



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: December 8, 2011

Agenda Item No. 8: Approval of a Proposed Reclamation Plan, Financial Assurance Cost Estimate and Environmental Impact Report for Santa Paula Materials, Inc. (91-56-00XX), Santa Paula Materials, Inc. (Operator), Mile Grbic (Agent), City of Santa Paula.

INTRODUCTION: The State Mining and Geology Board (SMGB) acts as the lead agency for the City of Santa Paula, pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710, et seq.). Santa Paula Materials, Inc. currently owns and has been intermittently operating an aggregate processing facility that meets the definition of a surface mining operation within the City of Santa Paula's jurisdiction. SMARA requires that all surface mining operations must obtain a permit, a reclamation plan, and provide financial assurances for reclamation. On November 7, 2011, the City of Santa Paula granted final approval of a Conditional Use Permit (CUP), and also certified a Final Environmental Impact Report (FEIR) for a large scale processing use at the Santa Paula Materials, Inc. site. The SMGB is considering approval of the proposed Reclamation Plan, financial assurance cost estimate and FEIR for the Santa Paula Materials, Inc. operation.

BACKGROUND: On September 29, 2009, the U.S. Army Corps of Engineers (USACE) awarded a contract for the Santa Paula Creek Improvements Sediment Removal Project to Rick Garcia Construction Company (RGCC). Such contract involved the removal of approximately 330,000 cubic yards of accumulated alluvial material from Santa Paula Creek for the purposes of restoring hydraulic capacity and fish passage to the engineered channel and decreasing flood risk to the adjacent community. On October 29, 2009, the City of Santa Paula granted a Temporary Use Permit (TUP) to the Hawkstone Company doing business as Santa Paula Rock, Gravel & Sand, LLC (Santa Paula Rock, Operator) to stockpile, screen, sort and sell alluvial material excavated from Santa Paula Creek by RGCC. The TUP allowed for the processing and selling of approximately 330,000 cubic yards of aggregate material from the Santa Paula Rock site over a period of two years.

In February and April of 2010, the SMGB office received copies of correspondence from the law office of Stoel Rives, LLP to the Office of Mine Reclamation (OMR), alleging illegal surface mining operations were occurring at the Santa Paula Rock site, and requesting that OMR take enforcement actions. Additionally, on March 16, 2010, the SMGB received notification from Stoel Rives, LLP of pending litigation, in the form of a Verified Petition for Writ of Mandate filed by the Coalition for Responsible Development against the City of Santa Paula. The Petition alleged that the City of Santa Paula violated the California



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Environmental Quality Act (CEQA) in issuing the Santa Paula Rock TUP without conducting required environmental review and analysis of potentially significant impacts.

After confirming that the SMGB is currently the SMARA lead agency for the City of Santa Paula, and that the subject operation (i.e. the stockpiling, screening, sorting and selling of alluvial material excavated from the Santa Paula Creek channel) is required to comply with SMARA, SMGB staff requested to conduct a site inspection. Such inspection was conducted on May 27, 2010.

Results of May 27, 2010 Site Inspection: Based on observations made at time of the May 27, 2010 Site Inspection, and on review of pertinent documents, the SMGB's inspector determined that approximately 10 acres had been affected by ongoing surface mining activities subject to SMARA. Additionally, the inspector found that no reclamation plan or financial assurance was in place for the areas affected by the Santa Paula Rock surface mining operation. As such, the following violations were noted at time of inspection:

1. Santa Paula Rock is conducting surface mining operations without an approved reclamation plan as required by PRC Section 2770(a).
2. Santa Paula Rock is conducting surface mining operations without an approved financial assurance for reclamation as required by PRC Section 2770(a).

Issuance of Notice of Violation: On June 8, 2010, a Notice of Violation (NOV) was issued by the Executive Officer to Santa Paula Rock for conducting surface mining operations without possession of an approved Reclamation Plan, Financial Assurance, and Permit to Mine, in violation of PRC Section 2770. The NOV specifically required Santa Paula Rock to provide the SMGB with a Reclamation Plan, a FACE and documentation relating to the recently applied for Conditional Use Permit (CUP) issued through the City of Santa Paula. In addition, the NOV stated that until the Operator provides the SMGB with an approved Reclamation Plan, Financial Assurance and Permit to Mine, they legally may not conduct surface mining operations and should cease immediately any and all mining activities.

On June 8, 2010, the SMGB received from Santa Paula Rock a draft Reclamation Plan for the subject site. Such draft Reclamation Plan included a preliminary FACE as Appendix E.

June 10, 2010, SMGB Regular Business Meeting: At its June 10, 2010, meeting, the SMGB accepted the May 27, 2010 Site Inspection Report as complete, and they also received comments and held discussions pertaining to ongoing activities at the Santa Paula Rock site. Based on these comments and discussions, the SMGB concluded that the current surface mining activities may continue while a Reclamation Plan and FACE that are consistent with SMARA and the SMGB's regulations are being prepared.



Additionally, at their June 10, 2010 meeting, the SMGB moved to direct Santa Paula Rock to provide a proposed Interim FACE for approval consideration at their upcoming July 8, 2010, regular business meeting.

DISCUSSION:

Reclamation Plan: As noted above, on June 8, 2010, the SMGB received from Santa Paula Rock a draft Reclamation Plan for the subject site. Following several preliminary reviews by SMGB staff and revisions by the operator, on November 16, 2010, the proposed Reclamation Plan was forwarded to OMR for review. On December 23, 2010, review comments pertaining to the proposed Reclamation Plan were provided by OMR. Such review comments were forwarded to the operator and the proposed Reclamation Plan was revised to address OMR's concerns. This revised Reclamation Plan was provided to SMGB staff on January 10, 2011.

After numerous delays due to litigation and processing and review of the CUP and environmental documents for the project by the City of Santa Paula, SMGB staff was notified that a new entity had assumed responsibility for the project and was continuing to pursue regulatory approvals. As such, on November 2, 2011, a revised proposed Reclamation Plan was received by SMGB staff clarifying that Santa Paula Materials, Inc. had purchased the affected property and was assuming reclamation responsibility as the new mine operator. After additional review, SMGB staff considers the proposed Reclamation Plan as received on November 2, 2011, to be adequate.

California Environmental Quality Act (CEQA) Requirements: After confirming that the SMGB is the SMARA lead agency for surface mining operations within the jurisdiction of the City of Santa Paula (City), it was agreed that the City would act as the CEQA lead agency due to the fact that the operators had elected to apply for a CUP from the City. In this case, the SMGB is defined and a responsible agency with regards to the environmental document because the activities required by the proposed Reclamation Plan are included in the environmental analysis for the CUP.

After deciding that an EIR would be required for the proposed project, the City coordinated with an environmental consultant to prepare the necessary assessments and documents. On July 15, 2010, SMGB staff provided comments pertaining to the Notice of Preparation and Initial Study for the subject project as prepared by the City. A Draft EIR was completed and provided to the SMGB for review and comment on January 18, 2011. After addressing review comments, a Final EIR dated May 2011 and titled *Santa Paula Rock, Gravel and Sand LLC Conditional Use Permit and Reclamation Plan Final EIR*, was completed.

On May 24, 2011, the City of Santa Paula Planning Commission (Commission) voted to certify the FEIR, and on June 28, 2011, the Commission voted to approve the CUP. The Commission's actions regarding the FEIR and CUP were appealed to the City Council by a



member of the public on June 2, 2011, and on July 7, 2011. After a review of the appeals by the City Planning Department, on November 7, 2011, the City Council voted to deny the appeals of both the CUP approval and the FEIR certification for the subject project.

After reviewing of the FEIR, SMGB staff concludes that it adequately addresses potential impacts that may result from activities required by the proposed Reclamation Plan.

Financial Assurance Cost Estimate (FACE): As mentioned above, on June 8, 2010, the former Operator submitted a draft Reclamation Plan for the Santa Paula Rock surface mining operation, which included a proposed FACE as Appendix E. Such FACE was calculated with the assumption that the site would be returned to its pre-existing conditions (i.e. as it appeared prior to initiation of Santa Paula Rock's current activities). SMGB staff conducted a review of the subject FACE on June 15, 2010, and subsequently transmitted suggested revisions to the Operator. The Operator concurred with the suggested revisions, and provided the SMGB with a revised preliminary FACE on June 22, 2010.

The subject FACE proposed to remove the approximately 308,688 cubic yards of stockpiled alluvial material that occupied the site at that time, and transport it via dump trucks to a future industrial park site that has requested fill material located approximately 1.5 miles away. The total estimated cost for returning the Santa Paula Rock site to its pre-existing condition of an open flat parcel was \$887,168.00. On September 9, 2010, the SMGB approved an interim FACE in the above amount, and SMGB staff subsequently requested that an interim Financial Assurance (FA) be provided within 30 days (on or about October 16, 2010).

As of mid August, 2011 no interim FA had been provided to the SMGB. On August 31, 2011, the operator provided correspondence to SMGB staff in the form of a letter addressed to the City Manager of the City of Santa Paula (dated August 23, 2011), that indicated the previous company acting as operator of the site had vacated the property. On October 20, 2011, SMGB staff sent a letter to the operator clarifying that because no interim FA had been received, all surface mining operations were prohibited until the following events had occurred:

1. Final approval of the CUP and certification of the FEIR and Mitigation Monitoring and Reporting Program by the City of Santa Paula.
2. Approval of the Reclamation Plan, FEIR and Mitigation Monitoring and Reporting Program by the SMGB.
3. Receipt of an adequate financial assurance instrument by the SMGB office.

As noted above, the City has approved the CUP and FEIR. In addition, the current operator has submitted documentation, including the revised proposed Reclamation Plan dated



November 2, 2011, that clearly establishes intent to continue with the project and assume responsibility for reclamation of the site. As such, SMGB staff has determined that the SMGB should re-affirm the FACE amount of \$887,168.00 that was previously approved on September 9, 2010. Such FACE is included in the proposed Reclamation Plan as Attachment E.

CONSIDERATIONS BEFORE THE SMGB: The SMGB is being requested to review the FEIR, the proposed Reclamation Plan, and the financial assurance cost estimate, for their consistency and completeness in meeting the minimum requirements CEQA, and SMARA, CCR Section 3500 et seq. and Section 3700 et seq. The SMGB may:

1. Approve the documents as meeting these requirements; or
2. Modify the documents with conditions of approval, and then approve the documents as adequate; or
3. Reject the documents as inadequate and remand them back to the operator for additional adjustments and revisions.

EXECUTIVE OFFICER'S RECOMMENDATION: Violations noted in the June 8, 2010, NOV with regards to the subject project's required compliance with SMARA have been adequately addressed in the recently revised and re-submitted Santa Paula Materials, Inc. proposed Reclamation Plan. The FEIR, the Reclamation Plan, and the revised financial assurance cost estimate were reviewed by OMR and SMGB staff, and are considered consistent and complete in meeting the minimum requirements of CEQA, SMARA and the SMGB's regulations. Approval of the subject Reclamation Plan by the SMGB would bring the ongoing activities at the Santa Paula Materials, Inc. site into compliance with SMARA (PRC Section 2710, et seq.) and the SMGB's regulations for surface mining and reclamation practice (CCR Title 14, Chapter 8, Article 1, Section 3500, et seq.; Article 9, Section 3700, et seq.). The Executive Officer therefore recommends that the SMGB approve the FEIR, the Reclamation Plan and the revised financial assurance cost estimate.



SUGGESTED MOTION LANGUAGE:

Part A. Motion to approve the Adopted FEIR:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve of the analysis and recommendations contained in the Executive Officer's Report, and that the SMGB, acting as a responsible agency with authority provided under CEQA Guidelines Section 15381, approve the Santa Paula Rock, Gravel and Sand LLC Conditional Use Permit and Reclamation Plan Final EIR (CA State Clearinghouse No. 2010061081), and adopt the Mitigation Monitoring and Reporting Plan, as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975, and the California Environmental Quality Act.

Part B. Motion to approve the November 2011 Reclamation Plan:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve of the analysis and recommendations contained in the Executive Officer's Report, and the Board, acting as lead agency with authority provided under PRC Section 2710 et seq., adopt Resolution 2011-XX and approve the November 2011 Reclamation Plan for the Santa Paula Materials, Inc. surface mining operation as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975.

Part C. Motion to approve the financial assurance cost estimate:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve of the financial assurance cost estimate of \$887,168.00.78 for reclamation of the Santa Paula Materials, Inc. surface mining operation.

Respectfully submitted:



Stephen M. Testa
Executive Officer

EXHIBIT A: November 2, 2011, Reclamation Plan

EXHIBIT B: MAY 2011 FEIR (ON CD)

**EXHIBIT C: SANTA PAULA CITY COUNCIL
RESOLUTION NO. 6764**

EXHIBIT D: DRAFT SMGB RESOLUTION NO. 2011-04

