# Staff Report

Meeting Date: December 6, 2022

To: Siskiyou County Board of Supervisors

From: Hailey Lang, Planning Director

Subject: Use Permit 79-31 revocation

## Background

Pursuant to Siskiyou County Code section 10-6.1402, this matter is coming before the Board for consideration of the revocation of the surface mining use permit for the Timberhitch Mine, Use Permit 79-31. Prior to coming to the Board, the Planning Commission held a noticed, public hearing on the revocation at its November 16, 2022, meeting. After the close of the public hearing, the Planning Commission voted in favor of making a recommendation to the Board to revoke Use Permit 79-31. This Staff Report, the Planning Commission’s Resolution PC 2022-028, and the draft minutes for the November 16, 2022, public hearing are attached hereto and serve as the Commission’s report to the Board on its findings and recommendation.

Prior to the Planning Commission’s November 16, 2022, public hearing, this project was discussed at the June 15, 2022, Planning Commission meeting. The Siskiyou County Planning Commission formally found at that time that Butte Creek Minerals, Ltd. (BCM), the operator of Timberhitch Mine, is not financially capable of completing reclamation and has refused to provide a financial assurance in an amount deemed adequate by the lead agency. Staff was directed to take appropriate actions to cause forfeiture of financial assurances. In accordance with the Siskiyou County Code and Surface Mining and Reclamation Act (SMARA), the operator was given 60 days to commence reclamation in a letter dated June 28, 2022.

Mine operator BCM is a dissolved corporation. The sole surviving shareholder Patricia McMillan filed paperwork with the Secretary of State stating that the corporation had no outstanding liabilities, despite the unmet obligations at the mine site, and dissolved the corporation. The County’s efforts to correspond with Patricia McMillan as the sole surviving former shareholder of BCM have resulted in no return communications from Ms. McMillan. The mine is without any operator, no entity will take responsibility for its reclamation, and it has been abandoned.

Mr. Clif McMillan (“Clif”) represented that he could act on behalf of BCM and notified the County that he intended to reclaim the site and had already removed some scrap metal. He also indicated that due to extreme fire danger, he would need an extension because some reclamation activities could risk starting a fire. The County proposed December 1, 2022, as the final reclamation date and requested: (1) a letter of authorization establishing Mr. McMillan represented and worked on behalf of BCM, (2) a letter from the purported third-party equipment owner authorizing scrapping/removal of the equipment and (3) an updated Financial Assurance Mechanism (FAM).

On September 2, 2022, Clif sent an email to the County indicating the only partner of BCM had passed away (Mr. Cliff McMillian Sr.) so he would not be able to establish authority to act on behalf of BCM, and therefore would not be pursuing the mine reclamation. Despite correspondence and noticing, the County has received no responsive telephone calls or correspondence from the sole surviving former shareholder of BCM, Patricia McMillan. As no one will be reclaiming the mine site on behalf of BCM, the County intends to forfeit BCM’s financial assurances (specifically the bond) and reclaim the mine site.

Due to BCM not having the financial capability to reclaim the mine site, nor providing the County with the necessary documents to move forward with reclamation, the County is now required to reclaim the mine site in order to fulfil Surface Mining and Reclamation Act of 1975 (SMARA) requirements.

## Discussion

The Siskiyou County Code, Article 14- Expiration, Revocation, and Appeals of Permits and Variances, identifies a process for use permit revocation:

**Sec. 10-6.1402. - Revocation of permits.**

Any zoning permit, use permit, or variance granted in accordance with the provisions of this chapter may be revoked by the Board in the manner set forth in this section if any of the conditions or terms of such permits or variances are violated, if compliance is not made with the provisions of this chapter, or if the following findings are made:

1. Use Permits. The continuance of the use would be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such use or would be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the County.

Before the Board shall consider the revocation of any permit, the Planning Commission shall hold a public hearing thereon after giving written notice thereof to the permittee at least ten (10) days in advance of such hearing and in the same time and manner provided by law. Within five (5) days thereafter, the Planning Commission shall transmit a report of its findings and its recommendations on the revocation to the Board.

## Findings

The following finding must be made in order for the Board of Supervisors to recommend revocation:

1. Use Permits. The continuance of the use would be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such use or would be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the County.

Here, due to BCM not being able to reclaim the mine to the standards identified in the approved reclamation plan, Condition 4 of the Use Permit requiring that the uses under the permit be conducted in accordance with the Reclamation Plan has been violated to the detriment of the neighborhood and general welfare of the County. Allowing for the Use Permit to remain in effect, which permit runs with the land unless revoked, with no person or entity being willing to meet the conditions of the Use Permit or the obligations of the Reclamation Plan imposes a threat to the general welfare of Siskiyou County residents. Additionally, the spending of taxpayers’ dollars to clean up the mine site due to BCM being financially incapable to do so, impacts the general welfare of County expenditures, by having to use funding that could have been used for other purposes or programs.

Additionally, Timberhitch Quarry was notice/cited for multiple violations over the life of the permit without any corrective action being taken by any responsible party, including:

* Inadequate reclamation plan.
* Inadequate Financial Assurance Mechanism Cost Estimate (FACE).
* Idle mining operations without Interim Management Plan (IMP).
  + A surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan (PRC Section 2770 (h)(6)). Siskiyou County Code, Sec. 10-5.110
* Hazardous materials storage without a Hazardous Materials Business Plan.
* No proof of liability insurance in the amount of $500,000. (Condition 11.)
* Delinquent in payment to the County’s annual inspection fees.
* No official map or legal description which defines the boundaries of the mining area, and reclamation plan, to adequately complete reclamation in accordance with SMARA.
* Illegal disposal of solid waste.

## Environmental Review

The proposed enforcement actions are being recommended by staff to be exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15321.

CEQA Guidelines Section 15321, Enforcement Actions by Regulatory Agencies applies to actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency.

The proposed project falls within a Class 21 exemption because it is a county-initiated request that the Board revoke the Use Permit in order for the County to begin reclamation on the mine site. The regulatory action would not result in any impacts on the environment.

## Recommended Action

As detailed in the attached Resolution, it is recommended that the Board of Supervisors Revoke the Use Permit of Timberhitch Mine (U-79-31), Make All Necessary Findings Required Under the Siskiyou County Municipal Code and Determine the Project Exempt from the California Environmental Quality Act (CEQA).

## Recommended Motions

I move to adopt the Resolution hereby taking the following action:

## Adopt the recommended resolution revoking the use permit of Timbehiitch Mine (UP-79-31) and determining the project exempt from the California Environmental Quality Act pursuant to 14 CCR 15321.

## Attachments

1. Use Permit 79-31
2. Reclamation Plan
3. Signed Resolution PC 2022-028
4. Draft Planning Commission Meeting Minutes for November 16, 2022
5. BOS Resolution