

FILED

APR 19 2004

JOHN P. MONTGOMERY,
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
BY: R. SMITH, DEPUTY

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9 POINT SAN PEDRO ROAD COALITION

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF MARIN

12 POINT SAN PEDRO ROAD COALITION, a
13 California Corporation, JONATHAN
14 FRIEMAN, JAN BRICE, and MARIO
15 DIPALMA, Individually, and on Behalf of All
16 Those Similarly Situated,

17 Plaintiffs,

18 v.

19 SAN RAFAEL ROCK QUARRY, INC., and
20 DOES 1 - 500,

21 Defendants.

22 COUNTY OF MARIN, a Political Subdivision
23 of the State of California,

24 Plaintiffs,

25 vs.

26 SAN RAFAEL ROCK QUARRY, INC., and
DOES 1 through 20, inclusive,

Defendants.

Case No. CV 014584
(Consolidated with No. CV 014610, No
CV014602 and No. CV014618)

~~[Proposed]~~ ORDER

Hearing Date: April 6, 2004
Time: 9:00 a.m.
Dept. H
Judge: Hon. John A. Sutro, Jr.

Case No. CV 014602

1 PEOPLE OF THE STATE OF CALIFORNIA,

Case No. CV 014610

2 Plaintiff,

3 v.

4 SAN RAFAEL ROCK QUARRY, INC., et al.,

5 Defendants.

6 AMANDA METCALF,

Case No. CV 014618

7 Plaintiff,

8 v.

9 SAN RAFAEL ROCK QUARRY, INC., et al.,

10 Defendants.

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13 A trial in this bifurcated matter was held on July 17, 18, 21, 24 and 25, 2003. John
14 Edgcomb and Mary Wilke, of the Law Office of John D. Edgcomb, appeared for plaintiff Point
15 San Pedro Road Coalition; Amanda Metcalf, of the Law Offices of Amanda Metcalf, appeared
16 for plaintiff Amanda Metcalf; Jim Flageollet appeared for plaintiff County of Marin ("County");
17 Harrison Pollak and Raissa Lerner appeared for plaintiff People of the State of California; and
18 John Taylor and Derek Cole, of Taylor & Wiley, appeared on behalf of defendant San Rafael
19 Rock Quarry ("SRRQ").
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21 The Court announced its tentative ruling from the bench on January 20, 2004. With the
22 exception of Raissa Lerner and Derek Cole, who were not present, and James Wiley, who
23 appeared on behalf of the defendant, counsel was the same.
24

25 The Court has reviewed the pre-trial briefs filed by the parties, has ruled on the parties'
26 pre-trial *in limine* motions, has heard the testimony offered and the exhibits entered into .

1 evidence, and has reviewed the extensive post-trial briefs filed by the parties. As set forth in
2 more detail in the Statement of Decision issued herewith, this Court finds:

3 1. Defendant SRRQ's industrial use of its property located at 1000 Point San Pedro
4 Road, San Rafael, California, APNs 184-010-09, 15, 16, and 52 (the "quarry property"), became
5 non-conforming when the quarry property was re-zoned by the County on November 9, 1982.
6 To determine the current scope of defendant SRRQ's right to continue its industrial uses on the
7 quarry property, this Court applies the California Supreme Court's decision in *Hansen Brothers*
8 *Enter., Inc. v. Board of Supervisors*, 12 Cal. 4th 533, 556 (1996), including the three-part test set
9 forth in *Town of Wolfeboro v. Smith*, 556 A.2d 755, 759 (N.H. 1989), which was cited in *Hansen*
10 *Brothers, supra*. Pursuant to these cases, the Court finds that the evidence shows that at the time
11 the quarry property became non-conforming, defendant SRRQ's predecessor in interest, Basalt,
12 had manifested an intent to quarry the Main Pit to the extent doing so is profitable (i.e., without
13 respect to duration or the depth of its Main Pit), but that Basalt manifested an intent to mine
14 South Hill only to the limited extent reflected in the 1982 Amended Reclamation Plan and to not
15 mine other areas that Basalt agreed would be preserved in their natural state. Moreover, under
16 the third prong of the three-part test set forth in *Town of Wolfeboro v. Smith*, 556 A.2d 755, 759
17 (N.H. 1989), the Court finds that defendant SRRQ's activities now have a "substantially different
18 and adverse impact on the neighborhood" than they did in 1982. The Court further finds that
19 certain activities engaged in by defendant SRRQ on the quarry property between 1986 and now
20 exceed the scope of Basalt's use of the quarry property in 1982 and should be enjoined. Because
21 of these findings, the Court finds that defendant SRRQ has exceeded the permissible scope of its
22 nonconforming use in violation of Marin County Code § 22.78.010.
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1 2. The Court further finds that defendant SRRQ has undertaken a substantial
2 deviation from the 1982 Reclamation Plan, in violation of Public Resources Code § 2777,
3 Chapter 23.06 of the Marin County Code, and the Peacock Gap Neighborhood Plan.

