

April 1, 2010

By Hand-Delivery

Robert Williams, Chair
Commissioner Don Bennet
Commissioner Paula Cook
Commissioner Dennis Murphy
Commissioner Tom Lynch
Sonoma County Planning Commission
2550 Ventura Avenue
Santa Rosa, CA 94503

Re: Roblar Road Quarry – Sonoma County ("County") Planning Commission

Dear Chair Williams and Commissioners:

On behalf of CARRQ, these comments address water quality and related issues discussed in the Staff Report prepared by Blake Hillegas of the Sonoma County Permit and Resource Management Department for the Sonoma County Planning Commission dated April 1, 2010 (hereinafter the April 1, 2010 Staff Report). The stated subject of the April 1, 2010 Staff report is the continued public hearing on the Roblar Road Quarry. These comments are submitted by CARRQ in conjunction with that hearing.

The April 1, 2010 Staff Report and many of its attachments (for example, the GeoMega groundwater modeling, revised water management plan, and the County consultants' response to MacTec) were first made available to the public less than a week ago and received by CARRQ

for the first time on March 26, 2010. The California Environmental Quality Act (CEQA) provides that the public is entitled to review and comment upon the materials used by public officials to make decisions regarding development projects, such as Roblar Road Quarry. A meaningful opportunity to participate in public consideration of development projects is a core purpose of CEQA. Since we, and other members of the public, were not allowed to see these materials until late last week, we have been deprived of the opportunity to have a meaningful opportunity to review and analyze this new information. Accordingly, on March 29, 2010, CARRQ objected to the untimeliness of the production of the April 1, 2010 Staff Report and requested the April 1 hearing of the Planning Commission be postponed in order for CARRQ and other members of the public to comment. (Exhibit 1). If the Planning Commission goes forward with the public hearing on April 1, 2010, CARRQ reserves its right to also later comment on the statements and attachments of the April 1, 2010 Staff Report.

The inability of Sonoma County ("County") to timely provide the public and CARRQ with the documents that the Planning Commission may use to reach a decision on this project is aggravated by the fact the County has failed to timely identify for the public documents used in its consideration of this project. After several informal requests for documents, CARRQ made formal document requests to the County under the California Public Records Act for all documents relevant to this project's consideration. The County has refused to produce many of these documents on the grounds they are privileged. Although the County promised in late February 2010 to identify the relevant documents it is withholding from CARRQ and the public, the County did not identify the documents it withheld until this week, after CARRQ registered its objection on March 29, 2010. CARRQ's recent correspondence with the County Counsel's office in an effort to obtain and identify documents relevant to County's consideration of the Roblar Road Quarry project is collected in Exhibit 2.

In response to CARRQ's public records requests, however, the County produced certain documents pertinent to the issues addressed by the April 1, 2010 Staff Report. Many of these documents are attached as exhibits to the comments which follow.

We comment now on the statements contained in the April 1, 2010 Report which address the risk that operation of the proposed quarry next to the former Sonoma County Landfill will cause contaminants inside that landfill to migrate into surface and ground water.

First, we note that the draft Final Environmental Impact Report (“FEIR”) of the County, and the County Staff Report of December 17, 2009 (Exhibit 3), discounted any impact from the proposed quarry on water quality.¹ County staff initially recommended the Planning Commission certify the FEIR and approve the project prior to the hearing held on December 17, 2009. The County staff report of December 17, 2010 specifically found water quality impacts from the project would be insignificant, saying:

The Draft FEIR found that the project’s hydrology and water quality impacts can be reduced to less than significant levels with required mitigation....(Exhibit 3)

However, prior to and after the December 17, 2009 hearing of the Planning Commission, neutral water quality specialists and organizations whose fees and salaries were not paid by Applicant (such as the Russian River Keeper, Sierra Club, Sebastopol Water Information Group, and Community Clean Water Institute) raised significant water quality concerns about allowing a gravel mine like this one to dig into the side of an abandoned landfill.

