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April 25, 2016

BOS 4/26/2016
Item 9A

VIA EMAIL

Napa County Counsel
1195 Third Street, Room 310
Napa, CA 94559**Re: Surface Mining Permit No. P08-00337-SMP; Syar Proposed Revision to Mitigation Measure 4.8-4**

Dear County Counsel,

On behalf of Syar Industries, Inc. ("Syar"), we voluntarily request that the County of Napa revise Mitigation Measure 4.8-4 to omit any reference to Syar obtaining new supplies of additional water for operations. The revision is in response to Mr. Kevin Block's letter on behalf of Skyline Park Citizens Association, dated March 21, 2016 that alleged that the EIR's analysis of alternative water sources was inadequate. Mr. Block's letter is attached hereto as Exhibit A. Although the Applicant does not agree with Mr. Block's assertions regarding the legal adequacy of the analysis in the EIR, as discussed below the option of utilizing a new supply of additional water for operations is not necessary for the Applicant to feasibly mitigate the project's impacts to groundwater supplies.

Mitigation Measure 4.8-4's limitation on groundwater use of 140.6 acre-feet per year can feasibly be achieved at the full proposed production level of 1.3 million tons per year without reliance on other sources of water through recycling process water onsite, utilization of higher efficiency devices, and gravel/chemical dust suppressant application on unpaved roadways. The identification of the potential need for an alternative water supply in the original mitigation measure was primarily based on the Applicant's original project, which allowed for an annual production limit of 2 million tons. Mitigation measure 4.8-4 currently includes requirements for water reuse and water conservation methods to off-set additional water demands, these include gravel application to roadways and production areas, reuse of sand wash water. These identified options, and other water saving technologies will be utilized by Syar to reduce water demand and achieve maximum production without exceeding the maximum allowable usage of 140.6 acre-feet per year.

The reduced production project that was approved by the Planning Commission cut annual production to 1.3 million tons, which is a 35% reduction. The original 2 million ton project required up to 50 additional acre-feet of water per year. By reducing maximum production to 1.3 million tons per year the project requires only 20 additional acre-feet of water (reduction of 30 acre-feet). (Napa County Resolution No. 2015-03, Findings for Approval of Surface Mining Permit, § 8(C).) Increasing water efficiency by only 14% will provide the extra 20 acre-feet Syar needs for the full 1.3M production without increasing groundwater use above the 140.6 acre-foot maximum.

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The 14% increase in water use efficiency will be achieved through the utilization of new water saving technologies that allow for the reuse/recycling of water used to wash sand, aggregate, and truck wheels. Additional technologies that are anticipated to also provide significant water savings include use of gravel and surfactants on unpaved roadways and higher efficiency water sprayers/misters used for dust control at processing areas. Taken together, these technologies allow the project to feasibly reach full production without exceeding the baseline groundwater cap of 140.6 acre-feet per year, without having to resort to the obtaining a new supply of additional water.

Accordingly, Syar does not need to utilize supplemental water sources in order to avoid any impacts to groundwater supplies. In consideration of the project's reduced production levels the existing groundwater use baseline of 140.6 acre-feet can feasibly provided sufficient water for the full production level of 1.3 million tons per year. Therefore, Syar requests that the County modify mitigation measure 4.8-4 to omit any reference to use of new or additional water sources.

Sincerely,

DICKENSON, PEATMAN & FOGARTY

A handwritten signature in black ink, appearing to read 'Thomas Adams', written over a horizontal line.

Thomas Adams

cc: Gladys Coil, Clerk of the Board



March 21, 2016

Chair Alfredo Pedroza
Supervisor Brad Wagenknecht
Supervisor Mark Luce
Supervisor Diane Dillon
Supervisor Keith Caldwell
Napa County Board of Supervisors
Administration Building
1195 Third Street, Suite 310
Napa, CA 94559

Re: Syar Quarry Appeal

Dear Chair Pedroza and Members of the Board:

I am writing on behalf of Skyline Park Citizens Association to delineate two errors in the Planning Commission's approval of the Syar surface mining permit and certification of the EIR, either one of which warrants reversal of those decisions on appeal.

First, the mining permit authorizes Syar to increase production from approximately 800,000 to 1.3 million tons of aggregate per year while purporting to cap groundwater extraction at the current annual rate of 140.6 acre feet. That 63% increase in production will obviously require more water, yet the EIR, which by law must evaluate the project at peak production, fails to analyze potential supplemental water sources with the specificity required by CEQA. By authorizing increased production while skirting the issue of additional water sources, the EIR fails in its primary purpose of providing the Board and the public with sufficient information to make a reasoned decision about the project.