4 Accordingly, IT IS ORDERED:

5 1. The above-referenced violations constitute an “unlawful” act under the Unfair
6 Competition Law, Business and Professions Code § 17200. The Court therefore grants relief
7 under the following causes of action (as numbered in the complaints):
8

- 9 a. People of the State of California: 2
10 b. County of Marin: 11
11 c. Point San Pedro Road Coalition: 1
12 d. Amanda Metcalf: 1.

13 2. Defendant SRRQ is enjoined from conducting any further mining operations at the
14 quarry property, provided that the operative effect of the foregoing injunction shall be suspended
15 for a period of six months *from the date hereof JAS* or such further time as the Court may approve, upon motion and good
16 cause shown by the party or parties requesting such, to give defendant SRRQ time to seek to
17 remedy its aforesaid violations of law and for the County and other interested agencies to act
18 upon any amended reclamation plan that defendant SRRQ may submit.

19 3. Defendant SRRQ is enjoined from conducting any further quarrying outside of the
20 southeast and southwest quadrants of the quarry property as labeled in Fig. 1 to the 1982
21 Amended Reclamation Plan (attached hereto as Exhibit 1).
22

23 4. Defendant SRRQ is enjoined from quarrying at South Hill (the southwest quadrant)
24 beyond what is described in the 1982 Amended Reclamation Plan.
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1 5. Defendant SRRQ is enjoined from mining, grading, and depositing materials,
2 overburden, tailings, dredged material or other waste materials in the five (5) areas labeled
3 "PRESERVE IN NATURAL STATE" in Figure 4 of the 1982 Amended Reclamation Plan for
4 the Property (attached hereto as Exhibit 2).

5 6. Defendant SRRQ is enjoined from depositing any overburden, tailings, dredged
6 material or other waste materials in the Brick Resource Area (the northeast quadrant) depicted in
7 Figure 1 of the 1982 Amended Reclamation Plan (attached hereto as Exhibit 1).

8 7. Defendant SRRQ is enjoined from permitting more than 250 Truck Trips in or out of
9 the quarry property per day, and any Truck Trip by trucks with a capacity greater than
10 approximately 25 tons is prohibited.¹

11 8. Defendant SRRQ is enjoined from permitting Truck Trips into or out of the quarry
12 property before 7:00 a.m. or after 5:00 p.m., Monday through Friday, and all Truck Trips on
13 Saturday, Sunday or federal or state holidays, are prohibited.

14 9. Defendant SRRQ is enjoined from importing onto the quarry property the following
15 materials: i) gravel; ii) used asphaltic concrete or concrete for recycling; and iii) dredged non-
16 sand materials.

17 10. Unless and until a further amended reclamation plan is submitted to and approved by
18 the lead agency reflecting proposed, expanded quarrying, defendant SRRQ:

19 a. is enjoined from quarrying outside the final footprint, contours and -200' MSL
20 depth reflected in the 1982 Amended Reclamation Plan, thereby avoiding further illegal
21 substantial deviations from the approved 1982 Amended Reclamation Plan;
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25 _____
26 ¹ A "Truck Trip" is each trip by a truck with a capacity of approximately 25 tons, empty or loaded, into or out of the quarry property (i .e. a "round trip" is two Truck Trips).

1 b. shall provide a topographical map and an accompanying report to the Marin
2 County Department of Public Works within 60 days of this Order and by January 31 of each year
3 thereafter, consistent with the conditional approval of defendant's 1982 Amended Reclamation
4 Plan, and such maps and reports shall be made available by the County for public inspection.

