



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## **CONFORMED MINUTES**

### **THE STATE MINING AND GEOLOGY BOARD**

**Conducted a Regular Business Meeting on:**

**Thursday, September 12, 2013**

**9:00 A.M.**

**LOCATION:**

**Assembly Hearing Room #444**

**State Capitol**

**Sacramento, CA 95814**

### **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 requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 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.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to

the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's report, at the time of the public hearing. Such two-page summaries would be included as part of the administrative record before the SMGB. This policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

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

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

**I. Call to Order (Gonzalez)**

**II. Pledge of Allegiance**

**III. Roll Call and Declaration of a Quorum**

The meeting was called to order at 9:15 A. M. by Chairman Gonzalez, with Members Barry, Gavric, Kenline, Lane, Noushkam and Reding present, and a quorum was declared.

**IV. Director's Report (Nechodom, Department of Conservation) [Information]**

Director of the Department of Conservation, Dr. Mark Nechodom, reported on the following:

- The Department of Finance created a separate budgetary line item for the SMGB, and discussions have commenced between the Department, SMGB Chairman, Executive Officer and legal counsel.
- An External OMR Performance Review Panel has been established with the first meeting being held on August 28. The primary mandate of the Panel will be a review of OMR, and not SMARA, the SMGB or Lead Agencies. The Panel will be lead by State Geologist Dr. John Parrish. Participants include Brian Anderson (Vulcan Materials), Kevin Graves (California State Water Control Board) , Karen Keane (California State Association of Counties), Kim Philhart (County of Ventura) and Izzy Martin (The Sierra Fund)

- State Geologist's Report (Parrish) [Information]

Dr. John Parrish, State Geologist, reported on the following:

- Uniform California Earthquake Rupture Forecast Version 3 was released.
- Scientific Application for Risk Reduction (SAFER) project with USGS status.
- SB 135 which provides establishment of an earthquake early warning system is before legislature.
- Upcoming meeting in Washington, D.C. with Association of American State Geologists.
- Bill Bryant and Chuck Real, both with CGS, have retired. Tim McClink will have additional responsibility in managing their respective programs.

- Office of Mine Reclamation Report (Parrish) [Information]

Acting Assistant Director of the Office of Mine Reclamation (OMR), Dr. John Parrish, reported on the following:

- Updated the status of SB 108 with 146 applications received by OMR and 100 having been processed.



- Updated status of Mining Operations Annual Reports with 1,350 mines scheduled to file reports and 1,150 filed.

**V. Chairman's Report (Gonzalez) [Information]**

No information report provided.

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

Executive Officer Testa reported on the following:

- Public comment relating to the proposed regulation for mandatory notification and recertification of mining ordinances ends at the end of September, and the SMGB can anticipate adoption consideration at its next scheduled meeting.
- SMGB staff is scanning all certified mining ordinances. Once completed, such ordinances will be made available and posted on the SMGB's website.
- Rulemaking packets for the San Gabriel and Palm Springs Production-Consumption Regions are completed and will be forwarded to the Office of Administrative Law (OAL). A public hearing to receive comments from stakeholders for proposed designations, and termination of designations, in the Stockton-Lodi Production-Consumption Region, was held on August 16, 2013, in the City of Lodi.
- The Executive Officer, with assistance from CGS, hosted a delegation from the Xi'an University of Science and Technology, China. Twenty delegates participated and the topics of discussion included aggregate availability/sustainability and seismic hazards..

**VII. 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.]

- Chairman Gonzalez noted discussions held with Director Nechodum, Congressman Costa and Attorney Patrick Mitchell regarding the Carmelita Designation Appeal, and referenced correspondence directed to the SMGB's legal counsel Rick Thalhammer pertaining to Ex Parte matters.
- Member Kenline noted contact by receiving an email correspondence regarding the Carmelita Designation Appeal.
- SMGB legal counsel Rick Thalhammer addressed and clarified Ex Parte type discussions.

**VIII. 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.]

- Adam Harper, on behalf of the California Construction and Industrial Materials (CaCIMA) mentioned upcoming annual meeting to be held in Napa, and that Director Nechodum will serve as the keynote speaker, and Will Arcand, SMGB staff, will speak on the topic of the recently revised SMARA inspection form.

**IX. 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, July 11, 2013 Regular Business Meeting.

Board Member Gavric moved to approve the minutes. Board Member Lane seconded and the motion carried with a unanimous voice vote.

