



**BOARD OF SUPERVISORS AGENDA: 10/20/98**

October 16, 1998

BOARD OF SUPERVISORS  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz CA 95060

**SUBJECT: Continued Consideration of Application 98-0650 (Proposal to Amend Permit 97-0309, the Buena Vista Soil Management/Stockpile Project)**

Members of the Board,

At the close of your Board's hearing on this matter on October 6, 1998 staff was directed to provide additional information on various items and report back to your Board on October 20. These items are as follows:

1. Provide the Buena Vista Community Association (BVCA) with a copy of the new "Exhibit A" project site map and a copy of the conceptual biotic mitigation plan before the October 20 hearing date.
2. Obtain a letter from the Coastal Commission staff regarding their view of the recommended amended permit conditions for this project.
3. Meet with representatives of the BVCA to discuss alternative project sites and other issues of concern to the BVCA.
4. County Counsel to provide an explanation on the content of the Deed of Restriction proposed to be applied to the biotic mitigation sites for this project.

An explanation of how County staff has addressed each of these items is provided below.

A colored version of the "Exhibit A" site plan and a bound copy of the conceptual biotic mitigation plan prepared for this project were given to the attorney for the BVCA on October 8. The Coastal Commission staff has been contacted regarding the Board's

desire to have a letter stating the Commission staffs view of the amended project conditions and the alternative sites evaluated for this project. As you remember, the recommended amended permit conditions were the result of meetings with Coastal Commission staff and representatives of the State and federal resource agencies. Conditions that were changed from those approved in June were all drafted by Coastal Commission staff and that staff reviewed the final version of the recommended amended permit conditions before submitting them for your Board's consideration on October 6. The staff attorney for the Coastal Commission, Diane Landry, has responded to our request that a letter be provided prior to your Board's October 20 hearing date.

Staff from County Counsel, Planning and Public Works met with representatives of BVCA and neighbors of the Miyashita and Love properties on October 13. The BVCA had proposed use of the adjoining Miyashita and Love properties located on the east side of Buena Vista Drive as an alternative site for the project. The meeting was successful in clarifying the concerns of the BVCA and for the BVCA understanding the concerns of neighbors of the Miyashita and Love properties. Placing the project on either the Miyashita or Love properties would result in stockpiling activities significantly closer to dwellings than on the project site. Alexandra Howard owns three dwellings and an equestrian business on the parcel adjoining the Love parcel and also leases a portion of the Love parcel for horse pasture and riding lessons. Her daughter informed the group that she and her mother view relocating the project to either the Miyashita or Love properties would create significant problems for their equestrian business and residential uses on their property.

While the BVCA made it clear their priority was to have the project reduced in size as much as possible, as well as to move the project to another site, much of the meeting focused on those items the BVCA wants to see adopted by the County or incorporated into the project if the project remains at the proposed site. Many of the items can be synthesized into a single desire of the BVCA to be ensured that the project parcel will never be used as a landfill/refuse disposal site. Other items BVCA wants the County to consider are to continue investigating the feasibility of using the City of Watsonville landfill for all or a portion of the project, reconsideration of the Harkins Slough alternative site, an early commencement of the siting process for a new County landfill within the year (rather than within 2-5 years as planned), reducing the amount of soil to be stockpiled on the project site, restricting stockpiling away from the natural seep and all class 3 soils on the site, limiting the scope of the year 18 hearing for the project to ensure that only agricultural or habitat uses are considered as options for the project site at closure, expanding the biotic Declaration of Restriction to include the 10 acre open space area and the natural seep, drafting the Declaration of Restriction to make it enforceable by a third party and providing a fund or mechanism to be used to compensate neighbors for any damages resulting from activities on the project site.

Staff believes some but not all, of the BVCA concerns can be addressed. The recommended permit conditions (Attachment 1) have been revised to address several

of BVCA's concerns. The new language in the conditions is provided in bold type. One item where staff does not agree with the BVCA, is preservation of the habitat at the natural seep. As your Board may recall, the natural seep and the remainder of the south channel will be buried by stockpiling on the site. The purpose of the biotic mitigation plan is to compensate for this impact. Preservation of the one-half acre habitat of the seep area as an isolated stand without the remainder of channel will have very little biological benefit. In addition, collecting the water from the seep and conveying it to the three seasonal pond mitigation site is being done at the recommendation of the resource agencies. Installation of the buried pipe that will capture and convey natural seep water will require removal of much of the vegetative habitat at the seep. For these reasons staff continues to recommend removal of the vegetation at the natural seep. The NRCS Soil Survey maps a small amount of the site just west of the seep area as containing class 3 soil (Elkhorn sandy loam). The project will keep about 95% of this soil from being covered by stockpile soil as most stockpiling will occur on class 4 soil. However, it may be possible to restrict stockpiling away from all class 3 soil if the amount of soil becomes less than the proposed 1.25 million cubic yards. New permit condition A.12 addresses this issue.

The issue of the biotic Declaration of Restrictions is addressed in the separate letter from County Counsel (Attachment 2). County Counsel's letter also addresses other items as requested by your Board, such as why an EIR Addendum is appropriate under CEQA to address this permit amendment.

The conceptual biotic mitigation plan (Attachment 3) has also been provided for your information. This plan, with its new north channel mitigation site, represents one of the minor technical changes to the project discussed in the previous letter to your Board. As such, it should be included as part of the EIR Addendum.

#### CONCLUSION and RECOMMENDATION

The objectives, site area and activities of this project continue to be the same as the one your Board considered in June. What this amendment request will change are the conditions under which the project must operate. The most significant of the new conditions will:

- a) Expand the riparian/wetland mitigation plan to include a third biotic mitigation area which will enhance the habitat of the north channel and restrict agricultural and project activities from a 10 acre area surrounding the north channel;
- b) Place all three biotic mitigation areas under a permanent Declaration of Restriction rather than a biotic conservation easement;
- c) Expand the agricultural mitigation to include an annual contribution to the County's ACE Program that could be partially offset by leasing closed portions of the landfill for agriculture;

- d) Require 3 reviews of the project at 6 year intervals, where the closure technique for the project becomes decided at the review during project year 18.

No additional Environmental Review is required to amend the permit as now requested by Public Works other than considering this report, including all attachments, as an Addendum to the EIR. The Coastal Commission staff has informed County staff that the adoption of the permit conditions in Attachment 2 will address their concerns with the project. The approval of the attached findings and conditions will result a new permit for the project that supersedes the approval your Board granted in June. This action will nullify that earlier approval and result in the Coastal Commission dismissing the current appeal of the project.

It is therefore RECOMMENDED that your Board take the following actions:

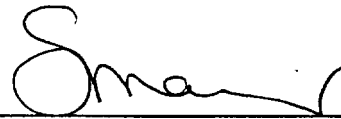
- 1. Adopt the ordinance provided in Attachment 1 of the October 6 report to rezone A.P.N. 46-121-03 from the "CA-O" (Commercial Agriculture with an Open Space Easement contract) to the "CA" (Commercial Agriculture) zone district and take related actions to extinguish Open Space Easement contract 751262;
- 2. Make the findings in Attachment 2 to:
  - a. Approve Application 98-0650 based on the conditions in Revised Attachment 3 of the October 6 report;
  - b. Make a policy interpretation that this project is a conditionally permitted interim use in the "CA" zone district and therefore complies with General Plan policies 5.13.5 and 513.6; and
  - c. Certify the Environmental Impact Report, Supplemental Environmental Impact Report, Mitigation Monitoring and Reporting Program (Attachment 4 of the October 6 report) and EIR Addendum prepared for this project and include both staff reports prepared for this item for your Board's meetings of October 6 and 2, including all attachments (except the EIR) as the EIR Addendum.

Sincerely,



ALVIN D. JAMES  
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO  
County Administrative Officer

Attachments:

1. Revised Recommended Permit Conditions
2. Letter of County Counsel dated 10/16/1998
3. Conceptual Biotic Mitigation Plan (on file with Clerk of the Board)

cc: John and Violet Rocha, Property Owners  
Patrick Mathews, Public Works  
County Counsel  
Coastal Commission  
U.S. Fish and Wildlife Service  
U.S. Army Corps of Engineers  
California Department of Fish and Game  
Interested Neighbors

stockpile3.wpd/pln453

**COASTAL ZONE/RIPARIAN EXCEPTION PERMIT  
CONDITIONS OF APPROVAL**

**Permit No. 98-0650**

Applicant and Property Owner: County of Santa Cruz Public Works  
Department for John and Violet Rocha.

Assessor's Parcel Number 46-I 21-03

Property Location: West side of Buena Vista Drive opposite its intersection with  
Harkins Slough Road; San Andreas Planning Area.

**EXHIBITS:**

Exhibit A - Project Plans dated August 1997 with a revision date of October 1998 consisting of 4 sheets:

- Sheet 1: Intermediate Grading Plan View
- Sheet 2: Final Grading Plan View
- Sheet 3: Drainage Details
- Sheet 4: Conceptual Grading Cross-Sections

Exhibit B - Wetland and Riparian Mitigation Plan, dated October 1998, consisting of a narrative and 4 sheets:

- Sheet D-1: Conceptual Grading Plan of East and North Channel Sites
- Sheet D-2: Conceptual Planting Plan of East and North Channel Sites
- Sheet D-3: Conceptual Planting Plan of the East Channel  
Buffer and Tree and Shrub Upland Corridor
- Sheet D-4: Conceptual Grading and Planting Plan of the Seasonal  
Wetland Site, including the pipe conveyance from the South  
Channel natural seep

Exhibit C - Mitigation Monitoring and Reporting Program, prepared by Harding Lawson and Associates dated November 1997

Exhibit D - Declaration of Restrictions for the Biotic Mitigation Areas and Buffer Zones

**CONDITIONS:**

- A. General Requirements and Approvals from other Agencies
1. This permit supersedes and replaces the approval of this project under Permit 97-0309. This permit authorizes the stockpiling of material excavated from the County's Buena Vista Landfill and the construction of associated drainage improvements for a period of 20 years. **This permit does not authorize the siting of a sanitary landfill on APN 46-121-03, or create any preference for such a use**

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**on the site.** This stockpiling component of the project may be implemented in two phases specified below:

- a. Phase 1: Stockpiling of up to approximately 1.1 million cubic yards of earth (corresponding to the excavation of module 4 at the landfill); and
- b. Phase 2: Stockpiling of up to approximately 150,000 cubic yards of earth (corresponding to part of the excavation of module 5 at the landfill).

Permit conditions corresponding to mitigation measures from the project's Environmental Impact Report are identified with a capital letter and number in parentheses at the end of the condition. (e.g., S-la). Such conditions are addressed in the monitoring program (Exhibit C), which specifies required monitoring activities for these particular permit conditions.

2. All soil material from the Buena Vista Landfill shall be transported to the project site by a conveyor system to be constructed overhead Buena Vista Drive. The design of this conveyor system shall replicate that shown on Plate 5.3-2 of the Draft EIR prepared for this project so the conveyor is fully enclosed in a rustic appearing structure which has a pitched roof. The only material that may be transported to the site by vehicles shall be limited to clay material derived from off-site sources which is necessary for clay lining of modules 4 and 5 or final cover of the Buena Vista landfill. The conveyor system shall be completely removed within three months of all soil material being transported to the project site. This conveyor system shall be regularly maintained so it functions in good working condition without generating significant volumes of noise. The use of the conveyor shall not increase the hourly average (Leq) of ambient noise more than 9 dBA for any property beyond the project site or the Buena Vista Landfill.
3. Prior to any project work occurring on the site, the Public Works Department shall obtain the approvals from the following State and federal agencies:
  - a. Streambed Alteration Agreement from the California Department of Fish and Game (CDFG);
  - b. All necessary approvals from the CDFG regarding compliance with the California Endangered Species Act;
  - c. NPDES permit from the Regional Water Quality Control Board;
  - d. Clean Water Act Section 404 Individual Permit from the U.S. Army Corps of Engineers; and

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- e. All necessary approvals from the U.S. Fish and Wildlife Service regarding compliance with Section 7 of the Federal Endangered Species Act.
4. If the approval of any of the agencies specified in Condition A.3 above results in significant changes to the project, the Public Works Department will immediately notify the Planning Department and make an application for a permit amendment so the required revisions can be reviewed by the Planning Commission at a regularly scheduled public hearing. If the revisions are acceptable to the Planning Commission, this permit shall be amended to reflect the changes to the project that have been generated by other agency requirements. If the Commission has concerns regarding any significant project revisions required by other agencies, the County's consideration of the permit amendment shall be continued until issues of concern can be resolved between the County and the federal and/or state agency requiring the revision.
5. The County shall make reasonable efforts to rehabilitate or enhance if necessary and then lease or **otherwise** make available to farmers the area(s) designated on Sheets 1 and 2 of Exhibit A for agricultural uses. Agricultural activities that will occur on the property outside the 20-acre project site shall be conducted in a manner that does not generate accelerated erosion or damage any riparian habitat and implement relevant "Best Management" practices: Any existing erosion conditions shall be corrected. Specifically, all crop cultivation proximate to the intermittent drainage at the northern end of the property shall occur no closer than 50 feet from the top of the channel bank as identified on Exhibit A and shall include measures to prevent sedimentation of this drainage channel. No crop or livestock production, nor any other use that could potentially generate sedimentation of the north channel and main channel shall occur between the stockpile area and the biotic resource buffer zones as shown on sheets 1 and 2 of Exhibit A. Areas not cultivated or pastured shall remain in open space.
6. Scheduled Reviews
  - a. This project shall be reviewed in public hearing by the Board of Supervisors one year after the commencement of site preparation work (e.g. installation of drainage facilities) associated with the project.
  - b. At least once every six years, the project, as may have been amended, along with a compilation of the annual reports, shall be reviewed by the Planning Commission and further amended if necessary to achieve the objectives of this permit approval. This review shall include an evaluation of the effectiveness of mitigation measures and other conditions of this permit, in consultation with



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applicable State and federal agencies. Where a higher degree of effectiveness is determined to be warranted, permit conditions shall be amended to achieve that objective. The amount of material being used for cover and the rate of landfill utilization shall also be factored into this review with appropriate operational adjustments to ensure that the stockpile area is returned or incrementally returned to agricultural and/or habitat uses as soon as possible.

- c. During the review occurring 12 years from commencement of grading operations, particular attention shall be paid as to whether there is a way to conduct the stockpile removal (which should be occurring by that time) so as to return the stockpile area or at least part of it to agricultural and/or habitat use more quickly than planned.
- d. During the review occurring 18 years from commencement of grading operations, a decision as to the future agricultural and/or habitat use of the interim stockpile area shall be made. **The options for consideration at this review shall be limited to either an agricultural use consistent with the provisions of Conditions G.1-G.3, a habitat use, or some combination of both agricultural and habitat uses.** The premise shall be that some hydrologic connection should remain and/or be restored from the wetland seep area to the mitigation ponds or other riparian area, unless experience has indicated that such a connection will not work or have no habitat value. The decision whether to retain the underground system versus reinstalling a riparian corridor will be based on: 1) a hydrologic and biologic assessment of the area, that includes evaluating the functioning of the ponds, which should not be diminished by the decision made, and 2) input from the resources agencies. The results of this 18 year review shall be a new or amended Coastal Zone Permit which sets a firm timetable and other implementation mechanisms for returning the stockpile area to agricultural and/or biotic habitat uses.
- e. Based on its records of material taken by Granite Rock, fill material deposited at the landfill, material used for landfill cover, and material stockpiled, the Public Works Department shall produce a projection of how much total stockpiled material will be needed for cover and when final removal of the stockpile will occur. These projections shall be presented and considered in conjunction with each six-year review of the project. Projections that there will be extra material not needed for landfill cover shall be responded to in these reviews by implementing a program to get rid of the projected excesses by the end of the stockpile's permitted life (20 years), in an environmentally appropriate manner, such as selling some material to a mining or construction company. Projections that the stockpile will have to stay longer than 20 years shall be

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accompanied by implementing a program to reduce the footprint of the remaining stockpile after 20 years and return the rest of the permitted stockpile area to agriculture and/or biotic habitat on schedule.

7. Declaration of Restrictions for Protected Biotic Areas

a. Area Covered by the Declaration

A declaration of restrictions shall be recorded for the biotic mitigation areas and a protective buffer zone adjacent to the main drainage channel and north drainage channel of the subject parcel that runs with the land according to the following requirements.

b. Content of Document

The declaration shall include a map conforming to Exhibits A and D delineating areas permanently reserved for habitat preservation and/or restoration, and the adjoining land area to buffer the protected biotic habitat from agricultural or stockpile uses.

c. Procedure for Preparing and Implementing Document

The declaration shall be prepared according to the format required by County Counsel. The document shall be reviewed and approved by County Counsel and County Planning staff prior to formal approval by the Board of Supervisors and recordation. The document shall be recorded prior to the commencement of any site preparation work for this project.

8. Open Space Areas

**Two areas of the parcel covering approximately 10 acres, as shown on Exhibit A, shall be kept in open space where no stockpiling activities, agricultural production nor biotic restoration shall occur. The purpose of the open space area is to create a zone of separation between stockpiling and agricultural activities on the site and those areas dedicated for biotic restoration and preservation. To achieve this objective the area shall be managed primarily passively as open space during the life of the project with active pursuits primarily limited to hydroseeding and other techniques to control erosion. The use of this land at project closure shall be determined at the year 18 review of the project as described in Condition A.6.d.**

9. Other than measures approved pursuant to subsection 8(b) below, the Public Works Department shall, in consultation with the resource

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agencies, submit for Planning Director review and approval the following plans prior to commencement of any site preparation work:

- a. Final stockpiling plans, including all associated facilities and improvements (e.g., conveyor, entrance road, drainage, equipment parking, etc.) and generally conforming to those plans shown in Exhibit A, but revised to address the conditions of this permit;
  - b. Final Wetlands and Riparian Mitigation Plan text and sheets conforming to those shown in Exhibit B, but expanded to address all elements specified in condition C.1;
  - c. Interim landscaping plans and narrative showing vegetative cover and screening for the period when no earth moving of the stockpile will occur;
  - d. Landscaping plans and narrative demonstrating how maximum erosion control and screening vegetation will remain in place during the period of stockpile removal.
10. As part of its agreement to undertake cooperative planning studies to evaluate the potential for consolidation of landfill activities, the County shall undertake the following steps. For each type of existing or potential operation studied at the landfills (e.g., recycling, composting, landfill, soil rehabilitation or treatment, sludge drying, stockpiling, equipment storage), a consolidated site should be identified that, if possible, utilizes non-agricultural areas first and then lower quality agricultural soils, secondly. Based on the results of the planning studies, the County should seek agreement with the City of Watsonville on ways to retain and/or return public land in the area not needed for landfill and related operations to agricultural use (with appropriate habitat buffers). A future Coastal Zone Permit request or amendment to continue to use the subject site for landfill or related purposes or that involves another agricultural parcel shall be accompanied by a report from the County detailing the results of the cooperative planning studies and the relationship of the request to the studies' conclusions.
11. The County shall make an annual contribution of \$12,000.00 to the Agricultural Conservation Easement program towards the purchase of agricultural conservation easements on properties selected for

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rehabilitation (preferably within the Coastal Zone) to increase their agricultural viability for each year that the project restricts crop growing or livestock grazing from occurring on the stockpile site and/or the area designated as open space on sheets 1 and 2 of Exhibit A. The annual contribution described above may be reduced by \$600.00 for each acre that is taken out of stockpile use and returned to active crop production on the parcel before the end of the project period.

**12. The County shall make reasonable efforts to reduce the amount of soil required to be transferred from the Buena Vista landfill site. In addition, the County shall make reasonable efforts to coordinate an agreement with the City of Watsonville to transfer soil to the City's landfill site for storage, if the County determines that such an alternative would not have new significant environmental effects that could not be mitigated and is operationally and economically feasible. The intent of these actions is to reduce, if possible, the amount of soil required to be stored on APN 46-121-03, with the objective of limiting the amount of Elkhorn sandy loam (or other soil with an agricultural capability rating of 3 or better) that may be covered as a result of stockpiling activities.**

**13. Use of the subject parcel for recycling programs is prohibited. The storage of vehicles and equipment shall be limited to those required for stockpiling activities. Such storage of vehicles shall be clustered in a location that limits their visibility from off-site locations.**

B. Prior to commencement of any site preparation work (except for biotic restoration) or deposition of fill material at the project site, the Public Works Department shall complete the following:

1. Additional engineering shall be undertaken during final project design to define soil properties and assess slope geometry to achieve an adequate factor of safety against instability. Final construction documents should include detailed specifications for site preparation and fill placement. (S-I a)
2. Additional drainage features shall be incorporated into the final subdrain system design to minimize the risk of slope failure from hydrostatic pressure buildup caused by groundwater seepage. The design should be flexible, allowing modification during construction to

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address actual field conditions. (S-1b)

3. Final project design shall include designing facilities and grades to accommodate the anticipated settlement or reducing the settlement. (S-2)
4. A design-level geotechnical investigation should be conducted of alluvial soils near the toe of fill slopes and at debris basin locations. All recommendations of the geotechnical investigation shall be incorporated into the final project plans. (S-3)
5. Project site drainage facilities shall be designed to resist seismic ground shaking forces to prevent damage during earthquakes. (S-5)
6. The final design of the proposed project shall incorporate requirements of the County of Santa Cruz Grading Ordinance, Erosion Control Ordinance, County Design Criteria, and the Construction Activities General Permit. (H-1 a)
7. The design of sedimentation basins shall incorporate erosion protection across exposed slopes to reduce the potential for erosion and possible failure of the berms during storm events.

The design capacity of the southern ravine sedimentation basin shall be increased to accommodate the anticipated reduction in capacity caused by ongoing sedimentation in the basin. In addition, a sediment removal schedule should be developed to maintain the storage capacity of the basins. This schedule shall be specified on the final project plans. (H-i b and H-1c)

8. A monitoring program shall be developed and implemented to assess project-related erosion and sedimentation of downstream drainages. The program should include the process for implementing any remedial measures if turbidity levels exceed standards set by the Regional Water Quality Control Board. (H-1 d)
9. The final engineered drainage plans shall incorporate culverts with sufficient capacity to accommodate 100 year storm flows from the contributing watershed. (H-2)
10. The final design of the replacement of the culvert required for reconstruction of the Buena Vista Drive crossing, shall incorporate a culvert with sufficient capacity to convey runoff generated by a 100-year storm event. (H-3).
11. The County or its contractor shall develop a site specific spill response plan and a routine maintenance and inspection program to minimize the risk of release of hazardous materials. The spill response plan and its inspection program shall be approved by the

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County Environmental Health Service. A copy of the approved plan shall be retained by both Public Works and Environmental Health. (H-4)

12. The existing grades of the entire stockpiling area shall be surveyed and mapped to provide the necessary data to allow fill material to be removed from the site without loss of native topsoil. All survey data and mapping shall be retained by the Public Works Department and followed by excavation crews when fill material is being returned to the Buena Vista landfill. (Also see conditions F.1 - F.3).
  13. The Declaration of Restrictions shall be implemented as described in condition A.7.
- C. Biotic restoration, to compensate for project riparian impacts, shall be conducted in the following manner.
1. Final working drawings based on the Wetland and Riparian Mitigation Plan, specified as Exhibit B of this permit, shall be prepared and approved prior to any site preparation work on the project site. The Wetland and Riparian Mitigation Plan dated September 1997 prepared previously for this project shall be revised to include the following measures:
    - a. A tree and/or shrub vegetated corridor on the site along all of Buena Vista Drive, with the exception of one culverted agricultural access road and one temporary stockpile access road (that will also be used for agricultural access);
    - b. Recontoured and stabilized northern channel, planted with riparian vegetation, and buffered by 50 foot width of native vegetation;
    - c. Performance standards to measure the success of habitat enhancement activities in the north channel;
    - d. Removal of the existing agricultural access road;
    - e. Subdrain system to be installed at the base of the southern channel fill area designed to divert seep water from the upper reaches of the channel into the 3 pond mitigation site and to operate by gravity flow with clean-out access for periodic maintenance;
    - f. Drainage outlet in lowest pond at the three pond mitigation area.

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The final plans shall be approved by County Planning, California Department of Fish and Game and the U.S. Army Corps of Engineers. (B-1 )

2. Biotic restoration work shall be implemented according to final working drawings based on the approved Wetland and Riparian Mitigation Plan (Exhibit B), as revised by the items specified in condition C.1 above, prior to soil stockpiling activities occurring on the site. All restoration work shall be conducted under the supervision of a wetland botanist or wetland/riparian restoration specialist approved by the County Planning and Public Works Departments. (B-1)
- D. Prior to any soil stockpiling occurring, the Public Works Department shall complete the following:
1. Measures shall be implemented to increase sight distance for vehicles leaving the project site to a minimum of 660 feet in both directions. These measures could include trimming of trees and brush, tree removal, and grading back of steep slopes adjoining the roadway provided they are consistent with the biotic restoration plan. Equipment crossing warning signs shall be posted north and southwest of the Buena Vista Drive crossing. The intersection of the project access road and Buena Vista Drive shall be a two-way stop controlled intersection with a stop sign posted at both legs of the access road so project traffic must stop to give Buena Vista Drive traffic the right-of-way. (T-1)
  2. A final design (structural Section) for the Buena Vista Drive crossing shall be developed in accordance with requirements of the Santa Cruz County Roadway Design Criteria and the Caltrans Highway Design Manual. This new crossing shall be constructed according to the approved plans. (T-2)
  3. Sufficient paving length shall be provided on both sides road approaches to minimize mud/gravel tracking on Buena Vista Drive. In addition, project personnel should sweep any accumulated mud or gravel from Buena Vista Drive at regular intervals each day (if needed). (T-3)
  4. Implement the wetland and riparian mitigation plan to provide partial screening of the stockpile. (T-4)
  5. All drainage facilities shall be installed according to the requirements specified in conditions B.1 -B.10 above. All installation work shall occur during May 1 to October 1.
- E. All stockpiling activities shall comply with the following operational

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measures:

1. To ensure that air quality impacts from dust emissions are less than significant, the following operational measures shall be implemented:
    - a. Water trucks shall water exposed surfaces (loading site and unpaved roads) on a continual basis every work day when there is no natural precipitation to keep dust generation from occurring;
    - b. Watering intensity shall be 1 liter/square meter; and
    - c. Maximum vehicle speeds shall be 15 MPH when vehicles are full and 30 MPH when vehicles are empty. (AQ-1)
  2. Muffling and other typical noise operational conditions of heavy equipment shall be continuously implemented to assure that noise impacts would be less than significant. (N-1)
  3. Any new noise attenuation techniques that are developed in the future and are applicable to this project shall be used to the maximum extent feasible to reduce noise impacts to surrounding properties.
  4. All vehicular use and soil stockpiling and grading shall occur between 8:00 a.m. to 5:00 p.m., Monday through Saturday.
  5. From October 15 to April 15 of each year, winter erosion control measures shall be employed. At minimum, these measures shall include:
    - a. Hydroseeding all slopes greater than 15% and areas not receiving fill material during the rainy season period;
    - b. Regrading all unsurfaced roads on the site to drain into roadside collector ditches; and
    - c. Recompaction of all unsurfaced roads on the site.
  6. All stockpiled material shall be limited to material that will be used as cover or liner material at the Buena Vista landfill. Material not used for this purpose shall not be transported to nor deposited at the project property. This restriction shall not limit the transport and use of agricultural soil amendments on the portion of the property retained in agricultural crop and livestock production.
  7. The Public Works Department shall establish vegetation on barren surfaces of the stockpile to prevent surface erosion. (T-4)
- F. Use of the existing dwelling and use of the area remaining for agricultural crop and/or livestock production shall comply with the following:



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1. The dwelling shall not be used as a maintenance facility. Residential use and/or office use related to the project is permitted.
  2. No vehicles shall use Tulsa Lane to access the site.
- G. Project closure shall include the following requirements:
1. All stockpiled soil shall be removed from the site 20 years from the date stockpiling first occurred (approximately 20.5 years from the date of permit approval).
  2. If, at the eighteen year review, it is determined that the project site shall be returned to agricultural use, the site shall be restored to either:
    - a. Pre-project condition; or
    - b. A condition that is more viable for agricultural use as described in G.3. below.
  3. If the technique described in condition G.2.b. is selected as the final closure method, after the removal of fill from the project site, the site shall be graded to achieve final contours with gradients less than 20 percent. The site shall be covered with a layer of topsoil at least as deep as is currently present on the site.

Recovering the site with native topsoil after recontouring activities have been completed will require the temporary grading and stockpiling of native topsoil from those areas where recontouring will occur. Finished grades will facilitate crop production. Closure activities shall prevent any impacts from occurring on land protected by biotic preservation easement. If necessary, temporary construction fencing shall be installed 10 feet or more beyond the western edge of this protected land to prevent closure/recontouring activities from encroaching into the easement area.

H. MITIGATION MONITORING PROGRAM

The mitigation measures listed in Exhibit C have been incorporated into the conditions of approval for this project in order to mitigate or avoid significant effects on the environment. As required by Section 21.081.6 of the California Public Resources Code, a monitoring and reporting program for the above mitigations is hereby adopted as a condition of approval for this project. The monitoring program is specifically described following each mitigation measure listed below. The purpose of this monitoring is to ensure compliance with environmental mitigations during project implementation and operation. Failure to comply with the conditions of approval, including the terms of the adopted monitoring program, may result in permit revocation pursuant to Section 18.10.462 of the Santa Cruz County Code.

*NOTE: This permit shall expire within two years from date of issuance unless it has been exercised.*

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October 15, 1998

**Agenda: October 20, 1998**

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street, Room 500  
Santa Cruz, California 95060

**RE: Buena Vista Soil Management/Stockpile Project**  
**Application 98-0650 - Proposal to Amend Permit 97-0309**  
**Response to Buena Vista Community Association Comments**

Dear Members of the Board:

On October 6, 1998 your Board held a public hearing on the above-referenced project during which you received oral and written comments, including those submitted on behalf of the Buena Vista Community Association (BVCA). Pursuant to your direction, County Counsel provides the following information in response to the issues raised by BVCA.

- BVCA objects that the agenda materials did not include grading plans or other explanatory information regarding the proposed restorative grading in the north channel. BVCA suggests that grading in a riparian corridor is an anathema, but apparently recognizes that such is allowed under limited circumstances in that its letter states "such plans must be spelled out and the project bound to those plans to insure that the grading is consistent with the County's Riparian Corridor Ordinance."

**RESPONSE:** Grading done in connection with erosion control and/or habitat

restoration measures required as a condition of a County-approved project is exempt from the Riparian Corridor Ordinance; however, plans for such measures must be reviewed and approved by the Planning Director (County Code section 16.30.050(e)). Grading work proposed in the north channel is necessary to create riparian habitat and consists of lessening the channel gradient and increasing the area of surface inundation. Grading plans and narrative explanations are contained in the Wetland and Riparian Mitigation Plan dated October 1998, which is Exhibit B to the Conditions of Approval for the project and incorporated as a condition by reference. As is customary, these materials were not distributed with the agenda materials. However, they were and are available for review and copies have been provided to BVCA.

- BVCA contends that the amended project is inconsistent with County Code Section 13.10.639 and corresponding Development Permit Finding No. 2, both of which concern the requirement that land taken out of agricultural production for landfill activities must, upon cessation of such activities, be rehabilitated and made available for subsequent agricultural activities. In particular, BVCA objects to the option which provides for exclusive “habitat use” upon closure of the project in 18 years. BVCA also asserts that allowing a 10-acre area of agricultural land along the north channel to be left fallow for habitat and open space use may also contravene Section 13.10.639.

RESPONSE: The County’s Zoning Ordinance currently provides that land may be taken out of agricultural production for landfill activities, so long as such use is temporary and the land is ultimately rehabilitated and available for agricultural use. Condition of Approval G.2 satisfies the Zoning Ordinance and corresponding Development Permit Finding No. 2 in that it provides for the site to be returned to agricultural use and restored to either its pre-project condition or to a condition that is more viable for agricultural use as more particularly set forth in condition G.3.

Closure of the stockpile project requires a new or amended Coastal Zone Permit (Condition A.6.d.); the County’s Local Coastal Plan, including all implementing ordinances, that are in effect at that time will apply. During the intervening 18 years, surrounding land uses, the land’s viability for agricultural use, and the pertinent legal requirements may change. The General Plan/LCP and/or the Zoning Ordinance may be amended and the requirements limiting the future use of the property to agriculture be reduced or eliminated. Since the project involves considerable efforts to restore and enhance biotic resources that are currently in a significantly degraded condition, the exclusive habitat use option simply requires consideration of an alternative that provides for rehabilitation of the south channel

and preservation of the restored biotic resources. This alternative, or any other closure plan, can be implemented only if it conforms to the then applicable ordinances and other legal requirements and only after further environmental review and notice and public hearing. Until a closure option is selected and the appropriate permits applied for, it is premature to assert that the Zoning Ordinance is violated.

Allowing a 10-acre area of agricultural land along the north channel to be left fallow for habitat and open space use is intended to continue only during the life of the project. Since the open space the area is subject to the above mentioned closure options, this aspect of the project also complies with Section 13.10.639.

- BVCA contends that there is no analysis of whether \$12,000 per year adequately compensates for the interim loss of 30 acres of productive agricultural land for 20 years, or the possible permanent loss of the productive agricultural land where the stockpiling has occurred, thus warranting analysis in a revised Draft EIR.

RESPONSE: The proposed condition requiring an annual cash contribution to the County's Agricultural Conservation Easement program to be used for the purchase of agricultural conservation easements on properties selected for rehabilitation, preferably within the Coastal Zone, is not a mitigation required by the environmental documents or CEQA. Rather it is a condition suggested by staff to the Coastal Commission to further assure that the project is consistent with the County's Local Coastal Program and its policies concerning the protection of agricultural lands. Hence, the proposed condition does not require analysis in a revised and recirculated subsequent or supplemental EIR. (See also additional discussion below regarding the appropriate additional environmental review required by CEQA.)

- BVCA expresses concern regarding whether the piping of water from the current wetland seep to the new three-pond area will affect the long-term feasibility of selecting the closure option for exclusive use of the property for habitat protection.

RESPONSE: This concern is somewhat confusing given BVCA's objection to the inclusion of the biotic habitat closure option as violative of the Zoning Ordinance and Development Permit Finding No. 2. This is not a legal issue and is better responded to by Planning staff who have advised us that the wetland seep can be restored with the removal of the piping and the implementation of an appropriate mitigation plan.

- BVCA objects that the Declaration of Restrictions referenced in Condition A.7 does

not identify the party in whose favor the restrictions will run, does not require any restrictions for the wetland seep or south channel riparian corridor, and does not inform the public by attaching the referenced Exhibits A and D to the Conditions of Approval.

**RESPONSE:** Condition A.7. provides that the Declaration of Restrictions be in a format required by County Counsel. County Counsel will include a provision in the proposed Declaration to state that it is enforceable by the Coastal Commission.' The Declaration will apply to the biotic mitigation areas and protective buffer zone adjacent to the main drainage channel and north drainage channel, as shown on Exhibit B to the Declaration. It will not apply to the wetland seep or south channel riparian corridor for the reason that, at this time, it is uncertain whether at the end of the project those areas will be returned to agricultural use, preserved for exclusive habitat use, or otherwise provided for under an approved closure plan.

- Finally, BVCA asserts that CEQA requires revision and recirculation of the EIR since the revised project constitutes a major amendment of the prior permit, involves grading in a riparian corridor, involves displacement of 30 acres rather than 20 acres of agricultural land and does not comply with County Code Section 13.10.639: or, alternatively, the Staff Report and attachments do not constitute an adequate addendum.

**RESPONSE:** The state CEQA Guidelines<sup>2</sup> provide for a Subsequent EIR, a Supplement to an EIR, and an Addendum to an EIR and state the circumstances under which each must or may be used. Section 15 164 of the Guidelines states that a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but they do not

- ▶ involve substantial changes either to the project or to the circumstances under which the project is undertaken which require major revisions to the previous EIR due to new significant environmental effects or a substantial increase in

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<sup>1</sup> The Coastal Act expressly provides for individual participation in enforcing its provisions (Public Resources Code section 30800, et seq; Sanders v. Pacific Gas & Elec. Co. (1975) 53 C.A.3d 661). The concerns of BVCA's members regarding enforcement of the conditions of the Coastal Permit are unwarranted.

<sup>2</sup> Title 14 Cal. Code of Regulations, section 15000, et seq.

the severity of previously identified significant effects;

- ▶ involve important new information which was not known and could not have been known with the exercise of reasonable diligence and that meets certain specified criteria.

Unlike an addendum to a negative declaration, an addendum to an EIR is not limited to “only minor technical changes or additions.” (Section 15 164(b).)

There are several appellate cases concerning challenges to a lead agency’s decision to not require preparation of a subsequent or supplemental EIR but rather to rely on an addendum. Fund for Environmental Defense v. County of Orange<sup>3</sup> involved development of a medical research and laboratory complex on property adjacent to a wilderness park. The original use permit expired. Five years later when a new permit was applied for, the complex was completely surrounded by the park and other changes in the project were proposed, including clustering of the buildings and a 30 percent increase in their square footage, a reconfiguration of and increase in the number of parking spaces, increased grading, and a change in the means of obtaining the water supply. The County determined that a 106-page addendum to the original EIR was sufficient and the Court of Appeal upheld that determination. The Court stated as follows:

In the parlance of the CEQA Guidelines, there must be subsequent changes to the project or in the circumstances surrounding the project which “require important revisions of the previous EIR . . . due to the involvement of new *significant environmental* impacts not considered in a previous EIR” The term “significant effect” on the environment is defined in the Guidelines as “a substantial, or potentially substantial, *adverse change* in any of the physical conditions within the area affected by the project...” (supra, page 1553)

In Laurel Heights Improvement Assn v. Regents of University of California,<sup>4</sup> the California Supreme Court rejected the proposition that there is a statutory duty to prepare a new EIR whenever “*any* new, arguably significant information or data” is proposed

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<sup>3</sup> (1988) 204 Cal.App.3d 1538.

<sup>4</sup> (1993) 6 Cal.4th 1112.

“regardless of whether the information reveals environmental bad news.” (Italics in original.) The Court recognized that even a substantial increase in the severity of an environmental impact does not require recirculation of an EIR, or the preparation of a supplemental EIR if mitigation measures are adopted which reduce the impact to a level of insignificance.<sup>5</sup>

The proposed amendments to the Buena Vista Soil Management/Stockpile Project do not involve new significant adverse environmental impacts not considered in the certified EIR. The amendment application involves only relatively minor changes to the project, all of which further reduce the environmental impacts of the project and enhance the mitigation measures previously adopted. The temporary displacement of agricultural land and the impacts on biological resources were analyzed at length in the previous DEIR, FEIR, DSEIR and FSEIR.<sup>6</sup> It is the opinion of County Counsel that the staff report and attachments submitted as agenda materials for the public hearing before your Board on October 6, which includes a brief explanation concerning the recommendation not to prepare a supplemental EIR, constitutes a legally sufficient addendum and the requirements of CEQA are satisfied.

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<sup>5</sup> See also River Valley Preservation Project v. Metropolitan Transit Development Bd., ((1995) 37 Cal. App. 4th 154), in which the Court held that no subsequent or supplemental EIR was required for the post-approval development of the details of a wetlands mitigation plan for a light rail extension project with impacts on wetlands, and for the decision to raise the height of a berm supporting the rail segment. The original EIR had discussed the need for a wetlands plan as a mitigation measure; an addendum describing the same unavoidable adverse impacts as described in the original EIR was sufficient .

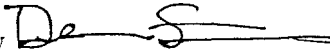
<sup>6</sup> The original stockpile project called for the displacement of approximately 30 acres of agricultural land on the 70-acre project site. Consequently, the Draft and Final EIR’s both analyze the project’s impacts and call for mitigation measures based on the temporary loss of approximately 28.2 acres of Commercial Agricultural (CA) land. (See for example pp 13- 15 DEIR and Table 2- 1 pp 6 & S and Table 3-1 p 9 FEIR.)



IT IS THEREFORE RECOMMENDED that your Board accept this report.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By   
\_\_\_\_\_  
Deborah Steen  
Assistant County Counsel

RECOMMENDED:

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SUSAN A. MAURIELLO  
County Administrative Officer

cc: Coastal Commission  
Jonathan Wittwer, Esq. (BVCA)  
Patrick Mathews, Public Works  
Kim Tschantz, Planning