



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

For Meeting Date: November 14, 2013

### **Agenda Item No. 11: Adoption of Proposed Regulatory Language for Review and Recertification of Amended Mining Ordinances Pursuant to Division 2, Public Resources Code, Article 5, Section 2774 et seq.**

**INTRODUCTION:** Pursuant to the Surface Mining and Reclamation Act (SMARA), surface mining ordinances are adopted by the lead agency and subsequently certified by the State Mining and Geology Board (SMGB). At the December 13, 2012 meeting of the Policy and Legislation Committee (Committee), the Executive Officer recommended that the Committee consider discussion of preliminary regulatory language for mandatory notification and recertification of surface mining ordinances being amended by a lead agency. The Committee concurred with such recommendation and directed its Executive Officer to work with the SMGB's legal counsel in developing regulatory language for consideration and further discussion by the Committee. At its February 13, 2013 meeting, the Committee reviewed draft language for mandatory notification of mining ordinances being amended by the local lead agency as defined under the Surface Mining and Reclamation Act (SMARA), and mandatory review and recertification of amended mining ordinances by the SMGB. The Committee subsequently moved to recommend approval of the proposed regulatory language to the whole SMGB. At its April 11, 2013, regular business meeting, the SMGB approved the proposed regulatory language for mandatory notification to the SMGB of amended mining ordinances, and recertification by the SMGB. The SMGB is considering 1) adoption of the proposed new regulatory language for mandatory notification to the SMGB of amended mining ordinances, and recertification by the SMGB, and 2) directing its Executive Officer to complete the rulemaking process.

**STATUTORY AUTHORITY:** Public Resources Code (PRC) Section 2755 provides the SMGB authority to adopt regulations and states:

*"The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."*

Pertinent statutes pertaining to mining ordinances and the administrative process for SMGB certification are as follows:

PRC Section 2774(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*

  
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*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 Section 2774.3 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.”*

PRC Section 2774.5(a) states:

*“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.”*

PRC Section 2774.5(b) states:

*“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.”*

PRC Section 2774.5(c) states:

*“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:** At the December 13, 2012 meeting of the Policy and Legislation Committee (Committee), the Executive Officer recommended that the Committee consider discussion of preliminary regulatory language for mandatory notification and recertification of surface mining ordinances being amended by a lead agency. The Committee concurred with such recommendation and directed its Executive Officer to work with the SMGB's legal counsel in developing regulatory language for consideration and further discussion by the Committee. At its February 13, 2013 meeting, the Committee reviewed draft language for mandatory notification of mining ordinances being amended by the local lead agency as defined under the Surface Mining and Reclamation Act (SMARA), and mandatory review and recertification of amended mining ordinances by the SMGB. The Committee subsequently moved to recommend approval of the proposed regulatory language to the whole SMGB. At its April 11, 2013, regular business meeting, the SMGB approved the proposed regulatory language for mandatory notification to the SMGB of amended mining ordinances, and recertification by the SMGB.

The proposed regulatory language was published in the California Regulatory Notice Register (Register 2013, No. 33-Z, August 16, 2013), for public comment. The 45-day public comment period commenced on August 16, 2013, and closed on September 30, 2013. No comments were received.

An Economic Impact Analysis was prepared and published on the SMGB's website. The public comment period for the Economic Impact Analysis commenced on October 23, 2013, and closed on November 7, 2013. No comments were received.

**PROPOSED REGULATORY LANGUAGE:** Proposed regulatory language for the SMGB's consideration, requiring mandatory notification of any changes, revisions or amendments being considered by a SMARA lead agency has been prepared. Such language is provided below:

Article 16. Mining Ordinances

Section 4000. Certification and Recertification of Mining Ordinances

(a). Upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, a lead agency shall, within 30 days of such action, provide written notice of the complete text of the resulting mining ordinance to the State Mining and Geology Board, to enable the Board to review the ordinance in accordance with Public Resources Code Sections 2774.3, 2774.5(a) and 2774.5(b).

(b). Where a lead agency has not provided the Board with timely notice of the complete text of its mining ordinance, consistent with subparagraph (a) herein, the mining ordinance shall not be considered to be in accordance with state policy until the mining ordinance is certified by the Board as being in accordance with state policy.

**EXECUTIVE OFFICER RECOMMENDATION:** The Executive Officer recommends that the SMGB 1) adopt the new proposed regulatory language, and if deemed acceptable, or with further revision (whole or in part), for mandatory notification to the SMGB of amended mining ordinances, and

recertification by the SMGB, and 2) direct the Executive Officer to complete the rulemaking process.

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

Motion – Recommend adoption of proposed new regulation and complete rulemaking process:

*Mr. Chairman, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, I move to adopt the proposed new regulatory language for mandatory notification by the lead agency of amended certified mining ordinances, and recertification by the Board, and direct the Executive Officer to complete the rulemaking process.*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer