



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT

For Meeting Date: October 11, 2012

### **Agenda Item No. 5: Issuance of a 45-Day Notice to Correct Deficiencies to the County of Madera Pursuant to the Surface Mining and Reclamation Act (SMARA).**

**INTRODUCTION:** Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB. A lead agency as defined under SMARA means “*the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving reclamation plan pursuant to this chapter.*” SMARA lead agencies also have other responsibilities including assuring the conduct of adequate inspections at least once each calendar year, and taking appropriate enforcement actions when warranted.

At its regular business meeting held on June 9, 2011, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) on the overall status and performance of the County of Madera (County) surface mining program pursuant to the SMARA. Deficiencies in the County’s SMARA program were identified and the County has subsequently responded to the deficiencies identified in the LART report. The SMGB is considering issuance of a 45-Day Notice to Correct Deficiencies (Notice) pending review of the County’s response.

**STATUTORY AUTHORITY:** Public Resources Code (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.”*



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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 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:** California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA pursuant to PRC Section 2728 defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a reclamation plan. Under SMARA, there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled “*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*” This evaluation assessed the lead agency’s performance of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including primarily financial constraints, limited or lack of internal technical expertise, and overall low priority. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

The review of the County’s SMARA program was performed in 2011. Madera County was initially contacted on January 27, 2011, with the field review commencing on May 20, 2011. The review findings were presented by LART in an exit conference with the County on September 23, 2011. Four of the findings were resolved prior to the issuance of the formal report to Madera County on April 3, 2012. A detailed response on the other findings was not provided to OMR until after the report was issued to the SMGB on May 17, 2012. Over 500 pages of information were received from the County on June 7, 2012, including information which resolved an additional nine findings, seven of which pertained to charging of inspection fees. The 2012 inspection reports sent to OMR on June 23, 2012 resolved four more

findings, leaving 23 LART findings unresolved. On July 31, 2012, County representatives met with the LART to discuss the outstanding findings.

**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, two idle, and one newly permitted. Commodities produced include fill dirt, decomposed granite, dimension stone and pumice.

In review of the LART report for the County of Madera, several deficiencies are reported. Deficiencies included out-of-date financial assurances cost estimates, out-of-date financial assurance mechanisms, lack of adequate documentation demonstrating approval of reclamation plans, absence of Interim Management Plans (IMPs), no demonstration of issuance of a Conditional Use Permit, inconsistencies in providing inspection reports, inadequate inspection reports, and failure to enforce SMARA (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.	Idle	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	Idle	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

**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.

There remains 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. OMR has not been able to find a signed agreement. An unsigned agreement was located, but simply would have required the County to follow the SMARA closure requirements. The County has not provided OMR with a signed agreement, or any other documentation of an 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. OMR and the County continue to work on a solution to reclaim and close these two surface mine sites, which would resolve about half of the outstanding and partially resolved findings.

In regards to Madera Quarry (CA Mine ID #91-20-0010 and CA Mine ID #91-20-0014), the FAM remains inadequate and improperly executed. The County is working on resolving this finding.

Taylor Pit (CA Mine ID #91-20-0007), and the two Madera Quarry sites (CA Mine ID #91-20-0010 and CA Mine ID #91-20-0014) are being considered for reclamation and closure via SB 108 consideration since they are currently deemed abandoned, although this approach is questionable since the intent of SB 108 was to consider sites that have become abandoned but still had an intent to resume mining.

This deficiency remains outstanding.

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 it 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 Game. 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 HGS patches any longer, 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.

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).

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.

This deficiency remains outstanding.

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 outstanding.

**EXECUTIVE OFFICER’S RECOMMENDATION:** Based on the record before the Executive Officer at the time this report was prepared, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued. Should the County not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, then a public hearing should be scheduled pursuant to PRC Section 2774.4(c).

**SUGGESTED MOTION LANGUAGE:** The SMGB may consider the following motion language:

First Option – Do not issue a 45-Day Notice to Correct Deficiencies:

[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 it 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 move that the SMGB not consider issuance of a 45-Day Notice of Deficiencies.*

[or]

Second Option – Defer issuance of a 45-Day Notice to Correct Deficiencies:

[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 it 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, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.*

[or]

Third Option – Issuance of a 45-Day Notice to Correct Deficiencies:

[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 it today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to the County of Madera pursuant to Public Resources Code Sections 2774.4(a) and (c).*



Respectfully submitted:



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Stephen M. Testa  
Executive Officer