In particular, in a letter to the County dated December 15, 2009 (Exhibit 4), the California State Regional Water Quality Control Board (RWQCB) stated, in part:

- The proposed rock quarry project abuts the County’s closed landfill which has no active leachate extraction system, or formal impermeable landfill cap. As such, there remains a strong likelihood of leachate generation from within the landfill and subsequent movement of pollutants in directions that have not been explored at depth. ...

¹ We also note the Applicant has apparently paid the fees for consultant hired by the County to prepare the FEIR, and the Applicant has paid in whole or in part the salaries of the County staff for the time they worked on this project, including the salaries of the County staff who wrote the December 17, 2009 Staff Report and April 1, 2010 Staff Report and issued its recommendations. (See Exhibits 21, 22, and 23).

- ... We are concerned about the identification of heavy metals and other pollutants in groundwater at levels exceeding ground and surface water quality objectives. We are not convinced by the documentation provided that excavation and draining of groundwater will not result in the movement of pollutants in the aquifer, thereby causing the degradation of water quality....
- At this point it is premature to assume the removal of contiguous overburden soils and underlying fractured rock that may be fundamental to the structural stability of the benched solid waste site will not result in any water quality impacts in the direction of the quarry and pit water. ...
- We remain concerned that the potential water quality impacts associated with mining up against an old unlined landfill are not adequately addressed in the project studies thus far. ...

The Regional Board letter of December 15, 2009 concludes:

- In summary, the FEIR falls short of outlining a clear path to avoid groundwater impacts to receiving waters. Should the County of Sonoma choose to move forward with this project as defined within the FEIR it should be noted that the Regional Water Board could find the project proponent and the County of Sonoma, Department of Transportation and Public Works responsible for discharge of waste to waters of the State. This project should be redefined to avoid such impacts.

After receiving the RWQCB's letter, the Planning Commission continued its hearing on this project. In response, the County staff and applicant John Barella and/or North Bay Construction (hereinafter "Applicant") quickly commissioned consultants to produce two additional documents. As reported in the April 1, 2010 Staff Report, Applicant's consultants have:

- (a) Constructed a conceptual model, paid for by Applicant, which says landfill water will never flow into the quarry; and
- (b) Designed a new water management plan which, staff says, will catch all the landfill water the model says will never flow into the quarry.

The County made these documents and these conclusions available only days ago. As a result, our consultants have not had sufficient time (nor sufficient information) to critique either

the groundwater modeling or redesigned water management plan. However, a couple of items are immediately evident.

1. There Is No New Groundwater Monitoring Data To Support County Staff's Conclusion.

The County and Applicant have not developed any new groundwater monitoring data to characterize the contaminants inside the landfill. They know as little about what is inside the landfill now as they did in mid-December, when the RWQCB and others said they didn't know enough.

The groundwater model advanced by County Staff does not use new data – it merely characterizes data that the RWQCB and others found inadequate. Given the inadequacy of the data, the model's stated conclusion (that water inside the landfill will not flow downhill into the quarry when the Applicant digs into the landfill) is just as untrustworthy as the conclusions reached by County staff and Applicant's consultants on the basis of the same underlying data three months ago.

We are also told that Applicant's water management plan – hastily amended – now guarantees no water flowing through the quarry will ever even escape the confines of the proposed mine. While we have not been given adequate opportunity to evaluate this claim, we make three observations about it.

(1) The Water Management Plan Does Not Address Subsurface Groundwater Contamination. Nothing in the plan addresses the risk noted by the RWQCB that mining operations will pollute subsurface groundwater with contaminants from the landfill.

(2) Under The "New" Water Management Plan Quarry Operations Must Be Converted Into A Perpetual Waste Treatment Plant For Surface Waters. Assuming the County staff's claim of the efficacy of the new water management plan is credible, the plan converts the operation of this quarry into a water treatment program that must remove all landfill contaminants which will leak from mining operations into the environment. The applicant is in the business of digging rock to use in his construction business. Applicant is not a water

treatment specialist. Digging into the side of an abandoned landfill, as the County now appears to acknowledge, does pose a risk that contaminants will migrate into the quarry. The applicant has shown no past ability to effectively deal with water quality issues. There is no evidence the Applicant will develop that expertise in the future. If the project is approved, the people of Sonoma County will need to rely on Applicant, a construction contractor, to protect its waters from the risk of contamination, not only for the next 20 to 30 years of operation of the quarry, but in perpetuity after his mining days are over.

(3) We Still Do Not Know The Extent Of The Risk Posed By The Pollution Inside The Landfill. Applicant and the County provide no new data to show the amount or extent of pollution inside the landfill. The fact that siting a quarry next to a landfill poses a risk to groundwater is now clear. The only question is: how much risk? It depends largely on how much pollution is in the landfill. The Applicant, with the concurrence of County staff, has chosen not to find out in the hope the Planning Commission will approve this project without forcing them to look.

What little data there is, however, about the contaminants inside the landfill undermines the County's conclusions. The December 15, 2009 letter of the RWQCB (Exhibit 4) assessed the existing data as follows:

We are concerned about the identification of heavy metals and other pollutants in groundwater at levels exceeding ground and surface water quality objectives. ...

The April 1, 2010 Staff Report concedes that the existing data from inside the landfill shows that levels of aluminum, chromium and nickel exceed minimum contamination levels for pollutants in groundwater. (April Staff Report, page 2).

The fact that the landfill poses a risk to drinking water is something the County has in the past (before the project neared approval) told the public. On August 24, 2007 the County alerted well owners in the vicinity of the Roblar Road landfill that high levels of aluminum, chromium, arsenic, and manganese had been detected near their residence in the 7600 Block of Roblar Road

(the landfill's address used by the County is 7601 Roblar Road. (See Exhibit 3, page 1). All levels of contaminants reported then by the County from the landfill were above safe water drinking standards. At that time, the County then advised landowners to test their groundwater for this pollution, saying, "the only way to be sure your water is safe is to have it tested." (Exhibit 5, page 1).

By its demand for indemnity from the Applicant, the County acknowledges there is a significant risk that the operation of the Quarry will cause pollution. While the April 1, 2010 Staff Report now suggests that there is no possibility the quarry operations will pollute the groundwater, the actions of the County show those knowledgeable about such matters in the County fear otherwise. The Sonoma County Division of Public Works, the division of the County responsible for the abandoned landfill's activities, now insists that as a condition of quarry approval that Applicant indemnify the County for all the water pollution that will be caused by the quarry's mining operation. The April 1, 2010 Staff Report concedes this:

Previously, staff had reported on the Department of Public Works conditions of approval requiring the applicant to indemnify the County, in a form acceptable to the County, from any and all liabilities and losses that relate to migration or threat of migration of contaminants from the Roblar landfill as a result of the quarry project. ... (See, April 10, 2010 Staff Report, page 6.)

The County's demand that Applicant pay for all the County's costs to clean up the pollution caused by the quarry's pollution has been acknowledged by Applicant's attorneys. In a 2009 letter to the County's attorneys (Exhibit 6) the Applicants' lawyers said so, stating:

... As I understand it, the Department of Transportation and Public Works (TPW) is the County department that administers activities related to the County's ownership of the landfill, including all compliance activities necessary to prevent a release of any pollutants from the Roblar Landfill. I further understand that TPW, as the landfill owners, is uncomfortable with perceived potential risk associated with having a closed, County-owned landfill adjacent to a potential quarry project. Accordingly, TPW will object to the potential quarry project unless North Bay Construction agrees to indemnify the County for pollution migration from the closed Roblar Landfill to the adjacent proposed quarry site.

In addition to the indemnification, TPW is requesting two new mitigation measures, one for “treat and release” wherein the quarry would agree to stop all quarrying until the quarry can prove there is no pollution migration. Second, TPW requests a mitigation measure that the quarry engage in stated mining, again in order to check for pollution migration, with initial mining to begin at a point farthest away from the landfill. ...

The indemnity, of course, is for the County only, not those who will actually suffer the pollution's consequences. The April 1, 2010 Staff Report indicates that the terms of the indemnity required by the County may not even cover the other public entities who will also be liable for pollution from the landfill, such as cities and towns in the County. In the past, the County’s lawyers have said that these cities – for example, Petaluma - will be liable for all pollution migrating from the abandoned landfill on Roblar Road. In a letter from Steven Woodside, County Counsel, to the City of Attorney of Petaluma, dated May 26, 2004 (Exhibit 7) the County Counsel of Sonoma County so stated:

... As you may be aware, cities in the County, including the City of Petaluma, have had their municipal solid waste delivered to at least three different County landfills over the last several decades. Those landfills include: the Central Landfill located at 500 Meecham Road, Petaluma; the Roblar Landfill located at 7175 Roblar Road, Petaluma; and the Sonoma Landfill located at 4376 Stage Gulch Road, Sonoma. As a generator and arranger of the City’s waste, the City is responsible for costs associated with preventing and remediating the release and threatened release of hazardous materials from the landfills.

The new water management plan proposed by Applicant cannot guarantee groundwater quality for Sonoma County. We do not dispute that the County's demand to be indemnified (if possible) due to the quarry’s threat to ground and surface water is a reasonable one. The risk of pollution here is significant and cannot be mitigated. The Applicant is not a water remediation specialist equipped to deal with the wastewater treatment. Further, the Applicant’s new water management plan does not even address the threat the quarry poses to groundwater. As for surface water, even with the best intentions, accidents happen. Applicant’s own performance as a contractor to the County bears this out. Applicant previously worked as contractor to build a leachate pipeline for the County of Sonoma that would extend about five miles between the

current Sonoma County landfill and a location near Rohnert Park. In the course of this project piping from the landfill containing leachate did not function properly, apparently causing contaminants to leak and/or concerns about leakage. Documents show the Applicant sued the pipe manufacturer over responsibility for this problem. (See Exhibits 8 and 9, Applicant's Cross Complaint against ISO Industries dated December 6, 2006 in U.S. District Court, Northern District of California, and ISO Industries' Answer to Applicant's Counterclaim dated December 27, 2006.) We do not know and express no opinion whether Applicant or the piping manufacturer was at fault for the pipe failure during the performance of Applicant's contract with the County to build a leachate pipeline. Our point, however, is that projects dealing with known sources of contamination like landfills, are inherently risky. As a result, the amount of pollution inside the landfill should be adequately assessed before a project near it is approved so the public knows the extent of risk. Here, the RWQCB and a nationally known environmental firm, MacTec as well as others, have said that assessment has not happened. Until we know what and how much pollution lurks inside the landfill, the County should not approve a project that risks letting some of it out.

An indemnity from the Applicant is not the salve the County should use to soothe the wound it will cause. Such an indemnity addresses the risk for no one other than the County. Instead of an indemnity, the County should require the Applicant to actually demonstrate there is no significant risk to water quality, thereby eliminating the need for indemnification in the first place.

The potential impacts of quarry operations to groundwater have not been mitigated by the project's design.

For all of these reasons, we believe the evidence that the potential risks of quarry operation to water quality (particularly groundwater quality) are significant and have not been mitigated by the project design. The April 1, 2010 Staff Report fails to find the threat of such water contamination a significant and unavoidable impact of the project. This is error. We turn

now to our next subject, which is the credibility and substance of the Applicant's and County's evidence on this and other conclusions stated in the April 1, 2010 Staff Report.

2. The Public Is Entitled To Question the Credibility of The County's Evaluation Of This Project

We find refusal of the County to insist that the Applicant test the groundwater inside the landfill curious. The same is true of the County's insistence on an indemnity from Applicant for water contamination that County staff now tells cannot possibly occur. We have looked for an answer in the documents produced by the County regarding this project. Our review of those produced documents shows that the County has worked closely with Applicant to enable the permitting of this project. As a consequence, the Planning Commission and public are entitled to be skeptical about staff and consultants' assertions that water quality concerns are mitigated by the current FEIR. County documents show the following:

- The Applicant is a contractor that has done business through numerous contracts with Sonoma County for many years. Many documents produced by the County evidence multiple contracts between the County and Applicant which contemplate payments to Applicant by the County.
- The Roblar Road Quarry has been recognized as a potential quarry site for well over twenty years by the County. In 1986 and 1989 persons with an interest in the quarry site filed applications to develop it as a quarry, but these applications were either defeated following objections of the public or withdrawn. (Exhibit 3, page 2)
- As of 2001, the land containing quarry (about 190 acres) and the land adjoining the quarry (about 750 acres) was owned by a Mr. Scott. The County then offered to buy from Mr. Scott development rights on the approximately 750 acres of the land that adjoined the quarry ("the adjoining land") through the Sonoma County's Agricultural Preservation and Open Space District ("Open Space"). The Open Space District is controlled by the Sonoma County Board of Supervisors.
- Open Space hired an appraiser to appraise Mr. Scott's adjoining land. Open Space accepted the appraisal for the adjoining land on 4/15/01. (Exhibit 10).
- On 5/2/01, Open Space offered Mr. Scott \$1,600,000 for the development rights on the adjoining land in order to preserve it from future development. (Exhibit 10). We understand Mr. Scott passed away before acceptance.

- Applicant then purchased both the quarry land and the adjoining land next to it from Mr. Scott's heirs on 11/1/01.
- Sometime before April 29, 2002, Applicant applied to Open Space to sell the development rights on the adjoining land to Open Space (Exhibit 11). On July 24, 2002, County staff spoke to Supervisor Kerns about this or related Applications of the Applicant. (Exhibit 12). Open Space informed Applicant that the sale would limit his right to develop on the adjoining land. (Exhibit 13).
- Open Space hired a different appraiser to do a new appraisal of the adjoining land for Applicant. The appraisal was completed in October, 2003. The appraisal (Exhibit 14) states that prior to the appraisal the County told the appraiser Mr. Barrella was in the process of filing an application to start mining gravel at the quarry site.
- In February 2004, Open Space recommended the County pay Applicant \$2,269,000 for development rights to the adjoining land. (Exhibit 15). We understand Applicant was later paid \$2,273,128.00 by the County on 5/21/04 for these development rights.
- Before the County's purchase of the development rights, Applicant told Open Space he was negotiating to sell the adjoining land, subject to this conservation easement, to others. (Exhibit 15). He later did so.

After receiving \$2.3 million from the County to preserve the adjoining land, and selling his underlying interest in it to others, Applicant then pursued his application to mine gravel on the quarry site next to it. ²

We are not yet done, however, with Applicant's dealings with the County's Open Space District in connection with this conservation easement. In about 2008, Applicant (or perhaps the County, we do not know) decided that in order to operate the quarry, Applicant would need to drive Applicant's gravel trucks through the adjoining land whose development rights Applicant had sold in 2004 to the Open Space District. The number of Applicant's trucks the County says will drive through this adjoining Open Space land (if permitted by the County) is considerable.

² We put aside for another time questions raised by this transaction, such as why the County thought it was a worthwhile expenditure of taxpayer's money to pay Applicant \$2.3 million dollars to remove development rights on land adjoining a proposed quarry site that Applicant had applied to the County to develop.

County Staff estimates on average each day at least 150 or more gravel trucks will use the road Applicant wants to construct through the adjoining Open Space land. The December 17 Staff Report, states:

On average, the production of 570,000 cubic yards per year (2,260 cy per day) would result in an average of 151 truck loads or 302 one-way truck trips per day. However, the maximum daily production rate of 3,600 cy of aggregate was used to determine the project's effects. On a peak production day, the project would generate approximately 240 truck loads per day, or 480 one-way truck trips. (Exhibit 3, p. 24).

In late 2007 and 2008, Applicant's lawyer asked the County to allow Applicant to drive his gravel trucks through the Open Space preserved adjoining land. *See* letters of Applicant's lawyer to Scott Briggs at County PRMD dated December 12, 2007 and the Sonoma County Agricultural Preservation and Open Space District dated January 9, 2008³. (Exhibits 17 and 18). County staff now says that Applicant's right to drive his gravel trucks through the Open Space is a draft condition of approval of the project. See email from Mr. Hillegas to Mr. Newell dated December 11, 2009. (Exhibit 19).

