

MEMORANDUM

Date: August 29, 2003

To: Interested Parties

From: James Sorensen, CDA Director
Chris Bazar, Planning Director

Subject: Apperson Ridge Quarry

This memorandum responds to recent letters received concerning the Apperson Ridge Quarry (as well as inquiries from the press and public). In summary form, the letters request that the County of Alameda and its Planning Department not “approve” the project in question without conducting further environmental review under the provisions of the California Environmental Quality Act (CEQA). It is asserted that the Environmental Impact Report (“EIR”), certified by the County Board of Supervisors when the project received its final approval in 1984, does not address certain potential project impacts.

The Planning Department, in consultation with County Counsel, has carefully considered the issues raised in the comment letters. We have reviewed the approved surface mining permit (SMP-17), the EIR, project findings, mitigation measures and relevant facts. Based on this review, and on applicable law, the County has determined that no further CEQA review is warranted or legally allowed.

The relevant facts are as follows. After a series of five public hearings ending on July 31, 1984, the Alameda County Planning Commission approved SMP-17. The matter was appealed to the Board of Supervisors by the Northern California Chapter of the Sierra Club, the Preserve Area Ridgeland Committee, and Patricia Stillman. After conducting three hearings concerning the appeal, the Board of Supervisors denied the appeal and confirmed issuance of the permit on August 21, 1984. At that same hearing, the Board of Supervisors certified the final four-volume EIR for the project and issued environmental findings and statements of overriding consideration in connection with approving the permit. As approved, SMP-17 incorporated extensive mitigations set forth in 62 express permit conditions.

The EIR addressed the potential environmental impacts of the project. By way of example, the EIR analyzed potential impacts relating to the geology, seismicity, soils, and hydrogeology at the project site. The EIR examined the site’s geology,

faulting, soils, and hydrogeology and analyzed the potential impacts from the project. Mitigation measures included, among other things, re-vegetation, slope stability requirements, and erosion control measures.

The EIR also discussed and analyzed in considerable detail the project's impacts to water quality, including potential impacts to both Apperson and Indian Creeks. The EIR further analyzed potential impacts such as turbidity, the potential for accidental spills during construction, runoff from the site, and the potential effects on natural springs and nearby wells. The EIR imposed comprehensive mitigation measures on the project in order to avoid potential impacts, including limiting the construction of the access road to the dry season, clean up plans in case of spills, monitoring and testing, and measures to prevent runoff from the project. Some impacts to water and wildlife were found to be unavoidable, for which the Board of Supervisors adopted a statement of overriding considerations.

In addition, prior to project approval and certification of the EIR, the EIR analyzed the vegetation, wildlife, and habitat. This included wildlife species, actually observed on the property as well as those wildlife species, which could potentially occur on the property but were not observed. Among the species considered as either existing or as potentially existing on the property, (and made part of the analysis of the project's potential impacts) were the tule elk, the Alameda striped racer/whipsnake, various raptors, the red-legged frog, the burrowing owl, and the tiger salamander. The EIR once again recommended, and the Board of Supervisors imposed, several mitigation measures on the project but also determined that some level of project impacts on wildlife, areas of vegetation, and riparian habitat were unavoidable. As to these types of impacts, the Board of Supervisors adopted a statement of overriding considerations.

The EIR further considered in detail the potential noise, blasting and aesthetic impacts from the project, including their effect on the nearby parks and recreation areas. Mitigation measures were imposed to address these impacts. The Board of Supervisors also adopted a statement of overriding considerations concerning these impacts.

After the Board of Supervisors took action in this matter, no legal action was filed to challenge the approval of SMP-17 or the legality of the EIR prepared in connection with such approval. Consistent with well-established law, once an EIR has been certified for a project, the EIR is conclusively presumed to be valid unless legally challenged within the time prescribed by law. Also germane is Section 15163 (a) (3) (c) of CEQA, which states that "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." No further discretionary action is required or has been requested by the permittee.

SMP-17 was intended to provide a long-term source of high-quality construction material for the area as other sources of aggregate became depleted. As such, the permit was issued for an eighty-year term. Consistent with the County's Surface Mining Ordinance, the permit did not require the operator to commence actual quarrying activities within a specific time frame. Since project approval, DeSilva, the permittee,

has relied on the permit and has begun the process of satisfying the extensive mitigations imposed by the County and conducting other work associated with commencing operations. DeSilva and the property owner have also entered into, and performed under, binding mitigation agreements included in SMP-17 and otherwise associated with the permit.

As indicated above, the project has received all discretionary approvals from the County. The County is required to accept and approve the operator's mitigation and technical and engineering plans when they are submitted as a requirement of, and in compliance with, the permit terms. In so doing, the County is fulfilling its own legal obligations to implement the prior approved permit. The County is not issuing "new" permits for the operation and is without jurisdiction to reopen the CEQA process. The most recent approval granted by the County was approved by the Director of Public Works for engineering plans to construct $\frac{3}{4}$ of a mile of the quarry access road

We note that the project EIR addressed the very issues some commenters state were left out of the 1984 EIR. For example, the EIR addressed impacts to, and imposed mitigations as appropriate for, habitat impacts potentially affecting a variety of wildlife either found on the site or potentially existing on the site. As noted above, the species considered by the EIR included, but were not limited to, tule elk, whipsnake, red-legged frog, western burrowing owl, tiger salamander and various raptors.

With respect to particular comments made concerning the tule elk impacts and mitigations, the EIR discussed at length the impacts on the San Antonio herd. The County Board of Supervisors made specific findings with respect to impacts and mitigations and adopted a statement of overriding considerations. The original mitigation measure was modified at a County Planning Commission hearing following a change in California Department of Fish and Game policy concerning elk relocation. At that time (at a public hearing and with input from the Department of Fish and Game and the Sierra Club) it was determined that no additional environmental impacts were caused by the change in the mitigation measure.

We hope that this document has been helpful in answering the various questions that have been raised on this matter. Please contact the Alameda County Planning Department at (510) 670-5400 if you have any further questions.