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San Rafael Rock Quarry recycling ban upheld



A view of the pit at the Dutra Quarry taken from the top of South Hill in San Rafael, 2006. (Robert Tong/IJ archive)

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Marin Independent Journal

PUBLISHED: March 8, 2019 at 4:07 pm | UPDATED: March 11, 2019 at 5:21 am

A state appeals court has upheld a ruling prohibiting the San Rafael Rock Quarry from importing reclaimed asphalt for recycling.

The San Rafael nonprofit Point San Pedro Road Coalition sued the quarry and Marin County after the county approved an amendment to the quarry's mining permit allowing the importation of asphalt paving "grindings" left over during pavement projects to the quarry for recycling. Marin Superior Court in 2016 ruled in favor of the coalition, and the quarry and the county appealed.

In a ruling issued Wednesday, 1st District Court of Appeals Justice Ioana Petrou wrote that the county's amendment of the permit "allows San Rafael Rock Quarry to change and unnaturally expand or increase its nonconforming use in violation of the County zoning ordinance."

The appeals court awarded the coalition unspecified costs and "reasonable" attorneys' fees on its appeal.

"We clearly told the Board of Supervisors both times they approved this permit amendment that it violated a prior court order and county zoning law," wrote the coalition's attorney, John Edgcomb, "but the Coalition's objections were ignored.

"The appellate decision entirely vindicates the Coalition," Edgcomb said, "and suggests that the Board of Supervisors should listen more closely to the community in its decision-making."

Aimi Dutra, spokeswoman and daughter of Bill Dutra, CEO of the Dutra Group, which operates the quarry, wrote in an email, "We had hoped that we could help promote recycling and environmental stewardship in Marin County by reusing asphalt grindings that would otherwise end up in a landfill, so we are disappointed in the court's decision."

The ruling comes as the quarry has begun implementation of its reclamation plan and is seeking to extend the life of the mine and reclamation activities for up to 15 years to 2029.

The quarry property was originally zoned for heavy industrial and limited agricultural use but was rezoned for commercial and residential use in 1982. As a result, the quarry's mining operation and on-site production of asphaltic concrete became a legal nonconforming use.

The quarry and Marin County asserted the recycling of the reclaimed asphalt resulted in no additional truck trips, no additional noise and less greenhouse gas emissions.

Dutra said if the material couldn't be sent to the San Rafael Rock Quarry it would have to be trucked to Dutra's Richmond facility.

Quarry operations have generated controversy for years. People living adjacent to the quarry have long expressed concern regarding the crystalline silica dust produced by the quarry, particularly during dynamiting, and the diesel emissions of trucks and equipment used in mining operations. Crystalline silica is a known carcinogen.

In 2004, Marin Superior Court Judge John Sutro chastised the Dutra Group for expanding its mining operations without securing necessary approvals and ordered the firm to bring its reclamation plan into compliance with state law. Sutro in turn criticized Marin County for failing to adequately oversee the quarry's operations.

Sutro also noted the quarry's regional importance providing rock riprap for Delta levees and emergency flood protection, gravel, asphalt concrete and sand for local roads and other public works.

The operating permit and reclamation plan approved by the county in 2010 limits the quarry to extracting no more than a five-year rolling average of 1,414,667 tons per calendar year, limits truck trips to 250 per day, requires sound curtains to muffle noise, and requires quarry conveyor systems be enclosed to limit dust.

“Our permit application will not result in any changes to current operating parameters, and it will not provide for any increase in production,” Dutra wrote in an email. “It will merely provide more time to extract the reserves that have already been permitted.

“We have been extracting reserves at a slower pace than had been anticipated in our 2010 permit application,” she wrote, “in large part due to the downturn in the economy and the fact that construction and infrastructure are generally slower to bounce back after a recession than other segments of the economy.”

Bonnie Marmor, co-president of the Point San Pedro Road Coalition, said the quarry began to implement its reclamation plan last year, six years after it was supposed to begin.

“We’ve been concerned about the many delays that have been allowed by the county,” Marmor said. “We want to make sure that reclamation is done in a timely manner.”

The Dutra Group has said that when mining ceases, it plans to cut a channel between the pit and the bay, create a 600-berth marina, and develop 350 housing units as well as office and commercial buildings.

Dutra wrote, “It is simply not correct to say that our reclamation plan is ‘six years behind schedule.’

“It is true that we began our reclamation grading efforts in the northeast quadrant last year,” she wrote, “but we have been engaged in other aspects of reclamation in the prior years, including the performance of required environmental studies and marsh restoration efforts, as well as the submission of applications for the permits necessary to engage in reclamation grading activities.”

In January 2017, county Principal Civil Engineer Berenice Davidson said implementation of the quarry’s reclamation plan was behind schedule because of the discovery of a California red-legged frog, an endangered species.

Marmor said the quarry can continue to dynamite under its operating permit, and it is during blasting that dust becomes a health concern in the neighborhood. She said air quality studies have looked only at long-term levels of c-silica in the air while short-term concentrations may be much higher.