

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 10/10/2006
Department Name: P&D
Department No.: 053
Agenda Date: 10/24/2006
Placement: Departmental
Estimate Time: 30 minutes
Continued Item: NO
If Yes, date from:
Document File Name: G:\GROUP\Permitting\Case Files\Oa\2000s\06 cases\06ORD-00000-00013 SMARA\BoardHrngLtr102406.doc

TO: Board of Supervisors

FROM: John Baker, Director
Planning & Development

STAFF CONTACT: Zoraida Abresch (934-6585)
Deputy Director

SUBJECT: Hearing to consider a zoning ordinance text amendment to the Santa Barbara County Land Use and Development Code to allow an expedited permit process for Agricultural Soil Export Mining under the Surface Mining and Reclamation Act (SMARA).

Recommendation:

That the Board of Supervisors consider the recommendations of the County Planning Commission and:

- A. Find that this amendment is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA.
- B. Adopt findings for approval of the proposed amendment.
- C. Adopt an Ordinance (Case No. 06ORD-00000-00013) amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35 of the County Code.

Estimated hearing time: staff presentation 10 minutes; total time 30 minutes.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with Goal No. 1., *An Efficient Government Able to Respond Effectively to the Needs of the Community*, Goal No. 4., *A Community that is Economically Vital and Sustainable*, Goal No. 5., *A High Quality of Life for All Residents*, and is required by law or routine business necessity.

Executive Summary

This item is a proposed ordinance amendment to establish a streamlined permit process for approving the export of soil off agricultural properties that are found to benefit agriculture. Exporting soil from agricultural property where soil of 1,000 cubic yards or more is removed for commercial purposes it is considered a mining operation and requires compliance with State and County Surface Mining and

Reclamation Act requirements. These requirements and the County's existing permit process are geared toward traditional mining operations. This work effort provides a simpler permit process for agricultural soil export projects, as was directed by the Board of Supervisors in May of this year resulting from an appeal of a Stop Work Order.

Discussion

The Board "set hearing" letter (10/10/06) provided the background on this item. Since the letter was prepared, official comments have been received from the State Mining and Geology Board staff. They were asked to review the draft ordinance as well as the revised application form. Their comment letter is included as Attachment D. They had no comments or suggested changes to the ordinance. The only comments identified two minor inconsistencies in the streamlined application form which staff has corrected. Once final action is taken by the Board, staff will submit the final ordinance to the State Mining and Geology Board for their approval at the next available meeting (most likely in November). Upon their approval these revisions to the Land Use Development Code would go into effect on January 2, 2007. At that time staff will be able to accept applications for agricultural soil export mining under the streamlined process.

Minor changes were made to the draft ordinance based upon final comments from County Counsel. These are reflected in Attachment C.

Mandates and Service Levels: Amendments to Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35 of the County Code are legislative acts under the jurisdiction of the Board of Supervisors.

Fiscal and Facilities Impacts: Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-286 of the adopted Planning and Development Department's budget for fiscal year 2006-07. There are no facilities impacts.

Special Instructions: The Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Attention: Cintia Mendoza, Hearing Support.

Planning & Development will prepare all final action letters and notify all interested parties of the Board of Supervisors final action.

Concurrence: None.

Prepared by: Larry Appel, Supervising Planner (934-6261)

Attachments:

- A. Findings
- B. CEQA Notice of Exemption
- C. Draft Ordinance
- D. State Mining and Geology Board letter, dated 09/26/06

Attachment A – State Mines and Geology Board Letter, September 26, 2006

STATE OF CALIFORNIA, RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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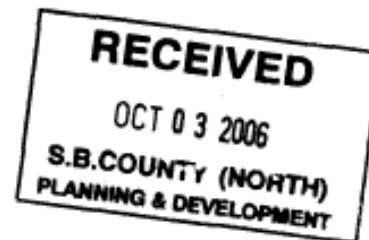
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September 26, 2006

Lawrence W. Appel
Supervising Planner,
SMARA Program Manager
County of Santa Barbara
Planning and Development
624 W. Foster Road, Suite C
Santa Maria, CA 93455-3623



**Re: Draft Amendment to Surface Mining and Reclamation Ordinance
and CUP & Reclamation Plan for Agricultural Soil Export**

Dear Mr. Appel:

Thank you for the opportunity to review Santa Barbara County's *Draft Amendment to Surface Mining and Reclamation Ordinance and Conditional Use Permit & Reclamation Plan for Agricultural Soil Export*. SMGB staff has completed its review of the proposed ordinance and model Conditional Use Permit (CUP) and reclamation plan for compliance with the Surface Mining and Reclamation Act (SMARA) and the SMGB's regulations. The following recommendations and suggestions are submitted for your consideration.

Ordinances

When draft ordinances are received for review, they are examined for: **Content, Clarity, and Conflict**. The review is conducted by the Executive Officer, one or more administrative and/or technical analysts from the Department of Conservation Office of Mine Reclamation (OMR), and the SMGB's legal counsel. If necessary, additional technical and legal advice may be sought from the California Geological Survey or from the Attorney General's Office.

Content: The ordinance is examined to determine if all SMARA requirements are addressed and contained within the ordinance.

Clarity: The contents of the ordinance are examined to determine if they are clearly stated or might be construed in more than one way, which might lead to later confusion.

Conflict: The contents are examined to determine that they are not in conflict with statute, nor are in conflict internally with other portions of the ordinance.

The Staff Review offers two types of review comments: **Recommendations** and **Suggestions**. These comments are not binding and are offered as a constructive service.

Recommendations are comments that should be followed if the ordinance is to be certified by the SMGB. These recommendations relate to serious omissions in content or statements in conflict with SMARA or the SMGB's Regulations.

Suggestions are comments that are made to improve the clarity of statements, usually by making them more complete or by offering references.

Ordinance

Your ordinance, taken as a "stand-alone" document, appears to be in compliance with SMARA and the SMGB's regulations. However, when the ordinance is compared to the Model *CUP & Reclamation Plan for Agricultural Soil Export*, there are two inconsistencies that may lead to confusion.

§35-320.2 – Definitions -- (Suggestion for clarity): In your proposed revised ordinance the definition of "Agricultural Soil Export Mining" places a limit of 75,000 cubic yards of soil that may be exported off site to qualify for the streamlined CUP & Reclamation Plan. In the model reclamation plan, however, on page 7, Section II B under "Statistical Information", there is a total production line for a volume between 50,000 and 100,000 cubic yards. If the maximum permissible limit for use of this form is 75,000 cubic yards, as specified by the ordinance, then this 100,000 cubic yard option is inconsistent and precludes use of the form. Whichever limit you select is within the discretion of the County, but this inconsistency should be corrected.

§35-320.8 (2e) – Findings for Approval, Reclamation Plans -- (Suggestion for clarity): In your proposed revised ordinance you state "Any Reclamation Plan for Agricultural Export Mining will reclaim the graded land solely for the purpose of agricultural activity, as defined in California Code of Regulations, Title 14, Section 3501." In the model reclamation plan, however, on page 4, Section I, under "Miscellaneous", the final bullet reads "Describe the proposed end use after grading has been completed. If agriculture, describe the type of crop(s) to be planted or how the property will be returned to grazing." The use of "If agriculture" implies that there are other possible end uses in addition to agriculture. The acceptable end use is within the discretion of the County, but this inconsistency should be corrected.

CUP & Reclamation Plan

Your Model *Conditional Use Permit and Reclamation Plan for Agricultural Soil Export* is obviously a blend of two documents intended to make it easier for users to comply with your new ordinance. As such, it contains much information not needed for review by the SMGB or OMR. Several items appear to be missing that would accelerate that review. These missing items include:

- A space to enter the California Mine ID Number (if one has been assigned);
- A space to enter the mine name;
- The estimated annual production of agricultural soil;
- A topographic map at a scale of 1"=100' to 1"=500' showing the final site configuration; and
- General Lead Agency Information, including:
 - a. Lead agency.
 - b. Staff contact.
 - c. Telephone number of staff contact.
 - d. Mailing address of staff contact.
 - e. Use permit number (if applicable).
 - f. Date permit was approved and/or amended.
 - g. Permit expiration date.

