



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: June 14, 2012**

**Agenda Item No. 5: Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.), Pursuant to Section 2714(f), for the Proposed East Area I Property, Limoneira Company and Teague Construction (Operator), City of Santa Paula, County of Ventura.**

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**INTRODUCTION:** The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one-time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. On May 18, 2012, Jane Farkas, consultant with Sespe Consulting, Inc., and on behalf of the Limoneira Company and Teague Construction, submitted a request for a one-time exemption from SMARA for the Proposed East Area I Project, located in the City of Santa Paula (City), County of Ventura (County). The purpose of the project is to complete mass grading associated with development of a 500 acre area, and will include offsite exportation of excess material to be used in the local market. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

**STATUTORY AND REGULATORY AUTHORITY AND CONSIDERATIONS:** Public Resources Code (PRC) Section 2735 defines surface mining operations and states:

*“Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:*

- (a) Inplace distillation or retorting or leaching.*
- (b) The production and disposal of mining waste.*
- (c) Prospecting and exploratory activities.”*

SMARA allows exemptions pursuant to PRC Section 2714(d) when:



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*“Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.”*

SMARA allows for a one-time exemption pursuant to Article 1 of Public Resources Code (PRC), Division 2, Chapter 9, Section 2714(f), which states:

*“Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.”*

California Code of Regulations (CCR) Section 3501 defines a borrow pit as:

*“Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.”*

Before exemptions from the provisions of SMARA are granted, the SMGB, pursuant to SMARA and SMGB Resolution No. 93-6, considers the following four criteria:

**Criteria 1 - Compliance with the California Environmental Quality Act**

**(CEQA):** Pursuant to PRC Section 2712(a), has an environmental review been completed for the proposed activity either separately or as part of a larger project? PRC Section 2712(a) states *“It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.”*

**Criteria 2 - Local authority:** Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency? PRC Section 2715 states *“No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:*

*(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.*

*(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.*

*(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.*



(d) *On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.*

(e) *On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.*

(f) *On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”*

PRC Section 2770(a) states “*Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.*”

**Criteria 3 - End use of the mining or borrow site:** Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity is proposed to occur defined? PRC Section 2711(b) states “*The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.*”

PRC Section 2712 states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:*

(a) *Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.*

(b) *The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.*

(c) *Residual hazards to the public health and safety are eliminated.”*

**Criteria 4 - Impacts of the operation on commercial activities:** Pursuant to PRC Section 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered? PRC Section 2714(b) states

*“Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including*



*the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:*

*(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).*

*(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).*

*(3) The approved construction project is consistent with the general plan or zoning of the site.*

*(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued."*

**BACKGROUND:** On May 18, 2012, Jane Farkas, consultant with Sespe Consulting, Inc., and on behalf of the Limoneira Company and Teague Construction, submitted a request for a one-time exemption from SMARA for the Proposed East Area I Project (Figure 1), located in the City of Santa Paula (City), County of Ventura (County). The purpose of the project is to complete mass grading associated with development of a 500 acre area, and will include offsite exportation of excess material to be used in the local market.

The East Area I property will need extensive grading and onsite earthmoving of a 500 acre are in order to prepare the site for construction of structures, infrastructure and roads. About 350 acres will require over-excavation and recompaction for development purposes, with 150 acres of this area containing 20 to 25% rock eight inches or larger in maximum dimension which will need to be removed from the site. The estimated volume of material anticipated to be excavated and removed from the site is on the order of 140,000 to 340,000 tons, out of a total of about 540,000 tons to be generated for the project.

**DISCUSSION:** General threshold criteria triggering SMARA is discussed in PRC Section 2714(d), which indicates that SMARA does not apply to operations where "*Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.*" In this case, the proposed project is subject to SMARA, unless exempted by the SMGB pursuant to SMARA Section 2714(f).

It is recognized that not all surface mining operations are an efficient "fit" under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully



applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.



Source: P&D Consultants, Inc. (2007)

Figure 1. Overview of proposed project area.

The proposed project 1) is anticipated to exceed SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes. However, one-time exemptions have been granted by the SMGB in the past in instances where such thresholds have been significantly exceeded, but not typically when materials are being extracted for export and commercial gain.

**Exemption Criteria:** The SMGB must contemplate four specific criteria, as discussed above, in considering granting a one-time exemption:

**Criteria No. 1:** Pursuant to PRC Section 2712(a), has an environmental review been completed on the proposed activity either separately or as part of a larger project?

**Finding No. 1:** Yes; an approved Environmental Impact Report (EIR) was prepared for the East Area 1 Specific Plan and approved by the City in 2008, EIR Section 4.8 Geology and Soils and 4.8.5 Mitigation Measures G-1, G-8, G-9, G-10, G-11, G-12, G-13, and G-14, discuss the need for removing oversized material during the site grading phase of the project.

**Criteria No. 2:** Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency?

**Finding No. 2:** No; the proposed project is authorized by a local lead agency, albeit not all permits have been attained. The City has approved an application from the Limoneira Company for a Specific Plan to develop properties in the City's East Area I General Plan Expansion Area. On June 3, 2008, the voters of Santa Paula approved Measure G, an initiative measure amending the City Urban Restriction Boundary (CURB) and approving an intensification of use in accordance with Santa Paula General Plan Sections III (G) ("SOAR") and III (F) ("Citizens Advocating Responsible Expansion Initiative"). On February 26, 2008, the City Council and Planning Commission approved the project's proposed specific plan and the project's Environmental Impact Report.

Teague Construction, on behalf of the Limoneira Company, will obtain a Grading Permit from the City's Public Works Department to move the material. No existing Grading Permits have been obtained as of yet, pending a decision from the SMGB as to whether an exemption would be granted.



It is also noted that PRC Section 2714(c) states:

*“Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:*

- (1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.*
- (2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.*
- (3) None of the minerals being processed are being extracted onsite.*
- (4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.”*

These criteria for conduct of a mineral processing facility is not currently met.

**Criteria No. 3:** Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the proposed activity is to occur defined?

**Finding No. 3:** Yes; originally agricultural, the end use or proposed end use of property is mixed housing, among other uses (Refer to response to Criteria No. 1).

**Criteria No. 4:** Pursuant to PRC Sections 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered?

**Finding No. 4:** The potential impacts on commercial interests resulting from the proposed activity have been considered. Surplus material will be exported from the site and be utilized in the local market. Western Ventura County has high demand for crushed rock and most of the material to be removed will be supplied to an asphalt plant located less than 6 miles away. Currently rock for the plant is trucked approximately 70 miles (one way) from their quarry located in the City of Palmdale. Moving this material from the East Area I site to the plant site will result in cost and environmental benefits. Local contractors will be utilized for the earthmoving and processing activities. Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.



Furthermore, it is my understanding that nearby mines includes Santa Paula Materials, which is in support of the exemption, and Upland Rock which produces small quantities of rip rap and non Portland Concrete Cement (PCC)-grade aggregates. In addition, within about 20 miles are four quarries in the Grimes Canyon area including CEMEX, Grimes Rock, Wayne J Sand and Gravel and Best Rock. These four quarries all produce from the Saugus formation which is 85% sand and 15% rock and tend to use all of the rock internally. Ventura County is general is deficient of quality aggregate. The intended use of the rock generated by the project will be to create PCC and Hot Mix Asphalt (HMA)-grade aggregates, and supply the nearby Granite Construction HMA Plant and CEMEX RMC Plants, both of which currently import rock from Palmdale or Irwindale.

**BEFORE THE SMGB:** The Executive Officer can deny a one-time exemption request if, upon review, the request does not meet the criteria set forth in SMGB Resolution No. 93-6. However, such a matter can also be placed before the SMGB if 1) a request is made by one SMGB member; 2) the Executive Officer cannot come to a clear consensus; or 3) if controversy arises surrounding the request.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB considers, and must assure, that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.

**EXECUTIVE OFFICER'S RECOMMENDATION:** The proposed project is characterized as a surface mining operation under SMARA. Furthermore, since no permits have been attained to date, the proposed project clearly does not qualify for an exemption based on the SMGB's criteria. Two options are provided for consideration:

Option No. 1: The SMGB thus could simply deny the exemption request until such permits are attained, and then reconsider at such time. However, the SMGB could consider conditionally granting an exemption.

Option No. 2: Should the SMGB decide to conditionally grant the exemption, that it be on the basis 1) that a construction permit is attained for areas to be mined, and 2) compliance with any and all permit conditions set forth by the City of Santa Paula and



County of Ventura, and any other agencies that have jurisdiction over any aspect of this project.

Based on the information before SMGB staff, and analysis and findings set forth above, it is the Executive Officer's recommendation that the SMGB either conditionally grant or deny the request for a one-time exemption pursuant to PRC 2714(f).

**SUGGESTED SMGB MOTION:**

To deny the request for a one-time exemption:

*Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed for the Strain Orchards Proposed East Area I Project located in the City of Santa Paula, County of Ventura, and as described in this report and its exhibits, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).*

Or,



To grant the request for a one-time exemption:

*Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed for the Proposed East Area I Project located in the City of Santa Paula, County of Ventura, and as described in this report and its exhibits, is subject to the requirements of SMARA, but that the SMGB conditionally grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f), pending 1) that a construction permit for the areas to be mined is obtained prior to conducting surface mining operations, and compliance with any and all permit conditions set forth by the City of Santa Paula and County of Ventura, and any other agencies that have jurisdiction over any aspect of this project.*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer

