

ORDINANCE NO. 2000-005

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF FEB 15 2000

AN ORDINANCE AMENDING SECTION 2-E-46 OF THE ZONING ORDINANCE (NO. 99-015 AS AMENDED), AND CHAPTER 6, ADDING SECTION 4 TO THE COMPREHENSIVE ZONING ORDINANCE, RELATING TO SURFACE MINING AND RECLAMATION ACTIVITIES

(M97-022)

CERTIFIED AS TRUE COPY OF Ordinance No. 2000-005 DATE CERTIFIED FEB 17 2000 CITY CLERK, CITY OF SACRAMENTO

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO, AS FOLLOWS:

SECTION 1.

Section 2-E-46 of the Zoning Ordinance is amended to read as follows:

A special permit shall be required pursuant to Section 4 of Chapter 6 of the Zoning Ordinance.

SECTION 2.

Section 4 is added to Chapter VI of the Zoning Ordinance (Ordinance No. 99-015, as amended) to read as follows:

Section 36 Surface Mining and Reclamation.

A. General. When allowed by Section 2 of this Zoning Ordinance in the applicable zone, surface mining operations and the reclamation of mined lands are subject to the requirements of this section. This section supplements and should be reviewed in conjunction with the California Surface Mining and Reclamation Act of 1975 (§2710 et seq. of the California Public Resources Code), as amended, which contains additional information and requirements applicable to surface mining operations and reclamation.

B. Findings. The City Council finds and declares that:

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1. The extraction of minerals is essential to the continued economic well-being of the City and to the needs of the 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.
  2. The reclamation of mined lands as provided for in this subchapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
  3. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that the reclamation operations and specifications therefore may vary accordingly.
- C. **Purpose and intent.** It is the intent of the City Council to create and maintain effective and comprehensive surface mining and reclamation policies and regulations to properly carry out the requirements of the California Surface Mining and Reclamation Act of 1975 (§2710 et seq. of the California Public Resources Code) hereinafter referred to as "SMARA", California Public Resources Code §2207, as amended, and the California Code of Regulations adopted pursuant thereto (14 Cal. Code of Regs., §3500 et seq.) to ensure that:
1. Adverse environmental and other effects of surface mining operations will be prevented or minimized and that the reclamation of mined lands will provide for the beneficial, sustainable, long-term productive use of the mined and reclaimed lands; and
  2. 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.
- D. **Incorporation of SMARA and state regulations.** The provisions of the California Surface Mining and Reclamation Act of 1975 (§2710 et seq. of the California Public Resources Code), California Public Resources Code §2207, and the California Code of Regulations implementing the Act (14 Cal. Code of Regs., §3500 et seq.), and 14 Cal. Code of Regulations, Article 9, Chapter 8, §3700 et seq. ("Reclamation Standards"), hereinafter also referred to as "State Regulations", as those provisions may be amended from time to time, are made a part of this subchapter by reference with the same force and effect as if the provisions therein were fully set forth here,

excepting that when the provisions of this subchapter are more restrictive than correlative State provisions, this subchapter shall prevail.

- E. **Permit and reclamation plan required.** No person shall conduct surface mining operations or permit another person to conduct surface mining operations on his/her property unless a special permit and reclamation plan have first been approved pursuant to this section and Section 4 of Chapter 6 of the Zoning Ordinance (Special Permits), except as otherwise provided in subsections F (Exceptions) and Q (Vested Rights) of this section. Special permit and reclamation plan approval are required for all surface mining operations in all zones where 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 previously approved. Reclamation plan approval is also required for those portions of existing surface mining operations which claim to have vested rights pursuant to California Public Resources Code §2776, unless otherwise exempted from SMARA by its provisions, or subject to an exception as provided by subsection F below.
- F. **Exceptions.** No special permit shall be required for the excepted activities specified in Section 2714 of the Public Resources Code, as that section may be amended or renumbered from time to time. Nothing in this provision is intended to exempt such excepted activities from any other requirement or provision of this Ordinance.
- G. **Application contents:** An applicant for a special permit for surface mining operations and for approval of a reclamation plan shall include the information required for special permits by Sections 4 of Chapter 6 of the Zoning Ordinance, and as required by subsection H below.
- H. **Reclamation plan requirements:**
1. State standards. All reclamation plans shall conform to minimum statewide performance standards required pursuant to the California Public Resources Code §2772(c) and the implementing regulations (14 Cal. Code of Regs., Article 9, Chapter 8, §3700 et seq.), adopted by the State Surface 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. Information on site and surroundings. The reclamation plan shall also

address specific characteristics of the site and surface mine to be reclaimed, such as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and the character of the surrounding area.

3. General application information. The reclamation plan shall include the information specified by Section G (Required Application Contents), and all additional information and materials specified by the list of "Required Application Contents for Surface Mining Permits and Reclamation Plans" furnished by the Planning Department.
4. Information on reclamation phasing. Each phase of reclamation shall be specifically described in the reclamation plan and shall include:
  - a. The beginning and expected ending dates for each phase;
  - b. All reclamation activities required;
  - c. Criteria for measuring completion of specific reclamation activities; and
  - d. Estimated costs as provided by subsection K below.

I. **Application processing.** Special permit applications and proposed reclamation plans for surface mines shall be noticed, processed and heard in the manner required by Section 4 of Chapter 6 of this Zoning Ordinance, and as follows:

1. Referral of application: Within 30 days of the acceptance of a special permit and/or reclamation plan application for a surface mining operation, the Planning Department shall refer the applications and plans to the following:
  - a. The Director of the State of California Department of Conservation shall be notified of the filing of all surface mining permit applications, reclamation plans and the associated CEQA document. The Department of Conservation shall have forty-five (45) days to prepare written comments on the reclamation plan and financial assurance, if the director of the Department of Conservation so chooses.
  - b. Whenever mining operations are proposed in a 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 (FEMA), and within one mile, upstream of downstream, of any state highway

bridge, the Planning Department shall also notify the California Department of Transportation that the application has been received.

2. Authority for action on reclamation plans. The Planning Commission shall be the granting authority for both the special permit and the reclamation plan.
3. Public hearing. Each application for a special permit and/or reclamation plan for a surface mine shall be subject to at least one public hearing as specified. If applications for a special permit and a reclamation plan are submitted by the same applicant for the same site, the granting authority may consider and decide upon both applications in one public hearing.
4. Hearing notice. Notice of a public hearing on a permit or reclamation plan for a surface mine shall be given as specified in Section 4 of Chapter 6 for special permit applicants.
5. Procedure for approval. Special permits for surface mining operations shall be processed and approved as provided by Section 4 of Chapter 6 of this Zoning Ordinance, which may occur at the same time as a reclamation plan. The approval of a reclamation plan, amendment to a reclamation plan, or financial assurances (as provided by subsection J), shall also occur as follows:
  - a. Certification to State. Prior to the final approval of a reclamation plan, financial assurances or any amendments to a reclamation plan or existing financial assurances, the granting authority shall:
    - (1) Certify to the director of the California Department of Conservation that the reclamation plan and/or financial assurance complies with the applicable requirements of the State regulations; and
    - (2) Submit the plan, assurances, or amendments to the director of the California Department of Conservation for review.
  - b. Conceptual approval. The Planning Commission may conceptually approve a reclamation plan and financial assurance before submittal to the director of the California Department of Conservation.
  - c. Deferral of action. Action on a surface mining special permit may be deferred until final action is taken on a reclamation plan and financial

assurance. If necessary to comply with applicable permit processing deadlines, if any, the City may approve the special permit for surface mining with the condition that surface mining operations shall not commence until financial assurances have been reviewed by the director of the California Department of Conservation, and final action has been taken on the reclamation plan and financial assurances.

- d. Responses to State comments. The City shall evaluate the written comments provided by the California Department of Conservation during the 45-day comment period. The Planning Department shall prepare a written response describing the disposition of the major issues raised by the State for approval by the granting authority. In particular, when the City's position is different than the recommendations and objections raised by the Department of Conservation, (or any other "responsible" or trustee agency) where comments have been based upon those agencies' statutory or regulatory authority, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the City shall be promptly forwarded to the operator/applicant.
- e. Final approval. The Planning Commission shall approve, conditionally approve, or deny the special permit and/or reclamation plan as provided by Section 4 of Chapter 6 of this Zoning Ordinance, and pursuant to §2774 of the California Public Resources Code, and approve the financial assurances as provided by §2770(d) of the California Public Resources Code.
- f. Findings for approval. In approving a special permit for a surface mining operation, the Planning Commission shall make all findings required for special permits, and a finding that the project complies with the provisions of applicable State regulations. In approving a reclamation plan, the Planning Commission shall first find that:
- (1) The reclamation plan complies with §2772, §2773, and §2773.1 of the California Public Resources Code and any other applicable provisions;
  - (2) The reclamation plan complies with applicable requirements of the State regulations (14 Cal. Code of Regulations, §3500 et seq., and 14 Cal. Code of Regulations, §3700 et seq.);

