



Planning Commission Staff Report-Hearing on October 21, 2021

County of Ventura • Resource Management Agency

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OJAI QUARRY

Reclamation Plan Amendment

CASE NO. PL18-0136

CA Mine ID# 91-56-0025

A. PROJECT INFORMATION

1. **Request:** The applicant requests that a Reclamation Plan Amendment (RPA) be approved to authorize changes in the final reclaimed configuration of the Ojai Quarry.
2. **Applicant/Property Owner:** Larry Mosler, 2280 Moonridge Ave., Newbury Park, CA 91320
3. **Decision-Making Authority:** Pursuant to Section 8107-9.6.9 of the Ventura County Non-Coastal Zoning Ordinance (NCZO), the proposed changes in the approved reclamation plan require a public hearing to be held. Pursuant to Section 8111-6.1.2 of the NCZO, the Planning Director is the decision-maker for the requested change in the Reclamation Plan. This matter is brought before the Planning Commission on appeal pursuant to Section 8111-7.2.a of the NCZO.
4. **Project Site Location, and Parcel Number:** The project site is located at 15558 Maricopa Highway in the unincorporated area of Ventura County, near the City of Ojai. The Tax Assessor's parcel numbers for the lot that constitutes the project site are APNs 009-0-090-16 and 009-0-090-18.
5. **Project Site Land Use and Zoning Designations:**
 - a. Countywide General Plan Land Use Map Designation: Open Space
 - b. Zoning Designation: OS-160 ac (Open Space, 160-acre minimum lot size)

6. Adjacent Zoning and Land Uses/Development:

Location in Relation to the Project Site	Zoning	Land Uses / Development
North	OS-160 ac	Open Space
South	OS-160 ac	Open Space
East	OS-80 ac (Opens Space, 80 Acre Minimum Lot Size) and OS-40 ac (Open Space, 40 Acre Minimum Lot Size)	Open Space
West	OS-160 ac / SRP (Open Space, 160 Acre Minimum Lot Size/Scenic Resource Protection Overlay Zone)	Open Space

7. History: A detailed project history is provided in Section 7 of the Planning Director staff report (Exhibit 9) for the May 27, 2021 hearing. Following that hearing, the proposed RPA was approved by the Planning Director (Exhibit 10). That approval was timely appealed to your Commission.

8. Project Description: The applicant requests that an RPA be approved to authorize changes in the final reclaimed configuration of the Ojai Quarry.

The current approved Reclamation Plan for the Ojai Quarry is comprised of the 1995 Reclamation Plan (Exhibit 5) and the 2012 Reclamation Plan Compliance Amendment (Exhibit 6). Because excavation and material removal occurred below the Final Reclaimed Surface (FRS) depicted in the 1995 plan, reclamation of the site in accordance with the approved plan could not currently be achieved without the backfilling of the over-excavated areas. Approximately 97,000 cubic yards of material would have to be placed in the over-excavated area to create the approved FRS should the mine close today. The need for grading work (in this case, the placement of fill) is a key factor in establishing the Financial Assurance that must be currently held by the County and State to ensure reclamation of the site in accordance with the approved Reclamation Plan.

The proposed RPA (Exhibit 3) would allow the existing ground surface in the over-excavated area to constitute a part of the FRS. This would eliminate the need to place 97,000 cubic yards of fill to achieve the currently-required FRS and the requirement for the County and State to hold a Financial Assurance to account for the cost of this fill placement.

The proposed project does not include any other substantial changes in the reclamation requirements to be applied to the mined lands at the subject facility. No changes in the operational limitations established by Conditional Use Permit (CUP) PL15-0118 are proposed or would be authorized by the requested RPA.

After a couple of iterations of interagency reviews and comments, the proposed RPA was found to be consistent with the requirements of the Surface Mining and Reclamation Act by the California Division of Mine Reclamation in February of 2021.

B. SCOPE OF THE HEARING

Surface Mining and Reclamation Act (SMARA) Compliance:

Section 2770 of the Public Resources Code (PRC) mandates that a permit to operate must be obtained, a reclamation plan prepared in accordance with SMARA must be approved, and a financial assurance must be posted with the Lead Agency and State in order to operate a mining facility. The operator of the Ojai Quarry is currently in compliance with these requirements.

A Reclamation Plan is not a local land use permit granted by the County of Ventura. It does not include conditions of approval. It is a mandatory plan required by State law to be prepared for each surface mining facility. Although it must include an estimated closure date, a Reclamation Plan does not “expire” and remains in effect until a mining site is reclaimed and the financial assurance released by concurrent action of the County and State.

