

ASPHALT PLANT APPEAL UPDATE as of 07/01/2025

The Taos County District Court has issued a decision regarding the asphalt plant operated by Taos Gravel at the Torres Pit across the gorge from Stagecoach Hills.

Background

Taos Gravel sought Taos County's approval to relocate and operate a portable asphalt plant on the site. The county approved the asphalt plant in 2023, essentially "grandfathering" the asphalt operation as "incidental" to existing gravel extraction and crushing operations.

SHNA challenged the permit by filing an appeal in the Taos County District Court, arguing that the asphalt plant is a "new use" of the site that is different from pre-existing operations, which means the County should have applied the more demanding standards required for a special use permit. Although Taos Gravel technically had the right to proceed with operations during pendency of the appeal, it did not do so until earlier this year. The court issued its opinion in late May.

The Court's Decision

In its appellate capacity, the district court is not permitted to engage in "factfinding." Instead, its role is to rule on the legal issues, including whether Taos County applied the correct standards in issuing the permit.

The court ultimately determined that the County's review "undertook a reasoned analysis of the facts presented, applied relevant provisions of the Land Use Regulations, and relied on both expert testimony and documentary evidence to support its conclusion," except for "the absence of a specific factual determination as to whether the asphalt operation qualified as a continuous, legal non-conforming use" of the property.

In order for asphalt production to be a "grandfathered" use at the gravel pit, the court decided that Taos County needs to determine whether or not there was continuous asphalt production at the Torres Pit before the issuance of the permit. This means that asphalt must have been produced at the pit and not shut down for a period of 365 consecutive days. The court remanded the matter (i.e., sent it back down) to the Taos County Board of Commissioners to answer this question.

The Question Taos County Must Now Answer

Whether the permit was properly issued therefore turns on this factual question regarding continuous use of the site for asphalt production. Because the court is not a “factfinder,” the matter returns to the County to determine “whether the asphalt production use at the Torres Pit constituted continuous use under the Taos County Land Use Regulations.”

Specifically, according to the court, “[E]ven if the asphalt plant had previously been operated on the site . . . there still must be a factual determination as to whether the asphalt operation had lapsed for more than one year prior to the permit application because the use for gravel mining is not the operative determination regarding asphalt.”

In short, the question before the County will be whether asphalt production at the Torres Pit “ceased or remained inactive” for a period of 365 consecutive days before the permit was issued.

