



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: November 14, 2013

Agenda Item No. 13: Consideration of a One-Time Exemption from the Surface Mining and Reclamation Act (SMARA) Pursuant to Public Resources Code Section 2714(f) for the Mendocino Forest Products (MFP) Site - Highway 101 (Operator, Desilva Gates), County of Mendocino.

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. In 2008, CalTrans submitted a request for an exemption for a one-time surface mining activity in association with the Willits Bypass project located in the County of Mendocino. This request which was granted was never implemented. On October 14, 2013, Chuck Jeffries, on behalf of Mendocino Forest Products (MFP), submitted a request for a one-time exemption from SMARA for the removal of approximately 800,000 cubic yards of material from a site formerly used as a saw mill to be used by CalTrans for the Willits Bypass project, located in the County of Mendocino (County). Since the excavated material is planned to be transported offsite, the proposed project is subject to SMARA. Under certain circumstances, the SMGB has the statutory authority to consider and grant an exemption from SMARA pursuant to PRC Section 2714(f).

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 provides an exemption for farming activities as defined under PRC Section 2714(a) which states:

“Excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.”

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

“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? No information was provided at the time the exemption request was made that addresses whether potential impacts on commercial interests exists.

BACKGROUND: On October 12, 2007, CalTrans submitted a request for a one-time exemption from SMARA for its Willits Bypass Project located in Mendocino County. The actual borrow site was known as “Oil Well Hill” and situated approximately 3 miles north of the subject site. Initially, the northern limits of the construction project extended past the proposed borrow site to an area referred to as Oil Well Hill. The borrow site being situated within the project limits would have been exempt from SMARA pursuant to the construction exemptions pursuant to PRC Section 2714(b). However, due to budgetary concerns, the project was revised and shortened during the design process such that the Oil Well Hill borrow site is now situated north of the subject site.

The Willits Bypass project is currently in progress and entails a bypass of US 101 around the City of Willits. Once completed, the four-lane interchange at the end of the project will transition to two-lanes constructed on the ultimate northbound lanes immediately north of the southern interchange. The northern interchange will consist of two lanes. Phase one of the project will entail the use of about

one million cubic meters of borrow material. Since CalTrans owns property adjacent to US 101, referred to as the Oil Well Hill borrow site, about three miles north of the City of Willits, this area was initially proposed as an optional borrow site. In 2008, the exemption from SMARA was granted by the SMGB. However, this request which was granted was never implemented.

On July 17, 2013, the County approved a grading permit. About 50,000 cubic yards were excavated and exported from the 50-acre site prior to August 18, 2013, when the grading permit was revoked. An additional 800,000 cubic yards remains in need.

On October 14, 2013, Chuck Jeffries on behalf of Mendocino Forest Products (MFP) submitted a request for a one-time exemption from SMARA for the removal of approximately 800,000 cubic yards of material from an approximately 22-acre area to be used by CalTrans for the Willits Bypass project, located in the County of Mendocino (County). The MFP site is zoned industrial, and was used as a saw mill until about 2000. There are no recreational uses on the site, and the site is entirely out of view from public roads and neighbors.

The request for a one-time exemption from SMARA is supported by CalTrans as noted in their correspondence dated October 14, 2013.

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 does not come under the construction exemption provided pursuant to PRC Section 2714(b), and 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.

The proposed project is anticipated to significantly 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: The County serving as the lead agency will review the application and conduct the CEQA public scoping hearing pursuant to CEQA. It is anticipated that the County will either facilitate a negative declaration), or recommend a tiered EIR complimentary to the existing Willits Bypass EIR.

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: Pursuant to PRC Sections 2715 and 2770(a), the activity to be conducted will be permitted or otherwise authorized by the County of Mendocino. The proposed project which incorporates the proposed borrow areas will be subject to all necessary lead agency permits.

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: Pursuant to PRC Sections 2711(b) and 2712, the project calls for the removal of approximately 800,000 cubic yards of material leaving a relatively flat area suitable for future development with engineered side-slopes to improve drainage and reduce the potential for sedimentation. Improving the existing slope stability is anticipated to further improve the site.

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: Pursuant to PRC Sections 2714(b), the commercial purposes of the activity have been considered, and the petitioner has previously demonstrated that the required materials (fill) are not available in sufficient quantities from existing SMARA-compliant surface mine operations. In 2008, there were 13 active surface mining operations throughout the County that supplied sand (fill), of which four of these sites are stream bed or gravel bar skimming operations. The proposed activity is not anticipated to be in conflict direct competition with any already SMARA-compliant surface mining operations. A "level playing field" continues to be established in this case, and Caltrans would not receive an unfair competitive advantage if its proposed project were granted an exemption. Furthermore, the proposed borrow site upon completion of extraction-related activities and final grading, would allow for future economic development with support from the County.

CONSIDERATION 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 could deny the exemption request until such permits are attained, and then reconsider at such time.

Option No. 2: The SMGB could consider conditionally granting an exemption providing 1) that a grading permit is attained for areas to be mined, and 2) compliance with any and all permit conditions set forth by County of Mendocino, 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 grant the exemption or conditionally grant the request for a one-time exemption pursuant to PRC 2714(f).

SUGGESTED SMGB MOTION:

Option No. 1 - To grant [or conditionally 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 Mendocino Forrest Products project, County of Mendocino, and as described in this report and its exhibits, is subject to the requirements of SMARA, but that the SMGB grant [or conditionally grant] a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f), providing 1) that a grading 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 County of Mendocino, and any other agencies that have jurisdiction over any aspect of this project.

Option No. 2 - 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 proposed Mendocino Forest Products project, County of Mendocino, 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).

Respectfully submitted:



Stephen M. Testa
Executive Officer