

Appendix I

Agencies that may use the PEIR

Permits

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General

The Lead agency is "the public agency with the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared" [California Environmental Quality Act (CEQA) Guidelines Section 15367]. The County of Humboldt is the lead agency for the preparation of this PEIR, and for the permitting of surface mining operations within the scope of the PEIR.

The Responsible agency is "a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. In addition, for the purposes of CEQA, the term 'responsible agency' includes all public agencies other than the lead agency which have discretionary approval power over the project" (CEQA Guidelines, Section 15381). Responsible agencies for the preparation of this PEIR may include: California Coastal Commission; California Department of Conservation's, Division of Mines & Geology; California Department of Parks and Recreation; California Department of Transportation (CalTrans); California Division of Boating and Waterways; California Regional Water Quality Control Board; North Coast Unified Air Quality Management District; State Water Resources Control Board; Army Corps of Engineers; National Marine Fisheries; and the U.S. Fish & Wildlife Service.

The Trustee agency is "a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California" (CEQA Guidelines, Section 15386). Trustee agencies for the preparation of this PEIR may include: the State Lands Commission, Native American Heritage Commission, and the Department of Fish and Game.

Surface Mining Permit

"Surface mining operations," as defined by Public Resources Code [Surface Mining and Reclamation Act (SMARA)] Section 2735, is "all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine."

Except as specifically exempted in SMARA (Section 2714) and Humboldt County Code (HCC, Section 391-3 or A314-36) "no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to, and approved by, and financial assurances for reclamation have been approved by the lead agency" (SMARA, Section 2770).

The permit issued by the County of Humboldt, under SMARA, takes the form of a Conditional Use Permit and/or the recognition of a vested right. A Conditional Use Permit may be granted after a public hearing before the Humboldt County Planning Commission. The decision of the Planning Commission is appealable to the Humboldt County Board of Supervisors, whose

decision is final. The recognition of vested right is made by Humboldt County's Director of the Planning and Building Department. The Director's decision is appealable to the Humboldt County Board of Supervisors (HCC Section 317-51).

A reclamation plan, may be approved after a public hearing before the Humboldt County Planning Commission, the reclamation plan assures that "mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety" (SMARA, Section 2733). The decision of the Planning Commission is appealable to the Humboldt County Board of Supervisors, whose decision is final.

Financial assurances are approved by the Humboldt County Planning Department and are to ensure reclamation is performed in accordance with the approved reclamation plan (SMARA 2773.1).

According to CEQA, the review and approval of a Conditional Use Permit and/or a reclamation plan are considered "projects", and are therefore subject to environmental review pursuant to CEQA Guidelines Section 15378. The County of Humboldt has determined that the review and recognition of vested rights, and the review and approval of financial assurances are either not subject to, or are exempt from CEQA.

As part of the review process for a Conditional Use Permit and/or a reclamation plan, an initial study is prepared to determine if the project may have a significant effect on the environment. As part of the initial study process, the Humboldt County Planning Department consults with the responsible and trustee agencies, which are responsible for resources affected by the project, to obtain recommendations on whether an EIR or a Negative Declaration should be prepared (CEQA Guidelines, Section 15063).

In addition to granting Conditional Use Permits, recognizing vested rights, and approving reclamation plans and financial assurances for surface mining operations, Humboldt County is responsible for issuing Coastal Development Permits for operations located in the Coastal Zone and within the permit jurisdiction of the County. The County's permit jurisdiction does not include tidelands, submerged lands, and public trust lands, whether filled or unfilled. These areas are within the permitting authority of the California Coastal Commission. Map No. XX illustrates the limit of the Coastal Zone in relation to the scope of this PEIR. All lands within the Coastal Zone and subject to this PEIR are in the jurisdiction of the County.

Other Agencies

There are other agencies expected to use this PEIR:

- ◆ Resources Agency

The Resources Agency provides state agency coordination for activities which may affect the free-flowing and natural character of the state's public trust resources, adopts the California Environmental Quality Act (CEQA, Public Resource Code Section 21000 et seq.) Guidelines, and coordinates various inter-department issues. The following are all departments of the Secretary of Resources Agency: Department of Conservation; California Coastal Commission; Department of Fish and Game; Department of Boating and Waterways; Department of Parks and Recreation; and, the Department of Water Resources.

◆ Department of Conservation

The *State Mining and Geology Board* is composed of nine members appointed by the Governor. The Board has broad policy responsibilities for mineral resource conservation, mining, and reclamation pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA).

