

Butte County Department of Development Services

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ADMINISTRATION * BUILDING * PLANNING

April 24, 2007

Butte County Board of Supervisors
25 County Center Drive
Oroville, CA 95965

Subject: Appeal Hearing - M&T Chico Ranch Mine
Final EIR Certification
Mining Permit
Reclamation Plan and Financial Assurance Estimate

Recommendation

Staff recommends a motion of intent to adopt the following:

1. Resolution Certifying the Final EIR, Adopting Findings of Fact and Adopting a Mitigation Monitoring Plan
2. Resolution approving the Mining Use Permit with Conditions of Approval, Reclamation Plan and Financial Assurance Estimate and a Statement of Overriding Considerations

(It is staff's recommendation that the Board first consider the Land Conservation Act Committee's recommendation of denial regarding immediate cancellation, then proceed with consideration of the mining project. The mining project contains a condition that the applicant obtains Board approval of the immediate cancellation request or a determination of compatibility.)

Summary

The Planning Commission certified the Final EIR and conditionally approved the mining permit, reclamation plan, financial assurance estimate and a statement of overriding considerations on February 22, 2007 with a 3-2 vote. Two appeal letters were filed regarding this action. County code provides a *de novo* hearing on such appeals. This means that the Board may consider all of the record, not just the content of the appeal letters.

The project is located in Williamson Act contracted land. The applicant filed a request for immediate cancellation on October 11, 2005. The Land Conservation Act Committee (LCA) made a recommendation of denial for the immediate cancellation. The LCA made a recommendation that only four of the required five findings can be made. Finding #5 requires that there is no proximate, non-contracted land which is both available and suitable for the proposed use or that development of the contracted land would provide more contiguous patterns of urban development (Government Code 51282(b)). While the immediate cancellation is part of the project, it is addressed in a separate staff report specific to the Williamson Act for the Board of Supervisors and reflects the LCA's recommendation.

Background

The project consists of a long-term, off-channel gravel mining operation proposal by Baldwin Contracting. The mining would take place on 193-acres of a 235-acre site over a 20 to 30-year period. Reclamation would occur incrementally and would consist of the creation of open-water wetland wildlife habitat and agricultural uses. The aggregate would be processed (washed and screened) on a 40-acre area at the site. The project is located on a portion of the M&T Chico Ranch approximately 1.5 miles east of the Sacramento River and approximately 5-miles southwest of the City of Chico in an area north of and adjacent to Ord Ferry Road, east of and partially adjacent to River Road. Access to the site would be provided by River Road. Assessor Parcel Numbers: 039-530-023 and 039-530-025 (formerly 039-530-019, 039-530-020).

This project has been determined to have significant environmental impacts associated with aesthetics and visual resources, agricultural land, air quality, archeological resources, drainage and flooding, geology, noise, traffic and circulation, water quality/groundwater, land use, biological resources, and cumulative impacts associated with air quality and traffic and circulation. Traffic and air quality impacts are considered significant and unavoidable even with mitigation and will require a statement of overriding considerations if the project is approved.

The project application was filed in 1996 and a previous version of a Draft EIR was circulated in 1998. Significant changes were required in that document and in the early 2000's another Draft EIR was circulated. This was presented to the Planning Commission for consideration of certification in 2003; however, the Department of Conservation had identified inconsistencies with the Williamson Act. The applicant chose to file a request for immediate cancellation for a portion of the lands that are in the Williamson Act contract. The Land Conservation Act

committee considered this request in February and April 2006. Their recommendation to the Board of Supervisors is that only four of the five required findings can be made.

Staff began the public hearing process again with the Planning Commission with a hearing on November 30, 2006. This item was continued to December 14, 2006 and January 25, 2007. At the January 25, 2007 hearing, the Commission made a motion of intent to certify the Final EIR and approve the project and continued the item to February 22, 2007. Findings were presented to the Planning Commission on February 22, 2007 for their consideration and the Planning Commission voted 3-2 to certify the Final EIR and approve the project with a statement of overriding considerations. Certifying the EIR means that the Planning Commission considered that the EIR met the requirements of CEQA and reflected the County's independent judgment.

The Planning Commission's action on use permits is subject to a 10-day appeal period. Two appeal letters were filed within the appeal period. Howard Ellman, an attorney representing Parrot Ranch/Llano Seco filed an appeal. Ron Jones also submitted an appeal letter with 13 signatures including property owners, Butte Environmental Council (BEC) and the Sacramento River Preservation Trust. Additionally, the applicant's attorney, Jeff Dorso of Deipenbrock-Harrison, has submitted a letter discussing the issues raised in the appeal letters (copy attached to this report). The appeal letters argue that the Planning Commission's action was incorrect. Issues raised in the appeal letters include problems with General Plan consistency, land use compatibility, prime farm land, flood impacts, ground water contamination, inadequate CEQA process, inadequate findings, failure to fully describe the environmental setting and surroundings and failure to demonstrate the need for aggregate. The appeal process is not limited to the issues raised in these letters because the appeal hearing is *de novo*.

The Planning Commission heard substantial testimony on the project and the Final EIR at its meetings in 2003 and at the recent meetings beginning on November 30, 2006. The Commission rendered its decision with some additions to the record. At the December 14, 2006 meeting, the Planning Commission directed staff to include clarifications (errata) to the text in the Final EIR. The errata includes a description of the Llano Seco Ranch as part of the Regional Environmental Overview and reference to the Williamson Act immediate cancellation request as part of the Detailed Project Description.

In addition to the information considered by the Planning Commission, the Board of Supervisors has the related Williamson Act recommendation from the Land Conservation Act Committee for its use in rendering a decision on the immediate cancellation. A separate staff report has been prepared for consideration. Consideration of immediate cancellation is considered a discretionary decision under CEQA. The Draft EIR evaluated the impacts associated with the mining activities at the proposed location and provided mitigation measures. It also discussed the Williamson Act. Once the applicant filed the request for immediate cancellation, staff determined that the Final EIR needed to discuss the additional action that would be required by the Board of Supervisors. This was included in the review of the Planning Commission for the public hearing series beginning with the November 30, 2006 hearing date.

Additional background discussion is provided in the attached Planning Commission staff reports. This includes the November 30, 2006, December 14, 2006, January 25, 2007 and February 22, 2007 reports.

General Plan Consistency and Land Use Compatibility

The appeal letters have challenged the consistency with the General Plan referencing a page in the Agricultural Element. General Plans are required to be vertically and horizontally consistent. The Land Use Element lists resource extraction and processing as a secondary use in the Orchard and Field Crop land use designation. The zoning ordinance lists mining as a conditionally permitted use. The Draft and Final EIR address General Plan consistency under CEQA. Conditionally permitted uses are those that may not be appropriate in all locations of the same zone and thus require discretionary review. The key part of the use permit process is to evaluate the site proposed in the use permit application and determine that with conditions, the location is appropriate and consistent with the General Plan. The criteria for granting use permits are contained in Section 24-45.10 of the Butte County Code. This section states: *The Planning Commission, on the basis of the evidence submitted at the hearing, may grant use permits required by the provisions of this chapter when it finds that the proposed uses of the property will not impair the integrity and character of the zone in which the land lies and that the use would not be unreasonably incompatible with, or injurious to, surrounding properties or detrimental to the health and general welfare of the persons residing or working in the neighborhood or to the general health, welfare and safety of the county.* The Planning Commission considered the record as a whole and determined that the project is consistent with the General Plan.

Mr. Jones' appeal letter references page AE-14 of the Agricultural Element with a quoted section from this page. This section appears in Program 3.6 which states: *Provide a definitive purpose section for the agricultural zones and a list of agricultural uses, including, but not limited to, crop production, orchards, aquaculture, animal husbandry, agricultural industries, and the like, which preserve, promote, and support the agricultural area.* The above program is a requirement to provide more definition to the agricultural uses in the agricultural zones of the County. This is not a statement or a restriction as to the activities that are conditionally permitted in the agricultural zones. Program 3.6 is listed under policies and Goal #3 of the Element: *Support the management of agricultural lands in an efficient, economical manner, with the minimal conflict from non-agricultural uses.*

Additional quotes were referenced from County Code. Below are those two quotes underlined in the full context of Section 13-101 of the Butte County Code.

Chapter 13 Surface Mining and Reclamation 13-101 Purpose and intent.

(a) The purpose of this article is to implement the provisions of the California Surface Mining and Reclamation Act of 1975 as amended (the "Act," Public Resources Code section 2710 et seq.).

(b) It is the purpose and intent of the board of supervisors to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(1) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land use.

(2) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range, and forage and aesthetic enjoyment.

(3) Residual hazards to the public health and safety are eliminated.

(4) The extraction of minerals is essential to the continued economic well-being of the county and to the needs of society, and that reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

(5) The reclamation of mined lands as provided in this article will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

(6) Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

(c) This article shall be reviewed annually and revised, as necessary, in order to ensure that it is in accordance with the state policy for mined lands reclamation and to encourage the mining industry of Butte County.

One of the purposes of a reclamation plan is to identify a proposed end use and to return the land to a condition that is appropriate for the proposed end use. The proposed end use of a lake with habitat does not conflict with section 13-101 of the Butte County Code.

Statement of Overriding Considerations

The Planning Commission's approval of the project required a statement of overriding considerations under CEQA. The EIR had identified impacts that cannot be reduced to a level of less than significant. These are listed in the Final EIR and the statement of overriding considerations. A summary listing of these impacts are as follows:

Impact 4.5.-5: Addition to Carbon Monoxide (CO) Hot Spots - Certain intersections in the vicinity of the Project will experience congestion under cumulative conditions.

Impact 4.6-4: Highway 32/West 5th Street Intersection - The proposed Project will add 10 or more trips per day to the intersection of State Highway 32/West 5th street. This intersection has been identified as a location having 4 or more accidents in a 12-month period over the last three years. This location also had more than one accident over a 12-month period, which involved heavy vehicles. This is considered a significant impact.

Impact 4.6-5: Park Avenue/East 20th Street/East Park Avenue - The proposed Project will exacerbate LOS F operating conditions on Park Avenue from East 20th Street to East Park Avenue under cumulative conditions.

Impact 4.6-6: East Park Avenue/Park Avenue/Highway 99 - The proposed Project will exacerbate LOS F operating conditions on East Park Avenue from Park Avenue to Highway 99 under cumulative conditions.

Impact 4.6-7: Bruce Road/Highway 32/Skyway - The proposed Project will exacerbate LOS E operating conditions on Bruce Road from Highway 32 to Skyway under cumulative conditions.

Impact 4.6-8: Baldwin Plant Driveway/Skyway - The proposed Project will exacerbate LOS F operating conditions in the a.m. peak hour and LOS D in the p.m. peak hour at the intersections of the Baldwin Plant driveway and Skyway under cumulative conditions.

Where an agency considers approving a project where the significant impacts will occur, it must identify social or economic benefits through a statement of overriding considerations. This statement identifies certain benefits that outweigh the impacts. The list is provided in the attached Planning Commission resolution and includes the following: Local source of aggregate, tax revenue, employment opportunities, development of an important mineral resource as designated by the State Geologist (MRZ-2), potential decrease in transport distance and related air quality, fuel usage and road miles traveled, creation of habitat, monitoring of ground water quality and a decreased reliance on in-stream mining. A Board of Supervisors resolution has also been prepared containing the same findings for a statement of overriding considerations.

Relationship to the Williamson Act Immediate Cancellation request

The Planning Commission has not been delegated the authority to review Williamson Act cancellation requests. The Land Conservation Act Committee, an advisory committee, serves in this capacity for the Board of Supervisors. Consideration of approval of the project also includes immediate cancellation from the Williamson Act as requested by the applicant. The project arrives at the Board from the Planning Commission and the Land Conservation Act Committee under separate reviews.

The Planning Commission was aware of the Land Conservation Act Committee's recommendation to the Board. Staff advised the Planning Commission that the authority for considering the immediate cancellation is held at the Board of Supervisors upon hearing the LCA's recommendation. If the Planning Commission's approval of the mining project had not been appealed, then the Board would have only heard the recommendation of the LCA considering the immediate cancellation request.

The project was conditioned at the Planning Commission level for compliance with the Williamson Act, either through immediate cancellation or a determination of compatibility. The LCA's recommendation is that the immediate cancellation request does not meet all of the required findings. Since the Planning Commission's approval has been appealed, staff coordinated both items to be considered by the Board at the same time. The immediate cancellation request is discussed in more detail in the Williamson Act staff report that accompanies this item.

If you have any questions, please do not hesitate to contact me at 530-538-6821 or Pete Calarco, Assistant Director at 530-538-2167.

Sincerely,

Tim Snellings, Director

Attachments:

Vicinity Map

Attachment A - Board Resolution Certifying EIR

Exhibit 1 – Impact Statement, Mitigation Measures and Findings of Fact

Exhibit 2 – Mitigation Monitoring Plan

Attachment B - Board Resolution Approving Project

Exhibit 1 – M&T Chico Ranch Mine Financial Assurance Cost Estimate

Exhibit 2 – Statement of Overriding Considerations

Exhibit 3 – Conditions of Approval

Table A – Public Works Fair Share Cost Estimates

Attachment C - Appeal Letters:

Howard Eilman (representing Parrot Ranch/Llano Seco Ranch)

Ron Jones (serving as the contact for 13 concern property owners/organizations)

Attachment D - Letter to the Board – Deipenbrock Harrison on behalf of Baldwin regarding the appeal letters

Attachment E - Planning Commission Staff Reports

November 30, 2006 and Minutes/Transcript

December 14, 2006 and Minutes/Transcript

January 25, 2007 and Minutes/Transcript

February 22, 2007 and Minutes

Attachment F – Planning Commission Resolutions (PC07-06 & PC07-07)

Draft EIR

Final EIR (includes additional Williamson Act discussion and Errata Additions)

Reclamation Plan