

# MERCER, FRASER COMPANY

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MAR 15 2007

HUMBOLDT COUNTY  
BUILDING DEPT.

## HAND DELIVERED

March 15, 2007

Attn: Michael Wheeler, Senior Planner  
County of Humboldt, Planning Department  
3015 H Street  
Eureka, California 95501

Ref: General Plan Update; Comments on Chapter 16 (Mineral Resources)

Sub: Industry Comments

Dear Mr. Wheeler:

## INTRODUCTION

Thank you for the opportunity to comment on this important process. Mercer-Fraser Company ("Mercer-Fraser") has been operating in-stream mining operations and hard rock quarries around the Humboldt County region for the past 137 years. In Humboldt County, we currently operate six aggregate processing facilities, five asphalt manufacturing/production facilities, and four hard rock quarries. We have always believed that the success and longevity of these types of operations are only achieved by careful planning and working cooperatively with Industry, County, State, and Federal agencies as a team. Mercer-Fraser submits the following comments pertaining to the Preliminary Hearing Draft for the Chapter 16 (Mineral Resources) component of the Humboldt County General Plan Update.

## General Comments

Mercer-Fraser has reviewed the comments to Chapter 16 (Mineral Resources) submitted separately by Granite Construction Company and Eureka Ready Mix

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Concrete Company, Inc., and concurs, for the most part, with those comments. In particular, Mercer-Fraser agrees with the other operators that Alternative B (consisting of Sections 16.3, 16.4 and 16.5 of the preliminary hearing draft) is not clearly presented in the preliminary hearing draft as the preferred alternative. Mercer-Fraser joins in the request that the revised draft address that point. Additionally, as a general comment, Mercer-Fraser suggests that the enumeration of State, Federal and County coordinated environmental review be expanded in order to present a complete picture of all aspects of environmental review pertaining to mining and processing activities in the County.

Notwithstanding the above comments, since Mercer-Fraser understands that County Staff intends to recommend the adoption of some version of Alternative B, Mercer-Fraser's comments are limited to those sections and no comments are being submitted at this time as to the remaining portions of the preliminary hearing draft. There are several components of the preliminary hearing draft (for instance Alternative A's extraction cap and exportation ban (Page 16-13&14) that Mercer-Fraser vigorously opposes. In the event that it appears that these issues are destined to receive serious consideration, Mercer-Fraser reserves the right to submit further, more detailed comments as to those non-Alternative B sections. Accordingly, Mercer-Fraser submits the enclosed redlined version of the introductory and Alternative B sections of the preliminary hearing draft of Chapter 16 (Mineral Resources); specifically, sections 16.1 through 16.5. Mercer-Fraser's specific comments related to the proposed redlined changes are set forth below:

## Specific Comments

### 16.2 Background

Page 16-1, first sentence of second paragraph under the heading "**Mineral Resource Production,**" insertion of the language "***... as well as the construction materials produced from them such as asphalt, concrete, ready mix concrete, and recycled products...***" clarifies and expands upon the proper definition of mining aggregate operations benefiting the County.

Page 16-2, under the heading "**Incompatible Land Uses,**" insertion of new second sentence, "***... Further, many vested mining operations in Humboldt County qualify as legal non-conforming uses...***". This additional language provides critical recognition of the fact that there are, at present, many operations in the County that are

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operating under vested rights and denotes the fact that the concept of "**Incompatible Land Uses**" cannot be fully addressed without acknowledging the legality of those vested operations.

### 16.3 Goals and Policies

Page 16-4, MR-G1, insertion of the phrase "... **and construction materials...**" after "**mineral resources...**" See Comment to 16.2, page 16-1, supra.

Page 16-4, MR-P6, insertion of the phrase "...**While recognizing that mineral resources are limited in location, reasonable efforts should be made to balance. . .**" The addition of this language clarifies the self-evident fact that mineral resources exist where they exist and that there is a need to balance a number of factors in siting and planning mineral extraction activities including, but not limited to, the location of usable aggregate product and character of surrounding land uses.

Page 16-4, MR-P15, insertion of "...**in the vicinity...**" in lieu of "**adjacent**" and insertion of "...**or vested...**" and "...**and record against the property...**" in first sentence. These revisions clarify the language and address the legal issue of recordation of the notices. The issue of vested rights is addressed above with regard to the Comment regarding "**Incompatible Land Uses**," discussed on Page 16-2 of the preliminary hearing draft document.

### 16.4 Standards

Page 16-5, MR-S3. Mercer-Fraser has tentative, but serious, reservations regarding this proposed language. It is anticipated that establishment of a Mineral Resource (MR) combining zone, with the accompanying imposition of such zoning on adjacent properties has some fundamental fairness problems and would undoubtedly be unduly inflammatory and cause needless controversy where none need exist due to the legal requirement that zoning conform to the General Plan. It is Mercer-Fraser's tentative opinion that this provision should be eliminated from the draft document.

Page 16-5, MR-S6, insertion of the phrase, "...**provided that such material is not sold commercially...**" is intended to reiterate that borrow pit material should not be sold commercially.

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Page 16-5, MR-S7. Mercer-Fraser's only comment is that we do not understand the meaning or import of the proposed language. **Further clarification is needed.**

### **16.5 Implementation Measures**

Page 16-5, MR-IM1, insertion of the phrases "***...recognized vested rights as required by law and ...***" and "***... and construction materials production...***". See Comments to 16.2, Background, Page 16-1, supra.

Page 16-5, MR-IM2, striking of language beginning with the word "**Preventing.**" This language fails to recognize that mineral resources exist on the ground where they exist. Thus, there is an inherent need to balance a number of factors in siting and planning mineral extraction activities including, but not limited to, the location of usable aggregate product and character of surrounding land uses.

Page 16-5, MR-IM3. Mercer-Fraser has tentative concerns that the notification requirement regarding property owners along haul routes is unfair and unworkable. Further analysis should be devoted to this proposal to ensure that operators are not put in the untenable position of being required to comply with requirements that are too onerous or simply not feasible.

Page 16-6, MR-IM4, insertion of phrase "***... conditioned upon entry into a funding agreement with operators and providing a list of potential consultants for operators and facilitating operator input...***" simply promotes concept that a project proponent, who is financially responsible, should have some input in the selection of the consultant.

Page 16-6, MR-IM5. See Comment to 16.4, Standards, MR-S3, supra.

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Again, thank you for the opportunity to contribute to this process, which is so important to the community, the mining operators in the County, and Mercer-Fraser Company. We hope that the comments contained in this letter are useful in the process of crafting the Mineral Resources Element of the Updated General Plan. If you desire any further information or wish to discuss the comments provided in this letter, please feel free to call me at (707) 443-6371. We look forward to further communication with you regarding this matter.

Very truly yours,

MERCER-FRASER COMPANY



Justin Zabel  
Vice-President

JEZ/wp

Enclosure: [redline of draft mineral resources element]

cc: Mark D. Harrison, Esq., Diepenbrock-Harrison  
Jeffrey L. Anderson, Esq., Diepenbrock-Harrison  
Mark Benzinger, MFCO  
Jordan Main, Granite Construction Company  
Paul Kraus, Eureka Ready Mix

## Chapter 16. Mineral Resources

### 16.1 Introduction

The Mineral Resources Chapter is a component of the Conservation and Open Space Element (Chapter 12), which is one of the seven required General Plan Elements. The purpose of the Mineral Resources Chapter is to identify the County's known mineral resources and support the conservation, development and utilization of these resources. Energy production and conservation are dealt with in the Energy Element (Chapter 15).

### 16.2 Background

Humboldt County is one of the most geologically complex areas in the State. Gold mining became one of the first important industries in this area. Other minerals such as copper, chromium, silver, and zinc were also once produced. One example is the Horse Mountain Copper Mine which operated from around 1907 to 1929. In the past, metallic mineral production varied according to national economic trends. Presently, very little metallic mining is occurring. High production and manufacturing costs limit the prospects for commercial utilization of these minerals.

The 1997 State Division of Mines & Geology Strategic Plan includes the following Mission Statement:

"The mission of the State Mining and Geology Board is to represent the State's interest in the development, utilization and conservation of mineral resources; reclamation of mined lands; development and dissemination of geologic and seismic hazard information; and to provide a forum for public redress."

The Humboldt County Framework Plan has included policy language that supports this Mission since 1984.

