

18. ENVIRONMENT

Title 18

ENVIRONMENT

Chapter 18.04

SURFACE MINING AND RECLAMATION

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18.04 Surface Mining and Reclamation

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18.04.010 Intent.

This chapter adopts standards and procedures on surface mining and reclamation to conform to the California Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 et seq. It is intended to supplement and not replace Ordinance 86, set out at the end of this chapter. (Ord. 146 § 1.0, 2002)

18.04.020 Definitions.

As used in this chapter:

“Exploration or “prospecting” means 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 quantity of minerals present.

“Mined lands” includes the surface, subsurface, and groundwater 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, equipment, machines, tools, or

other materials or property which result from, or are used in, surface or underground mining operations are located.

“Minerals” means 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.

“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.

“Operator” means any person who is engaged in surface mining operations, himself or herself, or who contracts with others to conduct operations on his or her behalf.

“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.

“Permit” means any formal authorization from, or approved by the city, the absence of which would preclude surface mining operations.

“Person” means any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

“Reclamation” means the process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse surface effects incidental to underground mines, as the 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 require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

“State Board” means the State Mining and Geology Board, in the Department of Conservation, State of California.

“State Geologist” means an individual holding office as structured in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.

“Surface mining operations” means all or any 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 the auger method, dredging and quarrying, or surface work incident to an underground

mine. Surface mining operations shall include, but are not limited to:

1. In place distillation, retorting or leaching.
2. The production and disposal of mining waste.
3. Prospecting and exploratory activities. (Ord. 146 §3.0,2002)

18.04.030 Incorporation by reference.

The provisions of SMARA (PRC Section 2710 et seq.), PRC Section 2207, and State regulations CCR Section 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. (Ord. 146 § 4.0, 2002)

18.04.040 Permit and reclamation plan requirements.

A. Any person, except as provided in Section 2776, California Surface Mining and Reclamation Act of 1975, who proposes to engage in mining, processing, reprocessing or exploratory drilling operations as defined in this chapter shall, prior to the commencement of such operations, obtain: (1) a permit to mine; and (2) approval of a reclamation plan, in accordance with the provisions set forth in this chapter and with Article 5, California Surface Mining and Reclamation Act of 1975. A fee established for the permitted uses in the city fee ordinance, shall be paid to the city clerk at the time of filing.

All reclamation plans shall comply with the provisions of SMARA (Section 2772 and Section 2773) and State Regulations (CCR Section 3500 et seq. and Section 3700 et seq., respectively) as they appear in this subsection, reclamation plans approved after January 15, 1993, reclamation plans for proposed new mining operations, and any substantial amendments to previously approved reclamation plans shall also comply with the requirements for reclamation, performance standards.

All applications for a reclamation plan for surface mining operations shall be made on forms provided by the city and as called for by Section 2772 of California Surface Mining and Reclamation Act 1975.

B. No person who has obtained a vested right to conduct a surface mining operation prior to January 1, 1976 shall be required to secure a permit pursuant to the

provisions of this chapter as long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of this chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he or she has in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently, commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to, but not after, January 1, 1976.

C. The director of the department of conservation shall be notified of the filing of all permit applications.

D. This chapter shall be continuously reviewed and revised, as necessary, in order to ensure that it is in accordance with the state policy for mined lands reclamation.

E. The person submitting the reclamation plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan. Said statement shall be kept by the city planner in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to city planner for placement in the permanent record. (Ord. 146 § 5.0, 2002)

18.04.050 Review procedure.

The city council shall review the permit application and the reclamation plan and shall schedule a public hearing within sixty (60) days of the date that both the permit application and the reclamation plan are determined to be complete for processing. Such public hearings shall be held by the city council for the purpose of consideration of issuance of a permit for the proposed mining, processing, reprocessing or exploratory drilling operation. (Ord. 146 § 6.0, 2002)

18.04.060 Financial assurances.

A. To ensure that reclamation will proceed in accordance with the approved reclamation plan, the city shall require as a condition of approval security which will

be released upon satisfactory performance. The applicant may post security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the city and the State Mining and Geology Board as specified in state regulations, and which the city reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

Financial assurances shall be made payable to the city and the State Department of Conservation.

B. 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 measures, if necessary.

G. Cost estimates for the financial assurance shall be submitted to the city planner for review and approval prior to the operator securing financial assurances. The city planner shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within forty-five (45) days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the city has reason to determine that additional costs may be incurred.

The city planner of the city shall, upon receiving ratification from the city council of the city, have the discretion to approve the financial assurance if the city planner finds it meets the requirements of this provision, SMARA, and state regulations.

D. The amount of the financial assurance shall be based upon 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 in the upcoming year. Cost estimates should be prepared by a California registered professional engineer and/or other similarly licensed and qualified professionals retained by the operator and approved by the city planner. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for each of these activities, the number of units

of each of these activities, and the actual administrative costs. 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. A contingency factor often (10) percent shall be added to the cost of financial assurances.

E. 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 Department of Conservation may need to contract with a third party commercial company for reclamation of the site..

F. 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).

G. 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. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.

H. Revisions to financial assurances shall be submitted to the city planner of the city each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

I. If the financial assurances offered by the operator to the city are deemed acceptable by the city planner, the city planner shall forward the financial assurance documents to the State Department of Conservation for review.

If the financial assurances offered by the operator are deemed unacceptable by the city planner the operator shall have thirty (30) days following the city planner's

designation of the amount of financial assurance to submit revisions to the financial assurance to conform to the requirements of the city planner. If the operator chooses to refuse to revise its financial assurances as were deemed required by the city planner the operator shall be entitled to the appeals procedure as outlined below. Likewise if the city planner requires revised financial assurances under subsections G and H of this section and the operator objects to said revisions the operator may file its objections to the city planner's decision rejecting the revised financial assurances in the manner and within the time limits as set forth hereafter. (Ord. 146 § 7.0, 2002)

18.04.070 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 city that the production, reserves, or rate of depletion entitled to protection as proprietary information. The city 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 District Geologist of the State Division of Mines and Geology by the city. 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, California Surface Mining and Reclamation Act of 1975. (Ord. 146 § 8.0, 2002)

18.04.080 Interim management plans.

A. Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit to the city planner a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all site approval conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the city planner; and shall be processed as an amendment to the reclamation plan. IMPs shall not be considered a project for the purposes of environmental review.

B. Financial assurances for idle operations shall be maintained as though the operation were active.

C. Upon receipt of a complete proposed IMP, the city

planner shall forward the IMP to the State Department of Conservation for re view. The IMP shall be submitted to the State Department of Conservation at least thirty (30) days prior to approval by the city planner.

D. Within sixty (60) days of receipt of the proposed IMP, or a longer period mutually agreed upon by the city planner and the operator, the city planner shall review and approve or deny the IMP in accordance with this chapter. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the city planner, to submit a revised IMP. If the operator desires to appeal the decision of the city planner denying the proposed IMP then the operator may file written objections to the decision of the city planner denying the IMP to the city council in the manner and within the time limits as hereinafter set forth. If the city planner has denied or not approved the operator's revised IMP within sixty (60) days of receipt of the revised IMP by the city planner, the operator, unless there is an agreement in writing signed by the city planner and the operator consenting to an extension of time, may file with the city clerk an appeal in the manner and within the time frames heretofore set forth.

E. The IMP may remain in effect for a period not to exceed five years, at which time the city planner, with the consent and approval of the city council may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan. Failure of the city planner with the consent and approval of the council of the city, to grant a renewed IMP, following a request by the operator for an extension for an additional five year period may be appealed to the city council in the manner and within the time period heretofore set forth. (Ord. 146 § 9.0, 2002)

18.04.090 Annual report requirements.

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the city planner on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within thirty (30) days of permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be forwarded to the State

Department of Conservation at the time of filing the annual surface mining report. Failure to file an annual report with the city or failure to file the annual report in the manner and form required by the city planner is grounds for rejection of the annual report and suspension by the city planner of any further mining activities by the operator. Any action of the city planner in rejecting the annual report, suspending the mining operation of the operator or failure to accept a initial surface mining report shall be appealable by the operator to the city council in the manner of and within the time frame provided herein. (Ord. 146 § 10.0,2002)

18.04.100 Inspections.

The city planner shall arrange for inspection of a surface mining operation within six months of receipt of the annual report required in Section 18.04.090, to determine whether the surface mining operation is in compliance with the approved site approval and/or reclamation plan, approved financial assurances, and state regulations. In no event shall less than one inspection be conducted in any calendar year. The inspections may be made by a 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 twelve (12) months, or other qualified specialists, as selected by the city planner. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

The city planner shall notify the State Department of Conservation within thirty (30) days of completion of the inspection that the inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection. Operator objections to the findings and recommendations of the inspectors shall be filed with the city planner. If the city planner, upon review of the objections of the operator to the findings and recommendations of the inspectors, refuses to modify the findings and/or recommendations of the inspector in accordance with the objections of the operator then the operator may appeal the decision of the city planner to the planning committee and/or the city council in the manner and within the time frame as provided herein. (Ord. 146 § 11.0,2002)

18.04.110 Appeals.

If written objections on city planner decisions on issues contained herein are filed by the objecting party before the end of the aforesaid thirty (30) day period, the city planner shall review said objections within thirty (30) days and advise the operator in writing of the acceptance or rejection of the operator's objections to the particular city planner decision. Upon rejection by the city planner, the operator may within thirty (30) days, or for such longer period as is agreed upon in writing between the city planner and the operator, following the city planner's rejection of operator's objections file an appeal with the city clerk. The city clerk shall immediately or as soon thereafter as is practical forward copies of the operator's appeal to the planning committee of the city. The planning committee shall review the appeal and file written recommendations to the city council. The appeal of the operator must be heard by the city council within sixty (60) days following the notice of appeal. The city council must within thirty (30) days after hearing the appeal file its decision either accepting the objections of the operator or rejecting same.

If the city council of the city rejects the written objections as set forth by the operator then the city must within seven days following the rejection notify the operator in writing by first class mail of its decision. For purposes of computing the time for arrival of first class mail as set forth herein it shall be presumed that the course of first class mail is five days from date of mailing. Following receipt of the rejection of the city council the operator must within fifteen (15) days appeal the decision of the city council rejecting the claim to the State Mining and Geology Board.

If the city council accepts the objections of the operator to the city planner's decisions on issues contained in this chapter the city planner's decisions shall be changed accordingly. (Ord. 146 § 12.0, 2002)

18.04.120 Amendments.

The city council is authorized to make such further amendments to this chapter by ordinance or resolution as are deemed necessary by the city council to bring the chapter into conformity with future changes in SMARA regulations as hereafter amended, modified and/or enacted by SMARA. (Ord. 146 § 13.0, 2002)

Ordinance 86 Environmental Protective Initiative of the City of Amador City.

This initiative is intended to regulate mining, processing and/or reprocessing of gouge, slag, tailings or overburden and exploratory drilling within the city limits of the city of Amador City. A conditional use permit with fees shall be required for any/all of the following categories.

A. Mining: All permit conditions apply and additionally no open pit or strip ruining shall, be allowed.

B. No processing or reprocessing of gouge, slag, tailings or overburden shall be permitted in Amador City. Trucking of these materials shall also be regulated where applicable,

C. Exploratory Drilling: All permit conditions apply.

PERMIT CONDITIONS

1. The applicant shall deposit a fee with the city to be based on the estimated consulting costs. These funds will be placed in an interest bearing escrow account in the name of the city and the applicant. Funds shall be used to pay for on site monitoring, preparation of staff reports and obtaining services of independent consultants and engineers where appropriate. The use permit shall, be issued for 12 continuous months. A new application, permit and public meeting shall be required to extend operations beyond the initial 12 month period.

2. Hours of operation shall be from 8 AM to 5 PM Monday through Friday. Maintenance of equipment shall be permitted on Sundays between the hours of 12 PM and 5 PM. Testing of equipment shall be limited to 30 minutes during the preceding time period.

3. During the hours of permitted operations, noise levels of drilling and excavation shall not exceed 50 DBA from a point 50 feet distant from any residence which is within 50 feet of the property lines on any legally defined parcel on which drilling or excavation occurs.

4. Noise monitoring consistent with item(s) above shall begin initially upon commencement of operations.

a) Initial readings shall be taken in a manner to ensure that data represents and is reported for levels generated within 360 degrees of the drill site or excavation site.

b) Initial reading shall be taken in the mid morning between 9 AM and 11 AM and afternoon between 1:30 PM and 3 PM.

c) Readings shall be at 15 minute intervals for 15 minutes in length.

d) The average hourly daytime LEQ shall be

calculated from the data and a report prepared which summarizes the levels. The report shall be submitted to the Environmental Health department for review, acceptance or remedial action, if required.

5. For the remainder of the mining activities, random and unannounced noise level monitoring shall be conducted by independent consultants on a monthly basis consistent with #4 above. City council shall take appropriate administrative action to ensure that all operations do not exceed the established levels. A log shall be maintained which indicates the date, time and location of all readings.

6. A complaint referral system shall be developed. The city shall within a predetermined number of hours of receiving a complaint from affected property owners take noise readings specified in #4 above.

7. All test holes shall be plugged immediately upon completion of testing. The method of capping shall meet or exceed California state standards for test holes. The property owner may exercise the right not to cap the test holes in those instances where water has been found and can be used for agricultural purpose subject to water quality analysis by county health officials.

8. All trenches and grading shall be back filled and restored to the original grades and slopes. The independent consultants shall approve the grade plans and inspect the final restorations.

9. Top soil shall be removed and stockpiled prior to road or pad development. Top soil shall be spread over the reclaimed land to its original depth to encourage natural revegetation. There shall be reseeded.

10. No drilling fluids shall be discharged onto the face or surface of the land.

11. No toxic components shall be used by the operator on the exploration drill site or area surrounding the drill site. If pesticides or herbicides are to be used on the site, the applicant shall insure that they will be used in accordance with the manufacturer's and the agricultural commissioner's recommendations.

12. A dust and pollution control plan shall be developed and submitted to and approved by the independent consultant. The plan shall be approved before drilling or excavation activities begin.

13. A reclamation plan which is acceptable to the land owner and the city shall be developed. The plan shall ensure that the method of restoration of lands shall be harmonious and compatible with adjacent lands and uses. A bond shall be deposited with the city of Amador City

to insure implementation of the reclamation plan. Bond amount to be established by consultant in charge.

14. A soil stability plan acceptable to the consultants shall be prepared in advance of any road grading, pad or bench development. The purpose of this plan is to avoid land movement or slippage.

15. No drilling or earth moving activities shall be permitted within five hundred (500) feet of any stream bed.

16. Portable toilets in sufficient numbers shall be provided and maintained by the operator.

17. No blasting shall be permitted on the site pending notification of adjacent property owners and a public meeting before the city council. If approved state and county permits shall be obtained, blasting shall be restricted to daytime operations. In no instance shall blasting occur within two thousand (2,000) feet of any residential structure.

18. Fuels and lubricants shall be contained in truck mounted carriers.

19. All solid waste by-products shall be removed from the site on a monthly basis and deposited in an approved sanitary land fill.

20. The applicant shall provide the city council with a monthly status report which will;

a) separately identify all exploration and drilling sites and holes,

b) separately identify all exploration trenches or strata exposures.

The consultant will verify the information provided by the operator.

21. There must be a "fire plan" developed by the applicant and approved by the California Division of Forestry. This plan must be reviewed by all employees and must be complied with by all employees and operators.

22. Drilling rigs shall not exceed two. The number of operating drilling rigs at any one time is dependent upon complying with established noise levels.

23. An indemnification agreement, to be approved by city council, shall be entered into by the applicant and the city.

If any portion of this ordinance is declared invalid, the remaining portions are to be considered valid.