

**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: County Planning Commission

FROM: Dianne Black, Assistant Director, Planning & Development
Staff Contact: Joseph Dargel, Planner

DATE: February 27, 2018

HEARING: February 28, 2018

RE: Case Nos. 16DET-00000-00004 & 10RVP-00000-00048
Lompoc Stone Mining Area Expansion Vesting Determination and Reclamation
Plan Revision Project
Assessor Parcel Numbers 083-060-015, -009, 083-070-018, & -010

This project was last heard by your Commission on January 10, 2018. At that hearing, the applicant requested a continuance to February 28, 2018 to allow time to draft a response to Mr. Chytilo's letter, dated January 8, 2018. The applicant's response to Mr. Chytilo's letter included a letter from Campbell Geo, Inc. (Campbell) as further evidence supporting the vesting determination request. The Campbell letter was provided to your Commission in a memo dated February 20, 2018. In light of the newly submitted evidence, staff has updated the findings of approval for the vesting determination. The updated findings are attached to this memo. Additionally, revised recommendations and procedures are included below.

RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and conceptually approve Case Nos. 16DET-00000-00004 and 10RVP-00000-00048 to 90-RP-001, based upon the project's consistency with the Comprehensive Plan and based on the ability to make the required findings.

Your Commission's motion should include the following:

1. Conceptually make the required revised findings for approval of the project, dated February 27, 2018 and specified in Attachment A of this memo, including the California Environmental Quality Act (CEQA) findings.
2. Conceptually adopt Mitigated Negative Declaration 12NGD-00000-00022 (Attachment C of the Planning Commission staff report dated January 2, 2018) and conceptually adopt the mitigation monitoring program contained in the conditions of approval.
3. Conceptually approve the project, Case Nos. 16DET-00000-00004 and 10RVP-00000-00048, subject to the conditions included as Attachment B to the Planning Commission staff report dated January 2, 2018.

4. Direct staff to refer the revised Reclamation Plan to the Division of Mine Reclamation (DMR) for review and approval and then return to the Planning Commission for final action after receiving direction from DMR.

Alternatively, refer back to staff if the Planning Commission takes other than the recommended action for appropriate findings and conditions.

Attachment A. Revised Findings, dated February 27, 2018

Cc: Case File (to Planner)
Hearing Support

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ATTACHMENT A: FINDINGS

1.0 CEQA FINDINGS

- 1.1** The Planning Commission has considered the Mitigated Negative Declaration, Case No. 12NGD-00000-000022 dated January 2, 2018, together with the comments received and considered during the public review process. The Mitigated Negative Declaration reflects the independent judgment and analysis of the Planning Commission and has been completed in compliance with CEQA, and is adequate for this proposal.
- 1.2** On the basis of the whole record, including the Mitigated Negative Declaration dated January 2, 2018 and any comments received, the Planning Commission finds that through feasible conditions placed upon the project, significant impacts on the environment have been eliminated or substantially mitigated. On the basis of the whole record, there is no substantial evidence that the project will have a significant effect on the environment.
- 1.3** The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Planning and Development Department located at 123 East Anapamu Street, Santa Barbara, CA 93101.
- 1.4** Public Resources Code Section 21081.6 and CEQA Guidelines Section 15074(d) require the County to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the reporting and monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation.

2.0 VESTED RIGHTS FINDINGS

- 2.1** *Public Resources Code Section 2776 states that no person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to SMARA as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter.*

Lompoc Stone or hereafter referred to as “Sepulveda” began operations at the project site in 1985. Historic aerial photos show evidence that mining activities have occurred on both AP Nos. 083-060-015 and 083-060-009 prior to the requirement for County permits for surface mining operations in 1958 and also prior to January 1, 1976. The County of Santa Barbara and the State Department of Conservation