The State Mining and Geology Board established the *Division of Mines and Geology* (DMG). The DMG implements a *Reclamation Program* which carries out many of SMARA's reclamation provisions. The Board sets policy for the Reclamation Program, and other DMG programs, and is the agency responsible for certifying local surface mining reclamation ordinances. The Reclamation Program is responsible for reviewing and commenting on reclamation plans submitted by lead agencies pursuant to SMARA.

The *Office of Mine Reporting and Reclamation Compliance* (MRRC) is a division of the Department of Conservation. The MRRC is responsible, among other things, for review of financial assurances and annual reports pursuant to SMARA.

◆ California Coastal Commission

In general, the coastal zone extends from the State's three-mile seaward limit to 1,000 yards inland from the mean high tide of the sea. In coastal estuaries, watersheds, wildlife habitats, and recreational areas, the coastal zone may extend inland to the ridge of the nearest mountain range or farther. In urban areas, the coastal zone may extend inland less than 1,000 yards from the mean high tide of the sea.

Specifically, for this project the coastal zone extends up the Mad River to approximately the upstream end of the extraction area for Site 8, see Map #. The river bed, bank to bank, is under the permit jurisdiction of the California Coastal Commission (CCC). The upland area west of the river is within the County's permit jurisdiction.

Because Humboldt County has a LCP, the CCC's role in coastal development regulation is reduced to a few well-defined responsibilities: 1) retains permit jurisdiction in certain areas such as state tidelands, submerged lands, public trust lands, and uncertified geographic areas (areas of deferred certification); 2) hears appeals from local actions on appealable developments; 3) determines jurisdiction in cases where a local determination is questioned or challenged (Regulation Section 13569); 4) enforces permits it issued before LCP certification; and 5) reviews projects for federal consistency.

The CCC also has an ongoing responsibility to monitor LCP implementation: 1) reviewing notices of pending local hearings and pending non-hearing actions; 2) reviewing notices of final local action; and 3) providing notice of appealable development to the CCC.

Anyone proposing development within the coastal zone must obtain a coastal development permit. For development in areas under the permit jurisdiction of the CCC, the project proponent must apply to the CCC. For development in areas under the permit jurisdiction of the County, the project proponent must apply for the Coastal Development Permit with the County. For a more detailed discussion of project conformance with applicable LCPs, see Section VIII, Environmental Setting.

◆ California Department of Fish & Game

Any person proposing an activity that will change the natural state of any river, stream, or lake must enter into a Stream or Lake Alteration Agreement with the California Department of Fish & Game (CDFG). These agreements are often call "1601" or "1603" permits, since many people use the statutory reference. As a general rule, this requirement applies to any work undertaken within the mean high-water mark of a body of water containing fish or wildlife resources or where the project sponsor will use material from the streambed.

The CDFG uses the following factors to determine the high-water mark: 1) the height of residue deposited by the stream, river or lake on its bank or beach in the course of a normal year; 2) the yearly fluctuation in flow; 3) personal knowledge of the area involved; and, 4) United State Geological Survey charts. The CDFG enters into Stream or Lake Alteration Agreements to protect the fish and wildlife resources of the state. In addition to its regulatory responsibilities, the CDFG reviews and recommends modification, approval or denial of projects requiring federal, state, and county permits that may affect fish and wildlife.

The CDFG bases the evaluation of an application for a Stream or Lake Alteration Agreement on the anticipated impact of the proposed project on fish and wildlife resources. Consequently, the CDFG will write the Stream or Lake Alteration Agreement with terms and conditions designed to protect these resources. The CDFG may impose additional conditions on the Agreement in the event that the project impairs the physical condition of the project area or an operation changes.

If a project sponsor does not agree to the conditions or modifications of the Stream or Lake Alteration Agreement, the CDFG and sponsor must establish an arbitration panel. The panel consists of a representative of the CDFG, the applicant or representative, and a neutral chairman selected with the approval of both. The panel may settle disagreements and make binding decisions concerning the proposed conditions or modifications.

Anyone proposing to use suction or vacuum dredging equipment with an intake diameter of 12 inches or less in any river, stream or lake designated as open for dredging must obtain a standard suction dredging permit from CDFG. Anyone proposing to use suction or vacuum dredge equipment with an intake diameter over 12 inches; or anyone proposing to use suction or vacuum dredging equipment of any size in any area designated as closed for dredging, must obtain a special suction dredging permit.

◆ California Department of Boating and Waterways

For all summer bridge crossings, the California Department of Boating and Waterways requires clear markings to warn recreational users of the river that hazards may exist.

