



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: March 11, 2013

Agenda Item No. 5: Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Madera Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).

INTRODUCTION: At its October 11, 2012 regular business meeting, the State Mining and Geology Board (SMGB), based on the May 17, 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on the County of Madera (County), moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on October 16, 2012. Following issuance of the Notice, the County prepared a response dated December 18, 2012. The SMGB will 1) assess whether the County has adequately address all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will assume any or all of the powers of the County under the Surface Mining and Reclamation Act (SMARA), with exception to permitting. At its February 13, 2013 regular business meeting, the SMGB determined that the County has made a good faith effort to respond to the Notice, and for this matter to be continued for 60 days to allow adequate time for the County to address certain outstanding issues to the satisfaction of the SMGB.

STATUTORY AUTHORITY: PRC Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

“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.”

PRC Section 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead



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agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207."

BACKGROUND: At its October 11, 2012 regular business meeting, the SMGB, based on the May 17, 2012 OMR LART Report on the County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on October 16, 2012. Following issuance of the Notice, the County prepared a response dated December 18, 2012. In addition, the SMGB's Executive Officer met with County representatives on January 10, 2013, and performed a visit of select sites.

COUNTY OF MADERA SMARA PROGRAM: Six surface mining operations are reported to exist within the jurisdiction of the County (Table 1). Three are characterized as active, one newly permitted, and two abandoned. Commodities produced include fill dirt, decomposed granite, dimension stone and pumice. A summary of pertinent information for surface mining operations located within the jurisdiction of the County is presented in Table 1.

Table 1 Summary of Surface Mining Operations situated in the County of Madera								
Surface Mine Name	Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage	Produced Product	Deficiencies Noted
Sierra White Quarry	CA Mine ID #91-20-0001	Cold Spring Granite Company	Active	2011	50.80	49.86	Dimension stone	2,4
Taylor's Pit	CA Mine ID #91-20-0007	Outback, Inc.	Active	2008	4	30	Pumice	2,4,6
Madera Quarry	CA Mine ID #91-20-0010	Madera Quarry, Inc.	Abandoned	2011	40	9.5	Stone	1,2,4,6
Weldon Pit	CA Mine ID #91-20-0012	Shirley & Richard Weldon	Active	No report noted	40	10	Fill dirt	1,2,3,4,6
Bruce Person	CA Mine ID #91-20-0013	Bruce Person	Abandoned	No report noted	Not noted	Not noted	Decomposed granite	1,2,3,4,6
Madera Quarry	CA Mine ID #91-20-0014	Madera Quarry, Inc.	Newly permitted	No report noted	125	0	Aggregate	1,2

COUNTY OF MADERA RESPONSE TO THE 45-DAY NOTICE TO CORRECT DEFICIENCIES:

The six categories of violations listed in PRC Section 2774.4(a) under which the SMGB may find a lead agency needs to take corrective actions:

Category [1] - A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;

Category [2] - A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

Category [3] - A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

Category [4] - A lead agency has failed to take appropriate enforcement actions as required by SMARA;

Category [5] - A lead agency has intentionally misrepresented the results of inspections required under SMARA;

Category [6] - A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

The following specific deficiencies in the County's administration of SMARA were identified with respect to these surface mines within the County's jurisdiction:

ANALYSIS: Following review of the County's response to the deficiencies identified in the LART report, outstanding deficiencies remain as briefly discussed below and summarized in Table 1.

Deficiency No. 1 - Approved reclamation plans or financial assurances which are not consistent with this chapter: Pursuant to PRC Section 2773.1(a)(3), SMARA requires that the financial assurance cost estimate (FACE) for each surface mining operation be reviewed and adjusted annually, as appropriate.

No FACEs for Weldon Pit (CA Mine ID # 91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013). The County asserts there is an agreement with past OMR Assistant Director, Douglas Craig, that supersedes SMARA's closure requirements, and, as a result, the other findings that affect these mines. The County also claims that once post-mining projects are issued grading permits for the sites, the County and OMR will consider them to be reclaimed. The County has not provided OMR with a signed agreement, or any other documentation of an agreement, but made note of an email dated November 4, 2011, acknowledging such agreement.

The County did agree that Weldon Pit and Bruce Persson are problematic and requested assistance from OMR. The operator of the Weldon Pit recently passed away and there is not sufficient money in the financial assurance mechanism (FAM) to adequately reclaim the property. In regards to Bruce Persson, the FAM was released by the County to the operator without the mine being adequately reclaimed or the Department of Conservation (DOC) approving the release. There has been no mining on these properties for at least nine years, thus, the mines are deemed abandoned.

It is current understanding that OMR and the County continue to work on a solution to reclaim and close these two surface mine sites, which apparently are dependent on approval of development plans which would resolve any outstanding issues associated with these two sites.

In regards to Madera Quarry (CA Mine ID #91-20-0010), a financial assurance cost estimate has been submitted to OMR for review, with an approved and updated financial assurance mechanism anticipated by February 1, 2013.

Two sites were deemed abandoned. Taylor Pit (CA Mine ID #91-20-0007) has an IMP which has been forwarded to OMR for review and scheduled for approval by the Planning Commission on February 5, 2013. Madera Quarry (CA Mine ID #91-20-0010) has an approved IMP in place.

Madera Quarry (CA Mine ID #91-20-0014) is a newly permitted site, and not deemed abandoned at this time.

Analysis Based on County's Response: Two sites remain problematic: Weldon Pit (CA Mine ID # 91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013). Both sites have been abandoned by the operator and adequate financial assurances do not exist for either site. The operator has failed in its responsibility under SMARA to ensure reclamation of these two sites prior to the financial assurance being either deemed inadequate or released, and the operator no longer available. Both sites have inadequate soil erosion preventive measures in place. However, the Board of Supervisors has approved the Weldon site for an industrial subdivision, and the Persson site for a mixed use development. In both cases, the eventual condition of the sites will be much improved. No financial assurance or limited financial assurance remains; however, assuming that the development anticipated by the Board of Supervisors takes place as approved, and further assuming that OMR and the County concur that there then remain no outstanding reclamation liabilities based on an inspection, CCR Section 3805.5 may provide a mechanism to achieve site closure.

That regulation states:

“Modification or Release of Financial Assurance

(a) Prior to the modification of a financial assurance amount, or to the release of the financial assurance instrument to which both the lead agency and the Department of Conservation are co-beneficiaries under Public Resources Code section 2773.1, the lead agency shall provide to the director of the department the following documents at one time:

(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code section 2774, indicating that there are aspects of the surface mining operation that require modification of the existing financial assurance amount, or stating that the mined land has been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operation that are inconsistent with the meaning of



reclamation as defined in Public Resources Code section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code section 2773.1, with supporting documentation, indicating the specific cost changes to the existing financial assurance amount, or indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined land remains subject to a financial assurance as modified, or that the mined land has been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and recommending to the director that the financial assurance be released.

(b) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code section 2774, and to conduct the director's own inspection of the surface mining operation if the director determines it necessary under Public Resources Code section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that the modified financial assurance amount is adequate, or that there are no outstanding reclamation liabilities on the mined land and that the original financial assurance should be released pursuant to Public Resources Code section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operation that require additional modifications to the financial assurance amount, or aspects that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975; or,

(3) Commence the financial assurance forfeiture process under Public Resources Code section 2773.1.

(c) If a violation by the surface mining operation is confirmed by an inspection either by the lead agency or by the director, then the lead agency, or the director, may take actions under Public Resources Code section 2774.1 to ensure that the violation is corrected. In any event, the financial assurance shall not be released until the violation is corrected.

(d) Prior to sending written notification and release of financial assurances as provided under Public Resources Code section 2773.1, the lead agency shall obtain written concurrence of the director that the completion of reclamation of the mined land disturbed by the surface mining operation is in accordance with the requirements of the lead agency-approved reclamation plan.

(e) If a violation of the Surface Mining and Reclamation Act of 1975 or of the approved reclamation plan is confirmed by the inspection, and the lead agency does not take action under Public Resources Code section 2774.1 to ensure that the violation is corrected or take action under Public Resources Code section



2773.1 for forfeiture of the financial assurance, then the director may refer the matter to the board for further action under Public Resources Code section 2774.4.”

Deficiency No. 2 - Failed to inspect or cause the inspection of surface mining operations as required by this chapter:

The Weldon Pit (CA Mine ID #91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013) were not inspected by the County for six and five years, respectively. In regards to the Weldon Pit, the County did request from LART additional information on how the LART geologist derived the reclamation plan borders. The County claimed that disturbance identified as mining outside of the reclamation plan boundaries is actually permitted grading unrelated to the mine. However, subsequent time-sequence aerial photographic analysis by LART clearly showed pit excavation extending beyond the boundary of the approved reclamation plan. The immediately proximate grading appears to be related to the excavation. Soil erosion issues also remain outstanding at the Bruce Persson site.

Inspection reports provided by the County overall are inadequate, although the County indicated that the County plans to participate in future inspection workshops provided by OMR.

In regard to Taylor's Pit (CA Mine ID #91-20-0007), the County's response to LART was deemed insufficient. County staff asserts that the slope face must remain untouched because it is a habitat of the burrowing owl, which is a state listed species of concern protected by the Department of Fish and Wildlife. According to the County, in addition to its state listing, it is also protected by the Migratory Bird Treaty Act of 1918 under the authority of the United States Fish and Wildlife Service. LART recognized the issues related to burrowing owls, but LART requested that the operator provide evidence of owl habitation in all of the over-steep slope faces and that the examination and report be signed off by a qualified wildlife biologist. Additionally, LART requested that the County require the operator to retain a botanist to evaluate the site revegetation and the status of the Hartweg's golden sunburst (HGS) patches per the approved reclamation plan and the conditions of approval. The County in response stated that there are no longer any HGS patches, and does not know whether there were fences built around the HGS areas, as required in accordance with the approved reclamation plan. The County also stated that nothing can be done to any of the slopes due to the burrowing owl. The County asserted that at least one slope in question was outside of the reclamation plan's restrictions. The County did not address other over-steepened slopes.

Inspection reports must make reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. Such inspection reports must also include any quantification of site conditions, where applicable. SMGB regulations (CCR Section 3504.5(f)) state that *“Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological*



hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.” Such information must be provided in the inspection reports.

Analysis Based on County’s Response: Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. California Code of Regulations (CCR) Section 3504.5(f) of the SMGB’s regulations state:

“Inspections may include, but shall not be limited to the following: the operation’s horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.”

CCR Section 3504.5(g) also states *“The inspection report to the lead agency shall consist of the inspection form MRRC-1...and any other reports or documents prepared by the inspector or inspection team...The lead agency shall provide a copy of the completed inspection report along with the lead agency’s statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection...”*

Adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made, and are how administrative and compliance/enforcement actions to be considered by the lead agency (City) are clearly identified. Overall, the inspection reports were inadequate and did not provide sufficient information to provide for an adequate understanding of site conditions, conditions that are deemed out-of-compliance, nor whether the lead agency needs to consider any specific compliance or enforcement actions. The following general observations were offered:

- Reference to Compliance/Enforcement Triggers: The inspection reports did not contain reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. No performance standards set forth in the reclamation plans or permit conditions are noted. Without such references, the inspection report upon review failed to assure the lead agency that the site conditions meet the requirements of the approved reclamation plan and permit requirements. It should be noted that some sites may have had numerous Conditions of Approval or permit conditions, many of which are directly relevant to reclamation such as steepness of slopes, setbacks, safety requirements, and revegetation performance standards.

- Quantification of Site Conditions: The inspection reports did not include any quantification of site conditions, where applicable. (CCR Section 3504.5(f), *supra.*) Such information was not provided in the inspection reports.
- Adequate Identification of Violations: The inspection reports did not adequately identify violations and corrective measures. Should a violation or substantial deviation from the existing approved reclamation plan or any Conditions of Approval be determined to exist at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary), a violation should be noted. The City could then determine upon review of the inspection report whether enforcement or other compliance actions are warranted. Without specific violations being noted in the inspection reports, the City acting as the SMARA lead agency is not in a position to consider and implement the appropriate SMARA compliance and/or enforcement action.

For example, in the five inspection reports reviewed, only one violation was noted. The violation was for the Murdock-Alberhill Ranch Mine, and the violation noted was for inadequate drainage maintenance. OMR staff has observed that certain operators have conducted surface mining operations outside their respective approved reclamation plan footprints and have failed to correctly amend reclamation plans to adhere to end use criteria.

- Annotated Images: The inspection reports did not adequately document violations observed during conduct of the inspection through the use of annotated photographs.

In summary, the inspection reports did not clearly reflect actual site conditions, and the need for several of the reclamation plans to be amended. Adequate mine inspections that fulfill the intent of SMARA and the SMGB's regulations need to be performed for all seven surface mine operations within the jurisdiction of the County. Such inspections needed to be performed by a qualified individual (or individuals) pursuant to PRC Section 2774(b), and CCR Section 3504.5(b), (c) and (d).

This deficiency remains outstanding.

Deficiency No. 3 - Failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter: The County failed to seek forfeiture of financial assurances and to carry out reclamation for Weldon Pit (CA Mine ID #91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013). Both sites have approved development plans for a mixed use housing development, and an industrial subdivision.

This deficiency reflects past failures of the County.

Deficiency No. 4 - Failed to take appropriate enforcement actions as required by this chapter: The County demonstrated a failure to commence enforcement for all surface mining sites within its jurisdiction with exception to the Madera Quarry (CA Mine ID #91-20-0014) as previously demonstrated. No information has been provided at the time this Executive Officers Report was prepared to demonstrate that the County understands the administrative process pertaining to enforcement of SMARA, and that it has taken any enforcement actions via issuance of a Notice of Violation, Order to Comply or Administrative Penalty.

Analysis Based on County's Response: In regards to both the Weldon Pit (CA Mine ID #91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013), the operator has failed in its responsibility under SMARA to ensure reclamation of these two sites prior to the financial assurance being either deemed inadequate or released, and the operator is no longer available. No financial assurance or limited financial assurance remains; however, in regards to remedy, this matter is further addressed under Deficiency No. 1.

Deficiency No. 6 - Failed to submit information to the Department as required by this chapter: LART has indicated that this deficiency remains outstanding. Documentation was not provided at the time this Executive Officer's Report was prepared.

This deficiency remains uncertain.

EXECUTIVE OFFICER'S RECOMMENDATION: A SMARA lead agency need only fail in one of the six categories set forth pursuant to PRC Section 2774.4(a) for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to demonstrate that it is committed to maintaining an effective SMARA program, and to fulfilling its obligations and responsibilities as a lead agency in accordance with SMARA and the SMGB's regulations.

The consideration before the SMGB is whether the County has clearly demonstrated that it has the resources, administrative mechanisms, and commitment, to adequately fulfill its SMARA responsibilities, and whether the SMGB should proceed with assumption of the County's lead agency responsibilities, in whole or in part, with the exception to permitting. Since receiving the LART Report in May 2012, the Executive Officer 1) visited certain surface mining operations within the jurisdiction of the County on June 20, 2012, 2) reviewed the overall status of the County's SMARA program, and the County's response to the Notice, and 3) at the direction of the SMGB issued the SMGB's 45-Day *Notice to Correct Deficiencies* (Notice) to the County dated October 16, 2012.

It is the opinion of the Executive Officer that the County has taken significant steps to improve its SMARA program which currently consist of six surface mining operations (three active, one newly permitted, and two abandoned). At its February 13, 2013 regular business meeting, the SMGB reviewed the County's response to the Notice, and upon such review and subsequent discussion, the SMGB indicated that the County has made a good faith effort in responding to the Notice, and for this

matter to be continued for 60 days to allow adequate time for the County to fully address certain outstanding issues to the satisfaction of the SMGB.

The outstanding issues reflect completion of site closure inspections, in coordination with the Office of Mine Reclamation, for the Weldon Pit (CA Mine ID # 91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013), as required pursuant to California Code of Regulations (CCR) Section 3805.5. The County allowed two mine operators to walk away from unreclaimed sites, and approved future development, even though there is no evidence or assurance that the developments will take place. At the time this Executive Officer's report was prepared, no documentation has been provided by OMR concurring with the County that the two surface mining operations known as the Weldon Pit (CA Mine ID # 91-20-0012) and Bruce Persson (CA Mine ID #91-20-0013), have been certified closed, allowing the SMGB to readily deem that the County has adequately addressed the deficiencies in the Notice to the satisfaction of the SMGB.

The Executive Officer, based on review of the administrative record contained herein, recommends that the SMGB find that the County is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and allow the opportunity for the County to resolve any outstanding issues in coordination with OMR, and bring this matter back to the SMGB should these outstanding issues remain. The Executive Officer does not recommend that the SMGB consider assumption in accordance with PRC Section 2774.4(a).

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language: [Should the SMGB determine that the County is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County of Madera is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the County has addressed the deficiencies to the satisfaction of the Board.

[or]

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County of Madera is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and can address remaining deficiencies to the satisfaction of the SMGB by working with the Executive Officer, provide copies of all 2013 inspection reports to the Executive Officer for review upon completion, and that the Executive Officer bring this matter back to the SMGB should any issues remain unresolved.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, has determined that the County of Madera has not corrected the deficiencies to the satisfaction of the board, and direct the Executive Officer to schedule a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public, pursuant to Public Resources Code Sections 2774.4(c).

Respectfully submitted:



Stephen M. Testa
Executive Officer