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Agenda Date: 11/16/2011

Agenda Placement: 9E

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning

REPORT BY: DONALD BARRELLA, PLANNER III - 707-299-1338

SUBJECT: Pope Creek Rock Quarry/Gravel Pit - Review and possible revocation or suspension of Surface Mining Permit No. 97420-SMP

RECOMMENDATION

POPE CREEK ROCK QUARRY/GRAVEL PIT - COMPLIANCE REVIEW OF SURFACE MINING PERMIT No. 97420-SMP CEQA Status - Categorical Exemption Class 21: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 21 ("Enforcement Actions by Regulatory Agencies") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15321.]

Request: Conduct a public hearing pursuant to Section 16.12.620 of the Napa County Code, for the purpose of determining whether or not the mining operator has substantially complied with Napa County Code Chapter 16.12, Surface Mining Permit No. 97420-SMP and the master mining plan. If the Planning Commission finds the operator is not in substantial compliance, the Commission shall consider: (1) Revocation or Suspension of Surface Mining Permit No. 97420-SMP issued April 15, 1998, for rock quarrying and associated activities; and (2) issuance of an Order to Comply to commence site reclamation as stipulated in Surface Mining Permit No. 97420-SMP. Revocation or suspension of No. 97420-SMP is requested on the grounds that the permittee is violating or has violated conditions thereof; the use for which the surface mining permit was granted is being, or has been exercised contrary to the terms or conditions of such approval; the use granted is being or has been exercised as to be detrimental to the public health, safety or general welfare; and, the use for which the approval was granted is being exercised in such a manner as to constitute a nuisance. The project is located on a 455-acre parcel on the north side of Pope Canyon Road approximately 2.5 miles northeast of its intersection with Pope Valley Cross Road within an Agricultural Watershed (AW) Zoning District (Assessor's Parcel Number 018-080-023). 2700 Pope Canyon Road, Pope Valley, California.

Staff Recommendation: Find that the mining operator and owner(s) are not in substantial compliance with NCC Chapter 16.12 (Surface Mining and Reclamation) and conditions of Surface Mining Permit No. 97420-SMP, revoke Surface Mining Permit No. 97420-SMP, and direct the planning director to issue an order to comply.

Staff Contact: Donald Barrella (707) 299-1338 or donald.barrella@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action: That the Planning Commission:

1. Find the proposed action categorically exempt from the California Environmental Quality Act pursuant to Section 15321 of the State CEQA Guidelines (Class 21 -- "Enforcement Actions by Regulatory Agencies");
2. Find that the mining operator and owner(s) are not in substantial compliance with NCC Chapter 16.12 (Surface Mining and Reclamation) and conditions of Surface Mining Permit No. 97420-SMP;
3. Revoke Surface Mining Permit No. 97420-SMP unless correction of the noticed violations has commenced by the date of the hearing;
4. Direct the planning director to issue an order to comply; and
5. Specify the contents of the order to comply.

Discussion:

On April 15, 1998 the Planning Commission heard and approved Surface Mining Permit 97420-SMP that allowed for surface mining, quarrying, and associated activities at the subject parcel as follows:

1. Excavation from the "Rock Quarry" of up to 8,800 cubic yards (cy) of rock each year for the next 7 years (until 2006);
2. Removal from the "Gravel Pit" (i.e. Pope Creek) of up to 5,500 cy of aggregate each year for the next 25 years (until 2023);
3. Operation accessory to the the Gravel Pit of a dry concrete batch plant producing up to 3,500 cy of concrete each year primarily from on-site materials for the next 25 years; and,
4. Reclamation of all disturbed areas both henceforth and in the past in conformance with the May 16, 1997 Pope Creek Rock Quarry/Gravel Pit "Reclamation Plan" as modified by the conditions of approval of the permit.

Other provisions of the approval include: the processing and storage in the 5.75-acre Rock Quarry and 6.5-acre Batch/Wash Plant areas of materials excavated from those areas; loading, wholesale sales, and limited retail sales of the materials produced; and, placement in compliance with Environmental Health Dept requirements of a portable travel trailer in the Batch/Wash Plant area and its use thereafter for up to the next 25 years to house a mine watchman. The conditions of approval and associated reclamation plan of No. 97420-SMP for the Pope Creek Quarry/Gravel Pit are attached as Exhibit A and Exhibit B, respectively.

