



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: Aug 30, 2016
Placement: On Aug 30, 2016, set
hearing for Sep 20, 2016
Estimated Time: 1 hour on Sep 20, 2016
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D. Director, Planning and Development
(805) 568-2085
Contact Info: Peter Cantle, Deputy Director, Energy and Minerals
(805) 568-2519
SUBJECT: **Gordon Sand Company Appeal (16APL-00000-00019) of the County Planning Commission's Approval of the Shell Guadalupe Dunes Gravel Remediation In-Lieu Proposal Project (Case Nos. 13RVP-00000-00119 and 14CDP-00000-00072), Third Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On August 30, 2016, set a hearing for September 20, 2016 to consider the Gordon Sand Company appeal of the County Planning Commission's June 29, 2016 approval of the Shell Guadalupe Dunes Gravel Remediation In-Lieu Proposal Project (Case Nos. 13RVP-00000-00119 and 14CDP-00000-00072).

On September 20, 2016, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 16APL-00000-00019;
- b) Make the required findings for approval of the project, including CEQA findings, included as Attachment A of the July 1, 2016 Planning Commission Action Letter (Attachment 1 to this Board Letter);
- c) Certify the Supplemental Environmental Impact Report (13EIR-00000-00005) and adopt the mitigation monitoring program contained in the conditions of approval (Attachment 2); and
- d) Grant *de novo* approval of Case Nos. 13RVP-00000-00119 and 14CDP-00000-00072, subject to the conditions included as Attachments B and C of the Planning Commission action letter dated July 1, 2016 (Attachment 1).

Summary Text:

This project was initially heard by the Planning Commission on September 10, 2014. The staff report from this initial hearing is included as Attachment 3. The Planning Commission continued the hearing and directed staff to return on November 12, 2014 to provide additional information. The applicant, Shell Western Exploration and Production, Inc. (Shell), requested that the November 12, 2014 hearing be delayed to allow discussions and possible resolution of issues with the Gordon Sand Company. The hearing was not held at Shell's request. Shell attempted negotiations with Gordon Sand Company since that time, but no resolution was ever reached. Having tried and failed to reach resolution with Gordon Sand Company, Shell requested that case processing continue.

Staff returned to the Planning Commission on June 29, 2016 and presented the items that were requested by the Commission at the original September 10, 2014 hearing. The staff memorandum from this hearing is included as Attachment 4. By a vote of 4 to 0, with Commissioner Brooks abstaining, the Planning Commission approved the project and certified the SEIR.

On July 11, 2016, Gordon Sand Company appealed the Planning Commission's approval to the Board of Supervisors.

Background:

The project site is located on land owned by the County of Santa Barbara. Husky Oil obtained a Conditional Use Permit (82-CP-75[cz]) in 1983, for oil and gas drilling operations on the property, including permission to develop and operate 42 oil and gas wells from two drilling sites. That Project's environmental impacts were evaluated within 82-EIR-11 (<http://sbcountyplanning.org/energy/projects/ShellGuadalupeGravel.asp>), which identified significant impacts to land use/recreation, visual, and floral and faunal resources. Ultimately, Husky Oil constructed only one drilling site (Site D), which contained five wells, located approximately 240 feet northwest of the existing and actively used Gordon Sand Company access road. This drilling operation included the placement of gravel for road base to accommodate heavy equipment access and to stabilize sand near the proposed drilling island. Shell later acquired the lease from Husky Oil.

Condition No. 31 of 82-CP-75(cz) requires removal of all materials brought into the dunes to support and as a result of the drilling project.

No. 31. All introduced materials on or near the surface (depth of 15 feet) shall be removed when the drilling islands are abandoned.

