



SMGB Information Report 2007-03

STATE MINING AND GEOLOGY BOARD

A Review of the State's Mineral Resources Management Program and its Components - Status and Effectiveness of Review Efforts

**Department of Conservation
Resources Agency**

November 2007

**This Information Report No. 2007- 03
of the State Mining and Geology Board was presented, in part,
at its Minerals and Geologic Resources Committee meeting
held on September 14, 2006.**

**This report does not set forth policy, but rather presents information that the
SMGB considers in setting policy.**



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TABLE OF CONTENTS

ABSTRACT

INTRODUCTION

Background

Mining Ordinances

Mineral Resources Management Policies (MRMP)

CEQA Review and Comment

ANALYSIS OF SPECIFIC PROGRAMS

Mining Ordinances

Mineral Resources Management Policies (MRMP)

CEQA Review and Comment

REVIEW ISSUES CURRENTLY BEING ADDRESSED BY SMGB STAFF

STAFF RECOMMENDATIONS

Policy Issue Recommendations for Consideration

Tools Issue Recommendations for Consideration

Research and Review Issue Recommendations for Consideration

CONCLUSION

LIST OF TABLES

- Table 1. Summary of Mining Ordinances and MRMP certified and recognized by the SMGB.

LIST OF FIGURES

- Figure 1. Flow diagram showing the entire review process under the State's Mineral Resources Management Program.
- Figure 2. Flow diagram showing the review process for the mineral land classification and designation program, the first link in the chain.
- Figure 3. Flow diagram showing the review process for the review of mining ordinances, the second link in the chain.
- Figure 4. Flow diagram showing the review process for MRMP, the third link in the chain.
- Figure 5. Flow diagram showing the process for review of CEQA documents.
- Figure 6a and 6b. Number of Ordinances certified per year.
- Figure 7. Assumption of Lead Agency responsibilities by the SMGB between 1987 and the present.
- Figure 8. Total number of MRMP recognized by the SMGB since 1981.
- Figure 9. Graph showing that since 1992, 135 CEQA documents have been reviewed and commented on per year, averaging 10 CEQA documents per year.
- Figure 10. Graph showing the number of CEQA documents reviewed and commented on per year.

APPENDICES

- Appendix A** Pertinent Statutory and Regulatory Requirements

A Review of the State's Mineral Resources Management Program and its Components - Status and Effectiveness of Review Efforts

Stephen M. Testa¹ and David J. Beeby²

ABSTRACT

The staff of the State Mining and Geology Board (SMGB) performed a review of the State's Mineral Resources Management Program and its components. Specifically, an analysis of 1) the current status of the SMGB effectiveness in reviewing Mining Ordinances, Mineral Resource Management Policies (MRMP), and California Environmental Quality Act (CEQA) documents under the SMARA Mineral Resources Management Program, and 2) the state of compliance by local governments in adopting Mining Ordinances and incorporating MRMP into their general plans, pursuant to Public Resources Code (PRC) Sections 2762 and 2763, and Title 14 California Code of Regulations (CCR) Sections 3675 and 3676. Although the mineral lands classification and designation program is also an important element of the State's Mineral Resources Management Program, this specific program is only briefly addressed herein, and a more comprehensive analysis will be addressed in a separate report. A synopsis of this review is presented.

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INTRODUCTION

Background

The SMGB oversees three primary program areas, among other responsibilities. These are the Alquist-Priolo Earthquake Fault Zone Mapping Program, the Seismic Hazards Mapping Program, and the SMARA Mineral Resource Management Program. Within the SMARA Mineral Resources Management Program are many functions, including policy development, regulation and guideline development, appeals, mine reclamation, mineral land classification and designation, and lead agency document review. This last function is the subject of this information report. There are three types of documents reviewed by the SMGB and its staff: mining ordinances, MRMP and CEQA documents. The entire review process is complicated and is illustrated in Figure 1.

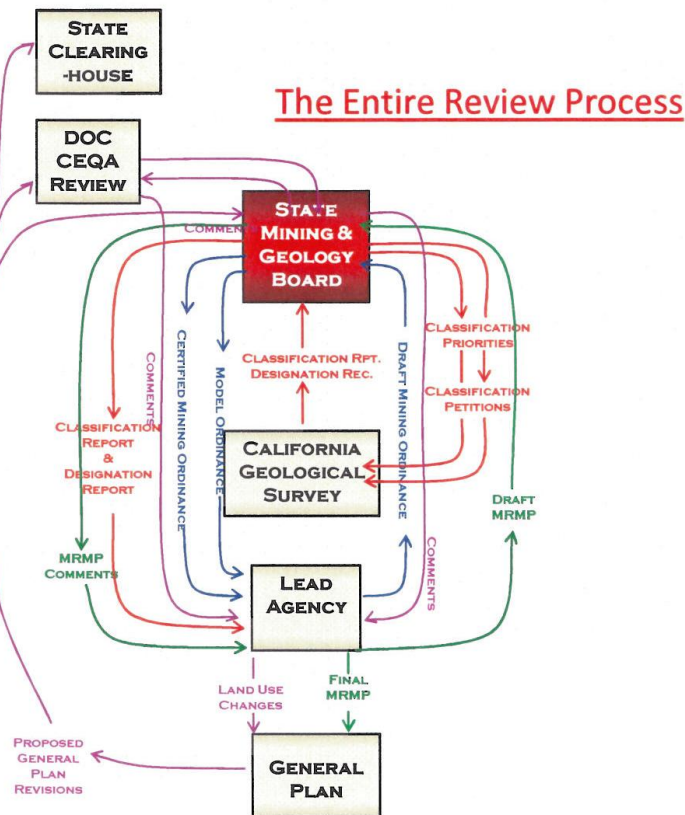


Figure 1. Flow diagram showing the entire review process under the State's Mineral Resources Management Program.

Four primary programs or links make up the review process. The first link in the chain, which will be the subject of a more comprehensive report is the mineral land classification and designation program. The process for this element is illustrated in Figure 2.

Link 1: Mineral Land Classification and Designation

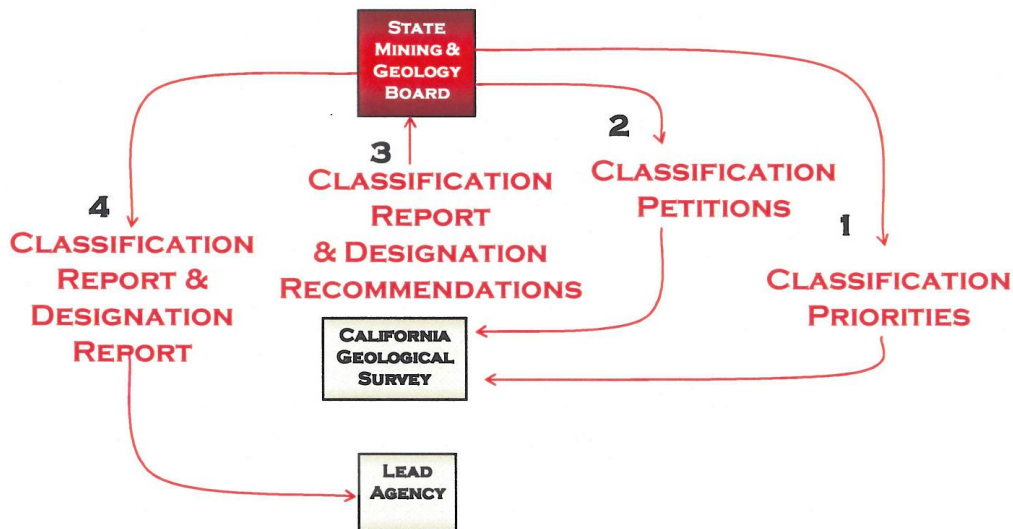


Figure 2. Flow diagram showing the review process for the mineral land classification and designation program, the first link in the chain.

Mining Ordinances

PRC Section 2774 (a) requires every lead agency to 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. However, any lead agency without an active surface mining operation in its jurisdiction may defer adopting and implementing a mining ordinance until the filing of a permit application. A mining ordinance establishes procedures which require at least one public hearing and is periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinance continues to be in accordance with state policy. PRC Section 2774.3 requires that the SMGB review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy. The SMGB also certifies 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 SMGB. The process for review of mining ordinances for certification consideration is illustrated in Figure 3, the second link in the chain.

Link 2: Mining Ordinance

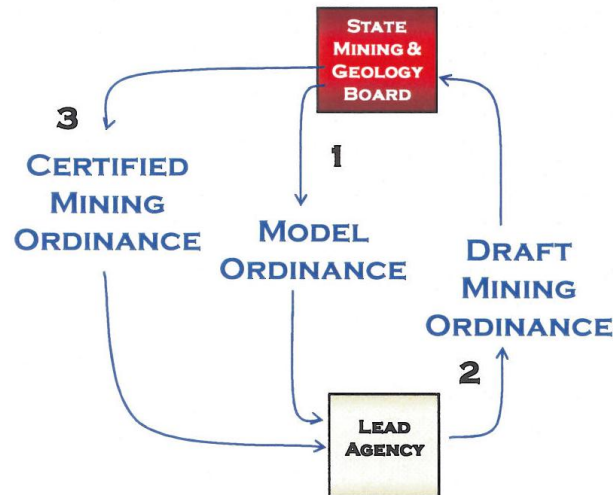


Figure 3. Flow diagram showing the review process for the review of mining ordinances, the second link in the chain.

There are a total of 58 counties and 478 incorporated cities in California, for a total of 536 possible lead agencies. Of these, 56 counties and 73 cities contain mines within their jurisdictions.

Mineral Resource Management Policies (MRMP)

The State Geologist is required to classify mineral lands within the State according to a schedule and criteria developed by the SMGB pursuant to PRC Section 2761. This section also requires the SMGB to transmit to local governments information on mineral classified lands received from the State Geologist. Local governments are required to incorporate this mineral information into their general plans within 12 months of receiving the information according to policies adopted by the SMGB pursuant to Section 2762. These SMGB policies are contained in Title 14 CCR Sections 3675 and 3676. PRC Section 2762, also, requires local governments to submit their proposed mineral resource management plans to the SMGB for review and comment.

According to SMARA, all lead agencies containing classified or designated lands within their jurisdictions must prepare MRMP, not just those containing active or idle mines. These comprise the MRMP lead agencies. The process for review of MRMP is illustrated in Figure 4, the third link in the chain.

Link 3: Mineral Resource Management Policies

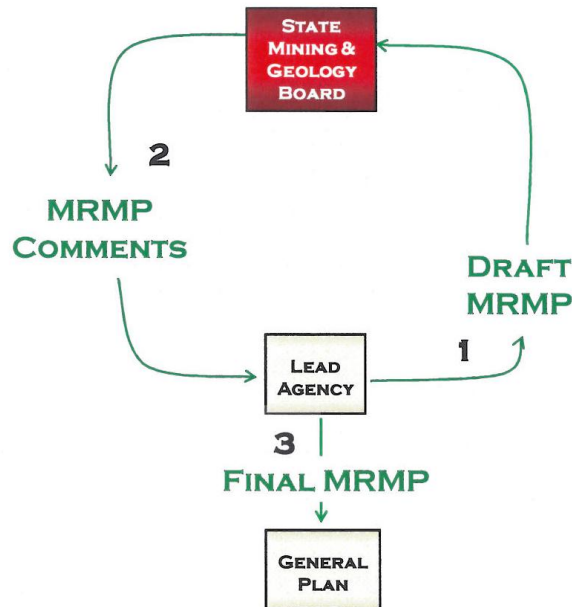


Figure 4. Flow diagram showing the review process for MRMP, the third link in the chain.

The number of MRMP lead agencies is currently unknown but must lie between 109 and 536. There is a complication however that effectively makes the number of MRMP lead agencies equal to the number of SMARA lead agencies (109). The Commission on State Mandates adopted a decision in 1985 that PRC Section 2762 constitutes a reimbursable mandate. As such local government is not required to implement any statute for which reimbursement is not provided. Because a reimbursement method is provided for lead agencies containing permitted mines (SMARA lead agencies), those must comply with PRC Section 2762 and incorporate MRMP into their general plans. Other lead agencies, even those containing SMGB designated mineral resources, might add MRMP at their discretion or might legally choose not to. This appears to be a

significant loophole in protecting identified mineral resources from incompatible development and assuring their future availability.

CEQA Review and Comment

CEQA Guidelines are found in California Administrative Code Section 15022-et seq. The act is complex and multifaceted, but from the perspective of the SMGB, any proposed amendments to a lead agency's general plan that impact mining or classified or designated mineral resources could raise issues of SMARA by that lead agency. If the negative environmental impact of the loss of those resources is not adequately addressed then the document is not in compliance with SMARA. The process for the review of CEQA documents is presented in Figure 5, the fourth link in the chain.

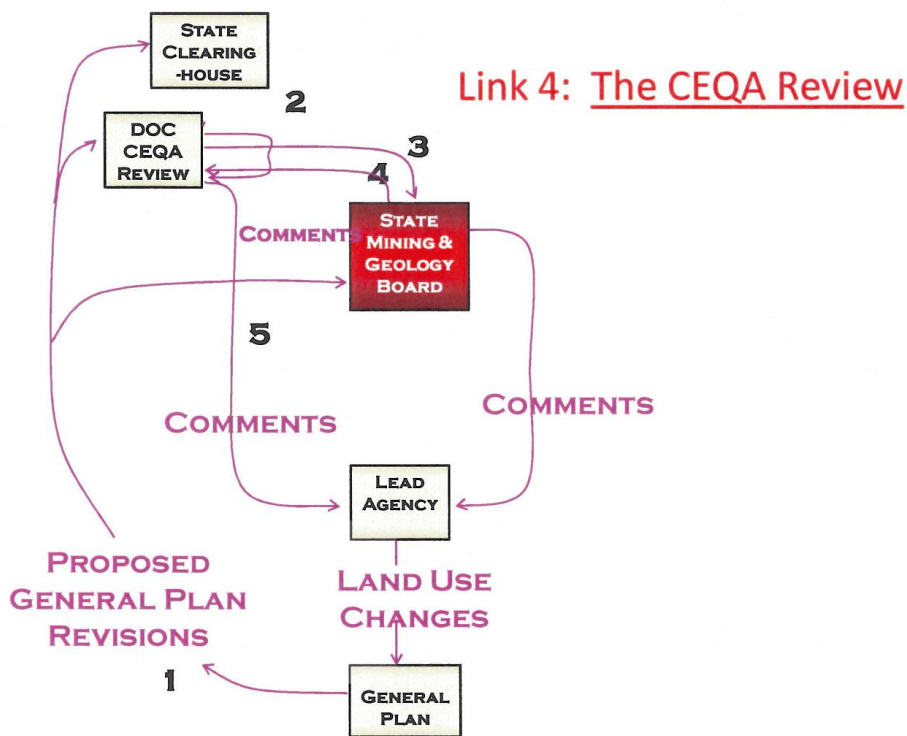


Figure 5. Flow diagram showing the process for review of CEQA documents, the fourth link in the chain.

Any of the 536 California lead agencies can produce a document triggering CEQA review, but only those from jurisdictions containing SMARA classified or designated

mineral resources are of interest to the SMGB under its review program. Thus the number of possible CEQA lead agencies is equal to the number of MRMP lead agencies, which is unknown.

ANALYSIS OF SPECIFIC PROGRAMS

The three interconnected review functions under the SMGB’s SMARA Mineral Resource Management Program are the natural follow-up activities that occur over time after the SMGB formally transmits mineral land classification reports to the affected lead agencies. Mining Ordinances establish formal local guidelines and processes that the lead agency uses to carry out the SMARA mandate. MRMP link the site-specific classification and designation data to the lead agency’s General Plan. The General Plan is the initial place most citizens will discover that mineral resources, other than those being actively mined, exist in their neighborhoods. The MRMP forces the lead agency to recognize mineral resource data provided by the State Geologist and the SMGB. CEQA review determines whether or not identified mineral resources are actually being protected by the Lead Agency for future generations.

An examination of SMGB records and archives beginning from the passage of SMARA in 1975 to the present was conducted to evaluate the status and effectiveness of each of the three review functions.

Mining Ordinances

Currently 116 lead agencies (55 counties and 62 cities) have mining ordinances certified by the SMGB as being in compliance with SMARA. The certification is always recognized by formal SMGB Resolution so is easy to track. Graphs showing the number of mining ordinances certified by the SMGB since 1981 are illustrated in Figures 6a and 6b.

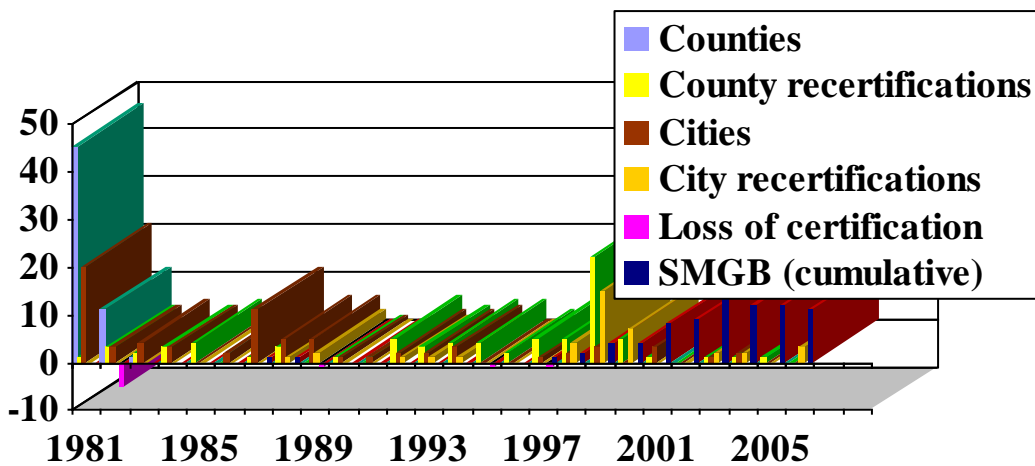


Figure 6a. Number of Ordinances certified per year.

