

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
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Agenda Number: 05/04/06
Prepared on: 05/04/06
Department Name: Planning & Development
Department No.: 053
Agenda Date: 05/16/06
Placement: Departmental
Estimate Time: 60 Minutes
Continued Item: NO
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BoardAppealHrngLtr051606.doc

TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning and Development

STAFF CONTACT: Zoraida Abresch (934-6585)
North County Development Review Division

SUBJECT: Consider the Appeal of Sutti Stop Work Order

Recommendation: That the Board of Supervisors:

1. Deny the appeal of Mr. Sutti to the Director's decision to issue a Stop Work Order placed on the property on April 7, 2006 for mining without permits.
2. Direct Mr. Sutti to submit an application for a major Conditional Use Permit and Reclamation Plan for processing and approval prior to additional mining of minerals on the property.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

A Stop Work Order was posted on agricultural property after it was discovered that large quantities of dirt were being removed from the property, in excess of what can be exempted from the surface mining regulations in Article III, Section 35-320. The Surface Mining and Reclamation Act (SMARA) and the county zoning code require permits for mining within the county. Article III requires a major Conditional Use Permit and a Reclamation Plan for properties that remove more than 1,000 cubic yards. Approximately 20-30,000 cubic yards has been removed and transported to an offsite location. The County has received information from the trucking firm responsible for transporting material to the offsite location. The firm stated they intended to receive an additional 300,000+ cubic yards of material from the Sutti property. The property manager, Edward Sutti, has stopped work but filed this appeal of the Director's decision to issue the stop work order.

In an attempt to resolve the appeal, on May 4, 2006, Planning and Development offered Mr. Sutti, through his agent Harrell Fletcher, an opportunity to obtain a grading permit and land use permit for agricultural

grading that results in no more than 25,000 cubic yards of exported soil, inclusive of soil already exported from the property to date. (See Attachment B). This offer is consistent with an administrative exemption granted by the departmental in the past for an agricultural grading project and is further described below in response to appeal issue #17.

This appeal, 06APL-00000-00015, involves AP Nos. 113-210-001, -004, -006, -008, -014, and -016, located west of the City of Santa Maria, Fourth Supervisorial District.

The appeal submitted by Mr. Sutti (Attachment A) raises 20 points that can be separated primarily into two issue areas related either to the County's Grading Ordinance, or the Zoning Ordinance dealing with surface mining and reclamation. All 20 points are set forth verbatim below and are followed by County staff responses.

Surface Mining and Reclamation:

Appeal Issues 3,4,9 – Surface mining, Reclamation Plans

3. There is no illegal surface mining.
4. The project does not intend by purpose to be nor does it duly qualify to be classified as a surface mine.
9. The grading does not intend by purpose to be nor does it duly quality to be classified as a reclamation project.

Response: The County of Santa Barbara incorporated the Surface Mining and Reclamation Act (SMARA) into its zoning ordinance in 1976. Since that time, the local ordinance has been updated periodically to reflect changes in State law. The local ordinance and state law both provide exemptions from the requirements of SMARA such that certain projects involving the movement of materials on a property do not always result in the need for a mining permit. The exemptions in Article III are found in Section 35-320.4 as follows:

1. *Exemptions. No Conditional Use Permit or Reclamation Plan shall be required for any of the following activities:*
 - a. *Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster (SMARA Sec. 2714(a))*
 - b. *Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards (SMARA, Sec. 2714 (b)) in one or more locations or parcels under the control of one operator that do not exceed a total of one acre.*

Staff has worked with local farmers through the grading ordinance to address grading operations on their land. Large volumes of dirt can be moved (cut and fill) on a property without SMARA permits to improve the land if certain basic requirements are followed. However, the materials can not be taken offsite unless the exemption shown in 1b (above) is met. According to county grading staff, the area currently disturbed from mining activity on the appellant's property is between 4-5 acres. Staff has estimated that to date, approximately 20,000 cubic yards have been transported to a local housing project

in the City of Santa Maria. Therefore, the current operation is not exempt from State or local surface mining regulations.

Appeal Issues 11,12 – Art. III, CUP/Rec Plan

11. Article III, Section 35-315 and Section 35-320 of the SB Co Zoning Ordinance do not apply.
12. A Major Condition Use Permit and Reclamation Plan do not apply and are not required for this grading project.

Response: Section 35-315.5.1.o requires the processing of a major conditional use permit (CUP) for mining, extraction and quarrying of natural resources. The soil being removed from the property is clearly a natural resource. If the soil was just redistributed on site, there would be no need for the CUP or Reclamation Plan. Section 35-320 requires a reclamation plan for any surface mine that is not a vested mining operation (continuous operation prior to 1976). Therefore, a major CUP and Reclamation are required for any further mining activity on the property.

Appeal Issues 13, 15 – SMARA and Financial Assurances

13. SMARA is not relevant and does not apply to this grading project.
15. Financial Assurance is not applicable to this grading project.

Response: The response to point Nos 3,4, and 9 explain why the current violation is subject to SMARA. Article III, Section 35-320.9 addresses the requirement for Financial Assurances. Under State and County regulations, all mining operations must identify an end use once the mining has terminated. The reclamation plan requires the posting of financial assurances to guarantee that the mining is not left in a state that does not achieve the approved end use. The financial assurances would be minimal in this case since the end use has already been identified as an agricultural field.

Grading Ordinance Issues

Appeal Issues 1,2, 5 – Ag Grading Exemption, Ordinance issues, Volume and Gradient

1. Nonallowance of the Ag grading exemption for the entire project.
2. All project grading is legal pursuant to the SB Co Grading Ordinance.
5. There is no restriction on the volume of soil moved on slopes with a natural gradient thirty percent or less.

Response: This Grading is not exempt under the SMARA statutory exemption for agricultural grading because the project results in the export of material in excess of the statutory maximum of 1000 cubic yards.

The export of grading material of this magnitude, in excess of one thousand cubic yards, is considered to be surface mining or quarrying operations and could only be carried out under a vested rights determination or a mining permit and reclamation plan approval, issued pursuant to the county's SMARA ordinance. If the export were limited to conform to SMARA's limits, then this project could proceed with

a grading permit and land use permit. At this time, if the export of material is stopped, then the project can proceed with a grading permit under Section 14-10, Grading Permits:

- (a) *Except as provided in Sections 14-6, 14-8 and 14-9 of this chapter [Grading Ordinance], no person shall perform any grading, excavation or fill without first obtaining a grading permit and land use permit for such work from the Planning and Development Department of the County of Santa Barbara. Issuance of a land use permit by the Planning and Development Department shall be subject to the application, processing and enforcement procedures provided in Chapter 35 of the County Code of the County of Santa Barbara. A separate permit shall be required for each site and may cover both excavation and fills. Adjacent sites being graded as one integrated project may be considered one site for purposes of this section.*

Staff can expeditiously process and issue a grading permit once Mr. Sutti has filed the necessary application.

Appeal Issues 6,7,8 – Offsite Movement, Natural Contour

6. There is no restriction or prohibition of offsite movement of soil as contained within the SB Co Grading Ordinance as it relates to ag grading.
7. The grading site has not excavated or filled over three feet from the vertical distance to the natural contour.
8. The absolute definition of natural contour/gradient as referred in the SB Co Grading Ordinance.

Response: The export of material offsite is addressed in the zoning code provisions that implement SMARA rather than the Grading Ordinance. Indeed, any project that obtains the necessary SMARA permits is exempt from the Grading Ordinance.

Absent a SMARA permit, this project is subject to the Grading Ordinance. In particular, staff site visits and photo documentation have determined that the project excavation has exceeded three feet in vertical distance to the natural (existing) contour. At some points, it has exceeded twelve feet.

The natural gradient, as defined in Section 14-7 Definitions: the slope of the area being worked in its natural state, exclusive of minor deviations. The area being worked is the new area of disturbance. Therefore, the operations exceed the limits of agricultural grading allowed under the terms of “natural grade.”

Mr. Sutti has taken the position that the material being moved was originally deposited at its present location by Union Sugar in the 1970’s. The material reportedly is said to consist of poor soils excavated from the settling ponds used for sugar beet production on this property. Mr. Sutti has taken the position that since this material was placed at its current location by Union Sugar, it is not part of the “natural gradient” and can therefore be graded and excavated without a grading permit.

Staff believes that if the SMARA issue is mooted by a cessation of exporting material from the site, then a grading permit is appropriate. First, this soil has been in place for over 30 years and due to its settling and

the natural revegetation of the area, it has long ago become part of the “natural contour” of the site. Second, the project exceeds the “technical” triggers of the Grading Ordinance in that it results in cuts and fills in excess of three feet, thereby causing the likelihood of erosion. Third, a principle purpose of the grading ordinance is to require an erosion control plan in order to mitigate erosion from the site that can damage wetlands, streams, or adjacent landowners. Such plans are routinely prepared by landowners and approved expeditiously by County grading inspectors and staff. Assuming Mr. Sutti ceases to export material, he can still proceed with agricultural grading by submitting an application for a grading permit along with an erosion control plan and staff can then expeditiously process and approve this project.

Appeal Issue 10 – No Applicable Permits Required

10. There are no applicable permits required for the grading operations as it currently is intended and maintained.

Response: Please see discussion above as to why permits are required.

Appeal Issue 14 – No Grading Permit Required

14. There is no Land Use Permit or Grading permit required for this grading project.

Response: As stated in Sections 14-6 and 14-10, a land use permit and a grading permit would be required for this “grading project” unless it is fully permitted under SMARA.

Appeal Issue 18 – Stockpile Prohibition not Enforceable

18. The prohibition from stockpiling is not enforceable for this project under the conditions of the SB Co grading Ordinance.

Response: Per Section 14-7, Definitions, stockpiling is considered grading. Stockpiling requires the applicant to obtain both a land use and grading permit, when the stockpile amount exceeds 50 cubic yards.

Other Issues Areas:

Appeal Issue 16 – Benign Neglect

16. In applying for any officially determined permits, the County of Santa Barbara may not institute the benign neglect policy.

