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Filed:	November 17, 2000
60 th Day:	Extended to January 14, 2002
Staff:	Tiffany S. Tauber
Staff Report:	February 23, 2001
Hearing Date:	March 14, 2001
Commission Action:	

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: Steve Scholl, Deputy Director
Robert S. Merrill, North Coast District Manager
Tiffany S. Tauber, Coastal Planner

SUBJECT: **Humboldt County LCP Amendment No. 1-00, (Part B – Surface Mining and Reclamation Ordinance), Implementation Plan Amendment** (Meeting of March 14, 2001 in San Diego)

SYNOPSIS:**Amendment Description:**

The County of Humboldt is requesting certification of LCP Amendment No. 1-00 (Part B) to the County's certified Implementation Plan (zoning code) that would update and revise the County's surface mining and reclamation ordinance to bring it into compliance with the state Surface Mining and Reclamation Act of 1975 (SMARA) as required by the state Mining and Geology Board.

Summary of Staff Recommendation:

The majority of the proposed changes to the surface mining and reclamation ordinance in the Humboldt County Implementation Plan are minor and the amendment as submitted is generally adequate to carry out the provisions of the Land Use Plan. However, several modifications are suggested to clarify the procedures for issuing coastal development permits for surface mining in the County's coastal zone to more effectively carry out the provisions of the LUP. The staff recommends that the Commission, upon completion of a public hearing, deny the

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 2

Implementation Program amendment as submitted and then certify the amendment if modified as suggested.

Commission staff believes that for the most part, the amendment conforms with and adequately carries out the provisions of the County's Land Use Plan. All of the existing zoning designations and use standards set forth for each zoning district would remain as currently certified, and would continue to dictate where extractive uses can occur in conformance with corresponding LUP designations. The surface mining and reclamation ordinance as proposed to be amended sets forth standards and procedures for reviewing and issuing use permits, mining permits, and reclamation plans required for surface mining within the County. The ordinance does not affect or preclude procedures or standards for reviewing or issuing coastal development permits required for surface mining in the County's coastal zone.

However, because the objective of the proposed zoning code amendment is to revise and update the County's surface mining and reclamation ordinance procedures consistent with state law, staff suggests several modifications to further achieve this objective and to clarify surface mining coastal development permit requirements. The suggested modifications include language to clarify that (1) the surface mining and reclamation ordinance does not govern the issuance of coastal development permits, (2) surface mining may take place in the coastal zone of the County only if it is consistent with the Coastal Act and/or the applicable certified Local Coastal Program, (3) coastal development permits for mining activities shall either be reviewed by the Coastal Commission pursuant to the Coastal Act for development within the Commission's retained jurisdiction, or by the County or the Commission on appeal for development within the County's coastal permit jurisdiction pursuant to the certified Local Coastal Program standards governing the issuance of coastal development permits, and (4) the Coastal Commission, rather than the certified local government, shall administratively adjudicate all vested right determinations for purposes of coastal development permit requirements pursuant to the Coastal Act and all other applicable law.

The Commission's procedures require that if the Commission wishes to certify an amendment with modifications, the Commission must first deny the LCP amendment request as submitted, and then certify the amendment if modified as suggested to incorporate the recommended changes. Therefore, staff recommends that the Commission, upon completion of the public hearing, deny the Implementation Plan amendment as submitted, and then certify the amendment if modified as suggested.

The appropriate motions and resolutions to adopt the staff recommendation are found on pages 3 and 4 of this report.

Analysis Criteria

To approve the amendment to the Implementation Plan (IP), the Commission must find that the Implementation Plan, as amended, conforms with and is adequate to carry out the provisions of the Land Use Plan (LUP) of the County's certified LCP.

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 3

Additional Information:

For further information, please contact Tiffany S. Tauber at the North Coast District Office (707) 445-7833. Correspondence should be sent to the District Office at the above address.

I. STAFF RECOMMENDATION, MOTION, AND RESOLUTIONS FOR HUMBOLDT COUNTY LCP AMENDMENT NO. 1-00 (PART B, SURFACE MINING AND RECLAMATION ORDINANCE, MAJOR)

MOTION I: I move that the Commission reject the Implementation Program Amendment for the Humboldt County LCP as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the Humboldt County LCP and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with and is inadequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

MOTION II: I move that the Commission certify the Implementation Program Amendment for the Humboldt County LCP if it is modified as suggested in this staff report.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 4

following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the Humboldt County LCP if modified as suggested on the grounds that the Implementation Program Amendment with the suggested modifications conforms with and is adequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

KEY FOR MODIFICATIONS TO COUNTY LANGUAGE:

The attached Exhibit No. 2 presents the complete text of the zoning code amendment as proposed by the County. In this section, the resulting revised text proposed by the County is shown in regular type, while additions suggested by the Commission are in **bold underline** and suggested deletions are in ~~strikethrough~~.

SUGGESTED MODIFICATION NO. 1: Section 313-61.2.1 of the Humboldt County zoning code shall be modified as follows:

313-61.2.1 **Purpose, Intent, and Findings.** This section explains why these rules are in the Humboldt County Code. If there is something in these sections that is not clear, and that needs to be interpreted, the “purposes and intent” of the Board, as explained in this section should be used so that any interpretation follows these purposes and carries out these intentions.

61.2.1.1 Purpose and Intent. The purpose of this Chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended, and the California Coastal Act, as amended (see Public Resources Code Section 30000 and following) **for reclamation plan, use permit, and mining permit purposes only. This Chapter shall not govern the issuance of a coastal development permit. Coastal Development Permits shall either be reviewed by the Coastal Commission for development within the Commission’s retained coastal development permit jurisdiction pursuant to the Coastal Act, or by the County or the Commission on appeal for development within the County’s coastal development permit jurisdiction pursuant to the certified Local Coastal Program standards governing the issuance of coastal development permits.** The State Surface Mining law is found in the Public Resources Code, at Section 2207 and Section 2710 and

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 5

following. In this ordinance this State law will be referred to as the “Act”, or as “SMARA.” The State Surface Mining Regulations are found in Title 14 of California Code of Regulations, at Sections 3500 and following, and in this ordinance are referred to as the “state regulations.” As stated in the act, and also hereby stated by this Board, it is the intent of the Board of Supervisors to:

...

SUGGESTED MODIFICATION NO. 2: Section 313-61.2.1.2.5 of the Humboldt County zoning code shall be modified as follows:

61.2.1.2 Findings.

The Board hereby finds and declares that:

- 61.2.1.2.1 the extraction of minerals is essential to the continued economic well-being of the County and the needs of society;
- 61.2.1.2.2 the rehabilitation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety;
- 61.2.1.2.3 the reclamation of mined lands as provided in this ordinance will allow the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land;
- 61.2.1.2.4 that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and cultural requirements are significantly different and that reclamation operations and the specifications therefore may vary accordingly;
- 61.2.1.2.5 that surface mining will may take place in the coastal zone of the County **only if surface mining is consistent with the Coastal Act and/or the applicable certified Local Coastal Program.** ~~and this Board hereby incorporates by reference the findings and declarations of the State Legislature with respect to the policy considerations governing the coastal zone (see current Public Resources Code, Section 30001, or any successor provision thereto).~~

SUGGESTED MODIFICATION NO. 3: Section 313-61.2.6 of the Humboldt County zoning code shall be modified as follows:

61.2.6 Legal vested mining operations.

61.2.6.0 This section is applicable only to local vested rights determinations and is not applicable to vested right determinations for purposes of Coastal Development

Permit requirements. The California Coastal Commission, rather than the certified local government, shall administratively adjudicate all vested right determinations for purposes of coastal development permit requirements pursuant to the Coastal Act and all other applicable law.

61.2.6.1 Continuance and Modification. Subject to the limitations of law, including but not limited to those expressed in this chapter and in the Act and Regulations, the operator of a legal vested surface mining operation may continue, provided that the operation does not undergo substantial alteration, expansion, or modification.

61.2.6.2 Special Permit Requirements. A person who has obtained a vested right to conduct surface mining operations shall submit an application for a special permit which includes a reclamation plan that was prepared in compliance with the requirements of this ordinance, and all other local, state, and federal laws and regulations, to the Planning Divisions for review and approval.

The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval.

61.2.6.3 All Other Requirements Applicable. Only the use permit requirements of this ordinance are not applicable to vested operations. All operations, vested or otherwise, must meet all requirements for reclamation plans and financial assurances except to the extent that such plans or assurances are not required by state law or regulations. (For example, section 2776 of the Act does not require the reclamation plan to include certain portions of property which were impacted solely by mining operations which occurred prior to January 1, 1976.) See Section 2773.1 for the current requirements for financial assurances.

III. FINDINGS FOR DENIAL OF IMPLEMENTATION PLAN AMENDMENT NO. 1-00 (Part B) AS SUBMITTED, AND APPROVAL IF MODIFIED

A. Background

The proposed amendment to the County's surface mining and reclamation ordinance is required by the Surface Mining and Reclamation Act (SMARA) of 1975 and by the state Mining and Geology Board's rules and regulations. The ordinance is being revised because the Mining and Geology Board advised the County several years ago that the local surface mining and reclamation ordinance is out of date and does not accurately reflect current Mining and Geology Board law and regulations. The County wants to revise and update the local surface mining and reclamation ordinance because if it is not brought into conformance with state law, the Mining and Geology Board can supersede local authority over surface mining in the County.

