

**PLANNING COMMISSION  
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 02013

A. P. # 167-033-010-000-M

**FINDINGS AND DECISION**

In the matter of the application of  
**Keith Day Sand and Gravel (PLN000066)**

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit, located approximately 2 miles southeast of the town of Chualar and 0.5 miles south of Chualar River Road Bridge, in and westerly of the Salinas River (mile 28-29.5), Township 16 south, Range 4 east (Mt. Diablo Meridian), Longitude 121-3-45 W., Latitude 36-32-56 N., Central Salinas Valley area, came on regularly for hearing before the Planning Commission on February 27, 2002.

WHEREAS: Said proposal includes:

- 1) Use Permit allowing mineral extraction and processing of up to 150,000 cu. yds. (approx. 225,000 tons) of sand and gravel for a period of 15 years; and
- 2) a Mining and Reclamation Plan.

WHEREAS: Said Planning Commission, having considered the application and the evidence presented relating thereto,

**FINDINGS OF FACT**

1. **FINDING:** The proposed surface mining operation, Reclamation Plan and the proposed use of reclaimed land pursuant to the Plan are consistent with Chapter 16.04 of the Monterey County Code, the General Plan, the Central Salinas Valley Area Plan and Title 21, Zoning Ordinance Chapters 21.30 and with the Monterey County General Plan which designates the property as "Farmlands, 40 Acre Minimum." The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of Title 21 and any zoning violation abatement costs have been paid.

**EVIDENCE:** The text and policies of the Central Salinas Valley Area Plan, the Monterey County General Plan and Title 21 have been evaluated during the course of the review of this application. The regulations of the County Surface Mining and Reclamation Ordinance (Chapter 16.04 of the Monterey County Code) have also been evaluated. No conflict or inconsistencies with the text or the policies were found to exist. No testimony, either written or oral, was received during the course of public hearing to indicate that there is any inconsistency with the Area Plan, General Plan or County Code.

**EVIDENCE:** Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property.

2. **FINDING:** The proposed Reclamation Plan complies with Sections 2772 and 2773 and other applicable provisions of the State Mining and Reclamation Act (SMARA), and with Sections 3500-3505 and 3700-3713 of the California Code of Regulations.

**EVIDENCE:** The Reclamation Plan has been reviewed by the Planning and Building Inspection Department and the State Department of Conservation. The Reclamation Plan consists of the Reclamation Plan, dated June, 2000 and the Mining and Reclamation Plan Amendment submitted on July 25, 2000. All comments by the State have been adequately addressed and incorporated into the Plan.

3. FINDING: The proposed Financial Assurances comply with Sections 2770 and 2773.1 and other applicable provisions of the State Mining and Reclamation Act (SMARA).  
 EVIDENCE: The Financial Assurance, contained in the Reclamation Plan has been reviewed by the Planning and Building Inspection Department and the State Department of Conservation.
4. FINDING: The proposed project has been reviewed pursuant to the requirements of CEQA and it has been determined that the project does not have the potential to cause significant adverse environmental effects.  
 EVIDENCE: The proposed project, including all permits and approvals, will not have significant adverse impacts on the environment. A Negative Declaration has been prepared and is on file in the Department of Planning and Building Inspection. Potential environmental effects have been studied, and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed, may have a significant effect on the environment. The Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and the testimony and information received, and scientific and factual data presented as evidence during the public review process. The Monterey County Planning and Building Inspection Department, located at 2620 1<sup>st</sup> Ave, Marina is the custodian of the documents and the materials that constitute the record of proceedings upon which the adoption of the Negative Declaration is based.  
 EVIDENCE: The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file.  
 EVIDENCE: County staff prepared an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provided substantial evidence that the project would not have significant environmental impacts. A Negative Declaration was filed with the County Clerk and the State Clearinghouse on November 6, 2001. It was also sent directly to the National Marine Fisheries Service, the California State Dept. of Conservation, U.S. Fish and Wildlife Service, U. S. Army Corp of Engineers and the California State Dept. of Fish and & Game for comments and was also noticed for public review. The following evidence has been received and considered: All comments on the Initial Study; evidence in the record that includes studies, data and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data and reports; application materials, and expert testimony. Among the studies, data and reports analyzed as part of the environmental determination are the following:
- Mitigated Negative Declaration: Salinas River Channel Maintenance Program. Dated March 26, 2001, Prepared by Entrix Inc. for the Monterey County Water Resources Agency
  - Army Corp of Engineers Regional 404 Permit No. 22309S
  - California Department of Fish and Game Streambed Alteration Agreement
  - Interim Guidelines for Obtaining Permits for the Regional 404 Five-Year River Maintenance Program for the Salinas and Arroyo Seco Rivers as Set Forth By the National Marine Fisheries Service (August 8, 2000).
  - Salinas River Vegetation & Wildlife Habitat Report, January 2000. David Haupt

