

DEPARTMENT: Planning

By: Sarah Williams, Planning Manager

Phone: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No X)

Resolution approving the following:

1. Temporary borrow site and associated uses on APN 11-250-018; including access improvements to the site from Mt. Ophir Road;
2. An exemption from the State Surface Mining and Reclamation Act (SMARA) for the borrow site in accordance with Section 2714 of Public Resources Code, Division 2, Chapter 9.
3. An exemption from the California Environmental Quality Act (CEQA) for the project action in accordance with Sections 15269(a) and (b), and Section 15301 of the CEQA Guidelines.

Justification for recommended action is discussed in attached memorandum to Board.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

See attached memorandum

**LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

1. Modify or condition temporary use.
2. Do not approve temporary uses and exemptions (negative action). Material or repair and reconstruction work would have to be hauled into river canyon from other sources.

COSTS: ( X ) Not Applicable

A. Budgeted current FY \$ \_\_\_\_\_

B. Total anticipated Costs \$ \_\_\_\_\_

C. Required additional funding \$ \_\_\_\_\_

D. Internal transfers \$ \_\_\_\_\_

COSTS: ( ) 4/5th Vote Required

A. Unanticipated revenues \$ \_\_\_\_\_

B. Reserve for contingencies \$ \_\_\_\_\_

C. Source description: \_\_\_\_\_

Balance in Reserve Contingencies, If Approved:  
\$ \_\_\_\_\_

SPECIAL INSTRUCTIONS:

List the attachments and number the pages consecutively:

1. Memorandum to Board

**CLERK'S USE ONLY**

Res. No.: 97-45 Ord. No.: \_\_\_\_\_

Vote - Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved  Denied

Minute Order Attached  No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

MARGIE WILLIAMS, Clerk of the Board

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

Deputy

**ADMINISTRATIVE OFFICER'S RECOMMENDATION:**

This item on agenda as:

\_\_\_\_\_ Recommended

\_\_\_\_\_ Not Recommended

\_\_\_\_\_ For Policy Determination

\_\_\_\_\_ Submitted for Comment

\_\_\_\_\_ Returned for Further Action

Comment: \_\_\_\_\_

\_\_\_\_\_

A.O. Initials: \_\_\_\_\_

**MARIPOSA COUNTY RESOLUTION NO. 97-45**

**A RESOLUTION APPROVING TEMPORARY BORROW SITE FOR  
EMERGENCY ROAD AND STRUCTURE REPAIR WORK IN  
MERCED RIVER CANYON FOLLOWING FLOODING EVENTS**

**WHEREAS**, the recent flooding events along the Merced River caused extensive and severe damage to roadways and structures throughout the Merced River Canyon; and

**WHEREAS**, the damage resulted in the closure of entire sections of Highway 140, including the entrance to Yosemite National Park; and

**WHEREAS**, the flooding eliminated entire sections of Incline Road, a County maintained road which provides the only access to residential development on the north side of the Merced River; and

**WHEREAS**, the flooding damage resulted in restricted access from Briceberg to the Cedar Lodge Motel. Traffic is limited to one way "caravans" because portions of the highway and shoulder are either gone entirely or severely undermined and in many locations there is only one lane which is safe for vehicular traffic; and

**WHEREAS**, based upon the extent of the flooding damage, the Board of Supervisors adopted Resolution No. 97-1 on January 7, 1997, proclaiming "existence of a local emergency" and requesting the Governor of the State of California to proclaim a state of emergency and to request a presidential declaration, and the Governor and the President did make the requested proclamation and declaration; and

**WHEREAS**, in response to the damage, John Newman (hereinafter referred to as project applicant) has proposed a temporary borrow site for fill material on APN 11-250-018 (Puglizevich, property owner) to enable local availability of necessary materials for repair and reconstruction efforts in the Merced River Canyon; and

**WHEREAS**, the Zoning Code does not address temporary uses; and

**WHEREAS**, the General Plan land use designation and zoning on this parcel is Mountain Home, which allows mining uses subject to a conditional use permit; and

**WHEREAS**, the conditional use permit process involves a lengthy review process and a public hearing at the Planning Commission, and this process normally takes months to complete; and

**WHEREAS**, the applicant has offered the fill material from the temporary borrow site to affected governmental agencies and to the contractors of affected governmental

agencies to facilitate on-going reconstruction work in the Merced River Canyon and to minimize its costs; and

**WHEREAS**, the project site is near Mt. Ophir and there are a number of identified historic sites in the area. The applicant has agreed to limit the area of his work, including the access road, to areas which are away from the identified historic sites. This will protect the known sites from potential impacts of the temporary project; and

**WHEREAS**, a sensitive animal species, the Pale Eared Bat, was observed in the area of the proposed project in 1956. Based upon habitat information for this species and the location of the observation, this temporary project, including the access road, will not disturb or impact this animal species; and

**WHEREAS**, the location of the temporary borrow site, while relatively close to Highway 49 North, is not visible from the highway or Mt. Ophir Road based upon existing vegetation and elevation differences between the site and the highway. The applicant is proposing to limit the area and height of the proposed excavation to ensure that the project will not be visible from the highway or the county road. The total area of disturbance is proposed to be 5 acres, of which 3 will be for the actual mining operations and 2 will be for stockpiling, screening and loading operations. The maximum height of the cut is proposed to be 18 feet; and

**WHEREAS**, the applicant will be required to obtain a grading permit for the temporary project, including the access road and the crossing of Norwegian Gulch. Engineering may be required by the Building Department for the permit. This permit will ensure compliance with all County Grading Ordinance requirements, including revegetation of all exposed soils for site reclamation upon completion of the project. The applicant has agreed to work with staff from the local Resource Conservation District and the Planning Department relative to these efforts, which will include limitations to the slopes of the excavations to ensure that revegetation efforts will be successful upon completion of the use; and

**WHEREAS**, the applicant has contacted Caltrans and will install appropriate signage as required by Caltrans to address possible traffic safety impacts related to slow moving trucks exiting and entering Highway 49 North (to and from Mt. Ophir Road); and

**WHEREAS**, the applicant has contacted the County Department of Public Works and will obtain an encroachment permit as required to address possible impacts related to excessive truck traffic using Mt. Ophir Road, a County maintained road. Encroachment improvements at the access road will be required, and the applicant may also be responsible for costs to repair damage to the County road caused by the use; and

**WHEREAS**, prior to issuance of a Grading Permit for the project, the applicant will be required to provide evidence to the County of a contract or other agreement to provide material for a road repair project in the Merced River Canyon. The applicant will be required to document quantities removed from the site and delivered to this project throughout the life of the temporary use; and

**WHEREAS**, the applicant has consulted with the Department of Fish and Game on possible impacts of construction of a temporary creek crossing for Norwegian Gulch. The applicant has agreed to incorporate all of Fish and Game's requirements into his project, including permit requirements; and

**WHEREAS**, the applicant will also be responsible for contacting the State Water Quality Control Board to determine whether or not an Industrial Stormwater Permit is required from this state agency. A permit or a waiver to the permit must be obtained prior to issuance of a Grading Permit for the project.

**NOW THEREFORE**, the Board of Supervisors of Mariposa County hereby resolves the following:

1. A temporary use for a temporary borrow site for fill material and associated uses is approved for APN 11-250-018. This temporary use is approved for operation for a maximum total of 100 calendar days (commencing upon issuance of a grading permit), or until completion of all repair and reconstruction work in the canyon, whichever comes first. A maximum of 40,000 tons of slate sub-base material may be removed. Prior to any work on the site for the temporary use, a Grading Permit shall be obtained from the County Building Department, and all project provisions as listed in this resolution shall be met. The use shall require an approved reclamation plan and financial assurances in accordance with all requirements of the State's Surface Mining and Reclamation Act. The applicant shall submit the plan and proposed financial assurances within 15 calendar days of the effective date of this resolution. Noise from the project shall not exceed what is "normally acceptable" for low density residential land uses as established by the Mariposa County General Plan at the property line of APN 11-330-007. All Planning Department fees shall be paid by the applicant for the temporary use. All permit and affected agency requirements shall be met throughout the life of the temporary use. The fill material shall only be utilized for repair and reconstruction work associated with flooding damage in the Merced River Canyon. The borrow site use shall be immediately ceased upon completion of all repair and reconstruction work in the canyon or at the end of 100 calendar days as provided for in this resolution, and the site shall be restored and revegetated in accordance with County Grading Ordinance standards, the approved reclamation plan, and the recommendations of staff from the Planning Department and Resource Conservation District.

**NOW THEREFORE**, the Board of Supervisors further resolves that approval of this temporary use is based upon the following findings:

1. There are special and unique public safety, environmental, and economic circumstances relative to the recovery efforts from the recent flooding events in the Merced River Canyon. Although there are provisions in the Zoning Ordinance which address mining uses in the Mountain Home Zone, it is in the general public interest to waive the conditional use permit process for the proposed temporary use to facilitate reconstruction and repair work for immediate access and recovery.
2. The temporary use is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Sections 15269(a) and 15269(b) of the CEQA Guidelines. The temporary borrow site is a use which is directly associated with a project to conduct "emergency repairs to public service facilities necessary to maintain service".
3. Based upon the specific project proposal from the project applicant, the temporary use will not have a significant adverse effect on the general public health, safety, peace and welfare. The temporary use will actually facilitate the emergency repairs, which will have a positive and beneficial impact on the general public health, safety, peace and welfare.
4. Providing an exemption from the conditional use permit process for the temporary use is appropriate for the temporary use based upon the site's proximity to the reconstruction and repair efforts. The proposed temporary borrow site use is within Mariposa County and close to a state highway. Having these materials available within the County and close to a state highway will improve the efficiency of the reconstruction work, and potentially minimize its costs. There is no process in County Code for reviewing a temporary mining operation.
5. These actions are consistent with the Mariposa County General Plan Safety Element which states that a major area of concern for flood hazards in Mariposa County is the "lack of adequate access for emergency equipment to residential structures during periods of flooding."

The Safety Element and County Disaster Plan also "provide for coordination of services during major emergencies in order to accomplish...restoration or activation of essential facilities and systems."

6. This action by the Board of Supervisors is based upon the special and unique circumstances related to this specific proposal by the project applicant. The waivers and exemptions approved by the Board of Supervisors do not establish a precedence for similar actions, unless warranted by other similar

special and unique circumstances which shall be reviewed by the Board on a case by case basis.

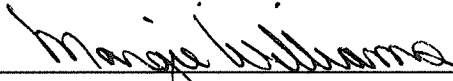
**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County on this 4th day of February, 1997 by the following vote:

AYES:	Balmain, Stewart, Parker, Pickard
NOES:	None
ABSTAINED:	None
EXCUSED:	Reilly



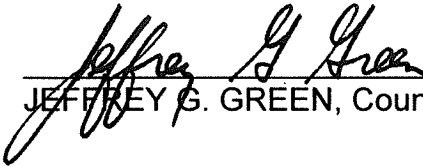
ROBERT C. STEWART, Chairman  
Mariposa County Board of Supervisors

ATTEST:



MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



JEFFREY G. GREEN, County Counsel

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

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TO: ED JOHNSON, Planning Director  
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*  
SUBJECT: TEMPORARY BORROW SITE FOR MATERIALS FOR  
EMERGENCY ROAD REPAIR WORK IN MERCED RIVER  
CANYON; RES. 97-45

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THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on February 4, 1997

ACTION AND VOTE:

**2:05 p.m.** Ed Johnson, Planning Director;  
**PUBLIC HEARING** to Consider Temporary Borrow Site (Including SMARA and CEQA Exemption) for Materials for Emergency Road Repair Work in Merced River Canyon Following Recent Flooding Events; John Newman, Applicant/APN 11-250-018, Puglizevich, Property Owner

**BOARD ACTION:** Ed Johnson gave an overview of the application and reviewed the correspondence that was received relative to this hearing. Sarah Williams, Planning Manager, provided a detailed staff report. Staff responded to questions from the Board relative to interpretation of being able to authorize SMARA exemptions as a result of the flood disaster.

Public portion of the hearing was opened, and the following persons provided input:

- John Newman, Newman Ranch, reviewed his proposed project and advised that the Puglizevich property consists of 1700 acres; advised that the project site consists of about five acres and is in the center of a 662 acre parcel and is surrounded by vegetation and a small canyon and it cannot be seen from Highway 49 North; the nearest residence is about one mile away and there is no visual impact; he proposes to build about 2,000 feet of road and this location is a short hauling distance to Highway 140; he proposes to use D-8 and D-9 bulldozers and may or may not screen the materials depending on Caltrans' specifications; the materials could be used for road shoulders and embankments; could possibly be used by BLM and the County on Incline Road; he intends to operate within the guidelines of the contractor - currently that is seven days a week and ten hours a day; he has discussed safety signing on the Highway with Caltrans to alleviate any hazards with the trucks entering and exiting the Highway; he is working with Public Works relative to mitigating impacts to Mr. Ophir Road; he has discussed the project with Fish and Game

and they will authorize a wet stream crossing; there is a pond close-by to handle sedimentation and he is working with Resource Conservation District on those issues; he is pursuing this project so that Caltrans can purchase materials locally and he feels they are interested in the material he can produce and will meet with him later in the week; this can expedite the project and generate a savings and will not impact the environment; advised that he is not asking for SMARA and CEQA exemptions - he will provide financial assurances and a reclamation plan and comply with all regulations; commented on the status of other operations in the County; and stated he is just asking for a waiver of the timeframes.

Persons speaking in opposition to the project:

- Sally Dupre, neighboring resident, stated they feel left out of the process as they were not aware of the proposed project until receiving a notice of this hearing in the mail; she expressed concern with noise impacts and that the operation may continue after the road repairs are finished as a result of the flood disaster; expressed concern with potential water contamination and with impact to the wildlife in the area. Mrs. Dupre responded to question from the Board relative to the location of their residence in regards to the project site.

- Tom Weidner, real estate agent for the Dupres, stated he felt there must be some safeguards to protect the neighbors; expressed concern that there may be some chemicals left in the area from earlier mining operations that might be disturbed by this project; and asked if blasting would be involved in this project.

- Frank Long stated he has had his financial assurances for his operation since February 19, 1996, but there needs to be a minor change in them to satisfy the State; stated he has material available; commented on the permit processes he has gone through and the costs for his operation and the amount of material they can supply; stated he feels this application could jeopardize the previous exemption granted by the Board for Yosemite Motels; he referenced a letter from John Parrish, State Mining and Geology Board, relative to interpretations of being able to exempt SMARA requirements and commented on other correspondence that was received; noted that a storm water permit is required annually for each pit site; referred to the earlier grading project by this applicant; and advised that if the Board approves this project, he will attempt to get on the next agenda for the State Mining and Geology Board to object.

Planning Director and Public Works Director responded to questions from the Board as to whether products exist on this site that meet Caltrans' specifications.

Comments of a general nature: none.

Rebuttal by applicant: John Newman introduced Mr. Puglizevich, property owner of the proposed project site; advised of a ridge and vegetation between the Dupre residence and the site and stated he does not feel that noise will be an impact; stated he feels Mr. Long should be trying to sell his own material instead of contesting his project - he feels there will be a need for more materials than can be produced locally; stated he does not feel that there are any water quality concerns for the area; and he will address storm water drainage. Mr. Newman responded to questions from the Board relative to the status of any contractual arrangements with Caltrans or their contractor for materials that he proposes to produce. Mr. Long responded to questions from the Board relative to the status of their operation and whether they have any contractual arrangements with Caltrans.

Public portion of the hearing was closed. Staff responded to the input provided during the hearing, and revised their recommendation in light of the input provided by the applicant and the State - they feel that the Board should not waive any requirements or grant any



exemptions, other than time limits; suggested a temporary permit be granted with a specified time to meet all conditions; and advised that with regards to environmental review, everything has been incorporated in the process with the exception of the noise issue and a mitigation measure could be added relative to hours of operation, and suggested six days a week during daylight hours, or relative to level of acceptable noise. Staff responded to questions from the Board relative to recommendation.

Board commenced with deliberations. (M)Pickard, (S)Parker, Res. 97-45 adopted approving a temporary mining permit for the temporary borrow site with financial assurances and reclamation plan to be submitted to staff in compliance with SMARA regulations within fifteen days; with all permit fees to be paid by the applicant; project to comply with noise standards as set forth in the General Plan for residential areas and any complaints shall come back to the Board for further consideration; applicant to comply with CEQA regulations as identified in the staff report; use of the materials from the project site is restricted to the Merced River canyon and Yosemite Valley repairs as a result of the flood disaster; term of the project shall not exceed 100 days; operation at the site is permitted during daylight hours, seven days a week. Motion was clarified to state that the project can only proceed if there is a contract for the materials and the financial assurances and reclamation plan are in place; the 100 day time limitation begins when the permit is issued, and any extension of this timeframe will come back to the Board for further review. Motion was amended by maker, agreeable with second, following further discussion, to restrict the use of the materials to the Merced River canyon to the boundary of Yosemite/Ayes: Balmain, Stewart, Parker, Pickard; Excused: Reilly. Hearing was closed.

cc: File