



Sonoma County Planning Commission STAFF REPORT

FILE: County Code Chapter 26A Amendment – ORD18-0005
DATE: July 12, 2018
TIME: 1:30 p.m.
STAFF: Blake Hillegas

Appeal Period: 10 calendar days

SUMMARY

Appellant: None
Applicant: Permit and Resource Management Department
Owner: N/A
Location: Open space locations in Sonoma County
APNs: All
Supervisory District No.: All
Subject: Amend County Code Chapter 26A (Surface Mining and Reclamation)

PROPOSAL: Request to change Chapter 26A of the County Code to confirm and clarify that changes to open space maps in 2012 do not retroactively trigger changes in requirements for existing quarry permits and sites.

Environmental Determination: This item is a clarification under existing law, and therefore, is not a project subject to CEQA as defined in Section 15378 and it is also exempt under Section 15061(b)(3). No additional CEQA review is required because the relevant permitted sites have already undergone CEQA review.

General Plan/SMARO: Section 26A-09-020(p) and Section 26A-09-040(d)



RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of proposed amendments to Section 26A-09-040(d) of Chapter 26A

EXECUTIVE SUMMARY:

Staff recommends a code change that confirms that the setbacks to critical habitat do not apply to already permitted sites. Specifically, staff recommends that the following language be added at the conclusion of section 26A-09-040(d): *“Setbacks from designated critical habitat do not apply to sites that were reviewed pursuant to the California Environmental Quality Act and approved prior to the designation of the relevant critical habitat in the general plan.”* This technical change will confirm that the new setbacks only apply to sites that have not already been permitted. This item is a clarification under existing law, and therefore, is not a project subject to CEQA as defined in Section 15378. No additional CEQA review is required because the relevant permitted sites have already undergone CEQA review.

ANALYSIS

Background:

Chapter 26A of the County Code addresses the local implementation of the California Surface Mining and Reclamation Act of 1975. A major 1999 amendment included sections creating “general standards,” “instream mining standards,” “terrace mining standards,” and “quarry mining standards.” The “general standards” provide that impacts to valuable habitat must be mitigated to a level that is less than significant. The instream and quarry mining sections however contain more specific terms that address “critical habitat.” “Critical habitat” is habitat (although not necessarily occupied) that the federal government identifies for special treatment under the Endangered Species Act in the context of Section 7 consultations between federal agencies.

With respect to instream mining, Section 26A-09-020(p) of Chapter 26A allows for mining in “critical habitat” if the project complies with the state and federal Endangered Species Acts. However, the quarry mining provisions are more restrictive. The code requires setbacks from “critical habitat” if that critical habitat has been “designated” in the General Plan. Section 26A-09-040(d) states: “Setbacks. Mining operations, stockpiles, and processing operations are to be set back a minimum of twenty-five feet (25’) from the MR zone boundary, the property boundary, and road easements and rights-of-way, whichever is the most restrictive. The minimum allowed setback for quarry mining operations from stream banks and critical habitat areas designated in the general plan is one hundred feet (100’). A minimum two hundred foot (200’) setback is also required from the boundary of any general plan residential land use designations. Additional setbacks may be required as a result of site specific reviews in order to mitigate environmental impacts and land use conflicts.”

These 100 foot setbacks are not required by state or federal law. The setbacks in this section of the code correspond to setbacks required in the Sonoma County Aggregate Resources Management Plan (pages 7-10, 8.5-1) (ARM Plan), which at the time were intended primarily to protect rivers and fish. The ARM Plan states that these setbacks are to be addressed in prospective permitting decision making. It indicates no intent to impose setbacks retroactively.

On August 31, 2011, the U.S. Fish and Wildlife service promulgated a map of approximately 47,383 acres of critical habitat for the California Tiger Salamander (CTS) in the Federal Register. The 47,383 acres encompasses most of the Santa Rosa Plain, from Windsor to southern Cotati, including a portion in the southwest that extends into the Roblar Valley. On October 23, 2012, the Board of Supervisors adopted map amendments to the Open Space Element of the General Plan to designate critical habitat for the California Tiger Salamander. Whereas the General Plan maps had previously identified the “potential range” of the California Tiger Salamander on the open space maps, they now specifically referenced the federal “critical habitat” map. The map change was treated as a technical data change and not as a substantive change in land use requirements.

