

RESOLUTION 12-

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA, CERTIFYING AN EIR, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR AMENDMENTS TO THE MENDOCINO COUNTY ZONING CODE TO CREATE A MINERAL PROCESSING COMBINING DISTRICT (MP); AND ADDING AN MP ZONING OVERLAY TO A PORTION OF APN 147-140-07

WHEREAS, Harris Quarry is immediately west of U.S. Route 101, near the top of the Ridgewood Grade on Mendocino County APNs 147-140-07, 147-180-08, 147-180-13 and 147-140-07 (collectively "Property") and has been mined intermittently since the 1920's. The Property consists of approximately 320 acres that are part of a larger 600 adjacent acres owned by Northern Aggregates, Inc, the Applicant;

WHEREAS, in 1983, the County approved Use Permit U19-83 for Harris Quarry, which was a 20-year use permit allowing extraction of up to 10,000 cubic yards of rock per year;

WHEREAS, in 1990, the Planning Commission approved a modification to this use permit, UM19-83/90, which increased the extraction rate to up to 50,000 cubic yards of rock per year for five years. This modification also allowed a one-time extraction rate of 125,000 cubic yards in 1990, with the total extraction under the five-year permit limited to 325,000 cubic yards;

WHEREAS, in 1997, the Planning Commission approved a Use Permit and Reclamation Plan UR19-83/95, allowing for the extraction and processing of up to 75,000 cubic yards of material for 10 years;

WHEREAS, on September 6, 2001, the County administratively approved of a minor modification to the 1997 Use Permit and Reclamation Plan to allow for the addition of a wash plant to the daily operations at Harris Quarry;

WHEREAS, the Applicant submitted an application for permanent asphalt plant on North State Street in general industrial zoning. On November 4, 2004, the Mendocino County Board of Supervisors ("Board") denied this application and directed staff to prepare an ordinance amendment that would allow the development of the asphalt plant on the existing Harris Quarry site, adjacent to the Ridgewood Grade;

WHEREAS, in response to the Board's direction, in January of 2005, the Applicant applied for a Use Permit and Reclamation Plan Renewal, as well as amendments to the Mendocino County Zoning Ordinance to allow the asphalt plant to be sited at the Property. This application sought to mine the quarry until the material was exhausted and is referenced to as the "End of Quarry Life" application. This was application UR19-83/2005;

WHEREAS, on May 19, 2005, the Planning Commission considered the End of Quarry Life application for a Use Permit, Reclamation Plan and Rezoning Amendments, as well as adopting a Mitigated Negative Declaration. The Planning Commission recommended approval of the application and the Mitigated Negative Declaration;

WHEREAS, the Planning Commission's recommendation was appealed to the Board and on June 14, 2005, the Board denied the ordinance amendments and the entitlement application, without prejudice, on the grounds that the application could potentially require an

Environmental Impact Report ("EIR");

WHEREAS, in 2005, County staff advised the applicant that an EIR would be required for the proposed Zoning Ordinance Amendment, Rezone, and End of Quarry Life Application;

WHEREAS, on November 1, 2006, the County issued a Notice of Preparation for an EIR for the End of Quarry Life Application;

WHEREAS, use permit UR 19-83/2005 expired on January 26, 2007, however, under County policy, the Applicant is allowed to continue operating under UR 19-83/2005 during the processing of the current renewal application;

WHEREAS, the County completed a Draft EIR for the End of Quarry Life Application in December of 2007;

WHEREAS, in January 2010, in response to numerous public comments on the Draft EIR for the End of Quarry Life Application, the Applicant submitted a revised project description requesting:

- a. An Amendment to the Mendocino County Zoning Code to create a Mineral Processing Combining District;
- b. A rezone of 18 acres of APN 147-140-07 to add the new Mineral Processing Combining District overlay to approximately 18 acres of the existing Harris Quarry site;
- c. A Use Permit Renewal or modification that would allow the extraction and processing of 200,000 cubic yards every year for 30 years;
- d. An asphalt plant, allowing production of up to 150,000 tons (58,280 cubic yards) of asphalt per year;
- e. Authorization to conduct night time operations up to a maximum of 100 nights per year; and
- f. A revised Reclamation Plan.

