

STAFF REPORT FOR THE PLANNING COMMISSION MEETING OF JULY 31, 2019

FILE NO: MISC-19-047

AGENDA ITEM: E-7

STAFF CONTACT: Hope Sullivan, Planning Manager

AGENDA TITLE: For Possible Action: Discussion and possible action to determine 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 consists of 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

The staff reported on the investigation at the Planning Commission meeting of May 29, 2019. At that point, the following people had been 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

The following information was provided at the May Planning Commission meeting.

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.

Since the May Planning Commission meeting, staff has met with David Navarro, Parks Operation Superintendent. This interview occurred on July 15, 2019.

Mr. Navarro has worked in the Parks, Recreation and Open Space Department since 2006, starting as the sports field coordinator. Mr. Navarro was promoted in 2014 to Parks Operation Manager, and in 2017 to his current position. In his current position, Mr. Navarro supervises the rangers.

Due to his long tenure in the Parks, Recreation, and Open Space Department, and his role supervising rangers, staff wanted to interview Mr. Navarro.

Mr. Navarro was not involved in the gate installation. Mr. Navarro started supervising the open space ranger in 2018. Mr. Navarro never had contact with Brunswick Materials, nor did he ever direct the ranger to have contact with Brunswick Materials. Mr. Navarro’s understanding was that the Open Space division was the lead on the gate.

Since the May Planning Commission meeting, the park rangers have continued maintaining a log regarding the gate being open. Based on a log through July 17, 2019 and 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. No action by the Planning Commission is recommended.

Attachments:

Bruswick Canyon Road Gate Log

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
5/17/2019	6:15pm	John Costello	Open	Daylight

5/24/2019	7:00pm	John Costello	Open	Daylight
5/25/2019	7:15pm	John Costello	Open	Daylight
5/31/2019	6:15pm	John Costello	Open	Daylight
6/1/2019	3:15pm	John Costello	Open	Daylight
6/14/2019	6:00pm	John Costello	Open	Daylight
6/15/2019	3:30pm	John Costello	Open	Daylight
4/28/2019	1:46pm	Allan Biddle	Open	Daylight
4/28/2019	4:50pm	Allan A Biddle	Open	Daylight
4/29/2019	3:10pm	Allan A Biddle	Open	Daylight
4/30/2019	6:05pm	Allan A Biddle	Open	Dusk
5/1/2019	5:00pm	Allan A Biddle	Open	Daylight
5/5/2019	2:10pm	Allan A Biddle	Open	Daylight
5/5/2019	5:00pm	Allan A Biddle	Open	Daylight
5/12/2019	3:12pm	Allan A Biddle	Open	Daylight
5/14/2019	4:40pm	Allan A Biddle	Open	Daylight
5/20/2019	4:05pm	Allan A Biddle	Open	Daylight
5/27/2019	2:45pm	Allan A Biddle	Open	Daylight
5/29/2019	4:58pm	Allan A Biddle	Open	Daylight
6/1/2019	2:10pm	Allan A Biddle	Open	Daylight
6/2/2019	2:10pm	Allan A Biddle	Open	Daylight
6/3/2019	6:33pm	Allan A Biddle	Open	Daylight
6/10/2019	2:20pm	Allan A Biddle	Open	Daylight
6/10/2019	4:30pm	Allan A Biddle	Open	Daylight
6/16/2019	12:42pm	Allan A Biddle	Open	Daylight
6/16/2019	1:52pm	Allan A Biddle	Open	Daylight
6/16/2019	7:38pm	Allan A Biddle	Open	Dusk
6/17/2019	3:05pm	Allan A Biddle	Open	Daylight
6/18/2019	12:20pm	Allan A Biddle	Open	Daylight
6/18/2019	4:24pm	Allan A Biddle	Open	Daylight
6/23/2019	2:13pm	Allan A Biddle	Open	Daylight
6/23/2019	5:10pm	Allan A Biddle	Open	Daylight
6/24/2019	9:41am	Jared Whitaker	Open	Daylight
6/24/2019	4:48pm	Allan A. Biddle	Open	Daylight
6/25/2019	12:25pm	Allan A. Biddle	Open	Daylight
6/25/2019	2:10pm	Allan A. Biddle	Open	Daylight
6/28/2019	7:10pm	John Costello	Open	Daylight
6/29/2019	3:15pm	John Costello	Open	Daylight
6/29/2019	7:30pm	John Costello	Open	Daylight
6/30/2019	3:27pm	Allan A Biddle	Open	Daylight
7/1/2019	2:12pm	Allan A Biddle	Open	Daylight
7/1/2019	4:50pm	Allan A Biddle	Open	Daylight
7/2/2019	11:35am	Allan A. Biddle	Open	Daylight
7/2/2019	3:18pm	Allan A Biddle	Open	Daylight
7/2/2019	4:44pm	Allan A Biddle	Open	Daylight
7/4/2019	3:00pm	John Costello	Open	Daylight
7/4/2019	8:00pm	John Costello	Open	Daylight
7/5/2019	11:45am	John Costello	Open	Daylight

7/5/2019 7:00pm	John Costello	Open	Daylight
7/6/2019 12:15pm	John Costello	Open	Daylight
7/6/2019 4:45pm	John Costello	Open	Daylight
7/7/2019 2:30pm	Allan A Biddle	Open	Daylight
7/7/2019 3:45pm	Allan A Biddle	Open	Daylight
7/8/2019 2:20pm	Allan A Biddle	Open	Daylight
7/8/2019 3:48pm	Allan A Biddle	Open	Daylight
7/9/2019 1:00pm	Allan A Biddle	Open	Daylight
7/9/2019 2:40pm	Allan A Biddle	Open	Daylight
7/10/2019 10:30am	Allan A Biddle	Open	Daylight
7/10/2019 11:10am	Allan A Biddle	Open	Daylight
7/10/2019 1:30pm	Allan A Biddle	Open	Daylight
7/14/2019 12:18pm	Allan A Biddle	Open	Daylight
7/14/2019 2:58pm	Allan A Biddle	Open	Daylight
7/15/2019 2:45pm	Allan A Biddle	Open	Daylight
7/15/2019 5:20pm	Allan A Biddle	Open	Dusk
7/16/2019 1:00pm	Allan A Biddle	Open	Daylight
7/16/2019 3:50pm	Allan A Biddle	Open	Daylight
7/17/2019 12:05pm	Allan A Biddle	Open	Daylight
7/17/2019 12:45pm	Allan A Biddle	Open	Daylight