The Stony Point Quarry and the Roblar Road Quarry do not comply with the setback requirements because they are entirely within the newly designated 47,383 acres. There was never any expectation that the setbacks would apply to these quarries, and these setbacks were not intended to apply retroactively. These quarries were permitted prior to the designation of the California Tiger Salamander critical habitat and have addressed or are addressing impacts to CTS in compliance with state and federal law. The staff report for the 2012 map changes stated that the changes “do not reflect any substantive change in County land use policy.” The Stony Point Quarry has been operating for over 90 years and has vested rights. It is also a designated quarry site in the ARM Plan. The Roblar Road quarry was permitted in 2010 before the setbacks applied, and that quarry is fully mitigating impacts to CTS pursuant to state and federal requirements. It is also a designated as a potential quarry site in the ARM Plan.

DISCUSSION OF ISSUES

Issue #1: Impacts to valuable habitat

The “general standards” of the Surface Mining and Reclamation Ordinance provide that impacts to valuable habitat must be mitigated to a level that is less than significant. The instream and quarry mining sections however contain more specific terms that address “critical habitat.” “Critical habitat” is habitat (although not necessarily occupied) that the federal government identifies for special treatment under the Endangered Species Act in the context of Section 7 consultations between federal agencies.

Issue #2: Critical Habitat designations in the General Plan - Setbacks

With respect to instream mining, Section 26A-09-020(p) of Chapter 26A allows for mining in “critical habitat” if the project complies with the state and federal Endangered Species Acts. However, the quarry mining provisions are more restrictive. The code requires setbacks from “critical habitat” if that critical habitat has been “designated” in the General Plan. Section 26A-09-040(d) states: “Setbacks, mining operations, stockpiles, and processing operations are to be set back a minimum of twenty-five feet (25’) from the MR zone boundary, the property boundary, and road easements and rights-of-way, whichever is the most restrictive. The minimum allowed setback for quarry mining operations from stream banks and critical habitat areas designated in the general plan is one hundred feet (100’). A minimum two hundred foot (200’) setback is also required from the boundary of any general plan residential land use designations. Additional setbacks may be required as a result of site specific reviews in order to mitigate environmental impacts and land use conflicts.”

These 100 foot setback from critical habitat is not required by state or federal law. The setbacks in this section of the code correspond to setbacks required in the Sonoma County Aggregate Resources Management Plan (pages 7-10, 8.5-1) (ARM Plan), which when adopted were intended to protect rivers and fish. The ARM Plan frequently used the term “critical riparian habitat” rather than “critical habitat.” The ARM Plan states that these setbacks are to be addressed in prospective permitting decision making. It indicates no intent to impose setbacks retroactively.

Issue #3: Designation of critical habitat for the California Tiger Salamander

On August 31, 2011, the U.S. Fish and Wildlife service promulgated a map of approximately 47,383 acres of critical habitat for the California Tiger Salamander (CTS) in the Federal Register. The 47,383 acres encompasses most of the Santa Rosa Plain, from Windsor to southern Cotati, including a portion in the southwest that extends into the Roblar Valley. On October 23, 2012, the Board of Supervisors adopted map amendments to the Open Space Element of the General Plan to designate critical habitat for the California Tiger Salamander. Whereas the General Plan maps had previously identified the “potential range” of the California Tiger Salamander on the open space maps, they now specifically referenced the federal “critical habitat” map. The map change was treated as a technical data change and not as a substantive change in land use requirements.

Issue #4: Compliance Conflicts Regarding Setback Requirements

The Stony Point Quarry and the Roblar Road Quarry do not comply with the setback requirements because they are entirely within the newly designated 47,383 acres. There was never any expectation that the setbacks would apply to these quarries, and these setbacks were not intended to apply retroactively. These quarries were permitted prior to the designation of the California Tiger Salamander critical habitat and have addressed or are addressing impacts to CTS in

compliance with state and federal law. The staff report for the 2012 map changes stated that the changes “do not reflect any substantive change in County land use policy.” The Stony Point Quarry has been operating for over 90 years and has vested rights. It is also a designated quarry site in the ARM Plan. The Roblar Road quarry was permitted in 2010 before the setbacks applied, and that quarry is fully mitigating impacts to CTS pursuant to state and federal requirements. It is also a designated as a potential quarry site in the ARM Plan.

Issue #5: General Plan and Surface Mining And Reclamation Act consistency

Because the permitted sites are designated in the ARM Plan, confirming that the setbacks are not retroactive maintains the consistency of the General Plan. This is because the Mineral Resources section of the Open Space and Resource Conservation Element utilizes the ARM Plan to prioritize aggregate resource sites, as contemplated by the Surface Mining And Reclamation Act (Public Resources Code section 2762). The Open Space and Resource Conservation Element explains, under the Surface Mining and Reclamation Act, “local agencies must adopt mineral management policies that recognize mineral information provided by the State, assist in the management of land use that affect areas of statewide and regional significance, and emphasize the conservation and development of identified mineral deposits. Accordingly, Sonoma County has adopted the Aggregate Resources Management (ARM) Plan to set forth the State mandated mineral management policy for the County.”

STAFF RECOMMENDATION

Approve proposed technical amendment to Chapter 26A of the County Code.

LIST OF ATTACHMENTS

- EXHIBIT A: Draft Ordinance with Exhibit A
 - EXHIBIT B: October 23, 2012 Board of Supervisors General Plan Critical Habitat Map
 - EXHIBIT C: October 23, 2012 Board of Supervisors General Plan Amendment Package
 - EXHIBIT D: October 23, 2012 Board of Supervisors Resolution
 - EXHIBIT E: Draft Planning Commission Resolution
-

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 26A (SURFACE AND MINING ORDINANCE) OF THE SONOMA COUNTY CODE TO CONFIRM THAT SETBACKS TO CRITICAL HABITAT AS DESIGNATED BY THE GENERAL PLAN IN 2012 DO NOT RETROACTIVELY APPLY TO ALREADY PERMITTED SITES, INCLUDING THE EXISTING STONY POINT QUARRY (7271 STONY POINT ROAD) AND THE APPROVED ROBLAR ROAD QUARRY (7175 AND 7601 ROBLAR ROAD); APNs 024-050-015 AND -016 AND 027-080-009 AND -010

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I: The Board finds and declares that adoption of this Ordinance is necessary to confirm that setbacks to critical habitat as designated in the General Plan in 2012 do not retroactively apply to already approved and permitted sites, including the Stony Point Quarry and the Roblar Road Quarry, based on the following findings:

1. On August 31, 2011, the U.S. Fish and Wildlife service promulgated a map of approximately 47,383 acres of critical habitat for the California Tiger Salamander (CTS) in the Federal Register. The 47,383 acres encompasses most of the Santa Rosa Plain, from Windsor to southern Cotati, including a portion in the southwest that extends into the Roblar Valley. On October 23, 2012, the Board of Supervisors adopted map amendments to the Open Space Element of the General Plan to designate critical habitat for the California Tiger Salamander. Whereas the General Plan maps had previously identified the “potential range” of the California Tiger Salamander on the open space maps, they now specifically referenced the federal “critical habitat” map. The map change was treated as a technical data change and not as a substantive change in land use requirements.
2. While the Stony Point Quarry and the Roblar Road Quarry do not comply with the 100 foot critical habitat setback requirement of the Surface Mining and Reclamation Ordinance based on the 2012 General Plan change, these quarries were permitted prior to the designation of the California Tiger Salamander critical habitat, and have addressed or are addressing impacts to CTS in compliance with state and federal law. There was never any expectation that the setbacks would apply to these quarries, and these setbacks were not intended to apply retroactively. The Stony Point Quarry has been operating for over 90 years and has vested rights. The Roblar Road quarry was permitted in 2010 before the setbacks applied, and that quarry is fully mitigating impacts to CTS pursuant to state and federal requirements. Both quarries are designated as a potential quarry sites in the ARM Plan.

SECTION II: Amendment to Surface Mining and Reclamation Ordinance. Section 26A-09-040 (d) (Quarry Mining) of the Sonoma County Code is amended as set forth in the attached Exhibit A.

SECTION III: Environmental Determination. This action is a clarification of existing law, and therefore, is not a project subject to CEQA as defined in Section 15378 and is also exempt under Section 15061(b)(3). No additional CEQA review is required because the relevant permitted sites have already undergone CEQA review.

SECTION IV: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one

or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION V: Effective Date. This Ordinance shall be and the same is hereby declared to be in full force and effect on and after 30 days following its passage, and shall be published once before the expiration of fifteen (15) days after passage, with the names of the Supervisors voting for or against the same, in a newspaper of general circulation, published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted on the ___ day of ___, 2018, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: Rabbitt: Zane: Hopkins: Gore:___

Ayes: Noes: Absent: Abstain: ____

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors

Sec. 26A-09-040. - Quarry mining standards.

In addition to the general mining standards set forth in Section 26A-09-010, the following standards shall be applied to quarry mining operations.

- (a) A mining permit for quarry operations shall be granted for a period not to exceed twenty (20) years, at the end of which time it shall expire; provided, however, that any such permit shall, upon written request to the county filed prior to its expiration, be reissued for periods not to exceed twenty (20) years if the permittee can establish to the satisfaction of the planning commission, or on appeal to the board of supervisors, that the use has not been conducted in a manner that is:
 - (1) Detrimental to the environment beyond impacts anticipated at the time of permit approval; or
 - (2) In violation of permit conditions. An application for reissuance shall be processed in the manner provided in Section 26A-07-010.
- (b) Visibility. To the extent feasible, quarry sites shall be screened visually from public roads and uses with topographic features, berms, shrubs and trees native to the area.
- (c) Slope Stability. The maximum allowable working slopes of the mine face shall be approved by a certified engineering geologist or a registered geotechnical engineer and specifically stated in the use permit. Any variation from the slope requirements of section 3502 (b)(3) of the state reclamation guidelines shall be specifically justified in the reclamation plan. Benches in slopes are required every twenty-five (25) to thirty (30) vertical feet for access and drainage control. Working slopes must eventually conform to final reclaimed slopes and topography. Quarries in or near fault zones may be required to incorporate additional geotechnical measures to insure worker and public safety.
- (d) Setbacks. Mining operations, stockpiles, and processing operations are to be set back a minimum of twenty-five feet (25') from the MR zone boundary, the property boundary, and road easements and rights-of-way, whichever is the most restrictive. The minimum allowed setback for quarry mining operations from stream banks and critical habitat areas designated in the general plan is one hundred feet (100'). A minimum two hundred foot (200') setback is also required from the boundary of any general plan residential land use designations. Additional setbacks may be required as a result of site specific reviews in order to mitigate environmental impacts and land use conflicts. Setbacks from designated critical habitat do not apply to sites that were reviewed pursuant to the California Environmental Quality Act and approved prior to designation of critical habitat in the General Plan.
- (e) Ancillary Activities. With approval of a use permit, quarry operations may include the manufacture of concrete and asphalt products and the processing and sales of raw, processed or recycled earth materials and aggregate products. Importation of such

Exhibit A
Surface Mining and Reclamation Ordinance Amendment

materials may be included as ancillary uses allowed with the use permit. Existing quarries may import a maximum of twenty-five percent (25%) of the aggregate materials processed or sold in each calendar year without obtaining a new use permit. This limit does not apply to materials brought to quarries for recycling.

- (f) **Water Supply.** All quarry sites must have adequate water supplies to support the operation. Sites located in Sonoma County Water Availability Zones III and IV will require analysis of the proposed water use, evaluation of the adequacy of the water supply, and mitigation of effects on water resources and nearby water users. Quarry operators may be required to monitor, survey, or report on depth and grades of excavation, groundwater levels, water use, revegetation and other subjects.
- (g) **Erosion and Sediment Control.** Drainage plans and facilities must minimize slope erosion and off-site sedimentation.
- (h) **Use of Explosives.** No explosives shall be used except as authorized by the use permit. Blasting activities shall be conducted by a qualified licensed blasting professional in compliance with state blasting regulations. Blasting permits shall be obtained from the Sonoma County sheriff's department. Blasting operations shall be designed to minimize adverse noise and vibration impacts on offsite residential areas. Permits may be conditioned to require notice to immediate neighbors prior to blasting.

(Ord. No. 5165 § 1, 1999.)