

## Attachment A

### YOLO COUNTY CCAP MINING AND RECLAMATION PERMITS INTERIM REVIEW PROCESS March 26, 2006

## DISCUSSION PAPER #3 Analysis of Unanticipated Environmental Changes and Analysis of CEQA Applicability

### Introduction

The Cache Creek Area Plan (CCAP) was adopted by the Yolo County Board of Supervisors (BOS) in August of 1996 and approved by County voters in November of 1996. The CCAP is comprised of the Off-Channel Mining Plan (OCMP) which is a mining and reclamation plan and the Cache Creek Resources Management Plan (CCRMP) which is a creek management plan. The OCMP was accompanied by two implementing ordinances: the Off-Channel Surface Mining Ordinance (Mining Ordinance) and the Surface Mining Reclamation Ordinance (Reclamation Ordinance).

Under the authority of the OCMP and both implementing ordinances, the BOS approved five off-channel mining and reclamation permits (permits) in November of 1996. These permits were each for a 30-year period and they were contingent on individual Development Agreements (DAs) which were executed in January of 1997.

Among the many terms of the permits, one was the requirement for "Interim Permit Review". Section 10-4.605 of the Mining Ordinance and 10-5.814 of the Reclamation Ordinance mirror one another in requiring specified interim reviews of the permits. Such reviews were required at 10 years, 20 years, and 30 years. A discretionary review is allowed at 15 years. The DAs establish the effective date of each of the permits as January 1, 1997. Therefore, the following schedule is applicable:

January 1, 1997	Effective date.
January 1, 2007	Date by which 10-year interim review must be complete.
January 1, 2012	Date by which 15-year discretionary review must be complete, if required.
January 1, 2017	Date by which 20-year interim review must be complete.
January 1, 2027	Date by which 30-year interim review must be complete.
January 1, 2027	Expiration date for permits unless extended.

In order to prepare for the upcoming 10-year interim review, this discussion paper is the third in a series. The topics are intended to explore relevant issues in detail in order to allow for extensive public involvement, education, understanding, and input as a part of the review process. The topics may be expanded or modified as determined necessary, as the process moves along, in order to be responsive to public inquiry and input.

### Prior Discussion Papers

Discussion Paper #1 (released April 20, 2005) addressed the "Scope of the Interim Review". This paper concluded that the main scope of the interim review is to respond

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to changes in environmental regulations, and that the secondary scope is to re-examine the per-ton regulatory fees. This paper set out a process for addressing these issues.

Discussion Paper #2 (released September 26, 2005) examined changes in environmental regulations and/or statutes that have occurred since November 1996 when the off-channel mining and reclamation permits were originally approved. The staff concluded in this paper that there have been no such significant relevant changes in environmental regulations and/or statutes that merit modification of the permits as a part of the interim review. In only one instance did one of the agencies make recommendations for consideration by the county. The Yolo Solano Air Quality Management District (YSAQMD) identified the following to improve air quality:

- 1) Encourage improvements in the electrical utility infrastructure to allow for the use of electrical power (rather than diesel) to crush pea gravel in order to make sand.
- 2) Continue to encourage the use of cleaner vehicles and equipment and/or the retrofit of existing vehicles and equipment with diesel particulate filters (DPFs).

The staff concurs that these two areas merit examination as a part of the interim review process. It should be pointed out that the mining operators and the County are already in discussions with the electrical provider in the area to resolve the problem raised in item #1. In addition, though not necessary, the staff is contemplating addition of a general condition that requires compliance and good standing with the terms of other required agency permits. This would reinforce the importance of compliance with the separate requirements of the other regulatory agencies.

- 3) The applicant shall be in full compliance and good standing with the terms of other required agency permits.

### **Method**

This third paper analyzes two distinct issues:

- 1) Whether any unanticipated or unmitigated environmental changes have occurred since the 1996 approvals. In order to do this the annual compliance reports and other file materials for each permit were reviewed and the results are summarized herein.
- 2) Whether CEQA is triggered by the interim permit reviews, and if so, what type of environmental analysis is necessary to provide appropriate CEQA clearance. In order to do this the conclusions of the first two papers are assessed against the regulatory framework created by CEQA and the results are reported herein.

