

Bradford F. Ginder
Susan H. McCollum
Peter L. Candy
Gisele M. Goetz
Thomas G. Thornton

**Hollister
& Brace**
a professional corporation
Since 1966
Attorneys at Law

1126 Santa Barbara Street
P.O. Box 630
Santa Barbara, CA 93102

Tel: (805) 963-6711
Fax: (805) 965-0329

www.hbsb.com
Email: pcandy@hbsb.com

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Via Email: sbcob@countyofsb.org

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

**Re: Pulice Appeal of the Ellwood Quarry Revised Conditional Use Permit
& Reclamation Plan, Case Nos.: 19APL-00000-00026,
18RVP-00000-00016 and 17RVP-00000-00082**

Dear Chair Nelson and Honorable Members of the Board:

This office represents Ellwood Ranch, Inc., and Santa Barbara Sand & Top Soil Corporation. Ellwood Ranch, Inc. ("Ellwood") is the owner of the lands on which the subject sand quarry operates. Santa Barbara Sand & Top Soil Corporation ("S.B. Sand") is the quarry operator. This letter responds to the appeal issues raised by Susan Petrovich of the Brownstein law firm on behalf of her client, the appellant, Ron Pulice.

1. Background

A sand quarry has operated in Ellwood Canyon since 1962. The original quarry, the "Pulice Quarry," was located on lands owned by Mr. Pulice about 300 yards to the east of our client's Ellwood Ranch. A CUP for the Ellwood Quarry was approved in 1987 as a replacement for the Pulice Quarry which, after more than 25 years of mining, had essentially exhausted its own sand deposit.

In connection with the 1987 CUP for the Ellwood Quarry, an EIR was prepared and certified. Traffic and circulation issues were the primary off-site effects identified and analyzed. Traffic impacts were forecast to be similar to those associated with the Pulice Quarry. As with the Pulice Quarry, truck trips for the Ellwood Quarry were limited to 96 per day. Traffic impacts at that level were considered to be less than significant.

In 2003, the Board of Supervisors approved an updated CUP and reclamation plan for the Ellwood Quarry. The remaining commercially producible sand reserves at the 10-

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acre site were estimated to be 1,028,250 cubic yards. The resource was expected to be depleted by 2018. The 2003 CUP and reclamation plan approved mining these volumes, and were assigned conforming expiration dates.

However, sand sales from the Ellwood Quarry have been significantly less than anticipated. Approximately 332,300 cubic yards of commercially producible material remains. SB Sand has therefore requested an extension of the right to operate the quarry for an additional 25 years. This is estimated to be the remaining useful life of the quarry given the existing level of market demand for sand.

SB Sand has an excellent record of compliance with County requirements. During the past 15 years, annual inspections have confirmed SB Sand's compliance with all conditions of the 2003 CUP and SMARA standards, and that all mitigation measures have been successfully implemented. The only change SB Sand seeks now is an extension of time, so that the commercial life of the quarry can be sustained. All of the relatively minimal mining infrastructure is in place. Mining equipment and procedures will remain the same. The mining area will not be increased.

Aside from extension of the end date for mining, the only substantial change in the proposed revised permit is a **reduction** of more than 50% in the number of truck trips permitted to and from the quarry. Staff has proposed, and SB Sand has agreed, that the limit on truck trips will be reduced from 96 trips per day to a maximum of 40 trips per day (20 in and 20 out).

2. Pulice's Opposition

According to the Brownstein appeal letter, Ron Pulice, owner of the adjoining ranch on which the Pulice Quarry operated for many years, objects to an extension of SB Sand's mining operations. His most fervent objection appears to be about traffic impacts. This is ironic. The original truck trip limitation of 96 trips per day in the 1987 CUP was a carry-over of the truck trip limitation placed on Pulice's quarry operations. Moreover, Mr. Pulice formally **supported** the Board's approval of the 2003 quarry CUP as conditioned, including the truck trip limitation of 96 trips per day. (See attachment A hereto.)

During the intervening 17 years since your Board approved the 2003 CUP, neither County staff nor the quarry operator have received any substantial complaints about quarry operations or associated truck traffic, whether from Mr. Pulice or anyone else.

3. Importance of Protecting a Local Mining Resource

The materials produced by the Ellwood Quarry provide a vital public resource to the Santa Ynez and South Coast Santa Barbara communities. The yellow sand and rock mined from the quarry are used in a variety of applications, including construction,

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landscaping, nursery, and equestrian operations. The fact these materials are sourced locally cannot be overstated. There is virtually no other local source for the quarry material that S.B. Sand produces. If operations were prematurely shut down, the trucking routes needed to obtain similar materials from alternate providers would extend to Santa Maria, Simi Valley, Lancaster, and beyond. Increased trucking distances would inevitably drive up costs to local homeowners, businesses, and public agencies. The increased distances would also negatively impact County roads, freeways and air quality. For decades S.B. Sand has provided an essential low-cost service to the local community, including public works departments, water and sewer municipalities, and school districts. The benefits of its operation must be preserved and protected for as long as commercially producible material remains.

The California State Legislature has declared that the state's mineral resources are vital, finite, and critically important natural resources, that must be developed and produced at the **local level** to reduce transportation emissions resulting from hundreds of millions of tons of construction aggregates being distributed annually throughout the state. (See Public Resources Code § 2711(d) and (f) of the Surface Mining and Reclamation Act of 1975.) Although these are state-level policy determinations, they apply directly to the Ellwood Quarry and should be afforded considerable weight when determining an appropriate end-date for quarry operations.

4. Environmental Review Is Adequate - An Addendum Is the Appropriate CEQA Document.

Staff proposes to satisfy CEQA through adoption of an addendum to the certified 1987 EIR. This is appropriate, indeed required, under the circumstances. Where, as here, none of the conditions requiring preparation of a further EIR are met, the agency is **not authorized to** prepare a subsequent EIR, but instead may prepare an addendum. (See CEQA Guidelines §§ 15162 and 15164.)

No subsequent EIR need be prepared here because (1) no new substantial changes are proposed for the project; (2) there are no substantial changes with respect to the circumstances under which the project is to be undertaken; and (3) no new information of substantial importance exists that would require major revisions to the EIR. (CEQA Guidelines § 15162.)

CEQA Guidelines section 15125 defines a project's baseline as those environmental conditions existing at the time of environmental review. (CEQA Guidelines, § 15125 (a).) "This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320.)

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Where, as here, a project involves continuation of ongoing or past activities, “the established levels of a particular use and the physical impacts therefore are considered to be part of the existing environmental baseline.” (*North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal.App.4th 832, 872.) The baseline thus reflects “the current operative condition” of the area being assessed. (*Citizens for East Shore Parks v. California State Lands Commission* (2011) 202 Cal.App.4th 549, 558.) Accordingly, “a proposal to continue existing operations without change would generally have no cognizable impact under CEQA.” (*North Coast, supra*, at 872-873.) This approach to baseline is the same for mining projects. (See *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 658 [“In the situation of an existing mining operation, a description of baseline environmental setting may reasonably include the mine’s established levels of permitted use.”].)

All mining operations, equipment and transportation will be the same as evaluated in the 1987 EIR. The mining area will not increase, and no mining waste will be generated. The only change will be to the mining end-date.

In terms of aesthetics, views of the quarry’s cut-slope from offsite viewing locations were identified in the 1987 EIR as potentially significant. Several mitigation measures were adopted, all of which Ellwood Quarry has implemented successfully. When the 1987 EIR was prepared, the most significant visual impact was the view of the site from Highway 101. This is no longer an impact because the subsequently-developed Winchester Commons housing project has blocked all views of the quarry from Highway 101. The quarry area will not increase under the revised CUP.

Emissions from sand quarry transport trucks were identified in the 1987 EIR as significant and unavoidable impacts on air quality. The revised CUP would reduce the previous limit of 96 trips per day to 40 trips per day. Actual quarry operations have been a fraction of the volumes anticipated in the 1987 EIR. The average production rate is not expected to materially increase over the remaining life of the mine, and allowable truck trips are being reduced by more than one-half. Air emissions associated with the proposed time extension fall below the APCD’s thresholds for significance for particulates and greenhouse gases.

Noise impacts from quarry operations and trucks traveling to and from the site were identified as potentially significant in the 1987 EIR. Mitigation measures to reduce impacts to less than significant levels were incorporated into the 1987 and 2003 CUPs. The operator is complying with all of these measures and no new noise impacts are anticipated.

The 1987 EIR found impacts on traffic and circulation due to truck trips associated with the quarry to be less than significant. This finding was based on the limitation on truck trips to historic levels associated with the former Pulice Quarry. The proposed revised CUP would reduce the limit from 96 trips per day to 40 trips per day. The extension

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of Cathedral Oaks Road has also now been completed and is being used. No new additional traffic or circulation impacts are anticipated.

As recommended by staff, given that both established levels of the particular use and the physical impacts therefrom are considered to be part of the existing environmental baseline, an addendum to the 1987 EIR is the appropriate CEQA documentation required to support an extension of the right to operate the quarry for an additional 25 years.

Two recent appellate court cases are particularly illustrative regarding the level of environmental review that applies to projects which propose no changes to existing facility operations, other than to extend the life of those operations. Both cases involve major facilities which were approved and built before CEQA's enactment in 1970, therefore no EIR for either project was prepared. The first case, *North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal App 4th 832, involved a CEQA challenge seeking to set aside approvals of interim renewal contracts for the Bureau of Reclamation's Central Valley Project (CVP). The second case, *World Business Academy v. State Lands Commission* (2018) 24 Cal App 5th 476, involved a CEQA challenge seeking to set aside the State Lands Commission's approvals of lease extensions for the Diablo Canyon nuclear power plant.

Appellants in both cases argued that circumstances had changed in the areas and environments surrounding the projects since the time the projects were first authorized which justified the need for full up-to-date EIRs. Importantly, however, no changes to either project were proposed other than proposals to extend the life of the existing facilities. The courts in both cases disagreed with appellants' arguments that EIRs were required, and upheld the proposed contract extensions without requiring any further CEQA review. The courts did so on the basis of the "existing facilities" categorical exemption set forth in CEQA Guidelines § 15301. The courts held that project operations, as they existed without any proposal to change (other than to extend the life) constituted the existing environmental baseline.

"Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline." (*North Coast, supra*, 227 Cal.App.4th at p. 872.) The baseline accordingly reflects "the current operative condition" of the area being assessed. (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal App 4th 549, 558.) Thus, a "proposal to continue existing operations without change would generally have no cognizable impact under CEQA." (*North Coast, supra*, 227 Cal.App.4th at pp. 872-873.)

As the appellate court explained in an earlier case *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1315, "thousands of permits are renewed each year for the ongoing

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operation of regulated facilities, and we discern no legislative or regulatory directive to make each such renewal an occasion to examine past *CEQA* compliance”

5. The Agricultural Reclamation Projects

A large portion of the Brownstein appeal letter is dedicated to complaining about Ellwood’s agricultural reclamation operations. Importantly, these projects are operated under separately issued County permits that are not before the Board at this time, and they have no bearing on quarry operations. Nevertheless, Mr. Pulice and his counsel seek to conflate the agricultural reclamation projects and quarry operations, arguing they should be considered a single project. They mischaracterize the history of the agricultural reclamation operations over the past two decades, including the recycling component, in an effort to paint the Batastini family as bad operators not entitled to an extension of their quarry CUP.

The reality is that the Batastinis ran the recycling operation with the full knowledge and consent of the County, and under its watchful eye. Since quarterly inspections of the landfill began in 2004, the County’s Environmental Health Services Department (“EHS”), aware that recycling was occurring, documented no violations related to the agricultural reclamation projects. Instead, EHS found the reclamation operations to be run in accordance with state minimum standards and with a high regard for public health, safety and environmental protection. To be clear, no recycling is presently occurring on the property. Recycling operations were terminated in 2019 in response to notice from P&D that recycling in the AG-II zone district was inconsistent with County land use ordinance requirements.

6. Conclusion

For the foregoing reasons, Mr. Pulice’s appeal should be denied and staff’s recommendations for approval of the Ellwood Quarry Revised CUP and Reclamation Plan should be adopted. Thank you for your time and consideration.

Sincerely,

HOLLISTER & BRACE
A Professional Corporation

By: _____

Peter L. Candy