

**STAFF REPORT FOR THE PLANNING COMMISSION MEETING OF DECEMBER 17, 2019**

**FILE NO:** SUP-10-115

**AGENDA ITEM:** E.7

**STAFF CONTACT:** Hope Sullivan, Planning Manager

**AGENDA TITLE:** For Possible Action. Discussion and possible action requesting that the Director investigate the conduct of Tahoe Western Asphalt relative to Special Use Permit SUP-10-115 as amended, located at 8013 Highway 50 East, APN 008-611-35, to determine if grounds exist for revocation or re-examination of the Special Use Permit. (Hope Sullivan, [hsullivan@carson.org](mailto:hsullivan@carson.org)).

**STAFF SUMMARY:** At its meeting of January 26, 2011, the Planning Commission approved a Special Use Permit for an asphalt plant and aggregate crushing facility at 8013 Highway 50 East. In 2018, the Planning Commission approved an amendment to the Special Use Permit, and in November 2019 performed an annual review of the Special Use Permit. The Special Use was issued, and amended, based on the ability of the Commission to find that the use will not be detrimental to the use, peaceful enjoyment, and economic value of surrounding properties or the general neighborhood, or includes improvements or modifications either on-site or within the public right-of-way to mitigate development related to adverse impacts such as noise, vibrations, fumes, odors, dust, glare or physical activity. During public comment received both in 2018 and 2019, there were allegations that the use is detrimental to the use, peaceful enjoyment, and economic value, of surrounding properties or the general neighborhood, and that odors are not being mitigated.

**RECOMMENDED MOTION:** “I move to request that the Community Development Director investigate the conduct of Tahoe Western Asphalt relative to Special Use Permit SUP-10-115, as amended.”

**VICINITY MAP:**



## **BACKGROUND / ISSUES**

Tahoe Western Asphalt operates an asphalt plant at 8013 Highway 50 East. Between 1984 and 1994 a portable rock crushing operation operated onsite (U-83-37). In 1994 the operation changed ownership and requested an expansion of the use to include extraction of material and a portable rock crushing facility for aggregate base; however, a new Special Use Permit was not required as long as the new operation was subject to the conditions of approval outlined in U-83-37.

In November 2010 staff conducted a Major Project Review for the proposed Far West Hybrid Asphalt Plant. The Airport Authority also reviewed the project in November and recommended to the Board of Supervisors and Planning Commission disapproval of the wind turbine component of the project.

On January 26, 2011 the Planning Commission approved a Special Use Permit for an asphalt plant and aggregate crushing facility. Later that year, on September 28<sup>th</sup>, the Planning Commission approved a Special Use Permit to allow four 190 foot tall wind turbines on the property.

On February 2, 2016 the Community Development Department determined the Special Use Permit for the aggregate and a batch plant operation was still valid.

In July 2016 the plant began operating.

On October 24, 2018 the Planning Commission approved a modification to the Special Use Permit (SUP-10-115) to allow for modified hours of operation subject to the construction of a roof over the truck loading chute area; installation of a water fogging system at drop points when material drops to a different part of the equipment and is exposed to air; installation and maintenance of a vent condenser; and utilization of Ecosorb to suppress odors. Additionally, the Planning Commission conditioned the approval on a one year review of the modified Special Use Permit primarily due to the impacts from odors.

The modification request stemmed primarily from issues the business had with operating outside of the permitted hours. Between February and September of 2018 City's Code Enforcement staff issued three notices of violation for operation outside of approved hours. Although only three notices were issued, between February 20, 2018 and September 26, 2018, fifty-six complaints were received. These complaints were primarily related to working outside of hours of operation and odors. Additionally, in January 2017 the business was cited by the Nevada Department of Environmental Protection (NDEP) for failing to notify NDEP of the initial startup and assessed fines of \$1,750. Between January 2017 and March of 2018, NDEP also cited the business seven times for violations related to air quality, and assessed fines of \$61,055.

On November 19, 2019 the Planning Commission conducted a one year review of the Special Use Permit. During this meeting staff informed the Planning Commission of the 99 complaints that had been received following the October 24, 2018 meeting. Ninety eight of the complaints were about odors, and one complaint was in regard to hours of operation. The City's Code Enforcement staff documented six visits to Mound House following the complaints. During one visit, there was no odor detected, during four visits there was a faint odor detected, and during one visit there was a strong odor detected. NDEP also received 127 complaints during the year following the October 24, 2018 meeting. Although strong odors and opacity were observed, the threshold for a violation was not met.

Many residents from the surrounding area were present at the November 19, 2019 meeting. During the meeting they voiced their concerns and complaints regarding odors and hours of operation. Many of them also indicated their concerns with the long-term health implications that may result from living in close proximity to an asphalt plant.

Based on the public testimony received at the meeting, the Planning Commission found the Ecosorb product is not effective in reducing odors and required utilization of a regenerative thermal oxidizer to address odor. The Commission required the equipment to be installed immediately, and that further operation without the regenerative thermal oxidizer is unlawful. The Planning Commission also eliminated the ability to perform work on Sundays and evenings up to 30 times per calendar year and included a condition to perform a review of the Special Use Permit in October 2020.

In addition to the modifications to the conditions of approval, the Planning Commission also directed staff to include on the next Planning Commission agenda an item for discussion and possible action to consider requesting the Director investigate the conduct of Tahoe Western Asphalt relative to the Special Use Permit.

**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 5 states:

5. Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare.

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.”

Should the Commission request the investigation, the Director would conduct the investigation, and then advise the Commission of his findings. The Commission would then have 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.