2. Approval of a Revised Financial Assurance Cost Estimate, Garnet Pit (CA Mine ID No. 91-33-0031), Granite Construction Company (Operator), Ms. Kila Moore (Agent), City of Palm Springs.

Board Member Gavric moved to approve the revised financial assurance cost estimate. Board Member Lane seconded and the motion carried with a unanimous voice vote.

**X. Continued Business [Action]**

[These business items have been continued from a previous meeting/hearing.]

3. Approval of Proposed Regulatory Language for Designation of Mineral Lands within the San Luis Obispo-Santa Barbara Production-Consumption Region, California.

Executive Officer Testa stated that at its December 8, 2011, regular business meeting, the SMGB accepted CGS Special Report 215, a classification report on Portland cement concrete-grade (PCC) aggregate in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region. At its March 8, 2012 regular business meeting, the SMGB accepted the State Geologist's recommendations for designation of select mineral resource lands in the San Luis Obispo-Santa Barbara Production-Consumption P-C Region. The SMGB subsequently directed its Executive Officer to notice a public hearing to receive comments on the proposed regulatory action. The 60-day public comment period commenced on June 7, 2012, and ended on July 31, 2012. A public hearing was held in the County of Santa Barbara to receive comment on July 11, 2012. At its April 11, 2013 regular business meeting held within the jurisdiction of the County of San Luis Obispo, the SMGB received further comments regarding the proposed designations. The SMGB at such time deferred action for an additional 60 days allowing sufficient time for all public comments received to be reviewed and considered. At its July 11, 2013 regular business meeting, the SMGB deferred taking action until its next scheduled meeting and requested a review by its legal counsel of previous counsel's analysis noting that designation is not a project under the California Environmental Quality Act (CEQA). The County, in their September 9, 2013 correspondence, requested removal of Sector I-7 from designation consideration since it lies within the County's Creston Village Reserve Line for future residential development. Should the SMGB move ahead with approval, the SMGB could consider removing this particular sector from its consideration. Lastly, the SMGB requested from its legal counsel a review of a previous opinion noting that designation is not deemed a project under CEQA. Mr. Thalhammer is prepared to speak on this issue. The SMGB will consider approval of the proposed regulations. With approval, the proposed regulations will be published in the California Registrar which would allow additional opportunity for public comment.

- Ken Johnston, resident of San Luis Obispo County, urged designation of Sector C as not only having regional significance but statewide significance under PRC Section 2790, and provided rationale for such consideration. Specifically, 1) most of the region's aggregate needs for the foreseeable future will come from Sector C, the only MRZ-2 classified area in San Luis Obispo County that is not in a riparian corridor, 2) Sector C is a large high quality deposit that is still largely undeveloped in close proximity to



Highway 101 and Interstate 1 and uniquely positioned to meet the broader region's future aggregate needs and so it should be recognized as having statewide significance, and 3) because of its high quality and ability to meet spec, material from Sector C can be found on major state thoroughfares and arteries such as Highway 101, Highway 1, Highway 46, 41, and Highway 166.

- Don Ritter, land use and environmental compliance consultant from San Luis Obispo County, urged designation of Sector C being of statewide significance. Specifically, without the protections afforded by a designation of statewide significance, much of the value of Sector C will be lost due to the results of urbanization. In terms of environmental considerations, such as air quality, water resources, riparian and sensitive habitat areas, there are big differences between those two sectors. Sector A, being located within the Salinas River and its surrounding riparian area, is much more sensitive overall, and more susceptible to potential negative impacts from resource extraction, than Sector C, which is not. If future demand for aggregate can be met by Sector C, it can significantly reduce the need to extract similar resources from Sector A. The environmental benefits from focusing extraction efforts on C as opposed to A, serves everyone in the state, not just regional or local residents. Ritter also stated that it appears San Luis Obispo County will run out of available local aggregate within a few short years. If future aggregate demand can be met by Sector C, then fewer resources will have to be trucked in from distant areas. The potentially significant reduction in the hauling of resources from local areas such as Sector C is in compliance with the State's goals articulated in AB 32 and SB 375. Because of these reasons, plus its relatively large size, in terms of tonnage, its relatively close proximity to major highway and railroad transportation corridors, and its advantageous location in the center of the state, almost exactly halfway between SF and LA, Sector C, is clearly a resource area of statewide significance.

