



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: May 8, 2018
Placement: Set hearing on April 10, 2018 for May 8, 2018
Estimated Tme: 1 hour on May 8, 2018
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Dianne M. Black, Director, Planning & Development
Director(s) 568-2086
Contact Info: Errin Briggs, Energy Specialist, Energy & Minerals Division
568-2047

SUBJECT: Applicant Appeal of the Lompoc Stone Mining Area Expansion Vesting Determination and Reclamation Plan Revision Project
Case Nos. 18APL-00000-00006, 16DET-00000-00004, & 10RVP-00000-00048
Fourth Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On May 8, 2018, staff recommends that your Board take the following actions:

- a) Conceptually grant the appeal, Case No. 18APL-00000-00006;
- b) Conceptually make the required findings for approval of the project, including CEQA findings, included as Attachment A of the February 27, 2018 Planning Commission Memo (Attachment 4 to this Board Letter);
- c) Conceptually adopt the Mitigated Negative Declaration, Case No. 12NGD-00000-00022, included as Attachment C of the January 2, 2018 Planning Commission staff report (Attachment 3 to this Board Letter), and conceptually adopt the mitigation monitoring program contained in the conditions of approval;

- d) Conceptually grant *de novo* approval of the project, Case Nos. 16DET-00000-00004 and 10RVP-00000-00048, subject to the conditions of approval, included as Attachment B of the January 2, 2018 Planning Commission staff report (Attachment 3 to this Board Letter);
- e) Direct staff to refer the revised Reclamation Plan to the Division of Mine Reclamation (DMR) for review and approval and then return to the Board for final action after receiving direction from DMR.

Alternatively, in order to deny the appeal and project, take the following actions:

- a) Make the required findings for denial of the appeal and project, Case Nos. 18APL-00000-00006, 16DET-00000-00004 and 10RVP-00000-00048, included as Attachment 6 to this Board Letter;
- b) Determine that denial of the appeal and project is exempt from CEQA pursuant to CEQA Guideline Section 15270(a), included as Attachment B of the January 3, 2017 Planning Commission staff report (Attachment 1 to this Board Letter);
- c) Deny the appeal and project, Case Nos. 18APL-00000-00006, 16DET-00000-00004 and 10RVP-00000-00048.

The project site is identified as Assessor's Parcel Numbers 083-060-015 & 083-060-009 (Site 1A) and 083-070-018 & 083-070-010 (Site 1B), located north of Santa Rosa Road and easterly of State Route 1, in the Lompoc area, Fourth Supervisorial District.

Summary Text:

The proposed project includes a vesting determination request to add 28.5 acres to an existing vested mining operation and a Reclamation Plan revision to incorporate the requested 28.5 acres into the existing Reclamation Plan. The Reclamation Plan revision request would also incorporate a 3.5-acre as-built expansion of the sorting and storage portion of the site. This vesting determination and revised Reclamation Plan project was initially heard by the Planning Commission on January 11, 2017. The staff report and action letter from this initial hearing are included as Attachments 1 and 2. After taking public comment and considering the request, the Planning Commission continued the hearing and directed staff to return at a future date with findings for approval of the vesting request along with the appropriate CEQA review for the project. Following the January 11, 2017 hearing, the applicant provided an updated Reclamation Plan and staff completed a Mitigated Negative Declaration (MND) for the proposed project. The MND was circulated twice and public comments were incorporated into the document.

Staff returned to the Planning Commission on February 28, 2018 and presented the items that were requested by the Commission at the original January 11, 2017 hearing along with updated findings incorporating new evidence provided by the applicant for the vesting request. The staff report and staff memorandum from this hearing are included as Attachments 3 and 4. The Planning Commission moved to conceptually approve the project and certify the MND; however, by a vote of 2 to 2 (Commissioners Cooney and Brown no; Commissioner Parke recused) the action failed to pass, resulting in no action which is deemed a denial pursuant to the Planning Commission procedures. The action letter from this hearing is included as Attachment 5.

On March 8, 2018, the applicant timely appealed the Planning Commission's deemed denial to the Board of Supervisors.

Background:

Sepulveda Building Materials currently operates the Lompoc Stone mine at Santa Rosa Road and State Route 1 in the Lompoc area under an approved Reclamation Plan, Case No. 90-RP-001. The Reclamation Plan identifies two distinct areas: Site 1A is the mining area, and Site 1B is the sorting and storage area. Raw stone material mined from Site 1A is transported via truck to Site 1B where it is sorted, sized, and stored for sale. The existing Reclamation Plan is scheduled to expire on June 30, 2045 (per Condition No. 11 of 90-RP-001). No changes are proposed to the existing expiration date. The proposed project would expand the area covered under the Reclamation Plan from 96.5 acres to 122.0 acres at Site 1A and from 3.0 acres to 6.5 acres at Site 1B. The existing vested mining activities and current Reclamation Plan include approximately 3 acres which overlap with the 28.5-acre area currently requested for vesting.

On September 29, 1958, the County adopted Ordinance 971, which first required a Conditional Use Permit (CUP) for mining activities. Ongoing mining activities within the approved Reclamation boundary at the Lompoc Stone site commenced prior to 1958, thus pre-dating the County's requirement for a CUP and are considered vested as determined by Santa Barbara County in the 1998 approval of the current Reclamation Plan (Case No. 90-RP-001). The proposed expansion of the mining area is beyond the limits of the area previously determined to be vested by Santa Barbara County. Therefore, in order to mine this area, either a vested rights determination or a Conditional Use Permit is required.

