



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 02/24/04

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM WS-3

**TO:** Mayor and City Council  
**FROM:** Director of Community and Economic Development  
**SUBJECT:** Surface Mining and Reclamation Act (SMARA) Ordinance

**RECOMMENDATION:**

It is recommended that the City Council review and comment on this report.

**BACKGROUND:**

In July of last year, unincorporated properties in the Mission-Garin area were rezoned and an annexation application was submitted to the Alameda Local Agency Formation Commission (LAFCO). Action on that application by LAFCO is expected later this year, pending finalization of a City-County tax-sharing agreement.

One of the uses in the area is the La Vista Quarry and a related asphalt batch plant. This operation is currently regulated by the County's Surface Mining Ordinance and the State Surface Mining and Reclamation Act (SMARA), with Alameda County serving as the SMARA lead agency and permitting authority. As the SMARA lead agency, the County is responsible for ensuring that reclamation of the land is completed, conducting annual inspections, reviewing annual reports from the mining operator and verifying that there exist sufficient financial assurances to ensure reclamation will be done. As the permitting authority, the County oversees enforcement of their ordinance and ensures compliance with the Quarry's surface mining permit conditions. Currently, the Quarry and batch plant operate under a County surface mining permit (SMP 37) issued in 2000 that expires at the end of 2008, at which time all reclamation is required to be finished. However, the operators of the La Vista Quarry have indicated that they may seek to obtain a new surface mining permit from the County later this year that would allow operations to continue for several more years.

If the La Vista Quarry lands are annexed into the City of Hayward, Hayward would serve as the SMARA lead agency. Under State law, to serve as lead agency, Hayward must have a SMARA ordinance that is certified by the State Mining and Geology Board. If Hayward does not have its own SMARA ordinance, the State's Office of Mine Reclamation would perform SMARA lead agency duties.

If the La Vista Quarry is annexed, the County permit in effect at that time would be applicable and the City, serving as the SMARA lead agency, would ensure operations complied with the terms of that permit and would perform other SMARA lead agency duties. However, if the La Vista Quarry operators wanted to expand or make changes to their operation after annexation, the City would be responsible for reviewing such changes and establishing new permit conditions.

In order to have SMARA lead agency authority over the La Vista Quarry if it is annexed, staff is recommending that the City adopt its own SMARA ordinance.

## **DISCUSSION:**

Many of the SMARA lead agencies throughout the State, including the three SMARA lead agencies in Alameda County (Alameda County, Oakland and Fremont), have ordinances that are similar to the State's model SMARA ordinance. The major components of the State model ordinance are summarized below.

Basic Requirements: This section indicates that a permit, reclamation plan and financial assurances are required to be approved by the lead agency prior to a surface mining operation being conducted. Some lead agencies require a special mining permit (like Alameda County), while other agencies (like Fremont) require a conditional use permit. Staff is recommending that a conditional use permit be required in the Hayward ordinance, so that the conditional use permit provisions of the Hayward Zoning Ordinance can be utilized (e.g., appeals, findings, etc.).

Exceptions: This section lists activities that are exempt from SMARA, such as grading associated with an approved project/permit, or operation of an asphalt batch plant located on lands designated in the lead agency's general plan and zoning ordinance as industrial or commercial where reclamation is completed and no on-site extraction is occurring.

Vested Rights: The State's model ordinance includes a provision stating operations that pre-date the effective date of SMARA (January 1, 1976) are not required to have a permit, and are only required to have reclamation plans for mining that occurs after that date. Since the La Vista Quarry operates under a permit issued by the County under SMARA, this section related to vested rights is not required for Hayward's ordinance. However, staff is recommending that a section be included in the Hayward ordinance that addresses the situation of the La Vista Quarry were it to be annexed to the City, recognizing the validity of any permit and reclamation plan approved by the County, provided operations continue in compliance with such permit and approvals.

Process: This section of the State model ordinance outlines the basic procedure for processing a permit and/or reclamation plan application, with the Planning Commission identified as the approving authority (similar to Alameda County and Fremont). Staff is recommending that the City Council serve as the approving authority (like Oakland), with the Planning Commission serving as the recommending body. The model ordinance and SMARA also require that the lead agency certify to the State Department of Conservation that any approved reclamation plan and financial assurance complies with SMARA and require the lead agency to forward any such reclamation plan and financial assurance to the State for review. The model ordinance requires mining operators to forward an annual report to the State Department of Conservation and to the lead agency.

Standards for Reclamation: The model ordinance essentially references sections in the State law that pertain to reclamation plans, including those related to reclamation performance standards. Additional performance standards, determined to be necessary as part of the permit review process, could be added as conditions of the use permit approval.

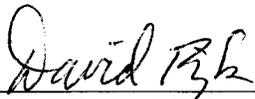
Inspections: Lead agencies are required by SMARA to conduct at least one inspection of a surface mining operation annually, and within six months of receiving the required annual report from the operator. Many agencies, such as Fremont, hire professionals to conduct such inspections. All costs associated with such inspections, as stated in the model ordinance and SMARA, are borne by the operator.

Fees: As allowed by SMARA, all costs incurred in implementing the lead agency's ordinance and the State SMARA regulations are to be borne by the operator. As the model ordinance indicates, such costs include, but are not limited to those associated with processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Hayward will need to amend its fee schedule to include such fees.

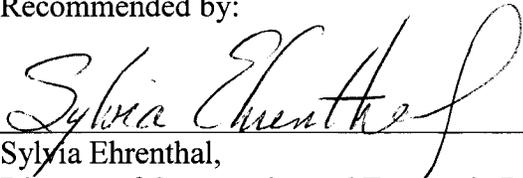
**NEXT STEPS:**

City staff proposes to meet with the operators of the La Vista Quarry to discuss issues associated with a draft SMARA ordinance for Hayward. Following these discussions, a draft ordinance is proposed to be presented to the State for review and comment. This referral is important as the State must determine compliance with State requirements. Thereafter, staff proposes to present a draft ordinance to the Planning Commission and City Council for review and consideration. After adoption, Hayward's SMARA ordinance will be routed to the State Mining and Geology Board for final action and certification.

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