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 7

To assist in the preparation of the revised ordinance, the County created the Surface Mining Advisory Committee comprised of county staff, aggregate extractors, concerned citizens, and local business representatives. The ordinance as amended has been approved by the Mining and Geology Board and was found by the Board to be consistent with SMARA. The proposed amendment to the surface mining and reclamation ordinance was adopted by the Humboldt County Board of Supervisors in May 1996, but was not transmitted to the Coastal Commission for certification at that time. The Commission received a filed application on November 17, 2000 and approved a one-year extension for Commission action on January 14, 2001.

B. Description of Proposed Amendment

The proposed surface mining and reclamation ordinance would apply Countywide. However, the ordinance would be applicable only to those sites in the County that are designated for extractive uses. Surface mining and reclamation activities are permitted only in areas designated by the certified Land Use Plan (LUP) and zoning code and none of those designations would be changed by the proposed amendment.

The proposed changes to the County's surface mining and reclamation ordinance are primarily technical in nature and do not significantly change the existing surface mining practices in the County. The ordinance does not approve any specific mining project, but rather, sets forth standards and procedures for the review of surface mining and reclamation permit applications. The standards and procedures in the ordinance pertain to use permits, mining permits, and reclamation plans and do not specifically apply to the review or issuance of coastal development permits. The coastal development permit process contained in the LCP and is an additional review process required for surface mining projects in the coastal zone, independent of the standards and procedures in the surface mining and reclamation ordinance. The proposed ordinance requires that all projects subject to SMARA comply with the ordinance and any other applicable local, state or federal laws and regulations including the County LCP and the Coastal Act.

Examples of proposed changes to the surface mining and reclamation ordinance involve (1) incorporating the state Surface Mining and Reclamation Act by reference, (2) clarifying the timber exemption, (3) clarifying the "one time" exception for agricultural activities, (4) increasing hearing notice requirements, and (5) clarifying the requirement relating to the maintenance of existing grades. Because the County surface mining and reclamation ordinance pertains specifically to the review and processing of use permits, mining permits, and reclamation plans, the proposed changes discussed below do not change the standards or procedures for the issuance of coastal development permits for surface mining in the County's coastal zone.

In the existing surface mining and reclamation ordinance, various definitions and other aspects of the state SMARA law are incorporated directly into the local ordinance. The County has found that when the Mining and Geology Board amends its definitions or interpretations, the local ordinance becomes outdated, and in some instances, comes into conflict with the state law or the Mining and Geology Board's regulations. To simplify the local ordinance and avoid the need for revisions each time the Mining and Geology Board amends their statutes or regulations, the proposed amended ordinance incorporates the state Surface Mining and Reclamation Act by reference to assure that the County's

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 8

ordinance will automatically stay in conformance with state SMARA regulations. The County's ordinance directs the user to specific sections of the state law which must be followed and also clarifies that when the regulations of the local ordinance are more restrictive of mining operations than state law, the more restrictive sections of the local ordinance apply.

Another proposed change to the ordinance involves clarifying the timber exemption. In the existing surface mining and reclamation ordinance, the County has interpreted timber to be an "agricultural activity." As such, surface mining by timber companies was interpreted to be exempt from SMARA in accordance with the County code that exempted specified agricultural activities. However, the state Mining and Geology Board does not consider timber to be an "agricultural activity" as they interpret the state law and regulations. Thus, a substantial conflict has existed between the state's interpretation and the local ordinance. The amended ordinance deletes the provision that explicitly references timber production as an exempt agricultural activity to eliminate the inconsistency between state law and the local ordinance.

Another proposed change involves clarifying an existing limitation in the County's existing ordinance regarding mining that occurs within the banks of a stream (streambed skimming). The existing limitation allows an exception for surface mining associated with agricultural activities for the removal of up to 1,000 yards of material from any one location of one acre or less. The Commission notes, however, that in Humboldt County, this activity has never been exempt when the removal is from streams and rivers, and that limitation is retained in the amended ordinance. The Mining and Geology Board has directly advised the County that, under state regulations, this exemption is allowed only once in the life of the operation. Therefore, that limitation is added to the proposed ordinance, by simply specifying that the exemption is "one time."

The amended ordinance also includes specific provisions that require additional noticing for conditional use permits to parties who would not necessarily receive notice under the permitting process in the County code. These provisions were added due to the nature of the activities undertaken in mining operations, such as potential noise, dust and trucking operations which have the potential to impact wider areas than those covered by the existing noticing process.

Another proposed change came as a result of comments from the Department of Fish and Game regarding the maintenance of existing grades. The proposed ordinance as amended clarifies that unless otherwise specifically authorized for the purpose of environmental enhancement by the U.S. Army Corps of Engineers and/or the Department of Fish and Game, grades and land forms in mined lands shall be maintained in such a manner as to avoid accumulations of water that could serve as sites of fish entrapment.

The ordinance as amended results in an updated surface mining and reclamation program that is in compliance with the requirements of the Surface Mining and Reclamation Act. The surface mining and reclamation ordinance sets forth standards and procedures for reviewing and issuing use permits, mining permits, and reclamation plans. The proposed changes do not eliminate the standards or requirements set forth by the County's certified LCP pertaining to coastal development permits. Additionally, the proposed changes do not change the kind, location,

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 9

intensity, or density of use that is presently allowed for any property in the County's LCP. The revised ordinance, as amended, is attached as Exhibit No. 2.

C. LCP Amendment Analysis

Section 30513 of the Coastal Act establishes the criteria for Commission action on proposed amendments to certified Implementation Plans (IP). Section 30513 states, in applicable part:

...The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.

To approve the amendment, the Commission must find that the amended Implementation Plan will conform with and adequately carry out the provisions of the Land Use Plan (LUP) as certified. In general, the proposed amendment to the zoning code is consistent with and adequate to carry out the LUP. The proposed zoning code amendment would not change the kind, location, density, or intensity of uses currently allowed by the certified LCP. All of the existing zoning designations and the use standards set forth for each zoning district would remain as currently certified, and would continue to dictate where surface mining and mineral extraction could occur in conformance with corresponding LUP designations.

As discussed previously, the proposed surface mining and reclamation ordinance sets forth standards and procedures for reviewing and issuing use permits, mining permits, and reclamation plans required for surface mining operations. In the County coastal zone, coastal development permits are also required for surface mining operations. The surface mining and reclamation ordinance as amended does not eliminate the requirements or standards for coastal development permits. While the surface mining and reclamation ordinance includes operational standards for mining permits including standards regarding access roads, dust suppression, discharge waters, erosion control, maintenance of existing grades, and surrounding water transmissivity, the surface mining and reclamation ordinance does not provide specific standards for coastal development permits. Rather, surface mining is addressed in many of the area-specific land use plans of the County's certified Local Coastal Program including the McKinleyville, Eel River, North Coast, and South Coast area plans which set forth standards for coastal development permits. Section 3.40 and following sections of the LUP provide resource protection policies and standards and directly incorporate Sections 30240, 30233, 30230, 30231, and 30236 of the Coastal Act. These policies act as the standard of review for coastal development permits for surface mining projects and provide for the protection of environmentally sensitive habitat areas, coastal wetlands, marine resources, biological productivity and the quality of coastal waters. Although the surface mining and reclamation ordinance as proposed does not incorporate specific standards pertaining to the protection of coastal wetlands and other environmentally

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 10

sensitive habitat areas, the ordinance as amended does not eliminate or change the coastal development permit review process or required findings for approval.

The proposed amendment would result in a revised and updated surface mining and reclamation ordinance which would be generally adequate to carry out the provisions of the certified LUP. However, a few modifications are necessary to further clarify portions of the ordinance to more effectively carry out the LUP. One of the County's main objectives of the proposed amendment is to revise and update the surface mining and reclamation ordinance to ensure consistency with state law. As submitted, certain sections do not adequately describe required coastal development permit requirements or procedures applicable to surface mining projects and therefore do not adequately carry out the provisions of the LUP. However, if modifications are made to these particular sections, the amendment would effectively carry out the provisions of the LUP. The suggested modifications are outlined below.

