OVERVIEW OF MINERAL LANDS INDENTIFICATION PROCESS

I. Overview of State Law

Governed by the Surface Mining & Reclamation Act (SMARA), Public Resources Code § 2710 *et seq.*

Two-Step Process:

1. Classification
    - Done by the State Geologist, part of the California Geological Survey (CGS)
    - Supposed to be updated every 10 years or so
    - Lands can be classified as either:
        MRZ-1: Few mineral deposits present, not of significance
        MRZ-2: Known or very likely to contain deposits of significance
        MRZ-3: Significance of deposits unknown
    - Classification is done solely on the basis of geologic factors. No consideration is given to existing land use or ownership. (SMARA §2761(b))
    - Classification Maps are transmitted to the lead agencies (cities and counties), who must incorporate the information into their zoning and create a Mineral Resources Management Plan (MRMP) to emphasize the conservation and development of the identified mineral resources. (SMARA §2762)
    - Before permitting a use in an MRZ-2 area which would *threaten the potential to extract minerals in that area*, the lead agency must prepare a statement of reasons for allowing that use, forward it to the State Geologist, and circulate it for public comment/public hearing. (SMARA §2762(d).)
    - Before permitting a use in an MRZ-3 area which would *threaten the potential to extract minerals in that area*, the lead agency must first require the significance of the minerals to be evaluated. The report must be forwarded to the State Geologist. (SMARA §2762(e).)
    - The SMGB has a regulation defining what it believes are uses that are incompatible with mineral extraction. These are high-density, high-value private developments, intensive commercial/industrial uses, or public facilities, because the economic value of those facilities is likely to outweigh the value of the rock underneath. (14 Cal. Code Regs. § 3675.)

2. **Designation**
    - Done by the State Mining & Geology Board (SMGB). It is not a required step, but is done at their election. (SMARA §2790)

- The designation process was suspended for most of 1990-2008 or so, because it was unclear whether designation triggered CEQA. It has since been determined that it doesn't trigger CEQA.
- Applies only to MRZ-2 classified lands, and is intended to add greater protection and oversight to significant mineral deposits so that they don't get covered up and become unavailable.
- MRZ-2 classified lands can be designated as either of regional or statewide significance. Statewide significance is rare, but is likely to become more common as demand increases and availability decreases.
- There is no difference in the statutory protections given to regional-significance deposits versus statewide-significance deposits. (SMARA §2763(a)-(b).)
- Once land is designated, before permitting a use that would *threaten the potential to extract minerals in that area*, the lead agency must prepare a statement giving its reasons and circulate it per SMARA § 2762(d). The lead agency must balance the mineral values against the alternative land use, and consider the importance to the region or state as a whole, and not just the local community. (SMARA § 2763.) <u>That latter consideration of regional or statewide importance is essentially the extra step required by designation that is not required by classification.</u>
- Designation can't prevent activities under a vested permit. (SMARA §2792.)

<u>II. San Luis Obispo County</u>

- Classification was first done in 1989, with CGS Special Report 152.
- It appears the County properly incorporated the classification maps into its zoning, because the current extractive overlay zones match the CGS maps from 1989.
- The designation step was never done at that time, due to the uncertainty at the time about whether designation triggered CEQA.
- The CGS updated its classification report in 2011, with Special Report 215. The maps are largely the same as in 1989, with a few new areas added as MRZ-2 (Huer Huero Creek out in Creston, for example).
- Special Report 215 was transmitted to the County, but no zoning update has been commenced.
- The County does not currently have a Mineral Resources Management Plan (MRMP). The minerals section in the COSE puts restrictions on mining operations; it does not plan for their conservation and development as required by SMARA, so that does not count as an MRMP.
- The County has two extractive overlay zones (EX and EX1) that were apparently put in place in 1986 and amended periodically throughout the 1990s.

EX1 (County Code 22.14.050): This applies to MRZ-2 Classified lands. It simply requires that prior to approving a non-mining use, the County must find that the use "will not adversely affect the *continuing operation or expansion* of a mineral resource extraction use." This is slightly less than what is required under state law. (See SMARA §2762(d)-(e).)

EX (County Code 22.14.040): This applies to designated lands. It requires a Minor Use Permit for all non-mining uses, and requires the application to include a mineral resource report prepared by a geologist or mining engineer. This is slightly more than what is required by state law.

- SMARA does not require discretionary permitting for all non-mining uses, only those that would *threaten the potential to extract minerals*. (It does not expressly require discretionary permitting for those uses, but in order to make the required findings, a non-ministerial permit is needed). See SMARA Regulation 3675 for the types of uses that would likely threaten the potential to extract minerals—high density development, public facilities, etc.
- SMARA also does not require a mineral resource report prior to permitting except for uses in an MRZ-3 (unknown) zone, and that is part of classification, not designation. For designated lands, it is presumed the minerals were adequately identified when they were mapped MRZ-2 and designated. That said, a mineral resource report may be helpful to the County in making its findings that the proposed use outweighs the value of the minerals.

The EX overlay also requires that approval of a non-mining use may be granted only when "the finding is made that the proposed use will not adversely affect the *continuing operation or expansion* of the energy or extraction use." This is slightly less than what is required by state law, since SMARA requires that for designated lands, the proposed use not threaten the *potential* to extract minerals in the area, not just the *continued* extraction (which implies an existing operation).

III. Summary

State law (SMARA) already requires discretionary permitting for any use that would *threaten the potential to extract minerals* on MRZ-2 Classified *or* Designated Lands, because the County must make certain findings to approve such uses. So nothing will change with respect to the state law permitting requirements with the upcoming designation of Sector C (the MRZ-2 sector outside Santa Margarita), except that designation adds an extra step to the findings that are already required (i.e. considering the needs of the region or state as a whole, and not just the local area).

State law does not require discretionary (i.e. minor or conditional use) permitting of uses that would not threaten mineral resource extraction—single family homes, agriculture, etc.,

basically all the stuff that is currently allowed on Rural and Ag lands by the County with a ministerial permit.

State law does require a mineral resource report *if* (1) the use is proposed on MRZ-3 classified lands (significance of the resource unknown); and (2) the use would threaten the potential to extract minerals in the area. These requirements are already in place under state law and would not change with the upcoming designation. These requirements do not apply to Sector C, because Sector C is classified as MRZ-2 (significance of the resource already identified).

The County EX1 ordinance currently applies in Sector C. EX will kick in after the state designation is complete.