

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

RESOLUTION NO. 11-07 - AT MEETING HELD MARCH 21, 2011

SURFACE MINING PERMIT AND RECLAMATION PLAN

CASE NO. SMP-28

**Introduced by Commissioner Loisel
Seconded by Commissioner Imhof**

WHEREAS Surface Mining Permit and Reclamation Plan SMP-28 was approved by the Planning Commission on January 2, 1990 by Resolution 90-06; and

WHEREAS SMP-28, as approved on January 2, 1990 by Resolution 90-06, authorized aggregate extraction and reclamation activities on an approximate 125-acre parcel located about 2.5 miles southwest of Sunol, west of Interstate 680, near the intersection of Mission and Sheridan Roads, and at Assessor's Parcel Number 96-56-12-7; and

WHEREAS C.W.C. Equity LLC ("Permittee") has filed with the Alameda County Planning Department an application to amend Condition No. 27 of SMP-28 to provide a twenty (20) year extension of the approval period of SMP-28 until March 31, 2031; and

WHEREAS Section 6.80.190 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 No. 27 of Surface Mining Permit and Reclamation Plan Case No. SMP-28 requires the Planning Commission to review compliance with conditions of the Surface Mining Permit and Reclamation Plan, considering any new or changed circumstances within the general area of mining operations that should be accommodated by the plan; and

WHEREAS under the Alameda County Surface Mining Ordinance, the Planning Commission is designated as the decision-making body for Surface Mining Permits and Reclamation Plans, including the periodic review requirements of Section 6.80.190, subject to appeal to the Board of Supervisors; and

WHEREAS this Planning Commission accepted and reviewed the Planning Commission staff report dated March 21, 2011, such documents collectively referred to herein as the "Review Documents;" and

WHEREAS this Planning Commission held a duly noticed public hearing to conduct a Five Year Review of Surface Mining Permit and Reclamation Plan SMP-28, as well as to consider the request to extend the permit expiration of SMP-28, at the hour of 1:30 p.m. on Monday, the 21st day of March, 2011, in the Public Hearing Room – Room No. 160, 224 Winton Avenue, Hayward, California; and

WHEREAS the Periodic Review of Surface Mining Permit SMP-28 has been reviewed in accordance with the provisions of the California Environmental Quality Act, and found to be Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15309 (Inspections) since it consists of an activity limited entirely to the inspection of the subject mining operation; and

WHEREAS the request to extend the permit expiration of Surface Mining Permit SMP-28 by twenty (20) years has been reviewed in accordance with the provisions of the California Environmental Quality Act (CEQA), and found to be Categorically Exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities) since it consists of the operation, maintenance, permitting, of an existing private facility, including its associated mechanical equipment and topographical features, with no expansion of use beyond that existing at the time of the lead agency's prior determination to approve a Negative Declaration on January 2, 1990 as well as the lead agency's present determination to approve a categorical exemption under CEQA Guidelines Section 15301. As stipulated by CEQA Guidelines Section 15301, "The key consideration is whether the project involves negligible or no expansion of an existing use." The subject application to extend SMP-28 involves no expansion of the existing use; and

WHEREAS the Review Documents, testimony submitted in writing and at the public hearing and other items in the public record have been considered by the Planning Commission prior to this action; and

WHEREAS this Planning Commission does find that under conditions of approval listed in Exhibit A below, the Surface Mining Permit and Reclamation Plan SMP-28, as modified below, conforms to requirements of:

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

WHEREAS it is the finding of this Commission, based upon said review, that Permittee is in compliance with Surface Mining Permit SMP-28 and all conditions thereof; and

WHEREAS there are a number of conditions of approval that require revision, primarily due to conditions previously fulfilled by the Permittee for single-event actions and which require no further oversight by the County since such prior conditions have been satisfied, or due to changes in the Alameda County Surface Mining Ordinance section numbering; and

WHEREAS it is the finding of this Commission that the continuation of Surface Mining Permit SMP-28, with amended conditions, is in the public interest for the reason that it is consistent with County plans, policies and ordinances for surface mines in Alameda County; and

WHEREAS this Planning Commission finds it appropriate and necessary to modify several Surface Mining Permit and Reclamation Plan conditions of approval, in light of the above, including modification to Condition No. 3, 4, 5, 8, 9, 10, 11, 12, 13, 26, 27, 28, 29, 30, 31, 32; and addition of five (5) new conditions, Conditions 33, 34, 35, 36, 37 and 38; and

WHEREAS this Planning Commission finds that permit condition changes are identified in Exhibit A as ~~strikethrough~~ text denotes deletions, underline text denotes additions.

NOW, THEREFORE,

BE IT RESOLVED that this Planning Commission accepts and approves the Section 15309 Categorical Exemption as the valid environmental review documentation for the Five Year Review; and

BE IT RESOLVED that this Planning Commission accepts and approves the Section 15301 Categorical Exemption as the valid environmental review documentation for the permit extension; and

BE IT FURTHER RESOLVED that this Planning Commission does hereby recognize as adequate and complete the required Five Year Review of Surface Mining Permit and Reclamation Plan SMP-28, does hereby adopt the Review Documents as findings in support of this Resolution and incorporate said Review Documents herein by this reference, and does hereby modify the conditions of approval for Surface Mining Permit SMP-28, as set forth in Exhibit A to this Resolution, showing added language underlined and deleted language ~~struck out~~.

EXHIBIT A

ALAMEDA COUNTY PLANNING COMMISSION RESOLUTION NO. 11-07

COMPLETE CONDITIONS OF APPROVAL

SURFACE MINING RECLAMATION PLAN SMP-28

SHERIDAN ROAD QUARRY

Changes to Planning Commission Resolution 90-06, accomplished by the current Planning Commission action are denoted as: added language is shown as underlined; deleted language is shown as ~~struck out~~.

1. Surface mining operations and grades shall be in substantial conformance with the maps labeled "Exhibit B," SMP-28, as approved by the Planning Commission on January 2, 1990; and "Exhibit C," being the application for SMP-28 dated April 27, 1989.
2. Surface mining operations and reclamation plan shall conform to the Alameda County Surface Mining Ordinance (ACSMO) except as hereinafter more specifically provided.
3. ~~Permittee shall guarantee timely performance of reclamation requirements of the ACSMO and these conditions by (a) posting a cash bond or letter of credit in the amount of \$50,000 (January, 1990 dollars) and (b) creating an escrow account acceptable to the County of Alameda and depositing in said account by February 1 of each year an amount totaling \$1.70 (January, 1990 dollars) per 100 tons excavated during the period since the last deposit.~~

~~Bond or Letter of Credit: A cash bond or letter of credit must be pledged in the amount of \$50,000 as a guarantee of reclamation. This amount may be reduced annually by the amount deposited into the reclamation escrow account, however, a minimum balance of \$25,000 shall be retained until reclamation is complete. At each five year review (conducted pursuant to Condition 26), the amount of the bond or credit line will be adjusted for inflation based on the Construction Cost Index for San Francisco of Engineering News Record.~~

~~Escrow Account: The first deposit shall cover the period starting from the date the permit is approved. Permittee may also receive credit for reclamation efforts completed during the period as determined by the Director of Public Works during the annual review pursuant to Condition 4. Said credit will be deducted from the required deposit and/or refunded from the escrow account. Escrow account deposits shall be adjusted annually for inflation, based on the Construction Cost Index described above.~~

~~Release of Guarantees: Upon expiration or revocation of the permit and completion of the reclamation plan, any funds remaining under the guarantees described above shall be released to the permittee upon the satisfactory determination by the Director of Public Works that the conditions of the permit have been met and that the site has been reclaimed in accordance with the approved reclamation plan. If the Director of Public Works determines that reclamation has not been accomplished satisfactorily, and permittee has not made a good faith effort to correct any deficiencies once notified in writing by the Director of Public Works, then guarantees shall be used by the County to bring the quarry into conformance and to reclaim the site.~~

