

Resolution Number _____

County of Mendocino
Ukiah, California

MARCH 18, 2021

REC_2019-0001 - RICHARD & MARGARET ROWLAND

RESOLUTION OF THE PLANNING COMMISSION, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, ADOPTING AN ADDENDUM TO A MITIGATED NEGATIVE DECLARATION AND GRANTING A MODIFICATION TO RECLAMATION PLAN FOR AN EXISTING OPERATION WITH VESTED RIGHTS TO MINE.

WHEREAS, the applicant, RICHARD & MARGARET ROWLAND AND GRIST CREEK AGGREGATES, LLC, filed an application for modification to an existing Reclamation Plan with the Mendocino County Department of Planning and Building Services 14± miles southwest of Covelo town center, lying on the north side of State Highway 162 (SR-162, AKA Covelo Road), 0.2± miles west of its intersection with Laytonville Dos Rios Road (CR 322), located at the confluence of the Middle Fork and Mainstem of the Eel River (APNs: 035-040-36 & -45), AKA Rowland Bar (CA MINE ID 91-23-0065)., 49600 COVELO RD, COVELO; 0350404500; General Plan RMR40;; Zoning UR:40/FP;; Supervisorial District 3; hereafter referred to as the "Project"; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*; CEQA) and the CEQA Guidelines (Title 14 California Code of Regulations section 15000 *et seq.*), a Mitigated Negative Declaration ("MND") was previously prepared for the governing use permit UR 71-77/2004 and was noticed and made available for agency and public review on April 27, 2005 and was adopted by the Planning Commission on May 19, 2005 and

WHEREAS, Section 15164 of the CEQA Guidelines provides that an addendum to a previously adopted MND may be prepared if only minor technical changes or additions to the project are necessary and if none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent environmental impact report or mitigated negative declaration have occurred; and

WHEREAS, County staff has prepared an Addendum to the adopted Negative Declaration related to the proposed Project, which is attached to this resolution as Exhibit "B" and incorporated herein by this reference ("Addendum"), and which determines that none of the conditions described in CEQA Guidelines Section 15162 will occur as a result of the Project; and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on March 18, 2021, at which time the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Addendum to the previously adopted Mitigated Negative Declaration and the Project. All interested persons were given an opportunity to hear and be heard regarding the Addendum to the previously adopted Mitigated Negative Declaration and the Project; and

WHEREAS, the Planning Commission has had an opportunity to review this Resolution and finds that it accurately sets for the intentions of the Planning Commission regarding the Addendum to the previously adopted Mitigated Negative Declaration and the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission makes the following findings;

1. **Existing Vested-Right Mining Operation Findings:** On January 30, 2013, the Department of Planning and Building Services (PBS) determined that the Rowland Bar mining operation on the Project site constituted a vested right, including the extraction of up to 50,000 cubic yards of material per year, based on records that documented the established and recognized historical use of the site as a mining operation.
2. **California Environmental Quality Act Findings:** That the Project would result in no new significant adverse impacts to the physical environment or in an increase in the severity of any previously identified potentially significant impacts. The California Environmental Quality Act (CEQA) Section 15162 states, "When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency has determined substantial changes are proposed on the basis of substantial evidence in the light of the whole record..." No significant changes are being proposed for the modification of the original reclamation plan and an Addendum to a Mitigated Negative Declaration previously adopted in 2005 is approved.
3. **General Plan and Zoning Consistency Finding:** That the Project would reclaim a vested right gravel extraction operation, which is a natural resource development activity that is consistent with the General Plan Remote Residential (RMR) land use classification (Development Element Policy DE-15) and is a Mining and Processing use is an allowable use within the Upland Residential (UR) zoning district (County Code Section 20.060.025(E)).
4. **Surfacing Mining and Reclamation Finding:** That the Project complies with the Surface Mining and Reclamation Ordinance, Chapter 22.16 of the Mendocino County Code, and the California Surface Mining and Reclamation Act (SMARA), which must be met prior to grading activities and for the duration of this permit.

BE IT FURTHER RESOLVED that the Planning Commission hereby adopts the Addendum to the previously adopted Mitigated Negative Declaration attached hereto as Exhibit "B". The Planning Commission certifies that the Addendum to the Mitigated Negative Declaration has been completed, reviewed, and considered, together with the comments received during the public review process, in compliance with CEQA and State and County CEQA Guidelines, and finds that the Addendum to the Mitigated Negative Declaration reflects the independent judgment and analysis of the Planning Commission.

BE IT FURTHER RESOLVED that the Planning Commission hereby grants the requested Reclamation Plan Modification subject to the Conditions of Approval in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary as the custodian of the document and other material which constitutes the record of proceedings upon which the Planning Commission decision herein is based. These documents may be found at the office of the County of Mendocino Planning and Building Services, 860 North Bush Street, Ukiah, CA 95482.

BE IT FURTHER RESOLVED that the Planning Commission action shall be final on the 11th day after the date of the Resolution unless an appeal is taken.

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

ATTEST: JAMES F. FEENAN
Commission Services Supervisor

By: _____

BY: NASH GONZALEZ
Interim Director

ALISON PERNELL, Chair
Mendocino County Planning Commission

EXHIBIT A

CONDITIONS OF APPROVAL AND MITIGATION MEASURES

MARCH 18, 2021

REC_2019-0001 – (RICHARD & MARGARET ROWLAND)

Reclamation Plan Modification to include a secondary gravel bar to the existing riverbed gravel extraction operation. The operation, for which a vested right has been granted for both the existing and secondary gravel bars; includes the extraction of up to 50,000 cubic yards of sand and gravel per year, and a maximum anticipated depth of 20 feet.

APPROVED PROJECT DESCRIPTION: Reclamation Plan Modification to include a secondary gravel bar to the existing riverbed gravel extraction operation. The operation, for which a vested right has been granted for both the existing and secondary gravel bars; includes the extraction of up to 50,000 cubic yards of sand and gravel per year, and a maximum anticipated depth of 20 feet.

CONDITIONS OF APPROVAL AND MITIGATION MEASURES (as indicated by “”):**

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game 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 \$2,530.25 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the action by the Planning Commission.** 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 project is approved) or returned to the payee (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The permit holder has the sole responsibility to insure timely compliance with this condition.**
- **2. A maximum of 50,000 cubic yards of material may be removed annually. 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. There is no expiration date with this Reclamation Plan Amendment based on the vested right determination by the County of Mendocino.
- **3. Equipment shall not be operated within 20 horizontal feet of the low water channel on the Middle Fork Eel and within a 30 foot buffer from the toe-of-slope on the southern boundary of the Project Area, with the exception of minor maintenance to the existing permanent access/haul road that traverses the slope to access the primary extraction area. **Installation and use of a temporary crossing to access the secondary gravel bar shall be removed at the end of each season.** The “alcove skimming” method shall continue to be used to minimize changes in bar morphology. Accordingly, extraction shall maintain an undisturbed head buffer that shall begin at the upstream end of the primary and secondary extraction areas and extend downstream for a distance equaling approximately 30-35 percent of the total length of the exposed bars to protect bar stability as recommended in NOAA Fisheries’ sediment removal guidelines. An undisturbed lateral buffer shall occur between the outer edge of the bars and the low-flow channel providing a vertical offset of two to four feet from the water’s edge and a horizontal offset of not less than 20 feet in width from the water’s edge. An undisturbed lateral buffer shall occur along the outer bank measuring 30 feet in width from the toe-of-slope. The remaining interior portion of the bars may be skimmed down to a longitudinal slope approximating the gradient of the adjacent low-flow channel from the downstream end of the bars ascending to the head buffer.

- **4. All extraction and reclamation activities associated with this application shall be confined to the primary and secondary extraction areas and limited to the period of July 15 through October 15. All extraction and reclamation activities shall occur during the late-summer to early-fall low-flow period when salmonids are unlikely to be present in the nearby channel. The proposed extraction period is July 15 through October 15 when low-flow and warm water conditions make it highly unlikely that salmonids would be present in the Middle Fork Eel River channel within, or adjacent to the Project area.
- **5. The applicant shall maintain the existing six monitoring cross-sections, the longitudinal profile through the thalweg of the Middle Fork Eel River along the Rowland Bar, and the digital terrain modeling that was previously established. Annual monitoring data shall include a digital copy of the pre- and post-extraction survey data that includes distance, elevation, notes, replenishment volume and extraction volumes for that year. These annual reports shall be compiled by the applicant to result in a 20-year report at the end of the reclamation plan period showing all combined survey data and a brief summary of the data.
- **6. This permit shall be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
- **7. Prior to the start of any approved reclamation activities, the applicant shall submit proof that they obtained all permit authorization required to comply with all conditions established by any agencies having jurisdiction including the Army Corps of Engineers, the California Department of Fish and Wildlife, the Regional Water Quality Control Board, and the Mendocino County Air Quality Management District. Proof of all such authorization(s) shall be submitted to the Department of Planning and Building Services prior to the start of any approved reclamation activities.
- **8. Prior to the commencement of gravel removal operations, the applicant shall submit to the Department of Planning and Building Services an accurate plan of the site on which reference points for required cross-sections and photographs are clearly plotted.
- **9. Prior to the commencement of gravel removal operations each year, the applicant shall submit to the Department of Planning and Building Services and Mendocino County Water Agency the following:
- a. Aerial or land based photos of the site taken in such a manner to show clearly the full extent of the removal area, any stockpiling or processing area, and reference to the stream or other predominant natural features in the area. Photos shall include some method for comparison of scale and shall be of size (no smaller than 3-inches by 3-inches) and quality acceptable to the Department of Planning and Building Services. Accompanying such photos shall be a copy of the site plan which includes the designation of the points from where photos were taken and the direction the camera was pointing, keyed to each photograph.
 - b. Accurate cross-sections shall be taken across the gravel bar(s), a minimum of one taken at the upstream end of the bar and one taken at the downstream end of the bar. Additional data shall include one cross-section located at the upstream footing of the Laytonville-Dos Rios Road Bridge (10C-005) and one cross-section located at the downstream footing of the bridge. The cross-sections shall show the existing water level, the gravel bar and the channel banks. Cross sections shall be related to some permanent reference points above the ten-year flood plain sufficient to enable future cross-sections to be made at approximately the same locations, and references to a common point of elevation. A description of the location of the end points of each cross-section should be given. The description should be clear enough that the Department of Planning and Building Services can locate the end points. A photograph of each end point shall also be submitted. Accompanying the cross-sections shall be a copy of the site plan on which the reference points for the cross-sections are plotted. A copy of all field notes including survey data shall be submitted with each cross-section drawing. The cross-sections and accompanying information must be of a quality acceptable to the Department of Planning and Building Services, Mendocino County Water Agency, Caltrans and the Mendocino County Department of Transportation. Additionally, survey data shall be provided to the Mendocino County Water Agency in a disk form in distance verses elevation format on a common spreadsheet program such as Excel, Quatro-Pro or other program acceptable to the Mendocino

County Water Agency. A paper print-out shall also be provided.

c. The photograph and cross-section information in (a) and (b) above shall be submitted in a form that will enable accurate annual comparisons. Each submittal sheet shall indicate the date the photographs or cross-sections were taken and be signed by the person doing the measurement

