

**ORDINANCE ADOPTING REVISED SMARA ORDINANCES,  
WITH ORDINANCES ATTACHED:  
INLAND (SECTION 391-4 AND FOLLOWING),  
AND COASTAL (SECTION A314-36)**

~~SMARA ZONING ORDINANCE (NON COASTAL)~~

ORDINANCE NO. 2117

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY  
OF HUMBOLDT AMENDING SECTIONS 391 AND A316-36  
COUNTY CODE RELATING TO SURFACE MINING AND RECLAMATION  
ACTIVITIES IN THE INLAND AND COASTAL ZONES  
OF HUMBOLDT COUNTY

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1.

Sections 391-1 through 391-12 are hereby amended as shown on the attached pages 313.6 through 313.24.

SECTION 2.

Section A316-36 is hereby amended as shown on the attached pages 200.196 through 200.215.

SECTION 3.

This ordinance shall take effect and be in force thirty (30) days from the date of its passage, except that the ordinances shall not take effect until the ordinances are approved and "certified" by the State Mining and Geology Board, and, with respect to the Coastal Zone ordinance referenced in section 2 above, approved and certified by the California Coastal Commission.

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/s/

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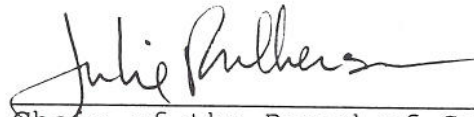
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PASSED, APPROVED and ADOPTED by the Board of Supervisors of  
the County of Humboldt, State of California, this 28th day of  
May, 1996, by the following vote, to wit:

AYES: Supervisors Dixon, Heider, Fulkerson, Neely, and Kirk  
NAYS: None  
ABSTAIN: None  
ABSENT: None



Chair of the Board of Supervisors  
of the County of Humboldt, State of  
California

(SEAL)

ATTEST:

LORA FREDIANI, Clerk of the Board  
of Supervisors of the County of  
Humboldt, State of California



May 28, 1996


sn: c:\...\smara(2).ord

The within instrument is a full, true  
and correct copy of the original on  
file in this office.

ATTEST:

LORA FREDIANI

Clerk of the Board of Supervisors of  
the State of California in and for the  
County of Humboldt.

By 

JUN 18 1996

(FINAL DRAFT FOR REVIEW BY THE BOARD OF SUPERVISORS)

ORDINANCE OF THE COUNTY OF HUMBOLDT IMPLEMENTING THE STATE  
SURFACE MINING AND RECLAMATION ACT AND REGULATIONS

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ORDINANCE OF THE COUNTY OF HUMBOLDT IMPLEMENTING THE STATE  
SURFACE MINING AND RECLAMATION ACT AND REGULATIONS

391-1 Purpose, Intent and Findings:

This section explains why these rules are in the Humboldt County Code. If there is something in these sections that is not clear, and that needs to be interpreted, the purposes and intent of the Board as explained in this section should be used so that any interpretation follows these purposes and carries out these intentions.

A. Purpose and Intent: The purpose of this Chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended. The State law is found in the Public Resources Code, at section 2207 and section 2710 and following. In this ordinance this State law will be referred to as the "Act," or as "SMARA." The State Regulations are found in Title 14 of California Code of Regulations, at sections 3500 and following, and in this ordinance are referred to as the "state regulations." As stated in the Act, and also hereby stated by this Board, it is the intent of the Board of Supervisors to:

- (1) protect the quality of the County's environment;
- (2) encourage the conservation and production of known or potential mineral deposits for the economic health and well-being of society;
- (3) regulate surface mining operations so as to prevent or minimize adverse environmental effects of surface mining;
- (4) provide for the reclamation of mined lands; and
- (5) reduce or eliminate hazards to public health and safety due to surface mining operations.

B. Findings:

The Board hereby finds and declares that:

- (1) the extraction of minerals is essential to the continued economic well-being of the County and the needs of society;
- (2) the rehabilitation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (3) the reclamation of mined lands as provided in this ordinance will allow the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (4) that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and cultural requirements are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

391-2 Incorporation of State Law and Regulations by Reference:

A. Reason: This Board has determined that one of the most efficient and easiest methods to ensure that this County's SMARA ordinance is written as required by State law is to "incorporate by reference" the provisions of State law. This avoids the possibility that any provision of State law will be overlooked or inadvertently misstated in this ordinance. It also avoids the need to amend this ordinance every time the State amends the State law, because those changes will, in most cases, automatically become a part of this section of the Code (however, see note below for exceptions).

NOTE: WHENEVER YOU MUST COMPLY WITH STATE OR LOCAL SMARA REGULATIONS, YOU WILL NEED TO GET A COPY OF THE STATE LAW AND REGULATIONS AND FOLLOW THOSE RULES. THIS ORDINANCE CONTAINS SOME SECTIONS IN ADDITION TO STATE LAW WHICH EXPLAIN HOW THE RULES WORK IN HUMBOLDT COUNTY. IF STATE LAW IS DIFFERENT THAN THESE LOCAL RULES, THE STATE LAW SHOULD BE FOLLOWED, UNLESS THE RULES IN THIS LOCAL ORDINANCE ARE MORE RESTRICTIVE ON MINING OPERATIONS, IN WHICH CASE THE STATE LAW SAYS THAT THE MORE RESTRICTIVE SECTIONS OF THIS ORDINANCE MUST APPLY.

B. Incorporation of State Law and Regulations:

The County of Humboldt hereby incorporates by reference, as if fully set forth herein, the State Surface Mining and Reclamation Act of 1975, and all amendments to that Act, which are currently set forth in Public Resources Code, section 2207 and section 2710 and following. Further



incorporated herein by reference are the State regulations adopted by the State to implement the Act, as amended from time to time by the State. The regulations are currently set forth in Title 14 of the California Code of Regulations at sections 3500 and following, section 3700 and following ("reclamation standards"), and section 3800 and following ("financial assurances"), and are also referred to in this ordinance as the "state regulations". Any reference in this ordinance to compliance with this "Chapter" also means compliance with all incorporated laws and regulations. Some provisions of state law are restated in this ordinance, and some are not. State law and regulations apply to mining operations, whether or not those laws and regulations are restated herein.

391-3 Limitations on Specified Activities:

A. Reasons for limitations:

The following activities are regulated by both State and local laws and regulations. The following limitations restate those environmental protections contained in the former County SMARA ordinance in order to ensure the continuation of the following protections.

B. "Stream bed Skimming":

State law contains an exception for non-commercial excavations or grading conducted for the purposes of farming, on-site construction, or restoring land following a flood or natural disaster, at Section 2714(a) of the State Act. Consistent with the County's prior ordinance governing mining operations, such activities, when they occur within the banks of a stream of river, are excepted only to the extent that the mining operation does not exceed the one time, one acre, one thousand cubic yard exception contained in current section 2714(d) of the Act. This section shall not apply to timber operations which are governed by section 2714(j) of the Act.

C. Drainage, Erosion and Sediment Control:

In addition to the "performance standards" set forth in section 3706 of the Regulations, final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations. Note that subsection (c) of section 3706 of the Regulations requires compliance with Regional Water Quality Control Board or the State Water Resources Board for water discharge standards.

391-4 Use Permit:

A. Application

1. Filing procedure: An application for a Conditional Use Permit for a mining operation shall be submitted to the County Planning Department on forms furnished by that Department and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Department. As may be required, supplemental information shall be provided in Appendices to the application forms in the following format:

a. Appendix A = Project Description, including the date of commencement of the project, the duration of the project, and the anticipated date of completion.

b. Appendix B = Property Documentation

c. Appendix C = Reclamation Plan

d. Appendix D = Environmental Assessment

e. Appendix E = Maps & Illustrations

2. Filing Fee: Each application shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors.

3. Acceptance: An application will not be accepted by the Planning Department as complete until the applicant sets forth the required information in sufficient detail to the satisfaction of the Department. When the Department receives all of the information which it requires, the Department shall notify the applicant that the application is accepted as complete pursuant to this section. Acceptance of an application as complete does not constitute an indication of approval.

4. Preliminary Review: In order to expedite processing, prior to submitting the completed application, Appendix C, the Reclamation Plan, and Appendix D, the Environmental Assessment may be submitted in draft form for preliminary review purposes. However there is a fee for preliminary reviews, and no final decisions will be made on the application until the project has been reviewed in its complete form.

B. Procedure for Review and Action on Applications.

1. Review: The Planning Department will review the Use Permit application for accuracy and completeness, and will coordinate the review with other County and public agencies. Unless for some reason it is not possible, the Use Permit required by this section, and the reclamation plan required by the next section shall be considered together as one application. Applicants should note that

any documents required for environmental review pursuant to the California Environmental Quality Act must also be processed in a timely manner to avoid any delays in the application. Applicants should discuss with the Department any questions they may have about the required environmental reviews.

2. Public Hearing: Upon completion of the review process, a public hearing shall be held before the Planning Commission. Notice of the public hearing shall be given in accordance with Humboldt County Code, with the following additional requirements: Notification shall also include, at a minimum, property owners within 300 feet from property lines of the parcels on which mining operations will occur, and 1500 feet from the location of any processing plant. Notification shall also be provided to property owners affected by the mining operation and affected haul routes as provided by Section 2530 of Chapter 3 of the Framework Plan of the County's General Plan. The notice shall specifically identify each issue to be considered at the hearing. The purpose of the hearing shall be to consider the applicant's request and to approve, conditionally approve, or deny the issuance of a Use Permit.

3. Approval or Denial: In addition to any findings required for a Use Permit by this County Code, the Planning Commission shall approve or approve with conditions the issuance of a Use Permit if the evidence presented supports the conclusions of section "a" and "b" below:

- a. That the application and supporting documents adequately describe the proposed surface mining operation, and adequate measures are incorporated to mitigate the probable or known significant environmental effects which have been or may be caused by the proposed operation. (This section is intended to remind applicants of the requirements for compliance with the California Environmental Quality Act (CEQA), which compliance is required before any permits may be issued); and,
- b. That the proposed use and location of the surface mining operation is properly located in accordance with the General Plan and any relevant element thereof. to the community as a whole, and to other land uses in the vicinity.
- c. If the Planning Commission determines that the above findings cannot be made, it shall so state and deny the application.

4. Conditions of approval: The Planning Commission shall, as is necessary to conform with the provisions of this ordinance, the Act and Regulations, and other applicable laws, provide that issuance of the Use Permit shall be contingent upon acceptance and observance of specified reasonable conditions related to surface mining operations, including the approval of a complete and final reclamation plan and financial assurances.

5. Commencement of operations: An operator shall commence a surface mining operation not later than one (1) year, or such longer period as may be agreed to between the County and the Applicant, from the effective date of the Conditional Use Permit, approval of the reclamation plan (see section 391-5 below), and approval of financial assurances, whichever is later. Failure to commence diligent operations within the one (1) year period, or otherwise agreed to period, renders the Use Permit void. This section shall not apply to those surface mining operations which, after obtaining a Use Permit, comply with any relevant provisions of § 391-7 relating to idle mines.

6. Term: Mining permits shall be granted for a period of not less than three (3) years and not more than fifteen (15) years. The term of the permit is a discretionary decision which should be governed by the life expectancy of the operation, and any special circumstances related to the operation which would make appropriate a more frequent or less frequent review of the operation. The basis for the determination of the term of the operation shall be stated in the grant of approval.

Upon written request to the Zoning Administrator, before expiration of the original permit, the permit may be reissued for a period equal to that grant of the original permit so long as the permit holder establishes to the satisfaction of the Zoning Administrator, or on appeal to the Board of Supervisors, that the use has been conducted in compliance with permit conditions.

If the law or circumstances of the mining operation have changed from the time the permit was originally issued, any new conditions or requirements determined by the Zoning Administrator, or the Board of Supervisors on appeal, to be necessary for compliance with the laws, regulations or changed circumstances may be added to or modified in the reissued permit.

This section does not establish any right by an operator to continue operating in any particular manner, or at all, at the end of the initial term of the permit originally issued, or any extension thereof.

7. Rights of successors: Any Use Permit issued for a surface mining operation shall run with the land affected thereby and conditions shall be binding upon all successors, heirs, and assigns of the operator.

8. Revocation: Use Permits granted pursuant to this Chapter may be revoked or suspended as any other Use Permit, in accordance with current section 317-41 and following of the County Code.

### 391-5 Reclamation Plan

#### A. Submittal for Approval

1. Filing procedure: A reclamation plan required by this Chapter shall be submitted to the County Planning Department and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Department.

2. Filing fee

a. For a reclamation plan filed as part of a Use Permit application, there shall be no filing fee. (The fee is already submitted as a part of the Use Permit application, which has its fees authorized under §391-4 (A)(2) above.)

b. All other reclamation plans filed for review and approval shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors.

3. Acceptance: A reclamation plan filed under Paragraph (A)(1) and (2) above will not be accepted by the Planning Department as complete until it sets forth the required information in sufficient detail to the satisfaction of the Department. The Department shall then notify the person submitting the plan that it is accepted as complete for review per §391-8 (A)(2). Acceptance of a reclamation plan does not constitute an indication of approval.

#### B. Procedure

1. Review

a. The Planning Department will review the reclamation plan for accuracy, adequacy, and completeness, and will coordinate the review with other County and public agencies. The

Planning Department shall, in compliance with §2774 of the Public Resources Code, submit a copy of the proposed reclamation plan to the State Department of Conservation and any comments received from that Department shall be incorporated into the review.

b. In accordance with section 2774 of the Act, there shall be at least one public hearing on every reclamation plan, as well as for proposed substantial amendments to previously approved reclamation plans. The hearing on the reclamation plan may be combined with a public hearing on other aspects of the project, so long as all notices clearly specify that the reclamation plan will be one of the subjects of the hearing. Notice of the public hearing shall be given in accordance with section 391-4(b)(2) above. The purpose of the hearing shall be to receive comments from interested parties, and to assure compliance with §2774(a) of the Public Resources Code.

2. Approval or Disapproval: The Planning Commission shall approve or approve with conditions the reclamation plan if the evidence presented establishes that the reclamation plan and supporting documents meet all of the conditions and requirements of SMARA, including but not limited to sections 2772 and 2773(a) of the Act and section 3502 and following of the State Regulations, and any additional County requirements for reclamation. Otherwise the Commission shall deny the application.

3. Conditions of approval: The Planning Commission shall, to the extent necessary to conform with the provisions of this ordinance and with §2773.1 of the Public Resources Code, apply conditions to the approval of the reclamation plan. Such conditions shall include, but not be limited to:

a. The meeting or exceeding of the minimum, verifiable statewide reclamation standards which may be adopted from time to time by the State Mining and Geology Board pursuant to §2773 (b) of the Public Resources Code, including but not limited to California Code of Regulations section 3500 and following and section 3700 and following, or any successor provisions thereto;

b. The entering into agreement between the Operator and the County whereby financial assurances are provided by the

Operator to assure the reclamation of all mined lands in the event of default by the Operator. Such financial assurances shall be made in the form, manner and timing as is required by State law and Regulations. See, current sections §2773.1 of the Act and section 3800 and following of the Regulations, which provide that the financial assurances shall be made payable to the County and the Director of the Department of Conservation, and shall be limited to the following forms:

- (1) Surety bonds;
- (2) Irrevocable letters of credit;
- (3) Trust funds; and,
- (4) Other forms of financial assurances specified by the State Mining and Geology Board pursuant to the Public Resources Code.

c. The right of access to the mined lands by County staff and their agents, and of authorized employees of the Department of Conservation in the performance of their enforcement responsibilities, included but not limited to inspection to determine compliance with any permit, permit conditions or approved reclamation plan; and,

d. A statement that all permit conditions, reclamation plan contents and requirements and financial assurances shall run with the land and shall be legally binding on all successors, heirs, and assigns of the Operator, and landowner, if they are different. The landowner, and the operator, if they are not the same person, shall sign a "Statement of Responsibility", which is a required part of the reclamation plan materials, acknowledging and accepting responsibility for full implementation applicable reclamation plans. Once a party responsible for, or authorized to undertake reclamation has concluded "final reclamation" consistent with the approved reclamation plan, the reclamation plan requirements are fulfilled and the plan no longer runs with the land.

4. Amendments: Amendments to an approved reclamation plan may be submitted which detail proposed deviations. If in the judgement of the Planning Director such amendments do not constitute a substantial change in the approved reclamation plan, such amendments may receive administrative processing and approval by the Planning Department. If, however, in the judgement of the Planning Director,

the amendments substantially deviate from the approved reclamation plan, then the request for amendment shall be submitted and processed for approval with the same considerations as a first submittal under this subsection B and the preceding subsection A above. Any party dissatisfied with the decision of the Director may appeal the decision in accordance with the appeal provisions of the County Code.

391-6 Legal vested mining operations:

A. Continuance and modification: Subject to the limitations of law, including but not limited to those expressed in this chapter and in the Act, the operator of a legal vested surface mining operation may continue, provided that the operation does not undergo substantial alteration, expansion, or modification. However, only the Use Permit requirements of this ordinance are not applicable to vested operations. All operations, vested or otherwise, must meet all other requirements for permits, reclamation plans and financial assurances except to the extent that such permits, plans or assurances are not required by state law or regulations. (For example, section 2776 of the Act does not require the reclamation plan to include certain portions of property which were impacted solely by mining operations which occurred prior to January 1, 1976.) See section 2773.1 for the current requirements for financial assurances. A vested rights application shall be administratively processed and approved by the Planning Department, provided that notice of the application has been given pursuant to this Chapter. If any objection is made to the Department regarding its action on the application for vested rights, the application shall be processed and acted upon by the Planning Commission, with a right of appeal to the Board of Supervisors pursuant to the general appeal provisions of this Code.

391-7 Idle Mines

A. Interim Management Plan: Within 90 days of a surface mining operation becoming idle, as defined in the Act (see current sections 2727.1 and 2770(h)), the operator shall submit to the Planning Department for review and approval an Interim Management Plan, accompanied by any required fees. The Interim Management Plan shall describe measures the operator will implement to maintain the site in compliance with the State Act and Regulations, with this ordinance, and with all permit conditions. Any applicable fees shall be submitted with the plan.



B. Term of plan: The Interim Management Plan may remain in effect for a period not to exceed five (5) years, at which time the County shall do one of the following:

1. Renew the Interim Management Plan for no more than one additional period, not to exceed five (5) years, provided the County finds that the operator has complied fully with the Interim Management Plan; or,

2. Require the operator to commence reclamation in accordance with the approved reclamation plan.

C. Financial assurances: Financial assurances as required by the Act, Regulations and this ordinance shall remain in effect during the period the surface mining operation is idle.

D. Interim Management Plan approval: The receipt of an Interim Management Plan by the Planning Department shall be considered and processed as an amendment to the approved reclamation plan. An Interim Management Plan for Idle Mines shall be considered a minor amendment to the approved Reclamation Plan and shall be processed administratively pursuant to subsection 391-5.B.4., above. Section 2770(h) of the Act provides that the review and approval of the Interim Management Plan is not a project for purposes of CEQA (Public Resources Code section 21000 and following.)

E. Forfeiture of Use Permit: The operator of a surface mining operation which has been abandoned, as defined in State or local SMARA law and regulations, for a period exceeding one (1) year shall forfeit the Use Permit and commence reclamation in accordance with the approved Reclamation Plan.

#### 391-8 Intermittent operations

Intermittent operations, as defined in section 3500 of the Regulations are subject to all of the same rules and regulations governing active operations, unless the operation meets the definition under SMARA as an "idle" operation, in which case the provisions governing idle mines apply.

#### 391-9 Administration and Enforcement

##### A. Time limitation

1. Use Permit and Reclamation Plan applications: Upon receipt of an application for a Use Permit and/or a Reclamation Plan for a surface mining operation, the Planning Department shall notify the

applicant within 30 days as to the adequacy and completeness of the application.

2. Time for review: The review procedure, including the holding of the public hearing, shall be completed within one hundred twenty (120) days of the filing of the complete Reclamation Plan (this time frame allows 30 days for State agencies' (other than CalTrans) review of the plan, 45 days for the State review of the financial assurances (and for review by CalTrans if the project is located within the one hundred year flood plain or within one mile of a State Highway bridge), and 30 days for processing time by County staff after the State responses have been received; all reasonable efforts will be made by County staff to process projects as quickly as possible). Compliance with this requirement shall be subject to time constraints imposed in accord with §2774(d) of the Public Resources Code and the California Environmental Quality Act (CEQA). A failure by the State or County to meet these deadlines shall not result in an automatic approval of the plan or project.

B. Simultaneous processing: Applicants are urged to submit all required applications and supporting documents at the same time. In the event that an application for a Use Permit for a surface mining operation and a Reclamation Plan are submitted for approval pertaining to a same project, then review and processing of the Reclamation Plan shall occur simultaneously with that of the Use Permit application. Either concurrent with or prior to the issuance of a Use Permit, the Reclamation Plan shall have been approved. Submitting all required documentation for simultaneous processing may avoid multiple hearings and may reduce the time and cost of processing the applications. It should be noted that section 2772(b) of the Act requires that "all documentation for the Reclamation Plan shall be submitted to the lead agency (County) at one time."

C. Public record: Applications, Reclamation Plans, interim management plans and other documents submitted in support of this Chapter are public records unless it is demonstrated to the satisfaction of the County that the release of such information, or any part thereof, would reveal reserves, production, or rates of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application, and such proprietary information shall be made available only to the State Geologist and to

persons authorized to receive such proprietary information. Such authorization shall be presented to the County in writing by the operator.

D. Inspection and review

1. Inspections: In accord with §2774(b) of the Public Resources Code, the Planning Director shall cause periodic inspections, but not less than annually, of each active or idle surface mining operation to determine whether the surface mining operation is in compliance with the Act, State Regulations, this ordinance and any applicable permit conditions. At least annually an inspection shall be conducted using a form provided by the State Department of Conservation for that purpose, and shall be conducted no later than six (6) months after receiving the surface mining operation's annual report submitted pursuant to §2207 of the Public Resources Code and Paragraph (E), below.

2. Costs of inspections: The cost of any inspection(s) required by Paragraph (D)(2), above, shall be borne by the operator. In causing the performance of these inspections, the Planning Director may implement procedures which are consistent with good practice and which will minimize the costs of inspection.

E. Annual report: In compliance with section 2207 of the Act, the owner, manager or other person in charge of any surface mining operation shall forward an annual report to the Director of the State Department of Conservation on forms furnished by the State Mining and Geology Board. Such annual report shall be in accord with instructions included with the forms, and shall include all information required by the Act (see section 2207(a)), State Regulations, and this ordinance. The designated copy shall be submitted to the County Planning Department on or before the anniversary date established by the Director of the State Department.

F. Appeals: Decisions of the Planning Director, Zoning Administrator, or Planning Commission required by this Chapter may be appealed in the manner set forth in the Humboldt County Code. An applicant, whose request for a permit to conduct surface mining operations in an area of regional or statewide significance has been denied by County action, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance may, within fifteen days of exhausting his rights to appeal in accordance with this section, appeal to the State Mining and Geology Board in accordance with the provisions of section 2775 of the Public Resources Code.

G. Enforcement

1. Violation-Public Nuisance: Any violation of this chapter is unlawful and is hereby deemed to be a public nuisance, and shall be abated, eliminated and enjoined as provided by the Humboldt County Code and/or any other provision of law. Any person or entity operating without legal authorization shall cease activities immediately.

2. Violation-Noncompliance

a. If the Planning Director should determine that a permitted or otherwise legally authorized operator is not in compliance with the provisions of this Chapter, the County, in conformance with §2774.1(a) of the Public Resources Code, shall, to the extent feasible with the resources available to the County, notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the County's notification, an order shall be sent by personal service or certified mail requiring the operator to comply with this Chapter, or, if the operator does not have an approved Reclamation Plan or financial assurances, cease all further mining activities. See, section 2774.1(a) of the Act.

b. An order issued under Paragraph 391-9 (G)(2)(a) above shall not take effect until the operator has been provided a hearing before the Planning Commission concerning the alleged violation. Any order issued under the Section cited above shall specify which aspect of the surface mine's activities or operations are inconsistent with this Chapter and shall specify a time for compliance, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

c. Any operator who violates or fails to comply with an order issued under Paragraph 391-9 (G)(2)(a) above after the order's effective date shall be subject to an order by the County or the State Director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with any provision of Chapter 9 of Division 2 and/or section 2207 of the Public Resources Code.

d. Any operator who fails to submit a timely report to the Planning Department pursuant to subsection "E" of this section

(see above), and §2207 of the Public Resources Code, shall be subject to any order issued by the County imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with subsection "E" above, and/or §2207 of the Public Resources Code).

e. The State Department of Conservation shall notify the Planning Department of any known or apparent violations or noncompliance with the Act in writing, and subject to the limitations in §2774.1 of the Public Resources Code, the County shall have primary jurisdiction and responsibility of administering this Chapter and the State Act and Regulations.

f. Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, including, but not limited to, Use Permit revocation proceedings.

391-10      Mining Permit Standards

In addition to meeting the minimum acceptable surface mining and reclamation practices in the State Act and Regulations, each surface mining operation shall be designed and conducted to meet the operational standards of this Section. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a permit shall be conducted only by the operator or an authorized agent. Additional standards are set forth in the Act and Regulations. See, for example, section 3700 and following, "Reclamation Standards."

A.    Access Roads: All private encroachments leading to a surface mining operation shall be adequately surfaced to prevent aggregate or other materials from being drawn onto the public way.

B.    Dust Suppression: All haul roads and driveways shall be maintained as necessary to minimize the emission of dust and prevent the creation of a nuisance to adjacent properties.

C.    Discharge Waters: Any waters discharged from the mined lands shall meet all applicable water quality standards of the Regional Water Quality Control Board and other agencies with authority over such discharges.

D.    Erosion Control: Adequate measures shall be taken to assure the prevention of erosion from mined lands and adjacent properties

during the life of the operation. The Reclamation Plan shall assure the prevention of erosion subsequent to surface mining operations. (See also, section 391-3 above).

E. Maintenance of Existing Grades: Unless otherwise specifically authorized for the purpose of environmental enhancement by the the State Department of Fish and Game (and the Army Corps of Engineers, if necessary), grades and land forms in mined lands shall be maintained in such a manner so as to avoid accumulations of water that will serve as breeding areas for mosquitoes or sites of fish entrapment.

F. Surrounding Water Transmissivity: Excavations which may affect groundwater shall not substantially reduce the quality or quantity of groundwater available in the area surrounding the mined lands. See, section 3710 and following of the current regulations for performance standards.

G. Compliance with Other Jurisdictions: Surface mining operations in areas where other agencies have regulatory jurisdiction shall be operated so as to comply with all applicable rules and regulations. Other agencies shall include, but not be limited to, the Department of Fish & Game, the North Coast Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. If the County becomes aware of any operation which is operating in violation of any other agency's permit conditions, or the regulations or laws of another agency, the Planning Department shall notify the other agency(ies) of the violation and request that the agency having jurisdiction take appropriate enforcement action.

391-11 Permit Modifications:

Modifications of conditions or restrictions on a Use Permit or approved Reclamation Plan may be allowed upon request of the surface mine operator upon a finding by the Planning Director that each requested change is necessary to achieve the stated goals and policies of the County, and that such modifications do not constitute a substantial change or expansion of the surface mining operation, or a reduction in environmental protections. Any modifications approved must be consistent with local, State, and Federal laws and regulations, and, if the modification has any effect on the financial assurances, the change must be submitted to the State Director for review. Additionally, any modifications granted must be reported as an amendment in the annual report required by section 2774(e)

of the Act. Any person dissatisfied with the decision of the Planning Director on a request for modifications may appeal the action in accordance with the appeal provisions of the Humboldt County Code.

391-12        Emergencies

In the event the Board of Supervisors declares a state of emergency pursuant to Government Code section 8558 or successor provision thereto, or any other applicable provision relating to emergencies, the provisions of this chapter governing surface mining operations may be temporarily suspended by the Board until such time as the emergency is mitigated. The provisions of this chapter shall be suspended only in those areas directly impacted by the emergency, only during the period of the declared emergency, and only to the extent necessary to mitigate the emergency situation.

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**SMARA COASTAL ZONE ORDINANCE**



(FINAL DRAFT FOR REVIEW BY THE BOARD OF SUPERVISORS)

ORDINANCE OF THE COUNTY OF HUMBOLDT IMPLEMENTING THE STATE  
SURFACE MINING AND RECLAMATION ACT AND REGULATIONS  
IN THE COASTAL ZONE OF THE COUNTY

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**A314-36 SURFACE MINING AND RECLAMATION.**

**I. Purpose, Intent and Findings:**

This section explains why these rules are in the Humboldt County Code. If there is something in these sections that is not clear, and that needs to be interpreted, the "purposes and intent" of the Board, as explained in this section, should be used so that any interpretation follows these purposes and carries out these intentions.

**A. Purpose and Intent:** The purpose of this Chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended, and the California Coastal Act, as amended (see, Public Resources Code section 30000 and following). The State Surface Mining law is found in the Public Resources Code, at section 2207 and section 2710 and following. In this ordinance this State law will be referred to as the "Act", or as "SMARA." The State Surface Mining Regulations are found in Title 14 of California Code of Regulations, at sections 3500 and following, and in this ordinance are referred to as the "state regulations". As stated in the Act, and also hereby stated by this Board, it is the intent of the Board of Supervisors to:

- (1) protect the quality of the County's environment;
- (2) encourage the conservation and production of known or potential mineral deposits for the economic health and well-being of society;
- (3) regulate surface mining operations so as to prevent or minimize adverse environmental effects of surface mining;
- (4) provide for the reclamation of mined lands; and
- (5) reduce or eliminate hazards to public health and safety due to surface mining operations.

**B. Findings:**

The Board hereby finds and declares that:

- (1) the extraction of minerals is essential to the continued economic well-being of the County and the needs of society;

(2) the rehabilitation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

(3) the reclamation of mined lands as provided in this ordinance will allow the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

(4) that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and cultural requirements are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

(5) that surface mining will take place in the coastal zone of the County, and this Board hereby incorporates by reference the findings and declarations of the State Legislature with respect to the policy considerations governing the coastal zone (see, current Public Resources Code, section 30001, or any successor provision thereto).

## II. INCORPORATION OF STATE LAW AND REGULATIONS BY REFERENCE.

A. Reason: This Board has determined that one of the most efficient and easiest methods to ensure that this County's SMARA ordinance is written as required by State law is to "incorporate by reference" the provisions of State law. This avoids the possibility that any provision of State law will be overlooked or inadvertently misstated in this ordinance. It also avoids the need to amend this ordinance every time the State amends the State law, because those changes will, in most cases, automatically become a part of this section of the Code (however, see note below for exceptions).

NOTE: WHENEVER YOU MUST COMPLY WITH STATE OR LOCAL SMARA REGULATIONS, YOU WILL NEED TO GET A COPY OF THE STATE LAW AND REGULATIONS AND FOLLOW THOSE RULES. THIS ORDINANCE CONTAINS SOME SECTIONS IN ADDITION TO STATE LAW WHICH EXPLAIN HOW THE RULES WORK IN HUMBOLDT COUNTY. IF STATE LAW IS DIFFERENT THAN THESE LOCAL RULES, THE STATE LAW SHOULD BE FOLLOWED, UNLESS THE RULES IN THIS LOCAL ORDINANCE ARE MORE RESTRICTIVE ON MINING OPERATIONS, IN WHICH CASE THE STATE LAW SAYS THAT THE MORE RESTRICTIVE SECTIONS OF THIS ORDINANCE MUST APPLY.

B. Incorporation of State Law and Regulations by Reference:

The County of Humboldt hereby incorporates by reference, as if fully set forth herein, the State Surface Mining and Reclamation Act of 1975, and all amendments to that Act, which are currently set forth in Public Resources Code, section 2207 and section 2710 and following. Further incorporated herein by reference are the State Regulations adopted by the State to implement the Act, as amended from time to time by the State.

The regulations are currently set forth in Title 14 of the California Code of Regulations at sections 3500 and following, section 3700 and following ("reclamation standards"), and section 3800 and following ("financial assurances"), and are also referred to in this ordinance as the "state regulations".

Further, the California Coastal Act and implementing regulations are hereby incorporated by reference, as if fully set forth herein, including but not limited to Public Resources Code section 30000 and following.

Any reference in this ordinance to compliance with this "Chapter" also means compliance with all incorporated laws and regulations. Some provisions of state law are restated in this ordinance, and some are not. State law and regulations apply to mining operations, whether or not those laws and regulations are restated herein.

### III. Limitations on Specified Activities.

#### A. Reasons for limitations:

The following activities are regulated by both State and local laws and regulations. The following limitations restate those environmental protections contained in the former County SMARA ordinance in order to ensure the continuation of the following protections.

#### B. "Stream bed Skimming":

State law contains an exception for non-commercial excavations or grading conducted for the purposes of farming, on-site construction, or restoring land following a flood or natural disaster at Section 2714(a) of the State Act. Consistent with the County's prior ordinance governing mining operations, such activities are excepted only to the extent that the mining operation does not exceed the one time, one acre, one thousand cubic yard exception contained in current section 2714(d) of the Act. This section shall not apply to timber operations which are governed by section 2714(j) of the Act.

#### C. Drainage, Erosion and Sediment Control:

In addition to the "performance standards" set forth in section 3706 of the Regulations, final grading and drainage shall be designed in a manner

to prevent discharge of sediment above natural levels existent prior to mining operations. Note that subsection (c) of section 3706 of the Regulations requires compliance with Regional Water Quality Control Board or the State Water Resources Board for water discharge standards.

IV. Use Permit.

A. Application.

1. Filing procedure: An application for a conditional use permit for a mining operation shall be submitted to the County Planning Department on forms furnished by that Department and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Department. As may be required, supplemental information shall be provided in Appendices to the application forms in the following format:

- a. Appendix A = Project Description, including the date of commencement of the project, the duration of the project, and the anticipated date of completion.
- b. Appendix B = Property Documentation
- c. Appendix C = Reclamation Plan
- d. Appendix D = Environmental Assessment
- e. Appendix E = Maps & Illustrations

2. Filing Fee: Each application shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors.

3. Acceptance: An application will not be accepted by the Planning Department as complete until the applicant sets forth the required information in sufficient detail to the satisfaction of the Department. When the Department receives all of the information which it requires, the Department shall notify the applicant that the application is accepted as complete pursuant to this section. Acceptance of an application as complete does not constitute an indication of approval.

4. Preliminary Reviews:

In order to expedite processing, prior to submitting the completed application, Appendix C, the Reclamation Plan, and Appendix D, the Environmental Assessment may be submitted in draft form for preliminary review purposes. However there is a fee for preliminary reviews, and no final decisions will be made on the application until the project has been reviewed in its complete form.

B. Procedure for Review and Action on Applications.

1. Review: The Planning Department will review the use permit application for accuracy and completeness, and will coordinate the review with other County and public agencies. Unless for some reason it is not possible, the use permit required by this section, and the reclamation plan required by the next section shall be considered together as one application. Applicants should note that any documents required for environmental review pursuant to the California Environmental Quality Act must also be processed in a timely manner to avoid any delays in the application. Applicants should discuss with the Department any questions they may have about the required environmental reviews.

2. Public Hearing: Upon completion of the review process, a public hearing shall be held before the Planning Commission. Notice of the public hearing shall be given in accordance with Humboldt County Code. Notification shall also include, at a minimum, property owners within 300 feet from property lines of the parcels on which mining operations will occur, and 1500 feet from the location of any processing plant. Notification shall also be provided to property owners affected by the mining operation and affected haul routes as provided by Section 2530 of Chapter 3 of the Framework Plan of the County's General Plan. The notice shall specifically identify each issue to be considered at the hearing. The purpose of the hearing shall be to consider the applicant's request and to approve, conditionally approve, or deny the issuance of a use permit.

3. Approval or Denial: In addition to any findings required for a use permit by this County Code, the Planning Commission shall approve or approve with conditions the issuance of a use permit if the evidence presented supports the conclusions of sections "a" and "b" below:

a. That the application and supporting documents adequately describe the proposed surface mining operation, and adequate measures are incorporated to mitigate the probable or known significant environmental effects which have been or may be caused by the proposed operation. (This section is intended to remind applicants of the requirements for compliance with the California Environmental Quality Act (CEQA), which compliance is required before any permits may be issued); and,

b. That the proposed use and location of the surface mining operation is properly located in accordance with the General Plan and any relevant element thereof, to the community as a whole, and to other land uses in the vicinity.

c. If the Planning Commission determines that the above findings cannot be made, it shall so state and deny the application.

4. **Conditions of approval:** The Planning Commission shall, as is necessary to conform with the provisions of this ordinance, the Act and Regulations, and other applicable laws, provide that issuance of the use permit shall be contingent upon acceptance and observance of specified reasonable conditions related to surface mining operations, including the approval of a complete and final reclamation plan and financial assurances.

5. **Commencement of operations:** An operator shall commence a surface mining operation not later than one (1) year, or such longer period as may be agreed to between the County and the Applicant, from the effective date of a Conditional Use Permit and Coastal Development Permit, approval of the reclamation plan (see section A314-36 "V." below), and approval of financial assurances, whichever is later. Failure to commence diligent operations within the one (1) year period, or otherwise agreed to period, renders the use permit void. This section shall not apply to those surface mining operations which, after obtaining a use permit, comply with any relevant provisions of § A314-36 "VII" (below) relating to idle mines.

6. **Term:** Mining permits shall be granted for a period of not less than three (3) years and not more than fifteen (15) years. The term of the permit is a discretionary decision which should be governed by the life expectancy of the operation, and any special circumstances related to the operation which would make appropriate a more frequent or less frequent review of the operation. The basis for the determination of the term of the operation shall be stated in the grant of approval.

Upon written request to the Zoning Administrator, before expiration of the original permit, the permit may be reissued for a period equal to that grant of the original permit so long as the permit holder establishes to the satisfaction of the Zoning



Administrator, or on appeal to the Board of Supervisors, that the use had been conducted in compliance with permit conditions.

If the law or circumstances of the mining operation have changed from the time the permit was originally issued, any new conditions or requirements determined by the Zoning Administrator, or the Board of Supervisors on appeal, to be necessary for compliance with the laws, regulations or changed circumstances may be added to or modified in the reissued permit.

This section does not establish any right by an operator to continue operating in any particular manner, or at all, at the end of the initial term of the permit originally issued, or any extension thereof.

7. **Rights of successors:** Any use permit issued for a surface mining operation shall run with the land affected thereby and conditions shall be binding upon all successors, heirs, and assigns of the operator.

8. **Revocation:** Permits or any other grant of authority for activities undertaken pursuant to this Chapter may be revoked or suspended as any other permit, in accordance with current section A315 or any other applicable provision of the County Code.

V. **Reclamation Plan.**

A. **Submittal for Approval:**

1. **Filing procedure:** A reclamation plan required by this Chapter shall be submitted to the County Planning Department and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Department.
2. **Filing fee:**
  - a. For a reclamation plan filed as part of a use permit application, there shall be no filing fee. (The fee is already submitted as a part of a use permit application, which has its fees authorized under SA314-36 IV above.)
  - b. All other reclamation plans filed for review and approval shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors.
3. **Acceptance:** A reclamation plan filed under the foregoing paragraphs of this section will not be accepted by the Planning Department as complete until it sets forth the required information

in sufficient detail to the satisfaction of the Department. The Department shall then notify the person submitting the plan that it is accepted as complete for review pursuant to section IX below. Acceptance of a reclamation plan does not constitute an indication of approval.

**B. Procedure.**

**1. Review:**

a. The Planning Department will review the reclamation plan for accuracy, adequacy, and completeness, and will coordinate the review with other County and public agencies. The Planning Department shall, in compliance with §2774 of the Public Resources Code, submit a copy of the proposed reclamation plan to the State Department of Conservation and any comments received from that Department shall be incorporated into the review.

b. In accordance with section 2774 of the Act, there shall be at least one public hearing on every reclamation plan, as well as for proposed substantial amendments to previously approved reclamation plans. The hearing on the reclamation plan may be combined with a public hearing on other aspects of the project, so long as all notices clearly specify that the reclamation plan will be one of the subjects of the hearing. Notice of the public hearing shall be given in accordance with section IV(B)(2), above. The purpose of the hearing shall be to receive comments from interested parties, and to assure compliance with §2774 (a) of the Public Resources Code.

**2. Approval or Disapproval:** The Planning Commission shall approve or approve with conditions the reclamation plan if the evidence presented establishes that the reclamation plan and supporting documents meet all of the conditions and requirements of SMARA, including but not limited to sections 2772 and 2773(a) of the Act and section 3502 and following of the State Regulations, and any additional County requirements for reclamation. Otherwise the Commission shall deny the application.

**3. Conditions of approval:** The Planning Commission shall, to the extent necessary to conform with the provisions of this ordinance and with §2773.1 of the Public Resources Code, apply conditions to the approval of the reclamation plan. Such conditions shall include, but not be limited to:

- a. The meeting or exceeding of the minimum, verifiable statewide reclamation standards which may be adopted from time to time by the State Mining and Geology Board pursuant to §2773 (b) of the Public Resources Code, including but not limited to California Code of Regulations section 3500 and following and section 3700 and following, or any successor provisions thereto;
- b. The entering into agreement between the Operator and the County whereby financial assurances are provided by the Operator to assure the reclamation of all mined lands in the event of default by the Operator. Such financial assurances shall be made in the form, manner and timing as is required by State law and Regulations. See, current sections §2773.1 of the Act and section 3800 and following of the Regulations, which provide that the financial assurances shall be made payable to the County and the Director of the Department of Conservation, and shall be limited to the following forms:
- (1) Surety bonds;
  - (2) Irrevocable letters of credit;
  - (3) Trust funds; and,
  - (4) Other forms of financial assurances specified by the State Mining and Geology Board pursuant to the Public Resources Code.
- c. The right of access to the mined lands by County staff and their agents, and of authorized employees of the Department of Conservation in the performance of their enforcement responsibilities, including but not limited to inspections to determine compliance with any permit, permit conditions or approved reclamation plan; and,
- d. A statement that all permit conditions, reclamation plan contents and requirements and financial assurances shall run with the land and shall be legally binding on all successors, heirs, and assigns of the Operator, and landowner, if they are different. The landowner, and the operator, if they are not the same person, shall sign a "Statement of Responsibility", which is a required part of the reclamation plan materials, acknowledging and accepting responsibility for full implementation and performance of all aspects of any applicable reclamation plans. Once a party responsible for,

or authorized to carry out reclamation has concluded "final reclamation" consistent with the approved reclamation plan, the reclamation plan requirements are fulfilled and the plan no longer runs with the land.

4. **Amendments:** Amendments to an approved reclamation plan may be submitted which detail proposed deviations. If in the judgement of the Planning Director such amendments do not constitute a substantial change in the approved reclamation plan, such amendments may receive administrative processing and approval by the Planning Department. If, however, in the judgement of the Planning Director, the amendments substantially deviate from the approved reclamation plan, then the request for amendment shall be submitted and processed for approval with the same considerations as a first submittal under this subsection B and the preceding subsection A above. Any party aggrieved by the decision of the Director may appeal the decision in accordance with the appeal provisions of the County Code.

VI. **Legal vested mining operations.**

A. **Continuance and modification:** Subject to the limitations of law, including but not limited to those expressed in this chapter and in the Act and Regulations, the operator of a legal vested surface mining operation may continue, provided that the operation does not undergo substantial alteration, expansion, or modification.

B. **Special Permit requirements:** A person who has obtained a vested right to conduct surface mining operations shall submit an application for a Special Permit which includes a reclamation plan that was prepared in compliance with the requirements of this ordinance, and all other local, state, and federal laws and regulations, to the Planning Department for review and approval.

The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval.

C. **All other requirements applicable:** Only the use permit requirements of this ordinance are not applicable to vested operations. All operations, vested or otherwise, must meet all requirements for reclamation plans and financial assurances except to the extent that such plans or assurances are not required by state law or regulations. (For

example, section 2776 of the Act does not require the reclamation plan to include certain portions of property which were impacted solely by mining operations which occurred prior to January 1, 1976.) See section 2773.1 for the current requirements for financial assurances.

VII. Idle Mines.

A. Interim management plan: Within 90 days of a surface mining operation becoming idle, as defined in the Act (see current sections 2727.1 and 2770(h)), the operator shall submit to the Planning Department for review and approval an interim management plan, accompanied by any required fees. The interim management plan shall describe measures the operator will implement to maintain the site in compliance with the State Act and Regulations, with this ordinance, and with all permit conditions. Any applicable fees shall be submitted with the plan.

B. Term of plan: The interim management plan may remain in effect for a period not to exceed five (5) years, at which time the County shall do one of the following:

1. Renew the interim management plan for no more than one additional period not to exceed five (5) years provided the County finds that the operator has complied fully with the interim management plan; or,
2. Require the operator to commence reclamation in accordance with the approved reclamation plan.

C. Financial assurances: Financial assurances as required by the Act, Regulations and this ordinance shall remain in effect during the period the surface mining operation is idle.

D. Interim management plan approval: The receipt of an interim management plan by the Planning Department shall be considered and processed as an amendment to the approved reclamation plan. An interim Management Plan for Idle Mines shall be considered a minor amendment to the approved reclamation plan and shall be processed administratively according to subsection A314-36.V.B.4., above. Section 2770(h) of the Act provides that the review and approval of the interim management plan is not a project for purposes of CEQA (Public Resources Code section 21000 and following.)

E. Forfeiture of use permit: The operator of a surface mining operation which has been abandoned, as defined in State or local SMARA law and regulations, for a period exceeding one (1) year shall forfeit the use

use permit and commence reclamation in accordance with the approved reclamation plan.

VIII. Intermittent operations.

Intermittent operations, as defined in section 3500 of the Regulations are subject to all of the same rules and regulations governing active operations, unless the operation meets the definition under SMARA as an "idle" operation, in which case the provisions governing idle mines apply.

IX. Administration and Enforcement.

A. Time limitation:

1. Use permit and reclamation plan applications: Upon receipt of an application for a use permit and/or a reclamation plan for a surface mining operation, the Planning Department shall notify the applicant within 30 days as to the adequacy and completeness of the application.

2. Time for review: The review procedure, including the holding of the public hearing, shall be completed within one hundred twenty (120) days of the filing of the complete reclamation plan (this time frame allows 30 days for the State agencies' (except CalTrans) review of the plan, 45 days for the State review of the financial assurances (and for review by CalTrans if the project is located within the one hundred year flood plain or within one mile of a state highway bridge), and 30 days for processing time by County staff after the State responses have been received; all reasonable efforts will be made by County staff to process projects as quickly as possible). Compliance with this requirement shall be subject to time constraints imposed by §2774(d) of the Public Resources Code and the California Environmental Quality Act (CEQA). A failure by the State of County to meet these deadlines shall not result in an automatic approval of the plan or project.

B. Simultaneous processing: Applicants are urged to submit all required applications and supporting documents at the same time. In the event that an application for a use permit for a surface mining operation and a reclamation plan are submitted for approval pertaining to a same project, then review and processing of the reclamation plan shall occur simultaneously with that of the use permit application. Either concurrent with or prior to the issuance of a use permit, the reclamation plan shall have been approved. Submitting all required documentation for

simultaneous processing may avoid multiple hearings and may reduce the time and cost of processing the applications. It should be noted that section 2772(b) of the Act requires that "all documentation for the reclamation plan shall be submitted to the lead agency (County) at one time."

C. **Public record:** Applications, reclamation plans, interim management plans and other documents submitted in support of this Chapter are public records unless it is demonstrated to the satisfaction of the County that the release of such information, or any part thereof, would reveal reserves, production, or rates of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application, and such proprietary information shall be made available only to the State Geologist and to persons authorized to receive such proprietary information. Such authorization shall be presented to the County in writing by the operator.