previously determined that the subject mine is a continuously operating and vested mining operation. Specifically, in 1998, the County approved a Mining & Reclamation Plan under permit 90-RP-001. In that approved Plan, it referenced the “Sepulveda” mine as a vested mining operation continuously operating since 1956 (before a Conditional Use Permit was required by County’s 1958 Zoning Ordinance 971) and described the approval as encompassing both AP Nos. 083-060-015 & 083-060-009. Further, Sepulveda performed substantial work and incurred substantial liabilities in good faith reliance upon permit 90-RP-001. Separately, a May 20, 1998 letter from the Department of Conservation’s Office of Mine Reclamation (DOC) refers to the Sepulveda mine as a vested mining operation. The Sepulveda mining operation has not changed substantially in nature over the years as the applicant has continued to mine the same “vein” of rock material and produced a cut-stone finished product. As such, the owner had historically manifested an objective intent to mine the additional portion of AP No. 083-060-009 that follows the vein of material that supplies the finished product. Additionally, the applicant has provided three letters with various documents as evidence in support of the vesting determination request. 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 Attachments H, I, and J to the staff report dated January 2, 2018 and are incorporated herein by reference. The salient points of these letters identified the applicant’s intent to mine further into AP No. 083-060-009 and document actual mining that historically occurred on AP No. 083-060-009. The letters include, among other documents, historic photos of the site dating back to 1954 which show mining activity on both APN 083-060-009 and -015, a recorded Certificate of Compliance documenting all AP Nos. within the Acin Ranch constitute one legal parcel, and a USGS map from 1958 that documents an existing mining operation. Finally, the applicant has also supplied a geologic and aerial photo review letter from Campbell Geo, Inc., dated February 14, 2018, and incorporated herein by reference. The 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 AP Nos. 083-060-009 and -015. It is standard practice for mining operations to follow the vein of rock as they mine through a parcel and the mapping of that formation throughout the subject site by Dibblee in 1950 shows that geologic information was available to the mine operator. Of the aerial photos analyzed, stereo pairs of the 1956 and 1958 photos of the site were examined using a stereoscope to see the landforms in three dimensions. As described by Campbell Geo, Inc., the stereo pair photos show disturbed areas with hummocky, obviously unnatural topography on the east facing slope of AP No. 083-060-009. The aerial stereo pair photos appear to demonstrate that the site was mined in multiple locations along the vein of the rock prior to the County’s 1958 Zoning Ordinance 971. Therefore, the applicant has a vested right to continue mining operations at Site 1A on AP Nos. 083-060-015 & 083-060-009 as well as continue the associated sorting and storage activities on AP Nos. 083-070-018 and 083-070-010.

2.2 *A person shall be deemed to have vested rights if, prior to January 1, 1976, the Applicant has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations.*

Sepulveda took over mining operations at the project site in 1985. The County of Santa Barbara and the State Department of Conservation previously determined that the mine is a continuously operating and vested mining operation. In 1998, the County approved a Mining & Reclamation Plan for the site under permit 90-RP-001. In that approved Plan, it referenced the “Sepulveda” mine as a vested mining operation continuously operating since 1956 (before a Conditional Use Permit was required by County’s 1958 Zoning Ordinance 971) and described the approval as encompassing both AP Nos. 083-060-015 & 083-060-009. Aerial photos and updates on reclamation demonstrate that Sepulveda had already mined portions of both APN’s at the time of that approval. Further, historic aerial photos indicate that mining activities have occurred on both AP Nos. 083-060-015 and 083-060-009 prior to the requirement for County permits for surface mining activities in 1958. The predecessor to Sepulveda diligently commenced surface mining activities, performed substantial work and incurred substantial liabilities in good faith reliance upon their legal right to mine the site without a County permit. Similarly, Sepulveda continued surface mining activities, performed substantial work and incurred substantial liabilities in good faith reliance upon Reclamation Plan 90-RP-001. Processing and extraction rates vary from year to year but typically amount to between 1,700 tons and 2,800 tons annually. Substantial materials, labor, equipment and funding are needed to extract and process this amount of material. Additionally, the applicant has provided three letters with various documents as evidence in support of the vesting determination request. 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 Attachments H, I, and J to the staff report dated January 2, 2018 and are incorporated herein by reference. The salient points of these letters identified the applicant’s intent to mine further into AP No. 083-060-009 and document actual mining that historically occurred on AP No. 083-060-009. The letters include, among other documents, historic photos of the site dating back to 1954 which show mining activity on both APN 083-060-009 and -015, a recorded Certificate of Compliance documenting all AP Nos. within the Acin Ranch constitute one legal parcel, and a USGS map from 1958 that documents an existing mining operation. Finally, the applicant has also supplied a geologic and aerial photo review letter from Campbell Geo, Inc., dated February 14, 2018, and incorporated herein by reference. The 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 AP Nos. 083-060-009 and -015. It is standard practice for mining operations to follow the vein of rock as they mine through a parcel and the mapping of that formation throughout the subject site by Dibblee in 1950 shows that geologic information was available to the mine operator.

