



August 20, 2024

GIS, Environmental, & Engineering Services

72400

Honorable Chairman O'Brien and Members
Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460

**RE: Forest Practice Rule Implementation and Effectiveness
Complications with Surface Mining and Reclamation Act (SMARA) Requirements**

Honorable Chairman and Members:

Thank you for the opportunity to provide feedback regarding Forest Practice Rule implementation and effectiveness. These comments specifically address a small area of Forest Practice Rules interpretation, but one that continues to result in unnecessary frustration and duplication of effort by a select portion of the public; specifically, the Board's interpretation and Cal Fire's implementation of the Timberland Conversion Permits and Timber Harvest Plans associated with mining sites with approved Mining and Reclamation Plans prepared pursuant to the Surface Mining and Reclamation Act of 1976 (SMARA). I have attempted to breach this issue multiple times previously through Cal Fire but to no resolution.

VESTRA is a regional environmental compliance services firm located in Redding, California. One of our areas of expertise is mine site compliance and permitting.

Background

Mines in California are permitted for operation through individual county Use Permits and SMARA requirements administered by the counties and the Division of Mine Reclamation, under the Department of Conservation. Each mine must prepare a Mining and Reclamation Plan to outline how over time the product will be extracted and how the site will be reclaimed following product removal. The plans are very specific and include detailed requirements for mining progression, stormwater management, erosion control, human safety, environmental safety, and final reclamation of the site to pre-mining conditions. In addition, each site undergoes full CEQA review required for obtaining the necessary permits for operation, which includes input from all responsible agencies. The permits generally required prior to operation include: Use Permit (County), Industrial General Stormwater permit (Regional Water Quality Control Board), and Authority to Construct and Operate (Local Air Quality Management District).

Mines normally operate for a 30- to 50-year period prior to reclamation. Reclamation is focused on restoring the mine to pre-mining conditions, although other options can be approved. In cases where the mines are located on property with a timber component, and timber was removed to mine, reclamation is almost always restoration of the mine to a forest ecosystem similar to the one removed prior to mining. The Mining and Reclamation Plan includes detailed specifications on planting media, plant type, seed sources, herbicide applications, and performance success.

Approximately 10 years ago, Cal Fire, as a responsible agency under CEQA, began requiring the mine owners in situations where timber is to be removed to also file a Timberland Conversion Permit. This requirement came about during Cal Fire CEQA review of the documents. CEQA review is initiated by the lead agency (generally, the County for the Use Permit application), and mine sites typically are approved with an Environmental Impact Report or Mitigated Negative Declaration depending on the site and impacts anticipated.

Because the mine site is covered by a Reclamation Plan and the reclaimed use of the site is timber, the “conversion” would be temporary in nature, albeit longer than the reforestation requirements of a Timber Harvest Plan. The Cal Fire argument was related to the fact that the mining operation essentially removed the use of timber for a long enough period of time as to be moot, regardless of whether the proposed reclamation was planting of trees. This was not a huge complication, as initially Cal Fire stated that if the trees were not merchandized, no Timber Harvest Plan was required.

More recently, Cal Fire has taken the position that a Timber Harvest Plan is required for any timber removal. This makes no sense since the removal of the timber and future replanting were covered under the SMARA Reclamation Plan and underwent full CEQA review. I appreciate that the Timber Harvest Plan serves as a the “functional equivalent of CEQA” for timber harvest, but in the case of the SMARA Reclamation Plan, all of the appropriate reviews were already completed. It is impossible for the mine to meet the reforestation requirements of the Forest Practice Rules as well as many other conditions specific to the short-term impacts anticipated in the Timber Harvest Plan.

The mining entity would be required to obtain a Timber Harvest Plan and renew it every 5 years for 30 to 50 years, or to prepare a specific Timber Harvest Plan every 5 to 10 years to remove small blocks of timber, neither of which is reasonable nor necessary. In general, mining moves gradually across a landscape, opening a new area when an old area is reclaimed in lieu of clear cutting and converting large blocks of ground over time.

Many mine sites are actually zoned *Mineral Resource* (MR) or *Timber Production – Mineral Resource* (TP-MR). Some are actually zoned *Timberland Production Zone* (TPZ) with mining allowed by code. The actual use of the site does not change simply the duration of time between harvest and reclamation.

Problem Summary

- The conversion is temporary; therefore, there is not a permanent conversion of use. In fact, there is no change in use as zoning remains the same, so the land is not commercialized in the conversion.
- The Timber Harvest Plan is duplicative of the SMARA process that includes the Mining and Reclamation Plan which undergoes CEQA and agency review and approval.
- The Timber Harvest Plan is not necessary as a functional equivalent of CEQA, as the CEQA process and review were completed for the Use Permit approval.

- The stocking requirements of the Timber Harvest Plan are met through the Mining and Reclamation Plan and cannot be met on the timeline of the Timber Harvest Plan.
- Stream redirection management and restoration are covered under the Mining and Reclamation Plan.
- Erosion and sediment control is covered under the Mining and Reclamation Plan, and the Notice of Intent and Stormwater Pollution Prevention Plan (SWPPP) associated with the *General Permit for Stormwater Discharges Associated with Industrial Facilities*.

Proposed Solution

The proposed solution would be to eliminate the requirements for a Timberland Conversion Permit and preparation of the Timber Harvest Plan for sites covered by a SMARA Mining and Reclamation Plan approved by a County that has undergone CEQA review.

I am happy to work with the Board or Board Staff to develop the solution and am available to discuss this subject in more detail with the board at a future meeting. This currently is affecting five or six mine sites in Northern California.

Thank you for your time and consideration. Contact me to discuss further at 530-223-2585.

Sincerely,

VESTRA Resources, Inc.



Wendy Johnston
Vice President

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