3. The Permittee shall guarantee timely performance of reclamation requirements of the Alameda County Surface Mining Ordinance and these conditions of approval by providing a mechanism for

financial assurance of reclamation as described in, and in accordance with, Surface Mining and Reclamation Act (SMARA) and the Alameda County Surface Mining Ordinance. The mechanism shall be of sufficient value to cover the full costs of reclamation in any specific year for which it is calculated, and may take any form acceptable within the requirements of SMARA, including but not limited to escrow accounts, trust accounts, performance / surety bonds and/or Irrevocable Letters of Credit.

4. ~~Annually~~ By July 1 of each year (beginning in the year 2012), the permittee shall furnish the Neighborhood Preservation & Sustainability Director of Public Works with a report describing compliance with these conditions. ~~The first report shall be submitted February 1, 1991.~~ With each report; the permittee shall provide a map at the same scale as the approved reclamation plan, showing current progress of mining and reclamation; drainage, erosion and sedimentation control facilities to ~~be~~ provided and those already in place; and areas which have been overlain with topsoil and reseeded.

The Neighborhood Preservation & Sustainability Director of Public Works shall review the report and inspect the mining operations to determine and assure continuing compliance and the regulations of the ACSMO. The Permittee shall pay to the County the actual cost of conducting the periodic inspection of operations and shall make available to the Neighborhood Preservation & Sustainability Director of Public Works such information as necessary for determination of compliance. The Neighborhood Preservation & Sustainability Director of Public Works shall state the findings of the inspection in a final report which shall be available to the public. One copy of said, report shall be sent to the permittee within 45 days after the inspection. A copy shall be furnished to the Planning Commission.

5. The owner and all lessees shall provide and, in the event of ownership or lessee change shall update, written statement(s) that they accept responsibility for reclaiming the site as indicated on the reclamation plan, as approved, and shall guarantee all reclamation to assure the permanency of physical reclamation features. Said responsibility shall run with the land under permit as a covenant thereupon until release of the covenant is recorded by Alameda County.
6. A fence around the perimeter of the excavated area conforming to requirements of Section 8-119.0 (e) of the Alameda County Surface Mining Ordinance shall be maintained in good condition.
7. No explosives shall be used.
8. ~~Within 60 days after the date of approval of this permit and p~~Prior to February 2012, and prior to ~~of~~ each succeeding year of operation, a drainage, erosion and sediment discharge control plan shall be submitted for approval to the Alameda County Neighborhood Preservation & Sustainability Director of Public Works. Grading and erosion control shall conform to design standard (Sections 7-115.0 through 7-115.19) and geotechnical requirements (Sections 7-114.2 through 7-114.10) of the Alameda County Grading Ordinance No. 82-17. Such approved sediment discharge control measures shall be in place and operational each year between October 1 and April 15.
9. ~~An annual fire plan shall be prepared and filed with the State Division of Forestry to mitigate potential fire hazards.~~
10. ~~Within 60 days after the date of approval of this permit, a phasing plan detailing sequence of mining and reclamation shall be submitted to the Planning Director for approval.~~ Reclamation shall include all mined areas (including those areas which were mined under previous permits as well as on-site facilities, such as the sediment basin and internal haul roads. Sequencing shall be tied to the three

benches shown on the reclamation plan (for example, a top-to-bottom phasing plan may be proposed in which the uppermost tier will be mined, re-contoured and re-vegetated before work on the middle tier may begin). Variation from the June 2009 phasing plan by Spinardi Associates may be approved by the Neighborhood Preservation & Sustainability Planning Director if necessary to gain access to different quality material in an area outside of a specified mining location. Permission to vary from the plan will be based on the Planning Neighborhood Preservation & Sustainability Director's determination that the variance will not jeopardize successful reclamation of the site.

11. Interim slopes (during periods in which mining is inactive) shall be safe and stable, and shall be no steeper than 2:1 (horizontal to vertical). Final slopes between the three (3) benches should, to the extent practicable, mimic natural contours in the vicinity through, for example, the establishment of 3:1 (horizontal to vertical) slopes.
12. ~~Recommendations included in the Soil Conservation Service letter to Jeffrey McMullen dated July 20 1989, shall be followed in reclamation activity on this site. An annual inspection, at the permittee's expense, shall be made by the SCS to review implementation of reclamation recommendations including topsoil stockpile locations and protection measures; re-soiling techniques seed mix, etc. If problems are noted by the SCS during their inspection, recommendations for remedial action shall be made, to the Planning Director and permittee shall take corrective measures.~~
13. Operations shall cease in the vicinity of any suspected archaeological resource until an archaeologist is consulted and his or her recommendations are followed, subject to the approval by the Neighborhood Preservation & Sustainability Planning Director.
14. A portable water supply shall be provided for employees during periods of active mining; subject to approval of Alameda County Health Care Services Agency. Facilities may be removed from the site when mining is inactive.
15. Adequate toilet facilities shall be provided for employees during periods of active mining, according to the requirements of the Alameda County Health Care Services Agency. Facilities may be removed from the site when mining is inactive.
16. Engines on dirt moving equipment used for surface mining operations shall be equipped with mufflers, and no muffler or exhaust system shall be equipped with a cutout; bypass; or similar device.
17. All surface mining and processing operations emitting smoke; vapors, dust and other airborne contaminants shall be provided with all necessary-control measures and devices as required by the Alameda County Health Department and the Bay Area Air Quality Maintenance District to prevent the occurrence of nuisance and undue pollution of the air.
18. The driver of a weighed vehicle, loaded beyond current State of California maximum legal weight limits, shall be notified and requested to reduce the load to the legal weight. If loaded material is subject to dust generation drivers shall be required to cover their loads with tarps prior to departure from the quarry. All loaded vehicles shall be required to cross, over a material shakedown area with berm, bumpers or ditches provided. Haulage roads and loading areas shall be paved; oiled; or watered to maintain a dust free condition.
19. Stop signs directing traffic leaving the site to come to a full stop at Mission Road shall be provided and maintained by the permittee at his own expense.
20. Excavation and loading operations, except for equipment maintenance operations, shall be conducted

only between the hours of 7:00 a.m. and 5:00 p.m., Mondays through Saturdays, and no surface mining operations or loading shall be conducted on Sundays or the following holidays: New Years Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day.

21. Permittees shall, at their own expense, keep streets in the vicinity of the quarry over which hauling is done, swept clean of quarry materials.
22. Permittees shall repair promptly, at their own expense; any damage to County streets caused by operation of trucks and equipment or by any other operation of the quarry.
23. Permittee shall pay to the County of Alameda full costs incurred by the County for review, approval, administration and enforcement of all conditions of approval, including required inspections and inspections performed in response to complaints.
24. New cut slopes shall be watered as they are created to the extent necessary to minimize dust.
25. Except during authorized working hours, all access roads to the quarry site shall be barricaded to prevent unauthorized vehicles from entering the quarry premises.
26. If problems develop regarding mining or reclamation as may be determined by the Neighborhood Preservation & Sustainability Planning Director, permittee shall take corrective action with all due haste, in good faith. Permittee shall implement solutions as approved by the Neighborhood Preservation & Sustainability Planning Director.
27. ~~Within 5 years from the date of approval~~ During or before the summer of 2016 and at five year intervals thereafter, the Planning Commission shall review compliance with the surface mining permit and progress in reclaiming the site, and consider any new or changed circumstances within the general area of the mining operations that should be accommodated by the permit or plan. The review shall include a public hearing. The Planning Commission may modify the permit or reclamation plan to conform with the ACSMC, and such permit or plan shall be binding upon the operation.
28. If surface mining operations are suspended for any reason for one year or more, procedures shall be followed in accordance with Alameda County Surface Mining Ordinance Section ~~8-119.2~~ 6.80.230.
29. Said surface mining permit shall terminate and end ~~20 years from the date of approval~~ by March 21, 2031, or upon completion of final reclamation, whichever occurs first. Final reclamation in accordance with the approved reclamation plan shall occur no later than 6 months after completion of surface mining. All stockpiles and equipment shall be removed from the site upon completion of reclamation. This permit shall be subject to revocation or suspension as specified in Section ~~8-121.2~~ 6.80.270 of the ACSMO.
30. If permittee wishes to terminate this permit prior to its expiration date, permittee shall make a written request to the Neighborhood Preservation & Sustainability Planning Director; and shall submit an adjusted reclamation plan which reflects site conditions accurate as of the date of the termination request. If adjustments to the reclamation plan are found to be substantially consistent with provisions of these conditions of approval and are deemed minor modifications, the Neighborhood Preservation & Sustainability Planning Director -- in consultation with the Director of Public Works -- may approve or conditionally approve the adjusted reclamation plan. If proposed adjustments to the plan are not considered minor, a modification to this Surface Mining Permit and Reclamation Plan is required, pursuant to Section ~~8-115.4~~ 6.80.120 of the Alameda County Surface Mining Ordinance.

31. This Surface Mining Permit and Reclamation Plan (SMP-28) and these conditions shall supersede requirements of SMP-3 upon exercising this permit; ~~except that a ninety (90) day extension is hereby granted to continue limited nighttime operation of the quarry for material loading in conjunction with a highway construction contract, subject to conditions imposed on the modification to SMP-3 (approved by the Planning Commission on August 21, 1989, Resolution 89-46).~~
32. The end use of the site upon complete reclamation is hereby assumed to be agriculture. Any other use must be approved by the County of Alameda (or the controlling jurisdiction, in the event that the quarry site is annexed to a city).
33. Mining and reclamation shall conform to the Alameda County Surface Mining Ordinance (ACSMO) and State Surface Mining and Reclamation Act.
34. The Permittee shall defend, indemnify and hold harmless Alameda County or its agents, officers or employees from any claim, action or proceeding against Alameda County, or its agents, officers or employees to attach, set aside, void, or annul this Surface Mining Permit, including any amendments thereto, or underlying environmental documents and actions taken pursuant to the California Environmental Quality Act, Alameda County Surface Mining Ordinance, the California Surface Mining and Reclamation Act, other County ordinance requirements and any combination thereof. Such indemnification shall include but not be limited to any such proceeding. If Permittee shall fail to adequately defend the County of Alameda, the County may provide its own legal defense and Permittee shall be responsible for the County's reasonable attorneys' fees.
35. The Permittee shall pay an administrative fee as required by Section 6.80.242 of the Alameda County Health and Safety Code, Surface Mining Ordinance Code.
36. By July 31, 2011, the Permittee shall install a sign in a conspicuous location at the entrance to the subject site which informs delivery trucks of the following: (1) hours of operation; (2) prohibition of dumping along any nearby public street (i.e., Mission Road, Sheridan Road); and (3) quarry operator contact name and phone number. Prior to installation, the Permittee shall submit a proposed site plan and sign plan to the Neighborhood Preservation and Sustainability Department Director for review and approval.
37. The Permittee shall routinely remove any exotic, invasive plants upon areas disturbed by mining activities. The results of exotic, invasive plant removal shall be described in the annual report required by Condition No. 4.
38. The Permittee shall conduct and maintain, in accordance with Surface Mining Ordinance Section 6.80.060, all recycling (e.g., asphalt and/or concrete) as an accessory use to mining activities authorized under this permit. The annual report required by Condition No. 4 shall demonstrate the recycling activities which have transpired over the previous year are subordinate to the principal permitted mining use.

ADOPTED BY THE FOLLOWING VOTE:

AYES:	Loisel, Imhof, Kirby, Ready, Rhodes, Jacob
NOE:	None
EXCUSED:	Carbone
ABSENT:	None
ABSTAINED:	None