10. Within 30 days of approval, and annually thereafter until reclamation of the site is complete, the applicant shall submit the appropriate mining inspection and monitoring fee to the Department of Planning and Building Services. Said fee may be subject to change over the period of approved reclamation activities.
- **11. Any current or modified requirements set forth by the Department of Fish and Wildlife (DFW) or the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) shall be adhered to throughout the life of the approved reclamation activities.
- **12. Within 30 days prior to commencement of any extraction, the applicant shall submit to the Department of Planning and Building Services a written statement that provides the operator's name, contact person and proposed quantities to be mined. Prior to any subsequent change of operators, the applicant shall notify the Department of Planning and Building Services 30 days prior to extraction. The applicant shall provide an accounting of all materials mined by each operator. Under no circumstances shall mined quantities exceed the annual limit established by this entitlement. Any change in operators shall not exempt the applicant/operators from providing required monitoring information.
- **13. The applicant shall notify the Department of Planning and Building Services and the Mendocino County Water Agency at least 10 days prior to the dates of pre-harvest survey, post-harvest survey and actual extraction of the site so as to be available for consultation and or inspection of the site.
- **14. Annually, prior to July 1st, the applicant shall supply to the Department of Planning and Building Services, the Department of Fish and Wildlife and the Mendocino County Water Agency an accounting of the quantities and types of materials extracted ~~that~~ during the previous season. 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 completing the report. Such report shall be submitted even if no material was removed ~~that-during the prior~~ season.
- **15. Following winter flows, prior to the next season's operations, the applicant shall submit to the Department of Planning and Building Services, Mendocino County Water Agency, Mendocino County Department of Transportation and Caltrans-Division of Structures new photographs and cross sections in the same locations as the pre-extraction photographs and cross-sections. The Department of Planning and Building Services shall annually review this information in consultation with other jurisdictional agencies.
- **16. Mining activity shall remain confined to only the Primary Extraction Areas which includes the primary and secondary gravel bars.
- **17. The applicant shall comply with all regulations of the Mendocino County Air Quality Management District, including obtaining any required additional permits necessary for the site of this application.
- **18. Any stationary onsite internal combustion engines over 50 horsepower (i.e. large power generator or pumps) may require a permit from the Mendocino County Air Quality Management District, depending on fuel sources and level of operation.
- **19. There shall be no signing allowed for the operation other than those directional or warning signs required by the Department of Transportation.
20. The applicant shall grant access to the property during hours of operation to permit 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.
- **21. The applicant shall return the site to as close to its natural state as possible upon completion of the project,

including a revegetation program if necessary. Reclamation shall also include the removal and grading of the temporary secondary bar crossing and the haul/access road that provides access across the gravel bar, from the bottom of the existing permanent access/haul road to the extraction area on the bar, pursuant to the Department of Fish and Wildlife standards for the reclamation of gravel bars. ~~following the harvesting of gravel Reclamation Plan, Appendix C, Sheets 1 and 2).~~

- **22. Gravel extraction shall be limited to quantities no greater than replenishment by natural bedload transport processes. Prior to the issuance of yearly streambed alteration permits (1603), the Department of Fish and Wildlife should review the gravel operation and determine the amount of gravel replenished subsequent to previous extraction. If the Department of Fish and Wildlife determines that inadequate recovery has occurred, they should notify the Department of Planning and Building Services. Upon notification, the Department of Planning and Building Services shall limit the contractor to less extraction activity or halt any extraction for the season.

Utilize a shallow-alcove extraction method because of the potential creation of low-velocity habitat for juvenile salmonids during moderately elevated flows during the fall, winter, and spring months. Sideslopes (into the alcove) no greater than 2:1 would also be followed during extraction. The downstream end of the alcove would have an elevation just above the low-flow elevation of the Main Stem Eel River, and this feature would allow inundation of the shallow alcove during elevated winter flows, thus forming a low-velocity backwater habitat.

The alcove configuration, conforming to NOAA Fisheries recommendation and guidelines, will be adjusted each time the bar is to be harvested. A minimum of 3,000 cubic yards of material must be available within the shallow alcove configuration before any extraction takes place. The cross-section profile comparison from the prior post-extraction survey to the late-spring gravel bar configuration provides the basis for estimating the amount of gravel available for extraction and the delineation of the proposed extraction location (shallow alcove) for the summer-fall extraction season.