Board Member Kenline moved to approve the proposed regulatory language with the exclusion of Sector I-7, but defer action until the outstanding issue pertaining to regional versus statewide significance can be assessed and considered. Board Member Barry seconded and the motion carried with a unanimous voice vote.

4. Report from the County of Yolo in Response to the Office of Mine Reclamation, Lead Agency Review Team (LART) Report dated October 5, 2012. Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

Executive Officer Testa stated that the Department of Conservation, Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) completed its lead agency review report for the County of Yolo (County) dated October 5, 2012, and provided a summary of the results of its review of this SMARA lead agency at the October 11, 2012 regular business meeting. Outstanding deficiencies included, but were not limited to, 1) failure to approve specific plans pursuant to PRC Section 2715.5(d) for two surface mining operations (Deficiency No. 1), 2) failure to inspect one surface mining operation (Deficiency No. 2), and 3) failure to take appropriate enforcement actions for two sites (Deficiency No. 4). In addition, two circumstances were reported to exist whereas two mine identification numbers pertaining to one surface mining operation exists (Woodland Plant and Woodland Properties, and Solano Concrete In-Channel and Solano Concrete Off-Channel). In lieu of issuance of a 45-Day Notice to Correct Deficiencies, the SMGB requested that the County report back to the SMGB with a status of its SMARA program in 90 days. The SMGB will consider whether the County is fulfilling its responsibilities and obligations as a lead agency under SMARA.



- Jeff Anderson, Associate Planner for the County of Yolo, concurred with the Executive Officer's introductory remarks, and provided an overview of its SMARA program.

Board Member Gavric moved to find that the County of Yolo has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the County has addressed the deficiencies to the satisfaction of the SMGB, and directed the County to provide copies of the 2013 inspection reports for all surface mining operations within the jurisdiction of the County to the Executive Officer for review and comment, and for the Executive Officer to bring this matter back to the SMGB if deemed appropriate. Board Member Reding seconded and the motion carried with a unanimous voice vote.

#### **XI. New Business [Action]**

5. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Marin, Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

Executive Officer Testa stated that five surface mining operations are located within the jurisdiction of the County of Marin. Four are characterized as active and one closed with no intent to resume mining. The primary commodity is stone, with a subordinate amount of sand and gravel. At its regular business meeting held on June 13, 2013, the SMGB received a report from the OMR LART dated March 13, 2013, on the overall status and performance of the County's surface mining program pursuant to SMARA. Deficiencies pursuant to PRC Section 2774.4(a) were reported. In review of the LART report for the County of Marin, several deficiencies are reported. Notably, such deficiencies were reported to include 1) failure to amend or update financial assurance cost estimates and/or mechanism (Deficiency No. 1), 2) failure to conduct adequate and complete inspections (Deficiency No. 2); and 3) failure to take appropriate enforcement action (Deficiency No. 4). Based on the SMGB's review of the LART report, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on June 18, 2013. The County responded in correspondence dated August 8, 2013, with a revised and final response dated August 28, 2013. The Executive Officer meet with the County on August 21, 2013 and although several deficiencies remain outstanding (i.e., notably completeness of inspection reports), the County has commenced with taking appropriate actions to resolve these deficiencies. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take action in accordance with PRC Section 2774.4(a). As with many of the lead agencies that have come before the SMGB, it is recommended that the County provide the SMGB's EO with copies of it next round of inspection reports, and should outstanding issues remain upon review, this matter could be brought back to the board at such time.

- Richard Simonitch, Associate Engineer for the County of Marin, provided an overview of the County's SMARA program and was present to address any questions the SMGB may have.

Board Member Gavric moved to find that the County of Marin has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and in addressing the deficiencies to the satisfaction of the SMGB, and directed the County to provide copies of the 2013 inspection reports for all surface mining operations within the jurisdiction of the County to the Executive Officer for review and comment, upon completion, and for the Executive Officer to bring this matter back to the SMGB, if deemed appropriate. Board Member Noushkam seconded and the motion carried with a unanimous voice vote.



6. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Monterey, Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

Executive Officer Testa stated that thirty-six (36) surface mining operations are reported to exist within the jurisdiction of the County. Twenty-four (24) are characterized as active, eight are newly permitted, and three are closed and certified complete. Commodities produced include primarily sand and gravel, with subordinate amounts of rock and silica. At its regular business meeting held on October 11, 2012, the SMGB received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated July 19, 2012, on the overall status and performance of the County surface mining program pursuant to the SMARA. Deficiencies pursuant to PRC Section 2774.4(a) were reported. In review of the LART report for the County, several deficiencies are reported. Notably, such deficiencies were reported to include failure to review and adjust financial assurances cost estimates, failure to inspect mines at least once each calendar year, preparation of inadequate inspection reports, failure to commence reclamation following site abandonment and absence of Interim Management Plans (IMPs), and failure to enforce SMARA. The SMGB moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on December 21, 2012. The County responded in correspondence dated February 26, 2013. Although the County has adequately addressed Deficiency Nos. 1 and 4, adequacy of the inspection reports remains an issue. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take appropriate action in accordance with PRC Section 2774.4(a). As with many of the lead agencies that have come before the SMGB, it is recommended that the County provide the SMGB's EO with copies of its next round of inspection reports, and should outstanding issues remain upon review, this matter could be brought back to the board at such time.

- Mike Novo, Planning Director for the County of Monterey, provided an overview of the County's SMARA program.

Board Member Lane moved to find that the County of Monterey is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but has not fully addressed the deficiencies to the satisfaction of the SMGB, and directed the County to 1) provide the SMGB a progress report on its efforts to improve its SMARA program, and 2) provide its Executive Officer, for review and comment, a copy of the 2013 inspection reports for all surface mining operations within the County's jurisdiction. Board Member Noushkam seconded and the motion carried, with Members Kenline and Reding opposed and Member Gavric abstain.

7. Discussion of the State Mining and Geology Board's 2012-2013 Annual Report. Executive Officer Testa stated that existing law requires various written reports to be prepared and submitted by State and local agencies to the Legislature and the Governor. Annual Reports are prepared for the State Legislature pursuant to PRC Section 2717(a). These reports are typically due by December 1. The SMGB is legislatively mandated to prepare annual reports to the Legislature pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). The Executive Officer is preparing the SMGB's annual report for 2012-2013. The SMGB is considering proposed conclusions and recommendations to be incorporated in the report.

No action taken.



**XII. Special Reports and Department Presentations [Possible Action]**

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

8. Acceptance of Inspection Reports Pursuant to PRC Section 2774(b) for the following Surface Mining Operations as Being in Accordance with the SMGB's Requirements:
  - Merrill Borrow Pit (CA Mine ID #91-02-0001), County of Alpine.
  - Gansberg Sand (CA Mine ID #91-02-0002), County of Alpine.
  - Diamond Valley Borrow Site (CA Mine ID #91-02-0004), County of Alpine.
  - Fredericksburg Gravel Pit (CA Mine ID #91-02-0005), County of Alpine.
  - Chile Bar Slate Mine (CA Mine ID #91-09-0004), County of El Dorado.
  - Marin Quarry (CA Mine ID #91-09-0013), County of El Dorado.
  - Will Arcand, Certified Engineering Geologist with the SMGB, summarized various aspects working with the recently revised inspection form.

Board Member Barry moved to accept the inspection reports. Board Member Lane seconded and the motion carried with a unanimous voice vote.

**XIII. SMGB Committee Reports [Information and Possible Action]**

- Geohazards Committee (Chairperson Lane)
- Alquist-Priolo Technical Advisory Committee (Executive Officer Testa)
- Minerals and Geologic Resources Committee (Chairperson Kenline)
  - The County of Santa Clara (County) has recently amended its Surface Mining and Reclamation Ordinance. The County's mining ordinance was originally certified by the State Mining and Geology Board (SMGB) in 2000 (Ordinance No. 1200.299). The Committee moved to recommend certification of the amended ordinance to the whole SMGB pending adoption by the County's Board of Supervisors.
- Policy and Legislation Committee (Chairperson Kenline)
- Surface Mining and Standards Committee (Chairperson Barry)

**XIV. 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.]

No continuing business was discussed.

**XV. 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:

No new business was offered.

**XVI. 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. Pending Litigation to which the SMGB is a party:
  - 1. Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.
  - 2. A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
  - 3. William Calvert, Elfriede Calvert and the Yuba Goldfields Access Coalition v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000530, Sacramento County Superior Court.
- B. Possible Litigation involving the SMGB.
- C. Staff Budget

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

No Executive Session held.

**XVII. Announcements of Future Meetings**

October 10, 2013 was announced as the date of the next meeting, with Sacramento as the location.

**XVIII. Adjournment**

The meeting was adjourned at 11:45 A.M.

**APPROVED**

  
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Ignacio Gonzalez, Chairman

  
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Stephen M. Testa, Executive Officer