The proposed project is limited to amendments of the approved Reclamation Plan for this facility. No changes in the operating permit (CUP PL15-0118) are proposed. The proposed RPA would revise the geometry of the FRS and amend the reclamation requirements of the area of the mining facility currently subject to the 1995 approved Reclamation Plan in accordance with SMARA standards. A revised financial assurance would be posted that reflects the proposed RPA, if approved.

In accordance with PRC 2770, a proposed Reclamation Plan that substantially meets SMARA standards must be approved by the Lead Agency, or the State Mining and Geology Board on appeal. Thus, the consideration of the RPA by the Planning Commission is limited to whether the RPA satisfies the standards of SMARA and is in compliance with the reclamation regulations (CCR 3500 et.seq.) adopted by the State Mining and Geology Board.

Consideration of the appeal of the Planning Director decision:

Following the May 27, 2021 public hearing, the Planning Director approved the proposed RPA. This decision was appealed to your Commission by Michael Shapiro representing the Ojai Stop the Trucks Coalition, the Los Padres Forest Watch, and the Environmental Coalition (collectively, “Appellant”).

The proposed RPA comes before your Commission for a hearing *de novo*, or anew. This means your Commission is required to conduct a hearing on the matter just as if the matter came to your Commission in the first instance. To avoid repetition, the factual record assembled by the Planning Director is made a part of the record, and your Commission should consider it. In addition to the factual record assembled by the Planning Director, your Commission must allow new evidence and argument to be presented at the *de novo* hearing, in accordance with the administrative rules for land use hearings adopted by the Board of Supervisors.

As indicated above, a Lead Agency (in this case, the County) is obligated to approve a Reclamation Plan found consistent with SMARA standards. Thus, the key question before your Commission is whether or not the RPA is prepared in accordance with SMARA standards.

The Ojai Quarry currently operates under the terms and conditions of CUP PL15-0118 as granted by the Board of Supervisors in 2017. No aspect of this permit is subject to appeal and before your Commission. The current Reclamation Plan for this mining facility was approved by the County in 2012. Should your Commission decline to approve the proposed RPA, the 2012 approved Reclamation Plan would remain in effect.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

A full discussion of compliance with CEQA is provided in Section C of the Planning Director staff report (Exhibit 9). This discussion concludes that an addendum to the 1995 certified Environmental Impact Report (EIR) satisfies the environmental review requirements of CEQA. The proposed addendum is attached as Exhibit 4; the 1995 EIR is attached as Exhibit 7.

D. CONSISTENCY WITH THE GENERAL PLAN

The consistency of the proposed RPA with the 2040 General Plan is discussed in Section D of the Planning Director staff report (Exhibit 9). This section concludes that the proposed RPA is consistent with all applicable General Plan policies.

E. RECLAMATION PLAN FINDINGS AND SUPPORTING EVIDENCE

The ability of County decision makers to make the required findings to approve a Reclamation Plan are evaluated in Section E of the Planning Director staff report (Exhibit 9). This is further elaborated upon in the text of the RPA (Exhibit 3). This section concludes that the required findings can be made to approve the proposed RPA.

F. ZONING ORDINANCE COMPLIANCE

The proposed RPA is subject to the special use standards set forth in Section 8107-9.6 of the NCZO. The conformance of the RPA with the applicable standards is evaluated in Section F of the Planning Director staff report. This section of the report concludes that the proposed RPA is in compliance with all applicable regulations.

G. APPELLANT'S GROUNDS OF APPEAL

On June 30, 2021, the Appellant filed a timely appeal of the Planning Director's decision to approve the proposed RPA. The specific grounds of appeal cited by the Appellant are listed below along with a response prepared by County staff.

1. Appellant's Ground of Appeal No. 1:

"The County's decision was issued erroneously because there are ongoing violations of permit conditions pertaining to landscaping and viewshed protections along Highway 33, a National Forest Scenic Byway."

Staff Response: A Notice of Violation regarding landscaping issues has not been issued by the County of Ventura to the operator of the Ojai Quarry. Planning Division staff continues to work with the operator to maintain compliance with the landscaping requirements imposed by the Board of Supervisors with the granting of CUP PL15-0118 in 2017. There are currently no outstanding violations of CUP PL15-0118.

