

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

Resolution No. 2020-____
John Smith Road Landfill Use Permit PLN200021

A RESOLUTION OF THE COUNTY OF SAN BENITO PLANNING COMMISSION APPROVING A USE PERMIT WITH CONDITIONS, COUNTY FILE PLN200021, TO ALLOW THE SHORT-TERM (UP TO 4-YEARS) OFF-SITE STOCKPILING OF APPROXIMATELY 315,000 CUBIC YARDS OF NATIVE SOILS EXCAVATED FROM JOHN SMITH ROAD LANDFILL ON AN APPROXIMATELY 12.7-ACRE PORTION OF AN IMMEDIATELY ADJACENT PARCEL LOCATED AT 2650 JOHN SMITH ROAD (APN 025-190-011)

WHEREAS, the County of San Benito and Waste Solutions of San Benito, LLC (Waste Solutions) have entered into a Landfill Operating Agreement on December 21, 2010 and amended on October 17, 2019; and

WHEREAS, the County and Waste Solutions have mutually engaged in an enterprise to provide County residents and businesses with waste disposal services at the John Smith Road Landfill in that Waste Solutions is the operator of the John Smith Road Landfill (JSRL) located on County owned property located at 2650 John Smith Road; and

WHEREAS, San Benito County Integrated Waste Management (SBCIWM) Division is responsible for managing compliance of the Landfill Operating Agreement with Waste Solutions; and

WHEREAS, on May 7, 2020, Waste Solutions, on behalf of Mr. Manuel Lima, property owner, filed a use permit application with the County, File No. PLN 200021, for the short-term stockpiling of native soils from JSRL on Mr. Lima's property; and

WHEREAS, the subject project site is located at 2650 John Smith Road on the north side of John Smith Road, immediately adjacent to the east of the JSRL in unincorporated San Benito County, California and is approximately 12.7-acres in size (a portion of Assessor's Parcel No. 025-190-011); and

WHEREAS, a lot line adjustment (File No. PLN20005) to reconfigure the property lines of the now 388.05-acre subject parcel [new parcel 2] was approved by the County on February 19, 2020 and subsequently recorded by the property owner; and

WHEREAS, the proposed project includes the short-term stockpiling of approximately 315,000 cubic yards of native soils on approximately 12.7-acres of grazing land located outside of the permitted boundary of the John Smith Road Landfill. The source of the soil is from the excavation of the last waste disposal module within the permitted landfill boundary, which is an already approved activity at the landfill. The stockpiled soil would be used as a source for daily and intermediate landfill cover until it is depleted, which is expected to take approximately four (4) years; and

WHEREAS, the proposed project includes the construction of an approximately one-acre stormwater detention basin to capture stormwater runoff from the soil stockpile as a component of erosion control.

The detention pond would be located directly southeast of the proposed soil stockpile, directly north of John Smith Road, and directly east of the permitted landfill boundary; and

WHEREAS, according to the California Department of Toxic Substances Control *Envirostor* database, the John Smith Road Landfill is identified for correction action under Identification No. 80001507. A Class III correction action monitoring program is in place that is designed to evaluate the effectiveness of the onsite groundwater extraction system in controlling the migration of volatile organic compounds from the site; and

WHEREAS, the subject property currently has a 2035 General Plan Land Use Diagram designation of Rangeland (RG) and the purpose of this designation is to maintain open space and grazing land on hills, mountains, and remote areas of the county. This designation is applied to areas that have minimal transportation access, high to very high fire hazard, and no public infrastructure (e.g., sewer, water, drainage). Most of these areas are located within remote parts of the county; and

WHEREAS, the 2035 General Plan allows landfills in the Public/Quasi-Public (PQP) land use designation because the purpose of this designation is to provide for public and quasi-public uses, including public utility facilities and services, and other similar uses related to the operation of County government services; and

WHEREAS, the County's 2035 General Plan Policy PFS-7.1 states "*The County shall ensure that there is adequate capacity within the solid waste system for the collection, transportation, processing, recycling, and disposal of solid waste to meet the needs of existing and projected development*"; and

WHEREAS, the zoning designation of the subject property is Agricultural Rangeland (AR) and a landfill use is not enumerated as a permitted or conditional use, but can be considered under County Code Section 25.07.005 (Z) as an additional conditional use in accordance with Section 25.29.106; and

WHEREAS, County Code Section 25.29.106 (H) states that the Planning Commission may, after a public hearing, permit government enterprises and/or private enterprise performing governmental functions (federal, state and local) uses in zoning districts from which they are prohibited by this title where the uses are deemed essential or desirable to the public convenience or welfare, and are in harmony with the various elements or objectives of the general plan. A notice of the public hearing shall be given in accordance with the provisions of this title; and

WHEREAS, County staff distributed the use permit application, proposed plans and draft Initial Study to responsible County and peer agencies for review and comment; and

WHEREAS, the proposed project is subject to the requirements of the California Environmental Quality Act (CEQA) and pursuant to Sections 21092 and 21092.3 of the Public Resources Code and State CEQA Guidelines Section 15072 an Initial Study/Negative Declaration was prepared and available for public review and comment from May 2, 2020 until May 22, 2020; and

WHEREAS, the Initial Study shows that there is no substantial evidence, considering the whole record before the County, that the project may have a significant effect on the environment; and

WHEREAS, in accordance with County Code §§25.29.106 and 25.45.005, staff recommended the Planning Commission find the Use Permit File No. PLN200021; (1) consistent with the 2035 General Plan because the use is deemed essential or desirable to the public convenience or welfare, (2) is in harmony with the various elements or objectives of the General Plan and (3) will serve the public necessity, convenience and general welfare; and

WHEREAS, the Planning Commission of the County of San Benito reviewed the proposed Use Permit and Initial Study/Negative Declaration at its duly noticed, specially scheduled meeting held on June 3, 2020, and reviewed all written and oral information presented to them by County staff and the public at the public hearing; and

WHEREAS, at the conclusion of the public testimony, the Planning Commission closed the public hearing, deliberated, and considered the merits of the proposal and draft conditions of approval; and

NOW THEREFORE BE IT RESOLVED that, based on all of the evidence in the record, the Planning Commission of the County of San Benito hereby finds as follows:

California Environmental Quality Act (CEQA) Finding:

Prior to approving the project, the Planning Commission as the decision-making body of the lead agency is required to consider the proposed Negative Declaration together with any comments received during the public review process. The Planning Commission shall adopt the proposed Negative Declaration only if it finds on the basis of the whole record before it (including the Initial Study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the County's independent judgment and analysis.

Finding: Pursuant to San Benito County Local Guidelines for the California Environmental Quality Act, there is no substantial evidence this project will have a significant effect on the environment and no mitigation measures are required for incorporation into the project in order to reduce potentially significant impacts to a less than significant level under Sections 15070 to 15075 of the California Environmental Quality Act Guidelines. The Negative Declaration reflects the County's independent judgment and analysis.

Evidence: *Based on the analysis included in the attached Initial Study, the John Smith Road Landfill Soil Stockpile Project would not be expected to cause significant, adverse environmental impacts. Therefore, the impacts associated with the proposed project would remain less than significant. As a result, the preparation of an Environmental Impact Report pursuant to the California Environmental Quality Act (Division 13 of the Public Resources Code of the State of California) is not required. The County has not received any comments in response to the Notice of Intent to adopt the Negative Declaration issued and published on May 1, 2020.*

Use Permit Findings:

County Code §25.43.004 requires that after the public hearing the Planning Commission shall approve the issuance of a conditional use permit only if the evidence is such as to establish; (1) that the proposed use is properly located in relation to the general plan and to the community as a whole and to other land uses, transportation and service facilities in the vicinity; and (2) that the proposed use, if it complies with

all conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity or cause any damage, hazard or nuisance to persons or property.

Finding 1: This proposed short-term soil stockpile use is properly located in relation to the 2035 General Plan and to the community as a whole and to other land uses, transportation and service facilities in the vicinity.

***Evidence 1:** The Planning Commission finds that the use permit is consistent with the 2035 General Plan in that the purpose of the project is to implement the 2035 General Plan goals and policies for the provision of solid waste service for the County. The services provided by the John Smith Road Landfill are deemed essential or desirable to the public convenience or welfare. The permit is for a short-term use that is necessary for the continued operation of the existing landfill. Surrounding land uses are rural in character and include agricultural and grazing lands. No residential or other structures are located within 1,000 feet of the project site. The nearest residence is approximately 0.7 mile southeast of the project site.*

Finding 2: That the proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity or cause any damage, hazard or nuisance to persons or property.

***Evidence 2:** The approval of the use permit with conditions will serve the public necessity, convenience and general welfare in that the safe and effective operation of the John Smith Landfill will be allowed to continue in an orderly fashion. The landfill operation will continue to be subject to the terms and conditions of the Landfill Operating Agreement, which remains the operative document. The Landfill Operating Agreement includes requirements for on-going compliance with the regulations and permits of other responsible oversight agencies. The project, as proposed, will not be hazardous by reason of floods, geological hazard or unstable soils, and will not be liable to endanger other properties or result in the deposition of debris on any public way, property or drainage course, or will otherwise create a hazard. The project as proposed will not place fill within a 100-year floodplain.*

BE IT FURTHER RESOLVED by the Planning Commission of the County of San Benito that based on the foregoing findings and considerations, and based on the evidence in the record, the Planning Commission hereby makes the following findings and approves the use permit PLN200021 with the conditions of approval included in this resolution.

1. The Initial Study and Negative Declaration prepared for the project are complete and in compliance with the requirements of CEQA.
2. The use permit is consistent with the 2035 General Plan and there is not any applicable special plan.
3. The approval of the use permit will serve the public necessity, convenience and general welfare and the operation of the John Smith Road Landfill is considered an essential public service.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO ON THIS 3rd DAY OF JUNE 2020 BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:
ABSTAIN:

Valerie Egland, Chair
San Benito County Planning Commission

ATTEST:

Taven M. Kinison Brown, Principal Planner
Resource Management Agency
County of San Benito

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Conditions of Approval

The Planning Commission's issuance of this conditional use permit PLN200021 shall be contingent upon acceptance and observance of the following specified conditions. The following conditions are deemed necessary to protect the public health, safety and general welfare.

1. Indemnification: APPLICANT shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter "COUNTY") free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Action"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT'S Project or action taken by COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant's decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY'S actions with competent legal counsel of APPLICANT's choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]

2. Successors in Interest: The conditions of approval are binding on all successors in interest of permittee, whether succession is by agreement, operation of law, or other means, including but not limited to all future owners utilizing this use permit. [Planning]

3. Landfill Operating Agreement: This use permit and its conditions of approval is limited to land use related issues and is not intended to alter the existing Landfill Operating Agreement between the County and Waste Solutions. In the event of any conflict created by this use permit with the Landfill Operating Agreement, the Landfill Operating Agreement shall be the operative document. [Planning]

4. Notice of Determination: In accordance with Section 15075 of the CEQA Guidelines the filing of a Notice of Determination is required for the project. The notice will be provided by the County Planning Division and filed with the County Clerk within five (5) days of approval of the project. The applicant shall be responsible for the payment of a \$50.00 administrative filing fee and \$2,406.75 (Negative Declaration) for CA Fish and Wildlife fees. Fees shall be submitted to the Planning Division prior to the filing of the Notice of Determination. [Planning/CDFW]

5. Permit Expiration: The duration and time period within which the proposed use is allowed shall be four (4) years. The four (4) years will start the year after the year in which the stockpile is placed which date is presumed to be January 1, 2021 with the permit expiring on December 31, 2024. A request to extend the time limit of this use permit may be made in accordance with County Code provisions.

6. Conformity with Approved Plans: The use of the soil stockpiling site shall conform substantially to the approved site plans entitled “John Smith Road Landfill Stockpile Grading Plan”, dated January 2020, prepared by Lawrence and Associates consisting of eleven (11) sheets. The site plan is attached to this use permit as Exhibit A. Any increase in the nature or intensity of land use on the site beyond that already analyzed shall be subject to further Resource Management Agency review and approval. Approved plans and specifications shall not be substantially changed, modified or altered without written authorization from the Resource Management Agency. All work shall be in accordance with the approved plans and with San Benito County Code. [Planning]

7. Cultural Resources: If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovery occurs of any human remains of any age, or any significant artifact or other evidence of an archeological site, the applicant or operator shall:

For Inadvertent Discoveries:

a. In the event that cultural resources are exposed during ground-disturbing activities, construction activities should be halted in the immediate vicinity of the discovery. If the site cannot be avoided during the remainder of construction, an archaeologist who meets the Secretary of the Interior’s Professional Qualifications Standards should then be retained to evaluate the find’s significance under CEQA. If the discovery proves to be significant, additional work, such as data recovery excavation, may be warranted and should be discussed in consultation with the County.

For Discovery of Human Remains: If such an event occurs the specific procedures outlined by County Code and the NAHC, in accordance with Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the Public Resources code shall be followed:

b. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains.

c. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.

d. Notify the Sheriff–Coroner of the discovery if human and/or questionable remains have been discovered. The Resource Management Agency Director shall also be notified.

e. Subject to the legal process, grant all duly authorized representatives of the Coroner and the Resource Management Agency Director permission to enter onto the property and to take all actions consistent with Chapter 19.05 of the San Benito County Code and consistent with §7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with §27460) of Part 3 of Division 2 of Title 3 of the Government Code.

f. The coroner will have two working days to examine the remains after being notified in accordance with HSC 7050.5. If the coroner determines that the remains are Native American and are not subject to the coroner's authority, the coroner will notify NAHC of the discovery within 24 hours.

g. NAHC will immediately notify the Most Likely Descendant (MLD), who will have 48 hours after being granted access to the location of the remains to inspect them and make recommendations for their treatment. Work will be suspended in the area of the find until the County approves the proposed treatment of human remains.

Planning

8. Lighting: Any exterior equipment lighting shall be installed with a manual on/off switch and shall only be lighted while maintenance personnel are working at the site. Exterior lights shall be shielded to direct light downward and comply with the County Dark Skies Code. [Planning]

9. Access Agreements: Prior to commencement of stockpiling the applicant shall provide documents to the County that demonstrate and provide assurance that appropriate rights of access and use of the off-site property have been negotiated and agreed upon by both respective property owners. [Planning]

10. Compliance Documentation: Upon request from the County, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]

11. Safety precautions: The permittee shall take all appropriate and necessary precautions to protect adjacent public and private property from damage that may result from the stockpiling operations. Perimeter fencing of the stockpile shall be installed to prevent hazards to persons or livestock. Dust from stockpiling operations shall be controlled. [Planning]

12. Unused Stockpile: The actual amount of unused stockpile to remain is undetermined at the time this permit is issued. In accordance with County Code Chapter 19.17 any remaining overburden generated by the project that is to remain on the stockpile site shall be distributed as evenly as possible along the natural contours of the site to the satisfaction of the RMA Director. The permittee shall submit to the County for administrative review an overburden distribution and revegetation plan detailing the grading and revegetation of all exposed surfaces at least 30-days prior to permit expiration or cessation of stockpile removal and reuse, whichever comes first. Overburden distribution should avoid slopes greater than 20%, maintain a depth no greater than 12 inches and not obstruct a drainage course. Areas intended for overburden must be stripped of topsoil and organic material for replacement above overburden material and must be revegetated. Mulching, fertilizing, watering or other methods shall be used to establish new vegetation.

Integrated Waste Management

13. Inspections: All stockpiling operations shall be subject to inspection by the County. In the event the RMA Director determines special testing is required, it shall be performed at the applicants expense. [IMW]

14. Regulatory Permits: Waste Solutions shall be responsible for obtaining all permits or approvals from any responsible agencies, as that term is defined in the California Environmental Quality Act, Public Resources Code section 21000, et seq., that may be required for the soil stockpile use that is the subject of this conditional use permit. [IMW]

15. Soil Management Plan: Waste Solutions shall provide an updated soil management plan to the satisfaction of the RMA Director prior to the commencement of soil stockpiling that provides updated quantitative data, including but not limited to Alternative Daily Cover (ADC) usage and soil usage for the landfill (i.e. daily, intermediate, and final cover and other soil use). [IMW]

16. Annual Soil Management Plan Update Report: Waste Solutions shall provide to the RMA Director an annual soil management plan update report that includes the amount soil remaining in the stockpile over the life of this use permit, which is four-years unless amended. The report shall include percentage of soil used for daily cover and ADC (percentage calculated based on disposal tonnage). Report will be based on percentage of daily cover soil from the 2018 and 2019 annual fiscal reports. The annual soil management plan update will use aerial surveys of the soil stockpile area, provide volume of soil used for operations, volume of ADC used and where ADC used (i.e. daily cover, erosion control, etc.). Any deviations from the initial soil management plan shall be noted by Waste Solutions. [IMW]

17. Maximum Volume of Average Daily Cover: Waste Solutions shall adhere to the requirements regarding the maximum volume of ADC that can be stockpiled consistent with limitations established in the Joint Technical Document and any other applicable regulations. [IMW]

Public Works

18. Drainage & Erosion Control: The project shall comply with the County's Drainage and Erosion Control Standards. Proposed methods to control erosion and drainage shall be such that it does not leave the site unless contained in an approved drainage channel and does not cause damage to neighboring properties and methods to establish vegetation on disturbed slopes. [Public Works, San Benito County Water District]

19. Water Quality Protection: No earth or organic material shall be deposited or placed where it may be deposited into a stream, marsh, slough or body of standing water in a quantity deleterious to wildlife, aquatic life or other beneficial uses of the water. [Public Works]

20. Soils and Geologic Report Recommendations: The engineering conclusions and recommendations included in any soils or geologic reports subsequently prepared for the project shall be incorporated into the stockpiling plans, specifications and operations. [Public Works]

Division of Environmental Health

21. This department has no comments at this time, but it reserves the right to make comments if there are any changes to the proposed project. [Environmental Health]

Fire Department

22. This department has no comments at this time, but it reserves the right to make comments if there are any changes to the proposed project. [Fire]

23. **Agreement with All Conditions of Approval:** Prior to or upon approval by the Planning Commission, the Applicant shall sign the statement below certifying that Applicant is in agreement with all conditions of approval. [Planning]

I certify that I understand and agree to comply with all the Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, as included in this resolution approving this Permit.

Applicant Signature: _____

Applicant Print Name: _____

Date: _____

EXHIBIT A APPROVED SITE PLANS

Approved Site Plans titled “John Smith Road Landfill Stockpile Grading Plan”, dated January 2020, prepared by Lawrence and Associates consisting of eleven (11) sheets are incorporated into this resolution by reference as *Exhibit A*.