



STATE MINING AND GEOLOGY BOARD

Policy and Legislation Committee

Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund

EXECUTIVE OFFICER'S REPORT

For Meeting Date: October 14, 2010

Agenda Item No. 3: Discussion of Potential State Regulatory Guidance to Local Agencies on the Permitting of Mining Facilities Located on State Designated Mineral Resource Lands (MRZ-2).

INTRODUCTION: At the March 11 and April 15, 2010, meetings of the Policy and Legislation Committee (Committee), the Committee discussed considerations pertaining to how local permitting impacts Mineral Resource Zones (MRZ-2) designation, and examine the State Mining and Geology Board's (SMGB) role in local permitting of mining decisions and what role the SMGB could play. At its April 15, 2010, meeting, the Committee directed the Executive Officer to develop some preliminary language for the Committee's consideration, notably in reference to PRC Sections 2762 and 2763, and provide some options for development of workshops or committee or some other venue, in pursuing this matter, and to continue this matter for further discussion at the Committee's next scheduled meeting.

CURRENT STATUTORY AND REGULATORY AUTHORITY: In regards to permitting, the following statutory and regulatory constraints exist:

Public Resources Code (PRC) Section 2774.4(a) allows the SMGB to exercise any powers of a SMARA lead agency, with exception to permitting during assumption consideration and states:

"If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority."

In consideration of lands classified by the State Geologist and accepted by the SMGB, PRC Section 2762(e) states:

"Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit



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located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.”

PRC Section 2763(a) provides constraints in the local permitting of lands that have been designated by the SMGB and states:

“If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.”

EXECUTIVE OFFICER'S RECOMMENDATIONS: The Executive Officer's offers no recommendations or proposed language to the Committee at this time.

Respectfully submitted:

Stephen M. Testa
Executive Officer