

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development

BOARD AGENDA # 9:15 a.m.

Urgent Routine

AGENDA DATE March 31, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Public Hearing to Consider an Appeal of Stanislaus County Planning Commission Approval for Use Permit Application No. 2008-03 - Delaney Aggregates. A Request to Excavate Sand and Gravel from an 80-Acre Portion of a 205-Acre Parcel Enrolled Under Williamson Act Contract and Located Within the A-2-40 Zoning District Near the Community of La Grange

PLANNING COMMISSION AND STAFF RECOMMENDATIONS:

The Stanislaus County Planning Commission, after conducting and receiving testimony at a public hearing during its regular meeting of February 19, 2009, on a 5-2 (Mataka, Gammon) vote, followed staff's recommendation and approved the subject use permit application. Staff recommends the Board follow both the staff recommendation and Planning Commission decision for the use permit by denying this appeal and approving the use permit request as follows:

(Continued on page 2)

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2009-204

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION: Based upon the staff report, presentations by staff and reports of consultants, including the PowerPoint presentation, all comments and testimony received during the public hearing, and all materials that were supplied to the Board and were taken into consideration in its decision, the Board denied the appeal and upheld the Planning Commission's decision to approve Use Permit Application No. 2008-03 - Delaney Aggregates, and specifically adopted Staff Recommendations Nos. 1 through 7



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

PLANNING COMMISSION AND STAFF RECOMMENDATION CONTINUED:

1. Adopt the Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects Stanislaus County's independent judgement and analysis.
2. Make the required findings for approval:
 - (a) The establishment, maintenance, and operation of the proposed use or building applied for is consistent with the General Plan designation of "Agriculture" and will not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood of the use and that it will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County;
 - (b) The use as proposed will not be substantially detrimental to or in conflict with agricultural use of other property in the vicinity;
 - (c) The parcel on which such use is requested is not located in one of the County's "most productive agricultural areas," as the term is used in the Agricultural Element of the General Plan, or the character of the use that is requested is such that the land may reasonably be returned to agricultural use in the future;
 - (d) The alternative to the Agricultural Buffer Standards applied to this project provides equal or greater protection than the existing buffer standards;
 - (e) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in the A-2 zoning district;
 - (f) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural product on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping;
 - (g) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use;
 - (h) The project complies with the provisions of the Surface Mine and Reclamation Act (SMARA) and State regulations; and
 - (I) The final approved Reclamation Plan:
 - I. Complies with SMARA Sections 2772 and 2773, and any other applicable provisions;
 - ii. Complies with applicable requirements of State regulations (CCR Section 3500-3505, and Section 3700-3713);

- iii. Is consistent with County Zoning Code Chapter 21.88 (Surface Mining and Reclamation) and the County's General Plan and any applicable resource plan or element;
 - iv. Has been reviewed pursuant to CEQA and the County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible;
 - v. Restores land and/or resources such as water bodies to be reclaimed to a condition that is compatible with, and blends in with, the surrounding natural environments, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values;
 - vi. Restores mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan; and
 - vii. A written response has been prepared to the State Department of Conservation, describing the disposition of major issues raised by the Department and that where the County's position is at variance with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail why specific comments and suggestions were not accepted.
3. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorders Office pursuant to California Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
4. Approve Use Permit Application No. 2008-03 - Delaney Aggregates, subject to the attached Conditions of Approval and Mitigation Measures.
5. Approve the attached Reclamation Plan for Use Permit Application No. 2008-03 - Delaney Aggregates, subject to compliance with the Conditions of Approval and Mitigation Measures.
6. Order the filing of a Notice of Reclamation Plan Approval with the Stanislaus County Clerk-Recorders Office pursuant to the California Public Resources Code Section 2772.7.
7. Approve the proposed Financial Assurance for Use Permit Application No. 2008-03 - Delaney Aggregates, in accordance with California Public Resources Code Section 2770.

DISCUSSION:

An appeal to the Planning Commission's February 19, 2009 project approval of UP 2008-03 - Delaney Aggregates was received on March 2, 2009 from landowners residing within the surrounding project area (see Attachment 2 -Appeal Letter - March 2, 2009). The appeal letter indicated that the project was being appealed due to a lack of public notice

and inability to access the project documents as well as for concerns regarding potential project impacts to water quality and public safety (in terms of trespassing, mercury contamination and increased truck traffic). The letter closes by stating that the project as proposed offers insufficient mitigation for potential impacts to wildlife and public safety and requests that an Environmental Impact Report (EIR) be completed. The appeal letter also included a number of attachments, labeled Exhibit 1-6, as described below:

- Exhibit 1 - letter to Roberta Miller (Crum) from a surrounding neighbor which describes some history from the area.
- Exhibit 2 - map of sites referenced in Exhibit 1.
- Exhibit 3 - photo of the area surrounding the project site.
- Exhibit 4 - list of property owners surrounding the project site.
- Exhibit 5(a-b) - excerpts taken from a 2003 draft of McBain and Trush's study titled, "Coarse Sediment Management Plan for the Lower Tuolumne River", which was conducted to investigate the potential for adding sediment into the Tuolumne River to improve fish habitat.
- Exhibit 6 - overview of water flow direction for the project site.

General Project Overview

The project involves a request to operate a gravel and sand extraction enterprise for Delaney Aggregates on an 80-acre portion of a 205-acre parcel enrolled under Williamson Act Contract and located within the A-2-40 zoning district. The project site will include four extraction pits ranging in size from two to twenty-two acres at a maximum depth of 40 feet. An estimate of 1.5 million cubic yards of sand and gravel, with a yearly average of 150,000 cubic yards, over a 10-year period, will be removed from the site. The proposed project site is located on Lake Road, approximately 1 mile southwest of the intersection of Lake Road and State Highway 132, just north of the Merced County line and northeast of Turlock Lake (APN: 008-022-003). See Attachment 3 - Staff Report for additional project details, including the Reclamation Plan and studies conducted for the project.

Public Notification

The appeal letter states that proper notice and sufficient time to review the project documents were not provided prior to the Planning Commission's February 19, 2009 public hearing date. Notification of a public hearing is required by California Government Code Section 65090 (a) to be published in at least one newspaper of general circulation and to be sent to surrounding landowners within 300 feet of the project site at least 10 days prior to the hearing. For properties in a rural area, County policy requires that notice of a public hearing be sent to surrounding landowners within a 1/4 mile of the project site or two parcels in any direction of the project site, whichever is greatest. In addition, California Environmental Quality Act (CEQA) regulations require notification be given to surrounding landowners at least 30 days prior to hearing. Staff has reviewed the project record and determined proper notice for this project has been provided. However, the notification area did not include all of the privately owned small ranchettes northeast of the project site along Lake Road.

Notice was extended to several additional properties for the Board of Supervisors appeal hearing to ensure that everyone that expressed interest had proper notice of the appeal hearing.

Public Safety

The appeal letter raises concerns with public safety in regards to the potential for trespassing and storm water contamination. Concerns related to public safety were also raised with regards to increased truck traffic. The appeal letter indicated that trucks traveling at high speeds could allow aggregate debris to fly out of truck beds and could potentially degrade the quality of Lake Road.

As discussed within Attachment 5 - Applicant's Appeal Letter Response, the property is currently fenced and will install locking gates and no trespassing signs as a preventative measure.

The appeal letter discusses the potential for the presence of mercury in existing dredge tailings to contaminate water supplies through storm run-off. Conditions of approval placed on the project require a Report of Waste Discharge (RWD) and a Storm Water Pollution Prevention Plan (SWPPP) be completed prior to operation. As a part of the RWD soil sediment samples were taken and tested in multiple locations throughout the project site. The sample results did not show any traces of mercury or other heavy metals (Attachment 4 - Soil Sediment Testing Results).

The draft version of the plan titled "Coarse Sediment Management Plan for the Lower Tuolumne River", conducted by McBain & Trush, was referenced within the appeal letter. The appeal letter states that this report was created for a mining application on the Zanker property, which was denied. Planning Staff was able to locate no such project request. The only known project request to extract aggregate material in the area was for Houret Sand & Gravel two properties to the east of the project site. McBain and Trush's study, written on behalf of the Tuolumne River Technical Advisory Committee, Turlock Irrigation District, Modesto Irrigation District, U.S. Fish and Wildlife Service and California Bay-Delta Authority, was conducted to determine the best method for the restoration of the Tuolumne River for improved fish habitat through the addition of aggregate material. The pages attached to the appeal letter are a draft version of this document which lists some of the factors that would need to be considered if the river restoration project was to pursue permitting of local mining operations to provide a source of the aggregate material. The Zanker property (which is the current project site) was identified as having the highest potential for providing enough aggregate material for the project.

Finally the appeal letter discusses potential impacts to public safety from increased truck traffic with regards to high truck traveling speeds, aggregate debris and damage to Lake Road. As discussed within Attachment 5 - Applicant's Appeal Letter Response, trucks are not expected to exceed 30 miles per hour within the one mile stretch of Lake Road between State Route 132 and the project site. During the Planning Commission hearing the project applicant speaking in favor of the project explained that the trucks hauling

aggregate material will be covered with netting to prevent hazards from truck debris. Potential impacts to Lake Road from increased traffic have been mitigated to a less than significant level with the requirement of a \$0.055 fee per ton of material entering or leaving the property via County roadways.

Water Quality

The appeal letter discusses concerns with potential impacts to water quality both in terms of ground water supplies and water contamination from sediment flow or mercury. As discussed above the project site was tested in multiple locations and no mercury was found. The project proposes to contain all storm water run-off and water flow on-site into the newly created basins. During Phase 1 water will be recycled through the temporary sedimentation basin. After Phase 1 is completed, the Phase 1 pond will be used to recycle water used for washing the aggregate material and as the sedimentation basin for unused material mined throughout Phases 2-4. In addition, the general issue of Hydrology was examined at a project level by Dr. Horatio Ferriz, an engineering geologist who is retained as a consultant for the Stanislaus County Department of Environmental Resources. Dr. Ferriz's review of the proposed project determined that the potential impact to ground water would be minimal.

Wildlife

A Biological Resources Assessment for the proposed Delaney Aggregates project was provided by WRA Environmental Consultants. Additional biological documents provided by WRA include one Nest Survey Report for Swainson hawk and Bald eagle and two species-specific assessments for the California tiger salamander and for the San Joaquin kit fox. The majority of the project site is characterized as disturbed habitat, reducing the occurrences of plant and wildlife species. Wildlife existing within the Joe Domecq Wilderness Area, the Kiwanis Youth Camp and Tuolumne River access picnic areas were considered as sensitive receptor within the Kimley-Horn and Associates, Inc. Noise Analysis Report prepared for the project in August of 2008.

Environmental Review

The appeal letter included a request for additional environmental review through completion of an Environmental Impact Report (EIR). An Initial Study, prepared on October 29, 2008, indicated that potential traffic and noise impacts and potential impacts to cultural and biological resources have been mitigated to a less than significant level. A Mitigation and Monitoring Reporting Program (MMRP) has been developed for this project to insure identified mitigation measures are properly implemented over the life of the project. (See Attachment 3 - UP 2008-03 - Delaney Aggregates Staff Report). Pursuant to Section 15070 of the CEQA Guidelines, a mitigated negative declaration is the appropriate environmental document because, although the Initial Study identified potentially significant effects, mitigation measures have been devised which either avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment.

Planning Commission Hearing

At its regularly scheduled meeting of February 19, 2009, after a public hearing, the Planning Commission voted 5-2 (Mataka, Gammon) to approve the subject project (see Attachment 1 - Planning Commission Minutes - February 19, 2009). Staff's recommendation was to approve the project as proposed. Staff's recommendation indicated that the Use Permit request as well as the proposed Reclamation Plan and Financial Assurance met all of the necessary findings for approval.

Following staff's recommendation for approval, Chair Layman opened the public hearing. Two neighboring residents spoke in opposition of the project, expressing a general concern regarding the impact that the mining operation would have to neighboring residents. Roberta Crum, who resides on a 1 acre parcel northeast of the project site along Lake Rd., requested that a full Environmental Impact Report be completed for the project to allow sufficient time for neighboring residents to review the project and its related documents. She also discussed concerns about potential impacts to Lake Road from increased truck traffic, as well as to the Tuolumne River and to ground water quality. Noise impacts were also brought up as a concern. Cheryl Locke, who resides on a 6-acre parcel northeast of the project site along Lake Rd., echoed the first speaker's concerns and requested additional time to review the proposed planning documents. Two people spoke in favor of the project including the project's consultant, Matt Prasek from EnviroMine Inc., and the prospective mine operator, George Morrow with Jim Brisco Enterprises. (See Attachment 2 - Planning Commission Minutes - February 19, 2009).

Following the closing of the hearing, the Commission discussion focused primarily on the opposition's claim that they had insufficient time to review the planning documents. After some discussion regarding how the supporting documents have already addressed concerns raised by neighbors regarding traffic and noise impacts, the majority of the Commissioners felt that they could make the required findings necessary for approval. Commissioner Mataka and Gammon stated that they felt the neighbors deserved additional time to review all of the documents related to the project. On a motion by Commissioner Navarro and seconded by Commissioner Souza, the Commission voted 5-2 (Mataka, Gammon) to approve the proposed project.

Additional comments regarding the project appeal were provided by the applicant, the property owner and a neighboring resident. The applicant's appeal response, Attachment 5 - Applicant's Appeal Letter Response, provides an overview of how each of the concerns discussed within the appeal letter have been addressed within the existing project proposal. A letter provided by the property owner, Mr. Zanker, and a neighboring resident provides a reasoning for why they believe the Board should deny this appeal request. (See Attachment 6 - Property Owner's Appeal Letter and Attachment 7- Neighbor's Appeal Letter Response) The complete findings requiring approval can be found above within the Staff Recommendations portion of this report as well as within Attachment 3 - UP 2008-03 - Delaney Aggregates Staff Report.

POLICY ISSUES:

The project is consistent with the County's General Plan Goals and Policies to manage extractive mineral resources to ensure an adequate supply without degradation to the environment. The proposed mining operation is classified as a Tier Three Use which is permitted by Use Permit within the A-2 (General Agriculture) zoning district. The Board should determine whether the project, as proposed, furthers the goals and objectives of ensuring a strong local economy.

STAFFING IMPACT:

There are no staffing impacts associated with item.

ATTACHMENTS:

1: Appeal Letter - March 2, 2009

2: Planning Commission Minutes - February 19, 2009

3: UP 2008-03 - Delaney Aggregates Staff Report

4: Soil Sediment Testing Results

5: Applicant's Appeal Letter Response

6: Landowner's Appeal Letter Response

7: Neighbor's Appeal Letter Response

8: attachment received at Board meeting

PowerPoint Presentation