STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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ARNOLD SCHWARZENEGGER
GOVERNOR

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NOTICE OF PUBLIC MEETING/HEARING

THE STATE MINING AND GEOLOGY BOARD

Will Conduct a Regular Business Meeting on:

Thursday, February 11, 2010

8:30 A. M.

The Yuba County Government Center
Board of Supervisor's Hearing Room
915 8th Street
Marysville, CA 95901

AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: http://www.consrv.ca.gov/smgb/ (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

Individuals are responsible for presenting their own projects at the meeting.

[**NOTE**: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting.]

I. Call to Order (Garner)

II. Pledge of Allegiance

III. Roll Call and Declaration of a Quorum

III. Director's Report (Luther, Department of Conservation) [Information]

- Office of Mine Reclamation Report (O'Bryant) [Information]
- State Geologist's Report (Parrish) [Information]

IV. Chairman's Report (Garner) [Information]

- Recognition of Distinguished Service for Susan Kohler (California Geological Survey)
- Recognition of Distinguished Service for Cheryl Bly-Chester (SMGB)

V. Executive Officer's Report (Testa) [Information]

VI. Ex-Parte Communication Disclosure [Information]
[Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.]

VII. Good of the Meeting [Information]
[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the SMGB should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman.]

VIII. Consent Items [Action]
[All the items appearing under this section will be acted upon by the SMGB by one motion and without discussion; however, any Board member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business.]

1. Approval of Minutes, January 14, 2010, Regular Business Meeting.
   TO BE PROVIDED UNDER SEPARATE COVER

IX. Continued Business [Action]
[These business items have been continued from a previous meeting/hearing.]

2. **Public Hearing:** Consideration of Limitations on Vested Rights Pertaining to Annual Production, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.
   EXECUTIVE OFFICER'S REPORT

X. New Business [Action]

3. Approval of Amendment to Administrative Procedures for Submittal of Documents to the State Mining and Geology Board.
EXECUTIVE OFFICER'S REPORT

4. Issuance of an Order to Comply to Lawyer Pit (CA Mine ID #91-09-0010), Archie's Trucking and Backhoe (Operator), Archie Lawyer (Agent), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).
EXECUTIVE OFFICER'S REPORT

5. Considerations Following Review of an Amended Reclamation Plan for Richmond (Chevron) Quarry (California Mine ID # 91-07-0006), Dutra Materials (Operator), Mr. Brian Peer (Agent), City of Richmond.
EXECUTIVE OFFICER'S REPORT

XI. Special Reports and Department Presentations [Possible Action]

[Based on these Reports, the Chair may instruct the SMGB staff to initiate administrative actions.

6. Report on AB 3098 Program (OMR). [Information]
EXECUTIVE OFFICER'S REPORT

7. Report on Legislative Process (DOC). [Information]
EXECUTIVE OFFICER'S REPORT

8. Inspection reports pursuant to PRC Section 2772(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:
EXECUTIVE OFFICER'S REPORT

- Western Aggregates (CA Mine ID #91-58-0001), County of Yuba.
- Cal Sierra Development (CA Mine ID #91-58-0003), County of Yuba.
- Sperbeck Quarry (CA Mine ID #91-58-0004), County of Yuba.
- Teichert Hallwood (CA Mine ID #91-58-0006), County of Yuba.
- Dantoni Pit (CA Mine ID #91-58-0011), County of Yuba.
- Teichert Marysville (CA Mine ID #91-58-0019), County of Yuba.
- Ella and Platter Borrow Sites (CA Mine ID #91-58-0026), County of Yuba.

XII. SMGB Committee Reports [Information and Possible Action]

- Geohazards Committee (Chairperson Bly-Chester)
  - Alquist-Priolo Technical Advisory Committee (Chairperson Tepel)
- Surface Mining and Standards Committee (Chairperson Lund)
- Minerals and Geologic Resources Committee (Chairperson Tepel)
- Policy and Legislation Committee (Chairperson Baca)

XIII. Continuing Business [Information]

[This item is provided as an opportunity for any SMGB member to receive information on or any items of continuing interest to the SMGB.]

XIV. New Business [Information]

[This item is provided as an opportunity for any SMGB member to bring any item of new business to the SMGB's attention for further discussion and further action.] Items to be discussed:

XV. Executive Session (Closed to the Public) [Possible Action]

[The SMGB will discuss information from its legal counsel on pending litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.] Items to be discussed:

a). Brunius vs. SMGB, Case # PC 20010449, El Dorado County Superior Court.

b). Kibbe Area Planning and Protection Association; Forest Tull vs. SMGB; A. Teichert & Sons, Inc.; and DOES 1010, Case No. 34-2007-00882657-CU-WM-GOS, Sacramento County Superior Court.

c). An un-named case where there is potentially significant exposure to litigation against the Board.

