

## Chapter 16.36

# SURFACE MINING AND LAND RECLAMATION REGULATIONS<sup>1</sup>

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### **16.36.010 Purpose and intent.**

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The city of Highland recognizes that the extraction of minerals is essential to the continued economic well-being of the city 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. The city also recognizes that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefor may vary accordingly. The purpose and intent of this section is to regulate surface mining operations, as authorized by California's Surface Mining and Reclamation Act of 1975 (Public Resources Code, Sections [2710](#) et seq.), as amended, hereinafter referred to as "SMARA"; and Public Resources Code Section [2207](#); and the California Code of Regulations adopted pursuant thereto (14 Cal. Code of Regs., Sections 3500 et seq.), to ensure that:

- A. Adverse environmental and other effects of surface mining operations will be prevented or minimized and that the reclamation of mined lands will provide for the beneficial, sustainable long-term productive use of the mined and reclaimed lands; and
- B. The production and conservation of minerals will be encouraged while eliminating hazards to public health and safety and avoiding or minimizing adverse effects on the environment, including but not limited to geologic subsidence, air pollution, water quality degradation, damage to biological resources, flooding, erosion, degradation of scenic quality, and noise pollution. (Ord. 171 § 9.10, 1994)

### **16.36.020 Incorporation of SMARA and state regulations.**

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The provisions of the California Surface Mining and Reclamation Act of [1975](#) (Public Resources Code, Sections [2710](#) et seq.), Public Resources Code Section [2207](#), and the California Code of Regulations implementing the Act (14 Cal. Code of Regulations, Sections 3500 et seq.), and 14 Cal. Code of Regulations, Article 9, Chapter 8, Sections 3700 et seq., "Reclamation Standards," hereinafter also referred to as the "state regulations," as those provisions 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, excepting that when the provisions of this chapter are more restrictive than conflicting state provisions, this chapter shall prevail. (Ord. 171 § 9.20, 1994)

### **16.36.030 Applicability.**

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A. Requirements for Department Review Permit. Unless exempted by provisions of this chapter, any person who proposes to engage in surface mining, or who proposes to permit another person to engage in surface mining on his property shall, prior to the commencement of said operations as defined in this section, first file and obtain approval from the city of Highland of a department review permit as provided in HMC [16.08.060](#); a reclamation plan in accord with the provisions set forth in this chapter, as further provided in Sections [2772](#) et seq. of the Public Resources Code, and [14](#) Cal. Code of Regulations, Article 9, Chapter 8, Sections 3700 et seq.; and financial assurances for reclamation. A department review permit shall be required for all surface mining operations in all zoning districts in which surface mining is allowed, and shall be required for the expansion or substantial change of operation of any surface mine for which such expansion or changes have not been thereby approved, including any operation which meets the definition of a “nonconforming use” as provided in the city of Highland Municipal Code.

B. Requirements for Reclamation Plans. A reclamation plan shall be required for all surface mining operations in all zoning districts in which surface mining is allowed, as well as for those portions of existing surface mining operations which claim to have vested rights pursuant to Public Resources Code Section [2776](#), unless otherwise exempted from the requirements of SMARA or as set forth herein. (Public Resources Code, Sec. 2770 et seq.)

C. Exemptions. This chapter shall not apply to the following activities:

1. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster. (Public Resources Code, Sec. 2714(a))
2. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less (Public Resources Code, Sec. 2714(b))
3. 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. (SMARA, Sec. 2714(c))
4. Such other surface mining operations which the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances. (Public Resources Code, Sec. 2714(d))
5. Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies. (Public Resources Code, Sec. 2714(f))
6. Surface mining operations conducted on lands owned, or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned, or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the Board adopted pursuant to this chapter. (Public Resources Code, Sec. 2714(g)(1))

