



ATTACHMENT B

County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

February 11, 2026

Via U.S. Certified Mail

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Subject: Riverbend Sand & Gravel – Director’s Determination

I consider the letter entitled “Appeal of Staff Determination - Rejection of Grading Permit Application No. 25-000206 – 3677 S. Riverbend Ave.” (“Appeal”), dated November 20, 2025, submitted by the Applicant following the November 5, 2025, “Staff Determination - Rejection of Grading Permit Application No. 25-000206 – 3677 S. Riverbend Ave.” from Department staff (“Determination”) declining Applicant’s Application for a grading permit on the basis that the CUP on which the Application depended had expired. This Decision of Director incorporates the Determination by staff, including all terms specially defined therein.

The CUP was issued to allow Applicant to mine. Applicant does not dispute that it never did so. Applicant asserts that it had acquired a vested right to finish its project more than a decade from the issuance of the permit. Not only did Applicant fail to meet the technical requirements of its permit or apply for all of the required construction permits, but with hardly any physical improvements to the site for a decade, Applicant did nothing to disabuse the public of the conclusion that the mine would never open.

Applicant had notice of the time limitation on the CUP and notice that the onus was on the Applicant to demonstrate substantial development. Applicant has a duty to understand and follow the County’s laws and its own CUP. Here, the ordinance speaks for itself. Soft costs expended by the Applicant following that notice were at the Applicant’s own risk, and do not support Applicant’s claim for relief. As a consequence, Applicant’s appeal is denied, and staff’s Determination stands.

Applicant Inadequately Addresses the Test for the Creation of a Vested Right

Applicant asserts “good faith reliance on the permit.” But that is not the test established by the Supreme Court in *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785 to determine if a vested right exists.

Each element of the vested rights test from *Avco* is about whether improvements were made to land. We must determine whether the applicant expended substantial liabilities *in hard costs* (*i.e.*, in making improvements to the land) and performed substantial work (*i.e.*, in construction) on a permit that defines the scope of the improvements to the land. This is developed through the case law discussed in the Determination and below.

To allow the Applicant to define the right so broadly as simple “good faith reliance” would allow the Applicant to create a nearly unlimited scope permit, dependent solely on the Applicant’s unilaterally declared perception of its own permit. Applicant’s interpretation of the vested rights doctrine does not just create a “slippery slope” situation; its interpretation of “good faith reliance,” if applied as the rule, would lead projects to languish in “development hell.”

The “Last Discretionary Permit” Test Is Not the Law

In *South Central Coast Regional Commission v. Charles A. Pratt Const. Co.* (1982) 128 Cal.App.3d 830, 845 (“*South Central*”), the court “specifically reject[ed] the ‘final discretionary permit test.’” The reason, despite Applicant’s assertion to the contrary, was manifold. The Court considered both the public policy behind the Coastal Act and, more importantly, the nature of the “ministerial” approval that follows the subject discretionary permit. In the same way that “tentative map approval without more does not entitle a subdivider to a final map,” the CUP and SPR do not entitle the Applicant to building and construction permits without more, especially given the unfulfilled conditions of approval.

A Federal District Court in Nevada, deciding a matter under California law, states the following of a so-called final discretionary permit rule:

“Such [final discretionary] approvals cannot be viewed in this case as the functional equivalent or sine qua non of a building permit. To so hold would allow a landowner who has gained preliminary governmental approval for a phased development project such as [subject project in the litigation] the right to complete construction for the indefinite future. This would result in ‘serious impairment of the government’s right to control land use policy.’ [California case citations.]” (*LeRoy Land Development Corp. v. Tahoe Regional Planning Agency* (D. Nev. 1982) 543 F.Supp. 277, 281 abrogated on grounds of *Nevada state law* by *Wal-Mart Stores, Inc. v. County of Clark* (D. Nev. 1999) 125 F.Supp.2d 420.)

The Court in *LeRoy Land Development Corp.* stated that, while the result is harsh, the final discretionary permit rule “is not the law” of California. (*Ibid.*)

The County cannot ignore the language choices of the *Avco* court. There is a reason the *Avco* decision specified a “building permit” or its functional equivalent. While *Avco* stated that a CUP can indeed meet the functional requirements of a building permit, the terms are not synonymous.

First, building permits are almost universally *ministerial*, not discretionary. (See Tit. 24, Cal. Code Regs. (California Building Standards Code), § 105.3.1 [“building official shall issue a permit”]; see also Tit. 14, Cal. Code Regs., § 15268, subd. (b)(1) [establishing a presumption for the California Environmental Quality Act that a building permit is ministerial].) A “last discretionary permit” test

simply does not make sense as a hard and fast rule where the Supreme Court identified a typically ministerial permit.

Furthermore, a building permit is precise—it specifies exactly where and exactly how improvements can be made. On the other hand, a CUP and SPR are general—they permit uses (not improvements) and provide a general bird's eye view of the landscape. As stated above, the necessary condition of a vested right is making improvements to land, thus the substantial work and hard costs requirements. A general permission for certain uses is not enough to establish the nature of specific improvements that are necessary for those uses.

In the years since *South Central*, California courts have considered the concept of the “phased project.” Practical law guides suggest that developers should “avoid long delays between phases of an approved project.” (CEB California Land Use Practice (2025) § 16-16; citing *Lakeview Development Corp. v. City of South Lake Tahoe* (9th Cir. 1990) 915 F.2d 1290 [no vested right with delay of ten years between phases one and two].)

Because the CUP is not the functional equivalent of a building permit merely by virtue of being the “last discretionary permit,” and does not bear the hallmarks of a building permit, we view the CUP as the first stage of the development of the mine. This is supported by the conditions of approval and project notes, specifically those referencing the additional permits required, as discussed in the Determination. Those additional permits, which Applicant did not seek for a decade, might have bridged the divide between the generality of the CUP and SPR and the specificity necessary to support a vested right.

No matter how this CUP is considered, the result is the same—it is not a permit on which a right can vest.

Applicant Continues to Focus Exclusively on Soft Costs

Applicant's Appeal focuses heavily on the amount spent by Applicant and the inflation adjusted figures spent by other developers in published cases. Those amounts are large and, in a vacuum, might even seem sufficient to support the “substantial liabilities” requirement in the context of Applicant's limited case review.

But Applicant has ignored the hard costs requirement from the case law. And again, Applicant's amounts do not tell the whole story.

Courts have considered large amounts before and found them insufficient. For example, \$1.1 million spent and \$29 million secured in 1980s dollars, were not sufficient where construction of a permitted hazardous waste processing facility had not begun. (*Security Environmental Systems, Inc. v. South Coast Air Quality Management Dist.* (1991) 229 Cal.App.3d 110, 127.) The result should be the same here.

I agree with Staff's Determination that there is no evidence that the Applicant expended sufficient hard costs to sustain a vested interest in development under the CUP.

Applicant's Argument That the CUP Does Not Automatically Expire Defies Logic

The Appeal attempts to rewrite the County's ordinances and the resolution approving the CUP by relying on self-serving statements of Applicant's legal counsel made years after the approval of the CUP. After stating that Resolution No. 12492 does not support an automatic expiration, despite its plain language to the contrary, Applicant does not analyze the language of the resolution, but instead focuses on the discussion of Applicant's legal counsel's after-the-fact emails.

These emails are irrelevant to the key issue—what the Resolution and ordinances actually say. Applicant's statement that "CUP 3390 would only expire upon the failure to substantially develop within two years of the CUP approval" (Appeal, at p. 10) is, at best, a half-truth. Resolution #12492 prominently states:

"The approval of this project **will** expire two years from the date of approval **unless** a determination is made that substantial development has occurred. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Unclassified Conditional Use Permit." (Resolution, p. 4 (emphases added).)

This is consistent with the text of the County's ordinance

"Each Conditional Use Permit approved either before or after the effective date of this amendment **shall** become void when:

"1. There has not been substantial development within two years after the approval of said Conditional Use Permit or the effective date of this amendment, whichever date is later...

"3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 873-I.1, the Commission may grant a maximum of four one (1)-year extensions. Application for such time extension must be set forth in writing, including the reasons for the extension, and be filed with the Public Works and Planning Department before the expiration of the Conditional Use Permit." (Zoning Ordinance, § 873, subd. (I) (emphasis added).)

"Where a determination is caused to be made by the Director of Public Works & Development Services that there either has or has not been substantial development within two years after the approval of said Conditional Use Permit, a notice of such determination shall be mailed to the applicant and to owners of property adjacent the external boundaries of the property described in the application." (*Id.*, at subd. (J)(1).)

"If an established time limit for development expires and no extension has been granted, the Conditional Use Permit **shall be considered void.**" (*Id.*, at subd. (K)(2) (emphasis added).)

Collectively, these provisions provide for the automatic termination of conditional use permits. They do not require a process, let alone a hearing, for the termination of one for failure to substantially develop or seek an extension within two years. The County did not elect to bind itself through its ordinances to initiate an administrative process, on its own accord, every time a use is abandoned or never

established across the millions of acres of Fresno County. To the contrary, the County's ordinances put the burden on the Applicant to demonstrate substantial development or seek an extension.

There is an optional process, which Applicant did not use, to apply for and acquire a substantial development determination or extension. Communications to the Applicant from the Planning Division have been entirely consistent with these principles.

Applicant Ignores its Obligation to Timely Prove Substantial Development

As stated above, the onus is on the Applicant to timely initiate a process and to demonstrate substantial development. Applicant's argument largely hinges on the question of whether it acquired a vested right, and does not adequately address whether Applicant achieved substantial development prior to the 2017 expiration of the CUP or presented evidence of that substantial development to the Director in accordance with the Zoning Ordinance and Resolution No. 12492.

I agree with Staff's Determination that the substantial development standard can only provide a greater level of protection than the vested rights doctrine. I also agree that the substantial development standard must require construction, which has not occurred here, not just expenditure of soft costs. (See, Determination, at pp. 9-10.)

A Separate Hearing on the Alleged "Revocation" Is Not Required

While I agree with Staff's Determination, namely that the County never revoked the CUP and that it automatically expired under its own terms and the requirements of County ordinances, entitling Applicant to no hearing, the matter is moot. The Applicant is receiving adequate process through this appeal process.

Because I have found that substantial development has not occurred and that the CUP expired, this correspondence amounts to a Director's determination on substantial development within the meaning of section 876.6.020, subd. (B), of the current Zoning Ordinance. Therefore, this determination is eligible for appeal to the Board of Supervisors in compliance with section 876.6.030 of the Zoning Ordinance.

Sincerely,

Steve White
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White
Date: 2026.02.11
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Steven E. White, Director
Department of Public Works and Planning

c: Peter Wall, Chief Deputy County Counsel
Bryan Rome, Senior Deputy County Counsel