These activities will take place on approximately 44.9 acres of the Property and shall be referred to as the "Project Site" in this Resolution. This acreage does not include any overlays on Highway 101 because it is not yet known if CalTrans will require an overlay;

WHEREAS, for purposes of this Resolution, the project description as it was revised in January 2010 shall constitute the "Proposed Project" or "Project." The Proposed Project substantially differs from the End of Quarry Life Application because the Proposed Project only seeks approval of use permit for quarry operations and an asphalt plant for 30 years. Additionally, the Applicant volunteered for a condition of approval requiring the Applicant to submit an application to remove the MP Zoning Overlay at the end of the 30 year use permit;

WHEREAS, after the County received the revised project description from the Applicant, the County issued a revised Notice of Preparation on September 3, 2010 and made arrangements to produce a revised draft EIR ("RDEIR");

WHEREAS, the County released the RDEIR in May of 2011;

WHEREAS, the Planning Commission held duly noticed public hearings on June 16, 2011 and July 20, 2011 and received comments on the RDEIR;

WHEREAS, the County released a Final EIR in February of 2012;

WHEREAS, the Planning Commission held a duly noticed public hearing on March 15, 2012 to consider its recommendations on: (1) the proposed amendments to the Zoning Ordinance; (2) applying the MP zoning overlay on 18 acres of the Project Site, and (3) certification of the EIR. The Planning Commission continued this meeting to a date certain of March 22, 2012;

WHEREAS, on March 22, 2012, the Planning Commission, in a 7-0 vote, recommended that the Board adopt the proposed amendment to the Zoning Ordinance, apply the MP zoning overlay on 18 acres of the Project Site, certify the Final EIR and adopt a Statement of Overriding Considerations;

WHEREAS, on March 26, 2012, the Board held a duly noticed tour of the Project Site with members of the public in attendance. Upon completion of the on-site tour, the Board reconvened in its chambers and accepted additional public comment on the Proposed Project;

WHEREAS, the Board held a duly noticed public hearing on April 9, 2012 to consider: (1) the proposed amendments to the Zoning Ordinance; (2) applying the MP zoning overlay on 18 acres of the Project Site, and (3) certification of the EIR. During this hearing the Board received comments from the public and reviewed all oral and written evidence presented to the County.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors of the Mendocino County hereby finds, declares and decides as follows:

1. Certification of the EIR.

- A. For purposes of this Resolution, the RDEIR, Final EIR, and all technical studies and reports shall be referred to as "the EIR" or "EIR".
- B. The Board hereby certifies that the EIR has been completed in compliance with the requirements of California's Environmental Quality Act ("CEQA").
- C. The Board hereby certifies that the EIR was presented to the Board and that the Board reviewed and considered the information contained in the EIR prior to taking action on the EIR, proposed amendments to the County's Zoning Ordinance, and application of the MP Zoning overly to 18 acres of Mendocino County APN 147-140-07.
- D. The EIR reflects the Board's independent judgment and analysis.

2. Findings on Impacts.

The Board makes the following specific findings with respect to EIR:

- A. Less Than Significant Impacts. During the preparation of the EIR, the EIR Preparer determined that certain environmental impacts would not occur as a

result of the Proposed Project or would not rise to a level of significance. The EIR discloses that the environmental impacts identified in **Exhibit A**, attached hereto and incorporated herein by this reference, are less-than-significant and do not require mitigation. The Board concurs with the EIR's "less than significant" findings for the environmental impacts identified in **Exhibit A** and determines that these environmental impacts of the Proposed Project would have no significant impact on the environment.

