

## EXHIBIT 2

**Marin County Surface Mining and Quarrying Permit  
Permit # Q-72-03, Amendment #1  
Conditions of Approval  
Including Amended Reclamation Plan  
San Rafael Rock Quarry  
(CA Mine #91-21-0008)**

This Permit is issued pursuant to Marin County Code Section 23.06. This Permit is intended to regulate the control of surface mining and quarrying operations and to insure that all lands affected by such operations shall be reclaimed according to the State Surface Mining and Reclamation Act (SMARA) and local ordinances.

### **Project Location**

San Rafael Rock Quarry  
1000 Point San Pedro Road  
San Rafael, CA

Assessor Parcel Numbers (dry land in **bold**):  
184-010-**09, -15, -16** -18, -19, -20, -44, -45, -47, -51, and **-52**  
Dry land covers approximately 272 acres.

General Plan Designations: City-Center Corridor; Bayfront Corridor, Mineral Resource Area

Zoning: RMPC (Residential/Commercial Multiple Planned)

### **Definitions**

“Permittee” means any person, partnership, corporation or public agency engaged in surface mining or quarrying and shall be defined as both the owner of the property, and the operator of the facility. All references herein to “Permittee” shall be defined to include the “permittee, or successor(s) in interest”.

“Operation” means all of the premises, facilities, roads and equipment used in the process of producing the mining or quarrying products, from the designed strip mine or quarry area or removing the overburden for the purpose of determining the location, quality or quantity of a natural deposit.

“Overburden” means all the earth and other materials, consolidated or unconsolidated, which lie above a natural deposit of mineral or useful rock, and shall also mean such earth and other material after removal from their natural state in the process of surface mining.

“(Northeast, Northwest, Southeast, Southwest) Quadrants” means the geographic division of the Quarry property as labeled and shown in Figure 1 of the 1982 Amended Reclamation Plan.

“Reclamation” means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses and creates no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

### **Permit Format**

Where Permit conditions of approval are derived from an Environmental Impact Report mitigation measure, the particular mitigation measure or measures are identified by parentheses and italics.

### **Quarry Plan Submittals**

Except as amended by this Permit and these Conditions of Approval the Amended Reclamation Plan is comprised of:

- San Rafael Rock Quarry Amended Reclamation Plan 2004 (Volume 1) dated October 12, 2004 (three ring binder)
- San Rafael Rock Quarry Amended Reclamation Plan 2004 (Volume 2 - Appendices) dated October 12, 2004 (three ring binder)
- San Rafael Rock Quarry Amended Reclamation Plan 2004 Implementation Plan sheets containing sheets E1 thru E6, G1 thru G4, RV1 thru RV4, and CS1 thru CS5 (Size D sheets), dated ‘Revised 2004’,
- Supplemental Amended Reclamation Plan information letter dated December 14, 2004 from CSW/Stuber-Stroeh Engineering Group, Inc. including ledger size drawings revising Sheets E2, E3, E5, and RV1 thru RV4
- Supplemental Geotechnical Data Report by ENGEO, Inc. dated April 11, 2005
- Supplemental Information for Section 2.B.5.i – Maintenance, San Rafael Rock Quarry, Amended Reclamation Plan 2004 (October 12, 2004), Revised on March 24, 2005

### **General Quarry Operations**

1. This Permit is granted for the surface mining and quarrying operations, and reclamation activities, consisting of the following:

- a. Mining and excavation, including removal of overburden, in accordance with the approved reclamation plan.

- b. On site processing of aggregate materials obtained from on site including, rock crushing, sorting, screening, conveying and storage/stockpiling.
  - c. Barge loading operations for materials obtained on site including conveyor and direct truck loading of barges, and barge unloading of dredged San Francisco Bay sand from barges for asphalt production.
  - d. The operation of an asphalt concrete batch plant using on-site aggregate materials and production of asphaltic concrete.
  - e. Access to and from the site by truck, and the loading of commercial and inter-facility trucks on site with rock, asphalt and processed aggregate materials quarried from the site.
  - f. Maintenance activities including repair, replacement and failure preventative measures on facilities, fixed plant, vehicles, vessels, and stationary and mobile equipment operating at the site.
  - g. Structures, facilities, equipment and other accessory uses and appurtenances including, but not limited to rock crushers, conveyor belts, asphalt batch plant, barging facilities, water supply ponds, water recycling ponds, scale house, truck wash racks, above ground fuel tanks, air pollution control equipment, administration offices, maintenance buildings and sheds as shown in the 2006 existing conditions aerial topography and map dated December 19, 2006, on record at the Marin County Department of Public Works. This is the last County required aerial map submittal prior to publishing the Notice of Preparation for the amended quarry permit EIR.
  - h. Reclamation, revegetation, reclamation monitoring, and biological studies at the quarry site per the approved reclamation plan and this Permit.
2. Mining shall not occur in the Northwest Quadrant. Mining shall not occur in the Northeast Quadrant except to the extent that rock is encountered when establishing the Quarry Bowl bench at the edge of the future flooded San Francisco Bay inlet. In no event shall mining occur beyond 100 feet north of the boundary line between the Northeast Quadrant and the Southeast Quadrant. Mining shall not occur on the non-land (on the bay side of the San Francisco Bay shoreline) portions of the Quarry lands. Quarrying on South Hill shall not be beyond what was described in the 1982 Amended Reclamation Plan.
3. The Permittee shall not import onto the Quarry property gravel, used asphalt concrete or concrete for recycling, or dredged non-sand material.
4. Pond fines, if produced in the future, shall not be placed in the Northeast or Northwest Quadrants.

5. Maximum annual production shall be limited to the fluctuating 1982 baseline level of production, i.e., a 5-year rolling average of no more than 1,414,667 tons per calendar year, and a maximum level of production of 1,697,600 tons in any one calendar year. (*Mitigation Measures P4.2-6c, P4.2-7d, C4.2-9b & P4.6-6b*)

a. Applicant shall keep a weekly operations production log, to the satisfaction of the Director of Public Works, which shall include the amount of product produced from all operations, the amount of product kept on-site, the amount of product removed from the Quarry site by barge and the amount of product removed from the Quarry site by truck. The log shall remain at the project site and be made available within 24 hours of a written request for such log from the Director of Public Works.

6. No equipment changes or other modifications to the plant, including but not limited to all crushers, screens and conveyors, shall be effected so as to increase plant capacity above existing conditions or limits set forth in BAAQMD permits at time of Permit issuance without Permittee obtaining County approval first. The Permittee shall not undertake operational or construction related activity which is not explicitly described in these conditions or applicable Exhibits without first contacting the Public Works Director to determine if said activity requires a modification or amendment to the Permit. A written description and/or map may be required by the Public Works Director prior to rendering a decision.

7. All Quarry operations and reclamation activity shall comply with the applicable Combined EIR mitigation measures.

8. This permit shall be kept on the site and must be shown to any representative of the Department of Public Works or any law enforcement officer on request.

#### **General Reclamation Plan**

9. As a condition to this Permit, and as further described below regarding a Conforming Amended Reclamation Plan, Permittee shall revise the 2004 Amended Reclamation Plan submittal to incorporate the following:

a. Add the same lands shown in the 1982 Amended Reclamation Plan, Figure 4, in the Northwest Quadrant labeled as 'preserve in natural state' (southerly and adjacent to kiln) as lands to be preserved in the 2004 Amended Reclamation Plan.

b. The toe of the 'surcharge berm' shown in the Northwest Quadrant of the 2004 Amended Reclamation Plan shall be no closer than 100 feet from the edge of the marsh area (edge of wetland delineation).

c. The 'surcharge berm' shown in the Northwest Quadrant shall be no higher than elevation 25 feet. McNear's Brickyard material storage or use

cannot occur on top of the surcharge berm above a surcharge berm grade of elevation 15 feet.

d. Phase 1 Reclamation plans shall be revised to: 1) provide an option to remove the new berm construction in the Northeast Quadrant ("Northeast Berm 1"), 2) not begin reclamation grading activity, except for erosion and sediment control, in the Northeast Quadrant for the first 18 months following approval of the Permit and amended reclamation plan, 3) relocate the top soil stockpile fill area "F" under Phase 1 of the proposed project, to avoid potentially adverse effects to the Caretaker's Residence, and 4) schedule marsh restoration for the first phase of reclamation work, but after the marsh restoration plan has been completed, approved and necessary permits obtained from resource agencies. Sheet G1 of the 2004 Amended Reclamation Plan shall be revised to reflect changes and to provide two sets of plans, one with and one without the "Northeast Berm1".

e. Phase 2 Reclamation plans shall be revised the Northwest quadrant surcharge berm maximum elevation to no greater than elevation 25 feet. Sheet G2 of the 2004 Amended Reclamation Plan shall be revised to reflect changes.

f. In order to preserve visual and sound screening between the mining and plant operations and adjacent residences, reclamation plans shall be revised so that the northern and easternmost hill/berm adjacent to the quarry bowl are maintained as a barrier until the later stage of reclamation or the last 5 years of the current approved amended reclamation plan. Sheets G1 through G4 of the 2004 Amended Reclamation Plan shall be revised to reflect changes.

g. Phase 4 Reclamation plans shall be revised to complete South Hill mining during this phase. Plans shall show amount of overburden or topsoil proposed as cover over final bedrock surface elevation. The Phase 1 Reclamation options in these conditions shall be reflected in two sets of Phase 4 plans. Final contour elevations shall be clearly labeled. Final South Hill contours shall be approximately no lower than those in the 1982 Amended Reclamation Plan. Provide at least two north-south cross sections across the quarry bowl and one cross section across the marsh/brickyard area, starting from the edge of property near Point San Pedro Road across the quarry to the Bay shoreline. Provide at least one east-west cross section through the quarry bowl and surcharge berm area. Show geologic conditions along the same cross sections. Indicate amount of backfill over rock on South Hill. Sheet G4 of the 2004 Amended Reclamation Plan shall be revised to reflect changes.

h. All Northeast Quadrant grading activities are limited to work and activities needed for geotechnical soil stabilization, erosion control and

successful revegetation of the area as approved by the Public Works Director. Grading activity that furthers the development beyond what is needed to readily adapt the area for alternative land uses is not approved under this Permit.

i. The four phase reclamation plan timeline shall be modified so that the ending date corresponds to the end of the Combined EIR analysis period date.

j. The erosion control and revegetation sheets shall be revised as needed to conform to the changes in this condition.

10. South Hill mining and quarrying shall be limited to no more than 75% of annual production for the first, second and third full calendar year, 50% of production the fourth year and 25% of production the fifth year after Permit approval; and thereafter a maximum of 141,467 tons per year, each year, until the quarry bowl depth shown in the 2004 Amended Reclamation Plan is reached or until year 2022. Excepting from this condition is the year that construction of the new ramp/road into the quarry bowl intersects with the existing ramp/road, in which case South Hill production shall not exceed 75% annual production for that single year. There are no South Hill annual production limits once the proposed bowl depth is reached or after calendar year 2022. The first three years of South Hill production reductions may be exchanged subject to prior approval by the Public Works Director. Annual production is defined as the rock/aggregate production provided to the State Office of Mine Reclamation annual operations report (excepting overburden sold as a result of a public emergency).

a. Materials shall be tested to ensure that they do not exceed hazardous waste standards prior to disposing excess overburden, pond fines or other mining wastes from other areas of the property in the Quarry Bowl.

b. The South Hill and Quarry Bowl production shall be provided in the Annual report to the County.

11. *Greenhouse Gas (GHG)* - The Permittee shall revise the amended reclamation plan, and include in the Conforming Amended Reclamation Plan described below, to add the following submittal requirement in the future post-reclamation development plan (*Mitigation Measure R4.2-5*):

a. A detail inventory of Greenhouse Gas (GHG) emissions associated with post-reclamation development, and

b. How the post reclamation development will incorporate measures to reduce GHG emissions consistent with Countywide (General) Plan policies and other relevant and applicable County, state and federal standards, in effect at the time of the Development Plan submittal.

12. Within 60 days of Permit approval, Permittee shall submit a statement of impact of reclamation on the future mining pursuant to Public Resource Code (PRC) Section 2772(c)(9).

13. Within 60 days of Permit approval, Permittee shall, to the satisfaction of the State Office of Mine Reclamation (OMR), revise the amended reclamation plan to give due consideration of the degree and type of present and probable future exposure of the public to the site (CCR Title 14, Section 3502(b)(2)).

14. Within 60 days of Permit approval, Permittee shall revise the amended reclamation plan to incorporate the State Office of Mine Reclamation (OMR) "Resoiling and Revegetation" comments contained in OMR's December 14, 2009 comment letter to the County.

15. *Conforming Amended Reclamation Plan:* Within 60 days of Permit approval, the Permittee shall submit a conforming reclamation plan incorporating these condition and approvals granted to the Permittee. The Public Works Director shall review the plan for conformance with all aspects of the County's approval. The Public Works Director may return the plan to the Permittee to correct any deficiencies, as determined by the Public Works Director at his sole direction. Thereafter, the Permittee shall have 30 days to resubmit the reclamation plan incorporating the comments and requested changes.

16. *Submittal of Financial Assurances Cost Estimate:* Within 60 days of Permit approval, Permittee shall submit a revised financial assurance (FA) cost estimate in conformance with the requirements of Surface Mining and Reclamation Act (SMARA) and, including but not limited to:

- a. A preliminary cost estimate to provide continuous funding of the operations and maintenance of the deep water quality equipment of the future harbor shall be included in the FA cost estimate.
- b. The FA cost estimate shall be amended at the time that the deep water quality engineering and economic report is completed and accepted by the County.
- c. Shall include all phases of reclamation over the entire Quarry property.

17. *Submittal of Financial Assurances:* The Permittee shall guarantee timely performance of reclamation requirements of the Marin County Surface Mining Ordinance and these conditions of approval by providing a mechanism for financial assurance of reclamation as described in, and in accordance with, the Surface Mining and Reclamation Act (SMARA) and the Marin County Surface Mining Ordinance. The mechanism shall be of sufficient value to cover the full costs of reclamation in any specific year for which it is calculated, and may take any form acceptable as determined by the County within the requirements of SMARA.

18. Financial assurance shall renew automatically and shall not expire or be terminated without 90-days advance written notice being provided to the County Department of Public Works. Marin County may adjust the amount of the security on an annual basis to account for additional lands disturbed or reclaimed, inflation, or revised cost estimates. The financial assurance shall reference the name of the mining site, and the County permit number.

19. The County may pursue redemption of the FA securities if: 1) the final reclamation does not meet the performance standards, 2) satisfactory progress is not made towards completing the reclamation in a timely manner, or 3) the operator is financially incapable of carrying out the reclamation

20. *Acceptance of Responsibility:* Within 60 days of Permit approval, the Permittee shall provide a written statement from the person submitting the conforming reclamation plan that they accept responsibility for reclaiming the mined lands in accordance with the reclamation plan.

21. *Grading Permit:* For each phase of reclamation, Permittee shall submit an application for Excavation, Grading or Filling, with plans, to the Department of Public Works prior to each phase of reclamation and which will be subject to review and approval by the Director of Public Works.

a. Reclamation grading shall be limited to a 10 week work period in any one calendar year. A reclamation phase may occur over multiple years.

b. Permittee shall submit the application at least 120 days in advance of the anticipated start of grading.

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

22. *Interim Management Plan (Idle Mine):* In the event that the permitted operation is curtailed for a period of one year or more, by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at future date, the Permittee shall file and implement an interim management plan in accordance with the provisions of SMARA.

23. All other parts of the reclamation plan are to be completed concurrently with the grading or as soon as practicable after completion of the grading specified in the reclamation plan (MCC 23.60.050 (6)).

24. Within ninety (90) days of termination of actual rock or mineral production, all structures, metal, lumber, tanks, or other debris or materials resulting from the operation are to be removed (MCC 23.06.050).

### **Specific Reclamation Limitations on Mining Area, Depth and Slopes**

25. Mining, excavation and reclamation shall only occur as specified in the approved reclamation plan (Conforming Amended Reclamation Plan and any subsequent approved amendments). Nothing in the Permit conditions contained herein allows the Permittee to excavate beyond or below approved excavation contours.

26. All final slopes on approved reclamation plan shall meet the following criteria, unless subsequent geotechnical analysis indicate modifications are required to maintain slope integrity:

a. Within the quarry pit, the average (toe to top) slope inclination shall not exceed 60 degrees for a maximum vertical height of 350 feet, as depicted on Figure 15 of the ENGEO Supplemental Geotechnical Data Report, Proposed Changes to Mining Plan, San Rafael Rock Quarry, Marin County California, April 11, 2005 (ENGEO Supplemental Report).

b. Minimum 30-foot-wide safety benches shall be constructed at a maximum of 90-foot vertical intervals.

c. In general, the inclination of inter-bench faces should be maintained at less than 75 degrees where possible. The recommended safety bench spacing and width are depicted in ENGEO Supplemental Report Figure 15. Locally, inter-bench face inclinations will be influenced by splitting along pre-existing rock discontinuities, but overhanging faces should be avoided whenever possible.

27. No stockpiling or related reclamation or mining activity shall occur within 100 feet of the marsh areas (as defined by Biological Recommendations Under the Amended Reclamation Plan of 2004 for the San Rafael Rock Quarry, LSA, October 8, 2004, Potentially Jurisdictional Wetlands and Other Waters, Figure 2, or other subsequent and resource agency approved study/determination), or within 50 feet of the outer property boundary in the NE Quadrant, except where pond fines are found in the NE Quadrant at the time the Permit is issued.

### **Expiration of Permit Upon Conclusion of Complete Reclamation**

28. This Permit shall expire when reclamation is complete. "Complete" reclamation is defined as that point in time when all mining has ceased, the

requirements of the approved reclamation plan have been met, including revegetation maintenance and monitoring, long term financial arrangements for harbor water quality maintenance are established, and the final financial assurance required by SMARA is returned to the Permittee.

29. All conditions of this Permit shall remain in effect until the Reclamation Plan is deemed “complete” by the County or the State, even though the operational aspects of mining have been terminated. A valid financial assurance (FA) shall be maintained on file until the County determines that all reclamation has been successfully carried out in compliance with the reclamation plan and Permit conditions.

30. The San Rafael Rock Quarry Combined EIR certified on October 27, 2009, analyzed potential impacts and the environment through year 2024. The term of the amended reclamation plan approval will be through December 31, 2024.

a. This permit may continue to be valid beyond 2024 insofar as quarrying and mining operations have ceased, and final Phase 4 reclamation is in progress per the approved reclamation plan and is substantially complete. Such activities may include vegetation management, marsh management, erosion and sediment control, historic structure preservation, and harbor and water quality management. However, continued quarry operations beyond 2024 would be considered a substantial extension of the termination date of mining operations as set out in the approved reclamation plan. In order for quarry operations, including but not limited to, crushing, trucking product, asphalt plant operation and barging, to continue beyond 2024, an application to amend the reclamation plan termination date, including continued mining operations if so desired, shall be filed at least 3 years before the termination date of the amended reclamation plan (no later than December 31, 2021).

31. Three years prior to the end of quarrying operations, Permittee shall submit a development plan for subsequent use of the quarry property.

a. Neither approval of this permit nor approval of the amended reclamation plan constitute approval of post reclamation land uses, regardless of the generalized land uses depicted in submittals, reclamation plans or the Combined FEIR. Pursuant to the Surface Mining and Reclamation Act (SMARA), the purpose of a reclamation plan is to assure that adverse environmental effects are prevented or minimize and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses. The proposed mix of land uses and intensities shall be reviewed and considered by the appropriate jurisdiction in the future, at the time a development plan is filed by the property owner as part of the required land use and environmental review entitlements process.

### **Days and Hours of Operations & Reclamation**

32. Except for declared public emergencies, as described below, site quarry operations or reclamation shall exclude Sundays and State Holidays, and the hours of operations for quarry and reclamation operations shall be limited to:

| Activity                                                                                                                                                | Days of Week | Hours of Operations                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------|
| Mining, Quarrying, Excavation, Drilling, Crushing Plant, Primary Crusher, Secondary Crusher, Aggregate Processing and Handling, and Asphalt Batch Plant | Mon. – Fri.  | 7 a.m. to 8 p.m.                                                                                                         |
| Maintenance Activities (excluding maintenance activity with no off site noise at nearby residences)                                                     | Mon. – Fri.  | Same as above (Mining, etc.)                                                                                             |
|                                                                                                                                                         | Sat.         | Up to 10 Sat. per cal. yr. 7 a.m. to 5 p.m.                                                                              |
| Reclamation Grading Activity in the N.E., N.W. and S.W. Quadrants                                                                                       | Mon. - Fri.  | <i>Apr. 15 thru Oct. 15 only, up to 10 weeks</i><br>7 a.m. to 5 p.m.                                                     |
| Material Haul Trucks Entering or Departing Quarry                                                                                                       | Mon. – Fri.  | 7 a.m. to 5 p.m.                                                                                                         |
| Barge Loading (truck or conveyor) Operations<br>'Winter', Nov. 1 thru Mar. 31 <sup>2</sup>                                                              | Mon. – Thu.  | 7 a.m. to 10 p.m.                                                                                                        |
|                                                                                                                                                         | Fri.         | 7 a.m. to 7 p.m.<br>Up to 26 Fri. per cal. yr. <sup>2</sup> 7 a.m. to 10 p.m.                                            |
|                                                                                                                                                         | Sat.         | Up to 26 Sat. per cal. yr. <sup>2</sup> , 7 a.m. to 10 p.m. only when combined with Friday work until 10 p.m.            |
| Barge Loading (truck or conveyor) Operations<br>'Summer', Apr. 1 thru Oct. 31 <sup>2</sup>                                                              | Mon. – Thu.  | 7 a.m. to 9 p.m. <sup>1</sup>                                                                                            |
|                                                                                                                                                         | Fri.         | 7 a.m. to 7 p.m.<br>Up to 26 Fri. per cal. yr. <sup>2</sup> 7 a.m. to 9 p.m. <sup>1</sup>                                |
|                                                                                                                                                         | Sat.         | Up to 26 Sat. per cal. yr. <sup>2</sup> , 7 a.m. to 9 p.m. only when combined with Friday work until 9 p.m. <sup>1</sup> |
| Blasting                                                                                                                                                | Mon. – Fri.  | 11:30 a.m. to 1:30 p.m.<br>max. 3 times per week                                                                         |
| Quarry Office Use                                                                                                                                       | Mon. – Sun.  | No Restrictions                                                                                                          |

<sup>1</sup> In limited circumstances, if barge loading or trimming is not completed by 9 p.m., loading/trimming may continue until completed, but in no case shall barge loading/trimming occur later than 10 p.m. The Permittee shall maintain records of loading that occurs between 9 and 10 p.m. and shall make those records available to the community.

<sup>2</sup> The reference to “per cal. yr.” means that no more than a total of 26 such exceptions shall be exercised per calendar year, not 26 such exceptions per season. (Mitigation Measures P4.1-9, P4.2-6c, P4.2-7a, P4.2-7d, C4.2-9b & P4.6-6b)

a. The Permittee shall provide 36 hours advance notification of any of the above operations occurring later than 7 p.m. Fridays or on Saturdays to the Director of Public Works and by posting the date and activity type on a publically accessible web site.

b. The Permittee shall attempt to schedule any of the permitted 10 days of Saturday noise producing maintenance to be scheduled on the same days when weekend barge loading operations occur.

33. *Declared Public Emergency:* The hours and days of operations limitations, as well as truck trip per day limitation and trucking hours, may be suspended when there is a public emergency. A public emergency exists only when there is need to prevent or respond to a landslide, levee failure, structural failure, or other imminent harm from an earthquake, flood or other natural disaster, and when the emergency has been declared by an authorized local, state, or federal government agency. Any suspension shall last only as long as is necessary to deliver by truck or barge the material necessary for correcting the adverse conditions constituting the emergency. The public emergency suspension shall not increase, nor will there be any adjustment, regarding the 5 year annual average production (Condition 5). The suspension shall not be approval to increase plant capacity from those permitted.

*Public Emergency Procedures*

a. Within five (5) calendar days following Permittee’s determination to suspend aforementioned operations limitations, the public emergency shall have been declared by an authorized local, state, or federal government agency;

b. Within 24 hours after invoking the suspension under this paragraph, the Permittee shall send written notice to Marin County Director of Public Works in this matter and post on its website an explanation of the location of the public emergency and sufficient facts regarding the suspension to allow all parties to evaluate if the suspension is necessary and appropriate;

c. If the Marin County Director of Public Works determines at any time, based on the facts and notice provided in the preceding paragraph and/or from any other information the Director may obtain, that any suspension invoked by the Permittee is not being invoked as a result of a declared local, state or federal emergency, the Director may order termination of that suspension by written notice to the Permittee and the Permittee shall immediately comply with that written notice.

d. Within 24 hours after the suspension is lifted, or the emergency declaration by the authorized local, state, or federal agency is not longer in effect, the Permittee shall send written notice to the Marin County Director of Public Works, and post on its website, the total hours of operation and number of truck-trips that occurred during the suspension.

34. Reclamation grading activities shall be limited to an 8-10 week period during each dry season, but shall not commence prior to April 15 nor active grading extend beyond October 15<sup>th</sup>. Erosion control measures may continue to be implemented after October 15<sup>th</sup>. (*Mitigation Measure R4.6-5a*)

a. Each year by May 1 and not later than 30 days prior to the commencement of reclamation activities, the Permittee shall inform by mail all residences on Marin Bay Park Court, Heritage Drive, and San Marino Drive, and the public at large by web site posting, of the start date, nature of the work and expected duration of the 8-10 week period during which reclamation grading activities will occur that calendar year. (*Mitigation Measure R4.6-3d*)

35. *Lighting*: Permittee shall restrict and minimize lighting for night operations. Where lighting is necessary, Permittee shall utilize light shades, directional lighting, and other measures so as to minimize off site glare at residences adjacent to property.

