

**THE LAW OFFICES OF CHARISSE L. SMITH**

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CHARISSE L. SMITH  
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Case No. 022.1050.5.16

June 23, 2016

**BY CERTIFIED MAIL RETURN RECEIPT REQUESTED AND U.S. MAIL**

Aspects Inc.  
c/o Ralf G. Zacky  
Agent for Service of Process  
9441 Opal Avenue  
Mentone, CA 92359

Jeff Geist  
Ames Construction  
391 North Main Street, #111  
Corona, CA 92880

Dave Mlynarski  
Transtech Engineers  
413 W. Mackay Drive  
San Bernardino, CA 92408

Re: EXPIRATION of Temporary Use Permit P201200310 (“TUP”)  
LOCATION: Opal Avenue at Carlsbad Avenue – Northeast Corner – APN: 0297-122-15  
 (“Subject Property”)

Dear Mssrs. Zacky, Geist, and Mlynarski:

This office serves as special counsel for the County of San Bernardino (the “County”). In such capacity I have been authorized and directed to write this letter regarding the Subject Property and expired TUP. Our records reflect that Aspects Inc., Mr. Zacky, is the Owner of the Subject Property (“Owner”) and that Ames Construction, Inc. and Transtech Engineers, Inc. obtained a TUP in 2012. The TUP allowed for the *temporary* stockpile of soil up to 650,000 cubic yards from the adjacent State Department of Water Resources East Branch Water Pipeline Extension Project.

As you are aware, the effective date of the TUP was October 22, 2012, and the initial expiration date was October 22, 2013. On or about June 20, 2014, the County granted a twelve month extension of time to complete and finalize the removal of the soil stockpile project described in the TUP, making the new expiration date June 20, 2015. No further extensions of the TUP have been granted. While the County is aware of and appreciates the recent activity that has resulted in reducing the volume of the most northern stockpile, the County continues to receive complaints about the ongoing presence of the stockpiles at the Subject Property after the expiration of the TUP, with, quite frankly, only minimal visible progress towards the elimination of the stockpiles.

This letter is to put you on notice that your failure to remove the soil stockpiles in accordance with the TUP and subsequent extension, violate the County of San Bernardino Municipal Code. You no longer have permission from the County to stockpile the soil at this location, and the County has asked this office to pursue the various options available to the County, including, but not limited to criminal prosecution, civil prosecution, and the appointment of a receiver to eliminate the soil. In order to avoid such action by

the County, you must **respond in writing to this letter within 15 days** and provide my office with a detailed proposed plan, with definitive timelines to immediately remove the stockpiles in an ongoing manner that is measured and clearly visible, i.e., in a manner that is – considering the circumstances – as timely and as businesslike as possible. The proposed plan should begin with removal of the soil stockpile adjacent to the Redlands Municipal Airport. Finally, your proposal should be informed by the fact that the time frames for the removal of the stockpiles proposed by Mr. Mlynarski via e-mail to Ms. Hernandez on June 22, 2016, are unacceptable to the County.

In the event we do not hear from you, we will take the necessary steps to ensure removal of the soil stockpiles in a timely and professional manner via Court order. If you have any questions regarding this letter, please contact me at (909) 257-0650. We look forward to working with you to get this matter resolved in a timely and professional manner.

Sincerely,



Charisse L. Smith

Enclosures:

Expired TUP and Extension

cc via electronic mail:

Willis A. Wingert, Code Enforcement Chief, LUSD, Code Enforcement Division

Julie Hernandez, Deputy Chief of Code Enforcement

Bart Brizzee, Deputy County Counsel

Certified Mail No. 7016 0750 0000 4641 5361 (Aspects)

Certified Mail No. 7016 0750 0000 4641 5378 (Ames)

Certified Mail No. 7016 0750 0000 4641 5354 (Transtech)

LAND USE SERVICES DEPARTMENT



COUNTY OF SAN BERNARDINO

PLANNING DIVISION
385 North Arrowhead Avenue-San Bernardino, CA 92415
(909) 387-4297 Fax (909) 387-3223
http://www.sbcounty.gov/landuseservices

CHRISTINE KELLY
Director

October 11, 2012

Effective Date: October 22, 2012
Expiration Date: October 22, 2013

Jeff Geist
Ames Construction
391 North Main Street, # 111
Corona, CA 92880

Dave Mlynarski
Transtech
413 Mackay Drive
San Bernardino, CA 92408

Re: Temporary Use Permit to Establish a Soil Stockpile of up to 650,000 cubic yards from the adjacent State Department of Water Resources East Branch Water Pipeline Extension Project- Opal Avenue at Carlsbad Avenue – Northeast Corner- APN: 0297-122-15; P201200310

Dear Mr. Geist and Mr. Mlynarski:

Please be advised that the application for the Temporary Use Permit (TUP) described above has received conditional approval by the San Bernardino County Land Use Services Department, subject to your compliance with the enclosed Conditions of Approval. The proposed operation is to allow for the stockpiling of up to 650,000 cubic yards of soil from the adjacent State Department of Water Resources East Branch Water Pipeline Extension Project. This conditional approval shall be valid for a period of one (1) year.

