RECOMMENDED ACTION AND JUSTIFICATION:

Authorize Chairman to sign Indemnity Agreement with Hazel Green, LLC regarding the matter of Hazel Green Ranch, LLC v. Department of the Interior, etal; and authorize issuance of an encroachment permit for the Old Coulterville Road.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Hazel Green Ranch, LLC has indicated that it intends to file a Motion to join Mariposa County as a party in their suit against the United States Department of the Interior.

At the August 21, 2007 Board of Supervisors meeting Counsel advised the Board that it had come to the County’s attention that questions had arisen with respect to the status of the Old Coulterville Road. County staff had reviewed County records and files and found no action vacating the County’s interest in this road.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

<table>
<thead>
<tr>
<th>Financial Impact?</th>
<th>( ) Yes</th>
<th>( ) No</th>
<th>Current FY Cost: $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budgeted In Current FY?</td>
<td>( ) Yes</td>
<td>( ) No</td>
<td>( ) Partially Funded</td>
</tr>
<tr>
<td>Amount in Budget:</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Funding Needed:</td>
<td>$</td>
<td></td>
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<tr>
<td>Source:</td>
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<td></td>
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<tr>
<td>Internal Transfer</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Unanticipated Revenue</td>
<td>4/5’s vote</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer Between Funds</td>
<td>4/5’s vote</td>
<td></td>
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<tr>
<td>Contingency</td>
<td>4/5’s vote</td>
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<tr>
<td>( ) General</td>
<td>( ) Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CLERK’S USE ONLY:

Res. No. 277
Ord. No. 
Vote – Ayes: 
Noes: 
Absent: 
Approved 
Minute Order Attached 
No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: 
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: 
Deputy

COUNTY ADMINISTRATIVE OFFICER:

☑ Requested Action Recommended
☐ No Opinion
Comments:

CAO:
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222
LYLE TURPIN, CHAIR    DISTRICT II
DIANNE A. FRITZ, VICE CHAIR   DISTRICT IV
BRAD ABORN    DISTRICT I
JANET BIBBY   DISTRICT III
BOB PICKARD   DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO:    THOMAS P. GUARINO, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Approve Indemnity Agreement with Hazel Green, LLC Regarding the Matter of Hazel Green Ranch, LLC v. Department of the Interior, et al and Authorize the Board of Supervisors Chair to Sign the Agreement; Authorize Issuance of an Encroachment Permit for the Old Coulterville Road and Find the Encroachment Permit is Exempt from CEQA (California Environmental Quality Act) (County Counsel and Public Works Director)

RESOLUTION No. 08-77

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 26, 2008

ACTION AND VOTE:

Approve Indemnity Agreement with Hazel Green, LLC Regarding the Matter of Hazel Green Ranch, LLC v. Department of the Interior, et al and Authorize the Board of Supervisors Chair to Sign the Agreement; Authorize Issuance of an Encroachment Permit for the Old Coulterville Road and Find the Encroachment Permit is Exempt from CEQA (California Environmental Quality Act) (County Counsel and Public Works Director)

BOARD ACTION: Thomas P. Guarino, County Counsel, reviewed the history of the Old Coulterville/Yosemite Road; reviewed communications with the National Park Service and their attorneys, and with Lew Geyser representing Hazel Green; he reviewed the status of the litigation on this matter; and he reviewed the recommended actions and options, including potential costs. He advised that the Encroachment Permit would be limited to those portions of the roads located in Mariposa County; and he advised of a minor correction to the identification of Crane Flat Road to reflect that it is also known as the Old Yosemite Road, designated as County Road 51. Discussion was held and County Counsel responded to questions from the Board relative to maintenance and the CEQA exemption. He reiterated that County staff has found no action vacating the County’s interest in this road. Dana Hertfelder, Public Works Director, responded to additional questions from the Board relative to traffic and maintenance records and the conditions of the roads, and relative to the Indemnity Agreement.

Input from the public was provided by the following:

Lew Geyser, President of Hazel Green Ranch, stated he would like an opportunity to speak again after he has heard the rest of the public input. He presented and reviewed a map showing the roads being discussed to Hazel Green. He advised that he purchased this land at the National Park Service’s suggestion because they wanted to use a portion of it for “off the Valley floor” parking and
run shuttle buses to Yosemite; and he noted that this was included in the 2001 Yosemite Plan, and that there was a promise of being able to obtain a shorter, 500 foot access from Highway 120 to the property. Subsequently, the Park Service decided not to offer the “off the Valley floor” parking, and they were unable to get the shorter access to the property. He advised of their efforts to work out something with the Park Service relative to access to the property, and of their filing of a lawsuit against the United States Department of the Interior. He advised that they have maps dating from 1874 to 2002 that show the .56 and 2.35 mile roads accessing the property from Highway 120. He referred to the recent litigation and the issue of bringing the County into the lawsuit.

Kevin Cann, Deputy Superintendent for Yosemite National Park, presented a map and documents relative to this matter. He referred to the comments from Department of Justice that County Counsel referenced and said the gates have been up for fifty years. He questioned why the County would issue an Encroachment Permit now since it will not be acted on until the Court rules on this matter. He stated he does not feel that the County has done maintenance of the roads inside the Park boundary. He referred to the recent Court hearing and the issue of the County not being at the table. He read a prepared statement into the record representing Yosemite National Park and the National Park Service, expressing concern with the County moving forward on this matter. He referred to assistance the Park Service has provided to the County with projects. He stated that without the County, Mr. Geyser does not have standing to use RS2477 to force the rebuilding of long-ago abandoned roads across National Park land. He feels that if the County joins forces with Mr. Geyser that it will be dragged into a long-running court battle and the press will be relentless and unfavorable. He reviewed what they feel are critical flaws in Mr. Geyser’s case relative to the location of the Coulterville Road; Crane Flat Road is almost entirely in Tuolomne County; and that federal law does not allow Mr. Geyser to force the County to exert its claim over historic roads. He expressed concern with the litigation and reviewed the Yosemite Valley planning process, and he advised that in the 2001 appropriations bill, Congress prohibited developing “out-of-park” parking.

Paul Chapman stated he is not in favor of more development around the Park; but he takes exception to Mr. Cann threatening the County and Board; and he feels press releases should be released.

Bart Brown stated he is concerned with the publicity that would result from this action. He feels it might be better for the County be dragged into the lawsuit versus voluntarily joining in.

Doug Balmain noted that as a former Supervisor, he can remember having to sit for long hours through meetings. On behalf of Hazel Green, he advised that he has walked the property and has been on the roads being discussed, and he referred to the proposal of ten years ago - he stated he views this as a good thing for the Park and the environment, visitors of the Park and for the County. He feels that what has been said is to promote an agenda versus being the facts; and he noted that the County has also worked with the Park on projects, including the compost facility. He feels we should be working together with the Park and not be adversaries. He noted that Mariposa County built the road and it has never been bought by the Federal government.

Kevin Cann stated that to be very clear, the Park has zero interest in publication of this issue. They fight bad press constantly. They are concerned about the relation with the litigation.

Lew Geyser referred to the Quiet Title Act and stated the purpose of the Encroachment Permit is to give enough title to make this lawsuit work. He referred to the litigation and the environmental groups.

County Counsel clarified that the action today is not to file a lawsuit. He feels it is inevitable that the County will be sued based on what has been heard, and the recommended Indemnity Agreement provides for the funding for the County for not opposing the motion. He advised that this does not stop anyone else from protesting the County being brought into the lawsuit in this case. Further discussion was held.

(M)Fritz, (S)Aborn, Res. 08-77 was adopted approving the Indemnity Agreement with Hazel Green, LLC regarding the matter of Hazel Green Ranch, LLC v. Department of the Interior, et al and authorizing the Board of Supervisors Chair to sign the Agreement; authorizing issuance of an Encroachment Permit for the Old Coulterville Road; and finding the Encroachment Permit is exempt from CEQA and that a Notice of Exemption may be issued; with the modified language to the Encroachment Permit on Attachment “A” that the Crane Flat Road, also known as Old Yosemite Road, designated as County Road 51. Further discussion was held. The motion was amended, agreeable with the maker and second, to include that the Encroachment Permit is only for those
portions of road in Mariposa County. Supervisor Bibby stated she still has concerns about the exemption finding for CEQA. Ayes: Aborn, Turpin, Fritz; Noes: Bibby; Excused: Pickard.

Cc: Keith Williams, County Clerk (w/Notice of Exemption to file)
    Dana Hertfelder, Public Works Director
    Kris Schenk, Planning Director
    File
TO: County Clerk, County of Mariposa  
P.O. Box 247  
Mariposa, CA 95338

FROM: Mariposa County  
Board of Supervisors  
P.O. Box 784  
Mariposa, CA 95338

Project Title: Issuance of Encroachment Permit

Project Location: Parcels located at 12878 and 12828 Old Yosemite Road, Mariposa CA 95338; Permit issued for roads located in portion of North half of Section 15, T2S R19E MDB&M; Northeast quarter of the northeast quarter of Section 22 T2S R19E MDB&M; Southeast quarter of Section 15, T2S R19E MDB&M; and projected Section 14, T2S R19E MDB&M. Road possibly enters Section 23, T2S R19E MDB&M.

Project Parcels: APNs 006-010-025 and 006-010-026

Description of Project: Encroachment permit for specified maintenance of existing roads as follows:

Permit is issued for (1) leveling existing potholes and (2) clearing trees and obstructions on the roads. Permit does not include or authorize any expansion of use beyond that existing at the time of issuance of the encroachment permit. Permit does not include or authorize any widening and/or excavation activities.

Name of Public Agency Approving Project: Mariposa County Board of Supervisors

Name of Person (Applicant) Carrying Out Project: Hazel Green Ranch, LLC / Lewis P. Geyser

Exempt Status: Categorical Exemption, Class 1; Section 15301(c), CEQA Guidelines

Reason Why Project Is Exempt: Project is an encroachment permit authorizing specific limited maintenance of existing public road, involving no expansion of use beyond that existing at the time of the Board of Supervisors' authorization to issue encroachment permit.

Lead Agency Contact Person: Dana Hertfelder, Public Works Director

Phone Number: (209) 966-5356

Mariposa County Board of Supervisors by:

Lyle Turpin  
Chairman  

Date: 2-27-08

FILED

KEITH M. WILLIAMS  
Deputy County Clerk

KAREN M. HERM  
Deputy County Clerk
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

LYLE TURPIN, CHAIR
DIANNE A. FRITZ, VICE CHAIR
BRAD ABORN
JANET BIBBY
BOB PICKARD

DISTRIBUTION LIST

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

TO: THOMAS P. GUARINO, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board

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ADOPTED THIS Order on February 26, 2008

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Cc: Keith Williams, County Clerk (w/Notice of Exemption to file)
Dana Hertfelder, Public Works Director
Kris Schenk, Planning Director
File