



**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: December 9, 2014
Placement: Departmental
Estimated Tme: 40 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Director Glenn Russell, Ph.D., Director
Department Planning and Development 568-2085
Contact Info: Kevin Drude, Deputy Director 568-2519
SUBJECT: **Hearing to consider the Brand Appeal of the Lehigh Hanson Aggregates Permit Condition Compliance, Fifth Supervisorial District**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Consider the appeal filed by Michael Brand, Case No. 14APL-00000-00023, of the County Planning Commission's September 10, 2014, receipt and filing of the staff report on condition compliance for Lehigh Hanson Aggregates Conditional Use Permit Case No. 86-CP-106 RV01 and Reclamation Plan Case No. 86-RP-006 RV01.

Your Board's action should include the following:

1. Deny the appeal, Case No. 14APL-00000-00023, thereby affirming the County Planning Commission's receipt and filing of the staff report and directing staff to return to the Planning Commission in four years (September, 2018) to provide a review of the applicant's permit compliance record, as shown in Attachment A, Planning Commission Action Letter, dated September 12, 2014.
2. Determine that no additional CEQA review is required pursuant to CEQA Guidelines Section 15162(c).

Alternatively, refer back to staff if the Board takes an action other than the recommended action.

Summary Text:

The subject appeal was filed by Michael Brand following the Planning Commission receipt and filing of a permit condition compliance report for the Lehigh Hanson Aggregates mining facility. Lehigh Hanson Aggregates mines sand and gravel and operates a hot mix asphalt plant (HMA) that produces asphaltic concrete at the project site near the Santa Maria River east of the City of Santa Maria. Project operations are permitted under a Conditional Use Permit (Case No. 86-CP-106 RV01) and Reclamation Plan (Case No. 86-RP-006 RV01) in compliance with the Santa Maria and Sisquoc Rivers Specific Plan. Condition No. 1 of the Conditional Use Permit and Reclamation Plan requires the Planning Commission review compliance with project conditions every ten years to ensure that permit conditions are effectively mitigating significant environmental impacts as identified in the project Final Environmental Impact Statement/Report (EIS/R). Further, Condition No. 1 allows the Planning Commission to impose reasonable additions to, or modifications of, project conditions if it determines that the conditions imposed on the project are inadequate to effectively mitigate the environmental impacts identified in the EIS/R. The project site is located at 5325 Foxen Canyon Road, Sisquoc on Assessor Parcel Numbers 129-210-026, 129-110-024, 129-110-013, 129-110-014, 129-110-015, 129-110-016, 129-110-017, 129-110-018 (approximately 400 acres) located along the Santa Maria and Sisquoc rivers, Fifth Supervisorial District.

Background:

On July 22, 2014, the Planning Commission considered the permit condition compliance report for Lehigh Hanson Aggregates (Attachment B, Planning Commission Staff Report), continued the item to September 10, 2014, and directed staff to provide additional analysis demonstrating Lehigh Hanson Aggregates compliance with the project's conditions of approval (Attachment C, Planning Commission Memorandum, dated September 10, 2014). Upon receiving additional information from staff, the Planning Commission moved to receive and file the permit condition compliance report for 86-CP-106 RV01 and 86-RP-006 RV01 on September 10, 2014, by a vote of 4 to 1; determined that no additional CEQA review is required pursuant to CEQA Guidelines Section 15162(c); and directed staff to return to the Planning Commission in four years (September, 2018) to provide a review of the applicant's permit compliance record (Attachment A, Planning Commission Action Letter). The appellant's appeal of the Planning Commission's receipt and filing of the permit condition compliance report was filed to your Board in a timely manner on September 18, 2014 (Attachment D, Appeal).

Appellant Issues and Staff Responses:

1. Appeal Issue: Timing of Mining, Reclamation, Habitat Mitigation and Revegetation.

The appellant asserts (Items 1 and 2 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Timing of mining, reclamation, habitat mitigation and revegetation.

Timing of 5 Year Mining Reclamation Plan reviews and this 10 year compliance review.

Staff Response

Permit Condition No. 1 of the project Conditional Use Permit (CUP) requires each mining phase be reviewed through five-year Mining and Reclamation Plans (MRP's) as well as a permit condition compliance review with the Planning Commission every ten years. The CUP Conditions of Approval set forth estimates for the proposed timing of phases of mining, reclamation, habitat mitigation and revegetation: Phase 1 (1 to 9 years), Phase 2 (10 to 13 years), and Phase 3 (14 to 23 years). This timing was based on estimated extraction rates of aggregate, made at the time of project approval in 1997, over a

23 year period at the project site. The language of Condition No. 1 of 86-CP-106 RV01 contains a caveat that the timing identified in the phases are estimates:

The proposed phasing for mining and reclamation is summarized in Table 2 in the Specific Plan. The timing identified is an estimate and will vary depending on sales demand, rock versus sand demand, and other factors.

