



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

COUNTY STRENGTHENS OVERSIGHT OF MINES

Introduction

The decision of the 2006-07 Santa Clara County Civil Grand Jury to monitor Santa Clara County's oversight of mining operations stemmed from complaints by a group of Los Gatos residents whose homes abut the Lexington Quarry. They asserted that the County has continually failed to enforce the State mining law, at the heart of which is a mandate that all mining operations have a permit, a reclamation plan, and financial assurances to implement the planned reclamation. On April 19, 2006, the State Mining and Geology Board (Board), an arm of the Resources Agency Division within the State Department of Conservation, issued a "45-Day Notice to Correct Deficiencies" directing the County to remedy its lax scrutiny of the nine mines under its jurisdiction.

On September 14, 2006, at the Board's regularly scheduled meeting, the Los Gatos residents requested the Board assume lead agency responsibility, a step permitted when local governments fail to enforce the State mining law. In turn, the County assured the Board of its commitment by submitting an aggressive mine inspection program it installed upon receipt of the State's "45-Day Notice to Correct Deficiencies." Rather than take over the lead agency role, the Board gave the County one year to strengthen its mine oversight, address the concerns of the residents, and provide the Board with a progress report in March, 2007. Since the Board's September, 2006 meeting, the County has assembled a team knowledgeable in mining operations, completed an aggressive inspection schedule for all nine mines, met regularly with the residents, and prepared a six-month progress report for the Board.

Discussion

The Grand Jury focused this inquiry on the County's compliance with the Surface Mining and Reclamation Act of 1975 (SMARA; Public Resources Code § 2710 et seq.). The purpose of SMARA is to assure that adverse environmental effects are prevented or minimized; that mined lands are reclaimed to a usable condition; that the production and conservation of minerals are encouraged while giving consideration to recreational, ecological and aesthetic values; and that residual hazards to the public health and safety are eliminated (§ 2712). To ensure compliance, SMARA requires all mining operators, where their operations are not deemed vested prior to the statute's January 1, 1976 effective date, to obtain a Use Permit, a Reclamation Plan, and post financial assurances showing their ability to pay for reclamation (§§ 2770, 2776).

Locally, the County has primary responsibility to ensure that the operation and reclamation of the mines within its boundaries conform with SMARA. However, the Board may assume stewardship of mine oversight if it finds the local agency is not meeting its duties under SMARA (§ 2774.4).

Currently, there are nine mining operations for which the County has oversight responsibility, namely, Azevedo, Calaveras, Curtner, Freeman, Hansen Permanente, Lexington, Polak, Serpa, and Stevens Creek. All nine mines have Reclamation Plans, procedures for salvaging the land once mining operations have ceased and have posted financial assurances evidencing the ability to pay for such reclamation. Some of the mines are also regulated by Conditional Use Permits, a County mandate for land used in any way that is not an explicit property right.

At the Board's regularly scheduled September 14, 2006 meeting, Los Gatos residents who live near the Lexington mine asserted the County was failing to implement SMARA and asked the Board to take lead agency responsibility for that mine. The County assured the Board of its commitment and reported on steps already taken to meet its mandate under SMARA and cure the defects identified in the "45-Day Notice to Correct Deficiencies" issued by the Board on April 19, 2006. The Board decided it would revisit the issue in one year, during which it would leave governance of the mines, including Lexington, with the County. During that year, the Board directed the County to address the issues raised by the residents and to submit a progress report in March, 2007.

In response to the Board's directive, the County retained outside SMARA geology experts as consultants; staffed an internal team of personnel with particular knowledge and training relative to SMARA enforcement; appointed a member to meet bimonthly with the Los Gatos residents; met with each of the mine operators; set an aggressive inspection schedule for all nine mines; completed extensive inspections of all mines, inspecting some twice; lifted the previous cap on fees so inspections could be thorough while the cost of inspections and Reclamation Plan modifications would be fully recouped; and prepared its six-month progress report for the Board's March 8, 2007 meeting.

Desiring more time to review the County's six-month progress and detailed inspection reports, the Board decided to agendaize its review of those reports at a later regularly scheduled Board meeting.

Conclusion

The County has honored its commitment to aggressively enforce SMARA and continues to take steps to address the concerns of the Board and the public. Indeed, the County has already commenced a long-term program budget to make the SMARA documentation electronic, provide further SMARA training for staff, and improve communication with State agencies.

Bibliography

California State Mining and Geology Board *Conformed Minutes* Regular Meeting, September 14, 2006.

California State Mining and Geology Board correspondence from Los Gatos residents, January 12, 2006.

California State Mining and Geology Board Executive Officer's Report entitled *Review of the 45-day Notice to Correct Deficiencies*, July 13, 2006. Issued by the Board and sent to Santa Clara County, April 19, 2006.

Santa Clara County SMARA Enhancement Program, August 31, 2006.

Santa Clara County, Office of Planning and Development *Status Report Regarding the Implementation of the Santa Clara County SMARA Inspection Program*, February 26, 2007.

Interviews and Appearances

September 14, 2006 Attended California State Mining and Geology Board Meeting, San Jose, CA.

February 14, 2007 Toured Lexington Quarry, Los Gatos, CA.

February 23, 2007 Interviewed County Official, Department of Planning and Development.

March 8, 2007 Attended California State Mining and Geology Board Meeting, San Jose, CA.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 27th day of March 2007.

Ronald R. Layman
Foreperson

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary