

STAFF REPORT FOR THE PLANNING COMMISSION MEETING OF MAY 29, 2019

FILE NO: MISC-19-047

AGENDA ITEM: E-13

STAFF CONTACT: Hope Sullivan, Planning Manager

AGENDA TITLE: For Possible Action: Discussion and possible action regarding determining if grounds for revocation or reexamination of Special Use Permit U-79-25 exists, and possible direction to staff to issue and serve the applicant with an order to show cause why the special use permit should not be revoked or reexamined relative to Special Use Permit U-79-25, located at 7400 Brunswick Canyon Road, APNs 008-531-44 and 008-531-45. (Hope Sullivan, hsullivan@carson.org)

STAFF SUMMARY: On December 27, 1979, the Planning Commission approved Special Use Permit U-79-25, a special use permit to operate a concrete batch plant, a hot plant operation, and to remove earth products on the subject property. This Special Use Permit includes a condition that states, in part: "Public recreation access through the subject property, on defined roadways, must not be restricted." Allegations have been made that public recreation access has been restricted. At its meeting of April 24, 2019, the Planning Commission requested that the Director conduct an investigation into the conduct of Brunswick Canyon Materials, LLC relative to restricting public access on defined roads. Upon hearing the results of the investigation, the Planning Commission may direct staff to issue and serve the applicant with an order to show cause why the special use permit should not be revoked or reexamined.

RECOMMENDED MOTION: *no formal action is recommended*

VICINITY MAP:



BACKGROUND / ISSUES

Brunswick Canyon Materials, LLC operates a pit at 7400 Brunswick Canyon Road. Access to the pit is from Brunswick Canyon Road.

Carson River Canyon Open Space, 870 acres purchased by Carson City for the preservation of open space, protection of floodplain and wildlife habitat, and public access for passive recreation, is also accessed from Brunswick Canyon Road.

On December 27, 1979, the Planning Commission approved Special Use Permit U-79-25, a special use permit to operate a concrete batch plant, a hot plant operation, and to remove earth products on the subject property. This Special Use Permit was initially reviewed by the Planning Commission every year, and then every two years until 2007. Since 2007, the staff reviews the Special Use Permit administratively every other year.

Initially, condition of approval number 11 stated that access through the property on a clearly defined road will not be restricted.

In 1988, the conditions were modified to include condition of approval 6 which states "Public access through the subject property, on the defined roadway, shall not be restricted."

In 2001, 2003, and 2007, condition of approval number 4 stated, in part, "Public Recreation access through the subject property, on defined roadways, must not be restricted."

The Planning Commission has not reviewed the Special Use Permit since 2007.

On March 15, 2017, the Community Development Director received a letter from a representative of Brunswick Canyon Materials, LLC advising that Brunswick Canyon Materials, LLC purchased the property that has historically been known as the Bertagnolli Pit, located at and near 7400 Brunswick Canyon Road. The letter states "As you are aware, years ago, the City approved a Special use Permit for the subject site, Special Use Permit U-79-25, which allows the operation of a sand and gravel operation including a batch plant on property that is zoned Conservation Reserve (CR)." The letter goes on to state "Our client intends to continue operating the facility subject to the terms of the existing Special Use Permit."

On March 21, 2019 at 6:15 PM, a Carson City Parks Ranger ("Parks Ranger") found a locked gate preventing access to Brunswick Canyon Road.

On March 30, 2019, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road. The gate was locked all day.

On March 31, 2019, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road. The gate was locked all day.

On April 5, 2019, at 6:15 PM, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road.

On April 10, 2019, at 6:15 PM, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road.

On April 13, 2019, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road. The gate was locked all day.

On April 14, 2019, citizens reported that the gate was locked all day, preventing access to Brunswick Canyon Road.

On April 17, 2019, at 6:10 PM, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road.

On April 19, 2019, at 6:15 PM, the Parks Ranger found a locked gate preventing access to Brunswick Canyon Road.

On April 24, 2019, the Planning Commission requested that the Director initiate an investigation.

SUMMARY OF THE INVESTIGATION

As part of the investigation, the following people were interviewed on the following days.

Jennifer Budge, Director of Parks, Recreation and Open Space: May 10, 2019

Vern Krahn, Senior Park Planner: May 12, 2019

Ann Bollinger, Open Space Manager: May 12, 2019

Jeremy Page, Managing Partner, General Thomas Hill LLC: May 8, 2019

John Costello, Park Ranger, May 8, 2019

Based on emails, it appears that the gate was installed in May, 2013 by the former property / business owner. These emails express concern by the Sheriff's office and Fire Department regarding access.

On May 17, 2013, the City's Open Space Manager writes: "Parks position has been that the public have the right to access and further the City Staff have not only property but improvements that we must be able to access around the clock."

Also on May 17, 2013, the Parks and Recreation Director wrote to the Sheriff "Understand that this is not Parks & Recreation gate or lock. We have never supported the installation of either and do not support locking the gate."

In 2015, City Parks and Recreation staff starting obtaining bids to automate the gate with the goal to close access at sunset.

In 2016, City Parks and Recreation staff entered into a contract with Artistic Fence Company Inc. to automate the gate, and a contract with Horizon Construction Inc. for signs and reflective tape on the gate.

Later in 2016, based on not owning the gate, City staff advised Artistic Fence Company Inc. to NOT activate the gate.

During a flooding event in January 2017, the Assistant Parks and Recreation Director requested staff to padlock the gate due to unsafe conditions. This was the only time city staff secured the gate.

Staff reached out to Artistic Fence to determine who had requested that the gate become operational. Ken from Artistic Fence advised Steve Brown of Brunswick Canyon Materials provide direction to activate the gate.

On May 11, 2017, one of the business owners Zack Doane visited the Parks and Recreation office to "discuss the company's frustration with the gate." As written in an email from a staff

member to the Parks and Recreation Director, the staff member advised Mr. Doane “that we want to see it closed also, that there are some legal issues holding the process up.”

In an email on May 17, 2018, Managing Partner Jeremy Page advised the Director of Parks, Recreation and Open Space that it is best to keep the gate closed for liability reasons.

In a phone conversation on April 12, 2019 with the Parks and Recreation, Steve Brown seemed to attribute the gate closures to problems with the gate.

In a phone conversation on May 8, 2019 with the Planning Manager, Jeremy Page advised that approximately six to eight weeks earlier, there had been a lot of rain. Steve Brown put a blade on the road, and cut a v-ditch in to protect the road. Given how muddy the road would have been at that time, in order to protect the road, Steve Brown modified the gate code so the gate would stay shut. Brown forgot to put the gate code back, so the gate stayed closed for three consecutive weekends. The intention was to secure the gate for one day. The owners did not direct the manager to close the gate.

In this same conversation, Mr. Page advised that when the gate was not secured, there were thefts, and advised of a situation where a car drove off the road.

Per the Sheriff’s office, in April and May, there were four calls that appear in the Dispatch history other than communications with park rangers:

- May 2: Illegal shooting
- April 17: Suspicious vehicle
- April 11: Suspicious vehicle
- April 9: Abandoned vehicle

On April 15, 2019, Code Enforcement hand delivered a Cease and Desist letter to Steve Brown advising him that Brunswick Material was not to restrict public access.

On April 18, 2019, the Planning Manager met with one of the owners of Brunswick Materials Zack Doane, and advised him that Brunswick Materials could not restrict public access. That meeting was at 3:30 PM. At 6:30 PM that next evening, the gate was closed restricting public access.

Based on a log maintained by the park rangers, public access has not been restricted since April 19, 2019.

LEGAL REQUIREMENTS: CCMC 18.02.080 (Special Use Permits), CCMC 18.02.090 (Revocation or reexamination of variance or special use permit) CCMC 18.02.095 (Show cause procedure of variance or special use permit)

Carson City Municipal Code 18.02.090 states “Any of the following reasons or occurrences are grounds for a hearing on revocation or reexamination of a variance or special use permit, pursuant to Title 18 (Show Cause Procedures):

Subsection 1 states, in part:

1. A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit ...

Carson City Municipal Code 18.02.095.1 outlines the show cause procedure. The first step is:

“The commission, upon its own motion, or upon the sworn complaint in writing of any person, or upon information presented by the director, shall request that the director investigate the conduct of any applicant under this chapter to determine whether grounds for revocation or reexamination of any variance or special use permit exists. The director will notify the applicant of any investigation prior to any public hearing.”

The Commission requested an investigation at its meeting of April 24, 2019. The Managing Partner was notified of the investigation through certified mail received on May 8, 2019. Through this report, the Director is advising the Commission of his findings. The Commission, upon hearing the findings of the investigation, has the opportunity to direct staff to issue and serve the applicant with an order to show cause why the special use permit should not be revoked. Once the applicant receives a copy of the order, the Planning Commission could then conduct a hearing on the matter.

RECOMMENDATION

Based on the information gathered in the investigation to date, the staff is not recommending scheduling a show cause hearing. Rather, staff would like to keep the investigation open, identify what additional information that Commissioners would like, and report any further findings to the Planning Commission at it June meeting.

Attachments:

Brunswick Canyon Road Gate LOG

May 17, 2018 email from Jeremy Page to Jennifer Budge

April 12, 2019 email from Jennifer Budge describing conversation with Steve Brown

April 1, 2019 Email from Ron Anderson regarding the road closure

Statement from John Costello, Park Ranger

Brunswick Canyon Road Gate LOG

Date	Time	Staff Representative	Status (open/closed)	Notes/Comments
3-Aug-18	8:05pm	John Costello	Closed	Daylight
10/10/2018	6:00pm	John Costello	Closed	Daylight
10/12/2018	5:45pm	John Costello	Open	Daylight
10/12/2018	6:25pm	John Costello	Closed	Daylight
10/13/2018	6:20pm	John Costello	Closed	Daylight
10/25/2018	2:00pm	John Costello	Open	Daylight
10/25/2018	9:00pm	John Costello	Closed	Night
10/26/2018	3:30pm	John Costello	Open	Daylight
11/2/2018	5:20pm	John Costello	Open	Daylight
11/2/2018	5:45pm	John Costello	Open	Daylight
11/9/2018	2:30pm	John Costello	Open	Daylight
11/10/2018	4:15pm	John Costello	Open	Daylight
11/14/2018	2:45pm	John Costello	Open	Daylight
11/15/2018	3:15pm	John Costello	Open	Daylight
11/28/2018	2:05pm	Jared Whitaker	Open	Daylight
12/2/2018	7:25am	Tyler Kerver	Open	Daylight
12/5/2018	2:45pm	John Costello	Open	Daylight
12/6/2018	12:30pm	John Costello	Open	Daylight
12/19/2018	8:25am	Jared Whitaker	Open	Daylight
1/9/2019	4:40pm	John Costello	Open	Daylight
2/21/2019	6:10pm	John Costello	Open	Night
3/21/2019	6:15pm	John Costello	Closed	Daylight
3/30/2019	all day	Tyler Kerver	Closed	Daylight
3/31/2019	all day	Tyler Kerver	Closed	Daylight
4/2/2019	8:15am	Jared Whitaker	Open	Daylight
4/3/2019	2:35pm	Jared Whitaker	Open	Daylight
4/5/2019	6:15pm	John Costello	Closed	Daylight
4/10/2019	5:45pm	John Costello	Open	Daylight
4/10/2019	6:15pm	John Costello	Closed	Daylight
4/13/2019	all day	John Costello	Closed	Daylight
4/14/2019	all day	reported by citizens	Closed	Daylight
4/15/2019	8:30am	Jared Whitaker	Open	Daylight
4/17/2019	6:10pm	John Costello	Closed	Daylight
4/18/2019	8:40pm	William Kohbarger	Open	Night
4/19/2019	6:15pm	John Costello	Closed	Daylight
4/20/2019	1:30pm	John Costello	Open	Daylight
4/20/2019	6:10pm	John Costello	Open	Daylight
4/23/2019	1:30pm	Jared Whitaker	Open	Daylight
4/24/2019	2:18pm	Jared Whitaker	Open	Daylight
4/20/2019	11:25am	John Costello	Open	Daylight
5/2/2019	8:20pm	John Costello	Open	Night
5/10/2019	1:15pm	Jared Whitaker	Open	Daylight
5/20/2019	9:30am	Jared Whitaker	Open	Daylight

Lena Reseck

From: Jeremy Page <jpage@elevateig.com>
Sent: Thursday, May 17, 2018 11:22 AM
To: Jennifer Budge
Subject: RE: cancelation of board meeting
Attachments: Property Owner Map Carson River Canyon.pdf

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Jennifer- I first want to apologize for our behavior on the gate matter. When the copy of the easements and gate agreement came over to me several weeks ago, I never reviewed them, but sent them to my Attorney and asked him to look for a few specific items that were important to me. I reached out to him Monday the 14th to see where thing stood, as I knew there was a meeting to discuss the agreements with the commissioners on the 17th. He then responded to me on the 15th and told me he had dropped the ball and hadn't got to them yet. So I personally opened them up at that point to review them my self, and realized that the agreement was very one sided and would not be in my best interest to sign in its current condition. If possible I would love to give my legal team the opportunity to red line the document and turn it back to the district attorney for acceptance. If granted this ask, I would need to understand how to get both legal teams in touch with each other. I understand that the city now doesn't want the gate shut, and although I have never understood the issue with the gate being closed from dusk to dawn? It may be helpful if it was explained what the issue with the gate closure is. If I understood the city's position, it might be easier for me to push the agreement along. Either way- I believe it is best for both parties to keep the gate that I own, and is on my property closed for liabilities reason, I will await the cities position on leaving it open during the night time. I even suggested that I would pay 100% of the maintenance cost for the gate... As a good neighbor I wanted the blessing of the City to close it.

On the other matter, I am working on a land swap with Congressman Amodei and the BLM for the 35 acre parcel that has the subject gate on it - and about a half of a mile of river frontage (APN 008-531-45). I was told by Brad Bonkowski of NAI Alliance that the city may be interested in a 3 way swap. This way the city would own more recreational land back there. Part of my proposal to the BLM is that after we deplete the mine we would donate the restored 60 acre parcel (APN 008-531-44) back to the BLM. Although I am sure this donation would be as equal or more valuable to the city. At that point the city would then own all the river frontage on both sides of the river, east of the SR513 DEER RUN RD over the Carson river (bridge) to Santiago Canyon which is essentially the Lyon county border. I have no idea what parcel the city could bring to the table in this 3 way swap that the BLM would want, but I am sure it exists. I am happy to entertain any arrangement that would benefit all parties in this matter, and feel free to contact me via phone or email for further discussion.

See attached map showing subject parcels and ownership

Jeremy Evan Page
775.235.2064

From: Jennifer Budge <JBudge@carson.org>
Sent: Thursday, May 17, 2018 7:34 AM
To: 'Jeremy Page' <jpage@elevateig.com>
Cc: Stephanie Hicks <SHicks@carson.org>; Nancy Paulson <NPaulson@carson.org>
Subject: RE: cancelation of board meeting

Mr. Page- I appreciate you contacting me and I would be happy to discuss your concerns. It is my understanding that you are also pursuing a possible land exchange with the City as well. I would like to work with our Property Manager,

Lena Reseck

From: Hope Sullivan
Sent: Monday, May 20, 2019 9:14 AM
To: Lena Reseck
Subject: FW: Call about Gate

Show cause hearing file

From: Jennifer Budge
Sent: Friday, April 12, 2019 11:53 AM
To: Hope Sullivan
Cc: Todd Reese; Benjamin Johnson
Subject: Call about Gate

I just got off the phone with Steve Brown, Foreman for Brunswick Canyon Materials. I told him that I wanted to let him know that the gate was closed the past two weekends and wanted to make sure they knew about that. He said he did get a call from a member of the public about it, but "didn't think anything about it." He then said that they have installed many improvements to the gate including solar panels, additional batteries, a remote system and other improvements to the gate, which they are maintaining. He then said that they have had problems with the gate working as well. I informed him that it appears to have been open during the week, but not on the weekends and wanted to make sure that they were aware of that.

Jennifer Budge, CPRP | Director
Carson City | Parks, Recreation & Open Space
3303 Butti Way #9 | Carson City, NV 89701
Office: 775.283.7345 | Fax: 775.887.2145
www.carson.org

Lena Reseck

From: Ron ANderson <ron9711@gmail.com>
Sent: Monday, April 01, 2019 4:49 PM
To: Jennifer Budge
Cc: Ann Bollinger; Daniel Kastens; David Navarro
Subject: Re: CARSON RIVER ROAD CLOSURE

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Thank you VERY MUCH for the quick attention to this issue! Im very pleased with the Citys work and efforts for our open spaces- one ive particularly enjoyed for five decades here. !! I beng an ex USFS LEO do keep a close eye on theat river corridor and have spoken with your Rangers on a few different occasions- and always a pleasant interaction..! Again,, THAnK YOU !!!

Ron Anderson
775 220-9185
ron9711@gmail.com

On Mon, Apr 1, 2019 at 1:52 PM Jennifer Budge <JBudge@carson.org> wrote:

Mr. Anderson-

Thank you for contacting us about the gate closure on Brunswick Canyon Road. Access to public lands is essential to our community and it is the City's full intention to ensure that public access remains at this location. Brunswick Canyon Materials operates under a Carson City Special Use Permit. As part of that permit, they are required to provide public recreation access unless there is an emergency. The City's District Attorney's Office is contacting them today to ensure compliance into the future. We appreciate you informing us about this situation and please know that we are taking steps to make sure it does not occur again.

Please let us know if you have any other questions or concerns. Thank you for your time and assistance. –Jen

Jennifer Budge, CPRP | Director

Carson City | Parks, Recreation & Open Space

3303 Butti Way #9 | Carson City, NV 89701

www.carson.org

From: Daniel Kastens
Sent: Monday, April 1, 2019 6:55 AM
To: Jennifer Budge
Cc: Ann Bollinger; Jared Whitaker
Subject: FW: CARSON RIVER ROAD CLOSURE

From: Carson City [<mailto:webmaster@carson.org>]
Sent: Saturday, March 30, 2019 1:46 PM
To: Daniel Kastens
Subject: CARSON RIVER ROAD CLOSURE

Message submitted from the <Carson City> website.

Site Visitor Name: Ronald D Anderson
Site Visitor Email: ron9711@gmail.com

Im a lfe long resident here- and formerly with BLM and and Leo in the USFS -Carson ranger districts. Im an avid fisherman in retirement and have been enjoying the river from deer run road to Dayton for decades. I was annoyed to say the least to find out today, 3/30/19 to find the gates closed at the river road - supposedly by permission by the gravel quarry - and that they were complaining of the public tearing up the road. As we all know that road is actually property of the V& T railroad and there is also a grandfathered access to the city property - which is the river road- originally a R&R grade to carson. There is no legal way that this quarry operation should be able to close access to the road and river AND CITY OPEN SPACE. Im willing to file complaints or anything else required to correct this issue.

Ron Anderson

775 220-9185
ron9711@gmail.com

Brunswick Canyon Rd. Gate

Since the closing of the Brunswick Canyon Rd. gate, I have received multiple complaints from the public. I have received at least three voicemails from members of the public, I have been patched through to disgruntled members of the public from CCSO dispatch, and I have made contact with multiple individuals on the east side of Carson that are frustrated with the gate being closed on weekends. Over the past two weeks we have observed that the gate is closing around 1800 hours Monday through Friday, and completely closed to the public on Saturdays and Sundays.

-John Costello