Section 8111-2.2.f of the Non-Coastal Zoning Ordinance (NCZO) states:

*No application request for a new **entitlement** or time extension of an existing entitlement whose initial term has expired shall be accepted if a violation of Chapter 1 or Chapter 2 exists on the lot, unless the acceptance of the application is necessary to abate the existing violation. [emphasis added]*

This Section of the NCZO generally prohibits the processing and approval of an entitlement (i.e. a permit) request on a property for which a violation of County ordinance has been identified. As stated above, a Reclamation Plan is not a local land use entitlement or permit granted by the County of Ventura. It does not include conditions of approval. It is a mandatory plan required by State law to be prepared for each surface mining facility. Thus, even if a violation of CUP conditions had been identified on the

subject site, the processing of the RPA would proceed. The issue before your Commission is whether or not the proposed RPA was prepared in accordance with SMARA standards.

Based on the above discussion, staff determined this ground of appeal lacks merit.

2. Appellant's Ground of Appeal No. 2:

"Furthermore, the decision was not consistent with the California Environmental Quality Act as a subsequent EIR should have been prepared instead of a mere addendum."

Staff Response: In order for a subsequent EIR to be prepared, substantial evidence of a potentially significant impact not previously identified in the certified EIR must be identified. Substantial evidence is defined in Section 15064(F)(5) of the CEQA Guidelines as follows:

Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.

The statement by the Appellant that a subsequent EIR should be prepared is made without evidence or analysis. The Appellant does not provide or otherwise identify any substantial evidence that the proposed RPA will result in a potentially significant environmental impact.

As discussed in the Planning Director staff report (Exhibit 9) and in the EIR addendum (Exhibit 4), the proposed RPA would replace the current approved Reclamation Plan. The only substantial change in site reclamation that would be allowed under the RPA is a change in the configuration of the FRS for the Ojai Quarry. Under the proposed RPA, the current over-excavated areas of the quarry would become part of the FRS and the need to hold a Financial Assurance to account for the placement of 97,000 cubic yards of fill to meet the pre-amendment FRS would be largely eliminated.

The proposed change in FRS configuration would not substantially alter the appearance of the Ojai Quarry (at the time of final reclamation) from public views along the adjacent State Route 33. This is because the over-excavated areas are not prominently visible from the highway under current conditions (see Figure 1 below) and would be further screened by required vegetation planted as part of reclamation of the site.

The other issue pertinent to the proposed RPA is slope stability. This issue is addressed by State-licensed geologists and engineers in reports included in the RPA (Exhibit 3). Based on the information provided in these reports, the current slopes proposed to remain after site reclamation meet established standards of stability (see Figure 2 below). The

slopes in question were created by mining excavation that occurred more than 30 years ago. No substantial slope failure has occurred over this period.



Figure 1 - View of Slope from State Route 33



Figure 2 - View of Slope from Onsite

In terms of biological resources, the proposed RPA continues to require revegetation of the slopes that would remain after mining excavation ceases. The over-excavated area would serve a beneficial post-mining purpose as a sediment trap to limit siltation of nearby Matilija Creek. Siltation would also be minimized by eliminating the grading activities that would be required to place the 97,000 cubic yards of fill to meet the pre-amendment FRS.

Given the above factors and the findings provided in the draft addendum (Exhibit 4), a subsequent EIR would not be appropriate for the proposed RPA. Therefore, staff determined this ground of appeal lacks merit.

H. PUBLIC COMMENTS

1. Comments Received Prior to the Planning Director Hearing

In the days before the May 27, 2021 Planning Director hearing, staff received five public comment letters:

- i. Letter from the City of Ojai by Lucas Seibert, Community Development Director
- ii. Letter from Pat Baggerly representing the Environmental Coalition
- iii. Letter from Michael Shapiro representing the Ojai Stop the Trucks Coalition
- iv. Email from James Hines representing the Sierra Club, Los Padres Chapter
- v. Email from Bill Miley

County staff prepared responses to the provided comments and posted the letters and responses as Exhibit 8 to the Planning Director staff report on the morning of the hearing (May 27, 2021). This document containing County staff's responses followed by the public comment letters is also attached to this Planning Commission staff report as Exhibit 8.

2. Comments Received after the Planning Director Hearing

Los Padres Forest Watch:

After the close of the public hearing on May 27, 2021, but before the Planning Director decision to approve the proposed RPA, a letter of comment dated May 27, 2021 was submitted by the Los Padres Forest Watch (LPFW). A marked version of this letter is provided in Exhibit 12.a; County staff's responses are provided in Exhibit 12.b.

City of Ojai:

The City of Ojai (City) submitted a July 1, 2021 letter (Exhibit 13.a) in support of the appeal of the Planning Director's decision. County staff's specific responses to the City's comments are provided in Exhibit 13.b.

