



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

Policy and Legislation Committee

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

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Approval Date: November 10, 2010

CONFORMED MINUTES

THE POLICY AND LEGISLATION COMMITTEE (Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund) OF THE STATE MINING AND GEOLOGY BOARD

Conducted a Meeting on:

Draft

Thursday, November 14, 2010

8:30 A. M.

Assembly Hearing Room #444
State Capitol
Sacramento, California 95814

AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's

report, at the time of the public hearing. Such two-page summaries would be included as part of the administrative record before the SMGB. This policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

Individuals are responsible for presenting their own projects at the meeting.

[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting]

I. Call to Order (Baca)

II. Roll Call and Declaration of a Quorum

The committee meeting was called to order at 8:30 A. M. All committee members were present at the time of roll call, with Committee Member Lund absent until 8:45 A.M., and a quorum was declared.

III. Consent Items [Action]

[All the items appearing under this section will be acted upon by the committee by one motion and without discussion; however, any committee member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business]

1. Approval of Minutes, April 15, 2010, Committee Meeting.

Committee Member Garner moved to approve the minutes. Board Member Licari seconded and the motion carried with a unanimous voice vote.

IV. Continued Business [Action]

[These business items have been continued from a previous meeting/hearing]

2. Discussion of Potential Amendment to SMGB Regulations Pertaining to Placement on and Removal from the AB 3098 List.

Executive Officer Testa stated that OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under California's Public Resources Code, Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation, that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies. Although what is required to be on the list is clearly spelled out, procedures for removal or subsequent reinstatement to the list are less clearly defined. The SMGB at its July meeting directed this matter to the Policy and Legislation Committee, and for the Executive Officer to provide a draft of regulatory language addressing the matter of due process for the Committee's consideration. Since such time, OMR has taken the lead in developing draft regulations for this Committee and the SMGB's consideration. This hearing is being held to allow stakeholders an opportunity to offer comment.



- Tom Henry, attorney with Stoel Rives, expressed support for regulations, and urged the need to review case law, and that such case law could be provided to the Executive Officer. Committee Chair Baca inquired as to other administrative processes having merit for review.
- Greg Tenorio, legal counsel for the Department of Conservation, discussed some of the issues to be considered in developing a due process, and agreed to provide a flow chart illustrating conceptually, the administrative and appeal process for removing and re-installing a surface mine operation on the AB 3098 list.
- Rick Churches, mine operator, requested that all surface mine operations that have been taken off the AB 3098 list, be reinstated until a due process is in place.

No action was taken by the Committee.

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). Executive Officer Testa noted that 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 SMGB's role in local permitting of mining decisions and what role the SMGB could play. On April 15, 2009, this committee discussed whether the SMGB or State should have a more prominent role in the local permitting of mining on designated mineral lands, and should a land owner have an intent to mine, should the SMGB or State be involved. Not being considered was the scenario where the land owner does not have an intent to mine. The purpose for this hearing is to allow for an opportunity to hear from stakeholders, prior to considering recommendations to be incorporated into the SMGB's 2009-2010 annual report.

- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), offered oral and written comments pertaining to methods to enhance MRZ protection and possible considerations in California, and excerpts from the 2010 California Regional Transportation Plan Guidelines.
- Ken Johnston, representing Las Pilitas Resources, LLC in San Luis Obispo County, discussed issues related the County allegedly not acknowledging designated mineral lands in a published CEQA Notice, and offered to forward additional information to the Executive Officer.
- Warren Coalson, Consultant with EnviroMINE, expressed growing concern regarding the lands being deemed as sensitive habitat or multiple species conservation areas as a means to preclude mining on classified and designated lands.
- Committee Member Garner noted no adequate mineral resources recognition as part of the initial CEQA environmental checklist and analysis, and the need for this to be enacted in code.
- Committee Chairman Baca concurred noting CEQA is an information document, and there is no requirement to do anything but to disclose, and the need to have boundaries on lead agencies when considering alternative land uses on designated land and when considering a mining permit on designated lands.



Committee Chairman Garner moved to recommend to the whole SMGB incorporation into the SMGB's 2009-2010 annual report to the legislature language to include the need to recognized mineral resources as part of initial CEQA environmental checklists and analysis, and setting of boundaries to lead agencies when considering alternative land uses on designated land and when considering a mining permit on designated lands. Committee Member Licari seconded and the motion carried with a unanimous voice vote.

4. Discussion of Potential Process Streamlining and Cost Reduction in the Implementation of the Surface Mining and Reclamation Act (SMARA).

Executive Officer Testa noted that SMARA has been amended twenty-eight times since its enactment in 1975. The statute is unique in two respects: (1) mining is regulated locally by cities and counties which are referred to as lead agencies, and (2) it provides for the conservation of mineral resources. SMARA has evolved such that certain elements require revisiting and discussion. At its September 9, 2010, regular business meeting, the SMGB directed this Committee to commence discussion as to how the overall SMARA process could be streamlined, duplicity minimized or eliminated, and inequities addressed, while still maintaining the overall intent of SMARA.

- Following general discussion by the Committee members, Committee Chairman Member Baca directed the Executive Officer to develop a survey questionnaire to be forwarded to SMARA lead agencies, for the Committee's consideration at the next meeting of the Committee scheduled for November 2010.

No action was taken by the Committee.

V. New Business [Action]

No new Business was discussed.

VI. Good of the Meeting [Information]

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the Committee should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman]

No Good of the Meeting information was presented or discussed.

VII. Continuing Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to receive information on or any items of continuing interest to the SMGB.]

No continued business for the committee's information was presented or discussed.

VIII. New Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to bring any item of new business to the Committee's attention for further discussion and further action.]

No new business was offered.



IX. Announcements of Future Meetings

The next meeting of the Policy and Legislation Committee was scheduled concurrent with the next SMGB regular business meeting in November 2010.

X. Adjournment

The Committee meeting was adjourned at 10:15 A.M.

APPROVED

Brian Baca, Committee Chairman

Stephen M. Testa, Executive Officer

