# Staff Report

Meeting Date: January 4, 2022

To: Siskiyou County Board of Supervisors

From: Bernadette Cizin, Assistant Planner

Subject: An Amendment to the County’s Surface Mining and Reclamation Ordinance (Z-21-09)

## 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 updates are needed to the County’s Surface Mining and Reclamation Ordinance to ensure consistency with SMARA.

## Analysis

September 15, 2021 Planning Commission Meeting

During the September Planning Commission meeting, the Commission expressed concerns relating to staff’s proposed amendments to update County Code Section 10-5.117 relating to enforcement of surface mining and reclamation activities. Specifically, the Commission felt it was important to maintain the appeal procedures within the current version of the County’s Surface Mining and Reclamation Ordinance, which stipulates the Planning Commission as the review authority should a mine operator appeal the Planning Director’s order to comply relating to violations of a surface mining operation. The Planning Commission outlined that the Commission is the review authority in approving Use Permits and Reclamation Plans for surface mining operations. Due to this, the Commission has extensive knowledge of surfacing mining and reclamation activities and should be the review authority when reviewing appeals of orders to comply. The Commission continued the public hearing to October 20, 2021 and directed staff to revise the proposed amendments to maintain the Commission’s role reviewing appeals of orders to comply.

October 20, 2021 Planning Commission Meeting
Staff moved forward with the Commission’s direction, including extensive review of SMARA, and determined that additional updates were warranted as the County Ordinance does not fully comply with the requirements of SMARA. As a result, staff proposed a comprehensive update of the County’s Surface Mining and Reclamation Ordinance.

The proposed amendments to the County Ordinance are minor and in line with the provisions of SMARA. The state’s changes to SMARA have revised timeframes relating to local governments review of interim management plans and financial assurances, and timeframes relating to the state’s review and comment period for reclamation plans, reclamation plan amendments, and financial assurances. The proposed amendments to the County Ordinance only include the provisions currently prescribed in SMARA and do not include any amendments that would be more restrictive than the State. The proposed amendments are the minimum necessary to ensure the County’s Surface Mining and Reclamation Ordinance is consistent with SMARA.

To specifically address the Commission’s concerns raised during the September 15, 2021, Planning Commission meeting, staff revised the proposed updates to Siskiyou County Code Section 10-5.117 (Enforcement) and now stipulate that a mine operator may appeal the Planning Director’s order to comply within 30 days following the service of the order to the Planning Commission. A Planning Commission hearing would be scheduled within 45 days of filing the appeal, unless a longer period is mutually agreed to by the operator and Planning Director. The Planning Commission shall determine whether or not the operator is complying with the approved reclamation plan, the County’s Surface Mining and Reclamation Ordinance, or SMARA, 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. However, SMARA (at Public Resources Code Section 2774.2(a)) states that any order imposing administrative fines shall be heard by the legislative body of the lead agency, thus an appeal of an order with fines must proceed directly to the Board of Supervisors.

The Commission agreed with the proposed revision to the appeals process. However, they expressed concerns regarding some of the newly proposed updates. Specifically, Section 10-5.102(b)(8) and if the exemption would apply to the use of product on cooperatively maintained road section not within the same parcel the product was harvested and the addition of ‘streambed skimming’ to the Definition of Surface mining operations per 14 CCR 3501 and the potential effect on future streambed restoration and groundwater sustainability projects along the Scott River and tributaries.

The Commission continued the meeting to December 15, 2021 to all ow staff to research and respond to these concerns.

December 15, 2021 Planning Commission Meeting
Staff was able to review state code, other similar projects throughout the state and meet with Department of Conservation staff to discuss the concerns and interpretation of SMARA.

It was found that exemption described in Section 10-5.102(b)(8) would apply to cooperatively maintained roads in connection with timber operations or forest management.

Staff concluded that there is not an exemption written that would directly apply to the example given by Commission of potential projects along the Scott River.

Following the hearing, the Planning Commission voted 3-0, with two commissioners absent, and adopted Resolution PC 2021-023, recommending the Board adopt the proposed Ordinance Amending Chapter 5 of Title 10 of the Siskiyou County Code regarding the County’s Surface Mining and Reclamation Ordinance.

While preparing documents for the Board, staff has discovered a minor clerical error in Section 10-5.113 (b). Within SMARA the “Department of Conservation” has been replaced with the “Supervisor of Mine Reclamation” therefore the “director” is now referred to as “Supervisor”. The above-mentioned section has now been updated to reflect the change.

Notice of the project was published and posted as required prior to the Board of Supervisors meeting and no public comments were received as of the preparation of this staff report.

## Environmental Review

Staff finds that the proposed Amendment to the Surface Mining and Reclamation 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 the proposed amendment to the Surface Mining and Reclamation Ordinance. 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 further finds that the moratorium is categorically exempt from further review under CEQA Class 7 Categorical Exemption, 14 CCR § 15307, (regulatory activity to assure protection of Natural Resources).

As such, the Board of Supervisors would need to determine the project to be categorically exempt from CEQA prior to adopting the proposed amendment to the Surface Mining and Reclamation Ordinance.

## Fiscal Impact

No direct fiscal impact other than staff time processing this project.

## Recommended Action

The Planning Commission recommended the Board adopt the proposed Ordinance amending Chapter 5 of Title 10 of the Siskiyou County Code regarding the County’s Surface Mining and Reclamation Ordinance. Should the Board of Supervisors agree with the Planning Commission’s recommendation, staff recommends the following motion:

## Recommended Motion

I move to take the following actions:

1. Introduce, waive, and approve the first reading of the proposed amendment to the County’s Surface Mining and Reclamation Ordinance (Z-21-09); and
2. Direct the clerk to schedule a continued public hearing on the determination of the CEQA exemption and for the second reading of the Ordinance Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County’s Surface Mining and Reclamation.

## Attachments

1. Working draft with Redline changes, an Ordinance of the Board of Supervisors of the County of Siskiyou, State of California, Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County’s Surface Mining and Reclamation Ordinance
2. Clean copy of Draft Ordinance, an Ordinance of the Board of Supervisors of the County of Siskiyou, State of California, Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County’s Surface Mining and Reclamation Ordinance
3. Planning Commission Staff Report Dated December 15, 2021
4. Planning Commission Staff Report Dated October 20, 2021
5. Planning Commission Staff Report Dated September 15, 2021
6. Signed Resolution PC 2021-023