1. Purpose, Content, and Findings

The County proposes to revise Section 313-61.2.1 to clarify the purpose, content, and findings of the surface mining and reclamation ordinance. This section, as amended, explains that the purpose and intent of the surface mining and reclamation ordinance is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended, and the California Coastal Act. Section 313-61.2.1.2 goes on to outline the findings that support the implementation of the surface mining and reclamation ordinance in the County which as amended, incorporates the Coastal Act by reference in subsection 61.2.1.2.5. The surface mining and reclamation ordinance as amended, would be incorporated into the County's certified Local Coastal Program, but does not specifically pertain to the review or processing of coastal development permits for surface mining projects in the coastal zone. The ordinance sets forth standards and procedures that apply only to conditional use permits, mining permits, and reclamation plans. The standards and procedures pertaining to the review and processing of coastal development permits for surface mining are set forth elsewhere in the LCP. To clarify permit requirements for surface mining projects in the coastal zone and more effectively carry out the LUP, the Commission includes **Suggested Modification No. 1** and **Suggested Modification No. 2**. Suggested Modification No. 1 clarifies that the County surface mining and reclamation ordinance applies to the review of reclamation plan, use permit, and mining permits only and that the ordinance does not govern the issuance of coastal development permits. Historically, surface mining in the County has occurred in areas of the Commission's retained coastal development permit jurisdiction as well as in areas of the County's coastal development permit jurisdiction. In areas of the Commission's retained jurisdiction, the Coastal Act is the standard of review for coastal development permits while in the County's jurisdiction, the certified LCP is the standard of review. To clarify the standard of review for coastal development permits required for surface mining in the coastal zone and more effectively carry out the certified LUP, Suggested Modification No. 1 also states that coastal development permits shall either be reviewed by the Coastal Commission for development within the Commission's retained coastal development permit jurisdiction pursuant to the Coastal Act, or by the County or Commission on appeal for development within the County's coastal development permit jurisdiction pursuant to the certified Local Coastal Program standards governing the issuance of coastal development permits. Suggested Modification No. 2 further clarifies that surface mining may take place in the coastal zone only if the proposed surface mining is consistent with the Coastal Act and the certified local coastal program.

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 11

Suggested Modification Nos. 1 and 2 will ensure that users of the zoning code will not overlook coastal development permit requirements that are in addition to the permit standards and requirements set forth by the surface mining and reclamation ordinance.

SUGGESTED MODIFICATION NO. 1: Section 313-61.2.1 of the Humboldt County zoning code shall be modified as follows:

313-61.2.1 **Purpose, Intent, and Findings.** This section explains why these rules are in the Humboldt County Code. If there is something in these sections that is not clear, and that needs to be interpreted, the “purposes and intent” of the Board, as explained in this section should be used so that any interpretation follows these purposes and carries out these intentions.

61.2.1.1 Purpose and Intent. The purpose of this Chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended, and the California Coastal Act, as amended (see Public Resources Code Section 30000 and following) **for reclamation plan, use permit, and mining permit purposes only. This chapter shall not govern the issuance of a coastal development permit. Coastal Development Permits shall either be reviewed by the Coastal Commission for development within the Commission’s retained coastal development permit jurisdiction pursuant to the Coastal Act, or by the County or the Commission on appeal for development within the County’s coastal development permit jurisdiction pursuant to the certified Local Coastal Program standards governing the issuance of coastal development permits.** The State Surface Mining law is found in the Public Resources Code, at Section 2207 and Section 2710 and following. In this ordinance this State law will be referred to as the “Act”, or as “SMARA.” The State Surface Mining Regulations are found in Title 14 of California Code of Regulations, at Sections 3500 and following, and in this ordinance are referred to as the “state regulations.” As stated in the act, and also hereby stated by this Board, it is the intent of the Board of Supervisors to:

...

SUGGESTED MODIFICATION NO. 2: Section 313-61.2.1.2.5 of the Humboldt County zoning code shall be modified as follows:

61.2.1.2 **Findings.**

The Board hereby finds and declares that:

61.2.1.2.6 the extraction of minerals is essential to the continued economic well-being of the County and the needs of society;

61.2.1.2.7 the rehabilitation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety;

- 61.2.1.2.8 the reclamation of mined lands as provided in this ordinance will allow the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land;
- 61.2.1.2.9 that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and cultural requirements are significantly different and that reclamation operations and the specifications therefore may vary accordingly;
- 61.2.1.2.10 that surface mining ~~will~~ may take place in the coastal zone of the County only if surface mining is consistent with the Coastal Act and/or the applicable certified Local Coastal Program. ~~and this Board hereby incorporates by reference the findings and declarations of the State Legislature with respect to the policy considerations governing the coastal zone (see current Public Resources Code, Section 30001, or any successor provision thereto).~~

2. Vested Rights Determinations

The existing surface mining and reclamation ordinance includes language concerning vested rights and the procedures and requirements of vested rights claims are not changed by the amended ordinance. Vested mining operations in the County are subject to all requirements of SMARA except for obtaining a use permit. However, the section pertaining to legal vested mining operations does not reflect the procedures regarding vested rights determinations for purposes of coastal development permits. As noted previously, one of the County's objectives of the proposed zoning code amendment is to revise and update procedural requirements consistent with state law. To further achieve this objective, the Commission includes **Suggested Modifications No. 3.** Suggested Modification No. 3 makes an addition to Section 313-61.2.6 pertaining to legal vested mining operations to accurately reflect the language of Subchapter 1 of Chapter 6 (sections 13200-13205) of the Commission's Administrative Regulations. Suggested Modification No. 3 clarifies that the section in the County surface mining and reclamation ordinance is applicable only to local vested rights determinations and is not applicable to vested right determinations for purposes of coastal development permit requirements. The section added by Suggested Modification No. 3 further clarifies that the Coastal Commission, rather than the certified local government, shall administratively adjudicate all vested right determinations for purposes of coastal development requirements.

SUGGESTED MODIFICATION NO. 3: Section 313-61.2.6 of the Humboldt County zoning code shall be modified as follows:

61.2.7 Legal vested mining operations.

61.2.7.0 This section is applicable only to local vested rights determinations and is not applicable to vested right determinations for purposes of coastal development permit requirements. The California Coastal Commission, rather than the

certified local government, shall administratively adjudicate all vested right determinations for purposes of coastal development requirements pursuant to the Coastal Act and all other applicable law.

- 61.2.7.1 Continuance and Modification. Subject to the limitations of law, including but not limited to those expressed in this chapter and in the Act and Regulations, the operator of a legal vested surface mining operation may continue, provided that the operation does not undergo substantial alteration, expansion, or modification.
- 61.2.7.2 Special Permit Requirements. A person who has obtained a vested right to conduct surface mining operations shall submit an application for a special permit which includes a reclamation plan that was prepared in compliance with the requirements of this ordinance, and all other local, state, and federal laws and regulations, to the Planning Divisions for review and approval.

The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval.

- 61.2.7.3 All Other Requirements Applicable. Only the use permit requirements of this ordinance are not applicable to vested operations. All operations, vested or otherwise, must meet all requirements for reclamation plans and financial assurances except to the extent that such plans or assurances are not required by state law or regulations. (For example, section 2776 of the Act does not require the reclamation plan to include certain portions of property which were impacted solely by mining operations which occurred prior to January 1, 1976.) See Section 2773.1 for the current requirements for financial assurances.

4. Conclusion

The ordinance as amended results in an updated surface mining and reclamation program that is in compliance with the requirements of the Surface Mining and Reclamation Act. The surface mining and reclamation ordinance sets forth standards and procedures for reviewing and issuing use permits, mining permits, and reclamation plans. The proposed changes do not change or eliminate the standards or requirements set forth by the County's certified LUP pertaining to coastal development permits. Additionally, the proposed changes do not change the kind, location, intensity, or density of use that is presently allowed for any property in the County's LCP.

For the most part, the zoning code amendment as proposed conforms with and adequately carries out the provisions of the County's Land Use Plan. All of the existing zoning designations and use standards set forth for each zoning district would remain as currently certified, and would continue to dictate where extractive uses can occur in conformance with corresponding LUP designations. However, as discussed above, some sections of the amendment as proposed are not inclusive or clear enough to be fully consistent with coastal development permit

HUMBOLDT COUNTY LCP AMENDMENT (Major)
NO. 1-00, Part B – Surface Mining and Reclamation Ordinance
Page 14

requirements of the certified LUP. Therefore, the Implementation Plan amendment as submitted does not adequately carry out the provisions of the LUP. However, with the addition of the suggested modifications, the amended surface mining and reclamation ordinance would be more comprehensive and accurate, and would more effectively carry out the provisions of the LUP.

Therefore, the Commission finds the County's Implementation Plan, as modified, conforms with and is adequate to carry out the requirements of the certified Land Use Plan consistent with Section 30513 of the Coastal Act.

D. California Environmental Quality Act

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(A) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

As discussed in the findings above, the amendment request with the incorporation of the suggested modifications is consistent with the California Coastal Act. The Commission finds that approval of the Implementation Plan with the incorporation of the suggested modifications to implement the Land Use Plan will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

EXHIBITS:

1. County Resolution
2. Proposed Amendment to the Humboldt County Zoning Code

ORDINANCE NO. 2117

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY
OF HUMBOLDT AMENDING SECTIONS 391 AND A316-36
COUNTY CODE RELATING TO SURFACE MINING AND RECLAMATION
ACTIVITIES IN THE INLAND AND COASTAL ZONES
OF HUMBOLDT COUNTY

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1.

Sections 391-1 through 391-12 are hereby amended as shown on the attached pages 313.6 through 313.24.

SECTION 2.

Section A316-36 is hereby amended as shown on the attached pages 200.196 through 200.215.

SECTION 3.

This ordinance shall take effect and be in force thirty (30) days from the date of its passage, except that the ordinances shall not take effect until the ordinances are approved and "certified" by the State Mining and Geology Board, and, with respect to the Coastal Zone ordinance referenced in section 2 above, approved and certified by the California Coastal Commission.

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EXHIBIT NO. 1
APPLICATION NO. HUM. CO. ICP AMEND NO. 1-00 (PART B)
RESOLUTION (Page 1 of 2)

PASSED, APPROVED and ADOPTED by the Board of Supervisors of
the County of Humboldt, State of California, this 28th day of
May, 1996, by the following vote, to wit:

AYES: Supervisors Dixon, Heider, Fulkerson, Neely, and Kirk

NAYS: None

ABSTAIN: None

ABSENT: None



Chair of the Board of Supervisors
of the County of Humboldt, State of
California

(SEAL)

ATTEST:

LORA FREDIANI, Clerk of the Board
of Supervisors of the County of
Humboldt, State of California



May 28, 1996

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**HUMBOLDT COUNTY LCP AMENDMENT NO. 1-00, (PART B – SURFACE
MINING AND RECLAMATION ORDINANCE), IMPLEMENTATION PLAN
AMENDMENT**

(As proposed by Humboldt County)

This exhibit presents the complete text of the Implementation Plan Amendment as submitted by the County. The surface mining and reclamation ordinance as amended is underlined and presented in its entirety in the first 16 pages of the exhibit. The previously certified existing surface mining and reclamation ordinance is shown in ~~strikethroughs~~ and is contained in its entirety in the last 8 pages of the exhibit.

EXHIBIT NO.	2
APPLICATION NO.	HUM. CO. LCP AMEND.
	NO. 1-00 (PART B)
PROPOSED AMENDMENT	(1 of 25)

313-61.2 SURFACE MINING AND RECLAMATION

61.2.1 Purpose, Intent and Findings. This section explains why these rules are in the Humboldt County Code. If there is something in these sections that is not clear, and that needs to be interpreted, the "purposes and intent" of the Board, as explained in this section, should be used so that any interpretation follows these purposes and carries out these intentions. (Former Section CZ#A314-36(I); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1 Purpose and Intent. The purpose of this Chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975, as most recently amended, and the California Coastal Act, as amended (see, Public Resources Code Section 30000 and following). The State Surface Mining law is found in the Public Resources Code, at Section 2207 and Section 2710 and following. In this ordinance this State law will be referred to as the "Act", or as "SMARA." The State Surface Mining Regulations are found in Title 14 of California Code of Regulations, at Sections 3500 and following, and in this ordinance are referred to as the "state regulations". As stated in the Act, and also hereby stated by this Board, it is the intent of the Board of Supervisors to: (Former Section CZ#A314-36(I)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1.1 protect the quality of the County's environment; (Former Section CZ#A314-36(I)(A)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1.2 encourage the conservation and production of known or potential mineral deposits for the economic health and well-being of society; (Former Section CZ#A314-36(I)(A)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1.3 regulate surface mining operations so as to prevent or minimize adverse environmental effects of surface mining; (Former Section CZ#A314-36(I)(A)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1.4 provide for the reclamation of mined lands; and (Former Section CZ#A314-36(I)(A)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.1.5 reduce or eliminate hazards to public health and safety due to surface mining operations. (Former Section CZ#A314-36(I)(A)(5); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.2 Findings.

The Board hereby finds and declares that:

61.2.1.2.1 the extraction of minerals is essential to the continued economic well-being of the County and the needs of society; (Former Section CZ#A314-36(I)(B)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.2.2 the rehabilitation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. (Former Section CZ#A314-36(I)(B)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.2.3 the reclamation of mined lands as provided in this ordinance will allow the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land. (Former Section CZ#A314-36(I)(B)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.2.4 that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and cultural requirements are significantly different and that reclamation operations and the specifications therefore may vary accordingly. (Former Section CZ#A314-36(I)(B)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.1.2.5 that surface mining will take place in the coastal zone of the County, and this Board hereby incorporates by reference the findings and declarations of the State Legislature with respect to the policy considerations governing the coastal zone (see, current Public Resources Code, Section 30001, or any successor provision thereto). (Former Section CZ#A314-36(I)(B)(5); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.2 Incorporation of State Law and Regulations by Reference.

61.2.2.1 Reason. This Board has determined that one of the most efficient and easiest methods to ensure that this County's SMARA ordinance is written as required by State law is to "incorporate by reference" the provisions of State law. This avoids the possibility that any provision of State law will be overlooked or inadvertently misstated in this ordinance. It also avoids the need to amend this ordinance every time the State amends the State law, because those changes will, in most cases, automatically become a part of this section of the Code (however, see note below for exceptions).

NOTE: WHENEVER YOU MUST COMPLY WITH STATE OR LOCAL SMARA REGULATIONS, YOU WILL NEED TO GET A COPY OF THE STATE LAW AND REGULATIONS AND FOLLOW THOSE RULES. THIS ORDINANCE CONTAINS SOME SECTIONS IN ADDITION TO STATE LAW WHICH EXPLAIN HOW THE RULES WORK IN HUMBOLDT COUNTY. IF STATE LAW IS DIFFERENT THAN THESE LOCAL RULES, THE STATE LAW SHOULD BE FOLLOWED, UNLESS THE RULES IN THIS LOCAL ORDINANCE ARE MORE RESTRICTIVE ON MINING OPERATIONS, IN WHICH CASE THE STATE LAW SAYS THAT THE MORE RESTRICTIVE SECTIONS OF THIS ORDINANCE MUST APPLY. (Former Section CZ#A314-36(II)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.2.2 Incorporation of State Law and Regulations by reference.

The County of Humboldt hereby incorporates by reference, as if fully set forth herein, the State Surface Mining and Reclamation Act of 1975, and all amendments to that Act, which are currently set forth in Public Resources Code, Section 2207 and Section 2710 and following. Further incorporated herein by reference are the State Regulations adopted by the State to implement the Act, as amended from time to time by the State. (Former Section CZ#A314-36(II)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

The regulations are currently set forth in Title 14 of the California Code of Regulations at Sections 3500 and following, Section 3700 and following ("reclamation standards"), and Section 3800 and following ("financial assurances"), and are also referred to in this ordinance as the "state regulations". (Former Section CZ#A314-36(II)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

Further, the California Coastal Act and implementing regulations are hereby incorporated by reference, as if fully set forth herein, including but not limited to Public Resources Code Section 30000 and following. (Former Section CZ#A314-36(II)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

Any reference in this ordinance to compliance with this "Chapter" also means compliance with all incorporated laws and regulations. Some provisions of state law are restated in this ordinance, and some are not. State law and regulations apply to mining operations, whether or not those laws and regulations are restated herein. (Former Section CZ#A314-36(II)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.3 Limitations on Specified Activities.61.2.3.1 Reasons for limitations.

The following activities are regulated by both State and local laws and regulations. The following limitations restate those environmental protections contained in the former County SMARA ordinance in order to ensure the continuation of the following protections. (Former Section CZ#A314-36(III)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.3.2 "Stream bed Skimming."

State law contains an exception for non-commercial excavations or grading conducted for the purposes of farming, on-site construction, or restoring land following a flood or natural disaster at Section 2714(a) of the State Act. Consistent with the County's prior ordinance governing mining operations, such activities are excepted only to the extent that the mining operation does not exceed the one time, one acre, one thousand cubic yard exception contained in current Section 2714(d) of the Act. This section shall not apply to timber operations which are governed by Section 2714(j) of the Act. (Former Section CZ#A314-36(III)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.3.3 Drainage, Erosion and Sediment Control.

In addition to the "performance standards" set forth in Section 3706 of the Regulations, final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations. Note that subsection (c) of Section 3706 of the Regulations requires compliance with Regional Water Quality Control Board or the State Water Resources Board for water discharge standards. (Former Section CZ#A314-36(III)(C); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4 Use Permit.

61.2.4.1 Application.

61.2.4.1.1 Filing procedure. An application for a Use Permit for a mining operation shall be submitted to the County Planning Division on forms furnished by that Division and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Division. As may be required, supplemental information shall be provided in Appendices to the application forms in the following format: (Former Section CZ#A314-36(IV)(A)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.1.1 Appendix A = Project Description, including the date of commencement of the project, the duration of the project, and the anticipated date of completion. (Former Section CZ#A314-36(IV)(A)(1)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.1.2 Appendix B = Property Documentation (Former Section CZ#A314-36(IV)(A)(1)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.1.3 Appendix C = Reclamation Plan (Former Section CZ#A314-36(IV)(A)(1)(c); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.1.4 Appendix D = Environmental Assessment (Former Section CZ#A314-36(IV)(A)(1)(d); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.1.5 Appendix E = Maps & Illustrations (Former Section CZ#A314-36(IV)(A)(1)(e); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.2 Filing Fee. Each application shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors. (Former Section CZ#A314-36(IV)(A)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.3 Acceptance. An application will not be accepted by the Planning Division as complete until the applicant sets forth the required information in sufficient detail to the satisfaction of the Department. When the Department receives all of the information which it requires, the

Department shall notify the applicant that the application is accepted as complete pursuant to this section. Acceptance of an application as complete does not constitute an indication of approval. (Former Section CZ#A314-36(IV)(A)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.1.4 Preliminary Reviews.

In order to expedite processing, prior to submitting the completed application, Appendix C, the Reclamation Plan, and Appendix D, the Environmental Assessment may be submitted in draft form for preliminary review purposes. However there is a fee for preliminary reviews, and no final decisions will be made on the application until the project has been reviewed in its complete form. (Former Section CZ#A314-36(IV)(A)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2 Procedure for Review and Action on Applications.

61.2.4.2.1 Review. The Planning Division will review the use permit application for accuracy and completeness, and will coordinate the review with other County and public agencies. Unless for some reason it is not possible, the use permit required by this section, and the reclamation plan required by the next section shall be considered together as one application. Applicants should note that any documents required for environmental review pursuant to the California Environmental Quality Act must also be processed in a timely manner to avoid any delays in the application. Applicants should discuss with the Department any questions they may have about the required environmental reviews. (Former Section CZ#A314-36(IV)(B)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.2 Public Hearing. Upon completion of the review process, a public hearing shall be held before the Planning Commission. Notice of the public hearing shall be given in accordance with Humboldt County Code. Notification shall also include, at a minimum, property owners within 300 feet from property lines of the parcels on which mining operations will occur, and 1500 feet from the location of any processing plant. Notification shall also be provided to property owners affected by the mining operation and affected haul routes as provided by Section 2530 of Chapter 3 of the Framework Plan of the County's General Plan. The notice shall specifically identify each issue to be considered at the hearing. The purpose of the hearing shall be to consider the applicant's request and to approve, conditionally approve, or deny the issuance of a Use Permit. (Former Section CZ#A314-36(IV)(B)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.3 Approval or Denial. In addition to any findings required for a Use Permit by this County Code, the Planning Commission shall approve or approve with conditions the issuance of a use permit if the evidence presented supports the conclusions of subsections 61.2.4.2.3.1. and 61.2.4.2.3.2: (Former Section CZ#A314-36(IV)(B)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.3.1. That the application and supporting documents adequately describe the proposed surface mining operation, and adequate measures are incorporated to mitigate the probable or known significant environmental effects which have been or may be caused by the proposed operation. (This section is intended to remind applicants of the requirements for compliance with the California Environmental Quality Act (CEQA), which compliance is required before any permits may be issued); and, (Former Section CZ#A314-36(IV)(B)(3)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.3.2 That the proposed use and location of the surface mining operation is properly located in accordance with the General Plan and any relevant element thereof, to the community as a whole, and to other land uses in the vicinity. (Former Section CZ#A314-36(IV)(B)(3)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.3.3 If the Planning Commission determines that the findings of subsections 61.2.4.2.3.1 and 61.2.4.2.3.2 cannot be made, it shall so state and deny the application. (Former Section CZ#A314-36(IV)(B)(3)(c); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.4 Conditions of Approval. The Planning Commission shall, as is necessary to conform with the provisions of this ordinance, the Act and Regulations, and other applicable laws, provide that issuance of the use permit shall be contingent upon acceptance and observance of specified reasonable conditions related to surface mining operations, including the approval of a complete and final reclamation plan and financial assurances. (Former Section CZ#A314-36(IV)(B)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.5 Commencement of Operations. An operator shall commence a surface mining operation not later than one (1) year, or such longer period as may be agreed to between the County and the Applicant, from the date of issuance of a use permit, approval of the reclamation plan (see Section 313-61.2.5), and approval of financial assurances, whichever is later. Failure to commence diligent operations within the one (1) year period, or otherwise agreed to period, renders the use permit void. This section shall not apply to those surface mining operations which, after obtaining a use permit, comply with any relevant provisions of Section 313-61.2.7 relating to idle mines. (Former Section CZ#A314-36(IV)(B)(5); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.6 Term. Mining permits shall be granted for a period of not less than three (3) years and not more than fifteen (15) years. The term of the permit is a discretionary decision which should be governed by the life expectancy of the operation, and any special circumstances related to the operation which would make appropriate a more frequent or less frequent review of the operation. The basis for the determination of the term of the operation shall be stated in the grant of approval. (Former Section CZ#A314-36(IV)(B)(6); Amended by Ord. 2117, Sec. 2, 5/28/96)

Upon written request to the Zoning Administrator, before expiration of the original permit, the permit may be reissued for a period equal to that grant of the original permit so long as the permit holder establishes to the satisfaction of the Zoning Administrator, or on appeal to the Board of Supervisors, that the use had been conducted in compliance with permit conditions. (Former Section CZ#A314-36(IV)(B)(6); Amended by Ord. 2117, Sec. 2, 5/28/96)

If the law or circumstances of the mining operation have changed from the time the permit was originally issued, any new conditions or requirements determined by the Zoning Administrator, or the Board of Supervisors on appeal, to be necessary for compliance with the laws, regulations or changed circumstances may be added to or modified in the reissued permit. (Former Section CZ#A314-36(IV)(B)(6); Amended by Ord. 2117, Sec. 2, 5/28/96)

This section does not establish any right by an operator to continue operating in any particular manner, or at all, at the end of the initial term of the permit originally issued, or any extension thereof. (Former Section CZ#A314-36(IV)(B)(6); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.7 Rights of Successors. Any use permit issued for a surface mining operation shall run with the land affected thereby and conditions shall be binding upon all successors, heirs, and assigns of the operator. (Former Section CZ#A314-36(IV)(B)(7); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.4.2.8 Revocation. Permits or any other grant of authority for activities undertaken pursuant to this Chapter may be revoked or suspended as any other permit, in accordance with current Chapter 2, Procedures, or any other applicable provision of the County Code. (Former Section CZ#A314-36(IV)(B)(8); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5 Reclamation Plan.61.2.5.1 Submittal for Approval.

61.2.5.1.1 Filing Procedure. A reclamation plan required by this Chapter shall be submitted to the County Planning Division and shall be full and complete, containing all information required by the Act as well as any additional information requested by the Planning Division. (Former Section CZ#A314-36(V)(A)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.1.2 Filing Fee.

61.2.5.1.2.1 For a reclamation plan filed as part of a use permit application, there shall be no filing fee. (The fee is already submitted as a part of a use permit application, which has its fees authorized under Section 313-61.2.4.) (Former Section CZ#A314-36(V)(A)(2)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.1.2.2 All other reclamation plans filed for review and approval shall be accompanied by a filing fee in an amount to be set from time to time by the Board of Supervisors. (Former Section CZ#A314-36(V)(A)(2)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.1.3 Acceptance. A reclamation plan filed under the foregoing paragraphs of this section will not be accepted by the Planning Division as complete until it sets forth the required information in sufficient detail to the satisfaction of the Division. The Department shall then notify the person submitting the plan that it is accepted as complete for review pursuant to Section 313-61.2.9. Acceptance of a reclamation plan does not constitute an indication of approval. (Former Section CZ#A314-36(V)(A)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2 Procedure.61.2.5.2.1 Review.

61.2.5.2.1.1 The Planning Division will review the reclamation plan for accuracy, adequacy, and completeness, and will coordinate the review with other County and public agencies. The Planning Division shall, in compliance with Section 2774 of the Public Resources Code, submit a copy of the proposed reclamation plan to the State Department of Conservation and any comments received from that Department shall be incorporated into the review. (Former Section CZ#A314-36(V)(B)(1)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.1.2 In accordance with Section 2774 of the Act, there shall be at least one public hearing on every reclamation plan, as well as for

proposed substantial amendments to previously approved reclamation plans. The hearing on the reclamation plan may be combined with a public hearing on other aspects of the project, so long as all notices clearly specify that the reclamation plan will be one of the subjects of the hearing. Notice of the public hearing shall be given in accordance with subsection 313-61.2.4.2.2. The purpose of the hearing shall be to receive comments from interested parties, and to assure compliance with Section 2774 (a) of the Public Resources Code. (Former Section CZ#A314-36(V)(B)(1)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.2 Approval or Disapproval. The Planning Commission shall approve or approve with conditions the reclamation plan if the evidence presented establishes that the reclamation plan and supporting documents meet all of the conditions and requirements of SMARA, including but not limited to Sections 2772 and 2773(a) of the Act and Section 3502 and following of the State Regulations, and any additional County requirements for reclamation. Otherwise the Commission shall deny the application. (Former Section CZ#A314-36(V)(B)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.3 Conditions of Approval. The Planning Commission shall, to the extent necessary to conform with the provisions of this ordinance and with Section 2773.1 of the Public Resources Code, apply conditions to the approval of the reclamation plan. Such conditions shall include, but not be limited to: (Former Section CZ#A314-36(V)(B)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.3.1 The meeting or exceeding of the minimum, verifiable statewide reclamation standards which may be adopted from time to time by the State Mining and Geology Board pursuant to Section 2773 (b) of the Public Resources Code, including but not limited to California Code of Regulations Section 3500 and following and Section 3700 and following, or any successor provisions thereto; (Former Section CZ#A314-36(V)(B)(3)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.3.2 The entering into agreement between the Operator and the County whereby financial assurances are provided by the Operator to assure the reclamation of all mined lands in the event of default by the Operator. Such financial assurances shall be made in the form, manner and timing as is required by State law and Regulations. See, current Section 2773.1 of the Act, and Section 3800 and following of the Regulations, which provide that the financial assurances shall be made payable to the County and the Director of the Department of Conservation, and shall be limited to the following forms: (Former Section CZ#A314-36(V)(B)(3)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

10425

61.2.5.2.3.2.1 Surety bonds;

61.2.5.2.3.2.2 Irrevocable letters of credit;

61.2.5.2.3.2.3 Trust funds; and,

61.2.5.2.3.2.4 Other forms of financial assurances specified by the State Mining and Geology Board pursuant to the Public Resources Code.

(Former Section CZ#A314-36(V)(B)(3)(b)(1-4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.3.3 The right of access to the mined lands by County staff and their agents, and of authorized employees of the Department of Conservation in the performance of their enforcement responsibilities, including but not limited to inspections to determine compliance with any permit, permit conditions or approved reclamation plan; and, (Former Section CZ#A314-36(V)(B)(3)(c); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.3.4 A statement that all permit conditions, reclamation plan contents and requirements and financial assurances shall run with the land and shall be legally binding on all successors, heirs, and assigns of the Operator, and landowner, if they are different. The landowner, and the operator, if they are not the same person, shall sign a "Statement of Responsibility", which is a required part of the reclamation plan materials, acknowledging and accepting responsibility for full implementation and performance of all aspects of any applicable reclamation plans. (Former Section CZ#A314-36(V)(B)(3)(d); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.5.2.4 Amendments. Amendments to an approved reclamation plan may be submitted which detail proposed deviations. If in the judgement of the Planning Director such amendments do not constitute a substantial change in the approved reclamation plan, such amendments may receive a summary approval by the Planning Division. If, however, in the judgement of the Planning Director, the amendments substantially deviate from the approved reclamation plan, then the request for amendment shall be submitted and processed for approval with the same considerations as a first submittal under this subsection 61.2.5.2, and the preceding subsection 61.2.5.1. Any party aggrieved by the decision of the Planning Director may appeal the decision in accordance with the appeal provisions of the County Code. (Former Section CZ#A314-36(V)(B)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.6 Legal vested mining operations.

61.2.6.1 Continuance and Modification. Subject to the limitations of law, including but not limited to those expressed in this chapter and in the Act and Regulations, the operator of a legal vested surface mining operation may continue, provided that the operation does not undergo substantial alteration, expansion, or modification. (Former Section CZ#A314-36(VI)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.6.2 Special Permit Requirements. A person who has obtained a vested right to conduct surface mining operations shall submit an application for a special permit which includes a reclamation plan that was prepared in compliance with the requirements of this ordinance, and all other local, state, and federal laws and regulations, to the Planning Division for review and approval. (Former Section CZ#A314-36(VI)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval. (Former Section CZ#A314-36(VI)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.6.3 All Other Requirements Applicable. Only the use permit requirements of this ordinance are not applicable to vested operations. All operations, vested or otherwise, must meet all requirements for reclamation plans and financial assurances except to the extent that such plans or assurances are not required by state law or regulations. (For example, Section 2776 of the Act does not require the reclamation plan to include certain portions of property which were impacted solely by mining operations which occurred prior to January 1, 1976.) See Section 2773.1 for the current requirements for financial assurances. (Former Section CZ#A314-36(VI)(C); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7 Idle Mines.

61.2.7.1 Interim Management Plan. Within 90 days of a surface mining operation becoming idle, as defined in the Act (see current Sections 2727.1 and 2770(h)), the operator shall submit to the Planning Division for review and approval an interim management plan, accompanied by any required fees. The interim management plan shall describe measures the operator will implement to maintain the site in compliance with the State Act and Regulations, with this ordinance, and with all permit conditions. Any applicable fees shall be submitted with the plan. (Former Section CZ#A314-36(VII)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7.2 Term of Plan. The interim management plan may remain in effect for a period not to exceed five (5) years, at which time the County shall do one of the following: (Former Section CZ#A314-36(VII)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

12 of 25

61.2.7.2.1 Renew the interim management plan for no more than one additional period not to exceed five (5) years provided the County finds that the operator has complied fully with the interim management plan; or, (Former Section CZ#A314-36(VII)(B)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7.2.2 Require the operator to commence reclamation in accordance with the approved reclamation plan. (Former Section CZ#A314-36(VII)(B)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7.3 Financial Assurances. Financial assurances as required by the Act, Regulations and this ordinance shall remain in effect during the period the surface mining operation is idle. (Former Section CZ#A314-36(VII)(C); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7.4 Interim Management Plan Approval. The receipt of an interim management plan by the Planning Division shall be considered and processed as an amendment to the approved reclamation plan. Section 2770(h) of the Act provides that the review and approval of the interim management plan is not a project for purposes of CEQA (Public Resources Code Section 21000 and following.) (Former Section CZ#A314-36(VII)(D); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.7.5 Forfeiture of Use Permit. The operator of a surface mining operation which has been abandoned, as defined in State and local SMARA law and regulations, for a period exceeding one (1) year shall forfeit the use permit and commence reclamation in accordance with the approved reclamation plan. (Former Section CZ#A314-36(VII)(E); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.8 Intermittent Operations.

Intermittent operations, as defined in Section 3500 of the Regulations are subject to all of the same rules and regulations governing active operations, unless the operation meets the definition under SMARA as an "idle" operation, in which case the provisions governing idle mines apply. (Former Section CZ#A314-36(VIII); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9 Administration and Enforcement.

61.2.9.1 Time Limitation.

61.2.9.1.1 Use Permit and Reclamation Plan Applications. Upon receipt of an application for a Use Permit and/or a reclamation plan for a surface mining operation, the Planning Division shall notify the applicant within 30 days as to the adequacy and completeness of the application. (Former Section CZ#A314-36(IX)(A)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.1.2 Time for Review. The review procedure, including the holding of the public hearing, shall be completed within one hundred twenty (120) days of the filing of the complete reclamation plan (this time frame allows 30 days for the State agency review of the plan, 45 days for the State review

of the financial assurances, and 30 days for processing time by County staff after the State responses have been received; all reasonable efforts will be made by County staff to process projects as quickly as possible). Compliance with this requirement shall be subject to time constraints imposed by Section 2774(d) of the Public Resources Code and the California Environmental Quality Act (CEQA). A failure by the State of County to meet these deadlines shall not result in an automatic approval of the plan or project. (Former Section CZ#A314-36(IX)(A)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.2 Simultaneous Processing. Applicants are urged to submit all required applications and supporting documents at the same time. In the event that an application for a use permit for a surface mining operation and a reclamation plan are submitted for approval pertaining to a same project, then review and processing of the reclamation plan shall occur simultaneously with that of the use permit application. Either concurrent with or prior to the issuance of a use permit, the reclamation plan shall have been approved. Submitting all required documentation for simultaneous processing may avoid multiple hearings and may reduce the time and cost of processing the applications. It should be noted that Section 2772(b) of the Act requires that "all documentation for the reclamation plan shall be submitted to the lead agency (County) at one time." (Former Section CZ#A314-36(IX)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.3 Public Record. Applications, reclamation plans, interim management plans and other documents submitted in support of this Chapter are public records unless it is demonstrated to the satisfaction of the County that the release of such information, or any part thereof, would reveal reserves, production, or rates of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application, and such proprietary information shall be made available only to the State Geologist and to persons authorized to receive such proprietary information. Such authorization shall be presented to the County in writing by the operator. (Former Section CZ#A314-36(IX)(C); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.4 Inspection and Review.

61.2.9.4.1 Operations. The Planning Director shall cause periodic inspections to be made of each surface mining operation to assure the compliance with all permit conditions and requirements (including but not limited to those of the reclamation plan, if applicable at the time of inspection), if any, and with local and state law and regulations. The maximum interval between inspections shall be one year. (Former Section CZ#A314-36(IX)(D)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.4.2 Reclamation Plans. In accord with Section 2774 (b) of the Public Resources Code, the Planning Director shall cause an annual inspection of each surface mining operation to be made to determine whether the surface

14 of 25

mining operation is in compliance with the Act, State Regulations, this ordinance and any applicable permit conditions. Such inspection shall be conducted using a form provided by the State Department of Conservation for that purpose, and shall be conducted no later than six (6) months after receiving the surface mining operation's annual report submitted pursuant to Section 2207 of the Public Resources Code and Paragraph 61.2.9.5. (Former Section CZ#A314-36(IX)(D)(2); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.4.3 Interim Management Plans. The Planning Director shall cause periodic inspections to be made of each idle mine with an approved interim management plan. Such inspections shall be to assure the compliance with the interim management plan and shall be in accord with Paragraph 61.2.9.4.2, if applicable. The maximum interval between inspections shall be one year. (Former Section CZ#A314-36(IX)(D)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.4.4 Costs of Inspections. The cost of any inspection(s) required by Paragraph 61.2.9.4.2, shall be borne by the operator. In causing the performance of these inspections, the Planning Director may implement procedures which are consistent with good practice and which will minimize the costs of inspection. (Former Section CZ#A314-36(IX)(D)(4); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.5 Annual Report. In compliance with Section 2207 of the Act, the owner, manager or other person in charge of any surface mining operation shall forward an annual report to the Director of the State Department of Conservation on forms furnished by the State Mining and Geology Board. Such annual report shall be in accord with instructions included with the forms, and shall include all information required by the Act (see Section 2207(a)), State Regulations, and this ordinance. The designated copy shall be submitted to the County Planning Division on or before the anniversary date established by the Director of the State Department. (Former Section CZ#A314-36(IX)(E); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.6 Appeals. Decisions of the Planning Director, Zoning Administrator, or Planning Commission required by this Chapter may be appealed in the manner set forth in the Humboldt County Code. An applicant, whose request for a permit to conduct surface mining operations in an area of regional or statewide significance has been denied by County action, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance may, within fifteen days of exhausting his rights to appeal in accordance with this section, appeal to the State Mining and Geology Board in accordance with the provisions of Section 2775 of the Public Resources Code. (Former Section CZ#A314-36(IX)(F); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7 Enforcement.

61.2.9.7.1 Violation-Public Nuisance. Any violation of this chapter is unlawful and is hereby deemed to be a public nuisance, and shall be abated.

eliminated and enjoined as provided by the Humboldt County Code and/or any other provision of law. Any person or entity operating without legal authorization shall cease activities immediately. (Former Section CZ#A314-36(IX)(G)(1); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.2 Violation-Noncompliance.

61.2.9.7.2.1 If the Planning Director should determine that a permitted or otherwise legally authorized operator is not in compliance with the provisions of this Chapter, the County, in conformance with Section 2774.1(a) of the Public Resources Code, shall, to the extent feasible with the resources available to the County, notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the County's notification, an order shall be sent by personal service or certified mail requiring the operator to comply with this Chapter, or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities. See, Section 2774.1(a) of the Act. (Former Section CZ#A314-36(IX)(G)(2)(a); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.2.2 An order issued under subsection 61.2.9.7.2.1, shall not take effect until the operator has been provided a hearing before the Planning Commission concerning the alleged violation. Any order issued under subsection 61.2.9.7.2.1 shall specify which aspect of the surface mine's activities or operations are inconsistent with this Chapter and shall specify a time for compliance, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order. (Former Section CZ#A314-36(IX)(G)(2)(b); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.2.3. Any operator who violates or fails to comply with an order issued under Paragraph 61.2.9.7.2.1, after the order's effective date shall be subject to an order by the County or the State Director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with any provision of Chapter 9 of Division 2 and/or Section 2207 of the Public Resources Code. (Former Section CZ#A314-36(IX)(G)(2)(c); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.2.4 Any operator who fails to submit a timely report to the Planning Division pursuant to subsection 313-61.2.9.5 of this section, and Section 2207 of the Public Resources Code, shall be subject to any order issued by the County imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with subsection 313-61.2.9.5, and/or Section 2207 of the Public

Resources Code. (Former Section CZ#A314-36(IX)(G)(2)(d); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.2.5 If the State Department of Conservation notifies the Planning Division of any known or apparent violations or noncompliance with the Act in writing, and subject to the limitations in Section 2774.1 of the Public Resources Code, the County shall have primary jurisdiction and responsibility of administering this Chapter and the State Act and Regulations. (Former Section CZ#A314-36(IX)(G)(2)(e); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.9.7.3 Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, including, but not limited to, use permit revocation proceedings. (Former Section CZ#A314-36(IX)(G)(3); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.10 Mining Permit Standards.

In addition to meeting the minimum acceptable surface mining and reclamation practices in the State Act and Regulations, each surface mining operation shall be designed and conducted to meet the operational standards of this Section. Conditions may be imposed on mining permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a permit shall be conducted only by the operator or an authorized agent. Additional standards are set forth in the Act and Regulations. See, for example, Section 3700 and following, "Reclamation Standards." (Former Section CZ#A314-36(X); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.10.1 Access Roads. All private encroachments leading to a surface mining operation shall be adequately surfaced to prevent aggregate or other materials from being drawn onto the public way. (Former Section CZ#A314-36(X)(A); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.10.2 Dust Suppression. All haul roads and driveways shall be maintained as necessary to minimize the emission of dust and prevent the creation of a nuisance to adjacent properties. (Former Section CZ#A314-36(X)(B); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.10.3 Discharge Waters. Any waters discharged from the mined lands shall meet all applicable water quality standards of the Regional Water Quality Control Board and other agencies with authority over such discharges. (Former Section CZ#A314-36(X)(C); Amended by Ord. 2117, Sec. 2, 5/28/96)

61.2.10.4 Erosion Control. Adequate measures shall be taken to assure the prevention of erosion from mined lands and adjacent properties during the life of the operation. The reclamation plan shall assure the prevention of erosion subsequent to surface mining operations. (See also, Section 313-61.2.3.) (Former Section CZ#A314-36(X)(D); Amended by Ord. 2117, Sec. 2, 5/28/96)

17925

SECTION A314-36-61.2 SURFACE MINING AND RECLAMATION

- A. Purpose.** ~~This section is adopted pursuant to the provisions of the surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.). Nothing contained herein is intended to modify or abridge the provisions of that act.~~

~~It is the intent of these regulations to protect the quality of the County's environment, to protect against land uses incompatible with preservation and utilization of natural resources and to assure the community of adequate supply of these resources for present and future generations.~~

- B. Applicability.** ~~These regulations shall apply to all surface mining including metallic and non-metallic minerals and reclamation activities in Humboldt County as permitted by Chapter 3 of this Division.~~

C. Vested Rights.

- (1) Vested Right.** ~~No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a use permit to mine as long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of the Act and this Section.~~

- (2) Vested Right, Defined.** ~~A person shall be deemed to have vested rights if, prior to January 1, 1976, he has, in good faith and in reliance upon a permit or other legal authorization, if such permit or other authorization was required, diligently commenced surface 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.~~

- (3) Special Permit Plan Approval.** ~~A person who has obtained a vested right to conduct surface mining operations shall submit an application for a special permit, which includes a reclamation plan that was prepared in compliance with the requirements of this Section, to the Planning Department for review and approval.~~

~~The reclamation plan shall provide for the reclamation of the area disturbed by surface mining operations mined after January 1, 1976. No substantial changes shall be made in the operation during the period in which the reclamation plan is being considered for approval.~~

- (4) Statement of Vested Right.** ~~Upon submission of a special permit application for surface mining operations proposed to be conducted on a site believed by the applicant to have vested rights, the applicant shall submit a "Statement of Vested Right" form provided by the County.~~

18 of 25

~~(5) — Filing Deadline.~~ Application for a special permit for a surface mining operation with s vested right shall be filed within nine (9) months after the effective date of this ordinance.

~~(6) — Extension.~~ should approval of the special permit not be obtained within twelve (12) months after the effective date of this ordinance, all of the subject surface mining operations shall be terminated and those areas mined after January 1, 1976, shall be reclaimed in a manner generally in conformance with this Section and subject to the approval of the Hearing Officer. The Hearing Officer may grant reasonable extensions of time for obtaining approval of the reclamation plan if approval is being diligently pursued by the applicant and if more time is required to fulfill all of the requirements and complete all of the procedures for such approval.

~~D. — Reclamation Plan Requirements.~~ A Reclamation Plan, prepared pursuant to the requirements of this section, shall be required for all surface mining operation use types and the metallic mineral extraction use type when it includes surface mining extraction. All surface mining operators shall adhere to the conditions and requirements of any applicable plan that has been approved pursuant to the requirements of this Division.

~~E. — Reclamation Plan Contents.~~ The required Reclamation Plan shall contain, at a minimum, the following information:

- ~~(1) — The name and address of the operator and the names and addresses of any persons designated by him as his agents for the service of process.~~
- ~~(2) — The anticipated quantity and type of mineral for which surface mining operation is to be conducted.~~
- ~~(3) — The proposed dates for the initiation and termination of such operation. Notification of the termination of an operation prior to the expiration of its permit shall be provided to the Planning Department within fifteen (15) days of such termination.~~
- ~~(4) — The maximum anticipated depth of the surface mining operation.~~
- ~~(5) — The size and legal description of the lands that will be affected by such operation, a map that includes the boundaries and topographic details of such lands, a description of the general geology of the area in which surface mining is to be conducted, the location of all proposed access roads to be constructed in conducting such operation, and the names and addresses of the owners of all surface and minerals interests of such lands.~~
- ~~(6) — A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.~~

- ~~(7) — A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.~~
- ~~(8) — A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including:
 - ~~(a) — A description of the manner in which contaminants will be controlled and mining waste will be disposed; and~~
 - ~~(b) — A description of the manner in which rehabilitation of affected streambed channels and streambanks to a condition minimizing erosion and sedimentation will occur.~~~~
- ~~(9) — An assessment of the effect of implementation of the reclamation plan on future mining in the area.~~
- ~~(10) — A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.~~
- ~~(11) — Any other information which may be required by this ordinance.~~

~~F. — Development Standards.~~

- ~~(1) — Surface Mining Operations. In addition to meeting the minimum acceptable surface mining and reclamation practices in the Act and policy guidelines, each surface mining operation requiring a use permit shall be conducted and designed to meet the following operational standards. Conditions may be imposed on use permits to ensure compliance with minimum acceptable practices and standards. Operations authorized by a use permit shall be conducted only by the operator named in the permit or by his authorized agent.~~
 - ~~(a) — Access Roads. All private access approaches leading off any paved public street onto a mining site shall be adequately surfaced to prevent aggregate or other materials being drawn onto the public right-of-way.~~
 - ~~(b) — Dust Suppression. All haul roads and driveways shall be maintained as necessary to minimize the emission of dust. Maintenance shall be conducted as necessary to prevent a nuisance to adjacent properties.~~
 - ~~(c) — Discharge waters. Any waters discharged from the site to adjacent lands, streams or bodies of water or to any groundwater body shall meet all applicable water quality standards of the Regional Water Quality Control Board and any other agency with authority over such discharges. Discharges of water to designated on-site settling ponds or desilting basins shall not be deemed to be in violation of this part solely on the basis of sediment content.~~

- (d) ~~Erosion Prevention.~~ During the period mining operations are being conducted, and prior to final reclamation of mined lands, measures shall be taken to prevent erosion of adjacent lands from Waters discharged from the site of mining operations and the off-site discharge of sediment. Such measures may include the construction of properly designed retarding basins, settling ponds and o other water treatment facilities, ditches, diking and revegetation of slopes. Settling ponds and other water treatment facilities shall be located and managed so that accumulated sediment will not enter any stream.
 - (e) ~~Maintenance of Existing Grades.~~ Grades in areas being mined shall be maintained so as to avoid accumulations of water that could serve as breeding areas for mosquitoes or as sites of fish entrapment.
 - (f) ~~Surrounding Water Transmissivity.~~ Excavations which may penetrate near or into usable water bearing strata shall not substantially reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such ground water basin or subbasin to pollution or contamination.
- (2) ~~Reclamation Activities.~~ Properties used for surface mining operations shall be reclaimed after the operation, or an approved phase of the operation, has been completed in accordance with the following standards:
- (a) ~~Time Limitation.~~ reclamation shall in all cases be completed within the time schedule set forth in the approved reclamation plan. In all oases reclamation shall commence not later than twelve (12) months following termination of the excavation operation or approved phase. However, the operator is required to proceed as soon as practicable and may be required to progressively rehabilitate the site as the excavation operation or approved phase is completed.
 - (b) ~~Final Reclaimed Slopes.~~ Final reclaimed slopes, abandoned spoil piles and the entire mining site shall be graded and smoothed as necessary so as to control erosion, prevent the creation of potentially dangerous areas and present a natural appearance. The grades of final reclaimed slopes shall be no steeper than 1 1/2 horizontal to 1 vertical unless a steeper angle of repose is recommended as safe and self supporting by a registered Civil Engineer qualified in the field of soils engineering and soil mechanics. Fill slopes flatter than 1 1/2:1 will generally be acceptable. In pits, slopes below the minimum water level shall be no steeper than the natural angle of repose.
 - (c) ~~Resoiling.~~ Resoiling to replace topsoil removed during the mining operation shall be accomplished in the following manner: Coarse, hard material shall be graded and covered with a layer of finer material or

~~weathered waste and a soil layer then placed on this prepared surface where practical. Where quantities of available soils are inadequate to provide cover, native materials should be upgraded to the extent feasible for revegetation.~~

- ~~(d) — **Revegetation.** All permanently exposed lands that have been denuded by mining operations shall be revegetated unless any such revegetation is determined by the Planning department to be technically infeasible or not beneficial with respect to the intent of this section. Revegetation methods and plant materials utilized shall be appropriate for the topographical, soil and climatic conditions present at the site. Native species shall be used wherever practical.~~
- ~~(e) — **Instream Operations.** where mining will occur between the banks of a watercourse, streambed channels and streambanks affected by the operation shall be rehabilitated periodically so as to minimize erosion and sedimentation and so as to minimize undermining or damage to off site public or private property, improvements or structures.~~
- ~~(f) — **Grading, Backfilling and Cleanup** Reclamation plans shall make provisions to ensure that the mining site is left in a final condition after operations are complete, that is:
 - ~~(i) — Safe with stable waste piles, cut slopes, fill slopes and with the elimination of steep-sided pits and holes.~~
 - ~~(ii) — Free of derelict machinery, waste materials, mining waste and scrap.~~
 - ~~(iii) — Revegetated where necessary for soil stabilization.~~
 - ~~(iv) — Free of drainage problems.~~
 - ~~(v) — Free of toxic substances in fill material.~~
 - ~~(vi) — Coordinated with present and potential future land use, topography and the general environment of surrounding property.~~~~
- ~~(g) — **Water-filled Areas.** Unless a water-filled excavation is recognized in the reclamation plan as an integral part of future development or use of the property, all excavations made to a level below the highest seasonal ground water table shall be filled with inert materials to a level above the highest seasonal ground water table and with slopes less than the critical gradient upon completion of a mining phase. The person responsible for reclamation shall practice effective mosquito control measures.~~

22 of 25

(h) — ~~Drainage, Erosion and Sediment Control.~~

- i. ~~Regrading and revegetation shall be designed and carried out to minimize erosion, provide for drainage to natural outlets or interior basins designed for water storage and to eliminate potholes and similar catchments that could serve as breeding areas for mosquitoes, sites of fish entrapment or threats to public safety.~~
- ii. ~~Silt basins which will store water during periods of surface runoff shall be equipped with sediment control and removal facilities and protected spillways designed to minimize erosion when such basins have outlet to lower ground.~~
- iii. ~~Final grading and drainage shall be designed in a manner to prevent discharge of sediment above natural levels existent prior to mining operations.~~
- iv. ~~Upon reclamation, no condition shall remain which will or could lead to the degradation of water quality below applicable standards of the Regional Water Quality Control Board or any other agency with authority over water quality.~~

G. Periodic Review. ~~As a condition of approval for the use permit or the reclamation plan, or both, the applicant shall establish an acceptable schedule for periodic inspections of the site to evaluate continuing compliance with the permit and the reclamation plan. The schedule may require the County to give applicant notice of the day and hour of an intended inspection and may require that the applicant or its representatives accompany the County inspector.~~

H. Responsibilities.

- (1) ~~**Responsibility.** The holder of a special or use permit for surface mining operations shall be responsible for adhering to the approved reclamation plan.~~
- (2) ~~**Succession of Responsibility.** Whenever one operator succeeds to the interest of another in an incompletd 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.~~

- I. ~~Minor Modifications of Approved Reclamation Plan.~~** ~~Minor modifications from an approved reclamation plan may be allowed, pursuant to Chapter 5 of these regulations upon request of the operator and applicant, if they are not one and the same, and upon a finding by the Hearing Officer that the requested modifications are necessary to achieve the prescribed post-mining use of the reclaimed land.~~
- J. ~~Term of Use Permit.~~** ~~Where a use permit is required for surface mining operations, by Chapter 3 of this Division, the use permit shall be granted at the discretion of the Hearing Officer for a period of not less than three (3) years and not more than fifteen (15) years depending on the life expectancy of the operation. Upon written request to the Hearing Officer, before the expiration of said permit, the permit shall be reissued for a period equal to that grant of the original permit so long as the permit holder establishes to the satisfaction of the Hearing Officer or on appeal to the Board of Supervisors that the use has been conducted in compliance with permit conditions.~~
- K. ~~Exception.~~** ~~The provisions of this Section shall not apply to the following excavation and surface mining operation:~~
- ~~(1) — Excavations or grading conducted for the purposes of farming, on-site construction, or restoring land following a flood or natural disaster. Streambed skimming, not in excess of one (1) acre, or streambed skimming where the total material removed, including overburden, does not exceed 1,000 cubic yards.~~
 - ~~(2) — Excavation for the construction of any building or structure for which a necessary building permit has been duly issued, or excavation which in all or part of a grading operation necessary to bring the contours of a proposed land subdivision to the grades shown on a tentative subdivision plan which has been officially approved.~~
 - ~~(3) — Surface mining operations, including prospecting and exploration for minerals of commercial value, so long as the lands mined do not exceed one (1) acre in any location and the total material removed, including overburden, does not exceed 1,000 cubic yards.~~
 - ~~(4) — Surface mining operations that are required by federal law in order to protect mining claim, if such operations are conducted solely for that purpose.~~
 - ~~(5) — Such other mining operations of an infrequent nature, and which involve only minor surface disturbances as may be categorically identified by the State Board of Mining and Geology from time to time.~~
- L. ~~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 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 Planning Department. Proprietary information shall be made available to persons other than the State Geologist only when authorized by the mine operator and by the mine operator and by the mine owner in accordance with Section 2778 of the Public Resources Code.