As part of the justification for this project's approval, the April 1, 2010 draft report further discusses this "deal" proposed by Applicant's lawyers to the County. It does so without disclosing the prior dealings between Applicant and the County's Agricultural Preservation and Open Space District. Perhaps this non-disclosure is forgivable given the County's avowed interest in developing Sonoma County based quarries. Years ago, when the County's use of gravel was increasing such an interest may have been more understandable. But that time has passed. The FEIR for this project does not show any present need in Sonoma County for the

³ We also put off for a later time questions raised by this proposed transaction, such as why Open Space would now release land to the Applicant use that had been earlier purchased from him with taxpayer dollars so it could be "Kept Open in Perpetuity," or why the County would now permit an access road through Open Space for a quarry that the County knew was going to be developed by the Applicant when the \$2.7 million dollars was paid to him by Open Space.

rock proposed to be mined at the Roblar Road Quarry. In fact, the County's own documents now show a declining demand for gravel in the County. The County has not provided any substantial evidence that the operation of this quarry will lead to cheaper gravel for County residents, or reduce roadway wear, or lessen gravel truck operation as claimed by the April 1, 2010 Staff Report. The only expert economist who has analyzed economic impact of this project finds no evidence of any of these claims. *See* report of economist Dr. Tina Saitone, Exhibit 20. Ms. Saitone's report, after reviewing the County's own evidence of rock consumption patterns concludes:

- The County documents reviewed and FEIR do not provide any evidence that rock from the proposed Roblar Road Quarry would be cheaper than existing supplies.
- The magnitude of any price impact is extremely difficult to predict without an extensive study of the aggregate market in Sonoma and the surrounding counties. No such analysis has been conducted by the County or Applicant and it is thereby speculative to assert that the price of aggregate will fall with the development of the Roblar Road Quarry.
- There is no evidence in the FEIR that the County requires new supply of aggregates. Alternative sources of supply through international imports or recycled aggregate may present superior alternatives to mining virgin aggregate within the county to the extent new sources of supply are deemed desirable.
- There is no evidence in the FEIR that supports the claim that the Roblar Road Quarry will reduce aggregate haulage in the county or reduce roadway wear.

Perhaps more importantly, the report concludes that the primary positive economic impact of the quarry, if approved, will not be for the benefit of the County or its residents, but for the benefit of Applicant's business. Ms. Saitone concludes:

Thus, the main impact resulting from development of the proposed quarry mining will be to provide North Bay Construction with a competitive advantage in the market for construction, which does not necessarily translate into cost savings for the county or Sonoma County real estate buyers. With the approval of the RRQ (Roblar Road Quarry), North Bay will be in a position to underbid rivals to gain more contracts, or, alternatively, maintain its own contract market share at a higher rate of

profits by not adjusting its bids downward to reflect its lower costs relative to competing firms.

Based on the County's own documents and statements, one can see why there is support for Ms. Saitone's conclusion. The County says most of the gravel mined by the proposed quarry will be used in Applicant's own construction business and projects. The County, in fact, concedes that 60 to 80% of all the gravel mined by Applicant and (if the County lets him) hauled through the County preserved open space, will be used in the Applicant's own construction business. The December 17 Staff Report confirms this; stating:

It is also anticipated that 60-80% of the material produced at the quarry would be used for North Bay construction projects using North Bay construction trucks or haulers under contract with North Bay Construction. (Exhibit 3, page 3).

Thus, Ms. Saitone concludes that in order for the County to get the benefit of rock mined locally from this quarry, notwithstanding its environmental risks, the County or county businesses will be obligated to do business in Applicant's construction projects. The County apparently assumes they will do so. The County's April 1, 2010 Staff Report says 90% of the gravel from the quarry will be used in the County.

