

The Application of SMARA to Surface Mining Operations Relative to Timber Harvest and Forest Management Activities

When rock materials are needed to facilitate road surfacing or erosion control work relative to timber operations and forest management activities, the question of how the source areas are to be managed may become an issue. To appropriately address the sites during the preparation and review of Timber Harvest Plans (THP) and other forest management activities, the location of the mineral resource must be considered, and the agency primarily responsible for overseeing the site and the strategy to be applied in reclamation needs to be resolved. The identification of the rock source and the approvals necessary should be resolved early in the THP preparation process.

Surface Mining and the Lead Agency System

The Surface Mining and Reclamation Act (SMARA) defines mining to include the removal of overburden and excavation directly from a mineral deposit, or the open-pit excavation of minerals that are naturally exposed. Borrow pitting, streambed skimming, and segregation and stockpiling mined materials (and recovery of same), all are deemed to be surface mining operations. According to SMARA, surface mining activities may include the surface, subsurface, and ground water of an area in which surface mining operations are conducted, including private ways and roads appurtenant to the area, and any land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, the surface mining operations are located.¹

The state agencies that implement SMARA are the Department of Conservation (DOC)'s Office of Mine Reclamation (OMR) and the State Mining and Geology Board (SMGB). However, at the local level, California employs a "lead agency" system to regulate surface mining activities. The lead agency responsible for regulating mining, relative to timber harvesting activities, is generally the local County Planning Department.² Each county in California and many city governments exercise local control over surface mining activities.³

In 1995, SMARA was amended to exempt certain surface mining activities that occur in conjunction with timber harvest operations on non-federal land.⁴ These exemptions allowed some sites, that meet specific criteria, to be exempted from regulation under SMARA and the lead agency system, and instead to be regulated by the California Department of Forestry and Fire Protection (CDF).⁵

Size, Location and Utilization Criteria

The following questions should be asked of surface mining operations during the preparation and approval of a THP or associated forest management activities:

¹ SMARA Section 2735 and 2729

² THP preparation with SMARA regulated rock sources commonly occur within-but are not limited to-Humboldt, Del Norte, Mendocino, Sonoma, Marin, San Mateo and Santa Cruz County, and other mountainous counties in California.

³ SMARA is also applicable on federally owned land within California. The State has signed Memorandums of Understanding with the USFS and BLM so that SMARA standards are met.

⁴ Chapter 680, Statutes of 1995

⁵ SMARA 2714(j)

- Does the area disturbed by mining exceed one acre in size or has more than 1000 cubic yards per location been mined?⁶
- Is the excavation or grading done for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management (not sold for commercial purposes) on land owned by the same person or entity?
- Does the footprint of surface mining disturbance fall within 100 feet of a Class 1 Watercourse or 75 feet of a Class 2 Watercourse?⁷

SMARA or CDF Jurisdiction?

If the disturbed area exceeds one acre in size or the cumulative volume of material mined exceeds 1,000 cubic yards per location, the site meets the threshold criteria as a surface mine.

If the footprint of the area disturbed by surface mining falls within 100 feet of a Class 1 Watercourse or within 75 feet of a Class 2 Watercourse, or if the rock source is not exclusively used for timber harvest operations on the same property ownership, the surface mining activities are regulated in accordance with SMARA, usually by the local lead agency.

If the disturbance does not cumulatively reach the 1,000 cubic yard or one-acre threshold, the activity is not regulated as a mining activity by either a SMARA lead agency or by CDF, regardless of its location relative to a watercourse.

The site is exempt from SMARA where the excavation and grading is done exclusively for obtaining materials for timber harvest roads or forest management activities, and if the footprint of surface mining disturbance is further than 100 feet away from any Class 1 Watercourse or 75 feet away from any Class 2 Watercourse. The mining site must also be situated on land owned by the same person or entity that is conducting the timber operations or forest management activities. These sites are exempted from SMARA and exclusively subject to CDF jurisdiction and regulated under the Forest Practices Act. However, if any part of the mining disturbance also falls within the stipulated stream buffer, or any portion of the material produced at the site is used for commercial purposes, the mining activities are subject to SMARA.

Management Strategy

If an activity is defined in SMARA as a surface mining operation and isn't exempt under the definitions in SMARA and the Forest Practice Rules, the SMARA lead agency should be notified by the project proponent or agent during the course of the THP preparation process. The project proponent or agent should advise the SMARA lead agency and CDF of any mining activity relative to their individual THP or forest management activity.

- Lead agencies are charged with the regulation of mining activities within their local jurisdictions, with DOC acting as an oversight agency both for enforcement and technical help. Generally, the approval of a mining operation by a lead agency is subject to a

⁶ SMARA Section 2714(d)

⁷ Stream Classes are defined in the Forest Practice Rules, CCR Sections 916.5, 936.5 and 956.5

permit⁸ and both the permit and reclamation plan approval must be reviewed by the lead agency as a project under the California Environmental Quality Act. In the process of preparing the THP, it should be realized that these provisions must be in place before the site may be utilized.

- Using the directives provided in SMARA, the lead agency's mining ordinance, which must be certified by the SMGB, governs the mining and reclamation activities. Usually the local mining ordinance parallels the standards set forth by the State Mining and Geology Board in SMARA and the California Code of Regulations (CCR)⁹, however the ordinance may also set standards more stringent than the minimum state regulations.¹⁰
- In order to comply with SMARA, all requirements for reclaiming a surface mine that have been adopted in the local mining ordinance must be included in the reclamation plan and applied at the site. If a reclamation plan is (or was) approved after 1993, minimum standards for backfilling and grading, resoiling, slope stability, revegetation, and stream protection are required to be met.¹¹ Because local mining ordinances are allowed to have more stringent requirements than the CCR, it is prudent to be aware of the county standards. It can also be helpful to contact the County Planning Department to determine site's status, and to investigate the specific requirements of the reclamation plan. OMR can also supply this information.
- The lead agency must initially determine whether either the one-acre or 1000 cubic yard SMARA threshold has been exceeded. The thresholds are considered to be cumulative over the life of the surface mining activity, beginning at the time of the institution of SMARA in 1976. The lead agency must also determine whether or not the site is used exclusively for the purpose of timber harvest on a single landholding, or alternatively, if the material will enter and compete in the commercial aggregate market.

If an activity is exempt under the criteria specified in SMARA, and reflected in the provisions of the Forest Practice Rules, the project proponent, in consultation with CDF, must apply specified SMARA standards in their operations, as follows:

- Cut slopes, including final highwalls and quarry faces, must have a minimum slope stability factor of safety that is suitable for the proposed end use and conform to the surrounding topography and/or approved end use.¹²
- Surface runoff and drainage from surface mining activities must be controlled by berms, silt fences, sediment ponds, revegetation, hay bales, or other erosion control measures, to

⁸If an operation began prior to January 1, 1976, when SMARA went into effect, a vested right may have been established. In this case, no permit, or no additional permit other than that held at the time the site was granted vested status, may be needed other than the approval of a reclamation plan pursuant to SMARA.

⁹ Title 14, Chapter 8, Article 1, Section 3500 *et seq.*; Article 9, Section 3700 *et seq.*

¹⁰ For example, Mendocino County's Mining Ordinance also cites that any surface mining within 50 feet of a Class 3 Watercourse is also subject to SMARA and non-exempt. However, while SMARA allows local land uses to be more stringent, it is currently debated in the courts whether or not local regulations more restrictive than those regulations cited in the Forest Practices Act may be applied to forest management activities.

¹¹ Article 9 CCR Section 3700 *et seq.*, Reclamation Standards

¹² CCR Section 3704(f)

ensure that surrounding land and water resources are protected from erosion, gulying, sedimentation and contamination. Erosion control methods must be designed to handle runoff from not less than the 20-year/one hour intensity storm event.¹³

- Upon closure of any SMARA-exempt timber harvest rock source site, the person closing the site must implement revegetation measures and post-closure uses.¹⁴

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¹³ CCR Section 3706(d)

¹⁴ SMARA Section 2714(j)(2)