

**PLANNING COMISSION MEETING  
THURSDAY, APRIL 14, 2016**

**DOCUMENTS RECEIVED AFTER PUBLISHED AGENDA**

# NOR-CAL ROCK, INC.

ASPHALT + CONCRETE → 'DISPOSAL'

April 13, 2016

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

## **RE: Response to letters concerning Appeal of Denial of Administrative Use Permit for 30120 Industrial Parkway Southwest**

Dear Members of the Planning Commission:

We have reviewed the letters submitted by the Liu family (owners of 31281 Wiegman Road) and attorneys for Sierra Equipment Co., Inc. and Sims Metal Management ("Sims"), and wish to provide a brief response to correct some inaccuracies and provide additional background.

Norcal commenced concrete recycling operations in 2008. Until the Liu letter was first sent in March 2014, we were unaware of any complaints from the Liu's or anyone else. We have never been made aware of any complaints from Sierra Equipment or Sims at any time.

As to the Liu letter, this is simply a re-dated letter that was first sent in March 2014. As is explained below, at that time there was a second concrete recycling operation – not operated by Norcal – located immediately adjacent to the Liu property on land leased from Sims. The Liu letter notes a "dramatic increase in dust" that elicited complaints from its employees. Prior to that time, Norcal had been in operation for approximately seven years and had never received any complaints. Only after the second operator began operating adjacent to the Liu property, was a complaint lodged.

In 2013, Norcal was in negotiations with Sims to sublease property located northeast of Norcal's lot and immediately adjacent to Liu's property. Norcal's intent was to expand our existing business. When negotiations broke down, Sims leased the property to a competitor of Norcal, who moved in and, in less than a month, commenced a concrete crushing operation. In contrast to Norcal's operation, Sims' sublessee used no dust suppression (other than one water hose), and did not have a permit from BAAQMD.

It was at this time (in early 2014) that Liu family wrote to the City to complain of a "dramatic increase in dust" which resulted from the new operator on Sims' site. (Note that the Liu letter references APN 475-0010-005, which is the Sierra/Sims property.) Norcal (who had received permission from the City to operate years earlier) also informed the City about this new operation. Attached is a photo from that time period, showing a truck dumping material on Sims' subleased site creating a large cloud of dust. Shortly after the Liu letter, this competing concrete recycling operation left the Sims' property. The City has not made us aware of any complaints about our operation from the Lius since that time. Moreover, we have not been made aware of any complaints from Sims, Sierra or any other neighboring businesses (including other commercial business) at any time.





1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

T: 510-834-6600  
F: 510-808-4730

www.wendel.com  
tawilliams@wendel.com

April 14, 2016

**VIA EMAIL AND HAND DELIVERY**

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

**Re: Planning Commission Hearing re Appeal of NorCal Rock, Inc.  
Administrative Use Permit PL-2013-0468 re 30120 Industrial Parkway SW**

Dear Planning Commissioners:

On behalf of NorCal Rock, Inc. ("NorCal"), owner of the property at 30120 Industrial Parkway SW, the purpose of this letter is to briefly respond to the Notice of Public Hearing, and staff report, for tonight's Planning Commission hearing regarding NorCal's appeal of the Planning Director's Determination that an Administrative Use Permit (AUP) is required, and the Planning Director's Findings of Denial of NorCal's AUP Application No. PL-2013-0468 to the City of Hayward Planning Commission (dated October 27, 2015), pursuant to Hayward Municipal Code sections 10-1.3145(a) and 10-1.2845.

**Notice:** NorCal's appeal clearly appealed two actions, as noted above and as confirmed in the staff report. However, the notice only mentions that the hearing is regarding the "Appeal of the Planning Director decision to deny an Administrative Use Permit to allow an outdoor concrete and asphalt crushing operation." The notice says nothing about the appeal of the Planning Director's decision to require an AUP which is also at issue.

**Hearing:** Since the appeal address two distinct issues and since resolution of the first could eliminate the need for the second, the appellant has requested that the items be considered separately to allow for a full hearing and presentation on both aspects of the appeal.

**Staff Report:** While certain items mentioned in the staff report are addressed in our appeal letter contained in the agenda packet (dated Nov. 12, 2015), several statements merit a brief response (headings below correspond to headings in the staff report):

- **Background:** This section completely ignores the applicant's conversation with former Planning Director Richard Patenaude in 2008 when Mr. Patenaude informed Mr. Navarro (owner) that his proposed use was allowed and consistent with prior outdoor uses at the site. Prior to publication of the staff report, representatives of NorCal met and/or spoke and communicated with Mr. Patenaude who confirmed that he met with Mr. Navarro, recalled their

conversation, and recalled his business card (that indicated that his business involved recycling of concrete and asphalt).<sup>1</sup>

- The report's discussion of a business license for FGY Stone is irrelevant and misleading. NorCal didn't seek to replace FGY Stone's license, but obtained its own license per the City's request. It's application was filed in 2011 and approved in January 2012. The City's letter specified that before a license would be issued that planning/zoning clearance was required. That clearance was sought and issued in January 2012. The applicant (Mr. Sanchez) was open and honest regarding the then already on-going operations.
- It is notable that the City's list of complaints regarding the site are unverified and inconclusive. Complaints made by one nearby owner (the only written complaint that the City has included in the report) were all made during a period when a second competing concrete crushing operation was taking place on a larger lot (subleased from Sims) immediately adjacent to the complaining owner. There have been no complaints since that competing operation shut down in mid-2014. Why the staff report makes no mention of this is inexplicable. It is notable that the staff report avoids any historic photos showing this use.
- The alleged "collapse" of a block wall (being installed to help abate dust and noise) was quickly repaired and is completely irrelevant. This appears to be included simply to paint the applicant in a negative light.
- The staff report does not mention that this case has been transferred between three planners. More important, it fails to mention that the planner who prepare the denial findings never visited the site until just recently and months after the denial findings were issued.
- The report notes the BAAQMD permit but again implies that somehow the permit was issued in error or is not being complied with. This is untrue. BAAQMD visited the site prior to issuing the permit, has renewed the permits and has not instituted any enforcement actions for noncompliance.<sup>2</sup>
- **Other Concrete & Aggregate Recycling Businesses.** This will be addressed at the hearing, however neither operation appears to be operating consistent with its approval.

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<sup>1</sup> Notably, the City has not contacted Mr. Patenaude but the staff report implies that NorCal must have been dishonest in its discussions with Mr. Patenaude. This assertion is ludicrous since NorCal's operation could be easily confirmed by the City.

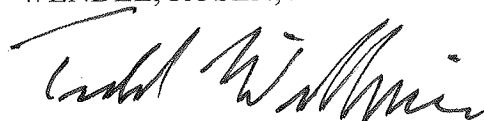
<sup>2</sup> The report's mention of a purported warning from the City's Stormwater Management and Urban Run-Off Control is unknown to the Applicant and is not relevant. NorCal has a state issued stormwater permit.

- **Zoning.** As mentioned above, NorCal received approval from the former Planning Director in 2008 that its use was authorized. In reliance on that statement, NorCal invested money and constructed and commenced its operations with the City's knowledge and use. (Public Works has used the site for concrete recycling). As such, the use has vested and is not "illegal" and no AUP is required. The Planning Director Rizk's decision to require an administrative use permit for such operations did not come until 2013.
- **Proposed Site and Project.** The report fails to state that all immediate neighbors of the site are engaged in outdoor industrial uses. Moreover, other than the one complaint, no other neighbors have previously filed a complaint about NorCal's use.
- The project does not intent to operate 24-hours a day, seven days a week. The crushing machinery only operates on average a few hours per weekday and many days is not used at all.
- **Appeal of Planning Director Determination:** See background above regarding discussions with Mr. Patenaude.
- FGY Stone is not an aggregates retailer. They sell countertops and cabinets.
- This section of the report contains many speculative claims that are unsupported by evidence.
- **Appeal of Denial of AUP.** Again, this section of the report includes speculation regarding use and need. The City has no official policy that merits denial of the AUP. Moreover, future plans of other properties should not dictate the current longstanding use on this site.
- **Environmental review.** The report does not explain why an initial study was not completed. The claims of staff's observations are without merit and are not the equivalent of substantial evidence that any environmental impacts result from the site's operation.

We look forward to discussing these and other issues at the hearing.

Regards,

WENDEL, ROSEN, BLACK & DEAN LLP



Todd A. Williams

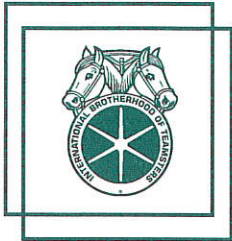
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David Rizk / City of Hayward  
April 14, 2016  
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WENDEL, ROSEN, BLACK & DEAN LLP

cc: Mr. David Rizk, Development Services Director  
Leigha Schmidt, Senior Planner  
Steve Navarro  
Frank Sanchez  
Dyana Anderly





# TEAMSTERS LOCAL 853

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS & TEAMSTERS' JOINT COUNCIL #7

7750 PARDEE LANE • OAKLAND, CALIFORNIA 94621-1497

TELEPHONE: (510) 895-8853 • (800) 400-1250 • FAX: (510) 895-6853

email: [connections@teamsters853.org](mailto:connections@teamsters853.org)

April 14, 2016

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City of Hayward Planning Commission  
777 B Street  
Hayward, CA 94541

Re: Appellant: Norcal Rock Inc.  
Administrative Use Permit # 2013-0468  
Site address: 30120 Industrial Pkwy SW, Hayward, CA 94544

Dear City of Hayward Planning Commission Members:

We have been asked by Norcal Rock, Inc. to address the history of relations between Teamsters Local 853 and S & S Trucking, with whom Norcal Rock shares common ownership.

It is my understanding that Norcal Rock has a Use Permit issue that is scheduled for consideration in the near future.

I feel comfortable in saying that our dealings with Mr. Steve Navarro and Mr. Frank Sanchez of S & S Trucking have been positive on the many Project Labor Agreements and Community Workforce Agreements in and around the San Francisco Bay Area.

Local 853 and S & S Trucking have had long term common interests dating back for over the last decade, and while we may not always agree on every single item, S & S has always made themselves available to discuss matters of mutual concern.

Should you have any questions on this matter, please contact me at the Local Union office at (510) 895-8853, extension 3326.

Yours Truly,

Stu Helfer  
Construction Division Director  
Recording Secretary

*Representing Members in Warehousing, Dairy, Liquor, Bakery, Construction, Building Materials, Newspaper, Printing, Vending, Concession, Retail Delivery, Automotive, Retail, Graphic Communications, and Miscellaneous Industries*

The re-dated Liu letter is also inaccurate in that there are no longer two concrete recyclers adjacent to their site. Moreover, Norcal is not adjacent to Liu's property. Our operation is much farther away from the Liu's commercial warehouse property, but, unlike the operator who had been on Sims' site, we employ far more robust dust suppression techniques and have a permit from BAAQMD.

Other comments in the Liu letter are inaccurate and/or contrary to the City's general plan and zoning. Speculative future development plans of other owners in the area do not supersede the City's industrial general plan and zoning on our site, nor are they relevant to the issuance of a use permit on our site. Finally, our site is not easily visible from I-880, is set back from Industrial Parkway by the exiting flood control channel.

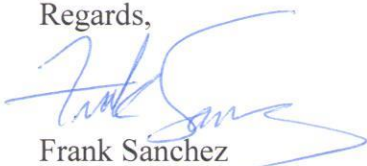
As for Sierra's letter, it misconstrues our proposal. Norcal is not proposing to expand or increase traffic. Our operation is already limited by the conditions imposed by BAAQMD and the State Water Board. In addition, there are no geo-technical issues.

As for Sims' letter, it too suffers from a lack of factual background. Norcal's operation was approved by the City's former Planning Manager over seven years ago, and operates pursuant to permits issued by regulatory agencies. As noted above, complaints about dust related to a different operator – operating without regulatory approval on property subleased by Sims. As noted above, concerns about fugitive sediment and dust on Norcal's site have been addressed.

In no way is Norcal flouting its duties to operate a professional and responsible industrial use in an area designated and zoned by the City for industrial use. Norcal's owners live in Hayward and care about this community. For over seven years, Norcal has been operating responsibly on this site (with approval by the City's former Planning Manager) and has been doing so without any verified complaint regarding its operations from any businesses in the vicinity.

If you have any questions, please feel free to contact me directly.

Regards,



Frank Sanchez  
Norcal Rock  
510-636-9860