

NOR-CAL ROCK, INC.

ASPHALT + CONCRETE → DISPOSAL

April 7, 2016

City of Hayward Planning Commission
c/o City of Hayward City Clerk
777 B Street
Hayward, CA 94541

RE: Appeal of Denial of Administrative Use Permit for 30120 Industrial Parkway Southwest

Dear Members of the Planning Commission:

As a Planning Commissioner you will be hearing our appeal of an administrative use permit that was denied by the Planning Manager. At issue is our concrete recycling facility, Norcal, located at 30120 Industrial Parkway Southwest. We are aware that you are encouraged to visit the properties under consideration prior to the hearing. We want to extend our personal invitation to you to meet us at our facility, that has been in operation for over eight years serving Hayward and the surrounding area, so that you can be assured that you become adequately familiar with our operation. We will be calling you to arrange a time that is best for you.

There are some critical issues associated with our business, of which you should be aware:¹

- We were legally established in our current location, having first cleared our operation through the then-Planning Manager Richard Patenaude in late 2007/early 2008 and later by the subsequent Planning Manager Sara Buizer in 2011. Current City staff claims that the concrete crushing segment of our operation was not disclosed. This is not correct. We would not have made the effort to seek a clearance, made substantial investments in our facility, operate out in the open on a major arterial, and accept concrete for processing – including from the City of Hayward Public Works Department – without first obtaining clearance to do so. Acting otherwise would be irrational and makes no logical sense. And most obviously, when concrete is delivered by trucks in large pieces and is then sold as aggregate, somewhere in that process crushing occurs!
- Although a concrete crushing business is not specifically called out in the Zoning Ordinance, the Zoning Ordinance allows the Planning Director or his or her designee may determine that the use is appropriate if it is similar to and not more objectionable or intensive than the uses listed. In our case, the Planning Manager found our use to be similar to and not more objectionable than the uses listed. In fact, previous to our concrete recycling business, we operated a trucking operation from our property, as well

¹ A more complete explanation is contained in our appeal submittal dated November 12, 2015.

as a composting operation and heavy trucks entered and exited our site much more frequently than our current operation.

- With City staff taking the position that we should not operate in our present location without an approved administrative use permit – despite the City’s prior planning clearances – we submitted an application under protest while under the City’s threat of fines. However, before our application was even deemed complete, City staff prematurely denied it, citing environmental issues for which there was no evidence. Due to these egregious errors, the Director of Development Services Manager David Rizk withdrew the denial action. This occurred about nine months after we started the application process. Our application was then assigned to a second planner for processing.
- Subsequently, the City assigned a third planner to process our application. With all of the planner changes, we were now well over a year into the application process. Our application was finally deemed complete in September 2015, but was then denied by City staff. You will be considering our appeal on this latest denial action.
- The first finding for denial is again based on environmental issues. As before, there is no evidence to support this finding. Our crusher operates only about 4 hours per day and many days, not at all, and is an environmentally insignificant portion of our operation. Our operation has been issued a permit from the Bay Area Air Quality Management District (BAAQMD) which includes conditions to address air quality and dust, as well as a stormwater permit from the California Water Board. In addition, our facility utilizes dust suppression techniques, is screened from view from the freeway by an approximately 28’ high building, and conversations can occur in proximity to the crusher, negating the claim that there is an excessive noise impacts. The largest noise generator for a crusher is the type of engine used. The sound generated by a diesel engine is much greater than the sound of concrete running through the closed compartment crushing equipment. To address this concern, we have already switched to an electric motor to power the crusher and added exhaust stacks per BAAQMD recommendations that further reduce and minimize the modest noise that comes from the equipment. No sensitive receptors are located in the vicinity. Furthermore, the planner who made the denial findings never visited our site before issuing her decision and did not propose any measures to address environmental concerns.
- Another alleged basis for City staff’s denial is that it claims our property is ripe for commercial development and that approving our administrative use permit would make that more difficult. However, when the General Plan was last amended our area was intentionally excluded from any commercial designation. For the staff to pre-suppose that the City Council will change the General Plan to Commercial at some future date is pure conjecture. We are still baffled on how decisions can be made that conflict with current General Plan designations and policies based on a speculative, future zoning

change that will impact our livelihood? We are in operation now, we have been since 2007 and have done nothing but act in good faith in our dealings with the City.

- Under the property's current Industrial zoning designation, an industrial building could be currently built on the site by right. If, in fact, there is future commercial interest in the land, there is no better situation than a parcel without a building to demolish. Outdoor businesses like ours are most conducive to being acquired and converted to other purposes.
- Our property and the surrounding area presents barriers for commercial development. The area in which our property is located is one of numerous parcels. To be clear, our parcel is sandwiched between two Industrial parcels whose business (retail rock, gravel and soil sales and a metals recycling facility) is very similar to ours. In order to be developed with a commercial development, all property owners must agree to sell and properties assembled or re-configured. Moreover, the developable area has no frontage on Industrial Parkway Southwest because of the presence of a 60-foot wide open flood control channel that separates the properties from the street. There is also an access easement (which we own) and a utility easement that constrain development; a railroad spur is located on the eastern most properties; and our property has limited visibility from the freeway due to a commercial building located between our property and the freeway.
- Staff's denial findings acknowledge that there is a need for concrete and aggregate services in the region. However, staff's findings claim that since there are already two approved concrete and aggregate recyclers in Hayward, approval of a third is unnecessary. One is described as an all indoor facility that mitigates impacts to sensitive receptors, while the other is located on a large lot far away from other uses that they also would have no impacts. In fact, neither of these sites exists as the City claims. The "indoor" site is in full operation *outdoors* and has been for years. It does not even appear to be open to the public. The other approved site is being used as truck storage yard on half, and pallet storage on the other half, with no crushing operation present at the approved location. The actual site being used is on Clawiter Road. Both of these sites currently appear to be operated inconsistent with their "approval" and/or are not providing crushing services. It appears that planning staff has not visited these sites either, as they have both been in operation for some time.

We look forward to meeting you and showing you our operation. The City's General Plan and policies send a clear message that "Green" is a priority for government, business, community and life. Norcal Rock embodies the City's message. Our whole business model centers on recycling material that would otherwise be hauled long distances and disposed of in landfills. Our business serves the community as well as your own municipality. We believe it will become obvious to you that our facility and use is responsibly operated (and has been for over 8 years), and is consistent with the intent of the Industrial General Plan Corridor designation and Industrial Zoning District and surrounding industrial uses on Industrial Parkway Southwest.

Regards,



Steve Navarro

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