Condition No. 1 also includes a notation stating that,

Phasing is subject to revision at each Periodic MRP [Mining and Reclamation Plan] subject to County Review and Approval.

The timing for mining and reclamation phases identified in Condition No. 1 was clearly presented in the project description as estimates which are subject to revision with each periodic Mining and Reclamation Plan (MRP). While the intervals of MRP submittals were identified within Condition No. 1 in five-year increments, actual MRP submittals are based on extraction rates of aggregate in the field which, depending upon market demand and other factors, may be completed sooner, or in some cases later than the estimated five-year period. As a result, MRP submittals cannot be based on hard dates every five years. For example, the applicant submitted MRP's in 2003, 2011 and 2014 for the first three phases of mining activities. These submittals were based upon mining and reclamation activities at the site which in the case of the 2003 MRP exceeded a five year time span, and in the case of the 2011 MRP, was completed in less than five years. These revised timing schedules do not represent non-compliance with permit conditions because flexibility was built-in at the time of project approval.

Condition No. 1 also requires a permit condition compliance review with the Planning Commission every ten years. On June 2, 2003, Land Use Permit 03LUP-00000-00048 was issued for the first phase of mining. The ten year review period required pursuant to Condition No. 1 ran from June 2003 through June 2013. The required ten year compliance update was not completed in June 2013, but rather on July 22, 2014. While P&D staff did not complete the requisite update within an exact ten year period, this delay does not constitute applicant non-compliance with permit conditions.

2. Appeal Issue: Failure to Establish Revegetation, Wetlands, Required Screening and Control Non-Native Species

The appellant asserts (Items 3, 4, 6, and 7 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Continuing failure of revegetation attempts.

Failure to establish required wetlands habitat.

Failure to establish required screening.

Failure to control non-native species as required by approvals.

Staff Response

Revegetation Attempts

Condition No. 42 of the project Reclamation Plan requires that revegetation be completed within two years of completion of surface mining operations within each approved mining area. While this requirement serves to expedite revegetation and reclamation, the applicant has found that due to environmental factors in the field (i.e. failure of plants to propagate or drought), this timeframe is not always achievable. The applicant, in consultation with P&D staff, may adjust revegetation practices in response

to environmental factors in the field to ensure that mitigation plantings are successful. If initial plantings fail for any reason, replanting is required until vegetation is determined to be established consistent with the requirements of Condition 42. The applicant has successfully revegetated areas within the Carranza basin. The Davis basin slopes were hydroseeded upon completion of mining in a portion of the basin however; seedlings have failed to propagate in this particular area. The applicant has been actively working with P&D staff to identify a restoration plan that will achieve successful revegetation of the basin. They have contracted with Recon Environmental to develop a plan to substantially supplement the existing hydroseed and increase erosion control on the slopes in the basin. P&D staff and the County Biologist will continue to work the applicant in adapting their revegetation efforts in the field to ensure successful revegetation of the basin and ongoing compliance with permit conditions.

Wetland Habitat

Condition No. 26 of the project Reclamation Plan requires wetland impacts be mitigated at a 1.5:1 ratio. By observing setbacks and clearly identifying in-channel mining areas in the field prior to mining, wetland habitat has generally been avoided by the applicant. However, approximately 1.16 acres of wetland habitat (mulefat scrub) disturbance occurred in 2005 from in-channel mining activities. That same year, the applicant implemented mitigation for this impact by planting approximately 12 acres of mulefat and willow scrub vegetation on the lower slopes of the Carranza Basin. By 2011, the plantings had failed and it was determined that this vegetation type would not be self-sustaining in the Carranza location. P&D staff and the County Biologist are currently working with the applicant to identify an alternative location for establishment of wetland habitat to ensure ongoing compliance with permit Condition No. 26.

Landscape Screening

Condition No. 1 of the project Reclamation Plan required screen plantings to be completed in Phase 1 (Years 1-3) along the majority of the site's perimeter. The applicant established the requisite screen planting prior to 2004. However, due to environmental factors (i.e. drought, failure of plantings to propagate, extreme weather conditions) these plantings failed to establish at the required success rates. On July 14, 2014, at the request of P&D staff, the applicant submitted a revised Landscape Screening Plan which included alternative plant species deemed more suitable for the site's environmental conditions. The Plan was reviewed and approved by the County Biologist and includes the following components:

1. Planting of the following species: Native Evergreen (Quercus) tree or shrub (including Coast Live (Agrifolia) and Coastal Scrub (Dumosa)); Native shrub including Toyon (Heteromeles Arbutifolia), Coyote Bush (Baccharis Pilularis), Lemonade Berry (Rhus Integrifolia), Coffeeberry (Frangula Californica), and Elderberry (Sambucus Mexicana).
2. Planting along the west segment of the main entrance to the Hot Plant gate (approximate length 567 feet).
3. Planting along the west segment of the Hot Plant gate to the 90-degree curve (approximate length 530 feet).

