



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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FINAL STATEMENT OF REASONS

FOR THE ADOPTION OF NEW REGULATIONS FOR DESIGNATION OF MINERAL LANDS IN THE SAN LUIS OBISPO – SANTA BARBARA PRODUCTION-CONSUMPTION REGION, COUNTIES OF SAN LUIS OBISPO AND SANTA BARBARA

GENERAL PURPOSE AND CONDITION ADDRESSED

As required by Section 11346.9(a) of the Government Code, the State Mining and Geology Board (SMGB) sets forth below the reasons for the adoption of new regulations for designation of mineral lands in the San Luis Obispo – Santa Barbara Production-Consumption (P-C) Region, San Luis Obispo and Santa Barbara Counties. Article 6 of the Surface Mining and Reclamation Act of 1975 (SMARA), commencing with Public Resources Code (PRC) Section 2790, provides for the SMGB, based upon mineral information from the State Geologist pursuant to subdivision (c) of PRC Section 2761, to adopt in regulation specific geographic areas of the state as areas of statewide or regional mineral resource significance and specify the boundaries of those areas. PRC Section 2793 also provides a mechanism for the SMGB after a public hearing to terminate, partially or wholly, the designation of any area of state wide or regional significance on a finding that the direct involvement of the SMGB is no longer required.

At its December 8, 2011 regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 215, a classification report on Portland cement concrete-grade (PCC) aggregate in the San Luis Obispo-Santa Barbara P-C Region. This report updated information previously published by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 162 – *Mineral Land Classification: Portland Cement Concrete Aggregate and Active Mines of All Other Mineral Commodities in the San Luis Obispo-Santa Barbara Production-Consumption Region*. Special Report 215 updated the classification portion of the two-step *Classification-Designation process* mandated by the Surface Mining and Reclamation Act (SMARA).

At its March 8, 2012 regular business meeting, the SMGB accepted the State Geologist's recommendations for designation of select mineral resource lands in the San Luis Obispo-Santa Barbara Production-Consumption P-C Region. The SMGB subsequently directed its Executive Officer to notice a public hearing to receive comments on the proposed regulatory action. The 60-day public comment period commenced on June 7, 2012, and ended on July 31, 2012. A public hearing was held to receive comment in the County of Santa Barbara on July 11, 2012. At its April 11, 2013 regular business meeting, the SMGB received further comments regarding the proposed

Mission of the State Mining and Geology Board is to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Redress

designations. All comments have been reviewed and addressed. At its July 11, 2013 regular business meeting, the SMGB deferred taking action until its next scheduled meeting and requested a review by its legal counsel of previous counsel's analysis noting that designation is not a project under the California Environmental Quality Act (CEQA). At its September 12, 2013, regular business meeting, the SMGB approved the regulatory language but requested this matter be continued so allow sufficient time to address whether Sector C should be considered of statewide in lieu of regional significance.

At its November 14, 2013, regular business meeting, the SMGB accepted the proposed new designations, and areas identified for termination of designation, for the San Luis Obispo – Santa Barbara P-C Region pursuant to PRC Section 2761. At its August 14, 2014, regular business meeting, the SMGB adopted the final regulatory language and associated maps.

SPECIFIC PURPOSE

The proposed new regulations adds Section 3550.17 to Article 2 CCR, is intended to clarify and make specific those mineral lands that are to be designated by the SMGB as having regional significance within the San Luis Obispo – Santa Barbara P-C Region, or areas where designation is to be terminated. These regulations are contained under Article 2, titled "*Areas Designated to be of Regional Significance.*"

The proposed new regulations reflect information provided in CGS Special Report 215 Aggregate resources in the San Luis Obispo-Santa Barbara P-C Region were not designated subsequent to the publication of Special Report 162 in 1989; therefore, the information on concrete-grade construction aggregate resources identified in Special Report 215 was used as a basis for consideration of potential designation actions by the SMGB. The P-C Region will need 263 million tons of construction aggregate (all grades) in the next 50 years. 137 million tons (52%) of that will need to be AC- and PCC-grade. 75 million tons of concrete-grade aggregate resources are currently permitted (reserves). Considering recent trends, these reserves will be depleted in about 16 years from the forecast date or in the year 2026.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB's threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. The areas identified as candidates for designation are Sectors A through I, comprised of 79 individual sectors and subsectors.

Proposed new regulations, CCR Section 3550.17, indicate reference to areas proposed for designation, and are illustrated on four Plates: Plate 1, *Candidate Areas for Designation in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region, California – Northern Part (2013)*; Plate 2, *Candidate Areas for Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California – Middle Part (2013)*; Plate 3, *Candidate Areas for Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California – Southern Part (2013)*; and Plate 4, *Candidate Areas for Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California – Cuyama Valley (2013)*. These four plates form an integral part of the regulation.

STATEMENT OF NECESSITY

PRC Section 2755 provides the SMGB the authority to adopt regulations that establish state policy for the designation of mineral lands of statewide or regional significance reclamation of mined lands, in accordance with Article 6 (commencing with Section 2790) of this chapter, and pursuant to PRC Section 2761. PRC Section 2790, states that after receipt of mineral information from the State Geologist, the SMGB may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof.

Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area. PRC Section 2791 also requires the SMGB to seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance. PRC Section 2793 also allows the SMGB by regulation adopted after a public hearing, to terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the SMGB is no longer required.

From 1989 to 2011, 90 million tons of AC - and PCC - grade aggregate were removed due to production, 273 million tons (1,275 acres) removed as a result of incompatible land uses, and 425 million tons removed as a result of revised calculations.

Furthermore, in 2012, the California Geological Survey (CGS) in their statewide report titled "*Map Sheet 52 (Updated 2012), Aggregate Sustainability in California*" noted that the San Luis Obispo – Santa Barbara P-C Region 50-year demand for aggregate was on the order of 240 million tons. Permitted aggregate resources were on the order of 75 million tons. The percentage of permitted aggregate resources, as compared to the 50-year demand, was 31 percent, significantly lower than the projected demand.

CEQA COMPLIANCE: The SMGB has determined that this rulemaking process is either not a project under Title 14, CCR Section 15378 of the CEQA Guidelines, or is categorically Exempt under Title 14, CCR Section 15308 of the CEQA Guidelines. Thus, there is no environmental impact in considering the proposed regulatory language.

DISCLOSURES REGARDING THE PROPOSED ACTION: [Government Code Section 11346.9, Subdivision (a)(2)]

The SMGB has made the following determinations, based in part on the Economic Impact Analysis prepared for this proposed amended regulation:

Mandate on local agencies and school districts: The SMGB staff determined that adoption of this regulation does not impose any new mandates on local agencies or on local school districts.

Costs or savings to any State agency: The SMGB staff determined that this proposed regulation imposes no savings or additional expenses to state agencies.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The SMGB staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: The SMGB staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

Cost or savings in Federal funding to the State: The SMGB staff determined that there are no costs or savings in Federal funding to the State.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The

SMGB staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language. The imposition of the proposed new regulation will have no cost impact on businesses, and no existing businesses in California will be expanded or eliminated. The proposed regulatory language serves as a planning tool for local government (counties and cities) and considering future land use as it relates to surface mining of aggregates.

Potential cost impact on private persons or directly affected businesses: The SMGB staff has determined that the proposed regulatory language will not have a potential cost impact on private persons.

Creation or elimination of jobs in California: The SMGB staff has determined that the adoption of these regulations will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

No jobs in California will be created or eliminated in regards to the proposed regulation. The proposed regulatory language is intended to serve as a planning tool for local government (counties and cities) and considering future land use as it relates to surface mining of aggregate.

Significant effect on housing costs: The SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The SMGB staff has determined that the designation of mineral lands areas will have no effect on small businesses. The imposition of the proposed amendment will have no cost impact on small businesses. There will be no new businesses created or existing businesses eliminated. The proposed regulatory language allows lead agencies to consider the regional significance of mineral lands designated by the SMGB when making land use decisions, but does not impose any fees or costs to business as part of that consideration.

ALTERNATIVES CONSIDERED [Government Code Section 11346.9, Subdivision (a)(4) and Subdivision (a)(5)]

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The SMGB's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses. Furthermore, no alternative have been considered by the SMGB at this time that would more cost effect and equally as effective to affected private persons, lead agencies, or small businesses.

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. In consideration of the proposed regulatory language, the SMGB relied on several documents including California Geological Survey (CGS) Special Report 162 and updated Special Report 215, recommendations set forth by the State Geologist, and Economic Impact Analysis prepared for this proposed amended regulation.

At its December 8, 2011, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 215, a classification report on Portland cement concrete-grade (PCC) aggregate in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region. This report updated information previously published in 1989 by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 162 – *Mineral Land Classification: Portland Cement Concrete Aggregate and Active Mines of All Other Mineral Commodities in the San Luis Obispo-Santa Barbara Production-Consumption Region*.

The updated report presented the following conclusions:

- Seventy-five (75) million tons of currently permitted construction aggregate reserves are projected to last through the year 2026, 16 years from the present (2010);
- An additional 2,991 acres of land containing concrete aggregate resources are identified in areas in and near the San Luis Obispo-Santa Barbara P-C Region;
- Anticipated consumption of construction aggregate in the San Luis Obispo-Santa Barbara P-C Region for the next 50 years (through the year 2060) is estimated to be 263 million tons, of which 137 million tons must be concrete-grade. This is 57 million tons more than the prior 50-year projection made in 1989; and
- An estimated 10,700 million tons of concrete aggregate resources are identified in the San Luis Obispo-Santa Barbara P-C Region.

Special Report 162 identified 35,888 acres of land containing 11.2 billion tons of PCC-grade aggregate resources. Reevaluation and revisions for updated Special Report 215 identified 40,895 acres of land containing 10.7 billion tons of AC - and PCC-grade aggregate resources. From 1989 to 2011, 90 million tons of AC - and PCC - grade aggregate were removed due to production, 273 million tons (1,275 acres) removed as a result of incompatible land uses, and 425 million tons removed as a result of revised calculations. In addition, 260 million tons of AC aggregate was included along with 5 million tons resulting from newly classified areas. In this updated study, three newly identified areas containing AC- and PCC-grade aggregate resources have been classified MRZ-2. These areas include 2,991 acres containing approximately 380 million tons of newly identified AC- and PCC-grade aggregate resources.

Aggregate resources in the San Luis Obispo-Santa Barbara P-C Region were not designated subsequent to the publication of Special Report 162 in 1989; therefore, the information on concrete-grade construction aggregate resources identified in Special Report 215 was used as a basis for consideration of potential designation actions by the SMGB. The P-C Region will need 263 million tons of construction aggregate (all grades) in the next 50 years. 137 million tons (52%) of that will need to be AC- and PCC-grade. 75 million tons of concrete-grade aggregate resources are currently permitted (reserves). Considering recent trends, these reserves will be depleted in about 16 years from the forecast date or in the year 2026.

At its March 8, 2012, regular business meeting, the SMGB accepted the State Geologist recommendations for designation of select mineral resource lands in the San Luis Obispo-Santa Barbara P-C Region. The State Geologist recommended several candidates, or areas, which meet

or exceed the SMGB's threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. The areas identified as candidates for designation are Sectors A through I, comprised of 79 individual sectors and subsectors. The SMGB subsequently directed its Executive Officer to notice a public hearing to receive comments on the proposed regulatory action. The 60-day public comment period commenced on June 7, 2012, and ended on July 31, 2012. A public hearing to receive comment was held in the County of Santa Barbara on July 11, 2012. At its November 14, 2013, regular business meeting, the SMGB accepted the proposed regulation with modification in consideration of public comments received. At its August 14, 2014, regular business meeting, the SMGB adopted the final regulatory language and associated maps.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS [Government Code Section 11346.9, Subdivision (c)]

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

INCORPORATION BY REFERENCE:

As the maps referenced in the regulation are large and cumbersome, it would be unduly expensive and otherwise impractical to publish them in the California Code of Regulations. However, the maps are readily available in the offices of the SMGB, as well as published on the SMGB's website.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD [Government Code Section 11346.9, Subdivision (a)(3)]

Written comments were received during the 45-day public comment period from the County of San Luis Obispo Department of Planning and Building, and members of the public. Specific comments pertained to 1) whether the proposed designations are of regional rather than statewide significance, 2) potential or future local land use decisions with authority granted to the lead agency (i.e., County) and outside the authority of the SMGB, and 3) applicability of the California Environmental Quality Act (CEQA) to the designation process (i.e., is designation a "Project" as defined by CEQA). A summary of comments received are chronologically summarized in Table 1. Some of the comments received were of a specific nature and a response was prepared as provided below.

Table 1		
Comment No.	Date	Public Comment for Proposed SB-SLO PCC Designations
1	June 26, 2014	Nick Forster, Planner, County of San Luis Obispo, Dept. of Planning and Building
2	June 28, 2014	Julie Stuart, Santa Margarita, CA
3	June 30, 2014	Andrew Christie, Santa Lucia Chapter Director, Sierra Club
4	June 30, 2014	Babak Naficy, Attorney, Sn Luis Obispo
5	June 30, 2014	Roy Reeves, President, Margarita Proud, Santa Margarita
6	June 30, 2014	Charles Kleemann, Santa Margarita, CA

Comment No. 1: County of San Luis Obispo Department of Planning and Building (June 26, 2014):

Comment No. 1: The County of San Luis Obispo, Planning and Building Department is supportive of the proposed designation of the identified aggregate resources being of regional significance rather than being of state wide significance.

Response to Comment No. 1: The SMGB concurs and the proposed designation is of regional significance, not statewide.

Comment No. 2: Julie Stewart (June 28, 2014):

Comment No. 2a: The Commenter notes that 1) the proposed regulation is regional significance, not statewide...

Response to Comment No. 2a: The SMGB concurs and the proposed designation is of regional significance, not statewide.

Comment No. 2b: I strongly object to the statement that; "This proposed regulation is necessary in order for the State to meet its aggregate availability and sustainability needs." The statement is the last sentence of the second paragraph of the "POLICY STATEMENT OVERVIEW". This statement is based on factual but not completely true and accurate data presented in SR-215, with respect to availability of aggregate resources in the SLO-SB Production-Consumption Region. True, there may be only "seventy-five (75) million tons of currently permitted construction aggregate reserves" and this amount may last only through 2026 at projected rates of use, but SR-215 totally fails to include the fact that most mining operators do not seek to permit mining operations for periods much beyond thirty years, whereas SR-215 is looking at a fifty year projection. Most importantly, SR-215 did not take into consideration the aggregate reserves planned for in the Santa Maria and Sisquoc River Specific Plan and the Rocky Canyon Specific Plan discussed on page 22 of SR-215. The aggregate resources from these two Specific Plans alone, when added to the 75 million tons that are currently permitted, provide enough aggregate to go well beyond the fifty year projection needs. I strongly suspect that other aggregate mining operations within this P-C Region also have access or control of projected aggregate resources within the proposed designated area that are currently not permitted and which they are planning to extract in the future. Thus, there may be a necessity for the proposed regulation "in order for the State to meet its aggregate availability and sustainability needs" far into the future, well beyond fifty years, but the justification and facts that back up this particular aggregate availability argument, as presented in the SR-215 conclusions, are not valid.

Response to Comment 2b: Surface mine operations are permitted for a few years to tens of years to over 100 years. No additional response or additional consideration is deemed necessary.

Comment No. 2c: Concerning "CEQA COMPLIANCE" I find it interesting that the SMGB has determined on its own, that this action is exempt from the requirements of CEQA.

Response to Comment No. 2c: This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the

importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of "Project" that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB's conclusion that the designation process in and of itself does not constitute a "Project" as defined under CEQA.

Comment No. 2d: As of this date I have received no official notice from the State or County that my property rights are being restricted to the point that I can make no improvements to my parcel that would be considered incompatible with aggregate mining. There seems to be absolutely no recourse that affected land owners can take at this time to protect their property rights from this regulatory action that is being thrust upon us without notification or representation.

Response to Comment No. 2d: The proposed regulation for designation imposes no restrictions on individual property rights. The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining, including land improvements.

Comment No. 2e: With respect to "DISCLOSURES REGARDING THE PROPOSED ACTION" two sections require comment:

"Mandate on local agencies and school districts:" The adoption of this regulation certainly does impose new mandates on local agencies. The whole purpose of the regulation and the act of "Designation" is to mandate that the local agencies must impose restrictions on land owners within the designated areas that will prevent the development of any project that would be incompatible with the extraction of the designated resource. SLO County, under existing ordinances, will be required to impose a more restrictive zoning overlay change that will apply to over 80% of the proposed areas within the county identified as candidates for designation.

"Potential cost impact on private persons or directly affected businesses:" Both of the suppositions in this paragraph are incorrect. First, in SLO County, a local mining operation is still going to have go through the CEQA process to get a Conditional Use Permit to conduct mining operations or even a proposed expansion of operations and if there are no objections the process may indeed be smoother. However, if the proposed operation is, for example, near a residential area, it may cost a lot more and take more time, and even then it may not get approval, even if it is in a designated area. Second, again in SLO County, the agency should have been aware that the county ordinances governing classification and designation, submitted to the SMGB for approval, requires that parcel owners in designated areas be required to submit a geologist report, at an estimated cost of between \$3,000 and \$10,000 or more, on any proposed project that is not related to resource extraction.

I also take exception to the CONSIDERATION OF ALTERNATIVES paragraph. From what I am aware of this designation process, there has been very little consideration of

alternatives. If my neighbors had not been involved in the process of trying to prevent a quarry being developed in our community this designation would probably have been completed without the knowledge of any the affected land owners. As it is, my property is divided by the proposed designation boundary and as near as I can determine the boundary bisects my home. The properties along our road are zoned Residential Rural and even though we are in a semirural area, county zoning considers these properties primarily in the residential category. The County has made no effort, in the past 22 years that I have lived here, to restrict residential growth in this area. In fact the County has allowed us to construct a second residence on our property as many of my neighbors have done. There should have been some consideration of existing county land uses, especially where existing residences are concerned.

Response to Comment No. 2e: The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency ultimately determines whether it will grant a permit for mining or other proposed and use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining, including residential.

Comment No. 3: Sierra Club (June 30, 2014):

Comment No. 3a: Under CEQA Compliance regarding the proposed action, that "The SMGB has determined that this rule making action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061 (b)(3)." The commenter disagrees with this assessment.

Response to Comment No. 3a: This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of "Project" that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB's conclusion that the designation process in and of itself does not constitute a "Project" as defined under CEQA.

Comment No. 3b: But for the designation, there would be no underlying regulatory scheme put in place intended to make easier and more likely that approval of surface mining in areas that have been designated, and making more difficult and less likely the approval of projects potentially incompatible with mining.

Response to Comment No. 3b: The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency (County) ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

Comment No. 3c: But for the designation, lead agencies within individual counties so designated would not be required to consider future land use projects in light of the importance to their market region as a whole, not just their importance to the lead agency's area of justification.

Response to Comment No. 3c: Counties are required to justify other land uses; however, designation does not prohibit other land uses.

Comment No. 3d: But for the designation, counties would not have a ministerial duty to revise their General Plan to reflect designation.

Response to Comment No. 3d: Counties are required to update their General Plans on a periodic basis, and incorporate Mineral Resources Management Policies (MRMP) which are reviewed and recognized by the SMGB, and subsequently incorporated in the General Plan.

Comment No. 3e: But for the designation, there would be no potential indirect impacts on the environment via the displacement of non-mining related development to other areas.

Response to Comment No. 3a, 3b, 3c, 3d and 3e: Designation in itself does not impose any potential impacts on the environment. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of "Project" that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB's conclusion that the designation process in and of itself does not constitute a "Project" as defined under CEQA.

Comment No. 4: Babak Naficy (June 30, 2014):

Comment No. 4a: As explained in Margarita Proud's letter, many of the assumptions underlying the proposed amendment of designation of areas within San Luis Obispo as containing "regionally significant" mineral deposits are flawed. Specifically, the assumption that mineral resources already identified are insufficient for meeting expected future demands is false. The State Geologist's report fails to take into account the full potential of already operating mining operations and the magnitude of already identified deposits.

Response to Comment No. 4a. No response or additional consideration is deemed necessary.

Comment No. 4b: The Notice of the proposed rulemaking is misleading and seriously flawed in that it fails to adequately inform the public about the true intent and implications of the proposed expanded designations. As I explained in my March 28, 2013 letter to Mr. Stephen Testa and the State Mining and Geology Board, the proposed designation will significantly affect the process by which lead agencies, particularly the County of San Luis Obispo, process and approve land use projects located within the areas designated as containing regionally significant mineral resources. In short, the designation would make it more difficult to deny mining

projects or to approve any project that may be perceived as potentially incompatible with mining.

Response to Comment No. 4b. The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency (County) ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

Comment No. 4c: The Notice also creates the impression that the designation of an area as containing minerals of regional significance amounts to merely providing additional information to the lead agencies to be used solely at their discretion. The truth is that by designating an area as containing regionally significant resources, the SMGB is essentially declaring a state policy in favor mining and against any "incompatible" uses in those areas.

Response to Comment No. 4c. The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency (County) ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

Comment No. 4d: In the course of making a decision whether to designate an area, the SMGB must balance competing interests, such as protection of wildlife, aesthetic values and water resources against the value of the mineral resource that is to be extracted. Accordingly, by designating an area as regionally significant for resource extraction, the SMGB essentially declares a state policy in favor of mineral extraction and against the protection of all other values and resources. Yet the Notice provided to the public fails to disclose this balancing act, or speak to the implications of a designation, which by design is intended to make it easier to mine and more difficult to do anything else with land that is designated as containing regionally significant mineral deposits.

Response to Comment No. 4d. The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency's General Plan. The lead agency (County) ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

Comment No. 4e: The Notice is also misleading to the extent that it claims "The specific benefits anticipated by the proposed amendment provides nonmonetary benefits to the environment by avoiding species conservation areas and habitat

sensitive areas. . .” The SMGB is in no position to make this claim because there is no evidence to suggest the Board has taken any meaningful analysis of the proposed designation on species conservation or sensitive habitats. It is interesting to note, however, that the Board’s claim that the designation would actually affect the environment in a positive manner is squarely at odds with the Board’s invocation of a CEQA exemption under CEQA Guideline § 15061(b)(3), which applies to projects which are incapable of affecting the environment.

Response to Comment No. 4e. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of “Project” that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB’s conclusion that the designation process in and of itself does not constitute a “Project” as defined under CEQA.

In regard to having positive environmental impact, this general statement relates to the fact that the closer to the market area a mineral extraction area is, the lower the amount of greenhouse gases that are emitted via transportation of aggregate, thus, a positive effect is evident even though that positive effect is not the only thing a lead agency considers when it makes land use decisions.

Comment No. 4f: Finally, we must again insist that the SMGB may not approve the proposed designation without undertaking a comprehensive environmental review as required by CEQA. The Board’s contention that the rule-making is not a “project” within the meaning of CEQA is untenable and not supported by the applicable case law. The designation process is specifically intended protect areas designated as containing significant mineral deposits from conversion to uses that would preclude mining. By designating an area, the SMGB essentially declares a state policy of promoting mining to the exclusion all incompatible uses within the designated area, making mining more likely.

Response to Comment No. 4f. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of “Project” that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB’s conclusion that the designation process in and of itself does not constitute a “Project” as defined under CEQA.

Comment No. 4g: The Notice also declares that the rulemaking is exempt from CEQA pursuant to CEQA Guideline §15061(b)(3) as an activity that could not conceivably cause a significant impact on the environment. This is simply not true in this case, because the act of designation is intended and will make it more likely that the designated land will be mined. According to one leading CEQA treatise,

A public agency action that will not have an immediate effect on the environment but might culminate in a physical impact to the environment is a project under CEQA. See,

Fullerton Joint Union High School Dist., 32 cal.3rd 779, 795 (1982). Thus, general plan amendments and other legislative policy enactments may be “projects” subject to CEQA even if further discretionary approvals will be necessary before development causing physical changes to the environment can occur.” Curtin’s California Land Use and Planning Law, 2014, p.143.

The act of designation essentially amounts to imposing a mining zoning overlay on the designated areas. Zoning decisions are considered projects capable of impacting the environment because they make the ultimate development in accordance with the zoning designation more likely. It is axiomatic that enactment of a zoning ordinance is subject to CEQA Cal Pub Resources Code § 21080(a).

For all the foregoing reasons, as well as the arguments presented to the SMGB in my March 28, 2013 letter (which is appended hereto and is hereby incorporated by this reference), I urge you not to proceed with the proposed rulemaking until adequate environmental review is conducted pursuant to CEQA and appropriate notice is provided to the public.

Response to Comment No. 4g. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of “Project” that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB’s conclusion that the designation process in and of itself does not constitute a “Project” as defined under CEQA.

Comment No. 5: Roy Reeves, President, Margarita Proud (June 30, 2014): Two comments areas are discussed: 1) the portrayal of aggregate supply and 2) the procedural absence of CEQA compliance in the designation of mineral resources.

Comment No. 5a: Conclusions presented in CGS Special Report 215 (SR-215) fails to accurately portray aggregate supply and recommend that language within Title 14 of the California Regulatory Notice Register 2014, No. 20-Z, Notice File No. Z2014-0506-07 be revised to portray a more clear and accurate assessment of available aggregate supply as outlined.

Response to Comment No. 5a. The classification of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of significance. Significance is a mineral deposit (or group of deposits that can be mined as a unit) that is actively mined under a valid permit or meet certain criteria pertaining to marketability and threshold value. Such specific classification criteria is provided in the SMGB’s “*Guidelines for Classification and Designation of Mineral Lands*” and was adhered to by CGS in considering classification.

Comment No. 5b: Request to postpone any actions pertaining to designation until compliance with CEQA has been completed for the following reasons.

- Prior to exempting designation from CEQA through adoption of Resolution 98-01, the SMGB rightfully complied with CEQA by preparing an Environmental

- Impact Report (EIR) prior to designating any areas as containing mineral deposits of statewide or regional significance.
- Case law cited (Kaufman & Broad-South Bay v. Morgan Hill District (1992) Cal. App. 4th 464, and Stand Tall on Principles v. Shasta Union High School District (1991) 235 Ca. App. 3rd 772) does not support the Board's conclusion.
 - The Board's designation has far more reach than the State Geologist's classification. Designation is not purely informational, including a prescriptive element that imposes additional substantive and procedural duties on lead agencies which make it more difficult to deny mining projects or approve projects that are potentially incompatible with mining.
 - Regulatory design underlying designation intends to make it easier, and therefore more likely, that surface mining would occur in areas that have been designated.
 - Upon designation, lead agencies within individual cities and counties affected will be required to consider future land use projects in light of the importance to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.
 - The designation process is akin to a land use designation, which is a project subject to CEQA.
 - Cities and counties have a ministerial duty to revise their General Plan to reflect designation.
 - Designation can result in indirect impacts on the environment by potentially displacing non-mining related development to other areas.

Response to Comment No. 5b. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of "Project" that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB's conclusion that the designation process in and of itself does not constitute a "Project" as defined under CEQA.

Comment No. 5c: Language within the California Regulatory Notice Register, (Register 2014, No. 20-Z) suggests that a variety of impacts such as creation or elimination of jobs within the state, effects on small businesses, benefits of designation, consideration of alternatives, potential cost impacts on private persons, and a variety of other determinations have been found not to be substantial or present adverse change. No studies or sources are cited within the document, and no EIR was prepared that might have provided detailed information to inform the broad determinations arrived at relative to these impacts. Please provide the methodology utilized to reach the various determinations cited.

Response to Comment No. 5c. There is no methodology and impact because with designation there remains no specific project to consider.

Comment No. 6: Charles Kleemann (June 30, 2014):

Comment No. 6a: I have been following the Designation process closely since submitting comments at the first SMGB hearing on this matter in Santa Barbara on July 11, 2012. As a building contractor for over 30 years, I fully understand that resources are utilized to maintain infrastructure and for development. I also

understand that open pit mining, strip mining, and mountaintop removal create significant environmental impacts not introduced with other types of land uses, presenting an elevated need to strike balance between the competing needs of industry and those of the communities these highly industrial operations impact. It becomes increasingly important to consider the connectedness of all things, and keep in mind that economic well-being more acutely depends on maintaining healthy environments as our collective human footprint increases.

Response to Comment No. 6a. No response or additional consideration is deemed necessary.

Comment No. 6b: Thus far, designation of mineral lands has been a relatively obscure process well under the radar of most everyone affected, with the exception of the mining industry. Because no means of notification that would find its way to the average citizen or landowner has taken place, the vast majority of affected parties would have no way of knowing about the actions leading up to the regulatory process currently underway.

Response to Comment No. 6b. Notification is mandated by state law, and current notification processes as provided in statute and regulation were met.

Comment No. 6c: The subject of the need for CEQA within the Designation process has perhaps been discussed, but needs to be dissected. I concur with the assessment of Margarita Proud, Sierra Club Santa Lucia Chapter, and North County Watch that SMGB's Designation must comply with CEQA and that SMGB's insistence on citing its Resolution 98-01 as the be all-end all to the discussion, though perhaps hopeful, is not well founded. The SMGB's position contradicts its own language in several areas. *"Potential cost impact on private persons or directly affected businesses: The imposition of the proposed language on a directly affected local mining operation will have a positive cost impact to that operation by the recognition of designated mineral land of regional significance which in some circumstances may reduce the amount of time, thus cost, in acquiring a permit to mine from its lead agency"* provides one concrete example that underlying Designation is an intent that goes beyond the simple act of mapping resources that several SMGB members repeatedly maintained at the April 11, 2013 SMGB meeting held in Atascadero, California.

Response to Comment No. 6c. This issue has been previously addressed by the SMGB via Resolution No. 98-01; whereas, although the SMGB recognizes the importance of addressing and fulfilling the requirements of CEQA, and fully supports the application of CEQA to defined projects, specific court cases have further refined the definition of "Project" that is subject to CEQA. Notably, the SMGB has determined that CEQA compliance is not required for action of the SMGB pursuant to PRC Section 2790 et seq. designating specific geographical areas of the State as areas of regional or statewide mineral significance. This policy is based on the SMGB's conclusion that the designation process in and of itself does not constitute a "Project" as defined under CEQA. Although designation may have a positive cost impact, it may also have little if any effect depending on a number of factors such as acquisition of land, permit conditions set forth by the lead agency or other authority, other limitations set forth by other agencies or authorities, economic factors, market factors, among other factors and considerations.

Comment No. 6d: How available supply is quantified matters and has everything to do with accuracy and meeting stated goals. I concur with the ongoing assertion by

Margarita Proud that the portrayal of the long term need for aggregate in the San Luis Obispo-Santa Barbara Production-Consumption Region is being skewed by not comprehensively identifying sources of supply that have been well identified within several Specific Plans denoted in SR-215. These supplies are in fact at the ready within the “bank accounts” of existing operations. Semantics would seem to best describe the language barrier placed between “permitted reserves” and documented “resources” already within existing mines.

Language within Proposed Regulatory Action

The State Mining and Geology Board (SMGB) proposes to present new regulations which would “*add Section 3550.17 to Title 14, Article 2, of the California Code of Regulations (CCR), and provide a description of the locations of mineral resources areas designated to be of **statewide** significance, and areas where designation will be terminated, within the San Luis Obispo Production–Consumption (P–C) Region, Counties of San Luis Obispo and Santa Barbara*”. The issue of statewide versus regional significance was decided with Agenda Item No. 6 at the November 14, 2013 SMGB meeting. The SMGB voted 4-1 in favor of language that stated areas designated would be of regional rather than statewide significance.

Perhaps the reference to providing a description of the locations of mineral resource areas designated to be of “statewide” significance within the Proposed Regulatory Action is an error as the Board’s decision was clearly that all sectors are designated as being of regional significance. Either way, it would seem the language within Title 14 should align with your Board’s prior decision. Water - a resource important to the needs of society Guidelines for Classification-Designation states; “*construction aggregate was selected by the SMGB to be the initial commodity targeted for classification because of its importance to society, its unique economic characteristics, and the imminent threat that continuing urbanization poses to that resource*”. Board Resolution 98-01 additionally states; “*the Legislature finds and declares in the Surface Mining and Reclamation Act (SMARA, Public Resource Code § 2710 et seq.) that the extraction of minerals is essential to the economic well-being of the State and to the needs of society*”.

Response to Comment No. 6d: The SMGB concurs and the proposed designation is of regional significance, not statewide.

Comment No. 6e: The proposed regulation for Designation, specifically for the approximately 14,000 acres within the North County area of San Luis Obispo County, effectively places restrictions on any further use found to be incompatible with mining. The acreage delineated is estimated to contain over six billion tons of concrete-grade aggregate. While aggregate has a certain societal value, simply designating all of the areas selected by the State Geologist that contain the resource is to work in a vacuum that ignores impacts imposed on other more important and valuable ancillary resources, most notably water. Such an approach is unsustainable, and counter to achieving the stated goals.

Response to Comment No. 6e: The proposed regulation for designation poses no restrictions on any further land use that is incompatible with mining.

Comment No. 6f: How available supply is quantified matters and as everything to do with accuracy and meeting state goals. I concur with the ongoing assertion by Margarita Proud that the portrayal of the long term need for aggregate in the San Luis Obispo-Santa Barbara Production-Consumption Region is being skewed by not comprehensively identifying sources

of supply that have been well identified within several Specific Plans denoted in SR-215. These supplies are in fact at the ready within the “bank accounts” of existing operations. Semantics would seem to best describe the language barrier placed between “permitted reserves” and documented “resources” already within existing mines.

Response to Comment No. 6e. The classification of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of significance. Significance is a mineral deposit (or group of deposits that can be mined as a unit) that is actively mined under a valid permit or meet certain criteria pertaining to marketability and threshold value. Such specific criteria is provided in the State Mining and Geology Board’s “*Guidelines for Classification and Designation of Mineral Lands*”

Comment No. 6g: Guidelines for Classification-Designation states; “*construction aggregate was selected by the SMGB to be the initial commodity targeted for classification because of its importance to society, its unique economic characteristics, and the imminent threat that continuing urbanization poses to that resource*”. Board Resolution 98-01 additionally states; “*the Legislature finds and declares in the Surface Mining and Reclamation Act (SMARA, Public Resource Code § 2710 et seq.) that the extraction of minerals is essential to the economic well-being of the State and to the needs of society*”.

The proposed regulation for Designation, specifically for the approximately 14,000 acres within the North County area of San Luis Obispo County, effectively places restrictions on any further use found to be incompatible with mining. The acreage delineated is estimated to contain over six billion tons of concrete-grade aggregate. While aggregate has a certain societal value, simply designating all of the areas selected by the State Geologist that contain the resource is to work in a vacuum that ignores impacts imposed on other more important and valuable ancillary resources, most notably water. Such an approach is unsustainable, and counter to achieving the stated goals.

Response to Comment No. 6g. The classification of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of significance. Significance is a mineral deposit (or group of deposits that can be mined as a unit) that is actively mined under a valid permit or meet certain criteria pertaining to marketability and threshold value. Such specific criteria is provided in the State Mining and Geology Board’s “*Guidelines for Classification and Designation of Mineral Lands*”

The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be incorporated in the lead agency’s General Plan. The lead agency (County) ultimately determines whether it will grant a permit for mining or other proposed and use, or impose any restrictions on land use. Pursuant to Public Resources Code Section 2774.4(a), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, consideration of some other land use incompatible with mining, factors such as noise, dust and traffic, or other factors such as water needs. These considerations are addressed by the lead agency as part of future land use decision considerations.