

Chapter 8.20

SURFACE MINING

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8.20.010 Purpose. This chapter is adopted pursuant to the Surface Mining and Reclamation Act of 1975, being Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code (PRC) and in compliance with the provisions set forth by the state Board of Mines and Geology, being Section 3500 et seq. of Chapter 8, Title 14 of the California Code of Regulations (CCR). (Ord. 2073 § 1, 1994; Ord. 1974 § 2 (part), 1993).

8.20.020 Findings.

A. The board of supervisors hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the county and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. Each county is required to adopt ordinances for the review and approval of permits for mining operations and plans for reclamation of mined lands within its jurisdiction.

B. The board further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of materials and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

C. The board further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, economic, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

D. The provisions of the California Surface and Mining Act of 1975 (PRC Section 2710 et seq.), PRC Section 2207, and the California Code of Regulations (Section 3500 et seq.) implementing the Act, as either may be amended from time to time, are made a part of this chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, except in that when the provisions of this chapter are more restrictive than conflicting state provisions, this chapter shall prevail. (Ord. 2073 § 2, 1994; Ord. 1974 § 2 (part), 1993).

8.20.030 Definitions. As used in this chapter:

A. "Area of regional significance" means an area designated by the state Mining and Geology Board, pursuant to Public Resources Code Section 2790, which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for materials in a particular region of the state within

which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

B. "Area of statewide significance" means an area designated by the State Mining and Geology Board, pursuant to Public Resources Code Section 2790, which is known to contain a deposit of minerals, the extraction of which is to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

C. "Exploration" or prospecting" means that search for minerals by geological, geophysical, geochemical and other techniques, including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, intent, or quantity of minerals present.

D. "Idle" means to curtail for a period of one year or more surface mining operations by more than ninety percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

E. "Interim management plan" is the plan which the operator of an idle mine shall submit and gain approval for, in order to assure that the site shall be maintained in compliance with the approved reclamation plan, use permit, and applicable conditions, until the mine operation is resumed or the mine is fully reclaimed in accordance with the approved reclamation plan.

F. "Mined lands" includes the surface, subsurface, and groundwater of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

G. "Minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

H. "Mining waste" includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations, excluding stockpiles as defined in subsection 0.

I. "Operator" means any person who is engaged in surface mining operations himself, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

J. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal by surface mining operations.

K. "Person" includes any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

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

M. "Reclamation plan" means the plan required by the Surface Mining and Reclamation Act of 1975, and meeting all the requirements of Section 2772 of the Public Resource Code, administrative guidelines and regulations adopted pursuant thereto, and ordinances of Tuolumne County adopted in accordance therewith.

N. "State Geologist" means the individual holding office created by Section 677, Article 3, Chapter 2 of Division 1 of the Public Resources Code. O. "Stockpile" means a volume of stored mined material which is residual or secondary material extracted during a surface mining operation and which has a demonstrated future economic value sufficient to warrant its protection and preservation.

P. "Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger methods, dredging and quarrying, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of the same) or surface work incidental to an underground mine. Surface mining operations include, but are not limited to:

1. In place distillation, retorting or leaching;
2. The producing and disposal of mining wastes;

3. Prospecting and exploratory activities.
(Ord. 2073 § 3, 1994; Ord. 1974 § 2 (part), 1993).

8.20.040 Scope.

A. The provisions of this chapter shall apply to all surface mining operations, as defined by PRC Section 2735 and CCR Section 3501, in Tuolumne County.

B. The provisions of this chapter are not applicable to:

1. Surface mining operations that are required by federal law in order to protect a mining claim if such operations are conducted solely for that purpose;
2. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster;
3. On-site excavation and on-site earth-moving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

a. All required permits for the grading, construction, landscaping, or related land improvements have been approved by Tuolumne County and any other public agency in accordance with the Tuolumne County Ordinance Code, resolutions of the Tuolumne County board of supervisors, the Tuolumne County general plan or area plan, and any other applicable provisions of state law and county-adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act (PRC Section 21000 et seq.),

b. The county's or other lead agency's approval of the construction project included consideration of the on-site excavation and on-site earth-moving activities pursuant to the California Environmental Quality Act,

c. The approved construction project is consistent with the general plan, and with the zoning district of the site,

d. Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer actively pursued;

4. Operation of a plant site used for mineral processing, including associated on-site structures, equipment, machines, tools, or other materials, including the stockpiling and other on-site recovery

of mined materials, subject to all of the following conditions:

- a. The plant site is located on lands designated for industrial or commercial uses in the general plan or applicable area plan,
- b. The plant site is located on lands zoned M-1, M-2, P, or MPZ under Title 17 of the Tuolumne County Ordinance Code. A plant site may be located on lands zoned C-1 or C-2, after first securing a conditional use permit (Sections 17.34.030 and 17.36.030 of the TCOC),
- c. None of the minerals being processed are being extracted onsite,
- d. All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred on-site after January 1, 1976;
5. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than one thousand cubic yards in any one location of one acre or less;
6. Reclamation of lands mined prior to, but not after January 1, 1976;
7. The requirement for the obtaining of an operation permit for those operating with a vested right prior to January 1, 1976 unless substantial changes in operation are proposed. (Ord. 2073 § 4, 1994; Ord. 1974 § 2 (part), 1993).

8.20.050 Use permit required. Any person, except those exempt as having a vested right to conduct surface mining operations, who proposes to engage in surface mining activity or to make any substantial changes in an existing surface mining operation in which the existing operation the person has a vested right, shall, prior to the commencement of operations, obtain a use permit as provided in Sections 17.68.020 through 17.68.180 therefore and approval by the planning commission of a reclamation plan as defined in subsection K of Section 8.20.030 and completion of all financial assurance requirements in accordance with PRC Section 2770(a). The commencement of any surface mining operation after a period of nonoperation shall not require the obtaining of a use permit if the operator has either a vested right in the operation or a previously obtained use permit as required by this chapter and the use permit expressly prescribes periodic nonoperation and no substantial changes in the operation are made. Any person without a vested right who has engaged in a surface mining operation after January 1, 1976, but prior to May 10, 1979, shall obtain a use permit and approval of a reclamation plan prior to April 30, 1980, or he/she shall be in violation of this chapter. (Ord. 2073 § 5, 1994; Ord. 1974 § 2 (part), 1993).

8.20.060 Reclamation plan - Submission and approval. Any person who obtained prior to January 1, 1976, and continues to hold a vested right to conduct surface mining operations shall submit and obtain approval of a reclamation plan for operations conducted after January 1, 1976, pursuant to the procedures of subsection B of Section 8.20.150; however, such person shall not be required to obtain a use permit for such operations. (Ord. 1974 § 2 (part), 1993).

8.20.070 Reclamation plan - Filing not required when.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of mined lands on which surface mining operations were conducted prior to January 1, 1976. (Ord. 1974 § 2 (part), 1993).

8.20.080 Reclamation plan - Determination of vested rights. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he/she has, in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. Expenses incurred in obtaining the issuance of a permit for a particular operation shall not be deemed liabilities for work or materials. Nonoperation after January 1, 1976, of a surface mining operation in which the operator has a vested right shall not by itself cause the lapse of the vested right so long as the nonoperation is consistent with the historic periodicity of the operation and does not extend substantially longer than previous periods of nonoperation. (Ord. 1974 § 2 (part), 1993).

8.20.090 Reclamation plan - Review fee. The fee for review of the reclamation plan, amendments to reclamation plans, financial assurances, and interim management plans required by this chapter shall be the amount specified in the Master Fee Ordinance for Tuolumne County. (Ord. 2073 § 6, 1994; Ord. 1974 § 2 (part), 1993).

8.20.100 Reclamation plan and use permit - Number required for noncontiguous parcels. Applicants having a surface mining operation which involves separate, noncontiguous parcels of land may file one use permit and/or reclamation plan for the entire operation covering each parcel of land. (Ord. 1974 § 2 (part), 1993).

8.20.110 Reclamation plan and use permit - Run with the land. Reclamation plans and use permits

issued pursuant to this chapter shall run with the land affected thereby and shall be binding on all successors, heirs, and assigns of the permittee. (Ord. 1974 § 2 (part), 1993).

8.20.120 Reclamation plan and use permit - Financial assurance. To guarantee reclamation in accordance with the reclamation plan, surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances adopted for use by the state Mining and Geology Board in accordance with PRC Section 2773.1(a)(1) and Section 2773.1(e) are required to be approved as part or condition of any reclamation plan and/or use permit required by this chapter. Financial assurances must be submitted by the director of community development to the director of the state Department of Conservation (Director) for review forty-five days prior to formal approval by the community development department. Any changes or amendments required as a result of the comments from the state must be completed prior to approval. Financial assurances shall be made payable to the County of Tuolumne, and the state Department of Conservation. If a mining operation is sold, or ownership is otherwise transferred, the existing financial assurance shall remain in force and shall not be released by the county until new financial assurances are secured by the new owner and have been approved by the county, in accordance with PRC Section 2773.1(c). Financial assurances shall be released upon written notification by the community development department, which shall be forwarded to the operator and/or property owner and the Director of the state Department of Conservation, that the reclamation has been completed in accordance with the approved reclamation plan, in accordance with PRC Section 2773.1(c). (Ord. 2314 § 28, 1999; Ord. 2073 § 7, 1994; Ord. 1974 § 2 (part), 1993).

8.20.130 Reclamation plan - Required information and documents. Pursuant to Section 2772 of the Public Resources Code, the reclamation plan required by this chapter shall include at least the following information and documents:

A. The name and address of the operator and the names and addresses of any persons designated by him/her as his/her agents for the service of process;

B. The anticipated quantity and type of minerals for which the surface mining operation is to be conducted;

C. The proposed dates for the initiation and termination of such operation;

D. The maximum anticipated depth of the surface mining operation;

E. The size and legal description of the lands that will be affected by such operation, a map that includes the boundaries and topographic details of such lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands, the location of all proposed access roads to be constructed in conducting such operation, and the names and addresses of the owners of all surface and mineral interests of such lands;

F. A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation;

G. A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses;

H. A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including: 1.

A description of the manner in which contaminants will be controlled, and mining waste will be disposed, and

2. A description of the manner in which rehabilitation of affected stream channels and stream banks to a condition minimizing erosion and sedimentation will occur. 3. A description of the reclamation methods and procedures and how each meets or exceeds the respective reclamation standards regulations adopted by the state Mining and Geology Board in accordance with Section 2773 of the Public Resources Code, otherwise known as the Reclamation Standards, CCR Section 3700 et seq.;

I. An assessment of the effect of implementation of the reclamation plan on future mining in the area;

J. A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan;

K. A monitoring plan to allow the operator and annual inspector to judge the compliance of ongoing mining and reclamation activities with the approved reclamation plan, with provisions for annual adjustment based on the activities at the operation during the previous twelve months. The monitoring plan shall be consistent with the

mitigation monitoring requirements for project approval in accordance with PRC Section 21081.6;

L. An estimate of the cost of reclaiming the site in accordance with all the provisions of the reclamation plan at any time during the first year of operation under that plan, formulated to allow for annual revisions of the reclamation costs. The estimate shall be prepared or reviewed by a registered civil engineer or certified engineering geologist. (Ord. 2073 § 8, 1994; Ord. 1974 § 2 (part), 1993).

8.20.140 Review procedure - Time limit.

Proposed reclamation plans, amendments to reclamation plans, interim management plans, or financial assurances which do not meet the requirements of this chapter must be returned to the applicant or operator within sixty days. The applicant or operator shall revise the proposed plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the community development department for review and approval. Prior to approval, the plan or financial assurances must be submitted by the community development department to the state Director of the Department of Conservation (Director) for review forty-five days prior to formal approval by the county. Any changes or amendments required as a result of the comments from the state must be completed prior to approval. The time taken to complete the review process may be increased if additional time is needed to complete review under the California Environmental Quality Act. (Ord. 2314 § 29, 1999; Ord. 2073 § 9, 1994; Ord. 1974 § 2 (part), 1993).

8.20.150 Review procedure - Generally.

A. The applicant shall submit all information requested on the standard application form, adopted by the board of supervisors.

B. Review of use permit and reclamation plan applications shall follow the procedures for notification and issuance of use permits as specified in Sections 17.68.020 through 17.68.180 and shall require at least one public hearing. In addition to the required findings in Section 17.68.050, such applications must be found to be in accordance with the purposes and provisions of this chapter prior to approval. (Ord. 1974 § 2 (part), 1993).

8.20.160 Plans, reports, applications are public record.

A. Reclamation plans, reports, applications and other documents submitted pursuant to this chapter are public records unless it can be

demonstrated to the satisfaction of the county that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The county shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the state Department of Conservation (Director) and to persons authorized by the operator and by the owner, and shall be returned to the operator and owner following review of the application by the director of community development.

B. All proposed reclamation plans, financial assurances, or amendments must be submitted by the community development department to the Director of the state Department of Conservation (Director) for review forty-five days prior to formal approval by the county. A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the state Department of Conservation (Director) on request. (Ord. 2314 § 30, 1999; Ord. 2073 § 10, 1994; Ord. 1974 § 2 (part), 1993).

8.20.170 Periodic review requirements.

A. Annual Reports. The operator or his/her designee of any surface mining operation not exempt in accordance with Section 8.20.040 shall forward to the state Department of Conservation (Director) not later than July 1, 1991, and every year thereafter not later than an anniversary date established by the state Department of Conservation (Director) upon forms furnished by the state Department of Conservation, an annual report which meets the requirements of Section 2207 of the California Public Resources Code. A copy of the annual report shall be provided to the community development department within the same time frame. A "mining operation" is any operation that meets the definition of Section 8.20.030(N), but is not exempted by Section 8.20.040.

B. Annual inspection. The county shall conduct an inspection of all surface mining operations (as described above) annually. The first inspection shall occur within six months of receipt of the first annual report, and at least once every twelve months thereafter. The inspection shall be conducted using the "surface mining inspection report" form supplied by the state Department of Conservation. The inspection can be conducted by either community development department staff or private consultant. The inspection may not be conducted by a person who has been employed by the surface mining operation in any capacity in the previous twelve months. Operators have the choice

of the two methods of inspection, and operators shall be responsible for all costs of the inspection. If an operator opts for inspection by a private consultant, the consultant shall be selected by the community development department. Operators opting for consultant inspection shall notify the community development department of that choice at the time of submittal of that year's annual report. After the consultant's estimated fees have been determined by the community development department and reported to the operator, the operator shall have fourteen days to provide one hundred percent of the estimated costs to the community development department. If the operator does not provide the required deposit within the fourteen-day time period, the inspection shall be conducted by the community development department. Any uncommitted funds remaining in the deposit after the termination of consultant's contract shall be immediately refunded to the operator. Fees for inspections shall be specified in Title 3 of this code; consultants' costs shall be borne by the operator in addition to county administrative fees. Any operator who does not provide the required inspection fees by the time specified by the community development department or prevents or impedes the actual inspection in any manner is considered in violation of the provisions of this chapter, and subject to the enforcement provisions of Sections 8.20.200 through 8.20.230. (Ord. 2314 § 31, 1999; Ord. 2073 § 11, 1994; Ord. 1974 § 2 (part), 1993).

8.20.180 Amendments to plan. Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed and approved, in the same manner as established herein for original application; provided, minor amendments may be approved by the director of community development. The foregoing notwithstanding, in emergency situations where irreversible physical damage to the environment may occur, an operator may take such action which is necessary to prevent such damage and shall forthwith report the taking of the action to the planning commission. Applications for an amendment are subject to the review fee in accordance with Section 8.20.090 above. An interim management plan for an idle mine is considered an amendment. The annual review of financial assurances per Section 8.20.170(C) is not considered an amendment. (Ord. 2314 § 32, 1999; Ord. 1974 § 2 (part), 1993).

8.20.190 Appeal procedure. Any decision of the planning commission or the community

development director required by this chapter, except section 8.20.230, may be appealed in the manner set forth in section 17.68.130. An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional 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 the right to appeal in accordance with this section, appeal to the State Mining and Geology Board in accordance with the provisions of Public Resource Code Section 2775. (Ord. 2296 § 8, 1999; Ord. 1974 § 2 (part), 1993).

8.20.200 Enforcement responsibility. The provisions of this chapter shall be enforced by the community development department. (Ord. 2296 § 9, 1999; Ord. 1974 § 2 (part), 1993).

8.20.210 Revocation of plan. An approved reclamation plan may be revoked by the planning director under the following conditions:

A. A violation of the provisions of this chapter or of the approved reclamation plan as determined by the director of community development of his/her qualified appointee;

B. Notice by personal service or certified mail has been given the operator, allowing thirty days from receipt of such notice to correct violations;

C. The operator fails to correct violations within the above notice period;

D. An order has been given the operator, delivered by personal service or certified mail. The order requires the operator to comply, or if the operator does not have an approved reclamation plan, cease all further mining activities. The order defines the nature of the noncompliance, specifies a reasonable time for compliance, and sets a date for a public hearing;

E. Not sooner than thirty days after the date of the order, a public hearing is held by the board of supervisors for which ten days' notice has been given pursuant to Government Code Section 6061 and at least ten day's written notice has been given to the operator, and the board of supervisors may uphold, modify or reject the director's determinations and may revoke the plan or otherwise take action to enforce the plan's provisions. (Ord. 2314 § 33, 1999; Ord. 1974 § 2 (part), 1993).

8.20.220 Penalties for noncompliance. As an alternative to revocation of the reclamation plan, an operator still in noncompliance after the effective date of an order as described in Section

8.22.210(D) is subject to an order imposing an administrative penalty in accordance with Section 2774.1 of the California Public Resources Code, assessed from the original date of noncompliance. The community development department may issue an order setting administrative penalties, which shall become effective upon issuance thereof. Payment shall be made to the community development department, unless the operator files an appeal with the Board of Supervisors within thirty days. Such an appeal would be scheduled and heard by the board of supervisors in the manner set forth in the Tuolumne County Uniform Zoning Ordinance, Section 17.68.130. If after hearing, the board affirms the order, the operator shall pay the administrative penalties set by the board's order within thirty days of the service of that order. (Ord. 2314 § 34, 1999; Ord. 1974 § 2 (part), 1993).

8.20.230 Violation; enforcement. A violation of this chapter shall be enforced as provided for in Chapter 1.10 of the Tuolumne County Ordinance Code. (Ord. 1974 § 2 (part), 1993, Ord. 2296 § 5, 1999).

8.20.240 Enforcement of violation.

Notwithstanding the foregoing, a violation of this chapter, including but not limited to operation without an approved reclamation plan, financial assurance, annual inspection or continued operation with a revoked reclamation plan, may be enforced by the county by the use of any legal or equitable remedy the county may have. In addition, any use permit required by this chapter may be revoked pursuant to the provisions of Sections 17.68.170 through 17.68.175. (Ord. 1974 § 2 (part), 1993).