#### Mineral Resource Production

Current County mineral resource production is primarily limited to sand, gravel, and rock extraction. Gravel bars and deposits from the large stream and flood plains supply most of the gravel needs of the County. Since costs for these materials are mostly associated with transportation, operations are usually located close to rural and urban development areas and used locally.

Production of sand, gravel, and rock are essential for the continued well-being of the County, as well as the construction materials produced from them such as asphalt, concrete, ready mix concrete, and recycled products. They are the basis for much of the construction materials for roads, concrete, streambank protection, erosion control, septic systems, and passive solar projects. Importation of these materials would raise costs and negatively impact the development and maintenance within the County.

Sand and gravel are mined primarily in-stream, with approximately 75% of all production occurring in the Eel River-Van Duzen complex. Rock production occurs in 32 active hard rock quarries scattered throughout the County. Figure 16.1, Rock and Mineral Extraction Sites, generally identifies the rock extraction and in-stream mining sites throughout the County.

### **In-Stream Gravel Mining Regulatory Coordination**

To address State, federal and County permitting requirements in a coordinated way and to implement mitigation required in Program Environmental Impact Reports for in-stream gravel mining, the County established the County of Humboldt Extraction Review Team (CHERT).

The CHERT process serves as a vehicle for interagency cooperation and annually reviews in-stream mining operations for State Surface Mining and Reclamation Act of 1975 (SMARA) compliance. The CHERT review process involves extensive interagency coordination and on-site annual inspections. Through this process the following agencies have input and can annually establish extraction quantities and permit restrictions for in-stream gravel mining operations:

- California Department of Fish and Game through their Streambed Alteration Agreements
- NOAA Fisheries through Endangered Species Act, Section 7, consultation
- U.S. Fish and Wildlife Service through Endangered Species Act, Section 7, consultation
- U.S. Army Corps of Engineers through their Letter of Permission
- California Coastal Commission for operations requiring Coastal Development Permits in Coastal Commission jurisdiction
- County of Humboldt for oversight of Conditional Use Permits, Coastal Development Permits, Reclamation Plans, and Financial Assurances

Additionally, the California Department of Conservation is involved in the review and approval of Reclamation Plans and Financial Assurances.

### **Environmental Protection and Reclamation of Mined Lands**

SMARA established State standards for mining activities and the reclamation of mined lands. These standards require that local governments obtain reclamation plans and set operational standards in granting permits for surface mining. Humboldt County adopted Ordinance #1373 to comply with this State requirement.

The Surface Mining Standards adopted within the County's Surface Mining Ordinance set environmental protection standards and prevent new mining operations from becoming nuisances to nearby communities and prevent problems of traffic, noise, water quality or visual degradation.

### **Incompatible Land Uses**

In the 1980s and early 1990s numerous surface mining conditional use permits were issued with a permit term of 15 years, subject to renewal. Further, many vested mining operations in Humboldt County qualify as legal non-conforming uses. More recently, a number of these permits have come up for renewal, and through the renewal notification and hearing process it has become apparent that there are more concerned neighboring property owners. In one instance, it was found that approximately 72% of parcels adjacent to an active extraction operation or haul route had changed ownership since the initial permit issuance. In order to insure the continued production of essential mineral resources, all mining operations and haul routes need protection from incompatible land uses.

## 16.3 Goals and Policies

### Goals

- MR-G1. Long-Term Supply of Mineral Resources.** To assure the long-term availability of adequate supplies of mineral resources and construction materials, to protect mineral resource areas from incompatible land uses and to minimize adverse environmental impacts. \*

