

ORDINANCE NO. 5201**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING SECTION 26A-05-020 OF THE SONOMA COUNTY CODE BY MAKING CERTAIN TECHNICAL CHANGES TO SUBSECTION 26A-05-020(j) TO COMPLY WITH STATE REQUIREMENTS**

The Board of Supervisors of the County of Sonoma ordains as follows:

SECTION I. Section 26A-05-020 of the Sonoma County Code is amended to read as follows:

SECTION 26A-05-020 APPLICATION PROCEDURE: ESTABLISHMENT OF VESTED RIGHT AND APPROVAL OF RECLAMATION PLAN

- a) **Vested Right Defined.** A person shall be deemed to have vested rights if, prior to January, 1976, he has, in good faith and in reliance upon a permit or other legal authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.
- b) **Vested Right Statement.** The Director shall undertake to provide reasonable notice to all mining operators of the requirements of this chapter; provided, however, that his failure to do so shall not exempt any operator from the requirements of this chapter.
- i) A complete "Statement of Vested Right" form provided by the County. A claim of vested right shall not be recognized if submission of the Statement of Vested Right and affidavit is not made within ninety (90) days of the effective date of this chapter.
- ii) An attached affidavit or declaration certifying that the information furnished is true and accurate.
- c) **Determination of Vested Rights.**
- i) **Preliminary Determination.** Following the receipt of a Statement of Vested Right, the Director or the Director's designee shall make a preliminary determination on each separate parcel of property of the existence and extent of

the vested right. If the Director finds that insufficient information is available to make a determination of the existence or extent of each claim for vested right, the Director may return the Statement to the applicant for additional information or clarification and/or the Director may deny the applicant's claim for vested right. The burden of proving the existence and extent of each claimed vested right is on the applicant. Notice of the determination shall be provided in accordance with Section 26A-07-040. Such determination shall be final unless appealed by any aggrieved person in writing to the Planning Commission within 30 calendar days of the date the notice of determination is mailed pursuant to Section 26A-07-040. Any such appeal shall set forth with specificity the grounds, both legal and factual, upon which the appeal is based.

- ii) **Planning Commission Hearing.** The Planning Commission shall hold a hearing on the appeal. The appeal shall be heard de novo. The hearing shall be noticed in the manner provided for a Section 26A-07-040. The burden of proof is on the appellant. The Commission shall have the authority to adopt rules governing the procedures for the hearings, including the authority to require evidence to be presented in the form of Declaration. The hearing may be continued from time to time by the Commission, however, every effort shall be made to expedite the hearing procedures.
- iii) **Planning Commission Decision.** The decision of the Commission shall be final, unless appealed by any aggrieved person in writing to the Board of Supervisors within 30 calendar days of the date the Planning Commission decision is rendered. Any such appeal shall set forth with specificity the grounds both legal and factual upon which the appeal is based.
- iv) **Board of Supervisor's Hearing.** The Board of Supervisors shall either:
 - 1) hold a hearing on the appeal in accordance with Section 26A-07-020 or
 - 2) appoint an administrative hearing officer.

The burden of proof is on the applicant. The Board of hearing officer shall have authority to adopt rules governing the procedures for the hearings including the authority to require evidence to be presented in the form of Declarations.

- v) **Board of Supervisor's Decision.** The decision of the Board of Supervisors shall be final.
- vi) **Fees.** At the time of filing an appeal to either the Planning Commission or the Board of Supervisors, the appellant shall pay a fee of \$125.00 in order to defray the costs of processing and hearing the appeal. In the event that the appellant requests a transcript of the appeal hearing(s), the appellant shall bear the cost of its preparation.

- d) Reclamation Plan. A reclamation plan for an operation with a vested right shall be filed with the Director prior to January 1, 1981. The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval. The reclamation plan shall conform to the requirements and form of this chapter.
- e) Director Review. The Director shall review the reclamation plan within thirty (30) working days and determine if it contains adequate information to proceed to the Committee. The Director shall return the reclamation plan to the applicant for additional information or clarification if, in his opinion, it is incomplete.
- f) Committee Review. The Committee shall review the reclamation plan and shall recommend conditions, modifications, and monitoring procedures to the Hearing Officer.
- g) Public Hearing. The Hearing Officer shall hold a public hearing on the reclamation plan. The hearing shall be noticed in accordance with Section 26A-07-040. The Hearing Officer may adopt rules governing the hearing procedure and may continue the hearing as necessary.
- h) Action. The Hearing Officer shall approve, approve with conditions, or reject the reclamation plan within twelve (12) months of the date of submission. In the event the Hearing Officer rejects the reclamation plan, he shall state the reasons for that rejection in writing.
- (i) Compliance. The Hearing Officer shall reject the reclamation plan if it does not comply with all of the applicable requirements of this chapter.
- j) ~~Article 26B-07-040~~ Extension. Should approval of the reclamation plan not be obtained within twelve (12) months after the effective date of this Ordinance, all of the subject surface mining operation shall be terminated and those areas mined after January 1, 1976, shall be reclaimed in a manner generally in conformance with this chapter, and subject to the approval of the Director. ~~The Director may grant reasonable extensions of time for obtaining approval of the reclamation plan if approval is being diligently pursued by the applicant and if more time is required to fulfill all of the requirements and complete all of the procedures for such approval.~~

SECTION III. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid or inconsistent with the taxing authority of the Sonoma County Open Space Authority, such section, subsection, sentence, clause or phrase shall be null and void, and 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, invalid or inconsistent with the taxing authority of the Sonoma County Open Space Authority and therefore null and void.

SECTION IV. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in the Press Democrat 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 introduced on the 12 day of October, 1999, and finally passed and adopted this 19 day of October, 1999, on regular roll call of the members of said Board by the following vote:


SUPERVISORS:

KERNS _____ **SMITH** _____ **KELLEY** _____ **REILLY** _____ **CALE** _____

AYES 5 **NOES** _____ **ABSTAIN** _____ **ABSENT** _____

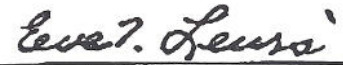
WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED



Chair, Board of Supervisors
County of Sonoma

ATTEST:



EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of
Supervisors