### **Review of Annual Compliance Reports**

Under the State Surface Mining and Reclamation Act (SMARA), the State assigns each regulated mine an identification number and requires regular self-monitoring, plus inspections by the responsible agency. In Yolo County, the County serves as the inspecting agency for the State. The State requires a surety bond or "financial

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assurance” to ensure performance pursuant to the applicable regulations. As each specific mining operation is completed and reclaimed, this regulatory oversight process concludes with release of the performance bond. Hence there is an ongoing system of checks and balances to ensure minimum performance. The County has combined the State-required inspection process with local oversight needed to ensure performance under the CCAP permit approvals issued in 1996.

For the purposes of researching this discussion paper, the Surface Mining Inspection Reports filed annually by the County as the SMARA inspecting agency, were reviewed for each of the mining operations. Accompanying those reports is an annual CCAP Compliance Review also prepared by the County that provides an assessment for each operator of compliance with the requirements of the County’s mining permit approvals. The Compliance Review reports on the status of: 1) the mining operation; 2) the Development Agreement; 3) the various County approvals; and 4) the conditions of approval. In some cases additional County file information was reviewed in order to clarify source materials. The results are provided in Attachment A and summarized below.

Each year of the program all operations and operators have been found to be in compliance with the conditions of approval, mitigations measures, and applicable regulations. Observations relating to water quality reporting and erosion control were provided in satisfaction of conditions subject to continued monitoring and/or correction. In many cases groundwater samples have been shown to contain elevated constituents, however this condition has been documented to result from turbidity during the sampling or pre-existing conditions (such as farming) and not from the mining operation.

There were some other documented concerns and/or “violations”, however most were in the form of failure to meet a specific aspect of an individual requirement and most were related to timeframes for performance (e.g. completion of a roadway improvement by a specified date or prior to a next step). This appeared often to be accompanied by information recognizing factors outside of the operator’s control and/or a formal amendment of the condition through the public hearing process to allow more time for performance. There was occasionally an observation that a particular concern should be revisited prior to the next annual review (e.g. within six months). Modifications to the approvals and changes in ownership were also reported.

### **Conclusions**

Overall, there were no documented unanticipated or unmitigated environmental changes. Items of concern that were identified in the Inspection Reports and Compliance Reviews in all cases related to environmental issues that were anticipated during the approval process and mitigated through existing regulatory processes, conditions of approval, and/or CEQA mitigation measures. In all cases items were corrected or otherwise satisfactorily addressed over time pursuant to the terms of the approval.

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### Analysis of CEQA Applicability

As a result of the analysis undertaken to date, the staff has concluded that there have been no significant relevant changes in environmental regulations and/or statutes that merit modification of the CCAP mining permits as a part of the interim review (Discussion Paper #2). Similarly the staff has concluded that there have been no documented unanticipated or unmitigated environmental changes (Discussion Paper #3).

While the staff may ultimately recommend minor modifications of the mining permits as a part of the interim review, these are likely to take the form of increases in CCAP per-ton fees (to be discussed in subsequent staff reports) and/or the addition of new conditions of approval if appropriate such as:

- 1) Encourage improvements in the electrical utility infrastructure to allow for the use of electrical power (rather than diesel) to crush pea gravel in order to make sand.
- 2) Continue to encourage the use of cleaner vehicles and equipment and/or the retrofit of existing vehicles and equipment with diesel particulate filters (DPFs).
- 3) The applicant must be in full compliance and good standing with the terms of other required agency permits.

Per County regulation, the per-ton fees are for: 1) CCAP administration; 2) future environmental remediation if ever needed; and 3) creek stabilization and creek restoration pursuant to the detailed project list and specifications of the Cache Creek Resources Management Plan (CCRMP) which has undergone a separate environmental review. The conditions that may be added would be for the purposes of further improving air quality and ensuring coordination with other regulatory permits that protect the environment.

The CCAP permits are in effect “conditional use permits” issued by the County, and as such they are discretionary and subject to CEQA. Modification or amendment of those permits is also a discretionary action. Therefore, any modification to the permits as a result of the interim review is a “project” under CEQA (CEQA Guidelines 15378a3).

Section 15061 of the CEQA Guidelines directs that once an activity has been determined to be subject to CEQA, the lead agency must then determine whether the project qualifies for an exemption. Three types of exemptions are identified: statutory, categorical, and “general rule”. The anticipated permit modifications that may result from the interim review do not fall under any specific statutory or categorical exemption identified in the State law or guidelines. However they do appear to fall under the general rule exemption.

The so-called “general rule” exemption (Section 15061b3) states that CEQA only applies to those projects which have the potential for causing a significant effect on the environment. The Section goes on to state: “Where it can be seen with certainty that

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there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

A CEQA Initial Study ((Environmental Checklist Form) will be prepared to accompany the staff report and recommendations to the Planning Commission and the Board of Supervisors, as substantial evidence in support of the final exemption determination.

### **Conclusions**

To the extent that the interim review results in modified terms for the approved mining permits, this action would be subject to CEQA but would likely qualify for a “general rule” exemption.

### **Next Steps**

In order to prepare for the interim review hearings, staff has determined that the following steps remain:

- Prepare an analysis of fee revenue and fee expenditures to determine whether actual costs are covered and to satisfy Section 8-11.13 of the County’s Gravel Mining Fee Ordinance. The results will be reported for public consideration in the subsequent staff report that is prepared for the Board of Supervisors final action.
- Prepare a staff report to summarize the staff research and conclusions to date and to make specific recommendations regarding modification of the terms of the mining permits as a result of the interim review process.
- Prepare a CEQA Initial Study to substantiate an exemption determination for the proposed actions.

This will then be followed by a public hearing before the Planning Commission to make a recommendation to the Board of Supervisors on the individual interim reviews, and a public hearing before the Board of Supervisors to take final action on the interim reviews, the fee modifications, and any amendments to the Development Agreement amendments.

### **Attachments**

- A) CCAP Compliance Summary
- B) Updated Schedule

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### CCAP COMPLIANCE SUMMARY

<b>1997</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Cache Creek Aggregates (R.C. Collet)	Did not pay CCAP expenses as required. Did not complete required roadway improvements per timing in condition. County did not provide necessary design information in a timely manner. CDFG 2081 permit not obtained as required. Six month review required. Note: Collet did not begin operations under DA #96-289 until January 1, 1998 (letter in file).
Solano Concrete	Groundwater monitoring thresholds exceeded for dissolved solids and specific conductance. Did not complete required roadway improvements per timing in condition. Caltrans did not provide design information in timely manner.
Syar Industries	Did not commence mining per approved timing because mining plans required revision to be consistent with approval. Approval amended to allow extension of time for commencement of mining and submittal of flood control facility designs. Permit modifications were identified as needed to amend Reclamation Plan for Lamb Slough stormwater conveyance channel and for reclamation of Phase F; however change to mining plan subsequently eliminated this requirement. Highway 89 bridge collapse forced alternate haul route. Syar required to install interim bridge.
Teichert Esparto (aka "Reiff Plant")	Groundwater monitoring thresholds exceeded for iron attributable to turbidity.
Teichert Woodland	Recharge facility site work not completed as required; however file letter shows plan submittal by deadline. County did not revise CCRMP boundary as required. Correction undertaken by County.
<b>1998</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Cache Creek Aggregates	Approval amended to allow extension of time for completion of roadway improvements. Found in violation for failure to get drainage system inspected as required. Six month review required. CDFG 2081 permit not obtained as required. Six month review required. Note: CDFG 2081 was subsequently determined not to be required May 21, 1999 (letter in file).
Solano Concrete	Approval amended to allow extension of time for completion of roadway improvements. Found in violation for failure to get drainage system inspected as required. Six month review required. Groundwater monitoring thresholds exceeded for total dissolved solids, specific conductance, and nitrates. Average mercury levels in fish samples exceed thresholds – study sets baseline for all operators. Erosion sites identified for repair.
Syar Industries	Processing major modification to original permit to decrease mining area and modify reclamation. Approvals amended to allow letter of credit in-lieu of flood control improvements and to reduce

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	financial assurances required for Phase A. Groundwater monitoring thresholds exceeded for iron (attributable to turbidity) and nitrates (attributable to upgradient farming). CDFG 2081 permit not obtained as required. Six month review required. Note: CDFG 2081 was subsequent determined not to be required September 7, 1999 (letter in file).
Teichert Esparto	Groundwater monitoring thresholds exceeded for iron and dissolved solids (attributable to turbidity), and nitrates (attributable to farming). Approval amended to allow extension of time for completion of roadway improvements along CR 19.
Teichert Woodland	Approvals amended to modify landscaping on berms and allow extension of time for completion of recharge facility. Groundwater monitoring thresholds exceeded for iron, manganese, aluminum, and chromium attributable to turbidity in well; and exceeded for total coliform attributable to bacteria in well system, not generally present in the aquifer.
<b>1999</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Cache Creek Aggregates (purchased by Granite Construction in April)	Approval amended to allow extension of time for completion of roadway improvements. Processing major modification to original permit to add asphalt and concrete plants and allow 20% exceedance. New hazardous material business plan for new owner not filed as required. Six month review required. Erosion sites identified for repair.
Solano Concrete	Groundwater monitoring thresholds exceeded for total dissolved solids and specific conductance (attributable to turbidity within the test result) and nitrates (attributable to upgradient farming).
Syar Industries	Approval amended to decrease mining area and modify reclamation. Five violations for failure to file various reports on time (groundwater, drainage, erosion, air emissions, and road maintenance). Six month review required. All violations subsequently cleared.
Teichert Esparto	Groundwater monitoring thresholds exceeded for nitrates attributable to farming.
Teichert Woodland	Groundwater monitoring thresholds exceeded for iron and manganese attributable to turbidity in the well.
<b>2000</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	No outstanding items.
Solano Concrete (purchased by Kiewit Company in January)	Bank stabilization improvements not installed within required timeframe. Groundwater monitoring thresholds exceeded for aluminum (attributable to turbidity) and nitrates.
Syar Industries	Conveyor delivered but not installed within required timeframe. Extension of time requested for installation. Extension of time requested for Highway 89 bridge replacement to allow County time to design.

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Teichert Esparto	Approval amended to modify phasing. County acknowledged voluntary NOx emissions reduction program. Groundwater monitoring thresholds exceeded for nitrates.
Teichert Woodland	County accepted conservation easement on 123 acres per condition of approval.
<b>2001</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	Permit modified to allow 20 percent exceedance. Operator has entered into voluntary program of 20% reduction of air emissions by 2005.
Solano Concrete/Kiewit Company	Approval amended to allow relocated batch plant. Groundwater monitoring thresholds exceeded for total dissolved solids (attributable to turbidity), specific conductance, and nitrates (attributable to upgradient farming).
Syar Industries	Approval amended to rezone land and adopt boundary line adjustment per conditions of approval. Conveyor not yet operational as required. One year extension requested. Extension of time requested for Highway 89 bridge replacement to allow County time to design.
Teichert Esparto	Groundwater monitoring thresholds exceeded for nitrates.
Teichert Woodland	No outstanding items.
<b>2002</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	Approval amended for new plants and changes to mining area.
Solano Concrete/Kiewit Company	Groundwater monitoring thresholds exceeded for total dissolved solids (attributable to turbidity), specific conductance, and nitrates (attributable to upgradient farming).
Syar Industries	Conveyor installed and operational April 2002. No outstanding items.
Teichert Esparto	Records missing.
Teichert Woodland	Records missing.
<b>2003</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	No outstanding items.
Solano Concrete/Kiewit Company (purchased by Rinker Materials)	Groundwater monitoring thresholds exceeded for total dissolved solids (attributable to turbidity), specific conductance, and nitrates (attributable to upgradient farming). Approval amended to modify phasing.
Syar Industries	Groundwater monitoring thresholds exceeded for iron attributable to turbidity. Air Emission Control Plan not completed as required.
Teichert Esparto	Minor erosion sites were identified and are being monitored.
Teichert Woodland	Groundwater monitoring thresholds exceeded for iron, manganese, aluminum, and total coliform attributable to turbidity.