As noted above, the Mining Permit allows the Rock Quarry to operate until 2006 and the Gravel Pit and associated Batch/Wash Plant to operate till 2023. Condition No. 66 provides a definition of when activities are considered "permanently ceased" and when reclamation activities shall commence. For the purpose of Permit No. 97420-SMP hard rock mining/gravel removal shall be considered by definition to have "permanently ceased" if less than 2,500 tons of rock or 1,500 tons of gravel, respectively, is excavated annually for 3 consecutive years.

Staff believes that pursuant to this definition, gravel extraction/removal from the Gravel Pit (i.e. Pope Creek) has ceased and reclamation of the Batch/Wash Plant area must commence because extraction from the Gravel Pit and operation of the Batch/Wash Plant have not been witnessed since 2007 (or documented since 1998), and that reclamation of the Rock Quarry must commence because the term of that mining activity has ended. The operator appears to be using the site exclusively for processing and sale of previously mined and imported materials, and

storage of equipment and other debris.

As identified in the past 4 Annual Inspection Reports for the facility (attached as Exhibits C, D, E, and F) the operation has not been in compliance with the following provisions of No. 97420-SMP and County Code:

- **Financial Assurance Cost Estimate (FACE):** The County has not been able to conclude that the operator/owner(s) have provided an adequate FACE update pursuant to Public Resources Code (PRC) Section 2773.1(a) and the California Code of Regulations (CCR) Section 3804(a) since August 2007. The failure to submit an annually updated FACE that is determined adequate by the lead agency is a violation of PRC Section 2773.1(a)(3), CCR Title 14 Section 3804(c), NCC Section 16.12.415, and Surface Mining Permit No. 97420 Condition of Approval No. 74.
- **Equipment Removal:** Since 2009, the County has requested that all trash/debris, materials and spoils piles, abandoned and unused equipment, buildings and installations in the Rock Quarry and Batch/Wash Plant areas be removed. Failure to remove these items is a violation of CCR Section 3709(b) and Conditions of Approval No. 7, 56, and 66, of Surface Mining Permit No. 97420 and associated reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770.
- **Reclamation:** Since 2009 the County has requested that reclamation of the Rock Quarry and Batch/Wash Plant areas (which includes equipment and debris removal described above) commence. Failure to commence reclamation of the facility is a violation of NCC Section 16.12.340 and Conditions of Approval No. 1, 2 5, and 66 of Surface Mining Permit No. 97420 and associated reclamation plan approved pursuant to NCC Section 16.12.300 and PRC Section 2770.

See the attached Notices of Noncompliance dated February 24, August 26, and October 5, 2011 (Exhibits G, H, and I, respectively), which formally request the operator and owner(s) to address these compliance issues.

Staff recommends that the Mining Permit be revoked unless the operator and owner(s) have begun to address the noticed violations by the date of the hearing (November 16, 2011). Staff also recommends that the Commission direct the planning director to issue an Order to Comply and specify contents of the Order. If the operator and owner(s) have not begun to address the noticed violations, the Order should require immediate compliance. If the operator and owners have made good faith efforts to comply before the date of the hearing, the Order should provide a timeline for completion of required actions and cessation of mining activities, and should clarify the extent to which the site may be used for processing and sales of previously mined and imported materials.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

CEQA Status - Categorical Exemption Class 21: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 21 ("Enforcement Actions by Regulatory Agencies") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15321.]

BACKGROUND AND DISCUSSION

The Surface Mining and Reclamation Act of 1975 (SMARA):

The Surface Mining and Reclamation Act (Public Resources Code Sections 2710-2796; California Code of Regulations Sections 3500-3965) provides a comprehensive surface mining and reclamation policy that regulates surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the state's mineral resources.

SMARA is implemented by the local Lead Agency, the California Department of Conservation Office of Mine Reclamation (OMR), and the State Mining And Geology Board (SMGB). The SMGB promulgates regulations, serves as a policy and appeals board, and may act as a lead agency. The OMR primarily provides oversight and technical assistance to lead agencies and can take compliance/enforcement actions if necessary.

Napa County, as the local lead agency, retains land use authority and administers SMARA as follows:

- Adoption of a Mining Ordinance;
- Issuance of permits to mine;
- Approval of reclamation plans and plan amendments;
- Approval of financial assurance cost estimates (FACE) and assurance mechanisms;
- Conducting annual inspections and preparation of annual inspection reports; and,
- Enforcement of SMARA.

