



## COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

Telephone 707/263-2221 FAX 707/263-2225

Item #1

9:05 AM

August 25, 2022

### STAFF REPORT

**TO:** Planning Commission

**FROM:** Mary Darby, Community Development Director  
Prepared By: Eric Porter and Peggy Barthel

**DATE:** August 25, 2022

**SUBJECT:** Request for Extension of Time, UPX 19-04 for Use Permit to Mine UPM 10-01 and Categorical Exemption, CE 19-98. Location: 12572 White Rock Canyon Road; Upper Lake. APN: 022-009-06

### SUPERVISOR DISTRICT 3

**ATTACHMENTS:**

1. Vicinity Map
2. Existing Conditions for Use Permit UPM10-01
3. Proposed Conditions for Use Permit Extension UPX19-04 to Use Permit to Mine UPM10-01
4. Site Plan

#### **I. EXECUTIVE SUMMARY**

Clearlake Redi-Mix is requesting ***Extension of Use Permit to Mine, UPM10-01***. There will be no changes in the operation and/or expansion of the authorized use. The applicant shall continue to be in compliance with all previously-approved Conditions of Approval for Use Permit to Mine UPM10-01 (Attachment 2) and the proposed Conditions of Approval for Use Permit Extension UPX19-04 (Attachment 3). County Staff recommends approval of the Use Permit Time Extension Request for a period of twenty years.

#### **Background and Previous Actions:**

Approved by the Planning Commission on August 24, 2000, Use Permit UP 98-05 permitted terrace mining of approximately 140,000 cubic yards of aggregate at 12572 White Rock Canyon Road, Upper Lake. Subsequent extension of the excavation was permitted upon approval by the Planning Commission of the Use Permit to mine UPM10-01 on September 23, 2010. UPM10-01 stated the expiration of the permit would be August 24, 2020.

Prior to the expiration of the use permit, the applicant applied for an extension on December 31, 2019. The submittal of the extension enabled the facility to continue to produce until this extension was heard and decided on by the Planning Commission.

The California Department of Conservation, Division of Mining (DMR) provides additional oversight of the project under the Surface Mining and Reclamation Act (SMARA). Prior to initial project approval, DMR (formerly the Office of Mining) approved Reclamation Plan 98-1 for the project. Under SMARA, the excavation project undergoes annual inspections by County Staff, with reports submitted to DMR. Clearlake Redi-Mix additionally provides a financial assurance cost estimate annually and is required to maintain a mechanism by which the amount for reclamation is available in the event mining should halt and reclamation begin.

**Project Description:**

Applicant: Clearlake Redi-Mix; PO Box 111, Lakeport, CA 95453

Owner(s): Richard and Carol Thorn

Location: 12572 White Rock Canyon Road; Upper Lake, CA

APN: 022-009-06

General Plan: Rural Lands & Resource Conservation

Zoning: "RL" Rural Lands; "WW" Waterway and "FF" Floodway Fringe Combining District along the creek.

**II. PROJECT SETTING**

Existing Uses and Improvements: The project area is currently permitted for excavation for a sand and gravel pond. The extension would allow for continued mining of gravel deposits on the floodplain terrace between Middle Creek and White Rock Canyon Road. There will be no changes in the operation and/or expansion of the authorized use.

Surrounding Zoning and Land Use: The project is located in a rural area of the County. The surrounding parcels are zoned "RL" Rural Lands and "RR" Rural Residential. Surrounding parcels are generally approximately 20 acres in size and developed with single-family residences.

Topography: The project parcel is relatively flat with Middle Creek located to the west and south of the site.

Soils: According to the USDA Soil Survey of Lake County, soil type 249, *Xerofluvents-Riverwash complex*, protected with 0-2% slopes is the soil type found at the project site. Class VIII soils have limitations that nearly preclude their use for commercial crop production. Permeability is rapid, surface runoff is very slow, and there is no hazard of erosion except along streams where there is severe stream bank erosion during high-intensity storms. This area is poorly suited for livestock and other agricultural uses due to limited water availability.

Fire Protection: Northshore Fire Protection District

Vegetation: Grass, dirt, trees and variety of native vegetation is found on the parcel. The immediate project area is all dirt.

### **III. PROJECT ANALYSIS**

#### ***General Plan Conformance***

The land use designation on the project parcels is *Rural Lands* and *Resource Conservation*. The *Resource Conservation* designation is within the creek.

Rural Lands. The purpose of *Rural Lands* is to allow rural development in areas that are primarily in their natural state, characterized by steep topography and are located outside of a Community Growth Boundary. Rural Lands allows a variety of natural resource uses, such as manufacturing and processing operations or mining upon securing a Conditional Use Permit (Major Use Permit).

Resource Conservation. The purpose of *Resource Conservation* is to assure the maintenance or sustained generation of natural resources within the County of Lake. Only the portion of the property containing Middle Creek is designated as *Resource Conservation*. The existing excavation is specifically set back from the creek so as not to disturb its banks.

- Goal OSC-4: To protect the current and future extraction of mineral resources that are important to the County's economy while minimizing impacts of this use on the public and the environment. The following General Plan policy applies to this project:
- Policy OSC-4.1 Environmental Contamination: "All mining operations are required to take precautions that prevent contamination from wastes or incidents related to the storage and disposal of hazardous materials, or general operating activity at the site."
- Policy OSC-4.2 Compliance with Aggregate Resource Management Plan: "The County shall ensure that all mining operation are performed in compliance with the policies and implementation measures found in the Lake County Aggregate Resource Management Plan (1993)."
- Policy OSC-4.4 Maintain Air Quality: "The County shall promote the use of Best Available Control Technology to minimize dust, smoke, and odors associated with mining and processing operations."

Each of these policies is met and verified, along with state DMR regulations, by way of Reclamation Plan 98-1, annual inspections, and state reporting of the operation.

#### ***Zoning Ordinance Conformance***

Article 27, Part 27.11(t): Excavation of a sand and gravel pond is permitted in the "RL" Rural Lands zone with a Major Use Permit pursuant to Article 27, Section 21.11 (t) of the County of Lake Zoning Ordinance.

Pond excavation was permitted by Major Use Permit UP98-05 on August 24, 2000. The expiration date on the use permit was August 24, 2010. Subsequently, Use Permit to Mine UPM10-01 permitted a renewal of UP98-05 with an expiration date of August 24,

2020. Accordingly, prior to the expiration of the 2010 extension the applicant submitted a Use Permit extension request on December 30, 2019.

### ***Upper Lake – Nice Area Plan Conformance***

The Upper Lake-Nice Area Plan observes that sand and gravel extraction make up the major portion of the Upper Lake-Nice Planning Area's mining activity. Sand and gravel are vital resources for development, and they are the principal source of aggregate for the construction and paving industries. The terrace mine operations provide the only sources of aggregate within the planning area.

No policies are specified for mining operations in the Upper Lake-Nice Area Plan.

### ***Aggregate Resource Management Plan Conformance***

The goals of the Aggregate Resource Management Plan include:

- To insure an adequate supply of aggregate for future growth and development in Lake County.
- To mine and develop Lake County's aggregate resources in a manner which preserves and safeguards the local environment and quality of life.
- To use the reclamation of mining projects as an opportunity to restore Lake County creeks and reestablish fish and wildlife habitat.
- To provide for effective and systematic monitoring and reclamation of aggregate mining projects.

Each of these goals is maintained, along with state DMR regulations, by way of Reclamation Plan 98-01, annual inspections, and state reporting of the operation

### ***Surface Mining and Reclamation Act Conformance***

The previously-approved reclamation plan meets the requirements of SMARA. Under SMARA, the excavation project undergoes annual inspections by County Staff, with reports submitted to DMR. Clearlake Redi-Mix additionally provides a financial assurance cost estimate annually, and is required to maintain a mechanism by which the amount for reclamation is available in the event mining should halt and reclamation begin. Because the surface mining area has not been reclaimed, Reclamation Plan 98-01 shall continue to be in effect.

## **IV. ENVIRONMENTAL REVIEW**

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of their actions. The sand and gravel pond has been in operation continuously since 1998 without any significant effect to the environment. The original use permit UP98-05 was based on the EIR for the Aggregate Resource Management Element. A subsequent Mitigated Negative Declaration was prepared for use permit UP98-05. No changes or additions to the currently-approved use are requested, the

extension qualifies for a CEQA Categorical Exemption, Class 4 (Minor Alterations to Land). A Categorical Exemption Class 4 (CEQA Guidelines Section 15304) includes grading on land with a slope of less than 10% which is not in a waterway, wetland, scenic area, or officially mapped area of severe geologic hazard.

## **V. CONDITIONS OF APPROVAL**

The sand and gravel pond will not be expanding and/or making any changes of the authorized use. The applicant shall continue to be in full compliance and adhere to all previously-approved Conditions of Approval for UPM10-01 (Attachment 2) except as amended by Conditions of Approval for UPX19-04 (Attachment 3). The Community Development Department has amended and/or added the following Conditions of Approval:

- Condition A-1: The use permit shall be valid for twenty years from date of approval by the Planning Commission. There shall be no changes and/or expansion of the use authorized by Use Permit UP98-5 and extended by UPM10-01 unless the permit holder applies for and obtains the necessary additional permits. The permit holder shall adhere to all conditions of approval herein and the Conditions of Approval for UPM10-01.
- Condition A-2: No use, structure or development shall occur that is inconsistent with the approved use permit to mine. The permit holder shall apply for a use permit modification if the permit holder proposes any use inconsistent with the approved use permit.
- Condition A-3: The Community Development Director may approve minor amendments which are in substantial conformity with the uses and locations of uses approved by UP98-5 and its amendments when, in the opinion of the Community Development Director, such amendments will not result in an increased environmental impact.
- Condition A-4: This use permit may be modified or revoked if the Lake County Planning Commission finds that the use to which this permit is put is detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such use, or if it is injurious or detrimental to property improvements in the neighborhood or to the general welfare of the County, or is a nuisance.

