

**BUTTE COUNTY PLANNING COMMISSION
AGENDA REPORT – January 25, 2007**

Applicant:	Baldwin Contracting Company (Rene Vercruyssen, representative)	Application:	M & T Chico Ranch Mine
Owner:	Pacific Realty		
File #:	MIN 96-03	Parcel Size:	Lease Area: 627 acres Project Site: 235 acres Mined Area: 193 acres Equipment Area: 40 acres Topsoil Stockpile: 2 acres
General Plan:	Orchard and Field Crops	Supervisor District:	1
Zoning:	A-40 (Agricultural, 40-acre parcel)	Planners:	Pete Calarco Assistant Director Dan Breedon, AICP Principal Planner
		Attachments:	
APNs:	039-530-019 & 020	A	Exhibit 2 – Conditions of Approval to Resolution Approving Mining Use Permit
		B	Final EIR Errata
		C	Public Works Memo
		D	Letter to OMR Regarding October 2, 2006 Transmittal of Reclamation Plan
		E	Correspondence

RECOMMENDATION

1. Adopt the attached resolution certifying the Final Environmental Impact Report (EIR) as consistent with the requirements of the California Environmental Quality Act (CEQA) including the Findings of Fact and Mitigation Monitoring Plan.
2. Adopt the attached resolution approving the Mining Permit 96-03 including the

reclamation plan, financial assurance cost estimate and a statement of overriding considerations

SUMMARY

This application was continued from the December 14, 2006 Planning Commission meeting after receipt of public testimony and discussion. Clarifications and responses to Planning Commission direction are provided for the proposed projects' compliance with the Williamson Act; determination of prime or non-prime agricultural lands; existing setting and project setting; traffic; and transmittal of the Reclamation Plan to the Department of Conservation.

ANALYSIS

The Project's Compliance with the Williamson Act

The applicant has requested immediate cancellation from the Williamson Act (California Land Conservation Act of 1965) contract. This request has been evaluated by the County's Land Conservation Act committee (LCA), an advisory committee to the Board of Supervisors. The LCA's recommendation to the Board is that four of the five required statutory consistency findings (Government Code §51282 (b)) for cancellation could be made. The LCA determined that one of the required findings could not be made, thereby constituting a recommendation to the Board not to approve the immediate cancellation request. The required finding which the LCA advised could not be made is as follows:

(5) That there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontinuous parcels.

A requirement of filing an immediate cancellation request is that the applicant file and record a notice of non-renewal. Alternatively, a Williamson Act contract can go through a landowner initiated non-renewal process commonly referred to as a nine-year roll-out meaning that the property taxes are increased over a nine-year period until full taxation is reached upon contract expiration. Williamson Act non-renewal is not a discretionary

action. A notice of non-renewal has been recorded on the area proposed to be mined. This means that the mine area will not be in a Williamson Act contract nine years from the date of filing that non-renewal regardless of the action by the Board of Supervisors on the immediate cancellation request and regardless of the decision on the proposed mining project.

The Board of Supervisors will consider the adequacy of the Final EIR as it relates to the immediate cancellation request. As stated, Government Code requires that the Board make all of the statutory consistency findings in order to approve the request for immediate cancellation. If the request for immediate cancellation is denied, an approved project could proceed upon completion of the non-renewal process. Alternatively, the Board of Supervisors may find that the project is consistent with the Williamson Act. In any of these three scenarios, the Board of Supervisors could approve the proposed project as consistent with the requirements of the Williamson Act. While compliance with the Williamson Act is part of the project description, staff has added an additional condition of approval clarifying this requirement (see attached Exhibit 2 – Conditions of Approval).

Determination of Prime or Non-Prime Agricultural Lands

Testimony was provided to the Planning Commission regarding the Final EIR's determination of the project site as prime or non-prime agricultural lands. Section 51201(c) of Government Code (the Williamson Act) provides any of five criteria may be used for determining prime agricultural land for purpose of the Act as follows:

51201. As used in this chapter, unless otherwise apparent from the context: ...

(c) "Prime agricultural land" means any of the following:

(1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

The Williamson Act does not require a detailed site-specific analysis for a determination of prime or non-prime for the all of the agricultural lands contained within a LCA contracted area. Evidence in the Final EIR indicates that the site-specific conditions on the specific area proposed for mining do not support a prime agricultural land designation, as defined above. The Assessor's Office determination regarding prime or non-prime contracted lands does not invalidate or conflict with the information in the Final EIR for CEQA purposes.

Clarification of Existing Setting and Project Description

As directed by the Planning Commission at the December 14, 2006 meeting, clarifications (errata) to the text in the Final EIR are provided (see attached). The errata includes a description of the Llano Seco Ranch as part of the Regional Environmental Overview and reference to the Williamson Act immediate cancellation request as part of the Detailed Project Description.

Traffic

Attached is a memorandum from Butte County Public Works in response to testimony provided at the December 14, 2006 meeting and Planning Commission direction to return with information regarding alternative/exclusive circulation routes. Routes addressed in the memorandum include River Road to SR 32 and Ord Ferry Road to Dayton Road, to Hegan Lane, to Midway, rejoining the original route at Midway and East Park Avenue.

Transmittal of Reclamation Plan to Department of Conservation and Response to Comments

Testimony was provided to the Planning Commission regarding the Department of Conservation Office of Mine Reclamation's review of the proposed Reclamation Plan in compliance with requirements of the Surface Mining and Reclamation Act of 1975 (SMARA - Public Resources Code §2710 *et seq.*). Attached is a letter from Development Services to the Office of Mine Reclamation confirming that the responses and submittal required in Section 2774(d)(2) of SMARA has been fulfilled. A portion of 2774(d)(2) is provided below:

The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments.

Butte County has reviewed and responded to the comments of the Department of Conservation, including their letters of November 18, 2002 and June 10, 2004. It is staff's recommendation that, in conditionally approving proposed Reclamation Plan, the Planning Commission determine that the plan is consistent with the requirements of SMARA. County staff transmitted the Reclamation Plan, including responses to the Director of Conservation's comments, in compliance with 2774(d)(2) on October 2, 2006. Those materials are included in the attached letter to the Office of Mine Reclamation (OMR).

EXHIBIT 2

CONDITIONS OF APPROVAL FOR M&T CHICO RANCH MINING USE PERMIT AND RECLAMATION PLAN (MIN 06-03 BALDWIN CONTRACTING COMPANY)

1. This Mining Use Permit allows the extracting, processing, and sale of up to 5,500,000 cubic yards of aggregates within Assessor Parcels 039-530-019 and 020 (“Project”) in accordance with County ordinances and land use regulations subject to the following terms and conditions. This approval also allows construction of facilities ancillary to the mining project and related improvements.
2. Failure to comply with the conditions specified herein as the basis for approval of application and issuance of the Mining Use Permit constitutes cause for the revocation of said permit in accordance with the procedures set forth in the County Zoning Ordinance, including County Code Sec. 24-45.65.
3. Unless otherwise provided for in a special condition to this Mining Use Permit, all conditions must be completed prior to or concurrently with the establishment of the granted use. Owner/Operator shall commence operations within 5 (five) years from the date of issuance of the final permit. Should operations not commence within said 5 (five) years the final permit shall expire and become void, unless extended by the Planning Commission prior to expiration.
4. Amendments to an approved Mining Use Permit may be submitted to the Planning Commission, detailing proposed changes to the original plan. Substantial deviations from the original plan shall not be undertaken until such amendments have been filed with and approved by the Planning Commission. The Planning Commission shall set a public hearing regarding such amendments in the same manner as provided for in County Code Section 13-107.
5. The terms and conditions of this permit shall run with the land and shall be binding upon and be to the benefit of the heirs, legal representatives, successors, and assigns of Owner/Operator.
6. Financial assurances to ensure compliance with the approved Reclamation Plan shall be in place to the satisfaction of the Director of the Department of Development Services or his/her designee prior to the establishment of the approved mining use. Financial assurances have been initially calculated at \$103,526.93.
7. Prior to use of the site for the proposed use Owner/Operator shall contact the Planning Division for a field inspection to verify that all conditions and ordinance requirements have been met.

Planning Division:

8. All Reclamation work shall be in substantial compliance with the approved Reclamation Plan.
9. All mine operations shall comply with the Project Description and Mining Use Permit application as submitted and approved and set forth in the M&T Chico Ranch Certified Final Environmental Impact Report (“Final EIR”), dated October

2003.

10. Annual inspection of the mine shall be conducted in accordance with the Surface Mining and Reclamation Act. All applicable inspection fees shall be paid in accordance with adopted rates.
11. Mine Operation and Reclamation shall be in accordance with the Mitigation Measures contained within the Final EIR incorporated herein by reference.
12. All Mitigation Measures as identified in the Final EIR for the M&T Chico Ranch Mine are adopted as conditions of this Mining Use Permit and as such the Mitigation Measures have full weight and authority in the same manner as conditions of the Mining Use Permit.
13. Mitigation Monitoring and Reporting shall commence and proceed in accordance with the Mitigation Monitoring Reporting Plan referenced within the Final EIR. The owner/operator is responsible for all costs associated with monitoring and reporting activities including but not limited to the hourly rate of County staff time, as approved by the Board of Supervisors and as amended, and any contract services as may be necessary to conduct such work on behalf of the County as determined by the Director or designee.
14. Mining, processing, maintenance and load-out activities shall occur from 7:00 am to 5:00 pm (nine hours per day) from November through April, and from 6:00 am to 5:00 pm (ten hours per day) from May through October. Operations shall take place five days per week; however, Saturday operations may occur sporadically to meet customer demands. Aggregate load-out for delivery to the plant could also occasionally, not to exceed 30 times per year to be verified by log book, begin by 5:00 am. Only during times of declared emergency (when aggregate resources are needed to address flood damage or other natural disaster) either under executive order from the State or County, operations are allowed 24 hours until such time as the emergency is declared over.
15. Prior to establishment of the use, the Owner/Operator shall obtain County Board of Supervisors approval of the partial California Land Conservation Act (Williamson Act) immediate cancellation request or determination of compatibility.

Butte County Air Quality Management District

16. The Butte County Air Quality Management District requires Owner/Operator to obtain an Authority to Construct Permit to operate. Owner/Operator shall be required to implement all emission controls necessary to assure specified limits are not exceeded on both mobile sources (mining equipment) and stationary sources (processing facilities). As noted within the Draft EIR for Impact 4.5-2 (Page 4.5-30) all diesel fueled construction-type equipment shall be required to meet the emission reduction requirements recently set by the California Air Resources Board (“CARB”). An equipment inventory shall be maintained at the project site and available for review by District staff. All equipment shall be maintained and kept in proper repair per manufacturer’s maintenance schedules.

Department of Public Works

17. Prior to operations Owner/Operator shall construct improvements to River Road at the Project's entrance, including acceleration/deceleration lanes, turn pockets, signing and striping. Improvement plans shall be approved by the Butte County Public Works Department prior to construction.
18. Prior to operations Owner/Operator shall provide improvements to the median crossing at the Baldwin Plant site driveway and the Skyway. Improvements to include acceleration and deceleration lanes, improved signing and striping, and channelization of the driveway approach. Improvement plans shall be approved by the Butte County Public Works Department prior to construction.
19. The project Applicant shall contribute its fair share of the costs to improve the pavement on River Road between Chico River Road and Ord Ferry Road with a two-inch asphalt concrete overlay. The fair share amount shall be based on the increase in ESALs, which is 51%. Butte County Public Works estimates the cost of this improvement to be approximately \$1,200,000. Therefore, the Applicant's fair share cost would be about \$40,000 per year. The Public Works Department has indicated that the fee shall be submitted annually based on the tonnage of material that is hauled from the project site and shall be relative to an inflation index. Based on the information contained in Table 4.6-9, the cost per ton of material hauled from the project site would be approximately \$0.08.
20. The project applicant shall contribute its fair share of the cost to maintain the asphalt concrete pavement on the following roads over the 30 year life of the project:
 - River Road; between Chico River Road and Ord Ferry Road;
 - Ord Ferry Road; between County Line and Dayton Road;
 - Durham Dayton Road; between Dayton Road and SR 99;
 - Dayton Road; between Ord Ferry Road and Chico City Limit;
 - Hegan Lane; between Dayton Road and Midway; and
 - Chico River Road; between River Road and Chico City Limit.

