

**STAFF REPORT - DECEMBER 17, 1990
FIVE YEAR REVIEW
SURFACE MINING PERMIT - SMP-17
OLIVER DeSILVA, INC.**

FIVE YEAR REVIEW - SURFACE MINING PERMIT AND RECLAMATION PLAN SMP-17 - in accordance with Condition 11 of Resolution 84-745, adopted by the Board of Supervisors on August 21, 1984, approving this quarry for an 80-year term. The quarry is located on a 680-acre leasehold on the 2,555 acre Apperson Ranch on Apperson Ridge, approximately three miles southeast of I-680 and Vallecitos Road and one mile east of Calaveras Road, in the Sunol area of unincorporated Alameda County.

STAFF RECOMMENDATION: Take public testimony and adopt the attached resolution which attests that the Commission has conducted a Five Year Review, in accordance with Condition 11 of SMP-17, and that there is no need to modify the terms of the permit at the present time. In three months, staff will present a progress report on investigation of alternative programs to mitigate effects of the quarry on tule elk. If new information warrants a modification to the permit at a future date, another public hearing will be scheduled (with required public notification) to focus on Condition 45 regarding tule elk mitigation.

PERTINENT FACTS:

Purpose of this Review: Section 8-117.5 of the Alameda County Surface Mining Ordinance states that permits shall be reviewed by the Planning Commission "to consider new or changed circumstances within the general area of the mining operations that should be accommodated by the permit or plan... The Planning Commission may modify the permit or reclamation plan to conform with this Chapter, and such modified permit or plan shall be binding upon the operation."

Environmental Review: The Environmental Impact Report prepared for the project and certified by the Board of Supervisors on August 21, 1984 serves as the environmental document for the Five Year Review.

Site and Vicinity: The quarry site is a 680-acre leasehold on the 2,555 acre Apperson Ranch located on Apperson Ridge. To the north and west are watershed lands owned by the San Francisco Water Department (including San Antonio Reservoir); to the south and west is East Bay Regional Park District land (the Sunol Regional Wilderness); to the east are privately-owned lands.

Permit Status: Neither construction of the quarry access road nor mining has commenced yet, although the permittee is in the process of fulfilling conditions of approval required prior to beginning construction or mining activity.

PLANNING CONSIDERATIONS:

There are two circumstances which have affected the permittee's ability to fully comply with conditions of approval: the first is that the permittee and the San Francisco Water Department (SFWD) have not yet reached an agreement on the design of the intersection and staging area improvements at the intersection of the quarry access road and Calaveras Road (San Francisco-owned right-of-way would be affected). Under Condition 39, installation of these improvements is required prior to construction, mining, or transport of material from the site. Continued discussions between the permittee and SFWD are in progress.

The second condition which has not been fulfilled is Condition 45. This condition requires a program to mitigate impacts of the quarry on the local herd of tule elk. (The project EIR determined that there is a high probability that the quarry would displace the tule elk herd, primarily due to the location of the access road which would bisect the herd's two critical habitat areas.) A mitigation strategy was adopted by the Planning Director after consultation with the California Department of Fish and Game, East Bay Regional Park District (EBRPD), Oliver de Silva, and other interested parties. The mitigation program consisted of introducing a new tule elk herd onto EBRPD lands. Since the mitigation plan was devised and approved in 1986, a change has occurred which significantly affects implementation of a tule elk acquisition/relocation program. In July, 1989, the State of California changed its policy regarding tule elk, no longer permitting tule elk to be moved from one location to another. This policy change renders it impossible for Oliver de Silva to comply with Condition 45 as written. Oliver de Silva remains committed to mitigating the impact of the quarry on the existing herd of tule elk and is exploring alternative mitigation approaches.

