

# ***MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION***

---

## **Meeting of July 17, 2008**

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

**PRESENT:** Commissioners Moore, McAndrew and Vice-chairman Barnes

**EXCUSED:** Chairperson Barton and Commissioner Mahoney

**STAFF PRESENT:** Mike Yankovich, Planning Program Manager; Jim Laughlin, Deputy County Counsel; Karen Avery, Senior Planner; Stan Schram, County Surveyor, Diane Buschman, Office Assistant III

Items from the floor - none

**The Minutes** of the regular meeting June 26, 2008 were approved as prepared.

1. **PUBLIC HEARING** to consider an appeal of the Zoning Administrator's approval of Minor Revision No. 2 to Use Permit No. U-94-13 and Reclamation Plan No. RP-94-01 of **Asta Construction (Rio Vista Sand Pit)** to allow for the expansion of an existing mining operation located approximately 1 mile south of the intersection of Emigh Road and Montezuma Hills Road along the Sacramento River, approximately 1 mile west of the City of Rio Vista in an "A-160" Exclusive Agricultural Zoning District, APN: 0049-320-030. The Planning Commission will also be considering adoption of a Negative Declaration of Environmental Impact as recommended by the Solano County Department of Resource Management. **Staff Recommendation:** Deny appeal

Karen Avery briefly reviewed the history of the project. She stated that the original use permit for Asta Construction was approved in 1994 allowing them to excavate 250,000 cubic yards of sand from a 25 acre portion of a 250 acre property. This permit also allowed for sand dredging and construction of a haul road for loading materials by barge. In 2002, through a minor revision, Asta Construction was approved to remove 19,000 cubic yards of clay materials which increased the footprint of the original site plan by 2 acres to 27 acres. Ms. Avery indicated that the permit before the Commission tonight is to expand the mining operation by excavating an additional 100,000 cubic yards of clay soils which would increase the footprint of the excavation of just less than 6 acres. She stated that the project was presented and approved on May 15, 2008 by the Zoning Administrator. Objections to that project were made by Mr. Al Medvitz to include his concern with the close proximity of the project to his property line fence and impacts such as erosion and the integrity of the fences, the rights to the 16 foot right-of-way access road, and the nuisance of ongoing operations. Ms. Avery noted that several conditions of approval were added to the permit to help alleviate these concerns.

Karen Avery stated that the reasons given for the appeal were that the approval of the project was premised on the applicant's ability to use the private access road, which is currently the subject of ongoing litigation; the mitigated Negative Declaration does not address what impacts might result if Asta Construction is forced to use an alternative access; the current litigation prevents the County from

being able to make the necessary Findings regarding adequacy of site access; and the noise associated with the increased use of the road by heavy trucks and machinery have not been properly addressed in both the mitigated Negative Declaration in the project's Findings. Also, if McCormack/Medvitz prevail in the litigation, they will close the road to Asta Construction, and the Negative Declaration does not address possible impacts from using barges as the only means of access. Ms. Avery indicated that the appellants have requested that the Commission deny the project revision, but if the commission is not willing to deny the revision, they ask the Commission postpone any final decision until the road litigation is concluded, and until adequate environmental review is completed. In the event the Commission approves the project, the appellant asks that the total number of truck trips be limited to 5 per day. Ms. Avery reviewed staff's responses to the appeal as stated in the staff report. She also noted that a letter was submitted by the appellant's attorney and was distributed to the commission.

Commissioner McAndrew wanted how much more activity this revision will create as compared to what is already taking place under the original use permit. Ms. Avery explained that the original permit was for 250,000 cubic yards and this request is for 100,000 cubic yards. Ms. McAndrew also inquired if there were any objections at the time the original use permit was approved. Ms. Avery stated that upon reviewing the file, no appeal was made in 1994 or in 2001 when a revision was requested.

Commissioner McAndrew inquired if there is another access road available to the applicant. Mr. Yankovich stated that there would be no other road available without having to cross over privately owned land.

Commissioner McAndrew referred to staff's written report and wanted clarification with regard to the 16 foot wide vs. 24 foot wide roadway. Stan Schram explained that in the 1800's when the property was originally sold there was no right of way given. He said that the very next day the landowner who sold the property realized that they had landlocked themselves, and acquired a 16 foot wide right-of-way across the adjacent property. He noted that over the years the physical roadway itself has expanded to 24 feet to handle the traffic. Mr. Schram noted that the road is actually outside of the right-of-way by modern standards.

