

Attachment A:
Draft Resolution Finding Compliance with CEQA and
Approving Use Permit with Modifications

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

RESOLUTION No. ____ - ____

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT
CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
AND APPROVING WITH CONDITIONS THE R. BROWN CONSTRUCTION COMPANY PERMIT
MODIFICATION APPLICATION

FILE #316-061-011; CASE # CUP-14-013XM; RP-14-001XM; SMP-14-001XM

WHEREAS, R. Brown Construction Company submitted an application and evidence in support of approving a modification to a Conditional Use Permit, Surface Mining Permit and Reclamation Plan to permit a 39-acre expansion of the existing quarry operation; and

WHEREAS, the Planning and Building Department - Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the Planning Division, prepared a Subsequent Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, This resolution includes CUP-14-013XM; RP-14-001XM; SMP-14-001XM; and

WHEREAS, the Planning Commission held a public hearing on July 13, 2017 during which they considered the Subsequent Mitigated Negative Declaration, received a staff report, accepted public comment, and deliberated on the proposed permit modification; and

WHEREAS, the Planning Commission, in conformance with Sections 15074 of the CEQA Guidelines, found that based on the information in the public record, there was no substantial evidence that the project would not have a significant effect on the environment and that the Subsequent Mitigated Negative Declaration has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis. and

WHEREAS, The Planning Commission found there was evidence in support of making all the required findings for approving Case Nos.: CUP-14-013XM; RP-14-001XM; SMP-14-001XM based on the submitted evidence; and

WHEREAS, The Planning Commission conditionally approved the permit modification for Case Nos.: CUP-14-013XM; RP-14-001XM; SMP-14-001XM; File No. APN: 316-061-011; and

WHEREAS, On July 21, 2017, the Planning Commission approval was appealed by the Mateel Environmental Justice Foundation representing Margaret and Richard Rowland; and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

WHEREAS, In order to address the issues raised in the appeal, a third-party geologist, Bajada Geosciences, Inc., was retained by the County to perform an independent review of the Engineering Geological Evaluation Report and to perform site specific soil studies and provide recommendations for increased slope stability during future mining operations; and

WHEREAS, Recommendations by Bajada Geosciences, Inc. resulted in changes to the design plans for the R. Brown Construction Quarry Expansion by the applicant to flatten the slopes of the highwall within the expansion area to 1.5:1 (horizontal to vertical) and to control groundwater levels behind the highwall through dewatering; and

WHEREAS, The appellant has confirmed in written correspondence that with incorporation of these recommended revisions to the mining plan the appellant would not raise objection to project approval; and

WHEREAS, Pursuant to Section 15074.1 of the CEQA Guidelines, the Subsequent Mitigated Negative Declaration incorporates the revisions to the mining plan as a substitute mitigation measure to increase the Factor of Safety for slope stability; and

WHEREAS, Board of Supervisors held a public hearing on February 11, 2020 to consider the project application and with the modified project description; and

WHEREAS, Board of Supervisors has considered the project application, the issues raised in the appeal and resulting changes to the project design with the conditions of approval.

WHEREAS, The Board of Supervisors finds as follows:

FINDING **1.** The proposed development is in conformance with the County General Plan, the Open Space Plan and the Open Space Action Program.

EVIDENCE **a. Land Use Chapter 4/Land Use Designations Section 4.8/Timberland (T).**
The Timberland designation is intended for land that is primarily suitable for the growing and harvesting and production of timber. The density range is 40-160 acres/unit. Policies and standards intending to establish, protect, retain, and preserve timber production areas from incompatible uses or conversion to non-timber uses. (FR-G1, FR-P8, 4.8, Table 4-G),

Surface Mining is a Use Type permitted in lands designated Timberland (T). The site is forestland zoned Timberland Production Zone. Mineral Resources standard MR-S2 requires that timber land conversion resulting from surface mining activities meet the requirements of the California Forest Practice Rules, and the Timberland Productivity Act. The mining operation will involve timberland conversion and a timberland conversion permit will be obtained from the California Department of Forestry and Fire Protection. Upon mine closure, the mined lands will be reclaimed consistent with the future use of timber production. This use is consistent with the Timberland designation and TPZ zoning.

b. **Conservation and Open Space Chapter 10 Mineral Resources**

Section 10.4 Numerous policies and standards recognize the importance of hard rock and in-stream mining to local & regional economy, and setting criteria and restrictions to ensure the health, safety, and general welfare of persons, property and public resources. These include the requirement for mine reclamation [MR-P7], maintenance of haul routes [MR-P10], permit conditions to reduce impacts [MR-P11].

Many of these policies and standards have been incorporated into the implementing Surface Mining Ordinance as performance standards required of all mining activities. The project has been conditioned to address dust and noise levels, hours of operations, access, setbacks and other performance standards to minimize potential environmental effects and conflicts with neighboring uses. This use is consistent with the Timberland designation and TPZ zoning. The project will be beneficial in the sense of ensuring a continued supply of quarry rock material, an important commodity for the local and regional economy. Upon mine closure, the mined lands will be reclaimed consistent with the future use of timber production.

c. **Conservation and Open Space Chapter 10, Cultural Resources Section**

10.6. Goals and policies contained in this Chapter relate to the protection and enhancement of significant cultural resources, providing heritage, historic, scientific, educational, social and economic values to benefit present and future generations (CU-G1, Protection and Enhancement of Significant Cultural Resources). Related policies: CU-P1. Identification and Protection, CU-P2. Native American Tribal Consultation].

Based on the findings of the present archaeological survey, no cultural resources will be impacted by the project as presently proposed. However, in the event unidentified cultural materials or human remains are encountered, the following mitigation measures will be used to reduce potential impacts to a less than significant level:

- I. Mitigation Measure CR-1: Consultation in the event of inadvertent discovery of human remains; and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

II. Mitigation Measure CR-2: Consultation in the event of inadvertent discovery of cultural material.

No request for formal Tribal Consultation was received. The Hoopa Valley Tribe subsequently submitted a letter of support for the mine expansion project.

d. **Conservation and Open Space Chapter 10, Scenic Resources Section 10.7.**

Goals and policies contained in this Chapter relate to the protection of scenic areas that contribute to the enjoyment of Humboldt County's beauty and abundant natural resources (SR-G1); and a system of scenic highways and roadways that increase the enjoyment of, and opportunities for, recreational and cultural pursuits and tourism in the County. (SR-G2). Related policies: SR-S4. Light and Glare.

The proposed project is located adjacent to and topographically above State Route 299. Highway 299 between Arcata and Willow Creek is a route that could be eligible for official designation as a California Scenic Highway. A visual impact analysis was performed for the expansion of the mining operation. The study found that the quarry would be visible for short periods by travelers on the highway but that the impact would be less than significant. Visual impacts will occur gradually over the 30-year operational life of the project and reclamation through the planting of trees and vegetation will immediately follow as the mining progresses down slope. The upper area of the mine expansion will use individual rock removal so topography and aesthetics will not substantially change. Portions of the expansion area located below the existing quarry were added to include the existing access road and stockpile areas; no new removal of trees and vegetation will occur during the life of the project. The quarry operates during daytime hours and the proposed project does not include any new lighting or signage.

e. **Water Resources Chapter 1, Stormwater Drainage.** Goals and policies contained in this Chapter relate to coordinated watershed planning and land use decision making to advance management priorities (WR-G3, WR-G4, WR-G5); watershed conservation and restoration efforts aimed at de-listing water bodies and watersheds which are restored to meet all beneficial uses, including water use, salmon and steelhead recovery plans, recreational activities, and the economy (WR-G1, WR-G2, WR-G7, WR-G8, WR-G9). All development should be designed to minimize erosion and sedimentation consistent with best management practices, adopted Total Maximum Daily Loads (TMDLs) and non-point source regulatory standards. Related policies: WR-P10. Erosion and Sediment Discharge; WR-P42. Erosion and Sediment Control Measures.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

The Project includes Best Management Practices such as sedimentation ponds and other features to capture, filter and contain site runoff and minimize erosion.

Standard soil erosion control protocols will be applied during mining operations. These include:

- Use of berms, water bars, or rolling dips
- Diverting run-on from stockpile areas
- Planting vegetation/installing stabilizers as necessary
- Directing runoff within quarry to siltation ponds at the in-slope edge of quarry benches

The mine operation is subject to an industrial storm Water Permit from the RWQCB.

- f. **Safety Element Chapter 14, Geologic & Seismic.** Development should be sited and designed to avoid and minimize the exposure of persons and property to hazards associated with seismic shaking, highly erosive, soils, and unstable topography. Related policies: S-P11. Site Suitability, S-P7. Structural Hazards

A Geological Evaluation Report was prepared for the project and was approved by the State Division of Mines and Reclamation Geologist. Additionally, a third-party review of this report was conducted by Bajada Geosciences, Inc. This third-party review included a reconnaissance of the surface conditions, sampling and unconfined compression testing of rock samples, and evaluation of data collected during the review including stability analysis. The third-party geologist recommended changes to the mining plan to flatten the slope to 34 degrees (1.5:1) and lower the phreatic (groundwater) surface behind the highwall through installation of an engineered dewatering system. The report concluded that incorporation of these revisions to the mining plan will increase the factor of safety and reduce the potential for future slide activity.

On the basis of the report, the applicant has agreed to make these changes to the project. These revisions are included in the February 2019 Revision to the Brown Mining and Reclamation Plan Amendment Proposed Expansion and Dewatering Plan.

Additionally, the mining operation is required to comply with guidelines and requirements established by the California Occupational Health and Safety Administration.

- g. **Safety Element Chapter 14, Flooding.** Development should be sited and designed to avoid and minimize the exposure of persons and property to hazards associated with river and coastal flooding, and inundation due to dam

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

failure. Related policies include: S-P12, Federal Flood Insurance Program; S-P13, Flood Plains; S-P15, Construction Within Special Flood Hazard Areas.

The subject site is outside any mapped flood hazard areas. The project site is not within a mapped dam or levee inundation area and, at approximately 25 miles distance from the coast, is outside the areas subject to tsunami run-up.

- h. **Safety Element Chapter 14. Fire Hazards.** Goals and policies of this Chapter encourage development designed to reduce the risk of structural and wildland fires supported by fire protection services that minimize the potential risk of wildfire. Related policies: S-P19, Conformance with State Responsibility Areas (SRA) Fire Safe Regulations. IS-S5, Other Development Outside Fire District Boundaries. Requires new development outside of fire district boundaries to obtain from the appropriate local fire service provider written acknowledgement of the available emergency response and fire suppression services and recommendations.

Mining operations can be a source of potential fire hazard from vehicles and heavy equipment operations. Accordingly, the project is conditioned to follow established guidelines and requirements for such industrial activities (e.g., use of spark arresters on vehicles, on-site availability of fire suppression water supply and fire-fighting tools).

The project is in an area of High Fire Rating hazard and within the CalFire State Responsibility Area and is located outside of a fire district. Notification was provided to the local service provider, Willow Creek Volunteer Fire Company. By letter dated January 2, 2020, from Captain Cory Hicks, through agreements with the County Office of Emergency Services and CalFire, the Willow Creek Volunteer Fire Department will respond to any emergency calls originating from the project site. That Department had no specific recommendations for the project.

- i. **Noise, Chapter 13.** Goals and policies contained in this Chapter discourage incompatible uses within communities and reduce excessive noise through the application of standards (N-G1, N-G2). Related policies: N-P1, Minimize Noise from Stationary and Mobile Sources; N-P4, Protection from Excessive Noise.

The use is determined to be compatible with 60 Ldn noise level at the property line of project site and no residences are subject to unacceptable levels.

Noise generated by mining operations is primarily associated with drilling and blasting and aggregate processing operations. Mining operations will conform to Section 391-10 of the Humboldt County Code. Blasting and processing

plant operation hours, and noise levels, will not change with the expansion of the mining area.

j. **Conservation and Open Space Chapter 10, Open Space Section 10.2**

Goals and policies contained in this Chapter relate to an Open Space and Conservation Program that is complimentary to other agencies' plans and that preserves the county's unique open spaces (CO-G1, CO-G3). Related policies: CO-P1, Conservation and Open Space Program; CO-P12, Development Review, CO-S1. Identification of Local Open Space Plan, and CO-S2. Identification of the Open Space Action Program.

The proposed project is located on working resource lands designated Timberland and zoned Timberland Production Zone. The project a surface mining operation. The discussion in Sections 10.3 (Biological Resources), 10.4 (Mineral Resources), 10.6 (Cultural Resources), 10.7 (Scenic Resources), 14.0 (Safety), and 15 (Air Quality) below demonstrates that the project is designed and conditioned to meet the applicable goals, policies and standards of the Open Space Plan and the Open Space Action Program.

k. **Conservation and Open Space Chapter 10. Biological Resources, Section 10.3.**

Goals and policies contained in this Chapter relate to mapped sensitive habitat areas where policies are applied to protect fish and wildlife and facilitate the recovery of endangered species (BR-G1, Threatened and Endangered Species, BR-G2, Sensitive and Critical Habitat, BR-G3, Benefits of Biological Resources). Related policies: BR-P1. Compatible Land Uses, BR-P5. Streamside Management Areas.

Trinity Valley Consulting Engineers spent 28 field hours surveying the project area. The survey protocol was based on the California Department of Fish and Wildlife (CDFW) Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities. The CNDDB and the California Native Plant Society (CNPS) websites were searched for special-status plants previously identified on or near the project site. No special-status plant or wildlife species have been identified within the proposed expansion area; however, special-status plants do occur within close proximity to the project site. Two special-status plant species were identified through the CNDDB search as occurring adjacent to the site, including wayside aster (*Wucephalis vialis*) and California globe mallow (*Illiamna latibracteata*).