Analysis:

The applicant requests a vesting determination for a 28.5-acre mining expansion area that adjoins the existing vested mining operation. The expansion area includes an extension of the same vein of rock material currently being mined. The proposed project also includes a revised Reclamation Plan which details reclamation activities in the requested 28.5-acre expanded mining area. The revised Reclamation Plan (Case No. 10RVP-00000-00048) and the conditions of approval contained therein would supersede the existing Reclamation Plan and associated conditions of approval (Case No. 90-RP-001). As described in the revised Reclamation Plan, re-contouring would resemble the natural topography, but the site would be between 2 feet and 5 feet lower in elevation. In addition, the revised Reclamation Plan includes a 3.5-acre as-built expansion of sorting and storage activities that have historically occurred at Site 1B as an accessory use to the vested mining operations. Regardless of the outcome of this vesting determination (that is, the request for 28.5 additional acres for mining), the applicant will be required to either revise their Reclamation Plan to include the additional 3.5 sorting and storage acres or to cease these activities.

In order to approve the project as proposed, the Board would need to make the required Vested Rights findings, Reclamation Plan findings and CEQA findings, which are included as Attachment A of the February 27, 2018 Planning Commission Memo (Attachment 4 to this Board Letter). In support of the vesting determination request, the applicant has provided evidence in the form of letters and various documents. Two letters from Mr. Sid Goldstien dated September 22, 2015 and August 3, 2016, and a letter from Price, Postel & Parma LLP, dated January 10, 2017 are included as a part of Attachment 8. The salient points of these letters identified the applicant's intent to mine further into the vein of material and document actual mining that historically occurred on the property. The letters include, among other documents, historic photos of the site dating back to 1954 which show potential mining activity at numerous locations throughout the property, a recorded Certificate of Compliance documenting that all AP Nos. within the Acin Ranch constitute one legal parcel, and a USGS map from 1958 that showed an existing mining

operation at the site. Finally, the applicant supplied an updated letter from Sid Goldstien as well as a geologic and aerial photo review letter from Campbell Geo, Inc., both dated February 14, 2018 and included as a part of Attachment 8. The Campbell Geo, Inc. letter analyzes historic topographic maps, aerial photos, and geologic maps of the subject site. Geologic mapping completed by Dibblee and published in June of 1950, indicate the presence of the source rock spanning both the existing mine area and the proposed expansion area. Testimony by Steve Campbell from Campbell Geo, Inc. points to aerial stereo pair photos that show a third dimension and demonstrate that the site was disturbed, appearing hummocky, in multiple locations along the targeted vein of the rock prior to the County's 1958 Zoning Ordinance 971.

Although courts generally follow a strict policy of banning the extension or enlargement of a vested or non-conforming use, an exception specific to mining enterprises allows the expansion of operations if certain requirements are met. (*Hansen Bros. Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 571-572.). Under the "diminishing asset" doctrine, a vested right to surface mine in an expanded area can be found; however, the owner "must show that the area it desires to excavate was 'clearly intended' to be excavated – as measured by objective manifestations, not subjective intent – when the vested rights trigger of a new law was pulled." (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 625) In the present case, the diminishing asset doctrine requires Lompoc Stone to have manifested an objective intent to mine the proposed 28.5-acre expansion area prior to the 1958 adoption of County Ordinance 971. Findings for denial are included in Attachment 6.

As a part of the appeal package, Case No. 18APL-00000-00006, the applicant has indicated that "[t]he denial of the project is contrary to law and not supported by the facts." As described in the paragraph above, staff has provided the evidence on record for the proposed project submitted by the applicant, a motion and findings for approval, and recommends approval.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$6,000.00 (25 hours of staff time). The costs for processing appeals are partially offset by a fixed appeal fee of \$650.06 and General Fund subsidy in Planning and Development's adopted budget. These costs are funded in the Planning and Development Permitting Budget Program, as shown on page D-286 of the adopted 2017-2018 FY budget.

Special Instructions:

As previously requested in the set hearing letter, the Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on May 8, 2018. The notice shall appear in the Lompoc Record. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be forwarded to the Planning and Development Department, Hearing Support, Attention: David Villalobos. A second minute order of the hearing shall be forwarded to the Planning and Development Department, Energy and Minerals Division, Attention: Joseph Dargel.

Attachments:

1. Planning Commission Staff Report, dated January 3, 2017
2. Planning Commission Action Letter, dated January 17, 2017
3. Planning Commission Staff Report, dated January 2, 2018
4. Planning Commission Memo, dated February 27, 2018

5. Planning Commission Action Letter, dated March 5, 2018
6. Findings for Denial of Appeal and Project
7. Sepulveda Building Materials Appeal Application, with Statement of Grounds for Appeal
8. Applicant Evidence in Support of Vesting
9. Public Comment Letters, Planning Commission Hearing dated January 11, 2017
10. Public Comment Letters, Planning Commission Hearing dated January 10, 2018
11. Public Comment Letters, Planning Commission Hearing dated February 28, 2018

Authored by:

Joseph Dargel, Planner III, (805) 568-3573
Energy & Minerals Division, Planning and Development Department