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A copy of the SMGB's Small Mine Reclamation Plan Prototype, which contains all the elements needed for a complete plan, is attached for your convenience. It is also accessible electronically on the SMGB's website at <http://www.consrv.ca.gov/SMGB/guidelines/PROTOTY.htm>.

Please provide the SMGB a copy of the revised ordinance and the *CUP & Reclamation Plan for Agricultural Soil Export* once the changes have been incorporated. Upon incorporation of these changes into the City's ordinance and their adoption by the City, we would be pleased to place the ordinance before the SMGB Mineral and Geologic Resources Committee for its review and recommendation to the SMGB for State recognition.

For reference, the current Surface Mining and Reclamation Act statutes can be accessed on line at www.conservation.ca.gov/omr/smara/index.htm.

Thank you for your patience during this review process. Please do not hesitate to contact us should you have any questions regarding the continuing process.

Sincerely,



David J. Beeby
Supervising Geologist



Stephen M. Testa
Executive Officer

Appel, Larry

Subject: RE: SMARA as it applies to Ag

----- Original Message -----

From: colab@utech.net

To: Baker, John ; John McInnes

Cc: Joni Gray ; Centeno, Joe ; brooks@firestonewine.com ; Boysen, Jack ; David Smyser

Sent: Friday, September 15, 2006 3:48 PM

Subject: SMARA as it applies to Ag

At yesterday's AAC meeting I spoke to the issue of SMARA permits as they are proposed to apply to ag operations. As I stated, it is COLAB's view that a much simpler approach to this issue is warranted to be to be consistent with the current grading ordinance which recognizes the SMARA exemption for agricultural grading.

As we have proposed, in deference to the mining operations in this county, we agree that selling material hauled off from an ag zoned property that exceeds the thresholds in SMARA does trigger the provisions of SMARA if the sole purpose, intent and result of the operation is simply a commercial sale of the material being transported.

However, we believe that if the County Ag Commissioner or the Soil Conservation Service can attest that the grading project and subsequent removal of the material off-site will serve to enhance actual farming operations on the site and there is a demonstrated commitment to farm the property in question- then the farming exemption in SMARA should apply.

We feel this simply approach ought to clear up the controversy.

Planning and Development Director John Baker asked for our legal opinion on this:

Per your request, the definition of "agricultural activity" is found within section 3501 of the public resources code (aka "SMARA," the surface mining and reclamation act). It states the following:

"Agricultural Activity. The cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incidental to or in conjunction with those farming operations, including preparation of these products for market."

Further, section 2714(a) of the Act (which specifies numerous "Exemptions") states specifically that:

" This chapter (i.e. the entirety of the Act) does not apply to any of the following activities: Excavations or grading conducted for farming [note, this does NOT state "onsite farming"] or onsite construction [note: this DOES apply to "onsite construction," a fact which implies the legislature's intent to specifically exempt on or off site farming"] or for the purpose of restoring land following a flood or natural disaster."

The only conceivable limitation of the above section is found in section 3505(3) of the Act (the "Special Provisions" section) which clarifies the above exemption by stating:

"The excavation, grading, or transportation of mineral materials, including overburden, exclusive of commercial surface mining activities. . .that is wholly integral and necessary to the conduct of agricultural activities either onsite or on non-contiguous parcels, shall meet the requirements of Public Resources Code Section 2714(a) for farming excavations or grading. This exemption does not apply to the exportation of mineral materials, including overburden, from the property that is in excess of 1,000 cubic yards FOR COMMERCIAL PURPOSES."

The term "commercial purposes" is not defined in the Act, however, there are many references to "commercial purposes" equating to the "sale of earthen material." Therefore, it is not the 1,000 cubic yards that is the triggering mechanism; again, it is the INTENT/PURPOSE of the removal of material which triggers the Act. In other words, a farmer is wholly exempt if he is removing ANY amount of dirt from a field so that he can farm the field. He is NOT exempt ONLY if he is moving over 1,000 cubic yards from the field if he is doing so SIMPLY TO SELL THE DIRT.

10/9/2006