RESOLUTION - ACTION REQUESTED 2015-175

MEETING: April 14, 2015

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Public Hearing: Re-Consideration of Zoning Ordinance Amendment No. 2014-078

PROJECT:
PUBLIC HEARING: Re-Consideration of Zoning Ordinance Amendment (ZA) No. 2014-078; Implementation of General Plan Policies for Mining (Referred Back to Agricultural Advisory Committee and Planning Commission by the Board of Supervisors on December 16, 2014)

Amendment to the Mariposa County Code Title 17 to implement General Plan provisions for processing Mining Permits. Text amendments are proposed to:

1. Chapter 17.20 Mountain Home zone
2. Chapter 17.24 Mountain Transition zone
3. Chapter 17.28 Mountain General zone
4. Chapter 17.32 General Forest zone
5. Chapter 17.36 Mountain Preserve zone
6. Chapter 17.40 Agriculture Exclusive zone
7. Chapter 17.48 Industrial Mining zone
8. Chapter 17.108 Supplementary Standards, and
9. Chapter 17.148 Definitions

RECOMMENDATION AND JUSTIFICATION:

This is an unusual project relative to processing. The Board initiated one project, and the final recommendations from the Agricultural Advisory Committee and Planning Commission do not support the initiated project.

Consequently, two options are being presented to the Board of Supervisors for consideration. Either option can be taken by the Board of Supervisors, without further review by the Planning Commission.

Due to the "summary ordinance" noticing requirement for the ordinance portion of either option, on April 14th, 2015, the Board will need to:

a) conduct the public hearing, including the staff presentation, questions, public input, and Board deliberation; and
b) take action (by formal motion) to give direction to staff to publish the "summary ordinance" for either Option 1 or Option 2 - whichever option the Board elects to pursue; and

c) continue the public hearing to a date and time certain, and
d) take final action on the selected option at the continued hearing. Final action will be by Adoption of Resolution and Waiver of First Reading/Introduction of Ordinance.

When the Board takes final action on the selected option at the continued public hearing, no further public input or deliberation should be necessary.

The two options presented for consideration include:

**Option 1** (implement current General Plan policies for mining permitting; additional provisions added for exploratory mining):

Following publishing of the "summary ordinance":

A. Adopt the attached resolution (option 1) approving ZA No. 2014-078 as amended with the recommended findings, including an environmental determination, and

B. Waive the first reading and introduce the attached ordinance (option 1) amending county code pursuant to ZA No. 2014-078 with the recommended findings.

OR

**Option 2** (amend General Plan policies for mining permitting):

Following publishing of the "summary ordinance":

A. Adopt the attached resolution (option 2) abandoning ZA No. 2014-078, and initiating and approving a new General Plan/Zoning Ordinance amendment to establish and implement new General Plan policies and regulations for mining; action includes recommended findings, including an environmental determination, and

B. Waive the first reading and introduce the attached ordinance (option 2) amending county code pursuant to the General Plan/Zoning Ordinance Amendment with the recommended findings.

The attached staff report packet contains additional information and the recommended text for both options.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Board of Supervisors initiated an amendment to the Zoning Ordinance to implement current General Plan policies on June 24, 2014.

The Board of Supervisors considered the amendments at public hearings/meetings on November 25, 2014 and December 16, 2014.

There was public input received during the Board public hearings, which resulted in additional recommended text edits to the amendments. On December 16, 2014, based upon state law, the Board of Supervisors rescinded their actions taken on November
25, 2014 and referred the amendments back to the Agricultural Advisory Committee and the Planning Commission for further review and recommendations.

The Board extended the reporting period for the Planning Commission's review on March 17, 2015.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Negative action (no action on either option) would result in no amendments to the General Plan or Zoning Ordinance. Inconsistencies between the General Plan and Zoning Ordinance would remain.

Alternatives - the Board of Supervisors may make other amendments to the text of the General Plan or the Zoning Ordinance. This may affect processing.

FINANCIAL IMPACT:
none

ATTACHMENTS:
Staff Report (DOC)
Draft BD Resolution Option 1 (DOC)
Draft BD Ordinance Option 1 (DOC)
Draft BD NOE Option 1 (DOC)
BD Ordinance Summary Option 1 (DOC)
Draft BD Resolution Option 2 (DOC)
Draft BD Ordinance Option 2 (DOC)
Draft BD NOE Option 2 (DOC)
BD Ordinance Summary Option 2 (DOC)
Comments Received During 2014 (PDF)
Comments Received During 2015 (PDF)
Agricultural Advisory Minutes - January 22, 2015 (DOCX)
Planning Commission Minutes - March 6, 2015 (DOC)
Planning Commission Draft Minutes - March 20, 2015 Minutes (DOC)
1404 email communications from Mendershausen and Overstreet (DOCX)
Additional Public Input regarding ZO Mendment NO. 2014-078 - Amendment to Mariposa County Code Title 17 (PDF)
Planning PowerPoint Presentation regarding Zoning Ordinance Amendment (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, CAO 4/9/2015
RESULT: ADOPTED [3 TO 2]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Rosemarie Smallcombe, Kevin Cann, John Carrier
NAYS: Merlin Jones, Marshall Long
TO: SARAH WILLIAMS, Planning Director

FROM: RENE' LaROCHE, Clerk of the Board

SUBJECT: PUBLIC HEARING: Re-Consideration of Zoning Ordinance Amendment (ZA) No. 2014-078; Implementation of General Plan Policies for Mining (Referred Back to Agricultural Advisory Committee and Planning Commission by the Board of Supervisors on December 16, 2014)

Resolution: 15-175

The following action was taken by the Mariposa County Board of Supervisors on April 14, 2015:

1. Planning RES-2015-175

PUBLIC HEARING: Re-Consideration of Zoning Ordinance Amendment (ZA) No. 2014-078; Implementation of General Plan Policies for Mining (Referred Back to Agricultural Advisory Committee and Planning Commission by the Board of Supervisors on December 16, 2014)

2:01 PM Chair Jones opened the Public Hearing.

Sarah Williams/Planning Director gave the staff report, and noted that public input that was received after the agenda packet was published was distributed to the Board today.

Supervisor Long read a statement advising that he has no financial interest in any mining by Long Aggregates on the Long Ranch and, consequently, no financial interest in any decision that is made; and that Long Aggregates is already permitted and will neither benefit nor suffer from any decision made today.

In response to an inquiry by Supervisor Smallcombe, Ms. Williams provided an overview of the processes and procedures relative to the California Environmental Quality Act (CEQA), the Surface Mining and Reclamation Act of 1975 (SMARA), and Conditional Use Permits (CUPs) with emphasis on the public participation and hearings. Supervisor Smallcombe required clarification regarding the differences in the scope of the discussions that can occur between the different types of actions. Ms. Williams responded, noted that the ability to make comment on the technical aspects of the mine, pursuant to SMARA, would be the same with either option; and that the ability to make comment on the environmental review aspects of the mining project would be the same with either option. Ms. Williams also noted that the biggest difference with the conditional use permits is that additional findings are established by Chapter 17.112 and that there is a discretionary review and decision made about the mining project based on the health, safety, morals, comfort, and general welfare of the
persons residing or working in the neighborhood.

Supervisor Cann required clarification of where the language discussing grandfathering could be found. Ms. Williams noted that if it is not in the resolutions and ordinances it should be. Supervisor Cann required clarification that a fifty percent expansion is a permitted function and would not require a conditional use permit. Ms. Williams affirmed, noting that it would still require an amendment to the mining permit and reclamation plan as is required now.

Supervisor Jones and Ms. Williams discussed the conditional uses with the two options.

Supervisor Carrier inquired if the difference between the two options is the discretionary review process in option two. Ms. Williams responded, noting that it is still included in option 1 for any parcel that is not in the Ag Working Landscape land use, and is not 160 acres or greater in size. Supervisor Carrier required clarification as to how much time the conditional use permit will add to the permit process. Ms. Williams noted that it should not add any additional time. Supervisor Carrier noted a clerical error in the fourth paragraph of page 123.

Supervisor Jones and Ms. Williams discussed the discretionary review process. Ms. Williams noted that the fundamental difference is that permitted uses are used by right, while conditional uses are discretionary.

Supervisor Long required clarification of the differences in the public process for a 159 acre Ag working landscape parcel, and a 161 acre Ag working landscape parcel. Ms. Williams noted that it would be the same number of public hearings, the same review process, and the same noticing under either option, but that the difference is determined by the CEQA determination and whether an environmental review must occur.

Supervisor Smallcombe required clarification as to whether the main difference between the two parcels has to do with the scope of the elements on which the public may comment. Ms. Williams affirmed, and discussed the elements being reviewed under CEQA; and noted that CEQA does not establish policy, nor give direction as to policy. Supervisor Smallcombe inquired about land swaps, and whether there was a possibility that a land swap might occur. Ms. Williams noted that the policy contained in the General Plan today allows for someone to make a proposal to amend the General Plan, but that it has to be of equal acreage. She also discussed the passage of the land swap provisions.

Public comment opened.

Chris Scheuring/Sacramento Farm Bureau staff lawyer urged adoption of option 2, noting that he would like to see local oversight in addition to CEQA and SMARA; and cautioned against relying on CEQA for the entire public process as laws change.

John Brady/MERG urged the adoption of option 2; noting that wording on land swaps was not onerous; and remarked that having a local level of control is important.

Malcolm MacGregor urged the adoption of option 2, noting that it has been approved by the Planning Commission and the Ag Advisory Committee; remarked that the environmental community also supports option 2; and noted that option 2 would provide more transparency to the process.

Ralph Mendershausen urged adoption of option 2; and discussed the County’s economy, and types of mining operations.

Margaret Udell-Williams urged adoption of option 2; and noted that property values will decline without the protections that a conditional use permit offers.

Kris Casto noted that this will be a policy decision; and discussed other uses that require conditional use permits for much less intensity.

Mark Wilcoxen urged adoption of option 2; commented that he likes the oversight; and noted that he doesn’t think that tourism is compatible with most large scale mining.

Les Overstreet urged option 2, noting that miners will be dissuaded by the permit use; and remarked that mining should continue with the application of conditions.

Linda Meyer/Meyer Ranches urged adoption of option 2.

Public comment closed.

Board deliberations opened.

Supervisor Cann concurred that the land swap process was onerous, noting that it was onerous for a reason; recounted that in nine years it has happened once and was nearly a year long process so he does not see that as an issue in the future; and requested that some specificity be built in to grandfather in existing operations. Ms. Williams clarified that today’s outcome will be to provide
direction as to which option to pursue, and that the appropriate language will be added to the finished resolution.

Supervisor Smallcombe inquired as to other counties that may have CUPs with defined criteria upon which to form the basis for decisions. Ms. Williams noted that CUPs are required for a number of uses in the county. She also noted that there is a set list of review requirements with SMARA. Supervisor Smallcombe requested further clarification as to whether efforts have been undertaken to define the criteria. Ms. Williams responded, noting that she could not answer as she has not researched the issue. Ms. Williams also noted that the Board will not be amending that chapter today.

Supervisor Jones noted that he does not like changing rules in the middle of the game; does not like the discretionary review aspect because three people can kill a project; noted that he would like to see definitions; noted that groups from out of the county will be able to come in and dictate the determinations if the County makes it a CUP; remarked that this county has always tried to be less intrusive than other counties which is why a lot of people move here; remarked that the landowners need to make the decisions if it doesn't intrude; discussed conditional use permits in other counties; noted that option number 2 would be stricter than those required by the State of California; discussed past mining and timber industries in the county; concurred with needing to protect the health and welfare of the county; and urged the adoption of option 1.

Supervisor Long remarked that option 2 allows the ability to kill any project; noted that mining has a history in Mariposa and does not impede tourism; discussed the necessity of mining to provide materials for technology; stated that mining creates economic development; noted that the aggregate mining business has been a constant in Mariposa County, and that there is no project currently before any entity for a large scale mining operation; commented that the discord over this item is because one project is being prejudged; remarked that there has never been a CUP on large Ag lands in Mariposa County and one is not needed now; discussed local mining operations that no longer exist, noting that he does not think that we need to further regulate the mining industry; urged option 1; and noted that both options should include stronger grandfathering clauses.

Supervisor Jones discussed mining and timber industry problems in the past, noting that those issues have been put to an end in California by the enactment of preventive regulations.

Supervisor Smallcombe noted that there are reasons that other counties have instituted CUPs; remarked that she does not feel that projects will be killed by imposing a CUP for mining activities; commented that bringing people together in the public process will reduce the possibility of litigation; and urged option 2.

Supervisor Long moved option 1, but the motion died for a lack of a second.

**ACTION was taken, under motion of Supervisor Smallcombe and second by Supervisor Carrier, to approve option number 2, providing that robust provisions are included to ensure grandfathering of current operations.**

Chair Jones continued the Public Hearing to April 28th, 2015, at 2:00 PM.

**RESULT:** ADOPTED [3 TO 2]

**MOVER:** Rosemarie Smallcombe, District I Supervisor

**SECONDER:** John Carrier, District V Supervisor

**AYES:** Rosemarie Smallcombe, Kevin Cann, John Carrier

**NAYS:** Merlin Jones, Marshall Long
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

MERLIN JONES, CHAIR
JOHN CARRIER, VICE-CHAIR
ROSEMARIE SMALLCOMBE
MARSHALL LONG
JOHN CARRIER

DISTRICT II
DISTRICT V
DISTRICT I
DISTRICT III
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

TO: SARAH WILLIAMS, Planning Director
FROM: RENE’ LaROCHE, Clerk of the Board
SUBJECT: PUBLIC HEARING: Re-Consideration of Zoning Ordinance Amendment (ZA) No. 2014-078; Implementation of General Plan Policies for Mining (Referred Back to Agricultural Advisory Committee and Planning Commission by the Board of Supervisors on December 16, 2014)
Resolution: None, but pertains to Res. 15-175

The following action was taken by the Mariposa County Board of Supervisors on April 28, 2015:

L. 2:00 PM Reconvene

Public Hearing (Continued from April 14, 2015)

Sarah Williams noted that this is the continued public hearing to discuss the issue of mining permitting, and she provided an overview of the matter to this point. County Counsel clarified that Finding 5 allows that any legally established mining use will be grandfathered, not illegally established ones. Ms. Williams summarized the procedural steps for the Conduct of Hearing; discussed publishing requirements and options under California regulations; noted where the proceedings are in the Hearing Procedures; and provided an overview of what will be accomplished today should the Board adopt the next two items.

Supervisor Jones required clarification of whether a third option could be entertained at this point in time. Ms. Williams noted that, in response to an earlier conversation with Supervisor Jones on the subject, she prepared a slide with a third option which would allow mining permitted on parcels or contiguous parcels greater than 160 acres in size, with 20 acres or less of disturbed land, and no chemical used in leaching, separating, or extracting minerals. She noted that the consideration of a third option would begin the process anew in order to get public input, and would have to go back before the Ag Advisory Committee and the Planning Commission. Supervisor Jones noted that he brought this up because he thought it was a good compromise which would make huge mines need a Conditional Use Permit (CUP), while still allowing smaller mines to be permitted; noted that they would still be following the California Environmental Quality Act (CEQA), Surface Mining and Reclamation Act (SMARA), and the rest of the requirements; and noted that he is bothered by the current option. Supervisor Jones and Ms. Williams then discussed the cost and process involved with a Conditional Use Permit. Supervisor Jones also discussed a hypothetical scenario; noting that the project could be killed, and the investment lost, if there were three board members who did not like it. Ms. Williams advised that any actions have to be based on Findings, but that the decision makers need to exercise independent judgment on the finding regarding health, safety, morals, comfort, and general
welfare; remarked that she knows that most of the counties around here have conditional use permits, but that this county is unique. Supervisor Jones inquired when the last application was received. Ms. Williams noted that they processed an application to combine two mining permits for Mark Long within the last year, but that prior to that, it has been a number of years; and she noted that they do have one new application that was submitted since the beginning of the year, but that the application is incomplete. Supervisor Jones noted that, given the historical significance of mining in the county, he hoped that the Board would allow this to go back to the Ag Advisory Committee so that onerous criteria are not being put on small operations.

 Supervisor Long noted that we talk about economic development, but then suppress it; noted that mining has a small profit margin; remarked that it provides a product that people in Mariposa County need; noted that if we accept Option 2, he does not think you will see another mine permitted in Mariposa County; and noted that he would like to consider Option 3.

In response to an inquiry from Supervisor Cann, Ms. Williams provided clarification of whether a hypothetical situation would trigger an Environmental Impact Report (EIR.) Supervisor Cann discussed the past actions of the Ag Advisory Committee and Planning Commission in this matter; noted that it seems that the greater number of potential mining parcels are in District II and District III; and remarked that if those two supervisors are insistent that this is a critical issue in their districts, then he would be prone to having the matter go back to the Ag Advisory Committee and Planning Commission again. Supervisor Jones remarked that it is an important issue in District II, which is why he worked so long and hard on a compromise option that would relate to both parties.

In response to an inquiry from Supervisor Carrier, Ms. Williams provided clarification of a hypothetical situation, and noted that there needs to be consistency between the policies and the zoning ordinance.

 Supervisor Long commented that agriculture and mining have gotten along for years; remarked that there have been mistakes but with proper planning, and proper oversight, mining can be done in a responsible way.

 Supervisor Jones discussed the benefits of the option that he is suggesting, and noted that he thinks that this is a compromise that will satisfy both parties.

 Supervisor Cann remarked that his feeling on large mining has not changed; and inquired if it would be proper to consider an urgency ordinance on anything larger than a twenty acre disturbance should they decide to reset the process in order to consider the third option. Ms. Williams noted that an urgency ordinance may be advisable, but that she would need to talk to County Counsel before making a determination. Supervisor Cann noted that an urgency ordinance could be one of the interim outcomes necessary if it is sent back through the process. Supervisor Cann required clarification that the prevailing language is the language in the General Plan which requires anything under 160 acres have a Conditional Use Permit. Ms. Williams affirmed.

Public comment opened.

 Kris Casto noted that when they went through the process of all of the public hearings, they were told that it would add no more to the process; remarked that when you look at a mine that would go through CEQA in relation to the General Plan, you have shown that the process works; commented that she is not here to say that she does not want mining but, rather, is here to say that she wants those other elements of health, safety, morals, etc., considered; noted that if it is not allowed in every other zone, except on a parcel over 160 acres, then she feels that we are only protecting a segment of our community, rather than protecting everyone.

 Bud Munch/local miner and geologist noted that when he came back to Mariposa County in 1967 or 1968, there were a lot of little mines going with all sorts of people working on their own mines; noted that he can understand regulating big projects but that all of these regulations will kill the medium and small projects; remarked that the Mariposa mine dump ended up being the base of Highway 49; noted that mines are only in certain places and can be innocuous in this County; noted that he has a personal list of over 1200 mines in this county and most of them cannot be seen; and remarked on the ability to have some economic base other than tourism for the county's economy.

Public comment closed.

 Supervisor Jones discussed his reasoning in formulating Option 3.
 Supervisor Smallcombe noted that she suspects that many of the parcels that would be potential
mine sites would be in Districts II and III, and she respects the positions of those supervisors; but, there is a need to balance the potential for economic development against the value of community; noted that the risk associated with intensive mining is considerable; and noted that she believes that a CUP is necessary for the community to engage and come to a common conclusion.

Supervisor Jones inquired if Board consensus is sufficient, or if a motion is needed to introduce Option 3 for consideration.

County Counsel recommended closing the public portion of the hearing, concluding Board deliberation, and making a decision; and noted that three members verbally indicating, on the record, direction to staff to develop Option 3 should be sufficient, otherwise the Board will need to proceed with Option 2.

Chair Jones inquired if the Board concurred with taking Option 3 back through the process. Supervisor Cann noted that he would probably feel differently had the Ag Advisory Committee and Planning Commission been consistent; remarked that it bothers him to flip flop like this; noted that he is concerned that there is not a good consensus; noted that he does not like the prospect of sending this back through the process, but believes that it has to go in deference to the two districts; and noted that he is, in no way indicating how he will vote when it comes back through, but will support sending it back through the process if the Districts II and III supervisors feel strongly about it.

Supervisor Long noted that this was not about mining but, rather, became about the Fremont Mine; and remarked that that hurts all mining in Mariposa County.

Supervisor Carrier remarked that when it went back, he questioned the difference between Conditional Use Permit and Permitted; noted that there is no guarantee that the Board will see Option 3 as the final recommendation; remarked that the whole purpose of this was to provide consistency; noted that this is important enough to kick it back down for more discussion, but we may end up with a different interpretation again; noted that he wants to make sure that if we do send it down to staff again, that they look at it really hard and get plenty of public input; noted that he is not against mining, but if any large corporation wants to come into Mariposa County and wants to do mining, we should be able to be sure that they have the capital and resources to make sure they are going to do it right; and remarked that he just wants to make sure that the community has input and buy-in on it.

Supervisor Jones concurred.

Supervisor Cann and Ms. Williams discussed reclamation plans under SMARA, as well as the process and annual reviews of the plan. Supervisor Cann urged consideration of an urgency ordinance while this process is pursued. Ms. Williams remarked that such direction could be part of the Board's action. Supervisor Jones concurred.

Discussion ensued between Supervisor Carrier and Ms. Williams regarding the difference in costs between a Conditional Use Permit and Permitted, and the effect on a small miner.

County Counsel recommended that the Chair call for a motion to direct staff to develop Option 3.