### Policies

- MR-P1. Mapping Mineral Deposits.** Maintain and update maps of the County's identified mineral deposits. \*
- MR-P2. Future Development Planning.** Plan future development such that it will not interfere with the utilization of identified mineral deposits. \*
- MR-P3. Reclamation for Alternative Uses.** Ensure adverse environmental effects are prevented or mitigated to the fullest extent feasible and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses under the General Plan. \*
- MR-P4. Production and Conservation.** Encourage the production and conservation of minerals, while preserving to the maximum extent feasible the values relating to recreation, watershed, wildlife, range and forage, science, and aesthetic enjoyment.
- MR-P6. Community Character.** While recognizing that mineral resources are limited in location, reasonable efforts should be made to balance the disruption of community character in siting and planning mineral resource extraction operations. \*
- MR-P7. Mineral Haul Routes.** Require mineral haul routes to avoid incompatible areas such as landslides, highly erodible soils, residential areas, and schools, if feasible. \*
- MR-P8. Conflict Reduction.** Permit conditions for mineral extraction operations should address allowable dust and noise levels, hours of operation, fencing, traffic, access, setbacks and other means to reduce conflicts with adjacent development. \*
- MR-P9. Sand and Gravel Extraction and Mean Annual Recruitment.** Annual in-stream gravel extraction prescriptions shall be based on a management strategy of not exceeding the Mean Annual Recruitment of a river segment. (modified FRWK 2533.9).
- MR-P11. Water Diversion Projects.** Evaluate significant water diversion projects that reduce the replenishment rate of gravel in streams in light of the impact they would have on local mineral supply in Humboldt County. (modified FRWK 2533.11)

Deleted: Prevent

**MR-P15. Right to Mine.** Discretionary projects in the vicinity of, permitted or vested surface mining extraction sites or along existing haul routes shall be required to file and record against the property a notice of the right to mine. The notice shall advise owners and subsequent interests in ownership that the existing mining operations has a permitted right to continued mining operations.

**Deleted:** adjacent to

### 16.4 Standards

**MR-S1. Surface Mining Standards.** Surface mining - See Surface Mining and Reclamation Act Ordinance, Title III, Div. 9, County Ordinance #1373. \*

**MR-S2. Timberland Conversion.** Timberland Conversion as a consequence of surface mining activities - Must meet the requirements of the Forest Practices Act. \*

**MR-S4. Permitted Land Use Designations.** Mining operations and subsequent reclamation activities shall be conditionally permitted in all land use designations and implementing zoning districts.

**MR-S6. Borrow Pits.** The operation of borrow pits on Resource Production Lands (timber, agriculture) for non-commercial purposes is considered a principle use necessary to maintain the primary use of the land provided that such material is not sold commercially. \*

**MR-S7. Subdivision.** The subdivision to create parcels which are for the primary purpose of providing road and construction materials shall be consistent with this plan. \*

**Deleted: MR-S3.**

**Deleted: Mineral Resource Combining Zone.** Establish a Mineral Resource (-MR) combining zone to facilitate implementation of the County's regulations for surface mining, conservation and reclamation. The purpose of the -MR combining zone is to ensure compatibility of adjacent uses. The -MR combining zone shall be applied to parcels with permitted surface mining operations and to parcels adjacent to permitted surface mining extraction sites and along existing haul routes.

### 16.5 Implementation Measures

**MR-IM1. Permit and Ordinance.** The County will recognized vested rights as required by law and maintain the conditional use permit requirement for mineral and construction materials production, oil and gas production operations and utilize the County Surface Mining and Reclamation Ordinance. \*

**MR-IM2. Mapping.** The Planning Department shall utilize the mapping in Policy 2533.1 when reviewing permit applications to:

Prevent development which would preclude utilization of those deposits.

\*  
\*

**Deleted:** Prevent the disruption of adjacent development by siting and planning for mineral resource extraction operations ensuring the elimination or reduction of nuisances and hazards in regards to noise, dust, traffic and public health and safety.

**Deleted: MR-IM3.**

**Deleted: Hearing Notification.** Notification for use permit hearings is provided to landowners within 300 feet of a project's boundaries. For mining operations the Planning Department should provide expanded notice for landowners affected by the mining operation and hauling routes.

**MR-IM4. Development Consultant.** The County, conditioned upon entry into a funding agreement with operators and providing a list of potential consultants for operators and facilitating operator input, should hire a consulting firm qualified in surface mining and reclamation practices to advise the County when large surface mineral deposits are proposed for development. This should include but is not limited to: EIR preparation, mitigation measures and reclamation plans. The consultant's fees should be paid via reimbursements from the mine developers. \*

**Deleted: Combining Zone.** Develop and utilize Mineral Resources Combining Zone to facilitate implementation of the County's regulations for surface mining, conservation and reclamation. The purpose of the -MR combining zone is to ensure compatibility of adjacent uses. The -MR combining zone shall be applied to parcels with permitted surface mining operations and to parcels adjacent to permitted surface mining extraction sites and along existing haul routes.