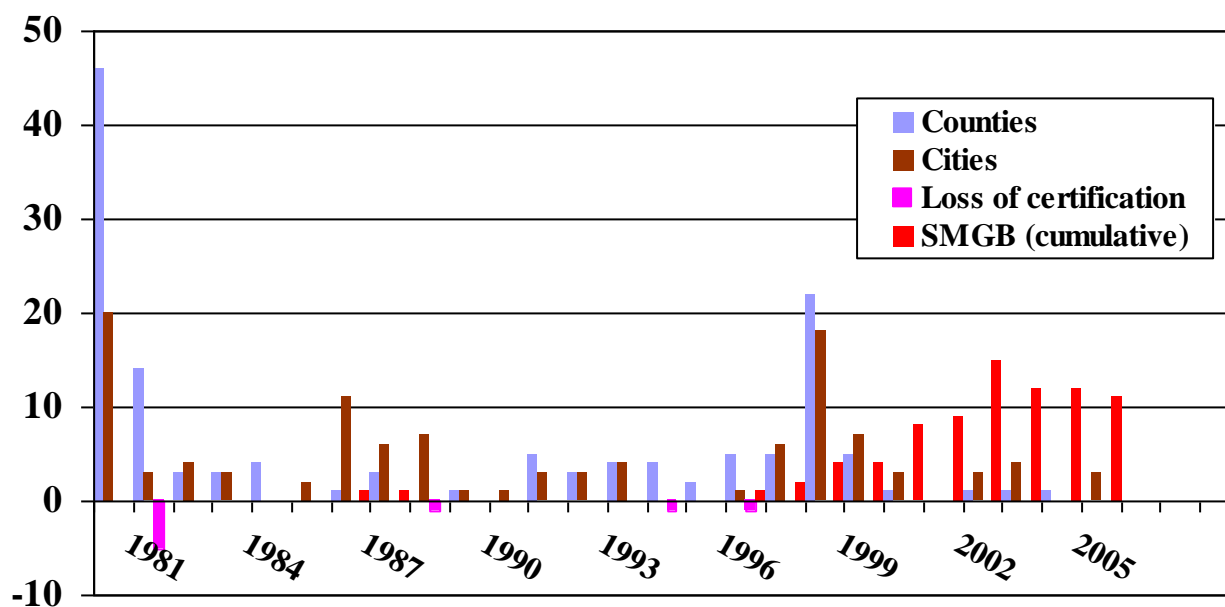


Figure 6b. Number of Ordinances certified per year.

Historically, since 1981, 57 counties and 74 cities have had SMGB-certified mining ordinances. Eight have had their ordinances decertified since that time. Five of these were decertified in 1982, and modification by the lead agencies allowed them to be recertified by the SMGB within a few years. County ordinances have been recertified 77 times, and city ordinances have been recertified 35 times. The majority of the recertifications took place between 1996 and 1999, after the SMGB adopted a Model Mining Ordinance in 1996. This model ordinance was a very successful tool to ensure implementation and appears to have been a great help to lead agencies. Cumulatively the SMGB has reviewed and certified a total of 243 mining ordinances over the past 25 years, for an average rate of 9.7 per year.

Out of 129 possible SMARA lead agencies, 116 have been certified by the SMGB as being in compliance with SMARA for a compliance rate of 90%. Because the SMGB is the lead agency for the remaining 12, and they operate under the certified Model Mining Ordinance, the compliance rate is effectively 100%.

Additions to SMARA pursuant to PRC 2774.3 required the SMGB to review and certify mining ordinances by January 1, 1982, and made many ordinances obsolete. The SMGB did adopt a new mining ordinance on May 9, 1996, which increased the role of the SMGB as a lead agency during the late 1990s and early 2000s. Currently, the SMGB serves as a lead agency for about 10 cities reflecting the absence of a mining ordinance for surface mining operations within their respective jurisdiction (Figure 7).

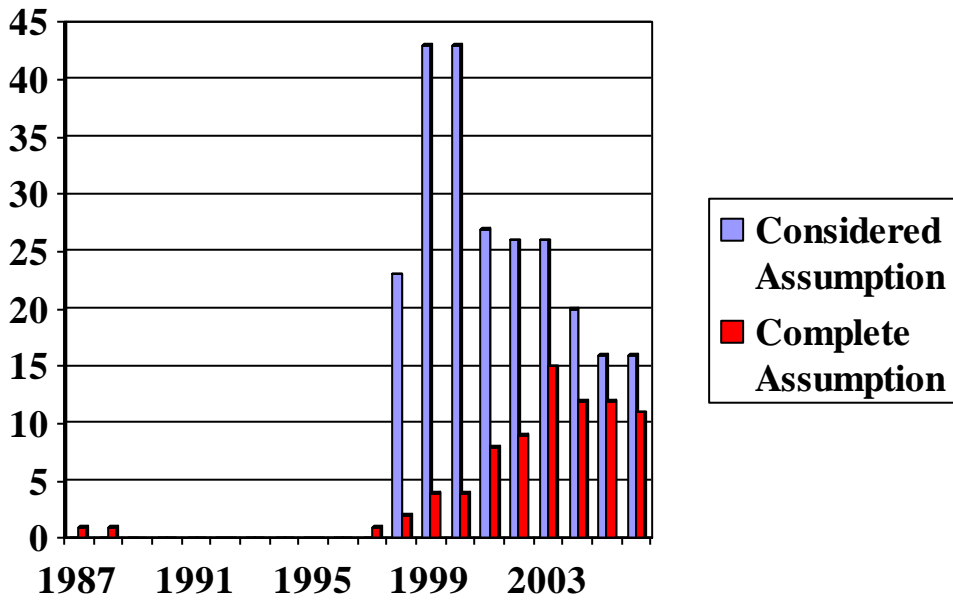


Figure 7. Assumption of Lead Agency responsibilities by the SMGB between 1987 and the present.

Mineral Resource Management Policies (MRMP)

SMGB records are sketchy with regard to MRMP. Since 1980 only 45 appear to have been reviewed, and of these, only 24 were recognized by the SMGB as being in compliance with SMARA, or an average of 1.7 MRMP have been reviewed per year and 0.9 MRMP recognized per year. The total number of MRMP recognized by the SMGB since 1980 is illustrated in Figure 8.

