

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

RESOLUTION NO. 25 –

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT MODIFYING THE KERNEN CONSTRUCTION CONDITIONAL USE PERMIT, RECORD NUMBER PLN-1440-CUP FOR APNS 516-141-017, 516-151-008, 516-151-017 AND 516-151-016.

WHEREAS, Kern Construction submitted an application for a Conditional Use Permit and Special Permit for the development and operation of a rock products processing facility and a contractor's yard for parking and storage of construction vehicles and equipment, for the storage of construction materials and for transfer, storage and processing of scrap and construction debris for recycling, the siting and regular use of heavy construction equipment (loader, log trucks, backhoe extractor, dump trucks and trailers, flatbed trucks, water trucks) and rock crushing machinery; and office facilities for the new use on March 20, 2001; and

WHEREAS, on August 16, 2001, the Humboldt County Planning Commission approved the Conditional Use Permit/Special Permit for record number PLN-1440-CUP; and

WHEREAS, after the close of all appeal periods the Conditional Use Permit/Special Permit was issued with an effective date of August 27, 2001; and

WHEREAS, on August 21, 2023, the Planning and Building Department (Department) received a complaint alleging that during July 2023 loud heavy equipment was operating 24 hours a day and during weekends at the subject site; and

WHEREAS, on August 28, 2023, the Department sent a letter informing the operator that a complaint was received with required actions to operate in compliance with approved hours of operation and other conditions; and

WHEREAS, on September 28, 2023, the Department conducted a site inspection to follow up on the notice of complaint letter; and

WHEREAS, on October 10, 2023, the Department issued a Notice of Violation (NOV) for operating outside of the approved hours of operations, unshielded lighting, and for grading for a water impoundment feature in the northern yard area without permits. The corrective action was to submit a complete grading permit application within 30 days, which was November 10, 2023; and

WHEREAS, on November 14, 2023, the Department submitted a letter to Kern Construction reiterating the items needed to remedy the NOV.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

WHEREAS, on September 30 (Sunday), and October 4, 7, 12, 13 (Sunday), 15 and 16, 2024, the Department received complaints that grading was occurring along the eastern and southern boundaries of the northern yard area within the SMA, and that riparian vegetation had been removed in this area.

WHEREAS, on October 18, 2024, the Department conducted a site inspection to follow up on the complaints about the grading in the northern yard area. It was confirmed that a flood control berm was constructed without grading permits in September - October 2024 and riparian vegetation within the SMA was also removed. The location of the berm is not in a location where stockpiling of material was contemplated or allowed and is located within a Streamside Management Area.

WHEREAS, on October 24, 2024, the Department issued a Notice of Potential Conditional Use Permit Revocation to the operator for the continued operation outside of the hours of operation, the ongoing grading in the northern yard, which created a public nuisance, and included a Notice of Public Hearing for the Board of Supervisors meeting of December 3, 2024.

WHEREAS, the Board of Supervisors held a duly-noticed public hearing on December 3, 2024, and continued the project to the February 4, 2025 public hearing; and

WHEREAS, on February 4, 2025 the Board of Supervisors continued the project to the April 8, 2025 public hearing; and

WHEREAS, on April 8, 2025 the Board of Supervisors continued the project to the April 15, 2025 public hearing; and

WHEREAS, the Board of Supervisors held a duly-noticed public hearing on April 15, 2025, and reviewed, considered, and discussed the application and appeal for the Conditional Use Permit; and reviewed and considered all public testimony and evidence presented at the hearing

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that the Board of Supervisors makes all the following findings:

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| 1. FINDING: | Project Description: Modification of a Conditional Use Permit for a rock aggregate processing and materials storage and handling facility. |
| EVIDENCE: | Project File: PLN-1440-CUP |
| 2. FINDING: | CEQA: The requirements of the California Environmental Quality Act have been complied with. |

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

EVIDENCE: a) The modification is exempt from environmental review pursuant to Section 15321 of the CEQA Guidelines (Enforcement Actions by Regulatory Agencies).

3. FINDING: The permit has been exercised contrary to the terms and conditions of such approval.

EVIDENCE: a) The permit is for the operation of a contractor's yard however unpermitted grading has occurred.

b) On 10/10/2023 an NOV was issued for operating outside of the approved days and hours, unshielded lighting, and for constructing a water impoundment feature on the northern yard without permits. The required corrective action was to immediately operate in compliance with the approved days and hours of operation, shield the lighting, and submit for a grading permit application within 30 days, which was 11/10/2023. A complete grading permit application was not submitted until 11/8/2024.

c) Unpermitted grading in the northern yard area has occurred in a Streamside Management Area, where a berm was constructed to alter the natural hydrology without permits and where riparian vegetation was removed. Grading occurred within 10 feet of the top of bank of Noisy Creek and likely included removal of riparian vegetation. At the time of approval of the Use Permit, the Streamside Management Area Regulations required a 25 foot setback from the top of bank and the approved site plan showed all riparian vegetation being retained as a buffer. The current Streamside Management Area regulations require a setback of 100 feet from the edge of the riparian vegetation. The grading occurred appropriately 0 feet, and perhaps within the edge of riparian vegetation and as close as 8 feet from the top of bank, thereby violating both the terms of the original approval and the Streamside Management Area regulations. Work occurring without approval renders the extent of damage to the riparian vegetation and Streamside Management Area difficult to impossible to quantify. At a public meeting on September 23, 2024 the potential of constructing a similar berm was discussed and the Planning Director specifically directed the operator to not do any such work until first submitting for, and obtaining a grading permit. The operator chose to conduct the work without permits even after receiving such

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

direction, thereby demonstrating an intent to avoid required County oversight.

- d) Continued grading of large retention berms to alter the natural hydrology without permits, indicates the site is not an appropriate location for stockpile and storage activities to take place on. The repeated construction of unpermitted berms and impoundment features, including running of large pumps to pump stormwater from the site into an impoundment facility demonstrate that the site is frequently overrun by stormwater and not an appropriate or safe location for the stockpile of materials.
- e) Altering the natural drainage and removal of riparian vegetation without benefit of permits is detrimental to the public welfare.
- f) A screening program with testing and record keeping of imported soil and materials has not been submitted to the County, as required by Condition of Approval B8. While a soil test was submitted on August 23, 2024, this is the only evidence submitted of any testing having been done for soil accepted on-site. A screening program was submitted on November 7, 2024, however to date no records of soil or material accepted by the facility has yet to have been submitted to the County.

4. FINDING:

The use for which the permit was granted is so conducted as to be a public nuisance and the permit should therefore be modified to require additional conditions to protect the public.

EVIDENCE:

- a) Improvements have been installed in an area subject to flooding without the benefit of a grading permit and without allowing the Floodplain Administrator to evaluate the impacts of placement of the pond and the berm in areas subject to flooding poses a potential impact to the public health, safety and welfare. This is considered a nuisance under the Humboldt County Code. Running of stormwater pumps at all hours of the night and early morning has caused disturbances to neighboring property owners, creating a public nuisance. Removal of vegetation along Glendale Drive has led to increased noise and visual impacts associated with the operation and it is necessary for the berm to be revegetated with plantings that will provide an effective vegetative screen
- b) Unpermitted grading in the northern yard area has occurred in a Streamside Management Area, where a berm was constructed to

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

alter the natural hydrology without permits and where riparian vegetation was removed. Grading occurred within 10 feet of the top of bank of Noisy Creek and likely included removal of riparian vegetation. Per Section 314-61.17.6.2 of the Humboldt County Code, the setback from perennial streams is 100 feet, measured from the top of bank or edge of riparian vegetation, whichever is greater. The grading occurred appropriately 0 feet, and perhaps within the edge of riparian vegetation. Work occurring without approval renders the extent of damage to the riparian vegetation and Streamside Management Area difficult to impossible to quantify. At a public meeting on September 23, 2024 the potential of constructing a similar berm was discussed and the Planning Director specifically directed the operator to not do any such work until first submitting for, and obtaining a grading permit. The operator chose to conduct the work without permits even after receiving such direction, thereby demonstrating an intent to avoid required County oversight. Further, the operation has caused asphalt debris to be deposited into the stream channel, causing adverse impacts to fish and wildlife. It is therefore necessary to require this berm to be relocated to be a minimum of 25 feet from the edge of riparian vegetation, and for the buffer area to be replanted with appropriate plant species. It is also necessary to require the asphalt debris to be removed from the stream channel.

5. FINDING: Kernan Construction's argument that the facts do not support taking an enforcement action is not correct.

EVIDENCE:

- a) Kernan indicates that a grading permit application was submitted in November 2023 and again on March 2024 and that the grading permit is still pending review and approval by the County. This is not accurate. While a submittal was made in November 2023 and again in March 2024, those application submittals were immediately rejected as not adequate for acceptance. A complete application for the grading permit was not submitted and accepted until November 8, 2024.
- b) Kernan indicates that the recent stormwater control berm is within the area encompassed by CUP-00-27 and associated grading permit #15818 and is in compliance with the NPDES Industrial General stormwater permit issued by the Regional Water Quality Control

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

Board. This is not accurate. The berm is not in compliance with the approved site plan for CUP-00-27, which showed this area as retained vegetation. The berm was not included on the grading permit #15818, and the Regional Water Quality Control Board does not have the authority to issue or approve a grading permit in Humboldt County. A grading permit is required for this work.

- c) Kernan argues that the hours of operation listed in the staff report for CUP-00-27 are incorrect, and that the submitted operations plan controls. Specifically they argue that only materials handling and processing of rock aggregates are limited in hours of operation. The hours of operation listed in the staff report project description were what the County Planning Commission reviewed when considering the approval of this permit, and Kernan has previously acknowledged these hours as applicable. However, the applicability of the approved project description is ambiguous enough and not necessarily a justification for revocation. This is justification to modify the approved permit to include specific hours of operation as a condition of approval.
- d) Kernan argues that it is false that the berm is “in an area subject to flooding” which “poses a danger to the public health, safety and welfare”. They state that there is an approved FEMA elevation certificate showing the area above the Base Flood Elevation (BFE) and out of the floodplain. While Kernan states that the berm is outside of the mapped floodplain and above the BFE, the failure to submit for a grading permit prior to completing the work prevented the County Building Official and Floodplain Administrator from reviewing the information before the work started. Even if this is not in a mapped floodplain, it is clearly in an area subject to flooding as documented by images captured in January of 2024. The construction of a large berm surrounding almost the entirety of the eastern parcel boundary in order to control stormwater and runoff, indicates that the property is unable to control runoff and stormwater without large alterations in the natural topography, which were not contemplated under the original permit.
- e) Kernan argues that the hours of operation are not applicable (see #3 above) and that even if they were, the majority of complaints related to operating out of these hours were not substantiated after investigation. As evidenced by Attachment 5, the County has received numerous complaints of working outside of the hours listed in the

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

project description of the staff report. Most of these were in fact not able to be substantiated by staff. This is not a justification for revocation of the permit however this is justification for a modification to the permit to include a condition of approval specifically limiting the hours of operation.

- f) Kernan argues that soil test results were submitted to the County showing the stockpile was clean and consistent with soils in the region. Condition of Approval B8 states that “The applicant operator shall have a screening program to ensure that hazardous, designated, contaminated soil or unauthorized wastes are not received. The program shall include screening criteria, laboratory testing by a certified lab when necessary, and record keeping. The program shall be designed and enforced to the satisfaction of the Division of Environmental Health.” While a soil test was submitted on August 23, 2024, this is the only such time a soil test was submitted to Humboldt County and is the only evidence of soil testing having occurred since the beginning of operation. Additionally, evidence of a screening program being in place was not submitted to the County until November 7, 2024. Records of the material accepted since the beginning of operation have never been submitted to the County.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby:

- a. Adopt the findings set forth in this resolution; and
- b. Amends the Conditional Use Permit to add operation restrictions as identified in Exhibit A.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on April 15, 2025, by the following vote:

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

Dated: _____

Supervisor Michelle Bushnell, Chair
Humboldt County Board of Supervisors

Adopted on motion by Supervisor _____, Seconded by Supervisor _____, and the following vote:

AYES: Supervisors: --

NAYES: Supervisors: --

ABSENT: Supervisors: --

ABSTAIN: Supervisors: --

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified Copy of Portion of Proceedings for the Meeting of April 15, 2025

STATE OF CALIFORNIA
County of Humboldt

I, Tracy Damico, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

NIKKI TURNER
Deputy Clerk of the Board of Supervisors of the
County of Humboldt, State of California