In August and September 2014, the applicant installed these plantings along Foxen Canyon Road, trimmed vegetation in front of the Carranza Basin, removed oleanders and dead plants, and repaired the irrigation system along the Davis Basin pursuant to the revised Landscape Screening Plan. The County has in place a Reclamation financial assurance from Lehigh Hanson Aggregates required by Condition Nos. 45, 46 & 47 of 86-CP-106 RV01 & 86-RP-006 RV01 sufficient to ensure that landscape revegetation/restoration and maintenance activities are achieved at the project site. If P&D staff

determines that the applicant is not in compliance with their landscaping requirements, the County may use the operator's Reclamation financial assurance to carry out the required revegetation to ensure compliance. However, the applicant is currently in compliance with all the landscape screening requirements of permit Condition No. 1.

Non-Native Species

With respect to revegetation, Condition No. 42 of the Reclamation Plan requires that the applicant identify processes for ground preparation, weed control, seeding and planting mixes and methods, a schedule for monitoring and maintenance activities, performance criteria as well as contingency plans. Currently, areas where landscape screening failed to establish have been infiltrated by weeds. In response, the applicant contracted with Recon Environmental who removed the weeds in front of the Carranza and Davis Basins. Additionally, Recon Environmental has been contracted to provide ongoing weed monitoring and eradication services to ensure ongoing compliance with permit Condition No. 42.

3. Appeal Issue: Removal of a Large Body of Water Without Required Approvals

The appellant asserts (Item 5 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Pumping to remove large body of water without required approvals in apparent effort to avoid requirement to establish replacement wetlands at ration of 1.5 acres mitigation wetlands to each 1 acre of potential wetlands encountered while mining.

Staff Response

The area of reference for this allegation is the Davis Basin which has been actively mined since 2003. The applicant indicated that the Davis Basin filled with water in 2011, when the groundwater table rose following a stormwater event and water entered the basin from natural river seepage. When the basin filled with water, the operator was forced to cease mining activities until the basin drained. Because the operator needed to remove the water in order to continue mining operations, they used a water pump to transfer the water from the basin to a water truck for ongoing dust control activities. No permit was needed to drain the Basin. The Davis Basin never had any wetland habitat within its boundaries. The applicant continues to mine the Davis Basin in compliance with permit conditions.

4. Appeal Issue: Operating Without a Valid LUP

The appellant asserts (Item 8 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Operating in the Davis Basin without a valid LUP.

Staff Response

A Land Use Permit (Case No. 03LUP-00000-00048) was issued to conduct sand and gravel mining operations on the southerly 29 acres of the Davis Basin (Phase I) on June 2, 2003. On April 3, 2006, a revision to the Land Use Permit (Case No. 03LUP-00001-00048) was issued allowing for an expanded pit area. On May 10, 2013, a Zoning Clearance (Case No. 13ZCI-00000-00050) was issued authorizing sand and gravel mining operations on the northerly 15.5 acres in the Davis Basin (Phase 2). The applicant is currently operating with valid Land Use Permits (03LUP-00000-00048 and 03LUP-00001-00048) and a Zoning Clearance (13ZCI-00000-00050) for mining operations within the Davis Basin. Therefore, the applicant is in compliance and operating with all necessary land use approvals.

5. Appeal Issue: Failure to Conduct CEQA Analysis, Consider Changed Circumstances, and Current Science/Standards

The appellant asserts (Items 9, 10, and 11 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Failure to conduct required CEQA analysis.

Failure to consider changed circumstances in surrounding environment since original approval, including additional oil production and intensification of nearby agriculture, both resulting in increased impacts to air quality, traffic and water usage.

Failure to consider current science and standards regarding diesel emissions.

Staff Response

On December 9, 1997, the Board of Supervisors adopted the Santa Maria and Sisquoc Rivers Specific Plan (Specific Plan), certified the Environmental Impact Report/Statement (EIR/S) Case No. 96-EIR-004 and approved Conditional Use Permit (86-CP-106 RV01) and Reclamation Plan (86-RP-006 RV01) which allows Lehigh Hanson Aggregates to conduct mining activities in and adjacent to the Santa Maria and Sisquoc rivers. The scope of analysis of the EIR/S included all areas to be mined over the course of the estimated 23 years of the project life. The EIR/S satisfies the requirements of the California Environmental Quality Act (CEQA) for all Lehigh Hanson Aggregates mining operations. The recent action taken by the Planning Commission, and now before your Board, includes; 1) the receipt and filing of a permit compliance report and 2) review of mitigation measures from the permit conditions imposed on the project to ensure that implementation of conditions is adequately mitigating for environmental impacts. Due to the inherent disruptive nature of mining operations, numerous potentially significant impacts were identified in the project EIR. Mitigations were identified to reduce these impacts and incorporated into the project as permit conditions of approval. The Planning Commission staff report (Attachment B) and Planning Commission Memorandum (Attachment C) provide detailed analysis describing activities completed by the operator which implement the permit mitigation measure/condition of approval in the field. The analysis also includes a discussion of the conditions' adequacy to mitigate the corresponding impact identified in the project EIR. P&D staff analysis has found that the conditions imposed on the project have proven to be sufficient to mitigate project impacts and no changes to conditions are recommended at this time. The Planning Commission concurred with staff's analysis.