5 11. Enforcement: To insure timely and effective monitoring and enforcement of the
6 aforementioned orders, the Court further orders that:

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8 a. within 60 days of this Order, defendant SRRQ shall pay for the installation and
9 maintenance of computerized truck counting system to be embedded or installed in all
10 entrance/exit roads to and from the quarry property and shall require all trucks counting as Truck
11 Trips entering and leaving the Property to pass over those systems and provide the County with
12 exclusive access to the system to download the data, which the County shall download and post
13 on the County's website no less frequently than once per month (SRRQ to pay for any required
14 upgrade of the County's website for this purpose). If it is determined that such a system will not
15 be feasible—because it might, for instance, not be able to distinguish ordinary parcel delivery
16 trucks and other large vehicles from trucks used to deliver or retrieve raw materials to and
17 products from the Quarry property—the parties shall agree on another suitable counting
18 mechanism or other crediting procedure that meets the intent of this condition.

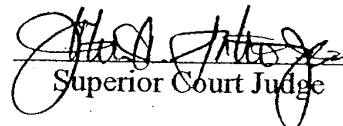
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20 11. Penalties. Defendant SRRQ is ordered to pay a penalty in the amount of \$2,500 for
21 its violation of Business and Professions Code § 17200 et seq., as alleged in the actions brought
22 by the People of the State of California and by Marin County.

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24 12. Further Administrative Proceedings and Retention of Jurisdiction. Additional
25 matters, including those discussed in the Statement of Decision accompanying this Order, should
26 be reviewed and addressed forthwith by the County through the proper administrative means. It

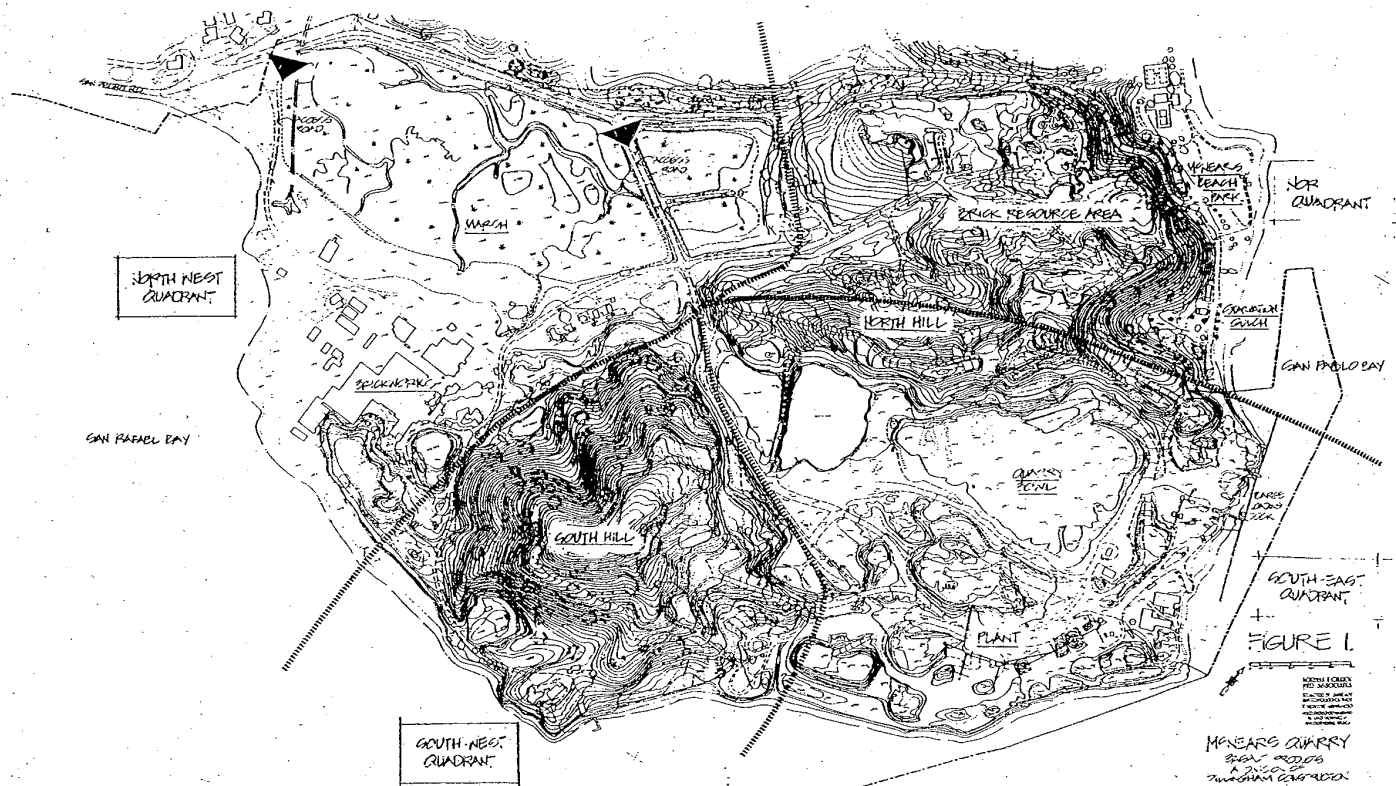
1 may be appropriate for the Court to review the matter of whether the quarry should continue to
2 be operated and, if so, how, after these issues have been addressed more thoroughly through the
3 administrative process. This Court retains jurisdiction of this matter for the purpose of resolving
4 issues, including those addressed but left unresolved in the Statement of Decision issued
5 herewith, unless and until this Court orders otherwise.

6 This order is not a final judgment for purposes of appeal. A case management conference
7 is set for Aug. 3, 2004 JTB
8 ~~April 6, 2004~~ to discuss additional issues.

9
10 Dated: 4.19.04

11 
12 Superior Court Judge

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EXISTING CONDITIONS, 1982

EXHIBIT 1

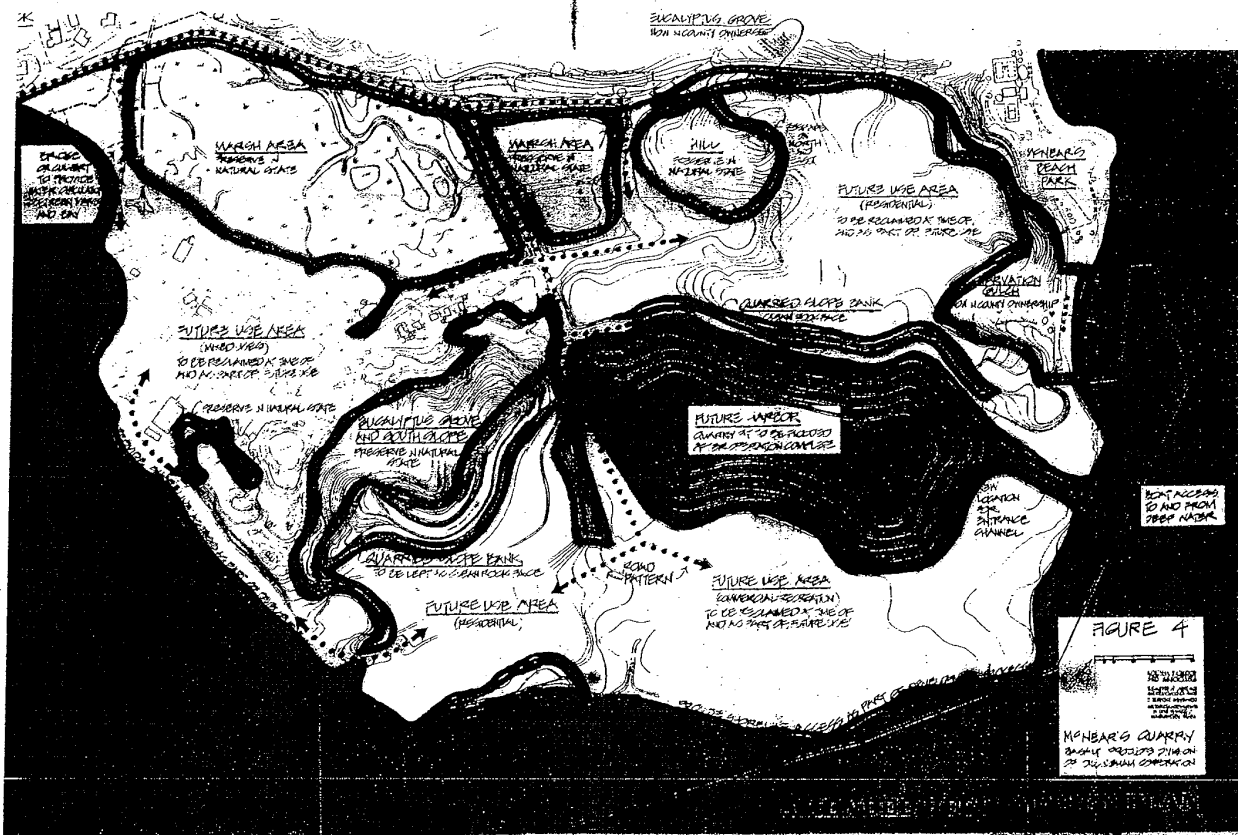


EXHIBIT 2