This development constitutes a minor disturbance and is allowed subject to the provisions of the Development Code, Chapter 84.25 (Temporary Structures and Uses). Therefore, the project has been approved by staff without the requirement of a public hearing.

Please be aware that all temporary structures and related improvements shall be completely removed from the subject site following expiration of the TUP (see expiration date above and in the conditions of approval). Any modifications and/or alterations to this project will require the submittal of a new application and approval prior to modifications being implemented. Periodic inspections as deemed necessary shall be made by staff of interested County Departments in order to ensure compliance with the Conditions of Approval.

Pursuant to Section 86.08.010 of the San Bernardino County Development Code, any interested person may, within ten (10) days after the date of this decision, appeal in writing to the Planning Commission for consideration thereof. The appeal, together with the appropriate fee, must be made in writing on forms available from the Public Information Counter.

If you have any questions or concerns regarding this matter, please contact me by mail at the above address, by telephone at (909) 387-4122 or by e-mail at david.prusch@lus.sbcounty.gov.

Sincerely,
Dave Prusch
Dave Prusch Supervising Planner
Planning Division

Enclosure: Conditions of Approval for TUP

GREGORY C. DEVEREAUX
Chief Executive Officer

Board of Supervisors
BRAD MITZELFELT First District
JANICE RUTHERFORD Second District
JOSIE GONZALES Fifth District
NEIL DERRY Third District
GARY C. OVITT Fourth District

APN: 0297-122-15  
P 201200310  
Ames Construction, Inc.

CONDITIONS OF APPROVAL

EFFECTIVE DATE: October 22, 2012  
EXPIRATION DATE: October 22, 2013

**TEMPORARY USE PERMIT**

**ONGOING CONDITIONS OF OPERATION:**

LAND USE SERVICES/PLANNING DIVISION (909) 387-4237

1. The following conditions of approval apply to a Temporary Use Permit (TUP) to establish two temporary stockpiles of soil, of up to 650,000 cubic yards maximum of material from the adjacent property on which the State Department of Water Resources – East Branch Extension Phase II Project – Citrus Reservoir Basin and Pump Station is being constructed. The approval of this project is based upon the County Development Code, Chapter 85.15 regarding Temporary Use Permits. Any alteration or expansion of this project or increase in the developed area of the site from that shown on the approved Site Plan may require submission of an additional application for review and approval.
2. An extension of time to the expiration date (listed above or as otherwise extended) may be granted for an additional twelve (12) month period beyond the current expiration date. An Extension of Time may be granted upon a successful review of an Extension of Time application, which includes a justification for the request and a plan of action for completion. The Extension of Time application shall be submitted, with the appropriate fee, not less than 30 days prior to the expiration date.
3. This conditional approval shall be valid for a period of one (1) year or at completion of the associated stockpile project, whichever occurs first. Should the stockpiles not be eliminated by the termination date of this TUP, and the location of the stockpiles returned to their pre-stockpile condition, the applicant would be responsible for applying for an Extension of Time to this TUP, not less than 30 day prior to the expiration date of the TUP.
4. In compliance with SBCC §81.01.070, the developer shall agree to defend, indemnify and hold harmless the County or its "indemnities" (herein collectively the County's elected officials, appointed officials [including Planning Commissioners], Zoning Administrator, agents, officers, employees, volunteers, advisory agencies or committees, appeal boards or legislative body) from any claim, action or proceeding against the County or its indemnitees to attack, set aside, void or annul an approval of the County by an indemnitee concerning the map or permit or any other action relating to or arising out of County approval, including the acts, errors or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim, except where such indemnification is prohibited by law. In the alternative, the developer may agree to relinquish such approval.

Any condition of approval imposed in compliance with the County Development Code or County General Plan shall include a requirement that the County acts reasonably to promptly notify the developer of any claim, action, or proceeding and that the

County cooperates fully in the defense. The developer shall reimburse the County and its indemnitees for all expenses resulting from such actions, including any court costs and attorney's fees, which the County or its indemnitees may be required by a court to pay as a result of such action.

The County may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the developer of their obligations under this condition to reimburse the County or its indemnitees for all such expenses.

This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The developer's indemnification obligation applies to the indemnitee's "passive" negligence but does not apply to the indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

5. All conditions of this Temporary Use Permit are continuing conditions. Failure of the applicant and/or operator to comply with any or all of said conditions at any time shall result in the revocation of the permit granted to use the property.
6. The applicant shall ascertain and comply with requirements of all Federal, State, County and Local Agencies as are applicable to the proposed use and the project area. They may include, but are not limited to: 1) State: Caltrans; Fire Marshal; South Coast Air Quality Management District; 2) County: Department of Public Health; Environmental Health Services Division; Local Enforcement Agency (LEA); Department of Land Use Services, Divisions of Building & Safety and Code Enforcement; Department of Public Works; Flood Control District; Fire Department.
7. If any County enforcement activities are required to enforce compliance with the TUP conditions of approval, the applicant and/or property owner shall be charged for such enforcement activities in accordance with the San Bernardino County Code Schedule of Fees.
8. The procedures and requirements in Chapter 86.06 (Time Limitations) and those related to appeals and revocation in Division 6 (Development Code Administration) shall apply following the TUP approval.
9. All temporary fencing and structures shall be maintained regularly by the applicant and/or property owner, so that all facets of the development are kept in continual good repair, including but not limited to the removal of graffiti. All trash and storage areas, loading areas, and mechanical equipment shall be screened from public view. The property shall be maintained so that it is secure from unlawful trespassing and is not dangerous to the health and welfare of the adjacent land uses and surrounding properties.

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P 201200310  
Ames Construction, Inc.

CONDITIONS OF APPROVAL

EFFECTIVE DATE: October 22, 2012  
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10. All on-site "No Trespassing" or other "Posted Area" signs shall be maintained in a clean readable condition at all times and all graffiti and vandalism shall be removed and repaired on a regular basis.
11. The access gate to the site shall remain unobstructed at all times during permitted work hours. The gate shall be locked and the site secured outside of working hours.
12. Parking and on-site circulation requirements shall be maintained in good condition at all times.
13. Any sign must be applied for, permitted, and registered per the Sign Regulations found in Chapter 83.13 of the San Bernardino County Development Code, Section 83.13.030. Such sign(s) shall be erected in conformance with the provisions of the San Bernardino County Code. All signs and their components shall be regularly maintained and kept in good repair and appearance.
14. All lighting on-site shall reflect away from public thoroughfares and any adjacent residences and shall comply with the County's Development Code, Section 83.07 (Glare and Outdoor Lighting).
15. Noise level shall be maintained at or below County Standards, Development Code Section 83.01.080. For information, Call DEHS at (909) 387-4677.
16. The operator shall ensure that all equipment (stationary and mobile) is maintained and tuned according to manufacturer's specifications.
17. The applicant/operator shall maintain the site free of ponding water to avoid vector breeding.
18. At the time of termination of the operation for any reason, all equipment, building, structures, stockpiles and refuse associated with the operation shall be removed from the site, and all hazards mitigated.
19. In addition to drainage requirements stated herein, other "on-site" and/or "off-site" improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office.
20. Prior to expiration date of the TUP, the property owner shall file a Conditional Use Permit (CUP), and/or any other land use application with the Planning Division, as deemed appropriate, for the permitting of any proposed or existing on-permitted land uses on the project site.
21. The project site is located within Compatibility Zones A and B1 of the Redlands Municipal Airport Comprehensive Land Use Plan (ACLUP). The applicant shall

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Ames Construction, Inc.

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- submit Form 7460-1 to the Federal Aviation Administration (FAA) to ascertain if any conditions or mitigations are required by the FAA, prior to initiating the stockpiling operation.
22. All construction activities shall comply with County noise standards (San Bernardino County Code 83.01.080). All grading activities shall be limited to 7 am to 7 pm, excluding Sundays and National Holidays. All stationary construction equipment shall be placed in a manner so that emitted noise is directed away from the nearest sensitive nose receptors.
  23. Exposed soil shall be kept continually moist to reduce fugitive dust during all grading and construction activities, through application of water sprayed a minimum of two times each day.
  24. During high wind conditions (speeds in excess of 25 mph), soil stockpiles shall be watered hourly.
  25. All trucks hauling dirt away from the site shall be covered.
  26. If visible dirt track-out occurs, paved access drives and affected streets shall be washed and swept daily.

PUBLIC WORKS DEPARTMENT/TRAFFIC DIVISION (909) 387-8186

27. Clear corner site distance shall remain at all driveway and intersection locations
28. A Department of Public Works permit is required for any oversized loads using and street/road within the County Maintained Road System.
29. Any changes to the haul route which include the County Maintained Road System will require a construction management plan to be reviewed and approved by the Department of Public Works. If the County Maintained road System will be used as a haul route, then the developer shall enter into a maintenance agreement with the Department of Public Works to insure all County maintained roads utilized by construction traffic shall remain in acceptable condition during construction. If the County Maintained Road System will be used as a haul route than the developer shall assure that all County maintained roads affected by the project during construction shall be restored to pre-construction condition. Please contact the County Department of Public Works, Transportation Operations Division at (909) 387 – 7995 for inspection prior to occupancy.

PUBLIC WORKS DEPARTMENT/SURVEYOR (909) 387-8149

30. If any activity on this project will disturb **any** land survey monumentation including but not limited to vertical control points (benchmarks), said monumentation shall be

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located and reference by or under the direction of a licensed land surveyor or registered civil engineer authorized to practice land surveying **prior** to commencement of any activity with the potential to disturb said monumentation. A corner record or survey of the references shall be filed with the County Surveyor (section 8771 (b) Business and Professions Code).

31. A Record of Survey per Section 8762 of the Business and Professions Code is required due to the grading plan showing bearings and distances which are not of record and to facilitate the location of the property lines for the proposed drainage swales and fill keys.

END OF CONDITONS



# LAND USE SERVICES DEPARTMENT

BUILDING & SAFETY • CODE ENFORCEMENT • FIRE HAZARD ABATEMENT  
LAND DEVELOPMENT • PLANNING



COUNTY OF SAN BERNARDINO

- 385 N. Arrowhead Avenue, First Floor • San Bernardino, CA 92415-0187  
(909) 387-8311 Fax (909) 387-3249
- 15900 Smoke Tree Street, First Floor • Hesperia, CA 92345  
(760) 995-8140 Fax (760) 995-8167

TOM HUDSON  
Director

June 20, 2014

New Expiration Date: June 20, 2015

Ames Construction, Inc.  
9333 East Hartford Drive  
Scottsdale, AZ 85255

Aspects, Inc.  
Attention: Dave Mlynarski  
9441 Opal Avenue  
Mentone, CA 92359

**RE: TWELVE MONTH EXTENSION OF TIME REQUEST FOR A TEMPORARY USE PERMIT TO STOCKPILE UP TO 650,000 CUBIC YARDS OF MATERIAL FROM THE ADJACENT PROPERTY RELATIVE TO THE STATE DEPARTMENT OF WATER RESOURCES REAST BRANCH WATER PIPELINE EXTENSION PROJECT. APN: 0297-122-15. P201300425**

Dear Applicant:

The Planning Division has completed the review of your extension of time application. After researching information relative to the original project, the requested extension of time to complete and finalize the removal of the soil stockpile project described above, is for an additional 12 months in accordance with the County Development Code subsection 86.06.060 (b). The new expiration date is June 20, 2015. The original findings for project approval are hereby incorporated by reference as the findings for approval of the extension.

Unless otherwise provided by law or by development agreement, any future development must adhere to and comply with all current construction standards (i.e., California Building Code, Green Building Code, Uniform Fire Code), State law requirements (i.e., State Model Water Efficient Landscape Ordinance), and any current fees (i.e., Transportation Fees), in effect at the time of permitting.

Any construction under permit at the time this extension expires may continue to completion, provided the building permits are maintained as active and valid. The applicant must submit a Revision to an Approved Action application and the required fees for any proposed changes, expansions, or revisions to the originally approved project. The Planning Division will review any such revision.

Should you have any questions, please contact me at [David.Prusch@lus.sbcounty.gov](mailto:David.Prusch@lus.sbcounty.gov) or (909) 387-4122.

Sincerely,

Dave Prusch  
Supervising Planner

DP/cks

GREGORY C. DEVEREAUX  
Chief Executive Officer

Board of Supervisors  
ROBERT A. LOVINGOOD, First District  
JANICE RUTHERFORD, Chair, Second District  
JOSIE GONZALES, Fifth District  
JAMES RAMOS, Third District  
GARY C. CVITT, Vice Chair, Fourth District