### **Trucking**

36. The Permittee shall limit daily truck traffic hauling aggregate, asphaltic concrete, rock and other quarry product from the Quarry to 250 one-way truck trips per day (125 in and 125 out). (*Mitigation Measures P4.6-6a & P4.2-7a*)

a. The Permittee shall keep daily written records of truck trips in and from site and shall provide said records to the Department of Public Works upon request. Records shall include date, load weight or bill of lading, and time of departure, as well as daily number of inter-facility trucks and destination of non inter-facility trucks. Records of truck trips shall include in-bound trucks not used for rock and aggregate transport, e.g. asphalt batch plant oil, and diesel loads. Records shall be kept a minimum of one year and an annual calendar year tabulation shall be provided in an Annual Report.

37. All loaded trucks shall be required to pass over a material shakedown area before exiting the Quarry.

38. All trucks leaving the Quarry shall be washed down, including the undercarriage, prior to entering Point San Pedro Road (except trucks transporting asphalt). The wash down and adjoining areas shall be paved to minimize tracking of dust and dirt. Point San Pedro Road shall be swept by a sweeper truck two times per day by the Quarry, except on rain days, when sweeping is not required. Sweeping is subject to the approval of the City of San Rafael within City jurisdiction.

This condition applies as well to Phase 4 reclamation for any loaded trucks.  
(Mitigation Measure R4.2-1c, R4.2-1d, R4.2-2a & P4.2-6a)

39. The access road leading between the scale house and Point San Pedro Road shall be paved.

40. The Permittee shall require all inter-facility trucks (those trucks transporting material from the Quarry to other facilities under ownership or control of the Permittee, its parent company or subsidiaries) to cover or tarp the load in order to prevent or reduce dust emissions.

41. Any material shipment from the Quarry to Dutra's currently proposed Haystack Landing facility in Petaluma shall be by barge only, provided that the facility is approved by the County of Sonoma with a barge unloading component and the barge unloading component is constructed.

42. Within 12 months of Permit approval the Permittee shall require that all trucks leaving the Quarry loaded with aggregate or asphalt materials shall have their loads covered by tarp or other means to prevent fugitive dust. Upon Permit approval, the Permittee shall notify their customers and post this requirement on a web site. Permittee shall incorporate this requirement in all applicable third party contracts or agreements. Aggregate materials shall have the same meaning as California Vehicle Section 23114.

43. The Permittee shall provide a pull out area onsite after exiting the truck scales for truckers to check their load and/or tarp their load.

44. Trucks leaving the Quarry shall be metered by the Permittee at a minimum of 2 minute intervals during peak traffic periods. The peaks periods shall be approximately 2 hours long in the a.m. peak, and 1 hour long in the noon time and p.m. peaks, as determined by the Public Works Director.

45. Permittee shall install and maintain a conspicuous sign onsite near all exits from the Quarry that states the following: "TRUCKS SHALL NOT USE NORTH SAN PEDRO ROAD." Such prohibition shall not apply in the event of temporary closure or blockage of Point San Pedro Road. In such case, Permittee shall immediately notify the Department of Public Works of trucks from the Quarry using North San Pedro Road.

46. Permittee shall be responsible for cleaning up material spills on Point San Pedro Road from loaded trucks leaving the Quarry.

47. The Permittee shall routinely advise in writing, but no less than once per calendar year, and shall train all Quarry employees, Permittee leased truck operators and inter-facility truck drivers of the following trucking 'rules of the road'. The Permittee shall implement a progressive discipline policy on violating the

trucking rules. Drivers who repeatedly violate trucking rules shall be prohibited from hauling materials from the Quarry by the Permittee. Independent truck drivers shall be provided with written 'rules of the road', either through their company or individually, and are to be held to the same requirements. If an independent truck driver is found to repeatedly violate trucking rules, they too shall be prohibited by the Permittee from driving loaded trucks from the Quarry. Sign(s) notifying drivers of these requirements shall be posted onsite in the vicinity of the scale house location. The following minimum trucking rules apply:

- a. Drivers shall keep their vehicles within prescribed legal speed limits at all times.
- b. Trucks are not permitted to park and stage along Point San Pedro Road (which is particularly an issue in the early morning hours before the Quarry gates are opened).
- c. Trucks are not permitted to enter the Quarry before business hours.
- d. Trucks are not permitted to convoy on Point San Pedro Road.
- e. Drivers shall avoid using 'jake brakes' on Point San Pedro Road except in emergencies.
- f. All material spills on public roads shall be reported to the Quarry immediately.
- g. Truck drivers and the trucking equipment shall comply with all federal, state, regional and local laws and ordinances.

48. The Permittee shall assign an employee with job duties as a 'Truck Marshall' to, on a daily basis, periodically inspect trucks travelling on Point San Pedro Road and departing the Quarry site for compliance with these applicable Permit conditions and trucking rules of the road. The Truck Marshall shall keep written records of inspections and any warning or action taken against a truck driver violating the Permit conditions or trucking 'rules'. The records shall be provided to the Department of Public Works upon request. The records shall be kept at least one year.

49. To reimburse the County and City of San Rafael for extra wear and tear to roads caused by the Quarry truck traffic, the Permittee shall annually (the remaining year after Permit approval shall be prorated based on allowed trucking days) obligate in kind materials (asphalt concrete and/or aggregate) with a total market value of \$100,000. The annual unused obligations shall accumulate from calendar year to calendar year, i.e., if all or part of the material was not used by the local jurisdictions in a calendar year, then the obligation would be added to the following year's obligation and made available to the County or City. Annual unused

obligations shall accrue up to a maximum of \$300,000. The Quarry shall annually report obligation used and unused in an annual report to the County. The County shall track the obligations and expenditures. The County shall work with the City of San Rafael to equitably use the materials, but the County shall retain final authority on use of the materials on Point San Pedro Road, or alternatively:

- a. The Public Works Director may substitute the following instead of an annual asphaltic concrete requirement for Point San Pedro Road described above. Upon 3 month notice by the Public Works Director, the Permittee shall provide as much as 12,000 tons of open grade asphaltic concrete for a project to repave Point San Pedro Road. Truck trips due to trucks delivering asphalt for this project shall not count against the daily truck trip limit (refer to Condition 36). Grindings from the Point San Pedro Road project shall be delivered to the Permittee quarry property and accepted at no cost to County or contractor (no tipping cost). If the project occurs later than December 31, 2011, the maximum tonnage shall be adjusted based on the ENR Bay Area Caltrans asphaltic oil index.

#### **Air Quality**

50. The Permittee shall use a minimum blend 20 percent biodiesel and 80 percent conventional diesel (B-20) biodiesel fuel in all on-site quarry rolling stock. To further reduce emissions from off-road diesel equipment, the applicant shall fuel on-site diesel-powered mobile equipment used in operations or reclamation activities with a minimum 80 percent biodiesel blend (B-80) or use other equipment and/or fuel that achieves the same reduction in particulate (PM-10) emissions. The applicant shall also use Purinox<sup>tm</sup>, or another County or BAAQMD approved additive, or other measures to reduce NOx and PM-10 emissions to the maximum extent feasible given current technologies. This condition applies to all reclamation phases, including Phase 4 (last phase) reclamation. Permittee shall provide records in the annual report or upon request by the County documenting compliance with this condition. *(Mitigation Measures R4.2-1a, R4.2-1d, R4.2-1g, R4.2-2a, R4.2-3a R4.2-3b, P4.2-6a, P4.2-7b & C4.2-9a)*

51. The Permittee shall operate a fleet of non-road diesel equipment to USEPA Tier 3 or higher standards, including for Phase 4 reclamation. The Permittee shall upgrade its tug boat fleet operating at the SRRQ to Tier 2 standards within one year of Permit approval. *(Mitigation Measures R4.2-1b, R4.2-1d, R4.2-2a, & P4.2-6a)*

52. The Permittee shall continue to use existing emission reduction practices, including use of alternative fuels, use of low-emission diesel equipment, and dust abatement measures (as found in other Permit conditions). *(Mitigation Measures R4.2-1d & P4.2-6a P4.2-6b P4.2-7c & C4.2-9a)*

53. Within one year of Permit issuance, the Permittee shall prepare and implement a Greenhouse Gas (GHG) Reduction Plan. The plan will include a complete inventory of reclamation-related GHG emissions and will demonstrate how the Quarry will reduce or offset remaining un-mitigated GHG emissions as identified

in the Combined EIR. The plan will prioritize emission reduction through energy conservation and other measures; and for those emissions that cannot be reduced, the plan shall specify how emissions will be offset. Offsets may take the form of installation of on-site alternative energy generation facilities (such as solar power) or off-site compensation, such as monetary contribution to a project that sequesters carbon. Examples of such projects include wetland restoration, purchase of carbon credits verified by the California Climate Action Registry, and reforestation. On-site offsets will be given higher priority than off-site offsets, and offsets with co-benefits, such as reduction of particulate emissions within the vicinity of the Quarry, and restoration of habitat for special status species, will be given higher priority. The plan must demonstrate how, at a minimum, the Quarry will reduce reclamation-related, non-biogenic GHG emissions consistent with the Marin County Greenhouse Gas Reduction Plan and Countywide Plan Update policies: the plan must demonstrate how reclamation-related emissions are reduced or offset, such that total emissions are 15% below the emissions associated with Amended Reclamation Plan 1982 (ARP82), or no more than 2,489 tons of eCO<sub>2</sub>. The plan will include an implementation schedule. The plan will be submitted to the Marin County Public Works Department for review and approval. The Greenhouse Gas Reduction (GHG) Plan shall also include an inventory of operations-related GHG emissions and a plan to reduce these emissions by 15 percent. In addition, the initial emissions inventory prepared as part of the plan will be reported to the California Climate Action Registry or a successor organization as a baseline inventory, and the Quarry will conduct and report additional inventories annually. (*Mitigation Measures R4.2-3c & P4.2-7e*)

54. The Permittee shall implement the following dust abatement measures identified by BAAQMD as feasible dust control, during all reclamation grading activities or operations, including through the end of Phase 4 reclamation (*Mitigation Measures R4.2-1e, R4.2-2b P4.2-6b P4.2-7c & C4.2-9a*):

- a. Cover all trucks hauling soil, sand, and other loose materials as a part of reclamation activities, or require such trucks to maintain at least two feet of freeboard between the top of the material and top of truck.
- b. Pave, apply water at a minimum three times daily in dry weather, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and staging areas at the Quarry;
- c. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at the Quarry;
- d. Hydroseed, apply non-toxic soil stabilizers, or water to inactive reclamation areas (previously graded areas inactive for ten days or more);
- e. Limit traffic speeds on unpaved roads to 15 miles per hour;

- f. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - g. Replant vegetation in disturbed areas as soon as the growing season dictates. Install wind breaks or plant trees/vegetative wind breaks at the windward sides of the reclamation areas until such time as the vegetation is established;
  - h. Suspend reclamation-related excavation and grading activities when wind (as instantaneous gusts) exceeds 25 miles per hour in the area being graded as measured by a hand held anemometer; and
  - i. Limit the area subject to reclamation-related excavation, grading and other construction activity at any one time.
55. The Permittee shall implement the following additional dust abatement measures:
- a. Initial clearing of areas to be mined, including removal and stockpiling of topsoil, shall be accompanied by surface watering to control dust generation.
  - b. Stockpiles of crushed rock shall be kept moist or shall be watered before loading.
  - c. Minimize drop heights while loading/unloading aggregate to the maximum extent feasible.
  - d. The operator of a facility/operation shall not cause or allow any visible fugitive dust plume from exceeding 100 feet in any direction from any mining or grading activity, equipment, storage pile, or disturbed surface area. Blasting is exempt from this condition (reference South Coast Air Quality Management District Rules).
56. The Permittee shall keep all off-road equipment well-tuned and regularly serviced to minimize exhaust emissions, and shall establish a regular and frequent check-up and service/maintenance program for all operating equipment at the Quarry. Permittee shall provide documentation to the County in an annual report (*Mitigation Measures R4.2-1f, R4.2-3b, P4.2-6b, P4.2-7c & C4.2-9c*)
57. Off-road diesel equipment operators shall be required to shut down their engines rather than idle for more than 5 minutes, unless such idling is necessary for proper operation of the vehicle. (*Mitigation Measures R4.2-1h R4.2-3b P4.2-6b P4.2-7c & C4.2-9c*)

58. The Permittee will limit on-site mining operations on days on which reclamation grading activities are performed concurrently such that total criteria air pollutants emissions from the site are not increased above BAAQMD significance thresholds. To ensure the effectiveness of this measure, the Permittee will be required to maintain daily records and report to the BAAQMD and the County Public Works Department a record of reclamation and operations activities, with an estimate of emissions from each, at the end of each annual season of reclamation activities. The baseline for combined emissions is the current level of emissions for mining operations as shown in the Combined FEIR Table 4.2-13.1 plus the baseline emissions for the reclamation grading phase, as shown in Tables 4.2-10 and 4.2-11 of the Combined EIR. The limit for combined emissions from mining and reclamation will therefore be the sum of the current emissions levels from mining operations, the baseline emission levels for reclamation grading, and the BAAQMD's threshold values for criteria pollutants, as shown in the Combined FEIR Table 4.2-10.1 for all reclamation phases. *(Mitigation Measures R4.2-1j, P4.2-6b, P4.2-7c & C4.2-9c)*

59. If the Permit conditional mitigation measures do not reduce emissions to below threshold values, the Permittee shall acquire BAAQMD off-site emission offset credits in sufficient quantity to reduce criteria air pollutant emissions from reclamation grading only to levels below BAAQMD significance levels. *(Mitigation Measures RR4.2-1i, P4.2-6b, P4.2-7c & C4.2-9c)*

60. The Permittee shall suspend excavation, grading, hauling, and/or unloading soil and rock (except within the quarry bowl) activities when wind gusts exceed 25 mph, as measured at the top of the quarry bowl. Wind speed shall be determined when an on-site anemometer registers at least two wind gusts in excess of 25 miles per hour within a consecutive 30-minute period.

