

ORDINANCE NO. 3759

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AMENDING CHAPTER 1 OF DIVISION 10 AND SECTION 812.19225, AND ADDING SUBSECTION 85.030420(e) TO ARTICLE 4 OF CHAPTER 3 OF DIVISION 5, ALL OF TITLE 8 OF THE SAN BERNARDINO COUNTY CODE REGARDING SURFACE MINING AND LAND RECLAMATION.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of the County of San Bernardino finds that:

(a) Properly noticed public hearings have been held before the Planning Commission and the Board of Supervisors of the County of San Bernardino, State of California, pursuant to the Planning and Zoning Law of the State of California and the County Code of the County of San Bernardino.

(b) This ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA Guidelines as it does not have the potential to cause a significant effect on the environment.

(c) The changes made by this ordinance are required by the State Department of Mines and Geology to make the County's regulations consistent with State law.

SECTION 2. Chapter 1 of Division 10 of Title 8 of the San Bernardino County Code is amended, to read:

CHAPTER 1

Surface Mining and Land Reclamation

Sections:

- 810.0101 Purpose and Intent.
810.0105 Incorporation by Reference.

- 1 810.0110 Scope.
- 2 810.0115 Vested Rights.
- 3 810.0120 Process.
- 4 810.0125 Standards for Reclamation.
- 5 810.0130 Statement of Responsibility.
- 6 810.0135 Findings for Approval.
- 7 810.0140 Financial Assurances.
- 8 810.0145 Interim Management Plans.
- 9 810.0150 Annual Report Requirements.
- 10 810.0155 Inspections.
- 11 810.0160 Violations and Penalties.
- 12 810.0165 Appeals.
- 13 810.0170 Fees.
- 14 810.0175 Mineral Resource Protection.
- 15 810.0180 Severability.

16 **810.0101 Purpose and Intent.**

- 17 (a) The County recognizes that the extraction of minerals is essential to the
- 18 continued economic well-being of the County, its residents and to the
- 19 needs of society and that the reclamation of mined lands is necessary to
- 20 prevent or minimize adverse effects on the environment and to protect the
- 21 public health and safety. The County also recognizes that surface mining
- 22 takes place in diverse areas where the geologic, topographic, climatic,
- 23 biological, and social conditions are significantly different and that
- 24 reclamation operations and the specifications therefore may vary
- 25 accordingly.
- 26 (b) The purpose and intent of this Chapter is to ensure the continued
- 27 availability of important mineral resources, while regulating surface mining
- 28 operations as required by California's Surface Mining and Reclamation

1 Act of 1975 (Public Resources Code Sections 2710 et seq.), as amended,
2 hereinafter referred to as "SMARA", Public Resources Code (PRC)
3 Section 2207 (relating to annual reporting requirements), and State Mining
4 and Geology Board regulations (hereinafter referred to as "State
5 regulations") for surface mining and reclamation practice (California Code
6 of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1,
7 Sections 3500 et seq.), to ensure that:

- 8 (1) Adverse environmental effects are prevented or minimized and that
9 mined lands are reclaimed to a usable condition which is readily
10 adaptable for alternative land uses; and
- 11 (2) The production and conservation of minerals are encouraged, while
12 giving consideration to values relating to recreation, watershed,
13 wildlife, range and forage, and aesthetic enjoyment; and
- 14 (3) Residual hazards to the public health and safety are eliminated.

- 15 (c) In the event that the State amends SMARA to the extent that it adds to or
16 conflicts with this Chapter, State law shall prevail.

17 **810.0105 Incorporation by Reference.**

18 The provisions of SMARA (PRC §2710 et seq.), PRC Section 2207, and State
19 regulations CCR §3500 et seq., as those provisions and regulations may be amended
20 from time to time, are made a part of this Chapter by reference with the same force
21 and effect as if the provisions therein were specifically and fully set out herein,
22 excepting that when the provisions of this Chapter are more restrictive than correlative
23 State provisions, this Chapter shall prevail.

24 **810.0110 Scope.**

- 25 (a) Except as provided in this Chapter, no person shall conduct surface
26 mining operations unless a permit and/or Reclamation Plan, and financial
27 assurances for reclamation have first been approved by the County. Any
28 applicable exemption from this requirement does not automatically

1 exempt a project or activity from the application of other regulations,
2 ordinances or policies of the County, including but not limited to, the
3 application of CEQA, the requirement of Conditional Use Permits or other
4 permits, the payment of development impact fees, or the imposition of
5 other dedications and exactions as may be permitted under the law. The
6 provisions of this Chapter shall apply to all lands within the County, public
7 and private.

8 (b) This Chapter shall not apply to the following activities, subject to the
9 above referenced exceptions:

10 (1) Excavations or grading conducted for farming or for the purpose of
11 restoring land following a flood or natural disaster.

12 (2) Onsite excavation and onsite earthmoving activities which are an
13 integral and necessary part of a construction project that are
14 undertaken to prepare a site for construction of structures,
15 landscaping, or other land improvements, including the related
16 excavation, grading, compaction, or the creation of fills, road cuts,
17 and embankments, whether or not surplus materials are exported
18 from the site, subject to all of the following conditions:

19 (A) All required permits for the construction, landscaping, or
20 related land improvements have been approved by a public
21 agency in accordance with applicable provisions of state law
22 and locally adopted plans and ordinances, including, but not
23 limited to, the California Environmental Quality Act ("CEQA",
24 Public Resources Code, Division 13, §21000 et seq.).

25 (B) The County's approval of the construction project is
26 consistent with general plan and included consideration of
27 the onsite excavation and onsite earthmoving activities
3 pursuant to CEQA.

1 (C) Surplus materials shall not be exported from the site unless
2 and until the site accepting the surplus materials likewise
3 has been approved for development according to the
4 appropriate procedures of the agency having land use
5 jurisdiction.

6 (D) Surplus materials shall not be exported from the site unless
7 and until actual construction work has commenced and shall
8 cease if it is determined that construction activities have
9 terminated, have been indefinitely suspended, or are no
10 longer being actively pursued.

11 (3) Operation of a plant site used for mineral processing, including
12 associated onsite structures, equipment, machines, tools, or other
13 materials, including the onsite stockpiling and onsite recovery of
14 mined materials, subject to all of the following conditions:

15 (A) The plant site is located on lands with an appropriate Official
16 Land Use Designation commensurate with the activity,
17 according to the County's general plan.

18 (B) None of the minerals being processed are being extracted
19 onsite.

20 (C) All reclamation work has been completed pursuant to the
21 approved Reclamation Plan for any mineral extraction
22 activities that occurred onsite after January 1, 1976.

23 (4) Prospecting for, or the extraction of, minerals for commercial
24 purposes and the removal of overburden in total amounts of less
25 than 1,000 cubic yards in any one location of one acre or less.

26 (5) Limited surface mining operations that are required by federal law
27 in order to protect a mining claim, if those operations are conducted
28 solely for that purpose. (Otherwise known as "assessment work.")

- 1 (6) Any other surface mining operations that the State Mining and
2 Geology Board determines to be of an infrequent nature and which
3 involve only minor surface disturbances.
- 4 (7) Emergency excavations or grading conducted by the Department
5 of Water Resources or the Reclamation Board for the purpose of
6 averting, alleviating, repairing, or restoring damage to property due
7 to imminent or recent floods, disasters, or other emergencies.
- 8 (8) Road construction and maintenance for timber or forest operations
9 if the land is owned by the same person or entity, and if the
10 excavation is conducted adjacent to timber or forest operation
11 roads. This exemption is only available if slope stability and erosion
12 are controlled in accordance with Board regulations and, upon
13 closure of the site, the person closing the site implements, where
14 necessary, revegetation measures and postclosure uses in
15 consultation with the Department of Forestry and Fire Protection.
16 This exemption does not apply to onsite excavation or grading that
17 occurs within 100 feet of a Class One watercourse or 75 feet of a
18 Class Two watercourse, or to excavations for materials that are, or
19 have been, sold for commercial purposes.

20 **810.0115 Vested Rights.**

- 21 (a) No person who obtained a vested right to conduct surface mining
22 operations prior to January 1, 1976, shall be required to secure a permit to
23 mine, so long as the vested right continues and as long as no substantial
24 changes have been made in the operation except in accordance with
25 SMARA, State regulations, and this Chapter. Where a person with vested
26 rights has continued surface mining in the same area subsequent to
27 January 1, 1976, he shall obtain County approval of a Reclamation Plan
28 covering the mined lands disturbed by such subsequent surface mining. In

1 those cases where an overlap exists (in the horizontal and/or vertical
2 sense) between pre- and post-Act mining, the Reclamation Plan shall call
3 for reclamation proportional to that disturbance caused by the mining after
4 the effective date of the Act (January 1, 1976).

- 5 (b) All other requirements of State law and this Chapter shall apply to vested
6 mining operations.

7 **810.0120 Process.**

- 8 (a) Applications for a Conditional Use Permit or Reclamation Plan for surface
9 mining or land reclamation projects shall be made on forms provided by
10 the Planning Division of the Land Use Services Department. Said
11 application shall be filed in accord with this Chapter and procedures to be
12 established by the Director of Land Use Services. The forms for
13 Reclamation Plan applications shall require, at a minimum, each of the
14 elements required by SMARA (PRC §§2772-2773) and other State
15 regulations, and any other requirements deemed necessary to facilitate an
16 expeditious and fair evaluation of the proposed Reclamation Plan, to be
17 established at the discretion of the Director of Land Use Services. As
18 many copies of the Conditional Use Permit application as may be required
19 by the Director of Land Use Services shall be submitted to the Planning
20 Division of the Land Use Services Department. For the purpose of
21 documenting a transfer of ownership of a Mining Conditional Use Permit
22 or Reclamation Plan, a Transfer of Ownership application shall be filed
23 and a new Notification of Responsibility form accomplished.

- 24 (b) As many copies of a Reclamation Plan application as may be required
25 shall be submitted in conjunction with all applications for Conditional Use
26 Permits for surface mining operations. For surface mining operations that
27 are exempt from a Conditional Use Permit pursuant to this Chapter, the
28 Reclamation Plan application shall include information concerning the

1 mining operation that is required for processing the Reclamation Plan. All
2 documentation for the Reclamation Plan shall be submitted to the County
3 at one time.

4 (c) Applications shall include all required environmental review forms and
5 information prescribed by the Director of Land Use Services.

6 (d) Upon completion of the environmental review procedure and filing of all
7 documents required by the Director of Land Use Services, consideration
8 of the Conditional Use Permit or Reclamation Plan for the proposed or
9 existing surface mine shall be completed pursuant to Section 83.030140
10 of this Title at a public hearing before the Planning Commission, and
11 pursuant to Section 2774 of the Public Resources Code.

12 (e) Within thirty (30) days of acceptance of an application for a Conditional
13 Use Permit for surface mining operations and/or a Reclamation Plan as
14 complete, the Planning Division of the Land Use Services Department
15 shall notify the State Department of Conservation of the filing of the
16 application(s). Whenever mining operations are proposed in the 100-year
17 flood plain of any stream, as shown in Zone A of the Flood Insurance Rate
18 Maps issued by the Federal Emergency Management Agency, and within
19 one mile, upstream or downstream, of any state highway bridge, the
20 Planning Division of the Land Use Services Department shall also notify
21 the State Department of Transportation that the application has been
22 received.

23 (f) The Planning Division of the Land Use Services Department shall process
24 the application(s) through environmental review pursuant to the California
25 Environmental Quality Act (Public Resources Code Sections 21000 et
26 seq.) and the County's environmental review guidelines.

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1 (g) Subsequent to the appropriate environmental review, the Planning
2 Division of the Land Use Services Department shall prepare a staff report
3 with recommendations for consideration by the Planning Commission.

4 (h) The Planning Commission shall hold at least one noticed public hearing
5 on the Conditional Use Permit and/or Reclamation Plan.

6 (i) Prior to final approval of a Reclamation Plan, financial assurances (as
7 provided in this Chapter), or any amendments to the Reclamation Plan or
8 existing financial assurances, the Director of Land Use Services shall
9 certify to the State Department of Conservation that the Reclamation Plan
10 and/or financial assurance complies with the applicable requirements of
11 State law, and submit the plan, assurance, or amendments to the State
12 Department of Conservation for review. If a Conditional Use Permit is
13 being processed concurrently with the Reclamation Plan and it becomes
14 necessary to comply with permit processing deadlines, the Planning
15 Commission may conditionally approve the Conditional Use Permit with
16 the condition that the Planning Division of the Land Use Services
17 Department shall not issue the Conditional Use Permit for the mining
18 operations until cost estimates for financial assurances have been
19 reviewed by the State Department of Conservation and final action has
20 been taken on the Reclamation Plan and financial assurances.

21 Pursuant to PRC §2774(d), the State Department of Conservation (DOC)
22 shall be given 30 days to review and comment on the Reclamation Plan
23 and 45 days to review and comment on the financial assurance. The
24 Planning Commission shall evaluate written comments received, if any,
25 from the DOC during the comment periods. Staff shall prepare a written
26 response describing the disposition of the major issues raised by the
27 State for the Planning Commission's approval. In particular, when the
28 Planning Commission's position is at variance with the recommendations

1 and objections raised in the State's comments, the written response shall
2 address, in detail, why specific comments and suggestions were not
3 accepted. The Planning Commission staff report including the staff
4 prepared responses to the DOC, along with the minutes of the hearing
5 shall constitute the written response to the state.

6 (j) The Planning Commission shall then take action to approve, conditionally
7 approve, or deny the Conditional Use Permit and/or Reclamation Plan,
8 and to approve the financial assurances pursuant to PRC §2770(d).

9 (k) The Planning Division of the Land Use Services Department shall forward
10 a copy of each approved Conditional Use Permit for mining operations
11 and/or approved Reclamation Plan, and a copy of the approved financial
12 assurances to the State Department of Conservation within 30 days of
13 approval.

14 **810.0125 Standards for Reclamation.**

15 (a) All Reclamation Plans shall comply with the provisions of SMARA (PRC
16 §§2772-2773) and State regulations (CCR §§3500-3505). Reclamation
17 Plans approved after January 15, 1993, Reclamation Plans for proposed
18 new mining operations, and any substantial amendments to previously
19 approved Reclamation Plans, shall also comply with the requirements for
20 reclamation performance standards (CCR §§3700-3713).

21 (b) The County may impose additional performance standards as developed
22 either in review of individual projects, as warranted, or through the
23 formulation and adoption of countywide performance standards.

24 (c) Reclamation activities shall be initiated at the earliest possible time on
25 those portions of the mined lands that will not be subject to further
26 disturbance. Interim reclamation may also be required for mined lands
27 that have been disturbed and that may be disturbed again in future
28 operations. Reclamation may be done on an annual basis, in stages

1 compatible with continuing operations, or on completion of all excavation,
2 removal, or fill, as approved by the County. Each phase of reclamation
3 shall be specifically described in the Reclamation Plan and shall include
4 (a) the beginning and expected ending dates for each phase; (b) all
5 reclamation activities required; (c) criteria for measuring completion of
6 specific reclamation activities; and (d) estimated costs for completion of
7 each phase of reclamation.

8 **810.0130 Statement of Responsibility.**

9 The property owner or mining operator shall sign a statement accepting responsibility
10 for reclaiming the mined lands in accordance with the Reclamation Plan. Said
11 statement shall be retained by the Planning Division of the Land Use Services
12 Department in the mining operation's permanent record. Upon sale or transfer of the
13 operation, the new operator shall submit a signed statement of responsibility to the
14 Planning Division of the Land Use Services Department for placement in the
15 permanent record, prior to beginning mining operations. This shall be completed by
16 the filing and processing of the Transfer of Ownership application.

17 **810.0135 Findings for Approval.**

- 18 (a) Conditional Use Permits. In addition to any findings required by the
19 County Code, Conditional Use Permits for surface mining operations shall
20 include a finding that the project complies with the provisions of SMARA
21 and State regulations.
- 22 (b) Reclamation Plans. In order to approve Reclamation Plans, the following
23 findings shall be made in the affirmative:
- 24 (1) That the Reclamation Plan complies with SMARA (PRC §§2772-
25 2773), and any other applicable provisions;
 - 26 (2) That the Reclamation Plan complies with applicable requirements
27 of State regulations (CCR §§3500-3505, and §§3700-3713).

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- 1 (3) That the Reclamation Plan and potential use of reclaimed land
2 pursuant to the plan are consistent With this Chapter and the
3 County's General Plan and any applicable resource plan or
4 element.
- 5 (4) That the Reclamation Plan has been reviewed pursuant to CEQA
6 and the County's environmental review guidelines, and all
7 significant adverse impacts from reclamation of the surface mining
8 operations are mitigated below a level of significance or to the
9 maximum extent feasible.
- 10 (5) That the land and/or resources such as water will be reclaimed to a
11 condition that is compatible with, and blends in with, the
12 surrounding natural environment, topography, and other resources,
13 or that suitable off-site development will compensate for related
14 disturbance to resource values.
- 15 (6) That the Reclamation Plan will reclaim the mined lands to a usable
16 condition which is readily adaptable for alternative land uses
17 consistent with the General Plan and applicable resource plan.
- 18 (7) That a written response to the State Department of Conservation
19 has been prepared, describing the disposition of major issues
20 raised by that Department. Where the County's position is at
21 variance with the recommendations and objections raised by the
22 State Department of Conservation, said response shall address, in
23 detail, why specific comments and suggestions were not accepted.

24 **810.0140 Financial Assurances.**

- 25 (a) To ensure that reclamation will proceed in accordance with the approved
26 Reclamation Plan, the County shall require as a condition of approval
27 security which will be released upon satisfactory performance. The
28 applicant may pose security in the form of a surety bond, trust fund,

1 irrevocable letter of credit from an accredited financial institution, or other
2 method acceptable to the County and the State Mining and Geology
3 Board as specified in State regulations, and which the County reasonably
4 determines are adequate to perform reclamation in accordance with the
5 surface mining operation's approved Reclamation Plan. Financial
6 assurances shall be made payable to the County and the State
7 Department of Conservation. In the case where the approved
8 Reclamation Plan involves unpatented land under the control of the
9 Bureau of Land Management (BLM), National Park Service or U. S.
10 Forest Service, the appropriate agency shall also be added as a third
11 payee.

12 (b) Financial assurances will be required to ensure compliance with elements
13 of the Reclamation Plan, including but not limited to, revegetation and
14 landscaping requirements, reclamation of aquatic or wildlife habitat,
15 reclamation of water bodies and water quality, slope stability and erosion
16 and drainage control, disposal of hazardous materials, removal of
17 equipment and buildings which are not part of an approved end use, and
18 other measures, if necessary.

19 (c) Cost estimates for the financial assurance shall be submitted to the
20 Planning Division of the Land Use Services Department for review and
21 approval prior to the operator securing financial assurances. The Director
22 of Land Use Services shall forward a copy of the cost estimates, together
23 with any documentation received supporting the amount of the cost
24 estimates, to the State Department of Conservation for review. If the State
25 Department of Conservation does not comment within 45 days of receipt
26 of these estimates, it shall be assumed that the cost estimates are
27 adequate, unless the County has reason to determine that additional
28 costs may be incurred. The Director of Land Use Services shall have the

1 discretion to approve the financial assurance if it meets the requirements
2 of this Chapter, SMARA, and State regulations.

3 (d) The amount of the financial assurance shall be based upon the estimated
4 costs of reclamation stipulated in the approved Reclamation Plan,
5 including any maintenance of reclaimed areas as may be required,
6 subject to adjustment for the actual amount required to reclaim lands
7 disturbed by surface mining activities since January 1, 1976, and new
8 lands to be disturbed by surface mining activities in the upcoming year.
9 Cost estimates should be prepared by the mine operator, a licensed
10 engineer or other professional experienced in the reclamation of mined
11 lands. The estimated amount of the financial assurance shall be based on
12 an analysis of physical activities necessary to implement the approved
13 Reclamation Plan, the unit costs for each of these activities, the number of
14 units of each of these activities, and the actual administrative costs.
15 Financial assurances to ensure compliance with revegetation, reclamation
16 of water bodies, reclamation of aquatic or wildlife habitat, and any other
17 applicable element of the approved Reclamation Plan shall be based
18 upon cost estimates that include but may not be limited to labor,
19 equipment, materials, mobilization of equipment, administration, and
20 reasonable profit by a commercial operator other than the permitter. A
21 contingency factor of ten percent (10%) shall be added to the cost of
22 financial assurances to cover the County's reasonable expenses for the
23 administrative and legal fees required to foreclose on the financial
24 assurance instrument.

25 (e) In projecting the costs of financial assurances, it shall be assumed without
26 prejudice or insinuation that the surface mining operation could be
27 abandoned by the operator and, consequently, the County or State

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1 Department of Conservation may need to contract with a third party
2 commercial company for reclamation of the site.

3 (f) The financial assurances shall remain in effect for the duration of the
4 surface mining operation and any additional period specified in the
5 Reclamation Plan for the purpose of monitoring until reclamation is
6 completed (including any maintenance required).

7 (g) The amount of financial assurances required of a surface mining
8 operation for any one year shall be adjusted annually to account for new
9 lands disturbed by surface mining operations, inflation, and giving credit
10 for reclamation of lands accomplished in accordance with the approved
11 Reclamation Plan. The financial assurances shall include estimates to
12 cover reclamation for existing conditions and anticipated activities during
13 the upcoming year, excepting that the permittee may not claim credit for
14 reclamation scheduled for completion during the coming year. The annual
15 SMARA inspection by the County shall, in most cases, be used to validate
16 the submitted estimate.

17 (h) Revisions to financial assurances shall be submitted to the Director of
18 Land Use Services each year prior to the anniversary date for approval of
19 the financial assurances. The financial assurance shall cover the cost of
20 existing disturbance and anticipated activities for the next calendar year,
21 including any required interim reclamation. If revisions to the financial
22 assurances are not required, the operator shall explain, in writing, why
23 revisions are not required.

24 **810.0145 Interim Management Plans.**

25 (a) Within 90 days of a surface mining operation becoming idle, the operator
26 shall submit to the Planning Division of the Land Use Services
27 Department a proposed Interim Management Plan (IMP). The proposed
28 IMP shall fully comply with the requirements of SMARA, including but not

1 limited to all Conditional Use Permit conditions, and shall provide
2 measures the operator will implement to maintain the site in a stable
3 condition, taking into consideration public health and safety. The
4 proposed IMP shall be submitted on forms provided by the Planning
5 Division of the Land Use Services Department, and shall be processed as
6 an amendment to the Reclamation Plan. IMPs shall not be considered a
7 project for the purposes of environmental review.

8 (b) Financial assurances for idle operations shall be maintained as though the
9 operation were active, or as otherwise approved through the idle mine's
10 IMP.

11 (c) Upon receipt of a complete proposed IMP, the Planning Division of the
12 Land Use Services Department shall forward the IMP to the State
13 Department of Conservation for review. The IMP shall be submitted to the
14 State Department of Conservation at least 30 days prior to approval by
15 the Director of Land Use Services.

16 (d) Within 60 days of receipt of the proposed IMP, or a longer period mutually
17 agreed upon by the Director of Land Use Services and the operator, the
18 Director of Land Use Services shall review and approve or deny the IMP
19 in accordance with this Chapter. The operator shall have thirty (30) days,
20 or a longer period mutually agreed upon by the operator and the Director
21 of Land Use Services, to submit a revised IMP. The Director of Land Use
22 Services shall approve or deny the revised IMP within sixty (60) days of
23 receipt. If the Director of Land Use Services denies the revised IMP, the
24 operator may appeal that action to the Planning Commission.

25 (e) The IMP may remain in effect for a period not to exceed five years, at
26 which time the Director of Land Use Services may renew the IMP for
27 another period not to exceed five years, or require the surface mining

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1 operator to commence reclamation in accordance with its approved
2 Reclamation Plan.

3 **810.0150 Annual Report Requirements.**

4 Surface mining operators shall forward an annual surface mining report to the State
5 Department of Conservation and to the County Planning Division of the Land Use
6 Services Department on a date established by the State Department of Conservation,
7 upon forms furnished by the State Mining and Geology Board. New mining operations
8 shall file an initial surface mining report and any applicable filing fees with the State
9 Department of Conservation within 30 days of initial permit approval, or before
10 commencement of operations, whichever is sooner. Any applicable fees, together with
11 a copy of the annual inspection report, shall be forwarded to the State Department of
12 Conservation at the time of filing the annual surface mining report.

13 **810.0155 Inspections.**

- 14 (a) The Planning Division of the Land Use Services Department shall arrange
15 for inspection of a surface mining operation within six months of receipt of
16 the Annual Report required in Section 810.0150, to determine whether
17 the surface mining operation is in compliance with the approved
18 Conditional Use Permit and/or Reclamation Plan, approved financial
19 assurances, and State regulations. In no event shall less than one
20 inspection be conducted in any calendar year. Said inspections may be
21 made by a state-registered geologist, state-registered civil engineer,
22 state-licensed landscape architect, or state-registered forester, who is
23 experienced in land reclamation and who has not been employed by the
24 mining operation in any capacity during the previous 12 months, or other
25 qualified specialists, as selected by the Director of Land Use Services. All
26 inspections shall be conducted using a form approved and provided by
27 the State Mining and Geology Board.

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1 (b) The Planning Division of the Land Use Services Department shall notify
2 the State Department of Conservation within thirty (30) days of completion
3 of the inspection that said inspection has been conducted, and shall
4 forward a copy of said inspection notice and any supporting
5 documentation to the mining operator. The operator shall be solely
6 responsible for the reasonable cost of such inspection.

7 **810.0160 Violations and Penalties.**

8 If the Director of Land Use Services, based upon an annual inspection or otherwise
9 confirmed by an inspection of the mining operation, determines that a surface mining
10 operation is not in compliance with this Chapter, the applicable Conditional Use
11 Permit and/or the Reclamation Plan, the County shall follow the procedures set forth
12 in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and
13 penalties, as well as those provisions of Chapter 2 of Division 1 of the County
14 Development Code for initiating enforcement action which could include the
15 revocation of a Conditional Use Permit.

16 **810.0165 Appeals.**

17 Any person aggrieved by an act or determination of the Planning Officer in the
18 exercise of the authority granted herein, shall have the right to appeal to the Planning
19 Commission. Any person aggrieved by an act or determination of the Planning
20 Commission in the exercise of the authority granted herein, shall have the right to
21 appeal to the Board of Supervisors. An appeal shall be filed in writing on forms
22 provided, within ten (10) calendar days of the decision, except that if the tenth
23 calendar day following the decision is not a County business day, the appeal may be
24 filed on the next following County business day.

25 **810.0170 Fees.**

26 The County shall establish such processing fees as it deems necessary to cover the
27 reasonable costs incurred in implementing this Chapter and the State regulations,
28 including but not limited to, processing of applications, annual reports, inspections,

1 monitoring, enforcement and compliance. Such fees shall be paid by the operator, as
2 required by the County, at the time of filing of the Conditional Use Permit application,
3 Reclamation Plan application, and at such other times as are determined by the
4 County to be appropriate in order to ensure that all reasonable costs of implementing
5 this Chapter are borne by the mining operator.

6 **810.0175 Mineral Resource Protection.**

7 (a) Mine development is encouraged in compatible areas before
8 encroachment of conflicting uses. Mineral resource areas that have been
9 classified by the State Department of Conservation's Division of Mines
10 and Geology or designated by the State Mining and Geology Board as
11 Mineral Resource Zones (MRZs), as well as existing surface mining
12 operations that remain in compliance with the provisions of this Chapter,
13 shall be protected from intrusion by incompatible land uses that may
14 impede or preclude mineral extraction or processing, to the extent
15 possible for consistency with the County's General Plan.

16 (b) In accordance with PRC §2762, the County's General Plan and resource
17 maps will be updated to reflect mineral information (classification and/or
18 designation reports) within 12 months of receipt from the State Mining and
19 Geology Board of such information. Land use decisions within the County
20 will be guided by information provided on the location of identified mineral
21 resources of regional significance. Conservation and potential
22 development of identified mineral resource areas will be considered and
23 encouraged. Recordation on property titles of the presence of important
24 mineral resources within the identified mineral resource areas may be
25 encouraged as a condition of approval of any development project in the
26 impacted area. Prior to approving a use that would otherwise be
27 incompatible with mineral resource protection, conditions of approval may

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1 be applied to encroaching development projects to minimize potential
2 conflicts.

3 **810.0180 Severability.**

4 If any section, subsection, sentence, clause or phrase of this Chapter is for any
5 reason held to be invalid or unconstitutional by the decision of a court of competent
6 jurisdiction, it shall not affect the remaining portions of this Chapter.

7
8 SECTION 3. Subsection 85.030420(e) is added to Article 4 of Chapter 3 of
9 Division 5 of Title 8 of the San Bernardino County Code, to read:

10 **85.030420 Development Standards.**

11 (e) Non-mining projects located within the MR Overlay District may be
12 approved only if the following finding is made in the affirmative:

13 Even though the project may otherwise be determined to be incompatible
14 with mineral resource protection policies, conditions of approval have
15 been applied to minimize potential conflicts with these policies.

16
17 SECTION 4. Section 812.19225 of the San Bernardino County Code is
18 amended, to read:

19 **812.19225 Surface Mining Operations.**

20 "Surface Mining Operations": All, or any part of, the process involved in the mining of
21 minerals on mined lands by removing overburden and mining directly from the mineral
22 deposits, open-pit mining of minerals naturally exposed, mining by the auger method,
23 dredging and quarrying, or surface work incident to an underground mine. Surface
24 mining operations include, but are not limited to, in place distillation or retorting or
25 leaching, the production and disposal of mining waste, prospecting and exploratory
26 activities, borrow pitting, streambed skimming, and segregation and stockpiling of
27 mined materials (and recovery of same). The following definitions shall further clarify
28 mining issues:

1 (a) "Area of Regional Significance". An area designated by the State Mining
2 and Geology Board which is known to contain a deposit of minerals, the extraction of
3 which is judged to be of prime importance in meeting future needs for minerals in a
4 particular region of the State within which the minerals are located and which, if
5 prematurely developed for alternate incompatible land uses, could result in the
6 permanent loss of minerals that are of more than local significance.

7 (b) "Area of Statewide Significance". An area designated by the Board which
8 is known to contain a deposit of minerals, the extraction of which is judged to be of
9 prime importance in meeting future needs for minerals in the State and which, if
10 prematurely developed for alternate incompatible land uses, could result in the
11 permanent loss of minerals that are of more than local or regional significance.

12 (c) "Borrow Pits". Excavations created by the surface mining of rock,
13 unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

14 (d) "Compatible Land Uses". Land uses inherently compatible with mining
15 and/or that require a minimum public or private investment in structures, land
16 improvements, and which may allow mining because of the relative economic value of
17 the land and its improvements. Examples of such uses may include, but shall not be
18 limited to, very low density residential, geographically extensive but low impact
19 industrial, recreational, agricultural, silvicultural, grazing, and open space.

20 (e) "Haul Road". A road along which material is transported from the area of
21 excavation to the processing plant or stockpile area of the surface mining operation.

22 (f) "Idle". Surface mining operations curtailed for a period of one year or
23 more, by more than 90 percent of the operation's previous maximum annual mineral
24 production, with the intent to resume those surface mining operations at a future date.

25 (g) "Incompatible Land Uses". Land uses inherently incompatible with mining
26 and/or that require public or private investment in structures, land improvements, and
27 landscaping and that may prevent mining because of the greater economic value of
28 the land and its improvements. Examples of such uses may include, but shall not be

1 limited to, high density residential, low density residential with high unit value, public
2 facilities, geographically limited but impact intensive industrial, and commercial.

3 (h) "Mined Lands". The surface, subsurface, and ground water of an area in
4 which surface mining operations will be, are being, or have been conducted, including
5 private ways and roads appurtenant to any such area, land excavations, workings,
6 mining waste, and areas in which structures, facilities, equipment, machines, tools, or
7 other materials or property which result from, or are used in, surface mining
8 operations are located.

9 (i) "Minerals". Any naturally occurring chemical element or compound, or
10 groups of elements and compounds, formed from inorganic processes and organic
11 substances, including, but not limited to, coal, peat, and bituminous rock, but
12 excluding geothermal resources, natural gas, and petroleum.

13 (j) "Operator". Any person who is engaged in surface mining operations, or
14 who contracts with others to conduct operations on his/her behalf, except a person
15 who is engaged in surface mining operations as an employee with wages as his/her
16 sole compensation.

17 (k) "Reclamation". The combined process of land treatment that minimizes
18 water degradation, air pollution, damage to aquatic or wildlife habitat, flooding,
19 erosion, and other adverse effects from surface mining operations, including adverse
20 surface effects incidental to underground mines, so that mined lands are reclaimed to
21 a usable condition which is readily adaptable for alternate land uses and create no
22 danger to public health or safety. The process may extend to affected lands
23 surrounding mined lands, and may require backfilling, grading, resoiling, revegetation,
24 soil compaction, stabilization, or other measures.

25 (l) "Stream Bed Skimming". Excavation of sand and gravel from stream bed
26 deposits above the mean summer water level or stream bottom, whichever is higher.

27 ///

28 ///

1 SECTION 5. The Board of Supervisors hereby declares that it would have
2 adopted this ordinance and each section, subsection, sentence, clause, phrase, or
3 portion thereof irrespective of the fact that any one or more sections, subsections,
4 clauses, phrases or portions thereof be declared invalid or unconstitutional. If for any
5 reason any portion of this ordinance is declared invalid or unconstitutional, then all other
6 provisions hereof shall remain valid and enforceable.

7
8 SECTION 6. This ordinance shall become effective thirty (30) days after its
9 adoption.

10
11 
12 _____
13 JON D. MIKELS, Chairman
14 Board of Supervisors

15 SIGNED AND CERTIFIED THAT A COPY OF THIS
16 DOCUMENT HAS BEEN DELIVERED TO THE
17 CHAIRMAN OF THE BOARD

18 EARLENE SPROAT,
19 Clerk of the Board of Supervisors
20 of the County of San Bernardino

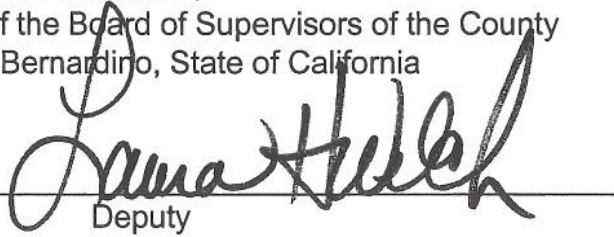
21 
22 _____
23 STATE OF CALIFORNIA)
24)ss.
25 COUNTY OF SAN BERNARDINO)

26 I, EARLENE SPROAT, Clerk of the Board of Supervisors of the County of San
27 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
28 Supervisors of said County and State, held on the _____^{4th} day
of _____ May _____, 1999 at which meeting were present Supervisors:
Kathy A. Davis, Dennis Hansberger, Fred Aguiar, Jerry Eaves, Jon D. Mikels
and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
to wit:

AYES: Davis, Hansberger, Aguiar, Eaves, Mikels
NOES: None
ABSENT: None

1 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
2 seal of the Board of Supervisors this 4th day
3 of May, 1999.

4 EARLENE SPROAT,
5 Clerk of the Board of Supervisors of the County
6 of San Bernardino, State of California

7 
8 Deputy

9
10 APPROVED AS TO FORM

11 DATE 4-12-99

12 Alan K. Marks, COUNTY COUNSEL
13 SAN BERNARDINO COUNTY, CALIFORNIA

14 BY [Signature], DEPUTY