



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA # 6(c)

- Arrangements for public hearings and timed presentations must be made with the Clerk of the Board in advance of public/media noticing
- Agenda Summaries must be submitted no later than *noon* Monday, 15 days prior to the meeting date (along with electronic submittals)
- Send 14 complete sets (original, single-sided+13 copies) – Items must be signed-off by appropriate departments and/or County Counsel
- Transmittal of electronic Agenda Summaries and associated records must be emailed to: bosagenda@co.mendocino.ca.us
- Electronic Agenda Transmission Checklist: ☐ Agenda Summary ☐ Records ☐ If applicable, list other online information below
- Executed records will be returned to the department within one week. Arrangements for expedited processing must be made in advance

TO: Board of Supervisors **DATE:** March 9, 2015

FROM: Third District Supervisor Tom Woodhouse **MEETING DATE:** March 17, 2015

DEPARTMENT RESOURCE/CONTACT: Andy Gustavson **PHONE:** 234-6650 Present ☒ On Call ☐
Steve Dunncliff **PHONE:** 234-6650

Consent Agenda ☐ Regular Agenda ☒ Noticed Public Hearing ☒ Time Allocated for Item: 1 Hour

■ **AGENDA TITLE:** **Noticed Public Hearing - Discussion and Possible Adoption of a Resolution on a Determination Regarding Section 20.188 of the County Code (Development Review) and whether the Resumption of Asphalt Processing at the Industrially Zoned Longvale Site (APN 036-190-26) Constitutes a "New or Changed" Use as Defined in 20.188.025(C)**

■ **PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:** On August 17, 2009, the Board of Supervisors certified an Environmental Impact Report (EIR) for an update of the County General Plan, including a land use change of the subject property from Rangeland (RL160) to Industrial (I). A subsequent rezone (#R 4-2009) of the Longvale Site from Rangeland (RL) to General Industrial (I-2) was adopted on May 11, 2010.

■ **SUMMARY OF REQUEST:** This item can only be considered by the Board after action to approve direct review of a zoning interpretation pursuant to Chapter 2.54 of the County Code (Agenda Item 6(b)). This code section allows the Board of Supervisors to take "original jurisdiction" over an administrative determination of the Department of Planning and Building Services pursuant to Chapter 2.54 of the County Code. Section 2.54.010(A) provides for the Board to "reserve to itself the functions of the planning agency when time is of the essence with respect to any permit or approval, based on the project's special contribution to the County's general welfare and economic wellbeing, including, but not limited to, projects that provide substantial employment opportunities, and involve County-wide infrastructure improvements." Section 2.54.010(B)(5) also provides that the Board may consider both the request for direct review and the subject of the approval at the same hearing where deemed appropriate and when properly noticed.

Grist Creek Aggregates (GCA) seeks a zoning determination in order to resume asphalt production at the Longvale Site (APN 036-190-26). The proposal includes replacing the former plant with a more efficient asphalt plant that would result in a decrease in process emissions for criteria pollutants. The subject property has a long established history as an aggregate processing and asphalt processing facility. In conjunction with the 2010 rezoning of the property from Rangeland to General Industrial, the Board found that the environmental impact report (EIR) for the 2009 General Plan update fully addressed the environmental impacts of the follow-up rezoning of the property. The General Plan Update EIR found that there would be no additional environmental impact as the ongoing activities were covered by conditions of approval from existing use permits and associated environmental documentation. The staff report accompanying the rezoning ordinance stated that a former 2002 use permit allowing processing and asphalt production under conditions of approval constituted a functional equivalent of Development Review for the Longvale Site, which would normally be

BOARD ACTION (DATE: 3/17/15): ☒ Approved ☐ Referred to _____ ☐ Other _____
RECORDS EXECUTED: ☐ Agreement: _____ ☒ Resolution: 15-054 ☐ Ordinance: _____ ☐ Other _____



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA # 6(c)

required for a "new or changed" industrial use per Chapter 20.188 of the County Code. GCA has provided an "Operational Statement" (dated February 24, 2015) describing the proposed resumption of asphalt production at the site. Included within the statement is a comparison of the proposed plant against the previous plant, demonstrating the efficiency of the newer equipment and the resulting decrease in process emissions for criteria pollutants. Also included is a proposed configuration showing the general layout of the equipment lying substantially within the footprint of the previous operating area (based on aerial photos from March 2004) and no closer to Outlet Creek. Based on a review of the 2002 use permit and the information provided by GCA, staff does not find the proposed resumption of asphalt production to constitute a new or changed use. The site is located approximately 2.5 miles east of Highway 101, extending along the north side of State Highway 162, between the highway and Outlet Creek.

■ SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT: N/A

■ ADDITIONAL INFORMATION ON FILE WITH THE CLERK OF THE BOARD (CHECKED BY COB IF APPLICABLE): ☐

FISCAL IMPACT:			
Source of Funding	Current F/Y Cost	Annual Recurring Cost	Budgeted in Current F/Y
N/A	N/A	N/A	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

■ SUPERVISORIAL DISTRICT: 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ All ☐ VOTE REQUIREMENT: Majority ☒ 4/5ths ☐

■ RECOMMENDED ACTION/MOTION: Adopt a resolution determining that resumption of asphalt production on APN 036-190-26 is not a new nor changed use pursuant to Mendocino County Code Section 20.188.025 requiring additional development review.

■ ALTERNATIVES: Do not adopt resolution.

■ CEO REVIEW (NAME): Alan D. Flora, Assistant CEO

PHONE: 463-4441

RECOMMENDATION: Agree ☒ Disagree ☐ No Opinion ☐ Alternate ☐ Staff Report Attached ☐

BOARD ACTION

☒ Approved Resolution
☒ Records Executed Res No 15-054

Date of Meeting 3/17/15

☐ Referred to _____

☐ Other _____

RESOLUTION NO. 15-054

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DETERMINING THAT RESUMPTION OF ASPHALT PRODUCTION ON APN 036-190-26 IS NOT A NEW OR CHANGED USE PURSUANT TO MENDOCINO COUNTY CODE SECTION 20.188.025 REQUIRING ADDITIONAL DEVELOPMENT REVIEW

WHEREAS, on February 17, 1972, the Mendocino County Planning Commission approved Use Permit #U 5-72 allowing for the extraction of gravel from bars along Outlet Creek located on Assessor's Parcel Number 036-190-26, on Highway 162 east of the community of Longvale (the "Site"), and the establishment of an aggregate processing plant including crushing, screening, hot plant (also known as an asphalt plant) and a redi-mix batch plant; and

WHEREAS, use permits for aggregate processing and for asphalt production were subsequently renewed, most recently on June 13, 2002, by use permit renewal #UR 5-72/2002, which involved both asphalt production and aggregate processing, and was subject to a mitigated negative declaration pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 *et seq.*, "CEQA") and conditions of approval; and

WHEREAS, as part of its General Plan update, adopted on August 17, 2009, the County of Mendocino changed the land use designation for the Site from Rangeland to Industrial; and

WHEREAS, the environmental impact report ("EIR") for the General Plan found that there would be no additional environmental impact from the land use designation change, as the ongoing activities at the Site were covered by previously granted use permits and associated environmental documentation; and

WHEREAS, by the adoption of Ordinance No. 4239 on May 11, 2010, the County rezoned the Site from Rangeland to Industrial (I-2) to bring the zoning of the Site into conformance with the General Plan, which ordinance was accompanied by a staff report which stated that, based on the General Plan EIR's analysis of the Site, the conditions of approval outlined in #UR 5-72/2002 function as an equivalent to the County's development review process and would continue to be maintained with the existing operation; and

WHEREAS, while the previous owner of the Site ceased asphalt production, the current owner, Grist Greek Aggregates, LLC, proposes to resume asphalt production at the Site, using a more efficient model plant and in a manner consistent with the conditions of approval of #UR 5-72/2002; and

WHEREAS, the more efficient asphalt plant will have less criteria pollutant emissions than the previous asphalt plant and will be located in the same general operating area as the previous plant; and

WHEREAS, Mendocino County Code Section 20.188.025 provides that a new or changed industrial use shall require further review under Chapter 20.188 (Development Review);

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors hereby determines that the production of asphalt at the Site is a use that has undergone development review by virtue of the Board's previous actions and is a permitted use on the Site subject to the conditions of approval of #UR 5-72/2002 that remain applicable to the Site, as reviewed by the Department of Planning and Building Services and identified in the

attached Exhibit A; and

BE IT FURTHER RESOLVED that the installation of a new asphalt plant at the Site as proposed by Grist Creek Aggregates, LLC, is not substantially changed from the operation as it previously existed and is not a new or changed use pursuant to Mendocino County Code Section 20.188.025 that requires further development review.

BE IT FURTHER RESOLVED that the determination of the Board of Supervisors being made by this resolution is not a project under CEQA pursuant to (1) Public Resources Code section 21080(b) which states that CEQA does not apply to ministerial actions and (2) Section 15268 of Title 14 of the California Code of Regulations which provides a statutory exemption for ministerial projects; the determination of the Board of Supervisors is a ministerial action as it involves only the review of whether the proposal conforms to the conditions of approval outlined in #UR 5-72/2002 that remain applicable to the Site and is therefore not a new or changed use.