61. New onsite diesel equipment, or new or used replacement of onsite diesel equipment purchase after Permit approval shall meet or exceed EPA 2003 emission standards for diesel particulate matter (DPM) reduction controls. The Permittee shall provide a report, on an annual basis, to the County when heavy equipment changes occur on-site which identifies and describes the additional or new replacement equipment with regard to emission standards.

62. Within 4 months of Permit approval, Permittee shall provide a public forum to consult with residents along Point San Pedro Road on purchase of a vacuum sweeper truck, the primary concerns being dust collection efficiency and sweeper noise level. Within an additional 5 months (9 months total) Permittee shall implement use of a vacuum truck street sweeper on Point San Pedro Road (currently broom sweeper). Point San Pedro Road shall be swept to remove aggregate and road dust two times per day during business hours by the Quarry when trucking from the Quarry occurs, except on rain days, when sweeping is not required. Sweeping is subject to the approval of the City of San Rafael within City jurisdiction.

63. Permittee shall maintain all quarry-operated equipment in accordance with manufacturers' recommendations to reduce exhaust emissions from heavy equipment and haul trucks.

64. All non road diesel trucks and road diesel trucks shall meet or exceed federal and State emission regulations and requirements.

65. The Permittee shall maintain all required erosion control measures and stormwater management plans, and shall keep current and comply with all permits required by the Regional Water Quality Control Board. This condition applies through the end of reclamation (Phase 4). (*Mitigation Measures R4.2-1c, R4.2-1d, R4.2-2a & P4.2-6a*)

66. The Permittee shall maintain all dust abatement devices and air pollution control devices, and shall keep current and comply with all permits required by the Bay Area Air Quality Management district (BAAQMD). This condition applies through the end of reclamation (Phase 4). (*Mitigation Measures R4.2-1c, R4.2-1d, R4.2-2a P4.2-6a & C4.2-9a*)

67. Copies of all BAAQMD permits for the Quarry property shall be provided to the Department of Public Works. The Permittee shall document compliance with BAAQMD permits as part of the Annual Report.

68. Recordkeeping: The Permittee shall keep the following records on-site for 3 years and make such records available to the Public Works Director upon request:

- a. Watering and sweeping schedule for on site quarry operations or reclamation;
- b. Days when reclamation or other operations were suspended due to high winds (greater than 25 mph) or days when work was suspended because of visible dust plumes greater than 100 feet;
- c. Days of non-toxic dust suppressant application other than water;
- d. Annual use of Purinox or similar additive; and
- e. Quarry operations engine hours curtailed when reclamation equipment is in use and engine hours and equipment type of reclamation equipment used.

69. Permittee shall fund an on-going air quality monitoring program by the County to measure ambient air quality in the vicinity of the Quarry. The monitoring shall focus on measuring respirable particulate matter (PM-10 & PM-2.5) and determining metals content of particulate matter using BAAQMD and State monitoring standards. The monitoring program shall be funded sufficiently before reclamation activities

begin in the Northeast Quadrant. The air monitoring program will be operational for two full consecutive years. Thereafter, at the discretion of the Public Works Director, the continuous monitoring program may be suspended should long term monitoring results document that the Quarry operations or reclamation activities do not cause exceedences of state and federal air quality standards, or should the program be suspended, the Public Works Director may recommence the air monitoring program. Monitoring shall occur when reclamation grading activity occurs in the Northeast Quadrant. A one year continuous monitoring program shall be implemented should state or federal ambient air quality standards change.

### **Noise**

70. Noise levels due to Quarry operations or reclamation, measured at the residential receptor property line, shall be limited to: 60 dBA day/night Ldn, 70 dBA maximum (sound level measurement made with "slow" meter response) and 65 dBA impulsive (sound level measurement made with "fast" meter response).

71. Within 30 days of permit issuance, the Permittee shall provide the County with the name and telephone number of the individual empowered to manage operational noise from the quarry. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site in a location easily visible to the public and on the Quarry's web site. The individual shall record all noise complaints received and actions taken in response, and submit this record to the County upon request and annually at the time of the Annual Report.

72. The Permittee shall implementation of the following noise abatement measures to reduce the annoyance impact of reclamation activity noise (*Mitigation Measures R4.6-3c, R4.6-5b R4.7-1b*):

- a. The applicant shall limit all reclamation grading activities in the NE Quadrant or berm construction in NW Quadrant to 7:00 a.m. to 5:00 p.m. Monday through Friday.
- b. Equipment and trucks used for all construction and reclamation activities shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds).
- c. All construction equipment powered by internal combustion engines shall be properly muffled and maintained;
- d. Unnecessary idling of internal combustion engines shall be prohibited.

73. The Permittee shall retrofit all rolling vehicles with backup alarms at the quarry with broadband backup alarms. Broadband alarms reduce nuisance noise effects by being directional (unlike conventional backup alarms), by being 5 dBA

quieter than conventional back-up alarms, and by generating noise that has a less intrusive tonal quality. (*Mitigation Measure R4.6-3a, R4.7-1a*)

74. The Permittee shall implement the following noise reduction program which shall be maintained in good operating condition:

- a. Enclose the conveyor systems at the Quarry crushing and processing plant including barge loading, primary, and secondary conveyors.
- b. Screens and secondary crushers shall have sound curtains with sound deadening materials installed between the equipment and residences.
- c. Enclosed transfer points along the conveyor system where material transfers from one belt to another by means of a hopper. The enclosures shall incorporate sound deadening materials.
- d. Permittee shall line all unenclosed hoppers and chutes on the conveyor at which aggregate materials fall onto a metal surface with a sound deadening material such as heavy neoprene, rubber or HDPE.
- e. Permittee shall implement the above noise reduction program as a phased program over 3 years from Permit approval. The noise reduction program shall include a barge loading noise reduction component to be included in the phasing plan. Proposed plans and phasing shall be prepared by a qualified acoustical engineer and then provided to the Public Works Director within 6 months of Permit issuance for review and approval. The phasing goal is to have the noisiest equipment, relative to nearby residences, retrofitted in the first 12 months following plan approval. The applicant shall have a qualified acoustical engineer inspect the site and equipment and submit a verification of compliance with these conditions after each phase.

75. The flat deck barge fleet associated with Permittee quarry operations shall be fully converted to concrete deck barges within three years. At least two steel deck barges shall be converted per 500,000 tons of annual (calendar) quarry production. Within three years of Permit approval, only non metallic flat deck barges, i.e. concrete deck barges, shall be permitted to be loaded at the Quarry site.

- a. Upon Permit approval, only concrete surface flat deck barges shall be loaded later than 8 p.m.
- b. Non-concrete surface flat deck barges from contracted third parties may be used in a declared public emergency.

76. Engines on all equipment used for surface mining operations shall be equipped with manufacturer-recommend mufflers, and no muffler or exhaust system

shall be equipped with a cutout, bypass, or similar device intended to thwart quieting.

77. Permittee shall fund an on-going noise monitoring program by the County to measure ambient and Quarry noise levels in the vicinity of the Quarry. Noise monitoring shall occur at the property line annually at the start of each season of reclamation work in the Northeast Quadrant and shall last the entire period of Northeast Quadrant activity. The noise monitoring program i.e., number of stations station locations, and other operational monitoring characteristics, shall be as required by the Public Works Director and performed by an acoustical consultant retained by the County. If the Permit noise levels are not met, the Permittee will have 15 days to correct the problem. If after 15 days the problem has not been corrected, the Permittee will only be allowed to operate compliant equipment, which will meet the permitted noise levels.

### **Blasting**

78. Blasting shall be limited to an annual (calendar year) average of two times per week (104 times per year) and a maximum of three times per week. (Mitigation Measures P4.1-9, P4.2-6c, P4.2-7a, P4.2-7d, C4.2-9b & P4.6-6b)

79. Blasting shall be limited to the hours of 11:30 a.m. to 1:30 p.m. Monday through Friday. No blasting is to occur on State holidays or weekends.

80. The Permittee shall provide 36 hours advance notification of blasting to local residents and to the County of Marin by posting the date and approximate time of scheduled blasts on a publically accessible web site.

81. The Permittee shall design blasts to maintain a minimum scaled distance of 52.8 ft/lb<sup>1/2</sup>, as defined in the REVEY Associates, Inc. report in Appendix J of the Combine FEIR, Volume III: Appendices. The Permittee shall provide the County with a blast report providing charge weight, delay, and other information needed to confirm compliance with these conditions, with 24 hours following each blast.

82. All charges should be confined with clean crushed stone of height equal to or greater than 25 charge diameters, as defined on Page 21 of the REVEY Associates, Inc. report in Appendix J of the Combine FEIR, Volume III: Appendices.

83. All charges should be confined with rock burden equal to or greater than 25 charge diameters, as defined on Page 21 of the REVEY Associates, Inc. report in Appendix J of the Combine FEIR, Volume III: Appendices.

84. Air-overpressure measured near residential home should never exceed 133 dBL, as measured with 2-Hz monitoring equipment.

85. Blasting vibration beyond the Quarry property boundary shall be limited to a maximum peak velocity of 0.25 inches per second.

86. All blast monitoring of ground motion and air-overpressure effects done by either Permittee personnel or third-party service providers should be done in full conformance with ISEE guidelines provided in Attachment I of the REVEY Associates, Inc. report in Appendix J of the Combine FEIR, Volume III: Appendices. *(All above in Blasting section, Mitigation Measures P4.7-7a, P4.7-7b)*

87. No blasting shall take place when wind velocity equals or exceeds 25 miles per hour. The wind speed shall be measured at the top of the quarry bowl.

88. No blasting shall take place on days when 'Spare the Air Days' declared by Bay Area Air Quality Management District are in effect, provided the BAAQMD gives at least 48 hours notice.

89. Within 60 days of Permit approval Permittee shall prepare and provide to the County a graph showing distance (ft.) to nearest off site residence and charge weight per delay (lb) using the scale factor and detonation delay of individual charges of 8 milliseconds or greater.

90. Permittee shall fund an on-going blasting seismic and air overpressure monitoring program of up to 3 stations, as determined by the Marin County Public Works Director.

### **Biological Resources**

91. The Permittee shall implement amended reclamation plan "Standards for Preserving Sensitive Habitat Areas." Implementation of these standards will protect specific areas of oak woodland and native grassland. *(Mitigation Measure R4.3-2a)*

92. The Permittee shall submit to the Marin County Department of Public Works a revised 'conforming reclamation plan' that includes the preservation of the small hill near the kilns, consistent with ARP82. Any plans for future alteration of the small hill for post-reclamation development may be proposed as part of the Development Plan, due to be submitted three years prior to the cessation of mining. The conforming reclamation plans shall continue to preserved areas originally described, including portions of South Hill, the Grassy Knoll, and the marsh areas *(Mitigation Measures R4.3-2b R4.3-3a, R4.3-4a, R4.3-4b)*

93. Prior to each reclamation phase and during the planning for post-reclamation development, presence/absence surveys for special-status plants will be conducted by an independent qualified botanist within areas to be disturbed. *(Mitigation Measure R4.3-3b)*

- a. Surveys will be conducted in accordance with CNPS and CDFG rare plant survey guidelines.

- b. Surveys will be conducted prior to the start of each phase of reclamation activities, during the flowering period when the species is most readily identifiable (June – October).
- c. The results of the surveys will be filed with the County; if the presence of any of these species is confirmed, a copy of the survey results will be forwarded to CDFG, and following Permit condition will be implemented.
- d. In the event that special-status plants are proven absent, then no additional mitigation is necessary.