◆ North Coast Unified Air Quality Management District

The State Air Resources Board (ARB) and the Federal Environmental Protection Agency (EPA) have established standards which govern the quality of the surrounding atmosphere, known as ambient air quality standards. The North Coast Unified Air Quality Management District (NCUAQMD), and, in some cases, the EPA, may also have established emission limits for specific types of equipment. The NCUAQMD is a multi-county special district funded partially by the State of California and partially by those operations that fall under its jurisdiction.

In addition to emission limits and ambient air quality standards, the NCUAQMD may have adopted what are commonly known as New Source Review Rules. New Source Review Rules regulate all new or modified sources with emissions exceeding a specified limit for any pollutant for which there is a state or national ambient air quality standard (excluding carbon monoxide) or any precursor to such a pollutant. The NCUAQMD also determines whether the new emissions violate any carbon monoxide standard at the ground level point where they are most concentrated. All new or modified stationary sources with a net increase in emissions greater than the limit must be constructed using the best available control technology (BACT).

Even in areas where the ambient air quality standards are not being violated, the NCUAQMD may determine that additional emissions would cause a violation of a standard at the point of greatest concentration at ground level. The project sponsor must reduce these emissions to a level where no violation exists.

Any person or organization proposing to construct, modify, or operate a facility or equipment that may emit pollutants from a stationary source into the atmosphere must first obtain an Authority to Construct from the NCUAQMD.

If the NCUAQMD denies an Authority to Construct, the applicant may appeal the decision within 10 days of the denial notice to the district's Hearing Board. The Hearing Board must reach a decision within 30 days of receipt of the appeal, unless the applicant and the NCUAQMD agree to additional time.

The Authority to Construct permit cannot be transferred to another party. Also, the project sponsor must comply with all conditions included in the permit. The NCUAQMD may, after holding a public hearing, revoke an Authority to Construct permit if it finds the project sponsor has violated any district rules, regulation, or permit conditions.

Any person proposing to operate equipment that emits pollutants into the atmosphere must obtain a Permit to Operate from the NCUAQMD. The project sponsor may apply for the permit only after obtaining an Authority to Construct permit.

The NCUAQMD may cancel a Permit to Operate if the project sponsor has not begun operating the facility within one year of completing construction. The Hearing Board may revoke a Permit to Operate if it finds, after a public hearing, that the permittee has violated any district rules and regulations.

◆ State Water Resources Control Board

The owner or operator of any facility or activity that will discharge waste into any surface waters of the state must obtain waste discharge requirements. The requirements serve as a federal National Pollutant Discharge Elimination System (NPDES) permit from the Regional Water Quality Control Board (RWQCB).

The RWQCB evaluates the NPDES permit application to determine whether the proposed discharge is consistent with the RWQCB's adopted water quality objectives, the Areawide Waste Treatment Management ("208") Plan, the Basin Plan for the area in which the project is located, and federal effluent limitations.

When approving an NPDES permit, the RWQCB sets limits on each discharge. These limits assure that the discharge will not harm public water supplies, agricultural and industrial water

use, wildlife habitat, or any water-related recreational activity, and that the discharge will comply with the requirements of federal and state law.

The RWQCB denies an NPDES permit if the discharge contains a harmful biological, radiological, or chemical agent or if the discharge would substantially impair the anchorage and navigability of the waterway.

The RWQCB decision to issue, or not issue, a NPDES can be appealed to the State Water Resources Control Board.

The State or RWQCB may require the project sponsor to discontinue the discharge if the sponsor violates the conditions of the waste discharge requirements or has misrepresented the activity to obtain the requirements. The State or RWQCB may also go to court to seek fines for violation of the permit.

In late 1991, the RWQCB was delegated responsibility to implement a Statewide General Permit that may be used by surface mining operations which have NPDES permits. The Statewide General permit requires the operator to eliminate any possibility of non-stormwater discharge, prepare and implement a Stormwater Pollution Prevention Plan and prepare and implement a Stormwater Discharge Monitoring Program.

The RWQCB is responsible for verifying compliance with the General Permit and may use any of its enforcement authorities to obtain compliance.

The RWQCB also is responsible for regulating handling and storage of petroleum products. Any above ground tanks must comply with State registration and monitoring regulations. Tanks with a capacity over 700 gallons must have a Spill Prevention Control, Countermeasure and Contingency Plan. However, the regulation of underground tanks is the responsibility of the Humboldt County Department of Environmental Health.

The objective of the petroleum storage regulations is to avoid spillage of fuels and asphalt products where they may immediately affect the sensitive uses of the Mad River or its tributaries. The RWQCB has enforcement powers to regulate compliance with the petroleum storage and handling requirements.

◆ State Lands Commission

The State of California acquired sovereign ownership of the beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State. The Statewide Public Trust is for purposes of waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space.

The State Lands Commission comments, pursuant to CEQA, on projects which may affect state lands or public trust easements, and collects royalties for the removal of mineral resources from state fee-owned lands.

◆ Department of Transportation

Any proposed activity within, under, or over the State highway right of way must have an encroachment permit from the Department of Transportation (Caltrans). Encroachment permits are issued to: 1) ensure that the proposed encroachment is compatible with the primary uses

of the State highway system; 2) ensure the safety of both the permittee and the highway users; and 3) protect the State's investment in the highway facility.

If the proposed encroachment is minor and will have no significant effect on the environment or is exempt from the California Environmental Quality Act, the permit engineer will review the application to determine whether the encroachment is compatible with other highway uses and conforms to Caltrans standards. If the application is acceptable, the permit engineer will issue the permit.

If the proposed encroachment is major, the permit engineer inspects the project area. Other Caltrans units, such as Traffic, Design, Hydraulics, and Environmental, may review the application to determine the proposed encroachment's effect of the use of the State highway and on the environment. If these units find the encroachment acceptable, the permit engineer will issue the permit.

Caltrans has no formal appeal process, however, in cases where the permit engineer and the project sponsor cannot reach an agreement, the District maintenance engineer will negotiate with the applicant. If an agreement is not reached at this level, the District Director will negotiate with the applicant. If unsuccessful, the District Director may seek the advice of Department Headquarters in Sacramento to resolve the conflict. The decision of the Department Director of Caltrans is final.

Caltrans may revoke a permit and order the removal of an encroachment, if the permittee has not complied with all terms and conditions of an approved permit, or if the continuance of the encroachment is incompatible with highway use.

◆ United States Army Corps of Engineers

Any person or public agency proposing to locate a structure, excavate, or discharge dredged or fill material into waters of the United States or to transport dredged material for the purpose of dumping it into ocean waters must obtain a United States Army Corps of Engineers (corps) permit, often referred to as a "404" permit.

Sections 9 and 10 of the federal River and Harbor Act of 1899 gave the Corps permit power over activities in navigable waters. Navigable waters were defined as those suitable for commercial transport. Recent court decisions and new legislation, however, such as Section 404 of the federal Clean Water Act and Section 103 of the Marine Protection, Research and Sanctuaries Act, have widened the definition of navigable waters and have expanded the Corps' regulatory jurisdiction. Now "navigable waters" include rivers, coastal waters, adjacent wetlands, lakes intermittent streams, and low-lying areas behind dikes along the coast.

The Corps evaluates each application for any effects on the environment, navigation, or flood control. The Corps' primary area of expertise is in navigation and flood control, so they ask other public agencies to assist in evaluating the environmental effects of a project. The Corps will also consider safety, water quality, land use effects, historic values, aesthetics, economics, conservation, and the welfare of the general public when reviewing the merits of a proposal.

The Corps will not issue a permit when other government agencies object. The Corps has no formal procedures for appeals.

Although the Corps issues the Section 404 permits, the Environmental Protection Agency (EPA) has developed the 404(b)(1) Guidelines and retains veto power over Section 404 permits and may designate specific areas as non-discharge sites. The EPA will comment on individual permit applications and often acts as an agency "watchdog" to ensure compliance with the 404(b)(1) Guidelines and NEPA.

◆ National Marine Fisheries Service

The National Marine Fisheries Service is responsible for preserving and enhancing marine, estuarine, and anadromous fish resources and the habitats that support these resources.

◆ Fish and Wildlife Service

The United States Fish and Wildlife Service (USFWS) is responsible for regulating the Endangered Species Act and updating the list of threatened or endangered species. All Federal agencies are required to consult the USFWS before taking any action which could adversely affect threatened or endangered species or result in the destruction or adverse modification of lands determined by the USFWS to be 'critical habitat'. The consultation does not apply to private actions; it applies only to actions involving permits or other approvals by the federal government.

◆ Humboldt Bay Municipal Water District

The Humboldt Bay Municipal Water District operates wells and provides water supplies that draw from the Mad River and its underlying aquifers, and submits comments as an interested agency on proposed projects subject to CEQA which may affect the volume or quality of its water supplies.