The foregoing Resolution introduced by Supervisor Woodhouse, seconded by Supervisor McCowen, and carried this 17th day of March, 2015, by the following vote:

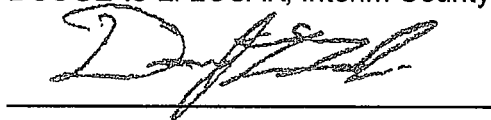
AYES: Supervisors Brown, McCowen, Woodhouse, Gjerde, and Hamburg
NOES: None
ABSENT: None


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

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
DOUGLAS L. LOSAK, Interim County Counsel

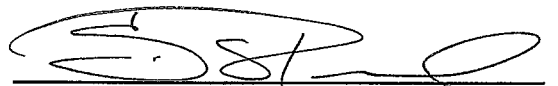

Deputy


CARRE BROWN, Chair
Mendocino County Board of Supervisors

MAR 17 2015

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

BY: CARMEL J. ANGELO
Clerk of the Board


Deputy

**ZONING ADMINISTRATOR
FINAL FINDINGS AND CONDITIONS
JUNE 13, 2002**



Conditions directly
applicable to resumed
asphalt production.

CASE#: UR 5-72/2002

DATE FILED: 2/4/2002

OWNER: PARNUM PAVING, INC.

APPLICANT: PARNUM PAVING, INC.

REQUEST: Renewal of use permit for an asphalt batch plant and aggregate processing facility.

LOCATION: At Longvale, 2.5+- miles east of Highway 101, extending along the north side of State Highway 162, between the highway and Outlet Creek, located at 37342 Covelo Road; AP# 036-190-26.

PROJECT COORDINATOR: Julie Price

The Zoning Administrator, on June 13, 2002 approved UR 5-72/2002 making the following findings and subject to the following conditions of approval.

FINDINGS:

Environmental Findings: The Zoning Administrator finds that no significant environmental impacts would result from the proposed project that cannot be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan by virtue of its legal nonconforming status and as subject to the conditions of approval.

Department of Fish and Game Findings: The Zoning Administrator has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing development on the subject parcel, and the fact that the project consists of the renewal of an existing use that was previously permitted, the project will not have any adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Zoning Administrator has rebutted the presumption set forth in subdivision (d) of Section 753.5.

Project Findings: The Zoning Administrator approves #UR 5-72/2002 subject to the following conditions of approval further finding:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not 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.
3. That such use preserves the integrity of the zoning district.

Additional Findings: This permit is granted as a continuation of a non-conforming use; however, the applicant is strongly encouraged to either:

1. Find another location more suitably zoned for the operation prior to the permit expiration in 2012, or
2. Prior to permit expiration in 2012, seek a General Plan and Zoning change for the site to resolve potential zoning conflict issues.

CONDITIONS:

A. Conditions which must be met prior to use and/or occupancy and for the duration of this permit:

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 \$25.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to June 28, 2002. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
2. 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 two years 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 June 13, 2012. 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.
3. Aggregate processing plant operations (excluding asphalt hot plant) shall commence no earlier than April 1 of any year and cease no later than October 30 of any year (further restrictions may be required as recommended by the Department of Fish and Game in sensitive stream areas). Emergency work may be conducted as needed, provided that the operator submits a letter to the Department of Planning and Building Services within seven (7) days of commencement of emergency work stating the date(s) that the emergency work was conducted.
- ✓ 4. A valid Permit to Operate issued by the Mendocino County Air Quality Management District shall be maintained and complied with for the duration of the project.
- ✓ 5. That the access road, driveway and interior circulation routes be maintained in such a manner as to insure minimum dust generation subject to the Air Quality Management District's dust regulations. Any rock material used for surfacing must comply with Air Quality Management District's regulations regarding asbestos content. All grading activities must comply with Regulation 1, Rule 4300 (Fugitive Dust Emissions).
6. Increase the gravel berm height and the berm filtration capacity in the processing site near the stream water intake pump (northwest side) and at the southwest corner of the plant site. Establish a stronger, higher and more stable berm around the wash pond.
7. Replant the stream bank adjacent to the processing site with native, woody riparian species in conformance with a revegetation plan that the owner/operator shall submit to the Department of Planning and Building Services for approval.
8. If not already in place, install a water diversion screen on the intake pump at the processing site that meets National Marine Fisheries fish screening criteria.
- ✓ 9. A valid Industrial Activities Storm Water Permit issued by the Regional Water Quality Control Board shall be maintained and complied with for the duration of the project.
10. The owner/operator shall discontinue use of the existing tailings disposal site no later than June 13, 2005. Relocation of the tailings disposal site shall occur at a location approved by the Department of Planning and Building Services and entirely outside of the 100-year floodplain.
11. Submit to the Department of Planning and Building Services and the Mendocino County Water Agency for approval an engineered plan that demonstrates the structural integrity of the existing

SHN report
(7/2003)
submittal
10/7/03

tailings disposal site during extreme rainfall conditions and 100-year Recurrence Interval storms, addressing supersaturation and seismic issues, without discharging into Outlet Creek. If the engineered plan fails to provide sufficient evidence that the site is structurally stable under these conditions, an engineered reclamation plan shall be submitted to the Department of Planning and Building Services for approval such that the site shall be reclaimed to as near its natural conditions as possible prior to the deposit of wash pond tailings.

12. Should the operation be allowed to continue the use of the existing tailings disposal site, the owner/operator shall submit to the Department of Planning and Building Services for approval a long-term management plan of the site that includes measures to discontinue channel bank erosion, such as the planting of native woody vegetation along the flanks of the berm and rock armor at the toe of the disposal pile.

13. The tailings disposal site shall be shaped for proper drainage and reseeded each year prior to the winter rains.

✓ 14. 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.

15. The tailings disposal site shall be inspected annually by the Department of Planning and Building Services. The applicant shall submit an annual inspection and monitoring fee of \$210.00 to the Department of Planning and Building Services within thirty (30) days of inspection for the duration of the existing tailings disposal site.

✓ 16. Noise levels created by the operation as measured at the nearest residence other than that of the plant owner or operator shall not exceed the following:

- a. 55 dBA for a cumulative period more than 30 minutes in any hour.
- b. 70 dBA for a cumulative period of more than 12 minutes in any hour.
- c. 75 dBA for a cumulative period more than 3 minutes in any hour.
- d. 80 dBA for a cumulative period more than 1 minute in any hour.
- e. 85 dBA at any moment.

17. Annually, prior to December 31st, the owner/operator shall supply to the Department of Planning and Building Services an accounting of the volume of materials processed from each extraction location that season. The accounting report shall indicate the name, location and California Mine Identification Number of each site from which processed material was extracted, the method used to calculate the volume figures and the signature of the person responsible for completing the report.

18. Should the owner/operator cease extraction activities at surface mining operations located in the Dos Rios vicinity as designated on the revised Attachment A (to be submitted by the applicant within 30 days) which will include the Crabtree/Nashmead bar such that mineral resources from these extraction sites no longer supply the processing plant for a period of no less than three years, the Department of Planning and Building Services has the authority to require closure of the plant operation and reclamation of the plant site according to an approved reclamation plan.

19. The owner/operator shall submit to the Department of Planning and Building Services for approval a reclamation plan for the final closure of the processing facility. The reclamation plan shall include a cost estimate for reclamation procedures. The plan shall be submitted to the Department of Planning and Building Services within six (6) months of project approval.

20. The owner/operator shall provide Mendocino County with a cash or surety bond or other acceptable form of financial assurance for the final reclamation plan of the processing site. The bond amount shall be calculated based on a cost estimate submitted by the applicant and approved by County staff for the approved reclamation procedures. The bond shall be established and in place within one (1) year of project approval. The security bond is not set up to replace the applicant's responsibility for reclamation, but to assure funding for the reclamation plan should it

be required during the term of this permit. The requirements for the bond will terminate when the approved reclamation plan has been completed.

- ✓ 21. A Hazardous Materials Business Plan approved by the Department of Environmental Health shall be approved, maintained and complied with for the duration of the project.
- ✓ 22. The owner/operator shall obtain all authorizations required by and comply with all conditions established by the following agencies having jurisdiction over the project, which may include the following:
- a. U.S. Army Corps of Engineers
 - b. California Department of Fish and Game
 - c. California Regional Water Quality Control Board
 - d. Mendocino County Air Quality Management District
 - e. National Marine Fisheries Service

Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

- ✓ 23. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- ✓ 24. That the application along with supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Zoning Administrator.
- ✓ 25. That the owner/operator 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.
- ✓ 26. This permit shall be subject to revocation or modification by the Zoning Administrator upon a finding of any one (1) or more of the following grounds:
- a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

Any such revocation shall proceed as specified in Title 20 of the Mendocino County Code.

- ✓ 27. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

7/1/02

DATE



FRANK LYNCH
ZONING ADMINISTRATOR