance of this change of corporate ownership was that it should result in a reassessment of the property retroactive to the day of transfer. The current property tax base for the SRRQ property is the adjusted 1986 purchase price. After an initial interview by the Grand Jury, a staff person in the County Assessor's office attempted to reach the chief financial officer for Dutra but instead spoke to “a CPA” who advised that there was no change of ownership, that the trustee represented Bill Dutra and it was all part of the normal bankruptcy process in which the company was still involved. On the basis of this (completely erroneous) information, the staff person in the County Assessor's office advised the Grand Jury that the office had concluded that there was no change of ownership that would trigger a reassessment of the property and nothing further would be done regarding the issue. This conclusion was based largely upon a July 26, 1988, memo (88/55) sent to county assessors from the State Board of Equalization. The memo reads in part:

“Chapter 11 -- This chapter provides a means by which financially distressed businesses, including sole proprietors, partnerships, and corporations, may restructure their finances to continue their operations and avoid liquidation. The filing of a Chapter 11 petition automatically institutes a stay of debt collections and lien enforcement. The filing of a petition under Chapter 11 automatically places all property of the bankrupt under the control of the court.

“Under a Chapter 11, reorganization the debtor will ordinarily remain in control of its business, unless the court finds it necessary to appoint a trustee. The debtor remaining in control is called a ‘debtor in possession.’

“A debtor in possession has an exclusive right to file a Reorganization Plan during a specified period. The purpose of this period is to give the debtor enough time to formulate the Reorganization Plan by negotiating with creditors and by predicting the future capacity of the enterprise. When the Plan is confirmed by the court, the estate of the bankrupt is automatically terminated. By operation of law, all property of the estate returns to the control of the reorganized debtor, unless otherwise provided in the Plan [Note: as the Grand Jury confirmed was specifically the case with the SRRQ, Inc./Dutra Group Reorganization Plan] or in the confirmation order.

“The whole purpose of a Chapter 11 reorganization is to encourage and facilitate the rehabilitation of businesses in financial trouble and to avoid liquidation.

Therefore, the (filing of a petition for bankruptcy) does not result in the transfer of beneficial ownership but permits the assets of the bankrupt to be used in its ongoing operations for the benefit of the debtor but free of debt collection and lien enforcement. Since the beneficial ownership of the assets of the estate are not transferred as a result of filing a petition under Chapter 11, a change in ownership does not result from the creation of the estate."

Several sources confirmed that one result of the SRRQ, Inc/Dutra Group Bankruptcy Reorganization Plan was that on May 22, 1998, ownership of SRRQ went from a corporation with 100 percent of the voting stock owned by Bill T. Dutra to a 1,000,000-share trust corporation, which holds 50 percent of the voting stock shares owned by Safeco Insurance Company of America, 25.42 percent of the voting stock shares owned by Farmers & Merchants Bank of Central California, 15.45 percent of the voting stock shares owned by Bank of Stockton and 9.13 percent of the voting stock shares owned by River City Bank.

During a follow-up interview that included questions as to whether the trustee might, in fact, represent a new ownership that resulted from the Dutra Group going out of bankruptcy, the staff person from the Assessor's office admitted that the office's earlier conclusion may have been wrong, but it was unclear what, if anything, was going to be done to pursue the matter.

The Grand Jury was disappointed in what appeared to be a lack of interest on the part of the County Assessor's office to diligently pursue information provided to it by the State Board of Equalization regarding the change of ownership of the SRRQ property associated with the May 22, 1998, change of ownership of the Dutra Group. This is important because, given the rapid rise in property values in Marin, local public agencies may be due the significant additional property taxes that could result from a reassessment of this major commercial property currently assessed based upon the adjusted 1986 purchase price and the currently virtually untaxed bayside estate located thereon.

The Grand Jury discovered that over 15,000 square ft. of office space, owned by or leased to and utilized as the administrative offices for the Dutra Group has been occupied continuously since discovery of the space by county staff in September 1995, but has never been assessed property taxes. The County Assessor has failed to take any action to recover the escaped property taxes on these office buildings. Because of the four-year statute of limitations, some of this escaped tax revenue may already be beyond recovery.

Extensive illegal remodeling and new construction activity has occurred on the residential portion of the SRRQ property. These buildings have been occupied continuously for years, but the County Assessor has never assessed the improvements

and new construction. Again, because of the four-year statute of limitations, some of the escaped property tax revenue from these improvements is probably already beyond recovery.

3. General lack of action by county staff in response to numerous condition and code violations at SRRQ

On March 27, 2000, following a lengthy public hearing, the County Planning Commission unanimously adopted a Resolution "directing staff to notify the San Rafael Rock Quarry that quarrying activities do not comply with the Reclamation Plan and to issue an order requiring compliance with the Reclamation Plan." The Planning Commission found that: "The areas of non-compliance include exceeding the approved depth of excavation, insufficient financial assurances, and increases in the level of truck traffic." The Commission also found that "the 1982 Reclamation Plan is inadequate with respect to the depth of excavation, the financial assurance level, and the level of truck activity. Changes to the quarry operations have exceeded the scope of work that was contemplated, identified, and approved in the Reclamation Plan for the property to the extent that the approved Reclamation Plan is no longer adequate to address reclamation of the property in compliance with SMARA and the reclamation requirements of Marin County Code Chapter 23.06."

Approximately 14 months later, the county still hasn't done anything to limit the quarry activity while it awaits a "complete" application from SRRQ to legally expand the use--an option which, as described elsewhere in this report, the Grand Jury doesn't believe exists under the quarry's current non-conforming use status. It is not clear how much longer the county will allow the quarry to continue operations "as usual" in spite of the findings made by the Planning Commission in March 2000. Since the commission action, the lack of any serious follow-up action by county staff has allowed up to 1.5 million additional tons of rock to be mined, processed and exported from the quarry.

The Grand Jury was surprised to discover that the Planning, Building Inspection and Code Enforcement Divisions of the County Community Development Agency have allowed the six illegally constructed buildings with over 15,000 square ft. of office space to be occupied for nearly six years (since their discovery in September 1995) without any building, plumbing, or electrical permits, and without a grading permit for the extensive grading and vegetation removal work associated with the construction of the office complex and parking areas on a hillside adjacent to the bay shoreline and without any of the required land use entitlements. The fact that the illegal offices have been allowed to be continuously occupied by the Dutra Group reflects a lack of serious enforcement of the county's zoning laws.

The Grand Jury was also surprised to learn that the Environmental Health Services Division of the County Community Development Agency has allowed over 15,000 square ft. of office space used as the headquarters for the Dutra Group to be occupied for nearly six years (since their discovery in September 1995) without an approved septic system for the office complex or any county investigation or inspections of how the bayside septic system (originally approved and constructed for two residential mobile homes) into which the office complex has been illegally connected, has been functioning.

Finally, the Grand Jury was surprised that the County Department of Public Works allowed SRRQ to initiate on November 27, 2000, and to then continue throughout the winter, significant new grading operations as part of the quarry's "Over Burden Transfer/Stripping" project without either approved grading or erosion control plans.

4. Legal advice received from the County Counsel's office regarding the county's authority over and discretion to regulate the quarry

During interviews and document review, the Grand Jury began getting very different opinions as to: (1) how much authority the county actually has to regulate the quarry use which has been non-conforming for the past 18_ years (since the property was rezoned by the Board of Supervisors in 1982) and (2) how much discretion the county actually has to consider the various applications from SRRQ (most after-the-fact) to expand the quarry operation, in light of a relatively recent California Supreme Court decision (Hansen Brothers Enterprises, Inc. vs. Board of Supervisors of Nevada County, et al. (1996) 12 Cal. 4th 533). Several persons cited the implications of this decision as the reason why the county has not been more forceful in dealing with complaints about SRRQ. The Grand Jury consulted retired Marin County land-use attorney Leland H. Jordan; he offered to review the matter and act as a consultant to the Grand Jury in assisting it to understanding the legal situation. The conclusions of the Grand Jury regarding this issue are as follows:

1. SRRQ became a legal non-conforming use on December 9, 1982, when the Board of Supervisors rezoned the property upon which it is located. When the Dutra Group purchased SRRQ in 1986, it knew, or should have known, that the quarry operation was a non-conforming use. However, in a March 22, 1988, letter from SRRQ to the County Planning Department, a Dutra manager confessed "shock" at having recently learned of the property's RMPC zoning. He indicated Dutra's desire to "immediately take the necessary actions to request a zoning change to a mining use." Thus, apparently aware that the RMPC zoning meant it could not legally expand its operations, Dutra nonetheless never initiated any action to rezone the property to M-2 (Heavy Industrial), which would have required a public hearing process.

2. To the extent that the current quarrying of rock extends beyond the surface area designated for that activity on the map included in the Amended Reclamation Plan approved by the county at almost the same time as the rezoning (on December 6, 1982), such quarrying would constitute an illegal expansion of the non-conforming use.
3. To the extent that the current quarrying of rock extends beyond the subsurface contours shown for that activity on the Amended Reclamation Plan approved on December 6, 1982, such quarrying would constitute an illegal expansion of the non-conforming use.
4. As the result of increased truck traffic, dust, noise, hours of operation and blasting vibrations, over that which existed in December 1982, there is strong evidence indicating that there has been an illegal intensification of the non-conforming use.
5. All buildings and structures constructed on the quarry property without benefit of the required county permits are illegal and subject to abatement. The residential structures constructed, expanded or essentially rebuilt without benefit of any required county permits could only be legalized if approved as part of a Master Plan for the ultimate development of the entire property. The various office structures constructed without benefit of any of the required county permits, could be legalized, but only if approved as part of a Master Plan for ultimate development of the entire property and only if those structures are not used primarily to serve the non-conforming quarry operation.
6. The current application to legalize the existing illegally constructed quarry office buildings and any application to amend the Reclamation Plan (i.e. to extend the life of the quarry or increase the depth of excavation) cannot be approved by the county to the extent that it proposes an expansion of the non-conforming quarry use beyond that indicated in the 1982 Amended Reclamation Plan. In order to do so, SRRQ would have to apply for and obtain approval from the Board of Supervisors of a rezoning of the quarry property. This would require environmental review and extensive public hearings, something that the quarry and the county both seem to want to avoid.

The reasoning which led the Grand Jury to the foregoing conclusions, is as follows:

Legality of current quarry operations

The property upon which SRRQ is situated was rezoned from M-2 to BFC: RMPC, effective December 9, 1982. Quarry operations are not a permitted use under the current zoning. However, since SRRQ existed as a legal use prior to adoption of the

current zoning, it is classified as a "legal non-conforming use." (It may be possible to argue that SRRQ became a legal non-conforming use as early as 1971, but that would not change the conclusions contained herein. Consequently, the effective date of the 1982 rezoning was treated as the date the use became legal non-conforming.)

Within certain limitations, legal non-conforming uses may be continued, notwithstanding the fact that they are prohibited under the current zoning. Such continuation is justified on the ground that requiring immediate cessation of the use would unconstitutionally deprive the owner of vested property rights without just compensation. However, the right to continue a legal non-conforming use is not an unlimited right. That right does not normally include the right to expand, extend or intensify the non-conforming activity. The question the Grand Jury had regarding SRRQ is whether the current operations go beyond the rights conferred upon the quarry as a legal non-conforming use.

The decision of the California Supreme Court in the case of Hansen Brothers Enterprises, Inc. vs. Board of Supervisors of Nevada County, et al. (1996) (12 Cal. 4th 533), sets forth the guiding principles applicable to the operation of a quarry as a legal non-conforming use. That case involved an aggregate production business that included rock quarrying, recovery of sand and gravel and the production of aggregate from these materials. The use, although not permitted under the current zoning, had been established long before the adoption of that zoning. The owner contended that, as a legal non-conforming use, the quarrying of rock could be extended throughout the owner's entire property, including areas not being quarried prior to adoption of the current zoning.

In the Hansen case, the Supreme Court acknowledged the general rule that a legal non-conforming use may not be expanded or intensified after it acquires its legal non-conforming status. However, the Court noted that mining and quarrying activities, as non-conforming uses, were unusual in that limiting them to the area already under excavation would be tantamount to requiring immediate cessation of the use. Therefore, the Court held that the "diminishing asset" doctrine must be applied to mining and quarrying operations conducted as legal non-conforming uses. Under this doctrine, the owners were entitled to extend their operations to those areas of the property "into which the owners had... objectively manifested an intent to mine" at the time the use became legal non-conforming.

Application of the diminishing asset doctrine to SRRQ requires a determination of the "objectively manifested intent" of the owner at the time this use became legal non-conforming in 1982. This inquiry must proceed in at least two directions. Over what area had the owner objectively manifested its intent to operate? And, to what depth had the owner objectively manifested its intent to operate?

On April 10, 1972, the County Planning Commission approved a Use Permit for operation of SRRQ by Basalt Rock Company, Inc. A map upon which the applicant indicated the "ultimate affected limits" of the quarry operation accompanied the applications for the Use Permit and the Staff Report to the Planning Commission. The "ultimate affected limits" shown on this map are the same as the boundaries of the entire assessor parcels upon which SRRQ is currently situated. This indicates that in 1972, the objectively manifested intent of the owner was to ultimately expand the quarry operations to include this entire parcel. The Grand Jury found no subsequent documents or events indicating that the owner thereafter manifested intent to reduce the area to be affected by these operations. Therefore, under the diminishing asset doctrine, the owner of SRRQ has the legal right to expand the operations over this entire area.

The County Counsel has expressed the opinion that in spite of the non-conforming status, the quarry could seek to amend the current Reclamation Plan to mine any part of the property and the county would have little discretion to not approve it. It must be remembered, however, that the quarry "operations" include activities in addition to the actual quarrying of rock. For example, it includes areas set aside for the crushing of rock, storing materials and the operation of an asphalt batching plant. The designation of the "ultimate affected limits" in the 1972 Use Permit does not necessarily permit the expansion of the actual quarrying of rock to those limits. Even under the diminishing asset doctrine, the quarrying of rock would be limited to that area to which the owner had objectively manifested an intent to expand that specific activity at the time the entire operation became legal non-conforming. Fortunately, documents exist which aid in determining that intent.

On December 6, 1982, three days prior to the effective date of the rezoning, which rendered SRRQ non-conforming, the County Planning Commission approved the Amended Reclamation Plan for SRRQ under the California Surface Mining and Reclamation Act of 1975 (SMARA). SMARA required the applicant to include in the reclamation plan submitted for approval "the size and legal description of the lands that will be affected by such operation" and "a detailed description of the geology of the area in which surface mining is to be conducted." In the context of SMARA, these terms appear to refer to the actual land area the owner intends to quarry or mine.

The county files indicate that the 1982 Amended Reclamation Plan submitted by Basalt Rock Company and approved by the county included a map designating this area. That map would establish the area to which the owner had objectively manifested intent to expand the quarrying of rock at the time the use became nonconforming. A map located in the county files and submitted by SRRQ in September 2000 clearly establishes that some of the area already quarried extends beyond those mapped boundaries; in other areas there are still some unmined sections within the boundary.

To the extent that the current quarrying of rock extends beyond that area, it would constitute an illegal expansion of the non-conforming use.

The Hansen decision dealt with the question of the surface area over which the owner of a legal non-conforming quarry had a vested right to expand the quarrying of rock. It did not deal with the issue of the depth to which such an operation might be extended. However, the logic supporting the diminishing asset doctrine would appear to make it equally applicable to this latter issue.

Documents reviewed indicate that Basalt's original 1976 Reclamation Plan application designated the "final contours" to which rock would be quarried and that its 1982 application somewhat modified these contours, with the latter application providing for a maximum depth of 200 feet. This was in accord with the requirement of SMARA that a reclamation plan include "The maximum anticipated depth of the surface mining operation." Once again, the contours shown in these applications are strong evidence of the then-owner's objectively manifested intent with respect to the subsurface area to be quarried. To the extent the present quarrying of rock extends beyond that subsurface area, such as excavation to 253 ft. below sea level where a maximum depth of 200 ft. was shown on the application, it would constitute an illegal expansion of a non-conforming use.