There are three alternative strategies under consideration to mitigate potential impacts on the tule elk. Features of each alternative are briefly described below:

1. ***Enhancement of habitat on San Francisco Water Department-owned lands adjacent to the San Antonio Reservoir.*** In this alternative, intermittent streams feeding into the reservoir would be dammed to create a bottomland area, providing a lush habitat for the elk. No mechanical irrigation would be required. The principal advantage of this alternative is that the elk may remain a *local* wildlife resource. By catching sediment, the dam could provide secondary benefits to SFWD by reducing siltation of the reservoir. On-going monitoring would be

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required through the life of the quarry to ensure continued maintenance of the habitat (fencing and other cattle control measures must be implemented, siltation monitoring must be conducted, etc.).

The potential disadvantage of the alternative is that the site is near the quarry and noise, truck traffic, and other disturbances associated with the quarry may prevent elk from becoming established here. Feasibility of this alternative must be explored with SFWD and implementation of this mitigation depends upon SFWD agreement.

2. *Enhancement of habitat located on private property located in Alameda County near the San Joaquin County line.* A portion of the San Antonio herd has migrated to a privately held ranch near the San Joaquin County line. Enhancement of this property could provide better quality habitat and the herd could increase. The advantage of this alternative is that the mitigation would occur within Alameda County; however, this alternative may not be feasible since it depends upon the agreement of the property owner, who has been tolerant of the existing herd but may not want more elk on his ranch, due to potential conflicts with cattle.
3. *Purchase of private land near Cache Creek in Lake County.* Privately owned property with excellent habitat value is available adjacent to a publicly owned preserve, where an existing herd of tule elk is thriving. Addition of acreage to the preserve and enhancement (through removal of cattle) would further ensure the long term protection of this herd in northern California. The benefit of this alternative is that the land has known habitat value, a herd is already established here, and the site is distant from potential disturbances. Additionally, this mitigation involves one-time purchase, and would not require on-going monitoring. The disadvantage would be that the mitigation would not occur locally.

A combination of alternatives is possible. To implement any of these alternatives, Condition 45 must be modified to read as follows:

Prior to commencement of grading, mining operations or construction activities, a program for mitigating impacts on the San Antonio tule elk herd shall be developed by permittee in coordination with the Department of Fish and Game (DFG) and approved by the Planning Director. Said program shall cover

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acquisition *and/or enhancement* of suitable tule elk habitat, ~~relocation of tule elk from some other location in the State~~, monitoring of the existing and new herds and timing of the different elements of the program. Permittee shall implement the tule elk mitigation program as approved by the Planning Director. Planning Director may require guarantees that all elements of the program will be implemented.

The San Francisco Bay Chapter of the Sierra Club has requested that prior to modification of Condition 45, the Sierra Club and other environmental organizations which were a party to the original agreement regarding tule elk mitigation wish to work with the Department of Fish and Game to change the department's rule disallowing relocation of the elk. The Sierra Club has asked for six months to accomplish this and Oliver de Silva has indicated willingness to go along with this request.

Staff recommends that the Planning Commission wait six months before modifying Condition 45 to allow the Sierra Club time to negotiate with the Department of Fish and Game. During this six month period, staff and representatives of Oliver de Silva will continue to investigate the feasibility and suitability of the three alternative mitigation strategies described above. A progress report will be presented to the Commission midway through the six month period to apprise the Commission and the public of progress towards selecting an appropriate alternative and/or changes in Department of Fish and Game policy, if applicable.

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA**

RESOLUTION NO. 90-69 - AT MEETING HELD DECEMBER 17, 1990

Introduced by Commissioner Hamlin
Seconded by Commissioner Cartwright

WHEREAS Section 8-117.5 of the Alameda County Surface Mining Ordinance requires periodic review of Surface Mining Permits and Reclamation Plans to consider new or changed circumstances within the general area of mining operations; and

WHEREAS Condition Number 11 of Surface Mining Permit and Reclamation Plan, SMP-17, of Oliver de Silva, Inc., adopted by the Alameda County Board of Supervisors on August 21, 1984 by Resolution 84-745, requires the Planning Commission to review compliance with the Surface Mining Permit and progress in reclaiming the site, considering any new or changed circumstances within the general area of mining operations that should be accommodated by the plan; and

WHEREAS this Planning Commission did hold a public hearing to review Surface Mining Permit and Reclamation Plan SMP-17 at the hour of 1:30 p.m. on Monday, the seventeenth day of December, 1990, in the Auditorium of the Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS this Five Year Review was duly noticed as required by law; and

WHEREAS the Environmental Impact Report prepared for SMP-17 and certified by the Board of Supervisors on August 21, 1984 serves as the environmental document for this Five Year Review; and

WHEREAS this Planning Commission does find that neither construction of the quarry access road nor mining has commenced yet, however, the permittee is in the process of fulfilling conditions of approval required prior to beginning construction or mining activity and is acting in good faith to fulfill such conditions; and

WHEREAS this Planning Commission does further find that the permittee is in compliance with requirements of:

- (a) the Alameda County Surface Mining Ordinance;
- (b) the Alameda County General Plan; and
- (c) the public health, safety and welfare; and

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WHEREAS the California Department of Fish and Game has changed its policies regarding tule elk, and has determined that relocation of tule elk is no longer allowed; and

WHEREAS this change in policy renders it impossible for the permittee to comply with Condition 45 of SMP-17, which requires relocation of tule elk as part of a program to mitigate the quarry's potential impacts on the local herd of tule elk; and

WHEREAS in order for the permittee to achieve compliance with this condition, the condition would have to be modified to omit the word "relocation;" and

WHEREAS the San Francisco Chapter of the Sierra Club has requested that prior to modifying Condition 45, they be allowed to negotiate with the Department of Fish and Game for up to six months to encourage the Department to reconsider the policy change concerning tule elk relocation and/or seek an appropriate alternative strategy to mitigate the quarry's potential impacts on the local herd of tule elk; and

WHEREAS Oliver de Silva, Inc., has agreed in the interim to investigate the feasibility and appropriateness of three alternative mitigation strategies which do not involve relocation of the tule elk, in consultation with Planning Department and Department of Fish and Game staff;

NOW THEREFORE BE IT RESOLVED that this Planning Commission has conducted a Five Year Review as required by Section 8-117.5 of the Alameda County Surface Mining Ordinance and Condition 11 of SMP-17, and finds that no modification to conditions of approval is necessary at this time; and

BE IT FURTHER RESOLVED that if additional information is brought to the attention of this Commission at a future time which warrants modification of Condition 45, a duly noticed public hearing will be scheduled to consider such permit modification.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Burdusis, Cartwright, Gordon, Hamlin, Pappas, Peixoto, and Schilling

NOES: None

ABSENT: None

EXCUSED: None

ABSTAINED: None

ADOLPH MARTINELLI - PLANNING DIRECTOR AND SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

**NOTICE OF PUBLIC HEARING
FIVE YEAR REVIEW - SURFACE MINING PERMIT SMP-17
APPERSON RIDGE QUARRY**

Notice is hereby given that the Alameda County Planning Commission will hold a public hearing to review compliance with Surface Mining Permit and Reclamation Plan SMP-17, approved by the Alameda County Board of Supervisors on August 21, 1984 for an 80 year term. Oliver deSilva, Inc., is the permittee. The quarry is located on Apperson Ridge in the Sunol area of unincorporated Alameda County.

Neither construction of the quarry access road nor mining has commenced yet, although the permittee is in the process of fulfilling conditions of approval required prior to beginning construction or mining activity.

The Environmental Impact Report prepared for the project and certified by the Board of Supervisors on August 21, 1984 serves as the environmental document for the Five Year Review.

A condition of approval for this permit requires a five-year review to evaluate compliance with permit conditions; additionally, any new or changed circumstances related to the operation of this quarry will be considered. Following this review, if warranted, the Planning Commission may modify the permit or reclamation plan to respond to any altered circumstances.

Said public hearing will be held on Monday, the seventeenth day of December, 1990, beginning at 1:30 p.m., in the Auditorium of the Alameda County Public Works Building, 399 Elmhurst Street, Hayward, California.

All persons interested in the matter may appear and be heard at this meeting.

**ADOLPH MARTINELLI - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**