

CHAPTER 29
SURFACE MINING AND RECLAMATION

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ARTICLE I. GENERAL

Sec. 29-10. Purpose and intent

(a) The Surface Mining and Reclamation Act of 1975, Chapter 9 of the Public Resources Code, authorizes and directs local agencies to adopt ordinances establishing procedures for the review and approval of reclamation plans and the issuance of permits to conduct surface mining operations. This chapter is adopted to comply with the directive and fulfill various purposes of the act.

(b) 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 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.

(c) 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.

(d) The board further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, geological and social conditions are significantly different and that reclamation operations and the specifications may vary accordingly. (Ord. No. 1036, ' 1.)

Sec. 29-11. Definitions

As used in this chapter, the following definitions shall apply:

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 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.

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 judged 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.

Exploration or prospecting means the 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, extent or quantity of minerals present.

Idle means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

Lead agency means the Solano County Planning Commission which has the principal responsibility for approving a surface mining operation pursuant to this ordinance.

Mined lands include 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 wastes, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in areas in which surface mining operations are located.

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.

Mining waste includes the residual or soil, rock, mineral, liquid, vegetation, equipment, machines, tools or other materials or property directly resulting from, or displaced by surface mining operations.

Operator means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on the operator's behalf, but does not include a person engaged in surface mining operations as an employee with wages as the person's sole compensation.

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.

Permit means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

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

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.

Reclamation plan means the plan approved by the County of Solano, and as required, by the Surface Mining and Reclamation Act of 1975, which meets all the requirements of section 2772 of the Public Resources Code, administrative guidelines and regulations adopted pursuant thereto, and ordinances and resolutions of Solano County adopted in accordance therewith.

State board means the State Mining and Geology Board in the Department of Conservation, State of California.

State geologist means the individual holding office created by section 677 of the Public Resources Code.

Surface mining operations mean 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 method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) In-place distillation, retorting or leaching.
- (b) The producing and disposal of mining waste.
- (c) Prospecting or exploratory activities.

Vested right. A person shall be deemed to have vested rights if prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization if such permit or other authorization was required and was in compliance with county regulations, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit, shall not be deemed liabilities for work or materials. (Ord. No. 1036, ' 1.)

Sec. 29-12. Scope

- (a) The provisions of this chapter shall apply to the unincorporated areas of Solano County.
- (b) The provisions of this chapter are not applicable to:
 - (1) Excavations or grading conducted for farming or on-site construction, or for the purpose of restoring land following a flood or natural disaster.
 - (2) Prospecting and exploration for minerals of commercial value where less than one thousand cubic yards of overburden is removed in any one location of one acre or less.
 - (3) Any surface mining operation that does not involve either the removal of a total of more than one thousand cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location.
 - (4) 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.
 - (5) Reclamation of lands mined prior to, but not after January 1, 1976.
 - (6) Such other mining operations that the County determines to be of an infrequent nature and which involve only minor surface disturbances, and are categorically identified by

the State Board pursuant to section 2714(d) and 2758(c), California Surface Mining and Reclamation Act of 1975. (Ord. No. 1036, ' 1.)

ARTICLE II. PLANS AND OPERATIONS

Sec. 29-20. Permit and reclamation plan requirement

(a) Any person, except as provided in section 29-12 of this Code and section 2776 of the California Surface Mining and Reclamation Act of 1975, who proposes to engage in surface mining operations, or to make any changes which are determined to be substantial by the zoning administrator in an existing operation in which such existing operation the person has a vested right shall, prior to the commencement of operations, obtain: (1) a use permit from the planning commission, pursuant to section 28-54 of this Code; and (2) approval by the planning commission of a reclamation plan, in accordance with the provisions set forth in this chapter and as further provided in article 5, California Surface Mining and Reclamation Act of 1975, commencing with section 2770 of the California Public Resources Code.

