

January 12, 2015

Airlin Singewald
Department of Planning and Building
County of San Luis Obispo
976 Osos Street, Rm. 300
San Luis Obispo, CA 93408

Dear Mr. Singewald:

These comments are submitted by Hanson Aggregates (“Hanson”), the owner and operator of the Santa Margarita Quarry. This letter provides Hanson’s comments on the Draft Environmental Impact Report (“DEIR”) for Hanson’s proposed modifications to the Quarry’s reclamation plan and conditional use permit (the “project”).

Hanson would like to first express its gratitude to the Department of Planning and Building, its staff members and consultants for their efforts. Hanson recognizes the great deal of work and attention to detail that was required to prepare the DEIR, and appreciates the County’s professionalism throughout the process.

The DEIR performs admirably to describe most elements of this quarrying and reclamation project. There are, however, certain aspects of the DEIR which require clarification, which Hanson is uniquely able to provide. We are taking this opportunity to provide our formal comments on the DEIR so that this information is before the County.

We have organized our comments to follow the general order in which language and concepts are introduced in the DEIR.

ENVIRONMENTAL SETTING

Section 3.1.1 (CEQA and Case Law)

In this section, the DEIR suggests that CEQA requires analysis of the impacts of the *existing* quarry operations to the extent those impacts are carried further into the future by project approval: “Only those impacts associated with the quarry’s *extended lifetime* within the proposed expansion area and final reclamation...are evaluated.” Deeper in the document, in Sections 4.11 (noise), 4.14 (transportation) and 5 (cumulative impacts), the DEIR treats the prolongation of existing traffic and noise conditions as new impacts that individually or cumulatively warrant mitigation.

These sections, and the DEIR in general, must recognize that the continuation of baseline conditions later into the future does not create a mitigable impact under CEQA. CEQA defines the baseline as the “physical environmental conditions” when the environmental analysis begins.

(Guidelines, § 15125, subd. (a).) Legally, it is well established that where an existing operation is being re-permitted, the baseline includes all of the environmental impacts (traffic, noise, etc.) that are currently generated by the operation, and prolonging such activities does not create any cognizable impact. (See, *Citizens for East Shore Parks v. California State Lands Commission* (2011) 202 Cal.App.4th 549, 561; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242.)

Hanson's project is a fairly straightforward case. Project approval would lengthen the Quarry's lifespan, but would not authorize any additional traffic or traffic-related noise along El Camino Real or SR 58. These baseline conditions – the “physical environmental conditions” in the vicinity – will be unchanged as a consequence of approval. (See, Guidelines, § 15125, subd. (a).) The DEIR states accurately at several points that the project will not change the volume or intensity of quarrying operations, but it must be clearer that prolonging the existing traffic and noise does not generate new impacts that require mitigation under CEQA.

AIR QUALITY

Section 4.4.5 (Dust Control Mitigation)

The dust control mitigation proposed in this section does not appear supported by any project-related impacts. The DEIR recognizes that quarrying-related air emissions are part of the baseline, and that the project will not introduce any new stationary emission sources (p. 4.4-10.) The DEIR also states that PM-10 emissions will potentially fall with the project because Hanson will introduce a conveyor to replace off-road truck trips (p. 4.4-10). Despite recognizing that the project involves “no new operational emissions” (p. 4.4-11), the DEIR proposes dust controls to mitigate for PM-10 impacts. As the project will not increase PM-10, this mitigation cannot by definition offset any project impacts.

Rather, the dust control plan appears to be intended to address the Quarry's *existing* operations. The DEIR (at p. 4.4-11, ¶ 2) identifies the current Quarry PM-10 output of 63.3 tons per year, and states: “[b]ecause these emissions exceed [APCD's thresholds] the impact of PM10 relative to conditions existing without the Proposed Project would be significant” (p.4.4-11, ¶ 2). CEQA is not designed to mitigate the effects of existing conditions. (See, *East Shore Parks*, 202 Cal.App.4th at p. 561; see also, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278-1281; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 142, 145; CEQA Guidelines, § 15126.4, subd. (a)(3)-(4) [requiring nexus between mitigation and project impacts].)

Currently, Hanson uses a range of dust controls as part of the Quarry's existing operations, and as required by its APCD air emissions permit. These dust controls include road watering, speed limits, and many of the same requirements in the proposed mitigation measure. Hanson does not object to the County confirming, in any conditions of approval, that Hanson is and will remain subject to specified PM-10 control measures. However, new dust controls are not independently warranted by the CEQA analysis, and the EIR should be modified to reflect this.

BIOLOGICAL RESOURCES

Section 4.6.5

Western Spadefoot

The DEIR requires a clarification on page 4.6-57. The fourth paragraph lists special status species that could occur in the RPA footprint and includes the western spadefoot. Western spadefoot is limited to vernal pool habitats, which are not present in the RPA footprint; therefore this species is not likely to occur.

California red-legged frog

Mitigation measure BIO-3.6 proposes protocol-level surveys for CRLF that are unwarranted, due to the lack of suitable CRLF habitat and because protocol-level surveys are not adaptable to the non-aquatic habitats present in the project area. WRA's biologists determined, through field assessments, that the project area has no suitable CRLF habitat due to a lack of aquatic resources and steep upland terrain. (WRA, 2012c.) While a small area of critical habitat has been mapped on the ridge in the northwest RPA Area, the area is dense chamise and northern mixed chapparal habitat that is unlikely to support CRLF, and after early coordination with USFWS, the USFWS concurred that mitigation was not necessary. (WRA, 2012c, 2013b.) Also, the existing protocol guidance (August 2005) indicates that protocol-level surveys are not adaptable to upland habitat: "[f]or sites with no suitable aquatic breeding habitat, but where suitable upland dispersal habitat exists, it is difficult to support a negative finding with the results of any survey guidance. Therefore, this Guidance focuses on site assessments and surveys conducted in and around aquatic and riparian habitat." Although the DEIR refers to the presence of CRLF in the Trout Creek watershed to the southwest, that watershed consists of perennial ponds and vernal pool habitats not present in the RPA Area. Given that conditions in the RPA Area are unlikely to support CRLF, the other pre-disturbance surveys in the DEIR (BIO-3.1, 3.2, 3.3, and 3.5) are adequate to protect against the low risk of CRLF presence.

Salinas River Diversions

The DEIR proposes a mitigation measure based upon the mistaken assumption that Hanson diverts water from the Salinas River for dust control. BIO-3.2(g) (page 4.6-65) proposes to bar diversions from the river to mitigate for an approximately three acre-foot increase in water use associated with the project: "Salinas River water use would increase by three acre-feet during a maximum production year under the Proposed Project..." (p. 4.6-57). These statements conflict with Section 4.15 (Water Quality and Supply), however, where the DEIR correctly states that the water will be drawn from the existing pit impoundment, not the river:

Under the proposed expansion, at full development, dust suppression water needs would increase by 2.8 afy... The proposed increase in dust suppression water use (2 to 3 afy) for expanded quarry operation would be provided by water collected in the existing impoundment... The hydrogeologic assessment prepared for the Proposed Project indicates that the water collected in the impoundment would be adequate to supply the 2 to 3 afy increase for dust suppression water needs (Golder Associates, 2012). Since the quarry's impoundment water supply would be able to adequately accommodate increased water supply demand, no additional extraction from the Salinas River would be required and the increase

in water use related to dust suppression would be less than significant.

(DEIR, p. 4.15-15.)

As such, part (g) of BIO-3.2 appears to be in error, is in conflict with Section 4.15, and is otherwise not supported by the DEIR analysis. Hanson requests that the County remove this element of the mitigation measure in the Final EIR.

Other Mitigation Measures

Mitigation measure BIO-3.3, at the bottom of Page 4.6-65, states that any listed plants shall be flagged for avoidance; this should be revised to state that listed plants shall be flagged for avoidance if agency authorization for removal and relocation has not been obtained.

Mitigation measure BIO-3.6, bullet one (on p. 4.6-68), states a full-time biological monitor will monitor vegetation clearing and initial site grading within occupied CRLF habitat. Because no aquatic habitat exists, occupancy cannot be established using protocol-level surveys. This measure should be revised to state if CRLF are detected during clearance surveys and it is deemed safe to do so, then a biological monitor may be required to be present during clearing activities.

NOISE AND VIBRATION

Section 4.11.5 (Traffic Noise)

The DEIR misstates the noise impacts associated with the project. The DEIR assumes that traffic-related noise along local roadway segments will increase from implementation of the project. Specifically, the DEIR states that some road segments may experience an increase of up to three decibels, and that because these roadways already exceed general plan noise limits, the increase would be significant and unavoidable. (DEIR, p. 4.11-13.)

The DEIR's conclusion is fundamentally inconsistent with other information in the DEIR. Traffic will not increase as a result of project approval, as the DEIR recognizes in many passages. (DEIR, pp. 2-10, 4.4-11, 4.4-13, 4.5-7, 4.10-8, 4.14-2, 4.14-8, 4.14-9.) Quarry-related traffic is limited to 294 two-way truck trips daily, and fluctuates within such limit based upon the market demand for quarried material. (DEIR, pp. 2-2, 2-8.) The project would extend mining to new areas, but not change throughput or authorize any increase in the number of trucks that visit the Quarry. Because project approval would not increase the number of trucks on local roads, it would not cause an increase in traffic-related noise.

The DEIR's conclusion appears to result, at least in part, from a misinterpretation of information in a noise study by Bollard Acoustical Consultants. The Bollard report recognized that traffic noise may increase by three decibels between the average and peak traffic conditions. Bollard presented this data in Table 10 of its report. Both average and peak traffic are part of the current setting, however. Moreover, peak traffic is reflected within the average which forms the baseline. (DEIR, pp. 2-2, 3-1, 4.11-5, 4.14-8-9.) Bollard concluded that the project would not cause any significant noise impacts.

The DEIR departed from Bollard's analysis, however, by inaccurately describing the three-decibel difference in traffic noise as a consequence of the project rather than as an existing condition. Table 4.11-8 in the DEIR describes the variance as the "[m]aximum increase in noise

levels *due to proposed project.*” (DEIR, pp. 4.11-13-14, italics added.) In this manner, the DEIR conveys the mistaken impression that traffic noise will increase due to project approval, when in fact no additional Quarry traffic would be either authorized or a foreseeable consequence of the project’s approval.

Hanson recommends that the County revise the DEIR discussion in order to recognize that traffic-related noise will not increase as a consequence of project approval. This change also would need to be reflected in other sections of the DEIR which incorporate the current analysis, including Section 5 (cumulative impacts) and Section 6 (alternatives).

Section 4.11.5 (Major Domo Lot Line Adjustment Project)

Hanson also believes the DEIR requires some clarification concerning the project’s relationship with the nearby Major Domo Lot Line Adjustment project. The DEIR reasoned that Hanson’s project could have a significant noise impact upon neighboring land, if noise exceeded the 50 decibel limit established by the Noise Element Policy 3.3.5(b), should the Major Domo project eventually result in new development.

Policy 3.3.5(b) applies, however, only where pre-existing noise sources undergo modifications that increase noise, and such an increase exceeds 50 decibels to vacant land. Here, project approval will not increase traffic noise along local roads because, as explained above, no additional traffic would be authorized by the project. Moreover, to the extent that future mining in the extension area shifts the operational noise sources, Bollard’s study showed that any noise increases would be small and will remain significantly below the 50-decibel threshold set by the general plan. (See, Bollard, Table 9.) Thus, the EIR should clarify that Hanson’s project does not pose any significant impacts with regard to the Major Domo project.

In addition, Hanson recently reduced the speed limit on the main access road which enters the Quarry site from El Camino Real. Hanson has reduced the speed limit along this road from 44 MPH to 35 MPH. This change can be expected to reduce road noise for any current or future receptors in proximity to this road.

RECREATION

Section 4.13.5 (Salinas River Trail)

The DEIR proposes mitigation in the form of a trail dedication, to address possible impacts to recreational opportunities. The DEIR does not identify a location or configuration for such a trail, leaving it to future determination.

The rationale for this mitigation is hard to follow. The DEIR correctly states that no recreational facilities exist at the project site, and that no existing resources would be affected by the project. (DEIR, p. 4.13-5.) The DEIR also states that no recreational trails are currently planned for the site, and the nearest segment of the (proposed) Salinas River Trail is 1.3 miles away. (Id.) Thus, this mitigation measure would not compensate for any loss of existing or planned recreational facilities.

The DEIR goes on to suggest that the project site, or adjacent lands under the same ownership, *could* be designated for a trail in the future. (DEIR, p. 4.13-5.) In addition, the DEIR states that any commuter bicyclists traveling along Highway 58 may perceive a lesser experience due to heavy truck traffic (although such traffic is baseline and not a consequence of the project).

But these scenarios are speculative at best, and difficult to link to any foreseeable impacts of the project. They do not appear to meet the minimum requirements (proportionality, nexus, adopted plans) listed under Policy 3.13 of the Parks and Recreation Element, which the DEIR describes at page 4.13-2.

In sum, the DEIR does not appear to identify any impacts to recreation warranting the dedication of land as proposed in REC-1. Nonetheless, Hanson is willing to consider dedicating such a trail easement at a future date, as part of the final reclamation process for the Quarry site, if the conditions of approval make clear that no dedication or trail development may occur until all mining and reclamation activities have concluded. This avoids the public safety risks that would arise if the public was allowed in proximity with activities at the site.

TRANSPORTATION AND CIRCULATION

Section 4.14.5 (Traffic Mitigations)

Hanson believes that the DEIR accurately describes the baseline traffic conditions generated by current quarry operations, but proceeds to improperly assign impacts and mitigation measures on the basis that the project would extend quarrying operations further into the future. As explained above, prolonging the baseline conditions does not create impacts that are cognizable under CEQA.

The DEIR begins its traffic analysis by correctly recognizing that the Quarry already generates truck traffic, and that the Quarry's baseline traffic volumes will not increase as a result of project approval:

Traffic volumes from existing quarry operations, under both normal and peak operating conditions, are part of the baseline traffic conditions discussed below for study area roadways. As discussed in EIR Section 2.0 (Project Description), the Project would not generate new traffic volumes over existing conditions, but instead extends daily baseline trip generations by continuing quarry operations.

(DEIR, p. 4.14-2.) The DEIR makes a nearly identical statement at page 4.14-8, and on page 4.14-9 the DEIR explains that "average and peak daily traffic from current operations represents that generated by the Proposed Project."

The DEIR also explains that the existing traffic is currently accommodated by local roadways. All local roadways currently operate at acceptable levels of service with the existing Quarry traffic, and the project would not diminish the Level of Service (LOS) to unacceptable levels (pp. 4.14-9-10). Similarly, the DEIR states that traffic volumes approaching the Quarry access road "do not warrant...a separate left turn lane. (DEIR, p. 4.14-15.)

The DEIR nonetheless proceeds to describe three different mitigation measures (TR-1, TR-2 and TR-3) for traffic impacts. The first would require Hanson to pay for improvements to Santa Margarita-area intersections; the second would require road improvements at the Quarry's access road intersection; and the third would require Hanson to monitor and/or pay for Highway 58 damage. The measures are in general not well defined, leaving the scope and terms for later determination. The County also appears to have no road improvement or development impact fee assessment for this area, apart from County-wide fees.

The premise for each mitigation measure is that the project will lengthen the Quarry's operating life. The DEIR specifically relies upon the Quarry's "continuing" effect on local roads as the basis for each mitigation measure. In essence, the DEIR proposes to require mitigation for continuing baseline conditions. The analysis, however, is not supported by CEQA. As explained above, CEQA is not designed to mitigate the existing, baseline conditions. (*East Shore Parks*, at 561.) Because Quarry traffic is part of the baseline and will not increase due to project approval, there are no traffic impacts that warrant mitigation. The same analysis applies with respect to the supposed Highway 58 Bicycle Level of Service (BLOS) impacts described on pages 4.14-18-19. Hanson submits that any traffic (or BLOS) impacts should be designated as Class III, and the EIR revised accordingly.

Hanson appreciates the County's governmental interest in ensuring that local roadways are maintained. Hanson would support efforts by the County to establish an appropriate program to ensure this need is met. Hanson also is open to discussing improvements at the intersection of the Quarry's access road and El Camino Real to address any specific concerns within the context of the conditions of approval. This issue cannot, however, be addressed as part of the CEQA review under these circumstances.

CUMULATIVE EFFECTS

Section 5.3.10 (Noise and Vibration)

The cumulative impacts discussion concerning noise should be revised to match any revisions to the project-level noise analysis in Section 4.11. The cumulative impacts discussion incorporates the same mistaken assumption that traffic-related noise will increase as a result of project approval. Both sections should be revised.

Section 5.3.13 (Transportation and Circulation)

As with noise, the cumulative impacts discussion of traffic should be revised to be consistent with any changes made to Section 4.14. The cumulative analysis adopts the identical approach taken in Section 4.14, and treats the continuation of the baseline traffic conditions as an impact that warrants mitigation. This analysis should be corrected as explained above.

COMPARISON OF ALTERNATIVES

Section 6.1.2 (Significant Effects)

Hanson comments that this section will need to be revised to track any changes to the main noise analysis in Section 4.11. The discussion on pages 6-2 and 6-3 incorporates the same assumptions that traffic-related noise will increase with the project, and will be significant and unavoidable. Once these assumptions are corrected, the alternatives section should be revised for consistency.

Section 6.3 (Alternative 2)

The discussion of the Enhanced Reclamation Alternative (Alternative 2) on page 6-7 proposes changes to the mine design that Hanson submits are infeasible and do not merit further consideration. Alternative 2 involves a significant redesign of the quarry pit to provide for wildlife habitat. The alternative would flatten the pit slopes to give wildlife better access to the pit floor.

Alternative 2 also proposes the creation of seasonal wetland habitat on the pit floor by adding topsoil and wetland revegetation to this area.

A number of problems exist with this proposal. First, the DEIR acknowledges that Alternative 2 would not compensate for any project impacts to wildlife or habitat: “it would not reduce or eliminate any of the impacts associated with the Proposed Project.” (DEIR, p. 6-8.) In this regard, CEQA limits its consideration of alternatives to those which “substantially lessen the significant environmental effects” of a project. (Pub. Resources Code, § 21002.) “[A]lternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project.” (CEQA Guidelines, § 15126.6(f).) Where, as in this case, an alternative does not compensate for any project impacts, it should not be considered.

Second, Alternative 2 proposes activities that may not be technologically possible. Alternatives must be technologically feasible. (Pub. Resources Code, §§ 21002, 21061.1; CEQA Guidelines, § 15364.) Because the pit does not receive groundwater, the alternative assumes that rainfall will be sufficient to establish and sustain wetland vegetation. As described in the Golder Associates 2012 report, however, rainfall that accumulates seasonally is expected to evaporate in the dry season in average rainfall years. Wetlands vegetation such as willow trees, cottonwoods, and cattails are water-intensive and usually require either a groundwater connection or perennial water source that is not available here. As such, a sustained wetlands system does not appear to be possible. Hanson further notes that Alternative 2 calls for Hanson to track-walk bulldozers on bench faces of 60-70 degrees and to apply growth medium on the slope faces. (DEIR, p. 6-7.) In Hanson’s experience it is not safe or operationally possible to track-walk a bulldozer on slopes at such angles. Hanson’s experience also indicates that growth medium will not adhere to a slope of 60 degree or more due to the slick nature of the native surface.

Third, Alternative 2 functionally amounts to a redesign of Hanson’s quarry operation. The alternative involves a “reduction of the northeast and east sides of the excavation pit to a slope of 45 degrees and the northwest and west slopes to 55 degrees” to improve wildlife access. (DEIR, p. 6-7.) Hanson’s engineers have preliminarily considered the implications of this proposal. In short, changing the bench face angle requires either: (1) moving the crest of the pit outward (i.e. expanding the footprint of the project and affecting ridgelines) to maintain the same volume of available reserves, or (2) moving the toe of the highwall(s) in at the pit bottom, which will significantly reduce the volume of material that can be mined, and reduce the pit floor size (i.e., where the alternative creates wetland habitat). In short, the practical result of the proposal is either to increase the impacts or reduce the benefits of the project by curtailing Hanson’s ability to mine the site.

Finally, the proposal to apply a stain upon reclaimed rock faces visible from SR 58 is inconsistent with the DEIR’s conclusion that the project will have no visual impacts. The DEIR states in Section 4.2 (pp. 4.2-18-19) that the project would have a “beneficial effect as compared to existing conditions” because implementation will reduce the visibility of mined lands from SR 58. Thus, impacts are less than significant impact or nonexistent with respect to views and scenic vistas (p. 4.2-18-19). In the absence of visual impacts, the analysis does not warrant alternatives designed to minimize such impacts. (See, CEQA Guidelines, § 15126.6(f) [“alternatives shall be limited to ones that would avoid or substantially lessen...significant effects”].) Similarly, there is no basis for the statement on page 6-20 which assumes “impacts associated with aesthetics and visual resources.” The alternatives discussion should be revised to track the impacts analysis with respect to visual impacts.

OTHER MISCELLANEOUS CORRECTIONS

On page ES-5, first commenter summary, the second sentence refers to 294 truck trips “annually,” and this should be changed to “daily.”

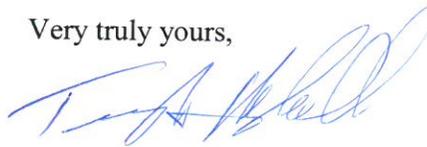
On page ES-6, last paragraph, the DEIR refers to “64 years (29 years of mining plus five years of final reclamation).” This should be corrected to “64 years (59 years of mining plus five years of final reclamation).”

On page 4.5-7, first paragraph, the DEIR states that the project would “extend” mining operations by 59 years. In fact, 59 years describes the entire projected lifespan of the mining operation within the existing and proposed RPA areas. Similar clarifications are needed at page 4.5-8, second full paragraph; on page 4.6-43, second full paragraph; and twice on page 4.14-15, in each of the last two paragraphs.

CONCLUSION

Hanson appreciates the County’s work in preparing the Draft Environmental Impact Report. We look forward to continuing to work with staff and its consultants to finalize the EIR and CEQA process, and we will be prepared to answer questions and concerns as needed during the Planning Commission’s hearing on the project.

Very truly yours,



Terry Marshall
Hanson Aggregates

cc:

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Cindy Chambers – Wallace Group