

Chapter 18.43 Surface Mining and Reclamation

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**18.43.01 Purpose and Incorporation by Reference.** The purpose of this chapter is to regulate surface mining and reclamation operations consistent with the County General Plan and State Surface Mining and Reclamation Act of 1975 (and all subsequent amendments) and with the State Mining and Reclamation Policy set forth in Chapter Eight of Title 14 of the California Code of Regulations. The provisions of SMARA (PRC § 2710 et. seq.), PRC Section 2207, and State regulations CCR § 3500 et. seq., as those provisions and regulations 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 correlative State provisions, this Chapter shall prevail.

**18.43.02 Definitions.** The purpose of this section is to provide definitions for the most commonly used terms in this Chapter without affecting the meaning of the same terms used in other chapters of this title. Definitions for less commonly used terms in this chapter are found in State law affecting mining and reclamation, specifically, State Public Resources Code Section 2725 et seq. and Title 14 of the California Code of Regulations Section 3501 and 3701.

A. **Administrative Penalty:** A fine imposed by Merced County or the Director of the State Department of Conservation for violation of this Chapter or of SMARA.

B. **Angle of Repose:** The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material.

C. **Board:** Merced County Board of Supervisors

D. **Critical Gradient:** The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

E. **Department of Conservation (DC):** State agency responsible for overseeing SMARA.

F. **Engineering Data:** Data consisting of maps, profiles, calculations and analyses as provided by a qualified professional.

G. **Financial Assurance:** Monetary guarantee in the form of a surety bond, irrevocable letter of credit, trust fund, certificate of deposit or other form used primarily to perform the mine's reclamation plan.

H. **Idle Mine:** A mine having reduced its operation for a period of one year or more by more than 90 percent from the previous maximum annual mineral production, with the intent to resume full scale mining in the future.

I. **Interim Management Plan (IMP):** An amendment to the reclamation plan of a conditional use permit for a surface mining operation or an idle mine.

J. **Mine (Mined Lands):** Surface, subsurface and groundwater of an area in which surface mining operations are conducted, including private ways and roads related to any such area, mineral removal, mining waste and areas used for structures, equipment and machinery related to surface mining operations. **Small mining operations** are operations that remove native soil without forming or deepening pits or basins. **Large mining operations** are operations beyond the scope of small mining operations.

K. **Mineral:** 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.

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- L. Mining Exemptions: Exemptions for mineral removal from this chapter and SMARA.
- M. Mining Waste: Residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.
- N. Operator: The person engaged in or contracting with others to conduct surface mining operations.
- O. Overburden: Soil, rock or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after the removal by surface mining operations.
- P. Qualified Professional: State registered geologist, State registered engineering geologist, State registered civil engineer, State licensed landscape architect or State registered forester experienced in land reclamation.
- Q. SMARA: The State Surface Mining and Reclamation Act of 1975 and all subsequent amendments.
- R. State Board: California Mining and Geology Board.
- S. Surface Mining Operations: Process involved in the mining of minerals by removing overburden and mining directly from the mineral deposit, borrow pitting, dredging, mining by the auger method, streambed skimming or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to:
  - 1. Inplace distillation or leaching.
  - 2. The production and disposal of mining waste.
  - 3. Prospecting and exploratory activities.

### 18.43.03 General Provisions.

- A. Mining Exemptions.
  - 1. Excavation or grading conducted for farming or for the purpose of restoring land following a flood or natural disaster where the soil removed is used for agriculture and no other commercial activity. Occurrence of a flood or natural disaster must be validated by County Fire/CDF or another disaster assessment agency.
  - 2. On-site excavation and on-site earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping or other improvements.
  - 3. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than one thousand cubic yards on one acre or less in a contiguous quantity of land under the same ownership.
  - 4. Surface mining operations that are required by Federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.
  - 5. Any other surface mining operations that the State Board determines to be of infrequent nature and which will involve minor surface disturbances.
  - 6. Emergency excavations conducted by the State Department of Water Resources or Reclamation Board based on protection from disasters or emergencies.
- B. A conditional use permit pursuant to Chapter 18.50 is necessary for all surface mining operations excluding mining exemptions and mining operations on County owned property.
- C. For County owned property, the County department proposing the project is the lead department in compliance with SMARA including but not limited to, mining/reclamation plans, board hearings, annual reports and financial assurances.
- D. The Planning Department shall be responsible for CEQA and SMARA review as to adequacy prior to processing the application by the lead department.
- E. An Environmental Impact Report is required for any open pit mining operation subject to SMARA and utilizing a cyanide heap leaching process for the purpose of producing gold or other precious metals.
- F. An inactive mine if reactivated shall require a new conditional use permit.

### 18.43.04 Reclamation Plan Requirements. Applications for surface mining and reclamation projects

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shall require documentation, engineering data, narrative and site maps as a reclamation plan as per the most current Planning Commission adopted resolution.

### 18.43.05 Application Process.

A. The applicant shall submit a complete Conditional Use Application consisting of the following: Environmental Information Form, mining plan and operational statement documentation, engineering data, narrative, site maps and reclamation plan and such other information required by the Planning Director to assure compliance.

B. Upon acceptance of a complete application, the Planning Staff shall notify the State agencies pursuant to SMARA Sections 2770.5 and 2774(c).

C. Upon receipt of Department of Conservation's comments, Planning Staff will prepare a response with a copy forwarded to the applicants, or Staff may require the applicant to provide the responses. The response may be incorporated in the Staff Report to the Planning Commission.

D. The Planning Commission, at the public hearing of the Conditional Use Application (reclamation plan), shall consider the Department of Conservation's comments and Planning Staff response. Prior to approving the project, the Planning Commission shall, in addition to other necessary findings, make a finding that the project complies with SMARA and this chapter.

E. Prior to mining, the operator shall post a financial assurance consistent with the approved Financial Assurance Estimate (FAE) and reclamation plan, and implement all permit conditions (unless the Conditional Use Permit specifies a later date).

### 18.43.06 Monitoring.

A. Annual Reports. Annual reports shall be provided by the operator to the Planning Department pursuant to State Public Resources Code Section 2207. In addition, the annual report transmitted to the Planning Department shall include:

1. A Plot Plan showing:
  - a. Land newly disturbed by the mining operation during the previous calendar year.
  - b. Total disturbed area reclaimed during the previous calendar year.
  - c. Total unreclaimed disturbed area at the end of the calendar year.
  - d. Total disturbed and reclaimed area anticipated at the end of the year following

the annual report.

2. Updated FAE prepared by a qualified professional in accordance with the approved reclamation plan.

B. Within two months of approval of the FAE by County Staff, the operator shall submit the updated financial assurance instrument.

C. Annual inspections:

1. Planning Staff shall conduct or contract to conduct annual inspections of mines.
2. Planning Staff shall notify operators of annual inspections prior to conducting the

inspections.

3. Planning Staff or selected contractors shall complete and report annual inspection to the State Department of Conservation.

4. Staff may charge the mining operators for costs of inspections, monitoring, and FAE review.

D. Interim Management Plans (IMPs). Interim Management Plans are required for idle mines.

1. Application data.

a. A site plot plan showing disturbed and reclaimed areas. The plot plan shall show roads.

b. Narrative shall describe erosion control, dust control, water quality control, weed abatement, hazardous material containment, security of stored equipment and financial assurances. The narrative shall also explain:

- 1) Reason for idleness.

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- 2) Circumstances necessary to fully reactivate the operation.
  - 3) Whether the plan will meet all permit conditions.
  - 4) Reasons for not meeting any permit conditions in case of noncompliance
2. Application Process.
- a. Within 90 days of a surface mining operation becoming idle, the operator shall submit an IMP to the Planning Department.
  - b. In case of a deficient IMP, the operator shall have 30 days or a longer mutually agreed timeline, to resubmit a revised plan.
  - c. The Planning Director shall specify the effective length of the IMP for a period not to exceed five years.
  - d. Prior to the expiration of the IMP, the operator may request to extend the IMP for a period not to exceed five years.
  - e. Prior to expiration of the IMP, the Planning Director shall either extend the IMP based on an extension request or require the surface mining operator to commence reclamation in accordance with the approved reclamation plan. Extension of the IMP requires findings that the operator has complied fully with the IMP.
  - f. Idle mines without an IMP shall by the end of one year of being idle be reclaimed as practical according to the approved reclamation plan.

**18.43.07 Enforcement.** SMARA has designated Merced County as being responsible for enforcing violations of SMARA and Chapter 18.43 Surface Mining and Reclamation. The Planning Department may use this Chapter to enforce mining and reclamation violations. The Planning Department may also apply administrative penalties as described in SMARA and in this subsection.

A. Financial Assurance Forfeiture: SMARA has designated Merced County with the primary responsibility to seek forfeiture of financial assurances and to reclaim mines in Merced County. The procedure for financial assurance forfeiture is as follows:

1. The Planning Commission shall hold a public hearing resulting in a determination that the operator:
  - a. Is financially incapable of performing the reclamation pursuant to the reclamation plan; or
  - b. Has abandoned the surface mining operation without completing the reclamation.
2. The Planning Department shall notify the operator by certified mail of appropriate action to forfeit the financial assurance and specify reasons for so doing.
3. The Planning Department shall allow the operator 60 days to commence or cause the commencement of reclamation in accordance with the approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time mutually agreed upon by Merced County or the State Department of Conservation and the operator.
4. The Planning Department shall proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph 3 above.
5. The Planning Department shall use the proceeds from the forfeited financial assurances to conduct and complete reclamation as practical in accordance with the approved reclamation plan.

B. Administrative Penalties. Merced County is primarily responsible for assessing administrative penalties on mining operations out of compliance with SMARA consistent with the following procedure:

1. If a violation extends beyond 30 days of the first written notice to the operator, the Planning Department may issue an order for administrative penalty by certified mail for an administrative hearing scheduled 30 days or more after the date of the order. The order will state all violations and require the operator to comply with SMARA and this chapter but may only take effect after the hearing. The hearing notice is limited to the project site.
2. The Planning Director shall also consider and may impose an administrative penalty not exceeding \$5,000 per day assessed from the original date of noncompliance. Penalties shall be used for no purpose other than to cover the reasonable costs of enforcement. The Planning Director shall take into

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consideration the nature, circumstances, extent, and gravity of the violation, any prior history of violations, degree of culpability, economic savings, if any, resulting from the violation and any other matters justice may require.

3. A subsequent order issued by the Planning Department and sent by certified mail is necessary to notify the operator of administrative penalties for repeated violations. Payment of any administrative penalty shall be made within 30 days of issuance of the order unless the operator petitions the Board to review the order of administrative penalty.

4. In case of a petitioned order, the Board shall notify the operator by certified mail whether or not the Board will review the order setting the administrative penalty. If the Board reviews the order, the Board will establish the complete record of evidence to implement the policies of SMARA. If the Board upholds or issues an order, the Board will notify the operator by personal service or certified mail of the order.

5. Any petitioned order or Board order shall become effective unless the operator petitions the Superior Court within 30 days following either the Board order or Board denial to review the petitioned order.