- Conditions for Obtaining Permits for the Regional 404 Five-Year River Maintenance Program for the Salinas and Arroyo Seco Rivers, as Set Forth by the U. S. Fish and Wildlife Service (June 17, 1999)
- July 21, 2000, Letter and Attachments, prepared by Higgins and Associates: Civil and Traffic Engineers.

5. FINDING: The land and/or resources contained within the land to be disturbed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources.  
EVIDENCE: The Mining and Reclamation Plan submitted with the project application and other materials in the project file.  
EVIDENCE: Site visits by the project planner.
6. FINDING: For purposes of the Fish and Game Code, the project will have a potential for changes to fish and wildlife resources upon which the wildlife depends.  
EVIDENCE: Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. It is anticipated that the project and alteration of the site will not have a significant adverse environmental impact due to permitting requirements of the U. S. Army Corp of Engineers and the State Dept. of Fish and Game.
7. FINDING: Conditions as approved in the U.S. Army Corp of Engineers Regional 404 Permit, the USFWS Incidental Take Permit, and California Department of Fish and Game Streambed Alteration Agreement are incorporated into this Use Permit by reference.  
EVIDENCE: Conditions of Approval, Exhibit "D".
8. FINDING: The site is suitable for the use proposed.  
EVIDENCE: There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Health Department, Monterey Bay Unified Air Pollution Control District, Salinas Rural Fire District, the Regional Water Quality Control Board, National Marine Fisheries Service, California State Dept. of Conservation, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers and the California State Dept. of Fish and Game. There are no significant physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

9. **FINDING:** The establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such use, or be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

**EVIDENCE:** The project as described in the application and accompanying materials was reviewed by the Planning and Building Inspection, Health Department, Public Works Department, Water Resources Agency, Salinas Rural Fire District, Monterey Bay Unified Air Pollution Control District, Regional Water Quality Control Board, National Marine Fisheries Service, CA Department of Fish and Game, US Fish and Wildlife Service, and US Army Corps of Engineers. These departments have recommended conditions, where appropriate, to ensure that the project will not have adverse effects on the health, safety and general welfare of the residing or working in the neighborhood, or the County in general.

### **DECISION**

THEREFORE, it is the decision of the Planning Commission of the County of Monterey that the Negative Declaration be adopted and said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. This Combined Development Permit allows the extraction (subject to approval of future U. S. Army Corp of Engineers 404 Permits and California Dept. of Fish and Game Streambed Alteration Agreements) and processing of up to 150,000 cu. yds. (approx. 225,000 tons) of aggregate material per year, for a period of 15 years, to be reviewed by the Planning Director who shall report to the Planning Commission every 5 years, subject to the following terms and conditions and in conformance with the approved Mining and Reclamation Plan. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection Dept.)**

### **PRIOR TO OPERATION**

2. The applicant shall record a notice which states: "A permit (Resolution 02013) was approved by the Planning Commission for Assessor's Parcel Numbers 167-033-010, 167-033-013, 167-033-011 on February 27, 2002. The permit was granted subject to 25 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection Dept.)**
3. The activities allowed under this Use Permit are contingent upon the issuance of additional permits. Unless obtained by MCWRA or other entity, the applicant shall obtain and maintain in active status all permits required by other agencies. These may include the following: Army Corp of Engineers, 404 Permit; California State Department of Fish and Game, Streambed Alteration Agreement; U.S. Fish and Wildlife Service, Incidental Take Permit; Monterey Bay Unified Air Pollution Control District, Permit to Operate; and a Regional Water Quality Control Board, Waste Discharge Permit. A copy of these permits shall be provided to the Planning and Building Inspection Department staff. **(Planning and Building Inspection Dept.)**

4. The applicant shall provide vegetation baseline data for percent cover, density, and species richness of the area surrounding the area subject to reclamation. The County shall use this information in evaluating revegetation success. Revegetation density and species richness shall be equivalent to the baseline data prior to release of reclamation bonds. **(Planning and Building Inspection Dept.)**
5. No in-channel excavation shall be performed until the existing 404 Permit is renewed or the applicant obtains a separate 404 Permit. No in-channel excavation shall be performed until a new California Dept. of Fish and Game, Streambed Alteration Agreement is issued. The activities allowed under this Use Permit are to be performed in compliance with the conditions and protocols established under these other permits. **(Planning and Building Inspection Dept.)**
6. The operator shall annually submit an updated reclamation cost estimate for review and approval by the Planning and Building Inspection Department as required by the State Surface Mining and Reclamation Act and County Code. Cost estimates shall be submitted to the Planning and Building Inspection Department for review and approval prior to the operator securing or revising financial assurances. The financial assurance, in the form of a surety bond, Certificate of Deposit or other suitable mechanism, shall be submitted to the County prior to commencement of operations and shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is determined to be completed by the County. **(Planning and Building Inspection Dept.)**
7. The operator shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be kept by the Planning and Building Inspection Department in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the Planning and Building Inspection Department. **(Planning and Building Inspection Dept.)**

#### **CONTINUOUS PERMIT CONDITIONS**

8. All aspects of the operation shall be conducted in compliance with the approved Mining and Reclamation Plan and other applicable requirements of the State Surface Mining and Reclamation Act (SMARA) and conditions of this permit and shall be conducted only within the boundaries indicated in Figure #4 of the approved Mining and Reclamation Plan, dated June 2000. **(Planning and Building Inspection Dept.)**
9. The Mining and Reclamation Plan shall be subject to review by the Planning Director who shall report to the Planning Commission every five years for the 15 year life of the permit. This review shall take place concurrently with the renewal of the Army Corp of Engineers Regional 404 Permit. The applicant shall submit all necessary information, within 30 days after the 404 permit renewal date, to allow staff to perform this review. Based on changing circumstances or requirements of the 404 Permit the Planning Director may require the applicant to submit an amended Mining and Reclamation Plan for approval. **(Planning and Building Inspection Dept.)**
10. The operator shall comply with the "Interim Guidelines for Obtaining Permits for the Regional 404 Five-Year River Maintenance Program for the Salinas and Arroyo Seco Rivers as set forth by the National Marine Fisheries Service" (August 8, 2000). If these guidelines are revised through the Army Corp of Engineers 404 Permit consultation process, the revised guidelines shall apply. **(Planning and Building Inspection Dept.)**
11. The activities allowed under this Use Permit are to be performed in compliance with the conditions and protocols established in future 404 Permits and Streambed Alteration Agreements. **(Planning and Building Inspection Dept.)**

12. All aspects of the operation shall be performed in compliance with the document, Conditions for Obtaining Permits for the Regional 404 Five-Year River Maintenance Program for the Salinas and Arroyo Seco Rivers, as Set Forth by the U. S. Fish and Wildlife Service” (June 17, 1999). If these guidelines are revised through the Army Corp of Engineers 404 Permit consultation process, the revised guidelines shall apply. **(Planning and Building Inspection Dept.)**
13. Fugitive dust emissions shall be controlled through implementation of the following measures:
  - a) Material handled shall contain sufficient natural or added moisture to prevent excessive dusting.
  - b) Spray water or use palliatives and other surface binding agents on access roads, process area, active mining level and dust prone stockpiles to reduce fugitive dust emissions as necessary.
  - c) Haul Trucks shall maintain at least 2 feet of freeboard or haul material shall be covered.
  - d) Prior to operating, post a publicly visible and legible sign at the entrance off River Road with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 48 hours. The telephone number of the MBUAPCD and the Monterey County Planning and Building Inspection Department shall also be visible. The sign size shall not exceed the limit established in the Zoning Ordinance.
  - e) The operator shall obtain a MBUAPCD “Permit to Operate” for the portable screening equipment and comply with all the conditions of said permit.
  - f) During periods of high winds, all operations shall cease immediately if fugitive dust emissions can be seen with unaided vision to be impacting surrounding properties.  
**(Planning and Building Inspection Dept.)**
14. Material extraction shall not exceed a maximum amount of 150,000 cu. yds. (approx. 225,000 tons) per year and may be less subject to requirements of the Reclamation Plan and the requirements of the Army Corp of Engineers 404 Permit and the Dept. of Fish and Game Streambed Alteration Agreement. Truck counts and scale weights shall be used to determine total annual production. The applicant shall provide the annual quantity of extraction calculations to the County prior to the annual mine inspection. **(Planning and Building Inspection Dept.)**
15. The operator shall request and allow annual inspections of the mining operation by the Planning and Building Inspection Department during the duration of the permit as required by the State Surface Mining and Reclamation Act. The operator shall reimburse or pay to the County the full cost of the inspection services, including related administrative costs required pursuant to the Act. **(Planning and Building Inspection Dept.)**
16. Upon the sale or transfer of the operation, the new operator shall record a signed Notice stating that “The operator shall accept responsibility for operating and reclaiming the mined lands in accordance with the approved Reclamation Plan and shall operate the surface mining activity within the limits and according to the conditions of the Use Permit and Reclamation Plan.” A copy of the recorded notice shall be submitted to the Planning and Building Inspection Department within 30 days of recordation. **(Planning and Building Inspection Dept.)**
17. The operator shall forward an annual surface mining report to the State Department of Conservation and to the County Planning and Building Inspection Department on the date established by the State Department of Conservation. Any applicable fees shall be forwarded to the State Department of Conservation at the time of filing the annual surface mining report. The initial surface mining report and applicable filing fees shall be filed with the State Department of Conservation within 30 days of permit approval. **(Planning and Building Inspection Dept.)**
18. Within 90 days of the mining operation becoming “idle” (to curtail surface mining operations for a period of one

year or more, by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume mining operations at a future date), the operator shall submit to the Planning and Building Inspection Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA and shall provide measures the operator will implement to maintain the site in a stable condition taking into consideration public health and safety. The IMP shall be subject to the review and approval by the Monterey County Planning Commission. **(Planning and Building Inspection Dept.)**

19. Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of **\$1,275. This fee shall be paid within 5 days of permit approval, before the filing of the Notice of Determination.** Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection Dept.)**
20. No exterior lighting shall be allowed without prior approval by the Director of Planning and Building Inspection. The applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director, prior to the issuance of building permits. **(Planning and Building Inspection)**
21. The applicant shall pay his fair share of maintenance costs for area roads caused by uses allowed by this permit. Within 120 days of project approval, the applicant shall enter into a Road Maintenance Agreement with the County of Monterey. **(Public Works Dept.)**
22. Prior to the establishment of revegetation test plots, the applicant shall provide to the County a list of species to be planted and method of seeding. If oaks are to be planted in the test plots or in subsequent reclamation efforts, acorns shall be used rather than cuttings. In addition to the planting of trees, grasses and forbs shall be incorporated into the revegetation plan. **(Planning and Building Inspection Dept.)**
23. Comply with Title 19 of the California Code of Regulations, Subchapter 3 and Health and Safety Code Chapter 6.95 (Hazardous Material Registration and Business Response Plans) as approved by the Director of Environmental Health. **(ENVIRONMENTAL HEALTH)**

24. Comply with Title 22 of the California Administrative Code and Chapter 6.50 of the Health and Safety Code (Hazardous Waste Management) as approved by the Director of Environmental Health. **(ENVIRONMENTAL HEALTH)**
25. Submit a site Spill Prevention Control Countermeasure (SPCC) Plan to the Director of Environmental Health for review and approval. The Plan shall meet the standards as per Title 26, Division 22, Article 3, Sections 66264.30-66264.56; Preparedness and Prevention. **(ENVIRONMENTAL HEALTH)**

**PASSED AND ADOPTED** this 27th day of February, 2001 by the following vote:

AYES: Errea, Sanchez, Hawkins, Parsons, Brennan, Pitt-Derdivanis, Diehl, Hernandez, Wilmot  
NOES: None  
ABSENT: Lacy

Original Signed By:

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DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90<sup>th</sup> day following the date on which this decision becomes final.

#### NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires 2 years after the above date of granting thereof unless construction or use is started within this period.