Of the aerial photos analyzed, stereo pairs of the 1956 and 1958 photos of the site were examined using a stereoscope to see the landforms in three dimensions. As described by Campbell Geo, Inc., the stereo pair photos show disturbed areas with hummocky, obviously unnatural topography on the east facing slope of AP No. 083-060-009. The aerial stereo pair photos appear to demonstrate that the site was mined in multiple locations along the vein of the rock prior to the County's 1958 Zoning Ordinance 971. These facts support a conclusion that Sepulveda and previous operators at the site acted in good faith and in reliance upon authorization to mine portions of both APN's. Therefore, the predecessor to the applicant in good faith diligently commenced operations prior to January 1, 1976 and incurred substantial liabilities for work and materials.

2.3 *“Pursuant to the diminishing asset doctrine, the area the Applicant desires to be excavated was clearly intended to be excavated at the time the permit requirement went into effect.”*

Sepulveda assumed mining operations at the project site in 1985. Sepulveda's predecessor began mining activities on AP Nos. 083-060-015 and 083-060-009 prior to the requirement for County permits for surface mining in 1958. Sworn testimonials from Frank Acin (current property owner) and Don Lee (historic neighbor to the project site) which detail knowledge of onsite mining activities occurring at the site dating back to at least 1956 including numerous occasions where rock was removed from 083-060-009 at this time are included in the official project record in the Reclamation Plan included as Attachment F of the January 2, 2018 Planning Commission staff report. As stated in these testimonials and incorporated herein by reference, the landowner recalls his father mentioning on several occasions that rock was removed from -009 since the early 1950's. Historic aerial photos corroborate that mining activities have occurred on both AP Nos. 083-060-015 and 083-060-009 prior to the requirement for permits in 1958. The County of Santa Barbara and the State Department of Conservation previously determined that the mine is a continuously operating and vested mining operation. Specifically, in 1998, the County approved a Mining & Reclamation Plan under permit 90-RP-001. In that approved Plan, it referenced the "Sepulveda" mine as a vested mining operation continuously operating since 1956 (before a Conditional Use Permit was required by County's 1958 Zoning Ordinance 971) and described the approval as encompassing both AP Nos. 083-060-015 & 083-060-009. Further, Sepulveda performed substantial work and incurred substantial liabilities in good faith reliance upon Reclamation Plan 90-RP-001. Separately, a May 20, 1998 letter from the Department of Conservation's Office of Mine Reclamation (DOC) referred to the Sepulveda mine as a vested mining operation of 68.5 acres. The Sepulveda mining operation has not changed substantially in nature over the years as the applicant has continued to mine the same "vein" of rock material and produced a cut-stone finished product. Additionally, the contiguous portion of 083-060-009 in which Sepulveda seeks to expand mining is similar in character to existing authorized excavation areas, and as there are no intervening physical or legal boundaries, the expanded portion of -009 is a natural

extension of the vein of desirable material existing Site 1A that is adaptable to mining. As such, the owner had historically manifested an objective intent to mine the additional portion of -009 that follow that vein of desirable material. Additionally, the applicant has provided three letters with various documents as evidence in support of the vesting determination request. 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 Attachments H, I, and J to the staff report dated January 2, 2018 and are incorporated herein by reference. The salient points of these letters identified the applicant's intent to mine further into AP No. 083-060-009 and document actual mining that historically occurred on AP No. 083-060-009. The letters include, among other documents, historic photos of the site dating back to 1954 which show mining activity on both APN 083-060-009 and -015, a recorded Certificate of Compliance documenting all AP Nos. within the Acin Ranch constitute one legal parcel, and a USGS map from 1958 that documents an existing mining operation. Finally, the applicant has also supplied a geologic and aerial photo review letter from Campbell Geo, Inc., dated February 14, 2018, and incorporated herein by reference. The 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 AP Nos. 083-060-009 and -015. It is standard practice for mining operations to follow the vein of rock as they mine through a parcel and the mapping of that formation throughout the subject site by Dibblee in 1950 shows that geologic information was available to the mine operator. Of the aerial photos analyzed, stereo pairs of the 1956 and 1958 photos of the site were examined using a stereoscope to see the landforms in three dimensions. As described by Campbell Geo, Inc., the stereo pair photos show disturbed areas with hummocky, obviously unnatural topography on the east facing slope of AP No. 083-060-009. The aerial stereo pair photos appear to demonstrate that the site was mined in multiple locations along the vein of the rock prior to the County's 1958 Zoning Ordinance 971. Therefore, the applicant has a vested right to expand mining operations at Site 1A on AP Nos. 083-060-015 & 083-060-009.

3.0 RECLAMATION PLAN FINDINGS

In compliance with Subsection 35.82.160.I.2 of the County Land Use and Development Code, prior to the approval or conditional approval of an application for a Reclamation Plan the review authority shall first make all of the following findings, as applicable:

3.1 The Reclamation Plan complies with applicable requirements of the Surface Mining and Reclamation Act and associated State Regulations, with applicable provisions of the County's Grading Ordinance (County Code Chapter 14), and with other appropriate engineering and geologic standards.

The Reclamation Plan complies with all applicable standards and regulations of the Surface Mining and Reclamation Act, is in compliance with the County's Grading Ordinance, and complies with appropriate engineering and geologic standards as

discussed in Section 6.3 and 6.4 of the staff report dated January 2, 2018 and the revised Reclamation Plan included as Attachment F of the January 2, 2018 Planning Commission staff report and incorporated herein by reference.

3.2 *The Reclamation Plan and the potential use of reclaimed land in compliance with the plan are consistent with the provisions of the Land Use and Development Code (LUDC) and the Comprehensive Plan.*

The proposed end use -- cattle grazing and open space at Site 1A and agricultural equipment/storage on Site 1B -- are allowed uses in the 100-AG zone district of County Land Use and Development Code (LUDC) and the A-II land use designation of the Comprehensive Plan. The project is consistent with applicable Comprehensive Plan policies, as discussed in Section 6.2 of the staff report dated January 2, 2018, and complies with the applicable provisions of the LUDC, as discussed in section 6.3 of the Planning Commission staff report dated January 2, 2018 and incorporated herein by reference. The project site is not located within a Community Plan area.

3.3 *In approving or conditionally approving the Reclamation Plan, the required findings in compliance with the California Environmental Quality Act (CEQA) can be made.*

The Mitigated Negative Declaration prepared for the project, 12NGD-00000-00022, identifies mitigation measures that will mitigate all potentially significant project impacts on the environment to a less than significant level. Through feasible conditions placed upon the project, significant impacts on the environment have been eliminated or substantially mitigated. The required CEQA findings can be made, as noted in Findings 1.1 through 1.4 above, and are incorporated herein by reference.

3.4 *The land and/or resources (e.g., water bodies to be reclaimed) will be reclaimed to a condition that is compatible with the surrounding natural environment, topography, and other resources.*

Condition No. 1 of the revised Reclamation Plan requires that all mined land be re-contoured to blend with the surrounding natural topography and revegetated with a seed mix that is compatible with native vegetation in the area and suitable for cattle grazing. Existing reclaimed areas at the site have proven to be compatible with the surrounding natural environment. The Santa Ynez River lies adjacent to the site but it would not be impacted by mining activities.

3.5 *The Reclamation Plan will reclaim the mined lands to a usable condition which is readily adaptable for alternative land uses specified by the landowner and consistent with the Land Use and Development Code (LUDC) and the Comprehensive Plan. Any Reclamation Plan for Agricultural Soil Export Mining will reclaim the graded land solely for the purpose of agricultural activity, as defined in California Code of Regulations, Title 14, Section 3501.*

The site will be re-contoured and revegetated as required by Condition No. 1 of the revised Reclamation Plan. This required final landform will allow for a reversion to cattle grazing, which is consistent with the Comprehensive Plan and LUDC, as discussed in Section 6.0 of the staff report dated January 2, 2018 and incorporated herein by reference. The Reclamation Plan does not include any Agricultural Soil Export. The project site is not located within a Community Plan area.

3.6 A written response to the Director of the Department of Conservation has been prepared, describing the disposition of the major issues raised by the Director of the Department of Conservation. Where the review authority does not agree with the recommendations and objections raised by the Director of the Department of Conservation, the response shall address, in detail, why specific comments and suggestions were not accepted.

This finding is not required at this time. The Planning Commission's approval of the proposed revised Reclamation Plan is conceptual. As required by Section 35.82.160.G.3.b (2) of the LUDC, the conceptually approved Reclamation Plan will be sent to the Department of Conservation's Division of Mine Reclamation (DMR) for review and comments. A final Reclamation Plan that incorporates DMR comments will then be prepared and brought to the Planning Commission for final approval. At that time, this finding must be made.