

Table of Contents

Introduction.....2

Part 1: Avoiding Pitfalls.....3-7

- 1.1 Assemble an expert permitting team
- 1.2 Properly research and define the project
- 1.3 Set realistic time and cost expectations
- 1.4 Identify potential obstacles upfront and develop solutions
- 1.5 Involve everyone – agencies, politicians, and citizens early on

Part 2: Adopting Best Practices.....8-11

- 2.1 Maintain ongoing community outreach and education programs
- 2.2 Build mutual understanding between all parties involved
- 2.3 Develop and implement a permitting marketing campaign
- 2.4 Establish a solid reclamation plan
- 2.5 Leverage experience and an expert strategy

Appendix.....12-15

- About the author
- About the contributors
- About the sponsor
- Bibliography of research and quoted sources
- Disclaimer

Introduction

Telsmith, Inc., a leading provider of global processing solutions, is proud to sponsor this informative white paper, which is intended to share valuable resources and to stimulate further discussion regarding one of the industry's greatest challenges – navigating the permitting process. The release of this white paper is part of Telsmith's ongoing commitment to best serve the aggregate and mining industry, and to partner with its customers to provide total processing solutions. Consider that without proper approaches to permitting, producers would ultimately face dwindling market share, and increasing difficulties in meeting the needs of their customers – and communities would be denied readily-available access to the valuable construction aggregate materials required to build homes and businesses, and to repair and rebuild an aging infrastructure.

Authored by veteran industry writer Carol Wasson, and entitled *“The Permitting Process: Avoiding Pitfalls and Adopting Best Practices,”* this white paper features resources from regulatory agencies and expert advice from two of the industry's top land use permitting consultant firms – California-based Benchmark Resources; and The Saint Consulting Group, which is headquartered in Boston.

According to Benchmark Resources, its staff is comprised of specialists in mine permitting, design and operation, as well as federal, state, and local agency regulation. Benchmark assists its clients during all phases of mineral development, from exploration and feasibility to design, permitting, construction, operation, and closure.

The Saint Consulting Group stresses an expertise in land use politics and a specialization in winning zoning and land-use battles. As the climate for development has become increasingly fraught with opposition, The Saint Consulting Group says it has assembled a staff of successful political strategists, media executives, and attorneys, who understand what drives decision-making in government, communities and the real estate marketplace.

In a two-part approach, this white paper will focus on assembling the proper permitting team; defining the project; setting realistic goals and expectations; identifying potential obstacles upfront; proactively developing solutions; and adopting best practices that may help pave the way to winning permitting approvals, while remaining a good neighbor and a respected contributor to the community.

Part 1. Avoiding Pitfalls

Maneuvering around the potential pitfalls in the permitting process may be likened to playing a fierce round of dodge ball. It takes gamesmanship, mental toughness, negotiation skills, preparation, persistence, and help from a talented team of players. Many are stricken by hit after hit along the way, and in the end, few are left standing. However, the strong do survive and permits are won. Attaining the hard-fought-for permit is the result of avoiding pitfalls and adopting best practices.

1.1 Assemble an expert permitting team.

A common pitfall in the permitting process is failing to assemble a strong, knowledgeable, and experienced permitting team – a *complete* and competent team that oversees the legal, technical, environmental and political approaches regarding the project, the process, the agencies, the government officials, and the community. While large producers may have in-house teams that cover each of these areas, most producers do not have the resources to handle the entire process effectively.

“If there is an operation that knows the local politics, we will encourage them to embrace that; however, having an extended team of experts is an important aspect,” says Benchmark Resources President David Brown. “Our team is able to work any technical or environmental issue whether it’s traffic, noise, or biology. But it’s more than having a consultant delivering a report – it’s the operating assumptions and knowledge needed to analyze the results; and to determine if and how an operation should modify the project parameters to gain approvals. It’s more than knowing the law and regulations as they read, but also knowing where the grey or negotiable areas are,” says Brown. “Working with consultants that have a broad range of experience helps the producer to understand the interrelations between all aspects of the project. Decisions should not be made on just the primary issues that are important to the producer (such as production capacity), without an understanding of the impact that other issues have upon those affected by the project,” he says.

“Regulatory agencies typically read statutes as black and white, or interpret the meaning in a way that has always been done, but in truth, there is some latitude in interpretation,” says Benchmark Resources Vice President Bruce Steubing. “Our job is to know the regulations better than the agency staff, so we can go in and tell them what we want to give them and how that complies with the regulations,” he says. Steubing goes on to explain that his team must also understand all the process and timeline requirements of the agency. “We cannot assume that they will take our project through and manage it all the way, so we are continually reminding and confirming that the agency staff has given all the notifications under the time period required by the statutes. At the same time, we’re managing all the public notifications and reviews before the decision makers have the project in front of them,” he says.

According to Christopher Hopkins, senior vice president of The Saint Consulting Group, the permitting team should include an expert in uncovering the political ramifications of the particular permitting process. “It’s 25-percent science, and 75-percent politics. You can have every study in order, but if you don’t have the politics, you’re not going to win,” says Hopkins,

whose firm often assists producers with completing political due diligence prior to the application being submitted. “We completely assess the politics of a community – what the regulations are, who sits on what board and who influences who,” he says. When producers tell Hopkins that they have been in the community for years and know the players better than an outside consultant, Hopkins says that officials are often telling the producer what they want to hear. “We can get information that the client can’t get – the unfiltered opinions. We can find out who the opposition is, why they will oppose the project, so that we can address it before they make their complaints – and can diffuse the situation. You need to give ‘political cover’ to the people you want to approve your project,” says Hopkins.

Benchmark’s Brown and Steubing agree that having the political support is essential. “You are going to get litigated most of the time, so you have to know what support is on your side before you file your application,” says Steubing. “On one project we had a supervisor who told us they weren’t going to vote for the project. Two hearings later, that very person was the one who made the motion to approve the project – as we had never stopped working with him and addressing his legitimate concerns. Support can change at any time. Someone who is identified as the opposition is the first person you need to talk with,” he says.

1.2 Properly research and define the project.

Another pitfall is poor planning and failing to fully research and define an expansion project. A well-defined project leads to well-defined projections as to key issues such as truck traffic, noise, air quality, and more. Benchmark Resources Vice President Bruce Steubing says that if a project isn’t properly defined upfront, one cannot determine what the actual non-negotiable issues are, forcing the producer to revise an approach even as they get into the public process. “That is dangerous from a cost standpoint, and it forces the environmental consultants and the regulatory agencies to deal with a project that is essentially a moving target. It also leaves the door open for the opposition to potentially define the project instead – and the producer is forced to go on the defensive right from the start,” he says.

Steubing says that his firm works with producers to define objectives. How much in reserves do they currently have? How many tons per year do they need? What are the true non-negotiable requirements? How much funding does the operator have? Do they want to stretch the project out?

“It may take a couple of months to a year to properly define a project, and once that is done, we can then assemble the permitting team based upon the parameters,” says Steubing.

1.3 Set realistic expectations as to time and costs.

Permitting timelines and regulations vary widely by state and by local jurisdictions. Time ranges can vary from as little as a matter of months (in a few states) to more than seven to ten years in states such as California. Typically, permitting requires at least two to five years. One California-based producer who had just completed a more-than-a-decade-long permitting process was quoted as saying, “Many companies just simply give up. An operation should have plenty of money and reserves upon applying for a permit, as it’s going to take a long time.”

According to Benchmark Resources David Brown, the variations in timeframes are typically based upon the agencies one is dealing with, the environmental requirements, and

what type of permit approval one is seeking. Litigation is also factored into the timeframe. He also notes that environmental evaluations should be done upfront, before the filing of the application, so that an environmentally-friendly project can be presented to the public.

“Obviously the timeframe for a greenfield site is going to be substantially different than an amendment to an existing operation. The timeframe is directly proportional to the entitlement one is seeking. Permitting doesn’t have to exceed typical timeframes if one knows what the project is and what it isn’t,” says Brown.

Other issues that affect timeframes and costs are any new legal issues that may arise; changing environmental regulations; changing players within an agency staff; the amount of public outreach needed; and the level of education and negotiation required to gain approvals from agency staffers and all other decision makers.

“We have been successful with producers because they are comfortable that we are going to get them to the endgame – but they have to be realistic enough and flexible enough to know that they may not get everything they want, when they want it – and they may have to give a little here and there,” says Brown.

1.4 Identify potential obstacles upfront and develop solutions.

Christopher Hopkins of The Saint Consulting Group says that before filing an application and spending thousands of dollars on testing and environmental studies, find out who is likely to oppose the project, who is likely to support it, and who the closest neighbors are and what they think. “It is best to meet with neighbors individually to explain the benefits of the project. The last thing an operator wants to do is introduce a project to skeptical neighbors in a group setting that puts reasonable people in contact with rabid opponents before there’s been a chance to make a case for the project,” says Hopkins.

When meeting with neighbors, he says, it is important to learn if there are anti-development groups in town that will automatically oppose your project. With this information an operator can build a plan to counter potential opponents and to neutralize the arguments they will make.

Hopkins says that it is also important to identify political alliances and to which constituent groups they own allegiance. Examine the campaign finance records of the elected decision makers to identify major contributors to determine if these contributors are likely to oppose a project.

Hopkins develops and implements campaigns to counter any of the above obstacles. “The sooner you can identify potential pitfalls, the earlier you can develop a campaign to overcome them,” he says.

1.5 Involve everyone – agencies, politicians, and citizens early on.

While transparency is important to the process, Benchmark Resources President David Brown says that it’s best to first determine what each party needs to know and when it’s best to inform them. “Our approach is to do some project planning; assess environmental liabilities; develop preliminary solutions, and then start talking to people,” he says. Agency planners should be approached first, he says, to get a read on their impressions way ahead of filing an application. This helps to discern if anything has been missed during preliminary planning.

“Next, we talk with elected officials before speaking with the public, as politicians do not want to get a call from any angry constituents regarding a project that they don’t even know about. Then we speak with supporters, followed by likely opponents. Keep in mind that engaging each of these parties follows one another very closely in time, as the word travels quickly within the rumor mill. Ultimately, you want all entities to feel that those involved with the project are being forthright and transparent,” says Brown.

1) Case Study:

Consider the recent plight of a large quarry development that got DNR approval after four years of working towards final permit approval; yet they temporarily withdrew their request in order to focus on the intense neighborhood (NIMBY) concerns that had been brewing for a considerable amount of time – enough time for the community to have formed a well-organized and well-funded opposition coalition. In light of these mounting fears, the company created a presentation about its history, safety record, and details about the aggregate industry. They directed the community to their website; and instead of immediate interaction, they announced that they would be communicating directly with neighbors in the coming weeks.

But it seems those efforts were too weak, and came too late in the process. An ordinance was proposed at a county commissioner’s meeting that would ban quarry development within 2 miles of any residential area comprising 100 homes or more. The quarry company says it was not aware of the ordinance during its first reading, and was not present at the county commissioner’s meeting to respond. Weeks later, and just days after the quarry re-filed its request for approvals, another commissioner’s meeting was held and the ordinance to ban the quarry was passed. Quarry representatives and their lawyers were there to oppose the ban, but they left hurriedly after the vote. Reports following the latest commissioner’s meeting indicated that one of the commissioners lived within the residential area near the proposed quarry and felt that the “devastation” it would cause would be too great for the community.

It is possible that if the quarry had addressed the residential concerns early in the process; and had done political due diligence prior to any public hearings, they may have been better able to address and mitigate concerns. Or, before considerable time and monies had been expended, they may have found that the project would incur stumbling blocks that could not be overcome. Although these “what-if” scenarios have no certain and highly predictable outcomes, it is clear that the actual outcome of the permitting process described here is anything but successful – and arguably, major mistakes were made early in the process.

2) Case Study:

A case study involving a limestone rock quarry involved a situation where the county planning commission has already issued a negative recommendation after intense community opposition at the initial public hearing. They needed a radical change in the political situation, and consulted with The Saint Consulting Group. The immediate priority was identifying and organizing existing supporters to urge the county

commissioners to delay the hearing by 30 days, allowing the consulting team to mount an aggressive county-wide campaign.

The tactics involved included the following:

- 1) Conducted a petition drive in support of the quarry.
- 2) Held meetings for voters with their county commissioners to demonstrate support.
- 3) Established a countywide coalition of business owners advocating economic development and educating about the full-time jobs the quarry would generate and the beneficial ripple effects.
- 4) Identified key speakers for the public hearing and provided each with relevant talking points.
- 5) Held a cookout prior to the public hearing and gathered all of the project supporters to actually march into the public hearing together in a show of local support.

The outcome:

According to The Saint Consulting Group, more than 200 residents of the small rural county attended the public hearing in support of the project. Over 800 residents signed the petition in favor of the project, and another 110 residents wrote letters of support to their county commissioners. The quarry's application was approved with a majority vote of the county commission.

Part 2. Adopting Best Practices

2.1 Maintain ongoing community education and outreach programs.

Outreach and education must be ongoing. The industry has long said that it must do a better job to educate the public as to the values and contributions of the aggregate and mining industry. This is what helps to build trust and to ease the misconceptions and fears that the public may have, particularly during the permitting process. Few, other than those who work in the industry, truly understand it. Producers who continually implement education programs are definitely in the minority. A quick internet search regarding quarry education will turn up those producers who are offering tours to school groups and other organizations, teacher's study guides, educational materials for children, and links to a variety of resources on their websites. A particularly innovative industry site for children comes from the United Kingdom and can be found at www.virtualquarry.co.uk. It is unique and interactive, and deserves to be shared with school groups. Other resources are listed in the appendix of this paper.

As to community outreach, some top producers are well known for their "Quarry Days" events, which are well attended year after year. Other programs include adopt-a-school programs; scholarships; material donations; employee community service programs, and more. "The most important thing," says Christopher Hopkins of The Saint Consulting Group, "is never to offer outreach and education when you need something, and turn it off when you don't. It must be ongoing."

Community outreach can even be designed into the permitting process negotiations. Consider the following: A recent proposed quarry operation is working with the town council to allow the town to divert underground water percolating from the proposed quarry operation to the town's wastewater treatment plant – creating a new source of usable water for the town. The town had been in discussions with the quarry over the plan for about three years, and although the quarry operations are not expected to start for at least a few more years, the town's mayor wanted to ensure that the community had another sustainable source of water for future use. Under the plan, the town would be able to build a pumping facility and pipeline to transfer the water, which would be diverted to the treatment plant at no cost to the town.

2.2 Build a mutual understanding between all parties involved.

Local government outreach sessions conducted by the Washington State Governor's Office of Regulatory Assistance (ORA) led to a report defining several top themes to improve the permitting process. One of their top themes is building a mutual understanding by bringing agencies, the industry, elected officials, and the public together to educate all parties on the "how" and "why" of the permitting process and to determine how to be more effective during permit review. The report details several approaches to stimulate ongoing process improvements:

- 1) Provide a forum or technical seminar for industries and permitting departments to better understand each other's requirements and objectives. A seminar, when combined with opportunities to talk informally, allows participants to put faces to names and fosters working relationships that ease permit coordination later on.

Explaining why things work the way they do can dissolve misconceptions that cloud the permit process.

- 2) Similarly, the report also suggests providing training or discussion forums for permitting staff and local citizens on how permitting works, what reviewers consider, how to make influential comments to reviewers, and varying agency roles in the process. This approach prepares citizens for the process ahead, and adds a human dimension to an otherwise obscure process.
- 3) Emphasize the importance of education for staff and an understanding of the entire regulatory picture. Agency directors, sometimes with the support from elected leaders, provide inter-departmental and inter-agency staff groups with an opportunity and direction to learn from each other about each program's goals, respective procedures, and why a department or program operates as it does.
- 4) Elected leaders should be encouraged to attend these sessions to gain an understanding of the range of issues and priorities that enter into permit processing discussions. This helps officials to better respond to constituents and can inform their thinking about how to plan and budget for appropriate levels of service in the various departments.
- 5) Engage all reviewers, stakeholders, and concerned citizens early in the process so that critical design requirements and constraints can be identified and resolved without surprise and rework late in the process. Many jurisdictions, particularly those in urban settings, encourage applicants to talk with neighbors before formal submittal. Some require mandatory neighborhood meetings, where applicants can learn about site history, potential areas of concern and appeals, and what changes to the project might deflect a controversial issue.

2.3 Develop and implement a permitting marketing campaign.

Successful permitting involves good sales and marketing skills. Just as in any effective marketing and PR campaign, the project must be anchored upon an attractive theme that makes the project easier for people to accept. The theme may involve much-needed jobs; or an environmental spin such as minimizing greenhouse gas emissions via the elimination of heavy truck traffic. Benchmark Resources stresses the latter issues and all other issues that educate the public as to why a nearby source of aggregate is beneficial to them. Operations may wish to conduct research on what themes have been successful for other producers, and tailor them to their specific needs.

Saint Consulting Group Founder and CEO P. Michael Saint puts it this way, "To win a land use battle, one must consider the project to be like a candidate and then create and implement a winning campaign strategy to "elect" that project. Polling, petitioning, grassroots organizing, meetings, lawn signs, supporter databases, social media, telephone town halls, video petitions and other political campaign tools should be used to identify, educate, organize, and harness the political power of real voters who want the project built."

P. Michael Saint and two of his colleagues, Robert Flavell and Patrick Fox, have written "NIMBY Wars: The Politics of Land Use." The book teaches how to create a campaign plan, craft a message, identify and connect with supportive residents, secure press coverage, and neutralize attacks.

2.4 Establish a solid reclamation plan.

According to Christopher Hopkins of The Saint Consulting Group, a comprehensive and properly-targeted reclamation plan is essential in gaining community support and overcoming opposition when pursuing a quarry permit. City and county planners agree that a solid plan is often the key in gaining approval. Hopkins says that more than a decade ago, reclamation plans often suggested that a landfill be created when material reserves were exhausted. However, today's climate indicates the latter as one of the most unwanted alternatives. Instead, community planners prefer natural habitats, parks, lakes, trails, and golf courses being created atop filled quarries.

Typically, the life span of the quarry dictates just how specific the reclamation plan must be. A shorter operational timeframe of 10- to 20-years requires more plan specificity. Proposed quarry permits with 40 or more years of reserves obviously require some amount of fluidity in reclamation planning as officials often want more flexibility when forecasting the needs of communities and municipalities so far into the future.

"For a community to accept a reclamation plan, trust is essential," says Hopkins. He further stresses that if a company does not have a good reputation, especially for following through on promises, much more scrutiny is focused on all facets of a permitting application. "The best way to avoid plans being viewed over-critically is for a company to maintain its reputation as a good neighbor, while remaining actively involved in its communities," says Hopkins, who adds that officials also pay considerable attention to the financial stability of the applicant. "To ease local concerns, communities often require that bonds be posted to cover the anticipated cost of reclamation," he says.

A recent example of a successful, yet complex reclamation plan involves a California-coastal based operation that worked closely with consultant Benchmark Resources to prepare its environmental impact report and its final mining and reclamation plan. Importantly, Benchmark provided the expertise to navigate through the layers of oversight within the county planning and coastal commissions, while avoiding any costly appeals. The plan included the creation of a large conservation easement. Reclaiming as the producer goes along, for every acre mined, three acres are allocated for use as a natural habitat, which features sophisticated ponds for endangered red-legged frogs; protections for nesting raptors and migratory birds; and a grading, vegetation, and water management plan for additional habitat ponds. The operation created an annuity to pay for the care of the easement over time. In the end, the fully reclaimed site will serve as a very large water reservoir.

2.5 Leverage experience and an expert strategy.

Permitting is a long-term process and should be treated as such with proper planning and research, and the diligence to uncover the obstacles and create a solution-oriented perspective. Operators may be confident that they can effectively handle every part of the process in-house; however, more often than not, they will no doubt save both time and money by reaching out to mining permitting experts, such as those who have contributed to this white paper.

Christopher Hopkins of The Saint Consulting Group says many clients come to his firm after the house is on fire. "They tell us they've just lost at the planning board level and now

they have to go in front of the city council, and they don't know what to do. It's all about identifying, organizing and mobilizing your support. The second time these same clients approach the permitting process, they know better, and they call us at the very beginning," he says.

Top consultants have been involved in a plethora of projects, and indeed their key advantage is the experience they've gained and the obstacles they've faced during a wide variety of permitting processes – each with different challenges.

David Brown and Bruce Steubing of Benchmark Resources agree that an expert consultant has the broad experience needed to understand pitfalls and develop strategies to overcome them within the unique operational conditions and constraints related to the aggregate and mining industry. "We understand the strict versus negotiable regulatory requirements and we know how to work within any agency constraints imposed by a lack of staffing or a lack of knowledge of the mining industry. We also understand relationships and know when to push, to stay, or to back-off," says Steubing.

Brown says it's all about establishing an expert strategy. "Decisions made for one issue have ramifications on others. That's where the expertise comes in. Anyone can make a decision which they assume is appropriate – however, having the experience to make a decision based on the interrelationships of geology, reserves, environmental needs, regulations, political ramifications, and profitability is essential."

Appendix

About the Author

Carol Wasson is a veteran freelance writer for the aggregate, mining, and construction industries. Her focus is working with equipment manufacturers, and their marketing, engineering, and application specialist teams to develop valuable content for both print and digital marketing, advertising, and PR materials; and to create expert feature editorial submissions for the global trade press. Over nearly two decades, she has authored hundreds of processing solutions case studies, and technical articles which appear in major industry publications worldwide.

About the Expert Contributors

David Brown

Benchmark Resources President David Brown has more than 30 years of experience as a mining expert specializing in CEQA, SMARA, and the acquisition of federal, state, and local agency land use permits and other entitlements. He has been involved in SMARA compliance since the 1980s and has participated in the development and shaping of its regulations. Brown provides strategic oversight for Benchmark's public agency and private industry clients. He has served as the principal, project manager, and primary author of scores of environmental documents in both urban and rural environments. His experience also includes public works and private development projects such as general industrial uses, solid waste landfills, transmission lines, county prisons, and commercial and residential developments. His long-term familiarity with all facets of environmental compliance and permitting provides Benchmark's clients with wide-ranging insight that facilitates project success.

Christopher M. Hopkins

As the Senior Vice President, Aggregate and Mining, for The Saint Consulting Group, Chris Hopkins oversees its work in the quarry and mining industries in the US, United Kingdom and Canada. He is a regular speaker on overcoming the difficulties of permitting aggregate quarries and mineral mines before such organizations as the National Sand, Stone and Gravel Association; the Ontario Stone, Sand and Gravel Association; the Northwest Mining Association and the American Coal Council. Chris was elected to the Board of Directors of the American Coal Council in 2013. Chris joined Saint Consulting in 2000 after managing and participating in more than 20 political campaigns over a 12-year period. Since joining the firm, he has organized and run more than 75 land use permitting campaigns.

Chris is also an adjunct professor at the University of Arizona, where he teaches a course about how to overcome community opposition and political hurdles when permitting a mineral mine. He is a frequent guest lecturer at graduate programs in mining at several other prestigious universities as well, including the University of Utah, the Missouri University of Science and Technology, and the University of Illinois. His articles are routinely published in industry trade journals.

Bruce Steubing

Benchmark Resources Vice President Bruce Steubing has more than 20 years of experience as an attorney and project director, specializing in federal, state, and local environmental law and regulation. After starting his career at two of Sacramento's prominent law firms, he joined forces with David Brown to strengthen the firm's environmental law and regulation compliance practice. Steubing has been responsible for managing the preparation of numerous environmental documents (e.g., EISs, EIRs) for large, complex, and controversial projects, including projects related to mining, oil pipelines, and industrial, commercial, and residential developments. He currently directs the permitting and compliance efforts for technical documents, mine plans, and formulation of strategies for legal, environmental, and permitting success.

About the Sponsor

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The Saint Consulting Group <http://www.tscg.biz>

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Educational resources:
www.virtualquarry.co.uk

www.uky.edu/KGS/education

www.rohrersquarry.com/tours-education.php

www.vulcanmaterials.com/social-responsibility/teacher-center

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