

## RESOLUTION NO. 15-087

### RESOLUTION OF THE MENDOCINO COUNTY BOARD OF RESCINDING RESOLUTION 15-054 RELATED TO ASPHALT PRODUCTION ON APN 036-190-26

WHEREAS, Grist Creek Aggregates, LLC ("GCA"), is the current owner of Assessor's Parcel Number 036-190-26, located on Highway 162 east of the community of Longvale (the "Site"); and

WHEREAS, the County has previously issued several land use entitlements relating to the use of the Site for aggregate processing and asphalt production, as follows:

- a. 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 on 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;
- b. On June 13, 2002, use permit renewal #UR 5-72/2002 was approved by the Mendocino County Zoning Administrator, which renewal involved both asphalt production and aggregate processing. #UR 5-72/2002 was approved subject to a mitigated negative declaration prepared pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 *et seq.*; "CEQA") and conditions of approval. The Zoning Administrator approved #UR 5-72/2002 as a continuation of a nonconforming use and strongly encouraged the applicant to either find another location more suitably zoned for the operation prior to permit expiration in 2012 or seek a General Plan amendment and zoning change for the Site to resolve potential zoning conflict issues (by rezoning the site to a district where the use would be conforming);
- c. On August 17, 2009, the Mendocino County Board of Supervisors ("Board") certified an environmental impact report ("EIR") and adopted a General Plan Update, by adopting Resolution Numbers 09-182 and 09-183, respectively, which, among other changes, changed the General Plan land use designation of the Site from Rangeland to Industrial. General uses of the Industrial land use designation include processing and manufacturing. The land use change request in the General Plan EIR stated that a condition of the property owner's existing permit required the owner to seek a General Plan amendment to change the land use classification of the property to Industrial to allow for the processing of the aggregate stream. Findings made related to the request included that the request was consistent with the existing and proposed General Plan as the new Industrial designation would better reflect the existing operation and 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 documents;
- d. On May 11, 2010, the Board approved the rezoning of the Site from Rangeland to General Industrial (I-2), by adopting Ordinance Number 4239. The staff report for the zoning changes stated that the applicants had sought the previous General Plan amendment of the land use classification to Industrial to allow for the processing of aggregate without the need of a use permit entitlement. The staff report also stated that the conditions of approval outlined in #UR 5-72-2002

be viewed as the functional equivalent of development review, and that so long as the Site was operated under the conditions of approval, there would be no further environmental impacts from operations on the Site.

WHEREAS, no opponent challenged the Zoning Administrator's approval of #UR 5-72/2002, the Board's approval of the General Plan update or the Board's approval of the rezoning of the Site within any applicable limitations period; and

WHEREAS, in December 2014, GCA met with County staff to discuss GCA's plans to resume the production of asphalt at the Site, using a more efficient model plant in a manner consistent with the conditions of approval of #UR 5-72/2002; 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); and

WHEREAS, the County and GCA agreed that the clearest procedure for any review as to whether the resumption of asphalt production was a new or changed use was through a zoning interpretation by the Board of Supervisors, which the Board could hear under its original jurisdiction of land use matters procedures (Mendocino County Code Section 2.54.010); and

WHEREAS, on March 17, 2015, after a noticed public hearing, the Board took original jurisdiction of and adopted Resolution No. 15-054, which determined 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 that were identified in an Exhibit A to the resolution; and

WHEREAS, the Board further determined that the installation of a new asphalt plant on the Site as proposed by GCA was 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; and

WHEREAS, the Board further determined that the determination made by Resolution No. 15-054 is not a project under CEQA pursuant to Public Resources Code section 21080(b) and Section 15268 of Title 14 of the California Code of Regulations, both of which state that CEQA does not apply to ministerial actions; the determination made by Resolution No. 15-054 was ministerial as it involved 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, which conditions had been found to be the equivalent of a development review process for the rezoning of the Site; and

WHEREAS, an unincorporated association named the Friends of Outlet Creek ("FOOC") filed a petition for writ of mandate in the Superior Court for the County of Mendocino on April 24, 2015, Case No. SCU-K-CVPT 15-65618, alleging, in part, that the Board's approval of Resolution No. 15-054 failed to comply with CEQA; and

WHEREAS, Resolution No. 15-054 reviewed previous actions related to the Site to reach a conclusion that the issue of whether asphalt production was a new or changed use had been determined by the prior land use entitlements granted for the Site and did not provide any further entitlements for the Site; and

WHEREAS, litigating CEQA lawsuits requires significant expense and exposes the County to other financial liabilities that the County chooses not to pass on to its citizens at this time, given that the Board's adoption of Resolution No. 15-054 was not required and did nothing to affect GCA's land use entitlements for the Site; and

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors hereby rescinds its approval of Resolution No. 15-054;

BE IT FURTHER RESOLVED that the rescission of Resolution No. 15-054 in no way impairs the land use entitlements of the Site as they existed prior to March 17, 2015.

The foregoing Resolution introduced by Supervisor McCowen, seconded by Supervisor Hamburg, and carried this 16<sup>th</sup> day of June, 2015, by the following vote:

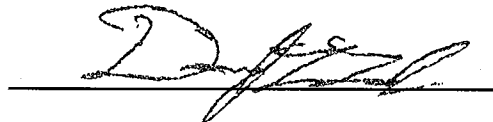
AYES: Supervisors Brown, McCowen, Woodhouse, Gjerde, and Hamburg  
NOES: None  
ABSENT: None

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

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

  
Deputy

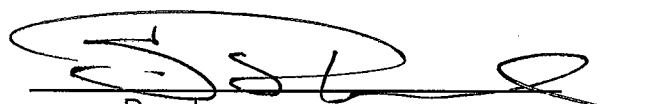
APPROVED AS TO FORM:  
DOUGLAS L. LOSAK, Interim County Counsel



  
CARRE BROWN, Chair  
Mendocino County Board of Supervisors

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