All extraction activities shall be conducted during the late-summer to early-fall low-flow period when salmonids are unlikely to be present in the nearby channel. The proposed extraction period is July 15 through October 15 when low-flow and warm water conditions make it highly unlikely that salmonids would be present in the Middle Fork Eel River channel within, or adjacent to the Project area.

- **23. Noise levels created by the operation as measured at the nearest residence other than that of the mine owner or operator shall be consistent with the 2009 General Plan noise standards as provided in Policies DE-100 through DE-103. Property occupants located adjacent to the project boundary shall be sent a notice, at least 15 days prior to commencement of reclamation activities each year, of the beginning of reclamation along with a contact name for the operator's Noise Disturbance Coordinator and a telephone number where residents can contact that person about the reclamation process and register concerns.

The Disturbance Coordinator shall be responsible for responding to any local complaints about construction noise. When a complaint is received, the Disturbance Coordinator shall notify the County within 24-hours of the complaint and determine the cause of the noise complaint (e.g. starting too early, bad muffler, etc.) and shall implement reasonable measures to resolve the complaint, as deemed acceptable by the County Department of Planning and Building Services.

- **24. The hours of operation shall be limited to between 7:00 a.m. and 5:00 p.m. on weekdays. There shall be no earth moving or transportation activities on Saturdays and Sundays.

25. These reclamation activities are approved without a legal determination having been made upon the number, size or shape of parcels encompassed within the described boundaries of the reclamation area. Should, at any time, a legal determination be made that the number, size or shape of parcels within the reclamation area described boundaries are different than that which is legally required by this approval, this approval shall become null and void.

26. These approved reclamation activities shall be subject to revocation or modification by the Planning Commission upon a finding of any one (1) or more of the following grounds:

a. The reclamation plan approval was obtained or extended by fraud.

b. One or more of the conditions upon which the reclamation plan was approved have been violated.

c. The activities for which the reclamation plan was approved are so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

**27. No material shall be placed into or where it may pass into any stream or watercourse in quantities that would be deleterious to fish, wildlife or other beneficial uses. The use of vertical and horizontal offsets will protect low flow channel confinement and integrity. The use of the general NOAA Fisheries guidelines for the shallow alcove configuration, which provide a vertical and a horizontal offset from the wetted channel, ensures that the extraction process takes place well away from the wetted channel, thus avoiding disturbance to anadromous salmonids or their instream habitat.

**28. 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. No disturbance shall occur within 10feet of the willow riparian scrub habitat located along the Main Stem Eel River bank on the south side of the river.

Each season, prior to any ground disturbance in the area, exclusionary fencing shall be installed to delineate the 10-foot buffer from the riparian habitat. The fence shall be maintained throughout the extraction season, and removed as part of the end-of-season and final reclamation (Phases 2 and 3).

**29. There shall be no on-site fuel storage in association with this project, nor shall any mobile fueling occur within the Project Area. All fueling and lubricating shall occur within the turnout on SH 162 and shall adhere to the BMP's set forth in the Industrial SWPPP prepared for the Project. Further, idle equipment stored outside of hours of operation will be parked on the haul/access road and over drip pads to prevent drips from reaching the gravel bar.

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

The bond amount shall be calculated based on a 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 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 Section 2773.1 and 2774.1 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.

**30b. 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.

**31. All non-turbo charged equipment shall have approved spark arrestors installed and shall carry "ABC" type fire extinguisher(s).

- **32. The existing permanent access road shall be maintained during operating season and winterized at the completion of each season by grading and ditching as necessary to minimize winter erosion and stream sedimentation.
- **33. No washing, crushing, screening or plant operations shall occur within the stream's high-flow channel.
- **34. Although no stockpiling is anticipated or proposed with this project, should the applicant/operator stockpile any materials, all materials will be stockpiled above the Ordinary High Water (OHW) mark as determined by the FEMA Flood Insurance Rate Map for the area or survey performed by a Licensed Land Surveyor/Civil Engineer which determines the OHW, as indicated by the silt line.
35. The Department of Planning and Building Services shall be notified in writing upon termination of each season's work so that annual inspections may be completed.
- **36. Although no cultural resources were identified within the Project Area, one potential historical resource is located near the south side of the river; thus, to ensure avoidance of this resource, prior to commencement of each season's extraction activities, a 20-foot buffer delineated with orange fencing shall be established and employees prohibited from entering the area. Any recommendations made by the County Archaeological Commission at its March 12, 2014 hearing, including that protection measures noted within the approved survey for the project (dated April 25, 2013) be strictly adhered to.

In the event that archaeological resources are encountered during normal operation activities at the site, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

Further, the title to all abandoned archaeological sites and historic or cultural resources on or in the submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (CSLC). Should any cultural resources on state lands be discovered during construction of the project, CSLC staff shall be notified.

37. Pursuant to Section 2772.7 of the California Public Resources Code, the applicant/operator shall have recorded with the County Clerk, a "Notice of Reclamation Plan Approval" that shall include:
- a. A statement that "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the County of Mendocino, a copy of which is on file with County Department of Planning and Building Services," and;
 - b. A legal description of the property subject to the said reclamation plan.
38. All recommendations made within the Amended Reclamation Plan for Rowland Bar (dated ~~January 2014~~ February 2020) prepared by Rau and Associates Compass Land Group shall be considered conditions of approval for the subject use permit and reclamation plan. The final reclamation and revegetation of the site shall be done in conformance with ~~the~~ said plan.

EXHIBIT B

ADDENDUM TO THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION

FOR

RECLAMATION PLAN MODIFICATION REC_2019-0001

Modified Project Description and Project History: The Mendocino County Planning Commission (County) adopted a Mitigated Negative Declaration (MND) for UR 71-77/04 on May 19, 2005. The project involved the renewal of an existing in-stream gravel mining operation on the site. Vested rights were granted by Mendocino County in 2013 based on findings that gravel extraction/instream mining had occurred on the site since the 1950's. A subsequent Reclamation Plan REC 2-2013 for the continued gravel extraction operation was approved by the Board of Supervisors on April 22, 2014 including adoption of an Addendum to the Mitigated Negative Declaration based on the prior surface mining entitlement.

The current project involves modifying the previously approved Reclamation Plan to include a secondary gravel bar as part of the instream mining operation. This secondary gravel bar lies within the determined vested rights for mining activities at Rowland Bar. The proposed addition of the secondary gravel bar will provide greater flexibility to the operator and trustee agencies in determining the annual extraction configuration to maintain channel form and function. No changes to the annual extraction amount, mining methods, equipment, or reclamation end use is being proposed.

Purpose: Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously adopted Mitigated Negative Declaration (MND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent MD have occurred. Section 15162 states that when an MND has been adopted for a project, no subsequent MD shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was certified as complete, shows any of the following: A) the project will have one or more significant effects not discussed in the previous MND; B) significant effect previously examined will be substantially more severe than shown in the previous MND; C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

No substantial changes are proposed which would require major revisions to the previously approved Mitigated Negative Declaration. None of the proposed changes to the project will increase the severity of previously identified significant effects. The proposed changes will not result in a new environmental effect. No additional mitigation is required.

Explanation of Decision Not to Prepare a Supplemental Mitigated Negative Declaration:

See Purpose section above. In every impact category analyzed in this review, the projected consequences of the proposed Reclamation Plan Modification are either the same or less than significantly increased compared to the project for which the Mitigated Negative Declaration was adopted.

Both the California Surface Mining and Reclamation Act (SMARA) and Chapter 22.16 of the Mendocino County Code (Surface Mining and Reclamation Ordinance) require reclamation plan approval for vested right operations. On July 9, 2020, comments were received from the California Department of Mining and Reclamation (DMR) regarding requirements of mining operator information, CEQA review process, and weed management. Compass Land Group submitted a response and clarification to DMR's comments on July 13, 2020. Of concern by DMR was the name and identification of the current operator which, in fact, was accurately listed in the Amended Reclamation Plan and therefore required no revisions to said plan. DMR raised the question of whether a CEQA review was conducted on the secondary gravel bar. Mining of the secondary gravel bar is vested, per Mendocino County determination in January 2013, and an Addendum to a previous Negative Declaration is being processed by the County for this reclamation plan modification. Lastly, Weed Management within the reclamation area is not anticipated as the project area consists solely of an instream gravel extraction operation. Compass Land Group's comments were submitted to DMR on July 15, 2020. It is presumed that these responses to DMR's comments were satisfactory as no response was received from DMR.

In completing the 2014 MND Addendum, staff emphasized that the mining operation was recognized as a vested right and, therefore, was not in itself subject to a use permit or environmental review by the County. Therefore, environmental review for this project assesses only those environmental impacts caused by the implementation of the reclamation plan and not the impacts created by the mining operation. Also, as a general note, reclamation plans are largely designed to mitigate long term impacts of mining by providing for final site reclamation and/or restoration to conditions that are acceptable in terms of public and environmental safety, as well as the availability of the site for future land uses.

The project included mitigation measures approved for the extraction and reclamation activities in association with the Rowland Bar Use Permit # UR 71-77/2004. Revised mitigation measures and conditions of approval were incorporated based on recommendations by responsible agencies after completion of updated biological assessments, resource studies, and resource agency consultations. Exhibit B summarizes the recommended changes made to the original 2005 MND mitigation measures. With noted revisions, impacts were further mitigated below levels identified within the 2005 MND. As a result, the Addendum to the 2005 MND satisfied CEQA requirements per Section 15164.

New analyses were conducted for four specific areas found within the Environmental Checklist as part of R 2-2013. These included new evaluations of Geotechnical Stability, Biological Resources, Cultural Resources, Noise, and Greenhouse Gases, which are summarized as follows:

Geotechnical Stability – A Landslide Stability Assessment was performed in December 2013 as part of the Reclamation Plan to provide recommendations for stabilization of potential slide areas near the access road.

Biological Resources – New studies for Special Status Plant Species and Habitat, Wildlife and Fisheries were conducted for the project area (~~see Part 2 Attachment D Wildlife Assessment, May 16, 2013, and Attachment E- Biological Assessment, Galloway Enterprises, July 2020 April 2013~~) with mitigation proposed accordingly for project specific reclamation impacts as well as potential impacts from extraction activities covered by the recognized vested rights. The modified 2005 MND mitigation measures proposed by the applicant are recommended by PBS, based on consultation with responsible and trustee agencies, to further minimize impacts to resources that may occur during extraction operations and reclamation activities.

Cultural Resources - An updated Archaeological Inventory or study, ~~dated April 25, 2013 performed by Tom Origer and Associates, dated July 2020~~, was prepared for the Project. This study, ~~as with prior studies~~, found ~~previously~~ unrecorded historic resources in the vicinity, but outside of the project area. ~~As with previous comments and recommendations made by the Archeological Commission and California State Lands Commission, it was accepted by the County Archaeological Commission on March 12, 2014, with recommendations for the Project to avoid these resources as well as adhere to the study's other recommendations. Comments were received from the California State Lands Commission (CSLC) requesting notification in the event that any cultural resources are discovered on in the submerged lands of California. The addition of the continuation of~~ Condition Number 36 is recommended. ~~to ensure these and other concerns of~~

~~the County and Archaeological Commission are met.~~

Noise and Greenhouse Gas (GHG) Emissions - A study of noise impacts and greenhouse gas emissions was prepared for the Project by acoustics and air quality consultants Illingworth & Rodkin, Inc., dated May 14, 2013. With respect to noise impacts, recommended mitigation language would be updated from the 2005 MND to require that reclamation activities not generate noise exceeding noise standards found within the 2009 General Plan Update. Reclamation activities would also be restricted to Monday through Friday between 7:00 a.m. and 5:00 p.m., which is similar to past limitations on Rowland Bar extraction activities. See Conditions Number 23 and 24.

The 2005 MND did not assess potential greenhouse gas (GHG) emission impacts. Since that time, however, CEQA environmental review statute requires GHG impact. The May 14, 2013 study concluded that GHG emissions generated from reclamation equipment and related activities would fall well below significance thresholds used by the County Air Quality Management District. No mitigation is required as a result. Overall, noise and GHG impacts from reclamation of the site would be less than significant.

Vehicle Miles Traveled- On September 27, 2013, Governor Jerry Brown signed Senate Bill (SB) 743 into law, requiring jurisdictions to use Vehicle Miles Traveled (VMT) to analyze a project's transportation impact on the environment. This requirement eliminates using level of service (LOS) as a basis for determining significant impacts and identifies VMT as the preferred California Environmental Quality Act (CEQA) transportation metric. The Mendocino Council of Governments' (MCOG) developed a screening tool to determine if a project's VMT will create an environmental impact. The screening tool uses data from the MCOG traveling forecast model to compare the VMT to similar projects for the sub-region in which a project is located. In 2017, the California Air Resources Board (CARB) identified VMT reductions relationship to State Climate Goals including the VMT reductions needed to meet the State's Greenhouse Gas emission reduction targets by 2050. This document identifies two specific thresholds to meet these targets, a 14.3-percent reduction in total VMT per capita, and a 16.8-percent reduction in light-duty vehicle VMT per capita.

The proposed project is located in an area where existing activity and uses generate a low VMT. The site was evaluated using the MCOG screening tool under the analysis of the 14.3-percent threshold and passed (14.3 percent analysis represents the threshold required by the state in order to meet 2050 GHG reduction goals) and means the project generated VMT is likely at or below the threshold set by the MCOG for the area in which the project is located. This evidence supports a conclusion that the project would have a less than significant VMT impact under baseline plus project conditions. This conclusion would also apply under cumulative conditions presuming no substantial changes to the subarea land use and transportation context.

Findings: Based upon this review, the following findings are supported:

1. For the modified project there are no substantial changes proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

No new significant effects or increase of severity of effects are anticipated. The proposed reclamation modification does not entail substantial changes to the existing mining operation that has occurred on the site since the 1950's. No additional changes are to occur from this modification and staff has determined there to be no significant impacts.

2. For the modified project no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Based on the discussion in Finding 1, above, no new significant environmental effects resulting from the proposed use permit modification are anticipated.

3. For the modified project there has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted as complete.

There has been no new information of substantial importance which was not known and could not have been known at the time the previous MND was complete. The baseline conditions describing the overall impacts of the previously approved use permit remain the same.

4. The proposed changes do not constitute a change in the level of significance previously discussed in the original MND. As such, it is concluded that: the current project will not have one or more significant effects not discussed in the previous MND. Furthermore, significant effects previously examined will not be substantially more severe than shown in the previous MND. There are no mitigation measures or alternatives previously found not to be feasible that would in fact be feasible and would substantially reduce one or more significant effects of the project. .

The proposed reclamation modification does not involve changes to, or analysis of any mitigation measures. No new potential impacts have been identified requiring new mitigation measures to be developed.

5. Finally, there are no mitigation measures or alternatives identified in this analysis which are considerably different from those analyzed in the previous MND, and which would substantially reduce one or more significant effects on the environment.

The proposed reclamation modification does not involve changes to, or analysis of any mitigation measures.

Conclusion: Based on these findings it is concluded that an Addendum to the adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed Reclamation Plan Modification.