94. In the event that special-status plant populations are found during the surveys conducted pursuant to the above condition, the Permittee will avoid disturbance to the species by establishing a visible buffer zone of not less than 25 feet prior to construction or by relocating reclamation activities, if feasible, to avoid disturbance. Where necessary reclamation activities cannot be altered to avoid disturbance, the applicant shall relocate affected special-plant populations and/or restore similar habitat in another location: *(Mitigation Measure R4.3-c)*

- a. Protection of special status species will be coordinated by a qualified biologist.
- b. Disturbance or mortality of special status plant habitat and species shall be avoided as a priority. If a qualified biologist determines that restoration would provide equivalent or more effective mitigation, special-status plant habitat and/or sensitive plant communities may instead be restored on-site at a 2:1 ratio in areas that are to remain as post-reclamation open space, such as the Grassy Knoll or within the salt marshes.
- c. Special-status plants and/or seeds will be salvaged from areas of disturbance and moved to restoration areas on or off the site; if this is not feasible, an alternate source of seed or plant material will be selected by a qualified biologist.
- d. A five-year restoration mitigation and monitoring program will be developed and implemented. Appropriate performance standards will include, but are not limited to: a 75 percent survival rate of restoration plantings or plant cover; absence of invasive plant species (any species listed on the California Invasive Plant Council's California Invasive Plant Inventory); and a functioning, self-sustaining plant community at the end of five years.  
*(Mitigation Measure R4.3-c)*

95. The Permittee will implement the following measures in order to minimize damage to protected trees that are to be preserved on-site: *(Mitigation Measure R4.3-4c)*

- a. Prior to the start of any clearing, stockpiling, excavation, grading, compaction, paving, change in ground elevation, or construction, preserved trees that occur adjacent to project construction areas shall be identified as preserved and clearly delineated by constructing short post and plank walls, or other protective fencing material, at the dripline of each tree.
- b. The delineation markers shall remain in place for the duration of the work.
- c. Where reclamation activities would encroach upon the dripline of a preserved tree, special construction techniques will be required to allow the roots of remaining trees within the project site to breathe and obtain water (examples include, but are not limited to, use of hand equipment for tunnels and trenching, and/or allowance of only one pass through a tree's dripline).
- d. Tree wells or other techniques may be used.
- e. The following shall not occur within the dripline of any retained tree: parking; storage of vehicles, equipment, machinery, stockpiles of excavated soils, or construction materials; or dumping of oils or chemicals.
- f. If a tree within a preserved area is damaged or destroyed, the applicant shall replace the tree at a ratio of 2:1 with trees of the same species. Tree replacement shall be performed by a certified arborist. *(Mitigation Measure R4.3-4c)*

96. All pruning activities of preserved trees shall be performed by a certified arborist. No more than 25 percent of a tree's canopy shall be removed during pruning activities of retained trees. *(Mitigation Measure R4.3-4d)*

97. The Permittee shall develop and implement a five-year monitoring program for any required replacement plantings, as specified in Combined EIR Mitigation Measure R4.3-4c. The performance standards for tree replacement include all of the following: 75 percent survival rate of restoration plantings; absence of invasive plant species (any species listed on the California Invasive Plant Council's California Invasive Plant Inventory); and self-sustaining trees at the end of five years. If these criteria are not met, the applicant shall re-plant and success shall again be assessed after five years. *(Mitigation Measure R4.3-4e)*

98. All jurisdictional wetland areas to be avoided shall be protected by setbacks throughout site reclamation and post-reclamation development consistent with the Baylands Corridor designation of the site in the 2007 Countywide Plan:

- a. Setbacks for the NW Quadrant marshes shall be consistent with the requirements of the Baylands Corridor designation for the site. During reclamation activities, no temporary or permanent reclamation stockpiles,

berms, or other features shall be placed within 100 feet of the NW Quadrant marshes. Buffers shall be included as part of post-reclamation development design in the vicinity of the NW Quadrant marshes and shall be a minimum of 100 feet in width.

b. Setbacks for seeps and seasonal wetlands shall be a minimum of 50 feet.

c. Areas that are avoided and provided with setbacks will be further protected by Best Management Practices (BMPs), as described in the Combine EIR Mitigation Measure R4.3-5d. Such measures include the installation of silt fencing, straw wattles or other appropriate erosion and sediment control methods or devices along roads and at the 100 foot setback limits. Such BMPs shall also be employed if and when reclamation grading and post-reclamation development requires work within the setbacks as described above, between the feature and the activity. (*Mitigation Measure R4.3-5a, C4.3-18a, R4.3-5b, & 4.3-12a*)

99. All necessary jurisdictional wetland permits and approvals of appropriate regulatory agencies shall be obtained prior to each relevant phase of reclamation. Copies of the permits or approvals shall be provided to the Department of Public Works. (*Mitigation Measure R4.3-5c*)

100. The Permittee shall conduct reclamation activities in a manner that avoids erosion and sedimentation of wetland areas, through implementation of standard BMPs to maintain water quality and control erosion and sedimentation during construction as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities and as established by mitigation measures set forth in the Combined EIR and this Permit.

101. Water quality and Best Management Practice mitigation measures include, but not limited to, installing silt fencing between jurisdictional waters and project related activities, locating fueling stations away from potentially jurisdictional features, and otherwise isolating construction work areas from any identified jurisdictional features. In addition, BMPs identified in the Long-term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) (Corps, 2001) shall be implemented to prevent degradation of water quality resulting from dredging activities within open waters. These BMPs include: silt fencing and gunderbooms or other appropriate methods for keeping dredged materials from leaving the project site. (*Mitigation Measure R4.3-5d*)

102. The Permittee shall revise the amended reclamation plan to include as a standard for guiding development of the Development Plan that post-reclamation residential, commercial, and mixed use development, except as otherwise permitted by BCDP, shall not occur within the 100 foot shoreline band subject to BCDP

jurisdiction. This revision shall be provided at the time of the Conforming Amended Reclamation Plan. *(Mitigation Measure R4.3-5e)*

103. Prior to open-water construction activities, the Permittee shall obtain the necessary permits from the US Army Corps of Engineers (USACE) and other regulatory agencies. Open-water construction will not begin prior to obtaining necessary permits. Copies of the permits or approvals shall be provided to the Department of Public Works. *(Mitigation Measure R4.3-6a)*

104. All open-water construction activities shall adhere to the guidelines of the then-current version of the LTMS. *(Mitigation Measure R4.3-6b)*

105. To minimize wetland disturbance, the construction of the connecting channel from the Main Quarry Bowl to the Bay, and removal or installation of rip-rap along the Bay shoreline, will either operate from dry land or from water-based equipment such as barges, scows, derrick barges, and tugs. *(Mitigation Measure R4.3-6c)*

106. Permittee shall include surveys for California red-legged frog (CRLF) in its "Standards for Preserving Sensitive Habitat Areas," to be conducted prior to filing for grading permits for each reclamation phase, as well as undefined setbacks to be established in the site's Development Plan. *(Mitigation Measure R4.3-8a)*

107. The Permittee shall conduct reclamation and post-reclamation development activities in and around the process water ponds in the NW and SW Quadrants in a manner that avoids take of California red-legged frog (CRLF) through surveys to determine whether the species is present, and, if so, to reduce the risk of take of individuals of the species, as specified below. The Permittee shall conduct quarry operations in a manner that avoids take of CRLF. Specifically, the following measures shall be implemented *(Mitigation Measures R4.3-8b, P4.3-13)*:

a. The Permittee shall retain a qualified biologist to conduct a habitat assessment for CRLF according to U.S. Fish and Wildlife Service (USFWS) guidelines prior to filing for grading permits for Reclamation Phase 1 or prior to any site disturbing activity within 300 feet of the ponds or fresh water marsh. The habitat assessment shall be submitted to USFWS for review. If, following the review of the habitat assessment, USFWS recommends protocol-level field surveys, then the project sponsor shall conduct protocol-level field surveys for CRLF within aquatic habitat that provides potential breeding habitat (the process water ponds in the NW and SW Quadrants) on the project site. The Permittee shall provide the County with the results of the habitat assessment, USFWS review, and protocol level surveys, if required, prior to any site disturbing activity within 300 feet of the subject areas.

b. If no CRLF are found during the habitat assessment and/or protocol level surveys associated with Phase 1 reclamation activities then the project proponent shall consult with USFWS as to the necessity of conducting further

assessments or surveys for Phases 2 through 4 and/or for post-reclamation development.

c. If, as a result of the habitat assessment and/or protocol level surveys, CRLF are found on the project site, the project applicant shall initiate informal consultation with the USFWS to determine the need for formal consultation and preparation of a Biological Assessment and Biological Opinion (required by the federal Endangered Species Act). Specific measures to protect CRLF shall be determined in consultation with USFWS and may include, but are not limited to, the following measures, which are derived from the USFWS Programmatic Biological Opinion (PBO) for impacts to CRLF. The PBO summarizes typical project effects and provides generic preventive measures designed to substantially reduce the risk of incidental “take” of CRLF within the project area:

i. The name and credentials of a biologist qualified to act as construction monitor shall be submitted to USFWS for approval at least 15 days prior to commencement of work.

ii. A qualified biologist shall conduct pre-construction surveys within aquatic habitat by two weeks prior to the onset of construction activities. Surveys shall be completed for all life cycle stages of CRLF (e.g., egg masses, tadpole, juveniles, and adults) that may occur within the project area. If adult CRLF, tadpoles or eggs are found within the construction disturbance zone, the approved biologist shall contact USFWS to determine if moving any of these life-stages is appropriate. If USFWS approves moving the animals, the approved biologist shall be allowed sufficient time to move them from the construction sites before work activities begin. If no frogs are detected during these surveys, construction-related activities may proceed without further requirements for the protection of individuals, although habitat protection measures (i.e., avoidance of intermittent drainages and riparian habitat) shall still be observed.

iii. Exclusionary fencing, such as silt fences, shall be installed around the process ponds and around all construction areas that are within 100 feet of or adjacent to potential CRLF habitat. Once fencing is in place, it shall be maintained by the proponent until completion of construction within or adjacent to the enclosure.

iv. Prior to commencement of any earthmoving activities, the monitoring biologist shall train all construction personnel and work crews on the sensitivity and identification of the CRLF and the penalties for the “take” of this species. In addition, visual materials shall be provided to assist in identifying the species. Training sessions

will be repeated for all new employees before they access the project site and periodically throughout project construction.

v. The monitoring biologist will demarcate construction avoidance areas in the field and monitor construction activities within 300 feet of aquatic habitat for CRLF. The demarcation shall remain on-site until all initial vegetation clearing and habitat disturbance is completed.

vi. All fueling and maintenance of vehicles and other equipment and staging areas shall occur at least 100 feet from any riparian habitat or water.

108. The Permittee shall conduct quarry operations, reclamation and post-reclamation development activities on site, and in and around the process water ponds in the NW Quadrant, in a manner that avoids take of northwestern pond turtle through surveys to determine whether the species is present, and, if so, to limit activities as specified below. Specifically, prior to any site disturbing activity within 300 feet of the NW Quadrant process water ponds or filing for Phase 1 reclamation grading permits, a qualified biologist who is permitted by CDFG to move turtles and their nests shall perform northwestern pond turtle (WPT) surveys within suitable habitat in and around the process ponds in the NW Quadrant. Surveys and subsequent actions shall include the following (*Mitigation Measures R4.3-9, P4.3-14*):

a. Surveys shall be conducted for nests as well as individuals.

b. If WPT are found during initial surveys a qualified biologist shall be present when project-related activities within or adjacent to suitable aquatic habitat for northwestern pond turtle are occurring and will be responsible for temporarily relocating adult WPT that move into work areas.

c. No work within the process ponds or on their banks will proceed until the work area is determined to be free of WPT or their nests.

d. If a nest is located within the process pond area and may be impacted by reclamation activities, it shall be caged to exclude predators and monitored closely until the eggs hatch. Hatchlings shall be moved to an appropriate facility and reared until they are large enough to survive in the wild. They shall then be released into appropriate suitable habitat. All aspects of these activities shall be conducted by a qualified biologist in consultation with CDFG.

e. A report shall be prepared by a qualified biologist documenting the presence/absence of WPT at SRRQ, as well as the measures taken to protect them if present, and submitted to the County and to CDFG.

- f. If no turtles are found during surveys associated with Phase 1 reclamation activities the project proponent shall consult with CDFG regarding the need for further future surveys.

109. The Permittee shall conduct quarry operations or reclamation activities involving tree removal and building demolition in a manner that avoids disturbance or mortality of bats, through surveys to determine whether bats are present, and, if so, to limit reclamation activities as specified below. Specifically, the applicant shall take the following measures to avoid direct mortality of roosting special-status bats and disturbance of maternity roosts or winter hibernacula (*Mitigation Measures R4.3-10, P4.3-16*):

- a. A qualified bat biologist, acceptable to the CDFG, shall conduct surveys of all potential bat habitats within 500 feet of reclamation activities prior to initiation of such activities, including surveying trees slated for removal as a result of quarrying activity. Potentially suitable habitat shall be located visually. Bat emergence counts shall be made at dusk as the bats depart from any suitable habitat. In addition, an acoustic detector shall be used to determine any areas of bat activity. At least four nighttime emergence counts shall be undertaken on nights that are warm enough for bats to be active. The bat biologist shall determine the type of each active roost (i.e., maternity, winter hibernaculum, day or night).
- b. Removal of trees or demolition of buildings showing evidence of bat activity will occur during the period least likely to impact the bats as determined by a qualified bat biologist (generally between February 15 and October 15 for winter hibernacula and between August 15 and April 15 for maternity roosts). If active day or night roosts are found the bat biologist shall take actions to make such roosts unsuitable habitat prior to tree removal or building demolition.
- c. A no-disturbance buffer shall be created around active bat roosts being used for maternity or hibernation purposes at a distance to be determined in consultation with CDFG. Bat roosts initiated during construction are presumed to be unaffected, and no buffer is necessary. However, "take" of individuals, including harming, harassing, or killing, will be prohibited.
- d. If pre-construction surveys indicate that roosts are inactive or potential habitat is unoccupied during the reclamation, construction or mining periods, no further mitigation is required. Trees and buildings that have been determined to be unoccupied by special status bats and that are located outside the no-disturbance buffer for active roosts may be removed or demolished.

e. If known bat roosting habitat is to be destroyed during tree removal or building demolition activities, artificial bat roosts shall be constructed at least two weeks prior to such disturbance in an undisturbed area of the property, at least 200 feet from any ongoing or future activities. The design and location of the artificial bat roost(s) shall be determined by a qualified bat biologist.

f. Prior to quarry-related tree removal a report shall be submitted to the County that details the survey results and any actions taken to protect special-status bats. Any special-status bat sightings shall also be submitted to the CNDDDB.

110. The Permittee shall implement nesting raptor surveys described as part of the "Standards for Preserving Sensitive Habitat Areas in the amended reclamation plan. (*Mitigation Measure R4.3-11a*)

111. The Permittee shall conduct quarry operations and reclamation activities, including vegetation removal as well as variability in quarrying activity levels on South Hill in a manner that avoids direct losses of nests, eggs, and nestlings and indirect impacts to avian breeding success. Specifically (*Mitigation Measures R4.3-11b, P4.3-15*):

a. During the breeding bird season (January 1 through August 31) a qualified biologist will survey sites for nesting raptors and passerine birds not more than 14 days prior to any ground-disturbing or vegetation removal (including trees, shrubs, and grassland vegetation) activity. In addition, vegetation on South Hill will be surveyed if quarrying activities on South Hill cease for a period of more than one week during breeding bird season.

b. If reclamation activities occur only during the non-breeding season between September 1 and December 31, no surveys will be required.

c. Surveys shall also be conducted during breeding season in those areas of the project site that a qualified biologist determines may have nesting special status bird species present that could potentially be impacted by indirect noise impacts of operations such as truck traffic or blasting at that time.

d. Results of the surveys will be forwarded to the County and CDFG (as appropriate) and avoidance procedures will be adopted, if necessary, on a case-by-case basis. Avoidance procedures shall be reviewed and approved by CDFG. Depending on the species involved, these may include construction buffer areas (up to several hundred feet in the case of raptors) or seasonal restriction or avoidance of activities. Vegetation of any kind identified as supporting active nests will not be removed until nestlings have fledged. If survey results are positive for nesting birds, vegetation removal or mining on South Hill will not occur until submittal and review of reports and

implementation of any necessary avoidance measures. Special-status bird sightings shall also be submitted to the CNDDDB.

112. The Permittee shall submit revisions to the amended reclamation plan that include a standard for post-reclamation development (to be submitted three years prior to cessation of mining activities or by December 31, 2021, whichever is earlier) that requires the applicant to conduct post-reclamation development activities in a manner that avoids harassment, disturbance, and mortality of nesting birds and other wildlife that inhabit the SRRQ marshes. The standard will include development of a Marsh Wildlife and Habitat Protection Plan, to be prepared as a part of the Development Plan, and subject to review and approval by the Marin County Community Development Agency, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. Components of the plan will include, but not be limited to, the following:

- a. In accordance with the policies set forth in the 2007 Marin Countywide Plan the project development footprint will maintain a set back of at least 100 feet from marsh habitat on the project site.
- b. Cyclone fencing with vinyl slats for screening shall be installed at the setback distance between the marshes and all residential or commercial development. Appropriate native vegetation will be planted both inside and outside of the fence to provide further screening. The fence will be designed specifically to provide a barrier to exclude cats, dogs, and other household pets from marsh areas and will also provide a visual screen between marsh wildlife and human activity.
- c. To minimize the potentially-adverse effect of night lighting on the adjacent salt marsh habitat the following will be utilized: street lighting only at intersections, low-intensity street lamps and low elevation lighting poles, and internal silvering of the globe or external opaque reflectors to direct light away from marsh habitat. In addition, private sources of illumination around homes shall also be directed and/or shaded to minimize glare into the marsh.
- d. An education program for residents will be developed including posted interpretive signs and informational materials regarding the sensitivity of the marsh habitat, the dangers of unleashed domestic animals in this area, and discouragement of the practice of feeding feral cats. (*Mitigation Measure R4.3-12b*)

113. The Permittee shall prepare a Marsh Restoration plan and implement the recommendations as soon as practicable, and in any case, shall complete the tidal marsh restoration prior to completion of Phase 1 reclamation. This mitigation measure will be implemented through the following:

a. The Permittee shall develop and submit a Marsh Restoration Plan to the County and other applicable resource agencies within 1 year of approval of the amended quarry permit. The Plan will include, but not be limited to, the following elements:

- i. A baseline study of existing marsh conditions, including topography, a complete analysis of current hydrology, vegetation, and wildlife that will be used to inform subsequent marsh restoration planning.
- ii. A thorough analysis of the potential effects of tidal restoration on adjacent infrastructure and existing marsh vegetation.
- iii. Development of a suite of restoration alternatives, with tidal restoration as the preferred alternative, providing constraints do not preclude this course of action.
- iv. Feasible goals for marsh restoration with quantifiable objectives that can be measured over time to determine whether goals are being met.
- v. A detailed plan for marsh restoration, including, if necessary to achieve objectives, plans for excavation of new channels, addition of new culverts, setbacks, buffers, etc.
- vi. A maintenance schedule for any mechanical devices or features, such as tide gates, specified in the plan.
- vii. A monitoring plan to determine optimum inundation levels for the marshes. This would include measurements of hydrology, sediment accretion, and changes in vegetation over time.
- viii. A schedule for annual monitoring reports, which shall be submitted to the Department of Public Works, as well as all permitting agencies as required. *(Mitigation Measure C4.3-18b)*

### **Geology/Geotechnical/Seismicity**

#### **Design**

114. The Permittee shall include the recommendations made in the Supplemental Geotechnical Data Report Proposed Changes to Mining Plan by ENGEO, Incorporated dated April 11, 2005 as part of the quarry design and submittal of the Conforming Amended Reclamation Plan. These recommendations include conducting supplemental geotechnical pit observations, groundwater monitoring, and slope monitoring which shall be conducted by a California Certified Engineering Geologist or Registered Professional Geotechnical Engineer with oversight by the State Office of Mine Reclamation. In addition, the average slope inclination (toe to

top) shall not exceed 60 degrees for a maximum vertical height of 350 feet, a minimum of 30-foot-wide benches shall be constructed at maximum 90-foot intervals, and inter-bench face inclinations shall not exceed 75 degrees. (*Mitigation Measure R4.4-1 & R4.4-3b*)

115. The quarry access ramp placement required to deepen the quarry shall be configured to minimize excavation at the south face and create a buttressing effect to the slopes at the south side of the quarry.

116. Quarry pit design shall consider the potential effect of large-scale horizontal curvature of pit walls on slope stability. In general, convex-inward horizontal curves in quarry slopes should be avoided. Concave inward-sloped offer some degree of increased confinement by “arching” of the rock mass between discontinuities, and effectively decrease the area of free face available for kinematically possible failure geometries. Convex-inward slopes can actually contribute to potential instability, since lateral confinement is reduced and the area of the kinematically-available free face is effectively increased.

#### *Monitoring*

117. Mine quarry highwalls and the South Hill cut slope shall be periodically observed, mapped, and evaluated by a qualified engineering geologist and/or geotechnical engineer to determine if there are any rock structures or conditions that adversely impact or otherwise contradict the assumptions of the slope stability analyses provided with the 2004 Amended Reclamation Plan. In addition, the observations during mining would be to identify possible adverse rock structure as excavations proceed, so that the quarry operations can avoid undesirable slope failures in critical improvements such as access ramps or quarry brow improvements. At least annually, as part of the required SMARA mine inspection, the mine highwalls and South Hill cut slope shall be evaluated by a qualified engineering geologist and/or geotechnical engineer. If an adverse condition occurs, additional geotechnical studies shall be undertaken and slope modifications made to ensure stability of the final mine slopes. Copies of all evaluation reports shall be provided to the Department of Public Works as part of the Annual Report.

118. Piezometers shall be installed within a year following approval of the Permit around the margins of the quarry pit to allow periodic monitoring of ground water elevations to demonstrate that the assumptions in the slope stability analysis about pore water pressures are valid. The actual configuration of the piezometer array should be determined based on the final proposed pit configuration and on proposed planning of quarry operations to allow optimum placement of instruments and to avoid conflicts with future operations. Ground water level monitoring shall be done at least quarterly. Copies of all monitoring data and reports shall be provided to the Department of Public Works at least annually.

119. A network of survey monitoring points shall be established around the quarry pit and on benches to allow for measurement of any movement in the highwalls.

These monitoring points shall be surveyed initially at a monthly interval. The Quarry geotechnical engineer shall periodically evaluate whether additional survey points are necessary, and determine if more or less frequent survey monitoring is needed (reference page 77, ENGEO Supplemental Report). Results of this survey monitoring shall be reported to the Department of Public Works as part of the Annual Report.

120. The south face quarry access ramp shall be constructed to provide for a buttressing effect on the Wedge 1 failure area and any similarly unstable areas. Additional remedial grading and placement of engineered fill materials may be necessary to provide this buttressing effect. Any fill placed for structural support shall be designed, inspected, and tested by a qualified geotechnical or soils engineer. An engineer's report on placement and compaction of any engineered soils shall be provided to the Department of Public Works for review.

121. The periodic geotechnical inspections recommended above shall include evaluation of mining faces for potentially unstable blocks. Localized face failures are an expected part of surface mining, and the location and potential size of unstable blocks can be evaluated during periodic inspections as mining proceeds. If it appears that a critical facility such as the access ramp could be threatened by a potential block failure, the geotechnical engineer shall recommend appropriate correction action such as the installation of rock bolts, or local modification of mining excavations to increase stability.

122. The large-scale stability of the quarry walls shall be periodically evaluated by the geotechnical engineer based on the results of monitoring of slope performance, groundwater levels, and geotechnical inspection of mining exposures. If unacceptable slope performance is detected, it will be possible to implement several possible mitigation measures as described below. The actual recommended mitigation measures shall be based on site-specific evaluations:

- a. Mitigation measures shall be employed if adverse groundwater conditions are encountered (unacceptably high pore pressures or excessive seepage, etc.) Mitigation measures could include horizontal drains, extraction wells, slurry walls, etc.
- b. If unacceptable levels of mining-concurrent slope deformation are encountered, mining activities shall be modified to improve stability. At the quarry brow, stockpiles of products, quarry waste piles or areas of overburden can be excavated and moved to reduce driving forces. In the pit, bench configurations can be modified by "stepping out" or increasing bench width, effectively flattening the mining slope angle.

123. At the south quarry brow, it is anticipated that the final slopes will locally expose quarry fills and areas of native soils and weathered rock. The anticipated extent of soils and weaker materials in the proposed face is presented in Figure 13

of the ENGEO Supplemental Report. ENGEO Supplemental Report Figure 14 presents options for mitigation, including construction of a sheet pile wall or an engineered fill buttress. Both options would allow the quarry limits depicted in the Quarry's mining plan to be preserved. The Quarry shall select an appropriate method based on conditions actually encountered at the time of construction. The Quarry shall provide the engineering evaluation and method chosen to the Department of Public Works for review prior to implementation.

#### *Future Geologic/Geotechnical Studies*

124. A thorough re-evaluation of excavated slopes shall be performed near the conclusion of the mining operations, but no later than three years from mining cessation, so that the proposed post-reclamation conversion to secondary uses can be re-evaluated based on revealed conditions with a comprehensive re-evaluation of quarry slope stability based on the results of on-site geotechnical pit observations made during mining, groundwater monitoring, slope monitoring, and a program of laboratory testing of on-site materials. An appropriate testing program shall, as a minimum, include unconfined compressions tests, triaxial testing, and direct shear tests of joint surfaces. The re-evaluation shall be provided to the Department of Public Works.

125. The additional studies recommended in the condition above and the ENGEO Supplemental Report will include a study to determine how the site may be developed following reclamation in order to avoid or mitigate to less than significant impacts related to soil and slope stability. At the time the study is prepared, there will be a greater understanding of the bedrock stability and the properties and performance of the Quarry walls. A comprehensive re-evaluation of slope stability shall be performed based on results from geotechnical observations throughout the mining period, groundwater monitoring, slope monitoring, and laboratory testing of on-site materials which would include compression tests and shear tests of joint surfaces.

- a. The design-level, site-specific geotechnical investigation shall be prepared by a California licensed Geotechnical Engineer or Certified Engineering Geologist and include review of the supplemental geotechnical evaluations and monitoring conducted throughout the history of mining activities. The investigation shall include final grading recommendations, mitigation of any identified compressible or liquefiable soils, slope stability analyses, calculation of factors of safety, and structural foundation recommendations to ensure that post-reclamation development will be in accordance with the then-current requirements of the California Building Code and the Marin County Building and Safety Division or City of San Rafael Building Code. These recommendations shall be incorporated into the final design plans for post-reclamation development. (*Mitigation Measure R4.4-3c*)
- b. A qualified Geotechnical Engineer or Certified Engineering Geologist shall prepare a revised geologic map of the Quarry Pit and South Hill, and

provide supplemental recommendations, if any, for implementation of the proposed reclamation plan. The study shall confirm that the final mine slopes are stable and suitable for the proposed post-reclamation land use. As necessary, the study shall provide recommendations for any geotechnical investigation and/or analysis needed to demonstrate the stability of the slopes is suitable for any proposed post-reclamation end land use(s). The study shall be provided to the County. If determined by the County or engineering geologist, supplemental rock slope engineering recommendations shall be provided to maintain acceptable factors of safety for proposed adjacent land uses.

c. If the design-level, site-specific geotechnical investigation determines that achievement of factors of safety adequate for the intended post-reclamation uses are infeasible in some or all of the reclaimed Quarry, the report shall specify appropriate alternative post-reclamation uses or limitations on the planned use. An amended reclamation plan shall be submitted to the County as required under State law and/or the Marin County Code. (*Mitigation Measure R4.4-3d*)

d. The location of secondary use structures and critical facilities such as lifeline roads and utilities with respect to the top finished pit reclamation slopes shall be based on the results of the recommended detailed post-mining studies

126. The Permittee shall incorporate into the reclamation grading and construction specifications provisions requiring that all phases of reclamation construction implement best management practices (BMPs) to reduce and eliminate soil erosion and loss of topsoil. The Permittee shall implement these BMPs, and the Permittee shall be responsible for the inspection and maintenance of the BMPs through all phases of reclamation. (*Mitigation Measure R4.4-2b*)

127. The proposed reclamation grading and other earthwork activities included in the amended reclamation plan shall be designed such that all potential development areas would be located on either bedrock or consolidated engineered fill, with known and predictable strengths and stability. (*Mitigation Measure R4.4-3a*)

### **Water Quality**

128. Within 6 months, the Permittee shall provide a Stormwater Management Plan and Stormwater Pollution Prevention Plan, both of which will be implemented as part of the projects. The Permittee shall include as part of the Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Management Plan, a monitoring and maintenance element that would require scheduled periodic monitoring of BMP performance and condition. At a minimum, stormwater and erosion control BMPs shall be monitored after major storms, prior to the first rain event, and midway through large storm events extending over several days. Temporary BMPs (e.g., fiber rolls) shall be monitored for performance and immediately replaced if

necessary. Performance and failure of BMPs shall be described in the annual report to the RWQCB as required under the SWPPP. Monitoring and maintenance shall be conducted by an erosion control specialist contracted by the applicant. Monitoring and maintenance reports shall be filed with the Permittee and available to the County on request. *(Mitigation Measures R4.4-2a, R4.5-2a & R4.5-2b)*

129. Within one year of Permit approval, the Permittee shall submit an engineering and economic report for construction, operation and future maintenance of a mechanical mixing or aeration system, or another engineered approach, which will result in avoidance or elimination of a stratified water column within the Main Quarry Bowl after it is flooded. The report will be conducted by qualified limnologists and water quality engineers. The system design will be at a schematic level and will be stamped by a California professional engineer, and will include calculations that demonstrate that the system will maintain water quality objectives established in the San Francisco Bay Regional Water Quality Control Board's Basin Plan. The report will include an analysis of operating and maintenance costs for the system, as well as predicted energy requirements and greenhouse gas emissions, and a plan for minimizing both of these; estimate the funds needed to construct and operate in perpetuity the system to meet water quality objectives and what the financial assurance amount should be for the reclamation plan financial assurances; and will identify funding sources to ensure continued operation of the system after reclamation. The need for, and design of a mechanical mixing or aeration system shall be subject to further study and review as part of the post reclamation development plan, which shall be submitted at least three years prior to cessation of mining. *(Mitigation Measure R4.3-7, R4.5-6)*

130. Prior to implementation of the last phase of reclamation (Phase 4), the Permittee shall model effects of the maximum expected tsunami, seiche event, and anticipated sea level rise, considering the latest climate change information, and county policies and regulations in effect at the time, and proposed adequate setback and final contour elevations in a report to the County. If changes to the approved reclamation plan are needed, a revised Phase 4 reclamation plan shall be submitted to the County for review and approval prior to implementation. *(Mitigation Measure R4.5-8)*

131. The Permittee shall submit a revised amended reclamation plan that includes standards for preventing polluted stormwater runoff from entering the Main Quarry Bowl after it is flooded. The standards will be used to guide development of the post reclamation Development Plan, due to be submitted three years prior to the anticipated completion of mining. *(Mitigation Measure R4.5-10)*

132. Permittee shall abide by all standards and monitoring requirements of its State of California Regional Water Quality Control Board (RWQCB) discharge permit, including monitoring by a State of California certified sampling laboratory of all specified constituents and subsequent correction of any problems indicated by sampling results in excess of specified water quality standards; or any subsequent

requirements of the Regional Water Quality Control Board that may be implemented to augment or supersede the requirements.

133. The Permittee shall maintain all erosion control measures and keep current and comply with all permits required by the RWQCB. Copies of all RWQCB permits for the Quarry property shall be provided to the Department of Public Works.

#### **Revegetation**

134. Within 60 days of Permit approval, Permittee shall revise the amended reclamation plan (ARP04) to incorporate the State Office of Mine Reclamation (OMR) "Resoiling and Revegetation" comments contained in OMR's December 14, 2009 comment letter to the County. The revisions shall be included in the Conforming Amended Reclamation Plan submitted to the County.

135. In areas to be reclaimed by secondary development uses, temporary Type I, II, or III vegetation shall be installed as soon as reclamation grading is complete.

#### **Hazardous Materials/ Public Health**

136. Permittee shall maintain and periodically updated a Hazardous Material Business Plan that contains operator information, a hazardous material inventory, site maps, and an Emergency Response Action Plan. (*Mitigation Measure R4.8-1a, R4.8-1b, & P4.8-3a*)

137. The Permittee shall prepare and maintain a blasting plan that describes how the Quarry will consistently comply with applicable blasting regulations and standards of practice. The blasting plan will contain a complete description of clearing and guarding procedures; descriptions of how explosives will be safely transported, stored, and used at the site in accordance with applicable regulations; evacuation, security and fire prevention procedures; blasting equipment list, and procedures for notification of nearby receptors in the event of an accident or emergency involving explosives. The blasting plan shall incorporate the recommendations contained in the REVEY Associates, Inc. report in Appendix J of the Combine FEIR, Volume III: Appendices (pp. 23-24). The blasting plan shall be prepared and submitted within six months of approval of the Permit. The plan will be subject to review and approval by the County Department of Public Works. (*Mitigation Measure P4.8-3b*)

138. A potable water supply and adequate toilet facilities shall be provided for employees according to requirements of the Marin County Environmental Health Division.

139. *Reporting Accidents:* The Permittee shall immediately notify the Public Works Director by telephone, FAX, and/or voice mail of any incidents such as fires, explosions, spills, land or slope failures, or other conditions at the site, which could pose a hazard to life or property outside the Permit or Quarry area. Upon request of any County agency, the Permittee shall provide a written report of any incident within

seven calendar days, which shall include, but not be limited to, a description of the facts of the incidents, the corrective measures used, and the steps taken to prevent a recurrence of the incident. This condition does not supersede nor replace any requirement of any other governmental entity for reporting incidents.

### **Cultural Resources**

140. In the event that any human remains, artifacts, or other indicators of prehistoric or historic use of the parcel are encountered during quarrying, site preparation, construction, or reclamation activities on any part of the project site, all work at the vicinity of the discovered site shall stop and the project sponsor shall contact the Marin County Environmental Coordinator immediately. If human remains are encountered, the County Coroner must also be contacted. A registered archaeologist, chosen by the County and paid for by the project sponsor, shall assess the site and shall submit a written evaluation to the Community Development Agency Director advancing appropriate conditions to protect the site and the resources discovered. State law designates procedures should human remains be encountered. If the remains are deemed to be Native American and prehistoric, the Coroner must contact the Native American Heritage Commission so that a "Most Likely Descendant" can be designated. No work at the site may recommence without approval of the Community Development Agency Director. (*Mitigation Measures R4.12-1a, & P4.12-9*)

141. The following applies to the last Phase of reclamation (Phase 4). The Permittee shall retain the services of a qualified archaeological consultant who has expertise in California prehistory to review reclamation grading plans and identify areas of potential concern, including previously undisturbed or minimally disturbed areas. The archeological consultant shall monitor all ground-disturbing or vegetation removal activities in identified areas of concern during mining or construction to ensure that any previously undiscovered cultural resources are properly identified and preserved or otherwise mitigated in accordance with prevailing professional standards and Public Resources Code §21083.2. If an intact archaeological deposit is encountered, all soil-disturbing activities in the vicinity of the deposit will cease. The archaeological monitor will be empowered to redirect crews and heavy equipment until the deposit is evaluated. The monitor will immediately notify the Marin County Department of Public Works of the encountered archaeological deposit. The monitor will, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, present the findings of this assessment to Marin County. If Marin County, in consultation with the archaeological monitor, determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed project, the Permittee shall take steps to:

- a. Redesign the project to avoid any adverse effects on the significant archaeological resource; or
- b. Develop and implement an archaeological data recovery program

(ADRP) (unless the archaeologist determines that the resource is of greater interpretive than research significance and that interpretive use of the resource is feasible). If the circumstances warrant an archaeological data recovery program, an ADRP will be conducted that will preserve and recover important archeological data from the find, to the extent that adverse effects will be avoided. The project archaeologist will consult with Marin County to determine the scope of the ADRP. The archaeologist will prepare a draft ADRP that will be submitted to Marin County and the state Office of Historic Preservation for review and approval. The ADRP will identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain (i.e., the ADRP will identify the scientific/historical research questions that are applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions). Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods will not be applied to portions of the archaeological resources if nondestructive methods are practical. *(Mitigation Measure R4.12-1b)*

142. The Permittee shall relocate the top soil stockpile fill area "F" under Phase 1 of the proposed project, to avoid potentially adverse effects to the Caretaker's Residence. The fill area could be relocated either to the east or to the west of this potentially eligible historic resource, or split into two smaller stockpiles, to avoid the resource. *(Mitigation Measures R4.12-3a & R4.12-5b)*

143. Prior to commencement of Phase 1 reclamation grading, the Permittee shall submit a detailed plan to the Marin County Department of Public Works detailing stockpiles and haul routes, and protection of historic resources. The plan will clearly show how the Caretaker's Residence and other potentially eligible historic resources will be protected and preserved. *(Mitigation Measures R4.12-3b & R4.12-5b)*

144. The Permittee shall relocate and/or redesign the surcharge berm proposed under Phase 2 of the proposed project, to avoid potentially adverse impacts to the Boarding House and Office structures. The north-south leg of the berm could be narrowed to avoid these resources, allowing more fill to occur on the east-west portion of the berm. To ensure adherence to this mitigation measure, prior to commencement of Phase 2 reclamation grading, the applicant shall submit a detailed plan to the Marin County Department of Public Works detailing the precise location of the surcharge berm, as well as areas that will be used to support construction of the berm. The plan will clearly show how the Boarding House and Office structures and other potentially eligible historic resources will be protected and preserved. *(Mitigation Measures R4.12-4a, & R4.12-5b)*

145. If relocation or alteration of the surcharge berm will affect the geotechnical properties of the site required for intended post-reclamation development, the

Permittee shall revise the conceptual design for the NW Quadrant Reclamation Plan accordingly. *(Mitigation Measure R4.12-4b)*

146. The Permittee shall redesign the reclamation activities in the SW and NW Quadrants under Phase 3 of the proposed project to avoid potentially adverse impacts to the former c. 1935 U.S. Army Signal House. The southernmost limits of the reclamation activity area could be reduced by approximately 100 feet to avoid this historic resource, potentially allowing more reclamation activities to occur on the northern, eastern, or western portions of SW-3. *(Mitigation Measures R4.1-1b, R4.1-2, & R4.12-5a)*

147. Prior to commencement of Phase 3 reclamation grading, the Permittee shall submit a detailed plan to the Marin County Department of Public Works detailing reclamation grading activities. The plan will clearly show and describe how the affected potentially historic resources, including the c 1935 U.S. Army Signal House, the Caretaker's residence, and the McNear's Brickyard Boarding House and Office structures, as well as any other potentially eligible historic resources will be protected and preserved. *(Mitigation Measure R4.12-5c)*

148. The Permittee shall revise the applicable portion of ARP04 to specify preservation of the following four historic resources: 1) c. 1902 Cookhouse, 2) c. 1902 Drysheds, 3) c. 1902 Hoffman Kiln #1, 4) c. 1904 Hoffman Kiln #2, and 5) c. 1910s Worker's Shed. The neighborhood commercial uses proposed for the NW Quadrant shall be constructed to provide a sufficient setback to allow these structures to visually 'read' as a working brickyard, with all original components of the brickmaking industry intact. *(Mitigation Measures R4.1-1a, R4.1-2, R4.1-1b, R4.12-6a, & R4.12-6b)*

#### **Quarry Monitoring and Reporting**

149. Within 60 days of Permit approval, the Permittee shall provide, in a form approved by the Public Works Director, three (3) copies, in binders, of all Exhibits to this Permit, and a mitigation, monitoring and reporting program plan to implement all required mitigation and monitoring programs and studies. In addition, the binders shall include all permits issued by or applied for from any other agencies.

150. Within 30 days of Permit approval, the Permittee shall contact the California Department of Mines and Geology, Office of Mine Reclamation, to determine what additional information is required by that agency given the County's approval of the project. The requested information shall then be provided in a timely manner with a copy to the County.

151. *Annual Report:* The Permittee shall furnish the Director of Public Works with an annual report by February 1<sup>st</sup> of each year describing how all conditions and mitigation measures of this permit are being implemented, any problems with such implementation and the resolution of such problems compliance with these conditions.

- a. With each report, the Permittee shall provide a topographic map at the same scale as the approved mining and reclamation plans, and if a different scale, a topographic map 1 inch to 200 feet.
- b. With each report the Permittee shall also provide an annotated map showing current progress of mining and reclamation and with information on drainage, erosion and sedimentation control facilities installed, and 'as-built' plans of revegetation areas.
- c. The report shall summarize air quality, noise, and biological monitoring data that has been collected over the preceding year.
- d. The report shall document conformance with the adopted Mitigation, Monitoring and Reporting Program (MMRP).
- e. The report shall specify planned biological surveys, reports, protective measures or mitigation that the Permittee intends to undertake in the upcoming year.
- f. The report shall contain information prescribed elsewhere in these permit conditions.
- g. The Permittee shall certify the accuracy of this report.

152. Permittee shall consult with the California Department of Fish and Game and US Fish and Wildlife Service in preparation of final mitigation plans for habitat preservation and enhancement. The methods, results, and recommendations of the field surveys shall be approved by the Public Works Director, and successful implementation shall be completed by the Permittee prior to site disturbance, or prior to final reclamation, as the case may be. Monitoring shall be performed by a qualified third party professional, who shall submit a report as part of the Permittee's Annual Report.

153. Permittee shall maintain a public web site where information and notices regarding this Permit, applicable condition noticing and the Permittee's operations will be posted as applicable.

154. Upon reasonable notice, Permittee hereby authorizes the County, or its designee, to enter and inspect the Quarry site for compliance with these permit conditions and/or the Marin County Code.

#### **County and Consultant Work, Compliance Monitoring and Enforcement**

155. Annual inspection, review of reports or plans required under these Permit conditions or approval, monitoring and enforcement costs, and fees shall be paid by the Permittee in order to cover all actual costs incurred by the County, including but

not limited to materials, staff time and consultant costs, for the inspection, monitoring and enforcement of the applicable Permit conditions and reclamation plan inspections. Where monitoring service of a qualified professional is required or needed by the County, additional monitoring fees may be levied on the Permittee to cover such costs. The County may request advance deposits prior to starting the work.

a. Within 45 days of Permit approval, Permittee shall deposit \$100,000 in a deposit account for monitoring. Said deposit will be used by County agencies to cover staff costs and/or County-initiated consultant contracts associated with these Permit conditions. As funds are drawn down the County may request additional funds in order to maintain an adequate fund balance. Standard accounting practices shall be employed by the County to account for the funds.

b. All phases of operations and reclamation shall conform with the adopted Mitigation, Monitoring and Reporting Program (MMRP), and the County of Marin will verify compliance with each of the required mitigation. Pursuant to the MMRP, the Permittee shall bear all cost associated with the management of the MMRP, including direct County staff costs. In the event County staff cannot absorb the task of managing the MMRP, an independent contractor will be hired by the County at the expense of the Permittee to carry out the responsibilities for managing the MMRP.

156. The County retains the right to hire its own consultants to evaluate any work undertaken by the Quarry or Quarry consultants under contract with the Quarry. Prior to the County engaging any independent consultants or contractors which will be paid for by the Permittee pursuant to the conditions of this Permit, the County shall confer with the Permittee regarding the scope and necessity of the work to be contracted for, as well as the costs of such work. County staff shall prepare a detailed proposed scope of work for services proposed to be provided by any consultant. These proposed contracts and scopes of work shall be provided to Permittee prior to retaining any consultant. The Permittee shall have the opportunity to review and comment on all such consultant contracts. Any decisions made by County staff may be appealed to the Board of Supervisors per the appeal procedures contained in the Marin County Ordinance Code then in effect.

#### **Permit or Monitoring Modifications**

157. Prior to undertaking any operational or construction related activity which is not expressly described in these conditions or approved Conformation Amended Reclamation Plan, the Permittee shall contact the Department of Public Works to determine if such activity requires a modification of this Permit.

a. The Public Works Director may, at his/her discretion, require that the Permittee file a written description of the proposed activity prior to rendering a decision whether a permit or monitoring modification is required. If a permit

or monitoring modification is required, such modification shall be subject to the then applicable standards for permit modification in the Marin County Code and the environmental review required by CEQA. Such permit or monitoring modifications shall be accompanied by a fee to process the request and reimburse the County staff time, as determined by the Public Works Director.

158. The Public Works Director may in his/her discretion extend the time limits for compliance with permit conditions if the Permittee demonstrates that it has diligently attempted to meet the deadline specified. The monitoring programs and plans submittals required by the Permit conditions herein may also be reasonably modified at the discretion of the Public Works Director after consultation with the resource agency with applicable expertise.

159. The County and all other permitting agencies shall have the option of referring any and all subsequent permit modification application requests of the Permittee to an independent and qualified consultant for review and evaluation of issues beyond the expertise or manpower of staff. The costs for all such consultant work shall be borne by the Permittee and are independent of the fees paid for staff processing of a permit application or review.

### **Community Relations**

160. At least twice annually, or more frequently as determined by the Public Works Director, the Permittee shall hold a local community forum to review and discuss Quarry operations and reclamation, and answer questions from the public in attendance. The meeting announcement shall be made at least 30 days in advance of the meeting and posted on a web site, provided to the Public Works Director, and provided to local community organizations.

### **Mining Operation or Reclamation Not in Compliance with Permit**

161. If the Director of Public Works determines, based upon an inspection or otherwise confirmed by credible evidence, that the surface mining operation or reclamation activity is not in compliance with this Permit, approved reclamation plan, County of Marin Code or State law, the Director may notify the Permittee of that violation by personal service or certified mail. If the violation extends beyond 5 days after the date of the Director's notification, the Director may issue an order by personal service or certified mail requiring the Permittee to comply with this Permit, County of Marin Code or State law.

- a. Any order issued under this section shall specify which aspects of the surface mine's activities, operations or reclamation are inconsistent with this Permit, County of Marin Code or State law, shall specify a time for compliance which the Director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

b. If the Permittee violates or fails to comply with an order issued under this section after the order's effective date, the Permittee shall be subject to an order of the Director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, per violation, assessed from the original date of noncompliance with this Permit, County of Marin Code or State law. The penalty may be imposed administratively by the Director.

c. In determining the amount of the administrative penalty, Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require.

d. Orders setting administrative penalties shall become a final order and effective upon issuance thereof and payment shall be made to the County of Marin within 30 days, unless the Permittee appeals to the Board of Supervisors for review.

e. Within 15 days of the issuance of an order or orders setting administrative penalties the Permittee may appeal to the Board of Supervisors for review of the order(s). If no appeal is requested from the Director of Public Works Order(s), such shall be deemed a failure to exhaust administrative remedies and a waiver of any further administrative and legal rights.

f. If an appeal is requested, the Board of Supervisors may, after hearing the appeal, affirm, modify, or set aside, in whole or in part, by its own order, any order of the Director of Public Works.

g. The Permittee aggrieved by a final order of the Board of Supervisors may obtain review of the order by filing in the superior court a petition for writ of mandate within the statutory time following the issuance of the final order. If the Permittee does not petition for a writ of mandate within the statutory time limits, a final order of the Board of Supervisors shall not be subject to review by any Court or Agency.

h. The remedies and civil penalties provided by this section shall be in addition to any other remedies and penalties provided by law.

162. A current set of Permit conditions, approved reclamation plan and associated exhibits and reports shall be retained at the Quarry site.

**Revocation (ref. MCC 23.06.070)**

163. In the event any Permittee holding a permit hereunder fails, neglects or refuses to fulfill any of the requirements or any of the conditions of the permit or violates any other applicable law or ordinance, or conducts or carries on the

operation in such a manner as to materially affect adversely the health welfare or safety or persons residing or working in the neighborhood of the property wherein the operations is being conducted, or conducts or carries on an operation so that it is materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Director of Public Works may revoke or suspend the permit. No permit shall be revoked or suspended until a hearing is held by the Board of Supervisors.

#### **Correspondence from Other Agencies/Jurisdictions**

164. Copies of all violations or abatement notices, or requests for reports or information related to this Permit and its authorized uses by federal, state or local jurisdictions/agencies, shall be provided to the Public Works Director within 30 days of the Permittee's receipt of said notices or requests. Within 30 days of any subsequent modification of another agency's permit or submission of an application for any permit to another agency, the applicable materials shall be submitted to the Public Works Director.

#### **Change of Ownership Notice**

165. Permittee, property owner and their authorized agents, and any other person in control of the property, individually or collectively, are responsible for the observation and compliance with all the provisions of this permit and the Marin County Surface Mining Ordinance. Said responsibility shall run with the land under permit as a covenant. Successive owners, heirs, and assigns of this real property are bound to comply with all the requirements of these conditions. Prior to any lease, sale, transfer, or conveyance of any portion of the real property that is the subject of the Quarry, the owner shall provide a copy of the adopted conditions to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

166. At least 10 calendar days prior to the effective date of change of property ownership, or of lessee(s), or operator(s) of the permitted use, there shall be filed, as an initial notice with the Public Works Director, the name(s), address(es), and telephone/FAX number(s) of the new owner(s), lessee(s) or operator(s), and company officer(s). A final statement that a transfer of ownership has occurred shall be provided to the Public Works Director within 15 calendar days of said transfer. Said statement shall include any changes in name(s), address(es), and telephone/FAX number(s) of the new owner(s), lessee(s), or operator(s), and company officer(s) from the initial notice. Said statement shall be accompanied by a letter from the new property owner(s), lessee(s), and/or operator(s) acknowledging and agreeing to comply with all conditions of this Permit. Said statement shall specify the effective date and time of the transfer.

#### **Severability**

167. If any of the conditions of this permit are held to be invalid, that holding shall not invalidate any of the remaining conditions or limitations set forth.

168. If any condition(s) is invalidated by a court of law, and said invalidation would change the findings and/or mitigation measures associated with the approval of this Permit, the project may be reviewed, at the discretion of the Board of Supervisors, and substitute feasible condition(s)/mitigation measures may be imposed to adequately address the subject matter of the invalidated condition(s).

**Permittee Defense Costs**

169. As a condition of permit issuance and use of this permit, including adjustment, modification or renewal of the permit, the Permittee agrees to:

- a. Defend, at the Permittee's sole expense, any action brought against the County by a third party challenging either its decision to issue this Permit or the manner in which the County is interpreting or enforcing the conditions of the Permit; and
- b. Indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of or resulting from any such action.

170. Upon demand from the County, the Permittee shall reimburse the County for any court costs and or attorney's fees which the County may be required by a court to pay as a result of any such action the Permittee defended or of which it had control of the defense. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relive the Permittee of its obligations under this condition.

**Duty to Defend & Indemnity**

171. As a condition of permit issuance and use of this permit, including adjustment, modification or renewal of the permit, the Permittee agrees to defend, indemnify and hold harmless the County, its agents, officers and employees, from any claim, action or proceeding against the County, to challenge any portions of the EIR certification, permit or reclamation plan process or approval; In addition to damages, indemnification includes reimbursing the County for staff and consultants cost, court costs, and attorney's fees (including claims for private Attorney General fees).

172. Neither the issuance of a permit hereunder nor compliance with the conditions thereof shall relieve the Permittee from any responsibility otherwise imposed by law for damage to persons or property, nor shall the issuance of any permit hereunder serve to impose any liability upon the County of Marin, its officers or employees for injury or damage to persons or property.