



February 4, 2015

San Luis Obispo County Planning Commissioners
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

RE: 2/5/15 Continuation of Oster/Las Pilitas/Hwy. 58 Quarry Conditional Use Permit and Reclamation Plan (DRC2009-00025)

Margarita Proud is a non-profit community organization that represents a diverse group of San Luis Obispo county residents committed to the safety, livability and character of Santa Margarita, CA and surrounding areas. We support responsible planning principles that result in economic and aesthetic well being for the entire community.

As the hearing to consider this large scale industrial proposal that significantly impacts it's immediate surroundings and the entire community of Santa Margarita continues, we believe our prior submittals regarding this matter (December 9, 2014 and January 7, 2015) remain apposite. In light of the project applicant's substantial efforts to obfuscate and misrepresent the overwhelming factual evidence supporting staff's recommendation for denial, we encourage you to review our prior submittals and to address correspondence placed into the record by the project applicant:

Re: Treder Land Law January 7, 2014 submittal:

A. Legal Framework Applicable to Mining Projects in Classified/Designated Areas

Regarding the State Mining and Geology Board's (SMGB) requirement to adopt a local Mineral Resources Management Plan (MRMP):

The applicant discusses the requirement that local agencies adopt a Mineral Resources Management Plan (MRMP) and the County's General Plan policies, but omits any mention of

Specific Plans for aggregate mining in the San Luis Obispo-Santa Barbara P-C Region. The following is found on pg. 22 of Special Report-215, Update of Mineral Land Classification: Concrete Aggregate in the San Luis Obispo-Santa Barbara Production-Consumption Region, California (2011):

SPECIFIC PLANS IN THE SAN LUIS OBISPO-SANTA BARBARA P-C REGION

San Luis Obispo and Santa Barbara counties have taken an important step in their planning process that is intended to ensure future access to a large part of their concrete-grade aggregate resources. Both counties have adopted Specific Plans designed to serve as the primary land use and regulatory guides for mining and reclamation in the Plan areas. The overall goals these plans are to provide for the long term production and conservation of aggregate resources in a manner compatible with existing surrounding land use, while minimizing adverse impacts to the environment. A 12 mile section of the Santa Maria and Sisquoc rivers is covered by a Specific Plan (Santa Barbara County, 1997; and San Luis Obispo County, 1998) adopted by both counties, and the Rocky Canyon Quarry area is included in a Specific Plan (San Luis Obispo County, 1998) adopted by San Luis Obispo County.

The plans set forth goals, objectives, and policies for resource utilization and protection, and environmental protection, as well as operation, reclamation, and monitoring criteria. All actions taken by the regulatory agencies involving plan review and approval for mining and reclamation within the Plan area must be consistent with these Plans. These Specific Plans represent significant additions to the mineral management policies of the two counties, as they include parts of the two largest PCC-grade aggregate resource areas in the P-C Region.¹

This discussion of mining and reclamation plans in the Santa Barbara-San Luis Obispo PC region demonstrates that there will be no shortage of aggregate in this region for the foreseeable future. These proven reserves are more than adequate for meeting the future needs of the County for the foreseeable future.

The proposed Las Pilitas quarry will be unable to contribute significantly to any future need for PCC-grade aggregate in the region for the following additional reasons:

- As the Project Description has been modified to eliminate wet processing (the washing of aggregate), this project will not be producing Portland Cement Concrete-Grade Aggregate (PCC-grade).
- This Project is within the same granitic deposit as both Hanson and Rocky Canyon, but the elimination of wet processing diminishes it's ability to produce the range of products Hanson and Rocky Canyon produce.
- Wet processing (washing of aggregate) would require significant water consumption and was not considered in the environmental analysis (FEIR).

¹ CGS, SR-215 (2011), pg. 22

Regarding general State Mining and Reclamation Act (SMARA) comments:

The applicant claims “Under SMARA, local land use decisions involving areas designated as being of regional or statewide significance must be made in accordance with the lead agency’s mineral resource management policies and must also, in balancing mineral values against alternative land uses, consider the importance of the minerals to their market region or the state as a whole, and not just their importance to the local jurisdiction.” This statement omits critical information:

- The SMGB has determined the aggregate to be of regional and not statewide significance; therefore there is no evidence to suggest the minerals deposits are important to the “state as a whole”.
- As stated above, San Luis Obispo and Santa Barbara counties have planned for and considered the regional market needs as evidenced by the adoption of the Specific Plans reference above.
- Public Resource Code § 2711(a), the section of SMARA on which the applicant focuses, is not the only place in SMARA where the intent of the Legislature is expressed. When viewed objectively in its entirety, SMARA acknowledges that the need for aggregate must be balanced against the adverse environmental effects and hazards that extractions of aggregate poses to public health and safety.
- In his Response to Comments for the San Luis Obispo-Santa Barbara Production-Consumption Region Designation Regulation Adoption Consideration, The Executive Officer of the SMGB (Mr. Stephen Testa) (August 14, 2014) emphasized that the ultimate authority to evaluate mining applications within the designated areas in light of each proposal’s potential local impacts including issues related to air, traffic, noise and buffer/setbacks:

“The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated, will be incorporated in the lead agency’s General Plan. The lead agency (i.e., County) ultimately determines whether it will grant a permit for mining or other proposed land use within such designated areas. Pursuant to Public Resources Code Section 2774.2(A), the SMGB cannot exercise permitting authority on behalf of a lead agency. In addition, the SMGB has no authority in addressing local issues pertaining to air, traffic, noise, and buffer zone or setbacks; such authority resides with the County. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining including incorporation of buffer zones or setbacks.”

- Based on the foregoing, it is clear that the County has the both the authority and responsibility to thoroughly evaluate proposed quarries in Classified or Designated Mineral Land areas and deny those applications whose benefits are outweighed by the significant and unavoidable environmental impacts of mining.
- Contrary to Ms. Treder’s implication, the intent of Classification-Designation is not to override communities or tip the balance in favor of mining projects that cause significant and disruptive impacts.

The applicant's claim that SMARA recognizes that if land use decisions are simply a beauty/popularity contest, quarries will always lose and that SMARA was enacted to protect from NIMBYism is misleading, inaccurate and very revealing of the applicant's disregard for community concerns:

- SMARA recognizes that a delicate balance must be struck between the need for aggregate and the project's environmental impacts.
- The applicant's statement is intended to downplay the project's expected significant impacts by suggesting these impacts are merely cosmetic and unimportant.
- As planning staff has explained, the Project will pose a significant threat to the health and welfare of its neighbors and Santa Margarita residents.
- Even if land use decisions were made solely on the basis of satisfying the need for aggregate alone, this project would not be approved because as explained above, this mine would not meet any unmet need.

The project applicant further writes that the basic requirements and policies of SMARA have not always been heeded by local governments and cites further findings of the Legislature regarding general information pertaining to the importance of local mineral resources throughout the State:

- Aggregate Resources in the San Luis Obispo and Santa Barbara Production/Consumption Region are plentiful and are recognized by the respective lead agencies.
- The State Mining and Geology Board (SMGB) writes: "To avoid dictating to local communities where future aggregate mines should be located, mineral designated areas generally contain resources (un-permitted deposits) that are far in excess of the regions 50-year demand". This attempts to provide maximum flexibility to local governments in making land use decisions, while still conserving an adequate amount of construction aggregate for the future."

The project applicant points out that SMARA requires that "local governments must notify the CGS and SMGB prior to approving any land uses that would threaten the potential to extract mineral resources in a classified area". This statement, however, does not apply here. SMARA §2792 addresses the situation actually present here:

§ 2792. Neither the designation of an area of regional or statewide significance nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code, pursuant to the Subdivision Map Act (Division 2 [commencing with Section 66410] of Title 7 of the Government Code), or by a building permit or other authorization to commence development, upon

which such person relies and has changed his position to his substantial detriment, and, which permit or authorization was issued prior to the designation of such area pursuant to Section 2790.

- Denial of this application as recommended by planning staff would not constitute approval of any land use and does not threaten the potential for future extraction in any classified area. The proposed site represents but a sliver of the acreage identified within only one Sector (Sector C) of the sectors identified by the California Geological Survey Special Report-215.
 - Denial best preserves the PCC-grade mineral resource for future extraction when it may actually be needed and when appropriate supporting infrastructure exists.
 - Denial upholds the rights and interests of the many surrounding property owners who have well established ministerial entitlements to develop residences within the land use category Residential Rural prior to and since Classification occurred.
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B. History of the EX1 Overlay Zoning in San Luis Obispo County

The EX-1 Combining Designation is not a “zoning” designation as the applicant has suggested. The purpose of the EX-1 Overlay (combining designation) is merely to identify areas that have been “*classified as containing or being highly likely to contain significant mineral deposits.*”

- A proposal for a quarry is not an existing mineral resource extraction use as emphasized.
- The purpose of the EX-1 Combining Designation is to protect existing resource extraction operations from encroachment by incompatible land uses that could hinder resource extraction. This does not mean that existing uses are to be sacrificed for the benefit of a proposed mining operation.
- The applicant’s assumption that when the County adopted the EX-1 overlay it carefully considered land use compatibility issues is incorrect. The EX-1 overlay included the mapping provided by the SMGB, which as described by the SMGB only identified the presence of a mineral resource.

The applicant has claimed that by adopting the EX-1 overlay, the County has essentially pre-determined that mining would be appropriate anywhere within the combining designation. This simply is not the case:

- The Adoption of the EX-1 Combining Designation with a Negative Declaration, does not mean the County has made a determination on the environmental impacts of any specific sites within the area.
- Each mining proposal within the EX1 designation must still be subject to a discretionary permitting process requiring all necessary findings be made for approval of a Conditional Use Permit.

- Here, after the conclusion of environmental review of the project, Planning Staff has objectively determined that the required findings to approve or conditionally approve a Conditional Use Permit (CUP) cannot be made.
- A CUP is not a guaranteed entitlement as was well communicated to the applicant very early in the process.
- Research on the 2 parcels near Sector C that have a mine buffer area appear inconsistent. Residential Rural parcels smaller and closer to the proposed site do not have the mine buffer area in Permit View.
- Several inclusions within San Luis Obispo County Ordinance 2498, which the Board of Supervisors enacted through the adoption of Resolution 98-218 (April 16, 1991) support Margarita Proud's position that County policy does not favor mineral extraction over environmental protection and health and safety of existing residents:

Purpose

3. To emphasize the conservation and development of the mineral deposits identified by the Division of Mines and Geology, provided that a high level of environmental quality is also preserved and protected through the discretionary approval process.

General Objectives

3. Extraction operations may be established in areas designated as Scenic and Sensitive lands in the adopted Open Space Plan only when the need for a particular resource or facility location is determined by the Board of Supervisors to outweigh the value of the scenic and sensitive land resource. Scenic and Sensitive lands may be subject to extraction operations or energy facility development only when no feasible alternative sites are available.

4. Evaluation of proposed extraction operations in areas having open space, scenic, habitat, recreational, or agricultural value shall balance those values against the need for extracting mineral resources from such sites.

5. Extraction operations shall provide and be provided with adequate buffering and screening from adjacent land uses.

7. Extraction site access routes shall not create nuisances, hazards or road maintenance problems for adjacent properties.

Resolution 98-218 makes it clear and reiterates that:

- Evaluation of each proposed mining operation requires balancing the perceived need for resources against the environmental impacts of the project, which must be evaluated on a site by site (project by project) basis.
- County policy does not favor new mining operations that are proposed in environmentally sensitive areas or areas that are adjacent to and therefore could affect established land uses such as residential and commercial that pre-date the SMGB classification (the process an EX-1 Combining Designation is in response to). Proposed mining projects that are

incompatible with environmental values or established communities, can properly be denied consistent with County policy.

- The existence of the EX-1 Combining Designation does not trump the basic purpose of planning to address compatibility between uses.

C. The Las Pilitas Quarry is at the wrong location

The applicant claims ‘The Oster property was specifically selected by the Las Pilitas Partners because of its location within a mineral zone and frontage on a state highway.’”

- However, the project’s location directly on a state highway creates unavoidable problems because of the site’s unsafe access onto SR58 with high speed traffic and a limited line of sight.
- The project location creates unsafe traffic conditions because 80,000 lb. loaded trucks would be pulling out and slowly climbing a nearly 1/2 mile grade up over the Salinas River bridge. Ongoing traffic coming around a blind curve at high speeds could easily plough into the back of gravel trucks. This is a significant unaddressed safety hazard.
- Additionally the project would create a significant and unavoidable aesthetic impact in a highly visible view shed from highway 58, a valued scenic corridor.

The applicant further claims that “Mike Cole, one of the partners, lives across the street from the Oster property, and for 19 years (until 2011) he had his trucking company based at his house, with a fleet of up to 17 trucks. Accordingly, Mr. Cole knew from firsthand experience that large trucks could safely navigate that stretch of Highway 58 without issue.” These claims are false and misleading:

- The Coles live approximately ½ mile south of the Oster property on parcel 070-154-019 within the land use category Residential Rural.
- The Cole’s driveway is located in a stretch of road that has a far better line of sight than the proposed Oster site and on a portion of the road with minimal incline. Even so, the unloaded Cole trucks still created problems for travelers on SR58. In any event, the Coles’ anecdotal and self-serving claims do not amount to reliable or substantial evidence.
- It should also be noted that Cole’s trucking operation, which he now claims qualifies him as an expert on truck safety on Highway 58, was operated illegally in violation of County Code. A code enforcement case COD2010-00095 is on file for parcel 070-154-019. Despite efforts to present himself as a reliable and upstanding businessman, the record shows he knowingly operated his trucking business illegally.
- Moreover, claims about the number of truck numbers associated with his illegal business enterprise are not substantiated with any verifiable evidence.
- This history of intentional violations of existing land use regulations raises concerns and doubt regarding his future compliance with any conditions associated with approval of a CUP.

- Finally, it should be noted that contrary to the claim, the project before you is not “relatively small-scale”. Relative to its location and specific site characteristics and constraints, it is unacceptably large in scale, industrial in nature, and an extremely poor fit for the neighborhood.
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D. Specific Claims in the Staff Report

1. Traffic

Regarding discussion on EIR’s calculation of 273 truck trips per day:

The applicant claims that the Project could average no more than 198 truck trips per day. This figure is based on an overall average of truck trips based on the project’s capacity. It does not reflect seasonal variations.

Average truck trips, however, do not accurately portray the seasonal nature of mining or the reasonably foreseeable circumstance that some days will have a significantly greater number of trucks. This would be true, for example, during the busy late spring and summer construction season, when the demand for aggregate would be high, in contrast with rainy winter season, when most large scale construction operations slow down.

The applicant also claims that a new source of aggregate does not create additional or new demand for aggregate and that a new source of aggregate would only create a redistribution of existing truck traffic. There are several problems with this analysis:

- The discussion regarding redistribution of market share only mentions Hanson.
- Rocky Canyon would also be affected in redistribution of market share and their trucks do not currently go through Santa Margarita. Redistribution from Rocky Canyon would increase truck traffic through downtown Santa Margarita.
- Also, regardless of where trucks originate, only 35-40 % of trucks from Hanson go through downtown Santa Margarita. This proposal’s FEIR estimates that 80% of loaded trucks from the proposed project would travel through downtown Santa Margarita and 90% of loaded trucks would travel through the school zone and RR crossing. All trucks accessing the proposed Project would travel through the school zone and RR crossing.
- Moreover, the applicant’s claim cannot be reconciled with their other claim that the County should approve the project because the County is in desperate need for aggregate. The applicant’s claim that a new mine would only cut into the business of other mines proves their contention that there is an actual need for a new mine is FALSE.
- The requested extraction rate is simply out of scale with the proposed site and the haul route’s safe capacity. Truck trip counts are a simple and crude derivation from the annual extraction rate. The only way to ensure truck traffic would not cause overwhelming impacts on the community, both the annual and daily volume permitted would need to be reduced . In the

unlikely event that the County would consider approving the Project, conditions of approval must set strict limits on the number of daily truck trips.

- As mentioned above, we believe the reasonable worst case daily scenario defined by CEQA has been drastically understated by averaging truck trip counts without regard to seasonal variations.
 - Moreover, there is insufficient evidence and analysis in the record to accurately predict any significant reduction in the number of daily truck trip counts associated with the operation of other quarries.
 - Owing to the predicted number of daily trucks, ingress and egress of large trucks cannot be safely managed at the site. The steep and winding Entrance Road directly adjacent to Hwy. 58 cannot accommodate the queuing of 26 trucks as stated and will consequently cause unsafe conditions and random staging events at yet to be disclosed locations.
 - The traffic impacts disclosed in the FEIR are understated because a passenger-car equivalency (PCE) factor per the Highway Capacity Manual (HCM) was not used for project truck trips. PCE represents the number of passenger cars displaced by each truck in the traffic stream and have been used extensively in HCM analysis methodologies to establish the impact of heavy trucks, buses, recreational vehicles, etc. on traffic flow.
 - Section 6.0 of the EIR, Project Alternatives, failed to address and evaluate a reduced extraction volume alternative, so in the unlikely event the County decides to approve the Project, additional environmental review would be required to determine if a scaled down project alternative would cause less significant impacts to public health and safety and is feasible.
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The applicant disagrees with the EIR and Staff's conclusion that the Project would significantly affect bicyclists because, it contends, the quarry trucks will only be on the road Monday – Friday. The applicant claims mine's operation schedule would avoid conflicts with the majority of the recreational bicyclists who, according to the applicant, only use the road on weekends.

- Again, no evidence supports the applicant's argument. The local residents' observation is that individuals and bicycle groups frequently ride on Highway 58 on weekdays, with many riders using the road primarily on weekdays.

The applicant also argues that if large trucks were truly a legitimate concern, then all trucks should be barred from using Highway 58, not just quarry trucks. This is a straw man argument:

- Barring all trucks from the highway is clearly impractical, unnecessary, and not at all what is being advocated by the community.

- The County of San Luis Obispo has not only the authority, but a duty and responsibility to make land uses decisions that take into account “the safe capacity of all roads providing access to the Project, either existing or to be improved with the Project”.²
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2. Noise

The applicant claims that because the County grants exemptions from the Noise Ordinance for the “construction” phases of projects (and is puzzled why staff did not disclose that here), the first phase of the operation of the mine should be exempt from the noise ordinance. The applicant’s claim is absurd. Even the early phases of the Project must be considered part of the operation because the excavated material will be sold and the early phase will last for a number of years. The intent of the exemptions is for “construction” (intermittent and short term in nature), not for operations. The vast majority of the early phases activities of the mine cannot be considered construction.

The applicant continues to argue that it is “beyond improbable” that operational noise between 7am and 5pm would cause the afflictions listed in the staff report. This claim too is false because many local residents will be home during these hours, and would therefore be significantly impacted.

Regarding blasting, the applicant states (without any evidence) that it is unlikely that the noise or vibration would travel as far as the nearby residences. This is an interesting statement considering how close many residences are to the proposed quarry.

We additionally believe the noise impacts at the project site are understated due to the EIR’s failure to analyze ingress and egress along the Entrance Road. Jake brakes would be a routine occurrence for a fully loaded double traversing down the steep and winding driveway.

3. Santa Margarita Design Plan

The applicant states that around the time the Design Plan was approved, there was an offer by a developer to re-route Highway 58 around town and that there was widespread public outcry, thinking that moving Highway 58 would kill local businesses and the character of the downtown. No documentation or specifics were provided. Even if this statement is true, it is completely irrelevant in the present context.

- The truth is that Santa Margarita has taken great strides in the direction of achieving the goals of the Design Plan and has increasingly become a destination on its own.

² Required Findings (E), pg. 5, County of SLO Dept. of Planning and Building Staff Report

- Santa Margarita’s location is prime, a short commute from San Luis Obispo and our North county wine region make it a very desirable and convenient destination, and the gateway to the Carrizo Plains National Monument.
- The Design Plan recognizes that the success of downtown Santa Margarita depends on pedestrian traffic and recommends traffic calming measures as the highest priority. As the staff has clearly explained, the proposed project would be contrary to the goals of the Design Plan making the main drag in town virtually un-walkable during the operation of the mine.

The applicant states “in order to ensure consistency with the Design Plan’s goals for a walkable, pedestrian-friendly downtown, Las Pilitas Resources has negotiated for a free public parking lot in the center of downtown, something that has been on the communities wish list for some time.” This is simply not a truthful statement:

- The public parking lot in the center of downtown was negotiated for by Topaz Solar during the construction of the Solar projects on the Carrizo Plain.
- The lot is owned by the fire department and now that Topaz has finished construction is being made temporarily available to the community by the fire department.
- The lot will eventually become the building site for the new fire department.
- While it is appreciated if the applicant is offering to join in community volunteer efforts and help to maintain the existing parking lot, it should be known that the lot is temporarily offered to the community by the fire department regardless of any potential participation in maintenance by this applicant.

Again, we encourage review of our previous submittals and those from our counsel, Babak Naficy, on our behalf. We continue to encourage your Commission to base your decision on sound planning principles and the substantial factual evidence that exists. As more and more information emerges, the depth of your staff’s research in reaching their recommendation is becoming increasingly apparent. Please support their continued good work and DENY this poorly planned, poorly located, and unnecessary proposal.

Roy Reeves



President, Margarita Proud