The diminishing asset doctrine, established by the Supreme Court in the Hansen case, is a modification of the usual legal principle that prevents the expansion of a legal non-conforming use into new areas. The Hansen decision, however, does not purport to otherwise change the limitations imposed by law on legal non-conforming uses. That decision left intact the requirement that a legal nonconforming use not be otherwise unreasonably expanded or intensified. In fact, the Court affirmed that doctrine when it said: "Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate does not compel a conclusion that this right extends to quarrying the amount of rock proposed in its SMARA proposal. Given the objective of zoning to eliminate non-conforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement." The Court left undecided the question whether there had been an illegal intensification of the Hansen Brothers' use after it became non-conforming. However, the case does provide some guidance in determining whether there has been an illegal intensification in a legal non-conforming quarry.

The decision in the Hansen Bros. case cited, with apparent approval, several other cases dealing with this issue. For example, it quoted from a New Hampshire case as follows: "In conclusion, we hold that a party who desires to continue excavation operations must meet a three pronged test: First, he must prove that excavation activities were actively being pursued when the law became effective; second, he must

prove that the area that he desires to excavate was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent; and third, he must prove that the continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood." Although stating that an increase in business volume alone is not an expansion of a non-conforming use, the Supreme Court does suggest that the impact of such increased business volume on surrounding areas is a proper consideration in determining whether there has been an illegal expansion or intensification

In addition to probable illegal expansion of the surface and/or subsurface areas, which are the subject of actual rock quarrying, there is evidence suggesting that the quarry operations have been illegally expanded or intensified in other ways. There have been allegations that truck traffic, dust, noise; hours of operation and blasting vibrations have substantially increased. There is evidence suggesting that the volume of rock quarried may have increased significantly since 1982. Since the determination of whether there has been an illegal expansion or intensification in these areas is very fact-intensive, the answer to this question may have to await further clarification of these allegations.

Legality of certain structures on the SRRQ property

As described elsewhere in this report, a number of buildings and other structures on the SRRQ property were constructed, expanded or essentially rebuilt without benefit of any of the required county permits. It almost goes without saying that these structures are presently illegal and the county could require their abatement. Nevertheless, in the fall of 1995 SRRQ applied, then withdrew and recently reapplied to the county to legalize the quarry office structures.

Dwelling structures are permitted uses under the current zoning (BFC:RMPC), provided that they are part of a county approved Master Plan for the property. Theoretically, therefore, those improvements and alterations to the existing residential structures, made without benefit of permit, could be legalized if they are included as part of an approved Master Plan for ultimate development of the property. As a practical matter, it would seem premature for the county to approve a Master Plan for the ultimate development of the property prior to cessation of the quarry operation.

A more complex problem is presented by the non-residential structures that have been constructed on the property without county permits. It may be beyond the county's authority under the present zoning restrictions to legalize these structures, not withstanding SRRQ's applications to do so.

According to the Staff Report for the December 9, 1996, Planning Commission hearing, the non-residential structures are used for offices housing the "company's headquarters and operational support space for accounting, engineering, data processing, audit, and

rock transportation and placement support services that are associated with the quarry operation." At that time, these offices were to house "up to 45 employees." As described, these buildings are being used as an integral part of the quarry operations. There are court decisions holding that offices, which are ancillary to a more paramount use conducted on the same property, partake of the character of the paramount use. Under this theory, the new offices serving SRRQ would be deemed an industrial use, which is not permitted under the current zoning. They then would appear to constitute an illegal intensification of the non-conforming quarry operations.

The county is currently reviewing a new application to amend SRRQ's Use Permit to legalize the use of these office buildings. The county's authority to approve such an amendment for quarry related use is, at best, questionable. Nothing in the county's zoning regulations appears to authorize the issuance of a use permit to allow intensification of a non-conforming use. Under this same theory, it would also appear that the county would have no authority to legalize the use of these buildings for quarry related use by issuance of a variance. Further, any such variance would appear to be a "use variance," which is not permitted under applicable California state law.

If, however, the various office structures constructed on the property without required building permits were *not* used as part of the non-conforming quarry operation, but as general office space, it would appear that these structures could also be legalized under the current zoning, which allows office use by Use Permit, but only if also approved as part of a Master Plan for ultimate development of the full property. Numerous descriptions by both SRRQ and county staff, however, seem to indicate a strong connection between the office buildings and the non-conforming quarry operation.