Second, the Planning Commission found the project consistent with the Napa County General Plan. It based that decision on a consistency analysis which ignores many relevant General Plan policies as well as Measure P. The Board has considerable leeway to make consistency determinations, but it must examine *all* of the relevant policies in doing so. The intent of the AWOS designation, as set forth in the General Plan, is to prevent the urbanization of agricultural land and open space. Measure P requires that such intent be interpreted broadly to effectuate that purpose. Syar may expand its quarry, but only after the people of Napa County approve a re-designation of the affected parcels.

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I. THE EIR FAILS AS AN INFORMATIONAL DOCUMENT BECAUSE IT DOES NOT ANALYZE WHERE SYAR WILL OBTAIN THE ADDITIONAL WATER NECESSARY FOR FULL PRODUCTION AT THE EXPANDED QUARRY, OR THE ENVIRONMENTAL CONSEQUENCES OF MOBILIZING THOSE ADDITIONAL WATER SOURCES.

The EIR concludes that additional extraction to support the expanded quarry could substantially deplete groundwater supplies or interfere with groundwater recharge (EIR, Impact 4.8-4). Because the quarry's main well is located in the groundwater deficient Milliken-Sarco-Tulocay basin, and because the aquifers are hydraulically connected, pumping more groundwater could cause a deficit throughout the MST (DEIR, App. JJ, p. 77). No more groundwater is available for Syar's mining operations (Res. No. 2015-03, p. 41).

The EIR proposes to mitigate this impact to less than significance by capping the mine's groundwater extraction at its current level of 140.6 acre feet per year, forcing Syar to make up the difference from other, unspecified sources "if additional water is required."

If additional water is required for the Project, the additional water shall be obtained from offsite sources such as new wells outside MST. Offsite sources of recycled water are available and water can be purchased from public and private sources. If additional water sources are not available, then the Applicant shall reduce its production volume to a level such that the water use shall not exceed the maximum allowable annual usage of 48.5 million gallons (140.6 acre-feet) per year. Any new or additional water sources for quarry operations shall be subject to additional environmental review pursuant to CEQA and modification of this surface mining permit (Res. No. 2015-03, p. 42).

Additional water will obviously be required for Syar to achieve full production, but the EIR leaves us to guess how much. We are also left to speculate about the identity and location of the "public and private sources" identified in the EIR, the likelihood of Syar obtaining access to them, the time frame that will be required and, most importantly, the foreseeable environmental impacts from mobilizing each potential source. Therein lies the problem.

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The criteria for determining whether an EIR's water analysis is adequate was established by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412. There, the Court emphasized the vital role of CEQA in informing government decision-makers and the public about the environmental consequences of a project (CEQA Guidelines 15002(a)(1)). CEQA does not require that future water supplies be established with certainty, but neither does it allow an EIR to merely assume that water sources will exist.¹ The EIR must show there is a *likelihood* that the project will have sufficient water. If there are multiple alternative sources, the EIR must examine their environmental impacts in enough detail to evaluate the pros and cons of each. And it must conduct this analysis assuming the project will reach the maximum amount of production being authorized. Failure to do so thwarts CEQA's informational mission.

The Syar Quarry EIR does not meet the *Vineyard Area Citizens* test. It identifies several potential sources of supplemental water for the project in very general terms, but does not evaluate them or analyze their foreseeable environmental impacts. For trucked water, for example, the EIR should project the likely number and distance of trips, and the impacts on traffic, air quality, noise and greenhouse emissions. For water from alternative wells, it should discuss potential locations, identify potential impacts on those aquifers, and describe the need for storage tanks, pipelines and other supporting infrastructure. For recycled water, the EIR should report on the likelihood of Syar connecting to the NSD pipeline and the environmental benefits and disruption.

In its brief discussion of the NSD pipeline, the EIR raises more questions than it answers, including issues of availability, cost and infrastructure (FEIR 4-5). A photograph of the pipeline route suggests that establishing a Syar connection would require substantial effort. The point is that we do not know based on the current EIR but are instead left to speculate. The EIR contains only fleeting references to trucked water, none to alternative wells, and no analysis of either of those options.

This case is similar to *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818. There, a water district challenged an EIR prepared in connection with the operation of a sand and gravel mining company within the district's jurisdiction. The EIR noted that the district agreed to provide water to the project and estimated the amount of

¹ Napa County's General Plan imposes a higher standard than CEQA. Policy CON-53 provides in relevant part: "The County shall ensure that the intensity and timing of new development are consistent with the capacity of water supplies and protect groundwater and other water supplies by requiring all applicants for discretionary projects to demonstrate the availability of an adequate water supply prior to approval."

water the mine would use, but failed to discuss the pumps, storage and other infrastructure needed to deliver the water. For that reason, the court held that the EIR was inadequate.

Nowhere in the EIR is there a description of the facilities that will have to be constructed to deliver water to the mining operation, or facts from which to evaluate the pros and cons of supplying the amount of water that the mine will need. . . . [¶] The construction of additional water delivery facilities is undoubtedly one of the significant environmental effects of the project. As such, a description of the necessary construction had to be included if the EIR was to serve its informational purpose.

Id. at 829.

The fact that these options may be subject to separate environmental review if and when they are implemented does not cure the problem. An EIR must analyze the project as a whole, including its reasonably foreseeable impacts. (CEQA Guidelines § 15378(a).) Deferring environmental analysis of future impacts which can be reasonably anticipated when the project reaches full production does not relieve a lead agency of the obligation to analyze those impacts now. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.)

It is reasonably foreseeable that the expanded Napa Quarry will require additional water, and that Syar will take steps to access one or more offsite sources. Without identifying and analyzing the consequences of those actions, to some reasonable degree, the Board cannot make an informed decision on whether to approve the mine expansion.

Requiring that Syar to maintain its current level of groundwater extraction is not a proper mitigation measure. As the court explained in *Stanislaus*:

We are not concluding [the applicant] must first find a source of water for the “project” before an EIR will be adequate. We are concluding that an EIR for this project must address the impact of supplying water for the project. **It is not mitigation of a significant environmental impact on a project to say that if the impact is not addressed then the project will not be built.** The decision not to build may well rest upon the absence of a suitable or adequate water source. However, the decision

to approve the EIR of this project does require recognition that water must be supplied, that it will come from a specific source or one of several possible sources, of what the impact will be if supplied from a particular source or possible sources and if that impact is adverse how it will be addressed. **While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built.**

Id. at 205 (emphasis added).

By analogy, Syar's business decision of whether or not to expand its quarry may turn on its ability or inability to obtain water for increased production. The question before the Board is not whether to expand the quarry, however, but whether to certify the EIR because it complies with CEQA. It is crucial that the Board distinguish between these two issues in making its decision.

The case of *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 is directly on point. There, a civic group challenged the county's certification of an EIR analyzing the expansion of an aggregate mining operation by extending the existing permit for 30 years and increasing output from 260,000 to 550,000 tons per year. The EIR did not analyze the correlation between the amount of water used and the level of production, in part because it contained a mitigation measure that the project must maintain its current level of groundwater use. The court held that such an approach does not comply with CEQA and decertified the EIR.

[A]lthough the EIR included as a mitigation measure that the Project must "maintain the current Project consumptive use . . . , a mitigation measure cannot be used as a device to avoid disclosing project impacts. An EIR must analyze the impacts of providing water to the entire proposed project, which in this case includes peak production of 550,000 tons per year. Since maximum production levels (approximately double the baseline) are specifically authorized by the proposed [conditional use permit], the EIR should disclose how much groundwater pumping would be needed to support such operations and analyze the impacts thereof.

Id. at 678.

In sum, the primary purpose of the Syar EIR is to inform the public and the Board of the environmental effects of expanding mining operations. One of those effects is the need for more water and, because no more groundwater is available, that water must come from somewhere else. The issue is not whether Syar can secure sources of supplemental water, but the environmental impacts of mobilizing them. This EIR contains no evidence or analysis on that score whatsoever, and thus undermines the basic informational purpose of CEQA.

II. APPROVAL OF THE SYAR QUARRY EXPANSION IS INCONSISTENT WITH THE NAPA COUNTY GENERAL PLAN AND MEASURE P.

Most of the Syar project, including the Pasini Ranch, is on land designated Agricultural Watershed and Open Space (AWOS) under the General Plan. Measure P, which extended Measure J for 50 years with overwhelming voter support, provides that land may not be re-designated without a vote of the people. The staff report asserts that no land is being re-designated in connection with the Syar project, and that Measure P is therefore not implicated. That is true, but obscures the real General Plan issue.