Nothing in this subsection shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from the city in order to conduct surface mining operations specified in subsection A of this section. Nothing in this subsection shall preclude the bringing of an enforcement action pursuant to Section 2774.1 if it is determined that a surface mine operator acting under contract with the Department of Water Resources or the Reclamation Board on lands other than those owned, or leased, or upon which easements or rights-of-way have been obtained by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with Public Resources Code Sections [2710](#) et seq. (Public Resources Code, Sec. 2714(g)(2))

An exemption under this chapter does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the city, including, but not limited to, application of the California Environmental Quality Act (Public

Resources Code, Sections [21000](#) et seq.), the requirement of site approvals or other permits, or the payment of development impact fees or the imposition of other dedications and exactions as may be permitted under the law. (Ord. 171 § 9.30, 1994)

#### **16.36.040 Contents of applications for department review permit for surface mining operations and reclamation plans.**

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A. Applications for a department review permit or reclamation plan for surface mining or land reclamation projects shall be made on forms provided by the community development department. Said application shall be filed in accord with this chapter and procedures to be established by the community development director. As many copies of the department review permit application as may be required by the community development director shall be submitted to the community development department.

B. As many copies of a reclamation plan application as may be required shall be submitted in conjunction with all applications for surface mining operations. For surface mining operations that are exempt from a department review permit pursuant to this chapter, the reclamation plan application shall include information concerning the mining operation that is required for processing the reclamation plan.

C. Applications shall include all required environmental review forms and information prescribed by the community development director.

D. Upon completion of the environmental review procedure and filing of all documents required by the community development director, consideration of the department review permit or reclamation plan for the proposed or existing surface mine shall be completed pursuant to HMC [16.08.060](#), at a public hearing before the planning commission, and pursuant to Section [2774](#) of the Public Resources Code. (Ord. 171 § 9.40, 1994)

#### **16.36.050 Processing.**

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A. Within 30 days of acceptance of an application for a department review permit for surface mining operations and/or a reclamation plan as complete, the community development department shall notify the Director of the California Department of Conservation of the filing of the application(s) (Public Resources Code, Sec. 2774(e)). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the community development department shall also notify the State Department of Transportation that the application has been received. (Public Resources Code, Sec. 2770.5)

B. The community development department shall process the application(s) through environmental review pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code, Sections [21000](#) et seq.) and the city's environmental review guidelines.

C. Subsequent to the appropriate environmental review, the community development department shall prepare a staff report with recommendations for consideration by the planning commission.

D. The planning commission shall hold at least one noticed public hearing on the department review permit and/or reclamation plan.

E. Prior to final approval of a reclamation plan, financial assurances (as provided in this chapter), or any amendments to the reclamation plan or existing financial assurances, the planning commission shall certify to the Director of the California Department of Conservation that the reclamation plan and/or financial assurance complies with the applicable requirements of the state regulations and submit the plan, assurances, or amendments to the Director of the California Department of Conservation for review (Public Resources Code, Sec. 2774(c)). The planning commission may conceptually approve the reclamation plan and financial assurance before submittal to the Director of the California Department of Conservation. If a department review permit is being processed concurrently with the reclamation plan, the planning commission may simultaneously also conceptually approve the department review permit. However, the planning commission may defer action

on the department review permit until taking final action on the reclamation plan and financial assurance. If necessary to comply with permit processing deadlines, the planning commission may conditionally approve the department review permit with the condition that the community development department shall not issue the department review permit for the mining operation until financial assurances have been reviewed by the Director of the California Department of Conservation and final action has been taken on the reclamation plan and financial assurances.

The Director of the California Department of Conservation shall have 45 days to prepare written comments on the reclamation plan and financial assurance, if the Director of the California Department of Conservation so chooses (Public Resources Code, Sec. 2774(d)). The planning commission shall evaluate written comments received from the Director of the California Department of Conservation during the 45-day comment period. Staff shall prepare a written response describing the disposition of the major issues raised by the state for the planning commission's approval. In particular, when the planning commission's position is at variance with the recommendations and objections raised in the Director of the California Department of Conservation's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted (Public Resources Code, Sec. 2774(d)). Copies of any written comments received and responses prepared by the planning commission shall be promptly forwarded to the operator/applicant.

F. The planning commission shall then take action to approve, conditionally approve, or deny the department review permit and/or reclamation plan, pursuant to HMC 18.08.060, and pursuant to Section [2774](#) of the Public Resources Code, and to approve the financial assurances, pursuant to Section [2770\(d\)](#) of the Public Resources Code.

G. The community development department shall forward a copy of each approved department review permit for mining operations and/or approved reclamation plan, and a copy of the financial assurances to the Director of the California Department of Conservation. By July 1st of each year, the community development department shall submit to the Director of the California Department of Conservation for each active or idle mining operation a copy of the department review permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. (Public Resources Code, Sec. 2774(e))

H. Annual Reports. Surface mining operators shall forward an annual status report to the Director of the California Department of Conservation and the city community development department on a date established by the Director of the California Department of Conservation upon forms furnished by the State Mining and Geology Board (Public Resources Code, Section [2207](#) (a)-(g)). (Ord. 171 § 9.50, 1994)

#### **16.36.060 Performance standards for reclamation plans.**

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A. All new or revised reclamation plans shall conform to minimum statewide performance standards required pursuant to Public Resources Code Sec. 2773(b) (14 Cal. Code of Regulations, Article 9, Chapter 8, Sections 3700 et seq.), as adopted by the State Mining and Geology Board, including but not limited to wildlife habitat, backfilling, revegetation, drainage, agricultural land reclamation, equipment removal, stream protection, topsoil salvage, and waste management.

B. The city of Highland may impose additional performance standards developed either in review of individual projects, as warranted, or through the formulation and adoption of citywide performance standards. (Ord. 171 § 9.60, 1994)

#### **16.36.070 Phasing of reclamation.**

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Reclamation activities shall be phased with respect to the mining operation and shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance (Public Resources Code, Sec. 2772(f)) (see also Interim Management Plans for Idle Mining Operations, HMC [16.36.110](#)). Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the city. Each phase of reclamation shall be specifically described in the reclamation plan and shall include (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of

specific reclamation activities; and (d) estimated costs as provided under financial assurances hereinbelow. (Ord. 171 § 9.70, 1994)

### **16.36.080 Findings for approval.**

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A. Approval of a Department Review Permit. In addition to the findings for approval of a department review permit contained in HMC [16.08.060](#), department review permit for surface mining operations shall include a finding that the project complies with the provisions of state regulations.

B. Approval of Reclamation Plans. For reclamation plans, the following findings shall be required:

1. That the reclamation plan complies with Sections [2772](#), [2773](#), and [2773.1](#) of the Public Resources Code and any other applicable provisions;
2. That the reclamation plan complies with applicable requirements of the state regulations (14 Cal. Code of Regulations, Sections 3500 et seq., and 14 Cal. Code of Regulations, Sections 3700 et seq.).
3. That the reclamation plan and potential use of reclaimed land pursuant to the plan are consistent with this chapter and the city's general plan and any applicable resource plan or element.
4. That the reclamation plan has been reviewed pursuant to the California Environmental Quality Act ("CEQA," Public Resources Code, Sections [21000](#) et seq.) and the city's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible.
5. That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is as compatible with and blends in with the surrounding natural environmental, topography, and other resources, or that suitable off-site development will compensate for related disturbances to resource values.
6. That the reclamation plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the general plan and applicable resource plan.
7. That a written response to the Director of the California Department of Conservation has been prepared, describing the disposition of major issues raised by the Director of the California Department of Conservation. Where the city's position is at variance with the recommendations and objections raised by the Director of the California Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted. (Public Resources Code, Sec. 2772(d)) (Ord. 171 § 9.80, 1994)

### **16.36.090 Financial assurances for reclamation plans.**

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A. In order to ensure that reclamation will proceed in accordance with the approved reclamation plan, the city shall require as a condition of approval security which will be released upon satisfactory performance. The applicant may post security in an acceptable form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the city and the Mining and Geology Board (the "Board") as specified in statewide regulations adopted by the Board, and which the city reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan. Financial assurances shall be made payable to the city of Highland and the Department of Conservation. (Public Resources Code, Sec. 2773.1(a)(4))

B. Financial assurances will be required to ensure compliance with elements of the reclamation plan including but not limited to revegetation and landscaping requirements; restoration or aquatic or wildlife habitat; restoration of water bodies and water quality; slope stability and erosion and drainage control; disposal of hazardous materials; and other mitigation measures. Financial assurances for such elements of the plan shall be monitored by the community development department.

C. The amount of the financial assurances shall be based upon the estimated costs of reclamation for the years or phases stipulated in pursuant to the approved reclamation plan, including any maintenance of reclaimed areas as may be required,

subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year, as provided in subsection F of this section. Cost estimates shall be prepared by a licensed engineer and/or other qualified professionals retained by the operator and approved by the community development director. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved reclamation plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee.

D. In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the city or state may need to contract with a third party commercial company for reclamation of the site.

E. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required). (Public Resources Code, Sec. 2772.1(a)(2))

F. The amount of financial assurances required of a surface mining operation 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 (Public Resources Code, Sec. 2773.1(a)(3)). The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.

G. Revisions to financial assurances shall be submitted to the community development director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required. (Ord. 171 § 9.90, 1994)

### **16.36.100 Inspections.**

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The community development department shall arrange for inspection of a surface mining operation within six months of receipt of the annual report required in Sec. 812.0125, to determine whether the surface mining operation is in compliance with the approved department review permit and/or reclamation plan, approved financial assurances, and the state regulations (Public Resources Code, Sec. 2774(b)). In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months, or other qualified specialists, as selected by the community development director and as retained by the city council. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board. The community development department shall notify the Director of the California Department of Conservation within 30 days of completion of the inspection that the said inspection has been conducted and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection. (Ord. 171 § 9.100, 1994)

### **16.36.110 Interim management plans.**

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A. Within 90 days of a surface mining operation becoming idle, as defined in this chapter, the operator shall submit to the community development department a proposed interim management plan (Public Resources Code, Sec. 2770(h) ("IMP")). The proposed IMP shall fully comply with the requirements of Public Resources Code, Sec. 2770(h) and shall provide measures the operator will implement to maintain the site in compliance with SMARA, including, but not limited to, all conditions of the department review permit and/or reclamation plan. The proposed IMP shall be processed as an amendment to the reclamation plan and shall not be considered a project for the purposes of environmental review. (Public Resources Code, Sec. 2770(h))

B. Financial assurances for idle operations shall be continued as addressed in the reclamation plan or as otherwise approved through the idle mine's IMP.

C. Upon receipt of a complete proposed IMP, the community development department shall forward the IMP to the Department of Conservation for review. The IMP shall be submitted to the Department of Conservation at least 45 days prior to approval by the planning commission.

D. Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the community development director and the operator, the planning commission shall review and approve or deny the IMP in accordance with this chapter. The operator shall have 30 days or a longer period mutually agreed upon by the operator and the community development director to submit a revised IMP. The planning commission shall approve or deny the revised IMP within 60 days of receipt. If the planning commission denies the revised IMP, the operator may appeal that action to the city council.

E. The IMP may remain in effect for a period not to exceed five years, at which time the planning commission may renew the IMP for another period not to exceed five years or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan. (Ord. 171 § 9.110, 1994)

#### **16.36.120 Periodic review.**

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As a condition of approval for either the department review permit or the reclamation plan, a periodic review schedule shall be established to evaluate the compliance with said plan. (Ord. 171 § 9.120, 1994)

#### **16.36.130 Time limit for commencement of use permits for surface mining operations.**

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The time limit for commencing a surface mining operation that is permitted pursuant to this section shall be as provided in HMC [16.08.060](#). (Ord. 171 § 9.130, 1994)

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<sup>1</sup>Code reviser's note: The original source for this chapter appears to be Ord. 155, 1993.