5. Has the county been giving the quarry preferential treatment and, if so, why?

The Grand Jury was particularly troubled by the perception (both by members of the Grand Jury and a growing number of members of the public) that SRRQ has been the recipient of particularly lenient treatment by the county--treatment that would not have been given other property owners under similar circumstances. This was particularly apparent at the May 22, 2001, Board of Supervisors' hearing on an appeal of the quarry erosion control plan at which time testimony indicated "bafflement" at the lack of appreciable county action against the numerous violations at the quarry. While we were unable to conclusively determine why this seems to be the case, in our opinion, contributing factors may include the following:

- The quarry hired a former long-term County Supervisor to provide legal services on SRRQ permit issues and negotiations involving the County of Marin, the City of San Rafael, and neighboring homeowners. As this former County Supervisor explained his role in public Bankruptcy Court documents: "Homeowners associations have lodged complaints with the county to close down the operation

of the quarry alleging that the quarry operation constitutes a nuisance. The county was contemplating actions to revoke the quarry's permit. To date, we have been successful in convincing the county not to close down the quarry, but to instead consider granting revised permits. We have also been successful in blocking the homeowners associations from succeeding in closing down or limiting the operation of the quarry.”

- The quarry has hired other former county staff members to represent it in dealings with the county. They include the former head of the County Land Development section of the Department of Public Works, who was hired to obtain a septic permit (which was issued in error) for the illegal office buildings. They also include a former county employee who is now working for SRRQ in a public relations capacity. This former employee had been an administrative aide to a current County Supervisor.
- SRRQ is a major supplier of materials for public works projects at the same time the County Public Works Department is the county department with primary responsibility for monitoring quarry activities.
- SRRQ produces significant income for the county. During the first quarter of 2000, it was ranked as the fourth largest sales tax generating use within the unincorporated area of the county. During the second quarter of 2000, it was the second highest.
- Possible intimidation created by the January 29, 2001, draft lawsuit delivered to the county, which threatened that unless a Notice of Violation/Stop Work Order was lifted by the end of the next day, SRRQ intended to file a lawsuit seeking \$5 million from the county, \$1 million from the Planning Commission, \$1 million from the County Supervisor representing the First District, \$500,000 from the County Department of Public Works staff member who issued the Stop Work Order, and “an amount exceeding \$150 million” (with interest) for inverse condemnation. The document contended that “...the County began a process of intimidation, investigating SRRQ through County’s Grand Jury.” In addition, on December 27, 2000; February 9, 2001; and February 15, 2001; an attorney for SRRQ wrote letters to the District Attorney regarding this Grand Jury investigation. Statements in these letters included: “...should the Civil Grand Jury publish any report or reports which are not related to the administration of local government and which are detrimental to the interests of the Quarry, we will bring an action seeking appropriate damages from all entities and individuals involved.” We do not agree with this because we were not investigating the quarry, but rather the administration of local government. [Note: While county staff lifted the Notice of Violation/Stop Work Order, as requested, the Planning Commission

subsequently found that SRRQ was operating without an approved erosion control plan or an adequate Reclamation Plan.]

- The Grand Jury believes county staff lacks the resources and expertise (legal, mining and environmental) to appropriately deal with issues as specialized and complex as those associated with SRRQ. There are no similar situations regarding large-scale, non-conforming industrial uses, or any other large quarry operations in Marin County.

FINDINGS

1. The County Assessor has failed to diligently pursue information it received from the California Board of Equalization regarding a potential change of property ownership of SRRQ associated with the May 22, 1998, change of ownership of the Dutra Group, which would trigger a reassessment of a major commercial property that is currently assessed based upon the adjusted 1986 purchase price.
2. The County Assessor has failed to take any action to recover all legally permitted escaped property taxes associated with the 1995 illegal construction of over 15,000 square feet of office space owned by or leased to and utilized as the administrative offices for the Dutra Group. These buildings have been occupied continuously since that time, but have never been assessed. Because of the four-year statute of limitations, some of this escaped tax revenue may already be beyond recovery.
3. The County Assessor has failed to take action to recover the legally permitted escaped property taxes associated with extensive illegal remodeling and new construction activity which has occurred on the residential portion of the SRRQ property owned by the Dutra Group and leased to and occupied by the former owner of the quarry. These buildings have been occupied continuously for years, but have never been assessed. Because of the four-year statute of limitations, some of this escaped tax revenue is probably already beyond recovery.
4. Many people interviewed indicated that the county's tepid response in dealing with this matter is because, based upon advice received from the County Counsel, the County Board of Supervisors have taken the position that the California Supreme Court decision in the "Hansen Bros. Case" severely limits the county's ability to regulate the quarry use, in spite of the facts that (1) it became a non-conforming use with by the rezoning of the quarry property by the Board of Supervisors in 1982 and (2) there has been a long history of identified permit and code violations.

5. In spite of the January 30, 2001, decision by the Board of Supervisors to direct County Counsel to file a "public nuisance abatement" lawsuit against SRRQ, California law does not give it authority to do so. Only the District Attorney, California Attorney General, or appropriate City Attorney can file such a suit in the name of the people. Because of the assistance that the District Attorney provided the Grand Jury in this investigation of various county departments (including the County Counsel's office), a conflict of interest exists that makes it inappropriate for the District Attorney to deputize a member of the County Counsel's office to pursue a county "public nuisance" abatement" action against SRRQ. This leaves it to the California Attorney General or the District Attorney to determine whether to pursue this action.
6. The Department of Public Works allowed SRRQ to initiate on November 27, 2000, and to then continue throughout the winter, significant new grading operations, as part of the quarry's "Over Burden Transfer/Stripping" project, without an approved erosion control plan.
7. The Planning, Building Inspection and Code Enforcement Divisions of the Community Development Agency have allowed six illegally constructed buildings with over 15,000 square ft. of office space (used as headquarters for the Dutra Group) to be occupied for nearly six years (since their discovery in September 1995) without any building, plumbing, or electrical permits, and without a grading permit for the extensive grading and vegetation removal work associated with the construction of the office complex and parking areas on a hillside adjacent to the bay shoreline. The fact that the offices still exist on the property and have been allowed to be continuously occupied by Dutra reflects a lack of serious enforcement by the county of the county's zoning laws.
8. The Environmental Health Services Division of the Community Development Agency has allowed over 15,000 square ft. of office space used as headquarters for the Dutra Group Corporation to be occupied for nearly six years (since their discovery in September 1995) without an approved septic system for the office complex or any investigation or inspections of how the bayside septic system, which were originally approved and constructed for two residential mobile homes and to which the office complex has been illegally connected, has been functioning.
9. The quarry operation became a legal non-conforming use on December 9, 1982, when the Board of Supervisors rezoned the property upon which it is located. At the time the Dutra Group purchased the SRRQ property in 1986, it knew (or should have known) that the quarry was a non-conforming use. Yet, in a March 22, 1988, letter from Dutra to the County Planning Department, a Dutra manager

confessed "shock" at having recently learned of the property's RMPC zoning and expressed a desire to "immediately take the necessary actions to request a zoning change to a mining use." Dutra never initiated any action to rezone the property, which would have required public hearings and would have been subject to environmental review. Apparently aware that the RMPC zoning meant that it could not legally expand its operations, Dutra proceeded to expand the quarry operation anyway, without requesting a rezoning of the property or any of the required county permits. And, various levels of county government have allowed the quarry to continue the expanded and illegal operations.

10. On March 27, 2000, following a lengthy public hearing, the County Planning Commission unanimously adopted a Resolution "directing staff to notify the San Rafael Rock Quarry that quarrying activities do not comply with the Reclamation Plan and to issue an order requiring compliance with the Reclamation Plan. The Commission found that the areas of non-compliance include "exceedance to the approved depth of excavation, insufficient financial assurances, and increases to the level of truck traffic." The Planning Commission also found that "the 1982 Reclamation Plan is inadequate with respect to the depth of excavation, the financial assurance level, and the level of truck activity. Changes to the quarry operations have exceeded the scope of work that was contemplated, identified, and approved in the Reclamation Plan for the property to the extent that the approved Reclamation Plan is no longer adequate to address reclamation of the property in compliance with SMARA and the reclamation requirements of Marin County Code Chapter 23.06." However, now about 14 months later, the county still hasn't done anything to limit the quarry activity while it awaits a "complete" application from SRRQ to legally expand the use--an option which the Grand Jury does not believe exists under the quarry's current non-conforming use status. Since, and in spite of, the Planning Commission action, the county has allowed up to 1.5 million additional tons of rock to be mined and processed at, and exported from the quarry.

RECOMMENDATIONS

1. The County Assessor should take swift action to reassess the SRRQ property and seek to recover the escaped property tax assessments associated with the May 22, 1998, change of ownership of the SRRQ property, which resulted from the new ownership of the Dutra Group.
2. The County Assessor should take immediate action to recover all legally permitted escaped property tax assessments associated with the 1995 illegal construction of over 15,000 square ft. of office space owned by, or leased to, and occupied as the administrative offices for the Dutra Group.

3. The County Assessor should take immediate action to recover all legally permitted escaped property tax assessments associated with the extensive unpermitted remodeling and new construction, which has occurred on the residential portion of the SRRQ property owned by the Dutra Group and leased to the former owner of the quarry.
4. In the future, the County Assessor should be more diligent in pursuing information it receives regarding a potential change of property ownership that would trigger a reassessment of a property, particularly where a major commercial property such as SRRQ is involved.
5. County Counsel and the Board of Supervisors should reexamine their position regarding the impact of the California Supreme Court decision in the "Hansen Bros. Case" and how this position limits the ability of the county to appropriately regulate the quarry use.
6. Because of the conflict of interest, which prevents County Counsel staff from being deputized by the District Attorney to pursue a county "public nuisance abatement" action against SRRQ, the litigation should be initiated and aggressively pursued directly by the District Attorney's office to protect the rights and interests of Marin County residents, if the California Attorney General fails to promptly do so because of other priorities.
7. The County Community Development Agency and the County Department of Public Works should explain to the public and the Grand Jury their decision to allow SRRQ to continue operations "as usual" for approximately 14 months following adoption of the March 27, 2000, resolution by the County Planning Commission that found that SRRQ, in four significant areas, has been operating in violation of the 1982 Reclamation Plan.
8. The County Department of Public Works should explain to the public and the Grand Jury its decision to allow SRRQ to initiate on November 27, 2000, and to then continue throughout the winter, significant new grading operations as part of SRRQ's "Over Burden Transfer/Stripping" project without approved grading or erosion control plans.
9. The County Community Development Agency should explain to the public and the Grand Jury why it has allowed six illegally constructed office buildings with a total of over 15,000 square ft. of space to be occupied for nearly six years (since their discovery by Agency staff in September 1995) without any building, plumbing, or electrical permits, and without a grading permit for the extensive

grading and vegetation removal work associated with the construction of the office complex and parking areas on a hillside adjacent to the bay shoreline.

10. The County Community Development Agency should explain to the public and the Grand Jury why it has allowed over 15,000 square ft. of office space used as headquarters for the Dutra Group to be occupied for nearly six years (since they were first discovered by the county in September 1995) without an approved septic system for the office complex or any investigation or inspections of how the bayside septic disposal system, which was originally approved and constructed for two residential mobile homes and to which the office complex has been illegally connected, has been functioning.

REQUEST FOR RESPONSES

Pursuant to CA Penal Code Section 933.05, the Grand Jury requests responses from:

Marin County Board of Supervisors: to Findings 1-10 and Recommendations 1-10.
Marin County Assessor: to Findings 1-3 and Recommendations 1-4.
Marin County District Attorney: to Finding 5 and Recommendation 6.

Although not legally required, the Grand Jury also requests responses from:

Marin County Counsel: to Findings 4 & 5 and Recommendations 5 & 6.
Marin County Community Development Agency Director: to Findings 7-10 and Recommendations 7, 9 & 10.
Marin County Department of Public Works Director: to Findings 6 & 10 and Recommendations 7 & 8.