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<b>2004</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	Paleontological resource uncovered. All protocols followed. Annual drainage system inspection report not provided as required. County consultant did not complete digital terrain modeling in timely manner. Streambank erosion report not provided as required for same reason. Both under preparation for spring submittal.
Rinker Materials	Groundwater monitoring thresholds exceeded for total dissolved solids (attributable to turbidity), specific conductance, and nitrates (attributable to upgradient farming). Streambank erosion report not provided as required due to County consultant not completing digital terrain modeling in timely manner. Under preparation for spring submittal.
Syar Industries	Groundwater monitoring thresholds exceeded for nitrates. Erosion sites identified for repair. Repair completed same day.
Teichert Esparto	No outstanding items.
Teichert Woodland	No outstanding items.
<b>2005</b>	
<b>Operator</b>	<b>Summary of Observations</b>
Granite Construction	Groundwater monitoring thresholds exceeded for fecal coliform. County staff will work with Granite Construction to determine the reason for these results. Wells will continue to be monitored.
Rinker Materials	Total sold tonnage exceeded 2005 limit, but did not exceed the 20% excess limit. Groundwater monitoring thresholds exceeded for total dissolved solids attributable to upgradient farming. Elevated nitrate levels attributable to upgradient farming activity in Phase I. Wells with constituents that exceed maximum thresholds will continue to be monitored and county staff will work with the operator to address these results. All other measurements were below established thresholds.
Syar Industries	On August 15, 2005, employees at the gravel mine uncovered what appeared to be artifacts and skeletal remains while removing topsoil for phase A2. The work was stopped, and a qualified archeologist was called to the scene by the operator's plant superintendent. The Yolo County Coroners office also visited the site, provided a case number to Syar, and turned the excavation back over to the archeologist. Remains and artifacts will be reinterred on site under the direction of the archeologist and a representative of the local Rumsey Band of Wintun Indians. Notice will be provided to the County when the reinterment occurs. The most recent Cultural Resources Orientation and Awareness Training took place September 29, 2005.
Teichert Esparto	No outstanding items
Teichert Woodland	No outstanding items
Prepared by TSCHUDIN CONSULTING GROUP based on Surface Mining Inspection Reports, County Compliance Review records, and other file records. March 26, 2006. NOTE: 1) The County has determined each operation to be	

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in compliance each year of the program. The notes provided herein are reflective of specific observations relevant to the operation and noted in the records. 2) NOTE: Groundwater samples from the mining operations often contain elevated concentrations of iron, due to sample turbidity and nitrates and other constituents due to farming activities. These results reflect pre-existing conditions resulting unrelated to the mining operations.

### **Yolo County Mining Permits – Interim Review Process Tentative Working Schedule** (revised March 26, 2006)

April 20, 2005	Release Discussion Paper #1 – Scope of the Interim Review
May 2, 2005	TAC meeting on Discussion Paper #1
June 16, 2005	Planning Commission Workshop on Discussion Paper #1
September 26, 2005	Release Discussion Paper #2 -- Analysis of Regulatory Changes
October 13, 2005	Planning Commission Workshop on Discussion Paper #2
April 6, 2006	Release Discussion Paper #3 -- Analysis of Unanticipated Environmental Changes and Analysis of CEQA Applicability
April 13, 2006	Planning Commission Workshop on Discussion Paper #3
September 2006	Planning Commission hearing
October 2006	Board of Supervisors hearing and action
January 1, 2007	Final date for Interim Reviews to be completed