Commissioner McAndrew inquired about the current litigation taking place. Mr. Yankovich stated that the case is currently being heard, but he did not know its status. Jim Laughlin stated that since the county is not a party in the litigation, staff has not been following the case.

Jim Laughlin commented to the letter submitted by the appellant's attorney regarding environmental review. Mr. Laughlin stated that this project is somewhat unusual because it is a revision of an existing use permit, and California case law states that in a situation such as this when an existing permit is being revisited, environmental review is made only on the impacts associated with the revision. It is not required to go back and reassess the impacts of the original project. He stated that the applicant has an entitlement to cause whatever impacts were described in the original project description, and in this case the appellant is complaining that impacts from barging the materials offsite were not addressed in the Negative Declaration. Mr. Laughlin stated that the original permit allowed the applicant to barge the material offsite although they have not done so to date, it is a part of their existing entitlement so the Negative Declaration was only required to look at the increased impacts or new impacts that result from this additional 100,000 cubic yards of activity.

With regard to noise, Mr. Laughlin stated that the concern suggests that the Negative Declaration should have looked at how a single property owner would be impacted by the noise of this project. He

stated that noise is a legitimate land use concern and the Commission needs to address it, but it is not an environmental concern. He explained that a single property owner or small group of property owners are not considered to be the environment for purposes of environmental review. Mr. Laughlin stated that in his opinion the project Negative Declaration is adequate as far as addressing the impacts from this project revision to the environment, however the proposed changed conditions are intended to address the noise impacts to this particular property owner.

The applicant's representative Bo McMillan, 1090 Saint Francis Way, Rio Vista, provided some background on the project. He stated that the McCormick Pitt permits were applied for in 1994 and obtained. He said the Perry Anderson Ranch were neighbors and used the same road from Montezuma Hills Road to the McCormick Pitt. He said that due to concern about two blind sections of the road the existing fence was moved to allow safe passage. He said they also moved the encroachment east of the Perry Anderson Ranch house to intersect Montezuma Hills Road. Mr. McMillan noted that they completed all the fence work with local ranch help and labor crew. He said the encroachment is in Asta Construction's name and with the direction of the county the work was completed. Mr. McMillan stated that their sand operation at the present time is depleted.

Ervin Rifenburg, project engineer, 12793 Paddy Creek Lane, Lodi, 95240, stated that the appellant claims there is an environmental hazard with regard to endangered species. Mr. Rifenburg commented that environmental review on this project began in 1994, and to this date the applicant has performed 3 biological assessments. He stated that each one of those studies showed no endangered or threatened species on the site.

Mr. Rifenburg spoke with regard to Condition No. 7 regarding the road fee which refers to sand being hauled from the site, and requested adding the words "clay or materials hauled from the quarry" after the word sand to make it more clear. With regard to Condition No. 11, Mr. Rifenburg stated that the applicant has made a good faith effort to try and appease the appellant and agreed to a start time of 7:30 a.m., noting that the company's start time has always been 7:00 a.m. Mr. Rifenburg commented that in all reality that half hour makes very little difference, and requested that the time be changed back to 7:00 a.m. With regard to Condition No. 44 concerning environmental care for endangered species, Mr. Rifenburg reiterated that there have never been any of these species found on the project site in the last 13 years.

Mr. Rifenburg spoke to the limit on production in out of the pit, and stated that it should be noted that the clay material essentially has very little commercial value for anything else other than for building levees. He stated that these types of projects are usually completed in a set amount of time, and explained that 2,000 yards per day is the industry standard, and if the applicant is limited to 1,000 yards per day it will take double the time to complete the job. He stated that nothing is gained as far as impact to the residents by cutting the production because it just stretches out the length of time it takes to complete the job and also escalates the cost.

Commissioner McAndrew wanted to know if these issues were brought up at the Zoning Administrator meeting. Mr. Rifenburg stated that the Zoning Administrator imposed the additional condition on the limit to yardage. He said that they objected at the time, but in turn the owner agreed that they would abide if it would be beneficial to the residents.

Vice-chair Barnes asked staff to respond to Mr. Rifenburg's comments with regard to the conditions of approval. Mr. Yankovich stated that at the Zoning Administrator meeting staff was looking at some type of a compromise between the applicant's proposal, as well as the appellant's position with regard to the

nuisance, traffic, and noise issues. He said the conditions on the limit for the 1,000 cubic yards per day and the adjustment in the hours of operation were imposed. He stated that the biological issue is altogether separate and was not a part of the discussion.