- (3) The reclamation plan has been reviewed pursuant to the California Environmental Quality Act ("CEQA"), California Public Resources Code §21000 et seq.), and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible;
  - (4) The land and/or resources, such as water bodies, to be reclaimed will be restored to a condition that is as compatible with and blends in with the surrounding natural environmental, topography, and other resources, or that suitable off-site development will compensate for related disturbances to resource values;
  - (5) 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 any applicable resource plan; and
- g. Referral to State. The Planning Department shall forward a copy of each approved special permit for surface mining operations and/or approved reclamation plan, and a copy of the financial assurances to the California Department of Conservation.
- J. **Phasing of reclamation.** Reclamation activities shall be phased with respect to the mining operation and shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may occur on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, or as approved by the City.
- K. **Financial assurances for reclamation plans.** To ensure that reclamation will proceed in accordance with the approved reclamation plan, appropriate security for performance shall be required as a condition of reclamation plan approval. The applicant shall post security as provided by statewide regulations adopted by the California State Mining and Geology Board. Financial assurances shall be made payable to the City and the California Department of Conservation.
1. Scope of assurances. 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; 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 Planning Department.

2. Amount of assurances. The amount of financial assurances shall be in the amount, and shall be calculated, as follows:
  - a. The amount of financial assurances shall be based on the estimated costs of reclamation for the years or phases stipulated in the approved reclamation plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year.
  - b. Cost estimates shall be prepared by a licensed engineer and/or other qualified professionals retained by the operator and approved by the Planning Director. The estimated amount of financial assurance shall be based on an analysis of physical activities necessary to carry out the approved reclamation plan, the unit costs for each activity, the number of units of each activity, and the actual administrative costs.
  - c. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved reclamation plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee.
  - d. In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the City or State may need to contract with a third party commercial company for reclamation of the site.
3. Adjustments to assurances. The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands completed in accordance with the approved reclamation



plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the next calendar year, provided that the permittee may not claim credit for reclamation scheduled for completion during the coming year. Proposed adjustments to financial assurances shall be submitted to the Planning Director each year prior to the anniversary date for approval of the financial assurances. If adjustments to the financial assurances are not required, the operator shall explain, in writing, why adjustments are not required.

4. Term and release of assurances. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required). The financial assurances shall be released upon satisfactory performance.

L. **Periodic review and inspection required.** Whenever a permit or reclamation plan for a surface mine is approved or conditionally approved, periodic inspection of the site and surface mining operation by the Planning Department shall be a condition of approval.

1. Timing of Inspection. The Planning Department shall arrange for inspection within six months of receipt of the annual report required by subsection M below. In no event shall less than one inspection be conducted in any calendar year.
2. Purpose of inspection. The periodic inspection shall be required to determine whether the surface mining operation is in compliance with the approved special permit and/or reclamation plan, financial assurances, and the State Regulations.
3. Inspection personnel. Required inspections may be made by a California state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months, or other qualified specialists selected by the Planning Director and retained by the City.
4. Inspection forms. All inspections shall be conducted using forms provided by the California State Mining and Geology Board.
5. State notification of inspection. The Planning Department shall notify the California Department of Conservation within 30 days of completion of the

inspection that the inspection has been conducted, and shall forward a copy of the inspection notice and any supporting documentation to the mine operator. The mine operator shall be solely responsible for the reasonable cost of the inspection.

6. Refusal of inspection. Failure by the permittee to allow a required inspection shall constitute grounds for revocation of the permit pursuant to Section 4 of Chapter 6 of this Zoning Ordinance.

M. **Annual reports.** The following annual reports are required:

1. Report to State. By July 1 of each year, the Planning Department shall submit to the California Department of Conservation a copy of any special permit or reclamation plan amendments, as applicable, for each active or idle mining operation, or a statement that there have been no changes during the previous year.
2. Report by surface mine operators. Surface mining operators shall forward an annual status report to the California Department of Conservation and the Planning Department on a date established by the California Department of Conservation, on forms furnished by the State Mining and Geology Board.

N. **Interim management plans for idle operations.** Within 90 days of a surface mining operation becoming idle (as defined by Section 2721.1 of the Public Resources Code), the operator shall submit, and the Planning Department shall process, a proposed interim management plan (IMP) as provided by this subsection.

1. Content of IMP. The proposed IMP shall comply with the requirements of California Public Resources Code §2770(h), and shall describe measures the operator will implement to maintain the site in compliance with SMARA, including but not limited to all conditions of the special permit for surface mining and/or the reclamation plan.
2. Processing of IMP. A proposed IMP shall be processed as an amendment to the approved reclamation plan, and shall not be considered a "project" for purposes of environmental review, pursuant to California Public Resources Code §2770(h).
  - a. Referral to State. Upon receipt of a complete proposed IMP, and at least 45 days prior to action on the IMP by the City pursuant to subparagraph b. below, the Planning Department shall forward the

IMP to the California Department of Conservation for review.

- b. Approval or denial of IMP. Within 60 days of receipt of a proposed IMP, or longer period mutually agreed upon by the Planning Director and the operator, the granting authority shall review and approve or deny the IMP in accordance with this section. In the event of a denial, the operator shall have 30 days (or a longer period mutually agreed upon by the Planning Director and the operator) to submit a revised IMP. The granting authority shall approve or deny the revised IMP within 60 days of receipt. The denial of a revised IMP may be appealed to the City Council in the same manner as a special permit.
  3. Continuation of financial assurances. Financial assurances for idle operations shall be continued as provided by the reclamation plan or as otherwise approved through the IMP for the idle mine.
  4. Duration of IMP. An IMP may remain in effect for a maximum of five years, at which time the granting authority may renew the IMP for a maximum of another five years, or require the surface mining operator to commence reclamation in accordance with the approved reclamation plan.
- O. **Site development and operational requirements.** Surface mining operations shall satisfy the following requirements:
1. Surface mining practices. The state requirements for surface mining and reclamation practices contained in the California Code of Regulations are hereby incorporated into this section as though they were fully set forth here. The state guidelines shall be the minimum acceptable practices to be followed in surface mining operations.
  2. Buffer and screening required. A noise and/or visual buffer or screen shall be provided along any road rights-of-way and along any property lines as required by conditions of approval, where the City determines that adjacent incompatible uses exist (e.g., schools, parks, or other public or private incompatible uses).
- P. **Amendments and transfers of ownership:**
1. Amendments to an approved reclamation plan may be submitted to the Planning Director, detailing proposed changes from the original plan. Deviations from the original plan that are determined by the Planning Director

to be substantial shall not be undertaken until such amendments have been reviewed and approved by the granting authority for the original reclamation plan, through the same procedure used for the initial approval.

2. Whenever one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, transfer, conveyance, exchange or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this section.

**Q. Vested Surface Mining Operations: Reclamation Plan and Financial Assurances:** No special permit shall be required for surface mining operations vested pursuant to Section 2776 of the Public Resources Code; provided that a special permit shall be required for an expansion of the surface mining operations beyond the operations vested pursuant to Section 2776. Pursuant to Section 2770 of the Public Resources Code, an approved reclamation plan and financial assurances for reclamation shall be required for all vested surface mining operations except as otherwise provided in Section 2770. The procedures set forth in subparagraphs "b" through "e" above shall apply to applications for approval of a reclamation plan and financial assurances. At least one public hearing shall be held by the Planning Commission on an application for approval of a reclamation plan and financial assurance plan. The hearing shall be noticed and heard in the same manner as an application for a special permit for a surface mining operation. Pursuant to Section 2770 of the Public Resources Code, the Planning Commission shall limit its consideration to whether the plan and the financial assurances substantially meet the applicable requirements of Section 2772, 2773 and 2773.1 of the Public Resources Code and the implementing regulations set forth in 14 Cal. Code of Regs Sec. 3500 et seq.

**R. Violations and penalties.** If the Planning Director determines, based upon an annual or other inspection that a surface mining operation is not in compliance with this section, the approved special permit, any other required permit, and/or the reclamation plan, the City shall follow the procedures set forth in California Public Resources Code §2774.1 and §2774.2 concerning violations and penalties, as well as the provisions of Section 4 of Chapter 6 of this Zoning Ordinance that are not preempted by SMARA.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

**JIMMIE R. YEE**

\_\_\_\_\_  
MAYOR

ATTEST:

**VALEIE BURROWES**

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CITY CLERK

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