Response: The County will diligently and expeditiously process any permit application that Mr. Sutti chooses to submit.

Appeal Issue 17 – Focused Discrimination

17. While other projects of this type have been recently allowed by the County of Santa Barbara, certain focused discrimination seems to exist as directed toward this grading project.

Response: County staff has fully reviewed this matter and determined that Mr. Sutti is being treated consistent with other similar permits. A review of the three cases that have been noted by the appellant and his agent, Mr. Fletcher, were all statutorily exempt from SMARA and further were fully approved by the County with grading permits. In particular, for two of the projects, Public Resources Code section 2714(b) exempts grading that is “an integral and necessary part of a construction project ... undertaken to prepare a site for construction of structures...” Under this statutory exemption, grading necessary to prepare a site for construction is therefore exempt, even if it results in the export of substantial amounts of material offsite. Staff notes that such grading is routinely analyzed and permitted as part of major development applications that are subject to full review under CEQA. The other project sited by appellant was not subject to SMARA because it did not result in the export of materials offsite.

The first, Orcutt Plaza, was a development plan that was approved by the county in the Orcutt area. In this case, the project was evaluated in the staff report and the environmental document for export of over 100,000 cubic yards of material. That export was approved through issuance of grading and land use permits.

The second, Bradley Lands grading, was an approved erosion control permit allowing the movement of soil from east of Hwy. 101 to property west of Hwy. 101. The export was allowed since the property was in one ownership on a single parcel until the state split the property with the relocation of Hwy. 101. There was no export of material offsite and, therefore, it was not subject to SMARA.

The third example cited was the Elks Rodeo grounds east of Hwy 101 in the Orcutt area. In this case, the project received approval of a major CUP for the construction of the events facility. The property required a significant parking area to handle the larger events that were permitted, including the 3-day Elks Rodeo. Grading and land use permits were approved for the project that included the rodeo facility, RV camping, roads and parking lots and staging areas for the event participants. A revised grading permit was issued to lower the parking area which created more parking spaces. The extra dirt from that grading operation was utilized by Unocal for various soil remediation projects throughout the Santa Maria Valley. In summary, each of the three examples received proper permits from the County and met the exemption from SMARA.

Absent a statutory exemption, Mr. Sutti’s project falls within County’s zoning code, Sec. 35-320.4, which requires a major CUP for such projects. This requirement is also found in Public Resources Code Section 2714(b). Therefore, the zoning code and SMARA requirements are applicable to this project as long as it results in the substantial extraction (i.e. export) of soil offsite.

Notwithstanding the zoning code and SMARA requirements, Staff research into this issue has revealed a fourth case from 2003 that resulted in the County issuing a grading and land use permit for agricultural grading that resulted in the export of 25,000 cubic yards of material from an area west of Highway 101 in the Santa Maria area. The grading was permitted to enhance the productivity in a farm field. The grading reduced slopes and squared off a farm field so that it could be farmed more efficiently. The excess material was taken offsite. Based on this case, the Department offered to process a grading and land use permit for Mr. Sutti allowing up to 25,000 cubic yards to be removed from the property, inclusive of any

export that has already occurred. (See Attachment B). Since some material has already been removed from the Sutti property, the permit would allow the balance, if any, of the 25,000 to be exported. Any additional material would require approval of a major Conditional Use Permit and a Reclamation Plan. To date, Mr. Sutti has not responded to the County offer.

Appeal Issue 19 – Economic Disadvantages

19. The Applicant is and will suffer economic disadvantages and damages as a result of the SWO's.

Response: The County is obligated to apply and enforce the law, including the requirements of SMARA. Further, it should be noted that there are almost 20 fully permitted mining operations in the County that have gone through the permit process, environmental review. In addition, they have posted financial assurances which in some cases are close to \$1 million dollars. These mines have gone through all the necessary permit processing and are therefore entitled to sell their products to customers in and out of the county. Mr. Sutti can enjoy the same privileges as these mining operators provided he complies with applicable law.

Appeal Issue 20 – Agent for Landowner

20. While the SWO were issued to ED Sutti, the Board of Supervisors is hereby noticed that Ed Sutti is also acting as the Agent for landowner (s).

Response: Comment noted.

Mandates and Service Levels:

An appeal of a Director/Zoning Administrator decision, per Section 35-332.1 is considered by the Board of Supervisors based upon Article III, Section 35-327.3. The appeal form and fees were submitted to the Clerk of the Board within ten days of the posted Stop Work Order.

Fiscal and Facilities Impacts:

The costs for processing appeals are provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$300 to P&D. Costs beyond that fee will be absorbed by P&D. These funds are budgeted in the Permitting and Compliance Program of the Development Review North Division, as shown on page D-296 of the adopted 2005/2006 fiscal year budget.

Special Instructions:

The Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Attention: Cintia Mendoza, Hearing Support.

Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Concurrence: n/a

Prepared by: Larry Appel, Supervising Planner, 934-6261
David Vyenielo, Grading Inspector, 934-6233

Attachments:

- A – Appeal Form and 20 appeal issues
- B - Letter to Mr. Fletcher dated May 4, 2006
- C - County Grading Ordinance Excerpt