In response to Commissioner Moore's inquiry, Mr. Yankovich stated that since part of the issue concerned noise, staff believed that with a less amount of trucks would come a less amount of noise, and that is why the decision was made to reduce the amount of trucks which reduces the amount of yardage being transported.

Vice-chair Barnes opened the public hearing.

Eileen Beresford, 3404 W. Country Club Lane, Sacramento, 95821, stated that she and her husband are part owners in the Michael McCormick Ranch. She said that the McCormick Ranch consists of two parcels, one being the ranch itself, and the other a private road which is their only legal access to their property. She said the only person that refutes the fact that this private strip of land for a roadway belongs to the Michael McCormick Ranch is Albert Medvitz and Jeanne McCormack. She noted that Mr. Medvitz's and Ms. McCormack's property deed excludes this particular road. She indicated that this roadway traverses the Medvitz/McCormack property and was brought into litigation by them. For many years this road has been utilized by a large number of service vehicles and private parties, including Mr. Medvitz's farm equipment. Ms. Beresford stated that Mr. Medvitz and Ms. McCormack have trespassed onto her property by changing their access gate from 20 to 16 feet, removing and changing gate locks, blocking their entrance gate with vehicles, installing tractors, pick-up trucks, travel trailers and T stakes along their roadway hindering their access. She noted that all items except the gate have since been removed. Ms. Beresford stated that the roadway was widened for a number of reasons and if it is reduced to 16 feet, many who utilize the road will have issues with safety and accessibility.

Ms. Beresford stated that to meet the Montezuma Fire Protection District access and tenant farmer equipment access requirements their 20 foot gate needs to be placed back to where it was originally installed in 1995. She stated that for the past 13 years Asta Construction has used this road with the permission of the Michael McCormick Ranch owners. Asta has maintained this road at great cost. They have treated the road with organic oil and water during drier times, regraded the surface, and added base material, made turn-outs for safety purposes, and provided self imposed reduced speed limits. She said that Asta has delayed truck start times, changed hours of operation, eliminated engine brake use altogether while on the road, and eliminated truck staging and idling on Emigh Road where it meets Montezuma Hills Road. This has all been done to try to placate complaints made by Mr. Medvitz and Ms. McCormack. She asked that the commission deny the appeal.

Dave Lane, Department of Water Resources, 1416 9<sup>th</sup> Street, Room 1641, Sacramento, 95814, stated that the main objective in obtaining this material is to fix levees. He commented that there was tremendous storm damage to several levees in 2006. He asked the commission to support this revision and noted that it is urgent that work get started as soon as possible to help prevent levee failures. With the use of a PowerPoint presentation Mr. Lane pointed out the water districts in the county and the damages to the various levees. He noted that his department partners with the U.S. Army Corps of Engineers and the State Reclamation Board oversees the projects. Mr. Lane stated that the DWR chose Asta Construction because they have the volume of material needed and were at a reasonable haul distance. He stated that the main concern is to keep the haul distance short to cut down on traffic.

Ryan Seele, Attorney, Downey Brand, LLP, 555 Capitol Mall, Sacramento, stated that two of the major issues at hand are the ongoing litigation and noise. He stated that he did not believe the law is entirely

clear that the impacts suggest one person is not considered under CEQA because case law exists that finds that information very relevant. Mr. Seele stated that it is true that generally past projects are not examined except in the instance that there might be a change in the circumstances that would cause a significant impact. He would argue here that there is a change in circumstance with the most relevant change being the location of where Mr. Medvitz and Ms. McCormack reside. He stated that the previous residence was not affected by noise, but due to the current location of the residence, noise is now an issue.

Mr. Seele stated that CEQA provides for a low burden when it comes to the issue of examining whether or not a county or agency needs to look at significant impacts, and in the initial study those impacts need to be addressed. He stated that this was not done for the project with regard to both the noise and the impacts that could be caused by barging all materials. Mr. Seele noted that this litigation is ongoing and to postpone a decision until mediation is complete might be appropriate. He stated the one item he feels deserves particular attention is the noise that the residents are having to endure. He would find it difficult to make the finding that there were no noise impacts or that the noise levels are not relevant.