County documents show the County has been paid by Applicant for its work to process his application. The County hired a consultant named ESA to prepare the FEIR used in the permitting process. Documents show Applicant has paid the fees charged by the County's environmental consultant. (Exhibit 21). As of late 2009, documents show the fees for this County consultant on this project total nearly \$600,000. (Exhibit 21). In addition, Applicant has been billed for and apparently paid the salaries of County staff, as well as County lawyers, for the time they have worked on this project. Documents from the County show that Applicant has been billed tens of thousands of dollars to pay, at least in part, the salaries of County staff and County lawyers charged with responsibility for this project. Exhibit 23 shows a breakdown of these salary charges and the identity of the staff, including Mr. Briggs and Mr. Hillegas, who charged them.) In addition, very recently, Applicant agreed to indemnify the County for all costs the County incurs for the County's approval of his application and the adoption of the FEIR.

(Exhibit 24). The indemnity agreement, entered into by Applicant and the County on March 11, 2010, states:

As part of this application, applicant agrees to defend, indemnify, release and hold harmless the County, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application or the adoption of the environmental document which accompanies it.

Documents also suggest that at least one member of the County Board of Supervisors, who will need to finally approve this project, and who control the operation of the Sonoma County Agricultural Preservation and Open Space District, has followed the approval process for this application closely. Supervisor Kerns, who also was contacted in connection with Applicant's Open Space transactions, has been briefed by County staff on the status of Applicant's request for project approval from the County. A November 26, 2008 memo from Mr. Briggs to Jill Saudan shows that County staff tried to contact Supervisor Kerns when staff concluded there were favorable developments to "celebrate." (Exhibit 25). Mr. Briggs's November 26, 2008 email states

Hello Jill – I got an upbeat telephone call from John Barella this morning, who indicated that the water quality test results of our just-completed round of groundwater tests "came up clean!" John indicated that he was going to give Supervisor Kerns the news as well.

I would much appreciate you letting the Supervisor know that we are very encouraged by this news, but that we have not yet had a chance to confer with the groundwater consultant (PES, Inc.) regarding the specifics of the test results. So -- while it certainly sounds like good news, we are delaying our celebration until we have had a chance to get a full technical debrief from PES. And, should this debrief identify anything new I will be sure to let your Office know.

CONCLUSION

The Applicant's FEIR offers insufficient evidence to support the conclusion that the environmental effects of this project on water quality will be insignificant. Further, the reasons offered in support of the overriding considerations stated in the April 1, 2010 Report are not

supported by substantial evidence. The scant evidence the Applicant and the County have mustered together to support these overriding considerations should be scrutinized carefully. This is especially true since, based on the County's own projections of the use of gravel from this quarry; the County will derive little benefit from the Applicant's gravel mining operations from this quarry unless the County (or others in the County) contract with the Applicant's own construction business.

Finally, we note again that many documents relevant to the County's consideration of this project have been withheld from the public on claims of privilege. In this connection the County also has recently attempted to withdraw from review other relevant documents previously given by the County to the public. It appears at least one of these documents, at least in the opinion of others, shows that studies done by the County in support of this project were faulty. *See Exhibit 26.* On September 16, 2008, Applicant, John Barella, sent to one of the County staff persons in charge of this project, Mr. Briggs, a facsimile attaching a letter (Exhibit 26) which said the following:

Dear John,

I thought that you should know that the County staff working on the E.I.R. have really blown it for you.

The office is buzzing with whispered accusations and there is a big cover up going on- but it's too late.

An e-mail exchange between Jennifer Barrett and a few other staff was "accidentally" given to the public.

In the e-mails they acknowledge that the whole traffic study was badly done, and draws faulty conclusions.

Now they do not want you to find out about it.

If I was you I would ask them for a copy of it right now.

Good luck.

We believe the email exchange in question was subsequently withheld from us when we made our most recent document request under the Public Records Act in December, 2009. In order to determine whether, as Exhibit 26 claims, there was such a “cover-up,” or whether the County conclusions about the project are "faulty," we need to resolve with the County whether the public is entitled to review and comment on this e-mail and other documents now withheld as privileged.

We respectfully ask the Planning Commission to either deny approval of this project, or, as an alternative, postpone its decision until CARRQ and other interested organizations who have no economic ties to Applicant have had an opportunity to review the groundwater model and the water management plan in its entirety, and resolve the County's claim that it is entitled to withhold certain documents relevant to the consideration of this project