Re-open Regular Business Session, Announce Results of Executive Session

XVI. Announcements of Future Meetings

XVII. Adjournment

NOTES

A. GENERAL STATEMENT

The Board's general authority is granted under the Public Resources Code, which requires all Board members to "represent the general public interest". Board membership consists of nine individuals appointed by the Governor, and confirmed by the Senate. Each member serves for four years in staggered terms, and each must have a demonstrated specialty in either geology, seismology, mining engineering, hydrogeology, the environment, mineral resources, landscape architecture, or government.

The Board has specific responsibilities under the following acts:

Alquist-Priolo Earthquake Fault Zoning Act -- Under this Act, the Board is authorized to represent the State's interests in establishing professional practice guidelines and standards for geological investigations and reports produced by the California Geological Survey, public sector agencies, and private practitioners, and to develop specific criteria through regulations that shall be used by affected local jurisdictions in complying with the provisions of the Act so as to protect the health, safety and welfare of the public.

This Act (Public Resources Code, Chapter 7.5, §2621 through §2630) is intended to provide policies and criteria to assist cities, counties and state agencies in the exercise of their responsibilities to prohibit the location of developments and structures for human occupancy across the trace of active faults as defined by the Board. Further, it is the intent of this Act to provide the citizens of the State with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking.

Seismic Hazards Mapping Act -- Under this Act, the Board is authorized to provide policy and guidance through regulations for a statewide seismic hazard mapping and technical advisory program to assist cities, counties, and state agencies in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction or other ground failure, landslides and other seismic hazards caused by earthquakes, including tsunami and seiche threats.

The Seismic Hazards Mapping Act (Public Resources Code Chapter 7.8, §2690 through §2699.6) establishes the authority to provide programs to identify and map seismic hazard zones in the State in order for cities and counties to adequately prepare the safety element of their general plans and to encourage land use management policies and regulations to reduce and mitigate those hazards so as to protect public health and safety.

Surface Mining and Reclamation Act of 1975 -- The extraction of minerals in a responsible manner is essential to the continued economic well-being of the State and to the needs of society, and the thoughtful reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

Under various statutes, the Board is authorized to represent the State's interests in the development, utilization, and conservation of the State's mineral resources, the reclamation of mined lands, and Federal matters pertaining to surface mining within the State.

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code, §2710 through §2797) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the State's mineral resources. (Public Resources, §2207, provides for the annual reporting requirements of this statute, under which the Board also is granted authority and obligations).

B. HEARING PROCEDURES

Regulations governing the hearing procedures of the State Mining and Geology Board can be found under Articles 4, 5, 7, 11.5, 12, and 14, of Title 14, Division 2, Chapter 8, Subchapter 1, of the California Code of Regulations. These procedures can be accessed at the SMGB internet web site at: http://www.consrv.ca.gov/smgb/.

Unless otherwise specified in the public notice for a specific item, the SMGB wishes to limit oral presentations from all parties to three (3) minutes or less per individual depending on time constraints. Interested persons should submit to the SMGB office at 801 K Street, Sacramento, California, 95814, twelve (12) written copies of all comments, technical reports, and other material concerning any matters on the Agenda at least fifteen (15) days prior to the hearing date. This written material will be provided to the SMGB along with the full agenda materials. In addition, persons submitting written comments and other materials should be present at the SMGB meeting and be available for questions.

Oral comments that are duplicative of written comments should be limited to a summary of the previously submitted written materials. The SMGB reserves the right to refuse to accept any late-submitted written materials, absent a proper showing that information is available which was not available at the time the written materials were submitted.

(1) Hearings Pursuant to 14 CCR 3675, et seq., 3650, et seq., and 3680, et seq.:

Testimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the SMGB. Testimony or comments that are not reasonably relevant, or that are repetitious, may be excluded by the SMGB. Cross-examination may be allowed by the SMGB Chair as necessary for the SMGB to evaluate credibility of factual evidence or the opinions of experts. Video taped testimony by witnesses who are not present at the hearing will not be accepted unless such testimony was subject to cross-examination by all designated parties[1].

During the hearing, participants will be determined to be either “designated parties” or other “interested persons.” Only designated parties may seek permission from the SMGB Chair to cross-examine witnesses. Interested persons may not cross-examine witnesses, but may ask the SMGB to clarify testimony. Designated parties automatically include the SMGB and any person to whom an Order is directed. All other persons wishing to testify or provide comments are interested persons.

For any hearing, the SMGB Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested parties generally will be allowed three (3) minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The SMGB Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited because of the number of persons wishing to speak on an item, or the number of items on the SMGB’s Agenda, or for other reasons.

All persons testifying must state their name, address, and affiliation. The order of testimony for hearings generally will be as follows, unless modified by the SMGB Chair:

- Identification of the Record
- Statements on behalf of the Petitioner/Appellant
- Statements on behalf of the Lead Agency or the Director

[1] This does not preclude the use of videotape to present graphic images, provided that the person who took the videotape is available for questioning and the presentation conforms to time limits imposed on all speakers; this is intended to apply to spoken testimony of witnesses who are not available for cross-examination at the hearing.

[2] Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony.

- Statements on behalf of the Public
- Rebuttal and closing statements on behalf of the Petitioner/Appellant
- Rebuttal and closing statements on behalf of the Director
- Motion to Close the Public Hearing
- Deliberation and voting by the SMGB, including SMGB examination of parties.

After considering evidence, testimony, and comments, the SMGB may choose to adopt, modify, or deny an order regarding a proposed agenda item. All SMGB files, exhibits, and Agenda material pertaining to the items on the Agenda are made a part of the record. Persons wishing to introduce item exhibits (i.e. maps, charts, photographs) must leave them with the SMGB Secretary and must provide sufficient copies for distribution to the SMGB, designated parties, and interested persons.

SPECIAL HEARING PROCEDURES FOR VESTED RIGHTS DETERMINATION

§ 3961 Vested Rights Hearing - Sequence. (a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;
(2) Statements on behalf of the vested rights Claimant;
(3) Statements on behalf of the agency originally holding lead agency status;
(4) Statements on behalf of the public;
(5) Rebuttal on behalf of the Claimant; and
(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman of the Board or the delegated committee's selected chair, or the Board's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal. (c) The Chairman of the Board or the delegated committee's selected chair, or the Board's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five business days prior to the hearing. (d) All statements of fact made at the hearing shall be under oath as administered by the Chairman of the Board or the delegated committee's selected chair, or the Board's designee. (e) The public hearing shall be recorded either electronically or by other convenient means.

C. HEARING RECORD

Material presented to the SMGB as part of testimony that is to be made part of the record must be left with the SMGB. This includes photographs, slides, charts, diagrams, written testimony, etc. All SMGB files pertaining to the items on this Agenda are hereby made a part of the record submitted to the SMGB by its staff for consideration prior to action on related items.

D. PROCEDURAL INFORMATION

A Closed Session may be called by the Chair to discuss litigation and other privileged attorney-client communications by authority of Government Code, §11126(e)(1), and Sacramento Newspaper Guild v. Sacramento County Board of Supervisors [1968] 266(b)CAL.APP.2nd.41; basis of "litigation" exception is the attorney-client privilege.

The SMGB is governed by the Bagley-Keene Open Meeting Act that requires the SMGB to (1) publish an Agenda at least ten days in advance of any meeting; (2) describe in the Agenda specific items to be transacted or discussed; and, (3) refuse to add an item after the Agenda is published.

A quorum of the members of the SMGB may recess for lunch; however, no business will be discussed except to the extent of Closed Sessions as announced at the meeting.

Agenda items are subject to postponement. Interested and affected persons may contact the SMGB office in advance of the meeting day for information on the status of any Agenda item.

Speaker Cards: All persons desiring to address the SMGB are required to fill out a speaker card. Cards normally are provided near the entrance to the meeting room. Please fill out a separate card for each item on which you intend to speak, and present it to the SMGB Secretary prior to the item being heard by the SMGB.

E. AVAILABILITY OF EXECUTIVE OFFICER'S REPORT AND AGENDA MATERIAL

Persons are invited to visit the SMGB web site at http://www.consrv.ca.gov/smgb to view the Executive Officer's Report and other Agenda material and reports generated by the SMGB. These documents will be available for viewing approximately one week prior to the scheduled SMGB meeting. A copy can also be obtained by contacting the SMGB office. A public copy of SMGB documents is available at all meetings. Non-SMGB generated documents and materials are available for viewing at the SMGB office during public business hours (9:00 A. M. to 4:00 P. M.) Monday through Friday (except holidays).

F. PRESENTATION EQUIPMENT

Providing and operating projectors and other presentation aids are the responsibilities of the speakers. Some equipment may be available at the SMGB meeting; however, the type of equipment available will vary depending on the meeting location. Owing to software and hardware compatibility issues, provision and operation of laptop computers and projectors for presentations generally will be the responsibility of the individual speakers. To ascertain the availability of presentation equipment, please contact the SMGB office at least five (5) working days prior to the meeting.

G. ACCESSIBILITY

SMGB meetings are open to the public and are held in barrier-free facilities in accordance with the Americans with Disabilities Act. For additional information or assistance, contact the SMGB office.

H. PAGERS AND CELL PHONES

For the listening comfort of others attending these meetings, audible alarms in pagers, cell phones, or other electronic devices during Board and Committee meetings must be turned off. You may be asked to leave the meeting if your device produces an audible signal during the meeting.

I. PROFESSIONAL REPORTS AND DOCUMENTS

Professional reports, documents, calculations, plans, specifications, maps, cross sections, boring or trench logs, and diagrams, hereafter collectively referred to as documents, which must, under applicable law, regulation, or code, be prepared by or under the supervision of licensed professionals will not be accepted or considered by the State Mining and Geology Board unless at least one copy of the document bears an original signature, stamp impression or seal, and date affixed by the author in accordance with applicable law and regulation. Unless otherwise directed or agreed in advance, all professionally prepared documents included in Board, or Board committee, meeting packages or presented to the Board in a meeting are to be in final form and must be signed, stamped or sealed, and dated in accordance with applicable law and regulation.