



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: March 13, 2008

Agenda Item No. 2: Consideration for Approval of a Request for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) by the Department of Transportation, Office of Design East, for a One-Time Surface Mining Activity for the Willits Bypass Project, County of Mendocino.

INTRODUCTION: The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one-time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. CalTrans has submitted a request for an exemption for a one-time surface mining activity in association with the Willits Bypass Project located in the County of Mendocino. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

STATUTORY CONSIDERATIONS: SMARA allows for a one-time exemption pursuant to Public Resources Code Article 1 Section 2714(f), which states:

“Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.”

Before exemptions from the provisions of SMARA are granted, the SMGB needs to consider and fully address the following four criteria:

Criteria 1 - Compliance with the California Environmental Quality Act

(CEQA): Pursuant to PRC Section 2712(a), has an environmental review been completed on the activity either separately or as part of a larger project? PRC Section 2712(a) states *“It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) 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.”*

Criteria 2 - Local authority: Pursuant to PRC Sections 2715 and 2770(a), is the activity conducted permitted or otherwise authorized by a local lead agency? PRC



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Section 2715 states “No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”

PRC Section 2770(a) states “Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.”

Criteria 3 - End use of the mining or borrow site: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity occurs defined? PRC Section 2711(b) states “The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.”

PRC Section 2712 states “It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(a) 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.



(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.”

Criteria 4 - Impacts of the operation on commercial activities: Pursuant to PRC Section 2714(b), have the commercial purposes of the activity been considered? PRC Section 2714(b) states “*Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:*

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency’s approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.”

BACKGROUND: On October 12, 2007, CalTrans submitted a request for a one-time exemption from SMARA for its Willits Bypass Project. CalTrans is in the final design phase for this project, which will entail a bypass of US 101 around the City of Willits in Mendocino County. Once completed, the four-lane interchange at the end of the project will transition to two-lanes constructed on the ultimate northbound lanes immediately north of the southern interchange. The northern interchange will consist of two lanes. Phase one of the project will entail the use of about one million cubic meters of borrow material. Since CalTrans owns property adjacent to US 101, referred to as the Oil Well Hill borrow site, about three miles north of the City of Willits, this area has been proposed as an optional borrow site.

Initially, the northern limits of the construction project extended past the proposed borrow site to an area referred to as Oil Well Hill. The borrow site being situated within the project limits would have been exempt from SMARA pursuant to the construction exemptions pursuant to PRC Section 2714(b). However, due to budgetary concerns, the project was revised and shortened during the design process such that the Oil Well Hill borrow site is



now situated about two miles north of the proposed project site. Caltrans intent to attain available fill material of suitable quality and specifications prior to considering extracting material from Oil Well Hill was expressed in their email correspondence dated March 4, 2008.

The request for a one-time exemption from SMARA was also supported by the County of Mendocino Department of Planning and Building Services as noted in their correspondence dated February 15, 2008. The basis of such support is that the County believes that the overall benefits provided by the project outweigh the potential impacts, which in any case, are felt would be less than significant.

DISCUSSION: Pursuant to PRC Section 2714(d), SMARA does not apply to operations where “*Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.*” Based on the description of the project, one million cubic meters of borrow material is to be extracted. This quantity is not considered a minor surface disturbance, and is 1,000 times greater than the 1,000 cubic yards threshold allowed. In addition, the borrow site(s) appears to be on the order of about 27 acres, significantly greater than the one acre threshold allowed.

It is recognized however that not all surface mining operations are an efficient “fit” under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.

The proposed project 1) exceeds SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes, and 2) is not a part of an on-site construction project that may be exempt from SMARA pursuant to the requirements under Section 2714(b); however, one-time exemptions have been granted by the SMGB in the past in instances where such thresholds have been significantly exceeded.

The basis for considering granting the exemption is as follows:

Finding No. 1: Pursuant to PRC Section 2712(a), an environmental review has been completed on the activity either separately or as part of a larger project. A Final Environmental Report/Environmental Impact Report and EIR have been prepared which incorporates the proposed borrow areas.

Finding No. 2: Pursuant to PRC Sections 2715 and 2770(a), the activity to be conducted is permitted or otherwise authorized by a local lead agency. The



proposed project which incorporates the proposed borrow areas is subject to all necessary lead agency permits.

Finding No. 3: Pursuant to PRC Sections 2711(b) and 2712, the end use or proposed end use of property on which the activity occurs is defined.

Finding No. 4: Pursuant to PRC Sections 2714(b), the commercial purposes of the activity have been considered, and the petitioner has demonstrated that the required materials (fill) are not available in sufficient quantities from existing SMARA-compliant surface mine operations. There are 13 active surface mining operations in Mendocino County that supply sand (fill), of which four of these sites are stream bed or gravel bar skimming operations. The site will not be in direct competition with any already SMARA-compliant surface mine operations. A "level playing field" has been established in this case, and Caltrans would not receive an unfair competitive advantage if its proposed project were granted an exemption.

CONSIDERATIONS BEFORE THE SMGB: The Executive Officer can deny a one-time exemption request if, upon review, the request does not comply with the criteria set forth in PRC Section 2714(d). However, this matter can also be placed before the SMGB should 1) a request be made by one SMGB member; 2) the Executive Officer cannot come to a clear consensus; or 3) if controversy arises surrounding the request.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB pursuant to the SMGB's Resolution No. 93-6, needs to consider and assure that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.

EXECUTIVE OFFICER'S RECOMMENDATION: Based on the analysis and findings set forth above, it is the Executive Officer's recommendation that the SMGB consider the request for a one-time exemption from CalTrans.



SUGGESTED SMGB MOTION:

To deny the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by Caltrans, and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB not grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f). The basis for denial of the exemption is that the project is for a one-time period of approximately four months, thus infrequent nature, but involves a major surface disturbance.

OR

To approve the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by Caltrans, and as described in this report and its attachments, is not subject to the requirements of SMARA, and that the SMGB grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f). The basis for the exemption is that the project is not of an infrequent nature and all requirements for exemption consideration have been met.

Respectfully submitted:

Stephen M. Testa
Executive Officer