

# Exhibit H

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Report to Monterey County Board of Supervisors

SUBJECT	CONSIDER THE APPEAL FROM LAVENA CUMMINGS FROM THE DECISION OF THE PLANNING COMMISSION GRANTING A USE PERMIT (PC-4745) TO KAISER REFRACTORIES TO ALLOW REMOVAL OF NATURAL MATERIALS, NATIVIDAD AREA, DISTRICT 1.	BOARD MEETING DATE	AGENDA NUMBER
		OCTOBER 11, 1983 11:15a.m.	AGENDA # 7
DEPARTMENT	PLANNING		

RECOMMENDATION

Deny the appeal from LaVena Cummings from the decision of the Planning Commission granting a Use Permit (PC-4745) to Kaiser Refractories to allow removal of natural materials in the Natividad Area.

JUSTIFICATION

The appellant states that the immediate neighbors of Kaiser were not notified of the public meeting.

The County noticed the public hearing as required by law, including newspaper notice, mailed notices to adjacent property owners, and posting on the project site. This notice was given for the May 11, 1983 public hearing. Continued public hearings on May 25, June 29, July 27 and August 10 did not require additional notice.

The appellant questions why the Planning Commission did not require an Environmental Impact Report.

The County completed an Initial Study which indicated that potentially significant impacts are mitigated by implementation of Kaiser's Reclamation Plan. All of the provisions of the Reclamation Plan were made conditions of approval for the Use Permit or the Reclamation Plan Resolution, and Kaiser must comply with them.

The appellant appeals the finding #3 of Resolution No. 83-280 which mentions that the conditions be "broadly written."

Finding #3 states that the only conditions that are to be "broadly written" are those which refer to mining time tables and market conditions. The Use Permit contains 16 conditions and the Reclamation Plan Resolution contains 44 conditions. The Planning Commission's intent is to assure that the mining operation complies with the Reclamation Plan and with the County's Policies. It is not their intent to regulate mining time tables and marketing conditions. These factors do change and that is why the Planning Commission is requiring an update of the operation at least every 5 years, or sooner if necessary. (Use Permit 2970 conditions 2 and 3.)

Appeal from Lavena Cummings (Kaiser Refractories)  
October 11, 1983  
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The appellant appeals condition #2 of Resolution 83-280 which requires a revegetation plan prior to December 29, 1983.

This condition must be met before operations can begin on the additional property. The December 29 date gives Kaiser sufficient time to test the effectiveness of various hydro-seeding methods. A preliminary vegetation study is available in the Reclamation Plan on file in the County Planning Department.

The appellant appeals condition #25 of Resolution 83-280 which requires a Geotechnical Consultant to be retained by Kaiser.

Although the Geotechnical Consultant will be retained by Kaiser, the County will review the consultant's work as required by condition #3 of the Use Permit, when an evaluation of the operation is submitted to the County at least every 5 years.

The appellant appeals conditions #35 and #38 of Resolution 83-280 which provide requirements for the construction of water process ponds.

The ponds, subdrains and toedrainns will be designed by a registered Civil Engineer and be tested by a qualified Geotechnical Consultant. The general design and location of the ponds is shown in the Reclamation Plan on Figures 11-2 and 6. The County again has the opportunity to review this work when the updates of the operation are submitted.

The appellant appeals condition #2 of Resolution 83-279 which requires an evaluation of the operation every 5 years or upon the request of the department, but no more frequently than every 2 years.

The Planning Commission felt that this timetable is reasonable on a 50-year Use Permit. Planning may consider a violation of a condition of approval at any time.

A copy of the Reclamation Plan is available at the Planning Department for your reference. Copies of the Use Permit and Resolution adopting the Reclamation Plan attached.

  
ROBERT SLIMMON JR., DIRECTOR OF PLANNING

CMS:jc

Attachments

cc: Applicant  
Michael Johnson, Assistant County Administrative Officer Intergovernmental  
Affairs  
News Media  
County Counsel  
Board Secretary

*Before the Board of Supervisors in and for the  
County of Monterey, State of California*

Appeal from LaVena Cummings from the Decision )  
of the Planning Commission Granting a Use Permit )  
(PC-4745) to Kaiser Refractories to Allow )  
Removal of Natural Materials on Property Located )  
in the Natividad Area, District No. 1, Held; )  
Appeal Partially Granted; Use Permit Approved )  
with Conditions . . . . . )

A public hearing is held on an appeal from LaVena Cummings from the decision of the Planning Commission granting a Use Permit (PC-4745) to Kaiser Refractories to allow removal of natural materials on property located on Parcel B and portion of Lot 3 of Sub A of Lot 28, Assessor's Map of Natividad Rancho, Natividad area, fronting on and northerly of Old Stage Road, District No. 1.

Bob Slimmen, Planning Director, explains Kaiser has removed minerals from this area for many years. He states Kaiser Refractories currently operate under use permits issued by the County of Monterey, and now seek to expand mining and processing operations into newly purchased adjoining parcels. He states the Planning Commission as well as granting a Use Permit, approved the Reclamation Plan which is in accordance with Title 16 (Environment) 16.04 (Surface Mining and Reclamation) of the Monterey County Code, and is available at the Planning Department for reference.

Various persons address the Board on the circumstances surrounding the appeal. They address the conditions placed on the Use Permit by the Planning Commission, and make suggested modifications.

After discussion, and upon motion of Supervisor Del Piero, seconded by Supervisor Shipnuck, and unanimously carried by those members present, the Board hereby partially grants the appeal, thereby approving the Use Permit, subject to the following findings and conditions:

*Plan*

*ENTER*

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

Hearing on Appeal from LaVena Cummings from )  
the Decision of the Planning Commission Granting )  
a Use Permit (PC-4745) to Kaiser Refractories )  
to Allow Removal of Natural Materials on Property )  
Located in the Natividad Area, District No. 1, )  
Continued to Tuesday, October 18, 1983 at 2:00 )  
p.m. . . . . )

Upon motion of Supervisor Peters, seconded by  
Supervisor Del Fiero, and unanimously carried, the Board  
hereby continues the hearing on appeal from LaVena Cummings  
from the decision of the Planning Commission granting a Use  
Permit (PC-4745) to Kaiser Refractories to allow removal of  
natural materials on property located in the Natividad Area,  
District No. 1, to Tuesday, the 18th day of October, 1983 at  
the hour of 2:00 p.m.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of  
Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said  
Board of Supervisors, duly made and entered in the minutes thereof at page \_\_\_\_\_ of Minute Book \_\_\_\_\_  
on OCTOBER 12, 1983

Dated: **October 11, 1983**

ERNEST A. MAGGINI, County Clerk and ex-officio  
Clerk of the Board of Supervisors, County of Monterey,  
State of California.

By Nancy Rudenbill Deputy.

## FINDINGS OF FACT

1. Kaiser Refractories or predecessor corporations have continuously mined dolomite at the Natividad Quarry site since circa 1900. Kaiser Refractories currently operate under use permits issued by the County of Monterey and now seek to expand mining and processing operations into newly purchased adjoining parcels. The operations conducted by Kaiser Refractories at the site have significant economic impacts in the County of Monterey and have significant national defense and national industrial impact. The operations have been conducted by the company in good faith compliance with use permit conditions.
2. The Kaiser operations have resulted in large white-colored highly visible mining scars and production pilings which have substantial adverse aesthetic impact in the Salinas Valley which affects the property values and economic stability of the surrounding communities. The white prominence is especially notable from the City of Salinas, the Toro Area of Development Concentration and some parts of Moss Landing. Due to the population growth of surrounding areas, the present high visibility of the processing and materials makes a significantly larger impact upon the general welfare of the County than when the operations initially commenced. The natural rolling landforms and hills impart an ambiance and immediate visual escape from moments of congestion and overcrowding and warrant protection so far as practicable, of the natural topographic conditions.
3. The Planning Commission finds that the importance of the operations coupled with their ongoing nature warrant a long term use permit. The Planning Commission further finds that the aesthetic impacts of the operations and the anticipated operations warrant imposition of stringent and diligently enforced reclamation and aesthetic conditions. The Planning Commission further finds that due to the technical nature of much of the operations and the need for flexibility with respect to mixing of various grades of extracted minerals, it is very difficult to create conditions based upon precise mining location, precise extraction time tables or precise amounts of removable minerals. Consequently, the Planning Commission finds that use permit conditions should be broadly written to allow operational flexibility with respect to mining time tables and marketing conditions. In turn, the Planning Commission finds that the burden of establishing the need for changes in any of the use permit conditions should rest primarily with the applicant. When material or substantial changes of operations or reclamation processes become necessary due to unforeseen events occurring during the life time of the proposed use permit (including technological improvements, significant changes in market demand or significant changes in rates of extraction) the applicant should initiate requests for modifications of use permit conditions. If it is uncertain whether operational or reclamation process modifications will be material or significant, the uncertainty should be resolved in favor of Planning Commission review.

4. The proposed reclamation plan and quarry expansion is found to be consistent with the Monterey County General Plan. In particular the General Plan states "The plan shows that existing industrial sites in the County should be retained, including the Kaiser dolomite quarry. The plan proposed ...eastward expansion of the Kaiser dolomite quarry..." (p. 163).
5. The proposed reclamation plan is in conformance with Chapter 16.04, Monterey County Code (Surface Mining and Reclamation).

#### DECISION

THEREFORE, it is the decision of said Board of Supervisors that said application for a Reclamation Plan be approved, subject to the following conditions:

1. The reclamation plan shall be defined as both Volume 1 Reclamation Plan for the Natividad Quarry of Kaiser Refractories and Volume 2 Appendices to the Reclamation Plan for the Natividad Quarry of Kaiser Refractories, dated December, 1982.
2. A detailed revegetation plan shall be prepared and submitted to the Planning Department prior to December 29, 1983. Prior to each new phase as outlined in the Reclamation Plan, updates to the revegetation plan shall become a condition of this resolution upon approval of the Director of Planning. Modifications to the revegetation plan may be made by the Director of Planning upon application but if the Director determines that such modifications may be significant or substantial, the Director shall refer the matter to the Planning Commission for modification of this resolution with respect to these matters. All revegetation of the site shall be done in a timely and orderly manner as outlined in the reclamation plan.
3. Topsoil which has been excavated shall be stockpiled until such time that test results show whether it is required to promote revegetation. Any topsoil stockpiles or areas of redistributed topsoil shall be stabilized and revegetated prior to the onset of winter rains.
4. All conveyor systems or roads which may carry material to the new primary pile shall be as visibly inconspicuous as possible. The location and design of each conveyor system or road shall be approved by the Director of Planning prior to the commencement of construction. No such material, other than that to be commercially exported from the site, shall be hauled on County roads.
5. Provide adequate erosion control, including the use of water bars, culverts, and sediment traps.
6. All permanent down drains for erosion control and/or transport of ponding water shall be of a color and nature to be visibly inconspicuous and subject to the approval of the Director of Planning.
7. Surface-water catchment ponds shall be installed in appropriate areas to reduce runoff from disturbed areas.
8. As fills are placed in lifts behind berms, adequate provision shall be made for drainage to avoid ponding of water on the fill and to protect scouring of the fill face where the water drops to a lower level.
9. When the two easterly knobs are excavated, water shall be prevented from flowing off the sides by installation of a perimeter berm. A small detention pond on each shelf would aid in controlling runoff.
10. The existing settling ponds shall be returned to agricultural use, by grading the pond to create a slight incline, laying down