

ORDINANCE NO. 242

AN ORDINANCE OF THE COUNCIL OF THE CITY OF ATASCADERO
ADDING CHAPTER 9 TO TITLE 5 OF THE ATASCADERO
MUNICIPAL CODE ADOPTING SURFACE MINING AND
RECLAMATION PLAN REGULATIONS

The City Council of the City of Atascadero does ordain as follows:

Section 1. Chapter 9 is hereby added to Title 5 of the Atascadero Municipal Code to read as follows:

CHAPTER 9 - SURFACE MINING AND RECLAMATION PLAN REGULATIONS

5-9.01. Purpose and Intent.

The City of Atascadero 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 therefore 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 (SMARA) of 1975 (P.R.C. Sec. 2710 et seq.), as amended, hereinafter referred to as SMARA; P.R.C. Section 2207; and the California Code of Regulations adopted pursuant thereto (14 Cal. Admin. Code Sec. 3500 et seq.), to ensure that:

- a. The adverse 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.

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5-9.02. Definitions.

For the purpose of this chapter, certain words and phrases shall be defined as follows:

- (1) **Haul Road:** A road along which material is transported from the area of excavation to the processing plant or stock pile area of the surface mining operation.
- (2) **Idle:** 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. (SMARA, Sec. 2727.1)
- (3) **Minerals:** 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, bituminous rock, but excluding geothermal resources, natural gas, and petroleum. (State Regulations, Sec. 3501) For the purpose of this chapter, minerals shall also include but not be limited to sand, gravel, cinders, diatomaceous earth, shale, limestone, flagstone, decorative stone, and rip-rap.
- (4) **Operator:** Any person who is engaged in surface mining operations or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.
- (5) **Overburden:** Soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations. (SMARA, Sec. 2732)
- (6) **Person:** Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof. (State Regulations, Sec. 3501)
- (7) **Surface Mining Operations:** 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 or retorting or leaching.

- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities. (SMARA, Sec. 2735)

Surface mining operations shall also include the creation of borrow pits, streambed skimming, segregation and stockpiling of mined materials (and recovery of same). (State Regulations, Sec. 3501)

- (8) **Reclamation:** 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 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 alternative 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. (SMARA, Sec. 2733)

5-9.03. Incorporation of SMARA and State Regulations.

The provisions of the California Surface Mining and Reclamation Act of 1975 (P.R.C. Sec. 2710 et seq.), P.R.C. Section 2207, and the California's Code of Regulations implementing the Act (14 Cal. Admin., Sec. 3500 et seq.), hereinafter referred to as the State Regulations, 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, excepting that when the provisions of this chapter are more restrictive than conflicting State (or City) provisions, this Chapter shall prevail.

5-9.04. Applicability

- (1) **Requirements for Use Permit.** Unless exempted by provisions of this chapter, an approved use permit as provided under AMC Section 9-6.160 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 "non-conforming use" pursuant to AMC Title 9, Chapter 7, Non-Conforming Uses.

- (2) **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 conducted after January 1, 1976, unless a Reclamation Plan was approved by the County prior to that date and the person submitting that plan has accepted responsibility for carrying out the plan. 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 legally and in compliance with all applicable County regulations prior to January 1, 1976.
- (3) **Exemptions.** A Reclamation Plan shall not be required for any of the following activities:
- (a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster. (SMARA, Sec. 2714(a))
 - (b) 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. (SMARA, Sec. 2714(b))
 - (c) 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))
 - (d) 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. (SMARA, Sec. 2714(d))

5-9.05. Contents of Applications for Use Permits for Surface Mining Operations and Reclamation Plans.

- (1) In addition to the Conditional Use Permit (CUP) application required in AMC Section 9-6.160, all applications for CUP's for surface mining operations shall contain a Surface Mining Application Supplement. As many copies of the CUP and Surface Mining Application Supplement may be required shall be submitted to the Community Development Department (Department).
- (2) As many copies of a Reclamation Plan Application as may be required shall be submitted in conjunction with all applications for CUP's for Surface Mining Operations. For surface

mining operations that are exempt from a CUP pursuant to this chapter, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan.

- (3) Application shall include the necessary environmental review forms and information prescribed by the Department.
- (4) The Department will review the application package for completeness and shall, within 30 days after receipt, either accept the application as complete for the purpose of initiating permit processing or return the application as incomplete with an explanation of where the application is deficient. Resubmittal of the revised application shall start a new review timeframe.

5-9.06. Processing.

- (1) Within thirty (30) days of acceptance of an application for a Conditional Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Department shall notify the State Geologist of the filing of the application(s). (SMARA, 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 Department shall also notify the State Department of Transportation that the application has been received (SMARA, Sec. 2770.5).
- (2) The Department shall process the application(s) through environmental review pursuant to the California Environmental Quality Act (CEQA) and the City's Environmental Review Guidelines.
- (3) Subsequent to the appropriate environmental review, the Department shall prepare a staff report with recommendations for consideration by the Planning Commission.
- (4) The Planning Commission shall hold at least one noticed public hearing on the Conditional Use Permit and/or Reclamation Plan.
- (5) Prior to final approval of a Reclamation Plan, financial assurances (as provided in this chapter), or any amendments to a Reclamation Plan, the Planning Commission shall certify to the State Geologist that the Reclamation Plan complies with the applicable requirements of the State Regulations and submit the plan, assurances, or amendments to the State

Geologist for review (SMARA, Sec. 2774(c)). The Planning Commission may conceptually approve the Reclamation Plan before submittal to the State Geologist. If a Conditional Use Permit is being processed concurrently with the Reclamation Plan, the Planning Commission may also conceptually approve the CUP at this time. However, the Planning Commission may defer action on the CUP until taking final action on the Reclamation Plan. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the CUP with the condition that the Department shall not issue the Conditional Use Permit for the mining operation until financial assurances have been approved by the State Geologist and final action has been taken on the Reclamation Plan.

The State Geologist shall have 45 days to prepare written comments on the Reclamation Plan, if the State Geologist so chooses (SMARA, Sec. 2774(d)). The Planning Commission shall evaluate written comments received from the State Geologist 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 State Geologist's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted (SMARA, Sec. 2774(d)). Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the operator.

- (6) The Planning Commission shall then take final action to approve, conditionally approve, or deny the Conditional Use Permit and/or Reclamation Plan. The Planning Commission's action shall be final, subject to appeal to the City Council.
- (7) If a project has proceeded to review by the City Council, the Council may, at its discretion, assume duties assigned to the Planning Commission under this chapter or delegate specific related tasks back to the Planning Commission.
- (8) The Department shall forward a copy of each approved Conditional Use Permit for mining operations and/or approved Reclamation Plan to the State Geologist.
- (9) Annual Reports - Surface mining operators shall forward an annual status report to the State Geologist and the City Community Development Department on a date established by

- (2) That the Reclamation Plan complies with applicable requirements of the State Regulations (14 Cal. Admin., Sec. 3500 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, through the Reclamation Plan, all significant adverse impacts on lands to be reclaimed as a result 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 compatible with and blends in with the surrounding natural environment, 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 State Geologist has been prepared, describing the disposition of major issues raised by the State Geologist. Where the City's position is at variance with the recommendations and objections raised by the State Geologist, said response shall address, in detail, why specific comments and suggestions were not accepted. (SMARA, Sec. 2772(d)).

5-9.10. Financial Assurances for Reclamation Plans.

- (1) In order to ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the City shall require as a condition of approval one or more forms of security which will be released upon satisfactory performance. The applicant may post security in the form of a corporate surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, a certificate of time deposit as part of an approved trust fund, or other method acceptable to the City and the State Geologist as specified in statewide regulations adopted by the Mining and Geology Board. Financial assurances shall be made payable to the City of Atascadero and the State Geologist (SMARA, Sec. 2773.1(a)(4)).

the State Geologist upon forms furnished by the State Mining and Geology Board (P.R.C. Sec. 2207 (a) - (g)).

5-9.07. Performance Standards for Reclamation Plans.

- (1) All new or revised Reclamation Plans shall conform to minimum statewide performance standards required pursuant to SMARA Sec. 2773(b), 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.
- (2) The City of Atascadero may impose additional performance standards developed either in review of individual projects, as warranted, or through the formulation and adoption of City-wide performance standards.

5-9.08. Phasing of Reclamation.

Phasing of Reclamation - (See also, Sec., 5-9.12, Interim Management Plans for Idle Mining Operations) - Reclamation activities shall be phased with respect to the phasing of 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 (SMARA, Sec. 2777(f)). Interim reclamation may also be required for mined lands that have been disturbed and will be disturbed again in future operations. Reclamation may be done on an annual basis, or 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: the beginning and expected ending dates for each phase; all reclamation activities required; criteria for measuring completion of specific reclamation activities; and estimated costs as provided in Sec. 5-9.10 (Financial Assurances). The reclamation schedule shall require City approval.

5-9.09. Findings for Approval.

In addition to the findings for approval of Conditional Use Permits contained in AMC Section 9-2.109 of this Code, approval of use permits for surface mining operations shall include a finding that the project complies with the provisions of State Regulations.

For Reclamation Plans, the following findings shall be required:

- (1) That the Reclamation Plan complies with Sections 2772, 2773, and 2773.1 of SMARA and any other applicable provisions;

- (2) Financial assurances will be required to ensure compliance with elements of the Reclamation Plan including but not limited to revegetation and landscaping requirements; restoration of aquatic or wildlife habitat; protection of archaeological sites; 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 Department.
- (3) The amount of the financial assurances shall be based upon the estimated costs of reclamation for each year or phase stipulated in the Reclamation Plan, including any maintenance of reclaimed areas as may be required. 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. Financial assurances may be based upon estimates including but not necessarily limited to the volume of earth moved (cubic yards) for each year or phase of reclamation. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the 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.
- (4) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by an operator and, consequently, the City or State may need to contract with a third-party commercial company for mobilization and reclamation of the site.
- (5) Where reclamation is accomplished in annual increments, the amount of financial assurances required for any one year shall be adjusted annually and shall be adequate to cover the full estimated costs for reclamation of any land projected to be in a disturbed condition from mining operations by the end of the following year. The estimated costs shall be the amount required to complete the reclamation on all areas that will not be subject to further disturbance, and to provide interim reclamation, as necessary, for any partially excavated areas in accordance with the Reclamation Plan. Financial assurances for each year shall be released upon successful completion of reclamation (including any maintenance required) of all areas that will not be subject to further disturbance and

upon the operator filing additional financial assurances for the succeeding year. Financial assurances for all subsequent years of the operation shall be handled in the same manner.

- (6) Financial assurances for reclamation that is accomplished in multiple-year phases shall be handled in the same manner as described for annual reclamation.

5.9.11. Inspections.

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. 5-9.06, to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and/or Reclamation Plan, and the State Regulations (SMARA, 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, or other qualified specialists, as selected by the Community Development Department. All inspections shall be conducted using a form provided by the State Mining and Geology Board. The Community Development Department shall notify the State Geologist within thirty (30) days of completion of the inspection that the 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, including a City administrative fee of 15% of the consultant's costs.

5-9.12. Interim Management Plans.

- (1) Within 90 days of a surface mining operation becoming idle, as defined in this chapter, the operator shall submit to the Department an interim management plan (SMARA, Sec. 2770(h)). The interim management plan shall fully comply with the requirements of SMARA, 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 Conditional Use Permit and/or Reclamation Plan. The interim management plan shall be processed as an amendment to the Reclamation Plan and shall not be considered a project for the purposes of environmental review (SMARA, Sec. 2770(h)).
- (2) Financial assurances for idle operations shall be continued as addressed in the reclamation plan or as otherwise approved through the idle mine's interim management plan.

- (3) Within 60 days of receipt of the interim management plan, or a longer period mutually agreed upon by the Department and the operator, the Planning Commission shall review and approve or deny the plan in accordance with this chapter. The operator shall have thirty (30) days or a longer period mutually agreed upon by the operator and the Department to submit a revised plan. The Planning Commission shall approve or deny the revised interim management plan within sixty (60) days of receipt. If the Planning Commission denies the revised interim management plan, the operator may appeal that action to the City Council.
- (4) The interim management plan may remain in effect for a period not to exceed five years, at which time the Planning Commission may renew the plan for another period not to exceed five years or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

5-9.13. Time Limit for Commencement of Use Permit's for Surface Mining Operations.

The time limit for commencing a surface mining operation that is permitted pursuant to this Section shall be as provided in AMC Section 9-2.113, Conditional Use Permits.

5-9.14. Violations and Penalties

If the Department, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this chapter, the applicable permit and/or the Reclamation Plan, the City shall follow the procedures set forth in SMARA, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of AMC Section 9-2.119 for revocation and/or abandonment of a Conditional Use Permit which are not preempted by SMARA.

5-9.16. Fees

The City shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter and the State Regulations, including but not limited to processing of applications, annual reports, inspections, monitoring, enforcement and compliance.

Section 2. Publication.

The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in the Atascadero News, a newspaper of general circulation, printed, published, and circulated in the City in accordance with Section 36933 of the Government Code; shall certify the adopting and posting of this ordinance and shall cause this ordinance and this certification together with proof of posting to be entered into the Book of Ordinances of the City.

Section 3. Effective Date.

This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

On motion by Councilperson _____ and seconded by Councilperson _____, the foregoing ordinance is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ADOPTED:

CITY OF ATASCADERO

ATTEST:

By ALDEN SHIERS, Mayor

LEE RABOIN, City Clerk

APPROVED AS TO FORM:

ARTHUR MONTANDON, City Attorney

PREPARED BY:

HENRY ENGEN
Community Development Director