Shell ceased operation of Site D in 1989 and commenced abandonment and reclamation to restore the site under 96-CDP-010 as required by the County. With the exception of remnant gravel, all production wells and infrastructure were removed and site reclamation was otherwise completed in 1997 in compliance with regulations of the County and California State Department of Oil, Gas, and Geothermal Resources. The applicant performed site assessments which confirmed that no hazardous levels of any materials were present in local soils or groundwater. A portion of the gravel used for road base and some asphaltic materials were removed under 96-CDP-010 in 1997; however, approximately 293,752 cubic yards of sand impacted by gravel was left in place because the gravel occurred at depths much greater than anticipated. The total surface area currently impacted by gravel is approximately 18.9 acres.

Shell proposes to leave sand impacted by remnant gravel in place and remove Permit Condition No. 31 of 82-CP-75(cz). In exchange for leaving the gravel in place, Shell proposes to provide an in-lieu fee to the County for acquisition of property at a mitigation ratio of not less than 3:1 (56.7 acres of mitigation for 18.9 acres of disturbance) to enhance public recreational opportunities in the north coastal region of Santa

Barbara County. Acquisition of the mitigation property by the County of Santa Barbara would be required prior to final permit issuance. The 3:1 ratio is consistent with standard mitigation practices used by the County of Santa Barbara and the California Coastal Commission.

The appellant, Gordon Sand Company, operates a neighboring commercial sand mining facility, which consists of sand collection pits and a sand screening and processing facility. Access to the Gordon Sand Company facility is provided through an access road on Santa Barbara County property and the road to the sand pit overlaps the subject gravel access road. Much of the access road is on an easement granted to Gordon Sand Company prior to County ownership. The new road was built by Shell to Site D in approximately 1983. As documented in aerial photos, between 1991 and 1992 Gordon Sand extended the new road through County property to the mining site, which provided a shorter and more stable route to the mining site. This relocation of the easement access rights was not authorized by the County; therefore, Gordon Sand appears to be partially trespassing on County property to access its mine. California law does not recognize any type of prescriptive easement over publicly owned property. Gordon Sand's original access route has since become overgrown with vegetation.

Appeal Issues:

The appellant has submitted a statement of grounds for the appeal along with their appeal application. The statement identifies and explains four specific issue areas that constitute the grounds for their appeal (see Attachment 5). Those issues have been summarized below and are followed by staff's response.

Appeal Issue No. 1. SEIR Fails to Describe Physical Change to the Environment

The appellant claims that the SEIR fails to disclose and discuss a significant physical change in the environment, including the following assertions:

- a) "Imported gravel remaining from the oil operation is intermixed with significant quantities of river cobbles ranging in size up to six (6) inches in diameter."
- b) "The remnant gravel and cobbles that exist at Site D, Site 2, Road Site, and Upper Area (collectively the "Project Site") have, over the years, been distributed and disbursed over and beyond the areas where they were initially deposited as a result of natural coastal processes, primarily the prevailing northwest wind."
- c) "These natural coastal processes have moved remnant gravel and cobbles onto property owned and used by Gordon Sand Company for its mining operation."
- d) "The prevailing northwest wind is an ongoing and perpetual coastal process that will continue to move remnant gravel and cobbles around the Project Site, including onto property owned and used by Gordon Sand Company for its mining operation – most importantly its sand pit and access road."

Staff Response: The proposed final SEIR clearly describes the location, movement, and impacts of the gravel on the environment. The location of remnant gravel within the Project Site is detailed in the 2010 AECOM Restoration Work Plan (Attachment 6), which relies on soil borings (2002-2003) and surface

visual assessments (2010) conducted within four subareas identified as Site D, Site 2, the Road Site, and the Upper Area.

A review of aerial photographs shows that gravel at Site 2, including remnant gravel within the Gordon Sand Company sand pit, has likely been distributed by the movement and operation of heavy equipment in this area, including the grading of the alternative access route (discussed above) to the sand pit by Gordon Sand Company prior to April 1993. While the prevailing wind blows in a northwesterly to southeasterly direction, the movement of gravel over time at the site has been to the west, directly tracking the movement of Gordon Sand Company equipment as shown on Figure 2 of the June 29, 2016 AMEC Foster Wheeler Response to the Lancaster (2015) Study (Attachment 7).

The appellant's assertion that physical changes in the environment are not described in the SEIR ignores the evidence in the record, and was previously addressed in the response to comments in the Draft SEIR, as follows:

Comment Response 5-1a. Sand dunes, like those found at Rancho Guadalupe Dunes County Park, form when there is (1) a ready supply of sand, (2) a steady wind, and (3) some kind of obstacle such as vegetation, rocks, or fences, to trap some of the sand. Sand dunes form when moving air slows down on the downwind side of an obstacle. The sand grains drop out and form a mound that becomes a dune (Nelson 2003). Using the Bagnold (1941) equation for entrainment of particles by wind, it was found that a 0.025 cm diameter particle has a theoretical critical shear velocity of approximately 5.15 miles per hour (Beckstrand 1998). Other publications estimate the actual threshold wind velocity for sand at approximately 14 miles per hour (Worley Parsons 2010; Tsoar 2004). Using the Bagnold equation, it follows that in order to transport a six-inch diameter cobble winds in excess of 120 miles per hour would be required. Even gravel three inches in diameter would require wind gusts in excess of 50 miles per hour. Realistically, the requisite threshold wind velocity might be even greater than these theoretical calculations. As winds of these velocities are uncommon at Rancho Guadalupe Dunes County Park, the evidence does not support a conclusion that cobbles from the Husky Oil operations have blown over 500 feet from Site D into the Gordon Sand Company sand mine. Further, as the prevailing winds at the Project Site are from the west-northwest (WRCC 2002), it is unlikely that aeolian processes are transporting gravel or cobbles to the southwest from Site D into the Gordon Sand Company mine. In order for materials to be transported in this direction a prevailing northeast wind would be required.

Review of County aerial photographs of the Project Site reveal movement of gravel at Site 2 is from east to west, against the prevailing wind direction, tracking the movement of the sand pit on Gordon Sand Company property. Remnant gravel at the Project Site is slowly becoming exposed as a result of a process known as deflation. Deflation is the lowering of the land surface due to removal of fine-grained particles by the wind. Deflation concentrates the coarser grained particles at the surface, eventually resulting in a surface composed only of the coarser grained fragments that cannot be transported by the wind. After the

gravels are exposed at the Project Site, additional unrelated disturbances (e.g., from heavy equipment) could be responsible.

Included as Exhibit F of the appellant's appeal (Attachment 5) is a report by Dr. Nicholas Lancaster (*Movement of gravel and other coarse material by wind at Shell Guadalupe Dunes Gravel Remediation Project Site*, dated July 23, 2015) that purports to establish that "natural coastal processes," including the prevailing northwest wind, move gravel at the project site in a direction perpendicular (that is, in a southwest direction) to the prevailing wind. However, the report is an academic discussion of idealized conditions and not representative of conditions on the site. The report does not conclude that the wind is blowing gravel at the site into the Gordon Sand Company sand pit. Scott Kerwin, a Certified Engineering Geologist and Professional Geologist (AMEC Foster Wheeler) peer reviewed Dr. Lancaster's report. His review (Attachment 7) found that the discussion in Dr. Lancaster's report regarding wind transport of sediments focuses primarily on sand-sized particles, not the larger gravel and cobble sizes actually found at the project site. In addition, Dr. Lancaster's report provides no discussion of the prevailing wind direction at the site, which is the primary mechanism for transport and sorting of the sand that comprises the Guadalupe Dunes. Mr. Kerwin states, "there are no known natural processes at the Project site that would account for transport of gravel and cobbles (e.g., up to 6-inches in diameter) in a southwesterly direction and any apparent movement of those materials in that direction (i.e., near perpendicular to the prevailing wind direction) must be manmade or anthropologically influenced." The appellant's report provides no information or evidence that supports a conclusion that wind transport of the imported gravel and cobble deposits has occurred at the Project site.

Therefore, contrary to appellant's assertion in Appeal Issue No. 1, the SEIR appropriately describes physical conditions at the site. No evidence on record shows a change to the environment as a result of natural coastal processes.

Appeal Issue No. 2. SEIR Fails to Consider Impacts to an Important Mineral Resource

The appellant claims that the proposed Final SEIR, contrary to the requirements of the California Environmental Quality Act (CEQA), fails to recognize the "significant" environmental impacts that the In-Lieu Project will have on a local mineral resource of "regional and statewide significance."

The appellant asserts that projects considered under CEQA "that result in physical changes to the environment, if the physical changes could cause economic and/or social consequences, the magnitude of these consequences may be relevant in determining whether the physical changes or impacts are 'significant.'"

The appellant further asserts that "CEQA requires lead agencies to consider the potential effects that a proposed project will have on local mineral resources," and that, "[t]he Conservation Element of the County's Comprehensive Plan delineates the Guadalupe Dunes as an important local mineral resource recovery site with regional and state-wide significance."

Staff Response: As noted in the proposed Final SEIR, Appendix G of the CEQA guidelines states that a project would have a significant impact on mineral resources if the project:

- a) *"Resulted in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state*

- b) *Resulted in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.*” (SEIR Section 3.11.5.)

The proposed Final SEIR considers impacts to local mineral resources in Section 3.11.5, *Mineral Resources*. The appellant previously raised this issue in comments on the Draft SEIR. In response, additional information was added to the proposed Final SEIR in Section 3.11.5, recognizing that the Conservation Element of the County’s Comprehensive Plan delineates the Guadalupe Dunes as an important known mineral site. The proposed Final SEIR also notes that Gordon Sand Company has operated in conjunction with the presence of the remnant gravel for approximately 30 years. The presence of the gravel has not resulted in the loss of availability of a locally important mineral resource over this time period. Additionally, there is no evidence to suggest that the continued presence of the gravel will now or in the future result in adverse impacts to mineral resources.

In summary, the evidence in the record does not support or result in a conclusion that the gravels present on Gordon Sand Company’s property appreciably contributes to the loss of availability of the resource.

Appeal Issue No 3. SEIR Fails to Consider Imposition of Gravel Remediation Cost to Gordon Sand

The appellant asserts that, “[t]he gravel and cobbles that exist on Gordon Sand’s fee-owned land... are interfering with Gordon Sand’s ongoing harvesting operations.” “Gordon Sand has been forced to install ‘scalping’ machines necessary to remove non-native materials from the sand its [sic] extracts from the dunes.” The appellant further asserts that the economic impact of remnant gravel and cobbles in areas where active mining operations occur is relevant to determining the significance of the In-Lieu Project’s impacts on an important local mineral resource and that “no mitigation or monetary contribution has been proposed to compensate Gordon Sand Company for impacts to its property and mineral resource resulting from permanently leaving the gravel and cobbles in place.”

Staff Response: As described in the proposed Final SEIR, and shown on SEIR Figure 2-2, a portion of the remnant gravel at Site 2 is indeed located within the Gordon Sand Company property and to a lesser degree extends into the sand pit. As described in Staff Response to Appeal Issue No. 1, a review of County aerial photographs of the Project Site documents that the movement of gravel at Site 2 is from east to west, essentially against the prevailing wind direction, tracking the movement to the sand pit on Gordon Sand Company property. The evidence shows that movement of gravel at the site over time is not attributable to natural processes. Gravel at Site 2, including remnant gravel within the Gordon Sand Company sand pit, has been distributed by the movement and operation of heavy equipment in this area, especially the Gordon Sand Company grading of an alternative unauthorized access route to the sand pit through existing gravel piles prior to April 1993.

The proposed Final SEIR identifies mitigation for all potentially significant impacts associated with the project, consistent with CEQA. As described in Section 3.11.5 of the proposed Final SEIR and in the response to Appeal Issue No. 2, impacts to mineral resources would be less than significant.

It is staff’s understanding that Shell has attempted to negotiate a possible resolution with Gordon Sand Company since November of 2014, but no resolution has been reached. At the June 29, 2016 Planning Commission hearing, a Shell representative stated on the record that Shell had made numerous overtures to come to a private arrangement regarding gravel on the Gordon Sand Company property, but that Gordon Sand Company was unresponsive. Shell’s potential liability for any financial impacts to Gordon Sand Company is outside the scope of Shell’s permit request and the County’s land use authority, and may

ultimately be resolved through the legal system. Shell has agreed to defend and indemnify the County from any legal liability associated with the proposed project through Condition No. 10 of 14CDP-00000-00072.

In summary, the evidence in the record does not support the appellant's assertion that the SEIR must consider the imposition of gravel remediation cost to Gordon Sand Company. Indeed, the record indicates Gordon Sand Company entirely brought this situation upon itself by relocating without authorization its access route through Shell's operation near Site D.

Appeal Issue No. 4. Gravel Increases Gordon's Reclamation Obligations

The appellant asserts that the presence of the remnant gravel creates uncertainty regarding the cost of Gordon Sand's future reclamation obligation.

Staff Response: Condition of approval No. 8 of the 1993 Gordon Sand Final Reclamation Plan (Attachment 8), addresses this issue directly and states:

“Reclamation shall include removal of clay and silt which has been spread on the sand road as a stabilizer from the portion of the road which crosses the vegetated area. This material, and that remaining in the sediment basin at the time of closure, shall be disposed of in the sand pit upon completion of decompaction activities. Any other rock materials used by Gordon Sand Company (not including any gravel placed adjacent to the road by the Shell Corporation) to stabilize the road shall also be disposed of in the sand pit prior to completion of decompaction activities. To ensure compliance, the applicant shall provide photo-documentation of the removal of this material and arrange for an inspection by the Permit Compliance staff.” (Emphasis added.)

Staff previously responded to this assertion on page F-17, Comment Response 4-4 in the proposed Final SEIR Response to Comments (Appendix F).

Comment Response 4-4: ...Gordon Sand Company would not be responsible for the reclamation of remnant gravel retained under the Proposed Project. As stated in Item 1(d) within the Gordon Sand Final Reclamation Plan (1993) “clay, silt, or rock materials removed from the access road and processing plant during reclamation would be placed into the sand pit for disposal.” (Emphasis added.) Therefore, Gordon Sand Company would not be burdened by separating remnant gravel from the overlying clay access road, for which the company is responsible.

This condition clearly states that Gordon Sand Company is not responsible for removal of gravel placed adjacent to the sand pit access road by Shell. Gordon Sand Company would not have to separate gravel from its clay road prior to placing it in the sand pit, and would not have to remove any other remnant gravel placed by Shell. There is no additional reclamation burden placed on Gordon Sand Company by leaving the gravel in place.

In summary regarding this appeal issue, the evidence in the record does not support the appellant's assertion of uncertainty with regard to Gordon Sand's future reclamation obligation.

Based upon the analysis in this report, staff recommends the Board deny this appeal and uphold the Planning Commission's approval of the project.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$6,000.00 (30 hours of staff time). All costs to process the appeal are paid for entirely by the applicant, Shell Western Exploration and Production Company, Inc. The funds are budgeted in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2016-2017 FY budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on September 20, 2016. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the notice are included with this Board Letter. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention: David Villalobos.

Attachments:

1. County Planning Commission Action Letter, Dated July 1, 2016
2. Supplemental Environmental Impact Report 13EIR-00000-00005
3. County Planning Commission Staff Report, August 21, 2014
4. County Planning Commission Staff Memorandum, June 9, 2016
5. Gordon Sand Company Appeal Application, with Statement of Grounds for Appeal
6. AECOM Restoration Work Plan, August 17, 2010
7. AMEC Foster Wheeler Response to the Lancaster (2015) Study, June 29, 2016
8. Action Letter, 1993 Gordon Sand Final Reclamation Plan, June 17, 1993

Authored by:

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