



## COUNTY OF MENDOCINO

### DEPARTMENT OF PLANNING AND BUILDING SERVICES

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## MEMORANDUM

**Date: December 7, 2017**

**To: Planning Commission**

**From: Planning and Building Services**

**Subject: UR\_2016-0002 (Blue Ridge Rock Quarry) Modifications and Additions  
to Recommended Findings, Conditions of Approval and Mitigation  
Measures**

Staff received comments from the applicant as well as the California Department of Fish and Wildlife on the recommended conditions of approval and as such is recommending several modifications and additions to the recommended conditions and additions to the recommended findings. Deletions are shown as ~~stricken~~ and additions are shown as underlined. The recommended changes are shown in the attached revised resolution for this project.

### **Modification of Findings:**

On November 30, 2017 Staff received a phone call from the California Department of Fish and Wildlife with concerns about some of the mitigations measures contained in the Mitigated Negative Declaration. The concerns primarily centered around potential impacts to the foothill yellow-legged frog, which has recently been designated a candidate species for listing. As a result of this candidate status of the foothill yellow-legged frog, a more restrictive condition is necessary to ensure that the resource is protected from any potential impacts resulting from the project. Due to the fact that the proposed modification of conditions will modify mitigation measures contained in the Mitigated Negative Declaration additional findings are required pursuant to Public Resources Code Section 15074.1, as follows:

Finding 13: After circulation of the proposed Mitigated Negative Declaration for the proposed project, California Department of Fish and Wildlife (CDFW) provided comment on the proposed mitigations for several identified resources within the project site. As a result of the CDFW comments, revised mitigation measures are recommended. The proposed revised mitigation measures are equivalent and more effective in mitigating or avoiding potential significant impacts from the proposed project and, in itself, will not cause any potentially significant impacts on the environment.

In addition to Finding 13 above, Staff suggests inclusion of Finding 14 to explicitly state the required Use Permit findings. While the existing findings in the resolution include the required use permit findings, Staff felt that it would be appropriate to include the verbatim text from Mendocino County Code so as to prevent any confusion. Thus, Staff recommends addition of Finding 14 to demonstrate conformity with Mendocino County Code Section 20.196.020, as follows:

### Finding 14: Use Permit Findings:

- a. That the establishment, maintenance or operation of a use or building applied for is in conformity to the General Plan.
- b. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
- c. That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or

injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use is necessary for the public health, safety or general welfare, the finding shall be to that effect.

d. That such use preserves the integrity of the zoning district.

**Modification of Conditions of Approval and Mitigation Measures:**

Staff is recommending modification of Condition 1 to ensure consistency with County Code requirements and provide a definitive expiration date for this project. The second recommended change to conditions relates to Condition 8 which requires compliance with all mitigation measures and conditions of approval from the underlying use permit (U #10-95). The applicant has suggested, and staff agrees, that the cleanest application of the previous conditions is to list them with updated information from the proposed renewal with the recommended conditions under this permit. This will result in modification of Condition 1 and 15, deletion of Condition 8, and addition of Conditions 30 through Conditions 51, as renumbered after deletion of Condition 8. The recommended changes are shown in the attached revised resolution for this project as well as outlined below.

~~**Condition 1:** This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Board of Supervisors has expired and no appeal has been filed with the Board of Supervisors. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.~~

This permit shall become effective after all applicable appeal periods have expired or appeal processes exhausted. Failure of the permittee to make use of this permit within one year or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit. This permit shall expire on December 7, 2047. The applicant has sole responsibility for renewing this permit before the expiration date listed above. The County will not provide a notice prior to the expiration date.

~~To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.~~

~~**Condition 8:** All mitigation measures and conditions of approval included under Use Permit #10-95 shall continue to apply.~~

**Condition 15:** \*\*Until July 31, 2018, or such time as a determination has been made regarding the listing status of the foothill yellow-legged frog, an Incidental Take Permit shall be required from the California Department of Fish and Wildlife before removing sediment from the two basins where the foothill yellow-legged frogs were observed (as identified in Attachment I of this report, Figure 3. Biological Resources Blue Ridge Rock Quarry). If the foothill yellow-legged frog becomes listed, the applicant shall consult with the California Department of Fish and Wildlife and obtain the necessary permit(s) to remove sediment from these ponds. Should bullfrogs be detected during biological surveys, the applicant shall consult with the California Department of Fish and Wildlife to determine whether a Bullfrog Management Plan will be required. If the foothill yellow-legged frog is not listed, the following condition shall apply:

A qualified biologist shall survey the sediment basins for all life stages of foothill yellow-legged frogs prior to sediment removal activities. A qualified biologist shall relocate the foothill yellow-legged frog outside of the project area if encountered.

**Condition 30:** The rock quarry operation shall not exceed a total of 6,000,000 cubic yards of rock, with an annual limit of 200,000 cubic yards of rock per year for 30 years.

**Condition 31:** The applicant shall submit a Mining Inspection and Monitoring fee to the Department of Planning and Building Services, as outlined in the adopted County fee schedule, within thirty (30) days of permit issuance. This fee shall be submitted each year to Planning and Building Services prior to scheduling the annual inspection

**Condition 32:** This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2266.25 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period. Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has “no effect” on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. The applicant has the sole responsibility to insure timely compliance with this condition.

**Condition 33:** An Indemnification Agreement which has been signed by the applicant, shall be filed with the Department of Planning and Building Services. The indemnification Agreement shall be on the form provided by the Department of Planning and Building Services.

**Condition 34:** The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.

**Condition 35:** No material shall be placed into or where it may pass into any stream or watercourse in quantities which would be deleterious to fish, wildlife or other beneficial uses.

**Condition 36:** During the non-operating months, quarried rock will be stockpiled at a slope not exceeding 2:1.

**Condition 37:** Noise levels created by the operation as measured at the nearest residence other than that of the mine owner or operator shall not exceed 55 dBA Ldn.

**Condition 38:** All non-turbo charged equipment shall have approved spark arrestors installed and shall carry an “A,B,C” type fire extinguisher.

**Condition 39:** That the applicant shall grant access to the property during hours of operation to permit Department of Fish and Wildlife personnel, Regional Water Quality Control Board personnel, and County representatives or any consultants hired by the County for inspection, enforcement, or monitoring activities deemed desirable by the County. The applicant shall designate an individual who is to be available at all times for purposes of supplying information deemed necessary by the authorized County representatives in connection with such work during working hours.

**Condition 40:** The applicant shall annually supply to the Director of the Department of Planning and Building Services, within sixty (60) days of the permit/plan anniversary date, an annual accounting of the quantities and types of materials extracted and/or processed from each location (Mendocino County Code Section 22.16.041(r), Ordinance Number 3263, adopted 1979). The accounting report shall indicate the dates on which the specified volumes were removed, the method used to calculate the volume figures and the signature of the person responsible for establishing the volume figures.

**Condition 41:** That there be no signing allowed for the operation other than those directional or warning signs allowed by Mendocino County Code Section 20.184.025(A).

**Condition 42:** There shall be no on-site fuel storage in association with this project.

**Condition 43: a.** The applicant shall provide Mendocino County with a cash or surety bond or other acceptable form of financial assurance for the reclamation plan and mitigation measures. The bond shall be available to both the County and the Department of Conservation. Any withdrawals made by the County or Department of Conservation for reclamation shall be redeposited by the applicant within 30 days of notification.

The bond amount shall be calculated based on the cost estimate submitted by the applicant and approved by both County staff and the Department of Conservation for the approved reclamation procedures. The bond shall be established and in place within six (6) months of project approval. Each year, following the annual site inspection, the bond amount shall be adjusted to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

The security bond is not set up to replace the applicant's responsibility for reclamation or mitigation, but to assure funding for the reclamation plan and mitigation measures. Should the applicant fail to perform or operate within all the requirements of the approved reclamation plan, the County or Department of Conservation will follow the procedures outlined in Sections 2773.1 and 277.4 of the Surface Mining and Reclamation Act (SMARA), regarding the encashment of the bond and applicable administrative penalties, to bring the applicant into compliance. The requirements for the bond will terminate when the approved reclamation plan and mitigation measures have been completed.

**b.** Implementation and Verification. The financial assurance shall name both the County and the Department of Conservation as payees per the requirements of AB 3551. The amount will be based on an estimate of reclamation cost provided by the applicant and subject to review by both County staff and Counsel and the Department of Conservation. The financial assurance will be reviewed on an annual basis for adequacy and shall be released when the approved project, mitigation measures and final reclamation plan activities have been completed.

**Condition 44:** That the hours of operation be limited to between 7:00 am and 6:00 pm on weekdays and Saturdays and up to 45 nights per year for haul-out only.

**Condition 45:** The applicant/operator shall maintain the operation in compliance with the Storm Water Pollution Prevention Plan.

**Condition 46:** The applicant shall submit an annual report to the Department of Planning and Building Services of the dates the sedimentation ponds were cleaned and the amounts of sediment removed and the methods of sediment disposal. The report shall be submitted no later than December 31 of each year.

**Condition 47:** The applicant shall comply with the provisions/recommendations outlined in the Mining and Reclamation Plan dated July 6, 2017, prepared by Crawford & Associates, Inc. Said Reclamation Plan is on file with the Department of Planning and Building Services.

**Condition 48:** A 50 foot buffer shall be established from all existing water courses except where roads exist as of the commencement of operations.

**Condition 49:** Where feasible, as each phase of the quarry operation is completed, overburden covered with topsoil shall be graded onto the benches and/or landings and shall be seeded, as provided for in the Mining and Reclamation Plan dated July 6, 2017.

**Condition 50:** Where feasible, the final cut banks shall be either terraced or left at a slope no steeper than one (1) horizontal to one (1) vertical, and that the slope shall be recovered with soils and seeded to encourage revegetation or be constructed per the engineered grading plans and

revegetated per the Mining and Reclamation Plan dated July 6, 2017, on file with the Department of Planning and Building Services.

**Condition 51:** A 50-foot setback shall be required between project-related activity and Assessor's Parcel Number 050-460-05 until evidence is provided that demonstrates that the applicant has obtained the legal right to use the parcel for the purposes described in the permit, such as by ownership or lease. Until such time as the legal right to use the parcel has been obtained for APN 050-460-05, the operator shall visibly field stake boundaries of property lines to ensure that mining activities do not encroach upon APN 050-460-05.

**Revised Recommendation:**

By resolution, adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and grant a Surface Mining Use Permit Renewal/Modification and Reclamation Plan Amendment for the Project, as proposed by the Applicant, based on the facts and findings and subject to the conditions of approval, as revised at the December 7, 2017 public hearing.