## **VI. FINDINGS FOR APPROVAL**

### ***Major Use Permit [Article 51, Section 51.4(a)]***

1. *That the establishment, maintenance, or operation of the ongoing authorized use will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.*

**Response:** *The existing pond excavation project is located on a 33± acre parcel in a rural area of the county with minimal development. The nearest residential community is Upper Lake, which is located approximately one mile to the southeast.*

2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of ongoing authorized development.

**Response:** *The sand and gravel pond is located in a rural area of the county which contains minimal development. The existing use is also protected by the natural topography of the land, which consists of varying slopes up to greater than 30% which helps minimize any potential visual impacts to the surrounding area.*

3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific ongoing authorized use.

**Response:** *The project is accessed off White Rock Canyon Road which is located off Elk Mountain Road. These roads are adequate for the ongoing use of the sand and gravel pond.*

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

**Response:** *The existing and ongoing authorized use has adequate emergency service protection through Northlake Fire Protection District, CalFire and the Lake County Sheriff's Office. These agencies were notified of this action and had no adverse comments.*

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.

**Response:** *The existing and ongoing use is in conformance with the Zoning Ordinance through the issuance of a year 2000 Major Use Permit to Mine approved by the Planning Commission on August 24, 2000 and extended on September 23, 2010 to allow continued excavation of a sand and gravel pond. The use is in conformance with the General Plan and the Upper Lake-Nice Area Plan as the plans encourage sustainable extraction of resources in manner which provides short-term and long-term benefits to the Upper Lake - Nice Planning Area, while preserving environmental resources and the public health and safety.*

6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.

**Response:** *The department has no record of current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code on the subject parcel.*

## ***California Surface Mining and Reclamation Act***

### ***7. The project is consistent with the California Surface Mining and Reclamation Act.***

Under SMARA, the excavation project undergoes annual inspections by County Staff, with reports submitted to DMR. Clearlake Redi-Mix additionally provides a financial assurance cost estimate annually and is required to maintain a mechanism by which the amount for reclamation is available in the event mining should halt and reclamation begin.

## **VII. RECOMMENDATION**

**Staff recommends that the Planning Commission approve the project extension UPX 19-04 with the following findings:**

### **A. Adopt Categorical Exemption, Class 4 (CE19-98) for Use Permit Extension UPX19-04 with the following findings:**

1. This time extension is for an existing use permit to allow continued operation of an existing sand and gravel pond. There will be no changes and/or expansion of the authorized use and the applicant shall adhere to the conditions of approval.
2. This project is consistent with CEQA Categorical Exemption, Class 4, which includes grading on land with a slope of less than 10% which is not in a waterway, wetland, scenic are, or officially mapped area of severe geologic hazard.
3. This project remains consistent with the Lake County General Plan, Aggregate Resource Management Plan, Upper Lake-Nice Area Plan, and the Lake County Zoning Ordinance.
4. There has been no change in the project which would create new significant environmental impacts.
5. This project is consistent with land uses in the vicinity.
6. This project will not result in any significant adverse environmental impacts.

### **B. Approve the request for an Extension of Time, UPX19-04 for Use Permit to Mine UPM10-01.**

1. This project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the area of the proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.
2. The site is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.
3. The streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the proposed use.
4. There are adequate services to serve the project.
5. This project is consistent with the Lake County General Plan, Upper Lake-Nice Area Plan and the Lake County Zoning Ordinance.

6. No violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the properties.
7. The project is consistent with the California Surface Mining and Reclamation Act.

## VIII. **SAMPLE MOTIONS**

### **Categorical Exemption**

I move that the Planning Commission find that **Use Permit Extension UPX19-04** applied by **Clearlake Redi-Mix** on property located at **12572 White Rock Canyon Road; Upper Lake, CA** and known as APN: 022-009-06 is exempt from CEQA because it falls within Categorical Exemption Class 4, based on the findings set forth in the Staff Report dated **August 25, 2022**.

### **Use Permit Extension**

I move that the Planning Commission find that **Use Permit Extension UPX19-04** applied by **Clearlake Redi-Mix** on property located at **12572 White Rock Canyon Road; Upper Lake, CA** and known as APN: 022-009-06 does meet the requirements of Section 51.4(a) of the Lake County Zoning Ordinance and that the Planning Commission has reviewed and considered the Categorical Exemption CE19-98 which was adopted for this project, and Use Permit Extension UPX19-04 be granted for a period of 20 years and subject to the conditions and with the findings listed in the Staff Report dated **August 25, 2022**.

*NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination*

Reviewed By: \_\_\_\_\_

Mary Darby, Director