In addition to prohibiting the re-designation of land without a vote, Measure P locks in place the General Plan's AWOS provisions. One of those provisions is a statement of the intent or purpose of the AWOS designation.² That purpose is to identify and protect agricultural and open space land from urbanization (Policy AG/LU-20), defined broadly as the use of any parcel for non-agricultural purposes (Policy AG/LU-27).

Policy AG/LU-20, describing the purpose of AWOS, does not exist in a vacuum. It is informed by a raft of companion policies, such as these, which are paraphrased here:

Policy AG/LU-4: The County will reserve agricultural lands for agricultural use, including lands used as open space, except those lands shown on the Land Use Map as planned for urban use.³

² Measure P also locks in place AWOS minimum parcel sizes and building intensity limitations. SPCA agrees with staff that those aspects of AWOS and Measure P have no bearing on this case.

³ Only the existing Syar quarry is in the South County Industrial Area. The expansion area, notably Pasini Ranch, is not.

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Policy AG/LU-12: No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel.

Policy AG/LU-22: Urban uses shall be concentrated in incorporated cities and towns and designated urbanized areas of the County to preserve agriculture and open space.

Policy AG/LU-24: Commercial uses will be grouped in areas outside those designated for agricultural uses in the General Plan.

No reasonable person would conclude that the extension of a surface mining operation onto land designated as agricultural watershed and open space is consistent with these policies. Incredibly, *none* of them is even mentioned in staff's General Plan consistency analysis (Res. No. 2015-03, Exhibit A, pp. 2-3), which is the *sole* basis for the Planning Commission's finding that the Syar project is consistent with the General Plan (Res. No. 2015-03, Section 10).

I repeat: *none* of these policies are mentioned, much less analyzed, in staff's consistency analysis. Nor does the analysis set forth the key provision of AG/LU-20, describing the purpose of the AWOS General Plan designation.

The Board has broad leeway in determining General Plan consistency, but its discretion is not unlimited. Among other factors, courts will examine whether decision-makers considered all of the applicable General Plan policies, not just select policies that support a desired conclusion. (*Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 374.) Moreover, "a project's consistency with some General Plan policies will not overcome inconsistencies with a policy that is fundamental, mandatory and clear." (*Ideal Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 312.)

Even if reasonable people could disagree about whether the Syar project is consistent with the intent of the General Plan's AWOS provisions, a finding of inconsistency would still be required. Measure P, which locks in the description of AWOS, provides that it shall be "broadly construed in order to achieve" the initiative's purpose (Measure P, Section 5),

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which is "to prevent the premature or unnecessary conversion of agricultural, watershed and open space lands to other uses" (Measure P, Section 1(G)).

Expansion of the quarry – particularly onto the Pasini property -- will urbanize some of the County's prime open space, even though quarrying operations will not (for now) intrude into Skyline Park. Instead of the sounds of wildlife, hikers will hear the operation of heavy equipment. Horseback riders will need to be alert for the sounds of blasting, which may startle their horses. Users of the park will breath dust instead of fresh air. And in place of gently-rolling forested hills, they will see hillsides being ripped away.

The project is inconsistent with other policies contained in the General Plan, not just AWOS. For instance, CON-53 provides that every applicant for a discretionary permit must demonstrate the availability of an adequate water supply prior to approval. The EIR assumes that Syar can obtain an adequate supply of water, but contains no supporting facts. The Planning Commission's resolution approving the project even concedes that assumption may not be true (Res. No. 2015-03, p. 42).

Policy ROS-15 embodies the County's commitment to preserve and protect parks and land for recreation. It provides that the County will "[a]ssure the permanent protection of Skyline Wilderness Park as a public park and nature based recreation area through all appropriate means . . ." Removal of the Pasini knoll in order to mine aggregate is not consistent with that policy, yet staff's consistency analysis does not mention ROS-15 (Res. No. 2015-03, Exh. A, pp. 16-17), though it is the only General Plan policy that applies directly to Skyline Park.

Syar can expand its quarry, but it must first persuade the people of Napa County to approve a re-designation of its land to something other than AWOS. The Pumpkin Patch had to do so in 1996 in order to sell produce and Christmas trees and operate pony rides and a petting zoo. Surely no less should be required to expand surface mining.

Sincerely,



Kevin P. Block