



**Siskiyou County
Planning Commission Staff Report
September 15, 2021**

**New Business Agenda Item No. 2
Surface Mining and Reclamation Ordinance Update (Z-21-09)**

- Applicant:** Siskiyou County, Planning Division
- Project Summary:** The project is proposing to amend the County's Surface Mining and Reclamation Ordinance in order to update the Enforcement Section (Sec. 10-5.117) to be consistent with California Public Resources Code.
- Location:** The project encompasses all parcels in the unincorporated area of Siskiyou County, California. The project area (i.e., unincorporated Siskiyou County) is roughly centered on Section 17 of Township 44 North, Range 7 West of the Mount Diablo Meridian.
- General Plan:** All
- Zoning:** All
- Exhibits:**
- A. Draft Resolution PC-2021-023
A Resolution of the Planning Commission of the County of Siskiyou, State of California Recommending the Board of Supervisors Adopt the Proposed Ordinance Amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code Regarding Enforcement of the County's Surface Mining and Reclamation Ordinance (Z-21-09)
 - Exhibit A. Draft Board of Supervisors Ordinance Amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code Regarding Enforcement of the County's Surface Mining and Reclamation Ordinance

Background

The California Surface Mining and Reclamation Act of 1975, Public Resources Code Sections 2710 et seq., referred hereafter as “SMARA”, was enacted by the California Legislature to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. SMARA is intended to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

1. Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
2. The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
3. Residual hazards to the public health and safety are eliminated.

Under SMARA, local governments are required to adopt ordinances for land use permitting and reclamation procedures, which provide the regulatory framework under which local mining and reclamation activities are conducted.

The County’s current Surface Mining and Reclamation Ordinance (Chapter 5 of Title 10 of the Siskiyou County Code) was adopted on May 12, 2015. However, since the County’s adoption, the State has passed legislation further amending and updating SMARA. County Planning staff has determined that minor updates are needed to the County’s Surface Mining and Reclamation Ordinance to ensure consistency with SMARA.

Analysis

Discussion

The proposed project would amend the County’s Surface Mining and Reclamation Ordinance and would specifically revise Siskiyou County Code Section 10-5.117 relating to enforcement of surface mining and reclamation activities. As mentioned previously, the State legislature has amended SMARA, and this proposal will provide flexibility to Siskiyou County relating to County enforcement of surface mining and reclamation activities including possible future amendments from the State. The Planning Division is recommending the following revisions to Section 10-5.117, additions are shown in *underline italics* and deletions are shown in ~~strikethrough~~:

Sec. 10-5.117 – Enforcement.

(a) If the Director, or his or her designee, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable land use permit, any other required permit and/or the Reclamation Plan, the County shall follow the procedures identified in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of County Code Section 10-6.1203 (Revocation) for revocation and/or abandonment of a Use Permit, which are not preempted by SMARA.

~~(a) If, after conducting the annual inspection or otherwise confirmed by an inspection of the mining operation, the Planning Director finds that the surface mining operation is not in compliance with the approved reclamation plan, the provisions of this chapter, or SMARA, the Planning Director may notify the operator and the owner of the subject property of that violation by personal service or certified mail. If the violation continues beyond thirty (30) days after the date of issuance of the notice of violation, the Planning Director may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities. The order shall specify which aspects of the surface mine's activities or operations are inconsistent with the approved reclamation plan, the provisions of this chapter, or SMARA; shall specify a time for compliance which the Planning Director determines is reasonable, given the seriousness of the violation and any good faith efforts to comply with applicable requirements; shall set a date for a public hearing before the Planning Commission no sooner than thirty (30) days after the date of issuance of the order; and shall not take effect until the operator has been provided a public hearing concerning the violation, unless it is determined by the Planning Director that the violation presents an immediate threat to public health or safety requiring immediate corrective action pending a Planning Commission hearing, and the operator has been given adequate notice and an opportunity to be heard by the Planning Director prior to the effective date of his or her order (PRC Section 2774.1(a) and (b)).~~

~~(b) At the hearing, the Planning Commission shall determine whether or not the operator is complying with the approved reclamation plan or the provisions of this chapter and may affirm, modify or set aside the order issued by the Planning Director. The decision of the Planning Commission may be appealed~~

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~~within ten (10) calendar days to the Board of Supervisors.~~

