

**CHAPTER 19.100**  
**SURFACE MINING OPERATIONS**

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**19.100.010 PURPOSE AND APPLICATION**

The purpose of this chapter is to regulate surface mining operations consistent with the requirements of the California Mining and Reclamation Act (Public Resources Code Sections 2710 et seq.) and the State Policy for Surface Mining and Reclamation Practice (Title 14 of the California Administrative Code, Sections 3500 et seq.). The requirements of this chapter are applicable to any surface mining operation undertaken in unincorporated Kern County, except for those operations specifically exempted by Sections 2714 or 2776 of the California Public Resources Code.

**19.100.020 PERMIT — RECLAMATION PLAN — REQUIRED**

Subject to the exceptions specified in Section 19.100.010 of this chapter, no surface mining operations may be undertaken anywhere in unincorporated Kern County unless a surface mining permit and a reclamation plan has been submitted to and approved by the Board of Zoning Adjustment in accordance with the procedures set out in Sections 19.102.130 through 19.102.180 of this title. All surface mining permits and reclamation plans, including amendments of same, are subject to a thirty- (30-) day review period by the State Department of Conservation. For projects requiring the preparation of an environmental document pursuant to the California Environmental Quality Act, the review period shall commence with the Department of Conservation's receipt of the draft environmental document.

### **19.100.030 PERMIT — APPLICATION — CONTENTS**

An application for surface mining and reclamation permit shall include the following:

- A. Name and address of the applicant
- B. Name(s) and address(es) of the property owner(s) or owners of surface rights
- C. Name(s) and address(es) of owner(s) of mineral rights
- D. Name and address of lessee
- E. Name and address of operator
- F. Name and address of person designated by operator as his agent for the service of process
- G. Assessor's parcel number(s)
- H. Legal description of the subject property
- I. Site development plan drawn at a scale specified by the Planning Director, which includes the following information:
  - 1. Property boundary lines and dimensions
  - 2. Areas proposed for development
  - 3. Location of proposed buildings and structures
  - 4. Parking and vehicle maneuvering areas
  - 5. Method of vehicular access
  - 6. Location of any existing or proposed roads, water lines or other pipelines, easements proposed or existing, and any existing buildings, structures, or major areas of use for the property being considered
  - 7. Height, type, and location of fencing
  - 8. Such additional information as may be deemed necessary to permit adequate consideration of the proposal
- J. A vicinity map showing all proposed access routes and a statement as to the method proposed for transporting mined materials from the site

- K. A sufficient number of cross sections of the area to show existing grades and proposed finished grades after all surface mining has been completed shall be provided; such cross sections shall be drawn to an engineer's scale that is practical and workable
- L. Reclamation plan including the following information:
1. The anticipated quantity and type of minerals for which the surface mining operation is to be conducted
  2. The proposed dates for the initiation and termination of such operation
  3. The maximum anticipated depth of the surface mining operation
  4. 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
  5. 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
  6. 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
  7. A description of the environmental setting of the site and the effect that possible alternate reclaimed site conditions may have upon the existing and future uses of surrounding lands.
  8. A description of how site reclamation may impact the public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site.
  9. A description of any areas to be mined to produce additional materials for backfilling and grading, as well as settlement of filled areas.
  10. A description of the manner in which reclamation adequate for the proposed use or potential uses will be accomplished, including:

- a. A description of the manner in which contaminants will be controlled and mining waste will be disposed
  - b. A description of the manner in which rehabilitation of affected stream bed channels and stream banks to a condition minimizing erosion and sedimentation will occur
  - c. A description of existing wildlife habitat and a plan to ensure that habitat conditions which exist are maintained or improved in the course of reclamation, unless the proposed end use precludes its use as wildlife habitat
  - d. A description of the manner in which backfilling, regrading, slope stabilization, scarification, ripping, and recontouring will occur
  - e. A description of the manner in which topsoil will be salvaged and the manner in which the site will be revegetated
  - f. A description of any existing topographical features that will be significantly altered as a result of mining activity
  - g. A description of the manner in which existing site drainage patterns will be disturbed through mining activity and a description of drainage patterns that are expected after site reclamation
  - h. A description of the manner in which all buildings, structures, and equipment will be removed, including any previously abandoned structures or equipment
  - i. A description of the necessity for and the manner in which post reclamation monitoring will occur
11. A detailed line item cost breakdown estimating all reclamation costs, including, but not limited to:
- a. Costs of backfilling, regrading, slope stabilization, and recontouring
  - b. Costs of revegetation and wildlife habitat replacement
  - c. Costs of final engineering design
  - d. Costs of labor, including supervision
  - e. Costs of mobilization
  - f. Costs of equipment

- g. Costs of removal of buildings, structures, and equipment
  - h. Costs associated with reduction of specific hazards, such as: heap leaching facilities, chemical processing ponds, soil decontamination, in-water slopes, highwalls, landslides, subsidence, or other mass ground failure
  - i. Costs of drainage and erosion control measures
  - j. Costs of soil tests
  - k. Costs of haul road ripping and reseeding
  - l. Costs of fencing
  - m. Costs of liability insurance
  - n. Costs of long-term stabilization, control, containment of waste solids and liquids
12. A letter from the Kern County Public Works Department stating that the estimated costs of reclamation have been reviewed and found to be sufficient by that department
  13. An assessment of the effect of implementation of the reclamation plan on future mining in the area
  14. A statement that the person submitting the plan accepts the responsibility for reclaiming the mined lands in accordance with the reclamation plan
  15. Any other information determined by the Planning Director or the State Mining and Geology Board to be necessary for consideration of the reclamation plan

**19.100.040 DEVELOPMENT STANDARDS AND CONDITIONS**

Surface mining operations shall comply with the following standards:

- A. Surface mining operations shall be consistent with the goals and policies of the County General Plan.
- B. Surface mining operations shall comply with the requirements of the California Surface Mining and Reclamation Act, the State Policy for Surface Mining and Reclamation Practice, and any standards or procedures adopted by the Board of Supervisors to implement the act, state policy, or this chapter. In all cases, the following minimum development standards shall be observed:

1. The designed steepness and proposed treatment of the mined lands' final slope shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other factors. In all cases, the reclamation plan shall specify the critical gradient needed to maintain slope stability and shall specify slope angles flatter than the critical gradient for the type of material involved. Whenever final slopes approach the critical gradient for the type of material involved, an engineering analysis of the slope stability shall be performed and submitted as part of the reclamation plan.
2. Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plan shall provide for the compaction of fill materials in conformance with good engineering practice.
3. The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.
4. Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.
5. Settling ponds or basins shall be constructed to prevent potential sedimentation of streams at operations where they will provide a significant benefit to water quality.
6. Operations shall be conducted to substantially prevent siltation of groundwater recharge areas.
7. All reasonable measures shall be taken to protect the habitat of fish and wildlife.
8. Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.
9. Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent erosion of spillways when these basins have outlet to lower ground.
10. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan or where such measures appear necessary as determined by the Planning Director or the Soil Conservation Service. It shall not be permissible to denude adjacent areas of their soil to achieve this purpose.

11. Revegetation methods and the selection of species shall be suitable for the topographical, resoiling characteristics, and climate of the mined areas and shall be reviewed and approved by the Planning Director or the Soil Conservation Service.
- C. Surface mining operations shall comply with any conditions deemed necessary or convenient by the Board of Zoning Adjustment to effect the purposes of this chapter, including conditions with respect to the following:
1. The environmental objectives set forth in California Public Resources Code Section 21000
  2. Protection of the health, safety, and welfare of persons residing near the site of the mining operation and the general public
  3. Reasonable preservation of the values and uses and opportunity for potential uses of the adjacent and nearby areas insofar as this is not inconsistent with the provisions of the act, State policy, this chapter, or any implementing standards or procedures adopted by the Board of Supervisors

#### **19.100.050 MINOR PLAN MODIFICATIONS**

The Planning Director may review and approve minor plan modifications to approved reclamation plans in accordance with the procedures set out in Sections 19.102.040 through 19.102.060 of this title. Where the Planning Director determines that a proposed amendment constitutes a substantial deviation from the original plan, the proposed amendment shall be considered by the Board of Zoning Adjustment. Any change to adopted conditions of approval or increases in the amount of surface area to be disturbed shall be treated as a substantial deviation from the approved plan and shall be considered by the Board of Zoning Adjustment at a regularly scheduled public hearing.

#### **19.100.060 INSPECTION OF OPERATIONS**

- A. The Building Official shall make, or cause to be made, periodic inspections of all surface mining operations and the areas affected thereby to ascertain whether the operation is being conducted in conformity with the approved conditions of the permit and reclamation plan and all applicable statutes, regulations, and ordinances.
- B. The person conducting or in charge of all surface mining operations shall make the surface mining operation open and available for such inspection during regular County business hours or at such other times as may be mutually agreed upon by him/her and the Building Official. The provisions of this subsection shall be deemed to be a condition of each permit.
- C. At a minimum, the Building Official shall conduct an annual inspection of every surface mining operation within six months of receiving the Lead Agency's copy of the operator's annual report filed with the State Department of Conservation pursuant to Public Resources Code Section 2207. Within thirty (30) days of the County's inspection, the

Building Official shall provide written notification to the State as to the results of the inspection in the manner required by the State.

#### **19.100.065 IDLE MINES - INTERIM MANAGEMENT PLANS**

- A. Within ninety (90) days of a surface mining operation becoming idle, as defined in Section 2727.1 of the Surface Mining and Reclamation Act, the operator shall submit an interim management plan for review and approval by the Planning Director. The interim management plan shall be processed in accordance with Public Resources Code Section 2770(h). The interim management plan shall be considered to be an amendment of the approved reclamation plan and shall be processed as a minor plan modification pursuant to Section 19.100.050. The interim management plan shall include, at a minimum, the following:
1. Statements as to the reason why the mining operation is idle, including a description of those conditions necessary to reactivate the operation;
  2. The requested duration of the interim management plan (five (5) years maximum);
  3. Discussions related to site security;
  4. Information regarding all pit and stockpile locations, interim slope angles and stability, and methods to minimize erosion and sedimentation concerns;
  5. Description of equipment to be retained on site;
  6. A schedule for the operator's regular inspection of the site;
  7. A description of interim reclamation or revegetation efforts;
  8. A plot plan showing disturbed areas and areas used for stockpile and equipment storage, if any.
- B. In reviewing interim management plans, the Planning Director may impose conditions necessary to safeguard the environment and the public health and safety.
- C. The operator shall notify the Planning Director in writing prior to reactivation of the mining operation.

#### **19.100.070 VIOLATION — NOTICE TO CORRECT**

- A. Either the Building Official or the Planning Director may initiate enforcement action pursuant to this section. If, after conducting the annual inspection or otherwise confirmed by an inspection of the mining operation, the Building Official finds that the surface mining operation is not in compliance with the approved mining plan, the approved reclamation plan, any permit conditions imposed by the County, the provisions of this ordinance, or the Surface Mining and Reclamation Act, the Building Official may notify



the operator and the owner of the subject property of that violation by personal service or certified mail. If the violation continues beyond thirty (30) days after the date of issuance of the Building Official's notice of violation, the Building Official shall notify the Planning Director of that fact. Thereupon, the Planning Director may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities. Said order shall specify which aspects of the surface mine's activities or operations are inconsistent with the approved mining plan, approved reclamation plan, permit conditions, the provisions of this ordinance, or the Surface Mining and Reclamation Act; shall specify a time for compliance which the Planning Director determines is reasonable, given the seriousness of the violation and any good faith efforts to comply with applicable requirements; shall set a date for a public hearing before the Board of Zoning Adjustment no sooner than thirty (30) days after the date of issuance of the order; and shall not take effect until the operator has been provided a public hearing concerning the violation pursuant to the provisions contained in Section 19.102.020. In instances where a violation of this chapter exists with respect to a mining operation which has not secured approval of a surface mining permit and/or reclamation plan, the requirement to hold a public hearing pursuant to this section and Section 19.100.080 may be waived by the Planning Director. The property owner(s) shall ultimately be held responsible for any default by any lessee or operator related to permit noncompliance or site abandonment.

- B. The time within which the permittee must commence correction of the violation shall not be sooner than sixty (60) days after such notice is given, unless it is determined that earlier action is required for the protection of public safety. Any surface mining operation determined not to be in compliance with this chapter and which presents an imminent and substantial endangerment to the public health or the environment, as determined by the Planning Director or the State Department of Conservation, may be enjoined from further operations by order from a court of competent jurisdiction.

#### **19.100.080 FAILURE TO COMPLY WITH NOTICE — PERMIT REVIEW**

- A. Where the Building Official has reported a failure to comply with a notice pursuant to Section 19.100.070, the Planning Director shall set a date for a public hearing before the Board of Zoning Adjustment for review of the surface mining permit and/or reclamation plan pursuant to Section 19.102.020 and Sections 19.102.150 through 19.102.170 of this title.
- B. At the hearing, the Board of Zoning Adjustment shall determine whether or not the operator is complying with the approved mining plan, the approved reclamation plan, the permit conditions, or the provisions of this ordinance and may affirm, modify, or set aside the order issued by the Planning Director. The decision of the Board of Zoning Adjustment may be appealed to the Board of Supervisors, pursuant to the provisions specified in Section 19.102.170.

### **19.100.090 PERMIT REVIEW — ACTIONS BY BOARD**

After such matter has been heard and considered, the Board of Zoning Adjustment may take any of the following actions:

- A. Revoke the permit
- B. Require the reclamation program to begin immediately or within a prescribed time following the effective date of revocation of the permit
- C. Allow additional time within which to cure the violation, if requested by the permittee, not to exceed a maximum of six (6) months from the date of the Board's decision
- D. Impose new or additional conditions on the permit or on the reclamation plan
- E. Increase the amount of the original security to guarantee reclamation in accordance with the plan
- F. Recommend to the Board of Supervisors proceedings to recover on any security
- G. Recommend to the Board of Supervisors that the County conduct work to accomplish the reclamation plan, to perform any conditions in default, or otherwise cure any default
- H. Recommend to the Planning Director the imposition of an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or with the conditions of any approved surface mining permit or reclamation plan, as authorized by Section 2774.1 of the Surface Mining and Reclamation Act
- I. Such other order or orders as may be appropriate to correct the violation or default

### **19.100.100 ADMINISTRATIVE PENALTIES**

- A. Any operator who fails to comply with an order issued by the Planning Director or Board of Zoning Adjustment after the order's effective date or who fails to submit a report to the Director of the Department of Conservation or County as required by Section 2207 of the Public Resources Code, shall be subject to an order by the Planning Director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of the Building Official's notice of violation or noncompliance pursuant to Section 19.100.070. In determining the amount of the administrative penalty, the Planning Director 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. An order imposing an administrative penalty shall become effective upon issuance, and payment shall be made to the Planning Department within thirty (30) days, unless the operator petitions the Board of Supervisors for review of the order. Said order shall be served by personal service or by certified mail upon the operator.

- B. If the operator petitions the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by personal service or certified mail as to when the matter has been set for public hearing. The Board of Supervisors may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Planning Director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by personal service or certified mail upon the operator. Payment of any administrative penalty specified in the Board of Supervisor's order shall be made to the Planning Department within thirty (30) days of the service of the order.