SMARA requires mine operators to obtain a permit to mine from the lead agency, along with an approved reclamation plan and an approved financial assurance cost estimate and assurance mechanism for reclamation activities. It also requires operators to submit a Mining Operation Annual Report (MRRC-2 report) and fee to OMR. It should be noted that even mine operators with "vested" rights, who do not require permits to mine, are required under SMARA to have approved reclamation plans for portions of their site mined after 1975, as well as financial assurance cost estimates and assurance mechanisms for reclamation activities ((PRC Section 2770(a) through 2770(c)).

Napa County Code Chapter 16.12 - Surface Mining and Reclamation:

Napa County Code (NCC) Chapter 16.12 regulates surface mining and reclamation activities within Napa County consistent with the requirements of SMARA (Public Resources Code 2710 et seq.). In addition to the subject mine, the County currently has three other permitted mines that are inspected on an annual basis by Conservation Division staff: 1) Syar American Canyon Quarry - reclamation complete, remaining activities primarily include monitoring and maintenance; 2) Syar Napa Quarry - active mine; and, 3) the McLaughlin / Homestake Mine - reclamation complete, remaining activities primarily include monitoring and maintenance.

In addition to conducting annual inspections and financial security review (so adequate monies are available to ensure reclamation), County staff processes applications for new or amended mining permits and reclamation plans, and initiates code enforcement actions when facilities are not in compliance with provisions of the Napa County Code and/or the applicable permit.

Chapter 16.12 requires that surface mining operations obtain a Surface Mining Permit (SMP) to conduct mining operations in the County. The SMP consists of a Master Mining Plan that includes 2 components; a mining plan which specifies how the mine will be operated, and a reclamation plan which specifies how the site will be reclaimed. The Master Mining Plan also specifies the end use of the mining property to ensure that the mined lands are reclaimed to a usable condition which is readily adaptable for alternate/end land use and creates no

danger to public health or safety. The SMP also requires that an adequate security amount and mechanism for reclamation of the mining site and operation, pursuant to Article IV (Security) of Chapter 16.12 (Sections 16.12.400 through 16.12.480).

Pope Creek Quarry obtained Surface Mining Permit No. 97420-SMP in April 1998 allowing surfacing mining and processing and the operation of an associated dry concrete batch plant, as further described below: also see the Pope Creek Rock Quarry/Gravel Pit Reclamation plan attached as Exhibit B and conditions of approval attached as Exhibit A.

Under No. 97420-SMP, mining operations were heavily influenced by the conditions of approval. Over 53 of the 80 conditions deal with site preparation, site maintenance, mining and production operations, and other permitting. The remaining conditions primarily deal with permit terms, reclamation, reclamation monitoring and maintenance, and financial securities, which are further described below.

Mining Property and Permit History:

Owners: Gerald Marino (Marino Family Trust), Joseph C. Nichelini, Chris Harney (Harney Trust)
Operator: Don Wesner, Don Wesner Incorporated, Blue Rock Company
Location: 2700 Pope Canyon Road, Assessors Parcel No. 018-080-023
General Plan: Agriculture, Watershed, and Open Space (AWOS)
Zoning: Agricultural Watershed (AW)
CA Mine ID No: 97-28-0007

Site plans showing the location of areas described below can be found in Exhibit B.

1947

In 1947 Carl Benson, the original operator, commenced aggregate/gravel extraction from Pope Creek (referred to as the Gravel Pit in the current permit) and related processing at what is now identified as the Batch/Wash Plant area. Annually, portions of a gravel deposit that accumulated east of the Batch/Wash Plant area were extracted from Pope Creek for processing. Processing of extracted aggregate occurred at the Batch/Wash plant area (located on the north side of Pope Canyon Road) and consisted of crushing, washing, screening and stockpiling of gravel extracted from Pope Creek. Improvements or equipment for the operation included a crusher/washer/screener, 2 wash ponds, and small accessory structures (sheds and small office). These improvements were installed between 1947 and the mid 1950s. The owner of the property at this time was Mr. James Connor.

1950s

In January of 1955, the County adopted its first comprehensive zoning ordinance and under that ordinance, mining operations were required to have a permit. In the late 1950s, hard rock mining began at the Hard Rock Quarry area located approximately 0.5 miles east of the Batch/Wash Plant area along the north side of Pope Canyon Road. Over time, a crusher and scale were installed on this portion of the property so mined material could be crushed and stockpiled for sale.

1963

George Ray took over operations of the mine and continued gravel extraction and hard rock mining; Mr. Ray operated the quarry until 1979.

1965

On December 20th, Use Permit No. 44-66 was approved for a dry concrete batch plant operation in conjunction with an existing quarry operation; the batch plant was located at what is referenced as the Batch/Wash Plant area in the current permit. This use commenced in 1965 and ceased in the 1980s.

1979-1995

In 1979, Gadiners Rock took over quarry operations and then in the late 1980s, ACT Construction took over quarry operations. In 1990, James Conner sold the property to Joseph A. and Carol Nichelini, and Gerald and Norma Marino. In October of 1995, Nichelini General Engineering took over quarry operations, and sometime in 1996 Don Wesner took over operation of the quarry

1996

On November 4th, the County issued a Certificate of Legal Nonconformity (CLN) No. 96092 for gravel extraction from Pope Creek (i.e. the Gravel Pit), recognizing activities that preceded the County's zoning ordinance.

1998

On February 4, 1998 the Planning Commission approved Surface Mining Permit No. 96900-SMP for surface mining, quarrying, and associated activities at the subject parcel as described above. However, this approval limited operation of the Rock Quarry, the Gravel Pit, and the Batch/Wash Plant to 7 years.

Other associated activities approved under No. 96900-SMP included: the processing and storage of material excavated within the 5.75-acre Rock Quarry area and 6.5-acre Batch/Wash Plant area; the loading, wholesale sales, and limited retail sales of the materials produced; the placement of a portable travel trailer in the Batch/Wash Plant area to house a mine watchman; and the reclamation of all disturbed areas in conformance with the May 1997 Pope Creek Rock Quarry/Gravel Pit Reclamation Plan.

Subsequent to that approval, on February 20, 1998, the owners (Gerald Marino and Joseph A. Nichelini) requested that the Commission reconsider the requirements contained in No. 96900-SMP, specifically the term (i.e. date of termination) of removal of gravel from the "Gravel Pit" and operation of the associated concrete batch plant. The request was to modify the permit to allow gravel mining and related batch plant operations to continue indefinitely. The requested modification of No. 96900-SMP necessitated a new permit number: Surface Mining Permit No. 97420-SMP. On April 17th 1998, Surface Mining Permit No. 97420-SMP was approved, permitting mining the hard rock quarry area, gravel extraction from Pope Creek (i.e. the Gravel Pit), and batch plant operations. The approval of Permit No. 97420-SMP extended both the removal/extraction of gravel from the Gravel Pit (i.e. Pope Creek) and operation accessory to the Gravel Pit of a dry concrete batch plant for 25 years until 2025. For the most part, all other provisions and conditions of No. 96900-SMP were carried over to No. 97420-SMP.

The reclamation plan of No. 97420-SMP envisioned that final topography of Hard Rock Quarry and the Batch/Wash Plant areas would gradually slope to the north/northwest toward Pope Creek. If necessary in either area, depending on slope, a low wide detention/sediment basin could be created/accommodated along the northern boundary of each mining area to control runoff and soil loss and associated sedimentation. It was anticipated that reclamation of the Gravel Pit (i.e. Pope Creek) would primarily be a natural process. In other words, the gravel bar of the creek would naturally reclaim itself annually and any access roads to gravel extraction area(s) would be repaired and re-vegetated.

According to information available to staff and staff observations, extraction from the Gravel Pit never recommenced under No. 97420-SMP, and Batch/Wash Plant activities have also ceased. Field inspections conducted by staff (from 2007 through the present) have confirmed that the Gravel Pit area has not been mined and is currently in a natural condition. Re-vegetation of other mining areas was envisioned to replicate the native plant species of the area, primarily with ground cover and scattered trees. The current reclamation plan dates from May 1997 (Exhibit B) and identified a subsequent/end use of open space and wildlife habitat. It appears that the revised reclamation and re-vegetation plan called for under conditions No. 14 and 15 were never submitted.

2003-2005

Joseph A. Nichelini's interest in the property was placed into the Estate of Joseph Nichelini (Co Trustees Joseph C. Nichelini and Michael Nichelini). In 2004, the Marino's interest in the property was placed into The Marino Family

Trust. In 2005, Joseph C. and Michael Nichelini dissolved the Estate of Joseph A. Nichelini and each took an interest in the property. Ownership interests of the property (50% Marino Family Trust, 25% Joseph C. Nichelini, and 25% Michael Nichelini) remained this way until 2011.

2008

On April 18th, the owners and operator submitted a minor modification application (P08-00306) to extend Hard Rock Quarry operations specified in Permit No. 97420-SMP an additional 4 years. The application was abandoned/closed on February 24, 2011 due to an incomplete submittal.

2011

In April 2011, Michael Nichelini granted his 25% interest in the property to The Christopher Joseph Harney, Christina Marino Harney Trust. On August 26, 2011, the County issued an Initial Notice of Non-Compliance pursuant to NCC Section 16.12.610, which was not appealed to the Board of Supervisors. The basis for issuance of this notice was due to the compliance matters identified above (i.e. inadequate FACE, site conditions, and reclamation) that are further detailed below. On October 10, 2011, the County issued a Final Notice of Non-Compliance/Notice of Violation and Notice of today's Public Hearing to the operator and owner(s). On Friday October 14th 2011, the County noticed today's hearing pursuant to NCC Section 16.12.370(b).

Permit Conditions & Compliance:

County over-site of the mining operation was minimal until early in 2007 when the Conservation Division staff re-connected with the operator and owner(s) and commenced conducting annual inspections and review of financial assurance cost estimates of the operation. Additionally, the Department wanted to fully understand the provisions of Permit No. 97420-SMP as they related to operations and reclamation, and to assist the operator/owner(s) in achieving compliance. Inspection reports prepared by the lead agency are required annually (these reports are also referred to as the MRRC-1 report). The following inspection reports are attached:

2007/2008 Inspection report dated May 23, 2007 (inspection date 7/27/07) - Attached as Exhibit C

2008/2009 inspection report dated January 29, 2009 (inspection dates 5/8/08 and 1/22/09) - Attached as Exhibit D

2009/2010 inspection report dated February 24, 2011 (inspection dates 3/30 and 12/3 2010) - Attached as Exhibit E

2010/2011 inspection report dated October 7, 2011 (inspection dates 8/4 and 9/30 2011) - Attached as Exhibit F

As detailed in these inspection reports, the County has repeatedly requested that the operator/owner(s), provide an adequate Financial Assurance Cost Estimate (FACE) update; remove all debris, trash, abandoned/unused equipment and buildings/installations, and materials and spoils piles; and, commence reclamation of the facility, pursuant to Permit No. 97420-SMP and NCC Chapter 16.12.

It should be noted that the scope and magnitude of the requests to provide an updated FACE, remove equipment/debris and commence reclamation increase from 2007 to the present. The primary reasons for this is due to the number and complexity of the conditions of No. 97420-SMP. In an effort to assist the operator/owner (s) work toward compliance, staff gradually ramped up enforcement efforts. Furthermore, staff wanted to fully understand the provisions of the permit and see if any options were available to assist the operator/owner (s) achieve compliance before intensifying enforcement efforts. As an example, it was believed at the time that the minor modification application submitted in 2008 (noted above), that a permit modification would allow continued operation of the rock quarry on a limited basis. The application materials were never complete, and rock quarry activities have ceased. Based on the 2009 Mining Operation Annual Report (MRRC-2 report) filed with OMR on February 14, 2011, active mining ceased in 2008 and only the sales of stockpiled aggregate material has occurred from 2008 to the present. According to OMR, MRRC-2 reports were filed from 1993 through 2009 with no reports in years 2004 and 2010.

There are 80 conditions associated with No. 97420-SMP (Exhibit A). While many of these conditions and

mitigations would have been relevant with commencement and ongoing operation of the mining operation, there are a few that are germane to this matter as it stands today. In particular, those that remain applicable concern the term of the permit, conditions affecting the term of certain activities authorized under the permit (in particular the cessation of gravel extraction from Pope Creek and batch plant activities), financial assurances, site conditions, and commencement of reclamation including the potential for revised plans. Below is a more detailed discussion of these conditions.

Term:

Pursuant to these conditions time limits for mining and associated activities and subsequent reclamation were established. Conditions No. 1 and 2 primarily establish these limits, as noted above Condition No. 1 authorizes:

- Excavation of rock from the "Rock Quarry" of up to 8,800 cubic yards (cy) of rock each year during the next 7 years;
- Removal from the "Gravel Pit" (i.e. Pope Creek) of up to 5,500 cy of aggregate each year during the next 25 years; and,
- Operation accessory to the Gravel Pit of a dry concrete batch plant with producing up to 3,500 cy of concrete each year for the next 25 years.

Condition No. 2 further separates the project into 4 phases (site cleanup, permitting/site preparation, operating, and reclamation) taking place on the following schedule:

1. Phase I: Site Cleanup - completed by July 1, 1998, that included site cleanup and posting of the financial assurance bond/mechanism.
2. Phase II: Permitting and Site Preparation - completed by June 1, 2000, that included filing of applications necessary to extract gravel from the Gravel Pit (i.e. Pope Creek) and any other needed permits.
3. Phase III: a) Operation of the Rock Quarry and processing - July 1, 1998 - June 1, 2006; and b) Operation of the Gravel Pit and associated operations including Concrete Batch Plant operations - July 1, 1998 - June 2023.
4. Phase IV: a) Reclamation of the Rock Quarry - begun before June 1, 2006; and b) Reclamation of the Batch/Wash Plant area - begun before June 1, 2023.

This condition also includes the stipulation that reclamation of the Rock Quarry or the Gravel Pit/Wash Plant areas shall be initiated by June 1, 2000, if rock and gravel mining is not re-commenced in full conformance with the requirements of the permit.

Other conditions that affect the term of the permit and the commencement of reclamation include Conditions No. 5, 30, 32 and 66. Condition No. 66 requires that reclamation of the Rock Quarry and/or the Batch/Wash Plant areas commence August 1, 2006 and 2023, respectively or, if sooner, within 60 days after the subject activity "permanently ceases". Permanently cease is defined in the permit: hard rock mining/gravel removal shall be considered permanently ceased if less than 2,500 tons of rock or 1,500 tons of gravel, respectively, is excavated annually for 3 consecutive years.

However, Conditions No. 5, 30 and 32, make it difficult to clearly understand the timing provisions of the permit. Condition No. 5 states "All mining operations, related material processing, storage and shipping, and concrete production shall permanently cease on-site and reclamation shall begin by June 1, 2006 unless continued mining and/or mining related activities after that time are authorized by separate surface mining permit approved by the County." Condition No. 30 appears to allow mining until reserves are not sufficient to meet the needs of eastern Napa County and Condition No. 32 allows for two years of raw material, rock, and aggregate storage on-site of the mine's average authorized production for rock and aggregate: so it could be reasoned that reclamation not commence until 2008.

Even considering these conditions (i.e. Nos. 5, 30, and 32), staff believes that Batch/Wash Plant and Gravel Pit operations have ceased pursuant to the permit and that Rock Quarry operations should have ceased no later than 2008. Reclamation of both areas should have commenced as specified in Conditions No. 1 and 2 of Permit No. 97420-SMP.

Furthermore, Condition No. 34 specifies that all mining-related activities on-site shall cease by July 1, 1998 unless Condition Nos. 7-17, 19-22, 25-28, 72, and 73 have been fulfilled and they shall remain suspended until all these conditions are met. Of these identified conditions it appears that only Condition No. 73 has been met.

Financial Assurances:

The purpose of financial assurances is to ensure that sufficient funds are immediately available to the lead agency or OMR to reclaim the mined lands if the operator defaults or abandons the mine. Annually, the financial assurance calculation is updated for review and approval by the lead agency so that the assurance amount is always current.

It is unclear when Surety Bond No. 111827 for the operation was originally submitted pursuant to Condition No. 73 of Permit No. 97420-SMP; however records indicate that in May of 2000 a bond in the amount of \$48,800 was in place. The amount of the bond was that specified in Condition No. 73.

In July 2007 a FACE update in the amount of \$36,878 was provided by the operator, however it only covered half the operation. In an effort to assist the operator/owner(s) to obtain an adequate assurance amount Conservation Division staff recalculated the amount taking into consideration the entire operation, the amount of the calculation was \$63,039. In August 2007, OMR found that amount appropriate and on August 29, 2007, an updated bond to cover the updated FACE was requested by the County. In April of 2008 an updated bond of \$63,039 was provided by the operator.

While the 2007 FACE update was considered adequate at the time, there were/are still several items that the operator/owner(s) needs to address to have a truly adequate assurance amount that covers all of the reclamation obligations of No. SMP 97420-SMP, Chapter 16.12 NCC, and SMARA. The deficiencies and shortcomings of subsequent FACE updates that the operator/owner(s) still need to address are detailed in the attached inspection reports.

Condition No. 74 requires that the amount of the financial security be reviewed and adjusted annually (June of each year) to assure that it remains sufficient. The operator has submitted 3 updated Financial Assurance Cost Estimates (FACE) since 2007; however, the county has not been able to determine that any of these FACE updates are adequate to guarantee full and complete reclamation of each of the areas disturbed by the operation. This condition goes on to stipulate that "All mine-related activities shall cease on-site if said calculations and the revised securities they mandate have not been received by the Planning Division by the date specified above. Moreover, they shall remain suspended thereafter until said calculations and securities are received." This requirement to annually update the FACE and assurance mechanism are established by Section 16.12.415 NCC, Public Resources Code Section 2207(a)(9) and 2773.1(a)(3), and California Code of Regulations Title 14 Section 3804(c).

The most recent FACE update provided by the operator (April 8, and April 12, 2011) and comments on that FACE (August 20, 2011) are attached as Exhibit J.

Site Conditions:

Conditions No. 7 and 56 deal directly with the condition of site. Condition No. 7 requires that all trash, spoils piles, and abandoned/unused equipment, building and installations in the Rock Quarry and Batch/Wash Plant area be removed and disposed of properly by July 1, 1998. Condition No. 56 requires that the portions of the property utilized by the mining operation (i.e. the Rock Quarry, Gravel Pit and Batch/Wash Plant) be maintained in a clean

and neat state at all times and that these areas be cleared of solid waste and other debris at least once a month. As noted above and in the inspection reports, the operation has not been maintained in accordance with permit provisions. It should be noted that the 2007/2008 and 2009/2010 Inspection Reports documented that some debris and equipment has been removed from the site, however all reports have indicated that additional/increased efforts in removing debris and equipment would be necessary.

Condition No. 66 also requires the removal of all equipment (including the Batch Plant), vehicles, buildings, roads, pavement, debris, spoils piles and material stockpiles when operations/activities cease and reclamation begins.

Reclamation:

As discussed above, staff believes that activities of the Batch/Wash Plant and Gravel Pit have ceased pursuant to the permit and the deadline for Rock Quarry activities has passed, therefore reclamation of the operation should commence. As discussed above, the reclamation plan envisioned final topography of Hard Rock Quarry and the Batch/Wash Plant areas would gradually slope to the north/northwest toward Pope Creek would be re-vegetated to replicate natural conditions with ground cover and scattered trees. Even though the reclamation plan included reclamation of the Gravel Pit (i.e. Pope Creek) due to removal of gravel from the creek, the activity was never commenced under Permit No. 97420-SMP, therefore reclamation of this area is not necessary.

Relevant reclamation conditions include Conditions No. 13, 14, 15, 65 through 71, and 74. It is recommend that these conditions be identified in any Commission and/or Director action/order to ensure full reclamation of the mining areas. Conditions No. 14 and 15 required a revised reclamation plan and re-vegetation plan as part of the permit and staff believes that the current reclamation plan and re-vegetation only need minor modifications and/or supplementing to accomplish appropriate reclamation of the site. These minor modifications would need to include revised grading contours and drainage patterns that take into account the existing site topography, necessary detention capacity of any necessary detention/sediment basin(s) needed to accommodate runoff of each area, and tailoring the re-vegetation plan specifically for the site.

Notices

Enforcement of mining operations is pursuant to Article VI (Enforcement), Chapter 16.12 (Surface Mining and Reclamation) of the Napa County Code: Sections 16.12.600 through 12.12.660.

On October 19, 2007 the Napa County Conservation, Development and Planning Department (CDPD) issued a Notice of Noncompliance regarding submittal of an updated financial assurance mechanism/bond based on the updated FACE amount and submittal of an extension request that was previously discussed with the operator and owners in May of 2007. On February 26, 2008, a Final Notice of Noncompliance/Notice of Violation was issued on these two matters. On April 10, 2008, an updated bond in the amount of \$63,039 was provided and on April 18, 2008 the extension request application was submitted (#P08-00306). The submittal of the bond update and extension request addressed the compliance issues at the time. However, as noted above the extension request was abandoned/closed on February 24, 2011 as incomplete.

On November 19, 2010, the CDPD issued a Notice of SMARA Violation requesting that a FACE update be submitted. This notice followed a letter dated October 22, 2010 that requested a FACE update be submitted by November 10, 2010: this letter also outlined other issues of the facility that needed to be addressed. On December 17, 2010 the operator provided a FACE update, however that cost estimated was determined to be inadequate (see 2009/2010 inspection report for details).

On February 24, 2011, a Notice of Noncompliance (Exhibit G) was issued requesting the following items be addressed: 1) submittal of an adequate FACE update; 2) removal of all trash, spoils piles, and abandoned/unused equipment, buildings and installations of the Batch/Wash Plant and Rock Quarry areas; and, 3) to commence reclamation of the Batch/Wash Plant area. On April 8th and 12th the operator submitted a FACE update, however, that update was not determined to be adequate (see August 26, 2011 Notice for details). Additionally, according to

delivery certifications only one property owner appeared to receive this notice and as noted above one of the owners was in the process of granting his interest in the property to a new owner, therefore staff re-issued this notice in August after confirming ownership and site conditions.

On August 26, 2011, an Initial Notice of Noncompliance (Exhibit H) was issued requesting the following items be addressed: 1) submittal of an adequate FACE update; 2) removal of all trash, spoils piles, and abandoned/unused equipment, buildings and installations of the Batch/Wash Plant and Rock Quarry areas; and, 3) to commence reclamation of the rock Quarry and Batch/Wash Plant areas. The operators and owners had did not appeal the notice.

On October 5, 2011, a Final Notice of Noncompliance/Notice of Violation and Notice of Public Hearing (Exhibit I) was issued identifying that the issues in the August 26th notice had yet to be addressed and that the operation was in violation of the aforementioned provisions of the permit and county code. The matter was also scheduled for hearing before the Commission in conjunction with the Final Notice of Noncompliance/Notice of Violation.

Staff Recommendation:

As detailed in this report and the annual inspection reports, Pope Creek Quarry has not been operated in accordance with Permit No. 97420-SMP, County Code Chapter 16.12, and applicable provisions of SMARA for some time. Unless the operator and owner(s) make substantial progress on noticed violations before the date of the hearing, staff is requesting that the Commission revoke their permit and direct staff to prepare an Order to Comply with Permit No. 97420-SMP. Even if progress is made, the Commission should consider directing staff to issue an Order to Comply with specific deadlines for compliance with relevant conditions of approval. An Order to Comply may be appealed to the Board of Supervisors and non-compliance may result in administrative penalties of up to five thousand dollars per day from the original date of non-compliance.

The order shall require the following actions within 30 days:

1. Submittal of an adequate Financial Assurance Cost Estimate update in accordance with NCC Section 16.12.415 and Condition of Approval No. 74;
2. Removal of trash/debris, materials and spoils piles, abandoned and unused equipment, building and installations of the operation in accordance with California Code of Regulations Section 3709(b) and Conditions of Approval No. 7, 56, and 66; and,
3. Commencement of reclamation of the operation in accordance with NCC Section 16.12.340 and Conditions of Approval No. 1, 2, 5, and 66.

If these actions have been commenced but not completed prior to the date of the hearing, staff recommends that the Planning Commission not revoke Surface Mining Permit No. 97420-SMP and direct the planning director to issue an order to comply containing a deadline for further reclamation activities, including re-vegetation. Such order shall also specify the extent of processing of existing aggregate material stock piles, including imported materials, and sales thereof allowed under the permit.

SUPPORTING DOCUMENTS

- A . Surface Mining Permit No. 97420-SMP
- B . Reclamation Plan No. 97420-SMP
- C . Annual Inspection Report 2007-2008
- D . Annual Inspection Report 2008-2009

- E . Annual Inspection Report 2009-2010
- F . Annual Inspection Report 2010-2011
- G . Notice of Noncompliance, February 24, 2011
- H . Initial Notice of Noncompliance, August 26, 2011
- I . Final Notice of Noncompliance/Notice of Violation and Hearing, October 5, 2011
- J . April 2011 FACE Update with County Comments
- K . Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell