



Board Agenda Item 12

DATE: June 2, 2026

TO: Board of Supervisors

SUBMITTED BY: Steven E. White
Department of Public Works and Planning

SUBJECT: Appeal of Unclassified Conditional Use Permit No. 3390 Vested Rights
Determination (Appellant: Riverbend Sand & Gravel, LLC)

RECOMMENDED ACTION(S):

1. **Consider appeal of the Director of the Department of Public Works and Planning's (Director) determination of the expiration of Unclassified Conditional Use Permit No. 3390 for the Riverbend Sand and Gravel, LLC (Riverbend) aggregate mining project.**
2. **If your Board chooses to grant the appeal and overturn the Director's rejection of the submitted grading permit and determination that the land use permit has expired:**

Adopt Resolution determining that Unclassified Conditional Use Permit No. 3390 has achieved substantial development and has not expired, subject to additional conditions relating to indemnifying the County in the event of litigation related to this action and the need to commence Phase I mining operations within two years of your Board's determination, as listed in the proposed Resolution.

There is no Net County Cost associated with the recommended actions. This item comes before your Board based on a February 26, 2026 appeal of the Director's determination that the land use permit did not achieve substantial development, and the project conditional use permit has expired. A location map of the project site is included as Attachment A. A copy of the Director's determination is included as Attachment B and the appeal of that determination is included as Attachment C.

The 619-acre project is located in unincorporated Fresno County, approximately 1.5 miles southeast of the City of Sanger, between the Kings River and Riverbend Avenue. East Goodfellow Avenue bisects the Project Site, which is composed of seven parcels. This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

Your Board may uphold the Director's determination, determine that the land use permit has expired, and deny the appeal.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. Pursuant to the County's Master Schedule of Fees, the Appellant has paid \$555 in fees to appeal the Director's determination.

DISCUSSION:

Background

The project, including certification of the project's Environmental Impact Report (EIR), was approved by the Fresno County Planning Commission on February 26, 2015. On March 12th of that year, an appeal of the Planning Commission's decision was filed by an opponent to the project. The appeal was scheduled to be heard before the Board of Supervisors on May 19, 2015, but at the time of the scheduled hearing, County staff was advised that the appellant had withdrawn their appeal, leaving the Planning Commission's approval to stand.

As originally approved, Unclassified Conditional Use Permit No. 3390 (UCUP No. 3390) would have permitted an aggregate mining operation on 619 acres of a combined 833 acres of property. The remaining 214 acres, including the entire existing riparian habitat along the Kings River, were excluded from the project. The anticipated annual processing of material was 1.6 million tons per year with annual sales at approximately 1.25 million tons per year. At the time of its approval, the 619-acre project Site was occupied by walnut and olive orchards and grape vineyards with several farm residences nearby. Aerial imaging indicates that some of these crops have since been removed. Reclamation of the project Site would create approximately 268 acres of reclaimed farmland and approximately 351 acres of open space, riparian and open water habitat. Mining activities were anticipated to have a 75-year lifespan. To date, mining activities have not commenced on the site.

Staff notes that if your Board grants the appeal and determines that substantial development has occurred, development of the site will continue to be subject to the conditions of approval and mitigation measures associated with UCUP No. 3390.

Activities Between 2015-2024

Following the withdrawal of the Board appeal in May of 2015, very limited development activities for the project occurred. Most notable were approval of a Site Plan Review (SPR No. 7946) in September of 2015 and approval and inspection of a 12 Kilovolt overhead power distribution line in March and July of 2017 respectively. On February 23, 2017, Riverbend representatives provided a letter to County staff stating that in their opinion substantial development of the project had occurred. Staff provided a March 21, 2017, response to Riverbend representatives, which clarified that there is formal process for requesting substantial development and that the project applicant had the ability to apply for a one-year time extension. Riverbend representatives did not avail themselves of either of those options. A list of key events related to the project is attached as Attachment D.

In the years after the expiration of UCUP No. 3390, the Applicant, under the misapprehension that the permit rights had vested, made occasional contact with County departments regarding its project. For example, there were email discussions with County employees about a Traffic Mitigation Agreement, although they did not result in any agreements being reached. These contacts in the intervening years did not address the core issue of whether the entitlements had vested and the permit was still in effect. The various staff members contacted over the intervening years were not in roles that included analyzing the core issue of permit life.

It should be noted that Section 868.6.020.A.3 of the Fresno County Zoning Ordinance specifically addresses permit expiration and that a permit or approval shall be exercised before its expiration. The permit or approval shall not be deemed exercised until the applicant has:

- a. Obtained a Building Permit and continuous on-site construction activity including pouring of foundations, installation of utilities, or other similar substantial improvements has commenced; or
- b. Obtained a Grading Permit and has completed a significant amount of on-site grading, as determined by the Director; and

- c. Diligently continued the approved construction/grading activities; or
- d. Actually, implemented the allowed land use, in its entirety, on the subject property in compliance with the conditions of approval.

Department staff maintains the position that neither a, b or c noted above were effectively met by the Riverbend project representatives. As stated in a May 31, 2024 letter to Riverbend's legal counsel, the Applicant did not incur substantial liabilities in the form of hard costs. The Applicant was aware of the need for additional permits beyond a conditional use permit but failed to obtain or apply for any except the power line approved in March of 2017. Regardless, of the installation of said line and the Applicant's supposed reliance on limited site activities up to 2020, the UCUP would have become void after the project was abandoned for a period of two years per Subdivision 873(I)(2) and (K)(2) of the pre-2024 County Zoning Ordinance and Section 868.6.020.A.1 of the current Zoning Ordinance.

Applicant 2024 Inquiry and Request for Determination

On March 13, 2024, Riverbend's legal Counsel reached out to Department staff regarding the status of the mining operation. In a discussion with Riverbend representatives, staff informed them of the County's position that the land use permit had expired due to a lack of substantial development. Following that discussion, on April 23, 2024, Riverbend's legal counsel submitted a written request for determination of substantial development to the Department with approximately 800 pages of supporting documentation.

Throughout the substantial development discussion process, Department staff has consistently maintained the position that the Applicant received a two-year project development right under UCUP No. 3390 in 2015 and failed to take necessary steps to prevent that land use permit from expiring: namely, to substantially develop the site or file timely time extensions when they were available. Department staff acknowledge that the Applicant made occasional limited efforts to comply with some of the permit conditions but missed relevant and important opportunities to engage with the Department on the key issue of UCUP No. 3390 expiration or the successful achievement of substantial development. In lieu of constructing the infrastructure necessary to support the proposed use, the Applicant created a record based on correspondence with County staff from various divisions and departments, none of which included analyzing the core issue of permit life.

Following Riverbend's April 23, 2024 letter, Department staff provided Riverbend representatives a May 31, 2024 written response stating that the land use permit expired in 2017 due to a lack of substantial development. On June 13, 2024, Riverbend sent a letter to the County purporting to appeal the May 31, 2024 written response. But the May 31, 2024 written response was not an appealable determination. On August 22, 2024, Riverbend filed a lawsuit against the County in Fresno County Superior Court, alleging that the May 13, 2024 written response was an appealable determination, and seeking an order requiring either that the Director render a decision on the purported appeal, or that the Board hear and decide the purported appeal. The lawsuit is still pending, but Riverbend representatives submitted a grading permit on January 2, 2025, seeking to commence mining activities. This was intended/expected to generate a formal determination that substantial development had not occurred, such that Riverbend could properly appeal the matter to your Board.

Director's Determination of Permit No. 25-000206

The grading permit (Permit No. 25-000206), which was incomplete as submitted to the County, was rejected by Department staff on the basis of the substantial development determination. In its November 5, 2025 rejection of the permit, Department staff restated the determination that substantial development did not occur before May of 2017 and that the Applicant possessed no vested right to develop under UCUP No. 3390. Department staff maintained that as the land use permit had expired in 2017, the Applicant could no longer commence upon the use permitted by UCUP No. 3390. In its rejection letter, Department staff also

stated that the determination was appealable to the Director of Public Works and Planning (Director) under section 876.6.020, subd. (A) of the current Zoning Ordinance, and that such an appeal must be submitted in writing within fifteen days of the determination.

On November 20, 2025, Riverbend representatives appealed Department staff's rejection of the grading permit based on a lack of substantial development to the Department's Director. Following a review of the facts associated with the rejection of the grading permit and the appeal of Department staff's determination, the Director determined that the Applicant inadequately addressed the test for the creation of a vested right and that substantial development has not occurred, and that UCUP No. 3390 had expired. A letter stating this determination was issued to Riverbend representatives on February 11, 2026. The letter concluded with a statement that the determination was eligible for appeal to the Board of Supervisors. On February 26, 2026 Riverbend representatives appealed the Director's determination to the Board of Supervisors. The February 26, 2026 appeal letter included in Attachment C references certain correspondence between County staff and Riverbend representatives, which was separately provided to your Board as Advance Agenda Materials on May 15, 2026.

Department staff's Recommendations and Considerations Under California Environmental Quality Act (CEQA)

As stated above, the project's EIR (State Clearinghouse No. 2013071097) was certified by the Planning Commission on February 26, 2015. No analysis of the validity of this CEQA document and the preceding studies used to prepare the document has been undertaken by either Department staff or Riverbend's representative.

Indemnification

In addition to the previously imposed and adopted conditions of approval and mitigation measures associated with Unclassified Conditional Use Permit Application No. 3390, staff recommends that if your Board chooses to grant the appeal and determine that the land use permit has not expired, the following additional conditions be added.

- 1. The owner(s) and/or operator shall enter into an agreement indemnifying the County for all legal costs associated with its determination that UCUP No. 3390 has not expired and that site development may occur per the project's Mitigation Measures, Conditions of Approval and mandatory requirements, and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.*
- 2. Phase I mining operations shall commence (e.g., satisfying all applicable conditions of approval and mitigation measures required prior to commence of operations, clearing and grubbing of plant site, installation of the aggregate processing plant, construction of all required access roads, removal and storage of overburden, and commence of mining operations) within two years of this determination by the Board of Supervisors (June 2, 2028). If after that two-year period Phase I operations have not commenced, Unclassified Conditional Use Permit No. 3390 shall be deemed expired.*

These recommended conditions are listed in the proposed Resolution on file with the Clerk.

REFERENCE MATERIAL:

BAI #8 - May 19, 2015

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A - Location Map

Attachment B - Rejection of Grading Permit Application No. 25-000206

Attachment C - Appeal of Director's Determination

Attachment D - Key Events Post Project Approval

On file with Clerk - Advance Agenda Material (Memo, Attachment 1, 2, 3)

On file with Clerk - Advance Agenda Material (Attachment 4, 5)

On file with Clerk - Resolution

CAO ANALYST:

Maria Valencia