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REPLY TO:
☒ ROSEVILLE ☐ ONTARIO

October 18, 2021

Jim King, Chair, and Members of the
Ventura County Planning Commission
County of Ventura
800 S. Victoria Avenue
Ventura, CA 93009-1740

Re: October 22, 2021 Planning Commission Meeting, Agenda Item No. 7A
Appeal of Reclamation Plan Amendment and Addendums to EIR
Ojai Quarry, APNs 009-0-090-16 and 009-0-090-18
Case No. PL 18-013, Larry Mosler

Dear Chair King and Members of the Planning Commission:

This office represents the operator of the Ojai Quarry (“Quarry”), the applicant for the appealed project, an amendment to the Quarry’s reclamation plan. As the Staff Report thoroughly explains the grounds for denying the appeal, we will keep our written comments short, and will not repeat the grounds for denial that Staff have persuasively explained. We instead offer the following additional comments supporting denial of the Appellants’ claim that an Environmental Impact Report (“EIR”) is required under the California Environmental Quality Act (“CEQA”) for the minor reclamation-plan amendment proposed.

The Appellants’ position on CEQA is flawed in its understanding of what is properly before the Commission. Under CEQA, it is always necessary to first accurately identify the “project” that is proposed. (*Tuolumne Citizens for Responsible Growth, Inc. v. County of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) The CEQA Guidelines explain that a “project” includes “the whole of the action” presented for consideration. (14 Cal. Code Regs., § 15378.)

Here, the whole of the action is solely the approval of an amendment to the existing Quarry reclamation plan. The proposed amendment seeks only to amend this existing plan in a limited way. The amendment would do no more than remove the requirement to backfill an area of previous over-excavation. Effectively, this change would enable the Quarry operator, at the time it reclaims the Quarry, to utilize the existing surface of the affected area as part of its overall reclamation scheme (which, generally, would be to leave the property in an open-space condition). Engineering and geological analyses have amply determined this amendment can be made while ensuring compliance with Surface Mining and Reclamation Act (“SMARA”) performance standards.

Under CEQA, the limited nature of the proposal here requires that only the specific amendment to the reclamation plan be considered as the applicable project. This is confirmed by

two important court decisions. First, in *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, the court held that when an amendment to a reclamation plan is considered, CEQA review must be confined to impacts associated with only the reclamation of the mined land—that is, the specific act of restoring previously mined lands to a safe, stable, and natural condition. Stated otherwise, when a reclamation plan amendment is considered, the CEQA “project” is the reclamation plan amendment, not other aspects of the mining operation, such as would be regulated by a conditional use permit or air- or water-quality authorizations. (*Id.* at p. 1598.)

An earlier case that held the same is *City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47. There, a city had challenged approval of a reclamation plan on the ground a county had failed to consider the operational impacts of channel-skimming on the Russian River. The court rejected this challenge, finding the alleged impacts were outside the scope of “limited nature of the proceeding: whether [the operator’s] reclamation plan should be approved.” (*Id.* at p. 55.) The *El Dorado County Taxpayers* court specifically endorsed this reasoning from *City of Ukiah*.

Consistent with *El Dorado County Taxpayers* and *City of Ukiah*, the only matter before the Planning Commission is the limited reclamation-plan amendment proposed. The Appellants, in claiming that an EIR must be prepared, either misunderstand or misstate what the Quarry is requesting. The actual project being considered does not involve any proposal to amend, remove, or add any condition to the Quarry’s conditional use permit. Nor does the project at issue involve a request to amend any requirement of the Quarry reclamation plan other than the backfilling of the over-excavated area. Through the proposed amendment, the Quarry requests to amend only one part of its overall reclamation plan.

To repeat: the only proposal is to allow the Quarry to utilize the surface of the over-excavated area for reclamation, rather than having to backfill it. As the Staff Report and supporting agenda material plainly establish, nothing about this proposal creates any new environmental impact, or intensifies any existing impact, that would require preparation of a new or supplemental EIR. The Appellants’ position otherwise is incorrect and should be rejected.

We look forward to discussing the above points and the additional grounds for denial of the appeal at your meeting on October 22, 2021.

Sincerely,



Derek P. Cole
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