Road Maintenance shall include a chip seal surface treatment every 10 years with M & T Chico Ranch Mine project's fair share contribution based on the projected net increase in ESALs as shown in the attached Table A. Based on the information contained in Table A, the cost per ton of material hauled from the project site would be approximately \$0.06 and shall be relative to an inflation index.

If maintenance costs are rolled into a single fee per ton of material extracted, the mitigation fee shall be made up of \$0.08 per ton for the overlay on River Road, plus \$0.01 per ton for the improvements to the Ord Ferry Bridge, and the

installation of a signal at Midway and Durham Dayton highway, for a total of \$0.09 per ton of material removed from the site. The amount intended to compensate for the extra maintenance required due to the increased truck traffic, shall be \$0.06 per ton of material extracted. These fees shall be deposited by the operator into the Butte County Road Fund, and shall be adjusted for inflation based upon the change in the Construction Cost Index for San Francisco, during the month of January of each year. These fees shall cease to be collected should the County impose a countywide tax or fee for road maintenance based upon weight of materials moved over the roads.

21. Prior to establishment of the use Applicant shall provide a fully executed agreement to preserve, maintain, restore and or repair in perpetuity, any and all mitigation improvements constructed or required as a condition of this project. These improvements shall include, but are not limited to, any weirs, dykes, levees, channels, berms or other flood control devices. All repairs shall be completed in a timely manner in conformance with the adopted mitigation measures. This agreement shall be recorded and shall run with the land. In order to insure compliance with this condition, applicant provide a performance bond, cash deposit or other County approved security; in an amount equal to 100% of the construction costs of said improvements. Said security shall be adjusted annually using the change in Engineering News Record Construction Cost Index for San Francisco as the basis for adjustment. The County, at its sole discretion, shall have the authority to call said bond and use the proceeds to perform the required work. Nothing contained in this condition shall be so construed as to attach any liability to the County for its actions or failures to act in order to preserve any of the improvements required by this project.

Environmental Health Division

22. Owner/Operator shall receive a Hazardous Material Release and Response Plan (Health and Safety Code 25500 et seq.) (Business Plan) for hazardous materials inventory and emergency response planning.
23. Owner/Operator shall receive a septic and domestic water well permit from the Environmental Health Division prior to site development for waste water disposal and drinking water.

Pacific Gas and Electric Company

24. If there is a conflict between the mining operations and the PG&E natural gas line, Owner/Operator will be responsible for the relocation of the PG&E gas line and all associated costs, along with the acquisition of new rights of ways.
25. Weights of all mining equipment shall be provided to PG&E to ensure that weights will not damage gas lines.
26. Any use of PG&E easements shall require a review and consent of PG&E. Upon review a consent agreement would be prepared if the use is appropriate.

Mosquito Abatement:

27. Owner/Operator shall be required to comply with Butte County Mosquito and Vector Control District requirements for the cost of any future mosquito control work performed by the District at the Project site. This shall include stocking the pond with mosquito fish to prey on and control mosquito larvae.

State and Federal Requirements and Conditions:

28. Owner/Operator shall comply with the Clean Water Act and obtain all necessary approvals, including a 404 Permit for fill or disturbance of wetlands and other waters of the United States.
29. Owner/Operator shall comply with the Federal Endangered Species Act, including a Section 10a Permit for incidental take of federally-listed threatened or endangered species or their habitat, if any.
30. Owner/Operator shall comply with the California Endangered Species Act, and obtain all necessary permits, including a Section 2081 Permit (Fish and Game Code 2081) and Streambed Alteration Agreement (Fish and Game Code 1603) for incidental take of State-listed threatened/endangered species or habitat (if anticipated) for possible impacts, if determined to the Swainson's hawk and for any new stream crossings.
31. Owner/Operator shall comply with the following Regional Water Quality Control Board requirements, and obtain all necessary approvals, including:
 - a) NPDES Permit or Waste discharge requirements Permit CFR Title 40, Section 436, Subpart B, for on-site gravel washing and discharge of wash water to on-site settling basins.
 - b) Stormwater Pollution Prevention Plan prior to construction activities used to identify potential pollutants and to eliminate or reduce the amount of pollutants entering surface waters.
 - c) General Industrial Activities Storm Water Permit is required if there are storm water discharges to surface waters.
 - d) A Review of Groundwater Monitoring Plan prior to approval by the County.
32. Owner/Operator shall comply with the following California Department of Water Resources, Reclamation Board requirements, and obtain all necessary approvals, including:
 - a) A Construction Activity Storm Water Permit for any construction activities where clearing, grading, filling and excavation result in a land disturbance of five acres or more.
 - b) A Storm Water Pollution Prevention Plan must be in place prior to construction activities.

- c) Compliance with the California Aboveground Petroleum Storage Act for owners and operators of above ground petroleum storage tanks to file a storage statement and prepare a federal spill prevention and control countermeasure plan.
 - d) A Section 401 Water Quality Certification is required for projects needing an Army Corps of Engineers 404 Permit; this certification must verify that the project does not violate State Water Quality Standards.
33. Owner/Operator shall receive a State Board of Reclamation Encroachment Permit (CCR Title 23 Section 135) for any encroachment that could reduce or impede flood flows, or would reclaim any of the floodplain within the Butte Basin, if necessary.

Agricultural Commissioner's Office

34. Prior to Mining Permit issuance, submit a Weed Management Plan to the Agricultural Commissioner's Office for review and Approval.

Butte County Counsel

35. If this entire matter or any finding, action or condition of this matter is appealed to the Board of Supervisors, Baldwin or any other developer/operator other than Baldwin agrees to indemnify the County of Butte from liability or loss related to the approval of this project and agrees to sign an indemnification agreement in a form approved by County Counsel before the Board's appeal hearing. If the application is not appealed, these conditions of approval are deemed satisfied.

Attachment: Table A

Final EIR ERRATA Additions

The following is added to the Final EIR, Section 3.0 (Draft EIR Errata).

3.2.4 Regional Environmental Overview – Llano Seco Ranch

Parrott Investment Company, owner of the Llano Seco Ranch, located South of the M&T Ranch, has requested that its land use be more accurately described in the M&T Chico Ranch EIR. Llano Seco Ranch has submitted information indicating that it has placed more than ten thousand acres under easement or have been sold as wildlife habitat since 1991. The Ranch has invested in restoration work to create such habitat, including seasonal wetland for wintering waterfowl, riparian oak forest, and native grasslands. (see: Letter from Ellman Burke, Hoffman & Johnson to Butte County Planning Commission, November 27, 2006). Current aerial photography shows these wetland habitat areas, located approximately one mile south of the proposed M&T Chico Ranch Mine.

The above information, is added to Draft EIR Section 4.1.1, Regional Environmental Overview.

3.2.5 Williamson Act Cancellation

The proposed M&T Chico Ranch Mine lies in an area which is included within Williamson Act contracted land. Exhibit A to the subject Williamson Act Contract provides a list of the permitted use on the subject property. Section 7.a. provides: “sand and gravel operation subject to the securing of a use permit approved by the County.”

Government Code Section 51238.3(c)(1) provides that the requirements of 51238.1 and 51283.2 do not apply to uses that are expressly specified within the contract itself prior to June 7, 1994. The contract, specified above, meets the requirements of Government Code Section 51238.3(c)(1) because: (1) excavation activities are defined as compatible and (2) the contract was executed prior to June 7, 1994. Both the Butte County Resolution, and the M&T Williamson Act Contract allow the Board of Supervisors to approve the proposed end land use of open water/wildlife habitat/agriculture.

On n October 11, 2005, the Applicant voluntarily decided to submit a Petition for Cancellation. While the Project is compatible with the Williamson Act, in order to address comments of the State of California Department of Conservation (DOC) and to avoid conflict between the DOC and the County, the Applicant decided to go forward with a Petition for Partial Cancellation with respect to 106 acre area of the project.

As the proposed project is compatible with the Williamson Act Contract in effect on the site, non renewal or cancellation are not required. However, the Applicant has voluntarily filed a Petition of Partial Cancellation for consideration by the County Board of Supervisors if it chooses to do so.

The above information, is added to Draft EIR Section 3.4, Detailed Project Description.