- B. Impacts that were Mitigated to Less than Significant. The EIR discloses that the Proposed Project poses certain significant or potentially significant adverse impacts that can be mitigated to less than significant levels. These impacts are fully and accurately summarized in **Exhibit B** to this Resolution, attached hereto and incorporated herein by this reference. The Board finds that changes or alterations have been required or incorporated into the Proposed Project that will mitigate these impacts to the less than significant levels set forth in the EIR. The Board therefore determines that the significant adverse environmental impacts of the Proposed Project summarized in **Exhibit B** to this Resolution have been eliminated or reduced to a point where they would have no significant effect on the environment.
- C. Unavoidable Significant Adverse Impacts. The EIR discloses that the Proposed Project poses certain significant or potentially significant adverse environmental impacts which, even after the inclusion of mitigation measures, may not, or cannot, be avoided if the Proposed Project is approved. These impacts are:
- (i) RDEIR Impact 4.6-C: indirect emissions of criteria pollutants (NO_x, CO, VOCs, PM10, and PM2.5) from on-site activities which could exceed applicable significance lines;
 - (ii) RDEIR Impact 4.7-A (aesthetics): the processing site will change views from Black Bart Drive and the Ridgewood Subdivision;
 - (iii) RDEIR Impact 4.7-B (aesthetics): the expansion will change views from vantage points on the Ridgewood Ranch;
 - (iv) RDEIR Impact 4.7-C(aesthetics): lighting of the processing facilities will impact night views in the area; and
 - (v) RDEIR Impact 4.7-E. (aesthetics): the expansion and highway improvements will change views from Highway 101

Those impacts are fully and accurately summarized in **Exhibit C**, attached hereto and incorporated herein by this reference.

- D. Substantial Evidence. The findings set forth herein are supported by substantial evidence in the record of this proceeding. The Board finds that these determinations are supported by substantial evidence and that there is no substantial evidence in the record that these determinations were erroneous. The Board further finds that there is no substantial evidence in the record that any environmental impact that might arguably be anticipated to occur as a result of the Proposed Project has not been adequately examined in the EIR.
- E. Alternatives. The Draft EIR considered seven project alternatives. As is set forth in **Exhibit D**, the Board rejected these because they did not meet the objectives for the Proposed Project; were not economically feasible, or other reasons as is

set forth in **Exhibit D**. The Board further finds that the Proposed Project, as mitigated by the adoption of mitigation measures identified in the Draft EIR, can be feasibly implemented and serves the best interests of Mendocino County.

3. Statement of Overriding Considerations.

- A. As to the significant adverse environmental impacts of the Proposed Project identified in the EIR and this Resolution which are not avoided or substantially lessened to a point less than significant, the Board finds that specific economic, social, technological, or other considerations make additional mitigation of these impacts infeasible, in that all feasible mitigation measures have been incorporated into the Proposed Project and that Project alternatives one through seven are infeasible. The Board further finds that it has balanced the benefits of the Proposed Project against its unavoidable environmental risks and determines that the benefits of the Proposed Project outweigh the unavoidable adverse environmental effects. The Board further determines that the unavoidable adverse environmental effects of the Proposed Project are acceptable, that there are overriding considerations which support the Board's approval of the Proposed Project and that these considerations are identified in **Exhibit C** to this Resolution, attached hereto and incorporated herein by this reference ("the Statement of Overriding Considerations").

4. Adoption of the Mitigation Monitoring and Reporting Program.

- A. The Board hereby finds that the mitigation measures described in the EIR are feasible and therefore will become binding on the County.
- B. The Mitigation Monitoring Program, as set forth in **Exhibit E** to this Resolution, is adopted. County staff is directed to undertake monitoring in accordance with the Mitigation Monitoring Program to ensure that required mitigation measures and project revisions are complied with during project implementation.

5. Other Findings.

- A. The Board has considered comments and arguments received in writing, during the public comment period, prior Planning Commission hearings, during the March 27, 2012 post site tour comments, and the April 9, 2012 Board hearing regarding the Proposed Project's potential environmental impacts and the feasibility of imposed mitigation measures, and makes the following specific findings with respect thereto:
- (i) Water Supply Assessment. The Board notes that a Water Supply Assessment (WSA) was prepared for the Proposed Project on January 11, 2012 and was independently peer reviewed on February 6, 2012. Both the WSA and the peer review were included in the FEIR and have been available for public review and comment since at least February of 2012. The Board notes that recent case law, *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 523-527, determined that lead agencies are not required to hold separate hearings to approve a WSA and a CEQA document. Accordingly, the Board hereby adopts and approves the WSA and its peer review for the Proposed Project.

- (ii) Baseline. CEQA Guideline section 15125(a) states that the baseline for an EIR is normally the existing physical condition, at the time the Notice of Preparation was prepared. Courts interpret this requirement as conferring discretion on the County to decide exactly how the existing physical condition without the project can most realistically be measured, so long as the County's determination is supported by substantial evidence. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.) Courts have noted that historically aggregate production fluctuates depending on the economy. (*Hansen Brothers v. Board of Supervisors* (1996) 12 Cal.4th 533.) Courts have also noted that: (i) environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods and (ii) during the period of environmental review temporary spikes or lulls in operations during the review period should not depress or inflate the baseline. (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 336-338.)

The Board notes that the Applicant has submitted various asphalt plant applications for over ten years. Seven of those ten years focused on the proposed amendments to the County's Zoning Ordinance and rezoning a portion of the Project Site. During the last decade, the economic conditions changed significantly resulting in fluctuating aggregate production at Harris Quarry. The Applicant submitted a letter to County staff certifying that its extraction rates met its 75,000 cubic yards per year in all but two of the last ten years. The Applicant's most recent permit, UR 19-83/2005, authorized extraction of 75,000 cubic yards per year. As a result of these fluctuations, the County conservatively selected a baseline of extracting 75,000 cubic yards per year to reflect the varying extraction rates based on economic conditions. The Board notes that the Applicant has actually extracted more than 75,000 cubic yards in seven of the last fourteen years and that this baseline reflects actual physical conditions, not a hypothetical limit or non-existent physical condition.

- (iii) Biological Resources. Comments on the Proposed Project expressed concern that the Project may have an impact on wildlife on the Project Site. The Board notes that Draft EIR found that there were no sensitive or significant plant or animal species on the Project Site. The Board also notes that the RDEIR found that there was a lack of even common wildlife life species in the Project area.

The Board received and considered comments expressing concern that the Proposed Project may negatively affect California Coastal Chinook Salmon and Steelhead in Forsythe Creek. There is a tributary to Forsythe Creek south of the quarry mining area that merges into the Russian River approximately 16 miles downstream of the existing quarry. Forsythe Creek has year-round water flow, while the tributary is often dry during the summer months. According to the California Department of Fish and Game, there is a series of high gradient boulder falls that form a salmonid migration barrier approximately 0.2 miles downstream of the tributary's confluence with Forsythe Creek. The Board notes that the Applicant met on-site with a representative from the National Marine Fisheries Service (NMFS), the agency with jurisdiction over anadromous fish, such as salmonids, and their habitat, and that NMFS submitted an email to County

staff stating that the Proposed Project would not affect salmonids or their habitat.

The Board also received comments that sedimentation and run-off from the Proposed Project would negatively affect water quality, thereby degrading fish habitat. The Board notes that the Applicant met with the North Coast Regional Water Quality Control Board ("Regional Water Board"), the agency with jurisdiction over water quality in this region, and that the Regional Water Board provided a letter dated March 8, 2012, which states that the Regional Water Board has been to the site, reviewed the Proposed Project and concluded that with mitigation, it will not negatively impact water quality.

The Board also notes that a Water Supply Assessment ("WSA") was prepared for this Project. The WSA concluded that the Proposed Project will be served with groundwater and that there is sufficient groundwater to serve the Project in most years. During extremely dry years, the Applicant will reduce water use by using lignin, modifying the processing/washing operation schedule to concentrate on wetter season conditions, and reducing production rates, as it set forth in the Project description.

- (iv) Geology and Soils. The Board received a comment that Proposed Project site is in a fault zone. In response, the Board notes that Figure 4.2-2 of the RDEIR shows that the Project Site is not in the Maacama Fault Zone. Multiple Geologist Reports have been prepared and the Project's design incorporates all Geologists' recommendations.
- (v) Hydrology and Water Quality. The Board received comments that the Proposed Project will degrade water quality. As is set forth above, the Regional Water Board, the agency with jurisdiction over water quality in this area, physically inspected the Project Site, reviewed the plans for the Proposed Project, including Best Management Practices ("BMPs") and concluded that BMPs, including, but not limited to: (i) sediment retention pond on the quarry floor that is adequate to hold the SMARA-required design level storm for a detention basin; (ii) 100 year, 24 hour storms will be contained within the quarry floor; (iii) a bio-retention basin at the site of the asphalt plant; and (iv) a covered fueling area with a drain inlet, media filter that will collect surface run-off, were sufficient to adequately protect water quality.
- (vi) Land Use/Planning. The Project Site has a General Plan Land Use Category of Rangeland and is zoned Rangeland. The Board received comments expressing concerns that the proposed Zoning Ordinance Amendments are not consistent with the County's 2009 General Plan and that the creation of the MP Overlay Zoning District will affect 41% of the privately owned lands in Mendocino County.

The Board finds that there are many different policies and goals in the County's 2009 General Plan and that the Board must weigh and balance these policies to determine if a project is consistent with the General Plan. The Board finds that: (a) aggregate extraction is the "processing of a natural resources" as is set forth in Section 4-8 of the General Plan; (b) the Rangeland Land Use Classification and Policy DE-17 expressly allow uses

that are related to and compatible with processing and development of natural resources; and (c) making asphalt from aggregate that was extracted on-site is compatible with the "processing and development natural resources" within the meaning of General Plan Policy DE-17.

The Board finds that the proposed amendments to the County's Zoning Ordinance will not result in development of 41% of the privately owned lands in the County because the language of the ordinance specifically limits the application of the MP Zoning Overlay to lands with Rangeland as their base zoning; lands not in the flood zone; and lands not enrolled in Williamson Act Contracts.

The Board further finds that the RDEIR determined that of the nine sites currently zoned Rangeland, which have quarries on the site, only one site, the Blue Ridge Rock Quarry site is zoned Rangeland and has the potential to have an asphalt plant. Blue Rock's permits expire in 2016 and there is no evidence before the Board that the operator intends to apply for the permits necessary to have an asphalt plant. Thus, the Board find that there is no evidence that the Zoning Ordinance amendments will result in a significant number of additional asphalt plants because only one other parcel has the potential to be practically and economically viable and any assertion that the amendments will result in additional permit applications for asphalt plants is speculation because there are no pending, known or reasonably foreseeable asphalt plant permit applications. The Board further finds that it is not required to engage in speculation or to analyze speculative impacts. (CEQA Guideline §15145.) Furthermore, if any such hypothetical application were to be submitted, the application would be a separate discretionary decision and would require its own CEQA review and permitting process.

- (vii) Transportation/Traffic. The Board received a number of comments expressing concern about the safety of Project-generated traffic and the proposed improvements to Highway 101 are required in Mitigation Measure 4.4-B.1 through 4.4-B.3. The Board notes that CalTrans is a responsible agency for the Proposed Project and that CalTrans has substantial expertise when reviewing plans for improvements to State highways. CalTrans submitted a letter dated March 21, 2012, stating that CalTrans is performing a Preliminary Engineering Evaluation Report (PEER) and that the proposed improvements to Highway 101 contain appropriate design elements that best fit existing conditions.

6. Miscellaneous.

The findings and determinations set forth in this Resolution are based upon the record of these proceedings. References to specific statutes, ordinances, regulations, reports, or documents in a finding or determination are not intended to identify those sources as the exclusive bases for the finding or determination.

7. Summary.

The foregoing findings and determinations are true and correct, are supported by substantial evidence in the record, and are adopted as hereinabove set forth.

8. Custodian of Records.

The Clerk of the Board is designated as the custodian of the documents and other materials that constitute the record of the proceedings upon which the Board's decisions herein are based. These documents may be found at the office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Ukiah, California 95482.

The foregoing Resolution introduced by Supervisor _____, seconded by Supervisor _____, and carried this 9th day of _____, 2012, by the following vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

JOHN McCOWEN, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
JEANINE B. NADEL, County Counsel

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy