



STATE MINING AND GEOLOGY BOARD

Mineral & Geologic Resources Committee
George Kenline, Chair; Jelisaveta Gavric; John Lane

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 12, 2013

Agenda Item No. 2: Consideration of the County of Santa Clara's Amended Surface Mining Ordinance (File 5520-12Z) as Being in Accordance with the Surface Mining and Reclamation Act (SMARA; Public Resources Code Section 2710 et seq.).

INTRODUCTION: The County of Santa Clara (County) has recently amended its Surface Mining and Reclamation Ordinance. The County's mining ordinance was originally certified by the State Mining and Geology Board (SMGB) in 2000 (Ordinance No. 1200.299). In correspondence dated June 3, 2013, the County requested a preliminary review of the County's amendments of its amended certified ordinance No. 555.19. On August 23, 2013, the County provided a copy of its amended ordinance reflecting preliminary comments provided by the SMGB's Executive Officer in correspondence dated August 8, 2013, and requested that this matter be placed before the Minerals and Geologic Resources Committee (Committee), for additional comment and consideration. The Committee is considering recommending certification of the amended ordinance to the whole SMGB pending adoption by the County's Board of Supervisors.

STATUTORY AUTHORITY: Public Resources Code Section 2774.4(a) states:

"Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy."

PRC Sections 2774.3 provides information pertaining to the role of the SMGB and states:

"The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant to this chapter."

Furthermore, PRC Section 2774.5(a), (b) and (c) states:



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“ If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

BACKGROUND: The Surface Mining and Reclamation Act (SMARA; Public Resources Code Section 2710 et seq.) requires that each city or county with a surface mining operation within its jurisdiction adopt a surface mining ordinance in accordance with State Policy that establishes procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations. SMARA provides for the SMGB to certify local agency mining ordinances as being in accordance with State Policy before they become effective (PRC Section 2774.3).

The County has recently amended its Surface Mining and Reclamation Ordinance. The County's mining ordinance was originally certified by the SMGB in 2000 (Ordinance No. 1200.299). In correspondence dated June 3, 2013, the County requested a preliminary review of the County's amendments of its amended certified ordinance No. 555.19. On August 23, 2013, the County provided a copy of its amended ordinance reflecting preliminary comments provided by the SMGB's Executive Officer in correspondence dated August 8, 2013, and requested that this matter be placed before the Minerals and Geologic Resources Committee (Committee), for additional comment and consideration. The Committee is considering recommending certification of the amended ordinance to the whole SMGB pending adoption by the County's Board of Supervisors.



REVIEW METHODOLOGY: Preliminary review of the draft ordinance was performed by the Executive Officer and comments provided to the County in correspondence dated August 8, 2013. When a mining ordinance is received for review, it is examined for content, clarity, and conflict. The review is typically conducted by the Executive Officer, but could also include SMGB staff, one or more administrative and/or technical analysts from the Office of Mine Reclamation, and the SMGB's legal counsel. If necessary, additional technical and legal advice may be sought from the California Geological Survey or from the Attorney General's Office. Evaluation of content is to determine if all SMARA requirements are addressed and contained within the Ordinance. Evaluation of clarity is to determine if they are clearly stated or might be construed in more than one way, which might lead to later confusion. Evaluation of conflict is to determine that they are not in conflict with statute, nor are in conflict internally with other portions of the Ordinance.

In addition, two types of review comments are offered: recommendations and suggestions. Recommendations are comments that should be followed if the Ordinance is to be certified by the SMGB. These recommendations relate to serious omissions in content or statements in conflict with SMARA or the SMGB's Regulations. Suggestions are comments that are made to improve the clarity of statements, usually by making them more complete or by offering references. These comments are not binding and are offered as a constructive service.

ANALYSIS: Pursuant to PRC Section 2728, a lead agency is defined as the city, county, San Francisco Bay Conservation and Development Commission, or the SMGB, that has the principal responsibility for approving a surface mining operation or reclamation plan. In order for a lead agency to have such responsibility, it must have a SMGB certified mining ordinance. In considering certification or recertification of a mining ordinance, the SMGB is tasked with reviewing a lead agency's mining ordinance, and has authority to require that agency to adopt an Ordinance that conforms to state policy. A lead agency can revise its Ordinance, and the Ordinance would become effective upon adoption, as in this case, by the Board of Supervisors. Furthermore, should the Ordinance be in conflict, or contrary to state policy, it remains effective unless the SMGB has an opportunity to review and pursue administrative actions afforded the SMGB pursuant to PRC Section 2774.5(a), (b) and (c). However, pursuant to PRC 2774.5(c), should the lead agency not have a certified Ordinance (i.e., amended and adopted by the Board of Supervisors, but not recertified by the SMGB), no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the SMGB.

Upon review the Executive Officer finds the amended Ordinance to be in compliance with SMARA and the SMGB's regulations

EXECUTIVE OFFICER'S RECOMMENDATION: The Committee is considering recommending to the whole SMGB certification of the County's amended mining ordinance upon adoption by the County's Board of Supervisors. The Executive Officer, in review of the amended Ordinance, finds it to be in compliance with SMARA and the SMGB's regulations, and recommends that the Committee recommend approval by the whole SMGB at the appropriate time.



SUGGESTED MOTION LANGUAGE:

Recommend recertification to the whole SMGB:

Mr. Chairman, in light of the information before the Minerals and Geologic Resources Committee, I move that the Committee recommends to the whole board [conditional] certification of the County of Santa Clara Amended Surface Mining Ordinance (File 5520-12Z), as being in accordance with the requirements of State Policy, the Surface Mining and Reclamation Act and the SMGB's regulations, upon adoption by the County's Board of Supervisors.

Respectfully submitted:



Stephen M. Testa
Executive Officer