D. **Inspection and review.**

1. **Inspections:** In accord with §2774 (b) of the Public Resources Code, the Planning Director shall cause periodic inspections, but not less than annually, of each active or idle surface mining operation to be made to determine whether the surface mining operation is in compliance with the Act, State Regulations, this ordinance and any applicable permit conditions. At least annually an inspection shall be conducted using a form provided by the State Department of Conservation for that purpose, and shall be conducted no later than six (6) months after receiving the surface mining operation's annual report submitted pursuant to §2207 of the Public Resources Code and Paragraph (E), below.

2. **Costs of inspections:** The cost of any inspection(s) required by Paragraph (D)(2), above, shall be borne by the operator. In causing the performance of these inspections, the Planning Director may implement procedures which are consistent with good practice and which will minimize the costs of inspection.

E. **Annual report:** In compliance with section 2207 of the Act, the owner, manager or other person in charge of any surface mining operation shall forward an annual report to the Director of the State Department of Conservation on forms furnished by the State Mining and Geology Board. Such annual report shall be in accord with instructions included with the forms, and shall include all information required by the Act (see section 2207(a)), State Regulations, and this ordinance. The designated copy

shall be submitted to the County Planning Department on or before the anniversary date established by the Director of the State Department.

**F. Appeals:** Decisions of the Planning Director, Zoning Administrator, or Planning Commission required by this Chapter may be appealed in the manner set forth in the Humboldt County Code. An applicant, whose request for a permit to conduct surface mining operations in an area of regional or statewide significance has been denied by County action, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance may, within fifteen days of exhausting his rights to appeal in accordance with this section, appeal to the State Mining and Geology Board in accordance with the provisions of section 2775 of the Public Resources Code.

**G. Enforcement:**

1. **Violation-Public Nuisance:** Any violation of this chapter is unlawful and is hereby deemed to be a public nuisance, and shall be abated, eliminated and enjoined as provided by the Humboldt County Code and/or any other provision of law. Any person or entity operating without legal authorization shall cease activities immediately.

2. **Violation-Noncompliance.**

a. If the Planning Director should determine that a permitted or otherwise legally authorized operator is not in compliance with the provisions of this Chapter, the County, in conformance with §2774.1(a) of the Public Resources Code, shall, to the extent feasible with the resources available to the County, notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the County's notification, an order shall be sent by personal service or certified mail requiring the operator to comply with this Chapter, or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities. See, section 2774.1(a) of the Act.

b. An order issued under this section IX, subparagraph (G)(2)(a), above shall not take effect until the operator has been provided a hearing before the Planning Commission concerning the alleged violation. Any order issued under the Section cited above shall specify which aspect of the surface mine's activities or operations are inconsistent with this



Chapter and shall specify a time for compliance, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

c. Any operator who violates or fails to comply with an order issued under this section IX, subparagraph (G)(2)(a) above, after the order's effective date shall be subject to an order by the County or the State Director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with any provision of Chapter 9 of Division 2 and/or section 2207 of the Public Resources Code.

d. Any operator who fails to submit a timely report to the Planning Department pursuant to subsection "E" of this section IX (see above), and §2207 of the Public Resources Code, shall be subject to any order issued by the County imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with subsection "E" above, and/or §2207 of the Public Resources Code).

e. If the State Department of Conservation notifies the Planning Department of any known or apparent violations or noncompliance with the Act in writing, and subject to the limitations in §2774.1 of the Public Resources Code, the County shall have primary jurisdiction and responsibility of administering this Chapter and the State Act and Regulations.

3. Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, including, but not limited to, use permit revocation proceedings.

X. Mining Permit Standards.

In addition to meeting the minimum acceptable surface mining and reclamation practices in the State Act and Regulations, each surface mining operation shall be designed and conducted to meet the operational standards of this Section. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a permit shall be conducted only by the operator or an authorized agent. Additional standards are set forth in the Act and Regulations. See, for example, section 3700 and following, "Reclamation Standards."

- A. **Access Roads**: All private encroachments leading to a surface mining operation shall be adequately surfaced to prevent aggregate or other materials from being drawn onto the public way.
- B. **Dust Suppression**: All haul roads and driveways shall be maintained as necessary to minimize the emission of dust and prevent the creation of a nuisance to adjacent properties.
- C. **Discharge Waters**: Any waters discharged from the mined lands shall meet all applicable water quality standards of the Regional Water Quality Control Board and other agencies with authority over such discharges.
- D. **Erosion Control**: Adequate measures shall be taken to assure the prevention of erosion from mined lands and adjacent properties during the life of the operation. The reclamation plan shall assure the prevention of erosion subsequent to surface mining operations. (See also, section 391-3 above).
- E. **Maintenance of Existing Grades**: Unless specifically authorized for the purpose of environmental enhancement by the State Department of Fish and Game (and the U.S. Army Corps of Engineers, if necessary), grades and land forms in mined lands shall be maintained in such a manner so as to avoid accumulations of water that will serve as breeding areas for mosquitoes or sites of fish entrapment.
- F. **Surrounding Water Transmissivity**: Excavations which may affect groundwater shall not substantially reduce the quality or quantity of groundwater available in the area surrounding the mined lands. See, section 3710 and following of the current regulations for performance standards.
- G. **Compliance with Other Jurisdictions**: Surface mining operations in areas where other agencies have regulatory jurisdiction shall be operated so as to comply with all applicable rules and regulations. Other agencies shall include, but not be limited to, the Department of Fish & Game, the North Coast Regional Water Quality Control Board, the California Coastal Commission, and the U.S. Army Corps of Engineers. If the County becomes aware of any operation which is operating in violation of any other agency's permit conditions, or the regulations or laws of another agency, the Planning Department shall notify the other agency(ies) of the violation and request that the agency having jurisdiction take appropriate enforcement action.

**XI. Permit Modifications:**

Modifications of conditions or restrictions on a Special or Use Permit or approved Reclamation Plan may be allowed upon request of the surface mine operator upon a finding by the Planning Director that each requested change is necessary to achieve the stated goals and policies of the County, and that such modifications do not constitute a substantial change or expansion of the surface mining operation, or a reduction in environmental protections. Any modification granted must be consistent with local, State, and Federal laws and regulations, and, if the modification has any effect on the financial assurances, the change must be submitted to the State Director for review. Additionally, any modifications granted must be reported as an amendment in the annual report required by section 2774(e) of the Act. Any person dissatisfied with the decision of the Planning Director on a request for modifications may appeal the action in accordance with the appeal provisions of the Humboldt County Code.

**XII. Emergencies:**

In the event the Board of Supervisors declares a state of emergency pursuant to Government code section 8558, or any successor provision thereto, or if an emergency situation is otherwise declared to exist pursuant to any other provision of section 8558, the provisions of this chapter governing surface mining operations may be temporarily suspended by the Board until such time as the emergency is mitigated. The provisions of this chapter shall be suspended only in those areas directly impacted by the emergency, only during the period of the declared emergency, and only to the extent necessary to mitigate the emergency situation.

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