

ORDINANCE NO. 1271

AN ORDINANCE OF THE COUNTY OF SUTTER REPEALING
CHAPTER 290 AND ADOPTING A REVISED SURFACE MINING
AND RECLAMATION CODE AS NEW CHAPTER 290

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUTTER ORDAINS AS FOLLOWS:


SECTION 1: The Sutter County Ordinance Code is hereby amended by repealing Chapter 290, the Sutter County Surface Mining and Reclamation Code, and adopting a revised Surface Mining and Reclamation Code as shown in Attachment A, attached hereto and made part hereof.

SECTION 2: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is held by a court of competent jurisdiction to be invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and the holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 3: This ordinance shall take effect thirty (30) days after the final passage and, together with the names of the Board of Supervisors voting for and against the ordinance, shall be published in the Appeal Democrat, a newspaper of general circulation, at least once before the expiration date of fifteen (15) days from the date of passage.

PASSED AND ADOPTED this 25th day of August, 1998, by the Board of Supervisors of the County of Sutter, State of California, by the following vote:

AYES: Supervisors Kroon, Nelson, Munger, Akin
NOES: None
ABSENT: Supervisor Bechtel
ABSTAIN: None


Larry Munger, Chairman
Board of Supervisors

ATTEST:

LONNA B. SMITH, CLERK

By: Pamela Frushee
Deputy



Chapter 290
SURFACE MINING AND RECLAMATION CODE

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290-010 PURPOSE AND INTENT

This Chapter is adopted pursuant to the California Surface Mining and Reclamation Act of 1975, Division 2, Chapter 9 of the Public Resource Code (commencing with section 2710), as amended, hereinafter referred to as "SMARA", and shall be known and referred to as the Sutter County Surface Mining and Reclamation Code. The purpose and intent of this Chapter are to provide local procedures, processes and responsibilities for the implementation of SMARA and other State regulations pertaining to surface mining in Sutter County.

290-015 INCORPORATION BY REFERENCE

The provisions of SMARA, Public Resource Code section 2207, and Division 2, Chapter 8 of Title 14 of the California Code of Regulations (section 3500 - 3806.2), as those provisions and regulations may be amended from time to time, are incorporated by reference into this chapter. In the event of a conflict between this chapter and state law, this chapter shall prevail to the extent permitted by law.

290-020 DEFINITIONS

The definitions set forth in this section shall govern the construction of this Chapter. For definitions of other terms as used herein, reference should be made to SMARA.

(A) "Board": The Sutter County Board of Supervisors.

(B) "Commission": The Sutter County Planning Commission.

(C) "County": The County of Sutter.

(D) "Department": The Sutter County Community Services Department.

(E) "Director": The Director of the Sutter County Community Services Department or his designee.

(F) "Exploration" or "Prospecting": The search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent, or quality of minerals present.

(G) "Financial Assurance": A financial guarantee provided by the operator of a surface mining operation to ensure the reclamation of mined land pursuant to an approved Reclamation Plan in the event of default by the operator.

(H) "Hazardous Excavation": An unattended pit, shaft, porthole or other surface opening which if not secured by covering, fencing, or having access restricted by gates, doors or other reasonable means presents a threat to the physical safety of the public.

(I) "Haul Road": A road along which material is transported from the area of excavation to the processing plant or stockpile area of the surface mining operation.

(J) "Permit": A surface mining permit as authorized by this Chapter.

(K) "State Board": State Mining and Geology Board, in the Department of Conservation, State of California.

290-030 SCOPE

(A) The provisions of this Chapter shall apply to the unincorporated areas of Sutter County.

(B) The provision of this Chapter are not applicable to those activities as described in section 2714 of SMARA.

290-040 SURFACE MINING PERMIT AND RECLAMATION PLAN REQUIRED

Any person who proposes to engage in surface mining operations as defined in this Chapter, shall, unless exempt, prior to the commencement of such operations, (1) obtain a County approved Surface Mining Permit, (2) obtain a County approved Reclamation Plan, and (3) obtain and post with the County a County approved financial assurance for the reclamation of the mined land, in accordance with the provisions set forth in this Chapter. Exempt operations, which are those operations with vested rights, shall have an approved reclamation plan and a financial assurance for all lands mined after January 1, 1976.

Applications for a Surface Mining Permit and/or Reclamation Plan shall be made on a form provided by the Department, and shall comply with the requirements of SMARA, Public Resource Code section 2207, and Division 2, Chapter 8, of Title 14 of the California Code of Regulations (section 3500 - 3806.2), as amended.

The application(s) shall be accompanied by a fee as adopted by resolution of the Board, and such plans, photographs, specifications and descriptive narrative as required by SMARA and/or by the Department.

290-045 MISCELLANEOUS REQUIREMENTS

(A) All mining operations shall maintain a minimum setback of twenty-five (25) feet of undisturbed land from all property lines.

(Be) During the hearings on an application, the Commission may require as a condition of the permit reasonable noise control measures to assure that the proposed operation is compatible with the use of surrounding and nearby properties.

(C) Any person who has obtained a Permit and the approval of a Reclamation Plan, shall not be required to obtain a Use Permit for the same activity.

(D) Any application for a Permit or Reclamation Plan which remains incomplete six months after the date that the application was determined to be incomplete, shall be, without the need of any action on the part of the County, void and of no force and effect. Fees paid for Permit applications shall be refunded to the applicant after deduction for County costs incurred.

(E) All surface mining operations shall maintain at least three surveyed benchmarks as control points for determining vertical elevations and horizontal distances. The control points shall be clearly identified on all maps and/or aerial photographs submitted as part of any application reviewed by the Department.

(F) Except for existing surface mining operations as described in the Sutter County General Plan or expansions thereof, no surface mining operation shall be allowed above a ground elevation of 100 feet mean sea level.

290-050 REVIEW PROCESS

The Department shall review the Permit and/or the Reclamation Plan application(s) and, upon determination that the application(s) is/are complete, shall schedule a public hearing by the Commission.

Notice scheduling and processing of the Permit and/or Reclamation Plan shall be performed in the same manner and time period as required for a Use Permit under Chapter 1500 of the Sutter County Ordinance Code.

At the conclusion of the hearing, the Commission may approve, approve with conditions or deny the Permit and/or Reclamation Plan. The action of the Commission is final unless appealed pursuant to the requirements of this Chapter.

290-055 INTERIM MANAGEMENT PLANS

(A) Within 90 days of a mine becoming idle as defined by section 2727.1 of SMARA, the operator shall submit to the Department for review and approval by the Director an Interim Management Plan. The Interim Management Plan shall be accompanied by a fee for review of the plan as adopted by resolution of the Board of Supervisors, shall be considered an amendment to the approved Reclamation Plan, and shall include measures the operator will implement to maintain the site in compliance with all conditions of the approved Permit and/or Reclamation Plan.

(B) The Interim Management Plan may remain in effect for a period not to exceed five (5) years, at which time the Director shall do one of the following:

- (1) Renew the Interim Management Plan for an additional period not to exceed five (5) years.
- (2) Require the operator to commence reclamation in accordance with the approved Reclamation Plan.

(C) The financial assurance required by section 290-065 shall remain in effect during the period the surface mine is idle.

(D) The Director shall review and approve the Interim Management Plan in accordance with section 2770(h) of SMARA. The Interim Management Plan may be approved subject to conditions in order to assure compliance with SMARA and/or the conditions of approval of the approved Permit and/or Reclamation Plan.

(E) The Department shall annually inspect idle mines to assure compliance with the approved Interim Management Plan.

290-060 CONDITIONS OF APPROVAL

In addition to other conditions as may be required by the Commission, the following conditions shall be met for all mining and exploration activity:

(A) Final elevations within twenty-five feet of any property boundary shall be sufficient to give adequate lateral support to the adjoining property.

(B) The first one hundred feet of access road(s) on the property intersecting with a publicly maintained road shall be paved. The paving shall commence at the edge of pavement within the public right-of-way. An encroachment permit shall be obtained from the Department of Public Works for any work to be completed within the public right-of-way. Traffic control and warning signs shall be installed, if required, at such intersection. The placement, size and wording of these signs shall be approved by the agency responsible for the maintenance of the public road.

(C) Storm water and erosion control facilities shall be constructed and maintained to prevent erosion of disturbed and undisturbed areas and overburden waste piles, to prevent the deposition of sand, silt or other materials in a natural water courses and to maintain water quality. Prior to the construction of settling ponds, slurry ponds, water reservoirs, or storm drainage facilities, final plans based on design by a registered civil engineer shall be approved by the Department of Public Works.

(D) Exterior lighting shall be shielded to prevent intrusive glare on the public right-of-way or adjacent properties.

(E) The application shall show the location of all fences and signs warning of mining operations. Unless otherwise provided by conditions of the Permit, fences shall:

- (1) be adequate for the location and type of operations.
- (2) be gated to fence height at all vehicular and pedestrian entrances.
- (3) be kept in good repair.

Trespass signs shall be posted on the fences at not less than 300 foot intervals advising of the mining operation and warning against trespass. Signs shall be kept in good repair.

EXHIBIT A-7

(F) The removal of vegetation and overburden in advance of a County approved surface mining plan, a County approved reclamation plan, and the posting of a County approved financial assurance is prohibited. Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion. Erosion control facilities such as retention basins, settling ponds, ditches, diking, and streambank stabilization shall be constructed and maintained where necessary to control erosion.

Settling ponds or basins shall be constructed downstream from areas of potential erosion at operations where they will provide a significant benefit to water quality. Temporary stream or watershed diversion shall be restored in final reclamation wherever practical. At sites where groundwater recharge is a significant consideration, operations shall be conducted to prevent siltation of recharge areas.

(G) Permanent piles or dumps of overburden and waste rock shall be stable, shall not restrict natural drainage and, where reasonable choices exist, shall be located in the least visible locations. Upon mine closure, all equipment shall be removed. Toxic materials shall be removed or protected to reduce leaching to allowable levels in accordance with appropriate State and Federal standards.

(H) Whenever slopes approach the critical stability gradient as determined by the Department of Public Works, an engineering analysis of the slope's stability will be required.

(I) Any area mined to produce additional materials for backfilling and grading shall be included in the Reclamation Plan. Settlement of filled areas must be considered in all Reclamation Plans. Where the probable ultimate use anticipates roads, building sites, or other improvements sensitive to settlement, the Reclamation Plan shall include compaction of the fill material in conformance with good engineering practices to avoid excessive settlement. Fill placement shall conform to the Uniform Building Code and all applicable County Ordinances.

(J) Grading and revegetation shall be designed to prevent excessive erosion, to convey surface runoff to natural drainage courses or interior basins designed for water storage and to restore the land surface to an economically viable use with an appearance consistent with the final use and the surrounding properties. 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.

(K) When the Reclamation Plan calls for resoiling, coarse hard 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 do not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining native materials. The use of soil conditioners or imported topsoil shall be considered where revegetation is part of a Reclamation Plan and where such measures appear necessary.

(L) Before final revegetation is undertaken, the operator shall investigate and make use of the available research on revegetation methods and on the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of his area. Native species are

recommended wherever practical. Reclamation Plans may also include development of screens and roadside plantings at mines currently in operation where such screens and planting are practicable and desirable.

290-065 FINANCIAL ASSURANCE

(A) A financial assurance guaranteeing the completion of reclamation activities pursuant to the approved Reclamation Plan, shall be filed for all active and idle surface mining operations. The amount of the financial assurance shall be adjusted annually as required by the Department to reflect changes in the mining operation, reclamation activities previously completed and cost of living increases. The form of the financial assurance shall be either surety bonds, irrevocable letters of credit, trust funds or other mechanism approved by the State Board.

(B) Any cost incurred by the County to establish the amount of the financial assurance or annual adjustment thereto shall be paid, by the operator and/or landowner, as established by resolution of the Board.

(C) Cost estimates for the financial assurance shall be submitted to the Department for review and approval prior to the operator securing financial assurances. The Department shall forward a copy of the cost estimate, together with any documentation supporting the estimate, to the State Department of Conservation for review. After receipt back of comments from the State, if any, the Director shall approve the financial assurance cost estimate if it meets the requirements of this Chapter, SMARA and State regulations.

290-070 PUBLIC RECORD

Permits, Reclamation Plans, reports, applications, and other documents submitted pursuant to this Chapter are public records, unless it can be demonstrated to the satisfaction of the County that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of each application upon request to do so by the operator and/or owner. A copy of all Permits, Reclamation Plans, reports, applications, and other documents submitted pursuant to this Chapter, including proprietary information, shall be furnished to the Director of the Department of Conservation by the County. Proprietary information shall be made available to persons other than the Director of the Department of Conservation only when authorized by the mine operator and by the mine owner in accordance with Section 2778 of SMARA.

290-080 PERMIT TERM PERIOD AND PERIODIC REVIEW

Unless a shorter or longer period is specified when initially approved by the County, all new Permits shall be subject to a twenty year term period to complete all mining and reclamation activities. The term period shall commence on the date of approval by the Commission of the Permit. Any application for extension of a Permit whose term period is about to be completed or has expired shall be filed and processed in the same manner as a new Permit.

Unless a shorter or longer period is specified when initially approved by the Commission, any Permit for which mining activities have not commenced within four years of the date of approval by the County of the Permit shall be null and void.

All mining operations shall be inspected annually or more often, if necessary, for compliance with their approved Permit and/or Reclamation Plan. The operator shall pay the County's cost of the inspection based on a time and materials basis. The inspection shall be conducted by the Department and other agencies deemed necessary by the Director. The County may employ professional outside consulting assistance for the annual inspection at the discretion of the Director and upon prior notification of the operator. The operator shall pay the County's cost for said outside consulting services.

290-090 AMENDMENTS

Amendments to an approved Reclamation Plan may be submitted to the County at any time, detailing proposed changes from the original plan. Applications shall be on a form provided by the Department and shall be accompanied by a fee as adopted by resolution of the Board.

Any amendments to a Permit and/or Reclamation Plan, unless determined to be a minor modification as described below, may be approved by the same procedure as is prescribed for approval of a Permit and/or Reclamation Plan.

Minor modifications to a Permit and/or Reclamation Plan may be allowed by the Director upon a written finding that the requested modification is necessary to achieve the prescribed or higher post mining use of the reclaimed land, that the change does not increase the area or volume of materials to be mined by more than ten (10) percent, and that the change is consistent with the intent of the conditions of approval and environmental clearance of the Permit and/or Reclamation Plan. These findings shall be supported by substantial evidence in the record.

290-100 VARIANCE

Variances to this Chapter shall be approved by the same procedure and at the same fee as prescribed for approval of a Reclamation Plan.

290-110 CESSATION OF OPERATIONS

Unless an Interim Management Plan is approved, if for any reason the actual mining being conducted pursuant to a Permit ceases for a one year period or more, the Permit shall be deemed to have been abandoned, and reclamation of the site shall be commenced and completed.

290-120 ENFORCEMENT

The provisions of this Chapter shall be enforced by the Director. Violation of the provisions of this Chapter shall be processed as specified by sections 2774.1 and 2774.2 of SMARA. The Director shall be authorized to take all actions required of the lead agency except that any hearing before the lead agency concerning the alleged violation(s) shall be conducted by the Commission and that any review of an order setting administrative penalties shall be conducted by the Board.

290-130 APPEAL

Except for actions taken pursuant to §2774.1 and §2774.2 of SMARA, any person aggrieved by an act or determination by the Director or the Commission in the exercise of the authority granted herein shall have the right of appeal to the Commission or Board, as appropriate. Any appeal must be filed within ten (10) calendar days after the rendition of the decision, shall state the reasons for the appeal, and shall be accompanied by a fee as set by resolution of the Board. The County shall hold a de novo hearing on the appeal with notice to the operator, land owner, the aggrieved person if other than the operator or land owner and any person filing a written request for notice of the hearing.

290-140 SEVERABILITY

If any section, subsection, sentence, clause or phase of this Chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Chapter.