#### **19.100.110 SECURITY TO GUARANTEE RECLAMATION**

- A. In accordance with Public Resources Code Section 2773.1, all surface mining operations under the County's jurisdiction are required to provide financial assurances in an amount adequate to guarantee complete final reclamation of the site in accordance with the approved reclamation plan. The Planning Director may authorize the phasing of financial assurances to coincide with any phased reclamation approved as part of the operation's reclamation plan. The amount of the required financial assurances shall be determined by the Planning Director based on the requirements of the reclamation plan and the cost estimates required by Section 19.100.030.L.11. Financial assurances shall be in the form of corporate surety bonds, irrevocable letters of credit, trust funds, or other mechanisms specifically authorized by the State Mining and Geology Board. The form of such financial assurance shall be subject to approval of the County Counsel and the Department of Conservation. The financial assurance shall designate the County of Kern and the Department of Conservation as the principal beneficiaries. Prior to the County's approval of financial assurances, the financial assurances shall be subject to a forty-five-(45-) day review period by the State Department of Conservation.
- B. The financial assurances shall be approved by the Planning Director and posted with the Director of Engineering and Survey Services or with such other officer of the County as the Board of Supervisors may order.
- C. Financial assurances shall be reviewed annually by the Director of Engineering and Survey Services as provided for by Public Resources Code Section 2773.1(a)(3).
- D. No approved financial assurance shall be permitted to expire unless final reclamation has been completed and certified by the Building Official. For the purposes of changes in mine operation ownership, existing financial assurances shall not be released until a new "Statement of Responsibility" has been submitted and new financial assurances have been approved and posted.
- E. The security shall be posted with the Director of the Kern County Engineering and Survey Services Department or with such other officer of the County as the Board of Supervisors may order.

#### **19.100.120 PERMITTEE DEFAULT – PERFORMANCE BY COUNTY**

- A. If the permittee fails to perform or conform to any requirement imposed by any order made under Sections 19.100.070 through 19.100.090 of this chapter within the time fixed in such order, or if no time is fixed in such order, then within a reasonable time, the Board of Supervisors shall have authority to order and otherwise undertake the planning and conduct of all or any part of the work necessary to accomplish the reclamation plan, to perform any conditions in default, or to otherwise cure any default.
- B. The officers, employees, and agents of the County, and any contractor hired by the County, and his employees, subcontractors, and agents, and any engineers, surveyors, and other experts retained by the County, may go on the site of the mine and any adjacent property of the permittee for the purposes of planning or doing all or any part of the work mentioned in Subsection A of this section, bringing and using thereon any and all equipment and machines necessary for doing such work, and using any equipment, supplies, earth, or other materials found thereon. One of the conditions of each permit shall be authorization for such entry, work, and use by or on behalf of the County.
- C. Insofar as it is practical to do so, the County shall follow the previously approved reclamation plan or conditions in the conduct of such work.
- D. The Board of Supervisors is authorized to order retention and deposit into the County general fund a portion of the proceeds from the security for its costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred in successfully enforcing the obligation of the security, and for its reasonable expenses incurred in any inspections, giving notices, conducting hearings pursuant to Sections 19.100.070 through 19.100.090 of this chapter, and for any expenses incurred in the planning, surveying, testing, and administration in preparation for the letting of any contracts, administration and enforcement of contracts, and otherwise doing any of the work mentioned in this section.
- E. The Board of Supervisors may enter into an agreement with the permittee, or any successor in interest of the permittee, under which he/she would agree to do the work needed to accomplish the reclamation plan or a specified portion thereof, or to perform any or all of the conditions in default or such other work needed to cure any default, in consideration of payment from the remaining proceeds of the security of an amount commensurate with the work completed.
- F. The Board of Supervisors may enter into an agreement with any public agency or public entity under which it would agree to do the work needed to accomplish the reclamation plan or a specified portion thereof, or to perform all or any of the conditions in default or such other work needed to cure any default, in consideration of transfer or payment to such agency or entity of all or any part of the remaining proceeds from the security.
- G. Any financial assurances remaining after the County completes final reclamation in the event of default on the part of the operator shall be returned to the operator. The operator shall be held liable for any such costs incurred by the County that exceed the amount of financial assurances posted with the County.

#### **19.100.130 SUCCESSORS IN INTEREST**

Any reference in this chapter to the permittee or applicant shall also be deemed to include any successor in interest or assign of the permittee or applicant.

#### **19.100.140 REMEDIES NOT EXCLUSIVE**

The provisions in this chapter of any remedy to the County, or to any board or officer of the County, for noncompliance with or default in the performance of any reclamation plan, or of any condition of any permit or reclamation plan, shall not be deemed as a limitation on any other remedy at law or in equity which the County, or any board or officer of the County, or any other public officer or agency, nor any member of the public, may otherwise have.

