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Agenda Date: 3/22/2016
Agenda Placement: 9B
Set Time: 9:15 AM PUBLIC HEARING
Estimated Report Time: 6 Hours
Continued From: February 9, 2016

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Donald Barrella, Planner III - 707-299-1338
SUBJECT: Syar Appeals

RECOMMENDATION

Consideration and possible action regarding the following:

1. Appeals filed by Skyline Park Citizens Association, Inc. and Dorothy Glaros (hereafter Appellant Skyline Park Citizens) to:
 - a. A decision made by the Planning Commission on October 21, 2015, to certify an environmental impact report (EIR) prepared in connection with **Syar Industries, Inc.'s** Surface Mining Permit (SMP) to modify the mining and reclamation plan and associated quarry operations, including aggregate processing, production and sales as currently permitted under UP-128182, UP-27374, and County Agreement 2225 to allow: (1) an approximate 106-acre expansion of the current surface mining and reclamation plan for a 35 year term; (2) an increase in mining depth from approximately 300 feet and 150 feet above mean sea level (msl) to no greater than 50 feet above msl; (3) an increase in production of aggregate and aggregate-related materials from approximately 1 million tons per year (tpy) to 1.3 million tpy; and (4) add reclaimed asphalt pavement handling equipment to the existing asphalt batch plant and an increase in asphalt production up to approximately 300,000 tpy (inclusive of total annual production). This SMP replaces UP-128182, UP-27374, and County Agreement No. 2225, and brings existing and expanded mining and reclamation areas and associated quarry operations, including aggregate processing, production, and sales under one permit. (Hereafter referred to as the Syar Project.)
 - b. A decision made by the Planning Commission on November 18, 2015, to adopt Resolution No. 2015-03 regarding the Syar Project: (1) Adopting Findings and Rejecting the Proposed Project, the No Project Alternative, and the Reduced Footprint/Conservation Alternative pursuant to the California Environmental Quality Act (CEQA); (2) Finding the Syar Modified Project Plus Area C consistent with the Napa County General Plan; (3) Adopting the Mitigation Monitoring and Reporting Program; (4) Adopting the Syar Modified Project Plus Area C; and (5) Approving Surface Mining Permit No. P08-00337-SMP. (Hereafter referred to as the CEQA Findings.)
2. Appeals filed by Stop Syar Expansion, Steven Booth, Sandra Booth, Julia Winiarski, Kathy Felch, Richard S.

Blair, Susanne M. von Gymnich-Rosenberg, and David Lopez (Appellant Stop Syar) to:

- a. A decision made by the Planning Commission on October 21, 2015, to certify the EIR prepared in connection with the Syar Project.
- b. A decision made by the Planning Commission on November 18, 2015, to adopt Resolution No. 2015-03 regarding the Syar Project and the CEQA Findings.

The Syar Project site is located on the east side of State Highway 221 (Napa-Vallejo Highway) at its intersection with Basalt Road east of 2301 Napa-Vallejo Highway, within the unincorporated portion of Napa County, Assessor's Parcel Numbers 045-360-005, 046-370-012, -013, -015, -022, -025, 046-390-002, -003, and 046-450-071.

(CONTINUED FROM FEBRUARY 9, 2016)

EXECUTIVE SUMMARY

This matter involves four appeals of the Planning Commission's decision to: (1) certify the EIR; and (2) adopt CEQA findings and approve the Syar Project. On October 21, 2015, by a 5:0 vote the Commission took its first action and adopted Resolution No. 2015-02 certifying the EIR for the Syar Project. Timely appeals were submitted by Appellant Stop Syar and Appellant Skyline Park Citizens to the Commission's action.

Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. Because the two Commission actions being appealed (i.e., certification of the EIR and the CEQA findings and the Syar Project approval) are interrelated and most of the grounds raised in the appeals overlap each other, the Chair consolidated the appeals. Appellant Skyline Park Citizens, Appellant Stop Syar, Applicant and Staff all support consolidation of the appeals. On February 9, 2015, the Chairman opened and continued the public hearing (with the consent of all parties) to March 22, 2016 at 9:15 a.m.

PROCEDURAL REQUIREMENTS

Because of a software malfunction, there is no recording of the October 21, 2015 Planning Commission's final hearing regarding the Syar Project. Pursuant to Napa County Code Section 2.88.090 (A), if the hearing held before the approving authority (e.g., Planning Commission) was not recorded electronically or by a certified court reporter, the hearing on the appeal shall be de novo. Although the public hearings before the Commission on October 2, 2013, January 7, 2015, February 18, 2015, April 1, 2015, August 12, 2015, September 2, 2015, and November 18, 2015 were recorded and transcripts were made available to the Board and the public, the final hearing on October 21st was not recorded. As a result, the Chair determined that the appeal hearing will be held de novo. That means that a new hearing will occur and Appellants may present new evidence and arguments that were not presented to the Planning Commission so long as the evidence and argument relates to the grounds raised in their Appeal Packets. Because of the multiple appeals, the appeal hearing will be conducted as follows:

1. Chairman introduces item and requests Staff report presentation. Staff to present background common to all of the appeals. Because four appeals were filed, Staff prepared a consolidated staff report which addresses all of the grounds of appeal; however the appeal hearing will occur in two parts with Part I encompassing the two appeals filed by Appellant Stop Syar and Part II covering the two appeals filed by Appellant Skyline Citizens Park.
2. Chairman opens public hearing for Part I related to the two appeals filed by Appellant Stop Syar, invites Staff presentation on Part I, testimony from Appellant Stop Syar and their witnesses as previously disclosed on their witness list.
3. Chairman opens public hearing for Part II related to the two appeals filed by Appellant Skyline Citizens Park,

invites Staff presentation, testimony from Appellant Skyline Citizens Park and their witnesses as previously disclosed on their witness list.

4. Chairman invites any other interested parties and the public to testify regarding the appeals.
5. Upon hearing all testimony from the public and interested parties, Chairman invites the Applicant Syar to testify regarding Part I and Part II of the appeals.
6. Chairman then invites Appellant Stop Syar followed by Appellant Skyline Park Citizens to have the final rebuttal.
7. After the Board has heard testimony and received all evidence from the Appellant Stop Syar, Appellant Skyline Park Citizens, interested parties and the public, Applicant Syar and Staff, Chairman closes the public hearing.
8. A motion of intent is made and seconded to deny, uphold, and/or remand each of the four appeals. *Note: Because of the multiple appeals, staff requests that the Board act on each of the appeals separately and the Chairman call for a vote on each of the motions, as follows:
 - a. Appellant Stop Syar's appeal regarding certification of the EIR;
 - b. Appellant Stop Syar's appeal regarding the CEQA findings and approval of the Syar Project;
 - c. Appellant Skyline Park Citizens appeal regarding certification of the EIR; and
 - d. Appellant Skyline Park Citizens appeal regarding the CEQA findings and approval of the Syar Project.
9. Chairman refers the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the complexity of the appeals, the voluminous administrative record and the number of grounds raised in the appeals, good cause exists for County Counsel's office to have ninety days to prepare the Resolution of Findings and Decision on Appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Consideration and possible recertification of a Final Environmental Impact Report (State Clearinghouse No. 2009062054) prepared and certified on October 21, 2015.

BACKGROUND AND DISCUSSION

Documents associated with the Syar Project including but not limited to, the Draft EIR, Final EIR, Mining and Reclamation Plan, and transcripts, comments and correspondence received can be accessed at <http://www.countyofnapa.org/Syar/>. Planning Commission staff reports including attachments can be accessed at http://napa.granicus.com/ViewPublisher.php?view_id=21.

Summary of Planning Commission Hearings:

On January 7, 2015, the Planning Commission conducted a public hearing to consider certification of the EIR and the merits of the proposed quarry expansion and associated SMP. Prior to the hearing, comments were received on the Syar Project as well as the adequacy of the proposed Final EIR. During the hearing, several hours of testimony was presented primarily by interested parties. At the conclusion of the proceedings, the Commission continued the hearing to February 18, 2015 and directed staff to: evaluate and respond to public comments; clarify potential impacts and how they were assessed; clarify the benefits and disadvantages of the project alternatives

identified in the EIR; provide a hybrid project alternative for consideration; and clarify and refine proposed mitigation measures and conditions of approval.

On February 18, 2015, the Commission received additional testimony and comments from interested parties on the EIR and Syar Project. At staff's request, the Commission continued the item to April 1, 2015 to allow staff and the consultant additional time to evaluate and respond to comments.

On April 1, 2015, the Commission dropped the item from its agenda so that it could be re-noticed for a special meeting to allow staff adequate time to evaluate the Applicant's project modifications and continue to develop a hybrid alternative.

On August 12, 2015, the Commission conducted a special public hearing to consider certification of the EIR and the merits of the proposed quarry expansion and associated SMP. Public notice of this meeting was mailed, posted and published on July 11, 2015. Immediately prior to the hearing, extensive comments and technical reports were received regarding the Syar Project. During the hearing there were several hours of testimony presented primarily by interested parties. At the conclusion of the proceedings, the Commission continued the hearing to September 2, 2015, to allow time for staff and County consultants to review and evaluate the comments.

On September 2, 2015, the Commission received additional testimony and comments from interested parties on the EIR and the Syar Project. At staff's request, the Commission continued the item to October 21, 2015, to allow staff and the consultant time to respond to comments.

On October 21, 2015, the Commission adopted Resolution No. 2015-02 certifying the Project EIR, and adopted a motion of intent to approve the Syar Modified Project (which includes a production limitation of 1.3 million tons per year for a 35 year term) plus a footprint that excluded an approximate 4-acre area located in the southeast corner of the project area, identified as Area C (the Pasini Pond Area) for a total expansion of approximately 106-acres.

On November 18, 2015, the Commission adopted Resolution 2015-03: (1) Adopting findings and rejecting the Proposed Project, the No Project Alternative, and the Reduced Footprint/Conservation Alternative pursuant to CEQA; (2) Finding that the Syar Modified Project Plus Area C consistent with the General Plan; (3) Adopting a Mitigation Monitoring and Reporting Program; (4) Adopting the Syar Modified Project Plus Area C; and (5) Approving Surface Mining Permit No. P08-00337-SMP for the Syar Project.

Summary of Appeals:

This matter involves four appeals of the Planning Commission's decision to: (1) certify the Environmental Impact Report (EIR); and (2) adopt CEQA findings and approve the Syar Project. On October 21, 2015, by a 5:0 vote the Commission took its first action and adopted Resolution No. 2015-02 certifying the EIR for the Syar Project. On November 3, 2015, Appellant Skyline Park Citizens filed a timely Notice of Intent to Appeal the Commission's action certifying the EIR. On November 18, 2015, an Appeal Packet was timely submitted by Appellant Skyline Park Citizens. On November 3, 2015, Appellant Stop Syar filed a timely Notice of Intent to Appeal the Commission's action certifying the EIR. On November 18, 2015, an Appeal Packet was timely submitted by Appellant Stop Syar.

On November 18, 2015, by a 3:2 vote (Commissioners Cottrell and Phillips opposed) the Commission took its second action and adopted Resolution No. 2015-03 making CEQA findings and approving SMP No. P08-00337 for the Syar Project. On December 3, 2015, Appellant Skyline Park Citizens filed a timely Notice of Intent to Appeal the Commission's action to adopt Resolution No. 2015-03 adopting CEQA findings and approving the Syar Project. On December 16, 2015, an Appeal Packet was timely submitted by Appellant Skyline Park Citizens. On November 18,

2015, Appellant Stop Syar filed a Notice of Intent to Appeal the Commission's action to adopt Resolution No. 2015-03 making CEQA findings and approving the Syar Project. On December 4, 2015, an Appeal Packet was timely submitted by Appellant Stop Syar.

Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. Because the two Commission actions being appealed (i.e., certification of the EIR and the CEQA findings and the Syar Project approval) are interrelated and most of the grounds raised in the appeals overlap one another, the Chair has consolidated the appeals. Consolidation of the appeals will maximize staff resources, avoid duplicative reports, reduce repetition and provide for a more efficient hearing, thereby saving time and costs. Appellant Skyline Park Citizens, Appellant Stop Syar, Applicant and Staff have no objection to consolidation of the appeals. To accommodate all parties' schedules and in order to satisfy the ninety day scheduling deadline in the appeals ordinance, the public hearing was opened on February 9th and continued to March 22, 2016 at 9:15 a.m.

Pre-Hearing Conference:

In an effort to clarify the County's procedural requirements and expectations regarding appeals of Planning Commission decisions, the County Counsel's office has initiated a program whereby a pre-hearing conference is held with the parties (applicants and appellants) and the Chairman of the Board to discuss estimates of the time length of presentations, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference will be treated as an ordinary member of the public and be allotted the usual three minutes of speaking time.

A pre-hearing conference was held on February 8, 2016, with Appellant Stop Syar and their counsel, Appellant Skyline Park Citizens and their counsel, Applicant Syar Industries and their counsel, Chair Pedroza and County Counsel's office. At that time, Appellants agreed to use their best efforts to provide to County Counsel's office by February 22nd, their list of witnesses and any supplemental information the parties wished to have distributed to the Board as part of the agenda packet. Attached as Exhibit B is the witness list, expected testimony scope and time estimate of Appellant Stop Syar, Appellant Skyline Park Citizens, and Applicant. None of the parties provided any supplemental information to be distributed with this agenda report.

Because of a software malfunction, there is no recording of the October 21, 2015 Commission's final hearing regarding the Syar Project. Pursuant to Napa County Code Section 2.88.090 (A), if the hearing held before the approving authority (e.g., Planning Commission) was not recorded electronically or by a certified court reporter, the hearing on the appeal shall be de novo. Although the public hearings before the Commission on October 2, 2013, January 7, 2015, February 18, 2015, April 1, 2015, August 12, 2015, September 2, 2015 and November 18, 2016 were recorded and transcripts were made available to the Board and the public, the final hearing on October 21st was not recorded. As a result, the appeal hearing will be held de novo. This means that a new hearing will occur and Appellants may present new evidence and arguments that were not presented to the Planning Commission so long as the evidence and argument relates to the grounds raised in their respective appeal packets.

Stated Basis for the Appeals and Staff Response:

Exhibit A (attached) outlines the basis of the appeal as contained in the appeal submitted by Appellant Stop Syar and Appellant Skyline Park Citizens and Staff's response to the grounds of appeal. Part I (A) and (B) addresses the two appeals filed by Appellant Stop Syar and Part II (A) and (B) addresses the two appeals filed by Skyline Park Citizens. Part III contains the Staff Recommendation and options for the Board to consider.

Exhibit A was released to the Appellants, Applicant, the Board, interested parties and the public on March 10th. The Appellants have agreed that Appellant Stop Syar will address the Board first after Staff's presentation followed by Appellant Skyline Park Citizens. For convenience, staff has numbered each issue and provided a summary of the

appeal and staff's response, but staff recommends that the Board review the actual appeals.

Board Considerations and Staff Recommendation:

The following options are provided for the Board's consideration regarding possible action on the appeals:

- | Deny the appeals in their entirety and uphold the Syar Modified Project Plus Area C approved by the Commission;
- | Uphold one or more grounds of the appeals and either approve the Syar Modified Project Plus Area C, some other alternative consistent with the alternatives analyzed in the EIR, and/or impose additional conditions of approval on the project; or
- | Remand the matter to the Planning Commission.

Staff recommends that the Board uphold the Planning Commission's approval of the Syar Modified Project Plus Area C. Should the Board desire to consider alternatives to the project approved by the Commission, staff offers the following options:

1. Increased Buffers. While potential noise impacts have been reduced to a less than significant level, in order to ensure potential noise effects resulting from surface mining operations will be further minimized, the Board may wish to increase buffer widths or identify additional exclusion areas to provide additional noise reduction measures for the benefit of nearby residential and recreational uses.
2. Fleet Upgrades. The Board may determine that current and on-going operations require heightened levels of air pollution controls to provide further additional improvements to air quality. As an example, the Board may wish to require that quarry fleet engines be upgraded within an accelerated schedule. For instance, primary pieces of mining equipment could be conditioned to be updated to Tier 2 requirements within 12 months of approval of the permit or operations will need to be suspended until such upgrade occurs.
3. Lower Production. The Board may wish to consider a lower annual production level in a range closer to the five year average. Using historic baseline information, the five-year average would result in an annual production amount of 810,364 tons of Quarry sales.
4. Project Alternatives. Regarding the extent of the new areas to be mined, the Board may wish to consider one of the alternatives analyzed in the Draft EIR, the Hybrid Alternative prepared at the Commission's direction, or some alternative that encompasses components of the various alternatives.
5. Modifications to Mining and Reclamation Plan. The Board may wish to modify components of the Mining and Reclamation Plan to enhance or accelerate reclamation of the site. Examples may include but are not limited to, requiring the commencement of reclamation in areas where mining has ceased or is not anticipated to occur or requiring the commencement of reclamation in a specified year for identified mining areas. Another option would be to revise reclamation techniques or methods to take advantage of site conditions such as enhancing wetlands located along the southwest periphery of the site or converting runoff detention facilities into wetland features, both of which may benefit hydrologic functions of the facility after mining has been completed.
6. Easement. The Board may wish to consider a conservation easement to provide additional protection for the buffer area between the mine and Skyline Park as an option, but this can only be accomplished with the Applicant's voluntary concurrence.

SUPPORTING DOCUMENTS

A . Exhibit A - Grounds of Appeal Responses 3-10-2016

B . Exhibit B - Appellants' Witness List

- C . Stop Syar Expnasion Appeal Grounds
- D . Skyline Park Citizens Appeal Grounds
- E . Resolution 2015-02 Syar
- F . Resolution 2015-03 Syar
- G . Napa Quarry Mining and Reclamation Plan Revised 11-2015

CEO Recommendation: Approve

Reviewed By: Helene Franchi