- ~~(c) Any operator who fails to comply with an order issued by the Planning Director after the order's effective date, unless set aside by the Planning Commission or Board of Supervisors, shall be subject to an order by the Planning Director imposing an administrative penalty of not more than Five Thousand and no/100ths (\$5,000.00) Dollars per day, assessed from the original date of the Planning Director's notice of violation or noncompliance with PRC Section 2207. In determining the amount of the administrative penalty, the Planning Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator petitions the Board of Supervisors for review of the order prior to the date on which the penalty payment is due. The order shall be served by personal service or by certified mail upon the operator.~~
- ~~(d) If, within ten (10) days from the date of issuance, the operator petitions the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by personal service or certified mail as to whether the Board of Supervisors will review the order and, if so, when the matter has been set for public hearing, or consider the order final as previously issued. If it determines to consider the petition on its merits, the Board of Supervisors may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Planning Director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisor's order shall be made to the County within thirty (30) days of service of the order.~~
- ~~(e) If a new mining operation commences without an approved reclamation plan, the County may initiate legal action and proceedings pursuant to the general enforcement provisions of the County Code, which may include abatement, injunctive actions and civil penalties.~~

The proposed amendment would ensure the County's Surface Mining and Reclamation Ordinance is consistent with Public Resources Code, as amended from time to time, and provide flexibility should the State amend SMARA in the future.

Environmental Review

Staff recommends that the proposed Ordinance (Z-21-09), which would amend the County's Surface Mining and Reclamation Ordinance Enforcement Section to be consistent with Public Resources Code, be determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) and Section 15307. It can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of this Ordinance amending the County's enforcement procedures for surface mining and reclamation, as the Ordinance amends the County's enforcement procedures consistent with the State's Public Resources Code. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, staff recommends the Board of Supervisors determine the proposed Ordinance to be exempt for CEQA pursuant to Class 7 Categorical Exemption, 14 CCR § 15307, which consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources.

The Planning Commission must consider the proposed CEQA exemption together with any comments received during the public review process, which would be included in the Commission's recommendation to the Board of Supervisors. Further, the exemptions can only be approved if the Board of Supervisors finds, based on the whole record before it, that there is not substantial evidence that there are unusual circumstances (including future activities), which might reasonably result in the project having a significant effect on the environment.

Planning Staff Recommendations

- Adopt Resolution PC-2021-023 taking the following actions:
 - Recommend the Board of Supervisors adopt the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09); and
 - Recommend the Board of Supervisors determine the project exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) and Section 15307.

Suggested Motion

I move that we adopt Resolution PC-2021-023, A Resolution of the Planning Commission of the County of Siskiyou, State of California, recommending the Board of Supervisors adopt the proposed Ordinance amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code regarding enforcement of the County's Surface Mining and Reclamation Ordinance.

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Preparation

Prepared by the Siskiyou County Planning Division.

For project specific information or to obtain copies for your review, please contact:

Kirk Skierski, Planning Director
Siskiyou County Planning Division
806 S. Main Street
Yreka, California 96097

Resolution PC 2021-023

A Resolution of the Planning Commission of the County of Siskiyou, State of California Recommending the Board of Supervisors Adopt the Proposed Ordinance Amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code Regarding Enforcement of the County's Surface Mining and Reclamation Ordinance

Whereas, the California Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 et seq., referred hereafter as "SMARA" declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety; and

Whereas, SMARA requires local governments to adopt surface mining and reclamation ordinances consistent with the provisions of Public Resources Code Section 2710 et seq., as amended from time to time; and

Whereas, Siskiyou County adopted its current Surface Mining and Reclamation Ordinance (Chapter 5 of Title 10 of the Siskiyou County Code) on May 12, 2015; and

Whereas, the State legislature amended SMARA following the passage of County's most recent Surface Mining and Reclamation Ordinance adopted on May 12, 2015; and

Whereas, Planning staff has determined the County's Surface Mining and Reclamation Ordinance needs to be updated for consistency with SMARA pertaining to the State's amendments; and

Whereas, the Planning Division presented its oral and written staff report on the proposed amendments to the County's Surface Mining and Reclamation Ordinance at the Planning Commission's regularly scheduled meeting on September 15, 2021; and

Whereas, the Planning Division recommended the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) be determined categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) and Section 15307 of the CEQA Guidelines because it can be seen with certainty that there would not be any significant impacts to the environment resulting from the project; and

Whereas, the Planning Division recommended approval of the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) set forth in Exhibit A of this Resolution referenced hereto and incorporated herein; and

Whereas, a Notice of Public Hearing was published in the Siskiyou Daily News on September 1, 2021; and

Whereas, hearing notices were posted pursuant to Siskiyou County Code Section 10-6.2805 *et seq.*; and

Whereas, on September 15, 2021, the Chair of the Planning Commission opened the duly noticed public hearing on the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) to receive testimony, both oral and written, following which the Chair closed the public hearing and the Commission discussed the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) prior to reaching its decision.

Now, therefore be it resolved that the Planning Commission recommends the Board of Supervisors determine the project to be categorically exempt from CEQA pursuant to Section 15061(b)(3)) and Section 15307 and that the Board of Supervisors adopt the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) set forth in Exhibit A of this Resolution referenced hereto and incorporated herein; and

It is hereby certified that the foregoing Resolution PC-2021-023 was duly adopted on a motion by Commissioner _____ and seconded by Commissioner _____, at a regular meeting of the Siskiyou County Planning Commission held on the 15th day of September 2021, by the following voice vote:

Ayes:

Noes:

Absent:

Abstain:

Siskiyou County Planning Commission

Tony Melo, Chair

Witness, my hand and seal this 15th day of September, 2021.

Kirk Skierski, Secretary of the Commission

Exhibit A: Draft Board of Supervisors Ordinance Amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code Regarding Enforcement of the County's Surface Mining and Reclamation Ordinance

An Ordinance of the County of Siskiyou, Amending Section 10-5.117 of Chapter 5 of Title 10 of the Siskiyou County Code Regarding Enforcement of the County's Surface Mining and Reclamation Ordinance

The Board of Supervisors of the County of Siskiyou Ordains as Follows:

Section I: Section 10-5.117 of Chapter 5 of Title 10 is hereby amended to read as follows, additions are shown in underline italics and deletions are shown in ~~strikethrough~~:

Sec. 10-5.117 – Enforcement.

(a) *If the Director, or his or her designee, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable land use permit, any other required permit and/or the Reclamation Plan, the County shall follow the procedures identified in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of County Code Section 10-6.1203 (Revocation) for revocation and/or abandonment of a Use Permit, which are not preempted by SMARA.*

~~(a) If, after conducting the annual inspection or otherwise confirmed by an inspection of the mining operation, the Planning Director finds that the surface mining operation is not in compliance with the approved reclamation plan, the provisions of this chapter, or SMARA, the Planning Director may notify the operator and the owner of the subject property of that violation by personal service or certified mail. If the violation continues beyond thirty (30) days after the date of issuance of the notice of violation, the Planning Director may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities. The order shall specify which aspects of the surface mine's activities or operations are inconsistent with the approved reclamation plan, the provisions of this chapter, or SMARA; shall specify a time for compliance which the Planning Director determines is reasonable, given the seriousness of the violation and any good faith efforts to comply with applicable requirements; shall set a date for a public hearing before the Planning Commission no sooner than thirty (30) days after the date of issuance of the order; and shall not take effect until the operator has been provided a public hearing concerning the violation, unless it is determined by the Planning Director that the violation presents an immediate threat to public health or safety requiring immediate corrective action pending a Planning Commission hearing, and the operator has been given adequate notice and an opportunity to be heard by the Planning Director prior to the effective date of his or her order (PRC Section 2774.1(a) and (b)).~~

- ~~(b) At the hearing, the Planning Commission shall determine whether or not the operator is complying with the approved reclamation plan or the provisions of this chapter and may affirm, modify or set aside the order issued by the Planning Director. The decision of the Planning Commission may be appealed within ten (10) calendar days to the Board of Supervisors.~~
- ~~(c) Any operator who fails to comply with an order issued by the Planning Director after the order's effective date, unless set aside by the Planning Commission or Board of Supervisors, shall be subject to an order by the Planning Director imposing an administrative penalty of not more than Five Thousand and no/100ths (\$5,000.00) Dollars per day, assessed from the original date of the Planning Director's notice of violation or noncompliance with PRC Section 2207. In determining the amount of the administrative penalty, the Planning Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator petitions the Board of Supervisors for review of the order prior to the date on which the penalty payment is due. The order shall be served by personal service or by certified mail upon the operator.~~
- ~~(d) If, within ten (10) days from the date of issuance, the operator petitions the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by personal service or certified mail as to whether the Board of Supervisors will review the order and, if so, when the matter has been set for public hearing, or consider the order final as previously issued. If it determines to consider the petition on its merits, the Board of Supervisors may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Planning Director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisor's order shall be made to the County within thirty (30) days of service of the order.~~
- ~~(e) If a new mining operation commences without an approved reclamation plan, the County may initiate legal action and proceedings pursuant to the general enforcement provisions of the County Code, which may include abatement, injunctive actions and civil penalties.~~

Section II: Constitutionality: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, 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 each 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.

Section III: The Board hereby finds that this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of this Ordinance amending the County’s enforcement procedures for surface mining and reclamation, as the Ordinance amends the County’s enforcement procedures consistent with the State’s Public Resources Code. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 7 Categorical Exemption, 14 CCR § 15307, (regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources).

Section IV: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed, and published in the County of Siskiyou.

Passed and Adopted this ____ day of _____, 2021 at a regular meeting of the Board of Supervisors by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Ray A. Haupt, Chair
Board of Supervisors

Attest:
Laura Bynum, Clerk,
Board of Supervisors

By _____
Deputy