A study of the special-status wildlife in the project area was completed by LBJ Enterprises in 2015. According to CNDDB data, special-status wildlife species occur within five miles of the project site; however, most are unlikely to occur in the vicinity or be potentially impacted by the project. The northern spotted owl (*Strix occidentalis*) has habitat within the project area that will be

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

removed. Prior to removal, the area will be surveyed to confirm absence of the species to ensure that there will be no impact during breeding season. U.S. Fish and Wildlife Service (USFWS) protocol surveys were conducted in 2015 and 2016.

As conditioned, the mine expansion will not impact special status plant or animal species.

1. **Circulation. Chapter 7.** Establishes policies and standards for planning, development, maintenance and use of roads, ports, rail, and airport. Related policies: C-P3. Consideration of Transportation Impacts in Land Use Decision Making.

Access to the mine will be from State Highway 299. An existing commercial encroachment approved under a Caltrans issued encroachment permit will be used for transit of mined materials. Hauling of mined materials limited to “legal loads” as defined in Vehicle and Streets & Highways Codes.

- m. **Air Quality Chapter 15.** Goals and policies contained in this Chapter relate to improved air quality to meet current and future state and federal standards, including attainment of particulate matter requirements (AQ-G1, AQ-G2, AQ-G3) and the successful reduction of greenhouse gas emissions to levels consistent with state and federal requirements (AQ-G4). Related policies: AQ-P4, Construction and Grading Dust Control, AQ-S1., Construction and Grading Dust Control, AQ-P7, Interagency Coordination.

Dust from mining and processing operations will continue to be controlled as necessary through the application of water from a spray truck onto surface roads or through the application of dust palliative agents. Mitigation of dust by the application of water from spray trucks will be in accordance with North Coast Unified Air Quality Management District regulations by meeting General Permit and operating conditions.

At the request of the North Coast Unified Air Quality Management District (District), the project proponent performed a detailed geologic evaluation of the property in 2004 to evaluate the potential of impacts from serpentinite rock bodies. To update this report, geologists inspected the site on June 13, 2016, and compiled additional geologic maps. The previous and current geologic evaluations identified one small, isolated, shallow area of serpentinite. This body is located at the base of the mine site and should not be disturbed. If necessary, the small area will be removed and stockpiled for use in reclamation. No other ultramafic or serpentinite-bearing lithologies, or any asbestos or asbestos-form minerals, were identified. This is also true for stockpiles, roadbeds, and berms within areas of current operation at the time of the site examination.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

FINDING 2. The proposed development is consistent with the purposes of the existing zone in which the site is located;

EVIDENCE

- a. **HCC §314-11 Uses Compatible with Timber Production.** Enumerated examples of uses determined compatible/conditionally permissible. Though “surface mining” is not expressly listed, HCC §391-1 (Surface Mining Ordinance) recognizes use as conditionally permissible in all zoning districts.
 - b. HCC §314-12(c) TPZ Minimum Parcel Size is 160 acres, or 40 acres w/ JTMP. The project does not entail land division.
 - c. HCC §314-12(e)(1) TPZ Minimum Front Yard is 20 ft. (TPZ). Project does not entail placement of permanent structures subject to setback criteria. Mining is not within setback.
 - d. HCC §314-12(e)(3) TPZ Minimum Rear Yard is 30 ft. Project does not entail placement of permanent structures subject to setback criteria. Mining is not within setback.
 - e. HCC §314-12(e)(2) TPZ Minimum Side Yard is 30 ft. Project does not entail placement of permanent structures subject to setback criteria. Mining is not within setback.
3. The proposed development conforms with all applicable standards and requirements of the County’s Mining Ordinance (HCC §391-1 et seq.)
 - a. HCC §391-10 establishes mining permit standards above and beyond that minimally required under SMARA, which are incorporated in the conditions of approval. These standards and their reference location in the Reclamation and Mining Plan include:
 - i. All private encroachments leading to a surface mining operation shall be adequately surfaced to prevent aggregate or other materials from being drawn into the public way. (Reclamation Plan: 2.1.4, p.5)
 - ii. All haul roads and driveways shall be maintained as necessary to minimize the emission of dust and prevent the creation of a nuisance to adjacent properties. (Reclamation Plan: 2.7, p.12)
 - iii. Any water discharges from the mined lands shall meet all applicable water quality standards of the Regional Water Quality Control Board and other agencies with authority over such discharges. (Reclamation Plan 2.7; p.12)

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

- iv. Adequate measures shall be taken to assure the prevention of erosion from mined lands and adjacent properties during the life of the operation. The reclamation plan shall insure the prevention of erosion subsequent to surface mining operations. (Reclamation Plan 3.2.2; p.14; 3.5, p.15)
- v. Unless specifically authorized for the purposes of environmental enhancement by the California Department of Fish and Game (and the U.S. Army Corps of Engineers, if necessary), grades and land forms in mined lands shall be maintained in such a manner so as to avoid accumulations of water that will serve as breeding areas for mosquitoes or sites for fish entrapment. (Reclamation Plan 2.4.1, p.10)
- vi. Excavations which could affect groundwater shall not substantially reduce the quality or quantity of groundwater available in the area surrounding the mined lands. (Reclamation Plan 2.4.2; p.10)
- vii. Surface mining operations in areas where other agencies have regulatory jurisdiction shall be operated so as to comply with all applicable rules and regulations. (Reclamation Plan: 2.1.4, p.10; 3.2.4, p.15)

Based on information contained in the application and environmental documentation, the project has been designed or is being conditioned to assure compliance with these standards.

FINDING 4. The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

EVIDENCE

- a. The project has been reviewed by the following agencies who have not comments: Humboldt County Building Inspection Division, Humboldt County Environmental Health Department, California Department of Fish and Game, National Marine Fisheries Service (NMFS), Regional Water Quality Control Board (RWQCB).
- b. Humboldt County Department of Public Works, Land Use Division: "Conditional approval."
- c. California Department of Forestry and Fire Protection: Standard conditions. A Timberland Conversion Permit is Required
- d. California Office of Mine Reclamation. CCR Section 3502(d) requires an amended reclamation plan in the event of a substantial deviation from the approved plan. Applicant amended reclamation plan.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

- e. North Coast Unified Air Quality Management District (NCUAQMD): NCUAQMD provided comment on the MND and the applicant responded and prepared an asbestos management plan acceptable to the District.
- f. Sonoma State University, Northwest Information Center: In response to the 2000 project review, NWIC indicated that there is a low possibility of historical resources; further study is not recommended.
- g. Based on information submitted by the applicant, contained in the environmental documents, and referrals from all jurisdictional agencies and interested parties at present, staff believes that the project as conditioned will not cause significant environmental effects nor be detrimental to the public health, safety or welfare.

FINDING

The reclamation plan shall meet the form and content requirements of state law and local ordinance.

EVIDENCE

- a. Public Resources Code (PRC) Sections 2772, 2773 and 2774 specifies the information and documents required for all reclamation plans. The required information and documents are as follows:
 - i. The name and address of the operator and the names and addresses of any persons designated by him as his agent for the service of process; and
 - ii. The names and addresses of the owners of all surface and mineral interests of such lands; and
 - iii. The anticipated quantity and type of minerals for which the surface mining operation is to be conducted; and
 - iv. The proposed dates for the initiation and termination of such operation; and
 - v. The maximum anticipated depth of the surface mining operation; and
 - vi. The size and legal description of the lands that will be affected by such operation,
 - vii. A map that includes the boundaries and topographic detail of such lands, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands, the location of all proposed access roads to be constructed in conducting such operation,
 - viii. A description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted,
 - ix. A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation; and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

- x. A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses; and
- xi. A description of the manner in which contaminants will be controlled, and mining waste will be disposed; and
- xii. A description of the manner in which rehabilitation of affected streambed channels and streambanks to a condition minimizing erosion and sedimentation will occur; and
- xiii. An assessment of the effect of implementation on the reclamation plan on future mining in the area; and
- xiv. A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan; and
- xv. A cost estimate prepared by a qualified individual for financial assurances to ensure reclamation is performed in accordance with the reclamation plan.
- xvi. The comments made by reviewing agencies and lead agency responses thereto.
- xvii.
- b. The full contents to satisfy required findings A. through P. are found in the Reclamation Plan for the original permit (RP-98-01) and the Amendment to the Reclamation Plan submitted for this project modification.

FINDING 6. The lead agency to require that the financial assurance comply with the established form, term, and monetary adequacy requirements, as periodically reviewed, to assure the reclamation will be completed should default by the responsible party occur.

EVIDENCE a. PRC §2770, §2773.1 and related administrative guidelines of the Department of Conservation's State Mining and Geology Board (California Code of Regulations §§ 3800 - 3806.2) direct the lead agency to require that the financial assurance: A.) Take the form of either surety bonds, irrevocable letter of credit, trust funds, certificates of deposit, or other mechanisms specified by the State Mining and Geology Board; B.) Remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed; C.) For any one year are annually adjusted to account for new lands disturbed by surface mining operations, reclamation pursuant thereto, areas previously reclaimed, and inflation; D.) Are determined to be adequate for the purposes of performing the reclamation in accordance with the approved reclamation plan; and E.) Made payable to the lead agency and the Department of Conservation.

Form of Assurances. The proposed form of financial assurances for the next extraction seasons has not been indicated at this time. As part of the ongoing administration of the reclamation plan, staff shall ensure that the form of

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

financial assurances is one authorized by the State Mining and Geology Board, and consistent with County practices and procedures.

- i. Duration of Assurances. As part of the ongoing administration of the reclamation plan, the period of the assurances shall be set to correspond to the 15 year period for extraction, taking into account annual reclamation costs.
- ii. Annual Adjustments. As part of the ongoing administration of the reclamation plan, the amount of individual year financial assurances shall be reviewed and adjusted to correspond to changes in quantity prescriptions, past reclamation activities, and inflationary costs associated with reclamation labor, equipment and materials.
- iii. Adequacy of Assurances. Based upon the submitted cost estimates (as prepared by the applicant's agent on the basis from standard time and material construction costs), adequate projection of required reclamation expenses has been performed.
- iv. Designated Payee. As part of the ongoing administration of the reclamation plan, the Planning Division shall ensure that the financial assurances are designated as payable to the "County of Humboldt" and "State Mining and Geology Board", pursuant to SMARA.

FINDING 7. The Board of Supervisors has reviewed and considered the Mitigated Negative Declaration with all comments and information related thereto and finds there is no substantial evidence to support a fair argument that the project would have a significant effect on the environment.

EVIDENCE a. A Draft Subsequent Mitigated Negative Declaration (MND) was prepared for the modification request to expand the operational area of the quarry. The Draft Subsequent MND has been circulated twice for public and agency comment. Revisions were made in response to comments received on the first circulation, and the document was circulated and posted for public comment again. Comments on the first draft related to geologic stability, possible asbestos rock at the quarry site, and aesthetic (visual) impacts. The applicant's consultant prepared responses to these comments and addressed the issues with additional supporting materials, including a more detailed visual impact analysis, a geological engineer's review of stability, and further details on asbestos. After revisions and recirculation of the MND, a second round of comments was received from concerned public, re-iterating concerns with asbestos and geologic stability. Comments on geological stability were again submitted by William Verick of the Mateel Environmental Justice Foundation and the Hoopa Tribe. In response to the asbestos issue, the applicant's consultant had further testing conducted and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

results reviewed by the North Coast Unified Air Quality Management District and determined that the asbestos on the site is confined to an area that would not be disturbed by the mining operation. The consultant also discussed the geological stability with Verick and the Hoopa tribe. The Hoopa tribe submitted a subsequent letter rescinding their previous comments. Further, the Brown Quarry Reclamation Plan has been reviewed by a geologist with the Division of Mine Reclamation and found to be acceptable. Additionally, all referral resource agencies that have reviewed the Subsequent Mitigated Negative Declaration and provided comments have had their issues addressed.

- b. In response to an appeal of the Planning Commission's approval of the project an independent review of the Engineering Geological Evaluation Report, was conducted by a 3rd party geologist, Bajada Geosciences, Inc., to review the results and conclusions presented in the Geological Evaluation Report. This third-party review included a reconnaissance of the surface conditions, sampling and unconfined compression testing of rock samples, and evaluation of data collected during the review including stability analysis. The third-party geologist recommended changes to the mining plan to flatten the slope to 34 degrees (1.5:1) and lower the phreatic (groundwater) surface behind the highwall through installation of an engineered dewatering system. The report concluded that incorporation of these revisions to the mining plan will increase the factor of safety and reduce the potential for future slide activity to a level less than significant.
- c. In response to the recommendations by Bajada, the applicant modified the project. These revisions are included in the February 2019 Revision to the Brown Mining and Reclamation Plan Amendment Proposed Expansion and Dewatering Plan.
- d. The Subsequent Mitigated Negative Declaration, with the substitute mitigation measures incorporated, is adequate for adoption as the recommended changes to the mining plan have been made part of the project and will be enforced through conditions of approval, and the mitigation monitoring and reporting program. The revisions increase the factor of safety by using more conservative assumptions than the applicant's original Geological Evaluation Report, including: 1) the revised slope stability model factored in the ascending slope above the quarry high wall; 2) a lower rock strength value was used in the modeling to more closely represent site conditions; 3) modeled groundwater was based on observed discharge from the quarry face at numerous locations; and 4) a slightly higher horizontal earthquake loading value was utilized based the analysis of landslide deposit at the project. The changes to the mining plan are more protective of the environment and by itself will not cause any potential significant effect on the environment.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

- e. The Subsequent Mitigated Negative Declaration has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis.

NOW, THEREFORE, be it resolved, determined, and ordered the Board of Supervisors hereby:

1. Adopts the Subsequent Mitigated Negative Declaration, with substitute mitigation measures, and the Mitigation Monitoring and Reporting Program
2. Denies the appeal,
3. Approves the R. Brown Construction Company project modification for Case Nos.: CUP-14-013XM; RP-14-001XM; SMP-14-001XM); File No. APN: 316-061-011, subject to the recommended conditions of approval in Exhibit 1 and incorporation of changes set forth in the Revision of the Mining and Reclamation Plan and the Expansion Dewatering Plan.

Adopted on motion by Supervisor
and the following vote:

, seconded by Supervisor

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Estelle Fennell, Chair

STATE OF CALIFORNIA

)

) SS.

County of Humboldt

)

I, Kathy Hayes, Clerk of the Board of Supervisors of the 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-titled 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.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: _____
KATHY HAYES

Date: _____, 2020

By _____
Deputy

Exhibit 1

RECOMMENDED CONDITIONS OF APPROVAL

APPROVAL OF THE SURFACE MINING PERMIT, CONDITIONAL USE PERMIT, AND RECLAMATION PLAN IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS:

A. Conditions of Approval:

1. Financial Assurances to ensure reclamation is performed in accordance with the approved reclamation plan shall be entered into with the County of Humboldt and the State Geologist per PRC Section 2773.1.
2. The applicant shall submit a “wet signed” statement naming the person or persons who accept responsibility for reclaiming the mined lands in accordance with the approved reclamation plan and PRC Section 2772.
3. Prior to hearing, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,456.75. [Note: In order to comply with the time limits for filing the Notice of Determination per CEQA, this payment will be requested from the applicant prior to hearing and will be held by the Planning Division pending a decision on the permit.] Pursuant to Section 711.4 of the Fish and Wildlife Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. This fee is effective through December 31, 2020 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Wildlife Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at www.dfg.ca.gov for a determination stating the project will have *no effect* on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,456.75 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required.
4. The applicant shall reimburse the Planning Division for any processing costs that exceed the application deposit.
5. Pursuant to the California Code of Regulations Section 3697, the owner or operator of a newly-permitted operation shall submit an initial report and reporting fee to the Department of Conservation (DOC) after permit approval. The DOC has developed the New Mining Operation Report form, please contact DOC at (916) 323-9198 to obtain a form. The condition shall be satisfied by submitting to the County the completed yellow Lead Agency copy of the New Mining Operation Report form.
6. The applicant shall submit a written letter to the Planning Division from the California Department of Fish and Game stating either that their current Fish and Game Code

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

Section §1600 agreement extends to the project or that such an agreement has been approved specifically for the quarry project.

7. The General Plan User Fee of \$650 for Industrial Development must be paid to the Humboldt County Planning and Building Department.
8. The applicant shall abide by all of the mitigation measures contained in the Subsequent Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Plan.
9. The Dewatering Plan in Attachment H of the Board Report is considered preliminary. Following issuance of the permit and prior to the completion of the first bench developed in the location shown on Figure 15 – Final Topography and Drainage, dated January 2019, prepared by VESTRA, as depicted in the revised Reclamation and Mining Plan, the preliminary Dewatering Plan prepared by Trinity Valley Consulting Engineers, Inc., dated November 2018 shall be revised and submitted for approval by the Planning Director. The Planning Director shall make this determination in consultation with the third-party reviewing geologist. The cost of the third-party geologist's review shall be borne by the applicant. The preliminary Dewatering Plan shall be revised and supplemented to meet acceptable slope stability methods and thresholds, as defined by the California State Mining Board, California Geological Survey (Special Publication 117), and American Society of Civil Engineers (Special Publication 117a). Those revisions should include the following:
 - Stability analyses quantifying the maximum elevations of the groundwater/phreatic surface beneath the quarry to achieve acceptable stability;
 - A preferred dewatering method with minimum and maximum spacings and lengths;
 - Recommendations for methods of capturing and conveying water derived from dewatering, off-site and away from the quarry highwalls; and
 - Recommendations regarding the construction sequencing of dewatering systems relative to highwall and bench construction.

The revised Dewatering Plan shall include a Dewatering Maintenance Plan that shall be reviewed by the third-party geologist and shall conform to commonly accepted engineering practices as set forth in the previous references, and as applied in the industry. The revised Dewatering Plan shall be signed and stamped by both a California Certified Engineering Geologist and California licensed Geotechnical Engineer. All work shall be conducted consistent with the approved Dewatering Plan.

10. The applicant shall establish a financial mechanism for the Dewatering Maintenance Plan (Condition #10 above) to the satisfaction of the Planning Director. The obligation for on-going maintenance of the horizontal drain and collection system shall be set forth in an agreement between the operator, landowner and the County and recorded against the property, and shall continue and not terminate until this condition is modified.. The long-term maintenance plan and financial assurances shall include provisions for adjustments for inflation.

B. Operation Restrictions:

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

1. The mining operator shall adhere to the approved mining and reclamation plan, incorporating changes set forth in the Revision of the Mining and Reclamation Plan (Attachment G) and the Expansion Dewatering Plan (Attachment H) of the Board Report, and as conditioned herein, and the mitigation monitoring and reporting program, as apply to the mining extraction site proper, and other support and ancillary uses and facilities (i.e., stockpiles, and the maintenance of access road drainage culverts). The reclamation plan shall be reviewed annually by the operator and county staff to assure that any required reclamation is completed and is in compliance with the approved reclamation plan. Any substantial changes to the reclamation plan, including changes necessitated or required by changes in the riverine environment, may require review by the Division of Mines & Geology, Reclamation Program, and approval by the County.
2. The applicants/operators shall abide at all times to the Humboldt County Surface Mining Regulations, and any revisions thereto, and the State Surface Mining and Reclamation Act, and any revisions thereto.
3. The terms of this conditional use permit and reclamation plan shall be the maximum allowed under current regulations, therefore, fifteen years from the effective date. The applicant may renew the use permit and/or reclamation plan, if allowed under current state and county regulations, by submitting appropriate forms and fees in effect at the time of renewal.
4. The operator shall be responsible for submitting to the State Geologist, on forms provided by the State Geologist, an annual report per PRC Section 2207.
5. Hauling along public roads shall be limited to "legal loads" only. "Overweight loads" must have prior approval from the Department of Public Works and/or CalTrans.
6. Any and all portable toilet facilities shall be adequately maintained by a licensed septic tank pumper to the satisfaction of the County Department of Environmental Health.
7. Blasting, shall only be conducted between the hours of 8:00 am and 5:00 pm Monday through Friday. Extraction, drilling, *and processing* operations shall only be conducted between the hours of 6:00 am and 6 pm Monday through Saturday. Quarry operations shall not be conducted on federal holidays. *The hours and days of operation for loading and hauling of processed material shall not be restricted.*
8. Mining operations are a source of potential fire hazard from vehicles and heavy equipment operations. Accordingly, the project is conditioned to follow established guidelines and requirements for such industrial activities (e.g., use of spark arresters on vehicles, on-site availability of fire suppression water supply and fire fighting tools).

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

9. The applicant shall monitor the sedimentation basins to ensure they are functioning properly, and shall take corrective action as appropriate in accordance with the Mitigation/Monitoring Plan Item 2.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings;

Meeting on February 11, 2020

C. Informational Notes:

1. Surface mining operations are regulated by various different state and federal agencies. Each of these agencies is responsible for regulating a specific aspect of the mining operation. For example, the Department of Fish and Game is responsible for assuring that fish and wildlife resources are not negatively impacted by a surface mining operation; the Army Corps of Engineers is responsible for regulating discharges into navigable waters of the United States; the Regional Water Control Board oversees waste discharge requirements; CalTrans assures that no State bridges or highways are negatively affected by mining operations, and; the State Lands Commission regulates activities on lands within the public trust. Other agencies which may have jurisdiction over a surface mining operation include but are not limited to, California Department of Conservation, Division of Mines & Geology; Northcoast Air Quality Management District; California Coastal Commission; National Marine Fisheries; United States Fish & Wildlife Service, and ; CalOSHA.

The operator is responsible for contacting all of the above regulating agencies to assure conformance by the surface mining operation with these agencies regulations.
2. The Financial Assurance shall be subject to annual review and adjustments to account for: a) changes in the costs of reclamation due to inflation; b) lands reclaimed in the previous year and not involving future reclamation; and c) additional lands requiring reclamation in the next year.
3. Building permits are required for all equipment structural pads/foundation buildings, and all structural concrete work (i.e. scales) that are not pre-existing.
4. The North Coast Unified Air Quality Management District has advised that the operation of an aggregate processor on site may require a District permit. The permit, if needed, will contain conditions sufficient to ensure that no significant effects to air quality. Also, the reclamation plan makes reference to locally sheared serpentine and clast rocks. The applicant is advised that if they intend to sell, offer for sale, supply, use or apply serpentine material for surfacing purposes (to cover surfaces used for pedestrian, vehicular or non vehicular travel), the provisions of District Regulation 3 - Section 6 will apply. Further information about the Airborne Toxic Control Measure for Asbestos-Containing Serpentine Rock is available from District staff. For purposes of these comments, serpentine is defined as any form of hydrous magnesium silicate materials - including, but not limited to, antigorite, lizardite, and chrysotile.