I. PLANNING COMMISSION HEARING NOTICE

The Planning Division provided public notice regarding the Planning Commission hearing in accordance with the Government Code (Section 65091), Ventura County NCZO

(Section 8111-3.1). On October 6, 2021, the Planning Division mailed notice to owners of property within 300 feet of the property on which the project site is located. On October 7, 2021, Planning Division staff emailed the notice to all interested parties who provided their email addresses. On October 11, 2021, the Planning Division placed a legal ad in the *Ventura County Star*.

J. APPEAL FEES

Pursuant to the current Board of Supervisors-adopted Planning Division Fee Schedule, if any appeal is fully upheld, all fees paid by the appellant shall be refunded. If the appeal is upheld in part, the decision-making body hearing the appeal shall determine at the time the decision is rendered what portion of the appeal charges should be refunded to the appellant. Therefore, should your Commission uphold this appeal in part, your actions must include a determination regarding the appropriate refund to the appellant, if any.

K. APPELLANT'S RECOMMENDED ACTIONS:

The Appellant requests your Commission to:

1. Rescind the Planning Director's decision, and;
2. Direct that a subsequent EIR be prepared.

L. STAFF'S RECOMMENDED ACTIONS

Based upon the analysis and information provided above, Planning Division Staff recommends that the Planning Commission take the following actions:

1. **DENY** the appeal of the Planning Director's decision to approve the RPA (Case No. PL18-0136);
2. **CERTIFY** that your Commission has reviewed and considered this staff report and all exhibits hereto, including the 1995 EIR (Exhibit 7) and proposed addendum thereto (Exhibit 4), and has considered all comments received during the public comment process;
3. **FIND** that none of the conditions have occurred or exist as set forth in CEQA Guidelines section 15162 to require the preparation of a supplemental or subsequent EIR for the subject mining operation, and that the addendum to the certified 1995 EIR (Exhibit 4) satisfies the environmental review requirements of CEQA;
4. **FIND** that, as discussed in Section F of the Planning Director staff report (Exhibit 9), in accordance with NCZO section 8107-9.6.9, the RPA is consistent with and is hereby approved in accordance with the Ventura County Zoning Ordinance, as amended; the

provisions of SMARA (Public Resource Code (PRC) § 2710 et seq.), PRC Section 2207, and State regulation Title 14 California Code of Regulations (CCR) § 3500 et seq., as amended; the regulations, guidelines and other measures adopted by the State Mining and Geology Board; Ventura County Public Works Agency standards; any and all locally adopted resource management goals and policies; and compatible with the existing geological and topographical features of the area.

5. **APPROVE** the RPA (Exhibit 3) for the Ojai Quarry;
6. **DESIGNATE** the Planning Division as the custodian of the documents pertaining to the subject RPA and environmental document, and that the location of these documents shall be the Planning Division files.

County Counsel has reviewed this Staff Report.

If you have any questions concerning the information presented above, please contact Thomas Chaffee at (805) 654-2406 or Thomas.Chaffee@ventura.org.

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EXHIBITS

- Exhibit 2 -- Site Maps
- Exhibit 3a -- Proposed Reclamation Plan Amendment Text
- Exhibit 3b -- Proposed Reclamation Plan Amendment Site Plan
- Exhibit 3c -- Engineering Geologic Report
- Exhibit 3d -- Slope Stability Analysis
- Exhibit 3e -- Geologic Slope/Stability Review
- Exhibit 3f -- Stormwater Pollution Prevention Plan
- Exhibit 4 -- EIR Addendum

- Exhibit 5 – 1995 Reclamation Plan
- Exhibit 6 – 2012 Reclamation Plan Compliance Amendment
- Exhibit 7 – Final EIR Certified in 1995 (with 2012 addendum)
- Exhibit 8 – Public Comments and Staff Responses dated 05.27.21
- Exhibit 9 – Planning Director Hearing Staff Report without Attachments 05.27.21
- Exhibit 10 – Planning Director Approval Letter 06.25.21
- Exhibit 11 – Appeal Filed 6.30.21
- Exhibit 12.a – Los Padres Forest Watch Comment Letter (marked) dated 05.27.21
- Exhibit 12.b – County Staff Responses to Los Padres Forest Watch Comment Letter
- Exhibit 13.a – City of Ojai Comment Letter (marked) dated 07.01.21
- Exhibit 13.b – County Staff Responses to City of Ojai Letter