(b) Any person who obtained, prior to January 1, 1976, and continues to hold a vested right to conduct surface mining operations shall obtain the approval of the planning commission of a reclamation plan for operations conducted after January 1, 1976, but such person shall not be required to obtain a use permit for such operations except in accordance with the provisions of this chapter. The reclamation plan shall provide for the reclamation of portions of the site mined after January 1, 1976. A reclamation plan prepared pursuant to this chapter need not be prepared, filed or approved for reclamation of lands mined prior to, but not later than January 1, 1976.

(c) The commencement of any surface mining operation after a period of nonoperation shall not require the obtaining of a use permit if: (1) the operator has either [a] a vested right in said operation, or [b] a previously obtained use permit as required by this chapter when such use permit expressly prescribes periodic nonoperation; and (2) no substantial changes in the operation are made. Periodic 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 such vested right so long as the nonoperation: (1) is consistent with the historic periodicity of such operation; and (2) does not extend substantially longer than previous periods of nonoperation. (Ord. No. 1036, ' 1.)

Sec. 29-21. Financial assurances

(a) Any person who is operating or intends to conduct a surface mining operation, whether that person has existing vested rights or not, shall submit for approval a financial assurances plan for review by the lead agency. This plan must be submitted and approved prior to any new operation being initiated. Any existing operation must submit a financial assurance plan pursuant to provisions of Public Resources Code ' 2773.1. The following is applicable to the financial assurances plan:

(1) Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the lead agency which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operator's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is complete.

(3) The amount of financial assurances required of a surface mining operator for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the State Geologist. However, if the operator has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this requirement, or shall credit them toward fulfillment of the financial assurances required. If more than one public agency exercises control over the surface mining operation, the financial assurances required shall not exceed the amount reasonably necessary to perform reclamation of lands remaining disturbed.

(b) If the lead agency, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its operation without commencing reclamation, either the lead agency or the State Geologist shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency, or the state, intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the State Geologist and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2), immediately above.

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the State Geologist, that reclamation has been completed in accordance with the approved reclamation plan.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b), above. However, as specified in Public Resources Code § 2773.1(d), the State Geologist may act to seek forfeiture of financial assurances if both of the following conditions exist:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the State Geologist.

(2) The lead agency has been notified in writing by the State Geologist of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following occurred:

(A) The lead agency has been notified in writing by the State Geologist that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under the Public Resources Code.

(B) The State Geologist determines that there is a violation which amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the State Geologist in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

Sec. 29-22. Review procedure

(a) All applications for approval of either a reclamation plan or financial assurances for surface mining or land reclamation projects shall be made on forms provided by the office of the county environmental management department and as provided for by the California Surface Mining and Reclamation Act of 1975, and any amendment or state policy subsequently adopted. A filing fee of three hundred fifty dollars at the time of filing the reclamation plan, or five hundred dollars at the time of concurrent filing of the reclamation plan and required use permit application shall be paid to the county. Such fee may, from time to time, be modified or adjusted by resolution of the board of supervisors, as provided in section 1-18 of this code.

(b) Prior to approval by the planning commission of any application for a use permit and/or any reclamation plan, financial assurances or amendment thereto, at least one public hearing shall be held by the planning commission.

(c) Notice of such public hearing shall be given at least ten days prior to such hearing, pursuant to section 28-65(b) of this code. Any such public hearing may be held in conjunction and simultaneously with any other public hearing required by this chapter, the California Environmental Quality Act, or other applicable statute or ordinance.

(d) The State Geologist shall be provided with a copy of any filing of any application for a permit to conduct surface mining operations, or the filing of any reclamation plan or financial assurances, or amendments thereto, pursuant to section 2774 of the California Surface Mining and Reclamation Act of 1975 for review and approval. The lead agency shall certify to the State Geologist that the submitted documentation complies with applicable state law. (Ord. No. 1036, ' 1.)

Sec. 29-23. Public records

(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 Geologist and to persons authorized, in writing, by the operator and by the owner.

(b) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the State Geologist on request. (Ord. No. 1036, ' 1.)

Sec. 29-24. Periodic review

As a condition of approval for the permit of the reclamation plan, or both, a schedule for periodic inspections by the county of the site shall be established to evaluate continuing compliance with the permit and reclamation plan. A scheduled inspection shall occur within six months of the start of operations at a site, and at least annually thereafter. The operator shall be solely responsible for the reasonable cost of the inspection. An inspection fee shall be set and adjusted from time to time by resolution of the board of supervisors as provided by section 1-18 of the Solano County Code. The fee shall be payable by the operator. A report of the results of the inspection shall be completed on a form to be provided by the state, and a copy of the inspection report shall be provided to the State Geologist. (Ord. No. 1036, ' 1.)

Sec. 29-25. Amendments

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 with and approved by the planning commission. A proposed amendment to a reclamation plan shall be processed in the same

manner, and the applicant shall have the same rights and pay the same fee as established herein for an original application. (Ord. No. 1036, ' 1.)

Sec. 29-26. Idle operations

Within 90 days of a surface mining operation becoming idle, as defined herein above, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project within the meaning of the California Environmental Quality Act (CEQA) Public Resources Code ' ' 21000 and following. The approved interim management plan shall be considered an amendment to the surface mining operators approved reclamation plan, for purposes of this ordinance. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this ordinance, including, but not limited to, all permit conditions.

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

- (a) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.
- (b) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

In any event, financial assurances required under ' 29-21, above, shall remain in effect during the period the surface mining operation is idle. If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operator shall commence reclamation in accordance with its approved reclamation plan.

Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to ' 29-20, above, so long as the plan satisfies the requirements above in this paragraph, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the board of supervisors, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the board of supervisors.

Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the board of supervisors, a surface mining operation which remains idle for over one year after becoming idle as herein defined without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

ARTICLE III. REVIEW AND ENFORCEMENT

Sec. 29-30. Enforcement

(a) Alleged violations of this chapter shall be heard by the planning commission of the County of Solano in order for the commission to determine and recommend proper remedies.

(b) If the lead agency determines that the operator is not in compliance with statutory provisions or the provisions of this ordinance, the lead agency may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's notification, the lead agency may issue an order 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, cease all further mining activities.

(c) An order issued under subdivision (b) shall not take effect until the operator has been provided a hearing before the lead agency concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(d) The conducting of any surface mining operation which requires a reclamation plan and/or use permit pursuant to this chapter without such an approved reclamation plan and/or use permit shall be unlawful and constitute a public nuisance, and an action or proceeding for abatement, removal or injunction may be commenced as set forth in section 28-66 of this Code.

(e) Notwithstanding the foregoing, a violation of this chapter may be enforced by the County of Solano by the use of any legal or equitable remedy; such county may have. (Ord. No. 1036, '1.)

Sec. 29-31. Penalties

Any operator who violates or fails to comply with an order issued under the enforcement provisions of this ordinance after the order's effective date, as provided for herein, or who fails to submit a report to the State Geologist or lead agency as required by Public Resources Code ' 2207, shall be subject to an order by the lead agency imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed

from the original date of noncompliance. The penalty may be imposed administratively by the lead agency. In determining the amount of the administrative penalty, the lead agency shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency within 30 days, unless the operator petitions the board of supervisors or the superior court for review. Any order shall be served by personal service or by certified mail upon the operator.

Sec. 29-32. Appeal

Any person aggrieved by an act or determination of the zoning administrator or planning commission in the exercise of the authority granted herein shall have the right to appeal to the planning commission or the board of supervisors, whichever is the next higher authority.

Any appeal must be filed, in writing, within ten days of the decision creating the grievance. Any operator who is aggrieved by an order of the board of supervisors may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the decision, pursuant to Public Resources Code ' 2774.2(e). (Ord. No. 1036, ' 1.)

Sec. 29-33. Severability

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the chapter. (Ord. No. 1036, ' 1.)