



COUNTY OF HUMBOLDT

Legislation Details (With Text)

File #: 20-147 **Version:** 1 **Name:**
Type: Resolution **Status:** Passed
File created: 1/29/2020 **In control:** Planning and Building
On agenda: 2/11/2020 **Final action:** 2/11/2020
Title: Appeal of the Planning Commission Approval of the Brown Quarry Modification Application
Case Numbers: CUP-14-013XMA; RP-14-001XMA; SMP-14-001XMA
Application Number 13702
Assessor Parcel Number 316-061-011
Willow Creek Area

Sponsors:

Indexes:

Code sections:

Attachments: 1. Staff Report, 2. Attachment A - Resolution.pdf, 3. Attachment B - Appeal Letter.pdf, 4. Attachment C - PC Resolution.pdf, 5. Attachment D_1_CUP 14-013XM Staff Report.pdf, 6. Attachment D-2_Subsequent Mitigated Negative Declaration.pdf, 7. Attachment D-3_Appendix A Viewshed Analysis, 8. Attachment D-4_Appendix B_Botanical Survey.pdf, 9. Attachment D-5_BrownSons Quarry_Response to Comments No 1.pdf, 10. Attachment D-6_BrownSons Quarry_Response to Comments No. 2.pdf, 11. Attachment D-7_Figures.pdf, 12. Attachment D-8_Timberland Conversion Permit.pdf, 13. Attachment E - Action Summary Excerpt from PC 7.13.2017.pdf, 14. Attachment F - Third Party Geologic and Geotechnical Review.pdf, 15. Attachment G - February 2019 Revision to Mining Plan.pdf, 16. Attachment H - R. Brown Quarry Dewatering Plan.pdf, 17. Attachment I - Brown Quarry email from W Verick.pdf, 18. Attachment J - Mitigation Monitoring Reporting Program.pdf, 19. Resolution 20-14

Date	Ver.	Action By	Action	Result
2/11/2020	1	Board of Supervisors	approved	Pass

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Appeal of the Planning Commission Approval of the Brown Quarry Modification Application
Case Numbers: CUP-14-013XMA; RP-14-001XMA; SMP-14-001XMA
Application Number 13702
Assessor Parcel Number 316-061-011
Willow Creek Area

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing, and receive the staff report, testimony by the appellant, the project

- applicant and public; close the public hearing;
2. Adopt the Resolution _____ (Attachment A) to take the following actions:
 - a. Adopt the Mitigated Negative Declaration (MND), with substitute mitigation measures, and the Mitigation Monitoring and Reporting Program;
 - b. Make the findings required for approval of the project;
 - c. Deny the appeal; and
 - d. Approve the Brown Quarry Modification Application subject to the conditions of approval and incorporating changes set forth in the Revision of the Mining and Reclamation Plan and the Expansion Dewatering Plan.
 3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent, and any other interested party; and
 4. Direct the Planning and Building Department - Planning Division to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

SOURCE OF FUNDING:

The Appellant has paid the appeal fee associated with filing this appeal and the applicant has paid for the additional time involved in bringing the appeal forward.

DISCUSSION:

Executive Summary

The matter before your Board of Supervisors is an appeal of the Planning Commission's July 13, 2017 adoption of the Mitigated Negative Declaration (MND) and approval of the Brown Quarry Conditional Use Permit Modification application. The appellant is the Mateel Environmental Justice Foundation representing Margaret and Richard Rowland. The issues associated with the appeal have been addressed by hiring a third party engineering/geologist to review the project and make recommendations with the applicant having incorporated these recommendations into their plans.

Background

The project consists of a modification of a recent 15-year renewal of a previously approved Conditional Use Permit for an upland rock quarry surface mining operation. The modification seeks to expand the area of mining operation by adding an additional 39 acres to be mined (in addition to the existing 25-acre mining area). This includes areas that will be mined for rock and areas that will be used for topsoil and overburden storage. The Reclamation Plan is revised to show that the total area to be reclaimed is 64 acres. Rock of various sizes will continue to be mined, with an estimated volume of 4 million tons of hard rock removed over the life of the mine. Mining and overburden fill have already occurred on approximately 25 acres of the parcel.

Previous Land Use Decisions

This upland quarry near the town of Willow Creek has been operated by the applicant under two previous permits: 1) a Conditional Use Permit and Surface Mining Permit issued by the County of

Humboldt (CUP-11-90/SMR-02-90) approved on April 19, 1990 and effective for 10 years; and 2) a Conditional Use Permit, Surface Mining Permit and Reclamation Plan approval issued by the County of Humboldt (CUP-99-06/SMP-99-01/RP-99-01) approved on May 16, 2000 and effective for 15 years. On October 16, 2014 the Zoning Administrator approved renewal of the surface mining permit to extract a total of 100,000 cubic yards (yd³) of rock and fragmented aggregate material from the quarry over an anticipated 15-year life at the subject site within the existing 25-acre mining area.

The present operation involves the average annual production of about 5,500 yd³ of quarry materials. Two methods of surface rock removal will be used: 1) mass rock removal from the rockfields, and 2) selective removal of soil and rock generally from forested areas surrounding the rock fields. Equipment to be used includes a loader, cat and excavator. The operation will also involve boulder blasting, and material will be hauled by truck. The haul route consists of a private road entering directly onto State Highway 299. During periods of production, there will be approximately 5 truck trips per day leaving the property and using this highway. This level of traffic activity is minor and is similar to that for other resource-related uses (e.g., timber hauling) in the area.

Present Project Modification

If the request for a modification is approved the quarry will increase in size by 39 acres, from 25 acres to 64 acres. This will extend the life of the quarry and will allow for a total volume of 4 million tons of hard rock to be extracted over the life of the mine. The mining plan for the expansion is substantially an extension of the existing quarry operation. As with the exiting mine, the quarry will be subject to numerous on-going, annual, and terminal mitigation and reclamation measures. These include: set operational hours for blasting, extraction, processing, and hauling; the installation of a stormwater detention and sedimentation basin; following a “business plan” approved by the Public Health Department for the storage and use of hazardous materials such as fuels, lubricants, and explosives; winterizing the site prior to the onset of the rainy season; and final reclamation of the site at the end of the permit term.

The actual and potential environmental effects of the project, including noise and hazards, traffic dust, noise, and safety concerns, water quality degradation, impacts to sensitive habitat areas, and depreciation in open space aesthetics, have been reviewed by County and referral agency staff. Staff supports approval of the application for several reasons: a) the site has historically been used as a quarry; b) the project area is remote and is not anticipated to have any impact on residential uses; and c) potential impacts to resources have been addressed through mitigation and operations restrictions. Based upon the operational and performance standards included in the mining operation and reclamation plan, staff and the referral agencies have concluded that the operation can be conducted in a safe and appropriate manner provided these standards are made conditions of project approval.

The Subsequent MND and CUP modification findings are addressed in the Planning Commission Staff Report (found in Attachment D).

Basis of Appeal

The basis of the appeal is set forth in the notice of appeal submitted by the Mateel Environmental Justice Foundation and Margaret and Richard Rowland which was received by the Planning and Building Department on July 21, 2017 (Attachment B). The appellants argue that the decision of the Planning Commission is not in accord with the California Environmental Quality Act (CEQA).

Specifically, they state that evidence in the administrative record creates a fair argument that the approved project will cause landslides and slope instability that will likely cause significant adverse environmental impacts. They further state that a full environmental impact report (EIR) is the level of environmental review that must be conducted when there is a fair argument that the project will cause significant adverse environmental impacts.

Planning Commission Decision

The Humboldt County Planning Commission (Planning Commission) conducted a Public Hearing with regard to the Brown Quarry Modification and the associated Subsequent Mitigated Negative Declaration (MND) on July 13, 2017, and the Planning Commission adopted the Subsequent MND and approved the project by adopting Resolution, No. 17-34, on a vote of 4 in favor and 0 opposed, after review of the staff report and supplemental information (Attachment D) and after consideration of public testimony (Attachment E).

Actions Taken Since Appeal

Since the July 2017 appeal filing, Staff has engaged with the applicant and appellant's representatives seeking to narrow the outstanding issues on appeal. An outcome of these discussions is the department retained the services of an independent third-party reviewing geologist, James Bianchin of 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 reviewing 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. The full report is included in Attachment F.

The results of the Bajada Geosciences, Inc report and third-party geologist's recommendations were shared with the appellant. Attorney William Verick by email dated April 24, 2019 (Attachment I) confirmed that with the incorporation of these recommended revisions to be put before the Board of Supervisors the appellant would lift any objection to project approval. 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 (Attachment G) and Dewatering Plan (Attachment H). Because the appeal hearing is de novo, these changes may be included as part of the project appeal under consideration by the Board.

The Mitigated Negative Declaration is adequate for certification as the recommended changes to the mining plan have been made part of the project and will be enforced through conditions of the permit. 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.

Staff recommends that the Board deny the appeal and adopt the Mitigated Negative Declaration (MND), with substitute mitigation measures, and approve the Brown Quarry Modification Application subject to the conditions of approval (Exhibit 1 to Attachment A) and incorporating changes set forth in the Revision of the Mining and Reclamation Plan (Attachment G) and the Expansion Dewatering Plan (Attachment H).

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents

OTHER AGENCY INVOLVEMENT:

The Department has referred project to numerous agencies for comments and recommendations, including the State Division of Mine Reclamation Geologist. These referrals are included in the Planning Commission staff report (Attachment D).

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors can choose to uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to approve the Subsequent Mitigated Negative Declaration and make all of the required findings. Alternatively, the Board could deny the appeal but make changes to the conditions of approval in addition to those recommended by staff. If either of these alternatives is pursued, the staff would request that the matter brought back before the Board at a later date to consider a revised resolution and/or revised Conditions of Approval.

ATTACHMENTS:

Attachment A: Draft Board Resolution

Attachment B: Appeal filed by Mateel Environmental Justice Foundation and the Margaret and Richard Rowland

Attachment C: Resolution of the Planning Commission, Resolution No. 17-34

Attachment D: Planning Commission Staff Report, Subsequent Mitigated Negative Declaration, and Supplemental Information

Attachment E: Action Summary (excerpt) of Planning Commission Hearing on July 13, 2017

Attachment F: Third Party Geologic and Geotechnical Review - Brown Quarry Expansion

Attachment G: February 2019 Revision of the Mining and Reclamation Plan Amendment Proposed Expansion

Attachment H: R. Brown and Son Quarry Proposed Expansion Dewatering Plan

Attachment I: April 24, 2019 Communication from William Verick representing the Appellant Lifting Appellant Opposition to the project subject to incorporation of changes set forth in the Revision of the Mining and Reclamation Plan (Attachment G) and the Expansion Dewatering Plan (Attachment H)

Attachment J: Mitigation Monitoring and Reporting Program

PREVIOUS ACTION/REFERRAL:

Board Order No.: None

Meeting of: N/A

File No.: N/A