Albert Medvitz, 8192 Montezuma Hills Road, Rio Vista, stated that they purchased their property in 1999 from Perry Anderson Estate. The Perry Anderson Estate had entered into a license agreement with Asta Construction to widen the road and to modify its position. He stated that the current width is not historic, it is a result of a license agreement that was implemented in 1994/95. Mr. Medvitz noted that typically other ranch roads in the neighborhood are approximately 16 feet wide. He said that he does not object to the use of the right-of-way for agriculture and routine maintenance and work on area gas wells. He stated that an occasional truck in the course of the day hauling grain from a neighboring ranch in a 12 hour period could be 1 truck every 3 to 4 hours. What the applicant is proposing is 100 loads per day, which is 200 passages. He stated that this would work out to be approximately 1 truck every 3 minutes and these trucks run within 100 feet of his home. He said the scale of the matter is really what is important. Mr. Medvitz indicated that there is a litigation issue going on with regard to the ownership of the road. He noted that he has a photograph of a burrowing owl which is sitting next to the road.

Commissioner McAndrew inquired about the relocation of the residence. Mr. Medvitz stated that there was a 5 year period between when they leased the property and when they bought it. He said that after they purchased the land they began to restore the residence, but did not live onsite, so the issue of trucks and truck noise was not immediate at the time.

Commissioner Moore inquired if Mr. Medvitz was aware of the operations that were ongoing and the various uses of the road when he purchased the land. Mr. Medvitz stated that they were aware of the operations, but they were not aware of the legal arrangements on which those operations were based. Commissioner Moore wanted to know if Mr. Medvitz was given documentation at the time he purchased the land that identified the use of the property and any easements. Mr. Medvitz stated that in the deed it describes the parcel and lists an exception of a 16 foot strip of land for the use of a private roadway. He stated that historically it has always been an easement.

Jeanne McCormack, 8192 Montezuma Hills Road, Rio Vista, stated that they were tenant farmers on the property that they now own from 1990 to 1995 and did not live in the house at that time. She stated that when the first part of the Asta project was permitted they knew that something was taking place but had no real knowledge of the extent of the project. At the end of 1999 when they bought the ranch and decided to restore the house there were 5 or 6 trucks that would drive by per day. She commented that it was a small scale, low impact operation. Ms. McCormack stated that when they started the

restoration and the volume of trucks radically increased they were stuck because of the money that had already invested. Ms. McCormack stated that they conduct business out of their home that pertains to their farming operation, and when the trucks are running they cannot even have a conversation in their kitchen. She stated that she has counted trucks entering the gate approximately every 7 seconds. She said that the noise is indescribable, and it would make a huge difference if there were a reduction from 100 to 50 trucks even if the project took longer. Ms. McCormack commented that she has seen endangered species on the property.

Since there were no further speakers, Vice-chair Barnes closed the public hearing.

Commissioner McAndrew wanted to know how many days a year the operations runs. Mr. Yankovich stated that the sand operation was seasonal, and this operation is limited depending upon the amount of repair that is needed for the levees. He stated that staff does a compliance review of the project every 5 years.

Commissioner Moore suggested the start time in Condition No. 11 be set back to 7:00 a.m. as under the current permit. He wanted Condition No. 44 to remain as is, so if there are ever biological issues the company will be prepared to deal with it. With regard to Condition No. 46, Mr. Moore stated that he would really be concerned about the work Mr. Lane described if the project is not accomplished in a timely manner, and the amount of agricultural acres that would be lost if those levees broke. He agreed with the applicant that the standard should be a normal work period, leaving in the exception for the emergency condition, and the maximum per day being 2,000 cubic yards.

Commissioner McAndrew stated that although she was hesitant, she would agree with Commissioner Moore's suggestion for Condition No. 46, but she did not agree on changing the start time back to 7:00 a.m.

A motion was made by Commissioner Moore and seconded by Commissioner McAndrew to deny the appeal and uphold the decision of the Zoning Administrator approving Minor Revision No. 2 to Use Permit No. U-94-13 and Reclamation Plan No. RP-94-01, subject to the Findings and Conditions contained in Zoning Administrator Resolution No. 08-17, and as repeated in the Planning Commission Resolution with amendment to Condition No. 46 to change the maximum of cubic yards per day to 2,000. The motion passed 3-0 with Commissioners Mahoney and Barton being absent. (Resolution No. 4501)

2. **ANNOUNCEMENTS and REPORTS**
3. Since there was no further business, the meeting was **adjourned**.