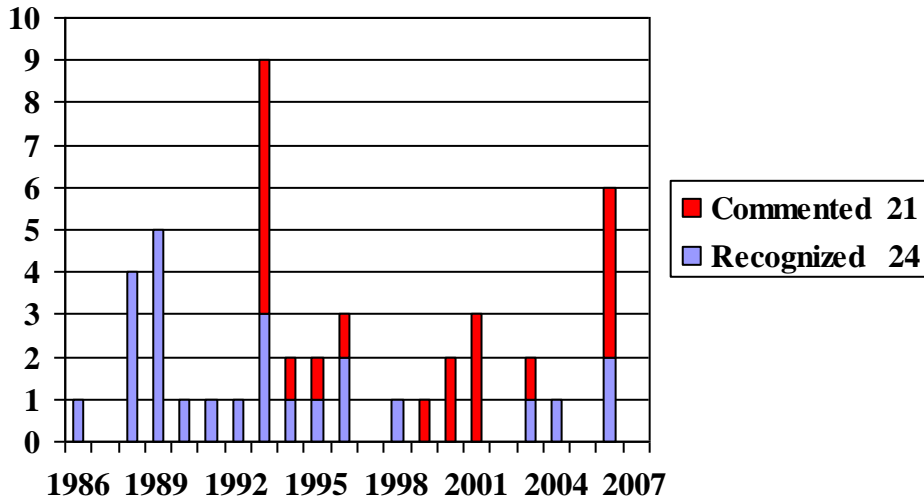


Figure 8. Total number of MRMP recognized by the SMGB since 1980.

There does not appear to be a consistent process for recognizing a lead agency's MRMP. In four cases it was done through formal SMGB Resolution and in 20 cases by letter from the Executive Officer. This adds to the difficulty in record keeping. There have been early versions of a "model MRMP" but there is no modern equivalent of the Model Mining Ordinance, which proved so effective in obtaining compliance by lead agencies. A problem that adds to the staff time needed to review draft MRMP is the wide variety of General Plan formats in use, with MRMP appearing in different places.

It seems likely that a greater number of MRMP than 24 must have been recognized, though that cannot be quantified without additional staff work. The ability to review MRMP appears to directly correlate with the availability of SMGB staff, being higher in years where the SMGB benefited through the addition of a loaned position from the Office of Mine Reclamation. Since the mid-1990s almost no review took place as SMGB staff time became dominated by tasks associated with lead agency assumptions.

Out of a minimum of at least 129 possible MRMP lead agencies, only 24 been recognized by the SMGB as being in compliance with SMARA for a compliance rate of 19%. If there are as many as 536 MRMP lead agencies, the compliance rate drops to 4%. Of the 45 MRMP reviewed, 24 were recognized and 21 were returned to lead agencies for further work. There is no record that any of these were modified and eventually recognized by the SMGB, so only 53% of the MRMP reviewed were satisfactory. From both perspectives the compliance rate and overall effectiveness is characterized as poor.

CEQA Review and Comment

With regard to SMARA mineral land classification, the CEQA review is a primary indicator of program effectiveness, for through this review a metric for determining the percentage of identified and designated mineral resources can be determined. While a lead agency is not prohibited from permitting incompatible land uses on designated lands, comprehensive and consistent CEQA review would indicate the percentage of mineral resources lost annually over time. Direct measurement of designated ground lost to urbanization is also possible using aerial photos and GIS technology. This was attempted by the California Geological Survey for selected regions of the state about ten years ago. The outcome of this effort does not appear to have been published.

The ability to conduct CEQA review is identical to the issues raised for MRMP review and appears to directly correlate with the availability of SMGB staff, being higher in years where the SMGB benefited through the addition of a loaned position from the Office of Mine Reclamation. CEQA review has been hard-hit by general fund reductions throughout the Department of Conservation (DOC). Within the SMGB, a total of 135 CEQA documents have been reviewed since 1992, for an average of about ten per year. Since 2002 SMGB staff reviewed a total of only five CEQA documents. Graphs illustrating the number of CEQA documents reviewed are presented in Figures 9 and 10.

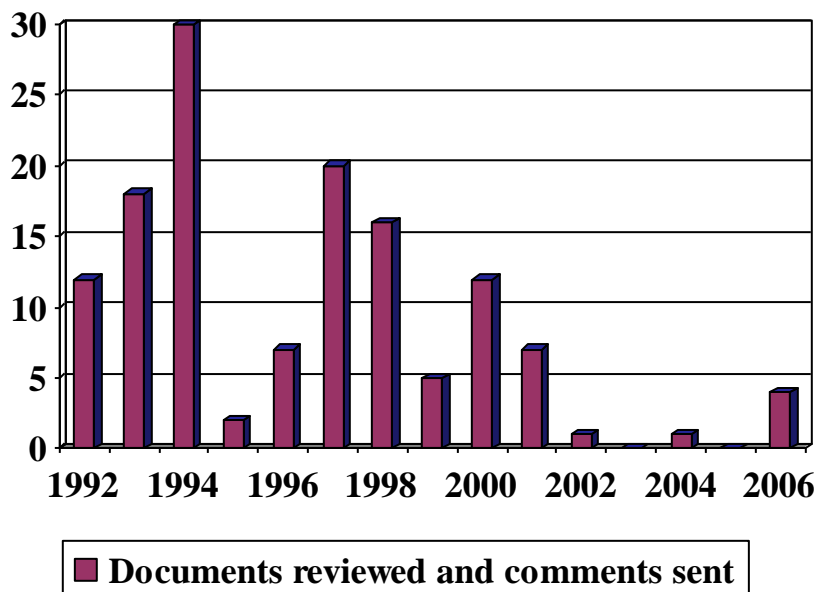


Figure 9. Graph showing that since 1992, 135 CEQA documents have been reviewed and commented on per year, averaging 10 CEQA documents per year.

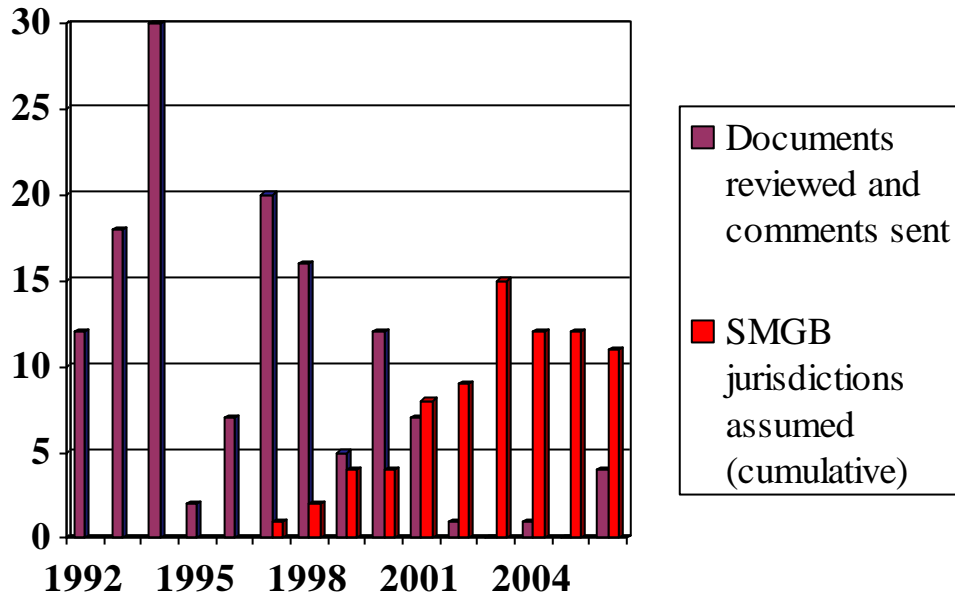


Figure 10. Graph showing the number of CEQA documents reviewed and commented on per year.

Effectiveness of CEQA Review

This is difficult to quantify, but in the most recent year of record, 2005, the State Clearinghouse processed 14,777 CEQA documents. From this total, DOC was a reviewing agency for 1,470 CEQA documents. It is not known how many of those 1,470 impacted mapped mineral resources, but it is likely that at least some, perhaps many, did. Yet in 2005, SMGB staff reviewed none. The effectiveness is characterized as very poor, and the program is for all practical purposes dormant.

REVIEW ISSUES CURRENTLY BEING ADDRESSED BY BOARD STAFF

A number of ongoing review program issues involving legal opinions, record keeping, interdepartmental coordination, and improved review tools for staff use became apparent during this analysis. They are, or will be, addressed directly by SMGB staff, and include:

- Obtain opinions from the Attorney General on the legality of selected issues. An example is the determination of how restrictive a lead agency can be regarding mining while still remaining in compliance with SMARA.
- Explore the possible need for legislative or regulatory change. (Standardization of MRMP locations in General Plan initial studies, Draft Environmental Impact

Reports (DEIRs) and Final Environmental Impact Reports (FEIRs) could increase review efficiency, as would the inclusion of negative consequences for lead agencies that ignore SMGB review or comments on MRMP).

- Improve SMGB files, logs, and record keeping.
- Develop and maintain a library of all lead-agency Mining Ordinances, MRMP, and CEQA reviews.
- Add a list to the SMGB website of all SMGB certified Mining Ordinances and MRMP.
- Evaluate methods of improving coordination of CEQA review within DOC.
- Determine the number of CEQA documents that need to be reviewed per year.
- Develop a CEQA review checklist for use of SMGB staff, in a manner similar to the checklist developed below but focused on CEQA issues.
- Develop a new MRMP review checklist for use by SMGB staff. A review checklist was in use for a short time in the early 1990's. It is being updated and revised to reflect current SMGB policy and used by reviewers to assure the SMGB of thorough and consistent application of review standards.

STAFF RECOMMENDATIONS

It is recommended that the Minerals and Geologic Resources Committee develop an aggressive program to be placed before the SMGB for its consideration that will establish a policy by which the SMGB will act in carrying out its responsibilities for mineral conservation under SMARA. It is also recommended that this program be integrated into the overall SMGB Strategic Plan, and that it harmonize with the mineral classification and designation policies of the SMGB.

Specific recommendations for consideration by the committee are provided in three categories: policy, tools, and research and review issues. Specific recommendations for consideration per issue include:

Policy Issue Recommendations for Consideration

- Develop a standard protocol and format for response and SMGB recognition. The SMGB could do this through formally adopted Resolutions or could authorize the Executive Officer to do this using a letter format.

- For MRMP not recognized by the SMGB, develop follow-up protocol. If mining ordinances are not certified for example, the SMGB can consider assumption of lead agency status. What consequences are there if MRMP are not recognized?
- Obtain policy clarification and review standards from the SMGB for MRMP and CEQA documents. Should different categories of mineral land classification require different standards of protection by lead agencies, for example?

Tools Issue Recommendations for Consideration

- Develop a new “Model MRMP” for lead agency use and distribute. This was a very effective tool in guiding lead agencies securing compliance with regard to mining ordinances.
- Support the DOC effort to develop a Geographical Information System (GIS)-based MRMP and CEQA review tool that would flag intersections of mineral resource data with specific lead agency jurisdictional boundaries:
 - Obtain or digitize lead-agency jurisdictional boundaries.
 - Obtain or digitize mineral land classification and designation boundaries.
 - Obtain or develop software and hardware to compare the two. This tool would greatly improve review efficiency and quality and would have broad application throughout the Department of Conservation.
- Consider developing lead-agency outreach and training. This could be through utilization of the SMGB website or through face-to-face training, perhaps in conjunction with training sessions currently provided to lead agencies by the Office of Mine Reclamation.

Research and Review Issue Recommendations for Consideration

- Determine the number of MRMP lead agencies. This would be much easier to perform using appropriate GIS technology than to perform manually.
- Contact each lead agency and request a copy of their current MRMP. This can be performed only after the MRMP lead agencies are identified.
- Review the MRMP from each lead agency. This is obvious but essential since only 24 lead agencies currently are known to have recognized MRMP. Until a GIS application is developed for use by the reviewer this will be a labor-intensive task.

- The SMGB could explore becoming an official Review Agency for selected documents and receive them directly from the State Clearinghouse. This would be more direct and save review time. It would ensure that all appropriate documents came to the SMGB.
- Re-evaluate the effectiveness of the Classification-Designation Program by requesting an update from CGS of the amount of designated land and land classified MRZ-2 that has been lost to uses incompatible with mining since its original transmittal to lead agencies. An update of the unpublished effectiveness study from the mid 1990's would be extremely useful.

CONCLUSIONS

The Mining Ordinance review and certification program is working well, with an effective compliance rate of 100%. The MRMP review and recognition program is not working well and the compliance rate, while not well documented, may be as low as 4% to 19%, which is unacceptable. The CEQA review and comment program within SMGB is currently dysfunctional and no documents were reviewed in 2005. If the latter two programs are to regain their effectiveness, significant changes are required. Recommendations for the consideration of the Minerals and Geologic Resources Committee of the SMGB have been provided.

APPENDIX A

Pertinent Statutory and Regulatory Requirements

PERTINENT STATUTORY REQUIREMENTS

Article 4. State Policy for the Reclamation of Mined Lands

PRC § 2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

§ 2763. (a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

PERTINENT SMGB's REGULATIONS

Article 6. Mineral Resource Management Policies

§ 3675. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

Compatible Land Use. Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

Incompatible Land Use. Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2761-2762, Public Resources Code.

HISTORY

1. New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).

§ 3676. Mineral Resource Management Policies.

Lead agency mineral resource management policies adopted pursuant to the provisions of PRC Section 2762 shall include but not be limited to, the following:

(a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of the identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the Board.

(b) Statements of policy in accordance with the provisions of PRC Section 2762(a).

(c) Implementation measures that shall include:

(1) Reference in the general plan of the location of identified mineral deposits, and a discussion of those areas targeted for conservation and possible future extraction by the lead agency.

(2) Use of overlay maps or inclusion of information on any appropriate planning maps to clearly delineate identified mineral deposits and those areas targeted by the lead agency for conservation and possible future extraction.

(3) At least one of the following:

(A) Use of special purpose overlay zones, mineral resource/open space zoning, or any other appropriate zoning that identifies the presence of identified mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.

(B) Record, on property titles in the affected mineral resource areas, a notice identifying the presence of identified mineral deposits.

(C) Impose conditions upon incompatible land uses in and surrounding areas containing identified mineral deposits for the purpose of mitigating the significant land use conflicts prior to approving a use that would otherwise be incompatible with mineral extraction.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2757 and 2761-63, Public Resources Code.

HISTORY

1. *New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).*