

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF INYO COUNTY, CALIFORNIA, AMENDING AND ESTABLISHING PROCEDURES AND REQUIREMENTS FOR SURFACE MINING AND LAND RECLAMATION

The Board of Supervisors of the County of Inyo, State of California, does hereby ordain as follows:

SECTION I: Title 7.70 Added to Inyo County Code.

Title 7.70 is hereby added to the Inyo County Code to read as follows:

CHAPTER 7.70

SURFACE MINING AND LAND RECLAMATION

Chapters:

7.70.005	Purpose and Intent
7.70.010	Definitions
7.70.015	Scope
7.70.020	Reclamation Plan Requirements
7.70.025	Applications
7.70.030	Fees
7.70.035	Notifications
7.70.040	Financial Assurances
7.70.045	Public Records
7.70.050	Procedures
7.70.055	Periodic Review and Inspections
7.70.060	Idle Mines Interim Management Plans
7.70.065	Amendments to Plan
7.70.070	Enforcement
7.70.075	Application Fees

7.70.005 Authority and Purpose.

It is the purpose and intent of this chapter to implement section 2710 et. seq. of the California Public Resources Code and to establish an effective and comprehensive surface mining and reclamation policy including regulation of mining operations so as to assure that:

- A. Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adapted for alternative land use.
- B. The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
- C. Residual hazards to public health and safety are eliminated.

7.70.010 Definitions.

For the purposes of this Chapter the following definitions shall apply:

A. **"Area of regional significance"** means an area designated by the State Mining and Geology Board, pursuant to Public Resources Code Section 2790, which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

B. **"Area of statewide significance"** means an area designated by the State Mining and Geology Board, pursuant to Public Resources Code Section 2790, which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

C. **"Budget set aside"** means a financial assurance mechanism, meeting the requirements of Section 3806.2 of California Code of Regulations by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

D. **"Exploration or prospecting"** means that search for minerals by geological, geophysical, geochemical and other techniques, including, but not limited to, sampling, assaying, drilling

or any surface or underground works needed to determine the type, quality, or quantity of minerals present.

E. "**Financial assurance amount**" means that amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total which shall be calculated in accordance with Section 3804 California Code of Regulations, and shall constitute an obligation to pay by the operator. 62

F. "**Financial assurance**" means a instrument, fund or other form of Financial assurance as provided in Section 2773.1(a) and (e) of the Public Resources Code and Article 11 of the California Code of Regulations.

G. "**Government mine**" means any surface mine owned and operated by federal, state or local governmental entity.

H. "**Idle**" means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

I. "**Interim management plan**" is the plan which the operator of an idle mine shall submit and gain approval for, in order to assure that the site shall be maintained in compliance with the approved reclamation plan, use permit, and applicable conditions, until the mine operation is resumed or the mine is fully reclaimed in accordance with the approved reclamation plan.

J. "**Mined lands**" includes the surface, subsurface, and ground-water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

K. "**Minerals**" mean 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, water, natural gas, and petroleum.

L. **"Mining waste"** includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations, excluding stockpiles as defined in subsection T.

M. **"Operator"** means any person who is engaged in surface mining operations himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

N. **"Overburden"** means soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal by surface mining operations.

O. **"Person"** includes any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

P. **"Pledge of revenue"** means a financial assurance mechanism meeting the requirements of Section 3806.1 of the California Code of Regulations by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

Q. **"Reclamation"** means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, or other adverse effects from mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

R. **"Reclamation plan"** means the plan required by the Surface Mining and Reclamation Act of 1975, and meeting all the requirements of Section 2772 of the Public Resources Code, administrative guidelines and regulations adopted pursuant thereto, and ordinances of Inyo County adopted in accordance therewith.

S. "State geologist" means the individual holding office created by Section 677, Article 3, Chapter 2 of Division 1 of the Public Resources Code.

T. "Stockpile" means a volume of stored mined material which is residual or secondary material extracted during a surface mining operation and which has a demonstrated future economic value sufficient to warrant its protection and preservation.

U. "Surface mining operations" means all, or part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by auger methods, dredging, and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to:

1. In place distillation, retorting or leaching.
2. The producing and disposal of mining wastes.
3. Prospecting and exploratory activities.
4. Borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same).

7.70.015 Scope.

A. The provisions of this chapter shall apply to all the unincorporated areas of Inyo County.

B. The provisions of this chapter are not applicable to:

1. Excavation or grading for farming, onsite construction, or restoration of land following a flood or natural disaster.
2. Reclamation of lands mined prior to January 1, 1976, subject to exceptions set forth in this chapter.
3. Those underground operations with tailings or waste dumps in total amounts of less than one thousand cubic yards not exceeding one acre in extent at any one site of

underground access opening, providing such openings are secured.

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. Prospecting for, or the extraction of, minerals for commercial purpose and the removal of overburden in total amounts of less than one thousand cubic yards in any one location of one acre or less.

7.70.020 Reclamation Plan Requirements.

A. Any person who proposes to engage in a mining activity shall, prior to the commencement of the operations, obtain approval of a permit to mine, a reclamation plan, and financial assurances. Approval shall be obtained from the Planning Commission for a conditional use permit to mine and reclamation plan in accordance with the provisions set forth in this chapter, Title 18 of the Inyo County Code, and as further provided in Section 2772 of the Public Resources Code. Permits to mine on public and Indian lands shall be obtained from the agency tribal council administering these lands prior to consideration of approval of a reclamation plan and financial assurance by the Planning Commission.

B. A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the County Planning Department a reclamation plan for operations to be conducted after January 1, 1976.

C. The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation, and sediment and erosion control.

D. Reclamation plans issued pursuant to this chapter shall run with the land affected thereby and shall be binding on all successors, heirs, and assigns of the permittee.

E. Applicants having a surface mining operation which involves separate, noncontiguous parcels of land may file one reclamation plan for the entire operation covering each parcel of land, provided that the type of operation is the same on each parcel of land and each parcel of land is identified in the reclamation plan.

7.70.025 Application.

All applications for a reclamation plan for any mining operation shall be made on forms provided by the County Planning Department. The application shall be filed in accordance with this chapter and procedures established by the Planning Commission.

7.70.030 Fees.

A. The fees for a Reclamation Plan, as established by Section 3.60.040 of Chapter 3.60 of the Inyo County Code, shall be paid to the Planning Department at the time of filing of the reclamation plan.

B. The fees for an amendment to reclamation plans, and interim management plans required by this chapter shall be the amount specified in Section 3.60.040 of Chapter 3.60 of the Inyo County Code.

C. A fee shall be paid the County for annual inspections of a surface mine as outlined in Section 2274 of the Public Resources Code. The fee for mine inspections shall be specified in Section 3.60.040 of the Inyo County Code.

7.70.035 Notifications.

Pursuant to section 2774(c) of the Public Resources Code all reclamation plans, financial assurances, and amendments thereto shall be sent to the Director of the Department of Conservation for a 45 day review prior to formal County approval.

7.70.040 Financial Assurances.

In order to ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the County shall require as a condition of approval financial assurances:

A. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds or other mechanisms

adopted by the State Mine and Geology Board through the regulatory process.

B. Public Agencies may satisfy financial assurance requirements by using "Pledges of Revenue" or "Budget Set Aside" as acceptable financial assurances mechanisms.

C. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

D. Financial assurances shall be calculated using the Reclamation Cost Estimate Summary Sheet of the Mine Reclamation Application.

E. 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 accomplished in accordance with the approved reclamation plan.

F. The financial assurances shall be made payable to Inyo County, the Department of Conservation, and any other affected public agency. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the County, the County shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the County, and the Department of Conservation and otherwise meet the requirements of Section 2773.1 of the Public Resources Code.

G. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the County until new financial assurances are secured from the new owner and have been approved by the County.

H. The release of financial assurances shall be with the concurrence of all agencies named on the financial assurance. The criteria for release of financial assurances, or part of the financial assurances, shall be made part of the Reclamation Plan. In no case shall the financial assurance be released until reclamation has been completed.

J. The amount of financial assurances shall be reviewed and adjusted, if required, pursuant to section 7.70.055(b) of this chapter.

7.70.045 Public Records.

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 any 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. 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 State Geologist by the County on request. Proprietary Information shall be made available to persons other than the State Geologist only when authorized by the mine operator and by the mine owner in accordance with Section 2778 of the Public Resources Code.

7.70.050 Procedures.

Upon completion of the environmental review procedure, and filing of all documents as required by the County Planning Department, a public hearing will be scheduled for Planning Commission consideration of the reclamation plan for the proposed or existing surface mine.

7.70.055 Periodic Review and Inspections.

A. The County shall conduct an inspection of each surface mining operation within six months of receipt by the County of the surface mining operations annual report submitted pursuant to Section 2207 of the Public Resources Code. In no event shall the County inspect a surface mining operation less than once per year. The operator shall be solely responsible for reasonable cost of the inspection.

B. The required financial assurances shall be reviewed annually by the County and be part of the annual inspection required by Section 2207 of the Public Resources Code. Financial assurances shall be adjusted to account for new lands disturbed by surface mining operations, inflation, reclamation of lands accomplished in accordance with the approved reclamation plan, or other factors

related to the cost of reclamation which have changed since the previous review.

C. At the time of the annual inspection, the mine operator shall make available to the county an updated reclamation cost estimate prepared by the operator using the guidelines and format established in the Reclamation Cost Estimate Summary Sheet of the Mine Reclamation Application.

D. The person in charge of the surface mining operation 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 and the Planning Department. The provisions of this subsection shall be deemed to be a condition of the reclamation plan.

E. The Planning Department shall make a report of the results of the inspection. This report shall be filed with the Director, Department of Conservation and the operator no later than 30 days after the inspection is completed.

7.70.060 Idle Mine - Interim Management Plans.

Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit an Interim Management Plan. The Interim Management Plan shall be developed in accordance with section 2770 (h) of the Public Resources Code. Interim Management Plans shall be sent to the Director of Conservation for review in the same manner as amendments to Reclamation Plans. Financial Assurances as required by Section 2770(h)(3) of the Public Resources Code shall remain in effect during the period that the surface mining operation is idle.

7.70.065 Amendments To Plan.

Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed and approved, in the same manner as established herein for original application. The foregoing notwithstanding, in emergency situations where irreversible physical damage to the environment may occur, an operator may take such action which is necessary to prevent such damage and shall forthwith report the taking of the action to the Planning Department. Application

for an amendment are subject to the fee in accordance with Section 3.060.040 of the Inyo County Code.

7.70.070 Enforcement.

- A. Where it appears to the Planning Department that a surface mining operation is in violation of any condition of an approved reclamation plan or applicable statute, regulation, or ordinance, the Planning Department shall serve formal notice to the Operator stating the nature of the violation and the specified time frame to correct the violation before an order is issued.
- B. The time within which the permittee must commence correction of the violation shall be sooner than sixty (60) days from the notice of violation.
- C. An order shall be issued if the Operator fails to comply with the notice within the specified time limit. Not sooner than 30 days after the date of the order, a hearing shall be held by the Planning Director or his designee, for which at least ten days' written notice has been given to the operator. The order shall not take effect until the Operator has been provided the hearing. The date of issuance of the order is the date of receipt by the operator.
- D. Failure to comply with the order shall be subject to an order setting administrative penalties. Penalties shall be assessed from date of original non compliance.
- E. In determining the amount of administrative penalty, the County 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.
- F. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the Planning Department, unless the operator files an appeal with the Board of Supervisors within 30 days. The Board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. If after hearing, the Board affirms the order, the operator shall pay the administrative penalties set by the Board's order within 30 days of the service of that order.

G. The provisions of this chapter shall be enforced by the Planning Director or his designated appointee.

H. Notwithstanding the foregoing, a violation of this chapter may be enforced by the County by the use of any legal or equitable remedy the County may have.

7.70.075 Application Fees.

No application shall be accepted unless it is in full compliance with all requirements of this chapter, and accompanied by the fee, specified in section 3.60.040 of Chapter 3.60 of the Inyo County Code. No part of any required fee shall be returnable, and every such fee shall be deposited with the County Treasurer. The amount of filing fee required shall be as set forth in Chapter 3.60 of the Inyo County Code.

SECTION II: REPEALER.

Section 18.76 of the Inyo County Code is hereby repealed.

SECTION III: SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board hereby declares that it would have passed this chapter, and each and every section, subsection, sentence, clause, or phrase not declared invalid of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION IV: EFFECTIVE DATE.

This Ordinance shall take effect and be in full force and effect, except as herein limited, thirty (30) days from its adoption. Before the expiration of the fifteen (15) days from the adoption hereof, this Ordinance shall be published for one week in a newspaper of general circulation printed and published in the County of Inyo, State of California. The Clerk of the Board is hereby instructed and ordered to so publish this Ordinance together with the names of the Board voting for and against the same.

PASSED AND ADOPTED this _____ day of _____
1994, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Robert W. Gracey, Chairman,
Inyo County Board of Supervisors

ATTEST: C. Brent Wallace
Clerk of the Board

By: _____
Deputy