The California Environmental Quality Act (CEQA) Guidelines Section 15162(c) states:

Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

The Planning Commission's receipt and filing of the permit compliance report on September 10, 2014, represented no new discretionary action which would require further analysis pursuant to CEQA Section

15162(c). Therefore, no additional CEQA analysis is required as part of your Board's consideration of this compliance update.

6. Appeal Issue: Failure to Consider Effects of Listing of the California Tiger Salamander

The appellant asserts (Item 12 on Exhibit A of Attachment D) that areas of non-compliance include the following:

Failure to consider effects of listing of California Tiger Salamander as an endangered species in interim since original approvals.

Staff Response

The Lehigh Hanson Aggregates project was approved by the Board of Supervisors on December 9, 1997, and the California Tiger Salamander was listed as an endangered species by the U.S. Fish and Wildlife Service September 21, 2000. Condition No. 35 (Changes in Species Status) contemplated the need to protect species that may be listed as endangered or threatened in the future to mitigate for biological impacts of the project by requiring the following:

To protect species that may be listed as endangered or threatened (Federal or State) in the future, the applicant shall have an agency approved biologist conduct sensitive species surveys of areas approved for mining in the upcoming Periodic MRP. If future listed species are expected to be impacted by mining activities, the applicant shall demonstrate compliance with the ESA through a new Section 7 consultation with USFWS or a Section 10A permit issued by USFWS, and/or consultation with the California Department of Fish and Game, whichever is appropriate. The biologist shall use USFWS-established protocol for surveying, if available. Any conservation measures and conditions required by USFWS shall be implemented to the satisfaction of the ACOE. The applicant shall submit proof of compliance with this measure (letter or copy of permit) to the Counties involved.

Pursuant to Condition No. 35, species listed as endangered or threatened require specific surveys prior to mining activities. The most recent Sensitive Species and Habitat Report completed for Davis Basin Phase 2 (October 13, 2011) included a California Tiger Salamander specific survey and reported no California Tiger Salamander within the proposed mining area. The County has notified the applicant that a survey for the California Tiger Salamander is required as part of their 2014 MRP currently being processed under Zoning Clearance Case No. 14ZCI-00000-00067. Upon receipt of this survey, the P&D Biologist will peer review the survey to evaluate potential impacts to the California Tiger Salamander. If impacts to the California Tiger Salamander are identified, P&D staff will consult with the U.S. Fish and Wildlife Service as required by the Endangered Species Act. The applicant continues to be in compliance with Condition No. 35 through the submittal of the requisite sensitive species surveys.

Conclusion:

Based on staff's analysis from the Planning Commission staff report dated July 22, 2014, Planning Commission memorandum dated September 10, 2014, and analysis presented in this Board letter, staff recommends that the Board deny the appeal and affirm the Planning Commission's receipt and filing of the staff report and direction that staff return to the Planning Commission in four years (September, 2018) to provide a review of the applicant's permit compliance record, and determine that no additional CEQA review is required pursuant to CEQA Guidelines Section 15162(c).

Fiscal and Facilities Impacts:

Budgeted: Yes

A \$643.00 appeal fee was charged. The costs for processing appeals are provided through funds in the Planning and Development Department's adopted budget. Total staff time for processing this appeal is estimated to be approximately 25 hours. These funds are budgeted in the Permitting Program as shown on page D-212 of the adopted 2014/2015 budget.

Special Instructions:

Noticing has been completed by the Clerk of the Board. A Minute Order of the hearing shall be returned to P&D, Attention: David Villalobos, Hearing Support.

Attachments:

- A. Planning Commission Action Letter, dated September 12, 2014
- B. Planning Commission Staff Report, dated July 22, 2014
- C. Planning Commission Memorandum, dated September 10, 2014
- D. Appeal Packet 14APL-00000-00023, dated September 18, 2014
- E. Conditional Use Permit (Case No. 86-CP-106 RV01) and Reclamation Plan (Case No. 86-RP-006 RV01) Conditions of Approval

Authored by:

Errin Briggs, Energy Specialist
(805) 568-2047